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Transportation Law Commission

National Report of Ukraine

Nataliya Myroshnychenko, Dmitriy Zagorodnyuk,
Danil Hristich
International Law Offices Interlegal

24B Genuezskaya str,
Odessa, 65009, Ukraine
0038 0482 33-75-28 / 29
office@interlegal.com.ua
myroshnychenko@interlegal.com.ua

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

The Civil Code of Ukraine (Chapter 67, Articles 979-999) contains general provisions regulating the insurance, its terms and conditions, rights and responsibilities of the parties; the Commercial Code of Ukraine (Chapter 35, Articles 352-355) contains the provisions determining the rules for the insurance as business activity.

The main specialized law which regulates the sphere of insurance in Ukraine is the Law of Ukraine "On insurance" No.85/96-BP dd. 7 March 1996.

Despite this law is fully devoted to insurance, its provisions are quite general and declarative. Therefore, certain gaps exist in respect of different spheres of insurance.

The law "On insurance" contains main definitions and terms of insurance and mentions that marine insurance is the separate type of voluntary insurance. Voluntary insurance is the insurance carried out on the basis of an agreement between the insurer and the insured. Terms and procedures for certain type of voluntary insurance are determined by Insurance rules elaborated by each particular insurer.

So Ukrainian insurance law doesn't have specific regulations as to H&M and P&I insurance.

In the meantime, the Merchant Shipping Code of Ukraine (Section 3, Chapter 1, Articles 239-276) contains more specific provisions related to marine insurance. In particular, the Code stipulates the right of abandon and subrogation. Among the interests which may be insured are: vessel, cargo, freight, future profit, wage of the crew, liability of the ship owner and carrier, risks of the insurer etc. The Code also determines specific grounds for refusal in insurance indemnity.

The law also prescribes that individuals and entities may form P&I clubs in accordance with the laws of Ukraine.

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?

Ukrainian legal theory is unfamiliar with the English doctrine of warranty. Despite this, the Civil code of Ukraine prescribes that essential breach of the contract shall be the ground for its termination and so the ground of limitation or refusal in insurance indemnity. The breach of the contract shall be deemed as essential when the party is deprived of what it expected at conclusion of the contract. Thus, essential breach of the contract in Ukrainian law may be considered as an analog of warranty.

In particular, the law of Ukraine "On insurance" provides general conditions which release the insurer from liability to cover losses:

- 1) intention actions of the insured aimed on the occurrence of the insured event;
- 2) commitment of a crime by the insured which led to the insured event;
- 3) filing of untruthful data about the insured event;
- 4) full payment of damages by the party at fault;
- 5) late notification of the insured about the insured event without good reasons;
- 6) other events prescribed by the law.

Late notification of the insured event shall not be in itself considered as a ground for refusal in insurance indemnity. In particular, the Supreme Commercial Court of Ukraine in its decision in case No. 26/370 stated that late notification shall matter only in cases when it deprives the insurer from the opportunity to find out whether the event is an insurance event or not, i.e. when the lack of information may affect its obligation to cover losses.

Art. 261 of the Merchant Shipping Code of Ukraine also prescribes that the insurance indemnity shall not be provided if damages were the result of:

- military operations and their consequences;
- piracy;
- lockouts;
- arrest or destruction of the vessel or cargo;
- civil commotions.

The insurer is also not liable if (art. 252, 258 of the Merchant Shipping Code of Ukraine):

- the insured knew or had to know about the occurrence of the insured event and did not inform the insurer;
- losses were caused by the natural features of the cargo (internal destruction, rust, mold, spontaneous combustion, etc.) or by improper packing.

2.1. Please state whether (i) unseaworthiness, (ii) deviation from the agreed vessel trading area or route, (iii) violation of safety rules and/or (iv) negligence, gross negligence or willful misconduct of the insured may cause loss or limitation of coverage.

Art. 256, 257 of the Merchant Shipping Code of Ukraine provides that the insurer is not liable for losses which were the result of:

- unseaworthiness of the vessel;
- gross negligence or willful misconduct of the insured, shipper, consignee or their representatives;
- tear and wear of the vessel or its equipment;

- carriage of hazardous cargo, if it was prohibited by the contract.

The Ukrainian civil law defines neither "negligence" nor "willful misconduct". It is a common practice that local insurers mean by these terms a wide array of actions of insured usually stipulated in details by the insurance contract.

The law doesn't consider deviation from the agreed vessel trading area or route and violation of safety rules as grounds for non payment of insurance indemnity. Nonetheless, such provision may be incorporated into the insurance contract or policy and so to become contractual warranties.

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.

Art. 26 of the Law of Ukraine "On insurance" prescribes that the burden of proof lies on the insured.

The conditions which may lead to loss or limitation of coverage are stated in par. 2 above.

4. Are the warranties or other terms identified in reply to question 2 mandatory, or may they be deviated from by the 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.

According to the Art. 26 of the Law of Ukraine On insurance, the terms of the contract may provide other grounds for refusal to cover losses if they don't contradict the law. These terms may both be to the advantage of the insurer or to the advantage of the insured, but in practice the insurer incorporates additional grounds for refusal to cover losses in his benefit.

The civil law provides that whatever is not prohibited by law is permitted. This principle has a practical value. Since plenty of issues related to insurance (especially marine insurance) are not covered by the laws of Ukraine, the terms of insurance are mostly governed by the particular contract.

In one of the cases the insurer refused in paying insurance indemnity due to improper use of the vessel's machinery, which was prohibited by the insurance contract. The insured claims that the damages are the result of the hidden defect of the vessel. The lawfulness of such refusal was then determined by the court.

5. Will a choice of law clause in H&M policy or P&I club's rules be recognized 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?

Art. 14 of the Merchant Shipping Code of Ukraine prescribes that the contract of insurance shall be governed by law at parties option. If choice of law was not made, the contract shall be regulated by law of the insurer's domicile. Art. 44 of the Law of Ukraine On international private law No. 2709-IV dd. 23.06.2005 also stipulates that if the parties did not make a choice of law, the law of the insurer's domicile shall apply.

Thus, the insurance policy may provide choice of law other than the place of business of the parties. The insurer may also refer to H&M or P&I club's rules in the contract, which shall be obligatory upon the parties.

In particular, it is allowed by the art. 6 of the Law of Ukraine "On insurance", which provides that the insurer may adopt his own rules of insurance and incorporate them into the contract.

6. Unless covered by your replies about, is there any case law in your jurisdiction which considers an 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 willful misconduct of the insured?

Ukrainian law belongs to the continental system based on the legal provisions but not on the case law.

Besides, Ukrainian ship owners insure their property in foreign insurance companies and P&I clubs. Therefore Ukrainian court practice contains very few cases related to insurance, mainly connected with other types of insurance.