IS NEGLIGENCE A CAUSE OF LOSS IN MARINE INSURANCE?

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Introduction

The DC Merwestone (The Versloot case),[1] despite the fact that it is a well-known case for the heated issue of fraudulent claims, it also addressed the question of the cause of loss in details. As the matter of fact, a number of causative events happened, typically, before the eventual loss occurred. The chain of causation started from the crew's negligence of failing to close the sea suction and drain the pump, which allowed the water to freeze in the system and caused pump system's crack and displacement of the lid. This subsequently led to unseaworthiness, as the bowthruster room was made open to the sea which affected the watertight integrity.

After the vessel sailed, the ingress of water into the bowthruster room occurred in the course of the voyage. The water further flew to the engine room due of lack of watertight integrity of the bulkhead. Although the crew were aware of the ingress of water at an early stage, the pump system was defective and failed to cope with the situation. Finally, the vessel was damaged. Popplewell J found that the proximate cause, which is the right test of causation in marine insurance cases, in the case was perils of the sea, that is, the fortuitous ingress of water. What is noteworthy is that, on one hand, Popplewell J held the crew's negligence which triggered the ingress of water was not the proximate cause, and admitted that the crew's negligence was not material in the way that it was no more than a factor contributing to the fortuity of the ingress of water for being perils of the sea.

Paradoxically, Popplewell J, to complete the thoroughness of the decision, further pointed out that if he was wrong about the conclusion that the proximate cause of perils of the sea, he approved that the shipowners have established that the loss in the engine room (other than the initial ingress of water in the bowthruster room), was proximately caused by contractor's negligence, which is an insured peril under Institute Additional Perils Clause. That is to say, negligence of a contractor itself can be a proximate cause of loss.

Similarly, a more recent case, *Venetico Marine SA v International General Insurance Co Ltd*,[2] is related the grounding of the vessel subsequent to the crew and master's negligence of navigation. Andrew Smith J concluded that grounding is of itself perils of sea, irrespective of the cause of the grounding. This also renders that the fact that the assured had proved that the grounding was caused by the crew and master's negligence of navigation was immaterial to the issue of causation.

In light of these two decisions, it is worth reviewing 'negligence' in marine insurance law under the issue of causation, as to when negligence is material and when it is not. The key question to be addressed is whether negligence is a proximate cause of loss in marine insurance? Whether and to what extent the assured's negligence is different from negligence of other people in law? Finally, whether and how the negligence of people other than the assured should be defined in law and agreed in the standard clauses as an insured peril?

Negligence in marine insurance

Looking at the English Marine Insurance Act 1906 (The 1906 Act) firstly, one of the provisions that closely related to 'negligence' is S 55 pertaining to the insured and excluded losses.[3] S 55 provides that a marine insurance policy only covers the loss or damage proximately caused by an insured peril, but excluding '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*.'[4]

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[1] *Versloot Dredging BV v HDI Gerling Industrie Versicherung AG* [2013] EWHC 1666 (Comm).
[2] [2013] EWHC 3644 (Comm).
[3] The assured's negligence is also relevant to the sue and labour provided by S 78 of the 1906 Act pertaining to his obligation of mitigating the loss and damage. See , for instance, *Lind v Mitchell* (1928) 32 Ll L.R 70.
[4] MIA 1906, s.55(2)(a) (emphasis added).

In *Netherlands v Youell*,[5] the Dutch navy purchased two submarines which were insured under separate policies. In the course of their construction and trials the submarines suffered debonding and cracking in their paintwork. Precisely speaking, this judgment focused on the negligence and misconduct of the assured's agents. Unlike the wilful misconduct of the assureds, these occasions will not debar the assured's claim. Per Phillips L.J.:

> I do not believe it is normally helpful, when considering the effect of negligence or misconduct on the cover afforded by a policy of marine insurance, to ask whether or not the negligence or misconduct is the "proximate cause" of the loss. Negligence and misconduct are generic terms that apply to acts or omissions that are coupled with a particular mental element. Where such an act or omission results in loss or damage to property insured, this will be because the act or omission causes or permits a more direct physical cause of loss or damage to occur… A policy of marine insurance can provide cover against "negligence" or "misconduct" (other than of the assured) or exclude cover for losses attributable to such causes. In either case the cover or exclusion will apply whether or not the negligence or misconduct is the proximate cause of the loss…Section 55(2)(a) demonstrates that by 1906 it was established that where such negligence or misconduct caused or permitted a peril insured against to impact on the property insured, the negligence or misconduct in question would not be a bar to a claim.

