The ins and outs of insuring cargo

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SINCE the answer is obvious, there is one question that need not be asked by anyone in the business of importing or exporting goods or arranging their carriage over land or by sea or air: Cargo must be insured.

Having said this, I do, from time to time, come across instances where goods are not insured because the owner believes they will not be lost or damaged, or relies on the carrier to have insurance.

It is only when something goes wrong and the cargo is lost or damaged, that the owner realises they made a mistake. When this happens, they have the unenviable task of trying to recover the loss or damage from the guilty party. They will then discover just how difficult this is when they are faced with contractual terms that absolve the carrier from liability or an international convention that limits the liability.

Having come to the conclusion that it is prudent to always insure goods the question arises about who can take out insurance. The owner of the goods and a party who bears the risk of loss or damage can do so. In both instances, the insured party will suffer financially if the cargo is lost or damaged.

In insurance parlance, the party wishing to take out insurance must have what is called an insurable interest in the goods. If the party wishing to be insured can suffer financial harm then he or she will have an insurable interest.

The requirement that a party wishing to be insured must have an insurable interest is to distinguish insurance from a wager.

If, for example, you were to take out insurance under the terms that you would receive an agreed figure from the insurer on the loss of an asset owned by a stranger, you and the insurer would be betting on the likelihood of such an event occurring. This would constitute a wager. The reason is that because you are not the owner of the asset or do not bear the risk of loss or damage, you have no insurable interest in it. The stranger in the example will suffer such harm. It is, therefore, not possible to insure an asset unless you have an insurable interest in it. The owner always has an insurable interest as they will suffer financial harm if the asset is lost or damaged.

In a sale transaction, however, ownership in the asset sold will at some stage transfer from the seller to the buyer. Once that occurs, the seller will no longer have an insurable interest and will not be able to insure that asset beyond the point of transfer of ownership.

The point at which ownership transfers, will either be determined by the terms of the contract of sale, or by operation of law. If there is no stipulation in the contract, it will pass in a cash transaction on delivery and payment of the price and in a credit transaction on delivery.

The party bearing the risk of loss or damage also has an insurable interest. The passing of risk from one party to another, such as in the sale transaction, is usually determined by the terms of the contract. For example, it may be agreed between the seller and the buyer that when the cargo is loaded on to a carrying vehicle, the risk will pass from the seller to the buyer. At that point ,the insurable interest will also pass.

In international sales transactions use is made of an Incoterms (international commercial terms) such as FOB (free on board), CIF (cost, insurance and freight) and CFR (cost and freight). These Incoterms dictate when risk passes from the seller to the buyer. For example, with an FOB or CIF sale. the risk passes from the seller to the buyer on the loading of the asset on to the vessel, which will be carrying the asset to its destination. Certain Incoterms are used only when sea carriage is involved while other Incoterms are used for sea and other carriage. It is important to identify and use the correct Incoterm and not one exclusively used for sea carriage in respect of land carriage.

This is not a punt for insurers, but simply practical advice. If the asset is being exported or imported or being carried is insured and there is loss or damage then if it is insured you simply need to lodge a claim with your insurer.

Provided you have complied with the terms of the policy and provided the cause of the loss or damage is an insured risk covered by the policy, the insurer will pay you out and then endeavour to recover what has been paid from the guilty party.

If, however, you are not insured you will suffer the loss yourself and then be faced with all the attendant problems of trying to recover from the guilty party, which is time consuming and expensive and you have no guarantee of being successful.

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Sugar mills across KwaZulu-Natal are in full swing as the crushing season gets under way in earnest. Cobus Oelofse, the chief executive at the iLembe Chamber of Commerce and Industry, said the financial and economic benefits of the sugar cane plant and its potential as a renewable energy source were high on the chamber's development agenda.

Hopes sugar cane can produce power

Colleen Dardagan

KEY STAKEHOLDERS in the sugar industry on the KwaZulu-Natal north coast have started talks to generate electricity from sugar cane as the iLembe District Municipality looked for solutions to boost energy shortages hampering development in the region.

Cobus Oelofse, newly appointed chief executive at the iLembe Chamber of Commerce, said a workshop was hosted at the Gledhow Sugar Mill earlier this month. It was attended by high-profile delegates from Trade & Investment KZN, the Department of Economic Development and Tourism, Eskom and the KwaDukuza municipality.

Key stakeholders such as the Cane Growers' Association, who wished to become independent power producers, had co-generation requirements clarified at the workshop.

"We also explored opportunities for Eskom and the municipality to establish long-term power production agreements with independent power producers," he said.

Oelofse said the strategic importance of the meeting was significant and well-timed as reportedly Eskom was under pressure to supply electricity and had entered into short-term power-purchase agreements with industrial customers such as Sasol and Sappi.

Siyabongile Khanyile, the municipality's executive director of technical services, said they were prepared to play their role in exploring and realising the potential of co-generated electricity.

Development potential

Nisaar Mohamed, Trade & Investment KZN Section Manager, said follow-up meetings were already scheduled to consider the manufacturing demands and investment opportunities which could flow from the successful supply of ethanol and co-generated electricity in the region.

Oelofse said the fast-paced growth in the municipality had put significant focus on existing and proposed infrastructure which had resulted in the Chamber, private business and the regional and local municipalities working closely to "unlock issues" impacting on development. He said the supply of electricity from renewable sources was a critical element.

Paul de Robillard, the executive board vice chairman at the Gledhow Sugar Company, said the meeting provided an opportunity to share their proposed energy generation project, a joint initiative between the sugar, pulp and paper industries, and the significant benefits it held for cane growers.

He said while the project would allow for capital investment in an area desperately in need of a socio-economic lift and employment opportunities, equally important was that it would increase the electricity supply to KwaDukuza.

Liesel Beires, a green economy specialist at KwaZulu-Natal's Department of Economic Development and Tourism, said the sugar industry presented the province with the biggest opportunity to diversify its energy supply base. "It has the biggest job creation potential."

She said the production of ethanol and co-generated electricity from sugar cane had the potential to change the economic, social and energy landscape in the province.

Pool Mahadeo, Eskom's senior manager for key customers in KZN and the Eastern Cape, congratulated the chamber and sugar industry for "taking the lead" and using their energies to find solutions rather than playing the blame game.

"The challenge of a constrained power system is a South African challenge and everyone has a role to play whether as business, consumer, producer or supplier in the entire value chain," he said.