

## **RISK IN WATER TRANSPORT, CONCEPT OF DAMAGE AND SHIPS INSURANCE (CASCO insurance)**

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*The article treats in two distinct points, but in close connection, both the issue of risks in water transport and the insurance shipping vessels, also known as the CASCO insurance.*

*The foreseeable risks, the unforeseen general risks and the special ones, the elements of the water transport risk, the main categories of insurance terms specific to this type of transport, the additional insurances and the emergency concept are briefly addressed in the first section.*

*The contents of the second section present the specific policy conditions to ensure the vessels, the risks excluded from insurance, the cases where the provision of damage and compensation is not granted.*

*Key words: the issue of risks, water transport, foreseeable risks, insurance shipping vessels, compensation.*

### **1. Risks in shipping**

The insurance of the goods transported by water implies that the insurance company covers the likely events and not the damages that will occur for sure<sup>1</sup>.

The predictable risks can be avoided both by the technical equipment of the used vehicles, and by the fulfillment of duties of those who use them, those who participate to their manufacturing, etc. This risk category is excluded from insurance: in other words, the insurers do not cover them by the concluded contracts and therefore there are no compensations in case they occur.

The insurable unforeseen risks are divided into general and special risks. General risks consist of the main events taking place on water, for which insurers give compensations, for cases such as collision, grounding, storm, etc., as well as for events specific to the insurance of goods in general, such as fire, explosion, lightning, etc..

The special risks may be due to the nature of goods or other special cases such as breaking, dissipation, scratching, cracking, sweating, etc.. or risks of war or strike and may be covered in the insurance terms, and the insured person will pay an additional premium.

In general, the risk of water is characterized by three essential elements (a - c):

- a) Place of transport, meaning: sea or inland waters (rivers, canals, rivers, lakes);
- b) Means of transport, respectively the ship;
- c) Shipped goods, meaning the ship itself and transported exchangeable things<sup>2</sup>.

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<sup>1</sup> Risks are classified into certain and foreseeable ones and unforeseeable or uncertain risks.

<sup>2</sup> See G.G.Ștefănescu, *Avarii la navă și încărcătură*, Editura Tehnică, București, 1974, p.157 și urm. Nowadays, the risk of water is not limited only to the loss or to the damage caused by wind and by water, that affect the ship and on things transported in special circumstances, but it also extends to losses for damage caused by human acts or wars on water.

Listing the risks of water is almost impossible because of both their wide variety and their causes<sup>3</sup>.

Two techniques for covering the insurable risks have developed, namely:

- The first is to ensure all the risks, without them being listed in the terms of the insurance policy;
- The second refers only to ensure the risks expressly listed in the terms of the insurance policy.

In the long practice of this type of insurance, three main categories of specific insurance clauses crystallized, namely condition A, condition B and condition C. The differences between the three conditions, consist essentially, not only in their different name but also in the more specific and clearer delimitation of their spheres of coverage.

The conditions and terms issued in 1982 by the Insurers Institute in London represent the base of the goods and ships / vessels' insurance terms, currently applied on the national markets of different countries, including Romania, terms that lay on the proposals made by the Committee for invisible things and financing connected to trade, within the U.N.C.T.A.D.

**A. Insurance clause A,** is the most comprehensive one, all the risks of loss and damage of the insured goods are covered based on it, except for some risks presented separately. Exclusions are common to all the three conditions and consist of three groups of excluded risks (a - c):

a) Loss, damage and expense resulting from or caused by:

- Willful failure behavior of the insured person;
- Ordinary leakage, loss of usual weight or volume or normal wear of the insured good;
- Insufficient or improper packaging and preparation of the insured good (the packaging includes the piling-up in a container provided that the piling-up is made before the entry into force of the insurance by the insured person or by his/her agents);
- Inherent defect or nature of the insured good;
- The direct delay even if it is due to an the insured risk, except for expenses incurred in joint damage;
- Loss or frustration of the voyage or travel;
- Insolvency or financial failure by the owners, managers, operators charterers or vessel operators, users;
- Use of weapons of war that use fission and / or nuclear fusion, atomic nuclear or other reaction other radioactive force or object;
- Radioactive contamination;
- The innavigability condition of the vessel or craft, the fact that the ship, the boat, the means of transport, the container is inadequate for the transportation, in good conditions of the insured good, if the insured person or his/her agents are aware of this the moment it is loaded.

