

The Impact of Terrorism on Marine Insurance

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THE IMPACT OF TERRORISM ON MARINE INSURANCE

By

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ABSTRACT

Marine insurance occupies the largest area in the insurance market and it is one of the major subjects of international trade. However, today's marine insurance sector is under the threat of global terrorism especially after September 11. Terror risks and covers are becoming the greatest issue of this sector in the new era following the September 11 attacks.

This study aims to examine the impact of terrorism on marine insurance from the perspective of law as law research project. To accomplish this target several standard marine insurance policy forms, cases, related legislations, journal articles, books, electronically available databases and other published materials are used.

To introduce the research topic to the reader, particularly to give general information about the evaluation and general characteristics of marine insurance risks and covers some of the major marine insurance basics namely perils of the sea, cause of loss, proximate cause of loss, excluded losses issues are examined in the first chapter of the development part. These issues are basically examined and analyzed from the perspective of case law to reflect their evaluation. As a conclusion of these examinations and analysis so many inconsistencies are observed affecting the interests of both shipowners and insurers. The details of the conclusions and recommendations about these issues are stated in conclusion and recommendations chapter.

The analysis of the impact of terrorism on marine insurance starts in terrorism and marine insurance chapter which examines the definition of terrorism, the concept of terror risks in marine insurance. Then the analysis continues in the following chapters dealing with specific areas of marine insurance namely the impact of terrorism on charterparties which examines terror exclusions in standard charterparties, terrorism and P&I cover which examines P&I Clubs regulations and covers for terror risks in general, war risks and P&I cover which examines the latest Club regulations in terms of war risks under the threat of terrorism. The last analysing chapter includes a report prepared by the Norwegian Shipowners' Association which examines the effect of September 11 on shipping risks from the perspective of different aspects including conclusions and recommendations.

In the conclusion and recommendations chapter, the analysis made about the impact of terrorism in the aforementioned chapters is concluded stating that there are so many weaknesses in covering the terror risks causing from the inadequate standard marine insurance policy forms, clauses, regulations of the P&I Clubs and related legislations and case decisions. Alternative compensation systems are recommended requiring the support of governments in national and international area. Besides, aforesaid observed inconsistencies in case law depending on the analysis made upon marine insurance basics are summarized and alternative dispute resolution systems are recommended to avoid the problems caused by these.

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DECLARATION

I declare that this project is all my own work and the sources of information and material I have used (including the internet) have been fully identified and properly acknowledged as required in the guidelines given in the Programme Handbook I have received.

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CHAPTER 1: INTRODUCTION

Marine Insurance constitutes the largest portion of the insurance market and it is one of the leading issues of international trade. Of course, when any kind of insurance is discussed the main problem occurs as insurable risk.

Aims and Objectives

This research project is mainly about the impact of terrorism on marine insurance. The target of this research project is to find the answer of the question: "what is the impact of terrorism on marine insurance?" Although the focus will be on terror risks, to introduce the subject to the reader some general basics of marine insurance about the marine insurance covers and risks namely perils of the sea, excluded losses, cause of loss, proximate cause will be examined. Of course, when the topic question is determined as above in this law research project, the courts' approach to the disputes arising from marine insurance risks and covers, their interpretation by the courts and mostly, the reply of the marine insurance market to these issues which is reflected by the policies and the practice are the targets aimed to be considered. When the terror risks and covers and other marine insurance basics are examined the aim will be to find out how they are compatible with the needs of today's business life. Since the 90s there have been remarkable changes and developments in the nature of risks and their determination in the insurance market, especially in the area of marine insurance because of terrorism. This has also brought about changes in insurance rates and new practices as a reaction by the global insurance sector. For instance, after the terrorist attacks of September 11, 2001, rates for marine hull business rose by between 25% and 50%.¹ These changes in risk factors in the insurance market make this area very attractive to make a research project on. These changes, which demonstrate the main reason for this research project, will be examined in the following section. Moreover, other legal systems' approaches to the terror risks and covers issue, including the American approach, will be examined partially in the scope of this research study.

¹ Barbara Cockburn, Sarah Veysey. Business Insurance. Chicago: Jul 4, 2005. Vol.39, Iss. 27; pg. 20.
For related graphics see appendix C.

As mentioned in the research topic question, international shipping is under the threat of terrorism and this becomes the biggest issue for the whole sector in nowadays. Terrorism has been recognised as a risk in shipping ever since the hijacking of the Italian cruise liner Achille Lauro in 1985. However, the September 11 events have played a catalyser role in this. Thus, this study is mostly based on terror risks and covers.

Concept of Risks

What are risks and what is their role in insurance? There are many definitions of risk as a general term found in text books. It can be argued that, it is better to use the risk definition in Fundamentals Risk (of) and Insurance, 4th edition, by Emmett J. Vaughan, p.4 that: "Risk is a condition in which there is a possibility of an adverse deviation from a desired outcome that is expected or hoped for." Insurance depends on risk factor so it is very important to define the insurable risk initially in that research study. It can be said that generally an insurable risk has four characteristics: the presence of a sufficiently large number of homogeneous exposure units to make the losses reasonably predictable; it should be a definite and measurable risk that produces the loss; the loss caused by it must be fortuitous or accidental and the loss which is caused should not be catastrophic.²

A marine policy may cover the risks of a single voyage, or may insure for a certain period of time. The main risks insured against in a marine policy are stated in the "perils" clause which is often supplemented by the "especially to cover" clauses, or restricted by provisions eliminating one or more of the insured risks. The traditional "perils" clause is contained in the First Schedule of the *British Marine Insurance Act* of 1906 from Lloyd's policy. It reads as follows: "Touching the adventures and perils we the assurers are contended to bear and to take upon us in this voyage: they are of the seas, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraints, and detainments of all kings, princes and people, of what nation, condition or quality, barratry of the master

² Fundamentals Risk (of) and Insurance, 4th edition, by Emmett J. Vaughan, p.4)

and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment or damage of the said goods and merchandises, and ship, &c., or any part thereof. ³

More recently, war risks have been removed from ordinary marine policies and are covered by separate war risk policies. Ordinary marine policies no longer mean what they state and only cover those risks which are not excluded by the F.C. & S. (Free of capture and seizure) clause. Among the perils "of the seas" that are deemed to be covered under a marine policy are the extraordinary action of the wind and waves, collision, foundering, stranding, striking on rocks and icebergs. Not covered are ordinary wear and tear and losses which can be anticipated as regular incidents of sea carriage or navigation.⁴

Hull policies, which are policies insuring ships, used to be quite specific as to the risks they covered. Modern policies are written to cover most forms of liability. A "collision and running down" provision is contained in the standard hull policy to cover liability incurred for damage to another vessel or structure, and sometimes even personal injuries incurred. The protection and Indemnity policy covers against collision liability not covered by the "collision and running down" clause, as well as against all other liability exposure.⁵

³ www.marlegal.com

⁴ www.marlegal.com

⁵ Ibid.

CHAPTER 2: LITERATURE REVIEW

Books

A large amount of books are available on the marine insurance field. When the books are considered, it can be argued that it is possible to distinguish books as students' texts, philosophical works and practitioners' works. From this point of view, it can be said that amongst the books used in this research project E.R. Hardy Ivamy's *Marine Insurance*⁶ can be classified under the students' texts, *Insurance Law: Doctrines and Principles*⁷ by John Lowry and Philip Rawlings focuses on some philosophical matters which can be seen also as an philosophical work and Susan Hodges' *Cases and Materials on Marine Insurance Law*⁸ can be seen as more as a practitioner's work than as a classical student's text. Detailed explanation about these books will be given in this chapter.

Also there are some books written only about one aspect of insurance such as risks in general, *Fundamentals Risk (of) and Insurance*, by Emmett J. Vaughan⁹ is a good example of this. Because of the aims of this research project, it is important to introduce some of the basics of both insurance and marine insurance. As a wide concept, risk is one of the basic issues of insurance and it is necessary to examine it before focusing on terror and other risks. This book provides a detailed explanation about the conceptual framework of risk and insurance.

As mentioned above, Susan Hodges' *Cases and Materials on Marine Insurance Law*¹⁰ contains a comprehensive collection of cases and materials on marine insurance law and the sources included in the text of this book are not readily accessible. Whilst it is a companion to the authors *The Law of Marine Insurance*, it is also structured to stand as a marine insurance text in its own right. Because of the materials and cases that it consists it is an important source used in examining the marine insurance basics which is the first chapter of this research project.

⁶ 4th Edition

⁷ 1999

⁸ First Edition

⁹ 4th Edition

¹⁰ First Edition

Hardy Ivamy's *Marine Insurance*¹¹ is also another important basic source used in writing the marine insurance basics chapter especially examining the evaluation of perils of the sea as a basic marine insurance risk to introduce marine insurance risks to the reader. It can be said that this book is mostly concerned about the law matter issues rather than dealing with the other issues of the marine insurance sector.

It is noted that *Insurance Law: Doctrines and Principles*¹² by John Lowry and Philip Rawlings has a theoretical approach in examining the general insurance issues including marine insurance which also provides some doctrinal discussions behind the insurance issues. Although for the purposes of this research project such an approach is not primarily important, this book is used in writing the marine insurance basics chapter to explain some of the issues of marine insurance namely excluded losses.

Halsbury's Laws of England,¹³ which is the major legal encyclopaedia on English Law, is amongst the books used in this research project. It is used to explain some of the marine insurance issues in the marine insurance basics chapter namely wilful misconduct of the assured, wilful misconduct: unseaworthiness. This book includes a huge number of cases that can guide the writer to collect necessary materials to reflect the courts' approach and interpretation on the above mentioned issues which is amongst the target of this study. Also it is used to refer to the primary materials such as Marine Insurance Act.

Apart from these mentioned books above, some research methods books are used to write the methodology chapter. The main book used in this chapter is *Research Methods For Business Students*¹⁴ by Saunders M., Lewis P, Thornhill A. This is the main reference book for the students doing research on business and management. Although this is a law research project, it is important to discuss applicability of some of the business research methods examined in this book and this is done in the methodology chapter.

¹¹ 4th Edition

¹² 1999

¹³ 4th Edition, Volume 25

¹⁴ Third Edition

The other research methods book used in this project is *Business Research Methods*¹⁵ by Bryman A., Emma B. Like the *Research Methods For Business Students*, this book has the same content and used for the same purposes.

Apart from these mentioned research methods books, Jeffries J. and Miskin C.'s *Legal Research in England and Wales*¹⁶ is a legal research book used in this research project. This book is referred for the classical legal research techniques and classification of the sources.

When the above written paragraphs in that chapter are examined, it can be seen that nearly all the books mentioned above are used for the marine insurance basics chapter and for the other chapters of the development part, which are about the impact of terrorism on marine insurance, nearly no book is used. The main reason for this is, terrorism is a relatively new risk in marine insurance and it is still continuing its evaluation in marine insurance area so that most of the books do not focus on it adequately and as a separate risk from the perils of the sea, war risks or any other marine risks. Also, terrorism is a current subject that it is necessary to find up to date materials which is not possible using the relatively old dated books written on marine insurance. During the research made for the literature it has been noticed that it is so difficult to find up to date books covering terrorism related to marine insurance. Moreover, it is preferred to use journal articles rather than using books for the research purposes.

Apart from the abovementioned books used in the text of this research project some other books are searched and examined for the research purposes. A list of these books is given in the bibliography part.

Journals

As mentioned above this study is mostly based on journal articles. There is a wide range of journals written on marine insurance field including specialized magazines and gazettes. Some of them are law journals and others are for the sector

¹⁵ 2003

¹⁶ September 1993

professionals. Generally law journals are used in this study because this is a law research project and it is aimed to reflect the situation in marine insurance caused by terrorism from the perspective of law. Accordingly, Westlaw Legal Journals Index is used to search for the related journal articles. Of course, there are some other important web indexes available such as Lexis Nexis and Proquest but it can be submitted that for this research project Westlaw Legal Journals Index is the most comprehensive one.

Maritime Advocate is one of the respected journals used in this study. *Negligence Was Proximate Cause of Sinking*¹⁷ is an important article used to explain the application of proximate cause by the courts which is one of marine insurance basics.

Lloyds's Maritime and Commercial Law Quarterly is another much respected law journal used in this research project. *The Insurance of the Pleasure Craft and The Doctrine of Proximate Cause, (J.J. Lloyds Instruments Ltd. v. Northern Star Insurance C. Ltd (The Miss Jay Jay)*¹⁸ by Muchlinski P. T. deals with a very important presumption stated by the Court of Appeal in Wayne Tank case and considers its possible effects to the shipping industry and to the pleasure boat owners from the point of view of cause of loss and proximate cause.

