

MARINE INSURANCE

And the UK Ins. Act 2015

**Are civil and common law rules
Any closer?**

(Francesco Siccardi – Siccardi Bregante & C.)

ITALIAN MARKET & UK MARKET

STRICTLY CONNECTED

TYPICAL IT. MARKET COVER

HULL

IT. POLICY «CAMOGLI» 1988

PLUS

INST. TIME CL. HULLS 1983-1995

CAMOGLI POLICY:

general principles

subject to it. law

I.T. CL. HULLS

«to be construed and applied»

as they are in UK

CARGO

IT. POLICY MERCI 2006

INS. CARGO CL. 2009

IT. CARGO POLICY

general principles

subject to It. law

I. CARGO CLAUSES

subject to English law

ASSURED

RISK
(PREMIUM)

INSURER

REPRESENTATION

DELIMITATION

ALTERATION

OCCURRENCE

ASSESSMENT

EXCLUSIONS

INCREASE

INDEMNITY

SPECIAL TERMS

REPRESENTATION

DUTY OF ASSURED

DISCLOSURE & [TRUE] REPRESENTATION (M.I.A. sects 18-20)

FAIR PRESENTATION (I.A. 2015)

“EXACT AND FULL DECLARATION” It. Civil Code [C.C.]

(sects. 1892-1893)

CONTENTS OF DUTY

CIVIL LAW

- 1. IT. DOES NOT DETAIL
CRITERIA FOR PERFORMANCE**
- 2. CASE LAW N.D. & MISR
MUST HAVE BEEN DECISIVE
FACTORS FOR INSURER’S
ACCEPTANCE OF RISK**

Civil Law

- a) Fraud or gross negligence**

COMMON LAW

**DETAILED CRITERIA
SPELL OUT
IN INS. ACT 2015**

BREACH

Common Law

- a) general**

AVOIDANCE OF contract (C.C. Sect. 1892)

b) Negligence

INDEMNITY PAYABLE IN PPN

PREMIUM PAID V.

PREMIUM DUE

AVOIDANCE OF c. M.I.A. (Sect. 18)

b1) act deliberate of reckless

AVOIDANCE OF C.

B2) risk acceptable

on other terms

CONTRACT VALID AT NEW TERMS

b3) risk acceptable

at new premium

INDEMNITY PAYABLE IN PPN

(I.A., 2015 Schd. 1)

REPRESENTATION

Other Civil law Countries

France (F.)

a) General

NULLITY OF CONTRACT

b) in case of assured's good faith

INDEMNITY PAYABLE IN PPN

(unless risk deemed unacceptable)

(Art 172.2 Code of Ins)

Germany (G.)

a) General

INSURERS DISCHARGED

b) if assured has no fault

INDEMNITY PAYABLE

AGAINST INCREASE OF PREMIUM

(DTV ADS 2009 CL 22)

REPRESENTATION

Other Civil law Countries

Norway (N.)

a) fraud or intentional act
INSURERS DISCHARGED

b) negligence
if risk deemed not acceptable
INSURERS DISCHARGED

If acceptable on other terms
**INDEMNITY DUE IF
LOSS NOT DUE TO BREACH
(NORDIC Cl. 3.2 &3.3)**

DELIMITATION RISKS COVERED V. EXCLUSIONS

Civil law

Common law

General exclusion

**ASSURED'S
FRAUD OR GROSS NEGLIGENCE
Sect 1900 C.C.**

**ASSURED'S
WILFUL MISCONDUCT
Sect. 55.2 (a) M.I.A.**

**(GROSS) NEGLIGENCE
In matters of safety (Sect 524 C. Nav)**

**PRIVITY
in sending
Unseaworthy ship at sea
M.I.A. Sect. 39 (5)**

F

INSURERS DISCHARGED

“FAUTE INTENTIONELLE & INEXCUSABLE”

(i. e. wilfull or reckless act)

(Art. 172.13 Code of Ins.)

NEGLIGENCE

INDEMNITY PAYABLE

unless in case of

breach of duty

To prevent risk

(art.172.13 c. C. of I.)

