Circular Ref: 2015/0008

Date: 13 February 2015

War and Risk Policy
- Potent mix of issues of Total Constructive Loss on Detention on Drug Trafficking Charges

In a recent case of Atlasnavios Navegação Lda v Navigators Insurance Co Ltd and Others (The "B Atlantic") - QBD (Comm Ct) (Flaux J) [2014] EWHC 4133 (Comm), a very interesting judgment came on 7 Dec 2014 that should be of interest to all ship owners who take out War and Risk Policy.

On 13 August 2007, upon completion of loading of a cargo of coal in Lake Maracaibo, Venezuela for discharge in Italy, the vessel *B Atlantic*, owned by the Ship owner, was subject to an underwater inspection by divers who discovered three bags of cocaine weighing 132 kg strapped to the hull 10 m below the waterline.

It was never suggested by the insurers that the owners themselves were implicated in the commission of the offence in any way. The drugs were affixed by persons unknown. In the present proceedings the owners claimed against the defendant who were the war risks insurers (the insurers) for the constructive total loss of the vessel by reason of her detention for longer than the six months provided for in clause 3 of the Institute War and Strikes Clauses Hull 1/10/83 (the Institute War and Strikes Clauses) as *amended.*

In the proceedings , the insurers admitted that the vessel was a constructive total loss **but denied liability** on the basis of two exclusions in clause 4 of the Institute War and Strikes Clauses, - *relating to loss arising from detainment by reason of infringement of customs regulations and to loss arising from failure to provide security.*

The Owners denied that exclusions in the policy will apply in this case as the proximate cause of the loss was the malicious act of the third party and was not infringement of customs regulations as the insurers were trying to argue. The Owners further argued that they tried their level best to provide security and all their efforts failed in Venezuela.

The Court took the Owners' view and the reason they provided was that on the correct construction of the policy; '*infringement of customs regulations'* in the exclusion did not include an "infringement" in this matter, which was itself no more than the manifestation of the relevant act of third parties acting maliciously. In addition, the evidence suggested that Owners tried their best to put-up security in Venezuela. In addition, Owners were awarded *sue and labour* expenses in relation to investigators' expenses to find smugglers, upkeep of the vessel during detainment, legal expenses to get the vessel released.

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What lessons can Andrew Liu's clients learn from this case?

a) In your operational manual, include one or two paragraph that crew should keep a strict vigilance in ports that are known for drug-trafficking, and crew should inform the Master immediately on any kind of suspicion on anyone in such ports.

b) Second, Owners should maintain proper records as to when they are trying to put-up security including of telephone calls. These records will be important to pre-empt the insurers taking a defence that Owners did not try their best to get their vessel released from detention.

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