International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 26-08-2022, Accepted: 12-09-2022, Published: 29-09-2022
Volume 8, Issue 5, 2022, Page No. 99-102

Impact of marine insurers on maritime safety laws and rescue operations at sea

Ehsan Jahanian
Research Scholar, School of Legal Studies, Cochin University of Science and Technology, Cochin University, Kochi, Kerala, India

Abstract
Today's shipping industry has many active beneficiaries whose existence cannot be denied. The insurer is one of these beneficiaries. In this regard, they significantly contributed to the development of maritime law from the beginning, and so far their traces can be seen in various maritime codes or conventions. Their efforts, policies, and accuracies have promoted maritime safety and the rescue of distressed ships. Furthermore, in the recent times insurance or equivalent financial guarantee is a requirement for ships to access ports and coastal waters. Since their existence is crucial for maritime trade, it's now evident that probing and utilizing of their ability to protect human lives and the environment at sea will be significant. This study intends to evaluate their efficiency in development of maritime safety and identification of any possible legal gaps.

Keywords: marine insurance, maritime law, safety at sea, rescue of distressed vessels

Introduction
In fact, it must be acknowledged that marine insurance has been a pillar in preserving maritime trade. owing to the advancement of marine technology, the advent of large tankers, and the potential for marine environment pollution. At this point, insurances have become so important and necessary that ships cannot sail without them, and coastal nations consider merchant ships without insurance as unseaworthy. On the other hand, insurance companies must support the development of safety standards and prevent bypassing of the minimum international approved regulations with insured vessels in order to maintain their own interests and to grow economically. In this regard, they have consistently paved the way for the expansion, development, and enforcement of international maritime safety regulations. As an example, two fundamental and primary marine insurances, Protection & Indemnity Club (P&I clubs), and Lloyds Company, have long been pioneers in the development of regulations. However, today they for protection their own interest by adhering to policies and warranties clauses has positive impacts on improving safety at sea. The purpose of this study was to examine their significant role in the development of safety laws at sea and to identify potential problems or gaps associated with them.

Research Methodology
This doctrinal study is based on primary and secondary legal data sources. Domestic legislations, case law reports, and international conventions such as the IMO Conventions are the primary sources. The secondary sources include books, journal articles, conference papers, web articles, newspaper and magazine reports, etc.

History of foundation of marine insurance
According to the insurance history, their activities have resulted in a reduction of financial risks associated with interests such as cargo and property with encountering unforeseen events. And over time, it has influenced the development of safety in industries. For example, in the 3rd and 2nd millennia BC, separately, Chinese and Babylonian merchants utilized the first ways of spreading or sharing risk in the business. It was common for Chinese traders to divide their goods among many vessels when travelling across risky rivers to mitigate the damage caused by capsized vessels. A few centuries later (1750 BC), the famed Code of Hammurabi showed particular regulations for transferring risk from merchants to lenders. A merchant was not required to pay back the loans if thieves stole his merchandise. Although, without a doubt, Babylonian lenders increased their interest rates to reflect the risk transfer. This rule was later used by Phoenicians and Greeks for sea trades as Bottomry and Respondentia; according to this approach, the lender provided a clause under which the borrower could cancel the loan if the vessel or its goods sank at sea, albeit at a higher interest rate. Consequently, the owner of the boat or cargo transferred the risk to the lender. When the ship was pledged, these contracts were called bottomry contracts; when the cargo was pledged, they were called respondentia contracts. Moreover, there was another insurance as political insurance,which is out of the study.

The phrase "insurance" (formerly "assurance"), however, has Italian origins Additionally, the word "policy" comes from the Italian word "polizza," which denotes a commitment. In this regard, the Lombards fled the war-torn regions of Italy for England in the thirteenth century. Their wealth and teamwork enabled them to engage in trade, lending, and shipbuilding. They started lending to shipowners in the fifteenth century in the form of bottomry and respondentia, which emerged as maritime insurance. As opposed to modern insurance corporations, these early marine policies were written by persons. And the shipowners or traders who needed security for their ship or cargo developed and disseminated a sheet with data regarding the ship, its cargo, its destination, and other important details. Later, they were mainly organized into groups in one coffee house owned by Edward Lloyd in London and followed a special procedure.

Insurers' Role in Improving Safety at sea

Nonetheless, it is evident that maritime insurance is a pioneer in the insurance sector as the oldest type of insurance, and that it was developed in response to the necessity of protecting parties' interests. Further, International trade and commercial development would have been significantly hampered without marine insurance. In fact, merchants and shipowners would be extremely reluctant to put their wealth at risk in marine ventures without insurance protection. As the insurer sought to increase its fund, these considerations improved safety. Therefore, insurers in modern days have impacted to improve safety and security at sea, particularly because insured vessels for enjoyment from an agreement with insurers need to follow two rules under implied warranties, the first warranty of seaworthiness and the second warranty of legality.

