

Introduction

- A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured in the manner and the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure.
- **In Lloyd v. Fleming, Blackburn J** defines a policy of marine insurance as a contract of indemnity against all losses occurring to the subject matter of the policy from certain perils during the adventure.

Classification of marine policy

1. Time policy.

- Where ship is insured for a particular time from a particular date to a particular date, the policy is called a time policy.
- The period should not exceed one year though it may contain one or several voyage.
- Time policy which is made for any time exceeding 12 months is invalid.
- A time policy is defined as a policy in which the contract is to insure the subject matter for a definite period of time.
- Generally in a time policy there is a continuation clause that if the ship at the expiration of the policy is still at sea or in distress or in a port.
- She shall be held to be covered by the same policy at pro rata monthly premium until, she reaches safely to her port of destination provided prompt notice to that effect is given to the insurer.

2. Voyage policy.

- Where the contract is to insure the subject matter at and from one place to another or others the policy is called a voyage policy.
- A contract for both voyage and time may be included in the same policy and such policies are in mercantile usage called mixed policies.
- E.g. A ship may be insured under the same policy from Bombay to Goa for six months or from Bombay to Vishakhapatnam and 90 days after arrival.
- In voyage policy the risk commences at the port of departure and ends at the port of destination.
- The voyage insured must be accurately described in a voyage policy i.e. The local limit of the risk must be specified.

3. Cargo insurance policy.

- Cargo means the goods carried on a ship.
- Thus the term suggest, cargo insurance is taken in respect of the cargo carried by the ship from one place to another.
- The cargo insurance policy may be a time policy or voyage policy .
- When the policy for a definite period it is known as time policy.
- If it is for a particular voyage it is known as voyage policy and there is no time limit.

4. Fright insurance policy.

- The freight is the rent or amount paid for the transportation of cargo.
- Generally the ship owner and the person receiving the freight is one person.
- The freight could be paid in advance or at the port of destination.
- Under the marine law the freight could be paid only if the cargo reaches safely at the destination port.
- Therefore, if the freight has been paid in advance, it poses no difficulty, but the problem sometimes arises when the freight is payable at the destination port and the cargo may get lost during the voyage and could not reach destination.
- In that even the freight is lost.
- In order to overcome such contingency, the freight insurance is taken.
- However if the freight has been paid in advance it cannot be recovered in case the cargo is lost during the voyage.

5. Valued policy.

- A valued policy is a policy which specifies the agreed value of the subject matter insured.
- In a valued policy, the value mentioned is conclusive between the parties.
- Under this policy the value of the policy is decided at the time of contract.
- The value is written on the face of the policy. In case of loss, the agreed amount will be paid. There is no dispute later on for determining the value of compensation.
- The value of goods includes invoice cost, freights, insurance charges, some margin of profit and other incidental expenses.
- The ships are insured in this manner.

6. Unvalued policy.

- When the value of insurance policy is not decided at the time of taking up a policy, it is called unvalued policy.
- The amount of loss is ascertained when a loss occurs. At the time of loss or damage, the value of the subject matter is determined.
- In finding out the value of goods, the invoice cost, freight, insurance charges, shipping charges are included and in this case no margin for anticipated profit is added.

7. Mixed policy

- This policy is a mixture of time and voyage policies. A ship may be insured during a particular voyage for a period, for e.g. A ship may be insured between Bombay and London for one year.
- These policies are issued to ships operating on a particular route.

8. Port risk policy.

- This policy covers the loss suffered by the ship when it is anchored at a port. It is for certain period only.

9. Floating policy.

- When a person's ships transporting goods regularly in a particular geographical area, he will have to purchase a marine policy every time.
- It involves a lot of time and formalities. He purchases a policy for a lump sum amount without mentioning anything else i.e. The value of goods and name of the ship etc.
- When he sends the goods, a declaration is made about the particulars of goods and the name of the ship. The insurer will make an entry in the policy and the amount of policy will be reduced to that extent. This policy is called an open or a floating policy.

10. Fleet policy.

- When a company purchases one policy for all its ships, it is called a fleet policy. The insured has an advantage of covering even an old ships at an average rate of premium.

Types of marine insurance

- Marine insurance covers the following:

1. Cargo insurance.

- The word cargo refers to goods and merchandise which are in transit by sea, road, rail, or air.
- While in transit, there is risk of goods being damaged and thus the need for marine insurance to indemnify the shippers against the financial loss caused due to damage to the cargo.

2. Hull marine insurance

- In this type of marine insurance the subject matter is the vessel and its equipments. The insurer compensate the insured in case the latter suffers financial loss due to damage or destruction of the vessel or its equipments.
- It covers various types of vessels such as jetties, trawlers, sailing vessels, dredgers, and port crafts, ocean steamers, off shore vessels and even ship builders and repairs.
- The policy covers risk caused due to fire, collision, sinking, overturning, crew negligence, earthquake, floods, piracy, and violent thefts.
- It does not cover risks due to radioactive damage, war, terrorists activities, deliberate damage and insolvency of the ship owner.

