The Carriage of Steel

A selection of articles previously published by Gard AS

Contents

Introduction

This booklet contains a collection of loss prevention material relating to steel cargoes, which over the years has been published by Gard.

Steel cargo claims account for a large proportion of total cargo claims, both in terms of frequency and cost. This booklet contains material with numerous examples of incidents resulting in large steel claims.

As with most claims, steel cargo claims can be avoided. The following ten points serve as a reminder of what should go a long way to ensuring a claim free voyage.

1. A pre-shipment survey will help to ensure that the mate's receipts and bills of lading accurately reflect the cargo quantity and apparent order and condition at the time of shipment.

2. Proper maintenance and inspection of bilges, hatch covers and other hold openings will reduce the risks of water ingress.

3. Hold preparation checks, e.g a hose test on hatch covers, tests on bilge suctions and non-return valves, will help to ensure watertight integrity.

4. Proper planning and supervision of stowage and securing arrangements will reduce the risks of cargo shifting, crushing and chafing.

5. Pre-sailing checks, e.g securing of cargo and of weather deck openings, will help to ensure that nothing has been overlooked or forgotten.

6. Proper ventilation, following the dewpoint point rule (only ventilate if the dewpoint of the air outside the hold is lower than the dewpoint of the air inside the hold), will reduce the risk of condensation damaging the cargo.

7. Visual checks of the holds and daily soundings of the bilges will help to ensure that problems arising during the voyage are detected and dealt with early enough.

8. An outturn survey will help to evidence watertight integrity and the condition of the cargo at the time of discharge.

9. Keeping full and proper records of the vessel's care for the cargo will to help defend claims should a claim arise.

10. If an incident does occur the Club and/or the local correspondent should be contacted to assist.

Expanded commentary on the above points can be found in the material enclosed in this booklet. So please read on and challenge your operation to a year without steel claims.

Gard Guidance on Bills of Lading,
➔ reprinted 2002/
Gard News 153 March/May 1999

Steel pre-shipment surveys

Purpose

Cargo survey

The purpose of a pre-shipment survey of the cargo is to establish its apparent condition immediately before it is loaded onto the vessel. Because of increasing claims for poor outturn of steel cargoes, it is now very common for carriers to contract independent surveyors to perform pre-loading surveys of this type of cargo. There would be insufficient time for the ship's officers to perform a detailed survey of all of the cargo from the time of the arrival of the vessel until the cargo is loaded. Hence the assistance of an independent surveyor is essential if the condition of the cargo at this time is to be fully and accurately determined. This is done to assist the Master to ensure that the Mate's receipts and bills of lading are appropriately clausedto accurately describe the apparent condition of the cargo at the time he accepts responsibility for the cargo.[1]

Vessel survey

Often a pre-shipment survey of the vessel is also requested. This will involve an examination of the vessel's holds to ensure that they are in a suitable condition to receive the cargo. The survey also involves the examination of the hatches, ventilators, sounding pipes, accesses, etc. to ensure that the watertight integrity of the vessel is adequate. A hatch survey includes the structure of the panels, sealing bars, rubbers, drain channels, guttering, cleats, wedges, wheels, hinges and the operating system, including any hydraulic leaks. It may include testing the integrity of the hatch covers by ultrasonic means or with a jet hose of water. Any faults discovered at the pre-loading survey of the vessel should be corrected before the vessel loads the cargo if necessary, but in any event before the vessel puts to sea.

Loading survey

Usually the surveyor is requested to remain in attendance throughout the loading so that he can monitor the loading operation. He may be requested to advise the Master on stowage and dunnaging, and to check (and perhaps advise) on the standards of securing. Correct stowage ensures the load on the ship's structure is within its strength limits (e.g., deck load in tonnes per square metre), avoids the cargo shifting, crushing and chafing, and ensures that the cargo can be readily discharged. Dunnage is used to distribute the load from the cargo, prevent friction damage, prevent distortion of the cargo in the stow and assist in cargo securing. The surveyor will keep complete records, such as the timing of the loading operations, including delays with reasons, the weather throughout, and details of the vessel, cargo description, numbers, types, weights, stowage, bills of lading, etc.

Terminology

The terms used to describe the condition of the cargo are the personal choice of the surveyor. The actual words he uses should be in the English language, which may not be his native tongue. Hence it can be seen that the true meaning of the terms used could be open to interpretation. In an attempt to avoid this confusion, the International Group of P&I Clubs has issued a list of standard clauses to be used to describe the condition of steel cargoes.[2] There are clauses to describe surface condition, including packaging if appropriate, which are mainly an attempt to differentiate between degrees of rust, and other clauses to describe mechanical damage.
In all cases, it is essential that the surveyor take a full set of high-quality photographs in order to both provide evidence and clarify the terminology, should this become necessary.

The formation of rust

When it leaves the producer, raw steel is covered by a thin coating of mill scale. This is brittle, and is easily displaced, whereupon rusting commences. The rusting of steel is a continuous process. The longer it continues, the more it will damage the cargo. Any rust which appears to be insignificant during loading could develop during the voyage, even if the cargo is properly looked after by the vessel. Thus it is vital that any and all signs of rust, no matter how minor, are identified by the surveyor.

Surface rust which forms in a fresh water environment, and is removed within a reasonable time, seldom causes damage which reduces the commercial value of the cargo. However, rust which forms in a salt laden environment can result in rapid

1 See article "Pre-load Surveys of Steel Products" in Gard News 144, of December 1996.

2 The relevant section of the International Group Circular, dated February 1964, reads:
"In appropriate cases, (…) it is permissible for any of the following clauses to be used when describing steel shipments which show signs of rust or a similar condition on shipment:

Partly rust stained
Rust and oil spotted
Rust stained
Wet before shipment
Rust spots apparent
Wet steel tubes
Some rust spots apparent
Wet bars
Some rust spots apparent on top sheets
Rust on metal envelopes
Top sheets rusty
Covered with snow
Some top sheets rusty
Pitted
Rusty edges
Rusty
Some rusty edges
Rust with pitting
Rusty ends
Goods in rusty condition
Some rusty ends
Edges bent and rusty
Rust spotted
Partly rusty

When packed sheet iron is shipped the following two clauses may be used:
Covers rusty/wet Packing rusty/wet"

deterioration of the cargo, with pitting of the surface. This considerably reduces the commercial value of the product, and may make it unsuitable for its intended purpose. It may have to be sold off for a lower quality application or even scrap and the attending surveyor must test any rust for salt content. This is usually done with silver nitrate, which turns milky when exposed to chlorides. However, this test is not infallible, and a positive result is only an indication that there may be salt contamination.

WHAT DOES THE SURVEYOR LOOK FOR?

Is the cargo wet?

This may be caused by the cargo being stowed in the open either during storage at the manufacturer's yard or in the port before loading. Even if it appears dry on the outside, rain may have penetrated, for example through covers or amongst rods of a bundle. Moisture may be apparent when the cargo is lifted and tilted, and there may be stains or marks on the outside to indicate that the cargo is damp or has been wetted in the past. If there are signs of moisture, it is important that these are tested for salinity. This could be caused by a salt laden environment (such as an open stow close to the sea with a strong onshore breeze) in addition to direct wetting by sea water. Wetness includes snow or ice.

Are there any signs of surface rust?

Types of rust include:
Spot – Localised slight penetration of the mill scale.
Stained – A light tan coloured and fine powdery coating.
Rusty – A thicker coating of brown scale, when removed, the remaining surface is uneven.
Pitted – Penetration of the surface with minor indentations which cannot be removed by wire brushing.
Scale – Thick flaking rust.
Streaks – Stains which indicate that water has previously run across the surface.

These comments should indicate the extent of the rust, with expressions to describe the percentage of the surface area affected, or the location of the rust if a distinct portion of the steel is affected (e.g., edges of flanges). If the product is galvanised, comments should be made if the zinc coating is dull or affected by white oxidation.

Is there any contamination present?

Full details including extent should be noted if there are any signs of grease or oil, including stains, or the presence (note colour and any other characteristics if the contaminant cannot be identified).

Is the cargo mechanically damaged?

The type and extent of deformations should be described as accurately as possible, with appropriate dimensions. Terms which are commonly used include:
Bent (locally or entire length/width)
Dented
Edges buckled
Scored
Nicked
Coating scratched, cracked, peeling
Windings telescoped
Bindings broken
Packaging torn/dented punctured

Often mechanical damage is caused by careless or inappropriate handling. If the handling damage is caused by the stevedores during loading, then they should be held responsible. The procedure is normally clarified in any charterparty. The bill of lading should

not be claused as this is not strictly pre-shipment damage.

Comments should also be made where individual pieces within a package have become misaligned, for example, bars protruding from one end, coils ovalised.

WHO SHOULD BE NOTIFIED

The attending surveyor should report any damage noted to his principals. His instructions should state who else should be notified, for example, the shipper of the cargo, so that he is given the opportunity to replace damaged goods or cancel shipment of affected items. Sometimes, the surveyor will negotiate an agreement with the shipper on the wording of the clauses to be used. The instructions will normally provide for the vessel to be kept fully advised so that the appropriate clauses to describe the apparent condition of the cargo can be inserted into the Mate's receipts and bills of lading.

