

工學碩士學位論文

相當注意義務 履行 效果  
研究  
- 船舶保險 中心 -

A STUDY ON THE IMPLEMENTATION OF DUE DILIGENCE  
AND ITS EFFECT  
- FOCUSING ON THE MARINE HULL INSURANCE -

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# **A Study on the Implementation of Due Diligence and Its effect**

**- Focussing on the Marine Hull Insurance -**

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## **Abstract**

Marine Insurance is for the underwriter to indemnify the assured, in manner and to the extent there by agreed, against marine losses, that is to say, the losses incident to marine adventure. In marine hull insurance, a loss or damage to the assured's insured-against can be divided into two categories. The one is the losses which always can be covered from underwriters regardless of assured's due diligence to his insured-against such as the losses proximately caused by perils of the seas and Act of God, and the other is the losses which can be covered only if his due diligence have been proved.

Accordingly, there may be some cases in which underwriters refuse to pay claims to the assured in case of his want of due diligence and actually, a lot of cases which an assured could not have been covered, existed through the history of marine hull insurance claims. Marine enterprisers such as ship's owners, managers, charterers and carriers should not overlook this kind of resonable care in running their business, and if they fail to do so, they might be in trouble with legal liability, to say nothing of their financial hardness and difficulty in management.

Statistically, looking back the past marine accident cases in korea, the most

parts of the accident are man-made disasters caused by want of due diligence. So, this study will focuss on this kind of marine losses and insurance clauses and other relevant rules containing due diligence such as due diligence of the assured in inchmaree clause, ITC-Hulls, 1983, and due diligence of carrier in Hague-Visby Rule and so on. This study also shows what the disadvantages to marine enterprisers are, caused by want of due diligence and the advantages of doing due diligence are.

In conclusion, this study contends that marine enterprisers should perform due diligence in doing their business for both financial stability and good management of their companies.

## 第 1 章 序論

### 第 1 節 問題 提起 研究 目的

#### 海上保險分野

가  
相當注意義務(Due diligence)  
가  
가, 相當 注意



가

가

分損不擔保條件<sup>1)</sup>(FPL Unless etc.)

가

全危險擔保條件

가

相當 注意

道德的 危殆

海上固有

危險

가

가

(SG Policy)

(Inchmaree Clause)

1983 協會船舶期間約款(ITC-Hulls,1983;

) 가

가

(天災)가

가

가

1) 가 ( ) SSBC , , ,

가

가

船舶保險

實益 考察

## 第 2 節 研究 範圍 方法

가

가

가

Code),

Y2K

(ISM

가

가

가

가

Y2K

‘ 海上保險 ’ ‘ 相當注意

2

義務 ’

, 3

가

4

가

## 第 2 章 理論的 背景

### 第 1 節 海上保險

#### 1. 海上保險法

海上保險

가 . ,

가 .  
 普通法(Common law) , 商慣習法(Law merchant)  
 가 . , 1906 英國海上保險法(Marine Insurance Act 1906;  
 MIA 1906) . , 17 ,  
 19  
 2,000 .  
 1906 , 가  
 . 94  
 , 1 (Rules for  
 Construction of Policy) 17 , 2  
 . , 가  
 , 가  
 가 가  
 , 가 가  
 ,

## 2. 海上保險 證券 約款

### 2.1 海上保險證券

海上保險證券(Marine Insurance Policy) (General  
 marine insurance clauses)

가 2) 가

定型的, 一般的, 普遍的, 標準的 約束約款

---

2) , 「 」 , , 1995, pp.359-360.

가 ,  
 , 保險契約當事者 ,  
 .3) , 가 附合契  
約 .

가  
 , 가 .

## 2.2 海上保險約款

### 海上保險特別約款

가 . 200  
(Lloyd's)  
가 .  
가 .  
“  
 ,  
”  
 , (Claim)

---

#### 3) 24. Signature of Insurer

1. A marine policy must be signed by or on behalf of the insurer, provided that in the case of a corporation the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

2. Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured.

“ ”

協會積荷保險約款(Institute Cargo Clause; ICC) 協會船舶期間約款(Institute Time Clause; ITC)

가

가

가 合同委員會

1884 6 가

1909

가

가 (Joint Hull Committee),

(Joint Cargo Committee),

(Joint Construction Risk Committee),

(Technical and Clauses Committee) 가

### 2.3 協會船舶期間約款 變遷

가

1779 (SG Policy Form)

가 海上危險 14

1880

(Voyage Policy) (Time Policy)

(Joint Stock Companies Acts)

가

가  
 .  
 . 가  
 가 ,  
 1883 4 4  
 , 1884  
 가  
 (ITC, ICC)  
 , 1982  
 (MAR Policy)  
 , 4가  
 ,

## 第 2 節 相當注意義務

### 1. 相當注意義務 過失

#### 1.1 相當注意義務

4) 가 1893 (Harter Act) 1924 船荷證券統  
 一條約 英美 堪航能力<sup>5)</sup>

4) , 「 , , 1989, pp.65-68.

