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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.)*

PART 1. FIRE AND MARINE INSURANCE [1880 - 10108.1] (*Part 1 enacted by Stats. 1935, Ch. 145.)*

CHAPTER 1. The Marine Contract [1880 - 2010] (*Chapter 1 enacted by Stats. 1935, Ch. 145.)*

ARTICLE 5. Loss in Marine Insurance [1960 - 1997] (*Article 5 enacted by Stats. 1935, Ch. 145.)*

1960. A loss is either total or partial.

(Enacted by Stats. 1935, Ch. 145.)

1961. A total loss is either actual or constructive.

(Enacted by Stats. 1935, Ch. 145.)

1962. An actual total loss is caused by:

- (a) A total destruction of the subject matter of insurance.
- (b) The loss of the subject matter by sinking, or by being broken up.
- (c) Any damage to the subject matter which renders it valueless to the owner for the purposes for which he held it.
- (d) Any other event which entirely deprives the owner of the possession, at the port of destination, of the subject matter.

(Enacted by Stats. 1935, Ch. 145.)

1963. A constructive total loss is one which gives to a person insured a right to abandon, under section 1971.

(Enacted by Stats. 1935, Ch. 145.)

1964. An actual loss may be presumed from the continued absence of a ship without being heard of. The length of time which is sufficient to raise this presumption depends on the circumstances of the case.

(Enacted by Stats. 1935, Ch. 145.)

1965. When a ship is prevented, at an intermediate port and by the perils insured against, from completing the voyage, the master shall make every exertion to procure, in the same or a contiguous port, another ship for the purpose of conveying the cargo to its destination. The liability of a marine insurer on the cargo continues after it is thus reshipped and such insurer is additionally liable as prescribed in section 1966.

(Enacted by Stats. 1935, Ch. 145.)

1966. In addition to the liability mentioned in section 1965, a marine insurer is liable, up to the amount insured, for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred in saving cargo reshipped pursuant to section 1965.

(Enacted by Stats. 1935, Ch. 145.)

1967. Upon an actual total loss, the insured is entitled to payment without notice of abandonment.

(Enacted by Stats. 1935, Ch. 145.)

1968. Where it has been agreed that an insurance upon a particular subject matter, or class of subject matter, is to be free from particular average, a marine insurer is not liable for any particular average loss not depriving the insured of the possession, at the

port of destination of the whole of such subject matter or class, even though the subject matter or class becomes entirely worthless; but such insurer is liable for his proportion of all general average loss assessed upon the subject matter insured.

(Enacted by Stats. 1935, Ch. 145.)

1969. When insurance is confined in its terms to an actual total loss, it does not cover a constructive total loss, but it does cover any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the entire subject matter insured.

(Enacted by Stats. 1935, Ch. 145.)

1970. Abandonment, in marine insurance, is the act of the insured by which, after a constructive total loss, he declares the relinquishment to the insurer of the insured's interest in the subject matter.

(Enacted by Stats. 1935, Ch. 145.)

1971. In marine insurance, after abandonment of the subject matter of insurance or of any particular portion thereof which is separately valued by the policy or otherwise separately insured, in a case where the cause of the loss is a peril insured against the insured may recover for a total loss, as described in section 1963, if:

(a) More than half in value of the subject matter is actually lost by such peril, or would have to be expended to recover it from the peril.

(b) The subject matter is injured to such an extent as to reduce its value more than half.

(c) The subject matter is a ship, and either the contemplated voyage can not be lawfully performed without incurring either an expense to the insured of more than half the value of the ship abandoned or a risk which a prudent man would not take under the circumstances.

(d) The subject matter is cargo or freightage and the voyage can not be performed, nor another ship procured by the master to forward the cargo, within a reasonable time, with reasonable diligence and without incurring an expense to the insured of more than half the value of the subject matter or a risk which a prudent man would not take under the circumstances. But freightage can not in any case be abandoned unless the ship also is abandoned.

(Enacted by Stats. 1935, Ch. 145.)

1972. An abandonment can not be either partial or conditional.

(Enacted by Stats. 1935, Ch. 145.)

1973. An abandonment can be made only at a time limited by all of the following:

(a) Within a reasonable time after the information of the loss.

(b) After the commencement of the voyage.

(c) Before the insured has information of the completion of the voyage.

(Enacted by Stats. 1935, Ch. 145.)

1974. Where the information upon which an abandonment has been made proves incorrect, or the subject matter of insurance is so far restored when the abandonment is made that there is in fact no total loss, the abandonment is not effective.

(Enacted by Stats. 1935, Ch. 145.)

1975. Abandonment is made by giving oral or written notice thereof to the insurer.

(Enacted by Stats. 1935, Ch. 145.)

1976. A notice of abandonment shall be explicit, and shall specify the particular cause of the abandonment, but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or of loss.

(Enacted by Stats. 1935, Ch. 145.)

