

When Is A Survey Report Not A Survey Report – Loss, Liability And Warranty Surveys

Nathan Cecil, Partner and Charles Street, Paralegal

Last month, the Federal Court of Australia handed down its decision in *Marine & Civil Construction Company Pty Ltd v SGS Australia Pty Ltd*¹ dismissing Marine & Civil's claim for damages arising from misleading and deceptive conduct against a marine surveying company, SGS.

The Facts

Marine & Civil were required to arrange the ocean transport of a crane for a construction project. The crane was loaded and secured fully assembled on a barge.

In order to obtain insurance for the voyage, Marine & Civil sought to obtain a warranty survey to verify the seaworthiness of the stowage and securing arrangements. Marine & Civil engaged SGS to inspect the barge and prepare a warranty survey report. SGS advised:

"Warranty Surveys are only conducted by the Classification Society however we are able to provide you with a survey report...but I must stipulate is not a Certificate of Seaworthiness for towing."

Marine & Civil were content to proceed on that basis. Further to the above qualification, the report issued by SGS included a statement that the report was only as to the "static" as opposed to a "dynamic" state of the lashing arrangement.

Marine & Civil passed on the report to the insurer, who accepted it in satisfaction of the requirement for a warranty survey and confirmed cover for the voyage.

During the voyage, the sea fastenings securing the boom of the crane to the barge failed, and the boom slewed 180°, causing extensive damage to the crane and other equipment that was secured on the barge deck.

¹ [2012] FCA 907.

The Claim by Marine & Civil

Although not addressed in the judgment, we expect that the insurers were forced to pay some or all of the loss and then became subrogated to the rights of Marine & Civil. Marine & Civil brought a claim against SGS, alleging that SGS had impliedly or expressly warranted that the securing arrangement of the crane to the barge were suitable and seaworthy, that the warranty was false and that Marine & Civil suffered loss as a result.

The Decision

The Court held that, although Marine & Civil requested a warranty survey as to seaworthiness, SGS expressly qualified the nature of the survey report that they were able to provide. SGS said that their survey would not be a warranty survey and the survey itself stated that it was limited to the fitness of the securing arrangement in a static condition. The Court held that SGS did not make the representations alleged and/or that Marine & Civil could not have relied on the survey report as a warranty survey in any event.

Implications for Logistics Providers, Surveyors and Insurers

For logistics providers in the position of Marine & Civil, this decision serves as a stark reminder of the importance of providing clear instructions as to the survey inspection and report that is required. It is equally important to ensure that the survey report produced responds appropriately to the instructions given by reading the report carefully and marking up any qualifications or limitations expressed in it. Logistics providers cannot simply rely on the document for all intents and purposes simply because it is headed 'survey report' or because they have asked for a particular kind of survey report (but have been given another). The contents of the report are critical. If the contents of the survey report are not adequate, logistics providers should request that a further survey be conducted and a new report issued.

For surveyors in the position of SGS, it is vital that surveyors carefully read the client's instructions and promptly notify the client of any limitation in the nature/purpose of surveys able to be conducted. Any such qualifications, limitations or outstanding information preventing a final opinion being issued should be prominently marked in the survey report itself. If surveyors expressly identify the parameters of their report, then it makes it extremely difficult for potential plaintiffs to argue that any implied representations were made to the contrary.

For insurers, it is important actively to read any survey report that is presented by the prospective insured. It is unwise to assume that any document which is headed 'survey report' is sufficient for the purpose of providing the particular cover being sought. Survey reports should be scrutinised to ensure that they provide the level of assurance required before cover is confirmed. If the survey report is not adequate, insurers should request that a further survey be conducted before considering whether to provide cover.

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If you have any queries or require further information, please contact:

Contact

Nathan Cecil Partner	+61 2 9230 9450	nathan.cecil@nortonwhite.com
Robert Wilson Partner	+61 2 9230 9475	robert.wilson@nortonwhite.com
Claire Morgan Foreign Registered Solicitor	+61 2 9230 9412	claire.morgan@nortonwhite.com