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## Insurable Interest in Maritime Law

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# *Insurable Interest in Maritime Law*

JOSEPH BOCKRATH\*

## INTRODUCTION

The concept of insurable interest seems often to resemble obscenity; it is recognizable but difficult to define. Attempts to define it are, however, frequent, and the attempt of the California Insurance Code is adequate as a basis for discussion. It states that "Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest."<sup>1</sup>

An insurable interest is a requisite for a valid contract of insurance,<sup>2</sup> and indeed has been termed "the very warp and woof of the enforceability of insurance contracts."<sup>3</sup> Public policy condemns as wagers insurance contracts which lack insurable interest in the policyholder. Given the fact that insurance is based on a theory of indemnity, such a policy is sound. Although banned in Spain as early as 1484,<sup>4</sup> wagering policies were apparently enforced in English courts until the "abuses and frauds that sprang from the ill-judged toleration"<sup>5</sup> led to a statute voiding such policies.<sup>6</sup> Such policies were enforced in New York until the adoption of the Revised Statutes in 1830.<sup>7</sup>

An insured need not have a legal or equitable title to a property to have an insurable interest therein, but rather an expectation of benefit from a property's continued existence, provided however that the

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<sup>1</sup> California Insurance Code §281.

<sup>2</sup> See Vance on Insurance §28.

<sup>3</sup> Harnett and Thornton, *Insurable Interest in Property: A Socio-Economic Reevaluation*. 48 Col. L. R. 1162 (1948).

<sup>4</sup> Barcelona Ordinance of 1484.

<sup>5</sup> Duer, *The Law and Practice of Marine Insurance*, p. 93.

<sup>6</sup> 19 George II. c. 37, (1746). "it hath been found by experience, that the making assurances, interest or no interest, or without further proof of interest then the policy, hath been productive of many pernicious practices, whereby great numbers of ships, with their cargoes, have either been fraudulently lost or destroyed, or taken by the enemy in time of war. . . ."

<sup>7</sup> Duer, §41. Also noted in the Duer lectures is the history of insurable interest requirements in other states and a number of foreign jurisdictions.

expectation has a legal right as its basis. Without such a basis, an expectation, "however likely or morally certain of realization it may be,"<sup>8</sup> will not afford an insurable interest.

### *The Marine Setting*

The general rule requiring insurable interest also prevails in the maritime setting. It is said to be an elementary principle of marine insurance law that "insurance cannot be created against injury to property in which the insured has no insurable interest . . ."<sup>9</sup>

The English Marine Insurance Act of 1906<sup>10</sup> defines insurance interest in the following manner.

5.—(1) Subject to the provisions of this Act, every person has an insurable interest who is interested in marine adventure.

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

Thus, a right of property in a thing is not always indispensable to an insurable interest. Injury from its loss or benefit from its preservation to accrue to the assured may be sufficient, and a contingent interest thus arising may be made the subject of a policy.<sup>11</sup>

The truth of the statement that, "In the law of marine insurance, insurable interests are multiform and very numerous,"<sup>12</sup> cannot be doubted. The very nature and complexity of the maritime industry and the wide array of persons who have some contact with a given maritime enterprise mandates the conclusion. Not only a quantified property interest in the thing insured is adequate, but also any "reasonable expectation of legitimate profit or advantage to spring therefrom."<sup>13</sup> Thus, it has been said in general that "The agent, factor, bailee, carrier, trustee, consignee, mortgagee and every other lien holder,

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<sup>8</sup> Vance on Insurance §28. A man has no right to an indemnity "because he has lost the chance of receiving a gift." *Routh v. Thompson*. 11 East 428 (1809).

<sup>9</sup> *Chase v. Hammond Lumber Co. et al.*, 79 F. 2d 716, 717 (CA9, 1935).

<sup>10</sup> Marine Insurance Act, 1906. 6 Edw. 7, c. 41.

