

# **Measure of indemnity in Hull & Machinery claims**

## **Section 69 and all that!**

MLAANZ – September, 2014

# Marine Insurance Act(s)

## Section 69. Partial loss of ship

Where a ship is damaged but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows:-

Note:       Section 69 of the English MIA, 1906 =  
              Section 75 of the Australian MIA, 1909 =  
              Section 69 of the New Zealand MIA, 1908

## Section 69(1)

Where the ship has been repaired, the assured is entitled to the reasonable cost of repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty.

Consider:

1. Opportunity [Irvin v Hine (1950)]
2. Place (ITC (Hulls) Clause 10)
3. Repairer (ITC (Hulls) Clause 10)
4. How / with what - “Claims payable without deduction new for old.” (ITC (Hulls) Clause 14) - [Versloot v HDI (2013)]

## Section 69(2)

Where a ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above.

## Section 69(3)

Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage computed as above.

# Unrepaired damage

- Scenario 1.

- Estimated repairs \$ 1,000,000
- Sound market value: \$ 1,500,000
- Damaged market value \$ 400,000

Claim based on the estimated cost of repairs = \$ 1,000,000

- Scenario 2

- Estimated repairs \$ 1,000,000
- Sound market value: \$ 1,500,000
- Damaged value (as scrap) \$ 600,000

Claim based on the depreciation = \$ 900,000

## Section 69(3)

Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage computed as above.

Consider (Arguments raised by Davis Walsh, Quadrant Chambers at IUA Market Briefing, March 2014)

At what point does one determine whether or not the ship has not been repaired?

- (a) When the claim is presented
- (b) Date of the casualty
- (c) **When the policy expires** (“Medina Princess” (1965), “Catariba” (1995))
- (d) Some other point in time

# Reason for repairs not completed.

- Accident happened at the end of the policy year and no time to do the repairs
- Parts have a significant lead time and are awaited.
- Waiting to the next “reasonable opportunity” (as established under Section 69(1)) which is the next dry-docking which is a year or more away and will save insurers money.

**Would insurers ever run the argument? Eventually!**



# Association of Average Adjusters Probationary Rule of Practice A4(2):

*Where a claim for particular average arises and the Assured has elected to repair the vessel, the Assured is entitled to:*

- a) recover the reasonable cost of repairs in terms of section 69(1) of the Marine Insurance Act 1906, irrespective of whether repairs are carried out before or after the expiry of the policy.*
- b) defer repairs, subject to Class approval, to the first reasonable opportunity which is likely to be the next routine overhaul or dry-docking period. Any increase in the overall cost of repairs arising from deferment beyond the first reasonable opportunity will be for the account of the Assured.*