



Insurers' subrogation rights against co-assureds

Recent developments in English Law

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Gard Marine & Energy Ltd v China National Chartering Co Ltd (The Ocean Victory)

- **Ocean Victory** : a capesize bulk carrier
- **Ocean Victory Maritime Co** : owner
- **Ocean Line Holding Ltd**: demise charterer
- **China National Chartering Co Ltd** : time charterer- intermediate charterer
- **Daiichi Chou Kisen Kaisha**: the charterers.



The Ocean Victory

- Owner ----- demise charterer -----time charterer -----charterer
- The charterer ordered the vessel to Saldanha Bay (South Africa) to load a cargo of iron ore for carriage to Kashima in Japan.
- The vessel became total loss at Kashima.
- Charterparty : safe port warranty
- Demise charterparty : joint insurance (owner and demise charterer)
- Gard marine indemnified the owner
- Subrogated the owner's rights against the charterers



The Ocean Victory

- Gard issued proceedings against
 - The intermediate charterers for damages arising out of the loss of the ship.
 - The intermediate charterers in turn brought third-party proceedings against the charterers.



The Ocean Victory

- The charterers argued
 - No liability as the charterparty provides a joint insurance without any right of recovery (by way of subrogation or otherwise) by the owners against the demise charterers.
 - If the demise charterers are not so liable then they have suffered no loss in respect of the loss of the vessel and have no claim to pass on to the intermediate charterers.



Subrogation issue

- Whether the demise charterers, who had insured the vessel at their own expense, had any liability to the owners in respect of insured losses.



Precedent

- *Kodros Shipping Corporation v Empresa Cubana de Fletes (The Evia) (No 2)* [1982] 1 Lloyd's Rep 334
- The charterparty provided that if the vessel was ordered into a war risk zone, the owners were entitled to insure against the risk of loss or damage to the vessel and recover the premiums from the charterer.
- The charterers' obligation to bear the payment of the premium freed them from liability for breach of the safe port obligation in the case of its breach.



Subrogation against co-assured

- *Circuity: The Yasin* [1979] 2 Lloyd's Rep 45
- *Express term either in the insurance or the underlying contract* : Tyco Fire & Integrated Solutions (UK) Ltd v Rolls-Royce Motor Cars Ltd [2008] Lloyd's Rep IR 617
- *Implied terms in insurance*: Rathbone Brothers plc v Novae Corporate Underwriting Ltd [2014] Lloyd's Rep IR 203. The Court of Appeal [2015] Lloyd's Rep IR 95
- *Implied term in the underlying contract*: The Ocean Victory (Reading the demise charterparty as a whole, the parties impliedly excluded any recovery by the insurer from the demise charterer).



Concluding thoughts

- The assured cannot sue himself. A co- assured is an insured person under the insurance contract.
- But does he fall outside the insurance contract or is he regarded as a third party when the injured party who has a claim against the assured is the other co-assured?
- Who pays the premium?
- Negligence is an insured peril. The loss is likely to occur as a result of negligence of a co-assured due to the nature of the contracts which require co-insurance.
- Who is first liable?
- Intention of the assureds and the insurer.