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Marine Cargo Claims

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Abstract

The need for maritime insurance stems from the need to cover all involved members of a voyage from casualty damages and unspecified factors. The insurance policy, however, is a proof element for the loading of the merchandise and at the same time certifies that the ship is suitable for loading this cargo. The first chapter aims to introduce the reader to the issue of marine insurance and claims, through referring to the most important concepts and definitions of this issue. The second chapter aims to analyze the industry of marine cargo transports. We will try to examine the nature of this type of cargo and transportation as well as the diversity that characterizes marine cargo goods and transport with the purpose to understand and comprehend the difficulty in regulating and harmonizing this field when it comes to insurance and cargo. The third chapter analyzes the framework of cargo claims through the study of the existing regulatory framework. We will discover that during the 20th century and until today there have been international efforts aiming to unify and harmonize the regulation concerning not only claims but insurance coverage in general. The main problem is that many countries refuse to join these efforts and ratify relevant international legal instruments. Finally the fourth chapter investigates how claims are solved in jurisdictional organs in practice. We will discover that many issues arise concerning jurisdiction, insurance contract provisions and proof that can support or reject a claim.

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Introduction

The need for maritime insurance stems from the need to cover all involved members of a voyage from casualty damages and unspecified factors. The insurance policy, however, is a proof element for the loading of the merchandise and at the same time certifies that the ship is suitable for loading this cargo. Thus, in addition to covering that provides for various risks that the load may face, is one means of securing both the ship-owner and the owner of the cargo.

Shipping (or shipping industry) deals with the transport of persons and goods through maritime routes. Shipping is a complex industry in which conditions that define procedures in one's field do not apply to another. Under certain conditions it can be considered as a set of interrelated industries. Its most important elements are its global character, the extroversion of the industry and the existence of a strong competition, which make the impact of technological developments on communication systems, information and e-services a decisive factor. The shipping market is not ahomogeneous, individual market. It is a complex and multidimensional market, which varies and differentiates according to the type of ship, the products and their supply and demand, geographical distances and location. The role of shipping and maritime transport in the economic growth is catalytic. Worldwide, the main mode of trafficking and freight transport is by sea means, since it is the most and cheaper than others.

But the functioning of the shipping industry does not always work without problems and sadly it involves many unpleasant events, since the human factor which is involved in its operation, has led to some dangerous situations leading to accidents or even fatal incidents in several of these cases.

An important role in all of the above, however, is the process and application of the insurance of ships and cargo carried and which procedure falls under specific statutory provisions based on the Anglo-Saxon Law or otherwise known as the Marine Insurance Act 1906. In this particular Law, all relevant provisions and statutory provisions are listed marine insurance by providing solutions to insurance and disaster problems ships or cargoes occurring from time to time.

Referring to the concept of maritime insurance, we would say that it refers at tits basis to a contract in which the insurer within a certain time undertakes the obligation to compensate the insured for damages; or losses that the insured asset will suffer from marine risk. The purpose of this dissertation is to examine marine cargo claims under this context, using theoretical as well as case study analysis.

Chapter 1: Maritime Insurance

1. Introduction

This chapter aims to introduce the reader to the issue of marine insurance and claims, through referring to the most important concepts and definitions of this issue.

2. The history of maritime insurance

Elements of participation in weights of loss of property at sea have been reported throughout history. The ancient Romans, as well as the Phoenicians were protecting their vessels and cargo from maritime risks using the first systems of insurance.[1] So it seems that it was years ago when the principles of participation in losses during maritime travel were set. This reality proved to be necessary so that the merchants of that time could protect their cargo and vessels from extra costs and high risks involved in traveling.

However, the first bold reference in state law for liability and incurring expenses and damages from maritime risks exists in the “Rhodian Law of the Sea” which is part of Justinian "Digesta", ie the registration of the prevailing laws of the Byzantine state. In particular, it is stated that the value of the cargo discharged at sea for the rescue of the cargo and the ship must be compensated in proportion to the saved property, that is, the ship and the remaining cargo. This is also the basic principle of General Average, which is also a major insurance risk today and a

predominant part of the “Average Adjuster”. [2] The Average Adjuster refers to the contribution rate that the rescued parts of the ship and the cargo have to pay after the sacrifice of part of the cargo or ship or after the disbursement of expenses for the common good is insurable interest and is covered by the Ship owners and the cargo owners separately.

Naval security and insurance started to evolve more rapidly in the 12th century when the Lombard merchants moved from Northern Italy to central London and City and founded the current “Lombard Street”. [3] During the 15th century, the primary London insurance company named Lloyd's was established and was named after the coffee shop where its founding members first gathered, whereby the first insurance contracts were signed in 1688.[4]

In 1720 the London Assurance and Royal Assurance Exchange Corp. was founded, and it monopolized insurance coverage until the year 1824 when this monopoly was abolished. In 1774 individual insurers began to become members of Lloyd's and thus created an insurance company known to everyone, as Lloyd's Insurance companies. At the same time similar companies began to expand in New York, Antwerp, Rotterdam, but without the prestige that characterizes Lloyd's as an insurance company which remains until today the leading insurer.

3. The concept of marine insurance

The necessity of maritime safety depends on the fact that it takes measures to protect against accidental events and any losses. This helps all those engaged in sea

trade to use marine insurance as protection against possible risks and damages. Insurance also avoids them to bind themselves to third parties who have to compensate them for some unforeseen risk. Freight owners irrevocably ask for the insurance policy, which is a proof of the loading of the ship, but also the banks request the insurance policy as a certificate of suitability for cargo and ship

During a commercial undertaking and the transport of goods through marine routes, several uncertainties, risks and possible losses are included. Such risks refer to the fact that a ship and its cargo are subject to the risk of loss, delay or destruction at sea. Goods are loaded by sellers who expect them to safely reach their destination and sell at a profit. The ship transports the goods in order to win the transport.

