i-notes

Newsletter from India's Leading Insurance Broking House

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Issue # 53

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- Claims Case Study - Inherent vice in Marine Cargo Insurance

india insure

The risk managers

Message from the Editor

Dear Readers

We bring this issue of *i-notes* to you with abundant pleasure.

It is stated that the Chennai floods is one among the top eight natural disasters of the world during the year, 2015. The devastating floods in Chennai during November/ December, 2015 has resulted in the Insurance Companies taking a hit to the extent of approximately Rs, 5,000 crores. It has to be seen whether these losses would have an impact on the premium rates for Motor and Property Insurances. The reinsurance programs of General Insurers in India may get affected and they may even witness some changes in the terms of coverage, especially when it comes to facultative placements is what Industry watchers forecast.

All of us would, definitely, appreciate that Marine Cargo Insurance is woven with quite a lot of intricacies and a clear understanding of the same is required in this modern era of trade and commerce. Be it the Insurers or the Insurance Brokers or the Insurance Agents, they need to suggest the right Marine Cargo Insurance Cover linked to the actual requirement of the client. There are a lot of minor but critical points that a Cargo Owner needs to consider before purchasing a Marine Cargo Insurance policy. These points not being considered, actively and appropriately, may leave the Cargo Owner in a quandary in case of a loss or damage due to Marine perils.

The focus article in this issue is Marine Cargo Insurance. Efforts have been made to present this article in very simple and easily comprehendible words. A Case Law, wherein the peril of Inherent Vice, was agitated upon is also being discussed.

I place on record my thanks to Mr. Madhusudhan Lahoty of Future Generali India Insurance Company Limited for offering his views on 'Marine Clauses and Claims' in the Interview section of this issue.

In the second part of the Interview section, Mr. Avya Kapoor of Cunningham Lindsey International Insurance Surveyors and Loss Assessors Pvt. Ltd. has expressed himself on 'Changes in Marine Claims process and handling'. I thank Mr. Avya Kapoor for the same.

With regards,

V G Dhanasekaran
Editor - *i-notes*

Marine Cargo Insurance

Cargo losses from China port explosions to be at least $1.5 billion: Report – Economic Times, 15 Dec., 2015

Freak road mishap hits big power project – Times of India, 13 Aug 2009

U.S. cargo ship El Faro sinks with 33 aboard near Bahamas – mercurynews.com, 5 Oct., 2015

9-hr fire hits cargo ship docked in Manila –philnews.org, 12 Sep., 2015

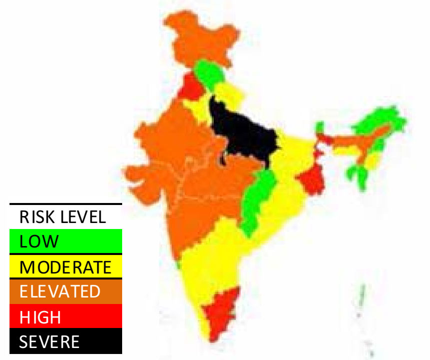
Since time immemorial, merchants engaged in maritime commerce have explored ways to minimize the impact of threats to their trade presented by natural and man-made perils. The onslaught of the perils of the sea often caused the total loss of ships and their cargoes, or inflicted extensive damage before goods reached their destination. Man-made perils came in the form of warships and pirates.

Marine Insurance is the oldest form of insurance in the world. The earliest records of a marine insurance policy relates to a Mediterranean voyage in 1347. Marine Insurance spread from Italy to trading routes in other countries of Europe. In the 17th century, London's importance as a trade centre led to an increasing demand for ship and cargo insurance. Edward Lloyd's coffee house became recognized as the place for obtaining marine insurance and this is where the Lloyd's that we know today began.

Insurance in India has evolved over time heavily drawing from other countries, England in particular. The Marine Insurance Act had been passed in 1963 in India. Over the years, many different types of risks have been covered by marine insurance, but traditionally a Marine cargo policy covers the loss or damage to goods during transit by rail, road, sea or air. Upon request, dispatches through courier/registered post are also covered.

Merchandise Exports vs. Cargo Premium Volume*

India: Cargo Theft Incidents Statistics 2014*



*From 2008: China Figures included

** From 2010: Latin America (Brazil from 2006), Middle East and Non-IUMI Asian figures included

Premium in 1.000.000 US $

Source: WTO / IUMI

(Contd... 02)

Marine Cargo Insurance .... Contd. # 1

INSTITUTE CARGO CLAUSES

Institute Cargo Clauses are clauses attached to the marine insurance contract which specifies what risks are covered should there be damage or loss to the shipment.

There are three basic sets of institute cargo clauses; A, B, C. The widest cover is provided under Institute Cargo Clauses A and a more restrictive cover under Institute Cargo Clauses B and Institute Cargo Clauses C.

