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FUNDAMENTAL PRINCIPLES OF MARINE INSURANCE

Abstract

The article describes the fundamental principles of marine insurance. It mainly examines the principle of "utmost good faith" which is the cornerstone of insurance law. The main aim of an article is to help the reader to gain basic knowledge and understanding of the legal principles of marine insurance. The fundamental principles governing marine insurance are very helpful in the assessment of loss and the claim in the maritime insurance industry. As in all contracts of insurance on the property, also marine insurance contract is based on the fundamental principles.

Keywords: *marine insurance, Marine Insurance Act 1906, principles of marine insurance, utmost good faith, insurable interest*

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Dəniz sığortasının əsas prinsipləri

Xülasə

Məqalədə dəniz sığortasının əsas prinsipləri təsvir edilmişdir. O, əsasən sığorta hüququnun təməl daşı olan "ən yaxşı niyyət" prinsipini araşdırır. Məqalənin əsas məqsədi oxucuya dəniz sığortasının hüquqi prinsipləri haqqında əsas bilik və anlayış əldə etməyə kömək etməkdir. Dəniz sığortasını tənzimləyən fundamental prinsiplər dəniz sığortası sənayesində zərərin və iddianın qiymətləndirilməsində çox faydalıdır. Bütün əmlak sığortası müqavilələrində olduğu kimi, dəniz sığortası müqaviləsi də fundamental prinsiplərə əsaslanır.

Açar sözlər: *dəniz sığortası, Dəniz Sığorta Qanunu 1906, dəniz sığortası prinsipləri, ən yaxşı niyyət, sığortalana bilən maraq*

Introduction

An insurance policy is a contract that is concluded between the policyholder and the insurer. The policyholder pays a premium, in return, the insurer provides the agreed insurance cover. One of the fields of insurance is marine insurance, and marine insurance is an ancient and essential commercial device. Marine insurance plays an important role not only in domestic trade as well as in international trade. But, firstly what is marine insurance? Marine insurance is stated in the Marine Insurance Act 1906 (MIA 1906) as a contract 'whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure' (1).

This definition contains two important conceptions: indemnification, and marine adventure. The fundamental idea of marine insurance, as with all other insurance, is to indemnify the insured against the loss he has incurred from an insured risk. This is the general rule; there may be particular and limited exceptions. From this general rule, further important principles follow (2).

So, marine insurance is a form of general insurance policy covering the loss or damage of ship, cargo, hull, or any other equipment and transport between the point of origin and final destination of the voyage. It works as a contract where the insurer undertakes the responsibility to indemnify the insured (policyholder) in case of any damage or loss as mentioned in the policy (3). Perils covered under marine insurance contract are the following: loss due to bad weather; loss due to fire; loss due to pirates attack; loss due to high waves and collision.

And exclusions are these: loss or expenses proximately caused by delay; loss or damage due to willful misconduct; loss or damage due to unsuitable or defective packaging (4).

There are mainly five fundamental principles are derived from the Marine Insurance Act, 1963 govern the marine insurance contracts:

Principle of Utmost Good Faith (Uberrimae Fidei): There’s no clear definition of 'utmost good faith'. It is defined in Robert W Strain, Reinsurance, as 'firm adherence to promises made to another, including disclosure of all relevant facts, and complete trust in the fidelity of the other'. Black's Law Dictionary defines this phrase as follows: 'Honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry. Honesty of purpose, freedom from intention to defraud, and, generally speaking, being faithful to one's duty or obligation'. Marine insurance is based on an important principle that is the crown area of this law, "Utmost Good Faith". It is laid out in Section 174 of the Marine Insurance Act 1906. It is the responsibility of the shipowner or freight owner to declare the facts, expectations, and beliefs to the insurer before or at the time of conclusion of the insurance contract. The insured must disclose any material fact known to him before the contract is signed. According to the Marine Insurance Law of 1906, the financial situation is known to the insured and the insured is considered to know every situation that needs to be known by him. The effect of not declaring a material event by the insurer causes the other party, which is the insurer, to avoid the contract. This happens because the marine insurance contract is a contract of good faith. It is very important for the insured not to make any misrepresentation, as it may lead to contract avoidance, so if the insured does not make any statement or misrepresentation, the insurer may avoid the contract from the beginning of the contract. Marine insurance contracts like any other contract follow the 'offer' and 'acceptance' procedure. Due to the features of the insurance market, marine insurance contracts have a higher degree of credit, especially when both parties have to fulfill their 'duty of utmost good faith' (5).

