

Welcome to the latest edition of TT Talk, number 64 in the series.

Contents:

1. Club announces financial results
2. The "Rafaela S" continues to make waves
3. Club's programme of Hazmat awareness seminars
4. Police crack down on overloaded containers
5. Conclusion

1. Club announces financial results

Last week the Club announced its annual results for 2004. Gross earned premiums rose by more than 20% to almost USD180 million. This, together with a 37% reduction in net claims incurred and a continued strong focus on cost control, yielded a surplus after tax of USD32.19 million. On the balance sheet, total assets grew by 15% to more than USD446 million while the total surplus and reserves reached a record USD89.53 million, an increase of 56% over 2003.

Reviewing the year, the Club President and Chairman, Sir David Thomson, said: "This exceptional set of results represents the accomplishment of the three-year recovery programme that was put in place by the board in early 2002. We now have a strong balance sheet and a competitive business that is recognised as the clear market leader in our chosen niche."

More details are available on the Club's website

<http://www.ttclub.com/ttclub/ttclub.nsf/HTML/63E8FA1B4A810C3780256FCC005A42E3>

2. Rafaela S continues to make waves

Following the item in TT Talk No. 62 on the House of Lords' decision in the Rafaela S case, Ian Hyslop, the legal services director of the Club writes with some reflections and advice on the use of straight bills of lading:

In spite of some remaining uncertainties, the Rafaela S brings welcome clarity to the interpretation of documents of carriage. It is important that members be aware of its implications both in issuing their own documentation as carriers and in accepting documentation as shippers from their subcontractor carriers.

It is now clear that an English court will apply the Hague-Visby rules to contracts evidenced by documents which are entitled, and look like, bills of lading, whether they are issued "to order" or addressed to a named consignee. If members hope to avoid being caught by the rules, the document must be entitled "Waybill" or "Receipt for Carriage", should restrict itself to details of the carriage and should not carry standard terms on the reverse. Conversely, a bill of lading should obviously be a bill, that is to say: it should "look and smell" like one. The Club's series 100 standard bill, for example, meets this requirement.

Members should also realise that the Hague-Visby rules are not always "bad" for them when they act as carriers. In seeking to avoid Hague-Visby by issuing a document to which they do not apply, you may be sacrificing not only a limitation structure, but also some important defences such as error in navigation. Further, using a document which does not require presentation (such as a waybill), may increase the risks of fraud.

Some carriers may wish to issue documents which are not caught by this judgment, in order to restrict their liability to below Hague-Visby levels. This is what happened in the Rafaela S itself: the carrier sought to rely on the USD 500 package limitation under the United States' Carriage of Goods by Sea Act, in preference to the more generous Hague-Visby alternative.

Members may find it difficult to resist such tactics employed by ocean carriers to whom they subcontract carriage. Any resulting "mismatch" with your own conditions will not of itself prejudice insurance with the Club, but you should be aware of the problem. You should be prepared to negotiate the terms of carriage as far as possible and appropriate (for instance by demanding a bill of lading from the line) and to ensure that the documentation which you issue to your customers is on the same terms.

It is worth recalling two basic points in this connection.

a. If the party issuing a waybill wishes to incorporate the Hague-Visby rules, there is nothing to stop this being done explicitly (as long as the normal requirement to bring it to the attention of the shipper is satisfied).

b. The rules will only be "imposed" as a result of *Rafaela S* in respect of voyages - generally exports from signatory countries, including of course the United Kingdom - to which Hague-Visby applies by force of law, and where the conditions include a clause enforcing English law and jurisdiction.

A longer version of this note has been posted on the Club's website <http://www.ttclub.club/ttclub/ttclub.nsf/HTML/pr070405>

The managers would welcome readers' views on this matter, and are always ready to offer further advice. Please write to tt.talk@ttclub.com

3. Club seminars on dangerous goods

Over the last six months, the TT Club, in conjunction with ICHCA International has organised a highly-popular series of seminars on hazardous goods transportation. The seminars concentrate on "back-office" issues such as staff awareness, identification and correct declaration of hazardous materials, segregation of hazards etc, and the penalties for failure to comply with the regulations.

The programme is now being extended to a number of other venues, with seminars planned for the following locations:

Limassol, Cyprus	13 & 14 April
Shanghai, PR China	20 May
Vancouver, Canada	08 June
Los Angeles, USA	09 June
Copenhagen, Denmark	05 & 06 October

Other seminars are planned for a venue on the US east coast and the UK (probably in September); and in Dubai and India in November. The exact dates and locations will be announced later.

The seminars are normally one day long and, besides a session on IMDG awareness, they include an update on security in the supply chain and the recent Code of Practice on safety and health in ports, issued by the International Labor Organization.

The seminars are free to companies which are members of the TT Club or ICHCA International, but places must be reserved. If you are interested in attending any of these seminars, please contact Andrew Webster (email Andrew.webster@thomasmiller.com) or Helena Workneh (Helena.workneh@thomasmiller.com) to make a booking.

The need for such seminars is again highlighted by a recent report in the Hong Kong Shipping Gazette which said that dock workers in Colombo, Sri Lanka, were "up in arms" following the discovery of a consignment of explosives at the port. According to the Colombo Page newspaper, the All Ceylon Ports Employees' Union alleged that two containers which had

arrived at the SAGT facility from Hong Kong were found to contain rockets and other fireworks when they were opened by the authorities for examination. The story also claimed that an unnamed shipping agency had facilitated the shipment by preparing false documents.

4. Overloaded containers

The police and highway authorities are continuing to crack down on overweight vehicles, and are looking especially at containerized loads.

In many countries, if a vehicle is discovered to be over the permitted weight limit, it will generally not be permitted to move any further: the truck operator or the shipper will be required to arrange to transfer the excess weight to another vehicle. It will immediately be recognized that the roadside is not the best environment for carrying out such transfers. Delivery will inevitably be delayed and there is a substantial risk of damage to the cargo. In the United States, truckers are permitted by federal law to recover the costs of any such transfer operations, and any fines imposed, from the shipper; they are also allowed to impose a lien on the cargo until the costs are paid. Similar arrangements exist in many other countries, either by law or under agreed contractual terms.

The reasons behind this close attention are evident: overloaded vehicles constitute a danger to themselves and other road users. If you were responsible for dispatching an overloaded container which was subsequently involved in an accident, you could find yourself liable in tort to an injured third party. No indemnity or guarantee from a customer or a trucker will shield you against any such claim, although they might enable you to make a financial recovery - providing, of course, that the trucker or customer is adequately insured. If you knew that the container was in excess of the permitted limits and nevertheless allowed it to proceed, you may have jeopardised your TT Club cover for first party and third party liabilities.

Because the weight restrictions differ from country to country, and because you also have to take into account the weight of the carrying vehicle when calculating the permitted weight in a container, the Club cannot give precise information for any particular movement. You should however be able to get the required information from the shipping line's dispatch department

5. 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 tttalk@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.