



No Cover under Liner Negligence Clause Where Vessel's Sinking Caused by Lack of "Due Diligence"

The latest case note received from [Jason P. Minkin](#) and [Jonathan A. Cipriani](#) of BatesCarey in Chicago concerns a Liner Negligence Clause which broadens the cover available under a marine insurance policy beyond the classic "perils" clause to losses caused by certain machinery or hull defects, or by the negligence of certain individuals.

This expansion in coverage is not, however, unlimited. This is demonstrated by *Starnet Insurance Co. v. LA Marine Service LLC*, No. 16-13511, 2017 WL 6604843 (E.D. La. Dec. 27, 2017), which found that no coverage was available under a time-hull insurance policy for a vessel that sank as a result of the policyholder's lack of due diligence.

In *Starnet*, the insured vessel sank after water entered the engine room through the shafts, stuffing boxes, and packing gland assemblies. The relevant policy included a Liner Negligence Clause, which covered losses caused by specified machinery, including "breakage of shafts" and "any latent defect in the machinery or hull." The policy also provided, however, that to come within the protection of the Liner Negligence Clause, the loss must not have resulted from a "want of due diligence by the Assured(s), the Owner(s) or Manager (s) of the Vessel, or any of them."

The policyholder claimed coverage under the Liner Negligence Clause, arguing that the damage to the vessel resulted from a premature failure of the stuffing box. The insurer took the position that the Liner Negligence Clause did not cover the loss because it was caused by the lack of diligence of the vessel owner—specifically, a failure to properly maintain the vessel's stuffing boxes. The insurer also claimed, as a separate coverage defense, that the insured violated the American Rule. As the *Starnet* court explained, the American Rule consists of two warranties that federal maritime law implies in every time hull insurance policy: an "absolute warranty of seaworthiness at the inception of the policy" and a "modified, negative warranty, under which the insured promises not to knowingly send a vessel in an unseaworthy condition." The court also noted, however, that the text of a Liner Negligence Clause can waive or displace the implied warranties under the American Rule. Thus, the court focused its analysis on whether the insured had shown "due diligence" as required to obtain coverage under the liner Negligence Clause.

While recognizing that a Liner Negligence Clause does permit recovery for some losses that would not be available under traditional maritime insurance contracts, such as losses caused by the negligence of the vessel's builder and construction supervisor, the court observed that the clause's expansion of coverage is not unlimited, as was clear from the explicit terms of the policy. Reviewing the facts, the court found that the vessel sank because of a leak through the vessel's stuffing boxes and that such leak was caused by overstuffing of packing material against the propulsion shafts, which wore down the shafts and led to a failure of the compression seal around the shafts.

As to whether the leak from the stuffing boxes resulted from want of due diligence by the policyholder, the court found that it was "essentially uncontested" that the policyholder failed to maintain the vessel's stuffing boxes and propulsion shafts properly. "Due diligence," the court explained, is judged under an objective standard, "rather than the vessel owner's subjective beliefs regarding acceptable practices." The insurer presented evidence from an expert witness who determined that the vessel's shafts wore down through lack of maintenance, specifically a failure to remove old packing rings when new ones were installed in the packing chamber. The insured argued in contrast that the sinking was caused by a "sudden and unexpected failure of the stuffing boxes," but the court concluded that there was no physical evidence in the record to support this theory. Based on the evidence submitted, the court found that the policyholder failed to exercise due diligence to maintain the vessel's stuffing boxes and that the policyholder was aware of an excessive leak from the stuffing boxes and failed to take reasonable steps to ensure that the stuffing boxes were in seaworthy condition. Therefore, because the insurer was able to demonstrate that the loss of the vessel resulted from the want of due diligence of the policyholder, the vessel's sinking was not covered under the Liner Negligence Clause.

Starnet underscores that coverage determinations are driven by the specific language of the relevant policy. In this case the Liner Negligence Clause can expand coverage beyond what a traditional time hull insurance policy would cover, but the coverage is contingent upon meeting certain additional requirements, such as the due diligence requirement enforced by the court here. In Starnet, the insured's lack of due diligence precluded its ability to recover.