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INSURANCE COMPANIES



Underinsurance

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Agenda

- When and why does underinsurance arise?
- The underwriting perspective
- How underinsurance may affect claims
- Back to underwriters: post-claim, would underwriters have done anything differently?
- Q&A session



When and why does underinsurance arise?

Deliberate request for underinsurance to keep premium down

Incorrect assessment of the value of the goods/vessel

Inflation

Commodity price fluctuation

External factors, e.g., COVID, Ukraine-Russia conflict

Line structure: max monetary line vs max percentage

Deductibles and/or co-insurance

Sub-limits

The underwriting perspective



The underwriting perspective

- Introduction & some thoughts
- Claim example



The underwriting perspective



What is underinsurance?

Section 81, Marine Insurance Act 1906

The Past

The underwriting perspective

The Present



Facilities & limits

First Loss

BOV & Incoterms

Rating on Sales

Inflation

Underwriting Process

The Customer

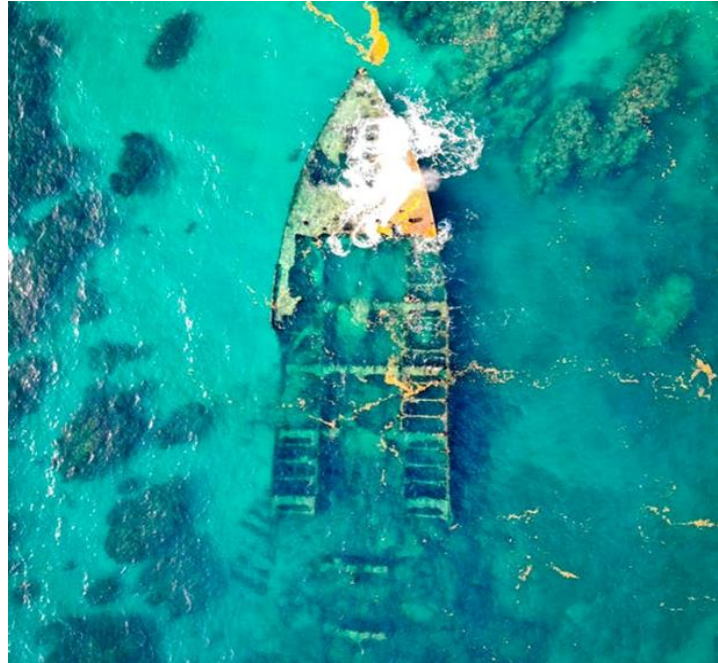
Summary

The claims perspective



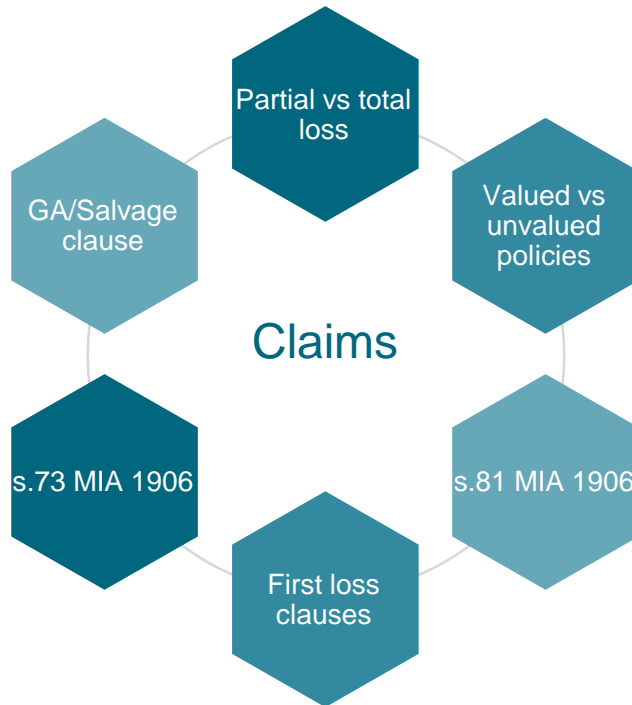
How underinsurance may affect claims

- If covered by the insurance, how should the loss be apportioned between insured & insurers?
- In a successful recovery action, how should proceeds be split between insured & insurers?



