

MARINE CARGO CLAIMS ADJUSTMENT AND RECOVERIES

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Claims Settlement - registration and documentation

It is common knowledge that the Claims Department of an Insurance Company is the mirror through which the public in general and the assureds in particular judge the efficiency and the viability of any Insurance Company. The manner of settlement of marine insurance claims can, therefore, enhance or bring down the good name and image of a marine underwriting company. And, unlike the other branches of insurance where often a claimant has to complete a claim form, in marine claims settlement, the most important thing is the collation of various shipping and insurance papers by the claims adjuster to ensure quick and judicious settlement.

The ability of a claims adjuster to trace claim files within a short or reasonable time when an assured calls in at the office or telephones to make enquiries on a claim cannot, therefore, be over emphasised. And to ensure this, a cargo claims register must be provided in a cargo claims office. In such a register are recorded all in-coming claims with the required documentation. In this register, too will be recorded the reference numbers of all claims that pass through the office. In it entries are also made in respect of any claim amounts that are settled at any particular time. This register also subsequently comes in handy when records of outstanding claims are required at the end of the year, or at any time.

A similar register must be kept for recoveries against shipowners and other third parties so that after settlement of claims where a recourse is to be made under the insurer's right of subrogation against any third party, the claim may be registered in it. Always when it has been clearly established that a loss is recoverable under a policy, consideration is given to the prospects of obtaining a recovery in respect of the damage sustained from any third party responsible for such damage.

Claims Adjustment

At this stage, I shall deal with the problems in marine cargo claims adjustment, after which I shall take on the subject of Recoveries from carriers

air carriers.

Marine cargo claims adjustment in developing countries, in my opinion, poses greater problems than one finds in the advanced countries for various reasons such as the fact that unlike the Developed countries where largely brokers and other intermediaries are employed by prospective assureds to obtain marine insurance covers, in Ghana, for instance, almost all the business is transacted directly between a proposer for insurance and the Insurance Company. I know that in a few countries in Africa such as Uganda, Kenya and Nigeria, the use of brokers is not uncommon. But in Ghana, ~~until about~~ eight years ago there were no broking firms. In such situations where almost all business is direct and ~~in fact~~ ~~where~~ the majority of those who engage in the business of imports and exports have limited formal education, the work of claims adjustment is ~~anything but~~ ~~enviable~~. A broker is conversant with the technicalities of insurance whereas an ordinary businessman, even in the developed countries, knows very little if anything at all, of it. Moreover, a businessman usually has no time to read his insurance policy to know exactly the risk he has insured his goods against.

With the above background, one finds that the adjustment of marine cargo claims in a developing country involves a lot of human relations. Even where a claim is not recoverable under a policy, it is the duty of the claims adjuster to pass on the message to the assured in the best possible way, in order to reduce the impact of the disappointment that will be felt by the assured. This approach is very vital because an insurance company is judged by the insuring public by the promptness and fairness with which claims are handled. Although a claims adjuster must be firm, he must also be fair. Any careless utterances by the adjuster before a claimant may go long way to reduce the premium income of an insurer by driving away prospective assureds.

A cargo owner (the assured) is required to give prompt notice of a loss or damage to the claims department so that he could be advised or guided, accordingly, as regards what measures should be taken to minimize the loss or damage or to lodge a proper claim. This notice of loss or damage must be followed by a fully documented formal claim against the insurer. When such notice is not given, it happens at times that the

assured, through ignorance, may omit to invite survey and the claims adjuster makes part payment of the claim. The part payment eventually leads to conflict between the assured and the insurer. This is often so because most assureds wrongly believe that insurers are always out to find excuses to reject claim payment.

To ensure an equitable assessment of a particular average claim, some or all the following documents are usually required in support of the claim, namely :

- (1) The Insurance Policy or Certificate,
- (2) A copy of the Suppliers' invoice,
- (3) A copy of the Bill of Lading,
- (4) The Harbour Waybill (which in Ghana is issued by the Ghana Cargo Handling Company who are the sole licensed shorehandlers at the two sea Ports of Tema and Takoradi. Their waybill is known as the delivery tally sheet),
- (5) Shipping Agent's discrepancy certificate or shorelanding Certificate, or any correspondence that have been exchanged between the assured or his agent and the carrier or other third parties,
- (6) A cargo survey report, if any, and if goods are sold by auction, certified copy of the Account sales, and
- (7) The Customs Bill of Entry.

