EUROPEAID/120540/C/SV/MULTI

Freight Forwarders Training Courses

for Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, Ukraine, Uzbekistan

Module 10 Insurance

This project is funded
by the European Union

A project implemented by
NEA and its partners STC,
TRADEMCO and Wagener &
Herbst Management
Consultants

Contents

Page

10.1 Liability Insurance 2
10.1.1 Liability Insurance Policy.. 3
10.1.2 Liability of different parties... 10
10.1.3 Carrier's statutory liability in international conventions 14
10.1.3 Limitation on liability.. 20

10.2 Transport Insurance.. 22
10.2.1 General insurance policy 22
10.2.2 Types of coverage.. 32

10.3 Duties of freight forwarder in case of damage........... 42
10.3.1 General 42
10.3.2 Chain of actions for freight forwarders 43

10.4 General Average 51
10.4.1 General Average.. 52
10.4.2 General Average Adjustment 55

10.1 Liability Insurance

Learning objectives

The student should know what liability insurance refers to, the different types of liability and liability insurance policies.
The student should understand the difference in coverage of various liability insurance policies and in particular, the liability insurance for FIATA bill of lading.
The student should also know the role of P&I clubs and TT clubs.
The student shall be aware of the liabilities that different parties bear, including the insurance company, forwarders, and carriers. Liabilities may be subject to limitations, as in liability insurance.
The student shall understand the concept of re-insurance.

Liability insurance is the type of insurance that pays and renders service on behalf of an insured party, for loss arising out of his/her responsibility to others imposed by law or assumed by contract. Liability insurance shields the insured from financial responsibility for injuries to others or for damage caused to other people's property.

Types of liability insurance
Insurance against the insured's potential legal liability to a third party, whether in contract or tort (wrongful act), is commonplace. In a number of instances, such insurance is required to be effected by statute i.e. so called mandatory policy. In other cases, liability insurance is taken by prudent people to insure against a further range of risks.

The most usual classes of mandatory policy cover the drivers of vehicles, those who offer professional services to the public, those who manufacture products that may be harmful, and those who offer employment. Public policy requires that such individuals should carry insurance as they are deliberately engaging in activities that put others at risk of injury or loss. Often, such liability that the individual bears derives from so called public liability. In many countries, such a liability insurance is a compulsory form of insurance.

Apart from the compulsory insurance, most risks involved in professional transport of goods are of contractual or tort nature, the insurance of which is therefore at the will of the companies involved. Such liability insurance is voluntarily taken.

Liability insurance in cargo transport
Cargo transport is a professional service that the transport company deliberately engages in against fees, offering service to the public. Often seen is the public liability involved, by being the employer and transport operator, in accordance with the compulsory national laws. Carriers also assume contractual liabilities such as those they choose to enter with the

cargo interests or others. In offering the services, the carrier can also incur liability to a third party in tort.

By undertaking the ancillary services or assuming a contractual-carrier's position, forwarders often find themselves in a comparable situation to carriers in cargo transport, therefore associated with a similar insurable interest. This group of interest can also expand to other parties, whoever offers the transport services, such as multimodal transport operators, logistics operators, consolidators or integrators and such.

10.1.1 Liability Insurance Policy

Learning objectives
The student should be aware of the various coverage of different liability insurance policies and in particular, the risks covered and those generally excluded.
The student should know the liability insurance for FIATA bill of lading.
The student should understand the role of P&I clubs and TT clubs.

Risks covered

We know that the potential liabilities that transport companies or others in a similar position bear can be in contract or in tort, or effected compulsorily by the statute. But not all such risks are covered by the insurance. One liability insurance policy often covers certain risks, but excludes others. The insured still bears the uncovered risks himself.

Liability insurance policy overview
In a simple scheme, the following table gives an overview of the risks and forms of insurance that are commonly seen in cargo transport.

Liability risks	**Form of insurance**
As industry for industrial activities, for employees, for safety, for environment etc.	Liability insurance for industries (ALL)
As forwarder for cargo	Forwarder liability insurance
As owner, possessor of motor vehicles	3rd Party Liability insurance for motor vehicles
As owner, possessor of items like bulldozers, cranes etc.	Equipment insurance with 3rd party liability coverage
As hirer of items like lifters, trailers, containers etc.	Container, trailer, semi-trailer liability insurance; 24-hour coverage under forwarder policy
As storage holder, holder of interests of third parties	Insurance on the basis of contract; stipulations depending on the service rendered

Liability insurance for industries (ALL)

Every company will need ALL insurance (liability insurance for industries). In addition to other types of liability insurance depending on the specific company, ALL insurance is always essential.

ALL insurance covers the risks of a company that as an enterprise shall be accountable for damage that its employees cause to third parties, as well as its employees. Damage may also be caused to a third party as the owner/user of port areas and buildings.

Major differences between ALL and other liability insurance are the following:

- The ALL excludes matters under supervision, while other liability insurance covers specific liability for damage that the insured has with regard to third parties.
- Other liability insurance may protect only the contractual risk (e.g. forwarder under FIATA conditions) of the insured.
- Legal liability risk is also applicable to ALL.

Protection & Indemnity Clubs (P&I Club)

P&I Club stands for the Protection & Indemnity Club. P&I Clubs these days refer to the thirteen Mutual Insurance Associations in the world, which between them insure the liabilities of some 95% of the world's ocean going tonnage. The P&I Clubs provide cover for a ship owner's liabilities, not the fabric of the ship itself.

During the mid nineteenth century ship owners found themselves with liabilities which their traditional hull underwriters (Lloyds) were unable or unwilling to cover. In order to solve the problem groups of ship owners formed themselves into mutual associations and agreed to share each other's claims.

The P&I Clubs all operate on a mutual or non-profit basis aiming at calling up only sufficient money each year to meet the costs, expenses and claims for that year. There are no shareholders and the ship owner members of the Association insure each other.

For detailed information about P&I Clubs, including the covers it provides and the services offered, please refer to Annex 1 at the end of this chapter.

P&I covered risks

Various risks are covered by the P&I associations. These will depend on the particular type of association concerned. In marine insurance, the types of risks of concern usually include the risks of a general nature, war risks, freight and demurrage risks, and through transit risks.

Risks of a general nature include such as the damages or compensation for the loss of life or personal injury or illness; expenses incurred under statute or collective or special agreements with respect to loss of life, personal injury or illness. Examples are:

- Repatriation
- Crew substitute expenses
- Loss of effects
- Distressed seamen's expenses
- Port and deviation expenses
- Life salvage
- Collision liability
- Fixed and floating objects
- Damage to vessels or property other than by collision
- Liability under towage contracts
- Liability arising under indemnities and contracts
- Removal of wretches
- Quarantine expenses
- Liability for loss or shortage of cargo or other property
- Liability for damage to or responsibility in respect of cargo or other property
- General average
- Fines
- Legal expenses

P&I uncovered risks

Uncovered risks can be defined in

1) the laws
   E.g. The Marine Insurance Act 1906 in U.K sets out a number of exceptions which apply to all policies unless they contain a term to the contrary; or
2) The Institute Clauses which are generally attached to the policy
   The Institute Clauses contain a number of clauses exempting the insurer from liability where the loss of or damage to the subject-matter insured arises from certain causes; or
3) The policy
   Sometimes exceptions are found expressly stated in a policy.

Exceptions under the MIA 1906

- Losses not proximately caused by perils insured against
- Losses caused by the wilful misconduct of the assured
- Losses caused by delay
- Losses caused by ordinary wear and tear
- Losses caused by inherent vice, and
- Other losses e.g. those caused by vermin

Exceptions under the institute clauses cargo (A/B/C)

Various exceptions are to be found and their extent depends on whether the particular set of clauses is concerned with the insurance of cargo, or hulls or freight. Slight difference exist among the Institute Clauses Cargo A, B and C.

For example, Institute Clauses Cargo A contains:

- A general exclusions clause
- An un-seaworthiness and unfitness exclusion clause
- A war exclusion clause and
- A strike exclusion clause

The general exclusion clause mentioned above refers to:

- Loss, damage or expense attributable to the wilful misconduct of the assured
- Ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
- Loss, damage or expense caused by insufficiency or unsuitability of packing or preparation for the sum insured
- Loss, damage or expense caused by inherent vice or nature of the sum inured
- Loss damage or expense proximately caused by delay, even though the delay caused by a risk insured against except expenses payable as a result of general average and salvage charges
- Loss damage or expense arising from insolvency or financial default of the owners, manages, charterers or operators of the vessel
- Loss, damage or expenses arising from the used of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

Liability insurance for FIATA Bill of Lading

The FIATA Bill of Lading (FBL) is a negotiable marine ocean bill of lading, subject to completion according to ICC UCP 500 rules. It can also serve as a Forwarder House Bill with a suitable endorsement or as a multimodal transport document. The FBL is used worldwide under the same set of conditions, offering the customer a substantial degree of protection.

The liability of the forwarder under the terms of the FBL is based on the UNCTAD/ ICC Rules for Multimodal Transport Documents (ICC Publication 481). Full details on all forwarder's liabilities and limitations are listed in e.g. the Standard Conditions Governing the FIATA Multi Modal Transport Bill of Lading (Re. Annex 2 at the end of the chapter).

There are no specific insurance requirements for the use of the FBL other than the user having arranged appropriate insurance with a first class insurance company to cover their liabilities. A forwarder issuing a FBL must ensure that all insurance arrangements related to these liabilities have been clarified.

Brokers offering cover in the local market place

General

Insurance business is usually conducted through intermediaries, i.e. insurance brokers. Ordinary businesses normally lack the necessary expertise and insurance brokers act on behalf of the buyers of insurance to assess the extent of cover which is necessary, that which is available, and whether or not a particular premium rate is reasonable.

Insurance broker is the one who advises persons on their insurance needs and negotiates insurances on their behalf with insurers, exercising professional care and skill in so doing. Brokers "shop around" for insurance at competitive rates on behalf of their clients. Lloyd's brokers are the only intermediaries who are permitted to place insurance with Lloyd's underwriters.

Whilst transport insurance originated from marine insurance, and marine insurance in its modern form originated at Lloyd" s with London still being the Mecca of the industry, it is by no means the only market and much transport insurance is transacted by numerous companies throughout the world. Many insurance companies located in a nation are linked to large overseas parent companies and are able to provide a professional and efficient service at competitive rates.

Through Transport Club (TT Club)

Though P&I Clubs insure the largest tonnage of ocean traffic, not all liability risks in cargo transport are insurable at P&I clubs. P&I Clubs are open only to its members who are essentially the ship owner. If the transport takes place over land or with ships that do not belong to the ship owner and that are not chartered by him, he will not be able to insure his liabilities with his P&I Club. It is also difficult to insure the usual P&I club liabilities in the open market.

In response to the difficulties in associated with the P&I Clubs, and the newly development that brings in new types of liabilities such as in the multimodal container transport, other insurers occur. Through Transport Club (TT Club) is one of them.

The following table gives a summary of the TT Club's cover.

Summary of the TT Club's cover

Risks covered	Logistics companies	Road, air, rail & sea freight transport operators	Port authorities	Cargo handling facilities	Ship operators	◇ Hauliers
Liabilities for loss of or damage to cargo, customers' equipment and ships	•	•	•	•		•
Loss of or damage to equipment including loss due to strikes, riots and terrorist risks	•	•	•	•	•	•
General average and salvage guarantees and contributions for equipment					•	
Liabilities arising from errors and omissions including delay and unauthorised delivery	•	•	•	•		•
Third party liabilities including impact and sudden accidental pollution	•	•	•	•	•	•
Fines and duty	•	•	•	•	•	•
Property and business interruption risks	•	•	•	•	•	•
Fire Legal			•	•		
Berth damage			•	•		
Port blockage			•	•		
Wreck removal costs			•	•		
Investigation, defence and mitigation costs	•	•	•	•	•	•
Disposal, quarantine and disinfection costs	•	•	•	•	•	•
Misdirection costs	•	•				
Political risks including war risks on land for equipment					•	

Source: www.ttclub.com.

Test Questions

1. Which type of insurance fits to which forwarders' liability? Please indicate.

Liability		Form of insurance
As industry for industrial activities, for employees, for safety, for environment etc.	Drag to	Liability insurance for industries
As forwarder for cargo	Drag to	Forwarder liability insurance
As owner, possessor of motor vehicles	Drag to	3rd Party Liability insurance for motor vehicles
As owner, possessor of items like forklifts, cranes etc.	Drag to	Equipment insurance with 3rd party liability coverage
As hirer of items like lifters, trailers, containers etc.	Drag to	Container, trailer, semi-trailer liability insurance. 24-hour coverage under forwarder policy.
As storage holder, holder of interests of third parties	Drag to	Insurance on the basis of contract stipulations depending on the service rendered.

2. The risks below are generally covered by P&I insurance except

a. life salvage
b. collision liability
c. losses caused by ordinary wear and tear or by inherent vice
d. liability for damage to or responsibility in respect of cargo or other property

(c)

3. Which parties can be members of P&I insurance Clubs?

a. Forwarders
b. Shippers
c. NVOCC's
d. Ships owners

(d)

4. True or False?

- Forwarder liability insurance (FIATA B/L conditions) insures the contractual risk of the forwarder (T)
- Forwarder liability insurance (FIATA B/L conditions) does not cover liability for damage that the forwarder has with regard to third parties (F)
- TT club insures risks that are not covered by the P&I Clubs (T)

10.1.2 Liability of different parties

Learning objectives
The student shall be aware of the liabilities that different parties bear in legal relationships they enter when offering professional services, including the insurance company, forwarders, and carriers.
The student shall further understand the different types of liability that the carrier may incur.

Liability of insurance companies

The insurance company should be providing insurance that properly covers the risks involved and to the proper liability limits – and which applies to the appropriate legislative regimes that may be involved in any given transit.

Insurance companies assume the risk associated with insurance policies and assign the premiums to be paid for the policies. The premium charged for the policy is based primarily on the amount to be awarded in case of loss, as well as the likelihood that the insurance companies will actually have to pay.

In order to be able to compensate policyholders for their losses, insurance companies invest the money they receive in premiums, building up a portfolio of financial assets and income-producing real estate which can then be used to pay off any future claims that may be brought.

Proper risks covered
It is obvious that the insurance company shall underwrite the proper risks involved by the insured. Should an improper risk be covered by the policy, the premium charged for the policy is then misled which directly affects the cost estimation on which the company operates. The improper risk covered may also involve such an amount of compensation to the policyholders that goes beyond the company's budgeting. The negative influence on the company's business operation of the improper risks is potentially huge and severe.

Proper liability limits
Proper liability limits concern the proper understanding and estimation of the liability limitation that the insured are entitled to in the circumstances where the insured is hold liable. The insurer assumes the part of risks that go beyond the liability limitation which allegedly rest on the insured, who in lieu of the insurance, will have to bear it by himself.

The consequence of improper estimation of liability limitation is the same as in improper risks covered. The premium against which the risk is undertaken, would be wrongly calculated, which consequently affects the company's cost estimation, budgeting and normal business operation.

Appropriate legislative regime

In intermodal transport or international transport, the transport activity may cover a few countries that fall into different legislative regimes. Different laws result in the disparity in interpretation of rights and obligations of the parties involved, and most of all, the imposition of liabilities on the party.

The variance of liabilities possibly to be borne by the insured give complexity for the insurer to assess the potential risks in associated with the insured concerning the specific transport activity. A correct understanding of the different legal regimes that may apply during the entire transport is essential for the insurer to assess the risks it underwrites, to calculate the premium, and to take measures properly and legally in case of damage.

Re-insurance

Due to commercial or marketing reasons, the insurance companies may cover the types of risk in its policy which the company is actually not adept in, or lack of experience or expertise. In such a case, the insurance company may prefer to divest the risks covered in the policies it issues. This is done in the re-insurance market. Re-insurance companies assume all or part of the risk associated with the existing insurance policies that are originally underwritten by other insurance companies.

Liability of freight forwarders

The development of international transport has changed the scope of services of the traditional freight forwarder. In the past, the freight forwarder was basically acting as an agent. In recent years, a lot of freight forwarders abandoned their traditional role as "paper pushing agents" and took the opportunity to advance to the status of acting as carrier (NVOCC and NV-MTO). By doing so, the freight forwarder is facing greater responsibility.

As an agent

Freight forwarder takes the traditional responsibility as an agent for the cargo interests. In this case, the forwarding company acts on behalf of the shipper or consignee. The forwarding company does not take in any transport related risks as a carrier except the services he renders pertaining to his agency agreement. Such agency agreement usually covers ancillary services in relation to the transport.

As carrier/consolidator

Freight forwarders acting as carrier/consolidator takes full responsibility of the whole transport. A house bill of lading is often issued by the freight forwarders in such a position. Often, companies acting as non-vessel operating MTO also sub-contract the ocean voyage or even sub-contract the whole transport. This may even renders the forwarding company be liable to a higher extent compared with any subcontractors involved, including the shipping line, whose liability may be protected by the laws or conventions governing that particular mode of transport.

Demarcation of liability risks of the forwarder

When we consider the issues of liability insurance of the forwarder, it will become evident that there are practical situations in which the boundaries between the fields of the different accountabilities are not always so sharply demarcated, certainly not as sharp as it appears in insurance contracts.

The risk of being held accountable for damage caused to a third party depend on the capacity of the forwarder and the activities unfolded by it. It may come from many directions. The relationship between the forwarder and the employee(s) / cargo interested parties is directed by legal provisions, treaties and limiting liability conditions (e.g. FIATA conditions).

For more information about the determination of the capacities of the forwarder versus the carrier, as well as a short explanation of the liability insurance policy of the forwarder, please refer to Annex 3 at the end of the chapter.

Dangerous goods transport

The potential liability for a freight forwarder is even higher when the transport involves dangerous cargo. It is very important to purchase the correct liability insurance coverage when carrying dangerous cargo. The transport of dangerous goods entails the certificate with respect to the specific type of goods, as well as the compulsory requirements for packaging, labelling and handling of the goods.

