

Crew Negligence Cover across Various Markets

Presented to the

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Wooden
Yacht



Sunken Tugboat





Generator
Engine Damage

Collision





Grounding Damage





INTRODUCTION

It is not surprising that when making marine insurance claims many vessel owners are reluctant to admit to their insurance underwriters that the loss they are claiming may have been caused by their own negligence or that of their crew.

This article will provide an overview of the nature of marine insurance hull and machinery coverage provided for acts of negligence and why, it is often important for vessel owners and their claims advisors to seek out and advise underwriters of any such negligence.

NEGLIGENCE OF MASTER AND CREW

(Marine Insurance Act – North America / Canada)

The scope of marine insurance coverage for acts of negligence is governed by both the *Marine Insurance Act (M.I.A.)* and by the contract of marine insurance. With respect to the *M.I.A.*, section 53(1) specifically provides coverage for losses proximately caused by a peril insured against, including those losses that would not have occurred but for the misconduct or **negligence** of the master or crew.

Institute Time Clauses - Hulls

6. Perils

6.1 This insurance covers loss of or damage to the subject matter insured caused by

6.1.1 Perils of the seas, rivers, lakes, or other navigable waters.

6.2.3 Negligence of Master, Officers, Crew, or Pilot.

Institute Additional Perils Clauses – Hulls

1. Insurance is extended to cover:

1.2 Loss of or damage to the vessel caused by any accident or by negligence, incompetence or error of judgement of any person whatsoever.

3. The cover provided in clause 1 is subject to all other terms, conditions and exclusions contained in this insurance and subject to the proviso that the loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers, Master, Officers, Crew or Pilots not to be considered Owners within the meaning of this Clause should they hold shares in the vessel.

Perils of the Sea Clause Coverage for Negligence of Master and Crew:

With respect to the contract of marine insurance, the primary coverage in most cases is provided by the perils of the sea clause. Guidance on the clarification of this clause is included in the “Rules for Construction of the Policy” that are included as a schedule to the M.I.A. These rules provide that in a marine policy, “perils of the sea” means “fortuitous accidents or casualties of the seas, but does not include ordinary action of the wind and waves.” Generally, the courts have understood the term “fortuitous” to mean not intentional and not expected. Since acts of negligence by definition are not intentional and not expected, it follows that negligence is one type of fortuity that can give rise to a loss under the perils of the sea clause.

Typical cases where there would be coverage under the perils of the sea clause for losses arising from crew negligence (including negligence of the master) would involve collisions, groundings, and sinkings. This case involved a converted barge that was being used for research purposes that sunk when a crewmember negligently left a valve open. In finding that there was insurance coverage for this loss, the following explanation of how negligence can be one, of several, possible causes of a fortuitous loss by a peril of the sea was given:

*The accident may consist in some **negligent** act, such as improper opening of a valve, or a hole made in a pipe by mischance, or it may be that seawater is admitted by stress of weather or some like cause bringing the sea over openings ordinarily not exposed to the sea . . . These are merely a few amongst many possible instances in which there may be a fortuitous incursion of seawater.*

Although crew negligence is generally covered by the perils of the sea clause, as discussed below under the heading “Negligence of Owners” under some circumstances if a vessel owner sends its vessel to sea with an inadequately trained crew there may be a denial of perils of the sea coverage.

Inchmaree Clause

In marine insurance, extension of cover to include damage or loss due to latent causes such as breakage of the ship's drive shafts, bursting of its boilers, unseen defects in its hull, machinery, and auxiliary equipment; as well as due to errors in navigation, or negligence of its captain, officers, engineers, crew, pilots, etc. It is named after the ship Inchmaree involved in a landmark 1887 case where a UK court declared that the above causes do not fit the definition of 'all other perils ... losses or misfortunes.'

Inchmaree Clause Coverage for Negligence of Master and Crew:

In addition to coverage for crew negligence under the perils of the sea clause, most contracts of marine insurance extend coverage for such acts of negligence by way of a clause that is often referred to as the “Inchmaree” clause or additional clause. For example, the form of the clause commonly used on the West coast of Canada (CHP, 1991) specifically provides coverage for additional damage including accidents in loading, explosions, breakage of shafts, or shifting of cargo. However, since the coverage in this clause involves matters over which the owner has control, it includes a due diligence requirement by the “Assured, Owners or Managers.” Accordingly, failure of the owners or managers to adequately train crew can be grounds for denial of coverage for crew negligence.

Since it can be quite difficult in the case of a vessel owned by a corporation for the vessel's underwriter to prove lack of due diligence on the part of the managers of the corporation, underwriters in England have narrowed the coverage under the Inchmaree clause by extending the due diligence requirement to apply also to superintendents and on shore management of the insured. However, this change has not been adopted in the clause commonly used in British Columbia.

Since the Inchmaree clause has a due diligence requirement, a claim that falls under the peril of the seas clause is easier for a vessel owner to establish than a claim under the Inchmaree clause.

