THE ROLE OF WARRANTY IN MARINE INSURANCE UNDER THE MARINE INSURANCE ACT, 1963: A CRITICAL STUDY

Chinnu Saju, LLM, Government Law College, Ernakulam, Kerala, India

Anjala Nazrin Subair, LLM, Government Law College, Ernakulam, Kerala, India

ABSTRACT

This paper investigates the fundamental role that warranties play in marine insurance agreements governed by the Marine Insurance Act of 1963. It analyzes the characteristics, boundaries, and legal consequences of both express and implied warranties. While express warranties are explicitly written into the policy to establish specific duties for the policyholder, implied warranties such as the vessel's seaworthiness, the lawful nature of the journey, and adherence to the planned route take effect automatically under the law. A key focus of the research is the absolute adherence demanded by these clauses; any violation, regardless of its relevance to a loss, can release the insurer from their financial obligations. Ultimately, the study underscores the practical importance of warranties in stabilizing risk and providing legal predictability within marine insurance.

Keywords: Marine Insurance, Express Warranty, Implied Warranty, Seaworthiness, Breach, Marine Insurance Act 1963

INTRODUCTION

In the era of globalization, maritime transport acts as the backbone of international trade and commerce. The transportation of high value goods by sea is one of the most cost-effective modes of transport. However, maritime transport also involves significant risks associated with perils of the sea. Therefore, it is essential that the parties involved are adequately protected through insurance.

Marine insurance refers to a contract whereby the insurer compensates the insured for financial losses arising from marine perils, in exchange for a premium paid by the insured. It covers losses relating not only to ships or vessels but also to goods or cargo transported by land, air, or water. Marine insurance is one of the oldest forms of insurance. In India, it is governed by the Marine Insurance Act, 1963, which is largely based on the Marine Insurance Act, 1906 of the United Kingdom.

Section 3 of the Marine Insurance Act, 1963 defines marine insurance as "a contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, losses incidental to marine adventure."[1]

However, this assumption of risk is highly contingent upon the insured party adhering to strict parameters. In this context, warranties assume critical importance. Warranties in insurance law differ significantly from warranties in general contract law, as the term "warranty" in insurance law has a more restrictive meaning. In marine insurance, warranties are akin to conditions under the Sale of Goods Act. Under general contract law, a breach of condition may give rise to a right to terminate the contract, while a breach of warranty typically results only in a claim for damages. However, in marine insurance law, this terminology is effectively reversed. A breach of warranty discharges the insurer from liability, making it crucial to understand this distinction at the outset. A marine insurance warranty is, therefore, a strict promissory condition that forms a fundamental basis of the contract.[2]

[1] The Marine Insurance Act,1963,S.3
[2] Mazyar Ahmad,"Law Relating To Warranties In Marine Insurance: United Kingdom And India In A Comparative Perspective" 7*Ijmr*1(2020)

This article explores the intricate doctrines of express and implied warranties in marine insurance. It examines their statutory foundations, in the Indian Marine Insurance Act, 1963, along with key judicial precedents that have shaped the global maritime legal framework.

LEGAL NATURE OF WARRANTY

To understand the operation of marine insurance, one must first confront the draconian legal nature of warranties as established by the Marine Insurance Act 1963. Under Section 35(1), a promissory warranty is defined as an undertaking by the assured to perform or avoid a specific act, fulfill a condition, or affirm the existence of particular facts.[3] The defining characteristic of such a warranty is the doctrine of strict compliance pursuant to Section 35(3), a warranty must be fulfilled exactly, regardless of whether the breach is material to the risk. The House of Lords in *Bank of Nova Scotia v. Hellenic Mutual War Risks Association (Bermuda) Ltd (The Good Luck)*[4] solidified this by ruling that a warranty acts as a condition precedent, where a breach automatically and immediately discharges the insurer from liability from the moment of the infraction, without the need for formal contract termination. This traditional stance imposes two harsh realities: the insurer is discharged solely upon proof of breach irrespective of causation, and a breach cannot be "cured" to revive coverage.[5] This is best illustrated by *Quebec Marine Insurance Co. v. Commercial Bank of Canada*[6], where the court held that even though a vessel's defective boiler was repaired mid-voyage, the initial breach at the start of the journey rendered the policy permanently void, as subsequent repairs cannot resuscitate a contract that is technically dead the moment the risk commences.

