

Refrigerated claims handling

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Presentation

- ▶ 5 Parts
- ▶ Modes of Reefer Cargo
- ▶ Common Claims
- ▶ Claims Handling Process
- ▶ Policy & Insured's Liability
- ▶ Resolutions strategies



1

Modes of reefer cargo

► Chill Mode

- Chill mode is used for
- Foodstuffs
- The temperature is maintained
- Continuously

► Freeze Mode

- Freezing
- From
- The
- Cont



2

Reefer Cargo Claims

▶ Common Claims

- ▶ Miscommunication
 - 0° Centigrade
 - -0.5° Centigrade
 - Non Operational
- ▶ Failure of power
- ▶ Failure of reefer



1

Reefer Claims

► Normal risks:

- These risks
- Eg loss

► Sp

- As
- More
- Or to se



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Claims Handling Building Blocks

- Statute Law – 1906
- Case Law
- Common Law
- Rule of Law
- Record
- Common Law



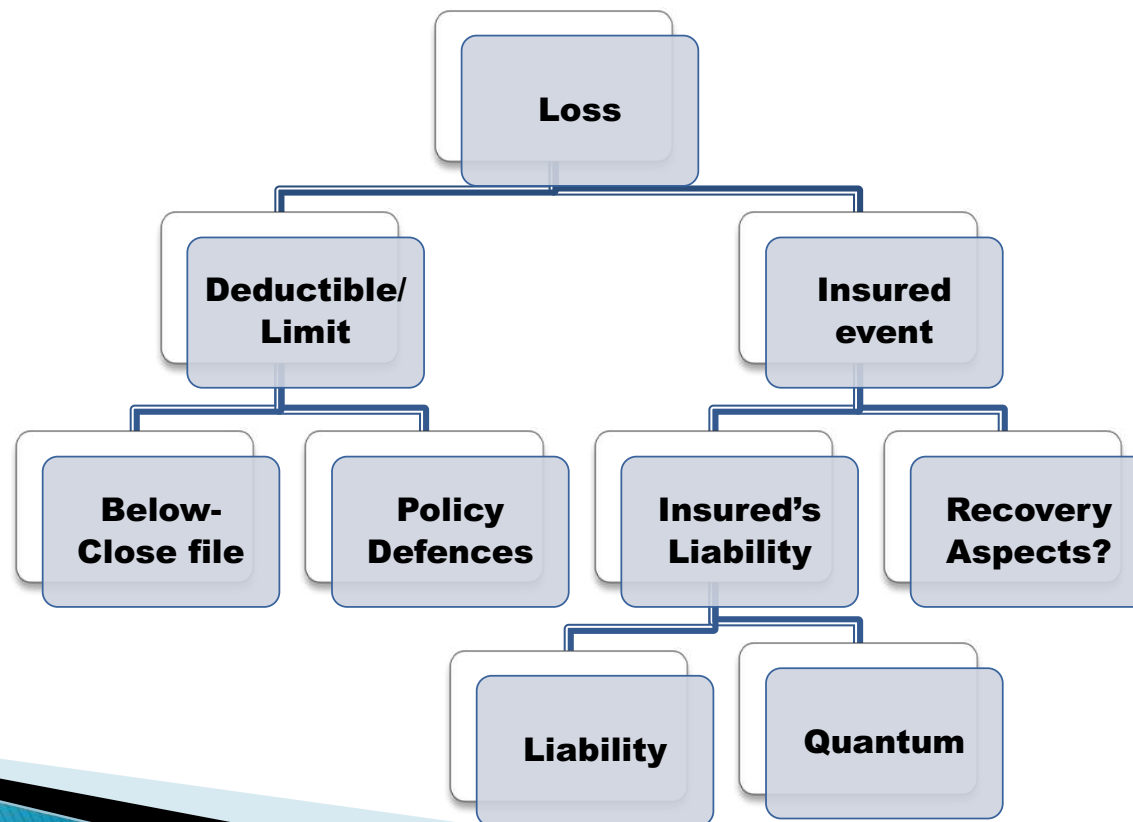
of 1906

(ROP)

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Claims Handling

- Steps are not either sequential or parallel but a combination of both



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Claims Handling - Liability

- ▶ Derivative
- ▶ Insured must be liable and the loss must be covered under the policy



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Policy Liability

- ▶ Policy engages if loss is above the deductible
- ▶ Generally large deductibles/ co-sharing of losses
- ▶ Policy liability – upto limit amount/aggregate



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Policy Liability

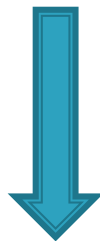
- Is the Loss covered under the Insurance policy?
 - Loss occurred outside the coverage of the policy period
 - Defences available - Exclusions, Conditions & Warranties
 - General defences available under law
 - ✓ Eg: Breach of Utmost Good Faith (S 17 of the MIA 1906)
 - ✓ Duty of Disclosure (S18 of the MIA 1906)
 - ✓ Excluded losses provided under S55(2) of the MIA 1906 ...willful misconduct
- We are not touching on this aspect as we believe that these situations would generally be rare, far and few in between given that Insurers will be selecting good risks to Insure



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Insured (Carrier's) Liability

