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Term Condition in Marine Insurance of Goods in Light of the Latest Version of the Terms of Marine Insurance: A comparative study between the Jordanian and British laws

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Cover Page Footnote

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The duration coverage in the marine cargo insurance In light of the latest version of the Institute Cargo Clauses and the Jordanian and British maritime laws

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Abstract:

This paper aims to investigate the duration clauses in the marine cargo insurance contract as manifested in the new version issued by the Institute of London Underwriters and Lloyds committees in 2009. The importance of this research comes from the fact that most of the Arab Marine Insurance market including Jordan using the Institute Cargo Clauses for insuring the goods is shipped by sea. The duration of the insurance cover is a corner stone in the marine insurance contract as it provides the commencement and the cases where the insurance terminates. The complicated dispute between the two parties of the marine insurance contract in the continuing and terminating the coverage may invoke legal disputes. In order to enhance the understanding these new amendments we need to explore these new Institute Cargo Clauses which have become international clauses and interpret insurance contract and avoiding the limited wording of the local marine insurance legislation concerning the duration of the marine insurance contract.

Key Words; Institute cargo clauses, Duration clauses, Transit Clause, Change of Voyage, Jordanian Maritime Commercial Law

Introduction:

It has been suggested that marine insurance rapidly and fundamentally developed into its modern form during the last part of the fourteenth century primarily through the influence of Italian merchants from Lombardi who had immigrated to Britain. The three centuries of marine insurance trade that followed resulted in the emergence and pre-eminence of the Lloyd's of London firm, which gave the marine insurance market in London a global dominance over the entire industry.(1) Nonetheless, the insurance industry was not known in

(1)To trace the development of marine insurance market and explain this structure, one may start with the origins of Lloyd's which lie in the seventeenth century coffee house. Lloyd's of London in the 17th century, has played the central role in enabling the London marine insurance market to adopts a unique system of security which works on a subscription basis. See Bennett, Howard The Law of Marine

the Arab world before the mid of the nineteenth century.(2) The first legislation to regulate the marine insurance in the Arab world was the Ottoman Maritime commercial Law of 1883 which has been affected by the French and English marine legislations. The Ottoman marine law has a section for the Marine Insurance and it remained in force in the Arab countries until the independence era, where some of the Arab countries started to issue more developed and advanced maritime commercial laws, the Lebanese Maritime Trade Law was issued in 1947, the Syrian Marine Trade Law was issued in 1950 and the Jordanian Marine Trade Law was issued in 1944 then was replaced by the Maritime commercial law of 1972 and remain in force until these days. All of the mentioned countries used to duplicate the provisions of the Ottoman Law with some minor amendments. The Ottoman Marine Trade Law remained in force in Egypt until 1990 and it is still in force in Iraq until these days.

Although these codes are old and not in line with the modern marine trade requirements, due to the development on ships building industry, the modern trade methods, and the increase of the commercial transactions via the marine transport within the world, they are still in force and didn't influence the development of marine insurance industry.(3) This is because the parties in the marine insurance contract under the semi-international standard of Institute Clauses have the right to agree on the conditions they deem appropriate. Thus the local laws didn't have a major impact on the marine insurance, not only in the Arab countries but worldwide. Due to that, the Institute of London Underwriters Clauses have been used significantly by the insurance companies which used to attach the Institute Clauses to the policy as the terms of the insurance contract. The Institute Clauses were first issued in 1912 and it has been used with the historical Lloyds policy (Ship and Good) .The clauses had been maintained in London and the Arab countries as well and was amended in 1963. The parallel operation of 1963 institute clauses with the terms of traditional policy (S.G) created complicated interference and led to a lot of disputes and complaints.(4) At the United Nations Conference on Trade and Development (UNCTAD) held in 1987, the traditional insurance policy was discussed and severely criticized in many aspects.(5)

Insurance, p 1, 7

(2) Taha, Mustafa and Bondg, Anwar, Marine Insurance ,p 15

(3) See infra under Chapter 2

(4) The inefficiency of the SG policy had been revealed in many cases and was severely criticized by Judges. For instance Buller J, described the policy as "an absurd and incoherent instrument". Lord Mansfield, who is considered the founder of commercial law, referred to SG policy as" a very strange instrument as we all know and feel", See Good acre, K Goodbye to the Memorandum, See also Arnold, where he said that the incomprehensible treatment results in the application of two different sets of words to the same group of facts. Gilman, Jonathan, Arnold's Law of Marine Insurance and Average, Vol 3, para 880 p 732

(5) These criticisms were followed by express recommendation: "The antiquated Lloyd's SG Form should

In order for the London market to maintain its position as the leader in the marine insurance industry, the London marine insurance took the initiative and directed the Institute of London Underwriters to review the whole English marine insurance system By January 1982, a new policy form coupled with new standard of clauses in three types A, B, and C had been introduced and traditional policy (S.G) which served for more than 200 years abandoned. Although the reform in marine insurance achieved in 1982 was a radical and successful one, but nothing remain perfect.

Recently and after 28 years from issuing the institute clauses in 1982 and due to development on the marine trade between the countries, the use of a new commercial terms was introduced(6) The London market realized that in order to avoid the complications in implementing the 1982 institute cargo clauses' version; the Institute of London Underwriters issued the 2009 version in the three types A, B and C. The latest version included many amendments related to the duration clause which contains three independent conditions, the Transport clause, the Termination clause and the Change of voyage clause, those conditions have an impact on the insurance cover commencement and termination, in addition to the changes which might rise during the insurance validity such as changing the final destination, using any carrying vehicle for storage or changing the voyage route.

This research aims to analyze the recent amendments and to compare them with the related articles in the Jordanian maritime law of the year 1972 and some other Arab laws in light of the Arabs and British court rulings.

Research Problem (Questions):

The research problem is to identify the impacts of the latest amendments to the institutional clauses on the three insurance duration clauses, and whether the wording of these amendments contradicts provisions of the Jordanian Maritime Law which regulate the commencement and termination of the insurance cover from the loading port to the unloading port (final destination). This paper also analyzes the meaning of the final destination which may be elected by the insured, the validity of the insurance cover, the delay or changing of the voyage from the normal route, and the impact on Jordanian laws which specifically govern the marine insurance contract.

be revised and updated. The Peril Clause should be combined with the other appropriate Institute Clauses so that the designated risks appear in one unified risk clause. UNCTAD Report 1978 Legal Secretariat Report. Para 111.

(6) The Chamber of Commerce issued a new version of "incoterms 2010 " which reflects the prefund trends and change that have taken place in global trade in international commercial transactions since 2000. See International Chamber of commerce, Web-site at 30- 1- 2012.

Research Hypothesis:

Studying the marine insurance and its commencement and termination according to the marine insurance clauses will lead us to study the insurance coverage for the land transportation vehicles which transfer goods and products from the factory premises to the vessel and from the vessel to the insured's final warehouse, the new regulation to the coverage duration raises some assumptions (hypotheses):

The latest amended Institute Cargo Clauses are in favour of the insured party in comparison with the previous conditions, which were covering the goods from outside the factory to the external gate for the insured final warehouse.

These in some instances contradict with the insurance duration according to the Jordanian Marine Trade Law, the question may arise whether the application of the clauses is still legitimate and does not conflict with the implementation of the Maritime Law.

The amendment to the duration clause was due to the development of the maritime transport industry and the extended insurance services and the increase in taking over the goods by the shipmasters.

The Jordanian Marine Trade Law for the year 1972, as well as most other marine laws, does not comply with modern insurance policies. At the same time the marine insurance market rely on the institutional clauses which we have to analyze and comprehend.

Research Importance:

The importance of this paper appears in analyzing and enlightening the duration clauses in the marine insurance contracts and the amendments which took place in 2009, the fact that the institutional clauses A, B and C are implemented in the Jordanian and the Arab's insurance market gave this paper a greater value.

This paper will identify the variance in regulating the duration clause as stipulated in the English Marine Insurance Act of 1906 and the Jordanian Maritime Commercial Law of 1972. Originally the duration of the insurance coverage was from the port of loading until the port of unloading then it was extended to goods cover from the exporter warehouse to the importer warehouse, the latest institutional clauses extended the coverage by amending the duration clause in clause 8 and the change of voyage clause in article 10, all of the above will be discussed in light of the court ruling. As far as the researcher knows, this paper is the first of its kind in the Arab World to discuss the latest duration clause and to present a comprehensive understanding for the marine insurance contracts in Jordan and the Arab world.

