

DABELSTEIN & PASSEHL

Hamburg  Leer



The Insurance Cover of Ship Managers

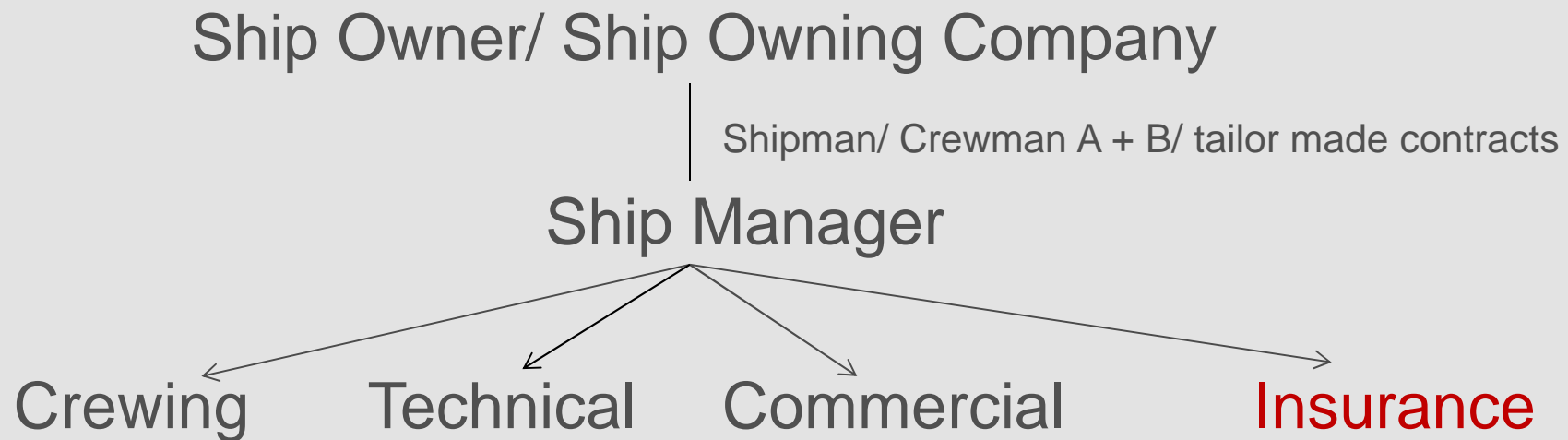
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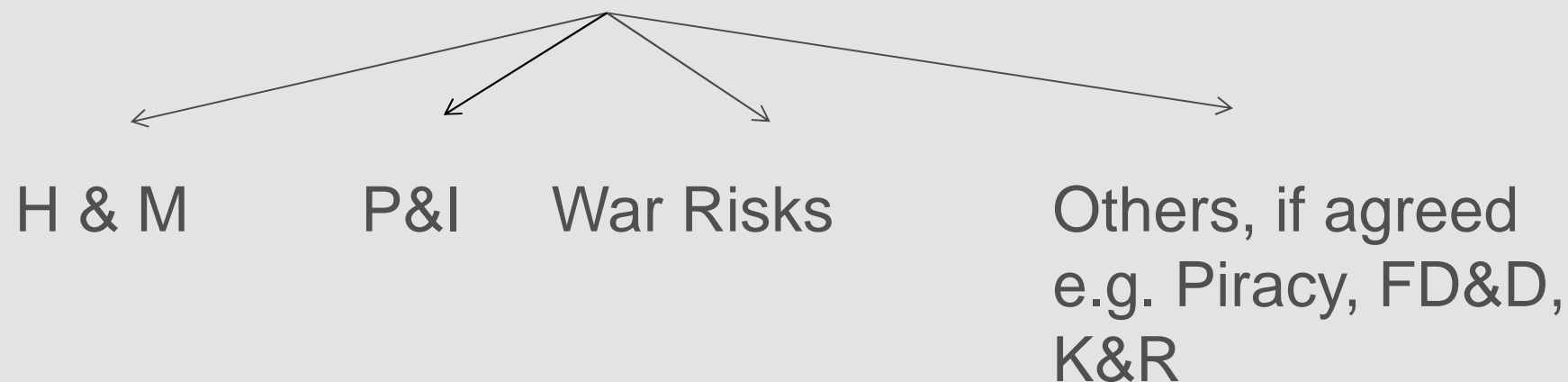
I. Ship Management and Insurance