BREACH WHEN EXCUSED

Expanding upon the "draconian" nature of marine warranties, it is essential to consider the narrow statutory gateways through which an assured may be excused from strict compliance. Under Section 36 of the Marine Insurance Act 1963, the law recognizes only two primary justifications for non-compliance: a fundamental change in circumstances that renders the warranty inapplicable to the contract, or the enactment of a subsequent law that makes compliance illegal. Outside of these rare exceptions, the only reprieve for an assured lies in the

[3] The Marine Insurance Act,1963, S.35
[4] [1991] 2 Lloyd's Rep 191 (House of Lords).
[5] Abd Ghadas, Z.A& Ahmd,M.S,"Warranty: The Hidden Shield and Sword for The Insurer to Retain Profit Under Marine Insurance",25*Peternica J.Soc.Sci&Hum*210 (2017)
[6] [1870] L.R. 3 P.C. 234

insurer's discretionary power of waiver. A waiver occurs when an insurer, despite having the right to be discharged from liability due to a breach, chooses to overlook the infraction and maintain the policy's force.[7]

The judicial application of this principle was notably clarified in *P. Samuel & Co Ltd v. Dumas*[8]. In this instance, a shipowner technically breached a warranty by securing freight insurance in excess of the contractually permitted limits. However, the House of Lords ruled that the insurers were precluded from invoking this breach to void the policy. The court found that because the insurers had underwritten the excessive insurance themselves and accepted the associated premiums, their conduct constituted an active participation in the breach. By demonstrating clear acquiescence and profiting from the very act they later sought to penalize, the insurers were barred by the principle of waiver from escaping liability when the vessel was subsequently lost. This case highlights that while the law of warranties is inherently rigid, the equitable doctrine of waiver serves as a critical check against insurers who might otherwise exploit a breach they themselves facilitated.

KINDS OF WARRANTIES

Warranties in marine insurance are classified into two types. Express warranties and Implied warranties.

EXPRESS WARRANTIES

An express warranty refers to a warranty that is explicitly stated and agreed upon by the parties to a marine insurance contract. It forms an essential part of the policy and must be strictly complied with by the insured. As per section 37 of the Marine insurance act 1963 , An express warranty is a warranty that is: expressly stated in the policy or written upon the policy or contained in a separate document that is incorporated into the policy by reference. The wording of an express warranty is flexible. It may be framed in any form of language, provided that the intention to create a warranty can be clearly inferred from the terms used. The emphasis is not on specific terminology, but on the intention of the parties to impose a binding obligation.[9]

The inclusion of one or more express warranties in a policy does not automatically exclude

[7] The Marine InsuranceAct,1963, S.36
[8] [1924] AC 431
[9] The Marine Insurance Act,1963, S.37

implied warranties. Both express and implied warranties may co-exist within the same contract, unless the express terms clearly negate or are inconsistent with the implied warranties. When a warranty is contained in a separate document, it will be treated as part of the insurance policy only if the policy expressly refers to that document. Such a reference leads to the deemed incorporation of the warranty into the policy. In the absence of an express reference, the warranty contained in the external document will not form part of the contract and, therefore, will not be binding on the parties.

In *De Hahn v Hartley* [10], a ship was insured for a voyage to the West Indies, with an express warranty written in the margin of the policy stating she would sail from Liverpool with "50 hands or upwards." The ship sailed with only 46 hands but safely picked up 6 more shortly after departing, before any loss occurred. The ship was later captured off the coast of Africa. Lord Mansfield ruled in favour of the insurer, they are not liable as express warranties requires strict performance.The fact that the breach was remedied and had no connection to the vessel's capture was deemed immaterial.

In *Overseas Commodities Ltd v Style*,[11] a policy covering a cargo of tinned pork contained an express warranty that all tins would be marked with the date of manufacture. A small number of tins were incorrectly marked. The court held that the warranty was breached, discharging the insurer from liability, emphasizing that warranties are not severable.

