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**TRANH CHẤP VỀ ĐIỀU KHOẢN MIỄN TRỪ TRÁCH NHIỆM
TRONG HỢP ĐỒNG BẢO HIỂM GIỮA CÔNG TY XUẤT KHẨU XOÀI (T) VÀ
BẢO HIỂM BẢO MINH**

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Tóm tắt

Hợp đồng bảo hiểm hàng hóa từ lâu đã trở nên thiết yếu đối với các doanh nghiệp tham gia vào hoạt động thương mại hàng hải, bảo vệ cho những rủi ro trong quá trình vận chuyển. Tuy nhiên, tranh chấp có thể phát sinh liên quan đến các điều khoản loại trừ trách nhiệm của hợp đồng bảo hiểm, mà các công ty bảo hiểm sử dụng để hạn chế trách nhiệm của họ trong những tình huống cụ thể. Bài viết này tập trung vào Bản án phúc thẩm số 02/2022/KDTM - PT của Tòa án nhân dân cấp cao tại Thành phố Hồ Chí Minh, đã ra phán quyết có lợi cho công ty xuất khẩu xoài. Tòa án nhận thấy rằng điều khoản loại trừ, không được giải thích rõ ràng cho người được bảo hiểm, nên không thể được sử dụng làm căn cứ để từ chối bồi thường. Phán quyết này đã nêu ra những vấn đề quan trọng liên quan đến tính minh bạch và khả năng thực thi của các điều khoản loại trừ trong hợp đồng

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bảo hiểm. Thông qua phân tích vụ việc, tác giả đã khám phá những tác động pháp lý đối với ngành bảo hiểm và đề xuất sửa đổi khung pháp lý để quản lý tốt hơn những sự cố tương tự.

Từ khoá: Hợp đồng bảo hiểm, bảo hiểm hàng hoá, tranh chấp, điều khoản miễn trừ trách nhiệm

CONFLICT OVER THE VALIDITY OF THE LIABILITY EXCLUSION CLAUSE IN INSURANCE CONTRACT: A CASE STUDY BETWEEN A MANGO EXPORTER AND BAO MINH INSURANCE COMPANY

Abstract

Cargo insurance policy has long been essential for businesses engaged in marine trade, offering protection against risks during transit. However, disputes may arise over exclusion clauses of the policy, which insurers use to limit their liability in specific situations. This paper focuses on the Appellate Judgment No. 02/2022/KDTM – PT by the High People’s Court in Ho Chi Minh City, which ultimately ruled in favor of the mango exporter. The court found that the liability exclusion clause, which was not adequately explained to the policyholder, could not be used as grounds to deny compensation. This ruling raises important issues regarding the transparency and enforceability of exclusion clauses in insurance contracts, particularly in commercial insurance. Through a detailed analysis of the case, this study explores the broader legal implications for the insurance industry and suggests revision for the legal frameworks to better regulate similar occurrences.

Keywords: Insurance policy, cargo insurance, conflict, liability exclusion clauses

INTRODUCTION

Insurance plays a crucial role in modern commerce by providing financial protection against various risks. One key area is cargo insurance, which specifically covers goods in transit. In marine trade, where goods are transported over long distances and are exposed to numerous hazards—ranging from natural disasters to theft—cargo insurance offers exporters and importers peace of mind by covering such losses.

For exporters, especially those dealing with perishable goods like mangoes, having adequate cargo insurance policies is vital to mitigating risks associated with damage or spoilage during shipment. In many cases, these insurance contracts often include exclusion clauses, which aim to limit the insurer’s liability under specific conditions. When disputes arise over the application of such clauses, they can lead to significant legal and financial consequences for both parties.

When studying legal disputes in insurance, we found that there are cases where the insurance contract has stipulated a liability exclusion clause, but the insurer did not explain to the insured about that clause. When an insurance event occurred, the insurer relied on the clause excluding insurance liability to not compensate the insured. However, the insured argued that the clause excluding insurance liability was not explained to him, so the insurer had to compensate the insured.

