Marin Insurance (PUN021)

The fundamental principles of Marine Insurance are drawn from the Marine Insurance Act, 1963* As in all contracts of insurance on property, the contract of Marine Insurance is based on the fundamental principles of Indemnity, Insurable Interest, Utmost Good Faith, Proximate Cause, Subrogation and Contribution. Practitioners of Marine Insurance must familiarize themselves with the Act and uphold these Principles when negotiating Contracts and settling claims under the contract.

Indemnity: The object of an insurance contract is to place the assured after a loss in the same relative financial position in which he would have stood had no loss occurred. By the Marine Insurance Act, the indemnity that is provided is "in manner and to the extent agreed." A "commercial" indemnity is thus provided. Because insurers cannot undertake to reinstate or replace cargo in the event of loss or damage, they pay a sum of money, agreed in advance, that will provide reasonable compensation. In practice, this is achieved by agreeing in advance the insured value, based on C.I.F., value of the goods to which it is customary to add an agreed ten percent which is intended to include the general overheads and perhaps a margin of profit on the transaction. Upon total loss of the entire cargo by an insured peril the sum insured is paid in full, and if part of the cargo is a total loss, the appropriate proportion of the insured value is paid. Claims for damage are settled by ascertaining the percentage of depreciation and applying this percentage to the insured value. The percentage of depreciation is calculated by comparing the value the goods would realize in their damaged state with their gross sound value on the date of the sale. The same date is used for both values to avoid distortion of the result arising from fluctuations in the market prices. In Marine insurance it is customary to issue agreed value policies. The agreed value is conclusive between the Insurer and the Assured except in the event of the unintentional error or where fraud is alleged. "Duty" and "Increased Value" policies are not agreed value policies. They provide pure indemnity only.

Insurable Interest: The Marine Insurance Act contains a very clear definition of insurable interest. It states that there must be a physical object exposed to marine perils and that the insured must have some legal relationship to the object, in consequence of which he benefits by its preservation and is prejudiced by loss or damage happening to it or where he may incur liability in respect thereof. Whereas in fire and accident insurance an insurable interest must exist both at inception of the contract and at the time of loss, the interest in respect of a marine contract must exist at the time of loss, though it may not have existed when the insurance was affected. This is necessary when one considers the mercantile practice under which there is every possibility of sale and purchase of goods during transit. However, the MIA has provided that where the goods are insured "lost or not lost" the assured may recover the loss, although he may not have acquired his interest until after the loss, unless at the time of effecting insurance he was aware of the loss and the insurer was not. If the assured had no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss. Arising from this, both a contingent and a defeasible interest are insurable. A partial interest is also insurable. Unless like the normal indemnity policy of other classes of insurance, a marine cargo policy is freely assignable either before or after loss provided of course the assignee has acquired insurable interest.

The type of sale contract also determines the Insurable Interest. A separate chapter has been devoted to most common terms of contracts known as "Inco Terms". The terms dictate which of the two parties to the contract, is responsible to insure the goods.

Good Faith: Every contract of insurance is a contract "uberrimae fidei" i.e. one which requires utmost good faith on the part of both the insurer and the assured. In Marine Insurance, it is the duty of the proposer to disclose clearly and accurately all material facts related to the risk. A material fact is a fact, which would affect the judgement of a prudent Underwriter in considering whether he would enter into a contract at all or enter into it at one rate of premium or another and subject to what terms. Apart from the duty of disclosure, the insured must act towards the insurer in good faith throughout the duration of the contract. It is customary to classify breaches of the duty of utmost good faith under four headings: non- disclosure, concealment, innocent misrepresentation, and fraudulent misrepresentation. The first two are termed passive breaches and the other two are termed active breaches. The Marine Insurance Act places a statutory duty on the assured to disclose to the insurer all material circumstances known to him or which he should know in the ordinary course of his business. Whether non-disclosure is intentional or inadvertent, the effect is the same and the policy may be avoided, although deliberate and material non-disclosure would usually amount to fraud and render the policy void. Over-valuation, for example, must be communicated to the insurers; if it is not so communicated, it is a concealment of a material fact and voids the insurance.

