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DRUG SMUGGLING and TOTAL LOSS
- Insurers did not cover the total loss on technical grounds!

In the recent case of *Atlasnavios – Navegação, LDA v. Navigators Insurance Company Ltd and Ors (B Atlantic)* [2016] EWCA Civ 808, the Court of Appeal reversed the Commercial Court decision. The Court of Appeal held that the war risk insurers ("Insurers") were not liable for the total loss of the *B Atlantic* (the "Vessel"). This vessel was confiscated by the Venezuelan authorities after cocaine was found strapped to her hull.

On 16 August 2007, the Vessel was detained and the crew was arrested after an underwater inspection of the Vessel in Lake Maracaibo. The inspection had revealed cocaine strapped to her hull below her waterline. The divers discovered three bags of cocaine weighing 132 kg strapped to the Vessel's hull. It was a breach of Venezuelan 2005 Anti-Drug Law. The Master and second officer were arrested and sentenced to 9-year in prison.

There was no dispute that the act of concealing the large quantity of cocaine was a malicious act, but the Insurers declined the claim on the basis that the confiscation was caused by breach of customs regulations and thus excluded. The vessel was arrested and the Owners claimed for total loss.

The Commercial Court allowed the owners' claim for total loss of the vessel on the basis that arrest of the vessel was simply the extension of the *malicious* act of someone strapping the drugs onto the vessel's hull.

However, the Court of Appeal looked at the issues more technically, and as a result held that, in this case, there were two *proximate* causes of the loss:

(a) the malicious actions of those who concealed the drugs; and
(b) detention by reason of breach of customs regulations.

The first cause was covered by the insurance policy (the "Policy"); the second was excluded. The net effect, when the two causes of action are analysed together was that the loss would not be covered by the insurers.

FDD division, based in Shanghai, advice to the Andrew Liu's clients is:

(a) Good precautions are needed in such countries where there is a drug menace. It could avoid all such complications;
(b) After the incident, whatever is discussed with the insurer should be measured and after consulting legal consultants, broker and lawyer.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk