



# Newsletter Newsletter

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## The Institute

The Insurance Institute of Hong Kong was founded in 1967 and is an independent professional body. It has more than 500 members.

The Institute's principle aim is to promote and advance the professionalism of the insurance industry and a well-recognised local qualification for the industry.

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Mr Y. O. Choi

## This issue .....July 2003

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## PRESIDENT'S LETTER

Dear Members and fellow Insurance Professionals,

I am sure that many of you will be on holiday during the summer and on these occasions the world of insurance can seem far away. However, wherever we travel in this world and whoever we talk to we can be sure our products are universally recognized and widely used.

It is a great feeling to know that what we do affects so many people and protects so many assets. Sometimes, however, we realise that not everyone fully understands our products nor are they totally convinced of the value they bring. There are also times when our industry is criticized for not clarifying terms and conditions in advance.

In order to avoid these difficulties we must strive to become more knowledgeable and more professional. All of our dealings with customers, whether these are brokers or direct clients, must be clear, concise and 100% accurate – as well as always being relevant to the circumstances.

The IIHK conducts examinations and runs Continuing Professional Development (CPD) seminars on a regular basis and these are all designed to improve knowledge on either a product or a technique basis.

Of course, being a member of the Institute does bring benefits, including priority access at lower costs for seminars.

Our links with other Institutes continue to grow and we were delighted that Nick Donne, our CPD Director, was able to attend the Institute for Global Insurance Education meeting held recently in New York.

There is no doubt that membership of the IGIE does allow the IIHK to become more aware of international developments in insurance education and I expect benefits to become more visible as time goes by.

We are pleased to welcome Olivia Chung to our Secretariat. Olivia is assisting Y.O. Choi in all matters administrative and both can be contacted via our email or by telephone at the Secretariat.

Finally, a reminder that we need to become almost totally electronic in communications with our members and other contacts. Hard copies of publications such as this can be downloaded from the web site if necessary.

Therefore, do not forget to inform us should your contact details change.

Have a good holiday and I look forward to seeing you at the CPD seminars.

Mike Haynes  
President



## MARINE CARGO INSURANCE The Challenges Beyond

Capt Lee Fook Choon  
Toplis & Harding (Marine) Ltd

The cargo insurance industry has become highly competitive and knowledge intensive. Insurers have resorted to mergers and information technology to achieve the economy of scale.

The global environment is in a constant state of change. Whether insurers can depend on; internal costs control; imaginative investment incomes; and core premium income to stay viable will be something which even economists cannot predict with certainty.

With the rapid liberalisation of China and the opening of India, cargo insurers are posed with formidable challenges but with many opportunities too. One needs to take bold, imaginative and well-considered risks. The challenge ahead is to lift the traditional conservative lid among insurers to allow the range and scope of business to be expanded even when the premium rates are nowhere near attractive.

The increase in the range and depth of cargo insurance business should not be achieved purely from commercial expediency but in a well-considered undertaking. To achieve this, insurers cannot be contented with just enhancing the insurance knowledge of their underwriting and claims handling staff. There is also a crucial need to expand their fields of knowledge in a multi-discipline approach. For instance, they need to enhance their knowledge of the subject matter insured (product knowledge); the mechanics and risks of sea/land/river/air transportation; the packaging criteria; pre and post casualty control measures; ways to control litigation

costs and country knowledge of the main trading nations. Acquisition of knowledge for underwriting and claims handling staff, like any many other professions, is a continuous process.

### **Product Knowledge**

Many underwriting and claims handling personnel are rather poorly informed of the subject matter insured. Many are insufficiently equipped to understand the nature and characteristics of the subject matter insured. Hence, in determining whether it is a good risk that warrants a Class A coverage; or whether a particular mode of transport is suitable; or whether a particular damaged product can be sold in the market or to be condemned; they are largely left to the whims of the assureds or intermediaries.

Take for instance steel related cargoes. Many insurance personnel do not understand the complexities of the steel trade. Grade B steel products are being insured as though they are of Grade A materials. Similarly, in food grains and other agricultural products, losses sustained are being treated as transit loss covered by the policies when in reality, many of the losses can be traced to defects in seeding process; weather-derived diseases; poor crop husbandry; and harvesting and handling deficiencies before shipments. The same can be said of the timber trade and other vegetable oil business where many claims can be attributed to rust suspensions and other non-chemical based impurities which actually can be made good or even sold at



substantially good prices even if downgraded or reprocessed.

