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# Obligations of the Policyholder and Liability of the Insurer in the Marine Insurance Contract in Poland between 1920 and 1961

**Keywords:** marine insurance policy, maritime shipping, property insurance, maritime risk, compensation for a loss.

## Introduction

The origins of marine insurance derive from an ancient maritime loan, general average, and the early forms of mutual insurance.[1] Pope Gregory IX's ban on usurious marine loans imposed in the thirteenth century provided impetus for the growth of insurance as an independent institution. However, the two were closely intertwined until the middle of the nineteenth century.[2] The oldest insurance documentation concerning

1 The maritime loan (*poenus nauticum*; also *pactunia traiecticia*) was a way to raise funds and an instrument for transferring financial (insurance) risk to a different entity, as it constituted a credit and trading transaction involving a transfer of a risk to the other party to the credit agreement. The maritime loan contained many elements characterising today's marine insurance, including essentially the payment of an insurance premium for the price of the risk. *Lex Rhodia de iactu* (the discharge maritime), on the other hand, was the original form of mutual insurance. It consisted in distributing the risk among the participants in a joint undertaking. For more on this, see: Grzegorz Blicharz, "Pożyczka morska w zachodniej tradycji prawnej," *Studia Iuridica* 58 (2014): 9–29; Idem, "Prawne aspekty finansowania transportu morskiego w starożytnym Rzymie," *Czasopismo Prawno – Historyczne* 54 (2012), 2: 291–314; Idem, "Pożyczka morska. Ślepa uliczka zachodniej tradycji prawnej?," *Forum Prawnicze* 15 (2013), 1: 28–35; Pitman Benjamin Potter, *The Freedom of the Seas in History, Law and Politics* (New York: Longmans, Green and Co., 1924), 11; Stanisław Płodzień, *Lex Rhodia de iactu. Studium historyczno-prawne z zakresu rzymskiego prawa handlowo morskiego* (Lublin: Wydawnictwo KUL, 2011); Waldemar Bednaruk, "Wpływ ubezpieczeń na rozwój transportu morskiego w epoce wczesno nowożytnej," *Teka Komisji Prawniczej Oddział PAN w Lublinie* 11 (2018), 2: 20–21; Marian Huget, *Ubezpieczenia przewozów morskich* (Gdynia: Wydawnictwo Morskie, 1960), 11–22.

2 Władysław Sowiński, *Prawo handlowe morskie w zarysie* (Lwów: Książnica Atlas, 1935), 167–168; Wojciech Kasperski, *System ubezpieczeń gospodarczych w międzywojennej Polsce* (Lublin: Wydawnictwo SAWP KUL, 2019), 34–38; Edward Kabat, *Przezorny zawsze ubezpieczony: dzieje ubezpieczeń* (Breń: Instytut Pomocy Młodzieży, 2007), 36–37; Jan Łopuski, *Odpowiedzialność za szkodę w żegludze*

property insurance in sea transport goes back to the turn of the fourteenth century.[3] It is worth adding that, besides the contract of insurance, maritime statutes were a separate source of law in Italian coastal cities. They contained regulations on shipping and maritime trade, and things such as ownership of seagoing vessels, the shipowner's liability, the ship's company, contract of carriage, joint failure, ship collision and maritime loan. Italian sources became the basis for the further development of maritime law, as the Spanish 14th century collection *Libro del Consulado del Mar* was partly based on them.[4] However, the first legal regulations concerning maritime insurance contracts, were established only in the fifteenth century (e.g., the Ordinance of Barcelona of 1435, the Statutes of Genoa of 1467).[5] With the increased dynamism of sea transport in the era of great geographical discoveries, there was a time when marine insurance developed to become an increasingly important element of compensatory relations and maritime trade.[6] Marine insurance, which was first developed in Italy, also came to Hamburg with the Dutch who fled after the fall of Antwerp. The first mention of a maritime insurance

*morskiej* (Gdańsk: Wydawnictwo Morskie, 1969), 45–50; Idem, *Encyklopedia podręczna prawa morskiego* (Gdańsk: Wydawnictwo Morskie, 1982), 76; Edward Montalbetti, *Ubezpieczenia morskie* (Warszawa: nakł. Powszechnego Zakładu Ubezpieczeń Wzajemnych, 1948), 5; Huget, *Ubezpieczenia przewozów*, 36–38.

3 Kasperski, *System ubezpieczeń*, 26–29; Marian Szczęśniak, *Zarys dziejów ubezpieczeń na ziemiach polskich* (Warszawa: Przedsiębiorstwo Wydawnicze LAM, 2003), 23.

4 Kasperski, *System ubezpieczeń*, 34–38; Bednaruk, "Wpływ ubezpieczeń," 21–25; Szczęśniak, *Zarys dziejów*, 29–30; Montalbetti, *Ubezpieczenia*, 5–8; Łopuski, *Encyklopedia*, 108; Huget, *Ubezpieczenia przewozów*, 24–25. Cf. Font Rius, José Maria, *Libro del Consulado del Mar. Edition del texto original Catalani y traduccion Castellani de Antonio de Capmany* (Barcelona: Cámara oficial de Comercio y Navegación de Barcelona, 1965), 7–58 and the prologue.

5 The owner of a vessel or cargo surrendered his right to receive monies upon signing the contract, agreeing to be paid only in the event of damage or loss to the vessel or cargo during the voyage. He paid a predetermined fee for this transaction. In the last stage of insurance loan evolution, the loan element was eliminated, and loans gained the character of solely premium-based marine insurance. See: Sowiński, *Prawo handlowe*, 168.

6 At this point it is also worth adding that in the 16th century, further regulation of marine insurance took place in Spain, Flanders, and Italy by means of ordinances. This was also the time when insurers started organising themselves into associations to defend their common interests, share risks, and popularise information about sea perils and averages. In the 17th century, a shipping information centre and an insurance exchange were set up in Lloyd's Coffee House, where shipowners and cargo owners would create assurance funds from the premiums they contributed. The operation of this association led to the signing of the first insurance contracts and the payment of compensations thereunder. Apart from individual insurers associated at Lloyd's of London, 17th–century England saw the establishment of the first marine insurance companies based on joint stock: the London Assurance Corporation and the Royal Exchange Assurance Corporation. The two insurers were incorporated in the eighteenth century and the rise of companies resulted from the 1825 repeal of legislation passed in 1720 that had banned companies other than the two in question. In the nineteenth century, they dominated the marine insurance market, although they never overshadowed Lloyd's. Cf. Gustav Fischer, "Ein Lloyds–Zirkular betreffend die Feststellung des Versicherungswertes in der Seeversicherung," *Weltwirrtschaftliches Archiv* (1918) 13: 236–238. For more on this, see: Łopuski, *Odpowiedzialność*, 51–53, Idem, *Encyklopedia*, 108–109; Magdalena Adamowicz, "Ubezpieczenia morskie," in: *Leksykon prawa morskiego 100 podstawowych pojęć,* eds. Dorota Pyć and Iwona Zużewicz-Wiewiórowska (Warszawa: Wydawnictwo

policy taken out in Hamburg dates from 1588.[7] Hamburg's trade flourished, so did the insurance exchange, and in 1765 the first Assecuranzgesellschaft auf Aktien was founded in Hamburg. The conquest of Hamburg by the French meant that the business of insurance companies suffered severe blows damaged in favour of England. However, after 1815, the Hamburg insurance market managed to recover. By the end of the 19th century, marine insurance was regarded as part of the general transport insurance system.[8] For the Polish regulation of marine insurance, mainly the German solutions from the turn of the 19th and 20th centuries are relevant.

