

Initial Onus of Proof & Payment of Claims

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Analysis on the Burden of Proof and the payment of insurance claims further to the 4th of August tragic event of Beirut

Summary

Insurance companies operating in Lebanon are awaiting the outcome of the official investigations into the 4 August devastating port explosion in Beirut, in order to be able to quantify the compensation they must pay to the insured.

Since the event is of such a catastrophic nature with a large number of damaged properties, the insurers are under the uncertainty regarding claims recoverability under different policies where each claim should eventually be processed in accordance with terms, conditions, limitations and exclusions of each underlying policy.

In dealing with such claims, in the absence of an official clear probe report - which might take years to be released - in practice, the question of the initial onus of proof is probably the most important one.

The principle of the Burden of Proof

(Articles 132, 362, 966 & 969 of the Lebanese Code of Obligations and Contracts)

When it comes to making an insurance claim, the claimant bears the onus of proof to demonstrate a valid claim against the policy.

This means the claimant must prove that it sustained a loss and that it is covered by the policy.

Once the claimant demonstrated that it has a valid claim against the policy, if the insurer agrees, the claim will be processed. However, if the insurer does not agree there is a valid claim, the onus of proof shifts to it to demonstrate that an exclusion applies (or any other term within the policy which serves to limit or deny the claim).

If the insurer discharges the onus of proof to evidence that an exclusion applies to deny or limit the claim and the claimant does not agree with its assessment, the onus of proof shifts back to the claimant to show that the insurer's decision is wrong.

Legally speaking, there's a bit more to it than this simple explanation.

The onus of proof though essentially means the claimant needs to prove its claim and the insurer needs to disprove it (if it considers it isn't covered).

Proof of Loss further to the tragic events of the 4th of August *(Articles 969 & 974 of the Lebanese Code of Obligations and Contracts)*

Under any insurance policy, the filing of a proof of loss is one of enumerated post-loss obligations, and it can be an essential condition for recovery, depending on how the policy is worded.

While the insured must notify the insurance company of a loss in order to begin the investigation, a proof of loss goes far beyond a mere notice. A proof of loss requires a formal statement of the claim, usually sworn with the notarized signature of the insured, and is designed to facilitate the investigation of the claim and enable the insurer to protect its interests.

Specifically, the purpose of a proof of loss is to provide the insurer with specific information pertaining to the formal claim of damages.

The policy will determine what must be in a proof of loss and most often includes:

- The amount of loss claimed;
- The documents that support the amount of loss claimed;
- The parties claiming the loss under the policy;
- The date and cause of the loss; and
- The people who have an interest in the claim.

Under the Lebanese scenario, the insured who has complied with the above is assumed to have demonstrated a valid claim.

To be more specific to the actuality, a review of the Lebanese law concludes that considering that the loss resulting from war risks and terrorism, including related perils such as strikes, riots, civil commotion are covered and compensated for by the insurer as long as the latter cannot prove the opposite - where of course the insurance policy in question covers such perils.

In other terms, the insurer who tends to refuse the compensation on the basis of the above, must establish a conclusive and direct exclusion in the policy or at least the evidence that the loss would not have occurred had it not been for the occurrence of these events. The onus of proof under this layout cannot be shifted under any circumstance to the insured.

The Benefit of the Doubt *(Articles 369 of the Lebanese Code of Obligations and Contracts)*

As previously mentioned, once the insured has made its claim informing the insurer and demonstrating the proof of loss, the validity is assumed. If the insurer does not agree there is a valid claim, the onus of proof shifts to it to demonstrate that an exclusion applies.

A grey area is however highlighted when there is vagueness on the particular cause - the event that lead to the loss under the Lebanese synopsis of the 4th of August.

Upon contemplation of the Lebanese law, it is clearly concluded that in the case where there is a controversy on the cause of the loss, the doubt shall be interpreted in favor of the insured over the insurer.

This means where the insurers in Lebanon are under a level of uncertainty regarding claims recoverability due to this event, the claims are deemed to be coverable.

The Payment of the Claims

The obligation of the insurer to compensate the insured for the damage expeditiously is entailed by the circumstances arising from the damage itself and the necessities of ensuring the general financial and economic stability of the transactions, based on the fact that the compensation must be concurrent with the damage due to the impact that this has on the amount paid and its discharging value, especially in the current economic situations.

Whereas under the Lebanese law, the insured must inform the insurer of any event that lead to the loss, within three (3) days from the date of its knowledge of it, accordingly, in the absence of any clear stipulation to the contrary in the insurance policy, the insurer must in its turn take action to investigate the validity of the claim in terms of commitment to the same period of time or at least under a reasonable period of time as per the norms and practices of the profession.

The Principle of Indemnification and the Currency of Payment

The principle of indemnity as applicable to insurance contracts means that the insurance coverage is intended to put the insured back into the same financial position as existed before the incident leading to a claim.

With the recent economical situation occurring in Lebanon and which lead to monetary inflation and the difference of exchange rates applied between the official rate, the one that the banks are applying and the rate governing the market, the insurers are under a controversy of the currency of claims payment.

The issue arises particularly when the local financial market is also governed in practice by two prices for the US Dollars currency which is directly reflected on the exchange rate against the local banknotes of the country.

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The answer is rather clear and simple, a fundamental principle of the law applicable to insurance matters is the requirement that insurance coverage comply with the concept of indemnification, which means that, subject to an adequate amount of available insurance, the insured should be put back into the same financial position as the person was in before the incident resulting in the loss of the insured object.

Conclusion

The event of the 4th of August, 2020 is of a catastrophic nature with a large number of damaged properties and meanwhile the insurers are still under a level of uncertainty regarding what caused the tragic event, they must pay the insured. The loss adjusters appointed by the insurance companies are actively working to estimate the amount of loss for each insurance claim.

The same position was adopted by the insurers in France further to the explosion due to Nitrogen fertilizers that occurred in Toulouse the capital of France's southern Occitanie region, on September 21st, 2001 where the cause triggering the explosion remains undetermined today, 19 years after the occurrence of the event.

Whereas exclusion couldn't be established by the insurers, claims were paid.

Under the scenario where there is still uncertainty on the causes triggering the Beirut's explosion, the insured must be covered and whereas the compensation must be concurrent with the damage, the insurers must pay the claims in the currency and amount that put the

insured back into the same financial position that existed before the devastating event occurred.

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