Marine and other types of transport insurance

International Commercial Transport & Insurance Course, Helsinki autumn 2017

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Risk sharing - Historical notes

• The Law of Hammurabi
  - Origins from 2050 BC
  - Text from 1760 BC
    • No 102-104

• Lex Rhodia de Jactu
  - Digest 14.2.1 Jettison of cargo
  - Today General Average 2016

• Foneaus Nauticum
  - Shipowner borrows to carry out a maritime adventure against interest
  - Interest was banned 1230

• Marine Insurance
  - Premium, instead of interest, on covered risk
  - From the Lombards, via Portugal, Netherlands, Hansa, England (Lombard street), the to Scandinavia
Different types of insurance

• Ship owner’s insurances
  - Hull and Machinery (H&M) insurance
    • Marine Perils
    • War Perils
  - Interest insurances
    • Hull interest (total loss and collision)
    • Freight interest (total loss)
  - Loss of hire
  - Protection and Indemnity (P&I) Insurance
    • Liability insurance

• Cargo owner’s insurances
  - Marine perils
  - War perils
The Influence from London

The internet in a cup

Coffee fuelled the information exchanges of the 17th and 18th centuries
Marine Insurance Act 1906

- Marine Insurance Act of 1906 (UK)
  - Codification of hundreds of precedents
  - Influential as jurisdiction often points out England

- Antiquated?

- Reform of the Act
  - Consumer Insurance Act 2012
  - Insurance Act 2015
Legal framework in the Nordic Countries

- Maritime Code until 1930ies
- Insurance Contract Act from around 1930ies
  - Some rudimentary rules on marine insurance
  - Current Nordic Acts from 1989 (Norway), 1994 (Finland) and 2005 (Sweden). Denmark is still on 1930 Act with revision 2006.
- Partly mandatory.
  - Marine insurance is not specifically regulated.
  - Marine insurance mostly outside the mandatory rules.
Plans, Rules and Conditions

- Nordic Marine Insurance Plan 2016
  - Commentaries
  - Agreed document
  - Only Minor Deviations from ICA

- Cargo Clauses 2009
  - ICC A, B & C and other national conditions
  - Normally not Agreed Document
  - Special rules in the contract

- P&I-Rules (Gard, Skuld and Swedish Club)
  - International rules (national law to apply?)
  - Not agreed
The Contract

- Contracting as in general contract law

- The parties
  - The party effecting the insurance or The Policy holder
  - The party whose interest is covered
    - The Insured or Assured
  - The insurer or the underwriter

- Placing the risk at Lloyd’s
  - Broker make up a Slip
  - Underwriter scratching the slip (stamping and signing a percentage of the risk)
  - If many subscriber, one is the leading underwriter
  - Cover note – confirmation of contract
  - Policy – The Contract
    - Document issued as evidence on insurance
    - Certificate and policy
    - General conditions or clauses

- Jurisdiction and choice of law
The parties and other relations

Re-insurance

Direct insurance

Right to compensation

80%
Insurable interest

- Ratio: Every contract of marine insurance by way of gaming or wagering is void
- The interest as a relation to the subject matter insured
  - Buyer, Crew wages, advance freight, mortgagor's interest
- Illegal activities
Interest: what value?

- Interest
  - Subject matter insured

- Insurable value
  - At the inception of the insurance
  - Objective value of the object before the casualty
  - Cargo costs and profit

- Amount and Sum insured
  - The policy holders valuation of the interest
  - Form bases for the calculation of the premium
  - Limit of the insurers responsibility

- Insured, Assessed or Agreed value
  - Fixed value
  - Can only be set aside if information is misleading
Under insurance

- Insurable value exceeds the sum insured
- Pro rata reduction of indemnity

Potential loss

- Insurable value 1,000
- Sum Insured 750

Basis for premium

Pro rata compensation at

\[
\frac{750}{1,000} = 75 \%
\]
of each damage
Over insurance

- Insurable value lesser than sum insured
- No good business
Cover

• All risk versus Named peril
  - All risk: Cargo Clauses A and Hull insurance
    - NB! Exclusions: War, intervention of states, insolvency and release of nuclear energy
  - Named peril
    • Limited cover in cargo insurance B and C clauses
    • P&I-insurance
Causation: Terminology

Perils covered:
- Heavy weather
- Theft
- Leakage
- Fire
- Etc.

Losses covered:
- CTL
- GA
- Coll. Liability
- Loss of hire
- Etc.

