Guest Column

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Marine Insurance- Proximate Cause

A fundamental principle governing every contract of marine insurance is that of 'Proximate Cause'- that a loss must be one which was proximately caused by a peril insured against exemplified in the legal maxim "Causa proxima non remota spectatur". Meaning that it is the proximate and not the remote cause that must be looked into. This principle is codified in respect of Marine Insurance by Section 55 of the Marine Insurance Act.

Quote ...

55. Included and excluded loses—

(1) Subject to the provisions of this Act, and unless the policy otherwise provides, 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.

(2) In particular—

(a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew.

(b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against.

(c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by maritime perils.

... unquote

The insurer is liable for a loss proximately caused by a peril insured against. The burden of proof lies upon the assured to show that according to the balance of probabilities, one of the specifically named perils has operated to bring about the loss. Once the assured has been successful in demonstrating that the loss is caused proximately by an insured peril, the burden of proof shifts to the insurer to prove that the cause of loss falls within the area of exclusions, if they wish to reject the claim. It is the dominant cause that needs to be considered and not the remote cause. It is not necessary that a dominant cause be closer in proximity of time.

In Reischer v Borwich [894]- 2QB 548, a ship collided with a floating object and developed a leak. After temporary repairs to stop the leak, the vessel was towed to reach the nearest dry dock. However, during the voyage, the temporary repair could not withstand the normal vagaries of the weather and the vessel began to sink and was abandoned. The Court of Appeal held that the proximate cause of the loss of the ship was the original collision notwithstanding that at least one other cause (the tow) was responsible for the incident.

What if a loss is caused due to multiple proximate causes? How then can it be determined which one is dominant and whether it comes under the definition of an insured peril? The rule seems to be that even if only one of the causes is an insured peril, insurers could be held liable for the loss unless the non-insured peril was expressly excluded.

Perils of the sea is an insured peril and and the maxim "causa proxima" is applicable. In Dudgeon v Pembroke [1877] 2 AC 284 (H.L) , an insured vessel was lost due to strong wings and shipping seas, that is, due to the perils of the sea. The insurers repudiated the claim on the ground that the ship was unseaworthy. The House of Lords applying the maxim observed that the immediate cause of the loss of the vessel was due to the perils of the sea and not unseaworthiness. Hence the Insurers were liable and the claim was payable.

The Courts have given prominence to the effective, dominant and operative cause rather than the remote cause. In Kajima Daewoo Joint Venture v. New India Assurance Co. Ltd. (2005) 1 CPJ 534, amongst a number of machines employed at a site was a TIL excavator. The machine was insured and one day it burst when its lubricating failed and consequently suffered damage to its engine. The insurance surveyor assessed the loss and therein the insurance company repudiated the claim contending that the machine did not suffer any external impact. The insurer further commented that the damage to the engine was mechanical and caused due to the deprivation of the lubricant oil and that this was not covered in the policy. The court relying upon the assessor's findings observed that the mechanical failure of the machine was due to its slipping on the hilly terrain and that the lubrication loss was incidental to this slipping. The Court held that the insurers were liable for honouring the claim.

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