b) Loss, damage and expense caused by:

- War, civil war, revolution, rebellion, insurrection or civil conflicts arising from them, or any hostile act of / or against a belligerent power;
- Capture, seizure, arrest, detention (except piracy), attempt to make them and their consequences;
- Mines, torpedoes, bombs or other abandoned war weapons.

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<sup>3</sup> In the international practice the causes for the ship loss are divided into seven categories namely: shipwreck by failure that breaks the ship's structure, sinking, abandonment, fire, collision, ship surrendering and its disappearance.

c) Loss, damage and expense caused by:

- Strikers, workers in lockout, disorders, riots or civil movements;
- Strikes, lock-outs, disturbances, riots or civil movements;
- Any terrorist or any person acting for political reasons.

**B. Insurance clause B**, covers, with the exceptions mentioned above, loss and damage of the insured good caused by:

- Fire or explosion;
- Failure, sinking or overturning of the vessel or craft;
- Collision or contact of the vessel, the craft or the means of transport with an external object other than water;
- Unloading the cargo at a port of refuge;
- Earthquake, volcanic eruption or lightning;
- Sacrifice in joint damage;
- Throwing or taking waves over the board;
- Entry of sea, lake or river water in the ship, craft, hold, means of transport, container or storage place;
- Total damage of a package lost overboard or dropped during loading or unloading to and from the ship, boat or other means of transport.

**C. Insurance clause C**, has a range of insurable risk coverage provided narrower than the clause B and it covers, except for the abovementioned exclusions, the loss and the damage of the insured good caused by:

- Fire or explosion;
- Failure, sinking or overturning of the vessel or craft;
- Overturning or derailment of land means of transport;
- Collision or contact of vessel, craft or means of transport with an external object other than water;
- Unloading cargo at a port of refuge;
- Sacrifice in joint damage;
- Throw overboard.

It may be noted that this condition covers the same loss and damage as condition B, except those caused by:

- Earthquake, volcanic eruption or lightning;
- Waves overboard;
- Entry of sea water, lake or river in the ship, craft, hold, means of transport, container or storage place;
- Total damage of a package lost overboard or dropped during loading or unloading to and from the ship, boat or other means of transport.

Insurance clauses A, B and C, contain some common terms, namely:

- Costs and contributions to joint damage and / or rescue expenses, paid by the insured person, established under the provisions of the charter contract and / or the applicable law, if they were made for, or in connection with the insurance of losses caused by any event;
  - Amount representing the proportion of liability set for the clause 'general average in case of collision', if this clause is provided in the charter party.

The risks of "theft, robbery and nondelivery", as well as storage risks may be associated with conditions of the insurance clauses B and C or separately.

The insurance term "storage risks" covers, with the exclusions listed in paragraphs a, b and c, the loss and the damage of the insured good caused by:

- Fire, lightning, explosion, even if lightning or explosion have been followed by a fire;
- Heavy rain, including its indirect effects;

- Hail, flood, storm, hurricane, earthquake;
- Collapse or landslides;
- Weight of snow or ice;
- Avalanches and snow falling on buildings or other structures of premises;
- Theft by breaking-in.

## **2. The concept of average**

According to Article 654 paragraph 1 of the Commercial Code, "shall be considered averages all the extraordinary costs done for the ship and for the load for both together or individually, and all the damages that happen to the ship and to the loaded vessel, after loading and departure to their return and unloading".

Further more, the abovementioned legal text provides in Line 3 that „shal not be considered avarges, but only simple costs with the vessel, the ordinary expenses to enter the bays, the rivers or the canals, or to get out of them, and costs for rights or shipping charges”.

