CARGO CLAIMS & PROPERTY DAMAGE

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CARGO CLAIMS & PROPERTY DAMAGE

Insurance contracts covering loss or damage to cargo often provide less protection to the insured than is either contemplated or understood when the policy is acquired due to the language used in the contracts. The general rule is that any ambiguities in the language used in insurance policies are to be interpreted strictly against the insurer. *Trahan v. Southland Life Ins. Co.*, 289 S.W.2d 753, 755 (Tex. 1956). The reasoning behind this rule is that the insurance company is adequately protected since it prepares the policy with minimal or no changes by the insured. *London v. Provincial Marine & Gen. Ins. Co. v. Sykes*, 66 S.W.2d 382 (Tex. Civ. App.—San Antonio 1933, writ dism'd). Though insurance contracts are to be construed strictly against the insurer, they still must be interpreted generally as other contracts, and thus "unambiguous words and phrases are to be taken in their ordinary meaning unless there is something in the contract that would indicate a contrary intention." *United American Ins. Co. v. Selby*, 338 S.W.2d 160, 164 (Tex. 1960).

An issue arises for insureds, however, when the language in a limited-risk policy is plain and unambiguous, but produces a result that seems contrary to the intentions of the insured. In cargo insurance contracts, this often occurs where the damage to the cargo is sustained as the result of either (1) collision between the load itself and another object in which the conveyance (the truck or trailer) does not come in contact with anything, or (2) when the damage incurred to the load is caused by the loss of equilibrium of the conveyance where the truck or trailer never actually turned over.

Cargo insurance contracts typically provide protection for loss or damage to the cargo that occurs as a result of specified risks that are detailed in the contract. The following is an example of language commonly used:

We will pay for "loss" to Coverage Property from any of the covered causes of loss.

Covered causes of loss means "loss" cause by or resulting from the following clause…

(1) Collision of the conveyance with any other vehicle or object

(2) Upset or overturn of the conveyance.

I. COVERAGE FOR LOSS DUE TO COLLISION OF THE CONVEYANCE WITH ANY OTHER OBJECT OR VEHICLE

Policies insuring cargo against loss or damage during shipment often afford protection where there is a collision of the conveyance with some other object. On several occasions the questions has arisen whether these policies coverage damage when the shipped property but not the conveyance itself collides with another object, such as the ceiling of an underpass. The courts who have wrestled with this issue have come to diametrically opposite conclusions.

A. Courts finding coverage

Courts in a number of jurisdictions have interpreted the terms of the policy to provide coverage for loss or damage to cargo resulting from a collision between the cargo and another object where the conveyance was not involved. Courts construing the clauses to provide coverage have done so mainly through three rationales: (1) the perceived intentions of the parties, (2) finding a collision when the conveyance strikes the roadbed or a culvert, and (3) finding the tarpaulin covering the cargo to be part of the conveyance.

1. Perceived Intentions of the Parties

Some courts have focused heavily on what is perceived to have been the intention of the parties when they entered into the cargo insurance contracts. *See Garford Trucking, Inc. v. Alliance Ins. Co.*, 195 F.2d 381 (2nd Cir. 1952); *Aetna Ins. Co. v. Cameron*, 633 P.2d 1212 (Mont. 1981); *Jorgenson v. Gerald Fire & Marine Ins. Co.*, 38 N.W.2d 209 (Minn. 1949); *Gould Morris Elec. Co. v. Atlantic Fire Ins. Co.*, 50 S.E.2d 295 (N.C. 1948); *C. & J. Commercial Driveway, Inc. v. Fidelity & Guar. Fire Corp.*, 242 N.W. 789 (Mich. 1932); *Simpsonville Wrecker v. Empire Ins.*, 793 S.W.2d 825 (Ky. App. 1990); *Bucks County Constr. Co. v. Alliance Ins. Co.*, 56 A.2d 338 (Pa. Super. Ct. 1948). In determining the parties' intentions the

