YOUR BASIC GUIDE TO MARINE INSURANCE CLAIMS

* * *

Table of Contents

Introduction 3

Chapter 1. Understanding Marine Insurance Claims 4

1. History of Marine Insurance Claims 4

Ancient Times 4

Europe 4

The 1600's 4

The Seventeenth Century 5

Marine Insurance Act 1906 5

1.2 Definitions of Terms 5

1.3 Modern Use of Marine Insurance 6

1.3.1 Marine Adventure and Maritime Perils 6

1.3.2 Perils of the Sea 6

1.3.3 Types of Losses 7

1.3.4 Warranties 8

1.3.5 Types of Marine Policies 9

Chapter 2. Types of Marine Insurance 11

2.1 Hull and Machinery Insurance 11

2.2 Cargo Insurance 12

2.3 Protection and Indemnity Insurance 13

Chapter 3. Parties Involved in Marine Insurance Claims 14

3.1 The Insured 14

3.2 The Additional Assureds 14

3.3 Underwriting Agents 14

3.4 Protection and Indemnity Clubs 14

3.5 Insurance Companies **14**
3.6 Brokers and Agents **14**

Chapter 4. The Essentials of Marine Insurance **15**
4.1 The Marine Contract **15**
4.1.1 Contents of a Marine Contract 15
4.1.2 Elements of a Marine Contract 15
4.1.3 Interpreting the marine contract 16
4.2 The Premium **16**
4.3 Insurable Interest **18**
4.3.1 Exceptions to Insurable Interest 18
4.3.2 Forms of Insurable Interest 18
4.4 Doctrine of Indemnity **19**
4.5 Doctrine of Subrogation **20**
4.6 Proximate Cause **20**
4.7 Assignment **21**
4.8 Good Faith, Misrepresentation, and Disclosure **21**
4.8.1 Good Faith 21
4.8.2 Disclosure 21
4.8.3 Representation 22
4.8.4 Misrepresentation 23

Chapter 5. Making A Marine Insurance Claim **24**
5.1 The Claims Process **24**
5.1.1 Hull and Machinery Insurance Claims 26
5.1.2 Cargo Insurance Claims 27
5.2 Prescription Periods and Notice Requirements **29**
5.2.1 Prescription by Statute 29
5.2.2 Contractual Limitation and Notice Periods 29
5.2.3 Relief Against Forfeiture 29

Chapter 6. Disputing a Denied Claim **30**
6.1 Reasons Why a Claim is Denied **30**
6.2 How to Handle a Denied Claim **31**

Chapter 7. Conclusion **34**

Introduction

* * *

The maritime industry takes root from ancient times. Before the dawn of modern transportation, people relied on ships to travel, conduct business, transport cargo, and even wage war. In fact, history will agree that the maritime industry was already formed even before they knew what to call it.

Maritime insurance is one of the oldest types of insurance. It was called bottomry in its earliest forms, primarily conducted through loans and guarantees. A person would advance money on a ship. If the ship went missing, he would lose his money. But if the ship made it back, he would get back the amount plus an agreed sum. The industry took form in the seventeenth century, and was finally codified by the Marine Insurance Act of 1906. The said Marine Insurance Act is now recognized as the basis for marine insurance.

What is maritime insurance? As the name suggests, it guarantees compensation for boats, ships, and cargo, and elements of its voyage in the face of maritime losses. But the scope of maritime insurance can be as wide as the vast sea. And obtaining insurance for marine businesses might be more complex than navigating open waters.

Maritime insurance works the same way as life insurance does. A person can be insured for general perils like illness, accidents, and death. But say the insured is a high-risk individual, like an extreme sports fanatic, the policy will be amended to cover such conditions. And the more expensive the premium will be.

Basically, maritime insurance is a contract of indemnity where an insurer takes the obligation to cover the loss, damage, and theft of the seafaring industry. There are two main types of marine insurance. Inland marine insurance or boat insurance applies to people who own seafaring vessels such as speedboats, yachts, and ferries. Meanwhile ocean marine insurance covers vessels that traverse the open seas. For the purpose of this e-book, discussions will focus mostly on ocean marine insurance.

More than ever, businesses involved in the seafaring industry are finding greater value in maritime insurance. As the list of perils in the open sea keeps growing, it is in a company's best interest to insure its assets and their contents. Should a fortuitous event happen, insurance compensates for the damage that occurs. But first, the insured must prove beyond doubt that the vessel is insured for the circumstances they are claiming for.

This e-book details maritime insurance, the process involved in a marine insurance claim, and what the insured can expect in disputing a denied claim.

Chapter 1. Understanding Marine Insurance Claims

* * *

1. History of Marine Insurance Claims

Ancient Times

We start our story during ancient times when maritime insurance took form in bottomry during the time of the Greeks, Romans, and Phoenicians. Someone who owned a ship would borrow money from a lender as a pledge for the ship's security. If something should happen to the ship at sea, the lender loses his money. But if the ship returns, the lender receives his full amount plus an additional determined sum of money. Bottomry is now practically obsolete.

Europe

In the 1400's, a group of Hanseatic merchants from Northern Europe had an insurance center in Bruges, which became known as the Chamber of Insurance. It was during this time that maritime insurance began its journey towards taking a form that was acceptable to the business sector.

Its next moment in history came within a few years as Barcelona became a busy port. And by 1432, the city of Barcelona laid down the first recorded statute for maritime insurance.

In Europe, most people who were engaged in marine insurance were mostly foreigners. The first known underwriters in London were German immigrants. Not too long thereafter, a group of immigrants started to set-up trading firms on Lombard Street in England. These became known as the Lombard's who are credited for establishing rules and regulations that made marine insurance acceptable in the trading community.

The 1600's

The period of the 1600's was an important time for seafaring merchants. The Elizabethan Act of 1601 became the first statute about marine insurance that was drafted by the English Government, and subsequently passed by parliament. It was promptly called "An Act Concerning Matters of Assurances Amongst Merchants". However the Act was more of lip service as it had little function.

As the law began to give legal form to marine insurance, so were underwriters abuzz all over London. They preferred to meet in coffee shops, and in 1652 Lloyd's Coffee House became the place for them to gather. The owner of Lloyd's also published a newspaper called Lloyd's News that featured commercial and shipping news. Thus sealing the Lloyd's name as connected to maritime insurance.

The Seventeenth Century

The seventeenth century was another turning point for maritime insurance in Great Britain. In 1771, the underwriters organized themselves by electing a committee to represent them. The year 1871 saw the First Lloyd's Act came about, which is essentially a structured organization of people connected to shipping, in accordance with law.

During this time, three breakthrough acts established policies for marine insurance and ended practices of wagering. The Marine Insurance Act of 1745, the Act of 1788, and The Marine Insurance Codification Bill of 1894 were the foundations marine policy, and required that insurance policies were in clear writing. The Marine Insurance Codification Bill of 1894 became the basis for the 1906 Act.

Marine Insurance Act 1906

The Marine Insurance Act 1906 is a landmark act that codified over two hundred years of judicial decisions in the field of marine insurance. It compiled existing statutes and clarified the trade's rules and regulations. To this day, the Act governs standard marine clauses, and operates in the absence of any party agreement.

