

Adviser

MARINE

Unlawful Maritime Vessel Arrest or Seizure: What's Insured?

Even in the earliest days of marine insurance, risks posed by war or seizure were viewed as especially dangerous to insure. In the 18th century, insurers imposed a sweeping “free of capture and seizure” (FC&S) warranty, thereby excluding losses arising from such perils altogether.

Vestiges of that warranty still exist within most marine insurance policies. Cover offered by insurers for such risks needs to be carefully examined, to see what exactly is offered and what remains excluded. Insurers are primarily concerned about “accumulation” or “aggregation,” as a single occurrence could see hundreds of ships, and possibly thousands of cargo interests, exposed to loss caused by a single event.

The recent detention of an Iranian tanker “Grace 1” by British authorities in Gibraltar, for alleged international sanctions breaches, was followed by what is widely viewed as retaliatory action by Iran against British shipping, with the “Stena Impero” seized by Iran’s Revolutionary Guard on July 19, 2019. This followed the unsuccessful attempt to seize another British tanker, “British Heritage,” a week earlier.

The ramifications of such actions taking place in, or near the Strait of Hormuz, are considerable. Located at the bottom end of the Persian or Arabian Gulf, and separating Iran from its neighbors Oman and the United Arab Emirates, this narrow strait of water is at its narrowest 21 miles (39 km). Yet a considerable proportion of the world’s oil and gas passes through it on maritime tankers.

What's the Trigger?

Owners/operators of vessels, or owners of the cargoes, may wonder whether their marine insurance protects them in such situations. The answer, as it has been for hundreds of years, is not straightforward.

With war, strikes, and similar risks excluded from most marine insurance conditions, additional (and in the case of marine hull cover, separate) insurance needs to be purchased if these perils risks are to be covered. When marine hull war and strikes insurance (and similarly for cargo) is purchased, it normally provides cover for physical loss or damage to the subject matter insured (that is, to the ship or cargo), only when that loss is caused by such named perils.

The cover provided still often specifically excludes losses that arise merely out of delay, or cause a business interruption, if no physical loss or damage has occurred. So, when vessels are seized (as in the case of the “Stena Impero”), the event does not automatically trigger an immediate valid claim under the policy, if there is no physical loss or damage to the vessel or its cargo.

This apparent lack of cover was partially addressed years ago, when, in 1967, the Suez Canal was blocked by Egypt without warning, following the “Six-Day War” against Israel. The Suez Canal was not re-opened until 1975, eight years later. More than 50 merchant vessels were trapped in the Suez Canal for the entire time.

Initially insurers denied total loss claims on the hull war insurance policies, on the grounds that the vessels were not physically damaged, just sitting idly, unable to sail. This case became a “cause celebre” within the English legal system. Although insurers won their argument, they were told that, even without physical loss or damage, loss of the vessels for such a long period had to be considered the same as if the owners of those vessels had been physically deprived of them. The insurers were ordered to consider such long detention as a constructive total loss (CTL).

Losses Without Physical Damage

Today, it is written into most marine hull war policies that unlawful holding of vessels for six months or more may be considered a CTL. But, until then, in the absence of physical loss or damage, traditional marine war and strikes policies would normally not respond to any delay or business interruption costs incurred.

Some vessel owners have additionally bought policies that cover against lost earnings, or “loss of hire” (LOH) of their vessels. But often with a standard LOH policy, even those extended to include war perils, for a loss to be triggered for lost earnings, there must first be physical loss or damage to the vessel that resulted in the lost earnings. So even those policies might not respond where a vessel is seized, but is undamaged, unless it has been specifically agreed to do so.

Almost immediately after the seizure of the Stena Impero, some insurers offered what they call a “new” cover against lost earnings, following seizure without physical loss or damage being suffered by the vessel, which additionally provides the services of internationally renowned security advisors.

While such cover may offer some new (and previously uninsured) protection, it may only provide cover for losses that directly echo, or repeat, what has happened to the Stena Impero. Should political/military matters in the region escalate, lost earnings arising out of events other than direct seizure may not be covered by such wordings.

As a result, advice from a specialist marine broker should be sought. When insurers quickly offer new coverage, a specialist marine broker like Marsh JLT Specialty can ensure that risks posed by the current situation are managed as effectively as possible, and advise on the efficacy of such “new” products. Should your business be exposed to additional risks by current events in the Middle East, or elsewhere, and you have concerns about your insurance, please contact the marine team at Marsh JLT Specialty.

