



WELCAR
Adjusting Experience
Lillehammer, 2008

QA/QC provision for Other Assureds

Clause 7 Exclusion for defective part

Schedule B



QA/QC provision for Other Assureds

▶ BROADFORM CAR POLICY WORDING

‘...THE INSURED

The term ‘Insured’ means :

- 1. The Named Insured stated in the Declarations;*
- 2. The Named Insured’s parent, subsidiary, affiliated or associated companies as now or hereafter constituted;*
- 3. Contractors, subcontractors, consultants, suppliers and project managers, if any, or any other interested party, for their respective rights, interests and liabilities in connection with construction projects and/or work declared;*

▶ WELCAR 2001 POLICY WORDING

... ASSUREDS

Principal Assureds

- i. [Name] and/or joint venturers as they may now or subsequently exist.*
- ii. Parent and/or subsidiary and/or affiliated and/or associated and/or inter-related companies of the above as they are now or may hereafter be constituted and their directors, officers and employees, while acting in their capacities as such.*

Other Assureds

- iii. Project Managers*
- iv. Any other company, firm, person or party (including contractors and/or subcontractors and/or manufacturers and/or suppliers) with whom the Assured(s) named in i, ii, iii and iv have entered into written contract(s) directly in connection with the Project.*

▶ WELCAR 2001 POLICY WORDING

... SPECIAL CONDITIONS FOR OTHER ASSUREDS

It is a condition precedent for any party identified in Other Assureds definition clause iii. and iv. above to benefit from the Other Assureds status under the Policy that they perform their operations according to Quality Assurance/Quality Control system(s) which comply with the Quality Assurance/Quality Control provisions passed on by the Principal Assureds through each and every written contract awarded within the scope of insured works as scheduled under the Policy.

Conclusions Lillehammer 2002

May affect number of claims; no cover for defaulting Other Assureds

No impact on claims from Principal Assureds

May open avenues for recovery/subrogation



- ▶ Adjusting experience has not reflected these expectations



Clause 7 Exclusion for defective part

▶ BROADFORM CAR POLICY WORDING

‘ ...

*It is understood and agreed that physical loss and/or physical damage to the subject matter insured during the period of the insurance caused by faulty design, faulty or defective materials, faulty or defective workmanship (including welding) and **including physical loss of and/or defect and/or physical damage to the faulty part** shall be covered hereunder even though the fault in design and/or defect may have occurred prior to the attachment date of this policy.*

...’

It is further understood and agreed that coverage hereunder includes the cost of repairing, replacing or renewing any defective part condemned solely in consequence of the discovery therein during the period of insurance of a latent defect ...’