Shipping and Transport Lawyer International is a highly used journal in the text of this research project. Especially Charles Baker's *Marine Insurance and the Terrorist Threat*¹⁹ is used extensively to examine the definition of terrorism from the point of view of marine insurance and the contents of this definition. *War Risks P&I Cover Post September 11*²⁰ deals with the problems arisen after September 11 related to war risks P&I cover in terms of terrorism pointed out by Luke Readman as a specialist in marine insurance sector. In *War Risks P&I Cover*²¹ Luke Readman provides an update on the war risks P&I cover provided by the UK P&I Club and other Clubs in.

¹⁷ Maritime Advocate 1998, v. 4, p.11-12

¹⁸ Lloyds's Maritime and Commercial Law Quarterly, Part 1,1987

¹⁹ Shipping and Transport Lawyer International, Volume 3, Number 4, 2002

²⁰ Shipping and Transport Lawyer International, Volume 3, Number 4,2002

²¹ Shipping and Transport Lawyer International, Volume 4, Number 4, 2004

the International Group as the Chairman of Thomas Miller P&I Ltd, the London agents of the managers of the UK P&I Club.

Maritime Risk International is also amongst the journals used in this study. In *Battle-Scarred Wording: The Courts' Treatment Of War Exclusion Clauses And The Impact Of September 11*²² Nik Rochez, Peter Gray look at how war exclusion clauses have developed through the ages, originating in the marine insurance market related to terrorism.

International Maritime Law is another respected journal used in this study. In *War & Terrorism: Legal Considerations*²³ Holman Fenwick Et Al examine the impact of September 11 on the war and force majeure exceptions in the marine insurance contracts and policies.

Maritime Risk International is also an important journal for the purposes of this study. In *Olympic Signs of Relief From War Risks Insurers*²⁴ John Culley, director, Thomas Miller War Risks Services, looks back at the first Olympic Games to be held since the 9/11 terrorist attacks and discusses the positive lessons for the future in marine insurance sector.

P & I International is a respected journal publishing on marine insurance field. In *The Impact of War & Terrorism On Charterparties*²⁵ Neil Q. Miller focuses on the possible effects of the threat of the Iraq war on insurance covers in the marine insurance market related to terrorism covers from the point of view of standard charterparties.

Fairplay is a quite well-known journal publishing on marine insurance field. *Norwegians Assess Shipping Risks*²⁶ is about a report presented by the Norwegian

²² Maritime Risk International, February 2004, p.14

²³ International Maritime Law, 2001, 8/2-3, p.97

²⁴ Maritime Risk International, September 2004

²⁵ P & I International, 2003, 17/2,

²⁶ Fairplay, July 4, 2002

Shipowners' Association on the consequences for shipping of the September 11 and ways in which war-risk insurance related to terrorism could be arranged.

Apart from the above examined journal articles used in the text of this research project, so many different journal articles were collected using the interlibrary loan claim service and considered for this study. These journal articles are listed in the bibliography part of this research project.

Electronic Sources

So many web-based sources are also used for this research project. As mentioned above Westlaw UK is one of the largest and most important electronic law databases which is used extensively in searching for cases, journal articles.

Marlegal.com –Maritime Legal Resources- is an important American internet site that provides a wide range of information about maritime law by referencing both British and American law sources. It is used to give introductory information about marine insurance law in the introduction chapter.

LexisNexis Butterworths is a very famous database containing extensive law materials. It provides access to UK legislation currently in force, many law report series and some full text journals. It includes full text works of legal commentary, plus forms and precedents. Also it provides an online version of Halsbury's Laws (the major legal encyclopaedia). The electronic form of Halsbury's Laws of England which is more up to date than its hardcopy is used in some parts of the text of this research project especially to refer to the new dated cases.

LexisNexis Professional is another well-known law database used in law field. It provides access to full text legal information including extensive archive of English reported cases from over 30 sets of law reports, unreported cases (from 1980). It also provides current awareness service based on Halsbury's Monthly Law Review. Moreover it includes comprehensive collection of Commonwealth cases, EU and US federal and state legal material. It is used to search for legal journal articles, cases and legislation relevant to the topic of this research project.

ProQuest is another important database used in this study. The ProQuest online information service provides access to thousands of current periodicals and newspapers, many updated daily and containing full-text articles from 1986. It is used to search for journal articles and other relevant material related to the topic of this study.

CHAPTER 3: METHODOLOGY

As explained in the introduction chapter in this research project, the impact of terrorism on marine insurance will be examined. By examining the impact of terrorism on marine insurance the aim is to find out how compatible terror risks and their covers with the needs of today's business life and also as stated in the introduction chapter some of the marine insurance basics will be examined from the same perspective. As stated, the topic question is "what is the impact of terrorism on marine insurance?" Therefore, mainly terror risks in the field of marine insurance and their insurance covers which are interpreted in the court decisions and provided by the marine insurance policies will be focused on.

Because the research project is on law, legal research methods will be preferred rather than using the business and management research techniques. Although it is stated that the legal research methods will be preferred because of the research topic question and the target which is finding out how compatible they are with the needs of today's business life, it can be argued that a qualitative research strategy can be chosen to succeed in the targets of this project. For example, such a qualitative research strategy can be based on specific focus groups. There can be two focus groups. One of them can be selected from the marine insurance companies mainly located in London and the other group can be selected from the representatives of the shipping companies mainly located in London. These focus groups can be composed a maximum of 5 group members. They can represent the both sides of the insurance sector. The aim of these study groups would be to collect primary data about the topic of this research project. In that kind of area these limited focus groups would be enough to reflect the tendencies and the ideas of both insurers and insured' about the changes in the risks in the field of marine insurance and about the answer to the question as to whether they are compatible with the needs of business life.²⁷

However, as stated above such a business research strategy is not aimed. There are some strong reasons for this. First of all, as a research project of a LLM course, this study is targeted to reflect the interpretations and approaches of the courts and the

²⁷ Saunders M., Lewis P, Thornhill A, Research Methods For Business Students, Third Edition, chapter 12

regulatory framework in the field of marine insurance in terms of terror risks and other risks and their covers. Secondly, it is very difficult to arrange such focus groups and contact the representatives of market because of the busy rhythm of the business life. Thirdly, in such law research subject it will be difficult to allege that such a survey will necessarily reflect the real situation wholly.

In the light of the above mentioned, it is decided to use the classical legal methodology of legal research which is based on collecting primary data as legislation, court decisions etc. and secondary data as books, journal articles etc.

Although, it is belonged to business research terminology, it can be said that in this research study the research philosophy will be realistic. The existing situation is aimed to be reflected depending on the primary data collected from the resources namely codes, case law, standard marine insurance policy forms and the secondary data collected from the resources namely journal articles, text books, specialized magazines.²⁸

Moreover, it can be said that inductive approach will be the main research approach of this research project. Though, it is belonged to business and management research terminology it can be argued that it is applicable in this study. In relation to the aforementioned research question related data will be collected from the primary and secondary sources of law. Then the data collected from these sources will be analyzed in the development chapters and some conclusions will be made depending on the analysis made at the end of this project.²⁹

Because of the fact that this research project is a law research project, using secondary data will have a crucial role in this study. This secondary data will be mainly based on documentary secondary data. Basically, written documents will be used as documentary data.³⁰ These written documents are explained in the literature review chapter in details.

²⁸ Bryman A., Emma B, Business Research Methods, 2003, p.15

²⁹ Saunders M., Lewis P, Thornhill A, Research Methods For Business Students, Third Edition,p.87

³⁰ Saunders M., Lewis P, Thornhill A, Research Methods For Business Students, Third Edition

As mentioned, the target is to relate the topic question to another question, how well does the sector respond to terrorism from the perspective of law. Of course, in doing this, the usage of the standard marine insurance policies, basic codes on this field, court decisions, treaties, and regulations of P&I clubs are the primary sources to be used. To analyze the primary data collected from these primary sources, secondary sources namely journal articles, text books, specialized magazines are highly used. As stated that in this study the classic law research methods are preferred, it is vital to use academic writers' views, critics and also views and critics of the sector representatives which are reflected by these secondary sources instead of using the above discussed qualitative research strategy. Also, secondary sources are used to collect data in addition to this analysis function as stated before in this chapter.

It can be submitted that for the aims of this research project, although the regulations of professional bodies and trade associations like P&I Clubs are not amongst the primary materials of law and can be categorized under non-legal sources, they should be seen as primary sources.³¹

³¹ Jeffries J, Miskin C, Legal Research in England and Wales, September 1993, p.3

CHAPTER 4: MARINE INSURANCE BASICS

Marine Risks

Marine risks can be examined under three basic clauses which are hull, freight and cargo clauses.³² Of course, there are some other risks which can be insured against. Because the focus of this research project is on terror risks, only the most controversial and widely examined marine risk “perils of the sea” will be examined under the heading of Hull Clauses to give the reader a general sense about the evaluation of the marine risks as a wide concept.

Hull Clauses

The Institute Time Clauses (Hulls) and the Institute Voyage Clauses provide provisions setting out the extent of the cover of the loss of or damage to the insured vessel, damage caused to another vessel and general average and salvage.

1. Loss of or Damage to Insured Vessel

The Institute Time Clauses and the Institute Voyage Clauses cover loss of or damage to the vessel caused by: a number of perils irrespective of want of due diligence by the assured, a number of perils where the assured is not guilty of want of due diligence and steps to mitigate a pollution hazard.³³

a) Perils irrespective of want of due diligence

These can be listed as follows: perils of the seas, rivers, lakes or other navigate waters, fire and explosion, violent theft by person from outside the vessel, jettison, piracy, breakdown of or accident to nuclear installations or reactors, and contact with aircraft or similar objects, or falling therefrom, land conveyance, dock or harbour equipment or installation.³⁴

³² Ivamy Hardy E.R, Marine Insurance, Fourth Edition, p.140, p.141

³³ Ibid.

³⁴ Ibid.

Perils of the sea

A peril of the sea can be defined as “a danger arising from the action of the sea which cannot be expressly guarded against, such as storms, or leakage of the ship, whether caused by agencies working from without or from within.”³⁵ Something fortuitous and unexpected is also involved in the word peril. Rule 7 of the Rules for Construction of Policy provides in the First Schedule to the Marine Insurance Act 1906 that: “The term “perils of the seas” refers only to fortuitous accidents or casualties of the sea. It does not include the ordinary action of the winds and waves.”³⁶

Therefore it is so important for the insurers to distinguish the casualties arising from the violent action of the elements from the silent, natural, and the gradual action of the elements upon the vessel itself.³⁷ Section 55(2)(c) of the Marine Insurance Act 1906 states that: “Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.”

In *Paterson v Harris*³⁸ the loss caused by the natural chemical action of salt water was distinguished from a loss by the violence of the waves. Also in *Crofts v Marshall*³⁹ it was held that the leakage from casks is not a loss from sea perils unless the cargo has shifted in a gale, in the absence of special terms in the policy. Furthermore, during the navigation, a straining of the ship when it took the ground at low water was not seen as loss by sea perils in *Magnus v Buttemer*⁴⁰ in the absence of any unusual circumstance. Also, in *Thompson v Whitmore*⁴¹ the transport of the vessel had been laid down on Gosport Beach to be cleansed and caulked in the ordinary way however the tide rose and knocked away the shoring and caused the ship to fall

³⁵ Ivamy Hardy E.R, Marine Insurance, Fourth Edition, p.141, *Hamilton Fraser & Co v Pandorf & Co* (1887) 12 App Cas 518.

³⁶ Ivamy Hardy E.R, Marine Insurance, Fourth Edition, p.141

³⁷ *Harrison v Universal Marine Insurance Co* (1862) 3 F&F 190, Ivamy Hardy E.R, Marine Insurance, Fourth Edition, p.141

³⁸ (1861) 1 B&S 336

³⁹ (1836) 7 C7P 597

⁴⁰ (1852) 11 CB 876

⁴¹ (1810) 3 Taunt 227

over. It was stated that the loss was not seen as a loss by sea perils. Later on, the decision in this case was discussed in *Davidson and Others v Burnand*⁴² and argued whether the decision in *Thompson v Whitmore* could be an authority for saying that an injury from water getting into a vessel whilst lying in port would not be an injury from the sea.

However, after the decision in *Thompson v Whitmore* in *Fletcher v Inglis*⁴³ in a similar situation where "a ship took ground at low water in harbour in the ordinary way, and the rising of the tide was accompanied by a heavy swell, which set into the harbour causing the ship to strike the ground and damage herself," it was held that the damage was caused from the sea perils.⁴⁴

On the other hand, in *Rohl v Parr*⁴⁵ the ship was damaged by the action of the worms on the timbers which could not be said to be unexpected or accidental, was held that it was not a loss by sea perils. Likewise, in *Hunter v Potts*⁴⁶ a similar decision was given where a ship was detained in Antigue for a considerable time, and rats made holes in the bottom of the ship, so that she was condemned.