The need for maritime insurance stems from the need to cover all involved parties during marine transports, from casualties, damages and unpredicted factors. The insurance policy, however, is a written proof concerning the transported merchandise and at the same time a written certification that the ship is suitable for such operation. Thus, in addition the insurance policy provides protection from various risks that the load may face, and is a means to secure both the interests of the shipowner and the owner of the cargo.

The basic criterion for undertaking insurance, is the existence of some interest. Consequently, the most common and most direct interests seafarers are shipowners, managers and others charterers.

Insurable interest is a fundamental term concerning marine insurance contracts. In each case we have to examine the validity of a contract based on the interest of each claimant. Each claimant needs to include a valid claim in his policy as only parties with interest in a marine adventure can influence a valid contract of insurance. Such parties are all persons that have legal relations with the adventure and the insurable property.

The application for marine insurance can be made directly from the interested in the insurance company or by an intermediary. In the first case the submits his application and the insurance company issues a quote indicating the premium and the specific terms of insurance. So long as the applicant agrees with the offered the insurance company undertakes the cover for the risks it provides and issues the

insurance policy. In the second case, the broker acts in a different manner. On a form, which is known as a "slip",[5] the terms of the insurance are outlined and then undertakes to find an insurer or insurers who will cover the insurance at its 100%. Therefore, it may not only take one insurer's coverage, but many insurers have the ability to cover parts that come in shares. Every insurer signs the slip and binds that way for that insurance at the rate corresponding to it. The broker undertakes to collect all slip signed by insurers and issues the insurance notice in which the conditions under which the insurance was effected and the amount of the premium to be paid so that the insurance can take effect. Also, this document is communicated to the insured party and his insurers along with the rate at which they are each individually covered. [6]

Marine insurance refers to the coverage of any loss that will be suffered by a party, usually referred as the assured, based always on a binding contract binding for all involved parties. The Marine Insurance Act established in 1906 is the most significant codification of marine insurance law, as it has allowed not only the codification of existing legislation but the establishment of new legislation as well. The importance of this legal Act is of course located in its worldwide significance, as it has affected international shipping and insurance norms.

4. Definitions

4.1 Insurance contracts

According to the Marine Insurance Act (1906) the following definition has prevailed concerning marine insurance contracts: "A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party."[7]

According to the greek legislation and Art. 1 of Law 2496/97 regarding to insurance contracts: " By the insurance contract an insurance undertaking (the

insurer) undertakes to make payments or if specifically agreed, to make provision in kind to the other party (the policyholder) or to a third party, in return for a premium, on the occurrence of the event on which it has been agreed that the insurer's obligation depends (the insured event)". [8]

4.2 Insurable Interest

Insurable interests is a term that refers to all insured and stand in any legal or equitable relation to the subject-matter in such a way that he may benefit by the safety or due arrival of insurable property or may be prejudiced by its loss, or by damage thereto or by the detention thereof or may incur liability in respect thereof.[9]

Insurance interest is the economic interest that arises for the insured, from the disruption of the legally registered relationship, which links him to the subject of the insurance. However a person need to acquire an insurable interest in due so that he can forward any claim and also have the right to indemnification. The question arising in relation to the insurance interest is whether it is sufficient for the valid conclusion of an insurance contract to have any interest in the insured, whether it is loose or indirect, or if certain conditions are required, as well as whether the type the extent of the insurance interest determines also the type and subject of the insurance that may be entered into by a person. [10]

The subject of non-life insurance is not the good in itself but the economic interest that one has for the preservation of the thing and, more generally, the economic interest that connects a person with a good. From the fact that the subject of the non-life insurance is not the thing itself but the economic link that connects it to a particular person, it can be concluded that it is not possible to take out insurance from a person who is not economically affiliated with the thing, nor is it necessary damage to property, damage or destruction.

4.3 The Assured

The assured person in the context of a marine insurance policy is any person that holds an insurable interest in a marine adventure or the insurable property at risk. All assured person are entitled to indemnification, and usually refer to the

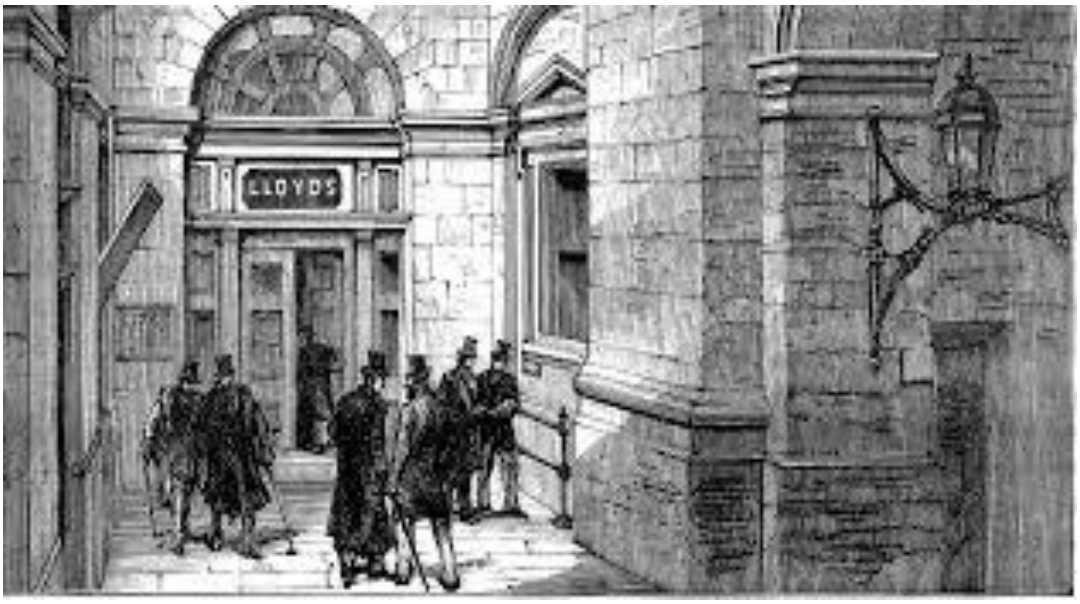
shipowners, the owners of the transported goods, insurers, agents, and all persons with an an insurable interest, harmed by a marine adventure.

