

Work-Flow in the Procedure of Marine Insurance Claims

Michael I. Pazarzis*

1. Introduction

The claims' collection procedure follows certain stages, which need further analysis. The levels of difficulty are rather significant and therefore an interdisciplinary approach is necessary. The work-flows in this procedure must follow a logical order, both by the policyholder and his representatives, as well as by the insurance company and the P & I clubs. The present Congress (as it is defined by its theme), offers the possibility of a systematic analysis of different fields of knowledge and hence that of Claims, through the presentation and analysis of the workflow in Marine Insurance Claims. Such a Claim appears when a risk prescribed by the policy contract occurs and ends with the payment of the compensation from the insurer.

It is a fact that the most important way of dealing with Claims is the prevention of their formation. However it is reasonable that taking into consideration the multi-diversity of maritime companies and their "difficulty coefficient", the prevention of risks is often rather difficult. Therefore whenever a named peril raises, the procedure of claims' resolution starts.

The first step in the management of claims is the report of the incident by the Captain to the shipping company, to the insurance company and the P & I club provided that the incident concerns the P & I club. Alternatively the incident shall be reported to the insurance company by either the shipping company or by the insurance broker. The assortment of evidence and proofs, which help towards a more efficient management of claims, follows in the next step.

In any case, the insurance company must be notified of the claim with a relative note of the policyholder¹, within a certain deadline starting from the moment the incident occurred or should have come to the knowledge of the ship-owners. If this requirement hasn't been met a claim can't be substantiated from the policyholder.

2. The Procedure of Claims

The process of gathering evidence is assisted by representatives – inspectors appointed by the ship owner who are in charge of contacting all involved parties,

*Assistant Professor, University of Piraeus, Department of Maritime Studies
mpazarzi@unipi.gr

such as inspectors, local authorities, shipyards, charterers, receivers of cargo etc. In case these individuals haven't been appointed jointly by the ship owner and the insurance company or the P & I Club, if the latter is involved, the policyholder has the responsibility to appoint a maritime inspector as well as an engineer inspector². The maritime inspector takes over the inspection of the works concerning the reinstatement of the ship's sailing ability as well as the transload and storage of the cargo if needed. Respectively, the engineer inspector is in charge of the propulsion capability and the function of the rest of the ship's equipment.

Meanwhile, the insurance company has the possibility to assign to Salvage Association the appointment of an inspector³ who will examine thoroughly the case on its behalf. To be more specific, the representative of Salvage Association focuses his interest on the examination of the causes where the claim stems from, on the size of the claim as well as on the possible next steps. The extents of the repairs which must be done to the shipyards as well as the cost of the repairs constitute the main duty of the inspector of the Salvage Association. It is possible to reason that there has been an overvaluation of the repairs, and in such case an intervention is necessary in order to re-evaluate the final amount of money that will be paid for the restoration of damages.

If there is an implication of fraud, the Salvage Association inspector needs to undertake extra investigation duties. It must also be noticed that he deals with the supervision of salvaging duties. To expedite those tasks the Salvage Association often uses Lloyd's global net of representatives.

The policyholder can request from the Average Adjuster a report on the expenditures⁴. It is useful to mention that the Average Adjuster can be replaced in his duties by the Claims Adjuster⁵, with the exception of the General Average whose presence is mandatory. As far as the Average Adjuster is concerned, it's often specified in the charter party that if needed to appoint an Average Adjuster, he must meet a series of requirements regarding his head office, in order to secure his credibility.

The Average Adjuster is responsible for conducting a study where he describes and quantifies the expenses that are required for the harbour expenses and other expenses that may arise, as well as the repairs that already have been agreed to be made. Therefore, the Average Adjuster is responsible of contacts with the inspector insurer for the estimation of the rrequired repairs and their cost.

In order that the claim is presented to the insurance company, the broker who represents the insured and who has been in charge of the duty of conducting the claim should firstly complete his work and calculate the Claim (demand). Alternatively, when the insured has 100% interest from the insured peril, no broker is involved. Regarding the cases that refer to the ship, the Average Adjuster, who processes the data collected concerning the case and who ensures that each claim from the insured 's side is well founded and is legally based, intervenes in the procedure. Despite this fact, if certain claims haven't got a strong legal support, the Average Adjuster can submit them to insurers "for consideration"⁶. At the same time, he advices the two sides contributing to the choice of either taking legal actions or follow the path of negotiations⁷.

