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ΝΑΥΤΙΛΙΑΚΗ

ΔΙΟΙΚΗΤΙΚΗ

CARGO CLAIMS: DELIVERY OF CARGO UNDER FRAUDULENT BILL OF LANDING

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Διπλωματική Εργασία

που υποβλήθηκε στο Τμήμα Ναυτιλιακών Σπουδών του Πανεπιστημίου Πειραιώς ως μέρος των απαιτήσεων για την απόκτηση του Μεταπτυχιακού Διπλώματος Ειδίκευσης στην Ναυτιλιακή Διοικητική.

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ΠΡΟΛΟΓΟΣ

Η παρούσα Διπλωματική Εργασία με τίτλο "Cargo Claims: Delivery of cargo under fraudulent Bill of Lading" συντάχθηκε στα πλαίσια της ολοκλήρωσης των Μεταπτυχιακών Σπουδών μου του Προγράμματος "MSc in Shipping Management" του Πανεπιστημίου Πειραιώς.

Πρόκειται για μία εργασία στην οποία γίνεται ανάλυση ενός πραγματικού claim στο οποίο ήμουν ενεργό μέλος καθ' όλη τη διάρκεια των εξελίξεων. Η ανάλυση ξεκινάει από τη στιγμή που συμφωνείται να πραγματοποιηθεί ένα ταξίδι από το Ιράν στην Ινδονησία για την μεταφορά ενός επικίνδυνου φορτίου και σταματάει στο στάδιο όπου ο δικαστής στην Αμερική αποφασίζει ότι το καράβι πρέπει να πωληθεί σε πλειστηριασμό ώστε να καλυφθούν οι οικονομικές απαιτήσεις των claimants από τον πλοιοκτήτη. Σκοπός της παρούσας διπλωματικής εργασίας είναι η ανάλυση όλων των απαιτούμενων σταδίων από την στιγμή που γίνεται η διαπραγμάτευση για την συμφωνία ενός ναύλου μέχρι και το τελικό στάδιο της παράδοσης του φορτίου στο λιμάνι εκφορτώσεως. Παράλληλα με την ανάλυση των σταδίων σε θεωρητικό επίπεδο, γίνεται και αναφορά στα αντίστοιχα πραγματικά γεγονότα που έλαβαν μέρος από τη χρονιά 2018 μέχρι και τη χρονιά 2020.

Από αυτή τη θέση θα ήθελα να ευχαριστήσω πρωτίστως τον επιβλέποντα αυτής της διπλωματικής εργασίας, κ. Αθανάσιο Καρλή για την στήριξη και την θερμή καθοδήγησή του για την σύνταξη και ολοκλήρωση αυτής της εργασίας. Εν συνεχεία θα ήθελα να ευχαριστήσω την οικογένειά μου και τα άτομα που ήταν δίπλα μου καθ' όλη τη διάρκεια αυτού του απαιτητικού αλλά υψηλά ανταποδοτικού Μεταπτυχιακού Προγράμματος.

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Abstract

This particular thesis work provides an analysis of a maritime claim occurred by the delivery of a damaged cargo. Despite the fact that the claim was based on fraudulent set of Bills of Landing, due to the fact that any subsequent financial security could not be granted/secured by the ship owners or its P&I Club these parameters led to the fact that the vessel was arrested and auctioned into public sale. During this thesis, the relevant processes as the chartering, the operations, the insurance and the legal prospects are being analyzed step by step.

Key Words (Fraudulent B/L, Letter of Indemnity, Charter Party Chain, Dangerous Goods)

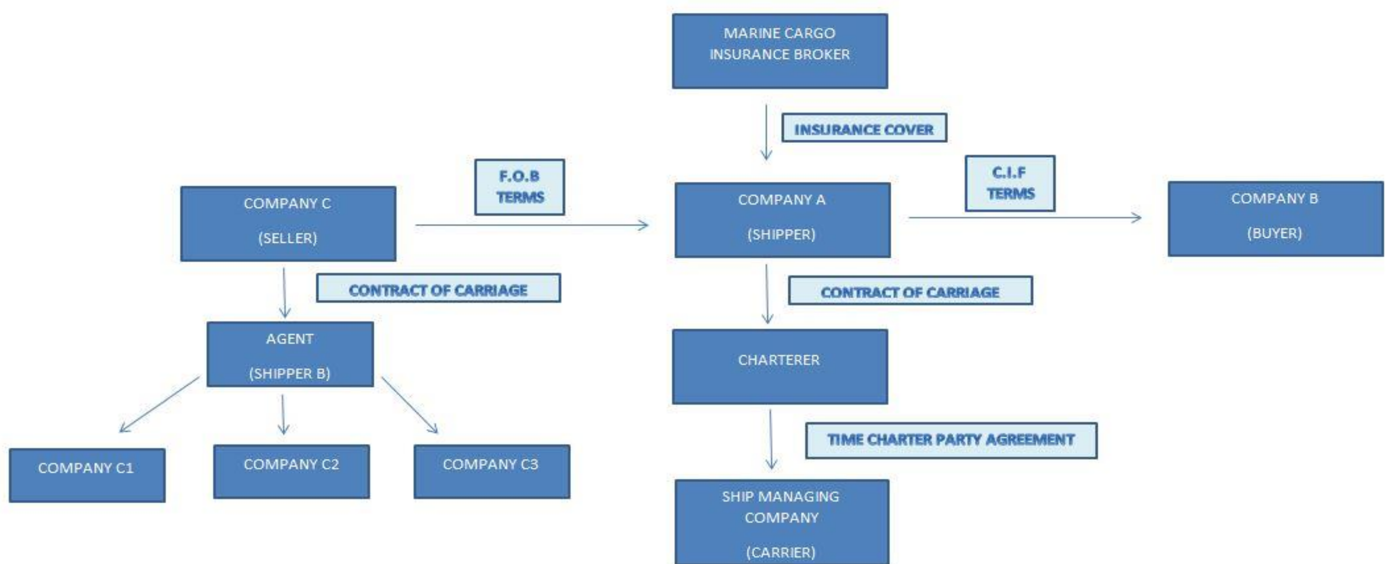
Περίληψη

Στην διπλωματική αυτή εργασία γίνεται ανάλυση απαίτησης ενάντια ενός πλοιοκτήτη, η οποία διαμορφώθηκε από τη στιγμή που μέρος του φορτίου ξεφορτώθηκε χαλασμένο. Παρά το γεγονός ότι η απαίτηση βασίζεται σε πλαστές φορτωτικές, η παράμετρος ότι ο πλοιοκτήτης και η ασφαλιστική εταιρεία που είναι υπεύθυνη για ζημίες έναντι τρίτων δεν μπορούσαν να εγγυηθούν την οικονομική κάλυψη της απαίτησης, οδήγησε τους αντίδικους να συλλάβουν το πλοίο, να γίνει αναστολή της λειτουργίας του και να το ωθήσουν σε δημοπρασία. Σε όλη την έκταση της διπλωματικής αυτής εργασίας, γίνεται ανάλυση των λειτουργιών της ναύλωσης ενός καραβιού, η καθημερινή διαχείριση, οι ασφάλειες και οι νομικές καλύψεις που θα πρέπει να έχει ένα καράβι.

Λέξεις κλειδιά (Fraudulent B/L, Letter of Indemnity, Charter Party Chain, Dangerous Goods)

1. The case study

This chapter examines the actual facts that took place in the subject case and relevant analysis is being made. There are topics that are highlighted since they have key role on the progress of the cargo claim. The data that are being presented here were taken from the actual correspondences and the agreements that had been made between the parties and the Declarations that were submitted to the Court in the United States. The events commence on May 2018 and this dissertation analyzes the facts that took place until May 2020.



On May 2018 there was a voyage charter party agreement between a Chartering Broker (named Charterer on the above diagram) and Company A which was acting as Shipper for a transportation of Direct Reduced Iron (DRI) cargo, which is characterized as dangerous goods, from Iran to Indonesia. The two parties have agreed the charterer to be responsible for loading, stowing, trimming and discharging the cargo. In this charter party, the B/L and sanction clauses provided, inter alia:

- Bills of lading (B/Ls) may show different shippers/consignee/notify than what is stated in the mate's receipt. This is a requirement under Charterers commercial contracts;
- Charterers have the option that loading port in B/Ls will show a different loading port against Letter of Indemnity (LOI);

- Also allow issuance of clean on-board B/Ls subject to LOI;
- B/Ls to be issued by in charterers option by agents at loading port, after B/Ls have been approved by Owners; and
- Charterers confirm that cargo/parties in connection hereof are not on the sanction list with UN/US/EU failing which Charterers to be held fully responsible for any costs/risks/consequences arising from vessel's carriage of the said cargo.

One month later at June, charterers in order to perform the voyage charter they entered into negotiations with the ship managing company, shown as carrier in the above diagram, in order to employ its vessel and transfer the said cargo from Iran to Indonesia. They have been negotiating the detailed provisions regarding charterer's authority to issue B/Ls and permitted amendments to be made, but no change to quality and quantity of cargo, condition, or description have been confirmed. Moreover, the load port had to remain unchanged. Therefore, and after reaching into final agreement the fixture recap, the parties entered into a time charter party agreement for a trip from Iran to and confirmed in which some key terms were included:

- All payments to be made in Euro; All payment to be based on pro forma invoices, not mentioning vessel name, IMO No., Iran and the C/P;
- Owners B/L Clause: All B/Ls to bear a C/P date of May 2018. In this part it should be highlighted that this clause was an integral part of the fixture recap and C/P since it suggests that the charter had a fixture / cargo deal already with some other party and same should have been perceived by the ship managers/owners;
- Signing of B/Ls: Bills of Lading are to be issued and signed only by Master, alternatively if required by the charterers, to be issued by charterers or their agents or their nominee on Master's behalf, but always in strict conformity with mate's receipts;
- B/Ls will be signed by charterer's agents in charterer's option in United Arab Emirates or elsewhere;

- Prior to issuance of any B/Ls, Charterers are to provide a draft copy to ship managers for their records and approval. Only after written approval of the final draft will the original B/L be allowed to be issued;
- There will be no switch B/Ls but B/Ls will show different shipper/ consignee / notify / discharge port than mate's receipts. Charterers will issue LOI in owners wording of requested;
- Charterers are only allowed to make the following changes to the B/Ls: change of discharge port/s and/or notify party/s and/or to order party and/or shippers. However, the quality, total quantity, description and condition of cargo to always remain unchanged; and
- Any other alterations that may be required in order to comply with the letter of credit, provided that the port of loading in Iran remains unchanged, will only be allowed, with prior written consent from the owners.

