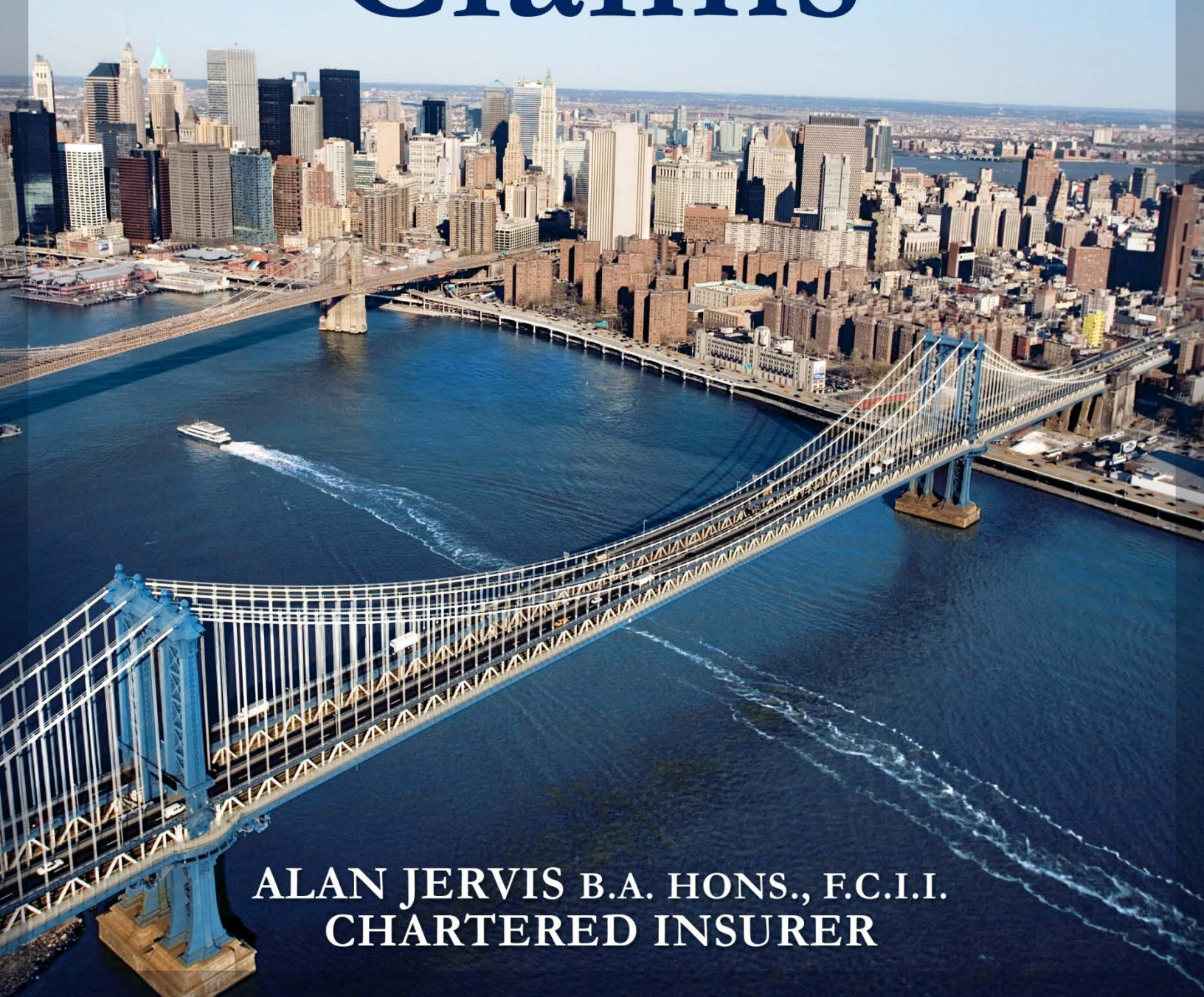




— AMERICAN INTERNATIONAL FREIGHT —
FORWARDER INTRODUCTORY GUIDE TO

Marine Cargo Claims



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

American International Freight Forwarder Introductory Guide

to

Marine Cargo Claims

By

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

1st Edition – 2015

© 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.

Website: www.marineinsuranceexpert.com

Table *of* Contents

About the Author.....	6
FAQs.....	7
Chapter One: Welcome to the World of Marine Cargo Claims!	15
Introduction.....	16
Marine Cargo Claims: A Unique Field of Insurance!	17
Chapter Two: The Players.....	20
Introduction.....	21
The Insured Importer or Exporter.....	21
Freight Forwarder	22
Ocean Carrier.....	23
Airline	24
Trucking Companies.....	24
Railway Companies	26
Insurance Broker.....	27
Insurance Company.....	29
MGAs	30
Reinsurers.....	30
Insurance Company Survey and Claims Settling Agents	30
Marine Surveyor	31
Average Adjusters	32
Attorneys.....	33
Chapter Three: Types of Cargo Claim.....	34
Types of Cargo Claim.....	35
Actual Total Loss of Cargo.....	35

