



Ports & Terminal Liability Insurance

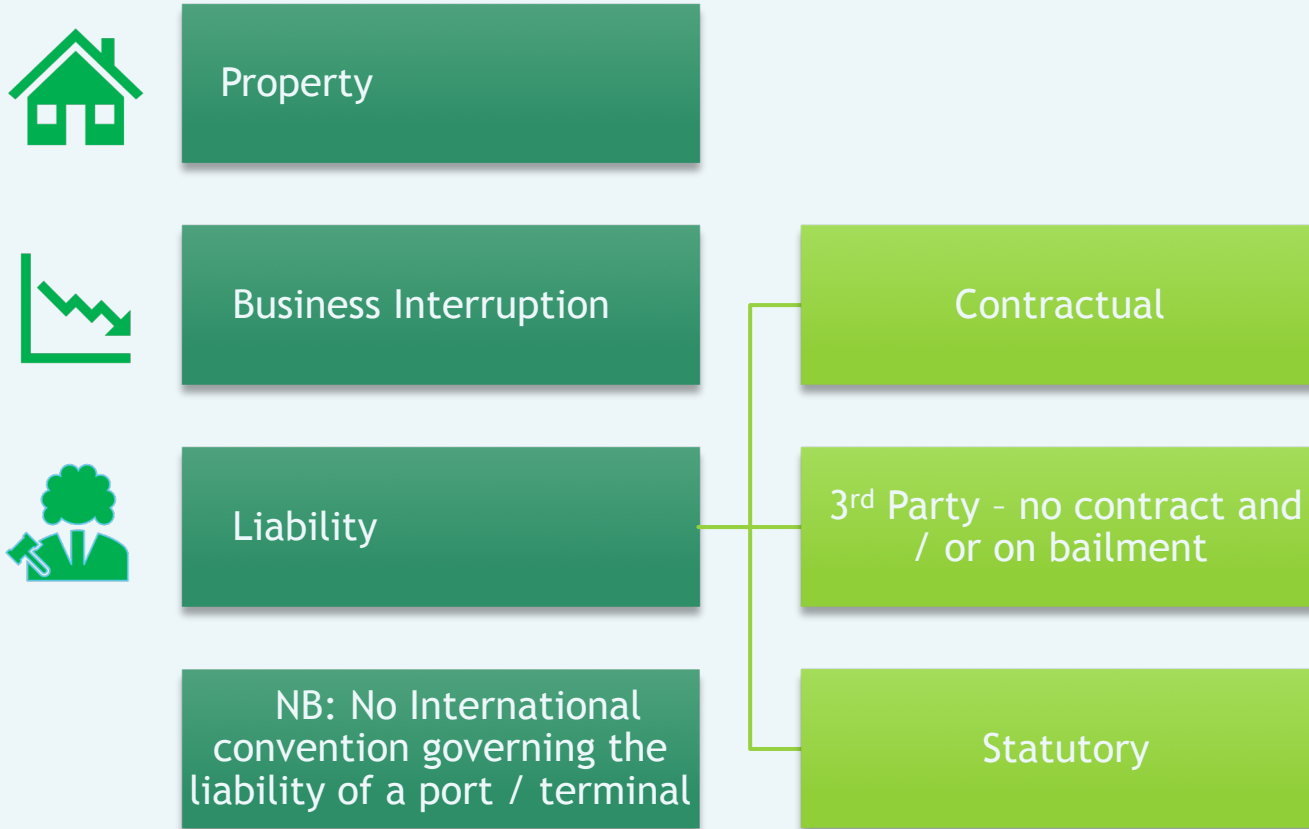
by
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OUTLINE

- ▶ EXPOSURE
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- ▶ DEFENCES
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 - ▶ LIBERTY TO SUBCONTRACT
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- ▶ GENERAL TERMS AND CONDITION
- ▶ REQUIREMENT
- ▶ EXTENSION
- ▶ ISSUE
- ▶ CONCLUSION