While the ship managing company was negotiating the employment of the vessel, the operations department has advised their marine insurance brokers that there would be a prospective call in Iran to load the said cargo and therefore the insurance brokers have sought for advice from the Hull & Machinery and War underwriters and from their P&I Club as well. A due diligence form which has been filled by the Charterers has been forwarded to the underwriters in which the parties were sanctions free at that time of period. It should be highlighted that it is important to check if the involved parties are sanctioned or blacklisted and since the P&I Clubs do not run a due diligence sanction check, the marine insurance broker made the respective screenshots as same is obligatory in order to prove that for that day the particular parties were clear .The checks should be run from the relevant site of the Office of Foreign Assets Control (OFAC) of the United States and from the relevant European site since same it is required from the International Groups P&I Clubs in order to secure that the involved parties are clear and do not appear on the list with the sanctioned entities.

At the end of June 2018, shipment of DRI is purchased by the Shipper from Company C which was the seller of the cargo. The terms of sale were agreed on a Free-on-Board Basis (F.O.B) which would mean that the title passes to Shipper once the cargo would be loaded onto vessel. Afterwards, the Shipper sold the same shipment of DRI

to the Company B which was the final buyer in a C.I.F terms meaning that seller/Shipper was the voyage charterer who was liable for the following:

1. Ship goods properly (enter into a contract of carriage with a carrier);
2. Arrange cargo insurance contract; and
3. Issue commercial invoice which conforms to the contractual description of the goods.

The same week, the vessel called the loading port of Iran in which the said cargo was loaded. The Master of the vessel authorized charterer's agent to sign the B\Ls in strict conformity with the Mates receipt on behalf of himself. Unexpectantly, the same day the following took place for which the ship managing company were not aware until one year later once the relevant claim was served;

- Fraudulent B/Ls allegedly issued by another broker based in Germany;
- Load port listed a port in United Arab Emirates instead of Iran;
- Two sets of B/Ls have been issued; one set of Non-Negotiable for customs purposes only and one Original set;
- Shipper listed as Notify Address;
- Company C listed as consignee into the three different Non-Negotiable B\Ls showing as load port Iran; and
- Companies C1,C2 and C3 as shown on the above diagram listed as Shippers into the three different Non-Negotiable B/Ls showing as load port Iran. These companies were the actual and initial suppliers of the cargo which passed through an agent to the Company C.

While the vessel was reaching the discharging port, charterers informed the shipping company that the original B/Ls would not be available at the discharging port and therefore they requested to discharge the cargo against LOI which was asked from and provided by the vessel's P&I Club as this is the common practice in such circumstances.

At Charterers' request, the discharging operations began and eventually the cargo start flaming on a specific hold. Since the said cargo is characterized as dangerous, due to the international standard procedures implied by the International Maritime Organization and the P&I surveyor recommendations in order to save property and life at sea the specific hold had to be flooded with sweet water so as the temperature to fall and then the cargo to be discharged into a warehouse. As a result, some MT of the cargo had been totally damaged.

The vessel left Indonesia and the receivers did not proceed to submit a claim to the shipowner for the damaged quantity. They did not request, as well, adequate security for such a damage through a Letter of Undertaking by Owner's P&I Club or an invitation to inspect the damaged cargo.

One year later, and before any subsequent claim could be assumed as time barred, at June 2019, claim has been submitted by the Cargo insurance broker against the ship managing company. On the submitted claim it was supported that even though after loading, the hatch covers were confirmed watertight by the Master, Chief Officer and attending Supercargo surveyor, however, upon arrival at the Indonesian port he temperature of the cargo in the specific hold was found to have risen significantly and cargo discoloration and damage was found in the hold. The Report of Survey prepared by shipper's surveyor attributed that the cause of the damage was the fact of the leaking cross joint hatch covers, such that seawater ingress during the voyage cargo overheating and combustion. As a result, loss and damage was suffered, for which Cargo Insurance broker hold the Owners fully liable, for being in breach of their obligations under Art 3 Rules 1 &2 of the Hague Rules, which apply to the B/L that is to say the Shipowner before and at the beginning of the voyage to exercise due diligence to:

- Make the ship seaworthy;
- Properly man, equip and supply the ship; and
- 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.

During a period of seven months, there were several communication exchanges between the P&I Club, the ship owner's solicitors, the claimants, the chartering brokers and many other parties in order to discuss the merits of the claim with the claimants and of course the coverage issues with the P&I Club. There were many obstacles that financial security or coverage by the P&I Club could not be granted to the claimant which was connected to the Iranian nexus on the said fixed voyage and the negligence of issuing fraudulent B/L. More specifically, the assistance that owner's Club could offer for voyages to or from Iran was severely limited due to the restrictions placed on the Club, particularly by the banking systems. Even if owner was engaged in a legal trade that did not appear to violate US sanctions then if there was an incident involving a voyage to or from Iran, then banking restrictions were the main issue meaning that it was extremely unlikely for all the International Group P&I Clubs to be in a position to make or receive payments, provide security or respond to any claims in the usual manner. In the present case, this means that the P&I Club were not in a position to proceed with posting security.

Afterwards, and after many times that the cargo insurance broker had threatened that the vessel will be arrested since no security could be posted, they indeed arrested the vessel in the United States of America. The claimant stated on the filed lawsuit at the local Court that the negligence of the ship owner, its agents, servants, or employees, acting individually, or concurrently, caused to the cargo brokers damages in the following respects:

A. Failing to have a safe vessel to store and transport the subject DRI;
B. Failing to properly train its employees to safely run a vessel to store and transport the subject DRI;
C. Failing to protect the subject DRI;
D. Permitting the subject DRI to be exposed to salt water;
E. Failing to properly maintain the vessel so that it could safely store and transport the subject DRI; and
F. Other acts of negligence that will be shown at trial of this matter.

Concluding the above analysis of the said case study, despite the owner's efforts to release the vessel the local judge maintained the arrest and, since the parties failed to

reach agreement on the form of security to be provided for the wrongful claim, has ordered the public sale of the vessel which after all took place.

The following chapters of this dissertation describes the process from chartering a vessel to transfer a cargo from one port to another, the insurance and the legal prospects should be followed, the operations of transferring and discharging dangerous goods and continues to an analysis of the charter party chain and its subrogation of submitting a cargo claim and finalizes to the unlawful arrest and auction of the vessel.

2. Ship Chartering Process

2.1 Basic Chartering Terms & Conditions

The document that the ship owner/manager comes to an agreement with the charterer to the employment of the vessel or part of the cargo space within, it is called Charter party in which there are terms and condition that the two parties are obliged to confirm. There is also the option, if agreed, the charter to enter into subcontracts to lease the vessel to a third party such as the shippers of the cargo.

The types of charter parties in use are the following:

- **Voyage charter party** – specific single voyage where freight is paid depending on the quantity of the carried cargo and distance of the transit.
- **Time charter party** – specific period of time (months or years) where the hire is paid depending the length of time.
- **Bareboat charter party** – lease of the vessel for a long period including all the aspects in order to be seaworthy.

Most of the contracts include both express and implied terms. The term "express" includes the terms that have been expressed and agreed during the negotiations and the "implied terms" are those which can be implied by common law or statue and are incorporated into the charter parties. *(Shipbrokers, 2016*)

The common law implies the following terns into any voyage charter party:

- **Seaworthiness**: The obligation of a ship owner/manager to deliver a seaworthy vessel to the charter which not only applies on the condition of the vessel but also to the Master's and crew's competence with respect to the particular type of cargo and the anticipated marine adventure. At common law, the duty of seaworthiness is absolute and in case of breach the ship owner/manager will be liable for any damages. Therefore, due diligence should be exercised in order to make the vessel in all respect seaworthy.

- **Reasonable dispatch:** The vessel must be ready to commence the agreed voyage and to load the cargo upon reasonable dispatch. Upon serious delay, there should be remedies that must be satisfied.

- **No unjustifiable deviation:** When the vessel has to deviate in order to save life at sea is justified in contrast when happened in order to save property at sea. That is to say, any unjustified deviation amounts to a breach of contract since the master or the ship owner/manager failed to use all the reasonable care to bring the adventure into successful conclusion.

- **Not dangerous goods loaded without notice:** The shipper is obliged to notify the ship owner/manager that loaded cargo would be dangerous goods and its particular characteristics. Dangerous goods can be described as the cargo which can directly cause physical damage to the ship or to other cargo.

- **Safe ports:** Even though on the charter parties the load/ discharge ports can be defined, there is the obligation of the charterer to give instructions to call only safe ports which are concerned the ports that at the specific period the particular vessel can reach-use and return from it without any perspective danger.