TYPES OF EXPRESS WARRANTIES

While express warranties can take many forms, the following seven types are most frequently encountered in marine insurance contracts:

1. Warranty of Safety on a Specific Day

When the insured subject matter is warranted to be "well" or "in good safety" on a specified date, the warranty is satisfied if the ship is safe at any point during that day. In *Blackhurst v. Cockell*, [12] a merchant insured goods on a ship with an express warranty that the vessel was "well" on October 25. Although the ship was safe at the start of that day, it was lost at 1:00 PM, shortly before the policy was actually signed. The insurer argued the warranty was

[10] [1786] 1 T.R. 343
[11] [1958] 1 Lloyd's Rep 546
[12] [1789] 3 TR 360

breached because the ship was already destroyed when the contract was finalized. The court ruled in favor of the insured, holding that a warranty of being "well" on a specific day is satisfied if the ship is safe at any point during that day. Because the ship was intact on the morning of the 25th, the warranty was fulfilled regardless of the ship's condition at the exact hour the policy was underwritten.

2. Warranty of Sailing Date

This warranty requires the ship to sail on the exact date specified in the contract. Any departure from the designated date whether earlier or later constitutes a formal breach of warranty.

3. Warranty of Non-Deviation

Under this warranty, the ship must proceed directly to its destination following the agreed upon route without any unauthorized changes in course. Any unjustified deviation results in a breach of warranty, which discharges the insurer from liability from the exact moment the deviation occurs. In *Alexander Elliot & Others v. William Wilson & Company*,[13] a vessel insured for a voyage from Carron to Hull was permitted to stop at the Port of Leith, but instead diverted six miles to Morison's Haven to load additional cargo. Although the ship was later wrecked while back on its authorized course, the House of Lords ruled that any unauthorized departure from the strictly defined route regardless of the distance or whether it increased the risk constitutes a deviation that voids the insurance policy. The ruling established the strict legal principle that once a ship departs from the agreed upon path, the underwriters are immediately discharged from liability, as the insured has substituted a different voyage for the one originally contracted.

4. Warranty of Neutrality

This warranty asserts two essential conditions: first, that the ship possesses a neutral status at the commencement of the voyage, and second, that it will maintain this neutral status for the entire duration of the journey. A loss of neutrality at any point during the voyage results in a direct breach of the contract terms.[14]

[13] [1776]UKHL 2 Paton 411
[14] Baris Soyer, *Warranties in Marine Insurance: A Comprehensive Study* (2000) (Degree of Doctor of Philosophy, University of Southampton).

5. Warranty of Class

This warranty stipulates that the vessel is registered under and maintains a specific rating from a recognized classification society (such as Lloyd's Register or ABS) throughout the duration of the policy. In *Hind Offshore Pvt. Ltd. v. IFFCO-Tokio General Insurance Co Ltd*[15] the Supreme Court of India ruled that the insured's failure to report engine damage to the classification society (ABS) effectively invalidated the vessel's class certificate. This failure constituted a breach of the "class warranty," which discharged the insurer from liability for the ship's subsequent sinking. This case underscores that maintaining "class" requires active reporting of any damage that might affect the vessel's rating.

6. Warranty of Trading and Navigation Limits

Express warranties often restrict a vessel from entering specific geographical areas that are deemed dangerous, particularly during certain times of the year (e.g., "Warranted no Baltic Sea in winter"). These limits ensure the insurer is only covering risks within agreed upon, manageable parameters. Any entry into a restricted zone regardless of whether a loss occurs there results in a breach of warranty.

7. Warranty to Sail with Convoy

While less common today, this warranty was historically vital during times of war. It requires a merchant vessel to sail under the protection of a designated naval escort.In *Hibbert v. Pigou,*[16] a ship insured for a voyage from Jamaica to London carried an express warranty to sail with a naval convoy. Although the ship attempted to reach the meeting point, unfavorable weather prevented it from joining the escort in time, and the vessel was subsequently captured while sailing alone. Lord Mansfield ruled that an express warranty requires absolute and literal compliance. Because the condition to sail with an escort was not met regardless of the ship's good faith intent or the intervening weather the warranty was breached, discharging the insurer from all liability.

IMPLIED WARRANTIES

Implied warranties are conditions that do not appear explicitly in a policy document but are

[15] 2023 INSC 697
[16] [1783] 3 Doug. KB 244; 99 E.R. 624

automatically applicable by operation of law, arising from statutory requirements, general practice, long-established customs, or industry usage. Despite their absence from the written text, these warranties are treated as if they are fully incorporated into the contract. Uniquely, implied warranties are generally absent from most areas of insurance law except for marine insurance, a distinction necessitated by the specific nature of the "marine adventure."