In *E D Sassoon & Co v Western Assurance Co*⁴⁷, damage to goods by water percolating through a leaky hulk was held not due to perils of the seas. However before that decision in *Thomas Wilson Sons & Co v Owners of Cargo of the Xantho*⁴⁸ it was held that: foundering caused by collision with another vessel was within the exception "dangers and accidents of the sea" in a bill of lading; and excused the shipowner for non-delivery of the goods if it occurred without fault in the carrying ship. By this decision, the former decision in *Woodley & Co. v. Michell & Co.*⁴⁹ which stated that: a collision between two vessels brought about by the negligence of either of them, without the waves or wind or difficulty of navigation contribution to the accident, was not "a peril of the sea" within the terms of that exception in a bill of

⁴² (1868) LR 4 CP 117

⁴³ (1819) 2 B&Ald 315

⁴⁴ Ivamy Hardy E.R, Marine Insurance, Fourth Edition, p.142

⁴⁵ (1796) 1 Esp 445

⁴⁶ (1815) 4 Camp 203

⁴⁷ [1912] AC 561

⁴⁸ (1887) 12 App. Cas. 509

⁴⁹ (1882-83) L.R. 11 Q.B.D. 47

lading, had been overruled. In *Grant, Smith & Co and McDonnell Ltd v Seattle Construction and Dry Dock Co*⁵⁰ the capsizing of a floating dock, owing to the unfitness of its structure for the work for which it was required, was held not to be a loss by perils of the sea.

In contrast to that decision, in *Mountain v Whittle*⁵¹ the plaintiff's houseboat sank owing to entry of water through defective side seams while being towed and it was held that it was a loss due to perils of the sea.

On the other hand, *The Lapwing*⁵² case was a good example of where a loss, not proximately caused by perils of the seas, was recoverable as a loss by perils ejusdem generis to them.

All of the above examined cases reflect the efforts made by the courts to distinguish the casualties arising from the violent action of the elements from the silent, natural, and the gradual action of the elements upon the vessel itself which is stated under the article 55(c) of the Marine Insurance Act 1906. By examining the above mentioned court decisions on perils of the sea it can be submitted that it is difficult to determine a consistency amongst the different dated decisions. Moreover, it can be said that courts -legal practice- are not successful every time to on ruling the correct law which the Marine Insurance Act provides in article 55(c). The decisions in the afore examined cases support this argument, such as the decisions given in *Thompson v Whitmore* and in *Fletcher v Inglis* which are about the damages caused by the rising of the tide, are inconsistent to see the damages caused from the perils of the sea. Also the decisions in *Thomas Wilson Sons & Co v Owners of Cargo of the Xantho* and *Woodley & Co. v. Michell & Co* show inconsistency about seeing damages caused by collision in the concept of perils of the sea. Likewise, in *Grant, Smith & Co and McDonnell Ltd v Seattle Construction and Dry Dock Co* and *Mountain v Whittle*, there is a contradiction in the decisions about the sinking of the ships in similar situations.

⁵⁰ [1920] AC 162

⁵¹ [1921] 1 AC 615

⁵² [1940] P 112

Excluded Losses

There are various losses mentioned in the Marine Insurance Act 1906 for which the insurers are not liable. These are: losses not proximately caused by perils insured against, losses caused by the wilful misconduct of the assured, losses caused by delay, losses caused by ordinary wear and tear, losses caused by inherent vice and other losses e.g. those caused by vermin.⁵³ The policy typically excludes the insurers from liability in certain specified situations. Under the Marine Insurance Act 1906, s 55(2) (b), (c) unless the policy provides otherwise, the insurers are not liable for loss caused by delay, even the delay has been caused by an insured peril, nor for “ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils”.⁵⁴

The Institute Clauses include various exclusion clauses: a war exclusion clause, which excludes losses caused by abandoned weapons such as mines, a strikes exclusion clause, which excludes loss caused by strikers, rioters or terrorists: a malicious act exclusion clause , which excludes loss by an explosive or weapon of war caused by someone acting maliciously or from a political motive; a nuclear exclusion clause, which excludes loss caused by an atomic or nuclear weapon.⁵⁵

Wilful Misconduct of the Assured

Section 55(2)(a) of the Marine Insurance Act 1906 states: “The insurer is not liable for any loss attributable misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew.” Wilful misconduct is equivalent to the wilful performance of the act which causes to the loss. Because of the principle that the law permits no man to take the advantage of his own wrong in such a case the insurers are not liable.⁵⁶ However, the insurer is liable for any loss proximately caused by a peril insured against even though the loss would not have happened but for the misconduct or

⁵³ Ivamy Hardy E.R, Marine Insurance, Fourth Edition, p.225

⁵⁴ Lowry John and Rawlings Philip, Insurance Law: Doctrines and Principles, 1999, p. 243

⁵⁵ Lowry John and Rawlings Philip, Insurance Law: Doctrines and Principles, 1999, p. 243

⁵⁶ Thompson v Hopper (1858) EB&E 1038, Ivamy Hardy E.R, Marine Insurance, Fourth Edition, p.232

negligence of the master or crew. About the section 55(2)(a) of the Marine Insurance Act 1906 it is stated that: "It appears to follow from the language of that provision that wilful misconduct by the assured will prevent him from recovering, in all cases in which misconduct has contributed to the loss, even though it is not so closely connected with the loss as to be its proximate cause"⁵⁷ The same result occurs when the negligence of any other person (including the assured himself) causes the loss. *Trinder, Anderson & Co v Thames and Mersey*⁵⁸ is a good example of such a situation in which the loss is caused by the negligence of the assured. In this case, there was a policy of marine insurance of a ship for loss within the perils insured against, the fact that the loss arose through the negligent navigation of the master, not amounting to wilful negligence, afforded no defence to his claim.

Also, it is important to emphasize that The Marine Insurance Act 1906 s 78(4), which provides that it is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss, only imposes a duty to sue and labour, and does not affect the assured's right to recover for a loss to which the negligence of himself or his agents has contributed.⁵⁹ In *British and Foreign Marine Insurance Co Ltd v Gaunt*⁶⁰ this case was stated by Lord Sumner.⁶¹

Moreover, the master of a vessel should also be included within the words 'the assured and his agents' in the Marine Insurance Act 1906 s 78(4), so that a failure by the master to take such measures as are reasonable will block the owners' claim against the insurers; the words 'his agents' should be read as inapplicable to the master or crew unless expressly instructed by the assured as to what to do or not to do in respect of suing and labouring and a possible exception in the case of a

⁵⁷ Halsbury's Laws of England, Fourth Edition, Volume 25, p. 203, *Britain Steamship Co v R* [1921] 1 AC 99 at 132, HL

⁵⁸ [1898] 2 QB 114, CA.

⁵⁹ Halsbury's Laws of England, Fourth Edition, Volume 25, p. 203

⁶⁰ [1921] 2 AC 41 at 65, HL

⁶¹ "There remains an argument based on a reading of s. 78, sub-s.4, of the Act which is very novel. It is one of the disadvantages of codification that new terms used or even unfamiliar sequences of propositions suggest that the law has been changed, where those familiar with the old decisions would not have suspected it. The argument affords a striking instance of this. The section obviously refers to suing and labouring. It cannot possibly be read as meaning that if the agents of the assured are not reasonably careful throughout the transit he cannot recover for anything to which their want of care contributes. The point therefore fails."

master/owner is not covered.⁶² In *Astrovlantis Compania Naviera SA v Linard, The Gold Sky*⁶³ the above mentioned case was held by Mocatta, J.

Wilful misconduct: unseaworthiness.

In addition to the above mentioned general provision which exempts the insurer from the liability from the loss attributable to that afore mentioned misconduct, there is a special provision in Marine Insurance Act 1906, [Article 39(5)] to the effect that where, with the assured's privity, a vessel insured under a time policy is sent to sea in an unseaworthy condition, the insurer is not liable for any loss attributable to unseaworthiness. In relation to this provision, it was held that in all questions arising between the subjects of different states, when each is a party to the public acts of his own government, an assured could not recover in respect of a capture, arrest or embargo by his own government.⁶⁴ This was well stated by Lord Ellenborough CJ in *Conway v Gray*.⁶⁵ Similar decisions were given in *Conway v Forbes*⁶⁶, *Maury v Sheldon*.⁶⁷ However, the contrary had been decided in *Aubert v Gray*.⁶⁸ Also in *Janson v Driefontein Consolidated Mines Ltd*⁶⁹ it was stated by the House of Lords that "where a subject of a foreign Government insures treasure with British underwriters against capture during its transit from the foreign State to this country, and the foreign Government seizes the treasure during the transit, and war is afterwards declared between the foreign and the British Governments, the insurance is valid, and an action may be maintained in this country against the underwriters after the restoration of peace, though the seizure is made in contemplation of war, and in order to use the treasure in support of the war." *lq* *

⁶² Halsbury's Laws of England, Fourth Edition, Volume 25, para. 358

⁶³ [1972] 2 Lloyd's Rep 187 at 221

⁶⁴ Halsbury's Laws of England, Fourth Edition, Volume 25, para. 359

⁶⁵ (1809) 10 East 536, "In all questions arising between the subjects of different states, each is a party to the public authorisation acts of its own government; and, on that account, a foreign subject is as much incapacitated from making the consequences of an act of state the foundation of a claim to indemnity upon a British subject in a British court of justice, as he would be if such act had been done immediately and individually by such foreign subject himself."

⁶⁶ (1809) 10 East 539

⁶⁷ (1809) 10 East 536 at 545

⁶⁸ (1862) 3 B & S 169

⁶⁹ [1902] AC 484

The Cause of Loss

Section 55(1) of the ~~marine~~ Insurance Act 1906 states that “subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.” This rule determines the principle that the liability of the insurer depends on the loss or damage being “proximately” caused by a peril insured against. However, the opening words of the section provide exceptions to the rule. As examined in the above paragraphs, in ss 39(5) and 55(2) the term “attributable to” is used. With regard to s 39(5) any loss attributable to such unseaworthiness to which the assured is privy is not recoverable. Also, any loss or damage attributable to the wilful misconduct of the assured is not recoverable under s 55(2)(a).⁷⁰

Furthermore, the expression “unless the policy otherwise provides” allows the parties to determine their own rule of causation. The current versions of the Institute Hulls Clauses, the Institute Cargo Clauses and the Institute Freight Clauses consist terms such as caused by, attributable to, reasonably attributable to, in consequences thereof, consequent on and arising from.⁷¹

Proximate Cause

Regarding the interpretation of proximate cause there were two distinct and different ways and this dilemma was continued by the courts until 1918 when *Leyland Shipping Co Ltd v Norwich Union Fire Insurance Society Ltd*⁷² (hereafter referred to as the *Leyland* case) was decided. According to one view, only the *causa proxima* or immediate cause of the loss must be regarded and this was stated by the court in *Pink v Fleming*.⁷³ The other view was expressed by Lope LJ, in *Reischer v Borwick*.⁷⁴ This view which is more clearly stated in the *Leyland* case. In this case, Lord Shaw of Dunfermline said that “the cause which is truly proximate is that which is proximate in efficiency.” So that the principle determined in the *Leyland* case, which is the term proximate cause should be construed to mean predominant or efficient cause, has

⁷⁰ Hodges Susan, *Cases and Materials on Marine Insurance Law*, First Edition, p. 335

⁷¹ Ibid.

⁷² [1918] AC 350, HL

⁷³ (1890) 25 QBD 396

⁷⁴ (1894) 2 QB 548, CA

been applied in a number of recent cases, namely, *Board of Trade v Hain SS Co Ltd*⁷⁵; *Yorkshire Dale SS Co Ltd v Minister of War Transport, The Coxwold*⁷⁶; *Ashworth v General Accident Fire and Life Assurance Corporation*⁷⁷ and *Gray and Another v Barr*.⁷⁸

In a recent case *Waterwell Shipping Inc and Another v HIH Casualty and General Insurance Ltd*⁷⁹ the issues to be decided by the court were whether the sinking was caused by negligence within the meaning of the Institute Fishing Clauses, if so whether the negligence was the proximate cause of the loss, and if so whether the loss resulted from want of due diligence within the provision of the clauses.⁸⁰

The Supreme Court of New South Wales stated that sea suction valves in a dead ship should be closed as a requirement of good practice and that should be applied to fishing vessels irrespective of whether or not they were undergoing fumigation. It was held that the failure to close the valves which resulted in the sinking of the vessel was because of negligence and the sinking of the vessel was proximately caused by that negligence.⁸¹

It can be said that *J.J. Lloyds Instruments Ltd. v. Northern Star Insurance C. Ltd (The Miss Jay Jay)*⁸² is an important case to reflect the approaches of the courts about proximate cause. In this case the vessel subject to hull insurance was privately owned pleasure craft. Generally, marine insurance on hulls is commonly thought to deal with only commercial vessels. However, like in this case the insurance of privately owned pleasure craft is equally its concern. The court found that the loss was *prima facie* recoverable under the policy and then considered the issue of causation. It was found that the adverse weather conditions and the faulty design and construction of the boat had equal or nearly equal affects in causing the loss. In this case the

⁷⁵ [1929] AC 534 , HL

⁷⁶ (1942) 73 L1L Rep 1, HL

⁷⁷ [1955] IR 268

⁷⁸ [1971] 2 Lloyd's Rep 1 , CA, Hodges Susan, Cases and Materials on Marine Insurance Law, First Edition, p.336,337,339

⁷⁹ (Unreported- New South Wales), Maritime Advocate, Negligence Was Proximate Cause of Sinking, 1998, v. 4, p.11-12

⁸⁰ Maritime Advocate, Negligence Was Proximate Cause of Sinking, 1998, v. 4, p.11-12

⁸¹ Ibid.