As noted above, there are three charter party forms and for each of them there are many charter parties' forms. To begin with the voyage charter party, few examples are the AUSTWHEAT, GRAINVOY BIMCO, NORGGRAIN, NUBALTWOOD AND OREVOY. As it can be seen the forms can been indemnified by a code which can relate specifically to a particular trade. The GENCON voyage charter party is a general-purpose form intended to cargoes or trades which no specific form exists. This type is associated with single voyage in which the ship owner/manager agrees to load a specific quantity of a commodity cargo at load port and to transport it and discharge it to the relevant port. However, since that form is for no specialized trades the parties should agree and include additional clauses. In summary, the voyage charter party form covers:

- Date
- Name of the parties
- Name and description of the vessel
- Loading port
- Nature and quantity of the cargo
- Discharge port –Lay days and cancelling dates
- Rate of freight and way of payment
- Loading and Discharging operations costs
- Rates of loading and discharging – Laytime
- Dispatch and demurrage rate
- Brokerage commission

The time charter party is being negotiated where a cargo is going to be transported on several ports and respectively would be sold on several buyers in order to be an overall flexibility. In this case, there are as well few forms such as the BALTIME, NYPE93, BPTIME, SHELLTIME, TEXACOTIME. In summary, a time charter party form covers:

- Date
- Name of parties
- Ships name and its particulars
- Speed and fuel consumption
- Duration
- Places of delivery and redelivery
- Trading areas and limitations
- Rate of hire
- Lay days and cancelling
- Brokerage commission

Last, on the bareboat charter party the charter may wish to employ the vessel for a long period of years as well. For that reason, the demise charter party has been arranged which transfers the complete operational role of the ship to the charterer. (*Shipbrokers, 2015*)

2.2 Charter Party Negotiations

The charter party negotiations are a vital step in order for the involved parties to come into agreement. The negotiations would have two steps; the first is when the main terms are being discussed and the second phase is the charter party details.

The main terms can cover various different points of the negotiations and depends on the type of the employment of the vessel and the character of the ship owners/managers and the charterer. Generally, the main terms would include a range of pre-agreed loading and discharging ports , the date that the

vessel is to arrive at the first port of load, the type and the cargo amount that is to be carried, the rate of the hire or the freight, payment arrangement, the duration, the speed at which the cargo will be loaded and discharged, the demurrage and dispatch rate.

Once the main terms have been concurred, then the parties agree that the vessel has been fixed on “main terms subject to details”. The involved parties will review the charter party and any other terms that have not been considered to be as main terms. Further subjects on the fixture such as the approval of the main board which confirms that the vessel is fully acceptable and approved to be engaged into the fixture and any respective subjects. The charter party, under the English Law, is being concluded once all the terms have been agreed and the subjects have been lifted. Afterwards, any breach or termination of the business is subject to penalties. (*Shipbrokers, 2016)*

2.3 Involved parties

The involved parties in carriage of goods is the Carrier, the Actual carrier, the Shipper, the Consignee and the Notify Address. More specifically:

- “Carrier” means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.
- “Actual carrier” means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.
- “Shipper” means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.

- "Consignee" means the person entitled to take delivery of the goods.

- "Notify Address" means the person who should be notified of the arrival of the cargo and take further steps such as arranging a customs clearance agent to do the clearance with customs. Depending on the B/L that is issued this could be the actual buyer or receiver of the goods, clearing and forwarding agent or the trader.

3. Insurance and sanctions process

3.1 Insurance

Marine insurance is one of the most vital and important steps that a shipowner or manager should arrange and it is considered as an indispensable aid to international trade. There are numerous underwriters and markets that offer a lot of forms and types of insurances which are highly diverse in character and capable of covering the relevant risks that may be exposed during a marine "adventure". The notion of a "marine adventure" is inclusively defined in section 3.2 of the 1906 Act, which provides that there should be "marine adventure" where:

- Insurable property such as a ship and cargo are exposed to "maritime perils";

- Earnings of income or profit is endangered by the exposure of the insurable property to "maritime perils". The income and profit may be the freight or hire, commissions, crew wages, advances, loans, disbursements and securities for such loans; and

- Owner or other person interested in insurable property may incur a liability by reason of "maritime perils".

The Marine Insurance Act 1906 is a codifying statute which sets out the law as it applies to marine insurance contracts. In this statute it is stated that "*A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to a marine adventure*".

The most commonly used Institute Clauses are:

- Institute Cargo Clauses (A), (B) and (C) 1982 and 2009
- Institute Time Clauses – Hulls 1983 and 1995)
- Institute Voyage Clauses – Hulls 1983 and 1995
- International Hull Clauses 2003
- Institute War and Strikes Clauses – Hulls 1983 and 1995
- Institute War Cargo Clauses 1982 and 2009
- Institute Strike Cargo Clauses 1982 and 2009

There are two significant features characterizing a marine insurance contract. The first is that it is a contract of indemnity insurance by which the insurer undertakes to hold the assured harmless against loss caused by an insured peril therefore the insurer will be responsible to compensate the assured for a specified type of loss caused by a specified insured peril. A contract of indemnity insurance is not a contract whereby the insurer agrees to pay a specified sum of money in specified circumstances. Thus, the assured is entitled only to compensation for its loss and is not entitled to receive or retain any benefits which result in being more than indemnified. Secondly, it is a contract of indemnity against marine losses by which an insurer will be liable to indemnify the assured if a loss of the type covered by the marine insurance contract occurs having been caused by a specified event. Losses may be of different types such as physical loss or damage, financial loss, or liability for payment of damages to a third party. The insurance contract will often specify the type of loss it covers. The concept "marine losses" refers to losses which are an "incident to marine adventure". As far the loaded cargo is concerned and in order to ensure its protection, there is the concept of cargo insurance or marine cargo insurance. The difference between marine insurance and the marine cargo insurance can be explained below:

- **Marine Insurance:** That type of insurances, as already described above, are based on the Marine Insurance Act, 1906. While marine insurance is deep in its coverage of possible losses, it does not cover losses that happen while the ship is sailing in the waters. This becomes a problem in case of those water areas where the risk of loss is magnified because of piracy known as High Risk Areas (HRA) and other reasons. In order to overcome this problem, the concept of marine cargo insurance emerged; and

- **Marine Cargo Insurance:** Cargo insurance or marine cargo insurance covers and protects the cargo when the ship is actually sailing in the oceanic waters, that is to say when the vessel is in transit.

However, there are a lot of minor points that an insured need to consider while going for a marine insurance policy which if ignored, then money could be lost as compensation even after paying the respective premium. There are many factors that can lead the cargo insurance policy to be cancelled such as in the case that goods are not packed properly, the loss to the cargo due to the negligence of the Master/Crew and even weather conditions as well. Another important thing to be considered while going for cargo insurance is whether to opt for an insurance policy that will be covered as per the voyages taken by the ship or as per an agreed insured period decided by the ship owner.

3.2 Sanctions

Economic sanctions are used to be a commercial and financial decision which occurs from the diplomacy and the military policies that are adopted by each country. There are several forms of actions which include different economic impacts. The worst-case scenario of the economic sanctions, known as comprehensive, is the prohibition of any commercial transaction between sanctioning and sanctioned countries as an example the U.S sanctions against Iran. (*Hossein G. Askari, 2003*)

The Office of Foreign Assets Control "OFAC" of the United States Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. *(Treasury, 2020)*

On the other hand, the European Union sets restrictive measures which are an essential tool in the EU's common foreign and security policy (CFSP), through which the European Union can intervene where necessary to prevent conflict or respond to emerging or current crises. In spite of their colloquial name "sanctions", European Union restrictive measures are not punitive. They are intended to bring about a change in policy or activity by targeting non- European Union countries, as well as entities and individuals, responsible for the malign behavior at stake. *(Council, 2020)*

Taking the above into consideration, when a ship owner/manager is negotiating for an employment of a vessel the due diligence check of the involved parties is very crucial. The sanctions checks were used to be run by the P&I Club of the Members, however, the last years they do not. Instead, some of the International Group Clubs have circulated the required procedure to do the necessary checks in so that the Members are able to do on their own all necessary checks so as to comply with their "due diligence" obligations accordingly.

More specifically and due to the subject voyage of this dissertation, the general advice on the restrictions affecting Club's cover for claims arising and or associated with trading with Iranian counter-parties and/or in respect of voyages to and/or from Iran is that the P&I cover is, in principle, available provided the cargo and counterparties in the trade with Iran and the claimants are not targeted by the remainder of the EU and US sanctions and provided that no US nationals are involved. However, there are a number of important restrictions which have an impact on the application of cover available and on claims processing, as follows:

1) **Cargo Restrictions:** The roll back of the US and EU sanctions, as far as shipping is concerned, relates to bulk liquid and non-liquid cargoes. There remains a list of targeted specialist cargoes relating not only to military equipment but also material and equipment which could be used for Iran's nuclear industry. Graphite and certain high grade raw and semi-finished materials are still also targeted. In addition, the almost blanket ban on shipping goods of US origin to Iran also remains in force;

2) **Counterparty Restrictions:** Similarly, as with the above cargo restrictions, Owners will need to have a solid due diligence system in place for screening that the parties involved in the contracts of carriage to or from Iran are not targeted by the US and EU lists. It should be noted that the Revolutionary Guards and any companies controlled by them are targeted entities and are reported to own large sections of the Iranian economy. A provision in the charterparty that no cargo targeted by US/EU/UN sanctions such as the BIMCO Designated Entities clause is helpful but Owners should still have a system in place to check that Charterers are carrying out screening effectively and are able to document and evidence that such checks are carried out. The Clubs do not carry out screening on behalf of its members nor do confirm that the members' counterparties are not targeted by the EU/US sanctions. Members should ensure they have evidence of the results of screening their counterparties which include, amongst others: their charterers; those parties named on the Bill of Lading such as the shippers, receivers, notify party; any Iranian agents or port operators; the vessel names where Ship To Ship operations are envisaged; any bank involved in the transaction etc. against the US SDN List and UK/EU lists;

3) **No Connection with US Persons, Cargo or Currency.** The roll back does not apply to US persons or cargo originating from the US. Owners remain exposed to penalties if they cause US persons to breach US sanctions regimes. Even after the roll back, US persons are effectively still prevented from entering into any commercial transactions with Iran. In practical terms, if there are any US persons within a member's organization, they should not be involved in any trade involving Iran. The US Dollar currency cannot be

freely traded as there are restrictions on clearing US Dollars. Therefore, members should exclude receivables/expenses for the voyage in USD including charter hire and bill of lading freight. While transactions can still be priced in USD, physical payment must be in a non-USD currency. Again, members should consider inserting wording to that effect in the Charter Party.

