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*COURT OF APPEAL – CIVIL APPEAL  
NO : B-02 (NCVC)(W) – 404-03/2016*

*We are happy to announce that on 19.12.2017, the insurers in the case of AmGeneral & Sun Life Takaful won their appeal in the Court of Appeal against the High Court's decision which had earlier allowed the insured and their financier's claims of over **RM107million** (including interest and costs) under the fire material damage and consequential loss policies.*

*We had the privilege of being appointed as the solicitors and counsel to defend the insurers in this matter, and with the support of our clients and clients' service providers we have managed to win the matter on appeal, based inter alia, on the following grounds:*

- 1) That the fire was deliberate with the connivance of the insured;*
- 2) That the insured used fraudulent means or devices or fraudulent declarations;*
- 3) That the standard of proving civil fraud was on a balance of probabilities, which the insurers succeeded in proving by way of circumstantial evidence;*
- 4) That the insured had breached the FEA Warranties attached to the FMD policies;*

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- 5) That the insured had breached Condition 9(d) of the FMD Policies prohibiting assignment of the policies without sanction of insurers;*
- 6) That the above breaches defeated the claims under the FCL Policies;*
- 7) That the financiers claim both under the Mortgagee/Chargee Clause and the assignment were defeated.*

*The Court of Appeal in their 150-page judgment has for the first time in Malaysia and also the Commonwealth, clarified the legal position of a financier under the Mortgagee/Chargee Clause, apart from reiterating the standard of proof in a fraudulent claim.*

*Azim,  
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