

Material Damage or Third-Party Liability? -CAR Policy



Background

On face value it is often difficult to ascertain whether a potential claim falls for consideration under the Material Damage or Third-Party Liability Sections of a Contractors' All Risks Policy.

To illustrate this point, we refer to a recently received claim intimation involving a Concrete Pump damaged in an accident that occurred on a construction site.

The claim was notified to Insurers by the Main Contractor under their CAR Policy following an email they had received from the Owner of the Concrete Pump stating they wished to claim for damage and associated repair costs under 'Section 1 – Material Damage', where cover prevailed for 'Contractors Plant & Machinery (CPM)'.

We contacted the Main Contractor and requested all relevant documentation relating to the incident including the contractual arrangements in place between the respective parties.

We also arranged to meet with the Owner of the Concrete Pump to ascertain the level of damage. It was during this meeting that it became apparent that the Owner was

holding the Main Contractor responsible for the damage as the incident occurred on the Main Contractors work site, for which they held overall responsibility.

The appointment of a Loss Adjuster to liaise with both the Main Contractor as well as the Equipment Owner allowed us to investigate the circumstances and gave Insurers a view from both sides at an early stage and allowed the claim to be considered under each section of the Policy:

Why This Matters

There is a long-held view that the overall Project / CAR Policy should pick up each and every loss which occurs on a Construction Site. On face value, this appeared to be a relatively straightforward case of a Sub-Contractor's equipment sustaining damage on site and therefore should be dealt with swiftly under the CAR Policy. Many of these types of incidents are likely settled without a full and thorough investigation taking place. The appointment of a Loss Adjuster to carefully review the documentation and understand the contractual position has led to the claim being resisted which has ultimately led to a saving for the Insurer.

Material Damage

From our examination of the Main Contract Agreement the Insurance provision stated that cover was to be arranged by the Main Contractor and afford cover for the Employer as well as *Sub-Contractor's* of any tier and for all nominated *Sub-Contractors'* works and liabilities, although no mention was made of the plant and machinery belonging to these entities.



We obtained details of the Sub-Contract Agreement in place between the Main Contractor and the Owner of the Concrete Pump; however, they were unable to provide any such document as there only existed a Supplier Agreement which stipulated that the Supplier should have in place all required Insurance policies in respect of the risk and liability stipulated in the Main Contract, at their own cost.

So, although cover prevailed for Plant and Machinery the claim would not fall for consideration under 'Section 1 – Material Damage' because the Pump belonged to a Supplier, (rather than the Main Contractor or appointed Sub-contractors, the parties afforded cover under the Policy). Likely this means that the owner of the equipment would have a Policy in place for their asset(s) and unless they could prove that the Main Contractor had been negligent then any claim for the resultant damage should be more appropriately directed to their Insurer.

Third Party Liability

Liability occurs when one party holds another party responsible for causing them harm, damage, or losses due to negligence, misconduct, or a breach of duty.

For Insurers to be able to consider the claim under 'Section 2 – Third Party Liability', the Supplier would need to establish that the Main Contractor committed a wrongful act, and that act caused the damage to their equipment.

Following a site survey to inspect the area where the incident occurred and upon provision of the Main Contractor's Risk Assessment and Method Statement for the works carried out at the time, our recommendation to Insurer's was that the claim should be refuted as we did not consider that there was any negligence on the part of the Main Contractor and that the cause of the incident was due to a failure of the soil/land upon which the equipment was situated at the time.

In our opinion the Owner of the Concrete Pump had failed to provide any detailed allegations of negligence holding the Main Contractor responsible and were unable to demonstrate any failings on the part of any of the Insured parties.





Summary

The Main Contractor assumed that the damage which occurred following the incident on their site was their responsibility and submitted the claim accordingly. The CAR Insurer acted prudently in appointing a Loss Adjuster to meet with all the relevant parties including the Owner of the Concrete Pump and following careful consideration of the accident circumstances and contractual documentation this led to the claim being declined upon both Sections of the Policy.

It is always imperative that following the intimation of a claim under a Constructors All Risks Policy, that the Main Contract Agreement and all relevant Sub-Contract Agreements are requested and reviewed in detail as they will determine who is afforded protection under the Policy and what Insurance provisions are in place.

Upon first review of this incident, it appeared as though the owner of the damaged equipment was a Sub-Contractor who would benefit from cover under Section I of the Main Contractor's CAR Policy. However, as investigations progressed it was determined that they were not a Sub-Contractor and were in fact a Supplier, who were not covered under Section I.

Further, unless they could prove the incident was because of the negligence of the Main Contractor,

then any claim for the damage sustained should be dealt with by their own Insurer and would not be recoverable under Section 2 of the Main Contractor's Policy.

We were therefore able to resist the claim and secure a favourable outcome for Insurers who will now have a better understanding of whether a Third Party will be deemed a Sub-Contractor or Supplier in relation to their Policy.

Should you encounter any similar issues or face challenges from the Insurer's of equipment owners looking to pursue a recovery, please feel free to contact us and we will be able to review the contractual position as well as investigate the accident circumstances.



Martin Feeney

Cert CILA

Liability and Construction
Loss Adjuster

A: Unit 903, 9th Floor,
Boulevard Plaza Tower 1,
Sheikh Mohammed Bin Rashid Blvd,
Dubai, United Arab Emirates

T: +971 (0) 54 252 1525

E: mfeeney@globalrisksolutions.com

W: www.GlobalRiskSolutions.com