

## 9A Couch on Ins. § 137:83

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### Part VI. RISKS AND ACTIVITIES COVERED BY INSURANCE POLICY

#### Subpart C. RISKS COVERED UNDER OTHER TYPES OF INSURANCE

#### Chapter 137. Marine Insurance Risks

#### II. Coverage for Loss of Vessel or Its Contents

#### F. Provisions Concerning Other Causes of Loss

#### 2. Piracy, Robbery, Theft, and the Like

# § 137:83. Generally; provisions covering “Piracy”

## References

In the early days of marine insurance, loss by piracy was a major concern and it tended to be specifically included or excluded in order to leave no doubt as to coverage for such a loss.

### Observation:

While “piracy” today is mostly in the form of terrorism, and the “pirates” usually want something other than the vessel itself, provisions from the earlier era appear in marine policies even today.<sup>1</sup>

At common law, piracy consisted of robbery, kidnapping, or other criminal violence committed at sea.<sup>2</sup> Piracy is distinguished from “privateering,” which is committed by lawfully commissioned authority of a sovereign state, or of a de facto government exercising sovereign powers and recognized as a belligerent, against declared enemies. Unlike piracy, privateering is authorized by principles of international law.<sup>3</sup> Accordingly, neither coverage against piracy nor against assailing thieves applies to acts done under a commission by a government in fact exercising supreme power within its jurisdiction, engaged in war, and recognized as a belligerent,<sup>4</sup> or to the wrongful seizure and sale of cargo by a consul of the United States.<sup>5</sup>

Under the English Marine Insurance Act of 1906, “the term ‘pirates’ includes passengers who mutiny and rioters who attack the ship from the shore,”<sup>6</sup> and American decisions have been in accord.<sup>7</sup>

Loss of an insured tug by theft from its pier in a harbor is not by “piracy” since piracy is an act committed on the high seas and a harbor is not within the meaning of the words “high seas.”<sup>8</sup>

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### Footnotes

- 1            *See, for example*, *Aqua Craft I, Inc. v. Boston Old Colony Ins. Co.*, 136 Misc. 2d 455, 518 N.Y.S.2d 863, 1987 A.M.C. 1943 (Sup 1987) (insuring against “assailing thieves”).
- 2            *See* Black's Law Dictionary, 9th ed, 2009.
- 3            *See, for example*, *Mauran v. Alliance Ins. Co.*, 73 U.S. 1, 18 L. Ed. 836, 1867 WL 11158 (1867); *Dole v. Merchants' Mut. Marine Ins. Co.*, 51 Me. 465, 1863 WL 1315 (1863); *Swinerton v. Columbian Ins. Co.*, 37 N.Y. 174, 1867 WL 5783 (1867); *Monongahela Ins. Co. v. Chester*, 43 Pa. 491, 1862 WL 5184 (1862).
- 4            *Mauran v. Alliance Ins. Co.*, 73 U.S. 1, 18 L. Ed. 836, 1867 WL 11158 (1867); *Dole v. New England Mut Marine Ins Co*, 7 F. Cas. 837, No. 3966 (C.C.D. Mass. 1864); *U.S. v. Klintock*, 18 U.S. 144, 5 L. Ed. 55, 1820 WL 2131 (1820); *Dole v. Merchants' Mut. Marine Ins. Co.*, 51 Me. 465, 1863 WL 1315 (1863); *Monongahela Ins. Co. v. Chester*, 43 Pa. 491, 1862 WL 5184 (1862); *Fifield v. Insurance Co. of Pennsylvania*, 47 Pa. 166, 1864 WL 4665 (1864).
- 5            *Paddock v. Commercial Ins. Co.*, 84 Mass. 93, 2 Allen 93, 1861 WL 4605 (1861).
- 6            English Marine Insurance Act 1906 (6 Edw VII, ch 41) sched I r 8.
- 7            *U.S. v. Gibert*, 25 F. Cas. 1287, No. 15204 (C.C.D. Mass. 1834) (mutiny); *Babbitt v. Sun Mut. Ins. Co.*, 23 La. Ann. 314, 1871 WL 6883 (1871) (a mob took over the vessel in the harbor).
- 8            *Britannia Shipping Corp. v. Globe & Rutgers Fire Ins. Co.*, 138 Misc. 38, 244 N.Y.S. 720, 1930 A.M.C. 1722 (Sup 1930), *aff'd*, 232 A.D. 801, 249 N.Y.S. 908 (1st Dep't 1931).

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