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Maritime Insurance: Settlement of Claims

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ABSTRACT

In the present era of globalization where Countries have opened their doors for trade, there has been a significant amount of both import and export worldwide. This stance has been conveniently facilitated by exploiting the age-old tradition of sea voyage and as such has accounted for nearly 80% of the volume in such transfers globally. But, with such development worldwide, there also comes the associated risk of the sea voyage which remains affected by uncertainties during the entire route. The issues that needs to be focused at is

The insurance bought by the parties dealing in India is governed by The Marine Insurance Act, 1963 which evenly deals with the aspect of insurance and covers the very basic aspect of concern of every insured as to how to claim insurance in case of any loss. With wide perspective enjoined in such cases the most deliberate fact remains to that of in case of partial loss of goods, where the notice of abandonment comes into picture and leaves the parties entangled as to claim the settlement of loss. There lies a very thin line of difference as to ascertain the type of loss and the measures to be sought thereafter.

Keywords: *Marine Insurance Law, Notice of Abandonment, Reasonable time, Constructive loss, Total Loss, Insurer and Insured*

I. INTRODUCTION

In Marine Insurance there are a lot of complexities which need to be handled with lots of due diligence and conflicts which need to be handled in a way that no party suffers injustice. The issues that crop up in general is regarding the claim settlement and who is responsible for the loss. Whether the loss has occurred because of negligence or due to the peril which is covered under the policy taken for the ship or the subject matter as whole.

This article is based on the disputable issues of abandonment which is time sensitive. Notice of abandonment is a notice which has to be sent by the captain of the ship to the insurer in order to receive the confirmation, as the confirmation will allow to receive the compensation in full like total constructive loss. This has certain criteria which has not been specified under any act, and has been kept vague. The reasonable time does not state what it is in different conditions.

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Even after such a long period of time where now we have got a plethora of case laws and situations that have come up still the laws keep silent regarding this. Time to notify the insurer as per reasonable time is disputable because every person might take his/her time to understand things or to notice if any wrong is happening.

This is also about the types of losses that get covered under the policy in Marine Insurance. How to identify whether it's a total constructive loss or partial loss. When the salvage value gets handed over or the rights of subject matter gets subrogated to the insurer to settle the claims.

One of the effects that is created by the abandonment is that the rights of the subject matter get transferred to the insurer. The insured may choose to abandon either right in rem i.e. right against the object or right in personam i.e. right against person. The rights are transferred from the insured to the insurer in many different ways and the modes differ from the kind of rights i.e., right in rem and right in personam. The issue that crops up here is whether the abandonment of subject matter is enough for the transfer of rights from the insured to the insurer? Whether the belief of subject matter getting transferred to the insurer from the insured without any known form of transfer or specific transfer mentioned in the abandonment. Marine Insurance has got its own methods and ways to settle the claims and when it comes to abandonment it's usually different from what abandonment means under any other law. The way abandonment works in marine insurance is different from that which stands good in other laws. Abandonment is not that easy as it looks just by stating that I abandon the ship; this doesn't result in abandonment whereas there should be the intention to abandon the subject matter.

(A) Statement of Problem

Shipping industry which remains the backbone of international trade and accounts for almost 90% of the world trade can be seen as a lifeline for the global economy.² With continuous developments in trade relations between countries and the overwhelming response of consumers across the globe, it becomes very apt on part of the trader to both import and export goods on its capacity. In order to facilitate such transactions and prosper the growth rate, such goods need to be transported to different countries. And, in this era of time where connectivity is the key source, people associated does not leave any stone unturned in reducing the gap.

Despite having various developments in transportation medium throughout the globe, still the usage of ships remains to be an undebatable choice of transportation between countries, without

² Shipping and World Trade; Retrieved from: <https://www.ics-shipping.org/shipping-facts/shipping-and-world-trade> on 18/03/2020.

withstanding the very fact that earth's surface is covered by 71% water.³

But despite having such major emphasis, people do forget to witness the problems associated with it. Such problems vary but as to the core remains to that of insurance settlement in case notice of abandonment is provided by the insured to the insurer. Now, the problem persists as even after furnishing notice of abandonment, such notices are rejected on the sole criteria of reasonable time period.

The problem stated is prolonged and there lies no definite stand as determining the exact time frame referred by stating such requirements of reasonable time period. Though, it has been observed in a number of cases that the topic of dispute remains restricted to that of reasonable time and such in every situation.

