

INTERLEGAL QUARTERLY

SHIPPING

NEWSLETTER



UPDATED BIMCO CONTRACTS FOR
TOWAGE AND BARGE HIRE

●
SOYA BEANS: RISKS AND LOSS
PREVENTION RECOMMENDATIONS

●
TIME-CHARTER CASE: OFF-
HIRE, ARREST AND CARGO
CLAIMS

Updated BIMCO contracts for towage and barge hire

The Baltic and International Maritime Council (BIMCO) recently published new editions of the widely used Towhire, Towcon and Bargehire contract forms, which were last revised in 2008. The amendments are intended to improve legal clarity and bring the contracts more in line with current commercial practices.

Towhire and Towcon are the industry standard ocean towage agreement. Both contracts have undergone revisions, including rearranging the layout as well as amending certain principle terms, as discussed below.

The party's liability regime now includes definitions of "Hirer's Group" and "Tugowner's Group". The forms also include a new definition of "Place of Connection" to address cases where the tow is located inside a port area which may take several hours to reach. In Clause "Towing Gear and Use of Tow's Gear" in part of hirer's responsibility to pay for repair or replacement of damaged or lost towing gear there are amendments due to which the hirer should pay only for gear and accessories provided by the Tugowner and used in connection with an Agreement. The box part also contains clause referring to daily reporting from Tugowner.

The contract now includes an "Insurance" clause, pursuant to which, the parties are obliged to warrant that the tug and the tow are insured, with protection and indemnity (P&I) insurance equivalent to the cover provided by members of the International Group of P&I Clubs as the benchmark. Some new clauses modelled on existing BIMCO have also been included, addressing infectious or contagious diseases, piracy, anti-corruption, sanctions.

The amendment made only to the Towcon form is "Free Time/Delay Payments" clause, where a provision has been made for bunkering the tug during the voyage. There is now a box for the tug owner to state the estimated average towage speed, which can be used as basis for calculating the compensation for extra time, to reduce the risk of disputes surrounding the calculation of compensation owed to the tug owner to cover delays due to slow steaming and deviation.

Some commonly found BIMCO clauses have been also introduced in Bargehire 2021.

The clauses dealing with survey, repair and redelivery have been given particular attention and extension. Other changes include a new and combined clause on ballasting operations and a default obligation on the charterers to take out P&I insurance.

All amendments have been introduced to make the proforma easier to understand and more user friendly and it is supposed that the 2021 editions of these contracts will become market standards.



Soya beans, due to their high value and the large quantities of export, this seemingly harmless cargo is responsible for multimillion-dollar claims. Though this commodity is predominantly subject to export to China, the biggest importer of soya beans, it has also become of a great interest in Ukraine.

In our practice there are some recent cases according to import of soya beans to Ukraine, which were not without problems. That is why we share practical recommendations on how to minimize risks even at the stage of concluding a contract.

Soya beans generally have a long shelf life provided they remain below 25°C and contain no more than 11.5% moisture. However, if the temperature and moisture are disturbed or the voyage is longer than expected, the cargo becomes unstable, which can cause self-heating of the cargo and result in a fire, putting the ship and its crew in danger. In addition to the risk of self-heating, soya beans are susceptible to mould and rotting.

Thus, the problem is indicated by the physical properties of the cargo, which is why it is so important to protect yourself from such incidents.

Under Article IV rule 2 (m) of the Hague-Visby Rules, the carrier is protected and not responsible for damage or loss when same has resulted from an inherent vice or defect of the goods. However, parties should not rely too heavily on this statutory protection as it will require strong evidence to prove that the damage resulted precisely for that reason and, furthermore, some jurisdictions do not accept the defense of inherent vice.

In this context, legal loss prevention can be very effective to avoid cargo claims. Such measures include carefully drafting contracts with a clear allocation of liability. We advise parties to check their contracts for clauses which concern the areas listed below.

State the allowed moisture content of cargo below 11,5 % in contract to prevent the cargo from becoming unstable. Also, it is of utmost importance to insert specifically worded clauses, clearly apportioning the parties' risks and responsibilities for the cargo damage due to the lack of ventilation, in the charter party. The Deviation Clause shall be also incorporated into the charter to clarify the owner's responsibility of cargo safety in case of deviation. The standard clauses in place which state that the vessel needs to be delivered with clean holds, can be further specified. For example, by adding rider clauses specifically stating the fumigation requirements.

We furthermore recommend using clear clauses outlining the allocation of responsibilities in respect of the risk of shortage and cargo damages. Note, these recommendations are important for especially sensitive cargoes, which are also exposed to the risks connected with long-distance maritime transport.



In the recent case of Navision Shipping A/S (as Charterer) v. Precious Pearls Ltd (as Owner) and Conti Lines Shipping NV (as Charterer) v. Navision Shipping A/S (as Disponent Owner) the court considered whether failing to have a vessel released from an arrest to secure cargo claims against the sub-sub-charterer on a different fixture was an omission within an off-hire exception clause; and the allocation of claims under a specific West Africa clause.

The background of the case was the following:

The chartered vessel, "MV MOOKDA NAREE" (the Vessel), arrived at Conakry, Guinea, in early December 2018, to discharge a cargo of milling wheat. She was arrested on 15 December 2018 by a Guinean company (SMG) to secure a short delivery claim against sub-sub-charterer Cerealis in relation to a cargo discharged in June/July 2018 from an unrelated vessel, ("MV SUPERTRAMP").

