DRN-4193718

The complaint

A group of limited companies, that I will refer to collectively as T, complain about decision of Great Lakes Insurance SE to decline their commercial insurance claim and void their policy.

What happened

The following is intended only as a brief summary of events. Whilst other parties have been, and continue to be, involved in the relevant matters where possible I have just referred to T and Great Lakes for the sake of simplicity.

T operate as laundrette related businesses and held a policy underwritten by Great Lakes. The policy was due to renew on 25 April 2021. In April 2021, T were sent a renewal invite. The documents stated:

> "…cover has been offered and accepted on the basis of the following:
>
> …
>
> [You] have never been, or are currently a director or officer of a company which has been, declared insolvent or had a receiver or liquidator appointed or entered into arrangements with creditors in accordance with The Insolvency Act 1986, or had an Individual Voluntary Arrangement (IVA)"

As well as the companies comprising T, the previous year's policy had insured a further company linked to T that I will refer to as L. Mr B, at the time, was a director of all of the companies comprising T and also of L. On 23 April 2021, T responded to the renewal invite saying they were pleased to confirm renewal, but that L could be removed from the policy, as this company was in the process of being placed into voluntary liquidation. T said that it would await revised documents. It should be noted that 23 April 2021 was a Friday.

Great Lakes responded to this email on Monday 26 April 2021, asking whether there were any outstanding debts associated with L. T, via a third party, responded on 29 April 2021 to advise that, "...there are no trade creditors or outstanding debts to report." And that, "This company did use the Government Bounceback loan..." T also said that L's turnover had dropped from around £40,000 per month to £5,000 per month.

The following day, 30 April 2021, Great Lakes provided amended policy documents, and confirmed cover had been renewed with effect from 25 April 2021.

During this period, L had passed resolution confirming it would be wound up, and an insolvency practitioner had been appointed. And Mr B signed a statement of affairs which set out the debts L owed. There is some dispute over whether this document was signed by Mr B, but this was either 26 or 28 April 2021. The debts set out included:

- Connected Companies £22,626
- Banks/Institutions £1,141

- Bounce Bank Loan £50,000
- Notice & Redundancy Pay £30,649

And the statement estimated the total deficiency as being around £108,600.

In December 2021, one of the companies comprising T suffered fire damage. And a claim was made to Great Lakes to cover the resulting loss. However, Great Lakes declined the claim and voided T's policy.

Great Lakes said that T had not provided accurate and complete information when the policy was taken out. And that, if the details of L's debt had been disclosed, it would not have offered the policy. Great Lakes has since confirmed that it considers this alleged failure by T to be a deliberate or reckless breach of the duty of fair presentation, as set out in the Insurance Act 2015 (the Act).

T were unhappy with this and complained. As Great Lakes did not change its stance, T referred their complaint to the Financial Ombudsman Service. However, our Investigator did not uphold the complaint and it has been passed to me for a decision.

T have made a number of points during the course of the complaint. I have considered all of these, but have set out those I consider key as follows.

T said that the contract of insurance had been entered at the point the renewal offer from Great Lakes had been accepted, and that this was on 23 April 2021. And that Great Lakes had not sought to raise any reservation at that time. At this point L had not entered any liquidation process, so there was no failure on T's part. T have also said that the renewal was certainly complete by 25 April 2021, which is when cover commenced. T consider that if there was a failure after this time, it should be considered on the basis of an Alteration in Risk.

T do not consider that the removal of L from the policy increased the risks posed to Great Lakes. And does not consider Great Lakes would not have offered the policy had the full circumstances been disclosed.

T also do not consider there to have been any failure or misrepresentation, as the liquidation of L and the Bounceback loan were disclosed. T feel that Great Lakes were put on notice at this point, and should have investigated matters further if it had any concerns. T consider that by not doing so, and then by providing the policy, Great Lakes has waived its rights to the remedies sought. T have also explained that a number of the debts L had should not have been considered as being those T needed to disclose.

Finally, T have said that if there was a failure to meet the duty of fair presentation, this was not deliberate or reckless. And that Great Lakes needs to demonstrate that T appreciated the risk relating to the information it was providing, but didn't care and ignored it.

In relation to this last point, Great Lakes has said that T had advised that there were no trade creditors or outstanding debts, but was aware – prior to the policy being confirmed on 30 April 2021 – that there were debts outstanding. Great Lakes considers that by signing a statement of affairs, for L, confirming debts "on the same day" as insurers raised their query, and advising the insurer there were no debts is clearly reckless non-disclosure of material facts, following a clear question being asked at the underwriting stage.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

Having done so, I am not upholding this complaint. I'll explain why.

I should firstly stress again that the above is only a summary of events. The involvement of third parties in the exchange of correspondence means that some of the dates as presented above could be misleading. For example, the information provided to Great Lakes on 29 April 2021 was via a third party. T themselves provided this information to the third party prior to this email; possibly a day or so earlier. But the overall timeline is as set out.