The Casualty

Causation

Causation
Duties of the insured

- Duty of disclosure or Fair Presentation
- Alteration of risk
- Duty of care
- Safety regulations
  - Seaworthiness
- Forbear from causing the damage
- Duty to avert and minimise loss
Duty of disclosure

• Insurance is *uberrimae fidei*. A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.
  - Duty of fair presentation
  - 2015 MIA UK in line with Nordic view.

• When concluding: Active and passive duty
  - Passive duty
    • Answer questions
  - Active duty
    • Active only when ought to realise
    • Circumstance of importance

• During insurance period
  - Duty to notify on becoming aware of changes
  - Incorrect information

• Sanctions
  - Level of blame decisive
    • Fraud, reduced responsibility or without liability
  - Not to apply if the insurer “ought to have realised”
Alteration of risk

• The general rule
  - Change in circumstances that form the base of the contract and alter or increase the risks

• Special rules Hull
  - Requisition by State Authorities
  - Change of manager
  - Loss of Class
  - Trading area or voyage

• Sanctions
  - Termination
  - Free of liability or other terms
Forebear from causing the damage

- Intent
  - No responsibility
- Gross negligence
  - Reduced responsibility
- Negligence
  - Full responsibility
From seaworthiness to safety

- Seaworthiness and airworthiness
- Safety regulations – Rules or orders concerning measures for the prevention of loss
  - Rules and regulations from Public authority
  - Insurance contract
  - Classification society
  - Stowing and lashing cargo
- Reaction
  - Cover if damage would have occurred anyhow
Duty to notify and avert or minimise loss

• If a casualty threatens or has occurred
  - Notify insurer
  - Preservations of right to recourse claim
  - Reasonable measures to avert or minimise

• Sanctions
  - Intention or gross negligence
    • Only responsible as if the duty was fulfilled
Policy cover: general issues

- Risk covered
  - Perils of the seas (it is a marine policy) and incident perils
    - All risks contra Named perils

- Losses or expenses covered
  - General average
  - Salvage
  - Other particular charges

- Exclusions
  - General exclusions
    - War and similar acts
    - Loss caused by delay
    - Ordinary wear and tear
    - Ordinary leakage or breakage
    - Inherent vice

- Specific exclusions in different insurances
  - Different commercial risk
  - Loss of profit
  - Loss of time
  - Wages and maintenance
  - Liability in property insurance
H&M insurance cover

- **Total loss**
  - Actual, constructive and presumed or compromised

- **Physical damage**
  - Repair costs

- **Collision Liability**
  - RDC ¾ cover or full cover
Hull damage exclusions

- Inadequate maintenance, etc.
- Error in design and faulty material
- Losses not covered
  - Economical loss and delay, Insolvency
  - Other losses not covered
    a. crew’s wages and maintenance and other ordinary expenses connected with the running of the ship during the period of repair, unless this is specially agreed,
    b. expenses of shifting, storing and removal of cargo,
    c. accommodation of passengers,
    d. objects which must normally be replaced several times during the expected life of the ship and which have been used for mooring, towing and the like, unless the loss is a consequence of the ship having sunk, or is attributable to collision, fire or theft.
    e. tarpaulins, zinc slabs, magnesium slabs and the like fitted for protection against corrosion,
Collision Liability Exclusions

- Liability according to the law of tort for damages inflicted to property in collision
  - Excludes damages to persons outside the collision
  - No liability for recourse claims from others

- Explicit Exclusions
  - Group 1
    - Towing by the insured ship
    - Injury or loss of life
    - Oil spill damages
      - Apart from damages to the other ship
    - Bunker spill damages
  - Group 2
    - Other cost for passengers than loss of life
    - Cargo claims from insured ship
    - Charterer’s claims
    - Removal of wreck belonging to third parties
P&I named perils cover

- Liability for injury and delay related to persons
  - Crew
  - Passengers
  - Pilots, travelling repairman
  - Loading or unloading personnel

- Cargo liability
  - Loss of or damage to goods
  - Multimodal transport
  - Delay
  - Necessary unloading and reloading
  - Document faults not covered

- Liability for Collision and striking

- Liability for oil pollution

- Other liabilities
  - Wreck removal, salvage, GA,
Example on collision and insurance settlement
Risk Assessment in Cargo Insurance

• Risk as a combination of findings of both law and fact

• Sales contract
  - Passing of Risk under this contract
  - Various options for the cargo owner

• Contract of carriage
  - Different modes
  - Different carriers

• Risk of loss
  - What Cargo?
  - What Carriage?
Performance under the sale contract

INCOTERMS 2010

- EXW – Ex Works sellers place
  - Risk passes there, when at buyers disposal.
  - Seller has no obligation regarding insurance.
  - Buyer has to pay transport and insurance.

