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Cargo insurance



07.03.2016

Marine insurance



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Overview

- What is cargo insurance
- The legal sources
- The insurance contract
- Insurable value and the sum insured
- Scope of cover

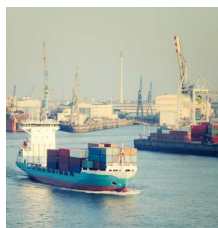
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Overview

- Duties of disclosure and due care
- The period of insurance
- The liability of the insurer



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1 What is cargo insurance

- Covers cargo under transport from A to B (normally seller to buyer)
- Casualty (damage and loss) insurance
- Includes buyer's profit
- But not
 - loss of income in general
 - owner's liability

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Contract of sale

Insurance
Loss
Damage

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Cargo insurance

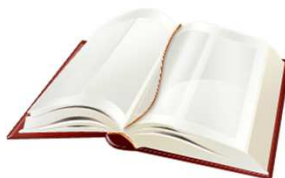
Contract of sale - transfer of risk

Insurance
Loss
Damage
Income

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2 The legal sources

- FAL (ICA) 1989
- The Norwegian Cargo Clauses



2.1 FAL (ICA) 1989

- Starting point: Mandatory, § 1-3.1
- But exception for insurance of international transport of cargo, § 1-3.2 (e)
- Applies to national transport of cargo
- The approach in the CICG:
 - Follows ICA
 - with certain exceptions for international transport

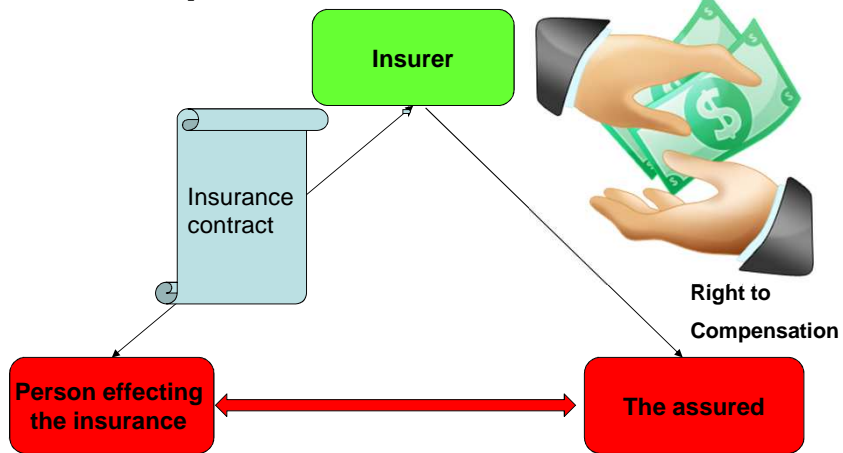
2.2 Norwegian Cargo Clauses (CICG)

- Conditions relating to insurance for the carriage of goods
- Many of the same characteristics as NMIP
- But
 - Less extensive commentaries
 - A stronger connection to the ICA

