

# **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 or 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

#### General exclusion

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

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

#### Common law

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

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

**F**

**INSURERS DISCHARGED**

**“FAUTE INTENTIONNELLE & 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

#### BREACH

#### (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 com-  
pliance could not increase  
risk

I. Act 2015 Secs. 10 & 11

## ALTERATION

### Civil law

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

### BREACH

### Common Law

**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**