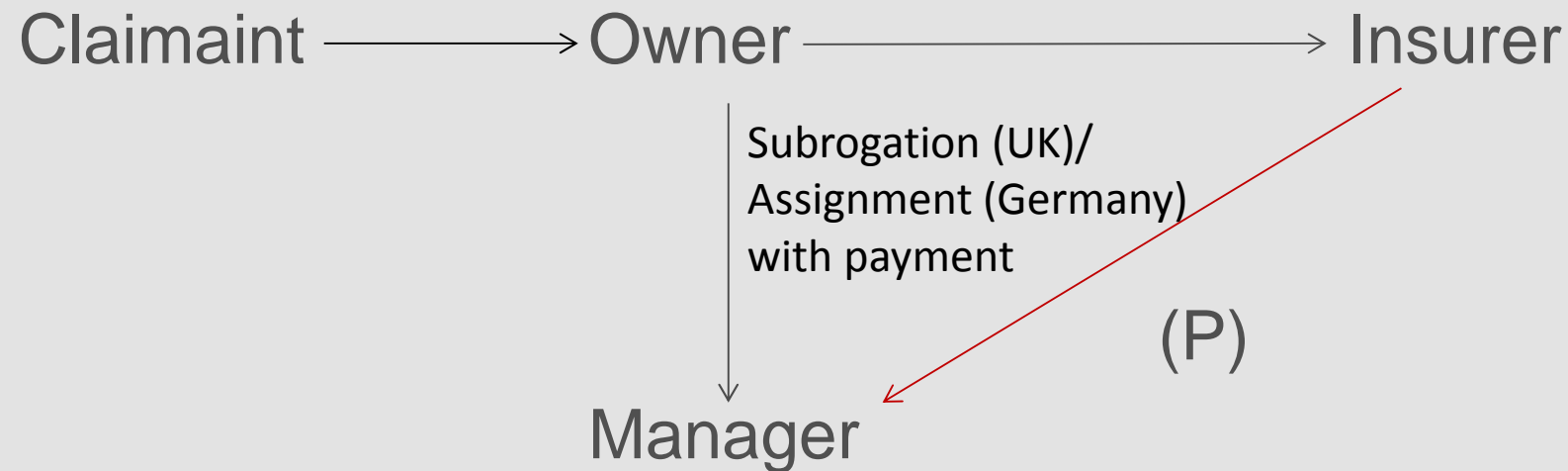
I. Ship Management and Insurance

Clause 10 Shipman 98

The Owners shall procure, whether by instructing the Managers or otherwise,...at the Owner's expense

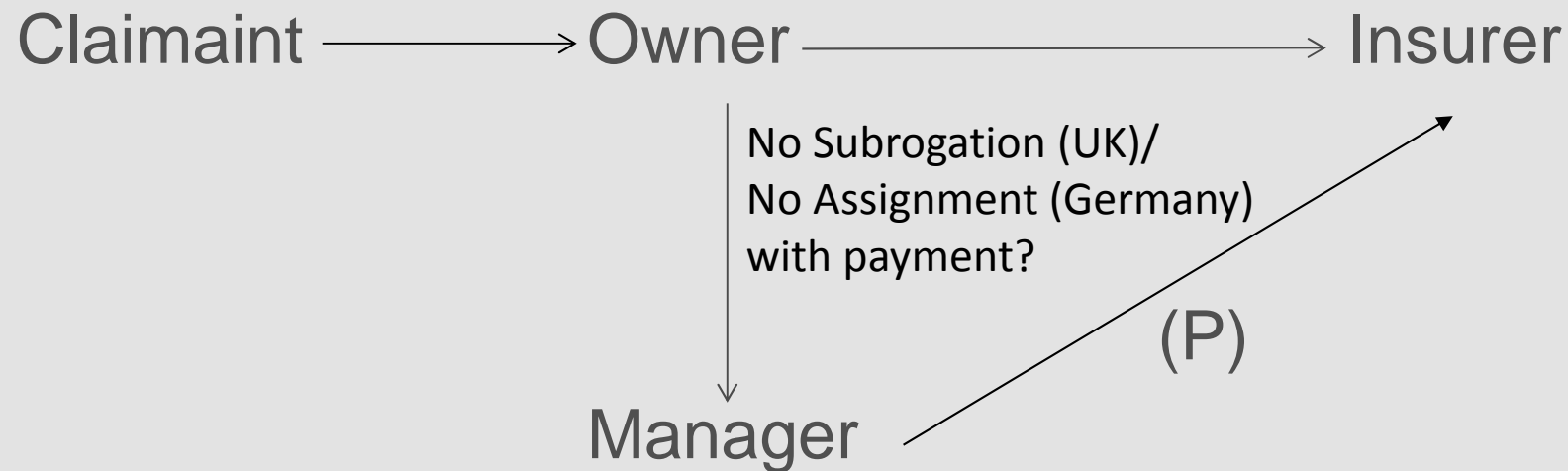


II. Recourse Risk



II. Recourse Risk

Solution: Co-Insurance?