As a follow-up to the Marine Insurance Act 1906, the Marine Insurance Gambling Policies Act 1909 was later enacted. The said statute imposed criminal liabilities to parties who relied on wagering to determine maritime insurance.

The Marine Insurance Act of 1906 mentions how cases of claims were decided on based on the wording of the policy. The M.I.A. 1906 is known to have approved the use of Lloyd's S.G. Ship and Goods) Form of Policy 1779, which appears as a schedule to the 1906 Act.

The Institute of London Underwriters, who are non-Lloyd's marine insurers, drafted clauses in the aim to improve the S.G. policy especially aspects of the policy that were not expressly clear. Clauses created in 1982 and 1983 replaced the S.G. clauses with simple ones for the Institute Clauses. The Institute Clauses would undergo revisions many times, the most recent one in November 2003.

Today, the Marine Insurance Act is responsible for providing the legal protection for the seafaring industry and is the governing law in marine insurance.

1.2 Definitions of Terms

Maritime Insurance is defined as a contract of indemnity where an insurer agrees to compensate the insured party according to agreed maritime losses.

Marine Adventure is a situation where the insured party is exposed to maritime perils.

Maritime Perils are incidental to voyages of the sea. Such perils include fire, war, pirates, capture, sinking, shipwreck, and the like.

Mixed sea and land risk is a contract that insures a party against losses on inland waters or land risks that are a consequence to voyages. It also refers to a ship that is in the course of building, launch, or adventure that is covered in marine policy.

Warranties are promissory undertakings that determine if a particular thing will or will not be done, or if it is or it is not covered by a contract.

1.3 Modern Use of Marine Insurance

Marine insurance requires that, first, there is an insurable property that will voyage in a legal marine adventure and face the possibility of maritime perils and losses. The insurance will compensate any such loss depending on the insured liabilities and the warranties stated in the insurance policy.

In order to understand the aspects of maritime insurance, the basic elements of marine adventure should be taken up.

1.3.1 Marine Adventure and Maritime Perils

A maritime insurance contract contains a lawful marine adventure. It is the basic necessity of a marine policy. The Marine Insurance Act 1906 defines that there is marine adventure where:

a. “Any ship, goods, or movables are exposed to maritime property.” Meaning that there is an insurable property.
b. “The earning or acquisition of any freight, passage, money, commissions, profit or pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;’
c. “Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.’

1.3.2 Perils of the Sea

The dictionary defines perils as a danger that arises from a specific activity. In maritime applications, perils of the sea refer to anything and everything that can happen during a ship’s voyage.

The Marine Insurance Act 1906 defines maritime perils as “fortuitous accidents or casualties of the seas, but does not include ordinary action of the wind and waves”. This creates a distinction between loss that can occur due to strong winds and waves, versus an accident caused by an incident during the marine adventure.

The following are some of the perils of the sea that can be insured:

- Losses by fire. This peril is covered by marine policies and can include fire caused by negligence or by arson. Damages incurred in an effort to control the fire will also be covered.
- Pirates and thieves. Losses caused by pirates and thieves are considered perils. Pirates are defined as persons who attack the ship from land, or any passenger who causes a riot within the ship. Meanwhile, thieves do not include incidents of theft among the ship's crew and passengers.
- Captures, seizures, and restraints result in losses that are considered maritime perils.
- Jettison refers to the act of throwing goods overboard in an effort to protect the maritime adventure or the lives of the crew and passengers.
- Barratry
- Shipwrecks
- Stranding
- Collision
- Loss by war

According to the Marine Insurance Act, there are items that are not considered perils of the sea:

- Losses caused by willful misconduct are not covered. It is important to note that willful misconduct requires an element of intent.
- Loss by damage to machinery.
- Loss by rats
- Loss by breakage
- Wear and tear
- Defects in goods
- Loss by delay
- Death of animals caused by nature's forces.

1.3.3 Types of Losses

A marine policy does not cover one hundred percent of the liability. Most policies only cover three fourths of the cost. That is why in the nineteenth century, ship owners came together under Protection and Indemnity Clubs or P.I. Clubs to insure the remaining amount amongst themselves.

Up until the 20th century, the types of risk that could be insured were limited. It was only through the pressure from businessmen that complete coverage meant that all risks were covered.

There are two types of losses: total loss and partial loss. An actual total loss happens when the cost of repairs is equal or greater to the cost of the insured property. Meanwhile, there is constructive total loss when the cost or repairs plus the cost to salvage the wreckage exceed the value of the insured property.

1.3.4 Warranties

In obtaining any insurance policy, details are key. Warranties in the contract will determine what a policy will cover or not, so the coverage will depend on what the contract says or does not say. Needless to say, warranties are very important in any marine insurance policy.

There are two kinds of warranties:

Implied Warranties

Implied warranties acknowledges certain conditions to be a given for the voyage policy to be granted. For example, that "it is a given" that a ship will be embarking on a legal marine adventure and that it guarantees its seaworthiness before setting sail.

There are three types of implied warranties:

a. **Legality of venture**
   - Definition of a warranty of legality: "there is an implied warranty in every marine policy that the marine adventure insured is lawful, has control, and will be carried out in a lawful manner".
   - This applies to voyage and time policies. Under the warranty, there can be no claims made for an illegal marine adventure, such as smuggling or violating national laws.
   - Neutrality should also be present. Any marine policy insurable property is warranted to be neutral in the following conditions:
     - That the property will have a neutral character before it presents itself to the peril of sea, and that this neutral character is maintained in the presence of risks.
     - Wherein the papers that establish the neutrality of a ship are real and legal. Falsified documents will render a policy null and void.

b. **Seaworthiness**

   Seaworthiness means that the ship is fit to face the perils of the port and of the sea. A vessel should be seaworthy at the beginning of a marine adventure by being well constructed and properly equipped.

   Seaworthiness only applies to voyage policies, not time policies, as a vessel might be at different stages of seaworthiness at different periods of a voyage.

   The following points put seaworthiness in a clearer light:

   - That the standard to judge seaworthiness is not fixed, varying from vessel to vessel, at different periods of time.
   - That seaworthiness extends to the capacity of the crew and the quality of the equipment.
   - That a vessel should be able to withstand the ordinary perils of the sea at the commencement of a voyage.

- That “cargo-worthiness” is considered, meaning that a vessel can withstand the cargo it is transporting.

Should something fortuitous happen to a ship at sea, a voyage policy will require the insurer to prove that the ship was seaworthy before it began its voyage. And in a time policy, the insuring party needs to prove that not only was the ship unseaworthy, the unseaworthiness was known to the insured and thus caused the loss.

c. Other Implied Warranties

A marine insurance policy should also comply with the following:

- That there is no change in voyage, meaning the port of embarkation and the point of destination is as stated in the contract. Should the destination be changed intentionally, then there is a change in voyage and the insurance contract is void.
- That there is no delay in voyage, meaning that the voyage should start within the reasonable time. As the name suggests, it applies only to voyage policies. Delays in voyage can render the contract void.
- That there is no deviation, meaning that the vessel does not take a different route without legal reason. Non-compliance to this implied warranty will free the insurer from his responsibility to the vessel.

d. Exceptions to the delay and deviation warranties:

The MIA states that there are exceptions when:

- When the deviation or delay is authorized, as dictated by a specific warranty.
- When the deviation or delay was beyond reasonable approach by the crew.
- When the deviation or delay was necessary for the safety of the ship and its passengers.
- When the deviation or delay was due to barratry.

