

Importer's and Exporter'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 *Importer's and Exporter's Guide to Marine Cargo Insurance – British Edition*, 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 the movement of your cargo, how they relate to the placement of your cargo policy and, finally, how they relate to the claims handling process, in the event you have a claim.

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 those documents that are generally mandatory on the one hand, and those documents that may be required to support your claim depending on the individual circumstances of the claim, on the other. 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 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 your duties as the insured cargo owner, following loss or damage to your cargo.

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

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

In a final chapter, we offer a checklist for you, the importer and exporter cargo owner, of key principles and practices to be considered in connection with your cargo insurance application as well as the procedures to be followed following an incident of loss or damage to your cargo. Such guidance is intended to assist you in avoiding possible pitfalls during the cargo insurance application process and to help bring about a more efficient handling of your cargo claim.

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 insurance claim, whether this be in connection with your factory, your warehouse, your office, your fleet of trucks or your stock. 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, generally speaking, 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 the United Kingdom?

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

- Marine Insurance Act 1906
- The terms and conditions of your 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. This particular duty is all about disclosing proper and accurate information about your business to insurers so that they can properly assess the risk and fix the appropriate premium and terms of insurance to reflect their exposures. The legislation also addresses the very important area of policy warranties as well as the consequences of non-compliance. Warranties are all about promises that you have to keep in order to keep your policy in force. 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 you, 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 that of an insured assigning over a certificate of insurance to a buyer overseas by signing and endorsing the back of the certificate.