For detailed information in relation to the dangerous goods transport, please refer to Module 11 “Safety, Security and Dangerous Goods”.

Liability of carriers

According to the nature and the underlining legal basis that provoke the liability, liabilities that a carrier assumes can be either of the following categories or a combination of two or more:

- Public liability (sometimes called strict liability)
- Statutory liability
- Tort liability
- Contractual liability

Public liability, tort liability

Public liability and tort liability concern the liability the carrier incurs with regard to third parties.

Liability to third parties includes the death or bodily injury caused to a third party, including passengers. Insurance of such liability is usually compulsory according to national laws. Without such an insurance or security the motor vehicle for example is not allowed to drive on a road.

Liability to third parties that a carrier may incur also includes the liability for damage done to the property of third parties.

Most national laws and regulations define explicitly the liabilities that the carriers bear against third parties. Provisions in respect of liability to third parties may vary among different countries.

Contractual liability

Contractual liability deals with the liabilities that the carrier assumes as opposed to the other party or parties bound by the transport contract. Often the other party or parties refers to the cargo interests, i.e. the merchant or respectively, the shipper or the consignee.

Contract liability is dependent on the provisions of the specific contract, if not overruled by explicit statutory liabilities. The concept of freedom of contract applies.

Statutory liability

Statutory liability is regulated by the stipulations of laws and regulations. The laws and regulations, including international conventions and agreements, are effectuated either by itself when conditions satisfied, or by the choice of the contract parties. In the latter case, the liabilities defined by the statutes are considered also as contractual. On the other hand, public liability in majority cases is clearly defined in national laws, which is therefore a type of statutory liability too.

Next in this chapter the statutory liabilities of carriers are briefed pertaining to different modes, i.e. roadway, railway, sea, inland water, air, express services and logistics services.

Test Questions

1. Different parties bear distinctive liabilities towards others in legal relationships. As for insurance companies, what shall be the preventive measures that the company takes in order to minimize its liability?

a. To cover proper risks
b. To understand properly the liability limits
c. To properly understand the applicable legislative regime
d. All of the above

(d)

2. True or False?

- In recent years a lot of freight forwarder abandoned their traditional role as "paper pushing agents" and took the opportunity to advance to the status of acting as carrier. As a consequence, the freight forwarders are facing greater responsibility in cargo transport (T)
- There is always a clear line between forwarders as an agent and as carrier/consolidator (F)
- As carrier, the forwarders may be liable to a higher extent compared with any sub-contractors involved (T)
- Usually if the freight forwarder renders only ancillary services, and that no house bill of lading is issued, it is very likely that the forwarder shall be considered as only an agent (T)

- In case of dangerous goods transport, the potential liability on freight forwarders goes even higher (T)

3. According to the underlining legal bases that provoke the liability, the carrier may incur the types of liability as the following:

a. Public liability and Tort liability
b. Contractual liability
c. Statutory liability
d. All of the above

(d)

10.1.3 Carrier's statutory liability in international conventions

Learning objectives
The student shall understand the statutory/contractual liabilities that the carrier may incur, particularly those resulting from applying international conventions in different modes of transport.

Unimodal transport is governed by the respective international conventions, and so is the carrier's liability:

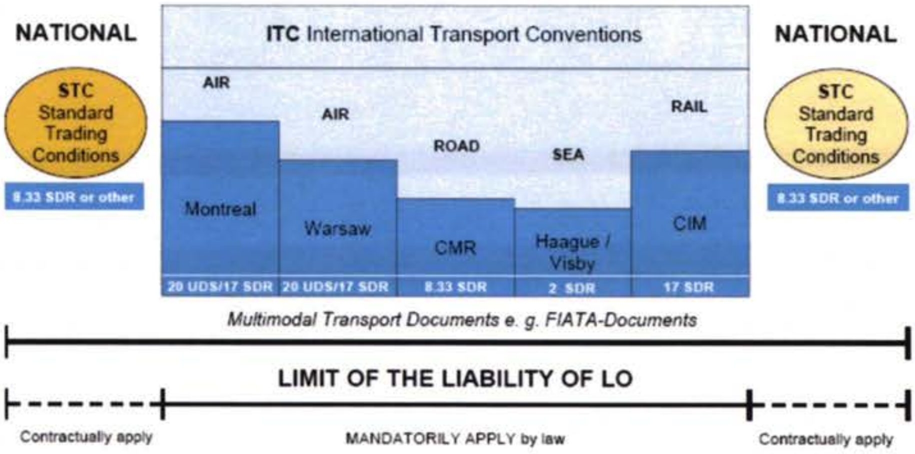
- for rail - The CIM
- for road - The CMR
- for ocean - the Hague / Hague-Visby / Hamburg Rules
- for air - the Warsaw Convention; and etc.

These transport conventions may also apply to individual segments of multimodal transport of goods.

Based on the definition of multimodal transport, a multimodal transport operator (MTO) assumes responsibility for the performance as a carrier for more than one mode of transport. As such the MTO bears the liability for the entire transport according to the contract with the merchant.

The following chart illustrates the relationship between different modes of transport with respect to the contractual/statutory liability that the carrier assumes:

- Contractual Liability


NATIONAL
ITC International Transport Conventions
NATIONAL
STC Standard Trading Conditions
8.33 SDR or other
AIR
AIR
ROAD
SEA
RAIL
STC Standard Trading Conditions
8.33 SDR or other
Montreal
Warsaw
CMR
Haague / Visby
CIM
20 UDS/17 SDR
20 UDS/17 SDR
8.33 SDR
2 SDR
17 SDR
Multimodal Transport Documents e. g. FIATA-Documents
LIMIT OF THE LIABILITY OF LO
Contractually apply
MANDATORILY APPLY by law
Contractually apply

(Source: "Cargo + Liability insurance in the Multimodal Transport", Jurgen Bochanski, Aktive AG, http://www.aktiv-assekuranz.de)

Railway networks

The main railway conventions that apply are CIM (Uniform Rules concerning the Contract of International Carriage of Goods by Rail) with most European countries as members, and the SMGS (Agreement on International Railway Carriage of Cargoes) with members from former USSR countries and its allies with communism systems during the Cold War.

According to CIM, the carrier is responsible for the loss of or damage to the goods from the time that he accepts the goods to the time of delivery. Loss of goods shall be compensated at the price calculated according to, sequentially, commodity exchange quotation, current market price, or normal value of goods of the same kind and quality at the time and place of acceptance. Compensation for cargo damage is equal to the loss of the cargo's value.

The liability limit in CIM is 17 SDR per kilogram of gross weight of the cargo plus rail freight. The time bar for cargo claim is one year.

Different from CIM, SMGS does not set the maximum liability limitation for the loss of goods. In this case, the compensation of the cargo loss and damage is unlimited, up to the cargo's value calculated on the commodity exchange quotation or others. Besides, SMGS has a 9 month time bar, instead of one year in CIM.

More detailed information about railway operators can be found in Module 6 "Rail Transport".

Road transport operators

Road transport operators carrying goods for reward on international road haulage journeys must comply with the Convention on the Contract for the International Carriage of Goods by Road (CMR Convention) which is effective since 2 July 1961. The Convention automatically applies to the transport contract as long as the carriage of goods is between countries of which at least one is a party to the Convention.

The CMR defines the carrier's liability as such:

- Period of responsibility: From the time that the carrier takes over the goods, to the time of delivery
- Liable for: 1) total and partial loss of the goods
  2) any damage to the goods
  3) delay in delivery
- Liability limit: 1) 8.33 SDR per kilo of gross weight, in case of cargo damage and loss
  2) carriage charge in case of delay
- Time bar 1) 30 days from the end of the term of delivery, or 60 days after date of taking over of the goods
  2) one year from the date of taking over in case of delay
  3) three years in case of wilful misconduct of the carrier

More detailed information about road operators can be found in Module 5 "Road Transport".

Shipping lines inland waterways

For inland waterway transport no worldwide liability regimes exist. The two most important international measures in Europe are:

- The CMNI Convention
- The Shipping and Transport Conditions (Verlade- und Transport Bedingungen): general conditions that apply to cross-border transport

The purpose of the CMNI Convention (Convention on the Contract for the Carriage of Goods by Inland Waterway) is to develop uniform civil inland shipping law. This means, amongst others, that a single liability system will apply in all countries where inland shipping is practised. The major features of carrier's liability in this convention are:

Period of responsibility:	from taking over until delivery
Contract of carriage:	consignment note required if requested
Liable for:	loss, damage and delay including cost for evaluating damage
Liability limit:	1) 8.33 SDR/kg 2) Delay 3x value of freight
Notice of claim:	1) Apparent loss, damage - on delivery at latest 2) Non apparent loss, 7 days after delivery 3) Delay: 21 days after delivery

These are general conditions that apply to cross-border transport. They have been in use for some decades and are very favourable towards carriers. Practically all liability is excluded. The following supplementary conditions are used in specific sub-markets:

- the General Ferry and Barge Shipping Conditions in rotation systems
- the General Push-Towing Conditions of 1998 in push-towing
- the General Towing Conditions in towing services.

Ocean going traffic

In the past, the point where responsibility is transferred ("critical point") was the ships rail. Goods were received by the shipping line at the port of loading, and delivered to the port of destination. With the advent of containerisation, shipping lines took responsibility of the goods at an earlier stage, as well as a later stage in terms of delivery, whereby the transfer of responsibility moved ashore. From CY/CFS to CY/CFS is normal. In line with this newly development, INCOTERMS and UCP both were revised to recognise this movement of "critical point", from the ships rail to the point where the goods are taken in charge by the shipping line.
The main international conventions in ocean traffic are the Hague Rules (1924), the Hague-Visby Rules (1968), and the Hamburg Rules (1978). Three Rules contain different provisions concerning the carrier's liability.

	Hague Rules (1924)	Hague-Visby Rules (1968)	Hamburg Rules (1978)
Period of responsibility	Rail – Rail; open for contractual agreement	Rail – Rail; open for contractual agreement	Acceptance of cargo – delivery of cargo
Liability	Loss of or damage to goods	Loss of or damage to goods	1) Loss of or damage to goods; 2) delay in delivery
Liability limitation	£100 per package or unit	SDR666.67 per package or unit, or SDR2/kg of gross weight, whichever is higher	1) loss or damage: SDR835 per package or unit, or SDR2.5/kg of gross weight, whichever is higher; 2) delay: 2.5 times of the freight in proportion of the cargo in delay, but not excessive of the freight for the entire consignment
Time bar	1 year, from delivery	1 year, from delivery; possibility to extend with agreement	2 years, from delivery; possibility to extend with notice

More detailed information about ocean shipping operators are referred to Module 2 "Sea Transport".

Airlines

Warsaw Convention 1929 and its Protocols are the main international agreements in air cargo transport. Montreal Convention 1999 is the result of the increasing pressure to enhance the air carrier's liability, at an international level.

Both the Warsaw Convention system and the Montreal Convention set the carrier's liability limit at 17 SDR per kilogramme of gross weight. But the main difference between the two is that the Montreal Convention adopts a strict liability system while the Warsaw Convention follows a fault liability system. The strict liability system imposes liability on the carrier regardless of his fault. Liability is not dependent on negligence or intent.

More detailed information about air carriers are referred to in Module 4 "Air Transport".

Express services (Integrators)

An express integrator service is another means for getting products overseas. Particularly suited (but not limited) to low-volume or time-critical delivery services, express integrators can provide a seamless door-to-door service across the globe. Express Integrators also provide customers with detailed product tracking and can manage customs requirements in a destination country.
Integrators are involved in international multimodal transport, mainly by air and road. Which liability regime is applicable depends on the mode of transport which is used at the time the damage occurs. Where international carriage by air is involved, international air conventions apply (e.g. Montreal Convention, Warsaw Convention). International carriage by road will be subject to the provisions of the CMR Convention. Please refer to the respective transport modalities for further information.

Logistics service providers

Due to the ongoing trend of outsourcing logistics activities, the role of logistics service providers (LSPs) has become more and more important in global transport. Traditional freight forwarders, by expanding business upwards and/or downwards the logistics chain, are increasingly taking on more responsibilities and function as logistics providers, and so are the single mode carriers. A sea carrier, for example, can be defined as a logistics service provider when its service offered extends significantly onshore, or to cover other modes of transport.

Standard logistics services include transportation, warehousing and cross-docking. The search for the right balance of transport speed, mode and cost, and the adaptation to systemized and customized logistics brings other elements into logistics services, such as:

- Pick and pack
- Re-labelling
- Testing and quality control

- Product assembly and repairs
- Stock planning
- Order entry
- Fiscal representation
- Tracking, tracing, invoicing

Forwarder's liability

Freight forwarders who, by expanding services take the responsibility as logistics service providers, involves the issue of determining whether he is the carrier or agent in order to define correctly the liability imposed on him.

According to the FIATA Model Rules for Freight Forwarding Services, if the freight forwarder performed the service or carriage using his own facilities or means of transport, he would be subject to the contract with his own specific conditions (house bill of lading) or the compulsorily applicable conventions. On the other hand, if the freight forwarder is not engaged as carrier, his liability is based on a duty to exercise due diligence and to take reasonable measures in performing the services. The monetary limit is 2 SDRs per kilo with respect to loss of or damage to the goods. Liabilities for valuables and for delay and consequential loss other than direct loss are exempted. The time limit for actions against the freight forwarder is nine months from delivery of the goods.

MTO liability

When a logistics service provider takes care of the transport of more than one mode, and assumes the carrier's position as opposed to the shipper, he is essentially a multimodal transport operator (MTO).

The MTO is responsible independently of the rules which apply to the actual carrier. Attempts at international unification however, with regard to a workable liability system for MTO were not successful.

The UN's Multimodal Transport Convention 1980 never entered into force. The Rules for Multimodal Transport Documents from UNCTAD and ICC has limited application in practice. The latter is more successful in that it has been reproduced in particular by FIATA in the Negotiable FIATA Multimodal Transport Bill of Lading (FBL).

The fact that the MTO is fully liable to the shipper, but on the other hand might find it impossible to recover fully from a subcontractor due to the liability limitation applicable to that specific mode, or the fact that the mode of transport where the damage took place cannot be identified, represents a great risk to the MTO. In order to cover this liability, it is essential that the MTO arranges adequate liability insurance cover for its operation.

Test Question

1. According to the applicable international conventions, in which mode(s) of transport will the carrier be subject to the highest liability limit per kilogramme of gross weight of the cargo?

a. Sea transport (Hague/Visby Rules)
b. Air transport (Warsaw Convention)
c. Road transport (CMR)
d. Rail transport (CIM)

(b & d)

10.1.4 Limitation on liability

Learning objectives
The student should understand the different forms of limitation that may be set on liability under an insurance contract.
The student shall understand the concept of re-insurance.

A professional indemnity policy will contain a term which prescribes the maximum amount that will be payable, usually defined differently for different circumstances, under the policy.

The maximum amount fixes the maximum sum with which the insurer may be liable to the insured. It follows that if the amount that the insured has lost is greater, even if it otherwise comes within the terms of the policy, the insured will be able to recover only up to the maximum sum against the insurer.

Contractual, single incident value and total claim value

Contractual claim value

Contractual claim value is the maximum amount set in the policy that the insurance company is to compensate to the insured, the claims arising out of the latter's contractual liability.

Single incident value

The maximum amount may be defined in relation to an individual claim. As a result, for each and every claim the insurer's liability to the insured will be limited to the maximum amount.

Total claim value

On the other hand, the maximum amount may be in relation to all claims within a given period, usually the duration of the policy. In this case, irrespective of the maximum amount of any individual claim, there will be a maximum amount on all payment by the insurer to the insured, during that period.

Such a provision is sometimes called an “aggregate limit”. It is not uncommon for the maximum amount payable under policy to be limited on each and every claim and in the aggregate as well.

Re-insurance concepts

Re-insurance contracts

A re-insurance is essentially an independent contract of insurance whereby the re-insurer agrees to indemnify another (insurer) wholly or partially against loss or liability by reasons of a risk the latter has assumed under a separate and distinct contract as the insurer of a third party (insured). Re-insurance by nature is a contract of indemnity.

The purpose of re-insurance is the same as that of insurance: to spread risk. By spreading risk within the insurance industry, re-insurance is a mechanism that enables the insurance industry to function more efficiently.

As a separate contract of insurance, re-insurance contains all the features an insurance contract usually has, and is subject to the general rules governing the contract of insurance. Therefore, the prerequisite such as insurable interest, duty of good faith and duty of disclosure all apply to the re-insurance contract.

Types of re-insurance

Re-insurance can be written on either a pro rata or excess-of-loss basis. Re-insurance on pro rata basis means that the re-insurer shares the same proportion of the premium and losses of the ceding company (the insurer). This also is called a proportional agreement. The operative relationship is one of sharing.

Re-insurance on excess of loss means that subject to a specified limit, the re-insurer indemnifies a ceding company against the amount of loss in excess of a specified retention.

Test Questions

1. The maximum amount payable in the insurance contract fixes the maximum sum which the insurer may be liable to compensate to the insured. This limitation of liability on the insurer can come in the forms of

a. Contractual claim value
b. Single incident value
c. Total claim value
d. Either of the above

(d)

2. The following descriptions about a re-insurance contract are correct except:

a. Re-insurance contract is in nature dependent upon the original contract of insurance between the insurer and the insured, therefore the two are inseparable

b. Re-insurance contains all the features an insurance contract usually has, such as the prerequisite of insurable interest, duty of good faith and duty of disclosure

c. Re-insurance can be written on either a pro rata or excess-of-loss basis

d. Re-insurance by nature is a contract of indemnity, with the purpose to spread the risk

(a)

10.2 Transport Insurance

Learning objectives

The student should understand the general issues about cargo transport insurance.

The student should know the various forms of transport insurance policies available, some specific types of cover, and the interrelation between the covers in respect of risks covered and excluded.