T's initial argument is based on the contract having been concluded prior to any exchange of information concerning L and its debts. T therefore says that there cannot be a breach of the duty of fair presentation in relation to this information exchange, as the duty only exists before a contract is entered into. However, I am not persuaded by this argument.

T have said that the contract was formed as soon as T responded positively to the renewal invitation, and/or that the contract renewed on 25 April 2021.

In terms of the first of these, T's position is essentially reliant on the contract that was ultimately entered being the contract offered by Great Lakes at the start of April. However, given one of the parties to the offered contract was not a party to the contract that was ultimately formed, and hence the cover initially offered was not the cover ultimately provided, this was clearly not the same contract.

And, whilst cover was backdated to 25 April, I cannot agree that this is the date the contract was formed. I consider this date was clearly 30 April 2021, when the contract containing the corrected parties and the declaration was provided. Backdating the period of cover does not change the date of the contract itself.

This is significant, as it means T's obligations under the duty of fair presentation existed up until 30 April 2021.

As I have said, there is some dispute over whether Mr B signed the statement of affairs for L on 26 or 28 April 2021. But either date is prior to the contract being formed. So Mr B, and by extension T, would have been aware of the debts of L during the period T were under the duty of fair presentation. T would also have been aware that Great Lakes had specifically asked whether or not L had any outstanding debts. So, they ought to have known this was information that was a material circumstance and so they had a duty to disclose it.

I do not consider that the references made by T in relation to a Bounce Back loan having been previously taken out was enough to put Great Lakes on notice that it ought to make further enquiries. Great Lakes had asked a very straightforward question over whether L had any outstanding debts. This question formed the additional enquiries Great Lakes made having been put on notice of the pending liquidation of L. And it was explicitly told that there were no outstanding debts. I consider Great Lakes was entitled to rely on this statement without asking further questions.

T have argued that the level of debt L had did not increase the risk posed to Great Lakes, as L were not going to be party to the ongoing contract. However, one reason an insurer might consider such information relevant is that Mr B was a director of all of these companies. So, him being involved in this debt accruing on one company posed a potentially increased risk of similar issues in relation to other companies he is involved in, and that Great Lakes was being asked to insure.

Great Lakes has provided the Ombudsman Service with the relevant part of its underwriting

criteria. It has not been possible to share this with T, due to the commercially sensitive nature of this information. But it is clear that the financial history of company directors is a material fact in relation to the risk Great Lakes is willing to take on. This risk consideration is common to the industry.

I also consider that T was obliged to provide full details of the debts L had. Whilst I note that T does not consider all of these to be relevant – for example the intercompany debt had apparently been written off and that the costs of redundancy would be covered by the liquidation process – this was not a decision for it to make. And even if I accepted T's argument here, there would still be other debts that it failed to disclose.

Taking all of these points into account, I consider that there was a breach by T of the duty of fair presentation.

Great Lakes' underwriting criteria also confirms that, had there been the level of disclosure I consider there should have been – i.e. had T informed Great Lakes of all the debts L had – Great Lakes would not have offered T the policy. This means that, regardless of whether or not the breach of duty by T was "deliberate or reckless" or not, Great Lakes would still be entitled to void the policy. As it would not have entered into the contract of insurance with T, Great Lakes can rely on the relevant remedy under the Act, and avoid the contract and refuse all claims.

However, Great Lakes has said that the breach of duty was "deliberate or reckless". If this is the case, Great Lakes is also entitled to withhold the premium T paid for the policy – which was around £10,000.

The Act, effectively, says that a breach is deliberate or reckless if the T knew that they were in breach of the duty or did not care whether or not they were in breach of that duty. It is, as T has said, for Great Lakes to demonstrate that the breach was deliberate or reckless. Great Lakes has though pointed out that T were asked a clear question over the debts of L, that prior to the contract being entered T were aware of the debts of L, and that T provided a clearly incorrect answer to this question.

As far as I can see, T's only defence to this position is that Mr B did not consider all of the debts owed by L to be those that were relevant. And it may be that when the answer to Great Lakes' question was provided, T held an honest belief that it was providing accurate information (although I would against say that not all of the debts listed can be explained as not being relevant).

However, upon seeing and signing the statement of affairs for L – on either 26 or 28 April 2021 – T ought to have been aware that the information previously provided was inaccurate. So, at that point, they either knew they were in breach of the duty of fair presentation, or did not care whether they were in breach. Given this, I am satisfied Great Lakes has fairly and reasonably treated the breach as deliberate or reckless.

It follows that I consider Great Lakes' decision to void T's policy and to not meet the claim to have been fair and reasonable.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 13 December 2023.

Sam Thomas
Ombudsman