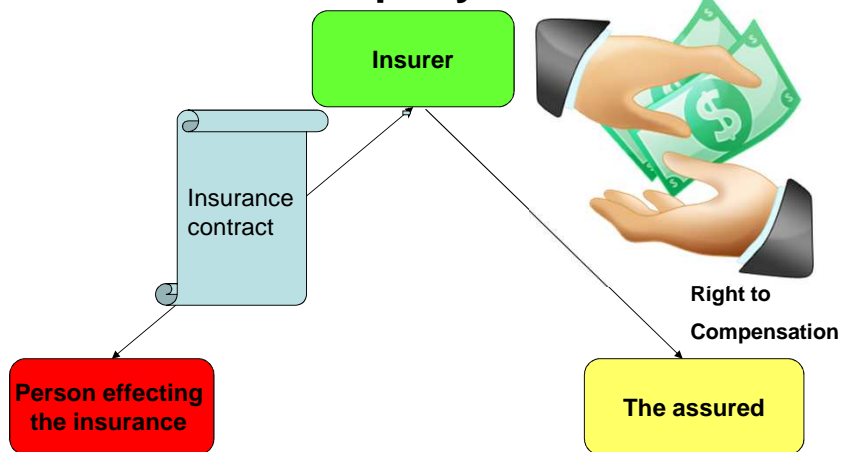
3 The insurance contract

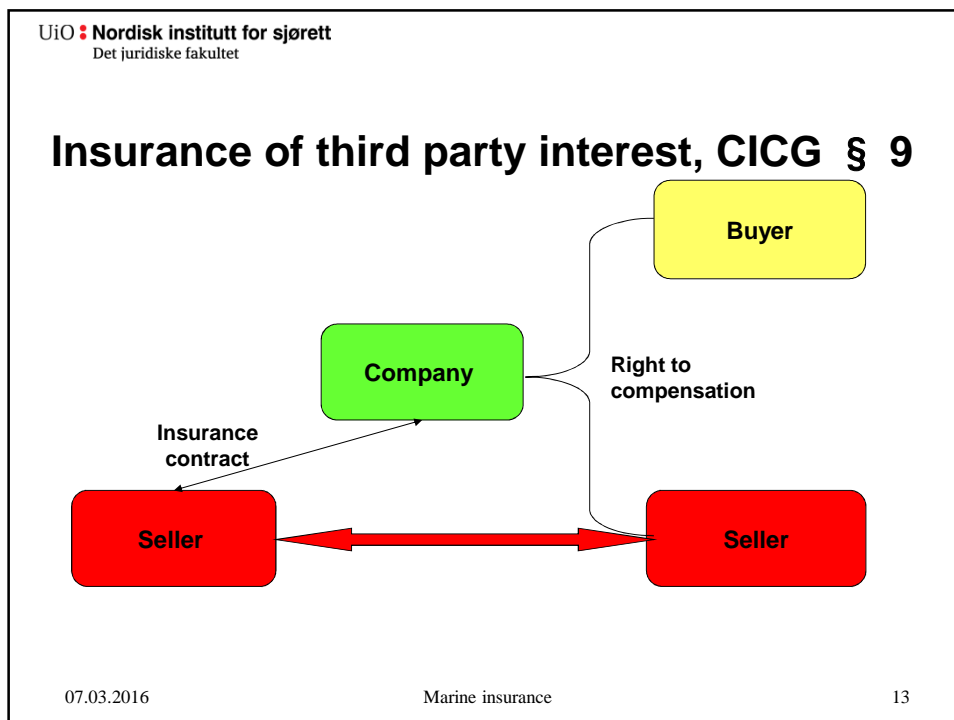
- The parties to the insurance contract
- Interests covered by the insurance
- Effecting the contract

3.1 The parties to the contract



Insurance of third party interest





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3.2 Concluding the Contract

- Insurance certificate, ICA § 2-2
- Insurance document , CICG § 1 no. 4
 - Single shipment = Insurance certificate
 - Open cover/floating policies =
 - certificate for the whole period
 - + document for each shipment

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Question

- A safety regulation is inserted in the insurance certificate agreed between the insurer and mother company A of carrier B for a one year transport policy, but not in the insurance document for a transport performed by carrier B.
- May the safety regulation be invoked against B?

4 Insurable value and sum insured

- Insurable value, CICC § 29
- Starting point for seller and buyer:
- Unless otherwise agreed, the **insurable value shall be deemed to be** the market value of the goods **at the place of loading at the inception of this insurance**. If the goods are sold, the market price shall be calculated on the basis of the invoice value.

4 Insurable value and sum insured

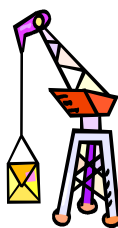
If compensation for the goods is payable to the buyer, the insurable value shall, if applicable, also include:

- (a) charges incurred by him in connection with the shipment,
- (b) customs duty and other ordinary costs related to the transit,
- (c) the insurance premium which he is to pay,
- (d) freight which he has paid or will have to pay,
- (e) his anticipated profit. Unless otherwise agreed, the insurable value of such anticipated profit shall be 10 per cent of the insurable value of the goods as such.