- CIF named place - Cost, insurance and freight
  - Risk passes when on-board in loading port.
  - Seller is effecting insurance in the interest of buyer.
Ex works

- **Sender** (Avsändare/Befraktare)
- **Carrier** (Transportör/Bortfraktare)
- **Shipper** (Avlastare)
- **Receiver** (Mottagare)
- **Sub carrier** (Undertransportör/-bortfraktare)
- **Seller**
- **Buyer**
CIF

Sender (Avsändare/Befraktare)

Carrier (Transportör/Bortfraktare)

Shipper (Avlastare)

Receiver (Mottagare)

Sub carrier (Undertransportör/Bortfraktare)

Seller

Buyer
Cargo insurance cover

- Transport accident - "C-Clauses"
  - The carrying vessel having collided, struck any object, sunk, capsized or suffered a similar serious accident
  - The land conveyance having collided, struck any object, overturned, been derailed or been driven off the road.
  - The aircraft having collided, struck any object, crashed or been driven off the runway.
  - Fire, lightning or explosion.
  - Earthquake, volcanic eruption, landslide, snowslide or similar natural disasters.

- Extended transport accident - "B-Clauses",
  - C-clause damages and
  - The goods being jettisoned or washed overboard.
  - Sea, lake or river water entering into warehouse or place of storage.
  - Loading or unloading of the insured goods, resulting in the total loss of entire packages.
  - Loading, unloading or shifting of the insured goods in a port of distress, and theft or precipitation while the goods are stored in a port of distress.

- All risks - "A-Clauses“ Standard insurance
Cargo clauses exclusions

- Four categories
  - General exclusion
  - Unseaworthiness and unfitness
  - War
  - Strikes

- This counts for English clauses
  - The conditions in the Nordic countries have various patterns
### Excluded perils (apart from war and strike)

<table>
<thead>
<tr>
<th>Exclusion / Condition</th>
<th>UK</th>
<th>DK</th>
<th>SF</th>
<th>N</th>
<th>S</th>
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</thead>
<tbody>
<tr>
<td>Wilful misconduct of the Assured/Third party damages</td>
<td>4.1/7</td>
<td>4.1</td>
<td>3.11</td>
<td>84.9</td>
<td>21/FAL</td>
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<tr>
<td>Ordinary leakage, loss or wear and tear</td>
<td>4.2</td>
<td>4.3</td>
<td>3.12</td>
<td>818.2</td>
<td>7.2</td>
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<tr>
<td>Unseaworthiness or unfitness of packing</td>
<td>4.3</td>
<td>4.4</td>
<td>3.13</td>
<td>823</td>
<td>13.1</td>
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<tr>
<td>Weapon of war nuclear fission</td>
<td>4.2</td>
<td>4.3</td>
<td>3.14</td>
<td>818.10</td>
<td>2.2</td>
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<tr>
<td>Radioactivity</td>
<td>4.7</td>
<td>5.1</td>
<td>4.5-8</td>
<td>822</td>
<td>13.12</td>
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<tr>
<td>Insufficiency or unsuitability of packing</td>
<td>4.7</td>
<td>4.9</td>
<td>4.5-8</td>
<td>834</td>
<td>1.9</td>
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<td>4.9</td>
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<tr>
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<tr>
<td>Excluded perils (apart from war and strike)</td>
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<td>4.9</td>
<td>4.5-8</td>
<td>834</td>
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</tbody>
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- **Delay**: 4.5, 4.6, 4.7, 3.26, 3.45, 3.3, 3.2
- **Carrier’s insolvency**: 4.6, 4.7, K63, 3.25, 3.13, 3.12, 3.11, 3.2
- **Indirect losses**: 4.5, 4.6, 4.7, 3.26, 3.45, 3.3, 3.2
- **Non maintenance of refrigeration**: 4.5, 4.6, 4.7, 3.26, 3.45, 3.3, 3.2
- **Inherent vice**: 4.5, 4.6, 4.7, 3.26, 3.45, 3.3, 3.2
- **Liability for damages**: 4.5, 4.6, 4.7, 3.26, 3.45, 3.3, 3.2
- **Radioactivity**: 4.5, 4.6, 4.7, 3.26, 3.45, 3.3, 3.2
- **Excluded perils (apart from war and strike)**: 4.5, 4.6, 4.7, 3.26, 3.45, 3.3, 3.2

### Exclusions/Conditions

- **Wilful misconduct of the Assured/Third party damages**
- **Ordinary leakage, loss or wear and tear**
- **Unseaworthiness or unfitness of packing**
- **Weapon of war nuclear fission**
- **Insufficiency or unsuitability of packing**
- **Ordinary maintenance of refrigeration**
- **Indirect losses**
- **Non maintenance of refrigeration**
- **Inherent vice**
- **Liability for damages**
- **Radioactivity**
- **Excluded perils (apart from war and strike)**
Duration of cover

- The risk attaches
  - When the Transport starts.
    - When does the transport start?

