

1 JUS5450 assignment V21

JUS5450 Marine insurance, Exam Spring 2021

The exam is a 24 hour home exam, maximum 3000 words.

Part I

MS North Passage Cruise, which was owned by the Norwegian company Shipping Cruise AS and registered in Norway, sailed with cruise passengers in Polar waters in May 2020. When the vessel sailed between Longyearbyen and New Ålesund, the sailing area was packed with ice. The vessel struck ice three times during the trip and sustained damage to the hull. The damage was not so serious that it needed immediate repairs, but when the vessel returned to Bergen after the cruise the owner wanted it to be repaired. It turned out that the hull had sustained ice damage in three places, and the repairs amounted to MNOK 3 per repair for two damages, and MNOK 10 for the last damage.

Shipping Cruise AS had effected hull insurance for MS North Passage Cruise on the Nordic Marine Insurance Plan 2013 Version 2019 against marine perils. The sum insured was MNOK 500 and the deductible MNOK 5. The assured claimed cover for the damages to the hull.

The insurer denied the claim and argued that the vessel had sailed in excluded areas and that the insurer therefore was not liable for the ice damage. It turned out that the assured had had special permission from the insurer to sail in the Polar waters for 2019, but that this permission was not renewed during the renewal of the insurance from 1 January 2020. The reason was that the manager for safety and insurance in the company had quit his job unexpectedly and the new manager had not been told to renew it. Even so, the insurer had claimed the same special premium for sailing in Polar waters as before and had also inserted special conditions for such sailing in the policy. The assured therefore argued that the insurance for 2020 was extended on the same special permission to sail in Polar waters as before.

Question 1

Is the insurer liable for damage to the vessel occurring in excluded waters?

If the assured had permission to sail in the Polar waters, the insurer argued that there were 3 casualties, and that 3 deductibles should be applied. The liability should therefore be limited to MNOK 5 for the damage that exceeded the deductible. The assured argued that as the ice damage had occurred between two ports, only one deductible should be applied.

Question 2

How many deductibles may the insurer apply?

If only one deductible could be applied, the insurer further argued that ice damage in the Polar waters should be regarded as damage caused by ordinary use of the vessel, and thus was not covered by the insurance. The assured denied this allegation.

Question 3

Can the insurer deny cover because the ice damage is caused by ordinary use of the vessel?

The Norwegian authorities has given a regulation in FOR-2016-11-23-1363 that implements SOLAS ch. XIV in § 2 and the Polar Code in § 3. The Polar Code 1.3.1 states that

Every ship to which this Code applies shall have on board a valid Polar Ship Certificate

It turned out that the assureds Polar Ship Certificate expired in 2019 and that the manager for safety and insurance had not renewed it. The insurer claimed that this constituted a breach of a safety regulation. The assured denied that this formal failure was a breach of a safety regulation, and if it was, the conditions to invoke the breach was not satisfied.

Question 4

- A. Has the assured breached a safety regulation?
- B. If so, can the insurer invoke this breach?

The Polar Code also have rules stating that the vessel has to carry a Polar Water Operational Manual (PWOM) which shall include or refer to specific procedures. The Polar Code 2.2.3 states that

The Manual shall include or refer to specific procedures to be followed in normal operations and in order to avoid encountering conditions that exceed the ship's capabilities.

One procedure in the vessel's manual was that the vessel should sail with two persons looking specifically for ice in ice-packed waters. The captain had failed to follow this procedure because he thought it was unnecessary. The insurer claimed that this was a breach of a safety regulation. The assured denied that a breach of procedure was a safety regulation, and regardless of this, the conditions to invoke a breach was not met.

Question 5

- A. Has the assured breached a safety regulation?
- B. If so, can the insurer invoke this breach?

All questions shall be answered.

Part II

The insurer is concerned about the risk for damage in Polar waters, and is contemplating to insert the following clause in the policy:

Unless otherwise agreed in writing, it shall be a condition of the insurance of the Vessel that the assured shall comply or procure compliance with all statutory requirements of the state of the Vessel's flag relating to the construction, adaptation, condition, fitment, equipment, manning, safe operation, security and management of the Vessel and at all times shall maintain or procure the maintenance of the validity of such statutory certificates as are issued by or on behalf of the state of the Vessel's flag in relation to such compliance.

The assured shall not be entitled to any recovery from the Association in respect of any claim arising during a period when the Member is not fulfilling or has not fulfilled the conditions in this provision.

The insurer asks you as a lawyer to explain the differences between this clause and the provisions on safety regulations in the Plan.



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