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Insurance Claims for Marine Collision Court Examines Constructive Total Loss, Responsibilities of the Insured, and Notification

Introduction

Instances of marine collision produce a wide range of legal issues, including questions of allocation of liability, entitlement to damages, and factual and expert evidence. One of the key issues facing parties involved in a marine collision case is whether the event is covered by insurance, especially given the extensive costs often involved in the repair or total loss of the vessel.

In *PT Adidaya Energy Mandiri v MS First Capital Insurance Pte Ltd* [2022] SGHC(I) 14, the Singapore International Commercial Court ("**SICC**") was faced with a claim for constructive total loss ("**CTL**") under a marine insurance policy arising from collision damage. In reaching its decision, the SICC had to consider a number of issues relating to the insurance coverage for the claim, including the proving of CTL; late notice of abandonment ("**NOA**"); the responsibilities of the insured under certain warranties provided in the policy; and compliance with the policy's claim notification requirements.

The SICC held that the insurer was not liable to the insured, finding that the collision damage did not result in a CTL, and that the NOA was not given within reasonable time. The SICC also found that the insured had breached the warranties, and had not notified the insurer of a potential claim within the timeline prescribed under the policy, which was a condition precedent to liability.

The SICC's decision highlights some common issues that may arise in a marine insurance claim for collision damage, as well as the substantive and procedural requirements that must be complied with to succeed in the claim.

The insurer was successfully represented by Jainil Bhandari, Aleksandar Georgiev, Kristin Ng and Nathaniel Loh of Rajah & Tann Singapore LLP.

In this Update, we provide a summary of the key points of the judgment and the SICC's consideration of the issues above.

Brief Facts

The Plaintiff company had been engaged to provide, operate, and maintain a Single Point Mooring Buoy ("**SPM**") deployed in an offshore gas field in Myanmar. The SPM was used as a mooring for a storage tanker attached to it ("**Vessel**") and received and transferred condensate from the field to the Vessel.

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The Plaintiff had insured the SPM with the Defendant insurer for total loss only, including CTL, under a contract of marine insurance.

As a result of a number of collisions between the SPM and the Vessel, the SPM was damaged and leaked seawater. Initial repairs were conducted by the Plaintiff *in situ* to restore its watertight integrity and rectify the damage.

The Plaintiff subsequently obtained quotations for further onshore repairs to the SPM. As these quotations exceeded the insured value of the SPM ("**Insured Value**"), the Plaintiff tendered the NOA to the Defendant around five months later. The Defendant rejected the NOA, and issues arose as to whether the further repairs were necessary. The Plaintiff subsequently sold the SPM at a considerable undervalue and continued to use it at all times until the sale.

In the suit, the Plaintiff claimed from the Defendant the Insured Value of the SPM as a CTL on the basis that the cost of repair required to restore the SPM exceeded the Insured Value. The Defendant denied liability on a number of different grounds.

Holding of the SICC

The SICC held in favour of the Defendant, finding it not liable for the Insured Value for the following reasons:

- (a) The Plaintiff had breached certain warranties in the Policy;
- (b) The Plaintiff had failed to give written notice of the incident giving rise to a claim in time;
- (c) The SPM was not a CTL as the reasonable cost of repair did not exceed the Insured Value;
- (d) The Plaintiff could not claim for CTL as the NOA was tendered late; and
- (e) The Plaintiff had waived its right to abandon the SPM and claim for CTL.

Warranties

The Defendant relied on two warranties in the Policy which applied to damage to the SPM while engaged in "Operational Activities":

- (a) Clause 1: The [SPM] is only to be operated by and under the supervision of suitably trained and authorised personnel.
- (b) Clause 8: Suitable precautions and preservation/maintenance measures to be adopted when storing, handling, transporting and operating [the SPM].

The SICC found on the facts that Clause 8 was breached as a static tow was not utilised to hold the Vessel at all times to prevent it from colliding into the SPM. Further, the Vessel, its Master, Officers, and crew had failed to take adequate measures to ensure proper station keeping to prevent the Vessel from moving towards and colliding with the SPM. Clause 1 was also breached as the Plaintiff failed to produce

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evidence of certification and training to show that the Master, Officers and crew of the Vessel, who were responsible for station keeping, were "suitably trained and authorised".