NEGLIGENCE OF OWNERS

Whether or not marine insurance coverage is available for negligence of owners, as compared with negligence of crew (including the master), will depend upon the circumstances of each case and which insurance clause the claim is being made under.

Inchmaree Clause Coverage for Negligence of Owners:

With respect to coverage for on board negligence of owners under the Inchmaree clause, specifically provides that crew will not be considered owners even if they own all or part of the vessel. Accordingly, it follows that a loss caused by the negligent conduct of an owner/operator while working as a master or crew member will not be excluded under the due diligence provision of the Inchmaree clause.⁹

With respect to exclusions from coverage for negligence of owners, as briefly discussed above, negligence of an owner with respect to supplying a competent crew can cause a rejection of coverage under the Inchmaree clause. A rejection of coverage under the Inchmaree clause was supported by the court because of a want of diligence on the part of the owner of a vessel in failing to supply the master with available stability information. Similarly, lack of due diligence by owners with respect to other items covered by the Inchmaree clause such as inspection for latent defects can also result in a rejection of coverage. Another specific exclusion is negligent repairs by the assured, unless the assured is operating a commercial repair facility.

Perils of the Sea Clause Coverage for Negligence of Owners:

With respect to losses claimed under the perils of the sea clause, although the *M.I.A.* does not specifically include coverage for negligence of owners as it does for crew, the legal cases reading the *Act* have, for the most part, held that “negligence on the part of the assured . . . does not exempt the insurer from liability though the loss is caused thereby, for one of the main objects of insurance is to protect the assured against the consequences of negligence”. The main exception or limit to this rule is contained in s. 53(1) of the *M.I.A.*, which excludes liability for any loss attributable to the “wilful misconduct of the insured.”

Other situations where negligence of the owner could cause a loss of coverage under the perils of the sea clause include:

- (a) The breach of a warranty implied into a voyage policy, that at the commencement of the voyage the vessel will be Seaworthy.
- (b) The sending of a vessel insured under a time policy to sea in an unseaworthy state, with the privity of the assured.

Another situation where negligence of an owner could cause a reduction rather than loss of coverage (that is most likely to arise under a perils of the sea claim) is when the assured breaches its duty to take actions to avert or minimize a loss after it has occurred. Examples would include the failure to make any reasonable efforts to save a ship that has grounded or the failure to make reasonable efforts to put out a fire that has started.

We believe crew negligence is a complex issue that is not necessarily resolved by shipowners spending more money. A number of factors including consumers demanding the lowest prices for goods and a shortage of well-trained quality crew in the first place and the fact that seafaring is not seen as an attractive career by many graduates has resulted in a number of issues. For example, crews with lower standards of qualifications and training; language problems leading to issues with communication and understanding maintenance manuals; and modern crew relying too much on computer data. “Underpinning all of this is the fragmented regulatory environment concerning the operation of ships and crew. Many bodies have little teeth in enforcing any regulations which often take a long time to get passed in the first place,” he adds. “It is relatively easy for the less diligent ship operator to circumnavigate the blue chip classification and flag states which means a vessel can be crewed with cheap labor and charge competitive freight rates which can be attractive to shippers.”

Simple Negligence & Gross Negligence

While simple negligence is acting or failing to act in a manner that a reasonably prudent person would act in the same circumstances, gross negligence is doing so with knowledge that a certain loss would probably result. Put another way, gross negligence is intentionally undertaking an u A final consideration is that many insurers will not provide coverage for losses that result from either gross negligence or criminal negligence.

P & I Club

Injury to a crew member

A Filipino engineer slips, falls down a flight of stairs and sustains a serious back injury while on board the vessel. A substitute is sent to replace the repatriated engineer, who has to undergo surgery and receive follow up physiotherapy and rehabilitation. He is declared fit for duty 80 days after he was repatriated. According to his contract of employment, the crew manager is liable for the cost of repatriation, sick pay, and medical treatment until he recovers and is considered fit for shipboard duty.

P & I Club

Negligence of a crew member

A shipowner uses a crew management company to man a fleet of container vessels. At a port in Europe, a crew member goes on shore leave and heads into the nearby city. He does not return to the ship in time for departure and misses the voyage to the next port in Asia. This is classed as crew negligence and the manager is liable for related costs.

P & I Club

Death of a crew member

A Filipino seafarer dies on board as a result of heart disease. The body is removed when the vessel arrives at the next scheduled port. An autopsy is carried out to determine the cause of death, after which the body is prepared for repatriation. The seafarer leaves behind a widow and two young children. The crew management company, as the seafarer's employer, pays compensation for the death to the beneficiaries in accordance with the terms of the applicable collective bargaining agreement.

