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## Sort Out Your Damage!

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1. Legal Test for Physical Damage
2. Analysing the cause of Damage and Effect of Damage
3. “Sudden” Damage in Machinery Insurance
4. Damage or Manifestation of Defect?

# Legal Test for Physical Damage

## 1. Physical Change (Permanent or Temporary)

*Change can be at molecular level - Quorum v Schramm (2002)*

## 2. Which makes the item:

- a) Less Useful
- b) Less Valuable

# Cause and Effect of Damage

Why does this matter?

- ‘All Risks’ does not mean all risks
- Cover is defined by exclusions
- Distinguish between effect of damage and effect of event

# Insurance of Machinery

Mechanical Failure - most significant source of industrial casualty

Machinery Insurance:

- Sudden and unforeseen damage
- Accidental, sudden and unforeseen damage

# “Sudden” versus Gradual

## *Pacific Chemicals v MSIG (Singapore) (2013)*

- Damage must be sudden, not the cause
- Objective Assessment
- Sudden means quickly BUT not instantaneously
- contrast with gradual

# Sudden vs Gradual

## GRADUAL

1. Fatigue cracking of turbine blades/vanes
2. Degradation of HDPE pipeline joint under
3. Solidification of molten PA

## SUDDEN

1. Downstream domestic object damage
2. Damage to plant from starvation of pipeline feed
3. Damage to storage tank

# Manifestation of Defect?

When 'damage' is not Damage

The apparent 'physical change' is merely the manifestation of a defect:

- no 'loss'
- no 'damage'



# Manifestation of Defect Cases

Skanska Construction v Egger (2002) UKCA

- *Concrete slab*

Acciona Infrastructure v Allianz Global Risks (2015)

- *Reinforced poured concrete floors to multi level building*
- *on appeal*

Time's Up!

Questions?

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