The student shall also understand the principle concepts in insurance, such as insurable interest, insurable value, and utmost good faith.

Test Question

1. True or False: What is the objective of cargo insurance?

- To protect the beneficiary against financial damage if the cargo to arrive is in damaged or less valuable condition, or is partly or completely lost. (T)
- To protect the forwarder against financial damage from an incident, causing the transport equipment to be damaged or partly or completely lost. (F)
- To protect the carrier against financial damage from an incident, causing harm to his employees, his properties or the environment. (F)

10.2.5 General insurance policy

Learning objectives

The student should understand how transport insurance is usually made, i.e. standard policy plus endorsed Clauses.

The student shall be aware of the difference between open policy and facultative policy, and the most often used Institute Cargo Clauses.

The student shall also understand the principle concepts in insurance, such as insurable interest, insurable value, and utmost good faith. Under different Incoterms, the student shall be able to explain who has the insurable interest and learn how to calculate the insurable value.

Cargo insurance policy (also blank endorsed)

Standard policy document and endorsement
An insurance policy is the evidence of a contract, which defines the terms of the agreement between the insured and the insurer.

In practice, a cargo insurance policy comes in the form of a standard policy document, which contains only the skeleton of a cargo insurance contract. The essence of the contract will be contained in the "Clauses" that are to be incorporated into the policy. This is called endorsement. Endorsement of clauses can be in the form of pre-printed clauses attached, or typed into the policy provided an endorsement space is reserved.

There are a bundle of different clauses in use today. For example, there are special trade clauses for shipments of coal, oil, rubber, timber, frozen food and meat, as well as a variety of special extension clauses. Clauses may also be designed to include risks that are not covered in the basic policy. For this purpose, the Institute Cargo Clauses developed by Institute of London Underwriters is the one with broad application which are in everyday use.

The standard marine insurance policy contains the following information:

- an agreement by the insurer to provide insurance cover in return for the payment of the premium
- the name(s) of the insurer(s)
- the policy number
- the name of the assured
- the subject matter insured
- the value to be covered. This should also include, for example, freight charges, import duty, anticipated profit on the consignment, etc.
- the premium amount
- the description of the voyage
- the name or description of the vessel or other conveyance
- the scope of insurance cover, e.g. "all risks including war and strikes'
- the claims procedure including details of where claims will be paid and in which currency
- reference to the clauses which are to apply.

(Source: http://www.imarine.co.za)

Types of cargo insurance policy
There are two types of cargo insurance policy. Depending upon the size and scope of the shipper's operation, the cargo insurance policy can be in the form of an open cargo policy or a facultative policy.

1) Facultative policy
Facultative policy is also known as one-off policy, or special marine policy. A facultative policy covers a single shipment. Every risk is discussed separately and a premium agreed upon. This policy provides the same coverage available under the open cargo policy. However, it does not

provide automatic coverage. Once the shipment has been completed and coverage has ceased, this policy automatically terminates.

2) Open policy

Open cargo policies are the most usual type of cargo insurance, where a policy is drawn up to cover a number of consignments. Often it is used when the shipper has a continuous flow of goods being shipped over a long period of time. The policy can be either for a specific value that requires renewal once the insured amount is exhausted or a permanently open policy that will be drawn up for an agreed period, allowing any number of shipments during this time.

The open cargo policy provides automatic coverage when the shipper must insure the goods. Details of a particular shipment must, however, be declared when they become known.

The policy is customarily issued on a warehouse-to-warehouse basis which provides the shipper continuous coverage throughout the normal course of transit. It frequently happens that a transit commences before the exporter and/or the consignee becomes aware of it and, in such a case, the open policy provides automatic protection.

Under an open policy, all export shipments, within the scope of the insurance, are automatically insured.

Open cargo policies can also be tailored to meet a shipper's many specific needs, such as returned or refused shipments, warehouse exposures outside the scope of the policy, inland transit, and shipments sold on terms other than under CIF.

Since the policy provides automatic coverage, it usually lists the insured party's name, the cargo covered, the insuring conditions, areas of the world that coverage is granted, and the insurance rates. The shipper is required to submit a monthly report of all shipments that have occurred under the policy and to pay a premium on those shipments at the agreed upon insurance rates. Depending on the shipper's needs, the open cargo policy may offer the broadest possible insurance terms for the lowest price.
(Source: http://www.ams.usda.gov)

For an extensive reading about the types of cargo insurance policy, please refer to Annex 4 at the end of this chapter.

Insurance certificate

Insurance certificates are often, for convenience, issued as evidence of the existence of policies. Even when insurance occurs on a continuous basis, the insured can have a need for proof of insurance for a separate transport. The bank, which regulates the payment traffic, often requires such a document in export.

Under an open policy, the issue of insurance certificates is also an evidence of the cover for each individual shipment insured. In certain circumstances, insurance broker may also issue a certificate in which he states that he has arranged insurance according to the procedure explained in the certificate.

In the certificate, the most important particulars for the recipient (e.g. the buyer) are mentioned, like the insured sum, goods, ship or other means of transport, the journey, the conditions of insurance and what is to be done in the event of damage.

A certificate may also be co-signed by the authorised agent or the insurance company. In this case the certificate is sometimes indicated as the "Underwriter's Certificate."

Cargo insurance cover

Cargo insurance cover is the contract of cargo transport insurance. A cargo insurance cover is required in accordance with shipper's declaration and mode of transport, especially where international conventions are applicable – CMR, Hague-Visby etc.

Institute Cargo Clauses

The most usual types of cover are those developed by the Institute of London Underwriters, i.e. Institute Cargo Clauses, plus War Clauses and Strikes Clauses. These institute clauses are widely used in the world in everyday business.

1) Institute Cargo Clauses, consisting of
   - Institute Cargo Clauses (A)
   - Institute Cargo Clauses (B)
   - Institute Cargo Clauses (C)
   - Institute Cargo Clauses (Air)
2) Institute War Clauses
3) Institute Strikes Clauses
4) Institute Trade Clauses
5) Additional Clauses
6) Additional Terms

Each set of clauses is self-contained and designed to stand on its own. War Clauses and Strike Clauses are specifically designed as none of the three Institute Cargo Clauses covers the risks of war, strikes, riots and civil commotions. In order to cover against such risks, the F.C.&S. Clause (Free of Capture and Seizure Clause) and the F.S.R.&C.C. Clause (Free of Strikes, Riots and Civil Commotions Clause) shall be deleted from the Institute Cargo Clauses, meanwhile the War Clauses and the Institute Strike Clauses are incorporated.

Among the three Institute Cargo Clauses - A, B or C, Cargo Clauses A provide the most cover with B and C giving less coverage which is reflected in reduced premiums for the lower cover. The Clauses build upon one another in the following way: (C) provides cover against certain risks; (B) incorporates (C) and provides cover against additional risks; (A) incorporates (B) and provides cover against further risks. Institute Cargo Clauses (Air) is for movement by air, which is equivalent to the A clauses.

Institute Cargo Clauses (C)

These cover loss of, or damage to the goods, reasonably attributable to the following:

- accident to the conveyance, such as crashing of aircraft, fire, explosion, stranding, grounding, sinking or capsizing, overturning or derailment
- collision of the vessel, craft or conveyance with any external object other than water
- discharge of cargo at a port of distress
- loss of, or damage to, the goods caused by jettison and general average sacrifice
- general average and salvage charges.

Institute Cargo Clauses (C) are generally used for shipment of bulk cargo.

Institute Cargo Clauses (B)

These cover the goods against loss or damage attributable to any one of the risks covered by Institute Cargo Clauses (C) as well as:

- earthquakes, volcanic eruptions or lightning
- washing overboard
- entry of water (i.e. sea, lake or river) into the vessel, hold, conveyance, container, or place of storage
- total loss of any pack lost overboard or dropped whilst loading/unloading

Where necessary, supplementary risk cover can be added, e.g. in respect of theft, pilferage, non-delivery, malicious damage, etc.

Institute Cargo Clauses (A)

These cover the cargo for all risks of physical loss or damage, subject to exclusions.

Institute Cargo Clauses (Air)

These are similar in scope to the Institute Cargo Clauses (A) except they are used specifically for airfreight.

Insurable value

Insurable interest

Insurable interest is a basic requirement of any contract of insurance unless it can be lawfully waived. At a general level, this means that the insured or policyholder may only buy insurance if there is an insurable interest - i.e. that the person stands to benefit, or expects to benefit from the safe and due arrival of the insured goods and will be adversely affected by its loss or any damage caused to it.

Insurable interest must be shown at the time the policy is taken out and also at the time of loss. In marine insurance, unlike other branches of insurance, the insured need not have an insurable interest at the time of effecting the insurance, but in order to recover under the policy, the person must be "interested" at the time of the loss. However, there must at least be an expectation of acquiring an interest when entering a contract with the insurers.

Who has the insurable interests?

In an export transaction, it is either the buyer(s) or the seller(s) who has the insurable interests in the goods in transit, who is also responsible for arranging insurance cover for the goods. The arrangements made will vary with the agreed trade terms (Incoterms) and will reflect the passing of the insurable interest from one party to another. It is not necessary, however, for each party to take out separate insurance cover - one party should always take out the cover on a warehouse-to-warehouse basis, and, in certain circumstances, will cede or assign the policy to the next party.

The seller

Sellers of goods have an insurable interest in goods, not only as owners but also, in some cases, as risk bearers or as unpaid sellers having security rights, until they have divested themselves of all rights and duties relating to the goods.

The person who has the legal ownership of property has an insurable interest in that property, even if the insured's title is defensible because, for example, it is subject to forfeiture. Such persons include co-owner, even though the value of his interest is less than the value of the property.

The buyer

On the other hand, he who has contracted to buy goods (buyers of goods) does not have an insurable interest in the goods unless he has them in his possession, or they are at his risk, or he has made an advance in respect of the purchase.

Possession of property, including constructive possession, gives an insurable interest in that property, even though someone else has a better right to the property (such as the owner) and even though the possession is wrongful (subject to innocent possession).

For example, the interest of an exporter who is selling on an f.o.b. basis, is transferred when the goods pass the ship's rail; the risk moves from the seller to the buyer, and the buyer becomes the person who acquires an insurable interest and should therefore arrange marine insurance for the voyage.

Insurable value

The value of the insurable interest which the insured has in the subject-matter of the insurance is called insurable value. Insurable value equals the amount to be paid out by the insurer in the event of total loss or destruction (assuming full insurance).

Insured amount

In the case of full insurance, the amount insured is equal to the insurable value. The amount insured however, can be also lower or higher than the insurable value.

The amount that the insured may recover from the insurer and that part of the sum which he may retain are related but sometimes different amounts. If, the insured insures the property for an amount that exceeds the value of his interest and recovers that amount, the excess must be held on trust for third parties whose losses it represents. He must do this because his property insurance is a contract of indemnity – he must not recover and keep for himself more than he has lost.

It should be underlined that more than one person may have an insurable interest in the goods at risk at any one time, e.g. the exporter, or confirming house or bank which is advancing funds to the exporter under, say, a letter of credit. As a result, the aggregate value of their interests, which is the aggregate amount insured, may exceed the value of the goods itself.

Insurable value examples

Trade terms in the sales contract reflect the point where the risk of the cargo is considered to be transferred from the seller to the buyer, as well as the responsibilities and the costs to arrange transport and ancillary services in relation to the cargo. Ancillary services include such as insurance, Customs clearance, documentation and etc. Depending on the risk-transfer point, either the seller or the buyer shall arrange the cargo transport insurance.

The insurable value of the cargo varies under different trade terms. Below are some examples of the insurable value for cargo under different trade terms.

1) Ex Works

An Ex Works sale represents the minimum obligation for the seller, who has merely to make the goods available at his premises for collection by the buyer's designated carriers. The risks and interests of the seller are transferred when the cargo is delivered at his premises. It is the buyer's duty therefore to arrange the transport as well as insurance.

Insurable value under Ex Works is equal to the product's selling price (net factory cost + interest + profit).

2) FOB

The interest of an exporter on an FOB basis is transferred when the goods pass the ship's rail, and so is the risk. Therefore, the buyer becomes the person who acquires an insurable interest and should arrange marine insurance for the voyage.

Insurable value under FOB includes selling price, plus

- loading cost to the first independent carrier named by buyer i.e. depot, wharf
- certification/legalisation/ inspection fee, if required
- export customs clearance fee
- additional packing / labour charges
- ship loading charges if by sea and if not included in freight

3) Duty Paid (Delivered Duty Paid / DDP)

Under the "D" terms (DAF, DES, DEQ, DDU and DDP), the seller (exporter/manufacturer) is responsible for all costs and risks associated with bringing the goods to the place of destination. Insurable interest in the goods remains at the seller during the transit so that the seller is charged with the insurance arrangement.

"Delivered duty paid" means that the seller fulfils his obligation to deliver when the goods have been made available at the named place in the country of importation. The seller has to bear the risks and costs, including duties, taxes and other charges of delivering the goods thereto, cleared form importation. As opposed to EX Works, DDP represents the most favourable terms, which a buyer can obtain, but the most onerous terms for the seller.

Insurable value under Duty Paid would include all the EX Works costs plus export packing, inland carriage, export clearance, freight charges, insurance premiums, import clearance, import duties and taxes and the costs of all export and import documentation.

4) With profit

An insurance policy should clearly state which value (of the property, of the goods, etc.) will be covered by the insurance contract. Example from a random insurance policy states:

- Particularities of insuring property:
  In the event of insuring property and the circumstances of the matter have not established otherwise, the insured sum shall be equal to the cost of this property.
- Insurance of lost profit:
  Insurance shall extend also to the profit which has not been received due to the ensuing of the insured event, if it is stipulated by the agreement.

"With Profit" insurance therefore ensures against the profit loss in case the values of the cargo is not established, or previously agreed such as in Ex Works, FOB or DDP.

Utmost good faith

In the formation of a contract of insurance, the principle of utmost good faith ("uberrima fides" in Latin) must be observed by both the insured and the insurer. Before a contract is concluded, the insured must disclose to the insurer all material facts of which s/he is aware which could affect the risk s/he is asking the insurer to bear. A failure to disclose, however innocent, entitles the other party to avoid the contract, and upon avoidance it is deemed never to have existed.

Material facts

A fact is considered material if it is one which would influence the judgment of a reasonable or prudent insurer in deciding whether or not to accept the risk, on what terms, or what premium to charge. Material facts are different from opinions.

For example, the dangerous nature of a particular export product must be declared. An exporter, for example, must pack his merchandise in a manner suitable to withstand the risks of transit. If s/he misleads an insurer into believing that the packing of the goods is adequate when, in fact, it is inferior, and subsequent breakages occur, the insurer may refuse a claim from the insured. Any non-disclosure of a material fact entitles the insurer to avoid the contract, irrespective of whether the non-disclosure was intentional or inadvertent.

Time of disclosure

The duty of disclosure has to be performed whenever the insurer has the decision to make - whether to make the contract of insurance and, if so, on what terms - on new insurance, on renewal of insurance, and with respect to any change in the current insurance.

The duty of utmost good faith continues throughout the currency of the policy. The strictness of the duty of disclosure however varies according to the phase in the relationship at a level appropriate to the moment. Disclosure at the time of first contracting, renewal and, extension is required in respect of all material information, whether or not the insured was aware of it.

Unless the contract stipulates otherwise, the insured has no duty to notify changes of risk during the insurance period. But when the contract requires so, the insured must notify the insurer of any alternation in the risk.

Reciprocal duty

The duty of good faith is a reciprocal duty owned not only by the insured to the insurer but also by the insurer to the insured. So it is not only the insured, but also the insurance company who shall observe the principle of "utmost good faith" in all insurance transactions.

Test Questions

1. True or False?

- Cargo insurance policy comes in the form of standard policy document and incorporation of "Clauses" by endorsement (T)
- When the shipper has a continuous flow of goods being shipped over a long period of time, a policy will be drawn up to cover a number of consignments. This type of policy is known as facultative policy (F)
- Insurance certificate is the proof of insurance for a single cargo transport, submitted by the insurer or his Intermediary (T)
- The Institute Clauses are often endorsed into the standard policy document. The Institute Clauses include the Institute Cargo Clauses (A, B, C, Air), Institute War Clauses, Institute Strike Clauses and others (T)

2. Mr Jansen sells a consignment wood to Mr Versteeg. At the moment of selling, the wood is on a ship under way from Columbia to Amsterdam. The wood gets lost after the sale. Which statements are correct?

a. Mr Versteeg is the interested party in the consignment
b. Mr Jansen is the interest party in the consignment
c. Either Mr Versteeg or Mr Jansen
d. Both Mr Versteeg and Mr Jansen

(a)

3. A shipper sells goods on Ex Works terms. The goods are partially lost during final distribution to the buyer. Who has the insurable interest with respect to the damage claim?

a. The seller
b. The buyer
c. Both partially
d. It depends

(b)

4. Insurable value under FOB term will include the following components except:

a. The product's selling price
b. Loading cost to the first trucking company as indicated by the buyer
c. Import duties and taxes
d. Export customs clearance fee

(c)

5. Utmost good faith is a principle in the formation of a contract of insurance. All the statements below about "utmost good faith" are correct except

a. Both the insured and the insurer must observe the principle of utmost good faith. It is a reciprocal duty.

b. The insured needs to disclose to the insurer all material facts when the contract is made, but not in other times

c. An exporter packed his merchandise in a manner which turned out to be inadequate and in fact inferior, as a result of which the goods are damaged in transit. However, the exporter honestly believed that he had done the suitable and sufficient packing and informed the insurer of his opinion. In this case the insurer may still refuse a claim from the exporter.

d. In scenario of C above, the insurer cannot refuse the claim because the exporter was honest when he informed the insurer about the packing.

(b & d)

10.2.6 Types of coverage

Learning objectives
The student should understand the most frequently used types of coverage in cargo transport insurance, including FPA, WPA, All Risk, War Risks, and Strikes Risks. The student shall be aware of the difference in respect of risks covered and excluded, between the above mentioned coverage.

