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1. COURT CASES AND ARBITRATION

England & Wales: High Court provides useful guidance on the meaning of ‘Fundamental Dishonesty’

The High Court in London in *London Organising Committee for the Olympic and Paralympic Games (in Liquidation) v Haydn Sinfield*¹ provides guidance on the ‘Fundamental Dishonesty’ test. In this case the claimant suffered an accident as a volunteer worker at the 2012 Olympic Games and as a result had long-term disability. His claim included a claim for special damages for the costs of employing a gardener, which he claimed was only necessary as a result of his injuries. The claimant had a 2 acre garden and declared that a gardener had been employed for 2 to 4 hours of work per week, at a rate of £13 an hour, from the period commencing 9 September 2012. The claimant also sought special damages in relation to future losses for gardening. The gardening claim amounted to 42% of his total claim for special damages.

However, the defendant subsequently became aware that the claimant had, in fact, employed a gardener before he sustained the injury and there had been no increase in the hours worked on the garden after the accident. Further, the invoices for the gardener were found to have been created by the claimant without the gardener’s permission.

The defendant argued that the claim should be dismissed in accordance with s.57 of the Criminal Justice and Courts Act 2015, which states that the Court shall dismiss a claim, unless it would cause substantial injustice, where a claimant has been found to be fundamentally dishonest on the balance of probabilities in relation to the primary claim or a related claim.

It was held by the trial judge, Mr Recorder Widdup, that the dishonesty shown by the claimant

was fundamental to the claim for gardening expenses, but this did not go to the root of the claim and did not contaminate other aspects of the claim. As such, the claimant was given judgment and awarded damages. In making his findings, the trial judge considered County Court decisions on the meaning of ‘fundamental dishonesty’ such as *Meadows v La Tasca Restaurants*.

In the High Court before Mr Justice Knowles the appeal was allowed and it was held that the claimant had been fundamentally dishonest in exaggerating the costs of gardening help following the accident. Mr Justice Knowles held that ‘a claimant should be found to be fundamentally dishonest within the meaning of s.57(1)(b) if the defendant proves on a balance of probabilities that the claimant had acted dishonestly in relation to the primary claim and/or a related claim... and that he has thus substantially affected the presentation of his case, either in respects of liability or quantum, in a way which potentially adversely affected the defendant in a significant way, judged in the context of the particular facts and circumstances of the litigation.’

Mr Justice Knowles considered the first instance judge was ‘plainly wrong’ not to have concluded that two paragraphs of the schedule of loss were dishonest misstatements by the claimant. Mr Justice Knowles went on to state that the fact that the greater part of the claim may have been genuine was ‘neither here nor there’ where the court finds fundamental dishonesty. He held that the claimant knowingly made dishonest misrepresentations in his schedule of loss which could have resulted in the defendant’s insurers paying out far more than they could properly, on honest evidence, have been ordered to pay following a trial.

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2. MARKET DEVELOPMENTS

Mexico: Probitas opens in Mexico

Probitas Syndicate 1492 has become the first Lloyd's syndicate to join the Lloyd's representative office in Mexico, demonstrating its commitment to servicing Latin America. The focus will initially be on providing facultative reinsurance for casualty and property business.

Lloyd's regional head for Latin America and Lloyd's representative in Mexico, Daniel Revilla, has been working hard to encourage managing agents to set up local offices in the region. Mr Revilla has explained that as Mexico is the largest source of premiums for Lloyd's in Latin America and Probitas' proximity to local stakeholders will likely secure them business that would not otherwise flow through the Lloyd's market.

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Europe: Windstorm Friederike: forecast to cost millions in economic losses

The estimated insured losses, resulting from windstorm Friederike which hit northern Europe earlier this month, are expected to top €90 million in the Netherlands and in Germany the losses could reach €500 million. The storm, which brought hurricane-strength winds of up to 90mph, is the most powerful storm to hit Germany in over a decade.

AIR Worldwide, the catastrophe risk modeller, has estimated the total insurance industry loss to be between €1.3 billion and €2.6 billion although their prediction does not include losses resulting from coastal or inland flooding, business interruption and additional living expenses for residential claims.

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