CLAUSING MATE'S RECEIPTS AND BILLS OF LADING

At the time of loading a Mate's receipt is issued and signed by the vessel. Later, the carrier will issue a bill of lading to the shipper based on the Mate's receipt. Amongst other facts, these documents state the condition of the cargo at the time of loading. This is usually phrased as "in apparent good order and condition". If this does not describe the condition of the cargo as would be apparent from a careful inspection, then the documents must be claused to reflect the true condition observed.

If the cargo is found to be wet, then the documents should be claused for example "wet before shipment". If rust is found, the type and extent of the rust should be described using the phrases discussed earlier. Similarly, if the cargo has mechanical damage, the type and extent should be included in the clause. Appropriate clauses should indicate the likely cause, for example "marked by handling gear". It is important that these remarks are as accurate as possible. The affected cargo should be identified. General terms such as "some", "a few" and "a number of" should be avoided.

The bill of lading represents the goods themselves, and if the cargo is sold during the voyage, the new owner will rely on the description of the cargo in the bill of lading. He will expect to receive his cargo as described, and so will have a case for damages against the carrier if the cargo is delivered in a worse condition. This is why care should be taken to ensure that an accurate description of the condition of the cargo at the time of loading is included in these documents.

THE OUTTURN SURVEY

Although we have discussed pre-loading surveys, it is important that an independent surveyor attends at the discharge port. He will examine the hatch covers before they are unsecured if possible, and check for signs of water ingress when they are first opened. His main duty is to examine the cargo upon discharge to check for damage. If he finds any damage that was not recorded at the time of loading, then he should investigate the causes. He may also be involved in ensuring that the damaged cargo is properly sorted, segregated and stored with suitable protection to prevent the cargo from deteriorating further, and that all necessary measures are taken to mitigate any loss.

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Condensation damage - Australia

Gard News 186,
→May/July 2007

The Federal Court of Australia has recently considered the responsibility for condensation damage when cargo interests knowingly use vessels without dehumidifiers.

Introduction

A recent decision[1] provides an interesting and, for carriers, worrying insight into how the Australian courts view the extent to which a carrier must exercise due diligence under a contract for the carriage of cargo. The decision is understood to be under appeal but the case raises an interesting debate.

The case before the Federal Court of Australia concerned two cargoes of sheet steel coils shipped on sister ships (both of single hold construction, with a tween deck and folding hatch covers) but on separate voyages from Japan to Australia. Both cargoes suffered corrosion damage, for which cargo interests brought claims under bills of lading identifying the owners of the two vessels as carriers. For the purposes of this analysis the cargo interests and shipowners/carriers can be considered the same in each voyage.

One of the cargo interests was the importer of the steel coils and had a contract of affreightment which required use of the carrier's vessels unless there was no vessel available at the time. The shipping manager responsible for choosing a carrier was familiar with the vessels and the hold arrangements.[2] He was aware that the vessels were carrying steel cargoes from other shippers for other consignees.

The dispute was whether the damage occurred because of insufficiency of packing[3] of the steel coils or because of the failure by the carrier to exercise due diligence to make the vessel seaworthy and/or to carry, keep and care for the cargo properly and carefully.[4]

Both voyages gave rise to very similar factual issues. It was common ground that the steel coils were damaged as a result of corrosion resulting from contact with water before or during the course of the voyages. Notably, there was rain during loading on both voyages. On the first voyage some of the subject coils were loaded wet. In both voyages other cargoes for other shippers were also loaded wet. There was no evidence of the subject coils being loaded wet in the second voyage. There was dispute as to the mechanism by which water entered the packaging around the coils. Both parties relied heavily on experts.

The mechanism of the damage

It was common ground that at least some of the corrosion damage to the coils in question was the result of condensation during the voyage. There was expert evidence that condensation on the steel coils would almost certainly have occurred since the recorded dew point levels exceeded the coil temperatures for most of the voyage. The case summary does not mention the type of condensation, but presumably it was cargo sweat.[5] However, the carrier contended that there were in fact three sources of wetting that caused damage. Firstly, external wetting which was able to infiltrate the wrapping surrounding the coils. This was only relevant to the first voyage, for which the mates' receipts/ shipping orders were claused "*partly wet by rain in barge*". However, there was expert evidence that the nature and distribution of the corrosion observed on the steel coils was highly consistent with the corrosion having occurred as a result of condensation and not as a result of external wetting. Secondly and thirdly, the carrier contended that condensation either on the external packaging or within the packaging, which was allowed to come into contact with the steel, was the source of wetting that caused damage. These arguments essentially equated to an argument of inadequate packing.

Inadequate packing

The coils in the subject case were said to be packaged in a manner consistent with the standard practice for the packaging of cold rolled steel coils – an inner soft paper wrapping, an outer metal wrapping, including end caps and corner protectors, with steel strapping. The essence of the carrier's case was that the coils should have been wrapped in a manner that would have completely prevented the ingress of water either in the form of liquid or vapour. The carrier referred to evidence of problems from previous shipments which resulted in the same shippers changing the inner paper wrapping as a result of suggestions that the previously used paper was not effective in preventing the penetration of water/ water vapour. The carrier also referred to the practice of another shipper of steel coils, which was to include an additional sealed plastic wrapper over the top of the inner paper wrapper, and which was said to completely seal the contents against any moisture ingress. The carrier also sought to make weight of the nature of the steel, which was unchromated. Chromate coating provides temporary protection against corrosion, but in this case the end receiver required unchromated steel. Therefore, only a light oil coating was applied to the coils which provided very limited protection against corrosion.

The court commented that insufficiency of packaging is the inadequate preparation of goods to withstand the foreseeable risks of carriage on the voyage contemplated. Packing would be deemed sufficient if it is normal or customary in the trade. It was apparent that the method of packaging in this case was in accordance with usual practice, but was not such as would prevent the entry of water vapour in the air. The real issue therefore was whether, having regard to the nature of the steel, the packaging was required to be such that water vapour could not enter through it, or whether the packaging was sufficient if it was adequate to prevent the entry of loose water from external wetting, the burden being on the carrier to ensure that water

1 Stemcor (Asia) Pty Ltd v C.V. Scheepvaartonderneming Ankergracht [2005] FCA 1808 (16th December 2005).
2 The case summary is not clear on this point, but it is assumed he did know or ought to have known that the holds were not fitted with dehumidifiers.
3 A defence available to a carrier under Article IV, rule 2 of the Hague-Visby Rules, which applied in the case by virtue of the Australian Carriage of Goods by Sea Act 1991.
4 Article III, rules 1 and 2 of the Hague-Visby Rules.
5 See article "Don't work up a sweat" in Gard News issue No. 173.

vapour in the air, which might infiltrate the outer and inner packaging, would not condense on the steel coils during the carriage. In other words, as the court put it, it was a question of whether the shipper was entitled to rely on the carrier to ensure that the conditions under which carriage was to occur would preclude condensation of water vapour in the air, or whether the carrier was entitled to assume that the packaging was such as to preclude the ingress of water vapour through the packaging.

Seaworthiness

The court stated that a carrier must demonstrate that it has exercised all reasonable skill and care to ensure that the vessel is seaworthy at the commencement of the voyage. The test to be applied was an objective one. The carrier must act in accordance with international standards and the standards of a reasonable carrier in the particular circumstances of the problem at hand. In the court's view, the more serious the consequences of unseaworthiness, the greater the effort that should be made to make the vessel seaworthy.

Cargo interests' main case on seaworthiness was that the vessels ought to have been equipped with a dehumidification system to remove water from the holds before condensation could occur. They argued that a vessel for use in the voyages in question at the particular time of year for the particular cargo that did not have a dehumidification system was unseaworthy with regard to that voyage carrying that cargo. The voyages in question were to commence in Yokohama in winter, when it is regularly cold and rain is expected. Rain did occur during loading operations of both vessels and it took about 20 minutes to close down the hatches when rain commenced. It was reasonably likely, therefore, that some rain entered the holds during loading operations. Water also entered the holds on and within other items of cargo that were loaded, including timber packaging and dunnage. There was expert evidence that the amount of water in the holds meant that condensation during the voyages was virtually inevitable. Interestingly, a figure of 68 litres was put on the amount of water required in the hold for condensation to occur. In order to travel to Australia, the vessels had to cross the equator where they would encounter warm moist air. Accordingly, there was a high probability that conditions for condensation would be created in the hold during the course of the voyages if free water was not eliminated or if moist air was introduced into the hold in the course of the voyages.

Cargo interests also argued as an alternative that heaters should be installed in the hold to prevent condensation, although there was no evidence that the use of heaters in vessels generally was commonplace. Dehumidification systems on the other hand had been used on vessels carrying moisture-sensitive cargoes for many years prior to the voyages in question. There was evidence that another carrier had been carrying similar coils with dehumidifiers since 2003 with no incidence of corrosion. Whether the installation of dehumidification systems, on either a temporary or permanent basis, was reasonably practicable in the circumstances was, in the court's eyes, to be gauged in the light of several factors, such as the freight earned under the year-long affreightment contract and the value of the coils, although the latter would have been unknown to the carrier. As the court put it, unless the cost was prohibitive or it was otherwise an unreasonable cost to incur, due diligence would require that it be incurred. It was determined that for each of the vessels the cost of installing a dehumidification system would have been somewhere between AUD 67,400 and AUD 115,406.