The ICC (A) clause states that "This insurance covers all risks of loss of or damage to the subject-matter insured except as excluded by the provisions of Clauses 4, 5, 6 and 7 below". The term 'All Risks', although very wide, does have limitations. It does not mean that all loss or damage, however it occurs, is covered. 'All Risks' covers things that happen unexpectedly or by accident or by chance (i.e. fortuitous damage). It does not cover things that are inevitable or almost certain to happen or things that would be within the control of the Assured to prevent.

The below table depicts the coverage provided under ICC - A, B & C.

Loss / damage to the subject matter insured reasonably attributable to /caused by:

1. Fire or Explosion;
2. Vessel or craft being stranded, grounded, sunk or capsized.
3. Overturning or derailment of land conveyance;
4. Collision or contact of vessel craft or conveyance with any external object

C

5. Discharge of cargo at a port of distress;

B

6. General Average Sacrifice;
7. Jettison;
8. General Average and Salvage Charges
9. "Both to Blame" Clause

A

10. Washing overboard;
11. Earthquake, volcanic eruption or lightning.
12. Entry of sea, lake or river water into vessel, craft, hold, container
13. Total loss of any package lost overboard or dropped whilst loading/unloading
14. Any other risk not specifically excluded in the policy or the clauses

    Exclusion extra (Malicious Damage) under B and C

    "Deliberate damage to or deliberate destruction of the subject matter insured or any part thereof by the wrongful act of any person or persons."

TYPES OF CARGO INSURANCE POLICIES

There are different kinds of cargo policies which are explained below:

Specific Policy

The Marine Specific Voyage policy insures cargo against risks involved in a specific voyage. As and when a shipment has to be sent, the insured approaches the insurers and purchases a policy insuring that particular shipment against transit risks. For a specific policy, the cover starts with commencement of transit and ends when the goods reach the final destination.

Marine Open Policy

A Marine Open policy for Inland Transits is linked to the Sum Insured covered under the policy. The Sum Insured gets depleted based on the transits periodically declared and there is a refund of premium to the Insured at the close of the policy period relative to the unutilized Sum Insured. In a Marine Open Policy for Exports/Imports (popularly known as Marine Open Cover), every transit is declared to the Insurer and a Marine Certificate is issued by the Insurer after debiting the Deposit Premium Account maintained by the insured with the insurer.

Sales Turnover Policy (STOP)

The Marine Sales Turnover policy covers a company's sales turnover unlike the other marine open policies which cover the value of goods to be insured. The company's annual estimated turnover forms the Sum Insured and all a company needs to do is to provide sales turnover figures periodically to the insurance company (usually monthly/quarterly).

The Marine Sales Turnover policy (STOP) is a single policy issued for all kinds of Transit including inland transit of raw materials or finished goods, customs duty, transits to and from job works, inter-depot transfers, export and import as also Purchase or Sales returns, thus saving the insured the hassle of multiple declarations. STOP is an open policy without periodic declarations in the actual sense of the term.

The premium rate is arrived at considering the total number of transits taking place including the inward outward movement and the rate is applied on the Annual sales turnover and is hence marginally higher than the standard marine policies. An added advantage of this policy is that it is generally on "All- Risks" basis; cover for War and SRCC (as applicable) being inbuilt.

ADVANTAGES

- Seamless cover with all movement of goods automatically covered.
- No hassles of submitting periodical declaration of transits to the insurer. Only monthly/ quarterly sales figures need to be submitted.
- Premium on full annual sales turnover need not be paid in advance. Facility for payment of premium on half-yearly / quarterly basis.

Special Storage Risk Policy

This insurance is granted in conjunction with an open policy or a special declaration policy. The purpose of this policy is to cover goods lying at the Railway premises or carrier's Godown after termination of transit cover under open or special declaration policies but pending clearance by the consignees. The cover terminates when delivery is taken by the consignee or payment is received by the consignor, whichever is earlier.

Sales Turnover Policy (STOP) vs. Marine Open Policy

STOP	Marine Open Policy
Payment of premium is on half yearly / quarterly basis	Payment of premium is at the time of policy inception
Inter depot transfers are covered	Inter depot transfers are not covered automatically
Tail end risks are covered on 'All risk' basis	Tail end risk are covered on ICC B basis
Single policy is issued for all kinds of Transit	Separate policies, at times with different policy periods issued for various kinds of transits like raw materials, stock-in-process and finished goods.
Only single monthly/quarterly sales figures need to be submitted	Declarations to be submitted for every transit on monthly basis
Insured does not need to track any sum insured except the actual sales figure	Insured has to keep a track of various sum insured under various policies

(Contd... 04)

Interview - *Insurer*

In this issue, we speak to **Mr Madhusudan Lahoty,** Sr Manager, Marine Cargo Underwriter, Future Generali India Insurance Company Limited on their views on 'Marine Clauses and Claims'.