<sup>11</sup> *Hooper v. Robinson*, 98 U.S. 528 (1879). See also *Gilmore and Black, Admiralty*, 2nd Ed., p. 60.

<sup>12</sup> *Hooper v. Robinson*, supra.

<sup>13</sup> *International Marine Ins. Co. v. Winsmore*, 16 A. 516 (Pa., 1889).

may insure to the extent of his own interest in that to which the interest relates. . . .<sup>14</sup> Likewise, interests which are possessory,<sup>15</sup> inchoate or contingent,<sup>16</sup> equitable,<sup>17</sup> and defeasible<sup>18</sup> have all been held adequate to accord insurable interest within the maritime realm.

It was held early,<sup>19</sup> and apparently accepted without serious question since, that an insurable interest must be a pecuniary one, although the Marine Insurance Act definition would not seem to mandate such a conclusion. Such a position is consistent with the mercantile nature of the subject, but may be subject to the same arguments which precipitated changes in the law of standing,<sup>20</sup> mental distress,<sup>21</sup> and aesthetic sensibilities.<sup>22</sup>

Given then that, in the maritime realm, an insurable interest is necessary, and that the scope of qualifying interests is wide, an analysis of the types of interests which have given rise to litigation is instructive.

### *Owners of Ship or Cargo*

No citation of authority is required for the proposition that a shipowner has an insurable interest in his vessel. Questions have arisen, however, where the ownership interest is less than whole. A part owner of a vessel who has made advances and disbursements at the request of the other owners and the owners of the cargo has been held to have an insurable interest, "at least to the extent of his advances,"<sup>23</sup> although it is unclear why he would not have the same interest were he not the owner. One of several partners has been held to have an insurable interest in a vessel,<sup>24</sup> but where the ownership is of one half of the vessel and the partner insured for the value of the entire vessel, the partner is entitled to only one half of the ship's value plus one half of the premium paid.<sup>25</sup> But, a part owner who charters the remainder,

<sup>14</sup> Hooper v. Robinson, 98 U.S. 528 (1879).

<sup>15</sup> The Gulnare, 42 F. 861 (CCA, La.).

<sup>16</sup> Hancox v. Fishing Ins. Co., 11 Fed. Cases No. 6013 (C.C. Mass.).

<sup>17</sup> Riggs v. Commercial Mutual Ins. Co., 125 N.Y. 7, reh. 51 N.Y. Super. 466.

<sup>18</sup> French v. Hope Ins. Co., 16 Pick. 397 (Mass.).

<sup>19</sup> Warder v. Horton, 4 Binn. (Pa.) 529.

<sup>20</sup> Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970).

<sup>21</sup> See Prosser on Torts, 3rd Ed., §11.

<sup>22</sup> See Bockrath, *Aesthetics and Condemnation Awards: Problems in Preserving the Aesthetic Environment Through Eminent Domain*. *Natural Resources Lawyer* VII:4 (1974).

<sup>23</sup> *International Marine Ins. Co. v. Winsmore*, 16 A. 516 (Pa. Sup. Ct., 1889).

<sup>24</sup> *Graves v. Boston Marine Ins. Co.*, 6 U.S. 419 (1804).

<sup>25</sup> *Finney v. Warren Ins. Co.*, 42 Mass (1 Met.) 16.

with a covenant to pay the value of the chartered portion in event of loss, may insure the whole.<sup>26</sup>

Perhaps the most extreme example of insurable interest in the owner is that of a shareholder of a corporation which owns the vessel.<sup>27</sup> This is in accord with the rule in non-maritime cases<sup>28</sup> and enunciates clearly that no legal ownership of the property in question is needed. The expectation of benefit or chance of loss is based instead on the legal right as a stockholder to a share of the proceeds or corporate dissolution or a participation in profits.<sup>29</sup>

