

Understanding Claims Handling Process & its Complexities

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Maritime Insurance

- Marine Insurance Act 1906
- Hull & Machinery insurance
- Cargo insurance
- Protection & Indemnity insurance

Marine Insurance Act 1906

- Adopted and used in Singapore
- Formation of marine insurance policy
 - Contract of marine insurance must be embodied in a marine policy
 - Must be signed by insurer
 - Must specify the name of assured
 - Must designate a subject matter to be insured
 - Policy may state value (valued = recover that amount only; unvalued = to prove loss, recover up to value)

Marine Insurance Act 1906

- Assured must have an insurable interest in the subject matter insured (i.e. legal or equitable relationship to the maritime adventure or to property insured)
 - Excludes unsecured creditors or company shareholders
No insurable interest in their debtor's property.
 - Can be assigned to another party, so that if at the time of loss you have already sold the goods to another party and assigned the right to claim to another party - the buyer can claim.
- Utmost good faith - disclose all material facts (test: influence the judgment of a prudent insurer whether to fix the risk?)

Marine Insurance Act 1906

- Warranty - failure to comply terminates the policy from date of breach of warranty, but without prejudice to insurer's liability before date of breach
- Warranty of seaworthiness of ship
 - voyage policy - implied warranty that at commencement of voyage ship shall be seaworthy for adventure insured.
 - time policy - no implied warranty that the ship shall be seaworthy at any stage of the adventure, but if ship was sent to sea in an unseaworthy state with the privity of assured, then insurer is not liable for loss attributable to unseaworthiness.

Examples of H&M claim

- Vessel hull damage
- Machinery / engine breakdown
- General average & salvage

Handling H&M claims

- Consider type of damage - must fall within list of perils covered by H&M policy
- Causation / proximate cause
- Fortituous
- Due diligence
- Sue and labour
- Notify underwriters
- Underwriters will appoint surveyors, recommend repairs
- Adjustment of claim

General Average

- General Average - when extraordinary sacrifice is intentionally and reasonably made for the common safety / preservation from peril the property involved in the common maritime adventure
 - E.g. vessel runs aground, need to jettison containers / cargo to refloat
 - E.g. vessel engine explodes, dead ship needs towage to safety
- Consider whether it is a salvage or a General Average situation
- If General Average, is it an actual loss or constructive total loss?

General Average

- If CTL - give notice of abandonment to H&M underwriter
 - H&M underwriter will usually decline the notice of abandonment, but agree to place the assured in the position as if a Writ has been issued - assured to continue dealing with the vessel
- If not CTL (want to continue dealing with vessel in GA) - then appoint average adjuster
 - Average adjuster ascertain who are interested parties in the maritime adventure, obtain General Average Bond / General Average Guarantee from interested parties

General Average

- Costs and expenses are adjusted
 - Adjusted costs presented to the Bond / Guarantee providers to pay their share
 - If Bond / Guarantee providers fail to pay or disputes payment, shipowner may sue for payment / general average contribution
- Question: was vessel seaworthy?
 - If Bond / Guarantee providers can prove that vessel was unseaworthy, then vessel's P&I will pay for cargo's contribution for GA contribution (assuming there are no beach of terms for P&I cover).

Case study #1

- Tanker partially laden with cargo is alongside terminal (still loading) when an explosion occurs within one of the cargo tanks;
- Shipowner notifies insurers:-
 - P&I: potential 3rd party exposure - crew injury, 3rd party injury, pollution
 - H&M: consider whether a salvage of general average situation - can the vessel be saved or is it a total write off?
- Surveyors appointed - preliminary survey of casualty to decide whether it is a general average or salvage;

Case study #1

- Shipowner declares general average, but does not declare constructive total loss;
- Shipowner gives notice of frustration to cargo interests, obliging them to come pick up / organise transshipment of cargo;
- Shipowner appoints average adjuster to work out total value of cargo on board, as against value of ship;
- Adjuster identifies cargo interest, obtains GA Bond from cargo receivers, obtains GA Guarantee from cargo underwriters;

Case study #1

- Cargo receivers organise transshipment of cargo - may include these as part of claim to be made against the shipowner (as counter claim against shipowner's eventual claim for GA contribution);
- After cargo discharge, vessel is freed up for repair;
- Upon completion of repairs and receipt of all costs / expenses submitted by shipowner to average adjuster;
- average adjuster reviews, adjusts and apportions the general average expenses between all interested parties, i.e. shipowner and cargo interests.

Case study #2

- Barge laden with cargo breaks tow and becomes grounded;
- Shipowner declares CTL and gives notice of abandonment to H&M underwriters, notice of frustration to cargo interests;
- H&M underwriters rejects notice, but agrees to place assured in a position as if Writ has been issued;
- Shipowner appoints average adjuster;
- Adjuster identifies cargo interest, obtains GA Bond from cargo receivers, obtains GA Guarantee from cargo underwriters;

Case study #2

- However, cargo receivers do not come forward to take cargo;
- Cargo deteriorates;
- Shipowner secures an offer for wreck, and for cargo at salvage value;
- Shipowner gives notice to cargo receivers / underwriters, seeks consent to sell cargo;
- Cargo underwriters do not object but reserve their rights;
- Wreck and cargo is sold 'as is'.

Examples of cargo claims

- Cargo damage / wet damage
- Cargo shortage

Handling Cargo claims

- Identify who is entitled to claim
 - Rights of suit / title to sue
 - Who has contract of carriage with carrier?
 - Shipper, consignee or receiver?
- Documentation to prove title to sue
 - Bill of lading
 - Contract for sale and purchase of goods
- Documentation to prove claim
- Exceptions / Limitation

Rights of suit / title to sue

- Bills of Lading Act 1855, Section 1
 - “Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.”

