



**Claim Form**

**In the High Court of Justice  
Queen's Bench Division  
Commercial Court  
Royal Courts of Justice**

Claim No. *2009 Folio 356*  
Issue Date : 17 March 2009



Claimant(s)

CAPITAL INTERMODAL LTD  
Suite 3005 West Tower, Shun Tak Centre, 200 Connaught Road, Central, Hong Kong.

Defendant(s)

FORTIS CORPORATE INSURANCE NV  
Postbus 30152, 3001 DD, Rotterdam The Netherlands.

Transaction: 280267  
Fee Code : COMM 1.1(n) 0  
Fee : £1530.00  
Operator : MANSFIELD, K  
Dated : 17/03/2009 15:24:03  
Payment Mtd:

Name and address of Defendant receiving this claim form

FORTIS CORPORATE INSURANCE  
Postbus 30152  
3001 DD, Rotterdam  
The Netherlands

Amount claimed  
Court fee £1530  
Solicitor's costs  
Total amount

The court office at the Admiralty & Commercial Registry, Royal Courts of Justice, Strand, London WC2A 2LL is open between 10am and 4:30pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number.

Claim No.

Does, or will, your claim include any issues under the Human Rights Act 1998 ? ~~Yes~~ No

**Brief details of claim**

The claim arises under an Insurance Policy / Cover Note number MB3706907 entered into on or about 27 November 2007 underwritten by the Defendant.

The Claimant claims sums in respect of outstanding rentals; recovery costs; containers that are lost and/or abandoned and containers that are a total loss which are now due under the Insurance Policy / Cover Note number MB3706907, currently estimated in the sum of about US\$3,111,271.19.

We certify that the current exchange rate of US Dollars to the Pound Sterling at close of business on 16 March 2009 was, according to the Financial Times US\$1.409 to the £1 Sterling and at this rate US\$3,111,271.19 is £2,208141.37.

Particulars of claim (~~\*attached~~)(\*will follow if an acknowledgment of service is filed that indicates an intention to defend the claim)

Statement of Truth

~~\*(I believe)~~(The Claimant believes) that the facts stated in this Claim Form ~~\*(and the particulars of the claim attached to this claim form)~~ are true.

\*I am duly authorised by the claimant to sign this statement

Full name DAVID McINNES

Name of claimant's solicitor's firm: Ince & Co.

signed David McInnes position or office held Partner

Claimant's solicitor Ince & Co (if signing on behalf of firm, company or corporation)

\*delete as appropriate

**Ince & Co,  
International House  
1 St Katharine's Way  
London  
E1W 1AY  
Tel : 020 7481 0010  
Fax : 020 7481 4968  
Ref : DJM/AJ/8403/8750  
DX : 1070 London City**

Claimant's or claimant's solicitor's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**COMMERCIAL COURT**

**Claim No. 2009 Folio 356**

**B E T W E E N:**

**CAPITAL INTERMODAL LTD**  
**(a company incorporated in Hong Kong)**

**Claimants**

**- and -**

**FORTIS CORPORATE INSURANCE NV**  
**(a company incorporated in the Netherlands)**

**Defendants**

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**PARTICULARS OF CLAIM**

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1. Capital Intermodal Ltd, a company incorporated in Hong Kong ("the Claimants"), are and were at all material times a company specialising in the operation and leasing of marine containers.
2. Fortis Corporate Insurance NV, a company incorporated in the Netherlands ("the Defendants") are and were at all material times an insurance company specialising, inter alia, in the insurance of fleets of marine containers and associated risks.
3. On or about 27 November 2007 the Claimants and the Defendants entered into an insurance policy contract whereby, subject to the terms of the insurance policy, the Defendants agreed to insure the Claimants' fleet of marine containers in relation to the risks and losses agreed by the parties. So far as is known by the Claimants no policy document as such was ever issued by the Defendants, or, in any event, no such policy

document has ever been provided to the Claimants. However, on or about 29 November 2007, the brokers involved, Global Marine Transport Agency Ltd, provided the Claimants with a "Cover Note" number MB3706907 setting out the material terms of the insurance policy ("the Policy").

