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# Superyacht construction contracts



WARRANTY CLAUSES  
AND EXCLUSION OF  
LIABILITY

# What you need to know?



Source of the superyacht warranty clauses  
and where to find them



The relationship between warranty and  
exclusion of liability



The change in judicial English contractual  
interpretation



**Star Polaris LLC .v.HHIC-PHIL Inc [2016]  
EWHC 2941 (Comm) and the impact on  
Hadley.v. Baxendale (1854) 9 Exch 341**

# Literal contractual interpretation?

*“The court’s task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement if it has long been accepted that this is not a literalist exercise focused solely on the parsing of the wording of the particular clause and, depending on the nature, formality and quality of the drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning”*

-Lord Hodge in **Wood.v.Sureterm Direct Ltd [2017] UKSC**



# Hadley.v. Baxendale (1854) 9 Exch 341

- Direct losses (the first limb) are losses occur in normal usual course of events and would have been expected by the parties when the contract was made.
- Consequential losses (the second limb) are losses which, from special circumstances, which will only be recoverable if the other party can be reasonably expected to know of those circumstances.

# What do superyacht warranty clauses look like?

- Typical custom/semi custom superyacht build will take as its starting point the Shipbuilders Association of Japan (SAJ) standard build contract
- Why?
- What will you be be faced with?
- English law contracts/jurisdiction switch e.g. English law/Dutch jurisdiction (AVOID!!!)

*English Solicitors*

*Non-English /non-common law qualified counsel*

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# Star Polaris LLC .v.HHIC-PHIL Inc [2016] EWHC 2941 (Comm)

- “.....two..... other features of contractual interpretation fall to be set out. The first is the general principle that if an exclusion clause is ambiguous it will provide no protection, because of the *contra proferentem* rule. Although it can no longer be said that exclusion clauses are to be read narrowly when they appear in commercial contracts between sophisticated parties - the wording must be given its ordinary meaning - where there is ambiguity the *contra proferentem rule* may play a role. The second, and in my judgement, highly significant point is the agreement of the parties that Article IX of the Contract provides a complete Code for the determination of liability, as the last sentence of Article IX.4(d) makes plain” *Sir Jeremy Cooke sitting as a High Court Judge*
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# Star Polaris LLC .v.HHIC-PHIL Inc [2016] EWHC 2941 (Comm)

- Paragraph 4(a) of Article 9 of the SAJ provided that that the builder had "no liability or responsibility whatsoever or howsoever arising for or in connection with any consequential or special losses, damages or expenses unless otherwise stated herein."
  - This meant the exclusion of losses falling within the second limb of Hadley v Baxendale. The Court took view that the wording of this specific contract, the word "consequential" was used in a cause-and-effect sense and not in its traditional legal context. Therefore when the parties agreed the language of that clause they clearly contemplated that the builder would be responsible for repairing the vessel and that was a likelihood that losses would arise whilst the ship was out of commission and that the agreement to repair was in exchange for waiver of consequential losses.
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# Conclusion

- Clearly understand the content of the warranty clause what it covers and what it does not
  - Don't assume the Courts or a Tribunal will look for meaning, increasing tendency to just look at the words on the page, and not just in warranty clause but other clauses which impact the liability of a builder.
  - *“Because Article IX sets out a code, excluding other liabilities imposed by statute, common law, custom or otherwise, the extent of the Yard's guarantee is set out in Article IX.4 and IX.3 to which it refers. The only express provision in Article IX.4 of responsibility and liability on the Yard post- delivery of the vessel (as referred to in the second sentence) is the liability of the Yard referred to in Paragraph 4(d) for defects directly caused by defective materials, design error, construction, miscalculation and/or poor workmanship “as above provided”. (Star Polaris)*
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