In view of the importance which is attached to marine claims documentation, one always finds the required papers enumerated on either the reserve side of a marine cargo insurance policy or printed separately and attached to the insurance policy or certificate.

The insurance policy, for instance, is required to support all cargo claims in order to enable the claims adjuster confirm in the first instance, that the goods for which the claim is being lodged were properly insured with the Insurer. For example, every so often, I receive a stranger in my office attempting to institute a claim for loss of personal effects. Such visitors have often just returned to Ghana after some years stay in some overseas country. Then I demand to see the relevant insurance policy only to discover that the cargo concerned was insured in an overseas country. But the S.I.C. of Ghana being very

widely known in the country, these persons simply send their requests for claim settlement expecting to be indemnified by it. What makes such incidents more interesting is that at most times, the procedure for claims settlement has been clearly written on the policy. But the assured had not bothered to read them.

As you are all no doubt aware, the policy also indicates the terms and conditions of insurance and so makes it possible for the claims adjuster to confirm whether the loss or damage is recoverable under the policy. For example, there may be a deductible or an excess of 3% under the policy for breakage. If the claim amount does not exceed this excess, the claim will be rejected by the insurer. The excess, apart from preventing the payment, of claims resulting from the nature of certain cargo such as asbestos sheets which are highly susceptible to breakage, is to assist to improve the moral risk in underwriting certain types of business. Sometimes too, it is used to reduce the costs of claim settlement. It also indicates the limit of liability of the insurer. One cannot, therefore, entertain a claim without sighting the Policy of Insurance. But assureds do not seem to appreciate this more so because they consider that since the insurance company issued the policy concerned, it is unfair for it to request the assured to surrender his copy to the company.

Claimants often encounter difficulties with the various bodies at the port of destination such as the shipping agents and the port authorities or their agents in obtaining the required remarks on, say, the harbour waybill to ensure that the claims adjuster can ascertain when and where a particular damage or loss occurred. Such information is always very important in marine claims settlement because, more than perhaps in any other branch of insurance, the exercise of subrogation rights against third parties is vigorously enforced. As a result, apart from recovery of part of claims settled from reinsurers, it is also possible for marine cargo insurers to recoup substantial parts of amounts paid to assureds from, particularly, shipowners and bailees as well as land carriers. Hence, the incorporation of the Bailee Clause in the Institute Cargo Clauses under which cargo is insured. Another use to which a claims adjuster may put the harbour waybill is to enable him to check whether the consignee, or for that matter, the claimant effected delivery of the consignment from the port of

destination within, say, sixty days from the date on which the cargo was discharged from the carrying ship as stipulated in the transit clause of the Institute Cargo Clauses. It also provides the details of the land carrier, for example, the registration number of the vehicle which conveyed the goods from the port and the name and address of its driver.

Sometimes, the need arises for the assured to obtain a discrepancy or short-delivery certificate from the agents of the carriers concerned. It is from the type of wording of the remarks on the harbour waybill that the claims adjuster is able to ascertain whether it is necessary to request the assured to provide such document.

There is no doubt that many shipowners are reluctant to uphold claims received from consignees and their insurers and so they sometimes engage in delay tactics when requested to issue such certificates until any prospective claim against them has become time-barred. In fact, many shipowners in certain countries have been taking undue advantage of the "time-bar" clause. However obvious their liability for loss or damage to cargo is, they intentionally refuse to answer any correspondence received from a claimant until the one year time limit for filing suit stipulated under the Hague Rules for instance, has expired before they write to say they are unable to uphold a claim because it has become time-barred. But what an assured must be made to appreciate is that the insurer is just as anxious to indemnify the assured to preserve his good image as he wants to be able to exercise his right of subrogation against other third parties through whose fault he has been called upon to indemnify the assured. The claims adjuster should, therefore, make himself conversant with the shipping practice in the country in which he works so that he can advise consignees as to how they should deal with each shipping agent.