5. Cargo Insurance Institutions

5.1 Lloyds

Lloyds is the most wide known institution in marine insurance. The company was founded in Edward Lloyd's coffee shop, in 1688, [12] where people dealing with shipping were gathering to discuss various issues concerning maritime space. With the passage of time, this simple café has evolved into one of the greatest insurers' organization in London, run by a twelve-member committee and was recognized by a law of the UK Parliament in 1871 as the Association of Insurers London under the name Lloyd.

Lloyd is not an insurance company, but an insurers' association. Therefore, it does not make insurance as a unified organization but its members themselves operate independently. Lloyds has a network of agents in the most important ports of the world, so that it can effectively safeguard the interests of its members and to operate as a general standard organization in the field. The work of Lloyds and the Institute of London Underwriters have worked for the development of standardized rules in marine insurance known today such as the “Institute Clauses”.[11]



5.2 Insurance companies

Insurance companies began to develop as an institution in marine insurance after 1824 when relevant British legislation led to the abolishment of the monopoly in the field. Since then a large number of insurance companies were granted the permission to operate and sign insurance contracts to ship owners.

The results of this development was that today ship-owners have a now a plethora of options to cover marine risks, and can choose the one that best favors their interests. Thus, it is considered appropriate to follow a commonly accepted type of policy or some types that would be commonly accepted among insurance companies nowadays. These efforts began in 1939 when the London Insurers Institute began to use a combined type of policy and in 1942 the Institute has set up a section of insurance policies, which is responsible for processing and issuing combined types of insurance policies that meet their requirements. [13]

Most insurance companies have adopted homogenous procedures and clauses, and became members of the Institute. Of course, there are some insurance companies that are not members of the Institute and are still making their own insurance policies

5.3 P&I Clubs

Inter-insurance organizations are non-profit companies in contrast to other insurers. These organizations have begun operating under the provisions of Article 85 of the Marine Insurance Act of 1906. [14] Using this article many shipowners created organizations (or clubs using the English terminology) so that their members may cover the possible damages of another member, while taking over the role of the insurer and the insured. These organizations cover risks that are not covered by other insurers or risks covered by the other insurers, with consistent conditions.

The risks that are inherent in the maritime transport industry and the large capitals that are in hazard due to the damages and potential claims have contributed as catalysts to the development of maritime insurance and to the further step of rhe creation of P & I Clubs.

The first P & I Club was founded in 1855 and was in the form of a mutual insurance company organization, as it is still active today called the "Britannia Association". [15] In 1862, the monopoly on maritime insurance was abolished and, as a result, new companies began to operate in the market. However, the trigger for the creation of P & I Clubs had been given. Most associations moved to enter such organizations, and have the opportunity to cover for various marine risks of a legal nature and substance.

Chapter 2: Marine Cargo transport

1. Introduction

The purpose of this chapter is to analyze the industry of marine cargo transports. We will try to examine the nature of this type of cargo and transportation as well as the diversity that characterizes marine cargo goods and transport with the purpose to understand and comprehend the difficulty in regulating and harmonizing this field when it comes to insurance and cargo.

2. Cargo Transports and Goods

Maritime transport is a particularly wide field of general cargo and cargo shipments carried out by merchant vessels whose history is lost in the depths of the centuries. Today the majority of world trade is being carried out by sea vessels. The construction of vessels from ancient times, until today has been plausible due the development of technology, the constant evolution from the paddle to the sail, the invention of the compass, which it allowed seafarers to discover new sea routes and commercial development sites, the application of steam engines, as well as the application of metals such as iron and steel as a means of material, have led to the remarkable advance in maritime transport.[16]

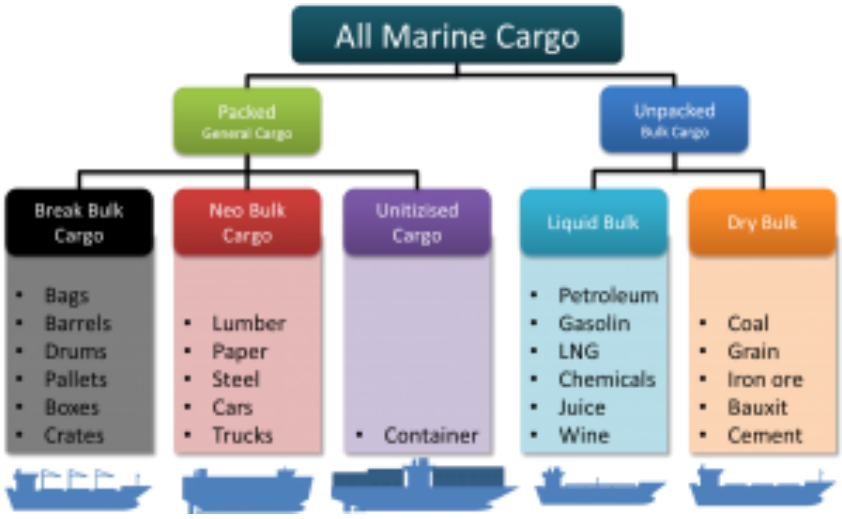
The modern shipbuilding industry, with the parallel development of new sea routes, the improvement of port facilities and the establishment of large shipping companies, has provided the ground for the development of the spectacular rise in marine transportations. With the development and specialization of ship types, international trade takes place in huge quantities at the lowest possible cost. For example, the need to transport large volumes of bulk shipments has led to the construction of freight carriages, lorries, containers and containers, as well as many others, which continue with gradual increase in size. Once, a few decades ago, existing scheduled and free international routes have been reported to have suffered a great deal from the above specialized types of ships. Today only very expensive items are transported by airplanes which have increased passenger transport. Inland

transport continues to transport goods in small quantities but also to increase passenger traffic without the need for specialized means of transport.

