

# COURT CONSIDERS MEANING OF "SEIZURE" IN POLICY WORDING

The Court has handed down judgment in *Hamilton Corporate v Afghan Global*<sup>1</sup> relating to reinsurance of a warehouse in Afghanistan and the AFB political violence wording. It held that an exclusion for seizure applied to the facts of the case, and that "seizure" was not restricted to action by governments. The Court also considered arguments on the distinction between Political Violence and Political Risk insurance.

## Background

Two of the defendants (referred to as "Anham") were the owners and operators of a warehouse in Afghanistan, used to distribute food to the US military, which was the subject of armed seizure by the Taliban in August 2021.

The claimants were the reinsurers of two policies issued in respect of the warehouse, and Anham were the original insureds under the Afghan Global Insurance Ltd ("AGIL") insurance policies.

Anham sought to recover under its AGIL policy for the loss of the warehouse. Reinsurers denied cover under the reinsurances and sought a declaration that they were not liable for the claim. Reinsurers then brought an application for summary judgment.

## Issues

Reinsurers argued that they were not liable because there was an exclusion for loss directly or indirectly caused by "seizure". Further, there was cover under the reinsurance only for property damage, not for deprivation loss consequent upon the seizure.

The defendants argued that the scope of the exclusion should be interpreted so that it was limited to seizure by governments (which it was said did not extend to the Taliban), as a matter of policy construction and in light of the factual matrix and commercial common sense. It was also argued that the proper construction of the policy was important to the market as it concerned the AFB Political Violence wording widely in circulation, and therefore the matter should go to trial.

## Relevant terms of the reinsurance

As noted, the policy incorporated the AFB Political Violence Wording which stated that it did not indemnify against:

*"Loss or damage directly or indirectly caused by **seizure**, confiscation, nationalisation, requisition, expropriation, detention, legal or illegal occupation of any property insured hereunder,*

*embargo, condemnation, nor loss or damage to the Buildings and/or Contents by law, order, decree or regulation of any governing authority,*

*nor for loss or damage arising from acts of contraband or illegal transportation or illegal trade."*

[note the emphasis is ours, and the clause has been split into three parts for ease of discussion below]

## Judgment

Mr Justice Calver found in favour of reinsurers, that the loss was excluded, and summary judgment should be granted. The defendants' arguments in relation to construction were rejected. Some of the key findings were:

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<sup>1</sup> [2024] EWHC 1426 (Comm)

- The wording of the exclusion was simple and unambiguous in excluding loss "*directly or indirectly caused by seizure*".
- There were difficulties with the defendants' arguments that the words "*by law, order, decree, or regulation of any governing authority*" qualified all the wording that preceded it – those words could have been included in part one of the clause; and the causal link in each part of the clause was different (i.e. "*directly or indirectly*", caused "*by*", and "*arising from*", suggesting three situations). The Judge noted a similar analysis applied in *The Captain Stefanos*<sup>2</sup>.
- The ordinary and natural meaning of the word "*seizure*" is, according to previous authority, all acts of taking forcible possession by a lawful authority or an overpowering force, and is not limited to acts of legitimate government or sovereign power.
- The defendants' argument that the principle of *noscitur a sociis* applied (i.e. that the word seizure should take its meaning from where it appears: next to confiscation, nationalisation etc) was also rejected. Following dicta in *FCA v Arch*<sup>3</sup>, there was no common characteristic here, and in any event the principle must not trump the clear wording of the clause.

## Factual matrix and commercial common sense

The defendants also argued when the clause was viewed in its relevant factual matrix including the insurance market background, and taking account of its commercial purpose, it would only exclude seizure by a governing authority.

The factual matrix was said to include:

- (i) the fact that the Taliban was active in Afghanistan and might want to overthrow the legitimate government;
- (ii) that the Taliban might want to seize the warehouse;
- (iii) it was said a distinction is drawn in the insurance market between the risk of action by a governing authority (such as expropriation and nationalisation) covered by political risk policies and challenges to the governing authority (such as insurrection and rebellion) covered by political violence policies; and
- (iv) the argument that political violence wordings evolved from clauses used in the marine market such as the Institute Time Clauses Hull (1.11.95), and that there were other relevant wordings in the market such as LMA 3030, a terrorism wording.

The Judge found that none of these matters displaced the clear wording of the clause. The fact that points (i) and (ii) were known did not point to reinsurers intending to give cover for seizure of the warehouse rather than excluding it.

On point (iv) the defendants argued that their interpretation gave this wording the same meaning as in the Institute War and Strikes Clauses Hulls -Time (1.11.95), from which it was said this clause evolved. The Court found that the Institute clause was not equivalent to this exclusion, it appeared if anything that the drafter of this clause appeared to be seeking to achieve something different, and there was no evidence as to whether they had worked from the Hulls Clause, or of an evolution in drafting from that clause. The Judge also rejected submissions that the fact that this wording was a standard form widely used in the political violence market meant that the matter should be allowed to go to trial.

The defendants' point (iii) was described as their "common sense" argument, and they put forward the proposition that expert evidence was required on the difference between political risk and political violence markets in order to construe the clause. It was said that the difference between the two types of cover concerned not the type of loss, but who causes it (with political violence cover focussed on politically motivated acts not perpetuated by government). The Court found that this was an overly broad generalisation, and that it was also wrong. Other perils covered under the reinsurances were not restricted to actions by non-government actors (such as "*war*" which obviously required an act of government), and it was clear that the policy did not only cover traditional political risks. The Court found that the distinction between Political Risk perils and Political Violence perils were:

- The perils are not synonymous with violence.
- They do not naturally give rise to property damage, although they might. The natural and foreseeable loss is deprivation of possession (seizure, confiscation, nationalisation, detention etc)

This characterisation was supported by *Kuwait Airways v Kuwait Insurance Co*<sup>4</sup> and was consistent with the reinsurances in this case.

<sup>2</sup> [2012] EWHC 571

<sup>3</sup> [2021] UKSC 1

<sup>4</sup> [1999] 1 Lloyd's Rep (803)

## Physical loss or deprivation loss

The court held that the wording of the cover made clear that it only responded to political violence risks and consequent property damage, not political risks and consequent deprivation loss.

The policy wording made clear that it was for "Property Damage only" with repeated reference to "physical loss" and "physical damage" and that was to be expected in a Political Violence policy.

## Peril falling within the insuring clause and the exclusion

It was accepted that the Taliban's campaign against the government of Afghanistan in 2021 likely engaged one of the insured perils. However, neither party suggested that this had caused the loss rather than the Taliban's seizure of the warehouse. However, if the loss was somehow caused by an insured peril, where the cause of the loss was also the excluded seizure, the exclusion would prevail.

## Conclusion

The Court held that the exclusion for "seizure" applied and granted summary judgment to reinsurers.

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