Marine Insurance - Principles & Practice

The main players - *dramatis personae*

- Insured
  - ***Brokers***
  - ***Intermediaries***
- Cf Life Assurance
  - ***Assured***
- Insurers
  - ***Agents***
  - ***Syndicates @ Lloyd's***
  - ***(Brokers for paying premiums)***

Proposals, slips and policies

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Marine Insurance - Principles & Practice

Where they play … the main markets

- **London**
  - Lloyd's
  - International Underwriting Association (IUA)
  - London-managed P&I Clubs
- **Scandinavia**
  - Marine Insurance Plan
  - Scandinavian P&I Clubs
- **Europe**
  - Antwerp
  - Germany
  - Switzerland
- **Japan**
- **China**
- **USA**
- **Reinsurance**

Marine Insurance: What they insure

- Loss insurance (*premium)*
  - ***Lloyds MAR Policy***
  - ***Institute Clauses:***
    - *Hull - H&M*
      - ***Time***
      - ***Voyage***
      - ***War & Strikes***
    - *Cargo -*
      - ***"A" All Risks***
      - ***"B" & "C"***
      - ***War Risks & Strikes***
    - *Freight*
      - ***Time***
      - ***Voyage***
      - ***War & Stikes***

- Liability insurance *(mutual)*
  - ***P&I Club cover***
  - ***FD&D cover***

- Liability insurance (fixed premium)

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Time & Voyage policies

- Time cover
  - ***Fixed period + continuation***
- Voyage cover
  - ***"from" - from the time of sailing form named port***
  - ***"at & from" - on arrival at named port***
- Implied terms in <u>voyage policies:</u>
  - ***seaworthy at commencement of each voyage or stage of a voyage***
  - ***no change of voyage after attachment of risk***
  - ***no deviation from geographical/contractual route***

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History of Marine Insurance

- Merchants sailed with their goods
- Babylonian loan
  - ***Hammurabi's Code - 2250BC***
- Maritime Loan
  - ***Justinian 5thC AD***
- Guilds of the Middle Ages
- Pope Gregory IX
  - ***maritime loan is usury - 1236 AD***
- Italian **simulated sale**
- **Lex Mercatoria's** premium insurance
- Spread through Europe...
  - ***Via Spain***
    - *Barcelona 1435*
    - *Burgos 1538*
    - *Bilbao 1560*
    - *Philip and the Duke of Alba*
      - ***The Netherlands inherited***
      - ***Antwerp - 1564 prohibition***
- And France
  - ***Philip the Good of Burgundy - 1459***
- To UK in Lombard Street
  - ***Henry I's Warrant***
  - ***Evicted by Elizabeth I in 1601[43 Eliz c 12]***

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Historical Development - cont

- Distilled by the great Writers
  - ***Grotius 1631***
  - ***Santerna 1531***
  - ***Pothier***
  - ***Magens***
  - ***Maligny 1622***
  - ***Valin***
  - ***Emerigon 1750***
  - ***Pelaez***
  - ***Park***
  - ***Arnould***
  - ***Emmanuel***
  - ***MacGillivray***
- Into the Great Codes of Europe
  - ***France***
    - *Louis XIV Ordinance 1681*
    - *1807 Code Napoleon*
  - ***Spain***
  - ***Netherlands - 1838***
  - ***Germany - 1900***
  - ***[England - 1906 per Chalmers LJ]***
- 1906 Act followed in
  - ***USA***
    - *Restatement*
  - ***Australia & New Zealand***
    - *Reform*
  - ***South Africa***
  - ***Canada***
  - ***China***

Lloyds of London

The slip

Nelson Hurst
Insurance Brokers
Limited

Policy number

Assured/account

Unique market reference number

Signed line %

30% Coles
HZ 1522 AV 0198
24798

SDD 60 da

7.5% PBZ 26/3/98
PBC 902
98 HFA 2263 2 6X

7½% DER 112
H4 4 A I WH 98 X 4 X

30% PWH 382
AV 383 08 A 075 N

5% TJP 500
308 W 3457 6K

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Marine Insurance: General principles

- A legal contract
- of indemnity
- re a marine adventure
- in re subject matter insured
  - ***ship***
  - ***goods***
  - ***freight***
  - ***liability of shipowner***
- Over which assured has an insurable interest
- And is in good faith
  - ***without***
    - *non-disclosure; or*
    - *misrepresentation*
- And the assured is not in breach of a warranty
- On payment of a premium
- To cover a risk
- As a peril insured against
- Where no exception avails the insurer
- And the assured proves the loss

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indemnity Insurance:

In indemnity insurance:

Assured is entitled to a full indemnity (and no more) for real and actual loss sustained as a result of the happening of an insured peril.

