

## Carrier's Responsibility for On Deck Shipments

*In the modern age, on deck shipments by cargo ships have become an indispensable practice in maritime transportation due to reasons such as commercial reasons, type of the cargo carried and local or international shipping practices customary for certain shipping operations.*



It is accepted that the fact that the cargo is deprived of the preservative property of the ship's hold in the on deck shipping is a factor that increases the risk of damage or full loss of the transported cargo.

One of the parties affected most by this conjuncture is undoubtedly the shipowners who are those that are responsible for delivering the cargo to the recipient safe and sound.

The usual approach of ship-owners to carry cargo on deck, which is deprived of the preservative features of the ship hold is to clearly write on the carriage contract and bill of lading that "the cargo will be shipped on the deck" and "risk(s) related to the cargo on deck shall be borne by the shipper and the carrier shall not have any liability for the cargo carried". In addition to this, although the cargo on deck are excluded from Hague-Visby rules under article 1(c) of definitions parts of the Hague-Visby Cargo Convention, stating on the B/L and carriage document that Hague-Visby rules shall be applicable for cargo on deck, is a common practice encountered in these circumstances. Therefore an easier settlement can be reached based on the applicable provisions written on the B/L through reference for distribution of liability regarding the on deck carriage operations and it is easier to estimate how to interpret the contract wording by the courts in case of a possible disagreement. Another advantage brought by this practice is that, it prevents carriage operations not subject to international cargo conventions and thereby prevents rejection of any damage by some P&I insurance companies, stating in their book of rules that they do not offer cargo coverage as the rights of defense of the carrier are limited or abolished, based on the reason that such carriage operation is not covered as it is not subject to international cargo convention.

Since it is possible to attribute liability to the carrier by the receiver of the cargo, charterer and even the owners of the cargo carried under the deck during the voyage where on-deck carriage is performed in addition to the shipper, the carrier must be sure that its liability for the cargo on the deck has been properly limited or eliminated by ensuring that carriage contracts protecting his interests have been concluded.

Another condition that must be taken into consideration for the carrier to benefit from the agreed defenses stated on the bill of lading is that applications before and during transportation are do not allow emergence of a situation that is contrary to the transportation conditions.



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For example, if the ship-owner overlooks carriage of a cargo, which is not suitable for transportation on deck, on the deck considering that "it is at the Shipper's risk in any case", this can be considered as a violation of the liability of the carrier to stack the cargo "on board properly and carefully". (see Article III.2 of Hague-Visby rules).

In transport contracts, the responsibility of lashing on the cargo on-deck cargo is left to the charterer and recommended to be left, but the Carrier must require lashing operations to be carried out by a professional company, ship crew should closely supervise the lashing operations and report to the ship-owner that the lashing operation is not reliable if there is any nonconformity. On-deck cargo with unreliable lashing must not be accepted and no departure should be started under the circumstances. Although the lashing operation is under the responsibility of the shipper or charterer, the Carrier is also responsible for the loss if the non-conformity in the operations is clearly apparent and the ship / carrier has not intervened. Upon completion of the Lashing operations, the Carrier must obtain a copy of the Lashing certificate.

Likewise, if any cargo, for which B/L stipulating carriage under the deck is arranged, is transported on the deck and such cargo is damaged, this may cause the carrier to face with a serious liability for compensation. Since this type of transport, which will constitute an intentional and deliberate act in contrary to the terms of the transport contract, will be excluded from the coverage of the Owner's P&I insurance; the options of the carrier to insure its liability in this case will either to convince the P&I insurer to include this special case, which is not possible in most cases or to purchase an additional insurance coverage providing coverage for the ship-owner's liability when a cargo, stated to be transported under the deck on the B/L, is actually transported on the deck. This coverage may be offered by some insurers under the Shipowners Liability (SOL) insurance heading, as well as under different names under the insurers' fringe covers product groups.

Although it is known which dangers will be faced, which trainings will be taken against these dangers and which procedures will be applied, the number of incidents not decreasing still, is a sign of the lack of adoption of a safe working culture and the inadequacy of implementation. Many ship-owners have adopted a safe working culture and have been pioneers in the marine industry. We wish that the number of ship-owners, showing necessary care and holding technical equipment, increases in time.

Likewise, taking on-deck cargo in a way that destabilizes the ship, ship class and certificates not allowing on-deck transport; may be perceived as a

fundamental breach of the carriage contract on the grounds that the carrier has not fulfilled its responsibility to maintain seaworthiness of the vessel and may impair the carrier's right to waive responsibility for the cargo on the deck. The carrier is obligated to maintain seaworthiness of the vessel at and before the beginning of the voyage. (see Article III.1.(a) of Hague-Visby).

Another important consideration in over-deck cargo transports, just as with usual under-deck transports, is whether the conditions of carriage to which the bill of lading is subject to, allow the carrier to limit his liability under what circumstances and in what extent. Although it is beneficial that these issues are predictable; in practice, the supercargo does not consider these limitations in favor of the carrier for cargo damage claims to be made against the carrier; and when full loss is claimed and the issue is referred to judicial authorities, the judge shall take the decision on such liability exception and/or liability limitation of the carrier, considering the objections of the supercargo.

Such defense and limitation opportunities offered to the ship-owner / carrier by carriage conventions such as Hague, Hague Visby and Hamburg rules may become obsolete if the issues stated in different articles of the same rules are realized and the limitation cannot be utilized. For example article IV.5 of Hague-Visby, prevents exercising limitation of liability provisions of such carriage conventions for indemnification of the losses that may be incurred due to the error and omissions to be made by the carrier, being aware that they may lead to loss, which can be considered as irresponsibility .

In terms of insurance; some fix premium-based P&I insurers either do not provide a cargo coverage for cargo carried on deck indirectly or may limit their cover against the insured ship-owner with liability limitation limits per package or weight provided by the abovementioned cargo conventions (for example it is 667 per item in Hague-Visby convention). Ship-owners who are unaware of this situation may face with a huge financial loss when a guarantee letter amounting as much as the invoice value of the cargo as a result of the damage to cargo on the deck and the insurer declares that it will refuse the request and informs that coverage will only be provided as per the liability limits.

In selecting the insurer, we always recommend that the above-mentioned measures be taken into consideration when carrying on-deck cargo, as well as the coverage differences provided by the insurers and the nuances between these lines rather than the premium comparison

