MARINE CLAIMS IN ACTION: BEST PRACTICES FROM FIRST NOTICE TO RECOVERY

TODAY'S FOCUS

- What is a Recovery?
- Best practices to protect Recovery rights
- Practical Steps to take when a claim arises
- Documents required for recovery
- Comparisons between US and UK Law
- Positive example
- Negative example
- Summary
- A brief look at the Straights of Hormuz
- Q&A

WHAT IS A RECOVERY?

- Sometimes described as a “Recourse” or “Subrogation” claim
- Against a third party responsible for damage or loss to goods
- Claim under a contract, contract of carriage, in tort or bailment

Who can claim?

- The party who has suffered the loss i.e., cargo owners
- And/or the party’s Insurer (under subrogation)
- And/or party who has “propriety interest” in the cargo

What do we need to prove?

- That we represent the party that suffered the loss (title to sue)
- The loss occurred in the custody of a Third Party (fortuity)
- The fault of the Third Party (responsibility)
- The value of the loss (quantum)

WHAT IS A RECOVERY?

Who pays?

- Carrier/Third Party/Liability Insurer/P&I Club pays for the loss or damage

What are the benefits?

- We get money back for the Cargo Insurer which improves the Insurer's bottom line and the Insured's loss ratio
- Better underwriting results

What are the additional benefits?

- When a Carrier is faced with having to regularly pay claims:
- The Carrier will take more care of cargo in the future
- More cargo arrives sound and on time
- There are less claims
- Business as usual for cargo owners, less time dealing with claims

BEST PRACTICES TO PROTECT RECOVERY RIGHTS

- Step 1
- Immediately secure the claim documents and review the documents, information, photographs available; consider the merits of the case:

- Location / Jurisdiction
- Value of cargo and potential value of loss
- Third Party involved
- Incoterms
- Notice of claim
- Loss mitigation

BEST PRACTICES TO PROTECT RECOVERY RIGHTS

- Step 2
- Assuming claim is of sufficient value:

- Appoint a local Surveyor/Loss Adjuster
- Appoint a Recovery Agent
- Appoint an Expert (fire, mechanical, contamination)
- Appoint a salvage sale expert
- Allow direct communication between appointed experts and the Insured/each other
- Obtain Authority from cargo owners to negotiate Security

PRACTICAL STEPS TO TAKE WHEN A CLAIM ARISES

The following actions or lack of action can have a huge impact on the success of the Recovery action:

- Late instruction & evidence of right to act
- Title to sue
- Burden of Proof
- Documentary evidence
- Location of Carrier and who is the responsible party?
- Law & Jurisdiction
- Loss valuation
- What is the relevant Contract of Carriage?
- What is the time bar?
- Is there a package/weight limit?
- What defences are available to the Third Party?
- What further documents/information may be required?

PRE-SHIPMENT EVIDENCE

- Evidence of pre-shipment conditions (certificate of quality/quantity)
- Pick/catch/slaughter/manufacture dates
- Storage temperature records
- Pre-cooling of container (if appropriate)
- PTI showing condition of container both internally and externally
- Place temp recorder(s) in container, preferably 2 (1 in the front and 1 in the rear)
- Photographs taken during the course of vanning showing that cargo is stowed and secured correctly, below the “max” load line and that air flow is not restricted and, if possible, showing random probe temperatures

POST-SHIPMENT EVIDENCE

- Notice of loss immediately or at least within 3 days (burden of proof shifts)
- 14 days for air shipments (all rights extinguished)
- Invitation to attend joint survey
- Photographs showing condition of container, noting any container damage, container number and condition of seals
- Photographs taken as doors opened showing cargo condition prior to, during and post de-stuffing
- Secure shippers Temperature Recorders and obtain Carriers Temperature Records
- Inspect a representative quantity of cargo as de-stuffed, taken from front, middle, back, top & bottom of stow
- Obtain best possible salvage value. If not possible then retain damaged cargo and agree depreciation with opposing Surveyor
- Disposal via official means only with official Destruction / Disposal Certificate
- When allowances for depreciation agreed by surveyor provide evidence of price received for damaged cargo

DOCUMENTARY EVIDENCE

- Subrogation Receipt / evidence of payment to claimant
- Letter of Instruction to W.E. Cox to handle the Recovery Action
- Contract terms(B/L, SWB, AWB, CMR Note, Warehouse Receipt, etc.)
- Original endorsed B/L if negotiable
- Charter Party (if referred to in B/L)
- Commercial Invoice(s)
- Evidence of payment for the goods (bank receipts, letters of credit, etc.)
- Carriage requirements (temperature, pressure, moisture, etc.)
- Freight/Storage Invoice
- Contractual chain

DOCUMENTARY EVIDENCE

- Evidence of quality / quantity prior to and post discharge
- Ship's load and outturn documents
- Deck Log-Book & other Ship's records
- Claused delivery receipts / EIR
- Inland transit documents if loss occurred prior to loading/ post discharge
- Written notice of claim to the carrier in a timely fashion
- Invitation to attend joint survey
- Independent Survey Report
- Colour photographs
- Evidence of salvage value, repair invoice or destruction / disposal certificate

