

top@doc newsletter

Must an insurance document indicate the number of originals issued?

Normally, an international transport of goods is covered by a transport insurance. Evidence of such an insurance is provided by presentation of an insurance policy or an insurance certificate. Must the insurance document specify in how many originals it has been issued?

This question is of particular importance since the insurer will pay with discharging effect in the case of an insurance document issued “to order” (called order paper or negotiable instrument) or “to holder” (then referred to as a paper of identity) to the party that presents an original insurance document. For any person with a legitimate claim to the goods respectively the insurance payment (e.g. importer or, possibly, financing bank), it may be important to know how many originals of the insurance document have been issued. It is the only way this person can make sure that he does in fact have all originals and that no third party can – unjustifiably – claim the insurance payment. In this connection, it is crucial that the terms of the credit specify corresponding requirements for the requested insurance document in an unequivocal and unmistakable manner. Our case study will tell how such a requirement can be drafted:

Proper and Prompt Ltd. receives a documentary credit issued in its favour that stipulates, inter alia, the following document: “Insurance certificate in duplicate”.

For utilization of the credit, Proper and Prompt Ltd. submits to the nominated bank, Careful Bank, inter alia two copies of



an insurance certificate that are visibly not originals, but only two photocopies.

With reference to the “Uniform Customs and Practice for Documentary Credits UCP 600”, art. 17 e, Careful Bank refuses to take up the documents. According to this provision, at least one original insurance document must be presented.

No problem for Proper and Prompt Ltd.: It had submitted the documents early enough so that sufficient time is left to subsequently remit the original insurance document. Careful Bank is now prepared to take up the documents and present them to the issuing bank, Free and Easy Bank. Some days later, Free and Easy Bank informs Careful Bank by SWIFT

message of its refusal to take up the documents.

The reasons given are:

- Only one original and one photocopy of the insurance certificate had been presented instead of two originals.
- The insurance certificate does not indicate in how many originals it had been issued.

Is this refusal justified?

No, it is not. As to the first point: If Free and Easy Bank or the applicant requests the presentation of two original insurance documents, such requirement must explicitly be stated in the terms of the credit. Therefore, instead of “Insurance certificate in duplicate”, the wording must be “Insurance certificate in two originals”.

As to the second point: Obviously, the “International Standard Banking Practice for Examination of Documents under UCP 600”, ICC Publication 745 E, expect that, in general, all originals of an insurance document issued will be presented (paragraph K 8). If the insurance document does not show in how many originals it has been issued, it is understood that the number of originals presented corresponds to the number of originals issued. According to the ISBP, also the second discrepancy listed by Free and Easy Bank is not valid.

In this context, Commerzbank would like to point out the following: If further original insurance documents are in circulation whose existence cannot be concluded from the layout of

the document, there is the risk that third parties will unlawfully make claims against the insurer by means of these original insurance documents. In order to protect the legitimate parties against such abuse and to ensure clarity, we believe that the insurance document must state the number of originals issued. The complete set of these originals must be presented unless otherwise provided for in the credit.

Moreover, we urgently recommend already upon issuance of the credit only to utilize wordings which leave no room for presumptions or interpretations, e.g.

“Insurance certificate in two originals, indicating that this insurance certificate has been issued in two originals”.

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