

1 covered by an insurance policy in the form of a marine insurance
2 policy, the provisions of this article, in so far as applicable,
3 shall apply thereto, but, except as by this section provided,
4 nothing in this article shall alter or affect any rule of law
5 applicable to any contract of insurance other than a contract of
6 marine insurance as by this article defined.

7 **§431: -3 Marine adventure and maritime perils defined.**

8 (a) Subject to this article, every lawful marine adventure may
9 be the subject of a contract of marine insurance.

10 (b) There shall be a marine adventure where:

11 (1) Any ship goods or other moveables are exposed to
12 maritime perils. Such property is in this article
13 referred to as "insurable property";

14 (2) The earning or acquisition of any freight, passage
15 money, commission, profit, or other pecuniary benefit,
16 or the security for any advances, loan, or
17 disbursements, is endangered by the exposure of
18 insurable property to maritime perils; or

19 (3) Any liability to a third party may be incurred by the
20 owner of, or other person interested in or responsible
21 for, insurable property, by reason of maritime perils.

22 For the purposes of this section, "maritime perils"



1 means the perils consequent on, or incidental to, the
2 navigation of the sea, including perils of the seas,
3 fire, war, perils, pirates, rovers, thieves, captures,
4 seizures, restraints, and detainment's of princes and
5 peoples, jettisons, barratry, and any other perils,
6 either of the like kind or that may be designated by
7 the policy.

8 **PART II. INSURABLE INSURANCE**

9 **§431: -11 Avoidance of wagering or gaming contracts. (a)**

10 Every contract of marine insurance by way of gaming or wagering
11 is void.

12 (b) A contract of marine insurance is deemed to be a
13 gaming or wagering contract if:

- 14 (1) The insured has no insurable interest as defined by
15 this article, and the contract is entered into with no
16 expectation of acquiring such an interest; or
17 (2) The policy is made "interest or no interest", "without
18 further proof of interest than the policy itself",
19 "without benefit of salvage to the insurer", or
20 subject to any other like term;



1 provided that, where there is no possibility of salvage, a
2 policy may be effected without benefit of salvage to the
3 insurer.

4 **§431: -12 Insurable interest defined.** (a) Subject to
5 the provisions of this article, every person has an insurable
6 interest who is interested in a marine adventure.

7 (b) A person is interested in a marine adventure where the
8 person stands in any legal or equitable relation to the
9 adventure or to any insurable property at risk therein, in
10 consequence of which the person may benefit by the safety or due
11 arrival of insurable property, or may be prejudiced by its loss,
12 or by damage thereto, or by the detention thereof, or may incur
13 liability in respect thereof.

14 **§431: -13 When interest must attaches.** (a) The insured
15 shall be interested in the subject-matter insured at the time of
16 the loss, though the insured need not be interested when the
17 insurance is effected; provided that where the subject matter is
18 insured "lost or not lost", the insured may recover although the
19 insured may not have acquired an interest until after the loss,
20 unless at the time of effecting the contract of insurance the
21 insured was aware of the loss, and the insurer was not.



1 (b) Where the insured has no interest at the time of the
2 loss, the insured shall not acquire interest by any act or
3 election after the insured is aware of the loss.

4 **§431: -14 Defeasible or contingent interest.** (a) A
5 defeasible interest is insurable, as also is a contingent
6 interest.

7 (b) Where the buyer of goods has insured the goods, the
8 buyer has an insurable interest, notwithstanding that the buyer,
9 at the buyer's election, might have rejected the goods, or have
10 treated them as at the seller's risk, by reason of the latter's
11 delay in making delivery or otherwise.

12 **§431: -15 Partial interest.** A partial interest of any
13 nature is insurable.

14 **§431: -16 Re-insurance.** (a) The insurer under a
15 contract of marine insurance shall have an insurable interest in
16 the risk, and may re-insure in respect of it.

17 (b) Unless the policy otherwise provides, the original
18 insured shall have no right or interest in respect of such re-
19 insurance.

20 **§431: -17 Bottomry.** The lender of money on bottomry or
21 respondentia has an insurable interest in respect of the loan.



1 **§431: -18 Master's and seamen's wages.** The master or any
2 member of the crew of a ship shall have an insurable interest in
3 respect of one's wages.

4 **§431: -19 Advance freight.** In the case of advance
5 freight, the person advancing the freight shall have an
6 insurable interest, in so far as such freight is not repayable
7 in case of loss.

8 **§431: -20 Charges of insurance.** The insured shall have
9 an insurable interest in the charges of any insurance which the
10 insured may effect.

11 **§431: -21 Quantum of interest.** (a) Where the subject
12 matter insured is mortgaged, the mortgagor shall have an
13 insurable interest in the full value thereof, and the mortgagee
14 shall have an insurable interest in respect of any sum due or to
15 become due under the mortgage.

16 (b) A mortgagee, consignee, or other person having an
17 interest in the subject-matter insured may insure on behalf and
18 for the benefit of other persons interested as well as for one's
19 own benefit.

20 (c) The owner of insurable property shall have an
21 insurable interest in respect of the full value thereof,



1 notwithstanding that some third person may have agreed, or be
2 liable, to indemnify the owner in case of loss.

3 **§431: -22 Assignment of interest.** Where the insured
4 assigns or otherwise parts with his interest in the subject-
5 matter insured, the insured shall not thereby transfer to the
6 assignee his rights under the contract of insurance, unless
7 there be an express or implied agreement with the assignee to
8 that effect. This section does not affect a transmission of
9 interest by operation of law.

