



The Case

Commercial Lines Insurance (CLI) insures businesses in the UK against a variety of risks including property damage and business interruption. Under its standard wording for business interruption losses, there is a one-year indemnity period for financial loss sustained “as a consequence of material damage to insured property.” By way of extension, the wording covers financial loss from “denial of access consequent on the order of a public authority caused by or arising out of an event in the vicinity of the premises.”

Following constant heavy rain in England for seven days commencing 10 April 2020, a number of roads were washed away and bridges were damaged. On 20 April 2020 the UK Government declared a state of emergency and ordered the closure of all motorways for a month. CLI settled many thousands of claims. The total losses exceeded £100,000,000. Some of the claims were for business premises that had been flooded or were close to motorways that had been flooded. However, a substantial number of the claims were for businesses that were not flooded and not close to motorways, but the Government order had made it difficult for them to obtain supplies or to distribute finished products. The entirety of the claims were settled for 80% of their value. One of the claims settled was in respect of a flooded oil refinery, which had on 21 April 2020 suffered a catastrophic fire – entirely unrelated to the flood – destroying all of its buildings and property. CLI paid a £5,000,000 business interruption loss on that claim alone.

CLI was reinsured by NatCat GmbH, a German company, under an excess of loss treaty stated to be governed by the Principles of Reinsurance Contract Law (PRICL). All disputes under the treaty were to be resolved by arbitration conducted by a sole arbitrator, the seat of the arbitration being England under the provisions of the Arbitration Act 1996. The sum reinsured under the ultimate net loss clause was aggregate loss on CLI’s portfolio in excess of £20,000,000 for all losses solely and directly caused by “any one event”. The treaty further provided that NatCat would indemnify CLI for losses falling within the terms of the underlying policies and within the terms of the treaty.

CLI’s claim under the treaty was rejected by NatCat on the grounds that: there was no coverage under either the policies or the treaty for losses suffered by businesses that had not suffered material damage; that the losses did not arise from a single event, in that neither flooding nor Government action could amount to an “event” and rather that each closure constituted an event; and that the claim for the refinery should in any event be excluded. CLI has invoked the arbitration clause in the treaty.

CLI and NatCat have jointly appointed Associate Professor, Dr Ozlem Gurses, as sole arbitrator. The parties and the Tribunal have scheduled the hearing for 17 September 2020.