

Insolvency of Hanjin Shipping and Its Impact on Marine Insurance Cover

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CASE STUDY

Introduction

The questions to be dealt in this paper relates to the bankruptcy of Hanjin Shipping. Such incidents rarely occur in history and when they do, a lot can be learned from these. Hanjin has 141 ships, of which 128 were operating. The collapse of the world's seventh-largest container shipper has caused much agonizing among its clients over the fate of stranded cargo. Hanjin vessels are carrying cargo worth 16 trillion won (\$14.5 billion) belonging to some 8,300 cargo owners and most of which will be insured by insurance companies worldwide.

In this paper I will discuss one typical scenario that many insurance companies will face in near future and the possible course of work available to insurance companies who have insured cargo under Institute Cargo Clauses A version 01/01/09. As our industry has never seen such a situation before so the discussion will mostly be based on my understanding of cargo clauses in general and to some material that I have read in this regard. First of all let's look at the background of a recent case of marine export policy issued by our office in which the assured claims for forwarding charges that will arise due to insolvency of Hanjin Shipping and premature termination of contract of carriage.

Background of the Case

A containerized consignment of sports goods insured under ICC A (01/01/09) plus War & Strike Clauses is being found on board of one of the Hanjin vessels. The contract of sale was on CIF Sydney and insurance attached when goods first moved in the warehouse located in Sialkot for immediate loading on to the vehicle for its onward journey. Due to insolvency of operators/charterers, the vessel was not able to reach its destination and it was decided that the insured consignment along with other shipments will be unloaded at Singapore port. From Singapore port the consignment insured by our company will be taken to Sydney through another vessel.

Considering the above scenario there are three questions that will be discussed in this paper with reference to relevant sections in ICC "A" (01/01/09). The questions are as follow:

1. Is loss or damage to consignment and related expenses due to insolvency of vessel operator or charterer covered under Institute Cargo Clauses A?
2. What will happen with the insurance coverage if the consignment is unloaded due to bankruptcy of shipping line & termination of contract of carriage at a port other than to which it was destined?
3. Are forwarding charges covered under ICC "A" and to what extent when incurred to send consignment to its intended port of destination after premature discharge at some other port/place?

At the time of writing, the claim is under process so this paper will discuss the technical issues from underwriting perspective which may differ from original position after settlement of claim. As the event is unique in itself and numerous types of claims will follow from the bankruptcy of shipping line which will be settled under different laws and practice, so it is true to say that this paper is purely for academic purpose based on my understanding which may lack at some points. Therefore readers are encouraged to take caution in applying contents given in this paper on any practical situation.

Discussion on Question No. 1

ICC "A" covers all risk of loss or damage to subject matter insured except exclusions that are stated in it. Coming to the first question of this paper i.e. loss or damage to subject matter insured (consignment of sports goods) due to insolvency of vessel operator/charterer. I have reproduced the exclusion no. 4.6 below for reference which typically relates to this position:

Exclusions

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

Under current version of ICC clauses (01/01/09) the above exclusion will not apply where contract of insurance has been assigned to a party claiming hereunder who has bought or agreed to buy the subject matter insured in good faith under a binding contract. The situation would have been quite different under Institute Cargo Clauses A (01/01/1982) which states that this insurance shall not cover “loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel”.

In case mentioned above, the insurable interest in consignment shifted from consignor (seller) to consignee (buyer) from FOB point which is when consignment is in on board the vessel at Karachi port and the consignee has bought the subject matter insured in good faith. So exclusion 4.6 will not apply on an innocent assured, or an innocent buyer to whom the insurance has been assigned as he will enjoy greater protection under new version of ICC clauses.

Discussion on Question No. 2

Clause 9 of ICC “A” is given below for discussion on second question which deals with termination of insurance coverage in case of termination of contract of carriage:

Termination of Contract of Carriage

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, either

9.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the subject-matter insured at such port or place, whichever shall first occur,

or

9.2 if the subject-matter insured is forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

As per clause 9 above, the contract of insurance will also terminate once contract of carriage is terminated at a port or place other than the destination named in insurance contract as provided for under clause 8 due to circumstances beyond the control of assured. So in our case the contract of insurance will also terminate after unloading of shipment at Singapore port unless prompt notice is given to insurers and continuation of cover is requested for this insurance to remain in force, subject to an additional premium if required by the insurer.

In my understanding if assured wants its consignment to be covered from Singapore to Sydney, he must give prompt notice to insurer and insurer can provide cover subject to any additional premium if required. If insurer refuses to extend cover from Singapore to Sydney than any loss to consignment and related liabilities that arises during this voyage will not be covered under the policy as insurance contract terminates at Singapore port and insurer didn't agree to continuation of cover.

If continuation of cover is agreed by insurer than the insurance cover will remain in force as per provisions of 9.1 or 9.2 above. This technical point is very important to consider as it provides a chance to insurer to re-evaluate his liability that he will take for rest of the journey which will be under a new contract of carriage with different vessel operator.

Discussion on Question No. 3

How forwarding charges, which are incurred to send the consignment to its intended port of destination, will be settled under ICC “A”? Clause 12 which deals with this situation is reproduced below:

Forwarding Charges

12. Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter insured is covered under this insurance, the Insurers will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter insured to the destination to which it is insured.

This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their employees.

Forwarding charges are an important feature in our case. Many consignments will be off-loaded from Hanjin vessels and will then be forwarded to destination through other vessels. As far as forwarding charges are concerned which are reasonably incurred in unloading storing and forwarding the subject matter insured to the destination to which it is insured, they will be paid under Clause 12 as these charges are incurred because of the operation of a risk covered by the insurance policy. So the charges that will be incurred to send the consignment to Sydney will be paid by the insurance company and will usually be a percentage of sum insured which must be reasonable in given circumstances.

The above mentioned understandings are open to discussion and will prove a good starting point for insurance professionals to research more on this topic. As the Hanjin event is still unwinding so a lot more is still to come.