A shipowner does not have an insurable interest in every aspect of a maritime venture. Where, for example a river pilot negligently steered a ship into a light tower, and the ship's property insurance carrier paid for the damage and sued the pilot, the payments made by the insurer were held to be volunteer since the ship had no insurable interest in the light towers and the policy insured only the ship's property and did not cover liability exposure.<sup>30</sup>

The insurable interest picture is somewhat less clear in the case of the cargo seller or owner. *Kaliman v. Liberty Mutual Ins. Co.*<sup>31</sup> involved an action on a marine open cargo policy where the plaintiff shipper's cargo was damaged by pilferage on board. The goods were shipped C.I.F.<sup>32</sup> and the defendant insurance company contended that the plaintiff lacked an insurable interest. Although the case is weakened by the fact that the plaintiff was also the owner of the consignee, the trial court held that the risk of loss passed from the plaintiff at delivery to the carrier, and that the bare legal title which remained with the plaintiff was inadequate to support an insurable interest under New York law.<sup>33</sup> The trial court relied on the fact that the plaintiff has received full payment for the goods after delivery, and that his subsequent credit to the purchaser of the amount of the loss would not empower the plaintiff to retake possession of the goods, and would thus have no effect on the existence of an insurable interest. The trial judge found as a fact that the policies in question had been countersigned and forwarded to the consignee prior to the loss and further

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<sup>26</sup> *Oliver v. Green*, 3 Mass. 133.

<sup>27</sup> *Seamen v. Enterprise F & M Insurance Co.*, 21 F. 778 (CC Mo. 1884). See also 18 F. 250.

<sup>28</sup> See *Vance on Insurance*, §28.

<sup>29</sup> For a further extension of the stockholder situation, see note 59, *infra*.

<sup>30</sup> *Chase v. Hammond Lumber Co. et al.*, 79 F. 2d 716 (Ca. 9, 1935).

<sup>31</sup> *Kaliman v. Liberty Mutual Ins. Co.*, 300 F. 2d 547 (Ca. 2, 1962).

<sup>32</sup> These letters in contracts on sale indicate that the price quoted covers the cost of the goods, freight, and insurance and that the buyer bears the risk of loss in transit. See *Sassoon, C.I.F. and F.O.B. Contracts, British Shipping Laws*, vol. 5.

<sup>33</sup> *New York Insurance Law* §148. (*McKinney's Consl. L.*, c. 28, 1949).

that the policy itself had been transferred. The Court of Appeals, however, found that this conclusion was without support in the record and held that there was no way of determining how much, if any, of the finding of no insurable interest was based on the erroneous finding that the policies had been transferred when they were forwarded. Thus, the court concluded that loss in some amount was incurred by the plaintiff while the policies were in his name, prior to the delivery of the drafts, while he still had a right of stoppage in transit; a sufficient interest to satisfy Section 148.

On the other hand, a plaintiff who held open marine cargo policies issued by the defendant covering all of his international shipments was held to lack an insurable interest *York-Shipley, Inc. v. Atlantic Mutual Ins. Co.*,<sup>34</sup> where the shipment of two boilers from Miami to Guatemala was made CIF. The open cargo policy authorized the assured shipper to issue special policies which would take the place of the open policy for particular shipments. Such a special policy was issued on the boilers and the policy and bill of lading were sent to the consignee. Holding that title under the CIF provision had passed to the consignee on delivery of the goods to the carrier, and that the seller therefore had no insurable interest and consequently no standing to sue the insurer, the court observed that the Uniform Commercial Code provides that "under the term CIF. . . unless otherwise agreed the buyer must make payment against the tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents."<sup>35</sup> The court's conclusion then was that the shipper under a CIF bill of lading becomes merely an unsecured creditor of a foreign customer.

