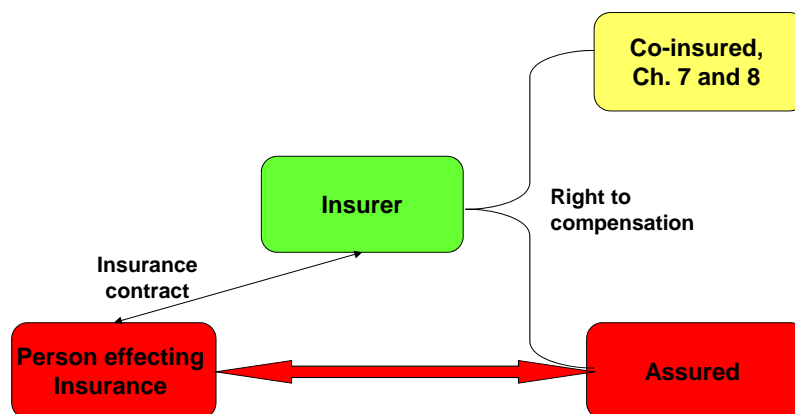




Marine insurance law

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Scandinavian Institute of
Maritime Law

Insurance of third party interest, NMIP



Insurance of third party interest



Shipowner effects insurance and is assured



Market value:
100 MNOK



Mortgage: 90
NMOK

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4. Insurable interest, insurable value and the sum insured

- o Insurance unrelated to any interest
- o Terminology
- o Calculating the insurable value
- o The sum insured as limit to the insurer's liability

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4.1 Insurance unrelated to any interest

- o Insurance unrelated to any interest is void, NP Cl. 2-1
- o MIA sec. 4.1
- o The relationship with provisions concerning legal interest:
 - o NL 5-1-2
 - o NP Cl. 3-16 concerning illegal activities

4.2 Terminology

- o Insurable value, NP Cl. 2-2
 - o Value of the insured interest
 - o at the commencement of the insurance
 - o Maximum for liability, Cl. 4-1
 - o Not possible for liability risk
- o Sum insured, NP Cl. 4-18,
 - o The sum the assured has chosen to insure
 - o Three sums at risk

4.2 Terminology

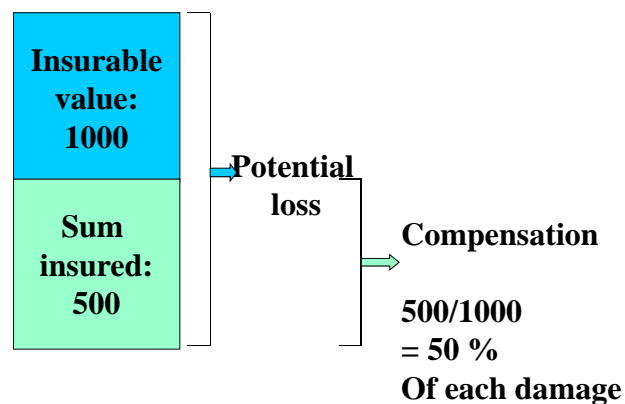
- o Under-insurance
 - o = insurable value exceeds sum insured
 - o NP Cl. 2-4
- o Over-insurance
 - o = sum insured exceeds insurable value
 - o NP Cl. 2-5
- o Double insurance
 - o = same interest insured against same peril under two or more contracts, NP Cl 2.-6

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Under insurance, NP Cl. 2-4

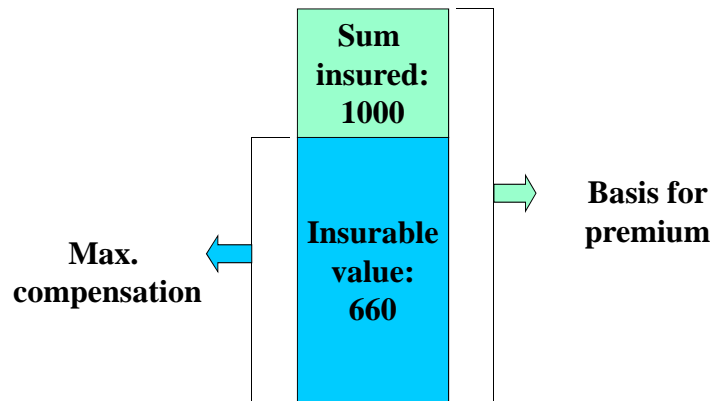


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Over insurance, NP Cl. 2-5



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4.3. Calculating the insurable value