1977. An abandonment can be sustained only upon the cause specified in the notice thereof.

(Enacted by Stats. 1935, Ch. 145.)

1978. An abandonment is equivalent to a transfer to the insurer of the insured's interest, with all the chances of recovery and indemnity.

(Enacted by Stats. 1935, Ch. 145.)

1979. Whenever a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever remains of the subject matter insured, or its proceeds or salvage, to the same extent as in the case of a formal abandonment.

(Enacted by Stats. 1935, Ch. 145.)

1980. Upon an abandonment, acts done subsequent to the loss and in good faith by persons who at the time were the insured's agents in respect to the subject matter insured, are at the risk of the insurer, and for his benefit.

(Enacted by Stats. 1935, Ch. 145.)

1981. An acceptance of an abandonment is not necessary to the rights of the insured, and is not to be presumed from the mere silence of the insurer at the time of receiving notice of abandonment.

(Enacted by Stats. 1935, Ch. 145.)

1982. The acceptance of an abandonment, whether express or implied, is conclusive upon the parties and admits the loss and the sufficiency of the abandonment.

(Enacted by Stats. 1935, Ch. 145.)

1983. An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded.

(Enacted by Stats. 1935, Ch. 145.)

1984. On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer of the freightage; but freightage subsequently earned belongs to the insurer of the ship.

(Enacted by Stats. 1935, Ch. 145.)

1985. If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, after deducting from the amount of the loss any proceeds of the insured subject matter which have come to the hands of the insured.

(Enacted by Stats. 1935, Ch. 145.)

1986. If an insured omits to abandon, he may nevertheless recover his actual loss.

(Enacted by Stats. 1935, Ch. 145.)

1987. (a) A valuation fraudulent in fact entitles a marine insurer to rescind the contract.

(b) When the subject matter has been hypothecated by bottomry or respondentia, before its insurance and without the knowledge of the person actually procuring the insurance, such person may show the real value.

(c) Otherwise a valuation in a policy of marine insurance is conclusive between the parties in the adjustment of either a partial or total loss if the insured has some interest at risk and there is no fraud on his part.

(Enacted by Stats. 1935, Ch. 145.)

1988. In a case of partial loss, a marine insurer is liable only for such proportion of the amount insured by him as the loss bears to the value of the whole interest of the insured in the subject matter.

(Enacted by Stats. 1935, Ch. 145.)

1989. Where profits are separately insured in marine insurance, in case of loss the insured is entitled to recover that proportion of such profits which the value of the subject matter lost bears to the value of the whole.

(Enacted by Stats. 1935, Ch. 145.)

1990. In case of a valued policy of marine insurance on freightage or cargo, if only a part of the subject matter is exposed to risk, the valuation applies only in proportion to such part.

(Enacted by Stats. 1935, Ch. 145.)

1991. When profits are valued and insured by marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount.

(Enacted by Stats. 1935, Ch. 145.)

1992. In estimating a loss under an open policy of marine insurance, the following rules are to be observed:

(a) The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value or which are necessary to prepare it for the voyage insured.

(b) The value of cargo is either its actual cost to the insured, when laden on board, or, where that cost can not be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to:

(1) Any losses incurred in raising money for its purchase.

(2) Any drawback on its exportation.

(3) The fluctuations of the market at the port of destination.

(4) Expenses incurred on the way or on arrival.

(c) The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it.

(d) The cost of insurance is in each case to be added to the value thus estimated.

(Enacted by Stats. 1935, Ch. 145.)

1993. If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is computed as follows:

(a) Deduct the market price, at port of destination, of the damaged subject matter from its market price there when sound.

(b) Take that proportion of the value which the remainder thus ascertained bears to such market price when sound.

(Enacted by Stats. 1935, Ch. 145.)

1994. A marine insurer is liable for all the expense attendant upon a loss which forces the ship into port to be repaired. Where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred thereby. In either case, the liability for such expense is in addition to the liability for a subsequent total loss.

(Enacted by Stats. 1935, Ch. 145.)

1995. In marine insurance, when an insured is required to make a contribution in respect to the subject matter of insurance toward a general average loss, if the average was called for on a loss by a peril insured against, the insurer is liable for the insured's loss through the contribution.

(Enacted by Stats. 1935, Ch. 145.)

1996. In marine insurance, where an insured has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating the insurer to the insured's right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor after the insured, having the right and opportunity to enforce contribution from others, neglects or waives the exercise of that right.

(Enacted by Stats. 1935, Ch. 145.)

1997. In the case of a partial loss of a ship or its equipments, the old materials are to be applied towards payment for the new. Whether the ship is new or old, a marine insurer is liable for only two-thirds of the remaining cost of the repairs after such deduction, except that anchors and cannon must be paid for in full, and sheathing metal at a depreciation of only two and one-half per cent for each month that it has been fastened to the ship.

(Enacted by Stats. 1935, Ch. 145.)