5) MIA 1906 39 4 “ 가  
 , (COGSA) 가 , “ ”

1921  
(Hague Rule) 가 가  
(Common law duty of care)  
.6) ,  
(Common law concept of reasonable care) .7)  
1) Slight care 2) Ordinary care 3) Great care Ordinary  
care 過  
失(Negligence) , 가  
, (Resonable care  
and skill) 가 가  
(Resonable diligence) 8)  
, , ' Due ' , ' Diligence '

9) " " 10)  
(Prudent and careful carrier)

.11)  
, 가  
, " , "

6) Mocatta, Mustill and Boyd, p.435.

7) Grime, *Shipping Law* (London; Sweet & Maxwell, 1978), p103; Ivamy, COGSA, 11th ed(London; Butterworths, 1979), p.94

8) *Jevis v. Tomkinson*, 1856, 1H.&N.195; *Gardi v. Xenos*, 1862, 2F & F740.

9) *Wilson & Clyde Coal Co. Ltd. v. English*, 1938, A.C.57.80.

10) *Angliss & Co. Pty. v. Peninsular & Oriental Navigation Co.*, 1927, 2 K.B. 456.

11) *Charles Brown & Co. Ltd. v. Nirate Proudcers Steamship Co., Ltd.*, 1937, 58 Lloyd's Rep.188.



” 12) . 1893

가

13)

1936 海上物件運送法(Carriage of Good By Sea Act; COGSA)

14)

가

.15)

Reasonable

diligence Reasonable prudence

.16) ,

가

.17)

國內 商法

“

가

”

.18)

12) *Black's Law Dictionary*, 15th ed. (Minn. West Publishing Co. 1979, p.411.

13) Harter Act, 1893

Section 2 provides: It shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel, to exercise **due diligence**, properly equip, man, provision and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided.

14) COGSA

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise **due diligence** to -

(a) Make the ship seaworthy;

(b) Properly man, equip, and supply the ship;

(c) Make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.

15) *Black's Law Dictionary*, p.411.

16) *Spencer Kellog & Sons v. Great Lake Transit Corp.*, 32F.

17) Poor, on charter parties and ocean Bills of Lading, 5th ed. (Newyork ; Matthew Bender & Co., 1980) p.168.

18) 民地判, 1978.8.3.77가 1615.

가 船積 發航 ( 788 19))  
가 . 가 . 가

가 . 가  
20) “ ” 21)

1.2 過失

過失 22)  
가 가

---

19) 788 ( )

91.12.31]

20) Atlantic Transport Co. v. Rosenberg Bros. & Co., 34F. 2d 843, 846 (9th cir.1929).  
21) Merriam webster; The care that a reasonable person exercises under the circumstances to avoid harm to other persons or their property  
22) Thames & Mersey Insurance Co. - V - Hamiton Fraser, 1887.

‘ Blyth-V-Birmingham Waterwork Co, 1856 ’

.23)

不注意 ,

怠慢

3

訴追

가

가

가

가

(a) Failure of the negligent party to do something which ought to have been done: or

가

가

(b) The act of the negligent party in doing something which ought to have been done, but with a lack of reasonable care in so doing; or

가

가

23) "Doing something which ought either to have been done in a different way or not at all, or omitting to do something which ought to have been done"

(c) The act of negligent party in doing something which ought not to have been done.

가

(Contributory cause)

(Contributory factor)

海上固有 危險 可航水域 固有 危險 近因 , 가 . ,

6.1.1 24)

坐礁

가 .

6.2 25)

가 ,

6.2

가

6.2.3

24) 6.1.1 Perils of seas rivers lakes or other navigable waters

25) 6.2 This insurance covers loss of or damage to the subject-matter insured caused by

6.2.1 Accidents in loading discharging or shifting cargo or fuel

6.2.2 Bursting of boilers breakage of shafts or any latent defect in the machinery or hull

6.2.3 Negligence of Master Officers Crew or Pilots

6.2.4. Negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder

6.2.5 Barratry of Master Officers Crew

Provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

6.2 , 가 , , , . 6.1.1 .

