

A Note from the Editor

Two articles this issue deal with the sad and difficult issue of stowaways. Both articles mention the tragic deaths of 58 Chinese in Dover last month: the first deals with the various routes some stowaways use to leave their home land and the second tells you how the TT Club can help you. There is also a new Stop Loss sheet giving guidance on this subject.

Please note too that there is another new Stop Loss sheet dealing with the subject of Chassis in the USA and also, the Club's Loss Prevention magazine came out recently. Please go to the Club's website for these publications (<http://www.ttclub.com>) and any other publications.

I do hope you enjoy reading TT Talk, and, as always, please contact me if you wish to know more about any of the subjects mentioned or if you feel there is a transport topic, which we have not touched on yet.

Stowaways - 58 Dead in a Container

It must have been an excruciatingly painful death - jammed inside a hot, sealed container, 54 men and four women clawed at the metal walls as the air inside that pitch-black coffin vanished. That was the fate of the illegal immigrants, who are believed to be Chinese, found dead on 19 June 2000 in a truck container in Britain, with the refrigeration turned off on one of the hottest days of the year.

The port where they were discovered by customs' officers, Dover, UK, is a long way from Fujian province, from where experts say the illegal immigrants are most likely to have come. The peasants and unemployed along the coast of Fujian dream about migrating to the West - 'To find gold, sneak out. One goes, whole family wins gold,' is a common saying. For a long time, they have viewed with awe the United States, which is known in villages and towns as the 'golden mountain'.

Human smuggling has got simpler in recent years and there are lots of ways if one has some money. Many immigrants now choose to leave the mainland by air instead of risking their lives at sea. It is safer and they can get to their destination quite easily via countries with lax immigration control. For those who want to leave the country by air can obtain a Chinese passport with a deposit of about US\$4,000 or simply buy a fake one of a different nationality.

Hong Kong's airport and container terminals have been a major transit point, with Triad involvement. More than 100 illegal immigrants were found in cargo containers in Seattle and Vancouver in January, aboard ships that had passed through Hong Kong. Migrants holding forged documents frequently manage to elude detection at Chek Lap Kok in Hong Kong before escaping by air, but quite a number are caught with forged documents. Immigration Department statistics show that 1,903 people were arrested at the airport during the 1998-99 financial year for carrying fake visas or passports.

Chinese people can travel to Eastern Europe easily by air. First they fly to any of a number of southeast Asian countries and then to Eastern Europe. Those who want to go to Western European countries could easily get a valid visa from one of the former Soviet republics, such as Moldavia, and fly to Eastern Europe with their Chinese passport. Experts speculate that the group found dead in the back of the truck in Dover had flown to Eastern Europe and travelled by road to Belgium, where they were packed into the lorry. They might have had genuine Chinese passports or forged documents, with visas to a European nation, but no papers allowing them into the UK.

The Triads have a number of constantly changing routes, stretching around the world, to get their human cargoes to their destination. As soon as law enforcement action targets one route, they are adapt, quickly switching to another.

Contributor: Sandy Ip, TT Club - London

Stowaways in Trailers & Containers

In recent weeks, the international transport press has carried a large number of articles on the subject of stowaways, especially following the discovery in Dover of over 50 Chinese immigrants who had died inside a single Dutch reefer trailer.

United Kingdom publications in particular have focused on the heavy fines being levied on road hauliers arriving in UK ports from Continental Europe, many of whom would appear to be totally ignorant of the fact that clandestine entrants had gained access to their vehicles or were hanging on to the undersides of trailers. Under the UK Immigration and Asylum Act of 1999, fines have been fixed at UKP2,000 (US\$3,000) per individual stowaway, a level so high that a small haulier unfortunate enough to find himself with a number of stowaways in his trailer is in serious risk of bankruptcy. Not only drivers but also the owners, hirers and operators of vehicles and trailers are at risk.

The TT Club has become aware of several articles, which have implied that transport operators are unable to insure against such risks. This is not the case. For a number of years, the TT Club has been offering its members insurance cover against not only legal defence costs but also the fines themselves. Cargo contaminated or otherwise damaged by stowaways is also covered.

According to the Club's spokesman, Andrew Kemp, the origins of this cover can be traced back to the beginnings of the TT Club:

'The TT Club was created to answer the needs of shipowners who, with the birth of containerisation, were assuming increased liabilities onshore in the shape of terminals, containers and chassis. Protection and Indemnity (P&I) clubs which, traditionally, had provided shipowners with liability cover, did not want to get involved with shoreside risks and so the TT Club was conceived to fill the requirement for a mutual club willing to underwrite such risks.'

'Stowaways have been a problem for shipowners for as long as there have been ships. However, the problem has increased in magnitude over the past few decades as governments all over the world have taken a tough line against ships unfortunate enough to find themselves carrying unwanted passengers. P&I clubs have been picking up the various costs relating to stowaways for many years.'

'It was therefore understandable that the TT Club should recognise this risk. Since these early days, its book of business has expanded to include freight forwarders and major international hauliers; all of these have availed themselves of the insurance cover which the TT Club offers against stowaways.'

