

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 4 | Issue 2**

---

**2021**

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Marine Insurance in Post Pandemic Period

---

MINI.S<sup>1</sup>

## ABSTRACT

*The Covid-19 Pandemic had engulfed the whole world and Covid pandemonium touched every nook and corner of life. Trade and Commerce were worsely affected during this period. Trade and Commerce via sea route was not left untouched and hence an introspection into Marine Law and the insurance relating to Covid Pandemic was felt necessitated. This paper focuses on the different aspects of marine law, particularly marine insurance. Marine law is the one of the oldest types of law that govern, tort, contract, shipping, claims over shipments and like. The Cruise ships, with large numbers of passengers and crew and an emphasis on communal dining and group activities - became incubators of the Covid-19 virus, and infections on ships have been termed as floating nightmares. This has touched the trade and commerce in marine areas resulting in heavy loss in trade and commerce and hence the need to extend the applicability of insurance in trade and commerce via sea. Insurance implications arise from the disruption of shipping and logistics due to the pandemic. Delay in transit was the major disadvantaged part of the pandemic crisis. There was embargo of marine cover with respect to the delay in transit. Cargo is also envisaged to be held for a longer duration at ports and for storage locations. The impact of Covid-19 on marine insurance opens scope of different possible lacunas in policy coverages. The situations in which the policy doesn't cover and different types of claims that is likely to arise in future also is covered in this paper. This also aims to cover the different types of marine insurance and their extension and applicability in the deadly pandemic period.*

## I. INTRODUCTION

Maritime law, also known as admiralty law, is a body of laws, conventions, and treaties that govern private maritime business and other nautical matters, such as shipping or offenses occurring on open water. International rules, governing the use of the oceans and seas, are known as the Law of the Sea. Marine law is the one of the oldest types of law that govern, tort, contract, shipping, claims over shipments and like. Marine insurance plays very important role in the modern post pandemic period. As the pandemic raged worldwide, the plight of the passengers and crew on board cruise ships and the cruise industry came into stark focus. Such

---

<sup>1</sup> Author is a Asst. Professor at Government Law College, Thrissur, Kerala, India.

instances are most prominently seen in the present pandemic situation. The Cruise ships, with large numbers of passengers and crew and an emphasis on communal dining and group activities - became incubators of the Covid-19 virus, and infections on ships like the *Diamond Princess* have been described as floating nightmares.

These incidents involving cruise ships pose the question whether the cruise industry can survive or recover from the effects of the pandemic and the remedies to survive the same.

### **A. Cargo Congestion**

Many countries have taken preventive measures during the pandemic by imposing lockdown or restricting movement. Some retailers and manufacturers fail to pick up their cargo and containers because their warehouses are full or closed. Some ports remain open but have reduced workforce, which exacerbates the cargo congestion. This causes disruption of the supply chain, including movement of essential goods and foodstuffs.

The cargo lying uncollected at ports creates congestion and takes up space, reducing capacity for incoming cargo and containers. Some ports have taken the precaution to declare 'force majeure' to pre-empt claims and legal liability. The closure of ports and port congestion has caused disruptions in the supply chain and import and exports.

### **B. Insurance**

Insurance implications arise from the disruption of shipping and logistics due to the pandemic. Cargo owners, importers, risk managers and insurers need to monitor closely, any delay or interruptions in transit. The insurance implications of the disruption include cargo and stock along with limited workforce availability, which will reduce capacity to distribute and handle goods. Cargo is also envisaged to be held for a longer duration at ports and for storage locations to see a volume increase whilst stocks await their next destination. These areas put embargo of normal marine cover.

- Although many want to keep their cargo moving, delay during the ordinary course of transit or while the goods are in storage could soon be inevitable. Most cargo and stock throughout policies exclude loss or damage solely caused by delay.

- Hold-ups or re-routing goods to an alternative destination due to government prohibition will incur an additional cost. Although these costs are usually sub-limited, the additional forwarding costs clause (or similar) will provide extra financial support if one experience added expenses.

- Perishable items such as pharmaceutical products and produce operate on a stringent and well-monitored time schedule. The normal cover for marine insurance does not cater to the characteristics of these cargoes due to exclusions for inherent vice and delay. Both will operate when ports are congested and cargo clearance is delayed in the current outbreak.