Express Warranties

Express warranties are defined as a group of words with the intention to infer a warranty. It is a guarantee for certain conditions to be covered by the policy.

1.3.5 Types of Marine Policies

There are different classifications of marine policies. In choosing a policy, businesses are advised to determine which is the

Time Policy

This covers a definite period of time, regardless of the number of trips a ship will make. The usual period covered is one year although it might be less on that

depending on what is stated in the contract. In this type of policy, the insurer will assume the maritime risks involved for a designated period.

Voyage Policy

A voyage policy insures a vessel for a specific voyage. It needs to define the port that a ship will leave from and its destination port. It also needs to indicate from which place to another the vessel will be traveling.

For a voyage policy, a change in the destination from the port of origin or to the point of destination will free the insurer from any liability for any loss that is a result of this action. A deviation or delay can also discharge the insurer from any liability. According to the Marine Insurance Act, a deviation can only be justified if:

- It is authorized a special term in the marine policy.
- It is caused by circumstances outside the control of the captain and the ship owner.
- It is reasonably necessary in order to comply with an implied or express warranty.
- It is reasonably necessary for the ship and the insurable property's safety.
- It is necessary to save human life, obtaining medical assistance, or helping another ship in distress.
- Due to barratry of the ship master or his crew.

Mixed Policy

This policy combines the mechanics of a time policy and a voyage policy. Under this classification, the insurer will assume maritime risks for a particular voyage and a designated period.

Valued Policy

A valued policy determines the value of loss to be fixed throughout its exposure to the perils of the sea. The insured, meanwhile, is guaranteed for the declared value of the insurable property. This policy becomes void in cases of fraud and overpricing.

Unvalued Policy

Under this classification, the value is not determined before the voyage ensues, rather after the loss occurs.

Floating Policy

A floating policy defines general terms and leaves the name of the ship, the cost of the shipment, and other details to be determined later on. This classification can cover several shipments.

The shipper must declare all the goods and their value. If he fails to do so, the contract might not be honored if in case of loss.

Chapter 2. Types of Marine Insurance

* * *

Shipping is important to everyday lives. To understand how it impacts people's quality of living, one simply has to look at the different items in his or her home. From clothes, to electronics, and even furniture, chances are that ninety percent of it was shipped via cargo from one port to another.

Dry bulk goods, oil, and containerized cargo are the three types of goods that are shipped across the seas. In 2006, these goods accounted for a huge portion of the total world sector, and generated an annual income of about one trillion US dollars worldwide.

Judging from the size of the seafaring industry, there is no doubt that valuable cargo traverses open seas every minute of each day. Marine insurance plays a very important role in global trade. And so with many perils and risks at sea, merchants are finding it the best move to insure their most precious assets against loss.

Obtaining marine insurance is not as easy as simply choosing a policy and then signing a contract. Maritime insurance can be complex and confusing. There are many conditions to consider, and the wrong flow of words can render any policy void. Thus, companies are turning to underwriters to translate legal maritime language into services and policies that are applicable to them. Obtaining the right kind of insurance is the only way to guarantee compensation in the instance that loss happens. That being said, marine insurance is confusing at first, but choosing the right type of coverage will be relevant to any business in the short and long run.

2.1 Hull and Machinery Insurance

The hull pertains to the main body of the ship, and the machinery refers to the ship's prime movers—its engines and its equipment.

Hull and Machinery Insurance guarantees against damage to the ship's body, machines, engines, and equipment. This can cover vessels of different sizes.

This type of insurance lists the causes of loss that a ship can be insured from.

- Total loss of the ship.
- Damage to the ship, machinery, engines, and equipment.
- Damages caused by collisions and possible liabilities concerning the other ship.
- A vessel can be insured against losses due to the total loss of the damage, or expenses associated with the repair of the damages to the hull or machinery. It can also cover expenses in preventing and minimizing loss on the vessel.
- It can also cover losses should a vessel go missing due to various reasons such as fire, explosion, piracy, and even negligence.

- Hull and machinery insurance covers expenses involved in the recovery of the vessel.

Should a vessel be exposed to risks associated to loss of hire, war, and strikes, additional coverage is required for the type of insurance.

This can cover vessels of different sizes. Hull and Machinery Insurance can cover container ships, tankers, carriers, passenger vessels, and various smaller vessels.

2.2 Cargo Insurance

Cargo insurance gives coverage to any physical damage or loss to the ship's cargo and the personal belongings of the ship's passengers whether it is transit by land, sea, or air. Cargo insurance will guarantee the personal property from theft, water damage, or breakage.

Given how important export and import cargo is, this type insurance is essential to a trader's peace of mind. The premium for cargo insurance will depend on the type of goods and its total value.

When dealing with cargo insurance, the term general average will be part of the equation. General average refers to a situation where damage or loss happens to certain goods, while remaining cargo and the vessel are safe. If general average is referred to, it means that all parties involved will contribute to compensate for the loss.

There are three Institute Cargo Clauses when it comes to cargo insurance—A, B, and C. Clause A provides extensive cover for a vessel's cargo. Meanwhile B and C have reduced premiums, and subsequently reduced coverage. One can also opt for additional clauses that will cover war and strikes, should a vessel be at risk for these.

Cargo insurance will usually dictate if coverage is comprehensive, or total loss, or partial loss. Traders should understand every sentence of the policy to make sure that he is getting the cargo insurance that his business needs. Some policies will cover goods from port to port, or warehouse-to-warehouse, whichever is best suited for the type of cargo.

Under cargo insurance falls three classifications. The first is Open Cover. This covers a specific value of goods to be shipped regardless of the number of shipments. This is the most common type of cargo insurance. Second is the Specific Voyage Policy that insurances a specific shipment. And the last type of cargo insurance is the Contingency Insurance or Seller's Interest Insurance. This is designed for exporters who will be delivering goods to a customer. Should any damage occur to the goods that would cause the customer to reject the shipment, Contingency Insurance will compensate the exporter.

2.3 Protection and Indemnity Insurance

Protection and Indemnity Insurance or P&I as it is commonly called protects a ship owner from liabilities from a third party. This third party refers to anyone apart from the ship owner himself who will have a claim against the ship.

P&I will provide coverage in situations where the crew or passengers are physically injured, the ship causes pollution, or if it is wrecked and requires removal.

A ship owner can avail of P&I by joining a club or a mutual insurance association. The members of these clubs are fellow ship owners or operators who will provide third party coverage for its members. Think of it as a cooperative where members pay fees that fund the club.

P&I clubs are in accordance with the Marine Insurance Act 1906 and according to the laws of where the accident happens. To claim support, a ship owner should prove the loss that has occurred, and then the club indemnifies him for his third party liabilities. The club will take charge of the payments as well. The early resolution of third party claims ensures that the charges against the ship owner will not be more than what it should be.

