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Cargo Deck Cargo

Introduction

The club's members are often asked to carry cargo on deck. The carriage of goods on deck is inherently risky because the cargo is exposed to greater dangers than goods carried under deck. Deck cargo is exposed to the elements and is subject to sea, spray and wind, as well as the additional risk of being washed or falling overboard.

Carrying cargo on deck without the agreement of the shipper may result in a breach of the contract of carriage. Prior to carrying goods on deck, the owner/carrier should be fully satisfied that it is safe to carry such goods on deck, there is a universal custom or statutory requirement to do so, or the shipper has consented to such a carriage. If not, by carrying goods on deck, the owner/carrier may be in breach of the contract of carriage and its P&I cover may be prejudiced.

Contracts of carriage often contain a liberty clause, seemingly allowing the carrier to carry cargo on deck. Such clauses are often ineffective in protecting owners/carriers in cases where cargo is carried on deck without prior agreement and should be treated with caution.

Cargo conventions and deck cargo

In jurisdictions where they apply, the Hague/Hague-Visby Rules place an obligation on the carrier to properly and carefully load, handle, stow, carry, keep, care for and discharge goods carried on board the ship. The definition of 'goods' is broad and the Rules apply to all cargo,¹ including that carried on deck, unless:

1. the contract of carriage clearly and expressly states that the cargo is to be carried on deck; AND
2. the cargo is in fact carried on deck.

As a result, unless the owner/carrier takes steps to ensure that the cargo being shipped on deck falls outside the provisions of the Hague/Hague-Visby Rules, the owner/carrier will be bound by the standards of care set out in the relevant convention, as with under-deck cargo. This exposes the carrier to greater risks and an increased chance of a cargo claim because goods carried on deck are unprotected.

1. Except for live animals.



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Cargo ship carrying wind turbine blades



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In order to protect themselves and ensure that deck cargo is not subject to the standards of care set out in the Hague/Hague-Visby Rules, the owner/carrier must ensure that:

1. there is an express agreement in the contract of carriage for goods to be carried on deck (or alternatively, it is a universal custom to carry such cargo on deck); AND
2. the contract of carriage clearly states that the goods are being carried on deck.

Setting its own standard of care for deck cargo

Provided that the carrier complies with the above two conditions, the owner/carrier may set out its own standards of care for the deck cargo. The usual position is for the carrier to exclude all liability for goods carried on deck. A typical clause excluding a carrier's liability for deck cargo is as follows:

"The cargo is carried on deck at the sole risk of the Shipper. The Carrier shall in no case be responsible for loss of or damage to deck cargo whatsoever and howsoever caused, even if caused by the negligence of the Carrier or his servants or agents."

If a carrier exempts itself from the Hague/Hague-Visby Rules, it is vital that an appropriate set of terms governing the carrier's liability, or excluding all liability, is in place.

Despite the contractual position, it should be noted that a carrier would still likely have a duty to ensure that the cargo was secured appropriately on deck at the commencement of the voyage and that the lashings were secured throughout the voyage.

P&I cover

The club excludes liability for deck cargo unless:

1. the cargo is carried under a contract of carriage clearly allowing cargo to be carried on deck and the contract states that it is in fact being carried on deck AND the contract excludes liability for deck cargo or it applies the Hague/Hague-Visby Rules; OR
2. it is customary to carry such cargo on deck; OR
3. the proposed carriage has been approved by the club's managers in advance.

Guidelines for carriage of cargo on deck

From a legal perspective, the guiding principles for our membership to consider when a ship is fixed to carry cargo on deck are as follows:

- the carrier should have prior agreement from the shipper to place the goods on deck, or there must be a universal custom to do so for the cargo in question;
- the contract of carriage (most often the bill of lading) should clearly state that the goods are stowed on deck;
- the contract of carriage should include a clause allowing the carrier to carry goods on deck;
- the contract of carriage should set out the extent of the carrier's liability for deck cargo – we suggest all liability is excluded;
- once on board, the carrier should ensure that deck cargo is secured in an appropriate manner and check lashings during the voyage.

This article intends to provide general guidance on the issues arising. It is not intended to provide legal advice in relation to any specific query. The law is also not static. If in doubt, The Standard Club is always on hand to assist.



Cargo ship carrying spruce

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