## II. HISTORY OF MARINE INSURANCE

The first basic insurance policy was the code of Hammurabi during Babylonian times around 2100BC. This policy was paid by the traders in the form of a loan to guarantee the safe arrival of their goods by caravan. During BC 916, the Rhodians who were basically agricultural people turned to commerce for trading their surplus product and they obtained mastery of the sea gradually. They introduced a new system of maritime code and in that General average,<sup>2</sup> bottomry<sup>3</sup> bonds were used. In the medieval times, Greeks also followed such a pattern for their marine transported goods. Then in 1347, Santa Clara, the first insurance contract was signed in Genova. That policy was in Italian language.

In 1688, the first Company was formed, Lloyd's of London, which introduced the idea of insuring of cargos by insuring them for a premium. The first premium paid was \$100 for a ship's cargo. But the Lloyd's were not allowed to establish a monopoly over the marine business and in 1720, Parliament allowed 2 or more marine insurance companies to be established in London.

In India the concept of pooling of resources to distribute in case of calamities can be traced back to Vedic period <sup>4</sup>

In ancient India, the concept of insurance was followed as marine trade loans and carriers contract. In 1870, British insurance Act was enacted and in 1970 Indian Mercantile Insurance Ltd. was established for transacting general insurance barriers. The first Marine Insurance Act was enacted in 1963<sup>5</sup>.

The basic principle of insurance is indemnity recoverable from the insurer for the pecuniary loss suffered by the assured, in manner and to the extent thereby agreed, against marine losses.<sup>6</sup>

---

<sup>2</sup> General average is the loss falling severally on all the interest in the joint venture. When in an exigency for lighten the vessel for the safety of the ship, and the goods of a particular individual is jettisoned, then the other individuals in the venture contribute to loss suffered by those whose property was sacrificed.

<sup>3</sup> Ship/cargo owners borrow money for carrying on their ventures by pledging their vessels or cargoes as security for such loans. the document stating the terms of the agreement is known as Bottomry Bond.

<sup>4</sup> Manusmriti by Manu, Dharmasastra by Yagnavalkya and arthasastra by Kautilya clearly states about the Concept of insurance.

<sup>5</sup> "Realing back in history to understanding Marine insurance/P&I clubs"; <https://www.mondaq.com/india> last visited on 5/7/20 at 12:30pm. The risk of ship owners, cargo owners terminal handlers and various intermediaries in the shipping business are covered by marine insurance.

<sup>6</sup> Sec.3, Indian Marine Insurance Act 1963.

A marine policy is to be construed according to its sense and meaning, which can be derived from the terms used in it and if the words are unambiguous, then plain, ordinary and popular sense is to be given to the terms.

Thus marine insurance is in essence pure interpretation of the contract contained in common form of policy.<sup>7</sup> The parties are free to make their own contract and to exclude or vary the statutory terms<sup>8</sup>. So marine policy is only an indemnity for liquidated damages.<sup>9</sup> The contract of marine insurance must be embodied in the policy.<sup>10</sup> When the appellant sue the respondent for breach of contract of sea insurance as not being expressed in a policy was unenforceable.<sup>11</sup> There should be some casualty, something that would not be foreseen, as one of the necessary accidents of adventure.<sup>12</sup> A marine policy must specify essential matters.<sup>13</sup>

For determining the measure of indemnity in case of an unvalued policy or when the valuation is not conclusive, the insurable value of the subject matter insured becomes very relevant. For admitting a marine policy as evidence, it should be embodied in a policy in accordance with the Act, or else the contract will be treated as an invalid one.<sup>14</sup>

### **III. TYPES OF INSURANCE**

Marine insurance is of 3 types.

- 1) P and I (protection and indemnity) club
- 2) Hull and machinery
- 3) Cargo Insurance

#### **1. P & I Club**

Protection and Indemnity or better known as P & I Clubs, are a compilation of non-profit making organizations controlled by ship-owners and operators who communally contribute to certain third party liability risks related to their business especially their maritime businesses. The P and I club is a non-governmental, non-profitable, mutual or co-operative association of marine insurance providers, to its members consisting of ship owners, operators etc. P and I

---

<sup>7</sup> Kulukundis V Norwich Union Fire Insurance Society, (1937)1K. B 1, 34.LA ( Per) Scott L.J

<sup>8</sup> Richards V Forest Land, Timber& Railway Co. Ltd, (1941) All ER 62, HL.

<sup>9</sup> Sec.5 of Marine Insurance Act states that Lawful marine adventure. — Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance

<sup>10</sup> Sec.24, Indian Marine Insurance Act, 1963.

<sup>11</sup> Surajmull Nagoremull V Triton Insurance Co. Ltd. (1924) L.R 52 I.A126,129.

