

A faint, dotted world map is visible in the background, spanning the top and bottom of the page. The map is composed of small grey dots forming the outlines of continents.

Recovery Advisers

Credit Insurance Claims Management & Recovery Services



Short Term Insurance Claims Analysis & Investigation

Aman Union Third Technical Training
Beirut, 27 April 2013

Learning Outcomes

- Analysis of claim documents to get a clear understanding of the underlying transactions.
- Suggestions to organize and categorize claim documents into discrete transactions.
- Evaluate the validity of claims and gauge risks of recovery.
- Plan for claims recovery.

Outline

- **Claim Analysis & Investigation – An Overview.**
- **Fundamentals of Claim Analysis.**
- **Claim Investigation Techniques.**
- **Dispute Assessment & Management.**
- **Case Studies.**
- **Recommendations.**



**CLAIM ANALYSIS & INVESTIGATION
– AN OVERVIEW.**

Goals of Claim Analysis & Investigation

- Determine validity of claim.
- Determine liability of debtor.
- Evaluate performance disputes / loss adjusting.
- Prepare for negotiations with debtor and formulate appropriate amicable settlement strategy.
- Determine required documents for formal action.
- Devise appropriate strategy for formal action and analyse potential risks.

Overview of Claim Analysis & Investigation

Claim Analysis

- Audit transaction documents.
- Systematically organize and group transaction docs.
- Check compliance with applicable standards.
- Check compliance with contract.

Claim Investigation

- Validate claim transactions.
- Check PH's contract performance.
- Identify materialized risks and liability of parties related to the transaction.



Fundamentals of

CLAIM ANALYSIS

Interplay of Disciplines



Documents of Single Export Transactions

- Basic Export Documentation.
 - Commercial Invoice.
 - Transport Documents (AWB, BL, CMR, CIM).
 - Packing List.
 - Certificate of Origin.
- Additional documentation.
 - Bill of Exchange / Drafts.
 - Phytosanitary / Health Certificate.
 - Pre-shipment Inspection Certificate.
 - Weight / Quality Certificate.
 - Cargo Insurance Certificate.
 - Etc. ...

Focus on Key Transaction Documents

- Crucial documents of single export transactions:
 - Commercial Invoice.
 - Specifies transaction value.
 - Evidences liability of debtor (in combination with purchase agreement).
 - Describes goods, and transaction terms.
 - Transport document (Bill of Lading is most common).
 - Evidences performance of PH.
 - Evidences liability of debtor.
 - Describes goods, weights, and quantities.

The Bill of Lading

- Key information on the BL.
 - BL Number.
 - On-board date and / or notation.
 - Qualified signature and stamp of carrier or his agent.
 - Name of Shipper (usually the PH or agent).
 - Name of Consignee (usually the debtor, his agent, or bank).
 - Notify Party (usually the debtor or his agent).
 - Quantity of containers and their numbers.
 - Clean BL.
 - Weights, quantities, and description of goods.
 - Port of loading.
 - Port of discharge.

The Bill of Lading in UCP 600

- Article 20 – I
 - *A bill of lading, however named, must appear to indicate the name of the carrier and be signed by:*
 - *The carrier or a named agent for or on behalf of the carrier, or*
 - *The master or a named agent for or on behalf of the master.*
 - *Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent.*
 - *Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.*
- Article 20 – II
 - *indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by pre-printed wording, or*
 - *An on board notation indicating the date on which the goods have been shipped on board.*
 - *The date of issuance of the bill of lading will be deemed to be the date of shipment unless the bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.*
 - *If the bill of lading contains the indication "intended vessel" or similar qualification in relation to the name of the vessel, an on board notation indicating the date of shipment and the name of the actual vessel is required.*
- Article 27.
 - *Clean Transport Documents.*

The Bill of Lading – Essential Data

- Shipper.
 - Policyholder or agent?
- Consignee.
 - Debtor, debtor's bank, or agent?
- Carrier and / or agent.
 - Name, stamp, signatures.
 - Names, stamps, or signatures qualified?
- Port of discharge.
 - Arrival port of the debtor?
- Description of goods.
 - Do quantities, weights, and measures match other export documents (in particular invoices?).
- On board notation.
 - Does the BL have an On-Board date?

