

Welcome to TT Talk, No. 85 in the series.

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1. Club warns of stormy weather ahead - and what to do about it

As the Bahamas, New Orleans and the Mississippi coast gradually recover from the devastation wreaked by hurricanes Katrina, Rita and Wilma last year, and with the 2006 hurricane season upon us, the Club has published a booklet in an effort to ensure that port and terminal operators are well-prepared to deal with storms and high winds.

In a foreword to the booklet, Club board member Joe Dorto, CEO of Virginia International Terminals, comments that, unlike most other natural catastrophes, the arrival of a windstorm can often be predicted, giving operators valuable time to secure equipment and buildings. The booklet, a synthesis of research and analysis gathered in dealing with the aftermath of storms, draws on the experiences not only of the Club but also of other specialist organisations worldwide to give members guidance on how to prepare their facilities against an impending storm.

Andrew Webster, the Club's loss prevention director said the publication was "an important demonstration that insurance can and should be about more than just picking up the bill." He added: "The distillation and sharing of all this knowledge and practical advice exemplifies the ethos of a mutual insurer and demonstrates one of the many benefits of mutuality " a proactive loss-prevention programme that works to the good of all policy-holders."

The booklet is being distributed to Members and is available on the Members' section of the website. Copies can also be purchased as downloads or in print from the Club's website. www.ttclub.com

2. US strengthens air cargo security

Dan Negron writes from New Jersey to point out significant changes in US regulations governing the tendering and acceptance of air freight.

In mid-May the Transportation Security Administration (TSA), part of the US Department of Homeland Security, announced requirements relating to the acceptance and carriage of airfreight, in further efforts designed to protect aviation from terrorist attack.

Noting that more than 50,000 tonnes of cargo is transported by passenger and all-cargo aircraft each day, the TSA said that the new security requirements are the first substantial changes to air cargo regulations since 1999, and represent a joint government-industry vision of an enhanced security baseline. TSA assistant secretary Kip Hawley said that the administration was working

with shippers and the airline industry on a series of separate operational measures to further increase security in air cargo.

The Air Cargo Final Rule makes permanent some practices already in place and adds others. Major new security measures include:

- Consolidating approximately 4,000 private industry Known Shipper lists into one central database managed by TSA. This will allow TSA to have more visibility into the activities of companies shipping on passenger aircraft and permit more in-depth vetting of known shippers;
- Requiring background checks of approximately 51,000 off-airport freight forwarder employees;
- Extending secure areas of airports to include ramps and cargo facilities.

These measures mean that an additional 50,000 cargo aircraft operator employees will have to receive full criminal history background checks, and will be enforced by an expanded force of air cargo inspectors stationed at the 102 airports which account for 95 percent of domestic air cargo.

The details of how to implement the new regulatory changes are spelled out in the security programmes that air carriers and freight consolidators must maintain. Draft security programs will be provided to the carriers and consolidators for comment concurrent with release of the final rule.

Enhancements are expected to be phased in during the next six months.

Full details of the air cargo final rule will be published in the Federal Register in the coming days. Showing that it means to enforce these regulations, the TSA comments that, in recent weeks, three air cargo consolidators have had their licences revoked for breaches of their security procedures, which means also that other carriers may not accept cargo from any of these three companies.

Dan points out that, although it is not specifically mentioned in the administration's press release, the regulations change the definition of an "Indirect Air Carrier" (IAC). The commentary to section 1540.5 states "with these changes, freight forwarders who offer cargo to operators of larger all-cargo aircraft must have a TSA-approved security program." Under section 1548.11(a) an IAC is banned from using any individual to perform any security-related duties to meet the requirements of its security program unless that individual has received the training specified in its security program. This requirement covers employees and agents performing security-related duties for the IAC.

A copy of the regulations and its commentaries (all 167 pages) is available through the attached link.

<http://www.tsa.gov/public/display?theme=44&content=09000519801dfb43>

3. NVOCs and General Average

The explosion and fire on board Hyundai Fortune affected a very large number of containers which had been on their way to Europe, and consequently also very many intermediaries -- whether they call themselves forwarders, NVOCs, NVOCCs, logistics operators or consolidators - and their clients. While general average is a very ancient maritime institution, it is a fairly rare occurrence these days. It therefore comes as no surprise to note that the ocean carrier's demand

for GA guarantees has caused problems for shippers and intermediaries alike: very few understand how it operates in practice. Harry Lee in the Club's Hong Kong office explains:

General average applies when something has happened which has threatened the voyage and has also required payment of extraordinary costs in an attempt to avoid the common peril. It is similar to mutual insurance in that the burden of the sacrifices and expenditures are spread equitably amongst the parties -- shipowner and cargo-owner alike -- whose interests have been preserved; it applies irrespective of any party's fault in carrying out the contract of carriage. Even though the cargo interests are immediate victims of a marine casualty due to cargo delay, loss or damage, they are still liable to make contributions to general average.

