Chapter 3: Marine Cargo Insurance

Objectives:

- To gain an overview to cargo insurance market & players.
- To understand the fundamental principles of cargo insurance.
- To understand the various types of losses.
- To understand the various insurance documents

Introduction

One of the great problem in any profession is to relate the principles and theory of a subject to practice. In this course on marine insurance cargo practice gives an interpretation of the basic principles on which marine insurance is underwritten and relate these principles to the practices carried out in the market.

There is an important section at the end of the chapter on particular trade clauses, which will be valuable to those seeking more detailed information. All these provide excellent material for anyone engaged in the logistic industry who appreciate the need for technical training and such a training is now rightly becoming essential to a successful career in the world of transportation.

Without cargo insurance, international trade would suffer many limitations, and indeed every merchant throughout the world must be concerned to ensure that the goods for which he is responsible are properly insured. To provide such insurance cover requires both understanding and skill on the part of the merchant himself, his broker if he uses one, and his insurer. Not only are the values at stake considerable, but the risks involved in trade are increasingly varied and complicated. This is an important subject which will certainly help those who wish to understand the problems of international cargo insurance and how they are handled.

History

Marine insurance is generally considered to have been the very first type of insurance. The oldest tangible evidence of this insurance is a policy written in 1343. In a different form, however, marine insurance was introduced many centuries prior to that time. Trade of various sorts was an important feature of ancient civilization. At first trade was conducted primarily on land, but gradually water transportation became more important commercially.

Marine insurance is one of the earliest forms of insurance. Commerce by ship was well established in the Mediterranean Sea 2,000 years before the birth of Christ. The Babylonians, Phoenicians, Greeks, and Romans were great sea traders, co-incident with the development of this trade, insurance transactions emerged as distinct commercial agreements.

Bottomry was a transaction protecting an owner from financial loss if his ship was destroyed. If the ship owner acquired the ship by means of a loan, an interest rate was paid to a moneylender. The moneylender, for a premium beyond the ordinary interest rate, would agree to forgive the loan if the ship' was destroyed.

The bottomry loan was an early forerunner of ocean marine insurance. The elements of an ideally insurable exposure will be seen in the following chapter, we can see that (1) similar units (ships) were exposed to similar perils; (2) non-accidental, self-inflicted losses were excluded from coverage; (3) losses were definite and measurable; and (4) catastrophes were not likely. We can see transfer and pooling in the bottomry loan as the moneylender charged each ship owner a premium sufficient (presumably) to pay for the few loans that would have to be forgiven.

Nevertheless, some elements of the modern insurance transaction were missing. Actuarial science was not practiced, although the Phoenicians were noted mathematicians, so premiums were probably not based on mathematical estimates but on intuition. Today, judgmental estimates remain the basis of marine underwriting. The early sea traders and moneylenders also lacked a highly developed body of law like that providing the environment for the modern insurance transaction.

Respondentia loans were comparable to bottomry loans, the difference being the subject of the loan. In this case the ship's cargo, rather than the ship itself, was the subject of the loan. Otherwise, the transaction was comparable. A merchant, placing cargo on a ship, would take out a loan using the cargo as collateral. The moneylender, for a premium in addition to the regular interest charged, agreed to forgive the loan if the cargo were lost. Again, as we will see shortly, modern ocean marine cargo insurance is very similar to the respondentia loan.

Lloyds of London

Some of the most significant developments in marine insurance had their origins in a London coffee house owned by a Mr Edward Lloyd between 1670 and 1680. It was here that merchants and ship owners used to gather to discuss insurance and other business matters. Insurance was conducted on an individual basis, with those seeking insurance asking reputable merchants (who acted as brokers) to seek other merchants willing to take responsibility for a portion of a marine risk (i.e. provide insurance cover) by writing their names under a statement of the risk on a slip of paper. It is from this practice that the term 'underwriter' is derived.

Lloyd's of London, as it is now known, has become a corporation which supplies to its members all facilities (e.g. administrative) required by them for the efficient performance of their underwriting businesses. Lloyd's itself, however, does not do any underwriting. Membership of Lloyd's is on an individual basis, i.e. no insurance company may become a member, and the assets, expertise and character of individual applicants concerned, are subject to stringent investigation by the Lloyd's Committee. Lloyd's, together with the insurance companies, forms the 'London market', the most important marine insurance market in the world.