Negligence in marine insurance law has been defined in the cited judgment, more importantly, two scenarios have been summarised therein: where a negligent act causes a cause of loss (a risk) and where a negligent act permits a cause of loss (a risk) to occur. It seems to infer that under both circumstances, negligence ought not to be regarded as a proximate cause, because the latter risk is. This is seemingly in line with the wording '*but for'* the misconduct or negligence of the master or crew in s 55 (2) (a). However, the finding of Popplewell J in *The Versloot* case, that negligence itself could be a proximate cause of the damage in the engine room, is contradictory to the cited statement. Moreover, the agreement made by the parties pertaining to negligence 'will apply whether or not the negligence or misconduct is the proximate cause of the loss.' Thus, there raises questions as to how to construe the clauses as to the insured perils of the policies which includes negligence, whether or not such negligence applies to doctrine of proximity, despite of the fact that the case law and the 1906 Act seems not support that negligence can be a proximate cause?

How is negligence agreed in marine insurance contracts?

Hulls and freight clauses provide for loss or damage resulting from negligence in two ways.[6] The first is clear reference to negligence in the Inchmaree Clause subject to the due diligence proviso and the servant-owner term. It is basically provided that the insurance covers loss caused by 'negligence of Master Officers Crew or Pilots' and 'negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder'. Likewise, an Institute Additional Perils Clause (the IAPC) further provides that insurance under the International Hull Clauses covers 'loss of or damage to the vessel caused by any accident or by negligence, incompetence or error of judgement by any person whatsoever'. In the absence of mentioning 'negligence' directly, the second way is to interpret the first (marine perils) part of the perils clause and the 3/4ths Collision Liability clause as which recovery is permitted if the loss is proximately caused by those perils, even though there has been negligence.

As to cargo insurance, in marine insurance context, coverage of The Institute Cargo Clauses (ICC) is provided on an A, B, or C basis. ICC (A), being well-known for its 'all-risks' coverage, comprehends a wide and extensive coverage of loss or damage, so long as occasioned fortuitously.[7] That is to say, the coverage does not embrace the loss or damage attributable to the assured's wilful misconduct; however, as to the negligence of the assured, master or crew should be recoverable on the basis of fortuity. Unlike, ICC (A), (B) and (C) specifically enumerate the insured perils and the exclusions respectively. These clauses contain no provisions for loss or damage due to negligence of whosoever.

The rules of causation in marine insurance law

[5] *Netherlands v Youell & Others* [1998] 1 Lloyd's Rep 236.
[6] F. D. Rose, *Marine Insurance: Law and Practice*, 2nd edn, 2012, London: Informa, para 15.23.
[7] *British & Foreign Marine Insurance Co Ltd v Gaunt* [1921] 2 AC 41; *London & Provincial Leather Processes Ltd v Hudson* [1939] 2 KB 724.

Before the codification of the 1906 Act, the law of marine insurance in England depended mainly on common law and customary commercial usage.[8] Historically, the general formulation in distinguishing remote and proximate causes in the legal perspective relied upon Francis Bacon's maxim[9] arising from early common law:

> [*Sic*] It were infinite for the law to judge the cause of causes, and their impulsions one of another; therefore it contenteth itselfe with the immediate cause, and judgeth of acts by that, without looking to any further degree.

The Bacon's Maxim basically emphasised that cases should be judged upon the immediate cause without looking to any prior circumstances. Thereafter, particularly during the Victorian era from 1837 to 1901, the test of 'the last cause in time order' was formed and applied to insurance cases. For instance, per Erle C J. in *Ionides v The Universal Marine Insurance Company*:[10]

> The maxim *causa proxima non remota spectatur* is peculiarly applicable to insurance law. The loss must be immediately connected with the supposed cause of it. Now, the relation of cause and effect is matter which cannot always be actually ascertained: but, if in the ordinary course of events a certain result usually follows from a given cause, the immediate relation of the one to the other may be considered to be established.

