HFW

DABELSTEIN & PASSEHL
Hamburg Leer

THOMMESSEN

SHIPPING

INTERNATIONAL MARINE CLAIMS CONFERENCE 2017

WORKSHOP 3: SAME WORDS, DIFFERENT GEOGRAPHY

29 SEPTEMBER 2017

HFW DABELSTEIN & PASSEHL Hamburg Leer THOMMESSEN

AGENDA

1. Introduction
2. Background of three regimes
3. Introducing the scenario
   A. Pre-contractual duties: fair presentation vs duty of disclosure
   B. Post-contractual duties: claims notification, wilful misconduct, fraudulent claims
   C. Maintenance, wear & tear, inherent vice
   D. Subrogation and rights of recourse
4. Conclusion

ENGLISH LAW

- Marine Insurance Act 1906 amended by Insurance Act 2015
- Institute Time Clauses 1983 most commonly used
- Long history of expertise in the English Courts and centuries of jurisprudence

GERMAN LAW AND CONDITIONS

- No statutory provisions: “full” freedom of contract (but unfair contract stipulations to be obeyed)
- Exclusively dealt with on the basis of general terms and law
- Most commonly used: ADS 1919/DTV-HC 1978/1992
- Newest clauses: DTV-ADS 2009, latest revision in August 2016 – no significant role

NORWEGIAN LAW AND CONDITIONS

- Norwegian Insurance Contracts Act 1989 ("ICA 1989") generally applicable to all types of insurance governed by Norwegian law, but not mandatory for marine insurance, except with respect to injured parties' right of direct action and payment under the contract of insurance in the event the insured is insolvent

- Starting point: full freedom of contract save for mandatory provisions in the ICA 1989 and general rules on unfair or unreasonable contract terms (Norwegian Contracts Act sec. 36)

- NMIP does not contain a general exclusion of the ICA 1989, but contains several provisions deviating from the ICA 1989, and is far more detailed than the ICA

- In matters not regulated by the NMIP, or where the NMIP is ambiguous, the ICA 1989 is an important legal source as an expression of Norwegian background law on insurance

- The published Commentaries to the NMIP is the most important source for interpretation of the terms

- Availability: www.nordicplan.org

SCENARIO

•The "CLOVER" is a 23,800DWT bulk carrier flagged in Liberia. She was built in 2010 by the Zhejiang Xifeng Shipbuilding Company in Fenghua.

•She is owned by Clover Marine Limited of Liberia

•She is bareboat chartered to Clover Marine BBC Limited of Liberia

•She is managed by Ararat Gemi Işletme AS of Istanbul who generally voyage charter her on trades between West Africa and Central America. It is a tough market for bulker owners and the margins are small.

•AGI have recently reviewed their insurance arrangements and changed their liability and property insurance. The business has been introduced by a new broker who have good contacts in Turkey.

•Both Clover Marine Limited and Clover Marine BBC Limited are named assured under the policies.

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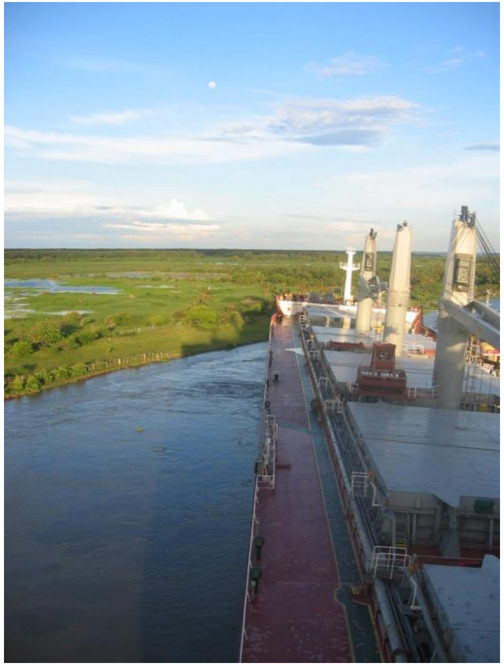
SCENARIO

