



Choice of law and jurisdiction in hull and machinery insurance contracts

Every insurance policy will usually include a provision governing which law and jurisdiction should apply to the contract. The aim of this article is to give some guidance, particularly in relation to H&M policies, on the factors to consider when considering the choice of law and jurisdiction.

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There are several reasons why it is important to focus on law and jurisdiction in insurance contracts. One is that standard hull clauses are drafted with the laws of one or more specific countries in mind. Combining a set of standard conditions with laws of a different country may, in certain circumstances, lead to the conditions being interpreted differently than originally intended by the parties. This may be to the detriment of the assured or the insurers, depending on the circumstances.

Some standard conditions include default provisions on law and jurisdiction. One example is the Nordic Marine Insurance Plan of 2013 (NMIP), which includes detailed default provisions in Clause 1-4.1 Other commonly used conditions do not address this issue at all, such as the American Institute Hull Clauses (June 2, 1977).²

As can be seen, this is an issue closely related to contract certainty, in other words, the desire of the parties to be as sure as possible what they have agreed on will be given effect. Due to the international character of shipping and marine insurance, if these issues are not specifically addressed or sufficiently certain in the insurance policy, this could lead to an undesirable law and or jurisdiction being imposed by statute or international convention. It is advisable therefore to specifically address which law and jurisdiction should apply when entering an insurance contract.

Combining standard clauses from one legal system with a different choice of law clause If for any reason it is desirable to combine a set of standard clauses with the law of another country's legal system, it is advisable to include provisions on how the wording of the clauses should be construed. In the London market, the Institute Bridging Clause (Clause 302)³ is commonly used for this purpose when 'foreign' standard clauses are combined with English law and jurisdiction:

Insofar as this insurance is subject to standard foreign clauses, plans or codes, these shall be given the same construction as they are given in the market to which they belong.

Save for such construction, this insurance shall be subject to English law and practice and to the exclusive jurisdiction of the English Courts.

The effect of this clause is that when interpreting the standard clauses, the English courts will first look at how the particular wording is interpreted in accordance with the law from which the clauses originate. Only when they are unable to find any clear answer in that law will they look at English law and practice. Use of such a clause will contribute to a higher degree of contract certainty by avoiding courts basing their decisions on completely new interpretations of relevant wordings. In addition, it may be advisable to include a reference to established practices under the relevant conditions in the contract, so as to avoid misinterpretations of practices that are not necessarily established by law.

Special considerations relating to the Nordic Marine Insurance Plan Unlike many other sets of conditions, the NMIP is an agreed document, issued jointly by the Shipowners' Associations in the Nordic countries (Finland, Sweden, Denmark and Norway) on one hand, and the Nordic Association of Marine Insurers on the other.

Under the laws of the Nordic countries, an agreed document would be construed in accordance with the intention of the parties. The intention of the parties relating to the NMIP is published in its comprehensive commentary. As non-Nordic courts may not recognise the NMIP as an agreed document in the same way, it is advisable to

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include a reference to the commentary in the policy. By doing this, the parties to the contract secure that the intention of the Nordic shipowners and insurers is upheld. In the event it is desirable to change the intention of the parties, this should be specifically dealt with in the policy.

Below is an example of a law and jurisdiction clause addressing some of the above issues:

This insurance shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales. The provisions of the Nordic Marine Insurance Plan shall, however, be interpreted in accordance with its Commentary and Norwegian Marine Insurance Practice.

Subject to the provisions of the Institute Bridging Clause (Clause 302).

Arbitration is closely connected to the choice of law and jurisdiction - it is not uncommon, and indeed is advisable, to deal with law, jurisdiction and arbitration in a common clause. In order to avoid lengthy and costly court proceedings, arbitration clauses are often included in insurance contracts. The parties can agree, amongst other things, that all disputes to be resolved by arbitration and that the arbitration will be final or appealable. When the insurance is based on the NMIP and there is a dispute concerning the insurer's adjustment of a claim, Clause 5-54 provides that the insurer's adjustment may be submitted to a Nordic average adjuster for his opinion before being brought to court. In this event, the Nordic average adjuster will assume a role as a 'non-binding arbitrator' in respect of the disputed adjustment. Below is an example:

Law, jurisdiction and arbitration clause

The legal relationship between the Insurer and the Assured shall be governed by German law also applying the Nordic Marine Insurance Plan (NMIP) in its original form or as amended by the policy document; the commentary to NMIP and Norwegian marine insurance practice.

All disputes arising out of or in connection with this insurance Policy or concerning its validity shall be finally settled by arbitration in Hamburg, Germany, in accordance with the Arbitration Rules of the German Maritime Arbitration Association in effect on the date of commencement of arbitration proceedings. The Assured(s) and the Insurer(s) shall each appoint one arbitrator. The arbitrators shall have professional knowledge of international marine insurance law and practice. The Arbitration proceedings shall be conducted in the English language.

Notwithstanding the above, in case of disputes concerning adjustment of a claim, the assured as well as the insurer may demand that the adjustment be submitted to a Nordic Average Adjuster for his opinion prior to arbitration. The rules of the Nordic Plan's Cl. 5-5 shall apply accordingly.

When it is agreed that the seat of arbitration is in a different jurisdiction to the law governing the insurance contract, consideration should also be given to making an express choice of law to apply to the arbitration agreement. The arbitration agreement does not necessarily have to be based on the same law as the underlying contract but it needs to be clearly stated to avoid uncertainty.⁵ Where an arbitration agreement refers to a standard set of arbitration rules, as in the example above, such

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rules will often include default rules concerning choice of law.

Summary It is good practice to consider which laws and jurisdiction should apply to an insurance contract and to clearly state this in the policy. Generally, in order to achieve contract certainty, it is recommended to choose the laws for which the standard set of clauses chosen were originally drafted. If not, consideration should be given to include provisions on how the standard clauses should be construed. When choosing the NMIP, if the parties do not wish to follow the default provisions in Clause 1-4, reference should be made to the NMIP and its commentary as applied in accordance with Norwegian marine insurance practice, but otherwise subject to the laws and exclusive jurisdiction of whatever country the parties have agreed. In choosing the law and jurisdiction of the contract, the parties will avoid the unnecessary time and expense involved in litigation around these issues as well as uncertainty caused by the difference in laws of different legal systems.

Questions or comments concerning this Gard Insight article can be e-mailed to the [Gard Editorial Team](#) .

1 [Nordic Marine Insurance Plan 2013, CL 1-4](#). 2 [American Institute Hull Clauses](#). 3 [Institute Bridging Clause \(Clause 302\)](#). 4 [Marine Insurance Plan 2013, CL 5-5](#). 5 *Sulamerica Cia Nacional De Seguros SA v Enesa Engenharia SA* [2012] EWCA Civ 638.

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