Whilst marine insurance in its modern form originated at Lloyd's with London still being the Mecca of the industry, it is by no means the only market and numerous companies throughout the world transact much marine insurance. Many Singaporean insurance companies are linked to large overseas parent companies and are able to provide a professional and efficient service at competitive rates.

The Insurance Market

Today, as in historical times, ocean marine insurance is essential to international commerce. The worldwide shipping of petroleum products, manufactured goods, and agricultural products creates a great need for ocean marine insurance. Many people who never think about this insurance actually pay the premiums because they are included in the price of foreign petroleum, imported automobiles, and other imported products.

Marine Insurance is a contract of indemnity. Contracts in the nature of wagering or gaming are void, and as in other types of insurance it is essential for the assured to have an insurable interest in the subject matter insured. Where a marine insurance broker is employed to effect the policy, he has certain duties to perform. The assured must disclose to the insurers all material facts, and must not make any misrepresentations during the negotiation for the contract. He must pay the premium, and the insurer must issue the policy when the premium has been paid or tendered. As we can see all the following parties to the marine insurance contract have their own responsibilities, rights and remedies.

In international sales transactions, with goods generally having to be transported over long distances and being subject to a variety of hazards en route, the risk of loss of, or damage to, goods is relatively high. If the loss or damage does occur, profitability will be lost unless the goods are covered by insurance. Marine cargo insurance is aimed at removing, as far as possible, the financial burden of the risks of loss or damage associated with the transportation of goods between exporters and importers, and placing it with specialist insurance underwriters. These underwriters are skilled in assessing risks, and they manage reserve funds (made up of premiums paid by others) out of which those who suffer losses can be compensated.

Insurance enables the liability for loss or damage to be shared out equitably amongst the many instead of having to be borne by, say, a single cargo owner or ship owner. By paying an insurance premium, to an insurer (e.g. an insurance company or a Lloyd's underwriter), the assured (e.g. the exporter or importer) earns the right to claim compensation from the insurer for a loss arising from any of the risks covered by the insurance policy.

Marine insurance used to refer to only the limited insurance of ships and their cargoes. Today, however, the term really means 'transportation insurance' and covers all modes of transport from source to destination, i.e. road haulage, airfreight, rail, and/or sea, or even by post. Marine insurance may, in fact, apply to the movement of cargo that involves no ocean transport at all.

Generally, Singapore marine insurers operate under the umbrella of The General Insurance Association (GIA) that come under the ambit of the Monetary Authority of Singapore (MAS), a body that regulates technical matters pertaining to the industry and liaises with the brokers' representative committee. Marine insurance may not be placed with underwriters/companies which are not registered in Singapore to transact marine insurance business and therefore it is only in unusual circumstances e.g. when an amount is too large for the local insurance market to absorb, that the Commissioner of Insurance in Singapore may permit business to be placed with non-registered insurers e.g. foreign insurance companies. Lloyd's is registered in Singapore.

Insurance Market - The Players

a) The assured/Insured

The buyers of marine cargo insurance are parties who move cargo around the world - mainly exporters and importers. The assured pays an insurance premium to the insurer, which provides the right to claim compensation in the event of loss or damage arising from any of the risks covered by the particular insurance policy.

b) Underwriter

The sellers of marine insurance are the underwriters who may be local company underwriters if they work for one of the companies active in the marine insurance field, or they may be underwriting members of Lloyd's. Marine underwriters are specialists in assessing risks relating to goods in transit. In return for a premium, the underwriter in effect 'takes over' the whole, or portion, of the assured's risk. The premium received by the underwriter is used to pay for reinsurance cover as protection against major catastrophes, and to pay for any losses suffered by the assured in terms of the type of cover provided by insurance policy, sets aside prescribed reserves and meets day-to-day administrative costs and is (hopefully) left with a profit as a 'reward' for carrying the risk.

c) Insurance company/Insurer

An insurance company employs underwriters who transact business on behalf of the company. Unlike Lloyd's members, company underwriters are not personally liable for the risks that they accept. Few insurance companies operate solely in the field of marine insurance and those that do are nearly all owned by large general insurance corporations. Many insurance companies, however, have a marine insurance division and may be approached either directly or through a broker.