⁸² (1986) LMLN 182

presumption stated by the Court of Appeal in *Wayne Tank & Pump Co. Ltd. v. Employer's Liability Assurance Corp. Ltd.*⁸³ was considered. In that case it was held that "where there are two concurrent causes of loss one of which is excluded, the excluded peril is presumed to apply and the insurer can avoid liability."⁸⁴

However, in the present case the situations were different. There was no express exclusion of unseaworthiness in the policy. The exclusion in the policy was related only to cases where the defective design or manufacture of the vessel was the sole cause of loss. In this case, the Court of Appeal appeared to be making a distinction between cases where a concurrent cause of loss is expressly excluded and cases where the exclusion is limited to circumstances in which the excluded peril is the sole effective cause of loss. As a conclusion of that precedent, to be fully protected the insurers should draw up exclusion clauses that do not depend for their efficacy upon a finding that the excluded peril was the effective cause of loss.⁸⁵

The above mentioned situation brings about a new question that "ought insurers to be permitted to draw up such broad exclusions in pleasure boat insurances?"⁸⁶ As an argument in favour it is said that the assured would get the insurance at a lower premium. However, it is submitted that it would be quite unfair if the insurer is allowed to avoid liability for a loss caused by the joint operation of an insured peril and unseaworthiness due to bad design and/or manufacture, where the assured has no knowledge of any latent defects in the vessel and fulfilled his duty under the policy to maintain the boat. On the other hand, it is submitted that it may be justifiable to hold commercial ship-owner liable for such losses. As a ground for this argument it is said that pleasure boat owners should be regarded as consumers dealing on the insurer's standard terms and not as parties to a freely negotiated bargain like the commercial ship owners. Furthermore, it is emphasized that although insurance contracts were excluded from the Unfair Contract Terms Act 1977, the courts still

⁸³ [1974] Q.B. 57

⁸⁴ Muchlinski P. T., Lloyds's Maritime and Commercial Law Quarterly, Part 1, 1987, The Insurance of the Pleasure Craft and The Doctrine of Proximate Cause, (*J.J. Lloyds Instruments Ltd. v. Northern Star Insurance C. Ltd (The Miss Jay Jay)*), p.23

⁸⁵ Muchlinski P. T., Lloyds's Maritime and Commercial Law Quarterly, Part 1, 1987, The Insurance of the Pleasure Craft and The Doctrine of Proximate Cause, (*J.J. Lloyds Instruments Ltd. v. Northern Star Insurance C. Ltd (The Miss Jay Jay)*), p.23

⁸⁶ Ibid.

exercise a protective function at common law on that issue. The assured in *The Miss Jay Jay* was fortunate because his policy had a narrowly drafted exclusion clause however other boat owners are not so fortunate like the owner in the *The Miss Jay Jay* and the law as it stands in *The Miss Jay Jay* cannot provide enough help to them.

Moreover, the presumption held by the Court of Appeal held in the *Wayne Tank* case which was discussed in *The Miss Jay Jay* is open to criticism. First, the presumption stated in this case causes avoidance from the need to determine the relative efficiency of the insured and excluded cause of loss which is very unjustifiable. By following this presumption where "common sense" suggests that both causes are concurrent, the courts would avoid a detailed examination of the causation issue to the detriment of the assured. This would cause to the blurring of the distinction between promissory warranties, which are based on the strict liability of the assured and operate irrespective of issues of causation, and exceptive warranties, which limit the insurer's liability but require proof that the loss was caused by an excepted peril in order to protect the insurer. Second, in the *Wayne Tank* case the "immediate cause" doctrine was applied, however the presumption was stated weakly. Only one member⁸⁷ of the court based his decision on it, the other two members⁸⁸ only stated it obiter. Third the application of this aforesaid presumption would cause great problems on grounds of consumer protection as mentioned in the former paragraph. Therefore, it can be said that the courts should not use the presumption in the *Wayne Tank* case too freely especially in the cases involving privately owned pleasure craft.⁸⁹

⁸⁷ Cairns. L.J.

⁸⁸ Lord Denning, M.R. , And Roskill, L.J.

⁸⁹ Muchlinski P. T. ,Lloyds's Maritime and Commercial Law Quarterly, Part 1,1987, The Insurance of the Pleasure Craft and The Doctrine of Proximate Cause,(*J.J. Lloyds Instruments Ltd. v. Northern Star Insurance C. Ltd (The Miss Jay Jay)*), p.24

CHAPTER 5: TERRORISM AND MARINE INSURANCE

A number of important recent incidents showed the potential risks that are amongst the concerns of P&I and hull insurers. Especially, in October 1985 *Achille Lauro*, an Italian luxury liner was hijacked in Egyptian waters by members of the Palestine Liberation Front. A few years later, the cruise ferry, *City of Poros* was attacked by terrorists (Greece, 11 July, 1988) with grenades. More recently, in the Philippines, in February 2000, terrorists placed bombs on two buses which were on board the inter-island ferry, *Our Lady of Mediatrix*. Because of the explosion forty five passengers were killed. In October 2000, USS Cole was rammed by a small boat laden with explosives off Yemen. The attacks are not restricted to cruise and war ships: more recently the u.l.c.c. Limburg was rammed by a small boat laden with explosives off Yemen (6 October 2002). To understand how the London marine insurance market covers loss or damage resulting from terrorist action and is responding to the observed threat following September 11, it is necessary to examine how today's insurance policy wordings and practices evolved.⁹⁰

HULL COVER AND TERRORISM

How Cover for Terrorist Attacks Evolved

All the insured perils listed in the old S.G. Form, with the exception of perils of the seas, fire (added relatively recently), jettisons and barratry and war risks were reflecting the concerns of 17th and 18th century ship-owners. When the underwriters wished to exclude war risks, this was done by inserting a clause which provided that the insured interest-hull, freight, or cargo- was warranted free from capture and seizure. Thus, the F.C.& S Clause was created and then excluded and reinstated by the old War Hull Clauses. There was no specific exclusion of terrorism in the F.C & S Clause. Loss and damage arising from "detonation of an explosive" or "any weapon of war" caused by a person "acting maliciously or from a political motive" was specifically excluded after 1970 by the Malicious Damage Clause.⁹¹

The traditional S.G. Form was eventually replaced by a new policy document in the shape of the MAR Form, together with new Institute Time Clauses for Marine Risks

⁹⁰ Baker Charles, Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, Marine Insurance and the Terrorist Threat, p. 22

⁹¹ Ibid.

and War Risks. The Institute War and Strikes Clauses provide cover for loss and damage caused by “any terrorist or any person acting maliciously or from a political motive” for hulls and freight. In fact, marine policies have expressly excluded, and war risks policies expressly covered, losses from terrorism since 1982 and those caused by “any person acting maliciously” since 1970 contrasts with many non-marine policies.⁹²

The new system requires that Marine and War Risks should complement one another. Therefore, the marine policy whether for hull, freight or cargo provides those specific risks which are excluded. In the Hull (and also the Freight) Clauses these exclusions are named as “War Exclusion”, “Strikes Exclusion”, “Malicious Acts Exclusion” and “Radioactive Contamination.” In the case of ship and freight the Institute War and Strikes Clauses, which use the same wording as the exclusions, provide cover for these excluded risks (apart from nuclear). The new Hull clauses—called the International Hull Clauses – became available on 1 November 2002, keep the former hull wordings and there were no changes so far as the War, Strikes, and Malicious Acts exclusions are concerned.⁹³

“ANY TERRORIST OR ANY PERSON ACTING MALICIOUSLY OR FROM A POLITICAL MOTIVE”

It is very important to consider the meaning of these words which the Institute War and Strike Clauses provide cover for.

i) Meaning of “terrorist”

As mentioned above, terrorism was first specifically included as an insured peril in 1982. Michael Miller in Marine War Risks 2nd ed. (1994, LLP) defines a terrorist as: “someone who kills, maims or destroys indiscriminately for a public cause.”⁹⁴

This definition is not exhaustive and terrorist action is easier to recognise than define.

⁹² Baker Charles, Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, Marine Insurance and the Terrorist Threat, p. 22, 23

⁹³ Ibid. For the full text of the exclusions in the New Hull Clauses see appendix A

⁹⁴ Ibid.

a) “Kills, Maims or Destroys”

It is suggested that “a cyber terrorist who brings trading on, for example, Bolero to a temporary halt may well not destroy anything, but if he is actuated by something more than a purely personal grudge or intention to gain financially, his action would be qualified by many as terrorist.”⁹⁵

b) “Indiscriminately”

When a terrorist is not concerned by the fact that people or property wholly unconnected with his principal target or political aim are killed, maimed or damaged, it can be said that he is acting indiscriminately. For instance, Abu Nidal’s attack on the Greek cruise ferry *City of Poros* can be seen as indiscriminate because it was directed against people whom the attackers did not know, who were in no position to alter political events in the Middle East and could not be seen as opponents in any real sense.⁹⁶

c) “Public Cause”

The requirement in the Miller’s definition of terrorism that the terrorist be motivated by some “public cause” is necessary to distinguish him from someone acting for a private grievance or attempting to make a private gain. However, the committee drafting the cover for the new peril of terrorist that the assured should have to prove what precise cause motivated the terrorist even though in many cases it is impossible to identify the perpetrators.⁹⁷

d) Non-Governmental

The modern understanding of terror is that it is not applicable to those operating in the name of an established government, however transient. In contrast, it was directed by the government in the history to pursue political aims during the time of Robespierre’s Reign of Terror in Paris in 1793.⁹⁸

⁹⁵ Baker Charles, Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, Marine Insurance and the Terrorist Threat, p. 23

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

Some Other Definitions of Terrorism

At this stage it is important to examine some other definitions of terrorism for the purposes of this research project. There is no case law on the meaning of the word in an insurance context and there are many different definitions of the term. One of the more succinct definitions is the FBI's, which is: "Terrorism is the unlawful use of force or violence against persons or property to intimidate a government, the civil population, or any segments therefore in furtherance of a political or social objective."⁹⁹

This definition is criticized as being unsatisfactory in any policy because it excludes losses clearly not caused by terrorism- property damage caused by rioters for example.¹⁰⁰ Terrorism has to be defined in international law. The crucial problem with this term is that one man's freedom fighter is another man's terrorist.

The non-marine terrorist exclusion clause (NMA2551A) which has not been considered by the English courts define terrorism as: "any act of any person acting on behalf of or in connection with any organisation with activities directed toward the overthrowing or influencing of any government de jure or de facto by force or violence."¹⁰¹

The Reinsurance (Acts of Terrorism) Act 1993 defines acts of terrorism as: "Acts of persons acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of Her Majesty's Government in the United Kingdom or any other government de jure or de facto."¹⁰²

Common Methods

The methods used by terrorists can be identical to those used by persons engaged in war or civil strife, pirates, thieves, crew committing barratry or those motivated

⁹⁹ Rochez Nik, Gray Peter, Battle-Scarred Wording: The Courts' Treatment Of War Exclusion Clauses And The Impact Of September 11, *Maritime Risk International*, February 2004, p.14

¹⁰⁰ Ibid.

¹⁰¹ Holman Fenwick Et Al, *War & Terrorism: Legal Considerations*, *International Maritime Law*, 2001, 8/2-3, p.97

¹⁰² Ibid.

purely by spite, revenge or vandalism. Therefore, piracy, violent theft by persons from outside the vessel and barratry are marine and not war risks under the Institute Clauses.¹⁰³

The Pragmatic Approach

Sometimes there may be no evidence both as to what precise occurrence caused the loss and if intentional for what motive. When it is examined, it can be seen that English courts tend to give the normal everyday meaning to the words used in a commercial document, such as an insurance policy, as an example *Kawasaki Kisen Kabushiki Kaisya v. Bantham Steamship Company Ltd. (No.2)*¹⁰⁴ can be shown.