26) “ , , ” (Goegel E. Rejda) “ ”

1) 2) 3) 4) 가

2. 相當注意義務 補償關係<sup>27)</sup>

2.1 相當注意義務가 要件 危險

(Perils irrespective of want of due diligence) . , 가

28)

26) R.H Brown, *Dictionary of marine insurance*, 4th edition.

27) ,前掲書, pp.141- 142.

28) 6.1.1 Perils of seas rivers lakes or other navigable waters  
6.1.2 Fire, explosion

海上, 江, 湖水 其他 可航水域 固有 危險 - 海上固有 危 險  
 火災爆發  
 船舶 外部 暴力的  
 投荷  
 海賊  
 核 裝置 原子爐 故障 事故  
 航空機 類似 物體 落下 物體, 陸上運 送  
 用具, 港灣施設 裝備 接觸  
 地震, 火山 噴火 落雷 .

2.2 相當注意義務 要件 危險  
 가 補  
 償請求權 .

가 ( 6.2 29)),

30) 故意 不法行爲(Wilful misconduct) .

6.2

6.1.3 Violent theft by persons from outside the vessel

6.1.4 Jettison

6.1.5 Piracy

6.1.6 Breakdown of or accident to nuclear installation or reactors

6.1.7 Contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbour equipment or installation

6.1.8 Earthquake volcanic eruption or lightning.

29) Provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

30) MIA 1906, 55 2 (a)

(2) In particular

(a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

가  
 , 31), 32), 가  
 (Want of due diligence) 가 ,  
 ( 6.2 ).  
 가 가

( 55 2(a)). ,  
 가

33)(裸傭船者) 34)  
 , 가 35)  
 가 ,  
 , 가

36)  
 가 , 「 」 ,  
 , 가 가  
 , 「 」 , 1986,  
 pp.760- 761.

- 
- 31) 被保險者  
 가 가 , 「 」 ,  
 , 1995, pp.12- 13.
  - 32) 船舶所有者  
 , 가 가  
 , 「 」 , 1986,  
 pp.760- 761.
  - 33) 船舶賃借人  
 , 前掲書, p.863.
  - 34) 船舶管理人  
 , 「 」 .  
 」 , , 1993, p.385.
  - 35)
  - 36) 6.2.1 Accidents in loading discharging or shifting cargo or fuel  
 6.2.2 Bursting of boilers breakage of shafts or any latent defect  
 in the machinery or hull  
 6.2.3 Negligence of Master Officers Crew or Pilots

貨物 燃料 積載, 揚荷 換積 發生 事故  
 破裂, 機關 軸 破損 機關 船體  
 船長, 士官, 部員 導船士 過失  
 修繕工 傭船者 過失, 修繕工 傭船者가 證券  
 被保險者가  
 船長, 士官 部員 惡行 .

### 2.3 相當注意義務 包含 危險約款 變遷

被保險者, 船主, 船舶管理人 가  
 1983 , 1995  
 1995  
 가  
 , 1-1 . 1-1  
 가 , 1995  
 가 , ,  
 가 . , ,  
 , , , ,  
 가 .

## 第 3 章 相當注意義務 海上保險法 約款 考察

### 第 1 節 英國海上保險法 第55條

6.2.4. Negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder

6.2.5 Barratry of Master Officers Crew



被保險者 相當注意義務(Due diligence)가

約定 注意義務 法定

注意義務

協會船舶期間約款

, 英國海上保險法 故意 不法行爲(Wilful misconduct)  
.37)

, 3

船舶期間約款(IT C- Hulls,1983)

, 55 2(a)

協會

6.2

“

近因

가

”38)

法定

免責事由(Statutory exclusion)

, 39)

船底

가

, 6

6.2

“ Provided such loss or damage has not resulted from want of due diligence by

37) , 前掲書, p.156.

38) The insurer is liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew

39) Compania Naviera Martiartu v. Royal Exchange Assurance Corp. 1924

the assured, owners or managers ”

.40)

## 第 2 節 舊 協會船舶期間約款 約款<sup>41)</sup>

(SG Policy)

1887 Thames & Mercy Marine Insurance Co. Hamilton, Fraser & Co. (Inchmaree)

가 追  
加危險約款(Additional Perils Clause) .42)

近因 全危險擔保條件 船舶保險

---

40) , 「 」 , , 1994, pp.60-61.

41) 7. This insurance includes loss of or damage to the subject matter insured directly caused by: -

(a) Accidents in loading discharging or shifting cargo or fuel

Explosion on shipboard or elsewhere

Breakdown of or accident to nuclear installations or reactors on shipboard or elsewhere

Bursting of boilers breakage of shafts or any latent defect in the machinery or hull

Negligence of Master Officer Crew or Pilots

Negligence of repairers provided such repairers are not Assured(s) hereunder

(b) Contact with aircraft

Contact with any land conveyance, dock or harbour equipment or installation

Earthquake, volcanic eruption or lightning

Provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

Master Officer Crew or Pilots not to be considered as part Owners within the meaning of this clause should they hold shares in the vessel.