In the warranty of seaworthiness, the main issue is the readiness of the vessel under standards; in other words, the insurer is not responsible for making any damage payments if the ship was considered unfit before the event. And that is an accepted clause for insurance, for example, under section 41(5) of India Marine Insurance Act and sec.39 of English Marine Insurance Act 1906 ;

"where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness "

The term "seaworthiness" refers to the requirement that the ship, her machinery, and her crew be able to endure the dangers that may be expected to arise during the proposed voyage. The classification and age of the vessel, the intended voyage, the type of good, and many other factors all affect the required standard of seaworthiness. There are several signs that a ship is unworthy of the sea, including structural problems, insufficient or inadequate equipment, unqualified officers and crew, understaffed for the trip, lack of enough bunkers for the intended voyage; the lack of the latest charts for the trip; the absence of any legal certificates that would be required for the sea trip, so on.

Ships are therefore deemed seaworthy when they are reasonably ready to face the risks associated with sea travel. Moreover, the ship shall be used according to its characteristics and accepted international instruments such as SOLAS regulations; for example, vessels designed and equipped for coastal navigation cannot be seaworthy for ocean voyages under international standards, and vessels not constructed to sail in polar regions according to accepted standards are not seaworthy for voyages to those regions. This notion of seaworthiness is preserved in the Act of 1906 and is based on the famed *Dixon v. Sadler 1839* decision. Under a time, insurance policy, the plaintiffs insured the defendants to cover the ship John Cook and her cargo. The master and crew, having boarded the pilot on the journey from Rotterdam to Sunderland, discharged some of the ballast as was routine in preparation for loading cargo. However, her stability decreased when she encountered a sudden, furious squall that she was pushed on her beam ends and wrecked. Underwriters rejected the plaintiffs' claim for a total loss on the basis that she had been unseaworthy because of the negligence of the master and crew before the event occurred. The underwriters were liable for payment of damages, the court said. The shipowner was not responsible for further vessel flaws because of the negligence of the crew and master. The Supreme Court later confirmed the lower court's judgement. Judge Parke B:

"*In the case of an insurance for a certain voyage, it is clearly established that there is an implied warranty that the vessel shall be seaworthy, by which it is meant that she shall be in a fit state as to repairs, equipment, and crew, and in all other respects, to encounter the ordinary perils of the voyage insured, at the time of sailing upon it.*"

As judge Parke B suggested, a ship's fitness should be such that it can encounter the ordinary perils of the voyage insured.' A number of other leading cases on the subject have confirmed this. Furthermore, the concept is now codified in Section 39(4) of the Act, though the term "voyage" has been replaced by the broader term "adventure."

Traditionally, a voyage policy has been considered subject to an implied warranty that the ship must be seaworthy before setting out on the particular journey. In this regard, the time policies are somewhat similar. Time policies do not contain such implied warranties, but if the insured sends a ship to sea that he knows, or should know, is unseaworthy, the insurer is not responsible for any losses caused by the unseaworthy condition. Whenever a ship is considered unseaworthy, it is not reasonably capable of withstanding the common maritime dangers for the venture being covered. Because shipowners are required to keep documents of their ongoing due diligence efforts, it is reasonable to anticipate that insurers will request access to these documents if there is a reasonable suspicion that a ship's unseaworthiness contributed to an event.

Hence, insurers weren't always compelled to indemnify. For instance, in the case of *Douglas v. Scougall*, the vessel set sail but shortly encountered a storm, became leaky, was towed ashore, and was revealed on the survey to have considerably decayed with damage discovered that could not be reasonably attributed to the storm. consequently, when the ship sailed on the insured voyage, it was determined that she was not seaworthy. In another case, "*Campania Maritime San Bassils v. Oceans Mutual Underwriting Assoc. (Bermuda)",* when insured goods were lost, the insurer refused to indemnify on the grounds that the ship was sent to sea in an unseaworthy condition with the assured's privity. The court ruled that if the ship is sent to sea in an unseaworthy condition with the assured's knowledge and consent, the insurer is not liable for any loss caused by the unseaworthiness. Consequently, the methods used by insurers to assess the seaworthiness of covered vessels have enhanced maritime safety.

