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GLOBAL SERVICES

NEWSLETTER

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Not So Elementary, My Dear Watson

Our team at **Advanta** have welcomed the new year with increased optimism and vigour, a positive feat during a time when the global socio-political stage is increasingly volatile and wrought with uncertainties. We have been solidifying our core divisions and launching new initiatives, including an Environmental Risks team which will be led by David Waller, an expert in this field and without doubt an invaluable addition to our technical portfolio. The start of this year has also seen our London office grow, welcoming new technically qualified loss adjusters to our team, laying the groundwork for our future and continued development.

The investigative nature of loss adjusting is ever-present throughout our newsletter as our adjusters outline their efforts to pin-point the causes or source of damage in previous claims. In our main article 'Unearthing Product Liability Roots', two adjusters from our Dutch associate office, Willem Timmerman and Frido Leendertse present an interesting case which involved the thorough investigation of an international organic product supply chain to assess product liability. The loss adjusters had to apply their proficient knowledge of the various EU legislative frameworks and their expertise on product liability to resolve this claim.

Our Oman office director, Richard Dixon, also provides us with an insightful article on thermal stress and uses a case study regarding glass panels to demonstrate how to identify the main causes for glass breakage, highlighting their relevance under EAR policies.

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Oliver Thoma
Director

Unearthing Product Liability Roots

Consumers are increasingly in search of natural and safe products resulting in the consumer demand for organic products seeing a sharp increase over the past 15 years. Driven by this demand, the production and trade in organic commodities has grown proportionately, resulting in evermore claims relating to organic products.

Insurers had instructed us to conduct an investigation into the liability issue of a Dutch trading company, it involved a shipment comprised of organic sunflower cakes from a former Eastern bloc country and destined for the animal feed industry. The shipment in question originated from a company that had the necessary organic certificates and a certified biological farm. The pre-shipment, loading and unloading samples taken by reputable experts in the field, had been analysed for residues of pesticides earlier that year and had been found to be in order.

The insured, a Dutch trading company that supplies organic products, was however held liable by a mixed feed company in Germany. Upon further inspection, it was found that the feed for laying hens produced by the mixed feed company contained residues of insect pesticides and a fungicide, which could be traced back to the sunflower cakes supplied to them, originating from the insured. The mixed feed company reported the matter, in accordance with European regulations, to the Food and Consumer Product Safety Authority of Germany. The relevant authorities of all EU Member states were informed via the EU's reporting system. As a result, biological mixed feed companies in the Netherlands, Germany, Belgium and France also lodged claims against the insured.

The insured was ordered by the competent Dutch authorities (SKAL) to block the supply of sunflower cakes in stock. The insured's clients were informed that they needed to stop the distribution of sunflower cakes in question and any mixed feed that included this product had to be recalled from the end users. The end users of the organic mixed feed were not allowed to bring any of their products; eggs, milk or meat, to market as organic products. The essence of organic products is that the end products are not allowed to contain pesticides. The reason the Food and Consumer Product Safety Authorities prohibited the sale of these end products was because consumers needed to be confident that the animals used to produce eggs, milk and/or meat had been fed organic feed, even if there is no danger whatsoever to public health. In this case, there was no examination of whether there were in fact residues of pesticides in the eggs, milk or meat.

Due to the international nature of this claim and the various juridical systems implicated, substantial work was required to examine the applicable legal frameworks and contractual relationships between all parties involved. By way of example, the company in the former Eastern bloc, was subject to Grain and Free Trade Association (GAFTA) conditions with arbitration seated in London, the German clients were governed by the conditions for biological products of Deutsche Getreidehandel with arbitration in Hamburg and for the Dutch clients, the comparable Dutch Trade in Grain and Feed material (CNGD) conditions applied with arbitration in Rotterdam.

We conducted further investigations at several of the insured's clients, including that of the first German mixed feed company who had raised a claim against the insured, as well as several laying farms to which the mixed feed company had supplied feed for laying hens. It was found that the sunflower cakes supplied to this German mixed feed company alone represented a total claim of more than EUR 2.5 million. The actual research in this context involved a traceability investigation, assessing the quality systems of the mixed feed company and factory farms (German KAT quality system), as well as obtaining samples for analysis from the mixed feed company.

The root cause of most of the damage in this case was as a result of the German Food and Consumer Product Safety Authority's decision to prohibit the factory farms from selling affected eggs as organic eggs, during a six-week period. This decision was not deemed to have any support under EU or German legislation or regulations, henceforth the German mixed feed company and laying farms filed an objection against this decision; regrettably the decision was upheld in the appeal.

