INTERNATIONAL FREIGHT MANAGEMENT SERVICES

SCI AUSTRALIA

PTY LTD

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OCTOBER 2016 NEWSLETTER

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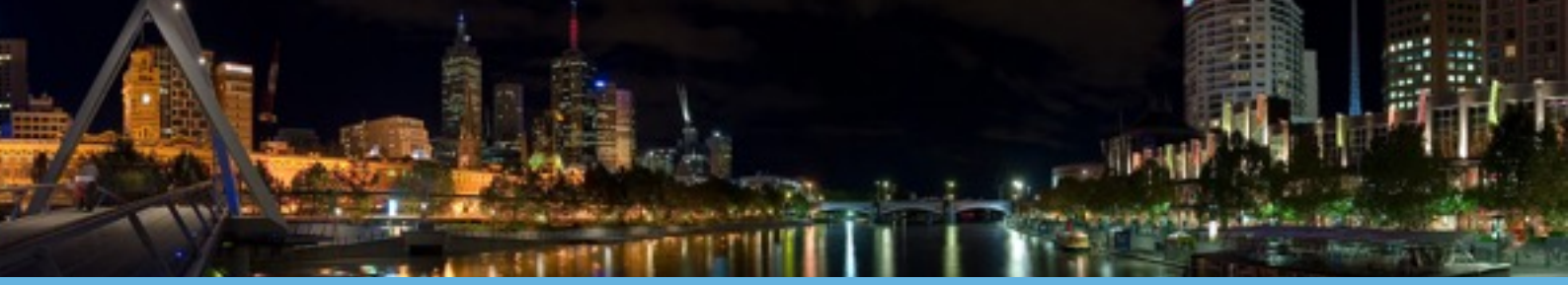
October Edition

Welcome Message

Welcome to the October Newsletter for the clients and friends of SCI Australia. This newsletter is designed to be an informative source about the company and the general industry and includes news, forthcoming events and the lighter side of the people who work for SCI.

We hope that you find this newsletter beneficial and the information provided of great value and interest. We appreciate your suggestions and input for future issues.



MSC Rate Restoration

Good afternoon,

Mediterranean Shipping Company S.A. (MSC) wishes to announce to Southbound Asia clients a Rate Restoration (RR) programme that is to apply to all vessels sailing ex Korea, China, Hong Kong and Taiwan to Australia.

The announced increase is to be effective from **15th October, 2016** (pro-forma sailing date).

The increase is as follows:

USD $500.00 per TEU.

Please be guided accordingly.
Kind regards,

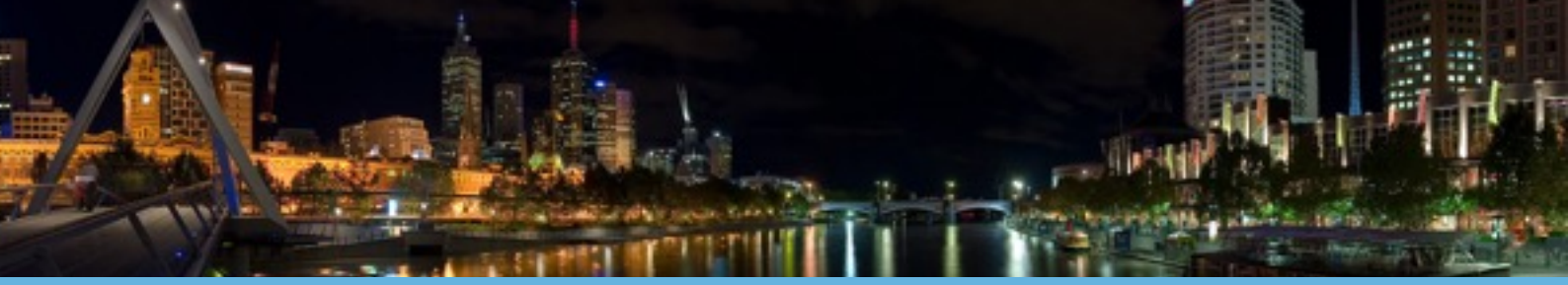
OOCL Rate Restorations

OOCL would like to advise that in order to maintain a high standard of service to customers, there will be a Rate Restoration of **US$500/20' and US$1000/40'** from **15th October 2016**, for both dry and refrigerated cargoes in the base ocean freight for cargoes from North East Asia (including China, Hong Kong, Korea and Taiwan) to ports and points in Australia.

This increase will be applied in full on top of existing ongoing market rates to all shipments based on the actual departure date of the vessel named in the bill of lading from **15th October** 2016, and will be subject to ancillary surcharges applicable at the time of shipment.

