Q2 2021

INTERLEGAL QUARTERLY SHIPPING NEWSLETTER

The LMAA Terms 2021: What's new?

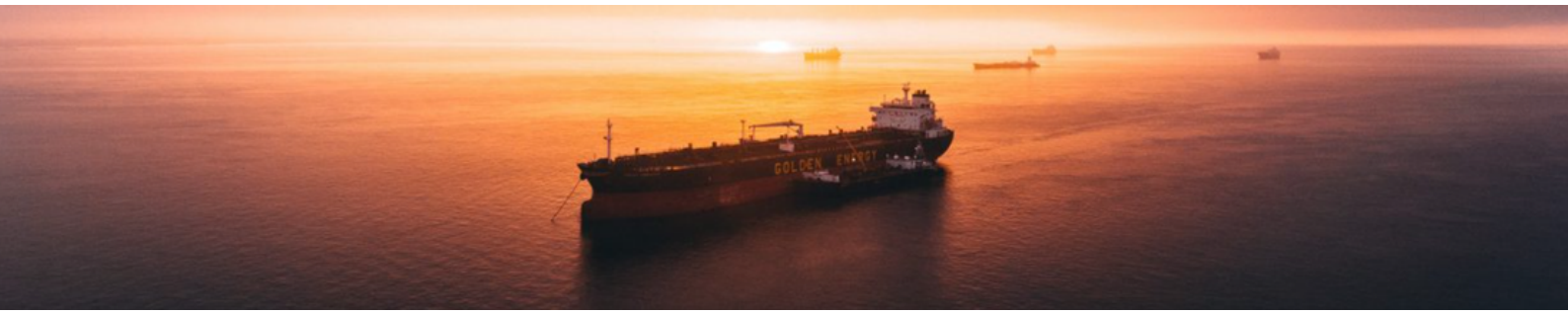
The London Maritime Arbitrators Association has recently published a revised version of its terms of procedure. A number of changes have been introduced including minor and key ones. The key revisions include such changes as additional guidance on the preparation and content of witness statements, requirements for parties to provide more detailed cost estimates within LMAA Questionnaire, virtual and semi-virtual hearings and a possibility of the LMAA president to appoint a substitute arbitrator when one of the original arbitrators becomes unable to conduct the proceedings or attend the hearing.

The new version of the LMAA Terms came into force on 1 May 2021. According to the section 4 of the LMAA Terms 2021 new terms will apply for arbitrations commenced on or after this date.

In addition to the changes of the main LMAA Terms the LMAA's ICP (Intermediate Claims Procedure) and SCP (Small Claims Procedure) have been revised as well. The key changes to the ICP include updated arbitrator appointment procedure and revised witness statement guidance. The SCP received more changes to its procedure including such provisions as payment of the SCP fees is now a condition precedent in order to move forward with proceedings, predetermined position that reasoned awards should be produced by default (unless the parties agree otherwise) and clarification on possible procedures if the SCP is inappropriate and not applicable.

Thus, while the general approach for the people of commerce remains the same, there have been some procedural changes introduced, which are indeed of high importance when referring to arbitration

Limitation of Liability for Bulk Carriers

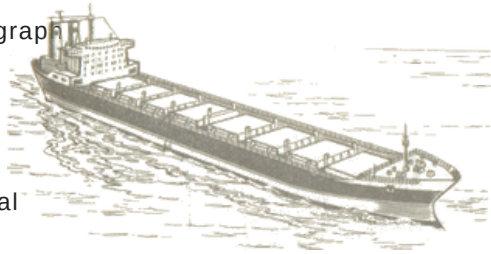


A relatively recent case of 2018 was heard by the English Court, which has brought a significant update in understanding the bulk carriers' right to limit their liability under the Hague Rules, which induces even more questions.

In The "Aquasia" [2018] case the appellant shipping company appealed against a High Court decision that it was not entitled to limit its liability for damage to cargo carried on its vessel under the article IV, paragraph 5 of the Hague Rules 1924.

While the point of actual damage to cargo was not the subject of disputes, the owner claimed that it was entitled to rely on Hague Rules' limitation of liability clause. As soon as the first instance court had declined such possibility, the owner referred to the Court of Appeal.

In its decision the Court of Appeal considered the appeal from different perspectives. In particular, the Court of Appeal addressed the issue of meaning of "package or unit" used in the Hague Rules. For such a determination the Court referred to travaux preparatoires (description of the documentary evidence of the negotiation, discussions, and drafting of a final treaty text); the product of Hague Rules' development, i.e. Hague-Visby Rules; and the Commonwealth authorities.



