



BRITISH INSURANCE BROKER'S
INTRODUCTORY GUIDE TO

Marine Cargo Claims



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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 British Insurance Broker's Introductory Guide to Marine Cargo Insurance, also available as an ebook, which can be downloaded at www.marineinsuranceexpert.com.

This 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 all areas 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 three main London market clauses: What is covered and what is not covered. We will provide examples of losses covered under the broad Institute Cargo Clauses A and will then devote a section on the burden of proof.

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 their 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 British 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 and in fact, the British Marine Insurance Act 1906, gives effect to many of those principles and practices.

What Governs the Way in which Marine Cargo Claims are Handled and Adjusted in Canada?

There are 3 factors that govern the way marine cargo claims are handled and adjusted:

- Marine Insurance Act 1906
- The terms and conditions of the open cargo policy
- Custom, usage and practice in the industry

a) Marine Insurance Act 1906

There are several provisions within the Act that address, for example, such matters as defining an actual total loss on the one hand, and constructive total loss, on the other. The Act also speaks to how particular average losses are adjusted and, further, addresses such items as sue and labour expenses and subrogation. Underlying all of this is the duty imposed by the Act upon the insured to comply with the duty of utmost good faith. The legislation also addresses the very important area of

policy warranties as well as the consequences of non-compliance. Some of these topics are discussed later in this publication.

b) Cargo Policy Terms and Conditions

Many of the open cargo policy's terms and conditions will mirror the provisions of the Marine Insurance Act. The policy will also provide other terms that impose duties on an insured. An example of such a policy provision is in connection with notice requirements to insurers in the event of a claim for loss or damage.

There are also, typically, special clauses that affect the adjustment of the claim. Two examples of such clauses are the Second Hand Machinery Clause and the Airfreight Replacement Clause, discussed further below.

c) Custom, Practice and Usage in the Industry

Marine claims practices are, to a great extent, mirrored by the 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. An example of this is the practice of requiring completion of a subrogation form by the insured following settlement of a claim. Another practice is an insured assigning over a certificate of insurance to a buyer overseas by signing and endorsing the back of the certificate.