Should you have any questions, please do not hesitate to contact your local Sales Executive at OOCL.

Thank you for your understanding and continued support of OOCL.
Yours faithfully,



The Asbestos Headache Continues

CONFUSION and uncertainty reigns among licensed customs brokers and freight forwarders in respect of asbestos regulations, even after last week's Department of Immigration and Border Protection Notice No. 2016/30 on 'assurances that imported good do not contain asbestos'.

Australia does not allow the importation of goods containing any amount of asbestos at all, whereas some countries are more lax; the US sees goods containing up to 1% asbestos as "asbestos free".

Speaking at a Customs Brokers and Forwarders Council of Australia legal forum yesterday (September 14) lawyer Andrew Hudson, partner at Gadens, said: "The Border Force is stuck here in a bit of a vice; what we're also facing is the rest of the world doesn't mind asbestos, but with us, there is zero tolerance."

Mr Hudson went on to say licensed customs brokers, who are responsible to do the clearances and import declarations have had a heavy burden placed on them.

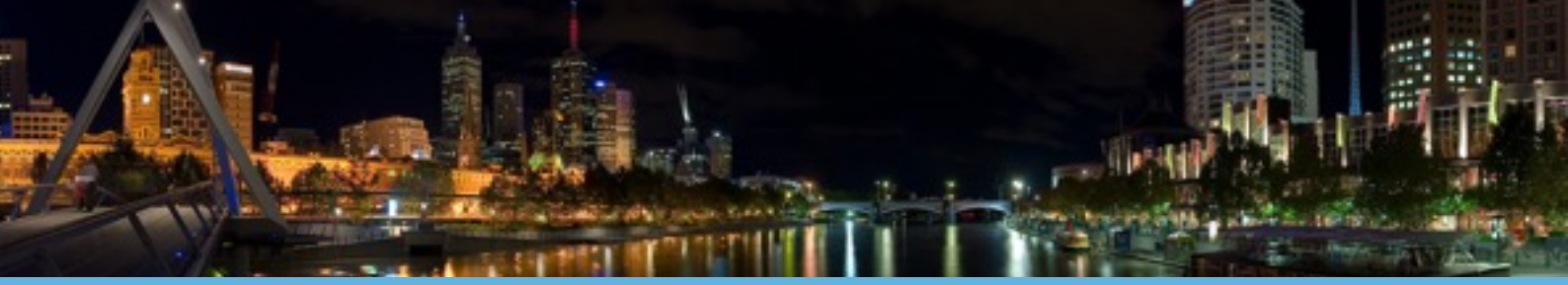
"This is because, in years to come, the importer may have disappeared off the face of the earth, the supplier overseas may well no longer exist, and the only person who is left existing in a legal fashion may well be the customs broker," he said.

Asbestos has been appearing in unusual places, such as in washers attached to nuts and bolts, and there's the famous example of the asbestos-laden crayons from a few years ago (apparently it was the green crayons that were the problem, according to Mr Hudson).

As asbestos is a prohibited import, it is a serious offence to bring it into the country. And, Mr Hudson said, there's the provision in Section 243 of the Customs Act, which says any error in a statement to customs – whether it has an effect on duty or not – is a strict liability penalty.

"There's a whole range of potential liabilities here, and we have to work out how we manage it," he said.

Source: **Lloyds List**
https://www.lloydslistaustralia.com.au/lla/market-sectors/law-and-regulation/Asbestos-headache-for-brokers-and-forwarders-continues-536868.html



Biosecurity Rules: Now Enforced (Part 1)

Last night, the Finnish Ambassador to the International Maritime Organization, Her Excellency Mrs Pдivi Luostarinen, handed over the country's instrument of accession to the Ballast Water Management Convention to IMO Secretary-General Lim on Thursday (8 September 2016).According to the IMO, accession by Finland triggers entry into force of the International Convention for the Control and Management of Ships' Ballast Water and Sediments (otherwise known as the Ballast Water Convention or 'BWC').

The BWC states that it will enter into force twelve months after ratification by at least 30 countries representing 35% of the world's merchant shipping tonnage. The Finnish accession takes that to 52 countries with 35.1441% of the world fleet.

And so the BWC will enter into force on Friday, September 8, 2017.Ballast helps improve the in-water stability of vessels at sea and, in days of sail, was often heavy wood, or quarried stone that was also being carried as cargo. Sea water has been used as ballast in merchant ships since the advent of steel hulls, about 120 years ago. Ships pump in water when sailing empty and dump it when/before taking on cargo.Unfortunately, sea water contains lots of micro-scopic creatures, which cannot undertake long journeys by themselves, that are sucked in to the ship's ballast tanks later discharged with that water into a new environment.

