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INSURABLE INTEREST AND MARINE CARGO INSURANCE

SURA MARINE

KNOWLEDGE IN TRANSIT

INTERNATIONAL TRADE AND THE TRANSFER OF TITLE

In understanding the nature of overseas trade it is important to appreciate that a shipment of cargo may be traded several times before it reaches its overseas destination.

This is particularly the case with commodities such as steel and oil where a healthy futures market means that a single shipment may be bought and sold several times during the course of transit as market prices rise and fall.

The marine insurance product therefore needs to be similarly transferable in order to avoid new participants in the trade having to arrange their own insurance cover. Even where there are only two participants to the trade, one party may have responsibility for arranging insurance that will ultimately be to the benefit of the other party.

An interesting aspect of marine insurance is how it interacts with international trade and in particular how the different parties involved all have their own unique interests that will determine if and at what stage of the transit they have an insurable interest in the cargo being shipped.

Insurable interest was a concept originally created to differentiate a contract of insurance from a wager or bet. In fact, the Marine Insurance Act makes this distinction in one of its sections stating that any marine insurance contract effected where no insurable interest exists or where such an interest is not expected to exist is void and is considered to be a gaming or wagering contract and considered illegal.

Insurable interest is a dynamic feature of marine insurance in that the party claiming on the policy of insurance may not necessarily be the original named insured. In a way therefore, marine insurance contracts have some similarity with the provisions of the Insurance Contracts Act 1984 where parties benefiting from an insurance policy do not need to be named in the policy.

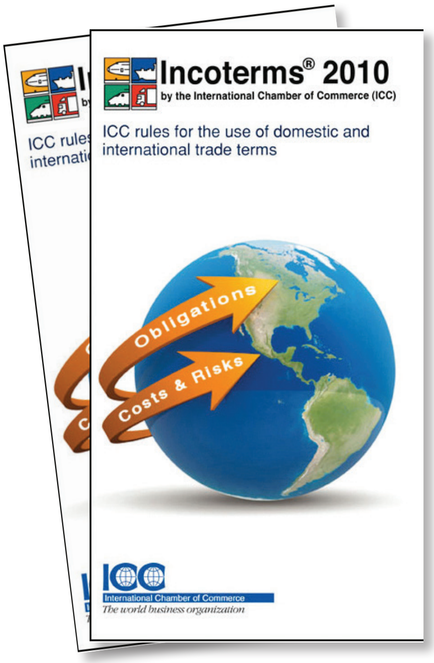
MARINE INSURANCE ACT

The Marine Insurance Act 1909 states that every person has an insurable interest where they may benefit from the safe arrival of the insured cargo or may be prejudiced by its loss, damage or detention (s.11). It does not matter that the insurable interest did not exist at the time the insurance was first taken out, only that the interest exists at the time of loss (s.12).

Therefore, for the current 'owner' of the cargo to claim upon a marine insurance policy covering the cargo all they need to demonstrate is that they have a financial interest in the cargo at the time of the loss. In practice, particularly where banks are financing the transaction under a Letter of Credit, an underwriter issues a marine export insurance certificate evidencing the insurance cover. This insurance certificate becomes part of the shipping documentation and is assigned to the new owners of the cargo by stamping and signing its reverse side. For readers old enough to remember using cheques you may recall a similar practice of assigning the rights to the cheque by signing its reverse side with new payee instructions.

TRANSFER OF RISK/TITLE

For brokers arranging marine cargo insurance for their clients a sound understanding of the different ways that both the **transfer of risk** and the **transfer of title** can occur are necessary in order to understand their impact on insurance and insurable interest.



INCOTERMS

Another interesting aspect of international trade is that the transfer of ownership (title in the goods) and the transfer of insurable risk may operate independently of each other. This can pose challenges in determining whether or not one party or the other had an insurable interest at the time of the loss (as required by the MIA) bearing in mind that on an international transit of 1,000's of kilometres it is often very difficult to ascertain exactly where and when a loss occurred. Essentially, it is between the buyer and seller to determine their responsibilities for such matters as insurance and shipping costs and this won't necessarily be dependent upon when the transfer of ownership or title in the goods occurs.

To make this intent easy to establish the International Chamber of Commerce has developed a set of eleven trading terms (Incoterms). With a three letter acronym buyers and sellers can easily determine their respective responsibilities and at what point transfer of title and risk occurs. **It should be clear that a critical part of any marine claims executive's job is to determine what the terms of sale are and whether the buyer or seller's insurer should meet the claim.**

COST, INSURANCE, FREIGHT (CIF)

A commonly used Incoterm in trade involving ocean transport is CIF (cost, insurance, freight named destination). Under CIF sale terms the seller is required to arrange insurance to the named destination however they are deemed to have delivered the goods to the purchaser once they are loaded onboard the overseas vessel at the departure port. Take for example, an Australia-based importer who has in place an annual cargo policy covering their imports. If they were to purchase a shipment from Italy on CIF Sydney sale terms, claims for damage would need to be referred to their Italian supplier's insurer's local nominated claims agent in order that their insurers meet the claim. This is because the CIF sale terms noted in the contract of sale means that the exporter (supplier) has responsibility for arranging insurance.

In this example it is important to understand that while the Italian supplier is responsible for arranging insurance it need only be on the minimum cover available in the market. **It is for this reason that importers should always be encouraged to arrange their own insurance locally rather than rely on the cover provided by the exporter.**

In terms of transfer or title, in the example given the Italian supplier may have already been paid for the damaged goods as title has transferred when the cargo was loaded onboard the vessel at the shipping port so it is a good example of where they have arranged the insurance but it will be their Australian client who is claiming under the policy arranged in Italy. It is common in such cases that the Italian supplier may not even know that the policy they arranged is being claimed upon – this may only become evident at their next renewal!