The Club is already handling claims of over UKP 80,000 for Civil Penalty Notices imposed on its members by the UK Immigration Service and is also meeting the cargo damage, legal and other costs associated with similar cases not only in Europe but worldwide. As Mr Kemp admits, sooner or later, this will have an impact on premium levels but as a risk, stowaways still form a tiny portion of the claims paid by the Club:

'We are seeing a massive global increase in the numbers of political and economic refugees. Governments should adopt policies that recognise this trend. The TT Club does not believe that fining transport operators, be they major shipping lines, trailer operators or hauliers, is the answer. Yes, it encourages diligence - and we certainly want our insureds to continue checking their trailers and their loads as thoroughly as possible - but it also penalises the innocent. This is not what most people recognise as justice.'

'If these penalties continue and no brake is applied to the number of illegal immigrants attempting to stowaway on ships and trucks, then inevitably, premiums will rise. The Club is very keen to see governments implement policies aimed at making things more difficult for

migrants, for example by insisting on the scanning of trailers and containers at the loading ports.'

As part of an ongoing campaign to advise its members about the risks they run whilst going about their lawful business, the TT Club has released a guidance sheet that discusses measures that its members can take to reduce the risk that stowaways will enter their containers or trailers undetected. The Stowaways Loss Prevention sheet is available from John Nicholls at the TT Club <mailto:john.nicholls@thomasmiller.com> or from local TT Club offices. Alternatively, it can be downloaded from the Club's website: www.ttclub.com.
Contributor: Andrew Trasler, TT Club – London

Chassis Visibility

To all members who are owners, lessees and users of chassis, a reminder that all such equipment, manufactured before December 1993 and in use on USA roads today, must comply with US Law as respects the presence of conspicuity and/or reflective tape no later than 1st June 2001. Please ensure that your fleet complies with this regulation.

There is also a TT Club guidance sheet called 'Chassis on the Road in the USA', which gives further details. This Loss Prevention sheet is available from John Nicholls at the TT Club john.nicholls@thomasmiller.com or from local TT Club offices. Alternatively, it can be downloaded from the Club's website: www.ttclub.com.
Contributor: Harry Higham, TT Club - London

Releasing goods on the demand of a customer who cannot provide bills of lading may be a crime - be careful!

A Singapore court held that a freight forwarder had not acted dishonestly by releasing goods to a customer who did not pay for them in full or have possession of the original bill of lading, which remained in the control of the shipper.

A freight forwarder released a consignment of Walt Disney apparel to a trader, a long time client, who did not have proper documents and had not paid for them in full. The forwarder then lied to the shipper that he still had the goods. He was convicted of conspiring dishonestly with the customer to misappropriate the items and sentenced to jail.

On Appeal, Chief Justice Yong Pung How quashed his conviction and set aside the sentence. He said Er Joo Nguang, 45, (the managing director of World Freight) was not being dishonest or committing criminal breach of trust just because he released the goods without proper documentation.

World Freight received the goods meant for its customer (Melwani). Er released them to Melwani, though the latter did not give him the original bills of lading endorsed by a bank, which would have shown that the Melwani had paid for the goods in full. Melwani needed the items urgently for a public sale in November and December of 1997.

Er and Melwani were tried and convicted last year of conspiring to misappropriate the goods. Er was sentenced to jail for four years and six months, while Melwani got five years and six months.

On appeal, CJ Yong quashed Er's conviction, saying he was not satisfied that dishonesty had been proved beyond reasonable doubt. Er said he had not expected Melwani, whom he described as a man of means, not to pay. In his grounds of decision, the CJ found Er's explanation credible. Releasing goods without the duly endorsed bills of lading was not an offence, unless dishonesty had been proved.

"The determining factor in judging whether a case is one of criminal breach of trust or of criminal breach of contract is whether the accused had acted dishonestly," he said.

CJ Yong felt Er had not released the goods so that Melwani or he could benefit. Neither had he intended to cause wrongful loss to the shipper. He also found that there were genuine commercial reasons for Er to breach standard practice and release the goods to Melwani, a trusted customer.

Contributor: P K Liew to Forwarderlaw.com, Peter Jones, General Editor

Combat Drug Smuggling in Colombian Ports

Stowaways are not the only problem facing the transportation industry. Drug smuggling is a worldwide problem. One of the UK Club's correspondents has the following recommendations for ship owners. However, it is well worth remembering that most of this advice is common sense and could be applied to all forms of transportation.

As the risk of drug smuggling is very high in Colombian ports, masters should take strict measures to reduce the risk of their vessels being used by the traffickers.

The following measures are recommended while in port:

limit the entry onboard only to people involved in the loading/unloading operations and who are properly identified (e.g. from the port authority, agents, stevedores, surveyors);

not to allow women onboard except when they are involved in the vessel's operation;

strict control entering and leaving the ship, including crew members;

careful inspection of provisions loaded locally;

keep a permanent watch on deck, boat decks, etc. by either crew members or private night watchmen;

adequate lighting on deck and around the vessel at night;

report to the agency or port authority if any suspicious boats are seen near the vessel.

It is also very important to:

have an underwater inspection of the vessel's hull and rudder to ensure no packages have been stuck there. This measure has been proved to be effective;

immediate request for TT and/or P&I assistance if drugs are found during any inspections.

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