Many of the microscopic creatures are the larval forms of much larger creatures. When the microscopic creature arrives in its new environment it can establish and, owing to a lack of any naturally-evolved local predators or other controls, they reproduce without control which can be very disruptive to the local eco-system. In the southern parts of Australia, for example, the North Pacific seastar (Asterias amurensis) has been transported in ballast water from the northern Pacific.

The IMO says that it reproduces in large numbers, reaching 'plague' proportions rapidly in invaded environments. This invasive species has caused significant economic loss as it feeds on shellfish, including commercially valuable scallop, oyster and clam species. The IMO states that the Convention will require ships to manage their ballast water and kill/ remove/avoid the intake and discharge of microscopic marine creatures and plants. "This is a truly significant milestone for the health of our planet," said IMO Secretary-General Kitack Lim.

(cont.)

Biosecurity Rules: Now Enforced (Part 2)

“The spread of invasive species has been recognized as one of the greatest threats to the ecological and the economic well-being of the planet. These species are causing enormous damage to biodiversity and the valuable natural riches of the earth upon which we depend. Invasive species also cause direct and indirect health effects and the damage to the environment is often irreversible,” he said. He added, “The entry into force of the Ballast Water Management Convention will not only minimize the risk of invasions by alien species via ballast water, it will also provide a global level playing field for international shipping, providing clear and robust standards for the management of ballast water on ships.”

According to the IMO, “Ship board ballast water management systems must be approved by national authorities, according to a process developed by IMO. Ballast water management systems have to be tested in a land-based facility and on board ships to prove that they meet the performance standard set out in the treaty.

These could, for example, include systems which make use of filters and ultra violet light or electro-chlorination. Ballast water management systems which make use of active substances must undergo a strict approval procedure and be verified by IMO.”

Capt Melwyn Noronha, general manager technical services and industry policy at Shipping Australia, provided the following comment on the convention. “We support the Ballast Water Convention provided it is applied consistently across countries and also within states across Australia.

“However, the United States is not party to the treaty and so it will create uncertainty with respect to the more stringent US approval rules on systems. The US requires that all ships that discharge ballast water in the US to use treatment systems approved by the US coastguard. However, no systems have been approved yet.

“It is vital for IMO member states to finalise the G8 type approval guidelines at the upcoming Marine Environment Committee meeting. That will provide ship owners with a level of confidence that they are spending money on the right equipment for their global operations,” said Capt Noronha.

Source: **Lloyds List**
https://www.lloydslistaustralia.com.au/lla/market-sectors/environment/Global-biosecurity-rules-can-now-enter-into-legal-force-in-Australia-and-worldwide-536366.html

Marine Cargo Insurance Ramifications (Part 1)

The global shipping and trading community is still reeling from the announcement that Korean shipping operator Hanjin Shipping Co Ltd ("Hanjin") filed for receivership in the Korean court on 31 August following the withdrawal of credit facilities from its banks and other creditors. Hanjin is likely to file for protection of its assets in jurisdictions wherever it has assets including ships it owns. This could include Australia pursuant to the cross border insolvency legislation enforcing the UNCITRAL Model Law to which Australia and Korea are parties.

The Hanjin receivership has particular ramifications for Australian cargo interests with cargo on board Hanjin vessels in or approaching Australia as the receivership could lead to significant difficulties and delays in discharging cargo for Australian consignees. Already one Hanjin vessel (the Hanjin California) has been arrested in Australia by creditors (evidently bunker suppliers) and others might follow. Port Authorities, stevedores and other parties who would normally be expected to service Hanjin vessels in Australia might take the view that they cannot afford the financial exposure and this could create further difficulties for cargo interests in having their cargoes delivered on time.

There has been considerable speculation in the Australian marine insurance market as to the extent to which marine cargo insurance policies held by owners of cargo on Hanjin vessels might respond to the difficulties faced by the cargo owners of if they incur additional charges in discharging their cargos from vessels and forwarding them to their final destinations (including on other vessels) whereby they may have to pay additional freight and other forwarding charges. Some comments have been a little wide at the mark suggesting that all additional charges associated with the insolvency of Hanjin affecting cargos on its vessels will necessarily fall under marine cargo insurance. Based on the usual marine cargo policies operating in the Australian market (whether issued in Australia or in similar markets such as the UK) this is unlikely to be the case automatically, although it is quite likely that in many cases policies will respond to some additional charges.

Whether or not they do will depend upon the wording of the actual insurance policy and the nature of the additional charges and the circumstances in which they were incurred.
What then is the usual position in relation to additional charges caused by the insolvency of a ship owner/operator carrying an insured's cargo when the ship owner/operator becomes insolvent?