From the analysis of these laws, it results that the average is determined by its cause and not by the nature of the cost or of the damage. The expense or the damage may be considered damages if they have been generated by an exceptional case (and not by the normal use of the means of transport) occurred during the transportation, so "after loading and departure to its return and unloading." In fact, shall also be considered averages the extraordinary costs and damages that may be caused to goods during their operation in stations or points of loading, unloading or in transit and waiting periods to carry out such operations.

## **3. Averages classification:**

A. According to Article 654 line 2 of the Commercial Code, "averages are of two types: large or general averages, and single or particular averages" (a - b)<sup>4</sup>:

a) large or general averages, consist of, according to Article 655 line 1 of the Commercial Code, "the extraordinary expenses incurred and damages suffered voluntarily for the sake and to escape the vessel and cargo." They are big because they are borne by all the things exposed to the risks of navigation on water and are common because they have been made in the interest of the ship and cargo; meanwhile being voluntary, they must be borne by those who have benefited, proportionally to the profit they have had<sup>5</sup>.

b) Single or individual averages, consist, according to Article 658 line 1 of the Commercial Code, of "all the damages and all the costs only for the ship, or only for the caro. They are to be paid or borne solely by the owner who has suffered the loss or who has spent his/her money, "he / she having this right of action for damages against the captain or the vessel and the freight (Article 658 penultimate line of the Commercial Code).

In connection with these two categories of averages, the literature speaks of average claims and damage costs<sup>6</sup>.

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<sup>4</sup> The average classification in general and particular, made by Article 655 and the following one from the Commercial Code is not restricting but inclusive. Therefore the assessment of facts which, according to some circumstances, may be considered averages, either general or particular ones, belong to the judge at first instance. C.Tonegaru, A.Theodoru, C.Ioanițiu, op.cit., p.143, nota 1 și p.145, nota 1.

<sup>5</sup> G.G.Ștefănescu, *Avarii la navă și încărcătură*, Editura Tehnică, București, 1974, p.10. The general averages are listed in the contents of Article 655 of the Romanian Commercial Code and the particular average are listed in Article 658 of the same legislative act.

<sup>6</sup> Average claims may occur to the vessel (eg voluntary failure of the ship, ordered by the commander to save the cargo) or while loading (eg throwing some part of the cargo for the ship to be able to stand on). Averages are expenses that may be encountered as towing costs, expenses to get afloat. They are found through a damage report done by experts choosen by the interested party or parties.

B. Depending on the degree of damage of the ship or of the freight, the averages are also classified in total damages and partial damages (a - b):

a) The total damage is the destruction or the total loss of the ship or of the cargo. It is also divided in real total damage, the total constructive damage and presumed total loss: in the case of the the total damage, there is no load, because of the occurrence of the insured event; in the case of the total constructive damage, the ship or goods exist, but they are both badly damaged and their repair requires large expenditure which would exceed the sum insured. For example, if the degree of damage of a vessel exceeding 75%, it is considered to be in the case of a total constructive loss; and finally the total presumed loss, is the fact that the insured person, after the occurrence of the insured event does not know anything about his / her the cargo or ship<sup>7</sup>.

b) The partial damage is, as you can see from its name, a partial damage caused to the ship or to the cargo.

#### **4. Average defined on the international level**

In essence, the international definitions of the concept of damage or average have the same content (a - e):

a) The law of the British merchant navy in 1906, defined the damage of the general average as the damage caused by an act of general average or as a direct consequence of such an act. The general average act requires making a great sacrifice or extraordinary expenses, voluntarily and reasonably, in case of danger, to save the property engaged in a common maritime shipping.

b) The Italian Navigation Code of 1942, defined the general average as the damage consisting of costs and damage caused by measures taken in a rational way by the commander, or by others in his place, to save the expedition. The general average is distributed among all who are interested in that shipment, provided that the damage produced voluntarily is not one that necessarily, would have been produced according to the natural course of events.

c) The Polish Maritime Code of 1961, defined the general average as the damage consisting of sacrifices and extraordinary expenditures made intentionally, directly and reasonably in order to save the ship, the freight and the cargo from a common danger. The indirect damage, such as groundages and price differences are excluded from the general average, to be borne by those who have caused or who have suffered them.