For example, in Ghana when cargo is shortlanded from a carrying vessel, it is the practice for the shipping agents to send out tracer messages to all the ports traversed by the vessel. If after the expiration of three months, they are unable to trace and deliver the cargo, it is presumed lost. They accordingly issue the relevant shortlanding certificate to the consignee. Where the consignee is not aware of such practice, when he is informed by the shipping agent that the matter is being investigated, the consignee does not bother to follow up the matter

immediately after three months has expired. Therefore, invariably the Certificate is issued to him, at times, one year after the date on which the cargo should have been discharged from the carrying ship. Then when the insurer refuses to uphold such a claim or makes part payment of it, the assured wrongly accuses the insurer of cheating or reluctance to uphold a genuine claim.

When the claims adjuster acquaints himself with the practices and events at the ports, this helps him also to take cargo loss prevention and minimization measures to reduce the loss ratio of his employers. This may take the form of advising the assured to effect prompt delivery of certain types of cargo that may be prone to high incidence of pilferage at the ports. Furthermore, the claims adjuster will be in a position to advise assureds as regards the right type of packaging materials to be suggested to the suppliers of a particular type of goods.

In the settlement of a marine cargo claim, another indispensable document is the Suppliers' invoice which aids the claims adjuster to make an equitable settlement. Without it, the claims adjuster might inadvertently underpay or overpay the assured as the particular consignment concerned might be made up of different sizes of the same item, such as butter in tins. The invoice again confirms the terms of the contract of sale - whether the cargo was sold on F.O.B. (Free on Board); C.I.F. (Cost, Insurance and Freight basis); C. & F. (Cost and Freight), or any other terms of sale, and thereby the insurable interest of the claimant. For example, where a cargo was sold on C.I.F. terms by the supplier to the assured, unless the insurance policy is assigned to the buyer (i.e. the assured), only the supplier can claim for any loss or damage as the buyer will then not have any insurable interest in the cargo.

Another document which a cargo claim adjuster demands from an assured is the Bill of Lading which contains the terms and conditions of the contract of carriage between the shipper and the master of the carrying ship. The Bill of Lading may state, for instance, that the carriage is being undertaken under the terms and conditions of the Hague Rules 1924. Such stipulation guides the claims adjuster to determine the limit of the carrier's liability and the legal time limit within which insurers can exercise their right of subrogation against the carrier concerned. It, at times too, helps to determine whether a recourse must be made against

the supplier for non-shipment of part of the cargo.

In the settlement of claims for damage to certain types of cargo such as rice or industrial raw materials in grain or powder form, the need for a cargo survey report cannot be over-emphasised. In such instances, it becomes almost impossible for the claims adjuster to determine the exact extent of the damage or loss suffered by the cargo except with the aid of a survey report. It is during such occasions that the assured is expected to invite a cargo surveyor recommended to him by the insurer or a Lloyd's Agency. But my observation is that by the wording of Open Covers, the impression is wrongly given to assureds that insurers require survey reports in the event of every damage or loss to cargo. However, where the nature and packaging of a particular type of cargo is such that one can easily determine the extent of the shortage, a discrepancy certificate issued by the relevant authority at the port of loading or discharging or by a land carrier must be adequate for the purposes of the claims adjuster.

In view of the importance which insurers attach to such surveys, names of recommended surveyors are often provided on cargo insurance policies and certificates. In Nigeria, the names and addresses of Intercotra Limited, the Lloyd's Agents in Apapa, and Fraser & Shepherd Ltd. at Port Harcourt and others may be found printed or typed on such document for easy reference of assureds. In Ghana, one may be referred to M/s. P.J. Everett & Co. Ltd., the Lloyd's Agents, and M/s. Risk and Indemnity Associated Consultants - an indigenous company.

In view of the vital role which cargo surveyors play in the adjustment of cargo claims, it is imperative that for a developing country to undertake the insurance of cargo successfully, it must have adequate number of trained cargo surveyors. An average businessman is more interested in his quick turn-over and cannot be indoctrinated to be patriotic about his profits. Any delays in the issuance of the survey report will hold up the settlement of his claim by the insurer. But the slightest delay in the settlement of a claim exasperates the cargo assureds as many importers and exporters in developing countries are against the local insurance of their goods. Claimants have been alleging that it is easier for them to buy imported goods on C.I.F. basis as in the event of loss

or damage they could obtain replacements easily. It would appear then that the importers will be more interested in an arrangement that will ensure the replacement of import licence where the cargo is lost in transit. Such an arrangement will be in the right direction because with such losses shortages of goods in the country are created.

