

The Dishonesty Exclusion:

The Judgment in *Travelers & Denton Wilde Sapte v Gauri Advani*

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The English Courts have handed down a decision concerning the dishonesty exclusion that is a common feature of many liability policies, and the decision has been given in the context of a particularly unusual set of facts.

Gauri Advani is LK Advani's former daughter-in-law. She joined an English law firm, Denton Wilde Sapte (DWS), as the head of its India desk. Two UK based NRIs sued DWS and Ms Advani alleging that Ms Advani had advised them to pay £383,259 to Ashok Yadav, the former Tourism Minister of Uttar Pradesh, with the intention of obtaining the UK & Ireland General Sales Agency (GSA) from Air India. The Plaintiffs alleged that because Ms Advani was DWS' employee, DWS were also liable in a vicarious capacity.

In its 2009 judgment the Court ruled against the Plaintiffs. This is because the Court found the payment to Mr Yadav was intended as a bribe - Ms Advani had acted as a facilitator in the arrangement with Mr Yadav, who had said that the payments from the Plaintiffs would secure the GSA. The Court also held that in acting as a broker in such a transaction, Ms Advani was acting outside the scope of her employment with DWS.

Through an E&O policy, Travelers had paid some of Ms Advani's defence costs. DWS had also paid a portion of the costs, much of which was recovered from the Plaintiffs. In September 2010 Travelers and DWS sued Ms Advani to recover the remaining costs, which amounted to almost £600,000. Travelers relied on the ground that Ms Advani had acted dishonestly, and DWS sued Ms Advani for the breach of her employment contract, the resulting damages equating to the amount DWS had spent on defence costs and not recovered from the Plaintiffs.

In her defence to Travelers, Ms Advani relied on the fact that there was no actual finding by the trial Court that she had been dishonest. The Judge acknowledged that the trial Court "*did not describe Ms Advani's conduct as dishonest but what [the trial Court] found her conduct to have been was plainly dishonest*". Judgment was also given for DWS as, plainly, Ms Advani had acted in breach of her employment.

The judgment shows that, in appropriate circumstances, the Courts will look at the substance of a finding rather than just the terminology applied, and that Insurers who decide to apply the dishonesty exclusion can succeed in the right case.

For further information on this topic please contact Tuli & Co

Tel +91 11 4593 4000, fax +91 2464 0904 or email lawyers@tuli.biz

www.tuli.biz