Rights of suit

- In order to sue the carrier in contract pursuant to Section 1 of the Bills of Lading Act 1855, the claimant of the lost and damaged goods must establish that:
 - a. He is the consignee named in the bill of lading, or the endorsee of the bill of lading and
 - b. Property in the goods passed to him “upon or by reason of such consignment or endorsement”
- Contractual right of suit

Documentation of claim

- Contract of carriage / supply
 - Charterparty / bill of lading
 - Invoices
- Pre-shipment documents
 - Certificates
 - Survey reports
- Post-shipment documents
 - Contemporaneous correspondence
 - Protest notes
 - Survey reports

Documentation of claim

- Ship's documents
 - Mate's receipt
 - Statement of Fact
 - Vessel's logs (bridge / engine)
 - Pumping logs
 - Reefer charts

Exceptions and Limitations

- Defence / exceptions
 - Hague / Hague Visby Rules and Hamburg Rules
- Limitations
 - Package vs. weight
 - Tonnage

Hague / Hague Visby Defences

- a. act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship;
- b. fire, unless caused by the actual fault or privity of the carrier;
- c. perils, dangers and accidents of the sea or other navigable waters;
- d. act of God;
- e. act of war;
- f. act of public enemies;
- g. arrest or restraint of princes, rulers or people, or seizure under legal process;

- h. quarantine restrictions;
- i. act or omission of the shipper or owner of the goods, his agent or representative;
- j. strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
- k. riots and civil commotions;
- l. saving or attempting to save life or property at sea;
- m. wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;

- n. insufficiency of packing;
- o. insufficiency or inadequacy of marks;
- p. latent defects not discoverable by due diligence;
- q. any other cause arising without the actual fault and privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

Hamburg Rules Defences

- Carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences (Art 5 rule 1)
- With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage if the carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals (Art 5 rule 5)
- The carrier is not liable, except in general average, where loss, damage or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea (Art 5 rule 6)

- Carrier is liable for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;
- Carrier is liable for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents, in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

(In case of fire, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on demand to the carrier and the claimant.)

(ART 5 rule 4)

Limitations

- Package vs. weight limitation
- Tonnage limitation

Hague / Hague Visby package vs. weight limitation

- Where the Hague / Hague Visby Rules apply, the limitation of liability is computed by reference to the number of packages in which the cargo was carried or the weight of such cargo.
- Art IV rule 5:- “Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged, whichever is the higher.”

Hague / Hague Visby package vs. weight limitation

- Package must indicate something packed or which has undergone a certain degree of packing
- Package and weight limitations of 10,000 francs and 30 francs are equivalent to S\$1,563.65 and S\$4.69 respectively

Hague / Hague Visby

Example: Container of cargo weighing 26,000 kg carrying 3,450 boxes of TV sets

- Bill of lading: *1 x 40" STC 3,450 boxes TV sets*
- Bill of lading: *1x40" STC TV sets 26,000 kgs*

Hague / Hague Visby

Package limitation

- 10,000 francs per package x 3,450 pieces
= SGD 5,394,592.50

Weight limitation

- 30 francs per kilo of gross weight of the goods lost or damaged x 26,000 kgs = SGD 121,940.00

Limitation under Hamburg Rules

Art 6(1)(a):-

- The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

Hamburg Rules

Example: Container of cargo weighing 26,000 kg carrying 3,450 boxes of TV sets

- Bill of lading: *1 x 40" STC 3,450 boxes TV sets*
- Bill of lading: *1x40" STC TV sets 26,000 kgs*

Hamburg Rules

1 SDR = USD 1.595 as at 7th Sept 2011

Package limitation:-

- $USD\ 1.595 \times 835 \times 3,450 = USD\ 4,594,796.25$

Weight limitation:-

- $USD\ 1.595 \times 2.5 \times 26,000 = USD\ 103,675.00$

Tonnage limitation

- Convention on Limitation of Liability for Maritime Claims 1976
 - in respect of any other claims = 167,000 SDR for a ship with a tonnage not exceeding 500 tons
 - 167 SDR for each ton from 501 to 30,000 tons
- Protocol of 1996
 - in respect of any other claims = 1 million SDR for a ship with a tonnage not exceeding 2,000 tons
 - 400 SDR for each ton from 2,001 to 30,000 tons

Tonnage limitation

Example:-

Loss of container of cargo weighing 26,000 kgs and carrying 3,450 boxes of TV sets carried in a ship of 10,000 tons

Tonnage limitation

Tonnage limitation for vessel of 10,000 tons:-

- 1976 LLMC
 - $167,000 \text{ SDR} + ([10,000 - 500] \times 167 \text{ SDR}) @ \text{USD}1.595 = \text{USD } 2,796,832.50$
- 1996 Protocol
 - $1 \text{ million SDR} + ([10,000 - 2,000] \times 400 \text{ SDR}) @ \text{USD } 1.595 = \text{USD } 6,699,000$

Tonnage limitation

Breaking limitation – 1976 LLMC

- Actual fault or privity – some form of fault or blameworthy conduct which was personal to the owners of the ship or to which they consented or of which they had knowledge

Responding to claims

- Jurisdiction clause
 - Court litigation or arbitration?
 - Exclusive jurisdiction clause?
- Time bar
 - Get extension of time (in writing)
 - Issue protective Writs, arbitration notices
- Protect claim against change of vessel ownership – issue protective Writ

Responding to claims

- Shipwatch
 - Preserving your right to security for claim
- Preserving (ship's) documentation
 - Mare del Nord order
- Who to sue? Contractual carrier vs. actual carrier.

Thank you

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