

THIRD EDITION

# WARRANTIES IN MARINE INSURANCE

BARIŞ SOYER



# **Warranties in Marine Insurance**

Third edition

**Bariş Soyer**

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# **Warranties in Marine Insurance**

Third edition

**In memory of Hatice Altinsoy (my grandmother).  
You left fingerprints of grace on our lives.**

# Foreword to the third edition

The publication of the third edition of Professor Soyer's book is notably timely, since in 2016 the Insurance Act 2015 came into effect, radically transforming the law on warranties as it has stood for over a century in the Marine Insurance Act 1906, and indeed going back to the law as developed by Lord Mansfield. Breach of warranty is now to be treated as "suspensive" if capable of remedy. Contracting out is possible in business transactions, but with restrictions. Further, the Act does not redefine whether a term is or is not a warranty. The result is that pre-2016 law remains important.

Professor Soyer has long argued cogently for a reform of the law relating to warranties, including in earlier editions of this book. Many of his ideas were taken up by the Law Commission, which cited his writing extensively in its 2014 report. Though limited in effect to contracts governed by English law, as he points out, these changes may be adopted as the way forward in other jurisdictions too.

In summary, this book brings together the law on warranties in marine insurance in a style that is both thorough and accessible. The issues are always anchored in the wider context of general shipping law. The result is a fine piece of scholarship, but also a book that will be of great use to practitioners in this sometimes difficult area of the law.

*The Honourable Mr Justice Blair  
Judge in Charge of the Commercial Court*

# Foreword to the second edition

My predecessor as foreword-writer, Mrs Yvonne Baatz, rightly called the first edition of this book both readable and thought-provoking. Now comes the second edition which continues that tradition. Its readability speaks for itself and, in the absence of any positive proposal for reform of the law of marine insurance warranties, wishes for that reform continue to be provoked by Dr Soyer's apt and illuminating criticisms. It is a tribute to the author that, in spite of many additions, the text is overall more succinct than the previous edition. This has been largely achieved by exclusion of the discussion of general defence to claims by breach of warranty in order to concentrate on the book's main theme of evaluating the current state of marine insurance warranties and proposing its reform.

History does not relate how common it is for a mere reviewer (118 LQR 647) to be promoted to a foreword writer, it will not surprise the reader to learn, however, that it is not only a less arduous, but infinitely more pleasant task to wish the second edition even more success than the first.

*Lord Justice Longmore  
Court of Appeal  
Royal Courts of Justice  
Strand  
London  
June 2005*

# Preface to the third edition

The first two editions of this book had two main objectives: i) to review the law in respect of marine insurance warranties, as concisely as possible, and identify any existing and potential difficulties in this area; ii) to put forward some viable proposals towards the resolution of such difficult issues that are still inadequately dealt with by the present regime. Soon after the publication of the second edition, the English and Scottish Law Commissions began their work on reforming insurance law, and the warranty regime featured prominently on their agenda. It was pleasing to see that the discussions and proposals made in the second edition of this book were taken into consideration by the Law Commissions (second edition of the book was cited numerous times in the issues papers and consultation reports published between 2007 and 2014) and played a significant role in designing the new warranty regime that is now embodied in the Insurance Act 2015. The 2015 Act received Royal Assent on 12 February 2015 and will apply to all contracts of insurance, reinsurance and retrocession that are concluded after 12 August 2016. Apart from modifying key aspects of the warranty regime, the Act introduces changes with regard to pre-contractual good faith duties of the assured in non-consumer insurance contracts, and it stipulates the remedies available to an insurer in case of submission of a fraudulent claim in consumer and non-consumer insurance contracts. Naturally, it was necessary to make substantial changes in the book to illustrate the potential impact of the changes on the warranty regime. However, the new regime introduced by the 2015 Act is a default regime, and the relevant provisions of the Insurance Act 2015 can be excluded subject to important transparency safeguards as set out in s. 17. It is, therefore, possible that parties might continue to incorporate the traditional warranty regime into their agreements, so references to that regime have been retained in the book. Given that the reform is now achieved, the chapter on merits and direction of a potential law reform in this area has been dropped.

For any common law subject, ten years is a long period during which one might reasonably expect substantial judicial activity. This was certainly the case as far as insurance warranties were concerned, and judgments handed down by British and other common law courts shed light on various aspects of the warranty regime. An attempt has been made in the third edition to incorporate these decisions into the text and to provide a commentary on them. The original



objective of providing a comprehensive legal analysis on the subject remains, but it is hoped that, as a result of the updates made and rearranging some parts, the text is more accessible and relevant to academics, underwriters, brokers and legal practitioners in need of an authoritative guide on the subject.

As a result of the changes the structure of the book has been slightly amended. After a general introduction in chapter 1, the main aspects of the warranty regime – express and implied warranties, effect of breach of a marine warranty and waiver of a marine warranty prior to or after the breach, are evaluated in chapters 2–6. Chapter 7, which is a new addition, aims to elaborate voyage conditions, stipulated in ss. 42–48 of the Marine Insurance Act 1906, that resemble marine warranties in some respects. There is a possibility that some of the changes introduced by the Insurance Act 2015 might be relevant as far as these conditions are concerned in light of the fact that the Act aims to offer a holistic approach to risk control clauses. The last chapter is a brief one offering some tentative conclusions as to the future of the warranty regime.

Preparing this edition for publication has taken longer than I naïvely anticipated a few years ago. I would like to thank my whole family for their continuous support during this period. When the first edition of this book was published, neither of my children were born. Now, my son, Özgür-James, is a teenager and my daughter, Cherley-Jale, is nine years old. Although I do not expect them to make the third edition of the book their bedtime reading, I must say that their presence and emotional support has helped me enormously. I also would like to thank all my colleagues with whom I had an opportunity to discuss aspects of this book, and in particular my colleagues at the Institute of International Shipping and Trade Law. I have the privilege of working alongside experts in commercial and maritime law, which facilitates a fruitful academic environment. Also, I would like to thank my PhD student, Ceren Cerit, for her assistance in producing the tables and index. Last but not least, I would like to extend my gratitude to Routledge for their patience, and in particular to Ms Olivia Manley for her support.

Needless to say, any infelicities remain my own.

The law stated is on the basis of materials available to me on 31 January 2016.

**Professor B Soyer**  
**March 2016**  
**Swansea, Wales**

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