The head charter and the sub-charter were on the Asbatime form and contained an additional clause 47 under which the Vessel was off hire upon her being detained or arrested by any legal process, until the time of her release, 'unless such ... detention or arrest [was] occasioned by any act, omission or default of the Charterers and/or sub-Charterers and/or their servants or their Agents'.

The head charter contained a further provision at clause 86 'When trading to West African ports Charterers to accept responsibility for cargo claims from third parties in these countries [...] including putting up security, if necessary, to prevent arrest/detention of the vessel or to release the vessel from arrest or detention and vessel to remain on hire.'

On 15 December 2018 under a voyage charter the sub-sub-charterer Cerealis became aware of the arrest by SMG for the "MV SUPERTRAMP" short delivery claim, but they were denying any liability and refusing to take any action to lift the arrest. The Vessel treated by both Charterers as being off hire from 12:00 on 15 December until 19:00 on 12 January 2019 and the disputes were referred to arbitration.

Based on both mentioned clauses the Tribunals held that the Vessel was not off hire from 15 December, but on hire for the entire period under arrest, because:

1. The detention under arrest was occasioned by Cerealis' failure promptly to deal with or secure SMG's claim so as to procure her release;
2. The arbitrators held that under the head charterparty, mentioned provision applied, as it was not limited to claims concerning cargo carried under the head charter.

Subsequently, Conti and Navision appealed against the resulting awards in favour of Navision and the Owner respectively.

The judge found that SMG's claim was not a cargo claim under article 86 of the charter between the Owner and Navision, as it did not concern the ship's trade in West Africa under that charter. The clause was erred by the arbitrators and it was therefore not a claim for which Navision was fully responsibility by clause 86.

Navision's appeal against the award in the head charter reference therefore succeeded to this extent only: the arbitrators should have held that when arrested the Vessel went off hire under clause 47 until the proviso bit from 12:00 hrs on 17 December 2018.

Thus, in such disputes, it is necessary to pay attention to individual clauses in the charter, which determine how much responsibility the charterer bears in certain situations. The correct interpretation of the conditions is important to protect yourself from premature losses and expenses.

INTERLEGAL NEWS:



Interlegal

good news

Interlegal lawyers settled the dispute in the amount exceeding 1 million USD upon unpaid bunker supply

Interlegal lawyers settled the dispute in the amount exceeding 1 million USD upon unpaid bunker supply
 Prompt, professional, in compliance with all the Client's interests – that's the dispute settlement upon unpaid bunker supply.
 There is untypical interesting case in Interlegal practice: our Client was a bareboat charterer of vessels, whose previous managers had large indebtedness for bunker supply.
 Case subject was indebtedness in the amount exceeding 1 million USD for seven sea-going vessels. It goes without saying that each vessel was arrested for unpaid debt.
 Our Client wanted to organize commercial activity upon such seven vessels and therefore decided to pay the whole indebtedness. Its principal goal was their commercial use as soon as possible, jointly with negotiations upon dispute settlement price.
 Facing such challenge, Interlegal law team developed strategy, hold negotiations 24/7, supported the Client's interests despite any tactical movements of counteragents, as well as drafted and proceeded the Agreement on Claim Assignment governed by the English law.



Interlegal

good news

Interlegal lawyers supported closing the deal upon tanker sale & purchase in Athens, Greece

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Interlegal

good news

Panamanian flag for the Turkish shipowner

In shipping industry, the so-called flags of convenience still remain the most popular ones.
 Panamanian flag for non-resident shipowners deserves special attention. It is an open register, i.e. vessels can be registered under the Panamanian owned both persons regardless of citizenship or place of registration.
 An important factor is that Panama is in the Whitelist of the Paris Memorandum.
 The Client, large Turkish shipping company, applied to Interlegal for changing owner of the vessels at the Panama Maritime Authority.
 Interlegal lawyers successfully supported procedure for changing ownership and received a new Registration Patent and Radio License for the new owner – shipping company.
 To settle this issue, lawyers applied to Interlegal associated office in Panama and appointed, among the local lawyers, a new authorized person in the Register for the Client's vessels.
 Due to teamwork of Interlegal Ukrainian and Panamanian offices, coordination of all actions, as well as thoughtful planning of actions upon this project, the Client could quickly receive new documents.

READY TO HELP YOU AND YOUR BUSINESS

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SEA OF GRAIN: VITAL ISSUES UPON GRAIN CARRIAGE BY SEA

On October 22, 2021, Interlegal jointly with Kronos Bulkiers invite you to the conference "Sea of Grain: Vital issues upon grain carriage by sea"

VENUE: Premier Odessa hotel (32, Akademicheskaya Street, city of Odessa)

DATE: 22.10.2021

CONFERENCE PROGRAM:

- Cargo will come
- Grain export trends
- Ukrainian grain export forecast
- Foreign markets for Ukrainian grain
- Product quality requirements
- The sea we have
- Freight trends in Mediterranean and Black Sea regions
- Shipping financing
- Bunkering market in Black Sea region
- Vessel sale & purchase trends in Black Sea region
- Carriages along the Dnieper: a new market
- Vital tax issues for shipping industry
- Roadstead handling problems
- Turkish view: what's new in the Bosphorus?
- Ship arrest: case study upon Black Sea region



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