Thus, after analysis of the aspect, it appears prudent in the light of the time that the basis of reasonable time period for the notice of abandonment needs to be addressed and a definite stand which would further help in solving the problem and further will ensure seamless flow of trade through the sea.

So, the need of the hour is to provide a definite meaning and understanding of the reasonable time period associated with the notice of abandonment in various circumstances.

(B) Review of Literature

The importance of marine insurance in terms of daily affairs of the shipping business is notable. And, above all the aspect of the crucial aspect relating to abandonment in purview of reasonable time period is a peculiar issue. Further, to understand the concept and problems arising out of it to substantiate in our current study, some of the research papers has been referred as under:

1. Svante, J., (2004)⁴ has discussed the most disputed scandavian claim settlement which is regarding the average adjuster. It has been clearly pointed out in this article that scandavian market is very favorable for the insured as rarely any dispute arises on the basis of claims. The insureds have direct connections with the insurers to avoid the hassled process. It has been found that settlement of claims is quite easy in the scandavian market.

2. Georg, C., Marnewick, (1996)⁵ They have talked about abandonment as a solution to the assured under Marine insurance. If the goods are getting damaged or have got damaged or the ship itself has got damaged in that situation the captain of the ship can inform or

³ A multi-phased journey. Retrieved from: <https://earthobservatory.nasa.gov/features/Water/page2.php> on 18/03/2020.

⁴ Johansson O. Svante. Settlement of disputed marine insurance claims (2004).

⁵ Marnewick; Christiaan Georg., Abandonment in Marine Insurance Law: An Historical comparative study, (1996).

communicate with the insurer regarding the notice of abandonment and shift the burden of loss. They have also emphasized that it's an original institution of Marine Insurance.

3. Khurram, R., (1994) ⁶ has in his article focused on the different types of loss under marine insurance and has also discussed the concept of abandonment in detail. Here, the author has rightly pointed out that constructive total loss concept which makes the entire difference in notice of abandonment has no definite laws to curtail with and in certain circumstances the non-presence of definite laws has categorically led to confusion and even losses in some cases, where due to non-issuance of notice of abandonment, thinking of it to be a constructive loss has substantiated the insurance amount claimed into that of partial loss and vice-versa in other cases where such notice was not required and such loss were partial in nature. Thus, there always lies the probability to change the constructive loss, which could be referred as legal fiction into either full/complete loss or partial loss. But, apart from it though the author has acknowledged the very fact of complexity of constructive total loss and abandonment but has failed to provide any recommendation to the aspect and also suggest the best means to determine the period of reasonability in the entire process of abandonment.

4. Smith, D., (1989) ⁷ states in his article that an insured can abandon the ship along with the goods and can claim for total constructive loss. If it's not accepted by the insurer and the situation was not under control and the peril was under the policy in that case still the insured will derive the benefit of insurance, where the claim awarded will be total insured value less the salvage value. Whereas if the notice of abandonment which was sent by the insured gets accepted by the insurer in that case the subject matter is handed over to the insurer and it considered as a total constructive loss.

5. Harvard Law Review (1954)⁸, has observed in its publication that when the ship has got damaged beyond the level of repair or say the charges that would be involved in repairing or maintaining that particular vessel would be more than the insurance value than in that scenario there is no point in getting the repair done. In such a situation where calculation becomes difficult whether to get the vessel repaired or not, in such times the vessel is generally abandoned and it is taken as constructive total loss, which permits to recover all the loss through timely notice of abandonment. But if there are any chances of reviving the complete vessel then it should be done rather than abandoning it but if the notice of abandonment has been sent

⁶ Rubina Khurram, Total Loss and Abandonment in the Law of Marine Insurance, 25 J. Mar. L. & Com. 95 (1994).

⁷ D. A. Smith, Marine Insurance - Constructive Total Loss, 6 Austl. & N.Z. Mar. L.J. 47 (1989).

⁸ Harvard Law Review, Impossibility of Calculating Whether Vessel Can Be Repaired at Less Than Insured Value Justifies Abandonment as Constructive Total Loss, Vol. 67 (1954).

already in such a given situation and it has got approved then in that case the ship could be abandoned and that would be considered as constructive total loss.

