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To: Transport Industry Operators

MOL Comfort Comforts No Forwarder

While the MOL Comfort incident was a disaster widely talked about among forwarders, all who suffered loss without exception will try whatever means to recover their losses down the line wherever the legal regimes permit.

Like it or not, cargo insurers who suffered huge loss after paying shippers, consignees and various cargo interests with cargo on board the ill fated MOL Comfort have now been taking law suits against forwarders worldwide in a wholesale scale hardly seen before. Had it not been for the total loss of the ship, cargo claims against forwarders would mostly be isolated for sporadic handling damages. In the case of MOL Comfort, the world is chasing after forwarders for compensation of cargo lost together with the doomed vessel.

Just in one writ we read, in Hong Kong alone there are some 140 plaintiffs represented by a lawyer commencing litigation against some 43 defendant forwarders who had subcontracted the ocean carriage to MOL Comfort. The prevailing but mistaken assumption that forwarders can always recover their losses from ocean carriers is being put into the strictest test.

The MOL Comfort case brings forth yet another legal trump card in favour of ocean carriers - "**Tonnage Limitation**", based on the *Convention on Limitation of Liability for Maritime Claims 1976*. This has caught many forwarders by surprise. The assumption that cargo losses at sea can often be recovered is completely shattered.

The owner of MOL Comfort can limit its total liability to US\$40 million. A Tonnage Limitation Fund ("the Fund") for that amount has been set up in Japan. At the time of writing, the total claim filed for access to "the Fund" amounts to US\$800 million, or optimistically US\$400million considering the likelihood of double counting (i.e. both forwarders and cargo interests may file claim against "the Fund"). With Tonnage Limitation, any forwarder/ NVOCC attempts to recover its loss from the owner of MOL Comfort will be fruitless and just a debacle. Consequently, the net financial result for the forwarder would either be a make or break depending on what have been done:-,

1. If a forwarder has not yet filed a claim against the Fund, it will not be able to share anything from the Limitation Fund. It has to compensate the cargo interests completely with own resources at best based on the limitation allowed in its House B/L.

2. Even if it has filed the claim, theoretically it could finally recover some 5% to 10% of what it has to pay to settle claims from the cargo interests.
3. Minus the meagre recovery, the forwarder will still have to foot the hefty bill of legal expenses and also the claim settlement with the cargo interests; UNLESS
4. A Transport Liability Insurance is in place to protect and help. All the above will be of the least concerns to the forwarder. The forwarder will be free from the time consuming legal worries and hassles.

The MOL Comfort incident is the latest alarm to forwarders to revisit their risk positions in the transport chain. Apart from Tonnage Limitation, recovery by forwarder against ocean carrier has always not been foolproof in practice due to the following well known risk disparities:

1. **Handling Risks** : CY/CY risks are lower than Consol shipment risks. Single ocean bill of lading (OBL) assumes less liability than multiple Forwarder House B/Ls (HBL);
2. **Jurisdiction risks** : OBL and HBL are based on different jurisdictions.
3. **Duration Risks** : Pure sea carriage under OBL versus Multimodal transport under HBL.
4. **Costs Risks** : Ocean carrier are often financially stronger and are well supported by Insurance.

A well constructed HBL may reduce the above risk disparities. A proper Transport Liability Insurance can protect forwarders in bad times. Not just transferring financial burden to pay BIG claims, the two will better deal with the ensuing legal process that will exhaust forwarders precious staff time slowing down their business development.

Please feel free to contact us if you have any questions.

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