While contrary in result, the *Kaliman* and *York-Shipley* cases may not be irreconcilable. The risk of loss shifts to the buyer upon shipment only if the seller has performed his obligations regarding the documentation in all respects, including necessary endorsements.<sup>36</sup> In *Kaliman*, however, the evidence of proper endorsement was unclear and at least some interest, albeit a difficult one to define, likely remained in the seller. Arguments based on a supposed right to stop the shipment seemed extraneous and unfortunate. In sum, it would appear that the seller under a CIF bill of lading, who has properly performed his obligations, is simply the agent of the buyer for the purchase of insurance and thus has no insurable interest in his own behalf in the merchandise sold.

<sup>34</sup> *York-Shipley, Inc. v. Atlantic Mutual Ins. Co.*, 474 F. 2d 8 (Ca. 5, 1973).

<sup>35</sup> Uniform Commercial Code, Art. 2, Sec. 320.

<sup>36</sup> See Braucher and Sutherland, *Commercial Transactions*, p. 106-7.

*Creditors and Lienholders*

Despite the general rule, reiterated in *York-Shipley*, to the effect that an unsecured creditor does not have an insurable interest, it is certain that a very wide variety of creditors and lienholders do have the requisite interest. Clearly a lienholder on cargo has an insurable interest in that cargo,<sup>37</sup> as does an assignee for the benefit of creditors.<sup>38</sup>

Maritime liens against a vessel are created in favor of a wide variety of persons who render the ship service. The interests thus acquired are generally insurable. Thus, where a boatbuilder who performed repair work on a ship acquired a maritime lien on the ship, he likewise acquired an insurable interest sufficient to validate the policy purchased by him.<sup>39</sup> Liens created when advances are made to a ship to enable it to proceed likewise create insurable interests in the lienholder. For example, where a plaintiff who made advances to a vessel's owner and mates to equip the ship for sea insured the hull, and the ship thereafter put in for repairs which were subject to a general average adjustment on its return, it was held that the advances made on the credit of the ship for repairs or supplies, gave rise to an in rem lien and that such a lien would support an insurable interest.<sup>40</sup>

*Captain and Crew*

Seaman's wages are secured by an in rem right in his ship; indeed, this lien has been termed "sacred," inhering as long as a plank of the ship remains.<sup>41</sup> Nonetheless, it has been held that neither a master or crew member has an insurable interest in a ship by virtue of his position.<sup>42</sup> It would seem likely, however, that if wages were not paid and the lien came into existence, that a crewman would have an insurable interest in the vessel to the extent of his lien.

Where, as was a common case in years past, a master's compensation was based on a percentage of the profits of a completed voyage, the master had an insurable interest in the vessel.<sup>43</sup> Similarly, a

<sup>37</sup> *Russel v. Union Ins. Co.*, 4 Dall. 421 Fed. Cases No. 12146.

<sup>38</sup> *Pike v. Merchant's Mutual Ins. Co.*, 26 La. Ann. 392. Likewise, the assignor has an insurable interest if his interest exceeds the debt. *Cabaub v. Federal Insurance Co.*, 37 Fed. 2d 23.

<sup>39</sup> *Eagle Star & British Dominions v. Tadlock*, 22 F. Supp. 545 (DC Cal., 1938).

<sup>40</sup> *The Merchant's Mutual Insurance Co. v. Baring*, 87 U.S. 159 (1874).

<sup>41</sup> *The John G. Stevens*, 170 U.S. 113 (1898).

<sup>42</sup> *Barker v. Marine Ins. C.*, 2 Fed. Cases No. 992.