The issuance of survey reports is often delayed when some cargo is to be auctioned and the auctioneer is late in submitting his account sales. This is an area where the cargo surveyor must be vigilant.

Survey fees

It must be noted that normally survey fees or other expenses of proving loss or damage are recoverable only if the claim itself is recoverable under the policy. If it is found, for example, that the damage was caused by a peril not insured against or that the damage sustained does not attain the franchise, then survey fees and other charges of proving the claim are charged to the assured's account and are not payable by underwriters. Although this is the practice among marine cargo insurers, it is one of the major sources of friction between insurers and assureds. However carefully one tries to explain the position to assureds, they just would not accept the explanation. The handling of this question by claims adjusters, therefore, requires a lot of patience and understanding of the claimant.

Another problem that militates against the insurance of cargo locally is the import licensing system that many developing countries are compelled to adopt in view of foreign exchange problems. But one finds that no allowance is made to enable an importer get immediate replacement of import licence where through perils of the sea a whole consignment is lost in transit.

In Ghana, Customs duty on imported cargo is based on a percentage of the Cost, Insurance and Freight (C.I.F.) value of the goods. And usually, carriers base their liability for loss or damage to cargo on the C.I.F. value. Hence the request for a copy of the Customs Bill of Entry form from the assured at the time of lodging a claim so that when the insurer is exercising his right of subrogation against the carrier, that document will be used to confirm the C.I.F. value of the lost or damage goods.

contributions being claimed from the insurer are actually recoverable from the company.

Where a shipowner has insisted on the payment of cash deposit by consignees, a general average deposit receipt is usually issued to the cargo owner. On such receipts are stated that refund, if any, will only be paid on production of the original deposit receipt. There is no legal liability on underwriters to refund a deposit. But in practice, where the general average has resulted from a peril insured against, on surrender of the original receipt to the claims adjuster together with the following documents, the amount involved is refunded to the assured:

1. The Insurance Policy or Certificate,
2. Supplier's invoice, and
3. The Bill of Lading.

When the refund has been made to the cargo assured, a complete form of subrogation is added to the above-mentioned documents and passed to the general average adjusters by the claims department to enable the former take the interest of the Insurer into consideration when any refunds are to be made to the contributors to the General Average fund after the completion of the adjustment.

Similarly, if any claim resulting from, say, jettisoning or damage done to cargo by water used to extinguish fire on shipboard is settled by the marine cargo claims department on any of the goods involved in the general average, all the claim papers together with a copy of the adjustment sheet is passed to the general average adjusters to enable them take it into consideration when determining the contributory value of the cargo. It must be stressed that assureds are expected to submit to the claims adjuster any correspondence they receive from the shipowner in connection with a General Average declaration to enable him advise as to the proper action to be taken by the assureds. If this is not done, the claims adjuster may be misled to think that the shipowner or his agent requires an underwriter's guarantee and may, therefore, complete one for the assured only for the latter to be informed later that a cash deposit is to be made. This leads to delay in clearing the cargo from the port and delays at the port engender pilferage.

Cases arise where goods slightly damaged by water used to extinguish fire are discharged from the vessel, reconditioned and then returned to the original, or some other vessel for onward carriage. In such cases, the expenses, which may include cost of reconditioning and return carriage to the ship, are recoverable from Underwriters as a direct claim.

Where claims of this nature arise, the following documents would be produced by the assured :

1. Policy of Insurance,
2. Bill of Lading,
3. Invoices,
4. Survey report,
5. Receipted bills for expenses of reconditioning,
6. Similar bills for other expenses arising out of the necessity for reconditioning.

Then on settlement of the claim, a completed form of subrogation is added to these documents and forwarded to the average adjusters in order that consideration may be given to the settlement in the General Average.

Where the marine cargo claims department is separate from the underwriting Department such as is the case in the State Insurance Corporation of Ghana, there is always the need for close co-operation between the two departments. The Claims department should be prepared at all times to provide the Underwriting Department with the claims records of various open cover holders in particular and all assureds in general to assist the department in determining commensurate rates of premium to be levied against an assured. For such co-operation to work, the heads of the departments should impress it upon the members of staff that work in the two Departments is complementary and that one cannot succeed without the ready assistance of the other.