10 **§431: -23 Measure of insurable value.** Subject to any
11 express provision or valuation in the policy, the insurable
12 value of the subject-matter insured shall be ascertained as
13 follows:

- 14 (1) In insurance on ship, the insurable value is the
15 value, at the commencement of the risk, of the ship,
16 including her outfit, provisions and stores for the
17 officers and crew, money advanced for seamen's wages,
18 and other disbursements, if any, incurred to make the
19 ship fit for the voyage or adventure contemplated by
20 the policy, plus the charges of insurance upon the
21 whole. The insurable value, in the case of a
22 steamship, includes also the machinery, boilers, and



1 coals and engine stores if owned by the insured, and,
2 in the case of a ship engaged in a special trade, the
3 ordinary fittings requisite for that trade;

4 (2) In insurance on freight, whether paid in advance or
5 otherwise, the insurable value is the gross amount of
6 the freight at the risk of the insured, plus the
7 charges of insurance;

8 (3) In insurance on goods or merchandise, the insurable
9 value is the prime cost of the property insured, plus
10 the expenses of and incidental to shipping and the
11 charges of insurance upon the whole; and

12 (4) In insurance on any other subject matter, the
13 insurable value is the amount at the risk of the
14 insured when the policy attaches, plus the charges of
15 insurance.

16 **PART III. DISCLOSURE AND REPRESENTATIONS**

17 **§431: -31 Disclosure by insured.** (a) Before the
18 contract is concluded, the insured shall truthfully inform the
19 insurer of the material circumstances that the insured has
20 knowledge of or ought to have knowledge of in the insured's
21 ordinary business practice and that may have a bearing on the



1 insurer in deciding the premium or whether the insurer agrees to
2 insure or not.

3 (b) The insured is not required to inform the insurer of
4 the facts that the insurer has known of or the insurer ought to
5 have knowledge of in the insurer's ordinary business practice if
6 about which the insurer made no inquiry.

7 **§431: -32 Right to terminate.** (a) Upon failure of the
8 insured to truthfully inform the insurer of the material
9 circumstances set forth in section 431: -31(a) due to the
10 insured's intentional act, the insurer shall have the right to
11 terminate the contract without refunding the premium. The
12 insurer shall not be liable for any loss arising from the perils
13 insured against before the contract is terminated.

14 (b) If, not due to the insured's intentional act, the
15 insured failed to truthfully inform the insurer of the material
16 circumstances set out in section 431: -31(a), the insurer shall
17 have the right to terminate the contract or to demand a
18 corresponding increase in the premium. If a contract is
19 terminated by the insurer, the insurer shall be liable for the
20 loss arising from the perils insured against that occurred prior
21 to the termination of the contract, except where the material



1 circumstances uninformed or wrongly informed of have an impact
2 on the occurrence of such perils.

3 **§431: -33 Disclosure by agent effecting insurance.**

4 Subject to section 431: -31(b) as to circumstances not required
5 to be disclosed, where insurance is effected for the insured by
6 an agent, the agent shall disclose to the insurer as follows:

7 (1) Every material circumstance known to the agent, and an
8 agent to insure is deemed to know every circumstance,
9 which in the ordinary course of business, ought to be
10 known by, or to have been communicated to, the agent;
11 and

12 (2) Every material circumstance that the insured is
13 required to disclose, unless it comes to the insured's
14 knowledge too late to communicate it to the agent.

15 **§431: -34 Representations pending negotiation of**

16 **contract.** (a) Every material representation made by the
17 insured or the insured's agent to the insurer during the
18 negotiations for the contract, and before the contract is
19 concluded, are required to be true. If any material
20 representation is untrue, the insurer may avoid the contract.



1 (b) A representation is material if it would influence the
2 judgment of a prudent insurer in fixing the premium, or
3 determining whether the prudent insurer will take the risk.

4 (c) A representation may be either a representation as to
5 a matter of fact, or as to a matter of expectation or belief.

6 (d) A representation as to a matter of fact is true, if
7 it be substantially correct, that is to say, if the difference
8 between what is represented and what is actually correct would
9 not be considered material by a prudent insurer.

10 (e) A representation as to a matter of expectation or
11 belief is true if it is made in good faith.

12 (f) A representation may be withdrawn or corrected before
13 the contract is concluded.

14 (g) Whether a particular representation is material or not
15 is, in each case, is a question of fact.

16 **§431: -35 When contract shall be deemed to be concluded.**

17 A contract of marine insurance shall be deemed to be concluded
18 when the proposal of the insured is accepted by the insurer,
19 whether the policy be then issued or not. For the purpose of
20 showing when the proposal was accepted, reference may be made to
21 the slip or covering note or other customary memorandum of the
22 contract.



PART IV. THE POLICY

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§431: -41 Contract must be embodied in policy. Unless otherwise specified, a contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this article. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

§431: -42 What policy must specify. A marine policy shall specify the name of the insured, or of some person who effects the insurance on the insured's behalf.

§431: -43 Signature of insurer. (a) A marine policy shall be signed by or on behalf of the insurer, provided that in the case of a corporation, the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

(b) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the insured.