SHIPPER Shipper		ORIGINAL BILL OF LADING		VOYAGE NUMBER FM22VWPM22W	
CONSIGNEE TO BANK OF COMMERCE AND DEVELOPMENT (DAT EL MAAD AGENCY) TRIPOLI LIBYA ORDER		EXPORT REFERENCES		BILL OF LADING NUMBER QDWE11128	
NOTIFY PARTY, Carrier not to be responsible for failure to notify Notify Party		 <p>CARRIER: CMA CGM - Société Anonyme au capital de 175 000 000 euros Head Office: 4, quai d'Arenç - 13002 Marseille - France Tel: (33) 4 88 91 90 00 - Fax: (33) 4 88 91 90 95 - Telex: 401 907 F B 562 024 422 R.C.S. Marseille</p>			
PRE CARRIAGE BY*	PLACE OF RECEIPT*	FREIGHT TO BE PAID AT	NUMBER OF ORIGINAL BILLS OF LADING		
		QINGDAO	THREE (3)		
OCEAN VESSEL	PORT OF LOADING	PORT OF DISCHARGE	FINAL PLACE OF DELIVERY*		
CMA CGM OTELO	QINGDAO PORT, CHINA	TRIPOLI PORT			
MARKS AND NOS CONTAINER AND BEALS	NO AND KIND OF PACKAGES	DESCRIPTION OF PACKAGES AND GOODS AS STATED BY SHIPPER SHIPPER'S LOAD, STOW AND COUNT	GROSS WEIGHT CARGO	TARE	MEASUREMENT CBM
CMHU1032250 SEAL: A4357249 N/M	1 x 20ST	17 PACKAGE (S) 5 MOTOR SPARE PARTS AS PER PERFORMANCE INVOICE NO. SF10120901 P2 DTD 01.09.2010 LC NO. 10/24/LC0039/10 DATED 02.11.2010 THE GOODS BEING EXPORTED ARE OF (CHINA) ORIGIN FREIGHT PREPAID	9240.000	2230	25.429
CMHU5075706 SEAL: A4357191	1 x 40HC	20 PACKAGE (S)	1829.000	3900	47.464
Weight in Kgs Total: 2 CONTAINER(S)			26069.000	6130	72.893
ABOVE PARTICULARS DECLARED BY SHIPPER. CARRIER NOT RESPONSIBLE. Sheet 1 of 2 ADDITIONAL CLAUSES 1. Tied to contract. 2. Shippers show, load and count. 4. Cargo at port is at receiver risk, expenses and responsibility. 5. FCL. 14. The ship is not of Israeli flag and will not call any Israeli ports waters and/or territories and is not entered into black list of Arabic countries. 77. Free and. 78. THC at destination payable by consignees as per invoice port. 84. General warehouse costs at POC for Consignee's account according to port rules. 103. As per Libyan decree no 17, no deviation charges are payable if Consignees return the container within ten days after date of termination of contract. Container later than ten days will be subject to a detention charge of US\$ 9207 or US\$ 1240 per day as from 11th day and US\$ 8207 or US\$ 1240 per day as from 11th day. 104. All cargo expenses including reworking of empty equipment are for Receiver's account. 106. For the purpose of the present carriage, clause 14(c) shall exclude the application of the York/Antwerp rules, 2004. 216. The shipper acknowledges that the Carrier shall carry the goods described in this Bill of Lading on the deck of any vessel and in any container or other packages or units indicated above stated by the shipper to comprise the cargo specified above for transportation subject to all the terms stated (including the terms on cargo cover) from the place of receipt at the port of loading, whichever is applicable, to the place of delivery, whichever is applicable. Delivery of the Goods will only be made on payment of all freight and charges. On presentation of this document (B/L) endorsed by the Carrier, by or on behalf of the holder, the rights are, facilities arising in accordance with the terms hereof shall be subject to any rule of common law or statute rendering them binding upon the holder. All actions against Carrier under the contract of Carriage evidenced by this Bill of Lading shall be brought before the Tribunal de Commerce de MARSEILLE, not to other Courts and any jurisdiction with regards to any such action. Actions against the Merchant under the contract of Carriage evidenced by this Bill of Lading may be brought before the Tribunal de Commerce de MARSEILLE, not to other Courts and any jurisdiction with regards to any such action. Actions against the Merchant under the contract of Carriage evidenced by this Bill of Lading may be brought before the Tribunal de Commerce de MARSEILLE, not to other Courts and any jurisdiction with regards to any such action. In witness whereof three (3) original Bills of Lading, unless otherwise stated above, have been issued, one of which being complete, and the others being copies. (OTHER TERMS AND CONDITIONS OF THE CONTRACT ON PAGE ONE) RECEIVED BY THE CARRIER FROM THE SHIPPER TO COMPARE THE CARGO SPECIFIED ABOVE FOR TRANSPORTATION SUBJECT TO ALL THE TERMS STATED (INCLUDING THE TERMS ON CARGO COVER) FROM THE PLACE OF RECEIPT AT THE PORT OF LOADING, WHICHEVER IS APPLICABLE, TO THE PLACE OF DELIVERY, WHICHEVER IS APPLICABLE. DELIVERY OF THE GOODS WILL ONLY BE MADE ON PAYMENT OF ALL FREIGHT AND CHARGES. ON PRESENTATION OF THIS DOCUMENT (B/L) ENDORSED BY THE CARRIER, BY OR ON BEHALF OF THE HOLDER, THE RIGHTS ARE, FACILITIES ARISING IN ACCORDANCE WITH THE TERMS HEREOF SHALL BE SUBJECT TO ANY RULE OF COMMON LAW OR STATUTE RENDERING THEM BINDING UPON THE HOLDER. ALL ACTIONS AGAINST CARRIER UNDER THE CONTRACT OF CARRIAGE EVIDENCED BY THIS BILL OF LADING SHALL BE BROUGHT BEFORE THE TRIBUNAL DE COMMERCE DE MARSEILLE, NOT TO OTHER COURTS AND ANY JURISDICTION WITH REGARDS TO ANY SUCH ACTION. ACTIONS AGAINST THE MERCHANT UNDER THE CONTRACT OF CARRIAGE EVIDENCED BY THIS BILL OF LADING MAY BE BROUGHT BEFORE THE TRIBUNAL DE COMMERCE DE MARSEILLE, NOT TO OTHER COURTS AND ANY JURISDICTION WITH REGARDS TO ANY SUCH ACTION. IN WITNESS WHEREOF THREE (3) ORIGINAL BILLS OF LADING, UNLESS OTHERWISE STATED ABOVE, HAVE BEEN ISSUED, ONE OF WHICH BEING COMPLETE, AND THE OTHERS BEING COPIES. PLACE AND DATE OF ISSUE: QINGDAO 11 JAN 2011 SIGNED FOR THE SHIPPER *APPLICABLE ONLY WHEN THIS DOCUMENT IS USED AS A COMBINED TRANSPORT BILL OF LADING SIGNED FOR THE CARRIER CMA CGM S.A. BY: [Signature] AGENT FOR THE CARRIER CMA CGM S.A.					