CONCLUSION

Subject to the fairly limited exceptions described above, it can be seen that marine hull and machinery insurance provides broad coverage for on board negligent actions of crew (including masters) and owners of vessels. Accordingly, when assisting vessel owners in preparing marine insurance claims, claims advisors should caution vessels owners against minimizing or hiding negligent conduct. Vessel owners and their crew should be reminded that the purpose of marine insurance is to insure against marine losses caused by fortuities, including negligent conduct aboard the vessel. To the extent that a loss involves a non-marine peril covered only by the Inchmaree clause, it would also be useful for vessel owners to present records demonstrating regular inspection and maintenance of machinery and training of crew.

Claims *about* the crew are claims for loss and damage suffered by other persons and their property because of the acts and omissions - or human errors - of the crew. This part of the paper considers the legal aspects of such claims and how they can be avoided by proper crew selection procedures and proper training.

When looking at claims about the crew it is useful to divide them into two categories: claims the crew were negligent, and claims the crew were incompetent. From a legal perspective the distinction is important for ship owners (and managers) who, as employers, can be held vicariously liable for the acts and omissions of their employees, the crew. With several third party claims (i.e. cargo claims) the ship owner can avoid liability for loss and damage arising from the crew's negligence in certain circumstances but any defences he might otherwise raise for such claims will be severely prejudiced in the event the crew are found to be incompetent.

Claims the crew were negligent

In what circumstances can crew members be said to have been negligent?

There are a large number of legal cases dealing with negligence and I do not propose to set out the law in detail in this paper. The most common definition however is the "reasonable man test" propounded by Baron Alderson in *Blyth v Birmingham Waterworks* (1856) 11 : Ex 781. Basically what he said was negligence was the omission to do something which a reasonable man, taking into account the considerations which ordinarily regulate the conduct of human affairs, would do; or doing something which a prudent and reasonable man would not do. From a legal perspective, the duty of care expected of a person relates to the post which he occupies. In a seafaring context this means the duty of care expected of a Master is that to be reasonably expected of a Master; the duty of a Chief Officer is that to be reasonably expected of a Chief Officer etc. The standard of care required is a question of law but whether or not that standard has been attained in any given case is a question of fact for the court to decide having regard to all the circumstances of the case. In this regard the court is likely to take into account industry standards of conduct e.g. International Regulations for Preventing Collisions at Sea and the Code of Safe Working Practices for Seamen. To sum up, a seafarer will be negligent when performing any task or duty if he fails to meet the requisite standard of care i.e. he does not exercise the necessary skill to be reasonably expected from somebody of that rank when carrying out that task or duty.

Claims the crew were incompetent

What is incompetence and how does it differ from negligence?

There is a fine line. A seafarer will be incompetent when he does not possess the necessary skill to carry out the particular task or duty whereas he will be negligent if he possesses the necessary skill but fails to carry it out.

From a legal perspective a seafarer can be incompetent because of:-

- An inherent lack of ability (i.e. seafarer does not have necessary qualifications and experience to perform the particular task);
- A lack of adequate training or instruction (i.e. seafarer has never been trained to use the particular equipment on board);
- A lack of knowledge about the ship and its systems (i.e. unfamiliar with systems onboard);
- A disinclination to perform his job properly notwithstanding his qualifications (i.e. habitual failure to perform);

or

- A physical or mental disability or incapacity, e.g. drunkenness, drug use.

Most allegations of incompetence concern an inherent lack of ability or adequate training or instruction in relation to the ship or its systems. Ships are becoming increasingly complex and owners need to adapt by implementing higher standards of training for their crews or face the consequences.

STCW Convention and ISM provisions

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (1978) ("STCW Convention") requires that all seafarers should be properly qualified for the position that they hold on board and that they should be able to communicate properly

in English. A seafarer is required to undergo the necessary training at an approved institution

and to have acquired the necessary sea time before he can sit the appropriate examinations for

professional certificates; and to be medically fit and have a good command of the English language.

Additionally, ship owners are now required in their ISM manuals to define the responsibility,

authority and level of competence required of each crew member.

Crew Selection

As regards crew selection, a ship owner must exercise due diligence to ensure that the crew they select are competent - they frequently delegate this duty to a manager who in turn delegates to a crewing agent. The bottom line however is that the owner is responsible if proper enquiries are not made or if certificates are not properly checked etc. The ship management contract usually contains a clause which obliges a ship manager to employ crew that meet a certain industry standard. It may be the case therefore that the ship management contract if entered into with a reputable manager will show that an owner has exercised due diligence with regard to crewing. However, the due diligence obligation also probably extends to a duty to ensure that a proper manager is appointed and that the functions of the manager (to employ competent crew) are being carried out.

Extent of Due Diligence

As regards due diligence, we have seen that there is an obligation on the ship owner to exercise due diligence with regard to the employment of competent crew but the obligation goes much further than this. The ship owner also has an obligation to train the crew in the operation of the vessel and in this regard he must ensure that they are briefed and trained in relation to proper procedures such that they can cope with any reasonably foreseeable event. Ship owners are also obliged to deal with ISM and SMS procedures and new legislations such as the security code for ships and ports. For examples of the Courts approach in relation to due diligence.