One such case was the legal battle between perishable goods exporting company and Bao Minh Insurance Company. In the Appellate Judgment *No. 02/2022/KDTM – PT* dated January 12, 2022, of the People’s Court of Ho Chi Minh City, the Trial Panel’s judgment on the case was considered very convincing, in the direction of accepting the insurance buyer’s claim for compensation for damages (Nguyễn, 2023). The case highlights the challenges that arise when exclusion clauses intersect with the benefits of insurance policyholders, particularly in the context of commercial insurance. Through a detailed analysis, this paper aims to explore the legal dimensions of the dispute, providing insights into the broader implications for the insurance industry and insurance legal framework.

CHAPTER 1. THEORETICAL FRAMEWORK

1.1. Cargo Insurance Clause A for Frozen Goods

1.1.1. Overview of cargo insurance in Vietnam

The Cargo Clauses of Vietnam, often referred to as QTC-1990, are a set of standardized terms and conditions governing marine cargo insurance in Vietnam. QTC-1990 provides a structured approach to marine cargo insurance, defining the types of coverage available, the risks covered, exclusions, and the responsibilities of the insured and the insurer. These clauses are essential for businesses involved in international trade, ensuring that they have clear and reliable insurance coverage for their goods in transit. The QTC-1990 clauses offer three main types of coverage, similar to the Institute Cargo Clauses (A, B, and C) used internationally. (Bộ Tài chính, 1990)

1.1.2. Cargo Insurance Clause A (QTC-1990)

Clause A provides comprehensive coverage against various risks, including damage or loss caused by perils of the sea, theft, and other hazards. This clause is known for its broad scope of coverage, making it a preferred choice for ensuring high-value or sensitive cargo.

In CIF contracts, Clause A is often used to fulfill the seller’s obligation to provide insurance. The broad coverage offered by Clause A ensures that the insurance policy meets the required standards, thereby protecting both the seller and the buyer. This clause provides a clear framework for what risks are covered, minimizing disputes and enhancing the clarity of insurance provisions in international contracts.

1.1.3. Cargo Insurance Clause A for Frozen Goods

(Tổng Công ty Cổ phần Bảo Minh, 1986) Coverage for Frozen Goods within the Institute Cargo Clauses (A) specifically addresses the risks associated with transporting temperature-sensitive items. Frozen goods require special conditions to maintain their quality and prevent spoilage, which makes this coverage particularly critical.

Key Aspects of Coverage for Frozen Goods:

- *Temperature Control:* Frozen goods must be transported under strict temperature controls. Policies that cover these goods usually stipulate the need to maintain specific temperature

ranges throughout the transit. Any deviation from these conditions could result in damage, which needs to be covered by the insurance.

- *Types of Coverage:*
 - + Loss or Damage Due to Temperature Fluctuations: Coverage often includes protection against losses resulting from temperature deviations caused by refrigeration failures or accidents that affect temperature control.
 - + Spoilage: Insurance may cover spoilage of frozen goods if it results from incidents covered under the policy, such as a refrigeration unit malfunction during transport.
- *Policy Specifics:*
 - + Conditions: Policies covering frozen goods may have specific conditions, such as requirements for using temperature-controlled containers, maintaining records of temperature during transit, ensuring proper handling.
 - + Special Clauses: Some policies may include special clauses tailored for frozen goods, specifying how temperature-related risks are handled and how claims should be filed.
- *Claims Process:*
 - + Documentation: To support a claim for frozen goods, detailed documentation is crucial. This includes temperature logs, proof of proper packaging, and evidence of refrigeration unit performance.
 - + Assessment: Claims involving frozen goods may require a detailed assessment by a surveyor or expert to determine the extent of spoilage or damage and confirm whether it falls within the coverage terms.

1.2. Vietnamese Law on Insurance Business

According to (Quốc Hội, 2000), The Vietnamese Insurance Business Law is a comprehensive legal framework that regulates the insurance industry in Vietnam about the rights, obligations, and responsibilities of insurance companies and policyholders. It aims to ensure a fair and efficient insurance market in Vietnam.

Below are some of the main Clauses relevant to the Case discussed:

Article 13. Insurance Contract:

- An insurance contract must include essential details like names, subject matter, coverage, exclusions, premium, and dispute resolution terms.
- Contracts may include additional terms as agreed by both parties.

Article 16: Exclusion Clauses

- Exclusions define when an insurance company is not liable for claims.
- Clauses must be clear and explained to policyholders before finalizing the contract.

