



Current Issues in Marine Insurance

McELROYS

LITIGATION LAWYERS

Overview

- Misrepresentation/non-disclosure
- UK developments
- Collateral lies
- Marine cyber risk insurance
- Interpretation – Ship Repairer's Liability

Misrep / Non-Disclosure

- Pre-contract obligation
- Over insure €13m yacht
- Can insurance decline
- Is that a “blot”?

UK Developments

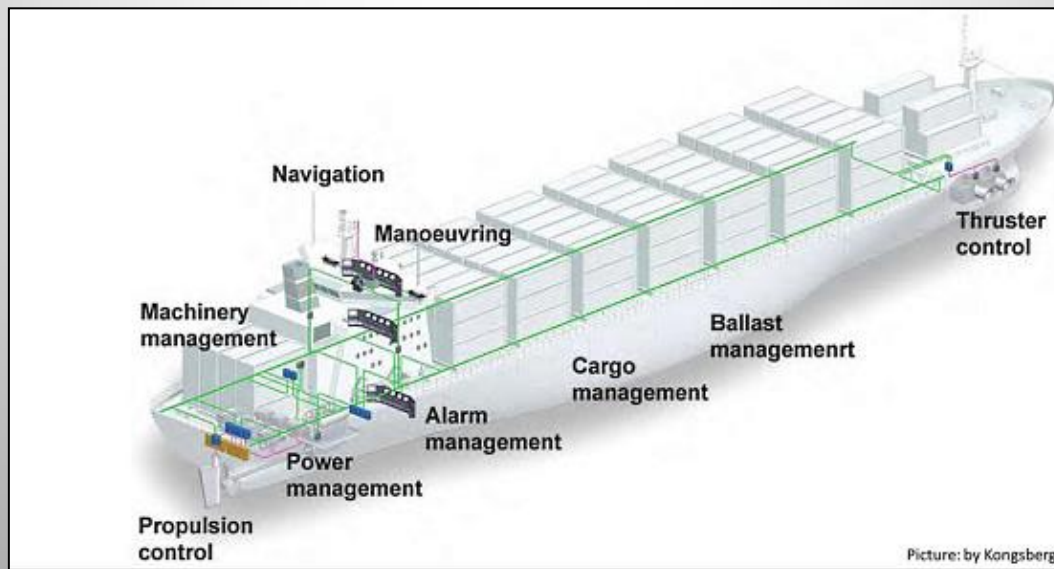
- Consumer Insurance (Disclosure and Representation) Act 2012 (UK)
- Insurance Act 2015 (UK)
 - “Fair presentation” s 3
 - Deliberate/reckless
 - Variation of terms
- ICNZ Fair Insurance Code 2016
 - Be “reasonable”
- Late payment
 - UK Enterprise Act 2016 – reasonable
 - ICNZ Code - quickly

“Collateral lies”

- Superintendent’s lie
- Declinature
- Fraudulent device?
- Two courts agreed
- Supreme Court UK abolished rule
- Insurer to pay

Marine Cyber Risk Insurance

- Disruption to ship, logistics, certification
- Goods diverted
- Cyber risk exclusion
- Scope of cover : physical loss



Interpretation – Ship Repairers' Liability

This insurance shall not cover any liability ... in respect of loss or damage specified in [cover clause] above unless discovered and reported in writing to Underwriters within [X time] of the delivery to owners or within [Y time] after the work is completed by the Assured, whichever may first occur.

Section 9 – Insurance Law Reform Act 1977

A clause prescribing any limit of time within which notice of any claim must be given to the insurer by the insured, will be binding only if the insurer has been prejudiced by the delay.

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Section 11 – Insurance Law Reform Act 1977

Prevents an insurer from relying on an exclusion clause where

- (i) The clause is aimed at the happening of certain events or the existence of certain circumstances deemed to increase the risk of loss occurring; and
- (ii) The insured can establish that that event or circumstances did not cause or contribute to the loss being claimed for.

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