

The Principle of Indemnity in Marine Insurance Contracts

A Comparative Approach

Bearbeitet von
Kyriaki Noussia

1. Auflage 2006. Buch. XIX, 298 S. Hardcover

ISBN 978 3 540 49073 9

Format (B x L): 15,5 x 23,5 cm

Gewicht: 1380 g

Recht > Handelsrecht, Wirtschaftsrecht > Europäisches, internationales
Wirtschaftsrecht

schnell und portofrei erhältlich bei


DIE FACHBUCHHANDLUNG

Die Online-Fachbuchhandlung beck-shop.de ist spezialisiert auf Fachbücher, insbesondere Recht, Steuern und Wirtschaft. Im Sortiment finden Sie alle Medien (Bücher, Zeitschriften, CDs, eBooks, etc.) aller Verlage. Ergänzt wird das Programm durch Services wie Neuerscheinungsdienst oder Zusammenstellungen von Büchern zu Sonderpreisen. Der Shop führt mehr als 8 Millionen Produkte.

Contents

Dedication	V
Contents	IX
Abbreviations	XVII
1. The history and legislative framework of marine insurance.....	1
1.1. Historical and policy reasons behind the various English statutes....	1
1.1.1. Early historical background	1
1.1.2. The Lombards	2
1.1.3. Early English marine insurance	3
1.1.4. The founder of Lloyd's and the rise of the Lloyd's coffee house.....	3
1.1.5. The first marine insurance companies	4
1.1.6. The evolution of Lloyd's and other forms of marine insurance companies.....	5
1.1.7. The growth and evolution of the system and law of marine Insurance.....	6
1.1.8. The policy reasons which generated the enactment of the Marine Insurance Act 1906	8
1.2. The history and legislative framework of marine insurance in Greece	9
1.3. The history and legislative framework of marine insurance in Norway.....	11
1.4. The history and legislative framework of marine insurance in France.....	13
1.5. The history and legislative framework of marine insurance in the USA.....	15
1.5.1. Introductory remarks	15
1.5.2. The situation prior to and after the "Wilburn Boat Co v Fireman's Fund Insurance Co case	16
1.6. The history and legislative framework of marine insurance in Canada	20
1.7. The history and legislative framework of marine insurance in Australia.....	21
1.8. General conclusive remarks and comparative discussion	22

2. Indemnity marine insurance contracts: basic features and cover provided	27
2.1. Basic features of the marine insurance contracts	27
2.1.1. Basic features of the marine insurance contracts in England	27
2.1.1.1. The nature of the marine insurance contract: basic literature review.....	27
2.1.1.2. The nature of the interest: insurable interest.....	31
2.1.1.2.1. Definition and evaluation of the concept of insurable interest and the requirements set by law for it	32
2.1.1.2.2. On the illegality of the insured adventure ..	40
2.1.1.2.3. The time when the insurable interest must attach	40
2.1.1.2.4. Critique on the existence of the requirement for insurable interest in relation also to overvaluation.....	42
2.1.2. Basic features of the marine insurance contracts in Greece ...	43
2.1.2.1. An introduction to the Greek legal system and the interpretation of law in relation to contracts	43
2.1.2.2. The nature and objective of marine insurance contracts in Greece	44
2.1.2.3. The formation of the marine insurance contract: basic requirements.....	45
2.1.2.4. The nature of the interest: insurable interest.....	47
2.1.3. Basic features of the marine insurance contracts in Norway ..	47
2.1.3.1. General requirements for marine insurance contracts under the Norwegian law regime	47
2.1.3.2. Insurable interest under the Norwegian law regime ..	49
2.1.4. Basic features of the marine insurance contracts in France ...	50
2.1.4.1. General requirements and duties of the contractual parties to a marine insurance contract under the French law regime.....	50
2.1.4.2. The nature of the interest: insurable interest.....	51
2.1.5. Basic features of the marine insurance contracts in the USA	52
2.1.5.1. General requirements for the formation of marine insurance contracts in the USA	52
2.1.5.2. The nature of the interest: insurable interest.....	52
2.1.6. Basic features of the marine insurance contracts in Canada.....	54
2.1.6.1. General requirements and the objective of marine insurance contracts in Canada	54
2.1.6.2. The nature of the interest: insurable interest.....	55
2.1.7. Basic features of the marine insurance contracts in Australia.....	57
2.1.7.1. Basic requirements under the Australian law regime	57