Insurance claims

It is also important to bear in mind that crew negligence is an insurable risk. The owner of a ship therefore can recover where his ship has suffered loss or damage as a result of crew negligence but he may not be able to recover where the cause of the loss is the fact that the ship has been sent to sea with an incompetent crew and the ship owner personally knew of this situation.

Summary

What conclusions can we draw from the above? Simply put that in the shipping world the ship owner is faced with many problems, many of which can be brought about by his crew. The crew's actions or inactions can prejudice the shipowner's legal defence to a cargo claim and/or his hull cover. The answer is for the owners to ensure that they comply with their legal obligations when it comes to the employment, training and certification of their crews and to make sure that they attain the "standard" (as the Court sees it at the time) of the "reasonable" ship owner. This standard however is not a fixed target but has developed over time such that shipowners now have to exercise greater care than ever when it comes to keeping their crews & trained and up to date with new developments.

**BASIC PRINCIPLES OF
INSURANCE & DAMAGE
SURVEY, CAUSE OF LOSS
WITH SPECIFIC
REFERENCE TO CREW
NEGLIGENCE**



Date: 12th May 2015

RISK

ORIGIN- Mid 17th Century

French 'Risque' and Italian 'Risco' - meaning danger

Meaning as verb:

Exposure to danger, harm or loss.

Example - Smoking is a health risk.

Meaning as noun:

A situation involving exposure to danger.

Example – Breaking the law is too much of a risk.

RISK is an uncertainty where neither the probability nor the mode of the occurrence is known.



UNCERTAINTY VS. RISK

- ⇒ **Are you willing to pay a price for the protection against risk and uncertainty?**
- ⇒ **Some see risk as an opportunity. Others see it as a problem.**
- ⇒ **Why risk which sounds danger can be an opportunity to someone?**
- ⇒ **Why risk is a problem to someone?**
- ⇒ **Can we measure risks in monetary terms? Can such risks cause financial loss to us or to someone?**

UNCERTAINTY VS. RISK



**RISK IS AN
ADVENTURE
FOR THIS
GENTLEMAN**

RISK CATEGORIES & CLASSIFICATIONS

Risk can be categorized as:

FORESEEN RISK

An expected outcome of some actions and reactions

- **Over speeding causing accident**
- **Smoking and lung cancer**
- **Accident - reckless driving**

UNFORESEEN RISKS

An unexpected happening

- **Natural calamities /earthquake & storm**
- **Sudden and unexpected accidents**

MARINE HULL INSURANCE



WHO CAN INSURE

ALL THOSE HAVING AN INSURABLE INTEREST
IN THE SUBJECT MATTER TO
BE INSURED CAN BUY INSURANCE

MARINE HULL INSURANCE

SCOPE OF COVER

- ⇒ **Marine Hull - Hull & Machinery & everything connected therewith on:
All ocean going vessels/ships of any dimensions and value.**
- ⇒ **Value Split defined as : H & M & Increased Value for major ship owners/operators.**
Value Split as per industry practice : 80/20 split depending on the client requirement – to be agreed.
- ⇒ **Damage repairs upto Hull Value; Increased Value applicable in case of CTL or TL.**

MARINE HULL INSURANCE

CONDITIONS OF COVER

- ⇒ **Mainly: Institute Time Hulls Clauses 1.10.1983 or International Hull Clauses popularly known Institute Clauses.**
- ⇒ **In the 19th Century, Institute of London Underwriters developed standardized clauses for use with Marine Policies both Hull and Cargo.**
- ⇒ **In 1991 London Underwriters produced revised Marine Policy Form known as MAR 91.**
- ⇒ **The Policy Jacket states that the Insurer agrees in consideration of the payment to them by or on behalf of the of the premium specified in the Schedule to insure against loss damage liability or expenses in the manner provided.**

INSTITUTE TIME CLAUSES

➔ **Navigation** : Vessel is covered at all times and has leave to sail or navigate with or without pilots to go on trial trips and to assist and tow vessel or craft in distress.

➔ **Continuation** : Should the vessel at the expiration of the insurance be at sea or in distress or at a port of refuge or of all, she shall, provided previous notice is given be held covered subject to pro rata premium to her port of destination.

➔ **Termination** : Paramount Clause - Unless underwriters agree to the contrary, insurance shall lapse at the time of:

- ✓ Change of the Classification Society of the vessel or change, suspension, discontinuance , withdrawal or expiry of her class.
- ✓ Any change, voluntary or otherwise, in the ownership or flag, transfer to new management, or charter on a bareboat basis or requisition for title or use of the vessel.

