

Welcome to the latest edition of TT Talk, number 43 in the series

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1. Container safety at sea

Our colleagues at the UK P&I Club have recently published edition No. 7 in their loss-prevention series "Carefully to Carry". It looks at the problems encountered in shipping containers - particularly the stresses caused to stacks in heavy seas - and contains much useful advice on lashing and securing systems. It also considers the difficulties that arise when the careful vessel planning is disrupted because a heavily-loaded container - planned for a lower tier - arrives late and therefore has to be stowed higher up than is really advisable.

Non-vessel-operators will also find items of interest: the problems of shipping thiourea dioxide and the risks associated with the carriage of apparently innocuous expandable polymeric beads are discussed; and the editors also provide useful information about the carriage of pharmaceuticals in temperature-controlled conditions.

The magazine is available free of charge from the UK P & I Club, International House, Creechurch Lane, London EC3A 5BA.

e-mail Karl.Lumbers@Thomasmiller.com.

or it can be downloaded from the UK Club's website at

[http://www.ukpandi.com/ukpandi/resource.nsf/Files/CtC7/\\$FILE/CtC7.pdf](http://www.ukpandi.com/ukpandi/resource.nsf/Files/CtC7/$FILE/CtC7.pdf)

2. Hazardous cargo: another warning!

The TT Club's campaign for better attention to the carriage of dangerous goods recently moved to south-east Asia, with seminars held in Hong Kong and Singapore last month. Both were well attended: they each attracted about 70 attendees, across the whole spectrum of Club membership, from shipping lines, terminal operators and freight forwarders. Andrew Webster of the Club's London-based Risk Management team was chairman and Mr Mike Compton MBE, also from London, the chairman of the ICHCA safety panel, was the key speaker who delivered a paper on the technical aspects.

The seminars focused on the best practice for the carriage of dangerous goods by sea and the IMDG Code (made compulsory this year under the 1974 Safety of Life at Sea Convention (SOLAS), as amended). They covered and discussed the IMDG Code, its background, requirements, and application; legal standards and enforcement (on the Hong Kong part), as well as the problems, risks and duty of care associated with the handling dangerous goods from both general and practical perspectives. Specific issues like mis-declaration and dangerous goods surcharges were also discussed.

The key message from the Club is that everybody in the transport chain has a duty (and a legal one, at that) to ensure that hazardous materials are carried safely. The lives of seafarers and other transport workers, further along the chain, are put at risk each time dangerous consignments are shipped without the proper declaration: just because someone was unwilling or unable to do their job properly. Transport operators must ensure due compliance with the IMDG Code as the starting point and minimum standard. But mere documentary or routine compliance with the Code is not enough. Hidden dangers like improper

shipping names or poorly-packed consignments can only be detected and avoided by a serious sense of risk-aversion. Adequate training and education are also indispensable. If in doubt, check!

In the seminar, the Club introduced the Hazcheck service, which is a user-friendly web-based tool for the operation, mentioned already in TT Talk No. 38. The free period for using this service has been extended to 1 May 2004. See: <http://www.hazcheck.com/>

3. The end of an ERA in Australia

Shipping Australia Ltd, the trade association encompassing ocean carriers, ports, terminals and other companies involved in shipping, has reminded shippers and carriers that from 1 June 2004 the current paper-based Export Receival Advice (ERA) will be replaced by the electronic Pre-Receive Advice (PRA).

The CEO of Shipping Australia, Mr Llew Russell, points out that the paper system, which has been in existence for some fifteen years, is notorious for errors. Around 60% of all ERAs contained information characterised by Mr Russell as "illegible, inaccurate or just plain wrong". He added "shipping lines estimate that they spend between 8 and 10 hours a week correcting mistakes" and believed that the resultant (but largely hidden) annual costs to shippers and their clients were in the region of half a million Australian dollars (USD 386,000). That figure did not even take into consideration the knock-on effects on supply chain efficiencies.

The electronic system, which initially will apply to container terminals in Sydney, Melbourne, Brisbane, Fremantle and Adelaide, is designed to save time and money by increasing the accuracy of container transport information and speeding the movement of containers into terminals. It will also complement the Australian Customs' new Cargo Management Re-engineering (CMR) programme as well as the US security requirements under C-TPAT and ISPS.

Shipping Australia points out that, once the CMR programme comes into effect, shippers presenting containers with inaccurate data are liable to be fined and also find that their cargo will miss its designated sailing. And, as the Club has pointed out on a number of occasions the new anti-terrorist measures in force there mean that if cargo is shipped to the United States with incorrect information it will inevitably be subject to serious delays and expense there.

Mr Russell said "all round the country, exporters are being unnecessarily burdened with the administrative, processing and re-handling inefficiencies of the paper ERA. So much of the information is now effectively and accurately handled by electronic data interchange, that we have reached a point of no return for paper transactions.. The electronic PRA is the next logical step."

Further details are available from Shipping Australia's website
<http://www.shippingaustralia.com.au/DesktopDefault.aspx>

4. Forwarders and the burden of proof

At the end of last year, the English Commercial Court was asked to decide whether a forwarder could limit its liability in a case where the circumstances of the loss were unclear. Which party had the burden of proving what actually happened? In this case, the forwarder had a contract with a mobile phone distribution company, under which it (the forwarder) could limit its liability to SDR 2.00 per kg if the phones were stolen, but had unlimited liability if they were negligently released. The phones disappeared from a warehouse: the forwarder thought that they had been stolen but could not provide an explanation one way or the other. It sought to limit its liability to SDR 2.00 per kg. The owners of the cargo argued that the burden of demonstrating what had happened fell on the forwarder, because it had promised that it would take care of the goods and would be liable in the event of their loss.

The judge held that the burden of proving what had happened to the goods fell on the forwarder. It had to demonstrate that the loss was caused by something other than negligent release: as a bailee, the forwarder had the goods in its care, and it was therefore in a much better position to state what had

happened to them. As it could not say definitely that the cargo had been stolen, the forwarder was held fully liable for the missing phones.

Further details of this case are available on David Martin-Clark's website
http://www.onlinedmc.co.uk/euro_cellular_v__danzas.htm

5. Corrections and clarifications

In Harry Lee's item on loss and replacement of bills of lading in TT Talk No. 42 the word "against" was missed out of the fourth paragraph. The text should have read: "Firstly, as a matter of fact, such an advertisement can never protect a g a i n s t an innocent buyer ...". In the following paragraph, we misspelt the name of Mr Justice Clarke (now Lord Justice Clarke). Apologies.

6. Conclusion

As you will see from the sign-off below, there has been a change in the editorial arrangements of TT Talk. Having created and nurtured this newsletter through its first two years and 39 editions, David Martin-Clark wishes to spend more time on other aspects of his business. I have therefore assumed the responsibilities of editorship, while David will remain as Legal Editor, helping me steer through the reefs and shoals of international law.

We cannot let the moment pass without expressing our gratitude to David for his valuable work. His is indeed a hard act to follow.

Both David and I hope that you will have found the above items interesting. If you would like to have further information on any of them, or have any comments you would like to make, please e-mail the Editor at tt.talk@ttclub.com. We look forward to hearing from you.

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