

# Will the decision in **Sky & Mace v Riverstone Managing Agency & Ors** impact insurance policy wordings?

25 March 2025  Joanna Wallens

**Sky & Mace v Riverstone Managing Agency & Ors** [2024] EWCA Civ 1567 ('Sky & Mace') is a recent case concerning a time-limited occurrence-based Contractors' All Risks insurance policy ('CAR').

It concerned claims for water damage to the roof of Sky Central. Sky Central has the largest flat timber roof in Europe, comprising almost 500 wooden cassettes, which rainfall entered during construction due to a failure to provide a temporary roof.

The Claimants successfully alleged that rain entering the timber during construction became trapped (this itself was held to be damage) and caused further damage throughout and after the end of the period of insurance. They claimed the damage spread within the roof to previously undamaged areas (developing damage) and damage that occurred during the period of insurance in the form of decay worsened (deteriorating damage).

## Key findings

Key findings included:

1. Under a time-limited occurrence policy an insured can recover for developing damage and deteriorating damage which occurs after the period of insurance if it flows from indemnified damage sustained during the period of insurance. This meant that the cost of rectifying damage, which happened after the period of insurance as the timbers deteriorated and the water continued to spread, was covered by the policy.
2. Even if capable of remediation by drying out, wetting of timbers in a roof can be damage within the ordinary meaning of the word. This is also consistent of the meaning of damage in the Criminal Damage Act 1971. The timbers did not need to have reached a condition requiring immediate repair or replacement for there to be damage.
3. Reasonable investigation costs are an insured loss whether or not damage is found.
4. A decision (in this case the design decision not to use a temporary roof during construction), can be a single event for the purpose of an 'any one event' policy clause.

## How does **Sky & Mace** relate to policy wording?

CAR policies usually cover:

1. physical damage to construction works, plant and equipment arising from causes during the course of construction;
2. financial loss as a result of the physical damage to construction works; and
3. the insured against liabilities for loss or damage to third party property or personal injury arising as a result of the construction activities (Public Liability Insurance).

CAR policies can cover all projects undertaken during the period of insurance or relate to a specific project.

# Can insurers exclude development and deterioration damage in policy wording?

In **Sky & Mace** the CAR insuring clause is conventionally worded. The insuring clause says that insurers will:

*“...indemnify the Insured against physical loss or damage to Property Insured, occurring during the Period of Insurance, from any cause whatsoever...”*

It will therefore have a wide application. It also has relevance for property insurance in general.

In **Sky & Mace** it was found that there was no language in the policy which modifies the ordinary rule that insurers are liable to pay the reasonably foreseeable costs of remedying development and deterioration damage. However, the ordinary rule is capable of modification by clear language. There needs to be a clear intention to depart from the normal remedies provided by law. For example, express terms in policy wording often imposes limits of indemnity, deductibles and exclusions. A property insurance claim is not a claim to enforce a promise to pay money, it is a claim for unliquidated damages.

The Insurers argued that by defining insured damage as that “occurring during the period of insurance” it had made it clear that the damage had to occur in the period of insurance and deterioration damage was not therefore covered. The court rejected this argument saying that this confuses **damage** with **damages**. The court said the insuring clause defined the damage to which the insurers’ primary obligation attaches but it does not purport to define or confine the loss the insurer is liable for in damages when in breach of its primary obligation. It does not address the secondary obligation to pay damages for the breach. If the insured damage causes further damage, then subject to the usual principles of mitigation and remoteness, the insurers are liable for further resulting damage.

Insurers may exclude resulting loss/ further damage from CAR (and other property policies) with express and clear language in policy wording, modifying the general position. However, this is an area that insureds and insurance brokers are likely to want to ensure is covered. Indeed, the court considered the insurers’ position to be uncommercial commenting:

*“A business person in the shoes of the assured would reasonably expect to be compensated for the consequences of the insured damage deteriorating or developing, absent a contract term excluding such recovery. Such reasonable expectation would be confounded if it is the insured not the insurer who has to bear the additional financial consequences which inevitably follow from the insured damage having occurred during the policy period. That would be regarded as the antithesis of what property insurance is for.”*

It seems unlikely that insurers will take this approach. As the Court points out, it would have the adverse consequence of making deterioration and development damage occurring after the period of insurance uninsurable as subsequent property insurers would not be willing to take on this cover after damage was already in progress. Insurance brokers are unlikely to accept this approach and no doubt will be looking out for any policy terms which seek to modify the measure of damages which insureds would be entitled to under common law.

## How will the decision impact serial loss clauses and aggregation in policy wording?

Many policies may operate to limit cover for serial loss clauses. These seek to limit exposure arising from multiple physical damage losses due to the same, or a similar cause. Whether losses can be aggregated is highly dependent on the facts of particular cases and the insurance policy wording. In **Sky & Mace** the court examined the definition of ‘any one event’, classic language used to aggregate losses for the purpose of the application of both deductibles and limits. It held that ‘event’ denotes the cause of the damage and not the damage itself. (Property insurance; CAR policies; construction law (Sky v Insurers)). It was held that the decision not to apply temporary waterproofing over the timber roof cassettes was a single event.

The Insurers had argued that “event” applied to the damage suffered and not the cause of the damage, and that there were as many events as there were cassettes because each cassette was intended to be sealed and there was no unity of place in treating the roof as a single place. The court disagreed, saying that “Occurrence is usually to be treated as synonymous with event” and that the natural reading is that event is looking to the cause (see paragraph 118 of the judgment). Insurers’ argument that a decision is not capable of being an “event” was also “unhesitatingly” rejected by the court.

## What this means for insurers

Insurers would be advised to review their standard exclusions, which seek to change what insureds are entitled to at common law, to ensure that there are sufficiently clear. The decision in **Sky & Mace** is likely to encourage insureds to challenge unclear policy terms.

Insurers may want to consider updating their wordings in relation to serial defects issues.

The decision in **Sky & Mace** regarding insurers' responsibility for remedying development and deterioration damage after the end of the period of insurance, may cause insurers to re-examine how proactively they manage insurance claims.

Above all **Sky & Mace** demonstrates the importance of clear wording in insurance policy wording.

In **Sky & Mace** an application for permission to appeal has been lodged. This will be a case that insurers will watch closely.

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Author

Joanna Wallens

Associate

joanna.wallens@brownejacobson.com

+44 (0)330 045 2272

Tim Johnson

Partner

[tim.johnson@brownejacobson.com](mailto:tim.johnson@brownejacobson.com)

+44 (0)115 976 6557

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