P&I will provide cover for collisions (RDC) or if the ship strikes a fixed object (FFO). But it is important to note that some aspects of hull and machinery insurance will cover these already. In these situations, the ship owner must decide which type of policy – whether hull and machinery or P&I—is best suited for his business.

Here are other situations that P&I covers:

- Death of crew or passengers
- Retrieving crew or passengers who might have fallen ill during the voyage, as well as covering subsequent medical expenses.
- Loss of crew's or passengers' personal belongings
- Loss or damage to cargo
- Liability against for stowaways

Chapter 3. Parties Involved in Marine Insurance Claims

* * *

Maritime insurance involves numerous parties.

3.1 The Insured

This refers to the one who took out or availed of the maritime insurance policy, and is held responsible for paying for the policy's premium. The insured is also referred to as the assured.

3.2 The Additional Assureds

The insurance policy will usually contain a clause that extends the insurance to additional people or parties.

3.3 Underwriting Agents

An underwriter is an entity that works closely with a marine insurance company. They have the authority to offer the policy and its premium. Underwriting agents have the authority to act in the behalf of underwriters. They prepare the insurance policy for the insured but is not a part in any way of the marine insurance contract.

3.4 Protection and Indemnity Clubs

As discussed previously, a P&I club is a mutual insurance association comprised of ship owners and those involved in the shipping business. Their main function is to provide third party liability for its member ship owners. Entering a P&I club will not yield any written policy. Rather, their members rely on the set rules of the club.

3.5 Insurance Companies

As the name suggests, these are companies that offer marine insurance.

3.6 Brokers and Agents

The difference between the two is that the agent acts in behalf of the insurance company, while the broker will act in behalf of the insured. The broker will usually meet with the insured to assess what the needs are and what type of policy would be suited best. The next step for the broker is to find an underwriter who will be willing to insure the client. Sometimes, a broker might be acting in behalf of both the insurer and the insured. This is permitted so long as there is no conflict of interests.

Chapter 4. The Essentials of Marine Insurance

* * *

The Marine Insurance Act 1906 still remains as the governing policy of maritime insurance. There are set rules and regulations to follow, but when it comes to creating the insurance contract, parties are free to render it as they deem fit.

Just as in any form of insurance, the insured and the insurer have the freedom to design a marine insurance policy that will best fit the insured's needs. A contract will usually contain a policy of insurance that details the obligations and responsibilities of the concerned parties. There might also be a cover note that gives further evidence to the terms of the contract.

Reviewing policy terms is an integral procedure to finalizing any maritime insurance contract. While the Marine Insurance Act 1906 clearly defines the standards of marine insurance, there are many provisions that allow parties to place their own contractual terms.

4.1 The Marine Contract

4.1.1 Contents of a Marine Contract

The M.I.A. requires that a contract of marine insurance is not admissible in evidence unless evidenced by a marine policy (s.25 (1) MIA).

The marine policy is made after the contract is issued. And in that line, below are the required contents of a marine policy. It must include:

- The name of the insured
- The subject matter insured
- The perils it is insuring against
- The type of policy, whether time policy or voyage policy.
- The name of the insuring party.
- The signature of the insurer.

4.1.2 Elements of a Marine Contract

There are four general features of a marine contract.

Proposal

First, there needs to be a proposal. Once the ship owner relays his needs for insurance, the broker will then prepare a slip, also known as the original slip. But more often these days, the client for the insurance company's perusal fills up a general proposal.

Brokers are expected to be knowledgeable in the legalities of marine insurance law and experienced in the matter. They will advise the client what other necessary information should be passed together with the original slip or the proposal.

It is important to note that there are many kinds of proposals, and each proposal should address the need of the insured party.

Acceptance

The proposal or the original slip is presented to the insuring company. Once signed, the proposal then becomes formally accepted. As discussed earlier, a marine insurance contract needs to be evidenced by a policy. The signed slip signifies that the underwriter agrees to sign the policy as well.

Consideration

A policy's premium is the amount the insured will pay in order to put the insurance to effect. When the details of the marine contract are sorted out, the premium is then established depending on the assessment of the proposal. Finalizing the premium is consideration to the contract.

Issue of Policy

The client should now expect the broker to send a cover note that will detail the terms and conditions of the insurance. Think of it as an insurance memorandum, and not part of the main legal document.

The policy is then legalized through documentary stamps and signatures, and is now in full effect.

4.1.3 Interpreting the marine contract

The marine insurance contract now becomes a legal document that indemnifies the insurer to the insured's liabilities. As with any contract, the law will interpret it by determining the entirety of the document and ascertaining the intentions of all parties involved. When it comes to marine insurance, courts will generally interpret the coverage clauses broadly, and view exclusions narrowly.

Ambiguous policies almost always end in the favor of the insured. This is the concept of the doctrine contra proferentem, which dictates that a contract should be interpreted against the interests of the party that drafted it.

Legal documents will show that contra proferentem have won many a court cases. It is one of the tools used in interpreting a marine insurance contract.

4.2 The Premium

There is a formula for computing the premium of an insurance policy. Basically, the bigger the risk, the higher the premium will be. The maritime insurance industry is

one of the oldest forms of insurance. With many years of practice, the determining of the premium has been established.

It is the insured's responsibility to pay for the premium of the policy. The amount is usually stated in the policy. But if it is not, it is assumed that the premium is a reasonable amount.

There are instances when a premium or a part thereof is returned to the insured when the policy contains a provision that requires it to be returned on the occurrence of certain events. The premium or a part thereof is also returnable upon a failure of consideration on the part of the insured.

Subsections two to eleven of section eighty-five of the Marine Insurance Act 1906 detail instances that the premium or a portion thereof may be returned:

Subsection 2. Where a marine policy is void, or is avoided by the insurer as of the commencement of the risk, and there is no fraud or illegality on the part of the insured or the insured's agent, the premium is returnable.

Subsection 3. Where the risk is not apportionable and has once attached, subsection (2) does not apply and the premium is not returnable.

Subsection 4. Where the subject matter insured or part of the subject-matter insured has never been exposed to any peril insured against, the premium or a proportionate part of the premium, as the case may be, is returnable.

Subsection 5. Where the subject-matter is insured "lost or not lost" and has arrived at its destination safely before the contract is concluded, subsection (4) does not apply and the premium is not returnable unless, at the time the contract is concluded, the insurer knows of the safe arrival.

Subsection 6. Where an insured has no insurable interest throughout the period of the risk, the premium is returnable.

Subsection 7. Subsection does not apply in respect of a contract by way of gaming or wagering and the premium is not returnable.

Subsection 8. Where an insured is over-insured under an unvalued policy, a proportionate part of the premium is returnable.

Subsection 9. Where an insured has a defeasible interest in the subject-matter insured that is terminated during the period of the risk, the premium is not returnable.

Subsection 10. Subject to subsections (2) to (9), where an insured is over-insured by double insurance, a proportionate part of the premiums is returnable.

