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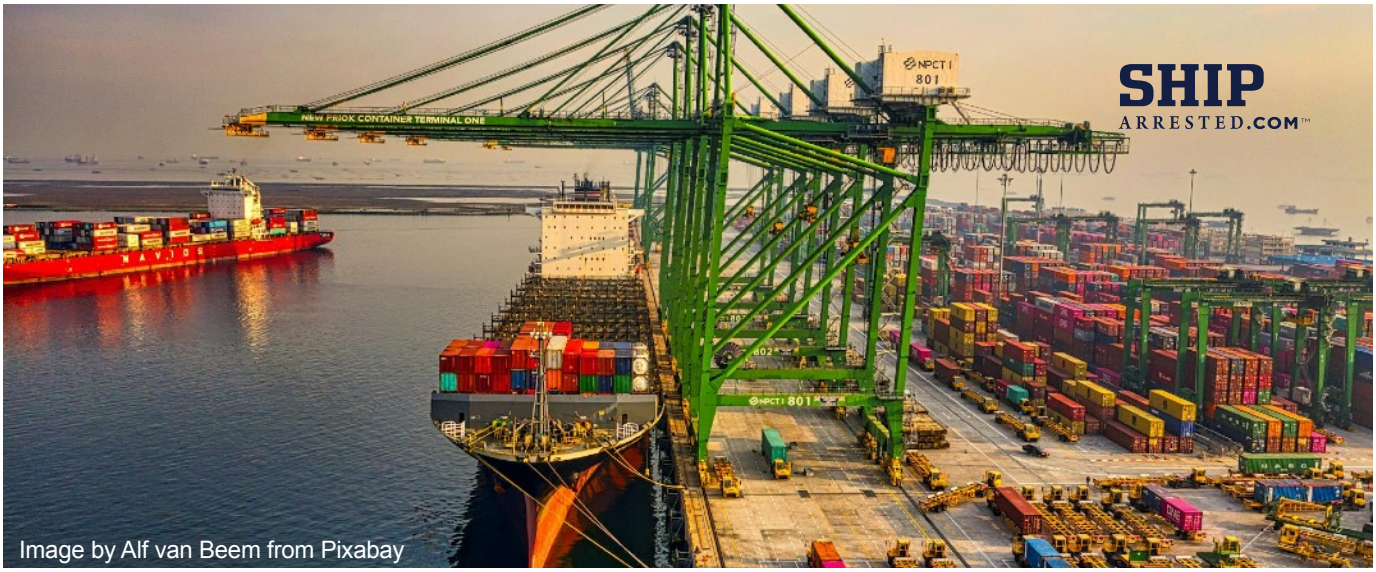


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Inherent Vice or Covered Damage to the Cargo? by Yoav Harris and Domiana Abboud, Harris & Co. Maritime Law Office (Israel)

The following is a voyage through the legal issues surrounding cigarettes sent to Baghdad, Panamanian hats sent to London, and Colombian coffee beans arriving at Bremen. The article will explore the tension between inherent vice and covered risks in cargo damage claims, including the maritime lien for “damage to cargo.”

Cigarettes to Baghdad (1923): E.D. Sassoon & Co. v. Yorkshire Insurance Co.

Upon arrival in Baghdad, surveyors opened 70 cases containing 3.5 million cigarettes shipped from Glasgow. Although the outer cases appeared intact, the internal tin linings were rusted on both sides, and every cigarette was mildewed. Messrs. E.D. Sasson & Co. were lucky or thoughtful enough to have their cargo insured by Messes. Yorkshire Insurance Company, established about 100 years before in 1824. Wording of the contract included an oddly worded paragraph which read as follows, "and touching the adventure and the perils the said company are liable unto" and exceptionally included damages by fresh water, mould or mildew as covered perils. As Lord Justice Scrutton, seated those days in the court of appeal explained, “it turned out that there are kinds of vegetable spores floating about in the atmosphere which, if they get into tobacco and find suitable dampness and suitable heat will grow and produce the appearance known as mould and mildew, which is really a small microscopic plant growing in a suitable soil”. Lord Justice Scrutton also phrased Yorkshire Insurance defense in the following two remarks: "Oh, but we have only insured mould and mildew which is a casualty, not mildew and mould which are, so to speak, ordinary wear and tear of cigarettes going to Bagdad"; and secondly, "if there is damage by mildew and mould it is due to the inherent vice of the cigarettes insured, and we do no insure against inherent vice". This insurer was in fact aiming at the rule that is now present today in Clause 4 of the Institute Cargo Clauses (A), which excludes inherent vice and ordinary wear and tear, "it [the insurance] covers a risk, not a certainty" and "it cannot properly apply to a case where the loss or injury must inevitably take place in the ordinary course of things" (latter cited by the court from Paterson v. Harris which dealt with a claim for sea water damage to a cable).

Testimony before the court from a gentleman connected with a firm that exported large quantities of cigarettes (50 million a year) confirmed that when the cigarettes are dried to a moisture content not exceeding 14% (as was done in the process of manufacturing the subject cigarettes) and packed as the subject cigarettes were packed too, they arrive at their destination with no injury at all. This testimony in favor of E.D Sasson and findings of rust on both sides of the tin lining, suggesting external condensation had penetrated and triggered mould growth, convinced the Court of Appeal to uphold the finding that the damage was a covered risk, not inherent vice. Yorkshire Insurance was ordered to pay £2,791 8s. 8d.

