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Cargo Insurance

Have you noticed how adverts for insurance on television are almost a glut crop? We have the massed ranks of Churchillian dogs and those little red things that give a whole new meaning to the words 'mobile phone'. The main thrust of all these offerings is that the insurance companies are queuing up to be the policy-holder's friend. And this is true – but only to an extent.

Insurance is a necessary part of commercial life and has been identified as the second oldest profession in the world but you need to remember that insurance is a business and, as is the way of all businesses including yours, the ultimate objective is profit. It is also true, as with all businesses, that you know yours, with all its pitfalls and points of advantage, better than you know the other man's.

Once I was in an insurer's office in Singapore and saw some framed words on the wall, rather like a mission statement, which said, "We treat claims differently – we pay them". In any other circumstances, this might have been thought of as the ultimate in cynicism but this was an insurer saying this of his own industry.

Many traders have found to their dismay and cost that insurance is not quite as simple as the broker made it sound when he was selling the policy. This is not saying that brokers or insurers are dishonest, it is more an indictment of the trading community for a level of naivety which is sometimes amazing.

It is fundamental to insurance that the policyholder must always behave as if he were uninsured. This means that whilst the insurer will cover you for specified risks he will rightly assume that you are not going to be cavalier or downright stupid about how you choose to move your cargo. He would expect you to be knowledgeable and prudent about the risks in the area in which you are going to do business. He would expect you to have made some risk assessment of the enterprise before you entered into it. Instead of which we find that with some traders insurance is almost an afterthought and when nothing goes wrong – which is true in the vast majority of instances – insurance is looked upon just as an additional expense. But, on those occasions when there is need

for a claim, there are many who wished they had looked at the detail of the policy earlier rather than later.

Consider this as an example of what can happen. Some years ago now several separate importers into Scandinavia combined together and bought a consignment of canned mushrooms which filled five containers. They were shipped out from a Far East port to Rotterdam where they were off-loaded and transhipped to the five consignees in different parts of Scandinavia. On arrival at destination all the containers were found to be empty! The immediate reaction of the average reader may well be to start to offer thoughts as to how this could happen but that is not the point. Each of the consignees had a different insurer and all the insurers, as with one voice, declined any claim until the consignees had 'proved a loss'. The critical factor is that when a container is completely empty, there is always the possibility that the cargo never existed in the first instance. The crunch feature of this example is that it is *not for the insurer to prove* that the cargo never existed, *it is for the claimant to prove* that it did – not always the easiest thing to do. Until this proof is forthcoming the insurer will not part with a penny. He will just reject the claim, not even institute (and pay for) any enquiry and the ball is in the claimant's court.

An example of an exporter who was the victim of local conditions is found in the case of a company which exported leather goods made in Spain. One particular consignment was sent to the Lebanon and, as it so happened, a minor documentary error provided the opportunity for the importer to allege that the containers had arrived in a pilfered condition. He found a 'co-operative' local loss adjuster who was willing to furnish the 'evidence' to substantiate claim for extensive (97%!) pilferage. In this case, the insurer stood to pay out on a claim which was so obviously unwarranted. It was pure chance that the container happened to be one of those which had been examined by Customs Quality Control at the port of loading and it was here that the documentary error had occurred. There was no doubt whatsoever that the goods have been received in the Lebanon intact and in good order and that the consignee was only trying to play the system. It is because they are so often faced with this kind of sharp practice that insurers can sometimes appear to be unyielding in their attitude to some claims.

It can be that the exporter or his insurer, the criminal does not care which one of the two, can be the victim of an official system. An incident in a South American country is a good example. In this case there were repeated thefts of a rather odd substance which was a line of regular trade, exported from the UK. I was asked to audit the system to try to find out what was happening and could hardly believe what I found. I saw a ship loaded in the UK and checked the container seals at shipside and then flew out to South America to see the same container when it was discharged. There it was, intact, no problem. But something was not quite right. There was no shipside tally or examination or anything whatsoever on the part of the port authority. The containers

were just landed and then left, mostly trailer-mounted. I made enquiries and was told of the local system which was, quite literally, the talk of the town – at least in criminal circles. During two or three days following discharge, the containers would be transferred to a storage area, still within the port precincts and there they would remain for anything up to a month awaiting ‘customs clearance’. Such was the level of criminality in the area that, during that lay-over time, anything could happen and quite often it did. At the end of the month – or thereabouts – the container would be collected by or on behalf of the consignee and it was when it was finally removed from the port area that details of seal and weight and other factors were noted and it was on the basis of this examination that the receipt was issued to the ship. This meant that the condition ‘as landed’ was, in fact, the condition of the contents after everyone who wanted to had had his wicked way with them.