Insurable value, § 29

Buyer and seller:
Market value at place
of loading

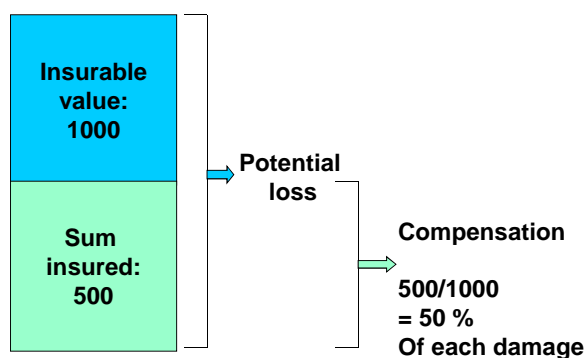
Buyer:
+ charges
+ customs
+ insurance premium
+ freight
+ profit



4 Insurable value and sum insured

- Sum insured
- Under-insurance, CIG § 30
- Over-insurance, CIG § 31
- Limit; CIG § § 32-33:
 - Sum insured for casualties, § 32
 - + losses according to § § 39-43, i.e. salvage measures etc.
 - + interest according to § 49

Under insurance, CIG § 30



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Over insurance, CIG § 31

Sum insured: 1000

Insurable value: 660

Max. compensation

Basis for premium

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5. Perils insured against

- Perils insured against
 - Three levels of coverage
 - International approach
 - Transport accident – C clauses, § 5
 - Extended transport accident – B clauses, § 4
 - All risks coverage, A clauses, § 3

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Question

- A container of furniture was transported by MS Ship. During loading MS Ship heeled over and the container fell overboard and was damaged. The owner of the furniture had transport insurance on C clauses. Is the damage to the furniture covered.

5. Perils insured against

- Risks excluded, § 18
 - Inherent nature of goods and ordinary loss in weight and volume (1 and 2)
 - Illegal activity (4)
 - Delay (5)
 - War and similar perils (3, 6, 7, 8-11)
- Other exclusions, § 17 and § 19.

Question

- A package containing jewellery and pearls were imported to Norway by Ms Glitter without payment of VAT. The package was insured by AS Transport insurance. The package was stolen.
- Can AS Transport insurance avoid liability?

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Question

- A package containing fresh food was delayed because there was no room in the ferry the truck was supposed to have taken. The fruit was already destroyed when the delay took place. Is this loss covered under the transport insurance?

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Question

- A ship was captured by pirates outside Nigeria. The pirates stole the oil cargo on board. The shipment was insured. Is the theft covered by CICG?
- Does it matter whether insurance was effected on A, B or C clauses?

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6. Duty of disclosure and due care

- Introduction
- Duty of disclosure
- Safety regulations
- Identification

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6.1 Introduction

- Follows ICA
- But:
 - Stricter safety-regulation for international transport
 - Suspension of insurance in case of delay

6.2 Duty of disclosure

- What and who
- When
- Sanctions

CICG § 12/ ICA Sec 4-1

In connection with the conclusion or renewal of an insurance contract, the company can ask for information on matters which may have a bearing on its assessment of the risk. The policyholder shall give correct and complete replies to the company's questions. The policyholder shall also on his own initiative provide information on special circumstances which he or she must understand have a significant bearing on the company's assessment of the risk.

6.2.1 What and who

- CICG § 12/ICA § 4-1:
 - Answering questions (Passive duty of disclosure)
 - At the time of conclusion of contract
 - But: duty to make corrections
 - Addressed to person effecting the insurance
- CICG § 13: Special rule for the assured

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6.2.2 When: time of the duty of disclosure

Factual circumstances **Good faith**

When contract is entered **All the time**
But: Only for factual circumstances at Contract point

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6.2.3 Sanctions

- Fraud, ICA § 4-2 and § 4-3:
 - No liability
 - Termination
- More than a little to blame, ICA § 4-2 and § 4-3
 - Reduced liability
 - Cancellation, 14 days notice

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6.2.3 Sanctions

- Less than a little to blame
 - Full liability
 - But: Cancellation, 14 days notice, ICA § 4-3
- Conditions to invoke, ICA § 4-4
 - No knowledge
 - Significance
 - Notification

Question

- A effected insurance for transport of several containers without informing the insurer that the carrying vessel did not have a valid ISM certificate. No questions were asked during the negotiations. The cargo was damaged during the transport due to heavy weather.
- Can the insurer invoke breach of the duty of disclosure?
- If so; what sanction may be used?