How underinsurance may affect claims

Apportionment of claim between insured & insurers



- Principle of average (s.81 MIA) apportions partial losses rateably in accordance with amount of risk each party has undertaken
- Total loss: agreed insured value vs “limit of indemnity” in unvalued policies
- Principle of average often amended by policy clauses, e.g., First Loss clauses
- S.73 MIA apportions insurers’ liability for GA/salvage expenses where there is underinsurance
- Most policies include GA/Salvage clauses that deems cargo to be insured for its “full contributory value”
- GA/Salvage expenses could also be recoverable as Sue & Labour

How underinsurance may affect claims

Case study

- Major fire involving cargo of timber on bulk carrier
- Voyage from Scandinavia to Middle East; fire occurred shortly after leaving load port
- Vessel returned to Scandinavia to offload cargo before traveling to Turkey for repairs (6 months)
- Vessel returned to Scandinavia to collect cargo
- Cargo (some) eventually delivered to Middle East more than 9 months later
- One insured had cargo of some \$3-4m onboard & was underinsured by some 25%
- Underinsurance arose b/c of policy sub-limit per conveyance
- No specific GA/Salvage clause in policy

Immediate problems to overcome:

- PA losses not fully indemnified
- Salvage security – insured had to fund 25%
- GA security – insured had to fund 25%
- Insured unpaid under sale contracts; affected liquidity

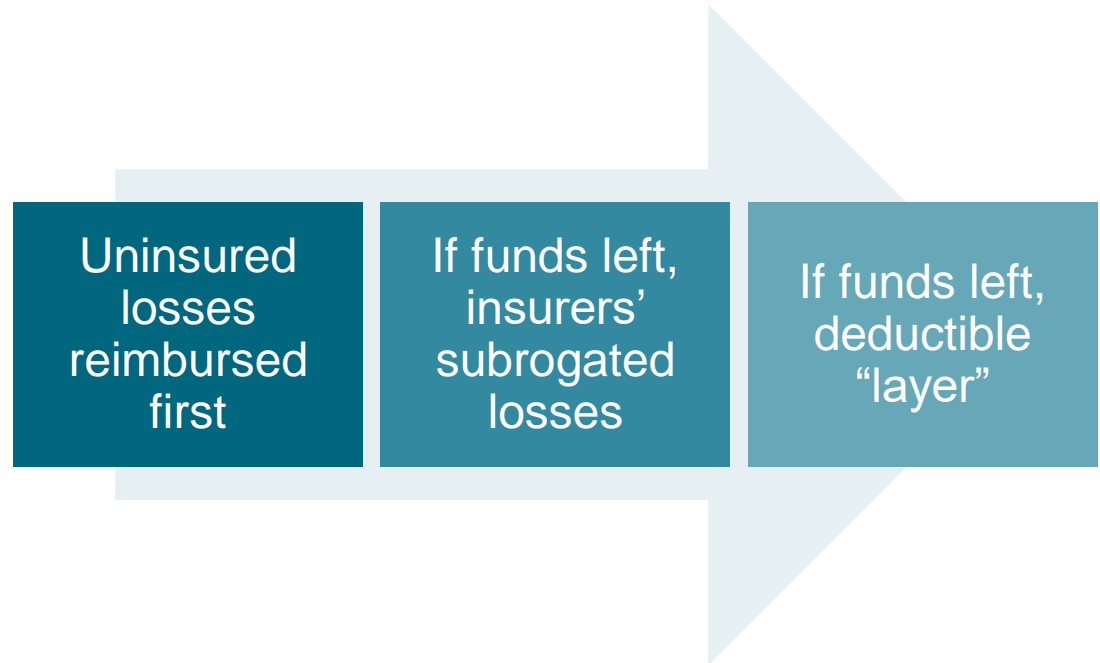
Future problems:

- Control & expenses of
 - recovery negotiations/proceedings
 - GA defence/salvage indemnity claims
- Apportionment of any recovery proceeds

How underinsurance may affect claims

Split of recovery proceeds between insured & insurers

- Under English law, unless policy otherwise provides, recovery proceeds are likely to be apportioned in layers with a “top down” approach
 - *Lord Napier and Ettrick v RF Kershaw Ltd* [1993] A.C. 713
 - *Kuwait Airways Corp v Kuwait Insurance Co* [1996] 1 Lloyd’s Rep. 664
- Subrogation receipt (or similar) can provide for an alternative split, even if policy silent



Back to underwriters: post-claim, would underwriters have done anything differently?

Different premium?



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graph TD; A[Different premium?] --> B[Amended insuring terms?]; B --> C[Changed limits or sub-limits of liability?]; C --> D[Declined the risk?];
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Amended insuring terms?

Changed limits or sub-limits of liability?

Declined the risk?

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