Proximate Cause: "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." Insurers are liable if an insured peril is the proximate cause of the loss. If an insured peril is only the remote cause of the loss, the proximate cause being an uninsured or excepted peril, the insurers are not liable. The proximate cause is not necessarily that which is proximate in time, but that which is proximate in efficiency. It is the dominant, effective and operative cause of the loss. In case of concurrent causes, following rules apply: -
a) If one of the causes contributing to the loss is an insured peril, and no excepted peril is involved, the loss is coy
b) If one of the causes is an excepted peril, the loss is not covered at all, unless the consequences of the insured peril can be separated from those of the uninsured peril, in which event the former, but not the latter, is cover.

Subrogation: "Subrogation is the right which one person has of standing in place of another and availing himself of all the rights and remedies of the other, whether already enforced or not."
Subrogation is a corollary of the principle of indemnity and the right of subrogation therefore applies only to policies, which are contracts of indemnity. Subrogation is a matter of equity, the purpose of which is to ensure that the insured is not over-indemnified for the same loss.
(a) In Marine insurance, where an insurer pays for a total loss,
- he is entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for (abandonment);
- he is subrogated to all the rights and remedies of the assured as from the time of the loss (subrogation).

(b) Where an insurer pays for a partial loss, he acquires no title to the subject-matter insured or to such part of it as may remain, but he is subrogated to all the rights and remedies of the assured as from the time of the loss, and in so far as the assured has been indemnified.

In marine insurance subrogation applies only after payment of a loss. The insurer is entitled to recover only up to the amount, which he has paid, in respect of rights and remedies. On payment of a total loss, the insurer is entitled to assume rights of ownership of the subject- matter insured. The right is conferred upon him by abandonment (not by rights of subrogation) and the effect is that if the property is subsequently salvaged or recovered the insurer is entitled to retain the whole of the proceeds of sale even though they may exceed the sum paid out under the policy, always assuming the property is fully insured and that the assured was not bearing part of the risk himself. In addition to this right of exercising ownership of the property, the insurer is subrogated to "all rights and remedies of the assured" as from the time of casualty causing the loss. This simply means that if the loss has been caused by the negligence of a third party, against whom the assured has the right of action in tort – say, against a carrier or bailee – then the Insurer is entitled to succeed to any recovery (whereby the loss is reduced) the assured may affect from such third party. This principle applies equally to total and partial losses and has nothing whatever to do with the doctrine of abandonment.

Contribution: Sometimes one risk may be covered by more than one insurer. In that case it is desirable not only to ensure that the insured does not receive more than an indemnity but that any loss is fairly spread between all the insurers involved. The principle of contribution is a method of distributing fairly among insurers the burden of claims for which each shares some responsibility.
Following factors are required to exist before a loss is shared among the insurers
1. There must be at least two policies of insurance.
2. All insurances must be policies of indemnity
3. The policies must cover
    - The same interest
    - The same subject matter
    - The same peril

4. A loss must occur
5. The policies must be in force at the time of loss.
6. All policies must cover the
7. The policies must be legally enforceable.

A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the insured, in the manner and to the extent thereby agreed, against transit losses, losses incidental to transit. A contract of marine insurance may by its express terms or by usage of trade be extended to protect the insured against losses on inland waters or any land risk which may be incidental to any sea voyage. In simple words the marine insurance includes.

Cargo insurance which provides insurance cover in respect of loss of or damage to goods during transit by rail, road, sea, air or by post. Thus, cargo insurance concerns the following:
(i) export and import shipments by ocean-going vessels of all types,
(ii) coastal shipments by steamers, sailing vessels, mechanized boats, etc.,
(iii) shipments by inland vessels or country craft, and
(iv) consignments by rail, road, or air and articles sent by post.
Hull insurance which is concerned with the insurance of ships (hull, machinery, etc.). This is a highly technical subject and is not dealt in this module. Simply speaking this part of marine insurance which is called Hull Insurance is dealing with insurance of Ships, barges launches, boats and offshore installations.