EXPOSURES



Port Crane Accidents

Driver failed to release twist locks

Some other pictures showing

- Pollution
- Damages in the ports and Terminals





FAILED TO RELEASE TWISTLOCKS



OTHER LOSSES



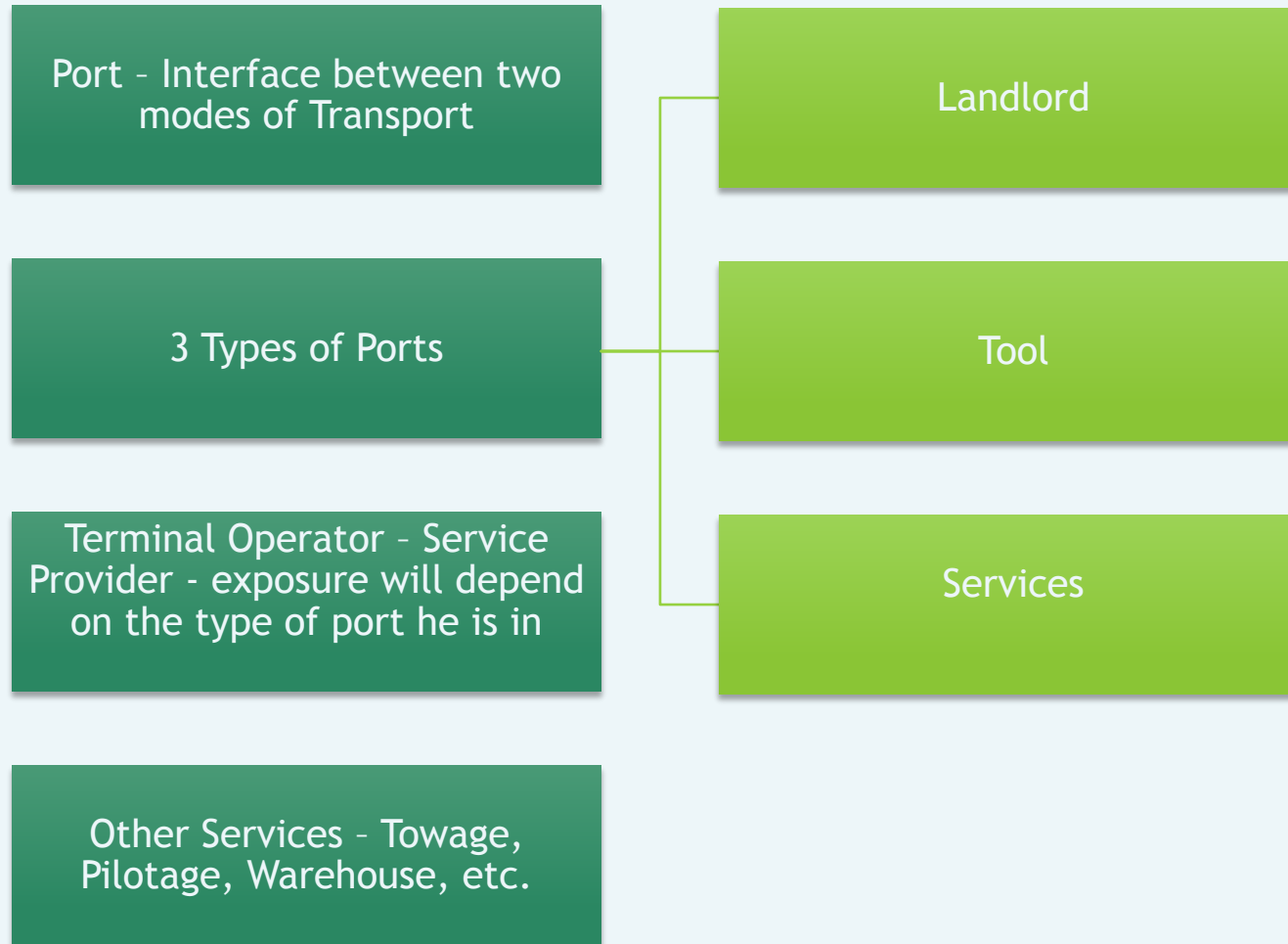
OTHER LOSSES

Unplugged reefer container

Accidents with Terminal equipment's



PORTS





LIABILITY

- ▶ Contractual -
 - ▶ Terminal Services Agreement / Standard Trading Conditions
 - ▶ Exclusions of Liability
 - ▶ Limitation of Liability
 - ▶ Time Bar
- ▶ See http://www.westportsmalaysia.com/About_Us-@-Terms_and_Conditions.aspx
- ▶ Subject to any statutory law preventing imposition of terms such as UK UCTA 1977 ...



- ▶ Tort of Negligence (*Donoghue v Stevenson*)
 - ▶ A tort, in common law jurisdictions is a civil wrong.
 - ▶ Tort law deals with situations where a person's behaviour has unfairly caused someone else to suffer loss or harm. A claim in tort may be brought by anyone who has suffered loss
 - ▶ Requirements:
 - ▶ Duty of Care
 - ▶ Breach
 - ▶ Causation
 - ▶ Not too remote
 - ▶ Occupiers liability a sub-sect of Negligence in Singapore



- ▶ Bailment
 - ▶ Legal relationship in common law where physical possession of personal property, or chattel, is transferred from one person (the 'bailor') to another person (the 'bailee') who subsequently has possession of the property. It arises when a person gives property to someone else for safekeeping/transportation
 - ▶ A terminal operator will often be a bailee or a sub-bailee.
 - ▶ In order to claim, a bailor must
