

MARINE CARGO INSURANCE

SECOND EDITION

JOHN DUNT

informa law
from Routledge

MARINE CARGO INSURANCE

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EC Shipping Law
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by Vincent Power
(1999)

For my family

PREFACE TO THE SECOND EDITION

There has been a sea change in the law of marine insurance since the first edition of this book in 2009.

The Insurance Act 2015 has introduced, from 12 August 2016, a provision limiting the effectiveness of terms of insurance contracts, including warranties, where any breach is not relevant to the actual loss. This long overdue reform of a much criticised aspect of English insurance law will most probably prove more significant than the new rule under which a warranty suspends rather than discharges the insurer's liability. In addition, there will be a new "duty of fair presentation" with proportionate remedies for breach of this duty instead of the sole "draconian" remedy of avoidance. The insurer's remedies where a claim is fraudulent have been rationalised. It remains to be seen whether the insurance markets will seek to contract out of the new scheme. Marine cargo insurance is international and English law widely respected. It would be unfortunate if these uncontroversial improvements in English law, intended to redress the imbalance between assureds and insurers, were not wholeheartedly endorsed by the insurance markets worldwide.

In the meantime, the Law Commission continues its review of insurance law and this edition of the book summarises the recommendations and proposals for further legislation to amend the Marine Insurance Act 1906 in various respects, including the requirements for a formal marine policy (section 22); the brokers' liability for premiums (section 53) and reform of the insurable interest requirement. There also remains outstanding the controversial and important issue of whether an insurer should be liable for late or non-payment of an insurance claim.

The Supreme Court decision in *The Cendor MOPU* has not only clarified the meaning of inherent vice, a much vexed issue in practice, but also has far wider implications for our understanding of how causation operates. Other important decisions of the courts have also impacted on sue and labour, subrogation and fraudulent claims.

In terms of European law, Rome I and the recast of the Judgments Regulation have modified and improved the rules relating to law and jurisdiction.

The London market has also been involved in its own process of updating and reform. The Joint Cargo Committee is now completing its review of the Institute ancillary and trade clauses. The Institute Commodity Trades/FOSFA Trade Clauses were published in June 2013 and the final drafts of the specific commodity clauses, bulk oil, coal, timber etc., were produced in time to be included in the appendices to this edition.

The opportunity has also been taken to incorporate in this book, where appropriate, foreign cases from the companion volume, *International Cargo Insurance*, published in 2012, where it was felt that these would be persuasive and of assistance in clarifying the position under English law.

I am indebted to the Institute of Maritime Law at the University of Southampton for their support in producing this edition and, in particular, to Mateusz Bek not only for his research

but also for his illuminating comments and suggestions in relation to the additional material in this edition and for improvements and amendments to the original text. His contribution to the book has been invaluable. Other members of the Institute have also contributed, in particular, Professor Yvonne Baatz who read the drafts of the chapter on law and jurisdiction and made many helpful comments and suggestions. William Melbourne, consultant at Clyde & Co, has kindly read drafts of the central chapter on all risks and made numerous perceptive recommendations for improvement, particularly of the additional material resulting from the decision in *The Cendor MOPU*.

I am grateful once again to members of the insurance market including Nick Gooding, Chair of the Steering Group involved with the revisions to the Institute ancillary and trade clauses, and to Peter de Boissiere of RSA who read a draft of the chapter on Measure of Indemnity. Paul Codd of Willis kindly provided the latest template of the Market Reform Contract and also the brokers' view of how the Insurance Act 2015 will impact on the placing of insurance risks at Lloyd's. I am also grateful to Lloyd's Agency Department for the latest form of the Lloyd's Insurance Certificates and for permission to reproduce this as an appendix.

In this respect, this edition of the book again has comprehensive appendices and I gratefully acknowledge the kind permission given by the Lloyd's Market Association and the International Underwriting Association of London to reproduce the Institute Cargo Clauses; the permission from Lloyd's Market Association and the Joint Cargo Committee to produce various JCC Clauses and the permission of Willis to reproduce their template for the Market Reform Contract.

The team from Informa Law from Routledge, led by Amy Jones, have been extremely supportive and encouraging both with regard to the text and the organisation of the appendices.

In light of the Insurance Act 2015, *The Cendor MOPU*, and the other changes in the law referred to above, much of this edition has been re-written. In this respect, Clyde & Co LLP have kindly provided secretarial support and this edition has been re-typed by Eira Robertson with, as usual, her exceptional speed and unerring accuracy.

Finally, I must thank my family for their patience and support.

I have endeavoured to state the law as at the early summer of 2015.