d) Insurance broker

Insurance business is usually conducted through intermediaries, known as insurance brokers. Ordinary businesses normally lack the necessary expertise and insurance brokers act on behalf of the buyers of insurance to assess the extent of cover which is necessary, that which is available, and whether or not a particular premium rate is reasonable. Brokers 'shop around' for insurance at competitive rates on behalf of their clients, Lloyd's brokers are the only intermediaries who are permitted to place insurance with Lloyd's underwriters. The Singapore Insurance Brokers Association (SIBA) represents the interests of member insurance broking firms practising in Singapore.

e) Claims Adjusters/Surveyors

Loss adjusters are insurance claims specialists. Chartered Loss Adjusters must operate in accordance with a strict code of conduct and are largely members of the Chartered Institute of Loss Adjusters, the world's premier claims institute which runs professional examinations open only to student members who have practised under the tutelage of a qualified adjuster for a minimum period of two years, and who already hold another professional or insurance qualification.

Loss adjusters are usually engaged by insurance companies. As the loss adjuster's fee is paid by the insurer, it is untrue to say that he is independent. However, the loss adjuster is expected to be impartial given that adjusters' fees are paid out of the common pot of premiums paid by policyholders to insurers. The claimant can also engage his own adjuster, but he will have to bear the charges himself. Some insurers may take exception to loss adjusters on their panel acting against them, while other insurers would welcome the participation of another adjuster, provided he helps in presenting a realistic claim.

Loss adjusting firms also employ other professionals, viz accountants, engineers, legal officers and the like, recognising the fact that to provide a professional and top class service, a multi-disciplinary approach to claims handling is needed.

The Fundamental Principles of Insurance

Insurance may be defined as a social device whereby one person is enabled to make a contract with another, the second party agreeing to assume certain definite risks of the first party upon payment by the latter of a compensation called the premium. This agreement is subject to the general law of contract, the application of which is limited in many essential respects, however, by the peculiar nature of the contract and by well-understood customs and usages of the business.

Essential requirements for insurance. —In order that such a contract may operate equitably, produce the desired benefits and be practical from a business point of view, certain conditions are absolutely necessary. Briefly stated, these conditions are the following:

1. The insured must be subject to a real risk. This risk may be a loss of goods or benefits, which he already possesses, or of prospective benefits or profits. The threatened loss may be a loss of visible property or of such an intangible thing as a legal right of action; but it is important that the contract be based upon some actual possibility of loss and not upon the mere desire of the insured to bet against the happening of some event. The latter is a perversion of the real function of insurance. It is preferable that the risk be one which cannot be affected by the actions of the parties involved; i.e., that the insured cannot himself produce the event insured against or increase the probability of its happening. At least, he should have no incentive for so doing, as otherwise a great moral hazard is involved in the contract. But if this were strictly adhered to many forms of insurance would be prevented from adequately exercising their legitimate functions.

2. It has been found in practice that the risk to be insured must be important enough to warrant the existence of an insurance contract. Many policies of insurance exclude

unimportant losses as costing more to insure than the value of the protection given. Obviously to cover every small loss that might possibly occur would be to greatly increase the cost of protection at the expense of those who desire protection against really great hazards. Thus in marine insurance it is customary to exempt the insurer from liability for small losses; in compensation laws the injured workman does not recover for the first few days of disability, and in accident and health insurance various restrictions are introduced limiting the company's liability.

3. The cost of insurance must not be prohibitive. In order to be of any great benefit to a large portion of the business community the premium paid must be sufficiently small to be within the reach of nearly everyone. Otherwise the risks written will be confined to a small and select group of persons insufficient in number to allow the law of average to work. Likewise the expense of doing business, which is a factor in the size of the premium, must be kept within due proportions. We have seen many instances in the past where new methods of conducting the insurance business have been introduced by competition because the expense of existing methods was thought to be excessive. It is essential for insurance agents and brokers to remember that their income is derived in the last analysis from the premiums paid by the policy-holders and that consequently their existence must be justified be rendering some real service to the insured.

Insurable interest.

One of the fundamental principles among those enumerated above is that the person insured must possess some real interest in the subject matter insured, a doctrine that has been spoken of as the necessity of an insurable interest. It is this insurable interest, which makes a contract between the insurance company and the insured particularly proper. In all forms of insurance this principle has been recognized by the courts although, as we shall see later, in life insurance and marine insurance considerable departures from the principle have been permitted. While insurable interest is necessary to the contract, insurable interest without a contract confers no rights upon its possessor. A contract of insurance has been held, for
example, to confer no rights upon third parties who happen for some reason to be interested in the subject matter involved. The illustration might be used of a workman who recovered damages for an industrial accident from his employer. The employer was insolvent and the workman found himself unable to collect on the judgment, whereupon he had recourse to a suit against a liability insurance company, which had insured the employer against such an event.