Notably, the Court found that the Clause 1 and Clause 8 warranties applied despite the fact that it was the Master of the Vessel who was responsible for maintaining station keeping and avoiding collision with the SPM, and that the Vessel was owned by a third party over whose employees the Plaintiff had no control. The Plaintiff had warranted a state of affairs, and the SICC held that the Plaintiff was in breach of the warranty if the state of affairs did not occur. The Plaintiff was not only under a duty not to breach the warranties by its own actions, but had promised that the warranties would not be breached, whether by itself or anyone else. It would not matter if the breach of warranty occurred by reason of the fault of a third party, or if the Plaintiff had delegated its duties. As the warranties had been breached, the Defendant had a complete defence to the Plaintiff's claim.

Notification of Claim

The Policy included a condition precedent that the Plaintiff would notify the Defendant within 30 days after "*becoming aware of any incident giving rise to a claim which may be covered*" under the Policy. This included awareness of any incident giving rise to a claim which might result in total loss or CTL.

The Plaintiff had notified the Defendant of the potential claim on 5 September 2018. However, the SICC found that the Plaintiff was aware of the collision incidents and the damage to the SPM by 17 July 2018, more than 30 days before the notification. It did not matter that the Plaintiff, before receiving the quotations for further repair, could reasonably believe that the cost of repair would not exceed the Insured Sum, or that the Plaintiff did not see the incidents as *likely* to give rise to a total loss; it was sufficient that the incidents gave rise to a claim which *might* be covered under the Policy and the Plaintiff was aware by 17 July that the incident might give rise to a claim for total loss.

The Plaintiff had thus breached the condition precedent by failing to give notice of the incidents within 30 days, which the Defendant could rely on as a complete defence to the claim.

CTL

The SICC further held that even if the Defendant could not rely on the complete defences, the SPM was not a CTL in fact and thus the Defendant's liability was not engaged in any case.

The major issue in this regard centred on whether it was reasonable or necessary for the SPM's skirting to be renewed, which involved either transporting the SPM to a yard for the work to be done, or utilising heavy lift equipment to take the SPM out of the water for such repairs to be effected. The cost of transporting the SPM or lifting it out of the water was substantial and would bring the cost of repair above the Insured Value, thus making the SPM a CTL.

On an assessment of the expert evidence, the SICC found that a prudent owner would not regard it as reasonable to renew the SPM's skirting and as such, the cost of repair could not approach the levels of

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the Insured Value. The effect of the absence of the skirting was minimal once the watertight integrity of the SPM was restored. No prudent insured would consider spending money on renewal of the skirting if there was a requirement for a static tow. Further, even if the skirting had to be renewed, this could be deferred to the next compulsory drydocking of the SPM such that no additional expenses would have to be incurred in transporting the SPM to a yard.

Since the renewal of the skirting was not necessary or reasonable, the SPM was not a CTL.

Late Notice of Abandonment & Waiver of Right to Abandon

The SICC held that the Plaintiff had failed to tender the NOA with reasonable diligence after receiving reliable information of the loss, or within a reasonable time. The Plaintiff had received three quotations for the repair of the SPM by mid-December 2018 and would have been aware of the possibility of CTL of the SPM by that time. However, five months passed before the Plaintiff tendered the NOA in May 2018, which was an unreasonable delay in the circumstances. As such, the Plaintiff could not claim for a CTL.

The SICC also held that the Plaintiff had waived its right to abandon the SPM to the Defendant, adopting the principle that an assured who has given a NOA which has been declined may lose the right to claim for a total loss by acting inconsistently with a continuing intention to abandon the insured property.