The London war risks market and the Mutual War Risk Associations have a pragmatic view that a terrorist act should be determined by examining each individual case. For instance, the case of *City Poros*, the attackers and their accomplices were only assumed to belong to the Abu Nidal Organisation, whose aims were uncertain. The Hellenic Mutual War Risks Association had the view that nobody does this sort of thing unless they are terrorists.¹⁰⁵

ii) "Acting Maliciously"

a) Malicious Damage Clause

The Malicious Acts Exclusion for ship and freight was included into the Institute Time Clauses as a result of the detonation of a limpet mine attached to the m/v *Granwood* as she was laying in Miami in 1964. The marine underwriters accepted the claim after The Malicious Damage Clause was introduced into the Market Marine Policy. The current wording of the clause which is in the Institute Time Clauses is as follows: "26. In no case shall this insurance cover loss damage liability or expense arising from, 26.1 the detonation of an explosive, 26.2 any weapon of war, and caused by any person acting maliciously or from a political motive",¹⁰⁶

¹⁰³ Baker Charles, Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, Marine Insurance and the Terrorist Threat, p. 23

¹⁰⁴ (1939) 63 L. L. Rep. 155 (C.A.), Baker Charles, Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, Marine Insurance and the Terrorist Threat, p. 23

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

b) Transfer to War Risks

The transfer of these aforementioned risks to the War Risks Policy is intended to be affected by the words in the list of insured perils in the Institute War and Strikes Clauses (Hulls): “1.3 derelict mines torpedos bombs or other derelict weapons of war ..., 1.5 any terrorists or any person acting maliciously or from a political motive.”¹⁰⁷

It is emphasized that, there is a potential overlap between war risk peril of malicious damage and the marine peril of barratry, which is defined by Schedule 1 Rule11 of the Marine Insurance Act 1906 as “every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be the charterer.”

As a result of this situation, it is argued that as a result of this situation, if a particular act qualified as both perils, it would be determined as a claim on marine underwriters, in view of Clause 4.2 of the Institute War and Strike Clauses, which excludes any loss or damage covered by them, but for the Deductible. Also, it is submitted that, if terrorists join a ship as a crew before causing loss or damage, in principle the marine policy should respond.¹⁰⁸

c) The Grecia Express Case

The Grecia Express [2002] 2 *Lloyd's Rep.* 88 is a important case which shows –very recently- how war risk insurers may be found liable in respect of malicious damage even when the identity of the perpetrator has not been established. In this case, somebody cut the vessel's mooring ropes and opened one of the four seawater drencher valves located in the vessel's auxiliary engine room and as a result the vessel capsized and sank. The cover was in the terms of the Hellenic Mutual War Risks Association's Rules 1994 and by-laws. The judgement was given against the War Risks Association and also judge Colman J. gave a very important explanation about the meaning of person acting maliciously:¹⁰⁹

¹⁰⁷ Baker Charles, Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, Marine Insurance and the Terrorist Threat, p. 23,24

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

“Provided that the evidence establishes that the vessel was lost or damaged due to the conduct of someone who was intending to cause it to be lost or damaged or was reckless as to whether such loss or damage would be caused, that is enough to engage the liability of war risk underwriters. The words, therefore, cover casual or random vandalism and do not require proof that the person concerned had the purpose of injuring the assured or even knew the identity of the assured.”¹¹⁰

This case is regarded as the most recent case about malicious damage cover which provides an important precedent to cover for terrorism in strict sense.¹¹¹

iii) “Political Motive”

These words are intended to use for covering such actions as those of the Cuban exiles who were suspected of attaching a limpet mine to the Granwood in Miami in 1964 which is mentioned above. However, there is not any judicial definition given for political motive yet.¹¹²

It is submitted that there is inevitably some overlap with the words previously considered -and it can be sometime before their precise scope is determined by the courts. Also, it is thought that it may be reasonable to assume that the war risks cover provided by the respective Institute War and Strikes Clauses for ship and cargo is adequate to deal with all conceivable forms of terrorist action as the words have been in use for over 30 years without revealing any unintended gap in terrorism or malicious damage.¹¹³

¹¹⁰ Baker Charles, Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, Marine Insurance and the Terrorist Threat, p. 24

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

CHAPTER 6: THE IMPACT OF TERRORISM ON CHARTERPARTIES

The aforementioned *Kawasaki Kisen Kabushiki Kaisya v. Bantham Steamship Company Ltd.* case has very important results. In this case, charterparties were discussed which set the stage for recent debate as to whether terrorism, as it has come to be understood in recent months, can be equated with war for the purposes of marine insurances.¹¹⁴

Also, there are important developments in the cruise ship industry and the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974 - regulating this area- has some important provisions which are related to terrorism. On November 1, 2002 an international conference at the International Maritime Organisation (IMO) adopted a protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974 which is open for signature at the IMO Headquarters from May 1, 2003. One of the major changes from the original convention is about compulsory insurance. Liability under the convention is so strict. According to the convention, the carrier will be liable whatever the circumstances causing the loss unless he can prove that the incident: "(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or (b) was wholly caused by an act or omission done with the intent to cause the incident by a third party."¹¹⁵

The last exclusion is so important. It is emphasized that the definition is wide enough to cover terrorism. In fact, neither the Convention, nor the Protocol, imposes any liability or obligation to take out insurance in respect of personal injury to or death of passengers wholly resulting from acts of terrorism. However, it is stated that for the purposes, when considered their impacts on charterparties and insurance, the threats of war and terrorism are one and the same.¹¹⁶

It is stated that, on a common sense appraisal, the work of terrorists can now be covered under standard Institute war risks insurance- if it is not already included

¹¹⁴ Miller, Neil Q., P & I International, The Impact of War & Terrorism On Charterparties, 2003, 17/2, p.15, 16

¹¹⁵ Ibid.

¹¹⁶ Ibid.

under a standard form charterparty (as it is specifically by GENCON 1994 and by implication in BARECON as a type of malicious damage), an additional clause may be added.¹¹⁷

In the light of the above mentioned an important question arises: what are the clauses of a charterparty upon which war and therefore terrorism may impact? There are three main types of clauses relating to war risks and cancellation found in standard charterparties. They are: Clauses dealing with war risks insurance/additional insurance premiums and crew bonuses, clauses prohibiting the ship from performing the voyage contract (without the owner's consent) and permitting loading and or discharge at an alternative and safe port, clauses giving both the owner and charterer the right to cancel the charter in the event of war risks or war involving named states.¹¹⁸

The industry becomes increasingly nervous about the new terror threats to its interests and concerns about the operation of these aforementioned clauses under these new circumstances. As a conclusion of these changing circumstances some important questions occur namely: who is liable to pay for war risks insurance and any additional premiums, especially where such charges arise mid-voyage? , when can one call at ports other than those specified in the charterparty without there being a breach? And when does the right to cancel the charter party arise?¹¹⁹

War Risks Insurance

War risk cover is provided to shipowners world wide at one base rate but because of the increasing terror risks in today's world underwriters exclude the more dangerous areas. Typically, these areas being subject to increased risk of war risk perils are identified by the Joint War Committee. These excluded zones are insured for an additional premium- usually at an enhanced rate- for the periods that ships enter the zones and as declared by the shipowners. These excluded zones can be changed by the underwriters at anytime and their decisions about determining the zones are

¹¹⁷Miller, Neil Q., P & I International, The Impact of War & Terrorism On Charterparties, 2003, 17/2, p.16

¹¹⁸Ibid.

¹¹⁹Inter alia, Lloyd's Institute War and Strikes Clauses

applicable within seven days of being declared by the underwriters.¹²⁰ There is no need for a war or even the imminent threat of a war for the decision to be made to create an excluded zone, merely a higher than normal degree of risk can be enough.¹²¹

For instance, after the Bali bombing in October 2002, Indonesian ports were added to the list of excluded zones. Thus, carriers travelling within these excluded zones must declare each voyage in the excluded zone and purchase extra war risk coverage for that voyage. Also, after the September 11 2001 insurers increased the base hull premium payable in relation to war risks. Moreover, large areas were excluded from the base rate and massive extra premiums are charged if ships entered those areas.

Besides, another concern of the industry related with the new terrorist threats is about the maritime containers because it is not possible to impose such sort of security for them.¹²²

Additional Insurance Premiums

Generally, a shipowner prices his anticipated expenditure into freight or hires rates agreed before a charterparty begins. Therefore, in principle any additional premiums present at this time can be reflected to the cost of the charterer. However, under today's new circumstances related to terror threat, premiums can go up during the course of a voyage at very short notice. Under the most standard form of the charterparties, the default position is that the shipowner pays for all insurances including war risks insurance but the do not allow the owner to recover some of the extra insurance expenses from the charterer.¹²³

On the other hand, Clause 4(b) of CONWARTIME 1993, states that charterers must reimburse owners for any additional premiums incurred where a vessel is "within, or is due to enter and remain within, any area or areas which are specified by such

¹²⁰ Miller, Neil Q., P & I International, The Impact of War & Terrorism On Charterparties, 2003, 17/2, p.16

¹²¹ Ibid.

¹²² Ibid.

¹²³ For example, NYPE Clauses 1 and 26, NYPE 93 Clause 6, BALTIME 1939 Clause 3 and SHELLTIME 4 Clause 6. For the full text of the related clauses in some these charterparties see appendix B.

underwriters as being subject to additional premiums because of War Risks" which can be shown as one of the several other forms make provision for owners to reclaim additional premiums in this way.¹²⁴

As mentioned above, many of these clauses are not adequate to provide charterers and shipowners enough legal options to cover to protect their rights. The NYPE 1993 clause does not cover terrorism and the SHELLTIME 4 clause is more limited than it. Especially, when there is merely threat of war or terrorism these clauses fall short. Only, the CONWARTIME 1993 (1(b)) definition of War Risks expressly includes cover for terrorism and war both actual and threatened. Also, only SHELLVOY 5 (additional Clause 3(4)) provides an explanation about the war risk zones "as designated by the London insurance market". It is important to emphasize that when compared only these above mentioned clauses consist enough clarity for the owners to be sure of recouping premiums paid. It is submitted that this degree of clarity should be encouraged because the charterers need to know their positions before the beginning of a voyage in terms of additional premiums which have increasing importance to determine the viability of a voyage.¹²⁵

When does the right to deviate to a different port or cancel a charter arise?

The courts have held that the right to cancel a charter or nominate an alternative port must be exercised within a reasonable time.¹²⁶ Moreover, it was stated by the courts that parties must exercise the option to cancel or redirect "honestly and in good faith" and not "arbitrarily, capriciously or unreasonably".¹²⁷ For instance, it would be a breach of the duty of good faith if there was an attempt to rely on a war cancellation clause by the owner or master to escape from a contract that became onerous or unprofitable when there was no real war risk even the assessment of the danger is within their discretion.

¹²⁴ Inter alia, NYPE Clause 31(e), BALTIME 1939 Clause 21, SHELLTIME 4- Clause 34, BOXTIME-Clause 19. For the full text of the related clauses in some these charterparties see appendix B.

¹²⁵ Miller, Neil Q., P & I International, The Impact of War & Terrorism On Charterparties, 2003, 17/2, p.17. For the full text of the related clauses in some these charterparties see appendix B.

¹²⁶ Kawasaki Kisen Kabushiki Kaisha of Kobe v Bantham SS Co Ltd [1939] All ER 819.

¹²⁷ Abu Dhabi National Tanker Co v Product Star Shipping (The Product Star) [1993] 1 Lloyd's Rep 397.

As a conclusion, when any charterer enters into an excluded zone it means that there is a consent to take a degree of risk. Also, the owners who have agreed to the charterer to enter these zones have the same situation as do the charterers. Thus, only if a new and specific threat arises after the parties agreed on the charter (maybe during the mid-voyage) the parties are entitled to revise the terms or cancel the charter.¹²⁸

Comments

As explained above, the regulations related to both owners and charterers under many of the standard form charterparties are inconsistent. Also, when the forms deal with the issues of liability for additional premiums and the right to cancel or renegotiate the charter are examined it is seen that there is a wide considerable area for uncertainty on both sides. It is suggested that extra provisions should be considered to put in the texts of the forms in use to overcome these mentioned problems.¹²⁹

¹²⁸ Miller, Neil Q., P & I International, The Impact of War & Terrorism On Charterparties, 2003, 17/2, p.17

¹²⁹ Ibid.

