

**The Insurance Act 2015 and The Enterprise Act 2016
So what has changed?**



Should it Stay or Should it Go?

Section 10 – Breach of Warranty

....

- (2) An insurer has no liability under a contract of insurance in respect of any loss occurring, or attributable to something happening, after a warranty (express or implied) in the contract has been breached but before the breach has been remedied.

....

Subsection (2) does not affect the liability of the insurer in respect of losses occurring, or attributable to something happening –

- (a) before the Breach of Warranty, or
- (b) if the breach can be remedied, after it has been remedied.

For the purposes of this section, a Breach of Warranty is to be taken as remedied –

- (a) in a case falling within subsection (6), if the risk to which the warranty relates later becomes essentially the same as that originally contemplated by the parties,
 - (b) in any other case, if the insured ceases to be in breach of the warranty.
- (6) A case falls within this subsection if –
- (a) the warranty in question requires that by an ascertainable time something is to be done (or not done), or a condition is to be fulfilled, or something is (or is not) to be the case, and
 - (b) that requirement is not complied with.

Section 11 – Terms Not Relevant to the Actual Loss

- (1) This section applies to a term (express or implied) of a contract of insurance, other than a term defining the risk as a whole, if compliance with it would tend to reduce the risk of one or more of the following –
 - (a) loss of a particular kind,
 - (b) loss of a particular location,
 - (c) loss at a particular time.

- (2) If a loss occurs, and the term has not been complied with, the insurer may not rely on the non-compliance to exclude, limit or discharge its liability under the contract for the loss if the insured satisfies subsection (3).

- (3) The insured satisfies this subsection if it shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

WARRANTIES

Warranted vessels classed and Class maintained.

Warranted turbo chargers (Vessel 1) overhauled under supervision of surveyor approved by underwriters and confirmed in satisfactory condition in writing within 21 days of attachment.

Warranted (Vessel 2) Special Survey ultrasonic gauging not less than 20% in excess of Class minimum requirements per Class Rules.

Warranted (Vessel 3) ship-to-ship transfer Standing Orders subject to audit/approval by external QM auditors approved by the Underwriter prior to inception.

Warranted (Vessel 3) subject to Condition Survey by surveyor appointed by underwriters and all recommendations/requirements complied with within 28 days or as agreed.

Question 1

“Warranted vessels classed and Class maintained”.

Does this warranty:

- a) Define the risk as a whole; or
- b) Reduce the risk of a particular kind, at a particular place, or at a particular time?

Question 2

“Warranted in respect of vessel 2 Special Survey Ultrasonic gauging’s not less than 20% in excess of Class minimum requirements per Class Rules”.

Does this warranty:

- a) Go to the risk as a whole; or
- b) Reduce the risk of a particular kind, at a particular place, or at a particular time?

Question 3

“Warranted turbo chargers (Vessel 1) overhauled under supervision of surveyor approved by underwriters and confirmed in satisfactory condition in writing within 21 days.”

Does this warranty:

- a) Define the risk as a whole; or
- b) Reduce the risk of a particular kind, at a particular place, or at a particular time?

Question 4

“Warranted ship-to-ship transfer Standing Orders subject to audit/approval by external QM auditors.”

- a) Define the risk as a whole
- b) Reducing the risk of a particular kind, at a particular place, or at a particular time.

Question 5

“Warranted (Vessel 3) subject to Condition Survey by surveyor appointed by underwriters and all recommendations/requirements complied with within 28 days or as agreed.”

Does this warranty:

- a) Define the risk as a whole
- b) Reducing the risk of a particular kind, at a particular place, or at a particular time

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Warranted (Vessel 3) ship-to-ship transfer Standing Orders subject to audit/approval by external QM auditors approved by the Underwriter prior to inception.

Warranted (Vessel 3) subject to Condition Survey by surveyor appointed by underwriters and all recommendations/requirements complied with within 28 days or as agreed.

Noted and agreed that warranties agreed hereunder are directed to losses by reference to a particular kind/timing/location of loss.

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Noted and agreed warranties to be treated as defining the risks insured hereunder as a whole.

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~~***Noted and agreed that warranties agreed hereunder are directed to losses by reference to a particular kind/timing/location.***~~

Noted and agreed warranties to be treated as defining the risks insured hereunder as a whole.

Noted and agreed that in the event of breach underwriters are not liable for any loss hereunder unless reinstatement of cover is agreed in writing in the event that a breach is remedied.

Question 6

What would you do if you were the Underwriter ?

