

***The Problems of Translating  
Intentionality in Marine Insurance  
Policy from English into Arabic***

***Dr. Mohamed Basil Al-Azzawi*** (\*)  
& ***Sahir Mahfooth Salih*** (\*\*)

***Abstract***

This research brings into focus the translation of intentionality in Marine Insurance Policy. The policy is a contract, i.e. an agreement which states rights and obligations between the parties to it. But not all agreements are contracts. It must be the intention of the parties that the agreement will create rights and obligations which will be enforceable by law. This intention is usually implied rather than expressed, that is, with a few exceptions, particularly agreements which are entered into are intended to be legally binding. Contracts usually take the form of legally binding promises made by the parties to the agreement.

The main aims of this research are:

1. To clarify intentionality in Marine Insurance Policy and problems of translating it.

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(\*) Dept. of Translation - College of Arts / University of Mosul.

(\*\*) National Insurance Company- Mosul.

2. To propose some recommendations for the translation of insurance policies and intentionality in particular.

The main finding is that the adoption of more literal translation means that the translators arrive at the intention of the source text without any hesitation reflected in using redundancy.

### ***The Model Adopted***

Much ink has been spilt on translation by theorists of translation and linguists. Nevertheless, it has been viewed differently. Some view it in terms of formal correspondence (Catford, 1965: 61); others view it in terms of dynamic equivalence and formal equivalence (Nida, 1964: 57). A third group views it in terms of equivalence and transference of meaning (Newmark, 1988a and 1988b). As a matter of fact, all views of translation are of two types; either in terms of equivalence or in terms of transference of meaning.

Hatim (1997: 105) rejects the idea of literal translation because he thinks that "it is appropriate to talk of a less literal translation of a certain part...., or a more literal translation of a certain part...." is taken as a general model of translation in this study.

### ***Bad Faith***

The intentional acts exclusion is a common law exclusion read into every insurance policy. It is not against public policy. Insurers

can exclude claims predicated on intentional conduct because of the common law right to exclude such claims even in the absence of a specific exclusion. It would be better to have an explicit intentional acts exclusion that makes it clear that the insurer will not impute the intentionality of one actor and goes even further to the entity or other insured. Failure to have such wording allows the insurer to argue the common law exclusion as broadly as the insurer cares to argue it.

Bad faith can only be found as a result of first party coverage. To prove bad faith, one must prove an objective and subjective element. To establish the objective element, it must be shown that a reasonable insurer, proceeding under facts and circumstances that a proper investigation would have revealed, would not have denied or delayed payment of the claim. The subjective element requires a showing of the insurer's knowledge or reckless disregard of the lack of reasonable basis for denial of the claim. The subjective component is essential to prove intentionality, as "bad faith by definition, cannot be unintentional" (Teubner, 2006: 79).

Some wrongful termination claims are predicated on breach of contract. That contract may be expressed or implied in fact. An expressed contract is one that the parties acknowledge as the agreement the parties reached. When the contract is in writing and signed by both parties, there is usually little basis for denying that

acknowledgement. An implied contract in fact will grow out of other writing or oral representations of the employer that relate to the terms and conditions of employment. In other words, the nature of the contract is implied from facts and circumstances rather than from a written document other or overt than that contract (Joerges, 2006: 399).

### ***Recognition of Bad Faith as a Tort***

In 1978, the Wisconsin Supreme Court first recognized the tort of bad faith in *Anderson V. Continental Insurance Company*. The court held that an action may be brought by an insured against its insurance company for failure to exercise good faith in settling the insured's own claim. Anderson was concerned in an insurance company that placed its interest ahead of its insured's when adjusting a fire claim, the Anderson alleged that continental's consistent refusal to accept their sworn proof of loss, and their refusal to negotiate in good faith was done with the knowledge and intent to avoid its obligations under the policy. The Anderson court, in finding that a tort of bad faith exists in Wisconsin, held that "every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement. Continental's lack of attention to its insured's claim was a breach of its fiduciary duty to deal in fairness with the Anderson (Posner, 2006: 259).

