

INSURANCE CONTRACTS

Court of Appeal considers meaning of endorsement to public liability policy following failure of fire extinguishing systems - *Reilly v National Insurance & Guarantee Corporation Ltd* [19.12.08]

This was an appeal of a preliminary issue involving consideration of a clause in the insurance policy excluding liability for “the failure of any fire or intruder alarm switch gear control panel or machinery to perform its intended function”.

The Claimant, Mr Reilly, was a fire protection engineer who installed fire detection and protection systems. He had taken out a policy for public liability (including product liability) with NIG. There was a fire on 12 May 2004 in premises where Mr Reilly had installed three fire extinguishing systems. That customer sued Mr Reilly and those proceedings were compromised on terms that the customer was entitled to pursue proceedings in Mr Reilly’s name against his insurers for £2 million. A preliminary issue was ordered on agreed facts as to whether Mr Reilly’s claim was excluded under the policy by operation of an exclusion clause which excluded indemnity in respect of any claim arising out of “the failure of any fire or intruder alarm switch gear control panel or machinery to perform its intended function”.

The parties, for the purposes of the preliminary issue, agreed a description of the operation of the three systems installed assuming that, following the discovery of the fire, members of staff activated the relevant system by the breaking of a glass call point; the fire should have been extinguished or sufficiently suppressed by the operation of the system but was not; the system was a fixed CO2 system and; it failed either because there was insufficient pressure in the master cylinder or the piston on the cylinder valve of the master cylinder failed, leaving the CO2 to escape preventing the cylinder valves from opening.

First instance decision

The Judge held that the system, including the actuator valves and cylinders, was “machinery” within the meaning of the clause and that the clause was to be construed as referring to fire and intruder alarms, switch gear, control panels and machinery as separate items of equipment. He, therefore, held that NIG was not liable to indemnify Mr Reilly because the failure of the fire suppression equipment arose out of the failure of a piece of machinery to perform its intended function.

Court of Appeal

Mr Reilly submitted that the words “fire or intruder alarm” governed everything that followed, that is switch gear, control panel and machinery, so that the clause as a whole is limited to the failure of fire and intruder alarm systems to perform their intended function. If that was right, the clause would not exclude Mr Reilly's

claim because the equipment he supplied was fire suppression equipment. NIG submitted that the clause was to be read as containing a list of various items of equipment in respect of whose failure to perform as intended was excluded from cover. The failure of the actuator and valve of the master cylinder constituted the failure of machinery to perform its intended function.

The Court of Appeal found as follows:

- The starting point must be the language of the clause itself. They identified that the absence of any commas in the clause makes it possible to argue that the words “fire and intruder alarm” governed everything that followed. One way of testing the construction might be to ask whether the other items of equipment mentioned in the clause are of a kind that might be expected to form part of the fire or intruder alarm system. If any of them could not, then that would be a strong argument for rejecting it. Switch gear and machinery might not be something that one would naturally expect to find as a component of a fire or intruder alarm system.
- If it had been the intention to exclude damage caused by the failure of a fire or intruder alarm, the words “switch gear control panel or machinery” could have been omitted, thereby shortening the clause and improving its clarity. Whilst the Court of Appeal accepted that NIG’s interpretation does not make complete commercial sense, they agreed that the endorsement is not limited to fire and intruder alarms.
- On the issue of whether there was a failure of machinery to perform its intended function (departing from the first instance finding), if the failure of the system to operate correctly was caused by the failure of the piston in the actuating mechanism to latch properly, there was a failure of the machinery. If, however, the failure was caused by insufficient pressure in the master cylinder, the master cylinder itself was not machinery. Likewise, if there was a loss of pressure as a result of leakage from the discharge valve of the master cylinder. Accordingly, in these circumstances, the exclusion would not operate.

On the above basis, the appeal was allowed in part.

Comment

Whilst the insurer’s interpretation of the exclusion clause was upheld, the Court of Appeal applied a very careful analysis of the facts to the wording. It might be argued that a somewhat artificial distinction has been drawn as to the basis on which the equipment failed to perform its intended function. The problem appears to have arisen in the master cylinder. If this occurred because there was insufficient pressure either because of being incorrectly filled or leakage, then this was not a failure of machinery, but if it failed because of the failure of the piston to latch then this was a failure of machinery. In all cases, the effect was the

same. This analysis, therefore, restricts the scope to which such an exclusion might be applicable and requires a detailed analysis of the method of failure.

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