Methodology:

The researcher will adopt the historical analytical comparative methodology in order to discuss the I.C.C clauses regarding The Jordanian and the English M.I.A to analyze and explain the new clauses and focus on the amendments after referring to the old clauses and documents in marine insurance, all of this will be testified by the related provisions in the English Marine Insurance act of 1906 and the Jordanian Maritime commercial law of 1972 concerning the duration clauses and indicating to the court judgments.

Research Limitation:

The researcher will give a brief historical overview of the development of the institutional clauses as to the duration of the marine insurance contract as a back ground to adopt the analytical comparative method by focusing on the relevant overview of both the English Marine Insurance Act of 1906 and the relevant institutional cargo clauses passed in 1982. This will include presenting the related English court ruling. Also, a comparison of the recent amendments with the marine insurance clauses of 1982 and 2009 will reveal their impact on both parties to the marine insurance contract. The researcher will also analyze and discuss these clauses in comparison with duration provisions in the Jordanian Maritime Commercial Law of 1972, and the extent to which they comply or contradict the institutional clauses. This research will be divided into a brief historical preamble followed by two sections:

The first section will discuss the amendments on the duration clause which been amended to commence the insurance coverage from the actual loading at the exporter warehouses till the unloading at the importer warehouses, and what can affect the coverage or terminate it by the insured adjustments to unload the goods and the impact of changing the voyage or deviate from the agreed upon sail.

The second section will explain the articles of the Jordanian Marine Trade that regulate the insurance cover validity and the termination events, and reveal their lack of harmony with the amended institutional clauses which override it and have been implemented instead of it.

This paper will end with conclusions and recommendation which the researcher hopes to be considered in analyzing and understanding the new insurance cover period that been implemented in Jordan recently.

PREAMBLE

HISTORICAL BACKGROUND OF THE INSURANCE DURATION CLAUSE

DURATION UNDER THE OLD DOCUMENTS

In order to better understand and evaluate the duration clauses in the current I.C.C of 2009, it is necessary to briefly consider their background. Under the traditional "ship and good" policy insurance was limited to the sea voyage. That meant the risk on insured cargo did not attach until the goods were literally on board the overseas vessel at the port of departure and terminated when the goods were discharged and landed within a reasonable time on the quayside of the designated port.(7) Land risks, as a result, were not covered. Likewise, goods were not insured while in vessels moving from shore to ship and vice versa. By the end of the nineteenth century, however, in light of significant developments in both marine traffic and the insurance markets, limiting coverage to the sea voyage only no longer met the demand of assureds willing to pay for broader coverage.

The insurance markets responded with a revised provision by which coverage was broadened to include transport risks incidental to the principal sea voyage. This came in the form of the "warehouse to warehouse" clause,(8) extending coverage on goods from their departure from the seller's facility to their arrival at the buyer's designated location.

DURATION UNDER THE I.C.C OF 1963:

The "warehouse to warehouse" clause and other similar clauses were later included in the I.C.C and influenced the duration of cover. For example, an "Extended Cover" clause, dated 1 January 1958, for example, merged with the "Warehouse to Warehouse" clause to become what was called the "Transit Clause" in the Institute Cargo Clauses of 1963.(9) This clause showed a significant departure from the M.I.A provision of 1906 and the Jordanian Maritime Commercial Law of 1972. For example, it provided that coverage could in many cases remain in force despite the occurrence of certain specified events that would previously have terminated affect the insurance.(10)

(7) See Rule 5 of the Rules for construction of the policy. Ivamy, Hardy, Chalmer's Marine Insurance Act of 1906.

(8) For the first time in form of 1912 I.C.C. Although the first inclusion of the warehouse to warehouse clause was 1912. Section 2 (1) ,f English marine insurance Act of 1906 states . A contract of marine insurance may , by its express terms or by usage of trade, be extended so as to protect the assured against losses on inland waters or any land which be incidental to any sea voyage "

(9) Clouse 1 of I.C.C . 1963.

(10) For example as where a deviation or a delay is beyond the control of the Assured See- s.46 and s.48 of M.L.A of 1906 .

DURATION UNDER THE I.C.C OF 1982:

Under the last version of I.I.C of 1982, where marine insurance documents subjected to radical change, as the S&G policy was abandoned(11). This was a tangible step towered modernizing and updating the insurance cover. But at the same time the transit clause continue to cover the goods from the time they left the seller's warehouse, until the goods arrive at the buyer's warehouse, so there is no cover unless the accident happened outsides the warehouse of seller or the buyer.

DURATION UNDER THE NEW CLAUSES OF 2009:

The London marine insurance market achieved an overhaul and change in the construction and wording of many clauses of 1982, as far as the duration clauses concern it is natural to amend these clauses since the time of commercial customs and practice in marine insurance and transport has been developed and the brokers tried to bridge the gap when they used to add new clauses to cover the period needed to load and unload the goods on the land vehicle.(12) No doubt that this achievement extends the cover in the transit clause in favour of the assured.

Under the new I.C.C, duration clauses have identical clauses in all three sets A,B, and C versions. Cover provided by transit clause (cl 8) were modified in favor of the assured and dealt with under the third group of clauses in each set of the clauses and headed "Duration". The section includes three distinct though interrelated to be read and analyzed in conjunction with each other.

These are the 'Transit Clause (cl.8), the 'Termination of Contract of Carriage Clause (cl.9) and the 'Change of Voyage clause (cl.10) '. Although Clause 9 and 10 are different in wording they envisage two instances of held cover' clause where the effect of the insurance remains in force subject to the prompt notice from the assured to the insurers and subject to an additional premium being paid.

CHAPTER ONE

1.1 TRANSIT CLAUSE

Under the old I.C.C of 1982 the insurance commences once the goods insured leave the warehouse or place of storage, the same as to the insurance termination once the goods arrive to the gate of warehouse in final destination. It seems that the reason behind the amendment of the clause is to satisfy the

(11) The form of ship and goods (S.G) policy adopted in its final form by Lloyd's in 1779.It consisted of three interrelated standard clause. The complicated and old wording of the S.G policy instigate to judges and practitioners to criticize the structure of this old obscure of S &G policy forum.
(12) www.associatedmarine.com.au

demands of the brokers in London marine insurance market who use to extend the coverage to include loading and unloading operations inside the warehouse. This means a new extension of cover, at the same time the clause adds a new case of termination of the insurance contract as provided in the sub-clauses of the Transit clause explained below as the following:

1.2 ATTACHMENT OF INSURANCE:

According to I.C.C. Clause 8.1, absent special agreement, insured risk does not attach until goods leave their place of origin for the specified transit. The word "leaving" requires physical movement of goods,(13) so "transit" does not start until goods move outside the seller's warehouse or storage facility described in the policy. Assureds wanting to extend insurance coverage to include the loading and unloading of their goods used to have to ask their brokers to arrange for such extensions.(14) The London marine insurance market, however, saw the opportunity provide self-standing clauses so drafters extended coverage from the moment goods are first moved in the warehouse for immediate loading (which requires that vehicles be available and ready to receive them). Therefore, cover does not attach to goods either stored prior to transit or in preparation for transit. This intention is confirmed by the words "From the time the subject-matter insured is first moved in the warehouse or place of storage."

On the subject of the scope and duration of insurance coverage, it is implied in insurance contracts that the adventure must begin within a reasonable time or the contract is avoidable by the insurer. The question of what constitutes a reasonable time is a matter of fact. As with other implied provisions, courts will not generally supply an implied provision of availability where the insurer knew the relevant facts at the time of contracting or had somehow waived the right of avoidance. An implied condition is, of course, not applicable to open cover contracts since they, by their very terms, state that the risk may commence at any time during the contract term.