Insurance is Uberrimae Fidei -this is an important feature that should apply to all policies, regardless of risk or subject matter. The marine insurance contract based on utmost good faith principle. If one of the parties doesn’t follow this principle another party can terminate the contract. Lord Stephenson stated that "it is enough that much more is required of both parties to the insurance contract than simply the absence of bad faith".In the contract, the underwriter trusts the representation and acts in confidence that it is not misleading or that circumstances do not exist, at which time the contract becomes invalid and the underwriter can terminate the contract. Likewise, the contract would be null and void against the insurer if he concealed; as if he had insured the ship on a voyage that he knew was coming, and the action will be false to get the premium back. In Banque Keyser Ullmann V Skandia, Judge Steyn noted that the obligation "not only to refrain from bad faith, but also in a positive sense to observe the utmost good faith ..." Thus, the duty of good faith must be followed by both parties until the contract is completed.

The Marine Insurance Act 2015 (UK) improved the regime for the duty of good faith. With this Act duty of good faith changed as duty of fair presentation (6).

Principle of Insurable Interest: The principle of insurable interest is another important legal principle. The principle of insurable interest states that the insured must be able to incur financial losses in the event of a loss. A valid insurance contract can be concluded by a person only if he has an insurable interest in the subject matter of insurance, that is if he is interested in a marine adventure. Thus, the shipowner, cargo owner, and the person who provided the loan secured by the ship or any goods arriving on the ship, and even the insurer of the ship or cargo, have an insurable interest within their multiple interests (7).

Principle of Proximate Cause (Causa Proxima): Proximate cause simply means the nearest cause of loss. Application of this principle is very difficult according to the different kinds of maritime perils. To make the insurer liable the insured must prove these: 1) the loss is caused by maritime perils; 2) the peril is insured against in the policy, and 3) the peril insured against is the proximate cause for the loss sustained. This principle implies that the insurer becomes liable to pay for loss if the insured peril or risk is the proximate cause of loss (Zhu, 2020: 99-107).

Principle of Indemnity: This principle is one of the most important legal principles in insurance. It states that the insurer agrees to pay no more than the actual amount of damage. In other words, we can say that the insured should not profit from losses. Most of the property and liability insurance contracts are indemnity contracts. If a covered loss occurs, the insurer does not have to pay more than the actual amount of the loss.

*Principle of Subrogation:*This principle deeply supports the principle of indemnity. Subrogation means the replacement of the insurer in place of the insured to claim indemnity from the third party for damages covered by the insurance. Thus, the insurer has the right to recover from a reckless third party any payments for damages made to the insured. In marine insurance, subrogation is applied only after the loss has been paid. The insurer is only entitled to recover the amount he paid with rights and remedies (Costabel, 2017: 49).

Upon payment of full damage, the insurer has the right to take over the ownership of the insured object. The right is granted to him by refusal (not based on a subrogation right), and as a result, if the property is subsequently saved or returned, the insurer has the right to withhold all proceeds from the sale, even if they may exceed the amount paid, always assuming the property is fully insured and that the assured was not bearing part of the risk himself (10).

Conclusion

So, marine insurance is needed to maintain the risks in marine activities and it is a form of general insurance policy covering the loss or damage of ship, cargo, hull, or any other equipment and transport between the point of origin and final destination of the voyage. It works as a contract where the insurer undertakes the responsibility to indemnify the insured (policyholder) in case of any damage or loss. Marine insurance is governed by its fundamental legal principles. The article attempted briefly discuss these principles especially the principle of "utmost good faith" (Levin, 2002: 456-460). The Marine Insurance Act 2015 (UK) became the start of a modern period for insurance law. So, the Act improved the regime for the duty of good faith by transitioning to the duty of "fair presentation" from traditional doctrines of utmost good faith in the Marine Insurance Act 1906 in the UK.

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