d) According to the French law concerning the sea events in 1967, the general averages consist of the made sacrifices and the extraordinary expenses incurred in joint and pressing rescue of the interests engaged in a maritime expedition, provided that the damages are a direct result of the act of general average decided by the commander; otherwise, the averages are seen as some particular ones, to be borne by the one who has made the expense or by the owner, they still having the possibility, later on, to cover losses in shares of responsibility, reimbursement or compensation .

e) York Anvers Rules of 1950, for a set of uniform rules defining both the circumstances and the conditions under which an act is recognized by finding the general or the joint average. Under these rules, the losses resulting from damage are divided between the ship, the freight and the cargo, proportionally to their value even if the sacrificed goods have not been insured. These rules are incident where, out of necessity a sacrifice or an unforeseen expense is incurred for the common safety, aiming at the ends to avoid a real and serious danger that hung over the goods forming the subject of the maritime expeditions. Just in case the goods are insured, usually the damages resulting from the

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<sup>7</sup> In the traffic on the Danube is unlikely that total presumed damages cases happen.

general average are repaired by the insurer, thus making unnecessary the application of the abovementioned rules<sup>8</sup>.

These regulations apply equally to maritime transport and in the water.

These regulations apply equally to the maritime and to the water transport<sup>9</sup>.

From the given definitions it results that the main common feature of the general damage, arising from a manifestation of will by which, with the aim to rescue the expedition, it causes a loss of the ship or of the cargo or an exceptional expenditure is incurred. Under Article 669 of the Romanian Commercial Code, "the captain will complete a minute of any decision that he makes and about the subsequent operations for common rescue, once it will be possible. The minutes will include the reasons for the decision and will briefly present the things thrown or broken; they will be underwritten by crew leaders and will show the reasons of their unwillingness to subscribe and it will be transcribed in the ship register".

It results therefore that the expression of will takes place as a result of the analysis of the given situation, by the ship commander together with the crew leaders<sup>10</sup>.

## **5. Additional insurances**

At the same time, there are some risks, even among the common exclusions, that can be guaranteed by an insurance company by an additional insurance or under the same contract, with the correlative obligation of the insured person to pay an additional premium. These are the risks of war and strikes risks that require the elaboration of the some specific insurance clauses.

**A. Insurance clauses " Risks of war"**. Except for the exclusions in paragraphs a and c of the Insurance clause "A", under the terms of the hereby insurance, the loss and the damage of the insured good caused by the following facts are covered:

- War, civil war, revolution, rebellion, insurrection or civil conflicts arising therefrom or any hostile act of / or against a belligerent power;
- Capture, seizure, arrest, detention or imprisonment resulting from the above mentioned risks, the attempt to cause them and their consequences;
- Mines, torpedoes, bombs or other abandoned weapons of war;
- Costs and contributions to the general average and / or saving costs.

Under this clause, the insurer covers the risk as long as the load is on the ship, but no longer than the expiry of 15 days from the 24 hour of the day it arrives at the port of destination or at its intermediate or final destination.

## **B. Insurance clauses " Strike risks"**

This clause ensures the loss or the damage caused by:

- Strikers, workers in lockout or persons taking part in the disturbances, riots or civil movements;
- Strikes, lock-outs, disturbances, riots or civil movements;
- Any terrorist or any person acting for political reasons;
- Costs and contributions to the general average and / or cost saving.

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<sup>8</sup> M.N.Costin, Dicționar internațional al afacerilor, Editura Lumina Lex, București, 1996, vol. III, p. 135; Gh.D.Bistriceanu, F.Bercea, E.I.Macovei, Lexicon de protecție socială, asigurări și reasigurări, Editura Karat, București, 1997, p.603-604; The intentional throw, from the commander order, of some part of the cargo from the ship, in order to restore the failed ship to buoyancy, flooding a barn in fire in order to save the loaded rest, the use of a part of the cargo as fuel or of the expenditures for the ship to enter a port of refuge, etc., are typical sacrifices of the general average. Gh.Caraiani, Transporturi, expediții și asigurări internaționale, Editura Lumina Lex, București., 2001, p.249.