<sup>43</sup> *King v. Glover*, 2 Bos. & PNR 206 (Eng.). Naturally, a master or crewman with an insurable interest in another capacity is not deprived of it by his position. *Buck & Hedrick v. The Chesapeake Ins. Co.*, 26 U.S. (1 Pet.) 151.

master's right to primage<sup>44</sup> on freight carried on his vessel created an insurable interest in his favor.<sup>45</sup>

In the absence of a statute to the contrary, a seaman has no insurable interest in wages to come due.<sup>46</sup>

The husband or manager of a ship does not have an insurable interest in it although his continued employment may be at risk.<sup>47</sup> As noted by Vance, "The shattering of expectations however bright, or the disappointing of hopes however strong, does not constitute such a loss as may be indemnified by insurance."<sup>48</sup>

### *Carriers*

The multiple responsibilities under which carriers operate give rise to some of the more interesting, if esoteric, problems of insurable interest. There can be little doubt that a carrier may insure cargo in order to protect himself against possible liability in case of loss. Although the rationale may depend much on convenience of commercial practice, or, as one court phrased it, "to avoid chaos," the carrier has an insurable interest in the cargo in his charge even if the cargo owner had previously insured the cargo.<sup>49</sup> The provision of insurance on the cargo by the carrier in no way diminishes his responsibility to the cargo owners, but rather increases his means of meeting those responsibilities.<sup>50</sup>

The insurable interest of maritime carriers may be limited to some degree by protections and exemptions granted them by the Harter Act<sup>51</sup> and the Carriage of Goods by Sea Act.<sup>52</sup> Even under bills of lading to which the acts apply, however, the risk of liability remains, as does the carrier's insurable interest in the cargo. It should therefore not be surprising that the carrier also has an insurable interest where the bill of lading has waived the acts' protections. Thus, in *Great Lakes Transit Corp. v. Interstate Steamship Co.*<sup>53</sup> where the Harter Act had been waived by the carrier, who then was involved in both to

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<sup>44</sup> Primage was the modest compensation paid to a vessel's master for the use of his cables and ropes to discharge cargo. This gratuity is now simply included in the freight charged by the owner. *Black's Law Dictionary*.

<sup>45</sup> *Pedrick v. Fischer*, Fed. Cases No. 10,900 (1859).

<sup>46</sup> *Webster v. DeTastet*, 101 Eng. Reprint 908. This would seem to be the rule with respect to employees generally concerning the assets of their employer. See Vance on Insurance, Sec. 28.

<sup>47</sup> *China Mutual Ins. Co. v. Ward*, 57 Fed. 712.

<sup>48</sup> Vance on Insurance, p. 173.

<sup>49</sup> *Western Assurance Co. v. Chesapeake Lighterage Towing Co.*, 65 A. 637 (Md., 1907).

<sup>50</sup> *Phoenix Ins. Co. v. Erie & Western Transportation Co.*, 117 U.S. 312.

<sup>51</sup> 46 U.S.C. Secs. 190-196.

<sup>52</sup> 46 U.S.C. Secs. 1300-1315.

<sup>53</sup> *Great Lakes Transit Co. v. Interstate Steamship Co.*, 301 U.S. 646 (1936).

blame collision in which the cargo was damaged, the insurer was held not entitled to recover over against the carrier they insured, but was said to possess only an equity of subrogation against the other vessel for a moiety of what was paid.

A carrier does not have an insurable interest in freight due him where the freight is due under the bill of lading even if the vessel is lost. In such a case, where the carrier, who had previously received an advance under a loan receipt from the insurer, sued the shipper for the freight, the shipper was not allowed to set off his liability for the freight against the amount received by the carrier from the insurer, where the policy was "on account of whom it may concern." The shipper contended that since the carrier had no insurable interest, the insurance was for his benefit only, but the court, after observing that at the time the insurance was purchased the carrier did not know what the bill of lading would provide and that an insurable interest in the carrier was then possible, concluded that the shipper was not a person those effecting the policy had in contemplation.<sup>54</sup>

### *Consignees*

The relationship of a consignee of goods shipped by sea to the goods may vary with the terms of the bill of lading but in the ordinary case the relationship would seem to be one of expectation based upon a contract right. Thus, if an insured has a contract under which the title to a cargo would accrue to him upon delivery and he would suffer from loss of the goods prior to deliver, an insurable interest exists.<sup>55</sup> This has sometimes been held to include goods under an f.o.b. contract, prior to delivery of the goods to the carrier, a situation now expressly covered by art. 2-501 of the Uniform Commercial Code.<sup>56</sup> Similarly an even under earlier law, one who has made a purchase of goods ready for shipment but not loaded, and who has contracted to sell the goods at a profit, may insure the profits.<sup>57</sup>