Marine Cargo Recoveries

I will now turn my attention to the subject of recoveries in the marine cargo insurance. Recoveries involve claims against reinsurers and carriers. Such carriers may be road, rail or air carriers as well as ocean carriers for the same voyage. But as this paper is on marine cargo claims, I will concentrate on the sea transit of the subject. However,

permit me to mention, in passing, that in order to be able to make a successful recovery from either a land or air carrier, it is necessary to become conversant with, say, the C.M.R. Convention which governs international carriage of goods by road and the Warsaw Convention and the various other international conventions governing the carriage of goods by air so that if it becomes necessary to effect recovery action against such carriers, the claims adjuster may not be found wanting. All these International Conventions have the object of limiting the liability of the carriers with regard to specific amounts and scope of legal liability to cargo owners in order to encourage individuals who are in a good financial position to venture into international transportation to do so.

Recoveries from Reinsurers

Recoveries from reinsurers necessitate, in most cases, preparation of bordereaux for all claims settled during each month or quarter of the year according to the terms agreed under the reinsurance treaty. And it is the claims adjuster who must ensure that all claims settled during an agreed period are taken into consideration at the time of preparation of the bordereaux. To ensure that no claims settled are omitted by the person preparing the bordereaux, there should be a cheque requisition book in which all claims settled are recorded as and when the payments are made. Such a book contains the file number, name of claimant, policy number, the amount paid, and the cheque number and date on which the cheque was issued.

But to ensure that the overseas reinsurers, if any, honour their obligation in paying their proportion of claims, it is necessary for the underwriting company to ensure that any premium payable by it to the reinsurers are duly paid at the appropriate time. Else, what one finds is that the overseas reinsurers become reluctant to meet their proportion of claims paid by the direct insurers although the relevant claims bordereaux have been duly received by them. Such refusal by reinsurers becomes embarrassing particularly when large losses occur so that the direct insurer invokes the cash loss clause in their marine cargo reinsurance treaty with a view to recovering reinsurers proportion of such losses.

If insurers in developing countries are to be able to increase their markets' participating in providing marine cargo cover for their external trade, then I would recommend that the question of payment of reinsurance premiums be closely watched, as otherwise they would only promote foreign reinsurance. It is for this reason that the recommendation that "regional reinsurances are to be encouraged" must be considered seriously, since the foreign exchange problem is plaguing most developing countries.

Recoveries from Shipowners

This requires thorough knowledge of the various international conventions on the carriage of goods by sea on which bills of lading are based. For example, international carriage of goods by sea has been governed for many years by the Brussels Convention on Bills of Lading 1924 (the Hague Rules). These rules have, however, been amended by the Brussels Protocol of 1968 - also known as the Hague-Visby Rules - which was given the force of law by the Carriage of Goods by Sea Act, 1971 of Britain. Of late, too, the United Nations Commission on International Trade Law (UNCITRAL) has promulgated a new convention known as the Hamburg Rules which is yet to receive the requisite signatures of the member countries of the United Nations Organisation to bring it into force.

As the revision and promulgation of such international conventions are generally initiated in the developed countries, it is incumbent on persons who deal with cargo recoveries from shipowners to read the various marine journals regularly in order to acquaint themselves with the developments taking place on the world marine insurance market. When one becomes aware of any new amendments or developments in such conventions or regulations, it is easy to obtain copies of any publications on them through overseas brokers or reinsurers. Such overseas contacts are always ready to provide the reassured with such material when they are made aware that they are required. Examples of journals which may be useful to marine cargo claims adjusters are :

1. "Fairplay International Shipping Weekly"

Minister House, Arthur Street, London, EC4R 9AX, England and

2. "The Post Magazine and Insurance Monitor"

The Butts, Half Acre, Brentford, TW8 8BN, Middlesex, England

One can always subscribe to such magazines through the above given addresses.

Now I will touch on the documentation of claims against shipowners and then back to elaborate on some of the clauses in the above-mentioned international conventions that one has to refer to almost always when effecting recoveries from shipowners.

As I have already mentioned elsewhere in this paper, recoveries from third parties play a vital role in marine claims settlement. Therefore, where it is discovered that a loss for which a claim has been instituted against underwriters has occurred while the cargo was on board a ship, underwriters, after settling the claim with the assured exercise their subrogation right against the carrier concerned usually through the agents of the shipowners at the port of discharge. Such claims against the carrier must be lodged, supported by the necessary documents, as soon as possible and by all means within one year from the date on which the cargo was discharged or should have been discharged from the carrying ship.