- o "Open" insurable value
 - o Full market value when the insurance commences, NP Cl. 2-2
 - o Not common in hull insurance for ocean going ships
 - o Reason: Must cover mortgage amount
- o Assessed insurable value, NP Cl. 2-3 = as agreed between the parties

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5. Scope of cover

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

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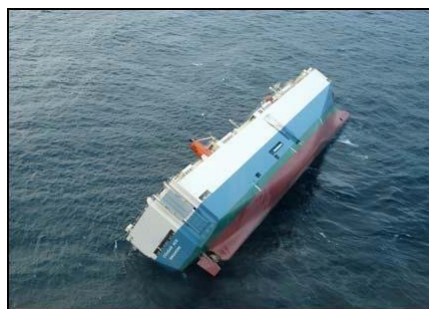
11

Terminologi

The casualty

Perils insured

Heavy weather
Theft
Leakage
Fire
Etc



Losses covered

Damage
Total loss
Collision liability
Loss of time
Etc

Causation

Causation

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5.2. Perils insured against

o Marine insurance

o All risks principle: NP Cl. 2-8

o Exceptions:

o War perils, Cl. 2-8 (a)

o Intervention by state power, Cl. 2-8 (b)

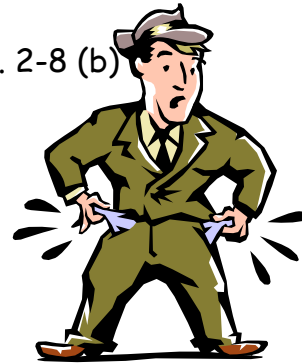
o Insolvency, Cl. 2-8 (c)

o RACE II, Cl. 2-8 (d)



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5.2. Perils insured against

o War insurance, NP Cl. 2-9

o Named perils principle:

o War or warlike conditions

o Capture/confiscation etc

o Riots, strikes, sabotage, terrorism etc

o Piracy and mutiny

o Common exceptions, see above

o The relationship between the two branches



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Question

- o MS Unhappy Ship was attacked and captured by a group of men 100 nautical miles outside Somalia.
- o Is the capture covered by the marine risk insurer or the war risk insurer?
- o Will the result be different if the attack took place 10 nautical miles from the coastline?

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Question

- o Whilst MS Happy Ship was lying in port in Malaysia, some men crept onboard and stole a lot of expensive electronic equipment.
- o Which insurance will cover this?
- o What if the Malaysian government confiscated the equipment under the pretext that it was used for illegal purposes?

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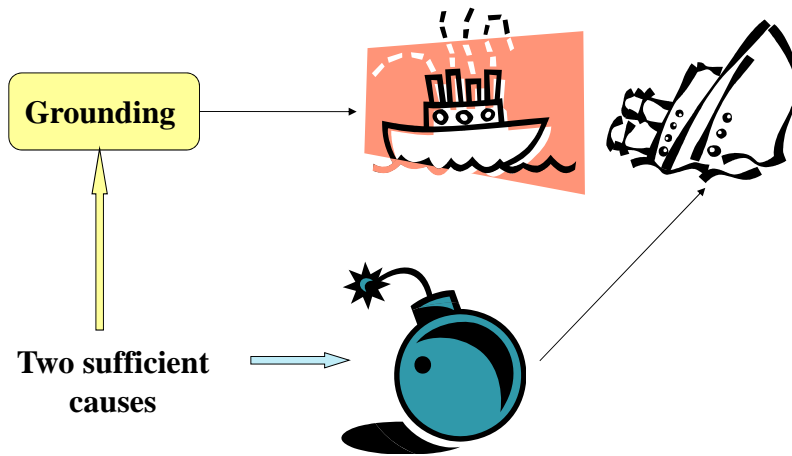
5.3 Causation