Marine Insurance Proximate Cause of loss

- Importance of establishing Proximate cause (Causa proxima) under the Policy.
- Proximate cause means the active, efficient cause that sets in motion a train of events which brings about a result without the intervention of any force started and working actively from a new and independent source.
- In determining whether there is a valid claim, it is necessary to ascertain the proximate cause.
- This can be done by careful and detailed inspection of the vessel and its machinery , review/ assessment of vessels records and allegation as to the cause of proximate loss or damage by independent Surveyors/Loss Adjusters.
- The proximate cause of loss or damage thus established will have to be one of the perils insured against under the Policy for the claim to be valid.
- Perils insured are stated under the Clauses attached to the Policy. A careful review of it is required to ensure that the loss is covered or not.
- In any case an independent Consultant Surveyor or Expert is required to be appointed by Assured so as to advise them about various aspects of the loss and how to go forward in supporting a claim under the Policy.

Marine Insurance Cause of loss

- Vast majority of marine claims on vessels are settled without much difficulty.
- Problems arise out of machinery damage claims.
- The scope coverage for machinery damage claims is governed by section 53 of the Marine Insurance Act 1906 and similar laws of each country.
- The Act excludes any loss or damage to machinery not proximately caused by maritime perils unless the policy provides otherwise.
- Most marine Policies extend coverage for damage to machinery in a clause that is often referred to as “Inchmaree” clause named after the name of the ship whose claim for machinery damage was rejected by the insurers. The extended clause reads:
 - This insurance covers loss of damage to the subject matter insured caused by:
 - Accidents in loading discharging or shifting cargo or fuel
 - Bursting of boilers breakage of shafts or any latent defect in the machinery or hull
 - Negligence of Master Officers Crew or Pilots
 - Negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder.
 - Barratry of Master Officers or Crew.
 - This clause is subject to want of due diligence by the Assured, Owners or Managers.

Marine Hull: Loss caused by Crew Negligence

- In establishing a claim for machinery damage the ship owner should ensure that the loss was caused by one of the named perils under the “Inchmaree” or additional perils clause such as negligence of the crew, repairer, latent defect etc.
- Since coverage under this clause is subject to want of due diligence, it is essential to support such a claim with credible evidence that due diligence was exercised by producing periodical repair and maintenance records.
- In other words simply by alleging crew negligence is not enough for the claim to proceed.
- Even when you have a valid Policy of insurance, it does not necessarily mean that you are going to be covered for very machinery damage claim particularly for losses that do not involve maritime perils.
- Well kept maintenance records, crew training and by regularly inspecting your vessels and its equipment for defects etc can put the owner in a very strong position to support a claim under the extended clauses.
- Another limitation of making a claim under the “Inchmaree” or additional perils clause is that the cost of making a claim for replacing the defective part itself is not covered unless this clause is further extended.
- Defective part cover is available under another clause called “Liner Negligence” .

Marine Hull: Loss caused by crew negligence

- Crew negligence today is alleged as the major cause of machinery damage claims.
- IUMI Statistics @ 2014 shows that 35% of the claims paid in 2014 was for machinery damages.
- World Statistics as IUMI :
- Weather related: 2%
- Grounding 28%
- Fire/Explosion 10%
- Collision/Contacts 20%
- Hull Damage 3%
- **Machinery damage 35%**
- Others 2%

Importance note to avoid Machinery damage claims which account for major loss of income for the vessel owners.

Healthy and structured maintenance plan in place

Recruitment of properly qualified crew

Periodic Training for them in vessel operation and maintenance.

Close supervision and provision of adequate spares on board.

INSTITUTE ADDITIONAL PERILS CLAUSE

Subject to an additional premium coverage is extended to:

- ➔ **Cost of repairing or replacing any boiler which burst or shaft which breaks.**
- ➔ **Any defective part which has caused loss or damage to the vessel covered under clause 6.2.2. of ITC Hulls.**
- ➔ **Loss of or damage to the vessel caused by any accident or by negligence, incompetence or error of judgment of any person whatsoever.**
- ➔ **Earthquake, volcanic eruption or lightning.**

No claim shall be allowed for the cost of repairing or replacing any part found to be defective as a result of a fault or error of judgment or construction and which has not caused loss or damage to the vessel.

The Additional perils clause is subject to the provision of want of due diligence from the Assured or Managers.

MARINE INSURANCE ACT 1906

MARINE INSURANCE ACT 1906 AN ACT OF UK PARLIMENT REGULATING MARINE INSURANCE

⇒ **The Marine insurance Act 1906 is of very high importance as it dominates the marine insurance industry worldwide.**

MIA defines Marine Insurance as a contract whereby the insurer undertakes to indemnify the assured in a manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure.

**SCHEDULE 1
LIST OF
DEFINITIONS**

**SCHEDULE 2
MODEL POLICY
WORDING**

IMPORTANT PROVISIONS

S.4: INSURABLE INTEREST

- ✓ A person has an insurable interest who is interested in the subject matter insured whereby he stands to benefit by its safety or may be prejudiced by its loss, damage, detention or may incur liability.

When the interest much attach:

- The Assured must be interested in the subject matter insured at the time of the loss though he need not be interested when the insurance is effected.
- Where the assured has no interest at the time of the loss, he can't acquire interest by any act or election after he is aware of the loss.