42) , 「 」 , , 1986, p.547.

가 . 1884 3 가  
主機關 補助機關 가  
가 가 가 空氣  
壓縮室 .

가 가 .

가 가 ,  
가 가

가 定期船  
定期船過失約款(Liner Negligence  
Clause) 가 .  
가

.43) 1983 新證券  
舊

(MAR Policy)가

7

. 1995  
가 . ,

, 1995

本節

3

---

43) , 「 」 , , 1993, p.291.

1. 爆發

火災

(Ejusdem generis)

가

가,

가

가

44)

(Explosion)

‘shipboard or elsewhere’가

(Fort Stikine)

1944

가

(Sabotage)<sup>45)</sup>가

44) The following clauses shall be **paramount** and shall override anything contained in this insurance inconsistent there with.

23. War Exclusion

24. Strike Exclusion

25. Malicious Act Exclusion

26. Nuclear Exclusion

45)

가

가

## 2. 核狀置 原子爐 破損 事故

‘ on shipboard or elsewhere ’ 가

6.1.6

가

## 3. 航空機 接觸

水上航空機

46)가

가

---

46) Polpen Shipping Co. -v- Commercial Union, 1943.

6.1.7

4. 陸上運送用具 接觸

가

가

가,

가

가

6.1.7

5. 埠頭 港灣施設 設置物 接觸

港口, 埠頭,

棧橋

가

(Fender)

. 保險控除額  
 가  
 . ,  
 . ,  
 가 ,  
 .  
 . (Gantry crane) . 가 (Container)  
 가 (Gantry arm)  
 , (Cell)  
 . , 가 接岸  
 ,  
 , (Mast) 가 .  
 ,  
 , 가  
 (Dry dock)  
 가 . , , 가,

6.1.7 .

6. 地震, 火山噴出 落雷

修理, 船底清掃, 船  
底塗裝, 檢查

錨泊

가  
가

(Radar)

6.1.8

海震

(Seaquake),

(Tidal wave)

### 第 3 節 協會船舶期間約款 危險約款<sup>47)</sup>

#### 47) 6. Perils

6.1 This insurance covers loss of or damage to the subject-matter insured caused by

6.1.1 Perils of seas rivers lakes or other navigable waters

6.1.2 Fire, explosion

6.1.3 Violent theft by persons from outside the vessel

6.1.4 Jettison

6.1.5 Piracy

6.1.6 Breakdown of or accident to nuclear installation or reactors

6.1.7 Contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbour equipment or



가

가

1970

(IT C-Hulls, 1970)

機械

類損傷追加控除約款(Machinery Damage Additional Deductible Clause)

(a) (b) . ,

가 . (a) (b)

6.1 가 ,

6.2 가 ,

installation

6.1.8 Earthquake volcanic eruption or lightning.

6.2 This insurance covers loss of or damage to the subject-matter insured caused by

6.2.1 Accidents in loading discharging or shifting cargo or fuel

6.2.2 Bursting of boilers breakage of shafts or any latent defect in the machinery or hull

6.2.3 Negligence of Master Officers Crew or Pilots

6.2.4. Negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder

6.2.5 Barratry of Master Officers Crew

Provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

6.3 Master Officers Crew or Pilots not to be considered Owners within the meaning of this clause 6 should they hold shares in the Vessel.

6.3 48)

가

6.2

，技術約款委員會(TCC)

6

1. 貨物 燃料 積載, 揚荷 移動 事故

6.2.1

(Shifting cargo)

全損

가

가

4

가

가

가

(Sling)

가

48) 6.3 Master Officers Crew or Pilots not to be considered Owners within the meaning of this clause 6 should they hold shares in the Vessel.