Proper and careful handling and care

Cargo interests also contended that the carrier breached the duty to properly and carefully load, handle, stow, carry, keep, care for and discharge the coils. The two broad arguments were that the carrier allowed free water to enter the holds during loading and that they failed to seal the hatches properly. Although some rain water may have entered the holds during loading, there was no evidence that the system for closing the hatches was other than a proper system, and there was no reason to believe that the system was not implemented in relation to the voyages in question. As for the hatches, there was no evidence of there being any ingress of water into the holds of either vessel by way of the hatches at any stage during their respective voyages. As for loading wet cargo or dunnage, the court took the view that this would not normally give rise to a breach of Article III, rule 2 of the Hague- Visby Rules so long as the carrier had a proper system to remove the moisture admitted into the holds.

Thus, the real question, as the court put it, was whether the carrier properly and carefully carried, kept and cared for the coils. If there was water in the holds, then ventilators would need to be operated in a way that would remove that moisture. If the ventilators were operated in a fashion that permitted

Condensation damage to steel coils.

the ingress of further moisture, there was a failure to carry, keep and care for the coils properly and carefully. Both vessels recorded periods when the holds were ventilated but cargo interests contended that the holds should not have been ventilated when they were, and that it was unnecessary and contrary to proper practice to do so. The ventilation records for both vessels confirmed that, on all occasions but one, the crew only ventilated the holds when the dew point of the outside air was less than that of the air inside the hold, consistent with the dew point rule. The court noted, however, that this was a non-hygroscopic[6] cargo and that it was standard practice in the shipment of steel from cold to warmer climates not to ventilate the hold.

The court's findings

The court's findings were as follows:
– The packaging of the coils was not insufficient, but adequate and consistent with general practice in the industry.
– While the nature of the steel (which was unknown to the carrier) made the coils particularly susceptible to corrosion, the sensitivity of steel to corrosion generally was well known in the industry.
– More likely than not the holds were closed in Yokohama with water trapped inside in the form of wet dunnage and liquid water on some cargoes that were wet with rain.
– It was probable that water in the form of vapour was introduced to the holds during periods of ventilation (when the vessels were likely to have been in the tropics) rather than being removed.
– On the balance of probabilities, condensation occurred after the loading of the coils on each vessel and during the course of the respective voyages of the vessels.
– The condensation resulted in corrosion.
– The corrosion could not have occurred if moisture had not been admitted into the holds or if moisture, once admitted, had been removed by the operation of a dehumidification system installed in the vessels. Alternatively, condensation could have been prevented by the operation of a heating system installed on the vessels to ensure that the surface temperature of the coils did not fall below the dew point temperature of the air in the holds.
– Given the imprecision of the dew point rule, the question of installation of a dehumidification system was critical.
– The carrier could have factored the cost of installation and operation of dehumidifiers into the freight charge for the particular voyage or for the period of the affreightment contract. That is a decision that should have been made prior to offering the vessels for loading.

The court's decision (under appeal)

The court went on to hold that in circumstances where the coils were known to be sensitive to moisture:
– and there was no dehumidification or heating system, the admission of water into the hold during the course of the voyages was a failure to carry, keep and care for the coils properly and carefully;
– and it was known or ought to have been foreseen by the carrier that water would be admitted into the holds on other cargo and on dunnage and possibly because of rain, the vessels were not seaworthy for the purpose of carrying the coils in question on the voyages in question at the relevant time of year;
– it was reasonable for the carrier to take steps to ensure that water could not be admitted into the holds or, if that was not practicable, to install a dehumidification system to remove excess water from the holds and ensure that the dew point temperature of air in the holds would not fall below the surface temperature of the coils. The failure to do so was a failure to use due diligence to make the vessels seaworthy or, putting it another way, to make the holds fit and safe for the carriage and preservation of the coils.

Discussion

There certainly appear to be plenty of issues in this case and it will be interesting to see the outcome of the appeal. The reader may feel that the carrier was unfortunate to have been found wanting in his duty to properly and carefully carry, keep and care for the coils. On all occasions but one, the crew ventilated the holds consistently with the dew point rule. If done properly, such ventilation should serve to replace hold air with ambient air that contains less moisture. Thus the court's

6 A hygroscopic material is one which attracts moisture from the atmosphere.

finding that it was probable water in the form of vapour was introduced to the holds during periods of ventilation rather than being removed, suggests some misunderstanding on their part. Perhaps the court was influenced by the fact that this was a carriage for which the holds would not normally be ventilated[7] and by expert evidence that the dew point rule is only an approximation. The latter may well be true, but that is the recognised system on board ships and the court seemed to be happy with the system of closing the hatches during rain despite it being likely that rain would enter the hold in the time taken to do so.

The most interesting aspects of this case, however, concern the court's views on the installation and use of dehumidifiers. The significant issue which appears to have been the carrier's undoing was the wetting present in the holds at loading, and the inability of the vessel to remove that moisture during the voyage. Of course by the time of loading it was too late to fit dehumidifiers. What other options did the carrier have at that time? The court itself recognised that it was not possible for the carrier to dry the cargo before it was loaded, especially since at that time the cargo would not be in the possession of the carrier. Since the vessels were of single hold construction, albeit with a tween deck, it may have been difficult to afford wet cargo its own separate stowage accompanied by a written remark on the bills whereby the shippers accepted all responsibility for the consequences of their cargo being wetted. That would perhaps leave the carrier with the option to reject wetted cargo. Not straightforward; and without knowing the terms of the contract of affreightment it is difficult to comment.

The importer who was the other party to that contract appears to have known that the vessels were not fitted with dehumidifiers and would have known about the risks of exposure to moisture-sensitive cargo on the subject voyages. This case suggests that, even with that knowledge, owners should bear the risk when cargo interests knowingly decide to use vessels without dehumidifiers and, furthermore, even if owners go on to ventilate in accordance with the dew point rule, they should still bear the risk. One wonders whether the court would have come to the same decision had there been no evidence of wetting in the holds at the time of loading, but then the corrosion may never have occurred.

Lessons learned

If anything, this case suggests that both carriers and cargo interests ought to give more consideration to the foreseeable risks to the cargo at the time they contract. Nobody likes to negotiate remarks on bills of lading at the last minute and a remark seeking to relieve the carrier from any responsibility for the vessel not being fitted with a dehumidifier could well fall foul of the relevant carriage rules.[8] For the voyages in this case there does seem to have been a risk of moisture being admitted to the holds at loading. However, due to changes in the weather/climate, that same risk may not arise on all loadings under a contract of affreightment. Cargo interests will in many cases wish to see their cargoes being shipped regardless of wetting. They may therefore be willing to use a ship for all loadings under a contract of affreightment without a dehumidifier and despite the risk that condensation may result from the vessel's inability to remove moisture admitted to the holds. As for the owners, they will be keen to ensure that they are not exposed to claims for condensation damage where they have no control over the substantial risks of such damage arising. The difficulty often faced by owners, as demonstrated in the subject court case, is determining the cause of the condensation. Moreover, it may not always be possible to avoid condensation despite proper practice on the ship. For example, if due to bad weather or high dew points in the ambient air, the ship is unable to ventilate, ship's sweat may be unavoidable on voyages from warm to cold climates. Cargo sweat at discharge can also be difficult to avoid and occurs when cold cargo comes into contact with warm moist air when the holds are opened at discharge.

If an owner is faced with a contract of affreightment similar to that in this case, and wishes to limit his exposure for condensation damage claims where no dehumidifiers are fitted on his ships, he could seek to make it clear in the contract that owners will only be responsible for such claims when caused solely by improper/insufficient ventilation. If bills of lading will be issued pursuant to the contract of affreightment, there is a risk that owners will be unable to avoid liability for condensation damage claims by innocent third parties entitled to claim under those bills.[9] Owners would then need to consider making provision for a non-responsibility clause under a voyage charterparty, which might, if incorporated in the bill, afford owners a defence, but more importantly could establish a recourse against the charterer in the event a defence could not be sustained.

7 Non-hygroscopic cargo being carried from a cold climate to a hot climate – see footnote 5.
8 E.g., Article III, rule 8 of the Hague/Hague-Visby Rules.
9 See footnote 5.

Gard News 187, November 2007/
➔ January 2008

Australia - Condensation damage - A follow-up

An article in Gard News issue No. 186[1] featured a case before the Australian courts involving corrosion damage to steel coils, caused by condensation, and for which the carrier was found liable. The case was appealed to the full court of the Australian Federal Court and judgment has now been handed down.[2] The outcome for carriers is mixed.

