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Erection all risks insurance and machinery insurance – characteristics and differences

1. INTRODUCTION

The construction and erection of technical facilities and machines as well as their operation can cause unexpected damages. The damages may for example arise by errors of construction, material, erection or operation. But also natural disasters such as flood, landslide or storm can cause damages at machines and technical facilities. Hereby damages to persons and property as well as financial loss may arise.

To secure against property damages resulting from the construction of technical facilities and machines, companies can conclude an erection all risks insurance (EAR) and for the operation a machinery insurance. This article deals with the practical differences between these two kinds of insurance.

2. LEGAL NATURE OF EAR AND MACHINERY INSURANCES

EAR and machinery insurances are property insurances and belong to the technical insurances. Both kinds of insurances therefore require technical know-how for the conclusion of the insurance contract as well as for the settlement of claims.

As technical insurances, both EAR and machinery insurance offer all risks cover. This means, that all risks, which may cause a property damage of the insured item are covered. The all risks cover does not apply if single risks are excluded from the insurance cover by the insurance contract (e.g. damages by prior deterioration).

The content of an erection insurance is regulated by the General Terms for EAR Insurance (Allgemeine Montageversicherungsbedingungen = AMoB) and usually by special written terms and conditions concluded by the contract parties. For machinery insurances the General Terms for Machinery Insurance (Allgemeine Maschinenversicherungsbedingungen = AMB) apply in addition to special written terms and conditions.

2.1 Purpose of EAR and machinery insurance

The EAR and the machinery insurance make sense for companies, whose main practice is related to the operation or construction and erection of machines and technical facilities.

If a company (work contractor, prime contractor) constructs machines or technical facilities, the company generally bears the performance risk in the stage of erection. This stage comprises the time from the beginning of the erection of the facility until finalization and acceptance by the client. The EAR protects the company in case of damages during the erection and trial stage. In addition the EAR may also cover the client's interests in the assembly equipment and the assembly item.¹

In contrast, the machinery insurance offers insurance cover for operators of ready-to-use machineries and technical facilities during the operational phase after a successfully completed trial. The machinery insurance allows operators of machinery and technical facilities to reduce financial risks arising from the operation. Operators are able to make financial plans on the basis of fixed insurance premiums.²

2.2 Insured risks

As the EAR and the machinery insurance offer all risks cover, the risks named as covered in the general insurance terms are solely examples (faulty operation, short time overloads, failure of measurement devices).

2.2.1 EAR

The EAR offers insurance cover for machines and technical facilities in the risky construction/erection and trial phase. Ready-to-use machines are insured under the EAR during a reconstruction or any other disassembly and reassembly.³

The EAR covers both stationary and movable machinery and assembly equipment. Insurance cover for the assembly equipment must be concluded separately within the insurance contract. It covers damages to the equipment resulting from accident.

The EAR cover also includes prototypes. A prototype is a preliminary version of the later serial production which serves at testing features.⁴ In the EAR, prototypes are deliveries, goods and ser-

¹ Günther/Eckes in: Münchener Kommentar zum VVG, 1st edition 2010, Technische Versicherungen, No. 300 f.

² Voßkühler in: Beckmann/Matusche-Beckmann Versicherungsrechts-Handbuch, 2nd edition 2009, sec. 35 l.c., No. 15

³ Cf. Günther/Eckes l.c., No. 109

⁴ <http://de.wikipedia.org/wiki/Prototyp>

vices, which are performed by the policy holder or the insured entirely or partly for the first time (chapter A sec. 2 sentence 2 AMoB). Prototypes must be identified as such in the insurance contract. The insurance cover for prototypes is limited to damages caused by external hazard (so-called “hull risk”), whereas otherwise the assembly item is also insured against inner operational processes.⁵

The EAR covers relevant operational faults, if the company departs from the designated use. Operational faults arise by external action. If for example a builder activates accidentally a wrong task of a truck-mounted crane (faulty operation) and thus an accident occurs, the damage caused by the faulty operation is insured.

2.2.2 Machinery insurance

The machinery insurance offers cover for stationary machines, machinery equipment and other technical facilities listed in the insurance contract. Unlike the EAR, the insured machines must be ready-to-use. Machines are ready-to-use as soon as the testing is completed and, where required, trial runs are finished. Machines are also defined as ready-to-use if they are in operation.

Concerning the place of insurance and insured risks the machinery insurance differentiates between stationary and mobile machines.

Stationary machines are installations, other technical facilities as well as their foundations and spare parts, which are tied to a certain place. As a requirement for insurance cover, stationary machines must be at the place of operation named in the insurance policy when the insured event occurs.⁶

In contrast, the place of insurance of movable machines is, depending on the purpose of operation, a geographically wide area. The machinery insurance therefore also covers the risk of moving machines. The machinery insurance also extends the insurance cover for movable machines to damages resulting from fire, lightning, explosion and force majeure. Operators of movable machines can secure the risk of theft and burglary by the machinery insurance.

2.3 Time scope of the insurance cover

If the insurance contracts are concerted, the machinery insurance timely follows the EAR. Policy holders may avoid gaps in coverage by coordinating the insurance contracts.

