

Marine warranty surveys: meeting underwriters' expectations?



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Marine and energy underwriters are commonly asked to underwrite technically sophisticated and complex projects.

To protect their interests, underwriters stipulate insured projects are reviewed by a marine warranty surveyor (MWS) to provide comfort work is being carried out to objectively acceptable standards and ensure the risk of an insurance loss is managed appropriately.

We consider some of the pitfalls to be avoided in drafting MWS clauses.

MWS clauses

Underwriters will wish to ensure, if there is a breach of the MWS clause and a loss results, they will not have to provide cover for that loss. MWS clauses will therefore usually be either warranties or conditions precedent to cover and so, if breached, the assured will not be covered – at least in respect of losses flowing from the breach. Accordingly, compliance with the MWS clause tends to be scrutinised closely following a loss and can give rise to disputes.

Scope of work

The scope of works usually focuses on the MWS reviewing, attending, approving and/or issuing certificates of approval in relation to listed items described with varying degrees of specificity.

An MWS would be forgiven for seeing the role as a “tick box” exercise, at odds with the “eyes and ears” service underwriters want. Attempting to resolve this by wording the scope of work widely can lead to arguments later.

For example, in the UK case of *Kircaldy v Walker* (2009), the clause provided for a “condition survey” to be carried out, without specifying what that term meant. Following loss of the insured dry dock, underwriters asserted a breach of the requirement for a “condition survey” and a dispute ensued as to the meaning of that term.

While underwriters were ulti-

mately successful in demonstrating whatever “condition survey” meant, nothing matching the description had been carried out, they incurred substantial delay, uncertainty and expense in litigating the issue.

Effective communication between underwriter, assured and MWS is therefore key.

Appointing the right MWS

While the MWS survey is necessary because underwriters require it and can use it to assert breaches if something goes wrong, there are also advantages for the assured.

The relationship between the assured and the MWS can be valuable if the MWS commands respect for his expertise and competence. However, the present practice of allowing the assured to appoint and pay for the MWS does not necessarily encourage selection of the best-qualified MWS.

Where the “wrong” MWS (in terms of qualifications and experience) is appointed, the process may be frustrating for the assured, faced with an MWS who cannot keep up with the technical demands of the project.

That can also diminish the value of the MWS process to underwriters, which in turn suggests underwriters ought to consider a more “hands-on” role in the appointment process.

The role of the MWS is becoming an increasing focus in the marine and energy insurance market, with various market organisations now printing draft clauses and codes of practice for the appointment of the MWS and the scope of the works they undertake.

These are a useful focal point around which the market may consider whether it is getting the best out of the MWS process and what might be done to enhance its value, ensuring risk is managed appropriately in carrying out complex projects. ■

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