§431: -44 Voyage and time policies. Where the contract is to insure the subject matter "at and from," or from one place to another or other, the policy is called a "voyage policy", and where the contract is to insure the subject matter for a



1 definite period of time, the policy is called a "time policy".
2 A contract for both voyage and time may be included in the same
3 policy.

4 **§431: -45 Designation of subject-matter.** (a) The
5 subject-matter insured shall be designated in a marine policy
6 with reasonable certainty.

7 (b) The nature and extent of the interest of the insured
8 in the subject matter insured is not required to be specified in
9 the policy.

10 (c) Where the policy designates the subject matter insured
11 in general terms, it shall be construed to apply to the interest
12 intended by the insured to be covered.

13 (d) In the application of this section, regard shall be
14 had to any usage regulating the designation of the subject
15 matter insured.

16 **§431: -46 Valued policy.** (a) A policy may be either
17 valued or unvalued.

18 (b) A valued policy is a policy that specifies the agreed
19 value of the subject matter insured.

20 (c) In the absence of fraud, the value fixed by the
21 policy, as between the insurer and insured, shall be conclusive



1 of the insurable value of the subject intended to be insured,
2 whether the loss be total or partial.

3 (d) Unless the policy otherwise provides, the value fixed
4 by the policy is not conclusive for the purpose of determining
5 whether there has been a constructive total loss.

6 **§431: -47 Unvalued policy.** An unvalued policy is a
7 policy that does not specify the value of the subject matter
8 insured, but subject to the limit of the sum insured, leaves the
9 insurable value to be subsequently ascertained, in the manner
10 previously specified.

11 **§431: -48 Floating policy by ship or ships.** (a) A
12 floating policy is a policy that describes the insurance in
13 general terms, and leaves the name of the ship or ships and
14 other particulars to be defined by subsequent declaration.

15 (b) The subsequent declaration or declarations may be made
16 by endorsement on the policy, or in other customary manner.

17 (c) Unless the policy otherwise provides, the declarations
18 shall be made in the order of dispatch or shipment. In the case
19 of goods, the declarations shall comprise all consignments
20 within the terms of the policy, and the value of the goods or
21 other property shall be honestly stated, but an omission or
22 erroneous declaration may be rectified even after loss or



1 arrival, provided the omission or declaration was made in good
2 faith.

3 (d) Unless the policy otherwise provides, where a
4 declaration of value is not made until after notice of loss or
5 arrival, the policy shall be treated as an unvalued policy as
6 regards the subject matter of that declaration.

7 **§431: -49 Construction of terms in policy.** (a) A policy
8 may be in the form in the first schedule to this article.

9 (b) Unless the context of the policy otherwise requires,
10 the terms and expressions mentioned in the first schedule to
11 this article shall be construed as having the scope and meaning
12 in that schedule assigned to them.

13 **§431: -50 Premium to be arranged.** (a) Where an
14 insurance is effected at a premium to be arranged, and no
15 arrangement is made, a reasonable premium shall be payable.

16 (b) Where an insurance is effected on the terms that an
17 additional premium is to be arranged in a given event, and that
18 event happens but no arrangement is made, then a reasonable
19 additional premium shall be payable.

20 **PART V. DOUBLE INSURANCE**

21 **§431: -51 Double insurance.** (a) Where two or more
22 policies are effected by or on behalf of the insured on the same



1 adventure and interest or any part thereof, and the sums insured
2 exceed the indemnity allowed by this article, the insured is
3 said to be over-insured by double insurance.

4 (b) Where the insured is over-insured by double insurance:

5 (1) The insured, unless the policy otherwise provides, may
6 claim payment from the insurers in such order as the
7 insured may think fit, provided that the insured is
8 not entitled to receive any sum in excess of the
9 indemnity allowed by this article;

10 (2) Where the policy under which the insured claims is a
11 valued policy, the insured shall give credit as
12 against the valuation for any sum received by the
13 insured under any other policy without regard to the
14 actual value of the subject matter insured;

15 (3) Where the policy under which the insured claims is an
16 unvalued policy, the insured shall give credit, as
17 against the full insurable value, for any sum received
18 by the insured under any other policy; and

19 (4) Where the insured receives any sum in excess of the
20 indemnity allowed by this article, the insured is
21 deemed to hold the sum in trust for the insurers,



1 that, if the adventure is not commenced within a reasonable
2 time, the insurer may avoid the contract.

3 (b) The implied condition may be negated by showing that
4 the delay was caused by circumstances known to the insurer
5 before the contract was concluded, or by showing that the
6 insurer waived the condition.

7 **§431: -72 Alteration of port of departure.** Where the
8 place of departure is specified by the policy, and the ship
9 sails from any other place, the risk shall not attach.

10 **§431: -73 Sailing for different destination.** Where the
11 destination is specified in the policy, and the ship sails for
12 any other destination, the risk shall not attach.

13 **§431: -74 Change of voyage.** (a) Where, after the
14 commencement of the risk, the destination of the ship is
15 voluntarily changed from the destination contemplated by the
16 policy, there is said to be a change of voyage.

17 (b) Unless the policy otherwise provides, where there is a
18 change of voyage, the insurer shall be discharged from liability
19 as from the time when the determination to change the
20 destination is manifested; and it is immaterial that the ship
21 may not in fact have left the course of voyage contemplated by
22 the policy when the loss occurs.



