1

WORKSHOP 5 - CARGO

1.1 Which party is likely to be responsible for the costs of the additional lashing applied to the steel coils in Middlesbrough?

Where the stowage of cargo is the responsibility of the charterer (for example by agreement to that effect in the charterparty), if the charterer's actions in stowing the cargo affect the safety and seaworthiness of the vessel the master should call on the charterers to improve the lashings. The costs for the additional lashings would have been for charterer's account.

2

WORKSHOP 5 - CARGO

1.2 Can the charterer demand clean bills of lading for cargo that is not presented in apparent good order and condition? Why might they do so?

The Hague-Visby Rules, article 3, places an obligation on the carrier to issue a bill of lading stating the apparent order and condition of the goods, but also goes on to say that 'no carrier shall be bound to sign bills of lading where there are reasonable grounds for suspecting that the description does not accurately reflect the condition of the goods or there are no reasonable means of checking the description'.

A master must never issue a bill of lading which does not accurately describe the condition of the cargo. Issuing a bill of lading which is 'clean' (casts no doubt over the condition of the cargo) when the cargo is **not** in apparent good order and condition will almost certainly give rise to claims against vessel by the receiver (buyer) of the cargo, who will be entitled to say that if the cargo was shipped on board in good condition (as stated in the 'clean' bill) but has arrived in poor condition then the deterioration or damage must have happened on board the ship.

The charterer's may demand clean bills following pressure from the shipper who requires a bill of lading to reflect exactly the requirements of a letter of credit (clean bill).

3

WORKSHOP 5 - CARGO

1.3 Was the master obliged to accept a letter of indemnity from the charterers for a clean bill of lading? What action would the P&I club take if the shipowner decides to accept the letter of indemnity?

In most jurisdictions such a letter of indemnity will be viewed as an attempt to deceive the receiver. To issue such a bill of lading and to accept a letter of indemnity for doing so is therefore a very serious commercial risk and in many countries would be considered fraudulent. For these reasons a P&I club would always advise against issuing such bills of lading or accepting such a letter of indemnity but that if the shipowner did so the club would advise that:

- it would prejudice cargo cover for the cargo concerned (rule 19(17) proviso (D)) unless the directors in the exercise of their discretion should determine otherwise
- that the letter of indemnity is unlikely to be enforceable
- that the shipowner is unlikely to be able to defend any allegation by the cargo receiver that the cargo had been wetted while on board the ship (see answer to 1.2 above). It is for this reason that all P&I club rules exclude cover for claims arising in this way.

4

WORKSHOP 5 - CARGO

1.4 What action would you advise the master to take at Middlesbrough so that the shipowner might have a reasonable defence against this claim?

Arrange a **steel pre-load survey**, preferably including a test of the hatch covers. The bill of lading should contain a detailed pre-loading description of the cargo, based on that survey, indicating that some of the cargo was wet before shipment. Under these circumstances the shipowner should have a reasonable defence to the claim on the basis of the pre-shipment condition of the cargo. Additionally silver nitrate tests taken after discharge in Karachi might be considered. They may have shown no signs of chlorides, which would be evidence to suggest there was no seawater ingress into the holds.

Other evidence of the exercise of **due diligence** to make the vessel seaworthy could include

- additional testing of hatch covers before the cargo was loaded
- shipboard records of bilge testing
- records of hatch coaming drains and non-return valves being tested
- records of testing bilges
- photographic evidence of the condition of the hatch covers prior to loading
- berth-to-berth voyage plan showing consideration of weather expected.

5

WORKSHOP 5 - CARGO

2.1 Since the charterer issued the bill of lading can the charterer be held responsible for the cargo damage?

The charterer cannot be held responsible for the cargo damage. The charterer is not a party to the contract evidenced by the bill of lading. It issued the bill 'for and on behalf of the master'.

Charterers and agents act on behalf of masters in signing bills of lading therefore the ship remains bound by the description of the cargo stated on the bill of lading and must deliver the cargo as described in the bill of lading, that is in 'apparent good order and condition'.

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WORKSHOP 5 - CARGO

2.2 What advice can we give the shipowner on how to resolve this claim under the bill of lading?

Any standard charter party bill of lading (such as CONGENBILL) would normally have a phrase such as 'Signed/Issued for and on behalf of the master in accordance with mate's receipt'.

The bill of lading thus binds the shipowner to the description of the cargo and in this case it is most likely that the shipowner will have to accept liability for the claim, even though the cargo was already wet when loaded.