According to the range of risks covered in the insurance contract, there are various types of standard covers available from the market. The well known examples are such as Institute Cargo Clauses, Institute War Clauses and etc. Each type of coverage refers to a specific group of risks that are covered in the policy, and collarary, those excluded.

Free of particular average (F.P.A)

The Free of Particular Average (F.P.A) is the narrowest form of coverage in cargo marine insurance. Among the Institute Cargo Clauses, the counterpart of F.P.A is Institute Cargo Clauses (C).

F.P.A means the insurer is not liable for particular average suffered by the insured. In another words, F.P.A covers only against total loss, caused by an insured peril.

There is slight difference in respect of the coverage between the American conditions and the English conditions of F.P.A.

The FPAAC (Free of Particular Average, American Conditions) limits recovery of partial losses under the Perils clause to those losses directly resulting from fire, stranding, sinking, or collision of the vessel.

The FPAEC (Free of Particular Average, English Conditions) is the same as FPAAC except that partial losses under the Perils clause are fully recoverable if the vessel has been stranded, sunk, burned, been on fire, or in collision, without requiring that the damage actually be caused by one of these perils.

What is Particular Average?

Particular average means a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss. In another words, the particular average loss of the goods is borne entirely by the cargo interested party (the insured). The loss must be less than total and not subject to the provisions of general average.

Particular average loss or damage must be accidentally and fortuitously caused by a peril insured against, which affects a particular cargo interested party only, such as the owner of a crate which was dropped during the loading of the vessel.

Other examples of particular average are the damage to the cargo as a result of the sea water entering the ship in heavy weather, or breakage of cargo through the stowage breaking adrift in heavy weather.

With Particular Average (W.P.A)

As opposed to Free Particular Average, With Particular Average (W.P.A) means including partial loss. W.P.A is a less inclusive form of coverage than the All Risks, but more than the F.P.A. Among the Institute Cargo Clauses, the counterpart of W.P.A is Institute Cargo Clauses (B).

W.P.A covers against total loss and partial loss caused by the perils insured against, such as the perils of the sea (i.e. the vessel stranded, sunk, burnt or been in a collision with other vessels or external substances), jettison of cargo and barratry (i.e. negligence, fraud or wrongful acts of the ship's master or crew resulting in injury or loss to the ship's owner). Some ocean marine policy forms provide limited coverage for a particular average loss.

A claim for a particular average loss is based on the proportion of the invoiced value which has been lost. This proportion is then applied to the insured value in order to arrive at the amount of compensation payable.

The particular average loss may further be subject to a franchise or an excess (deductible) written into the policy. The franchise may be at a percent of the cargo value such as 3%, and so is the excess (3-10%). If the loss is less than the indicated franchise or excess, the insured will not be able to claim the loss. The insured will be able to claim the loss in full amount if the loss is above the indicated franchise, or the loss minus the excess amount in case of the excess.

All Risks

The All Risks Insurance (A.R.) is the broadest form of coverage commonly used in cargo transport insurance. It is used to mean insurance against loss of or damage to property arising from any fortuitous cause except those that are specifically excluded. An insurance contract which provides All-Risks Insurance is an All-Risks policy. Among the Institute Cargo Clauses, the counterpart of A.R. is Institute Cargo Clauses (A).

The A.R. does not cover all the risks as the name may refer to. It does cover however, in respect of approved general merchandise, all risks of physical loss or damage from any external causes irrespective of percentage. The approved general merchandise includes new, packaged goods without unusual susceptibility to loss from breakage, pilferage, or the nature of the goods themselves. His counterpart, the Institute Cargo Clauses A (all risks), does not cover risks of war, strikes, riots, and civil commotions either.

Typical exclusions in an A.R. policy are:

1. Improper packing
2. Abandonment of cargo
3. Rejection of goods by customs
4. Failure to pay or collect accounts
5. Inherent vice (infestation or loss due to the nature of product itself)
6. Employee conversion or dishonesty
7. Losses due to delay or loss of market
8. Losses in excess of policy limits
9. Losses at port city more than 15 days after discharge of cargo
10. Losses inland more than 30 days after discharge of cargo
11. Losses in South America more than 60 days after discharge of cargo
12. Barge shipments
13. Goods subject to an on-deck bill of lading
14. Losses caused by temperature or pressure (air shipments)
15. Failure to notify air carrier of preliminary loss in timely fashion:
    a. Obvious damage - 7 days
    b. Hidden damage - 14 days
    c. Non-delivery - 120 days
16. Used goods

War risks

In most sets of the Institute Clauses, there is the "war exclusion clause". It may be desirable therefore to insure against the risks of war, by

- buying a war risks insurance separately, or
- inserting the specific war risk clauses into the policy.

If one were shipping goods to a "war zone", the premium rate would be very high.

Separate war risks insurance

As far as separate war risks insurance is concerned, war risk insurance is undertaken by mutual insurance associations such as P&I Club in respect of vessels entered with them. The purpose of the war risks insurance is to provide cover against the risks of war/warlike operations or activities.

War risk clauses

General war risk clause

One option of the war risk clauses to insert into the policy is the general war risk clause. Usually the principal risks which are covered by war risks clause are war and hostile acts by belligerents. Here it come the issue of interpretation of such as war, and hostile acts. The insured must show that the loss has occurred as a consequence of hostilities or warlike operations.

Institute War Clause

An alternative insertion is the Institute War Clauses. These clauses are only applicable when goods are being transported by sea or air or international post. This cover does not operate during land transit.

The extent of the Institute War Clause varies slightly depending on whether the subject-matter insured is cargo, hull or freight.

In the example of Institute War Clauses (cargo), Clause 1 states that the insurance covers (subject to specified exceptions) loss of or damage to the cargo caused by

- war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power;
- capture, seizure, arrest, restraint or detainment, arising from the above risks, and the consequences thereof or any attempt thereat; and
- derelict mines, torpedoes, bombs or other derelict weapons of war

Clause 2 states that the insurance also covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk mentioned above.

Risks covering strikes and civil unrest

As in the case of war risks, most sets of the Institute Clauses also contain the "strike exclusion clause" and similar. It may be desirable therefore to insure against the risks of strikes and civil unrest by either buying insurance separately for this purpose, or inserting the specific strikes and civil unrest risk clauses into the policy.

Institute Strike Clauses

The extent of the Institute Strikes, Riots and Civil Commotions Clauses (Institute Strike Clauses) varies slightly depending on whether the subject-matter insured is cargo, hull or freight.

Clause 1 of Institute Strikes Clauses (Cargo) states that the insurance covers with specified exceptions, loss of or damage to the cargo caused by

- Strikers, locked-out workmen or persons taking part in labour disturbances
- Any terrorist or any person acting from a political motive
  This, however, does not confer full political risk cover, e.g. a civil war is not covered.

Clause 2 states that the insurance also covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk mentioned above.

Exclusions

Normally, underwriters will indemnify a cargo owner against certain occurrences. There are types of risks that the insurance company does not want to insure against at certain coverage, or those generally excluded in majority of the cargo insurance policies, so called the uninsurable, such as nuclear incidents, inherent vice, and Act of Gods.

The major exclusions in cargo transport insurance include:

- Misconduct of the insured
- Ordinary leakage or loss in weight
- Inherent vice
- Insufficiency or unsuitability of packing or preparation
- Delay
- Nuclear weapons of war
- Wars
- Strikes, riots and civil commotions
- Insolvency of ship owners
- Unseaworthiness or unfitness of vessel, container or conveyance
- Radioactive contamination arising from, for example, nuclear fuel or nuclear waste, or any weapon of war employing atomic or nuclear fission
- Acts of God.

Inherent Vice refers to a characteristic in property that leads to its self-destruction (e.g. fruit, which will naturally deteriorate). Insurance contracts usually exclude such damages.

Test Questions

1. The Free of Particular Average (FPA) covers against:

a. Partial loss caused by the perils that are not insured against
b. Partial loss caused by the perils insured against
c. Total loss caused by the perils insured against
d. Partial loss that is a general average loss

(c)

2. With Particular Average (WPA) is comparable to which Institute Clauses?

a. Institute Cargo Clauses A
b. Institute Cargo Clauses B
c. Institute Cargo Clauses C
d. Institute Cargo Clauses Air

(b)

3. True or False?

- The All Risks Insurance (AR) covers all risks (F)
- The All Risks Insurance (AR) is comparable to the Institute Cargo Clauses A (T)

4. The insured has bought the Institute Cargo Clauses A insurance. In order to cover the war risks, he may choose to do the following:

a. Buy a separate war risks insurance
b. Insert a general war risk clause into the policy
c. Insert the Institute War Clauses into the policy
d. Either of the above

(d)

5. True or False?

There are types of risks that are not usually covered in the cargo insurance coverage, either because the insurance company does not want to due to the specific nature of the risk, or because of the so called uninsurable risks. Which risks below are usually excluded in cargo transport insurance?

- Act of Gods (T)
- Inherent Vice (T)
- Cargo damage as a result of the sea water entering the ship in heavy weather (F)
- Nuclear incidents (T)
- Unseaworthiness or unfitness of vessel (T)

Reference reading

Transport Insurance of Goods

1. Introduction

Insurance plays an important role in world goods trade. Without goods insurance, international goods trade would even be unthinkable. Extensive risks and large amounts related to this make it necessary for each exporting and importing enterprise to provide good goods transport insurance.

The aim of goods insurance is to provide cover for an interested party to goods transport against financial loss that he may suffer during his endeavours through an incident as a result of which the goods are totally or partially lost or arrive in a damaged or inferior condition.

Good communication between the internationally operating trade industry and transport insurers is essential. A condition for insurers is to continually adapt their insurance possibilities to the fast developments in the international trade industry.

Examples of this are the following:

- Changes in the service package of service-rendering enterprises.
- Transition procedures in streamlining new transport methods.
- Responsibility for supervising, packing, repacking and labelling of goods.

Goods insurers concern themselves with many activities related to transporting of goods.

Such as:

- prevention of damage in the field of export packaging;
- liability regulations in various transport sectors;
- stipulations with regard to importing and exporting of goods;
- delivery and payment conditions;
- credit stipulations of banks;
- storing possibilities in loading and unloading ports;
- knowledge of commodities, topographic knowledge and knowledge of modern methods of transport.

2. Transporters and liability

Liability regulations for land transport and sea transport and for national and international road transport differ. Nevertheless, they have some points in common, namely:

- that the extent of the compensation duty is limited;
- that in a number of situations the transporter cannot be blamed for damage to transported goods;
- that in the case of liability of the transporter, the compensation by service insurers will take a long time.

Many shippers do not arrange goods insurance because it is assumed that the transporter would be accountable for all damages. In practice, it is also often seen that the shipper are recommended not to take the liability insurance, seeing the above-mentioned reasons.

3. Insurance in general

For a good understanding of transport insurance, it is meaningful to mention a few main rules that are decisive in an insurance agreement.

1) The incident against which one insures must be uncertain.
   This means that the incident must be unforeseen. The consequence of this is that goods that are known to be damaged already with the conclusion of the insurance cannot be insured anymore.

2) There must be an agreement.
   An agreement is between the insurer and the interested party with the goods. The written agreement is called a policy.

3) Opposite to the achievement of the insurer (duty to compensate) is the counter achievement of the insured (duty to pay premiums).

   The insurer does the calculation of the risk and the related premium. The insured will be able to more or less influence this calculation by providing all unasked-for information that can extend the knowledge of the insurer with regard to the offered risk.
   Many factors play a role in calculating the premium, including the specific qualities of the insured goods. As a rule, these specific qualities will be best known to the insured.

4) The damage or loss that one suffers and that must be identifiable is compensated.

5) If the insured has no interest in the insured object, the insurer is not obliged to compensate the damage.

6) A wrong or false account of or reference to circumstances known to the insured that are of such a nature that the insurer would not have accepted the risk under similar circumstances renders the insurance null and void.

The aim of this is that the insured must inform the insurer extensively about the nature and the extent of the risk and submit all important particulars for evaluation.

7) The insurance contract is an agreement in which the insured and the insurer must observe the utmost good faith in their mutual relationship.

4. The premium

In calculating the premium in general, there are no uniform tariffs in the insurance industry for goods transport insurance. However in practice, the insurer takes the following into account:

1) The nature of the goods

- Vulnerability (chances to break or be damaged, sensitivity for dampness and smell)
- Durability (perishability, for instance meat and foodstuffs)
- Desirability (with regard to theft, for which high value of the goods is not a requirement).

2) The packaging

The content and packaging is regarded as one unit in goods transport insurance. Goods packed in a trunk will usually entail less risk than the same goods packed in boxes. Paper bags will be much more vulnerable than jute bags.

3) Journey en route

Distance between the beginning and end of the journey; countries in which both are situated; political circumstances and the situation in ports.

4) Means of transport

Sea ship, inland vessel, motorcar, aeroplane, train.

5) Conditions

The conditions on which the insurance is concluded.

5. Example - The conditions on which the insurance is concluded in Dutch law

For goods transport insurance, e.g. Section 637 of the Dutch Law Book of Commerce (LOC) is of special importance.

For the account of the insurer are all losses and damage caused to the insured articles by storm, bad weather, shipwreck, running aground, collision at sea, collision or drifting against, forced changing of the course of the voyage or of the ship through the throwing overboard of goods, fire, violence, flooding, requisitioning, hi-jackers, robbers, detainment by order of higher authority, declaration of war, deeds of vengeance, all damage caused by negligence, failure or dishonesty of the captain or the ship's crew and, in general, through all misfortunes coming from outside, however called, unless the insurer is exempt from the course of any of these dangers by law or by a stipulation in the policy.

From the conclusion of this extract from the act it is clear that a transport insurance policy is considered to cover all these dangers or misfortunes. Should an insurer wish not to cover one or more of these misfortunes, he will have to express it in so many words in the policy.

However, two important legal provisions must always be taken into account:

Section 249 of the LOC excludes any shortage, own decay that originates immediately from the nature of the insured matter itself. One could say that it is a misfortune coming from inside.
In this regard, it is mentioned once again that the packaging with the goods forms one unit. If the packaging is too weak or insufficient in another way for the transport and the goods are damaged because of this along the way, the insufficiency of the packaging is regarded as own insufficiency of the goods.

The other provision is Section 276 of the LOC. It exempts the insurer from his duty to compensate if the damage is caused by the own fault of the insured.
It is logical that the legislator exempts the insurer from his duty to compensate at the own fault of the insured. Indeed, damage caused by own fault of the insured cannot be regarded as an uncertain incident or as a circumstance that one cannot normally expect.

However, damage through the doing of the insured is always excluded from the insurance.

10.3 Duties of freight forwarder in case of damage

Learning objectives
The student shall understand that the freight forwarder shall take prompt and reasonable actions in case of cargo damage.
The student shall be aware of the chain of actions that the freight forwarder is obliged and expected to take, and the important points for attention in doing so, in the event of loss of or damage to the cargo. The student shall learn how to put these actions into practice in real life.

10.3.7 General

Learning objectives
The student shall understand that the freight forwarder shall take proper actions in different occasions, such as on arrival of the cargo, in case of cargo damage and so on, and what these actions are.

It is the duty of the insured to attend to all matters as specified in the cargo insurance contract, failing which the insurance company reserves the right to reject his claim for any loss if and when such failure prejudice the rights of the insurance company.

As the agent of the cargo interests, freight forwarder shall bear in mind the actions he shall take to protect and maximize his client's interests, and his own interests as well as liability resulting from his forwarding service contract.

The forwarder shall take delivery of the insured goods in good time upon their arrival at the port of destination named in the Policy. In the event of any damage to the goods, the forwarder shall immediately apply for survey to the survey and/or settling agent stipulated in the Policy. If the insured goods are found short in entire package or packages or to show apparent traces of damage, the forwarder shall obtain from the carrier, bailee or other relevant authorities (Customs and Port Authorities etc.) certificate of loss or damage and/or short-landed memo.

Apart from the actions above, there is a series of activities a forwarder shall also take in case of damages, explained in the next section.

Test Questions

1. What actions the forwarder takes are proper?

a. Take delivery of the insured goods upon their arrival at the port of destination named in the Policy

b. In the event of any damage to the goods, the forwarder shall immediately apply for survey to the survey and/or settling agent stipulated in the Policy

c. If the insured goods are found short to show apparent traces of damage, the forwarder shall obtain from the carrier, bailee or other relevant authorities (Customs and Port Authorities etc.) certificate of loss or damage and/or short-landed memo

d. All of the above

(d)

10.3.8 Chain of actions for freight forwarders

Learning objectives

The student shall be aware of the chain of actions that the freight forwarder is obliged and expected to take in the event of loss of or damage to the cargo.

The student shall bear in mind the important points for attention when taking actions, and be able to put these actions into practice in real life.

Place carriers on notice (all parties to contract), Request reserves

Once the forwarder or consignee discovers damage at delivery, he shall notes damage on the delivery slip when slip is signed. Along with noting delivery receipts, it is also vital to place all carriers "on notice".

While it is necessary to place the carrier on notice within the given time frame, payment from them should never be accepted without first advising the insurance company. Accepting payment from the carrier without notifying the insurance company prejudices the insurance company's right of subrogation and violates a provision of the insurance policy which may jeopardize the outcome of the claim.

Assessment of damage

Once the damage occurs, the assessment of damage shall be made. If the damage is estimated at more than a certain amount, such as USD 500, the forwarder or consignee calls surveyor. A survey minimizes subsequent disputes on the nature and extent of damage, and provides a reliable estimate of the cost of repairs. If a claim is not settled administratively, the survey report can eliminate questions of proof during litigation.

Joint survey

The survey is formal and technical, held by representatives of the two (or more) parties involved. The surveyor has the professional knowledge, who acts independently, impartially and objectively. Due to the different interests represented in different parties (shipowners, cargo owners, insurers), a joint survey is usually undertaken. The joint survey can be performed by either one surveyor who represents both or more parties, the cost being borne by both or all. It can be also more than one surveyor, where all the parties are present or represented, so that they can defend their rights.

