Betreff: FW: Stormvogel
Von: Jeremy Browne <JeremyBrowne@hendersonreeves.co.nz>
Datum: 30.09.2015, 04:22
An: "peter@wiedekamm.com" <peter@wiedekamm.com>

Dear Peter and Heidi

We have received a reply from the insurer's lawyer below. They are remaking many of the same points as previously. I smiled when I saw their point 3. In the email below, they have also mentioned the concept of "betterment". This is best illustrated with an example. Say you have an old car which you take to the mechanic. The mechanic negligently repairs the car with the result that the engine is ruined and needs to be replaced with a new engine. The end result is that the car you now have is better than the one you used to have because it has a new engine. Because of this "betterment" you cannot sue the mechanic for the full cost of the new engine. So what the insurer is saying here is that some of the work you are claiming for has improved your yacht and so this betterment has to be taken into account.

They have offered to pay $10,000 in full and final settlement on a no admission of liability basis. I think your main options are to (1) accept the offer; (2) make a counter-offer; and (3) file the claim. Things to take into account:

- Settlement has the benefit of certainty. You get a definite result and it avoids the time, cost and stress of uncertain court proceedings.
- As previously discussed, if you litigate, you will likely have to pay some security for costs.
- A case for about $30,000 is just about uneconomic to run as you will end up spending a disproportionate amount on lawyers and experts. T
- From a practical perspective, it is harder to run a case from overseas.

My inclination is that you should try and settle the case by making a counter-offer in an increased sum.

What would you like to do? I could make myself available for a telephone call if you would like to discuss this.

Regards
Jeremy Browne

From: Andrew Colgan [mailto:Andrew.Colgan@mcelroys.co.nz]
Sent: Wednesday, 30 September 2015 9:58 a.m.
To: Jeremy Browne <JeremyBrowne@hendersonreeves.co.nz>
Subject: RE: Stormvogel

Dear Jeremy,

We have now had an opportunity to discuss this matter with our client. Their position on the merits of your client's claim remains unchanged from our email of 17 June this year, as follows:

1. Norsand is adamant that the nuts on the port side of the pivot shaft were properly tightened. The addition of a further mechanism (such as pinning the nuts together) is a question for the designer and/or manufacturer.
2. The difference in hardness of the bore and the shaft does not establish that a poor fit was the result of the problem rather than the cause.
3. It was not within the scope of your client's instructions for Norsand to remove the centreboard. Norsand only carried out modifications on the seal carrier as requested.
4. There is nothing in Mr Lindberg's report that casts any serious doubt on the conclusions reached by Mr Howells at section 5 of his report. Indeed, the finding (at 5.1) that movement within the swing keel keyway had been ongoing for a "considerable period of time" does not appear to have been addressed at all.

Even if your clients were to make out their causes of action on the merits, a large proportion of the damages claimed appear to be remote and/or may have resulted in significant betterment.

In order to avoid unrecoverable costs of defending the claim in the District Court, however, we are instructed that our client is prepared to pay $10,000 (inclusive) in full and final settlement, subject to terms (including confidentiality and no admission of liability). Please let us know if the matter can be resolved on this basis.

We look forward to hearing from you.

Kind regards
Andrew Colgan
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From: Jeremy Browne [mailto:JeremyBrowne@hendersonreeves.co.nz]
Sent: Tuesday, 22 September 2015 6:00 p.m.
To: Andrew Colgan
Subject: Stormvogel

Please see the **attached**.

Kind regards
Jeremy Browne
Director

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creating smart legal solutions

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