Republic of the Philippines
**SUPREME COURT**
Manila

SECOND DIVISION

**G.R. No. 119599 March 20, 1997**

**MALAYAN INSURANCE CORPORATION,** petitioner,
vs.
**THE HON. COURT OF APPEALS and TKC MARKETING CORPORATION,** respondents.

**ROMERO, *J.:***

Assailed in this petition for review on *certiorari* is the decision of the Court of Appeals in CA-G. R. No. 43023 [1] which affirmed, with slight modification, the decision of the Regional Trial Court of Cebu, Branch 15.

Private respondent TKC Marketing Corp. was the owner/consignee of some 3,189.171 metric tons of soya bean meal which was loaded on board the ship MV Al Kaziemah on or about September 8, 1989 for carriage from the port of Rio del Grande, Brazil, to the port of Manila. Said cargo was insured against the risk of loss by petitioner Malayan Insurance Corporation for which it issued two (2) Marine Cargo policy Nos. M/LP 97800305 amounting to P18,986,902.45 and M/LP 97800306 amounting to P1,195,005.45, both dated September 1989.

While the vessel was docked in Durban, South Africa on September 11, 1989 enroute to Manila, the civil authorities arrested and detained it because of a lawsuit on a question of ownership and possession. As a result, private respondent notified petitioner on October 4, 1989 of the arrest of the vessel and made a formal claim for the amount of US$916,886.66, representing the dollar equivalent on the policies, for non-delivery of the cargo. Private respondent likewise sought the assistance of petitioner on what to do with the cargo.

Petitioner replied that the arrest of the vessel by civil authority was not a peril covered by the policies. Private respondent, accordingly, advised petitioner that it might tranship the cargo and requested an extension of the insurance coverage until actual transhipment, which extension was approved upon payment of additional premium. The insurance coverage was extended under the same terms and conditions embodied in the original policies while in the process of making arrangements for the transhipment of the cargo from Durban to Manila, covering the period October 4 - December 19, 1989.

However, on December 11, 1989, the cargo was sold in Durban, South Africa, for US$154.40 per metric ton or a total of P10,304,231.75 due to its perishable nature which could no longer stand a voyage of twenty days to Manila and another twenty days for the discharge thereof. On January 5, 1990, private respondent forthwith reduced its claim to US$448,806.09 (or its peso equivalent of P9,879,928.89 at the exchange rate of P22.0138 per $1.00) representing private respondent's loss after the proceeds of the sale were deducted from the original claim of $916,886.66 or P20,184,159.55.

Petitioner maintained its position that the arrest of the vessel by civil authorities on a question of ownership was an excepted risk under the marine insurance policies. This prompted private respondent to file a complaint for damages praying that aside from its claim, it be reimbursed the amount of P128,770.88 as legal expenses and the interest it paid for the loan it obtained to finance the shipment totalling P942,269.30. In addition, private respondent asked for moral damages amounting to P200,000.00, exemplary damages amounting to P200,000.00 and attorney's fees equivalent to 30% of what will be awarded by the court.

The lower court decided in favor of private respondent and required petitioner to pay, aside from the insurance claim, consequential and liquidated damages amounting to P1,024,233.88, exemplary damages amounting to P100,000.00, reimbursement in the amount equivalent to 10% of whatever is recovered as attorney's fees as well as the costs of the suit. On private respondent's motion for reconsideration, petitioner was also required to further pay

interest at the rate of 12% *per annum* on all amounts due and owing to the private respondent by virtue of the lower court decision counted from the inception of this case until the same is paid.

On appeal, the Court of Appeals affirmed the decision of the lower court stating that with the deletion of Clause 12 of the policies issued to private respondent, the same became automatically covered under subsection 1.1 of Section 1 of the Institute War Clauses. The arrests, restraints or detainments contemplated in the former clause were those effected by political or executive acts. Losses occasioned by riot or ordinary judicial processes were not covered therein. In other words, arrest, restraint or detainment within the meaning of Clause 12 (or F.C. & S. Clause) rules out detention by ordinary legal processes. Hence, arrests by civil authorities, such as what happened in the instant case, is an excepted risk under Clause 12 of the Institute Cargo Clause or the F.C. & S. Clause. However, with the deletion of Clause 12 of the Institute Cargo Clause and the consequent adoption or institution of the Institute War Clauses (Cargo), the arrest and seizure by judicial processes which were excluded under the former policy became one of the covered risks.