For a formal joint survey of damage, each party normally appoints its own surveyor who, with the other surveyor(s), examines the damage and attempts to reach agreement on the extent of damage from the casualty. The survey report lists items of damage and recommended repairs. When all parties agree, the surveyors sign the report to record their concurrence; surveyors normally sign without prejudice as to liability. If there is disagreement, disputed points are specifically noted. No surveyor subscribes to any statement in the survey report when he disagrees.

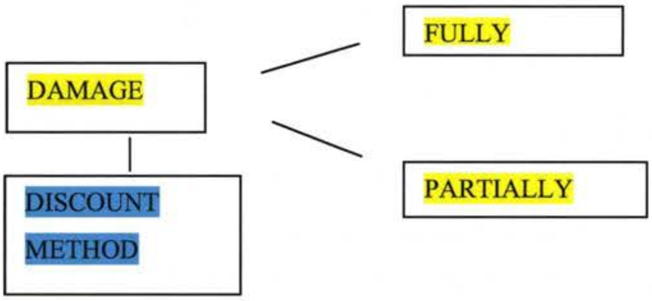
Determination of damage

The task of the expert or surveyor involves the calculation of the damage amount to the best of his knowledge. His report or expert survey report must also contain everything required to give the insurer a true picture of the nature and particulars of the damage. In addition, the report contains all particulars required to enable the broker to compile a damage account. It must happen in such a manner that the insurer can judge whether the claimed damage is for his account or not.

Calculation of compensation

To calculate the amount of compensation, one question is important, namely:

Did the goods reach the destination or not?



Ad. 1 Goods that do not reach the destination

When the goods have not reached the destination, it amounts to total loss and the insurer then pays the insured sum minus the eventual expenses like cargo off-loading expenses and import duties.

With partial loss, the damage settlement occurs in the same manner as for total loss. The insurer pays the insured value of the part that has been lost.
No problems are encountered when goods of similar value are insured for one amount under one policy. The damage percentage can then be applied to the insured sum.

If the goods are not similar in value and the insured value of every part is not given separately, then the damage, calculated on the basis of the invoice value, is to be calculated over the insured value. Again, expenses like off-loading costs and import duties are subtracted.

Sold en route
If the goods are sold en route because they have been damaged or due to a cause against which it is insured, the insurer pays the insured value (eventually reduced with the saved expenses) minus the net profit.

Ad. 2 Damaged at destination
If the goods reach the destination damaged completely or partially, then the insurers do not pay the difference between the value of the damaged goods and the insured value. If the damage settlement should take place in this way, the insurer would, with the lowered price of the insured goods at the destination, also have to pay the lower sales price of the goods that has resulted.
On the other hand, in a bullish market, the insurer would predict a higher profit of the damaged goods.

According to this method, experts must calculate what the value of the goods would have been, had they arrived in an undamaged (sound) condition, Furthermore what their value in the undamaged condition is.

The difference between both values must be expressed in a percentage of the sound value, and the insurer pays this percentage of the insured sum.
This method of calculation is called the discount method.

Lodge a claim for damage

In the event of an alleged cargo loss, damage or shortage, the forwarder shall notify all carriers of possible claim for damage.

Should the carrier, bailee or the other relevant authorities be responsible for such shortage or damage, the forwarder, representing the cargo interests who is the insured, shall further lodge a claim with them in writing and, if necessary, obtain their confirmation of an extension of the time limit of validity of such claim.

Claims documentation and supporting documents as required by insurer

Usually, to facilitate quick handling of the damage, the insured must consider all available documents when he submits the claim, for instance:

- original policy or insurance certificate;
- original invoice, specification and/or weight lists;
- original bill of lading and/or other contract of transport;
- supporting transport documents such as packing list, tally sheet, consignment note, delivery receipt or proof of delivery noting damage;
- claim on carrier holding them liable;
- carrier's reply form;
- survey report or other document that serves as proof of the cause and extent of the damage;
- off-loading reports and weight notes at final destination;
- correspondence with shipping company and/or his agents, regarding their liability for the loss or damage;
- If any third party is involved, documents relative to pursuing of recovery from such party should also be included.

All claims are unique and may require special documents. Claims Office of the insurance company will notify of the information and documents they require for each precise claim.

Immediate notice should be also given to the insurance company in cases when the cargo owner's actual responsibility in the damage becomes known.

Record of claims and settlement

It is recommended that the forwarder keep a record of his contact, throughout the claims process, with the insurance company as well as all other parties related including the authorities. Make certain to keep track of the specific information such as whom you talked to, when, what was discussed, etc.

It is also advised to follow verbal claim notification up with written notice. The insurer must acknowledge claim notifications within 10 working days.

Duty to minimise loss

Once the event of damage, loss or delay of cargo occurs, the insured and his forwarder shall, and the insurer may also, take reasonable measures immediately in averting or minimizing loss to the remaining cargo, taking proper care of the damaged cargo as well as keeping any salvage.

It is the responsibility of the insured and his agent or forwarder, to take measures to avoid or minimise any loss. Where possible, the insured and his forwarder/agent shall also reduce the possibility of damage to goods, for example, by removing goods threatened with damage or loss from the source of the risk, such as a burning warehouse, by claiming promptly on every culpable party, etc.

The measures so taken by the insured and his forwarder/agent or by the insurance company shall not be considered respectively, as a waiver of abandonment or as an acceptance of their rights and/or obligations from the insurance contract.

Contractual time-Bar issue

In the event of cargo damage, loss, shortage or delay, the forwarder, representing the cargo interests, shall be also aware of the contractual time bar issue. After this certain period of time, the rights to lodge a claim against a liable party and have it compensated concerning the damaged cargo will no longer be lawfully supported.

There are two time bar issues for attention. It is important to keep both in mind. One is the time bar to claim the insurance compensation from the insurance company as the insured, at and after which time the coverage will be considered void. The other is the time limit to file lawsuits against the carrier as stipulated in the transport contract between the carrier and the shipper/consignee. After paying the insurance, the insurer subrogates this right from the insured (cargo interests) against the carrier. The pass of time bar in the transport contract will prejudice the rights of the insurer derived from the insurance contract.

The time of validity of a claim under transport insurance is dependent on the provisions of the insurance contract, such as a period of two years counting from the time of completion of discharge of the insured goods from the seagoing vessel at the final port of discharge.

The following are time limitations for placing carriers "on notice" of the nature and extent of the claim, in accordance with the relevant international conventions:

Ocean carrier:	One year from date of delivery
Air carrier:	Pilferage and obvious damage - 7 Days
	Hidden damage - 14 Days
	Non-delivery - 120 Days
	(*Air carrier's tariff may provide different time
limits	that prevail over a bill of lading or oral representation.)

Test Questions

1. True or False?

In the event of cargo damage or loss at delivery, a diligent freight forwarder is expected to take a series of actions to protect and maximize his client's interests as well as his own. Judge whether the below actions are required or proper in case of cargo damage or loss.

- Place carriers on notice within the given time frame (T)
- Accept payment from the carrier before notifying the insurer (F)
- Assist in assessing the extent of damage (T)
- Lodge a claim for damage at all carriers, and other parties that are possibly liable within time bar (T)
- Keep record of claims and settlement (T)
- Taking care of the damaged cargo and keeping salvage in order to minimize loss (T)

2. To facilitate quick handling of the damage, the freight forwarder will assist his client, who is the insured, in preparing and submitting the claim documentation and supporting documents to the insurer. Such documentation include:

a. Original policy; original invoice; original bill of lading

b. Supporting documents such as packing list, consignment note, delivery receipt

c. Correspondence with shipping company and/or his agents, regarding their liability for the loss or damage

d. All of the above

(d)

Reference reading

Damage settlement with insurance of goods

1. Introduction

When damage has occurred, a chain of activities will need to be taken. Among others examples are:

- Action by the insured who has to produce particulars and material proof.
- Action by an expert, if not via a damage agent, who has to assess the damage.
- Action by a broker, if any, who has to gather the data and see to it that the data also come in, and who has to make up the damage account and submit it to the insurers.
- Action by the insurer who checks the damage account and further documentation and who must judge whether the damage is covered. And, if it is the case, has to pay the damage.

A damage settlement can be simple, but also very complex. Amongst others, it depends on the nature of the damage: What kind of damage or a combination of damages it is.

Onus of proof

In the event of loss of or damage to the insured goods, those who are supposed to have the right to compensation must prove:

1. that he represents the insured interest;
2. what the cause of the damage is (whether it is a covered danger);
3. what the extent of the damage is;
4. in the event of total loss and no news of the ship, that the shipping has taken place with the ship mentioned in the policy.

Ad. 1 Interest

Somebody has an interest in the cargoes or the subject-matter insured. When the damage happens he suffers damage to his means, which compensation the insurer has taken upon him, at the moment the damage occurs.

Example:

Mr Jansen sells a consignment wood to Mr Versteeg. At the moment of selling, the wood is on a ship under way from Columbia to Amsterdam. If the wood gets lost after the sale, Mr Versteeg has interest in the consignment wood. Not Mr Jansen, because his means have not been reduced by the contingency. At the moment of selling, the property interest goes over from Mr Jansen to Mr Versteeg. Mr Versteeg is the interested party. His means have been reduced, because before the contingency he was the owner of a consignment wood with a particular value and because after the contingency he had no consignment wood anymore. Only Mr. Versteeg is therefore entitled to damage compensation, but he will have to indicate his interest as owner.

Ad. 2 Onus of proof of the insured with damage

The general rule that everyone who makes a statement must be able to prove it is also applicable to the insured. When he claims damage from the insurer, the onus of proof that the cause of the damage is what he has been insured against, rests on him.

The insured must indicate that:

- he has suffered real damage and what the extent of the damage is;
- the damage was caused by an incident that had been uncertain at the time of taking out the insurance;
- the damage has occurred within the insurance period;
- the cause of the damage is an contingency covered by the policy.

Ad. 3 The extent of the damage

The goods insurance agreement is a compensation contract. It aims to compensate the insured for the material loss that he has suffered. Through the compensation received from the insurers, he must be brought materially to the condition in which he found himself before the disaster. The legislator has seen to it that the insured cannot obtain any advantage from the insurance.

Therefore, if the insured wants to claim damages under his goods policy from the insurers, he will have to prove that he has really suffered the damage and what the extent of the damage is (for example by means of a report from an expert).

Ad. 4 Proof of shipping

Proof that the shipping has occurred with the ship mentioned in the policy can be rendered by means of bill of lading. The insured should also consider the document to prove his interest.

Packaging and content form one whole, so that insufficient packaging can be regarded as "own insufficiency" of the insured goods.

2. Parties involved in damage of goods

Interested parties

Interested parties with damage of goods can be:

- the insured (for example the manufacturer, the exporter, the wholesale dealer, the importer)
- the recipients of goods

Only one of the two parties can claim damages, namely the party who is the interested party to the goods at the time of the damage.

Other parties

Others parties involved in the case of cargo damages are:

- **The insurer**

He assesses the damage, pays compensation to the insured or rejects the damage for reasons that he must make known to the insured.

- **The insurance broker (or intermediate)**

When the insured reports the damage, the broker informs the insurer about it. In the event of domestic damage, the insurer instructs him to appoint an expert (provided by the insurer) to determine the cause and extent of the damage or (in the event of little damage) make up the account of the damage.

In the event of damage abroad, the broker prepares the account of the damage on the basis of the expert report and/or the Lloyd's Survey report and/or damage documents. He sends these documents to the particular insurers for approval or payment of the damage. When he receives these back, he finalises the claims settlement approved by the insurers with the insured or other interested parties.

- **The expert**

The task of the expert involves the calculation of the damage amount to the best of his knowledge. His report or expert survey report must also contain everything required to give the insurer a true picture of the nature and particulars of the damage. In addition, the report contains all particulars required to enable the broker to compile a damage account. It must happen in such a manner that the insurer can judge whether the claimed damage is for his account or not.

- **The damage agent**

With insurance of goods that must go abroad, a stipulation is brought into the policy that in the event of damage one has to approach a person or firm mentioned by name.

This "damage agent" is in charge of managing the interests of the insurer, and his task is to determine the eventual damage or have it determined by an expert appointed by him.

The damage agent has a great responsibility. Exclusively according to his report, the insurer must judge whether he must pay the claimed damage or not.

- **Claims settling agent or claims paying agent**

Sometimes, the damage is made payable abroad. In such cases, the agent mentioned in the policy must not only initiate an investigation into the cause of the damage and calculate the extent thereof, but he also has the authority to pay the damage.

His responsibility is then even greater, because he instead of the insurer must decide independently whether damage is payable under the policy or not.

The damage agent, who has the authority of the insurer, is called a "claims settling agent" or "claims paying agent".

10.4 General Average

Learning objectives

The student should understand the implications of general average, and gain some knowledge about the most distinguished general average clauses York-Antwerp Rules.

The student should also have knowledge on the actions to be taken in case of general average.

General Average is the system whereby a ship owner can recover the extraordinary expenses that he necessarily incurred following some maritime accident, in protecting the cargo and/or preserving the ship. The costs are apportioned between the ship, its fuel and stores and the cargo (including containers) in proportion to their values.

General Average is almost as old as maritime transport itself and is well recognised in all major shipping and trading jurisdictions. Thankfully, however, modern standards and technology make it comparatively rare, so traders and forwarders are often unaware of the steps they have to take when confronted by a GA situation.

> *"The ancient principle of equity in which all parties in a sea adventure (ship, cargo, and freight) proportionately share losses resulting from a voluntary and successful sacrifice of part of the ship or cargo, to save the whole adventure from an impending peril, or extraordinary expenses necessarily incurred for the joint benefit of ship and cargo".*

10.4.9 General Average

> **Learning objectives**
> The student should understand what general average loss refers to, what constitutes general average acts, and what the conditions are to claim as general average.
> The student should also gain some knowledge about the most distinguished general average clauses York-Antwerp Rules.

What is general average?

General average loss
General average loss refers to deliberate partial loss incurred as a result of the voluntary actions of the ship-owner, or the ship's master, to save the voyage if it is in danger.

If property is deliberately sacrificed for the general benefit of the common adventure in time of peril – say, for instance, cargo is jettisoned to lighten a stranded ship, so enabling her to be re-floated and saved, together with the cargo remaining on board – then the loss of the cargo jettisoned would be a general average loss, to which the owners of the property saved would contribute.

General average act
There are two types of general average acts:

- Voluntary Sacrifice of a part of the vessel or a part of the cargo, e.g. jettison of property to stabilize the vessel during heavy weather.
- Extraordinary Expense necessarily incurred for the joint benefit of vessel and cargo, e.g. towing charges incurred to assist a disabled vessel to a port of refuge.

General average conditions

General average requires three elements which are clearly stated by Mr. Justice Grier in the case of "Barnard v. Adams":

- First: A common danger: a danger in which vessel, cargo and crew all participate; a danger imminent and apparently "inevitable," except by voluntarily incurring the loss of a portion of the whole to save the remainder.
- Second: There must be a voluntary jettison, jactus, or casting away, of some portion of the joint concern for the purpose of avoiding this imminent peril or, in other words, a transfer of the peril from the whole to a particular portion of the whole.
- Third: This attempt to avoid the imminent common peril must be successful.

General average clauses

The various average clauses in the insurance policy determine when partial losses due to a named peril in the policy are covered. Average clauses include general average clauses and particular average clauses i.e. F.P.A and W.P.A.

In contrast to partial losses, a total loss of an entire vessel or an entire cargo shipment due to any one of the perils listed in the insurance policy is covered in full.

Development of GA clauses

The first general average rules were agreed upon in 1860 as the Glasgow Rules. These were followed by the York Rules of 1864 and the York/Antwerp Rules of 1877, subsequently revised in 1890, 1924, 1950, 1974 and 1994.

Claims for general average were originally for jettison of cargo, cutting away of the mast or cutting of anchor cables or any acts carried out for the common safety in order to avoid imminent shipwreck caused by a peril of the sea. The need for an imminent peril was stressed.

Since 1890, step by step the general average expands to cover more losses and expenses.

More losses and expenses as listed below are considered as general average:

- the cost of discharging cargo, at a port of loading, call or refuge, when the discharge was "necessary for the common safety" or to permit repairs "necessary for the safe prosecution of the voyage" (Rule X(a))
- costs of "handling on board", as well as actual discharge, including the handling of fuel and stores, as well as cargo (Rule X(a))
- expenses of entering a port of refuge, where "necessary for the common safety", as well as charges for leaving such a port (Rule X(a))
- ship's detention in a port of refuge when it was "necessary for the common safety" or to permit repairs "necessary for the safe

prosecution of the voyage", and wages and maintenance of the crew during that "extra period of detention" (Rule XI(b))
- loss of or damage to cargo incurred in the act of discharging, storing, reloading and stowing (Rule XII); etc.

York-Antwerp Rules

Briefly the York-Antwerp Rules consist of two sets of rules, lettered rules (A, B, C, etc.) and numbered rules (I, II, III, etc.).

The lettered rules define general average, and the circumstances in which a loss, damage or expense can be counted as a general average loss. The numbered rules then go on to deal with most of the situations leading to a "general average" situation. These include rules about the jettison of cargo, sacrifice of part of the ship, damage caused by the extinguishing of fires on shipboard, voluntary stranding, salvage remuneration, expenses of lightening a ship, ship's materials and stores used as fuel, expenses at a port of refuge, wages and support of a crew for a voyage prolonged because of the need to shelter, etc.

The Interpretation Rule in York-Antwerp Rules 1950 gives the numbered rules precedence over the lettered rules. The lettered rules were to be applied only where the numbered rules did not fully cover a particular case.

The Interpretation Rule of 1950 reads:

"In the adjustment of general average the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith."
"Except as provided by the numbered rules, general average shall be adjusted according to the lettered Rules."

