

Symposium Handelsrecht
ter gelegenheid van het emeritaat van prof. mr. Ph.H.J.G. van Huizen

ENKELE RECENTE GEVALLEN INZAKE MARITIEME VERZEKERING

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HET TRANSPORTVERZEKERINGSBEDRIJF

Juridische en rechtsvergelijkende beschouwingen

*(Marine Insurance Business
a legal and comparative study)*

Flip

mr ~~XXXXXXXX~~ van Huizen

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§ 5. De rechtsgevolgen van een constructive total loss

Zodra er zich een constructive total loss voordoet, heeft de verzekerde de bevoegdheid de schade te doen afwikkelen als had er zich een actual total loss voorgedaan.

Wanneer hij van dit recht gebruikt wenst te maken, dient hij zijn wens hiertoe aan de verzekeraar kenbaar te maken door het schip of de goederen te abandonneren (artikel 61 en 62 MIA).

De aanzegging hiertoe, notice of abandonment¹¹¹ geheten, is vormvrij. Niet is vereist dat de aanzegging schriftelijk geschiedt. Artikel 62 lid 2 MIA bepaalt:

"Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer."

Zo werd in de zaak *Cohen, Sons & Co v. Standard Marine Insurance Co*¹¹² voldoende geacht dat de verzekerde

"claims a total loss and asks to be paid as for a total loss."

THE BRILLANTE VIRTUOSO (1)



NA...

VOOR...



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THE BRILLANTE VIRTUOSO (2)



- **Tanker met 140.000 ton olie Oekraïne – China**
 - **Aanval door piraten, Golf van Aden**
 - **Zware explosie in machinekamer**
 - **Verzekerde waarde 77 miljoen USD, eigenaar claimt CTL**

- **Berekening CTL**
 - **17,5% verschil herstellkosten Chinese werf – werf in Dubai**
 - **Rechter neemt niettemin kosten Dubai in aanmerking**
 - **10% marge voor onvoorziene kosten tijdens herstelling**

- **Vervolg?**

THE RENOS (1)



CTL na brand aan boord, maar...

1. NOA pas vijf maand later
2. Kosten voorafgaand aan NOA: berging en assistentie?

Artikel 60 MIA: CTL *“where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired.”*

*“In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of **the expense of future salvage operations** and any future general average contributions to which the ship would be liable if repaired...”*



CTL na brand aan boord, maar...

3. Kosten SCOPIC?

“SCOPIC remuneration shall be that of the Shipowner alone and no claim whether direct, indirect, by way of indemnity or recourse or otherwise relating to SCOPIC remuneration... shall be made... under the vessel’s Hull and Machinery Policy by the owners of the vessel.”

4. Sue and Labour (beredding)?



- **DEKKING**

including strikes, riots and civil commotions, malicious damage and vandalism, piracy and/or sabotage and/or terrorism and/or malicious mischief and/or malicious damage, including confiscation and expropriation

- **VERWIJZING NAAR INSTITUTE CLAUSES WAR RISKS 1983:
DEKKING**

- 1.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat
- 1.5 any terrorist or any person acting maliciously or from a political motive
- 1.6 confiscation or expropriation
- 3. detainment [berekening CTL]



- **UITSLUITING**

4.1.5 arrest restraint detainment confiscation or expropriation under quarantine regulations or by reason of infringement of any customs or trading regulations

- **UKSC: de uitsluiting heeft het laatste woord...**