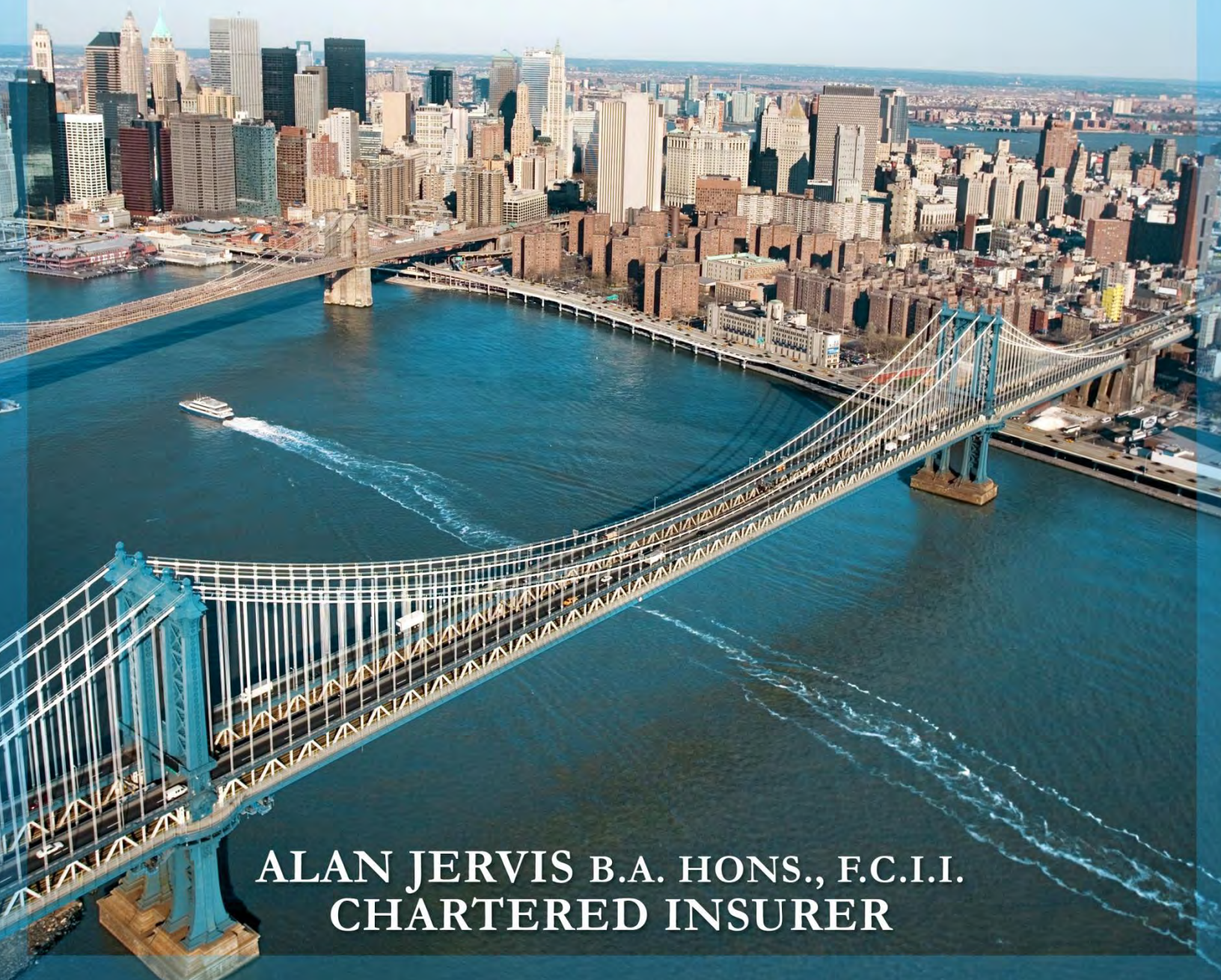




— AMERICAN IMPORTER EXPORTER —  
INTRODUCTORY GUIDE TO

# Marine Cargo Claims



ALAN JERVIS B.A. HONS., F.C.I.I.  
CHARTERED INSURER

*American Importer Exporter Introductory Guide to*  
**Marine Cargo Claims**

By

Alan Jervis B.A. Hons., F.C.I.I., Chartered Insurer

1<sup>st</sup> Edition – 2014

© Copyright Alan Jervis January 2014

Alan Jervis Resources International Ltd

**All rights reserved**

No part of this book may be reproduced in any form by any electronic or mechanical means including photocopying, recording, or information storage and retrieval without the written permission of the author.

**Waiver**

The purpose of this publication is educational and although its aim is to offer some guidance on and insight into certain aspects of marine cargo claims, it is by no means intended to offer authoritative interpretations on the law and or legal principles. Consequently, neither the corporation nor Alan Jervis nor their respective assigns, heirs and successors accept any responsibility for any statements and or opinions expressed herein. Further, no representations are offered that such statements or opinions are accurate. Accordingly, no claim shall lie against the corporation and or Alan Jervis, their respective rights and successors for loss damage or expense howsoever caused.

Alan Jervis can be contacted at: [ajervis@marineinsuranceexpert.com](mailto:ajervis@marineinsuranceexpert.com).

Website: [www.marineinsuranceexpert.com](http://www.marineinsuranceexpert.com)

# Table of Contents

About the Author.....	6
FAQs.....	7
<b>Chapter One: Welcome to the World of Marine Cargo Claims! .....</b>	<b>15</b>
Introduction.....	16
Marine Cargo Claims: A Unique Field of Insurance! .....	17