In order to make the choice between Arbitration and Courts, the main criterion taken into account will be the comparison of expenses required in each case. After The Average Adjuster completes his work, he delivers to the broker his report where the final amount of recognized expenses is determined. In most cases the broker who deals with the settlement of the claims is the one who negotiated the accomplishment of the insurance in the first place⁸. Often the broker undertakes the assignment of maritime inspectors on behalf of the insured⁹. After he has assembled and classified the reports of the Average Adjuster joint with the reports of the marine inspectors, the broker undertakes the duty to present the various claims to the involved insurance companies that have undertaken the coverage of the relevant risks. The broker's position presents particularities, because although he acts on behalf of the insured, he undertakes at the same time the additional duty of providing information to the insurers, before the report of the Average Adjuster becomes definitive. Consequently he should often show impartiality, which is not always compatible with the obligations he has towards the insured¹⁰.

It seems purposeful to add that in case that a false representation of real facts is attempted by the insured, the broker will not be discharged of conspiracy, unless he withdraws from the handling of case¹¹.

Provided that the claims have henceforth been regulated, the insured can receive the insurance compensation either directly or via the broker or even via the Average Adjuster¹². Having previously ensured authorisation, the broker or the Average Adjuster can collect the compensations and afterwards to attribute the proportional amount to the beneficiaries. Practically, this entails that a remittance or a credit note will be issued by the broker or the Average Adjuster to the secured, certifying thus the payment of the claim. We should add that for any further doubt, the involved parts may consult the Average Adjuster.

In case the risk comes upon on the transported cargo, another procedure is followed. The recipient of the cargo has the responsibility to inform the involved parts about the condition of the cargo, immediately as soon as this falls into his perception. More concretely, the insurers must be notified about the incident, in order to appoint an inspector, who will undertake to check up the condition of the cargo. We should underline that an inspection made jointly by the inspector and a representative of the recipient of the cargo is desirable so that the conclusion is mutually accepted.

Moreover, the carrier should be informed of the condition of the cargo and he should be called to participate in the joint inspection of the cargo. From this inspection can result a claim of the recipient of the cargo against the carrier. The appointed inspector may decide the landing or the handing of the cargo before the inspection in order to eliminate the damage. At the same time, it is often useful that the possible intermediary carriers of the cargo, normally the carriers from the harbour of landing to the storehouse of the recipient as well as the local harbour authorities¹³, to be informed about the condition of the cargo.

Afterwards, the report of the inspector is handed to the Average Adjuster who should declare the final amount of the compensation. In this point we should note that with regard to the market of small ships and off-shore oil and natural gas production and transport, the average adjuster can be replaced by the Loss Adjuster¹⁴. In certain cases the inspector also undertakes the duties of the Average Adjusters. At this point a difference between the cargo insurance and the ship insurance is underlined. In particular, while in ship insurance the Average Adjuster is independent, in cargo insurance usually he is appointed by the insurance company. Evidence of the particular importance of the role of the Average Adjuster and of his status is that although his report concerning the compensation is not binding neither for the insured nor for the insurer, it is usually accepted without objections by the concerned parties.

It has been established that the payment of the compensation to the beneficiary is collected by the broker on behalf of the insured. Usually, monthly - payments have been agreed but also a special settlement can be arranged. Subsequently, the broker is responsible of refunding the equivalent sum to the insured. If the broker has a large turnover and proportional liquidity, it is possible that he pays the compensation to the beneficiary before he collects it from the insurers. It is, however, possible that the case is not yet closed. For instance, we note the possibility of a partial recollection of the compensation paid to the insured, in case it is needed¹⁵.

A different procedure is required in case of the General Average, which is the situation in which the owners of the cargo are obliged to contribute proportionally to the expenses done for the necessary and safe emersion of the ship from a situation which lurks dangers for the ship or the cargo.

In this case only the Average Adjuster can undertake the duties of the Adjuster. When a situation of General Average has to be dealt with, the carrier has the obligation to inform immediately the recipient of the cargo about this situation. When in advance payment is required for the participation in General Average, the recipient of the cargo should pay the sum corresponding to him and claim compensation from the insurance company. It should be noted that the presence of the Average Adjuster is quite important in order to determine the degree of participation of each party in the total amount of compensation.

In the case of the General Average, at least in the United Kingdom, it has been established that the Average Adjuster assumes the responsibility to inform anyone related to the cargo about the extend of the claim¹⁶.

3. Conclusions

The application of information systems is necessary in order to facilitate considerably the settlement of claims. These applications should be put into practice from both the insured and the insurance companies. If the information systems are simultaneously applied to the preliminary agreements and the insurance policy, the

settlement of claims will be considerably facilitated. The information systems should cover the needs of both the insured and the insurers. If this occurs it will have important implications, provided that shipping enterprises have the possibility to create independent departments specialized in claims which will use specialized executives where information systems are applied.