The appellate court added that the failure to deliver the consigned goods in the port of destination is a loss compensable, not only under the Institute War Clause but also under the Theft, Pilferage, and Non-delivery Clause (TNPD) of the insurance policies, as read in relation to Section 130 of the Insurance Code and as held in *Williams v. Cole*. [2]

Furthermore, the appellate court contended that since the vessel was prevented at an intermediate port from completing the voyage due to its seizure by civil authorities, a peril insured against, the liability of petitioner continued until the goods could have been transhipped. But due to the perishable nature of the goods, it had to be promptly sold to minimize loss. Accordingly, the sale of the goods being reasonable and justified, it should not operate to discharge petitioner from its contractual liability.

Hence this petition, claiming that the Court of Appeals erred:

1. In ruling that the arrest of the vessel was a risk covered under the subject insurance policies.

2. In ruling that there was constructive total loss over the cargo.

3. In ruling that petitioner was in bad faith in declining private respondent's claim.

4. In giving undue reliance to the doctrine that insurance policies are strictly construed against the insurer.

In assigning the first error, petitioner submits the following: (a) an arrest by civil authority is not compensable since the term "arrest" refers to "political or executive acts" and does not include a loss caused by riot or by ordinary judicial process as in this case; (b) the deletion of the Free from capture or Seizure Clause would leave the assured covered solely for the perils specified by the wording of the policy itself; (c) the rationale for the exclusion of an arrest pursuant to judicial authorities is to eliminate collusion between unscrupulous assured and civil authorities.

As to the second assigned error, petitioner submits that any loss which private respondent may have incurred was in the nature and form of unrecovered acquisition value brought about by a voluntary sacrifice sale and not by arrest, detention or seizure of the ship.

As to the third issue, petitioner alleges that its act of rejecting the claim was a result of its honest belief that the arrest of the vessel was not a compensable risk under the policies issued. In fact, petitioner supported private respondent by accommodating the latter's request for an extension of the insurance coverage, notwithstanding that it was then under no legal obligation to do so.

Private respondent, on the other hand, argued that when it appealed its case to the Court of Appeals, petitioner did not raise as an issue the award of exemplary damages. It cannot now, for the first time, raise the same before this Court. Likewise, petitioner cannot submit for the first time on appeal its argument that it was wrong for the Court of Appeals to have ruled the way it did based on facts that would need inquiry into the evidence. Even if inquiry into the facts were possible, such was not necessary because the coverage as ruled upon by the Court of Appeals is evident from the very terms of the policies.

It also argued that petitioner, being the sole author of the policies, "arrests" should be strictly interpreted against it because the rule is that any ambiguity is to be taken *contra proferentum*. Risk policies should be construed reasonably and in a manner as to make effective the intentions and expectations of the parties. It added that the policies clearly stipulate that they cover the risks of non-delivery of an entire package and that it was petitioner itself that invited and granted the extensions and collected premiums thereon.

The resolution of this controversy hinges on the interpretation of the "Perils" clause of the subject policies in relation to the excluded risks or warranty specifically stated therein.

By way of a historical background, marine insurance developed as an all-risk coverage, using the phrase "perils of the sea" to encompass the wide and varied range of risks that were covered.[3] The subject policies contain the

"Perils" clause which is a standard form in any marine insurance policy. Said clause reads:

> Touching the adventures which the said MALAYAN INSURANCE CO., are content to bear, and to take upon them in this voyage; they are of the Seas; Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter Mart, Suprisals, Takings of the Sea, *Arrests, Restraints and Detainments of all Kings, Princess and Peoples, of what Nation, Condition, or quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes, that have come to hurt, detriment, or damage of the said goods and merchandise or any part thereof* . AND in case of any loss or misfortune it shall be lawful to the ASSURED, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, & c., or any part thereof, without prejudice to this INSURANCE; to the charges whereof the said COMPANY, will contribute according to the rate and quantity of the sum herein INSURED. AND it is expressly declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the Property insured shall be considered as a Waiver, or Acceptance of Abandonment. And it is agreed by the said COMPANY, that this writing or Policy of INSURANCE shall be of as much Force and Effect as the surest Writing or policy of INSURANCE made in LONDON. And so the said MALAYAN INSURANCE COMPANY., INC., are contented, and do hereby promise and bind themselves, their Heirs, Executors, Goods and Chattel, to the ASSURED, his or their Executors, Administrators, or Assigns, for the true Performance of the Premises; confessing themselves paid the Consideration due unto them for this INSURANCE at and after the rate arranged. (Emphasis supplied)

The exception or limitation to the "Perils" clause and the "All other perils" clause in the subject policies is specifically referred to as Clause 12 called the "Free from Capture & Seizure Clause" or the F.C. & S. Clause which reads, thus:

