

# THE ASSURANCE OF THE SHIP MANAGER'S LIABILITY *VIS-À-VIS* THE SHIPOWNER

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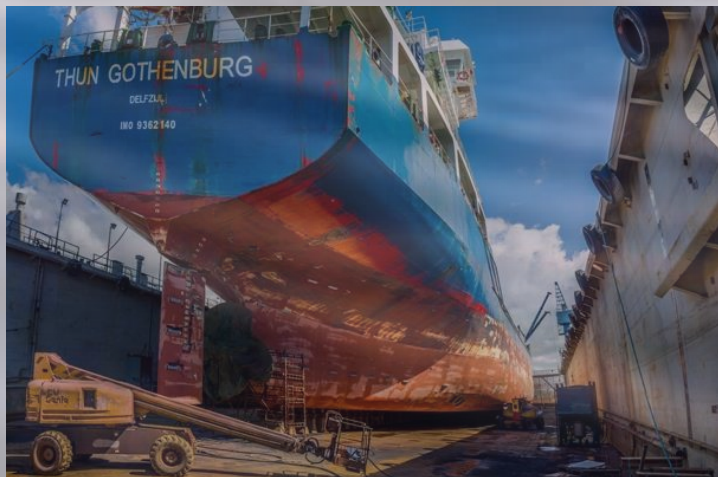
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# I. THE SHIP MANAGEMENT AGREEMENT

- **Concept:** Professional supply of a single or a range of services by a management company different from the vessel's owner.
- **Spanish regulation:** Article 314 MNA.



- **Services:** technical management, commercial management, crew management, insurance
- **Forms:** SHIPMAN and CREWMAN.



# II. SHIP MANAGER'S LIABILITY VIS-À-VIS THE SHIPWONER

**Technical management services.** Ship manager's functions (cl. 8 SHIPMAN 2009):

- Procure the requirements of the Flag State are satisfied.
- Assume the responsibility for the operation of the Vessel.
- Take over duties and responsibilities imposed by ISM and ISPS.



# II. SHIP MANAGER'S LIABILITY VIS- À-VIS THE SHIPWONER

- The ship manager “**could be**” liable for the damages caused to the vessel. **Due diligence obligations.**
- **Clause 8 SHIPMAN 2009:** “the Managers undertake to use their best endeavors to provide the Management Services as agents for and on behalf of the Owners with sound ship management practice and to protect and promote the interests of the Owners”.
- **Clause 17 (b)(i) SHIPMAN 2009:** “(...) the Managers shall be under no liability whatsoever to the Owners for any loss, damage, delay or expense of whatsoever nature (...) UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Managers or their employees or agents, or sub-contractors employed by them in connection with the Vessel (...)”.
- **Clause 17(a) SHIPMAN 2009:** Causes for exoneration.

# III. INSURABLE INTEREST

## 1) The risk of being liable *vis-à-vis* the owner

O’Kane v. Jones (The “Martin P”) [2005] Lloyd’s Rep IR 174



# III. INSURABLE INTEREST

- 1) **The risk of losing the opportunity to obtain remuneration as a result of the destruction of the vessel**

Thames & Mersey Marine Insurance Co Ltd v Gunford Ship Co Ltd [1911] UKHL 796

O’Kane v. Jones (The “Martin P”) [2005] Lloyd’s Rep IR 174



# IV. JOINT INSURANCE

## Clause 10 SHIPMAN 2009:

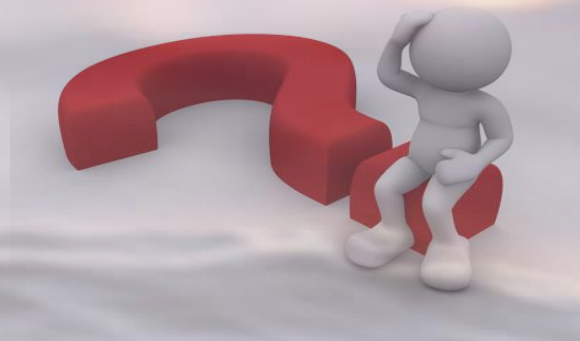
- 1) Shipowner is responsible for contracting and maintaining H&M insurance and P&I insurance.
- 2) He has to arrange the insurances on behalf of both the shipowner and the ship manager.



# V. SUBROGATION

## Shipowner's rights vis-à-vis the manager:

- Can the insurer claim against the co-insured manager?
- Is the manager a third party for the purposes of subrogation?





# V. SUBROGATION

**Gard Marine & Energy Limited v China National Chartering Co Ltd (The ‘Ocean Victory’)** [2017] UKSC 35



# V. SUBROGATION

## Theory of the construction of the main contract:

- Analyse the provisions made by the parties in the main contract:
  - If liability is excluded: insurer will have no action.
  - If liability is not excluded: can claim against the co-insured manager.

# V. SUBROGATION

## Implicit term theory:

- Joint and composite insurance.
- Implicit term in the insurance contract.
- Insurer waives the right to claim against the co-insured wrongdoer.

# V. SUBROGATION

## Circuity of action:

- The manager would be insured by the same insurer who tries to claim from him.
- Identity between the parties.
- Identity between the amounts claimed.

◆ **EXCEPTION:** Losses not covered.

# IV. CONCLUSIONS

## 1) Ship manager's insurable interest

- Damages caused to the vessel as a result of the breach of the obligation of keep the vessel seaworthy.
- Benefits lost as a result of the destruction of the vessel.

## 2) Insurer's subrogation

- He has no claim for the damages insured:
  - Theory of construction of the main contract.
  - Implicit term theory.
  - Circuity of action.
- If liability between the parties of the main contract is not excluded, the insurer can claim for de damages not covered.

**MANY THANKS FOR  
YOUR ATTENTION**