This test clearly assures certainty in law as to commercial cases when the causation question was raised, since the parties would not argue which event was actually the cause of loss, but simply seek the very last incident occurred before the loss.

However, at the end of the 19th century and in the beginning of the 20th century, the law has been reviewed and gradually changed from the time-order test to the modern test by assessing efficiency in contributing to the loss. For example, In *Reischer v Borwick,*[11] the vessel was covered merely against the risk of collision rather than perils of sea. It ran into a snag which resulted in leakage. Temporary repairs had been taken in case of immediate danger. However, the vessel was aground and abandoned finally due to the motions of the sea while it was tugged to the nearest dock for further repairs. The Court of Appeal held that the loss was recovered as the proximate cause was the collision rather than subsequent perils of sea. Although per Lindley LJ, his decision was consistent with *Pink v Fleming*[12], it has to be noted that the judgment did not follow the early test literally. Lopes L.J. articulated that the consequences of the collision 'never ceased to exist, but constantly remained the *efficient and predominating* peril to which the damage now sought to be recovered was attributable.'

This period happens to be largely overlapping the time when the Marine Insurance Act 1906 was drafted by Sir Mackenzie Chalmers. The 1906 Act did not adopt the wordings such as 'immediate', 'direct', nor affirmed the test of 'last time occurred in the time order'. Instead, s 55 has ultimately provided that a 'proximate' causal link is required between an insured peril and the loss or damage, regretfully, without any detailed explications. The most remarkable explanation of proximity has been provided by the decision of *Leyland Shipping Co Ltd v Norwich Union Fire Insurance Society Ltd.*[13] The House of Lords clearly pronounced that the real proximate cause should not be solved by the mere point of time but the one proximate in efficiency. Hence, so far as the general test of causation is concerned, 'the nearest in time' has become an obsolete test, and the doctrine of proximity remains good test till nowadays.

In light of the development of the rules of causation in marine insurance law, when reviewing and following the precedents of case law as to seek the proximate cause, it should be borne in mind that the test of causation in largely different prior to the codification of the 1906 Act, as in the 19th century, the predominant test was the immediate cause which occurred last in the time order. The conclusions of these decisions are worth re-examining before following or considering them.

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[8] Leslie J Buglass, *Marine Insurance and General Average in the United States,* 2nd ed., US: Cornell Maritime Press, 1981, p 4.
[9] Francis Bacon, *The Elements of the Common Lawes of England,* 1630, p 1.
[10] (1863) 14 CB (NS) 259.
[11] [1894] 2 QB 548.
[12] LR 25 QBD 396.
[13] [1918] AC 350.

Moreover, although the test of proximity is provided statutorily in the 1906 Act, its effect is subject to the parties' agreement in the policy. That is to say, the parties have freedom either to affirm or to exclude the application of the doctrine of proximity through clear expressions.

Room for negligence being the proximate cause in marine insurance

Pursuant to s 55 of the 1906 Act, unless otherwise agreed, it seems that it is irrelevant that whether the proximate cause of loss was brought about by the negligence of the assured himself or of the master or crew or not, whereas, only the proximate cause matters. Therefore, the negligence of whosever involved in the case, only matters when it can be recognised as a risk of loss and it has served the effect of being the proximate cause. When the Inchmaree Clause and the IAPC include negligence of crew and third party in the insured perils category, it indicates that the parties recognise such negligence as a risk and a cause of loss, which means they shall follow the conventional rules of causation.