Readers will recall from the article in issue No. 186 that the carrier was found liable at first instance[3] on two counts. Firstly, there was a finding of unseaworthiness by reason of failure to use due diligence to make the holds fit and safe for the carriage and preservation of the steel coils. The reasoning of the judge was that:(i) it was known or ought to have been foreseen by the carrier that water would be admitted into the holds on the cargo and on the dunnage, possibly because of rain, given the nature of the voyage and time of year. (ii) it was deemed reasonable for the carrier to take steps to ensure that water could not be admitted into the holds, or if that was impracticable, to install a dehumidification system to remove excess water from the holds and coils.

Secondly, there was a failure to carry, keep and care for the coils properly and carefully, because, in the absence of a dehumification or heating system, the carrier failed to prevent the admission of water into the hold during the voyage.

Unseaworthiness

To the appeal court, the question was whether the vessel was fit to carry the cargo to its destination. The alleged unfitness was the absence of dehumidifiers, leading to an inability to avoid condensation and, therefore, corrosion of the coils. If condensation was a risk of the voyage, then the carrier was obliged to provide a ship, crew and equipment to deal with that risk. To answer this, the appeal court raised two further questions. The first was whether such conditions might have arisen at some stage in the voyage, which was accepted. The second was whether the vessel and crew were capable of dealing with the problem. In answer to this, the appeal court doubted the correctness of the first instance judge's reasoning in (i) above and commented that the chance that moisture might enter the hold during loading could hardly, by itself, make the vessel unseaworthy, especially since much depended on the amount of water, the available means for dealing with it and the likely conditions to be encountered on the voyage. The appeal court went on to find that there was no evidence of any practice to install and use dehumidifiers, so the duty to exercise due diligence could only have required such a step if the vessel and crew were not otherwise capable of dealing with the problem. On that point, the appeal court found that there was a mechanism for removing water from the holds, namely wiping and mopping and although the effectiveness thereof may have been questionable, that had to be considered in light of the lack of evidence as to any practice concerning the use of dehumidifiers. In summary, therefore, the claimants adduced insufficient evidence to prove unseaworthiness, so the question of due diligence did not arise.

Proper and careful handling and care

The appeal court deemed that condensation, the causal event, was most relevant to consideration of this duty of the carrier, not the mere presence of water in the holds. Also key was the first instance finding that there should be no ventilation during the carriage of steel cargoes from cool to warmer climates, with which the appeal court agreed. They also agreed with the first instance judge's interpretation of the expert evidence that ventilation should not have occurred as it was capable of causing condensation. Although there remained the question as to whether the corrosion was caused by condensation resulting from improper ventilation, the appeal court decided that the carrier had not challenged the first instance judge's finding that it probably did. The appeal court went on to review the carrier's defences, notably inadequate packing, and agreed with the first instance judge, commenting that the carrier had failed to show that there was any wrapping in use that was impervious to water. The appeal court therefore upheld the first instance decision that the carrier had failed to properly and carefully carry, keep and care for the cargo.

Comment

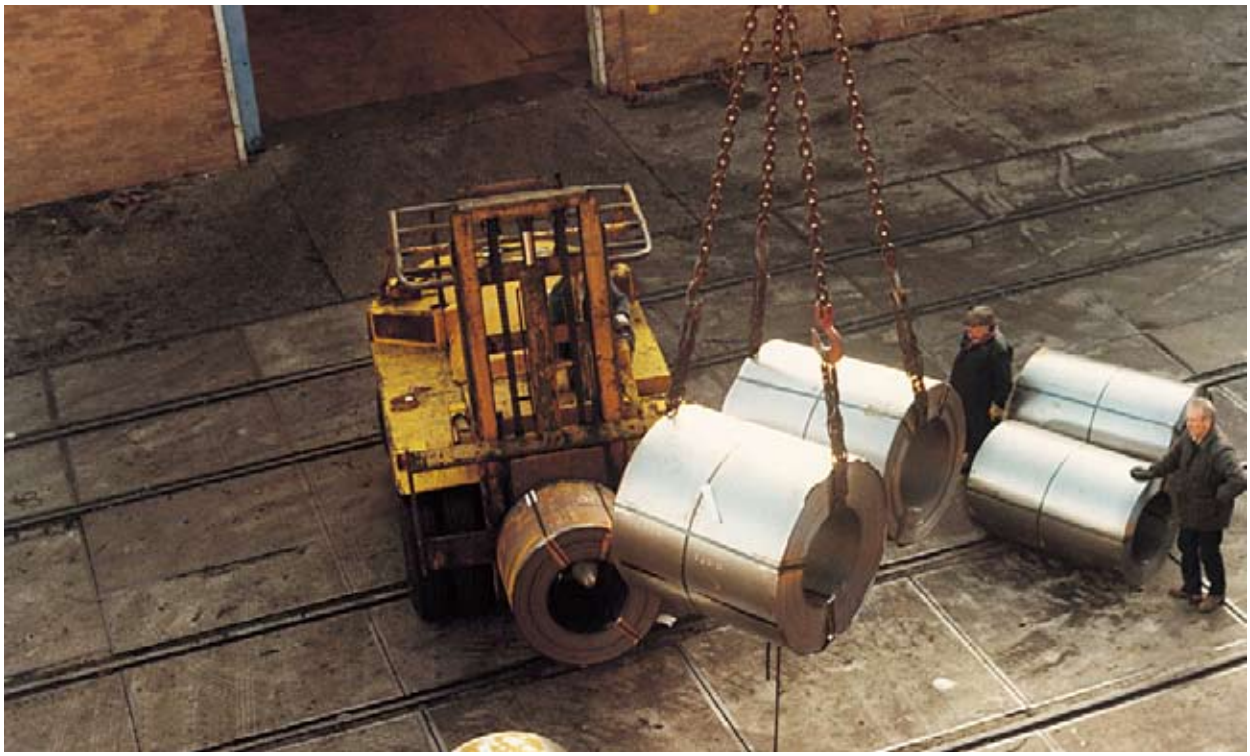
The positive aspect of the appeal decision is that the court appears to have played down many of the arguments on the use of dehumidifiers. Somewhat surprisingly, those arguments in relation to seaworthiness lost out to a much less sophisticated system: wiping and mopping. Ultimately, the carrier appears to have fallen foul of not complying with a basic principle of ventilation, which is not to ventilate non-hygroscopic cargoes on voyages from cooler to warmer climates. That basic principle is, however, just a basic principle and arguably over-simplifies matters. As mentioned in the previous Gard News article, cargo sweat can be difficult to avoid when cold cargo comes into contact with warm moist air when the holds are opened at discharge. Such "flash condensation" has been known to occur and it could have occurred on voyages such as those in this case, had there been no ventilation. It is interesting that the appeal court even commented that there was evidence of benefits in ventilating the steel cargo despite its non-hygroscopic nature, including warming the cargo.

It is also worth noting that at first instance and on appeal the Australian courts have considered the dew point rule an approximation and a system that in some circumstances might be considered improper. There was reference in both court judgments to the "three degree rule", which permits ventilation only if the external air dew point temperature is three degrees lower than that in the hold.[4] If any guidance can be given, it is to be aware of the risks of condensation and to seek instructions from shippers as to ventilation requirements. With cargoes like steel, which are very susceptible to damage from condensation, particular care is needed and the carrier needs to be confident that whatever ventilation system is adopted will improve the conditions within the hold without risk of condensation. If in doubt, seek expert guidance.

1 "Condensation damage – Australia".
2 C.V. Scheepvaartonderneming Ankergracht v Stemcor (Asia) Pty Ltd [2007] FCAFC 77 (31st May 2007).
3 Stemcor (Asia) Pty Ltd v C.V. Scheepvaartonderneming Ankergracht [2005] FCA 1808 (16th December 2005).
4 This rule is also given to the practice of only ventilating if the temperature of the outside air is at least three degrees cooler than the average cargo temperature at the time of loading, which can of course be difficult to determine.

Gard News 180,
➔ November 2005/January 2006

When can a master refuse to load damaged cargo?



Following a recent decision of the English High Court, very clear terms must be set out in the charterparty if the parties wish to give the master the right to reject damaged cargo before it is loaded.

Introduction

The question of whether a cargo, often a cargo of steel products, is in "apparent good order and condition" and the resulting disagreement as to whether the bill of lading should be claused (and if so, in what terms) arises regularly. Disagreement may arise because there is a genuine factual dispute as to the true condition of the goods. Alternatively (or sometimes additionally), for letter of credit reasons, a shipper will want a clean bill of lading, whereas a master has the right and the duty to protect both the shipowner and the future bill of lading holder(s) and to place remarks on the bill which in his reasonably-held opinion accurately reflect the condition of the goods.

Any disagreement is usually resolved by discussion between the parties. Either a wording for insertion into the bill by the master is agreed, or a clean bill is issued against the provision to the shipowners by the charterers of a letter of indemnity (LOI). The first solution is the one preferred and recommended by Gard. The second is likely to leave an owner without P&I cover (see Rule 34 1 ix of Gard's 2005 Statutes and Rules) and with little or no defence to a claim by an "innocent third party" for damage which should have been noted on the bill.