#### **Terms of the Insurance Policy**

4. The Policy, which the Claimants will refer to for its full terms and true meaning and effect included, inter alia, the terms set out in Schedule 1 of these Particulars of Claim.
5. The Policy covered, inter alia, the following risks relating to the Claimants' fleet of marine containers:
  - (i) Recovery Costs – all costs and expenses necessary to recover, re-position and transport containers to any depot in order for the Claimants to obtain control thereof and other costs and expenses incurred as a result of contractual default by any lessee with whom the Claimants had a contract including payments to release containers from commercial liens, depot and similar charges, handling charges, transportation charges and investigation, defence and litigation costs (Section I, clause 3) A));
  - (ii) Damage/Repair/Cleaning Costs and Loss of Equipment – all costs and expenses incurred as a result of contractual default by any lessee with whom the Claimants had a contract including maintenance and damage repairs, survey fees, repositioning costs of on hire equipment and the value of all lost or abandoned containers in accordance with the basis of valuation set out in the Policy (Section I, clause 3) B));
  - (iii) On and Off Hire Physical Damage – physical damage to the containers whether off hire or on hire, wherever located (Section I, clause 3) C));



- (iv) Loss of Revenue – indemnifying the Claimants for loss of revenue relating to any containers under any lease agreement resulting from the lessees' default including per diem rental charges following the "Date of Occurrence", drop off charges, early termination charges and repair service programme charges. Such loss of revenue claims limited to a maximum of 180 days equivalent charges per container subsequent to the Date of Occurrence until each container is returned to one of the Claimants' depots and repaired to current IICL standard (Section I, clause 3) D));
6. The Policy further provided that valuation of containers for the purposes of the Policy was to be on the basis of the containers' net book value as per the Claimants' records (Section I, clause 6)). The specified limits of liability of the Policy were US\$2 million for any one occurrence or event, in excess of the Claimants' retention for each claim with an aggregate limit of liability of US\$4 million for the period of the insurance (Section I, clause 7)).
7. The Policy further specified deductibles of US\$50,000 for any one occurrence or event for recovery and repatriation costs, physical loss or damage or loss of revenue claims for on hire equipment and a deductible of US\$10,000 per occurrence or event for claims for physical loss or damage for off hire equipment (Section I, clause 8)). The Policy was subject to the law of England and Wales (Section II, clause 5)).
8. In relation to claims under the Policy, Section II, clause 6) G) specifies that the "Date of Occurrence" for the purposes of the Policy is defined as the date of an event which may give rise to a claim recoverable under the Policy. The clause goes on to provide that the applicable event shall be the first of the following to occur: the date of any petition for bankruptcy or similar proceeding filed by or against the lessee; the date the lessee admits in writing it is unable to repay its debts as they become due or fulfil its contractual obligations or ceases operations or goes out of business; or the date of the

Claimants' original notice of default to the lessee demanding return or release of the Claimants' containers.

### **The Contract between the Claimants and SAILS**

9. On or about 1 September 2007, or alternatively with an agreed effective date as of 1 September 2007, the Claimants entered into a "Long Term Lease Agreement - General Terms and Conditions (GTC)" contract with South African Independent Liner Services (Pty) Ltd of Metropolitan Life Centre, 14 floor, 7 Coen Steytler Avenue, Foreshore, Capetown, South Africa, although the same was only signed by the Claimants on or about 4 December 2007 and by SAILS on or about 2 September 2007.
10. Pursuant to the terms of that contract the Claimants were not obliged to lease any containers to SAILS as such, but rather that contract set out the general terms of the contractual relationship between the Claimants and SAILS.
11. On or about 1 September 2007, or alternatively with an agreed effective date as of 1 September 2007, the Claimants entered into a "Long Term Lease Agreement - Economic Terms and Conditions (ETC)" contract number CISR40001 (together with the "Long Term Lease Agreement - General Terms and Conditions (GTC)" referred to above "the Contract") with SAILS which incorporated the provisions of the contract and general terms agreed by the Claimants and SAILS referred to in paragraphs 9 to 10 above.
12. Pursuant to the provisions of the Contract the Claimants were obliged to make available for leasing to SAILS up to 1,000 40-foot high-cube stainless steel reefer containers equipped with Daikin Model No. LXE10E-A145 J cooling units for a period of 8 years subject to the specified terms in the Contract. The Claimants duly made available for delivery and leased the agreed and specified number of containers to SAILS (collectively, or partly, so far as relevant, "the Containers").

13. On or about 16 October 2008 SAILS was put into liquidation in South Africa and on or about 16 October 2008 the Claimants sent a letter to SAILS terminating the SAILS Contact. This constituted a "Date of Occurrence" under the terms of the Policy. As at that date, 924 out of the 1,000 Containers were on lease to SAILS.

