

## Not Your Typical Hair Loss: No Coverage for Theft of Hair Weaves

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Marine cargo insurance policies provide coverage for losses while goods are in transit. After the goods are delivered, the risk generally passes back to the insured. But when, exactly? How the policy is drafted is key. In a recent unpublished case, a New Jersey appellate court found that a marine cargo policy did not provide coverage for the theft of numerous containers of hair weaves more than 24 hours after they were delivered. *Beauty Plus Trading Co. Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 2018 WL 384386 (N.J. Ct. App. Aug. 14, 2018). In so holding, the court rejected the insured's contention that, notwithstanding the language of the policy, the "next business day" rule extended the duration of coverage.

Beauty Plus Trading Company, Inc. ("Beauty Plus") is a wholesale distributor of hair extensions and similar products. It was insured under a marine cargo insurance policy issued by National Union Fire Insurance Co. of Pittsburgh, Pa. ("National Union"). The policy insured Beauty Plus against perils "of the seas and inland waters, fires, assailing thieves, jettisons, barratry of the Master and Mariners, and all other like perils, losses and misfortunes." The policy covered "all shipments of lawful goods and merchandise...consisting principally of new wigs and similar merchandise incidental" to Beauty Plus's business "[a]gainst all risk of physical loss or damage from any external cause." The policy also contained a "Warehouse to Warehouse" clause, for which coverage attached from the time the goods left the warehouse in China and continued until the goods were delivered to the final destination warehouse. The policy also contained a "Loading and Unloading" clause that extended coverage for Beauty Plus's goods for up to 72 hours after they arrived at the final destination, but not later than 24 hours after Beauty Plus had knowledge of the delivery.

On November 10, 2014, a shipping container with 487 cartons of "human hair weaves" left the port of Qingdao, China for Beauty Plus's warehouse in New Jersey. The container arrived at the warehouse at 5:00 p.m. on Friday, December 12, 2014. The warehouse managers determined there was not enough time to unload the container at that time and waited to unload the container until the following Monday, December 15, 2014. When the workers arrived at the warehouse Monday morning, the container of hair weaves was missing. Surveillance video showed that the container was stolen from the warehouse at 9:00 p.m. on Saturday, December 13, 2014, the day after it was delivered.

Beauty Plus sought coverage for its loss under the National Union insurance policy. National Union denied coverage for the theft under the "Warehouse to Warehouse" and "Loading and Unloading" clauses, on the basis that that the theft had occurred after coverage under those provisions expired. Beauty Plus filed a complaint for breach of contract and declaratory judgment against National Union. The trial court found in favor of National Union, and Beauty Plus appealed.

On appeal, the New Jersey Superior Court, Appellate Division, affirmed the ruling of the trial court for National Union. The court found that the policy's plain language was unambiguous and there was no coverage for the theft. Specifically, under the "Warehouse to Warehouse" clause, coverage attached when the goods left Qingdao, China on November 10, and terminated when the goods arrived at their final destination (i.e., Beauty Plus's New Jersey warehouse), at approximately 5:00 p.m. on December 12. Under the "Loading and Unloading" clause, the goods were insured until 5:00 p.m. on December 13. Because the theft occurred at approximately 9:00 p.m. on December 13-more than 24 hours after Beauty Plus had knowledge of the delivery-the policy did not cover the theft.

Beauty Plus did not dispute the language of the policy or the timing of the delivery. However, it argued that, notwithstanding, coverage under the policy should be deemed extended under the "next business day" rule. The court acknowledged that the "next business day" rule can extend insurance coverage when the time for a party's performance under an insurance contract expires on a weekend or holiday. The court noted, however, that the policy did not call for Beauty Plus to complete any specific act within 24 hours of becoming aware of a delivery. It simply set that deadline as the expiration for coverage. Beauty Plus's decision to wait to unload the goods did not prevent the coverage from lapsing or the risk of loss from transferring back to Beauty Plus as of 24 hours after delivery, i.e. 5:00 p.m. on December 13, roughly four hours before the theft. The court thus rejected Beauty Plus's argument that the "next business day" rule should apply to extend the policy's "Loading and Unloading" coverage until Monday, December 15. According to the court, the decision to wait to unload the goods did not prevent the coverage from lapsing and transferring the risk of loss back to Beauty Plus twenty-four hours after delivery, or 5:00 p.m. on Saturday, December 13. The court similarly rejected Beauty Plus's request to reform the policy according to its "objectively reasonable expectations." The court determined the policy language was unambiguous. Accordingly, there was no coverage available for the stolen hair weaves.

The decision in Beauty Plus underscores the primacy of policy language in resolving a dispute under a marine cargo insurance policy. While doctrines of construction may in some instances support results that differ from what the literal text of the policy allows, Beauty Plus demonstrates that courts' default preference is to hold parties to the terms of the policy absent a very good reason to depart from them. So when it comes to losing hair-or anything else-the time when the risk passes from insurer to insured will typically depend on what the parties agreed to in the policy of insurance.