> *Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereat*; also from the consequences of hostilities and warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein is performing) by a hostile act by or against a belligerent power and for the purpose of this warranty "power" includes any authorities maintaining naval, military or air forces in association with power.
>
> Further warranted free from the consequences of civil war, revolution, insurrection, or civil strike arising therefrom or piracy.
>
> *Should Clause 12 be deleted, the relevant current institute war clauses shall be deemed to form part of this insurance*. (Emphasis supplied)

However, the F. C. & S. Clause was deleted from the policies. Consequently, the Institute War Clauses (Cargo) was deemed incorporated which, in subsection 1.1 of Section 1, provides:

> 1. This insurance covers:
>
> 1.1 The risks excluded from the standard form of English Marine Policy by the clause warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature on voyage or service which the vessel concerned or, in the case of a collision any other vessel involved therein is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power. Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strike arising therefrom, or piracy.

According to petitioner, the automatic incorporation of subsection 1.1 of section 1 of the Institute War Clauses (Cargo), among others, means that any "capture, arrest, detention, etc." pertained exclusively to warlike operations if this Court strictly construes the heading of the said clauses. However, it also claims that the parties intended to include arrests, etc. even if it were not the result of hostilities or warlike operations. It further claims that on the strength of jurisprudence on the matter, the term "arrests" would only cover those arising from political or executive acts, concluding that whether private respondent's claim is anchored on subsection 1.1 of Section 1 of the Institute War Clauses (Cargo) or the F.C. & S. Clause, the arrest of the vessel by judicial authorities is an excluded risk.[4]

This Court cannot agree with petitioner's assertions, particularly when it alleges that in the "Perils" Clause, it assumed the risk of arrest caused solely by executive or political acts of the government of the seizing state and thereby excludes "arrests" caused by ordinary legal processes, such as in the instant case.

With the incorporation of subsection 1.1 of Section 1 of the Institute War Clauses, however, this Court agrees with the Court of Appeals and the private respondent that "arrest" caused by ordinary judicial process is deemed included among the covered risks. This interpretation becomes inevitable when subsection 1.1 of Section 1 of the Institute War Clauses provided that "this insurance covers the risks excluded from the Standard Form of English Marine Policy by the clause "Warranted free of capture, seizure, arrest, etc. . . ." or the F.C. & S. Clause. Jurisprudentially, "arrests" caused by ordinary judicial process is also a risk excluded from the Standard Form of English Marine Policy by the F.C. & S. Clause.

Petitioner cannot adopt the argument that the "arrest" caused by ordinary judicial process is not included in the covered risk simply because the F.C. & S. Clause under the Institute War Clauses can only be operative in case of hostilities or warlike operations on account of its heading "Institute War Clauses." This Court agrees with the Court of Appeals when it held that ". . . . Although the F.C. & S. Clause may have originally been inserted in marine policies to protect against risks of war, (see generally G. Gilmore & C. Black, The Law of Admiralty Section 2-9, at 71-73 [2d Ed. 1975]), its interpretation in recent years to include seizure or detention by civil authorities seems consistent with the general purposes of the clause, . . . ." [5] In fact, petitioner itself averred that subsection 1.1 of Section 1 of the Institute War Clauses included "arrest" even if it were not a result of hostilities or warlike operations. [6] In this regard, since what was also excluded in the deleted F.C. & S. Clause was "arrest" occasioned by ordinary judicial process, logically, such "arrest" would now become a covered risk under subsection 1.1 of Section 1 of the Institute War Clauses, regardless of whether or not said "arrest" by civil authorities occurred in a state of war.

Petitioner itself seems to be confused about the application of the F.C. & S. Clause as well as that of subsection 1.1 of Section 1 of the Institute War Clauses (Cargo). It stated that "the F.C. & S. Clause was "originally incorporated in insurance policies to eliminate the risks of warlike operations". It also averred that the F.C. & S. Clause applies even if there be no war or warlike operations . . . ." [7] In the same vein, it contended that subsection 1.1 of Section 1 of the Institute War Clauses (Cargo) *"pertained exclusively to warlike operations"* and yet it also stated that "the deletion of the F.C. & S. Clause and the consequent incorporation of subsection 1.1 of Section 1 of the Institute War Clauses (Cargo) was to include "arrest, etc. even if were not a result of hostilities or warlike operations. [8]

This Court cannot help the impression that petitioner is overly straining its interpretation of the provisions of the policy in order to avoid being liable for private respondent's claim.