3. Liability insurance.

- It is an insurance policy provided to the insured to cover his liabilities against the third party contingent to marine accidents or adventures.
- it will cover accidental loss of property of the third person as well as the fatal or non fatal injury to the third party.
- It can be of two forms:
- **Cross liabilities** – both the vessels are to be blamed for accident and required to pay.
- **Single liabilities**- it is only a liability of a part of vessels under lesser damage caused by them to the other.

❖ Voyage deviation

- When the ship intentionally **changes its route or remains in port without cause** then deviation in marine insurance happens.
- Thus, the deviation is the new route or delay of the ship.
- Unless the marine insurance states otherwise, there is a breach of the insurance contract by the party which is responsible for the deviation.

Deviation of voyage under marine insurance Act, 1963.

- As per the Indian marine insurance Act, 1963, there would be a deviation from the voyage where-
- There is deviation from the course of the voyage as mentioned in the policy document.
- The policy documents does not mention the course of the voyage but it is the customary course for departure that usually follows.
- At the time of deviation, the voyage is altered.
- Thus the marine insurer is free from its responsibilities.
- The marine insurance contract requires the insurance company to make payment only if it follows the stated port route.

- In case of any deviation, the insurer can refuse to settle the loss or damage.
- A breach of contract occurs when any unjustified and voluntarily deviation happen.
- In such a case, the insurance company has the right to terminate the policy.

• If it would do so, the policyholder would also lose the benefit of immunity in the insurance contract.

Thus, it would have to bear all losses or damages on its own.

- However, there would be no breach, if a ship deviates from the path on its own.
- In case of unfavourable weather conditions or to save a life, the marine insurance policy covers the deviation.

Cases where the deviation is excused.

- **Below are the following circumstances where a deviation is excused.**
 - ✓ Deviation occurs due to circumstances beyond the control of the policyholder.
 - ✓ It is necessary for deviation to take place to ensure the safety of the ship or the insured items.
 - ✓ In cases where the deviation saves the human life.
 - ✓ Where deviation happens to obtain medical or surgical aid for the person who is on board the ship.
- So there are other situations too which permit deviations.

Case -1

- J.s Ship was carrying a cargo of wheat when it started raining heavily. **The rainwater damaged a substantial part of the steamer, and then the captain of the steamer decided to throw off some consignment in the water to avoid the ship from getting sink.**
- **J.s Ship took this step in order to saves the lives of crew members who otherwise would have sunk in the water.**
- In this case, as the owner of j.s Ship had a marine insurance policy, it approached the insurer for the claim settlement.
- Here the insurer appointed a surveyor finds that j.s ship lightened the consignment to avoid it from getting sunk hence saving the lives of other people on board.
- Due to this reason, the marine insurance company agreed to settle the claim of j.s ship as per the marine insurance contract.

Case-2

- L . S fruits sent its consignment of orange to a company situated in the Maldives via sea.
- Here the **company had a marine insurance policy**.
- Therefore, it was confident that the insurer would cover any loss or damage.
- However, **when the ship was underway, the captain decided to change the route in order to avoid the sea traffic and reach destination in advance**.
- However, **the pirates attacked the ship while it was on the new route**.
- Luckily, after a week the crew members and cargo got rescued. However, to L.S fruits had to incur heavy losses.
- As the company had a marine insurance policy, it approached the insurer to cover the losses.
- However, the insurer refused to settle the claim as the deviation happened.
- Without any valid reason, the ship deviated from its original route, and therefore, the insurer was not liable to pay the compensation.

Perils of the sea

- Chalmer observes that it is unsafe to attempt a complete definition of the expression 'peril of the sea'.
- Broadly speaking a peril of the sea may be defined to cover everything that happens to the ship in course of a voyage but the immediate act of god without the intervention of human agency.
- It refer only to accidents or casualties not attributable to the free will and desire of a human being.
- Even in the act of god it does not include the natural and ordinary action of the winds and waves.
- The burden of proving a loss by perils of the sea lies on the insured.
- The reason for placing the burden of proof on the ship owner in such a case is that they are likely to have all the relevant information.

Examples of perils of the sea.

1. **Foundering at sea.(sinking).**

- If the ship is missing and after a reasonable time no news has been received, the loss may be presumed to be by the perils of the sea.

2. **Shipwreck (destruction of ship).**

- It is a loss caused by the perils of the sea when it happens by the ship striking against the rock or driven to the shore by the violence of winds.
- The shipwreck may occur in various ways e.g. The ship may be so shattered that it becomes a mere collection of planks or it is unable to navigate except at a great cost.

3. **stranding.**

- It happens when a ship by an accident gets out of the ordinary course of her voyage and gets struck in shallow regions of sand and received injury.

4. **collision.**

- Collision is regarded as a peril of the sea and it may arise by the ship striking against another ship or any other subject matter.