The Commercial Invoice

- Key information on the commercial invoice.
 - Buyer.
 - Seller.
 - Invoice date.
 - Invoice number.
 - Description, quantity, and price of goods.
 - Payment terms.
 - Delivery terms.
 - Need not be signed (UCP 600 – Art. 18).

Matching Single Transaction Documents

- Organizing and relating claim documents to each other can be a challenge.
- Organizing single transaction documents together can be done as follows.
 - Common order reference number.
 - Narrow date range (invoice date, BL date, CO date)
 - Identical weights, measures, and description of goods.
 - Identical parties (buyers, sellers, banks, or agents).
- **Transaction information must be consistent across all documents.**

Matching Single Transaction Documents

Bill of Lading		Multimodal Transport or Port to Port Shipment	
ST			
	Carrier's Reference:	B/L-No.:	Page:
	14123603	HLCUHOU080623749	2 / 4
AGING LOCK	REF. 2330247 E917918 EVD ET 1055518268		
	Forwarding Agent:		
	ELITE INT'L TRANSPORTATION, INC. 15333 JFK BLVD., 6TH FLOOR HOUSTON, TX 77032 US		
PREO:	Consignee's Reference:		
S	Place of Receipt:		

The same Sales Order number is shown on both BL and Invoice (as well as the rest of the Transaction documents).