- ✓ A defeasible or contingent interest is insurable. Example : A Buyer of goods.
- ✓ A partial interest of any nature is insurable.
- ✓ Advance freight is insurable so far as it is not repayable in case of loss.
- ✓ The lender of money has an insurable interest in respect of the loan.
- ✓ The Assured has an insurable interest in respect of the premium paid.
- ✓ The mortgagor of a property has an insurable interest.
- ✓ A Mortgagee or a consignee or other persons having an interest in the subject matter insured has an insurable interest.

MARINE INSURANCE ACT 1906

IMPORTANT PROVISIONS

s.15: ASSIGNMENT OF INTEREST

Where the assured assigns or otherwise parts with his interests in the subject matter insured, he does not thereby transfer his rights under the contract of insurance to the assignee unless it is specifically agreed.

A insurer under contract of insurance has an insurable interest and may reinsure part of it. An original Assured has no interest in the reinsurance.

s.16: INSURED VALUE

Insurable value on a ship is the value at the commencement of the risk including her outfit machinery and ordinary fittings required for the trade provisions, stores, and other disbursements. Insurable value of cargo is the prime cost of the property plus the expenses of and incidental to shipping and charges.

For all others it is the amount at the risk of the assured when the policy attaches plus the charges

MARINE INSURANCE ACT 1906

IMPORTANT PROVISIONS

s.17 & 18 : UBERRIMAE FIDES (Utmost Good Faith) & DISCLOSURE

Marine insurance is a contract based on utmost good faith and if utmost good faith can not be observed by either party, the contract may be avoided by either party.

Assured must disclose to the insurer, before the contract is concluded, every material circumstances which is known or deemed to be known in the ordinary course of the business or ought to be known by him. If the Assured fails to make such disclosure, the insurer may avoid the contract.

In the absence of enquiry, the following circumstances need not be disclosed.

- ✓ Any circumstances which diminish the risk
- ✓ Known or presumed to be known to the insurer
- ✓ Any circumstance to which information is waived.
- ✓ Any circumstance which is superfluous to disclose by reason of any express or implied warranty.
- ✓ The disclosure requirements continue for Agents affecting the insurance as well.

MARINE INSURANCE ACT 1906

IMPORTANT PROVISIONS

s.21: WHEN CONTRACT IS DEEMED TO BE CONCLUDED

A contract of insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer.

s.22: CONTRACT MUST BE ENBODIED IN POLICY

The contract of insurance is inadmissible as evidence in a court of law unless it is embodied in a Policy signed on behalf of the insurer.

s.27: VALUED POLICIES

Valued policy is which specifies the agreed value of the subject matter insured.

s.28: UNVALUED POLICIES

An unvalued policy is one which does not specify the valued of the subject matter insured, but subject to the limit of the sum insured, leave the insurable value to be ascertained.

MARINE INSURANCE ACT 1906

IMPORTANT PROVISIONS

s.33: WARRANTIES

- i. A warranty means a promissory warranty, by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.
- ii. A warranty may be express or implied.
- iii. A warranty as defined by the Act is a condition which must be exactly complied with, whether it be material to the risk or not.

If it is not complied with, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

s.34: WHEN BREACH OF WARRANTY EXCUSED

- i. Non compliance with the warranty is excused when by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract or when compliance with the warranty is rendered unlawful.
- ii. When the warranty is broken the assured can not avail himself of the defense that the breach has been remedied and the warranty complied with before the loss.
- iii. A breach of warranty may be waived by the insurer.

MARINE INSURANCE ACT 1906

IMPORTANT PROVISIONS

s.35: EXPRESS WARRANTIES

- i. An express warranty may be in any form of words from which the intention to warrant is to be inferred.
- ii. An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy.
- iii. An express warranty does not exclude an implied warranty, unless it be inconsistent therewith

Example: Warranted condition survey by ABC company within 30 days of commencement of risk.

s.39: WARRANTY OF SEAWORTHINESS OF SHIP

- i. In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.
- ii. Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.
- iii. A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.
- iv. In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

IMPORTANT PROVISIONS

s.40: NO IMPLIED WARRANTY THAT GOODS ARE SEAWORTHY

- i. In a policy on goods or other moveables there is no implied warranty that the goods or moveables are seaworthy.
- ii. In a voyage policy on goods or other moveables there is an implied warranty that at the commencement of the voyage, the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other moveables to the destination contemplated by the policy.

s.41: WARRANTY OF LEGALITY

There is an implied warranty that the adventure insured is lawful one.

s.43: ALTERATION OF PORT OF DEPARTURE

Where the place of departure is specified in the policy, and the ship sails from another port, the risk does not attach.

s.44: SAILING FOR DIFFERENT DESTINATION

Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach.