6. Richard, G., et.al. (1939)⁹ has thrown light to the abandonment notice which needs to be provided and has rightly illustrated the fact as to when it needs to be submitted and suggested that as soon as the insured is made aware of any such loss then such notice should be provided and in cases where the loss needs to be ascertained after due inquiry, then only after completion of such inquiry. But what the author has raised is the problem of reasonable time period which may be an issue when the insured takes certain to analyze the possibility of loss and also whether or not to serve notice of abandonment. Though having reflected the issue, the author has not further suggested and talked about eradicating the persistent issue, and has failed to criticize the reasonable period of time.

7. Roscoe, E., (1929)¹⁰ has discussed constructive loss and under what circumstances when a person with prudent mind won't repair the ship after substantive loss and the cost of which remains unviable. In these circumstances the only two ways lies is either to claim from the person due to which such loss has incurred and the other to claim insurance by providing a notice of abandonment, wherein the first relates to parties having no insurance and the other where the party has opted for insurance respectively. But, apart from it, the author has not very substantially talked about abandonment and any such notice which needs to be provided within the reasonable time frame.

8. Cady, E., (1925)¹¹ has observed the issue of reasonable notice for abandonment where in spite of repeated submission of notice, the acceptance was denied by the insurer and further where such insurers were compelled to pay later on and also where the Court are always bound to determine the reasonability period of the notice of abandonment in case of any dispute. Though, the problem has been highlighted but no definite means to solve the persistent problem has been suggested in order to eradicate the ever-known issue of determining the reasonability factor.

9. Barry, H., (1922-23)¹² has discussed that the abandonment leads to the transfer upon the rights of insured to the insurer of the subject matter which was insured under the policy. The insurer can take over the salvage of the subject matter, the insurer has the option either to get that repaired or to sell, whatever the insurer finds suitable could do with the subject matter.

⁹ Ralph Iliff; Mitchison Simey, Gilbert Richard. *Arnould on the Law of Marine Insurance and Average* (12).

¹⁰ Edward Stanley Roscoe. *Measure of Damages in Actions of Maritime Collisions* (3).

¹¹ Edwin Welling Cady. *Cases on the Law of Insurance* (1925).

¹² Herbert Barry, *Casual Comments upon Particular Average and Constructive Total Loss*, 9 Va. L. Rev. 344 (1922-1923).

The insurer can even take over the freight which had to be collected after the voyage if that has got completed and if that was covered under the insurance policy.

10. Joseph, et.al., (1909)¹³ has discussed about the service of notice of abandonment to the insurer within reasonable time and how categorically if the insurer has re-insured the insurance then no such notice of abandonment needs to be provided to the the reinsurer as such no right of the reinsurer arises until and unless the principle insurer obtains the ownership rights upon acceptance of any abandonment notice by the insurer when such notice is provided within reasonable time frame. But what the author has failed to do is to align the meaning of reasonable time which often remains a matter of dispute in any claims arising out of such dispute for loss suffered.

11. Vance, R., (1904)¹⁴ has observed that when abandonment notice could be provided. It has specifically provided that in instance of complete loss, no such notice of abandonment needs to provided but in case of any constructive loss, notice of abandonment needs to be provided, so that the insurer is made aware of the circumstances and any recoverable cargo could be easily saved and the amount could be subsequently realized by the insurer. But, in the same circumstances the provision as to the notice of abandonment with respect to the time period has not been completely discussed leaving a way as to the determination of such reasonable time period.

12. Tyser, C., (1894)¹⁵ has discussed the reasonable time period for notice of abandonment. The question discussed has been whether the notice to be provided in the very first hearing of the loss or at any subsequent moment. With a plethora of judgments in this regard, the very answer to the question lied that it varies from situation to situation and mostly the reasonable time concept was only pronounced without providing any definition for it. But also, it was critically analyzed as to the mode of providing the notice of abandonment which need not necessarily be written. But, apart from it, the stand illustrated has not conferred upon the question to solve the problem faced due to the term reasonable time period. Though, different cases talk about the reasonable time period but still it fails to point out the base of any such in order to solve the issue persisting in the industry.

13. Maclachlan, D., (1887)¹⁶ has talked about the validity of Notice of abandonment. The details or the reason because of which the ship had to be abandoned must be true but should be

¹³ Joseph; et al. Arnould. Arnould on the Law of Marine Insurance and Average (8).

¹⁴ William Reynolds Vance. Handbook of the Law of Insurance (1904).