 - ▶ establish receipt by the carrier of goods in good order and condition
 - ▶ Receipt of damaged cargo at the time of delivery



- ▶ Imposed by Law / Statutory Liability
 - ▶ Singapore
 - ▶ [Work Injury Compensation Act](#) (Cap 354)
 - ▶ Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution)
 - ▶ Prevention of Pollution of the Sea Act (MARPOL)
 - ▶ Singapore Merchant Shipping Act Part IX S 57 for Wreck Removal
 - ▶ In other jurisdictions
 - ▶ Occupiers Liability Act 1957 & Occupiers' Liability Act 1984 - based on the common law of UK



DEFENCES

- ▶ Through TSA with contractual parties by incorporating
 - ▶ Himalaya Clause
 - ▶ Liberty to sub-contract
 - ▶ Circular Indemnity Clause



HIMALAYA CLAUSE

- ▶ Adler v Dickson (“*The Himalaya*”[1955])
- ▶ Incorporated in C/P & / or B/L: to provide agents, servants, subcontractors, ...of the carrier the benefits of all exclusions and limitations enjoyed by the carrier
- ▶ HV Rules have a Himalaya Clause applicable to servants / agents
- ▶ Port / Terminals - are they a servant / agent of the Carrier?
- ▶ Liner Bills of Lading Invariably have a Himalaya Clause for 3rd parties
- ▶ Four-part test laid in *Midland Silicones*
 - ▶ the subcontractor is intended to be protected by the clause
 - ▶ the carrier contracted as agent for the subcontractor;
 - ▶ the carrier has authority from the subcontractor to enter into the ‘Himalaya’ clause (although later ratification would suffice)
 - ▶ difficulties regarding consideration moving from the stevedore must be overcome.