Subsection 11. Subsection (10) does not apply

(a) Where the double insurance is knowingly effected by the insured, in which case none of the premiums is returnable; and
(b) Where the policies are effected at different times and either the earlier policy has at any time borne the entire risk or a claim has been paid on the earlier policy in respect of the full sum insured by it, in which case the premium for the earlier policy is not returnable and the premium for the later policy is returnable.

4.3 Insurable Interest

When issuing a marine insurance policy, the insurance company will need to establish that the person has an insurable interest in the vessel. Meaning that the person will suffer a loss should something happen to the insured property. At the same time, a person will have benefit in the safe arrival of the insured property.

Since in marine insurance, ownership and other interests may change from one hand to another, marine insurance can be freely assigned. But it is important to note that insurable interest must be proven at the time of the loss.

A contract is void without insurable interest. But marine law provides certain exceptions.

4.3.1 Exceptions to Insurable Interest

Lost or Not Lost

A marine insurance contract can take place between the insured and the insurer on the basis of good faith. In this regard, a person can avail of a marine insurance policy without clear knowledge if the insurable assets are lost or not lost. Parties involved in the marine insurance contract do not know at the about the state of the goods at the time the policy was affected.

The policy becomes void if it is proven that one of the parties or all parties involved are aware of the loss before the contract was made.

P.P.I. Policies

P.P.I. Policies or Policy Proof Interest is a form of insurance whereby an insurer agrees to cover the subject matter even if the insured does not have insurable interest. This type of arrangement cannot be enforced by law, and is considered more of an honorable agreement.

4.3.2 Forms of Insurable Interest

In terms of maritime insurance, insurable interest can be any of the following:

- **According to ownership.** Whereby a person's insurable interest is the full value of the insured item.
  - ✓ In the case of ships, the person may insure the vessel up to its full price.

- ✓ In the case of cargo, the person may insure the cargo up to its full price, plus freight and insurance expenses.
- ✓ In the case of freight, the person may insure the full amount of freight.

- **Insurable interest in re-insurance.** Where the underwriter declares insurable interest in his guarantee of a risk, and thus obtains re-insurance.
- **Insurable interest in other cases.** This recognizes that many parties have insurable interest such as the crew to their wages, the insured to the assets, or the lender to his money.

4.4 Doctrine of Indemnity

Marine insurance is based on the insured value that is determined as the policy is being drafted. The doctrine of indemnity meanwhile is based on the insurable value or the market price at the time of the loss. Let us learn about this difference.

To indemnify is to compensate or guarantee for risk of loss. According to the Marine Insurance Act, “a contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured in the manner and the extent agreed upon”.

And because the marine insurance contract is one of indemnity, under no instance should the insured make a profit from a claim. The insurance company or the underwriter will agree to insure the vessel depending on the extent of the agreement. This is meant only to replace the lost value, and not to give profit to the insured. We have seen that there are many types of insurance that serves different purposes.

The value of the insurance is determined before the policy takes effect. This is called the insured value and it will be the basis of the indemnity should loss occur. The insured value is also called the agreed value because it is the amount that the insured and the insurer have agreed on. After all, the amount of insurance is not determined after a fortuitous event happens, it is decided on at the time of the proposal of the policy.

Because the amount has been agreed upon, there comes no need to object the value of the insurance payment unless any fraudulent findings cause the contract to be void.

On the other hand, the doctrine of indemnity places value on the insurable property at the time of the loss. In this situation, the insurance bases the claim on the market price of the loss, also known as the insurable value of the goods. But this not a common practice in marine insurance.

There are exceptions to the doctrine of indemnity. The first exception is that a certain profit margin may be allowed under marine insurance. And the second is the valuation of the insured property under the doctrine of indemnity must be predetermined.

4.5 Doctrine of Subrogation

Section 79 of the Marine Insurance Act details subrogation, whereby the insuring party will recover a paid out claim from a third party should it be proven that the said third party is legally liable in the loss.

Let us take a small vessel as an example. Say someone lent his yacht to another person. The borrower collided with another yacht, and because the yacht was insured, the owner was able to claim his insurance. Under subrogation, the insurance company can sue the one who borrowed the yacht as a third party directly responsible for causing the claim.

The MIA's doctrine of subrogation says that the insured party should not receive more than the value of the damage. The following are characteristics of subrogation:

- First that the insurer has the right to deduct the sum from the involved third party from the total amount of the claim. But in the case of marine insurance, the insuring party will first pay the insured before recovering costs from the third party.
- That after the insurance claim has been paid, the insured must assist the insurance company in claiming from the third parties. The insurance party cannot do this directly as they cannot file a suit in his own name. If the insured does not want to file a case against the third party, the insurance company can legally receive compensation from the insured.

4.6 Proximate Cause

"Perils insured against" refers to the risks or perils against which the insurance is granted. Basically it means that if the loss is in anyway caused by the perils insured against.

We will cite an example in automobile insurance in the civil case of Farmers Mutual Hail Insurance Company of Iowa versus Stansbury (Tex. Civil App.1956). The latter was insured for comprehensive coverage on a trailer. During a trip, the wheel came off its axle and resulted in mechanical failure and damage to the trailer's interiors. In this case, the court ruled that this was not covered by the policy because the no peril insured against contributed to the insured's loss.

This is the point of proximate cause. According to Section 55 of the Marine Insurance Act, it states that "Subject to the provisions of the Act and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but subject to as aforesaid he is not liable for any loss which is not proximately caused by a peril insured against'.

Section 55 also details which are not payable. These are (i) misconduct of the assured (ii) delay caused by a peril insured against (iii) ordinary wear and tear, ordinary leakage and breakage inherent vice or nature of the subject matter insured, or any loss proximately caused by rats, or any injury to machinery not proximately caused by maritime perils.

4.7 Assignment

A marine policy is then assigned to the insured. The assignment can happen before or after the loss happens. And it can be freely assignable unless the contract prohibits it.

4.8 Good Faith, Misrepresentation, and Disclosure

4.8.1 Good Faith

Marine insurance is one of the oldest forms of trade the world knows today. It has existed throughout centuries because of its effectiveness, and the willingness of all parties involved to provide fair guarantee for the seafaring trade.

From all the complexities and intricacies of maritime insurance, there is one clear ruling principle that governs the field of law. Maritime insurance relies on the principle of good faith, which is declaring in its most honest forms the conditions to which a marine insurance policy is made.

Utmost good faith is the determining principle of maritime insurance. Literature calls the principle of good faith as the crown field of maritime law. What it entails is that the ship owner or the insured states facts and beliefs during the time that the contract is made.

Sections 17 to 20 of the Marine Insurance Act 1906 states that it is necessary for the insured and the insurer or broker to disclose all material circumstances in observance of good faith and avoid misrepresentations.

Non-disclosure has a negative effect to the insured. Since a marine insurance contract is based on good faith, misrepresentations can cause the insurer to avoid the contract. In the same way, an underwriter that conceals any material circumstance will also render the contract void.

4.8.2 Disclosure

The MIA dictates that it is the duty of parties involved to disclose necessary material facts while preparing the contract. Disclosures are important in determining the premium, as they will help the insuring company to assess risks involved. Non-disclosure of information such as possible damages to the hull can cause the contract to be void.

