

Political violence

03 December 2024

Reinsurers win declaration of non-liability following Taliban warehouse seizure

Hamilton Corporate Member Ltd & Ors v Afghan Global Insurance Ltd & Ors [2024] EWHC 1426 (Comm)

Background

The insured logistics company owned a food distribution warehouse located at a US military base in Afghanistan. In August 2021, and following the US withdrawal of troops, the warehouse was seized by the Taliban and the insured lost control and possession of the warehouse.

The insured made a claim under its AFB political violence policy issued by the Defendant, Afghan Global Insurance Ltd (AGI), for the full extent of its US\$41m cover.

Reinsurers (Hamilton) denied liability on two grounds:

1. Clause 4.2, which excluded *"Loss or damage directly or indirectly caused by seizure..."*. As the Taliban had taken possession of the warehouse, this fell within the definition of 'seizure' and was excluded under the policy. In response, the insured and AGI argued that for clause 4.2 to operate, the seizure needed to be by a governing authority, which did not extend to the Taliban.
2. The policy covered property damage, and not deprivation loss consequent on seizure. In response, the insured / AGI argued that there was cover for deprivation loss on the policy's true construction: the warehouse was lost, which was akin to property theft.

The insured / AGI further argued that summary judgment was not appropriate where the court was being asked to interpret a contractual clause that may have wide implications for the insurance market and in cases involving a complicated factual matrix.

Decision

The Commercial Court held that Reinsurers were entitled to summary judgment.

In considering the appropriateness of a summary judgment, Mr Justice Calver highlighted that

"...it is not uncommon for an application under Part 24 to give rise to a short point of law or construction...".

In considering the construction of the clause, Calver J noted that the Court was to read the exclusion in three parts:

"This Policy DOES NOT INDEMNIFY AGAINST:

[1] Loss or damage directly or indirectly caused by seizure, confiscation, nationalisation, requisition, expropriation, detention, legal or illegal occupation of any property insured hereunder, embargo, condemnation,

[2] nor loss or damage to the Buildings and/or Contents by law, order, decree or regulation of any governing authority,

[3] nor for loss or damage arising from acts of contraband or illegal transportation or illegal trade."

On this construction, the wording and syntax of Clause 4.2 was unambiguous and therefore its ordinary and natural meaning could not be displaced by the factual matrix, or any “commercial sense” argument advanced by the Claimant.

The ordinary and natural meaning of the word “seizure” covers all acts of taking forcible possession either by a lawful authority or by overpowering force and therefore the exclusion in clause 4.2 was not limited to state acts of violence.

Notably, the Court disagreed with the Claimant’s argument that expert evidence on the difference between Political Risk and Political Violence policies was necessary to construe the clause. Whilst generally, Political Violence policies cover acts of violence and Political Risk policies cover political actions which cause property loss, such as confiscation or nationalisation, it does not follow that any exclusion in a Political Violence policy will be limited to acts of the state.

The Court went on to identify the following differences between Political Risk and Political Violence policies:

1. Insured perils under a Political Risk policy are not synonymous with violence, as they are under Political Violence policies.
2. Insured perils under a Political Risk policy give rise to deprivation of property whereas insured perils under a Political Violence policy give rise to property damage.

Finally, it was held that deprivation of property did not amount to “property damage”. The ordinary and natural meaning of the word “damage” requires there to be some change in the physical state of the property which had not occurred on the facts.

Comment

The judgment provides useful guidance on AFB Political Violence policies in providing certainty on the meaning of “seizure”, which does not require any physical force or the involvement of a governing authority as well as making it clear that the wording only covers property damage where there has been a physical loss.

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