



Steamship  
Mutual

# Cargo Liabilities



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# Cargo Liabilities Case Study



## The “INCREDIBLE BULK”





# Cargo Liabilities

## P&I Risk:

Liabilities, costs and expenses against which a Member may be protected and indemnified by entry in the Club are those set out in Rules 25 i to 25 xxi (subject to conditions).

## Cargo Liabilities:

- Cargo Liabilities represent one of the biggest claim categories for the Club, both in claim number and overall value
- The cover is very broad with high mutual limits, but there are a few restrictions
- Applicable to Owners and Charterers (as per CoE + Rules)





# Cover



Rule 25 xiii – Cover includes a Member's liability for loss, shortage or damage to cargo carried on an entered vessel, resulting from the Member's breach of obligations as a carrier by sea to properly care for the cargo, or out of unseaworthiness of the entered vessel



Cover extends to additional expenses (over and above the normal costs of the voyage) incurred in discharging or disposing of damaged or worthless cargo if no recourse

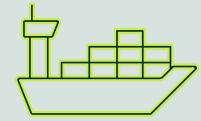


Subject to provisos and exceptions, all designed to ensure that mutuality is preserved so far as is practical within a commercial environment

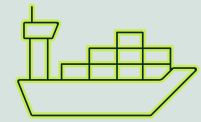


Governing principle: the cargo liabilities which each Member undertakes through its contract of carriage should be based upon the same framework of terms and conditions so that no one Member or group of Members expose the Club (and the entire Membership) to unreasonable or excessive risks

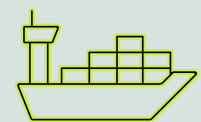
# Issues affecting P&I cover for cargo liabilities



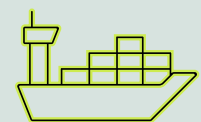
Deviation – any departure from the expected or normal voyage.  
Effect: deprive the shipowner of all defences and rights of limitation contained in the contract of carriage



Mis-description in the B/L



Delivery of cargo without production of original B/L



Late notice of a claim



# The MV “Incredible Bulk”



A voyage drawing out several scenarios - dealing with practical, legal and cover issues

The vessel is on time charter under the NYPE 1946 form, incorporating the Inter-Club Agreement (ICA); and is to issue bills of lading on the customary Congenbill form, including a Clause Paramount incorporating the Hague or Hague-Visby Rules

The “Incredible Bulk” is ordered to load 50,000 MT of soybeans in bulk in Santos, Brazil bound for Shanghai in China





# Scenario 1 – Ship/Shore discrepancy

The Owners are ordered to proceed to Santos to load a cargo of 50,000 mt of soybean in bulk. Loading proceeds smoothly and upon completion draft bills of lading are presented by the Charterers / Shippers

The Master carries out a draft survey and concludes that only 49,000 mt has been loaded, a shortage of 1,000 mt or 2% of the total. This is disputed by the shippers who insist that the whole quantity has been loaded and demand that the bill of lading be signed as presented

What are the Owners' legal obligations?

What should the Owners do?

What Club Cover issues arise, if any?



# Scenario 1 – Ship/Shore discrepancy



## Legal obligations...

- Hague Rules

*“...on demand of the shipper to issue a bill of lading showing among other things:*

*(b) Either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper.*

*Provided that no carrier, Master or agent of the carrier shall be bound to state or show in the bill of lading any....weight which he has reasonable grounds for suspecting not accurately to represent the goods actually received or which he has had no reasonable means of checking.”*

An impasse!





# Scenario 1 – Ship/Shore discrepancy



## What can Owners do?



Notify the Club!



Repeat draft survey – jointly?



Any customary allowance in country of discharge?



Review charterparty. Any contractual obligations?



Court Order?



Take a Letter of Indemnity? – financial wherewithal, will it be honoured voluntarily, wording, enforceability?



Do nothing?





# Scenario 1 – Ship/Shore discrepancy



## Club Cover Issues?

- ① No cover for issuing a bill of lading known by the Member or the Master to contain an incorrect description of the cargo quantity (Rule 25 xiii proviso viii(e))
- ① An LOI does NOT reinstate Club cover
- ① Directors' discretion
- ① Decision: In order to break the impasse (time is money!) the Master agrees to sign the bills of lading in exchange for an LOI provided by charterers. The owner accepts that this may have implications insofar as his cover is concerned, but the delay is costing money





# Scenario 2 – Cargo contamination

In addition to the quantity dispute, the Master then notices that the cargo contains foreign material including plastic bottles and some other rubbish. He protests that the cargo is not “clean on board” and again refuses to sign the bill of lading