▶ WELCAR 2001 POLICY WORDING

DEFECTIVE PARTS

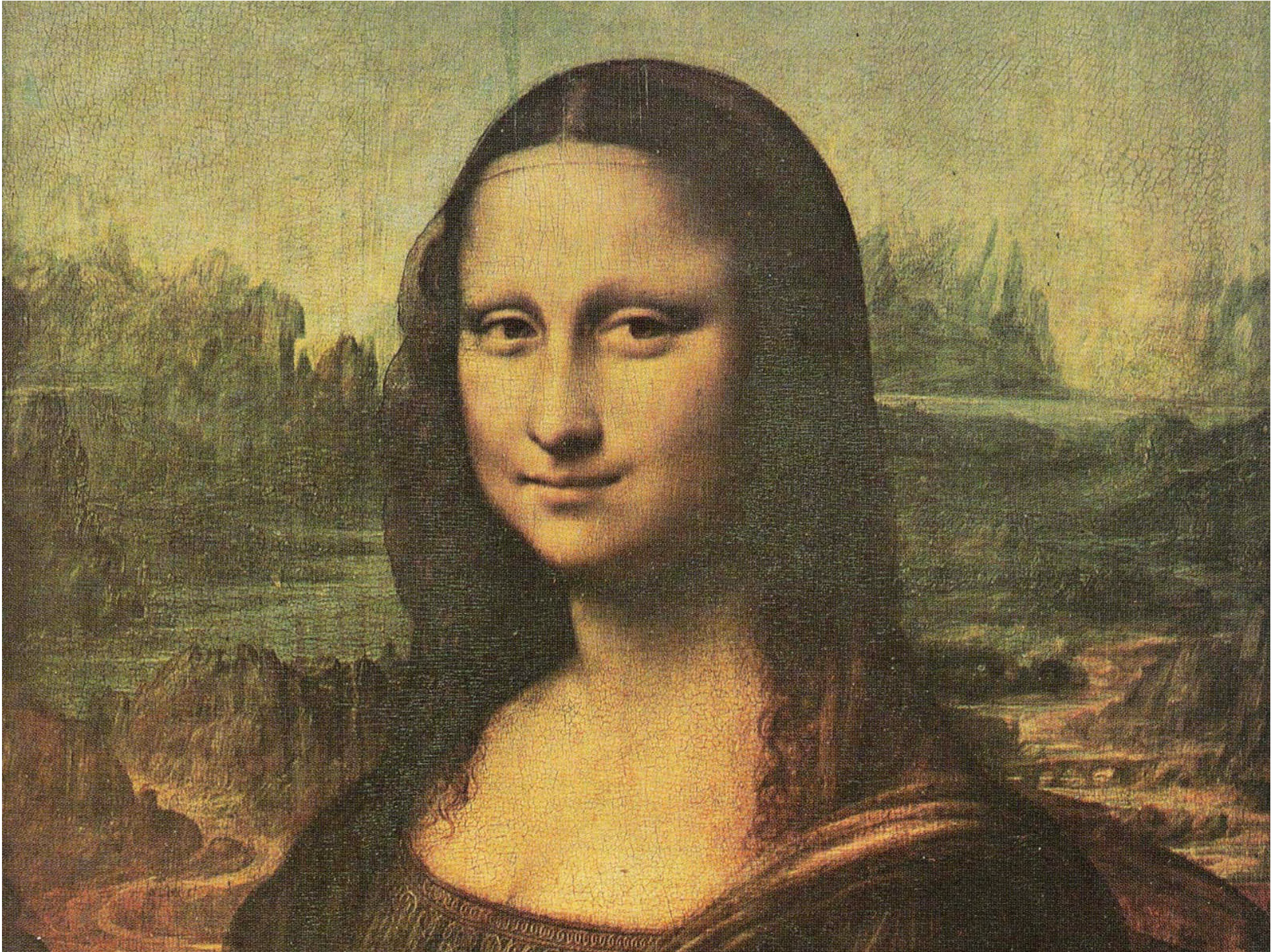
The insurance ... covers physical loss and/or physical damage to the property insured herein occurring during the Policy Period and resulting from a Defective Part, faulty design, faulty materials, faulty or defective workmanship or latent defect even though the fault in design may have occurred prior to the attachment date of the Policy.

*Section I, however, **does not provide coverage** for loss or damage to (including the cost of modifying, replacing or repairing) any Defective Part itself, unless all of the following are satisfied :*

- a. such Defective Part has suffered physical loss or physical damage during the Policy Period;*
- b. such physical loss or physical damage was caused by an insured peril external to that part; and*
- c. the defect did not cause or contribute to the physical loss or physical damage.*



WHAT IS THE FAULTY PART ?



- ▶ Nukila
- ▶ Commercial court; ‘a part ...one which was physically separable and formed a separate function...’
- ▶ Court of Appeal; ‘The word part...capable of being used in a whole variety of ways depending on the context...’

▶ Welcar clause 7

- ▶ ...shall mean any part of the subject matter insured which is or becomes defective and/or unfit or unsuitable for its actual or intended purpose, whether by reason of faulty design, faulty materials, faulty workmanship, a combination of one or more thereof or any other reason whatsoever. The term “defective part” shall also include such ancillary components, which are not themselves faulty, but which would normally be removed and replaced by new components when the component that is faulty is rectified.



Would an alternative form of words narrow the debate?

▶ OIL POLICY WORDING

'... INSURING AGREEMENTS

... to indemnify the Assured for all risks of direct physical loss or damage caused by an occurrence ...'

'... EXCLUSIONS

8 ... any loss, damage or expense caused by or resulting from inherent defect, ... unless resulting in the collapse of the property or a material part thereof, but not excluding resultant physical loss or damage to the remaining property or to other property insured hereunder.

*9 **Cost of repairing or replacing that portion of property which is defective in design, workmanship or material. ...'***



Schedule B

Determines Underwriters' limit of Liability in respect of a loss

Adjusting experience:

No real consistency of approach

Items such as pipelines may or may not be 'batched'

A single loss may impact a number of schedule B items

The structure of schedule B can have a significant effect on available limit



Other common adjusting issues

- ▶ Due Diligence/Sue and labour
 - ▶ Second sentence of Welcar Due Diligence clause potentially conflicts with Sue and Labour cover
- ▶ Weather Standby
 - ▶ What does/does not qualify as weather standby?
 - ▶ What about other classes of standby costs?
 - ▶ How should the 72 hour additional deductible be applied?
- ▶ Faulty Welding
 - ▶ No definition of weld