The clauses in an insurance contract have always remained a very challenging thing - for the underwriters to frame, and for the insured to understand. In the domain of marine insurance, it is even more intriguing. What is your take on this?

Marine Insurance is international in nature. Hence, clauses are decided internationally and then countries incorporate the same by way of amending the Marine Insurance Act. This definitely adds to the intrigue and challenge.

How has the frequency and severity of marine insurance claims changed over the past few years? Which is the industry from where the maximum numbers of claims arise?

With increase in containerization and palletisation there has been a decline in damage claims. However, surprisingly, theft and pilferage claims have not shown a declining trend. It is difficult to classify claims industry wise, but white goods would probably be the most claim prone industry. Project cargo claims remain one of the major concern areas.

Pricing in marine cargo insurance continues to be irrational. How long do you think this trend would continue and what is the impact this has had on the Indian Insurance industry?

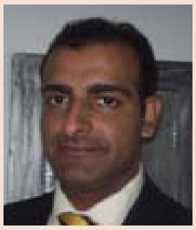
Pricing is a factor of capacity available in the industry, besides other factor. Intense competition has resulted in prevalent of irrational rates in the market. This has severely eroded the margins for insurers. Sooner, rather than later one would find it difficult to place loss making portfolio and this would affect commerce as a whole.

What are the likely factors that will drive the robust growth of marine insurance in India? What are the main challenges and concerns that insurers are facing in the Marine segment today?

The economy is picking up and this would definitely boost Marine Insurance market. However pricing and Marine Risk management would be the biggest challenge that insurers would face in the coming year.

"Views expressed herein are purely personal and do not reflect the views of the Company"

Interview - *Surveyor*



In this issue, we speak to **Mr. Avya Kapoor,** Operation Manager of Cunningham Lindsey International Insurance Surveyors and Loss Assessors Pvt. Ltd. on their views on 'Changes in Marine Claims process and handling'.

From the customer's perspective; claims management is a slow, unclear process with practically no transparency. What do you believe can be done to bring in more transparency and information sharing in the claims process?

The customer needs to have processes laid down before inception of the policy. Regular trainings need to be conducted to ensure each level within the portfolio is clear about their deliverables at the time of a claim. Above all the Insurers need to be aligned with the requirement and how they would treat claims, on account of theft, pilferage, accidents, etc. This would ensure a timely service is provided by the adjuster to the Insured in a clear and transparent manner.

Has the past decade brought about any perceptible changes in the way Insurers/corporate entities are handling claims? The trend to have a surveyor panel for large accounts is catching up. Can you please share your views on this?

The last decade has seen innumerable changes in the manner in which a risk is managed and claims portfolio is treated. While, there is still a requirement to have a panel of surveyors, this is also changing, with large corporate entities, opting to have a dedicated adjusting firm appointed for all their claims on a Pan-India basis. This arrangement ensures all levels and stakeholders are in agreement with respect to the process of claims settlement to be followed. It also ensures that the service provider, such as the adjuster is dedicated to the servicing of the account as it realizes the value it brings. Entities such as Cunningham Lindsey, now prefer to act as sole surveyors on large accounts, as it shows the commitment of each stakeholders (Insurers, Insured's, Surveyors and Brokers) on the portfolio to the relationship being nurtured.

How do you rate the present claims process that is being followed by Insurers? What steps can be taken to enhance the experience of all parties concerned in the claim settlement process?

The present claims process is a historical one and stems from the age old practice of managing claims. It does not differentiate between low value frequency claims, or high value complex claims. The process in my opinion needs to be re-engineered in the times to come in order to reflect the new age of claims management. With regulators being clear on their understanding of loss management, Insurers now need to realize the need for desktop settlements for low value, frequency claims, based on a pre-agreed processes and formats.

The Insurers must also look at using technology to their advantage. Claims can be settled based on evidence gathered by adjusters using PDA devices and sent as one page reports to Insurers, with copies of documents as collected from site (again using PDA technology). This would increase, speed and efficiency of the settlement process allowing adjusters to report on more claims in the same time frame.

The clauses in an insurance contract have always remained a very challenging thing - for the underwriters to frame, and for the insured to understand. In the domain of marine insurance, it is even more intriguing. What is your take on this?

Clauses stem from experience. Bad experiences (in terms of claims) lead underwriters to become creative and develop clauses and/or warranties to safeguard their interests. However, with respect to general principal insurance remains unchanged on the risks being underwritten on the marine portfolios. Underwriters would largely change warranties to ensure the Insured's and their service providers, including transporters and C&F's act in a prudent manner to mitigate the risks.