(Jib crane)

(Derrick)

가

(Barge)

( )

가

(Trim)

6.2.1 49)

(Bulk)

50)

가

6.2.1

(Grab)

가

가

49) 6.2.1 Accidents in loading discharging or shifting cargo or fuel

50) 가

	(Rope sling)		
			(Pallet)
			가
		6.1.7 <sup>51)</sup>	
6.2.1 <sup>52)</sup>			6.1
			6.1.7
			6.2.1
	燃料油		
			가
가			
			燃料倉庫(Bunker)
			가
			持分 가

---

51) 6.1.7 Contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbour equipment or installation

52) 6.2.1 Accidents in loading discharging or shifting cargo or fuel

2. 爆發

推進機  
(Boiler)

가

가

가

電氣發電機, 甲板機器

6.2.2

가

(a)

가

(b)

가

(Casing)

가

(c)

가

(d)

가

가

### 3. 推進軸 破損

6.2.2

推進軸 (Shaft tunnel)  
(Stern tube),  
(Bolt)  
(Propeller)  
船尾肋骨

應力  
가

6.2.2

(a) 가, 6.1.1<sup>53)</sup>  
가 6.2

(b) (a)

(c)

53) 6.1.1 Perils of seas rivers lakes or other navigable waters

(d) ,

(e) ,

6.2.2 54)

(Jalavijaya) 55) (Wood lining)

가 , (Blade)가 .

6.2.2 가 ,

가

#### 4. 潛在的 瑕疵

6.2.2

6.2.2 潛在瑕疵

6.2.2

가 檢査官

6.2.2 ,

19

19

54) 6.2.2 Bursting of boilers breakage of shafts or any latent defect in the machinery or hull

55) Scindia Steamship - v - London Assurance, 1937.

(Ellaline) 56) 船尾構造

保證約款

6.2.2

6.2.2

55 2

“

”

(Exclusion)

6.2.2

가

( , , )

(Beam)

가

56) Hutchins Bros-V-Royal Exchange Corporation, 1911.



가  
. 가  
. 舉證責任  
. 가  
. 設計  
57)가  
. 6.2.2  
. 가  
. 5. 船長, 士官 部員 過失  
. 6.2.3 가  
. 船底  
. 6.1.1 . 6.2.3 , ,  
. , ,  
. 6.2.3 가  
. 가  
. 10% 가 , , ,  
. 가

57) Jackson - V- Mumford, 1902.

(MAR Policy)

가 58)

가

6. 導船士 過失

6.2.3

‘操舵士’

6.2.3

港口,

港灣, 運河 其他 水路

針路

가

航行水域

6.1.1

가

6.2.3

가

58) Institute Machinery Damage Additional Deductible Clause

for use only with the Institute Time Clause-Hulls 1/10(83)

Notwithstanding any provision to the contrary in this insurance a claim for loss of or damage to any machinery, shaft, electrical equipment or wiring, boiler condenser heating coil or associated pipework. arising from any of the perils enumerated in Clause 6.2.2 to 6.2.5 inclusive of the Institute Time Clause-Hulls 1/10/83 or from fire or explosion when either has originated in a machinery space. shall be subject to a deductible of.....Any balance terminating. after application of this deductible. with any other claim arising from same accident or occurrence. shall then be subject to the deductible in Clause 12.1 of the Institute Time Clause-Hulls 1/10/83. The Provision of Clauses 12.3 and 12.4 of the Institute Time Clause-Hulls 1/10/83 shall apply to recoveries and interest comprised in recoveries against any claim which is subject to this Clause.

가

### 7. 修理業者 過失

가

6.2.4 59)가

6.2.4

가

가

6.2.4

가

가, 6.2.4

가

6.2.4

가

代位權

### 8. 傭船者 過失

6.2.4

가

가 12

가

裸

傭船契約(Bare Boat Charter)

59) 6.2.4. Negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder

가 , 가 , 가 가 , 가 가 가 가 가 가 6.2.4 가 가 6.2.4 가 가 代位權

### 9. 船員 惡行

#### 解釋規定(Rule of Construction of Policy)

“ , ”<sup>60)</sup> .

가 ,

(1)

(2)

, ( )免責條項

25 <sup>61)</sup> ,

---

60) Barratry

11. The term ‘barratry’ includes every wrongful act willfully committed by the master or crew to the prejudice of the owner, or, as the case may be, charterer

, , , 爆發性, 戰爭武器  
 補償金請求 . 25 . ,  
 ,  
 , ,  
 .  
 .  
 .  
 6.1 .  
 , . ' ' 6.2  
 . ,  
 , ,  
 .  
 , 6.3 62)  
 가 가 가  
 . 遠因 近因 ' ' ' 가 ' ,  
 , , ,  
 .

第 4 節 其他 相當注意義務 關聯 法 約款

---

61) 25. Malicious Act Exclusion  
 In no case shall this insurance cover loss damage liability or caused by  
 25.1 The detonation of an explosive  
 25.2 Any weapon of war  
 and caused by any person acting maliciously or from a political motive  
 62) 6.3 Master Officers Crew or Pilots not to be considered Owners  
 within the meaning of this clause 6 should they hold shares in the Vessel.