For shippers it is important to note that the obligation to pay general average attaches to the cargo, not to the contract. The responsibility to pay the contributions lies with the cargo-owners and cannot be devolved onto the shoulders of an intermediary, even if they actually made the booking or the contract of carriage with the actual carrier. The contributions are assessed on the landed value of cargo -- underlining the principle that general average is a sacrifice for the common good. If consignments have been lost -- perhaps deliberately jettisoned to save the ship -- those cargo-owners are also entitled to get a contribution to their losses from everyone else.

The shipowner has a legal duty to protect the interests of the property owners who have sustained sacrifice (and thus are entitled to seek contributions from other interests). Hence, all property interests must collectively be taken into account in an adjustment. Normally the shipowner appoints a specialised firm of general average adjusters to deal with all aspects. They act on behalf of all property interests (not just for the ship) and are responsible for collecting the right levels and forms of security, as well as calculating the correct contributing proportions. In the aftermath of an incident, the adjusters can only work from records such as the ship's manifest and will usually therefore write to the company recorded as the ocean carrier's contractual partner, although that person may not be the actual owner of the goods. Therefore, if an intermediary receives any request for security request from the shipping line's general average adjusters, he should relay the documents to his client or, if ownership and title have already passed through transfer of the bill of lading, to the consignee. Difficulties sometimes arise when there are two or more intermediaries in the contractual chain, but the rule remains the same: the responsibility lies with the cargo-owner.

The adjuster protects everybody's rights by exercising a lien (withholding release) on all cargo and property preserved. The lien can be discharged by provision of security or cash deposit. In other words, the shipowners will not, and they cannot, release any shipment unless its owner has made an agreement, backed by financial guarantees, to contribute general average.

Letters from the average adjusters will state clearly what the cargo owners need to do for the purpose of obtaining release or on-forwarding of the shipments. In general, both average bonds (to be signed by the cargo owners) and guarantees must be signed. The good news is that, if the cargo was protected by marine insurance, general average contributions will be paid by insurers. All the cargo-owner has to do in those circumstances is to pass the documents to the insurer, who will look after all the paper work.

If neither consignors nor consignees have taken out cargo insurance, whichever of them is the cargo-owner will have to provide an acceptable guarantee, either in cash or from a first-class bank. Members faced with this situation may wish to seek advice from the Club.

On some occasions a third party salvor may have assisted in saving the voyage. At law, all benefited parties must give an award to the salvor who also has a right of lien on goods saved. The process is similar to, but distinct from, the collection of general average contributions. Again, this is a matter for the cargo-owners, not the intermediary. Usually the salvors ask for security to discharge the lien. Sometimes, but not always, the shipowners (or the general average adjusters) may take up the collection of salvage securities as well to avoid duplication of efforts.

Liability under the contract of carriage and general average contributions are separate issues entirely. On the other hand, whether the carriers should be liable for causing a marine casualty is always a complicated question of law and fact not answerable overnight – indeed typically such disputes take several years to reach the courts. Also, carriers are entitled to liability exemptions by law, international conventions or contract. Our advice to members is that they should try to explain that it is in their clients' best interests to follow the general average instructions immediately and get their cargoes released, instead of focusing and spending too much time arguing about liability.

As noted above, clients who have "all risks" cargo insurance need not worry about any of these matters, as their marine insurers will take care of everything that has to be done. Yet another good reason for ensuring that your clients have taken out proper insurance cover for their goods in transit.

Of necessity this is only a brief overview of a complex subject. Readers wishing to find out more about general average may find the Club's Stoploss bulletin No. 11 (available from the Club's website www.ttclub.com) of help.

4. US Maritime Commission targets delinquent NVOCs

The US Federal Maritime Commission has recently instituted an investigation into possible violations of the Shipping Act by three non-vessel-operating common carriers. The companies are alleged to have accepted shipments from ocean transportation intermediaries that did not have required FMC tariffs or bonds.

Members are reminded that, if they are trading to or from the United States, they must comply with the FMC requirements for lodging, bonding and adhering to their tariff schedules. Members are NOT covered by the Club for any fines or penalties they may incur for non-observance of the FMC rules.

More information is available from www.fmc.gov

5. Railroad honours safe shippers

US railroad BNSF has honoured 59 shippers for the safe transport of hazardous materials by rail at its ninth annual product stewardship awards event. Two companies - BP Products North America and Olin Chlor Alkali Products - have won the award every year since they were first given in 1997. BNSF's product stewardship award is presented to shippers who successfully transport a minimum of 500 loaded tank cars of hazardous materials during a calendar year without any non-accidental releases.

6. Conclusion

We hope that you will have found the above items interesting. If you would like to have further information about any of them, or have any comments you would like to make, please email the editor at tt.talk@ttclub.com. We look forward to hearing from you.

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