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Known Loss Doctrine Precludes Insurance for Hijacked Cargo Shipment

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Courts in a number of states, including Florida, have declined to award insurance coverage to a policyholder who, at the time it purchased the policy, knew a loss had occurred or knew there was a probability the loss would occur. This is often referred to as the known loss doctrine. In I.T.N. Consolidators, Inc. v. Northern Marine Underwriters Ltd., 2017 WL 2804888 (11th Cir. June 28, 2017), the U.S. Court of Appeals for the Eleventh Circuit, applied the known loss doctrine to deny coverage for a hijacked cargo shipment that was known by the policyholder to be lost prior to purchasing the insurance coverage.

Northern Marine Underwriters Ltd. ("Northern Marine") sold an open cover policy to a freight forwarding company, I.T.N. Consolidators, Inc. ("ITN"). Under the policy, ITN could insure as many or as few cargo shipments as it chose. In November 2007, ITN learned that it failed to obtain insurance coverage for a shipment that had been hijacked. After the hijacking, ITN filed a standard form to obtain coverage for the shipment under the open policy, and then filed a claim for coverage which Northern Marine denied. In response, ITN filed suit against Northern Marine in federal court in Florida.

The district court granted summary judgment to Northern Marine, holding that the open cover policy did not cover known losses, such as the one at issue here. ITN appealed. On initial review, the appellate court agreed that the open cover policy did not cover known losses, but remanded the case to the district court to consider whether a new contract had been formed whereby Northern Marine agreed to insure the known loss in exchange for some new consideration (e.g., furtherance of the relationship with ITN or encouraging a policy of insuring all shipments). On remand, the district court entered summary judgment for ITN, finding that ITN's payment of premium after it learned of the hijacking constituted an offer to enter a new insurance contract that covered the known loss, which Northern Marine accepted by retaining the premium and continuing to do business with ITN after the claim. Northern Marine then appealed.

In its appeal, Northern Marine argued that, under new case law reflecting a change in Florida law prohibiting coverage for known losses as against public policy, there was no coverage for the hijacked shipment. The appellate court agreed, explaining that insurance necessarily involves contingencies such that the payment of a non-contingent loss is contrary to the very concept of insurance. The appellate court explained that there is a public policy of protecting the public

from insolvent insurers, and that the rule against insuring a known loss is part and parcel of that public policy because such insurance contracts risk the solvency of the insurer. Contracts to insure against the known loss are, according to the appellate court, against public policy regardless of whether an insurer knows about the loss before it agrees to the contract. Accordingly, the appellate court concluded that the insurance policy that ITN purchased from Northern Marine to insure the hijacked shipment was unenforceable as a matter of Florida public policy.

The court in I.T.N. Consolidators applied the known loss doctrine to preclude coverage where, as was the case here, the policyholder was aware of the lost cargo prior to obtaining the insurance coverage for it. The holding is consistent with the rule applied in Florida and elsewhere that insurance is intended to protect against fortuitous events, as opposed to a loss that the policyholder knew already occurred.