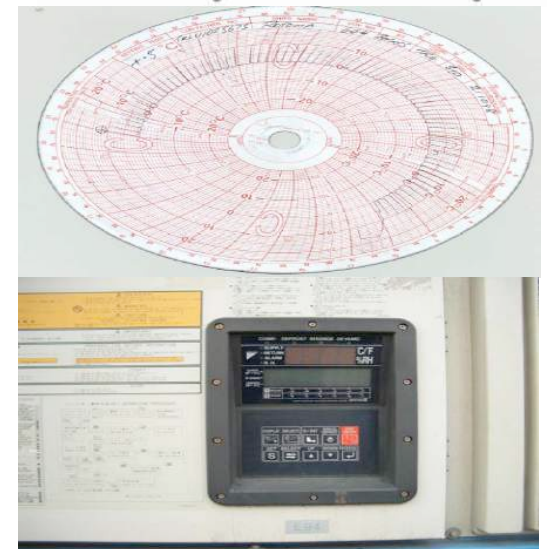
- ▶ Liability – Responsibility
- ▶ Role of the Insured
 - Container operator, Time Charterer, Vessel Owner / Operator
- ▶ Need to know the complete circumstances of the loss
 - Joint survey at the time of loss to determine this
 - Review of relevant information (Partlow chart, Data Logger)



- This will hopefully assist in knowing how the loss occurred



Responsibility



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Insured (Carrier's) Liability

- ▶ No fault / r
- ▶ Instead
 - Deterio
 - Impropr
 - Incorre
 - Farenh
 - REPUL



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Insured (Carrier's) Liability

- ▶ Loss happened during the responsibility of the Carrier
- Two factors to always consider when there is a claim
 - Quantum i.e. the \$\$\$ of the claim
 - Liability
- Mitigation of Loss – can it bring down the quantum?
 - Mitigation of loss is concerned with the claimant's responsibility to avoid avoidable losses by taking all reasonable steps to do so – a good surveyor acting for liability interests will certainly ensure that this is accomplished on a without prejudice basis!!!!



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Insured (Carrier's) Liability

- Technical Defences:

- Late notification
- Time bar available either under compulsorily applicable cargo conventions or the contract of carriage
- Jurisdiction

- Legal Defences:

- Role of the Carrier – did he provide the container or was it of the TC/Container Operator
- Title to sue – depending on the application of UK COGSA 1992/ Singapore Bills of Lading Act Cap 384 or application of Bills of Lading Act 1855
- Exclusions of Liability under The Hague / Hague Visby Rules
 - provided in Art IV (2) a – q provided the Carrier fulfills Art IV(1) and which includes Art III (1)



4

Insured (Carrier's) Liability

▶ Art IV (1)

- ▶ Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

▶ Art III (1)

- ▶ The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

- (a) make the ship seaworthy
- (b) properly man, equip and supply the ship;
- (c) take the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.



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Insured (Carrier's) Liability

▶ Art IV (2)

- ✓ (m) ... any other loss or damage arising from inherent defect, ...;
 - ✓ (n) insufficiency of packing;
 - ✓ (p) latent defects not discoverable by due diligence;
 - ✓ (q) any other cause arising without the actual fault and privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.
- q defence difficult but possible
 - Consider *Leesh River Tea v British India Steam Navigation* [1967] 2 QB, CA & *The Calavan Foods case* (Appeal No. 4649), in the San Francisco Superior Court of Appeals



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Insured (Carrier's) Liability

- Limitation of Liability

- Art IV (5) a of HV Rules
- SDR 2/kg or SDR 666.67/package – whichever is higher
- Difficult to break except for “...done with intent to cause damage, or recklessly and with knowledge that damage would probably result” (Art IV (5) e)
- Problem – Limitation sometimes may not be of assistance as B/L's may list no of packages resulting in high limitation amounts!

- Time Bar

- Art III (6) of HV Rules provides for claims to be extinguished unless suit brought within one year
- Art III (6 biz) – Indemnity actions may be initiated within the time allowed in the courts seized or not less than 3 months from the date claim settled



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Insured (Carrier's) Liability

- Quantum

- Proof & Extent of Loss

- Whether any mitigation of loss to reduce the claim

Eg Chill Cargo – even if temperature was not maintained, cargo may be saleable but at a discounted price

Frozen cargo – salability would depend whether the cargo has become deteriorated due to microbiological, chemical, bio-chemical & physical reaction

(Important to know Time Temperature Tolerances of cargoes being carried – this will vary from cargo to cargo)



5

Claim Resolution Strategies

- Direct Claimant to correct contractual party / cargo insurer
 - Advantage – claim will be resolved faster as it may become time barred by the time it reaches the Insurer
- Protect recovery
 - Who may be at fault?
- Jurisdictional
 - Time involved
 - Costs
 - Whether
 - Home address



5

Claim Resolution Strategies

- Consider settlement
 - Limitation of Liability as available under the Hague Visby Rules (Art IV (5) a – SDR 666.67 per package or SDR 2 per Kg – which ever is higher
 - Limitation of Liability available under the contract
 - Costs of defense (nuisance settlement)
- If Loss sizeable, consider whether Global Limitation Conventions are of assistance?
 - '57 Limitation Convention
 - '76 Limitation Convention
 - 1996 Protocol to the '76 Limitation Convention



5

Claim Resolution Strategies

- Use good negotiators
- Positional vs Interest based negotiation
- Better to let the claims be handled by Insurers i.e. Liability Insurers and Cargo Insurers
- Ensure best practices to avoid similar incidents
- No claims means less headaches and lower premium!
- But Claims do happen and must be dealt expeditiously



THANK
YOU

