

Recent case law developments



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The dangers of issuing clean bills of lading: Retla Rust Clauses

Owners often come under commercial pressure from shippers to issue a clean bill of lading. The shipper may have problems being paid under a letter of credit if the bill of lading is claused and so will offer a letter of indemnity (LOI) in return for a clean bill. The recent decision in *The Saga Explorer*¹ shows, however, that owners should exercise caution when issuing clean bills of lading against a LOI, particularly when the condition of the cargo is questionable.

Facts

The Saga Explorer involved a 'Retla clause' in bills of lading for a consignment of steel pipes. A Retla clause can sometimes be found on the face of a bill of lading for shipments of iron, timber, steel and metal products. Its purpose is to enable a master to issue a clean bill of lading, whilst providing no representation that the cargo was free of rust or moisture when it was received by the carrier. Its use was upheld by the US Court of Appeals in *Tokio Marine & Fire Insurance Company Ltd v Retla Steamship Company*², hence the name.

In *The Saga Explorer*, the load port survey described the pipes as "partly rust stained" and that the "damages/exceptions" had been acknowledged by the master. It recommended that the mate's receipt and the bills of lading be claused accordingly. The booking note stated that the carrier's bills of lading were to be issued as per the mate's receipt.



The mate's receipt contained a Retla clause but stated "Condition of Cargo as per Survey Report", although this was not attached. The bills of lading had no such reservation, stating the cargo was shipped "in apparent good order and condition". This was because the shipper had requested clean bills against an LOI. The bills incorporated US COGSA 1936 and had the following Retla clause:

"RETLA CLAUSE: If the Goods as described by the Merchant are iron, steel, metal or timber products, the phrase 'apparent good order and condition' set out in the preceding paragraph does not mean the Goods were received in the case of iron, steel or metal products, free of visible rust or moisture or in the case of timber products free from warpage, breakage, chipping, moisture, split or broken ends, stains, decay or discoloration. Nor does the Carrier warrant the accuracy of any piece count provided by the Merchant or the adequacy of any banding or securing. If the Merchant so requests, a substitute Bill of Lading will be issued omitting this definition and setting forth any notations which may appear on the mate's or tally clerk's receipt."

The consignee claimed damages from owners when it was found the pipes were heavily rusted on discharge.

Decision

The Court found against owners, holding that:

1. Under English law, the Retla clause is to be interpreted restrictively and does not exclude surface rust of "whatever degree" from the representation of good order and condition, although it does qualify the appearance of superficial rust and moisture on any steel cargo. It would likely form the basis of a determination as to whether there has been a further deterioration due to the inherent quality of the goods on shipment under US COGSA³ and the Hague-Visby Rules⁴. The Court accordingly disagreed with the decision in *Tokio Marine*.
2. The condition of the cargo was not reasonably and honestly represented by the clean bills. The decision by the owners to issue and sign clean bills involved false representations which were known to be untrue and intended to be relied upon. It was not an honest, non-expert view of the cargo and would therefore prejudice those relying upon the contents of the bills of lading. The Court also criticised the fact that the owners appeared to have been influenced by the provision of the LOI from the shipper.

Comment

The Saga Explorer shows why members should take care when signing clean bills of lading. The master must form an honest, non-expert view of the cargo as he sees it, particularly as regards its apparent order and condition. At present, under English law, the carrier will not be able to use a Retla clause to limit its responsibility for the description of the goods.

Members should also be aware that although it is common practice to obtain a LOI from shippers in return for issuing clean bills, not only will this potentially prejudice club cover, such LOIs are likely to be unenforceable under English law if the owner knew at the time that the cargo was not in good order and condition.

¹ [2012] EWHC 3124 (Comm)

² [1970] 2 Lloyd's Rep 91

³ Article 4(2)(m)

⁴ Section 4(2)(m)