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Thinking inside or outside the box...

Just because you can
doesn't mean you should.



After more than a decade of drought, the shipping market is booming again due to an imbalance between the supply and demand of vessels. On the one hand, the economy is recovering after further COVID-19 relaxations leading to an increase in customer demands. On the other hand, due to the same impact of COVID-19, there is a lot of port congestion all over the world leading to a shortage of available tonnage to meet the increased demand. This imbalance has led to an enormous increase in freight and charter hire rates and a shortage of containers.

We do see that the imbalance is fuelling creativity with parties trying to utilize every square meter of vessel space, including putting containerised cargo on or below deck or stowing breakbulk cargoes on deck that are usually to be stowed underdeck.

With this circular MS Amlin would like to promote awareness of the risks associated with loading cargoes on or below the deck of vessels that are not designed for that purpose, as well as to provide some loss prevention recommendations.

What are the top 3 risks?

1. STABILITY

Conventional bulk carriers as well as many general cargo vessels are in principle not constructed to carry containers in their holds or on deck. During the design and construction phase of a build, numerous calculations are carried out for the many types of cargoes that the vessel has been designed to transport. These calculations, containing various parameters, are used to determine the vessel's stability and are subsequently uploaded in the vessel's loading computer. In view of the fact that the shipment of containers either below or on deck is usually not included amongst the variables taken into consideration during the construction phase, such carriage would require recalculation of the vessel's stability and stress calculations as well as updating the vessel's software prior to being able to prudently engage in this adventure.

Imagine a tightrope walker carrying a pole in order to remain stable on the rope. What if he would add 10 kg to just one side of his pole, thus changing his centre of gravity? For sure he will try to correct this sudden alteration in stability, yet thereby running the risk of overcompensating and falling off the rope.

2. CARGO SECURING

The disaster with the RMS Titanic, which caused the death of more than 1500 people, triggered discussions in the maritime world on the importance of stability which ultimately led to the SOLAS Convention (Safety of Life at Sea) that saw the light of day in 1914. Its Chapters VI and VII deal specifically with the carriage of cargo and specify the requirements for safe loading, stowing and securing cargoes. These requirements are also laid down in a Cargo Securing Manual (CSM) which should be approved by the vessel's flag state or classification society. The CSM guides the vessel's crew on how to safely transport the goods from the load port to the discharge port. In view of the fact that a conventional bulk carrier is not designed to carry containers, it is likely that owners will need to make significant modifications to the vessel's design in order to be able to carry containers that can also be safely secured. Think of, for example, the placing of securing points and the supply of securing materials such as twist locks and lashing bars or chains. The modifications will also have to include a revised (approved) CSM, proper training of the crew and specific fire-fighting instructions as well as a qualified marine warranty surveyor to perform load surveys and inspect the stowage and lashing arrangements.

Three further areas of attention in this respect are:

- the many types of containers such as TEU¹ , FEU² , reefers, flat racks, etc., to which different considerations for stowage and lashing apply;
- the SOLAS requirements for a clear view from the bridge which may be obstructed when loading containers (or other cargoes) on deck;
- the fact that general cargo vessels and bulkers usually do not have sufficient cargo securing materials on board that are also of an adequate quality to properly lash and secure the cargoes.

3. STRENGTH

Bulk carriers and general cargo vessels are equipped with hatch covers and tank tops where the size, shape and dimensions have been carefully designed to contribute to the vessel's structural integrity, yet they have their load limits which are indicated in tons per square meter. These limits are based on a uniformly distributed load (UDL). However, the risk with loading containers is related to the so-called 'point loads' system whereby the weight is located on the four 'points' of the container instead of evenly spread along the hatch cover or tank top. This could be overcome by placing dunnage, that should obviously be of sufficient quality in order to generate the desired uniform load distribution and prevent sliding of the containers. This applies not only to containerised cargoes but also to breakbulk or project cargoes.

When making these revised stress calculations, it should be noted that hatch covers and tank top strength diminishes over time due to normal wear and tear resulting in a reduction of steel thickness and, subsequently, of load limits.

¹Twenty-foot equivalent unit.

²Forty-foot equivalent unit.

