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Hanjin – the impact on cargo insurance

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CLYDE & CO

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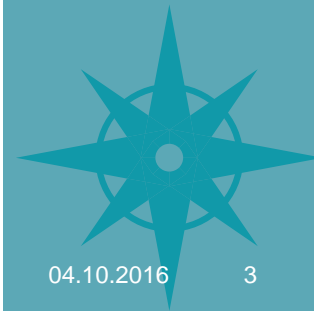
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AGENDA

- Hanjin Shipping
 - Position to date
 - Practical issues for insureds
 - Policy coverage
 - Delay and insolvency exclusions
 - Continuation of cover
 - Forwarding charges
 - Sue & labour and extra expense cover
 - Policy limits and deductibles

- Conclusions



POSITION TO DATE

- Seoul Central District Court Order 01/09/16
- The Court:
 - Granted Hanjin's application for rehabilitation
 - Appointed a Court receiver
 - Set a timeline for submission of claims and a rehabilitation plan
 - Also granted an Order preventing enforcement against Hanjin assets
- The Korean Court Orders are not effective outside Korea



POSITION TO DATE

- US New Jersey Bankruptcy Court Order
 - This was issued 06/09/16 and granted Hanjin's Chapter 15 application and recognised the Korean Court Order
 - Ordered a temporary stay on the commencement or continuation of US proceedings against Hanjin and its assets, owned or chartered, including any vessel arrests
 - Confirmed at a hearing on 09/09/16
 - Status Conference 23/09/16 and 06/10/16



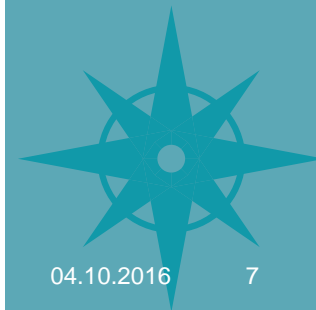
POSITION TO DATE

- Hanjin has indicated an intention to apply for similar orders in other jurisdictions to obtain recognition of the Korean Court Order
- Orders have been obtained in various jurisdictions (e.g. UK, Singapore, Germany)
- But some countries may not recognise the Korean Court Order e.g. China



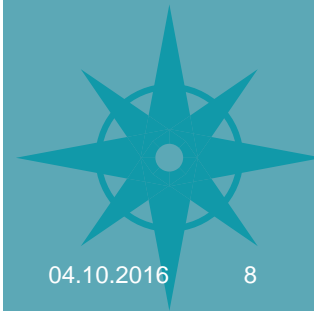
POSITION TO DATE

- There are reports of a possible financial rescue plan
- But a successful outcome remains uncertain
- Any payments to unsecured creditors in the rehabilitation are likely to be small



POSITION TO DATE

- Hanjin vessels are under arrest in various jurisdictions
- Other vessels have been refused permission for port entry or cargo handling services
- To avoid vessel arrests Hanjin have ordered vessels to “safe haven” ports or to stay outside port limits
- Hanjin have sought release payments for cargoes at loadport yet to be loaded onboard



PRACTICAL ISSUES

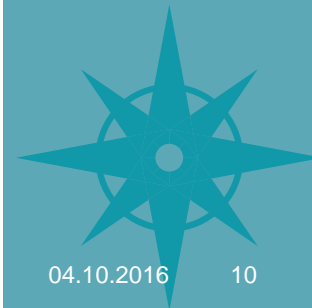
- Cargo interests face numerous issues including:
 - Securing the release of cargo - with terminal operators/port authorities/Hanjin seeking release payments directly from cargo
 - The risk of cargo deterioration or theft during delay
 - Extra cost in shipping cargo to destination

- And the need to file claims by the date fixed by the Court - **25 October 2016**



QUESTION

- Do you write business on
 - Institute Cargo Clauses (A) 1/1/09
 - Institute Cargo Clauses (B) or (C) 1/1/09
 - The 1982 Institute Clauses
 - The 1963 Institute Clauses
 - American Institute Cargo clauses
 - German DTV clauses
 - Other clauses?



