

# Titanic submarine incident raises questions on presumption of death; insurance policies

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For the past few days, the international news has been dominated by the missing Titanic submarine. Social media platforms have also been abuzz with the missing submarine.



One of the interesting questions that seemed to be prominent was the question of whether insurance claims could be submitted if the passengers of the submarine were not found.

For purposes of this article will be discussed in a South African context ie. as if the incident occurred locally.

## Presumption of death orders

The interested party – it can be a family member, employer, partner, etc. – can bring an application for a missing passenger of the submarine to be presumed dead. The application is brought on an *ex parte* basis.

In the absence of a catastrophic event, presumption of death orders are rare. They are, however, a useful tool to utilise in

catastrophic events as there are almost incontestable grounds to argue for the order to be granted.

Considering that there is no actual body, the court, in making a decision, is only circumscribed to circumstantial evidence. Thus, the founding affidavit of the applicant will have to explicate the grounds upon which the court should grant the order for presumption of death.

Over the years, the courts have highlighted that the outcome of such cases, like every case, is bound upon its own peculiar facts and circumstances. Previously, the courts always held the view that the missing person must have been absent for at least seven years before such an order could be granted. This is no longer the case.

Whilst the length of time that has lapsed since the disappearance is an important factor, the courts no longer pin any number of months and/or years in this regard.



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In addition to the length of disappearance, factors such as: health conditions of the missing person at the time of disappearance; place where s/he was last seen; whether there was any life-threatening event(s) near or around the location where s/he was last seen; the lifestyle and habits of the missing person, etc. are considered.

In this case of the missing submarine, the facts and the circumstances are considerably less complex – the passengers' identities are known; the circumstances around which they have disappeared are known; the risky nature of the circumstances around which they disappeared are known; and the less likely possibility of survival is also known.

These factors, in addition to other factors that may find application, would play a significant role in the determination of the application. Important to note, the fact that a court has granted this order does not necessarily mean that an insurance policy will respond.

If the insurer does not challenge the presumption of death order, the insurer can still rely on other “normal” grounds for repudiating the claim eg. misrepresentation, non-disclosure, etc. Even more interestingly, some non-indemnity insurance policies expressly exclude cover for death resulting from adventurous activities.

## Conclusion

In conclusion, whilst presumption of death orders are rare, they remain a pivotal tool in dealing with instances where a person is missing. In law (and in general), the death of a person is a significant event from which several legal consequences flow.

Therefore, where there are meritorious grounds for bringing such an application, one should not hesitate to do so, in order to bring about legal certainty to the affairs of the missing person.

## ABOUT THE AUTHOR

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