The Training Material on “Risks Management (including International Conventions)” has been produced under Project Sustainable Human Resource Development in Logistic Services for ASEAN Member States with the support from Japan-ASEAN Integration Fund (JAIF). Copyright Association of Southeast Asian Nations (ASEAN) 2014. All rights reserved.
Marine Cargo Insurance

LIFM 6.5.0
Elements of a Contract

- Offer and Acceptance
- Consideration
- Capacity to contract
- Legality
- Good Faith
Fundamental Principles

• Insurable Interest
• Utmost Good Faith
• Proximate Cause
• Indemnity
• Subrogation and Contribution
Elements Of Contract vs Insurance Principles

Why is good faith in contract not good enough for insurance contract?

- Offer and Acceptance
- Consideration
- Capacity to contract
- Legality
- Good Faith

- Utmost Good Faith
- Proximate Cause
- Insurable Interest
- Indemnity
- Subrogation and Contribution
Sustainable Human Resource Development in logistics services for ASEAN Member States

Insurance

What is insurance?

- It is a legal contract
- It is used to share risk
- Activates only after something has gone wrong
Fundamental Principles
Fundamental Principles

- Utmost Good Faith
- Insurable Interest
- Indemnity
- Proximate Cause
- Subrogation and Contribution
Fundamental Principles

Principles of Insurance

- Utmost Good Faith
- Insurable Interest
- Principle of Indemnity
- Principle of Contribution
- Principle of Subrogation
- Principle of loss Minimization
- Principle of ‘CAUSA PROXIMA’
- Why is it so easy to get?
  ✓ Everything can be insured.

- Why is it hard to keep?
  ✓ It is a price for peace of mind.

- What is the trouble with insurance?
  ✓ Pays only when something has gone wrong.
What is risks?

- It is about RISKS?
- Take a Risk?
- Is that Gambling?
- Or is that Insurance?
What is Risk?

External Influencers Driving Change

- Economic Turbulence
- Cat/Climate Shifts
- Demographic Shifts
- Consolidation
- Regulation Demands
- Globalization
- Technology Advances
- Communication Methods
- Competition
- Health Care Advances/Reforms

Source: Strategy Meets Action 2011
What is the odds?

- Both Gambling and Insurance involve the transfer of risk and reward
- Gambling creates Loser and Winner
- Insurance offers to replace loss and not to create Pure Gain.
What is the odds?

- Gamblers can continue spending, buying more risks than they can afford
- Insurance buyers are risks avoiders, transfer their needs to reduce exposure to Large losses
What is the odds?

- Gambling is designed so that odds are not affected by players conduct or behaviour
- Insurance requires policy holders to conduct risk mitigation practices such as installing fire sprinklers, fire proof materials to reduce odds of loss
- Insurers specialize in rehabilitation to minimize the risk of Total Loss
Who will pay?

The burden of financial loss
Who will replace the Boeing 747?
Who must now support the widow and her 3 children?
Who will restore the embezzled funds?
Where will the money come from to rebuild the house?
What about the medical expenses of injured pedestrian?
What happens when the ship and its cargo does not arrive at destination?
Who will pay?

- Disasters are an ever present hazard
- Financial losses can be transferred to professional risk-takers
- Insurance plays a vital part in international trade and economic progress
What is risk management?
Risk Management

A

Minor Consequences

Risks that can be safely ignored

B

Risks that can be mitigated through simple changes in behavior

C

Major Consequences

Risks that can be mitigated through insurance

D

Risks to actively identify, monitor, and mitigate

Low Likelihood

High Likelihood
Sustainable Human Resource Development in logistics services for ASEAN Member States

Where does insurance fit in?