INSURANCE

- The Institute Cargo Clauses (A) 1/1/09 contain
 - Clause 1 Cover for All risks of loss or damage except as excluded
 - Clause 4.5 Exclusion for delay
 - Clause 4.6 Exclusion for insolvency and financial default
 - Clause 8.3 Continuation of cover during delay beyond control of the Assured
 - Clause 9 Termination of contract of carriage
 - Clause 12 Cover for forwarding charges
 - Clause 16 Cover for sue and labour expense



THE DELAY EXCLUSION

- Clause 4.5
- *“4. In no case shall this insurance cover...
4.5 loss, damage or expense **caused** by delay, even though the delay be caused by a risk insured against...”*



THE DELAY EXCLUSION

- How does it apply to
 - Perishable goods that are delayed and deteriorate or pass their sell by date?
 - Loss of market e.g. non perishable goods that “miss” the market for Thanksgiving and Christmas?
 - Price sensitive cargoes e.g. that suffer a drop in market value during a period of delay?



QUESTION

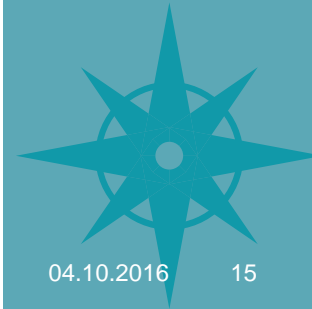


DO THE POLICIES YOU WRITE CONTAIN
AN INSOLVENCY OR FINANCIAL DEFAULT
EXCLUSION?



THE 2009 INSOLVENCY EXCLUSION

- “4. In no case shall this insurance cover
- 4.6 Loss, damage or expense **caused by insolvency or financial default** of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the **Assured are aware**, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage. This exclusion **shall not apply where** the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract”.



THE 2009 INSOLVENCY EXCLUSION

- It is for Insurers to prove that the insured was or ought to have been aware of the carrier's insolvency or financial default at time of loading
- The exclusion does not apply where the Policy has been assigned to a purchaser acting in good faith
- The equivalent exclusion in the 1/1/82 ICC(A) clauses was stronger

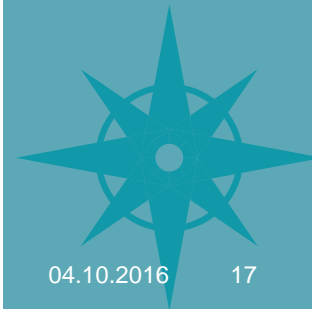


THE 1982 INSOLVENCY EXCLUSION

- “4. *In no case shall this insurance cover*

4.6

Loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel”



CONTINUATION OF COVER

- Clause 8.3

*"This insurance **shall remain in force** (subject to termination as provided for in Clauses 8.1.1 to 8.1.4 above and to the provisions of Clause 9 below) **during delay beyond the control of the Assured**, any deviation, forced discharge, reshipment or transhipment.."*



CONTINUATION OF COVER

- Termination of Contract of Carriage – Clause 9

*"If owing to circumstances beyond the control of the Assured either the contract of carriage is **terminated** at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the subject-matter insured as provided for in Clause 8 above, then **this insurance shall also terminate unless** prompt notice is given to the Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers ..."*



CONTINUATION OF COVER

- Key points on Clause 9:
 - The contract of carriage is **terminated** short of destination
 - Owing to circumstances beyond the control of the Assured
 - The insurance terminates except the Assured may ask for cover to continue subject to prompt notice and payment of any additional premium required

- Whether under Clause 8.3 (delay) or Clause 9 (termination) cover will likely continue



FORWARDING CHARGES

- But what of extra expense the insured incurs to get the cargo to destination?
- What is the basis of recovery from insurers
 - Clause 12 - the Forwarding Charges clause
 - Clause 16 – the Duty of Assured clause
 - Extra expense clauses?