The first Polish codification of maritime law, containing regulations on the aforementioned institution was the Gdańsk city charter (Old Polish: *wilkierz*) of 1761.[9] However, due to the partition of the Polish Republic, the legal systems of the partitioning states were effective in the Polish territory. When Poland regained independence in 1918, as sanctioned by the Treaty of Versailles of 1919,[10] the country gained access to the sea. This helped the legal community understand that the country needed maritime law, which would be tailored to the systemic and legal needs of interwar Poland. The lack of domestic normative acts that could supplant the post-partition codes led to the adoption of the principle of continuity of law.[11]

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C.H. Beck, 2013), 557; Montalbetti, *Ubezpieczenia*, 8; Kasperski, *System ubezpieczeń,* 46–47; Huget, *Ubezpieczenia przewozów*, 42–70.

7 Heinrich Sieveking, "A. Kieseelbach, Die wirthschafts – Und rechtsgeschichtliche Entwickelung der Seeversicherung in Hamburg," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 23 (1902), 1: 342.

8 Cf. State Archive in Gdańsk, Fonds: "Trade, Gdansk's merchants' books of accounts, maritime law," reference: 300, R/F, q1 and 300, R/ F, q2. See also: Sieveking, "A. Kieseelbach, Die wirthschafts," 342–344. See also: Edmund Cieślak, "Prawa i obowiązki kapitana statku w XII do XV w. według Rôles d'Oléron i prawa morskiego Związku Miast Hanzeatyckich z XIV i XV w.," *Zapiski Towarzystwa Naukowego w Toruniu* 17 (1951), 1–2: 61–87.

9 See: State Archive in Gdańsk, Fonds: "Wilkhur" [The Gdańsk city charter], reference: 300, R/X, 3 and 300, R/X, 1. Cf. *Najstarszy tekst prawa morskiego w Gdańsku*, ed. and trans. Bernard Janik (Gdańsk: Gdańskie Towarzystwo Naukowe, 1961). Cf. Stanisław Matysik, *Prawo morskie Gdańska: studium historycznoprawne* (Warszawa: Wydawnictwo Prawnicze, 1958); Idem, "Wspólne źródła prawa morskiego stosowanego na Bałtyku w przeszłości," *Czasopismo Prawno-Historyczne* 12 (1960), 1: 165–199; Idem, "Gdańska ordynacja prawa morskiego z początków XVI wieku," *Przegląd Zachodni* 8 (1952), 2 (5–8): 204–215; Tadeusz Maciejewski, "Prawo morskie w ustawodawstwie miasta Gdańska i innych miast pruskich lokowanych na prawie chełmińskim," *Prawo morskie* 8 (1995), 41–50; Idem, "Gdańskie źródła średniowiecznego prawa morskiego," *Studia z Dziejów Państwa i Prawa Polskiego* 5 (2000): 61–69. See also: Łopuski, *Encyklopedia*, 109; Jerzy Młynarczyk, "Ze studiów nad historią polskiego prawa morskiego," *Zeszyty Naukowe Wyższej Szkoły Administracji i Biznesu* 19 (2012), 3: 15. Cf. Kazimierz Kruczalak, *Morskie prawo handlowe. Zagadnienia wybrane* (Gdańsk-Szczecin: Wydawnictwo Instytutu Morskiego, 1992), 18–19; Huget, *Ubezpieczenia przewozów*, 27.

10 The Treaty of Peace Between the Allied and Associated Powers and Germany, Signed at Versailles, 28th June 1919, Dziennik Ustaw (hereafter: Dz.U.) [Journal of Laws] of 1920, No. 35, item 200. See also: Archive of New Files, Fonds "The Polish delegation at the Paris Peace Conference," reference: 135.

11 On 14 December 1918, the first meeting of the Maritime Law Commission of the Warsaw Legal Society took place. The work of the Commission, led by Jan Jakub Litauer, lasted until 12 June 1919,

## Legal regulation of marine insurance from 1920 to 1961

On the basis of the Act of 1 August 1919 on the Administration of the Former Prussian District,[12] the provisions of the German maritime law were adopted for the legislation of the Polish Republic and, though formally in force in the western territories of Poland, were applied commonly. In the German maritime law, marine insurance was codified in Chapter X "Insurance against shipping accidents," systematised in Book IV of the German Commercial Code of 1897 (Handelsgesetzbuch, cited here as HGB) titled "Maritime Trade."[13] The HGB provisions, along with the changes effected by the amendment of 30 May 1908, did not address the entire scope of marine insurance; for that reason, the General Terms of Maritime Insurance of 1867 or (alternatively) the Bremen Terms of Maritime Insurance of 1875 were in force until 1919, superseded from 1919 by the German General Terms of Maritime Insurance (Allgemeine Deutsche Seeversicherungsbedingungen) when they became effective. The latter were agreed with shipowners' associations, German marine insurance companies, forwarding agents and shipbrokers, as well as chambers of commerce.[14]

With respect to marine insurance in the interwar Poland, the provisions applicable in the territory of the former Russian and Austrian Partition, had no practical significance.

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interrupted by virtue of Poland's political situation and the risk of losing independence.Work on the unification of the Maritime and River Code resumed in 1932. See: Judyta Dworas-Kulik, "Rzeczowe zabezpieczenie wierzytelności morskich w międzywojennej Polsce," *Roczniki Nauk Prawnych* 28 (2018), 3: 35; Eadem, "Przywilej morski w Polsce w okresie międzywojennym na tle porównawczym," *Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa KUL* 13 (2018), 2: 66; Młynarczyk, Ze studiów," 16–17. Cf. Montalbetti, *Ubezpieczenia*, 3.

12 Dziennik Praw Państwa Polskiego no. 64, item 385. For more on the sources of maritime law in inter-war Poland, see: Stanisław Matysik, *Podręcznik prawa morskiego* (Warszawa: Państwowe Wydawnictwo Naukowe, 1963), 29–30; Aleksy Majewski, *Prawo morskie* (Gdynia-Tczew: Instytut Wydawniczy Szkoły Morskiej, 1930), 4–5; Młynarczyk, "Ze studiów," 16–17; Kruczalak, *Morskie*, 4–5. See also: *Polskie przepisy morskie*, ed. Zbigniew Toczyski (Warsaw: Księgarnia F. Hoesicka, 1933).

13 HGB §§ 778–900, translated into Polish and published by Tadeusz Zborowski as *Niemiecki kodeks handlowy z dnia 10 maja 1897, z uwzględnieniem ustaw uzupełniających* (Poznań: Drukarnia Nakładowa Braci Winiewiczów, 1912), 210–46; *Zbiór ustaw ziem zachodnich*, vol. 18, *Handlowe i prywatne prawo morskie obowiązujące w Polsce oraz przepisy o polskich statkach handlowych* (Poznań: Krajowy Instytut Wydawniczy, 1925), 79–115.