We at CLI, India believe that, while, India is presently far from having a sound framework to deal with dispute resolution, it is slowly becoming the norm, thereby requiring all service providers to become aware of the manner in which marine transit is to be done and risks associated with marine transits are to be mitigated. Lately, we have seen transporters asking for route inspections before the movement of critical equipment. We have seen large pharma and FMCG companies asking for risk inspections on their storage and marine risks. Thus, the environment, although challenging, is paving the path for better policies and coverage's that safeguard the interests of all stakeholders.

What are the main challenges and concerns that surveyors are facing in handling Marine Cargo claims?

Marine cargo claims in our understanding is simple as coverage is usually extended on all risk basis and an incident leading to a loss is the pre-requisite. Needless to say, there are certain claims that are complex and thus need to be handled appropriately, like claims on account of skilful pilferage, mysterious disappearance and temperature excursion. However, barring such claims and complex commodities, such as coal, critical equipment, etc. documentation is the main concern that needs to be fulfilled in the present insurance environment for claims to be resolved

(Contd... 04)

Interview .... Contd. # 3

and/or settled.

Most Insurers deal with claims (low value or high value) under a pre-set matrix, requiring all information and documentation to be provided. We believe that a good surveyor should be involved and the reports should act as a certification of the loss and the extent of damage. Insurers, especially for low value claims, should not look at collecting further documentation from police or other authorities to ratify the incident. They should trust their surveyors who have been appointed to facilitate this.

Again for large corporate entities, we should consider having a sole adjusting firm deputed for all claims, and should pre-agree to the manner in which claims are to be handled and/or dealt with. Claims should be managed with minimum documentation on pre-agreed formats to ensure faster settlement time-lines and lesser agony for Insured's.

Customers have a general opinion that the surveyors, having been appointed by insurers are biased at times towards the Insurer in the assessment of a claim? Your comments please.

Surveyors are inherently meticulous. They require information and documentation to conclude their report as per the current and prevailing insurance regime. On marine cargo policies, there is little subjectivity as the policy is on agreed value basis. Hence an insured should reveal all information and trust their loss adjuster to close/ conclude the claim on merit. Again, for this the right loss adjuster needs to be appointed to ensure all aspects of a claim are addressed before the report is released to underwriters.

How do you think it would help if there is a panel of surveyors decided upon at the time of policy placement itself? Can the surveyors play a more vital role in advising customers on loss prevention and minimization in case involved before a claim?

We believe the surveyors are a critical cog in servicing insurance portfolios. At CLI, India we believe that the general perception of panels needs to be avoided and a more focused approach to partner with adjusters who are dedicated to the business and the Insured should be undertaken.

At the time of incepting the policy, all stakeholders must come to an agreement with respect to the manner in which the claims would be managed and the portfolio would be controlled. If the appointed broker and the Insured thereafter have faith in their appointed adjusters, the delivery and servicing the portfolio then should be handed over to the adjuster with low levels of interference. This would allow for all stakeholders to invest lesser time into the portfolio, and gain faster better results from the portfolio.

Statistics suggest that the need for claims adjusters is going to increase significantly. But

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Claims Case Study - Inherent vice in Marine Cargo Insurance

Background:

MNS Ltd, the Complainants were the importers of gloves supplied and manufactured in Chennai. The gloves were wrapped in bundles of 12" draft paper wrappers and then placed in cardboard cartons. The cartons were sealed and ultimately packed into 20 ft. closed-top box containers for carriage to Amsterdam. On opening the cartons, the gloves were found to be wet, stained, moldy and discoloured. They also stank.

The leather gloves were insured with the insurer under an ICC -A (all risks) policy. The insurer contended that the damage was not proximately caused by an insured peril and fell within the policy exclusion of inherent vice.

The issues:

- An important factual issue was that this emanated directly from the air present in the container when stuffed.
- Expert evidence, however, established that what occurred was that the leather, being hydroscopic, absorbed moisture from the humid atmosphere in Chennai as did the cardboard cartons. When the container arrived at Amsterdam the ambient temperature was, much lower than that within the container. This resulted in moisture condensing on the inside of the top of the container ultimately causing water droplets to fall down upon the cartons of gloves below.
- Because the Insured & Insurer were not able to reach a consensus on this, the matter went to Court.

The arguments:

The question before the Court was - what was the real or dominant cause of the damage? Insurers posited that damage ensued because the gloves were shipped containing excessive moisture.

- In the present case the insured goods were cardboard cartons of gloves. Under the warehouse to warehouse clause, the insured transit began when they left MNS's

(Contd... 05)

Marine Cargo Insurance .... Contd. # 2

INCO Terms

Incoterms precisely define the responsibilities of the buyer and the seller and are recognized as the international standard by custom authorities and courts in all the main trading nations. They are standard trade definitions and are issued by the International Chamber of Commerce. They reduce the risk of misunderstandings and legal disputes. There are 13 Incoterms, each denoted by a 3-letter code. The terms are grouped in four categories based on the first letter in the three-letter abbreviation.

