BARNES & THORNBURG LLP

Barnes & Thornburg's Insurance Recovery Team Helps Secure Federal Appellate Victory For Construction Company In Sunken Barge Case

August 26, 2015 | | Insurance, Policyholder Protection

Christopher L. Lynch
Partner

On Aug. 20, 2015, the U.S. Court of Appeals for the Eighth Circuit issued an important favorable decision for marine insurance policyholders. The court reversed a summary judgment order that had been granted in favor of insurer St. Paul Fire & Marine Insurance Company (SPF&M) on a claim for wreck removal coverage for a construction barge that sank in Narragansett Bay, Rhode Island, in 2011. In doing so, the court confirmed that, to void a marine insurance policy under the federal maritime doctrine of *uberrimae fidei* ("utmost good faith"), an insurer must do more than show that the policyholder omitted information from the policy application that would have been objectively material to a hypothetical prudent and intelligent underwriter. In one of the clearest articulations of the necessary elements of *uberrimae fidei* issued by a federal circuit court to date, the Eighth Circuit confirmed that an insurer must also show actual reliance on the part of its own underwriter – *i.e.*, that the omission of the information at issue actually induced the insurer's underwriter to issue the policy. A contrary rule, the court reasoned, would create a moral hazard of post-claim underwriting by marine insurers.

The claim for coverage The case involved a claim for coverage by Abhe & Svoboda, Inc., a Minnesota-based construction company that repairs and paints bridges and other infrastructure. In 2010, Abhe leased a barge for use as a stationary equipment platform in connection with a bridge repair and painting project in Narragansett Bay. That barge was one of a number of barges scheduled and insured under a package ocean marine insurance policy that Abhe had purchased from SPF&M. The barge sank during a severe nor'easter storm in October 2011. The Coast Guard ordered the barge's removal from the bottom of the bay, and Abhe made a claim to SPF&M for wreck removal coverage under its Protection & Indemnity policy. SPF&M ultimately took the position that the package marine insurance policy it had issued to Abhe was void under the maritime doctrine of *uberrimae fidei* because, before SPF&M issued the policy, Abhe had not given SPF&M a copy of the on-hire survey that had been performed on the leased barge in November 2010. For its part, before issuing the policy, SPF&M had not requested that Abhe fill out an insurance application or provide any existing survey reports, and had not attempted to survey any of Abhe's marine equipment. ***Uberrimae fidei* – the obligation of utmost good faith** As recognized by the Eighth Circuit, and other circuits that have decided the issue, the principle of *uberrimae fidei* or "utmost good faith" is an established rule of federal maritime law that governs marine insurance contracts. The doctrine requires the parties to a marine insurance policy to "accord each other the highest degree of good faith." *St. Paul Fire & Marine*

RELATED PRACTICE AREAS

Insurance Recovery and Counseling

RELATED TOPICS

marine insurance policy
Utmost good faith

Ins. Co. v. Abhe & Svoboda, Inc., No. 14-2234, slip op. at 6 (8th Cir. Aug. 20, 2015). As explained by the Eighth Circuit, that heightened standard requires a party seeking marine insurance to disclose to the insurer all known circumstances that materially affect the risk being insured. *Id.* An insured's breach of the obligation of utmost good faith, even if it results from an unintentional omission, may entitle the marine insurer to void the insurance policy. **The litigation** SPF&M filed a lawsuit against Abhe in which it argued that Abhe's failure to disclose the information in the on-hire survey breached Abhe's obligations under the *uberrimae fidei* doctrine and entitled SPF&M to void the insurance policy. In April 2014, the District Court granted SPF&M's motion for summary judgment on that issue, finding that the omitted information was material as a matter of law, and that Abhe's failure to disclose the information – even if not intentional – allowed SPF&M to void the policy. On appeal, as in the District Court, Abhe argued that actual reliance was a necessary element of the *uberrimae fidei* analysis. Abhe contended that summary judgment was precluded by genuine fact issues as to both the objective materiality of the omitted information and whether the omission had actually induced SPF&M to issue its policy to Abhe. The Eighth Circuit agreed, explaining that omitting reliance as a necessary element of the *uberrimae fidei* analysis "would create a moral hazard on the part of marine insurers." *Id.* at 8. Allowing an insurer to void a policy without showing actual reliance, the court reasoned, "would have the perverse effect of encouraging insurers to assume unreasonable risks and to issue insurance policies that they otherwise would not have issued," collect premiums, and "then use the doctrine of *uberrimae fidei* to void the policy if an accident occurs and the insured seeks to invoke the policy's protection." *Id.* The court also recognized that requiring a showing of actual reliance on the part of the insurer was consistent with general principles of contract law, which require proof of reliance to establish a causal connection between the misrepresentation or omission in question and the issuing of the contract. *Id.* In surveying the national case law, the Eighth Circuit recognized that the Second Circuit has expressly held that reliance is a necessary element of the *uberrimae fidei* defense, and that other circuit courts applying the doctrine had either required a showing of subjective reliance by the insurer as part of the materiality analysis, or had relied on evidence of actual reliance or inducement on the part of the insurer. *Id.* at 7-9. Based on this analysis, the Eighth Circuit determined that, "clarity is enhanced by preserving actual reliance and objective materiality as distinct elements" of *uberrimae fidei. Id.* at 10. The court explained, "[w]hile materiality examines whether a fact would have influenced the judgment of a *reasonable and prudent* underwriter … reliance examines whether there was a causal connection between the misrepresentation or concealment of that material fact and the *actual* underwriter's decision to issue the policy." *Id.* (internal citations omitted). Reviewing the record evidence, the Eighth Circuit found that there were genuine issues of material fact as to both materiality and reliance. The court disagreed with the District Court's conclusion that the existence of non-watertight bulkheads on an equipment platform barge was information that was material as a matter of law. Citing statements made in prior surveys of the barge and expert testimony, the court concluded that because it cannot "be 'universally affirmed' on this record that the existence of non-watertight bulkheads 'must always be material to the risk' … there is a genuine dispute for trial on materiality as well." *Id.* at 12 (quoting *McLanahan v. Universal Ins. Co.,* 26 U.S. 170, 189 (1828)). The Eighth Circuit's carefully reasoned opinion is one of the clearest articulations of the necessity of actual reliance or inducement as an element of marine insurers' *uberrimae fidei* defense.

Because the Eighth Circuit applied a federal rule of maritime law, and took care to reconcile the substance of its conclusion with the decisions of other circuit courts that have applied the doctrine, the opinion's effect will likely be felt beyond the Eighth Circuit. For marine insurance policyholders, the decision may prove to be a valuable authority to prevent abuse of the "utmost good faith" standard by over-reaching insurers seeking to escape their coverage obligations. A copy of the Eighth Circuit's opinion in *St. Paul Fire & Marine Ins. Co. v. Abhe & Svoboda, Inc.,* No. 14-2234 (8th Cir. Aug. 20, 2015) can be accessed here. *Abhe & Svoboda was represented in the District Court and on appeal by members of Barnes & Thornburg's insurance recovery team, including the authors of this article.* Co-authored by Christopher L. Lynch, Laura N. Maupin and Thomas C. Mielenhausen.