Assured's negligence

It is obvious through the standard clauses that the provisions treat the assured's negligence differently from the assured's negligence. The negligence of the assured's and his servants', in principle, do not debar the assured from recovering the loss or damage with an exception of The Inchmaree Clause and the IAPC.
It has long been held that the assured's negligence in the form of negligent navigation should not release the insurer from his liability to indemnify the loss caused by perils of the sea. In *Trinder, Anderson & co v Thames and Mersey Marine Insurance Company*,[14] a marine freight policy against perils of the sea was effected by the respondent insurer. The master of the ship insured happened to be a part owner of the ship. Owing to his negligent navigation, the ship stranded upon a reef and the ship and the cargo were wetted and damaged to a critical extent. Accordingly, the cargo was sold at once. All the owners including the master claimed for total loss of freight against the insurer. In terms of the negligent navigation of the assured master, per Collins LJ, 'His [Assured's] negligence does not, any more than that of his servants, alter the character of the sea peril, which still remains the causa proxima,….' Thus, it becomes a general rule that the assured's negligence cannot justify his insurer's defence on this ground, with an exception of the Inchmaree Clause.

The Inchmaree Clause is famous for 'the due diligence proviso'. Opposing to the agreement that the negligence and even barratry of the master or crew are insured against under the Inchmaree Clause, the negligence of the assured is explicitly excluded herein.
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n sum, it seems the most plausible explanation of such phrasing may be that the parties agree that the 'due diligence' proviso has a prevailing effect over the enumerated incidents or risks within the clause. However, how to construe the ground of such an effect is unclear. The key point seems to be whether to treat the assured's negligence as an independent risk or simply a device or mentality of the assured as condition to acquire the recovery.

It could suggest that the negligent device of the assured which triggered those insured risks is an exception of coverage, unrelated to the law of causation in the strict sense. The Inchmaree Clause and the IAPC do not recognise the negligence of the assured as the proximate causes, but those risks enumerated in the proceeding subsection are. [15] That is to say, the requirement of the assured being due diligence does not apply the rules of causation, as they are not the same kind of insured risks as the risks mentioned thereunder. 'The due diligence proviso' is simply a ground that disentitle the assured from the recovery. For instance, negligence of the assured in the 'due diligence proviso' may be construed as a breach of warranty in an insurance contract, despite some major problems.

Some property policies may practically contain express terms which oblige the assured to 'take reasonable steps to safeguard the property insured',[16] or to prevent accidents[17]. However, it seems that the test of 'reasonable steps' in this context differs from that of 'due diligence' held by Blair J in *The Toisa Pisces*.[18] The *Sofi* case and

[14] [1898] 2 QB 114.
[15] *The Versloot case*, paras. 101-102.
[16] *Sofi v Prudential Assurance Co Ltd* [1993] 2 Lloyd's Rep 559.
[17] *Board of Trustees of the Tate Gallery v Duffy Construction Ltd (No 2)* [2008] Lloyd's Rep IR 159
[18] *Sealion Shipping Ltd v Valiant Insurance Co (The Toisa Pisces)* [2012] EWHC 50 (Comm), para. 136. The appeal has been dismissed by the Court of Appeal, *(The Toisa Pisces)* [2012] EWCA Civ 1625. The insurer

the *Tate Gallery* case have affirmed the correct test is to consider whether the assured has at least acted recklessly, more than negligence. Nonetheless, having found such a distinction, Blair J noted that it is necessary to read the provision as a whole, in conjunction with the terms relating to 'negligence' as a matter of defining the extent of the indemnity. Negligence is a covered peril in its own right pursuant to the Inchmaree Clause, but is limited to the negligence of the person named in the relevant clause. Evidently, the assured is not one of them; therefore the negligence of the assured cannot be indemnified under the clause. Ultimately, the applicable legal test in English marine insurance law in respect of the 'due diligence proviso' was established by Blair J, which is that 'want of due diligence' is simply mere negligence. Accordingly, negligence of the assured is generally harmless to the assured's right on the claims, notwithstanding express warranties as to the assured's duty of care. On the contrary, the negligence of the assured's under 'due diligence proviso' is an exclusion of the indemnity due to the construction of the Clause. Therefore, such inconsistency makes it difficult to regard the negligence of the assured as a breach of a warranty in the policy.

Moreover, if the negligence of the assured prevents the assured from recovering the loss, the causation question becomes irrelevant, as the insurer will not indemnify the claim, regardless the causes. However, this may be against the parties' intention that the assured's negligence exclusively affects the enumerated perils within the Inchmaree Clause, not to all sorts of insured risks.

