Newsflash: Supreme Court Digital Satellite Judgment
13 February 2013

The Supreme Court today handed down judgment in *Digital Satellite Warranty Cover Limited & anor v Financial Services Authority* concerning the issue of whether extended warranties for satellite television equipment are "contracts of insurance" within the meaning of Article 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("**RAO**").

Dismissing the appeal by Digital Satellite, the Supreme Court ruled (upholding the first and second instance judgments) that such contracts did fall within the RAO and Digital Satellite had been carrying on a regulated activity without the requisite authorisation.

Background

Digital Satellite provided extended warranty contracts to repair and replace satellite television dishes, digital boxes and associated equipment. Digital Satellite assumed an obligation only to repair and replace the equipment; not to pay money to the customer.

The FSA presented winding-up petitions against Digital Satellite on the basis that the extended warranties Digital Satellite had been offering constituted "contracts of insurance" within the RAO and Digital Satellite was carrying on a regulated activity without authorisation.

First Instance Decision

The first instance judgment (later upheld by the Court of Appeal) held that a contract providing benefits-in-kind of the sort offered by Digital Satellite did constitute a contract of insurance. This was on the basis that a contract which enables a customer to avoid a payment they would otherwise have to make (i.e. to repair or replace equipment) should properly be categorised as a contract to protect the customer from financial loss.

Court of Appeal Decision

On appeal, Digital Satellite sought to argue that, even if they were making and performing contracts of insurance, the contracts provided only benefits-in-kind and so did not fall within the European First Council Non-Life Insurance Directive (as amended) ("**the First Directive**") to which the RAO gave effect and, therefore, should not be considered contracts of insurance within Article 3 of the RAO. In other words, the RAO should be construed consistently with the First Directive and should not exceed in any way the scope of the First Directive.

The Court of Appeal held that the First Directive laid down a minimum regulatory framework which did not exclude national governments' rights to extend regulation to a wider class of benefits-in-kind insurance. Therefore, the scope of the RAO was not restricted in the manner contended for by Digital Satellite.

Supreme Court Decision

The Supreme Court upheld the Court of Appeal decision and dismissed the appeal.

In the Court's view the First Directive was never intended to impose a comprehensive scheme of authorisation upon member states and this was recognised in its Recitals. If national governments were to be precluded from regulating insurance activities not within the scope of the First Directive, then the result would be that such activities could be carried out without any regulatory protection for consumers.

The court affirmed the position that contracts which enable customers to avoid a payment they would otherwise have to make (i.e. to repair or replace equipment) should properly be categorised as contracts protecting the customer from financial loss and are therefore contracts of insurance within the risks identified in Class 16 of the RAO.

FURTHER INFORMATION & TRAINING

For more information or to enquire about any training requirements that you may have in relation to this subject please contact Lydia Savill.

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