Features of Marin Insurance:

- Offer & Acceptance: It is a prerequisite to any contract. Similarly, the goods under marine (transit) insurance will be insured after the offer is accepted by the insurance company.
- Payment of premium: An owner must ensure that the premium is paid well in advance so that the risk can be covered.
- Contract of Indemnity: Marine insurance is contract of indemnity and the insurance company is liable only to the extent of actual loss suffered.
- Utmost good faith: The owner of goods to be transported must disclose all the relevant information to the insurance company while insuring their goods.
- Insurable Interest: The marine insurance will be valid if the person is having insurable interest at the time of loss.
- Contribution: If a person insures his goods with two insurance companies, then in case of marine loss both the insurance companies will pay the loss to the owner proportionately.
- Period of marine Insurance: The period of insurance in the policy is for the normal time taken for a transit. Generally, the period of open marine insurance will not exceed one year.
- Deliberate Act: If goods are damaged or loss occurs during transit because of deliberate act of an owner then that damage or loss will not be covered under the policy.
- Claims: To get the compensation under marine insurance the owner must inform the insurance company immediately so that the insurance company can take necessary steps to determine the loss.

Operation of Marin Insurance: Marine insurance plays an important role in domestic trade as well as in international trade. Most contracts of sale require that the goods must be covered, either by the seller or the buyer, against loss or damage.

Type of contract Responsibility for insurance Free on Board: The seller is responsible till the goods (F.O.B. Contract) are placed on board the steamer. The buyer is responsible thereafter. He can get the insurance done wherever he likes.
Free on Rail The provisions are the same as in (F.O.R. Contract) above. This is mainly relevant to internal transactions.
Cost and Freight Here also, the buyer's responsibility (C&F Contract) normally attaches once the goods are placed on board. He must take care of the insurance from that point onwards.
Cost, Insurance & In this case, the seller is responsible Freight for arranging the insurance up to (C.I.F. Contract) destination. He includes the premium charge as part of the cost of goods in the sale invoice.
Practice in International Trade
The normal practice in export /import trade is for the exporter to ask the importer to open a letter of credit with a bank in favor of the exporter.
The terms and conditions of insurance are specified in the letter of credit. For export/import policies, the-Institute Cargo Clauses (I.C.C.) are used. These clauses are drafted by the Institute of London Underwriters (ILU) and are used by insurance companies in most of countries including India.

Types of Marine Cargo Insurance:

1. a) Specific voyage policy: A specific voyage policy covers transportation of goods through inland transport, import and export for specific destinations.
2. b) Open policy/Open cover: An open policy or an open cover is an undertaking to cover all shipments/transits that will be made during the year. At inception the insurer will have only general details of the cargoes, estimated sum insured, voyages and the quality of vessels that will be used. Specific details are provided for each shipment in the order of dispatch or in the form of periodic declarations.
3. c) Annual Sales Turnover Policy an Annual Sales Turnover Policy has become very popular in India. This is no different from any open policy except that the rate of premium is charged only on the sales turnover (and any other components not captured by the term 'sales turnover'). It is also known as Sales Turnover Policy (STOP) and Annual Turnover Policy (ATP) in different companies
4. d) "Duty" Insurance Cargo imported into India is subject to payment of Customs Duty, as per the Customs Act. This duty can be included in the value of the cargo insured under a Marine Cargo Policy, or a separate policy can be issued in which case the Duty Insurance Clause is incorporated in the policy.
5. e) Contingency Insurance (Buyer's or Seller's): This policy extends to cover the assured's contingent financial interest in any goods where the assured has no responsibility to insure under the Terms of Sale or where the cover provided is more restrictive than that afforded under this policy.

