

INSURANCE POLICIES AND CONSEQUENTIAL LOSS

In *Horbury Building Systems Ltd v Hampden Insurance NV* [2004] EWCA Civ 418 the Court of Appeal decided against the claimant, Horbury Building Systems Ltd, who were claiming consequential losses under their insurance policy.

Horbury were employed as a sub contractor to install suspended ceilings in a new build Multiplex Cinema project in Manchester. They negligently installed incorrect washers on 5 of the 16 ceilings. Two days after opening, one of the ceilings failed which in turn sparked a safety scare and resulted in the whole building being closed whilst checks were carried out to the other 15 ceilings.

Horbury turned to their insurers. However their claim included the employers' consequential loss claim for the one-month period that the cinema was closed whilst safety checks and subsequent remedial works were carried out.

The insurance company rejected this aspect of the claim because the policy applied:

*"against liability at law for damages and claimant's costs and expenses in respect of injury to any person and loss of or **damage to property*** occurring within the Territorial Limits during the period of insurance and **caused by any products*** after they have ceased to be in the custody or under the control of the Insured".*

***Emphasis added**

Horbury's claims were for:

1. damage to property in cinema 6 and the associated damages whilst repairs were effected in cinema 6, and

2. the consequential losses incurred by the employer whilst the cinema was closed.

During this time an investigation of the other fifteen cinemas was carried out and remedial works were carried out to four ceilings.

The first part of the claim was accepted.

The second part of the claim, however, was rejected on the basis that since that no physical '*damage*' had occurred in these cinemas.

The Appeal Court held that the policy only covered liability for the physical consequences of the damage in the auditorium and the economic loss caused by that physical damage.

The Appeal Court's decision may appear perfectly reasonable to some but, as the causative event is the same negligent act and as the damages claimed all follow on from that event in the same building on the same project, others may find it more difficult to accept.

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