courts are using the idea that if the policy was purchased for the particular cargo, then there is mutual agreement between the insurer and insured to provide protection for the listed cargo, regardless of the circumstances causing the damage. *See Simpsonville Wrecker*, 793 S.W.2d at 829; *Bucks County Constr. Co.*, 56 A.2d at 340. This is especially true when the cargo is large and bulky. In *Jorgenson*, the Supreme Court of Minnesota stated that the insurance policy must be read to cover the damage to the cargo, "so as to accomplish the purpose of the document and avoid absurdity." 38 N.W.2d at 213. The court went on to say that to avoid absurd results the court should determine the true intentions of the parties and in doing so, "literal meaning frequently suffers." *Id.* The Supreme Court of Michigan used a similar rationale in finding coverage, stating the words in the policy "must be considered in connection with all of the other language of the policy in order that it may be ascertained what meaning the parties mutually intended to give them which would be consistent with the object and purpose of the insurance." *C. & J. Commercial Driveway*, 242 N.W. at 690. In *Garford Trucking*, a policy was purchased insuring a turbine being transported and the turbine was damaged after coming into contact with an overhead bridge. 195 F.2d at 382. In finding the policy covered the damage the court stated, "Even though the truck sustained no injury whatever, we regard it as extremely unlikely that the parties would have desired to differentiate the two cases had they been foreseen. Why should they? The insurance does not cover injury to the truck but only the carrier's liability for damage to the cargo." *Id.*

While these cases that find coverage consistently speak of the intentions of the parties, the analysis has focused on the intentions of the insured. For example, in interpreting the insurance coverage to provide coverage, the Supreme Court of North Carolina noted that the policy specifically covered the cargo while in transit on a single trip and stated, "undoubtedly, the plaintiff thought it had such insurance." *Gould Morris*, 50 S.E.2d at 297. While this logic protects the insured from unexpected loss, it ignores the intentions of the insurer to provide coverage against specific risks, hence the limited-risk policy, and expands coverage beyond that originally contemplated.

2. Collision with the roadbed or culvert

Another rationale used by courts to interpret the insurance contract to provide coverage is use a broad definition of "collision" so that damage to cargo is covered when the truck hits the roadbed or a culvert. *See Employers Liab. Assur. Corp. v. Groninger & King*, 299 S.W.2d 175 (Tex. Civ. App.—Dallas 1956, writ ref'd n.r.e.); *Edgerton & Sons v. Minneapolis Fire & Marine Ins. Co.*, 116 A.2d 514 (Conn. 1955). In *Edgerton*, the truck came into contact with a culvert, causing a lathe that was transported to come into contact with an overhead bridge resulting in extensive damage. 116 A.2d at 516-17. While the insurer argued this damage was not covered under the policy because the truck did not collide with the bridge and sustained no damaged, the court found a collision between the truck and the culvert, and stated this collision was the proximate cause of the damage to the lathe, and thus the policy was triggered. *Id.* at 516. Another court found a collision when a truck made a sharp turn and then abrupt stop causing the wheels to momentarily come off the ground and then fall back onto the roadbed. *Groninger & King*, 299 S.W.2d at 178. This very broad interpretation of "collision" has not been widely used, often because such an occurrence will be considered an "overturn" and covered by another clause in the policy.

3. Collision between tarpaulin & overhead bridge

Another question that arises under these policies is whether a tarpaulin covering the cargo is part of the conveyance. One court had found that as a matter of law a tarpaulin covering the cargo to be part of the vehicle. *Brown Mfg. v. Carouse*, 102 N.W. 154, 157 (Iowa 1960). Thus contact between the tarpaulin and an overhead bridge that resulted in damage to the cargo was covered under the insurance contract. *Id.* On the other hand, the Supreme Court of Mississippi held that it was a jury question whether the tarpaulin was part of the vehicle or simply a cover and separate from the

vehicle. *Canal Ins. Co. v. H.L. Howell*, 160 So. 2d 218 (Miss. 1964).

4. What hasn't worked

Arguments that the cargo is part of the vehicle or conveyance have not been met with any success. *See Trinity Universal Ins. Co. v. Robert P. Stapp, Inc.*, 177 So. 2d 102, 104 (Ala. 1963); *Three Star Transp. Inc. v. Continental Ins. Co.*, 729 F. Supp. 501, 503 (S.D. Miss. 1989). The court in *Three Star* stated that the term "conveyance" must be given its usual and accepted meaning since there is no language in the policy to indicate that the parties intended otherwise and under this meaning conveyance is distinct from cargo. *Id.* Similarly the Alabama Supreme Court stated that the policy clearly only covered damage to the cargo resulting from a collision of the vehicle on which the property is being transported and, "To hold that a vehicle's cargo was a part of the vehicle for purposes of this policy would do violence to the express and explicit language of the policy." 177 So. 2d at 104.

