ALGERIA – BULK CARGO P&I CLAIMS

The McLean Group has handled P&I claims in Algeria since 1973. So, the experience has been a long one in the service to P&I Clubs & Insurers and their Shipowners & Charterers.

The Country & Its Needs

Algeria is a very large one with today a population of some 45 million people.

Whilst the country is rich in natural oil and gas, there is a large demand for food and a considerable amount is imported, particularly basic products such as grain.

Of course bulk grain is carried by sea in cargoes of 20 up to 50,000 tonnes per ship and is received by various ports in Algeria, particularly those of Algiers and Oran, the two major cities.

The cargoes are purchased and imported either by the State company OAIC or by non state companies. In both cases the cargoes are insured by State Insurance Companies such as CAAR and CAAT.

The Claims

The most common claims are for shortages on the bulk cargoes. The reasons for this can be:

- spillage from grabs on discharge
- failure to weigh lorries
- inaccuracy of weighing same
- inaccuracy of weighbridge recording
- unreliable monitoring & tally

plus of course

- unreliable weight at port of loading for the B/L figure.

In most jurisdictions it is the custom to apply a tolerance for shortage on bulk cargoes – a “Transit loss” usually at 0.50% on the total cargo carried.

Only OAIC acknowledges this, but the private importers and their insurers do not – thus a claim whatever the shortage on paper.

Then comes the demand for a guarantee from the Carrier which is assessed not only for the value of the “Shortage” but also for costs and even interest. Very often the demand for security is made before the discharge of the cargo is completed.

Failure by the Carrier to agree to provide security by the P&I concerned can lead to the arrest of the vessel by a Court Order.

In most cases a P&I guarantee is provided for the full amount demanded. This is to avoid providing a bank guarantee on the basis that the claim will be settled within a certain time. Failing settlement a bank guarantee must be provided to enable the claimant to commence legal proceedings for a judgment.

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In most cases and to avoid providing a bank guarantee, there must be settlement negotiations with the claimant.

And, “Settlement” is likely to be between 75 & 90% of the “Shortage”!

Such is how these claims go.

Avoid or Mitigate the Claims

As may be understood, the Claims for “Shortages” are to be anticipated, if not expected when the importers are not OAIC.

Whilst the Carrier of cargo may wish to budget for such claims when contemplating a grain fixture for Algeria, the following precautions should be taken for the discharge of the cargo:

1/ Full discharge survey to include:

- draft surveys
- permanent survey attendance
- tally of lorries & their weights
- checking collection of sweepings on quay by reliable surveyors / tally clerks.

Since there should be no conflict to determine weight, it is recommended that these precautions be taken jointly by Owners and Charterers, with shared costs.

2/ Agreement in principle to provide a P&I guarantee in lieu of a bank guarantee.

3/ If the transit loss cannot be applied, agree to consider the claim and negotiate a settlement.

Bank guarantees should always be avoided as otherwise the case has to go to Court and this can involve years of litigation even when the Carrier has a good case. This is because, if the Carrier is successful, the State Insurer will automatically appeal.

Currently McLeans have cases with bank guarantees that have remained in effect for 10 or 20 years – there is currently one dating from 1982!!

Reflections on the Claims Situation

As can be seen “Shortage” claims are to be expected here and most of the receivers or insurance claimants expect **payment of same virtually in full**…..

In most instances internationally such weight shortage claims will be settled by Carriers / P&I at say 50% - this is certainly the case in France. The principle to be applied is that there is no negligence by the Carrier for the weight discrepancies.

Cargo Insurers that insure on the basis of All Risks generally in most jurisdictions agree to share the loss with the Carrier on the basis of 50% (or less).

Another element is that of **stevedore negligence** causing shortage. The imports to Algeria are generally on the basis of FIOS. Thus, the stevedoring on discharge is a matter for the receivers and losses due to same should normally not fall to the Carrier.

However, we know of no court judgments that have decided on this issue.

Finally, there is a question relating to time charters and that of a **Time Charterer** being deemed to be the Carrier under the Bill of Lading, rather than the Owner of the ship under T/C.

Contrary to expectations at the time (2018) the Supreme Court in Algiers decided that a Time Charterer was to be considered to be the **carrier** of cargo under a Bill of Lading signed by the ship's Master that made NO mention of the Carrier's identity.

The case involved was the "GLARUS" that had discharged wet damaged cargo at Bejaia in 2012. The cargo loss amounted to USD one million!

This "Milestone" judgment was obtained for one of our IG P&I Principals by one of our Algerian Advocates.

Whilst this caselaw is so important we have to know that to use the "GLARUS" case in the future would imply lengthy legal proceedings over a number of years in order to reach the same result for a Shipowner under T/C.

This is because when State Insurance companies lose a case they automatically appeal, often not at great cost.

In addition, the Courts do not normally award legal costs…..

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