Today in terms of marine cargo shipments the two general types that are internationally recognized are Packed/General Cargo and Unpacked/Bulk Cargo.

1. Packed/General Cargo is divided into the following subcategories such as Break bulk, Neo Bulk and Unitizised Cargo. Break Bulk refers to goods that are stored and transported in boxes, bags, barrels, crates, drums & on pallets. This type of cargo is transported either through Bulk Carriers or combination ships. Neo Bulk cargo types refers to lumber, paper, steel, cars and trucks. For this type of cargo we use bulk carriers as well as the "RoRo" vessels that specialize in the transportation of trucks and automobiles. Finally unitized Cargo refers to cargo that packed in containers.

2. Unpacked/Bulk Cargo is divided into Liquid/Wet Bulk and Dry Bulk. The first category Liquid bulk refers to cargo including petroleum, gasoline, Liquefied Natural Gas, liquid chemicals, Juices and Wine. This types of cargo are transported with the use of tankers. The second category refers to Dry Bulk that included materials such as coal, grain, iron ore, bauxite or cement and the preferred types of ships are either geared or gearless bulk carriers [17]



Greece, is one of the countries that due to its very good geographic position, has been active in shipping for centuries. As a naval country Greece hosts important

ports, most notably Piraeus, which is one of the most significant commercial, passenger, transit and supply centers of the Mediterranean Sea. The port of Piraeus mainly exports agricultural products to the rest ports of Europe but also industrial products to developing countries. In recent years, the port of Piraeus has been specialized in certain types of cargo, such as susceptible products (eg bananas), cars and containers, where the remaining cargoes are served by the port of Elefsina. The Iconium is considered to be one of the largest container shipping centers of Europe, and consequently of the Mediterranean, as they have become very large investment so as to bring many profits due to its good geographic location port. Recently and despite the reactions of the people employed in OLP SA it was agreed to rent for the management of some terminals by COSCO in order to increase the competitiveness of the port of Piraeus against other European ports.

At the same time, there isthe shipyard repair area of Perama, which has the largest permanent Mediterranean reservoir in Skaramangas, as it can accept ships as far as possible with a capacity of 500,000 dwt. Finally, the port of Piraeus has a large passenger traffic throughout the year but mainly during the tourist season of summer. Greece due to its complexity with regard to its geographical location structure is forced to create a system transport of cargo and raw materials to the islands based on shipping. [18]

Thus, a structure of many important ports has been developed, with significant investments in recent years, for example, the port of Lavrion, in order to serve the need of transporting themcargo in the island area but also in long - distance ports for the promoting cargoes in ports. The main loads that are transported to the Mediterranean and the Greek area are: cereals (bulk), (Bulk), industrial and cooking salt (bulk), urea (in bulk), ores, timber, fertilizers, bricks, tiles, cement, iron, , tubes, aggregates - raw materials (bulk) and explosives.

3. Cargo Transports and Hazards

Marine cargo insurance has been adopted as a precautionary measure in the context of hazards that have been associated with the transportation of goods through sea routes. Insurance against such hazards today is deemed necessary and insurance

companies provide contracts that cover for any event and damage that may occur. At the same time the development of technology as well as risk prevention systems and relevant studies have led to the decrease of marine accidents concerning sea transportation. In this context several risks can be predicted and avoided through the use of technological advanced systems, and through the application of operational and manufacture standards and procedures.

The risks that are covered through the insurance contracts are divided into two categories including general and special risks. General risks refer to all events that occur when the vessels is in the water. In these cases insurers provides compensation for incidents including hazards of collision, grounding and adverse weather conditions, and also provides insurance covering the transported goods against incidents of fire and explosions. In addition special risks are also covered and depend on the hazardous nature of the transported goods against damages as well as risks associated with events of war, piracy and robbery. For such risks insured persons have to pay to the insurer a special premium. [19]

The principle of General Average was originally formulated by the ancient Greeks in relation to the expulsion of the cargo. With the development of shipping several other types of damage were added to the expense of the cargo. The General Abbey definition is given in rule A of the York-Antwerp rules. which states: "There is a measure of general average when and only when any extraordinary sacrifice or expense is deliberate and reasonable, and it is done to the joint salvation of a ship and cargo"

According to this definition, four are the characteristic features of General Average:

1. The sacrifice or expense is extraordinary, unusual.

2. The action must be deliberate and deliberate and not unavoidable.

3. There must be a real risk, although it is not necessary to be immediate.

4. The energy must be done for the joint salvation of the ship and cargo, and not simply for the saving of part of the property, that is, the cargo or the ship. The captain is responsible for the decisions. This sacrifice is proportionally borne by all the interests that exist on a ship and on that particular journey which they contribute

to cover it. In order for a contribution to be made, there must be a rescue, otherwise if the ship and cargo are lost, there is no need for general caution.

This is the doctrine of General Average, which is so named, because the loss is generally attributed to all the parties concerned.[20]

General Average as we will see refers to any extraordinary, intentional and reasonable act of sacrifice or expense in moments of common maritime risk to safeguard / rescue the ship, freight and freight. The institution of General Average stems from ancient times as well and can be found in the Law of the Rhodes (408 BC), in the Roman Rhodia de Jactu and Medieval Europe, in France (Ordonance, 1681) and then in the Code de Commerce (1808). That institution provided that, in the event of a cargo being discharged on board a ship, deliberately by the master to preserve the property on account of an imminent risk, that damage would be shared among all those who had an interest in the rescue. With time and with the increase in global shipping in abrasion, other losses or costs were added in the interests of the ship and cargo. [23]

This made it necessary for international maritime concerts to be settled in order to regulate the various requirements, which were raised on complex issues, on a single regulation. Ultimately, these international consultations, which began in 1877, resulted in the formulation of internationally-enforced rules of international application, which were improved and supplemented, codified and formed the so-called "York-Antwerp Rules Code" of 1890, known in the maritime field as "York and Antwerp Rules". These constantly improved rules were supplemented and modified in 1924, in 1949, in 1974, with the last of them the same rules of 1994 and 2004

The settlement of General Average accounts is a very difficult task and is made by special settlers who calculate the amount of the contribution for each of them who benefited from the General Average Act. Often cases of average are:

- Voluntary dropping of part of the cargo carried into the sea.
- Deliberate flooding of the ship
- Destroying part of the cargo from the water leak in order to fire to save the remaining cargo.