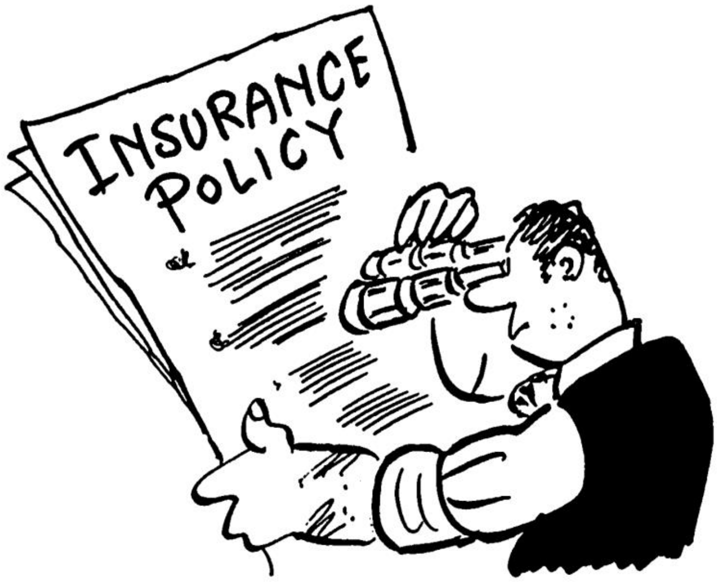
- In August the “CLOVER” loaded a cargo of yellow corn for discharge in Barranquilla, Colombia. Barranquilla is a deep-water multi-commodity port on the Caribbean coast of Colombia around 10 miles upstream of the River Magdalena.

- During her voyage up the River Magdalena to Barranquilla, the vessel grounds on the east side of the river. After attempted re-floats an LOF is signed with Tsaviliris. The Vessel is refloated after a few days.

- The cause of grounding is unclear:
  - Master negligence?
  - The inherent conditions of the River Magdalena which is subject to constantly shifting banks and water depths?
  - Failure of vessel equipment ?



- As the claim is progressed it transpires that:
  - The Vessel has a history of main engine difficulties including problems with the electrical generators and the stern tube. These were not notified to the insurers prior to issuing the policy.
  - There has been a change in the classification of the Vessel during the current policy.



•You have now had back the reports from your surveyor and appointed lawyers. It makes for interesting reading:

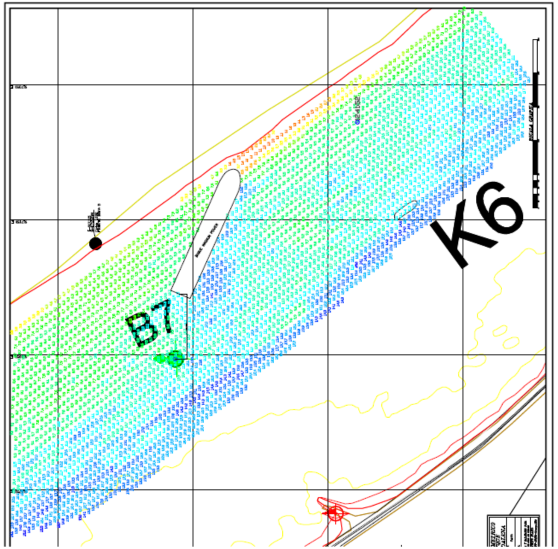
- The Owners and Managers were aware that of the history of mechanical problems with the Vessel and had not taken any steps to remedy them.
- The Owners and Managers did not undertake any due diligence in the hiring of the crew. It appears that the second engineer was not correctly certified in accordance with flag state requirements.
- The initial notification from the broker stated that the echo sounder had not been working. This has been established to be incorrect. The Owners agree that this statement was wrong.

C. Maintenance

- The surveyor has now provided his second report following his attendance at the repairs:
  - He is now aware of the previous history of breakdowns and the certification of the second engineer.
  - He is of the view that the vessel is in a poor state of repair. He has been unable to identify any maintenance regime of any kind or the current hours on any key parts.
  - His view is that the Vessel lost power before the grounding which allowed the vessel to drift with the current until aground. The cause was the stern tube seizing up as a result of inadequate lubrication – it would appear that sea water cooling line was closed.
  - On the phone with you, he described the vessel as a "complete dog".

D. Subrogation

- You've reached a settlement with the Assured. You had not considered subrogation but a colleague mentioned that Barranquilla is a notorious unsafe port:
  - It has complex tides and currents which result in a constantly shifting channel.
  - The local management of port is poor and they do not regularly dredge the channel or disseminate bathymetric surveys.
- You are worried though about spending good money after bad:
  - The Vessel clearly had problems and the Master could well be criticised. Was that the cause of the grounding rather than the unsafety of the port?
  - The Supreme Court has just handed down judgment in the OCEAN VICTORY...



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