The important exclusions under marine cargo policies are:

- Loss caused by wilful misconduct of the insured.
- Ordinary leakage, ordinary loss in weight or volume or ordinary wear and tear. These are normal 'trade' losses which are inevitable and not accidental in nature
- Loss caused by 'inherent vice' or nature of the subject matter. For example, perishable commodities like fruits, vegetables, etc. may deteriorate without any 'accidental cause'. This is known as 'inherent vice'.
- Loss caused by delay, even though the delay be caused by an insured risk.
- Loss or damage due to inadequate packing.
- Loss arising from insolvency or financial default of owners, operators, etc. of the vessel
- War and kindred perils. These can be covered on payment of extra premium.
- Strikes, riots, lock-out, civil commotions and terrorism (SRCC) can be covered on payment of extra premium.

Marin Hull Insurance: Insurance of vessel and its equipment's are included under hull insurance, there are several classifications of vessels such as ocean steamers, sailing vessels, builders, risks fleet policies and so on.
It is concerned with the insurance of hull and machinery of ocean-going and other vessels like barges, tankers, Fishing and sailing vessels.

- A recent development in hull insurance has been the growth of insurance of offshore oil/gas exploration and production units as well as connected construction risks.
- It is covered with specialized class of business particularly for Fishing Vessels, Trawler's, Dredgers, Inland and Sailing Vessels are available.
- The subject matter of hull insurance is the vessel or ship. There are many types of designs of ships. Most of them are constructed of steel and welded and are capable of sailing on the sea in ballast in with cargo.
- The ship is to be measured with GRT (Gross Register Tonnage) and NRT (Net Register Tonnage). GRT is calculated by dividing the volume in cubic feet of the ship's hull below the tonnage dock, plus all spaces above the deck with permanent means of closing.
- NRT is the gross tonnage less certain spines for machinery, crew accommodation ballast spaces and is intended to encompass only those spinning used for carriage of cargo.
- DWT (Dead Weight Tonnage) means the capacity in tons of the cargo required in load a ship to her load line level.
- Subdivision of Hull Insurance
- The Hull Insurance is further Subdivision into;
  1. General Cargo vessels.
  2. Dry Bulk Carriers.
  3. Liquid Bulk Carriers.
  4. Passenger Vessels.

These can be further divided into ocean going and coastal tonnage. Ocean going general cargo vessels is usually in the 5000 to 15000 GRT range, coasters are smaller in size and one engaged in the carriage of bulk cargoes.
Coastal tonnage does not withstand the same strains as ocean going vessels.

General Cargo Vessel: The general cargo vessels may be container ships, large carriers (LASH – Lighter Abroad Ship) Ro-Ro (Roll on Roll off) vessels, Refers (Refrigerated Vessels General Cargo).

Dry Bulk Carriers: Dry Bulk Carriers are specially constructed vessels in the size range of thousands GRT for coasters and 70,000 GRT for ocean going tonnage. The main bulk cargoes carried are iron ore, coal, grain bauxite and phosphate.

Liquid Bulk Carriers: Tankers are strongly constructed to carry bulk liquid. The tankers have using tanks which do not extend across the breadth of the tanker.

Passenger Vessels: There are cruise vessels or passenger liners which sail on voyages to distant areas of scenically beautiful but rocky or shallow coasts or near the icy waters of the Arctic and Antarctic. They possess modem navigational systems.

Other Vessels: There are other types of vessels such as fishing vessels, offshore oil vessels and others.

Fishing Vessels: Fishing vessels bulk of steel and fiberglass (GRP) are much more prevalent. Geographical/physical features of the area of operations vary from comparatively sheltered waters of inshore fishing to the full rigors of the open seas with exposure to gales, heavy seas fog ice and snow.

Offshore Oil Vessels: The offshore oil vessels are used for explanation or for commercial production of oil from the ocean beds.

Hull and Machinery Insurance: The policy covers the hull, machinery and equipment and stores etc. on board but do not cover cargo. The insurance cover, the requirements of the individual ship owner and protects him against partially loss, total loss, ship's proportion of general average and salvage charges, sue and labour expenses and ship-owner's liability towards other vessels arising from collisions.

Hull Underwriting: Hull underwriting requires the following information to assure the risk: Type, construction, builders, age, tonnage, dimension, equipment, propulsion machines, engine, fire extinguisher; classification society, merchant shipping act, warranties, navigation physical and moral hazard.

Thank You…