



Robinson Sheppard Shapiro

Recent developments in maritime law: the Quebec perspective

Speaker :

M^e Jean-François Bilodeau



Recent developments in maritime law: the Quebec perspective

INTRODUCTION

1. The paid to be paid rule
2. The principle of gross negligence
3. The importation of provincial law into marine policies
4. Miscellaneous Decisions: Is Quebec a distinct society?

1. The paid to be paid Rule

- **The Firma case also known as The “Fanti” and “Padre Island”.**
- **Lord Brandon stated:**

That is a provision capable of being expressed in a variety of different terms, which stipulates that a member, in order to be entitled to an indemnity in respect of liabilities or expenses incurred by him, must first himself have discharged the liabilities or expenses concerned.

1. The paid to be paid Rule

- Justice Stone in *Conohan v. Cooperators* stated:

*It seems to me that the issue under discussion reduces itself to one of construction. Did the « Paid to be Paid » requirement of Clause 16 impose an obligation on Gaudet to pay the damages incurred to the Appellant Conohan by reason of the collision before he could collect under the policy? In my view, the ordinary meaning of the words employes in the clause plainly required that payment first be made to third party as a condition precedent to recovery. In my opinion, the ratio in *Firma*, supra, applies to the construction of Clause 16, the language of which is too clear to admit of the application of equitable principles.*

1. The paid to be paid Rule

- The Quebec recognition of the paid to be paid rule: *Peracomo Inc. v. Royal Sunalliance Insurance Company of Canada*.
- Fishing of underwater communication cable in Baie-Comeau.
- The duty to defend

1. The paid to be paid Rule

The RSA policy:

Section 20: Protection and indemnities

20.1 The Underwriters agree to indemnify the Assured for any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable, as owner of the vessel,...

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1. The paid to be paid Rule

20.2 The Underwriters agree to indemnify the Assured for any of the following arising from an accident or occurrence during the period of this insurance:

20.2.5 Legal costs incurred by the Assured of which the Assured may be compelled to pay, in avoiding, minimizing or contesting liability with the prior written consent of the Underwriters

1. The paid to be paid Rule

- Judgment

1. The Marine Insurance Act does not contain any provisions imposing on the insurer any duty to defend the insured

2. The policy does not contain any such contractual obligation

2. The principle of Gross negligence

- Applicable in Quebec during the inland portion of the carriage.
- The Civil Code and the *Regulations Respecting the Requirement for Bills of Lading*

2. The principle of Gross negligence

Article 1474 CCQ:

A person may not exclude or limit his liability for material injury caused to another through an intentional or gross fault; a gross fault is a fault which shows gross recklessness, gross carelessness or gross negligence.

He may not in any way exclude or limit his liability for bodily or moral injury caused to another.

2. The principle of Gross negligence

- *Empire Cold Storage Co. Ltd. V. Vollailles Maxi et al.* or how to fix a cold storage piping system.
- Gross negligence is generally defined as the behaviour denoting a total disregard for the interest of others.
- *Royal & Sunalliance du Canada Société d'assurance v. Transport Quik-X and Markel Compagnie d'assurance*: the extension of the concept of gross negligence to the *Highway Safety Code*.

2. The principle of Gross negligence

- The fatal GPS set!
- The failure of the driver to keep his eyes on the road.
- Can the driver be grossly negligence when such total disregard for the property of others would also endanger his safety?

3. Importation of Provincial Law into Marine Policies

- Marine policies have to comply with certain provisions of the Marine Insurance Act but the parties are otherwise free to contract on any terms.
- Provincial statutes on insurance and in particular the Civil Code impose many requirements to the insurer that may significantly increase the exposure in certain circumstances.

3. Importation of Provincial Law into Marine Policies

For instance the Civil Code contains the following provision:

Art. 2503. The insurer is bound to take up the interest of any person entitled to the benefit of the insurance and assume his defense in any action brought against him.

Costs and expenses resulting from actions against the insured, including those of the defense, and interest on the proceeds of the insurance are born by the insurer over and above the proceeds of the insurance.

3. Importation of Provincial Law into Marine Policies

Example of a clause contained in a marine policy:

Conformity to laws:

In the event a provision of the present contract is declared invalid or inapplicable pursuant to a statute of the province in which the contract was issued, the remaining provisions of the contract will remain in force. The parties shall substitute to this invalid or inapplicable provision an equivalent provision that will maintain its economical intention.

4. Miscellaneous decisions: Is Quebec a distinct society?

- Allianz Global Risks US Insurance Company v. Moosonee Transportation Limited.
- Fortis Corporate Insurance v. SDV Logistics (Canada) Inc.
- Les Courtiers Breen Ltée v. Mediterranean Shipping Company S.A.

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CONCLUSION

Quebec is not a distinct society!

Questions ?