Sometimes small traders do not realise the time that claims take to process. Another example was that of a medium-sized importer in North London. He imported leather garments from Korea and, over a period of time, he was finding that his containers would arrive anything up to 30/40% short of manifested content. Again, he had to prove a loss – a loss you must note, not just a shortage. He was very good a selling leather garments but not very good a claims management and there existed a very strong hint that the containers were deliberately short loaded at the point of origin. This gave him a problem which was difficult to overcome. As a company, he was under-capitalised and the time it took to process insurance claims was too much and he went bankrupt.

Amongst other things, these examples demonstrate something which is often not understood by a policyholder. Your marine insurance policy will cover you for theft. It will not cover you if you have been defrauded. That means if the cargo never existed, although you may well have paid for it and all the documents may be in order, you are not covered. The maxim is, "You cannot insure that which does not exist." That makes sense, doesn't it? In those cases, you are on your own. Of course it makes good business sense to know exactly who you are dealing with but in these days of a global economy and cyber-commerce, all you may have is an image on a monitor. Nevertheless, time taken in being prudent before you sign the bottom line can be time well spent.

Another example was an oddity. A man was arrested with property suspected of being stolen. This was back in those days when the police found time to do their job properly and this property was traced as being part of a consignment to Australia. The audit trail of documents showed that there were clean receipts all the way down the line and even the consignee had not made a claim. The police were holding property in England which, officially, was in Australia. Eventually it was found that the consignee had a rather unique attitude. He had costed his claims management department and

procedures and found that it cost him £1800 to process a claim. He therefore closed his claims department down, ignored all losses of £1500 or lower and managed the rest of the claims himself. The police had to give the property back to the thief because, in law, they could not prove a loss and so it did not exist!

It absolutely essential and can be costly neglect to fail to omit read your policy of insurance very carefully. A claimant made a claim on a goods-in-transit policy for a theft from a convention center in America where they were exhibiting their goods. The claim was rejected because the goods were deemed to be not in transit but still under the care custody and control of the insured whilst at the convention center and the policy did not cover that part of their activity. They were legless.

Of course, there are some risks which are not insurable. We saw earlier that you cannot insure against being defrauded – at least in general terms. There are some areas of the world and some commodities which are not insurable in that the goods are prohibited from entering a particular country. If you are breaking the law, even on a technicality, you're probably not covered. There are, in fact, a whole myriad of details which need to be considered.

But the trader is not without hope. Quite apart from the advice which should be offered by insurer and broker, there are profession bodies which specialize in Risk Management in the same way as you might specialize in whatever it is that you may do. These bodies can be found by trawling the NET. There are also claims management companies including the recently launched Cargo Damage and Risk Control Bureau which offers a total claims management service on the NET

What do these incidents show for the exporter? Several things,

1. Even though international trade may often mean taking an opportunity and quickly this should never be at the expense of prudence or due care. Your insurer cannot cover you for your errors of judgment. Get expert advice and take it.
2. You should never trust your cargo to a carrier who could, possibly, be something less than efficient in this area. Particularly you should be aware of the hazards which may be peculiar to a specific area or commodity within an area. This is especially true with road transport cargo carried under CMR, where it is the responsibility of the carrier to exert 'utmost care' as opposed to the 'reasonable' standards of service which are the norm in other sets of conditions. Just a detail, but is the last carrier of your consignment carrying a value in excess of his policy limit? If so, who pays?

3. Always be aware of the possibility of fraud, even in the most ordinary of situations. Remember if there is fraud there is no cover.
4. Remember that some risks are uninsurable.
5. Although it may seem to be a pointless chore at the time, keep very careful records. Cases in dispute are better settled by records than by recollection.

Take care with your insurance, it is an integral part of your business, it is not just an 'add-on' and prevention is so much better than cure.