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MARINE INSURANCE
DENYING COVER AS A MARINE INSURER:
PLAIN SAILING OR DEAD IN THE WATER?

Please find below the answers regarding the marine insurance regulation in the jurisdiction of the Republic of Lithuania:

1. Which laws and rules govern contracts of insurance, including H&M and P&I insurance, in your jurisdiction?

In Lithuania, the Civil Code of the Republic of Lithuania (hereinafter referred to as the Civil Code) and the Law on Insurance of the Republic of Lithuania (hereinafter referred to as the Law on Insurance) governs the contracts of insurance.

2. Do the laws and rules governing contracts of H&M and P&I insurance prescribe any post-inception warranties or other terms, which – if breached by the insured – may allow the insurer to deny or limit coverage of an insured event?

The Lithuanian law prescribes the following rules, which may allow the insurer to deny or limit coverage of an insured event:

(1) The insured fails to notify about the insured event (Art. 6.1012 of the Civil Code);

(2) The insured fails to take reasonable accessible measures to reduce the potential damage, following the insurer's instructions if such instructions have been given to the insured. (Art. 6.1013 of the Civil Code);

(3) The insured event has occurred due to a wilful misconduct of the insured or the beneficiary (Art. 6.1014 of the Civil Code);

(4) The insured (the beneficiary) has refused his right of demand or if it became impossible to implement such right through the fault of the insured (the beneficiary) (Art. 6.1015 of the Civil Code).

The Lithuanian statutory law does not provide regulation regarding the events of unseaworthiness and deviation from the agreed vessel trading area or route, violation of safety rules and/or negligence, gross negligence of the insured, therefore, such events must be expressively indicated in the insurance agreement.

3. Under which conditions may a breach of the warranties or other terms identified in reply to question 2 cause loss or limitation of coverage? As part of your answer, please describe how the burden of proof is allocated.

The insurer has the burden of proof of the conditions established by the law, which would allow the insurer to deny or limit coverage of an insured event. It is not enough to prove only the breach of the requirements; the insurer must prove the causal relations between the breach of the obligations of the insured and the damages incurred.

The Supreme Court of Lithuania has provided such explanation of the Art. 6.1012 of the Civil Code: "therefore, upon the statement of such breach of the insurance agreement, i.e. when the insured fails to notify the insurer about the insured event in due time, it is important to establish the following: whether the insured has made a breach wilfully or through negligence (the fault of the insured); gravity of the breach of the insurance agreement, the causal relation between the breach and the insured event, the extent of damage caused by the breach. In cases when it is established that the insured has wilfully failed to notify about the insured event, deliberately seeking to mislead the insurer about the extent of the damages, thus impeding the performance of the insurer's obligation to determine the circumstances of the insured event, and creating the obstacles to take measures to reduce the damage, the insurance indemnity should not be paid. However, in cases when the insured fails to notify about the insured event through negligence, the insurance indemnity may be reduced to the extent that has been determined and increased by the insured event, provided the insurer proves that given it was notified about the insured event in time, it would have taken the measures that could have prevented the increase of the damages (e. g. it would have given certain instructions to the insured regarding the prevention of the increase of the damages, etc.) (*The Supreme Court of Lithuania, 10 May 2010, decision in civil case No 3K-3-210/2010)*.

4. ***Are the warranties or other terms identified in reply to question 2 mandatory, or may they be deviated form by contract either to the advantage of the insurer or to the advantage of the insured, or both. Is the insurer allowed to incorporate additional warranties or terms in contracts of H&M and P&I insurance, a breach of which may cause loss or limitation of coverage?***

We believe that the provision established in Art. 6.1014 of the Civil Code, i.e. the insured event has occurred due to a wilful misconduct of the insured or the beneficiary, must be held mandatory. The Lithuanian law does not prohibit the parties to agree upon other warranties or terms in contracts of H&M and P&I insurance, a breach of which may cause loss or limitation of coverage.

5. ***Will a choice of law clause in the H&M policy or P&I club's rules be recognised in your jurisdiction to the effect that the existence of such warranties and terms as are mentioned in question 2 and the consequences of their breach will be governed by the law chosen?***

The Lithuanian law does not limit the right of the parties to agree on the law applicable for the insurance agreement.

6. ***Unless covered by your replies above, is there any case law in your jurisdiction which considers an H&M insurer's or P&I club's right to deny coverage, in accordance with the H&M policy or the P&I club's rules or otherwise, as a result of an insurance event having been caused by (i) unseaworthiness, (ii) deviation from the agreed vessel trading area or route, (iii) violation of safety rules or (iv) negligence, gross negligence or wilful misconduct of the insured?***

The Highest Court of Lithuania has explained that "it is not prohibited by the law to stipulate the exceptions in the insurance agreement where the insurer has the right to refuse to pay the benefit or reduce it. However, this right must not contravene the essence of the insurance of civil liability and the purpose of insurance agreement, therefore, the insurance agreement condition limiting the scope of coverage and defining the insurance risk degree should be regarded as a substantial condition, that has to be expressly agreed upon by the parties and it should be as concretized as possible in order to prevent the conditions that would allow the insurer unreasonably refuse to pay the insurance benefit, denying the very essence of the insurance agreement". "When the insurer sets forth such standard terms

and conditions and construes them in such a manner where the insurance risk degree assumed by the insurer in respect of the scope of obligations established for the insurer, completely disappears or is minimized to such an extent that is essentially denied, in such a case such terms and conditions or such interpretation of their content contravenes the very essence and the purpose of the insurance. *(The Supreme Court of Lithuania, 29 November 2007, decision in civil case No 3K-3-536/2007)*.

Respectfully,

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