After tendering the NOA, the Plaintiff continued to deal with the SPM as its own property, to the exclusion of the interests of the Defendant to whom the SPM had ostensibly been abandoned. The Plaintiff continued to accept revenue for the SPM's hire without accounting for it to the Defendant, carried out repairs without informing the Defendant, and sold the SPM to a related company at a price which was shown to be a gross undervalue. Therefore, the Plaintiff had waived its right to rely on the NOA, and the Plaintiff's loss could only be treated as partial, thus preventing it from claiming for CTL of the SPM.

Concluding Words

In the event of a claim for marine collision damage, insurers and insured alike should be aware of the conditions for the insurer's liability to arise, as well as the procedural and substantive requirements to engage the insurer's liability under the policy.

The decision demonstrates the importance of strictly observing the timelines for notification set out in insurance policies. Failure to do so may result in the claim being unsuccessful. Insured parties should fully consider whether contingent notifications are appropriate after becoming aware of any incident that may later result in a claim.

The decision also highlights the need for the insured to comply strictly with warranties in insurance policies. As shown in this case, the responsibility for compliance with some warranties cannot simply be

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delegated to a third party, or put aside because the insured did not take control of the relevant tasks covered by the warranties.

For further queries, please feel free to contact our team below.

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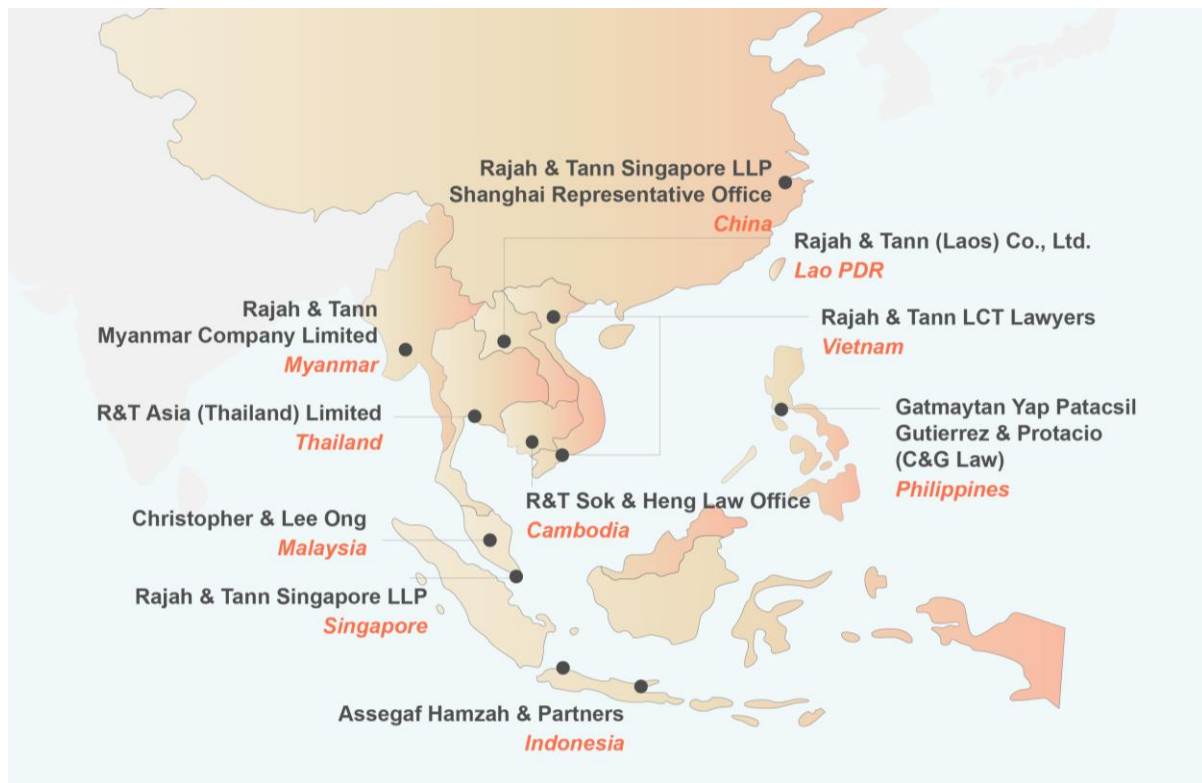
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