CHAPTER 7: P&I COVER AND TERRORISM

Most P&I insurance is provided on a mutual basis by the P&I clubs. However, their rules exclude war risks. As a result of this, has to obtain cover from elsewhere in respect of P&I liabilities such as injury or death of crew or passengers, wreck removal expenses. If a shipowner chooses to insure the hull under a market policy such as the Institute War and Strikes Clauses, he has to pay for additional war risks cover for P&I risks. This kind of cover is provided by the Institute Protection & Indemnity War and Strikes Clauses-Hulls. Also, alternatively, he can provide the cover from a Mutual War Risks Association that insures all types of war risks, namely; hull, freight and P&I.¹³⁰

Effect of September 11

Before September 11, P&I Clubs had agreed on not to include specific reference to terrorism or malicious damage to their definitions of war risks even though hull and cargo policies in the London market had done so for nearly two decades. September 11 influenced the P&I Clubs to modify their rules by making it clear that loss and damage caused by terrorism, which caused third party liability to be incurred, would also be excluded in future. The 2002 Rules of the Clubs contain only a few changes (written in bold hereunder) which supplements their previous war risk exclusion: “(i) war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, any hostile act by or against a belligerent power, **or any act of terrorism**; (ii) capture, seizure, arrest, restraint, or detainment (barratry and piracy excepted) and the consequences thereof or any attempt thereat; (iii) mines, torpedoes, bombs, rockets, shells, explosives or other similar weapons of war.. **In the event of any dispute as to whether or not any act constitutes an act of terrorism, the decision of the Board/ Committee/ Association shall be final.**” The types of weapon which are underlined above are added by the Clubs to those appearing in the corresponding provision in the Institute War and Strikes Clauses.¹³¹

¹³⁰ Baker Charles, Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, Marine Insurance and the Terrorist Threat, p. 25

¹³¹ Ibid.

Excess Loss or Secondary Cover for P&I War Risks

Although they exclude cover for war risks, since 1986 Clubs within the International Group of P&I Clubs have arranged an additional market war risk cover for war risk liabilities at no extra cost for their members. After September 11, the International Group Clubs issued a General Notice of Cancellation of the Excess Loss war risks cover.¹³²

An Interview on War Risks P&I Cover Following the Events of September 11

In this case, it is important to focus on the details of these new changes in war risks P&I cover post September 11 and reflect ideas of Luke Readman who is Chairman of Thomas Miller P&I Ltd, the London agents of the managers of the UK P&I Club. At a meeting held on 28 January 2002 the Directors of the UK Club were agreed on providing special war risks P&I cover to their members on a more restricted basis than previously.

According to him, the Club's special war risks cover (dating back to 1987) for traditional P&I liabilities such as crew and environmental claims "was never intended as a substitute for proper market cover". However, after the rapid increase in war risk rates because of September 11 he stated that "there was a possibility that an owner might seek to save on the cost of P&I war risk insurance by not taking out adequate cover in the knowledge that the Clubs' safety net insurance would, if required, protect his position".¹³³

New Arrangements

According to Readman, the new cover arrangements for P&I war risks will still respond to claims which otherwise would be excluded by the war risks exclusion in the Club Rules (which now expressly includes "any act of terrorism" following an amendment of 20 February 2002). But the cover is applicable only to the claims in excess of the "proper value" of the entered ship or whatever sum is recoverable from war risks underwriters "whichever is greater". He stated that the changes mean that

¹³² Ibid.

¹³³ Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, War Risks P&I Cover Post September 11, p. 14

“the special war risks P&I cover sits on the top of the basic market P&I war risks cover up to at least the insured value of the ship.” As an example he said that, “if the hull value is US\$50 million, then the hull war risk cover will be US\$50 million and correspondingly, the P&I war risk cover should be US\$50 million. The special P&I war risks cover provided by the Club would be for US\$200 million ‘sitting on top’ of the basic \$50 million of cover for P&I war risk provided by the market.”¹³⁴

Limits on Cover

According to the new Club Rules, when the proper value of a ship is more than US\$100 million its proper value will be deemed not to extend US\$100 million. Readman’s explanation about the thinking behind that rule is that: “with very high value ships, such as cruise ships and new LNG tankers there was a market capacity problem – so the Clubs have agreed that even if a ship is worth more than US\$100 million, provided primary cover of at least US\$100 million for P&I war risks is in place, then the Club special cover will still sit on top.”¹³⁵

War Risks and Mutuality

He told that: “from the point of view of the Club’s war risks cover, there is no difference between an entered cruise ship and a bulk carrier- they are all entitled to the same level of cover.” He added that “the function of the Clubs is to provide the widest possible protection on a world-wide basis for their members- that is why the Clubs have never sought to charge an additional premium like war risk under writers, for parts of the world perceived as particularly unsafe.” (It should be noted that the Clubs reserve the right to exclude a dangerous area of the world perceived as particularly unsafe) Moreover, it is important to emphasize that the terrorist threat is more difficult to predict than traditional war risks.¹³⁶

In this case, there arises a question: how fair is it to share war risks between all types of ships, irrespective of their potential vulnerability to a terrorist attack? Readman answered the question that: P&I war risks “are reinsured and, in any event, the cost

¹³⁴ Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, War Risks P&I Cover Post September 11, p. 14

¹³⁵ Ibid.

¹³⁶ Ibid.

of reinsurance is not passed on to individual members- it is part of the ordinary P&I cover". He added that he sees this as "a demonstration of the mutual principle, as well as the inherent flexibility of mutuals, with all members on the same footing as regards P&I war risk cover". Also the P&I war risk cover provided by the Clubs is limited- if an individual owner wants cover over US\$200 million he "must arrange this additional cover as the Clubs' role is only to provide a basic level of support."¹³⁷

Finally, Readman pointed out to a potential reinsurance problem, which is the result of the Clubs taking on more responsibility in relation to terrorism beyond the special P&I cover presently in place, that " there is a clear division between marine and war risks- there is no doubt that terrorism falls on the war risk side. Any move to include terrorism within general marine cover would cause problems in relation to the US\$2 billion reinsurance presently in place- in this context it is worth bearing in mind that there is absolutely no chance of arranging US\$2 billion commercial reinsurance for war risks!"¹³⁸

¹³⁷ Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, War Risks P&I Cover Post September 11, p. 14

¹³⁸ Ibid.

CHAPTER 8: WAR RISKS P&I COVER

For the 2004 policy year which was the third policy year after September 11 the UK Club like many other P&I Clubs had continued to adapt the terms of the special war risks P&I cover. War risks including the acts of terrorism, were excluded from the normal P&I cover under the Club Rules however, special war risks P&I cover was re-established by annual resolution of the Club Directors.¹³⁹

For the year 2004 the Directors of the Club passed a resolution on war risks P&I cover. The terms of this cover were the same as for the previous policy year except that a lower limit was determined for risks associated with the Athens Olympic Games.¹⁴⁰

i) Lower Limit for Athens Olympics Period

Reinsuring underwriters provided a lower limit on the available, i.e. US\$50 million (any event/each ship) in respect of ships in and around Athens during the period of the Olympic Games and associated sporting events. The reason for the lower limit was the perceived concentration of risk for this particular area during that particular period of time. If the shipowners need higher limits of cover, they would have to buy this individually on the market.¹⁴¹

It was submitted that major international events such as the Olympics will need security protection and insurance cover as a result of the increased terrorist threat. The owners and the war risk insurers need to remain alert to the threat whatever ships they operate and wherever they trade.¹⁴²

Moreover, it is submitted that a prescriptive approach to this kind of risk would be inappropriate and difficult to apply. Also, it is thought that underwriters have to take account of the threat posed, the people and assets involved, the vulnerability of the events, vessels or installations and the extent of upgraded security applied. According

¹³⁹ Readman Luke, Shipping and Transport Lawyer International, Volume 4, Number 4, 2004, War Risks P&I Cover, p. 26

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Culley John, Olympic Signs of Relief From War Risks Insurers, Maritime Risk International, September 2004, p.26

to John Culley, director, Thomas Miller War Risks Services, individual assessment therefore predominate for some time to come.¹⁴³

According to Culley, while shipowners will prefer the number of AP areas and premium levels to be as possible, continuing the flexible approach adopted for the Olympic Games offers the best prospect of balancing all interests successfully.¹⁴⁴

ii) General Features

Apart from the lower limit provided for risks associated with the Athens Olympic Games other features of the cover remained unchanged.¹⁴⁵

a) Limit

The limit of the cover was doubled in 2003. However, it remained at US\$400 million (each ship/ any event), or any lower limit as per vessel's terms of entry for the 2004 policy year. This limit functions in the aggregate: where the same ship entered by different interests in the UK Club or in more than one International Group Club, the aggregate recovery from the Clubs involved in respect of all liabilities covered by the war risks P&I cover cannot exceed the relevant limit per ship per event.¹⁴⁶

b) Excess Point

For the previous policy year (2003), the war risks P&I cover only responded to claims in excess of the proper value of the entered ship as defined in the Club Rules or whatever sum is recoverable from war risk underwriters, whichever is the greater. Members needed to maintain war risks P&I cover from their normal primary war risks underwriter up to at least the proper value of the ship. However, this did not apply to charterer members (other than a charterer by demise or bareboat charterer) whose cover from the Club was only subject to his ordinary P&I deductible.

The relevant club rule states that the "proper value" of the ship, for which an entered ship should be insured or deemed to be insured, shall be the market value without

¹⁴³ Culley John, Olympic Signs of Relief From War Risks Insurers, Maritime Risk International, September 2004, p.26

¹⁴⁴ Ibid.

¹⁴⁵ Readman Luke, Shipping and Transport Lawyer International, Volume 4, Number 4, 2004, War Risks P&I Cover, p. 26

¹⁴⁶ Ibid.

commitment. The note to this Rule also demands that members should review the ship's insured value at approximately frequent intervals and to consult their brokers and/or ship valuers to asses periodically the proper amount for which insurance should be effected to cover P&I liabilities under their insurance policies.¹⁴⁷

As a conclusion, of the rapidly changing market values experienced in recent months, the Club sent out a circular to members reminding them to review the relevant values more frequently and asses the proper value in the light of more frequent consultation with their brokers and/or ship valuers to ensure that the value for insurance purposes reflected the market value without commitment.¹⁴⁸

US TRIA Coverage

The UK Club's special war risks P&I cover includes cover for liabilities arising out of U.S. acts of terrorism as defined in the 2002 Terrorism Risk Insurance Act (TRIA). Under this act, the U.S. Government indemnifies 90 percent of insured losses resulting from certified acts of terrorism under certain conditions. Not all the ships entered in other Clubs in the International Group are covered by TRIA. However, all ships whether U.S. or non-U.S. flag, entered in the UK Club are covered by TRIA because the Club qualifies as a TRIA insurer and the Club may therefore benefit from the US Government's 90 percent indemnification. Although, there is not any passing of recovery on to the reinsurers and the Club itself does not benefit financially as a result, all Clubs and their members would benefit to the extent that a recovery from the U.S. Government helps to make cover from the reinsurers available for subsequent incidents and at a lower cost.¹⁴⁹

“Bio-chem” Exclusion

The 2004 war risks P&I cover contains the same exclusion as for the 2003 policy year in respect of bio-chem risks. The related clause is made in the terms of the reinsurance and in the primary cover: “This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith: 1. In no case shall this insurance cover loss damage liability or expense directly or indirectly

¹⁴⁷ Readman Luke, Shipping and Transport Lawyer International, Volume 4, Number 4, 2004, War Risks P&I Cover, p. 26

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

caused by or contributed to by or arising from 1.1 any chemical, bio-chemical or electromagnetic weapon.1.2 the use or operation, as a means for inflicting harm of any computer virus.”¹⁵⁰

The intention of the reinsuring underwriters in using this clause has been clarified by the following statement of the brokers: “It is our understanding that the phrase ‘any chemical, biochemical... weapon’ was intended by Underwriters to exclude neurological or viral agents such as sarin, mustard gas, anthrax, smallpox etc. It is not intended to refer to explosives or methods of their detonation or attachment. Nor does it refer to the use of a vessel or its cargo is itself a chemical or biochemical weapon within the scope of the clause.”¹⁵¹

To explain the above statement it can be shown as an example that: the use by a terrorist of a ship carrying a conventional chemical cargo will not be excluded by the bio-chem exclusion but that, if there is a chemical weapon in the cargo, it will be excluded. Therefore, such terrorist use of a ship and its cargo is to be treated as a war risks claim and not excluded by the clause.¹⁵²

War Risks P&I “Bio-Chem” Cover

The “bio-chem” exclusion clause or variation of it has become universal in war risks insurance in the light of the restrictions of the reinsurance market. The exclusion still creates an unsatisfactory position for shipowners, despite the clarification issued by underwriters since it is possible they may face to liabilities arising from an incident involving the use of these weapons.¹⁵³

Although international conventions provide shipowners a defence to liability in the event of a terrorist act, this is generally based on the wording which refers to loss or damage wholly caused by the act of a third party with intent to cause damage. However, a court may hold that there is contributory negligence on the part of the shipowner (for instance in not preventing a terrorist access to the ship) the defence may be lost and the shipowner faces a claim which is excluded by the “bio-chem”

¹⁵⁰ Ibid., p.27

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

exclusion in his war risks policy. The shipowner may also have a contractual liability to his crew irrespective of the cause of the incident.¹⁵⁴