B. Courts denying coverage

While several jurisdictions have construed the cargo insurance policies to provide coverage absent a collision involving the conveyance, there are also a number of jurisdictions who have reached the exact opposite conclusion, favoring a strict construction of the clause in the insurance contract. *Old Colony Ins. Co. v. Anderson*, 246 F.2d 102 (10th Cir. 1957) (applying Oklahoma law); *Western Cas. & Sur. Co. v. D. & J. Enter.*, 720 S.W. 2d 944 (Mo. 1986); *Vulcan Freight Lines v. South Carolina Ins. Co.*, 446 So. 2d 603 (Ala. 1982); *Canal*, 160 So. 2d at 222; *Wolverine Ins. Co. v. Jack Jordan, Inc.*, 99 S.E.2d 95 (Ga. 1957); *Hamilton Trucking Serv. v. Automobile Ins. Co.*, 237 P.2d 781 (Wash. 1951); *Mendelsohn v. Automobile Ins. Co.*, 195 N.E. 104 (Mass. 1935). These courts generally hold that the language in the cargo insurance contracts is plain, unambiguous, and subject to only one reasonable interpretation. In *Hamilton Trucking*, the Supreme Court of Washington held that damage to a gang saw was not covered since the conveyance did not collide with any vehicle or object and felt the language contained in the contract was plain and unambiguous. 237 P.2d at 784-85. The court also said it felt that courts taking the opposite view had created ambiguities where none existed, using rules of construction to determine the intent of the parties, and unnecessarily expanding the coverage of the limited-risk policies. *Id.* Similarly, in *Mendelsohn*, the cargo extended above the top of the truck and was damaged when it struck an overhead bridge. The court found the language used to describe the perils insured against was not unambiguous, there was nothing to indicate the words were given a special or technical meaning, and stated there was no reason to use anything but their ordinary meaning in denying coverage because only the cargo and not the vehicle came into contact with the overhead bridge. 195 N.E. at 104-05. Another court stated, "In our view, the language 'collision of the vehicle with any other vehicle or object' does not have a double meaning and we are not justified in saying it is ambiguous." *Western Cas. & Sur. Co.*, 720 S.W.2d at 946. This reasoning has been used universally by the courts denying coverage under these contracts when only the cargo is involved in a collision, emphasizing the plain meaning of the language in the contract and finding no reason to extend coverage beyond that which is clearly stated in the policy.

C. Texas

Originally, Texas courts interpreted the policy language by looking at the intentions of the parties even when the policy contained seemingly unambiguous language. *Employer's Liab. Assur. Corp. v. Groninger & King*, 299 S.W.2d 175 (Tex. Civ. App.—Dallas 1956, writ ref'd n.r.e.); *Mercury Ins. Co. v. Varner*, 231 S.W.2d 519, 522 (Tex. Civ. App.—Eastland 1950, writ ref'd); *Continental Ins. Co. v. Griffin*, 218 S.W.2d 350, 351 (Tex. Civ. App.—Eastland 1949, no writ). *Griffin* involved a policy covering houses while they were being moved and one of the risks covered was "accidental collision of the conveyance with any other vehicle or object." 218 S.W.2d at 350. In this case, the house struck the banister of a concrete culvert, though the truck did not come into contact with any object. *Id.* The court found the policy covered the damage, finding there had

been a "collision" within the meaning of the policy, despite the plain language contained in the contract. *Id.* at 351. Given the bulky nature of the houses, the court held that the policy was clearly intended to cover damage to a house while being transported on the insured's truck and accidental collision of a house with any object while on the truck. *Id.* at 351-52. The same broad interpretation of the policy was used a year later in finding there was a "collision" where a drilling mast fell to the ground and was damaged while being transported on a truck and trailer in which the trailer became detached from the truck. *Mercury Ins. Co. v. Varner*, 231 S.W.2d 519, 522 (Tex. Civ. App.—Eastland 1950). In *Groninger & King*, the court also found a "collision" within the policy terms when the truck carrying a tractor made a sudden stop to avoid a collision with a car, causing the truck's right wheel to leave the ground and then collide with the roadbed. 299 S.W.2d at 178. The chains securing the cargo tractor broke and the tractor slid off the truck and sustained extensive damage. *Id.* at 176-77.

