

Handling cargo claims
Carriage of goods by sea, land and air
(9 & 17/6/2004)

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To: Transport Industry Operators

19 April 2004

Seminar – 9/6/2004

**Handling cargo claims
Carriage of goods by sea, land and air**

The freight forwarders are usually providing one stop door to door services. Such would involve the use of different modes of transport & multiple handling and also various local & overseas agents & subcontractors. It is unavoidable that some mistakes, omissions or misconducts will be made by the forwarders' employees, agents or subcontractors. As a result, the forwarders have to handle many claim cases (e.g. cargo damage, losses, delay, misdeliveries or misdirection). In order to properly assess their liability, the forwarders need to study the transport contract terms (e.g. HB/L, OB/L, HAWB and MAWB), international transport conventions (e.g. Hague Visby Rules and Warsaw Convention) and also the claim supporting evidence (e.g. independent survey report and cargo commercial invoice & packing list). This may not be a too easy job for the forwarders. Moreover, the forwarders still have to negotiate with the claimants and also take recourse action against the liable parties.

As part of our transport risk management services to the transport industry, we will hold a seminar about the basics of handling cargo claims related to carriage of goods by sea, land and air. The details are as follows:

1. Date : Wednesday, 9th June, 2004 (10:00am – 12:00noon)
2. Venue : The Hong Kong General Chamber of Commerce - Theatre, 22/F., United Centre, 95 Queensway, Hong Kong.
3. Speaker : Mr Richard Chan
4. Language : Cantonese
5. Fee : HK\$100 per person
6. Outline : Accident occurrence, notification, survey investigation & cargo insurance
: Claim supporting document & information collection
: Forwarder liability assessment
: Claim negotiation, settlement & reimbursement
: Recovery action against liable parties
: Loss prevention

Please fill in the attached enrollment form and send it to us with your cheque for payment of the attendance fee.

Yours faithfully

For and on behalf of

SUN MOBILITY INSURANCE AND CLAIMS SERVICES LIMITED

Richard Chan
Director
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Simon Chan
Director
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To: Transport Industry Operators

5 May 2004

Seminar – 17/6/2004

**Handling cargo claims
Carriage of goods by sea, land and air**

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As part of our transport risk management services to the transport industry, we will hold a seminar about the basics of handling cargo claims related to carriage of goods by sea, land and air. The details are as follows:

1. Date : **Thursday, 17th June, 2004 (3:00pm – 5:00pm)**
2. Venue : The Hong Kong General Chamber of Commerce - Theatre, 22/F., United Centre, 95 Queensway, Hong Kong.
3. Speaker : Mr Richard Chan
4. Language : Cantonese
5. Fee : HK\$100 per person
6. Outline : Accident occurrence, notification, survey investigation & cargo insurance
: Claim supporting document & information collection
: Forwarder liability assessment
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: Recovery action against liable parties
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Yours faithfully

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Seminar – 9 & 17 June 2004

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One Stop Services

Freight forwarders are usually providing one stop door to door services. Such would involve the use of different modes of transport (by sea, land and/or air) & multiple handling (e.g. stuffing, unstuffing, loading and unloading) and also various local & overseas agents & subcontractors (e.g. CFS, CY, shipping companies, trucking companies and airlines). It is unavoidable that some mistakes, omissions or misconducts will be made by the forwarders' employees, agents or subcontractors. As a result, the forwarders have to handle many claim cases e.g. cargo damage (e.g. sea or fresh water damage, crush damage), losses (e.g. theft, robbery, overboard), delay, misdeliveries (e.g. release of goods without B/L) or misdirection, customs fines.

Accident Occurrence, Notification & Survey

Unfortunately, an accident has happened e.g. cargo loss, damage, delay, misdirection, misdelivery; general average or salvage; error or omission; customs fines. The forwarder should at once notify its transport liability insurer. Survey investigation should then be conducted to verify the cargo loss, damage and its extent (also in money terms). The surveyor should also find out the possible causes of cargo loss, damage and whether there is any defence e.g. cargo inherent vice or insufficient packing and whether there are any other parties liable e.g. CY, CFS, warehouse, haulier, shipping company or airline. Such would be useful for handling the claim properly in future.