1. What are the Owners’ legal obligations?
2. What should the Owners do?
3. What Club cover issues arise, if any?





# Scenario 2 – Cargo contamination



## Legal obligations – to clause or not to clause?

- Hague Rules – to issue a bill of lading showing “the apparent order and condition of the goods”
- What does that mean? “The David Agmashenebeli” [2003] 2 LLR 92
  - To act reasonably – an objective test. What would a reasonably competent Master do?
  - Not an absolute obligation to give an accurate description
  - The law does not cast upon the Master the role of an expert surveyor (although he may, if he wishes, call for expert advice)





# Scenario 2 – Cargo contamination

## What should Owners do?

It follows therefore that in these circumstances, the Master could probably legitimately clause the bills of lading, but only to reflect what appears to be minor levels of contamination. He should not “over-clip”

## Club Cover Issues?

The bill of lading should contain a correct description of the cargo (but qualified as above). If a claim for contamination arose at the discharge port, based upon the pre-shipment condition of the cargo not clausured in the bill of lading, a cover issue arises





# Scenario 3 – Heavy Weather!



The ship finally sails and three days into the voyage the vessel encounters heavy weather reaching force 9 on the Beaufort Scale, shipping seas on deck. After the weather subsides, the crew check the holds fearing seawater ingress and find that hold no.4 is showing signs of ingress around the hatch coamings

What are the issues?

What Club Cover issues arise, if any?





# Scenario 3 – Heavy Weather!



## What are the issues?

Notify the Club

Voyage planning - could weather have been avoided?

Condition of hatchcovers? Only one hold affected?

Hague Rules – obligation to make ship seaworthy before and at beginning of voyage

Obligation is one of due diligence, not absolute

Are there defences? Perils of the sea (Art IV rule 2(c))

## Any Club cover issues?

Unlikely, unless Owners knew they had defective hatch covers and did not address the issue.  
Prudent uninsured.

Defect Warranty clause?





# Scenario 4 – “The original bill won’t arrive in time...!”



Owners of MV "Incredible Bulk" are notified by Charterers that the original bill of lading will not arrive at the discharge port in time for the vessel's arrival and ask that Owners deliver without the original bill being surrendered, in exchange for a Letter of Indemnity

## What are the risks of agreeing?

- A misdelivery claim
- No Club cover (Rule 25 xiii(viii)), even if a LOI is provided

## How should Owners decide?

- Charterparty – is there an obligation?
- Commercial relationship with Charterers
- Worth of Letter of Indemnity – creditworthiness of provider/enforcement problems
- Risk appetite of Owners

The image shows a sample of the BIMCO CONGENBILL 94 Bill of Lading form. The form is titled "BIMCO CONGENBILL 94 BILL OF LADING". It contains various fields for shipping information, including Shipper, Consignee, Notify address, Vessel, Port of loading, Port of discharge, and Shipper's description of goods. It also includes a section for "Freight payable as per CHARTER-PARTY dated" and "FREIGHT ADVANCE Received on account of freight:". There is a "Time used for loading" section with fields for days and hours. The form also includes a "STIPPED" section with a description of the goods and a "WITNESS" section for the Master or Agent of the vessel. At the bottom, there is a table with columns for "Freight payable at", "Place and date of issue", "Number of original B/L", and "Signature".



# Scenario 4 – “The original bill won’t arrive in time...!”



**Decision:** Owners decide to agree to Charterers’ request to deliver the cargo without production of the original bill of lading. Owners contact the Club, who can provide the International Group Letter of Indemnity wording.

This wording should describe the parties, voyage, cargo and state that:

*The above cargo was shipped on the above ship by [SHIPPER] and consigned to [CONSIGNEE/TO ORDER OF PARTY] for delivery at the port of Shanghai, China, but the bill of lading has not arrived and we, Charterers, hereby request you to deliver the said cargo to [insert name of party to whom delivery is to be made - X] or to such party as you believe to be or to represent X or to be acting on behalf of X at Shanghai, China, without production of the original bill of lading.*

Then, in consideration of this request, the Charterers agree:

- to indemnify Owners for various types of losses – from Owners’ perspective this should be as broad as possible
- to put Owners in funds/provide security should the vessel be arrested/detained
- to surrender all three original bills of lading as soon as available (at which time, Charterers could ask for return of the LOI)



# Scenario 5 - MV "Incredible Bulk" Discharges... damage to cargo...

The cargo is being delivered, without production of the bill of lading, to the party who has identified themselves as the Consignee

However, damage is noted to soybeans contained in Hold 4

## What should Owners do?

1. Contact the Club to arrange attendance of a local surveyor to investigate and collect evidence
2. Damaged cargo should be separated from sound cargo and weighed

## What should the surveyor look for?

- A. What evidence is there of seawater ingress, vessel deficiencies, and where was the damage located within the hold?
- B. What does the damaged cargo look like?
- C. Does testing for silver nitrates reveal presence of sea water?