The court held, however, that a workman had no rights under a contract that was solely between the employer and the insurance company, even though his own
injuries might be the subject upon which the contract depended. In the same way public liability insurance policies exist, not for the protection of the public who may be injured, but for the protection of the party responsible for the injury, who may be liable for damages. In marine insurance an insurance policy may 'be taken out by a freight forwarder and after a loss a third person may appear and claim the proceeds of the policy, but it is necessary for the latter to show that he was the person for whom the insurance was intended at the time it was issued. Both an insurable interest and a contract must therefore be present.

Good Faith

Most commercial contracts are subject to the doctrine of ‘caveat emptor’ (let the buyer beware). These contracts are subject to various acts among them the Sale of Goods Act but basically it is the responsibility of each party to ensure they make a good or reasonable bargain. So long as one does not mislead the other and answer questions truthfully, there is no question of the other party avoiding the contract. There is no need to disclose information which is not asked for.

However in insurance when one party (the insurer/underwriter) knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the insured…to make a full disclosure to the insurer without being asked of all the material information. This is expressed by saying it is a contract of the utmost good faith (Rozanes v. Bowen (1928)). In order to make the situation more equitable the law imposes a duty of ‘uberrima fides’ or ‘utmost good faith’ on the parties to an insurance contract. The contract is deemed to be one of faith or trust and most contracts of a fiduciary nature are subject to the same doctrine.

Proximate Cause

It is necessary to state the perils against which cover is given, so that the intention of the parties is clearly defined. It would appear to be a simple matter to understand what is meant by an insurance against fire, or accident or maritime perils, but where does the operation of these perils start and when does their effect end. It is a fundamental law of insurance that the insurer is only liable for losses ‘proximately’ caused by an insured peril.

This doctrine is defined as ‘Proximate cause means the active, efficient cause that sets in motion a train of events which brings about a result, without the intervention of any force started and working actively from a new and independent source.’ (Pawsey v. Scottish Union and National (1907)). Therefore it is important to note that the proximate cause is not the first cause, nor the last cause, it is the dominant cause (Leyland Shipping Co. v. Norwich Union (1918) or the efficient or operative cause (P. Samuel & Co v. Dumas (1924)).

Indemnity.

It is defines for the purposes of insurance contracts, as a mechanism by which insurers provide financial compensation to place the insured in the financial position after a loss as he enjoyed immediately before it. There is a link between indemnity and insurable interest as it is the insured’s interest in the subject matter of insurance that is in fact insured. In the event of any claim the payment made to an insured cannot therefore exceed the extent of his interest.

Gambling analogy. Both gambling and insurance transfer risk and reward. Gambling offer the possibility of either a loss or a gain. Gambling creates losers and winners. Insurance transactions do not present the possibility of gain. Insurance offers financial support sufficient to replace loss, not to create pure gain. Gamblers can continue spending, buying more risk than they can afford to pay for. Insurance buyers can only spend up to the limit of what carriers would accept to insure; their loss is limited to the amount of the premium. Gamblers, by creating new risk transfer, are risk seekers. Insurance buyers are risk avoiders, creating risk transfer in terms of their need to reduce exposure to large losses.

Gambling or gaming is designed at the start so that the odds are not affected by the players' conduct or behavior and not required to conduct risk mitigation practices. But players can prepare and increase their odds of winning in certain games such as poker or blackjack. In contrast to gambling or gaming, to obtain certain types of insurance, such as fire insurance, policyholders can be required to conduct risk mitigation practices, such as installing sprinklers and using fireproof building materials to reduce the odds of loss to fire. In addition, after a proven loss, insurers specialize in providing rehabilitation to minimize the total loss.

Insurance, the avoiding, mitigating and transferring of risk, creates greater predictability for individuals and organizations.

Subrogation and contribution

Subrogation is the right of one person to stand in the place of another and avail himself of all the rights and remedies of that other, whether already enforced or not. As far back as 1882 in the case of Burnand v. Rodocanachi the principle was put forward that an insurer, having indemnified a person, was entitled to receive back from the insured anything he may receive from any other source.