Knowledge of vast categories of goods insured can be acquired through talks or short courses given by many trade associations and such talks can be organised through the Institute of Insurance or other insurers' associations.

### **Understanding the Transportation Systems**

Today, goods are transported across the world by a multitude of transport modes involving mother carriers, feeder ships, inland barges, road, rail or even domestic air carriers. While the transport systems in Japan, Europe and US are highly developed, the same cannot be said in most countries.

The rail systems and roadways in many countries are in desperate needs of repairs or investment in infrastructure renewal. This also includes the fleet of inland barges and coastal ships used in delivering goods to far inland destinations. It is common to see poorly equipped coastal tankers being chartered to deliver parcel chemical or clean oil products from well-managed ocean tankers to inland river ports. The standard of tank preparation before loading is not observed and the interchangeability of the tank used is also not adequately monitored. This often results in contamination of products on arrival at the final destination. It is also not uncommon to find rickety open and uncovered trucks being used to carry expensive cargo to inland destinations.

Many insurers, under tremendous commercial pressure, are willing to cover door-to-door risks even though they may not have the slightest clue with regard to the state of the inland transport systems in the country of destination. In such a

situation, insurers must be prepared to take inevitable losses rather than fortuitous losses. To increase awareness of the inland transport systems and the applicable legal regime governing the limit of liability for such inland carriers, insurers will do well by building up a file on useful data and historical records of the principal trading nations.

### **Packaging**

One major factor contributing to frequent losses is the sufficiency and adequacy of packaging. Many of the losses suffered in transit, especially during inland transits, can be attributed to less than rigorous packaging being employed. Some packaging methods or materials are determined by shippers whilst some are left to forwarders engaged by the shipper to do the packaging and/or consolidation for shipment.

The normal excuse given by shippers is that a particular packaging material has been in use for numerous shipments without difficulties encountered and, therefore, the argument that insufficient packaging or inadequate packaging is the cause of loss cannot be accepted. To reinforce this point, I will cite a case involving medical basic ingredients shipped in paper cartons by air from India to Europe. On arrival, the paper cartons were found to have softened by moisture as a result of condensation during the airflight and the entire shipment was rejected by the Danish Health Authority for being unfit for human consumption.

The assured gave the excuse that the packaging was adequate and customary whilst ignoring the fact that frequent use of a certain packaging mode without apparent deficiency noted does not mean that the standard of packaging is adequate. A combination of human



negligence, weather effects, and shortcomings of the aircraft storage control procedures can put to test whether a certain packaging mode is adequate. There are many similar cases that can be quoted.

Many shippers are also under intense pressure to trim their business costs. Rationalising the packaging methods or materials used is one cost-effective measure. Packaging materials and method used should be adequate to withstand the full rigours of handling and storage in many transport modes and the benchmark cannot be measured only against a particular mode such as truck transportation.

One of the effective ways for insurers to control their claims exposure is to focus on the packaging of the subject matter insured. Good, adequate and robust packaging can go a long way to reduce the scope and extent of damage to goods-in-transit.

### **Claims Handling**

The importance of proper claims handling to ensure only valid claims are paid, cannot be overstated in determining the profitability of the business. It is a fact that insurers rely to a great extent on a network of insurance surveyors to keep claims in check. For some established insurers, great pains are taken to set up a panel of surveyors but this panel is realigned each time a new claims person is put in charge. It is important for insurers to take note that professionalism and loyalty work both ways.

If a survey firm is confident that their listing on the panel is based on merits and is not simply replaced by a change of claims manager, they will work with diligence and a degree of professionalism. As most

surveyors can testify, to do a good job in obtaining important information or documents or other physical evidence, very often surveyors must go the extra mile. It is this 'extra push', which very often, makes the difference. The other spectrum is to do 'just enough' and the pride of a job well done is relegated to the back-burner. So, many claim handlers do complain about the quality and standard of field surveyors.

It is also common practice that the benchmark of survey services is focused on costs. While it is undeniable that cost has to be controlled, it is also a fact that experienced professionals cannot be cheaply reproduced. They are expensive employees and the costs of employing such people will have to be passed on to users of such services. Globalisation and economy of scale will not alter this situation and in fact, with globalisation, experienced personnel are even harder to keep as their services are in demand.

