



ANALYSIS ON MARINE INSURANCE

MRS FATIMA DIANA MERIL ML

ABSTRACT

Building, financing and operating a vessel is a multi-million investment, which, given the nature of the risks involved, requires thoughtful planning from all parties involved (shipbuilders, financiers, owners/buyers). It is therefore very important that all parties make inter alia insurance arrangements which will cover the respective risks they are exposed to. It will focus on the insurance coverage taken out by the shipyard, the vessel's financiers and the shipowners (as operators of the vessel). Marine Insurance is the oldest form of insurance in the world. With the globalization of the economy, supplier linkages span oceans, but still require goods to be delivered to the concerned party in a pristine state, just-in-time. Capital or consumer goods are produced in one country whereas users or consumers are located in some other part of the country or elsewhere in the world. Therefore, there is a need for transportation or transit of such goods by rail, road, inland waterway, sea or air. During this process of transportation, the cargo is exposed to various hazards like theft, breakage or damage

KEYWORDS

Marine Insurance, Transportation, Cargo, Warehouse, Utmost Good Faith, Subrogation

INTRODUCTION

Anything in respect of which there is a risk of loss from maritime perils may be the subject of marine insurance. It will be recalled that there is a distinction between the subject matter of insurance and the subject matter of the contract of insurance that every lawful marine adventure may be the subject of a contract of marine insurance, and that a contract of marine may be extended to cover risks other than maritime perils in a narrow sense.

Activity often combines the opportunity of advantage with the risk of loss. Thus, the financial rewards of international trade have to be offset against the numerous risk involved in transporting goods, particularly in the potentially dangerous environment of the sea.

Much of modern marine insurance owes its current appearance to a gradual introduction of new features over the years, and to caselaws that are addressed specific issues such as the introduction of steamships, the first and second world wars, the containers revolution and sornali piracy. The law continues to develop, which makes marine insurance a challenging and stimulating field to study and work in.

HISTORICAL BACKGROUND

According to Holdsworth the earliest remaining example of an insurance policy is to be found in Genoa, dating from 1347. The Greeks, however, were no strangers to agreements which had the appearance of insurances (on marine adventures). An insurance court was setup in Bruges in 1310. The first English policy appears to date from 1547 (a marine policy). The development of English insurance law was largely due to the judgements of Lord Mansfield, in the second half of the 18th century. By 1688, Edward Lloyd's coffee house had become venue for the transaction of insurance business and in 1696, he published a newsheet entitled Lloyd's news, in which movements of ships were entered.

Since independence, Indian shipping had undergone a considerable expansion, and it became mandatory for an Indian legislation consistent with Indian conditions, for the smooth development of Indian marine insurance. Prior to legislation, questions turning on this branch of law had to be decided by the general law of contract and the English decisions based on the common law rules of contract. Most of the law of marine insurance is in essence pure interpretation of the contract contained in the common form of marine policy. The Indian Act embodies only some and not all of the legal principles and rules of marine insurance, and its language is so extremely concise and general that its full import and meaning can scarcely be understood without referring to the existing law which it was intended to express or to the decided cases from which that law was evolved. The Indian Marine Insurance Act came into operation on August 1, 1963 and is a comprehensive document containing all regulations of marine insurance business in India.

THE NATURE OF MARINE INSURANCE

Marine insurance is one of the most important and oldest concepts of insuring the party from damage suffered by the loss or destruction of goods or the instrument of transportation. The contract of such insurance should comply with all the essentials of the standard contracts and should not be void contract. The main essentials of valid contract according to Indian contract act 1872 is that the contract should consist of an offer which is the proposal, an acceptance, which is a go ahead by acceptor, a consideration, a premium payable on the completion of the contract.

Marine insurance is concerned with overseas trade. International trade involves transportation of goods from one country to another country by ships. There are many dangers during the transshipment. The persons who are importing the goods will like to ensure the safe arrival of their goods.

The shipping company wants the safety of the ship. So marine insurance insures the coverage of all types of risks which occur during the transit. Marine insurance may be called a contract whereby the insurer undertakes to indemnify the insured in a manner and to the extent thereby agreed upon against marine losses.

MARINE ADVENTURES

The marine insurance act 1906, S 2(2) deals not simply with mixed sea and land risk but with adventures analogous to marine adventures. It provides that "where a ship in course of building or launch of a ship or any adventure analogous to a marine adventures, is covered by a policy in the form of a marine policy the provisions of this act, in so far as applicable shall apply there to". Ship building contracts and the launching of ships are activities of a maritime nature and not inappropriately covered by contracts of marine insurances.

Having specified, in S 1 that a contract of marine insurance is to indemnify against "the losses incident to Marine Adventure", the marine insurance act 1906 attempts, in S 3, to define, 'marine adventures' and 'maritime perils'.