The fundamental point is that the insured is entitled to indemnity but no more than that. Subrogation allows the insurer to recoup any profit the insured might make from an insured event. It also allows them to pursue any rights or remedies which the insured may possess, always in the name of the insured, which may reduce the loss.

Subrogation applies when a third party caused a loss or was primarily responsible for it through negligence. A loss victim usually has legal recourse against a party at fault. Subrogation transfers this right to the insurer when a loss is paid, but only to the extent of the insurance payment. Failure to protect the Insurer's Subrogation Rights can adversely affect claims settlement.

Contribution is the right of an insurer to call upon others similarly, but not necessarily equally liable to the same insured to share the cost of an indemnity payment. The fundamental point here is that if an insurer has paid a full indemnity, it can recoup an equitable proportion from the other insurers of the risk. If a full indemnity has not been paid, then the insured will wish to claim from the other(s) also to receive an indemnity and the principle of contribution enables the total claim to be shared in a fair manner.

At common law contribution will only apply where the following conditions are met:

- 2 or more policies of indemnity exist
- policies cover a common interest
- policies cover a common peril which gave rise to the loss
- policies cover a common subject matter
- each policy must be liable for the loss

Law of Large Numbers.

The vast majority of insurance policies are provided for individual members of very large classes. Automobile insurance, for example, covered about 175 million automobiles in the United States in 2004. The existence of a large number of homogeneous exposure units allows insurers to benefit from the so-called "law of large number," which in effect states that as the number of exposure units increases, the actual results are increasingly likely to become close to expected results. There are exceptions to this criterion. Lloyd's of London is famous for insuring the life or health of actors, actresses and sports figures. Satellite Launch insurance covers events that are infrequent. Large commercial property policies may insure exceptional properties for which there are no 'homogeneous' exposure units. Despite failing on this criterion, many exposures like these are generally considered to be insurable.

Consequence of the Law of Large Numbers

In insurance there are many important consequences of the law of average, some of which are:

1. Insurance is the exact opposite of gambling. In gambling two persons deliberately set about to create some hazard for pleasure or profit; they introduce the element of risk where it previously did not exist. Insurance, however, is designed as a hedge against risks which are already present, the object being to neutralize the existing risk. Thus a person who becomes the owner of property assumes the risk that it will burn, and takes out a policy of insurance to eliminate this risk or at least reduce its consequences. Every person living runs the risk of dying, every person in foreign trade assumes the risk that his goods will be lost at sea, every manufacturer runs the risk that some person will be injured on his premises and that he will be held responsible, every buyer of property runs the risk that his title will prove to be defective, every employer runs the risk that his employee will prove to be dishonest. Insurance is designed to reduce these existing risks instead of creating new ones.

2. Insurance involves the accumulation of large funds to meet future contingencies. Thus we find that in life insurance reserves are built up to reduce future premiums, in fire insurance to meet future losses, in liability and compensation insurance to meet claims and suits which will appear in the future. Since these funds so accumulated are the property of thousands of insured persons, the State has intervened, and, as a matter of public policy, has regulated their use. The investments of insurance companies are governed by state statutes designed to preserve such funds for the purpose for which they were intended.

3. Large catastrophes prevent the proper working of the law of average. A San Francisco fire is an exceptional happening which no one can foresee and to which past experience furnishes no guide. One method of attempting to reduce the consequences of such losses upon the financial standing of an insurance company is to secure a wide distribution of risks.

Thus a company which insured risks in the city of San Francisco alone would have been made insolvent by its losses, the premiums collected being insufficient to meet the claims presented. But most of the fire insurance companies involved were writing insurance not only in San Francisco but over the entire world. A wide distribution of risks, furthermore, reduces the variation in losses from year to year and consequently renders the operation of the insurance business more certain and sure.

The burden of financial loss

Who must now support the widow and her 3 children?

Who will replace the Boeing 747?

Who will restore the embezzled funds?

Where will the money come from to rebuild the house?

What about the medical expenses and loss of work time of the injured pedestrian?

Who bears the financial losses?

For the most part, in the absence of legal remedies, contractual arrangements, or cooperative efforts of friends and neighbours, these losses are allowed to stay where they fall.

Shifting the burden by law

Common Law or Civil Law

Loss caused by the negligence of another, the loss may be shifted by society through common law to the person who is responsible for it.