1.3 ORDINARY TRANSIT:

Another critical provision in Clause 8.1 is the language stating that insurance continues during "the ordinary course of transit," which put the meaning of that phrase at the center of determining the duration of insurance. The phrase denotes that goods must be carried in the customary manner by customary means through customary routes on reasonable time schedules to reach its destination.(15) The goods need not be in continuous motion, but must

(13) Hudson and Allen G, The Institute Clauses, p. 24
(14) Jordanian Court of Cassation, *Yousef Nader company v. Gordanian French Insurance Company*, Case No. 3333/2011
(15) Goodacre, K Goodbye to the Memorandum,p.128.

be carried from the *terminus a que* as specified in the policy to the *agreed terminus ad quem*. Thus, for example, delays resulting from customs clearance are not outside the ordinary course of transit, because they are expected.(16)

"Ordinary transit" under Clause 8.1 has been held to include a reasonably parked transit vehicle. In the non-marine case of *Saddler Brothers Co v. Meredith*,(17) a vehicle hauling goods from the insured company to their destination at the Port of London stopped briefly to allow the driver to handle necessary documents. Ten minutes later he returned to find the vehicle was stolen. The assured claimed the loss occurred during ordinary transit and the court agreed, holding that that "transit" means the passage of goods from one place to another and all that is involved with the journey. The goods themselves were in transit though the lorry carrying them was not, but rather temporarily parked. Roskill J., reached his decision after considering facts relevant to 'transit' and observed:

> *"I think here "transit "means passage or carriage Of the goods from one place to another and I think the goods were still being carried and therefore were still in transit from the one place to other even though the lorry in which they were being carried was temporarily parked".*

On the other hand stops or interruptions during transit may suspend cover if they are unrelated, not a part of the usual delivery process, or for the assureds' convenience. The latter case was investigated in *S.C.A (Freight) v. Gibson*,(18) where a vehicle driver made a detour to obtain food and rest. During the detour the vehicle overturned and seriously damaged the goods. The court held that such a detour was not connected with advancing the goods' delivery and so they were not in "ordinary transit" when the accident occurred. Ackner J., wrote:

> *"Goods cease to be in transit when they are on a journey which is not in reasonable furtherance of their carriage to their ultimate destination."*

Yet not all unexpected stops in transit will be found necessarily outside of "ordinary transit." A New York state appellate court considered a case where a freight driver overtaken by darkness stopped at a motel for the night before resuming his course.(19) The court held the stop was not outside "ordinary transit" .

(16) Templeman, Lambeth, On Marine insurance , p 1.2 .See Goodacre, K Goodbye to the memorandum, p129; Goodacre in his new edition of Marine Insurance Claims (1997) add that "ordinary course of transit" includes customary means of conveyance. Customary delays, customary transshipment, See Goodacre, Marine Insurance Claim, p 278

(17) *Saddler Brothers Co v. Meredith (1963) 2 Lloyds Rep 293-311.*

(18)*S.C.A (Freight) v. Gibson (1974)2 Lloyd's Rep . 533.*

(19) *The ORE & CHEMICAL CORPORATION v. EAGLE STAR INSURANCE COMPANY* United States Court of Appeals, Second Circuit 489 F.2d 455 Dec. 21, 1973.

> "*The true test thus appears to be not whether movement was interrupted overnight, or over a weekend, but whether the goods, even though temporarily at rest were still on their way with any stoppage merely incidental to the main purpose of delivery."*

Although the foregoing are cases involving the old "warehouse to warehouse" clause, they remain good precedents for predicting how courts will interpret the scope of "ordinary transit," since the ordinary course transit provision is unchanged in L.C.C of 2009.

1.4 TERMINATION OF THE INSURANCE:

Clause 8.1 provides for marine insurance contracts to be terminated in three distinct situations described in subsections 8.1.1, 8.1.2, 8.1.3 and 8.1.4 respectively. Additionally, clause 8.2 provides for an additional case of termination. Therefore, the insurance coverage is terminated if any one of these specific situations is found to exist.(20)

1.4.1 TERMINATION UPON DELIVERY TO THE FINAL WAREHOUSE:

According to the old clause 8.1.1, the cover terminates on delivery to the consignee at the warehouse stipulated or on the delivery to any place of storage at the destination named in the policy. It follows that goods will be covered during transit from the port of discharge to the final warehouse or place of storage. When the goods arrive the insurance terminates even if the unloading process does not commence. Normal delays in discharge or transit between the port of discharge and final warehouse named in the policy once created many disputes between consignees and insurers.(21) The new transit clause settles such probability, when it provides; the insurance terminates normally on the completion of unloading from the carrying vehicle or other conveyance at the final warehouse or place of storage. The purpose of this sub-clause the term" final warehouse or place of storage" must be the one named in the insurance policy. Therefore, where the goods remain loaded on the carrying vehicle inside the premises of the consignees within reasonable delay the cover still attaches(22).

The precise circumstances that will define a 'final warehouse' is examined under the new court judgment passed by the Hong Kong Commercial court. In the case of *Anbest Eloctronic Ltd. V CGU International PLC*(23) where the a

http://bulk.resource.org/courts.gov/c/F2/489/489.F2d.455.27.72-2103.html

(20) Upon the test of priority of whichever shall first occur.

(21) *Garfield Container Transport Inc .V Chubb Insurance Co* . Court of Canada, [2002] 114A.C.W.S.(3d) 1100 , Illustrated at http//www.admiraltylaw.com/insurance.htm

(22) See under Ordinary of transit. supera.

(23)*Anbest Eloctronic Ltd. V CGU international plc* (2008)(HCCL 82/2000) High Court of the Hong Kong

cargo of electronic equipment insured under all risk clauses shipped from Hong Kong to Khor Fakan in the Eimartes of Sharjah in the United Arab Emirates, the final destination was Khor Fakan and once the cargo arrived to Khor Fakan the purchaser who bought under CIF contract moved the goods to another destination before the completion of unloading and without informing the insurer. Whilst the cargo was in the transit the cargo was stolen and the purchaser refused to pay the good's price, the seller who insured the goods in Hong Kong filed a claim against the insurer, the insurer refused to pay indemnity on the ground that the insurance has been terminated once the good arrived to Khor Fakan terminal, the court dismissed his allegation and up held the claim of the insured on the ground that the final destination has been changed before unloading the cargo in Khor Fakan terminal therefore the court didn't consider that arrival at the final destination will not seize the insurance for the reason that the insured elect another final warehouse(24). This is also confirmed in old authorities when the old clause of transit was effective. It was decided that the meaning of the term "final warehouse" is a question of fact. In the case of *John Martin of London Ltd v. Russell*,(25) a cargo of pure refined lard was shipped from Chicago to Liverpool. The ship arrived at the port of Liverpool and its cargo was discharged into transit shed at the port. After two days the lard was found to be infested with copra beetle which had moved from another cargo stored in the transit shed. The assured claimed indemnity for the costs incurred by removing the lard for disinfection by refrigeration. The insurance denied liability and alleged inter alia, that insurance cover ceased when the goods were placed in the transit shed which was considered the final warehouse. This defense failed.

The court held that the transit shed was not the final warehouse intended by the meaning of the old 'Extended Cover 'clause which provided "This insurance…continues until the goods are delivered to the consignee or other final warehouse as in the destination named in the policy". It could be said that

illustrated in the below link
http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=60659&QS=%2B&TP=JU

(24) more details concerning this case to be observed, the purchaser First star Emirati company was able to take over the cargo by obtaining illegally the delivery note from the bank and committed the theft , the court in this issue stated that)there is a fact strongly indicated a pre-planned theft and that the goods could have been moved from Khor Fakan to the Sharjah terminal only on First Star's instructions) so the court held that the loss occurred upon the goods leaving Khor Fakkan. See note 15 supra.

(25) *John Martin of London Ltd v. Russell* (1960) Lloyds Rep. p554 , where Person J., said: The expression "final warehouse" seems to contemplate that there may be a warehouse which is not final. If one were searching for an example then take a transit shed which is essentially a shed in which goods are temporarily placed pending some further movement to some other place. The word "transit itself implies its transitory character." .

the decision was based on two justifications: the first one was linguistic justification expressed by Parson. J., as he said:

> *"The expression warehouse seems to contemplate that there may be a warehouse which is not final. If one were searching for an example then take a transit shed, which is essentially a shed in which goods are temporarily placed pending some further movement to some other place. The word "transit" itself implies its transitory character."*

Secondly, where the ordinary business practice of a port is to house goods in a transit shed while they await transfer elsewhere, such goods must be considered "goods on the quay" rather than goods at a destination. Parson, J., said:

> *"A transit shed, at any rate according to the practice of the port, is the place at which the goods are placed as soon as they are waiting patiently to go somewhere else. It is not the final warehouse"*

This means that "final warehouse" does not necessarily indicate the ultimate destination of a cargo should the assured chose to discharge the goods at another warehouse within the geographical area of the named distribution.(26) In fact this is confirmed by providing for alterative terminus in Clause 8.1.2, which I shall now refer.

1.4.2 ALTERNATIVE WAREHOUSE OR PLACE OF STORAGE

Clause 8.1.2 provides a second cause for termination of coverage under the concept of alternative terminus. In this situation the assured has discharged the goods from his vessel but has not yet delivered them to the place of storage designated in the insurance contract. He elects to discharge the goods in another warehouse, which is only done for one of two reasons. The first is for allocation and distribution and the other is for storage outside the ordinary course of transit.(27) Once goods are unloaded, the insurance is terminated as such a place would be considered the final destination in either case. Therefore, where an assured moves goods directly to a warehouse named in the policy after the goods were released from the shipping vehicle to the newly selected warehouse, coverage terminates and they are not covered during transit.