The starting point is usually the widely used Institute Cargo Clauses A (ICCA) 2009 version. The ICCA are designed to operate in conjunction with the Marine Insurance Act 1909 (1906 in the UK) ("MIA"). The ICCA and the MIA as far as cargo insurance is concerned proceed on the basis of single voyage or factitive cover as opposed to the more frequently used annual cargo or open covers. However relevantly there is unlikely to be any real difference as to the type of policy used when it comes to covering additional charges in the context of an insolvent carrier.

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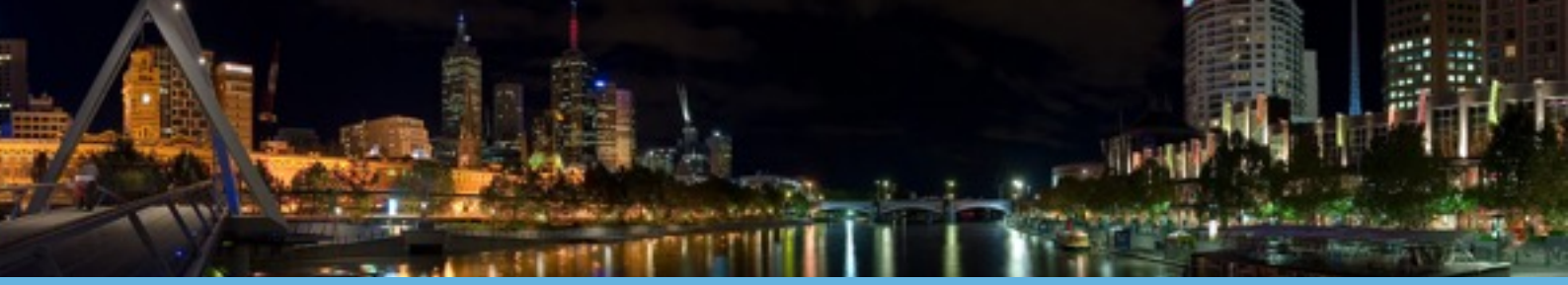

Marine Cargo Insurance Ramifications (Part 2)

The ICCA cover "all risks of loss of or damage to the subject-matter insured except as excluded" in a list of specified exclusions in clause 4 of the ICCA (cl 1 of the ICCA). Relevant to the insolvency of a carrier clause 4.5 excludes "loss, damage or expense caused by delay, even though the delay can be caused by the risk insured against" and cl 4.6 excludes "loss, damage or expense caused by insolvency or financial default of the owners, managers, charterers or operators of the vessel where, at the time of loading of the subject matter insured on board the vessel, the assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage. This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract".

With cargo insurance, unlike other forms of marine insurance such as hull or liability, it is accepted practice in the marine insurance market that the subject matter of the insurance is not merely risk to the physical cargo but also the arrival of the goods at the destination specified in the insurance policy. In other words what is insured under a cargo policy is not simply the physical cargo but also the completion of the actual voyage or adventure itself. This practice entitles the insured to claim a constructive total loss where the cargo is undamaged in the physical sense but the voyage has been frustrated and the cargo has not reached its intended destination. This is consistent with provisions in the MIA and in the ICCA (for instance clause 9) whereby cargo insurance usually terminates at the time of termination of the voyage the subject of the insurance policy or where there has been a fundamental change or deviation from the agreed voyage. However it is central to marine cargo insurance that the insurer can always agree to insure a replacement voyage if it has been prematurely terminated for reasons beyond the insured's control. The insolvency of the carrier can be such a reason.

In these circumstances it is in the interests of both the insured and the insurer for the insured to complete the voyage promptly and with minimal additional expense. For that reason where there is a potential loss of insured adventure the insured is obliged to "sue and labour" by say incurring the expenses of transhipping or forwarding the goods to their intended destination when the insured voyage has terminated prematurely and there is a risk thereby that the insured goods might suffer loss or damage (e.g. theft, deterioration). This duty is recognised in clause 12 of the ICCA whereby sue and labour expenses such as forwarding charges are recoverable. Clause 12 of the ICCA is known as the "Forwarding Charges Clause". However Clause 12 is subject to exclusions 4.5 and 4.6 of the ICCA. One comes back to the basic issue of whether the proximate cause of the loss of the adventure was the insolvency of the carrier in circumstances where the insured (as broadly defined in Clause 4.6 was aware or should have been aware of the insolvency at the time of loading. As with all exceptions to cover the insured has the burden of proving the applicability of the exceptions. The insurer must prove the insolvency of the carrier caused the loss the subject of the additional expense. The insolvency does not have to be the direct cause of the loss. Interestingly the ICCA do not define "insolvency" and it will vary from jurisdiction to jurisdiction.

