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To: Transport Industry Operators

Uncollected cargoes

We recently have received a lot of uncollected cargo claim cases from our forwarder clients, which have kept our 6 claim handlers very busy. We would like to take this opportunity to talk about this troublesome problem of uncollected cargoes. Actually, the forwarders have been facing this real headache in at least these two decades.

Container demurrage

It is common to see the shipping companies are charging the container demurrage at about US\$100/day/20' container and US\$200/day/40' container. Accordingly, one month of uncollected cargoes will result in container demurrage of US\$3,000 (for a 20' container) and US\$6,000 (for a 40' container). Such are even more than the value of the containers (say US\$2,500 for a new 20' container and US\$4,000 for a new 40' container). Accordingly, one year of uncollected cargoes may easily lead to container demurrage of US\$36,000 (for a 20' container) and US\$72,000 (for a 40' container). Hence, the crux of the uncollected cargo problem lies in the container demurrage. The higher the container demurrage, the lower the chances of taking delivery of the uncollected cargoes. The end result is: the uncollected cargoes remain being uncollected...

Consignees

As the consignees do not come forward to take cargo delivery, the forwarders will not have any contractual relationship with the consignees. Under the HB/Ls, the shippers ask the forwarders to carry the cargoes for delivery to the consignees. The contracts of carriage under the HB/Ls are just between the shippers and the forwarders (NVOCs) until the consignees present the HB/Ls to the NVOCs to take cargo delivery. Therefore, the forwarders as NVOCs basically have no contractual right to claim against the consignees for the extra costs resulting from the uncollected cargoes.

Shippers

From our observation, around 50% of the shippers take more or less no action and basically leave the forwarders to face with the problem of uncollected cargoes. Another 50% of the shippers use different ways to delay the matter e.g. keep telling the forwarders they are discussing with the consignees or finding new buyers, ask the forwarders to do return shipment quotations... But the result in the end will be more or less the same: the cargoes still remain uncollected after e.g. 6 months or even one or two years. Moreover, the shippers will not agree to pay any uncollected cargoes' extra costs. Many of the shippers will simply disappear in the end.

Forwarders' liability

The shipping companies will claim against the forwarders based on the MB/Ls for all the extra costs resulting from the uncollected cargoes e.g. container demurrage, terminal storage fees... The forwarders being the shippers / consignees under the MB/Ls in principle have to assume liability to the shipping companies for the actual losses suffered by the shipping companies.

Container daily rental v container demurrage

It is well known in the shipping industry that the container leasing companies will not charge more than US\$1/day or US\$2/day for a 20' container, or US\$3/day or US\$4/day for a 40' container. Moreover, it is very common that the shipping companies in fact do not hire any substitute containers from the container leasing companies to temporarily replace the containers involved in the uncollected cargoes. The shipping companies may therefore suffer the actual losses of only US\$1 or US\$2 per day, or US\$3 or US\$4 per day, or even no actual losses. The container demurrage of say US\$100 or US\$200 per day will not be the shipping companies' actual losses but only something based on some penalty clauses (even on the assumption such container demurrage rates have really been agreed by the shipping companies and the shippers), which should be legally invalid and unenforceable.

Uncollected cargo sale or disposal

It is important that the HB/Ls should have contract terms providing the contractual right for the forwarders to sell or dispose of the uncollected cargoes e.g. after giving a 14-day warning notice to the shippers and the consignees. If HB/Ls do not have the contract terms giving the forwarders the contractual right of sale or disposal of uncollected cargoes, the forwarders will need to apply to court for an order allowing the forwarders to sell or dispose of the uncollected cargoes in order to avoid cargo conversion liability. No matter it is by means of the HB/L contractual right or the court order, the sale or disposal of the uncollected cargoes should be done by public auction in order to prove that the sale proceeds obtained is fair and reasonable.

Cargo Conversion

Since the forwarders are not the owners of the cargoes, the forwarders have no legal right to sell or dispose of the uncollected cargoes. If the forwarders (without any HB/L contractual right or court order) still proceed to sell or dispose of the uncollected cargoes, the cargo owners may sue the forwarders for conversion and the court may hold the forwarders fully liable to compensate the cargo owners based on the full value of the cargoes.

Loss prevention

The forwarders should know the shippers and the consignees well before doing business with them. It is important that the forwarders should have good HB/L contract terms as a sword (giving the forwarders the contractual right to sell or dispose of the uncollected cargoes) and as a shield (defending the forwarders against the cargo conversion claims from the shippers and consignees). Moreover, the forwarders should use the penalty clause argument to fight against the shipping companies' container demurrage claims. Lastly, the forwarders should transfer the risks to the transport liability insurers covering the forwarders for the uncollected cargoes' extra costs and the cargo conversion liability.

Please feel free to contact us if you have any questions about the uncollected cargo problems.

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