Cargo values

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In today's market, investigating a cargo's value can be just as important as investigating liability.

Over recent years, commodity markets have seen exceptional volatility, affecting many of the cargoes shipped by sea. Grains, oilseeds, sugar, metals, chemicals, fertilisers, oil and petrochemicals have all seen turbulence and unpredictability, with prices often fluctuating widely, even over a short period of time.

Volatility in price means that some investigation is necessary to ensure a cargo is valued at the right time, in the right place and in the right currency, so that no overpayment occurs.

Legal issues in valuation of a cargo in the case of damage/non-delivery and late delivery

I. Non-delivery and delivery of goods in a damaged condition are usually treated in broadly the same way, except in certain situations.

   In the case of non-delivery, damages are assessed by reference to the market value of the goods at the time and place at which they should have been delivered (often referred to as the 'sound arrived value') less the cost of getting the goods to the place of delivery. In the case of damaged goods, the measure of damages is the amount by which the market value of the goods has been diminished by the damage, i.e. it is the sound arrived value of the goods less the actual value of the goods.

II. As regards late delivery, the measure is the difference between the market value of the goods at the time and place they should have been delivered and their market value at the time they were in fact delivered.

III. An 'available market'. The claimant should in theory be asked to go out into the market and buy equivalent goods at the relevant time (see above). If the claimant can do this, the court will award damages by reference to the price at which he can buy those goods. Thus, in the case of late delivery for example, the claimant will need to determine what the price of the goods in the available market would have been on the date of due delivery and at the date of actual delivery. If there was an available market for the goods on both these dates, the market prices on those dates will form the basis for calculating the damages claimed.

> The market value is to be assessed at the time and place of due delivery and not at the time when the goods were lost or damaged or bought

What prices are relevant in determining the market value?

– It is important to bear in mind that the relevant price is the price at which substitute goods could be bought, not the price at which they could be sold, because this is what the claimant must pay to provide himself with the substitute goods.
– The price at which a third party has agreed to buy the goods from the claimant is not relevant (although it

Worked example
A cargo of Vietnamese white long grain rice, 5% broken, packed in 50 kg bags. Published prices suggest that a cargo purchased and invoiced in late March 2013 would have cost around $400 pmt fob. Assuming the cargo was shipped in June 2013 and arrived in early July 2013, the same cargo could then have been purchased for around $365 pmt fob. Using the original invoice to value the cargo would result in an unnecessary overpayment

might be evidence of the market value of the goods). This is because the value of the goods is to be assessed independently of any circumstances peculiar to the claimant.
- Where there is no available market at the time and place of due delivery, it is permissible to take the claimant's cost price (i.e. the market price at the place where the goods were delivered to the carrier) and add the cost of carriage and an allowance for reasonable profit.
- Where damaged goods are resold, the resale price will usually be strong evidence of the market price of the damaged goods.

Claims for consequential losses
The following general rules usually apply (subject to the actual knowledge of the carrier at the time of contracting).

I. Lost profits on resale are usually not recoverable.

II. Lost user profits are also not usually recoverable. User profits are the profits the claimant would have been able to make using the goods; for example, the claimant cannot claim for lost profits he would have made with the machinery that was not delivered.

Recovering expenses
The claimant may be entitled to recover the expenses made necessary by the breach. Thus in the case of both non-delivery/damaged delivery and delayed delivery, the claimant may be put to the expense of buying goods that are the nearest substitute, although at a higher price because there is no available market for the actual damaged/non-delivered goods.

Currency
A final important point to bear in mind is the currency of the claimant's loss. Damages are expressed in the currency in which the loss was suffered by the claimant. The claimant takes the risks (and benefits) of currency fluctuations between the date of breach and the date of judgement (see the Texaco Melbourne [1994] 1 Lloyd's Reps 437HL). In another case, involving the loss of deck cargo, the claimant was an Italian company suing the carrier. The claimant had purchased the replacement cargo in Italian lire but was entitled to damages expressed in US dollars because the claimant was part of a US group of companies whose involvement in the transaction that led to the shipment was pursuant to a contract whose currency was in US dollars.

The cost of not checking cargo values
Finding the cargo's value presents many commercial challenges. Knowing the correct date and location at which a valuation is required are both essential elements. Having a full specification of what was agreed to be bought and sold is another. Bills of lading descriptions are rarely, if ever, sufficient to properly identify the cargo. Without a full invoice description, a fair degree of speculation is inevitable.

Top tips for valuing cargo
To gather cargo pricing information, consider data from different sources, including:

- Specialist databases
- Trade press
- Digital media
- Newsletters
- If possible, engaging with traders and brokers.

Together, these sources should reveal enough information to decide whether the claimants have overvalued the cargo. In the event of the need to challenge the claimant's valuation in the courts, one then looks to establish 'evidence' of value. This invariably means looking for an expert witness, probably a trader, broker or market analyst.