(26) See the case of *Anbest Eloctronic Ltd. V CGU international PLC* (2008)(HCCL 82/2000) High Court of the Hong Kong illustrated in the below link, discussed supra, p 11.
http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=60659&QS=%2B&TP=JU

(27) Hudson and Allen, op, at p.24 give the example of a custom's warehouse where goods remain for some period of time because the assured intends to defer payment of the customs' duty . As a general statement one can say that storage of goods when followed by unreasonable delay within the assureds' control is deemed to be outside the ordinary course of transit and will terminate the insurance.

1.4.3 TERMINATION UPON CHANGE OF DESTINTION AFTER COMPLETION OF DISCHARGE

As noted previously, there are, in addition to the termination provisions of 8.1.1, 8.1.2 and 8.1.3, a fourth termination provision set forth in Clause 8.2. Under this clause termination occurs at the time goods are discharged from a shipping vessel and loaded on a second vessel bound for a destination not named in the policy within sixty days. In this case termination (for purposes of Clause 8.2) doesn't extend beyond the beginning of transit to a second destination. Clause 8.2 is usually significant where a sale of the goods to the assureds' buyer occurs prior to the end of sixty days. Here it is assumed that the change of destination was determined by someone other than the assured. (28)

The foregoing cases of termination may be summarized by way of requirements which may be satisfied to terminate coverage. First, goods from a vessel must have been discharged. Second, the 60-day time limit must not have expired. Third, the cargo must be shipped on to a destination which is not the one designated and insured under the insurance contract. In most cases, the destination change must be determined by someone other the assured. If these requirements are met, Clause 8.2 provides that insurance coverage ceases at the point which the transit to the other destination commences.

1.4.4 ON THE USING THE CARRYING VEHICLE AS A STORAGE

This is a new case of termination which has been added to the transit clause (sub clause 8.13). This is full in the interest of the insurers, in that it envisages a new instance of ending the cover where the assureds or their employees elect to use the loaded carrying vehicle or any container as storage other than the ordinary course of transit. Comparison with the old clauses of 1982, the old clause 8.1.2 referred only to the assured decision about choosing the storage or place of distribution, and it seems to the researcher that it was not intended to elect the vehicle as a storage, the new clauses clarify the question by adding the decision of the assureds' employees in addition to the assured decision and determined the intended suspended of transit is keep the vehicle or container or any other land conveyance stooped as a storage. It has been suggested that considerable care must be taken to ensure that the wording is clear and express the intention of the contract of insurance and comply with conditions of the Sale Contract.(29)

(28) Usually happened where contract of sale is CIF contract, the assured may indorse the bill of Lading to another purchaser who may take the good to a new destination or place of storage.
(29) Carlson, Ulrika an article comments on the I .*C.C. of 2009*
http://www.if-insurance.com/web/industrial/ifnews/pages/marinenewsletter_3_2009.aspx

1.4.5 ON THE EXPIRATION OF 60 DAYS

Termination of coverage described in Clause 8.1.4 occurs sixty days after discharge at the destination port. The sixty-day coverage is a grace period in which the assured can place other coverage on the goods while they're still at the port, and it is not insurance for any other purpose. In other words if the assured transfers the goods during this time to another location, a loss would not be covered even within the sixty-day period. If there is a delay, even one outside the assureds' control, coverage still terminates. Collecting the goods after discharge is not relevant. The passage of sixty days terminates coverage unless an extended by agreement. The clause appears to assume a delay will occur prior to discharge. (30) There is time designated for the completing discharge after a vessel's arrival in the agreed port within a reasonable time.

1.5 VARIATIONS OF THE ADVENTURE

Many variations in transport do not affect coverage and they are explicitly listed in Clause 8.2, and not all are outside the assureds' control. In fact, only one type of delay contains the words "beyond the control of the assured." These variations generally occur as a result of their very nature or the fact that assureds have no control over the shipping voyage or even the terms of the contract they sign for shipping and delivery.

Over the years insurance underwriters eventually agreed to extend coverage over delivered goods without additional premium. One of the significant effects of 8.1.4 is that it removes doubt over the existence of cover should certain common circumstances arise. These circumstances are discussed below.

1.5.1 DELAY

Delay is one of the more likely variations in the list of circumstances included in clause 8.3 normally an assured is not in position to influence the prosecution of a voyage. Thus it refers to delay beyond an assureds' control during the transit after the risk has been attached and has nothing to do with the implied warranty as to the commencement of an adventure.(31) This is because Clause 8.3 operates while the insurance is already in force. On the other hand, delay within the assureds' control is governed by the Reasonable Dispatch Clause 18. Therefore where delay within the assureds' control takes either in the land or sea section of a transit; it is considered a breach of both Clause 8.1 and Clause 18. In fact, it was held in the Australian case of Verna Trading v. New

(30) in a heavily congested port, where finding a berth can take several weeks or even months as a result of the increase in the amount the goods carried by ships. Abu Ala'ola, Ahmad, Cargo Insurance p.233

(31) Section 48 of M.I.A of 1906 states : "In the case of a verge policy the adventure insured must be prosecuted throughout its course with reasonable dispatch , and , it without Lawful excuse it is not so prosecuted , the insurer is discharged from liability as from the time when the delay become unreasonable."

India Assurance,(32) that the goods discharged at the quay side and which remained there for three days before they were moved to the custom warehouse, was 'unreasonable delay ' and could have been avoided by the assured. Clause 8.3 deals with delay beyond the assureds' control and the question of whether the delay is reasonable or unreasonable does not affect the continuation of cover because this issue is not mentioned in the clause.(33) This would be different where goods detained in a customs warehouse because of an absence of necessary documents due to the negligence of the assured. The insurers in this case would be discharged from liability from the time the delay to be within the assureds' control.

Unjustifiable delay or delay incurred for the assureds' convenience falls outside ordinary transit. In the case of *Safadi v. Western Assurance Company*,(34) a cargo of cotton was insured for carriage from Manchester to Damascus under a marine policy, which contained a "warehouse- to warehouse "clause. The insurance provided inter alia "when the destination to which the goods are insured is without the limits of the port of discharge of the overseas vessel. The risk covered by this policy continues until the goods are safely deposited in a consignee's or other warehouse at the destination named in the policy or until the expiry of 30 days from the time of discharge whichever may first occur. Transshipment if any, otherwise the above, and/or delay arising from circumstances beyond the control of the assured, held covered at premium to be arranged". Each of the policies covered the risk of fire. The cargo arrived at Beirut (Beirut), was stored in the Custom House in order to be taken to Damascus. The cotton remained longer than the 30 days' time limit and after this period fire broke out and destroyed the cotton. The plaintiff sough indemnity on the grounds that although the time limit of 30 days had expired, the delay was beyond his control, and the transit was delayed owing to the state of insurrection and rebellion in Syria. The defendant denied liability on the grounds (inter alia) that at the time of the fire the goods were not covered, since the delay was under the assureds' control and was deliberately arranged for a commercial purpose. The court gave judgment for the defendant company.(35)

(32) *Verna Trading v. New India Assurance* (1989) Federal Court of Australia (Vict, CA) p129-172. http://www.fedcourt.gov.au/how/admiralty_cases_auststates_vic.html

(33) According to the old authorities and in the absence of the Institute Clauses application or any agreed terms in the contract the question of Reasonableness is a matter of facts. See Howard Bennett, *The Law of Marine Insurance*, 1996 p272.

(34)*Safadi v. Western Assurance Company* (1933) 46 LIL Rep p 140-145.

(35) Roche, J. observed: " This delay in the Custom House at Beirut did not, in may view of the facts, arise from any circumstances beyond the control of the assured but arose from the deliberate and intention of Messrs Sabeh and Kahaleh to leave the goods there as long as it was commercially convenient to themselves to do so". Per Judge Roche p 143.