<sup>12</sup> Stewart V New Zealand, (1912)16 C.W.N, 991,996

<sup>13</sup> Sec.25, Indian Marine insurance Act,1963.

<sup>14</sup> Sec 7(1) of Indian Stamp Act, 1899 states No contract for sea insurance shall be valid unless the same is expressed in a sea policy.

insurance is specifically designed to address unique needs of the industry, covering all maritime liability risk associated with the ownership and operation of vessel, including 3<sup>rd</sup> party risks for damage caused to cargo during transit, risks of environmental damage such as oil spills and pollution, war and political risk.<sup>15</sup> During the sea service, the most valuable element onboard, i.e. human life can be at risk due to illness, injury by accident or even death by hazards.

A P&I club provides compensation in the form of insurance cover for reasons as mentioned above to the seafarers. This not only helps him in the difficult time but also to the seafarer's family in case of death of their earning member. Each P&I club sets a premium for an individual owner reflecting:

- The risks against which he requires cover
- His fleets gross tonnage
- His fleets exposure to risk

Other factors includes the likelihood of significant claims in the coming years.

#### **FUNCTIONS OF P & I CLUB**

1. Ensure ship owners and operators against third-party liabilities not covered by hull and machinery policies obtained.
2. Ensure entire company fleets, but tend to prefer owners with similar types and standards of fleet.
3. subject owner's vessels are pre inspected before entry into the club and during membership.
4. Strive to keep 'calls on their members' at a minimum through loss prevention methods such as information bulletins aimed at owners insurance officers.
5. Disseminate information aimed at keeping members premiums down.
6. Produce lists of correspondents and reliable lawyers and surveyors.
7. Produce standard forms of letters of indemnity and protest.
8. May post bonds against members, ships when under arrest.
9. Issue handbooks containing club rules and lists of correspondents, which are very useful to master seeking advice and assistance win in any kind of trouble.

---

<sup>15</sup>What is protection and indemnity insurance, Bethan Moorcraft <https://insurancebusinessmag.com/asia/news> last visited on 7/7/2020 at 3pm

P and I provides policy holders with protection against personal injury, illness and death claims from crew, passengers and covers things like,

- 1) Liability claims as a result of collision.
- 2) Removal of wreck
- 3) Stowaway of repatriation.
- 4) Damages to or loss of cargo
- 5) Civil liabilities imposed after pollution or oil spill.
- 6) Liability under approved towage contract<sup>16</sup>

## **2. Hull and Machinery Insurance**

Hull and machinery insurance is a type of ocean marine insurance, which protects the insured vessel or fleet against physical damage caused by a peril of the sea or other covered perils while the vessel is in transit over water. This policy covers the vessel of transportation against physical damage caused by the perils of sea or other covered perils while the vessel is in transit over water. This policy covers the property of the ship, the machinery of equipment involved. Some policies also covers loss caused by piracy. It covers liability from collision with other ships known as RDS, Running down clause of liability for colliding with other objects than another ship known as FFO- Fixed and Floating Objects.

Hull and Machinery insurance usually covers loss or damage caused by major named perils such as collision, grounding, fire and explosion, earthquakes (and the tidal waves that might follow them), as well as general perils of the sea, lakes or rivers - which must be shown to be extraordinary in nature rather than just the fact that the sea was a bit rough that day. Some Hull and Machinery policies also cover loss caused by piracy which is quite an important issue currently, with the situation in various parts of the world such as the coasts of East and West Africa as well as parts of South East Asia.

This type of policy also covers loss or damage to the vessel caused by accidents in moving cargo or fuel around (such as capsizing (tipping over the ship), or arising because a piece of machinery has broken, or a boiler has burst. Negligence by the crew, or a repairer, is also covered. However, there is a requirement for the assured to exercise something known as due diligence, which means that if there is engine type damage, insurers will be looking for examples to make sure that the regular maintenance was up-to-date and undertaken properly, or

---

<sup>16</sup> id

that the crew have been trained properly.

Under this coverage, whilst the damage caused by the piece of machinery breaking or the boiler bursting is covered, the actual boiler or piece of machinery is not. Sometimes ships collide - both with other ships and other objects, such as navigation buoys. In many cases the ship will be liable in law for any damage caused to the other ship or object. The hull and machinery policy, although mainly a physical damage policy, does provide an element of liability cover so long as the collision is with another ship.

