LAW OF MARINE INSURANCE

SUSAN HODGES

Cavendish Publishing Limited

CHAPTER 5

VALUED AND UNVALUED POLICIES

A – VALUED POLICIES

A valued policy is defined in s 27(2) as 'a policy which specifies the agreed value of the subject-matter insured'. The purpose of fixing in advance the amount of compensation to be paid to the assured is to avoid disputes as to the value of the subject-matter insured. The validity of such a policy – whether it offends the principle of indemnity – was raised as early as 1761 in *Lewis v Rucker*,[1] where it was firmly established that it was not to be considered as a wager policy, or like an 'interest or not interest' type of policy. The learned Lord Mansfield remarked that, '… it must be taken that the value was fixed in such a manner as that the insured meant only to have an indemnity'. In *Irving v Manning*,[2] Mr Justice Patteson (who delivered the judgment of the Court of Appeal) had first to admit that a policy of insurance is not a perfect contract of indemnity before he could proceed to identify a valued policy as an example of its imperfection.[3] The convenience of a valued policy is, in the words of Mr Justice Gorell Barnes in *The Main*,[4] to save both parties the 'necessity of going into an expensive and intricate question as to the value in each particular case'. Of course, all is well and good if a fair and realistic figure is given as its valuation. But as to be seen, past cases have shown that the agreed values tended to be inflated and exorbitant.

AGREED VALUE IS CONCLUSIVE

In 1847, the question regarding the binding or conclusive nature of the agreed valuation was examined in *Irving v Manning*.[5] The House approved the decision of the lower court that, 'the agreed value is conclusive; each party has conclusively admitted that this fixed sum shall be that which the assured is entitled to receive in case of a total loss'. Lord Campbell expressed relief that this question, which had agitated Westminster Hall for 30 years, was at last solemnly resolved. The rule, confirmed by the highest authority of the land, is now embodied in s 27(3) of the Act, which states:

> 'Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and the assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.'

---

1 (1761) 2 Burr 1167 at p 1171.

2 (1847) 1 HL Cas 287.

3 He said, *ibid*, at p 287, '... it must be taken with [the] qualification that the parties may have agreed beforehand in estimating the value of the subject assured, by way of liquidated damages, as indeed they may in any other contract of indemnity'.

4 [1894] P 320 at p 327.

5 (1847) 1 HL Cas 287.

As can be seen, the section itself provides two exceptions to the general rule encapsulated in the phrases, 'subjection to the provisions of this Act' and 'in the absence of fraud'. Before proceeding to discuss the exceptions, some comments have to be made of the general rule.

In *Woodside v Globe Marine Insurance Co Ltd*,[6] a case decided before the Act, the binding nature of the valuation was said to apply regardless of any change in the actual value of the subject-matter insured. Justice Mathew took pains to describe the eventualities of a rise and fall in the actual value of the goods as follows:

> 'Whether the subject-matter of insurance be ship or goods, the valuation is the amount fixed by agreement at which in case of loss the indemnity is to be calculated. Where goods are assured the valuation may be low when the policy attaches; but the value to the owners may be enhanced when the goods have nearly reached their destination by the expenses of transit, etc. Yet the valuation is binding. And again, if the valuation be high, but the goods are depreciated in value from fall of market or other causes for which the underwriter is not liable, the valuation cannot be opened.'

The conclusive nature of the agreed valuation is binding even if, unbeknown to the parties, the ship was considerably damaged and the agreed value no longer reflects her real value. In this regard, *Barker v Janson*[7] and *Lidgett v Secretan*[8] are the leading and best illustrations on the subject. In *Barker v Janson*, at the time when the policy was made, but with the knowledge of the parties, the ship had sustained damage in a storm to such an extent that the expense of the repairs would have exceeded her value when repaired. She was, therefore, worth much less than the agreed valuation.[9] Notwithstanding this injury to the ship and the resulting substantial reduction in her value, the value stated in the policy was held conclusive as between the parties. The underwriters were not permitted to deduct from the valuation the sum it would have cost to make the vessel fit for sailing. Chief Justice Bovill observed that, 'both parties acting in good faith are willing to be bound by that valuation … An exorbitant valuation may be evidence of fraud, but when the transaction is *bona fide*, the value agreed upon is binding'. It is fair to say that the agreed valuation, however largely in excess of the true value, is, in the absence of fraud, conclusive between the parties.

