Marine insurance law

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Overview

- 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)
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
Insurable interest = full market value
Insurable value hull = assessed = potential ”rest value”
Rest value = hull interest insurance, but max 25 %
Hull and hull interest

Full market value = 12.5

Assessed insured value hull insurance = 10

Difference between full marked value and assessed hull value is covered by Hull interest
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
  - Freight interest: only if the ship is a total loss
  - Strike: only cover for expenses
Freight interest

Hull and hull interest covers full market value, which reflects the future income of the ship.
But: not loss because
- a long term contract expires or
- Ship is taken out of predetermined form of employment
Freight interest

Total loss interest, hull and freight risk

- Assessed hull value = 10 M covered by hull insurer
- Exceeding market value = 2.5 M covered by hull interest
- Loss of long time charterparty/employment = 2.5 M, covered by freight interest
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
  - Hull: up to the sum insured/assessed value
  - Hull interest: 25% above
  - P&I: Above “market value”
Liability, hull and P&I

Collision Liability = 15 Mill

Liability – full market value
(15 M – 12,5 M = 2,5 M
covered under P&I insurance)

Exceeding market value = 2,5 M
covered by hull interest

Hull value = 10 M
covered by hull insurer
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
  - Marine/civil insurance covers all risks that are not specifically excluded
  - Special exclusion for war risks
  - War insurance covers war and similar risks specifically defined (named perils)
  - Distinction used in all marine insurance
  - But concept of war risk varies
1.3 Some other distinctions of relevance

- **Primary insurance** - coverage for costs of saving acts
  - **Primary insurance:** coverage of casualties
    - **Caused by risks insured against**
    - According to the principles of indemnity in the insurance contract
  - **Costs of saving acts:** covers
    - Expences incurred to avoid/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
- Attempts of harmonization
  - UNCTAD 1974-1986
  - CMI 1997-2005
- Conclusion: Harmonization difficult
- Reason: Competition on conditions
- "Wish list" for the English market
2.1.2 The English insurance market

- The UK Marine Insurance Act (MIA)
  - The legislative framework in most common law countries
  - Built on practice before 1906
- The Institute Time Clauses Hulls (ITCH) 1983/1995
  - Used in most common law countries
  - Used in several civil law countries
- IHC
2.1.3 The Nordic market

- Each country used to have their own set of conditions.
- The conditions were inspired by NMIP
  - Many similar solutions
  - Different structure and legal framework
- But: From 2010 most Nordic markets use the Norwegian Marine Insurance Plan (NMIP)
- A Nordic Marine Insurance Plan was enforced from 2013 (NP)
2.2 The Norwegian legal picture

- 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
2.2.1 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
The Nordic Marine Insurance Plan of 2013

Based on the Norwegian Marine Insurance Plan of 1996, Version 2010
2.2.2 Nordic Marine Insurance Plan 2013

- Standard contract (Agreed document)
- Developed over 135 years
- Interested parties have participated in the preparation
- An approach different from ITCH/other national conditions
2.2.2 Nordic Marine Insurance Plan 2013

- Covers most of the relevant insurances for a shipowner
- But: P&I insurance
- Extensive preparatory documents (Commentary)
- Updated every third year (new versions)
- Little relationship with the ICA
A comprehensive and total product
17 Coastal vessels
18 Offshore units
19 Builders Risks
xx Tailor made

Common provisions

Hull I
Freight I
H & M
LOH
War
2.2.3 Norwegian Cargo Clauses (CICG) 2004

- Conditions relating to insurance for the carriage of goods (CICG)
- Many of the same characteristics as NMIP

But:
- Less extensive commentaries
- A stronger tie to the ICA
2.2.4 The P&I Conditions

- Included in NMIP 1964, but not in NMIP 1996/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
- The formation of a marine insurance contract
- Jurisdiction and choice of law
3.1. The parties

- Definitions, NP Cl. 1-1
  - The insurer (a)
  - The person effecting the insurance (b)
  - The assured (c)
- Coinsurance /claims leader (NP ch 9)
- Reinsurance
- Insurance of third party interest
The parties to the contract

- **Insurer**
- **Person effecting the insurance**
- **The assured**

Insurance contract:

- **Right to compensation**
Policy holder and the assured

- Insurer
- Insurance contract
- Person effecting the insurance
- Right to Compensation
- The assured

Marine insurance
Co insurance
→ Partial insurance with more than one insurer

Ship
600 mill NOK

Insurer A
200 mill NOK

1/3

Insurer B
200 mill NOK

1/3

Insurer C
200 mill NOK

1/3
Reinsurance

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

**Ship:**
600 mill NOK

Direct insurance: 100 %

**Insurer:**
100 mill NOK

Reinsurance: 500 mill NOK

**Reinsurer:**
500 mill NOK
Reinsurance

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

Ship: 600 mill NOK

Direct insurance: 100 %

Insurer: 100 mill NOK

Reinsurance: 500 mill NOK

Reinsurer: 500 mill NOK

No direct action
Insurance of third party interest, NMIP

- Person effecting Insurance
- Insurer
- Assured
- Co-insured, Ch. 7 and 8
- Right to compensation
- Insurance contract
3.2 Concluding the marine insurance contract

- Starting point: Ordinary contract law
- The use of a broker: NP Cl. 1-3
  - New regulation
  - Broker acting on behalf of the assured
  - Unless written authority on behalf of the insurer
- Documents:
  - NP: Written proof of insurance = policy, Cl 1-2
3.3. Jurisdiction and choice of law

- NP Cl. 1-4
- Main rule:
  - Norwegian jurisdiction
  - Norwegian background law
- But: Cl. 1-4.2: foreign leading insurer;
  - No regulation of jurisdiction
  - Default choice of law: Norwegian background law

Marine insurance
4. Insurable interest, insurable value and the sum insured

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

- Insurable value, NP Cl. 2-2
  - Value of the insured interest
  - At the commencement of the insurance
  - Maximum for liability, Cl. 4-1
  - Not possible for liability risk

- Sum insured, NP Cl. 4-18,
  - The sum the assured has chosen to insure
  - Three sums at risk
4.2 Terminology

- Under-insurance
  - $\text{insurable value exceeds sum insured}$
  - NP Cl. 2-4

- Over-insurance
  - $\text{sum insured exceeds insurable value}$
  - NP Cl. 2-5

- Double insurance
  - $\text{same interest insured against same peril under two or more contracts}$, NP Cl 2.-6
Under insurance, NP Cl. 2-4

- Insurable value: 1000
- Sum insured: 500

Potential loss

Compensation

500/1000 = 50%
Of each damage
Over insurance, NP Cl. 2-5

Sum insured: 1000
Insurable value: 660

Max. compensation
Basis for premium

Marine insurance
4.3. Calculating the insurable value

- "Open" insurable value
  - Full market value when the insurance commences, NP Cl. 2-2
  - Not common in hull insurance for ocean going ships
  - Reason: Must cover mortgage amount

- Assessed insurable value, NP Cl. 2-3 = as agreed between the parties