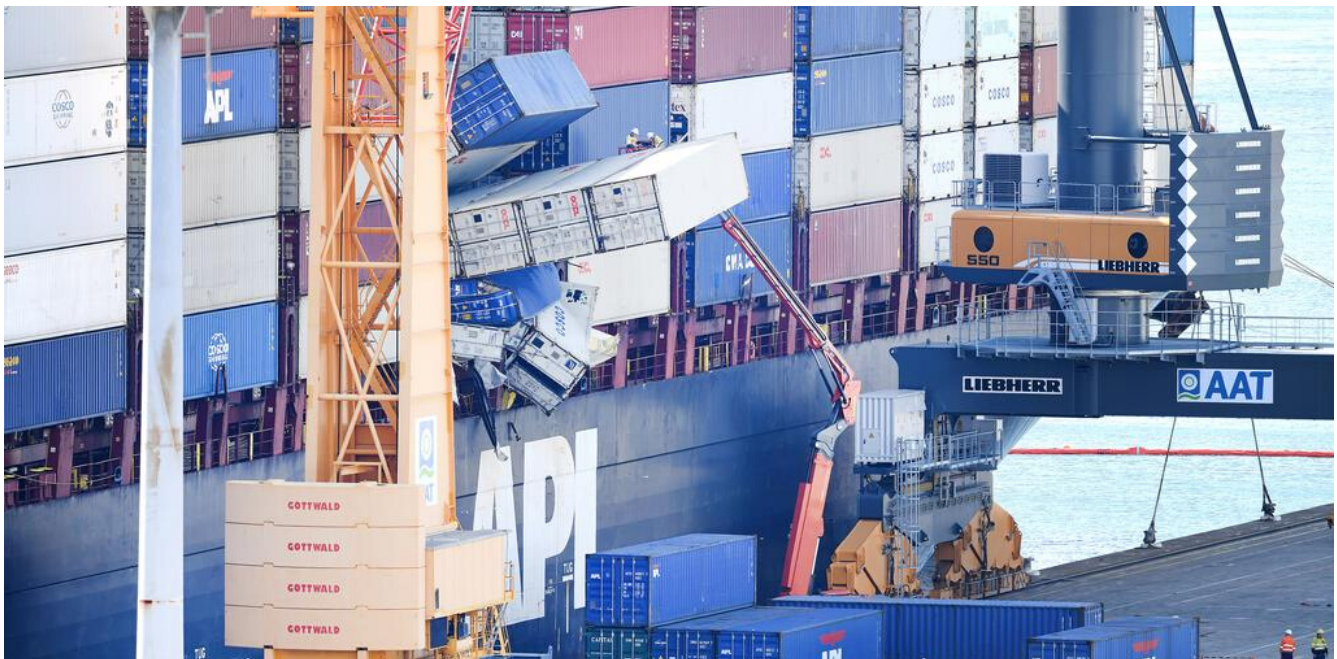


LOGICAL IN LOGISTICS NEWS



APL ENGLAND – IMPACTS OF LOSSES AND ASSOCIATED CLAIMS

As has been widely publicised by the FTA and elsewhere, on the 24th May 2020, whilst on a voyage from Ningbo, China to the Port of Melbourne, the Singapore flagged container ship APL England, operated by ANL shipping line, temporarily lost propulsion in heavy seas around 40 nautical miles to the South East of Sydney. It has been estimated that 50 containers were lost overboard with a further 80 containers damaged on board. The voyage was diverted to Port of Brisbane as a port of refuge for cargo unload and seaworthiness inspections by the Australian Maritime Safety Authority (AMSA).

The damaged containers have now been carefully discharged utilising specialised equipment at Port of Brisbane and ANL has advised that all parties with damaged/lost containers have been notified.

Following AMSA inspections on 19th June 2020, it was determined that APL England could safely leave the Port of Brisbane and make its way to China for repairs.