Alternatively, it may sound reasonable that the assured's negligence could still be regarded as ***a*** cause of loss in the broad sense. The assured's negligence might well be regarded as the paramount cause of loss than, but limited to, the enumerated causes. The Inchmaree Clause risks, as phrased in itself, are 'resulted from' the assured's negligence, which are more like the consequences of the assured's negligence. It seems those risks are a natural flow in the causation chain, just as 'one thing led to another'[19]. Nonetheless, at least the parties by contract agree that the assured's negligence is more operative matter which determines the nature of the perils. That is to say, had the assured successfully proved that the proximate cause is one of the Inchmaree Clause risks, if a causative link can be established by the insurer between the assured's negligence and that Inchmaree Clause risks (not the ultimate losses though), such risk turns to be an excluded peril. As a result, the claim should be rejected.

Crew negligence under the Inchmaree Clause

The Cendor Mopu[20] has successfully shown that how powerful 'perils of sea' is as a cause of loss in marine insurance cases. The causal efficiency of perils of sea beats that of a risk of loss arising from internal factors of the goods. Before *The Venetico* case mentioned in the introduction, the same as the assured's negligence, it has been also held for long that the antecedent negligence of the crew to the perils of sea does not affect the latter to be the proximate cause.[21]

The broad scope of the definition of perils of sea renders the cases are prone to be held as losses proximately by perils of the sea, despite of the contribution of the negligence of the people other than assured. It has been held in *The Lapwing*[22] that a yacht negligently by the master docked on a slipway and strained was caused by a peril *ejusdem generis* with a peril of the sea, stranding in the given case. Interestingly, the assured also relied upon the ground that the damage was directly caused by the negligence of the master, which was insured according to the policy. Hodson J further held that, whether or not the damage was due to a marine peril, the assured had also successfully established that the loss was caused by 'negligence of master' within the clause. Hodson J did not use the wording of proximate cause in the judgment, instead, the expressions 'due to perils of the sea' and 'caused by negligence of the master' were repeatedly adopted. Hodson J did not further distinguish which cause is more efficient, but found that both grounds had been well-established by the assured, therefore, on either case, the underwriter was liable. Nevertheless, *The Lapwing* is a case that the negligence of the master permitted the perils of the sea to cause a loss.

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issued a loss of hire marine policy incorporating Institute Time Clauses Hulls (1/10/83) and also insured against breakdown of machinery unless it was not resulted from wear and tear or was by want of due diligence by the assured. A dispute arose as to the standard of care: the assured suggested a test equivalent to; whereas, the insurer's submission rested mainly upon the authoritative treatises and contended a lower standard: lack of reasonable care, *viz*, mere negligence.

[19] *The Toisa Pisces* [2012] EWHC 50 (Comm).

[20] [2011] 1 Lloyd's Rep. 560

[21] *Davidson v Burnand* (1868-69) LR 4 CP 117

[22] (1940) 66 Ll LR 174

In contrast, in *The Vergina (No.2)*[23], the vessel was insured under four policies of marine insurance subject to the terms of the Institute Time Clauses (Hulls) 83. In the course of a voyage during the insurance period, the vessel developed a list to starboard of 23 degrees and the crew abandoned her. The vessel and the crew were salved by two different vessels. The assured sought to claim for the salvage, alleging that the vessel would have been proximately lost by perils of the seas or crew negligence, but for the salvage operations, and the result due to the salvage operations are proximately arising from the insured perils. The underwriters argued that the master's negligence was not the proximate cause. Further, despite of the fact that perils of the sea were the proximate cause, there would have been no loss but for the salvage operations. Aikens J concluded that: the actions of the chief engineer in operating the ballast system were the proximate cause of the list increasing to more than 10 degree at which point water would enter the open scupper valve, therefore assured had shown that, but for the salvage operations, the vessel would have been lost as a result of the negligence of the master, officers and crew for the purposes of clause 6.2.3. Moreover, the entry of sea water into the upper scupper valve after the vessel would also have been a proximate cause, constituting a peril of the seas for the purposes of clause 6.1.1. The two factors jointly caused the entire loss.

