

Kasko – Eksklusjonsklausul for smittsom sykdom

For forsikringsdekninger på Nordisk sjøforsikringsplan av 2013, heretter kalt «Planen».

Smittsom Sykdom er en ekskludert fare under forsikringen. Forsikringen dekker ikke tap hvor den dominerende årsak til havariet var en Smittsom Sykdom, med unntak av der den dominerende årsak til havariet var en handling eller unnløstelse av en person smittet eller påstått smittet av slik sykdom. Dersom Smittsom Sykdom ikke er den dominerende årsak, kommer klausul 2-13 til anvendelse.

Ved et havari som ellers er forårsaket av en fare som forsikringen omfatter, og som gir sikrede rett til erstatning, vil Planens bestemmelser gjelde uten endring dersom reparasjonskostnadene øker grunnet en Smittsom Sykdom.

Denne klausulen skal under ingen omstendigheter utvide dekningen under Planens standardvilkår.

«Smittsom Sykdom» betyr enhver sykdom, kjent eller ikke kjent, som kan bli videreført via en substans eller agens fra en organisme til en annen hvor:

- a) Substansen eller agensen inkluderer, men er ikke begrenset til, et virus, bakterie, parasitt eller annen organisme eller enhver variasjon eller mutasjon av det førnevnte, om dette anses levende eller ikke levende, og
- b) Overføringsmetoden, om direkte eller indirekte, inkluderer, men er ikke begrenset til, menneskelig berøring eller kontakt, luftoverføring, overføring via kroppsvæske, overføring til eller fra eller via enhver gjenstand eller overflate eller væske eller gass, og
- c) Sykdommen, substansen eller agensen kan, alene eller sammen med andre komorbiditeter, tilstander, genetiske mottakeligheter, eller med det menneskelige immunforsvaret, forårsake død, sykdom eller kroppsskade eller midlertidig eller permanent påvirke menneskelig fysisk og psykisk helse eller negativt påvirke verdien av eller bruken av gjenstander på noen måte.

Dette er en Cefor oversettelse fra original engelsk tekst. Dersom det er motstrid mellom den engelske originalen og den norske oversettelsen skal den originale engelske teksten gis forrang.

Hull - Communicable Disease Exclusion Clause

For insurance covers subject to the Nordic Marine Insurance Plan of 2013, hereinafter called 'the Plan'.

Communicable Disease is an excluded peril under this insurance. This insurance shall not cover any loss incurred where the dominant cause of the casualty was a Communicable Disease, except where the dominant cause of the casualty was an act or omission of a person infected or allegedly infected by such disease. Where Communicable Disease is not the dominant cause, Cl. 2-13 shall apply.

In the event of a casualty otherwise caused by an insured peril and giving the assured a right to indemnity, then, to the extent the repair costs are increased by a Communicable Disease, the provisions in the Plan applies unamended.

This Clause shall in no circumstances extend the cover under the standard conditions of the Plan.

“Communicable Disease” shall mean any disease, known or unknown, which can be transmitted by means of any substance or agent from one organism to another where:

- a) the substance or agent includes but is not limited to a virus, bacterium, parasite or other organism or any variation or mutation of any of the foregoing, whether deemed living or not, and
- b) the method of transmission, whether direct or indirect, includes but is not limited to human touch or contact, airborne transmission, bodily fluid transmission, transmission to or from or via any solid object or surface or liquid or gas, and
- c) the disease, substance or agent may, acting alone or in conjunction with other co-morbidities, conditions, genetic susceptibilities, or with the human immune system, cause death, illness or bodily harm or temporarily or permanently impair human physical or mental health or adversely affect the value of or safe use of property of any kind.

Commentary

The Clause is drafted to be used in combination with a hull insurance based on the Plan with 'Nordic' background law governing the insurance contract.

This Clause initially raises a question of causation. The starting point is a theory of logical causation: A is the cause of B if B would not have happened if A had not first occurred. A is thus a necessary condition for B. Such logical causation is a minimum requirement for any legally relevant causation, cf. Handbook on Hull Insurance (Wilhelmsen / Bull), 2nd edition, page 115 and onwards. However, logical causation must be supplemented by some form of legal qualifications. Insurance law in the Nordic countries is based on the 'dominant-cause doctrine' aiming to establish the dominant-cause factor or the dominant-peril. This doctrine is also supplemented by a theory of sufficiently close proximity between the cause and the loss. The Plan has a different approach by applying a rule of apportionment, cf. Cl. 2-13.

A Communicable Disease might cause a casualty, or alternatively it might increase the loss where the cause of the casualty was another peril. The first situation is regulated by sub-clause 1 and the second situation is regulated by sub-clause 2.

As a starting point, the Clause excludes Communicable Disease as a peril. Further, sub-clause 1 excludes any loss where the dominant cause of a casualty was a Communicable Disease. For guidance on the assessment of the 'dominant cause', see the Commentary to Cl. 2-14. This exclusion of all loss in this situation means that no apportionment as per Cl. 2-13 shall take place if a Communicable Disease is the dominant cause. In all other cases, Cl. 2-13 shall still apply. There is an exception for situations where the dominant cause of the casualty was an act or omission by a person infected or allegedly infected by the disease. Normally this will be a crew member, but it could also be another person. The exception is meant to preserve the assured's insurance cover for damage caused by specific acts or omissions of an identifiable person who is infected or allegedly infected. However, the exception is not applicable for measures taken to prevent the spread of infection, for example evacuation of some or all of the crew due to the presence of a person onboard who is infected, or due to fear of risk of infection.

Sub-clause 2 regulates the situation where the casualty as such is covered, meaning not being excluded by sub-clause 1, and there is an increase in repair costs caused by a Communicable Disease. This sub-clause 2 does not imply any limitation, but refers this situation to the ordinary rules in the Plan. This sub-clause 2 is strictly speaking unnecessary but has been included to provide clarity to a topic that has been subject to many questions and discussions.

1 December 2020