John Dunt
Guildford
June 2015

ABBREVIATIONS

Bibliographical abbreviations

<i>Arnould</i>	J. Gilman, R. Merkin, C. Blanchard and M. Templeman, <i>Arnould's Law of Marine Insurance and Average</i> , 18th edn, 2013, Sweet & Maxwell
<i>Bennett</i>	H. Bennett, <i>The Law of Marine Insurance</i> , 2nd edn, 2006, Oxford University Press
<i>Clarke</i>	M. A. Clarke, <i>The Law of Insurance Contracts</i> , 6th edn, 2009, Informa
<i>Clerk & Lindsell</i>	A. M. Dugdale, M. A. Jones and M. Simpson QC (gen. eds.), <i>Clerk & Lindsell on Torts</i> , 21st edn, 2014, Sweet & Maxwell
<i>Dicey, Morris & Collins</i>	Lord Collins <i>et al.</i> , <i>Dicey, Morris & Collins on the Conflict of Laws</i> , 15th edn, 2014, Sweet & Maxwell
<i>Goodacre</i>	J. K. Goodacre, <i>Goodbye to the Memorandum</i> , 1988, Witherby & Co Ltd
<i>Goodacre: Insurance Claims</i>	J. K. Goodacre, <i>Marine Insurance Claims</i> , 3rd edn, 1996, Witherby & Co Ltd
<i>Gough</i>	Neville Gough, <i>Institute Cargo and Related Trade Clauses</i> , 1988, Insurance and Reinsurance Research Group Ltd
<i>Historic Records Report HR3</i>	Report HR3 by an Historic Records Working Party of the Insurance Institute of London, 1963, The Insurance Institute of London
<i>Historic Records Report HR5</i>	Report HR5 by an Historic Records Working Party of the Insurance Institute of London, 2nd edn, 1964, The Insurance Institute of London
<i>Hodges</i>	S. Hodges, <i>Law of Marine Insurance</i> , 1996, Cavendish
<i>Hudson Sturges & Madge</i>	N. G. Hudson <i>et al.</i> , <i>Marine Insurance Clauses</i> , 5th edn, 2012, Informa

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<i>Insurance Disputes</i>	J. Mance, I. Goldrein and R. Merkin (eds.), <i>Insurance Disputes</i> , 3rd edn, 2011, Informa
<i>Kennedy & Rose</i>	F. D. Rose, <i>Kennedy & Rose: The Law of Salvage</i> , 8th edn, 2013, Sweet & Maxwell
<i>Lowndes & Rudolf</i>	R. Cornah and J. Reeder (eds.), <i>The Law of General Average and The York-Antwerp Rules</i> , 14th edn, 2013, Sweet & Maxwell
<i>MacGillivray</i>	J. Birds, B. Lynch and S. Milnes, <i>MacGillivray on Insurance Law</i> , 12th edn, 2012, Sweet & Maxwell
<i>Marine Insurance: The Law In Transition</i>	D. R. Thomas (ed.), <i>Marine Insurance: The Law In Transition</i> , 2006, Informa
<i>Maritime Law</i>	Y. Baatz (gen. ed.), <i>Maritime Law</i> , 3rd edn, 2014, Routledge
<i>Margo</i>	R. D. Margo <i>et al.</i> , <i>Margo on Aviation Insurance</i> , 4th edn, 2014, LexisNexis Butterworths
<i>Marsden</i>	S. Gault <i>et al.</i> (gen. ed.), <i>Marsden on Collisions at Sea</i> , 13th edn, 2003, Sweet & Maxwell
<i>Merkin: Marine Insurance Legislation</i>	R. Merkin, <i>Marine Insurance Legislation</i> , 5th edn, 2014, Informa Law
<i>Miller</i>	M. D. Miller, <i>Marine War Risks</i> , 3rd edn, 2005, LLP
<i>O'May</i>	D. O'May and J. Hill, <i>Marine Insurance: Law and Policy</i> , 1993, Sweet & Maxwell
<i>Rose</i>	F. D. Rose <i>et al.</i> , <i>Marine Insurance: Law and Practice</i> , 2012, Informa
<i>Scrutton</i>	B. Eder QC <i>et al.</i> , <i>Scrutton on Charterparties and Bills of Lading</i> , 22nd edn, 2014, Sweet & Maxwell
<i>Templeman</i>	R. J. Lambeth, <i>Templeman on Marine Insurance: Its Principles and Practice</i> , 6th edn, 1986, Pitman
<i>The Modern Law of Marine Insurance</i>	D. R. Thomas (ed.), <i>The Modern Law of Marine Insurance</i> , 1996, LLP
<i>Vishwanath</i>	K. S. Vishwanath, <i>Insuring Cargoes: A practical guide to the law and practice</i> , 2010, Witherby Insurance
<i>Wright & Fayle</i>	C. Wright and C. E. Fayle, <i>A History of Lloyd's</i> , 1928, MacMillan
<i>Witherbys Clauses</i>	<i>Reference Book of Marine Insurance Clauses</i> , 77th edn, 2013, Witherby & Co Ltd

ABBREVIATIONS

Other abbreviations

CA	Court of Appeal
CMA	Collateral Management Agreement
c.f.r.	Cost and Freight
c.i.f.	Cost, Insurance and Freight
CPR	Civil Procedure Rules
FC&S	Free of capture and seizure
f.o.b.	Free on Board
FOG	Full Outturn Guarantee
FPA	Free of Particular Average
GA	General Average
GAFTA	Grain & Feed Trade Association
GIT	Goods in Transit
GUA	General Underwriters' Agreement
HL	House of Lords
IACS	International Association of Classification Societies
ICC	Institute Cargo Clauses
IHC	International Hull Clauses
ILU	Institute of London Underwriters
IUA	International Underwriting Association of London
JCC	Joint Cargo Committee
IMO	International Maritime Organization
LIRMA	London International Insurance and Reinsurance Market Association
Lloyd's	Lloyd's of London
LMA	Lloyd's Market Association
LMBC	London Market Insurance Brokers' Committee
LMP Slip	London Market Principles 2001 Slip
LOF	Lloyd's Open Form
MIA 1906	Marine Insurance Act 1906
MRC	Market Reform Contract
PC	Privy Council
P&I	Protection and Indemnity
RACE	Radioactive Contamination Exclusion Clause
UCP	Uniform Customs and Practice for Documentary Credits
WA	With Average

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