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Back to where the devil's in the detail

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IN the summer of 1985 when I first went to work for the TT Club as a neophyte underwriter-beginner, I was parked in the office of a kindly and shrewd man named Bill Smith, an ex-Oceanus Club person who made underwriting decisions by educated instinct and knew all there was to know about the business of insuring containers. Just containers - no cargo.

The London insurance market had latterly come a cropper on insuring these things and there was a lot of rebound business coming into Smith's office. He was rather busy and, after scaring up a chair for me, he pointed to a small desk in the corner with a couple of printed things on it and said 'read those books first'.

So my first two books about the container business that I read that first week were first a rather but very educative, underwriting manual compiled by a scion of a old shipping family named Ken Anderson, who had come to rest in the TT Club in the evening of his working days. The second one was a smoother affair called *The Merchant's Guide to and Documentary Problems* by another P&O man (by way of OCL) called John Richardson. This had begun in 1979 as an eight-page guide to the new world of containers and the associated areas of incoterms, bills of lading, interchange documents, letters of credit, insurance and so forth written with customers of OCL in mind. It went through many editions and helped to thousands of people in the slightly arcane areas of risk management, contracts,

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indemnities, network bills of lading and much more. I am not entirely sure whether P&O entirely how influential The Merchant's Guide was and is.

The latest edition, published in 2000, runs to more than 120 pages.

When I read that Richardson had produced another book in his retirement, I to review it to see what I was missing and for the benefit of those who have not yet come across it. It is published as a Lloyd's Practical Shipping Guide and is entitled Combined Transport Documents - A Handbook of Contracts for the Combined Transport Industry. What the book consists of is a clause by clause of the contractual infrastructure of the liner industry, starting with the decision to enter this business by procuring tonnage under a Boxtime form, and concluding with the mysteries of a general average incident involving a containership and her associated cargoes. In between are chapters on such things as operating agreements (container consortia have been the source of headache-inducing complex wordings which liability between partners in a server), slot charters, container hiring agreements, container leasing agreements, contracts of carriage, standard trading conditions and those great staples outside the cover of the P&I clubs known as indemnities.

Richardson has been involved at the sharp end in the drafting of many of the key documents used in the containerised trades. He left his job in the insurance and claims department of the New Zealand Shipping Company in 1968 to go into the embryonic consortium of Overseas Containers Ltd which represented the container shipping interests of the major public British shipping companies, most of whom have been consumed by the ceaseless consolidation of the industry since the 1960s.

The container industry was a very poor fit with the breakbulk documentary and liability systems. In his preface he describes the almost comic uselessness for the container trades of the traditional O, S and D (over, short and damage) report which was prepared on the outturn of each traditional break-bulk vessel at each port.

The new needs of the liner industry were in the end catered for not by the legislator but by men like Richardson who gathered together in various parts of the world to draft and agree the new clauses and new standard contracts which would deal with the liability issues which arise out of the simple economic logic of running consortia and sharing capacity on many of the world's routes. He has taken the opportunity with this book to append comments to the clauses to explain why they were

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drafted in a certain way: also why they were not drafted another way. The result is a fascinating exercise which enables in the shipping and risk management business to revisit the main agreements of the industry in the company of one who helped draft them. Though this is a very technical book, the author's tone of voice is ever present.

Citing a long clause in an amended NYPE form he describes it thus: 'It reads like a masticated dictionary regurgitated at random. To read and understand it requires the memory of an the breathing of an opera singer and the of a QC.' He also states in a number of places in the book the principles he has used when drafting contracts for the transport world.

These are: lEmploy short sentences and simple wording; ltabulations and headings la definitions clause to avoid repetition lconsistent language He says that if you use 'ship', 'vessel' and 'containership' in the same document you are 'inviting a judge to embark on a voyage of discovery to put different meanings on each word'.

It is relatively easy to see these principles in action when examining documents such as the P&O Nedlloyd bill of lading or even the Bovertime form. The liner industry tends to have to rely on sound drafting because of the rarity of legal decisions governing key clauses. The values within individual containers do not mostly add up to enough to justify the expenditure of a day in court and compromise between claimant and carrier is the rule with very few exceptions.

Some readers of this column who know Richardson's firm views on waybills - he believes they are the future of the industry and negotiable bills of lading the past - may be surprised at the shortness of the section given over to theme. A mere six pages in a book of 458 pages.

But in a book necessarily taking a narrative and historical view of many things he also nails his colours to the mast as to the future: '...as electronic commerce spreads its tentacles, the bill of lading will be overtaken by the waybill, because a waybill can be an electronic message by reason of the fact that it is not a document of title and does not therefore need to be represented in some tangible form. The future therefore lies with the electronic waybill allied to a system not reliant upon a document of title to facilitate secure payment and transfers of title.' Several years into his retirement, Richardson is also involved inCCEWeb, one of the new online approaches to mesh contracts of carriage with

letters of credit using a suitably worded waybill. It is cheap, practical and one to watch.

All in all it is a pity this book was not around in the days when I started in the business. It would have spared me hours of reading and rereading. I would have understood the commercial pressures which led to the clauses adopted. My colleagues would have felt less exposed when assessing risks and we would all have spent less time trying (and often failing) to understand cross-indemnities. Quarterpoints Sam Ignarski

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