

11 October 2018

Continuing Warranty of Seaworthiness

The Managers are aware that, from time to time, Members have been offered contractual terms with counterparties that require the shipowner to provide a continuing warranty of seaworthiness for the entire duration of the voyage. Should this situation arise, the Club would urge Members to exercise caution before entering into contract terms since such a warranty could prejudice their P&I cover.

Cover for cargo risks is conditional upon the Member not contracting on terms less favourable than the Hague Visby Rules (HVR). Article III paragraph 1 of the HVR provides that the carrier must, before and at the beginning of the voyage, 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.

Under the HVR “exercising due diligence” means taking all reasonable precautions to see that the vessel is fit for the voyage contemplated. The carrier is not obliged to give an absolute guarantee of seaworthiness and the ship need only be seaworthy at the commencement of the voyage.

If a cargo owner can show that their loss was caused by a failure of the carrier to exercise due diligence to make the vessel seaworthy before and at the commencement of the voyage, the resulting loss will fall under Club cover. If, however, the loss was shown to have been caused by some event which affected the vessel’s seaworthiness only during the voyage then, assuming the due diligence test in Article III paragraph 1 is passed, the carrier would not be liable to the cargo interests under Article III paragraph 1 of the HVR.

A continuing warranty of seaworthiness throughout the voyage alters that position and would make the carrier potentially liable for any and all events affecting the vessel’s seaworthiness during the entire voyage. This would represent terms less favourable than the HVR and so place any resulting claims outside of Club cover.

Members are therefore advised to give serious consideration to the potential ramifications on cover of contracting on terms that give a continuing warranty of seaworthiness and to contact the Managers for guidance before fixing on this basis.

All Clubs in the International Group have issued a similarly worded circular.