- Exclusions do not apply if the policyholder accidentally breaks the law or has a valid delay in notifying the insurer.

Article 17: Rights and Obligations of Insurance Enterprises:

- Insurance companies have the right to collect premiums, request information, terminate contracts under certain conditions, and deny claims based on exclusions or coverage limits.
- Obligations include explaining terms, issuing certificates, paying claims promptly, and providing written explanations for denied claims.

Article 19: Information Disclosure:

- Both parties (insurer and policyholder) must provide complete and truthful information.
- False information from either side can lead to contract termination and potential claims for damages.

Article 29: Payment of Insurance Benefits:

- Insurance companies must pay claims within the time frame agreed in the contract. If no time frame is set, payments should be made within 15 days after receiving a complete and valid claim.

1.3. Vietnam Commercial Law

(Quốc hội, 2005) Vietnamese Commercial Law is a comprehensive legal framework that governs commercial activities within the country. One article related to the case discussed is Article 306:

Article 306. Right to Claim Interest for Late Payment

In the event that a party in breach of contract delays in paying [...], the non-breaching party shall have the right to claim interest on the outstanding amount at the average overdue debt interest rate prevailing in the market at the time of payment, corresponding to the period of delay, unless otherwise agreed or provided by law.

CHAPTER 2. ANALYSIS OF THE INCIDENT ABOUT INSURED INTEREST BETWEEN T AND B1

2.1. Incident Overview

2.1.1. Case Summary

This legal case involves a dispute regarding insurance compensation for damage to mangoes transport contract (Tòa án nhân dân cấp cao tại Thành phố Hồ Chí Minh, 2022). The prominent details of the case are as follows:

- Judgment: No. 24/2021/TLPTKDTM dated March 29, 2021, of the People's Supreme Court of Ho Chi Minh City

- Legal relations: Disputes over service provision
- Applying case law: No
- Case type: Commercial business
- Court's Decision: The insurance company is subrogated to pay compensation for damages caused to the goods on the ship.

2.1.2. Parties in the case

- Plaintiff (the Insured): T International Joint Stock Company (T)
 - + T's Legal Representative: Nguyễn Đức T1
 - + T's Lawyer: Mr. Nguyễn Đình H
- Defendant (the Insurer): Bao Minh Insurance Corporation (B1)
 - + B1's Legal Representative: Mr. Nguyễn Đức H1.
- Person with related interests and obligations: Consignee X
 - + X's Legal Representative: Mr. Nguyễn Đức T1
- Surveyors: Nori and McL (Australia)

2.1.3. Insurance Policy

- Type: Cargo Insurance Policy, Cargo Clause (A)
- Insurer: B1 Insurance Corporation (B1)
- Insured: T International Joint Stock Company (T)
- Subject matter (Insured cargo): 1.000 cartons / 5.000 kg of mangoes in a refrigerated container
- Insurance request date: April 21, 2017
- Departure: Cat Lai Port, Ho Chi Minh City on April 22, 2017
- Arrival: Australian Port on May 4, 2017
- Insured amount: 110% CIF 32.175 AUD - 550.321.200 VND
- Shipper: T International Joint Stock Company
- Consignee: Company X

2.1.4. Timeline & Events

The whole case can be divided into 05 main phases as below:

Phase 01: Conclusion of Insurance Contract and Shipment of Goods

- | | |
|------------|---|
| 21/04/2017 | T requested cargo insurance coverage for their mango export and was issued a cargo insurance policy number MCE/01289903 by B1 |
| 22/04/2017 | The goods began their journey from Cat Lai Port, Ho Chi Minh City. |
| 04/05/2017 | The goods arrived at the port in Australia. |
-

Phase 02: Incident and Inspection of Goods

- The goods were transported to the buyer's warehouse, Company X. Upon unloading, the goods were found to be damaged.
- 08/05/2017
- X refused to accept the goods.
 - T requested B1 to appoint McL (a marine surveying company in Australia) to assess the damage
- 25/05/2017
- McL determined that most of the cargo was soft, rotten, and had no salvage value. The entire lot had to be destroyed.
 - The initial cause was suspected to be a malfunctioning refrigeration unit. McL requested the shipping line, K Line, to provide a container temperature monitoring record for further investigation.
-