5. Loss by fire.

- If fire is caused on board of the ship and if the goods or ship is damaged, the insurance company will be liable.
- But it will not include the loss caused by the inherent vice of the subject matter insured.
- It covers also a fire voluntarily caused in order to avoid capture by an enemy.

6. Loss by capture, seizure.

- The term capture will include not only taking by an enemy but by revenue and statutory authorities.

7. Loss by arrest, Detention.

- Loss due to any restraint by political or executive acts generally called restraint of princes, kings etc. Will be included under the marine policy.
- But does not include loss by mob in a riot or arrest by a judicial process or embargo i.e. Order of the government prohibiting a ship or goods from a port.

Excluded Loss

1. **Wear & tear.**

- The term is used to denote the natural decay and deterioration which invariably happens to a ship or any portion due to the action of the winds and waves.
- In case of ship it means decay of the body of the ship and its accessory e.g. Splitting (break) of a sail, breaking of rope or cable, and in case of cargo of perishable nature like fruits, vegetables, weakness and defects.

2. **Springing a leak.**

- If a ship develops a leak, it is not a peril of the sea unless it is due to an accident.

3. **Breakage of goods.**

- If the goods are broken or damaged during the voyage due to movement of the ship it is not a peril of the sea.
- But if it is due to violent action of the waves and consequent labouring of the ship, it is a peril of the sea.

4. Inherent vice.

- The insurer will not be liable for any loss caused due to the defect in the goods etc. If the fruits becomes rotten or wine becomes bad due to inherent decomposition.

5. Death of animals due to nature's cause.

6. Loss by rats and vermin.

7. Loss by delay.

Elements of marine insurance contract.

1. Features of general contract.

2. Insurable interest.

- The insurable interest in marine insurance can be of following form;
 - I. According to ownership.
 - The owner has insurable interest up to the full value of the subject matter. The owner as of different types according to the subject matter.
 - A. In case of ship.
 - The ship owner or any person who has purchased it on charter basis can insure the ship up to its full value.

2. Insurable interest

B. In case of cargo.

- The cargo owner can purchase policy up to the full price of the cargo.
- If he has paid the freight in advance, he can take the policy for the full price of goods plus amount of freight.

C. In case of freight.

- The receiver of the freight can insure up to the amount of freight to be received by him.

3. Utmost good faith.

- Ships and cargo proposed for insurance may be thousands of miles away.
4. Doctrine of indemnity.
 5. Doctrine of subrogation.

6. Principal of warranties.

- A warranty is that by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled a whereby he affirms or negatives the existence of a particular state of facts.
- Warranties are the statement, according to which insured person promises to do or not to do particular thing or to fulfil or not to fulfil a certain conditions.
- ❖ Warranties are of two types.
 - A. Express warranties.
 - Express warranties are those warranties which are expressly included or incorporated in the policy by reference.
 - B. Implied warranties.
 - These are not included in the policy at all but are tacitly understood by the parties to the contract and are as full binding as express warranties.

Implied warranties under marine insurance contract.

1. Seaworthiness of ship.
 - The warranty implies that a ship should be seaworthy at the commencement of the voyage, or if the voyage is carried out in stages at the commencement of each stage.
 - This warranty implies only to voyage policies, though such policies may be of ship, cargo, freight to any other interest.
 - A ship is seaworthy when ship is suitably constructed, properly equipped, officered, sufficiently fuelled and documented and capable of withstanding the ordinary strain and stress of the voyage.
 - The standard to judge the seaworthiness is not fixed, there may be different standard for different ocean, for different cargo, for different destination and so on.

- Seaworthiness does not depend merely on the condition of the ship but also includes the suitability and adequacy of its equipment, the adequacy and experience of the officer and crew.
- Seaworthiness also includes cargo worthiness, it means the ship must be reasonably fit and suitable to carry the kind of cargo insured. There is no warranty that the cargo should be seaworthy.

2. Legality of venture (risky undertaking)

- This warranty implies that the adventure insured shall be lawful and that so far as the assured can control the matter it shall be carried out in a lawful manner.
- Marine policies cannot be applied to protect illegal voyage or adventure.
- The example of illegal venture may be trading with an enemy, smuggling, breach of blocked and similar venture prohibited by law.
- Illegality must not be confused with illegal conduct of the third party, i.e. Theft, pirates.

3. Other implied warranties.

- There are other warranties which must be completed in marine insurance.
 - A. No change in voyage.
 - When the destination of voyage is changed intentionally after the beginning of the of the risk, it is called change in voyage.
 - B. No delay in voyage.
 - This warranty applies only to voyage policies.
 - There should not be delay in starting of voyage and not laziness or delay during the course of journey.
 - This is implied condition that venture must start within the reasonable time. Moreover the insured venture must be despatched within the reasonable time.
 - C. Non deviation.
 - The liability of the insurer ends in deviation of journey.
 - Deviation means removal from the common route or given path.
 - When ship deviates from the fixed passage without any legal reason, the insurer quits his responsibility.
 - This would be immaterial that the ship returned to her original route before loss.