Meanwhile, we have been receiving numerous calls from FTA members who have been contacted by their customers who have been impacted by damaged and lost cargo. Whilst FTA members have reported that they have been able to assist their customers with their cargo claims against insurers and in some instances, the carrier, it has been reported that some customers believe FTA members are at fault & responsible and they have a right to claim against them seeking recompense. This approach is largely driven by either the customer not holding appropriate marine cargo insurance for their goods or not wishing to lodge claims against their cargo insurers. We are advised by FTA members that some of the conversations and correspondence with these customers is quite intense and heated.



JAMES COTIS

Principal at Logical Insurance Brokers

Against that background, we offer the following guidance to assist FTA members help their customers.

In all instances, FTA members should not admit liability, either verbally or in writing and be careful not to undertake actions which may imply they are liable.

Where an FTA member has issued a house bill of lading, then the FTA member will be the 'contractual carrier' under that house bill of lading. Therefore, the customer will have a right to claim against the FTA member, and the FTA member will most likely have a right to claim against the 'contractual carrier' ANL or other named carrier under the master (ocean) bill of lading, if the FTA member is named as the shipper or consignee under that master bill of lading. Where this is the case, the FTA member should acknowledge receipt of any claim made by its customer under the house bill of lading, but not admit liability, and seek guidance from its insurers/legal advisors. The FTA member should also lodge an intent to claim against ANL under the master bill of lading.

Alternatively, where the FTA member has not issued a house bill of lading, and the customer is named directly as the shipper or consignee on the master bill of lading, then the customer will have a right to claim directly against ANL. In this case, the FTA member should notify its customer that it is not the contractual carrier and therefore must deny liability for any loss or damage to cargo. The FTA member should advise its customer to claim directly against ANL, as the contractual carrier under the master bill of lading.

Where customers have arranged cargo insurance for their goods, as a first step, FTA members should encourage their customers to notify their insurance providers of the potential loss. Typically, cargo insurers will require their insured to complete a claim form. FTA members have reported that some of their customers have asked them to complete the claim form on their behalf, and we would discourage this practice. Customers should complete claim forms and be responsible for the representations contained in them. Cargo insurers are likely to request documentation and information in support of claims, most of which should be readily available to FTA members and easily provided to their customers. This information usually includes:

- The Bill of Lading;
- The commercial invoice or other documentation to substantiate the value of the goods;
- The freight Invoice;
- Copy of the letter of demand on the carrier, holding them responsible for the loss;
- Copy of any response/advice from the carrier, acknowledging that the cargo has been lost or damaged;
- Images/photos of the damage where possible.

As mentioned above, we understand there are challenges where FTA members' customers do not hold appropriate cargo insurance, particularly where customers are demanding FTA members pay for the losses incurred. Furthermore, we understand that sometimes there are delicate & sensitive commercial aspects at play. Whilst we do not advocate FTA members abandoning their customers during this difficult time, care needs to be exercised when dealing with uninsured cargo losses. In circumstances where FTA members haven't issued a house bill of lading, and therefore are not the contractual carrier, caution should be taken when assisting customers with lodging intents to claim against ANL. FTA members may lodge claims on behalf of their customers, but should make clear that ANL is the contractual carrier and that they, the FTA member, is not the responsible party for any loss or damage to cargo. However, in circumstances where FTA members have issued house bills of lading, they could consider offering an assignment of rights to their customer to pursue the ocean carrier directly.

If in any doubt, we suggest that FTA members should contact their specialist liability insurers who should be able to provide advice/guidance in the first instance. Alternatively, FTA has arranged with Frazer Hunt of Mills Oakley Lawyers to assist members in relation to this incident.

Finally, given the circumstances surrounding the damage sustained to cargo, FTA members should prepare their customers to expect potential lengthy delays in identifying and surveying/assessing damaged cargoes and subsequent claims settlements with insurers/carrier.

Who we are:

James and the team at Logical Insurance Brokers provide specialist risk management and insurance solutions to the logistics industry. Logical is delighted to be associated with the Freight and Trade Alliance (FTA) and is proud to be their appointed insurance adviser since its inception in 2012. James is also a regular presenter at FTA professional development events.

If you would like more information about how a carefully constructed insurance program and business continuity plans can help protect your business, please feel free to contact James on 02 9328-3322, email jamesc@FTAlliance.com.au or visit the Logical Insurance Brokers website at www.logicalinsurance.com.au/logistics.

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