F.O.B. purchasers clearly have an insurable interest after delivery

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<sup>54</sup> *New Orleans & South American S. S. Co. v. W. R. Grace & Co.*, 26 Fed. 2d 967 (Ca. 2, 1928).

<sup>55</sup> *Groban v. S. S. Pequ*, 331 F. Supp. 883, aff. 456 Fed. 2d 685. See also *Harison v. Fortlage*, 161 U.S. 57. In *Stock v. Inglis*, 12 Q.B.D. 564 (1884), where the plaintiff was the purchaser under an f.o.b. contract of sugar, and the vessel carrying the sugar was lost before the plaintiff's position was determined, an insurable interest was held to exist since the f.o.b. contract put the risk on the buyer who was liable to pay the price against the bill of lading irrespective of the fate of the sugar.

<sup>56</sup> *Ibid.* at page 894. cf. however to the contrary in England *Sassoon, C.I.F. and F.O.B. contracts*, *British Shipping Laws*, Vol. 5 (2nd Ed. 1925) para. 504.

<sup>57</sup> *Royal Exchange Assur. v. M'Swiney*, 14 Q.B. 646 (Exch.).

f.o.b. has been completed because they have title and not merely risk of loss even in a situation where the bill of lading was drawn to the seller's order and a firm price was not fixed. Further, it was noted in the concurring opinion that even if for some reason of circumstance title did not pass, by reason of the risk the buyer might insure it in respect of the interest held.<sup>58</sup> It has also, however, been said that where goods are sold f.o.b. the seller normally has the sole interest until the goods cross the ship's rail. The contrary would be true if the bill of lading contained a stipulation shifting the risk of loss to the buyer prior to f.o.b. delivery.<sup>59</sup>

The buyer under a c.i.f. contract may bring an action on a policy assigned to him, even if he was without an insurable interest at the time of loss. Any question of whether the proceeds are held for the assignor by the assignee is between those parties and does not concern the underwriter.<sup>60</sup> Problems have however arisen with respect to jurisdiction of American courts over foreign underwriters in these circumstances.<sup>61</sup>

### *Charterers*

One who charters a vessel may find himself with liability exposure to each of the other principals in a maritime enterprise. A charterer of a vessel for gross hire irrevocably paid in advance, whether the vessel was lost or not and who had collected freight in advance, also paid irrevocably, has been held to have an insurable interest in the vessel although no profits were at risk.<sup>62</sup> Even though the charter was not a demise and no property interest in the ship was created, the court noted the existence of a right in the return voyage, and that such right was dependent on the continued existence of the ship which was at risk with her hull.

As was noted in the case of vessel owners, stockholders of charterers have an insurable interest in the ship chartered,<sup>63</sup> and insurable interests in vessels have been held to exist where the charterer was under an obligation to insure to the extent of the vessel's value,<sup>64</sup> and where a

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<sup>58</sup> *Joyce v. Swanson*, 17 C.B. (N.S.) 84 (1864).

<sup>59</sup> *Sassoon*, *ibid*, Patas 503, 4.

<sup>60</sup> *J. Aron & Co., Inc. v. Miall*, 34 Com. Cases 18 (1928).

<sup>61</sup> *Ringers' Dutchocs Inc. v. S.S.S.L. Igo and Helevetia Swiss Fire Ins. Co.* 494 F. 2d 678 (1914).

<sup>62</sup> *Booth-American Shipping Co. v. Importer's and Exporter's Ins. Co.*, 9 Fed. 2d 304 (Ca. 2, 1925).