#### **The Claimants Claim against the Defendants under the Policy**

14. On or about 26 November 2008 the Claimants made a claim under the Policy in the total sum of US\$675,618.55. This consisted of rentals due on the Containers since the "Date of Occurrence" of US\$537,056.16 and recovery costs in relation to the Containers of US\$138,562.39. The claim included a full breakdown of these figures. The same was provided by the Claimants to their brokers and was provided to the Defendants on or about 26 November 2008. Despite repeated demands by the Claimants, the Defendants have failed to pay this valid claim under the Policy in whole or in part.
15. On or about 6 February 2009 the Claimants made a further claim under the Policy in the total sum of US\$965,756.19. This consisted of further rentals due on the Containers since the "Date of Occurrence" of US\$347,062.56 and further recovery costs in relation to the Containers of US\$618,693.63. The claim included a full breakdown of these figures. This was sent by the Claimants to the Defendants' Dutch lawyers and their brokers on or about 6 February 2009. The Defendants have failed to pay this valid claim under the Policy in whole or in part.
16. In addition to the above as at 13 March 2009 there are a total of 99 Containers that are lost and / or abandoned and that so far the Claimants have not been able to recover from SAILS. The net book value of these Containers in accordance with the Policy is a sum of US\$1,469,896.45. The Claimants provisionally claim this sum under the Policy.
17. However, over time this figure will reduce as further Containers are recovered, but the claims for rentals due and recovery costs will correspondingly increase. Details of

these Containers are set in Schedule 2 of these Particulars of Claim. Further particulars will be provided on an ongoing basis in this respect.

18. The Claimants have kept the Defendants fully advised regarding their efforts to recover and direct interchange Containers, unrecovered Containers and total loss of Containers by submitting regular recovery reports to the defendants.
19. The Claimants' claim against the Defendants as at 13 March 2009 is accordingly as follows:
  - (i) Total outstanding rentals on Containers pursuant to Section I, clause 3) D) of the Policy (or otherwise) of US\$884,118.72 (US\$537,056.16 for the period covered by the report of 26 November 2008 and US\$347,062.56 for the period covered by the report of 6 February 2009);
  - (ii) Total recovery costs of Containers pursuant to Section I, clause 3) A) and C) of the Policy (or otherwise) of US\$757,256.02 (US\$138,562.39 for the period covered by the report of 26 November 2008 and US\$618,693.63 for the period covered by the report of 6 February 2009);
  - (iii) The net book value in accordance with the Policy of a total of 99 Containers that are lost and / or abandoned and that so far the Claimants have not been able to recover from SAILS pursuant to Section I, clause 3) B) of the Policy (or otherwise) in the sum of US\$1,469,896.45.
20. The Claimants additionally claim interest on such sums as are held to be due to them pursuant to the Policy from the date of their first claim against the Defendants until due payment, for such a period and at such a rate as deemed appropriate by the Court.
21. The Claimants fully reserve the right to amend these Particulars of Claim and the quantum of their claim as may be appropriate in the light of further Containers that

are recovered, additional rentals and further recovery costs that are incurred and the like and any and all further claims that they are entitled to bring under the Policy.

AND THE CLAIMANTS CLAIM:

- (i) The sum of US\$884,118.72 as at 13 March 2009 in respect of outstanding rentals on Containers pursuant to Section I, clause 3) D) of the Policy (or otherwise), plus such further sum as is held to be due up to the Claimants up to and including judgment in this case;
- (ii) The sum of US\$757,256.02 as at 13 March 2009 in respect of recovery costs of Containers pursuant to Section I, clause 3) A) and C) of the Policy (or otherwise), plus such further sum as is held to be due up to the Claimants up to and including judgment in this case;
- (iii) The sum of US\$1,469,896.45 as at 13 March 2009 in respect of the 99 Containers that are lost and / or abandoned and that so far the Claimants have not been able to recover from SAILS pursuant to Section I, clause 3) B) of the Policy (or otherwise), plus such further sum as is held to be due to the Claimants, or alternatively such other sum as is held to be due to the Claimants, up to and including judgment in this case;
- (iv) Damages in the like sums as set out above or in such sums as the Court considers appropriate and/or a declaration that the Claimants are entitled to the same sums or such sums as the Court deems that they are entitled to;
- (v) Such other relief as the Court deems appropriate in the circumstances.

SERVED this 23 day of March 2009 by Ince & Co of International House, 1 St Katharine's Way,  
London E1W 1AY, Solicitors for the Claimants

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QUEEN'S BENCH DIVISION

COMMERCIAL COURT

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PARTICULARS OF CLAIM

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