⁵ Günther/Eckes I.c., No.. 111

⁶ Voßkühler I.c., No. 20 f.

2.3.1 Beginning and end of the erection and machinery insurance

The EAR offers insurance cover during the erection and testing phase. The insurance cover of the EAR starts at the earliest with the finalized first unloading of assembly parts at the insurance location. Damages occurring during the unloading are not secured by the EAR.

The insurance cover of the EAR ends with the client's acceptance of the erection work or when the company stops erection. In the second case, the policy holder in addition must declare the insured interest as expired towards the insurer.

If several plant components are insured in the EAR as individual erection works, insurance cover terminates for each component as soon as the previously mentioned requirements are given (chapter B sec. 3 sentence 2 AMoB).

In contrast to the EAR, the insurance cover of the machinery insurance does not start until the insured machine is ready-to-use. An interruption of the machine's readiness for operation does not interrupt insurance cover. This regulation also applies during a disassembly or reassembly as well as during a transportation of the machine within the insurance location.

2.3.2 Problem: Gaps in coverage for accepted plant components

The question arises, whether damages of individually accepted plant components, which occur during the attempt to set the overall plant into operation, are insured: If the client accepts a plant component (partial acceptance) and damages of the plant component occur after this acceptance, the damages are basically not insured under the EAR. Due to missing readiness for operation the machinery insurance does not cover these damages as well. Uninterrupted insurance cover for accepted plant components is advisable due to possible cost-intensive damages.

Policy holders should arrange contractually, that insurance cover does not end with the acceptance of individual plant components, but only after a successful testing of the complete plant.

2.3.3 Special case of an extended liability period in the EAR

The parties of the EAR may agree on an extended liability period (extended or visits maintenance). The extended maintenance immediately starts with the end of the liability in the EAR. Insurance cover in the maintenance insurance starts with the point of time of acceptance of the technical facility and the passing of risk to the client.

The maintenance insurance thus covers a period parallel to the machinery insurance. The maintenance insurance though covers special risks.

Risks insured in visits maintenance are damages occurring to insured items in connection with supplementary performance. The extended maintenance additionally covers damages which cause property damages after acceptance.⁷

In contrast, machinery insurance does not cover supplementary performance. As far as a third person as supplier (producer or trader), contractor or resulting from a repair order is liable for occurred damages, the machinery insurer does not provide compensation (sec. 2 sentence 4 lit. 1 AMB). The insurer must proof the third person's liability. The policy holder must allocate relevant documents (duty of disclosure and assistance).⁸

2.4 Scope of insurance benefits

After the occurrence of damage the EAR insurer replaces recovery costs. Recovery costs include all necessary expenses to restore the state immediately before the occurrence of the insured event less the value of recyclable material.

If the fair value of the insured object or of a part of it increases by the repair, the insurer will deduct the value added from the replaceable recovery costs.

The EAR insurer can replace additional costs resulting from overtime hours or working on Sundays, bank holidays and in the night. Also costs for urgent and express freights may be replaceable. The parties need to agree on a respective regulation in the insurance contract.

The insurer replaces further costs only within the amount of cover separately agreed upon.

The insurer replaces pure financial loss only if it is insured explicitly.

2.5 Exclusions

The EAR and the machinery insurance are all risks insurances. Exclusions protect the insurer against cases outside every calculable risk. The exclusions apply regardless of contributing causes.

In the following, we explain differences of exclusions in EAR and in machinery insurance.

2.5.1 Civil commotions

⁷ Voßkühler I.c., No. 7.

⁸ Voßkühler I.c., No. 175

Opposite to EAR, machinery insurers do not replace damages resulting from civil commotions. The parties may though agree that those damages shall be insured.

Damages resulting from civil war are excluded for both kinds of insurance. Therefore, it is relevant in case of EAR to distinguish between civil war and civil commotions. Civil commotions exist, if numerically significant parts of the people get into motion and commit violence in a manner that interferes with the public peace and order.⁹ In contrast to a civil war, civil commotions miss a leadership of the fighting parties.¹⁰ The difficult classification in the individual case is relevant especially for companies, which erect, construct or transport machines or technical facilities abroad.

Policy holders should define the terms “civil war” and “civil commotions” in the insurance contract clearly to be able to distinguish between the excluded facts (civil war) and the insured facts (civil commotions) in case of damage.

2.5.2 Earthquake, flood, high-water

Opposite to the EAR, the machinery insurance excludes insurance cover for damages resulting from earthquakes and floods.

2.5.3 Theft

Within the scope of the machinery insurance, the insurer does, opposite to EAR, not pay for damages resulting from theft. If though because of the theft an additional damage occurs to the insured item, this damage is usually insured.

3. CONCLUSION

Both the EAR and the machinery insurance are technical insurances and offer all risks cover. Nevertheless, there are crucial differences between EAR and machinery insurance.

For the settlement of damages it is decisive which insurance applies in the specific case. If the company concluded a maintenance insurance besides the EAR and the machinery insurance, it has to be examined with care, under which insurance the insured event occurred and which exclusions apply there.

⁹ Günther/Eckes I.c., No. 214

¹⁰ Günther/Eckes I.c., No. 216

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