1. Holds out for my two Notations. . I am not going to be pushed around;
2. Seek to agree that the Class and Condition Survey Warranty are subject to my notation and agree that the others are subject to the Broker's original draft; or
3. Put none of the Notations in and just allow the default position under the Act to apply?

WARRANTIES

Warranted vessels classed and Class maintained

Warranted in respect of laid up vessels, watchmen on board and on duty at all times

Subject to ultrasonic gaging of hold internals by surveyor approved by underwriters and approval of same in writing within 28 days

Cover in respect of Vessel 2 subject to satisfactory survey or lay-up/mooring arrangements.

Noted and agreed that cover remains in full force and effect in the event of breach of warranty/subjectivity where compliance would not have prevented a loss arising hereunder. (Broker)

Noted and agreed that warranties and subjectivities to be read together and that combined effect goes to define the risk as a whole. (Underwriter)

Section 3 – the Duty of Fair Presentation

- 1) Before a contract of insurance is entered into, the insured must make to the insurer a Fair Presentation of the risk.
- 2) The duty imposed by subsection (1) is referred to in this Act as “the duty of Fair Presentation”.
- 3) A Fair Presentation of the risk is one -
 - a) which makes the disclosure required by subsection (4),
 - b) which makes that disclosure in a manner which would be reasonably clear and accessible to a prudent insurer, and
 - c) in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.
- 4) The disclosure required is as follows, except as provided in subsection (5) -
 - a) disclosure of every material circumstance which the insured knows or ought to know, or
 - b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.

Section 4 – Knowledge of the Insured

1. Knowledge of insured

- (1) This section provides for what an insured knows or ought to know for the purposes of section 3(4)(a).
- (3) An insured who is not an individual knows only what is known to one or more of the individuals who are –
 - (a) part of the insured’s senior management, or
 - (b) responsible for the insured’s insurance.
- (6) Whether an individual or not, an insured ought to know what should reasonably have been revealed by a reasonable search of information available to the insured (whether the search is conducted by making enquires or by any other means).
- (7) In subsection (6) “information” includes information held within the insured’s organisation or by any other person (such as the insured’s agent or a person for whom cover is provided by the contract of insurance).
- (8) For the purposes of this section –
 - (a) “employee”, in relation to the insured’s agent, includes any individual working for the agent, whatever the capacity in which the individual acts,
 - (b) an individual is responsible for the insured’s insurance if the individual participates on behalf of the insured in the process of procuring the insured’s insurance (whether the individual does so as the insured’s employee or agent, as an employee of the insured’s agent or in any other capacity), and
 - (c) “senior management” means those individuals who play significant roles in the making of decisions about how the insured’s activities are to be managed or organised.

PRIOR YEAR'S RENEWAL INFORMATION

This section details the information that was provided to (Re)Insurers to support the assessment of the risk at the time of underwriting.

<u>Vessel</u>	<u>Flag</u>	<u>Type</u>	<u>Class</u>	<u>GT</u>	<u>DWT</u>	<u>Built</u>	<u>IMO</u>
<i>Prosperity</i>	Liberia	Bulk	R.I.N.A.	11,767	19,000	2008	9266991
<i>Ocean Success</i>	Liberia	Bulk	R.I.N.A.	39,017	73,506	1995	9067351
<i>Protank III</i>	Panama	Tanker	Cambodia	15,312	26,661	1989	9055811
<i>Bright Ambition</i>	Liberia	Bulk	R.I.N.A.	18,049	30,778	2001	9016631

(to be renamed)

Vessel 1 is currently under the management of Oceanic Shipping & Trading S.A. Vessels 2 and 3 currently under management of Universal Maritime S.A.

Universal Maritime S.A. formed in August 2015, by management staff with 20 years' experience of shipmanagement, with the intention that it merge with Oceanic Shipping & Trading S.A.

PRIOR YEAR'S RENEWAL - REAL STORY

Oceanic Shipping & Trading S.A. is a long-standing Assured and is presented by the Broker as the main Assured.

Universal Maritime S.A. was formed by the former principals of MP Management, following its winding-up after fines and penalties imposed for contravention of MARPOL Regulations in respect of a limited bulk carrier service serving Central America/Southern US. Several creditors were left unpaid. It turns out that MP Management had a fleet of 4 bulk carriers; 2 were total losses by fire; 1 was scrapped; *Prosperity* remains. Ownership of *Prosperity* was transferred when MP Management was dissolved.

Protank III was purchased in 2014 as a scrap sale for up-grading for a specific trading opportunity in respect of coastal shipments of petroleum products serving the Senegal-Congo range. Since her acquisition, *Protank III* has been subject to 6 PSC detentions.

