

## BRIEFING NOTE

**Determining the ‘Proximate Cause’ of Loss / Damage**

- ***Lessons from Allianz v University of Exeter [2023] EWHC 630 and Leyland Shipping v Norwich Union [1918] AC 350***

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The cover provided, or not provided, by all risks policies often turns on the proximate (or dominant) cause of the damage for which the cover is sought. That is because some causes of damage, such as faulty design or defective workmanship, may be excluded whereas other causes, such as poor operation or natural perils, may be covered. This gives rise to complex disputes as to which of a number of competing causes is the proximate cause of damage.

**Leyland Shipping**

Identifying the proximate cause of damage is not easy. In *Leyland Shipping Company, Limited v Norwich Union Fire Insurance Society, Limited* [1918] AC 350 (“**Leyland Shipping**”), the House of Lords held that the proximate cause was to be identified by the application of common sense, stating that the proximate cause was not necessarily the last event before the loss occurred, but the event that constituted the dominant cause of the loss.

The facts of *Leyland Shipping*, and more specifically the split decision (3-2) within the House of Lords, highlight the difficulties of identifying the proximate cause. In that case, a vessel carrying gold from Southampton to (what is today) the Port of Le Havre, was torpedoed by a German U-Boat. The crew managed to manoeuvre her to Le Havre for repairs, where the Harbour Master ordered that the vessel be berthed at open sea. She remained at open sea for two days, taking the ground at each ebb of the tide until finally her bulkheads gave way and she became a total loss. So what was the proximate cause? The attack? The refusal to give access to the port? Or the actions of the sea whilst she was berthed?

When determining what was the proximate cause of the loss, Lord Shaw dismissed the notion that the peril closest in time to the loss should always be deemed the proximate cause. The facts leading up to the loss had to be considered in their totality, and not in isolation. To establish a new intervening cause, any subsequent peril must prevent the originating peril from producing the result that it would otherwise have produced. Proceeding on this basis, the loss of the vessel was the natural consequence of the torpedo attack. Hence war risks were deemed to be the proximate cause of the loss.

## **Exeter University**

In *Allianz Insurance Plc v The University of Exeter* [2023] EWHC 630 (“***Allianz v Exeter University***”), contractors discovered an unexploded WWII bomb whilst working on a construction site adjacent to Exeter University. The Bomb Disposal Unit determined that it could not be defused safely or transported elsewhere. The only option was a controlled detonation at site, which despite best endeavours, caused damage to certain buildings of Exeter University. The question again was the proximate cause of the damage: whether this was the act of dropping the bomb or detonating the bomb seven decades later?

The Court held that the proximate cause of the damage was the act of dropping the bomb. Had the bomb exploded when it landed (and had the buildings been there at that time), the war would have been the proximate cause and war risks the relevant peril. The act of artificially detonating the bomb several decades later did not break the chain of causation.

The decision in *Allianz v Exeter University* may be further considered by superior courts. The reasoning that the bomb would have caused the same damage had it exploded when dropped gives rise to several arguments: first, the buildings damaged by the controlled detonation may not have been constructed when the bomb was dropped; second, if they were constructed, the scale of damage may have been different; third, the unexploded bomb might never have exploded but for the controlled detonation; and fourth, had it not been discovered and exploded of its own accord then the resulting damage may have been very different. In any event, applying *Leyland Shipping*, there remains an argument that the damage resulting from the controlled detonation was not the ‘natural consequence’ of a bomb dropped in WWII.

## **Commentary**

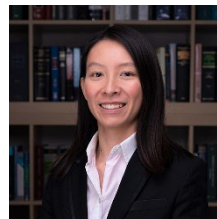
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