- Under the "E"-term (EXW), the seller only makes the goods available to the buyer at the seller's own premises. It is the only one of that category.
- Under the "F"-terms (FCA, FAS and FOB), the seller is called upon to deliver the goods to a carrier appointed by the buyer.
- Under the "C"-terms (CFR, CIF, CPT and CIP), the seller has to contract for carriage, but without assuming the risk of loss or damage to the goods or additional costs due to events occurring after shipment or dispatch.
- Under the "D"-terms (DAF, DES, DEQ, DDU and DDP), the seller has to bear all costs and risks needed to bring the goods to the named port of delivery.

Basis of Valuation

This is the basis on which the value of insured cargo is generally determined:

- Invoice + 10% for domestic transits
- FOB/C&F/CIF + 10%
- FOB/C&F/CIF + 10% + Duty

Commercial shipments are normally insured on the basis of the invoice value plus all transit and other known costs, plus a percentage to cover hidden costs. An additional 10% is allowed as per practice, to take care of various incidental expenses that may have to be incurred by the insured.

Marine Cargo policies are based on the principle of "agreed value". This means one does not need to determine the value of the goods on the day when the loss took place. The value of the goods is simply agreed between the assured and the Insurer and is, in a vast majority of cases, based on invoice value plus a mark-up thereon (typically 10%).

A marine cargo policy is freely assignable, as it is necessary in many cases for the policy to pass from hand to hand with the goods as a collateral security asked for by the banks. Also,

(Contd... 05)

factory in Chennai. The insertion into containers formed part of that transit. The damage was caused by the dropping of water from a source external to the insured goods on to those goods. In so far as the quality of the goods contributed to the casualty, it did so because the goods absorbed moisture before being placed in the container, which moisture escaped subsequently to condense and fall back on the goods.

- The insurers argued that it could still properly be said that it was the natural behaviour of the goods that caused the damage. They contended that the court wrongly treated as the proximate cause of the damage that which was merely the immediate cause. In other words, while the direct cause of wetting was moisture from the top of the container; that moisture originated from the gloves themselves. As such, it was the nature of the subject matter insured that ultimately caused the loss.
- More over, it was argued that the court erred in finding that the proximate cause was a fortuity when it was not. By this, it was maintained that the process of convection, condensation and wetting was predictable and a natural and ordinary chain of events.

The insurer stated that "the goods deteriorated as a result of their own natural behaviour in the ordinary course of the contemplated voyage, without the intervention of any fortuitous external accident or casualty. The damage was caused because the goods were shipped wet." Ergo, there was no combination of fortuitous events.

The Outcome:

- The Court disagreed and characterized the leather gloves case as being one "where the proximate cause of the damage to the goods has been external to the goods, even if a characteristic of the goods has helped to create that external cause".
- Essentially, the Court decided that the real or dominant cause of the damage was moisture condensed on the container roof. It mattered not that the moisture emanated from the gloves themselves. Hence, the claim had to be paid.

Marine Cargo Insurance .... Contd. # 4

insurable interest in a marine insurance policy should exist at the time of loss not at the time of effecting insurance. In other types of insurance other than marine insurance, interest must exist only at the time the policy is effected.

FACTORS CONSIDERED IN ARRIVING AT THE PREMIUM

Insurers generally evaluate a number of fundamental factors in order to appraise each risk associated with marine cargo insurance. Some of these factors are:

- *Destination or origin:* The geographical, physical or political condition at destination or origin creates difference in the risks involved.
- *Ocean carrier:* Basic rates contemplate the use of a metal self-propelled vessel of appropriate tonnage and age, classified by a recognized Classification Society (such as the American Bureau of Shipping). Any variance may result in additional premium.
- *Shipping routes:* No two shipping routes present identical risks.
- *Packing:* The possibility of loss/damage depends on this factor. By "standard & customary" it is meant that the packing should be strong, stable & suitable to withstand the intended journey keeping in mind the nature of the goods, the journey involved, the port conditions at origin & destination, handling methodology at theports & on board the conveyance, season, duration & all other aspectswhich would fall within the ordinary course of the transit.
- *Limit per Bottom / Conveyance / Sending Limit:* This denotes themaximum value that could be shipped or carried by the insured in any one vessel or conveyance, truck, etc. Shipment values exceeding this limit would remain uncovered unless prior notice is given to the Company & suitable amendments have been made in the policy.
- *Limit per location:* While the limit per bottom mentioned above is helpful in restricting the commitment of insurers on the cargo shipped by the insured through any one vessel, it may happen in actual practice that more than one shipment falling under the scope of the open cover may accumulate at the port of shipment / the discharge port/ intermediate storage as well. The location clause limits the liability of the insurers at any one time or place before shipment. The location limit is commonly two times the per bottom limit.