The Interpretation Rule has been amended by the York/Antwerp Rules 1994, to provide that the Rule Paramount (requiring any sacrifice or expenditure to be reasonably made or incurred), as well as the numbered rules, take precedence over the lettered rules in cases of conflict between them. In general, however, the numbered rules continue to override the lettered rules to the extent of any inconsistency between them.

Thus, detail was placed before principle. In consequence, general average may now be declared whether or not, as normally required under Rule A, there is

a) an extraordinary sacrifice or expenditure made for the common safety or

b) a peril, unless the numbered rule under which the claim is made so stipulates.

Test Questions

1. Which example fits to which General Average act? Please indicate.

Jettison of property to stabilize the vessel during heavy weather	Voluntary Sacrifice
Towing charges incurred to assist a disabled vessel to a port of refuge	Extraordinary Expense

2. Which party (parties) may be liable for GA contributions in respect of the cargo which was sold on Ex Works terms?

a. The shipper
b. The forwarder
c. The consignee
d. The carrier

(c & d)

3. Among the following descriptions of general average, which is (are) incorrect?

a. General average loss is a partial loss, which was deliberately made to save the voyage or for the common benefits of all parties involved

b. When assessing general average loss, the attempt to avoid the imminent common peril may be successful or not

c. The most often used general average clauses are known as York-Antwerp Rules

d. The portion of cargo thrown into the sea in order to avoid imminent shipwreck caused by a peril of the sea can be considered as general average loss

(b)

10.4.10 General Average Adjustment

Learning objectives
The student should be aware of the actions to be taken in the event of general average.

Declaration of general average

The process of adjusting a general average loss begins with the "declaration" of general average, which is ordinarily made by the ship owner through his underwriters.

General average claims must be submitted in writing to the average adjuster within 12 months of the date of termination of the common maritime adventure.

Failing such notification, or evidence of the claims, the average adjuster may estimate the allowance or the contributory value on the basis of information available to him.

Average Adjuster

Average adjuster is a marine claims specialist who prepares statements of Particular or General Average, etc. concerning claims for losses, expenses and contributions. The person is usually appointed by the vessel owner and is usually a member of the Association of Average Adjusters.

Requirement for general average bond

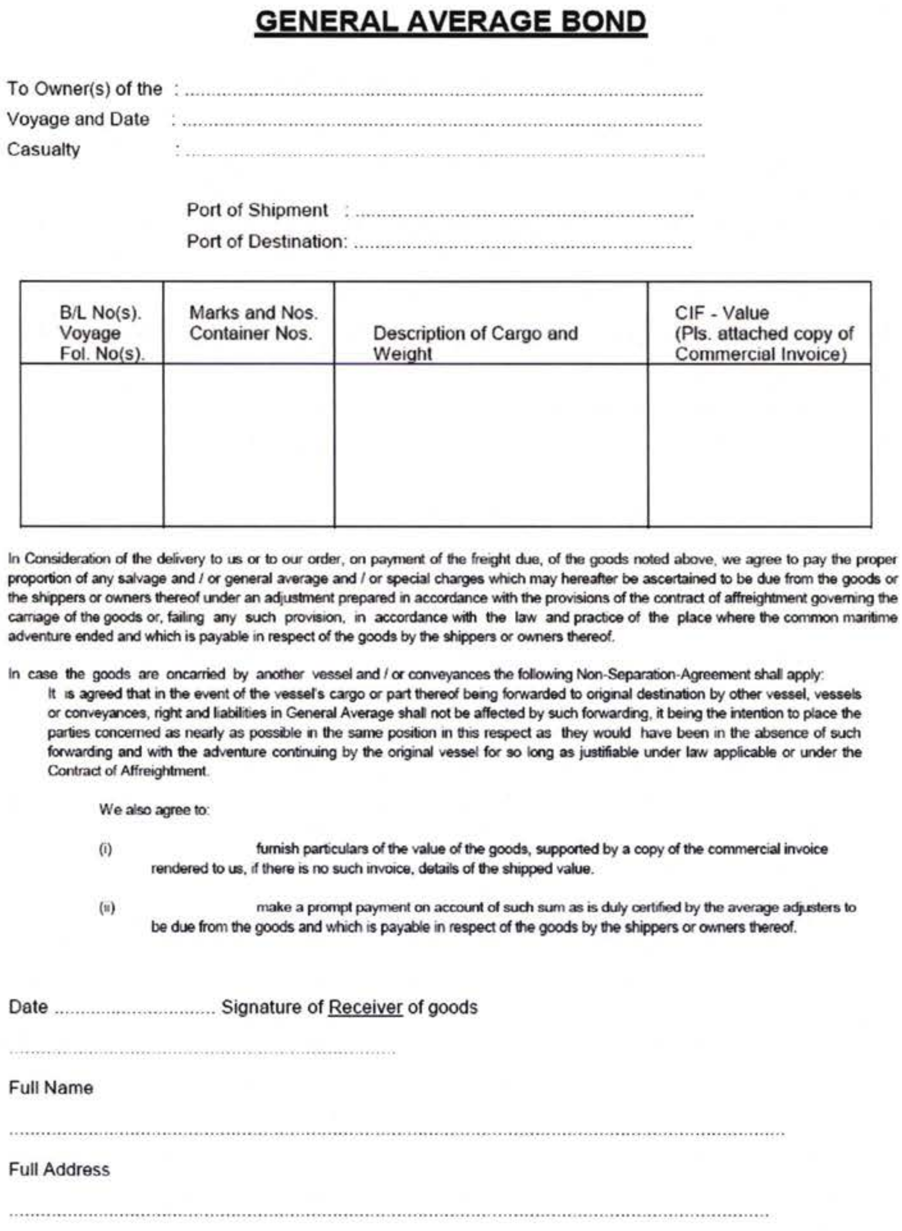
Before an average adjustment can be prepared, in particular where cargo has been sacrificed, a general average bond or general average agreement is usually required by the ship owner, which binds the owner of the goods to pay a proportion of the general average.

General average bond

General average bond is a guarantee by the owner of the cargo (usually the consignee) to pay that proportion of the general average contribution, salvage, or special charges owed by the shipment, and to give information about its value so an average adjustment can be prepared. The vessel owner will not release cargo for delivery to the consignee until the cargo owner signs this average bond, which is prepared by the general average adjuster.

The adjuster uses the carrier's records (usually the "ocean bills" or manifests) to identify from whom they should be demanding GA Bonds. The adjuster then will send a letter to interested parties demanding a bond in respect of the cargo. The letter will normally give brief details of the incident and will ask for a declaration of the value of the cargo and also request the party to sign (and get countersigned) the GA Bond form.

Below is an example of the General Average Bond.



GENERAL AVERAGE BOND

To Owner(s) of the : ....
Voyage and Date : ....
Casualty : ....

Port of Shipment : ....
Port of Destination: ....

B/L No(s). Voyage Fol. No(s).	Marks and Nos. Container Nos.	Description of Cargo and Weight	CIF - Value (Pls. attached copy of Commercial Invoice)

In Consideration of the delivery to us or to our order, on payment of the freight due, of the goods noted above, we agree to pay the proper proportion of any salvage and / or general average and / or special charges which may hereafter be ascertained to be due from the goods or the shippers or owners thereof under an adjustment prepared in accordance with the provisions of the contract of affreightment governing the carriage of the goods or, failing any such provision, in accordance with the law and practice of the place where the common maritime adventure ended and which is payable in respect of the goods by the shippers or owners thereof.

In case the goods are oncarried by another vessel and / or conveyances the following Non-Separation-Agreement shall apply:

It is agreed that in the event of the vessel's cargo or part thereof being forwarded to original destination by other vessel, vessels or conveyances, right and liabilities in General Average shall not be affected by such forwarding, it being the intention to place the parties concerned as nearly as possible in the same position in this respect as they would have been in the absence of such forwarding and with the adventure continuing by the original vessel for so long as justifiable under law applicable or under the Contract of Affreightment.

We also agree to:

(i) furnish particulars of the value of the goods, supported by a copy of the commercial invoice rendered to us, if there is no such invoice, details of the shipped value.

(ii) make a prompt payment on account of such sum as is duly certified by the average adjusters to be due from the goods and which is payable in respect of the goods by the shippers or owners thereof.

Date .... Signature of Receiver of goods

....

Full Name

....

Full Address

....

What to do as a forwarder

As a forwarder, when the letter from the adjuster arrives, it is important to know that it's a matter of the cargo owners and their insurers, and there is no need for the forwarder to sign the GA Bond or GA Guarantee forms.

The forwarder shall however, let his clients know what has happened and send each of them a copy of the letters from the adjuster. Explain that they have a responsibility for the GA contributions. If the cargo is sold on Ex-Works, FOB or CAF terms, they should pass the letters onto their customers (the buyers/ consignees). Standard marine cargo policies cover the costs of GA contributions so that the insurers will take over the detailed work of providing the guarantee and dealing with the adjuster. If the cargo is uninsured the evidence of the value and guarantee will need to be signed by an appropriate guarantor, such as a bank.

The forwarder shall further make clear to his clients that he will not be able to release the cargo until the guarantee has been returned and accepted. The forwarder's agent at destination may be able to assist in obtaining the declarations and guarantees.

The forwarder shall ask for the signed guarantee to be returned to him. Check that everything is received for all the cargo in the container and send the documents to the adjuster, who will then arrange for the cargo to be released at destination.

General average adjustment

If a GA situation arises, the ship owner will normally "declare GA" and appoint a firm of Average Adjusters to collect the GA contributions from all the parties liable to pay. The adjuster works out how much each party is liable to contribute by establishing the total value of the property rescued and the values of the sacrifices and expenditure. This process takes a long time (typically two years).

Absent any clause on general average in the contract of carriage, general average is ordinarily adjusted at the place where the voyage terminates, according to the law applicable there. The contract, however, usually provides that the adjustment is conducted according to the York/Antwerp Rules, unless the parties choose another mode of adjustment. Rule G of the York/Antwerp Rules 1994 provides in part:

"General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends."
"This rule shall not affect the determination of the place at which the average statement is to be made up."

The value of property sacrificed for the common safety and the corresponding contributory values of the ship and remaining cargo are measured as at the date of discharge at the port of destination or as of the date on which the voyage was broken up. The same rule applies to expenditures. More detailed provisions are given in York/Antwerp Rules 1994.

Provisions on computing the value of cargo lost or damaged by sacrifice are at Rule XVI, on the loss of freight at Rule XV and on the assessment of damage to the ship, at Rule XVIII. Contributory values are calculated according to Rule XVII. Special rules also deal with undeclared or wrongfully declared cargo (Rule XIX) and with mails, passengers' luggage, personal effects and accompanied private motor vehicles (Rule XVII, last para.), as well as with commissions and interest (Rules XX and XXI).

Test Questions

1. The purpose of general average (GA) Bond is multi-folded. Which following descriptions about general average bond are correct?

a. GA Bond is a guarantee by the owner of the cargo to pay that proportion of the general average contribution, salvage, or special charges owed by the shipment

b. GA Bond gives information about the value of the consignments

c. The vessel owner will not release cargo for delivery until the cargo owner signs the GA Bond

d. GA Bond can be prepared jointly by the forwarder and the shipowner or his agent

(a & b & c)

2. True or False?

- General average adjustment usually takes a long process e.g. two years (T)
- Any person can act as the general average adjuster provided that he is jointly agreed upon by all the cargo interests and the shipowner (F)
- According to York-Antwerp Rules 1994, the general average is adjusted on the basis of value at the time and place when and where the adventure ends (T)

References

1 The Law of Insurance Contracts, 4th edition, Malcolm A. Clarke, LLP, 200

2 Modern Insurance Law, John Birds, 4th edition, Sweet & Maxwell, London 1997

3 Templeman on Marine Insurance, its Principles and Practice, R. J. Lambeth, 6th edition, Pitman, 1986

4 P&I Clubs Law and Practice, Steven Hazelwood, 3rd edition, LLP, 2000

5 Elements of Cargo Insurance, Dennis Badger, Geoffrey Whitehead, Woodhead-Faulkner Ltd., 1983

6 Professional Indemnity Insurance Law, W.I.B. Enright, Sweet & Maxwell, London, 1996

7 MacGillivray and Parkington on Insruance Law relating to all risks other than marine, Michael Parkington and others, 8th edition, Sweet & Maxwell, London 1990

8 Marine insurance, E R Hardy Ivamy, 4th edition, Butterworths Insurance Library, 1985

9 Prof. William Tetley, Q.C., General Average now and in the Future, http://www.mcgill.ca/files/maritimelaw/genaverage.pdf

10 http://www.insweb.com/

11 http://encarta.msn.com/dictionary_561510169/insurable_interest.html

12 http://www.home-cover.com/insurance-glossary-insurable-value.cfm

13 http://www.imarine.co.za

14 http://www.mbendi.co.za

15 http://www.asiainsurance.com.sg

16 http://www.export911.com

17 The Role of Protection and Indemnity (P&I) Clubs, by Robert C Seward, Deputy Chairman Tindall Riley (Britannia) Ltd, http://www.intertanko.com/pubupload/protection%20%20indemnity%20HK%202002.pdf

18 http://www.amre.com/content/rl/amredecontents-intro.html

Annex 1

P&I Insurance

1. Introduction

With insurance of ships, as a rule damage to or loss of a ship comes to mind, or damage to a third party through collision. Because these risks are covered by hull insurance, it is also not so unfamiliar.

Yet these are not the only risks that the owner of a ship/shipping company or somebody who charters a ship runs. Like any entrepreneur, the shipping company also runs diverse risks and can be held accountable for diverse matters.
With the exception of risks that are covered by the hull insurance, other risks are carried by the shipping companies in a kind of mutual bond. The mutual bond is known as the Protection and Indemnity Club or P&I Club.

P&I insurance involve the risks run by a shipping company, whether he is owner, hirer or "manager" of ships.
Not covered by P&I insurance are damage to the ship and, in general, the other risks that are normally covered by hull, disbursement or cargo insurance.

"Protection" and "Indemnity" can be defined as follows:
"Protection has reference to liabilities which may arise out of the ownership of a vessel as a unit of navigation, whilst Indemnity embraces liabilities incidental to the use of the vessel as a carrier of cargo etc."

One could also say that Protection refers to the legal liability and that Indemnity refers to the contractual liability of the shipping company.
For the rest, these definitions are only of historic interest; both words together are to form one concept.

P&I insurance is only by exception concluded in the open market. In general, this insurance is managed by the so-called P&I Clubs, which are associations of shipping companies that insure themselves mutually against the P&I risks.

As a consequence of this mutual basis, the P&I Clubs employ a unique own terminology, for instance:

• Assured	=	Member
• Policy	=	Certificate of Entry
• Premium	=	Call (Advance Call + Final Call)

To obtain the correct insight in the meaning of P&I insurance, it is necessary to know something about the history of P&I insurance. We limit ourselves to the inception of P&I Clubs because they play such an important role in the field of P&I insurance.

2. Covered risks

The cover that the Protection Clubs offered their members at the beginning was twofold:

1) for liability in the event of collision, because this was not or not sufficiently insured by the hull policy;
2) for liability in the event of personal injuries or death of third parties.

The first Protection Clubs were established in 1855. Hardly fifteen years later, however, had the risk of shipping companies with regard to Indemnity greatly increased. Before the time, shipping companies enjoyed relative freedom with regard to the exclusion of their liability in the transport contract regarding damage to or loss of the cargo. Moreover, transport at sea always was an uncertain matter, and until then none of the parties with an interest in the cargo had asked themselves whether the loss of a ship with cargo was indeed ascribed to a cause for which the shipping company was accountable.

About in the year 1970, the situation started changing. In various cases, parties who had interest in cargo instituted claims against the shipping companies, and to the great disappointment of those shipping companies, it became evident that the exclusion of their liability in the bill of lading was not always accepted as valid by courts. The inception of the Harter Act in America a few decades later once again underlined the changed situation. The Harter Act declared all bills of lading invalid insofar as those aimed at excluding liability of the shipping company in a number of cases mentioned in the act. In this way, the freedom of the shipping company to exclude his liability in the transport contract was limited considerably.

The forwarders who had already united themselves in the Protection Clubs, found an incentive in this to extend the functioning of the Protection Clubs to the risks involved in the transportation of cargo. In that way, the Protection and Indemnity Clubs were established.

Traditionally, the duration of P&I insurance is 12 months, starting on 20 February. In the 19th century, in the time of sailing-ships, this was the date on which the Baltic Sea was sufficiently free of ice for a safe voyage.

Once the P&I Clubs had started their activities, it was decided to also include other risks in the P&I insurance. The main difference between cover by a P&I Club and cover by an insurance company is that the former, with a single exception, limits cover to the insured amount mentioned in the policy.

"Because the disaster risk of oil pollution is very great, the P&I Clubs manage since some years before that a limit of US $ 500,000,000 per incident".

P&I Clubs usually offer cover against risks of:

1 illness and casualties of crew members;
2 death and bodily injury of third parties;
3 25% of the collision damage to third parties;
4 excess insurance of collision damage;
5 wreck clearance expenses;
6 damage due to collision with non-ships;
7 damage without contact;
8 damage to ships or other objects due to other than nautical errors;
9 claims under a towing contract;
10 compensation that a shipping company must pay in terms of an indemnity;
11 quarantine expenses;
12 loss of or damage to cargo or other losses with regard to the transportation of cargo;
13 cargo share in general damage;
14 ship's share in general damage ;
15 fines imposed by customs, immigration or other authorities;
16 expenses incurred by or on behalf of the shipping company;
17 claim expenses;
18 contractual liability in connection with "offshore and ancillary craft";
19 remaining risks according to the "omnibus rule".

In the paragraphs below, these liability risks are discussed in more detail.

1. Illness and Casualties of Crew Members

The obligation of the Dutch shipping company towards the sailor who falls ill is stipulated in sections 415 and 416 of the LOC. Amongst others, these sections provide for payment of wages during illness, medical treatment, repatriation and funeral expenses.

