

# Claims Notification Clauses

Following a recent decision involving a single point mooring buoy operating in the Yetagun Gas Field, this article considers the significance of Claims Notification Clauses in commercial insurance contracts.



## Background

The Yetagun Gas Field is situated in the Andaman Sea, offshore Myanmar. The claimant, PT Adidaya Energy Mandiri, was the owner of a single point mooring buoy operating in the Yetagun Gas Field and insured with MS First Capital Insurance Ltd under a *Machinery and Equipment All Risks Policy*. The policy was against total loss only in respect of physical damage to property.

An essential part of the role of the single point mooring buoy was to operate in conjunction with a storage vessel "Bratasena". The single point mooring buoy was attached to the storage vessel. The storage vessel was to accumulate condensate from the pipeline and riser in the single point mooring buoy and then to offload the condensate to tankers.

Between the 11th and 13th of July 2018 there were various collisions between the single point mooring buoy and the storage vessel "Bratasena". This caused damage to the single point mooring buoy's compartments, leading to an ingress of water and a risk that the buoy could sink.

Temporary repairs were effected by the end of August 2018 and further repairs were effected in December 2018. The insurers were notified of a possible claim on 5th September 2018. Taking the position that further repairs were required to the single point mooring buoy, the claimant sought to recover from insurers on the basis that the buoy was a constructive total loss.

There was a general clause in the policy headed "Conditions Precedent", which stipulated that if there was a breach of a clause stated to be a condition precedent then that might prevent the making of a claim and might discharge the insurers from liability. There was one relevant condition precedent, in the policy Claims Notification Clause, which provided as follows:

*"It is a strict Condition Precedent to Underwriters' liability under this Policy (or otherwise) that in the event of the Assured becoming aware of any incident giving rise to a claim which may be covered under this Policy that Underwriters be given written notification of such circumstances within thirty days..."*

*It is hereby agreed by both parties that as claims notification is a matter of fundamental importance to Underwriters that compliance with the time limits set out within this Claims Notification Clause are strict Conditions Precedent to Underwriters' liability to indemnify the Assured under this Policy. Should either time period, whether this be initial notification or subsequent notification with provision of supporting documents, not be complied with then Underwriters will not be liable under this Policy or otherwise."*

The policy also defined "Warranties" as follows:

*"clauses... requiring steps to be taken or not taken by the Assured and based upon which Underwriters have chosen to underwrite this risk. If you breach a Warranty in this policy, Underwriters may have no liability in respect of any loss which happens after the breach has occurred but before it is remedied. Underwriters may elect to waive the breach but such waiver must be expressly communicated to you in writing."*

There were two clauses containing relevant warranties, as follows:

*"1. The Insured Equipment is only to be operated by and under the supervision of suitably trained and authorised personnel..*

*8. Suitable precautions and preservation / maintenance*

*measures to be adopted when storing, handling, transporting and operating Insured Equipment."*

### Claims Notification Clauses

Insureds must comply with a condition precedent in order to make a claim. The most common condition precedent is the claims notification condition.

A claims notification condition may specify the consequences of a breach by the insured, such as the insurer's right to reject a claim. Where the consequences of a breach are expressly detailed in a commercial insurance policy, the courts may be expected to uphold them.

Where the claims notification condition does not expressly set out the consequences of a breach, the insurer is bound to accept the claim.

The breach of a claims notification condition will rarely be treated as a repudiatory breach of the policy entitling the insurer to avoid the policy.

### PT Adidaya Energy Mandiri v MS First Capital Insurance Ltd [2021] SGHC(1)14

The *Machinery and Equipment All Risks Policy* under consideration was governed by the law of Singapore and subject to the exclusive jurisdiction of the courts of Singapore. However, the choice

of law clause in the policy was modified so that it was expressly agreed that all of the terms, conditions, warranties and other matters contained within the UK Marine Insurance Act 1906 (as amended by the Insurance Act 2015) applied to the policy.

Amongst other things, the judge found that there had been a clear breach of warranty clause 8 detailed above. Specifically, no suitable precautions had been adopted when operating the Insured Equipment. In this respect, the judge found that the collisions between the single point mooring buoy and the attached storage vessel "Bratasena" were caused by defects in the operation of the vessel. In particular: there had been a failure to keep a 24/7 watch on the bow of the vessel in relation to its station-keeping of the single point mooring buoy; there was no static tow; there had been a failure to use the vessel's engines to manoeuvre away from the buoy on being alerted to the problem; and whatever agreed procedures were in place they had not been followed.

With regards to the above detailed warranty clause 1, the judge found that no evidence had been produced to show that the officers and crew had been properly trained and held appropriate qualifications for the task.

Finding that the claimant was in breach of clause 1 and clause 8 of the warranties meant there could be no claim under the policy and

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no claim for associated suing and labouring expenses. However, the judge went on to discuss various other matters, including the policy Claims Notification Clause.

In accordance with the Claims Notification Clause, it was a condition precedent that a potential claim was notified within 30 days of the claimant "becoming aware of any incident giving rise to a claim which may be covered under this Policy". The claims notification to insurers took place on 5th of September 2018. Accordingly, the claimant's knowledge was to be assessed as at 6th of August 2018.

The evidence showed that on 6th of August 2018 the claimant did not actually know that there was a total loss of the single point mooring buoy so as to trigger coverage under the policy. However, the policy Claims Notification Clause did not require actual knowledge that there was a claim. Instead, the Claims Notification Clause addressed whether the claimant was aware of an incident giving rise to a claim which **might** be covered under the policy. In this respect, the judge considered that the claimant was aware of the incident, and of the risk of the single point mooring buoy sinking, prior to 6th of August 2018.

Furthermore, the Claims Notification Clause expressly set out the consequences of a breach, namely that underwriters would not be liable under the policy.

Accordingly, the judge was of the opinion that the claimant was in breach of the condition precedent in the policy Claims Notification Clause and insurers were entitled to rely upon it to deny liability.

### Conclusions

The case of PT Adidaya Energy Mandiri v MS First Capital Insurance Ltd highlights the importance to claimants of complying with Claims Notification Clauses.

In particular, claimants should be acutely aware of conditions such as those requiring the notification of circumstances which **may** give rise to a claim under the policy.

Should underwriters seek to deny liability due to a breach of a claims notification condition precedent, the claimant should establish if the relevant clause expressly grants insurers the right to deny liability.

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