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THE ORDINARY COURSE OF TRANSIT

SURA MARINE

KNOWLEDGE IN TRANSIT

IN-TRANSIT WAREHOUSING

An example of temporary warehousing in transit would include receipt into a local store of multiple smaller shipments to be then loaded onto a larger truck when available for interstate delivery where the final destination was pre-determined.

It would not include a situation where goods are delivered to the local store and temporarily warehoused while waiting for orders to be filled before determining place and/or time of final delivery.

Cargo owners and carriers may have goods in a warehouse that are a combination of storage in the course of transit and more permanently <u>outside</u> the course of transit.

WHY DON'T MARINE INSURERS JUST GIVE A CERTAIN AMOUNT OF DAYS THAT STATIC COVER IS IN FORCE FOR?

It has been suggested that a simple time period of X days be specified for when goods can be warehoused but still remain covered by the transit policy.

While this might seem like a neat solution such an approach would require an industry wide (and possibly international) acceptance and change in transit wordings and definitions.

The property market would have to follow suit and instead of their current approach which is to not provide cover for goods in transit they would instead have to say that they are not providing cover for goods that have been warehoused for less than X days.

Marine insurers would then have to consider potentially vast accumulation risks in warehouses where goods have been temporarily stored for those X days.

Often brokers will need to consider the extent of 'static' cover provided by a marine insurer when their client makes them aware that goods will be warehoused.

For something that appears quite straightforward, anyone who has had to consider when transit insurance starts and finishes will quickly find that the term 'ordinary course of transit' can be as clear as mud.

It is however a term that is at the backbone of transit insurance, that is, marine insurers are generally only interested in insuring cargo while it is in transit.

So, how does the marine market clarify the extent of warehousing cover they provide?:

1. Most marine cargo policies that insure overseas risks, i.e. imports and exports, will simply state that the cover starts and finishes in accordance with the duration clause defined in the Institute Clauses that apply to the policy.

   The Institute Cargo Clauses (A) state that the cargo is insured '…during the ordinary course of transit'.

2. Plain English wordings covering goods in transit within Australia contain a similar provision that goods are covered either 'during the course of transit' or 'during the ordinary course of transit'.

3. Carriers load policies, which for many years had defined start and finish points, have generally been widened to cover carriers' responsibility for goods while in their care, provided the goods remain in the normal course of transit.

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PACKERS' PREMISES

It is common for cargo to be transported to specialists for packing prior to shipment.

Most marine insurers' policy wordings will contain a specific clause giving static risk cover while cargo is at packers' premises.

Wordings will differ from a 30 day cover period to unlimited.

WHAT DOES THE LAW SAY?

A court case, NEC Australia Ltd v. Gamif Pty Ltd and others, involved a carrier's liability policy and considered whether goods stored temporarily in a carrier's warehouse remained in the course of transit.

In that case the judge took the view that while goods in transit don't necessarily have to be in motion at all times the overall object of the insurance contract is to facilitate the transportation of the goods from one place to another.

In other words, the period of transit may continue during periods when the goods are temporarily housed provided that such housing is reasonably required for the transport of the goods to their final destination.

"BUT I'VE BEEN TOLD THAT AS LONG AS THE GOODS ARE ON A VEHICLE THEY ARE 'IN TRANSIT'"

Circumstances will differ but generally speaking this assertion is wrong. When it comes to cargo insurance, the Institute Cargo Clauses state that cover terminates "…when the Assured or their employees elect to use any carrying vehicle…for storage other than in the ordinary course of transit".

The question then becomes whether cargo contained in a vehicle is in the 'ordinary course of transit'. To a large extent this will depend upon whether the cargo owner is in control of the decision to leave the cargo in the vehicle.

Scenario 1: A cargo owner engages a transport company who stores the cargo overnight in their vehicle at their depot for departure the next morning to final destination.

COVERED as the decision to leave cargo in the vehicle was made by the transport company. As far as the cargo owner is concerned the goods are in transit going directly from point A to point B.

Scenario 2: Cargo owner uses their own vehicle for deliveries and leaves the vehicle loaded overnight for early departure the next day.

NOT COVERED as the cargo owner is using the vehicle to store the cargo before the commencement of the actual transit.

NOTE: Some marine policies provide a 'goods stored in vehicle overnight' benefit in their cargo policies to specifically insure this risk and to remove any question as to whether or not overnight storage in vehicles is covered.

"BUT DON'T CARGO POLICIES INCLUDE AN AUTOMATIC 60 DAYS 'STATIC'COVER…"

This is a misnomer in marine cargo insurance. There is no automatic static or warehousing cover other than which occurs during the ordinary course of transit. Under the Institute Cargo Clauses (A) the insured transit terminates at the earliest of:

1. Cargo being unloaded from the carrying vehicle at the final warehouse or destination.
2. Cargo being unloaded and put into storage by the insured or their employees at any other prior warehouse or place of storage for use other than in the ordinary course of transit or for allocation or distribution.
3. When the assured or their employees put the cargo into storage into any carrying vehicle or container whether prior to or at the final destination for use other than in the ordinary course of transit.
4. The expiry of 60 days from discharge of the vessel at the final port of discharge.

Scenario 1: Cargo is in transit from the UK to Australia. The cargo is stored in a bonded warehouse at Brisbane Port for 1 week awaiting customs clearance.

COVERED as this would be regarded as a normal part of importing cargo.

Scenario 2: Cargo is in transit from Australia to USA. The insured puts the cargo into storage at a freightforwarder's warehouse for 1 week while they wait for the purchaser's funds to arrive and clear in their bank account.

NOT COVERED as the insured has elected to use the freightforwarder's warehouse as a place of storage.

WHERE TO FROM HERE…? To avoid the potential for claims and contractual issues brokers should have a frank discussion with their clients as to their exposure for cargo in storage, both in and outside of the ordinary course of transit.

Where storage outside the ordinary course of transit is concerned, marine insurers may be able to extend their transit cover for cargo owners to accommodate storage of their goods in a warehouse. Generally this would only be available for goods stored with professional third party logistics/warehousing providers. Generally, cover for goods stored at the client's own warehouse is better accommodated in the property insurance market.

Carriers' exposure for goods stored outside the ordinary course of transit can be insured in the property market as customers' goods or alternatively as goods in care custody and control under their liability insurance. In both cases sub-limits will apply and difficulties can be encountered getting cover for flood risks or cover beyond a negligence trigger.