

IN THE SUPREME COURT

## ***Fawkes v Westminster Insurance***

Mr Fawkes was a senior solicitor in a commercial law firm, and an aficionado of rare cigars. He had taken out a home insurance policy with Westminster Insurance, covering loss of or damage to his property, and the contents and personal possessions within. At the time, Mr Fawkes had notified Westminster Insurance of his collection of cigars, valued at £24,000.

On 5 November 2007, Mr Fawkes was made redundant. Upset, he spent the evening drinking alone at home. After consuming a considerable number of glasses of brandy he wondered whether or not if he smoked his cigars he could bring an insurance claim for them being damaged in fires. He reasoned that £24,000 would be very useful in his current economic state, and proceeded to light his first cigar.

Whilst smoking the first cigar he decided against his plan. He threw his cigar to the floor in disgust, but unfortunately the carpet set alight. The blaze soon spread throughout the room and to other areas of the house. Mr Fawkes was rescued by the fire service, cradling his box of cigars, and babbling incomprehensibly, but the property was severely damaged in the fire and rendered uninhabitable. Fortunately, no-one was injured and the remaining cigars were undamaged.

Mr Fawkes claimed on his home insurance policy for the damage to his house and contents due to the fire. Westminster Insurance refused the claim and Mr Fawkes subsequently brought an action against Westminster Insurance at York County Court.

King J found the following facts:

1. No claim was brought by Mr Fawkes in respect of the cigar that had been lit.
2. At the time of the incident Mr Fawkes had consumed 3/4 of a bottle of brandy.
3. There was no mortgage present on the house at the time of the incident.
4. General Exclusion Clause 1 of the policy excluded "*any wilful or malicious act by a member of the family or by a person lawfully at or in the home*".

King J found for the defendant, Westminster Insurance, on the following grounds:

1. Although Mr Fawkes had been drinking heavily on the night in question, this did not constitute insanity under the M'Naghten Rules, which could be applicable to insurance policies under *Porter v Zurich Insurance Company* [2009] EWHC 376 (QB).
2. In setting fire to the cigar with the intention of making a claim against the insurance company, Mr Fawkes had therefore wilfully acted and was unable to recover under the policy.

The Court of Appeal upheld the decision of King J. Mr Fawkes appeals on the following grounds:

1. King J erred in law in finding that the M'Naghten Rules would not be applicable due to the drunkenness of Mr Fawkes. King J neglected to apply the rule in *DPP v Beard* [1920] AC 479, that insanity, whether from intoxication or otherwise, could be a defence where specific intent was required.
2. In any event, Mr Fawkes had not wilfully acted to cause the damage. Mr Fawkes had not intended to set fire to the house; this had arisen purely out of his own negligence, and this was not excluded by the terms of the policy.