

学校编码: 10384

分类号\_\_\_\_\_密级\_\_\_\_\_

学号: 13620081150681

UDC \_\_\_\_\_

廈門大學

碩 士 學 位 論 文

海運貨物一切險承保範圍研究

——以承運人私自處分貨物為中心

On the Coverage of All-Risk Cargo Insurance

——Focus on Carrier's Unauthorized Disposal of Cargo

李 金 招

指導教師姓名: 何麗新教授

專業名稱: 民商法學

論文提交日期: 2011年4月

論文答辯時間: 2011年 月

學位授予日期: 2011年 月

答辯委員會主席: \_\_\_\_\_

評 閱 人: \_\_\_\_\_

2011年 月

厦门大学博硕士学位论文摘要库

## 厦门大学学位论文原创性声明

本人呈交的学位论文是本人在导师指导下,独立完成的研究成果。本人在论文写作中参考其他个人或集体已经发表的研究成果,均在文中以适当方式明确标明,并符合法律规范和《厦门大学研究生学术活动规范(试行)》。

另外,该学位论文为( )课题(组)的研究成果,获得( )课题(组)经费或实验室的资助,在( )实验室完成。(请在以上括号内填写课题或课题组负责人或实验室名称,未有此项声明内容的,可以不作特别声明。)

声明人(签名):

年 月 日

厦门大学博硕士学位论文摘要库

## 厦门大学学位论文著作权使用声明

本人同意厦门大学根据《中华人民共和国学位条例暂行实施办法》等规定保留和使用此学位论文，并向主管部门或其指定机构送交学位论文（包括纸质版和电子版），允许学位论文进入厦门大学图书馆及其数据库被查阅、借阅。本人同意厦门大学将学位论文加入全国博士、硕士学位论文共建单位数据库进行检索，将学位论文的标题和摘要汇编出版，采用影印、缩印或者其它方式合理复制学位论文。

本学位论文属于：

1. 经厦门大学保密委员会审查核定的保密学位论文，  
于 年 月 日解密，解密后适用上述授权。

2. 不保密，适用上述授权。

（请在以上相应括号内打“√”或填上相应内容。保密学位论文应是已经厦门大学保密委员会审定过的学位论文，未经厦门大学保密委员会审定的学位论文均为公开学位论文。此声明栏不填写的，默认为公开学位论文，均适用上述授权。）

声明人（签名）：

年 月 日

厦门大学博硕士学位论文摘要库

## 内容摘要

海洋运输货物一切险（以下简称“海运货物一切险”）在分摊海上货物运输风险方面发挥着重大作用。然而，由于我国海上保险制度的不完善，使得海运货物一切险在应对海上风险，尤其是承运人私自处分货物等外来风险时存在较大不足。本文以承运人私自处分货物风险为中心，剖析我国海运货物一切险承保范围的不足，借鉴英国相关制度的最新发展，结合海运货物一切险承保范围识别标准的法理基础，论证我国海运货物一切险应加强对承运人私自处分货物风险的承保，并提出相应的保险条款完善建议。

本文除了引言和结语外，正文共分四章：

第一章评析我国海运货物一切险承保范围应对承运人私自处分货物风险的现状与不足。由于我国海运货物一切险条款中对“外来原因”缺乏界定，导致我国现行海运货物一切险条款的性质不明确，承保范围不清晰，制约了承运人私自处分货物风险的分散和转移。

第二章梳理英国海运货物一切险承保范围就承运人私自处分货物风险的发展演变。英国海运货物一切险承保范围在该问题上经历了从“广泛承保”到“部分排除”再到“恢复承保”的演变过程，折射出被保险人利益保护理念的强化、航运秩序格局的走向、海上保险市场的国际化等因素对海上保险法发展趋势的影响。

第三章探究海运货物一切险承保范围的识别标准。可保风险的本质决定一切险所承保损失应当具有偶然性；货物保险的特征决定一切险所承保损失应当具有实质性；此外，海运货物一切险承保的损失原因还应具有外来性。