With regard to Dutch sailors living in the Netherlands or those on an equal footing, the stipulations of the Sick-fund Act, the Illness Act, the General Labour Disability Act and the Labour Disability Insurance Act are automatically applicable.

In coastal shipping, the obligation of the shipping company to pay for medical treatment abroad, repatriation and funeral is, as a rule, insured by the Mutual Health Expense Insurance Company "Het Noorden" and the Mutual Company for Insurance of Legal Employer's Risks for Shipping Companies "Het Noorden".

The shipping company can also carry own risk if sufficient guarantees are not provided. He can also take out insurance for the risk, for instance at a P&I Club.

In practice, few Dutch shipping companies make use of the latter, because the P&I Clubs in principal provide cover only during the time when the sailors are on board and during the journey to and from the ship.

For foreign shipping companies, crew risk is mostly the most important that is covered by the P&I Club. Naturally, the cover is then adapted to the obligations of the shipping company with regard to the crew members.

2. Death and Bodily Injury of Third Parties

The death and bodily injury of third parties who find themselves on board, on shore or on board of another ship or another movable or immovable concern. This is on condition that the insured is accountable.

Included in this, amongst others, are casualties that befall the passengers, dock labourers and port labourers, also when the shipping company is accountable in terms of a contract (if the particular contract has been approved by the Club). This is an important risk, especially in the United States of America.

The claims of passengers of another ship with which the insured ship has collided are also claimable from the Club in so far as the insured ship is guilty of causing the collision.

In terms of section 740/a of the LOC, the shipping company can limit its liability to the amounts mentioned in section 740/f of the LOC for claims in connection with:

a. death or injury of persons transported on the ship;
b. death or injury of other persons on land or at sea.

3. 25% Material collision Damage to Third Parties

The cover of 25% of the material collision damage to third parties is important in cases where the hull policy covers only 3/4 of the damage. In the Netherlands, insurance is usually taken out on the Institute Standard Dutch Hull Form (ISDHF) and then insurance of the risk by the P&I club is not necessary. Abroad, however, one often encounters insurance taken out on the Institute Time Clauses Hull (ITCH), and then the P&I Club insures 1/4 of the material collision damage to third parties.

4. Excess Insurance of Collision Damage

If a shipping company in the event of a collision is accountable for an amount higher than the insured amount under the hull policy, the P&I Club takes the balance for its account. The condition is, however, that the ship should not have been insured below the valid market value, where the amount of the limited liability of the ship, calculated in accordance with the stipulations of the London Limitation Agreement, is taken as minimum.

5. Wreck Clearance Expenses

The wreck clearance expenses of both the insured ship and whichever other ship are covered if the insured shipping company is accountable for it.

6. Damage due to Collision with Non-ships

The ISDHF offers cover for the Dutch shipping company for damage due to collision with non-ships. However, this does not apply to shipping companies who have taken out their hull insurance in terms of the ITCH. The latter can then insure the risk with a P&I Club.

7. Damage without Contact

Damage without contact can occur when moored ships are passed at a too great speed. Damage can also occur through wrong navigation when another ship must change her direction and collides with a third ship or runs aground. Ships can also cause damage to other objects in this way.

8. Damage to Ships or other Objects due to other than Nautical Errors

Under this, insurance is provided against liability in connection with damage to other ships or other objects caused by incidents other than collision or nautical errors. Damage to other ships and/or objects by explosion or fire on board a ship laying in a port and the pollution of waterways forms a group of very important risks. Moreover, a ship that causes such damage or pollution cannot appeal to its limited liability in terms of section 740/d of the LOC.

The most important risk included in this group is the risk of water pollution. Clause 8.4.5, respectively clause 8.4.4 of the ITCH, respectively ISDF (as well as clause B.22 of the "Pollution clause pertaining to inland ships") all stipulate that compensation of damage caused by pollution of properties of third parties is excluded from the cover (in terms of these three clauses, however, hull insurers will compensate pollution damage caused to another ship and its cargo through a direct collision by the insured ship).

The P&I Club that is prepared to provide cover against pollution risk will – contrary to all other P&I risks – limit its risk to a particular amount per incident. In 1984, the maximum cover for pollution damage amounted to US $ 300 000 000 per incident, which amount has since remained unchanged.

9. Claims under a Towing Contract

In terms of clause 1.1 of the ITCH and the ISDHF, the insured has the freedom

- to have the ship towed according to custom (for instance by tugs or in connection with loading and unloading); or
- in an emergency, to have the ship towed to the nearest safe harbour.

The towing usually takes place according to the towing conditions laid down by the towing service, which are usually more comprehensive than those found in law.

Despite the fact that a collision has been caused by a tug, the towing service can appeal for indemnity by the towed ship.
Mention is made here of contractual liability, and because clause 6.1 respectively 8.1 "Collision Liability" of the ITCH and the ISDHF provide cover only for legal liability, in these cases an appeal can be made to the cover by the P&I Club. It is not the intention of this document to insure the risk of towing, which is expressly excluded under clause 1.1 of the ITCH and the ISDHF.

10. Damage that a shipping company must pay in terms of an Indemnity (other than described above)

If the shipping company is obliged to pay compensation in terms of an indemnity, the P&I insurance covers this compensation. He must indeed have given this indemnity to owners or users of floating cranes, lighters or other loading or unloading equipment.
Also included in the cover is the liability for death or bodily injury that falls in the framework of the indemnity.
The condition is that the Club must approve the text of the indemnity in advance. In many cases, the P&I Club is also prepared to provide cover for

the forwarder for his liability if it is the result of indemnity that he has given to owners or users of shipyards, dry docks, piers or quays, also including the liability for death or bodily injury.

11. Quarantine Expenses

Quarantine expenses incurred because of the outbreak of a contagious disease are covered. Under this is understood the expenses of forced accommodation of the insured ship during a particular period at a particular place as a result of the outbreak of a contagious disease, either on board of the insured ship or at the place from which the ship has come. A P&I Club can cover these expenses.

12. Loss of or Damage to Cargo or other Losses with regard to the Transportation of Cargo

Under this heading, in the first instance, the loss of or the damage to cargo or other losses with regard to the transportation of cargo is covered.
The cover is also applicable to damage caused by persons employed by the shipping company or for whose actions the forwarder is contractually liable.
In his transport contract, the forwarder must take into account that the P&I Club does not provide unlimited cover for his liability for loss or damage to the cargo. Therefore, if he wants full cover, he must keep to the limits. The Club assumes that the forwarder states in the bill of lading that the Hague-Visby Rules are applicable.
Originally, most bills of lading refer to the stipulations of the "Hague Rules", which aimed at bringing about uniformity in the liability involved in sea transport. These Rules, included in the Brussels bill of lading Agreement of 1923, were ratified by a great number of seafaring countries. In 1968, some amendments were made to the Hague Rules of 1924. These stipulations are known as the Hague-Visby Rules, and the Netherlands ratified the agreement on 26 April 1982, and the Hague-Visby Rules came into effect here on 26 July 1982.

These amendments caused an important change in the second book, 5th section A of the Law Book of Commerce. The content of the Hague-Visby Rules and the legal provisions applicable to them are dealt with in lessons on transport law.

If the transporter has included other conditions in his connossement, these must be expressly agreed with the P&I Club.

If the forwarder does something as a result of which he forfeits the protection of the Hague-Visby Rules, his cover at the P&I Club ceases.
Examples of this are:

- He loads goods on the ship while he has submitted an under-deck bill of lading;
- He does not mention expressly in the bill of lading that the Hague-Visby Rules are also applicable to the deck cargo (in terms of section 470 of the LOC, in the case of loss or damage of goods loaded on deck, the transporter has the right to exclude or limit his liability);
- the ship departs from the normal route, so that it amounts to deviation.

In this regard, the actions are indeed called "deviation". By informing his P&I Club about the intended deviation, the forwarder can achieve the continuation of the cover. That can only happen if the P&I Club approve the conditions under which things happen. The P&I Club can perhaps also arrange re-insurance of the special risk. Moreover, it is not always necessary for the forwarder to give prior notice. He can make an agreement with the P&I Club that certain cases of deviation remain covered with declaration afterwards. The duty to inform is applicable only when the forwarder knows or could know that a course of action will be followed through which he would lose the protection of the Hague Rules (Hague-Visby Rules).

During the past years, developments took place in container transport where the forwarder undertakes transport from home to home (door-to-door). In this situation, the forwarder is not only liable for damage during sea transport, but also for damage during land transport. The bills of lading delivered for such transport is called Combined Transport Bills of Lading.
On the forwarder's request, the P&I Club is prepared to also insure these liabilities, f the transport takes place on the conditions applicable in the particular country. To avoid general problems, the forwarder will have the text of his bills of lading approved by the P&I Club in advance.

Otherwise, the liabilities arising from a Combined Transport Bill of Lading can also be insured with the Through Transport Club (TT Club), together with a number of other similar, combined, transport-related risks.

13. Lading Share in General Damage

The cover for the lading share in general damage exists only when the cargo share cannot be collected from parties with interests in lading on grounds of default on the part of the forwarder with regard to the transport contract. For example, when the forwarder has failed to take reasonable care with regard to seaworthiness, it is in general not expected of parties with interests in lading to pay a contribution. The P&I Club pays in that event.

14. Ship's share in General Damage

The P&I Club pays ship's share in damage gross only when and insofar as the cargo value is fixed at a higher amount than the insured value.
It can be caused by a prolonged voyage or the breaking out of war during the voyage, which causes the prices of ships to rise. It can also be caused by other standards applicable in the country where the division of the costs in general damage takes place. Hull insurers then have the right to limit their share proportionally on the basis of the insured value. The remainder is then claimable from the P&I Club. Of course, the insured value must correspond with the proper value.

15. Fines imposed by Customs, Immigration and other Authorities

Fines imposed by customs, immigration or other authorities are covered. The most important part of this is fines by customs. These can be imposed in the case of inaccuracies in the shipping papers; mostly, these fines are rather imposed with regard to smuggling by crew members. Because little or no money can be recovered from these crew members, surety is always expected of the forwarder. When debt by crew members is evident, this is fully or partially paid by the arranged surety.

16. Expenses incurred by or on behalf of the Ship-owner

Expenses incurred by the ship-owner form part of the cover. This cover is valid only when officials investigate the causes of a ship accident. In this event, the condition is that the accident, in the opinion of the Club, could have given rise to a claim under P&I insurance.

17. Claim expenses

All expenses, including advocate and procedure costs that are incurred with regard to claims brought against the forwarder, are covered. The condition is that the claims must have a bearing on the covered risk.

It is also a condition that the expenses should have been made by the P&I Club itself or by the forwarder with prior approval of the Club. If no approval has been given, the expenses should in the opinion of the Club have been in fairness.

18. Contractual Liability with regard to Offshore and Ancillary Craft (seagoing vessels)

For a number of years, some P&I Clubs have begun to also insure both the legal and contractual liabilities of forwarders/owners of working vessels, drilling ships and drilling islands.

These rather very heavy risks (for example wreck clearance, death, bodily injury) are to a great extent re-insured by the particular Clubs. The cover limits range between US $ 50 000 000 to US $ 100 000000. It stands to reason that the P&I Clubs only provide cover for contractual liability after perusal and approval of the drilling or working contracts.

Amongst others, excluded risk are, damage to third parties as a result of a blow-out, damage to or loss of the pit or slot, product liability and pollution arising from the pit.

19. Omnibus Rule

Under the Omnibus Rules Clause, the P&I Club mentions that liabilities not mentioned can also be covered and indeed insofar as the Club deems that these are liable. This cover is valid only if all the liabilities are inherent to the shipping company industry, certainly belong to cover offered and are not expressly excluded somewhere else under the provisions of the Club.

Strike risk (delay expenses)

Delay expenses (daily expenses) caused by strikes can also be insured at any P&I Club on a mutual basis. The rules with regard to this are very brief in general.

Examples

Example 1:
Strikes by crew members (Ship's Officers and/or Crew Strikes)
The insured sum, to be agreed in advance, to the maximum of the daily expenses of the ship in the harbour, including wages, bunkers, water, food supplies, harbour expenses, insurance and routine maintenance, excluding writing-off, is to be paid with the delay of the ship in the harbour due to a strike by the crew of the ship.

For the first 24 hours or another agreed period, no payment is made, and after that during a maximum of 42 days per case. If all claims cannot be compensated from the advance levy that maximally amounts to 5 times the advance call, proportional compensation follows.

Example 2:
Harbour strikes (Port Area Strikes)
Insured sum to be paid out with a strike by crew members at the delay of the ship in a harbour and/or waiting period to enter the harbour, if caused by strike or lock out of harbour labourers.

For the first 24 hours or agreed period, no payment is made, and thereafter during a maximum of 42 days per case.
Excluded is, amongst others, damage due to the ship transporting contraband, sailing to countries against which a blockade has been instituted or that are used for illegal trade. The Club afterwards determines advance levy and eventual levy.
A strike by the crew or the harbour, or a strike by the crew and the harbour can be insured.
These insurance possibilities are also open for charterers; therefore, they can also become members of the Club. The insured sum will then not amount to the maximum daily expenses of the ship etc., but maximally the daily rent plus the expenses that are for the charter's account.

Legal aid expenses (Freight, demurrage and defence)
Like with strike risk, there are some Clubs that insure the legal aid expenses of a forwarder on a mutual basis.
These legal aid expenses must be incurred in connection with claims, disputes and/or legal procedures with regard to inter alia:

- cargo, stay-over expenses, delay and other matters that arise from charter parties and/or other transport agreements;
- delay, storage, general damage contributions;
- insurance policies;
- damage to the ship;
- construction, buying/selling and reparation contracts.

Furthermore, the ship-owner has the right to obtain legal advice from the Club. All this as a matter of course, as long as it is in connection with the insured ship.

As own risk, the ship-owner must take 25% of the expenses for his own account, with a minimum of £500 and a maximum £10 000.

The Club afterwards determines advance levy and eventual levy. Charterers can also obtain this cover.

War uproar risks
For forwarders whose ships are listed in the British shipping register, the possibility exists to insure these ships at War Risk Clubs against war and strike uproar risks.

These Clubs insure their members on a mutual basis against war and strike uproar risks, including damage to and/or loss of the ship, liabilities with regard to collision and detention, as well as liabilities known as P&I Risks. In addition, one can obtain cover for loss of freight, loss of hire etc.

The Combined Group of War Risks Clubs jointly carry all claims, and as a Combined Group, re-insurance has been taken out with Lloyd's.

Together with a special re-insurance contract with the British State, these Clubs are able to provide uninterrupted cover, also in the event of war in which one of the Great Powers is involved (therefore, the Automatic Termination of Cover clause is not applicable).

The most important exclusion is the nuclear risks. However, these risks are indeed included in the event of war or hostilities in which Great Britain is involved.
Furthermore, in the event of war, the Club has the option to exclude a particular Navigation area from the cover, levy greater premiums or change policy provisions.

3. Limitations

Generally excluded risks

P&I Clubs also exclude particular risks from cover, namely:

- damage to or loss of the ship or equipment or any part thereof;
- reparation cost of the ship, of whatever nature;
- cargo or rent, unless retention of it has occurred in connection with a cargo claim;
- financial losses due to a chartering contract, insolvency, fraud of agents, demurrage or delay of the ship;
- uproar risks as mentioned in the "Free of Capture and Seizure Clause" (FC&S Clause).

Particular exclusion

Apart from these general exclusions, the Clubs in general also do not provide cover against liabilities, costs or expenses due to:

- claims of employers regarding specialist activities, or claims of third parties in connection with the specialist nature of the activities.
- the failure of the execution of such activities or the suitability for the aim and the quality thereof or imperfections in it;
- loss of or damage to the accepted work

The specialist activities intended here are dredging activities, work with explosive charges, pile-driving, generation of oil or gas sources, lying of cables, construction or maintenance activities in the offshore industry, the drawing of seabed monsters, dumping of soil dredged elsewhere, professional oil fighting and similar activities.

However, the mentioned exclusions are neither applicable to personal loss of the crew or other staff on board of the ship that was brought into the P&I Club, nor for eventual wreck clearance of the ship, naturally insofar as it is co-insured under the remaining regulations of the Club.

Besides the above-mentioned limitations, the limitations below are applicable:

- The P&I insurance is not transferable.
- Claims must be reported promptly.
- Except in certain cases, no nuclear substances may be transported.
- The ship may not transport any contraband.
- The ship may not be used in a manner that, in the opinion of the management of the P&I Clubs, is unwise, unsafe, unnecessarily dangerous or wrong.

Own risk

At most P&I Clubs, Franchise deductions are applicable to certain claims. For cargo claims, these franchise deductions are expressed in an amount per ton, and therefore vary with the tonnage of ships. A minimum and a maximum are determined, however. Usually the deductions vary between the minimum of US $ 500 000 and a maximum of US $ 1 500 000.
No deduction is applicable to the remaining risks, except in a few cases mentioned by name. It can be the case with crew risks. The deduction then usually amounts to about US $ 250.

It stands to reason that the ship-owner and the Club can agree upon higher deductions. These increased deductions can be the result of an unfavourable course of damage, but sometimes it also happens that especially large shipping companies prefer carrying a large own risk, because in doing so they effect an important saving on the premium.

4. The premium

Because of the mutual character of the Clubs, advance premiums and post-levies are used. To make the chances of a post-levy as small as possible, however, advance premiums are usually used; these are a reflection of the total of the damage that is expected in a particular year.

The premium is expressed in an amount per gross register ton. The advance premium must be paid at the beginning of the membership year. It varies not only per ship (namely in the difference per tonnage), but also because a ship-owner decides not to include particular risks at the P&I Club. The carrying of a voluntary or forced own risk also influences the size of the premium. Another factor that can influence the premium is the course of damage per forwarder. With favourable statistics, the forwarder can get a lower premium, and with unfavourable statistics a higher premium. The premium also relates to the type of ship. For example the premium for a tanker will be higher than for a ship with dry cargo.