If a delay occurs which is beyond the assureds' control, Clause 8.4 provides for continued coverage. This overrides the sometimes harsh effect of section 48, which makes no distinction as to whether or not the assured had control or not. Maintaining coverage during a delay that is not within the assured's control simplifies interpretation of the phrase "ordinary course of transit" as it appears in Clause 8.1. The *Saddler* case held that a delay not within the assureds' control was held to be a part of "ordinary transit." However, Clause 8.3 could have other meanings, and this is dealt with in Clause 8.1. Furthermore, Clause 8.3 is not relevant in cases where a loss is proximately caused by delay because such a delay is expressly excluded by the exclusion of Clause 4.5.(36)

1.5.2 DEVIATION

A "deviation" is defined as a departure from the shipping vessel's original course as described in the policy contract but with the intention to return to the original route and to continue to the stated destination.(37) If a vessel deviates without excuse, the insurers are released from liability from the moment the deviation begins.(38) The intention or decision to deviate does not affect coverage, as in the case of a change of voyage where intent does matter.(39) Furthermore, the vessel's return to the original course does not reinstate coverage.(40)

Following the permission of delay beyond the assureds' control, Clause 8.3 goes on to provide continuous coverage during "any deviation," though departure is excused by those circumstances set forth in section 49. Nevertheless, coverage in cases of deviation, whether within or without the assured's control, remains subject to provisions of Clauses 8.1.1, 8.1.4 and 9.

The phrase "any deviation" must be considered carefully no matter what descriptive language is used. The phrase was originally subject to two well-defined limitations: first, only ports which lie on usual routes between two termini may be used, and the ship must travel between them as denoted in the

(36) Clause 4.5 states:" In no case shall this insurance cover: Loss, damage or expenses proximately caused by delay, even though the delay be caused by a risk insured against(except expenses payable under Clause" relating to general average or salvage charges".

(37) O'May R, Marine insurance – Law and practice- London (1993).

(38) It is important to note that the ship should deviate in fact, since intention to deviate' is immaterial. This is unlike 'change of voyage 'which is from the time the decision is made to change. The consequences reflect the limit of the underwriters' liability. In the case of deviation the underwriters would be liable all insured losses occurring before the actual deviation, whereas in the latter case the underwriters would be discharged from liability from the time the decision to change the voyage declared, irrespective of whether the ship continued on the same course for a while before the change had taken place. See also s . 45 of M.I.A. Furthermore, in the case of deviation the insurers could avoid the contract even if a vessel regained her original route before any loss occurred.

(39) Bennet, The Law of marine Insurance. p 270-272

(40) See Shoukry,Baheej, marine insurance , practice and legislation , Dar . p. 646.

policy. If the policy describes destination ports in a specified geographical area, the ship must proceed to them in their geographical order. Second, the route followed must only be taken for purposes related to the principal object of the venture.

The "excuse circumstances" of deviation in the sea portion of a shipping itinerary are the same as those for delay in the M.I.A. section 49(1). Practically speaking these excuse conditions are provided in the standard clauses.

Although the Transit Clause (cl. 8) applies to both the land and sea portions of a shipping itinerary, whether Clause 8.3 also applies to land and sea is unclear. Some ambiguity is found in the language of the clause:

> "any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to ship-owner or charterers under the contract of carriage".

So, does Clause 8.3 apply only to "ship-owner or charterers" as the language itself seems to indicates, or is it intended to include deviation during the land portion of the journey as well, since this seems consistent with the purpose for the deviation rule? For example, goods insured under the transit clause were shipped from an Aqaba warehouse to an Irbid warehouse. The goods made it as far as Salt, where they were then loaded on trucks bound for Irbid. However, those trucks drove first to Amman before continuing on to Irbid, which is a much longer route. Is this a deviation under Clause 8.3? It is unlikely that clause 8.3 was intended to be limited to sea deviations only, because that doesn't achieve the main object of the Transit Clause which is to standardize logical definitions for the whole voyage. Furthermore, the word "delay in Clause 8.3 seems equally applicable to both land and sea segments of a journey that involves both. We should remember that the drafting of the clause must not contradict the intended meaning of the duration clauses.

It is rare to encounter an instance of deviation that is within an assureds' control. This doctrine is important in the context of the laws of carrying goods over sea; however, references to deviation in marine insurance contracts are older than references to deviation in sea carriage contracts.(41)

1.5.3 RESHIPMENT, TRANSHIPMENT AND FORCED DISCHARGE

The terms "reshipment or transshipment" denote the movement of insured cargo from one vessel to another.(42) Before enactment of M.I.A. in 1906,

(41) Gilman, Jonthan, Arnold's Law of Marine Insurance and Average, Vol 3, para 464- 466 p 298
(42) Mousa, Mohamed The Subject of Marine Insurance, p. 31. See also Sarko, Yakoub Marine insurance

transshipment terminated insurance coverage.(43) Coverage might be continued through agreement of the parties or in circumstances of necessity where continuing the journey in the original vessel is impossible. Section 59 of the M.I.A in 1906 treated transshipment and reshipment as arising out of necessity, and provided for continuation of coverage on the assumption that any change in vessel must result from an insured risk. Later, section 59 was broadened in the subsequent I.C.C to be similar to Clause 8.3 of 1982, providing continuing coverage in cases where transshipment occurs for reasons that are outside of the assured's control.

Reshipment, transshipment or forced discharge does not affect duration of coverage under Clause 8.3, although it may constitute a significant variation. This highlights the importance of Section 59 of M.I.A, since because of Clause 8.3, coverage is not dependent upon any insured peril. Furthermore, transshipment and re-shipment are not limited to sea shipment, as one might expect under the terms of M.I.A 1906.(44) Instead it governs transfers to or from any customary means of conveyance conducted in a usual manner.(45) Clause 8.3 is unlikely to deviate from the main thrust of clause 8, which governs both parts of the transit. Forced discharge often takes place when a shipment is thwarted for reasons clearly beyond the assureds' control, such as war. Coverage continues since the material insured in the shipment includes the cargo and the safe fulfillment of the voyage.

1.5.4 ANY VARIATION OF THE ADVENTURE.

The final section of Clause 8.3 states that any variation permitted under a contract of affreightment does not affect coverage. Thus, if a carrier terminates a shipment contract because it cannot be completed, this would not terminate the cover so long as it was beyond the assureds' control. This is reasonable since the assured has little or no control over the circumstances of the voyage. Even so, since variations avoidable by the assured are deemed outside the ordinary course of transit, they necessarily terminate coverage.(46) If the assured knows of a variation he must inform underwriters at the time of contracting, or the insurer may set aside the contract for non-disclosure of a fact material to the contract.

in the Kuwaiti law, p. 309.

(43) Arnold para 403 p. 32.

(44) It should be remembered that S.59 of M.I.A refers to the sea voyage only.

(45) Where section 59 uses the word ' Voyage' and Clause 8.3 uses the word 'adventure'. it is to emphasize that transshipment could be possible during the land section of the transit whatever the means used.. from train to train or vehicle to vehicle .

(46) See the concept of ordinary course of transit, supra p. 8

1.6 TERMINATION OF CONTRACT OF CARRIAGE (cl.9)

Clause 9 is basically a termination clause.(47) It provides for termination of the insurance where circumstances are beyond the control of an assured. Either the contract of carriage is terminated at a port or place other than the final destination named in the policy, or the transit is otherwise terminated before the completion of discharge of the goods as provided for in Clause 8.

Clause 9 is in substance the old "Termination of Adventure" clause (cl.2) in I.C.C. of 1982. Only some minor changes in the wording. For example, the term "delivery" in the former clause appears as "unloading" in order to make it consistent with clause 8. As far as minor language changes in the current clause are concerned, some suggest these changes were made to give a more accurate description of the role of the clause.(48)

Carriage contracts may be terminated in a number of circumstances, such as where the destination port is under siege or embargo, or port workers initiate a strike, or war breaks out in the area, or where a carrier becomes unable to complete a voyage due to his insolvency. In all these circumstances the voyage may be abandoned short of the destination agreed.

The assured, however, is given a chance to request continuation of insurance by giving prompt notice to the insurer, who then charge an additional premium. Thus, where facts of termination are within the assureds' control, this clause doesn't give the assured continued coverage because it is terminated from moment the contract of carriage is terminated.

These opportunities have their limits, and Clauses 9.1 and 9.2 make this clear. However, certain circumstances must exist in order for Clause 9 to prevent automatic termination of coverage. First, termination must be outside of the assureds' control. Second, the assured must give a timely notice, acting with reasonable dispatch. Further, the notice must be combined with a request for continuation of coverage and a willingness to pay additional premium if requested. Third, termination of coverage must be

(47) Clause 9 is subject to automation unless a prompt notice is issued by the assured, whereas in clause 8.3, the insurance remains in force without a need to issue a notice. See Clause 8.3.