---

「가」가  
가  
가  
가  
가  
가  
가  
가

2. 「3 1 (b)」

「가」가  
가  
3  
가 가  
4  
가 가

가 .

65)가

가

1.3

- 4 2

17

가

65) 3. 「3 1 (c)」

「 , , , 가  
 , , .」  
 , , ,  
 , , ,  
 , , ,

, Cargo on the Maori

King v. Hughes

가 가  
가 가



舉證責任

66)

1.4 國內 商法

海上運送人

1968

가 1978

가

, 商社過失

歸責事由

787

67)

運送物 滅失, 毀

損 延着 賠償 責任

66) Article 5

Basis of liability

1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence

which caused the loss, damage or delay took place while the goods were in his charge as defined in article 4, unless the carrier

proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.

67) 787 ( )

. < 91.12.31 >

1.

2.

3.

68).

2 . 船主, 船舶會社 ISM Code 履行

(ISM Code) ‘ International Management Code for the Safe Operation of Ships and for Pollution Prevention ’ ,

, (IMO) 1993 11

18

, 1994 5 63 94

(SOLAS 94) 9 (

) , 1998 7 1

陸上 安全管理 組織 船長 責任 權限, 陸上 船舶 安全管理 制度 確立, 安全管理 指針書 , 主官廳 統制 安全管理 活動 強化 骨子 .<sup>69)</sup> ,

, 가

68) , 「 」 , , 1983, pp.54- 65.

69) , 「 」 , , 1995, pp.11- 12.

### 3. Y2K 約款

#### 3.1 概要

(Millenium bug) 가  
가  
Y2K 2000 , , ,  
Y2K  
.70) ,  
. Y2K 1900 2000  
가 2000  
1980 1 6 가 (GPS) 1 1,024  
. , 2  
가 . 가  
. Y2K  
間接損害 (Consequential loss) 가  
가  
가 , 가 가  
. ,  
. Y2K 20  
가 . ,  
2000 2 29 가 가

70) 「 332 」 , , pp.23-36.

가 .  
가 ,  
가 가 . ,  
 , . ,  
가 가  
가 가 .

移書擔保

### 3.2 關聯 海上保險 免責約款

71) 가

71) Millennium Exclusion Clause ( 2000 가 )

It is agreed and understood that otherwise subject to the terms, exclusions, provisions and conditions contained in the policy or endorsed thereon, the following shall apply to this insurance:

A. Insurer(s) will not pay for damage or consequential loss directly or indirectly caused by, consisting of, or arising from, the failure of any computer, data processing equipment or media, microchip, operating system microprocessors (computer chip), integrated circuit or similar device, any computer software, or any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed above, whether the property of the insured or not, that result from any actual or alleged failure, malfunction or inadequacy due to inability to correctly recognize, process, distinguish, interpret or accept any data as its true calendar date.

B. It is further understood that we will not pay for the repair or modification of any part of an electronic data processing system or its related equipment, to correct deficiencies or features of logic or operations.

C. It is further understood that we will not pay for damage or

2000 1 1  
 長期契約(Long Term Policy) 가  
 , 1999 1 1 1  
 ( ) 가 .

第 5 節 相當注意義務 履行 利點

1. 低廉 保險料率 求得 經營合理化

가 船舶 管理計劃  
 船員 教育計劃, 가  
 危險減少方案 提示,  
 意志表現, 船舶 導入計劃 老後船 處理計劃提示,  
 ISM/ISO 經營合理化 ,  
 가 , 가  
 (船級檢查 定期檢查  
 ) 求得  
 가 .  
 , 教育計劃

consequential loss arising from the failure, inadequacy, malfunction of any advise, consultation, design evaluation, inspection installation, maintenance, repair or supervision provided or done by insured or for insured to determine, rectify or test, any potential or actual failure, malfunction or inadequacy described in A above.

Such damage or consequential loss described in A, B or C above, is excluded regardless or any other cause that contributed concurrently or in any other sequence.

가 , 가  
 가 . (ISO  
 Code)  
 , (ISM)  
 가 ,  
 海上企業 合理的 經營 事後的  
 事前的

## 2. 保險料率

### 2.1 船舶所有者

가  
 船舶所有者 海運業 經營方針, 船舶 管理  
 狀態, 船員 教育 訓練方法  
 .72) , 가 , ,  
 , , 가  
 가 . , 5  
 10 ,

### 2.2 船舶運航管理者

72) , 「  
 , 1995, pp.58-60.