MARINE INSURANCE ACT 1906

IMPORTANT PROVISIONS

s.50: ASSIGNMENT OF POLICY

- i. A Marine Policy is assignable.
- ii. It may be assigned either before or after loss.
- iii. Where the beneficial interest in the policy is passed to the assignee, he is entitled to sue thereon in his own name.

s.51: ASSURED WHO HAS NO INTEREST CANNOT ASSIGN

Where the Assured has parted with or lost his interest in the subject matter insured cannot assign.

s.52: WHEN PREMIUM PAYABLE

Unless otherwise agreed, it is the duty of the Assured or his Agent to pay the premium the insurer.

s.53: POLICY EFFECTED THROUGH BROKER

Broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium.

The Broker has a lien upon the policy for the amount of premium and his charges in respect of effecting the policy.

Unless otherwise agreed, it is the duty of the Assured or his Agent to pay the premium the insurer.

MARINE INSURANCE ACT 1906

IMPORTANT PROVISIONS

s.67: MEASURE OF INDEMNITY

This legal principle is that in the event of a loss or damage to the subject matter insured, the Policyholder should be restored to the same financial position that existed immediately prior to the loss or damage.

s.79: RIGHTS OF SUBROGATION

Subrogation is the principle by which the insurer takes over the right of the Assured against third parties following settlement of the loss or take over the title to what remains of the property to the extent that Assured has been indemnified.

s.55: EXCLUDED LOSSES

Unless the policy otherwise provides the insurer is not liable to a loss not proximately caused by a peril insured against. In particular:

- ✓ The insurer is not liable for losses caused by:
 - * Willful misconduct of the assured
 - * Delay although the delay may be caused by a peril insured against
- ✓ Ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject matter insured or for any loss proximately caused by rats vermin or for any injury to machinery not proximately caused by a peril insured against.
- ✓ Coverage is subject to the provision of 'new for old'.

**MV KASHMIR – COLLISION
IN DUBAI, 2009**



MARINE CAUSLATIES – OIL POLLUTION



MV PRESTIGE – SUNK – STRUCTURAL COMPROMISE

YACHT ON FIRE AT THE MARINA



NEW YACHT ON FIRE, DUBAI MARINA – DECLARED TL

PROTECTION & INDEMNITY CLUBS

- ➔ **In the early days, shipowners were left with no protection against risks not covered under the H&M Policy.**
- ➔ **They had therefore, formed their own associations known as Mutual Protection and Indemnity Clubs.**
- ➔ **These mutual P & I Clubs cover the risks at a cost depending on the tonnage of the fleet or vessel entered in the Club's register.**
- ➔ **Claims of the unfortunate few are met from these contributions.**
- ➔ **Additional contributions known as calls are made when claims frequency increases.**

MARINE HULL INSURANCE

PROTECTION & INDEMNITY COVER

➔ The cover provided is against a legal liability as owner of the vessel for any claims, demands, damages and/or expenses, where such liability is in consequence of any of the following arising from an accident or occurrence during the period of the policy:

- * Loss or damage to any fixed or moveable object or property or other thing or interest whatsoever other than the vessel.
- * Removal of wreck including the wreck of the insured vessel. Liability assumed by Assured under contract of customary towage of vessel for the purpose of entering or leaving port etc.
- * Loss of life, personal injury, illness or payments made for life salvage.

MARINE HULL INSURANCE

PROTECTION & INDEMNITY

➔ **Liability under LOF Salvage. Additional coverage:**

- * **Cost of fuel, insurance wages, stores, provisions and port charges reasonably incurred for the purpose of landing from the vessel sick, injured, or stowaways refugees or persons saved at sea. Additional expenses brought about by the outbreak of infectious diseases on board the vessel or shore (crew).**
- * **Fines imposed on the vessel, or Assured or on any of the crew or agent for any act or neglect or breach of regulation relating to the operation of the vessel.**

➔ **The expenses of removing the wreck of the insured vessel.**

➔ **Legal costs incurred by Assured.**

MARINE HULL INSURANCE

PROTECTION & INDEMNITY

→ Exclusion:

- ✓ Workmen Compensation payments
- ✓ Punitive or exemplary damages
- ✓ Cargo or other property carried on board
- ✓ Property owned by builders or repairs carried on board
- ✓ Liability under a contract or indemnity in respect of containers or equipment which is owned or leased
- ✓ Cash, negotiable instruments, or precious stones
- ✓ Fuel, wages, insurance, stores, port charges arising from delay
- ✓ Fines, or penalties arising from overloading or illegal fishing
- ✓ pollution or contamination of any real or personal property
- ✓ GA, S & L, S. charges, salvage &/or collision liability

Assured to give prompt notice of any claim, Should not admit or settle any claim without the prior approval of the underwriter.

Marine Cargo Survey

- Invite Carrier or other T.P. involved for joint survey- Notify all in advance so that they attend.
- Timely attendance and completion of FSR.
- Ascertain proximate cause of damage and endeavor to reach a consensus among the attendees to protect recovery. Obtain signature on FSR .
- Send copy of signed FSR to Department and all concerned.
- Ensure that Assured obtain timely remarks on the delivery notes. Accident report, Police report
- Collect as many supporting documents as possible.
- Timely issuance of survey report with full details & costs.