14 See: Max Pappenheim, "Das Recht der Seeversicherung. Ein Kommentar zu den Allgemeinn Deutschen Seeversicherungs-Bedingungen," *Weltwirtschaftliches Archiv* 19 (1923): 146–148; Heiko Ohling, "Erläuterungen zu den Allgemeinen Deutschen Seeversicherungs-Bedingungen (ADS)," in: *Export–Import–Spedition* (Wiesbaden: Gabler Verlag, 1979), 141–189; Idem, "Erläuterungen zu den Allgemeinen Deutschen Seeversicherungs-Bedingungen (ADS)," in: *Handbuch Export-Import-Spedition* (Wiesbaden: Gabler Verlag, 1986), 253–302. Cf. Majewski, *Prawo,* 202; Sowiński, *Prawo handlowe*, 168–169; see also: Leon Litwiński, *Handel morski w praktyce: zwięzły podręcznik opatrzony morskim słownikiem handlowym polsko–angielsko–francusko–niemieckim w oprac. Członków Sekcji Studium Morskiego przy Kole Studentów Polaków w Antwerpji* (Tczew: nakł. Instytutu Wydawniczego Szkoły Morskiej, 1928), 32–36; Władysław Górski, "Zagadnienia prawne ubezpieczeń morskich," *Technika i Gospodarka Morska* 11 (1961), 2: 42; Kruczalak, *Morskie,* 4–5; Huget, *Ubezpieczenia przewozów,* 27; Łopuski, *Encyklopedia,* 109.

An insurance contract was governed by the regulations applicable at the place of its conclusion, which was also reflected in the provisions of the inter-district law.[15] The lack of direct access to the sea and coastline rendered the said provisions null and void. For the same reason, the German maritime law provisions—though formally in force in the western territories of Poland—were applied commonly since the marine navigation headquarters were located in Gdańsk and Gdynia after the completion of the port construction in 1929.[16]

Book IV of the HGB were neither modified nor repealed in the whole inter–war period as the Polish codification of the first part of the commercial law did not cover issues pertaining to sea transport and insurance, so that the existing regulations in this regard were upheld.[17] It should be noted here that the codification work on the adoption of the Maritime and River Code (dubbed the Sułkowski Code after its author), which was to be the second part of the Commercial Code, did not encompass issues related to marine insurance, as it was planned to regulate them in the codification of private insurance law, legislated as the third part of the Commercial Code.[18] The work aimed at completing the Sułkowski Code and drafting insurance law was interrupted by the outbreak of World War II.[19]

15 See: Articles 9, 11–12 of the Act of 2 August 1926 on the law applicable to internal private relations, Dz.U. of 1926, No. 101, item 580. Cf. Dworas-Kulik, "Rzeczowe," 35–36. More about the inter-district law see: Robert Jastrzębski, "Prawo Prywatne międzydzielnicowe. Zarys problematyki," *Krakowskie Studia z Historii Państwa i Prawa* 8 (2015), 3: 288.

16 Por. Archive of New Files, Fonds "Ministry of Foreign Affairs," reference: 2385. See: Judyta Dworas-Kulik, "Budowa portu w Gdyni jako gwarancja niezależności odrodzonej Polski," in: *Logos i Ethos w Polityce. Księga Jubileuszowa Profesora Stanisława Wójcika*, eds. Agnieszka Łukasiewicz-Turecka and Konrad Słowiński (Lublin: Wydawnictwo KUL 2020), 145–154. Cf. Jordan Siemianowski, "The Circumstances of the Establishment of "Żegluga Polska" in 1926," *Studia Maritima* 35 (2022): 85–111; Sławomir Borowicz, Tadeusz Łodykowski, Janusz Żurek, *Polska flota transportowa w latach 1918–1981* (Gdańsk: Wydawnictwo UG, 1988), 12–49.

17 Cf. State Archive in Bydgoszcz, Fond: "Das Deutsche Wasserrecht im Allgemeinen" [German water law in general] v. I, reference: 9247. Cf. Article 3 in connection with Article 21 (1) of the Order of the President of the Republic of Poland of 27 Oct. 1933 – Implementing Provisions for the Commercial Code, Dz.U. [Journal of Laws] of 1933, No. 82, item 601. Similar regulations were included in Article 6 in connection with Article 24 (1) of the Order of the President of the Republic of Poland of 27 June 1934 – Provisions Implementing the Commercial Code, Dz.U. [Journal of Laws] of 1934, No. 57, item 503.

18 For more details, see: Codification Commission, *Report of the President of the Codification Commission*, 1 June 1932–31 March 1934, in: *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Dział Ogólny*, vol. 1, bk. 16 (Warsaw: Wydawnictwo Urzędowe Komisji Kodyfikacyjnej, 1934), 7–8; Codification Commission, *Report of the President of the Codification Commission*, 1 June 1934–31 March 1937, in: *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Dział Ogólny*, vol. 1, bk. 17 (Warsaw: Wydawnictwo Urzędowe Komisji Kodyfikacyjnej, 1937), 20–23. It is worth adding that on 1 December 1934, the Polish Maritime Law Association was established, whose aims included joint work on a Polish maritime code (for more details, see: Leon Mirza-Kryczyński, "Polskie Stowarzyszenie Prawa Morskiego," *Głos Sądownictwa* 8 (1936), 11: 892–898.

19 Krzysztof Zaorski, "Udział Bronisława Hełczyńskiego w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej." *Miscellanea Historico-Iuridica* 17 (2018), 1: 325–333; Dworas-Kulik, "Przywilej," 69–70; Eadem, "Rzeczowe," 36; Kruczalak, *Morskie*, 6–7; Józef Sułkowski, "Prace nad kodeksem

The legal regulations of Book IV of the German Commercial Code relating to marine insurance (§§ 778–900 with amendments of 30 May 1908) were also in force in the first years of the Polish People's Republic until the Polish Maritime Code was promulgated in 1961.[20] The restoration of the legal situation of pre-war Poland and the unification of maritime law were sanctioned by Article 3 of the Decree of 30 March 1945 on the Creation of the Voivodeship of Gdańsk[21] and Article 4 of the Decree of 13 November 1945 on the Administration of the Regained Territories.[22] Thus, despite the system,

morskim i rzecznym w okresie międzywojennym," *Technika i Gospodarka Morska* 12 (1962), 2: 53–54; Młynarczyk, "Ze studiów," 18–19. In the years 1939–1945 the region of Pomerania was annexed to the German Reich, but marine insurance regulations in this area were not repealed, because in virtue of Hitler's decree of 1939 they were not considered as contrary to German law. Also, the WWII maritime legislation of the legal Polish authorities in exile did not regulate marine insurance, leaving it intact. See: Jerzy Młynarczyk, "Polskie ustawodawstwo morskie w latach 1939–1945," in: *Polskie prawo prywatne w dobie przemian. Księga jubileuszowa dedykowana Profesorowi Jerzemu Młynarczykowi* (Gdańsk: Wydawnictwo UG, 2005), 179–187; Młynarczyk, "Ze studiów," 20. It should be emphasised that the subject of maritime law in force between 1939 and 1961 was not addressed more thoroughly in jurisprudence on maritime law.