We cite section 21 of the Marine Insurance Act in which the disclosure requirements are defined:

> S. 21 MIA
> (1) Subject to this section, an insured must disclose to the insurer, before the contract is concluded, every material circumstance that is known to the insured.

(2) Subject to this section, an agent who effects insurance for an insured must disclose to the insurer, before the contract is concluded,

(a) Every material circumstance that is known to the agent; and

(b) Every material circumstance that the insured must disclose, unless the insured learned of it too late to communicate it to the agent.

(3) A circumstance is material if it would influence the judgment of a prudent insurer in fixing the premium or determining whether to take the risk.

(4) Whether any circumstance that is not disclosed is material or not is a question of fact.

(5) In the absence of any inquiry, the following circumstances need not be disclosed:

(a) Any circumstance that diminishes the risk;

(b) Any circumstance that is known to the insurer;

(c) Any circumstance as to which information is waived by the insurer;

(d) And any circumstance the disclosure of which is superfluous by reason of any express warranty or implied warranty.

(6) For the purposes of this section,

(a) An insured is deemed to know every circumstance that, in the ordinary course of business, ought to be known by the insured;

(b) An agent is deemed to know every circumstance that, in the ordinary course of business, ought to be known by, or to have been communicated to, the agent; and

(c) An insurer is presumed to know circumstances of common notoriety and every circumstance that, in the ordinary course of an insurer's business, ought to be known by an insurer.

(7) If an insured or an agent of an insured fails to make a disclosure as required by this section, the insurer may avoid the contract.

(8) In this section, "circumstance" includes any communication made to, or information received by, the insured.

4.8.3 Representation

Representations are answers to the insurer’s questions. These are statements made by the insured party during the time that the contract is being drawn. The Marine Insurance Act states that it is the duty of the ship owner to answer truthfully, always in good faith. False answers are a breach of good faith and thus may free the insuring company of any responsibility towards the insurance contract.

A representation is not a warranty. A representation can be verbal or in writing. Meanwhile, a warranty is a clause that is included in the policy.

There are two types of representation:

1. **A matter of fact.** A disclosure of material circumstances under the principle of good faith. Representations can be corrected or revised, but must be finalized before the contract is drawn.
2. **A matter of expectation or belief.** A statement of facts that are a matter of expectation or belief, done under the principle of good faith.

4.8.4 Misrepresentation

Taking from the section on representations, misrepresentation are grounds to render the marine insurance contract void.

Chapter 5. Making A Marine Insurance Claim

* * *

The dictionary defines fortuitous as happening by accident or by chance. Fortuitous events are unexpected; one does not know when they will happen. And in the seafaring trade when ship owners and businessmen are dealing with huge amounts worth of vessels and cargos, leaving things to chance is something that they cannot afford.

When a fortuitous event happens to a vessel that causes loss, damage, injury or death, the ship owner takes out his marine insurance policy and proceeds to make an insurance claim. Every company will have its core business or service. And with respect to marine insurance, an insurance company's core product is to pay out a claim that it indemnified. Claiming insurance is the moment of truth for an insurance company. It is their time to deliver on their guarantee, and will set the stage for their professionalism and credibility in the marine insurance industry.

Making a claim is not a simple process. First, the ship owner must make sure that he is making a claim for an insured property. Basically, he should be insured against losses or perils that are specified in the contract. This shows the importance of a ship owner to understand the terms and conditions of an insurance policy before the contract is drawn.

The insurance company reviews the claim and generates a comprehensive report on the matter. Should the claim be approved, the insurer will arrange for the retrieval and repair of your vessel. Some may opt to pay out the guaranteed amount and leave the ship owner with the responsibility to recover and restore the vessel. There will also be times that a claim will be denied. In this situation, the comprehensive report will explain whom the insurance company finds liable for the loss that occurred.

5.1 The Claims Process

Making a claim can be very stressful for the insured. The loss or damage to any vessel can generate enough stress to send someone into a state of shock.

From all the parties involved in resolving a vessel's loss or damage, the insured will find that the insurance company is his new best friend. Insurance companies make it their business to settle claims, but first they go through great lengths to ensure that it is a proper claim. It can be a long and tedious process, and basic knowledge about the claims process can expedite the receipt of insurance compensation.

The first step in any claims process is to notify the insurance company and all relative parties of the incident. The insurance company will then look back at the insured's records to see if the premium is paid, if the policy is up to date, and most important if the loss or damage is covered by the marine insurance policy. It is the same process for any third party complaint against the ship owner. If any party holds

the insured liable for loss or damage, the insured should immediately notify the insurance company.

Act

Should a fortuitous event happen, the ship owner should do what is in his power to salvage whatever is left of the crew, the passengers, the vessel and the cargo. He should then immediately act to notify appropriate authorities such as the police, medics, and the insurance company.

It is important to remember not to go into any agreement regarding repair and salvage costs without the consent of the insurance company. But should lives be in danger, the ship owner should go ahead and make arrangements that will lessen damage, injury, and loss of life.

Investigate

After the insurance company has been properly notified, the insured should give the company ample time, resources and documentation in order to investigate the loss or damage.

If a third party holds the insured liable for any loss or damage, the insured should gather as much evidence and documentation as possible. Photographs are strong pieces of evidence that should be collected. Legal notarized affidavits should also be procured as written evidence. As a general rule, the ship owner should never enter into any personal agreement with the third party without the insurance company's knowledge.

Documents Required for a Claim

In general, here are the documents one will need to facilitate the claims process:

- The marine insurance policy
- The Bill of Lading. This document determines the scope of the contract of carriage.
- The invoice of bill stating terms and conditions of sale.
- The copy of protest.
- The certificate of survey
- The letter of subrogation

The Content of a Claim

The other important contents of a claim are as follows:

- Photographs of damage to the hull or machinery, or photographs of the cargo and any discrepancy to its supposed content.
- Results of a survey. A surveyor should be called to investigate and attest to the opening of cargo which has been deemed incomplete or damaged.
- A copy of the letter that informed the carrier or any concerned third party about the damage that occurred.

Other Tips on Making a Claim

- **File all necessary documents and reports on time.** Yes, an insurance claim means that the insured individual is probably up to his neck in in things to do. Incurring loss or damage means that many things have to be attended to all at the same time. In that light, one of the top tips in making a marine insurance claim is to file all necessary documents and reports at the required time. This does not mean solely reporting to the insurance company, it pertains to all authorities concerned in the event—the coast guard, the police, the medics, etc. The filing of a claim all boils down to documentation and evidence. Basically, the more proof that the insured has, the higher the chances of an approved claim.
- **Get a grip on the paperwork.** A marine insurance claim entails a lot of paperwork. The insured is advised to be fully hands on in this matter and to give the claims process the focus that it deserves. Should this not be possible, it will be a wise move to assign someone from the company to work solely on the matter of the insurance. Organization skills also make a difference. Having a system of filing important documents will help the insured track where original documents are, and evaluate documents that still have to be submitted.
- **Correspond with the insurance company.** Prompt and detailed responses to the insurance company will help shorten the period of making a claim. Sometimes documents sit in waiting for evaluations, approvals, and signatures. The insured can move quickly on his end, making sure that there is little to no waiting time in the claims process from his end. Should requests arrive from the insurance company, it is also in the insured's best interest to submit all necessary reports, receipts, and documentation to avoid any delay.
- **Payments should be made to the insured's name.** If the vessel involved is mortgage, then the insurance company will most probably issue a check to the bank and to the insured. This serves a few complications especially if the bank is not in the near proximity. The insured can avoid the difficulties of cashing in a check made to himself and the bank by ensuring that all payments are made under his name.
- **Keep in touch with suppliers.** If the insured needs repairs and replacements, he should coordinate all quotations with the insurance company as to avoid any complications during the settlement of the claim. Payments from the insurance company can take up to six months, so it is important for the ship owner to stay in touch with these people to continually guarantee them of the coming payment.