This tort is alleged rather frequently but plaintiffs rarely make a good case of it in the employment context. It requires genuinely egregious conduct that is "... outside the bounds of socially tolerable conduct." "Court have held consistently that criticism of an employee's job performance, abrasive interrogations, unjustified reprimands, opposition to unemployment benefits, excessive supervision, or negative evaluations alone do not constitute conduct beyond the bounds of socially acceptable behaviour." (Archer, 2006: 223).

However, a plaintiff will sometimes prevail on this theory when it is joined Title VII harassment case, such as when an employer uses racial epithets is particularly pervasive or mean-spirited. A plaintiff will also use this tort theory to sue a small employer for work place harassment when there is an insufficient number of employees to place the employer above Title VII's jurisdictional threshold. Although a few policies negligent infliction of emotional distress, this tort is usually confined to plaintiffs who witnessed someone close to them being seriously injured or killed. Negligence (as opposed to intentional) infliction of emotional distress is not often alleged in the employment context (Frederick, 2006: 30).

*Deceit, Misrepresentation & Fraud*

"A typical cause of action for deceit, misrepresentation, or fraud arises in the wrongful termination-context where the discharged employee accuses the employer of having made false promises regarding terms and conditions of his employment." (Njals, 2006: 75).

California has codified this cause of action. In other States, the plaintiff will be required to provide evidence

(a) That the employer

- (1) misrepresented or concealed a material fact relating to some terms or conditions of employment,
- (2) knew or should have known of the falsity of the misrepresentation,
- (3) intended to induce the plaintiff to rely on the misrepresentation.

(b) That the plaintiff justifiably relied on the misrepresentation. This is a tall order and hard to prove, but when it succeeds can result in substantial damages.

A good case in point is *Lazar V. Superior Court*. There the California Supreme Court ruled that a terminated general manager could plead that he had been induced to give up a secure job and

move from New York to California based on the false representations regarding the length, stability and compensation of the new employment. The court called this kind of action "promissory fraud." (ibid.: 81).

Intentionality in life insurance in which the death of an insured person results from intentional behaviour; subsequently the insurance company does not have to pay the benefits of an accidental death policy. There will be misrepresentation on behalf of the policyholder/applicant who does not reveal any or all of their current and former health conditions.

There is misrepresentation of age or sex in which the policy holder has intentionally or unintentionally given or recorded the wrong age or sex on the application for their policy (ibid.: 89).

### ***Insurability of Intentional Acts***

Even in the absence of an exclusion for intentional acts, insurers as a matter of public policy, are not required to indemnify the insured for intentional violations of the law, since it is against public policy to subsidize violations of the law. The intentional acts exclusion is, thus, a common law exclusion read into every insurance policy in every state. It is not against public policy, however, for insurers to indemnify the insureds for the damages assessed against them vicariously for violations of law committed

by their legal agents (e.g. employees) under the legal rubric respondent superior (or because the law simply works by statutory construction to cheat vicarious liability, which is the case for all of the civil rights laws (Michael, 2006: 186).

Vicarious liability is usually a form of strict liability, i.e. there is no need to show fault or intent, to do harm. In the Faragher case, however, the U.S. Supreme Court seemed to predicate an employer's vicarious liability for sexual harassment on some form of negligence on the employer's part (Robert, 2006: 3).

### ***Intentional Acts Exclusions***

Scottsdale Insurance Company excludes all dishonest, fraudulent and criminal acts of any insured if intentional and all willful failures to comply with law, regulation, etc. involving employment practices. The latter exclusion expands its scope even further to include reckless disregard of such laws and regulations. These combined intentional act exclusions are extremely broad and thus highly problematic (Ann, 2006: 205).