¹⁵ Charles Robert Tyser. Law relating to losses under a policy of marine insurance (1894).

¹⁶ David Maclachlan. Arnould on the Law of Marine Insurance (1887).

in a way that it could be proved as well. The insured can claim for total loss and recover that in full, only if the capture (in case the ship was getting captured by someone) and loss occurred together. If the ship has come under the control of the captain or owner before such action has begun then in that case even if the loss was total constructive loss but only the partial loss could be recovered. The total loss can be recovered only if the notice of abandonment has begun before any damage has taken place.

14. Oxley, J., (1883)¹⁷ has talked about the rights of shipowners for freight in case of abandonment. Here cases pertaining to the issue have been extensively talked about as to how the shipowner does not have the right to claim for the whole freight and also whether the shipowner to be treated as the actual owner of the ship upon abandonment notice is given and the ownership of the goods gets transferred to the insurer. Though, the stand has been analyzed, but critically the dilemma of the cargo owners has not been talked about as to how much difficulties would they face and how such difficulties may be covered up through appropriate means upon delivery of the cargo even though the ship has been abandoned, where logically the insurer becomes the rightful owner of the ship and not the goods therein.

15. Townsend, C., (1876)¹⁸ has observed the entire concept of abandonment and how such restrictions are put in it in the insurance contract and how it is implied in practical life. By undergoing the concept, one thing which is made clear is that in order to safeguard from the losses, the insurer inserts such terms as to involve percentage of damages which could be classified as abandonment. But, apart from it the author has not provided any means to determine the quantum of damage percentage and has only been classified as a clause inserted in the contract on behalf of the insurer.

16. Parsons, T., (1868)¹⁹ has discussed what constitutes abandonment and what circumstances leads to such abandonments by the insurer. The author has rightly discussed the total and constructive loss which plays a great role in ascertaining abandonment and how such leads to transfer of rights from the insured to the insurer with limiting the rights of the insurer to ask the amount of salvage value received by the insured after sale proceeds. But the problems affecting the entire concept of abandonment have not been discussed and only the effects have been discussed which needs to be correlated with the problems faced in the day to day activities.

¹⁷ James M. Oxley, *Effect of Abandonment upon the Ship-Owner's Right to Freight and General Average*, 17 *Am. L. Rev.* 542 (1883).

¹⁸ Calvin Townsend. *Compendium of Commercial Law, Analytically and Topically Arranged, with Copious Citations of Legal Authorities* (1876).

¹⁹ Theophilus Parsons. *Treatise on the Law of Marine Insurance and General Average* (1868).

17. Fine, J., (1852)²⁰ has focused on the important issue which talks about the right to abandon the ship or goods, this is completely based on the facts existing at the point and not when the information is received. When abandonment is done rightfully in an appropriate manner then it becomes binding and unquestionable. Once this is done the right over the subject matter transfers to the insurer. If the owner displays his intentions of not abandoning the ship which is in trouble then later on that voyage, he cannot use the right to abandon. This also causes his loss in rights regarding the right to abandon and waiver if any is there.

18. Arnould, J., (1849)²¹ has stated that if there is total constructive loss i.e. the ship has been destroyed completely in that case there is no need to send one notice of abandonment to the insurer. If it's been sent it will be treated as a formal procedure which was not really required. In this situation whatever remaining is left out of the ship i.e. the salvage if found would be under the insurance company. If observed on the goods and the goods are of perishable nature, any harm or changes in the goods or damage will lead to the loss. In this case as well there is no duty of notice of abandonment.

19. Archbold, J., (1845)²² In his article he has mentioned about the kinds of losses that are possible during the voyage and what could be claimed and what cannot be, for the further classification he has mentioned about Actual loss and Constructive loss. Actual loss is the situation where the ship and the cargo get damaged or the cargo was of perishable nature but was insured, or where the complete ship has become a wreck because it caught fire and there is complete destruction. Constructive total loss is a situation where the ship has got damaged beyond the repairable condition i.e. the cost to repair the ship is more than the insured value. In this case the ship is abandoned by the captain and before doing that a prior notice of abandonment is sent to the insurer. By doing so the insured hands over the salvage or abandoned ship to the underwriter.