E.g. - During the Bombay riots of 1992, many shipments of an electronics manufacturing company landed in a warehouse in Mumbai with some of the consignments already in the trucks ready to be dispatched to Hyderabad. With the riots breaking out; these trucks loaded with consignments were set on fire. Even though the electronics company faced loss amounting to around Rs. 2.5 crore due to this, they could recover claims of only Rs. 50 lakhs due to the insurance policy restricting the per location limit to Rs. 50 lakhs.

Moving from ICC 1982 to ICC 2009

As a consequence of the way world trade has developed and to some extent changed its character as a result of more modern transport technology, there is an increased demand from insured parties for up-to-date, clearer, and more advantageous terms of insurance. In 2006, an examination of existing cargo clauses was initiated and the ICC 1982 clauses was revised and updated, with the new ICC 2009 finally coming into effect on 1st January 2009. The overall result of the amendments to the 1982 Clauses are to make them more favorable to the Assured in general. Some of the terms used in the 1982 Clauses have been updated or adapted, for greater clarity. *(Refer Table on Page no. 6)*

CLAIMS HANDLING

There are various types of losses that can arise to cargo. One needs to carefully understand how the type of loss affects and how the claim will be adjusted.

Partial loss: A partial loss is defined as any loss that is not a total loss. In practice, there will be a partial loss where the subject-matter insured has suffered loss or damage but it still retains some measure of value, or; only a part of it is lost or damaged, the rest being sound.

(Contd... 06)

Interview .... Contd. # 4

is the talent for that readily available? Where do you see the future pool of new adjusters coming from?

A very pertinent observation. Talent is not sufficient, and the industry is not doing enough to develop this talent. Fee is regulated and remains to be the major concern for developing talent. The institution of surveyors and loss assessors is not doing enough and hence is alienating most adjusters who could potentially be the next breed of adjusters in India. Our regulator and our industry needs to realize this and take adequate measures to ensure this is looked upon as an avenue or career amongst young professionals. The profession is demanding and thus it has to be rewarding in terms of monetary benefits for young professionals to stay interested. This unfortunately is not being done at present and we hope the future is different.

CLI, India has been developing talent over the past many years and is committed to doing so in the future through its philanthropic arm "Kanakben Foundation"" which is focused at training the next 20 years of loss adjusters for India.

"Views expressed herein are purely personal and do not reflect the views of the Company"

Marine Cargo Insurance .... Contd. # 5

Where there is a partial loss of goods, it will usually be dealt with in one or more of the following ways:

- The surveyor will agree the amount of depreciation (usually expressed as a percentage of value).
- The goods will be sold and a percentage depreciation determined by a comparison of sound market value and sale value.
- The goods will be reconditioned or repaired and the claim will be based on the charges incurred in so doing

Total loss: There are two categories of total loss:

- Actual Total Loss (commonly referred to as an ATL)
- Constructive Total Loss (commonly referred to as a CTL)

Actual Total Loss (ATL):

- *An ATL occurs usually when the property insured is either:* destroyed, or so badly damaged that it ceases to be a thing of the kind insured. There is also an ATL when the Assured is irretrievably (permanently) deprived of the insured property. When there is an ATL of the subject-matter insured, the claim on the policy is for the full insured value thereof.
- *ATL through loss of specie*: It sometimes happens that the insured property arrives at destination, and still has some value, but is no longer 'a thing of the kind insured'. This is often referred to as a loss of specie. Examples of loss of specie Metal goods intended for use in manufacture have become damaged and are no longer fit for their intended purpose. Wood that has burnt and has turned into charcoal.
- *ATL through deprivation*: There may sometimes be circumstances where the goods remain in perfectly sound condition but there is an ATL because the Assured is permanently deprived thereof. Such circumstances are likely to be rare, but an example would be: A ship is carried by a tidal wave and comes to rest inland at a remote, inaccessible place from which neither the ship, nor the cargo on board, can be rescued. The cargo may still be perfectly sound but the Assured is irretrievably deprived thereof. The claim would be for ATL and the policy would pay the full insured value. If, however, at some point the cargo could be rescued and sold, then the proceeds would be for insurers' account as they would have taken over the full rights in the cargo having paid a total loss.

Constructive Total Loss (CTL):

- A CTL occurs when the Assured reasonably abandons the property in circumstances where an ATL seems unavoidable, or the insured property cannot be preserved from an ATL without an expenditure which would exceed its value when the expenditure had been incurred