Role of insurers on rescue operation at sea

The question of their potential impact on sea rescue operations has remained unanswered. Indeed, without the support of insurers, the marine industry and global trade will be on the verge of collapsing; their contributions are the primary logical reason for developing maritime trades and maritime safety. Furthermore, while their primary mission is to protect the owner's interests and rescue their wealth from maritime perils in accordance with their contracts, they also assist in rescue operations through indemnity of loss and abandonment clauses. Considering that they may support salvage vessels and their operations under the terms of their policy contracts, and since their support will motivate vessels to actively participate in rescue operations as they are supported in encountering unforeseen hazards at sea. Additionally, by emphasizing the importance of a vessel's

seaworthiness as the primary factor in its support, one might boost rescue units' active participation.

However, the important issue is the warranty of seaworthiness for various types and classes is different and the characteristics of vessels is defining the subjects toward seaworthiness, the classical example on this point is *Burges v Wickham*. In this instance, the ship was designed for riverside travel and was therefore typically inadequate for ocean travel. The court ruled that the warranty must be acknowledged to be limited to the vessel's potential and that it was satisfied if the vessel was made as seaworthy as it was capable of being at the beginning of the risk, even though this may not have created the vessel as seaworthy for the trip as would have been appropriate and usual if the venture had involved sending out a regular seagoing vessel. A ship shall be deemed seaworthy in this regard from a legal standpoint if she is made as functional as is typically practicable by available means. Furthermore, the requirements for seaworthiness are not absolute because they are based on the current state of knowledge and the standard prevailing at the time. As a result of technological advancement, the accepted international standard for the seaworthiness of various types of vessels will change. As an example, when science develops new means to improve vessel safety, and their use becomes standard practice under accepted norms, a vessel will become unseaworthy if those means are not used as intended. As a result, because rescue units must adhere to accepted international and domestic standards, all salvage companies and other insured vessels engaged in Search and Rescue (SAR) operations must use appropriate vessels. For instance, a cargo vessel with restricted maneuverability is inappropriate for firefighting activities because of its size, engine type, and equipment. In addition, the cargo vessel may need tugs to take a proper position. How can it safely approach other risky floating platforms or vessels on fire? Or, as mentioned before vessel shall follow all accepted international standards. In this way, the warranty clause of the insurer could help to improve rescue operations too. Especially because sailing under appropriate insurances is binding and necessary for all non-governmental ships in both ocean-going and offshore fields. A flag state must check that those responsible for the management and operation of a ship flying its flag are able to meet financial obligations that may arise as a result of that ship's operation to cover third-party damage risks that are generally insured in international maritime transportation. This can be achieved by ensuring ships flying their flag can always present documentation demonstrating that they have an acceptable guarantee, such as insurance or any other analogous means. In this context, we can see states' practices under customary rules or article 239 part 3 of the UNCLOS, or later article 12 of the ‟ Nairobi International Convention on the Removal of Wrecks,2007 ”, which asked all parties (flag and coastal states) to take action to impose compulsory marine insurance for indemnity of damages from all vessels over 300 gt. Or in ‟Civil Liability for Bunker Oil Pollution Damage, convention 2001”, art 7. Additionally, other conventions, such as the 1992 ‟Civil Liability Convention” with Art 7, require vessels carrying more than 2,000 tons of oil in bulk as cargo to provide insurance or other financial securities, and multilateral agreements of this type are focused on tanker owners' limited liability for contaminated damages; however, that is beyond the scope of this study. Meanwhile, most states are sensitive to the issue and have enacted the rules in their domestic law, as seen in the ‟Regulations of Entry of Ships into Ports, Anchorages, and Offshore Facilities Rules (India)”, 2012 part 3, which requires all foreign vessels with a tonnage of more than 300 gt to have valid insurance against maritime claims to enter Indian waters. And also, we can see the case *Liverpool & London S.P. & I Asson. Ltd.vs M.V. Sea Success I & Anr*, 2003 the court ruled:

“*Flexibilities being the virtue of law court, the High Court has rightly held that the marine premium would come within the purview of the term "necessaries" regarding the global change and outlook in trade and commerce”……With the increase in marine traffic, the insurance law also developed, and new varieties of insurance covers came into being. There has been a considerable expansion of the practice of insurance against various forums of legal liabilities which the assured may incur to the third parties……Therefore, notice is hereby given that from 1st November 1996, ships which do not possess valued insurance cover will not be given an anchorage berth in the Mumbai Port for cargo work or any other purpose; this notice period is given so that the owners, agents and shippers proposing to load cargo have sufficient time to ensure that such cargoes will be loaded on duly protected ships”*

