



# THE MODERN LAW OF MARINE INSURANCE

VOLUME FOUR

EDITED BY

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VOLUME FOUR

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## PREFACE

This volume continues the overarching objective of the series which is to identify and analyse evolving strands in the law and practice relating to marine insurance, and to provide a source of knowledge and understanding which supplements that provided by works of reference and traditional textbooks. The evolutionary momentum of the subject continues tirelessly, placing an ever growing challenge in the path of anyone who out of necessity or interest is driven to keep abreast of developments. In the field of marine insurance there has always existed an intimate relation between law, practice and the markets, and these various dimensions continue to find expression in the wide-ranging content of this fourth volume, which comprises ten contributions written by acknowledged experts, drawn from practice and academia.

The new century has witnessed major developments in both market practice and the law. Commencing with the publication of the London Market Principles in 2001, and thereafter sustained by amendments and numerous related initiatives, the ethos and practice of the London market have been radically reformulated, establishing a new and welcomed emphasis on contractual certainty, fair dealing and the raising of professional standards. This movement has also been responsible for the emergence of new placement documentation.

Concurrently with these market developments, the Law Commissions for England and Wales, and for Scotland, have been industriously employed identifying areas of the law which have attracted criticism or concern, or which may now be regarded as archaic, and subjecting them to detailed scrutiny. This review was not expressly directed at marine insurance, rather to business insurance generally, but since the basic legal principles set out in the Marine Insurance Act 1906 reflect the general legal position, it was inevitable that crucial aspects of the 1906 Act would be critically reassessed. It is also the case that over the course of the review certain specific matters relating to marine insurance came to be identified.

Of greatest significance to date, the deliberations of the Commissions were responsible for the enactment of the Insurance Act 2015, which applies throughout the UK and relates to non-consumer insurance contracts. The main provisions of the Act are of significant relevance to marine insurance but do not come into force until August 2016. This, presumably, is to give the markets time to digest and adjust to the amendments it makes. These relate to the duty of good faith, pre-contract duties in placing the risk, and warranties and analogous policy conditions. The Act also for the first time enacts a statutory provision relating to fraudulent claims. Although this volume is not expressly directed to an exposition of the 2015 Act,

## PREFACE

some contributions relate to or touch upon areas of the law covered by the Act and when this is the case the opportunity has been taken to comment on the prospective impact of the new legislation.

The topics addressed in this volume range significantly beyond those covered by the 2015 Act. In their entirety they focus on many of the principal and diverse issues extant in the contemporary law and practice, ranging from a broad assessment of the Marine Insurance Act 1906 to the doctrine of subrogation and the impact of the recast EC Regulation 2015. Between these extremes the focus is directed at the construction of policies, litigation against brokers, leading underwriter clauses, the duty of good faith of insurers and reinsurers, fraudulent claims, assured's right to interest under an avoided policy, and cargo insurance. All of which ensures that this volume continues to fulfil the policy underlying the Modern Law of Marine Insurance series.



# FOREWORD

THE HONOURABLE MR JUSTICE FLAUX

The latest volume of *The Modern Law of Marine Insurance* brings together a number of eminent academic lawyers and practitioners who are experts in this somewhat arcane area of English commercial law. They have contributed a series of chapters which consider a number of problems of marine insurance law many of which can be described as “old chestnuts” for those who seek to argue and resolve these disputes. The topics covered are the continuing impact of the Marine Insurance Act 1906 in the light of the new legislative regime, the effect of that regime on the insurer’s duty of good faith, the effect of the modern approach to contract construction on marine insurance contracts, leading underwriter clauses, the problems of assessment of damages recoverable from negligent brokers, the effect of fraud on an otherwise valid claim, the insured’s right to interest on returned premium when the contract of insurance is avoided, the scope of the defence of inherent vice, the place of the doctrine of subrogation in insurance law and the effectiveness of English jurisdiction agreements in insurance contracts.

Without exception the authors have provided a thought-provoking analysis of many of the difficult problems of marine insurance with which commercial lawyers have to grapple. This volume provides a valuable addition to the corpus of academic writing on marine insurance law. The editor and contributors are to be commended for their choice of topics and the fresh light they cast on the problems addressed. This excellent volume will be welcomed by all lawyers who have to steer a course through the sometimes choppy waters of the law of marine insurance.

Julian Flaux  
September 2015

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