

Contractual Liabilities Concerning Seaworthiness Warranty

It has not been uncommon to see that charterers may request that owners contractually agree to a vessel's seaworthiness for the full duration of voyage on contracts of carriage by sea.



Owners should bear in mind that such contractual warranties may jeopardize P&I cover. Even though P&I insurers have their own sets of respective rules, a generally accepted practice is that P&I insurer warrant Owners assume liabilities no wider than Hague-Visby Rules in contracts they may enter.

A review of Hague-Visby Rules shows that references inherent to seaworthiness of a ship are presented on Article III Section 1, which state;

The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

- (a) Make the ship seaworthy;
- (b) Properly man, equip and supply the ship;
- (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

According to Hague-Visby Rules, "exercising due diligence" means to take reasonable precautions to make the vessel suitable for the planned voyage. There are no provisions that the Owner, i.e. the Carrier, is required to absolutely warrant seaworthiness, beyond whatever is stated in above Article; and that the Carrier is only required to keep the vessel seaworthy before and at the beginning of the voyage.



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It may be therefore assumed that, should the cargo interests be able to evidence the Carrier did not exercise due diligence before and at the beginning of the voyage, such lack thereof may be within scope of P&I covers.

Furthermore, any loss of and/or damage to the cargo, which may arise following an incident that may render the ship unseaworthy in course of voyage, would not be deemed Carrier's liability in view of Hague-Visby Rules Article III Section 1. It must be of course assumed that Carrier showed due diligence before and at the beginning of the voyage.

Where the Carrier may assume contractual liabilities concerning seaworthiness throughout the voyage, it must naturally follow that the Carrier is also assuming liabilities above and beyond Hague-Visby Rules. This may jeopardize the Carrier's P&I insurance cover, subject to P&I insurer's rules.

We recommend that prior assumption of contractual liabilities that may affect insurance covers, Owners review such terms within scope of their insurance covers as well.