Cargo Insurance

The shipper and consignee should be encouraged to claim against their cargo insurance for quicker & fuller compensation (usually 110% insured value). This would also lessen the commercial pressure on the forwarder. It is common to hear an angry shipper or consignee threaten to stop all new business unless the forwarder pays the cargo claim in full immediately. This difficult situation could be avoided when the cargo owner has bought the cargo insurance and received the fuller and quicker compensation from the cargo insurer. Thereafter, the



cargo insurer may take the recovery action against the forwarder.

Document & Information Collection

Before a forwarder knows whether to pay and how much to pay in a cargo claim, it needs to get some supporting documents to make the decision. It has to look at the contract with its clients e.g. HB/L, HAWB, FCR, CTD and STC if the claimant is one of its clients. If the claimant is a cargo insurer, it has to produce the subrogation letter to prove that it already got the cargo owner's rights after making compensation in accordance with the cargo insurance policy. Forwarders always think that they can have recourse action against their sub-contractors. Although this does not always materialise, it sometimes does succeed. However, some documents like OB/L, MAWB or charter party have to be examined to see what the contract terms with the sub-contractors are. The survey report as mentioned above will be useful in determining the extent of cargo loss or damage, considering the possible defences and identifying the liable party. The claimant has to submit cargo commercial invoice to prove its claim amount. Forwarders should also ask for cargo packing list. One use of this is for calculation of liability limitation amount which is usually based on weight or package. Stuffing and devanning reports should be collected, if available. However, they are usually self-serving documents i.e. they usually are written in a way to protect the interests of the party issuing the reports and therefore do not have much use in determining the liability.

Liability Assessment

With the necessary documents and information collected, we come to the important stage of liability assessment.

Any fault

The first important question is “Is there any fault, omission or negligence on the part of the forwarder's servants, agents or sub-contractors?”. If negative (e.g. act of God, force majeure, improper or insufficient cargo packing, or inherent vice of the goods), the forwarder should reject the claim.

Suit time limit

The next very crucial issue is “Has the claim been time-barred?”. If yes, the forwarder should reject the claim. Suit time limit is the period of time within which legal action must



be commenced. Once this has expired, the claim is no longer protected by law & court no matter how strong its merits are. Further dealings with the claimant in an already time-barred claim may risk the forwarder being held as having waived the time-bar defence. Three month suit time extension is usually granted by the forwarder upon the claimant's request if the claim has not yet been time-barred. However, the forwarder should first obtain suit time extension from the shipping company, airline or other sub-contractors. Otherwise, this may give rise to an unfavourable situation that the claim against the forwarder is still valid whereas the forwarder's indemnity claim against the liable subcontractor has already been time barred. Forwarders usually have 9 month suit time limit in their contracts. However, such is sometimes overruled by international conventions' suit time limits e.g. Hague Visby Rules (1 year) or Warsaw Convention (2 years).

Notice time limit

The other time limit is the notice time limit which is the period of time within which the claim notice must be sent to the carrier. Warsaw Convention has the notice time limit of 14 days for cargo damage and 21 days for cargo delay, failure to comply with which will allow the carrier to time-bar the claim. However, other Conventions' (e.g. the 3 day notice time limit under the Hague Visby Rules) or contractual notice time limits usually could not really time-bar a claim. Failure to give the claim notice will give the carrier the prima facie evidence that the goods have been delivered in good order and condition. However, such prima facie evidence can be rebutted by some other better evidences e.g. an independent Surveyor's report proving the cargo loses or damage.

