

OCEAN MARINE INSURANCE OVERVIEW (121-1)

[Ocean marine insurance (aka wet marine insurance and marine insurance) covers oceangoing vessels, their cargos, waterborne exposures, and international ocean and air shipments (including domestic shipments that connect with international shipments).]

EOs 1 + 2. THE EVOLUTION OF MARINE (AND INLAND MARINE) INSURANCE:

1. **Middle ages: By 1343**, banking and insurance functions had been separated, resulting in the first pure insurance contracts.

By the end of the fifteenth century (1400s), governments began issuing ordinances governing the use and practice of marine insurance.

2. **Early English marine insurance:** Through the 1600s, individuals (usually bankers and lenders, but sometimes full-time insurers) indicated their willingness to bear the risk of a seagoing venture by writing their names and share of the risk under the venture's proposal or policy (hence the term 'underwriter').

In 1769, the underwriters who regularly met at Lloyd's coffeehouse to exchange marine news formed an insurance corporation called 'Lloyd's', moved to the Royal Exchange, and became the underwriting center of London.

In 1779, Lloyd's uniform printed marine insurance policy became the official British form. Lloyd's held a monopoly on marine insurance until 1824, when Parliament repealed their monopoly and allowed the formation of other marine insurance corporations.

3. **United States marine insurance:** The US colonies bought marine insurance from England until 1721, when John Copson opened his insurance office in Philadelphia. Others soon followed.

In 1792, the first insurance corporation, the Insurance Company of North America, was formed.

For most of the seventeenth century, a series of wars plus an economic depression kept the American shipping industry, and its marine insurance industry, from expanding significantly.

During WWI, insurers could not meet the increasing need for marine insurance and the US government provided additional insurance through the Bureau of War Risk Insurance.

After the war, the US government wanted to transfer much of its merchant fleet to private owners.

The Association of Marine Underwriters (formed 1918) responded by forming three insurance syndicates with enough capacity to insure those ships. **The Merchant Marine Act of 1920 (aka The Jones Act)** stated that those syndicates were *not* in violation of antitrust laws.

In the years between the two world wars, the marine insurance industry continued to expand. The increased use of railroad and motor truck transportation led to the development of inland marine insurance. Marine insurance's comparative lack of regulation gave it a competitive edge over both the fire and the casualty insurers.

In 1933, the National Convention of Insurance Commissioners established **The Nationwide Marine Definition**, which described the loss exposures marine insurers were allowed to underwrite. The growth of US marine insurance slowed after WWII due to changing economic conditions and foreign competition.

From 1960 to today, ocean marine premiums as a percentage of total property-casualty premiums have been in decline, due to

- a. the tort liability explosion, which increased liability premiums;
- b. the liberalization of workers' compensation laws, which increased WC premiums;
- c. increases in non-marine exposure units;
- d. widespread use of package policies;
- e. poor economic conditions related to marine insurance;
- f. the reduction of export markets for American products; *and*
- g. the restrictive insurance practices of many foreign countries, which make it difficult for US insurers to enter those markets.

EO 3. **THE THREE MAJOR TYPES OF OCEAN (aka WET) MARINE INSURANCE:**

1. **Cargo insurance**--covers goods shipped primarily by sea or, if internationally, by air. Most policies cover international shipments, but they can also cover domestic shipments. Insureds include manufacturers, retailers, distributors, freight forwarders, import and export traders, and businesses engaged in foreign commerce.
2. **Hull insurance**--covers partial or total loss of a vessel caused by a covered peril. Hull insurance often provides collision liability coverage, up to the hull's value. The insured is usually the vessel owner.
3. **Protection and indemnity (P+I) insurance**--covers
 - a. **bodily injury and property damage**--caused by specific types of accidents *and*
 - b. **unexpected vessel-related expenditures**--such as legal costs, fines, penalties, and other expenditures.
4. **Other types of liability coverage--include** charterers' liability policies, ship repairers' liability policies, builders' risk policies, marina operators' liability policies, *and* boat dealers' policies.

EOs 4 + 6. **FUNDAMENTAL CHARACTERISTICS OF MARINE INSURANCE:**

1. **LEGAL CONTRACT**--An insurance policy is a legal contract between the insurer and the insured. In the US, ocean marine policies are interpreted under **admiralty law** (the specialized branch of federal law that applies to claims for occurrences on navigable waters connected with maritime activity), although they may also be subject to state law.
Subjects that fall within admiralty jurisdiction:
 - a. contracts concerning maritime services;
 - b. contracts for the services of crew members;
 - c. physical damage to vessels and/or cargos on navigable waters;
 - d. damage caused by a vessel;
 - e. injuries to crew members, passengers, and others while aboard a vessel on navigable waters;
 - f. wrongful death actions for accidents occurring on navigable waters;
 - g. claims for general average and salvage; *and*
 - h. claims to recover ships wrongfully taken.Policies subject to English law are interpreted according to an English statute known as **The Marine Insurance Act of 1906.**
2. **INSURABLE INTEREST**--exists when a party would suffer from an insured property's loss *or* would benefit from its preservation. To collect under an ocean marine property policy, the insured must have an insurable interest in the property at the time of loss.
Parties with insurable interests in a vessel include its owner, mortgagees, bareboat charterers, bailees, *and/or* consignees.
3. **VOYAGE VERSUS TIME POLICIES**--An ocean marine policy covers either a particular trip (**voyage policy**) or period (**time policy**).
An open cargo policy has an inception date but no expiration date
An open cargo policy only ends when the insurer or the insured cancels the policy.
4. **MISREPRESENTATION AND CONCEALMENT**--A marine insurance policy is a **contract of utmost good faith**, meaning the insured must voluntarily reveal to the insurer all information pertinent to the risk.
An ocean marine policy is rendered void from its date of inception by either
 - a. **misrepresentation**--false statement *or*
 - b. **concealment**--failure to divulge material information**by the insured about any condition that would affect a prudent underwriter's assessment of the risk *or* the premium.**
Disputes are resolved at the state level unless the law of admiralty applies specifically to the point in question.