Perhaps, insurers should take another look at these suggestions:

1. A reliable network of surveyors to be maintained. Once a panel is formed, removal from or addition to this panel should be based on merits and not on personal relationship. Survey firms should be assessed on the quality of their employees; their knowledge of the local environment; contacts with salvage merchants and traders; and their contacts with service and repair workshops, whether locally, in the region or through Internet.
2. The quality of surveyors should be assessed based on their professional background and pay structure to stamp out corrupt practices.



3. Insurers should back up surveyors in the course of their work in dealing with assureds or their intermediaries in the course of claims handling.

The quality of survey report has a tremendous bearing on the ultimate success of recovery actions against the carriers. Many cases of good merits can be frustrated by poor reports with no concrete substantiation of evidence and facts.

#### **Understanding the Threat of Fraudulent Practices in International Trade**

Fraudulent activities in international trade are on the rise. These activities are not only confined to Malacca Straits but also to Vietnam, Philippines waters, parts of China, Central America, South America, parts of Africa and even in Europe. There is still no international order that can help to eradicate or minimise the threats of such criminal activities. The modus operandi of these fraudulent activities is a very complex web involving the planners, executioners, collaborators, distributors and some authorities at the point of sale.

To depend on law enforcement agencies or the courts in many countries to recover converted goods is still a dream. It is better for insurers to take precautionary measures than to become a victim of criminal acts. Insurers need to understand the types of maritime frauds prevalent in the market place and what are some of the possible steps that can be taken to mitigate the risks:

#### **Types of Maritime Frauds**

- Hijacking of ship by disgruntled crew to settle disputes with owners

- Hijacking of ship by organized syndicates with crew's complicity
- Hijacking of cargoes with or without crew's complicity
- Hijacking of ship and cargoes by crew or by organized syndicates
- Illegal detention of ship/cargo by owners to force payment of outstanding hire or demurrage or detention charges
- Pirate attacks to plunder ship's stores, equipment and or cash
- Misrepresentation of the nature of goods shipped

#### **How to prevent maritime frauds**

- Investigate the ownership and background of operators including their share ownership, mortgages etc
- If the ship is a chartered carrier, obtain all pre-chartering correspondence between charterers, shipbrokers and owners to determine the quality of shipowners and the shipbrokers.
- Obtain details of P & I coverage as well as hull and machinery coverage to determine the quality of insurance.
- Obtain copies of vessel's trading documents to establish the authenticity of registration/classification documents.
- Obtain details of crew (if possible) such as their nationality, age, qualifications, domicile address in order to draw up a character profile of the crew-very critical to determine whether they are guilty of complicity in the crime committed.
- Investigate into the background of charterers, nature of their business, scale of their operations and location of their office.
- Obtain evidence and investigate into the background of shippers, nature of business, historical aspects of sale transaction of missing cargo, payment



terms of goods, how shipments were arranged, how carrying ships were selected, terms of bills of lading, legality of export and foreign exchange control procedures.

- Identify the chain of buyers i.e. intermediate and final buyers, their background, if possible, and whether or not they qualify to claim under the policy, whether the import is legal and is covered by the necessary import permits.
- Examine prevailing market conditions of the product that is the subject of crime.

### **Country Knowledge**

Many insurers are less than well informed of the economic, political, social and legal environment of their principal trading nations other than the United Kingdom. If insurers want to ensure prudent measures to be taken to avoid the pitfalls in claims handling, they need to expand their country knowledge of their principal trading nations. The major trading nations I am referring to are China, India, European Community, East European Countries, Korea, Japan, United States and Russia.

There is a compelling need for insurers to compile country information and data (for quick reference) on the strengths and weaknesses of each of these countries, their technical abilities, customs regime and transaction restrictions, trade practices, political risks, quality of inland transport systems, judicial system, etc. Ask yourself these questions: How much do you know about a country's legal system? How does the court system function in that country? Is there any avenue for application to court for access to the vessel for document inspection? Do you know enough of the ship's arrest procedures in all these countries in

respect of obtaining security for your claims, the issue of counter security, the issue of whether protective writ can be issued to protect time-bar, repercussions of wrongful arrest, sister and associate ship arrests, the law governing validity of the limitation fund etc?

