

**R&R DEVELOPMENTS LTD v AXA INSURANCE PLC**

*Contra proferentem principle applies to ambiguous questions on a proposal form*

The court held in this case that questions to the Insured in a proposal form should be construed contra proferentem. On that basis the court only needed to determine whether the answer was correct on the reasonable meaning of the question, not interpret each question.

The claim related to a Combined Contract Works (CAR) policy to protect against theft and damage. The policy provided that it would be voidable in the event of misrepresentation, misdescription or non-disclosure in any material particular. In the proposal form R&R had answered 'no' to the question of whether *"any directors either personally or in connection with any business in which they have been involved ever been declared bankrupt or are the subject of any bankruptcy proceedings or any voluntary or mandatory insolvency"*. AXA contended that a director of R&R had been a director of a company in administrative receivership and of a number of liquidated and dissolved companies and that this should have been disclosed. The failure to do this amounted to a misrepresentation. R&R argued that the questions were ambiguous and that they only related to the insolvency of the Insured or any of its directors and, in any event, administrative receivership was outside the scope of *"voluntary or mandatory insolvency"*

The court held following *Doheny v New India Assurance* that there was genuine ambiguity and that, on the plain reading of the words, the question related to the Insured and its directors in respect of their personal affairs. The question did not therefore extend to companies in which the directors had been involved. R&R's interpretation of the question was reasonable and its answer was accurate. Accordingly, it was not necessary for the court to decide whether administrative receivership was *"voluntary or mandatory insolvency"*. It did, however, indicate that it was neither.

This decision demonstrates that questions in a proposal form need to be clear and unambiguous to avoid the contra proferentem principle being applied to both the representation and, where it became a term, to the term of the contract.

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