4) **Protective Clauses against Snap Back of the US and EU Sanctions.** OFAC's stated position is that whilst they are committed to not imposing sanctions retroactively for legitimate activity undertaken during the period of relief, they do intend to treat any transactions conducted after a 'snap-back', as sanctionable, even if those transactions were pursuant to contracts agreed during the period of relief. Owners should therefore ensure protective clauses such as the BIMCO Sanctions and the BIMCO Designated Entities clauses are negotiated into their charterparties. These clauses allocate risk and responsibility between Owners and Charterers for the possibility of a trade or entities becoming targeted due to subsequent changes in sanctions after the charterparty is entered into.

5) **Banking Restrictions on Making Payments and Providing Security.** Even if the trade and counterparties/claimants are legitimate and not targeted by US/EU sanctions, providing Club security in particular a bank guarantee or making direct payments of claims arising under a voyage involving Iran or involving an Iranian beneficiary, will not be possible as many major international banks continue to prohibit Iranian transactions for fear of US enforcement action and to minimize exposure to money laundering risks. In practical terms, for the time being this means that if the Club would be asked to provide a Club Letter of Undertaking, there would need to be an express provision in the wording making the Club's undertaking to pay conditional upon the Club obtaining prior approval from its bank and it is unlikely that the claimant would accept such a conditional undertaking. In the meantime, however, Clubs may have greater flexibility for reimbursing Members in those circumstances but this is far from ideal in the event of large claims as they will have to be paid by the member directly. This issue is being

followed up but it is not a straightforward process to obtain a change by the banks of their compliance requirements and as matters stand, the position is that if a claim arises in Iran or in connection with voyages involving Iran or Iranian beneficiaries, Owners will have to operate on the basis that they will have to put up security themselves, pay the claim in the first instance with reimbursement, to the extent possible, by the Club. Owners should therefore check that they have no similar banking/loan covenants or other contractual warranties in place which prevents them from making payments to or connected with Iran and whether their bank would be prepared to provide security.

6) **Protective Clauses Shifting Delay and Security/Claim Payment Obligations to Charterers.** Whilst it would be helpful to have these provisions in the charterparty, it is always questionable to what extent these provisions will be effective and/or enforceable in case a serious claim arises in Iran. This is particularly the case if the claim arises due to a potential breach by Owners under the charterparty or the Bill of Lading. It is likely that charterers/cargo interests will argue that in case of unseaworthiness or other breach of the charter or Bill of Lading, the wording of the clause is not wide enough to apply to such claims and much stronger would be required to make the protective clause more effective.

On 8th of May 2018 a National Security Presidential Memorandum issued announcing that the United States was withdrawing from the Joint Comprehensive Plan of Action "JPCOA" (Iran nuclear program) and would re-impose the U.S. secondary nuclear sanctions against Iran which had been suspended upon the commencement of the JCPOA. Those secondary sanctions had restricted the activities of non-U.S. persons in relation to Iran. Two separate wind-down periods have been established, enabling non-U.S. persons to conclude Iranian transactions entered into prior to 8th of May and thereafter from 6th August 2018, the sale, supply or transfer, directly or indirectly, to or from Iran of the following materials: graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes was completely sanctionable. This action increased the SDN List by more than 10 percent

and brought the total number of persons designated in 2018 to approximately 1,500—50 percent more than has ever been added to the SDN List in any single year.

In response to the U.S. decision, the European Union supplemented its existing blocking statute to prohibit compliance by EU entities with the new U.S. sanctions on Iran. In early 2019, Britain, France and Germany established a European special purpose vehicle to facilitate non-U.S. dollar trade with Iran, circumventing many of the risks that EU entities face in complying with U.S. sanctions. The new measure, called the Instrument in Support of Trade Exchanges ("INSTEX"), allowed trade between the EU and Iran without relying on direct financial transactions. INSTEX has been registered in France, will be run by a German executive, and will have a supervisory board consisting of diplomats from Britain, France, and Germany. *(Freehill, 2019)*

The subject voyage of this dissertation was fixed and took place in June/July 2018. This was during the period where the United States had announced to re-instate the US Sanctions taking effect from 6th August 2018. The facts on this case are the following:

- A voyage in June/July 2018 involving a transfer of dangerous cargo from Iran (as far as non-US nationals were involved) was not targeted by US Sanctions as such;
- However, the voyage could still be targeted by sanctions if any of the counterparties was included on the Specially Designated Nationals (SDN) and Blocked Persons List "SDN" or controlled by an SDN. For that reason, Owners had carried out due diligence in order to establish that the parties under the Bill of Lading (particularly, the shippers in a case of cargo loading from Iran) were not an SDN or controlled by an SDN.
- Even though the voyage was before the US sanctions were reinstated, the position before such reinstatement remained that the banking restrictions and covenants prevented the P&I Club from providing security or making direct payment on claims during voyages connect to

Iran even though the voyage was not targeted by sanctions in terms of cargo or counterparties; and

- Owners were aware before fixing the vessel, through the International Group of P&I Club's circular of May 2018, that all Clubs could encounter difficulties putting up security in the context of any claim with an Iran nexus.

The circular that the P&I Clubs have issued on 8th May 2018, that is to say when there was potential ramification of the US withdrawal from the JCPOA, had advised that in the event of ship detention, Clubs could encounter difficulties putting up security in the context of any claim with an Iran nexus. This is particularly relevant if security was required for a major claim relating to Iranian port, since the U.S. had announced that there would be re-imposition of sanctions against Iran's port operators, which sanctions provide for penalties against any person who provides "significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of a person determined to operate a port in Iran." The ramifications of the re-imposition of secondary sanctions against Iranian ports at that time of period were uncertain and the Clubs were seeking clarification from OFAC on this point. The position in relation to calls at Iranian ports under pre-8 May 2018 contracts during the wind down period up to 6th August and 4th November 2018 was fully unclear in a number of respects on which the IG was awaiting clarification and/or guidance from OFAC. Due to the uncertainty that was surrounding the application of the re-imposed secondary sanctions against Iranian ports, caution should have been exercised in respect of all calls at Iranian ports, especially if they were made under post-8th May contracts and under all transactions after November 4, 2018. Proper due diligence should have been exercised to ensure that neither the cargoes carried nor the parties involved in the transactions offend U.S. sanctions. However, still until this time there is no clear guidance from the U.S. authorities on the issue of routine transactions with Iranian port operators.

4. Operations Process - Transferring dangerous goods on board

The dangerous goods until the ninetieth century had not been considered to be circulated into special regulations even though the unfortunate results are catastrophic. The first reference appeared in the British Merchant Shipping Act,1984 Section 301 noting that "*an emigrant ship could not proceed to sea if she carried explosive (..) or any vitol, lucifer matched, guano (..) which by reason of the nature, quantity or mode of storage is likely to endanger the health or lives ...".* Nowadays, the number of voyages that are fixed to transfer dangerous goods is increasing which eventually is connected with the unfortunate event of maritime claims such as explosions, fire on board, spillages, pollutions, accidents and potential danger to the ship and the life on board. Therefore, special rules in the carriage of dangerous goods have been circulated and that is to say, the recent years the shipping industry operates into a legal framework between public and private law for the state of concern for safety, security and environmental concern of liability.

Some of the conventions that refer to the dangerous goods are MARPOL and SOLAS. However, since there was a lack due to the international uniformity the International Maritime Organization (IMO) first time addressed the International Maritime Dangerous Goods Code (IMDG) in 1965 and decided to be mandatory in 2004. This code was developed in order to enhance and harmonize the safe carriage of dangerous goods and to prevent pollution to the environment. The Code sets out in detail the requirements applicable to each individual substance, material or article, covering matters such as packing, container traffic and stowage, with particular reference to the segregation of incompatible substances. *(IMO, 2020)*

In the subject case, the cargo that had been agreed to be transferred from Iran to Indonesia was Direct Reduced Iron (DRI). This is a raw material which is used in the production of steel in electric furnaces and can be split into two sub-groups; cold

molded pellets or hot briquettes and both of them are considered hazardous when carried in bulk.

The DRI is susceptible in the presence of oxygen which depends to the degree of moisture and the atmosphere that the cargo is being carried. The overheating of DRI is the direct consequence of the exothermic oxidation reactions between metallic iron and the oxygen that is present in the atmosphere. That is to say, when the hot iron contacts water then a chemical reaction resulting in the production of hydrogen which is highly explosive. DRI is particularly at risk owing to the exceptionally high surface area that is formed within the pellets during the direct reduction process. Adequate aging of the product, usually over a number of days in a nitrogen rich atmosphere, is therefore essential for the safe storage, handling and transportation of this material.

4.1 Carriage Requirements

As mentioned above, the carriage requirements are set out in the IMO BC Code *(IMO, 1986)* which recommends that the shippers should provide specific instructions for the carriage of DRI, and these should either be:

1. Prior to the shipment, the cargo shall be aged for at least three days, or treated with an air-passivation technique, or another equivalent method, that reduces the reactivity to the same level as the aged product. Such ageing process shall be approved by the competent authority which shall also provide a certificate to that effect.

2. The cargo shall be kept dry at all times during storage, before and during loading, and during transportation.

3. Due consideration shall be given to the possibility of moisture inside the cargo pile in order to avoid loading of wet cargo or a wet part of the cargo,

recognizing that the bottom of the pile can be wet even though the surface of cargo pile looks dry.

4. Prior to loading this cargo, the shipper should have provided the master with a certificate issued by a competent person recognized by the national administration of the port of loading stating that the cargo, at the time of loading, is suitable for shipment, and that it conforms with the requirements of the Code; that the quantity of fines and small particles is no more than 5% by weight; that the moisture content is less than 0.3%; and that the temperature does not exceed $65^{oC.}$ This certificate shall state the date of manufacture for each lot of cargo to be loaded in order to meet the loading criteria in regards to ageing and material temperature.

5. For quantitative measurements of hydrogen and oxygen, suitable detectors shall be on board while this cargo is carried. The detectors shall be suitable for use in an oxygen-depleted atmosphere and of a type certified safe for use in explosive atmospheres.