1 **§431: -75 Deviation.** (a) Where a ship, without lawful
2 excuse, deviates from the voyage contemplated by the policy, the
3 insurer shall be discharged from liability as from the time of
4 deviation, and it is immaterial that the ship may have regained
5 her route before any loss occurs.

6 (b) There is a deviation from the voyage contemplated by
7 the policy if:

8 (1) The course of the voyage is specifically designated by
9 the policy, and that course is departed from; or

10 (2) The course of the voyage is not specifically
11 designated by the policy, but the usual and customary
12 course is departed from.

13 (c) The intention to deviate is immaterial. A deviation
14 in fact is required to discharge the insurer from liability
15 under the contract.

16 **§431: -76 Several ports of discharge.** (a) Where several
17 ports of discharge are specified by the policy, the ship may
18 proceed to all or any of them, but, in the absence of any usage
19 or sufficient cause to the contrary, the ship shall proceed to
20 them, or such of them as the ship goes to, in the order
21 designated by the policy. If not, there is a deviation.



1 (b) Where the policy is to "ports of discharge", within a
 2 given area, which are not named, the ship must, in the absence
 3 of any usage or sufficient cause to the contrary, proceed to
 4 them, or such of them as the ship goes to, in their geographical
 5 order. If not, there is a deviation.

6 **§431: -77 Voyage policy; reasonable dispatch.** In the
 7 case of a voyage policy, the adventure insured shall be
 8 prosecuted throughout its course with reasonable dispatch. If
 9 without lawful excuse, there is no prosecution, the insurer
 10 shall be discharged from liability as from the time when the
 11 delay became unreasonable.

12 **§431: -78 Voyage policy; lack of reasonable dispatch;**
 13 **lawful excuse.** (a) Deviation or delay in prosecuting the
 14 voyage contemplated by the policy shall be excused:

- 15 (1) Where authorized by any special term in the policy;
- 16 (2) Where caused by circumstances beyond the control of
 17 the master and the master's employer;
- 18 (3) Where reasonably necessary to comply with an express
 19 or implied warranty;
- 20 (4) Where reasonably necessary for the safety of the ship
 21 or subject matter insured;



1 (5) For the purpose of saving human life, or aiding a ship
2 in distress where human life may be in danger;

3 (6) Where reasonably necessary for the purpose of
4 obtaining medical or surgical aid for any person on
5 board the ship; or

6 (7) Where caused by the barratrous conduct of the master
7 or crew, if barratry is one of the perils insured
8 against.

9 (b) When the cause excusing the deviation or delay ceases
10 to operate, the ship shall resume its course with reasonable
11 dispatch.

12 **PART VIII. ASSIGNMENT OF POLICY**

13 **§431: -81 When and how policy is assignable.** (a) A
14 marine policy is assignable unless it contains terms expressly
15 prohibiting assignment. It may be assigned either before or
16 after loss.

17 (b) Where a marine policy has been assigned to pass the
18 beneficial interest in the policy, the assignee of the policy is
19 entitled to sue thereon in the assignee's own name; and the
20 defendant is entitled to make any defense arising out of the
21 contract that the defendant would have been entitled to make if



1 may be payable in respect of losses, or in respect of returnable
2 premium.

3 (b) Unless otherwise agreed, the broker shall have, as
4 against the insured, a lien upon the policy for the amount of
5 the premium and the broker's charges in respect of effecting the
6 policy; and, where the broker has dealt with the person who
7 employs the broker as a principal, the broker shall have a lien
8 on the policy in respect of any balance on any insurance account
9 that may be due to the broker from the person, unless when the
10 debt was incurred the broker had reason to believe that the
11 person was only an agent.

12 **§431: -93 Effect of receipt on policy.** Where a marine
13 policy effected on behalf of the insured by a broker
14 acknowledges the receipt of the premium, that acknowledgement,
15 in the absence of fraud, shall be conclusive as between the
16 insurer and the insured, but not as between the insurer and
17 broker.

18 **PART X. LOSS AND ABANDONMENT**

19 **§431: -101 Included and excluded losses.** Unless the
20 policy otherwise provides, the insurer is liable for any loss
21 proximately caused by a peril insured against, but, subject as



1 aforesaid, the insurer is not liable for any loss that is not
2 proximately caused by a peril insured against:

3 (1) The insurer is not liable for any loss attributable to
4 the wilful misconduct of the insured, but, unless the
5 policy otherwise provides, the insurer is liable for
6 any loss proximately caused by a peril insured
7 against, even though the loss would not have happened
8 but for the misconduct or negligence of the master or
9 crew;

10 (2) Unless the policy otherwise provides, the insurer on
11 ship or goods is not liable for any loss proximately
12 caused by delay, although the delay be caused by a
13 peril insured against; or

14 (3) Unless the policy otherwise provides, the insurer is
15 not liable for ordinary wear and tear, ordinary
16 leakage and breakage, inherent vice or nature of the
17 subject matter insured, or for any loss proximately
18 caused by rats or vermin, or for any injury to
19 machinery not proximately caused by maritime perils.

20 **§431: -102 Partial and total loss.** (a) A loss may be
21 either total or partial. Any loss other than a total loss shall
22 be a partial loss.



1 (b) A total loss may be either an actual total loss or a
2 constructive total loss.

3 (c) Unless a different intention appears from the terms of
4 the policy, an insurance against total loss includes a
5 constructive, as well as an actual, total loss.