The subject analysed above focuses on the issues of procedures and rational, equitable and effective settlement of claims setting aside the matters of substance of marine insurance agreements. However, it offers great opportunity for future development and analysis, and for the beginning of a scientific dialogue.

As a concluding remarque, I would like to underline the quantity and variety of legislation, the variance of jurisprudence in various countries, an issue that should be scrutinized in order to reach to synthesis.

4. References:

1. G.Hudson & J.Allen,"Marine Claims Handbook", LLP, Fifth edition, p.9.
2. G.Hudson & J.Allen,"Marine Claims Handbook", LLP, Fifth edition, p.9.
3. G.Hudson & J.Allen,"Marine Claims Handbook", LLP, Fifth edition, p.9.
4. G.Hudson & J.Allen,"Marine Claims Handbook", LLP, Fifth edition, p.10.
5. C.Thompson,"Surveying marine damage", Witherby & Co, London, p.17.
6. G.Hudson & J.Allen,"Marine Claims Handbook", LLP, Fifth edition, p.11.
7. C.Thompson,"Surveying marine damage", Witherby, London, p.18.
8. R.Brown, "Marine Insurance- Cargo Practice", Vol. 2, Whitherby, p.203.
9. C.Thompson,"Surveying marine damage", Witherby, London, p.19-20.
10. D.Thomas,"The modern Law of Marine Insurance", LLP, 1996, p296-297.
11. D.Thomas,"The modern Law of Marine Insurance", LLP, 1996, p296-297.
12. G.Hudson & J.Allen,"Marine Claims Handbook", LLP, Fifth edition, p.12.
13. G.Hudson & J.Allen,"Marine Claims Handbook", LLP, Fifth edition, p.72.
14. C.Thompson,"Surveying marine damage", Witherby & Co, London, p.15.
15. R.H.Brown, "Marine Insurance- Cargo Practice", Vol. 2, Whitherby, p.214.
16. G.Hudson & J.Allen,"Marine Claims Handbook", LLP, Fifth edition, p.12.

5. Bibliography

1. Amin Samir: "*Capitalism in the Age of Globalization: The Management of Contemporary Society*" London: Zed Books, 1997.
2. Bauman Zygmunt "*Globalization: The Human Consequences*" Cambridge: Polity Press, 1998.
3. Beck, Ulrich, "*What is Globalization?*" Athens: 1999, Kastanioti.
4. Brown, Robert H., "The Institute Time Clauses Hulls", *Analysis of Marine Insurance Clauses* Witherby & Co. Ltd., 1996.
5. Brown R.H., "*Marine Insurance- Cargo Practice*", Volume2, Witherby & Co.

6. Felice - Pace, Joe (Hons): "*Marine Cargo Clauses A Collection of Non – Institute Clauses*" London: Witherby & Co Ltd, 1998.
7. Gaskell N.J, Debattista C and Swatton R J "*Shipping Law*", 8th edition, Chorley & Giles, First published in Great Britain, 1987.
8. Goodacre, Kenneth J.: "*Marine Insurance Claims*" Great Britain: Witherby & Co. LTD, 1981.
9. Gupta Dev Satya: "*The Political Economy of Globalization*" Boston: Zed Books, 1997.
10. Hazelwood, Steven J., "*P. & I. clubs: law and practice*" Lloyd's shipping law library, 2000.
11. Hodges, Susan, "*Law of marine insurance*", Great Britain: 1996, 1997 print.
12. Hudson G. & J. Allen, "*Marine Claims Handbook*", London: LLP, Fifth edition.
13. Kiantos, V.: "*Cargo Marine Insurance*" Athens: Sakkoula, (in greek).
14. Lueddeke, Christof F., "*Marine claims: A guide for the handling and prevention of marine claims.*" - Practical guides, 1996.
15. Merkin, Robert, "*Marine insurance legislation*" Essential law, 2000.
16. O'May, Donald Hill, Julian "*Marine insurance law and policy*" London: Sweet and Maxwell, 1993.
17. Pazarzis M., University Lectures Notes "*Claims*", Piraeus: 2001 (in greek).
18. Rhidian D. Thomas: "*The Modern Law of Marine Insurance*» London: LLP Limited 1996.
19. Tetley.W. "*Marine Cargo Claims*" London: Stevens & Sons Limited, 1965.
20. Thomas D.R., "*The modern Law of Marine Insurance*", London: LLP, 1996.
21. Thompson C.B., "*Surveying marine damage*", London: Witherby & Co.
22. Waters, Malcolm: "*Globalization*" New York: Rutledge: 1995.