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## Current Trends in Maritime Insurance

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**Abstract:** This paper portrays relevant information about different aspects in maritime insurance with its history and we also emphasize on the principle of utmost good faith which is a very important principle that has to be noticed when making an insurance contract. We also refer to different types of maritime insurance policies offered by maritime insurance companies, as well as the P&I Club, together with their benefits. The different type of average and the maritime insurance Premium, and also Express Warranties are other topics which our work deals with. This analysis is based on qualitative methods and is addressed both to the specialist in this field and, also, to students and researchers which might be interested in. The aim of this research is to bring into attention this important problem of insurance – in any situation of life and, especially, in this area of the maritime activity. Our conclusion is that maritime insurance helps to spread risk and also makes provision for the share of losses as seen in the function of general average and it also indemnifies the assured of their losses or damages accordingly.

**Keywords:** risks; good faith; confidence; principle; P&I Club

**JEL Classification:** F5; J59; R41

*Motto:*

*“New-York is not the work of men, but of the insurances...”*

Henry Ford

### 1 Introduction

The globalization of trade has greatly enhanced global shipping of goods from one geographical region of the world to another. Thus, making shipping one of the efficient ways of transporting bulk goods across sea bound regions and through inland water ways as well.

The process of moving goods from a place of origin to a destination via the sea involves a lot of risk both for cargo owners, ship owners and the crew onboard. The occurrence of these maritime risk at sea has called for the need to insure cargo, vessel and crew in order to minimize and possibly recover the cost of losses or damages. Therefore, maritime insurance exists for this very purpose of providing a coverage for all such risks so that the assured maybe able to recover from any possible risk insured against during maritime venture.

This paper portrays relevant information about different aspects in maritime insurance with its history and we also emphasize on the principle of utmost good faith which is a very important principle that has to be observed when making an insurance contract and, according to the marine insurance Act, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

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Therefore, utmost good faith is needed to make valid maritime insurance contract that would not be rendered void subsequently.

## 2. Literature Review

Francis, (2013) provides readers with a fresh and up-to-date review of the modern law in the light of traditional principles and rules of underlying commercial law and the specific statutory rules of marine insurance as interpreted by case law, as moderated in practice by market practices and standard form marine insurance clauses. The author clarifies the law's underlying framework of principles and illustrates how it works in common contractual situations, explaining how the different components of the law interact.

Semark, (2013) offers comprehensive guidance on the complex area of P&I Clubs, a detailed but easy-to-follow account of the constitution, workings and daily practice of protection and indemnity clubs. It is a practical reference source for anyone who is in any way involved with mutual insurance.

Harvey, (2014) issued this book as an essential read for practitioners in maritime law and marine insurance.

Bugra, (2014) presents the delay in marine adventure, that is an important and frequent phenomenon of maritime transport which affects various parties and their interests under several types of marine insurance policies, including but not limited to hull and machinery, cargo, freight and loss of hire.

Schofield, (2015) provides a comprehensive overview of all aspects of laytime and demurrage, tracing the development of the law from its origins in the nineteenth century right up to the present day. The author delivers an in-depth analysis of both fixed and customary laytime clauses, the rules relating to commencement of laytime in berth, dock and port charters and discusses under which circumstances laytime can be suspended. Furthermore, it analyses demurrage rules and vital issues such as despatch, detention and frustration.

Dunt, (2016) expertly examines marine cargo insurance by reference to important English and foreign legal cases as well as the Marine Insurance, covering latest developments in the Enterprise Bill for damages for late payment of claims.

Harvey and Hudson, (2017) give us a book written from the perspective of the Average Adjuster and updated to include a detailed analysis of the new rules adopted in 2016. Their work is an essential read for practitioners in maritime law and marine insurance.

## 3. What is Maritime Insurance?

The maritime insurance was born in Italy, in Rome, to be more specific. During the Middle Ages, the maritime insurance was the brain child of Italian state-towns and the first occurrence of a marine insurance dates from the beginning of the 14th century<sup>1</sup>. Maritime insurance developed in England and was in full use there by the sixteenth century (Silliman, 2008).

Maritime insurance, the oldest form of insurance, protects shipping companies and cargo owners against the loss of a ship and/or cargo and it helps to manage risks in the event of an unfortunate incident like accidents, damage to the property and environment or loss of life. Also, in order to ensure that all the

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<sup>1</sup> <http://unsar.ro/en/istoria-asigurarilor/dezvoltarea-asigurarilor-maritime>.

risk can be properly handled without the insufficient funds when it is required, different Maritime insurances are necessary for ships and ship owners to take.