The cover is for the damages that the insured ship will have to pay not only to the other ship, but also any property such as cargo (goods) on the other ship. The cover in some policies however is limited to 75% of the actual liability of the ship owner. The original aim of insurers was that by bearing the other 25% themselves, the ship owners might take more care in the operation of their ships. What has happened in practice is that the ship owners have organised other insurance for that 25%.

Most hull and machinery policies will also cover sue and labour expenses, which are those costs incurred by an insured when trying to solve a problem for himself - although the loss may in fact be covered by the insurers.. The insured might call for some tugs to come and help tow the ship into the nearest port -which would be very prudent as a ship without power is a danger to itself and also other vessels. As this action has probably reduced or even removed an insurance claim, the insurers will pay those reasonable tug costs.

Particular to maritime law, and by reference therefore marine insurance, are the concepts of salvage and general average. Salvage is the concept of someone voluntarily rescuing you who then earns a reward. General Average is the concept of all parties (for example ship and cargo) contributing to the costs or expenses one of them makes in order to save everyone.

The claims under this type of insurance include – total loss or damage of the ship, engines and equipment, Explosions and Fires, Salvage of the Ship and contribution in General Average, RDC and FFO collisions and war Insurance, loss of Hire insurance, Sue and Labor expenses etc. This type of insurance will include a trading warranty clause stating where the vessel should trade. But this type of insurance relies on due diligence on the part of the assured.

### **3. Cargo Insurance**

The insurance helps the cargo owners against damage or loss of cargo due to delay in voyage, ship accident etc. It covers 3<sup>rd</sup> party liability covering the damage to the port, ship or other

transport forms resulted from the dangerous cargo carried by them.<sup>17</sup>

Then there are other different types of insurance coverage like Voyage Policy, Time Policy, Mixed Policy, Open or unvalued Policy, Valued Policy, Port Risk Policy, Wager Policy, Floating Policy, Single vessel policy, Fleet Policy, Block Policy etc. for different particular aspects.

### **Risks Covered under Marine Insurance**

Sec. 4 of Marine Insurance Act, 1963, covers the risks that will be covered under the Act.<sup>18</sup>

Various other risks that are covered by the Marine Insurance are perils of sea, fire, war, pirates and thieves, jettison, strikes, barratry etc.

## **IV. IMPACT OF COVID 19 OVER MARINE INSURANCE**

As the pandemic is spreading across the globe, the global marine insurance is also at stake. It has reflections in trade and supply chains. Due to the pandemic, the workforce will be reduced in all supply points and it will be difficult to distribute and handle goods.

The main problems that will be faced during COVID 19 are delay in ordinary transit. This delay will have consequential effects on the contractual obligations and for claiming compensation, the insured ship owners will have to rely on the clauses of the policy. Most insurance policies exclude loss or damage caused by delay. Hence the owners will find it difficult to claim their compensation. By this delay, the contract of supply, where time is an essence of contract, will be violated. But that will not be covered by the policy.

Then comes the issue of additional cost or charge happened while experiencing re-routing the goods to an alternative destination because of denial of permissions by govt. to anchor ship in a port. This will incur additional cost. This type of expenses will be covered by the insurance premium, if there is an additional forwarding clause included in the policy.

The majority of the difficulties deriving from COVID-19 are likely to be experienced by assureds themselves, for example travel restrictions, business closures and shifting supply chain demands. However, marine insurers may also be affected by business infrastructure,

---

<sup>17</sup> "Different types of Marine Insurance and Marine Insurance Policies", Raunek, <https://www.marineinsight.com/maritime-law>, last visited on 07/07/20 at 4pm

<sup>18</sup> Sec.4 of Marine Insurance Act states that 1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any risk which may be incidental to any sea voyage.

2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto, but except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this act defined.

government and regulatory, consumer demand, and operational and supplier factors. COVID-19 has resulted in disruptions throughout global supply chains. For example, some companies are seeking to renegotiate supply contracts or delay payments, terminals are accumulating cargoes and risk, vessels and crews are facing quarantine and crew change challenges, and deliveries are being delayed. Disruptions to even one section of a supply chain will naturally have cascading effects, and may ultimately affect a range of insurance policies.

The impact of COVID 19 on vulnerable and perishable goods is indeed to be considered. The goods which have a short life span like food products, dairy products, pharmaceuticals etc. , which is onboard voyage, where time is an essence of contract, will definitely suffer huge loss.

Covid-19 infections will be treated just like any other illnesses and hence, even though the pandemic is causing logistical and other practical issues, it will not affect P & I cover. It is true that Sec.4 of the Marine Insurance Act covers medical costs, repatriation and sick wages. If the insured had taken coverage of crew and passenger illness, that will be covered. <sup>19</sup>If the crew member contracts Covid-19 enroute voyage, the same can be covered under the policy, if the travel is as per the employment contract.

