

Enforcement of Marine Policies: Illegality and Ship Security

(or when can illegal activities of their own force, *notwithstanding issues of non-disclosure and express warranties*, perpetrated by ship owners and security providers render a marine policy unenforceable even if the unlawful acts have nothing to do with the loss?)

How Do We Tell if a Marine Insurance Policy is Illegal?

- The Law is Similar to Ordinary Contracts Except...
 - ❖ Ship Owner Can Recover if it is not Complicit in the Illegal Activity
 - ❖ The Primary Concern is the Adventure
 - Unlawful Adventure = Breach of Warranty

A Marine Adventure is...



How Do We Tell if a Marine Insurance Policy is Illegal?

- 1) Examine the **Purpose** of the Statute Breached by the Ship Owner or Security Provider
- 2) Consider Public Policy
 - The Principle that Courts Want to Find Adventures Lawful, and Insurances Enforceable *versus*
 - ❖ Adventures that Involve **Deliberate Crimes**
 - ❖ Adventures Made with **Unlawful Purposes**
 - ❖ **International Comity** or Adventures that Break Foreign Law

Firearms Aboard Ship

➤ Whose Law Applies

- ❖ On the High Seas, the Law of the Flag
- ❖ In Territorial Waters, the Law of the Flag **& *the Law of the Littoral State***
- ❖ (Through International Straits, the Law of the Flag Applies Exclusively so Long as the Vessel is Exercising Transit Passage)

Case Study I

- Marshall Islands Flagged Vessel
- Ten Member Security Contingent Armed with AK-47s
- Sails Through the Indian Ocean Without Incident
- Transits Through the Malacca & Singapore Straits
- Stops in Singapore to Refuel
- Leaves Singapore for the Pacific Ocean

Master's Authority

- Is it Lawful to Make an Agreement that Compromises the Master's Authority?
- No, it is Submitted that to do so would be Contrary to Common Law

Case Study II

- Security Provider and Ship Owner Agree that if a “Security Situation” Arises, the Security Leader’s Authority Would Override the Master’s Command

- Is the Adventure Unlawful?

Rules of Engagement

- Force Used in Self-Defence Must be Reasonable Under the Circumstances
- Threatened Danger Must be Reasonably Imminent and Must be of a Nature which could not be Met by More Pacific Means

Case Study III

- The Ship Owner and Security Provider Agree to Rules of Engagement that Exceed the Right of Private Self-Defence
- Is the Adventure Unlawful?
- Public Policy Would Look at...
 - ❖ The Agreement Itself (written & oral)
 - ❖ What Actually Happened

Conclusion

- Aside from Misrepresentation & Non-Disclosure, We Need to be Aware of the Illegality Defence

- General Principles
 - 1) Unlawful Adventure = Policy Unenforceable
 - 2) Look at the Statutory Purpose & Public Policy

- Know the Laws