Furthermore, no one is allowed to enter into a maritime insurance contract unless they have an insurable interest and this is done in order to lower the incidence of gaming and wagering on the voyages outcome, a practice that renders a contract of marine insurance void.

Additionally, insurable interest exists when a person is involved in a maritime adventure because of the benefit he has by the safe or due arrival of the insured property, or the disadvantage he may have by its loss, or by damage. However, at all times the assured is required to conduct his business as though he were a prudent uninsured person and not indulge himself in accidents intentionally or be negligence in his duty to take caution. Maritime insurance is effected through a market for example the London Market, which is part of the much larger British Insurance industry, or markets in the USA, Japan, France etc. 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<sup>1</sup>. The utmost good faith is a principle used in insurance contracts, legally obliging all parties to reveal to the others any information that might influence the others' decision to enter into the contract<sup>2</sup>

Furthermore, a double insurance may be also done by the assured and this double insurance is when two or more policies are effected by or on Double behalf of the assured on the same adventure and interest or any part thereof and the sums insured exceed the indemnity required by the maritime Act and, thus, the assured is said to be over-insured by double insurance.

Captive insurance is an alternative to self-insurance in which a parent group or groups create a licensed insurance company to provide coverage for itself. The main purpose of doing so is to avoid using traditional commercial insurance companies, which have volatile pricing and may not meet the specific needs of the company. By creating their own insurance company, the parent company can reduce their costs, insure difficult risks, have direct access to reinsurance markets and increase cash flow<sup>3</sup>. Also, in this type of insurance, the company is indirectly able to evaluate the risks of subsidiaries, write policies, set premiums and eventually make use of unused funds for further investment within the company or retain them as profit.

#### **4. Types of Maritime Insurance Policies**

There are different types of maritime insurance policies offered by maritime insurance companies some of these policies are listed below:

- Voyage Policies;
- Time Policies;
- Mixed policy (voyage and time policy);
- Unvalued Policies;
- Valued Policies;
- Floating Policies;

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<sup>1</sup> <https://moj.gov.jm/sites/default/files/laws/Marine%20Insurance%20Act.pdf>.

<sup>2</sup> <https://www.collinsdictionary.com/dictionary/english/utmost-good-faith>.

<sup>3</sup> [https://en.wikipedia.org/wiki/Captive\\_insurance](https://en.wikipedia.org/wiki/Captive_insurance).

- Blanket Policies;
- Block Policies;
- Single Vessel and Fleet Policies;
- Block Policies;
- Currency Policies;
- Annual Policy;
- Policy Proof of Interest (P.P.I.) Policies;
- Inland Transit Cargo Policy;
- Inland Vessel Policy;
- Package Policy;
- Free on Board Policy;
- Sailing Vessels Policy.

**Voyage Policy:** the voyage policy is a type of marine insurance policy which is designed for a specific voyage. In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable dispatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable<sup>1</sup>. Furthermore, deviation or delay in executing the voyage under this policy is exempted

- where it is reasonably required for the safety of the ship, or cargo insured
- in order to save human life or assisting a ship in distress where human life is in danger
- where it is generated by circumstances beyond the control of the master and his employer
- where it is reasonably required in order to comply with an express or implied warranty
- where it is necessary for the purpose of accessing medical or surgical aid for any person on board the ship
- in the situation where it is authorized by any specified term in the policy
- where caused by the negligence or misconduct of the master or crew, if barratry be one of the perils that is insured against.

Nevertheless, when the cause exempting the deviation or delay ceases to function, the ship must be resumed back to her true course and executes her voyage, with reasonable dispatch.

**Time Policy:** this is maritime insurance policy which is signed for a specified time period usually, for a year.

**Mixed Policy:** this is a type of marine insurance policy which offers the insured the benefit of combining both voyage policy and time policy as a single policy.

**Unvalued Policy:** this kind of policy does not contain the value of cargo beforehand and compensation is eventually made only after the loss or damage to cargo is evaluated and then valued.

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<sup>1</sup> <https://moj.gov.jm/sites/default/files/laws/Marine%20Insurance%20Act.pdf>.

**Valued Policy:** in this type of maritime policy, the cargo is valued and documented beforehand and the value of compensation is clarified in case of any loss or damage to cargo.

### **Period of insurance**

The insurance policy will cover the subject matter (ship, crew, cargo etc) against loss or damage for a specific time. In the case of cargo, this will normally relate to the period over which the cargo moves enroute and with regards to ship, the insurance period may be extended to a particular voyage or a specified period of time. Usually, maritime insurance is divided into two divisions: hull and machinery and protection and indemnity. Other forms of maritime insurance are designed to cover other risks such as the cost of delays resulting from strikes and losses resulting from trading a vessel in regions affected by war.