第四章论证承运人私自处分货物应属海运货物一切险的承保范围。承运人私自处分货物所致损失符合海运货物一切险承保范围的识别标准；海运货物一切险承保承运人私自处分货物亦符合海上保险的发展趋势。我国海运货物一切险条款承保范围的不清晰制约了承运人私自处分货物风险的

分散，故应加以完善以应对此类风险。

**关键词：**承运人私自处分；海运货物一切险；承保范围

厦门大学博硕士论文摘要库



## ABSTRACT

All-risk cargo insurance plays an important role in sharing the risk of carriage of goods by sea. However, owing to the imperfection of Chinese marine insurance system, there exists great deficiency for all-risk cargo insurance in confronting with marine risks, especially external risks such as carrier's unauthorized disposal of cargoes (hereinafter referred to as *CUDC*). Focusing on the risks of *CUDC*, this paper examines the deficiency of the coverage of Chinese all-risk cargo insurance, draws on the latest development of corresponding issue in UK, explores the identifying criterions on the coverage of all-risk cargo insurance, finally demonstrates that Chinese all-risk cargo insurance should cover the risks of *CUDC*, and makes several proposals on improving the all-risk clauses.

Besides preface and conclusion, this paper is divided into four chapters as follows:

Chapter 1 examines the present situation and deficiency on the coverage of Chinese all-risk cargo insurance confronting with the risks of *CUDC*. As a result of ambiguous definition of *external causes*, the nature and the coverage of Chinese all-risk cargo insurance clauses fall into uncertain, thus restrict the diversion and transfer of the risks of *CUDC*.

Chapter 2 reviews the development of the coverage of British all-risk cargo insurance, especially on the risks of *CUDC*. As to this issue, the coverage of British all-risk cargo insurance has experienced an evolution process from *extensively covered* to *partially excluded* and then *cover again*. The change reveals the factors influencing the developing trend of marine insurance law, such as the strengthening of assured's interest protection, the movement of shipping structure and the internationalization of marine insurance market.

Chapter 3 explores the identifying criteria on the coverage of all-risk cargo insurance. The essence of risk decides the losses covered by all-risk insurance should be fortuitous. The characteristic of cargo insurance determines the losses covered by all-risk cargo insurance should be substantial. Besides, the cause of the losses covered by all-risk cargo insurance should be external.

Chapter 4 demonstrates that the risks of CUDC should be covered by all-risk cargo insurance. Losses caused by such risks match the identifying criteria of the coverage of all-risk cargo insurance. Moreover, the development trend of marine insurance calls all-risk cargo insurance to cover the losses caused by such risks. Therefore, it is necessary for China to perfect the definition of the coverage of all-risk cargo insurance so as to deal with such risks properly.

**Key Words:** Carrier's Unauthorized Disposal of Cargos; All-risk Cargo Insurance; Coverage

## 目 录

引言 .....	1
<b>第一章 我国海运货物一切险承保范围现状评析 .....</b>	<b>3</b>
<b>第一节 我国海运货物一切险承保范围现状.....</b>	<b>3</b>
一、我国海运货物一切险条款的发展演变.....	3
二、我国现行海运货物一切险的承保范围界定不明.....	4
<b>第二节 我国现行海运货物一切险在应对承运人私自处分货物风险时的不足 .....</b>	<b>6</b>
一、承运人私自处分货物现象.....	6
二、我国海运货物一切险承保范围的模糊性制约承运人私自处分货物风险的分散.....	10
<b>第二章 英国海运货物一切险承保范围的发展演变.....</b>	<b>14</b>
<b>第一节 劳式 S.G.保单承保范围的局限性 .....</b>	<b>15</b>
一、劳式 S.G.保单的产生 .....	15
二、劳式 S.G.保单仅承保列明风险 .....	16
三、劳式 S.G.保单不承保承运人私自处分货物风险 .....	16
<b>第二节 货物一切险条款的产生与承保范围的突破.....</b>	<b>18</b>
一、货物一切险条款的产生.....	18
二、货物一切险条款对传统货物保险承保范围的突破.....	20
三、货物一切险条款承保承运人私自处分货物风险的广泛性.....	20
<b>第三节 1982 年协会货物一切险条款的修订与承保范围的限缩.....</b>	<b>22</b>
一、1982 年协会货物保险条款的修订.....	22
二、1982 年协会货物一切险条款承保范围的限缩.....	23
三、1982 年协会货物一切险条款排除部分承运人私自处分货物风险.....	24
<b>第四节 2009 年协会货物一切险条款的修订与承保范围的再度扩张.....</b>	<b>25</b>
一、2009 年协会货物保险条款的修订.....	25
二、2009 年协会货物一切险条款承保范围的扩张.....	26
三、2009 年协会货物一切险条款恢复承保承运人私自处分货物风险.....	27
<b>第三章 海运货物一切险承保范围的识别标准 .....</b>	<b>31</b>
<b>第一节 损失具有偶然性.....</b>	<b>31</b>
一、偶然性的判断基础为特定的运输状态.....	32