When a vessel is engaged in such an adventure, a wide range of interests including the shipowner, the crew, and the buyers or sellers of the cargo are exposed to significant maritime perils. During the voyage, neither the assured nor the insurer is in a position to accurately ascertain the vessel's condition. Consequently, to balance the conflicting interests of the contracting parties and minimize the inherent risks of maritime transit, marine insurance law imposes certain implied warranties. It is important to note, however, that these implied warranties can be negated by an express term within the policy; for instance, the implied warranty of seaworthiness is frequently waived in cargo policies through the inclusion of a "seaworthiness admitted" clause.

1. Implied Warranty of Seaworthiness

The implied warranty of seaworthiness serves as a fundamental principle in marine insurance, representing that a vessel is reasonably fit to perform its intended tasks and withstand the ordinary forces of nature. A vessel may be rendered unseaworthy due to inadequate design, defective physical conditions or even the incompetence of its crew. Because a ship incapable of performing its services unfairly prevents an insurer from earning their premium, seaworthiness is considered a prerequisite for the insurance "wager" to be valid. This warranty applies both before and after a policy takes effect; unseaworthiness existing prior to attachment constitutes a failure of consideration that prevents the policy from ever beginning, while unseaworthiness arising afterward unfairly increases the insurer's risk based on the vessel's original valuation.[17]

Under Section 41 of the Marine Insurance Act 1963, the law distinguishes between different types of policies and stages of a voyage.[18] In a voyage policy, there is an absolute implied warranty that the ship is seaworthy at the commencement of the journey for that specific

[17] Derek P. Langhauser,"*Implied Warranties Of Seaworthiness: Applying The Knowing Neglect Standard In Time Hull Insurance Policies"* 39 Me. L.Rev 447(1987)
[18] The Marine Insurance Act,1963, S.41

adventure. If the policy begins while the ship is in port, she must be fit to encounter ordinary port perils, and if the voyage is performed in stages requiring different equipment, the ship must be seaworthy at the start of each individual stage. Conversely, time policies do not carry an implied warranty of seaworthiness at any stage. However, if an assured party is "privy" to the fact that a ship is being sent to sea in an unseaworthy state, the insurer is relieved of liability for any losses directly attributable to that specific condition.

The legal interpretation of these standards is further refined by key court rulings and specific requirements for cargo. In *Burges v. Wickham*,[19] the court established that seaworthiness is relative to the vessel's capacity; if a river boat is made as strong as reasonably practicable for an ocean crossing, the warranty is satisfied even if it isn't as fit as a standard sea going vessel. Furthermore, *Thomas v. Tyne and Wear Steamship Freight Insurance Association* [20] clarified that an insurer is only protected if a loss results from a defect the owner actually knew about. Beyond the hull itself, seaworthiness includes "cargo-worthiness," meaning the ship must be fit to carry specific goods, such as having functional refrigeration for meat or ventilation for fruit. To protect cargo owners who cannot control the ship's condition, most cargo policies include a "seaworthiness admitted" clause to prevent these disputes from blocking a claim.

2. Implied Warranty of Legality

The implied warranty of legality is a fundamental principle of marine insurance, providing that the insured adventure must be inherently lawful and carried out in a lawful manner. This principle is codified in Section 43 of the Marine Insurance Act 1963, which states:

"There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner."[21]

Because marine insurance cannot legally protect or indemnify illicit activities, any contract covering an illegal venture is considered void from the outset. This warranty serves as a safeguard for public policy, ensuring that the insurance mechanism is not used to facilitate or profit from unlawful conduct. Illegal adventures typically include activities such as the smuggling, trading with an enemy nation during wartime, or any acts that contravene customs

[19] [1836] 3 B &s 669; 122 E.R. 251.
[20] [1917] 1 KB 938
[21] The Marine Insurance Act ,1963, S.43

laws, war policies, and general standards of public morality. The law takes a strict approach to these violations; if the illegal component of a voyage is inseparable from the adventure as a whole, the entire insurance contract becomes void.

A critical nuance of this warranty involves the knowledge and control of the assured. For a policy to remain valid, not only must the underlying objective be lawful, but the execution of the voyage must also remain legal, unless the illegality arises from circumstances entirely beyond the assured's knowledge or control. This distinction was underscored in the landmark case of *Pipon v. Cope*,[22] where a ship was arrested in England for smuggling. Because the master of the ship had engaged in smuggling with the owner's connivance (implicit consent or knowledge), the court held that the insurer was not liable for the loss, as the warranty of legality had been breached.