- In the case of a shortage of fuel, part of the cargo can be used as a fuel (oil tanker).
- The wages and charges of the master and all crew and any other costs of embargo or embargo on State order due to war or revolution , or other similar cause.
- Losses and extraordinary expenses incurred in order to prevent a risk, however, caused by a defect in the ship or cargo, or by a master's fault, or to the fault of the recipient of the cargo.[21]

Hazards related to cargo have been an important issue for the International maritime Organization. In the context of the "Sub-Division for marine technologies and cargoes" the organization has studied several issues concerning "all technical and operational matters related to the following subjects, including the development of any necessary amendments to relevant conventions and other mandatory and non-mandatory instruments, as well as the preparation of new mandatory and non-mandatory instruments, guidelines and recommendations". The purpose of IMO's work on the field is based on the following purposes:

"1 Effective implementation of the relevant conventions, codes and other instruments, mandatory or recommendatory, as appropriate, dealing with cargo operations, which include packaged dangerous goods, solid bulk cargoes, bulk gas cargoes, and containers;

2. Evaluation of safety and pollution hazards of packaged dangerous goods, solid bulk cargoes and gas cargoes;

3. Survey and certification of ships carrying hazardous cargoes;

4. Further enhancement of the safety and security culture, and environmental consciousness in all cargo and container operations; and

5. Cooperation with other relevant UN bodies, IGOs and NGOs on international standards related to containers and to cargo operations." [22]

In addition hazards related to cargo are covered by international conventions and protocols with mandatory character such as the following.

1 1974 SOLAS Convention (chapters VI and VII)

2 MARPOL (Annexes III and V)

3 International Convention for Safe Containers (CSC), 1972

4 International Maritime Dangerous Goods (IMDG) Code and related supplements;

5 International Maritime Solid Bulk Cargoes (IMSBC) Code and related supplements;

6 International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk (IGC Code);

7 International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on board Ships (INF Code);

8 International Code for the Safe Carriage of Grain in Bulk; and

9 Code of Safe Practice for Cargo Stowage and Securing (CSS Code). [22]

Chapter 3: The legal framework of cargo claims

1. Introduction

The purpose of this chapter is to analyze the framework of cargo claims through the study of the existing regulatory framework. We will discover that during the 20th century and until today there have been international efforts aiming to unify and harmonize the regulation concerning not only claims but insurance coverage in general. The main problem will be that many countries refuse to join these efforts and ratify relevant international legal instruments.

2. Cargo Insurance

Cargo insurance as we have seen is a concept associated with "risk", in terms of the possibility of occurrence of certain economic necessity. This risk may threaten both the personal property of the individual, such as his life and health, his property as well as his professional-economic action. The impact of both industrial and technological development and the development of modern sea transportation has added new sources of risk, and has yet to widen more the range of human activities exposed to them.

In particular one of the areas of human activity, in which the need to protect against possible risks has emerged in particular imperative, it is that of marine transport. It

is a commonplace, moreover, that transportation consists of one of the oldest occupations and at the same time a regulatory factor of human life since it serves on one hand the need for communication and on the other, it facilitates trade between countries in a global level. The diversity, however, of the risks that can occur during transportation of cargo from place to place, especially when they are in different places continents, has gradually led to the formation of a particular industry in private insurance. In fact, their insurance cover has yet to receive larger dimensions in view of the rapid development of transport technology, which in turn has contributed to the rapid movement of goods in international markets, and to the subsequent spread of goods and their commercial transactions

Cargo insurance is used to cover all types of the cargo during a ships voyage to its port of destination. Cargo insurance has been found to be highly beneficial for the interests of all types of cargo ships as it covers for losses that may take place while the ship sails and is considered to be in transit. [24]

3. The Institute Cargo Clauses

Modern insurance contracts are characterized by the element of strong accountability. In particular, general insurance terms have been pre-printed unilaterally by insurers in order to integrate them in a uniform contract covering an unspecified number of insurance contracts, which has as the recipient of the insurance is deprived of the possibility of negotiation of these terms, before the conclusion of the insurance contract.

A typical example of the accrual nature of insurance clauses is the work of the Insurance Institute of London, known as Institute Cargo Clauses A, B and C, which govern the present regime in marine insurance cargo and are considered to be the most acceptable terms globally.

Transport insurance for goods and merchandise of all kinds, such as raw materials and finished goods, machinery, foodstuffs, traded with all recognized means of transport on land, sea and air, from or to any part of the world.

Transport insurance is addressed to importers, exporters, merchant & transport companies, buyers or sellers of the products.

The Insurance Clause (A), refers to ALL RISKS, and provides a comprehensive contract that covers all or part of the damage to the goods as a result of all risks, sudden and unpredictable (All Risks).