5.1.1 Hull and Machinery Insurance Claims

Insurance companies will have its set of forms for the insured to accomplish when filing for hull and machinery claims. Since a ship owner is claiming for insurance on the vessel itself, its equipment, and machinery, photographic evidence would be essential. It is necessary to document all that is being claimed for.

A marine insurance policy is carried out in good faith. This is the principle in creating the contract in the first place. And thus, good faith must be followed making an insurance claim as well. The insured should never claim for loss that is more than the price or the physical equipment that it is. Doing so can bear consequences to the whole claim.

There are times that a third-party will cause the damage to a vessel. If this is proven, the insured has the right to claim against the insurance of the said third party. The ship owner can do this through the following:

- **First, claim against the third party's insurance.** Write the third party who is liable for the damage stating that he is being held liable for the damage to the vessel. The letter will then be forwarded to the third party's insurer who will then proceed to asses the claim. If it is proven that the third party did indeed cause the damage, the insurance company will pay the ship owner directly or will guarantee the cost of repairs to the vessel.
- **Second, the insured can settle the claim with his insurance company.** After which the insurance company will recover the cost from the third party who caused the damage. Under this scenario, a ship owner forgoes the hassle of dealing with the third party, and transacts with his insurance company directly. He basically makes a claim to his insurance company since his vessel's hull or machinery has been damaged. As this is covered by the policy, the insurance company will settle, but not without attempting to recover the cost of the policy from the involved third party.

There will be times that a third party will claim that the insured was responsible for damage. The insured must stay calm and follow the procedures of contacting the appropriate authorities and documenting the claim. An investigation will follow to determine the insured's liability or lack thereof.

5.1.2 Cargo Insurance Claims

Even if cargo is not lost at sea, a ship owner may take measures to check if an insurance claim is needed upon the cargo's arrival at the destination port.

Upon the arrival of the cargo, the insured should inspect the containers coming from the carrier. Photographs should be taken for evidence. The insured should watch out for cut seals and empty or partially empty containers. If this occurs, the cargo should not leave the premise and the insurance company should be notified immediately.

Once evidence has been gathered, the insured should write an endorsement on the delivery receipt. This would have accurate remarks that explain if there is a discrepancy between the goods that were received and the goods that should have arrived. This should then be endorsed by the carrier through signing. Putting in as much detail to this endorsement will help establish the claim. This is called "taking an exception". The delivery receipt is good evidence in making a claim for cargo insurance.

There are instances of concealed loss, where in appearance the cargo is in good condition, but the reveal happens when the packages are opened. Should this be the case, the insured should do as what the procedure above dictates. Gather evidence and report it to the insurance company.

Once a claim for cargo insurance is made, the insurance company will send a surveyor to investigate the situation. While it is not obligatory, the claimant's presence during the investigation will help keep him aware of the surveyor's initial comments about the loss or damage.

The next step is to file written notices for the claim. A Statement of Claim should be hand-delivered and sent by email to make sure it reaches the insurer or their agent. Note that carriers can avoid liability for a claim if no dispute was made within three days of the arrival of the goods. And for airfreight, the insured has fourteen days to complain for loss or damage.

The insured must then gather all documentation required to file the claim. These are the following:

- Accomplished cargo marine insurance form.
- Original Certificate of Insurance
- Original Commercial Invoice
- Original Packing List/Weight List
- One original of Bill of Lading or Airway Bill or Postal Receipt or International Carrier's Receipt.
- Original Exception Remarks
- Copies of delivery receipts.
- Ship's Outturn documents, tally sheets, etc. that can be used as evidence of loss.
- First written notice of claim on the party responsible for the loss or damage. Copies can be produced against the contractor, the vessel's owner, the custom's broker, and other concerned parties.
- Joint survey
- Additional documents to presented in the absence of the Bill of Lading:
    - ✓ Copy of the contract for inland forwarding services
    - ✓ Copy of final delivery receipt
    - ✓ First written notice of claim on the inland carriers and all subsequent correspondence.
- Report by the surveyor.
- Equipment Interchange Receipt or EIR for cargoes shipped via containers.
- Documentary evidence and detailed information about the container.
- Photographs
- The insured's statement of claim.

5.2 Prescription Periods and Notice Requirements

5.2.1 Prescription by Statute

For marine insurance, there is no prescribed period to file for a claim. The Marine Insurance Act 1906's non-prescription of a limitation period has caused uncertainty and confusion in the marine insurance industry. Different jurisdictions actually prescribe a limitation period, such as the case of British Columbia that provides a one year limitation period from the time of the loss. However, the decision of the Supreme Court of Canada in Ordon versus Grail (1998) showed otherwise. In this case, provincial statutes regarding limitation periods did not apply to marine insurance.

5.2.2 Contractual Limitation and Notice Periods

Given the uncertainty of limitation periods under the Marine Insurance Act 1906, some policies put down in writing the actions against insurers and the notice of claims commenced within a period of time.

5.2.3 Relief Against Forfeiture

At times, courts resort to relief against forfeiture. This prevents the insurer from rendering an insurance policy void due to breach of a condition, founded on the lack of prejudice. In the principle of relief against forfeiture, the insurer cannot rely on the passage of time in making a claim. Rather, the insurer has to prove that a claim was prejudiced in some way due to the lack of witnesses or evidence. If this is not proven, the courts will almost always put their favor on the assured.

Chapter 6. Disputing a Denied Claim

* * *

Marine insurance operates under the assumption of good faith. This means that at the time the policy was drawn, the parties involved declared facts and beliefs in good intent. But sometimes when an insurance claim is denied without good reason, it might lead the insured to think that the insurance agency acted in bad faith.

While it must be noted that not all denied claims are done in bad faith. There are telltale signs to unjust denials, such as reduced settlements and inadequate justifications. At times, the insurance company can simply refuse to pay, cease to communicate, or even fail to conduct an investigation. Such examples are denials made in bad faith that gives the insured the right to take action against the insurance company.

This chapter will discuss why a claim might be denied, and what the insured can do in the face of this situation.

The insured has the right to consult with a maritime attorney regarding a denied claim done in bad faith. If proven as such, he will be entitled to the agreed insurance payout, as well as punitive damages.

6.1 Reasons Why a Claim is Denied

Marine insurance is a contract of indemnity, whereby an insurance company guarantees against losses and damages from fortuitous events, fortuitous meaning that it happened by accident or chance. So in marine insurance, a vessel does not have to burn down or collide with another vessel in order for the policy to approve a claim. It simply has to prove that the vessel was in good standing before the fortuitous event happened.

