

The Time Limit to Notifying the Insurers of the Risks Occurring during the Validity of the Maritime Insurance Policy

Tariq Idais - Senior Associate
- Dubai International Financial Centre



Introduction

In our March 2021 Law Update article, *'The Necessity of Notifying the Insurers of the Risks Occurring During the effective Term of the Contract of Insurance Under the Maritime Commercial Law'*, we reviewed the judgments of the Abu Dhabi Court of First Instance and Court of Appeal in relation to a maritime insurance claim involving the loss of a rig.

In this article, we review the judgment of the Abu Dhabi Court of Cassation in respect of the same claim. The question before the Court was whether the assured was under an obligation to notify the insurers of risks occurring during the validity of the insurance policy that would increase the risks borne by the insurers within three days of the day the assured became aware of the risk.

In its judgment 495 of 2021 dated 26 July 2021, the Court held that the assured is obliged to notify and as long as the assured is in breach of contract, the insurer is not liable to indemnify the assured for the alleged damage. Reference was made to the Commercial Maritime Law.

Al Tamimi & Company represented the insurers in this matter.

The background of the claim

On 08 May 2019, a general trading company (the **Assured** and **Claimant**) procured, via its insurance broker, a port risk insurance policy with an insurance company (the **Insurer(s)** and **Defendant**) to cover damages sustained by the Assured's drilling platform rig during its dismantling at Musaffah Port in Abu Dhabi for a period of 90 days commencing from 08 May 2019 to 06 August 2019. The insurance policy covers the total loss of the rig, wreck removal, pollution and third party's liabilities.

The insurance value for the rig amounted to USD 2,600,000 in case of complete and total loss, and an amount of USD 5,000,000 for all liabilities towards third parties, wreck removal value, and pollution.

Furthermore, the insurance policy included an express warranties clause, which stipulated that: “Warranted no hot work unless approved by warranty surveyor and all relevant permits are obtained” (the **‘Express Warranties Clause’**).

In concluding the insurance policy, the Assured agreed to adhere to the Express Warranties Clause under the Insurance policy and agreed to not conduct any hot work on the rig during the validity of the Insurance policy, unless approved by a warranty surveyor and all relevant permits had been obtained.

At the end of July 2019, the Assured’s broker requested to extend the Insurance policy for an additional thirty days, until 5 September 2019. The Insurers’ agent agreed to extend the Insurance policy on the condition that the Assured would confirm that there were no known or reported losses on board the rig as of 5 August 2019. The Assured confirmed that there were no known or reported losses sustained by the rig as of 5 August 2019. Therefore, on 5 August 2019, the Insurance policy was extended until 5 September 2019 (the **‘Extended Insurance policy’**).

On 28 August 2019, the Insurers were advised that the rig sank on 17 August 2019 while it was being decommissioned, as a result of high tide. Therefore, the Assured submitted a formal claim towards wreck removal expenses. The Insurers conducted an investigation on the Assured’s claim and found that a fire broke out on the rig on 22 July 2019 twice which ultimately led to the sinking of the rig on 17 August 2019.

The Assured’s claim before the Abu Dhabi Court of First Instance

On 26 July 2020, the Assured filed an insurance claim before the Abu Dhabi Court of First Instance claiming that on 17 August 2019 and during the dismantling of the rig at Musaffah Port in Abu Dhabi, the rig sank as a result of high tide and was completely damaged, qualifying as a total loss. Therefore, the Assured claimed the sum of USD7,600,000 for the total loss of the rig, as well as for the liabilities towards third parties, wreck removal and pollution.

The Insurers’ Defence before the Court of First Instance:

The Insurers filed their defence with the Court and argued the following:

1. The Assured’s claim must be dismissed on the basis that it breached the Express Warranties Clause in the Insurance policy and did not obtain the required approvals from the warranty surveyor and the relevant authorities prior to conducting hot works on the rig; and
2. Alternatively, this claim must be dismissed based on Articles 385, 388 and 389 of the Commercial Maritime Law (the **‘Law’**), as the Assured failed to inform the Insurers of the fire on the rig during the effective term of the Insurance policy and/or when the Assured requested the extension of the Insurance policy.

Article 389 (1) of the Law states:

“The insured must notify the insurer of circumstances occurring during the currency of the contract which are such as to increase the risks borne by the insurer within three days from the date that he knows of the same, not counting official holidays. If notification is not given within the said period, it shall be permissible for the insurer to cancel the contract”.

The Abu Dhabi Court of First Instance's judgment-failure to inform the insurers of the fire

On 29 December 2020, the Abu Dhabi Court of First Instance dismissed the Assured's claim, as the Assured failed to perform their contractual obligations under the Insurance policy and did not inform the Insurers of the fire in accordance with the obligations set out in the Law.