Though the Texas courts originally aligned themselves with the courts finding coverage, there was a change of course with *Birmingham Fire Ins. Co. v. Newsom Truck Lines, Inc.*, 390 S.W.2d 537 (Tex. Civ. App.—Houston[1st Dist.] 1965, writ ref'd n.r.e.). In *Birmingham Fire* the insured was transporting a large circuit breaker when it was damaged by an overhanging tree limb. The Court of Appeals reversed an award of damages by the trial court since the damage to the circuit breaker was not caused by an accidental collision of the vehicle. The court noted that the cargo insurance policy was a limited-risk policy insuring against specific perils, including accidental collision of the vehicle with any other vehicle or object. Since this provision was not complicated or ambiguous, it had to be given its ordinary meaning and the thus without a collision involving the vehicle the policy was not triggered. In an opinion refusing the application for writ of error due to no reversible error, the Texas Supreme Court issued a per curiam opinion addressing the conflict between this decision and the decision in *Griffin* from the Eastland Court of Appeals and agreed with the decision in *Birmingham Fire* from the 14th Court of Appeals in Houston. *Newsome Truck Lines, Inc. v. Birmingham Fire Ins. Co.*, 394 S.W.2d 793 (Tex. 1965). Thus, the Texas Supreme Court has endorsed the approach of strictly interpreting these contracts if the language used is plain and unambiguous. Going forward it is very important for the purchaser of such a policy to carefully read the language of the policy to determine its coverage as unambiguous language will be given its ordinary meaning. The purchaser of such a policy should not expect a Texas court to find more expansive policy than that explicitly listed in the policy.

II. COVERAGE FOR LOSS DUE TO OVERTURN OR UPSET OF THE CONVEYANCE

A. General Rules

In cargo insurance policies protecting from loss or damage to cargo that is damaged due to overturn or upset of the conveyance, the conveyance is not required to end up completely overturned. *Aetna Cas. & Sur. Co. v. Electronic Explorations, Inc.*, 403 S.W.2d 480 (Tex. Civ. App.—Houston [1st Dist.] 1966); *Groninger & King*, 299 S.W.2d at 178; *Mercury*, 231 S.W.2d at 522. In these policies the terms "overturn" and "upset" are used synonymously. *See Fowler v. Canal Ins. Co.*, 389 S.E.2d 301 (S.C. App. 1990); *Puckett v. Carolina Cas. Ins. Co.*, 408 So. 2d 23 (La. App. 1981). Texas, as well as the other states that have encountered this issue, follows the rule that only a partial overturn is required with the true test being whether the vehicle preserved its equilibrium. *Williams v. Niesen*, 261 N.W.2d 401 (N.D. 1977); *Reed v. Commercial Ins. Co.*, 432 P.2d 691 (Or. 1967); *Dillehay v. Hartford Ins. Co.*, 421 P.2d 155 (Idaho 1966); *Hafey v. Paul Havens Co.*, 377 P.2d 499 (Utah 1963); *Chemstrand Corp. v. Maryland Cas. Co.*, 98 So. 2d 1 (Ala. 1957); *Jack v. Standard Marine Ins. Co.*, 205 P.2d 351 (Wash. 1949); *Moore v. Western Assur. Co.*, 195 S.E. 558 (S.C. 1938); *Carl Ingalls, Inc. v. Hartford Fire Ins. Co.*, 31 P.2d 414 (Cal App. 1934). A partial overturn does not require the truck to end up on its side, only that the truck loses equilibrium. *See Espree v. Western Pioneer Ins. Co.*, 324 P.2d 749 (Cal. App.

1958); *Groninger & King*, 299 S.W.2d at 177. Further, an upset or overturn that causes the conveyance to tip forward or backward will be treated the same as a loss of equilibrium that tips the conveyance on its side. *See Mercury*, 231 S.W.2d at 522.