COMPARISION OF IMPORTANT COMMERCIAL CHANGES-1982 vs. 2009 CLAUSES

CLAUSE	CHANGES AND ITS EFFECT
Insufficiencyof Packing or Preparation	The previous clause excluded insufficiency of packing or preparation even when it was beyond the control of the assured and arose accidentally after the insurance had attached. This was felt inappropriate. So, the new clause is limited to cases where the assured or their employees are themselves responsible for the poor packing or preparation, at whatever time it is carried out.
Insolvency clause	The exclusion has been reduced in scope so that the innocent Assured or assignee is still protected by the policy in the event of financial default or insolvency bringing the voyage to an end.
Terrorism Clause	The exclusions relating to strikes etc. remain unchanged but the terrorism exclusion has been extended to reflect the wide range of threats that may now be encountered, and the range of motives that may be behind an attack
Duration Clause	Under the 1982 Clauses, there was no cover until the goods had 'left' the warehouse, so it would only have been insured if an accident had happened outside the warehouse. As it has been commonplace for brokers' wording to extend coverage to include loading and unloading operations, this extension has now been brought into the standard cover and in line with continental European practice. The insurance now attaches 'from the time the subject-matter insured is first moved in the warehouse... for the purpose of the immediate loading'. This connects the 'first movement' of the goods closely in time to the loading of the conveyance to be used for the insured transit.The new ICC, to avoid any uncertainty, makes it clear that if the cargo is not unloaded straight away on arrival, but is stored either in the container or in or on the conveyance, then cover ceases at that point prior to actual unloading.
Change of Voyage Clause	The new clause 10.1 avoids using the term 'held covered' which has often been misunderstood by the assureds as providing cover and instead clearly explain the circumstances in which cover may be available from underwriters and also the action the assured must take in order to secure his interest.The new clause 10.2 deals with the so-called "phantom ship" situation in which a vessel, often with false papers, takes the cargo to a different location and sells it. Such cases have become less common in recent years, but this clause ensures that an innocent Assured does not lose coverage.
Un-seaworthiness & Unfitness Exclusion Clause	This clause has been modified, in favour of the assured, to limit the exclusion in relation to unfitness of vehicles or containers to cases where the assured or their employees are privy to such unfitness. Overall the effect is to narrow the scope of the exclusion

- *CTL because ATL seems unavoidable*: The first of these circumstances suggests a situation where the facts are not clear, i.e. it is not established beyond all doubt that the goods are an ATL but, on the balance of evidence, they probably are. Underwriters therefore give the Assured the benefit of the doubt and treat the claim as if it were an ATL. Example: a perishable cargo which is in a damaged ship and cannot be fully inspected at this point in time.
- *CTL because preservation from ATL will be too costly:* Whether the property is worth preserving, recovering, or repairing will depend upon the facts of each case. In general, no prudent person would spend, say, Rs. 5,00,000, on reconditioning goods if their value once reconditioned would only be Rs. 3,00,000.

As with an ATL, the amount the policy pays in the event of a CTL is the full insured value of the subject matter insured. Underwriters are entitled to a credit for any proceeds (net of sale charges) that may be obtained for whatever remains of the goods.

Salvage Charges

A salvage loss is a type of settlement that takes place when goods are sold at an intermediate place on the voyage, usually when goods are landed at a port of distress and are in damaged

Report Card - April 2016

Gross premium underwritten by non life industry for and up to the month of April 2016* **(Rs. In crores)**

Insurer	APRIL		% of Growth Upto April 2016 over the period Upto April 2015
	2016-17	2015-16	
Private Sector	4606	4073	13.1%
Public Sector	5484	4940	11.0%
Stand-alone Health Insurers	318	249	27.7%
Specialised Insurers	116	143	-18.6%
Grand Total	**10524**	**9405**	**11.9%**

**Source : General Insurance Council*

- The non-life industry has registered a growth rate of 11.9% in April 2016 vis-à-vis 11.7% in April 2015.
- The PSU's (excluding specialized insurers) have registered a growth rate of 11% during April 2016 vis-à-vis 10.5% during April 2015; while the private players(excluding standalone health insurers) have registered a growth rate of 13.1% during this period compared to last year's 11.7%.
- The stand-alone health insurers have registered a growth of 27.7% during April 2016 vis-à-vis 44.8% during the same period last year; while the specialized insurers (ECGC & AIC) have registered de-growth of -18.6%vis-à-visa growth rate of 8% registered for the same period of last year.

Marine Cargo Insurance .... Contd. # 6

condition. The rationale is that, if they are forwarded to destination, they will either become a total loss by the time they arrive or will have deteriorated much further. On this basis underwriters are in favour of such action as by selling the goods for at least some value, the insurance claim is thereby reduced.

The practice in such circumstances is that the goods are sold; the Assured retains the net proceeds of sale and the underwriters pay the difference between the insured value and the net proceeds.

Sue & Labour Charges: A marine insurance provision that requires the insured to protect damaged property from further loss once a loss has occurred. Insurers expect that the insured should at all times act as if he was uninsured and take such steps as a prudent person would normally take. In view of this, if there be any expenses incurred by the insured or his agents to minimize the loss or damage payable under the policy, the same are reimbursed by insurers.

Examples of Sue and Labour charges are landing, warehousing, reconditioning, re-forwarding and similar charges.

