JUR5450 - Marine Insurance

Spring 2011

MS Unlucky Ship was anchored in a port in the Niger delta in Nigeria. Most of the crew were on land celebrating the captain's 40th anniversary. Only two guards were left onboard, in spite of several recent attacks against ships in the Niger delta. It was clear that this was in breach of the Guarding Rules according to the Ship Safety Code. A group of 10 armed men crept onboard from a small boat, overmanned the guards, and sailed the ship out to the high seas, outside the territorial waters. They contacted the shipowner and claimed ransom in order to redeliver the ship. Before the negotiations were concluded, the contact with the ship was broken. It was later established that an explosion had occurred in the machinery, which caused the ship to sink. It was also established that the explosion was caused by a defect in the machinery and had nothing to do with the capture of the ship.

MS Unlucky Ship was insured against marine perils in AS Marine Risk and war risk perils in AS War Risk according to Norwegian Marine Insurance Plan 1996 version 2010. The insurable value and sum insured was 10 million USD in both cases, but AS Marine Risk had a deductible of 1 million USD.

The shipowner claimed that the casualty was caused by piracy and that the war risk insurer was liable for 10 million USD. He further claimed that AS War Risk was liable for the cost of the negotiations with the pirates. It was clear that these costs amounted to 1 million USD.

AS War Risk refused liability, and claimed that the loss was caused by a combination of robbery of the ship and explosion, and that both perils were covered by the insurance against marine perils. AS Marine Risk was therefore liable both for the loss of the ship and for the negotiation costs. If the robbery constituted piracy, AS War Risk claimed that the loss would have to be divided between the marine insurance and the war insurance.

AS Marine Risk and AS War Risk accepted that the negotiation costs qualified as measures to avert loss according to the Plan, but claimed that they would not be liable for these costs in addition to the sum insured for the total loss.

Both AS Marine Risk and AS War Risk also claimed that the breach of the Guarding Rules constituted a breach of a safety regulation, thereby freeing them from any liability.

AS Marine Risk further claimed that to the extent that they were liable, the deductible should be deducted from the sum insured.

Discuss the following problems:

1. Does the robbery of the ship constitute a marine peril or a war peril?
2. If the robbery constitutes a war peril; should the loss be divided between AS War Risk and AS Marine Risk, and if so: how much should each carry?
3. May the insurers invoke the breach of the safety regulation?
4. If the insurers may invoke the breach of the safety regulation, should the loss be divided between the respective insurer's and the assured, and if so, how much should each carry?
5. Are the insurers liable for the negotiation costs in addition to the total loss?
6. May AS Marine Risk reduce the liability for the total loss and/or the negotiation costs with the deductible?