Marine Cargo Survey

- Continue to coordinate with Assured for carry out follow up survey if necessary.
- Monitor costs and timely approval and issue of addendum report as required.
- Ensure to convey survey findings to Carrier/TP
- Estimated amount of claim/quotes to be provided to Carrier/TP for agreement.
- Clarity of contents of survey report

MARINE CARGO INSURANCE

RISKS COVERED

1

This insurance covers all risks of loss of or damage to the subject matter insured except as provided in clauses 4, 5, 6 and 7.

General Average clause

2

This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in clause 4,5,6, 7 or elsewhere in this insurance.

Both to blame collision clause

3

This insurance is extended to indemnify the Assured against such proportion of liability under the contract of affreightment “both to Blame Collision” Clause as is in respect of a loss recoverable hereunder. In the event of any claim by shipowners under the said clause the Assured agree to notify the Underwriters who shall have the right, at their own cost and expense, to defend the Assured against such claim.

MARINE CARGO INSURANCE

EXCLUSIONS

4

In no case shall this insurance cover:

- 4.1. loss damage or expense attributable to willful misconduct of the Assured.
- 4.2 Ordinary leakage, ordinary loss in weight or volume or ordinary wear and tear of the subject matter insured.
- 4.3 loss damage or expense cause by insufficiency or unsuitability of packing or preparation of the subject matter insured (for the purpose of this Clause (4.3 “packing” shall be deemed to include stowage in a container or liftwan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants.
- 4.4 loss damage or expense cause by inherent vice or nature of the subject matter insured
- 4.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expense payable under clause 2 above.
- 4.6 loss damage or expense arising from insolvency or financial default of the owners managers chartered or operators of the vessel
- 4.7 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

MARINE CARGO INSURANCE

EXCLUSIONS

5 Unseaworthiness & Unfitness Clause

6 War Exclusion Clause

7 Strikes Exclusion Clause

DURATION

8.1 The insurance attach from the time the goods leave the warehouse or place of storage or the place named herein for the commencement of the transit, continue during the ordinary course of transit and terminates either :

On delivery to the consignee or other final warehouse or place of storage at the destination named herein

OR

On the expiry of 60 days after completion of discharge oversee of the goods hereby insured from the oversea vessel at the final port of discharge,

whichever shall first occur

MARINE CARGO INSURANCE

DURATION

8

8.2 If, after discharge overside from the vessel at the final port of discharge, but prior to termination of this insurance, the goods are to be forwarded to another destination, this insurance, whilst remaining subject to termination as provided for above, **shall not extend beyond the commencement of transit to such other destination.**

8.3 This insurance shall remain in force **(subject to termination as provided for above and to the provisions of Clause 9 below)** during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.

9

If, beyond the control of the Assured either the contract is terminated at a port or place other than the named destination or the transit is terminated before delivery of the goods **then this insurance shall also terminate unless prompt notice is given to the Underwriters and continuation of cover is requested, subject to an additional premium if required by the Underwriters,** either

9.1 until the goods are sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the goods hereby insured at such port or place, whichever shall first occur,

OR

9.2 if the goods are forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named herein or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

10

Where, after attachment of this insurance, the destination is changed by the Assured, held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters.

MARINE CARGO INSURANCE

CLAIMS

- 11** In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.
- 12** When as a result of a risk covered by this insurance, the transit is terminated at a port or place other than that to which the subject-matter is covered under this insurance, the Underwriters will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter to the destination to which it is insured hereunder.

BENEFITS OF INSURANCE

- 15** This insurance shall not inure to the benefit of the carrier or other bailee.

MINIMISING OF LOSSES

- 16** It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder to take reasonable measures for the purpose of averting or minimizing such losses & to ensure all rights against carriers, bailees or other third parties are properly preserved and exercised.

AVOIDANCE OF DELAY

- 18** It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

LAW & PRACTICE

- 19** This insurance is subject to English law and practice

OVER DIMENSION CARGO TRANSPORT - LAND



MV HYUNDAI FORTUNE – MARCH 2006



MV HYUNDAI FORTUNE – SEVERELY DAMAGED DUE TO ACCIDENTAL EXPLOSION & FIRE

Marine Cargo damage survey

- Damage survey requirements
- Timely attendance for damage survey
- Interest insured and items subject of the damage survey to be properly identified.
- Timely Notice of Loss of to carriers and other third party involved.
- Joint Survey and agreement on the proximate cause of loss to protect recovery rights.
- Damage remarks from the Port, Accident report, Police report and another other relevant documents in support of the damage

Marine Cargo damage survey

- Timely issuance of report with full details and indication of the cost, if possible.
- Damage remarks from the Port, Accident report, Police report and another other relevant documents in support of the damage
- Clarity of details in the report
- Coordination with the Insured for follow up survey, if necessary.
- Monitor costs and approval of cost.