a) Federal maritime law.....	17
b) State law .....	18
c) Cargo policy terms and conditions .....	18
d) Custom, Practice and Usage in the Industry .....	18
<b>Chapter Two: The Players.....</b>	<b>19</b>
Introduction.....	20
The Insured Importer or Exporter.....	20
Freight Forwarder .....	21
Ocean Carrier.....	22
Airline .....	23
Trucking Companies.....	23
Railway Companies .....	25
Insurance Broker.....	26
Insurance Company .....	28
MGAs .....	28
Reinsurers.....	29
Insurance Company Survey and Claims Settling Agents .....	29
Marine Surveyor .....	29
Average Adjusters .....	31
Attorneys .....	31

<b>Chapter Three: Types of Cargo Claim .....</b>	<b>33</b>
Types of Cargo Claim.....	34
Actual Total Loss of Cargo.....	34
Constructive Total Loss of Cargo.....	34
Particular Average Damage .....	35
General Average.....	35
<b>Chapter Four: What is Covered and What is not Covered!.....</b>	<b>36</b>
The Open Cargo Policy.....	37
Losses Covered under AIMU Cargo Clauses 2004 – FPAAC – American Conditions.....	37
Losses Covered under the AIMU Cargo Clauses 2004 – FPAEC – English Conditions.....	38
Losses Covered under the AIMU Cargo Clauses 2004 – With Average (WA) .....	39
Losses Covered under the AIMU Cargo Clauses 2004 – All Risks .....	39
Excluded Losses under the AIMU Cargo Clauses 2004.....	40
Burden of Proof .....	41
Burden of Proof: Policy Terms and Conditions that may relieve the Insured .....	41
<b>Chapter Five: Documents in Support of a Marine Cargo Claim.....</b>	<b>43</b>
Introduction.....	44
Certificate of Insurance .....	44
Ocean or NVOCC (House) Bill of Lading.....	45
Air Waybill .....	46
Inland bill of lading.....	47
Commercial Invoice.....	47
Packing List.....	48
Letter of Credit.....	48
Master’s Protest .....	48
Delivery Receipt .....	49

