

Welcome to TT Talk, No. 75 in the series.

Contents:

1. Keep thieves out of the cab!
2. UNCTAD survey on ISPS implementation
3. Safety warning on thiourea dioxide
4. A shattering experience
5. The costs of misreleasing cargo
6. Club offices in the USA
7. Conclusion

1. Keep thieves out of the cab!

In its policy conditions, the Club often demands that, where certain high-value consignments are being moved by road, the driver must be equipped with a card to be used if he is stopped by the police. The card should explain that the vehicle is carrying a sensitive load and that the driver is prohibited from leaving the cab or even opening the window. He or she is, however, willing to accompany the officers to a nearby police station.

Just how useful this sort of card can be is amply demonstrated by a recent report, published on the Truckpol website:

"Police are investigating an attempted armed robbery in the Birmingham area. A lorry driver was stopped when a Vauxhall Omega, with three male occupants dressed in dark clothing and wearing high-visibility jackets, pulled in front of him, displaying alternate flashing red lights on the rear parcel shelf. Believing them to be police officers, the driver pulled over.

"Two of the men approached him and signalled for the driver to open the door but he wisely kept his cab locked, telephoned his manager and held up a vulnerable load card which carries instructions to bona fide police officers. When he realised that they weren't genuine police officers, he drove away and returned to base." The load was subsequently safely delivered to the correct consignees.

Truckpol also reports the encouraging news that eight men were recently sent to prison for a total of 94 years for their involvement in a series of robberies, hijacks and thefts from lorry drivers. The total value of goods stolen in these robberies was more than UKP 800,000. The prosecution followed the search of a warehouse in which police recovered two stolen tractor units, an imitation handgun, a trailer load of stolen electrical goods and a number of other items. Arrests soon followed and the strength of the evidence against the men resulted in guilty pleas to a number of charges for robbery, firearm theft, handling, conspiracy and counterfeiting offences. All of this underlines the message that cargo theft is often very closely linked with other forms of criminal activity.

TruckPol is a public/private sector partnership, supported by the UK Home Office, the Association of Chief Police Officers and industry stakeholders. This partnership is crucial in sharing information on national road freight crime to deliver solutions to minimise opportunities for criminals to target transport businesses and drive down road freight crime. Although it is a UK-based initiative, its website contains much useful information for drivers and road transport operators in all countries about how to reduce the risk of theft.
<http://www.truckpol.com/alerts.htm>

2. IAPH survey on ISPS impact

The International Association of Ports and Harbors (IAPH) has circulated its members at the request of the United Nations Conference on Trade and Development (UNCTAD) to help it collect information on the effects of ISPS Code implementation. The research, which UNCTAD says is for the purpose of its own study, is looking not only at general issues but also the costs and investments incurred to ensure compliance. With that aim in mind, UNCTAD has asked IAPH member ports to answer a questionnaire.

UNCTAD has agreed that, in view of IAPH's consultative status, the association will receive copies of the responses for its own study and analysis.

We know that many members of the TT Club and readers of TT Talk are affiliated to the IAPH but some are not and it would be useful for UNCTAD to have the most accurate information it can get. If therefore you are not a member of the IAPH but are interested in making your voice heard about your experience of ISPS implementation, its costs and consequences, please contact Alice Rymill (alice.rymill@thomasmiller.com) for a copy of the questionnaire. The completed documents should be submitted to UNCTAD by 30 December.

3. Safety warning on thiourea dioxide

Our friends at the UK P&I Club have issued a warning about improperly declared shipments of thiourea dioxide, predominantly emanating from China.

Thiourea dioxide (or formamidine sulphinic acid) is an odourless white to pale yellow crystalline powder. It is used in the paper and textile industry as a bleaching and reducing agent and is listed under UN No. 3341 in class 4.2 of the IMDG code. It is normally packed in sealed drums since it readily oxidises in air and may generate enough heat to cause ignition when in contact with moisture. The cargo may only be stowed on deck.

According to the UK Club, there have been several instances recently of shippers naming the product as "Thiourea D" or "Thiourea De" and claiming that it is stable. One such shipment decomposed violently in a container, producing sulphur dioxide that contaminated neighbouring containers and necessitating expensive decontamination, clean-up and disposal operations. Subsequent chemical analysis confirmed that the cargo was, indeed, thiourea dioxide.

The Club warns that neither "Thiourea D" nor "Thiourea De" is a recognised shipping name. If any cargoes with these or similar descriptions are offered to members, even if the shippers claim that they are not hazardous, they should be refused.

4. A shattering experience

We are grateful to Bob Blyth, a reader in South Africa, who noted how, in a recent issue, we stated that a consignment had been sold on "FOB Larnaca airport" terms. While our report correctly recorded the agreement between buyer and seller, Mr Blyth points out that FOB, along with CFR and CIF, should really only be used when there is a sea voyage, and even then, only when the cargo is not containerised. The International Chamber of Commerce has expressly developed the terms FCA, CPT and CIP for use when cargo is carried in containers or transported by rail, road or air.

Shipping documentation is notoriously slow to change, as evidenced by the continuing requirements on letters of credit for "3/3 original bills of lading" (a practice dating back to the uncertain voyage times in the days of sail) and even for bills to be claused "stow away from boilers" (slightly more recent, but still linked to coal-fired, steam-powered ships). It is similarly taking a mighty long time for these "new" Incoterms (twenty years old and counting) to become generally adopted.