Then there will be the issue of prolonged stay in the ship because of Covid-19 restrictions, P&I insurance will not be covering costs incurred during this period. But the situation is different if the crew member is affected with illness during the subsistence of contract. But there may be situation in which the number of persons on board exceeds the limit. In such situation, it will be difficult to get coverage of P& I Insurance. Similarly, P & I Insurance coverage will not be extended if the crew member is being repatriated to his mother land on the completion of employment contract. But repatriation due to illness will be covered under the insurance as it will be coming under casualty in the policy.

Even though the Charterers liability covers compensation of unexpected quarantine of vessel, it does not include loss of earnings as hire payment and demurrage. And as no specific exclusion is there, cargo claims resulting from delay by the pandemic prevention will be usually covered as per the conditions in P &I insurance policy

Hence COVID 19 will have far-reaching effects on marine insurance. As there are travel restrictions and shifting of chain supply demands, many difficulties are likely to arise. Due to Covid -19 restrictions, many terminals are faced with the issue of accumulating goods thereby making it difficult to deliver it for supply.

---

<sup>19</sup> Ibid 17.

This Post- Covid period is going to witness many claims under different heads. Many new heads are to be anticipated, like, liability to persons on ship, illness and death of seamen, etc. One major change has to be there in the matter of Repatriation and substitution expenses, Quarantine expenses. The claims for sue and labour cost may also rise in future.

The liability of insurer towards passengers covers illness and death claim and also extends to damages and compensation to passengers on board, as a result of casualties in the ship.

<sup>20</sup>Similarly there will be problem of potential cash flow in paying premiums and many projects will be delayed reducing investment in industry and the returns from the investment will be low. Considering P& I liability, many claims regarding quarantine, sea fearers' illness and death, repatriation cost, passenger liability is likely to arise. <sup>21</sup>

In the area of Cargo insurance, the main problem will be decline in trade, fragility in supply chain, warehouse overflow, port accumulation, reduction of work force, supply chain affected by border controls and factory closures. <sup>22</sup>

In Hull and Machinery insurance, the problem of availability of spare parts, increased vessel lay-ups, scrapping, changing voyage patterns are likely to arise.<sup>23</sup> As usually the marine insurance policy covers physical damage, the present situation of Covid-19 necessitates policy restructuring by including non physical loss in the insurance policy.

To successfully claim a policy, the owner or the insured will have to prove that the incurred loss is the result of Covid-19. The insured should be able to prove that the non physical damage is the result of Covid-19.

Cargo owners also face potential dangers as a result of lockdown and other related hindrances. In the present situation, there is possibility of delay for the insured to pick the cargo from the destination ports. This will result in lack of warehouse space. So the insured will have to bear the detention charges. The present insurance policies don't cover detention charges. These charges are expressly excluded under the policies.

## **V. CONCLUSION**

Hence it is important to highlight that the pandemic era has brought about a tremendous change in the lifestyle and the risk suffered by people and that too it has reflected in the modes of

---

<sup>20</sup> Mark Cracknell, Covid -19: The impact on Marine Protection and Indemnity Coverage, [www.marsh.com/uk/insights/research](http://www.marsh.com/uk/insights/research) last visited on 7/7/2020.

<sup>21</sup> Richard Turner, Covid-19 and the impact on marine insurance, [www.Inmi.com/uploads/webinar](http://www.Inmi.com/uploads/webinar) last visited on 7/07/2020

<sup>22</sup> Id.

<sup>23</sup> Id

conveyance resulting in economic and commercial issues. To overcome the economic and commercial issues, the insurers have to determine how to respond to the claims where noncompliance with policy terms will be there. There is a possibility of increase in internal or local trade, which will adversely affect international trade and marine transportation. This type of locale concentration will help the producers to diminish the unexpected risks. But that type of market will have a negative impact in the economic system in the long run.

The global arena will face many insolvencies and there will be increase of claims both genuine and fraudulently. So, to overcome these difficulties, it is highly necessary that terms and exclusions included in the policy has to be redrafted or reinterpreted so as to help the sinking companies. The legislation should definitely be revamped in such a manner that that the marine insurance. the metes out the commercial and economic issues suffered by people during Pandemic Similarly, the insurers will also have to alter their way of business, giving more scope for bringing up of more insurance centres around the world.

\*\*\*\*\*