Outline

- The main types of marine insurance
- The legal sources in marine insurance (in general)
- The insurance contract (NP)
- Insurable interest, insurable value and the sum insured (NP)
- Scope of cover (NP)
- Duty of disclosure and due care (NP)
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

- Three main insurances:
  - Hull insurance
  - Loss of income
  - Liability

- The main difference:
  - What interests are insured
  - Calculation of compensation
1.1.1 Hull insurance

- Damage to/loss of property
- Element of liability
- Element of loss of income
- Divided into two:
  - Hull insurance
  - Hull interest insurance: only total loss and liability
1.1.2 Loss of income

- The covered interest: income derived from the ship:
- Different types:
  - Loss of hire: only if the ship is damaged
  - But also some cover under hull insurance
- Freight interest: only if the ship is a total loss

1.1.3 Liability insurances

- Covering ship-owners' third party liability
- Main liability insurance: P&I insurance
- Hull/hull interest insurance cover part of the collision liability
1.2 Insurance of goods under transport

- Covers cargo under transport from A to B (normally 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
  - Two different insurances
  - General division
- Primary insurance - coverage for costs of saving acts
  - Primary insurance: coverage of casualties
  - Costs of saving acts: covers expenses

2 The legal sources

- Insurance Contract Act (ICA) 1989
- The Nordic Marine Insurance Plan (NP) 2013
- The Norwegian Cargo Clauses (CICG) 2004
- The Gard and Skuld P&I conditions 2011
2.1 Insurance Contract Act (ICA) 1989

- Starting point: Mandatory, § 1-3
- But:
  - Insurance of registered ships, § 1-3 (c)
  - Insurance of cargo under an international transport, § 1-3 (e)
- In practice: All cargo insurances follow the rules in ICA, with certain exceptions

2.2 Nordic Marine Insurance Plan (NP) 2013

- Standard contract (Agreed document)
- Developed over 135 years
- By Interested parties from both sides
- Covers most of the relevant insurances for a shipowner (not P&I)
- Extensive preparatory documents
- Updated every third year (new versions)
- Departs from ICA
2.3 Norwegian Cargo Clauses (CICG) 2004

- Conditions relating to insurance for the carriage of goods (CICG)
- Many of the same characteristics as NP
- But:
  - Less extensive commentaries
  - A stronger tie to the ICA
2.4 The P&I Conditions

- Included in NMIP 1964, but not in NMIP 1996 or NP 2013
- Today: Each P&I club has its own conditions (in Norway: Gard and Skuld, in Sweden: The Swedish Club)
- The most important clubs members of The International Group

3. The insurance contract

- The parties to the insurance contract
  - Definitions, NP Cl 1-1
    - The insurers
    - The person effecting the insurance
    - The assured
  - The insurer
    - Coinsurance / claims leader (NP ch 9)
    - Reinsurance
  - The assured: third party interest
The parties to the contract

- Insurer
- Person effecting the insurance
- The assured

Policy holder and the assured

- Insurer
- Person effecting the insurance
- The assured
**Co insurance**
→ Partial insurance with more than one insurer

- **Ship**: 600 mill NOK
- **Insurer A**: 200 mill NOK
- **Insurer B**: 200 mill NOK
- **Insurer C**: 200 mill NOK

1/3 → 1/3 → 1/3

**Reinsurance**
→ The insurer reinsures the risk undertaken under the direct insurance contract.

- **Ship**: 600 mill NOK
- **Insurer**: 100 mill NOK
- **Reinsurer**: 500 mill NOK

Direct insurance: 100 %

Reinsurance: 500 mill NOK
The insurance contract

- Concluding the marine insurance contract
  - NP Cl 1-2: Written proof of insurance
  - The use of a broker: NP Cl 1-3

- Jurisdiction /choice of law NP Cl 1-4
  - Nordic jurisdiction unless foreign claims leader
  - Nordic background law
4. Insurable value and the sum insured

- Insurable value:
  - Starting point: What is the value of the interest
  - Open insurable value, Cl 2-2
  - Assessed insurable value, Cl 2-3

- Sum insured
  - Starting point: Which sum is chosen
  - Three times the sum insured, Cl 4-18

