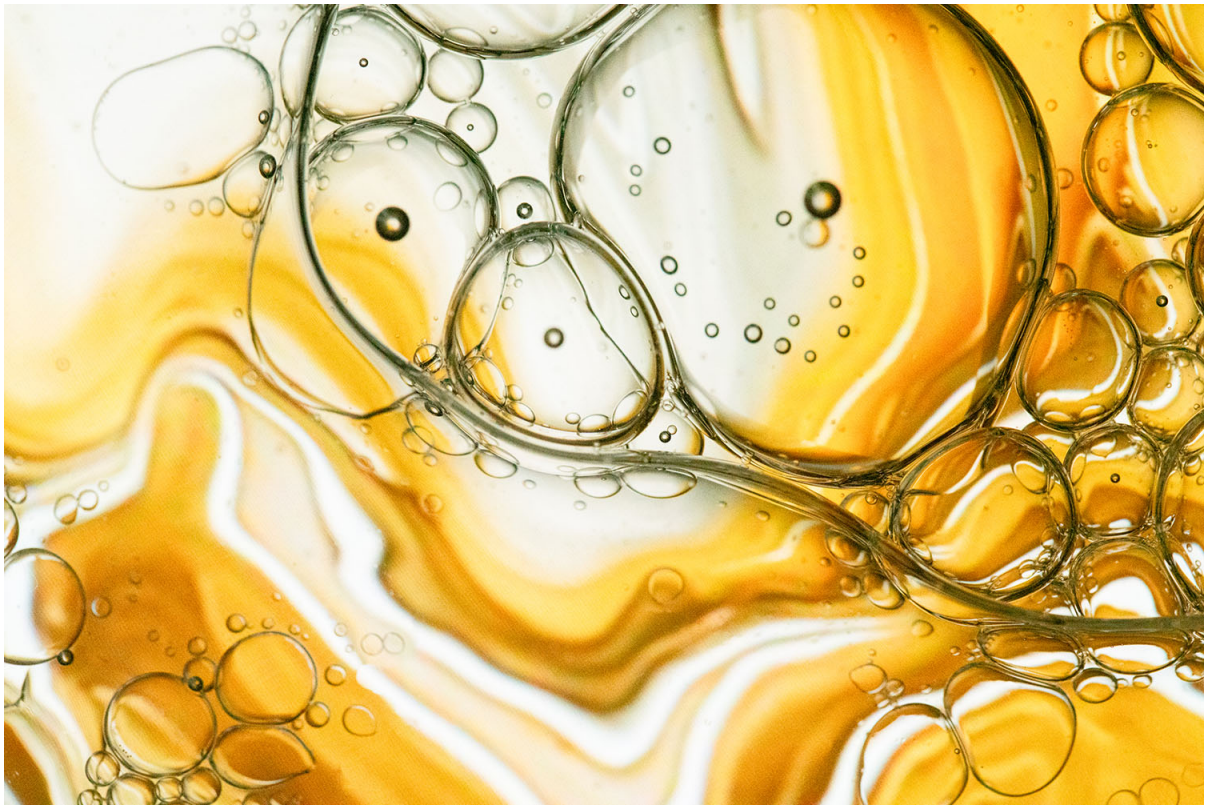




Onboard blending and commingling from a P&I perspective

Onboard blending and commingling of liquid cargoes are common requests, but it is not done without risk. This article looks at how these operations work, the potential pitfalls, and what they mean for P&I cover for both shipowners and charterers.

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The terms commingling and blending are sometimes used interchangeably, but they are in reality two quite distinct activities:

- **Commingling**

is the operation of loading in the same cargo space parcels of the same product with the same specification from different sources such as different shippers or ports, but without taking any other steps in relation to the product other than to carry and discharge and deliver it.

- **Blending**

is the process whereby two or more different cargoes are mixed with the intention of achieving a cargo with a new product designation. As such, blending is part of production and manufacturing, rather than connected with the operation of the ship. Adding inhibitors that are necessary to preserve the cargo characteristics (i.e. to prevent other dangerous reactions such as polymerisation), is not considered as blending since it does not create a new product. As for additives or dyes, if these are used to produce a new end product which varies in specification from the original cargo, this would generally be considered as blending.