20 The need for a Polish maritime law was felt acutely in the first years after the war. The first drafts of maritime commercial law by Józef Górski and Jerzy Falenciak were prepared between 1946 and 1949. The drafts were discussed among lawyers, but did not receive the legislative go-ahead. Further work on the draft was undertaken in 1950. The first draft was prepared by Michał Szuldenfrei, Director of the Office of Legislative Work of the Office of the Council of Ministers. However, it was not until the seventh redaction in 1960 that legislative work on the Maritime Code was completed (Cf. Stanisław Darski, "Znaczenie i podstawowe założenia kodeksu morskiego," *Technika i Gospodarka Morska* 12 (1962), 2: 33–34; Antoni Walczuk, "Przebieg prac nad kodeksem morskim," *Technika i Gospodarka Morska* 12 (1962), 2: 35–36. See: Archive of New Files, Fonds "Ministry of Justice in Warsaw," reference: 285/9818: 374–389 of the draft Polish Maritime Code. Cf. Title VI of the Polish Maritime Code of 1961 concerns marine insurance. Division I contains provisions governing maritime insurance contracts (Articles 256–276) and Division II contains regulations relating to the execution of marine insurance contracts (Articles 277–301). See: The Act of 1 Dec. 1961 – Maritime Code (Dz.U. [Journal of Laws] of 1961, No. 58, item 318). Pursuant to Article 2 (1–2) of the Act of 1 Dec. 1961 – Provisions Implementing the Commercial Code (Dz.U. [Journal of Laws] of 1961, No. 58, item 319) the following ceased to be effective: the provisions of Book IV of the Commercial Code of 10 May 1897 (Reichsgesetzblatt [Reich Law Gazette], 219), provisions of §§ 93–104 of this Code and Articles 6–7 of the act implementing the Commercial Code (Reichsgesetzblatt, 437). Moreover, the following became ineffective: §§ 1259–1272 of the 1896 Civil Code, the Act of 17 May 1874 on shipwrecked persons (Reichsgesetzblatt, 75) and the Act of 5 February 1906 on sea routes (Reichsgesetzblatt, 120). The next article repealed some of the provisions enacted by the Polish inter-war legislator. For more on this, see: Matysik, *Podręcznik*, 300–317; Jan Łopuski, *Prawo morskie dla oficerów marynarki handlowej i rybołówstwa* (Gdynia: Wydawnictwo Morskie, 1965), 340–353; Wojciech Popiela, *Ubezpieczenia i wypadki morskie* (Szczecin: Wydawnictwo WSM, 1980), 15–237.

21 Dz.U. [Journal of Laws] of 1945, No. 11, item 57. The communist authorities repealed the legislation of the former Free City of Gdańsk and the former German Reich, thus restoring in Gdańsk Voivodeship the regulations from before 1 September 1939.

22 Dz.U. [Journal of Laws] of 1945, No. 1, item 295. The provisions of the decree extended to the Regained Territories the regulations that were in force in the jurisdiction of the Voivodeship Court in Poznań. See: Młynarczyk, "Ze studiów," 21; Matysik, *Podręcznik*, 35. The activity of Polish insurance companies and insurance brokers (sea agents and shipbrokers) was subject to the control of the Minister of Treasury, and the Finance Minister from 1952 (see: Article 91 of the Order of the President of the Republic of Poland of 26 Jan. 1928 on insurance control, Dz.U. of 1928, No. 9, item 64; Article 91 of the Decree

political and economic changes in Poland after World War II and the growing use of machinery on ships and the increasing capacity of power generators, along with the steady development of maritime navigation and transport, the post-German provisions were in force until the entry into force of Polish legal regulations in 1961.

## Rights and obligations of the insurer in German legislation and the Polish Maritime Code

Marine insurance was, and still is, interpreted as an agreement made between a policyholder (the insuring party) and an insurer, whereby the latter, in exchange for a specified insurance (assurance) premium, undertook to cover a direct or indirect material loss[23] incurred by the policyholder resulting from a shipping accident, as far as it was possible to assess it in monetary value.[24] Failure to pay the insurance premium within the agreed time entitled the insurer to withdraw from the contract.[25] The marine insurance contract was voluntary, so the policyholder could withdraw from it before the state of sea risk covered by the insurance contract set in (Cf. Article 262 m.c.). The essential elements of marine insurance were: a marine risk, the material interest of the insurance, and assurance premium. A marine insurance contract was void if the insured loss had

of 3 Jan. 1947 on the regulation of property and personal insurance, Dz.U. of 1947, No. 5, item 23; Article 13 (3) of the Act of 28 March 1952 on State Insurance, Dz.U. of 1952, No. 20, item 130; and Article 36 in connection with Article 35 (2) of the Act of 2 Dec. 1958 on Property and Personal Insurance, Dz.U. of 1958, No. 72, item 357). From *the Introduction to the Ministerial Meeting on Ship Breakdowns* and *the Assessment of Breakdowns in the Commercial and Fishing Fleet*, it appeared that the Ministry of Shipping demanded increased cooperation with the insurance institutions "Warta" and "PZU" in order to use their prevention fund for the purchase of modern radio navigation and shipping safety equipment and instructional actions, as well as campaigns raising awareness of the importance of prevention of breakdowns and the relevant measures. Efforts were also made to improve the professional qualifications of vessel crews. See: Archive of New Files, Fonds "Ministry of Shipping, Department Legal and Administrative – the Maritime Administrative Department," reference: 51/26. Cf. Gustav Fischer, "Deutsche Seeversicherungs – Gesellschaft von 1914," *Weltwirtschaftliches Archiv* 7 (1916): 31. Cf.: Kasperski, *System ubezpieczeń*, 146–151; Waldemar Bednaruk, "Odpowiedzialność dyscyplinarna pośredników ubezpieczeniowych w okresie dwudziestolecia międzywojennego w Polsce," *Teka Komisji Prawniczej Oddział PAN w Lublinie* 13 (2020), 1: 13–20; Sowiński, *Prawo handlowe*, 169; Górski, "Zagadnienia," 45.

23 The extent of damage was regulated in HGB §§ 854–881, and the terms of compensation payment were specified in §§ 881–893 thereof. See: Sowiński, *Prawo handlowe*, 192–202.

24 Kazimierz Petyniak-Sanecki, "Ubezpieczenie morskie," *Morze. Organ Ligi Morskiej i Rzecznej* 3 (1926): 12; Huget, *Ubezpieczenia przewozów,* 179–180. Cf. Franz Schencking, *Die Elemente privater Versicherung*, in: *Entwicklungsmöglichkeiten privater Krankenversicherung. Zur Rekonstruktion des Versicherungsbegriffes* (Wiesbaden: Deutscher Universitätsverlag, 1999), 34–45.

25 See: § 250 in *Niemiecki kodeks cywilny wraz z ustawą wprowadzającą*, part 1, trans. Henryk Damm and Karol Gerschel, self-published, Bydgoszcz 1922, 56–57. Cf. Petyniak-Sanecki, "Ubezpieczenie," 12; Huget, *Ubezpieczenia przewozów*, 179–180. Cf. F. Schencking, *Die Elemente privater Versicherung*, in: *Entwicklungsmöglichkeiten privater Krankenversicherung. Zur Rekonstruktion des Versicherungsbegriffes* (Wiesbaden: Deutscher Universitätsverlag, 1999), 34–45. Similar regulations were contained the provision of Article 256 § 1 m.c.

already occurred or it had been impossible to occur, which both parties knew before the conclusion thereof.[26] The parties to a marine insurance contract were: an insurer, who provided a cover for a thing or an interest therein against sea perils—committing himself to pay compensation after a loss (insurance company)—and an insuring party, who made the contract on his own account (insuring his own interest) or for someone else (insuring the interest of a third party). The third party eligible for compensation by reason of having their property insured was called the insured (see HGB § 839. Cf. Article 260 § 1 m.c.).[27] The legislator did not require that the insured party be indicated and on whose account the contract was concluded. However, if it was not indicated on whose account the contract was made, it was deemed to have been concluded on one's own account unless it transpired that the insurance concerned the interest of a third party (Cf. Article 260 § 2–3 m.c.).[28] In such a case, the provisions concerning insurance on another party's account applied (HGB § 781). Insurance taken through an agent acting without an order or through another proxy (e.g., a shipbroker), was treated as insurance taken on one's own account (HGB § 783).[29]