2.1.7.2. The nature of the interest: insurable interest.....	57
2.1.7.3. Insurable interest and the requirements for marine insurance contracts under the Australian law regime: the reform proposals.....	59
2.2. The cover offered under marine insurance contracts in the various common law and continental law jurisdictions	65
2.2.1. The coverage offered under marine insurance contracts in England.....	65
2.2.2. The coverage offered under marine insurance contracts in Greece.....	70
2.2.3. The coverage offered under marine insurance contracts in Norway	73
2.2.4. The coverage offered under marine insurance contracts in France	74
2.2.5. The coverage offered under marine insurance contracts in the USA	75
2.2.6. The coverage offered under marine insurance contracts in Canada	76
2.2.7. The coverage offered under marine insurance contracts in Australia.....	77
2.2.7.1. The coverage offered under marine insurance contracts in the Australian law regime: the reform proposals ..	78
2.3. General conclusive remarks and comparative discussion	80
3. Types of losses in marine insurance contracts.....	89
3.1. Types of losses in marine insurance contracts under the English law regime.....	89
3.1.1. Indemnity and losses.....	89
3.1.1.1. Total losses: actual total loss	90
3.1.1.1.a. Where the subject-matter is totally destroyed: actual total loss of a ship – a “total wreck”	92
3.1.1.1.b. Actual total loss of a ship: a missing ship ..	93
3.1.1.1.c. Actual total loss: where the subject-matter insured ceases to be “a thing of the kind insured”	93
3.1.1.1.d. Actual total loss: where the assured is “irretrievably deprived” of the subject- matter insured	95
3.1.1.1.e. Actual total loss of freight : actual total loss of freight caused by a total loss of ship and/or goods	96
3.1.1.1.f. Recovery for a partial loss	97
3.1.1.2. Constructive total loss	98

3.1.1.2.a. Types of constructive total loss: reasonable abandonment of the subject- matter insured	100
3.1.1.2.b. Types of constructive total loss: deprivation of possession of ship or goods.....	102
3.1.1.2.3. Effects of constructive total loss: abandonment of the subject-matter insured – the meaning of “the notice of abandonment”	105
3.1.1.2. Indemnity and partial losses	110
3.1.1.2.1. Indemnity and particular average losses..	110
3.1.1.2.2. General average losses	111
3.1.1.2.3. Indemnity and the “sue & labour” clause	113
3.2. Types of losses in marine insurance contracts under the Greek law regime	113
3.2.1. Total loss and abandonment under the Greek law regime ..	114
3.3. Types of losses in marine insurance contracts under the Norwegian law regime	116
3.3.1. The cover offered under the Norwegian marine insurance contracts.....	116
3.3.2. Types of losses under the Norwegian marine insurance law	118
3.4. Type of losses in marine insurance contracts under the French law regime.....	119
3.4.1. Losses under French marine insurance contracts.....	119
3.4.2. French marine insurance contracts and abandonment	119
3.5. Types of losses in marine insurance contracts under the US law regime.....	121
3.6. Types of losses in marine insurance contracts under the Canadian law regime.....	122
3.7. Types of losses in marine insurance contracts under the Australian law regime	123
3.8. General conclusive remarks and comparative discussion	124
4. Valuation and the measure of indemnity in marine insurance contracts.....	127
4.1. Valuation and the measure of indemnity.....	127
4.1.1. Valuation and the measure of indemnity in England.....	127
4.1.1.1. Valued and unvalued policies.....	128
4.1.1.2. The mode of calculation and the finality of losses .	135
4.1.2. Valuation and the measure of indemnity in Greece	136
4.1.3. Valuation and the measure of indemnity in Norway	139
4.1.4. Valuation and the measure of indemnity in France	140
4.1.5. Valuation and the measure of indemnity in the USA	141
4.1.6. Valuation and the measure of indemnity in Canada	142