Whether the same rule applies to a voyage policy was considered in *Lidgett v Secretan*, where two policies were involved: the outward policy was from London to Calcutta and the homeward voyage was 'at and from Calcutta'. On the expiration of the first policy, the actual value of ship was, compared to the agreed valuation in the second policy, considerably reduced as a result of storm damage sustained by the ship during the first voyage. The real issue in the case

6 [1896] 1 QB 105; 1 Com Cas 237.

7 (1868) LR 3 CP 303.

8 (1871) LR 6 CP 616.

9 In *Barker v Janson* [1868] LR 3 CP 303 at p 307, Montague Smith J, said: 'A thousand things might lessen the value a vessel between the time of a policy being made and the time of its attaching, such as natural decay, worms, or the ship become drug in the market; and all the evils intended to be avoided by this kind of policy would arise again.'

was, as put by counsel for the insurers, '… whether the assured … were entitled to recover under the second policy the full value of the ship as if she had been undamaged at the inception of the risk'. Counsel also argued that, as the policy was for a voyage, it should be treated differently from *Barker v Janson*, where the policy was for a period of time. The second insurer's main line of defence was to the effect that, as the implied warranty of seaworthiness applied to the policy in question, they should be allowed to deduct from the amount for which they are liable under that policy a sum which should (though not actually incurred) have been incurred in order to render the ship seaworthy for the homeward voyage: It was said that the nature of a voyage policy was such that the vessel should not depart on her voyage home until the repairs were effected to make the ship seaworthy.

This contention was roundly dismissed by Justice Willes, who could find no authority limiting the value to that extent. His justification for denying the insurer the deduction was as follows:

> 'If the vessel had been at sea, and the policy is a valued one, had been made after she had sailed, and the vessel had sustained damage, would the underwriters be entitled to say that the particular loss should be deducted from the value in the policy?'

With due respect, it is submitted that a more acceptable line of reasoning is that, because the policy was 'at and from Calcutta', it had attached when the ship arrived, albeit in a damaged condition, 'at' Calcutta. Further, the implied warranty of seaworthiness is applicable only at the commencement of the voyage, and as the vessel did not set sail from, but was destroyed by fire whilst undergoing repairs at Calcutta, no question of breach of the said warranty can arise.

Once a policy (voyage or time) has attached, the agreed value prevails whatever the actual value of the vessel might be at the time. Mr Justice Montague Smith said: 'It cannot depend upon the actual value at the time of the loss or at the time the risk attaches.' In so far as the conclusive nature of the valuation is concerned, no distinction is to be drawn between a time and a voyage policy. For better or for worse, the agreed value is conclusive.[10]

The most recent case to have tacitly confirmed the validity of an over-valued policy is *The Maira (No 2)*,[11] where the House of Lords indicated that the vessel, which was mortgaged twice over, should have been insured in accordance with the agreement for 130% of the mortgage debt.

10 By the time *Loders and Nucoline Ltd v The Bank of New Zealand* (1929) 33 Ll L Rep 70 at p 75 reached the court in 1929, the principle that the value of the subject-matter insured as stated in the policy is conclusive and cannot be re-opened was described as 'already very well established'.

11 *Glafki Shipping Co SA v Pinos Shipping Co (No 1)* [1986] 2 Lloyd's Rep 12, HL.

'As between the insurer and assured'

The valuation is, according to s 27(3), binding only 'as between the insurer and the assured', though Lord Campbell in *Irving v Manning*[12] was of the opinion that it enured for 'all purposes'. In *North of England Iron SS Insurance Association v Armstrong*,[13] the court, taking the agreed value of £6,000 into consideration, held that the insurers were entitled to recover from the assured the whole of the £5,000 which the assured had recovered from the owners of the ship responsible for the collision. On the effect of the agreement as to the value, Mr Justice Mellors commented:

> 'The basis of the contract is the agreed value of the vessel, and when, to avoid all questions as to the real value, the parties come to an agreement as to the value, it appears to me to follow as a matter of course that all those rights, which spring out of the payment by an underwriter for a total loss, must be governed by the agreed value.'