Law & jurisdiction

Another defence may be the law and jurisdiction clause in the contracts e.g. B/L or AWB stipulating the claims against the carriers must be determined by a particular country's laws and courts. However, many countries' courts do not recognise such kind of foreign law & court clause. Anyway, it is still better to have it in contracts as this sometimes may help the forwarder stay or dismiss a court case which is commenced in a wrong forum.

Liability limitation

If all the above cannot help the forwarder to avoid liability in a particular claim case, then there is a last hope of limiting its liability. For example, it is very common to see a liability limitation of US\$500 per package or US\$2 per kilogram of gross weight of the goods lost or damaged for the contract of carriage of goods by land. Warsaw Convention governing



international air carriage would limit the carrier's liability to about US\$20 per kilogram. Hague Visby Rules relating to international carriage by sea would limit the carrier's liability to about US\$1,000 per package or US\$3 per kilogram whichever is the higher.

Burden of proof

On the question of burden of proof, the rule is usually that the party which puts up an argument has the burden to submit the evidence to prove it.

Negotiation

After assessing whether the forwarder in a claim case has liability or not, there comes to the negotiation stage. The forwarder should mark "Without Prejudice" on its correspondence with claimant. In brief, this means the fax or the letter is without prejudice to the question as to liability and should not be disclosed to the court by the claimant without the forwarder's prior approval.

Settlement

The forwarder should make no liability admission or settlement agreement unless with its transport liability insurer's prior approval. Otherwise, the transport liability insurer may decline to cover the claim case. Settlement offer should include an expiry date for claimant's acceptance e.g. 14 days. Any claim settlement should be on full & final basis and conditional upon claimant's agreement to issue a Release/Indemnity letter to forwarder.

Reimbursement

The liability insurer reimburses the forwarder the agreed settlement amount subject to the deductible & limit in the insurance policy.

Recovery

If there is enough evidence, the recourse action should be taken by the forwarder together with its liability insurer against liable parties, usually the subcontractors e.g. CY, CFS, warehouse, haulier, shipping company or airline. If successful, this will improve the claim record & reduce the loss ratio of the transport liability insurance and hopefully will maintain the renewal premium at an acceptable level. However, it is often quite difficult to get sufficient evidences to claim a particular party e.g. a forwarder issued its CFS/CFS HB/L whereas shipping company issued its CY/CY OB/L, the forwarder usually would not have



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enough evidences to pinpoint which subcontractor had caused the cargo loss or damage; and thus the indemnity claim has to be dropped after the forwarder has paid the claim to the claimant.

Loss Prevention

The transport liability insurance should be for contingency purpose. If a forwarder has too many claim cases, such would increase its transport liability insurance premium (in other words, the operations costs or competitiveness would be adversely affected) and also damage its image and reputation. The long-term solution should be “to prevent loss from occurring”. It is not difficult to name a few measures: learn lessons from own and others’ mistakes; remove loopholes from existing system; provide staff with more and better training; use professional & reliable agents & subcontractors which have bought transport liability insurances. Lastly, having contract terms that reasonably exempt and limit liability is also a very important measure to reduce the forwarder’s loss even if an accident really happens. Otherwise, forwarders have to face the full claim amount without any chance to limit or exempt liability once it is proved that there has been negligence on the part of forwarders, their servants, agents or sub-contractors.

Richard K. W. Chan (richardchan@sun-mobility.com)
Sun Mobility Insurance and Claims Services Limited

9/6/2004 & 17/6/2004



Seminar – 9 & 17 June 2004

**Handling cargo claims
Carriage of goods by sea, land and air**

	<u>Sea</u>	<u>Land</u>	<u>Air</u>
	<u>Hague Visby Rules</u>	<u>Contracts</u>	<u>Warsaw Convention</u>
Suit time limit	1 year	9 to 18 months	2 years
Claim notice time limit	3 days	3 to 14 days	14 days for damage, 21 days for delay
Carrier's liability limitation	About US\$1,000/package or US\$3/kg, whichever the higher	US\$500/package or US\$2/kg	HK\$135/kg or US\$20/kg