Constructive Total Loss of Cargo.....	35
Particular Average Damage	36
General Average.....	36
Chapter Four: What is Covered and What is not Covered!.....	37
The Open Cargo Policy.....	38
Losses Covered under AIMU Cargo Clauses 2004 – FPAAC – American Conditions.....	38
Losses Covered under the AIMU Cargo Clauses 2004 – FPAEC – English Conditions.....	39
Losses Covered under the AIMU Cargo Clauses 2004 – With Average (WA)	40
Losses Covered under the AIMU Cargo Clauses 2004 – All Risks	40
Excluded Losses under the AIMU Cargo Clauses 2004.....	41
Burden of Proof	42
Burden of Proof: Policy Terms and Conditions that may relieve the Insured	42
Chapter Five: Documents in Support of a Marine Cargo Claim.....	44
Introduction.....	45
Certificate of Insurance	45
Ocean or NVOCC (House) Bill of Lading.....	46
Air Waybill	47
Inland Bill of Lading.....	48
Commercial Invoice.....	48
Packing List.....	49
Letter of Credit.....	49
Master’s Protest	50
Delivery Receipt	50
TIR (Trailer Interchange Receipt).....	51
Letter of Intent against Carriers	52
Freight Invoice	53

Customs Form.....	53
Repair or Replacement Part Invoice.....	53
Tender for Bids and Bid Documents	53
Insured’s Statement of Claim	54
Pre Shipment Survey.....	54
Survey Report	54
Container Stuffing or Destuffing Report.....	55
Container Repair Report	55
Certificate of Origin.....	56
Phytosanitary Certificate	56
CMR Note.....	56
Destruction Certificate	56
Mandatory Claims Documents.....	57
Documents Relating to the Transportation.....	57
Documents Necessary to Establish the Extent of Loss or Damage or Quantum of the Claim....	58
Documents Necessary to Preserve Subrogation Rights and Necessary to Effect Recovery	58
Documents required where Cargo is Actual Total Loss.....	59
Chapter Six: The Stages in a Marine Cargo Claim	62
Introduction.....	63
Stage One: Reporting the claim.....	63
Stage Two: Acknowledgement of Claim and Investigation by Insurance Company or by its Overseas Claims Agents.....	63
Stage Three: Review of Claim by Insurance Company’s Claims Examiner	65
Stage Four: Adjusting the Claim	68
Stage Five: Subrogation Stage.....	68

Chapter Seven: Common Policy Clauses that Impact Adjustment of the Claim	69
Sue and Labour Clause	70
Second Hand Machinery Replacement Clause.....	70
Air Freight Replacement Parts Clause.....	71
Pairs and Set Clause	71
Cuttings Clause	71
Debris Removal Clause	71
Brands Clause	72
Chapter Eight: Examples of a Particular Average (PA) Claim Adjustment	73
Meaning of Particular Average	74
Example One: Damaged Machinery	74
Example Two: Bananas	75
Example Three: Furniture.....	76
Chapter Nine: General Average.....	77
Definition of General Average.....	78
Law Governing General Average	78
Essential Elements of a General Average.....	78
Examples of General Average.....	79
Responsibilities of Cargo Owner Following General Average.....	79
If Cargo Owner has Cargo Insurance	80
Example of General Average Adjustment.....	80
Chapter Ten: What are the Duties of an Insured Following a Claim?	82
General Duty	83
Specific Duties.....	83
What the Insured Must NOT Do.....	85

Chapter Eleven: Common Grounds on which a Claim may be Denied	86
Introduction.....	87
Grounds on which a Marine Claim Cargo Claim may be Declined.....	87
Denial of Claim due to Breach of Warranty.....	88
Policy Avoided due to Concealment or Misrepresentation.....	90
Chapter Twelve: Loss Prevention and Mitigation	91
Introduction.....	92
Containerised Cargo: Loss Prevention.....	92
Dry Bulk Cargo: Loss Prevention.....	93
Chapter Thirteen: Claims Checklist.....	94
Conclusion	95
Checklist: In the Event of a Claim!.....	95

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 International Freight Forwarder's Introductory Guide to Marine Cargo Insurance, also available as an ebook, which can be downloaded at: www.marineinsuranceexpert.com.

Our publication on 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 customer'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 nature of the coverage 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 nature of the claim. 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 the insured cargo owner following loss or damage to its cargo.

In Chapter Eleven, we discuss common grounds on which a marine cargo 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 freight forwarder, of key principles that relate to your cargo policy and how you and your customer can avoid pitfalls including 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 insurance 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, the origins of which can be traced to the days of the coffee house of Edward Lloyd, the beginnings of what is now known as Lloyd's of London.

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 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 the insured, on the one hand, and insurer, on the other. Your policy is further unique in the way it works in that you are insuring cargo on behalf of your customers. Having paid premium in consideration of marine insurance protection, your customers have a direct right of claim against your cargo policy's insurer in the event of loss or damage to their cargo. Hence, you, your customer as well as the insurer are all 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 generally of universal application and, to a great extent, are 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.