



**WORLD WIDE CLAIMS SERVICES**

*Established in 2004*

*Licensed under Dubai Economic Dept.*

*Claims Consultancy*

**And**

*Claims Recovery*

*in respect of*

*Sea Carriage, Airfreight , Road Transport*

**and**

*Property claims*





**WORLD WIDE CLAIMS SERVICES**

**FRUSTRATION OF AIR FREIGHT – ACT OF GOD**

A shipper in Colombo appointed a Forwarding company to arrange a shipment of Live Ornamental fish from Colombo to New York. The Forwarder booked the cargo with Emirates Airline via Dubai. It was in the month of February when US was experiencing snow storms. When the shipper enquired about possible cancellation/delay in flights due to adverse weather, they were advised that as on that date, the flights are going as per schedule.

However, after the flight left Colombo for Dubai, the JFK airport in New York was closed and consequently the connecting flight for this shipment could not take off from Dubai. The consignment was thus held up in Dubai. It was not possible for the Airline to advise when the flights would resume.

The shipper was informed of the situation. Needless to say, they were very much concerned about the fish surviving and reaching the destination safely. To keep the fish alive, the water has to be sea water or artificial sea water with specific gravity of 1.024. In order maintain this level, either the water has to be changed or reoxygenated.

Since there was no indication of immediate resumption of flights, the Airline suggested that the shipper take the consignment back to Colombo. The shipper was reluctant to incur the return freight of USD 4000. In the meantime, the fish started to die one by one. As a result, the shipment was frustrated. The Airline did not accept responsibility for the incident citing the adverse weather as “Act of God” and beyond their control.

The shipper held the Forwarder responsible alleging that they did not check the weather conditions in US and availability of flights before booking the shipment. They claimed the value of the consignment and for loss of business.

The Forwarder’s Liability insurer contacted WWCS for our advice on this issue. Upon verifying the sequence of events and all the correspondences between shipper/Forwarder/Airline, we concluded that there was no fault on the part of the Forwarder since –

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***“Meaningful Silence is always better than meaningless Words”***

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- they had enquired with the Airline prior to booking about possible delay or cancellation of flights to US and were informed that there were no delays as on that date and time.
- they could not have foreseen the weather conditions in US.
- they had suggested to the shipper to bring the fish back to Colombo from Dubai. If the shipper had agreed immediately, the fish could have been returned to Colombo safely. Instead, they abandoned the consignment to avoid incurring return freight.

Ironically, the Forwarder was inclined to entertain the claim as they did not want to upset their customer. However, they were advised that the Policy will not cover the claim.

*Freight Forwarders, wishing to maintain their business relationship with their customers, expect their Liability Insurer to settle the claims. However, the Insurer cannot agree to settle such claims to satisfy the Insured's commercial considerations.*

### **ENGINE DAMAGE CLAIM**

WWCS was instructed by an H&M Underwriter to arrange survey and investigate damage sustained by one of their insured vessels. It was a supply vessel carrying out STS operations in the high seas off Omani coast. There was engine failure during the voyage and collision with the mother vessel during STS operation. The collision resulted in cracks on the deck plating as well as loss of some port side fenders. During the return voyage, there were frequent engine failures eventually resulting in complete black out on the vessel. The vessel started to drift in the high seas. Subsequently, the owner's repair team boarded the vessel and managed to start the engine. The vessel was brought into a nearby port in Oman.

Our appointed surveyor boarded the vessel and upon investigating it was revealed that cracks had developed on the main deck due to the collision. Sea water had ingressed through these cracks and contaminated the port fuel tanks beneath leading to problems with the vessel's main and auxiliary engines.



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Upon reviewing the entire sequence of events, it was concluded that –

- The crew ignored the possibility of water ingress through the cracks and hence timely action was not taken to avert the engine damage.
- The sea was very rough and as such the weather was not conducive to carry out STS operations. The Master obviously ignored the safety of the vessel by undertaking such task.
- The vessel's operations were outside the areas permitted under the Policy which was obviously a breach of Policy terms.

As a result of the above findings, the Insured's claim under the Policy was severely prejudiced.

*The Insured's decision to carry out the STS operation in such inclement weather was poor seamanship. Their reason was that they were pressurized by the Charterers to complete the operation without delay. Considering the safety of the ship and the crew onboard, the Master had every right to refuse the Charterer's instructions. Further, they did not immediately assess the impact damages and take preventive action, which led to the engine failure. The Insured should also have verified that the location of the intended operation was within the trading warranty of the policy. This is a typical example of a ship owner throwing caution to the winds for commercial reasons.*

### AMUSING DEFENITIONS

**SCHOOL** - A place where Parents pay and Children play.

**LIFE INSURANCE**- A contract that keeps you Poor all your life so that you can die Rich.

**NURSE** – A person who wakes you up to give you sleeping pills.

**MARRIAGE**– Agreement in which a Man loses his Bachelor's degree and a Woman gains her Masters.

**CONFERENCE** – The confusion of one person compounded by the number of persons present.

**BOSS** – Someone who arrives early when you are late and late when you are early.

**POLITICIAN** – One who shakes your hand before elections and your confidence after.

**HOSPITAL** – An institution which holds your ills by pills and kills you by bills.



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