This condition, for instance, together with others are usually stipulated in the Bill of Lading particularly where the bill of lading concerned is governed by the Hague Rules. When the insurer does not ensure that the claim in favour of the assured is settled in time to enable him submit claim papers subsequently to the shipowners before the expiry of the time limit stipulated in the Bill of Lading, shipowners always point out that the claim against them has become time-barred. This is one of the factors which underlines the claims adjuster's request for the Bill of Lading when an assured puts in a claim as it is from the Bill of Lading that at the time of recovery from the carrier, he can argue on the terms and conditions of the carriage of the goods and hence on the rights of the assured, against the carrier. The Bill of Lading is, therefore, among the documents which an insurer uses to support his recovery claim against a carrier.

One, therefore, finds that where claims adjusters receive claim documents from the assured one year after the goods have been delivered to the assured, they often point out that the right of recovery against the carrier has become prejudiced. In view of that, they either reject the assured's claim completely or settle only part of it. Hence, the stipulation in the marine cargo clauses - the bailee clause - stating that

that it is the duty of the assured and their agents to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised.

Other documents which are used to support a claim against carriers are :

- (1) a debit note indicating the amount being claimed, and the details of how the amount was arrived at,
- (2) copy of the suppliers invoice,
- (3) The shipping agent's discrepancy certificate,
- (4) The Customs bill of entry,
- (5) The completed subrogation form, and
- (6) survey report, if necessary.

It is from the information on the shipping agent's discrepancy certificate that the claims adjuster will obtain the details or the extent of loss or damage attributable to the ship. Then as has been mentioned earlier on, the Customs bill of entry form will confirm to the shipowners the Cost, Insurance and Freight (C.I.F.) value of the damaged or lost cargo. The need for the supplier's invoice is obvious. And as you all know, the survey report in some cases helps to ascertain the exact shortages or loss that occurred on the ship.

For example, one may find stated on the shipping agent's discrepancy certificate the following words : "2 cases motor vehicle spares landed broken, checked and found to contain 8 packets, 4 parcels and 3 pieces sound". From the supplier's invoice it may become evident that each case contains various types of motor vehicle spares. In such a situation, unless there has been a survey on the damaged cases to confirm the numbers of the particular cases landed in discrepant condition and also the various items found in each case and, therefore, the losses that had been suffered by them, it might not be possible for the claim adjuster to determine the exact extent of the carrier's liability.

At times too, further losses in the form of pilferage are suffered by the cargo in the port warehouse prior to delivery to the assured. In such circumstances too, the survey report plays an invaluable part in making it possible for the claims adjuster to determine what amount should be claimed from the carrier concerned.

When the claim papers are despatched to the carriers direct or through their agents, it is advisable to keep a desk diary in which will be recorded the date on which a reminder may be sent to the carriers if no response has been received from them. It is natural that no one wants to part willingly with one's money. Therefore, many shipowners are averse to settling claims instituted against them by cargo owners. It is through constant reminders that some of them eventually pay heed to letters of claims made against them. Writing of constant reminders is, therefore, a very vital part of recovery from carriers.

It is important, therefore, that the assured arranges with his suppliers to ship his cargo per reputable shipping lines who in the event of a loss or damage which could be proved to have resulted from their negligence, will honourably accept liability and settle claims instituted against them by either consignees or cargo insurers.

Where assured's cargo is often carried by shipping lines which use spurious grounds to repudiate liability for loss or damage to cargo, the insurers counter this by either charging higher premiums or declining to accept proposals for insurance of cargo shipped by that particular importer or exporter. This practice of using spurious excuses to decline liability for claims is true particularly of Greek shipowners, Panamanian carriers, and shipowners in the Eastern European countries. Another shortcoming of the Greek-owned vessels is that many of them are very old so that cargo carried by them often suffer sea water damage. And yet the owners would not even bother to reply letters sent to them with a view to recovering any monies from them.