In its research the Court found that the word "package" contained in article IV paragraph 5 unquestionably referred to a physical item and the interpretation of the words "package" and

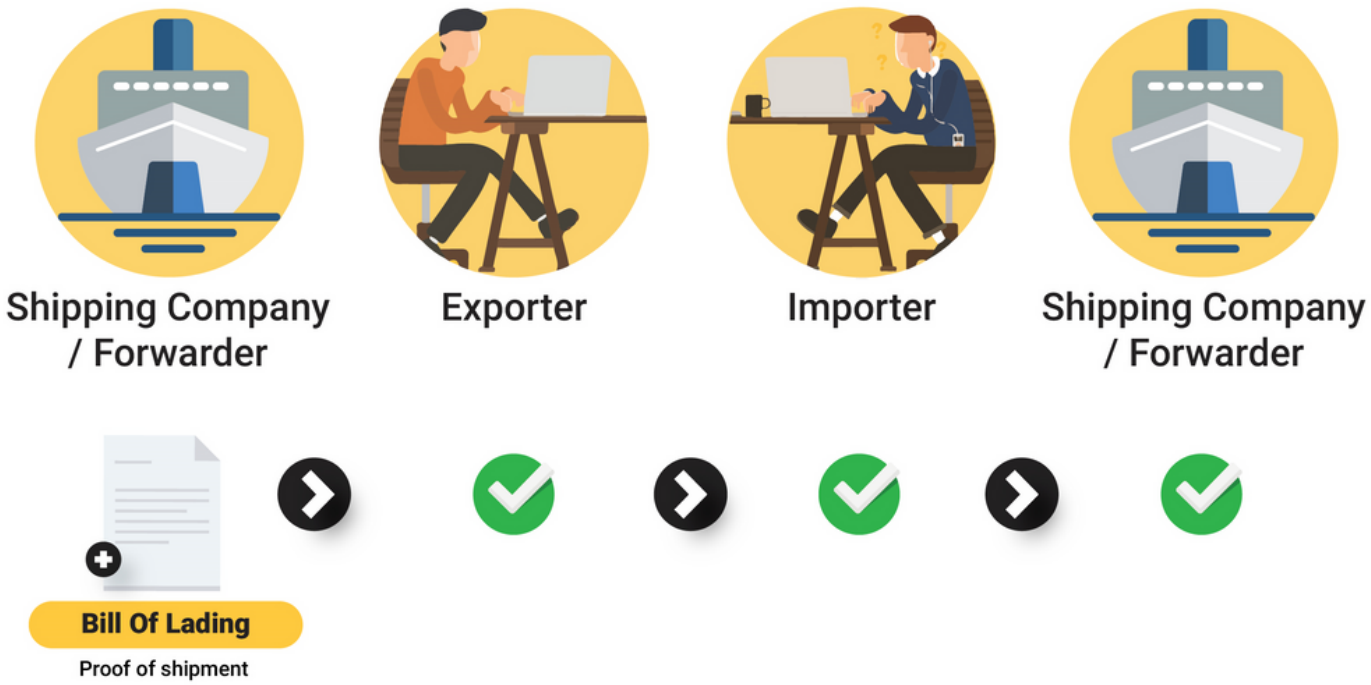
"unit" together undoubtedly pointed towards the fact that these both wards were concerned with physical items rather than units of measurement. Therefore, a logical conclusion follows that in the Hague Rules the word "unit" meant a physical item of cargo, not a unit of measurement.

The same was confirmed by the travaux preparatoires and the respective judicial precedents, e.g. El Greco (Australia) Pty Ltd v Mediterranean Shipping Co SA [2004] FCAFC 202.

Examination of the Hague-Visby Rules led to the same conclusions – it was concluded by the Court of Appeal that the article IV of the Hague-Visby Rules suggested that a "unit" constituted a physical item of cargo rather than a freight unit.

Having found such conclusions, that that "unit" means a physical item of cargo or shipping unit but not a unit of measurement or a freight unit, the Court has decided that it is impossible for the Hague / Hague-Visby Rules to be applicable for a bulk cargo, which of course brings a significant level of uncertainty as for the owners' options for limitation their liability.

e-Bills of Lading: Another Offer



One more key piece of news that is worth mentioning is that BIMCO alongside with International Chamber of Commerce and other key stakeholders are planning to accelerate digitalisation in the shipping business by adopting electronic bills of lading.