(48) Grime, Robert Insuring Cargos in the 1990s' p. 126 . These alterations are manifested by dropping the term 'adventure' from the title and text. Also the term ' affreightment' has been replaced by the word 'transit' and carriage' , See cl 2 in I.C.C.,1963. The practical significance of these change may be realized ' where there is more than one contract of carriage and transit embraces a land section . The editors of the Ist supplement of Arnould (1997) suggested that the maritime language of ' Contract of affreightment ' might not be an apt phrase for contract involved with the movement of goods on land . See Arnould op.cit, Vol.3 para 271 p.167 .

"at a port or place other than the destination named therein or the transit otherwise terminated before the completion of discharge the goods provided for in Clause 8."

This clarifies two points. The word "otherwise" gives reasons for termination and not places. Also, normal completion of discharge of the goods according to this clause includes contemplated in sub-clauses (8.1.1 and 8.1.2).

1.6.1 THE GRANTED COVER

Having met these requirements the assured, according to Clause 9.1, has automatic continuance of insurance until the goods are sold and unloaded to the stipulated destination. This means that the mere passing of property does not necessarily end the cover. Alternatively, cover is granted for a period not exceeding 60 days from the time the goods arrive at an intermediate port or place. Here it is argued that word "arrival" may provoke different interpretations and give rise to dispute.(49)

Problems may arise when such circumstances produce controversy between carrier and assured. For example, if a carrier suspects a cargo to be illegal, or an important document is found to be missing or damaged it can also be argued that the "automatic termination" position adopted by Clause 9 could give rise to some problems if relatively few days have elapsed between the time of termination and the time of delivery of the required prompt notice. In the Jordanian case of *Abdulkader Moh'd v. Jerusalem Insurance Co Ltd*. the carrying vessel *(Cedaerff)* which was heading for Aqaba, had been blocked by an American warship and consequently the port of destination was changed to Jeddah. It was held that the assured ought to have given prompt notice once he was aware of the blockade and not three days after the ship had discharged its cargo in Jeddah. (50)

The continuation of cover provided by cl 9.1 and cl 9.2 is limited, as the granted cover terminates according to the course of action the assured elects to take over his goods.(51) However, such circumstances can be summarized as follows: the expiry of 60 days after discharge at the intermediate port and when goods are sold and delivered prior to the expiry of the 60 days 'time limit, whichever occur first. Termination of the granted cover according to Clause 9.2 is associated with clause 8 by virtue of the insurance terminating if goods have

(49) . This is because no reference is made to the term 'arrival' either in the clauses or in the M.I.A. It is suggested that the term in clause 5 of the Institute War Clauses could apply.

(50) *Abdulkader Moh'd v. Jerusalem Insurance Co Ltd* (1994) Jordanian Appeal court 194, the case did not reach the cassation court , as the assured and P.I. Clubs reach a reconciliation .The American warship was used to impose a block on the port of Aqaba in order to subject the ship to a thorough inspection to ascertain whether the goods on board belonged to Iraqi market.

(51) See Supra note No1,p10.

been forwarded to their original destination, or some other destination, within a 60-day period according to the provision of the Transit Clause. This means that if the instances of termination in Clauses 8.1.1, 8.1.2, 8.1.3, 8.14 and 8.2 have taken place before the termination of a contract of carriage or transit, the assured cannot rely on Clause 9.

Determining when coverage terminates under Clause 8 can be somewhat confusing because Clause 8.1.3 provides for termination 60 days after discharge at the final port of destination, while Clause 9.2 provides that termination occurs 60 days after discharge at "any other destination in addition to the final port of discharge." One might conclude that goods covered under Clause 9.2 didn't reach the final port of discharge but were discharged at some other port. Does Clause 8.1.3 or Clause 9.2 apply? Further, Clause 8.3 provides coverage "during any variation of the adventure arising from the exercise of a liberty granted to a ship-owner or charters under the contract of carriage affreightment." This provision seems to require "termination of the contract of carriage" and may be better handled under Clause 9, since the coverage approach is different there from the approach in Clause 8.(52) There is an apparent contradiction between Clause 8.3 and Clause 9 regarding the termination of carriage coverage, because in the former situation continuation of coverage is automatic without the need for any sort of notice. However, Clause 9 indicates termination in the same circumstances unless prompt notice is given.

1.6.2 CHANGE OF VOYAGE IN THE M.I.A ACT of 1906

Section 45 of the Marine Insurance Act provides that 'Change of voyage' means the voluntary change of the *terminus ad quem* after attachment of the risk.(53)

As a result, unless there has been a stipulation to the contrary in the policy, wherever there has been a change of voyage, underwriters are discharged from liability from the point when the decision to change was made. It is irrelevant whether or not the ship had actually left its proper course when the loss took place. (54)

It logically follows that a deviation is clearly different from a change of voyage. First, changes in voyage involve one of the voyage termini being changed. Second, because underwriters are discharged from liability for a deviation only where the vessel deviated in fact. Changes of voyage only

(52) Clause 9 is subject to automatic termination unless a prompt notice is issued by the assured, whereas in Clause 8.3, the insurance remains in force without the need to issue the notice. See Clause 8.3.
(53) Section 45 reads: "Where after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage"
(54) See chimer's Marine insurance. act 1906 , London -2010, p.67 .

require a decision to change the destination of the ship. Recall that Section 45 comes into operation when a voyage commences and the risk attaches. If a decision to change the destination was made before the commencement of the voyage, the case is not a 'change of voyage' since the risk did not yet attach. The same would be the case where a voyage commenced from a place other than the one specified in the policy.

1.6.3 THE OPERATION OF THE CLAUSE (cl 10).

According to section 45(1) of the Marine Insurance Act of 1906 there said to be a change of voyage where after the commencement of the risk, the destination of the ship is voluntarily changed from destination contemplated by the policy.

The new clause of change of voyage makes the change of voyage more obvious and clear. It deals with two distinct but interrelated cases of change of voyage. The first one when once risk is attached after sailing and then the final destination voluntarily by the assured the assured may still enjoy right to obtain insurance cover subject to a prompt note to the insurers but only if he meets certain requirements. It is unnecessary that the change of destination be made by the assured. It is sufficient that the intention to change the voyage is clearly evident. For example, this may exist where the assured instructs the master to change the agreed upon *terminus ad quem*, (by radio, for example). In order for the assured to obtain coverage, there are three requirements under the clause. The first is that the assured has to give 'prompt notice' as soon as he chooses to alter the route. The time permitted between the determination of route alteration and the issuance of notice must be according to the 'Note' to reach an agreement between the parties. Second, the assured must pay an additional premium, which must be a reasonable market sum agreed to by all parties to the contract.(55) These matters are factual issues in each case.(56) Third, if a loss occurs prior to the parties reaching an agreement, coverage may be purchased at a new rate and at reasonable market prices.

The previous voyage alteration clause of 1982 (Clause 10) did not address what happens if a destination is changed by a party other than the assured or by

(55) See M.I.A, s 3131 and s. 88 of the M.I.A of 1096. If the parties cannot reach an agreement on the additional premium, proceeding can be undertaken to fix a reasonable amount for it . See Arnould , Vol 3 op . cit , para 277 , p . 169. It has also been suggested that the 'Held Covered' clauses do not customarily carry any expiree Limitation on the power of underwriters to amend the terms of the cover and demand an additional premium. These are powers that must be exercised in reasonable majer terms appropriate to the nature and degree of the additional risks. See Thomas op.cit, p.25.

(56) Circumstances considered for fixing reasonable commercial premiums are, for example: change involving a longer voyage or one which has become more hazardous. See Liberian *Insurance Agency Inc. v.Mosse* (1977) 2 Lloyd's Rep.560. The word 'arranged 'shall be deemed to mean "agreed" or, in default of agreement, fixed by an arbitrator or by the court; Ibid. at p.568.

facts outside of his control. The new clause of 2009 was sure to address that issue. The second portion of the clause provides that where the subject-matter insured commence the transit in according to the transit clause cl 8.1 and the ship change the transit without the assured or his employees knowledge, the risk attach once the change of transit commence and the innocent assured still enjoy coverage.(57) It seems that the increased phenomenon of the so called " phantom ship" cases in which a ship with false papers, take the cargo to another place other than the destination agreed and sell the goods is behind the amendment of clause 10. Therefore, whenever the destination change by someone other than the assured or by circumstances beyond his control,(58) mostly a dishonest act by the captain. In fact the reason behind this edition in the clause is combat the maritime fraud may be committed by the master of the ship.