Due to the publication that Gard P&I have issued *(Gard, 2018)* , if the atmosphere is inerted, the inerting agent must be nitrogen. Carbon dioxide should not be used, primarily because it can produce carbon monoxide, which is both toxic and flammable. The condition of the cargo should be monitored during loading and if it is hot or damp should not be loaded. However, cargo with a temperature in excess of 65^{oC} should never be loaded. It is usual for temperature thermocouples to be placed within the cargo holds during loading for the monitoring of cargo temperatures during carriage. It is important that these thermocouples are tested prior to being positioned within the cargo and their location within the cargo recorded. Even on short sea voyages it is recommended that the cargo be fully inerted. Passivation has been shown to effectively reduce oxidation, from fresh water contamination, in the short term, but, over time, the effective protection is reduced. It should be noted that there is little protection from the rapid reactions caused by the ingress of salt water into the cargo spaces. It is therefore recommended that the carriage of DRI should always be

undertaken under a nitrogen blanket. The ship's crew or an appointed surveyor should carry out effective monitoring of the atmosphere in the cargo spaces. Records should be kept of the levels of hydrogen and oxygen in each cargo space. If the cargo temperature is above the ambient temperature, advice should be obtained from the local Competent Authority.

It is also recommended that the cargo should be properly trimmed in order to reduce the amount of surface area exposed to the atmosphere. Trimming also helps reduce the "funnel" effect by reducing the amount of void spaces in the cargo where hot gases can move upwards while drawing in fresh air.

If the vessel has any doubts about any particular DRI loading it is recommended that independent advice be obtained from an expert. *(Gard, 2018)*

4.2 Facts took place on the subject case study

The cargo was said to have comprised direct reduced iron pellets, which were loaded into the Vessel's four cargo holds in June 2018. The IMDG Code lists a number of requirements as regards the carriage of this material, however, there were never given details of the origin of this cargo, how it was aged or stored by the manufacturer, or how and when it was transported to and stored at the load port. Prior to loading of the cargo, the shipper should have provided the master with "*a certificate issued by a competent person recognized by the national administration of the port of loading stating that the cargo, at the time of loading, is suitable for shipment, and that it conforms with the requirements of this Code*;" A brief mention of the storage facilities was provided, in which it was stated that the cargo condition and temperatures were inspected in material in the open yard at the port premises, and that the material was loaded into cargo holds by means of bucket loaded on trucks from the covered warehouse and open yard in port area. The documents record that the holds were inspected and found to be suitable to carry DRI and the vessel was seaworthy, the bilge wells were found dry and satisfactory, and the bilge line in the engine room was

sealed/blanked off. Ultrasound testing of the hatch covers found no leakage. Ventilation points were checked and found to be in good and tight condition. Cargo holds No. 1, 2, 3 and 4 were accepted for loading DRI and a certificate of fitness was issued. The available records do not suggest that there had been any rainfall immediately before, during or after completion of loading and the hatch openings were reportedly swept clean and hatch covers closed and secured tightly. The hatch covers were swept with air pressure and cleaned before sealing with polyurethane foam at the seams and/or sides of the hatch covers. The ventilators were also reportedly shut tight, covered and sealed with polyurethane foam. A joint examination of the cargo holds reportedly found them to be satisfactory. All of the cargo temperatures were recorded as less than 44^{oC} throughout the voyage measured by the super-cargo superintendent.

Once the vessel arrived to the discharge port, the operations commenced from hold no. 2 and 4, however, discharge cargo hold no.2 was suspended at 02:05 owing to the observation of “smoke” and high temperatures at the forward bulkhead on the starboard side. Although the exact location is not described, it appears not to have been within the hatch square as it was inaccessible to the grab. A little “smoke” was later reported at 03:30 from cargo at the aft bulkhead. The DRI expert surveyor commented that there was no doubt that the “smoke” was, in fact, steam/water vapour that was being produced within the stow. Immediately the discharge due to further areas burning and cargo was seen flaming as it was being discharged.

Due to the meeting that took place in the discharging port between the Master of the vessel, the supercargo surveyors and the P&I Correspondent and the relevant Minutes of Meeting document, a collective decision was made to partially flood the hold since as it usual, the addition of water into the hold resulted in the eruption of flames over the surface of the stow, especially around the perimeter. As it is already mentioned above, the overheating of DRI is the direct consequence of the exothermic oxidation reactions between metallic iron and the oxygen that is present in the atmosphere. Information regarding the history and aging of this cargo had not been provided, and neither has a record of the commodity temperatures measured during removal from

the storage piles. It is entirely possible, therefore, that a portion of the cargo had undergone some self-heating prior to being loaded against the bulkheads of the specific hold. Alternatively, or additionally, the exothermic oxidation reactions can be triggered and/or accelerated by the presence of moisture, especially from saline. Whilst precipitation did not appear to have been an issue during loading, the history of this cargo was unknown and it would appear that at least some of the material had been stored in open area and in this regard, storage near to the sea can expose piles to excessively moist air. In conclusion, the DRI expert on his report concluded to the fact that the evidence favored the overheating to have been a result of loading a parcel of cargo that was either hot or had an excessive moisture content, rather than water ingress on during the voyage as the plaintiff supports.

4.3 Important actions that should have to be taken

1. <u>Appointment of P&I Correspondent Surveyor during loading and discharging operations.</u>

The damage to a cargo may eventually be occurred even on the best-case scenario. There are particular commodities such as the steel products which are notorious and can held the ship-owners responsible for damage either during the loading or the discharging. For that reason, it is very important to contact preloading and after loading surveys to verify the condition of the carried cargo in order to avoid future claims. In the cases that the parties have agreed Charterers to appoint surveyor then ship-owners should appoint and their P&I correspondent surveyor in order to save owners' rights in future claims.

In the subject case, in the fixture recap it was included that owners shall have the liberty of appointing their cargo specialist surveyor and/or their P&I surveyor to conduct a thorough survey of the cargo prior to loading and be present during loading and/or during the voyage if necessary in order to ensure that the cargo is loaded/stowed and carried in accordance to the IMSBC CODE/IMO regulations and that shippers will appoint the specialized supercargo surveyor to be on board of the vessel all the time until the completion of discharging. At the actual time that the

vessel arrived to Iran, the only surveyor that was supervising the loading was the supercargo surveyor who was appointed by the charterers. That is to say, owners acted in good faith and made the decision to not appoint a surveyor which, however, in after sight could have saved owners from the arisen claim and its costs until the present time since the nature and the condition of the cargo would have been tested and confirmed by the P&I surveyor.

It should be noted, as well, that the provisions of the Hague/Hague-Visby Rules place obligations on the Master:

- Inspect the cargo's apparent order and condition to enable the Master to ensure that the B/L is accurate in its description of these items.
- Inspect the cargo's marks so as to identify the goods, and number, quantity or weight as the case may be, to enable the Master to ensure that the B/L is accurate in its description of these items, unless there are no reasonable means of inspecting the cargo.

Therefore, the appointment of a P&I surveyor is a management decision which should be taken into consideration each time depending the carried cargo and the involved parties.

1. Avoidance of authorization for signing B/L

In many cases the Master would be requested to have the B/L signed on his behalf by the ship's agents and/ or charterers. These instructions are usually included on a Letter of Authorization which is issued by the Master of the vessel and it is addressed to the agent/charter. In such circumstances the Master should ensure that the wording of the letter is clear and its instructions cannot be disputed. As such, the Master should ensure that *(Gard, 2013)*:

- Description of the cargo and date of shipment in the Mate's receipt are accurate.
- Mate's receipt contains accurate details, information or remarks that must be included on the B/L.

- Letter of authorization expressly states that the B/L is only to be signed in accordance with the Mate's receipt.

Taking the above into consideration, the authorization for signing the B/L is again a management decision by which an authority is given to a third party, i.e charter or agent. That is to say, in the unfortunate event that the agent or the charter would not act in a good faith then afterwards the ship-owner would face obstacles in his request to be covered by its P&I Club since same procedure is not approved and can arise many questions.

In the subject case, the Master of the vessel had authorized the agent of the charterer to sign the B/Ls on behalf of himself but always in strict conformity with the Mate's receipt and the Cargo Manifest. The agent signed a non-negotiable set of B/L which were issued for customs purposes only - as it was alleged afterwards by the claimants- while charterer's agent based in Germany signed as well another formal set of B/Ls which was the only set that was circulated but in which the loading port was not the actual port in Iran but a port in the United Arab Emirates. That is to say, authorizing for signing the B\Ls is as risky as the reputation of the charterer or agent.

2. <u>Incorporation of the charterparty in the B/Ls.</u>

Another vital issue is the incorporation of the charterparty in the B/L since it evidences the terms of contract of carriage and the liabilities that may ~~arose~~ arise from it. Therefore, and in order to avoid any exposure to risks in excess of another charterparty than the one agreed, the charter party and its date should be clearly noted in the face of the B/L and general wording such as "other conditions as per charterparty" or "terms as per charterparty" should not be incorporated since are insufficient. Taking the above into consideration, it is highly recommended that the following or similar wording to be incorporated in the B/L "all terms, clauses, conditions and warranties including the arbitration, choice of law, time bar and time limitation clauses of the charterparty dated …. are hereby incorporated into this B/L". It is critical that the correct charterparty date is inserted to the above wording.

In the subject case, the first set of the B/L that incorporated the accurate loading port noted "as per charter party clean, shipped on board dated " while on the second set of

the fraudulent B/Ls there were no mention about the charter party and its date *(Gard, 2013*).

3. <u>Refusal to deliver the cargo without surrounded by original B/L</u>

As it is described on the Chapter 5.2 of this dissertation, the delivery without the production of the original B/L would have serious consequences, such as:

- Shipowner would be exposed to claims.
- Loss of P&I cover

5. Discharging Operations

5.1 The role of the Bill of Lading

A Bill of Lading (B/L) is a document that includes crucial details such as the type and quantity of goods being shipped, port of loading and discharging. The role of the Bill of Lading is very valuable and important since it is a legal document with few functions. Due to the Carriage of Goods by Sea Act 1992 – Chapter 50 (*Act, 1992)*, the Bill of Lading is:

- A representation of the goods to have been shipped on board a vessel or to have been received for shipment on board a vessel; and
- Signed by the master of the vessel or by a person who was not the master but had the express, implied or apparent authority of the carrier to sign the B\L and who shall in favor of a person who has become the lawful holder of the bill, be conclusive evidence against the carrier of shipment of the goods or, as the case may be, their receipt for shipment.