In *SS Balmoral v Marten*,[14] the insurers, who were asked by their assured to reimburse them their share of general average which they had contributed, were held liable to pay only that proportion of the salvage and general average losses which the policy value bore to the proved, or real, value of the ship.[15] Lord Shand was adamant that:

> 'In all questions of indemnity, therefore, the parties to the policy, insurers and insured, have agreed that though the ship may in truth be much more valuable, her value is to be taken at £33,000 only. There is no exception. The agreement is to apply in all cases of indemnity which may arise.'

Scrapping voyages

A vessel which has, during the course of a time policy, to make a journey (referred to as 'scrapping voyages') to a scrap yard or other place for the purpose of being 'broken up' or 'being sold for breaking up' will be governed by cl 1.5 of ITCH(95),[16] the relevant part of which states:

> '… any claim for loss of or damage to the Vessel occurring subsequent to such sailing shall be limited to the market value of the Vessel as scrap at the time when the loss or damage is sustained, unless previous notice has been given to the Underwriters and any amendments to the terms of cover, insured value and premium required by them have been agreed …'

Unless previous notice and arrangements have been made, the scrap, and not the agreed value of the vessel at the time of loss, is to be taken as the figure for settlement of any claim for loss or damage. This is a contractual exception to the general rule contained in s 27(3) that the agreed value is conclusive.[17]

---

12 (1847) 1 HL Cas 287 at p 308, HL.

13 (1870) LR 5 QB 244.

14 [1902] AC 511, HL.

15 The agreed value was £33,000, but £40,000 was taken as the value in the salvage proceedings. The insurers were only bound to pay 33/40ths of the ship's contribution.

16 Previously cl 1.3 of the ITCH(83). There is no equivalent to cl 1.3 in the IVCH(95).

17 If the policy is unvalued, the scrap value, and not her value at the commencement of the risk (s 16(1)) is also to be applied.

EXCESSIVE OVER-VALUATION

The rule that the agreed value in a valued policy is binding and conclusive is firmly established. It was always thought that the value should never go beyond what is 'reasonable and fair,' and the assured is meant only to have an 'indemnity', the very basis of a contract of insurance.[18] Admittedly, it is, of course, difficult at any given time to be exact or precise about the value of the subject-matter insured. A margin of error is bound to occur, and the courts are generally prepared to overlook any difference between the real and the agreed value provided that it is not grossly or outrageously excessive. Not all over-valuations will be tolerated by the courts, and there are, as will be seen, more than ample grounds upon which the courts may set aside an agreed valuation which is excessive. What constitutes excessive over-valuation is a question of fact.

'In the absence of fraud'

The above phrase embodies the defence of fraud, which could be used to nullify an excessive agreed valuation. Section 27(3) specifically states that the valuation is conclusive only 'in the absence of fraud'. Thus, if a policy is tainted with fraud, the whole policy, and not just the agreed valuation, is at risk. According to Mr Justice Wright in *Loders and Nucoline Ltd v The Bank of New Zealand*,[19] the phrase 'in the absence of fraud' is simply 'a warning that if there is fraud, not only the valuation but the whole of the policy may be re-opened and avoided … unless the policy is avoided the value is conclusive'.

The question of fraud was first considered in *Haigh v De la Cour*,[20] where it was held that fraud committed by the assured 'entirely vitiates the contract'. It was obvious from the circumstances of the case that, from the very beginning, the assured had intended to cheat the underwriters: fictitious invoices were issued; the bills of lading were interpolated after they were signed by the captain; the ship was run away with; and some of the cargoes were disposed of. It was held that the insurers were not liable even for the value of the goods that were actually on board.