In Gard's experience, it is relatively rare for a master to refuse to load damaged cargo. This usually happens when there is a clause in the charterparty which requires the master to sign clean bills of lading, but which allows him to reject cargo which is in such a condition that a clean bill could not be issued. Nevertheless, this does happen from time to time and a recent decision of the English High Court[1] provides useful guidance on the points which masters, owners and charterers should have in mind when faced with such a situation. Interestingly, this was an appeal by owners Sea Success Maritime (SSM) from an award in favour of charterers African Maritime Carriers (AMC) by a tribunal of London arbitrators. Under English law, it is very difficult to obtain leave to appeal against an arbitration award. The fact that leave to appeal was granted suggests that the judge who heard the application thought there were important issues which should be heard by the High Court.

The facts

SSM were the owners and AMC the charterers of the SEA SUCCESS. The vessel was chartered on the well-known New York Produce Exchange form. There were several other charterparties "down the line" to various sub-charterers, essentially on identical terms. The same arbitrators were appointed under each charterparty and the disputes were dealt with concurrently.

In September 2004, the vessel was ordered to load a cargo of steel pipes at Constanza, Romania. Having inspected them before loading, the master found the pipes to be damaged. He refused to load them. The dispute was resolved by the issue to owners of an LOI. The vessel then

1 Sea Success Maritime Inc. v. African Maritime Carriers Ltd. [2005] EWHC 1542 (Comm); 15th July 2005

After initial inspection of the cargo, shippers may change their intended desription of the cargo in the bill of lading.

sailed to Novorossiysk. There, she was instructed to load a cargo of hot rolled steel coils. The same situation arose. The master considered the coils to be damaged (which in Gard's experience is not uncommon with such cargo) and refused to load them. This time, rather than an LOI being issued, the parties entered into a "without prejudice" agreement which resolved the immediate problem. The cargo was then loaded.

The basis on which the master refused to load the cargo

In support of his decision to refuse to load the cargo in question, the master (and SSM) referred to clause 52 of the charterparty with AMC. This clause read:

"The vessel to use Charterers' Bills of Lading or Bills of Lading approved by Charterers and/or sub-Charterers which to include … Clause Paramount General, USA or Canadian, as applicable, … during the period of this Charter. Master to authorise, time by time, in writing Charterers or their appointed Agents to sign Bills of Lading on behalf of Master in accordance with Mate's Receipts. Master has the right and must reject any cargo that are [sic] subject to clausing of the BS/L."

SSM relied on the last sentence of this clause which, they argued, meant that the master could and should refuse to load cargo which was in such a condition that, if it was loaded, the bills of lading would have to be claused. Effectively they were arguing that only cargo which was in "apparent good order and condition" could be loaded.

There seems to have been no dispute between SSM and AMC as to the actual condition of the cargo at both Constanza and Novorossiysk. So far as the Novorossiysk cargo was concerned, AMC agreed and confirmed that the bills of lading would contain the description of the cargo and its condition as set out in the pre-loading survey report prepared on owners' behalf. On this basis, AMC said that the master would not need to clause the bills of lading (because they already contained the surveyor's remarks) and thus that he had no good reason to refuse to load the cargo.

The arbitration

The dispute went to arbitration. It was heard by three well-known London arbitrators. Essentially, they had to decide two questions:

1. In what circumstances, on the true construction of clause 52 of the charterparty, is the master entitled and obliged to reject the cargo presented for shipment/tendered for loading?
2. Did those circumstances exist at Novorossiysk?

In answer to the first question, the tribunal decided that the master could/should reject the cargo "... if the cargo, once loaded (emphasis added) would be properly described in the bill of lading in a way which would qualify the statement of apparent good order and condition ... proposed to be stated in the bill of lading by the shipper".

In answer to the second question, the tribunal's answer was "no", on the basis that there was no dispute as to the condition of the cargo, nor the description of it that would be inserted in the bills of lading. The tribunal was no doubt influenced by the fact that SSM and AMC were essentially in agreement as to the proper condition of the cargo. SSM sought leave to appeal against these findings and obtained it. The appeal was heard by the High Court in early July 2005.

The High Court's findings

The judge upheld the tribunal's decision and thus found in favour of AMC. Broadly, he approved of the tribunal's reasoning. He made the particular point that clause 52 (and presumably similar clauses) was not intended to be used if there was no dispute between SSM and AMC as to the condition of the cargo. The judge accepted that the clause would operate if the master (correctly) intended to clause the bill in relation to the condition of the cargo, but the shipper did not agree.

The judge also dealt with what he called the "timing point". This concerned SSM's argument that it was impractical for a master to try to reject cargo once it had been loaded, an argument with which many readers will have sympathy. Nevertheless, the judge rejected this argument. He concluded that, after the initial inspection of the cargo (whether by the master or by the pre-loading surveyor), the charterers/shippers have the opportunity to change their intended description of the cargo in the bill of lading. Thus, he felt, it would be premature for the master to reject the cargo at that time. If charterers/shippers agreed to the bill being worded in terms acceptable

to the master, there is no dispute and clause 52 does not operate (see above). In the judge's view, it was only if the charterers/shippers declined to change their description of the cargo in the bill of lading (i.e., refused to allow the bill to be claused as required by the master) that clause 52 operated and the master was then allowed and required to reject the cargo.

Because it did not arise here, the judge said nothing as to the master's position if the charterers/shippers do not reply to his request that they agree to the bill(s) of lading being worded in terms acceptable to him. Under English law, silence is not agreement. Thus it would seem that, if faced with a clause in the charterparty worded similarly to clause 52, the master would probably have to continue loading, but would have the right and obligation to clause the bill(s) himself, just as he would have if the charterers/shippers had refused his request.

Comment

It must be said that clause 52 is not clearly worded. Although the intention appears to be that the master "has the right and must reject" damaged cargo prior to loading, the last sentence has been interpreted by a tribunal of London arbitrators and a High Court judge as meaning something different, especially as to when the master can exercise his right and obligation to reject. If owners, or indeed charterers, wish to give the master the right to reject damaged cargo before it is loaded, this will have to be set out in very clear terms in the charterparty.

We have mentioned above the position where a clause in the charterparty requires the master or his agent to sign only clean bills of lading, but also gives him the right to reject cargo for which clean bills can not be issued. Based on this case, it seems that such a right to reject may arise only once the cargo has been loaded. It is therefore suggested that owners who are asked to accept such a clause stipulate in clear terms that the master is entitled to refuse to load (not merely "reject") cargo for which in his opinion a clean bill could not be issued.

It is also worth stressing that both the tribunal and the judge appear to have been strongly influenced by the fact that SSM and AMC were in agreement as to the condition of the cargo, especially the Novorossiysk cargo. It is apparent that AMC were willing to allow SSM's surveyor's remarks to be inserted into the Novorossiysk bills. Had this been done, it would have been difficult for SSM to have argued that the bills did not accurately state the condition of the cargo at the time it was received by the vessel. If there had been no agreement between SSM and AMC and had AMC insisted on clean bills being issued, it seems the position would have been very different. The judge found that clause 52 would have operated in such circumstances, although he does not seem to have considered how, in practice, the vessel would have discharged the steel coils already loaded.

Lastly, the judge re-stated what almost all practitioners would recognise as being the correct state of affairs in such matters. To paraphrase the judge, he said that if the master (or often a surveyor acting for owners) inspects the cargo and reasonably considers it to be in such a condition that the bill of lading should be claused, the parties have a choice. Either the charterers/shippers agree to the bill of lading being so claused, in which case the master can sign it, or give authority for it to be signed on his behalf, because he is satisfied that it accurately reflects the condition of the cargo, or the charterers/shippers refuse to themselves clause the bill, in which event the master must do so himself.

In so saying, the judge repeated the well-known position under English law that a master has to take what he called a "... reasonable, non-expert view of the cargo ... as he sees it."

A master will often seek a second opinion from a surveyor and in the case of cargoes of steel products, it is common for pre-loading surveys to be carried out, as happened here.

What is uncommon is that the master and SSM refused to allow the cargo to be loaded, even though AMC confirmed that the surveyor's remarks would be inserted into the bills of lading.

Both the arbitrators and the judge found that clause 52 of the charterparty did not allow SSM to refuse to load the cargo. It remains to be seen whether, having lost on two occasions, SSM wish to appeal to the Court of Appeal. We shall keep readers informed.

The "timing point" is an important factor.

Pre-loading surveys of steel cargoes - When are they recommended?

Gard News 171,
→ August/October 2003

Articles in Gard News issues No. 144 and 153 discussed steel pre-loading surveys and the Club's policy and recommendations in this regard. Recent experience has demonstrated that there may still be some uncertainty with respect to this issue.

In particular, it has been observed that some members do not fully appreciate that there are some steel products which normally do not justify the costs of having a pre-loading survey arranged.