As previously mentioned, a finding of an "upset" or "overturn" hinges on the loss of equilibrium for the conveyance. Since the loss of equilibrium must be the main cause of the damage to the cargo for the policy to apply, it must be great enough to cause damage to the cargo. *See Mercury*, 231 S.W.2d at 522; *Moore*, 195 S.E. at 559. The loss of equilibrium required has been described by some courts, including one from Texas, as "significant enough so that the overturning process proceeds to a point where the person in control of the vehicle no longer has the power to stop its progress. *See Mason v. Commercial Union Assurance Co.*, 626 P.2d 428 (Utah 1981); *Aetna*, 403 S.W.2d at 482; *Jack*, 205 P.2d at 354.

B. Examples of Loss of Equilibrium

As stated above a partial loss of equilibrium is all that is required for the coverage in the cargo insurance policy to apply. Loss of equilibrium can occurs for a variety of reasons. In one Texas case, a truck was found to have partially overturned when it made a sharp turn and abrupt stop to avoid a collision with an oncoming car causing the truck to slightly tip and the right wheels to momentarily leave the ground. *Groninger & King*, 299 S.W.2d at 178. This partial overturn resulted in the chains holding a tractor that was being transported to break leading to damage to the tractor. *Id.* In another Texas case a trailer was held to have overturned when device connecting the trailer to the truck broke, causing the trailer to fall forward, and a drilling mast to be damaged. *Mercury*, 231 S.W.2d at 522. Similarly, an upset was found when the rear wheels of a dump truck fell off causing the truck to hit the ground with significant force, ripping the dump bed back and apart from the chassis and spilling all of the gravel that was contained in dump bed. *Home Service Cas. Ins. Co. v. Barry*, 277 S.W.2d 280, 285 (Tex. Civ. App.—Waco 1955, writ ref'd n.r.e). Loss of equilibrium due to the truck's wheels dropping into a depression leading to twisting of the truck frame and spilling of the cargo was also held to be covered under the "overturn" provision. *Dillehay*, 421 P.2d at 363. Upset can also occur due to water, and a car that was damaged when washed from a causeway and turned half over cover under an "upset" clause. *Providence Wash. Ins. Co. v. Proffitt*, 239 S.W.2d 379 (Tex. 1951). Furthermore, the loss was covered when the truck-trailer carrying a log loader became stuck in the mud and was tipped, leading to equilibrium loss while being extricated, resulting in damage to the log loader, even though there was no loss of equilibrium when the truck initially slid into the mud. *Northwest Ins. Co. v. Albrecht*, 587 P.2d 1081 (Wash. App. 1978). These cases represent a non-exhaustive list of the numerous ways a loss of equilibrium can occur, triggers coverage under the "upset" or "overturn" clauses.

C. Examples not constituting a Loss of Equilibrium

While only a partial loss is required for coverage to apply, damage to cargo that occurs without partial loss of equilibrium or overturn will not be covered under the policy. Though the loss of equilibrium does not have to be significant, it still must happen. In *Old Colony Ins. Co. v. Anderson*, damage to a drilling unit was not coverage when the chains holding it on the trailer broke after a sharp turn by the truck because the wheels of the truck never left the ground and the truck never lost equilibrium. 246 F.2d at 103. Recovery was also denied in *Puckett v. Carolina Cas. Ins. Co.*, 408 So. 2d 23 (La. App. 3rd Cir. 1981), where the truck hit a "dip" in the road which caused the side of the trailer to split and spill the cargo because there no was no evidence that the truck lost equilibrium when it hit the "dip." Another example where coverage was denied occurred in *Forest Tree Serv. v. Illinois Farmers Ins.* where the truck's bucking and bouncing movement was insufficient to cause loss of equilibrium and the movement was no more than was expected in the normal operation of the equipment attached to the truck. 502 N.E.2d 78, 80 (Ill. App. Ct. 1986). Overall without some degree of a loss of equilibrium, these policies will not cover any damage that the cargo incurs.

III. CONCLUSION

Issues can arise in limited-risk cargo insurance contracts that protect against damage that results from (1) collision of the conveyance with any other vehicle or object and (2) overturn or upset of the conveyance. The courts are split on the issue of whether a collision involving the cargo only falls under such a policy. Texas courts have moved toward strictly construing these policies, focusing on the unambiguous language. For policies containing the "overturn" or "upset" provisions, it is important to remember that the vehicle or trailer must undergo a loss of equilibrium in some manner for the coverage to be triggered. Best practice is to carefully read these policies and to discuss the breadth of the coverage beforehand to avoid the situation where the insured has less protection than initially contemplated.