20. Samuel et.al, (1810)²³ had pointed out the problem where the insured had furnished the notice of abandonment to the insurer but the insurer had earlier refused to accept the notice of abandonment, and further upon claim from the insurer for the loss, claim was being denied for non-service of notice within the reasonable time frame. This pertains as to the fact that once notice of abandonment is accepted by the insurer, then no negligence could be embarked upon

²⁰ John Fine. Lectures on Law. Prepared Principally from Kent (1852).

²¹ Joseph Arnould. Treatise on the Law of Marine Insurance and Average (1849).

²² John Frederick. Archbold. Law of Nisi Prius: Comprising the Declarations, Pleadings, and Evidence in Particular Actions, Namely, Bills of Exchange, Notes, Cheques, etc., Policies of Insurance, in All Cases, and in Ejectment (1845).

²³ Samuel; Condy Marshall, J.W., Editor. Treatise on the Law of Insurance, in Four Books (2).

by the insurer, as the insurer becomes the rightful owner of the abandoned ship. But though the perspective has been talked about in detail but no substantiate alienation of such problems has been provided and the scope where such reasonable notice period could be questioned is only provided and no means of dealing with the problem is suggested thereon.

(C) Objectives of the Study

The main objective of the research work is:

1. To analyze the rationale behind the necessity for notice of abandonment.
2. To analyze the relativity and significance of a reasonable time period for notice of abandonment.

(D) Scope of the Study

The scope of the study relates to track out the aspects of the notice of abandonment and how it plays a decisive role in terms of marine insurance. The study extends to further co-relating the aspect of notice of abandonment with that of reasonable time period, which plays a crucial role in the overall procedure for claims under marine insurance law. It also aims to study as to how the reasonable time period is determined and under what circumstances such notice of abandonment is handed to the insurer by the insured. It also aims to focus on recent developments related to the term reasonable time period, which often creates ruckus as to the settlement of claims. Moreover, it also tries to collaborate various stand taken in various judgements and also look forward to finding a way out to determine the definite meaning of a reasonable time period to reduce conflict.

(E) Limitation of the Study

Though, research-based decision making is now considered, still there may lie a gap between understanding the research and users. Some of the limitations which might have restricted the scope of study are as follows:

1. The time period for the study was less.
2. The study was confined to only a particular aspect of the industry, due to which the analysis may differ to an extent.
3. The study was based on secondary data sources which might affect the analysis.

(F) Research Methodology

Doctrinal Research Methodology has been used for the present research article. Doctrinal research has been chosen as most of the information has been sought from the available

literature, case laws, books, law journals, research articles, newspaper articles for the preparation of the research article.

II. ANALYSIS

Abandonment in general means to forget or cessation or to neglect. The general meaning of the word itself gives a rough idea of what it means in marine insurance. Whereas Notice of abandonment means to notify or to communicate with the insurer by the assured before abandoning or leaving the goods from his possession during the voyage. This is the mode via which the loss is informed to the insurer by the assured and the conformity regarding abandonment.

Notice of abandonment has to be sent to be communicated to the insured or else the loss won't be reimbursed. Whatever may be the situation irrespective of that it needs to be notified. This norm is relaxed only under one situation i.e. when there is actual total loss, in this case it's not mandated to notify or to communicate to the insurer. This has been laid in the case of *Kaltenbach v. Mackenzie*²⁴, that other than in the case of a constructive loss it's not required to notify the insurer or to send a notice to the insurer regarding notice of abandonment.

But if the scenario is where there is no actual total loss then notice of abandonment has to be sent to the insurer otherwise the loss will be considered as partial loss. This loss has to be borne by the assured in this criterion. In the case of *Robertson v. Smith*²⁵, it's been stated that the ship was captured and regarding the same loss a notice of abandonment was sent to the insurer which was approved by them. It was held that once approved they have to redeem the claim of the assured for total loss and not partial loss.

The word abandonment in general covers a broad meaning and has different relevance in different contexts but in Marine Insurance this means cessation of the subject matter. When notice of abandonment comes into the effect the rights over the subject matter insured gets transferred to the insurer. In the case of *Randall v. Cochrane*²⁶ and *Per Gibbs*²⁷, C. J., *Houston v. Thornton, Holt*, it was clearly mentioned that if the loss was made good to the insured then the rights over the subject matter will move to the insurer. When the abandoned ship which was the subject matter of the policy is obtained by the insurer and the insurer sells it then the money that is recovered out of the salvage which was recovered belongs to the underwriter and not to the assured in order to keep up the principle of indemnity. In the case of *Martin, B.*,

²⁴ *KALTENBACH V. MACKENZIE*, 3 208. C. P. D. 467.

