



Eatons

Loss and Damage – Economic Damage not Physical

Misunderstandings are at the base of many legal disputes and nowhere is this more evident than in disputes involving insurance claims.

Recently, a company which used scrap metal found that it had inadvertently received scrap contaminated with small amounts of radioactive plutonium.

The radioactivity itself had not caused any significant problems other than the resultant cost of disposal of the contaminated material, which had to be carried out under the controlled conditions that apply to radioactive waste.

Once the company had disposed of the radioactive material, it reclaimed the cost from its insurers, relying on a clause that insured 'loss...or damage due to contamination...by radioactive materials utilised in the manufacturing process'.

The insurers argued that in the context of the insurance policy (an 'all risks' material damage policy) the clause referred to physical damage, not economic damage.

The judge, considering the policy as a whole, found it difficult to envisage that the intention would have been to cover a completely different type of loss in a policy otherwise worded to deal with damage to property. The addition of cover relating to loss due to radioactive material was to bring into cover something which would otherwise be excluded (most insurance policies exclude liability for loss due to radioactive contamination).

Nor had the cost of disposal of the radioactive material been caused by its being used in the manufacturing process per se – accordingly, the loss was not covered by the policy.

If you are in doubt as to the meaning of your insurance policies or any other contracts or legal documents, we will be pleased to advise you.

For advice on all aspects of litigation, company regulation and contracts and agreements please contact Marcus Baff on Tel: 01274 728 327.

EATONS SOLICITORS

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