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What is an accident?
Matton Developments Pty Ltd v CGU Insurance Limited [2016] QCA 208

Key Points

- What is an "accident" in property damage insurance policies is often not clear cut.
- Expert evidence from a crane operator may have allowed the Insurer to maintain its denial.

Background

The Appellant Insured owned and operated a mobile crane which could only move over level ground while carrying loads over a certain weight.

The Insured used concrete rubble to level the area over which the crane was to pass. It was intended that as the crane travelled over the rubble, the rubble would compress resulting in level ground.

However, the rubble did not compress which resulted in the boom collapsing.

The operator of the crane was experienced and was aware of the risk the boom would fail in the circumstances in which it did.

The operator's evidence at trial was that he watched the spirit level in the machine during the 12 second period the crane crawled up the incline before the room collapsed.

The insurance policy provided an indemnity for accidental overload:

> *We will pay for insured damage caused by or resulting from accidental overloading which is non-deliberate and clearly unintentional.*

The policy had an exclusion clause which provided that the policy did not cover damage to the crane which was:

> *… [being] operated contrary to the manufacturer's guidelines.*

The court at first instance concluded that the operator of the crane:

> *…had a full 12 seconds of crawling the crane up the ramp … during which he must have appreciated two things. First the rubble was not compressing as he expected and second, from looking at the spirit level, the crane was not being operated on level ground*.

Therefore the court at first instance found the collapse of the boom of the crane was not an accident due to the operator's "recklessness, a gamble or a deliberate courting of the risk of which he was well aware".

The Law

It is trite that property damage policies will not respond to a loss where the loss is deliberately caused. But as Cooke J in *Mt Albert City Council v NZMC Insurance Co* [1983] NZLR 190 observed:

> *… There is a category of cases falling short of a deliberate causing of the damage by the Insured where his conduct is nevertheless so hazardous and culpable that the event cannot be fairly called an accident … One expression that has been used in some cases and was used … here is "courting" the risk. If that is understood as a term stronger than merely running or incurring, and in the sense of inviting or willing, I respectfully agree that it can be a useful test …*

Conclusion

The majority of the Queensland Court of Appeal found that the operator of the crane was not "courting the risk" in the circumstances, and so the collapse of the crane's boom was still an "accident" in terms of the policy and so cover was not excluded.

In the majority decision, McMurdo P found that by the time the crane operator realised the ground was not compressing as expected, the overloading and collapse of the crane was imminent and unavoidable.

Morrison JA in the other majority judgment stated that "the total time [for the Insured to realise the rubble was not compressing] was only 12 seconds".

Fraser JA in the minority judgment considered it was implicit in the primary judge's findings that 12 seconds was sufficient time for a full appreciation by the crane operator that it was reckless to continue proceeding up the ramp.

Many people in the community, might say that 12 seconds was a very long time to continue operating a machinery in circumstances where there is likely to be an accident. However, the majority of the Court of Appeal concluded it was sufficiently short period that the collapse of the boom was unavoidable.

Lessons Learned

We query if an expert crane operator could have given evidence on behalf of the Insurer about the amount of time it should take a properly qualified crane operator to realise that the operation should be ceased to prevent the crane's boom from collapsing.

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