COMMERCIAL INVOICE		
SELLER")		
AT No: BE0416375270		
SALES ORDER 2330247	INVOICE DATE 23.06.2008	DUE DATE 19.09.2008
INTERNATIONAL CO FOR PAPER		INTERNATIONAL

Matching Single Transaction Documents

11 Container Said to Contain 275 BAGS OF 70 KG. NET BOLIVIA WASHED ARABICA COFFEE PRIMERA ORGANIC, CROP 2007 ICO 113-2 INVOICE COMERCIAL No. 0055 POSICION ARANCELARIA: 09011190 000 FWA11923540592		19470.00 KGS		
MISKUB2723 ML-SA2906590 20 DRY R'6 275 BAGS 19470.00 KGS SHIPPER'S LOAD, STOW, WI				
PARTICULARS FURNISHED BY SHIPPER - CARRIER NOT RESPONSIBLE				
MARKS AND NUMBERS	N° OF PKGS./CNTRS.	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT
N/M DFSU6207473 SN:R0989649 QTY:1041 CY / CY FCL/FCL TW:3,900.000KGS GW:23,842.000KGS M3:58.210CBM	1	HIGH CUBE 40' CONTAINER SAID TO CONTAIN 1041 CTNS EXTENSION SOCKET 14 DAYS FREE TIME FOR CONTAINER RENTAL AT DESTINATION GDSSPA085616 *TEL:0574-27871111 FAX:0574-27872333	23,842.000KGS	58.210CBM
SHIPPER'S LOAD, STOW, COUNT AND SEALED FREIGHT PREPAID SHIPPED ON BOARD AUG.12.2012 MERCHANT SHALL COMPLY WITH ALL G.C.C. RULES AND REGULATIONS AND STUFF GOODS IN CONTAINERS ACCORDINGLY. MERCHANT SHALL BE LIABLE FOR ANY FINES IMPOSED FOR NON-COMPLIANCE OR VIOLATION OF G.C.C. RULES AND REGULATIONS. CARRIER DEMURRAGE RULES FORM AN INTEGRAL PART OF THIS B/L AND ARE DEEMED TO BE INCORPORATE HEREIN, EMPTY CONTAINERS Service Coverage CONTAINER YARD in SHANGHAI, CHINA CONTAINER YARD in SHUWAIKH, KUWAIT Continued on Appendix to BL Nr NDAEXKP00				
SHIPPERS DECLARED VALUE \$ (IF NOT DECLARED, LIABILITY LIMIT APPLIES AS PER CLAUSE 15.):				
TOTAL No. OF CONTAINERS OR PACKAGES RECEIVED BY THE CARRIER :				

SINGLE TRANSACTIONS VS CONTRACT PERFORMANCE

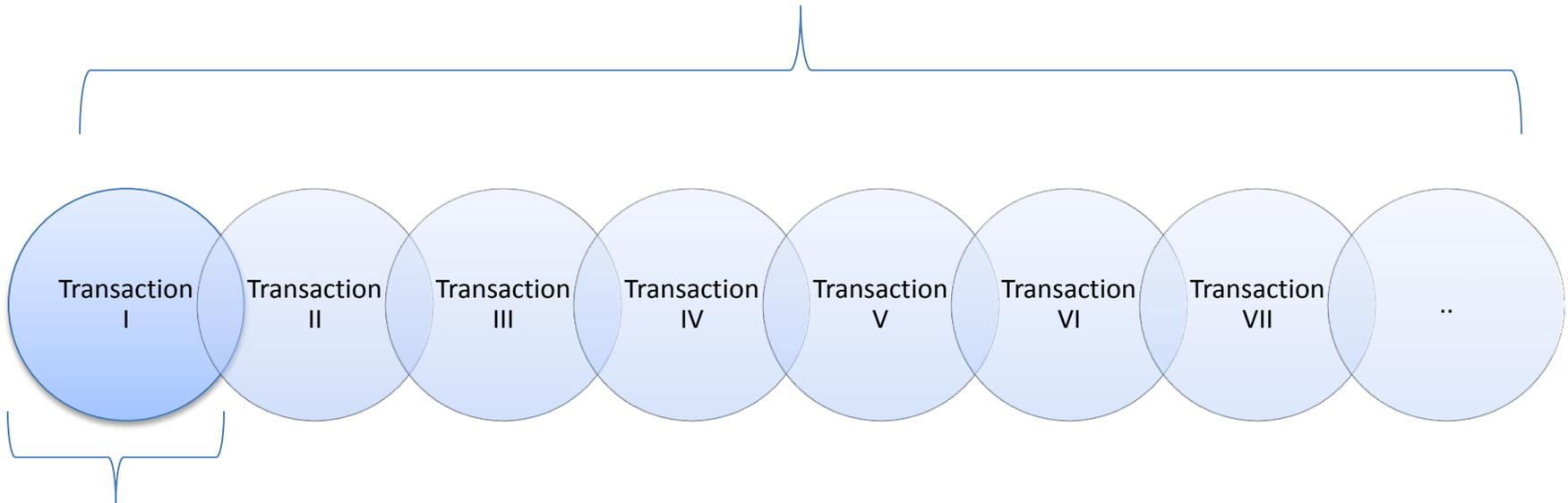
Single Transactions vs. Contract Performance

- Contract may include a series of discrete transactions spanning over a long period of time.
- PH performance duty may span across the entire contract.
- While a single export transaction may be valid, the PH could still be in breach of other aspects of the contract.
- Breach of contract may result in set-off claims / counter claims.
- Such set-off / counter claims can negatively affect the rights subrogated to the ECA.