Clause B (Institute Cargo Clauses B)

The Insurance Clause B is a limited cover for total or partial damage to the goods from defined risks and covers the damage the cargo will incur for the risks covered by the CLAUSE C and additional risks from:

• Earthquakes

• Washing overboard

• From entering and entering water on board

• Total loss of cargo during loading and unloading

Clause C (Institute Cargo Clauses C)

Insurance Clause C is a limited cover for total or partial damage to goods from defined risks such as:

• Fire or Explosion

• Attach, sink or overturn the ship

• Rollover or derailment of land transport

• Collision or contact of a ship or other means of transport with an external object other than water

• Unloading the goods at a port of refuge or refuge

• The deliberate or forced dropping of goods at sea in the effort to rescue the ship and the rest of the cargo [25]

4. Hague and the Hague-Visby Rules

Between 1921 and 1923 the "International Convention for the Unification of Certain Rules for Bills of Lading" was formulated. It is known under the name of "HAGUE RULES". The Rules refer to settings related to the bill of lading. The Hague rules were signed by the most important trading nations, but because it did not extend to the carrier's agents and representatives, these rules were supplemented in 1968 by the HAGUE VISBY RULES (HAGUE VISBY RULES). The Hague-Visby Rules were not signed by all the nations that signed the Hague Rules, such as the United States of America, and both the Hague rules and the Hague-Vissby Rules are in force and enforced.

1. The Rules of the Hague, 1924.

They regulate the rights and obligations of shippers and shipowners on shipping to and from the US.

• They did not offer adequate protection in the event of damage to the goods

from the shipowner

• Increased the amount paid by shipowners to their owners goods in case of transport damage from GBP 100 per packing at 500USD.

2. The Hague Vishwy Rules, 1968.

The most important principle of these rules is the largest bargaining power conveyor from the loader, which means that for the protection of the owner of the load / loader, the law must impose basic obligations to the carrier. The Hague Vishbu Rules are a combination of international rules for the transport of goods by sea. The official title of this international set of rules is terminology is "International Convention on the Unification of Certain Rules of Law relating to Bills of Lading " and was signed in Brussels in 1924. After being amended by the Done at Brussels, 1968, "Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading ", the rules were made commonly known as The Hague-Wisbey Rules. The Hague-Visby Rules were incorporated into English law by the "Carriage of Goods by Sea Act 1971" and its last modification was made to the Second Protocol (SDR Protocol) in 1979.

The principle of the Hague-Vissby Rules is that the carrier has much greater negotiating power from the shipper and to protect the interests the shipper / owner of the cargo, the law must impose obligations on carrier. According to the Rules, the basic obligations of the carrier are the loading, handling, stowage, transport, guarding, care and unloading transported goods as well as the custody of a seagoing ship with the right one manning, equipment and supplies. The Hague-Visby rules require one ship to be navigable only "before and at the beginning of the journey" below them.

Several exceptions are set concerning the carrier and the ship exclusion from liability in case of destruction or damage to the goods caused by , negligence or command of the master, seaman or pilot when navigating or management of the ship, fire, acts of good and war, as well as quarantines etc. and any other cause that arises without the actual fault or knowledge of the carrier, its agents or its employees. [26]

5. The Hamburg Rules

The Hamburg Rules include a combination of rules that manage international maritime transport of goods, and were produced by the United Nations Convention on the Carriage of Goods by Sea (United Nations /International Convention on the

Carriage of Goods by Sea), which was established at Hamburg on 31 March 1978. The conference was an attempt to create a unified legal basis for the carriage of goods for ocean freight. The Congress was the attemptof several developing countries to reach the level of the remaining participants. It entered into force on 1 November 1992.

These new rules were applicable to all maritime transport and was dependent on the issue of the bill of lading, although they considered it to be issued by the carrier.

The new rules regulate the carriage of a diversified the type of goods, importing new goods into transport previously considered to be prohibited. Such loads are live animals, goods on deck, and also dangerous/hazardous loads.

The first category concerns the transport of live animals, which raises the responsibility of the carrier to care for them beyond their safe transport. In a loss arising from the inherent nature of that cargo the carrier is not deemed responsible. Goods on the deck are carried by the carrier only when they are in accordance with the contract of carriage and the shipper is compatible with the procedure, according to usage, rules and legislation. [28]

The third category concerning hazardous loads, that cannot be transported without the carrier's consent. If this happens, the carrier has the right to neutralize the merchandise, charging the shipper for it without any compensation to the owner of the goods. The Hamburg Rules established three conditions for the transfer of such carriage that there must the necessary indications on the nature of the goods, that their dangerous nature must be reported to the carrier and finally that the necessary precautions must be taken and the bills of lading must include clear statements on the hazard of the cargo.

In these Rules the liability of the carrier for the goods is extended. Specifically, it starts from the moment of receipt until delivery. The entire shipping period is still covered by the carrier and during uploading procedures as well. A contract for the carriage of goods by sea with a shipper is concluded covering not only the carrier but also any other person acting on behalf of the carrier. Regarding the obligations of the carrier, he is liable for loss, damage or damage delay of delivery of the goods. If the loss occurs during the period the goods are under his responsibility,

the carrier has the right to prove that received, or the person or persons designated by it, all the necessary measures for it to avoid such damage. [27]

6. The Rotterdam Rules

The rules of Rotterdam, the official terminology of which is United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea¨ consists of a negotiation of international rules, which reviewed the legal and political framework for the carriage of goods by sea and was adopted on 11 December 2008. The rules were being prepared for more than 10 years at a command UNCITRAL, ie the United Nations Conference on Trade and Cooperation Development "at the International Maritime Commission (CMI), which started the Draft text of the legislative framework. New proposals have been made which establish a modern, comprehensive, uniform legislative regime, which will sought to balance the burden of cargo, technological developments, the increase in the use of containers etc. [29]

The ultimate aim is the expansion and modernization of the existing rules, as well as the creation of a uniform law, upgraded and at some point in the future a set of rules that will replace the existing Hague, Hague-Visty and Hamburg regulations with a wider and clear text.

The most important provisions and changes to the existing framework are the following:

1. Expansion of the length of time that carriers are responsible for the goods, covering the interval between the point of delivery and delivery of goods. Please note that this applies only on marine transfers to the total transport of the goods. Therefore the Rotterdam rules do not fully respond to combined transport, if maritime transport, is not applicable.