- Incorporation
- Assumption of Risk
- Management of Risks
- Purchase of Insurance

Risk Management
Marine Cargo Insurance
Insurance

**WHY THE WORLD NEEDS INSURANCE: AN OVERVIEW**

1. **Natural Catastrophes Are Costing the World a Fortune**
   - 1970 – 1990: $700 billion
   - 2001 – 2011: $1570 billion
   - Increase: 124%

2. **The World is Collectively Underinsured by $168 Billion**
   - Minimum Insurance Requirement: $370 billion
   - Actual amount of insurance: $202 billion
   - Insurance gap: $168 billion

3. **Underinsurance is a Particular Problem in Developing and Emerging Markets**
   - Most underinsured countries by value: $ billion
     - China: $79.57
     - India: $19.72
     - Indonesia: $14.12
     - Brazil: $12.68
     - Turkey: $10.23
     - Mexico: $7.78

4. **Being Well Insured Supports Economic Growth**
   - More insurance is required, richer countries have more access to protect.
   - Well-insured countries have less need to rely on emergency, more money to invest.
   - GDP grows.
   - Insured businesses have more security, need to hold less capital, and boost investment.
   - In some businesses, rely less on state help, so less burden on the taxpayer if disaster strikes.

**... AND THE WIDER ECONOMY**

- Rise in insurance penetration: 13%
- Reduction in uninsured losses: 22%
- Increase per capita GDP: $6000

**Risk Management**

**Marine Cargo Insurance**
Sustainable Human Resource Development in logistics services for ASEAN Member States

Insurance Market

INVESTMENTS

PREMIUMS

OPERATING EXPENSES
- PREMISES
- EQUIPMENT
- STAFF
- UTILITIES
- TAXES
- REGULATORY FEES
- INSURANCE

CLAIMS
- BROADER COVERAGE
- ATTITUDES
- ECONOMIC CLIMATE
- COURT DECISIONS
- LEGISLATION

Risk Management Marine Cargo Insurance
Insurance Market

- Who are the players?
  - The insured/assured (buyer)
  - The underwriter (seller)
  - The insurer/insurance company
  - The insurance broker (intermediary)
  - The loss adjusters
Shifting the burden by law

- Common Law or Civil Law
- Statute or Criminal Law
- Statutory Insurance
Insurance Premium

2. parties to an insurance contract
1. Insurer agrees to pay claims according to the contract
2. Insured agree to pay premium or consideration for the performance
Elements of Insurance

- Insured must be subject to a real risk
- Risk must be important enough
- Cost of insurance must not be prohibitive
Sustainable Human Resource Development in logistics services for ASEAN Member States
Law of Averages...consequences

- Exact opposite of gambling
- Preeminently social in nature
- Accumulation of large funds
- Catastrophes prevent proper working of law of average
- Size of individual risk do not vary greatly
- Random selection of risks
Insurable Risks...7 common characteristics

• Law of large numbers
• Definite Loss
• Accidental Loss
• Large Loss
• Affordable premium
• Calculable Loss
• Limited risk of catastrophically large loss
Business Risk

Operational Risk
- Bid Process
- Information Transfer
- Construction Management
- Accounting Process

Financial Risk
- Cost of Capital
- Growth Capitalization
- Market Risk
- Bank & Surety Support

Customer/Industry Changes
- Growth Strategy
- Branding/Image
- Competition

Employee Injury/Illness/Theft
- Third-party Liability
- Natural Hazards
- Property Loss

Strategic Risk

Hazard Risk

Four Quadrants of Business Risk
Insurable Interest

Title, Risk, and Insurable Interest
Indemnity

Principle of Indemnity

- Indemnity means a guarantee or assurance to put the insured in the same position in which he was immediately prior to the happening of the uncertain event. The insurer undertakes to make good the loss.

- It is applicable to fire, marine and other general insurance.

- Under this the insurer agrees to compensate the insured for the actual loss suffered.
Insurable interest

What is it that is insured in a fire policy?
Not the bricks and materials used in building the house, but the *interest* of the insured in the *subject matter* of insurance.

*Court of Appeal in the case of Castellain v. Preston (1883)*
Uberimae Fidei

‘As the underwriter knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the assured...to make a full disclosure to the underwriter without being asked of all the material circumstances. This is expressed by saying it is a contract of the utmost good faith.’