4.1.7. Valuation and the measure of indemnity in Australia.....	142
4.2. Total losses and the measure of indemnity	143
4.2.1. Total losses and the measure of indemnity in England.....	143
4.2.2. Total losses and the measure of indemnity in Greece.....	149
4.2.3. Total losses and the measure of indemnity in Norway	150
4.2.4. Total losses and the measure of indemnity in France	154
4.2.5. Total losses and the measure of indemnity in the USA	155
4.2.6. Total losses and the measure of indemnity in Canada	157
4.3. Partial losses and the measure of indemnity	157
4.3.1. Partial losses and the measure of indemnity in England.....	157
4.3.1.1. Partial loss of a ship and the measure of indemnity	158
4.3.1.2. Partial loss of goods and the measure of indemnity	159
4.3.1.3. Partial loss of freight and the measure of indemnity	160
4.3.1.4. General average losses and the measure of indemnity	161
4.3.2. General average losses and the measure of indemnity in Norway	161
4.3.3. Successive losses and the measure of indemnity in England.....	163
4.3.4. “Sue & labour” and the measure of indemnity in England.	164
4.3.5. “Sue & labour” and the measure of indemnity in Norway..	166
4.3.6. “Sue & Labour” and the measure of indemnity in Canada.	167
4.4. Over-insurance and the re-opening of valuation	167
4.4.1. Over-insurance, under-insurance and the re-opening of valuation in England	167
4.4.2. Over-insurance and the re-opening of valuation in Greece	172
4.4.3. Over-insurance and the re-opening of valuation in Norway	172
4.5. Floating policies and open-cover insurance	174
4.5.1. Floating, open-cover policies and the measure of indemnity in England.....	174
4.5.2. Floating, open-cover policies and the measure of indemnity in Greece.....	192
4.5.3. Floating, open-cover policies and the measure of indemnity in France	192
4.5.4. Floating, open-cover policies and the measure of indemnity in the USA	193
4.5.5. Floating, open-cover policies and the measure of indemnity in Canada	193
4.6. Critical discussion on valuation and the measure of indemnity ...	194
4.7. Salvage and the measure of indemnity.....	197
4.8. Consequential, future profit loss and the measure of indemnity ..	199

4.9. Mortgagee's interest insurance and the measure of indemnity	204
4.10. Double Insurance and the measure of indemnity	207
4.10.1. Double insurance and the measure of indemnity in England	207
4.10.2. Double insurance and the measure of indemnity in Norway	211
4.10.3. Double insurance and the measure of indemnity in Canada	212
4.11. General conclusive remarks and comparative discussion	213
5.Subrogation rights arising from marine insurance contracts	215
5.1. The rights of the insurer on payment in marine insurance contracts in England.....	215
5.1.1. The doctrine of subrogation: definition and perspectives ...	215
5.1.2. The rights in respect of which subrogation arises and their extent; the persons upon which subrogation rights may be effected.....	216
5.1.3. Recovery in the case of under-insurance or partial insurance	227
5.2. The rights of the insurer on payment in marine insurance contracts in Greece.....	230
5.3. The rights of the insurer on payment in marine insurance contracts in Norway	231
5.4. The rights of the insurer on payment in marine insurance contracts in France	234
5.5. The rights of the insurer on payment in marine insurance contracts in the USA	234
5.6. The rights of the insurer on payment in marine insurance contracts in Canada	237
5.7. The rights of the insurer on payment in marine insurance contracts in Australia	237
5.7.1. The main areas of the reform in relation to subrogation under the Australian law regime	239
5.8. General conclusive remarks and comparative discussion	241
6. Discussion on the principle of indemnity in marine insurance contracts.....	245
6.1. General critique.....	245
6.2. Advantages and disadvantages of the proposition for a future law reform	252
6.2.1. General remarks on the idea of unification and/or harmonisation	252
6.2.2. The arguments for and against a law reform by means of new codification	253
6.3. Alternatives to legislative reform.....	259

6.4. Provisions related to indemnity in need of reform.....	261
6.4.1. The discussion on possible reform of the sections on insurable interest	261
6.4.2. The discussion on possible reform of the sections relating to the measure of indemnity.....	263
6.5. General conclusions and future prospects.....	264
Bibliography	269
Table of Cases.....	275
Table of Statutes.....	289
Index.....	293
About the Author	297