6.3 Safety regulation



- Concept; National transport: § 21.1.1:
 - § 22 – unsuitable means of transport
 - § 23 – marking and packing of goods
 - § 24 – Goods carried in thermo regulated means of transport



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6.3 Safety regulation

- Concept; International transport: § 21.1.2:
 - As above
 - + “all regulations and injunctions concerning measures for the prevention of loss issued by public authorities”



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6.3 Safety regulation

- Sanction: § 21.2: No liability (# ICA) provided
 - Causation
 - Fault: “Cannot be imputed” (# ICA)
 - Burden of proof: shifted

6.4 Casualties caused by the assured

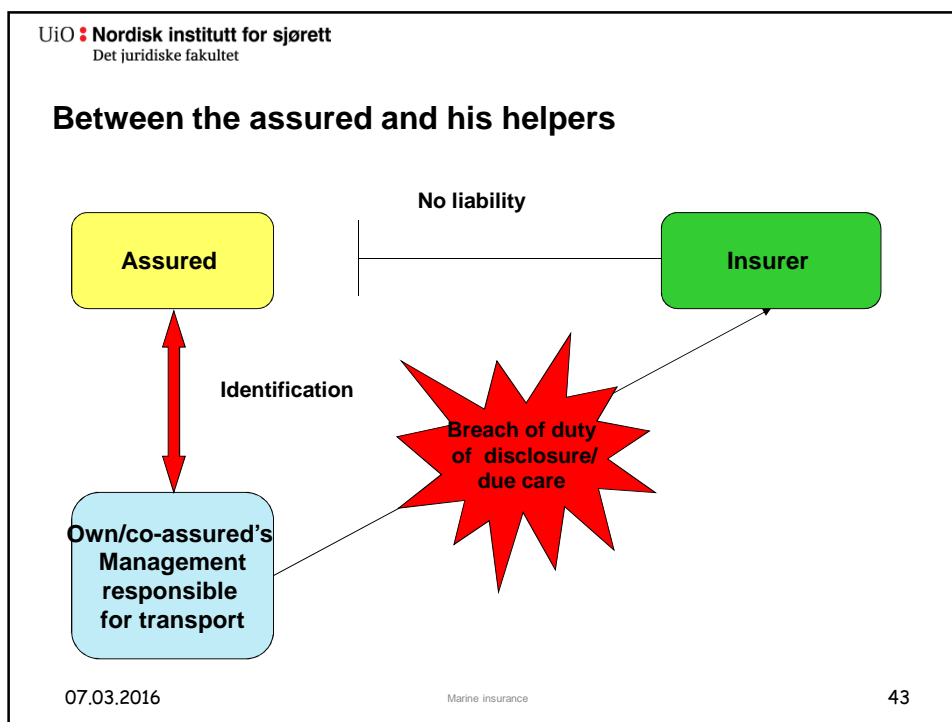
- ICA § 4-9
- Intent
 - No liability
 - Without fraud: part liability possible
- Gross negligence – reduction in liability
- Ordinary negligence – full liability

6.5 Identification

- The problem
- Between the assured and his helpers
- Between the assured and the policy holder/former owner
- Extended identification for breach of safetyregulation

6.5 Identifcation between the assured and his helpers

- CIGG § 10, 1 (a): Management personnel employed by one of the assured parties responsible for the transport of the goods