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

5.3.1 The problem

- o Presumption:
 - o Two causes are **necessary** to result in a loss,
 - o **none** of them are **sufficient**.
- o Combination of perils in different situations
 - o Covered and uncovered perils
 - o Perils covered under different branches
 - o Perils occurring in different insurance period

Presumption: Two necessary causes

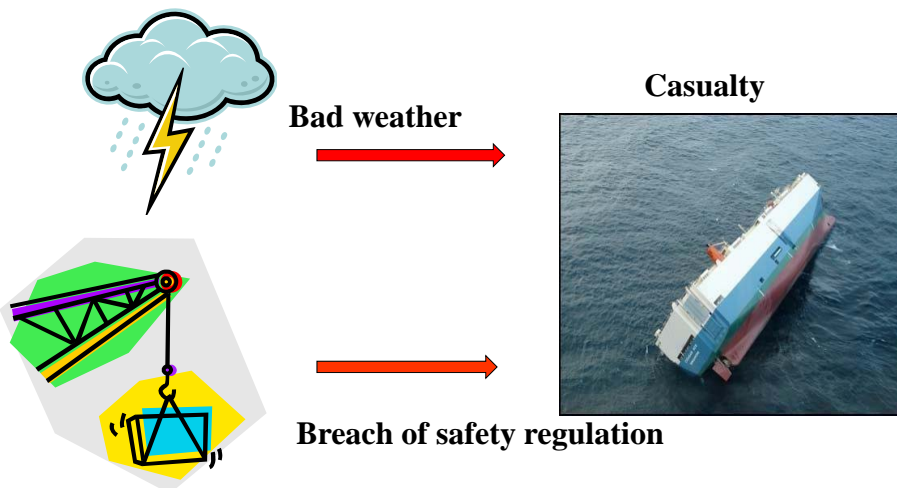


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Combination of covered and uncovered causes



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Combination of causes covered under separate insurances



War risk



Stranding



Marine risk



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Causes in different periods

2009



Fracture
in
propellor

2010



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5.3.2 General insurance law

- o The main rule: The dominant cause rule
- o Legal basis: ND 1916.76, cfr, ND 1916.209 NSC SKOTFOS
- o Anglo-American solution: Causa proxima

Rt 1916.1117 Skotfos



War risk



Stranding



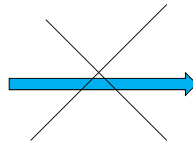
Marine risk



Rt 1916.1117 Skotfos



War risk not relevant



Stranding



Marine risk = Dominant

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5.3.3 NP: The main rule

- o NP Cl. 2-13
- o Apportionment principle, not the dominant cause rule
- o Special Norwegian principle
- o Only applied in marine insurance
- o Combination of covered and uncovered perils

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NP Cl. 2-13

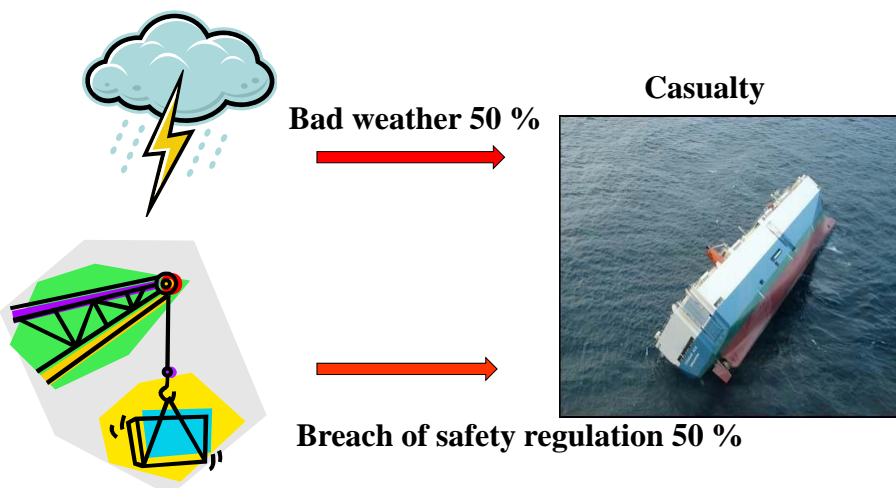
- o If the loss has been caused by a combination of different perils, and one or more of these perils are not covered by the insurance, the loss shall be apportioned over the individual perils according to the influence each of them must be assumed to have had on the occurrence and extent of the loss,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

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NP Cl. 2-13



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5.3.4 Combination of war and marine perils

- o NP Cl. 2-14
- o Reinstates the dominant cause rule as a main rule
- o If neither cause is dominant, equal division

NP Cl. 2-14

- 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.