Under a marine insurance contract, the insurer undertook to cover the costs incurred by reason of an average and its consequences, including abandonment of goods, sea rescue and prevention of major losses (even if the measures undertaken were not as effective as expected) and expenses borne to restore the insured thing to its original condition (Cf. Article 290 § 1–2 and Article 291 § 1–2 m.c.). In addition, the insurer bore the costs of discovering and establishing the extent of loss, especially of inspection, estimation, selling and preparing a distribution plan (Cf. Article 283 m.c.).[30]

26 Cf. Article 10 (1–2) of the Act of 28 March 1952 on State Insurance, Dz.U. of 1952, No. 20, item 130. Pursuant to HGB § 894, if an activity covered by the insurance policy was not performed in part or in whole, or if the object of insurance was not exposed to a sea peril covered by the insurance contract, the policyholder was allowed to claim a reimbursement of the insurance premium, up to the sum due to him as compensation (*ristorno*), unless the parties had agreed otherwise or no other custom applied in the place where the contract was made. See: A. Majewski, *Prawo*, 205–206; W. Sowiński, *Prawo handlowe*, 203–204.

27 The buyer of the insured thing assumed all rights and obligations of the insuring party resulting from the marine insurance contract (cf. Article 270 § 1 and 271 § 1 m.c.). The seller and buyer were jointly and severally liable for the insurance premium before the insurer (HGB § 899). Cf. Huget, *Ubezpieczenia przewozów,* 264–269; Sowiński, *Prawo handlowe*, 204–205. See also: Majewski, *Prawo*, 203.

28 Pursuant to HGB § 882 and in conjunction with HGB § 819, the insured, despite the fact that in a particular situation he was entitled to compensation from the shipmaster or another person, could first claim compensation from the insurer. This obliged the insured person to assist the insurer in enforcing his right of recourse by securing his claim and reducing the loss by, for example, arresting the freight or having the vessel arrested (see also: HGB §§ 804–805). Cf. Łopuski, *Encyklopedia,* 106; Majewski, *Prawo*, 216–217.

29 Majewski, *Prawo*, 204; Sowiński, *Prawo handlowe*, 171–172; Huget, *Ubezpieczenia przewozów,* 180–182.

30 Issues concerning a general average were addressed in HGB §§ 834–839. Cf. Petyniak-Sanecki "Ubezpieczenia," 12; Sowiński, *Prawo handlowe*, 189–192. The master of a damaged vessel was obliged to keep a log of all expenditure related to the average. Upon his arrival at the port of destination, he was to notify the shipowner or the consul of the country where the loss was incurred, and give an account of all

The insurer was liable for the loss only up to the sum insured (HGB § 840. Cf. Article 288 § 1 m.c.). A change in the voyage by the insured person's request or consent, unless caused by an accident at sea resulting from a risk covered by marine insurance, released the insurer from compensatory liability (HGB § 813).[31] Under the 1961 Maritime Code, the insurer was not liable for damage caused by the policyholder's intentional fault or wilful negligence, but for navigational error of the master, other crew members or the pilot (see Article 284 § 1–2 m.c.).

## Rights and obligations of the policyholder in German legislation and the Polish Maritime Code

The basic obligations of the policyholder included the payment of the insurance premium upon signing a contract or when a maritime policy was issued (HGB § 812. Cf. Article 277 § 1–2 m.c.).[32] The insuring party, when making a contract either on his own or someone else's account, was obliged to notify the insurer about all circumstances known to him that had a significant impact on the estimation of maritime peril and, as a consequence, the insurer's decision to execute a contract (see HGB § 808) or modify the contractual terms before signing it. The duty to notify applied also to the legal representative of the insuring party; when a contract was made on a third party's account, the duty applied also to both the insured and the party indirectly instructed. With regard to third parties, the obligation to notify covered also circumstances known only to them insofar as they had a considerable impact on sea peril assessment[33] (HGB §§ 806–807).

loss sustained during the voyage in the maritime court of this port—under oath and in the presence of the crew. The duty to testify obtained also in the maritime court located in the port where the vessel took refuge from a storm or stopped due to damage. All paperwork done; the damage was apportioned to all interested parties. The payment of the sum insured was made when the documentation confirming the accident during sea transit were presented to the insurer and when the time necessary for their verification had elapsed. See: Petyniak-Sanecki, "Ubezpieczenia," 12; Huget, *Ubezpieczenia przewozów,* 205–206. Cf. Charles Sumner Lobingier, "The Maritime Law of Rome," *Juridicum Law Review* 47 (1935): 18–30; Zenon Kamiński, "140 lat reguł Yorku-Antwerpii," *Prawo Morskie* 22 (2006): 167–181.

31 Sowiński, *Prawo handlowe*, 184. The disbursement of the total insured sum relieved the insurer of further obligations arising under the insurance contract—that is, reimbursement of rescue costs plus preservation and restoration of the insured thing to its original state. This was the case only from the moment the insured received an appropriate statement. The time limit for filing the statement was three days after the insured party became aware of the occurrence of an accident, its consequences and the circumstances giving rise to the loss. The payment of compensation was not equivalent to acquiring titles to the insured things (see: HGB §§ 841–842).

32 The universality of insurance used for marine transactions consisted in the fact that the insurance premium was included in the price of imported or exported goods. It was assumed, therefore, that its amount should reflect rates used globally. See: Huget, *Ubezpieczenia przewozów*, 94–95 and 189–92; Petyniak-Sanecki, "Ubezpieczenie," 13; Sowiński, *Prawo handlowe*, 180–181.

33 The insured or the party directly receiving an order were not obliged, prior to the conclusion of the contract, to provide essential information on the risk if the provision thereof would require extraordinary measures. Likewise, when the contract was concluded, no account was taken of important

The conclusion of a marine insurance contract implied the obligation of notification, which, when breached, entitled a party to withdraw from the contract (Cf. Article 278 § 1 m.c. and Article 281 § 1 m.c.). The legislator ruled out the possibility of withdrawal in a situation where the insurer had knowledge of deliberately concealed or untrue information concerning a risk, or when a failure to convey material information or provision of misleading information was not culpable (HGB § 809).[34] In contrast, if prerequisites for withdrawal arose with respect to only part of the insured goods, the insurer could refuse to cover the remainder of the goods only if he could not conclude a contract for that part on terms applicable to all of them (HGB § 810).[35] The right to withdraw from the contract with the possibility of retaining a full insurance premium was reserved for the insurer for 7 days from the moment when he became aware that the duty to notify was not fulfilled (Cf. Article 278 § 2 m.c.). The right was exercised when an appropriate written statement was submitted to the counterparty. The insuring party who received compensation, despite breaking the rules of loyalty and diligence in connection with a notification, was obliged to repay the benefit plus the interest accrued from the date of receipt (HGB § 811).

The post-German provisions and the provisions of the 1961 Maritime Code provided for the possibility of applying a deduction from insurance indemnity in the amount by which the loss would be reduced in the event of a breach by the policyholder of his duty to give prompt notice of any event concerning the subject matter of the insurance policy (HGB § 818. Cf. Article 281 §2). In addition, the provision of Article 282 § 1–3 m.c. made it mandatory to save the object of insurance and to prevent or reduce the loss. The policyholder's willful misconduct or gross negligence resulting in the failure to take all reasonable measures relieved the insurer of liability for damage arising from this.