The main functions of the Bill of Landing are the following *(Gard, 2013)*:

- **Document of title** meaning that the person that presents the original Bill of Lading at the port of discharge is entitled to receive the delivery of the goods.
- **Evidence of the contract of carriage** since it is a document that acts as a proof of legal connection between the carrier and the shipper when the goods are loaded on board the ship.
- **Receipt for the goods loaded** since the bill of lading includes plural information such as date, loading and discharging port, the full quantity and each apparent condition. In the Hague Visby Rules-Carriage of Goods by Sea At 1992, Article III Rule IV it is noted that the figures are conclusive evidence between the carrier and a third-party receiver to whom the Bill of lading will be transferred in good faith.
- **Proof of being carrier** since it acts as evidence of the contract of carriage between the carrier and the shipper while the former would be the owner, charterer or freight forwarder.
- **Proof of the charter party** since the terms of carriage are usually found on the reverse side of the bill of lading, however the carrier may have agreed special terms of carriage with a charterer.

The list of the most important types of B/L as follows:

- **Straight B/L:** In that type the person to whom the shipment is going to be delivered named “consignee” is the only one who can sign for and accept the delivery and it is not a transferable document.
- **Open B/L:** That type of B/L is negotiable meaning that the name of the Consignee can be changed with his approval and signature and therefore the cargo can be transferred to him. Switch bill of lading is a type of open bill of lading.
- **Direct Bill of Lading:** In that type the vessel that would load and discharge the cargo to its final destination is known to both parties.
- **Negotiable B/L:** That particular type of B/L acts as a check which can be transferred to a third party through consignment who has to stamp and sign the bill in order to receive the shipment. That means that the B/L can be transferred from a person with title to a person without title, for example from

a consignee named in the B/L to a consignee not named, and as a result the goods can be traded whilst in transit. The most common negotiable B/L are order B/L in which the words “order or assigns” inserted instead of or against a named consignee.

- **Seaway B/L:** This type is to track shipments between companies and there is no need for submission of original B\L and for that reason the procedure is called “express release”.

5.2 The role and legal capacity of the Letter of Indemnity

It is a very common fact in shipping operations, charterer to request from carrier or the master of the vessel to accept a Letter of Indemnity in order to either issue clean B/L for damaged cargo, deliver the cargo without surrender of original B/L or deliver the cargo on a different port than that it was identified on the B\L.

A Letter of Indemnity is an agreement between two parties where the issuer requests from the other party to do something which they are otherwise not obliged to do. In exchange, the issuer promises that they will keep harmless and indemnify the recipient of the LOI in the event of any losses suffered as a result of complying with that request. (*Williams, 2013)*

More specific, the undertakings in a LOI is that the receiver of the cargo and usually together with the bank countersigning, are undertaking to indemnify the carrier (ship owner/manager) against any losses or consequences arising against the carrier out of the delivery of goods without production of the original B/L. Therefore, since the carrier who is taking the risk in complying with the third parties request, it is more than obvious that it is in the carrier's interest to get the maximum possible security included in any LOI, and to get the widest possible scope of any such indemnity. In many cases some receivers might offer indemnities which contain a clause causing them to expire after thirteen months. This is based on the idea that any cargo claim should become time-barred, under the Hague Visby Rules, after twelve months. *(Club, 2020*)

The content of an LOI is a list of details such as the name of the vessel, the voyage, the loaded cargo, the B/L, the full list of parties jointly liable, the reason and the Circumstances of issuing such an LOI. Moreover, specific risks are included that would be covered and the law and jurisdiction of the LOI.

Although the LOI is usually considered as a legal document, the truth is that it is just a paper that cannot guarantee compensation to the ship owner. There are three principal reasons that state that the LOI is just a simple and risk-free solution offered by third parties *(Association, 2019*):

1. **Unenforceable**: In that case if the cargo is damaged but the B/Ls issued and signed contain no remarks as to the nature of this damage (i.e. issuance of 'Clean B/L') then the buyer/consignee of the goods and their bank will have no knowledge of the damage until the goods arrive. The master and ship-owner could then be seen to have colluded with the seller/shipper to intentionally misrepresent the cargo condition to the ultimate buyer/cargo consignee. As such, they will have effectively committed a fraud. The associated LOI will then be considered an illegal contract and unenforceable in law and as a result the LOI is worthless if the seller/shipper later refuses to settle the buyer/consignee's cargo claims against the carrier/ship-owner.

2. **Unsecured**: In that case the seller/shipper may have no capital to reimburse the claimed amount even if he is willing to do so. The only fall back then would be if the seller/shipper also provided a back to back bank guarantee from a reputable bank, however, there would not exist any bank that would do so.

3. **Uninsured:** In that case all P&I Clubs exclude any claims for losses arising out of a member's intentional involvement in an illegal contract, inclusive of unenforceable LOIs. As such, there will be no liability cover for their member against cargo consignee claims if a shipper/charterer does not honor his LOI. The attention of such a case would be potentially covered by the P&I Club only after the Member's Committee discretionary exclusion of cover under the Club Rules.

5.3 Delivery of cargo without original B/L – What should the shipowner/ship-managers be aware of (perils)

The most common situation when a LOI is offered is when there is a request for delivery of cargo without production of a B/L. The speed of carriage of goods by the sea has been increased so that vessels are more liable to arrive at a discharge port before the necessary paperwork being processed. While documents can be transferred around the world there are frequently delays of some days before B/Ls are produced or released at the load port. The unfortunate event on this is that in a world where cargo can be traded many times over in a very short period, the ship-owner should still be held liable for the consequences of documents not being able to move fast enough to keep up with this chain of transactions.

It should be clearly understood that where delivery is given without surrender of the original Bills of Lading against a LOI, cover is excluded even if the letter is in a form which has been suggested by the Association. The International Group of P&I Clubs has issued a circular on the delivery of cargo without presentation of B/Ls *(P&I, 2020)* in which it is pointed out that any liability arising from the delivery of cargo without presentation of B/Ls may not be covered under Club Rules .Nevertheless in order to try to give a member as much assistance as possible the Clubs have recommended a standard form of Letter of Indemnity for such a situation and in such cases the Member is relying upon the LOI in place of the normal P&I cover. Moreover, Clubs always highly recommend that ship owners/managers should accept a LOI in the only case that is countersigned by a first-class bank. That is to say, the acceptance of such a letter is a commercial decision for the ship owner/manager in the particular circumstances meaning that there is always the potentiality of the provider not being able or willing to honor his undertaken obligation. The English court has proved ready to do so in most cases unless there is evidence that the LOI has been given in order to assist in the committal of a fraud or an illegal act, which is why most forms of LOI including Forms A and AA are subject to English law and the jurisdiction of the English court.

Nowadays, it is very regular the fact that in plenty charter parties there are terms incorporated which require the owner to deliver cargo in accordance with the instructions of the charterer, against a LOI to be given by the charterer. A typical example would read "*should a bill of lading not arrive at the discharge port in time, owners should release the entire cargo without presentation of the original bills of lading. Charterers hereby indemnify owners against all consequences of discharging cargo, without presentation of the original bills of lading*". The ship owner/manager might accept such a clause when fixing with a first-class charterer with whom he has had previous dealings. In other circumstances, the clause would be less protective especially if the owner suddenly faces a major claim some months after the event at a time when a charterer is not reachable *(Gard, 2013).*

At that point and taking all the above into consideration, when a ship owner/manager is requested to deliver the cargo without the presentation of original B/Ls then it is a crucial decision. In such cases they should ensure that such an indemnity adequately would cover any potential claim. Moreover, they should make sure that the person granting the indemnity is reliable, and will be able to indemnify them as confirmed on the letter is of a wide enough scope to cover any liabilities, costs or losses that the owner/manager should face, and that its life extends long enough to cover any such claims which might arise.

Last but not least, it is very important to know that by agreeing to discharge goods without production of a B/Ls, or discharge at a port other than indicated in the B/Ls against such a LOI the member might have already prejudiced the P&I cover, however, in any case they should still contact the Club to confirm such action and ask for advice with respect to the Letter of Indemnity.

6. Charter Party Chain

Usually on the Charter Party chain, the parties will look to pass on responsibility for claim from up to the chain to down and vice versa such as the head owners or the sub-charterers respectively. However, the flow of liability from the one party to another in some instances is prevented which are described below:

- **Case No.1:** A party is liable when a damage or loss has been occurred and it is a result of his ultimately fault or responsibility under the contract terms. For example, if a shipowner failed to exercise due diligence to make the vessel seaworthy then the shipowner will have little right of recourse and rights to be reimbursed by the insurers. *(Act, 1992)*
- **Case No.**2: In contrast, when a party experiences loss and may not be at fault or responsibility then the contract may not indicate any link against its counterparty to pass the liability. Therefore, there should be implied terms on any contract. *(Gard, 2013*)
- **Case No.3:** There are cases that the loss would be shared and this depends upon the charterparty wording and should be provided specifically for some cases. For example, cargo shortage or over carriage are shared equally by the parties and the apportionment would be shared down to the contractual chain so that sub-charterers account the one fourth of the loss. Therefore, it is very vital to have agreed on a clear wording and especially for the allocation of responsibility in order to avoid disputes. *(Club, 2017)*
- **Case No.4:** The counterparty solvency is another fact which is very important since it can determine the possibilities of being reimbursed. Assignment of rights, non-contractual claims, contractual rights, LOI's and rights under more than contracts are some cases that the solvency is being tested. *(Gard, 1999)*
- **Case No.5:** A party may find himself liable under more than one contract. As example we can take into consideration a shipowner who cannot collect the freight from the charterer and he is exercising the right to intercept freight from the shipper, that is to say owner withdraw the right of the charterer as its agent to collect freight under the bill of lading. *(LMAA, 2012)*
- **Case No.6:** It is very often the fact that different charterparties are related such as a time charter is above a voyage charter in the chain. Potentially, fatal examples might include mismatching time periods under time bar clauses and therefore no claim can be submitted to that extend. *(Club, 2017)*
- **Case No.7:** The flow of liability from the one party to another is prevented when the charterer and the ship owner are jointly insured under the same insurance policy since jointly insured parties could not claim against the other

party for potential breach. Otherwise, there can be the case that in the jointly insurance policy it is included that the insured parties can have the ability to claim each other or procure a waiver of subrogated rights of claim meaning that there can be no such liability to pass on or claim against their sub charterers.