Phase 03: Claim for Compensation and Dispute over the Cause of Damage

- 29/05/2017
- T collected all necessary documents and submitted an insurance claim to B1 as instructed.
- 22/06/2017
- T sent a second claim to B1.
- 23/06/2017
- B1 sent a letter to T explaining the delay in response due to the shipping line's non-cooperation (failure to provide the container's temperature monitoring record, making it difficult to determine the cause of the loss).
-

Phase 04: Lawsuit and Court Rulings

- 11/8/2017
- T filed a lawsuit against Company B1 at the People's Court of District 1.
 - The People's Court of District 1 transferred the case to the People's Court of Ho Chi Minh City
- 30/11/2018
- B1 sent a Letter No. 2253/2018-BM/HH denying the insurance claim.
- 29/09/2020
- The People's Court of Ho Chi Minh City issued a First Instance Judgment ordering B1 to pay T 550.321.200 VND in damages, plus interest on overdue payments.
- 13/10/2021
- B1 appealed to the First-Instance judgment and maintained their appeal until the
-

appellate court.

Phase 05: Final Judgment and Enforcement

The appellate court's judgment upheld the first-instance decision and became final, 12/01/2022 ordering B1 to pay the entire insurance amount plus overdue interest at a total of 667.743.159 VND.

2.1.5. Legal Proceedings

Following the inspection of goods after the incident, which has damaged most of the goods, T submitted a claim for compensation to B1 on May 29, 2017. On June 22, 2017, after sending a second claim, T received a response from B1 citing the reason for denying the claim: the shipping line had not provided the container's temperature records for the entire transport, making it impossible to determine the cause of the loss. Since the insured event had occurred and T had provided all required documents but B1 did not accept to compensate, T filed a lawsuit against B1 at the People's Court of District 1 on August 11, 2017. The case was later transferred to the People's Court of Ho Chi Minh City.

After the People's Court of District 1 requested temperature records from K-line, the shipping line transporting the goods in this case, B1 then forwarded the data to McL Marine Surveyors. The report by McL, dated December 12, 2017, concluded:

"In our initial report, we suggested the likely cause of the loss was refrigeration malfunction or compressor failure during customs clearance in Australia. However, after analyzing the temperature data for container AKLU6701320 from April 22, 2017, to May 4, 2017, we found no evidence of equipment malfunction or incorrect temperature settings during this period. There was a brief equipment shutdown on April 28, 2017, possibly due to loading/unloading operations at Singapore. However, we do not believe this was a significant factor in the damage."

They also noted that no temperature data had been provided between May 5, 2017 and the time of unloading (May 10, 2017). Therefore, they could not comment on this period. Additionally, they could not determine whether the handling by Australian quarantine authorities had contributed to the damage.

After B1 received the missing temperature data for the period from May 5 to May 10, 2017, from K-Line, the data was forwarded to another independent surveyor, Nori. According to Nori's inspection report (No. 18120736/HCM dated September 19, 2018), the cause of the damage was "improper storage of the fresh mangoes at an inappropriate temperature (from +19°C to +21°C) for an extended period (48 hours), which affected the quality of the goods. Once the container was reconnected to a power source, it functioned normally, indicating no refrigeration failure."

Dissatisfied with Nori's conclusion, T requested B1 to send the temperature records to McL for a reassessment, which was then agreed by B1. McL's final report confirmed that the

refrigeration unit did not malfunction, and human intervention caused the machine to shut down for a period, resulting in the loss.

Based on the inspection reports and insurance terms, on November 30, 2018, B1 sent T an official letter No. 2253/2018-BM/HH to deny the insurance claim on the grounds that the loss was not covered under the policy.

