

History and Development of Marine Insurance

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Third Instalment—Continued from Issues of February 17th and March 3rd—Forms of Policies—Implied and Expressed Warranties.

There are several forms of policies which may be briefly noted.

An Interest Policy is one which shows clearly that the assured has a specific real and substantial interest at risk, as, for example, on one hundred bales of wool.

A Voyage Policy, as distinguished from a Time Policy, is one in which the limits are defined by termini or places, the interest at risk being insured for a particular voyage as for example, Vancouver to Liverpool.

A Time Policy, usually confined to the insurance of hulls, is one which expresses the insurance for a specified period of time. In England such policies, if made for more than twelve months, are, by the Stamp Acts, illegal.

A Valued Policy is one where an agreed value (not necessarily the actual value) of the thing insured is inserted in the policy.

An Open, or Floating, Policy is one in which no name of any special vessel is inserted, the policy so framed as to apply to any ship or ships, steamer or steamers, etc., by which the assured may have an insurable interest, the various shipments being declared from time to time as they occur. It is a fundamental principle of such policies that all shipments which the assured may have are to be declared thereunder. He must not run his own risk upon or insure others elsewhere, anymore than he can wait with a view to declaring only those shipment that are lost, or which arrive damaged. The "Open" policy is in very general use and it has the advantage from the merchant's point of view that his goods are always covered even though, as often happens, a loss occurs before he has made his declaration.

Lastly, there is a Wager Policy, which shows on the face of it by such words as "Policy Proof of Interest," or "Interest or No Interest," that the assured has no substantial interest at stake or else that the underwriter is willing to dispense with any proof of interest. They are usually known as P. P. I. (Policy Proof of Interest) Policies, and according to Statute are void. They nevertheless, continue to be executed, and inasmuch as there is no legal obligation on the underwriter to be bound by the policy they are regarded as a record of obligation not of law but of honour between the parties, and are often known as Honour Policies. As an example of a P. P. I. Policy one may instance an insurance against the risk of an increased Government duty, or of the taxation of articles previously duty free.

The above are definitions of the various forms of policies, which may be used, but it need not be assumed that they are all in general use. It may be taken for granted that for all practical purposes the forms in general use are Time Policies which are used chiefly in connection with hulls, and Voyage Policies, which are used in connection with sailing ships, and for the insurance of cargo. Open Policies are merely what one might call an enlargement of a Voyage Policy. Furthermore, practically all marine policies are what are known as Valued Policies; in other words, the valuation of the interest insured is nearly always stated.

In this respect it may be interesting to note the difference between a fire policy and a marine policy. A fire policy does not insure a specific house, factory or cannery, but it insures damage up to a certain amount, which may occur to the interest. A marine policy, on the other hand, insures the interest itself, and it may be taken as an axiom that in a marine policy the assured is always a coinsurer to the extent by which the amount of his insurance falls short of the value expressed in the policy.

It is a well known fact that the essence of every contract is good faith, and this is equally true of the contract of Marine Insurance. The assured is bound to communicate all circumstances of which he has knowledge, which may effect the risk, or influence the underwriter in accepting it or in fixing the rate at which he is willing to write it. The non-communication of such a fact is termed "concealment" and renders the policy void. For example, if the assured has received a doubtful report of the capture of a ship similar to his own, and neglects to communicate the intelligence to his underwriter on effecting the insurance the policy will be void. And similarly if a misrepresentation be made with the object of deceiving the underwriter, as for example, the positive statement that a ship sailed on a certain day and so is not a missing ship, or that she was safe in port at a particular time and so escaped a storm, or that her cargo was of a certain kind or weight so that she was not overlaid.

An implied warranty is a condition of the policy which is not expressed, but understood, and the breach of which avoids the contract. The term warranty is applied to these conditions because

they are as binding as though written upon the face of the policy.

They are three in number—

1. In every voyage policy that the vessel shall be seaworthy when the risk commences.

2. That the voyage shall be prosecuted in the usual way without undue delay, deviation or departure from any of the established usages of trade or navigation.

3. That the adventure shall be in all respects a legal one and the ship properly documented.

Seaworthiness has been concisely defined in the following terms: "The assured undertakes in a voyage policy that his vessel shall start upon the voyage in all respects fit to encounter the ordinary perils incident to such a voyage. In other words, before the assured can recover in case of loss he is bound to prove not only that the ship was tight, staunch and strong, but that she was properly equipped with sails and stores and that she was manned with a sufficient crew to navigate her on the voyage insured. In addition the ship must have a pilot when required by law or usage, proper ground tackle, and in short, all things necessary for the voyage. The cargo must be properly stowed, and the vessel not overlaiden.

Neither ignorance nor innocence will avail to relieve the assured from the consequences of a breach of the warranty, although the ship-owner may have done everything in his power to ensure the seaworthiness of the vessel before sailing, and her unseaworthiness be the result of a latent defect.

Upon the same principle an insurance on cargo is avoided if the vessel sail unseaworthy though the assured be ignorant of her state or powerless to alter it. This fundamental condition can only be dispensed with by an express agreement between the parties to this effect, and any words inserted in the policy to exclude the warranty must clearly specify the intention to exclude it.

There is, however, no implied warranty of seaworthiness in a time policy.

The consequences entailed by a deviation are set forth in the Marine Insurance Act, as follows, viz.:

"Where a ship without lawful excuse deviates from the voyage contemplated by the policy the insurer is discharged from liability as from the time of deviation and it is immaterial that the ship may have regained her route before the loss occurred."

In practically all policies, however, the following clause is usually inserted which practically nullifies the effect of a deviation:

"In the event of deviation and/or change of voyage the assured to be held covered at a premium to be arranged provided due notice be given on receipt of advices."

An express warranty is a condition appearing upon the face of the policy the literal fulfilment of which is essential to the contract. "It is of no avail to plead inability, accident, or even the operation of a peril insured as an excuse for non-compliance with an express warranty." For instance, a vessel was warranted to sail on a certain day and was in readiness to depart when she was detained by an embargo until after the specified date. It was held that even though the detention was effected by superior force, and that "restraint of princes" was a peril insured against, the underwriter was discharged by the breach of the warranty.

Express warranties may refer to the date of a vessel's sailings, to her classification, equipment or nationality; to the weight or description of cargo; to her trading limits, the course to be pursued during the voyage or other circumstances connected with the risk.

The extract from the "Saturday Evening Post," that I have already read, gives the wording of an ordinary Lloyd's policy.

Whilst it is not within the scope of this paper to discuss the various risks enumerated at any length, it may be of interest to run over them briefly.

First, then, there are "Perils of the Seas." This term does not cover every accident or casualty which may happen on the sea. It must be a peril of the sea. It is also a fact of law that it does not cover every damage of which the sea is the immediate cause. It does not, for instance, cover wear and tear; there must be some extraordinary peril, such as stranding, sinking, heavy weather, to account for the damage before the liability can be fixed on underwriters to make it good.

The risk of fire does not need to be explained, as the gentlemen assembled here are fully aware of what it covers.

"Men of War Enemies." This term is self-explanatory, and it is needless to add that an English policy covering the risk of capture of enemies' property by British War vessels is illegal.

"Pirates and Rovers." Those knights of the skull and cross-bones, who were the delight of our youthful days.