

## WORLD WIDE CLAIMS SERVICES

### UAE UPDATES

**Dubai Maritime sector** – It is reported that the Maritime sector accounts for seven percent of Dubai's gross domestic product. This reflects a healthy increase from the previous year. There are over 5000 companies involved in various maritime activities such as shipping, ports, marine repairs etc. The Maritime authority has created an ideal environment that attracts maritime services from all over the world. This confirms Dubai's position as an important Maritime centre in the world.

**Dubai Maritime Cluster office** under the Dubai Maritime City Authority (DMCA) has been operating with the object of making the Emirate a leading global maritime hub.

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### WEIGHT OF CONTAINERS

Very often shippers misdeclare the weight of the container which leads to disastrous consequences. Besides affecting the safety of the ship, there have been instances of cranes getting damaged and injuries/death of stevedores. Though there were recommendations from various forums, the problem continues to persist.



Safety of Life at Sea Convention ( SOLAS) has adopted a Resolution for all laden containers to have a document of Verified Gross Mass ( VGM) or alternatively, their weight has to be ascertained before they



*“Waves are inspiring, they fall but never fail to rise again.”*



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are loaded on board a ship. It is the responsibility of the shipper to produce these documents. This practice was supposed to come to effect from first 1 July 2016.

Needless to say, it is a step in the right direction. However, some teething problems are expected. For instance, there will be some confusion as to who exactly is the responsible shipper who should produce the



documented weight. In many instances, a Freight Forwarder is named as the Shipper on the bill of lading although they have no personal knowledge about the weight and contents of the shipped containers. They have to rely on the information given by their customer. Besides, many Ports may not have sufficient facility to weigh large number of containers. Lack of space and eventual congestion may pose problems inside the ports. In the circumstance, it may take some time to get this practice streamlined in all Ports.

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### CARGO DAMAGE

A Merchant based in Dubai signed a Booking Note with a Charterer in Amsterdam for shipping a consignment of Plywood and MDF boards from China to Tripoli, Libya. On arrival of the vessel at Tripoli, substantial quantity of the cargo was found damaged. The consignee rejected the entire consignment and refused to take delivery. A joint survey was carried out attended by surveyors representing the consignee,



*Plan well in every walk of life.  
Remember the Carpenter and Tailor's rule -  
"measure twice, for you can cut only once".*



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cargo Underwriters, Owners and Charterers. It was discovered that a major part of this consignee's cargo was carried on deck and the vessel had experienced heavy weather during the voyage.

The merchant had a Marine Open Cover incorporating ICC (A). The Policy further stated that ICC (C) will apply for non containerised on deck shipments. The cargo Underwriters refused to cover the damages in respect of the cargo carried on deck as it did not result from any of the named perils under ICC (C). They were only prepared to pay for the damages to the cargo carried under deck. Without the support of the cargo Underwriters, the Insured was left to face a substantial loss. However, the insurance Brokers were keen to support their customer and instructed **WWCS** to assist them.



The issue was first taken up with the Insurers pointing out that the Insured did not authorize loading of the cargo on deck which was done by the Charterer without their knowledge. However, the Insurers did not accept this view. A legal action against the cargo Underwriter was considered, but it was decided to keep that option open while attempt was made to recover the full claim from the ship Owners. It was therefore decided not to accept the offered settlement in respect of the under deck cargo immediately.



*“Nothing is permanent in this world, not even our troubles”*



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The ship was arrested and subsequently released after the ship Owner's P & I Club issued a LOU for the full value of the cargo amounting to USD One Million. The claim was then pursued against the Owners under the bills of lading issued by them. Simultaneously, a claim was lodged against the Charterer for the consequences of loading part cargo on deck without approval.

Discussions commenced with the P&I Club and their lawyers in London. They tried to reject liability relying on the defence of heavy weather and insufficient packing which was not accepted by us. They also produced another set of bills of lading purportedly issued by the Charterers. These were Congen bills of lading and incorporated the clause – "ship not responsible for cargo loaded on deck". Besides, these bills of lading were subject to English Law and Jurisdiction. The Merchant had no knowledge of these bills of lading. On taking up this issue with the Charterers, they advised that they had initially issued these bills of lading as required by the Agent at loadport and subsequently replaced them with Owners' bills of lading. The P&I Club tried to reject the claim on the basis of the clauses on these bills of lading. They further argued that as per the B/L terms, the claim should be decided by arbitration in London. It was pointed out to them that these bills of lading were replaced with Owners' bills of lading which evidenced the actual contract of carriage and moreover it was against the Owner's bills of lading that the cargo was released to the consignee. It was further impressed upon them that as per the LOU, ship owner has agreed to abide by the judgment of Lebanese court. However, they continued to insist on London Arbitration.



*"Happiness isn't getting all you want.  
"It is about enjoying all you have."*



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In the meantime, it was decided to accept the part payment from cargo Underwriter and pursue the Ship owner for the balance claim. Upon receiving the payment, the Merchant subrogated their rights upto the settled amount to the Underwriter. Following this, they were also required to hand over the P&I Club's LOU to the Underwriter so that they can pursue their recovery against the Ship owner. This complicated the situation as the LOU was also required by the Merchant to pursue their part of the claim against the ship owner. The negotiations with the P&I Club were therefore speeded up and a reasonable settlement was arrived at, albeit with great difficulty.

Further efforts were made to claim the unrecovered amount from the Charterer. However, this was not successful as the Charterers refused to entertain the claim, maintaining that the Owners are solely to blame. Given that the Charterer had no tangible assets, a legal action was not pursued.

*There were too many complications in this matter thanks to the Charterers who arranged the loading and documentation. A Merchant should always monitor the cargo handling and documentation instead of blindly relying on the Charterers.*

*Despite the fact that the LOU referred to Lebanese jurisdiction, the P&I Club tried their best to take the matter to Arbitration in London. But they did not succeed due to successful intervention of WWCS. It is very important to ensure that the LOU is properly worded without leaving any doubt about the applicable Law and Jurisdiction.*

*Though the Insured did not receive support from their Insurer, WWCS was at hand to assist them from the beginning of the incident till successful conclusion of the claim – advising on the Insurer's position, arresting the vessel, obtaining properly worded LOU, successfully thwarting the P&I Club's attempts to take the issue to arbitration and finally achieving a reasonable recovery.*

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***“Success is a measure as decided by others.  
Satisfaction is a measure as decided by you”.***

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