

# A brief introduction to the DTV-ADS 2009

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# Agenda

- 1 Status and Motives
- 2 Structure now and then
- 3 Unseaworthiness
- 4 Latent Defect
- 5 Third Party Liability and pollution/anti-pollution issues

## Status and motives

- The Allgemeine Deutsche Seeversicherung clauses date from 1919
- Partly altered by DTV Hull Clauses 1978, 1992 and 2004 as well as by marine prints and broker clauses
- Apparent development and change in machinery, jurisdiction and economy since 1919
- Strong need for restructuring and simplifying existing clauses
- Contract Certainty

## Structure now and then: Conditions Jungle vs. Contract Certainty

### Status

ADS 1919

DTV Hull Clauses 1978

DTV Hull Clauses 2002

DTV Hull Clauses 2004

Hull Prints 2/2002

Hull Print 12/2003

Broker clauses

### DTV-ADS 2009

Ch 1: General Provision

(cl. 1 – 53)

Ch 2: Hull and Machinery

(Cl. 54 – 66) (as agreed)

Ch 3: Increased Value

(Cl. 67 – 69) (as agreed)

Ch 4: Loss of Hire

(Cl. 70 – 81) (as agreed)

Ch 5: Mines Clause

(Cl. 82) (as agreed)

Ch 6: War

(Cl. 83 – 88) (as agreed)

Ch 7: Closing provisions

(Cl. 89 – 91)

## Seaworthiness: the ADS/DTV Hull Clauses approach

### Clause 23 DTV Hull Clauses:

The Insurer is free from liability in case of

- Unseaworthiness of the vessel
- which caused the loss

burden of proof: Insurer

UNLESS

- no fault on the insured's side

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burden of proof: Insured

## The DTV-ADS 2009 approach: Ship Safety Regulations

What is it?

Cl. 33.1.1:

*The term “ship safety regulations” refers to any applicable provisions contained in the international conventions, laws, directives and rules of classification companies which serve to safeguard the safe operation of the vessel.*

## The DTV-ADS 2009 approach: Ship Safety Regulations

The Insurer is free from liability in case of

- failure of the Insured to comply with a ship safety regulation



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## The DTV-ADS 2009 approach: Ship Safety Regulations

The Insurer is free from liability in case of

- failure of the Insured to comply with a ship safety regulation
- burden of proof: Insurer

UNLESS

- this failure had no bearing on the type or scale of the loss or damage

OR

- there was no deliberate or gross negligence act of the Insured

## The DTV-ADS 2009 approach: Ship Safety Regulations

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- failure of the Insured to comply with a ship safety regulation

burden of proof: Insurer

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OR

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burden of proof: Insured

## The DTV-ADS 2009 approach: Ship Safety Regulations

- Shift in burden of proof (causation)
  - improvement for the Insurer

*versus*

- ease in counter proof (gross negligence instead of fault)
  - improvement for the Insured

## The DTV-ADS 2009 approach: Ship Safety Regulations

The Insured has the choice:

Cl. 33.1:

*Compliance with ship safety regulations (applies insofar as Clause 33.2 – Seaworthiness; hazardous cargo, bulk cargo – has not been explicitly included in the insurance).*

## Latent defect: The ADS/DTV Hull Clauses approach

- Cover for
  - latent defects resulting from errors or faults in materials or manufacturing,
  - errors or defects in construction,
  - breakage of the vessel's shaft.
- Only for damage to machinery
- Limited to consequential damage (“ILSE”/Marine Print)

## Latent defect: The DTV-ADS 2009 approach

- Cover for
  - latent defects resulting from errors or faults in materials or manufacturing,
  - errors or defects in construction,
  - breakage of the vessel's shaft.
- For damage to machinery and hull
- Limited to consequential damage (“ILSE”/Marine Print), **but cover for items specifically classed**

## Third Party Liability and pollution/anti-pollution issues

- Cl. 65 DTV-ADS 2009 almost identical to Cl. 34 DTV Hull Clauses

BUT for one additional exclusion:

Cl. 65.4.1.5

*expenses incurred by third parties for loss prevention measures for which liability cover is not provided*



## Third Party Liability and pollution/anti-pollution issues

**Background:** Liability for costs incurred by third party ship owner by following orders from public authorities to remove pollutants from his sunken vessel

### Exclusion

#### 65.4.1.2

*damage caused by the release of liquid or gaseous substances, and of chemicals and other hazardous goods governed by Classes 1-9 of the IMDG Code, unless such loss or damage was proximately caused by collision of the insured vessel with another vessel and resulted in loss of or damage to such other vessel or property on board of such other vessel,*

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**Thank you for your interest**

**Nils Bremke - Dieter Schwampe**