- **Case No.8:** There are some standard contracts like BIMCO's Supply time 2005, that included the Knock-for-Knock clauses meaning that each party is responsible for and damage or loss to its own property without having the authority to claim against other party even if the other party is liable for it. *(BIMCO, 2017)*

Taking all the above cases into consideration, the flow of liability from the one party to another can be prevented +and not be passed down to the contractual chain. It is vital for each party to try to protect its own interests. *(Grout, 2020)*

6.1 Insurance & Legal prospects

It is very important the fact that, depending on the governing law the breach of different terms can provide the innocent party with different remedies. Rights and obligations may be varied by the particular terms of each charterparty agreement, however, the standard either expressed or silent obligations of the shipowner and the charter are under Article III Rule 1 of the Hague and Hague Visby Rule the following:

Duties of the shipowner:

1. Provide a seaworthy vessel that complies with the charter party description;
2. To properly and carefully load, handle, stow, carry, discharge and deliver the cargo;
3. To comply with charter's legitimate employment instructions;
4. To prosecute voyages with reasonable dispatch.

Duties of the charterer:

1. Remunerate the shipowner;
2. Provide legitimate employment instructions;
3. Ensure that no dangerous goods are loaded otherwise to confirm same prior loading;
4. To direct vessel to safe ports;
5. Perform their duties on time.

In the case that the parties are not meeting and do not conform to the above duties, then it is said that they are in breach of their duties/breach at law on a legal prospect.

As far insurance is concerned, any claim brought under charterparties may or not be subject to insurance. More specifically, the damaged cargo is a field that is usually covered under the P&I insurance whereas claims caused by the delivery of cargo without the surrender of original B/Ls are not. In any case, it is necessary to consider the nature of the claim and the cover afforded by the several types of insurances.

As it is foreseen on the Hague Visby Rules, all countries to provide that that claims must be brought within a specific period and if that period is exceeded then the claim is unenforceable. Most cargo claims will be subject to one year of the delivery of the cargo due to Hague and Hague Visby Rules and the governing English Law. Therefore, the mere of notification of a claim does not suspend the limit of time and for that reason it is very common relevant extension to be requested. Carriers are not obliged to grant such extension, but they may do so if they believe that claim may be settled without the proceeding of legal costs. *(Shipbrokers, 2016)*

7. Cargo Claims

Claims in respect of cargo can be derived under the type of contract that the respective parties have based on their contractual liability either directly or indirectly.

More specific, there may be a straight cargo claim between cargo claimant and carrier under the Bill of Lading or through the cargo claimant who represents another party who are legally connected by a charterparty.

The most common cargo claims are the following *(Shipbrokers, 2016)*:

- Damage to the cargo;
- Loss of part or all the cargo;
- Misdelivery of cargo;
- Delay;
- Extra discharging or/and storing costs
- Cargo's proportion of salvage or general average.

Moreover, there are many cases that claims have wrongfully brought and this is very common at the cases that there is no bona fide shortage when delivering. That is to say, there may be mispresentation of the quantity, the weight or the apparent order and condition of the cargo and when the cargo is delivered claim arises even though no event took place during the voyage. This is a common problem in the case of bulk cargoes since many ports work on a different degree or measurement and many claims are based on the allegation that the discrepancy caused by the trade.

The most common approach to the question who has the right to sue the carrier, the answer is that is the party that suffered financial loss as a result of carrier's breach of contract either there is a contractual liability or not. Liability that arises through contract, can be linked directly or indirectly. That is to say, the liability can arise directly from the carrier to the cargo claimant or by way of indemnity as between the carrier who has settled the claim and another party under another contract such as charterparty. *(Gard, 2018)*

7.1 Cargo Claim arising from liability in tort.

Claim can arise as well when there is no contractual link between the parties. That is to say, the person who causes damage or loss to the cargo in case there is no connection with the cargo owner this does not mean that there is no liability for the damage or loss. A fundamental principle in shipping industry is that each person has a duty to take care and not to cause damage or loss to the property of another person. For that reason, when it can be proved that the damage or loss has been caused by negligence then the owner of the cargo can prove that even though that there is no contractual link such as through the contract of carriage, between the person who is liable for the damage/loss, claim can be brought against him in tort. Liability in tort usually arises in two situations *(Shipbrokers, 2016)*:

- Where the contractual carrier is not the shipowner and is a charterer or freight forwarder and the carriage is delegated to a shipowner who causes loss or damage to the cargo during the carriage; or
- Where loss or damage to the cargo is caused by a sub-contractor of the carrier such as from stevedores.

That particular claims, is an attractive remedy to a cargo claimant where the carrier under the B/Ls is the charterer and can be evidenced that the damage/loss caused by shipowners' negligence during the carriage then the cargo claimant will sue the shipowner and most probably will arrest the vessel for security especially in the case that there are doubts about the financial health of the party. However, a claim in tort can be brought by a party that was entitled to possession of the cargo at the time when the negligence occurred.

Usually, in the first instance the cargo claimant would make a claim under the respective cargo insurance by which there would be a reimbursement for the physical damage or loss of the cargo. Thereafter, cargo insurers will be subrogated to whatever rights the cargo claimant had in order to bring a claim in contract or in tort against the carrier or the party that caused the damage/loss. As such, the cargo claim would be

brought through the cargo insurers against the carrier or the said party under the assured's or their own name since cargo underwriters are entitled to bring such a claim and they are subrogated to the rights of the assured including the right of the to bring a claim against the carrier under the B/L.

Normally, the cargo claim and the liability will be covered by the standard P&I cover provided always that the cargo was delivered surrender of the original B/Ls and not by a LOI since in this case the P&I cover, as described above, has been prejudiced. That is to say, the shipowner in any case should immediately notify the P&I Club in order to defend the claim and work closely and be aware that any settlement should be procced to the claimant and thereafter the P&I Club would reimburse since the cover is in line with the "pay to be paid". Last but not least, shipowners should always bear the fact that the P&I Club is not obliged and is in Member's Committee discretion if security should be offered to prevent the arrest of a ship or release it. *(Gard, 2018)*

7.2 Indemnity claim

Claims which are brought under B/L and rely on a charterparty, then the carrier under the B/L may wish to claim an indemnity from the other party to the charterparty and these merits of such claim will depend on the agreed termed and of course from the cause of the cargo damage/loss.

In majority cases, in case that the liability that the carries has under the B/L is excessive than the liability that he may have if the same claim had been brough under the charterparty, then the carrier is entitled to indemnity the other party. However, if the claim of loss or damage is based on the failure to take care of the cargo during the loading, stowage or discharging then the responsibilities depends on what has been agreed for the cargo operations and therefore the shipowner may have the right to claim an indemnity from the charterers *(Gard, 2018)*.

The rights of a shipowner and charter to claim indemnities *inter se* under dry cargo time charter for loss or damage is very complicated and as such the P&I Clubs have agreed on the Inter-Club New York Produce Exchange Agreement (ICA) which is a *"rough and ready"* allocation of responsibilities between shipowners and time charters regarding various types of claim in which they have agreed inter allia *(Gard, 2018)*:

- Claims that arise due to unseaworthiness of the vessel or any related fact to be born 100% by shipowners;
- Claims that arise due to unseaworthiness of the vessel caused by the loading, stowage and discharge then the claim shall be apportioned under sub-clause;
- Claims that arise due to the loading, stowage and discharge to be borne 100% by charterers;
- Claims that arise due to the loading, stowage and discharge but it has been agreed on the charterparty that the Master would be responsible then the claim to be borne 50% by charters and 50% by the shipowner;
- Claims for shortage or over carriage are to be borne 50% by charters and 50% by the shipowner;

8. Unlawful arrest and auction of the vessel

International Convention on Arrest of Ships, 1999 Geneva, 1999 determines that arrest "*means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument"*. However, an arrest can be characterized as wrongful which is carried out with *mala fides* (bad faith) or *crassa negligentia* (gross negligence) and this happens when the party that proceed to an arrestment act without good faith and honest belief and therefore this action is not legal or legitimate. *(P&I, 2020).*

Moreover, the Convention mentions that a ship may be arrested or released from arrest only under the authority of a Court and may only be arrested in respect of a

maritime claim for the purpose of obtaining security. The maritime claims over a ship take a form of priority and this list refer to the maritime liens.

8.1 Maritime Liens

A lien is a form of security granted over an item of property to secure the payment of a debt or performance of some other obligation. The owner of the property who is called debtor/ lienee grants the lien and the person who benefits from it called creditor/ lienor. A type of a lien among a list is the maritime lien as well. Maritime lien is a privileged claim upon a maritime property either ship, cargo or freight for service to it or damage done by it. The maritime lien accrues from the moment that the claim attached and is travelling with the property unconditionally and it is enforceable by an action *in rem* meaning that can be affected anytime. The term privileged claim means that the maritime lienor has a higher priority than other creditors in the event that a maritime property – usually the vessel – is sold with the intention of distributing the proceeds to satisfy various creditors. Under the International Convention on Maritime Liens and Mortgages of 1993, the list of the priority of the maritime liens is the following:

- Salvage;
- Crew Wages;
- Loss of life or injury;
- Port, canal and pilotage dues; and
- Tort for physical loss or damage

8.2 Arrest of the vessel in the United States

As described on the Chapter 1, the vessel was arrested in the United States where there is a specific practice and law that apply by which the Federal Rules of Civil Procedure's and Supplemental Rules for certain admiralty and maritime claims govern these procedures. More specific on these rules it is noted that there is an

established procedural mechanism used to arrest property that is subject to a maritime lien. It should be highlighted the fact that there is no international convention that applies to the arrest of a ship in the United States and there is no other way to arrest a ship which in anyway should not be a government or other foreign sovereign.