Marine Adventures where insurable property is exposed to the earning of pecuniary benefit or security is endangered by exposure to, or third party liability may be incurred by reason of maritime perils. It would be simple to draw the general inference that a marine adventure is one involving risk of loss by the virtue of maritime perils, were it not for at least two facts, facts, S 3 gives specific instances of marine adventure but does not exclude other possible types of marine adventures or even confine marine adventures to those involving exposure to maritime perils. Second, the final part of the definition of maritime perils appears not to be an amplification of the preceding specific instances of perils consequent on, or incidental to, the navigation of the sea, but to include further perils.

MARINE RISK

There are several risks facing the marine industry that are not new but which are changing all the time; these include political risk, terrorism and piracy. Cyber risk is, of course, a big concern for the marine industry. Vessels increasingly are reliant upon computer systems for navigation, and this opens up the possibility of a ship's course being altered. Cyber poses a very real risk if you are transporting perishable goods – any delay to delivery caused by a cyber event could result in large losses.

A good example of the real threat cyber poses to the marine industry is the two-year-long attack on the Port of Antwerp during which a Dutch criminal gang used the port to transfer drugs hidden in containers carrying bananas and timber, among other things, from South America. The gang hired a group of hackers who hacked the system of two piers in the port which managed the transport, storage and shipment of thousands of containers that pass through the port – one of the busiest in the world – each day. The hack allowed the gang to send in truck drivers to steal the cargo before the real customers arrived to collect their goods.

VARIOUS RISK COVERED BY MARINE INSURANCE

All risk marine insurance is cargo insurance that covers any and all instances of theft, loss, or damage to your cargo. The insurance policy is all-encompassing and covers the following instances of theft, loss, or damage:

- Stranding
- Sinking
- Burning
- Collision
- Fault of vessel management
- Bursting of boilers
- Latent defects in hull
- Explosion
- Water damage
- Heavy weather
- Ships sweat
- Condensation
- Improper stowage by carrier
- Theft or pilferage
- Non-delivery
- Leakage or breakage

RISKS NOT COVERED UNDER MARINE INSURANCE

Marine insurance does not offer any coverage in the following cases

- Loss or damage due to willful act of negligence or misconduct
- Any loss or damages due to delay
- Loss or damage due to improper packing
- Financial default or insolvency of owners, charterers, managers, operators of the vessel
- Loss or damage due to wire, strike, riot, and civil commotion
- Loss or damage arising from nuclear fission, weapon or any other radioactive force
- Collision damage
- Removal of wreck
- Contamination due to radioactive rays
- Attack or damage from biological, biochemical, chemical or electro magnetic weapons

MARINE POLICIES

There are two types of marine policies:

1. VOYAGE POLICY

A time policy is valid for a specified period, generally a year. Its contract lays down the precise minute when the cover comes into effect and when it terminates. While a voyage policy insures the cargo in transit from one place to another, a time policy insures it for a definite period.

A voyage policy suits those businessmen or traders who rarely require marine insurance policies, or who export a relatively small amount of cargo by sea.

2. TIME POLICY

On the other hand, major export houses with a high frequency of voyages prefer a time policy that protects all the cargo that they ship for a specified period.

Suppose a trader insured their cargo through a time policy. Due to personal reasons, the captain of the ship arrives two hours late. As a result, the time covered by the policy runs out, and the cover ceases even though the cargo is still on the high seas.

For such a reason, the cargo is mostly insured on a voyage basis. Coupling the benefits from each end, marine insurance today is mostly an amalgamation of both time and voyage insurance policies.

SUBROGATION

The underlying purpose of a contract of Indemnity insurance is the provision of an agreed indemnity to an assured for a loss. The 'doctrine of subrogation' is often used to describe a series of related legal principles which can be best understood as having two major functions. The first is to prevent the assured from being over-indemnified under the contract of insurance for the loss insured against, at the expense of the insurer. The second is to facilitate recoupment of the insurer for the indemnity paid to the assured—often, though not invariably, at the expense of the party responsible for causing the loss.

The insurer, upon payment under the insurance contract, steps into the assured's shoes in respect of the assured right against third party for the loss suffered. The requirements of subrogation are

- The assured should have a claim against the third party
- The subrogation action has to be brought in the name of the person insured.
- The insurer subrogates only for the amount paid to the assured but no more than that
- The insurer cannot be subrogated into a right of action until he has paid the sum insured and made good for the loss

THE INSURERS RIGHT OF SUBROGATION

SUBROGATION WHERE TOTAL LOSS

On payment by an insurer for a total loss of the whole of the subject-matter insured or, if the subject-matter insured is goods, for any apportionable part of the subject-matter insured, the insurer becomes entitled to assume the interest of the insured in the whole or part of the subject-matter and is subrogated to all the rights and remedies of the insured in respect of that whole or part from the time of the casualty causing the loss.

SUBROGATION WHERE PARTIAL LOSS

On payment by an insurer for a partial loss of the subject-matter insured, the insurer acquires no title to the subject-matter but is subrogated to all the rights and remedies of the insured in respect of the subject-matter from the time of the casualty causing the loss to the extent that the insured is indemnified, in accordance with this Act, by the payment for the loss.