In Australia as a general rule of thumb under corporations law a party is insolvent when it is unable to pay its debts as they fall due. Very rarely will any shipper of cargo have any notice of insolvency or financial default of a carrier at the time of loading the cargo. However if a cargo interest was unwise enough to pay any charges to a known insolvent carrier it could not expect to escape the natural consequences of exclusion 4.6 of the ICCA. There are some reports of Hanjin or its agents requiring cargo interests to provide security for delivery of goods. Given the widespread publicity of the Hanjin receivership, a cargo interest would be unwise to make such a payment and expect its insurer to indemnify it for that payment.

There is an important proviso to the 4.6 exclusion whereby it does not apply to assignees of the cargo policy who are the purchasers of the insured goods in good faith. This will invariably be the case when goods are sold on say a CIF or CIP basis which is probably the situation in which many Australian importers of goods aboard Hanjin vessels find themselves. This proviso was inserted specifically for such importers as they are in reality not just the buyers of the goods but also the buyers of the cargo policy, as the buyers will not have entered the contract of carriage with the carrier nor purchased the insurance, and at the time they entered the sales contract to buy the goods probably had no idea of the identity of the would be carrier. An FOB buyer of goods taking out its own cargo insurance is in a different position.

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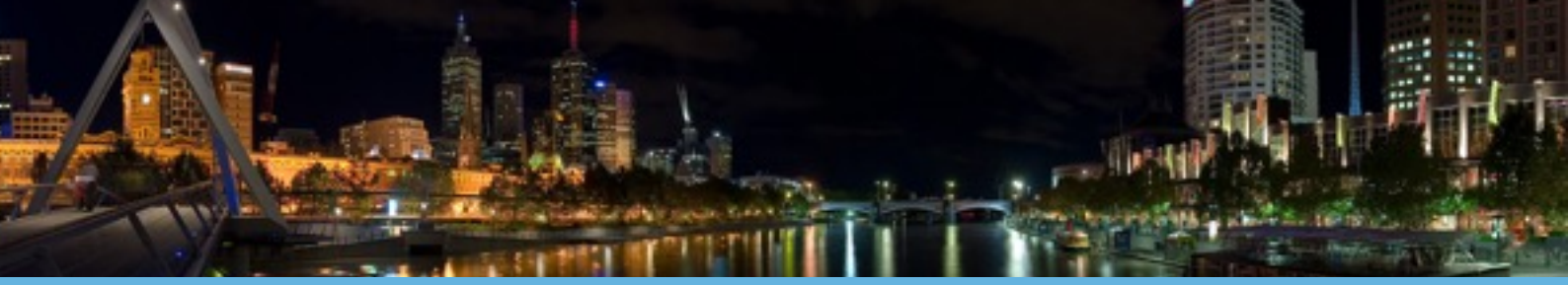


Marine Cargo Insurance Ramifications (Part 3)

Some insureds will have the benefit of specifically tailored provisions in their marine cargo policies which possibly go even further in protecting cargo owners with goods on the vessel of an insolvent carrier. Sometimes the exclusion in clause 4.6 of the ICCA is tightened even further and occasionally removed altogether. However such a watering down or removal of that exclusion does not automatically mean that all forwarding-type expenses will be recoverable. The extent to which such tailored clauses operate is always a question of the wording of the policy. In such cases it will not simply be a matter of looking at the modification or removal of exclusion 4.6 but also whether there has been a corresponding amendment to clause 12 of the ICCA or whether there are any other provisions in the policy which specifically cover the particular additional forwarding expense incurred by the insured to complete the original insured adventure, which has been terminated prematurely for reasons beyond the insured's control and presented a risk to the goods. Marine cargo policies even in their broadest and most insured-friendly form are not designed to offer unconditional compensation to cargo owners when the carrier becomes insolvent. There must still be loss or damage to the insured cargo as opposed to a pure financial or economic loss to the insured arising from the insolvency, for instance payment of freight to the carrier. Payments of freight once made particularly if prepaid are usually deemed in the relevant sea carriage document or charter party to be deemed to be earned on loading and both legally and in practice will not be recovered. This is notwithstanding the fact that at the time of the payment of freight the insured was unaware of the insolvency of the shipowner and could not have been aware of it. There might be cases where issues will arise as between insureds and insurers as to whether at the time goods were loaded there was sufficient knowledge to constitute the insured being aware of the carriers "insolvency or financial default" but in most circumstances that will not be the case. It is not likely to be case for any Australian cargo interests with cargo on board Hanjin vessels which were loaded prior to 31 August.