The procedure commences by the arresting party obtaining a warrant of arrest from the local Court that the vessel is or will call. The types of claims that a ship can arrested are the following *(ShipArrest, 2008):*

1. Maritime Lien or where the U.S statute provides for maritime action in rem.
   1.1 Property arrested must be related to the Plaintiff's claim
   1.2 Maritime Lien claims include: ship repairs, ship supplies, towage, drydock, crew wages, tort claims arising from a collision, injury claims, stevedoring, cargo damage/loss, breach of charter party, mortgage, salvage and pollution.
2. A party can obtain jurisdiction over defendants' property for any debt arising out of a maritime claim when the defendant "cannot be found within the district"
3. As mentioned above, the maritime claims include maritime torts and any claim arising from breach of a maritime contract such as a charter party or B/L. Under the U.S Law "maritime contracts" generally include shipbuilding contracts, vessel sale and purchase contracts, brokerage or other preliminary service contracts or commodities sale and purchase contracts.

Following the warrant, the claimant should submit a verified complaint asserting that the underlying claim is in admiralty/maritime claim accompanied by supporting claim documentation in which he must show cause of damage and explain why the arrest/ attachment should not be vacated. Moreover, the claimant submits an Agreement of Indemnity by which agrees to hold harmless the U.S. for damages if the arrest/attachment is later found to have been wrongful and, as well, a bank check as a deposit to cover insurance, guard services and other costs related to

arresting/maintaining the vessel which costs are known as custodia legis expenses. Afterwards, once the vessel has been arrested/attached the Courts will have jurisdiction up to the amount of the claim unless there is a clause that requires the claim to be brought in a foreign jurisdiction. The vessel may be released if a settlement agreement would be reached by the parties or respective security such as bond or a P&I Club Letter of Undertaking or if after conducting a post seizure hearing the Court determined that the arrest was improper and should be vacated. However, the Court would acknowledge wrongful arrest in exceptional circumstances as if the Defendant show that the claimant acted with bad faith, malice or gross negligence. *(ShipArrest, 2008)*

8.3 Auction of the vessel

Generally, and as discussed above, the parties will commence discussions for settlement after the vessel is arrested or when there is an announcement for the ship auction which usually may be no less than thirty days. The main principals of the announcement of the public sale of the vessel is to notify as many possible bidders in order to maximize the final sale price and to make aware the respective creditors that have interest over the vessel to report any claim and other lawful rights to the Court. The announcement of the auction contained details as the name of the ship, the time and venue, reasons and grounds for the auction and any registration of debts.

After the successful conclusion of the auction meaning that the minimum bid price has been met, the auction committee sign a letter confirming the conclusion of the auction and the relevant buyer which shall be confirmed by the Court and has a binding contractual effect. The buyer must immediately pay a sum of no less than the twenty percent of the auction price of the ship and the remaining must be settled within seven days. The first settlement of the buyer should be noted that it is acting as a guarantee or deposit since it can be refunded in the case that the second settlement would not be proceeded and second auction would be organized.

When the buyer has paid the total bid amount, the shipowner should deliver the ship to the buyer at the berthing place as is while the auction committee will supervise the delivery and respectively sign a letter of confirmation of delivery and acceptance with the buyer after the delivery of the vessel. *(Robert Force, 2006)*

9. Discussion - Conclusion

The carriage of cargo by sea is an important trade since it is the most cost-effective transport solution when it comes to large volumes and long distances. Over ocean carriage, a huge complex network of parties is being involved which includes shippers, freight forwarders, traders, banks, carriers, insurers, charterers, brokers, receivers and other interested parties. Cargo claim, which is a demand for compensation in respect of a sustained financial loss, is a very common issue that the shipowners/ ship managing companies are facing day to day and it is connected to the liabilities that have over other parties. The obligations of the parties are included on the several forms of contracts such as voyage/ time charter parties, Bills of Landings and other type of contracts. Cargo claim can arise due to the breach of a contract of carriage or failure by the carrier to fulfill certain contractual obligation, however, the carrier would not be liable to compensate the claimant if the loss is connected to liabilities that are not legally connected to the carrier or connected to fraud. It is vitally important to know the background and the reputation of the involved parties before entering into a contract.

On the subject case a vessel was fixed to transport some metric tons of Direct Reduced Iron (DRI), which is categorized as dangerous goods, from Iran to Indonesia under a time charter party agreement. It can be said that the subject claim is being divided into two fields of types of claim; the first is the actual damage to the cargo and the second is the fraud that the claimants are relying to and finally proceeded to the arrest and the auction of the vessel.

The sequence of the events that took place, is the following:

- **LOADING PORT (Iran):** owner's P&I correspondent hadn't been appointed, Certificate of origin of the cargo was never provided, Master authorized agent to sign the B/Ls on his behalf;
- **DURING VOYAGE**: Master was requested to deliver the cargo once arriving in Indonesia against L.O.I since the original B/Ls weren't available; and
- **DISCHARGING PORT (Indonesia):** Vessel discharged against L.O.I, owner's P&I correspondent hadn't been appointed to inspect the discharging operations until flames and high temperature occurred into the particular cargo hold, join inspection of the damaged cargo wasn't conducted, official claim wasn't submitted until the time that the vessel sailed.

To begin with the fact that the cargo was actually delivered damaged, since part of it was destroyed due to the high temperature and the subsequent flames into the particular cargo hold cannot burden manager's / owner's actions to serve a seaworthy vessel since there are a lot of concerns about the origin, the age and the way that the cargo was stored before being loaded into the vessel. As described at Chapter No.4, the Master of the vessel should have been provided by a specific certificate issued by competent authority including all the required details which in the subject case never provided. Since this certificate is missing, this fact raises many queries about the cargo such as if it was actually in a good condition in order to be loaded and be transported to another country. As it is described above, the transportation of such cargo may produce serious consequences such as mass casualties or mass destruction *(IMO, 2018*). Moreover, the fact that P&I Correspondent wasn't appointed to the loading port, this makes managers/owners position powerless since afterwards they cannot save their rights over the condition of the loaded cargo. Lastly, even it is common practice in shipping industry the Master to authorize agents to sign the B/Ls on his behalf this again is a decision that managers and owners should more protractedly examine before instructing the Master to do so. This authority, even though in the respective letter were strictly instructed the agent to act on a particular

line, finally have raised queries to the P&I Club once considering to provide coverage to the Owners while the vessel was arrested in the United States.

Moving on and during the time that the vessel was sailing to Indonesia, the Charterers have requested from the Master to deliver the cargo against L.O.I since the original B/Ls would not be available at the discharging port. As described on Chapter No.5, although the L.O.I is usually considered as a legal document the truth is that it is just a paper that cannot guarantee compensation to the ship owner in case of a claim. It should be highlighted again, the fact that the B/Ls that were attached on the L.O.Is were shown the Iranian port and were a non-negotiable copies whereas the claim that was brought was under the fraudulent B/Ls which show the port in the United Arab Emirates.

In the discharging port, again the managers have made the decision to not appoint a P&I correspondent who would supervise the discharging operations while saving their rights for any potential claim. Unfortunately, the high temperature and the flames destroyed part of the cargo that was loaded on a particular cargo hold. Supercargo surveyor and P&I surveyor attended the vessel and issued a survey report for the casualties of damages.

As it has been described above, the survey report does not contain any conclusive evidence to suggest the Owners are at fault in relation to the cargo damage. According to claimants, their alleged claim is based on a conclusion reached by their surveyor's report noting that the damage occurred because of condensation and cargo sweat. It also concludes that damage was caused by water ingress resulting from cross joint hatch covers leaking meaning that wasn't waterproof. It does not, however, provide any evidential basis or explanation for these conclusions fact that comes in contrast to owners' surveyor report which comes to the conclusion that the cargo damage resulted from self-heating.

More specifically and in regards to first type of claim, that is to say the actual damage to the cargo, the report from the supercargo surveyor provided that the joint inspection at the loading port found the holds to be well-ventilated and dry and as such a certificate of fitness issued. The cargo condition was also inspected at the loading port

which was stored on an open area, but no specific comments were made about its condition and the relevant certificate for the cargo was never provided to the ship owners. During the voyage from Iran to Indonesia, the vessel experienced rough seas and rolling during the voyage some sea spays on the deck and hatch covers found, however, at the discharging port it was confirmed by the surveyors that the relevant tape and the sealing foam that was applied to the hatch covers at the loading port, found to be intact before commencing the discharging operations.

The above statements can indicate that Owners may not actually be at fault for the cargo damage. The fact that the relevant Certificate, confirms that the cargo at the time of loading is suitable for shipment and that it conforms with the requirements of the Code, was never provided to the Master of the vessel and the shipping company it is a vital issue that arises many questions about the history of the cargo and its condition pre loading. In addition, the fact that the cargo was stored in an open area at the port may be linked to the possibility of the cargo to be moisturized during storage that is to say the cargo was loaded wet.

As far the second type of claim is concerned, the Charter issued without any approval from the ship owners/managers fraudulent B/Ls including a port in U.A.E instead of the actual loading port in Iran. The claimants have submitted this set of fraudulent B/Ls to the U.S Court and ordered the arrest of the vessel. Even though the owners have offered to the claimants the option to assign a first priority mortgage interest over the vessel and gain income from the day to day operations, the Court rejected this offer since it was stated that it was not sufficient. After a period of four months that the vessel was under attachment and since the Owners were not in position to proceed either with the settlement of the claimed amount nor with a security from the P&I Club due to the Iranian nexus and the fraudulent B/Ls, the vessel was sold in public sale.

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