More recently, in *The Gunford Case*,[21] Lord Shaw of Dunfermline, in an informative speech, dealt with the subject of fraud in the following way:

> 'Had this over-valuation been tainted by fraud the contract of insurance could not have been enforced. Where there is heavy over-valuation, fraud is, *a priori*, not very far to seek. But fraud is not here pleaded; and upon the general question it ought to be remembered that to the insurer using a ship as part of the going concern of a business a statement of value going much beyond the amount to be realised if the concern was stopped and the asset put upon the market in

18 In *Forbes v Aspinal* (1811) 13 East 323 at p 326, Lord Ellenborough's understanding was that the assured should keep 'fairly within the principles of insurance which is merely to obtain an indemnity' when fixing the agreed value.

19 (1929) 33 Ll L Rep 70 at p 76.

20 (1812) 3 Camp 319.

21 [1911] AC 529 at p 542, HL.

intelligible and legitimate It is not discountenanced by the Marine Insurance Act of 1906, but, on the contrary, is, apart from fraud held under s 27, sub-s 3, of the statute to be conclusive of the insurable value.'

It is, of course, possible for a valuation to be excessive without being fraudulent. As fraud is by no means easy to prove, this defence is rarely pleaded. It is true to say that '… it is much more easy to infer fraud from over-insurance of goods than from over-insurance of ship when both parties are in approximately the same position to know what the market value of the ship proposed to be insured is'.[22]

Breach of utmost good faith

Besides fraud, there is another defence which could be invoked by an insurer in order to avoid liability. Section 17 on the doctrine of *uberrimae fide*, or 'utmost good faith', is concerned with conduct of a lesser degree of impropriety than fraud. Conduct short of fraud could attract the operation of this principle; interestingly enough, the section has not, so far, been used for this purpose, and the reason for this could well be that the other defences available to the insurer have proved to be effective. It is to be noted that fraud would render a contract void *ab initio*, whereas a breach of the duty of utmost good faith would merely make the contract voidable.

The principle of utmost good faith is the golden thread running through the whole fabric of a contract of insurance.[23] A valuation known to the assured to be grossly excessive, but not revealed to the insurer, would surely offend the principle of disclosure and, very likely, constitute a breach of the duty of utmost good faith.

Wagering or gaming

A valued policy, as was seen, is not to be regarded as a wager policy. If it was, it would be void. Lord Mansfield in *Lewis v Rucker*,[24] after acknowledging the fact that there are many conveniences for allowing valued policies, nevertheless warned that 'if they are used merely as a cover to a wager, they would be considered as an evasion'. Gross over-valuation could be evidence of gaming or wagering. This was also recognised by Mr Justice Blackburn of the Court of Appeal in *Ionides v Pender*,[25] where he observed that, '… whether there is an excessive valuation or not, depends on whether the valuation was so high as to amount in part at least to a wager …'. And a wagering policy is void by s 4. On the facts of the case, the court preferred to rest its decision on the ground of non-disclosure of a material fact. An assured who excessively over-values his insured property may well find that he has no policy upon which to base his claim: such a policy could be held to be void by reason of gaming or wagering.

22 *Per* Bailhache J, *General Shipping & Forwarding Co & Another v British General Insurance Co Ltd* (1923) 15 Ll L Rep 175 at p 176, further discussed below.

23 See Chapter 6.

24 (1761) 2 Burr 1167 at p 1171.

25 (1874) LR 9 QB 531 at p 536.

Non-disclosure of material fact

Excessive over-valuation could arise in one of two ways: an assured may take out one policy in which he has excessively over-valued the subject-matter insured or he could take out more than one policy on the same subject-matter insured, resulting in an over-valuation or, if preferred, over-insurance (by double insurance) of the subject-matter insured. In either case, the effect is the same.[26] An assured who fails to disclose to the insurer that the agreed valuation in a single policy, or the total sum of the agreed valuations of more than one policy, is excessive, would be guilty of a breach of the duty of disclosure.

Non disclosure of excessive over-valuation

Ionides v Pender[27] is the first case to consider non-disclosure of an excessive over-valuation as a ground for avoidance of a policy. In this case, the plaintiffs had insured goods at a value very greatly in excess of their real value without disclosing this fact to their underwriters. Justice Blackburn of the Court of Appeal adopted the questions which the trial judge had directed to the jury to consider upon the facts. As the order or sequence of the questions is particularly important, it is worthwhile citing them in full:[28]

- Were the valuations for insurance excessive?
- If excessive, were they so made with a fraudulent intent?
- Whether fraudulent or not, was it material to the underwriters to know that the valuation was excessive?
- Was it concealed from the underwriters?

