Marine insurance law

Hans Jacob Bull
Scandinavian Institute of Maritime Law
Overview

- The main types of marine insurance
- The legal sources
- The insurance contract
- Insurable interest, insurable value and the sum insured
- Scope of cover
1. The main types of marine insurance

- Insurance related to ships
- Insurance of goods under transport
- Some other distinctions
1.1 Insurance related to ships

- Insurances related to the ship itself
  - Damage to/loss of property
  - Element of liability
  - Element of loss of income
  - Divided into two:
    - Hull insurance
    - Hull interest insurance
1.1 Insurance related to ships cont.

- Insurances related to loss of income
  - Covering income derived from property:
  - Loss of hire, freight interest, strike

- Insurances related to shipowner’s liability
  - Covering ship-owners third party liability
  - Main liability insurance: P&I insurance
  - Overlaps with hull/hull interest insurance covering part of the collision liability
1.2 Insurance of cargo under transport

- Covers cargo under transport from A to B (seller to buyer)
- Casualty (damage and loss) insurance
- Includes owner’s profit
- But not
  - loss of income in general
  - owner’s liability
1.3 Some other distinctions of relevance.

- Marine/civil risks vs war risks
  - Marine/civil insurance covers all risks that are not excluded
  - Special exclusion for war risks
  - War insurance covers war and similar perils as defined
  - Distinction used in all marine insurance
1.3 Some other distinctions of relevance.

- Primary insurance - coverage for costs of saving acts
  - Primary insurance: coverage of casualties
    - Caused by perils insured
    - According to the principles of indemnity in the contract.
  - Saving acts: covers
    - expenses incurred to avert/minimize losses
    - according to ordinary tort principles
2. The legal sources in marine insurance

- The international legal picture
- The Norwegian legal picture
2.1 The international legal picture

- No international convention
- The English marine insurance market
- The Scandinavian marine insurance market
2.1.1 No international convention

- Contrary to many other areas of maritime law
- Has been attempts of harmonization in UNCTAD
- A new attempt recently by CMI and NIFS
- The situation today
2.1.2 The English insurance market

- The English MIA = the legislative framework in most common law countries
- English ITCH clauses used in
  - even more common law countries
  - and in some civil law countries
2.1.3 The Scandinavian market

- Each country has their own set of conditions
- During the last century much inspired by the Norwegian Marine Insurance Plan
- Many similar solutions, but different structure and legal framework
- A Scandinavian Marine Insurance Plan?
2.2 The Norwegian legal picture

- FAL (ICA) 1989
- The Norwegian Marine Insurance Plan
- The Norwegian Cargo Clauses
- The P&I Conditions
2.2.1 FAL (ICA) 1989

- Starting point: Mandatory, § 1-3
- But exception for
  - Insurance of ships that should be registered, § 1-3 (c)
  - Insurance of international transport of cargo, § 1-3 (e)
- However: Cargo insurance follows ICA with certain exceptions
2.2.2 Norwegian marine insurance Plan 1996 (NMIP)

- Standard contract (Agreed document)
- Developed over 125 years
- Most of the interested parties have participated in the construction
- This approach contrary to ITCH/other conditions
2.2.2 Norwegian marine insurance Plan 1996 (NMIP)

- Covers most of the insurances for the shipowner
- But: not P&I insurance
- Extensive preparatory documents (Commentary)
- Little relationship with the ICA
2.2.3 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
2.2.4 The P&I Conditions

- Previously: Part of the NMIP
- Today: Skuld and Gard (Norway), Swedish club (Sweden)
- Part of international network
- Cover: Protection and Indemnity + other types of cover
3. The insurance contract

- The parties to the insurance contract
- The formation of a marine insurance contract
- Jurisdiction and choice of law
3.1. The parties to the insurance contract

- Definitions, NMIP § 1-1
- The insurer/company
- Co-insurance /claims leader (NMIP ch 9)
- Reinsurance
- The assured
- The person effecting the insurance
- Insurance of third party interest
The parties to the contract

**Insurer**

- Insurance contract
- Right to compensation

**Person effecting the insurance**

**The assured**
Insurance of third party interest, NMIP

- Insurer
- Person effecting Insurance
- Assured
- Co-insured, Ch. 7 and 8
- Right to compensation
- Insurance contract
Co-insurance
→ Partial insurance with more than one insurer

Ship
600 mill NOK

1/3

Insurer A
200 mill NOK

1/3

Insurer B
200 mill NOK

1/3

Insurer C
200 mill NOK
Reinsurance

\[ \text{The insurer reinsures the risk undertaken under the direct insurance contract.} \]

- **Ship:** 600 mill NOK
- **Insurer:** 600 mill NOK
- **Reinsurer:** 500 mill NOK

- **Direct insurance:** 100%
- **Reinsurance:** 500 mill NOK
3.2 Concluding the Contract

- Starting point: Ordinary contract law
- The use of broker: NMIP § 1-3
- “Housekeeping rule”
- No sanctions
- The purpose
- Relationship to the “slip”
- Documents
  - NMIP: Written proof of insurance = policy, see § 1-2
3.3. Jurisdiction and choice of law

- NMIP § 1-4
- **Main rule:**
  - Norwegian jurisdiction
  - Norwegian background law
- **But:** NMIP § 1-4.3: foreign claims leader
4. Insurable interest, insurable value and the sum insured