5. **WARRANTIES**--Ocean marine policies can include both express and implied warranties.
- a. **Express warranties** appear in the policy.
 - 1) **Exemptive warranties**--exclude certain types of losses.
 - 2) **Promissory warranties**--require that certain conditions do or do not exist at policy inception or that certain actions take place or not take place during the term of the policy.
Under English law, the insured must comply exactly with a promissory warranty.
Under American law, the Wilburn Case established that breach of warranty is subject to applicable state laws, which may not require the insured's absolute compliance.
 - b. **Implied warranties** do not *appear* in the policy but are *understood* to apply.
 - 1) **Seaworthiness**--assures that the vessel, crew, and stores are adequate to their tasks and to the voyage. In time policies, seaworthiness must exist when the policy attaches *if* the vessel is in port. There is *no* implied warranty of seaworthiness *if* a policy attaches to a vessel already at sea.
 - 2) **No deviation**--assures that the vessel will keep to her course, barring emergencies. This implied warranty pertains to voyage policies *only*. Also, most cargo policies specifically nullify this implied warranty.
 - 3) **Legality**--assures that the vessel is on a legal venture for a legal purpose.
6. **COVERED PERILS**--Policies are issued on two bases:
- a. **Named perils policy**--lists the perils protected against.
 - b. **All-risks policy**--covers all perils not specifically excluded. Liability, collision, and P+I policies typically specify covered perils. Property policies typically use the "all-risks" approach.
7. **COVERED LOSSES**--fall into four categories:
- a. **Total loss**--is either an actual total loss or a constructive total loss.
An actual total loss occurs when the covered vessel or cargo is physically destroyed, rendered useless (**loss of specie**), or irretrievably lost.
A constructive total loss has occurred if recovery and repair costs exceed the **agreed value** (the value agreed to by insurer and insured before policy inception).
 There is *no* recovery for a constructive total loss *unless* the property is reasonably abandoned because total loss can *not* be prevented without expending more than the property's value.
 - b. **Particular average**--is a partial loss borne by *one* party.
[Average is simply partial loss of a vessel or cargo.]
 Hull policies pay reasonable repair costs on covered particular average losses.
 Cargo policies pay a proportion of the total amount insured.
A total loss only (TLO) policy excludes particular average.
 - c. **General average**--is a partial loss borne by *all* parties when property is sacrificed or jettisoned to save a venture.
The York/Antwerp Rules govern the adjustment of general average.
Apportionment of general average allocates general average costs among all interested parties.
 A professional average adjuster performs the apportionment and prepares a report (**the average statement**).
 Since his report is rarely available until months after completion of the voyage, cargo owners are required to post an average bond before taking possession of their goods.
The average bond is a legal contract promising to pay the owner's fair share of general average costs.
 The average bond is usually accompanied by some financial security.

General average losses include

- 1) **General average sacrifices**--The requirements for a general average sacrifice:
 - a) the property must be imperiled,
 - b) the sacrifice must be a deliberate act,
 - c) the sacrifice must be made to achieve safety,
 - d) the sacrifice must be reasonable, *and*
 - e) the sacrifice must be made in an unusual or abnormal manner.

Examples: voluntary stranding of a vessel and jettison of cargo.
- 2) **General average expenditures**--include the fees and expenses incurred to save a venture.

Port of refuge expenses derive from a vessel's entering a port of refuge.
Examples: towage costs to enter a port of refuge and related crew wages.
- 3) **Substituted expenses**--are incurred instead of general average expenses and are included up to the amount of general average expenses avoided.
Examples: towage costs to final destination and fees to forward cargo to final destination.
- d. **Sue and labor charges**--are unexpected and necessary expenditures incurred to avoid or contain losses.

EO 5. **EXAMPLES OF DIFFERENT TYPES OF LOSSES:** Assume Vessels A and B collided. Vessel A's cargo consisted of crackers (now waterlogged) and coins (now lost overboard)--both total losses. The cost of repairing Vessel A exceeds her value; therefore, she is a **constructive total loss**. Vessel B limped into port for repairs, but the contents of one cargo hold were partially damaged by water and the contents of another were jettisoned to ensure that she could reach port. The damaged property in the first hold is **particular average**. The property lost from the second hold is **general average**. When B reached port, the contents of the first hold were repacked and reconditioned to avoid further water damage. Costs for that work are **sue and labor charges**.

EO 7. **HOW TO APPORTION GENERAL AVERAGE:** Multiply total general average costs by each party's **contributory value** (the value of a given interest's property in an expedition) divided by the aggregate value of all interests at risk.

Using the example of Vessel B above, assume the jettisoned cargo was worth \$1 million, the cargo successfully delivered is worth \$1 million (for a total contribution of \$2 million), a second owner had cargo worth \$3 million aboard (none of it intentionally sacrificed), *and* Vessel B is worth \$5 million.

The value of all contributions is \$10 million (\$2 million + \$3 million + \$5 million). General average costs (\$1 million in sacrificed cargo) would be apportioned as follows:

Cargo owner 1:	\$1 million	X	\$2 million	÷	\$10 million	=	\$200,000.
Cargo owner 2:	\$1 million	X	\$3 million	÷	\$10 million	=	\$300,000.
Vessel B's owner:	\$1 million	X	\$5 million	÷	\$10 million	=	\$500,000.