FORWARDING CHARGES

- Clause 12 applies where
 - the insured transit **terminates** short of destination
 - termination is due to the operation of an insured risk
 - often supplemented by extra expense clauses

 - But is Hanjin's insolvency an insured risk?
 - And Clause 12 is subject to the ICC(A) exclusions



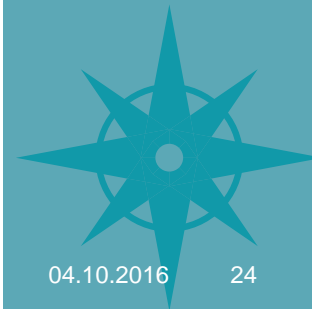
FORWARDING CHARGES

- Clause 12 – continued
 - The Cl. 4.5 delay exclusion may not apply where transit is terminated rather than merely delayed
 - And its application is not straightforward anyway
 - The Cl. 4.6 insolvency exclusion may be of limited relevance



FORWARDING CHARGES

- Carrier insolvency clause (an American wording)
 - *Notwithstanding anything contained herein to the contrary, in the event of the termination of the insured voyage at a place other than the final destination **due to insolvency and/or financial default** of the carrier the additional charges [to get the goods to destination] are a recoverable expense under this Policy..*



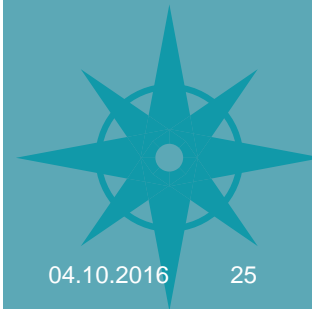
FORWARDING CHARGES

- Clause 16 ICC(A)

"It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder

16.1 To take such measures as may be reasonable for the purpose of averting or minimising such loss; and

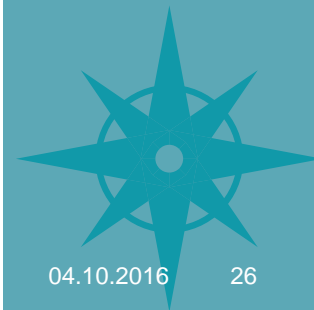
16.2 ..and the insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties".



FORWARDING CHARGES

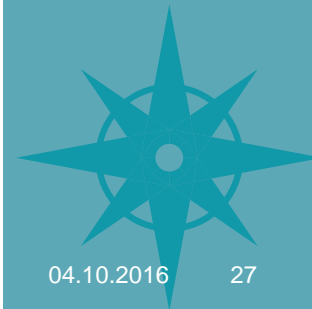
- Integrated Containers [1984]
 - Collapse of Oyama Shipping Line
 - Insurance against All risk of loss or damage to containers
 - Containers were scattered over the Far East
 - The Insured spent money recovering the containers
 - And sought to reclaim that expense from Insurers

- Held : entitled to recover
- Factual finding that containers were at risk of theft, misuse and enforcement of liens
- Steps taken by the Insured were reasonable



FORWARDING CHARGES

- Extra expense clauses
- **“Notwithstanding anything herein to the contrary** *this insurance is also to indemnify the Insured for up to US\$ X... in respect of additional expenses incurred in attempting to prosecute the intended voyage (..including all forwarding costs...) as a result of ..*
 - (a) the vessel being... delayed for any time period and **as a result of any reason whatsoever***



FORWARDING CHARGES

- Whether extra expenses are recoverable will be a fact specific enquiry, depend upon Policy wording and may be subject to Policy exclusions
- There is no “one size fits all” answer
- Whether claimed under Clause 12 or the Clause 16 Duty of Assured clause, any extra expense must be properly and reasonably incurred
- An extra expense clause may not have that limitation



POLICY LIMITS / DEDUCTIBLES

- Policy limits
 - *US\$ X or the equivalent in any other currency any one vessel aircraft conveyance or any one location in the ordinary course of transit*

- Policy Deductibles
 - *All claims for loss damage or expense resulting from any one occurrence or series of occurrences **arising out of one event shall be adjusted as one claim** and from the amount of such adjusted claim there shall be deducted US\$ Y...**[save that ..sue and labour charges shall be payable in full..]***





CONCLUSIONS

- This is a rapidly evolving situation with an uncertain outcome
- Insureds should ensure compliance with the Korean Court claims deadline
- The application of Policy terms may involve complex legal and factual questions



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