海上運送業者

가

가 가

가

가

가

가

가

### 2.3 保險加入規模

1

가

가

(Scale merit)가

가 가

### 2.4 保險契約者 保險成績

가

( , , )

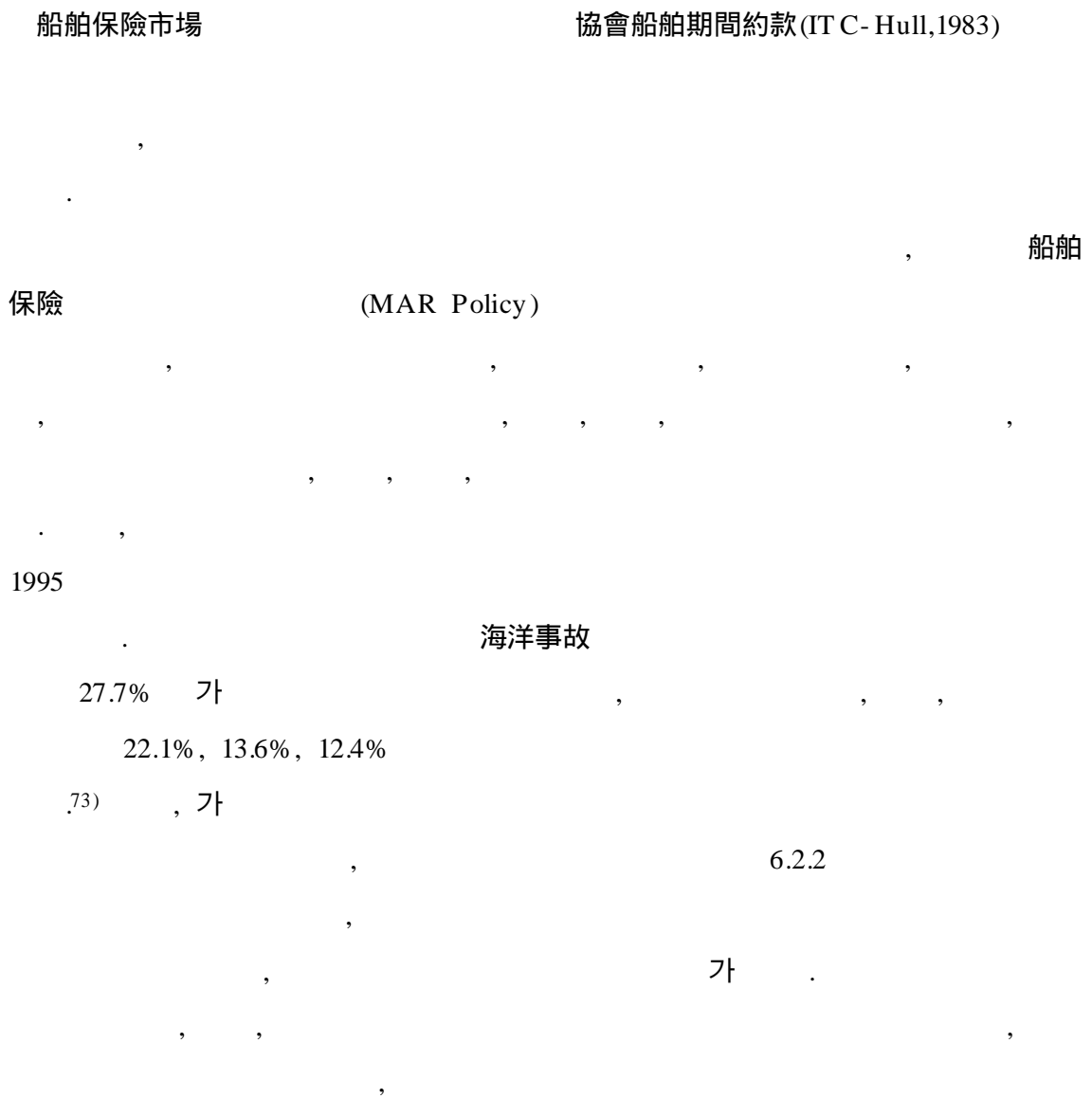
가

船長 船員

任免, 教育 訓練, 指揮監督, 船舶 補修狀態, 安全運航 貨物 安全管理計劃

## 第 4 章 相當注意義務 關聯 事故事例 分析

### 第 1 節 相當注意義務 關聯 事故 比重



73) 「  
 」, , 1988-1991 .



