

Note
concerning a contract passed by the Ministry of Industry for
construction of a workshop of the Thai Rubber Company Ltd.

By letter No. น . 3095/89 dated 17th December 2486 the Minister of Industry has submitter a question concerning a contract dated 18th November 1943 for building a rubber factory at Pakret.

The Minister of Industry would like to know, for the purpose of considering fire insurance in the case where fire breaks out during the construction of the building, without enemy action, if the case would be considered as force majeure or not

The question so submitted seems unlikely to raise difficulties in law : because insurance (especially, involving only the usual eases, and not the enemy action) is a contract which applies essentially and by nature to any loss resulting from force majeure or unexpected case. A provision which would exclude from the contract cases of force majeure in general, and not such or such case duty specified by the agreement of the parties (as for instance they do usually for war damages) would have no legal meaning.

Consequently if fire breaks out during the construction of a building, without enemy action, this is essentially a case of force majeure which cannot be averted by the insurer.

It may be that the doubt of the Minister of Industry has been raised by clause 18 of the contract which mentions force majeure. But it seems clear that clause 10 of the contract has for essential purpose to put for the account of the employers all expenses during the work caused by war damage or war like actions to the buildings. This is exactly the case which is excluded by the question of the Ministry of Industry because in effect the risk of war is not usually accepted by the insurer. As to the insurance for other cases of force majeure, they cannot be avoided by the insurer. When clause 18 says at its beginning that " the object obligations of the contractors under this contract are subject to force majeure", it must be interpreted that this means that delays in the execution of the work or absence of such or such materials, When due to force majeure, will not entail default and indemnity by the contractor; and it should be interpreted that the provision quoted does not extend to insurance, not only because it does not mention the case of insurance, but also because to extend it to the insurance would make the contract of insurance without meaning, as explained here before.

4 th January 2487