The decision of *The Versloot* in this regard is somewhat analogous to *The Vergina (No. 2)*, which affirms that negligence other than the assured can be a proximate cause on its own. As aforementioned, Blair J has also clearly addressed in *The Toisa Pisces* that under the Inchmaree Clause, negligence is insured peril in its own right.

Nonetheless, the issue of negligence in the aforementioned cases were all juggled with the perils of the sea, no matter when the perils of the sea operated, before or after negligence or at the same time, such negligence had not been physically harmful until the seawater began to damage the ships. The negligent operations of the crew, such as *The Vergina No.2*, may cause some economic expenses for salvage, however, marine policies normally agree to cover physical losses, but not economic losses, unless otherwise agreed.[24] The main effect of the negligence in those cases was to allow the insured marine perils to be fortuitous and hazardous, but not being able to cause some physical damage or loss by itself.

It should be noted in the first place that Inchmaree Clause includes the risks which have no connection with conventional marine characteristics, but are insured in marine policies. It was designed and inserted into major modern standard forms in response to *Thames and Mersey Marine Insurance Co v Hamilton, Fraser & Co* (*The Inchmaree).*[25] The general purpose is to extend the cover to the risk of damage to hull or machinery, which are lack of connection with marine perils.[26] Thus, negligence is based upon the presumption that there is no peril *ejusdem generis* with perils of the sea involved, nonetheless, the losses is occurred through a negligent act of the persons other than the assured. Thereupon, perils of the sea become irrelevant in law due to the fact, and the negligent acts of the relevant people become the possible proximate cause. That is to say, the negligence of the persons other than the assured should not affect the well-established precedent that perils of the sea would be the proximate cause, despite of the negligence of those people.

The mystery of Inchmaree Clause, albeit an ordinary presence in modern policies, is due to the very limited number of precedents under English law.[27] It is even hardly able to find any English case which has remarkably decided upon the ground that crew's negligence within the Inchmaree Clause has been the proximate cause of loss. Although the parties to the insurance contract still keep arguing about whether crew's negligence is the proximate cause or not as always, regretfully, due to the inference of perils of the sea, the vast majority of cases have been decided upon marine perils. Accordingly, it is worthy of rethinking whether there is possibility in fact and in law that there is a simple and clear damage proximately caused by crew negligence only, which is occurred on the sea but without the effect of sea water?

In light of the nature of *The Inchmaree*, the crew who are the operators of the ship, a giant piece of machine, are prone to commit some technical or even causal mistakes negligently which causes malfunctions or other physical damage to some interior parts of the vessel, while the ship is sailing on the sea. Such physical damage is simply within the vessel and need repairing in the dry docks, however, not severe enough to endanger the safety of the whole ship through the ingress of sea water. These cases, compared with those interfered by the

[23] *Seashore Marine S.A. v Phoenix Assurance plc (The Vergina) (No. 2)* [2001] 1 Lloyd's Rep 698
[24] For example, Business Interruption Clauses.
[25] (1887) 12 App Cas 484.
[26] Jonathan Gilman *et al*, *Arnould's Law of Marine Insurance and Average*, 18th ed., London: Sweet & Maxwell, 2013, p 1142.
[27] *Ibid*, p 1141, at fn 345.

perils of the sea, are usually quite minor in terms of the amount of indemnity, for instance, losses of some accessories such as fire extinguishers, or losses of broken mechanical parts and pipes. Under such circumstances, the insertion of crew's negligence in the Inchmaree Clause makes the cause of loss much straightforward, and some indemnity would be recovered. Thus, loss or damage can be proximately caused by crew's negligence but in very limited occasions. However, is this intent when parties introduce this item into the clause?

The questions of putting the negligence in the clauses

All in all, the key point is how to understand the negligence in marine insurance context. What does 'negligence' precisely mean in the clauses? Firstly, it should not refer to a mind, as holding a certain mentality cannot physically be a risk in insurance. That is to say, such negligence is not a cause of loss, and the causation rules should not apply. On the contrary, if underwriters intend to define the 'negligence' as assorted incidents or risks, which can be the proximate cause and apply the rules of causation. However, how to understand the negligent element within these incidents or occurrences?

