Claim Case Study:

Insurance Policy Declared Void for Non-Disclosure – *Guardian Insurance v. Roman Catholic Archdiocese of St. John's*

In a significant legal development, the Commercial General Liability (CGL) insurance policy held by the Roman Catholic Archdiocese (RCA) of St. John's has been declared void. This ruling releases Guardian Insurance from its obligation to cover settlements related to historic sexual abuse claims. The controversy stems from the 1980s, when the archdiocese failed to disclose known allegations of abuse against its clergy at the time the policy was issued. Despite expert testimony indicating that such allegations were not typically deemed material for religious institutions at the time, the court concluded that the policy would never have been granted had the abuse been disclosed.[1]

Background

In 1974, a student (T.C.) told Father Ron MacIntyre that Father Jim Hickey had sexually abused him. MacIntyre informed Vicar General Monsignor Morrissey about the student's allegation.

In 1975, Father Philip Lewis arranged a meeting between T.C. and Monsignor Morrissey, where T.C. detailed the abuse. Monsignor Morrissey did not report the incident to civil authorities but informed Hickey, who then confronted T.C. No action was taken to prevent further abuses, and Hickey continued to abuse children for the next 14 years, moving between parishes.

In May 1980, seminarian Randall Barnes told Archbishop Penney that Hickey and another seminarian were abusing boys at the parochial house in Rushoon, where Hickey was the parish priest. Archbishop Penney did not report this information to civil authorities or disclose it to Guardian.

Prior to commencement of the trial, both parties submitted an Agreed Statement of Facts to the Court. In this document, RCA admitted that it didn't reveal its knowledge about allegations of sexual abuse by some of its clerics before obtaining the Policy in October 1980, or when renewing it each year up to 1985.

RCA was subsequently served with claims from people who alleged they were abused by its priests between October 1, 1980, and October 1, 1985. RCA requested that Intact Insurance Company (Guardian's successor) defend and cover these claims. In a letter dated March 25, 2010, RCA says Intact denied the claims for coverage under the Policy.[2]

RCA brought third-party claims against Guardian for indemnification under its CGL when it was found vicariously liable for the abuse claims.

Guardian defended the proceeding claiming material nondisclosure and fraudulent misrepresentation. Additionally, it asserted that RCA did not report the abuse contrary to the *Child Welfare Act*.

Utmost Good Faith

Uberrima fides, or "utmost good faith," is a fundamental principle in insurance contracts. It means that both the insurer and the insured must act with complete honesty and transparency. This principle requires a high level of transparency between the insurer and the insured. This means that both parties to an insurance contract have a greater duty to disclose all material facts compared to other types of contracts. This ensures that the contract accurately reflects the actual risk being undertaken.

1 https://www.insurancebusinessmag.com/ca/news/breaking-news/guardian-insurance-dodges-liability-in-archdiocese-abuse-case-519149.aspx
2 https://www.canlii.org/en/nl/nlsc/doc/2024/2024nlsc182/2024nlsc182.html

Whether nondisclosed information is material is a question of fact in each case, whether the matters concealed or misrepresented had been truly disclosed, they would, on a fair consideration of the evidence, have influenced a reasonable insurer to decline the risk or to have stipulated for a higher premium.[3]

The consequence of non-disclosure or misrepresentation by the customer is loss of coverage because the insurer is entitled to render the contract "void". Unless there has been fraud, this usually means that the customer is entitled to a refund of premiums.[4]

RCA's policy was declared void ab initio (from inception) and Guardian was permitted to retain all premiums paid because of the fraudulent misrepresentation by RCA.

How does this impact Faith Organizations?

The court's decision underscores the importance of disclosure in the insurance industry, particularly for institutions managing sensitive or high-risk operations.

Faith Organizations can learn several important lessons about nondisclosure to insurers:

1. **Full Disclosure is Essential:** Faith Organizations must disclose all relevant information when applying for or renewing insurance policies. Failure to do so can result in the policy being voided, leaving the organization without coverage when it's needed most.
2. **Legal and Financial Risks:** Nondisclosure can lead to significant legal and financial consequences. If an insurer discovers that material facts were withheld, they can deny claims and cancel the policy, which can be financially devastating.
3. **Reputation Management:** Transparency with insurers helps maintain the Faith Organization's reputation. Being honest and forthcoming can prevent scandals and the loss of trust within the community.
4. **Training and Policies:** Faith Organizations should implement training programs and policies to ensure that all staff understand the importance of full disclosure. This includes regular reviews of what needs to be disclosed and how to handle sensitive information.
5. **Consult Legal Experts:** Engaging with legal and insurance experts can help Faith Organizations navigate the complexities of insurance contracts and ensure they meet all disclosure requirements.[5]

This landmark case highlights the financial and ethical consequences of non-disclosure, reinforcing the critical role of transparency in insurance agreements.

3 https://www.canlii.org/en/nl/nlsc/doc/2024/2024nlsc182/2024nlsc182.html
4 https://www.canlii.org/en/nl/nlsc/doc/2024/2024nlsc182/2024nlsc182.html
5 https://www.bclplaw.com/en-US/events-insights-news/when-can-insurers-avoid-for-non-disclosure.html

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