Owners of goods on Hanjin vessels might also have rights against Hanjin or whoever issued the sea carriage document on its behalf and that will be a matter of consideration of the relevant sea carriage document such as a bill of lading. In some cases the relevant contractual carrier might be a Hanjin company and not the actual ship owner as the Hanjin fleet included many vessels chartered by Hanjin from the ultimate ship owners. It will be necessary to ascertain whether the relevant bill of lading is an owner's or a charterer's bill if Hanjin was not the ship owner.

Cargo interests also need to be very careful about acquiescing to demands for additional payments made on behalf of Hanji by local agents of Hanjin because where those charges are additional to charges contemplated in the contract of carriage, it is unlikely that there is any legal entitlement for Hanjin or its agents to claim those payments. Even though in some circumstances cargo interests might be tempted to make a payment or provide some other form of security (preferably not payment but rather say an indemnity) in order to secure prompt release and delivery of their cargo, in those circumstances cargo interests should not expect to be indemnified by their marine cargo insurers unless they have very specific provisions covering such "after the event" charges. However forwarding and other charges made to third parties to complete the voyage are a different matter and these will ordinarily be covered by marine cargo policies incorporating the provisions mentioned in this article provided the provisions of the policy are satisfied in particular the insured did not have knowledge of the insolvency or financial default of Hanjin at the time the goods were loaded. In the case of a CIF/CIP buyer that exclusion will not apply as long as the buyer purchased the goods in good faith.

Australian marine cargo insurers will normally be only too happy to try to assist their insureds in these difficult circumstances where the insolvency of Hanjin is not the making of the insured. However insureds need to remember that insurers are entitled to rely on the terms of their policies and that must be the starting point for any claim and subsequent discussions between insureds and their insurers. Interested parties can contact Mr Luxford via the email at the top of this article or by his law firm, Hicksons.

Source: **Lloyds List**
https://www.lloydslistaustralia.com.au/lla/market-sectors/containers-and-container-shipping/FREE-HANJIN-CRISIS-marine-cargo-insurance-ramifications-for-Australian-cargo-interests-536095.html

Industry Responds To The Cancellation of QSL Licences

Industry reacts to the news that QSL had its licence cancelled by the Border Force for alleged involvement with a tobacco smuggling case; some serious questions are raised.
Freight & Trade Alliance director Paul Zalai writes:
Licensing carries with it a level of trust, responsibility and obligations – abuse of this privileged status requires a strong response from regulators. We expect the ABF to cancel licences for any entities proven to be involved in organised crime and furthermore we hope that the courts also follow up with appropriate sentencing.

A strong compliance environment is a good for the industry as it provides protection for highly professional entities doing the right thing. We applaud the ABF for initiating the Compliance Advisory Group as a means of engaging with key industry representatives to establish a fair and consistent compliance regime."

Stuart McFarlane of the Australian Federation of International Forwarders writes:
It is regrettable that certain individuals in the industry have allegedly facilitated the illegal importation of illicit and prohibited goods. AFIF supports and commends the ABF in its ongoing work to smash crime infiltration in the supply chain.

AFIF's standing recommendation to our members: if they witness suspicious activity, see or hear something unusual in their local area or businesses relating to the illegal import or export of goods, to contact ABF Border Watch on 1800 06 1800 or www.border.gov.au/borderwatch

Customs broker Susan Danks of Susan Danks Tariff Consulting writes:
I read the article as to the cancellation of the bond licence of QSL Freight Forwarding Pty Ltd with some concern as to the licensing process for bond operators. Of particular concern was the notation that the premise had been operating for only nine weeks.

In order to apply for a licence the applicant and those involved in the premise management and control must be "fit and proper" persons. Some of the criteria to be considered in this assessment are outlined in Customs Act s.77H (3).

The ABF alleges that QSL was involved in the movement of 832,000 undeclared cigarettes, which were being held under Customs control at another licenced s77G depot, in order to deliberately defraud the revenue. This has apparently been an ongoing investigation and probably one over a considerable time. How therefore did the company ever obtain a 77G licence given the extensive review that should have occurred of the application of the operation and key personnel of this company? To my certain knowledge this is not the first time criminal elements have been involved in bond ownership and operations. Perhaps the 77G licensing process needs a long overdue overhaul.

Source: **Lloyds List**
https://www.lloydslistaustralia.com.au/lla/market-sectors/containers-and-container-shipping/Condemnations-and-congratulations-—-industry-responds-to-cancellation-of-QSL-licence-537633.html

Big Buoys Mark the Way for Channel Deepening

Lyttelton Port of Christchurch (LPC) today commenced its baseline water quality monitoring program for its proposed channel deepening project, deploying 14 real-time water monitoring buoys throughout Lyttelton Harbour, Port Levy and offshore marine areas. Before the dredging begins, LPC must gain consent under the Resource Management Act to carry out the dredging and disposal; LPC plans to lodge the application for consent later this month.
These will collect information over a baseline period, including at least one year prior to dredging, during the proposed dredging, and for a period after the completion of the dredging operations.