Proceedings at Court of First Instance

At the trial, the plaintiff T (represented by Nguyễn Đức T1) sought the following claims against B1:

1. B1 must compensate the full amount of the loss under the insurance policy, calculated at 32,175 AUD, equivalent to 550.321.200 VND (at the exchange rate of 17,104 VND/AUD on the trial date, September 10, 2020).
 2. B1 must also pay interest for late payment of the insurance claim, calculated from November 30, 2018 (the date B1 issued the letter denying compensation) until the full payment is made, with the interest rate based on the average overdue debt rate of three banks at the time of payment, in accordance with Article 306 of the Vietnamese Commercial Law.
- The total amount for calculating interest was 550.321.200 VND.
 - The average overdue debt interest rate at the time of the trial was 12% per year.
 - The interest accrued up to the trial date (September 10, 2020) was calculated as

$$\frac{(550.321.200 \text{ VND} \times 12,00\%/year) \times 649 \text{ days}}{365 \text{ days}} = 117.421.959 \text{ VND}$$

The total claim amounted to 667.743.159 VND. Following that, the plaintiff also requested B1 to immediately pay the compensation and the interest for delayed payment once the court's judgment became legally effective.

In response to the claims, during the trial proceedings, the defendant - B1, represented by Mr. Nguyễn Đức H1, presented his defense as follows:

- After the incident, B1 had appointed independent surveyors to determine the cause and extent of the damage. According to the survey report (No. MAR181821), most of the mangoes were soft and rotten, with no use left. However, B1 claimed that they could not compensate until they had the temperature records from the container during the transport, which had not yet been provided by the shipping company K-Line. This had been explained by B1 to T as a rejection of the insurance claim.
- As the shipment was sold under CIF terms, the risk of loss or damage was transferred to the buyer – Company X once the goods passed the ship's rail at the port of departure. Therefore, B1 maintained that T - the seller no longer had any *insurable interest* in the goods after the point of loading, and therefore had no right to file a compensation claim;

and only the buyer, X, who held the risk after the shipment, would have had insurable interest under the policy.

- The cargo was insured under Policy No. MCE/01289903, which specifically applied the Frozen Food Clause (A) 1/1/86. According to this clause, insurance coverage would only apply if there was a refrigeration malfunction for at least 24 hours. The inspection reports from both McL and independent surveyor Nori concluded that the goods had been stored at the wrong temperature for 48 hours, but not due to a malfunction in the refrigeration unit, as the machine functioned properly once it was reconnected. Thus, B1 stated that the damage did not fall under the policy's coverage (because it was not caused by a refrigeration failure) and denied the insurance claim.
- B1 also disagreed with T's argument that they were not adequately informed about the insurance terms and conditions, as the insurance terms were clearly outlined in the policy, forming a part of the contract. B1 affirmed that they had fully explained the terms and conditions at the time of the agreement, and the plaintiff did not raise any objections. B1, therefore, requested the court to dismiss T's lawsuit.

Meanwhile, T's Buyer - X, represented by Mr. Nguyễn Đức T1, confirmed that

- Due to the damage to the shipment, X did not accept the goods or pay for them;
- X then issued a document stating that they were not involved in the case and granted Mr. Nguyễn Đức T1 power of attorney to represent them in court.

In short, X supported the plaintiff's claim and requested the court to accept T's lawsuit.

Court of First Instance's Ruling

The Court of First Instance on September 29, 2020, sided with the plaintiff, T. Given the aforementioned information and requested documents, the court ordered:

- B1 to compensate T with 550.321.200 VND (based on the insurance value of 32.175 AUD). In addition, B1 was required to pay 117.421.959 VND in interest for the delayed compensation, calculated from the date of B1's refusal to pay the claim to the trial date. This brought the total amount to 667.743.159 VND.
- B1 also had to pay court fees and warned that any delay in fulfilling the compensation would result in additional interest charges.

At the Appellate Court

B1 was not satisfied with the initial ruling. On October 13, 2021, the People's Court of Ho Chi Minh City received B1's appeal, requesting the court to amend the first instance judgement and dismiss T's claim.

As for the plaintiff, the legal representative of T argued that:

- B1 had failed to include the Frozen Food Clause (A) 1/1/86 within the insurance policy or explain the relevant terms. This violated the Law on Insurance Business, which requires exclusion clauses to be clearly stated and explained.
- B1 also failed to adequately explain the insurance exclusion clauses to T when the contract was signed, as required by law. B1 also could not prove that they had fully explained the exclusion clauses, so they cannot deny T's claim.
- The plaintiff's representative requested the court to dismiss B1's appeal and uphold the initial ruling, as T retained an insurable interest in the goods due to the failure to receive payment from the buyer.