Statute or Criminal Law

Where society feels that the common-law allocation of loss is not in the best interest of its citizens, government passed statutes to redistribute the loss. For e.g., workmen's compensation laws to place the loss resulting from industrial accidents absolutely upon the employer, without regard to fault, rather than trying to find the negligent party. Social security laws or CPF have been passed to redistribute the loss of income resulting from unemployment, disability, old age, and death.

Insurance and the Burden of Loss

Whether the burden of the loss remains where it falls or is shifted by law, that loss may well cause someone serious financial difficulty. The OWNER whose property is destroyed or damaged or whose income is interrupted by the death, disability, or forced retirement of the breadwinner is likely to suffer great financial loss. A person who becomes legally liable to someone else for bodily injury or property damage can suffer disastrous financial consequences.

Insurance contracts have become vital to practically every one of us in family or business. As a group we pay billions for private insurance contracts and more billions under government-sponsored social insurance plans. Insurance is one of our country's large and important businesses.

Types of Marine Cargo Policies

The shipper or insured covers the risks depending on the terms of letter of credit/ export order. The Institute of London Underwriters has drawn up the different clauses in marine insurance policy in respect of risk coverage. The risk coverage is done in terms of various institute cargo clauses. Different marine insurance policies with different risk coverage are:

Institute Cargo Clause A: This policy covers all the risks of loss or damage to goods. This is the widest cover.

Institute Cargo Clause B: This policy covers risks less than under clause 'A'.

Institute Cargo Clause C: This policy covers lowest risks.

War and Strikes, Riots and Civil Commotion (SRCC) clause is excluded in all the above policies. These risks can be covered by specifically asking for, paying additional premium.

Covered Perils

The "perils clause" of a marine property policy lists the causes of loss covered by the policy. The perils of principal importance covered by hull and cargo policies are the "perils of the seas," which do not include every loss that occurs on the sea, but only accidental, unanticipated losses occurring through extraordinary action of the elements at sea, as well as mishaps in navigation such as collision with another vessel or running aground.

Various other perils – such as fire, lightning, or earthquake—are also named in the perils clause. As the insurance needs of ship-owners and cargo shippers became more complex, new clauses were devised to cover additional perils such as bursting of boilers, breakage of shafts, and accidents in loading and unloading. Eventually, the concept of "all-risks" policy was introduced, which states that any risk of physical loss is covered unless it is specifically excluded. War, capture, seizure, political or labour disturbances, civil commotion, riot, and similar perils are excluded under basic marine insurance forms but can be bought back through an endorsement or by a separate policy.

The peril normally covered by a liability policy is a claim or suit brought against the insured claiming damages for some alleged wrongful act of the insured. Unless the claim is made or the suit is brought, the insured will not suffer a liability loss, even though the insured may have negligently injured another or damaged another's property. The types of loss covered by liability policies are presented in different ways. Typically, protection and indemnity policies contain several clauses describing the specific types of losses, costs, or expenses that the insurer will pay if, and only if, the insured is held liable for and has paid them.

4. Types of Losses Covered

The types of losses covered by cargo and hull policies can be categorized as (1) total loss, (2) particular average, (3) general average, and (4) sue and labour charges. These categories of losses are described below.

Total Loss. A total loss can be either an actual total loss or a constructive total loss. An actual total loss may take any of three basic forms:

- Physical destruction (e.g. foundering, loss by fire, missing ship).
- Loss of specie. This has been defined as cargo that no longer answers the description of the interest insured.
- Irretrievable deprivement (e.g. capture).

Because the interpretation of constructive total loss by some laws is unacceptable to most insurers, some hull policies usually contain a provision stating that there will be no recovery for a constructive total loss unless the cost of recovering and repairing the vessel would exceed the agreed value of the vessel. Similarly, cargo policies ordinarily contain a provision stating that there will be no recovery for a constructive total loss unless the property is reasonably abandoned in expectation of its becoming an actual total loss without expending more than the value of the property. The important concept to grasp for now is that in most marine insurance policies the full amount of insurance is payable in the event of either an actual or a constructive total loss.

Particular Average. In marine insurance, an "average" is a partial loss of vessel or cargo. A particular average is a partial loss that is to be borne by only a particular interest (such as the vessel alone or one of the various cargo interests aboard). In contrast, a general average is a partial loss that must be borne proportionally by all interests in the maritime venture (such as the vessel and all owners of cargo aboard the vessel on a particular voyage).