二、偶然性的判断内容为损失.....	32
三、偶然性的判断对象为被保险人.....	33
<b>第二节 损失具有实质性.....</b>	<b>35</b>
一、实质损失概述.....	35
二、一切险仅承保货物实质损失.....	36
<b>第三节 损失原因具有外来性.....</b>	<b>38</b>
一、非保险标的自身原因.....	38
二、非被保险人自身行为.....	39
<b>第四章 承运人私自处分货物应属海运货物一切险承保范围.....</b>	<b>43</b>
<b>第一节 承运人私自处分货物符合海运货物一切险承保范围的识别标准.....</b>	<b>43</b>
一、承运人私自处分货物对被保险人而言具有偶然性.....	43
二、承运人私自处分货物所致损失具有实质性.....	44
三、承运人私自处分货物属于外来原因导致损失.....	44
<b>第二节 一切险承保承运人私自处分货物风险契合海上保险的发展趋势.....</b>	<b>46</b>
一、符合航运实践的发展.....	47
二、符合被保险人利益保护原则.....	50
三、有利于强化我国保险业的国际竞争力.....	55
<b>第三节 完善我国海运货物一切险条款以应对承运人私自处分货物风险.....</b>	<b>56</b>
一、明确一切险的非列明险性质.....	56
二、完善承保范围的界定.....	57
<b>结语.....</b>	<b>60</b>
<b>参考文献.....</b>	<b>61</b>
<b>致谢语.....</b>	<b>66</b>

## Contents

<b>Preface .....</b>	<b>1</b>
<b>Chapter 1 Analysis of the Status Quo on Coverage of Chinese All-risk Cargo Insurance.....</b>	<b>3</b>
<b>Subchapter 1 Status of the Coverage of Chinese All-risk Cargo Insurance .....</b>	<b>3</b>
Section 1 Development of Chinese All-risk Cargo Insurance Clauses.....	3
Section 2 Indefiniteness of the Coverage of Current Chinese Chinese All-risk Cargo Insurance .....	4
<b>Subchapter 2 Deficiency of Current Chinese Chinese All-risk Cargo Insurance in Confronting with Risks of CUDC .....</b>	<b>6</b>
Section 1 Phenomenon of CUDC .....	6
Section 2 Ambiguity of the Coverage of Chinese All-risk Cargo Insurance Restricting the Diversion of the Risks of CUDC.....	10
<b>Chapter 2 Development of the Coverage of British All-risk Cargo Insurance .....</b>	<b>14</b>
<b>Subchapter 1 Limitation on the Coverage of Lloyd's S.G. Policy .....</b>	<b>15</b>
Section 1 Emergence of Lloyd's S.G. Policy .....	15
Section 2 Lloyd's S.G. Policy Cover Specified Risks Only.....	16
Section 3 Lloyd S.G. Policy doesn't Cover Risks of CUDC.....	16
<b>Subchapter 2 Emergence of All-risk Cargo Insurance Clauses and Breakthrough of the Coverage.....</b>	<b>18</b>
Section 1 Emergence of All-risk Cargo Insurance Clauses .....	18
Section 2 Breakthrough of All-risk Cargo Insurance Clauses on Coverage.....	20
Section 3 All-risk Cargo Insurance Clauses Covers Risks of CUDC extensively ..	20