Parameters such as water turbidity, pH, temperature and nutrient levels will be continuously measured during the baseline period and a summary of the data will be sent to a publically available, dedicated website.

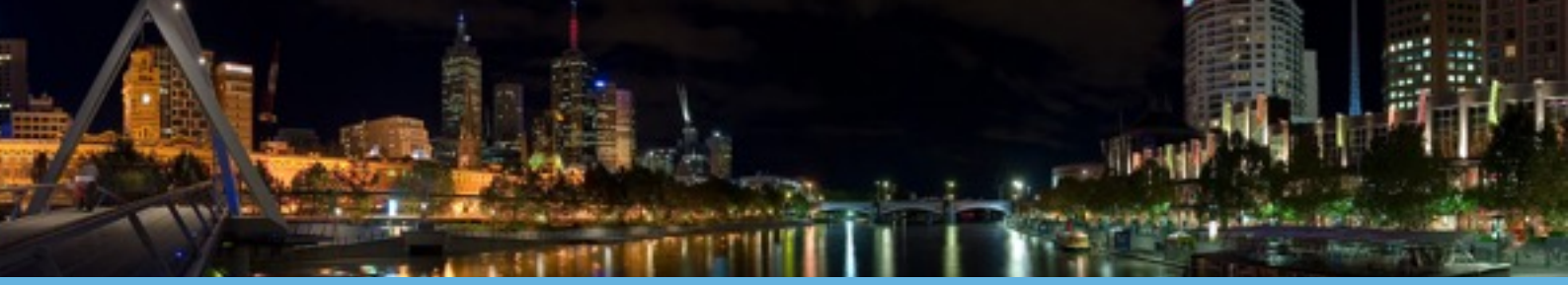
LPC chief executive Peter Davie said the company was committed to “future proofing” the port. “We will not do this at the expense of our environmental responsibilities,” he said.

“The water quality monitoring project is one of many investigations we are undertaking to ensure the proposed dredging does not result in any adverse outcomes for the environment.”

Mr Davie said LPC has been working with a range of experts in areas including marine ecology, the study of sea birds, marine mammals, sediment, waves, as well as tidal modelling to evaluate and mitigate potential effects of the proposed dredging program.

LPC is to invest more than NZ$3m in the environmental monitoring program, which includes the installation of the monitoring buoys. LPC contracted Australian company Vision Environment to implement and manage the water monitoring system.

Source: **Lloyds List**
https://www.lloydslistaustralia.com.au/lla/market-sectors/ports/Big-buoys-mark-the-way-for-channel-deepening-536957.html



Bouncing Back From Hanjin Bankruptcy

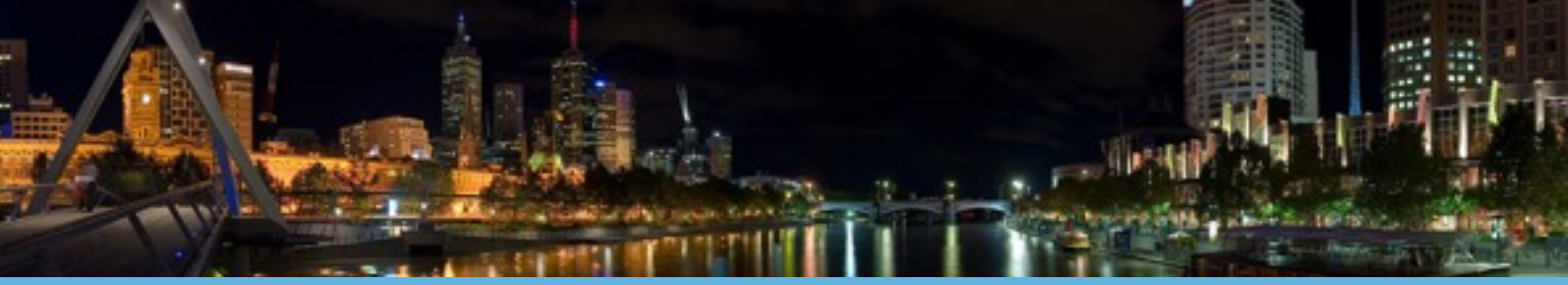
Alphaliner executive consultant Tan Hua Joo noted that Hanjin only accounted for about 3% of global capacity for container shipping. "Even in the largest market that Hanjin was serving, which is the transpacific market, it had a 7% share of the market. So a 7% disruption of the US inbound supply chain is unfortunate but it is not a catastrophic event." The event caused a two-week delay in inventory for most cases at 7% of the entire market, Mr Tan added. Putting things into perspective, he does not expect the Hanjin event to be one that the container shipping system is unable to recover from fairly quickly.