- It remains in force during ordinary transit and

- Terminates
  - At delivery to the consignee’s warehouse at place of destination,
  - At delivery to consignee, or
  - Placed to his disposal.
The risk attaches

Place of storage

Warehouse

Transport conveyance

Swedish and Norwegian

Finnish

Danish

English
Risk cover: seller and buyer insurance

- The goods is ready
- Agreed delivery time
- Buyer is late
- Risk passes
- Cover attaches

Actual delivery

No Cover?
When the risk terminates after the sea leg

Destination port

Custom Warehouse

Transport to

Disposal or Distribution

Final warehouse

Warehouse at request

60 days
Case 1 Delta Peace

DELTA PEACE completed loading of a cargo of steel billets in Rotterdam on 26 February 2003. She sailed the same day for discharge in Inchon, Korea. At the end of March the vessel put into Durban for bunkers. The ship was promptly arrested by the bunker suppliers for non payment of previous bunkers by the Shipowners. The Shipowners did not have the financial resources to settle the outstanding debts. The vessel was sold by judicial auction. The cargo owners arranged for the cargo to be transhipped to destination on a substitute vessel. Transhipment operations were completed on 13 April and the replacement vessel, UNFORTUNATE, sailed for Inchon. On 28 April the vessel encountered heavy weather. The cargo shifted and punctured a hole in the side of the vessel. The pumps were unable to cope with the ingress of water and the vessel sank on 2 May.

The cargo receivers, to whom the insurance policy had been assigned when the goods were on UNFORTUNATE, submitted a claim to the insurers for the costs of the transhipment operation and the total loss of the cargo as a result of the vessel sinking. The insurance had been arranged under the Cargo Clauses (A).
Case 2 Yahroma

The Russian river motor vessel YAHROMA was fixed on a voyage from Lesosibirsk at the river Jenissej to Alexandria. She had 0-class which means that she is not an Ocean going vessel. The charterer was the seller of a consignment of timber. The aim of the voyage was to go North in the Jenissej river with two other vessels and an ice-breaker to the discharge of the river, further westward passing Novaja Zemja and then southward in the Russian river system from the port of Belomorsk, via the Black Sea with final destination Alexandrian Port. On the Sea of Kara the convoy encountered heavy weather and YAHROMA eventually sank with the timber carried.

The timber was covered by a cargo insurance issued by A-Insurers on all risk cover. Nothing was said about the voyage in the policy except for the port of loading and the destination stated above. The following clause was included in the insurance.

- The Assured shall ensure that the goods are carried by means of transport or in a container that is suitable for the transit.

The consignee of the timber submitted a claim to A-Insurers on the amount of USD 363,592 for the lost cargo including profit. A-insurers refuse the claim with reference to the said clause. What do you say about the claim?
Case 3 Fish to Italy

A consignment of fish was sold on “Incoterms 2010 DAT buyer’s warehouse Napoli” from a Norwegian seller to a buyer in Italy. The consignment was supposed to be transported by road from Oslo to Napoli by an independent carrier. The fish was to be loaded by a forklift into a container at the seller’s premises. An employee of the seller handled the forklift. Loading started at Friday morning.

a) In connection with the loading operation the driver of the forklift lost control over the lift. The forks ran into the fish which was totally damaged in connection with the moving of the pallet from the shelves in the freezing warehouse.

b) The driver picks up another pallet of fish in the warehouse. On his way out to the container he took a lunch break. During the lunch hour the fish was stolen.

c) At last the fish was properly loaded into the container around mid Friday. The carrier was supposed to pick up the container on Saturday. Due to technical problems with the lorry, it had to be left at the seller’s warehouse for four days. After two days a fire started in the lorry which destroyed also the fish.

d) When the consignment of fish finally reached the buyer at Napoli, the unloading of the container started immediately. The pallets were placed on the loading ramp of the warehouse together with other cargo. The ramp was not properly constructed for the heavy load and broke into pieces. The fish was damaged and considered a total loss.

The Norwegian seller had effected an insurance subject to the cargo clauses A. Consider the insurance cover of the different occurrences above.
Thanks for the attention