There are many types of policies and forms of marine insurance. The latter is designed to protect the insured from a list of perils that may be encountered during the marine adventure. In a marine insurance policy, wording is key. The insured needs to understand all the terms and conditions of his contract, and watch out for any exclusion and warranties.

One of the main reasons why a claim is denied is that the peril is not covered by the insurance policy. Another reason is that the insured might have breached the policy by raising questions about the vessel's seaworthiness, the legality of the marine adventure, and other deviations that can render the marine insurance contract to be void.

Let us cite an example of a ship owner whose vessel sank while it was docked. The insurance company rejected his claim based on the principle of seaworthiness. The argument being that if the vessel was fit for voyage, then chances are very slim that it would sink while it was docked. Insurance companies will always exhaust all

means to investigate a situation to conclude whether the event violated the marine insurance policy or not.

There are also perils that are not covered by marine insurance. Wear and tear, losses due to vermin, breakage, and willful misconduct are some of them. If the loss or damage is due to the list of items that are not considered as perils of the sea, then a claim will not be approved.

When the insured party files for a claim, the insurance company hires a marine surveyor to investigate the event. Most of the time, the report of the surveyor never finds itself in the hands of the insured, and goes directly to the insurance company as the basis for a claim. It is always advised for the insured to accompany the surveyor in the investigation or to hire his own surveyor for an objective evaluation of the loss or damage. In this way the insured will have a basis for the findings of the surveyor hired by the insurance agency.

These are some of the most common reasons why a claim is denied. In instances of denied claims, the insured should not hesitate to ask questions and to go through the terms and conditions of his policy word by word.

6.2 How to Handle a Denied Claim

A denied claim can be devastating to an already-devastated ship owner. Paying the premium on a policy was an important step in guaranteeing his assets. And it is saddening that the insurance company did not pull through when the insured needed it the most.

Before giving up hope on a denied claim, the insured has to regroup, refocus and evaluate his next steps. Here are ten tips that an insured person might take in the face of a denied claim.

First: The first “no” might not be the final answer.

According to statistics, about ten percent of insurance claims from all kinds of sectors are unjustly denied. And of this ten percent, only 1 percent takes action and questions the denied claim. Furthermore, statistics show that a majority of insured individuals who dispute their claims receive settlement in their favor.

It benefits the insured to know fully the terms and conditions of his marine insurance policy so that he can understand on what grounds the claim was denied, and then make a sound decision whether to question the claim or not.

Second: Request for a written explanation.

Most state laws will require an insurance company to put in writing the grounds for a denied claim. As additional documents, the insured can also request for a copy of the surveyor’s findings. Since surveyors do not act in favor of the insured, having a hired surveyor can validate or refute any findings the insurance agency presents.

Third: Familiarize one's self with the policy

With a written explanation available, the insured can continue to evaluate the insurance company's finding. If he is armed with apt knowledge about the terms and conditions of his insurance contract, the insured can further his informed decision on whether his claim was denied legitimately or not.

Fourth: Filling errors do not render a marine insurance contract void.

The previous chapter detailed the steps and documents involved in filing a claim. Should the need arise, the insured should coordinate with the insurance company on all the documentary requirements and instructions to complete in filing for a claim. It is a lot of hard and tedious work, but worth it once the claim is approved and released. If by any chance an insurance company finds fault in the way a form was filled out or if a deadline was missed, they cannot use it as grounds to refuse your claim.

Five: Know your claim

Having sufficient information about the marine insurance policy can help the insured in understanding the reason why a claim was unjustly denied. This type of knowledge begins at the very beginning when the contract was drawn. The insured can also further his research by studying past rulings by courts on the subject matter.

Six: Ask the broker

The broker is a person who initially assisted the insured in obtaining a marine insurance policy. And as such, the broker always acts on the insured's behalf. In the face of a denied claim, the insured can consult with his broker who will probably know the ins and outs of the policy's terms and conditions. The broker can also be connected to people within the insurance company and can get more information on why a claim was denied.

Seven: Talk to the insurance company

If the insurance company has yet to settle the claim after thirty days, the insured should exert efforts to start dialogue with the said insurance company. It does not matter that the conversation is with the company's help desk number. What is important is that the insured gets the paper trail going by documenting conversations himself, writing down the date and time of the call, asking the name of the phone operator, and requesting for a transaction number. To add to evidence, the insured may send emails after each phone call as additional documentation to the conversation that transpired.

Eight: Write a letter

In the light of a denied claim, the insured can put his grievances in writing, including all pertinent details of his policy. He should request for a written reply to his letter within a period of three weeks. Proof that the letter was sent and received should

also be documented. If no response is given, the insured should continue to send follow-up letters with a copy of the previous letters attached. In the United States, failure to respond to letters is a unfair insurance practice.

Nine: Consult a marine insurance attorney

The insured does not have to struggle by himself in the face of a denied claim. Unjust denials can be consulted with a maritime lawyer who can provide guidance on further legal actions in pursuing a claim.

Marine insurance litigation attorneys are available in every state to assist claims versus insurance companies. As a result of legal action, the insured can file damages, on top of the policy's pay out.

Disputing a claim and making a claim have much in common. Both will require documentation, focus, and attention. The difference is that this time, the insured, together with his lawyer, is doing the investigation in order to substantiate their claim of unjust denial.

In looking for a marine attorney, the insured is advised to look for one who has experience in the type of marine insurance he is claiming.

CONTACT MARITIME INSURANCE ATTORNEY, BILL VOSS, FOR A FREE NO OBLIGATION CONSULTATION AT (866) 276-6179, OR BY E-MAIL AT INFO@VOSSLAWFIRM.COM.

Chapter 7. Conclusion

* * *

The world has made much advancement in the fields of transportation and technology. Yet most of the traded goods today still arrive to their destination the way they did centuries ago.

When it comes to shipping, the vessels might have improved, but the basic concept remains the same. Majority of the world's goods still travel from port to port, from one country to another. For an industry worth billions of US dollars, risks from the perils of sea have to be minimized. And ship owners and businesses do this through marine insurance.

Marine insurance takes many forms, many policies, many types, and numerous details. Yet the simplest of concept still remains—it is a contract of guarantee based on good faith. Marine insurance recognizes the perils of the sea, and all the possible losses and dangers of a marine adventure. In exchange of this, the insured party pays a premium that will give effect to the contract of marine insurance.

Should a fortuitous event happen, the insured has to notify the insurance company immediately. An investigation will be launched to review and approve a claim. But just as a contract is made in good faith, the results of an insurance investigation may come in light of bad faith. When claims are denied for legal and unjust reasons, the insured has the right to file a litigation case against the insurance company. After which the final decision is left in the hands of a court of law, governed by the rules and regulations of the maritime industry.

CONTACT MARITIME INSURANCE ATTORNEY, BILL VOSS, FOR A FREE NO OBLIGATION CONSULTATION AT (866) 276-6179, OR BY E-MAIL AT INFO@VOSSLAWFIRM.COM.