1.6.4 PROMPT NOTE

The word 'note' points to the right to be 'held coverage' depends on the assured giving timely notice to the underwriters that describes events that give rise to his entitlement to continued coverage. The word "prompt" means that the assured must notify the insurer immediately before he becomes aware of an event that might terminate coverage under a contract of carriage (cl .9) .(59)

The foot of I.C.C. contains the Held Cover Note, it appears in this section because it primarily serves as a reminder of the unwritten but implied term that invokes a "held covered" provision be conditioned upon underwriters being given prompt notice. Clauses 9 and 10 serve as appropriate examples in which the notes are significant to the 'held covered' provisions which attempt to keep coverage in place.

Whether notice meets the requirement of promptness (i.e., within a reasonable time after learning of a variation of the risk) depends upon the precise factual circumstances of the case, considering that insurance contracts require good faith. Ignoring obligations imposed by the note allows an insurer to be released from liability from the point the assured failed to deliver the required notice. Nevertheless, it is important to keep in mind that some coverage provisions in the I.C.C. impose on assureds an obligation to deliver prompt notice to their insurer.

(57) Carlson, Ulrika an article comments on the I .*C.C. of 2009* .
(58) R.R. Cornah , institute cargo clauses of 2009 , an article of 12 page commenting in the new clause . www.rhig.com.
(59) At the foot of all three sets of clauses A,B, and C a supplementary note appears in italics and states :
"It is necessary for the Assured when they become aware of an event which is' held covered ' under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation"

CHAPTER TWO
DURATION OF COVER UNDER THE JORDANIAN MARITIME COMMERCLAL LAW.

2.1 Transit in the Jordanian Maritime commercial Law

Although the J.M.C.L. was enacted in 1972 it does not extend cover to embrace the land section of the transit.(60) This shows how far the influence of the old SG policy from affected the marine insurance law in Jordan.(61) However, this matter have been justified at the time of the enactment of the British Marine Insurance Act of 1906 , when the idea of 'warehouse to warehouse 'transit had not been completely developed . But as the Jordanian Maritime Commercial Law was enacted at a time when the 'warehouse to warehouse' clause was well recognized and practiced, the legislator should have complied with its concept warehouse to warehouse clause is a modern principle of marine insurance introduced by the I.C.C together with the philosophy of the civil law system in the Jordanian legal system, where the main interpretation is through the provision of the law in the absence of a contractual agreement. This in fact has been taken in consideration when the Egyptian enacted their maritime law in 1990.(62)

The J.M.C.L of 1972 has dealt with the duration of insurance for both hull and cargo insurance together. Section 345 of J.M.C.L reads:

> *"If the subject-matter insured is the hull of the ship, and the duration of risks is not specified in the contract, then the risks insured against under a voyage policy shall start to run as from the time of sailing or weighing anchor of the ship, and shall terminate when the ship is at the port of destination or alongside the quay.*
>
> *If, however, the ship carries a cargo of goods, the risks shall start to run as from the time when loading of the goods commences, and shall terminate when off-loading is completed, provided that the duration shall not extend beyond fifteen days after the arrival of the ship at the port of destination unless goods for another voyage are loaded at the port of destination before the lapse of the aforesaid period of fifteen days, in which case the risk insured against shall terminate forthwith."*

(60) Jordanian court of Cassation, *Damnon Arab insurance Company v. Watheq Kate'a Habeeb* case No. 2885/2001

(61) See section 345 of the Jordanian Maritime Commercial Law of 1972.

(62) See Taha, Mustafa and Bondg, Anwar Marine Insurance, p227. See also section 388 which provides: The effective of insurance must continue without interruption in any place during the voyage compliance with terms agreed in the policy.

As far as cargo insurance is concerned, the second paragraph of the section pinpoints the fact that the duration of cover starts from the time of loading a vessel and terminates upon the occurrence of one or more of the possible circumstances.(63) Firstly, termination occurs when the discharge of the goods is completed. Secondly, and alternatively, the cover may be terminated on the expiry of 15 days commencing from the time of arrival at the port of destination. Thirdly, according to the aforesaid provision, the cover may come to an end before the expiry of the 15 days if the goods are moved to another destination. In this case the cover ceases immediately.

In light of the above the observation may be made that the provision reveals many lacunas; the first is the time limit of 15 days starts at the time of arrival and not from the time of completion of discharge at the port of destination, as is the case in the I.C.C of 2009, where the insurance remain effective for sixty days after completion of discharge from the overseas ship in the port of destination.

This means if a ship arrives at a congested port or where the port is strike-bound, time may run out and the assured will find himself out cover before the discharge of his goods. The provision of section 345 of J.M.C.L could be more acceptable if the 15 days were to start after the completion of the discharge of the goods at the port of destination. At the same time the legislator has to prevent any interference by the carrier to prematurely end the time limit.

Again the Jordanian legislator has dealt with the insurance "from under ship's tackle to under ship's tackle' in section 347. The risk in this case runs "from the time the goods leave the quayside of port of departure in order to be loaded ", and terminates when the goods are discharged on the quay at the port of destination. In the second paragraph of the provision the transit by craft from the port to the ship and vice versa, has been embraced. It is clear that the cover provided under section 345 which deals with cargo cover is more restrictive than section 347 , although the sentence "The risk shall start to run from the time when the goods leave the land in order to be loaded" , is quite confusing . Does this extend as far as to embrace transit from the warehouse of the assured? Or does it indicate the time when the goods leave the quay in order to be loaded into the vessel? Furthermore, the J.M.C.L does not express an opinion in case of delay when dealing with the commencement of a voyage. It is become obvious that the Jordanian Maritime Law does not defer too much from the English Maritime Law as stated in article 48 of the Marine Insurance Act regarding the attachment of the insurance which has been specified at the time of the shipment of the goods on the board of the vessel, the only clear difference that the Marine

(63) Ivamy, Hardy Charlmers' Marine Insurance Act 1906

Insurance Act dealt with the delay while the Jordanian did not. However this treatment doesn't hold any importance neither in the English nor in the Jordanian laws where the parties follow the new set of the Institute Cargo Clauses which is dealing with the delay out of the insured control. Regarding the unreasonable delay we pointed out that this matter is lifted to the assessment of judiciary.

2.2 CHANGE OF VOYAGE IN J.M.C.L

The J.M.C.L has dealt with the 'change of voyage, issue in section 348. According to this section, the J.M.C.L distinguishes between two circumstances of change of voyage. The first one deals with circumstances when the intention to change a voyage becomes manifest after sailing. In this case the insurance company is not liable for the risk which might occur. Up to this point the provision quite clearly overlaps with section 45 of M.I.A of 1906. But the consequences of such a change are different , because where change occurs according to section 45 of the English M.I.A. the insurers are not liable for any consequent loss, whereas the ' change of voyage' under J.M.C.L does not merely terminate a contract of insurance , but also entitles the insurers to claim compensation. Section 348 of the J.M.C.L reads:

> *"If any change in the voyage is intentionally made after departure of the ship, the insurer shall have the right to compensation and he shall not be liable for the risks. If such change occurs before the sailing of the ship the insurance shall be void and the insurer shall be entitled to receive half the premium specified in the contract as fixed compensation".*

The second circumstance of change of voyage is where the decision to change is made before sailing from the port of departure. In this case the contract of insurance is deemed to be void, and the insurers would be entitled to claim for half the premium as fixed compensation. (64) Except for the issue of compensation this echoes the non-attachment of the risk according to s. 43 and 44 of the M.I.A.

It is very interesting to note that the provisions dealing with 'change of voyage' end without offering a specific legal definition of it nor they pinpoint the essential requirements of change of voyage. Such omissions cannot be bridged by incorporating the I.C.C. because they do not present a definition. This task is left to the law in the English marine insurance system. In a country where a civil law system is applied it sounds a serious weakness and needs to be dealt with urgently. Although, the provision insists that the change must be

(64) Although the English Marine Insurance Act of 1906 consist with the Jordanian one on the failure of consideration of the contract. The English Act entitled the assured to restore the all the premium paid. See Marine Insurance Act 1906, section 84(1).

intentional, the J.M.C.L makes no reference to which changes are meant. The provision provides 'if any change in the voyage is intentionally made after". The general term "any change "could be understood to be a change of course in navigation, or a change of date of arrival, or a change of the date of the commencement of a voyage. Moreover, the essential word "destination" which is the crucial word in a 'change of voyage' has been missed out. Furthermore, the J.M.C.L considers the circumstances of change before sailing from the port specified as a case of change of voyage, whereas such a change is considered a different voyage. Where change of voyage occurs after sailing from the port of departure the law does not specify from what time the insurers would be discharged from their liability.