<sup>63</sup> *New Bedford & N.Y. Propeller Co. v. U.S.*, 81 W.S. 670 (1872).

<sup>64</sup> *Bartlet v. Walter*, 13 Mass 267.

lessee under a void lease was in possession and responsible for preservation.<sup>65</sup>

A charterer may also have an insurable interest in the cargo he carries. For example, where a charterer, bound to secure or discharge general average contributions due upon goods of the cargo owners, and was entitled to a lien thereon for reimbursement, he has been held to have an insurable interest in the goods.<sup>66</sup> There seems little reason to think, however, that such esoteric circumstances are required. An insurable interest in the cargo would likely be present whenever the charterer is exposed to risk in the event they be lost.

The same rules would seem to apply in the case of freight. As often is the situation, however, the only case discovered on the topic is, based on its peculiar facts, to the contrary of the general rule. Thus, where the charterer also was the owner of the goods carried, he was held not to have an insurable interest in the freight, since the freight was paid by him rather than to him.<sup>67</sup>

### *Trustees and Beneficiaries*

The formidable array of interests which arise out of the eccentricities of ship finance may create issues of insurable interest in a variety of presumed interest holders.

Trustees, for example, were included in the expansive list of holders of insurable interests in maritime law in *Hooper v. Robinson*<sup>68</sup> and that such is indeed the situation has been demonstrated by several cases. A trustees' operating agent has been held, for example, to have an insurable interest in the prospective profits from the operation of a steamship involved in a possessory libel proceeding operating by stipulation of the parties.<sup>69</sup> In a similar vein, a captain of a vessel who also owned the ship and a portion of the cargo, the remainder of which was consigned to him and documented as such, was held to have an insurable interest in the whole, the court finding that he was "at least a trustee" for the cargo not his own.<sup>70</sup>

Trust beneficiaries may also have insurable interests in maritime

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<sup>65</sup> *Delanty v. Yang Tsze Ins. Assoc.*, 220 P. 754.

<sup>66</sup> *Dodwell & Co. v. Munich Assur. Co.*, 123 Fed. 841, aff. 128 Fed. 410, cert. den. 195 U.S. 629.

<sup>67</sup> *Cheriot v. Barker*, 2 Johns (N.Y.) 346.

<sup>68</sup> *Hooper v. Robinson*, 98 U.S. 528 (1878).

<sup>69</sup> *The Regent*, 57 F. Supp. 242 (DC, N.Y., 1944).

<sup>70</sup> *Buck & Hedrick v. The Chesapeake Ins. Co.*, 26 U.S. (1 Pet.) 151. See also *Young v. Union Ins. Co.*, 24 Fed. 279.

adventures. In *Universal Insurance Co. v. Steinback*<sup>71</sup> an extremely informal "family conference" which took place before the ship was purchased was said to furnish "a circumstance which allowed the imposition of a trust"<sup>72</sup> sufficient to create an insurable interest in the beneficiary.<sup>73</sup>

### *Miscellaneous*

Among the miscellaneous relations to a maritime enterprise which may give rise to an insurable interest therein, such as lenders on bottomry bond,<sup>74</sup> captors of a prize ship,<sup>75</sup> and a contractor engaged to build a ferryboat,<sup>76</sup> two are worthy of closer inspection.

*Samson v. Ball*<sup>77</sup> involved a type of advance not often seen in maritime law in recent time. The plaintiff had advanced money to the ship owners for which he was given the right to fill three-eighths of the ship's tonnage for a simple voyage, with his goods or those of another, and an insurable interest in the vessel resulted.

In perhaps the final extension of the stockholder's insurable interest, in *Aktiebolagit Malareprovinsernas Bank v. Hanover Fire Insurance Co. (The Ada)*,<sup>78</sup> a stockholder of one who furnished security for the release of a vessel seized under judicial process was held to have an insurable interest in her.

