The Club successfully supported Head Time Charterers in a dispute whereby the Master refused to load cargoes of steel pipes and coils as directed by Charterers. In the case of the *Sea Success* the Master refused to load in reliance on clause 52 of an amended NYPE (1981) time charter.

Clause 52 reserved to the Master the right to reject for loading any cargo that would be subject to claustring of the bills of lading. It was held that although such a clause did require the Master to refuse to load cargo where the description of the cargo was in dispute between the Master and Charterers or shippers, the Master did not have a right and was not obliged to reject cargo for loading when no such dispute existed. In this respect, the key to the dispute was what constituted "claustring" of the bill of lading?

In determining this matter, it is necessary to understand the practices for the preparation and presentation of the mate's receipt and bills of lading. The court accepted the arbitrators' findings that the cargo description set out in the voyage instructions were usually derived from a sale contract, but did not always reflect the actual condition of the cargo to be loaded. There would normally be a discussion between the Master and Charterers' or shippers' port representative about the cargo condition and the proper description of that cargo which, when agreed, would form the basis of the mate's receipt and the bill of lading presented to the master for signing.

This was the sequence of events which took place in the *Sea Success*. Statements set out in a detailed cargo survey report were inserted into the draft bill of lading. These statements were not disputed by the Master but, in reliance on clause 52, the Master refused to load the cargo.

Owners contended that only "good" cargo could be loaded, that any cargo that would be "subject to remarks" in the bill of lading must be rejected, and that because the draft bills of lading contained "remarks" as to the description of the cargo the Master was, pursuant to clause 52, obliged to reject the cargo.

Charterers contended that there was no authority in deciding what constituted "claustring" of the bill of lading but that a bill of lading was claustring if the Master of the vessel disagreed with, and therefore would normally qualify, the description of the cargo set out in the draft mate's receipts and/or draft bill of lading.

The court decided:

1. The specific provisions of the charter party will normally govern the form of the bill of lading to be presented for signature by the Master and that there is no general requirement in law for cargo to be in a "good" or "apparent good" condition.

2. Where the charter party provides for bills of lading to incorporate the Hague or Hague Visby Rules, the requirement is for the bill of lading to evidence the "apparent order and condition of the goods" (Article III Rule 3 (c)). As such, "good cargo" is cargo not subject to claustring in the bills of lading. That is cargo which matches the description set out in the draft bill of lading without qualification.

In the case of the *Sea Success* the Master was found to have been wrong to refuse to load the cargo of steel pipes and coils because he agreed the description of the cargo contained in the draft bill of lading. There was no dispute between the parties as to the condition of the cargo that had been presented for loading.

In the event of a dispute as to the actual condition of the cargo on loading, the Master should either persuade the shippers' and/or Charterers' representatives to re-issue bills of lading that describe the condition of the cargo on loading, or, if the Charterparty provides the Master with the right to do so, and if an amended cargo description cannot be agreed, refuse to load that cargo. However, the Master is placed in a difficult position. He is not an expert and must take a reasonable non-expert view as to the condition of the cargo to be loaded.** If in doubt the Master should contact the Managers and Club's local correspondent for advice on the description of the cargo to be loaded.

* [2005] EWHC 1542 (Comm)
** See case report on the "David Agmassnenebel" on the Steamship Mutual website.