III. Insurable Interest

Insurable Interest of Ship Manager in Owners' Policies?

Liability part of H&M Insurance and P&I Insurance:

Yes, as Ship Manager is generally also exposed to liability – IMO conventions also name Operator/ Manager as being responsible for defaults

III. Insurable Interest

BUT

Ship Manager: No ownership interest but an Interest not to become liable vis-à-vis the Owner (and insurer after payment) = “**pervasive interest**” = “liability risk”

(P) Property part of the H&M Insurance

II. Insurable Interest

Pervasive interest insurable in property part of H&M Insurance?

English law: Yes
(The Martin P – Marine Insurance context)

German law: Yes

* Supreme Court made this clear in a decision dating back to 2000 in non-marine context, but this is transferable as reasoning not being reduced to consumer protection thoughts.

II. Insurable Interest

Today in German H&M Policies standard, e.g. for a typical wording:

Assured: Manager

Co-Assureds: Ship Owning Company GmbH & Co.
Bareboat Charter Company
Crew Management Company
and/or subsidiary and/or affiliated
and/or associated companies and/or
to whom it may concern

III. Co-insurance

The Owner's Insurances name the Manager and, ..., subject to underwriters' agreement, any third party designated by the Managers as a **joint insured with full cover.**

German Ship manager contract wording:

Nothing in this respect – only „Ship Manager has to organize usual insurances on usual terms and conditions.

III. Co-insurance

Clause 10 Shipman „Insurance“:

„Joint issued with full cover“

Joint assured/member vs. Co-assured

(Newcastle P&I v. V. Ships)

Full assured/member

„Misdirected arrow cover“

Liable for premiums

Not liable for premiums

III. Co-Insurance

- Misdirected arrow cover under English law provides cover only to the same extent as to the owner

(P) Owner can limit liability, ship manager not, only covered to the amount the Owner is covered => shortfall

- Full protection under English law only if joint assured/ joint member with the consequence of liability for premiums.

= reason for Wording of Clause 10 Shipman “joint insured with full cover”

III. Co-Insurance

How does Shipman Wording fit into German Co-insurance approach?

- Under German Law full protection also possible if Ship Managers is not a joint assured but simple the assured or simple a co-assured due to our law of “insurance of someone else’s interest” what is unknown to English Law

III. Co-Insurance

In practice it is often the case that companies are forgotten to be named in the policy as being a joint assured/ a co-assured especially in the context of crew management.

=> Co-insurance possible if Ship Manager is not expressly mentioned in the policy?

III. Co-Insurance

Co-insurance possible if Ship Manager is not expressly mentioned in the policy?

English Law: No

German Law: Yes, as ship managers have an interest to be insured and insurers know or ought to have known this and have no valid reason why they should not include the ship manager.
(Supreme Court in non Marine context)

IV. Ship Manager Liability Insurance

E&O- Insurance of the Ship Management Company insuring the Ship manager for his services detailed in the Policy/ Certificate of entry especially for his

liability for negligent services

and other liability risks such as liability as an unintentional principal.

IV. Ship Manager Liability Insurance

Terms generally contain a Condition precedent to coverage that Ship Manager is named as an co-insured on the Owners' Hull and P&I-Policies/ a subsidiary clause.

=> Only supplementary cover to the cover under the Owner's Insurance.

V. Practice Examples

1. Insolvency of the Owning Company

- * Liability of the Ship Manager for outstanding premiums? Joint assured/ Co-assured?

- * Right to claim outstanding insurance proceeds or does this right rest with the administrator?

V. Practice Examples

2. Prospectus Liability claims

= KG-Shareholder claiming indemnity from Ship Manager due to his involvement and faults in the development of the shareholder information (= “prospectus”), e.g. delivering wrong expected charter calculations.

=> Liability due to KG-ship-finance services of the Ship Manager covered as “Ship Manager Services” under the Ship Manager Liability insurance?

V. Practice Examples

3. Omitted repair of a bow thruster before the sale of vessel and therefore buyer rejects notice of readiness, Seller/ principal agrees on price reduction

Price reduction covered under Ship Manager Liability Insurance?

Damage due to negligent Ship Management services?

V. Practice Examples

3. Omitted repair of a bow thruster before the sale of vessel and therefore buyer rejects notice of readiness, Seller/ principal agrees on price reduction

=> No, as long as price reduction only reflects the costs for the necessary repair as such costs would have arisen anyway.

VI. Summary

1. Co-insurance in Owners' Policies essential
2. Possible liability for premiums
3. * English Law: only express co-insurance
* German Law: co-insurance also possible if Ship Manager not expressly mentioned in policy
4. * Ship Manager Liability insurance only supplement insurance
* Gaps in the cover for services not falling under the insured "Ship Manager Services"

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Thank you!

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