The Abu Dhabi Court of Appeal

The Assured filed an appeal before the Abu Dhabi Court of Appeal challenging the Court of First Instance's judgment. The Assured argued the following in its appeal:

1. There is no obligation imposed on the Assured to notify the Insurers of the insured risk (the fire in this claim) within three days. However, the law requires the Assured to notify the Insurers only of potential risks that may occur during the validity of the Insurance policy that would increase the risks borne by the Insurer within three days of their knowledge of said risks;
2. The Commercial Maritime Law did not place an obligation on the Assured to inform/notify the Insurers within three days of an insured risk's materialisation. A distinction must be drawn between the materialization of a risk event on the one hand and circumstances that increase the insured risk on the other. It is clear that the rig sank as a result of the fire incident which took place on 22.07.19. This confirms that the fire incident was not a circumstance that increased risk but an incident that resulted in materialization of the insured risk. In other words, the fire incident does not constitute circumstances that increase risk under Article 389(1) of the Law. The Law did not stipulate or specify a certain timeframe for notification of the Insurers of an insured risk;
3. The Law does not provide that the Assured will not be entitled to compensation if it does not notify/inform the Insurers of the materialisation of the insured risk within a specified timeframe;
4. Any violation of Article 389 (1) of the Law by the Assured does not release the Insurers from their obligations to compensate the Assured under the Insurance policy.

The Court of Appeal's Judgment- Assured's appeal dismissed

However, on 24 February 2021, the Court of Appeal dismissed the Assured's appeal and upheld the Court of First Instance's judgment. The Court of Appeal ruled that:

1. The Assured must notify the Insurers of the Fire within three days of its occurrence.
2. Furthermore, the Assured failed to notify the Insurers of performing hot works on the rig which had increased the risks to be borne by the Insurers;
3. The intended notification under Article 389 (1) of the Law is the notification of the risks which appear during the effective term of the insurance contract and would increase the risks sustained by the insurers;
4. It is established that the Assured failed to prove that they had notified the Insurers of the hot works performed on the rig, which was the cause of the fire that led to the rig sinking; and
5. The Assured were obliged under Articles 385 and 389 of the Law to notify the Insurers of risks occurring during the validity of the Insurance policy which would increase the risks borne by the Insurers.

The Abu Dhabi Court of Cassation

The assured filed an appeal before the Abu Dhabi Court of Cassation challenging the Court of Appeal's judgment. The assured reiterated all their arguments, which were raised before the Court of Appeal.[\[1\]](#)

Therefore, the assured requested the Court to accept its appeal and order the insurers to pay the Assured the claimed amount or to refer the claim back to the Court of Appeal to reconsider the claim further based on its appeal.

The Insurers' Defence before the Court of Cassation:

The insurers argued:

1. The assured never informed the Insurers of the fire.
2. The Assured had admitted before the Court of First Instance that the fire had no connection to the sinking of the rig on 17 August 2019.
3. The Assured based its claim on the allegations that the rig sank on 17 August 2019 due to the high tide and did not refer at all to the fire in its claim.
4. The Assured provided evidence with its statement of claim to show that the rig sank officially on 17 August 2019 and made an official claim regarding the sinking of the rig on 17 August 2019 as a result of a high tide on 28 August 2019 via its insurance broker.
5. The Assured admitted on 5 August 2019, when it had requested to extend the Insurance policy that *"no known or reported losses occurred to the rig as of 5 August 2019."*
6. In any case, the Assured was obliged by law to notify Insurers directly within three days from the occurrence of insured risks and risks occurring during the validity of the Insurance policy that would increase the risks borne by the insurers.

The Insurers therefore requested the Court of Cassation to dismiss the appeal and uphold the judgment of the Court of Appeal.

The Court of Cassation's Judgment- No obligation to indemnify the Assured

On 26 July 2021, the Court of Cassation dismissed the Assured's appeal and upheld the Court of Appeal's judgment. The Court of Cassation found that the Court of Appeal's judgment was issued in accordance with the Law. Accordingly, the Court of Cassation adopted the findings of the Court of Appeal and referred to it as part of its judgment.^[ii] Moreover, the Court Cassation added that since the Assured failed to perform their obligations under the Commercial Maritime Law and did not notify the Insurers of the insured risk, the Insurers are not obliged to indemnify the Assured.

Conclusion

The Cassation judgment is a timely reminder that an assured should always inform its insurers of the risks (that constitute a material risk under the policy) that may occur during the effective term of the insurance contracts as soon as it learns of them to prevent the dismissal of their maritime insurance claims (based on Articles 389 of the Commercial Maritime Law). This is also in keeping with the duty of good faith requiring the representation and disclosure of any material facts relating to the insured risk that will increase the risks borne by the insurer. Under the Civil Code, it is also important to note that Article 1028 provides that the right of the assured shall not lapse if there is a delay in giving notice of the incident insured if there is a reasonable excuse for the delay.

^[i] Please see above the Abu Dhabi Court of Appeal Section.

^[ii] Please see above the Abu Dhabi Court of Appeal's Judgment Section.

Al Tamimi & Company's Transport team regularly advises on maritime insurance related claims. For further information please contact [Tariq Idais](#).