Why are these questions so important? They are very important because without which, insurers will be heavily exposed to wrongful advice leading to massive wastage in the legal costs in either pursuing a recovery claim or defending a claim. Many insurers, due to the legacy of history, are comfortable with English law but, unfortunately, English law is not universally adopted. Continental law or a hybrid variation of English law is adopted in many trading nations.

### **Dispute Resolution**

Traditionally, insurers tend to look to the court for resolving any disputes with assureds or reinsurers. But in today's commercial world, there are alternative cost-effective dispute resolution options other than going to court to settle a commercial dispute. In India and China, for instance, it does not make sense to settle disputes by dragging them through the district, provincial high court and then the highest court of appeal. Increasingly, insurers should look at Arbitration and or Mediation processes to resolve commercial disputes.

Insurers in European countries are looking into all aspects of claim control possibilities and it is of no co-incidence that they are by far the boldest in trying out mediation and arbitration.

### **Arbitration**

Arbitration as a dispute resolution process is very little understood amongst insurers



in this part of the world. What is an arbitral process and how to commence an arbitration proceeding is something still unfamiliar to many insurers. In actual fact, the East Asian Branch of the Chartered Institute of Arbitrators and the Hong Kong International Arbitration Centre will be more than willing (I believe) to educate insurers through insurers' associations or the Institute of Insurance in understanding the arbitration process..

The arbitration process needs to be understood and insurers will be well served if they are briefed on the advantages and disadvantages of arbitration such as : How arbitrators are appointed? The difference between a sole and a three-member tribunal; the definition of commencement of arbitration in preservation of writ; How to challenge and dismiss arbitrators guilty of misconduct? How to ensure transparency and accountability in the arbitral process? How to control the costs of arbitration? How to enforce an arbitration award in home country as well as in a foreign country? The right of appeal to the court etc.

**Mediation**

This is a process that has seldom been used by local insurers. From my experience as a mediator for foreign insurers, the results have been most gratifying. In most cases, it is a win-win situation, and unlike court or arbitration, the parties can walk away happy with the

outcome (having the opportunities to have their views heard and tested against reality). Mediation is a poorly understood concept even among local insurers who are familiar with court proceedings.

The questions often asked are: How does mediation work? What is the difference between domestic and cross-border mediation? How to appoint a mediator? How can complex insurance claims be resolved through mediation? What are the advantages of mediation? If we proceed with mediation, can we revert to arbitration or court action at a later stage? Can a mediation agreement be binding on the parties? And, finally, what is the likely cost of mediation?

Mediation is hot topic in many countries. In construction, municipality and domestic family disputes, for instance, it is widely practised with good results. It is not possible to go into a substantive discussion on specific questions of the mediation process in this article as the depth of the subject will require a separate paper to do so.

The writer reckons that his views may not be shared by all but certainly, he hopes that this article will act as a catalyst to stir more general discussions among insurers to enhance the professional levels in the industry. ◆◆◆

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### INSURANCE COMPANIES PAID MORE THAN \$100 MILLION TO SARS VICTIMS

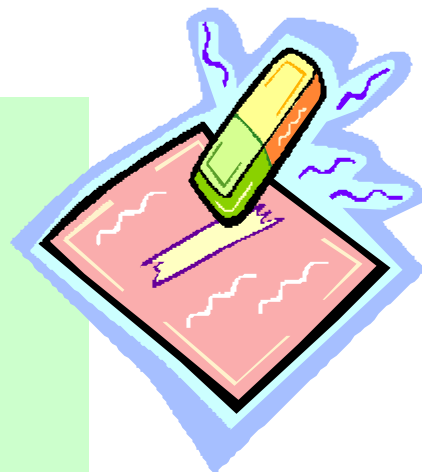
Figures released on 10<sup>th</sup> July 2003 by The Hong Kong Federation of Insurers showed accumulative statistics on claims paid as at 31 May 2003 arising from Severe Acute Respiratory Syndrome (SARS). A total of 40 insurance companies settled 492 SARS claims and paid HK\$105,285,100 in total.

There were 72 claims for death benefit under life insurance policies against 278

fatal SARS cases. The families of the deceased received HK\$101,450,500 in total. The number of lives involved may be fewer than 72 as some of the deceased might have taken out more than one insurance policy.