Single Transactions vs. Contract

Performance Scope of Contract

Regulated by jurisdiction, applicable Laws, and general int. standards.



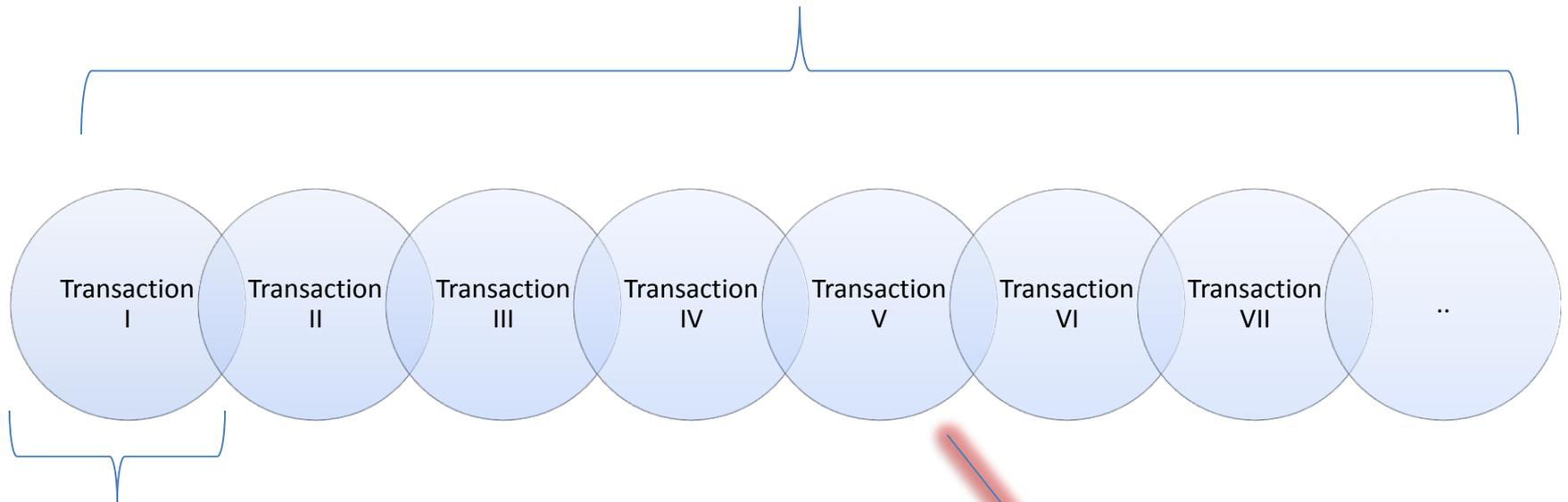
Scope of Single
Export
Transaction

Regulated by Int. Standards
(INCOTERMS, Customs, etc.).
Requires individual export docs.

Claims Related to Multi-Transaction Contracts

Scope of Contract

Regulated by jurisdiction, applicable Laws, and general int. standards.



Scope of Single
Export
Transaction

Regulated by Int. Standards
(INCOTERMS, Customs, etc.).
Requires individual export docs.

Set-off / Dispute
Possibility effecting other
transactions.

Relating Transactions to Contract

- Same principles of single transactions apply to multi-transaction contracts, in addition to the following:
 - Statement of Accounts.
 - Provides clarity on the composition of the claim amount.
 - Listing of transaction documents.
 - Provides an opportunity to identify missing documents.
 - Provides an opportunity to review all transaction information and match them to invoices.

Suggestions for Claim Analysis

- Use checklists to inspect claim / export documents.
- List all documents provided by the PH in a spread sheet, relate and group them as necessary.
- Consider “invoice + delivery documents” as the corner-stone of claim analysis.
- Inquire about all aspects of the sales contract between the PH and debtor.