6 (d) Where the insured brings an action for a total loss
7 and the evidence proves only a partial loss, the insured, unless
8 the policy otherwise provides, may recover for a partial loss.

9 (e) Where goods reach their destination in specie, but by
10 reason of obliteration of marks, or otherwise, they are
11 incapable of identification, the loss, if any, is partial, and
12 not total.

13 **§431: -103 Actual total loss.** (a) Where the subject
14 matter insured is destroyed, or so damaged as to cease to be a
15 thing of the kind insured, or where the insured is irretrievably
16 deprived thereof, there is an actual total loss.

17 (b) In the case of an actual total loss, notice of
18 abandonment is not required.

19 **§431: -104 Missing ship.** Where the ship concerned in the
20 adventure is missing, and after the lapse of a reasonable time
21 no news of the ship has been received, an actual total loss may
22 be presumed.



1 **§431: -105 Effect of transshipment, etc.** Where, by a
2 peril insured against, the voyage is interrupted at an
3 intermediate port or place, under such circumstances as, apart
4 from any special stipulation in the contract of affreightment,
5 to justify the master in landing and reshipping the goods or
6 other moveables, or in transshipping them, and sending them on
7 to their destination, the liability of the insurer shall
8 continue, notwithstanding the landing or transshipment.

9 **§431: -106 Constructive total loss defined.** (a) Subject
10 to any express provision in the policy, there is a constructive
11 total loss where the subject-matter insured is reasonably
12 abandoned on account of its actual total loss appearing to be
13 unavoidable, or because it could not be preserved from actual
14 total loss without an expenditure which would exceed its value
15 when the expenditure had been incurred.

16 (b) There is a constructive total loss if:

17 (1) The insured is deprived of the possession of his ship
18 or goods by a peril insured against, and either:

19 (A) It is unlikely that the insured can recover the
20 ship or goods, as the case may be; or



1 (B) The cost of recovering the ship or goods, as the
2 case may be, would exceed their value when
3 recovered;

4 (2) In the case of damage to a ship, the ship is so
5 damaged by a peril insured against that the cost of
6 repairing the damage would exceed the value of the
7 ship when repaired. In estimating the cost of
8 repairs, no deduction is to be made in respect of
9 general average contributions to those repairs payable
10 by other interests, but account is to be taken of the
11 expense of future salvage operations and of any future
12 general average contributions to which the ship would
13 be liable if repaired; or

14 (3) In the case of damage to goods, the cost of repairing
15 the damage and forwarding the goods to their
16 destination would exceed their value on arrival.

17 **§431: -107 Effect of constructive total loss.** Where
18 there is a constructive total loss the insured may either treat
19 the loss as a partial loss, or abandon the subject-matter
20 insured to the insurer and treat the loss as an actual total
21 loss.



1 **§431: -108 Notice of abandonment.** (a) Where the insured
2 elects to abandon the subject matter insured to the insurer, the
3 insured is required to give notice of abandonment. If the
4 insured fails to do so, the loss shall be treated as a partial
5 loss.

6 (b) Notice of abandonment may be given in writing, or by
7 word of mouth, or partly in writing and partly by word of mouth,
8 and may be given in any terms that indicate the intention of the
9 assured to abandon one's insured interest in the subject matter
10 insured unconditionally to the insurer.

11 (c) Notice of abandonment shall be given with reasonable
12 diligence after the receipt of reliable information of the loss.
13 Where the information is of a doubtful character, the insured is
14 entitled to a reasonable time to make inquiry.

15 (d) Where notice of abandonment is properly given, the
16 rights of the insured are not prejudiced by the insurer's
17 refusal to accept the abandonment.

18 (e) The acceptance of an abandonment may be either express
19 or implied from the conduct of the insurer. The mere silence of
20 the insurer after notice is not acceptance.

21 (f) Where notice of abandonment is accepted, the
22 abandonment is irrevocable. The acceptance of the notice



1 conclusively admits liability for the loss and the sufficiency
2 of the notice.

3 (g) Notice of abandonment is not required where, at the
4 time when the insured receives information of the loss, there
5 would be no possibility of benefit to the insurer if notice were
6 given to the insurer.

7 (h) Notice of abandonment may be waived by the insurer.

8 (i) Where an insurer has re-insured the insurer's risk, no
9 notice of abandonment need be given by the insurer.

10 **§431: -109 Effect of abandonment.** (a) Where there is a
11 valid abandonment, the insurer is entitled to take over the
12 interest of the insured in whatever may remain of the subject
13 matter insured, and all proprietary rights incidental thereto.

14 (b) Upon the abandonment of a ship, the insurer is
15 entitled to any freight in course of being earned, and that is
16 earned by her subsequent to the casualty causing the loss, less
17 the expenses of earning it incurred after the casualty; provided
18 that where the ship is carrying the owner's goods, the insurer
19 is entitled to a reasonable remuneration for the carriage of
20 them subsequent to the casualty causing the loss.

21 **PART XI. PARTIAL LOSSES (INCLUDING SALVAGE AND**
22 **GENERAL AVERAGE AND PARTICULAR CHARGES)**



1 **§431: -111 Particular average loss.** (a) A particular
2 average loss is a partial loss of the subject matter insured,
3 caused by a peril insured against, and that is not a general
4 average loss.

5 (b) Expenses incurred by or on behalf of the insured for
6 the safety or preservation of the subject matter insured, other
7 than general average and salvage charges, are particular
8 charges. Particular charges are not included in particular
9 average.