2. Enabling e-commerce and approval of more forms of online documentation.

3. Imposes the obligation to carriers to have ships seamlessly and properly manned,

throughout the journey.

4. Increases the carrier's liability limit to 875 SDRs per pack or 3 SDRs per pack

kg of gross weight.

5. Extends the filing time of legal requirements in two years from the day the goods were delivered or should have been delivered.

6. Allows contracting parties, in specific contracts, to be excluded from certain liability rules contained in the contract [30]

6. Third party protection and liability

According to Norwegian "Gard" "Cargo claims can arise under many forms of contract that are regularly used in the shipping industry. However, contractual liability can arise either directly between a carrier and a cargo claimant (for example, as between a carrier and a cargo receiver under a bill of lading) or by way of indemnity as between a carrier who has settled such a claim and another party under another contract (for example, as between the carrier and the other party to whatever charter party contract 2 there may be between them.)" [31]

Third party liability is an important issue concerning cargo claims. Third party liability refers to the obligation to compensate the another person harmed or injured or that has suffered a loss due to negligence or mistake or wrongful act of first party. When the insured first party causes a loss then the second party assumes the insured liability up to the policy limit. Examples of third party liabilities are collision, third party injury or death claim, oil pollution liability, cargo claim, crew claim, unrecoverable general average contribution etc. When the agreement is signed by the parties, they agree on certain conditions and goals written in the agreement. They also get certain liability towards each other for successful achieving of the goals. But by any reason a third party gets affected, then liability towards the third party is called third party liability.

7. Law and Jurisdiction

Jurisdiction is a crucial aspect when it comes to cargo claims. Gard stated that " *Until today cargo claims represent one of the largest categories of P&I claims both in number and value. Gard's records show more than 7,000 pending cargo claims,*

which represent more than 35 per cent of the number of all pending claims and about 30 per cent of the total value. About 80 per cent of the pending cargo claims are less than three years old, which shows that cargo claims are resolved relatively quickly. This is partly explained by the fact that in most jurisdictions a prescription period of one year will apply. There are variations both in terms of types of cargo, methods of carriage, types of ship involved, operational aspects, causes of loss or damage, as well as legal aspects such as jurisdiction, applicable law, exoneration and limitation of liability issues, just to name a few." [32]

Several issues arise when we examine the issue of jurisdiction. In practice it has been rather difficult to create contracts among parties as several problems arise on issues such as legislation and jurisdiction, as they tend to vary among countries. Very often insurers cannot rate premiums due to existing differences among states as different rates exist concerning liability and jurisdiction. More frequently even when a party has a good claim in a national court, often the court and legislation of the other contracting party may not even recognize the jurisdiction of the first court examining the claim.

The question is further complicated by the fact that a distinction needs to be drawn between the jurisdiction where the claim is to be determined and the law that should be applied in adjudicating the claim. It does not follow automatically if a claim is determined by a court or arbitration tribunal in country A that the law of country A will necessarily be the law that governs the dispute. The law of most countries requires its courts or tribunals to consider whether the claim should be determined by a foreign law and if necessary to apply that law. Therefore, a dispute may be heard by the courts of country A but that court may apply the law of country B. A classic example may be where the courts of country A are asked to resolve a dispute arising out of a contract which is subject to the law of country B. This requirement to consider the possible application of foreign law is normally referred to as the conflicts of law issue. Therefore, the twin issues of jurisdiction and the applicable law constitute a fundamental problem and all subsequent attempts to improve the situation have had to tackle the various diffculties which are inherent to international trade. Consequently, even today, it is necessary whenever a claim arises to consider a patchwork of:

1 International conventions;

2 Regional conventions;

3 National laws; and

4 local laws. [33]

Chapter 4: Case Studies: claims in practice

1. Introduction

The purpose of this chapter is to see how claims are solved in jurisdictional organs in practice. We will discover that many issues arise concerning jurisdiction, insurance contract provisions and proof that can support or reject a claim.

2. The Aqasia Case

The Aqasia case refers to a claim caused by damage to a fish oil cargo during its transfer by the tanker "AQASIA". The tanker was charterted from the Defendant to the First Claimant by a charter party evidenced according to a 'Fixing Note' dated 23rd August 2013 ("the Charterparty"). The Defendant party had agreed to carry the specific cargo which consisted of approximately 2,000 tons cargo of fish oil in bulk, from Iceland to Norway.

According to the Fixing Note "The Owners in all matters arising under this Contract shall also be entitled to the like privileges and rights and immunities as are contained in Sections 2 and 5 of the Carriage of Goods by Sea Act 1924 and in

Article IV of the Schedule thereto …" In addition it has to be noted that the referred "Schedule to the Carriage of Goods by Sea Act 1924 ("COGSA") contains the Hague Rules. Article IV Rule 5 of the Hague Rules that has the provision that *"Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 100l. per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading."* [34]

On arrival at the discharge port(s), part of the cargo was found to have been damaged. Even though the defendant accepted his responsibility, the party argued that he had the right to limit his responsibility pursuant to Article IV r. 5 of the Hague Rules, that had no application to shipments that are categorized as bulk cargoes.

The case was brought before the High Court in London. The main difference among the parties was the use if the term "unit" . The Court after examining a series of legal sources and international regulations decided that the use of the term 'unit' in Article IV Rule 5 of the Hague Rules does not apply to bulk cargoes and in the event that it was applied it should be interpreted as pointing to 'freight unit'.[35]

It has to be noted that the Aqasia case despite the fact that referred directly to the Hague Rules the court's decision also affects the Hague-Visby Rules cases. In this context the Hague-Visby Rules contain two limits. The first refers to the limit on the number of packages or units, and the second to a limit on the weight of the cargo.[36]

3. Westpac Banking Corporation v Dominion Insurance Ltd

The case Dominion Insurance Ltd Westpac Banking Corporation [1998] FJCA 48; Abu0005u.97s (27 November 1998) refers to a claim examined through arbitration, where the Court held that, since the insurance policy does not contain a loss clause, the fact that the premiums have not been paid by the insured party, does

not affect the existence of the contract. The court examined the history of renewal and relations between the parties before reaching that conclusion.

