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Does an all risks marine cargo policy cover fraudulent documents for a non-existent cargo?

1. This is an interesting question which has cropped up more frequently in recent times. There are no reported decisions from the Singapore Courts dealing with this issue. Having said that, the position under English law, upon which most marine insurance policies are based, is that this risk is not covered by the standard wording of an all risks marine cargo policy. In order for the policy to cover financial losses that do not result from physical loss or damage, the policy wording must contain clear words to that effect.
2. The English position on the matter is contained in the case of *Engelhart CTP (Us) LLC V Lloyd's Syndicate 1221 And Others* [2018] EWHC 900. The Commercial Court held that an all risks marine cargo insurance would generally only cover losses flowing from physical loss or damage. The commercial significance of this is that if parties intend for their marine insurance policies to cover non-physical losses, then they must make this explicitly clear through the clauses of the policy. This is particularly important with the noticeable rise of cases dealing with fraudulent documents, where there is no underlying cargo.
4. It was assumed that no copper was ever shipped and that the Claimant in good faith had paid for and taken up fraudulent bills of lading and other shipping documents.
5. The Claimant submitted a claim under their Marine Cargo Insurance Policy with the Defendant, who were the underwriters of the policy, for loss of the cargo and insured expenses. The Defendant underwriters refused the claim.
6. The policy included a number of conditions, including fraudulent document clauses. The phrases of 'shortage' and 'loss of damage' were highlighted as particularly relevant to the dispute before the Court.

The Parties' Arguments

Brief Facts

3. In *Engelhart*, the Claimant bought 7,000 mt of copper ingots and resold them on the same day. However, when the containers were subsequently opened, it was discovered that no copper ingots were shipped and that the containers only contained slag of nominal commercial value. The bills of lading, packing lists and quality certificates were found to be fraudulent.
7. The Claimant argued that the provisions in the policy should be read to the effect that it would cover the broadest possible scope. In furtherance of this, the Claimant argued that the phrase 'shortage' in the policy should include situations be read to include situations where no goods were shipped and cover both partial and full shortages of cargo.
8. The Claimant further argued that the fraudulent document clause covered losses that were caused through the acceptance of fraudulent documents and non-existent shipment.
9. The Defendant underwriters resisted these claims and argued that on a plain reading of the policy, it did not cover any loss resulting from the acceptance of fraudulent documents for non-existent cargo nor did it cover situations where goods were never shipped.

Decision


10. Sir Ross Cranton, sitting as the judge of the High Court, rejected the Claimant's interpretation that the policy should be ready to cover a wide scope.
11. Instead, he adopted a textual interpretation of the policy, and used the plain words of the policy to decide the scope of coverage. The Court stated that generally all risks marine cargo insurance was to be read as only covering losses flowing from physical loss or damage to goods and that did not cover cases of pure economic loss.
12. If the parties had intended for there to be a broad scope of coverage by the policy, then they had to make such an intention explicitly clear through the wording of the policy, by including specific provisions or clauses.
13. The Court further held that based on the facts in *Engelhart*, no goods had ever been shipped. Consequently, there could be no loss or "shortage" since the shipment never existed in the first place. Applying a plain interpretation of the clauses, the Court held that 'shortage' did not cover cases of non-existent cargo.

Significance

14. The decision in *Engelhart* makes it clear that courts will only look at the plain meaning of phrases such as "shortage" and "physical loss or damage" when deciding the scope and coverage of the policy. The result of this is that all risks marine cargo insurance coverage will only cover physical loss or damage, unless otherwise expressly stated by the parties.
15. This is particularly significant to traders and trade finance banks who very often rely on documents, including bills of lading, to conduct their business. Prudent parties should ensure that the terms of the marine cargo insurance extends to such cases or risk left having to bear the burden of loss in the event of fraudulent documents being presented. This is especially the case given that the general clauses within an all-risk marine cargo policy will not have the same scope and coverage provided by specific provisions and clauses. Therefore, some types of losses (as in *Engelhart* with fraudulent documents and non-existent goods) will be excluded.

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