- Insurance unrelated to any interest
- Insurable value and sum insured
- Underinsurance and overinsurance
- Double insurance
- Calculating the insurable value
- The sum insured as limit to the insurer’s liability
4.1 Insurance unrelated to any interest

- Insurance unrelated to any interest is void, NMIP § 2-1, Criminal Enactments Act § 12 (wager insurance)
- The relationship with provisions concerning legal interest:
  - NL 5-1-2
  - NMIP § 3-16 concerning illegal activities
4.2 Insurable value and sum insured

- Insurable value, NMIP §2-2, =
  - Value of the insured interest
  - At the commencement of the insurance
  - Maximum for liability
  - Not possible in P&I insurance

- Sum insured = the sum for which the assured has chosen to insure his interest
4.2 Under insurance

- Under-insurance = insurable value exceeds sum insured
- Regulated in NMIP § 2-4, CICG § 30
- Not possible in P&I insurance
- Pro rata reduction in coverage
- Not common in hull insurance except for co-insurance
Under insurance

- Insurable value: 1000
- Sum insured: 500

Potential loss: 500/1000 = 50% of each damage
4.2 Overinsurance

- Over-insurance = sum insured exceeds insurable value
- Regulated in NMIP § 2-5
- Liability limited to the insurable value
- No liability in case of fraud
- Not good business
Over insurance:

Max. compensation

Sum insured: 1000

Insurable value: 660

Basis for premium
4.2 Double insurance

- Double insurance = same interest insured against same peril under two or more contracts
- NMIP § 2-6
- Main rule: joint liability
- Exclusion: Subsidiarity, NMIP § 2-6.2
4.3. Calculating the insurable value

- "Open" insurable value, NMIP § 2-2 = full market value when the insurance commences
- Assessed insurable value, NMIP § 2-3 = as agreed between the parties
4.4 The sum insured as limit to the insurer’s liability

- NMIP § 4-18: Three times the sum insured:
  - The “ordinary” sum insured
  - + The “collision liability” sum
  - + The “costs of measures to avert or minimize a loss” sum
5. Scope of cover

- Terminology
- Perils insured against in marine insurance
- Causation
Terminology

**Perils insured**
- Heavy weather
- Theft
- Leakage
- Fire
- Etc

**Causation**

**Losses covered**
- Damage
- Total loss
- Collision liability
- Loss of time
- Etc
5.2. Perils insured against

- The main distinction in national and international marine insurance: Marine insurance and war risk insurance
- NMIP § 2-8 and § 2-9
5.2. Perils insured against

- Marine risks
  - The all risks principle, NMIP § 2-8
  - Exceptions:
    - War perils, § 2-8 letter a)
    - Intervention by state power, NMIP § 2-8 b)
    - RACE II, NMIP § 2-8 d)
    - Insolvency, NMIP § 2-8 c)
5.2. Perils insured against

- War insurance
  - Named perils principle, NMIP § 2-9
  - Exceptions:
    - RACE II, NMIP § 2-9.2 b)
    - Insolvency, NMIP § 2-9.2 a)
  - The relationship between the two branches
5.3 Causation

- The problem
- General insurance law
- NMIP: The main rule
- Combination of war and marine perils
- Combination of perils over different insurance periods
5.3.1 The problem

- **Presumption:**
  - Two causes are **necessary** to result in a loss,
  - None of them are **sufficient**.

- **Combination of perils in different situations**
  - Covered and uncovered perils
  - Perils covered under different branches
  - Perils occurring in different insurance periods
Combination of covered and uncovered causes

Marine insurance

Bad weather

Breach of Safety rule

Combination of causes

Grounding
Combination of causes covered under separate insurances

- Marine insurance
  - Failure of navigation
    - Combination of causes
      - Darkening of lighthouse
        - War insurance
          - Grounding
Causes in different periods

2004
Fracture

2005
Bad weather

Casualty
5.3.2 General insurance law

- The main rule: The dominant cause rule
- Legal basis: ND 1916.76 jfr. 1916.209 NSC Skotfos
- The content
- Anglo-American solution: Causa proxima
The ship runs aground

Combination of causes

Darkening of lighthouse

War insurance

Failure of navigation

Marine insurance

Liability

"Dominant cause" = the most important

Not relevant cause
5.4.3 NMIP The main rule

- NMIP §2-13
- Apportionment principle, not the dominant cause rule
- Special Norwegian principle
- Only applied in marine insurance
- Combination of covered and uncovered perils
NMIP § 2-13/CICG § 20:

Covered risk

Uncovered Risk

Coverage 70 %

Casualty

70 %

30 %

Non-coverage 30 %
5.4.4 Combination of war and marine perils

- NMIP § 2-14
- Reinstates the dominant cause rule as a main rule
- If neither cause is dominant, equal division
5.4.5 Combination of perils in different periods

- NMIP § 2-11
- Starting point: When the peril strikes
- Exception for unknown defect or damage
The insurer is liable for loss occurred when the interest insured is *struck by an insured peril* during the insurance period.

A defect or damage which is unknown at the inception or on expiry of an insurance, *shall be deemed to be a marine peril which strikes the ship at the time the casualty or damage to other parts occurs, or at such earlier time as the defect or the first damage became known.*
Incidence of loss, NMIP § 2-11, 1:

- Peril strikes
- 31.12.2005 Renewal
- Casualty
- No liability for the 2006 insurer
Incidence of loss, NMIP § 2-11, 2:

Viz:
- Primary damage attributed to the point in time when the peril struck
- Consequential damage covered when development occurs