



Are you sure it is damaged?

Keith Jones

Introduction



- Background
- Words which seem obvious:
 - Part
 - Reasonable
 - Loss or damage
- Michael Harvey – Chairman AAA – *A tale of blocked pipes, fly tipping, acid, Degas and an alcoholic beverage - 2005*

Introduction cont'd



- Practical examples
- Actual policy wording
- Law cases

1st Question



- Must there be physical damage to have a claim on a policy??
- Yes
- No
- Depends

2nd question



- Would it make a difference if the policy is subject to physical loss or damage??
- Yes
- No
- Depends

Definition



- What constitutes damage
- Oxford dictionary – damage = *injury, harm; especially physical injury to a thing such as impairs its value or usefulness*

The Marine Insurance Act 1906



- Section 55
- (1) ... the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

The Marine Insurance Act cont'd



- (2) In particular –
 -the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured,.....
- Named perils policy onus on assured to prove loss the result of an insured peril

Policies



- Going to assume we either have All Risk cover or covers with the Additional Perils/Liner Negligence Clauses included
- ITC – 1.10.83/1.11.95 – ...*loss of or damage to*
- IHC – 1.11.03 -*loss of or damage to*
- AIHC – 2.6.77 -*loss of or damage to*

Policies cont'd



- Nordic Plan – Commentary to the Plan’s Cl. 12-1 briefly explains damage as follows:
 - That the ship has been “damaged” means first and foremost that it has sustained physical damage. However, pollution of the ship itself is also within the meaning of the term, so that the insurer will cover the costs of removal and cleaning.

Policies cont'd



- Institute Cargo Clauses - 1982/2009 - ... *all risks of loss of or damage*
- Institute Builders Risk Clauses – 1988 - ... *all risks of loss of or damage*
- WELCAR 2001 - ... *all risks of physical loss of and/or damage to*
- MARCAR – 2007 - ... *all risks or physical damage to*

Damage



Damage cont'd



Damage cont'd



Examples of damage



- Tank coating damages
- Energy claim – welding ‘pig’ stuck in a pipeline
- Pump/machinery which has been wrongly assembled
- Car carrier loss where cars had been immobilised for several weeks at a 45* degree angle
- Angle iron left in a pipeline/spanner in the works

Reminder of definition



- Oxford dictionary – damage = *injury, harm; especially physical injury to a thing such as impairs its value or usefulness*

Law cases



- Not all marine cases:
- Nukila – *...assured has to prove some change in physical state of the vessel*
- Orjula – spillage of hydrochloric acid on a ship's deck. Definition of damage given as – *not being able to use something for the purpose it was intended*
- King v. Lees – Spillage in a taxi – held to be 'damage' even though it could be washed out

Law cases cont'd



- British Celanese Ltd (1969) –
 - *If A put sugar into the petrol tank of B's motor car with the result, through clogging of the fuel pipes, that the supply of petrol to the carburettor is cut off, everyone would say, if asked, that A had damaged B's motor car.*
- Blocked pipeline but is it damaged if it can be cleaned? – physical structure not affected

3rd question



- Does clogging of a pipeline or machinery with solidified material constitute ‘physical’ damage
- Yes
- No

Law cases cont'd



- British Celanese Ltd (1969) – it was contended that fact machinery could be cleaned there was no damage. Judge disagreed and found that clogging did constitute physical injury
- S.C.M 1971 – affirmed above decision that where equipment is prevented from working as a result of a blockage it is physically damaged

Law cases cont'd



- Regina v. Henderson & Baily (1984) –
 - criminal case – landfill – whether could be considered as being damaged – *injury impairing value or usefulness*
- Orjula/King v. Lees – underlying material had not been altered in any way by the ‘temporary contamination’ – Nukila - *...assured has to prove some change in physical state of the vessel*

Summary



- Each case based on its own merits
- Mike Harvey contends must have suffered some injury which affects –
 - Appearance, or
 - Value, or
 - Usefulness, or
 - Life expectancy

4th question



- Must there be physical damage to have a claim on a policy??
- Yes
- No
- Depends

Can I sit down now, or





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