

BRIDGE LOOK-OUT

EDITION
NO. 02/22

DEVIATIONS FROM CONTRACTUALLY-AGREED VOYAGES
IMPACTS ON INSURANCE COVER

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In modern shipping times, deviations from intended voyages in laden condition are standard practice. The reasons for such deviations can be of various nature such as bunkering, crew changes or supply of spare parts and stores. Furthermore, damage repairs may require a deviation from the intended voyage.

In our current edition of our Bridge look-out, we highlight the potential impacts on insurance cover in result of deviation in laden condition in relation to the voyage and the necessary steps which need to be taken to avoid prejudicing insurance cover.

According to the Hague Visby Rules and as stipulated in each typical charter party, the carrier is obliged to carry the cargo from the loading to the discharge port with due dispatch on the usual route without any unreasonable deviation or delay. A deviation from the route may thus constitute a breach of the contract of carriage.

The only exception that justifies a deviation under the Hague Visby Rules is an attempt to save life or property at sea which shall not be deemed to be an infringement or breach of this Convention or of the contract of carriage. In such cases, the carrier shall not be liable for any consequential loss or damage.

Whilst the saving of life or property at sea is based on SOLAS and is clearly defined as per Hague Visby Rules, the term “any reasonable deviation” instead is not stipulated in further detail. The interpretation of this term may vary heavily depending on the applicable law and in consequence leads to uncertainty among the contractual partners concerned. Therefore, the vessel’s P&I Club in principle only covers the operational costs associated to the deviation and resulting from a SOLAS event. In any case, Loss of Hire cannot be claimed under a Club’s entry or cover.

As risk increases with a breach of the terms of the contract of carriage, the P&I Clubs attempt to restrict their cover with exclusions relating to cargo liabilities in their rules. Thus, the rules exclude any recovery in the event of a claim resulting from any unreasonable deviation from the contractually agreed voyage. The latter may deprive the member of the right to rely on defences or rights of limitation which otherwise would have been available to them unless the Club has agreed that cover may remain unprejudiced for the captioned deviation.

Hence, it is of utmost importance to always notify the Club prior to the commencement of the deviation. In many cases, the Clubs will accept that the cover remains unprejudiced or will alternatively request to opt for additional shipowner’s liability coverage for the given period. The terms for this cover might vary depending on duration, route and cargo which is on board during the deviation.

The same procedure applies for deviations in result of a casualty covered under the H&M insurance. Even if no P&I elements are involved in a casualty, the P&I Club needs to be notified about a potential deviation from the contractually agreed voyage, for example to carry out repairs or to enter a port of refuge. If GEORG DUNCKER is the nominated broker for the H&M as well as the P&I cover, the Club will automatically be notified from our side.

As an alternative to notifying the P&I Club for each individual deviation from the contractually agreed voyage, problems may be prevented from a legal and practical perspective when including a so-called liberty clause which contractually defines which type of deviation is allowed under the charter party. In such a standard clause, the Charterers are obliged to indemnify the Owners against any claims resulting from such pre-defined deviations and at the same time are urged to incorporate such a liberty clause in each sub-charter or bill of lading issued to this end.

As such, we would recommend including the BIMCO Liberty and Deviation Clause for Contracts of Carriage 2010 or similar in each charter party fixture. Wherever a specific liberty clause has not been agreed during charter negotiations, Owners are strongly advised to monitor each voyage carefully under the perspective of legal implications of non-authorised deviations beyond the saving of life. In order to notify the Club in advance.

If you should have any further questions, please feel free to contact your designated claims handler at GEORG DUNCKER.



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