- ▶ Sub-bailment on terms - The “KH Enterprise” aka The Pioneer Container
- ▶ Subcontracted carrier could rely on the terms and conditions of its own B/L in a claim for bailment if there was a liberty to sub-contract clause in the B/L issued to the owner of the lost goods by the overlying carrier
- ▶ Wordings “ *The Carrier shall be entitled to sub-contract on any terms whatsoever the whole or any part of the Carriage*” (See Clause 5(1) of TT Series 100/500)



- ▶ *The Merchant undertakes that no claim or allegation shall be made against any Person or Vessel whatsoever, other than the Carrier, including, but not limited to, the Carriers servants or agents any independent contractor and his servants or agents,*
- ▶ *Without prejudice to the generality of the foregoing, if the Carriage is Port to Port, Terminal Operators shall have the benefit of all provisions herein benefiting the Carrier, including the exceptions and limitations set out in clause 6(1) and 6(3) hereof, in relation to any port storage or handling services provided whether before loading or after discharge and regardless of whether the Carrier s responsibility for the Goods has yet to commence or has ceased.*
- ▶ *The Merchant shall Indemnify the Carrier against any claim or liability (and any expense arising therefrom) arising from the Carriage of the Goods insofar as such claim or liability exceeds the Carrier s liability under this sea waybill.*

Clause 5(2)-(4) of TT Series 100/500



- ▶ Claimants not entitled to sue anyone other than their contractual party
- ▶ If Claimants do, the contractual party can sue for damages for losses flowing from the breach
- ▶ Intention is to ensure that the claimants do not get more than what is provided in the contract





Risk capping

Exclusions

Limitations

Risk Transfer say
by insurance



INSURANCE



Mutuals (TT Club)

Other Insurers

Forms

- Wavelength Wordings - also known as London Standard Wordings (LSW 1510 through LSW 1515 and LSW 1524)
- TT Club Wordings
- Etc.



- ▶ Named Perils Policy
- ▶ Physical loss or damage to property of 3rd party including loss of use, demurrage
- ▶ Personal injury to 3rd parties
- ▶ Liability to tenants for operations provided by any sub-contractor appointed by the assured
- ▶ Costs and expenses in the defence of any claim covered / costs and expenses of litigation awarded to any claimant
- ▶ Costs and expenses for disposing of the cargo,
- ▶ Costs and expenses incurred for the removal of wreck or debris basis a statutory order
- ▶ Port Vessels cover - ITCH Port Risks 20/07/87 subject to the Institute P&I Amendment Clause 1/6/91



EXCLUSIONS

- ▶ Employees
- ▶ Workmen's Compensation or Employer's liability or statutory or common law liability to employees
- ▶ Pollution, diseases, trauma, repetitive stress injury
- ▶ Property owned or leased by the Insured (would fall under property cover)
- ▶ Gradual wear, tear or deterioration.
- ▶ Ad valorem or valuable cargo (to Capp Exposure - could be written back subject to declaration...)



- ▶ Equipment, conveyance, vehicle (property cover..)
- ▶ Interest in respect of vessel, aircraft or helicopter (property cover ...)
- ▶ Radioactive / Chemical / Biological / Electromagnetic and Cyber attack
- ▶ Electronic Exclusion
- ▶ War, Strikes & Terrorism





GENERAL TERMS & CONDITIONS

Contracts to be submitted to U/W's for vetting prior to inception of cover

Duty for Dangerous Cargo

Assured's duty to minimize loss

English Law as the Governing Law

Dispute Resolution - Arbitration by a 3 member Tribunal





- ▶ Sub-contractors must be insured on similar terms as the insured and with their policy being the primary policy
- ▶ Requirement of legal liability
- ▶ Wreck removal for Port Authority - statutory right or legal obligation of the insured and must not be undertaken without the prior approval of the Insurers



EXTENSIONS

- ▶ Fire Extension (Liability)
- ▶ Advice and Information
- ▶ Fines and Duty
- ▶ Infringement of Personal Rights
- ▶ Wrongful Delivery of Cargo
- ▶ Property
- ▶ Loss of Earnings



Exposures

Proper Risk Management

Proactive Claims Handling

Long Tail business

Jurisdiction



- ▶ Risks
- ▶ Risk management
- ▶ Insurance coverages



QUESTIONS?



Q&A





THANK YOU!

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