Mr Blyth points out that using an inappropriate Incoterm can have unintended consequences, recalling the experience of a South African exporter who sold glass panels to a buyer in Zambia on CFR Lusaka terms. Bearing in mind the geography, the consignment had logically been sent overland, by rail. On arrival at the construction site outside the Zambian city, more than half of the consignment was found to be broken and unusable.

The buyer immediately contacted the company concerned to request urgent replacements for the shattered panes. The exporter replied that the risk of loss or damage under CFR was borne by the buyer who should have taken out cargo insurance to cover his exposure. The buyer refused to pay and the case subsequently went to arbitration. The arbitrators held that under the CFR Incoterm the risk passes from seller to buyer at the ship's rail. As no ship was involved in conveying the goods to Lusaka, there was no ship's rail and therefore the risk never passed to the buyer.

The result was that although the seller had intended that the consignee should bear the risk of loss or damage in transit, in fact it was he that had to bear the cost of the damaged goods, either by paying for replacements or because his customer would not pay for the broken panels.

The moral of the story is that you should persuade your clients to use trade terms that are appropriate for the chosen transport mode, and be sure they understand their obligations under the term concerned. If they do not want to take all the risk right up to the client's door (and therefore sell DDU or DDP) then they should choose the most appropriate of the "intermediate" terms.

In essence:

- If FOB, CFR or CIF are used, there is small chance (and then really only for some break-bulk movements by sea) that the term is correct, BUT
- If FCA, CPT or CIP are used, they cannot be wrong

but the buyer and the seller must agree on what terms they want!

http://www.iccwbo.org/index_incoterms.asp

5. The costs of misreleasing cargo

The High Court in Hong Kong recently handed down its decision in a case involving the misrelease of a consignment of cameras. The claimant, Vastfame Camera, contracted with the buyer, HPI France for the sale of 55,000 cameras and invoiced HPI the sale price of USD 143,815.00. The payment terms under the contracts were "LC at sight" but these were later changed to "cash against documents". The claimant then arranged with Birkart to carry the cameras from Hong Kong to Le Havre, France. Birkart issued a house bill of lading to the claimant, consigned "to order", naming Vastfame as "shipper" and HPI as "notify party". On arrival, the consignment of cameras was released to the buyer by Birkart's local representative, Moiroud S.A, without them demanding surrender of the bill. Vastfame was never paid and sued Birkart for the full invoice value.

In its defence, Birkart contended that it was not a contractual carrier and that its "house" bill of lading was not a document of title but nothing more than a receipt for the goods coupled with an authority for it to enter into a contract for their carriage. The court rejected this argument, relying on the English court of appeal's decision in "The Starsin" which says that when a bill of lading contains on its face an apparently clear and unambiguous statement as to who is the carrier, the shipper should not have to scour the detailed conditions on the reverse to find out if he was actually contracting with someone else.

Birkart further argued that its liability was limited by reference to the conditions on the bill of lading, but these had been poorly drafted. In them, Birkart was described as "the company"

but the limitations of liability only protected "the agent". Since the court had held that Birkart was a principal carrier, it gained no protection from the clauses dealing with anyone acting as agent.

Judgment was given against Birkart for the full invoice value, but, as Moiroud had been responsible for the misrelease, it was held completely liable and ordered to compensate Birkart in full.

A more detailed report of the judgment is available on the DMC's CaseNotes website of our legal editor, David Martin-Clark.

<http://www.onlinedmc.co.uk/va.htm>

6. Club offices in the United States

From 30 November the Club's office has a new address in Jersey City:

Thomas Miller (Americas) Inc.
Harborside Financial Center
Plaza Five, Suite 2710
Jersey City, NJ 07311

The telephone and fax numbers remain unchanged:
Tel +1 201-557-7300
Fax +1 201-946-0167

The email inboxes for claims and underwriting, as well as individuals' email addresses are also unchanged.

It was recently decided that the Managers would close their office in Miami with effect from 30 November 2005. That decision was taken, in part, in an effort to improve efficiency in the administration of the Club's services through more fully staffed regional centres.

Moving forward, we are pleased to confirm that the Club will continue to provide a full range of claims handling, loss prevention and advisory services to its Members from its offices in New Jersey, San Francisco and Buenos Aires. Underwriting services will, as now, be provided from the New Jersey office.

With a few exceptions, the office in San Francisco will provide claims handling, loss prevention and advisory services to Members on the US West and Gulf Coasts (excluding Florida) and in Mexico, the office in Buenos Aires will provide those services in Central and South America, and the office in New Jersey will provide those services on the East Coast (including Florida) and in the Mid-west of the United States, in Canada and in the Caribbean.

Regardless of the office that may be assigned to you, you can be sure that all offices will provide the same high quality service to Members and their brokers that you have come to expect from the Club.

7. 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.

Andrew Trasler

Editor
On behalf of
TTMS (UK) Ltd, London

David Martin-Clark
Legal Editor
Shipping & Insurance Consultant
Maritime Arbitrator
Commercial Disputes Mediator

TT Talk is a free electronic newsletter published as occasion demands, by the TT Club, International House, 26 Creechurch Lane, London EC3A 5BA, United Kingdom.

You can also read this newsletter and past issues on our website: <http://www.ttclub.com>

If you do not wish to receive future editions, please reply to this message and include the word "REMOVE" in the subject line. If you have received this edition via someone else and you would like your own personal copy in future, please send your name, company name and e-mail address to:
tt.talk@ttclub.com

If you would like to receive further editions in Microsoft Word, please reply to this message and include "E-MAIL" in the subject line