### *Honor Policies*

The confusion that seems inherent in the question of insurable interest in marine policies has been alleviated to a degree by the issuance of policies "P.P.I., F.I.A." — "Policy Proof of Interest, Full Interest Admitted," commonly referred to as honor policies.

The effect of such policies is simply that the underwriter agrees not

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<sup>71</sup> *Universal Insurance Co. v. Steinback*, 170 Fed. 2d 303 (Ca. 9, 1948), construing Oregon Statutes Secs. 101-1119 and 101-1120 O.C.L.A.

<sup>72</sup> *Ibid.* at 305.

<sup>73</sup> See also *Lazurus v. Comm. Ins. Co.*, 19 Pick. (Mass.) 81 upholding the insurable interest of a cestui que trust.

<sup>74</sup> *Simmonds v. Hodgson*, 3 Barn. & Ad. 50 (Exch.).

<sup>75</sup> *LeCras v. Hughes*, 99 Eng. Rep. 549 (kB, 1782), based on the terms of the Prize Act and expectation of reward from the Crown for bringing the ship to port. See also *Lucena v. Crawford*, 127 Eng. Reprints 42 (Exch.) where a commission having a right as a government agency to cause captured ships to be condemned was held to have an insurable interest in them.

<sup>76</sup> *Donavin v. Thurston*, 179 N.Y.S. 473.

<sup>77</sup> *Samson v. Ball*, 4 U.S. (Dall.) 459 (Sup. Ct. Pa., 1806).

<sup>78</sup> *Aktiebolagit Malareprovinsernas Bank v. Hanover Fire Ins. Co. (The Ada)* 208 N.Y.S. 173 (1925); r.o.g. 241 N.Y. 197.

to raise the defense of lack of insurable interest. Such policies are used where it is commercial practice to insure the risk at hand although it is questionable whether an insurable interest really exists.<sup>79</sup>

Honor policies are illegal in England as contracts of wager<sup>80</sup> but apparently are not prima facie void in the U.S. although the insurer may escape if he can affirmatively show a lack of insurable interest.<sup>81</sup> The provision in a policy that the instrument shall be proof of interest does not render the policy void if the insured in fact had an insurable interest, and such policies are deemed policies on interest if the contracting parties so understood and agreed.<sup>82</sup>

In practice, obligations under honor policies are always respected by the insurer. Thus, they "come under judicial scrutiny only when the control of the policy has passed away from the underwriter, when he is contesting some other point, or when their existence is material in a suit between other parties."<sup>83</sup>

## CONCLUSION

The case law verifies completely the opinion of *Hooper v. Robinson* that "In the law of marine insurance, insurable interests are multiform and very numerous."<sup>84</sup> Much of the number may be ascribed to the substantial variety of interests that are involved in a given maritime transportation situation. Also clear is the tendency to find the existence of an insurable interest at the slightest provocation where premium has been paid; this is keeping with the rules of insurance law generally. Given, however, the basis on which the concept of insurable interest developed; to wit, to halt wagering, some extensions seem extreme and might lead one to question whether, particularly in light of the apparent success of P.P.I., insurable interest remains a valid consideration in marine insurance.

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<sup>79</sup> Gilmore & Black, *The Law of Admiralty*, 2nd ed., §2-5.

<sup>80</sup> *Aetna Ins. v. United Trust*, 304 U.S. 430.

<sup>81</sup> *Republic of China v. National Union Fire Ins. Co.*, 163 F. Supp. 812 (DC, Md., 1958). See also *Hall v. Jefferson Ins. Co.*, 279 Fed 892 (N.Y., 1921).

<sup>82</sup> *Brown v. Merchant's Marine Ins. Co.*, 152 Fed. 411.

<sup>83</sup> Gilmore & Black, *The Law of Admiralty*, 2nd ed., p. 61, n. 45.

<sup>84</sup> *Hooper v. Robinson*, 98 U.S. 528 (1878).