Techniques of

CLAIM INVESTIGATION

Parties Related to the Claim

- Debtor.
- Logistics Service Providers:
 - Carriers & forwarders.
 - Clearance Agents.
- Banks.
- Customs Offices.
- Inspection Bureaus.

Claim Investigation with the Debtor

- Investigate the following aspects related to the debtor.
 - Existence of debtor's company at the time of the transaction.
 - Signatories and capacity of person placing the orders.
 - Confirm actual placement of order.
 - Investigate reasons for non-payment.
 - Determine liability of debtor (in case of performance disputes).
 - Identify potential “red-flags”.

Claim Investigation with Related Third Parties

- Logistics Service Providers.
 - Confirm delivery or abandonment of goods.
 - Confirm alleged rejection by customs.
 - Assist in tracing the movement of goods.
- Banks.
 - Confirm the release of documents for Documentary Collections.
 - Confirm discrepancies or presentation problems with LC's.
- Customs Offices.
 - Confirm the release of goods.
 - Can provide formal / court-admissible evidence of delivery.
- Inspection Bureaus.
 - Report on quality upon delivery.

Suggestions for Claim Investigation

- Complete Claim Analysis steps prior to contacting debtors or related third parties.
- Identify anomalies or possible “red-flags” prior to contacting debtors or related third parties.
- Prepare clear goals of the investigation prior to contacting debtors or related third parties.



Basics of

DISPUTE ASSESSMENT & MANAGEMENT

Common Types of Disputes

- Contract performance.
 - Quality / specification mismatch.
 - Damaged goods.
 - Late delivery.
- Trade Terms.
 - Consignment sales vs. fixed price.
 - Unordered deliveries.
- Historical Trade.
 - Set-off claims.
 - Outstanding balance.

Dispute Management

1. Quantification of the dispute (loss adjusting).
 - Determining the value of the dispute.
2. Evaluate the validity of the dispute.
 - Proof of non-performance / dispute.
 - Email communications.
 - Dispute claim procedures.
 - Supporting documents.
 - Acceptability within the applicable legal / contractual frameworks.
3. Feasibility, viability, and risk of formal dispute resolution measures.
 - Amount at stake.
 - Costs (time and monetary) of formal action.
 - Effectiveness of debtor's jurisdiction.
 - Time frame of reporting.
 - Dispute reporting framework; what applies? The contract, the law, to what extent does the contract apply?
 - Feasibility of dispute resolution; amicable / formal action; what's cheaper?

Applicable Standards to International Commercial Disputes

- Vienna Convention Risk Model.
- ICC INCOTERMS 2010 Risk Model.
- Choice of law (or non-legal standards) in arbitration.
- Reasonability:
 - Visible vs. Invisible Flaws.
 - Frustration (performance impossibility).
- Force Majeure.



Claim Analysis and Investigation

CASE STUDIES

Case Study I – Wrong Consignee

- Claim Details.
 - Claim amount: USD 67,000.
 - Debtor's jurisdiction: Lebanon.
 - Reason for claim: Protracted default.
- Results of claim analysis.
 - Consignee on BL was not the debtor.
- Result of claim investigation.
 - Debtor did not recognize the BL.
 - Carrier confirmed release of goods to rightful consignee almost 18 months prior to claim date.
- Result: claim rejected. Client deemed the debtor as unrelated to the transaction.

Case Study II – Customs Rejected Goods

- Claim details.
 - Claim amount: USD 35,000.
 - Debtor's jurisdiction: Saudi Arabia.
 - Reason for claim: Customs rejected the goods due to wrong country of origin labelling. PH insist that debtor is still liable to pay because risk of rejection falls on debtor.
- Results of claim investigation.
 - Both customs and carrier reported that the reason of rejection was a mismatch in labelling country of origin; external packing had one country, yet actual product had another.
- Result: Claim rejected. The client deemed the PH responsible for the rejection.

Case Study III – Unshipped Goods.

- Claim Details:
 - Claim amount: USD 600,000.
 - Debtor's jurisdiction: Libya.
 - Reason for non-payment: Breach of contract.
- Results of claim analysis.
 - BL lacked on-board date / notation, or stamp.
- Result of claim investigation.
 - Debtor did not place order.
 - Carrier never received the goods for shipment.
- Result: Claim rejected.



RECOMMENDATIONS

Recommendations for Claim Analysis & Investigation

- Use systematic approach to claim analysis.
- Complete the analysis stage and plan for claim investigation.
- Use both stages to plan for successful recovery losses incurred.
- Involve your recovery agency as early as possible.



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Thank You

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