Finally, the provision of section 348 is designed to deal with a change of voyage under relevant circumstances which can be illustrated clearly in law. If certain issues can be overridden by the I.C.C of 2009 which are applicable in the Jordanian marine insurance market, there are provisions which cannot be overridden and their violation render void any contrary agreement such as noted in the second part of section 348.

2.3 DEVIATION IN J.M.C.L

As a consequence the law moved to deal with the circumstances of a "ship astray" which could also be a case of deviation. Section 349 of J.M.C.L. reads:

> *"if the ship goes astray the risks encountered while it was on its correct course shall be insured , provided that the insurer shall have right to prove that such risks were the result of the ship going astray".*

The Jordanian legislator has already assumed that such a case of deviation occurred unintentionally, although the word 'deviation' has been missed out. This is indicated by use of the word' astray '[(65)] One consequence of a ship going astray is that the insurers would remain liable for any occurrence which might take place before its departure from its proper course of navigation. This simply means they would not be responsible for any risk after the ship had deviated. The provision provides that insurers shall have the right to prove that such risks were the result of the ship being off its prescribed course. Such an emphasis on the insurers' rights is undue' because it is normally accepted that insurers have to disprove an assureds' allegation. Nor does the provision decide the fate of the cover when a ship regains her course, because section 349 does not mention such a possibility. While the English Marine Insurance Act pin

(65) Baheeg Shoukrey comment in using astray which mean the ship get lost in the sea saying that the Arab Legislator did not keep following the updating technology the carriage of good by sea , since ship going astray is same thing from the past .see Shoukrey, Baheeg marine insurance, p 189-190

pointed this issue clearly as returning after deviation to the original route does not make the insurance attached.

However, marine insurance practice in the Arab world marine insurance market including Jordan owes a lot to the use of the Institute Cargo Clauses, because some of the bizarre provisions as contained in Jordanian Maritime Commercial law, can be overridden in a contract of marine cargo insurance when the parties add the version of the clauses as the terms of the contract. Unfortunately, some issues cannot be defined, such as the definitions of 'change of voyage' or deviation in the clauses.

The Jordanian Maritime Commercial Law of 1972 and most of the Arab maritime commercial legislations legalized the using of these clauses as the result of the "common will" of the parties agreement. Section 297 of J.M.C.L states:

> *"All the provisions of this part which do not contain an express stipulation to the effect that shall be applicable not withstanding any agreement to the contrary, or to the effect that their violation shall render void any contrary agreement, shall only be regarded as interpreting the will of the contracting parties and be superseded by express provisions"*. This provision in J.M.C.L is identical to be found in many Arab marine laws.

2.4 DELAY IN J.M.C.L

As we mentioned above; delay has not been treated by the Jordanian Maritime Law in the transit operation except in article 337 which states "No claim may be made against the insurers for any delay in dispatch or arrival of the goods, or for any difference in the prices or any obstruction caused to the business transaction of the assured resulting from any cause whatsoever".

Therefore delay considered as an excluded risk which is echoes to clause 4.5of the Institute Cargo Clauses, but as the clause 8.4 is applicable and it dealt with the delay beyond the assured control during the marine transit or on the arrival of the cargo to the place of destination, this will bridge the gap in the Jordanian Maritime Law as the parties have to comply with the contract of marine insurance and the attached Institute Cargo Clauses.

CONCLUSION:

From the analysis of the Duration Clauses specified in the sub clauses 8, 9 and 10 of the institute cargo clause of 2009, it would appear that the complications and the restricted cover given to assureds according to the duration clause of 1982 does not exist. The duration of cover has extended to contemplate a new phase in addition to the transit period; it encompasses the process of loading the goods in the warehouse of the sellers and extended the

termination of the insurance until the cargo has been discharged from the vehicle or any inland conveyance in the final warehouse. The new clauses also take a heavy consideration to the innocent assured who may lose the cargo when the ship alter the transit and act as a phantom ship. This falls in the interest of the assured, and responds to the needs of the marine insurance market worldwide to combat the maritime fraud committed by some ship masters.

When comparing the provisions governing the duration of insurance in J.M.C.L. with the better organized sections of their counterparts in the English M.I.A, both of them fall short of the progressive and all-embracing nature of the 'transit Clause 'which embraces the sea and land sections of transit and both of which may hinder any broader interpretation of the concept of change of voyage and deviation from the I.C.C. of 2009. Unfortunately the effect of the ambiguity created by the draftsmen would have, under the Jordanian system even more negative effects. This is because the Jordanian legal system lacks the richness of accumulated precedent cases and the interpretation of the contract is limited to the statutory provisions which have to be complied with, unless there is a clear indication in the stipulated terms to the contrary. The practical terms are using the Institute cargo Clauses. The researcher hopes that by analyzing the new version of the I.C.C of 2009 may contribute to explaining the meaning and the reasons behind the last amendments in the world of marine insurance concerning the duration of marine cargo insurance contract.

Recommendations:

1- In the light of international character of institute clauses and their world-wide use including Jordan and the Arab countries, the researcher calls for more focusing and encouraging the insurance company to apply the new versions of 2009 instead of 1982 version . Due to the clarity of the new clauses and for the interest of the assureds.

2- It is time to review the Jordanian marine insurance law and other Arab legislation to bridge the gap between the duration in the institute cargo clauses and their counterpart of the related provisions in maritime law.

3- The amended change of voyage clause is worth to be considered when the assured elect to insure according to the new version of the clauses and this also call for revising the change of voyage clause in the maritime local legislation to enhance the combating the phenomena of the maritime fraud.

4- The researcher calls on the Arab Federation of Insurance and the Jordanian Federation of Insurance Company to conduct a seminar to explain and discuss the duration clause in light of the new amendments.

Appendix

INSTITUTE CARGO CLAUSES in (A) (b) and (c)

DURATION

Transit Clause

8. 8.1 Subject to Clause 11 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit, continues during the ordinary course of transit and terminates either

8.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,

8.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or

8.1.3 When the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or

8.1.4 On the expiry of 60 days after completion of discharge overside of the subject-matter insured from the oversea vessel at the final port of discharge, whichever shall first occur.

8.2 If, after discharge overside from the oversea vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 8.1.1 to 8.1.4, shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.

8.3 This insurance shall remain in force (subject to termination as provided for in Clauses 8.1.1 to 8.1.4 above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the 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.

Change of Voyage

10. 10.1 where, after attachment of this insurance, the destination is changed by the Assured, this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.

10.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 8.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

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شرط المدة في التأمين البحري للبضائع على ضوء النسخة الأخيرة الصادرة لشروط التأمين البحري

(دراسة مقارنة بين القانون الأردني والبريطاني)

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كلية الحقوق – جامعة الشرق الأوسط

يهدف هذه البحث إلى مناقشة شروط المدة في عقد التأمين البحري على البضائع كما ظهرت في نسختها المعدلة الأخيرة والتي أصدرها معهد مكتبي التأمين البحري في لندن وجمعية سوق مؤسسة اللويدز في العام ٢٠٠٩، تبرز أهمية هذا البحث من حقيقة أن معظم أسواق التأمين البحري العربية بما فيها سوق التأمين البحري الأردني تعمل على تطبيق الشروط المعهدية لتأمين البضائع المنقولة بحراً. إن مدة سريان عقد التأمين تعتبر ركناً أساسياً في عقد التأمين كونها تحدد بدء وحالات انتهاء غطاء التأمين. إن كثيراً من المنازعات في التأمين البحري تتمركز حول إشكالات بدء وسريان وحالات انتهاء عقد التأمين. لتعزيز فهم التعديلات الجديدة فإننا نحتاج للتعمق في الشروط الجديدة لمدة التأمين البحري لتجنب الصياغة المحدودة في التشريعات البحرية الوطنية المتعلقة بمدة التأمين البحري على البضائع.هذا البحث ينقسم إلى مقدمة عامة تحدد ملامح الموضوع مدار البحث بالإضافة إلى خطة للبحث ومن ثم يتضمن فصل خاص بتحليل الشروط مقارنة مع القانون البريطاني وفصل أخر يتضمن أثر هذه التعديلات مقارنة مع قانون التجارة البحرية الأردني كنموذج لباقي التشريعات العربية.

الكلمات المفتاحية: شروط التأمين المعهدية على البضائع، شروط المدة، شرط النقل، شرط تغيير الرحلة، قانون التجارة البحرية الأردني.

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