

WICA 2023

Peter MacDonald Eggers KC

7 King's Bench Walk

Formulation of war and political risks



- War risks commonly include:
 - War, civil war, revolution, rebellion, insurrection, etc
 - *Cf. “consequences of hostilities and warlike operations”*
- Political risks commonly include:
 - Capture, seizure, arrest, restraint, detainment, confiscation, expropriation
- These are not mutually exclusive:
 - *Kuwait Airways v Kuwait Insurance* (1999)
- Difficulties of interpretation:
 - *Spinney’s v Royal Insurance* (1980)
- Important differences in Institute War Clauses (Cargo)

Total losses



- Marine insurance adopts exhaustive definitions of total loss
- Marine Insurance Act recognises both physical and commercial total losses
 - Actual total loss: physical or legal impossibility of repair/recovery
 - Constructive total loss: commercial impracticability of repair/recovery
 - *Masefield v Amlin* (2011)
- Non-marine insurance does not include doctrine of CTL
 - Difficulties of defining a total loss for purposes of non-marine insurance
- Important classification:
 - Total loss by damage
 - Total loss by deprivation of possession

Sue and labour and ransoms



- Duty to mitigate under insurance law
- Marine insurance: sect. 78(4) of Marine Insurance Act 1906
- Non-marine insurance: is there such a duty?
 - *Yorkshire Water v Sun Alliance* (1997)
- Is there a duty to pay ransom?
- If ransom is paid, is it recoverable?
 - If paid to pirates, it is not illegal or contrary to public policy and so recoverable: *Masefield v Amlin* (2011)
 - If paid to terrorists, it is illegal: Terrorism Act 2000, sect. 1
- If recoverable, on what basis:
 - Sue and labour clause
 - Other means of recovery

Cyber risks



- Structure and form of cyber risks
- Difficulties of defining key concepts:
 - Computer systems
 - Insured risks – types of attack
- Double insurance:
 - New cyber risks policies
 - Traditional policies which cover risks by the back-door
- Challenges of ransomware
 - Payment of ransoms: recoverable and permitted?
 - Piracy/terrorism distinction
 - Sanctions legislation



Peter MacDonald Eggers KC
pme@7kbw.co.uk

020 7910 8300



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www.7kbw.co.uk

7 King's Bench Walk, Temple, London EC4Y 7DS

+44 20 7910 8300