<sup>9</sup> A See, in extenso G.G.Ștefănescu, Avarii la navă și încărcătură, Editura Tehnică, București, 1974, p.12-24.

<sup>10</sup> In the absence of such manifestations of will, the damage has a particular character, in which case the exceptional suffered damage or the extraordinary expense is the product of the natural forces or of the human actions that do not work for the the common save.

This clause ensures the loss or the damage caused by:

- Strikers, workers in lockout or persons taking part in the disturbances, riots or civil movements;
- Strikes, lock-outs, disturbances, riots or civil movements;
- Any terrorist or any person acting for political reasons;
- Costs and contributions to general average and / or saving costs<sup>11</sup>.

#### **6. Ships' insurance (casco). Insurance Conditions**

As conditions of goods insurance, conditions of ships' insurance<sup>12</sup>, differ from one country to another in relation to the national legislation on insurance and commercial usage as practiced in this area<sup>13</sup>. In time they have seen significant changes and improvements to meet the best interests of both the insured persons and the world trade. The current ship insurance conditions lay on the conditions developed in 1982 by the Institute of London Insurers abovementioned<sup>14</sup>.

In the process of exploitation of sea and river vessels, they can suffer different damages, and in order to cover them, the owners resort to "the casco insurance".

**A.** Next, we present the risks excluded from insurance:

- Normal wear and tear and gradual deterioration of the hull, machinery (engines) or other parts of the ship;
- Damage caused by forcing the ice, except ice breakers;
- Costs incurred for cleaning, applying the primer and painting the ship, if they are not the consequence of an insured risk;
- Removal of the wreckage;
- Loss or damage to the transported cargo under contract or personal property, except those on another vessel with which the insured vessel has collided;
- Salaries and maintenance of the master, officers and crew, except for the cases of general average;
- Loss of life, personal injury or illness;
- Indirect damages such as: loss of income and damages due to delay transport even if they are the result of a risk covered by the insurance.

**B.** The main forms of vessels insurance are concluded in one of the following conditions (a - e):

a) The condition "total loss, averages and liability for the collision", covers the total loss, the loss and the average of the vessel, the contribution to both the general average and the saving costs, liability for damages resulting from the collision of the insured vessel with another vessel, port facilities or other fixed or floating objects and expenses arising therefrom.

b) The condition "total loss, joint damage and liability for the collision", covers the total

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<sup>11</sup> The existence of several conditions to ensure the goods meets better the practical needs of the international trade because not all goods are suitable for coverage against all risks. It is important that the cargo is insured against those risks that are real dangers in that shipment. Although some risks are possible, they have not been seen for transport on the Danube. They have still been listed, but we were unable to give detailed conditions of insurance and their presentation in the paper is still important, since, the fluvial – nautical ships have access to the Braila port, ships that transport things both on the rivers and on the sea.

<sup>12</sup> This insurance, called "casco", includes merchant ships, fishing vessels and collecting vessels as well as other vessels, floating facilities and equipment for the vessels such as tugs, floating cranes, boats, barges, lash vessels, barges, etc.

<sup>13</sup> Romanian-flagged vessels and those in the national pavilion may be insured abroad as marine insurances belong to the law of nations. C.Tonegaru, A.Theodoru, C.Ioanițiu, op.cit., p.135, nota 2.

<sup>14</sup> C.Alexa, V.Ciurel, E.Sebe, A.M.Mihăescu, Asigurări și reasigurări în comerțul internațional, Editura All, București, 1992, p.73. Romania has adopted and has applied these new insurance conditions and terms.

loss of the vessel, contributing to both the general average and the saving costs, liability for damages resulting from the collision of the insured vessel with another vessel, port facilities or other fixed or floating objects and expenses arising therefrom.

