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LEGAL OPINION

Maritime Insurance – Utmost good faith

A pleasure boat had water penetration and partially sunk in the marina where she was berthed. The owner requested that the insurance covers the relevant expenses to raise and repair the boat.

Insurers inquired on the cause of water penetration; the owner contended water entered through a draining valve, which was loosely closed and allowed water to get in. In the court procedure where the insured owner's claim against the insurers was heard, the owner produced a technical report where the cause of the damage was attributed either to malicious act or to impingement of the valve cap, underwater, to objects existing in the marine environment.

The court rejected above alternatives; the first because no relevant report to the marina authorities had been made; and secondly because no indications of impingement existed, like scratches etc.

Accordingly, it was found the damage occurred due to the lack of proper maintenance, which was a duty of the insured. The latter failed to produce evidence of regular and proper maintenance. In view of this, he was found liable for non observance of the utmost good faith duty to disclose the lack of proper maintenance, which is a warranty under the insurance policy. The insurers were released from paying the insurance remuneration.

Piraeus One membered Court of Appeal Judgment no 502/2017 Judge: El. Nikolakopoulou, Attorneys at Law: A. Pasipoularidis, M. Papadopoulou, Maritime Law Review vol 45, p.124.

NOTE: The policy was governed by MIA 1906, which provides that breach of the duty of utmost good faith releases the insurer from the duty to remunerate.

Here, the lack of maintenance (and non-disclosure of it), led to rejection of the claim.

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