TIR (Trailer Interchange Receipt).....	50
Letter of Intent against Carriers .....	51
Freight Invoice .....	52
Customs Form.....	52
Repair or Replacement Part Invoice.....	52
Tender for Bids and Bid Documents .....	52
Insured’s Statement of Claim .....	53
Pre Shipment Survey.....	53
Survey Report .....	53
Container Stuffing or Destuffing Report.....	54
Container Repair Report .....	54
Certificate of Origin.....	55
Phytosanitary Certificate .....	55
CMR Note.....	55
Destruction Certificate .....	55
Mandatory Claims Documents.....	56
Documents Relating to the Transportation.....	56
Documents Necessary to Establish the Extent of Loss or Damage or Quantum of the Claim...57	
Documents Necessary to Preserve Subrogation Rights and Necessary to Effect Recovery .....	57
Documents required where Cargo is <i>Actual Total Loss</i> .....	58
<b>Chapter Six: The Stages in a Marine Cargo Claim .....</b>	<b>61</b>
Introduction.....	62
Stage One: Reporting the claim.....	62
Stage Two: Acknowledgement of Claim and Investigation by Insurance Company or by its Overseas Claims Agents.....	62
Stage Three: Review of Claim by Insurance Company’s Claims Examiner.....	64
Stage Four: Adjusting the Claim .....	66

Stage Five: Subrogation Stage.....	67
<b>Chapter Seven: Common Policy Clauses that Impact Adjustment of the Claim .....</b>	<b>68</b>
Sue and Labour Clause .....	69
Second Hand Machinery Replacement Clause.....	69
Air Freight Replacement Parts Clause.....	70
Pairs and Set Clause .....	70
Cuttings Clause .....	70
Debris Removal Clause .....	70
Brands Clause .....	71
<b>Chapter Eight: Examples of a Particular Average (PA) Claim Adjustment .....</b>	<b>72</b>
Meaning of Particular Average .....	73
Example One: Damaged Machinery .....	73
Example Two: Bananas .....	74
Example Three: Furniture.....	75
<b>Chapter Nine: General Average .....</b>	<b>76</b>
Definition of General Average.....	77
Law Governing General Average .....	77
Essential Elements of a General Average.....	77
Examples of General Average.....	78
Responsibilities of Cargo Owner Following General Average .....	79
If Cargo Owner has Cargo Insurance .....	79
Example of General Average Adjustment.....	79
<b>Chapter Ten: What are my Duties as an Insured Cargo Owner Following a Claim? .....</b>	<b>81</b>
General Duty .....	82
Specific Duties.....	82
What the Insured Must NOT Do.....	84

<b>Chapter Eleven: Common Grounds on which my Claim may be Denied.....</b>	<b>85</b>
Introduction.....	86
Grounds on which a Marine Claim Cargo Claim may be Declined.....	86
Denial of Claim due to Breach of Warranty.....	87
Policy Avoided due to Concealment or Misrepresentation.....	89
<b>Chapter Twelve: Loss Prevention and Mitigation .....</b>	<b>90</b>
Introduction.....	91
Containerised Cargo: Loss Prevention.....	91
Dry Bulk Cargo: Loss Prevention.....	92
<b>Chapter Thirteen: American Importer Exporter Claims Checklist .....</b>	<b>93</b>
Conclusion .....	94
Importer Exporter Checklist: In the Event of a Claim!.....	94

# 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 Importer's and Exporter's Introductory Guide to Marine Cargo Insurance, also available as an ebook, which can be downloaded at [www.marineinsuranceexpert.com](http://www.marineinsuranceexpert.com).

Our publication cargo claims 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 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.(FPA and WA)

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 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 container shipments as well as to shipments of dry bulk cargo.

In a final chapter, we offer a checklist for you, the importer and exporter, of key principles that relate to your cargo policy and how to avoid pitfalls. We then provide you with a checklist of the procedures that should be followed in the event of a 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 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 often 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 dependent 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 you, the cargo owner, on the one hand, and the insurer on the other. Hence, both parties, insurer and insured, are legally bound by its terms and conditions. Most of the terms and conditions to be found within an open policy 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.