10 **§431: -112 Salvage charges.** (a) Subject to any express
11 provision in the policy, salvage charges incurred in preventing
12 a loss by perils insured against may be recovered as a loss by
13 those perils.

14 (b) For the purposes of this section, "salvage charges"
15 mean the charges recoverable under maritime law by a salvor
16 independently of contract. Salvage charges do not include the
17 expenses of services in the nature of salvage rendered by the
18 insured or the insured's agents, or any person employed for hire
19 by them, for the purpose of averting a peril insured against.
20 Those expenses, where properly incurred, may be recovered as
21 particular charges or as a general average loss, according to
22 the circumstances under which they were incurred.



1 **§431: -113 General average loss.** (a) A general average
2 loss is a loss caused by or directly consequential on a general
3 average act and includes a general average expenditure as well
4 as a general average sacrifice.

5 (b) There is a general average act where any extraordinary
6 sacrifice or expenditure is voluntarily and reasonably made or
7 incurred in time of peril for the purpose of preserving the
8 property imperiled in the common adventure.

9 (c) Where there is a general average loss, the party on
10 whom it falls is entitled, subject to the conditions imposed by
11 maritime law, to a ratable contribution from the other parties
12 interested. The ratable contribution is a general average
13 contribution.

14 (d) Subject to any express provision in the policy, where
15 the insured has incurred a general average expenditure, the
16 insured may recover from the insurer in respect of the
17 proportion of the loss that falls upon the insured; and, in the
18 case of a general average sacrifice, the insured may recover
19 from the insurer in respect of the whole loss without having
20 enforced the insured's right of contribution from the other
21 parties liable to contribute.



1 (e) Subject to any express provision in the policy, where
2 the insured has paid, or is liable to pay, a general average
3 contribution in respect of the subject insured, the insured may
4 recover the contribution from the insurer.

5 (f) In the absence of express stipulation, the insurer is
6 not liable for any general average loss or contribution where
7 the loss was not incurred for the purpose of avoiding, or in
8 connection with the avoidance of, a peril insured against.

9 (g) Where ship, freight, and cargo, or any two of those
10 interests, are owned by the same insured, the liability of the
11 insurer in respect of general average losses or contributions is
12 determined as if those interests were owned by different
13 persons.

14 **PART XII. MEASURE OF INDEMNITY**

15 **§431: -121 Extent of liability of insurer for loss. (a)**

16 The measure of indemnity is the sum that the insured can recover
17 in respect of a loss on a policy by which the insured is
18 insured, in the case of an unvalued policy to the full extent of
19 the insurable value, or, in the case of a valued policy to the
20 full extent of the value fixed by the policy.

21 (b) Where there is a loss recoverable under the policy,
22 the insurer, or each insurer if there be more than one, is



1 liable for the proportion of the measure of indemnity that
2 insurer's subscription bears to the value fixed by the policy in
3 the case of a valued policy, or to the insurable value in the
4 case of an unvalued policy.

5 **§431: -122 Total loss.** Subject to any express provision
6 in the policy, where there is a total loss of the subject matter
7 insured:

8 (1) If the policy be a valued policy, the measure of
9 indemnity shall be the sum fixed by the policy; and

10 (2) If the policy be an unvalued policy, the measure of
11 indemnity shall be the insurable value of the subject
12 matter insured.

13 **§431: -123 Partial loss of ship.** Where a ship is
14 damaged, but is not totally lost, the measure of indemnity,
15 subject to any express provision in the policy, is as follows:

16 (1) Where the ship has been repaired, the insured shall be
17 entitled to the reasonable cost of the repairs, less
18 the customary deductions, but not exceeding the sum
19 insured in respect of any one casualty;

20 (2) Where the ship has been only partially repaired, the
21 insured shall be entitled to the reasonable cost of
22 such repairs, computed as above, and also to be



1 indemnified for the reasonable depreciation, if any,
 2 arising from the unrepaired damage, provided that the
 3 aggregate amount shall not exceed the cost of
 4 repairing the whole damage, computed as above; and

5 (3) Where the ship has not been repaired, and has not been
 6 sold in her damaged state during the risk, the insured
 7 shall be entitled to be indemnified for the reasonable
 8 depreciation arising from the unrepaired damage, but
 9 not exceeding the reasonable cost of repairing such
 10 damage, computed as above.

11 **§431: -124 Partial loss of freight.** Subject to any
 12 express provision in the policy, where there is a partial loss
 13 of freight, the measure of indemnity is the proportion of the
 14 sum fixed by the policy in the case of a valued policy, or of
 15 the insurable value in the case of an unvalued policy, as the
 16 proportion of freight lost by the insured bears to the whole
 17 freight at the risk of the assured under the policy.

18 **§431: -125 Partial loss of goods, merchandise, etc.**
 19 Where there is a partial loss of goods, merchandise or other
 20 moveables, the measure of indemnity, subject to any express
 21 provision in the policy, is as follows:



- 1 (1) Where part of the goods, merchandise or other
2 moveables insured by a valued policy is totally lost,
3 the measure of indemnity shall be the proportion of
4 the sum fixed by the policy as the insurable value of
5 the part lost bears to the insurable value of the
6 whole, ascertained as in the case of an unvalued
7 policy;
- 8 (2) Where part of the goods, merchandise, or other
9 moveables insured by an unvalued policy is totally
10 lost, the measure of indemnity shall be the insurable
11 value of the part lost, ascertained as in case of
12 total loss; and
- 13 (3) Where the whole or any part of the goods or
14 merchandise insured has been delivered damaged at its
15 destination, the measure of indemnity shall be the
16 proportion of the sum fixed by the policy in the case
17 of a valued policy, or of the insurable value in the
18 case of an unvalued policy, as the difference between
19 the gross sound and damaged valued at the place of
20 arrival bears to the gross sound value.