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information provided by the insured regarding sea perils when insurance was taken without his order or knowledge, of which the insurer was aware. See: Huget, *Ubezpieczenia przewozów*, 182–188 and 196–205; Sowiński, *Prawo handlowe*, 179. A policyholder who was in good faith when concluding an insurance contract could claim a reimbursement of the insurance premium or keep it until he received a ristorno. Similar rights were available when insurance was taken on someone else's account if the insured also remained in good faith when giving the instruction (HGB § 895). See: Majewski, *Prawo*, 203; Litwiński, *Handel*, 22; Sowiński, *Prawo handlowe*, 176–178.

34 No fault entitled the insurer to demand a higher insurance premium in connection with a higher risk. The case was similar when a circumstance affecting the acceptance of risk was disclosed after the insurance contract was concluded, unless it was known to the other party. In both cases, the time limit for asserting a claim with respect of a higher assurance premium expired within a week of becoming aware of such a condition arising (HGB § 811a). In the 1961 Maritime Code, an insurer who exercised its right of cancellation should be notified of its decision within three days of becoming aware of the change in peril. Failure to meet the deadline only entitled the insurer to demand the payment of an additional premium for the increased peril. Completion of the notification formalities entailed the right to retain the entire agreed premium and liability for damages incurred before the change of peril (see: Article 280 § 1–2 m.c.).

35 See: W. Sowiński, *Prawo handlowe*, 180; M. Huget, *Ubezpieczenia przewozów*, 188–189.

## Conclusion

Historically, marine insurance is the oldest branch of property insurance derived from an ancient maritime loan and *Lex Rhodia de iactu*. Serious sea perils associated with sea travel and maritime trade plus the high property values of sea-going vessels and their cargoes made it necessary to build a financial system to compensate for the losses that owners of both ships and cargo carried by sea were likely to suffer. Marine insurance developed much earlier than land insurance, as the earliest legal provisions governing maritime insurance contracts go back to medieval centers of sea trade, including Barcelona, Genoa and Venice. In Poland, marine insurance came to be used at the turn of the 18th century. Given the fact that they increased the security of sea transactions and served to secure credit transactions, the 19th and 20th centuries was the time when they were instrumental in the development of maritime business operation.

In the maritime legislation of modern capitalist states, several groups could be distinguished (i.e., regime of law). In the legislation of continental Europe, especially the French and German groups (i.e., the French and German law family) became very noticeable. At the turn of the twentieth century, the Polish lands were governed by legal provisions from both these groups, with some provisions of the German maritime law, including those concerning marine insurance, in force until 1961 when the Polish Maritime Code became effective. German legislation, although created in the 19th century through appropriate modifications and additions, also by way of the German General Terms of Maritime Insurance, could be applied on Polish territories uninterruptedly from 1920 to 1961.

The need to change the code regulations arose already in the early years of the People's Republic of Poland but work on the code continued until the early 1960s. Analyzing in detail the content of the legal provisions cited on this publication shows that the Polish codification was more modern and, thus, adapted to the changed economic, political and economic circumstances. It also took account of the development of maritime transport and maritime technology in terms of shipbuilding, increased speed, power, etc. The 1961 Maritime Code was clearer and more legible as it had been systematized. It also did not require extra-code additions as with the HGB. Undoubtedly, it shows a continuation of doctrine and solutions in the field of marine insurance, as the 1961 regulations are largely similar to those of the HGB. However, the Polish regulations were more detailed. In addition, the 1961 Maritime Code contained a catalog of circumstances entitling the insurer to rescind the contract or the possibility to demand the payment of an additional premium for the increased peril and a catalogue of exclusions of the insurer's liability.

## BIBLIOGRAPHY


### Archival sources

Archive of New Files [Archiwum Akt Nowych]. Fonds: "Ministry of Foreign Affairs." Reference: 2385.

Archive of New Files. Fonds: "Ministry of Justice in Warsaw." Reference: 285/9818.

Archive of New Files. Fonds: "Ministry of Shipping, Department Legal and Administrative – the Maritime Administrative Department." Reference: 51/26.

Archive of New Files. Fonds: "The Polish delegation at the Paris Peace Conference." Reference: 135.

State Archive in Bydgoszcz [Archiwum Państwowe w Bydgoszczy]. Fonds: "Das Deutsche Wasserrecht im Allgemeinen" [German water law in general]. Reference: 1/9247.

State Archive in Gdańsk [Archiwum Państwowe w Gdańsku]. Fonds: "Seeamt Danzig" [Maritime Chamber in Gdańsk]. Reference: 281/7 and 281/8.

State Archive in Gdańsk. Fonds: "Trade, Gdansk's merchants' books of accounts, maritime law." Reference: 300, R/F, q1 and 300, R/ F, q2.

State Archive in Gdańsk. Fonds: "Wilkhur" [The Gdańsk city charter]. Reference: 300, R/X, 3 and 300, R/X, 1.

*Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 23 (1902), 1: 342–344.

### Printed sources

Act of 1 August 1919 on the Administration of the Former Prussian District, Dziennik Praw Państwa Polskiego 1919, No. 64, item 385.

Act of 28 March 1952 on State Insurance, Dziennik Ustaw 1952 (hereinafter Dz.U.). [Official Journal of Laws of 1952], No. 20, item 130.

Act of 2 Dec. 1958 on Property and Personal Insurance, Dz.U. of 1958, No. 72, item 357.

Act of 1 Dec. 1961 on Maritime Code, Dz.U. of 1961, No. 58, item 318.

Act of 1 Dec. 1961 on Provisions Implementing the Commercial Code, Dz.U. of 1961, No. 5, item 319.

Decree of 30 March 1945 on the Creation of the Voivodeship of Gdańsk, Dz.U. of 1945, No. 11, item 57.

Decree of 13 Nov. 1945 on the Administration of the Regained Territories, Dz.U. of 1945, No. 1, item 295.

Decree of 3 Jan. 1947 on the regulation of property and personal insurance, Dz.U. of 1947, No. 5, item 23.

*Niemiecki kodeks handlowy z dnia 10 maja 1897, z uwzględnieniem ustaw uzupełniających*. Edited and translated by Tadeusz Zborowski. Poznań: Drukarnia Nakładowa Braci Winiewiczów, 1912.

*Niemiecki kodeks cywilny wraz z ustawą wprowadzającą*, part 1. Translated by Henryk Damm and Karol Gerschel. Bydgoszcz: self-published, 1922.

Order of the President of the Republic of Poland of 26 Jan. 1928 on insurance control, Dz.U. of 1928, No. 9, item 64.

Order of the President of the Republic of Poland of 27 Oct. 1933 – Implementing Provisions for the Commercial Code, Dz.U. of 1933, No. 82, item 601.

Order of the President of the Republic of Poland of 27 June 1934 – Provisions Implementing the Commercial Code, Dz.U. of 1934, No. 57, item 503.

Treaty of Peace Between the Allied and Associated Powers and German, Signed at Versailles, 28th June 1919. Dz.U. of 1920, No. 35, item 200.

*Zbiór ustaw ziem zachodnich.* Vol. 18. *Handlowe i prywatne prawo morskie obowiązujące w Polsce oraz przepisy o polskich statkach handlowych*. Poznań: Krajowy Instytut Wydawniczy, 1925.

**Newspapers and magazines**

*Czasopismo Prawno – Historyczne* 12 (1960), 1.

*Głos Sądownictwa* 8 (1936), 11.

