

Breasting Dolphin Piles and Fortuity Under All-Risk Policies

Article By:

Larry P. Schiffer

An all-risk policy is meant to cover a loss triggered by any conceivable cause not excluded under the policy. While the burden is on the policyholder to establish a *prima facie* case for coverage, the policyholder need only show (1) the existence of an all-risk policy, (2) an insurable interest in the subject of the insurance contract, and (3) the fortuitous loss of the covered property. The burden to show fortuity is relatively light and when met, shifts the burden to the insurer to show that an exclusion applies or that the loss was not fortuitous.

Merriam-Webster defines “fortuitous” as “occurring by chance.” The question in a recent marine property damage case was whether an overload or ordinary wear and tear was the cause of the collapse of a mooring pile at a pier, which resulted in the loss. The steel pile was part of the southern inner breasting dolphin used for mooring operations. Got your attention?

The case involved cross motions for summary judgment. The issue was whether the policyholder met its initial burden of showing a *prima facie* case for coverage or whether the court could find for the insurers because the loss was caused by ordinary wear and tear and therefore, as a matter of law, was not fortuitous. *Petroterminal de Panama, S.A. v. QBE Marine & Specialty Syndicate 1036*, No. 14 Civ. 8614, 2017 U.S. dist. LEXIS 7638 (S.D.N.Y. Jan. 19, 2017).

Simply put, the tanker was moored and the pile collapsed. The policy covered the loss of the pile if the loss was fortuitous. The court granted the policyholder’s partial summary judgment motion finding that the policyholder had met its burden of showing a *prima facie* case that the loss was covered under the all-risk policy. The court, noting that the burden of proof was relatively light, held that the policyholder met its burden by introducing evidence that the pile was designed for infinite life and should not have failed from ordinary wear and tear. Experts were used to provide evidence.

While the insurers disputed the issue of material fact with their own expert, the court held that it did not have to resolve this battle of the experts at this stage of the case. The court found that there was a disputed issue of fact over whether the pile collapsed from overload or ordinary wear and tear. Because the insurers had not proven that as a matter of law no reasonable jury could find that the overload event was the proximate cause of the pile collapsing, especially when the pile was designed for infinite life, the insurers’ summary judgment motion was denied.

The case is interesting because of the analysis of fortuity in the context of an all-risk policy. It is also interesting because of the distinction between finding that an initial burden of proof has been satisfied

to allow a case to go forward on a *prima facie* basis compared to a determination as a matter of law that there is no coverage. Ultimately, a jury will determine whether the breasting dolphin pile was overloaded, and therefore covered, or merely collapsed from ordinary wear and tear leaving the loss uncovered.

© Copyright 2025 Squire Patton Boggs (US) LLP

National Law Review, Volume VII, Number 27

Source URL: <https://natlawreview.com/article/breasting-dolphin-piles-and-fortuity-under-all-risk-policies>