As a general guideline, the Club will cover the costs involved in owners' entries pre-loading survey on finished steel products. Accordingly, it is normally recommended that pre-loading surveys be carried out on the following products:
– Hot rolled steel in coils or bundles
– Cold rolled steel in coils, packs or bundles
– Galvanized steel
– Stainless steel
– Tin plates
– Wire rods
– Steel pipes
– Structural steel (rebars, channels, angles, beams, bars, strips, sections, forgings)

However, certain low-value and semi-finished products, such as those listed below, normally do not require a pre-loading survey:
– Steel billets
– Steel blooms
– Steel slabs
– Steel scrap
– Steel swarf
– Pig iron.

Nevertheless, if despite the Club's recommendation a member wishes to have a pre-loading survey of any of the above low-value and semi-finished steel products carried out, the Club may assist with the arrangements, but the costs of the survey will be for the member's own account.

It should be noted that the mere failure to carry out a pre-loading survey on finished steel products does not prejudice the P&I cover. But, as always, the P&I cover may be prejudiced if the master or the member knows that the bill of lading, waybill or other document evidencing the contract of carriage contains an incorrect description of the cargo or its quantity or its condition.

Finally, there are occasions when it makes sense for an owner to agree with a time charterer to share the costs of a pre-loading survey on a 50/50 basis. Generally, the Club does not have a problem with this, and it may be a good solution from a cost perspective if there is a sound on-going commercial relationship between owners and charterers. However, it is appropriate to warn owners against agreeing to share the costs of a pre-loading survey with voyage charterers for the obvious reason that voyage charterers will quite frequently have a very close commercial relationship with the shippers, with the result that disputes over remarks in mate's receipts and clausing of bills of lading can easily occur.

Steel – Seawater wetting inland?

Gard Loss Prevention Circular
→ 12-02

THE SCENARIO

Roads and other surfaces are commonly sprayed with salt in winter to prevent and remove frost and ice. When that salt becomes mixed with water on the roads, from rain or melted ice, the salt gets taken up in the spray generated from vehicles on the roads. Steel transported by road on lorries, is often not covered at all or insufficiently covered, e.g. by tarpaulins. This can lead to the steel being exposed to the salt laden spray. The result is salt contamination.

THE PROBLEM

It is well known that steel products are sensitive to salt contamination, principally because of the risk of the steel rusting. The mere presence of chlorides on coils often, therefore, leads to rejection of the cargo by receivers, and losses resulting from agreed depreciations, salvage sales or even disposals. The losses on particularly sensitive types of steel, for example cold rolled coils, can be significant – tens to hundreds of thousands of US dollars. Invariably when a receiver discovers that chlorides have contaminated the coils, he is inclined to think that the cause is seawater, and the damage having occurred during the sea transit. Whilst tests confirming the presence of chlorides are not infallible, they may, together with other evidence, for example the presence of heavy weather during the sea transit, suffice to establish a prima facie case that the sea carrier is the responsible party.

This general problem highlights the need to protect shipowners position against claims for pre-shipment damage.

THE SOLUTION

It follows that it is very important for the sea carrier to have good evidence of the condition of the steel at the time of loading and discharge from the vessel to properly assess whether cases against them have any merit. That is why sea carriers are recommended to instruct properly qualified and independent surveyors to perform pre-shipment and outturn surveys of steel (for further information/comment see the article "Steel pre-shipment surveys" in Gard News 153, March/May 1999, pages 35-39). As part of such surveys, the Master is advised to ensure that the surveyor tests steels, particularly those suspected to have been in contact with moisture, for the presence of chlorides. This test is usually done with a silver nitrate, which turns milky when exposed to chlorides. As a follow-up to this circular, please refer to the upcoming Gard News 169 in February 2003 for further information on silver nitrate testing.

Further information can also be found in the Gard Guidance on Bills of Lading on our website at www.gard.no.

We are grateful to our correspondents in Barcelona, Bull Sworn Marine Surveyors S.L for drawing our attention to this issue and for providing the images of steel on lorries being affected by sprays on Spanish roads, accompanying this article. With the winter in the northern hemisphere around the corner the problem of salt contamination from road spray will not be isolated.

California Block Stowage - Too free and easy?

Gard News 160,
➔ December 2000/February 2001

INTRODUCTION

The California Block Stow (CBS) method of stowing steel slabs has been in existence for a number of years. As the name suggests, the method originated in California, reportedly with California Steel Industries. The idea behind this method appears to have been to increase "efficiency" in cargo handling, although it is unlikely to have been coincidental that one result of the use of this method is to reduce the time and cost involved in cargo handling by the stevedores.

This method involves binding together steel slabs into a free-standing stow. The slabs are loaded fore and aft, dunnaged and shored up and then lashed with "Signode" strapping. This system uses steel strapping and metal clips, rather than wire ropes and turnbuckles, to secure the goods. The straps secure only the top few tiers in the outer stacks vertically. The slabs inside the stack are essentially free-standing, held in place only by their own weight, by the weight of the slabs outside and above them and the strapping.

Although ease and speed of loading and discharging is important commercially, it is more important, both for the safety of the vessel and her crew and cargo, that the best and safest method of stowing and securing the cargo is used. This is particularly the case where the cargo is large, heavy, steel slabs. Gard Services' view is that the CBS method is not necessarily the best and safest method in all situations and that the traditional method is to be preferred.

ARBITRATION

A case which ended up in arbitration in New York and which resulted in the losing party paying close to a seven figure sum in respect of damages, makes it clear that using the shortcut of the CBS method does not produce the desired result in the long run. The case involved several parties and a number of issues, but the basic facts are set out below.

The vessel in question, a self-trimming five-hold bulker, was built in the early 1980s. In early 1995, she loaded a cargo of nearly 15,500 MT of steel slabs at a port in southern Italy. The cargo was destined for the US East Coast. Prior to loading, the Master was informed that the CBS method would be used. He had never carried steel slabs before and initially suggested the more time-consuming but tried and trusted method of stowing the slabs athwartships, extending the stow to the sides of the hopper tanks. However, the shippers persuaded him that the CBS was appropriate and that they had considerable experience of this method. He therefore accepted their stowage plan. He also signed a letter given to him by the shippers in the following terms:

"This is to certify that the cargo laden onboard my vessel has been loaded, stowed, secured and lashed under my supervision and up to my complete satisfaction. The vessel is in all respects seaworthy and is ready to carry on her voyage."

Unfortunately, a few days after sailing and whilst still in the Mediterranean Sea, the vessel suddenly listed in moderate, but not exceptional, weather conditions. An inspection

of the holds showed that the cargo in all five holds had shifted to port. The shipowners declared general average and the Master decided to put into a port of refuge in one of the Mediterranean islands. There, the cargo was re-stowed in accordance with the recommendations of the surveyors who attended on behalf of the various parties. Interestingly, the surveyors recommended that steel brackets be welded in each hold to prevent the stow shifting, but other than this change, the stowage method was essentially the same as had been used at the port of loading, i.e., the CBS method. The remainder of the voyage was uneventful and the vessel and cargo arrived safely at the port of discharge.

THE CLAIMS

There were a number of disputes between the various parties. There were claims both up and down the line of charterparties for hire and bunkers paid or withheld. The shipowners also claimed the re-stowage and associated costs, to the extent that they had not been reimbursed in general average. The (voyage) charterers at the bottom of the chain of charterparties also claimed their general average contribution. All these disputes were consolidated into an arbitration, which took place in New York before a panel of three arbitrators.

Essentially, the matter fell to be dealt with on the basis of clauses 8 and 15 of the standard New York Produce Exchange (NYPE) form of charterparty. Both these clauses were materially unamended. In particular, clause 8 did not contain the words "and responsibility" after the words "under the supervision of the Master".

THE ARGUMENTS

Owners argued that the weather encountered by the vessel was not unusual for the time of year and that the cause of the cargo shift was failure by the shippers to properly follow their own loading plan. Owners further said that clause 8 rendered the voyage charterers responsible for incorrect and/or inadequate stowage and securing of the cargo.

Voyage charterers disagreed. They maintained that the (CBS) method of stowing the goods was appropriate and that the stowage and securing by the shippers was correct and adequate. They referred to the Master's "letter of satisfaction" in support of their position. In their view, an exceptionally heavy roll must have caused the cargo in all five holds to shift, which further indicated negligent navigation on the part of the Master.

THE ARBITRATORS' DECISION

One arbitrator dissented from the decision of the other two. There was much argument about the weather conditions encountered by the vessel and the extent of roll of the vessel which would or should cause the cargo to shift. Expert evidence was submitted by both sides. On the basis of the evidence which they saw and heard, particularly from the various surveyors who attended the vessel at the port of refuge and assisted in the re-stowage operation and the surveyor who carried out a pre-loading survey of the cargo, the majority decided that the shippers had not followed their own loading and stowage plan. The majority found that there were deficiencies in the lashings used and insufficient lateral support for the slabs. It also found that the slabs in each "stack" were not of uniform size. This naturally meant that each stack was itself not of uniform size.