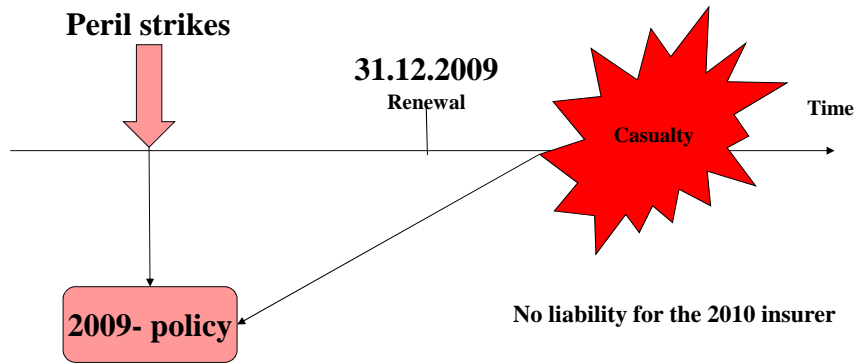
5.3.5 Combination of perils in different periods

- o NMIP § 2-11
- o Starting point: When the peril strikes
- o Exception for unknown defect or damage

NP CI 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.

Incidence of loss, NMIP § 2-11 (1):



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Cl. 2-11 sub clause 2 and 3

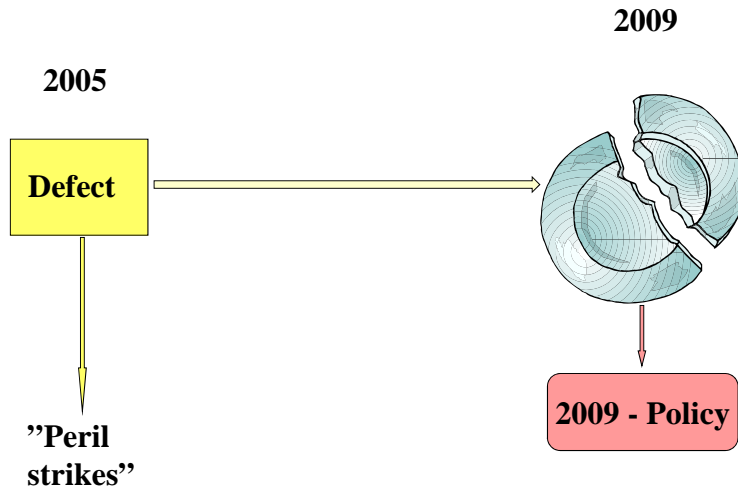
- o If an unknown defect results in damage to the insured vessel, the defect shall be deemed to be a marine peril that strikes the interest insured at the time the damage starts to develop.
- o If unknown damage in one part of the vessel results in damage to another part or parts of the vessel, the original 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.

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Incidence of loss, NP Cl 2-11 (2):

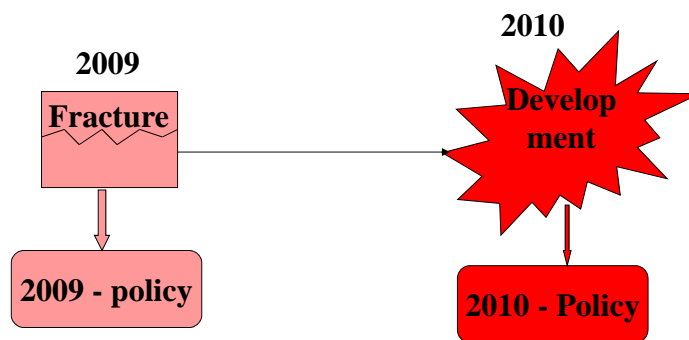


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Incidence of loss, NP Cl. 2-11 (3):

