



# SEMAPHORE

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## Claimant Wins Case of Stricken Yacht

An intriguing situation involving a yacht which perished in the Sulu Sea (south of the Philippines) was outlined to conference delegates by senior solicitor Natalie Jagusch of law firm Duncan Cotterill.

Her case note referred to the case of *Linda McKeever v Northernreef Insurance Co SA* [2019] 2 Lloyds Rep.161 and involved the yacht *Creola* which on March 19, 2014 grounded on a reef in the Sulu Sea.

Ms McKeever and her crew were forced to abandon the yacht but when they returned to the vessel, they found it had been looted and damaged. The cabin had been padlocked but this had been broken open by the looters. As a result, seawater got into the interior of the craft.

The yacht was insured by Northernreef Insurance and Ms McKeever made a claim under the policy for the loss and damage sustained. While Northernreef did not decline the claim, neither did they pay out. Therefore, Ms McKeever issued proceedings and sought recovery under the policy for:

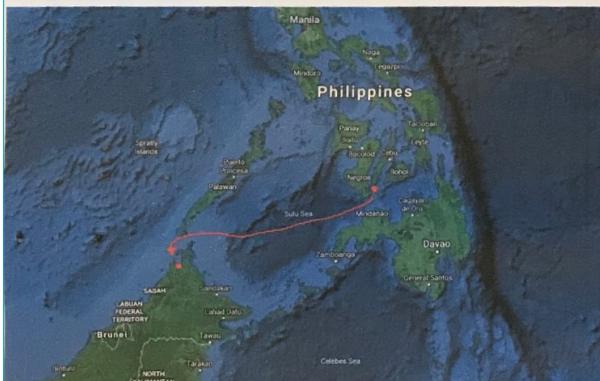
- damage to the yacht
- indemnity for items stolen
- recovery of sums paid for guarding the yacht and towing it

Ms Jagusch said the key issues that the court was required to determine were:

- the perils of the sea – whether the grounding was fortuitous and whether the defendant was entitled to resist the claimant’s claim for damage proximately caused by the grounding
- water ingress – whether the damage caused by water ingress was recoverable
- theft – whether the theft resulted from any negligence on the part of the claimant

### Facts

Linda McKeever owned 'CREOLA', a sailing yacht  
19 March 2014, CREOLA grounded on a reef in the Sulu Sea  
Linda McKeever and her crew were forced to abandon CREOLA  
When they returned, CREOLA had been looted and damaged



*The Creola case stemmed from events after a yacht perished on a reef*

In terms of the first issue relating to the perils of the sea, Ms Jagusch said there was no argument that the grounding on the reef was a peril of the sea but the defendant argued that there should be no cover due to a lack of maintenance of the yacht, unseaworthiness and negligence.

In terms of water ingress, the claimant sought damages for loss caused by water which had got into the yacht as a result of the looters breaking in. The policy covered damage from piracy and from malicious acts.

In the third key issue of theft, the defendant admitted that there had been theft and the court considered whether any exclusions applied, due to loss arising as a result from want of due diligence or negligence.

Ms Jagusch said the outcome of the case was that the claimant was entitled to:

1. recovery under the policy for damages for loss caused by the grounding – the court determined that the grounding was caused by a peril of the sea and there was no reason why the claim should not be covered
2. damages for loss caused by water ingress – the court held that the damage was not caused by piracy or a malicious act, but it was caused by a peril of the sea which was covered
3. damages for loss caused by theft – the court held that there was no negligence or want of due diligence

The claimant succeeded on all counts.

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