21 As used in this section, "gross value" means the wholesale
22 price, or, if there is no such price, the estimated value, with,



1 in either case, freight, landing charges, and duty paid
2 beforehand; provided that, in the case of goods or merchandise
3 customarily sold in bond, the bonded price is deemed to be the
4 gross value.

5 "Gross proceeds" means the actual price obtained at a sale
6 where all charges on sale are paid by the sellers.

7 **§431: -126 Apportionment of valuation.** (a) Where
8 different species of property are insured under a single
9 valuation, the valuation shall be apportioned over the different
10 species in proportion to their respective insurable values, as
11 in the case of an unvalued policy. The insured value of any
12 part of a species is the proportion of the total insured value
13 of the same as the insurable value of the part bears to the
14 insurable value of the whole ascertained in both cases as
15 provided under this article.

16 (b) Where a valuation is required to be apportioned, and
17 particulars of the prime cost of each separate species, quality,
18 or description of goods cannot be ascertained, the division of
19 the valuation may be made over the net arrived sound values of
20 the different species, qualities, or descriptions of goods.

21 **§431: -127 General average contributions and salvage**
22 **charges.** (a) Subject to any express provision in the policy,



1 where the insured has paid, or is liable for, any general
2 average contribution, the measure of indemnity is the full
3 amount of such contribution, if the subject matter liable to
4 contribution is insured for its full contributory value. If
5 only part of the subject matter is insured, the indemnity
6 payable by the insurer shall be reduced in proportion to the
7 under insurance, and where there has been a particular average
8 loss that constitutes a deduction from the contributory value,
9 and for which the insurer is liable, that amount shall be
10 deducted from the insured value in order to ascertain what the
11 insurer is liable to contribute.

12 (b) Where the insurer is liable for salvage charges, the
13 extent of the insurer's liability shall be determined on the
14 like principle.

15 **§431: -128 Liabilities to third parties.** Where the
16 insured has effected an insurance in express terms against any
17 liability to a third party, the measure of indemnity, subject to
18 any express provision in the policy, is the amount paid or
19 payable by the insured to the third party in respect of the
20 liability.

21 **§431: -129 General provisions as to measure of indemnity.**

22 (a) Where there has been a loss in respect of any subject



1 matter not expressly provided for under this article, the
2 measure of indemnity shall be ascertained, as nearly as may be,
3 in accordance with this article, in so far as applicable to the
4 particular case.

5 (b) Nothing in this article relating to the measure of
6 indemnity shall affect the laws relating to double insurance, or
7 prohibit the insurer from disproving interest wholly or in part,
8 or from showing that at the time of the loss the whole or any
9 part of the subject matter insured was not at risk under the
10 policy.

11 **§431: -130 Particular average warranties.** (a) Where the
12 subject matter insured is warranted free from particular
13 average, the insured shall not recover for a loss of part, other
14 than a loss incurred by a general average sacrifice, unless the
15 contract contained in the policy is apportionable; provided that
16 if the contract is apportionable, the insured may recover for a
17 total loss of any apportionable part.

18 (b) Where the subject matter insured is warranted free
19 from particular average, either wholly or under a certain
20 percentage, the insurer is liable for salvage charges, and for
21 particular charges and other expenses properly incurred pursuant



1 to the provisions of the suing and labouring clause in order to
2 avert a loss insured against.

3 (c) Unless the policy otherwise provides, where the
4 subject matter insured is warranted free from particular average
5 under a specified percentage, a general average loss shall not
6 be added to a particular average loss to make up the specified
7 percentage.

8 (d) For the purpose of ascertaining whether the specified
9 percentage has been reached, only the actual loss suffered by
10 the subject matter insured shall be considered. Particular
11 charges and the expenses of and incidental to ascertaining and
12 proving the loss shall be excluded.

13 **§431: -131 Successive losses.** (a) Unless the policy
14 otherwise provides, and subject to this article, the insurer is
15 liable for successive losses, even though the total amount of
16 the losses may exceed the sum insured.

17 (b) Where, under the same policy, a partial loss, which
18 has not been repaired or otherwise made good, is followed by a
19 total loss, the insured can only recover in respect of the total
20 loss; provided that nothing in this section shall affect the
21 liability of the insurer under the suing and labouring clause.



1 **§431: -132 Suing and labouring clause.** (a) Where the
2 policy contains a suing and labouring clause, the engagement
3 thereby entered into is deemed to be supplementary to the
4 contract of insurance, and the insured may recover from the
5 insurer any expenses properly incurred pursuant to the clause,
6 notwithstanding that the insurer may have paid for a total loss,
7 or that the subject matter may have been warranted free from
8 particular average, either wholly or under a certain percentage.

9 (b) General average losses and contributions and salvage
10 charges, as defined by this article, are not recoverable under
11 the suing and labouring clause.

12 (c) Expenses incurred for the purpose of averting or
13 diminishing any loss not covered by the policy are not
14 recoverable under the suing and labouring clause.