Meanwhile, B1 argued that the loss did not fall within the scope of the insurance coverage, and T did not have the right to file a lawsuit. Under CIF terms, the buyer bears all risks of loss and damage to the goods from the time the goods pass the ship's rail at the port of loading. Thus, the risk had already been transferred to the buyer, making Company X the rightful party to claim insurance. T was no longer has the *insurable interest*, and only had the right to participate in the court as a person with related rights and obligations, not as a plaintiff.

T countered, arguing that the goods were sold under CIF price, which was mistakenly understood as the CIF Incoterms Rules issued by the International Chamber of Commerce. Since the buyer, X, did not accept the goods and the payment had not been made, T retained the insurable interest and was thus entitled to claim compensation from B1.

The representative of the People's Procuracy agreed with B1, stating that T's lawsuit lacked the proper grounds, and recommended that the court accept B1's appeal and amend the first-instance judgment.

Appellate Court's Final Judgment

The appellate court had upheld the original decision of the People's Court of Ho Chi Minh City in favor of T. The Court's final judgment can be summarized as follows:

- *First*, there existed an insurance-contractual relationship between B1 and T. T had completed all the paperwork and paid for an insurance policy from B1 so the insured party was Company T. Therefore, B1 was obligated to fulfill its promises to compensate 110% of the goods' value in the event of a loss.
- *Second*, B1 refused to provide compensation by citing a clause in the insurance policy that pertains to frozen food (Clause A), claiming that the loss did not fall within the scope of coverage. However, B1, as the insurer, had failed to provide sufficient evidence to support their claim that the loss was excluded from coverage. In addition, B1's failure to fulfill its duty to provide clear information about the policy's exclusion was a violation of Vietnamese insurance law.

- *Third*, when the insured event occurred, the insured party, T, having completed all necessary procedures, submitted a claim for insurance compensation to B1. Therefore, B1 was obligated to pay the insurance claim as agreed.
- The court accepted the plaintiff's claim, ordering B1 to pay T a total of 667.743.000 VND, including the original insurance claim of 550.321.200 VND and accumulated interest on overdue payment of 117.421.959 VND. B1's failure to pay the amount by the deadline will lead to an accrual of interest on the remaining balance at prevailing market rate.
- B1 was also responsible for paying all court fees associated with both the first instance 30.709.720 VND and 2.000.000 VND for appellate proceedings. T, meanwhile, will receive a refund for the court fees 13.155.072 VND they had paid.

The judgment was immediately enforceable, and the parties involved had the right to initiate enforcement proceedings if necessary.

CHAPTER 3. DISCUSSION & RECOMMENDATIONS

3.1. Discussion

The five-year-long case study has given readers fundamental insights into the implementation of cargo insurance policies. Both the Insurance company and the Good exporter could draw valuable lessons from their case, helping them to prevent future handling of similar occurrences.

3.1.1. *From the Insurance Company's perspective*

For B1, despite having prepared enough evidence to support their claims, they were the losing party. Several insights into insurance companies' actions could be worthy of discussion:

3.1.1.1. *Failure to include and explain all the Clauses in the Insurance Policy was costly*

According to Clause 2, Article 16 of Law on Insurance Business, "*Exclusion clauses must be set out clearly in the insurance contract. An insurance enterprise must explain [the exclusion clauses] clearly to the purchaser of insurance when a contract is entered into.*" Hence, failure to explain the exclusion clauses to the Insured proved costly for the Insurer, rendering these Clauses non-binding. Even if they have explained the clauses, failure to prove their explanation also meant the Clauses were not legally binding, according to the Law.

3.1.1.2. *Delayed handling of cases had consequences*

B1 showed considerable delay in processing T's claim for insurance. T sent the insurance claim B1 in May 2017, but it was not until November 2018 that B1 sent the official Letter refusing the insurance claim.

As we can see from the case, late handling of the case was costly to B1. Not only did B1 have to pay the entire insurance amount (~550 million VND), but this insurer also had to process a huge amount of overdue interest payment (~117 million VND). This was mainly due to B1's

delay in processing the case and the insurance payment by 1 year, 9 months and 10 days, with a high interest rate of 12%.