General Average: General Average is a legal principle of maritime law to which all parties, in a sea venture, proportionally share any losses resulting from a voluntary sacrifice of part of the ship cargo to save the whole in an emergency.

General average is independent of the insurance cover bought for the cargo. Instead, it arises out of the contract between the cargo owner and the ship owner.

The following are some examples of events and expenditures that are likely to be involved in a General Average loss: Grounding/Stranding, Fire, Cargo shifting in heavy weather, Heavy weather collision or machinery breakdown, etc.

The York-Antwerp Rules: The fact that a general average act can occur in any international waters, or on the high seas, raises the questions of which law and jurisdiction should apply to the general average adjustments. But, if the Rules are incorporated into the contract, they will govern the adjustment of general average. They provide a complete code and, by the general rule of interpretation, they 'shall apply to the exclusion of any law and practice inconsistent with them', if the parties to a contract have adopted them.

CLAUSES TO WATCH FOR

- **Concealed damage clause**- In case there is a delay in opening the package after arrival of goods, at the final destination and if a loss/ damage is found when such packages are eventually opened, such loss shall be paid by Insurers if this clause has been opted for. However, this clause will apply only if packages are opened within 30 days of their arrival at final destination.
- **Sellers Interest/Contingency clause** - The Seller's Contingency clause is an attempt to bring some relief to the seller who in case of international trade is an exporter. In a FOB contract, the seller here undertakes to put the goods on board of a ship that has been named to him by the buyer. All charges, including the delivery of goods on board, have to be borne by the seller while the buyer has to bear all the subsequent expenses including stowage, freight, insurance, import duties and other incidental charges.

  Thus, if the seller is allowing credit to the buyer and has shipped goods on FOB/C&F basis, the seller has no control over the conditions of the insurance cover arranged by the buyer. In the worst scenario, the buyer may not even have insured the goods and in case of damage during transit may refuse to accept them. Hence, to protect the seller from such financial loss, the Sellers Interest/ Contingency clause was scripted. For valid commercial reasons, the Insurer insists that the exporter may not disclose the purchase of this clause to the buyer.
- **Temperature-controlled cargo clause/ Refrigerated goods clause** –Consignments being carried in refrigerated containers need to opt for this clause. These containers are primarily used for food products but can also serve a host of perishable commodities such as pharmaceuticals and others requiring a temperature and humidity controlled environment. This clause covers loss or damage caused by breakdown of the refrigerating machinery and/or power generation equipment and/or loss of power supply. But a claim is tenable only if the breakdown or improper temperature has lasted at least (12) twelve consecutive hours.
- **Import Duty:** All imports into the country attract Customs Duty. This clause covers loss of custom duty value suffered on imported consignments damaged after payment of duty. This duty can be included in the value of the cargo insured under a Marine Cargo Policy or a separate policy can be issued in which case the Duty Insurance Clause is incorporated in the policy. Warranty provides that the claim under the Duty Policy would be payable only if the claim under the cargo policy is payable.
- **Increased Value Clause:** The cost of the goods imported increases on landing at destination to the extent of duty paid and other incidentals incurred by the importer. It may also be due to fluctuations in the market. This policy covers the increased value of cargo, if the market value of the goods at the destination port, on the date of landing is higher than the CIF + Duty value of cargo.

CONCLUSION

The export and import of goods comes with the risk of shipments being damaged or destroyed in transit. An accident involving the vehicle carrying the cargo, failure of the stevedores in the port area or damage to the container are just some of the risks that can cause considerable financial losses.

Cargo insurance protection is an aid to commercial negotiations. It allows traders to proceed with confidence in the knowledge that each party to the transaction is properly protected. In most cases the cost of marine insurance is nominal when compared with the value of the goods and the freight cost.

Series of Workshop on D&O Liability and Claims Handling

In the first week of May, India Insure co-hosted a series of workshops on D&O Liability and Claims handling in Mumbai, Pune and New Delhi along with Khaitan Legal Associates. The workshop was facilitated by Nilam Sharma, a well-known D&O insurance/reinsurance expert from London.

A glimpse from the workshop in Mumbai: L to R: Deepali Rao (India Insure), Sakate Khaitan (Senior Partner, Khaitan Legal Associates), Sushant Sarin (Tata AIG) and Nilam Sharma.

The event witnessed active participation from general counsels, risk managers, claim handlers and experts.

The workshop focused on the various relevant and practical issues pertaining to D&O insurance.

With the help of Case studies, claims scenarios were discussed and an attempt was made to bring to light the importance of clauses to be looked into in an insurance policy by the Directors and officers.

The workshop furnished insight for the directors and officers to evaluate their risks as well as for those considering the purchase of D&O Insurance. The comparison of claims handling in UK markets and Indian Markets was an added benefit.

Ms Niharika Singh from Iffco Tokio was a panelist for the Delhi event.

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