



South African Maritime Safety Authority

Ref: SM6/5/2/1

Date: 7 November 2014

Marine Notice No. 27 of 2014

Non-compliance with Regulatory requirements- findings of the Western Cape High Court on Insurance Cover

TO ALL MASTERS, SKIPPERS, MANAGERS, OWNERS, OPERATORS, AND PRINCIPAL OFFICERS

Summary

The purpose of this notice is to remind industry of the necessity of compliance with the Merchant Shipping Act and its regulations and the possibility of repudiation of an insurance claim where non-adherence is detected in a casualty investigation.

The Authority has often advised industry of the possibility of repudiation of an insurance claim where the casualty investigation detects alleged contraventions and non-adherence to regulatory requirements.

At the 2006 Fishing Vessel Safety Indaba one of the topics presented addressed this very issue. The presentation is attached as an Annex.

Recently the Western Cape Division of the High Court, exercising its admiralty jurisdiction, heard a case between an insurer, the defendant, and a vessel owner, the plaintiff.

The vessel was insured under a marine hull policy issued by the insurer covering loss, damage, liability or any expense provided by the policy.

The vessel was lost and owners initiated a claim which was repudiated due alleged non-compliance with various regulations under the Merchant Shipping Act.

The vessel owner's instituted proceedings against insurers as they believed they had not breached the "Vessel Clauses", the "Perils Clauses" and the "Merchant Shipping Act Warranty".

The insurers alleged that the owners breached the warranty in a number of aspects, and in doing so, relied on a breach of regulations appertaining to the South African Merchant Shipping Act in repudiating the claim.

The court found that on the basis of the evidence heard the owners did not comply with the provisions of regulations and the Merchant Shipping Act Warranty imposed a duty of compliance on the owners. “A breach by the insured of such a warranty amounts to a breach of the insurance contract”.

The court;

- Dismissed the Plaintiffs complaint; and
- Awarded costs against the Plaintiff.

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ANNEX

**SAMSA FISHING
SAFETY INDABA
19 OCTOBER 2006**

**REPUDIATION OF CLAIMS DUE TO NON
COMPLIANCE WITH STATUTORY
REQUIREMENTS**



THE INSURERS WARRANTIES

- The Merchant Shipping Act Warranty
- Skippers Warranty
- Navigation Limits

MERCHANT SHIPPING ACT WARRANTY

Failure to comply with these warranties constitutes a breach of a material term of the policy and allows the Insurers to repudiate liability and walk away from the claim. In terms of these warranties, the Insured is required to ensure at all times that the vessel complies with the provisions of the Merchant Shipping Act and Regulations relating to safety and seaworthiness of the vessel.

SKIPPER'S WARRANTY

The Skipper's Warranty provides that the vessel shall be skippered by a suitably qualified and certificated skipper at all times.

NAVIGATION LIMITS

The navigation limits on the policy document must match the limits specified on the SAMSA general safety certificate, and the vessel owner is required to ensure compliance with these requirements.

MANNING REQUIREMENTS

The Manning Requirements are incorporated into the Merchant Shipping Act, however, SAMSA is the delegated authority who govern this, and again the vessel owner is required to comply with the manning requirements at all times.

If in the event of a claim it is discovered that the vessel was inadequately manned, the Insurers can repudiate liability as the vessel will be deemed to be unseaworthy.

CERTIFICATION

It is imperative that the navigable limitations stated on the SAMSA Safety Certificate and the Skippers Certificate are complied with at all times.

If in the event of a claim, it is discovered that the vessel or the skipper was operating out of the navigation limitation set by SAMSA, the Insurers have the right to repudiate the claim, even if this had no bearing on the claim and did not cause the loss.

The Annual SAMSA Safety Certificates must be valid at all times.

MARINE LIABILITY COVER

The Marine Liability Cover is subject to the insured vessel remaining throughout the period of insurance, classed with an approved classification society.

In the case of South African registered vessels , SAMSA is the approved authority.

CREW PERSONAL ACCIDENT

If the vessel owner has Personal Accident cover in force for their crew, the Personal Accident Insurers have a condition on the policy that the vessel must have a valid safety certificate at all times.

EXAMPLES OF PROBLEMS

- Breach of navigation areas of vessel
- Inadequate Manning
- Breach of navigation areas of skipper
- Incorrect certification

Repudiation will only be on the basis where failure to comply with the provisions of the Merchant Shipping Act, is material or causal to the occurrence of the loss.