G
INSURERS DISCHARGED
INTENTIONAL OR
GROSSLY NEGLIGENT ACT
INSURERS DISCHARGED
IN CASE OF SAFETY
REGULATIONS unless
no causal link
between breach and loss
(DTV ADS Sect 33& 34)

N
INTENTIONAL ACT
INSURERS DISCHARGED
(Nordic cl 3.32)
GROSS NEGLIGENT ACT
INSURERS LIABILITY SUBJECT
TO ASCERTAINING DEGREE OF FAULT
AND CIRCUMSTANCES
(Nordic cl. 3.33)
NEGLECT OF PREVENTION
DUTIES
INDEMNITY PAYABLE
WITHIN LIMIT AS IF
DUTIES COMPLIED WITH
(Nordic cl. 3.31)

SPECIAL TERMS

Civil law

Conditions precedents to insurance

INSURERS DISCHARGED

Until term complied with

Common law

Warranties

(a) INSURERS DISCHARGED

even if lately complied

(M.I.A. Sect 33.1)

(b) INSURERS DISCHARGED

1) until term complied with

1a) at time of compliance

1b) when risk becomes

“essentially the same”

2. warranties not defining the risk as a whole unless non compliance could not increase risk

I. Act 2015 Secs. 10 & 11

BREACH

ALTERATION

Civil law

**INSURERS DISCHARGED
IF DUE TO THE ASSURED
UNLESS change does not cause
Loss or its measure
(C. of Nav, Sect. 522)**

Common Law

BREACH

VOY POLICIES

a) alteration port dept

RISK DOES NOT ATTACH

b) change of voy or deviation

INSURERS DISCHARGED

(M.I.A. Sects 42-46)

time policies

WARRANTIES

OR HELD COVERED

ALTERATION SPECIAL TERMS

**CHANGE / BREACH
CLASS, FLAG, MANAGEMENT**

INSURERS DISCHARGED

As per alteration rule above

BREACH OF WARRANTY

**F
TERMINATION OR
PPN REDUCTION OF INDEMNITY**

G**Management****INSURERS DISCHARGED****IN CASE OF INTENTION****GROSS NEGLIGENCE****OR LOSS CAUSED BY BREACH****(DTV ADS Sect. 25)****Class****TERMINATION****(DTV ADS Sect. 26)****N****Safety regulations- Special safety reg.****INSURERS DISCHARGED****unless assured not negligent****or no causation link****(Nordic Cl 3.9 , 3.24)**

CONTRACTUAL RULES

INSTITUTE TIME CLAUSES.HULL

Cl. 4 ITCH 1.10 1983

Change of class, manag. flag
AUTOMATIC TERMINATION

Cl 4 & 5 ITCH 1.11.1995

Cl. 4 Classification

Duty to maintain and observe rules
INSURERS DISCHARGED

Cl. 5 Termination

Change of class manag. flag
AUTOMATIC TERMINATION

PAYMENT OF INDEMNITY

Civil law

Law: if no term set: IMMEDIATELY
if term required under circumstances
AT TIME JUDICIALLY SET
Policies: USUALLY 30 DAY FROM ADJUSTEMENT

F. 30 DAYS

G. 2 WEEKS

N. 6 WEEKS FROM ADJUSTEMENT

Common Law

WHEN PAYMENT IS DUE

(a) NO RULE IN M.I.A.

(b) REASONABLE TIME
(I.A. 2015 Sect. 13A)

Policies

ADJUSTMENT

TO BE COMPLETED IN 28 DAYS
(Int. Hull Clauses 2003)

(Other Civil Law Countries)
LAW OR POLICY TERMS

DAMAGES FOR DELAY

Civil Law

**Indemnity can be adjusted
For MONEY DEVALUATION and
LEGAL INTEREST added on top.
Proved ADDITIONAL DAMAGE
claimable**

**If foreseeable at time of contract
(Sect. 1224 C.C.)**

Common law

**(a) no right to damage
(Case law)
(b) damages for breach
of REASONABLE TIME for
payment
(I.A. 2015 secy 13A.5)**

Other civil countries

F.

**DAMAGES RECOVERABLE
as per general civil law**

G.

**DAMAGES RECOVERABLE
IF INSURERS ACTED
INTENTIONALLY
OR GROSSLY NEGLIGENTLY**

N.

**INTEREST PAYABLE
AT COMMERCIAL RATE (ANNUALLY
FIXED BY GOVN.)**

FRAUDULENT CLAIMS

Civil law

**The contract must
be performed with
good faith**

(Sect. 1375 C.C.)

BREACH

**remedies for breach
of contract**

Common law

**The insurance contract
is of utmost good faith
(M.I.A. Sect. 17)**

BREACH

**termination of contract
discharge of insurers**