Damaged property can be considered general average only if the property was sacrificed in order to save the entire venture or was somehow damaged as a result of the sacrifice. If this element is lacking, the damage is a particular average. An example of particular average is fire damage to a vessel and cargo aboard the vessel.

General Average. General average originated in ancient times as a way to apportion fairly among all parties to a maritime venture any losses incurred by some of the ventures in the interest of preserving the entire venture. Modern hull and cargo policies include a provision covering the insured's share of general average. In order for a loss to be considered general average, the loss must be a direct consequence of a "general average act." defined as follows:

There is a general average act when an extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

Effecting a Cargo Policy

Although it is not compulsory for the exporter to insure his overseas shipments, common business prudence demands it. Moreover, the contract of sale, or the need of bank finance, may dictate insurance. The exporter usually has the choice, however, of employing a broker or of insuring direct with an insurance company.

Proposal forms, common in most branches of insurance, are rarely used for marine insurance, but, as all insurance contracts are contracts to which the legal requirement of the utmost good faith applies, absence of a proposal form enhances rather than diminishes the duty of the proposer to disclose all material facts.

What is the information the insurer is expected to know?

- Matters of common notoriety or common knowledge i.e. from daily newspapers
- Matters, which in the ordinary course of insurer's business it ought to know i.e., access to Lloyd's Register of Shipping, trade terms, shipping conditions, navigational hazards, climatic conditions, and types of packing.

What is the information the Insured is expected to provide?

- Material facts which would influence an insurer to accept or reject the insurance or fix an appropriate premium.
- Material facts which he actually knows and which he should know in the ordinary course of his business (if a material fact is not disclosed the result is the same – innocent or deliberate – the insurer is entitled to avoid the contract).

Representations

During the course of negotiations for an insurance, subsidiary statements relating to the risk which are known as representations, if material, must be true, otherwise the insurer may avoid the contract. However the standard of truth of representations is not as great as that for material facts. The obligation to disclose material facts and to correct any misrepresentations continues until the proposal of insurance is accepted by the insurers.

Warranties

A warranty is an **absolute** undertaking that something shall or shall not be done (e.g., that goods will be unloaded direct from the ship on to railway wagons), or it affirms or negates a particular state of facts (e.g., that the goods are packed in cases).

A warranty **must be complied with exactly and literally** whether it is material to the risk or not, otherwise the insurer will be discharged from liability from the moment of the breach. In practice the insurance would probably be worded:

“Warranted unloading direct from ship on to railway wagons or held covered,” or “Packed in cases or held covered.”

The phrase “or held covered” means that if the warranty is not complied with the insurance will remain in force but the insurers are to be informed without delay and an additional premium paid if so required.

Implied Warranties: There are 2 warranties which are incorporated in a cargo policy by the Marine Insurance Act and they are warranties of 1. legality and 2.seaworthiness. “Implied” that is warranties which are understood to apply but which are not written into the policy.

Other Types of Policies

Open Covers: It is normal for regular exporters to have standing arrangements with their marine insurer where all their shipments are automatically insured. These are in essence agreements where the assured undertakes to advise the insurers of all his shipments, the insurers agree to insure those shipments. These mutual obligations apply in all circumstances so that if the assured discovers that he has omitted to advise the insurers of a shipment, and the goods have arrived safely at destination, the assured must still declare the shipment and pay the premium for it. The insurers, for their part, undertake to insure all the assured’s shipments, and this applies even if the goods have been lost or damaged prior to declaration regardless that acceptance of the declaration involves liability for a possible claim.

Floating Policies: It is issued with a sum insured sufficient to cover a number of consignments. As and when they are shipped declarations are made and the sum insured of the policy is reduced by the value of the goods shipped. This procedure continues until goods have been dispatched to a value that equals the floating sum insured. A further floating policy can then be arranged.

The Insurance Premium

There are 2 parties to a marine insurance contract. These are the insurer, who agree to pay claims according to the contract and the assured, who agrees to pay the premium or consideration for the performance. This consideration is, in fact, the sum of money paid or payable to the insurer and is called “the premium”. The premium is vitally important to the insurer for it is from this premium income that he accumulates the funds set aside to meet possible claims. The difference between premium income and

claims, less overheads, represents the insurer’s profit. It follows that the insurer must use all his skill, judgement and knowledge to ensure an adequate premium income but, at the same time, not to underwrite business which may result in large claims, thus reducing the profit ratio.