It would be helpful by looking at the professional negligence in liability insurance. Professional liability insurance agrees to cover the assured against all sums which the assured shall become legally liable to pay as damages and claimants costs and expenses as a result of any claim or claims made against the assured during the period of insurance stated arising out of any negligent act, error or omission in the part of assured. The risks (the causes of losses) to be covered against under a profession liability insurance policy are occurrences or contingencies which may lead to liabilities or claims, not professional negligence in its own right. The negligence describes the nature of such liabilities or claims, which is exactly the same as 'of the sea' in 'perils of the sea'. That is to say, the insured risks of the professional liability insurance are, inter alia, 'perils of negligence.' Thus, it may be plausible to venture that 'negligence' within the Inchmaree Clause and IAPC, can be construed as equivalent to 'perils of negligence', referring to the negligent acts of these people which leads to further occurrences to cause the loss or damage.

Returning to the definition quoted from *Netherlands v Youell*, one can find consistency in definition, namely, a negligent 'act or omission causes or permits a more direct physical cause of loss or damage to occur'. By the same token, the 'due diligence proviso' pertaining to the assured's negligence can be interpreted in the way that the perils of the assured's negligence are generally covered, excluding those listed in the Inchmaree Clause and IAPC.

Furthermore, the negligent act itself is not hazardous until the subsequent occurrence shows its impact; some of the subsequent occurrences are marine perils clearly itemised under insured perils clause, while others are not. When the perils of negligence happens to be an insured peril expressly specified in the clauses, such as fire, in line with the cited judgment of *Netherland v Youell* as above, it becomes superfluous to ask whether the negligence is the proximate cause or not, as both are insured. This question only matters when the consequent occurrences are not uninsured or even excluded from the coverage, but they had been attributed to a negligent act. It should be particularly noted that the rules as to concurrent causes should not apply here, as the perils are causally connected, and the most effective one should be identified.

A literal construction of the clauses would maintain that firstly, the parties agreed that such negligence is an insured peril, secondly, the underwriters agreed to insure all the losses or damage proximately caused by the occurrences or risks arising of negligence subject to the Inchmaree Clause and IAPC.

However, it is worthy of re-emphasising that the crew negligence within the Inchmaree Clause can be proved as the proximate cause in a very limiting condition. The case law has explicitly shown that the Inchmaree Clause is coping with the risks lacking of marine characteristics, whereas, the negligent operations of the master, crew or a third-party contractor which serve a purpose of marine features is very likely to fall into the very broad and wide scope of the perils of the sea. The distinction lies in whether the negligent operation itself leads to any marine-related occurrence. If it simply provides a condition to a marine peril or causes an insured peril, such negligence is immaterial to determine whether the loss is recoverable or not. If the negligent operation, by itself, creates hazard within the vessel and eventually results in physical loss or damage, the crew negligence is an insured peril and the cause of loss.

The crucial point in practical terms is that, the assured cannot complete his burden of proof by simply proving that the loss or damage has been caused by a negligent operation of the people other than himself without enquiring whether a marine risk, in any form, was the proximate cause.

On the contrary, the Institute Additional Perils Clause is genuinely hazardous for the underwriters to define the boundaries of the extended coverage, since the wordings adopted therein are overwhelmingly unrestricted. Compared with the Inchmaree Clause, the negligence of any person mentioned in the IAPC seems not restricted by the requirement of non-marine characteristic, either literally or historically. The task rests upon the courts to weigh the intention of such agreement and the application of the causation rules. It is obvious from the literal meaning that the coverage has been widely extended to any loss proximately caused by an occurrence arising from negligence of some person relevant to the claim, particularly when such an occurrence is not specified as one of the insured perils elsewhere in policies. Again, two steps must be followed in terms of onus of proof: firstly such occurrence must be proved being the proximate cause, and then this is triggered by a negligent mind of certain people. The law does not support such a presumption that once the assured establishes that some people has acted negligently, then the loss must have been proximately caused by the negligence within the IAPC and should be recovered accordingly.