

Trade & Transportation Insurance News



Insurable Interest

March 2007

Introduction

Following on from our February newsletter which covered some of the most common Terms of Trade, this newsletter looks at the issue of insurable interest.

The principle of insurable interest is fundamental to all insurance contracts but due to the specific nature of marine transits (where the goods not only pass through a number of hands but can also change ownership during the transit) the application varies in respect of marine insurance.

This newsletter looks at how insurable interest is dealt with in the marine context.

Disclaimer

This newsletter is for information purposes only and is not legal advice.

History

The concept of insurable interest evolved to prevent wagering contracts. Until the Marine Insurance Act 1745 (UK) there was no legal requirement that an insured have any connection to the insured adventure. Therefore, insurance policies were open to abuse as wagers and provided a financial disincentive to exercise due care.

Definition

An insurable interest is where an insured stands to suffer a loss or incur a liability if the goods are lost or damaged, for example

- The insured would suffer a direct loss if the goods are lost or damaged - buyers and sellers.
- The insured could incur a liability in respect of these goods - General Average and Salvage liabilities and "Both or Blame Collision" liabilities.

Attachment

The Marine Insurance Act (MIA 1909) does not require insureds to have an insurable interest at the time they take out the insurance but they must have a ***reasonable expectation of acquiring an insurable interest.***

The insured must have an insurable interest in the insured property at the time of loss. (Clause 11.1 of the Institute Cargo Clauses).
If he doesn't, then the contract of Marine Insurance becomes void and of no effect.

If there has been any intent to defraud, the insured may be liable to prosecution.

Establishing Insurable Interest

In practice, a policy of marine insurance can be assigned as the insurable interest transfers from one party to another as is the case with many Import and Export shipments. Marine Certificates of Insurance can be issued under the terms of the policy to facilitate assignment and as proof of insurance cover (required by Banks and Buyers).

The Certificate of Insurance is a negotiable document and passes from one party to the other as ownership transfers. Security of these documents is very important.

In most cases, the original Certificate is required to make a claim under the policy. In the absence of the Certificate other transit documentation must be provided to show the transfer of ownership.

Market clauses are available to protect the insured where disputes occur between the various parties.

As always, if you would like more information, please contact us.

**The Team at
Vero National Marine**