MARINE LOSSES

A **marine loss** is a loss in quantity or quality of commodities that occurs between the time the B/L is issued to the shipping company and the time the shipping company turns over custody and control of the commodities to the Awardee (or the Awardee's designated C&F agent), usually at the port. Marine losses may be discovered when the independent surveyor (as required) attends the discharge of the commodity from the ship, counts or weighs it, examines its condition, and produces a survey report.

An **inland loss** pertains to landlocked countries only, where commodities are received at a port in an intermediate country and then transported to the recipient country. Inland losses may include warehouse handling losses at the port of entry and losses that occur during transportation through the intermediate country to a designated point in the recipient country.

TYPES OF LOSSES

Maritime law can be classified into two

1. Total loss
2. Average loss

1. **TOTAL LOSS** : Total loss can be further classified into Actual Loss and Constructive Loss

A. **ACTUAL LOSS** : Actual Total Loss in Marine Insurance may occur when;

- (i) The insured cargo is physically destroyed such that there is no possibility of salvage or recovery of the goods.
- (ii) The insured cargo is damaged that it ceases to be a thing or description insured. E.g. cement bag turns into concrete due to sea-water contact.
- (iii) The cargo is irretrievably lost. For example, when the ship sinks, the cargo can be retrieved only after a long time and the salvaged goods cannot be of any value to the insured.

B. **CONSTRUCTIVE LOSS** : Constructive Total Loss can take place when the cargo is damaged to such an extent that the cost of saving and repairing or reconditioning of the goods is more than the value of the goods.

2. **AVERAGE LOSS** : If loss is less than total cost, it is called an average loss. Average loss may be Particular or General.

A. **PARTICULAR AVERAGE LOSS** :

There are two types of particular average losses i.e. the Total loss of a part of goods and Goods arrived in damaged condition.

TOTAL LOSS OF A PART OF GOODS:

- (i) When a part of total consignment is lost, this method is applied. Value will be arrived by multiplying the number of items lost with per unit value declared in the invoice.
- (ii) **Arrival of Damaged Goods:** In case, the goods arrive in a damaged condition at the point of destination, the consignee or his agent and ship surveyor attempt to arrive at the agreed percentage of depreciated value of goods for settlement. Say, the depreciated value is arrived at 30%, insurance company will pay the balance 70% of the declared value. If both the parties fail to arrive at a settlement, the damaged goods will be sold, locally, in the open market. To arrive at the claim amount, the sale proceeds will be deducted from the wholesale value of those goods at that place and time where damaged goods are sold. The claim amount and sale proceeds are given to the insured. Auction charges and other incidental expenses have to be borne by the insurer. If the damaged goods can advantageously be repaired, the underwriter pays the repair charges to the insured, not exceeding the insured value.

(B) **General Average Loss:** This may occur whether the goods are insured or not. It results from an intentional sacrifice or expenditure incurred by the master of the vessel to save the ship or goods from danger for the common benefit of the owners of the ship and goods. It needs to be emphasized that the sacrifice or expenditure should be made knowingly, but prudently, and in a reasonable manner.

General average loss in a Marine Insurance would arise in the following circumstances:

- (i) Some goods are thrown to lighten the ship when the ship is caught in a rough weather.
- (ii) Make payment to the nearby agency to tow the ship in danger of sinking to the nearby safe port or
- (iii) Pour water to extinguish fire.

DOUBLE INSURANCE

(1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

(2) Where the assured is over-insured by double insurance—

(a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;

(b) where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation, for any sum received by him under any other policy, without regard to the actual value of the subject-matter insured;

(c) where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;

(d) where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

REINSURANCE

(1) The insurer under a contract of marine insurance has an insurable interest in his risk, and may reinsure in respect of it.

(2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance.

CONCLUSION

Marine insurance is a mechanism that helps to mitigate the risks of financial loss to the property such as ship, goods or other movables, in maritime transport, on the payment of premium by the assured to the insurer. Insurer provides risk cover to the ship-owners or the cargo-owners against loss or damage that the ship or cargo may suffer in transit due to accidents and mishaps in the nature of a financial indemnity. The insurance company undertakes to make good the loss to the maximum value as agreed with the insured perils or risks. Loss is payable only when it has been proximately caused by the insured peril. The marine insurance is governed by the national legal regimes. In India, Marine Insurance Act, 1963, regulates various aspects of marine insurance.

However, the fact that divergent national legal regimes exist, in the conduct of marine insurance business, has certain consequences for the parties to contract, particularly the assured, who will have difficulty in understanding the coverage of foreign insurance market. Without the uniformity in the national marine insurance legal regimes, the international conduct of marine insurance, particularly from the assureds' perspective, would be severely impeded. Hence, given the international character of marine insurance, there is a need for harmonization of the legal regimes governing the rights and obligation of the parties to the insurance contract involving international transport and trade.