Seaworthiness

One of the most fundamental obligations under a contract of carriage is the obligation to deliver a vessel that is seaworthy. Unfortunately, the standards of 'seaworthiness' vary from jurisdiction to jurisdiction but Article III Rule 1 of the Hague-Visby Rules, which are frequently used for the international carriage of goods by sea, formulates this obligation as follows:

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

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

Claiming cargo interests will usually try to establish that the carrier breached the seaworthiness obligation and on that basis file claims for, for example damaged or lost cargo. In the event of a cargo claim based on the unseaworthiness of the vessel, the owners issuing the bills of lading would normally not be able to claim an indemnity from the charterers that otherwise might be available. By the same token, when the owners of an unseaworthy vessel do not issue bills of lading, the charterers would be able to claim an indemnity from the owners for the charterers' losses incurred as carrier under the bills of lading.

Furthermore, seaworthiness, or the lack thereof, could potentially be a hot topic in a general average event. If cargo (or bunker) interests can successfully evidence that the shipowner failed to exercise due diligence in making the vessel seaworthy at the commencement of the voyage, the shipowner therewith runs the risk of losing any contribution from these parties to the general average event. In addition, claims arising out of the vessel's unseaworthiness will have an impact on the allocation of responsibility under the Inter-Club Agreement. Considering these serious consequences, please keep in mind that an approval from flag or class does not necessarily render a vessel seaworthy.

Contract of carriage

A basic requirement under the Hague-Visby Rules that are often applicable to contracts of carriage, is that the carrier is obliged to properly load, handle, stow, carry, keep, care for and discharge the goods carried on board the vessel and any clause avoiding or lessening any liability on the part of the carrier or ship, is considered to be nil and void i.e. of no effect.

However, under Article I (c), the Rules are not applicable to cargoes carried on deck if:

- the contract of carriage expressly states that the cargo is being carried on deck and,
- the cargo is indeed carried on deck.

Whilst it may look appealing that the Rules generally do not apply to deck cargo, it also means that the carrier cannot rely on the defences available under the Rules such as the right to limit or exclude liability. Therefore, in order to properly protect the position of the carrier in case of loading deck cargo, it is important to incorporate the necessary clauses in the relevant contract of carriage stating that the cargo is loaded on deck and specifically excluding any liability for the deck cargo whatsoever and howsoever caused.

Charter party considerations

One should always consider the clauses specifying the particular trade, the cargo allowed under the contract, and the vessel's description. There may well be specific exclusions, which may render the carriage of containers on a bulk carrier a breach of the contract. In the event that the carriage does not fit within the ordinary cargo service, any particularities need to be addressed in the charter party such as, the installation and unmounting of container fittings and other securing modifications that may be necessary. If you are uncertain about the effect of a specific clause, please contact our Loss Prevention Services (ClientServicesDesk@msamlin.com) for further consultation.

Recommendations and insurance requirements

Another relevant point is that, whilst most bulk carriers and general cargo vessels are not designed to carry containers, it does not mean that it cannot be done. However, one should take into account all the statutory, technical, operational and legal requirements and ramifications, some of which have been touched upon in this circular.

From an insurance perspective, it should be noted that the carriage of cargoes in a non-conventional way on board vessels that are not designed for this trade may have implications on the insurance cover due to a material change in the insurable risk. Therefore, we recommend for our Shipowners' P&I clients as well as Charterers' Liability clients who are considering any such changes, to contact our Underwriting teams for consultation and re-assessment of the risk.

On a final note, whilst we are excited that after more than a decade of drought, prosperous times seem to have arrived for most owners and charterers, we herewith wish to ensure that reasonable caution is taken to protect the balance between financial optimization and operational prudence. Just because it can be done doesn't mean you should. Let's keep our balance and prevent the tightrope walker from falling off his rope.

This circular is meant for guidance purposes only. Should you require more information or assistance, please feel free to contact our Loss Prevention Services: ClientServicesDesk@msamlin.com



Bianca te Poele
Business Development Manager
Bianca.tePoele@msamlin.com



Michel Vonk
Technical Loss Prevention Consultant
Michel.Vonk@msamlin.com

MS Amlin

MS Amlin Marine N.V.

Postal Address
P.O.Box 30152
3001 DD Rotterdam

Visiting Address
Beursplein 37
3011 AA Rotterdam
The Netherlands
Tel: +31 10 799 5800

MS Amlin offices

Antwerp, Hamburg, London, Paris, Rotterdam and Singapore.

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