



Japan-ASEAN Cooperation



AFFA

Sustainable Human Resource Development in logistics services for ASEAN Member States

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Handling Liability Claims



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Objectives

To identify practical issues relating to claims handling



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Topics



- What are the claims conditions which apply to liability policies
- What happens when liability policy is activated?
- Claims scenarios

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Claims Guidelines



Liability policies always contain
conditions on claim procedures
– see examples in notes

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Claims Guidelines



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Claims Guidelines

To avoid prejudicing claim...

- If there is any event that is likely or suspected, that can give rise to a claim against you, notify the insurer – any late notification may prejudice your claim
- Reject the claim and advise your customer to submit the claim to their cargo insurer



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Claims Guidelines

To avoid prejudicing claim...

- Notify the carrier and/or your sub-contractor and file a written notice of claim against them as soon as possible. Be careful of prescribed time limits such as 3 day notice against sea carriers, 14-day notice against airlines & contractual notices against your sub-contractors



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Claims Guidelines

Never admit liability, undertake any financial obligation, or guarantee to pay out, without seeking consent from the insurers



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Claims Guidelines

To avoid prejudicing claim...

- Do not allow your staff to be interviewed by cargo surveyors
- Always consult your insurers before appointing a lawyer to defend the claim



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Claims Procedure

Question:

Should you notify insurer of each and every potential claim?



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Claims Scenarios

Scenario 1: 'All Risks' – Fortuity – Inherent vice

- 3 separate shipments of laminated wood flooring from S'pore to Long Beach.
- On arrival all 3 shipments damaged by moisture
- Major issue whether damage due to fortuity or inherent vice



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Claims Scenarios

FORTUITOUS

Something fortuitous is random like an accident, but there's no downside. A rock falling on your head is an accident, dollar bills falling on your head is fortuitous. The meaning of *fortuitous* is changing from "happening by chance" to "lucky chance" because people get it mixed up with *fortunate*.



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Claims Scenarios

INHERENT VICE

An exclusion found in most property insurance policies eliminating coverage for loss caused by a quality in property that causes it to damage or destroy itself.



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Claims Scenarios

Findings:

- Trial judge found that damage not caused by inherent characteristics of the cargoes but due to abnormal conditions in ship hold.
- On appeal, Court reviewed that there was no evidence of exceptional conditions in hold to constitute a fortuity and held it's attributable to nature of cargoes.
- Appeal was allowed and claim against insurer dismissed



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Claims Scenarios

Scenario 2 – Failure to report claim

- Jet boat operator received 3rd party letter claiming damages and injuries on 6 Jul '95.
- Nothing happened till 23 Feb 2000 when served with writ for \$2.1 m
- Insured claimed and was duly denied coverage



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Claims Scenarios

FAILURE TO NOTIFY OF CLAIM



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Claims Scenarios



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Claims Scenarios

Findings:

- Court found on grounds of Insurance Act insured not entitled to relief having failed to act reasonably. (Act has no provision for contract of marine insurance)
- On ground of law of equity (common law), Court found insurer had suffered prejudice
- Insured request for coverage was dismissed



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Claims Scenarios

Scenario 3 – Direct action against Insurers – Interpretation of Policies – limits of Coverage

- LSP's truck stolen including client's belongings. Judgement against LSP not satisfied
- Client sued insurers directly, insurers disagreed with loss apportionment



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Claims Scenarios

Contra Proferentem

The doctrine that the construction least favourable to the person putting forward an instrument should be adopted against him.

Example: Form of Condition of Contract
Bills of Quantities
Specification

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Claims Scenarios

Findings:

- Court noted principles of contra proferentum rule: the principle that coverage should be broadly construed and exclusion narrowly. When policy is ambiguous then it will be construed in insured favour
- Court considered whether its breach of transportation or storage
- It was held to be storage and the full limit applies



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Claims Scenarios

Scenario 4 – Cargo Insurance – Exclusions – Institute Frozen Meat Clauses

- Plaintiff bought a used refrigeration unit from LSP to transport meat and vegetables and insured with an exclusion arising from “...unfitness of container”
- During transit unit broke down and goods within were spoiled
- Plaintiff sued both the vendor and their own insurer



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Claims Scenarios

Findings:

- Court found the cause of failure of the unit was a defective part
- Plaintiff argued implied warranty of fitness and merchantability under Sale of Goods Act
- Vendor argued contracted out with “No Warranty” in quotation
- Court held these words not clear to exclude implied terms
- Court held insurer not liable, exclusion not negotiated away



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Claims Scenarios

Scenario 5 – Tower’s Legal Liability

- Tug owner’s policy cover loss of damage to barge and cargo
- The barge and cargo were owned by same owner
- Insurer denied liability on basis that policy excluded all liability to cargo
- Tug owner has extension to cover ‘tow or the freight thereof or to the property on board’



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Claims Scenarios

Findings:

- Both trial Judge and Court of Appeal held exclusion applies to cargo on insured vessel i.e. the tug and not cargo on the barge owned by barge owner and not insured
- Further 'freight' meant goods transported in a vessel.
- It is held there was coverage under the policy



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Self- Assessment