²⁵ *ROBERTSON V. SMITH*, 2 DOW, 474.

²⁶ *RANDALL V. COCHRANE*, I VES. SEN. 98.

²⁷ *PER GIBBS, C. J., HOUSTON V. THORNTON*, HOLT, 242.

*Stringer v. The Eng. Ins. Co.*²⁸, it's been declared that the money after a sale of the recovered subject matter belongs to the insured and not to the assured. The underwriter gets all the rights over that same amount if the abandonment was done by the assured, this is irrevocable and the underwriter can keep the action.

In the case of *Per LordCottenham, L.C., Fleming v. Smith*,²⁹. It has been ordered that there is no need to communicate notice of abandonment in case there is an actual loss but needs to be done when there is a constructive loss. If the assured does some action which is not in line with the abandonment then they lose the rights of abandonment as the intention was to benefit out of the policy.

Now when we go on talking about the notice of abandonment it becomes crucial to know how it gets accepted by the underwriters and when it is considered to be valid. Notice of abandonment can get accepted by the underwriter either in express way or in implied way or through the conduct of the underwriter. But mere silence doesn't reflect the acceptance, this assumption stands wrong, silence is not accepted or taken as a criteria for the acceptance. In the case of *Peele v Merchant's Ins Co.*³⁰, same thing happened. Whereas the underwriter can keep the ship for several days in order to maintain the ship or to repair it. But this itself doesn't constitute that it has been abandoned; there has to be expressed means to do so. In the case of *Peele v Suffol*³¹, the court ordered that the ship or the subject matter can be rightfully be retained for the maintenance or for some repair work with the underwriter and by doing so the underwriter doesn't accept the notice of abandonment. The underwriters can keep the subject matter for the reasonable period of time and not beyond that. The actions or conduct of underwriters should not be deceiving one which reflects the acceptance but has not been accepted.

The effectiveness and applicability of the notice of abandonment could be seen from the case of *Cincinnati v Bakewell*³², it is observed that when an underwriter takes over the subject matter and starts repairing it or maintaining it without any notification to the assured, in that case it is assumed that the insured has accepted the notice of abandonment.

When it comes to the reasonable time it becomes quite a hectic task to figure out what it ought to be, because the subject matter cannot be abandoned just like that without any reasonable

²⁸ MARTIN, B., STRINGER V. THE ENG. INS. CO., L. R. 5 Q. B. 606.

²⁹ PER LORDCOTTENHAM, L.C., FLEMING V. SMITH, 1 H. L. C. 513, 531.

³⁰ PEELE V MERCHANT'S INS CO, 3 MASON 27 (1822).

³¹ PEELE V THE SUFFOLK INSURANCE COMPANY, 38 U.S. 415 (1839); 7 Pickering's (Mass.) Reports, 254, PHILLIPS ON INSURANCE, vol. ii. 5th Ed. p. 375.

³² CINCINNATI INSURANCE V. BAKEWELL, 43 KY. 541, 4 B. MON 541 (1844).

cause. To find out that reasonable cause, it might take time which may not be considered by the insurer as a reasonable time and prudent nature of the owner or assured. In the case of *Renos 2018*³³; the owners were provided with a long time to abandon the ship and to claim a constructive loss. This was not that easy; several experts were involved in this case as to whether the proper information was furnished to the underwriter or not. Whether the owner has the right information with himself? Whether the Notice of abandonment was given with due diligence or not.

As per the *Rankin v. Potter*³⁴, abandonment and notice of abandonment are two different things, notice of abandonment is necessary for making the claim for total loss. Where notice of abandonment means that the assured has lost its good or the vessel as whole and the underwriter responsibility to approve the claim.

Regarding reasonable time to send the notice of abandonment, it is one of the essentials for the approval of notice of abandonment and to claim constructive total loss. Even in the case of *Per Lord Chelmsford, Rankin v. Potter*³⁵ it was stated that the information regarding the damage or loss to the subject matter must be communicated to the insured within the reasonable time without any negligence.

With the plethora of case and the general understanding between the insured and the insurer it could be highly disputable when it comes to claim settlement where either of the party may be at fault, whether knowingly or unknowingly due to presence of various essential constituents and technicalities like reasonable time, notice of abandonment and Constructive total loss.