3.1.2. From the Frozen food exporter's perspective

3.1.2.1. Importance of acknowledging the Liability Exclusion Clause

Failure to scrutinize the additional Insurance Clauses could be costly for T - the insurance purchaser. As the additional clause showed, T was only eligible for insurance compensation if the temperature changes arose out of malfunctioning air conditioning units. Should this Clause have been explained to T, T could not have been granted the insurance cover, as the air conditioning unit only stopped working then resumed working normally.

Thus, for insurance customers in general, and exporters buying insurance in particular, it is highly necessary to carefully read and understand not only the entire content of the policy, but also the Terms, conditions, warranties, and especially additional clauses attached therein. These additional clauses may stipulate exclusion of the liabilities of the parties, which can fundamentally change the outcome of the case.

3.1.2.2. Importance of comprehensive understanding of the Law on Insurance Business:

A comprehensive grasp of Law on Insurance Businesses by T's lawyer, as presented in the case, helped T to deal with Insurance Company's circumvention of law. The Lawyer hired by the T international Company with his understanding of this Law, pointed out the loopholes in B1's argument. He proposed that despite having included the additional clauses in the policy, they were non-binding since the B1 Insurance company did not explain the additional Clauses to T. Thus, having a good lawyer, with clear understanding of Insurance Law, contributed to T's success in the case.

3.2. Recommendations

3.2.1. For Insurance Companies in Cargo Insurance

Insurance companies play a critical role in managing the risks associated with insuring cargo, especially perishable goods. This section highlights key lessons learned regarding how insurers can improve their services by ensuring clear communication, efficient claims processing, and collaboration with other parties.

First and foremost, insurers must provide clear explanations of all policy terms, especially exclusion clauses, to prevent misunderstandings, disputes, and unexpected losses later on. Ensuring that clients fully understand the limits of their coverage is crucial for avoiding conflicts during the claims process. Additionally, it is vital for insurers to tailor policies based on the unique needs of each shipment that are outside standard policies to cover specific risks like temperature control (Sassoon, 1965).

Prompt claims handling is another critical area, helping to reduce the financial burden for insurers themselves. This could be achieved by collaboration with third parties, such as shippers and logistics companies, to ensure proper documentation and handling, which aids in the process

of determining liability in case of damage. In addition, insurers may also consider investing in technological solutions like real-time temperature monitoring and data analytics to further improve their ability to quickly assess and manage risks, ultimately preventing losses for the company and enhancing service quality.

3.2.2. For perishable goods exporters

Exporting temperature-sensitive goods comes with unique challenges that require careful risk management and insurance coverage. To best safeguard the goods and manage potential claims efficiently, perishable goods exporters should consider several key areas.

The first crucial step for exporters of perishable goods is to thoroughly understand their insurance policy, as this serves as the foundational legal framework for all future events. Beside the standard terms and conditions, specific contracts may include additional clauses for perishable goods that address critical factors such as temperature control, handling requirements, which can significantly impact liability in the event of damage or loss. Exporters should carefully review these provisions and discuss them with their insurers to ensure comprehensive coverage of all potential risks, including refrigeration and proper handling during transit, to avoid significant financial losses (Jasutiene, 2023). Additionally, exporters should also understand any exclusions under the contract that may apply, such as those related to machine malfunction or human error, to prepare for risks that fall outside the insurer's responsibility.

To further mitigate risks, exporters must collaborate closely with shipping companies and maintain detailed records to clearly establish liability in case of disputes and ensure their ability to file a successful claim. This involves actively requiring temperature logs, inspection reports, and handling records throughout the shipping process.

Furthermore, under CIF, the risk transfers to the buyer once the goods are loaded onto the ship. If this is not clearly understood, exporters may face complications in claiming damages under their own insurance policy after the risk has shifted to the buyer. Therefore, being aware of these terms helps exporters navigate potential issues with insurance claims more effectively.

3.3. Recommendations for Policy Improvements:

3.3.1. Insurance policy improvement:

To enhance cargo insurance policies for perishable goods, we would like to suggest several recommendations for policy improvements.

First, clarity in policy terms must be stipulated in the contract. Insurers should ensure that all policy terms, particularly exclusion clauses, are clearly communicated to clients. Insurers must be legally required to explicitly explain these clauses as part of the contract-signing process, ensuring clients understand the conditions that could invalidate a claim. Additionally, records of these explanations should be maintained and signed by both parties to prevent future disputes.