Management of damage

The management of damage is done by the manager (the executive of the Club) who has to account for it, just like for all other matters, to the management.

This management of damage is totally different from that of his insurance companies. When a damage claim has been submitted to a ship-owner and he has forwarded it to the P&I Club, the Club launches an investigation. Based on the results of the investigation and in co-operation with the ship-owner, the claim is rejected or settled.

When the ship-owner settles a damage claim with the Club, he is certain that the Club pays the amount due to the third party. For the P&I Club, the advantage is that from the beginning it can exercise control over claims submitted to the ship-owner. With its staff of jurists and other experts, of whom many know the shipping industry from own experience, and with a network of agents and advocates at all harbours of importance throughout the world, the Club is able to prevent overpayment in certain cases or that unnecessary expenses are incurred to dispute a claim.

After a ship-owner has paid, in consultation with the Club, the matter is laid before the manager, who obviously approves the settling of a claim that has been settled in consultation with the management.

5. Re-insurance

It is clear that a P&I Club, however large, cannot function without re-insurance. In the case of a disaster, the post-levy payable by the ship-owner may take on such proportions that it threatens their enterprises.

To make the provision of cover of unlimited amounts possible, 14 of the largest Clubs have formed a pool; the International Group of P&I Clubs. All claims that exceed a particular amount are spread over all members of the pool, according to the ratio of each one's tonnage and damage course in the pool. The Club that has insured the ship involved carries a fixed amount as own maintenance. A club that more often appeals to the pool, therefore, will proportionally contribute more in the pool claims.

In addition, there is also re-insurance of the pool at Lloyd's. In 1993, the own maintenance of the P&I Clubs amounted to US $ 900 000. The pool covers the largest part. For amounts from US $ 7 100,000 to US $ 744,000,000, the pool was reinsured at Loyd's.

The International Group of P&I Clubs comprises about 90% of the world's commercial fleet, which means that members have the largest possible certainty that claims of whatever size can be paid.

Individually, the members of the pool also act as re-insurers of other Clubs, where the pool arrangement also has to be used once again.

From this all, it is evident that the Clubs assume a very loyal attitude towards one another. Also in the field of investigation and counselling, a great measure of co-operation exists.

Structure and size

Only ship-owners may be members of P&I Clubs. The members elect the management from among themselves. The management leaves the day-to-day management in the hands of a manager.
Many Clubs are also led by a firm that is entrusted with the management. The management meet regularly to discuss important matters and approve the payment of claims.

Apart from the International Group of P&I Clubs, there are Clubs that have not joined the pool. It can be because they work in a specialised field, want to follow an independent course or because they do not meet the requirements for members of the pool.
Some clubs have "fled" due to tax legislation in England. They are officially settled in countries with a pleasant tax climate, like Bermuda and Luxemburg. Agents of the management firms, however, have remained in England (London).

In Scandinavia are three fairly large P&I Clubs, while Japan, America and Greece have one P&I Club each. In the remaining countries are either no P&I Clubs at all or small, local clubs like in the Netherlands (Northern Netherlands Protection Club).

The largest part of the Dutch commercial fleet is insured with the "fled" English Clubs.

The two largest P&I Clubs are:

- The United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd.
- The West of England Ship Owners Mutual Protection and Indemnity Association (Luxembourg).

P&I insurance in the open market

It is possible to take out P&I insurance in the open market (with Lloyd's or insurance companies) that includes about all the risks that are also covered by P&I Clubs. In general, it is very difficult to arrange such insurance, because the results thereof have still been unfavourable for Lloyd's or insurance companies.

The advantage of P&I insurance in the open market for the ship-owner is that a fixed premium is paid, while with the Clubs one runs the risk of post-levy.

Disadvantages, however, are that no unlimited cover is found in the open market, while the settlement of damage claims in general also proceed less smoothly than with the Clubs. At the Clubs, the ship-owner is assisted from beginning to end in the management of damages, while with insurance in the open market the insured himself must manage the settlement of damage. An important aspect of this is that one has to wait and see whether insurers at the time of submission of the claim for payment are of the opinion that he has acted as "a prudent ship owner uninsured". The fact that the Clubs do not have a profit motive is another reason why ship-owners prefer to take out their P&I insurance in the open market only by way of exception.

P&I insurance for inland shipping

During the past years in inland shipping, still more P&I insurance has been taken out. In the first place, this is due to the unlimited character of the amounts. Another important cause is the fact that the P&I risks are/have been met only partially and spread over a large number of dissimilar insurances. Now, with the necessary changes, the same cover that is available for operators of sea ships is also available for inland waterway operators.

P&I clauses in other policies

In general, everybody that has to do with the exploitation of the ship is applicable as the insured of P&I Clubs. This can be the owner, the co-owner or the charterer of a ship.
Other parties with interests in P&I insurance coverage, for instance a shipyard that has to make test voyages with ships to be built, are forced to provide for this cover in other ways.

The following clauses also include cover for P&I risks:

- Standard Dutch Clauses for Construction Risks, forming part of the Netherlands Exchange Body Policy for Construction 1947;
- Institute Clauses for Builders' Risks;
- Institute Time Clauses Hulls Port Risks.

These clauses mention a number of specific risks that are covered.
The amount of the cover is limited to the insured amount under the policy. Essential expenses to be incurred to dispute liability, if they have been incurred with the permission of the insurers, are claimable above the insured amount.

In addition, a separate set of clauses exist:

- Institute Protection and Indemnity Clauses Hulls Time 20-7-1987 (Clause 344).

These clauses are designed to serve independently as a basis for separate, independent P&I insurances.

6. Charterer's liabilities

When a ship is chartered, the charterer runs certain risks where (printed and written) stipulations of the chartering party involved are of great importance.

At the P&I Clubs, diverse charterer's liabilities, amongst others with regard to the cargo and persons, can be insured. Damage to the chartered ship for which the charterer may be liable, however, is completely excluded from insurance with a Club. For example, should the charterer use the ship for transporting goods that are excluded according to the charterer, the ship-owner (agent) can hold him liable for the damage done to the ship. Charterer's liabilities with regard to damage to the ship can be insured in the open English market.

7. TT Club

In conclusion, some attention must be given to the Through Transport Club (TT Club).
As already mentioned with regard to transport, the possibility exists for ship-owners and charterers to insure liabilities, where transport moves partially at sea and partially on land and arise from transport agreements, with the P&I Clubs.

In many cases, with the inception of modern transport techniques, the ship-owner is not only a sea transporter, but also an enterprise that provides or respectively rents containers and trailers to shippers. The forwarder then often also acts as land transporter.
If the transport then takes place over land or with ships that do not belong to the ship-owner and that are not chartered by him, he will not be able to insure his liabilities with a his P&I Club.

The fact that it was difficult to insure this liability in the open market led to the establishment of the TT Club by a number of P&I Clubs.

To both ship-owners and all remaining transporters, this Club offers the possibility to insure their transporter's liabilities.
This Club can also insure damage to and/or the loss of containers and trailers, as the liability of the owner and/or hirer of these objects.

Basically, here is also mutual insurance, but in contrast to P&I Clubs, no unlimited cover is provided.

Assistance in managing the damage is indeed provided to the transporter from beginning to end. Because of the fact that the TT Club can make use of the correspondents of P&I Clubs, the transporter is ensured of optimal service rendering.

Note: There are no specific insurance requirements for the use of the FIATA bill of lading other than the user having insurance in the place to cover their operational liabilities with a first class insurance company e.g. TT Club, etc.

Annex 2

Standard Conditions governing the FIATA MULTIMODAL TRANSPORT BILL OF LADING

Standard Conditions (1992) governing the FIATA MULTIMODAL TRANSPORT BILL OF LADING

Definitions

- "Freight Forwarder" means the Multimodal Transport Operator who issues this FBL and is named on the face of it and assumes liability for the performance of the multimodal transport contract as a carrier.
- "Merchant" means and includes the Shipper, the Consignor, the Consignee, the Holder of this FBL, the Receiver and the Owner of the Goods.
- "Consignor" means the person who concludes the multimodal transport contract with the Freight Forwarder.
- "Consignee" means the person entitled to receive the goods from the Freight Forwarder.
- "Taken in charge" means that the goods have been handed over to and accepted for carriage by the Freight Forwarder at the place of receipt evidenced in this FBL.
- "Goods" means any property including live animals as well as containers, pallets or similar articles of transport or packaging not supplied by the Freight Forwarder, irrespective of whether such property is to be or is carried on or under deck.

1. **Applicability**
   Notwithstanding the heading "FIATA Multimodal Transport Bill of Lading (FBL)" these conditions shall also apply if only one mode of transport is used.
2. **Issuance of this FBL**
   2.1. By issuance of this FBL the Freight Forwarder
   2.1.1. undertakes to perform and/or in his own name to procure the performance of the entire transport, from the place at which the goods are taken in charge (place of receipt evidenced in this FBL) to the place of delivery designated in this FBL;
   2.1.2. assumes liability as set out in these conditions.
   2.2. Subject to the conditions of this FBL the Freight Forwarder shall be responsible for the acts and omissions of his servants or agents acting within [illegible]

[illegible]

Annex 3

Forwarder vs. carrier and forwarder's liability insurance policy

Much has been written, discussed and litigated about the difference between the forwarder, the carrier/transporter and the carrier/transporter who sub-contracts others.

As most have realized, "The forwarder: a marginal case". Nevertheless, some clear guidelines can be used for references which enable a forwarder to be addressed/ regarded only and exclusively as forwarder and not as transporter.

The capacity of forwarder is maintained if:

1. The forwarder profiles himself only and exclusively as forwarder.
   Only forwarding is mentioned in the naming of the enterprise.
   Forwarding is mentioned exclusively in the naming and/or logo on the letterhead, invoices, faxes, other correspondence and documents.

2. It appears from the entry in the commercial register of the Chamber of Commerce that the aim of the enterprise/industry is exclusively the performing of forwarding activities – the arrangement of transport, acting as agent – and no actual transport activities.

   It is mentioned expressly on the invoices, faxes, letterheads and all other documents that all activities are performed in the capacity of forwarder and according to the FIATA provisions.
   Therefore, no reference is made to, for instance, the CMR provisions.

3. The FIATA provisions are made known to the employer in advance.

4. The forwarder does not mention his name on the waybill. If the forwarder has to mention his name on the waybill for essential reasons, then only in box 1 (CMR waybill as sender).

The invoices to the employer(s) are specified in such a manner that the price for the transport to be done is mentioned separately from those of the remaining activities.

The enterprise itself does not have any means to transport the goods.

Daily practice and insurance
Experience has taught that, in daily practice, often nothing with regard to liability is arranged between the producer, employer and the forwarder.
With regard to both liability and insurance of the various activities, special appointments will have to be made.

The forwarder who enters the field of logistic services will have to make agreements with his employer about the conditions under which activities will be performed. It must be clear from the conditions when the forwarder is accountable and to what extent, and when not.

Every time, it will have to be established per employer which activities will have to be performed and whether the conditions are indeed applicable to them.

Liability insurance policy of the forwarder

In general, insurance contracts consist of a number of recognisable chapters containing provisions. That is not to say that all contracts are the same with regard to content or arrangement; however, some chapters are essential.

In the policy provisions of liability insurance of a forwarder, one always finds the following texts:

- Definition of terms
- Field of validity
- Insured capacity
- Range of the coverage
- Extra coverage
- Maximum insured amount
- Exclusions
- Own risk
- Obligations of the insured on damage
- Extent of damages
- Payment of premiums
- Amendment of premium and/or provisions
- Duration / end of insurance
- Division of risk in protection of transport of goods by road.

Besides the standard provisions regarding liability insurance of forwarders, extra information is often given on the policy page. Some industries prefer to mention, for instance, insured amounts, own risks, insured capacity or the field of validity on the policy page and not in the General Provisions.

The heart of the policy provisions, or rather the most essential elements of the liability insurance of a forwarder, is the following:

- Range of the coverage
- Exclusions
- Maximum insured amount
- Field of validity
- Insured capacity

Calculation of premium

The premium of liability insurance of a forwarder is calculated according to the kind of coverage, the insured amount and the exclusions.

The price is not calculated through a commercial approach, but rather through a subject-technical approach and most probably through a risk analysis. The premium is based on the

- limiting liability provisions
- insured capacities
- gross (cargo) turnover

Annex 4

Most common kinds of policies in cargo insurance

1. Introduction

The ordinary Dutch and English goods policies are intended to insure especially the mentioned missions. Sometimes, however, the practice of commerce wants more. An insured person/enterprise usually knows that he will do business that can involve transport insurance. However, he does not always know exactly when, with which means of transport and from which point of departure the goods are shipped, how large the consignment is, what the marks are, etc.
In other words: there is often a need for cover that automatically becomes valid when the goods are going on a journey for the risk of the insured.

The implication is that two kinds of policies are distinguished, namely

2) non-continuous:
   - detached items;
   - off-loading and write down policy
3) continuous (as a rule):
   - contract or declaration policy;
   - lump sum or surrender policy;
   - turnover or settlement policy.

2. Non-continuous kinds of policies

The detached items
Contrary to the kinds of policies discussed hereafter, with insurance of a detached item the consignment of goods must first be reported to and accepted by the insurer before cover is valid. The manufacturer, the importer and exporter will also have one or more transports that are not simply covered by the continuous insurances; for example the moving of a factory inventory.

The off-loading and write down policy
These kinds of policies are still used sometimes with a transaction where it is stated that the delivery of consignment of goods is done successively, mostly within a certain time limit. Therefore, the consignment is transported in smaller units from the seller to the buyer.
In the policy, the total insured sum of the whole transaction is stated with an indication of the maximum amount on occasion. If the total value of goods insurance amounts to more than the maximum, there is in principle no cover for the balance.

The difference between the off-loading and write down policy is that:

The off-loading policy every off-loading is registered in a declaration register, and the declarations are sent to the insurers once in a particular period, after which calculation of the premiums thereof will take place. Thus, the premium here is brought into account afterwards.

The write down policy is also kept in a register by the insured of the consignments. However, the premium for the total insured sum is payable in advance. The total is decreased with the insured value of each consignment, until there is no premium left.

3. Continuous kinds of policies

The declaration policy

The declaration policy is usually used for consignments to or from abroad.
The insurer is obliged to cover the goods to be consigned. Usually, it happens continuously with intermittent mutual possibilities to cancel. Eventually, within particular geographic borders and up to a particular maximum amount per occasion. Often these policies provide "world coverage". The premiums for the more or less regularly recurring goods and/or routes etc. are fixed, with the provision that the premiums must be regulated by declaration. In particular cases, an arrangement can even be made that premiums and conditions must be regulated by declaration.
The consignments are registered in a register. On the basis of the entries and the premiums laid down in the contract, the premium amount is calculated at particular times. Of course, the insured is obliged to declare all consignments, but the late or non-declaring in good faith does not nullify the cover.

The lump sum or surrender policy

The lump sum or surrender policy covers all consigned goods at a fixed, prepaid premium amount and within particular geographic borders during the period mentioned in it (mostly a year, with silent extension).
The only limitation is the maximum per occasion. If the total value of a goods consignment amounts to more than the maximum per occasion, there is in principle no cover for the balance. This kind of policy owes its popularity to its simple administration.

In contrast with the declaration policy, the declaration of each consignment can be omitted with the lump sum policy. The premium amount is paid in advance.

Because insurers get no information about each separate consignment, this kind of policy is not suitable for transport at sea. Indeed, one cannot see whether the ship complies with the requirements of the classification clause. Besides, one would not be able to calculate the premiums of the co-insurance of war and strike risks that are subject to adjustments in various areas. The premium must be determined newly every year according to the value of the transported goods during the past year. An independent expert like an accountant or an administration office must eventually provide these turnover figures with a confirmatory statement.

The turnover or settlement policy

The turnover policy is almost similar to the lump sum or surrender policy. However, the premium statement has been brought on a more logical basis, because at the end of the insurance period, settlement takes place on the basis of the total value of the despatched goods.
At the beginning of every insurance year, an advance premium is brought into account. Sometimes a minimum retention of premium is indicated.

Annex 5

Institute Cargo Clauses

1. Institute Cargo Clauses (A, B, C, Air)

2. Institute War Clauses

The purpose of these clauses is to provide cover against the risks of war/warlike operations or activities. If one were shipping goods to a "war zone" , the premium rate would be very high. These clauses are only applicable when goods are being transported by sea or air or international post. This cover does not operate during land transit.

3. Institute Strikes Clauses

These cover loss or damage caused by the action of strikers, locked-out workmen and the like. They also cover loss and damage "caused by any terrorist or person acting from a political motive" . This, however, does not confer full political risk cover, e.g. a civil war is not covered.

4. Institute Trade Clauses

The Institute Cargo Clauses are not used for all types of cargo where there is a special "trade risk" (i.e. related to the specific nature of a product), specialised clauses are used. These clauses have usually been formulated in conjunction with the trade body concerned and are based on the Cargo Clauses. Examples of trade clauses are those relating to the following commodities: coal, oil, corn, flour, frozen meat and produce, raw sugar, rubber and timber.

5. Additional clauses

These may be added to a policy to ensure cover for specific risks not otherwise insured against in the Institute Cargo Clauses e.g. Malicious Damage Clause, or Institute Replacement Clause.

6. Additional terms

Apart from the printed clauses which may be attached to the insurance policy, there may be typewritten:

- exclusions
- warranties, i.e. conditions imposed upon the assured with which he must comply, e.g. "Warranted packed in a container"
- excesses, i.e. a pre-determined monetary amount or a percentage of the shipment value which is deductible from the value of a claim
- franchises, i.e. a percentage below which the underwriter will not consider any claim but above which the whole loss will be recoverable. Thus, where a policy contains a franchise clause, the assured must suffer a certain level of loss before any compensation is payable. Once that level is reached, however, compensation is payable in full
- malicious damage.