

HOW TO HANDLE A MARINE CARGO CLAIM

The successful prosecution of a cargo claim very often depends on taking early and appropriate steps to preserve and secure the claim. Most cargo interests do not take active roles in handling cargo claims particularly when their cargo is fully insured. Cargo interests should not overlook their duty to take steps to preserve their insurers' claim against the appropriate party. This paper is intended to equip cargo interests with an adequate working knowledge on the basic steps to be taken in the event of loss or damage to cargo irrespective whether the cargo is insured or not.

A. DOCUMENTATION

1. Bill of Lading;
2. Commercial Invoice;
3. Evidence of payment;
4. Packing List, if applicable;
5. Documents to prove the resale price at the port of destination;
6. Pre-loading survey report, if applicable;
7. Survey report at the port of discharge;
8. Outturn Report, etc.

B. APPOINTMENT OF KEY PERSONNEL

1. An appropriate expert;
2. A competent and experienced surveyor; and
3. An experienced lawyer.

C. PRESERVATION OF EVIDENCE

1. Full and detailed statements should be recorded from all persons involved. This is necessary as legal proceedings may take place 2 years after the accident, in which event, the recollection of the witnesses may not be so accurate.
2. Permission should be obtained from the shipowners to inspect the vessel. Inspection should take place before any repairs are effected. It is not uncommon for shipowners to resist a request for inspection, in which event, it would be advisable to obtain an Order of Court to place a surveyor and/or expert onboard.
3. Documents should also be obtained to facilitate the investigation and/or inspection of the vessel. The following documents should be obtained from the shipowners :-
 - (a) Deck log book;
 - (b) Engine log book;

- (c) Vessel's plans;
- (d) Vessel's trading certificates;
- (e) Vessel's classification records;
- (f) Vessel's maintenance records;
- (g) Vessel's records of cargo loaded onboard including stowage plans, cargo manifest;
- (h) Documents relating to repairs of the vessel;
- (i) Vessel's crew list together with certificates of competence of the ship's officers; and
- (j) Voyage reports and/or accident reports by Master.

D. IDENTIFYING THE DEFENDANT

- (a) The owner of the vessel;
- (b) The carrier under the bill of lading contract (this could include the owner or charterer of the vessel, the freight forwarder);
- (c) Berth operators including warehouse operators; and
- (d) Agents of the carrier in limited circumstances e.g. delivery of cargo without production of bill of lading.

E. CHOICE OF JURISDICTION

1. POSSIBLE JURISDICTIONS

- (a) Country where the damage and/or loss was discovered
- (b) Country where the shipowner is based
- (c) Country where the claimants are based
- (d) Country where the vessel is registered
- (e) Country where the other vessels of the shipowner regularly call
- (f) Exclusive jurisdiction clause
- (g) Foreign arbitration clause

2. SELECTION OF JURISDICTION

- (a) System of law
- (b) Cost and expense
- (c) Expertise of the judicial system
- (d) Expertise of the local lawyers
- (e) Speed in disposing of the legal proceedings

- (f) Limitation of liability
- (g) Availability of arrest
- (h) Applicable time bar

3. LIMITATION OF LIABILITY

There are 2 major Conventions which govern the limitation of liability. There are the 1957 Limitation Convention and the 1976 Limitation Convention. There are material differences in the 2 Conventions. The principal differences between the 2 Conventions are as follows :-

(a) THE LIMITATION FUND

(i) Under the 1957 Limitation Convention

Where there is loss of life/personal injury either alone or together with damage to property, the Total Fund for distribution would be $\text{NRT} + \text{Engine Room Space Deduction} \times \484.73 .

The fund for distribution to property claimants alone (Property Fund) would be $\text{NRT} + \text{Engine Room Space Deduction} \times \156.36 .

The difference between Total Fund and the Property Fund would constitute the Life Fund which would be utilized for distribution for loss of life and/or personal injury claims.

(ii) Under the 1976 Limitation Convention

In respect of claims for loss of life or personal injury, the limitation fund is 333,000 Special Drawing Rights (SDR) for a ship with a tonnage not exceeding 500 tons. For a ship with a tonnage in excess of 500 tons, the following amounts would be added :-

For each ton from 501 to 3,000 tons, 500 SDR

For each ton from 3,001 to 30,000 tons, 333 SDR

For each ton from 30,000 to 70,000 tons, 250 SDR

For each ton in excess of 70,000 tons, 167 SDR

In respect of any other claims, the fund is 167,000 SDR for a ship with a tonnage not exceeding 500 tons. For a ship with a tonnage in excess of 500 tons, the following amounts would be added :-

For each ton from 501 to 30,000 tons, 167 SDR

For each ton from 30,001 to 70,000 tons, 125 SDR

For each ton in excess of 70,000 tons, 83 SDR

However, where the Life Fund is insufficient to pay the claims in full, the Property Fund shall be available for payment of the unpaid balance of the life and/or personal injury claims and such unpaid balance shall rank rateably with the other claimants.

In respect of passenger claims, there is a special regime to govern the limitation fund. The limitation amount is calculated by reference to the number of passengers and not the tonnage of the vessel. The limitation is 46,666 SDR x the number of passenger which the ship is authorised to carry according to the ship's certificate but not

exceeding 25,000,000 SDR.

(b) **TEST FOR BREAKING LIMITATION**

(i) **Under the 1957 Limitation Convention**

The shipowner will be deprived of the right to limit under the 1957 Convention if it could be proved that the loss arose as a result of the actual fault or privity of the shipowner.

(ii) **Under the 1976 Limitation Convention**

The test under the 1976 Convention is much more difficult to break. The shipowner will only be deprived of the right to limit if it could be proved that the loss resulted from his personal act or omission committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

CONCLUSION

I hope this paper has given you an adequate working knowledge as to the steps which should be taken in the event of loss or damage to cargo. Taking early step is often the most effective way to minimise loss.