In such encounters with these particular types of shipowners, one way by which an insurer can obtain a recovery is to institute legal action in the Court of Law against them for the arrest of the ship concerned. But quite often, the claim amounts involved, as compared with legal costs, do not make court action a good proposition. I will suggest, therefore, that in known cases of slight chances of success in recovering from carriers, the cargo insurer must use all measures available to him to discourage his clients from having their cargo carried by such shipping lines.

Conclusion

By way of a conclusion, I will put forward various suggestions which may help participants in this Seminar to review their countries' present policies in marine cargo insurance.

(1) In spite of the various factors that I have mentioned above as being necessary to make for smooth and successful cargo adjustment in marine insurance, one way by which a start could be made by a developing country is to find trained personnel from other countries to assist in setting up a marine department. And before any serious underwriting begins, the company concerned must also arrange reinsurance treaties with both local and foreign reinsurance companies so that if any proposal for cover for a large consignment with a heavy value is received, there will be no panic.

For instance, when the State Insurance Corporation of Ghana started business in November, 1962, it had no trained marine personnel. For that reason, in the initial stages, it employed an Englishman as the marine underwriter and appointed the Lloyd's Agent in Accra as claims settling agent. But now, the Corporation has an all-Ghanaian Marine Claims Department which handles not only cargo claims but also hull and aviation claims. In view of such an arrangement, the Corporation was able to start marine cargo and hull insurance as far as October, 1963.

(2) For the insurance of export cargo such as cocoa by a local company to become feasible, it is necessary for a foreign bank account to be opened so that either part of the insurance premium collected from the sale of the cargo could be deposited into the account solely for claim settlement and the payment of reinsurance premiums or on the other hand periodic transfers of money into the account could be arranged. My experience in Ghana is, however, that it is better to obtain the agreement of the Government to get, at least, part of the premium received from the cargo sales paid direct into a foreign account to ensure easy availability of funds to service claims. Then an overseas claims settling agent could be appointed to handle claims to ensure prompt settlement as otherwise the overseas buyers of the exports will object to the buying of the cargo by them on C.I.F. basis.

(3) Again, in my opinion, the use of brokers in placing marine cargo insurances may be encouraged in developing countries. These intermediaries will definitely serve to make the work of cargo claims adjusters easier because a broker enjoys the confidence of both an assured and the insurer.

But one problem with some brokers is that they collect premiums from assureds and instead of paying them to the insurer, they make use of the money. But when the moral hazard of the brokers is excluded, their intervention will surely save both insurers and assureds and particularly, the assureds from going to Court on minor issues. Brokers will also be in a better position to collate relevant claim documents to facilitate the adjustment of claims and hence assist in effecting recoveries from carriers.

(4) The part that may be played by the commercial banks and the Customs Authorities to make importers import F.O.B. or C. & F. should not be overlooked. The Government of a country could make laws making it obligatory to purchase all imports on F.O.B. or C. & F. basis. But it is the commercial banks that grant letters of credit to merchants which must ensure that before such credits are given, the importer produces evidence of having effected his marine cover locally. The practice whereby the Customs Authorities at the port base their calculation of the import duty on the C.I.F. value of cargo so that in the absence of evidence of local marine insurance cover they employ their own arbitrary premium figure which is usually much higher also goes a long way to ensure the proper compliance by merchants.

(5) Where goods are lost in transit, particularly during a catastrophe at sea when, say, a ship carrying cargo has sunk, it will be advisable for the Government agency responsible for the insurance of import licences to issue a replacement to the assured whose cargo is lost. Such a system will go a long way to alleviate some of the hardships which merchants undergo when such losses occur. This is because although the insurer will indemnify the merchant, the indemnity is in the local currency which is not of much use to the merchant. This is particularly true of the currencies of developing countries.

Although this paper seems to have longer than expected, it has not been possible for me to cover all aspects of the topic as I would have wished to do. For instance, I could not give you any practical examples of how to approach the adjustment of claims. But when time is on our side, I shall be prepared to discuss and if necessary work out some of these examples. Any one may, therefore, during the discussion that follow the reading of this paper freely ask any question on marine claims adjustment and recoveries and I shall do my best to answer them. Thank you all for the patience you have had to listen to me.

P.S. For further reading on this subject, you are kindly referred to :
"Marine Insurance Claims" by J.K. Goodacre, published by Witherby & co. Ltd.,
5 Plantain Place, Crosby Row, London S.E. 1 LYN, Price £10.50 net.