<b>Subchapter 3</b>	<b>Revision of ICC(A) 1982 and Restriction of the Coverage.....</b>	<b>22</b>
Section 1	Revision of ICC 1982 .....	22
Section 2	Restriction of ICC(A) 1982 on Coverage .....	23
Section 3	ICC(A) 1982 Partially Excludes the Risks of Carrier's CUDC .....	24
<b>Subchapter 4</b>	<b>Revision of ICC(A) 2009 and Secondary Expansion of Coverage ..</b>	<b>25</b>
Section 1	Revision of ICC 2009 .....	25
Section 2	Expansion of ICC(A) 2009 on Coverage.....	26
Section 3	ICC(A) 2009 Covers the Risks of CUDC Again.....	27
<b>Chapter 3</b>	<b>Identifying Criteria on Coverage of All-risk Cargo</b>	
	<b>Insurance.....</b>	<b>31</b>
<b>Subchapter 1</b>	<b>Fortuity of Losses .....</b>	<b>31</b>
Section 1	Judgment Basis of Fortuity is the Certain Transport Position .....	32
Section 2	Judgment Content of Fortuity is Losses.....	32
Section 3	Judgment Object of Fortuity is the Assured .....	33
<b>Subchapter 2</b>	<b>Substantive of Losses .....</b>	<b>35</b>
Section 1	Summarize of Substantial Losses .....	35
Section 2	All-risk Cargo Insurance Covers Substantial Losses Only.....	36
<b>Subchapter 3</b>	<b>External Causes of Losses .....</b>	<b>38</b>
Section 1	Not Caused by Subject-matter Insured .....	38
Section 2	Not Caused by Assured.....	39
<b>Chapter 4</b>	<b>Risks of CUDC should be Covered by All-risk Cargo</b>	
	<b>Insurance .....</b>	<b>43</b>
<b>Subchapter 1</b>	<b>Losses Caused by CUDC Fulfill the Identifying Criteria on</b>	
	<b>Coverage of All-risk Cargo Insurance.....</b>	<b>43</b>

---

Section 1	CUDC is An Accident to the Assured .....	43
Section 2	Losses Caused by CUDC is Substantial .....	44
Section 3	Causes of the Losses of CUDC is External .....	44
<b>Subchapter 2</b>	<b>All-risk Insurance Covers the Risks of CUDC Meeting the Development Trend of Marine Insurance.....</b>	<b>46</b>
Section 1	Meet the Development of Shipping Practice .....	47
Section 2	Satisfy the Principle of Assured's right protection.....	50
Section 3	Help to Strengthen the International Competitiveness of China's Insurance Industry .....	55
<b>Subchapter 3</b>	<b>Improving China's All-risk Cargo Insurance Clause so as to Deal With Risks of CUDC Properly .....</b>	<b>56</b>
Section 1	Definite the Nature of All-risk Insurance .....	56
Section 2	Perfect the Definition of Coverage .....	57
<b>Conclusion</b> .....		<b>60</b>
<b>Bibliography</b> .....		<b>61</b>
<b>Acknowledgements</b> .....		<b>66</b>

厦门大学博硕士学位论文摘要库



Degree papers are in the "[Xiamen University Electronic Theses and Dissertations Database](#)". Full texts are available in the following ways:

1. If your library is a CALIS member libraries, please log on <http://etd.calis.edu.cn/> and submit requests online, or consult the interlibrary loan department in your library.
2. For users of non-CALIS member libraries, please mail to [etd@xmu.edu.cn](mailto:etd@xmu.edu.cn) for delivery details.

厦门大学博硕士论文摘要库