# Scenario 5 – MV "Incredible Bulk"



## Discharging damaged cargo

In total, 5,000 MT of soybeans are found to be damaged. Investigations suggest this damage may have been caused by sea water ingress



What if the Consignee refuses to take delivery of this cargo?

There may be cover available for handling this worthless or damaged cargo (Rule 25 xiii b):

1. Extra costs
2. For disposing of damaged or worthless cargo
3. Provided Member has no recourse
4. Recovery only to extent that costs exceed proceeds of sale

**Outcome:** The Consignee takes delivery, but intends to make a claim for losses suffered



# Scenario 6 - MV "Incredible Bulk"

## Discharges...Cargo Shortage...



Upon completion of discharge, the Consignee states that a total of 10,000mt of cargo is missing (in addition to the damaged cargo)

### What should Owners do?

- Draft surveys
- Shore scales
- Weigh bridges

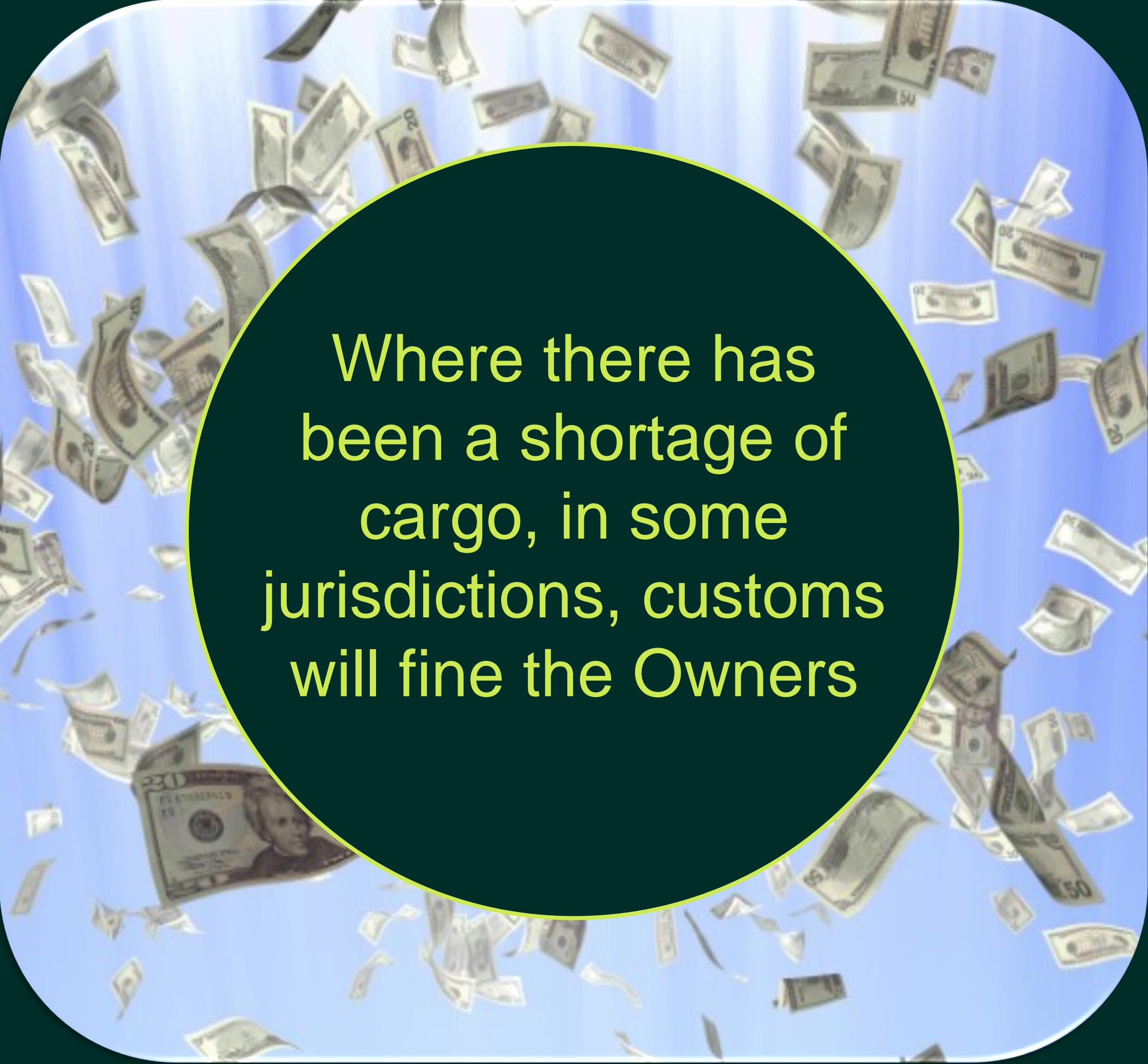
### If there is a shortage, can it be explained?