III. SUGGESTIONS & RECOMMENDATIONS

Based on the above analysis and negating through various journals in this respect, it would be apt to suggest that despite having some technical issue in the marine insurance law, still there lies a scope for filing the gaps encountered by it.

As after observation, it can be made out that there lies lot of complexities when it comes to claim settlement. Even after expiration of a considerable amount of time since the implementation of the marine insurance law, and with humpty number of precedents, there is no sure shot relay as to settlement of claim.

In our opinion, though the law stands on a very affirmed ground but now time has arrived that it needs considerable amount of amendments and changes as to certain technical aspects like

³³ THE "RENOS", [2018] EWCA CIV 230.

³⁴ RANKIN V. POTTER, L. RI. 6 IH. L. 73, 156.

³⁵ PER LORD CHELMSFORD, RANKIN V. POTTER, L. L. 6 H. L. 73, 158.

reasonable period of time, notice of abandonment and hassle-free transaction for the claim settlement. With regards to, we have noticed in our study that these issues remain the much-debated point in times of claim settlement. Taking into consideration this aspect, the most viable alternative which could be suggested varies from case to case but with a determined opinion that in case of reasonable time period, the law should be amended in such a way as to provide a specific duration in which the owner should notify to the underwriter and should be kept as it is now, which is vague in nature and promoting mis-utilization of the technicality.

This issue remains to be a continuous bowl in the Court, where such technicality plays a decisive role where either the insurer or the insured may play in bad faith and may overall hamper any of the genuine party depending upon the case.

In light of this, the notice of abandonment connected with such reasonable period of time stands still as of the current scenario after exploring every other alternative, such notice of abandonment is being provided by the insured. This phase and vagueness allow the insured to play a deceptive role by exploring every viable option and mitigating only when such option diminishes. This further has adverse repercussions, in order to forbid which, the insurer takes help of the reasonable time period clause. So, though both parties may be correct in their approach, but they end up harming the other party, which would in turn lead to heavy losses from either part of the party. Thus, in order to eradicate such persisting problem, a stringent and simple policy as to classifying the period for such abandonment needs to be addressed. This will help in saving both time and effort of the Court as well as the parties concerned.

Thus, on light of the above, it seems very apt that the persisting law needs an amendment with some drastic changes in order to make the entire process of claim settlement easier and more flexible by keeping in mind the relevancy of such in trade and commerce.

IV. CONCLUSION

Marine Insurance is a very complex subject to discuss as the role of each party differs at various stages. The complexities start when the topic of claim settlement arises as to which party to be blamed. Who stands at the fault? But to resolve this dispute marine insurance has the clause of Notice of abandonment which is accompanied by the reasonable time. Here, reasonable time is a sensitive essential as it differs from each case, thus no precedent could be used as it is. The facts of each case vary from the other one. Keeping this in light and from the above study we could easily relate that the process of calculating the loss is complex and unavoidable. Thus, the insurer should give reasonable time to the assured to figure out the reliable information and loss.

Losses should be identified in an appropriate manner as to avoid the hassle and to claim the constructive total loss. Notice of abandonment should be sent within a reasonable time with due diligence or else the loss is partially recoverable. It's only an exception when there is actual loss where the owner need not send the notice as a formality. Then there are several other ways how the insurer accepts the notice of abandonment which again becomes of complex nature.

To keep this simple, procedures should be carefully taken and with due diligence decision should be made as once the subject matter is abandoned it cannot be revoked and there must be the intention to abandon and if it's missing, claim might be rejected for constructive total loss. Notice of abandonment and reasonable time is the most critical thing in marine insurance the claim settlement is dependent on this if any wrong happens to the subject matter.

V. SCOPE FOR FUTURE STUDY

The research study could be more extensively conducted by focusing on availing of primary data as a source and also having view points of the general insurance company and the person who is being related in such transaction. This will particularly help in order to know the ground reality of such problem and the way which is being consecutively adopted in cases of such situation. Also, the study could be very well extended in devising solutions to the persisting problem along with effective and faster remedies on case to case basis. Overall, this study helps to establish base for the problem persisting in the current scenario due to certain technicalities prevalent in terms of marine insurance law.

Thus, an extensive study focusing on eradicating the technicality with ease and adherence could be conducted and ways to formulate such principles in order to remove confusion could be conducted.