Regarding medical insurance, a total of 372 claims had been settled and HK\$3,740,300 paid to medical insurance policyholders. ◆◆◆

	Individual Life	Group Life	Medical (Hospital & surgical/Hospital Income)	Travel	Total
No. of Claims paid	63	9	372	48	492
Amount Paid (HK\$)	93,716,500	7,734,000	3,740,000	94,300	105,285,100




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***Have you moved house, changed your job, achieved any academic qualifications .....?***

***Remember to update us in case your details changed!***

***Fax : 2295 3939***  
***Email : [enquiry@iikh.org.hk](mailto:enquiry@iikh.org.hk)***

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## EMPLOYEES COMPENSATION INSURERS INSOLVENCY SCHEME

Tommy Tong  
Partner, Herbert Smith Hong Kong

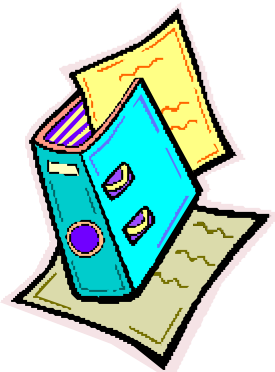
On 21 February 2003, the Employees Compensation Insurers Insolvency Bureau ("ECIIB") was established by the insurance industry of Hong Kong and, on the same day, the ECIIB and the Insurance Authority entered into an agreement on the establishment of the Employees Compensation Insurer Insolvency Scheme (the "Insolvency Scheme").

The purpose of the Insolvency Scheme is to take over from the Employees Compensation Assistance Scheme ("ECAS") the responsibility of meeting the liabilities arising from employees compensation insurance policies in the event of the insolvency of the relevant insurers.

Commencing from 1 April 2003, the Insolvency Scheme will collect contributions from employees compensation insurers in Hong Kong. Starting from the effective date which is expected to take place on 1 April 2004, the responsibility of meeting liabilities arising from employees compensation insurance

policies in the event of the insolvency of the relevant insurer will vest in the Insolvency Scheme. The scope of the Insolvency Scheme and the claims and settlement procedures will largely follow the relevant provisions under ECAS.

The purpose of the establishment of the ECIIB and the Insolvency Scheme is to relieve the financial burden of the existing ECAS, in particular from the sudden strain on the cash flow of the ECAS arising from the insolvency of an employees compensation insurer. ◆◆◆



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### **MOTOR INSURANCE** – Motorist’s Duty and Rights under a Motor Policy

*Date : Thursday August 21<sup>st</sup> 2003*

Time : 16:00 - 18:00

Language : Cantonese

Venue : City University of Hong Kong, School of Continuing and Professional Education, 8/F United Centre, 95 Queensway, Hong Kong.

A Certificate of Attendance will be issued upon completion of the seminar which should be retained as evidence of the two (2) core credits earned.

For registration, simply complete the reply slip and return to us together with your payment. Reservation will only be confirmed upon receipt of payment.

All reservations must be paid in advance and there will be no refund for any fee paid.

Please complete the attached [Reply Slip](#) and send it with your cheque to our Secretariat at G.P.O. Box No. 6747 Hong Kong.

Please arrive early at the seminar (Registration commences from 3:45 p.m. onwards). Late arrival can result in you not be accredited with the 2 core credit hours. Participants must attend the entire two hours seminar.

#### **Seminar Cost :**

HK\$160 per person (Non-member)

HK\$130 per person for IIRK members

*(New member qualifies for the reduced seminar cost of HK\$130.)*

For further information, please contact :

**Mr. Y O Choi**

Tel : 2520-0098 Fax : 2295-3939 Email : [enquiry@iirk.org.hk](mailto:enquiry@iirk.org.hk)



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**Reply Slip**

To : Mr. Y O Choi  
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The Insurance Institute of Hong Kong Ltd  
G.P.O. Box No. 6747  
Hong Kong

"Yes" I wish to attend the above Seminar(s) and I attach my cheque payable to  
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Name \_\_\_\_\_ I.D. Card / Passport No. \_\_\_\_\_  
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Cost for each seminar :  
**HK\$160 for non-member**

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**HK\$130 for Member of the Institute**  
**(please fill in your PIN number above)**

Non-member who wishes to join the IIHK as member, please send  
a separate cheque of HK\$120 together with this form.

(New member qualifies for the reduced seminar cost of HK\$130.)