The Concept of Warranty in Maritime Insurances

Insurance, which is a common instrument used in risk management, is based on the written contract principle.

The purpose for an assured to purchase insurance is to recover damages that can be incurred because of the risks noted to be covered from the Insurance Company. Therefore the proper execution of the indemnity principle, which is one of the most important principles of insurance, is possible only if the mutual liabilities determined in the insurance policy are performed fully and completely in entire insurance period starting from the date of issuance of the contract. The assured is deemed to have undertaken liabilities at its side when the policy starts.

The general perception of the assured about the warranty concept is "performance of the indemnity obligation by the insurer against the premiums paid on time". Although this approach summarized the essence of insurance, it is insufficient alone. Since many assureds fail to show necessary care for the warranties and examination of the policies or do not work with broker institutions not holding necessary qualifications, they may face with situations where the duty of indemnity under their policies are not fully performed or are not performed at all.

Since the insurance policy offers material warranty provided when the damage takes place, most assureds recognize the errors or omissions in their liabilities during the damage process and in case of this scenario, which is it the worst in terms of timing, the Insurer invalidates the policy from the moment when the liability is violated and may cause the Assured to be deprived of compensation by returning the premium accrued for respective period.

These obligations, which are defined as "warranty" in British insurance terminology, entitle the Insurer to withdraw from its liability from the date when such obligations are not fulfilled by the insured regardless of they are "related to the risk or not" (Marine Insurance Act 1906, 33(3)).

Umut CAN
Asst. Technical Manager
+90 216 545 0300 (D.231)
+90 530 391 11 49
umut.can@turkpandi.com

Following his graduation from Istanbul Technical University with a degree in Mathematics Engineering, Umut started his marine risks insurance career in 2005 at Anadolu Insurance Company. He later joined Aon ve Omni as an insurance and reinsurance broker. In 2014 he took the position as Underwriter of Turkish P&I. Umut's responsibilities include establishment of Company's risk and business acceptance criteria, review and guidance of rating practices and application of these practices to both prospect busines and portfolio, and ensuring smooth and continuous run of the Company's reinsurance treaty programmes. His articles on various insurance related topics continue to be published in maritime and insurance sector periodicals.

TÜRKP&I

If the insured violates an obligation, it may be difficult to find a supporting argument however when the obligation is in contrary to the law and/or is inapplicable under the insurance contract, this may prevent the insurer to exercise its right to waive from liability (Marine Insurance Act 1906, 34(1)).

These warranties are generally mentioned under "Warranty" heading and/or with "warranted that" phrase and phrases like "provided that", "on condition", "subject to the condition", "on the stipulation that", "with the provision that" may bring liability to the insured.

These obligations are not limited to those written on the policy wording. The "Basis of Contract" Clause contained in some policies subject to British Law, considers even a simple omission or error made by the assured on the application form as a "warranty" violation.

For example, leaving a question, the answers to which is not known, as empty instead of writing "not known" entitles the insurer to claim that there is an error on the form and therefore the right the withdraw. Although this in an example that compels the principle of good faith, it explains the importance of the warranty topic.

If we handle the subject from maritime risks perspective, British Laws, which are dominants in maritime trade and insurances, divides warranties as "Express Warranty" and "Implied Warranty" (Marine Insurance Act 1906,33.(22)).

"Express Warranty" concept covers the obligations mentioned expressly on the policy. Their scopes are generally shaped upon technical assessment of the insurer rather than generally recognized
customs and laws. Following examples can be given as these kinds of warranties;

- Performing condition survey within a certain period for a vessel which will be covered under Hull and Machinery Insurance
- Excluding the liability to be attributed to the ship-owner due to wet cargo from the P&I insurance in a bulk carrier, hold hatches of which failed to pass from ultrasonic test.
- Stating the obligation that it is necessary to take certain security measures against pirate attacks for a vessel, regarding to which Kidnap and Ransom Insurance have been issued.

Other than the "Express Warranties", there are "Implied Warranties" which are not printed on the policy as the parties are familiar with but must be complied with by the insured such as the performing legal trade, taking the measures known or should be known for the potency of the insured's benefit and no variance regarding the insurance subject than the one introduced to the insurer.

Although these warranties are not stated expressly on the contract, they are implicit obligations that are expressly agreed by and binding for the insured.

Seaworthiness of the vessel (Marine Insurance Act 1906,39), legality of the trade subject to insurance (Marine Insurance Act 1906,41) and voyage coverage stated for the vessel or not using the vessel for any purpose other than the voyage coverage (Marine Insurance Act 1906,46(1)) can be shown as the most common examples encountered historically regarding the implicit warranties.

In order to the allow the insurance policies, which have financial importance more than ever considering the economic conditions of today, to rescue the ship-owners from huge financial losses encountered due to possible accidents, the ship-owners must show necessary care for the warranty concept and be in touch and continuous cooperation with the insurance brokers and insurer in order to better understand their obligations.