There is no intentional acts exclusion in the American International Companies. These insurers can exclude claims predicated on intentional conduct because of the common law (or statutory) right to exclude such claims even in the absence of a specific exclusion. It would be better to have an explicit intentional

acts exclusion that makes it clear that the insurer will not impute the intentionality of one actor goes even further to the entity or other insured. Failure to have such wording allows the insurer to argue the common law exclusion as broadly as the insurer cares to argue it. That's too big of an opening in the opinion of many insureds (Edward, 2006: 323).

The Gulf Underwriters Insurance Company Policy contains explicit intentional acts exclusions. More disturbing, however, is the wording in the definition of wrongful "termination" that excludes from that definition any termination of employment for which the employer has failed to exercise "duty and care". That overtly broad imposition of duty and care is broader than an intentional acts exclusion. It arguably permits the insurer to avoid a very large class of cases, since the plaintiff will always allege that the employer did not properly dispatch these duties (Leo, 2006: 12).

### *Data Analysis*

Terms play a decisive role in indicating the dialect of the country where the insurance policies are issued. Several difficulties arise, however, when we set out to choose the most appropriate equivalent because English and Arabic are two different languages. This is taken by a third person, i.e. the translator.

### *Samples of Translation Equivalent*

Hatim's (1997: 105) views are to be applied to the Marine Insurance Policy where he rejects the idea of literal translation because he thinks that "it is more appropriate to talk of a less literal translation of a certain part..., or a more literal translation of a certain part....".

The following are instances of texts produced by National Insurance Company/Iraq henceforth (NIC), the second is by Bahrain Kuwait Insurance henceforth (BKI).

#### *Source Language Text:*

1 . "Marine Policy"

#### *Target Language Texts:*

1 . (NIC)

1. وثيقة تأمين بحري (بضائع)

2. (BKI)

2. وثيقة تأمين بحري

#### *Proposed Translation:*

وثيقة تأمين بحري (بضائع)

#### *Discussion*

The translation of (NIC) shows the intention of this policy by specifying what is insured to remove ambiguity that the hull and the freight are excluded unlike (BKI) who do not explain this, so the translation of (NIC) is appropriate.

**Source Language Text:**

2."We, THE UNDERWRITERS, hereby agree, in consideration of the payment to us by or on behalf of the Assured of the premium specified in the Schedule"

**Target Language Texts:**

1. اننا، شركة التأمين الوطنية، نوافق بموجب هذه الوثيقة ومقابل قيام (NIC) المؤمن له أو من ينوب عنه بدفع قسط التأمين المحدد في الجدول.
2. توافق البحرينية الكويتية للتأمين بموجب هذه الوثيقة وفي مقابل (BKI) المؤمن له أو من ينوب عنه للشركة المبين في الجدول.

**Proposed Translation:**

توافق، شركة التأمين الوطنية، بموجب هذه الوثيقة ومقابل دفع المؤمن له أو من ينوب عنه للشركة القسط المحدد في الجدول

**Discussion**

(NIC) do not follow TL grammar. They do not start with the verb. A point which is taken into consideration by (BKI). (NIC) translate (in consideration of) less literal into (مقابل) while (BKI) translate it more literal into (في مقابل). (NIC) translate (payment) more literal into (قيام بدفع) by adding (قيام ب-) while (BKI) translate it less literal into (دفع). (NIC) do not translate (to us) which is translated into (للشركة) by (BKI) to reflect its intention. (NIC)

translate (the premium) less literal into (قسط التأمين) while (BKI) translate it more literally into (القسط). (NIC) translate (specified) accurately into (المحدد) unlike (BKI) who translate it into (المبين) which can be translated into (shown). The translation of (BKI) is more appropriate except for their translation of (specified).

**Source Language Text:**

3. "To insure against loss damage liability or expense in the proportions and manner hereinafter provided"

**Target Language Texts:**

1. (NIC) 1. على التأمين من الفقد / أو الضرر / أو المسؤولية / أو المصاريف بالكيفية والمدى المشترطان فيما بعد.
2. (BKI) 2. على التأمين ضد الخسارة، أو الضرر، أو المسؤولية، أو المصاريف (BKI) وذلك وفقا للشروط المذكورة أدناه والملحقة بهذه الوثيقة.

