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Marine Insurance Coverage—The *Uberrimae Fidei* Defense and Reliance as a Necessary Factor

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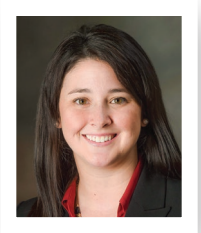

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On August 20, 2015, the U.S. Court of Appeals for the Eighth Circuit ruled that demonstrating reliance is required to void a marine insurance policy under the *uberrimae fidei* defense. In doing so, the court reversed the United States District Court for the District of Minnesota-Minneapolis' summary judgment award in favor of the marine insurer, St. Paul Fire & Marine Insurance Company ("SPF&M"), being able to void a marine insurance policy under the *uberrimae fidei* defense. *St. Paul. Fire & Marine Ins. Co. v. Abhe & Svoboda, Inc.*, 798 F.3d 715, 2015 U.S. App. LEXIS 14671 (8th Cir. Aug. 20, 2015). In this case, Abhe & Svoboda, Inc. ("Abhe"), an industrial painting contractor, leased a "dumb" barge, used as a stationary platform, to complete work on a bridge in Rhode Island. Abhe was required by the leasing company to have a professional surveyor assess the barge's condition. A surveyor required by the barge leasing company indicated the existence of pinholes in the deck and that the barge's under-deck tanks were not watertight from one another. After the survey, Abhe anchored the barge, loaded equipment, and began the several month project. Also, Abhe applied for and obtained a marine policy from SPF&M. Instead of SPF&M requesting that Abhe complete an application for insurance, it accepted an application Abhe had used for a different insurance application from May 2010. Abhe did not send SPF&M a copy of the barge's survey, and SPF&M did not survey any of Abhe's marine equipment, although it was entitled to do so under the marine insurance policy.

When Abhe's barge sank during a severe nor'easter in October 2011, the Coast Guard ordered the barge to be removed from the bottom of the Narragansett Bay. Abhe made a claim under its packaged ocean marine insurance policy for the wreck removal coverage, specifically under the Protection and Indemnity Policy. However, SPF&M denied the request for wreck removal coverage, citing that Abhe's policy was void under the *uberrimae fidei* ("utmost good faith") doctrine. SPF&M claimed that before it issued the package marine insurance policy, Abhe had not provided a copy of the November 2010 survey performed on the leased barge, and, therefore, its policy was void.

The *uberrimae fidei* doctrine requires both parties to a marine insurance contract to "accord each other the highest degree of good faith," and the insured to disclose to the insurer all known circumstances that materially affect the risk being insured." *Knight v. U.S. Fire Ins. Co.*, 804 F.2d 9, 13 (2d Cir. 1986). This is because the insured is in the best position to know of any facts that may be material to the risk. *Id.* Here, Abhe argued that SPF&M was incorrectly awarded summary judgment because the District Court had failed to consider whether Abhe's omission of the survey had induced SPF&M to issue Abhe's marine policy, and the actual reliance element of *uberrimae fidei*. In considering the parties' arguments, the Eighth Circuit was persuaded by the principal case addressing the issue, *Puritan Insurance Co. v. Eagle Steamship Co. S.A.*, 779 F.2d 866 (2d Cir.1985), in which the court held that reliance was a necessary element of the *uberrimae fidei* defense. The Eighth Circuit agreed with the Second Circuit that not only is the insured obligated to disclose all material facts to the insurer, regardless of whether the insurer makes a specific inquiry, reliance is a necessary element of the *uberrimae fidei* analysis, and omitting it "would create a moral hazard on the part of marine insurers." *St. Paul Fire & Marine Ins. Co.*, 2015 U.S. App. LEXIS 14671, at *11.

The Eighth Circuit noted that not all circuits explicitly recognize reliance as an element of *uberrimae fidei*. Nonetheless, several circuit courts use a subjective test for materiality that asks whether the insurer, in fact, would have found the omitted information material. The Eighth Circuit further recognized that

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including the reliance factor as part of the test is consistent with general contract law principles, under which a misrepresentation, by omission, requires the misrepresentation to have induced the harmed party to enter into the contract. The Eighth Circuit then concluded that under either test, SPF&M had the burden to show that Abhe's misrepresentation induced SPF&M to underwrite the risk. However, it did not find that SPF&M had provided sufficient evidence to show its reliance, and, therefore, reversed the summary judgment finding in favor of SPF&M, and remanded the case back to District Court for further findings.

In light of the Eighth Circuit's explicit finding that reliance is a necessary element to the *uberrimae fidei* analysis, insurers should take note that, when attempting to void a marine insurance policy for an insured's failure to disclose material facts, depending on the jurisdiction, the insurer may also have to prove that those omitted facts induced the insurer to underwrite the risk at issue. Insurers should now take the extra step and be able to prove that had its underwriters known the veracity of a material fact, they would not have issued the policy.

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