(Rozanes v. Bowen (1928))
Material Facts

Legal definition contained in the Marine Insurance Act 1906 s.18 (2):

‘Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.'
Representations

Written or oral statements made during the negotiations for a contract are termed ‘representations’. Some of these statements will be about material facts and others will not. Those which are material must be substantially true or true to the best knowledge or belief.
Warranties

Fundamental conditions and a breach allows the aggrieved party to repudiate the contract. It is an undertaking that something shall or shall not be done or that a certain state of affairs exists, or does not exist.
Comparison

Representations
1. Need only be substantially correct
2. A breach (misrepresentation) must be material to allow repudiation
3. Do not normally appear on the policy

Warranties
1. Must be strictly and literally complied with
2. Any breach gives the right to repudiate
3. Are written into the policy except for implied warranties. (There is no legal requirement to do this directly as the proposer may be asked to sign a warranty on the proposal form and the policy states it as basis of contract).
Proximate cause

‘Proximate cause means the active, efficient cause that sets in motion a train of events which bring about a result, without the intervention of any force started and working actively from a new and independent source.’

The standard legal case of Pawsey v. Scottish Union and National (1907)
Proximate cause (contd)

The proximate cause is not the first cause, nor the last cause, it is the dominate cause (Leyland Shipping Co. v. Norwich Union (1918) or the efficient or operative clause (P. Samuel & Co. v. Dumas (1924))
Pink v. Fleming (1890) on Delay

There was an insurance on a cargo of oranges and was warranted free from partial loss or damage unless such loss or damage was consequent on collision with any other ship. There was a collision during the voyage and the vessel had to be put into port for repairs. In order to make repairs the cargo had to be discharged into lighters and subsequently reloaded. When the vessel arrived at destination, it was found that the fruit was considerably damaged partly due to handling and partly from natural decay owing to the delay in voyage.

Question is was the damage to the cargo a result of or caused by the collision within the meaning of the policy?

The COURT held that the loss was not recoverable. The proximate cause was due to delay and not the collision. Delay is a policy exclusion.
Indemnity

Lord Justice Brett, in the case of Castellain v. Preston (1833) define indemnity for the purposes of insurance contracts as ‘exact financial compensation sufficient to place the insured in the same financial position after a loss as he enjoyed immediately before it occurred.’
Methods of Indemnity

- Payment of cash
- Repair
- Replacement
- Reinstatement
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.

In the case of Burnand v. Rodocanachi (1882)

The fundamental point is that the insured is entitled to indemnity but no more than that. It allows the insurer to recoup any profit the insured might make or reduce the loss from an insured event.
Subrogation
Subrogation

- Subrogation Potential Identified
- Claim Opened/Investigation Begins
- Initial Letter and Questionnaire sent to Member/Participant
- Response by mail, toll-free number or e-mail
- Proper Parties put on Notice
- Diary Set for Follow-Up
- Claim Resolution
- Recovery Placed in Dedicated Client Escrow Account
- Claim dollars disbursed to Client/Plan bi-monthly
Sustainable Human Resource Development in logistics services for ASEAN Member States

Contribution

MY CONTRIBUTION TO KEEP THE HOUSE CLEAN

"derp, lift up your feet"

*le mom

Risk Management  Marine Cargo Insurance
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.

Leading cases in contribution

North British & Mercantile v. Liverpool & London & Globe (1877)
Scottish Amicable Heritable Securities Association v. Northern Assurance Co. (1883)
Glasgow Provident Investment Society v. Westminster Fire Office (1887)
Case Study 1

- A Thai exporter has his factory in Bangkok and he has entered into a sale contract to ship a consignment of rice with a buyer whose premises are located in Hongkong.

- Discuss the liability and responsibility of the buyer and seller as regards to risk and insurance if the terms of sale are
  - CIF
  - FOB
Case Study 2

• A buyer in Australia has agreed to buy 500 washing machines under EXW terms. The goods are made available at the seller’s premises in China from 1st July 2007 and for two weeks.

• On 1st July, the seller informs the buyer that the goods are ready for taking over. On 12th July thieves break into the premises and the washing machines are stolen.

• Discuss the liability and responsibility of the buyer and seller as regards risks and insurance.