

JUS5450/JUR1450 Marine insurance, Exam Spring 2012.

Part I.

MS Unlucky ran aground 15 March 2010 outside the west coast of Norway. The vessel managed to get off by its own engine. The Master ordered a divers' inspection, which concluded that the damage was not serious. The Master therefore decided that further inspection and repairs could be postponed until the next dry docking. The Master informed the shipowner about the casualty and his decision.

As the damage was below the deductible, it was not notified to the insurer. The shipowner had for the sake of good order planned to inform the insurer about the damage when the insurance policy was renewed in December 2010, but he forgot about it due to a heavy work load.

MS Unlucky was dry docked in November 2011. At the dry docking it became clear that the grounding damage was more serious than had been realized and that the failure to repair had led to further damage in the surrounding areas of the hull bottom. The total repair costs was at this stage estimated to 8 million NOK. The original damage was estimated to amount to 4 million NOK.

MS Unlucky was insured in AS Cover Up on The Norwegian Marine Insurance Plan 1996 Version 2010 for both 2010 and 2011. However, the deductible was 5 million NOK in 2010, but was reduced to 2 million NOK in 2011 due to reduction in the value of the vessel.

The shipowner claimed coverage for the cost of repair of 8 million NOK from AS Cover Up in November 2011. AS Cover Up denied the claim, and argued that the time limit for notification of the casualty in the Plan § 5-23 was breached. The insurer also claimed that the shipowner had breached the duty of disclosure by not informing the insurer about the casualty sustained in January 2010 when the insurance was renewed for 2011. If they had known, they would have secured a better reinsurance cover. This could be documented by written internal policy. Presuming they were liable, they further claimed that the peril struck when the grounding took place in January 2010, and therefore the highest deductible should be applied on the whole damage.

The shipowner claimed that the time limit for notification could not run when the damage was below the deductible. He also denied that he had breached the duty of disclosure. The damage was below the deductible when it first occurred, and he therefore thought it would have no significance for the insurer. The assured also claimed that only the original damage of 4 million NOK should be attributed to the insurance cover for 2010. The rest should be attributed to the contract for 2011, where the deductible was lower. Even if it was disputed how the damage should be divided between the policies, it was agreed between the parties that the damage constituted one casualty in relation to the deductible so that only one deductible should be applied. If the damage should be divided over the two periods, 50 % of the deductible for 2010 and 50 % of the deductible for 2011 should be deducted.

Discuss the following questions:

1. Is the time limit for notification of the casualty in the Plan § 5-23 breached?
2. Presuming the time limit is not breached, has the shipowner breached his duty of disclosure?
3. Presuming the duty of disclosure is breached, what sanction may AS Cover Up invoke?
4. Presuming AS Cover UP is liable for the whole damage, shall the damage be attributed to the 2010 policy or divided between the 2010 and the 2011 policy?

Part II

Please answer the following questions concerning the concept of insurable value in the different contracts in Norwegian marine insurance:

1. What does "insurable value" mean?
2. Where do we find rules about "insurable value"?
3. How is "insurable value" regulated in the different rules?

All questions shall be answered