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# Chapter One

## Welcome to the World of Marine Cargo Claims!

# Introduction

For a proper understanding of how marine cargo insurance works as well as an understanding of the applicable insuring conditions in a marine cargo policy, it is strongly recommended that you read the American Insurance Broker's Introductory Guide to Marine Cargo Insurance, also available as an ebook, which can be downloaded at www.marineinsuranceexpert.com.

Our publication will begin with an explanation as to why the field of marine cargo claims handling and adjusting is so unique. We will explain what factors govern the way cargo claims are adjusted. We will then devote an entire chapter on the various players involved in the fields of transportation, logistics, marine cargo insurance placement and underwriting as well as the handling of the claim itself. We will describe the roles and duties of each player and how they relate to your client's cargo shipment, to the placement of the insurance policy and to the claims handling process.

This will be followed, in Chapter Three, by a brief analysis of the four main types of cargo claim. In the chapter that follows, we will discuss the cover provided by the AIMU Cargo Clauses 1974: What is covered and what is not covered. We will provide examples of losses covered under the broad All Risks Clauses and will then devote a section on the burden of proof. We will also explain the cover offered by the named perils clauses.

A further chapter will list the documents that are required to support a marine cargo claim and we will explain why each document has significance. We will draw a line between which documents are absolutely mandatory on the one hand, and those documents that may be required depending on the individual circumstances. We will then move forward with a discussion on the various stages that are involved with a marine cargo claim, beginning with the initial notification to insurers and ending with payment and subrogation.

Chapter Seven will discuss the various common policy clauses that impact the adjustment of the claim.

Chapter Eight offers examples of a particular average adjustment whilst Chapter Nine addresses briefly the principles and practices relating to general average and offers an example of a basic general average adjustment.

Chapter Ten lists the duties of your client, as the insured, following loss or damage to its cargo.

In Chapter Eleven, we discuss common grounds on which your client's claim may be declined.

In Chapter Twelve, we offer loss prevention and mitigation guidance in respect to container shipments as well as to dry bulk cargo.

In a final chapter, we offer a checklist for you, the American insurance broker of key principles and practices that should be followed in connection with the cargo insurance placement as well as the procedures to be followed following an incident of loss or damage to your client's cargo.

# Marine Cargo Claims: A Unique Field of Insurance!

What you first need to know about marine cargo claims is that they differ substantially from any other type of claim within the property and casualty market. The rules are different. The principles are different. The handling and adjusting practices are different. The laws pertaining to marine claims handling and adjusting are also different. In practical effect, the field of marine cargo claims handling and adjusting involves a discipline in which centuries old custom, usage and practice is imbedded.

What is particularly interesting is that marine cargo insurance follows international trade. Hence, many of the principles and practices in the field of marine claims are of universal application.

## What Governs the Way in which Marine Cargo Claims are Handled and Adjusted in the United States?

There are at least 4 factors that govern the way marine cargo claims are handled and adjusted:

- Federal maritime law
- State law
- The insurance contract: Terms and conditions of the marine cargo policy
- Custom, usage and practice in the industry

### a) Federal maritime law

Due to the court's decision in the decision in the 1955 Wilburn Boat case, although marine insurance contracts are within admiralty jurisdiction, the question as to whether federal law applies is dependant on a number of factors. These include whether or not federal law is silent on the point in question, whether or not there is entrenched federal maritime precedent and whether or not the state has a substantial interest in the application of local law versus federal law.

If there is an established rule of maritime law in relation to a particular subject matter then federal law may apply.

### b) State law

If there is no established federal precedent, then there is an assumption that state law will apply. For example, the effect of an insured's misrepresentations or concealment in relation to placement of a risk under a marine policy is subject to state law.

### c) Cargo Policy Terms and Conditions

Like any other insurance policy, a marine cargo policy is a contract between the insurer and your client, the insured. Hence, both parties, insurer and insured are legally bound by its terms and conditions. Many of an open cargo policy's terms and conditions are common throughout the marine industry and have therefore stood the test of time.

The policy will typically contain general clauses such as the Valuation Clause, Merchandise Clause and Voyage Clause.

The policy will also include clauses which govern the way claims are handled and adjusted. These include: Brands Clause, Airfreight Replacement Cost Clause and the Second Hand Machinery Clause. These are discussed further below.

### d) Custom, Practice and Usage in the Industry

Marine claims practices are, to a great extent, mirrored by the provisions of the UK Marine Insurance Act 1906 and are embedded in the marine cargo policy language. On the other hand, there is other custom, practice and usage that is not formally documented but which is important in the industry. Such custom, practice and usage may apply to the way claims are handled and adjusted on marine cargo policies. Other customs and practice flow from international trade.