

Liar, Liar Ship on Fire, Now What?



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Legal Perspective- Misdeclared Cargoes

Scope of the problem

- Recently, National Cargo Bureau volunteered to inspect 500 containers
- Both imports and exports – DG and non-DG
- Export Containers
 - ❖ 38% of DG Containers failed
 - ✓ 25% cargo securing issues
 - ✓ 15% Improper placards
 - ✓ 5% Misdeclared Cargo
- Import Containers
 - ❖ 49% of DG Containers failed
 - ✓ 44% cargo securing issues
 - ✓ 39% Improper placards
 - ✓ 8% Misdeclared Cargo



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Containership Fire – Values -7,200 TEUs

- CIF Values: excess of \$250mm
- Potential GA/Salvage: est. \$150mm
- PA Claims: excess of \$40mm
- Individual Insurers
 - ❖ Worldwide Exposures
 - ❖ Accumulation of Interest

Now over 20 containerships with capacities over 18,000 TEUs

Liability

- Shipper

- ❖ COGSA §4(3)

- The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising from any cause without the act, fault, or neglect of the shipper, his agent or his servants.

- ✓ Shipper's negligent failure to warn the carrier about foreseeable dangers posed by a cargo can constitute "fault" within meaning of §4(3)

- ❖ COGSA §4(6)

- With respect to Goods of an inflammable, explosive, or dangerous nature, "the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment."

Liability

- Consignee

- ❖ Generally speaking, a consignee/CIF Buyer owes no tort based duty to the carrier or other cargo interests unless Buyer was in a unique position to protect against the harm or warn of known risks

- ✓ *In re Rickmers Genoa*

Misdeclared?

- Misdeclared – Shipper has misstated what the cargo is or has not used the proper shipping name
- Failure to Warn – Although cargo may be properly declared, the shipper knows of the cargo's unique characteristics and fails to provide that information to the carrier
 - ✓ *In re D.G. Harmony*
- Improperly packed/shipped
 - ✓ *In re YM Green*

Issues

- General Average/Salvage
 - Posting of Security
 - ✓ GA Bond and GA Guarantee
 - ✓ Salvage Guarantee
 - Reasonableness
- Particular Average

Issues

- Cargo Liability

- *Insurance to cover the Insured's legal liability arising from their ownership/interest . . . while such cargo is onboard vessels*

- Seasonable Merchantability Clauses

- *Policy is extended to cover the Insured's actual loss in sales caused by a delay in arrival of goods insured under this Policy. It is understood that this coverage applies only if the delay in arrival is directly caused by a peril insured against by this Policy, and that the insured peril occurs after commencement of transit*

Risk Perspective - What can be done?

- “Know your Insured”

- ❖ What type of goods is Insured buying/shipping
 - DG v. Non DG
 - How is it being packaged – is the Insured involved?
 - How are the good being declared
 - Track Record of Shipping Cargo
- ❖ From whom is the Insured purchasing
 - Established company
- ❖ Where is the Seller Located
 - Statistically, more issues with Far East origins
- ❖ How long has relationship been in place
 - Is Seller new to Insured
 - How as the Seller vetted
- ❖ How is Seller vetted
- ❖ Loss Control for Insurers