Improved claims documentation is also essential. The absence of comprehensive shipping logs, especially temperature records, complicated the determination of liability in this case.

Therefore, Insurance Policies should require the collection of real-time shipping documentation, including detailed temperature logs and container tracking to ensure that all data is available in the event of a claim, and risk of disputes over missing or incomplete information is minimized.

Customization of policies under CIF contracts is important to clearly stipulate who could file a claim when the risk had already been transferred to the buyer. Policies should clearly define the conditions for risk transfer and specify who has the right to file claims. Insurers should also provide special clauses that address pre- and post-risk transfer scenarios, indicating which side can file a claim, depending on the nature of the loss and the point at which the risk is transferred.

Finally, timely claim responses are critical, especially for perishable goods. In this case, the delay in the insurer's response to the claim created financial strain for the insured party. Insurance policy should hence enforce strict timelines - for example, a maximum of 30 days - for insurers to respond to claims, especially in cases involving perishable goods. If insurers exceed this timeline without just cause, they should face strict penalties.

3.3.2. Law improvement

In the context of international cargo insurance, particularly for perishable goods, national legal frameworks must evolve to address the unique risks associated with these shipments. This section explores necessary improvements in laws governing cargo insurance.

The Law on Insurance Business should strengthen the requirement for clear communication of exclusion clauses, particularly for high-risk goods like perishables. (Nguyễn, 2023) stated that according to Article 16, Clause 2 of the 2000 Insurance Business Law, *"Exclusion clauses must be clearly specified in the insurance contract. The insurer must explain these clauses to the buyer at the time of contract formation."* As can be seen, the current regulations on exclusion clauses remain insufficient, leading to insurers evading their obligations. The law should mandate that exclusion clauses be explained, either verbally or in writing, during a contract conclusion. Written records of these explanations should also be mandatory, with signatures by both parties to prevent future disputes.

To avoid lengthy claims processing, especially for perishable goods, amendments to the Law on Insurance Business are necessary. Given the time sensitivity of perishable shipments, legal deadlines for claims resolution should be implemented, with penalties for insurers that exceed these deadlines.

Tailored coverage for CIF contracts is also essential, as these contracts transfer risk to the buyer once the goods are taken delivery. The law should mandate special insurance clauses to clarify the timing of risk transfer and define which party has the right to file a claim.

Additionally, the Law on Insurance Business should impose stricter penalties on insurers that fail to meet obligations, whether through delays in claims processing, lack of proper communication, or failure to explain exclusion clauses. This would create a greater incentive for insurers to maintain high standards of service and transparency, benefiting both clients and the industry as a whole.

CONCLUSION

The conflict between the mango exporter and Bao Minh Insurance Company over the exclusion clause in the cargo insurance policy highlights key issues regarding the application of such clauses in commercial insurance contracts. The court's ruling, which favored the exporter, emphasizes the importance of transparency and the obligation of insurers to clearly explain exclusion clauses to policyholders. This case serves as a reminder that failure to communicate and document such clauses can lead to significant legal and financial repercussions for insurers.

To address these challenges, this paper recommends several ways to improve insurance policies. First, insurers must prioritize clarity in policy terms by explicitly explaining exclusion clauses to clients during the contract-signing process, with signed records to prevent future disputes. Improved claims documentation, particularly the inclusion of real-time shipping data such as temperature logs, is essential to ensure transparency in determining liability. Furthermore, policies for CIF contracts should clearly define the conditions for risk transfer and specify who has the right to file claims, reducing confusion in cases where risk has already been transferred to the buyer. Timely claims processing is also crucial, particularly for perishable goods, and policies should mandate insurers to strictly adhere to agreed timelines.

From a legal standpoint, both national and international laws governing cargo insurance should evolve to address the unique risks associated with perishable goods. Laws should mandate clearer communication of exclusion clauses, enforce timely claims processing, and incorporate mediation or arbitration procedures to resolve disputes efficiently. Additionally, there should be standardized contract conditions for perishable goods and stricter penalties for insurers that fail to meet their obligations.

By adopting these contractual and legal improvements, the insurance industry can better serve clients, reduce the potential for disputes, and ensure a fairer, more transparent process for all parties involved in marine trade.

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