According to the words of Grant Hunter, head of contracts and clauses at BIMCO, in order to digitally transform shipping industry, it is of utmost importance to enact a globally accepted standard for electronic bills of ladings.

BIMCO is supposed to be the main player at this initiative as it is going to develop electronic bills of lading standard for the dry and liquid bulk sectors. Afterwards BIMCO is planning to encourage electronic bills of lading acceptance and adoption by insurers, banks, regulators and carriers.

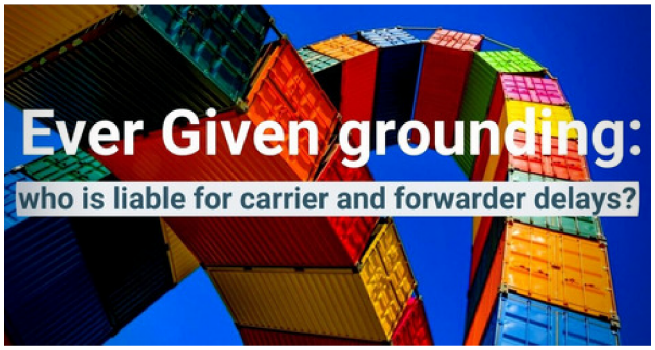
BIMCO has a longstanding experience in this field and is widely known to all the players of this branch of market due to its existing contributions, i.e. paper bills of lading such as CONGENBILL and CONLINEBILL.

According to the BIMCO official website, electronic bills of lading will be entirely consistent with the UN/CEFACT Multimodal Reference Data in order to deliver smooth and transparent electronic bills of lading transactions across international borders.

In addition, the Digital Container Shipping Association as it is said will be contributing to development of electronic bill of lading standard alongside with BIMCO.

INTERLEGAL NEWS:

Ukrainian Government has finally declared the Port-Landlord pattern to gradually replace the outdate ‘state enterprise’ model in the still rather post-Soviet economy of this sector. And as soon as the first progress started moving toward it, the voices have risen in respect of the port dues in Ukrainian ports. Indeed, Ukrainian port dues are regarded as the highest in the region exceeding those in neighbouring states with a sensitive margin. Moreover, the very system is rather complicated if compared to, say, Singapore port dues based simply on the purpose of call (cargo ops or bunkering etc.), rates per 100 GT of a calling ship, and duration of stay, with some discounts they call concessions and rebates applied on certain conditions. Or an almost similarly simple system applied in Rotterdam where ships GT rates and cargo rates are divided to 16 classes each, discounts granted; plus buoy, dolphin and public quay dues whichever pertinent and waste fee – all subject the fact of using them.



The grounding of the Ever Given container vessel in the Suez Canal caused considerable congestion for many other vessels which were trapped on both sides of the canal. As such, cargo interests – such as shippers' and consignees' respective cargo insurers, as well as the sea carriers of the respective vessels and the initial (multimodal) carriers and forwarders – are faced with damages arising from these delays.
Carriers, forwarders which have agreed a fixed freight and sea carriers are liable under general civil law as German shipping law does not provide for liability rules for delay.
When determining liability, a key consideration is whether the carriage has actually been delayed (ie, whether the shipment has arrived or will arrive after an agreed delivery date). Usually, no fixed delivery dates are agreed in international sea carriages; rather, the carriers state an estimated time of arrival (ETA).

Within the port practice, Interlegal experts drafted Analysis of Container Handling & Logistics for 2018-2020. The Client was large European logistics operator.In the framework of marketing research, our law team studied for the Client issues of container flow distribution in Ukraine, including transportation by rail, by road and in container trains. The review also covered the issues of container handling in Ukraine for 2018-2020 and market distribution between operators and leading container lines.
Interlegal drafted review in partnership with Port Clearance – customs, brokerage & consulting company, based on original research upon specific issues (i.e. either carried out 3-4 years ago or not being carried out yet). The review included statistic data taken from the open sources, professional media and interviews with key market players.
Similar research may awake interest among container terminal operators, line carriers, railway operators, freight forwarders, road carriers, dry port owners, river carriers and river terminal operators.
Interlegal team – Viktoria Krotova, Andrii Netrebenko, Igor Kazakutsa, **managed by partner** Arthur Nitsevych **– led the project.**

READY TO HELP YOU AND YOUR BUSINESS

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