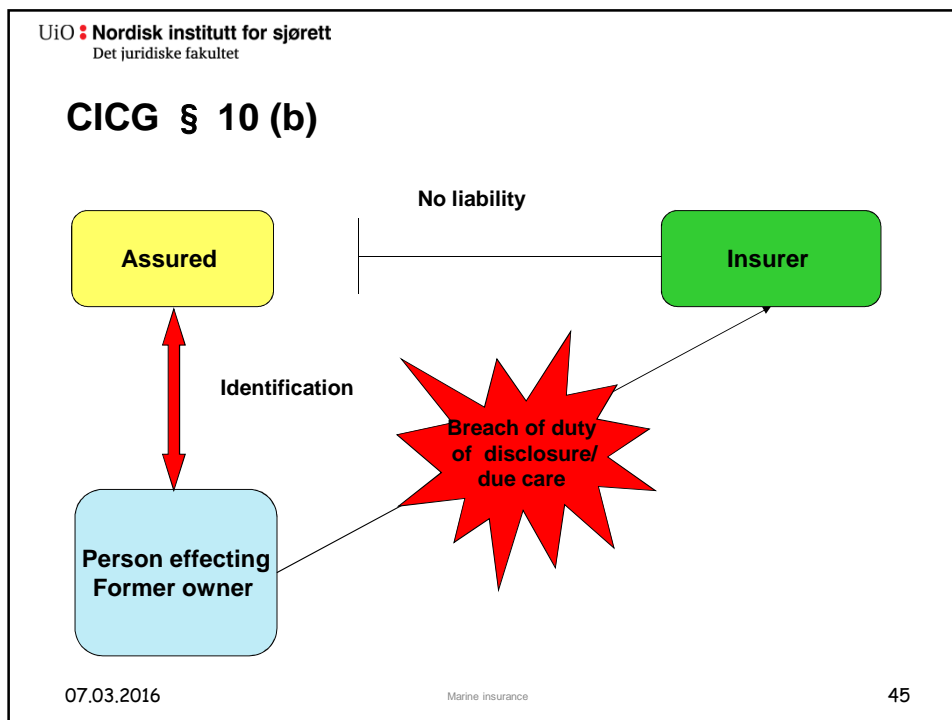


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6.5 The assured and the person effecting the insurance

- CICG § 10.1 (b)
- Person effecting the insurance and former owner of the goods
 - Either owner at the time of the omission or
 - Goods were in his charge

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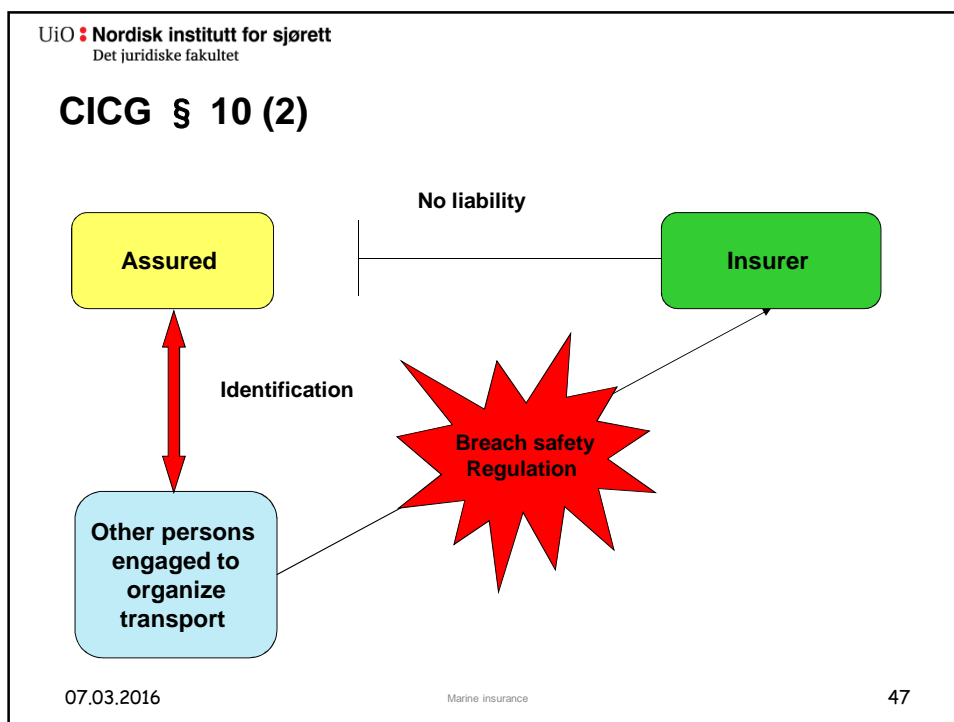


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6.5 Extended identification

- CICG § 10 (2)
- Breach of safety regulation by other persons engaged to organize the transport
- Ex freight forwarders etc

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7 Period of insurance

- Period of insurance in this context: When does the insurance attach for each separate consignment of goods?
- When does the period commence?
- When does the period terminate?
- Suspension of the insurance

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7.1. Commencement of the period of insurance

- CIGG § 14.1: where the insurance is effected by the seller,
- The insurance period starts when the goods are moved for direct loading into the means of transport which shall convey them from the warehouse or place where the insured transit shall commence

Question

- Goods were damaged when the fork lift hit the goods too hard when it inserted itself into the pallet inside the warehouse to move the goods for transport.
- Is the damage covered?
- Does it matter whether insurance was on A-, B-, or C clauses?