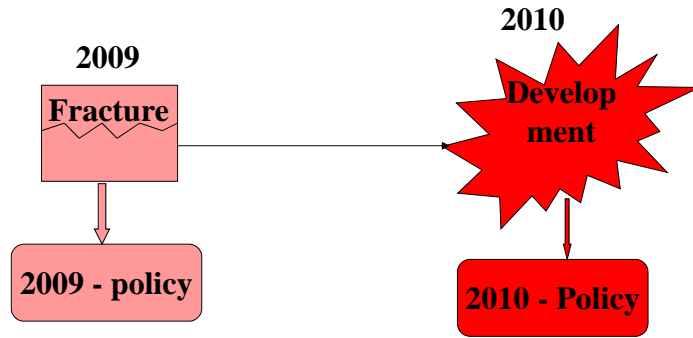


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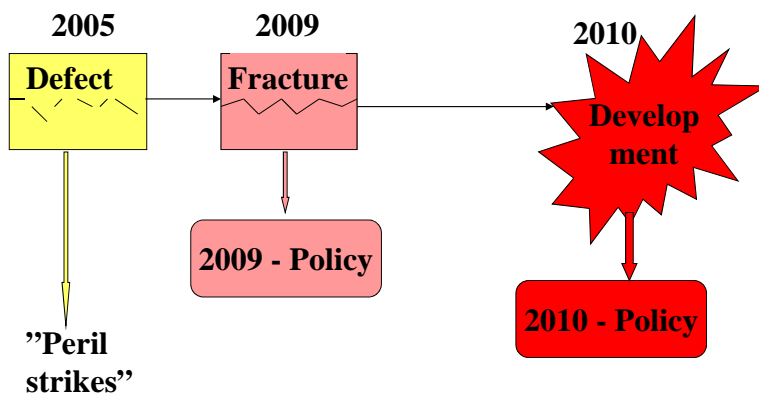
Incidence of loss, NP Cl. 2-11 (3):



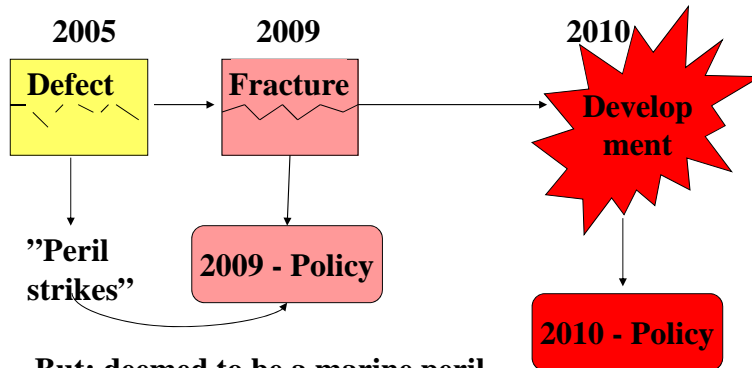
Viz:

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

Incidence of loss, NP Cl 2-11, 2 and 3



Incidence of loss, NP CI 2-11, 2 and 3



But: deemed to be a marine peril which strikes at the time of the extension

NP CI. 2-11 (4)

- o Where a defect or damage existing at the inception of the insurance which is known to the assured but not to the Insurer, gives rise to damage (in the case of defects) or new damage to other parts (in the case of existing damage) the liability of the Insurer shall not exceed the amount the Assured would have been able to recover under the insurance on risk at the time the Assured first acquired knowledge of the relevant defect or damage.

Question

- o MS Happy Ship sustained a brake down of machinery in January 2011. The reason was a crac in the crank web that had started to develop in 2009. It was agreed that only one part was damaged.
- o Is the 2009 or the 2011 insurer liable?

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Question

- o What would be the result if the crack from 2009 led to brake down of the machinery in 2011 which again resulted in grounding of the vessel?
- o Would the result be different if the assured was aware of the crack in 2009?

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