5. Scope of cover

- Terminology
- Perils insured against in marine insurance
- The losses covered
- Causation
Terminology

The casualty

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

Losses covered
- Damage
- Total loss
- Collision liability
- Loss of time
- Etc

Causation

5 Scope of cover

- Perils insured against: Marine perils
  - All risks principle: NP Cl 2-8
  - Exceptions:
    - War perils, NP Cl 2-8 (a)
    - Intervention by state power, Cl 2-8 (b)
    - Insolvency, Cl 2-8 (c)
    - RACE II, Cl 2-8 (d)
5 Scope of cover

- War insurance, NMIP Cl 2-9
  - Named perils principle:
    - War or warlike conditions
    - Capture/confiscation etc
    - Riots, strikes, sabotage, terrorism etc
    - Piracy and mutiny
  - Common exceptions, see above

- Losses covered: Few general rules
- Causation - combination of causes, NP
  - Cl 2-13: The main rule
  - Cl 2-14: Combination of war and marine perils
  - Cl 2-11: Combination of perils over different insurance periods
The main rule, NP Cl 2-13

o If the loss has been caused by a combination of different perils, and one or more of these perils are not covered by the insurance, the loss shall be apportioned over the individual perils according to the influence each of them must be assumed to have had on the occurrence and extent of the loss, and the insurer shall only be liable for that part of the loss which is attributable to the perils covered by the insurance.

Combination of marine and war

o If the loss has been caused by a combination of marine perils, cf. Cl 2-8, and war perils, cf. Cl 2-9, the whole loss shall be deemed to have been caused by the class of perils which was the dominant cause. If neither of the classes of perils is considered dominant, both shall be deemed to have had equal influence on the occurrence and extent of the loss.
NP Cl 2-11, sub clause 1

The insurer is liable for loss occurred when the interest insured is struck by an insured peril during the insurance period.

Cl. 2-11 sub clause 2 and 3

- If an unknown defect results in damage to the insured vessel, the defect shall be deemed to be a marine peril that strikes the interest insured at the time the damage starts to develop.

- If unknown damage in one part of the vessel results in damage to another part or parts of the vessel, the original damage shall be deemed to be a marine peril that strikes the interest insured at the time the damage to the other part or parts starts to develop.
6 Duty of disclosure and due care

- Duty of disclosure, NP Cl 3-1 ff
  - The extent: Active
  - The time: When entering the contract
  - Who: the person effecting the insurance
  - Sanction in case of breach depends on
    - Degree of fault
    - Causation

6. Duty of disclosure and due care

- Alteration of risk,
  - General regulation, NP Cl 3-8 to 3-13
    - Conforms as a main rule to § 3-1 ff
    - Less practical significance
  - Special regulation, Cl 3-14 to § 3-21.
    - Loss of class
    - Trading area
    - Illegal entity
    - Change of ownership
6. Duty of disclosure and due care

- Safety regulation, NP Cl 3-22, Cl 3-25
  - The concept
  - Knowledge
  - Causation
  - Burden of proof
  - Special regulation

- Casualties caused by the assured
  - Deliberation
    - No liability, Cl 3-32
    - Cancellation, Cl 3-34
  - Gross negligence
    - Cl 3-33, reduction of liability
    - Cancellation, Cl 3-34
  - Ordinary negligence, full liability
  - Notification and salvage measures
8 Identification, Overview

- The issue of identification
- The need for rules
- The problems:
  - the person effecting insurance and his helpers
  - the assured and his helpers
  - the assured and the person effecting the insurance
  - the assured and co-insured/co-owner

Identification between person effecting the insurance and his helpers

The person effecting ins.  The insurer

Broker/Agent

Identification

breach of the duty of disclosure  No liability
Assured and co assured/co owner

Assured

Liability

Insurer

No Identification

Breach of duty of due care

Co-assured Co-owner

Assured and co assured/co owner

Assured

Identification

Co-assured Co-owner

No Liability

Insurer

Breach of duty of due care

If overall decision authority

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the assured and the person effecting insurance

Assured

Identification

Person effecting insurance

Breach of duty of disclosure

No liability

Insurer

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