Marine insurance

MACKINNON McERLANE BOOKER PTY LIMITED v *P & O AUSTRALIA LIMITED*
Victorian Full Court 24 August 1987.

The Full Court of the Victorian Supreme Court has unanimously dismissed the appeal by hull underwriters from the decision of Marks J who held that the charterers of a barge which had been damaged off the north-west coast of Australia were entitled to recover the towage costs of the barge to Singapore where repairs were to be effected from the hull and machinery underwriters. The barge had been chartered from a Singapore company. The insurer submitted that the cost of towage was not a reasonable cost of repair, but was a cost of redelivery of the barge by the charterer to its owner at the completion of the charterparty.

The charterparty contained an option to extend the charter, but this option was not exercised due to the damage to the hull. The court considered that the cost of redelivery would probably have been incurred by the charterers at the completion of the charter, whether it had been damaged or not. However, the cost of towing the barge to Singapore would not have occurred at that time if it had not been damaged extensively.

The Full Court considered that if the charterparty had provided for another port as the port of redelivery, then the towage costs to Singapore would undoubtedly have been incurred as part of the reasonable cost of repair. Thus the question was whether the charter which provided for redelivery of the barge in Singapore and for the charterer to pay for any repairs, altered this position.

Section 61 of the Marine Insurance Act 1909 provides that the insurer is liable for any loss proximately caused by a peril insured against, but is not liable for any loss which is not proximately caused by the peril insured against. The measure of indemnity is governed by section 75 of the Act, which provides that where a ship is not a total loss, the measure of indemnity where the ship has been repaired is the reasonable cost of the repairs, less the customer reductions, but not exceeding the sum insured. Where the ship is not repaired, section 75(c) provides that the insured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage.

The Full Court considered that as a result of the casualty, the charterers decided not to exercise their option to renew their charter and to redeliver the barge. The Full Court considered it was a reasonable cost of repair within section 75(a) of the Marine Insurance Act 1909. The barge had to be

towed to Singapore for repair; the damage was a partial loss and proximately caused by peril insured against.

The court then turned to consider whether the costs of the return journey of the barge from Singapore were recoverable by the insured.

The court considered that section 61 was not directed to the issue of "reasonable cost of repairs" in section 75; it considered that section 61 was directed to the casualty in its cause, that is to say, the loss. The court considered that if the casualty was proximately caused by a peril insured against, one had then to measure the amount of the indemnity in accordance with section 75. The court considered that the costs were imperatively incurred by underwriters, and the fact that the charterers benefited in some way was immaterial, as the costs were not increased by the action of the charterers. Accordingly the appeal was dismissed.