Hanjin's 3% of global capacity should be easily replaced by other container shipping lines, Mr Tan noted, given that idle capacity in the containership market is around 5% — significantly more than what Hanjin is operating. Additionally, with the number of containership newbuildings scheduled for delivery over the next four months (September to December), "it is almost similar to the capacity that Hanjin is withdrawing". With both these factors in mind, he feels the 3% global capacity taken up by Hanjin can be easily replaced. Looking at situation so far since Hanjin entered court-led receivership, Mr Tan notes that nearly 70% of Hanjin's capacity on the transpacific trade has already found replacements. "The speed of the capacity substitution is incredible."

Although Hanjin's filing for receivership occurred amidst the so-called traditional peak shipping season, Mr Tan said it was fortunate that the peak season this year had been fairly tepid. As such he expects the entire logistics crisis to be resolved roughly a month and a half from now. "The whole impact of the Hanjin situation is going to blow over. It is not a Lehman event. If we were to look back on this situation several months from now, I think we would see that this thing is going to revert back to normal," he said. That would also mean that the increase in freight rates seen over the past few weeks in light of Hanjin's predicament will be short-lived as the market enters its lull period, with the Chinese bank holidays coming up in early October. Mr Tan expects cargo volumes to slide by then, with the extra capacity offered by Hanjin's competitors. Hanjin's situation has also barely made a dent in the charter market so far, and will not be of much help to shipowners, he said.

But he did say that the situation with Hanjin's vessels could have a major impact on how alliances are set up, especially for The Alliance, which Hanjin would have been part of.
"Without the inclusion of Hanjin, the [alliance] at this point looks particularly weak and that, in a sense, is only going to drive the uncertainty as we move towards the new alliance set-up, which will come about in the second quarter of next year," he said. Hanjin would have contributed about 20% of planned capacity in the alliance.

Source: **Lloyds List**
https://www.lloydslistaustralia.com.au/lla/market-sectors/containers-and-container-shipping/CONTAINER-SHIPPING-CRISIS-box-shipping-industry-will-bounce-back-from-Hanjin-bankruptcy-536962.html



HOW GOOD IS YOUR TRIVIA KNOWLEDGE?

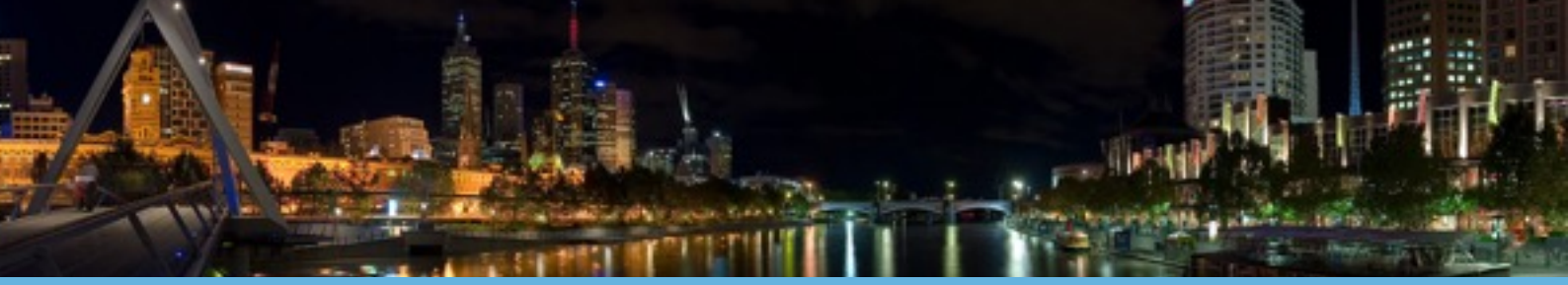
1. The Roman numeral “D” stands for what number?
a) 20
b) 50
c) 100
d) 500

2. What is not a main ingredient in beer?
a) Grain
b) Hops
c) Yeast
d) Flour

3. What year was Facebook founded?
a) 2004
b) 2006
c) 2007
d) 2008

4. How old must a person be to run for president of the United States?
a) 18
b) 21
c) 25
d) 35

1) d 2) d 3) a 4) d



Feedback

Should you wish to discuss any of the issues contained in this newsletter please contact your CSO or any of the people listed below:

Mile' Jurcic' (Melbourne)

Mark Hingston (Brisbane)

Thank you for continued support.
SCI Australia Pty Ltd

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