

Misdeclared cargoes, risk for charterers

By admin On July 8, 2022 In Cargo, Insurance Marine News, Keep, Marine Liability

Erwann Merrien, Assistant Vice President, Claims at Skuld has written on the topic of misdeclared container cargoes and the risk for charterers.

Following the fire onboard the ULCC **Maersk Honam** in 2018, the US based National Cargo Bureau (NCB) in 2019 conducted a survey of more than 500 containers, in a year that also saw several major container vessel fires.

NCB survey results showed that more than half of the containers failed with one or more deficiencies – 69% of the import containers contained dangerous goods and 38% of the export ones. With a global container trade reaching 206.8m teu in 2021 (up 6.3% year-on-year) despite the Covid-19 pandemic and frequent port congestion conditions, the risk of a serious casualty on a container vessel was permanent and raised concerns, wrote Merrien.

Incidents involving misdeclared or undeclared cargoes ranged from simple customs fines to major casualties involving pollution, wreck removal and/or crew injuries, all liabilities which charterers might be exposed to.

Merrien focused on the risk of wrongfully declared weight or the nature of the cargo itself.

Weight misdeclaration

After several serious incidents involving vessel stability and loss of containers at sea due to misdeclared container weights, this issue was finally considered by the IMO in the SOLAS Chapter VI Reg 2. Important changes to SOLAS regarding container weight verification (VGM) came into force on July 1st, 2016.

Shippers of a packed container are now obliged to provide a verified container gross weight (VGM) to the carrier and terminal prior to loading and unless these requirements are met the container shall not be loaded and carried.

Smuggling of cargo

Most illegal drugs, weapons and contrabands are smuggled via maritime routes and inevitably in containers, which are very rarely inspected. Such criminal activity represented a significant challenge to the charterers as their exposure to liabilities towards owners for having their crew and or vessel detained increases, especially in hot spots for illegal drug traffics like Mexico or the USA. Traffickers would sometimes attempt to “contaminate” legal cargo shipments within the port area but could also set up front companies which they either create or buy so they could run their illegal business with apparent clean export records.

Fire

Merrien wrote that the most frightening and constantly growing challenge for the whole container industry was having a fire onboard which originated from one or several incompatible containers. Due to the size of the container vessels currently deployed on the market and the difficulty in reaching the container concerned during a fire, the exposure to dramatic consequences was easy to foresee. The **X-press Pearl**, which sank in May 2021 off Sri Lanka was probably the latest reference for multiple third parties’ liability, but more recent events could still be found with fire originating from containers on several vessels such as the **Zim Kingston** (4253 TEU) in December 2021, the **CMA CGM Lisa Marie** (11,000 TEU) in April 2022 or the **SL Tweety** (2500 TEU) on June 6th, 2022.

Lithium-ion batteries, the latest threat

In March 2022 the US Coast Guard received a report on a container from China which caught fire at LA/Long Beach and it was noted that the container was misdeclared. The bill of lading indicated that the container was containing ‘synthetic resins’ – a non-hazardous material when in fact it held used lithium-ion batteries, a hazardous cargo that is extremely sensitive to high temperatures. The fate of the **Felicity Ace** in late February 2022, which sank with 3828 cars including electric cars equipped with lithium-ion batteries, “is still in everyone’s memory when it comes to lithium-ion related casualties”, wrote Merrien.

Liabilities to owners

Liabilities toward vessel owners for damage to hull, crew injury, vessel detention or more generally any third-party liabilities like pollution risks, general average, wreck removal or fines were increasing the risks for charterers when the supply chain was not under control.

Most charterparties place on the charterers the responsibility for all claims in respect of any liability or expenses whatsoever arising in connection with the goods and containers carried but will also detail which containerized cargoes are excluded or the conditions of their approval onboard. Skuld clients were therefore “always advised to carefully match their charterparties with their trade needs”.

Although most of the goods are transported in a filled and sealed container (FCL/FCL), which render it difficult for the carriers to identify the real nature of the cargo, Merrien wrote that there were focus areas to minimize the exposure to issues.

The booking process has been pointed out as the main weakness on the carrier side; shippers were “becoming increasingly more inventive when it comes to tricking the carriers”:

- Cargo description is sometimes misleading where generic names are used instead of a specific and relevant itemisation of the cargo. This includes using the wrong UN code for dangerous goods.
- Last minute changes on the booking request or bill of lading draft should serve as an alert.
- Falsifying documents or voluntary misdeclaring the goods’ nature and/or net weight.

Merrien wrote that one-shot customers or unknown freight forwarders are to be screened carefully. Know Your Customer (KYC) and training were key to a safer supply-chain environment. Apart from carefully checking the identity of the shipper and their shipping track records, purposely trained booking agents should always double check the cargo description as declared on the booking and also any changes made to the documentation at a later stage, especially at the last minute.

Using AI and blockchain-based technology would help charterers’ booking department to detect misdeclared cargo. Merrien noted that some software could now check cargo booking details and keywords to help identify suspicious bookings. The same could sometimes also identify in real time any changes to the bookings, bills of lading and/or any other instructions provided by the shipper.

The container shipping industry is also pushing for a more favourable anti-competition regulation so that shipping lines may more easily exchange information related to bad customers for safety purpose.

If due diligence had to be done by charterers, “shippers must also take more responsibility in mitigating the malpractice of cargo misdeclaration”.

Merrien noted that several shipping lines had decided to increase their “misdeclaration fee” to very substantial amounts in the range of \$15,000 to \$30,000 per non-conformity. “Finally, charterers should also be aware of, and try to resist, shipper’s attempts to incorporate provisions waiving their liability in the carriage contracts.”

<https://www.skuld.com/topics/cargo/containers/misdeclared-container-cargoes-charterers-at-risk/>