The panel then considered who was contractually responsible for the poor stowage. Owners argued that the wording of clause 8 placed such responsibility on the voyage charterers. Somewhat surprisingly, perhaps, the voyage charterers accepted that this was correct. Nevertheless, the voyage charterers argued that:

- the true cause of the casualty was unseaworthiness on the part of the vessel, not poor stowage;
- this unseaworthiness was caused by negligence or fault on the part of the shipowners (or their servants or employees);
- there was a non-delegable duty on owners to ensure that the vessel was seaworthy;
- the Master had a duty to supervise the loading and stowage of the goods and familiarise himself with the nature of the goods, over and above his responsibility to ensure the stability and seaworthiness of his ship.

Essentially, the case came down to the question of causation. Was the cause poor stowage or unseaworthiness? The majority decided that the cause was poor stowage and went on to say that the Master (who, it will be recalled, had never carried this cargo before) can not be expected to be an expert in the carriage of every type of cargo. He was entitled to rely on what he was told by the shippers, who represented themselves as being well versed in the CBS method. The letter of satisfaction simply confirmed what the Master had been told by the shippers and was described as being no more than a letter which stevedores in many ports require a Master to sign on completion of loading.

The dissenting arbitrator disagreed with the conclusions of the majority. It is not known whether he was appointed by the voyage charterers, but, effectively, he supported their position. In particular, he felt that the Master should have done more to supervise the loading and stowage of the goods and to satisfy himself that it was correct and safe, rather than (in the arbitrator's view) simply sitting back and allowing the shippers to take over this responsibility. The arbitrator also felt that more weight should have been given to the letter of satisfaction signed by the Master. He accepted that the Master had a duty to ensure the stability and seaworthiness of the vessel before and at the time of sailing, but, on the basis of the evidence submitted, was not satisfied that the Master had done so. He therefore concluded that the main fault lay with the Master and his employers, the shipowners.

Despite this dissent, the majority allowed the shipowners to recover virtually all their claim from the voyage charterers, who had agreed to step into the shoes of owners' contracting party. Inclusive of interest, the amount recovered came to slightly more than USD 800,000. In addition, the majority awarded attorneys' fees and disbursements. Although not specifically mentioned in any of the charter contracts, an award of such fees had been requested by each party. This item came to USD 170,000.
Thus the total amount payable by the voyage charterers was almost USD 1 million.

CONCLUSION

In reaching their decision, the panel made it clear that they were not passing judgment on the CBS method itself. They also accepted evidence that numerous cargoes of steel slabs stowed using this method were carried at sea without any problem. However, several of the surveyors with whom Gard Services has regular contract have expressed the view that this method is inherently less safe than the traditional method of stowing and securing such large and heavy pieces of steel. For this reason, Gard Services does not recommend the use of the CBS method.

Pre-loading surveys of steel products

Gard News 144,
➔ April 1996

STEEL CARGOES AND BILLS OF LADING

One of the functions of a bill of lading is that of a receipt for the goods loaded. As such, it will usually state the apparent condition of the cargo at that time. All those to whom the bill of lading is transferred normally rely on that statement to form a view on the condition of the cargo at the time of loading. This is especially important for buyers and receivers of cargo. Where the bill of lading shows that something was wrong with the cargo at the time of loading the buyer may be able to reject the cargo under the contract of sale, or at least claim damages from the seller. On the other hand, if the bill of lading states that the cargo was in apparent good order and condition at the time of loading and at discharge it is not in the same order and condition, then the receivers will not have a claim under the contract of sale, but instead will have a claim under the contract of carriage, that is, a claim against the carrier. In virtually all jurisdictions, the carrier is unlikely to have any defence whatsoever to such a claim if in fact the damage existed prior to loading and such damage was known by the master to exist, but the bill of lading was issued clean. Since it knowingly mis-states the true condition of the cargo, the bill will, in such circumstances, normally be regarded as a fraudulent document. Consequently, owners will almost certainly lose their P&I cover, as well as find themselves liable in full to cargo interests: a double blow! A letter of indemnity from the shippers is unlikely to be regarded as legally valid and owners' only hope of salvaging something will be if the shippers are willing to honour any such indemnity. It should always be kept in mind that the owners and through them, the master, have a duty towards the innocent third party cargo buyer to protect his position by properly clausing the bill.

It may be that issuing a bill of lading showing that something was wrong with the cargo at the time of loading creates commercial problems for the shippers, since the bill may be rejected by banks under documentary credit transactions. This, however, is a problem for the shippers (who have, after all, supplied damaged cargo for shipment) and should not affect owners' approach. Nevertheless unnecessary or meaningless clauses should be avoided, as should remarks which do not relate strictly to the condition of cargo at the time of loading. Clauses inserted in Mate's receipts and bills of lading should always be carefully and selectively considered.

PRE-LOADING SURVEYS OF STEEL CARGOES

Steel products are particularly prone to damage which may result in a claim against the carrier. Hence special care should be taken when issuing bills of lading for this type of cargo. For various reasons the ship's officers may be unable to properly ascertain the condition of the cargo and clause the bills of lading accordingly. This may be because the loading operations start so soon after the vessel has arrived at the relevant port that there is no time for the officers to examine the cargo prior to loading, or perhaps because the officers are not familiar with the system used for marking and identifying the cargo at the particular port, etc. For these reasons it is common practice for shipowners to appoint a surveyor with relevant experience to inspect the cargo prior to loading on board. The surveyor should carefully ascertain the condition of the cargo at that time and assist the master in preparing suitable clauses to be inserted in the bill of lading.

Pre-loading surveys are outside the scope of the regular P&I cover. However, for some time it has been Gard's policy to encourage Members to carry out pre-loading surveys every time steel products are loaded on board their vessels. As a consequence, the Association regularly assists Members in arranging such surveys and may cover the costs involved under the individual Member's P&I cover.

COVER NOT SUBJECT TO DEDUCTIBLE

Because pre-loading surveys of steel cargoes are an important loss prevention tool, every incentive should be given for Members to undertake such surveys. In order to achieve that objective, the costs of pre-loading surveys may be covered by Gard, in which case they will be treated as "special costs". This means that the costs will be absorbed by the Club, regardless of any deductible applicable to "normal" costs, thereby being incorporated into the Member's loss record.

CHARTERERS

The main purpose behind pre-loading surveys of steel cargoes is to ensure that Mate's receipts and bills of lading are claused in a manner which reflects the actual condition of the cargo at the time of loading. The survey is therefore an important instrument which assists the ship's officers in properly clausing Mate's receipts and bills of lading.

On the other hand, in cases involving charterers' entries the main purpose of a pre-loading survey report is to secure a recourse against the shipowners or possibly to assist in the negotiation of claims. Therefore there is a fundamental difference in the function of pre-loading surveys under owners' entries and charterers' entries and as a consequence the relevant costs are not covered under charterers' entries, unless special terms of entry have been agreed with the Club.

Nevertheless, charterers are recommended to do their utmost to ensure that owners carry out pre-loading surveys of steel cargoes. This could be achieved through a charterparty clause placing an obligation on owners to carry out a pre-loading survey. We recently spotted the following clause in a charterparty:

"If steel is to be loaded a pre-loading survey to be performed by Owners' P&I Club appointed surveyor. Cost of same to be for Owners' account".

Something as simple as that would be sufficient.

REMARKS TO BE INSERTED IN THE MATE'S RECEIPT AND BILL OF LADING

One must differentiate between cases where the bill of lading is issued by the shipowners (the Member) and cases where the bill is issued by the

charterers. Where the bill of lading is issued by the shipowners, in order to be entitled to cover for the costs of the pre-loading survey the Member must ensure that the surveyor's remarks are inserted in both the Mate's receipt and the bill of lading. If the remarks are inserted in the Mate's receipt but not in the bill of lading, the cost of the survey will not be covered.

Where the bill of lading is issued by the charterers, costs may be covered even though the surveyor's remarks are not inserted in the bill of lading, provided they are inserted in the Mate's receipt (and provided the Master's Letter of Authority states that the bills are to be signed strictly in accordance with the Mate's receipt), unless the charterers have the shipowners' consent to the manner in which they have issued the bills of lading.

FOLLOW-UP HATCH SURVEY AT DISCHARGE

Where there has been a pre-loading survey, a follow-up hatch survey at discharge is always recommended. These costs will be covered as regular costs, subject to the applicable deductible.

Steel coils from China contaminated by asbestos

Loss Prevention Circular
➔ No. 01-07

Gard has recently been advised by our Antwerp correspondents of steel cargoes from China allegedly contaminated by asbestos. We understand that other P&I Clubs have also been notified of similar cases.

The problem appears to be mostly associated with steel coils shipped from Bayuquan in China. In the case in which Gard is involved, we were informed by our Antwerp correspondents that charterers had specifically asked for a survey to be carried out upon arrival at Antwerp of unpacked hot rolled coils.

The coils had been shipped on board three different vessels from Bayuquan to Antwerp and are reportedly contaminated by asbestos. The appointed surveyor attributed the contamination of the coils to being put on fire resistant material during the production process while still hot.This fire resistant material, however, contains asbestos fibres, causing contamination of the hot rolled coils. The surveyor involved in this particular case is of the opinion that the contamination may have been visible at the time of loading.

Discussions are ongoing whether this sort of contamination of hot coils may have been visible at the time of loading and whether, accordingly, the relevant bills of lading should have been properly claused. What is clear is that substantial time and money has had to be spent on cleaning each coil prior to discharge.

