

## SHIPMENT OF CONTAINERS ON BULK CARRIERS

*Disruption in global commodity supply chain arising from COVID-19 and other causes has led many players to seek alternative options in shipment of containers. One of those options is shipment of containers on bulk carriers.*



A primary obligation of a carrier is to provide a seaworthiness of the ship intended for carriage. The term of “seaworthiness”, used in broadest strokes, usually undertaken by the vessel is prepared to encounter the ordinary perils which may be encountered in course of intended voyage, and the cargo carried shall not suffer any ill effect from attributable to the ship. Therefore, seaworthiness is a major factor where carriage of containers on dry bulkers is considered.

Whilst this term may be stated in variations depending on the choice of charterparty used, a most common example can be found in Article 3.1 of the Hague/Hague-Visby Rules as follows:

**“The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to make the ship seaworthy, properly man, equip, and supply the ship, make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.”**

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Considering other regimes of liability in general also attribute major liability to carrier in this matter it may be worthwhile to review if and how an owner can refuse to carry containers on board.

The first fallback in this consideration is obviously the exclusions concerning the nature of trade and again, the cargoes excluded. E.g., any statement to effect “... the vessel is bulk carrier...” and further descriptions concerning vessel’s exclusive suitability to dry bulk cargoes may allow the owner to defend refusal of carriage of containers.

Even then, it is beneficial for the carrier to keep in mind that Hague/Hague-Visby Rules absolutely exclude on deck cargo if “the contract of carriage expressly states that the cargo is to be carried on deck”, and “the cargo is in fact carried on deck”, therefore depriving the carrier to benefit from defenses as provided under Article 4 of Hague/Hague-Visby Rules. On the other hand, considering Hague/Hague-Visby rules exclude on deck cargo, the carrier may find



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opportunity to exclude liability arising from negligence of carrier and unseaworthiness of the vessel, resulting in loss of cargo on deck.

In any case, it is useful for the carriers to include specific wordings to contracts of carriage such as bills of lading, and charterparties which exclude explicitly focus on carrier's negligence and unseaworthiness of the vessel, thus transferring risks arising from these factors to charterers.

It must be also borne in mind that in addition to contractual matters, dry bulk carriers actually need to have proper permissions from authorities and class in place, and there must already incorporate suitable modifications in their design for carriage of containers. Therefore, any dry bulk carrier missing relevant documentation and modifications in this respect may provide plausible excuse to refuse shipment of containers on ground of not being seaworthy.

The transition to acquire ability to carry containers is usually a multi-faceted process that involves careful examination of cargo spaces, a review of cargo securing arrangement, remeasurement of vessel's structural strength, in addition to incorporation of data necessary for carriage of containers to cargo securing manual. Furthermore the vessel's loading software must be also suitable to calculate container related data. All these changes will have to be approved by vessel's flag state and classification society as well.

Even though all these procedures are critically important to vessel's seaworthiness, the crew must be also sufficiently familiar with practices of a ship carrying containers. This includes the crew's ability to recognize actual nature of the cargo for purposes of safety, skillful application and control of lashing, efficient use of loading software and application of CSM.