**Proposed Translation:**

على التأمين ضد الفقد أو الضرر أو المسؤولية أو المصروف بالنسب والكيفية المشترطان فيما بعد.

**Discussion**

It seems that the NIC's translation is less literal. They translate (against) into (من) which is less appropriate than (ضد). They added the conjunction (الواو) which has no reference in the ST. They as

(BKI) pluralize the translation of (expense) and propose the translation of (manner). They translate (proportions) inaccurately into (المدى) and translate (manner hereinafter provided) into (وفقا للشروط المذكورة أدناه), and add (الملحقة بهذه الوثيقة) which has no reference in the ST. (NIC) do not add (proportion) to their English text. The translation of (NIC) is more appropriate irrespective of what has been said. Here the ST declares its intention by specifying what is covered in this policy.

***Source Language Text:***

4. "This insurance is subject to English Jurisdiction"

***Target Language Texts:***

1. (NIC) \_\_\_\_\_ .1  
 2. (BKI) يخضع هذا التأمين للاختصاص القضائي لمحاكم مملكة البحرين. .2

***Proposed Translation:***

يخضع هذا التأمين للاختصاص القضائي لمحاكم جمهورية العراق.

***Discussion***

(BKI) translate it while (NIC) do not. It is necessary to translate it to show how legal language is culture specific.

**Source Language Text:**

5."In witness whereof the General Manager of Lloyd's Policy Signing Office has subscribed his name on behalf of each of us".

**Target Language Texts:**

1. ولتأييد ما تقدم، فان المدير العام لشركة التأمين الوطنية، أو من ينوب (NIC) عنه و/أو يخوله بتوقيع وثائق التأمين، قد ثبت اسمه وتوقيعه نيابة عن شركة التأمين
2. واشهاداً على ما ورد فقد تم التوقيع على هذه الوثيقة نيابة عن الشركة (BKI).

**Proposed Translation:**

واشهاداً على ما ورد فان المدير العام لشركة التأمين قد وقع على هذه الوثيقة نيابة عن الشركة.

**Discussion**

The translation of (NIC) is less literal by rendering (witness) into (تأييد) which is the translation of (uphold). They add redundant words which have no reference in ST such as (أو من ينوب عنه ) , (و/أو يخول بتوقيع وثائق التأمين ) and (واسمه) the matter which reflects their ignorance and hesitation in translating, whereas (BKI) translate it more literally to the extent that they do not avoid the passive construction which Arabic does not favour, yet, the translation of

(BKI) is better because they avoid redundancy and directly convey the intention of ST.

### ***Findings and Discussion***

The rendering of (5) texts of the Marine Policy show that two companies handle texts in different ways. They adopt, but variably, the idea of translation by Hatim (1997: 105). The adoption of more literal translation means that they arrived at the intention of the ST without any hesitation reflected in using redundancy.

### ***Conclusions***

The conclusions drawn from this study are exhibited as follows:

1. It is necessary for the applicants to know their common law because insurance policies are not against it.
2. They have to read carefully the policy and consult the underwriters before affecting insurance to know their intention because insurers rarely compensate the insured totally since the policy is subject to exceptions and exclusions.

## *Bibliography*

- Ann, F. (2006). **How We See Them**, Eskimo: Riordan Press.
- Archer, P. (2006). **Law and Lawyers**, London: Longman.
- Catford, J. C. (1965). **A Linguistic Theory of Translation: An Essay in Applied Linguistics**, London: Oxford University Press.
- Edward, B. (2006). **Researches into the Early History of Mankind**, Chicago: University of Chicago Press.
- Frederick, P. (2006). **The History of English Law**, Cambridge: Cambridge University Press.
- Hatim, B. (1997). **The Translator as a Communicator**, London: Routledge.
- Joerges, C. (2006). **The Autonomy of Law**, Florence: Florence Press.
- Leo, A. (2006). **Ancient Mesopotamia**, Cambridge: Cambridge University Press.
- Michael, M. (2006). **The Will in Medieval England**, England: Sheechan Press.