We have been advised that in one incident, an expert was appointed on behalf of the carrier during loading in China and his intervention resulted in many coils being rejected due to contamination of asbestos. Information received suggests that unsuccessful attempts were made to remove the asbestos by cleaning with a brush. More importantly, we understand that the shippers intend to load these same coils aboard a substitute or later vessel.

Recommendation

Gard recommends that Members and clients exercise extra caution when fixing a vessel to load hot rolled steel coils in China. To provide the Member with the best possible protection, we strongly recommend that a local expert is appointed to inspect the cargo upon loading of hot rolled coils in China and that Members ascertain the pre-shipment history of the coils.

P&I incidents involving steel cargoes

Gard News 144,
→ April 1996

In the preceding article we have discussed the reasons for and the Association's policy on pre-loading surveys of steel cargoes. There is no doubt that pre-loading surveys are vitally important in establishing the condition of the cargo at the time it is received into the carrier's custody thus enabling him (provided the Bills of Lading have been properly claused) to defeat or reduce numerous claims for alleged damage made by cargo interests. Nevertheless, steel cargoes continue to generate a significant number of claims and the opportunity is taken here to re-state some fundamental principles of claims handling.

Sea water is the greatest enemy of steel products. Hatch covers and fittings should therefore be properly and timely maintained. Ram-Nek tape and/or expanding foam should not be used as a substitute for such maintenance, but only as an additional safety precaution.

Example: a bulk carrier entered with the Association loaded 266 coils/6,020 MT of hot rolled steel sheet in coils in the US Gulf. Some minor exceptions were recorded in the pre-loading report and the bills of lading were claused accordingly. During her voyage to Japan, the vessel encountered heavy weather, with winds up to Force 11 and the ambient temperature dropped sharply. At the time of discharge, all 266 coils were found to be rusty, with some 71 per cent being badly affected by sea water, which had entered through the defective hatch covers of one hold and through a hole caused by corrosion of the bottom plate of a crane post.

A claim in excess of USD 600,000 was submitted and it was only by the use of the US package limitation that it was possible to settle with cargo interests at a much reduced figure.

Fresh water wetting is often less of a problem. Many coils are left ashore in open storage, exposed to the elements, either before loading or after discharge.

Nevertheless, high-value cargo such as galvanised coils cannot be wetted by fresh water with impunity: on the contrary, all possible care should be taken to ensure that the cargo does not become wetted during the voyage. This requires stowage with compatible cargoes and protection from condensation. Ventilation may inevitably have to be restricted during periods of heavy weather and if the cargo is not properly protected,

damage will be noted at the time of discharge. Plastic sheeting is often an effective means of protection against sweat.

Example: a cargo of steel coils was stowed by the charterers in the same hold as a consignment of wet lumber. Ventilation was restricted during the voyage from the Great Lakes to Japan and moisture migrating from the lumber caused severe rusting to the cargo. A seven figure claim was submitted. Our shipowner Member had to face the claim and reached an amicable settlement.

Physical loss or damage can also be costly. Proper stowage and securing is essential, especially when heavy weather is expected. Large, heavy, packages, often weighing several tonnes, can cause substantial damage to themselves, other cargo and sometimes the vessel herself if they become free to move around during a voyage. Extra delay and costs may also be incurred if the cargo is damaged to such an extent that it cannot be discharged in the normal manner.

Strange though it may seem, it is also often alleged by cargo interests that the vessel has somehow lost one or more coils/sheets/beams/angles. As mentioned, such cargo is large and heavy and the chances of it disappearing during a voyage are remote, to say the least. It is hardly pilferable! Nevertheless, such claims do arise and it will considerably assist in the defence of such claims if tallies can be produced to support the (logical) argument that, if a vessel loaded a certain number of coils at one port, sailed to another port without discharging cargo elsewhere and was empty of cargo on completion of discharge, she must have discharged all the coils loaded. In the absence of tallies, it is sometimes possible to go one step back and require cargo interests to discharge the initial onus on them to prove the quantity loaded.

Example: a vessel entered with the Association loaded a quantity of steel billets in bundles in Eastern Russia for carriage to Taiwan. The case was complicated by the fact that two different sets of original bills of lading were issued, but since the quantity of cargo shown in both sets was the same – 1,380 bundles weighing 12,038 MT – this issue is not relevant here. Cargo interests alleged that only 1,348 bundles, weighing 10,757 MT were discharged and thus, that there was a shortage of 32 bundles or 1,281 MT and argued that the bills of lading were prima facie evidence of quantity and weight. Shipowners argued that they were not. Each side produced evidence to support its argument.

The bills of lading were claused "All particulars (weight, measure, marks, numbers, quantity, contents, value and etc. [sic]) thereof as stated by the Merchant but unknown to the Carrier." The case went before the English High Court of Justice, where the Judge found that the claimants had been unable to prove, on the evidence submitted, that any particular weight of cargo was loaded. Nor had they proved that a lesser weight was discharged than was shipped. Accordingly, it was held that cargo interests had failed to prove their claim and the shipowners succeeded.

It has to be said that neither side's evidence was found to be particularly impressive, but the Court appears to have concluded that the unsatisfactory nature of the evidence as to the quantity allegedly loaded, together with the lack of correlation between the weight of the quantity allegedly shortlanded and the number of bundles allegedly shortlanded (32 bundles would, on average, have weighed 279 MT), meant that cargo interests' case did not get over the first hurdle.

Accurate and reliable tallies might, however, have lead to a different result.

In view of the huge trade in steel products, claims involving such cargoes are unlikely to die out, but there are a number of simple preventative measures which can be taken and which, if performed properly, should go a long way towards avoiding such claims, or enabling a strong defence to be mounted. Often the damage to the cargo is of a pre-shipment nature but this can only be proved if pre-shipment surveys are carried out.

Example: In May/June this year one of Gard's entered vessels loaded a full cargo of various steel products: bars, coils (hot and cold rolled), pipes, wire rods etc.

Pre-loading surveys were arranged at all the loading ports: Ventspils, Stettin, Brake and Antwerp. The findings of the surveyors, which included rust-stained cargo, indent and chafing marks, damage to ends of pipes, protecting caps and strapping bands missing etc., were entered into the Mate's receipts and the bills of lading were claused accordingly.

Upon discharge at US Gulf ports, the receivers complained about rust and mechanical damage to the cargo, and joint surveys were arranged together with surveyors from receivers. The surveyors found that the cargo had been properly handled and stowed. Further, there were no signs of seawater entrance into the holds, and silver nitrate tests gave negative reactions, thus indicating that the rust damage was of fresh water origin.

When comparing the findings of the surveyors with the remarks entered into the bills of lading, the surveyors concluded that there was no liability on the carrier, and thus no claim is expected.

There is no doubt that without the pre-loading survey and, more important, the clausing of the bills of lading, the carrier would have been in a far more difficult position. Through the years the Association has seen many cases where everything points in the direction of pre-shipment damage. However, with no survey from the loading ports, and clean bills of lading, the carriers have been unable to provide any evidence in their favour.

It also appears that many of the files opened by the Association with a pre-loading survey of steel cargo, are simply closed one year later as there has been no reaction whatsoever from the discharging ports. The fact that the bills of lading have been properly claused seems to discourage the receivers from presenting "unjust claims".

If a pre-loading survey is not carried out, or if the bills of lading are not claused once damage is ascertained during such a survey the result can be very costly.

Example: During discharge of steel coils from one Gard entered vessel the cargo receivers claimed damage to the coils and alleged that the packing/wrapping of the coils outturned in a very rusty condition. The cargo interests demanded security from the shipowner corresponding to the full value of the cargo if an arrest of the vessel were to be be avoided. The cargo surveyor appointed by the Club confirmed that the steel coils were apparently discharged in a rusty condition. It transpired that not only the packing, but also the steel coils themselves were heavily exposed.

Investigations on board the vessel confirmed that there were no signs of water entrance through the hatch covers during the voyage and the holds appeared to be dry. At the time of loading the cargo the weather had been clear and dry. During the voyage the weather had been good with a calm sea and no water on deck. All in all it seemed that the vessel owner was not to blame for the rusty steel coils. A silver nitrate test carried out on the rusty coils also confirmed no traces of sea water.

The steel coils had been on board the vessel for four days only and the heavy rust attacks on the steel coils indicated that the rust must have been of pre-shipment origin.

After more closely checking of the shipment it turned out that the steel coils had originally been shipped on river barges from the inland manufacturers to the sea port. The shipment on the inland barge started two months prior to the loading on board the sea-going vessel. At all times during the transport prior to loading on board the sea-going vessel the steel coils had been stored in the open exposed to the weather.

The consignment of steel coils in question was loaded on board the Gard vessel without any pre-loading cargo condition survey and against clean bills of lading!

The cargo interests subsequently claimed their loss under the same clean bills of lading, and the Member's final exposure in this unfortunate matter amounted to more than USD 100,000 which would have been avoided if the correct measures had been taken at the loadport prior to loading the cargo.

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