COMPARISONS BETWEEN US AND ENGLISH LAW

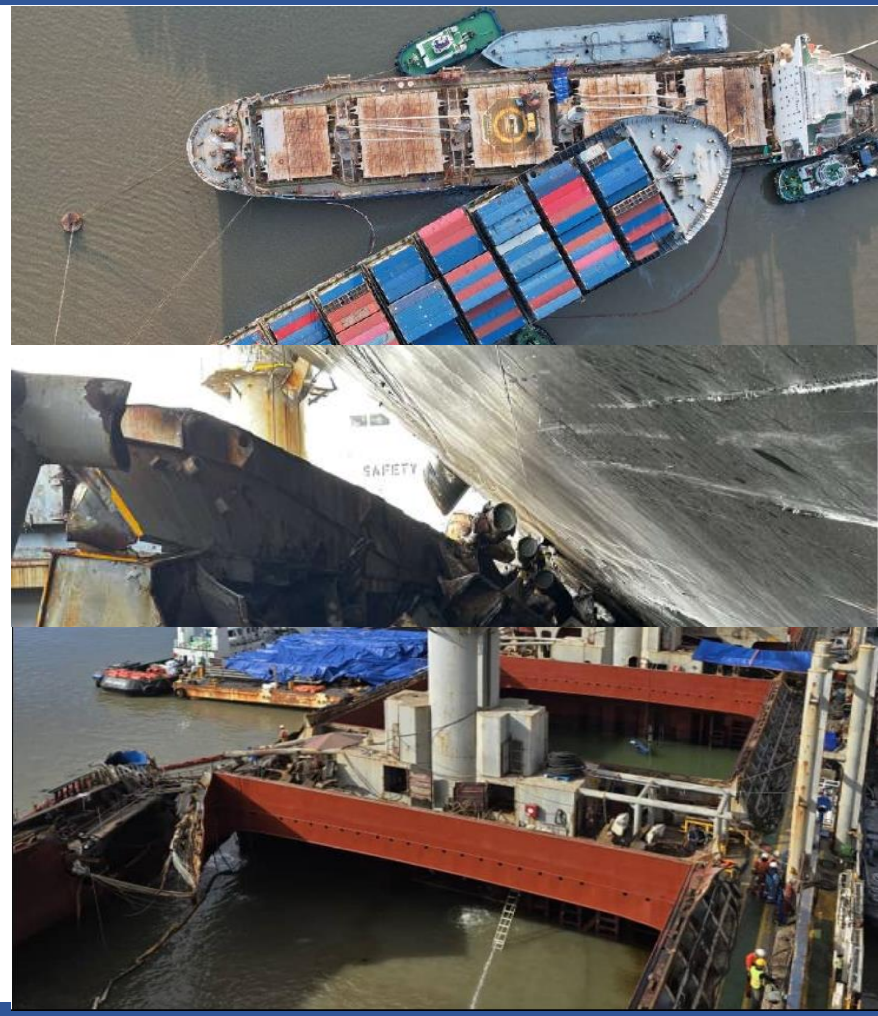
	USA	England
In who's name do you sue?	Insurer/Insured/Jointly	Insured/cargo owner
Jurisdiction	Multiple Circuits which interpret matters differently	Specialised Arbitration/Court
Applicable conditions	US COGSA	Hague/Hague Visby (dependant upon contract)
Limitation	$500/package	£100/package SDR2/kg or SDR666.67/package
Limitation bulk cargoes	$500/freight unit	no limit
Costs award	Unusual to recover costs	Costs awarded to the successful party

POSITIVE EXAMPLE

- Collision 27th April 2025
- Considerable damage to cargo on board Vessel A
- Professional Salvors, General Average declared
- Cargo value $3.4M
- W.E. Cox instructed 2nd May 2005

- Salvage and General Average Security provided by W.E. Cox
- Cargo Security obtained from both Vessel A and Vessel B
- Expert Master Mariner appointed with access to Vessel and cargo
- Expert cargo Surveyor appointed to assist with damage assessment and loss mitigation

- Sound cargo delivered without delay
- Recovery of PA losses and Salvage Indemnity protected



NEGATIVE EXAMPLE

- Contamination of Rapeseed Oil 9th December 2025
- Contaminant confirmed as Palm Stearin (previous cargo)
- Claim amount EUR800,000
- W.E. Cox instructed 18th August 2026

- Vessel in single Ownership at time of loss
- Vessel sold, renamed and re-flagged 24th April 2026
- Vessel sold, renamed and re-flagged 4th June 2026

- Security not obtained at time of loss
- No assets against which the claim can be attached

- If Recovery Agent was instructed on day 1 Security could have been obtained from P&I Club

A BRIEF LOOK AT THE STRAIGHTS OF HORMUZ

Since operation Epic Fury commenced 27th February 2026:

- At least 40 cargo Vessels have been targeted by Iran
- At least 14 Merchant Mariners killed by Iranian attacks

From a recovery perspective:

- Is there insurance in place?
- GPS spoofing
- Access to Vessel & cargo
- Loss mitigation
- Force Majeure
- Sanctions

SUMMARY: HOW CAN YOU HELP ?

- Ensure timely Notice of Claim & invitation to joint Survey
- Early instruction of Recovery Agent (often more documents are required for recovery than claim under the cargo policy)
- Allow direct communication with Surveyors, Loss Adjusters & Experts
- Provide evidence of full contractual chain (sub-contractors, Charterers, etc.)
- Provide evidence of contractual terms (bespoke contracts, standard terms, national/international conventions)
- Loss mitigation (has the cargo owner mitigated their loss and can we evidence this)
- Clear claim calculation including policy uplift, policy excess, etc.
- Working closely together prevents leakage and gives best possible opportunity of successful recovery

WE WELCOME YOUR QUESTIONS