Harpers Wine&Spirit TRADES REVIEW

London City Bond roof collapse: the legal and insurance implications

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Tuesday, 21 December 2010

Following the recent roof collapse at London City Bond solicitor Andrew Park and insurance broker John Haber-Smith assess the impact on those who lost stock and the chances of them making successful claims.

They write: "In the immediate aftermath of the roof collapse, the priority for most stock-owners was to establish whether their stock had been damaged, and, if not, to get access to it and make it safe. LCB took urgent steps to move all undamaged stock to another warehouse to enable their customers to have access to stock.

"In many cases, fortunately, it was a simply a matter of stock being transferred, undamaged, from A to B and no significant loss or interruption of business or profit was sustained. Other owners, however, are looking at claims for stock which has been damaged or destroyed.

"Some stock remains in the damaged warehouse as it is too dangerous to move, leaving a number of importers unable to meet orders and frantically trying to source replacement stock. In the worst case, this will mean them having to let customers down completely at the busiest time of year, and could prove very damaging for both the importers and the customers.

"The stock-owner will want to claim the market value of the stock - the amount it would cost him to obtain replacement stock, or the amount he would have expected to sell it for. He will also want to claim for any other consequential losses suffered.

"Typically, however, a warehouse's terms and conditions will include clauses:

• limiting liability in respect of the value of the goods, for example to £100 per tonne (inclusive of duty);

• excluding or limiting liability for consequential loss.

"Furthermore, liability is usually only accepted for ‘neglect or wilful damage' by the warehouse. Proving ‘neglect' in these circumstances may be difficult and costly.

"If the warehouse insures its customers' goods, as most do, that insurance should then kick-in, but it will be subject to the above limitations and exclusions of liability.

"To the extent that the warehouse's contract terms and insurance cover combine to limit the amount recoverable by the owner, he must look to his own insurance policy to fill the gaps. He may well be disappointed.

"In the writers' experience, many wine import/distribution businesses have a typical 'business all risks' policy. These are fairly standard products, which usually have significant gaps in cover for importer/distributors:

• stock held off their premises will not normally be insured.

• business interruption/loss of profit and other consequential losses suffered in these circumstances will rarely be adequately covered.

• claims arising from breach of contract will generally not be covered.

• loss or damage in transit will generally not be covered - and hauliers' contract conditions usually restrict cover in a similar way to the warehouses.

• whilst goods are in bond, duty still needs to be considered. If stock is destroyed, no duty is payable.

"If stock is lost or stolen, e.g. in transit, then the importer remains liable for duty.

"The importer may have to settle for whatever he can get from the warehouse/its insurers, and meet all the other losses and claims himself - including any claims from his customers. While this clearly could be potentially catastrophic, the good news is that specialised insurance policies are available which can fill the gaps, by providing market value cover for stock held by third parties, and business interruption/loss of profit and consequential loss cover.

"It would mean paying a higher premium, but:

• what is already being paid in premium for an all-risks policy may actually be of little value, and provide an illusory reference point.

• there could be scope for reducing the amount spent on premises and contents cover, by looking realistically at the risks and distinguishing between the manageable and the unmanageable - i.e. what could wipe the business out altogether.

"When reviewing their insurance cover, importers might ask some further questions:

• do they have adequate product liability cover? Many importers assume that an all risks policy provides such cover, whereas it normally will not do so unless it is specifically insured and paid for.

• what about product recall liability insurance? This is even rarer.

"Where wine is originally supplied by a producer based in the EU, the above may be less of a concern, provided the importer has negotiated a satisfactory contractual indemnity with the producer. But where the wine is imported from outside the EU, the importer will be held liable as if he were the producer. He, not the producer, is likely to be the first port of call for claims in the event of any serious product liability or recall issue. And if it turns out that he has no insurance cover...."

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