### **Hull and Machinery Insurance**

Hull and machinery insurance is a maritime insurance that protects the insured vessel or fleet from navigation accident caused by a peril of the sea, fire, theft etc, while the vessel is in transit over water and this is referred to as maritime risk. It also covers losses or damages caused by act of war which is referred to as war risk. Furthermore, it also covers a combination of maritime risks and war risk in a single policy.

### **Protection and indemnity (P&I) insurance**

Protection and Indemnity Insurance is liability insurance for practically all maritime liability risks associated with the operation of a vessel, other than that covered under a workers compensation policy and under the collision clause in a hull policy<sup>1</sup>. This type of maritime insurance is covered by the P&I club, which is an association involving ship owners and charterers and is owned and controlled by the insured charterer or ship owner members. However, they operate on a non-profit mutual basis, as the members bring their premiums together and use it to spread the cost of an individual's loss or expense.

### **Loss in maritime insurance**

A loss may be considered as:

- partial loss
- actual total loss
- constructive total loss.

### **Partial loss**

A partial loss is any loss other than a total loss. If the ship or goods are damaged or only part of the freight is earned and, under the terms of the 1906 Act, if the assured cannot show that all is lost, the reparation will be based on a prorate payment of the sum insured. For instance, if a shipper loses 25% of the cargo due to a peril insured against, he will only receive payment on that amount (ie. 25% of the total value of the goods). Also, where the cargoes arrive at their destination, but due to obliteration of marks, they are unable to be identified, the loss if any will be considered as a partial loss.

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<sup>1</sup> <https://www.alignedinsuranceinc.com/protection-and-indemnity-insurance/>.

**Actual loss**

Actual total loss occurs where the subject matter insured is destroyed, or so damaged as to cease being a thing of the kind insured, or where the assured is irretrievably deprived of the subject matter (eg stolen).

**Constructive total loss**

Constructive total loss occurs where the subject matter insured is reasonably abandoned on account of the actual loss appearing to be unavoidable, or because it could not be preserved from actual loss without expenditure which would exceed its value had the expenditure been incurred.

Mainly, there is a constructive total loss:

- in the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival
- where the assured is deprived of the possession of his ship or goods by a peril insured against and it is unlikely that he can recover his ship or goods or the cost of recovering them would exceed their value
- in the case of damage to the ship, where she is so damaged that the cost of repairing the damage would exceed the value of the ship when repaired.

More so, where there is constructive total loss the assured may either consider the loss as a partial loss or abandon the subject matter insured to the insurer and treat the loss as it were an actual total loss.

Also, if he abandoned the subject matter he must give notice of abandonment to the insurer, in writing, or by word of mouth, with due diligence after receipt of reliable information of the loss. If the assured fails to give a notice of abandonment to the insurer, it will result in the loss being considered as a partial loss.

**Ways of indemnifying a person at loss**

There are four broad areas of indemnifying the person who has suffered a loss:

- Marine insurance
- P&I Clubs
- Ship owner's Liability
- General Average.

Marine insurance is covered, in the United Kingdom, by Marine Insurance Act 1906 and by the use of insurance policies, usually contracted with underwriters, the incorporate the Institute Clauses. Insurance is effected through a market for example the London Market, which is part of the much larger British Insurance industry, or markets in the USA, Japan, France etc.

**P&I Clubs**

P&I Clubs are organizations where ship owners join together to spread the cost of an individual company's loss or expense.

**Benefits of P&I Clubs**

Currently, only a very little portion of P&I insurance is underwritten outside P&I Clubs. This could be attribute to the fact that the P&I Clubs have the following advantages compared to commercial insurance providers:

- the P&I Clubs have no profit element and all premiums paid by the members will be used to cover the members' own risks and necessary administration costs hence, the premium could be controlled at the minimum level
- the P&I Clubs are owned and controlled by their ship-owner members and they will provide an insurance facility that is actually required by their members
- the P&I Clubs reserve the right to make additional calls on their members if there is a particularly bad claims experience for the Club as whole, and the Club is able to offer members cover with very high limits, unlike hull insurance, the value of shipowners' liabilities are always unpredictable and could be very substantial
- P&I clubs' letter of undertaking can be provided at minimum cost for provision of security and are generally accepted worldwide
- the P&I Clubs employ well experienced and highly qualified claims handling staff that can provide the members with free advice or assistance on a wide range of matters, whether or not the matter is covered by the Club or not. Meanwhile, the members can also benefit from the Club's worldwide network of correspondents to resolve the problems they face in a remote area
- The scope of cover of P&I Clubs is not limited to the listed risks in the published Club rules. In many circumstances, even the loss or damage are suffered due to an issue which is not specifically mentioned in the rules, the managers and directors are entitled to exercise their discretion to decide whether or not this claim should be covered.

