

EXAM

JUS5450 - Marine Insurance

Spring 2017

Date: 31 May

Time: 10:00 - 14:00

Part I. Master and Bachelor level

MS Unlucky, which was owned by the Norwegian company Oily and registered in Norway, was carrying a cargo of oil and sailing within Nigerian territorial waters outside Lagos in Nigeria when it was arrested by the Nigerian Navy. The reason for the arrest was that the captain did not have proper papers for the cargo onboard and license from the Nigerian government to load and/or discharge oil in Nigerian ports. Such license is needed to engage in cabotage and coastal trade in Nigeria. MS Unlucky tried to flee from the Navy vessel, and when the Navy vessel tried to stop her, the two vessels collided. Both vessels sustained serious damage, but were still able to sail. Thereafter, the Navy vessel escorted MS Unlucky to Lagos, where the vessel was handed over to the police and detained whilst the authorities investigated whether or not the vessel was trading oil without license in Nigerian ports. No illegal trade was proved. MS Unlucky was released after 3 months, but had to pay collision liability to the Nigerian Navy amounting to 50 MNOK. It turned out that the cost of repair for MS Unlucky's own damage was 25 MNOK.

Oily had effected hull insurance for MS Unlucky on the Nordic Marine Insurance Plan 2013 Version 2016 against marine perils and war perils. The agreed insurable value and sum insured for each type of insurance was 40 MNOK. The insurance included hull interest insurance with 10 MNOK for both types of insurance.

The assured Oily claimed compensation for hull damage to MS Unlucky and indemnification for payment of collision liability to the Nigerian Navy under the insurance and argued that the arrest must be covered either as a marine peril or as a war peril. The insurer refused the claim and argued that the arrest of the ship was excluded from the marine risk insurance and did not constitute a war peril under NP.

Question 1

Is the damage to MS Unlucky and collision liability covered by

1. insurance against marine perils, or

2. insurance against war perils.

Presuming that the arrest constituted a covered peril the insurer denied liability because the collision was caused by gross negligence by the assured since MS Unlucky had tried to flee from the Navy vessel. The assured argued that it was natural that the vessel tried to escape since they risked being detained in spite of being innocent, and that this did not constitute gross negligence. Presuming it was gross negligence to try to escape, the owner claimed that the decision to escape was made by the captain and that the owner could not be identified by the captain in this matter.

Question 2

1. May the insurer invoke gross negligence by the assured?
2. Can the owner be identified with the captain?

Oily claimed compensation for the collision damage to MS Unlucky, 25 MNOK, and the collision liability to the Nigerian Navy, 50 MNOK, and argued that the insurer was liable for the total amount of 75 MNOK. The insurer agreed that liability for collision was included in the hull cover, but argued that the liability was limited to the part of the sum insured that was not used to compensate for the hull damage, i.e. 15 MNOK. Under no circumstance could the insurer be liable for more than 40 MNOK for the collision liability.

Question 3:

Presuming the insurer is liable for the arrest and may not invoke gross negligence: which amount is he liable for?

Under the repair of MS Unlucky, it turned out that the ship had sustained cracks in a bulkhead in the collision and it was revealed that parts of the bulkhead were corroded below the minimum requirement of the classification society. The assured claimed the cost of renewing the steel as part of the costs of repair. It was confirmed by the classification society that the ship could sail until the next classification without having to make replacements if the collision had not occurred. The insurer denied the claim for renewing the steel in the corroded area and argued that they were not liable for wear and tear.

Question 4:

Is the insurer liable for the cost of renewing the steel in the corroded area of the bulkhead?

All questions shall be answered for both Master and Bachelor level.

Part II. Only for Master level

Oily had effected loss of hire insurance according to the NP 2013 Version 2016. This insurance covered marine risks and war risks, including chapter 15. Oily claimed cover for loss of hire for the three months that it was detained in Lagos.

Question 5

Presuming the arrest is a peril covered by the insurance: Is the loss of hire insurer liable for loss of income for the three months in Lagos under the

1. insurance against marine perils
2. insurance against war perils

Both sub-questions shall be answered for Master level.