He agreed with the trial judge that the valuations were excessive but that they were not made fraudulently. On the third question, of the materiality of the fact of the excessive over-valuation, he found that:

> '... there was distinct and uncontradicted evidence that underwriters do in practice act on the principle that it is material to take into consideration whether the overvaluation is so great as to make the risk speculative. It appears to us a rational practice.'

As this was regarded as a 'rational practice', he had no choice but to rule that the concealment of the fact of the excessive over-valuation constituted a breach of the duty of disclosure.

The defence of non-disclosure was also applied after the passing of the Act in three well-known cases, namely, *Gooding v White*,[29] *Piper v Royal Exchange*

---

26 In *The Gunford Case* [1911] AC 529 at p 536, HL, Lord Alverstone CJ thought that the over-valuation and over-insurance were in the circumstances of the case synonymous: 'Some distinction was attempted to be made between over-valuation and over-insurance, but, inasmuch as all the policies were valued policies, the question becomes immaterial.'

27 (1874) LR 9 QB 531.

28 It is observed that the same questions were raised in *Herring v Janson & Others* (1895) 1 Com Cas 177, but as all the answers were in the negative, judgment was accordingly awarded to the assured-plaintiffs.

29 (1913) 29 TLR 312.

Assurance[30] and *Berger and Light Diffusers Pty Ltd v Pollock*.[31] In the first of the trilogy, Mr Justice Pickford remarked that:

> 'It was unnecessary to say whether over-valuation that was effected for the purpose of defrauding the underwriters was done with too enthusiastic an idea of the profits likely to be realised from the cargo. It was sufficient that if there was, as he thought there was, such an over-valuation as ought to have been communicated there was a concealment of a material fact which avoided the policy.'

In the second case, Mr Justice Roche pointed out that the deterioration and the facts with regard to the value of the ship were matters which were known to the assured. As the assured was unable to show that the defendants knew or ought to have known of any facts material to the actual value of the yacht, judgment was awarded against them.

On the question of the knowledge of the insurer, either that he knew or ought to have known that the subject-matter insured was grossly over-valued, reference should be made to the case of *General Shipping and Forwarding Co v British General Insurance Co Ltd*,[32] where a distinction is drawn between over-insurance of goods and of ships. In this case, the vessel was valued at £5,000 in the policy when her actual market value was about £1,500. The insurers denied liability on the ground that the vessel was grossly over-valued. Mr Justice Bailhache awarded judgment in favour of the assured on the ground that the insurers themselves were in as good a position as the assured to gauge the market value of the ship. The judge pointed out that, if the policy be on goods, the matter would be on a different footing:[33] 'There the underwriter has no means of knowing the value of the goods except the statement of the assured. He has not, as in this case, all the information to his hand when he comes to insured goods …'.

In *Berger and Light Diffusers Pty Ltd v Pollock*,[34] Mr Justice Kerr's remarks on the subject are particularly informative. He said:[35]

> 'Over-valuation is only one illustration of the general principle that insurers are entitled to avoid policies on the ground of non-disclosure of material circumstances. It must therefore always be shown that the over-valuation was such that, if it had been disclosed, it would have entitled the insurer to avoid the policy because it would have affected his judgment as a prudent insurer in fixing the premium or determining whether or not to take the risk.

The aim of this speech is to emphasis that the terms of s 18, namely, the test of materiality and of the prudent insurer, must be observed.

30 [1932] 44 Lloyd's Rep 103.

31 [1973] 2 Lloyd's Rep 442. See also *Visscherij Maatschappij Nieuw Onderneming Assurance Co Ltd v The Scottish Metropolitan* (1922) 27 Com Cas 198, CA.

32 (1923) 15 Ll L Rep 175, KBD.

33 *Ibid*, at p 176

34 [1973] 2 Lloyd's Rep 442.

35 *Ibid*, at p 465.