6.2.3 6.2.5 , , , , ,  
 , , , , , .  
 가  
 (Scuttling) 가 . 道德的 危殆(Moral hazard)<sup>74)</sup>

### 海運競爭國

人的過失 運輸過失 整備/取扱不良  
 70% 社會·經濟的 影響  
 .<sup>75)</sup>

## 第 2 節 相當注意義務 關聯 事故事例

### 1. 號 事件 (The Antigoni)<sup>76)</sup>

#### 1.1 概要

1986 8  
 가  
 (Antigoni) . 1986 9 16  
 (Free Town) 110

Lloyd's Open Form  
 (Goldenay) . 1986 10 1  
 (Las Palmas) , 가

74) “ 가

” Goege E. Rejda, Principles of Risk Management and Insurance, 4th ed, Harper Collins Publishers, 1992, p.7.

75) , 「

」 -

76) Lloyd's Law Report vol.1, 1990, pp.45-51.

貨物運送 航海

1.2 事例分析

共同海損費用

損害(General Average Expenditure)<sup>77)</sup>

가 (Piston) 가 (Connecting rod) ,  
 가 , 1986 9 16 貨物運送契  
 約書上 , 船荷證券  
 가 海上物件運送法(Carriage of  
 Goods by Sea Act, 1971) ,

가 (Diamond)  
 , 整備指針書  
 , 1986 9  
 16

救助費 共同海損分擔金

가 判示 .

反訴 ,

77) “ ” , , , 1995, p.349.

가 ,  
 6.2.3 , ,  
 가 가

共同海損分擔金

2. 號 事件 (The Safe Carrier)<sup>78)</sup>

2.1 概要

1990 9 6 (Safe Carrier) 7 50  
 (Tyne)  
 (Carrigan) 5  
 2 50 24  
 3 , , . 9 8  
 11  
 (Seaboard Offshore LTD)  
 1991 8 1988 31  
 (Merchant Ship Act, 1988)<sup>79)</sup> (New Castle)  
 가 ,  
 26 9  
 45 가 ,  
 (Aberdeen)

78) *Lloyd's Law Report vol.1*, 1994, pp.75-82.

79) 31 : (1) It shall be the duty of the owner of a ship to which this section applies to take all reasonable steps to secure that the ship is operated in safe manner...

(3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection(1), he shall be guilty of an offence...

가 .  
 27 1  
 5 2 50  
 , 7 .  
 .  
 (Service) 가  
 (Settling)  
 , 7 5 가 .  
 , 燃料油清淨機  
 (Gravity feed disc)  
 . 11 30 , 3  
 가 가 가  
 가 , 60  
 가 .  
 가 右舷 燃料由  
 .  
 가 .  
 , 1990 9 8  
 11 .  
 ,  
 3 .

2.2 事例分析

, (Staughton) 31

不作爲

가

가

Secretary of State for Transport

가

가

가

가

가 가

### 3. - 號 事件 (The Ny-Eeasteyr)<sup>80)</sup>

#### 3.1 概要

- (Ny-Eeasteyr) 1970  
 1940  
 (KFK) 가 ,  
 吃水 가  
 2 ,  
 가 (Horne)  
 (Lewis),  
 , 135,000 가

80) *Lloyd's Law Report vol.1*, 1988, pp.60-70.

1980 12 8 2 40

(WORTHING)

8.5

가

가,

가

가

가

(Houghton)

### 3.2 事例分析

가

(Hamilton)

敗訴

55 2 (a)<sup>81)</sup>

6.2.5

刑事處罰

---

81) 55. Included and Excluded Losses

2. In particular

a. The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

第 5 章 要約 結論

가  
 5, 1993 1997  
 가 英國海上保險法,  
 , 協會船舶期間約款(IT C-hulls, 1983)

' 93 31%, ' 94  
 27%, ' 95 31%, ' 96 30%, ' 97 32%  
 82)

船荷證券, - ,  
 가  
 . 1993 1997 不堪航  
 가  
 ' 93 18%, ' 94 23%, ' 95 23%, ' 96 20%, ' 97 20%  
 83)

가 , 가  
 가 國際海運市場  
 가

82) 「 ( )」, 1998 , p.482.  
 83) 「 ( )」, 1998 , p.492.



가

가 ( )

(ISM Code)

가

危險管理活

動

가

<

>

1-1

		ITC-hulls(1983)	ITC-hulls(1995)
,			
( )			
, ,			
, ,			
( , 가 가 )			
,			
, ,			
,			

(Latent Defect)

1-2

		ITC Peril Clause	Institute Additional Peril Clause
(material)			
		x	
		x	x
(workmanship)			
		x	
		x	x
(design)		x	
		x	
		x	x

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332  
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*Lloyd's Law Report vol.1*, 1994.

朴相甲

2

南永銀, 尹大根,

仁川

稅關 海上課長, 船舶主務

船舶運航實務

海洋水產部

船舶檢查官, 仁川稅關, 高麗海運,

三星電氣

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2000年 2月 李祥旭