Unlike the first condition, in this case, the averages resulting from the particular damage are covered only if they have been caused by ship collisions with other ships, port facilities or other fixed or floating objects.

c) The condition "total loss" covers the total loss of the ship, the saving costs and other expenses arising therefrom.

d) The condition "total loss and damage" covers the total loss, loss and damage to the ship, and the contribution to both the general average and the saving costs.

e) The condition "total loss and joint damage" covers the total loss of the vessel and the contribution to both the general average and the saving costs.

Any insurance concluded in one of the conditions may be extended to cover the inventory of both the fixed assets and the material operating funds / circulating assets and expenses in connection with the operation of the ship and war and strikes risks.

**C.** Under the insurance contract concluded in one of the above conditions, the insurance company granted compensation for (a - h):

a) vessel averages caused by the following events:

- Danger of the seas, rivers, lakes and other waterways;
- Fire, explosion;
- Theft committed by persons outside the vessel;
- Throw overboard and making waves;
- Piracy;
- Collision with vessels, aircraft or other similar objects or objects falling on them, land means of transport, equipment or dock or port facilities;
- Collision with the quay, dry dock or otherwise, building slip, launch hold, careening support, pontoon, mole, pier, platform, buoy, cable, wire or other fixed or floating object, including floating ice;
- Earthquake, volcanic eruption or lightning;
- Accidents in loading, unloading or cargo or fuel moving;
- Breaking the boiler or plant and any damage caused by a latent defect in the machinery or in the hull;
- Measures to save the ship;
- Measures taken by authorities to prevent or decrease the danger of pollution or the threat of pollution resulting directly from the average of the ship;
- Navigation error;
- Negligence of the commander, the officers, the crew or the pilots;
- Negligence of the repairers or of the charterers provided that they are not the insured person;
- Barratry (fraudulent act) of the commander, of the officers or of the crew, provided that the damage is not the result of lack of care of the insured person, of the owner or of the manager of the vessel;

b) costs and saving necessary to prevent damage, to reduce the caused damage, to establish the circumstances, the causes, the effects, the real damage and its extent;

c) rescue remuneration or assistance to the ship, including costs with experts, trial or arbitration lawyers and other similar proceedings to determine it;

d) the cost that represent the contribution of the ship to the general average, including those with experts, court or arbitration lawyers to determine the contribution;

e) the amounts payable by the insured when the insured vessel collides with other ships,



- port facilities and other fixed or floating objects, he is the responsible one;
- f) loss or damage to another vessel or property on it, port facility or other fixed or floating object;
- g) the delay or loss of use of other vessels or property on it, port facility or other fixed or floating object;
- h) general average, towing or rescue under a contract of another vessel or property on it, port facility or other fixed or floating object.

It should be noted that the insurer does not indemnify the expenditure categories in paragraphs d, e, for for the insurances concluded under the term "total loss".

**D.** The insurer does not grant compensations for (a - g):

- a) normal wear and tear, gradual deterioration and hidden defects of the hull, of the machinery (engines) or of other parts of the ship and the failure or cessation of operation of electrical or mechanical parts thereof;
- b) damage caused by forcing the ice, except for ships hat are used as ice-breakers;
- c) the removal of the wreckage;
- d) loss and damage to transported cargo under contract or personal property, except those of the other vessel, with which the insured vessel collides;
- e) the salaries, remunerations and maintenance of the commander, the officers and the crew, except for the general average cases;
- f) loss of life, personal injury or illness;
- g) indirect averages, such as: loss of income, damages due to the transport delay, even if they are the consequence of a risk covered by insurance.

E. In order to obtain the compensation, the insurance must be supplemented by special provisions, for the following categories of averages (a - c):

- a) loss and damage to inventory of the fixed assets and of the material circulating assets on board, including bunkers, lubricants and fishing nets;
- b) loss and damage to the cargo on board, the property of the insured person, including fish production;
- c) the non-freight, the non-cash of the contribution to the general average an
- d other sums expended in connection with the operation of the ship.

Without completing the requirements listed and paying for the appropriate premium, the insurer will not cover those risks.

Similarly, the insurer does not cover any risks of war, civil war, revolution, strikes, etc., if they are not expressly mentioned in the insurance contract.

The insurance can be concluded both by natural and legal persons, Romanian, foreign or mixed.

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