In a separate action under the charter party contract the shipowner should consider action against the charterer for breach of the charterparty terms in issuing a clean bill of lading contrary to master's instructions.

7

WORKSHOP 5 - CARGO

2.3 Is the P&I club obliged to provide a letter of undertaking at Karachi in respect of claims by the receiver for failure to care for the cargo? What factors would the managers of the P&I club consider before providing a letter of undertaking?

The provision of security by the clubs is discretionary.
Factors to consider:

- security is for a P&I liability
- no club rules have been broken
- the Member has paid all his premiums
- amount of security is reasonable
- there are no relevant warranties against the vessel
- the wording of the contract is acceptable
- the jurisdiction and choice of law is acceptable
- the amount of the deductible (counter security may be required).

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WORKSHOP 5 - CARGO

2.4 As a claims handler can you advise the shipowner of any
- **other options to consider or**
- **problems that might be encountered**

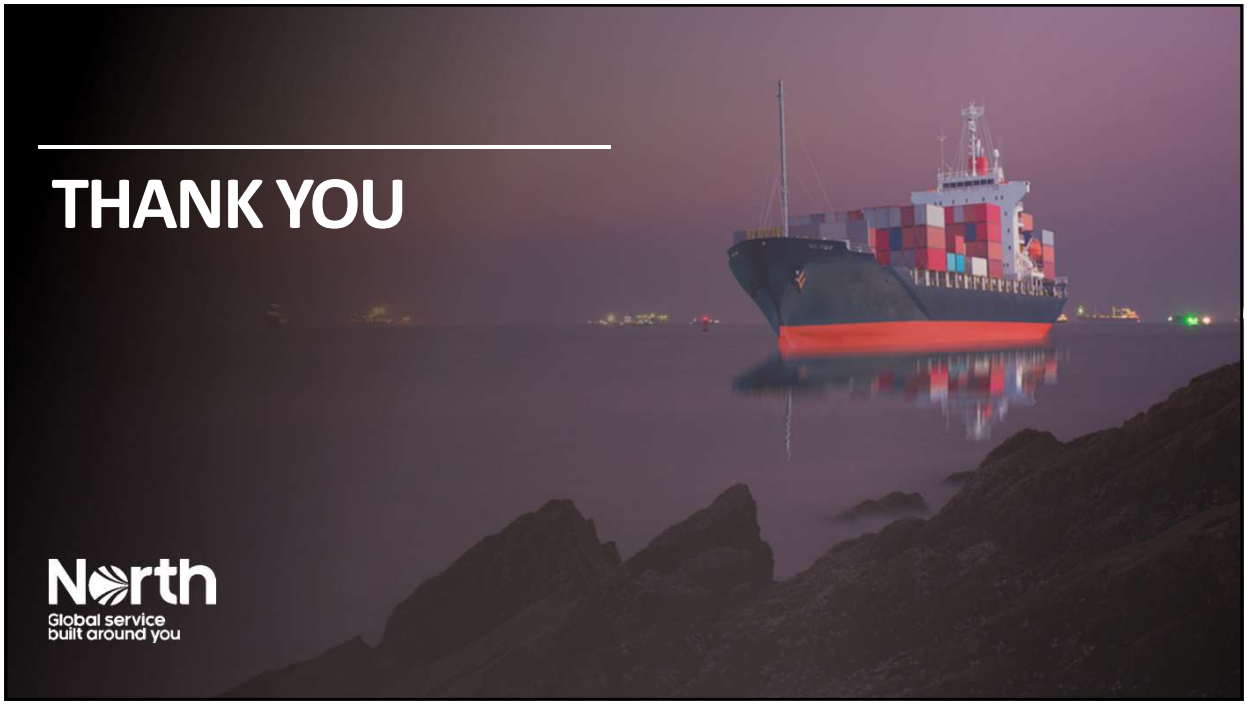
in resolving this claim?

If the bill of lading had been claused to show that the cargo was wet when loaded, there should be no claim for that wetting damage. If further damage had been suffered during the voyage the question would be whether this was caused by inherent vice (because wet timber will inevitably become stained and mouldy in transit); or by poor care by the ship (because the master could have ventilated but did not do so). Which is the correct cause of the damage will depend on expert evidence and therefore a good surveyor should attend the ship on discharge.

Many jurisdictions have an element of strict liability in which case the shipowner may have no defence.

Negotiate a settlement before the claim goes to court?

9



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