As a result of this problem, the Boards of the International Group Clubs have chosen to pool certain “bio-chem” claims under the war risks cover. A supplementary Resolution was passed by the UK Club Directors on 15 March 2004 to provide supplementary cover to members in respect of certain “bio-chem” claims.¹⁵⁵

The scope of the “bio-chem” cover is narrower than the war risks P&I cover. It only applies in respect of crew risks and legal costs relating to other P&I liabilities, to the extent that they are not recoverable under the shipowner’s normal war risks P&I cover solely by virtue of the operation of the bio-chem exclusion (as interpreted in accordance referred to above).¹⁵⁶

The Club provides this new pooled facility from the ground up (in excess of Members’ usual deductibles) with a limit of U.S. \$20 million per event per ship. The first \$5 million of any claim is retained by the Clubs as usual, and the U.S.\$15 million excess is then pooled in accordance with the usual pooling percentages under the Pooling Agreement. Since the cover is pooled with no market reinsurance back up, it is not subject to any terms and conditions of the reinsurance market. Therefore, the scope and limit of this cover is substantially less than that provided under the ordinary war risks P&I cover. In addition to these mentioned above, further safeguards are provided for the Club in giving the cover. Particularly, the “bio-chem” cover may be cancelled by giving not less than 24 hours’ notice. For instance, at the time of the Olympic Games the area around Athens was excluded in respect of all ships, not only passenger ships being used for accommodation. As a conclusion, it is important to emphasize that despite these limitations The Clubs in the International Group have been able to provide at least some cover against a risk which is almost wholly uninsurable in the market through their mutual structure and pooling arrangements.¹⁵⁷

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

CHAPTER 9: NORWEGIANS ASSESS SHIPPING RISKS

The Norwegian Shipowners' Association (NSA) has presented a research report on the consequences for shipping of the 11, 2001 terrorist attacks in the US, and ways in which war-risk insurance related to terrorism could be arranged. The report concludes that the world is no more dangerous to shipping after September 11 than it was before, however, the industry should nevertheless chart potential dangers and prepare counter-measures against them.¹⁵⁸

Participants in the project included the Norwegian Institute of International Affairs, Norwegian Marine Technology research Institute, Det Norske Veritas and the Norwegian School of Economics and Business Administration, with former DNV CEO Svein Ulrig as the project manager. The team interviewed 18 experts in related matters.¹⁵⁹

In its conclusions, the team had the following statements: Terrorism had been a recognised risk in shipping ever since the hijacking of the Italian cruise liner Achille Lauro in 1985. However, September 11 events have caused fears that ships might be used as weapons in terrorist action, which is a new aspect. Short term effects of the attacks were "temporary and modest", but demands for greater openness in the financial world will also affect shipping. The diplomatic moves that followed the attacks will have long-lasting effects while the terrorists have so far failed to achieve their goals. The fight against terrorism must embrace a broad front, while over-reaction should be avoided. The maritime sector should, however, examine "worst-case attack" scenarios so that workable counter-measures could be planned.¹⁶⁰

The team divided its work into five sectors, the first being the economy. The long-term effects of the September 11 events will largely depend on whether new attacks will take place and if so how these will affect international commodity trades or particular trade routes. Even an incident considered rather minor from a political point of view could have substantial consequences for shipping. It was said that the September 11 events did not have such an effect. However, they could have delayed

¹⁵⁸ Fairplay, July 4, 2002, Norwegians Assess Shipping Risks, p.23

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

recovery of the US economy in the short term, while possible higher defence spending might reduce growth in other sectors. World trade has become more sensitive to terrorism than it was a few decades ago. According to the report: growing outsourcing by many industries means that the effects of a local shock will more directly affect other regions, and these effects are mirrored in trade and transport.¹⁶¹

Concerning the political front, the team concluded that piracy remains a greater risk to shipping than terrorism. Because some countries fail to police their coast, the formation of “international coast guards” remains an issue. As a measure, officials in the US have called for the inspection of inbound containers and the team said that multilateral action would be better in tackling the threat than unilateral measures by one country.¹⁶²

Global diplomacy was the third sector study considered by the team. In this study the team focused on the “extended Middle Eastern” region, because of its oil reserves. There were some important issues examined: Can Russia play the energy card. Should governments in Saudi Arabia and Egypt fall? The team said that the situation would “get out of hand”.¹⁶³

The fourth area examined by the team was direct threats that could affect shipping and they identified seven possible scenarios: They were: container vessels used as a “Trojan box”; an attack on chemical carriers, gas carriers or passenger ships; oil pollution caused by an attack on a tanker; the destruction of oil production installations and sabotage of IT systems.¹⁶⁴

The team proposed 11 ways of improving security. The suggestions ranged from: speeding up the installation of automated identification systems on ships, imposing new requirements for both port and shipboard security officers and security plans,

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

inspection of cargo units, transparency in vessel ownership and introduction of equipment to prevent boarding of ships in port and at sea.¹⁶⁵

The fifth and the final aspect of their work concerned war insurance in terrorism-related risks. The team proposed three ways of arranging this. Each option assumed that it was the responsibility of the Norwegian government to participate in protecting the merchant fleet against terrorism, because ships form part of the country's contingency plans.¹⁶⁶

The first proposal suggested that a new war-risk pool should be set up and the government should provide a guarantee against risks exceeding a certain level. The second proposal built on a layered model, whereby the market covered risks up to a certain level. Thereafter, a war-risk pool plus reinsurance cover would provide the second layer and the government would guarantee risks that could not obtain commercial cover. The third option suggested that underwriters and reinsurance companies should assume part of terrorism risks in their normal cover, but that the government should provide guarantees for excess cover.¹⁶⁷

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

CHAPTER 10: CONCLUSION AND RECOMMENDATIONS

Terrorism is one of the most recent, specific war perils that have taken place in different forms in marine war risks policies since 1983. Many terrorist acts before then would have been excluded by the Malicious Damage Clause introduced into the Institute Time Clauses in 1970 and accordingly insured (albeit with slightly different wording) in the War Risks Policy then in use.¹⁶⁸

The Institute War and Strikes Clauses seem sufficiently widely drawn to cover every form of terrorism that may be devised in the future. As examined in details in chapter 5 the scope of the clauses are very comprehensive. It can be submitted that the wording of the list of insured perils in the Institute War and Strikes Clauses (Hulls):"1.3 derelict mines torpedoes bombs or other derelict weapons of war... 1.5 any terrorist or any person acting maliciously or from a political motive." can cover any form of terror as considered in chapter 5.¹⁶⁹

On the other hand, there is a great uncertainty area that concerns the cruise ship industry and whether the present structure of the war risks market requires any radical change to provide affordable cover against terrorist acts. Especially, as a result of the new Athens Protocol 2002 the P&I Clubs have to face very significantly increased liabilities towards passengers. Although, an owner and his insurer might not be liable under the Athens Convention for the consequences of a terrorist attack, determined claimants will not be deterred if they consider that owners were partially liable. Despite the heightened terrorist threat, it is questionable whether the introduction of new capacity by the P&I Clubs is really needed, or even thought desirable by the Clubs themselves.¹⁷⁰

As examined in chapter 6, the regulation of many of the standard form charterparties for example BALTIME, SHELLTIME, GENCON AND CONWARTIME is inconsistent. It can be said that when a form deals with the key issues of liability for additional premiums and the right to renegotiate or cancel the charter, there is

¹⁶⁸ Baker Charles, Shipping and Transport Lawyer International, Volume 3, Number 4, 2002, Marine Insurance and the Terrorist Threat, p. 25

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

considerable scope for uncertainty on both sides. Also, only some of the forms provide regulations for these issues.¹⁷¹

It is vital for all parties to a charter to make efforts to overcome this abovementioned problem. It can be suggested that careful consideration must be given to the wording of any forms used and extra provisions must be considered.¹⁷²

It can be submitted that the analysis written in the Norwegian Shipowners' Association's research report are generally parallel to the analysis done in the previous chapters of this research project and the conclusions and recommendations in this report are highly valuable and important to be reflected in the conclusion chapter because of the targets aimed in this study. The conclusions reached from the analysis made in the previous chapters and stated hereunder have many parallel points with this report.

September 11 has caused a new era for the marine insurance sector. It led to fears that ships might be used as weapons in terrorist action which is a new aspect. It can be said that short term effects of the attacks were temporary and modest but demands for greater openness in the financial world will affect shipping. It can also be suggested that the maritime sector should examine "worst-case attack" scenarios so that workable counter-measures could be planned.¹⁷³

When the economic aspects of the September 11 events are considered it can be submitted that the long term effects largely depend on possible new attacks and if so how these affect international commodity trades or particular trade routes. It is obvious that world trade has become more sensitive to terrorism than it was a few decades ago.¹⁷⁴

When the political aspects of the September 11 attacks are considered it can be said that piracy is a greater risk to shipping than terrorism. As a result of the situation that

¹⁷¹ Miller, Neil Q., P & I International, The Impact of War & Terrorism On Charterparties, 2003, 17/2, p.17

¹⁷² Ibid.

¹⁷³ Fairplay, July 4, 2002, Norwegians Assess Shipping Risks, p.23

¹⁷⁴ Ibid.

some countries fail to secure their coasts, the formation of the international coast guards becomes an issue. It can be submitted that multilateral action would be better in tackling the threat than unilateral measures by one country.¹⁷⁵

When the global diplomacy field is considered after the September 11 the focus should be on the extended Middle Eastern region because of its oil reserves. The possible policy of Russia, the possible politic changes in countries like Egypt, Saudi Arabia can cause the situation to get out of hand.¹⁷⁶

It can be said that there are some direct threats that could affect shipping. These can be listed as: container vessels used as a “Trojan box”; an attack on chemical carriers, gas carriers or passenger ships; oil pollution caused by an attack on a tanker; the destruction of oil production installations and sabotage of IT systems.¹⁷⁷

Apart from the conclusions about the impact of terrorism on marine insurance written above some conclusions are also reached about the issues examined in marine insurance basics chapter. While examining the marine insurance basics in this study namely perils of the sea, cause of loss, excluded losses, proximate cause of loss, wilful misconduct it is noticed that it is impossible to find consistency in the court decisions given on these basic issues. It can be argued that this situation threatens interests of both sides of the sector, shipowners and insurers. Under these observed conditions shipowners cannot get enough covers and sometimes cannot get anything from insurers when they face risks. On the other hand, insurers are also in trouble to face the risks arising from the unpredictable, inconsistent approach of the courts. As a conclusion it can be said that both of the sides are unhappy about these existing facts of the sector.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

Recommendations

To avoid the existing situation about marine insurance basics mentioned above some suggestions can be argued. First, shipowners' chambers, insurance-reinsurance companies and P&I Clubs can establish specialized tribunals dealing with marine insurance disputes which will prevent parties to bring their action before courts. These specialized tribunals can include the representatives of all the parties listed above and a kind of mandatory arbitration system which brings all the parties of the sector can be quite functional. Second, shipowners and insurance-reinsurance companies can establish an alternative compensation system between each other. This can be a war-risk pool which is constituted by the contributions collected from the members of these parties. Third, the government can provide support to marine insurance market directly or indirectly. It can provide guarantee for risks exceeding certain cover which is an indirect support or it can directly give certain amounts of money to insurance-reinsurance companies' associations and P&I Clubs regularly.

In particular, to improve security against terror risks in marine insurance area some specific suggestions can be considered namely speeding up the installation of automated identification systems on ships, imposing new requirements for both port and shipboard security officers and security plans, inspection of cargo units, transparency in vessel ownership and introduction of equipment to prevent boarding of ships in port and at sea.¹⁷⁸

About the war insurance in terrorism related risks there are three proposals worthy to consider. First suggests that a new war-risk pool should be set up and the government should provide a guarantee against risks exceeding a certain level. The second proposal is built on a layered model, whereby the market covered risks up to a certain level. Thereafter, a war-risk pool plus reinsurance cover would provide the second layer and the government would guarantee risks that could not obtain commercial cover. The third option suggests that underwriters and reinsurance companies should assume part of terrorism risks in their normal cover, but that the government should provide guarantees for excess cover.¹⁷⁹

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

When the above explained suggestions are considered it is necessary to emphasize necessity of international collaboration between governments, P&I Clubs, insurance-reinsurance companies' associations. Terrorism is a global threat and marine insurance has the largest portion of it which affects all the countries common interests. This can be organised by international organizations such as International Maritime Organization.

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APPENDIX A: INTERNATIONAL HULL CLAUSES (01/11/02)

PART 1 – PRINCIPAL INSURING CONDITIONS

29. WAR EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by

- 29.1. war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
- 29.2. capture seizure arrest restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat
- 29.3. derelict mines torpedoes bombs or other derelict weapons of war.

30. STRIKES EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by

- 30.1. strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
- 30.2. any terrorist or any person acting from a political motive.