Moreover, although the possession of insurance was previously not considered a necessity and was outside of admiralty law, the high court believed that since the end of the twentieth century, it had been accepted as a necessity by new international conventions (such as the 1999 Arrest Convention), and customary rule and practice of most states like as Canada, South Africa, Australia, China, and Korea have given the claim for unpaid insurance premium in respect of a ship the status of a maritime claim. And, as evidenced by their practices, they accepted compulsory insurance for all ships; for example, Australia announced on April 6, 2001, that ships of 400gt or more require compulsory insurance when entering Australian waters. As a result, opinions on mandatory insurance have shifted everywhere. Accordingly, the belief that only tankers carrying more than 2000 tonnes of cargo are subject to the requirement for mandatory insurance under the "Civil Liability Convention 1969" and Indian MSA 1958, sec. 352N, and P (as domestic legislation) have evolved and applied to all. As seen in Calcutta Port's circular no. 10 dated 26.6.2001 to all shipping agents, representatives must declare the details of P&I Club coverage, including the period of validity and a declaration that the insurance provides comprehensive coverage, along with the berthing application to protect the port's interest in the cost of repairs caused by a marine casualty, etc.

As a result, marine insurance coverage is essential and required for all offshore and ocean-going vessels, and for the enjoyment of insurance advantages, must adhere to all warranty criteria, such as a seaworthiness warranty, which has a direct effect on the safety of at-sea, including of the rescue operation, particularly because they always are in seaworthy condition for responding to distress situation and salvage team without hesitation for regaining expense would be carried on the rescue operation. Further, the IMO Legal Committee maintains a strong relationship with representatives of insurers through the International Group of P&I Clubs and International Union of Marine Insurance (IUMI) as the IMO consultative status NGOs for discussion

and the identification of legal gaps, the development of international maritime law, and the promotion of international maritime law harmonization. Besides that, the underwriters have played an essential role in implementing ,codifying, developing and enacting maritime law regulations from the beginning of the last century, such as the influence of the ‟ no cure, no pay ” clause of Lloyd's open form as a primary principle in the Salvage 1910 convention or the Salvage convention,1989 without the support of P&I club through its pay special compensation under SCOPIC could not be pragmatically enforced. Similarly, Lloyds worked hard to assist safe shipping through IMO collaboration, which resulted in the Polar Code being implemented to enhance safety and pollution mitigation in the polar region. In March 2014, Lloyds recommended creating detailed guidelines for safeguarding shipping activities in the region. In November of that same year, the IMO polar code was signed. In addition, research into the several marine compensation conventions, such as CLC 1969 or 1992, will show that compensation is not possible without the presence of insurers. In other words, without insurance support, nothing will be done to increase maritime safety, and maritime trade would remain exceedingly risky and expensive. Furthermore, if marine states wish to increase the safety at sea, the best way is through increased cooperation and communication with marine insurers.

Conclusion

As the oldest underwriter, marine insurance has always been one of the primary pillars of maritime trade and, particularly in the modern period, has had a significant impact on the development of maritime safety through its warranty terms and seaworthiness requirements. Although, it is also undeniable that efforts are made to serve its interests because it is a business. In addition, the requirement for insurance coverage certificates for sea travel, port access, and access to marine markets is now proved by state practises and domestic legislation. In this context, there isn't a particular international convention that deals with the provisions of marine insurance policies in this situation, the majority of marine conventions on liabilities or compensation —including the CLC 1992, Nairobi International Convention on the Removal of Wrecks, 2007, Civil Liability for Bunker Oil Pollution Damage, convention 2001, and others—requested coverage of an appropriate guarantee certificate or insurance coverage to compensate for potential offshore oil pollution. In this way, the warranty clause of the insurer could help to improve the quality of rescue operations too. Especially because sailing under appropriate insurances is binding and a necessity for all non-governmental ships in both ocean-going and offshore fields. Also, the IMO, through cooperation and exchange of opinion with representatives of insurers on those underwriters NGOs with IMO`s consultative status, such as the International Group of P&I Clubs or IUMI, could identify legal gaps and develop international maritime law. Hence the insurers have a chance to impact on developing international maritime safety regulations. Although, since the beginning of the 20th century, underwriters have been a crucial influence in the implementation or even the codifying of maritime law regulations, as evidenced by the influence of the "no cure, no pay" clause of Lloyd's open form as a fundamental principle in the Salvage 1910 convention or Salvage convention (1989), which could not be practically enforced without P&I club supports. Or more recently, Lloyds' efforts to codify the polar code helped to increase safety, boost rescue operations, and reduce pollution in the polar regions. Finally, we can conclude that commercial shipping, the salvage industry and rescue of distressed vessels, safe operation and navigation, and protecting parties' interests would all be dreams without marine insurance. In other words, marine insurance is the reason for survival safe maritime trade in modern era.

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