Subject to limitations:

- ***Insured value (if any)***
- ***real or actual value***
  - *under-insurance deduction - 'averaging'*
- ***any limiting terms in the policy***
  - *double insurance "contribution term"*
  - *"first condition of average" in underinsurance cases*

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Good faith 101

Contracts require good faith, insurance contracts particularly

- ***"utmost good faith" of English law - uberrima fides***
- ***good, better, best faith?***
- ***"One may be less than honest, but one cannot be more than honest" (Miller JA – Oudtshoorn Municipality SA case)***

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Content of good faith

Pre-contractually

- ***Disclosure***
  - *insured must disclose to the insurer*
  - *before conclusion of the contract*
  - *every material circumstance which he/she knows or ought to know*
- ***Misrepresentation***
  - *Insured must not misrepresent any material fact*
  - *Thereby inducing the insurer to contract*

During cover period

- ***Alteration of risk***
- ***Other changes of circumstances***
- ***Submission of claims***
  - *Dishonesty not affecting the claim*
  - *Fraud puffing the claim or creating a liability that does not exist*

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Good faith ~ Materiality

Objective test

- Would the reasonable person (in the context of an insurance contract) have regarded the misrepresentation or the non-disclosure as enough ...

Subjective test

- Would this insurer have regarded the misrepresentation or non-disclosure as enough ...

... to have charged a higher premium
or
... to have refused to take on the risk

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  - ***without***
    - *non-disclosure; or*
    - *misrepresentation*
- And the assured is not in breach of a **warranty**
- On payment of a premium
- To cover a risk
- As a peril insured against
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- And the assured proves the loss

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English Insurance Act 2015 - good faith and disclosure

Good faith – utmost good faith retained

- Breach no longer allows insurer to avoid liability
- Part V – “Good faith”
  - Any rule of law permitting a party to a contract of insurance to avoid the contract on the ground that the utmost good faith has not been observed by the other party is abolished.

Disclosure – duty of fair presentation

- The insured must disclose all material circumstances about the risk or, failing that, it must give the insurer sufficient information to put it on notice that it needs to make further enquiries for the purposes of revealing all the material circumstances about the risk

The English Mischief, 1906

Marine Insurance Act, section 33(3)

"A warranty … is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then … the insurer is discharged from liability as from the date of the breach … , but without prejudice to any liability incurred by him before that date"

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Breach of warranty in 1906 English Law

- Upon breach, even if
  - ***non-causative***
  - ***immaterial***
- Assurer may repudiate from time of breach
- Subsequent remedying of breach does not deprive assurer of right to repudiate
- Subject to refund of premium from breach

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English Insurance Act 2015 - Warranties watered down by Sec 10

"Any rule of law that breach of a warranty (express or implied) in a contract of insurance results in the discharge of the insurer's liability under the contract is abolished"

- Breach no longer kills insurer's liability on the policy from the date of breach
- Breach suspends the cover until rectified
- Generally, if the insured's breach does not increase the risk, it will not affect cover

- Insurers not liable to pay any part of a fraudulent claim
- Parties may contract out

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- On payment of a **premium**
- To cover a **risk**
- As a **peril insured against**
- Where no exception avails the insurer
- And the assured proves the loss

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Marine Insurance: Institute perils

- Perils insured irrespective of the possible want of due diligence of the assured

- Perils insured only if the assured has no want of due diligence
  = *Inchmaree* perils

- Pollution hazards - only if assured is not in want of due diligence to prevent or mitigate the hazard

H&M Insurance: Institute perils - without due diligence

- perils of the seas, *rivers, lakes or other navigable waters*
- fire & explosion
- *violent theft by persons outside the vessel*
- piracy
- jettison
- breakdown of or accident to nuclear installations or reactors*
- contact with aircraft *or similar objects, or objects falling therefrom,* land conveyance, dock or harbour equipment or installation*
- earthquake, volcanic eruption or lightning*

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H&M Insurance: "Inchmaree" cover