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<i>Ambition</i>	(to be renamed)						

All vessels now under management of Oceanic Shipping & Trading SA. Selected senior technical/ operations staff of Universal Maritime hired to complete management team.

Protank III upgrade completed November 2016 for the deployment of petroleum product shipments Senegal/Congo range.

Purchase of *Bright Ambition* (to be renamed) delayed during current policy period. Purchase/ attachment expected 14-18 January 2017.

Noted and Agreed that a full and reasonable search has been performed for all material information.

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“Noted and Agreed that Underwriters have considered the information provided and that all required further enquiries in respect to material information have been made and satisfied.”

THE TRUE POSITION

The 'Insurance Manager' is the Owners' cousin, and is a useless alcoholic. He is just kept on as a favour.

The Technical Manager is one of the Universal Maritime bad-lads; he got badly caught out accidentally releasing invoices from a yard that showed that work for Owners account had been transferred onto the invoices for damage repairs submitted to Underwriters.

The *Protank III* was temporarily detained by the Nigerian Authorities on suspicion of smuggling subsidised diesel. The Technical Manager has arranged with the Chief Engineer to have some non-working pumps, electrical motors and a generator removed and is contemplating making a claim that they were stolen by pirates.

The purchase of the *Bright Ambition* was developed because the ballast tanks could not be pumped out due to leakage, which has now been temporarily stopped using doubler plates. Only the Owner and technical manager know the details of this.

13A IMPLIED TERMS ABOUT PAYMENT OF CLAIM

(1) It is an implied term of every contract of insurance that if the insured makes a claim under the contract, the insurer must pay any sums due in respect of the claim within a reasonable time.

(2) A reasonable time includes a reasonable time to investigate and assess the claim.

(3) What is reasonable will depend on all the relevant circumstances, but the following are examples of things which may need to be taken into account:

- > a. The type of insurance,
- > b. The size and complexity of the claim,
- > c. Compliance with any relevant statutory or regulatory rules or guidance,
- > d. Factors outside the insurer's control.

(4) If the insurer shows that there were reasonable grounds for disputing the claim (whether as to the amount of any sum payable, or as to whether anything at all is payable):

- > a. The insurer does not breach the term implied by subsection (1) merely by failing to pay the claim (or the affected part of it) while the dispute is continuing, but
- > b. The conduct of the insurer in handling the claim may be a relevant factor in deciding whether that term was breached and, if so, when.

(5) Remedies (for example, damages) available for breach of the term implied by subsection (1) are in addition to and distinct from:

- > a. Any right to enforce payment of the sums due, and
- > b. Any right of interest on those sums (whether under the contract, under another enactment, at the court's discretion or otherwise).

- Maintain a strong line of communication via lawyers and via the Brokers.
- Do not delay in commissioning technical and legal advice, so that the vigour of the response is apparent.
- Maintain a clear "paper-trail". Follow up requests made.
- Ensure that legal and technical advisors explain the reasons for requests for documents, correspondence and information made and the need, if applicable, for access to the crew.
- Keep a documents/information register – this will record the requests made, and to what extent the requests have been complied with.
- Don't wait to be chased.
- When technical and legal advice is being sought, give estimates as to the likely timetable for a response.
- Set a clear reservation of rights if there is a perception that the Insured is deliberately hindering or obstructing the investigation.

16A Contracting out of the implied term about payment of claims: consumer and non-consumer insurance contracts

(2) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects deliberate or reckless breaches of the term implied by section 13A than the insured would be in by virtue of that section is to that extent of no effect.

(3) for the purposes of subsection (2) a breach is deliberate or reckless if the insurer:

- (a) knew that it was in breach, or
- (b) did not care whether or not it was in breach.

(4) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects any of the other matters provided for in section 13A than the insured would be in by virtue of the provision of that section (so far as relating to non-consumer insurance contracts) is to that extent of no effect, unless the requirements of section 17 have been satisfied in relation to the term.

NOTICE OF ABANDONMENT

Prosperity Maritime SA as Owners of the Vessel "*Prosperity*" hereby tender Notice of Abandonment following the grounding and fire suffered by the Vessel on 30 January 2017 on the grounds that she is a Constructive Total Loss.

If abandonment is declined by Underwriter Prosperity Maritime SA seeks agreement that it be put in the same position as if a Claim Form had been issued today.

It is noted and agreed that the Insured has complied with all requests for documents, correspondence and information, required by Underwriters.

INCE & CO | INTERNATIONAL
LAW FIRM

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Beijing Dubai Hamburg Hong Kong Le Havre London Monaco Paris Piraeus Shanghai Singapore