15 (d) The insured and the insured's agents, in all cases,
16 shall take all reasonable measures to avert or minimize a loss.

17 **PART XIII. RIGHTS OF INSURER ON PAYMENT**

18 **§431: -141 Right of subrogation.** (a) Where the insurer
19 pays for a total loss, either of the whole, or in the case of
20 goods of any apportionable part, of the subject matter insured,
21 the insurer is entitled to take over the interest of the insured
22 in any remaining subject matter paid for, and the insurer is



1 subrogated to all the rights and remedies of the insured in and
2 in respect of that subject matter as from the time of the
3 casualty causing the loss.

4 (b) Subject to the foregoing provisions, where the insurer
5 pays for a partial loss, the insurer acquires no title to the
6 subject matter insured or any remaining part of it, but the
7 insurer is subrogated to all rights and remedies of the insured
8 in and in respect of the subject matter insured as from the time
9 of the casualty causing the loss, in so far as the insured has
10 been indemnified, according to this article, by the payment for
11 the loss.

12 **§431: -142 Right of contribution.** (a) Where the insured
13 is over-insured by double insurance, each insurer is bound, as
14 between the insurer and the other insurers, to contribute
15 rateably to the loss in proportion to the amount for which the
16 insurer is liable under the contract.

17 (b) If any insurer pays more than the insurer's proportion
18 of the loss, the insurer is entitled to maintain an action for
19 contribution against the other insurers, and is entitled to the
20 like remedies as a surety who has paid more than one's
21 proportion of the debt.

1 **§431: -143 Effect of under insurance.** Where the insured
2 is insured for an amount less than the insurable value or, in
3 the case of a valued policy, for an amount less than the policy
4 valuation, the insured is deemed to be the insured's own insurer
5 for the uninsured balance.

6 **PART XIV. RETURN OF PREMIUM**

7 **§431: -151 Enforcement of return.** Where the premium or a
8 proportionate part of it, by this chapter, is declared to be
9 returnable, then:

10 (1) If already paid, it may be recovered by the insured
11 from the insurer; or

12 (2) If unpaid, it may be retained by the insured or the
13 insured's agent.

14 **§431: -152 Return by agreement.** Where the policy
15 contains a stipulation for the return of the premium, or a
16 proportionate part thereof, on the happening of a certain event,
17 and that event happens, the premium, or the proportionate part
18 thereof, is returnable to the insured.

19 **§431: -153 Return for failure of consideration.** (a)
20 Where the consideration for the payment of the premium totally
21 fails, and there has been no fraud or illegality on the part of



1 the insured or the insured's agents, the premium shall be
2 returnable to the insured.

3 (b) Where the consideration for the payment of the premium
4 is apportionable and there is a total failure of any
5 apportionable part of the consideration, a proportionate part of
6 the premium, under the like conditions, shall be returnable to
7 the insured:

8 (1) Where the policy is void, or is avoided by the insurer
9 as from the commencement of the risk, the premium is
10 returnable, provided that there has been no fraud or
11 illegality on the part of the insured; provided
12 further that if the risk is not apportionable, and has
13 once attached, the premium is not returnable;

14 (2) Where the subject matter insured, or part thereof, has
15 never been imperiled, the premium, or, as the case may
16 be, a proportionate part thereof, is returnable;
17 provided that where the subject matter has been
18 insured "lost or not lost" and has arrived in safety
19 at the time when the contract is concluded, the
20 premium is returnable unless, at that time, the
21 insurer knew of the safe arrival;



1 may be negatived or varied by express agreement, or by usage, if
2 the usage bind both parties to the contract.

3 (b) This section extends to any right, duty, or liability
4 declared by this chapter that may be lawfully modified by
5 agreement.

6 **§431: -173 Reasonable time, etc. a question of fact.**

7 Where by this article any reference is made to reasonable time,
8 reasonable premium, or reasonable diligence, the question of
9 what is reasonable is a question of fact.

10 **§431: -174 Slip as evidence.** Where there is a duly
11 stamped policy, reference may be made, as heretofore, to the
12 slip or covering note, in any legal proceeding.

13 **§431: -175 Interpretation of terms.** Unless the context
14 or subject matter otherwise requires:

15 "Action" includes counter-claim and set off;

16 "Freight" includes the profit derivable by a shipowner from
17 the employment of the shipowner's ship to carry the shipowner's
18 own goods or moveables, as well as freight payable by a third
19 party, but does not include passage money;

20 "Moveables" means any moveable tangible property, other
21 than the ship, and includes money, valuable securities, and
22 other documents; and



1 "Policy" means a marine policy.

2 §431: -176 Conflict with section 431:1-207 or 431:5-302.

3 If any provision of this article conflicts with any provision of
4 section 431:1-207 or 431:5-302, this article shall control."

5 SECTION 2. This Act shall take effect on July 1, 2009.

6

INTRODUCED BY:

A large, stylized handwritten signature in black ink, appearing to be a cursive name, positioned over the horizontal line of the 'INTRODUCED BY:' text.

JAN 22 2008



Report Title:

Marine Insurance

Description:

Enacts modified version of the British Marine Insurance Act 1906, with the modifications for disclosures and warranties. Defines "marine insurance", specifies necessity of an insurable interest, requires a policy, addresses issues relating to voyage, loss and abandonment, and indemnity.

