

Damage and claims to cargo law commercial essay

Law



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8. 1 INTRODUCTION In this chapter the principles in dealing with cargo damage and claims are examined. The same principles which apply to hull and machinery damage are applicable to cargo damage. However, the processing of claims is different in some aspects, due to losses not encountered in hull and machinery claims; for example, theft, pilferage and non-delivery, etc. For more details, (3). In the subsequent paragraphs, some of the principles are examined.

8. 2 INSURABLE INTEREST They are of major importance in dealing with cargo claims and also in dealing with recoveries for third parties. Under normal terms of sale, whether free on board, cost and freight or cost insurance and freight or variations of these terms, the duty of the seller is to send the requisite goods to the ship and place them on board; there may be minor variations to this duty in particular trade, other countries or with particular contracts. Until this is done the seller has not complied with his contract. It follows that if there is loss or damage in transit to free on board, the seller will suffer and not the buyer; that is, the seller has an insurable interest, the buyer has not. Again, under normal terms of sale the seller has fulfilled his necessary duties when he places the goods on board. He can then assemble the documents, including the set of bills of lading which show the goods have been received on board and present them to the buyer in conformity with the contract of sale. Primarily, the risk of transit from the time when placed on board rests with the buyer who then has the risk of the goods and who is bound in conformity with the contract to accept the documents and pay the agreed price, even though the goods may have been lost or damaged between the time the goods went on board and the time of presentation of the documents representing the goods. Under a "

pure" contract of sale the ownership of goods would pass to the buyer as from the time they were loaded onto the ship. In practice there is unlikely to be such a contract; the seller naturally wishes to retain the security of the goods until he has payment or at least the legal promise to pay.

Nevertheless, he has the legal right to require the agreed payment once the goods are on board and against presentation of the documents. It follows that a buyer has the expectation of acquiring insurable interest as from free on board where the contract of sale is on free on board or cost and freight terms. He will normally arrange to insure such interest but it must be understood that his insurance can only be valid if, in fact, he has an interest at the time of loss, in cases where goods are insured " G. I. F." or Warehouse to Warehouse, where there is common ground between assured and underwriters. No policy is enforceable unless there is a valid interest; if the buyer has, properly or otherwise, refused to accept the goods (or the documents representing them) he cannot claim under his policy since he lacks insurable interest. The position is basically the same under a cost insurance and freight sale since that here there is throughout the intention that insurance cover for the whole voyage shall be effected by the seller and assigned to the buyer. The assignment under a policy " Warehouse to Warehouse" enables the buyer to recover for losses which occurred even before the goods were placed on board. In general, under free on board and cost and freight sales, the seller will insure the transit to free on board and the buyer the remaining transit, each in his own name. This has its dangers for the seller. If after putting the goods on board he presents the documents and the buyer refuses to accept them, the goods will be effectively

uninsured. The buyer's policy cannot apply since the buyer will acquire to insurable interest; the seller's interest policy which will extend to cover the goods until the buyer takes up the documents, becoming the owner of the goods and retrospectively accepting the risk from free on board. The 'seller's interest' policy becomes of no effect when the buyer accepts the documents; it is designed merely to safeguard the security of the goods while their ownership remains with the seller. The policy is not assignable and is sometimes called a contingency insurance.

8. 3 MEASURE OF INDEMNITY

The measure of indemnity is for the proportionate part of the insured value. Where the cargo of part thereof, is damaged the depreciation is assessed by comparison of the arrived sound and damaged values. This percentage depreciation is applied to the insured value of the cargo, or part thereof, involved to give the measure of indemnity. The need to consider values at destination arises from the fact that the purpose of the voyage is to bring the cargo to its destination – no other comparison can adequately indicate the effect to the damage upon the goods. The values of cargoes, whether consisting of manufactured goods or those products which are, and have always been, the life blood of commerce, are not stable. They are affected by the laws of supply and demand which in turn are influenced by circumstances and events entirely dissociated from any particular cargo. For instance, the outbreak of war, or even a sudden increase in international tension, will tend to increase demand for certain commodities. The effect will be uniform or necessarily world-wide. It is perhaps only as approximation that an increase in the value of goods will give a corresponding increase in the value of a similar type of damaged goods. Yet, if so, it is the best