Panamanian Hats to London (1932): Whiting v. New Zealand Insurance Company Ltd

A similar mould claim arose in Whiting v. New Zealand Insurance Company Ltd (King’s Bench Division, 14–16 November 1932). The case involved 3,800 dozen Panamanian hats, manufactured in Formosa and shipped from Japan to London. On two of the consignments carried aboard the steamships, Suwa Maru and Raiputana, a significant number of hats (893 dozen) arrived mouldy. The marine insurance policies provided warehouse-to-warehouse cover and included the risk of fresh water damage. The assured, Mr. Whiting, argued that the damage was caused by fresh water during transit, particularly while the cases were on the quay before they were carried to the ship, or in the (carrying) lighter. The insurer contended that the damage resulted from inherent vice, as the material of the hats (wood fibres coated with cellulose) formed an excellent medium for mould growth. The Court acknowledged that the hats’ material provided a good

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ground on which mould might grow, but held that mould would not develop unless there was some external cause to make it grow. The fact that many other shipments over a long period arrived sound undermined the suggestion of a manufacturing defect. Evidence of rust on the nail holes and around the bands (obtained from the court's guidance to put the cases under a microscope) indicated that the cases had been wetted externally, allowing moisture to penetrate and encourage fungal growth. The Court emphasised that “moist atmosphere is not an accident or peril that is covered; it is more or less a natural test or incident which the goods have to suffer.” But, since the damage was caused by external wetting rather than inherent vice alone, Mr. Whiting was entitled to recover under the policy.

Colombian Coffee Beans to Bremen (Volcafe Ltd v. Compañía Sud Americana de Vapores SA, UK Supreme Court, 2018)

About 100 years later in December 2018, the English Supreme Court delivered an important judgment in Volcafe Ltd v. Compañía Sud Americana de Vapores SA concerning condensation damage to bagged Colombian green coffee beans. The cargo was shipped from Colombia in early 2015 in 20 unventilated 20-foot containers on LCL/FCL terms. After transshipment in Panama, the beans were discharged at Rotterdam and Hamburg before arriving at their final destination in Bremen. Coffee is a highly hygroscopic cargo that readily absorbs, stores, and emits moisture. When carried from a warm to a cooler climate in unventilated containers, condensation commonly forms on the container walls and roof. Standard industry practice to prevent this was to line the containers with Kraft paper — either two layers of 80 gsm or one layer of at least 125 gsm. The carrier used only one layer of Kraft paper but failed to prove that it met the required thickness of 125 gsm. Although the cargo owner had chosen the cheaper unventilated containers, by issuing the bills of lading on LCL/FCL terms, the carrier was contractually responsible for preparing the containers for carriage and properly stowing the bags. At first instance the claim was dismissed, but the Supreme Court allowed the cargo owner’s appeal. The Supreme Court held that the carrier bore the burden of proving either that it had taken reasonable care and the damage occurred nevertheless, or that the damage would have happened anyway due to the cargo’s inherent propensities even if all reasonable steps had been taken. The carrier failed to discharge this burden and was also found in breach of its duty under Article III Rule 2 of the Hague-Visby Rules to “properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods.” As a result, the carrier could not rely on the inherent vice exception in Article IV Rule 2(m).

Relevance to Carriers and Maritime Liens

The question of "inherent vice" is relevant not only between insured and insurers but also between carriers and cargo interests. Under Article IV Rule 2 of the Hague-Visby Rules, the carrier is exempt from liability for inherent defect, quality or vice of the goods and insufficiency of packing. As Sir Norman Hill- representing British shipowners during the Hague Conference (1924) famously noted, “This clause, Article IV, is the shipowner's clause”. In Israeli law, claims for damage to cargo are recognised as maritime liens under the Brussels Convention 1926 (incorporated in the Israeli Shipping Act 1960) or the Admiralty Court Act 1861. When deciding on the matter of a cargo claim in civil appeal 264/67 Migdal Insurance vs. American Export Lines (1967), the Israeli Supreme Court likened a cargo owner to “the patient who comes within the hospital cannot complain at exit that he goes out of the hospital carrying the same illness he had when he entered; he is entitled to an explanation only if during his stay at the hospital he contracted more illnesses which did not exist at entry.”

Conclusion

As moisture, condensation, and climate changes will continue to affect cargos and owners’ liability, matters of evidence as to cause of damage and burden of proof must always be carefully addressed. Whether the

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damage stems from inherent vice or a covered peril often depends on proper documentation, packing standards, and the presence of an external cause. These issues remain as relevant today as they were nearly a century ago.

Cases cited:

E.D. Sasson & Co. Ltd v Yorkshire Insurance Company, UK Court of Appeal, 18 June 1923

Whiting v. New Zealand Insurance Company Ltd, King's Bench Division, 14–16 November 1932

Volcafe Ltd and Others v Compania Sud Americana de Vapores [2018] UKSC 61



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