

Avoiding legal tripwires



Interview
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Loss prevention is not only about avoiding physical accidents and damage – there are plenty of legal tripwires, too, where the wrong action taken might cause substantial loss. The Swedish Club is leading the way in considering this aspect of loss prevention, the question being: “Is there a legal angle to minimising the risks that the members face?”

To this end, the Club is currently compiling a new handbook on contractual issues, with the first section due to be launched next year.

“As ever, we focus on issues which we know are problematic from the view of the membership,” says Torbjörn Claesson, Senior Claims Executive. “We have taken what we think are the most common problems and put together

guidance to deal with them. Of course, the Club is always available to our members who can come direct to us to discuss issues, but we hope this new publication will provide a slightly more informed basis on which to start discussions.”

Bills of Lading

The Club possesses a significant database of information relating to contractual issues. Drawing on this, and other research, the first topic to be covered will be Bills of Lading (Bs/L). As Torbjörn says, the B/L is an everyday document that can present a good deal of legal risk. For example, wrongly completed, a B/L could lead to a member taking on liabilities they should not be responsible for.

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“The B/L is such a short contract – only two pages – but a lot of law goes with it which isn’t written into the contract,” he says. “We want to help members in dealing with the various issues which arise from these contracts. For example, having to change details mid-voyage because the vessel is going to a different port – that requires the involvement of a fair number of people, including members’ offices and also people on board, chiefly the Master.”

The Club is compiling a set of articles to help those involved to understand the detail of a B/L – not just what they have to do, but also explaining the legalities behind that.

Delivery through SCOL

“This, we hope, will help the members and the Master to carry out their duties in conjunction with the P&I Club. Importantly, this guidance will be available in hard copy and also electronic format. The plan is to make it accessible via SCOL, so copies can go on ships and also be provided in members’ offices.”

All of this means that Club and member will literally be on the same page – with access to exactly the same information, it will be easy to refer to specific paragraphs and points when discussing any issue.

An everyday issue

“This should make what can be complex issues a little bit less tricky,” says Torbjörn. “The B/L is something which our members come across in their daily operations in a way they would not with some of the other P&I issues, such as wreck removal. By having a handbook, we can guide members and they can more easily see if there should be alarm bells raised – hopefully putting a stop to any issue before it grows.”

Potential pitfalls

For such a short document, the B/L comes with a large amount of variations and potential pitfalls. What do you need to write on the B/L if you carry deck cargo? How does endorsement of the B/L work? Who is the party responsible for carrying the cargo - owner or charterer?

“Unlike some other areas of the law where we have practitioner books – for charterparties, for example – any guidance on Bs/L tends to be more theoretical. As a P&I Club, we try to deal with issues in as practical a way as we can, without losing the legal theory behind it,” explains Torbjörn.

“It is possible that you get a B/L wrong and that a loss will result. It is also possible that if you get it wholly wrong you fall outside the limits of the P&I cover. One important aspect of this publication is to help members to do what is correct in issuing a B/L, thereby ensuring they remain within the scope of what we do cover and do not fall into an exclusion area, so preserving their right to seek compensation where appropriate.”

Considering blockchain

The focus will be on traditional paper Bs/L initially, but the Club has a clear eye on global initiatives trialling blockchain and other digital Bs/L. “As time goes by, we will see what new issues come up with these blockchain Bs/L” says Torbjörn. “A lot of the principles will remain the same but no doubt the new technology will bring some separate issues to be dealt with.”