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Proving the Cause of Loss Under a Marine Cargo Insurance Policy

Chubb Insurance Singapore LTD v Sizer Metals PTE LTD, [2023] SGHC(A) 17, Singapore Court of Appeal.

In this case, the Singapore Court of Appeal has considered whether the assured has satisfied the burden of proving the cause of loss under a marine cargo insurance policy in circumstances where there was no direct evidence of when or where the loss had occurred.

In September 2017 and May 2018, the company Sizer entered into two contracts with Excellent Mining in Rwanda for the purchase of nine shipments of tin concentrate to be delivered to Penang.

Sizer took out marine cargo insurance cover with Chubb under the terms of the Institute Cargo Clauses (A), whereby there was an all risks cover, the risk attaching “from the time the goods leave the warehouse or place of storage” until delivery. Therefore the cargo was insured only for the period after the commencement of the transit (“the Transit Period”).

On arrival at the destination, four of the shipments were found that did not contain tin concentrate. There had been a theft either at Excellent Mining’s premises in Rwanda or during the transit by road to a bonded warehouse in Kigali, Rwanda, before the cargo was transported to the port of Dar as Salaam for shipping to Penang, Malaysia.

A dispute arose between the assured Sizer and the insurer Chubb regarding as to whether the cargo was lost before or during the course of transit. According to the Institute cargo clauses (A), the burden of proof is on the assured to show fortuitous loss or damage to the subject matter insured occurring within the duration of the policy. In the present case, the issue was as to whether the assured had satisfied the burden of proof on the balance of probabilities that the theft had occurred during the transit.

The assured’s case was that the theft of the cargo had occurred during the Transit Period from Rwanda to Malaysia, i.e., after the cargo left the seller’s premises. The assured relied on two pieces of evidence:

- The fact that at the seller’s warehouse, none of the representatives who had checked the tin concentrate

had noticed any tampering with the sealed drums.

- The National Public Prosecution Authority of Rwanda investigated the theft and concluded that it did not take place in Rwanda.

The Court of Appeal upheld the first instance decision that Sizer had satisfied the burden of proving that the loss had occurred in transit, at some point after the consignments had left Excellent Mining's premises in Rwanda and before the cargo had reached Dar es Salaam.

Sizer had demonstrated that there was no serious possibility that the theft could have taken place on Excellent Mining's premises, and by applying a process of elimination, Sizer had demonstrated that the loss would have occurred in transit. On the other end, Chubb had been unable to produce evidence confuting that possibility.

Conclusion

The Singapore Court of Appeal clarifies how far an assured must go to prove its loss on a balance of probabilities under a marine cargo insurance policy. In this case, the assured was able to satisfy the burden of proof and recover the loss under the insurance policy, even if there was no direct evidence of when or where the loss had occurred. By applying a process of elimination, the assured was able to show that the theft could not have occurred on Excellent Mining's premises, and thus it had occurred in transit.

No doubt a welcome decision for assureds of marine cargo insurance policies.

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