Question

- Goods were lifted from the shelf in the warehouse into a container. Due to a mistake the container was not immediately transported to the ship for carriage to the buyer. The delay lasted for 24 hours and resulted in temperature damage to the goods.
- Has the period of insurance started?

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Commencement of the period of insurance

- CICC § 14.2: Where the insurance is effected by buyer, or
- Where the insurance only covers buyer's risk
- Period of insurance commences when, in accordance with sales contract:
 - The risk passes to buyer
 - Insurance effected by seller terminates

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Commencement of the period of insurance

- CIGG § 14.3: Insurance period extended where the insurance covers only buyer's interest
 - Covers buyer's loss because no information in transport document on shortage or damage incurred after start of transport
 - Provided buyer in good faith

7.2 Termination of the period of insurance

- CIGG § 15: Five possible termination points in time given
- Decisive: Which point in time occurs first

7.2. Termination of the period of insurance

- First alternative: goods safely unloaded from means of transport that brought them to consignee's warehouse at named place of destination
- Second alternative: goods delivered to consignee or placed at his disposal

7.2 Termination of the period of insurance

- Third alternative: Risk passed to buyer where carrier has sold the Goods in accordance with contract
- Fourth alternative: 30 days after completion of discharge at named place of destination
- Fifth alternative: 60 days after discharge from the carrying vessel

Question

- Goods were discharged at the buyers warehouse and was damaged when lifted by a forklift for transport to the storage facilities within the warehouse.
- Is the damage covered under insurance effected by the buyer?
- What if the insurance was effected by the seller for his interest only?

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7.3. Suspension of the insurance

- CIGG § 16.1: Delay in one place for more than 15 days due to circumstances within the assured's control
- CIGG § 16.2: Delay in transit in one place for more than 3 months, unless exceptions nr. 1, 2, 3 or 4 apply

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7.3 Suspension and ICA § 4-6

- The company can reserve the right to disclaim or limit its liability if a specific circumstance with a material bearing on the risk is changed. **Such a reservation can not be invoked if the insured party neither knew nor ought to have known that the circumstance had been changed, or if the insurance event is not due to the changed circumstance.**

8. Liability of the insurer

- Two main questions:
- Under what circumstances does the assured have a right to compensation?
 - Total loss, shortage, damage
- How is the compensation decided?
 - Total loss, shortage, damage

8.1. Total loss

- The concept "total loss", CICG § 35.1
 - The entire consignment is destroyed
 - The assured deprived of the goods without possibility of retrieving it
 - Transit to destination abandoned
 - Severe damage (90% of value lost)

8.1. Total loss

- The settlement of a total loss, CICG § 35.2
 - Main rule: sum insured, but not more than insurable value
 - No deduction for previously incurred damage, whether covered or not

8.2. Shortage

- The concept "shortage", cf. CICG § 36.1
 - Part of the insured consignment totally lost, cf. CICG § 35.1
- Compensation, cf. CICG § 36.2
 - Right to proportion of sum insured corresponding to the goods lost

8.3. Damage

- The concept "damage": not defined in CICG
- The compensation:
 - The insurer may always require repair, and cover the costs of repair, CICG § 37.1
 - But: If repair results in unreasonable loss or inconvenience

8.3 Damage

- If damage not repaired, the insured entitled to cash settlement based on damage percentage, CIG § 37.2
 - But: If damage percentage for goods intended for resale is above 50%, the insurer may demand sale, CIG § 37.3.1
 - With perishable goods, right to sale even where damage percentage is below 50%, CIG § 37.3.4

8.3 Damage

- Special rules to apply for procedure and limits to the right of sale
 - Request must come without undue delay after survey report, CIG § 37.3.3
 - Perishable goods: not necessary to wait for survey report, CIG § 37.3.4
 - Right to sale to take due account of the interest of the assured, CIG § 37.3.5, cf. § 52

Thank you for your attention