This Court finds it pointless for petitioner to maintain its position that it only insures risks of "arrest" occasioned by executive or political acts of government which is interpreted as not referring to those caused by ordinary legal processes as contained in the "Perils" Clause; deletes the F.C. & S. Clause which excludes risks of arrest occasioned by executive or political acts of the government and naturally, also those caused by ordinary legal processes; and, thereafter incorporates subsection 1.1 of Section 1 of the Institute War Clauses which now includes in the coverage risks of arrest due to executive or political acts of a government but then still excludes "arrests" occasioned by ordinary legal processes when subsection 1.1 of Section 1 of said Clauses should also have included "arrests" previously excluded from the coverage of the F.C. & S. Clause.

It has been held that a strained interpretation which is unnatural and forced, as to lead to an absurd conclusion or to render the policy nonsensical, should, by all means, be avoided. [9] Likewise, it must be borne in mind that such contracts are invariably prepared by the companies and must be accepted by the insured in the form in which they are written. [10] Any construction of a marine policy rendering it void should be avoided. [11] Such policies will, therefore, be construed strictly against the company in order to avoid a forfeiture, unless no other result is possible from the language used. [12]

If a marine insurance company desires to limit or restrict the operation of the general provisions of its contract by special proviso, exception, or exemption, it should express such limitation in clear and unmistakable language. [13] Obviously, the deletion of the F.C. & S. Clause and the consequent incorporation of subsection 1.1 of Section 1 of the Institute War Clauses (Cargo) gave rise to ambiguity. If the risk of arrest occasioned by ordinary judicial process was expressly indicated as an exception in the subject policies, there would have been no controversy with respect to the interpretation of the subject clauses.

Be that as it may, exceptions to the general coverage are construed most strongly against the company. [14] Even an express exception in a policy is to be construed against the underwriters by whom the policy is framed, and for whose benefit the exception is introduced. [15]

An insurance contract should be so interpreted as to carry out the purpose for which the parties entered into the contract which is, to insure against risks of loss or damage to the goods. Such interpretation should result from the natural and reasonable meaning of language in the policy. [16] Where restrictive provisions are open to two interpretations, that which is most favorable to the insured is adopted. [17]

Indemnity and liability insurance policies are construed in accordance with the general rule of resolving any ambiguity therein in favor of the insured, where the contract or policy is prepared by the insurer. [18] A contract of insurance, being a contract of adhesion, par excellence, any ambiguity therein should be resolved against the insurer; in other words, it should be construed liberally in favor of the insured and strictly against the insurer.

Limitations of liability should be regarded with extreme jealousy and must be construed in such a way as to preclude the insurer from noncompliance with its obligations. [19]

In view of the foregoing, this Court sees no need to discuss the other issues presented.

WHEREFORE, the petition for review is DENIED and the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

*Regalado, Puno, Mendoza, and Torres, Jr., JJ., concur.*

**Footnotes**

1 Penned by Justice Godardo A. Jacinto and concurred in by Justices Ricardo J. Francisco and Hector L. Hofilena.

2 16 Me. 207.

3 R. Keeton & A. Widiss, Insurance Law, 467 (1988).

4 Petition, pp. 13-14, *Rollo*.

5 Blaine Richards & Co. v. Marine Indem., Ins., Co., 653 F. 2nd 1051 (1980).

6 Petition, p. 13, *Rollo*.

7 p. 13, *supra*.

8 *Supra*.

9 Importers' & Exporters' Ins. Co. v. Jones, 1924, 266 S.W. 286, 166 Ark. 370.

10 General Accident, Fire & Life Ass. Corp. v. Louisville Home Telephone Co., 1917, 193 S.W. 1031.

11 The J.L. Luckenbach, C.C. A.N.Y. (1933), 65 F. 2d 570.

12 Wheeler v. Aetna Ins. Co., D.C.N.Y. (1933), F. Supp. 820.

13 Rosen Reichardt Brokerage Co. v. London Assur. Corp. (1924), 264 S.W. 433.

14 Quinlinan v. Northwestern Fire & Marine Ins. Co., D.C.N.Y. (1929), 31 F. 2d 149.

15 Dole v. New England Mut. Marine Ins. Co. (1863) 88 Mass. 373.

16 Cherokee Brick Co. v. Ocean Accident & Guaranty Corp., Limited, (1918), 94 S.E. 1032, Ga. App. 702.

17 Rosen-Reichardt Brokerage Co. v. London Assur. Corporation, (1924), 264 S.W. 433.

18 Vol. II, G. Couch, Cyclopedia of Insurance Law, pp. 524-525, (1963).

19 Fortune Insurance and Surety Co., Inc. v. Court of Appeals, 244 SCRA 308 (1995).



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