*Juridicum Law Review* 47 (1935).

*Morze. Organ Ligi Morskiej i Rzecznej* 3 (1926), 12.

*Przegląd Zachodni* 8 (1952), 2 (5/8).

*Technika i Gospodarka Morska* 11 (1961), 2; 12 (1962), 2.

*Zapiski Towarzystwa Naukowego w Toruniu* 17 (1951), 1/2.

**References**

Adamowicz, Magdalena. "Ubezpieczenia morskie." In: *Leksykon prawa morskiego 100 podstawowych pojęć*, eds. Dorota Pyć, and Iwona Zużewicz-Wiewiórowska, 556–565. Warszawa: Wydawnictwo C.H. Beck, 2013.

Bednaruk, Waldemar. "Wpływ ubezpieczeń na rozwój transportu morskiego w epoce wczesnonowożytnej." *Teka Komisji Prawniczej Oddział PAN w Lublinie* 11 (2018), 2: 19–27.

Bednaruk, Waldemar. "Odpowiedzialność dyscyplinarna pośredników ubezpieczeniowych w okresie dwudziestolecia międzywojennego w Polsce." *Teka Komisji Prawniczej Oddział PAN w Lublinie* 13 (2020), 1: 13–20. DOI: 10.32084/tekapr.2020.13.1-2.

Blicharz, Grzegorz. "Prawne aspekty finansowania transportu morskiego w starożytnym Rzymie." *Czasopismo Prawno–Historyczne* 54 (2012), 2: 291–314.

Blicharz, Grzegorz. "Pożyczka morska. Ślepa uliczka zachodniej tradycji prawnej?". *Forum Prawnicze* 15 (2013), 1: 28–35.

Blicharz, Grzegorz. "Pożyczka morska w zachodniej tradycji prawnej." *Studia Iuridica* 58 (2014): 9–29.

Borowicz, Sławomir, Tadeusz Łodykowski, and Janusz Żurek. *Polska flota transportowa w latach 1918–1981*. Gdańsk: Wydawnictwo UG, 1988.

Bull, J.W. *An Introduction to Safety at Sea*. Glasgow: Brown, Son & Ferguson, 1966.

Cieślak, Edmund. "Prawa i obowiązki kapitana statku w XII do XV w. według Rôles d'Oléron i prawa morskiego Związku Miast Hanzeatyckich z XIV i XV w." *Zapiski Towarzystwa Naukowego w Toruniu* 17 (1951), 1–2: 61–87.

Codification Commission. *Report of the President of the Codification Commission*, 1 June 1932–31 March 1934. In: Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Dział Ogólny, vol. 1, bk. 16. Warsaw: Wydawnictwo Urzędowe Komisji Kodyfikacyjnej, 1934.

Codification Commission. *Report of the President of the Codification Commission*, 1 June 1934–31 March 1937. In: Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Dział Ogólny, vol. 1, bk. 17. Warsaw: Wydawnictwo Urzędowe Komisji Kodyfikacyjnej, 1937.

Darski, Stanisław. "Znaczenie i podstawowe założenia kodeksu morskiego." *Technika i Gospodarka Morska* 12 (1962), 2, 33–34.

Dworas-Kulik, Judyta. "Przywilej morski w Polsce w okresie międzywojennym na tle Porównawczym." *Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa KUL* 13 (2018), 2: 65–76.

Dworas-Kulik, Judyta. "Rzeczowe zabezpieczenie wierzytelności morskich wmiędzywojennej Polsce." *Roczniki Nauk Prawnych* 28 (2018), 3: 35–48. DOI:10.18290/rnp.2018.28.3-3

Dworas-Kulik, Judyta. "Budowa portu w Gdyni jako gwarancja niezależności odrodzonej Polski." In: *Logos i Ethos w Polityce. Księga Jubileuszowa Profesora Stanisława Wójcika*, eds. Agnieszka Łukasiewicz-Turecka, and Konrad Słowiński, 145–154. Lublin: Wydawnictwo KUL, 2020.

Fischer, Gustav. "Deutsche Seeversicherungs – Gesellschaft von 1914." *Weltwirtschaftliches Archiv* 7 (1916): 31.

Fischer, Gustav. "Ein Lloyds-Zirkular betreffend die Feststellung des Versicherungswertes in der Seeversicherung Tübingen." *Weltwirtschaftliches Archiv* 13 (1918): 236–238.

Górski, Władysław. "Zagadnienia prawne ubezpieczeń morskich." *Technika i Gospodarka Morska* 11 (1961), 2: 42–45.

Huget, Marian. *Ubezpieczenia przewozów morskich*. Gdynia: Wydawnictwo Morskie, 1960.

Janik, Bernard. *Najstarszy tekst prawa morskiego w Gdańsku*. Edited and translated by Bernard Janik. Gdańsk: Gdańskie Towarzystwo Naukowe, 1961.

Jastrzębski, Robert. "Prawo Prywatne międzydzielnicowe. Zarys problematyki." *Krakowskie Studia z Historii Państwa i Prawa* 8 (2015), 3: 277–298. DOI:10.4467/20844131KS.15.017.3994.

Kabat, Edward. *Przezorny zawsze ubezpieczony: dzieje ubezpieczeń*. Breń: Instytut Pomocy Młodzieży, 2007.

Kamiński, Zenon. "140 lat reguł Yorku-Antwerpii." *Prawo Morskie* 22 (2006): 167–181.

Kasperski, Wojciech. *System ubezpieczeń gospodarczych w międzywojennej Polsce*. Lublin: Wydawnictwo SAWP KUL, 2019.

Kopyra, Jerzy and Grzegorz Krawiec. "Umowa ubezpieczenia morskiego – zagadnienia Wprowadzające." *Gospodarka Materiałowa i Logistyka* 11 (2004): 24–26.

Kruczalak, Kazimierz. *Morskie prawo handlowe*. Zagadnienia wybrane. Gdańsk–Szczecin: Wydawnictwo Instytutu Morskiego, 1992.

Litwiński, Leon. *Handel morski w praktyce: zwięzły podręcznik opatrzony morskim słownikiem handlowym polsko–angielsko–francusko–niemieckim w oprac. Członków Sekcji Studium Morskiego przy Kole Studentów Polaków w Antwerpji*. Tczew: nakł. Instytutu Wydawniczego Szkoły Morskiej, 1928.

Lobingier, Charles Sumner. "The Maritime Law of Rome." *Juridicum Law Review* 47 (1935): 18–30.

Łopuski, Jan. *Prawo morskie dla oficerów marynarki handlowej i rybołówstwa*. Gdynia: Wydawnictwo Morskie, 1965.

Łopuski, Jan. *Odpowiedzialność za szkodę w żegludze morskiej*. Gdańsk: Wydawnictwo Morskie, 1969.

Łopuski, Jan. *Encyklopedia podręczna prawa morskiego*. Gdańsk: Wydawnictwo Morskie, 1982.

Maciejewski, Tadeusz. "Prawo morskie w ustawodawstwie miasta Gdańska i innych miast pruskich lokowanych na prawie chełmińskim." *Prawo morskie* 8 (1995): 41–50.

Maciejewski, Tadeusz. "Gdańskie źródła średniowiecznego prawa morskiego." *Studia z Dziejów Państwa i Prawa Polskiego* 5 (2000): 61–69.

Majewski, Aleksy. *Prawo morskie*. Gdynia-Tczew: Instytut Wydawniczy Szkoły Morskiej, 1930.