In principle, however, the nature of the insurance policies should be highlighted. In particular, an insurance policy is an indemnity agreement in which one party (the "insurer") agrees to indemnify the other party (the "insured") in the event of a specific occurrence ("insurance risk"). An insured person pays a monetary amount (the "premium") under the insurance policy to insure against the specific risk. Therefore, the parties' obligations are as follows:

• The insurer is obliged to pay indemnity to the insured person if the risk occurs.

• The insured is obliged to pay the insurance policies as agreed.

In addition should the insured fail to pay the premium, this consists of a violation concerning the terms of the contract and the insurer is entitled to take steps to counter the non-payment of the premium. The usual measures to be taken by the insurer are specifically defined in the terms of the policy. In this case in particular, as we mentioned in Chapter 1 above the insurer has the following options:

• The policy expires, ie the insurance policy is terminated and the insurance cover is no longer in place - the insured person is now deemed to have lost the insurance policy and if there is some value in the policy (from the previously paid premiums) then the insurance policy is replaced by a loan agreement under which the insurer pays money to the insured.

• Continuation of the insurance policy by increasing premiums.

The most significant part of the Dominion Insurance Ltd vs. Westpac Banking Corporation (1998) case is that the insurer denied to provide the agreed coverage on the basis that no insurance premiums had been paid by the plaintiff since the last renewal of the contract. The vessel was insured with the defendant since October 1990 and the last renewal had been in 1993. After an accident the ship was destroyed in March 1994. The defendant’s argument was that since the plaintiff had not paid any premiums since October of 1993, he had no obligation to

cover for the damages. The Court found that concerning the existing Renewal notices, there was not a written provision that would allow the cancellation of coverage should the insured party not pay his premiums.[37]

4. Feuiltault Solution Systems Inc. v. Zurich Canada 2011

According to the Feuiltault Solution Systems Inc. v. Zurich Canada case, the plaintiff was the owner of a destroyed cargo consisting of machines transferred by sea in containers from Canada to the EU. During the voyage, as it was discovered after the delivery of the goods, the cargo had been damaged by rust. At the court if first instance the claim by the plaintiff was disused on the grounds of insufficient of packaging. According to the evidence the cargo was destroyed due to the use of not proper packaging materials. The packaging was the same as in previous shipment of the same goods that were transported without a similar incident.

Zurich Canada denied its responsibility stating: "The findings of the surveyor reveal, that the damage is attributable to the inherent humidity / water contents of the timber, which was used to secure the goods in the container. In conclusion of the surveyor's opinion, the sweat water resulting from the humidity of the square timber in conjunction with the insufficient protection of the goods, led to the damage." [39] In addition what the Court took also under consideration was the fact that during the voyage all the containers "were in good order and condition prior to and at the end of the voyage. In fact, before the end of the trial, Feuiltault acknowledged that this was no longer a disputed fact. During the voyage, there was thus no ingress of either fresh or sea water (as opposed to humid air) inside those containers. The court also accepted evidence that there were no claims for damage to the contents of any of the other 1,344 containers onboard the ship, other than one reefer unit that broke down."[39]

During the trial of the case, the Court while examining the evidence found that fact that the packing was not proper for the protection of the goods, as the wood that was used to brace caused the corrosion of the engines. The plaintiff appealed to

second instance courts and his appeal was rejected. The Federal Court of appeal agreed with the trial Judge that the packing was unsuitable and was the cause of the loss. Although this was sufficient to dispose of the appeal, the Court addressed at length the question of the burden of proof under an "all risks" policy. Specifically, the Court of Appeal held that the trial Judge had erred in holding the assured had the burden of proof. The Court of Appeal said that where an all risks policy contains exclusions that exclude non-fortuitous losses, such as inherent vice or wear and tear, the onus of proving lack of fortuity falls on the insurer. The insured under an all-risks policy need only show that the cargo was in good condition when the insurance attached and that the goods were damaged while the insurance was in force. [38]

Chapter 5: Conclusions

In recent years, sea transport as well as other modes of transport(land transport and air transport) are known to have great growth as well the means of transport are increased and the transport technique is being improved. In particular, in maritime transport the rapid evolution of technology has as consequently the construction of modern ships which, in addition to refinement of their mechanical part are large in volume and capacity. Today ships specially built for each particular kind of transport are being built fast and with more modern means of movement. This development also had asconsequently the finishing of the loading-unloading, stowing machinesand other technical means used in maritime transport

Finally, it is worth mentioning that in recent years a wide-ranging debate has begun on the renewal of the law on maritime transport. The conversations are moving around the adoption of a new International Convention, which will replace the Hague-Visby rules and the Hamburg rules. On this initiative taken by the United Nations Committee on International Law Commerce (UNCITRAL) which in cooperation with many organizations has developed a Plan International Convention on the Carriage of (All or Part of) Marine Transport "Draft instrument

on the carriage of goods (wholly or partly) by sea" and several preparatory work discussed new technical developments in the marine environment transport, the responsibility of the maritime carrier, the regulation of the combined transport, the use of containers and its consequences, both when transport takes place on the deck as well as when the cargo is carried delivered sealed, as well as many other issues. The plan is yet at an early stage and it is by no means certain to be completed at the near future

Important issues that arise until today concerning claims are the following:

1) The carrier's liability for the suitability of the transfer conditions

2) the carrier's responsibility for loading, and stowage of things,

3) damage to the container itself,

4) issuance by the carrier of a clean bill of lading,

5) defects or special nature of the load as well as inadequate packaging of the cargo within containers,

6) loading of containers on the deck,

7) limiting the liability of the carrier by parcel or unit

8) liability of the transporter in combined transport

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