WARRANTY IMPLIED FROM AN EXPRESS WARRANTY

The principle of a warranty implied from an express warranty dictates that when the subject matter of insurance whether the ship or the goods is expressly warranted as "neutral," several implied conditions automatically attach to the contract. Primarily, there is an implied condition that the property must possess a neutral character at the commencement of the risk and that the assured must, so far as they can control the matter, ensure this neutral character is preserved throughout the duration of the voyage. If the warranty of neutrality is false at its inception, the policy is vitiated immediately, as the insurer's risk was predicated on a status that did not exist.

Beyond the mere status of the vessel, the assured has a continuous duty to maintain neutrality through their conduct. Any voluntary act by the assured that destroys the ship's neutral standing constitutes a breach of this implied condition. A critical component of this maintenance is the implied condition of documentation. Where a ship is expressly warranted as neutral, it is legally required to be properly documented. This involves carrying all necessary papers to establish neutrality under international law or specific treaties, and strictly prohibits the falsification, suppression, or use of simulated or "mock" papers. The consequences of breaching these implied conditions are severe. If a loss occurs through a breach of the documentation requirement, the insurer is entitled to avoid the contract entirely. Notably, a false warranty of neutrality will vitiate the policy even if the eventual loss occurs in a manner completely

[22] [1808] 1 Camp. 434; 170 E.R. 1012

unrelated to the breach itself. This strict interpretation ensures that the insurer is never held to a risk fundamentally different from the one they initially agreed to cover.[23]

This legal standard was clearly illustrated in the case of *Rich v. Parker*.[24] In this instance, a ship insured for a voyage from Portsmouth to Hamburg was warranted as "American property." Under a treaty between France and the United States, this status required the vessel to carry a specific "passport" or sea letter to prove its neutrality. Although the ship was indeed American owned, the court ruled that the warranty was breached because the vessel sailed without the necessary documentation. Lord Kenyon emphasized that a warranty of neutrality is not merely a statement of ownership, but an ongoing obligation for the vessel to be neutral in every legal sense including the possession of required treaty documents thereby voiding the policy from its inception.

NO IMPLIED WARRANTY AS TO THE NATIONALITY

In contrast to other foundational warranties in marine insurance, Section 39 of the Marine Insurance Act 1963 explicitly provides that there is no implied warranty as to the nationality of a ship, nor is there an implied condition that its nationality shall remain unchanged throughout the duration of the risk. Under this statutory framework, the insurer generally assumes the risk regardless of the vessel's national registry unless an express warranty is specifically negotiated.[25]

However, this lack of an implied warranty does not provide the assured with absolute immunity regarding changes to the ship's status. If the assured voluntarily changes the nationality of the vessel and, by doing so, directly exposes the ship to a risk of hostile capture, the legal character of a subsequent loss shifts. In such cases, the loss may be attributed to the intentional act of the assured rather than the fortuitous maritime perils covered by the policy. Consequently, if a vessel is captured as a direct result of a voluntary change in nationality that increased the risk, the insurer may be entitled to avoid liability for the loss.

CONCLUSION

In conclusion, express and implied warranties form the cornerstone of contractual discipline

[23] Sachin Rastogi,Insurance Law and Principles 312 (LexisNexis,Haryana,1st edition,2014)
[24] [1798] 7 Term Rep.705;101E.R.1209
[25] The Marine Insurance Act,1963, S.39

under the Marine Insurance Act, 1963. These warranties ensure that the insured strictly adheres to specific conditions, thereby maintaining the balance of risk between the insurer and the assured. Express warranties, being explicitly stated in the policy or incorporated by reference, provide certainty and clarity regarding the obligations of the parties. In contrast, implied warranties such as seaworthiness, legality of voyage, and non-deviation operate automatically by virtue of law, safeguarding fundamental expectations in marine ventures.

The rigid nature of warranties under the Act, where even a minor breach can discharge the insurer from liability regardless of materiality or causation, reflects the traditional emphasis on utmost good faith and risk minimization in marine insurance contracts. However, this strict approach has also attracted criticism for being overly harsh on the insured.

Overall, the distinction and interplay between express and implied warranties highlight the importance of precision, compliance, and good faith in marine insurance. A thorough understanding of these principles is essential not only for legal practitioners but also for parties engaged in maritime trade, as non-compliance may have significant legal and financial consequences.