### **Average**

Frequently, in insurance, the word "AVERAGE" is used and in the context of this field of specialization, the term has the meaning of a loss. It is an equitable apportionment among all the interested parties of such an expense or loss<sup>1</sup>.

### **General Average**

General average is the apportionment of loss caused by an intentional damage to the ship, sacrifice of cargo etc and the expenses incurred to secure the general safety of the ship and cargo. It is covered by the York-Antwerp Rules 2004 and it involves contributions by all participants of a particular venture for a loss suffered by an individual for the common good of the voyage. The ship owner's liability can be classified into two distinct areas:

- Full liability
- Limited liability

In full liability, the ship owner is compelled to pay full compensation for the loss or damage that has been done.

In limited liability, the ship owner is allowed to pay a percentage of the compensation claimed and this is provided for by statute, convention or contractual clause.

### **Particular Average**

This is partial loss or damage to a ship or its cargo that affects only the ship owner or one cargo owner<sup>2</sup>. Particular average is normally covered by a Marine Insurance Policy, held with a Marine Underwriter,

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<sup>1</sup> [https://en.wikipedia.org/wiki/Marine\\_insurance#Actual\\_total\\_loss\\_and\\_constructive\\_total\\_loss](https://en.wikipedia.org/wiki/Marine_insurance#Actual_total_loss_and_constructive_total_loss)

<sup>2</sup> <https://www.collinsdictionary.com/dictionary/english/particular-average>

which extends to a total as well as partial loss. Some common examples of particular average on a vessel are heavy weather damage, damage caused by stranding, collision and fire.

### **Maritime Insurance Premium**

Maritime insurance premium is the amount of money the assured pays for a maritime insurance policy. According to maritime insurance act, the duty of the assured or his agent to pay the premium and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions and the insurer is not bound to issue the policy until payment or tender of the premium, unless agreed otherwise<sup>1</sup>. Also, where a marine policy is initiated on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium and, then, the insurer is directly responsible to the assured for the amount to be paid with the regards to the losses or damages and/or the returnable premium.

### **Express-warranties**

It frequently occurs that an express warranty will appear in the contract of insurance. Two factual examples are:

- warranted all tins to be code marked by manufacturers for verification of date
- warranted to sail in convoy.

In the first instance the ship did not sail in convoy and was lost in a storm. Regardless of the fact that the circumstance which caused the loss of the ship was not directly related to the express warranty, it was ruled by the Court that there was a breach of the warranty to sail in convoy and the underwriters were not liable to their insured for the loss of the ship.

However, in the second example some of the tins containing meat were marked and some were not. The unmarked tins were condemned whilst many of the remainder were sold off below market value. It was ruled by the Court that the policy conditions applied to the consignment as a whole and could not be made to apply to individual tins. Since there were a substantial number of tins unmarked it was held that there had been a breach of the warranty condition on the whole consignment and, therefore, underwriters were not liable to their insured.

It is important to know that express warranty in the policy must be complied with and the only exemption for noncompliance of a warranty is when by reason of change of circumstances the warranty itself ceases to be applicable to the circumstances of the contract or when compliance with the warranty results in an unlawful act. If any breach of express warranty is contemplated, for whatever reason, it would be prudent to seek underwriters' approval prior to the breach taking place.

Failure to observe a warranty absolves underwriters from any liability under the Contract of insurance from the date of the breach of warranty. Underwriters are not, however, absolved from liability under the contract for losses which took place prior to the date of the breach.

## **5. Conclusion**

Maritime insurance helps to spread risk and, also, makes provision for the share of losses as seen in the function of general average and it also indemnifies the assured of their losses or damages accordingly. Having a vessel at sea without insurance would not be prudent, so, it is advisable for every ship owner to make a contract of insurance against basic risks if not all risk that could occur. In similar manner,

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<sup>1</sup> <https://moj.gov.jm/sites/default/files/laws/Marine%20Insurance%20Act.pdf>.



cargo owners should insure their cargo as well to prevent complete loss in event of any peril at sea or any other risk covered by maritime insurance.

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