Non-disclosure of additional insurance

It is necessary to examine the position of an assured who has taken out legitimate insurances upon ship, cargo or freight, and also made additional separate insurance(s). An assured who takes out an additional valued policy or policies resulting in an over-valuation or over-insurance of the subject-matter insured, as in *The Gunford Case* and *Mathie v The Argonaut Marine Insurance Co Ltd*,[36] could also be caught by the rules of non-disclosure. In *The Gunford Case*, the assured, in addition to taking out a valued policy on hull for £18,500 (the actual value was £9,000) and on freight for £5,500 (actual value of about £5,000) took out additional policies in connection with the ship on disbursements for £6,500 and on hull and disbursements for £4,600.[37] Though these ppi policies on disbursements were void under s 4 of the Act, nonetheless, as 'they go to swell the sum which would be payable in the event of the ship being lost … there was a very large over-valuation which might well make a prudent underwriters hesitate both as to undertaking the risk and consider the premium which he should be required before doing so'.

In the second case, additional policies were effected on freight or anticipated freight and also for disbursements. The issue was whether the assured was bound to disclose to the underwriter, with whom he had effected an insurance for £6,000 on a cargo of coal on his ship, the fact that he had already effected an insurance for freight, also for £6,000, which, in the circumstances, was higher than the freight that he could possibly earn. It was estimated that the actual freight upon the coal may have been something in the region of £1,800 to £2,000. The insurance of the cargo and freight added together (£12,000) was considerably in excess of the total value of the cargo and freight (£7,200). Lord Dunedin of the House of Lords held the view that there was a vital difference between this and *The Gunford Case*. Whilst the risk was said to be 'entirely speculative' in *The Gunford Case*, the assured in the case under consideration was entitled under the policy to insure freight up the limit of £6,000. In the circumstances of the case, it was held that there was no concealment of a material fact. Lord Sumner stressed that, 'The question is purely one of fact …'. As there was nothing to change 'what was a perfectly usual and legitimate business transaction into a purely speculative one', the appeal of the insurer was dismissed.[38]

'Subject to the provisions of this Act'

In *Loders and Nucoline Ltd v The Bank of New Zealand*, Mr Justice Wright expressed the view that the words, 'Subject to the provisions of this Act' may

---

36 (1925) 21 Ll L Rep 145, HL.

37 [1911] AC 529, at p 543, *per* Lord Shaw of Dunfermline, '… the disbursements were the very things which had been already accounted for in the freight, and when the ship became a wreck the payment on these policies was not to be a payment of indemnity, but a present to the assured of this sum of money, a present falling to be made in the event of the wreck and loss of the vessel'.

38 *Per* Lord Dunedin, (1925) 21 Ll L Rep 145 at p 146, HL.

'perhaps refer to ss 29(4) and 75(2)'. As the former can be more appropriately discussed under 'unvalued policies', only the latter will be considered here.

Where subject-matter is not wholly or completely at risk

In the above case, Mr Justice Wright expressed the view that the words were 'not a qualification … but a reminder of another rule which again is of essential importance in marine insurance'. The relevant parts of s 75(2) states that: 'Nothing in the provisions of this Act … shall … prohibit the insurer from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy'. This defence was raised in the case of *The Main*,[39] where the whole of the subject-matter insured, freight, was not at risk. The underwriters were entitled under the common law, the principle of which is now stated in s 75(2) of the Act, to show that a part[40] or the whole of the subject-matter was not at risk. Mr Justice Gorell Barnes said:

> 'In strictness, it is not an opening of the valuation, but is merely a reduction in proportion to the amount of cargo shipped, the valuation still being held binding as a valuation on that portion which is shipped.'

The policy covered only freight which was at risk on the voyage in question.[41]

B – UNVALUED POLICIES

An unvalued policy is defined in s 28 as 'a policy which does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner hereinbefore specified'. Unvalued policies, sometimes referred to as 'open' policies, are nowadays rarely used. Whilst the valuation declared in a valued policy is accepted by both parties as binding and conclusive, in an unvalued policy, the value of the subject-matter insured, referred to as the 'insurable value', has to be subsequently ascertained in accordance with the rules set out in s 16.