31. MALICIOUS ACTS EXCLUSION

In no case shall this insurance cover loss damage liability or expense arising from

- 31.1. the detonation of an explosive
- 31.2. any weapon of war

and caused by any person acting maliciously or from a political motive.

32. RADIOACTIVE CONTAMINATION EXCLUSION

In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

- 32.1. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
- 32.2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
- 32.3. any weapon employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- 32.4. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this Clause 32.4 does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural,

medical, scientific or other similar peaceful purposes.

33. CHEMICAL, BIOLOGICAL, BIO-CHEMICAL, ELECTROMAGNETIC WEAPONS AND CYBER ATTACK EXCLUSION

In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

- 33.1. any chemical, biological, bio-chemical or electromagnetic weapon
- 33.2. the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system.

APPENDIX B

BIMCO Standard War Risks Clause for Time Charters, 1993 Code Name: "CONWARTIME 1993"

(1) For the purpose of this Clause, the words:

(b) "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever'), by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.

(4)

(b) If the Underwriters of such insurance should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then such premiums and/or calls shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due

NYPE 93

6. Owners to Provide

The Owners shall provide and pay for the insurance of the Vessel, except as otherwise provided, and for all provisions, cabin, deck, engine-room and other necessary stores, including boiler water; shall pay for wages, consular shipping and discharging fees of the crew and charges for port services pertaining to the crew; shall maintain the Vessel's class and keep her in a thoroughly efficient state in hull,

machinery and equipment for and during the service, and have a full complement of officers and crew.

31. Protective Clauses

This Charter Party is subject to the following clauses all of which are also to be included in all bills of lading or waybills issued hereunder:

(e) WAR CLAUSES

"(i) No contraband of war shall be shipped. The Vessel shall not be required, without the consent of the Owners, which shall not be unreasonably withheld, to enter any port or zone which is involved in a state of war, warlike operations, or hostilities, civil strife, insurrection or piracy whether there be a declaration of war or not, where the Vessel, cargo or crew might reasonably be expected to be subject to capture, seizure or arrest, or to a hostile act by a belligerent power (the term "power" meaning any de jure or de facto authority or any purported governmental organization maintaining naval, military or air forces).

(ii) If such consent is given by the Owners, the Charterers will pay the provable additional cost of insuring the Vessel against hull war risks in an amount equal to the value under her ordinary hull policy but not exceeding a valuation of . In addition, the Owners may purchase and the Charterers will pay for war risk insurance on ancillary risks such as loss of hire, freight disbursements, total loss, blocking and trapping, etc. If such insurance is not obtainable commercially or through a government program, the Vessel shall not be required to enter or remain at any such port or zone.

(iii) In the event of the existence of the conditions described in (i) subsequent to the date of this Charter, or while the Vessel is on hire under this Charter, the Charterers shall, in respect of voyages to any such port or zone assume the provable additional cost of wages and insurance properly incurred in connection with master, officers and crew as a consequence of such war, warlike operations or hostilities.

(iv) Any war bonus to officers and crew due to the Vessel's trading or cargo carried shall be for the Charterers' account."

"BALTIME 1939" Uniform Time-Charter (as revised 2001)

21. Cancelling

Should the Vessel not be delivered by the date indicated in Box 22, the Charterers shall have the option of cancelling. If the Vessel cannot be delivered by the cancelling date, the Charterers, if required, shall declare within 48 hours after receiving notice thereof whether they cancel or will take delivery of the Vessel.

"BOXTIME" Charter Party

19. War

(a) Unless the consent of the Owners be first obtained, the Vessel shall not be ordered to nor obliged to:

(i) remain in or pass through any area which is dangerous or is likely to become dangerous as a result of war, hostilities, warlike action or piracy, actual or threatened, nor

(ii) call at any port where there is any revolution, civil war, civil commotion or any threat thereof, nor

(iii) carry any goods that may in any way expose her to any risk of seizure, capture or detention.

(b) However, should the Owners consent to allowing the Vessel to proceed, notwithstanding the existence or threat of the danger(s) outlined in Clause 19 (a), the Owners agree that the Vessel proceeds at their own risk in consideration of the Charterers agreeing that the Owners may effect the following insurances for which the Charterers will reimburse the Owners the netcost of premium/calls therefor: (See Clause 6 (n))

(i) Reinstatement of the War Risks cover on Hull and P & I for trading to the required area.

(ii) Any further additional premia necessary to maintain Hull cover whilst blocked or trapped pending release of the Vessel, acceptance of constructive total loss by insurers or trapped for consecutive days, whichever shall first occur.

(iii) Insurance of hire on the Vessel for not exceeding 365 days.

(c) In the event of the wages of the Master, Officers and/or crew and/or other of the Vessel's operating expenses are affected by any of the factors mentioned in (a) above, the amount of any increase shall be added to the hire due upon production of the

Owners' account therefor together with appropriate receipts and paid by the Charterers to the Owners with the next hire payment.

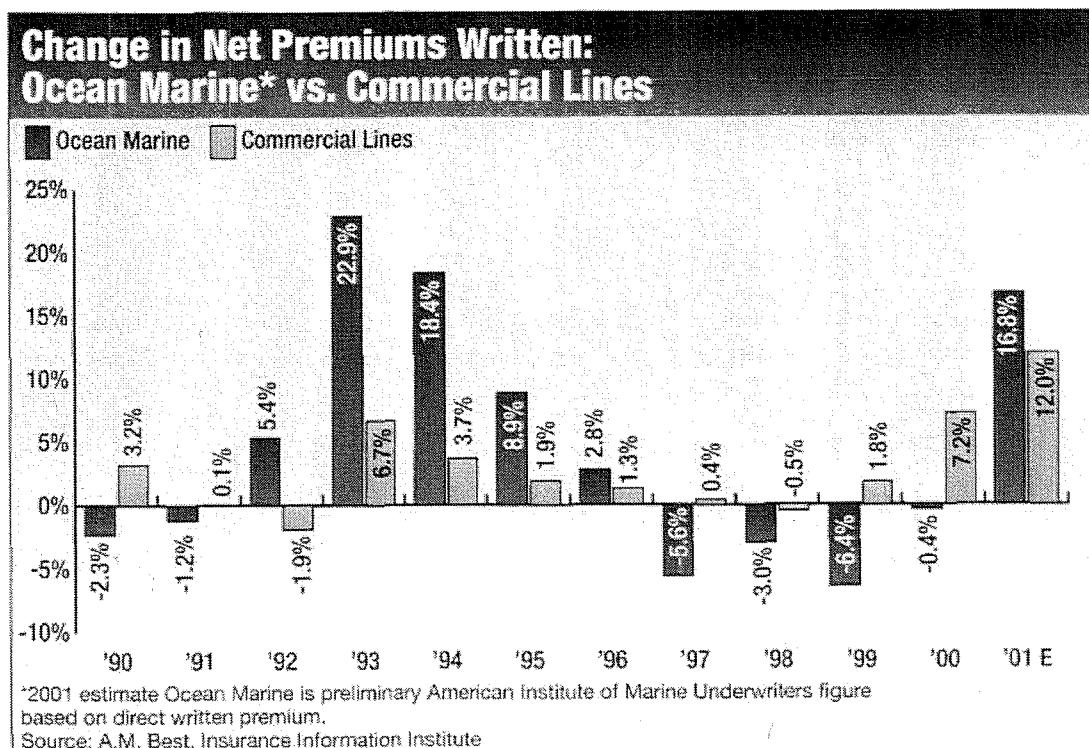
(d) The Vessel shall have the liberty to comply with any orders or directions of whatsoever nature given by the government of the nation where the Owners are domiciled or whose flag the Vessel flies or any other government or person or body acting, or purporting to act, with the authority of such government or by any party having, under the terms of the war risk insurance on the Vessel, the right to give such orders or directions.

(e) In the event of the outbreak of war, whether there be a declaration of war or not, between any two or more of the following countries or involving the nation where the Owners are domiciled or whose flag the Vessel flies:

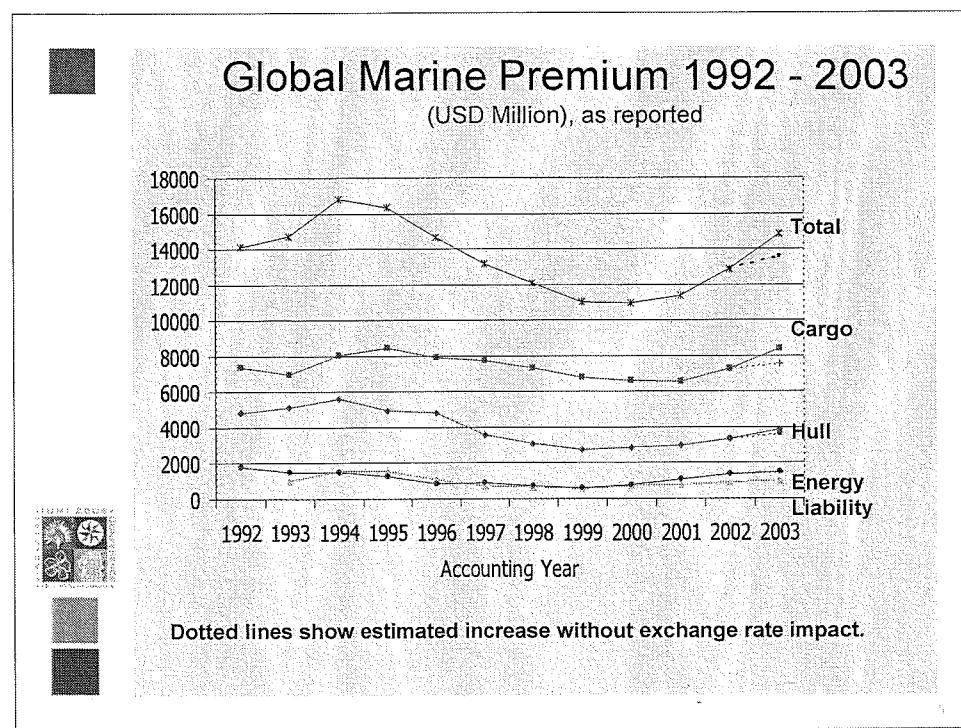
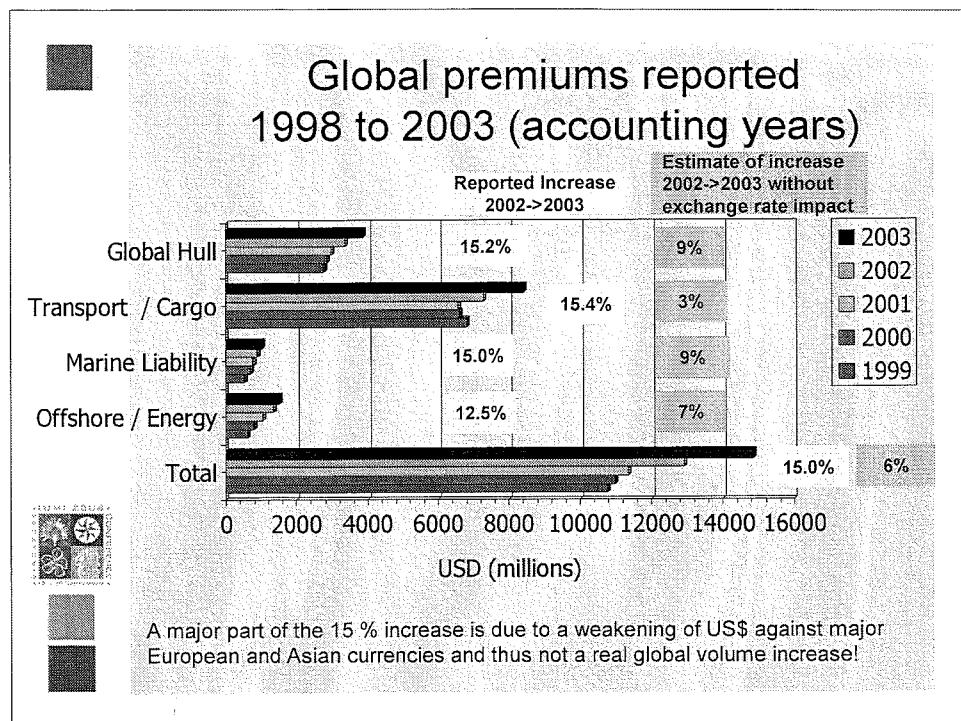
People's Republic of China, France, Federal Republic of Germany, United States of America, United Kingdom, Union of Soviet Socialist Republics, either the Owners or the Charterers may cancel this Charter Party and, unless otherwise agreed, the Vessel shall be redelivered to the Owners at the port of destination or, if debarred under this Clause from reaching or entering it, at a near open and safe port at the Owners' option after discharge of any goods and containers on board.

(f) If in compliance with the provisions of this Clause anything is done or is not done, such shall not be deemed a deviation.

APPENDIX C



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