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MARINE CARGO INSURANCE - "INHERENT VICE" –MEANING OF INSURANCE COVER EXCLUSION –

Global Process Systems Inc and another (Respondents) v Syarikat Takaful Malaysia Berhad (Appellant) [2011] UKSC 5

Abstract

In ***Global Process Systems Inc and another (Respondents) v Syarikat Takaful Malaysia Berhad (Appellant)*** [2011] UKSC 5 (judgment given on 1 February 2011), the Supreme Court was asked to consider the meaning of a clause contained in a marine insurance policy excluding any "*loss, damage or expense caused by inherent vice or nature of the subject-matter insured*".

Facts

The Appellant provided insurance for the carriage from Texas to Malaysia of an oil rig which the Respondent had purchased. The oil rig consisted of a platform and three massive tubular legs each about 300 feet long which during the transport were in place above the platform, thus extending into the air. Some repairs were made to the legs mid voyage but eventually all three legs broke off and fell into the sea. The insurers rejected the Respondent's claim under the policy by reference to the exclusion for loss caused by "inherent vice". The matter came to trial before the Commercial Court which held in favour of the insurers, finding that the proximate cause of the loss was "inherent vice" in that the legs were not capable of withstanding the normal incidents of the voyage. The Court of Appeal reversed the decision, holding that the proximate cause of the loss was the height and direction of the waves.

Judgment

The Supreme Court dismissed the appeal. The proximate cause of the loss was not inherent vice.
The central issue was as to the meaning of the exception to the insurance cover. Whether or not a loss was covered by a marine policy always depended on ascertaining its proximate cause, which was a question to be answered applying the common sense of a business or seafaring man. There were two possible proximate causes – perils of the seas (in form of the waves) or inherent vice. As for the meaning of the term "inherent vice", this had been defined by Lord Diplock (in *Soya GmbH Mainz KG v White* [1983] 1 Lloyd's Rep 122) as meaning the "natural behaviour [of the goods] in the ordinary course of the contemplated voyage without the intervention of any fortuitous external accident or casualty". The natural meaning of that definition was that if there is an "intervention of any fortuitous external accident or casualty", the law treats the loss as being covered thereby and not by inherent vice. Furthermore, "in the ordinary course of the contemplated voyage" was not intended to embrace weather conditions foreseeable on such voyage but was rather used as a counterpoint to a voyage on which some fortuitous external accident or casualty occurred.

Comment

This case is an example of how carefully the English courts will look at the terms of a contract (of insurance) and consider the industry specific context whilst applying an objective test (that of a business or seafaring man with common sense) in order to ascertain the meaning of such terms and achieve a clear and certain result.

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