Matysik, Stanisław. "Gdańska ordynacja prawa morskiego z początków XVI wieku." *Przegląd Zachodni* 8 (1952), 2 (5–8): 204–215.

Matysik, Stanisław. *Prawo morskie Gdańska: studium historycznoprawne*. Warszawa: Wydawnictwo Prawnicze, 1958.

Matysik, Stanisław. "Wspólne źródła prawa morskiego stosowanego na Bałtyku w przeszłości." *Czasopismo Prawno-Historyczne* 12 (1960), 1: 165–199.

Matysik, Stanisław. *Podręcznik prawa morskiego*. Warszawa: Państwowe Wydawnictwo Naukowe, 1963.

Mirza-Kryczyński, Leon. "Polskie Stowarzyszenie Prawa Morskiego." *Głos Sądownictwa* 8 (1936), 11: 892–898.

Młynarczyk, Jerzy. "Polskie ustawodawstwo morskie w latach 1939–1945." In: *Polskie prawo prywatne w dobie przemian. Księga jubileuszowa dedykowana Profesorowi Jerzemu Młynarczykowi*. Gdańsk: Wydawnictwo UG, 2005.

Młynarczyk, Jerzy. "Ze studiów nad historią polskiego prawa morskiego." *Zeszyty Naukowe Wyższej Szkoły Administracji i Biznesu* 19 (2012), 3: 13–26.

Montalbetti, Edward. *Ubezpieczenia morskie*. Warszawa: nakł. Powszechnego Zakładu Ubezpieczeń Wzajemnych, 1948.

Ohling, Heico. "Erläuterungen zu den Allgemeinen Deutschen Seeversicherungs-Bedingungen (ADS)." In: *Export-Import-Spedition*. 141–189. Wiesbaden: Gabler Verlag, 1979.

Ohling, Heico. "Erläuterungen zu den Allgemeinen Deutschen Seeversicherungs-Bedingungen (ADS)." In: *Handbuch Export-Import-Spedition*. 253–302. Wiesbaden: Gabler Verlag, 1986.

Pappenheim, Max. "Das Recht der Seeversicherung. Ein Kommentar zu den Allgemeinrn Deutschen Seeversicherungs – Bedingungen." *Weltwirtschaftliches Archiv* 19 (1923): 146–148.

Petyniak-Sanecki, Kazimierz. "Ubezpieczenie morskie." *Morze. Organ Ligi Morskiej i Rzecznej* 3 (1926), 12: 12–14.

Płodzień, Stanisław. *Lex Rhodia de iactu. Studium historyczno prawne z zakresu rzymskiego prawa handlowomorskiego*. Lublin: Wydawnictwo KUL, 2011.

Popiela, Wojciech. *Ubezpieczenia i wypadki morskie*. Szczecin: Wydawnictwo WSM, 1980.

Potter, Pitman Benjamin. *The Freedom of the Seas in History, Law and Politics.* New York: Longmans, Green and Co., 1924.

Rius, Font and Maria José. *Libro del Consulado del Mar. Edition del texto original Catalani y traduccion Castellani de Antonio de Capmany*. Barcelona: Cámara oficial de Comercio y Navegación de Barcelona, 1965.

Schencking, Franz. *Entwicklungsmöglichkeiten privater Krankenversicherung. Zur Rekonstruktion des Versicherungsbegriffes*. Wiesbaden: Deutscher Universitätsverlag, 1999.

Siemianowski, Jordan. "The Circumstances of the Establishment of "Żegluga Polska in 1926." *Studia Maritima* 35 (2022): 85–111. DOI: 10.18276/sm.2022.35-03.

Sieveking, Heinrich. "A. Kieseelbach, Die wirthschafts – Und rechtsgeschichtliche Entwickelung der Seeversicherung in Hamburg." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 23 (1902), 1: 342–344.

Sowiński, Władysław. *Prawo handlowe morskie w zarysie*. Lwów: Książnica Atlas, 1935.

Sułkowski, Józef. "Prace nad kodeksem morskim i rzecznym w okresie międzywojennym." *Technika i Gospodarka Morska* 12 (1962), 2: 53–54.

Szczęśniak, Marian. *Zarys dziejów ubezpieczeń na ziemiach polskich*. Warszawa: Przedsiębiorstwo Wydawnicze LAM, 2003.

Toczyski, Zbigniew. *Polskie przepisy morskie.* Warszawa: Księgarnia F. Hoesicka, 1933.

Walczuk, Antoni. "Przebieg prac nad kodeksem morskim." *Technika i Gospodarka Morska* 12 (1962), 2: 35–36.

Zaorski, Krzysztof. "Udział Bronisława Hełczyńskiego w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej." *Miscellanea Historico-Iuridica* 17 (2018), 1: 309–344. DOI: 10.15290/mhi.2018.17.01.17.

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**SUMMARY**

Marine insurance is historically the oldest branch of property insurance dating back to antiquity. Marine insurance predated the development of land insurance by a considerable margin, as the first legal provisions prescribing a marine insurance contract date back to the medieval centers of maritime trade, including Barcelona, Genoa and Venice. In Poland, marine insurance was initiated at the turn of the 17th and 18th centuries. As they increased the certainty of maritime trade and were used to secure credit transactions, they were an important factor in the development of maritime business in the 19th and 20th centuries. In view of the above, this article seeks to analyze the historical and legal provisions of maritime law relating to the duties of the policyholder and the liability of the insurer arising from the code regulations of the maritime insurance contract, which were in force in Poland from 1918 until the unification of maritime law in 1961. The article will attempt to show whether the Polish maritime law regulations were based on the post-German regulations in this respect or whether they were completely different. It will also attempt to indicate the direction of changes in maritime law regulations in this respect.

## Obowiązki ubezpieczającego i odpowiedzialność ubezpieczyciela w umowie ubezpieczenia morskiego w Polsce w latach 1920–1961

**Słowa kluczowe:** polisa morska, żegluga morska, ubezpieczenia majątkowe, ryzyko morskie, kompensacja szkody

**STRESZCZENIE**

Ubezpieczenia morskie są historycznie najstarszym działem ubezpieczeń majątkowych sięgającym swymi korzeniami do starożytności. Ubezpieczenia morskie znacznie wyprzedziły rozwój ubezpieczeń lądowych, gdyż pierwsze przepisy prawne normujące umowę ubezpieczenia morskiego pochodzą ze średniowiecznych ośrodków handlu morskiego, m.in. Barcelony, Genui i Wenecji. W Polsce ubezpieczenia morskie zostały zapoczątkowane na przełomie XVII i XVIII wieku. Z uwagi, iż zwiększały pewność obrotu morskiego i służyły do zabezpieczenia transakcji kredytowych, w XIX i XX wieku stanowiły ważny czynnik rozwoju działalności gospodarczej na morzu. Uwzględniając powyższe, niniejszy artykuł ma na celu poddanie analizie historyczno–prawnej przepisów prawa morskiego odnoszących się do obowiązków

ubezpieczającego i odpowiedzialności ubezpieczyciela, wynikających z kodeksowych regulacji w zakresie umowy ubezpieczenia morskiego, które obowiązywały w Polsce od 1918 r. do unifikacji prawa morskiego z 1961 r. W artykule została podjęta próba wykazania czy polskie regulacje prawa morskiego bazowały na poniemieckich regulacjach w tym zakresie czy też były całkowicie odmienne oraz została podjęta próba wskazania kierunku zmian w przepisach prawa morskiego w omawianym zakresie.

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