



## Discovery in Insurance – Cover Slip

### *Lagan Construction Group Holdings Ltd and others v Ben McArdle Ltd and Citynet Insurance Brokers*

August 2017

The recent case of *Lagan Construction Group Holdings Ltd and others v Ben McArdle Ltd and Citynet Insurance Brokers* [2017] IEHC 427 provides an insight into the court's attitude to discovery in cases involving professional indemnity insurance policies where a cover slip issue is involved.

#### Policy Issues

Lagan had instructed Ben McArdle Ltd (who are insurance brokers) to procure a policy of professional indemnity insurance in respect of their civil engineering business. In addition to the primary layer policy, Lagan required two layers of excess policies to be underwritten on the Lloyds market. As Ben McArdle Ltd was not licensed on the Lloyds market they used Citynet Insurance Brokers Ltd (a second insurance broker who was licensed to Lloyds) to place the excess insurance policies.

Ben McArdle Ltd placed the primary layer of cover with Royal Sun Alliance Insurance plc and instructed Citynet Insurance Brokers Ltd to renew the two layers of excess cover. Citynet Insurance Brokers Ltd renewed one layer of excess cover for the relevant period (1 October 2012 to 30 September 2013) but did not renew the second layer of excess cover with with CNA Insurance Europe Limited (“CNA”) immediately.

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Following from a change in broker the plaintiff sought a cover slip for the second excess layer. Citynet Insurance Brokers Ltd. placed cover with CNA on 18 April 2013. The cover was not retrospective and the policy was endorsed to that effect. In summary, therefore, there was no cover on the policy from 1 October 2012 to 18 April 2013.

When issues arose and potential claims against Lagan were notified to insurers early in 2013, this gap in the layers of insurance cover came to light.

### Core Document

A serious discrepancy came to light in respect of the CNA cover slip. Lagan's solicitors wrote to Ben McArdle Ltd stating that CNA provided them with a cover slip. The slip was dated 18 April 2013 and was endorsed: -

*'... CNA Insurance Europe Limited will not be liable for any claim or notification which has been notified to the primary insurer before 18 April 2013.'*

A cover slip had been furnished by Ben McArdle Ltd to Lagan, but was undated and was not endorsed. Ben McArdle Ltd claimed that this cover slip was provided to them by Citynet Insurance Brokers Ltd. This document appeared to show that cover was in place from 1 October 2012 to 30 September 2013. In fact, it was not. How this came about and who is responsible are hotly contested issues for the trial of the action.

### Discovery in this type of Case

Discovery was agreed between Ben McArdle Ltd and Citynet Insurance Brokers Ltd. Citynet Insurance Brokers Ltd agreed to make discovery of three categories of documents with a temporal limit. Disputes as to the scope and adequacy of the discovery arose which resulted in an application by Ben McArdle Ltd. for an order for further and better discovery and for an order pursuant to Order 31, rule 20 (3) of the Rules of the Superior Courts to compel Citynet Insurance Brokers Ltd to swear an affidavit in relation to a document which is central to this dispute, the CNA cover slip.

There were three grounds of complaint in Ben McArdle Ltd.'s application. Of note is the discussion surrounding Order 31, rule 20(3). Citynet Insurance Brokers Ltd had discovered the cover slip which was undated and unendorsed but not the dated cover slip with the endorsement.

The court exercised its discretion to order an affidavit to be sworn by Citynet Insurance Brokers Ltd explaining whether the CNA cover slip dated 18 April 2013, and endorsed, was or had at any time been in its possession or power and if not then what had become of it.

### Concluding Remarks

This case will be an interesting case to track to full hearing. The issues are complex and the court in the discovery application has highlighted the necessity for explanation of the existence of documentation to prove assertions.

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