The financial consequences of this decision were considerable, as this claim concerned ten companies with a total of more than 900,000 laying hens, the eggs of which were thus not to be brought to market as organic products for a period of six weeks. Apart from the price differential between organic and non-organic eggs and different packaging that would be required, the affected businesses were also further impacted as they could not bring these eggs to market via retail companies since the colour of the affected eggs' yolks were different to those of conventional eggs. To mitigate losses, the only solution was to sell them as industrial eggs and have them processed into egg powder and other by-products at a considerably lower price point.

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Willem Timmerman

Frido Leendertse
Netherlands Associate Office

Cracking Under Pressure

We will be examining a case study that delves into the causes of glass breakage and thermal stress. Among the main causes and influencing factors on glass breakage are uniform load, impact, edge damage, poor installation, site damage, thermal stress, nickel sulphite inclusion, framing design, internal and external features and handling and installation.

In this case, an air traffic control operator discovered a crack in the air traffic control tower's (ATCT) glazing at 90° to the top edge of the panel, which turned through 80° and pitched at circa 30°. During the course of the crack, it formed an S shape, influenced by a microscopic imperfection. Each panel was composed of multi-laminated, tapered, glass construction and the glazing was installed in a complicated frame angled 15° from the perpendicular. Both upper and lower glazing frame recesses had air voids and drain holes for condensation and the outer panel was tinted. Whilst investigating this claim we identified that the average outside temperature on the day was 24°C, the interior of the control tower was undergoing cooling tests at the time of the incident and the temperature was estimated to have been 18°C with vents blowing cold air onto the panel. Aiding thermal stress was the fact that the interior of the panel was protected by an automatic film blind system.

Thermally induced stress within a pane of glass can be caused by temperature differential between two areas of the pane. In hot weather, the centre of the glass warms up faster than the edge as it is within the glazing rebate and shaded from direct solar radiation. As heat absorption causes the centre of the pane to expand this increases the temperature and consequently induces tensile stress in the edge which is forced to expand by a similar amount.

Typically, thermal stress fractures in glass can be determined by the fact that the crack extends at a 90° angle to the glass edge and to the two glass surfaces. Likewise, they originate from the glazing edge and never emerge in a radial pattern. Certain types of tinted glass and coatings are inherently at risk of thermal stress breakage, varying between types of glass. The most important property in relation to thermal stress is absorption, which is defined as "the amount of light energy converted to heat within a material that is not transmitted or reflected".

The thermal safety of glass is also influenced by frame design, material and colour. The risk of breakage is increased if the frame is in good thermal contact with a substantial heat sink keeping the edge of the glass cool. Conditions on the room side of the glass affect the amount of heat absorbed and lost by the glass. Internal blinds may reflect radiation and reduce heat loss by restricting air movement. Structural elements may reflect solar radiation back to the glass and radiant heaters, or blow coolers can direct additional cool air towards the glass.

When the glass edge is shaded, by an overhang for example, greater thermal stresses occuras the shadows inhibit the temperature increasing at the glass edge. As a result of the 'colder' glass edge, or the greater temperature difference between the centre and the glass edge, higher tensile stresses occur increasing the risk of breakage.

Whilst examining this case no standard exclusions applied and there was no inference of defective design, materials or workmanship. Any microscopic cracks identified in the beveled edges of the outer laminate did not fall within the definition of faulty materials as they were almost impossible to detect. There was no evidence of any impact nor reported incidents during transit, storage on site or during installation in the control tower. No physical evidence of edge damage was identified during examination and the frame mechanism appeared to be designed correctly and operating effectively in the control tower. Henceforth, this claim was concluded to be admissible against a standard Erection All Risks Insurance Policy.

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Richard Dixon
Oman Office

Group News

During the last quarter we have welcomed various new members to our team throughout the network. In our London office Susan Myers, an experienced loss adjuster in complex energy related onshore and offshore claims, has joined the team. She brings to the table both industry experience as a hydrographic surveyor for energy and telecom companies and brokering experience, thereby strengthening our Energy division.

Moreover, we have welcomed one of the UK's key environmental loss adjusters, David Waller. He has an extensive range of experience in claims related to oil and chemical spills, agricultural liabilities, fisheries and flooding and water supply liabilities. During the course of his career he has contributed to numerous trade press publications and provides technical material for CILA, CII and key brokers and insurers. At **Advanta**, he will be spearheading the efforts of the Environmental Risks team whilst also enhancing our existing technical expertise.

We are pleased to inform you that we will be hosting the **Advanta Annual Cocktail Party**, an opportunity to meet with industry peers and catch up over a few drinks and canapes. We will be ending this first quarter of 2017 on a celebratory note, so please join us at our Cocktail Party which will take place on Thursday 30th March 2017.

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