- accidents in loading discharging or shifting of cargo or fuel
- bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull
- negligence of Master Officers and Crew or Pilots
- negligence of repairers *or charterers* provided such repairers *or charterers* are not an Assured
- barratry of Master *Officers and Crew*

Provided the assured is not in want of due diligence (master officers and crew not to be considered "owners" if they hold shares in the vessel)

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H&M Insurance ~ Collision liability

- Only form of liability cover (as opposed to property damage cover) in H&M insurance
- Covers 3/4ths insured vessel's liability for
  - ***damage caused to other vessel(s) in collision and property on board***
  - ***Delay of other vessel arising from collision***
  - ***General average***
- Remaining ¼ covered by P&I
- Provisos:
  - ***Liability maxed @ insured value of vessel at fault***
  - ***Both-to-blame then apportion claims according to respective fault***

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Marine Insurance: Excepted Perils

- Per the 1906 ACT
  - ***not proximately caused by peril insured against [sec 55(1)]***
  - ***wilful misconduct of the assured [sec 55(2)]***
  - ***delay [sec 55(2)(b)]***
  - ***ordinary wear and tear [sec 55(2)(c)]***
  - ***inherent vice [sec 55(2)(c)]***
  - ***vermin, ordinary leakage and breakage [sec 55(2)(c)]***
- Per Institute Clauses
  - ***Hull***
    - *war, strikes, malicious acts, terrorism, nuclear occurrences, and 1/4 collision liability*
  - ***Cargo***
    - *General exclusions - wilful misconduct, ordinary leakage, loss of weight or wear and tear, unsuitability of packing, inherent vice, delay, insolvency etc, nuclear occurrences*
  - ***Qualified undertakings - "Warranties" and Navigation exceptions***

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P&I Clubs: Historical roots

- 1693 – loss of 100 vsls in the Smyrna fleet to the French
  - ***Hull war risk clubs***
- 1720 - 1820 *Bubble Act* Royal Exchange & London Assurance monopoly
  - ***"Hull Clubs"***
- Limitations of 1745 Marine Insurance Act
  - ***no more than ship's value recoverable from insurer***
- de Vaux v Salvador 1836
  - ***4/4ths Collision cover***
  - ***cf. Peters v. Warren, 1838 in the USA***

- Fatal Accidents Act, 1846
- Harbours Docks & Piers Clauses Act 1847
- The Westenhope's deviation
- The Emily's negligent navigation
- The liabilities of the 1st MSA 1854
- 1854 RDC gave 3/4ths collision liability
- The Employer's Liability Act 1880

"Protecting Clubs" - The Shipowners (1855), The N of England (1866)

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P&I CLUBS:
The International Group

- Britannia (Tindall Riley)
- UK Mutual (Thos Miller)
- Steamship Mutual
- West of England
- Standard Steamship (Chas Taylor)
- London Steamship (A Bilbrough)
- Shipowners P&I
- North of England
- Newcastle P&I
- The Swedish Club
- Skuld
- Gard
- Japan Club
- cf. *Through Transport (TT) Club*
- cf *Defence & War Risks Clubs*

P&I Cover -
Crew/personal liability claims

- Damages or compensation for loss of life or personal injury or illness
- Statutory/collective agreement expenses re the same
- Repatriation
- Crew substitute expenses
- Loss of effects
- Distressed seaman's expenses

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P&I Cover
Damage liability claims

- 1/4th collision liability
- Fixed & floating objects
- Damage to vessels or property NOT by collision
- Loss of or damage to cargo

P&I Cover
Specific liabilities

- Oil Pollution
- Wreck removal
- Towage liabilities
- Irrecoverable GA/Salvage & Life Salvage
- Indemnities or contractual libility
- Quarantine, Fines & legal expenses (re P&I)
- Port & deviation expenses

- Omnibus Rule

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Defence Clubs: FD&D Cover

Legal costs of defending or prosecuting:

- Charterparty disputes:
  - ***freight***
  - ***deadfreight***
  - ***demurrage***

  but not disputes concerning P&I losses such as c/p cargo claims
- Disputes re purchase and sale contracts by the shipowner
- Disputes on stevedoring contracts
- Disputes on mortgage agreements
- Disputes on insurance contracts

*NOTE: Subject matter of claim is **not** covered*
*FD&D is more **discretionary** than P&I: it is in the discretion of the Club as to whether to back the member in his dispute or not*

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