INSURABLE VALUE

Policies on hulls and on goods are now always valued policies, but unvalued policies have also been used in the past for both hulls and goods.

Insurable value of ship

The method for ascertaining the insurable value of a ship is set out in s 16(1) as:

> '… the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's

39 [1894] P 320 at p 324.

40 *Forbes v Aspinall* (1811) 13 East 323 where the insurers were held liable for the loss of freight which was expected to be earned only from cargo which was actually on board.

41 The same rule applies to an unvalued policy: see *Williams & Others v North China Insurance Co* [1933] 1 KB 81, CA.

> wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole. The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade.'[42]

It is to be noted that in relation to a voyage policy, it is value of the ship at the commencement of the 'risk', not of the voyage, which is to be considered. Thus, in a voyage policy, reference has to be made to rr 2 and 3 of the Rules for Construction for the purpose of determining when the risk attaches. On the question as to what is included within the term 'ship,' s 16(1) has to be read with r 15. A policy simply on 'hull and machinery' does not cover stores and provisions because it is not as comprehensive as a policy on 'ship'.[43] It is to be observed that coals and engine stores are covered only if they are 'owned by the assured'.

Insurable value of freight

Section 16(2) states:

> In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance.

The word 'gross' covers working expenses to earn freight, and this is of 'great practical convenience in avoiding a troublesome, uncertain and possibly litigious inquiry into working expenses.'[44]

In relation to advance freight, it is to be recalled that the insurable interest lies not in the shipowner, but in the person who had paid the freight in advance.[45]

Insurable value of goods or merchandise

The insurable value of goods is 'the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole'. The expression 'prime cost' was examined in *Williams v Atlantic Assurance Co Ltd*[46] by the Court of Appeal with Lord Justice Scrutton stating that it is means the 'cost of manufacturing and would … refer to the state of the goods at or about the time of their first being at risk, the time of commencing the adventure'. The invoice price is *prima facie* evidence of prime cost. He also clarified that it does not cover 'loss of a profit or rise in the market price which

42 *Hogarth v Walker* [1900] 2 QB 283 on dunnage mats and separating cloths on board a vessel engaged in the grain trade.

43 *Roddick v Indemnity Mutual Mar Insurance Co* [1895] 2 QB 380, CA.

44 *Per* Lord Robson, *The Gunford Case* [1911] AC 529 at p 549, HL.

45 Section 12.

46 [1933] 1 KB 81 at p 90, CA. For another example of an unvalued or open policy on goods, see *Berger & Light diffusers Pty Ltd v Pollock* [1973] 2 Lloyd's Rep 442.

was expected to be made or to occur in the future'. [47] Whether the loss be total or partial, the same principle applies. [48]

Floating or open policy on goods

A floating policy is defined in s 29. It is a policy on goods which leaves 'the name of the ship or ships and other particulars to be defined by subsequent declarations'. In the context of insurable value, s 29(4) states that:

> 'Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration.'

The parties may, in view of the opening words to the subsection, insert a special clause in the policy as to valuation in the event of loss or arrival before a declaration is made. Clause 5 of the Institute Standard Conditions for Cargo Contracts (1/4/82) is an example of such a clause. It states:

> 'In the event of loss accident or arrival before declaration of value it is agreed that the basis of valuation shall be the prime cost of the goods or merchandise plus the expenses of and incidental to shipping, the freight for which the Assured are liable, the charges of insurance and … %.'

Insurable value of any other subject-matter

With respect to any other subject matter, s 16(4) states that the insurable value is simply the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

47 In similar terms, Greer LJ, *ibid*, at p 103, noted that it means 'the prime cost to the assured at or about the time of shipment, or at any rate at some time when the prime cost can be reasonably deemed to represent their value to their owner at the date of shipment'.

48 *Usher v Noble* (1810) 12 East 673, the rule for estimating a partial loss is 'by taking the proportional difference between the selling price of the sound and that of the damaged part of the goods at the port of delivery, and applying that proportion (be it a half, a quarter, an eighth, etc) with reference to such estimated value at the loading port, to the damaged portion of the goods'.