- Draft survey inaccuracy at load port due to weather conditions
- Pilferage / Stevedore negligence – can Master provide any evidence?
- Wastage in Bulk

It transpires that the cause of the shortage is stevedore negligence and cargo has been dropped overboard



# Scenario 7 – Customs Fines

A background image showing numerous US dollar bills of various denominations (including \$10, \$20, and \$50) falling through the air against a light blue sky with soft, vertical light rays. A large, dark green circle with a yellow border is centered over the image, containing the text.

Where there has been a shortage of cargo, in some jurisdictions, customs will fine the Owners

Club cover for fines

- for which Member is liable, imposed by the competent authority/court,
- which arise from short or over delivery of cargo,
- or for failure to comply with regulations concerning the declaration of goods,
- or for the failure to comply with the documentation of cargo



# Scenario 8 – A few weeks later...

## The Cargo Claim and Recourse



### What are the stages of cargo claim analysis?

1. Title to sue
2. Breach of the B/L contract... Hague Rules/Hague-Visby Rules
  - A. Article III 2: subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried
  - B. Article III 1/ Article IV 1: Carrier not liable unless loss arises from unseaworthiness... unless caused by want of due diligence on the part of the carrier to make the ship seaworthy
  - C. Article IV 2: Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from: (c) Perils, dangers and accidents of the sea or other navigable waters
  - D. Article III 6: time bar?



# Scenario 8 – A few weeks later... The Cargo Claim and Recourse



3. Did the breach cause the losses suffered?
4. Is the quantum of the claim supported, properly recoverable and not too remote?
5. Did the Cargo Owner mitigate their losses?

## Outcome:

- The Owners are liable for the cargo damage. The Cargo Owner can demonstrate that the cargo has been damaged during carriage and that the cause was unseaworthiness due to the evidence of leaking hatch covers/sea water ingress. The hatch covers had not been maintained and were not properly checked at the loadport and therefore due diligence had not been exercised. The “perils of the sea” defence cannot therefore apply.
- A settlement is negotiated with the Claimants.





# Scenario 8 – A few weeks later... The Cargo Claim and Recourse



The Club will consider potential recovery from third parties...

Is there a C/P  
clause putting  
liability onto  
Charterers?

Are Hague/Hague-  
Visby Rules  
incorporated into the  
C/P – Article III 6 and  
Article III 6bis

Is the Inter-Club  
Agreement  
(ICA) incorporated  
into the  
agreement?

## Outcome:

- There is no clause making Charterers liable for damage to cargo in these circumstances
- The ICA is incorporated, but under clause (8)(a), liability will be 100% for Owners for “Claims in fact arising out of unseaworthiness and/or error or fault in navigation or managements of the vessel”





# Scenario 8 – A few weeks later... The Cargo Claim and Recourse



The Club analyses the Cargo Shortage claim

## Outcome:

The cause of the damage was stevedore negligence

As between Owners and the Claimant, there is no defence

A settlement is negotiated utilising available arguments on quantum/mitigation

- There was a failure to carefully discharge the cargo [Article III 2]
- There are no applicable exceptions under Article IV 2 – Act, neglect, or default of ...the servants of the carrier in the navigation or in the management of the ship
- The claim is brought within the one year period, as per Article III 6





# Scenario 8 – A few weeks later...

## The Cargo Claim and Recourse



The Club again analyses the potential recovery from third parties:

- Charterers: are they responsible for operations?
- Stevedores: if Owners are responsible for operations and appointed stevedores, consider a recourse against Stevedores?

### Outcome:

- There is a clause which provides that Charterers will be liable for (a) discharging operations and/or (b) negligence of stevedores
- However, in addition to this, the Inter-Club Agreement is incorporated and will be the code for cargo indemnity claims
- Charterers are 100% liable under clause (8)(b) “Claims in fact arising out of the loading, stowage, lashing, discharge, storage or other handling of cargo”
- The Club will engage with Charterers’ Club in order to recover the claim and any costs



Any Questions?