available yardstick, so that in practice the comparison between such values will give a fair measure of depreciation. These arrived sound values are to be based on gross values, duty paid since for sound goods; that is, the price which a seller at destination would expect to receive, knowing throughout that to achieve that price would necessarily involve disbursement of various costs and expenses in addition to the duty payable. Where, however, under norm market arrangements goods are bought and sold in bond, the bonded values are used. In such cases the goods may be held at destination without payment of duty until such time as they are cleared from the bonded warehouse in which they are stored; this will be done by the final buyer. The Act clearly provides that where cargo is delivered in specie but is unidentifiable by reason of obliteration of marks or otherwise, the loss is particular average and not total loss. This can produce difficulties in practice, notably in recent years in connection with jute cargoes. That commodity often forms a substantial part of parcel cargoes from Bangladesh; it is also a serious fire risk. Where fire occurs, the result may well be that the wrapping of many bales may be burnt, the marks obliterated or the bales broken open, in the fire or in handling the bales broken open, in the fire or in handling the bales during fire-fighting, and infrequently a mass of sound and damaged material of different types and parcels largely unidentifiable will remain, (see Appendix E, example 1). Eventually, and after sorting as far as possible, the goods will be sold and the proceeds apportioned between the owners of the bales not delivered according to the mark. As a result there will be very considerable periods during which an assured is without his goods and without any assessable claims under his policy. Moreover, the almost

inevitable declaration of general average will further introduce complications. To some extent the apparent hardship is avoided by the agreement of underwriters to make 'payments on account' but there is a very definite problem for merchants and for underwriters. It will also be appreciated that this commodity is frequently the subject of 'increase value' provisions in the Institute Jute Clauses has eased the position to a degree, but goodwill on both sides is essential to deal adequately with the situation.

8. 4 INCREASED VALUE POLICIES AND CLAUSES

Increased Value Policies
The value of cargo during a voyage is not static. Apart from the expenses incurred en route, which add to the cost of commodity, the principle of supply and demand operates. The cost of raw materials in particular will vary. There is always a market for goods in course of shipment and parcels of cargo are frequently sold and resold after shipment. Where such sales occur the original basis of valuation which may be cost insurance and freight plus 10% while satisfying the original seller may not be sufficient for the subsequent buyer, and the need for further additional insurance on the same cargo will be necessary. Where an increased value policy is effected with a different underwriter, the original policy will not be affected unless an endorsement is made in both; the original policy agreeing that a certain value is the value of the goods, binds the assured and those to whom he assigns his rights. It follows that if a loss occurs and recover from the proceeds of damaged goods will be due to the original underwriter, and no claim can be made by the increased value to the underwriters to any proportion thereof. Equally, the expenses relating to the cargo of a sue and labour or special charges nature will be claimable from the original

underwriter. b. Increased Value Clauses Many of the trade clauses incorporate a special increased value clause by which any increased value insurance becomes part of a total insurance comprising the original and any increased value insurances placed. Where other increased value insurances are placed they are usually on terms 'to pay as cargo'; that is, they pay the same proportion of loss as is paid by the original policy. Note that the original policy only pays survey fees and expenses, including the sue and labour, particular and special charges, but also is due to receive rights of subrogation relating to the cargo since the original valued policy incorporates an agreement between assured and underwriter that the cargo value is the value stated in that policy, (see Appendix E, example 2).

8. 5 DOCUMENTS FOR CARGO CLAIMS

The following are the documents which require to be presented as proof of loss when a cargo claim is being presented. The policy will be required in all cases. It will be retained in the case of total loss but endorsed and returned in other cases. A copy of the bill of lading suffices, but in the case of total loss, the full set of 'shipped' bills would be required since these are documents of sale. The invoice should indicate the terms of sale and thereby the insurable interest of the claimant. It also indicates the value of the goods and thus can prove that there was no over-insurance. Form of subrogation. This document is completed by the assured following the payment of a loss under the policy. It makes clear to the assured the legal position that the insurance company is entitled to any recovery from a third party and also give the insurance company the right to sue and take legal proceedings in the name of the assured. The survey report is a most important document. It indicates not only the facts

concerning the loss but also the whole outline of the voyage. The surveyor is not concerned whether or not the loss forms a valid claim; he is a disinterested third party whose duty it is to state the facts and to assist in minimizing the loss on behalf of all concerned.