Newmark, P. (1988a). **Approaches to Translation.**  
Cambridge: Cambridge University Press.

\_\_\_\_\_ (1988b). **A Text Book of Translation.** Hernel  
Hempstead: Prentice Hall.

Nida, E. A. (1964). **Toward a Science of Translating.** Leiden: E. J.  
Brill.

Njals, S. (2006). **Expression of Intention.** California: University of  
California.

***Texts Analysed:***

***A. English Text:***

Lloyd's Office, (w.d.). **Lloyd's Marine Policy.** London: Carlton  
Berry Co. Ltd.

***B. Arabic Texts:***

National Insurance Company Documents, (w.d.). **Marine  
Policy (Cargo).** Baghdad.

Bahrain Kuwait Insurance Document, (w.d.). **Marine Policy.**  
Bahrain.



## Lloyd's Marine Policy

We, The Underwriters, hereby agree, in consideration of the payment to us by or on behalf of the Assured of the premium specified in the Schedule, to insure against loss damage liability or expense in the proportions and manner hereinafter provided. Each Underwriting Member of a Syndicate whose definitive number and proportion is set out in the following Table shall be liable only for his own share of his respective Syndicate's proportion.

In Witness whereof the General Manager of Lloyd's Policy Signing Office has subscribed his Name on behalf of each of Us.

LLOYD'S POLICY SIGNING OFFICE  
*General Manager*



*This insurance is subject to English jurisdiction.*

Where damaged goods are surveyed, it is usual to utilise a standardised Survey Report form which seeks to elicit all the relevant information for consideration by underwriters.

**FREIGHT**

A loss of freight arises when as the result of a casualty to ship, cargo money due to the shipowner for the carriage of goods is not payable by reason of loss of or damage to the ship or cargo. This cannot arise where freight is advanced or pre-paid because it would then have been merged with the value of the cargo and any claim would be made under the cargo policy.

The measure of indemnity is laid down in Section 70 of the Marine Insurance Act for a partial loss of freight. This has been slightly modified by an express provision in both the Institute Time and Voyage Clauses Freight 1/1/83 that the amount recoverable for any claim for loss of freight should not exceed the gross freight actually lost.





## ملخص

# مشكلات ترجمة النية في وثيقة التأمين البحري من الانكليزية إلى العربية

أ.م.د. محمد باسل العزاوي (\*)

وم.م. سحر محفوظ صالح (\*\*)

يركز البحث على النية في وثيقة التأمين البحري. وتعد الوثيقة عقد أي اتفاق يذكر الحقوق والواجبات بين أطرافه، إلا أنه ليس كل الاتفاقيات عقوداً، فيجب أن تكون نية الأطراف بأن الاتفاق سيرتب الحقوق والواجبات التي سيرفضها القانون. وعادة ما تكون هذه النية ضمنية أكثر مما هي صريحة، وهذا يعني، أن هناك استثناءات طفيفة جداً، وخاصة الاتفاقيات المبرمة ويقصد بها أن تكون ملزمة قانونياً. وغالباً ما تأخذ العقود أشكالاً وعوداً ملزمة قانونياً يضعها أطراف الاتفاق. وتتلخص الأهداف الرئيسية لهذه الدراسة:

1. توضيح النية في وثيقة التأمين البحري.

2. اقتراح بعض التوصيات للمترجمين في شركات التأمين.

ويخلص البحث إلى التوصية بتبني ترجمة أكثر حرفية وهذا يعني بأن المترجمين توصلوا إلى النية للغة المترجم منها دون أي تلوؤ قد ينعكس باستخدام الحشو اللغوي.

(\*) قسم الترجمة - كلية الآداب / جامعة الموصل.

(\*\*) شركة التأمين الوطنية / فرع الموصل.