

LP 23/2025 Pay First Clauses Rendered Effective by the UK

Court of Appeal

The UK Court of Appeal has held in *MS Amlin Marine NV v King Trader Ltd & Ors* that a “pay to be paid” or “pay first” clause in a marine liability policy is enforceable by the insurer against the insured, and the clause survived the transfer of rights to a third-party creditor under the Third Parties (Rights against Insurers) Act 2010 (the 2010 Act). The clause is equally enforceable against that creditor. The Court also found that such clauses are standard market terms in marine insurance and do not fall foul of the so-called “red hand doctrine”, which is an onerous or unusual clause. The judgment gives the market clear guidance on how the burden of risk is allocated under marine policies.

In May 2017, King Trading Ltd (the Owner) time-chartered the Solomon Trader to Bintan Mining Corporation (the Charterer) by a time charterparty. The claimant insurer, MS Amlin Marine NV issued a marine insurance policy in March 2018 to the Charterer in respect of the Charterer’s liability. The cover was for 12 months from 1 April 2018. In February 2019, the Solomon Trader grounded in the Solomon Islands, spilling heavy fuel oil and causing serious pollution. The Owner and the Korea Ship-owners’ Mutual Protection & Indemnity Association (the Club) incurred the clean-up costs and obtained an award in March 2023 against the Charterer in LMAA arbitrations in Hong Kong (the Award). The Award against the Charterer, together with costs and accrued interest, exceeds US\$47 million.

By then, however, the Charterers had already gone into insolvency in 2021 and were unable to satisfy the award. Under the Third Parties (Rights against Insurers) Act 2010 the Charterers’ right to claim under the policy automatically transferred to the third-party creditors. The Owners and the P&I Club, as those creditors, accordingly, demanded payment direct from the Insurer. The Insurer then issued these proceedings on 5 October 2022 seeking declarations that the pay first clause, which was found at clause 30.13 of the Policy and provides “it is a condition precedent to the Assured’s right of recovery under this policy with regard to any claim by the Assured in respect of any loss, expense or liability, that the Assured shall first have discharged any loss, expense or liability”, is enforceable.

For full text of the judgement, please click the [link](#) or refer to the attachment below.

For more information, please contact Managers of the Association.