Cover consequences

In Gard's view, cargo claims arising out of commingling are generally within cover as long as bills of lading are accurate and otherwise comply with Gard [Rule 34](#) for cargo claims. Other Clubs within the International Group of P&I Clubs may take a different cover position. Some of the complications with respect to the contents of the bills of lading follow below in the discussion of documentary issues.

Since blending is seen as part of the cargo production process, it is not considered to be an activity that arises in direct connection with the operation of a ship. Therefore, cargo damage that arises from a failed blend falls outside of cover under Gard Rule 34. The same reasoning applies to Charterers under [Gard's Charterers Rules](#). Thus, charterers, like owners, do not have P&I cover for cargo claims that arise due to blending. Disputes between an owner and a charterer following a failed blend may be subject to the Defence cover for legal fees and expenses for both an owner and a charterer.

Legal and operational issues

As a starting point, the shipowner is not obliged to comply with requests for blending or commingling unless it has been agreed in the charterparty. Without a charterparty clause, it is up to the shipowner to decide whether to follow the charterer's or the shipper's request to blend or commingle the cargo. Note however, that blending/commingling clauses in charterparties are common in the tanker trade. For example, INTERTANKO's Documentary Committee has produced a detailed clause which requires owners to comply with an order to blend against a letter of indemnity (LOI) provided by the charterer. The clause deals with both the liability aspects and the documentary issues.

International regulation

On 1 January 2014, an amendment to the SOLAS rules came into force, adding a new regulation (VI/5-2) that bans the physical blending of bulk liquid cargoes on board ships during a sea voyage. Physical blending means using the ship's cargo pumps and pipelines to internally circulate two or more different cargoes with the intent to achieve a cargo with a new product designation. Following this amendment, the practice of blending by ship-to-ship transfer outside of port limits is no longer allowed. There may also be local restrictions or requirements for blending while the ship is at anchor or at berth. Members and clients who are contemplating cargo blending should seek advice and guidance from the relevant Flag State and Port State authorities as necessary. Gard, with our extensive local correspondent network, may be able to assist as well.

Documentary issues

Dating problems and misdescription of the cargo may arise when cargoes are commingled or blended on board a Ship. This can affect P&I cover, for example, if a bill of lading is wrongly dated or has incorrect cargo details, certain costs or liabilities might not be covered under the Mutual Rule 34(1)(b)(xi) and 34(1)(b)(x) and Charterer's Rule 24(2)(k) and 24(2)(l).

- **Dating**

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After the commingling/blending has taken place, the original bills of lading from a prior port are sometimes replaced with new ones intended to govern the carriage of the total cargo. There is a tendency to insert on such bills of lading the date on which the commingling/blending took place. However, unless the new replacement bills of lading also record the date on which the original cargo had been loaded, they may be considered to be post-dated since they will give a misleading shipment date for part of the cargo.

- **Misdescription of the cargo**

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Commingling/blending can also cause other difficulties since the description of the cargo on the switched (replacement) bills of lading may be that of the commingled/blended cargo rather than accurately describing the cargo that was originally loaded before it was commingled/blended.

- **Switch bills of lading:**

The replacement bills of lading should include the description of the parcels, place and date of shipment. The original bills of lading for the parcels must be surrendered, cancelled and rendered null and void before any new bills of lading are issued.

Operations to facilitate fraud or other illegality

In addition to documentary issues, commingling or blending that is intended to hide the origin of a component of the final cargo, for example to avoid sanctions, automatically voids P&I cover for all risks.

Further, a letter of indemnity given by the party requesting the operation may itself be unenforceable if issued in furtherance of an illegal act. It is therefore critical for those involved to understand the purpose of the operation before agreeing to perform it.

Precautionary measures

Once the decision has been made to comply with a request for commingling or blending, a number of preventive measures should be considered:

1. Clear written order from the shippers/charterers

: It is important that the charterers/shippers' orders regarding the blending/commingling of cargo are clear and in writing, including the name of the charterer's authorised signatory.

2. Informing the consignees

: Shipowners should preferably seek confirmation in writing from charterers/shippers that the receivers/consignees know about and agree to the proposed blending/commingling.

3. Letter of indemnity (LOI)

: An LOI is one of the security forms generally acceptable by both shipowners and charterers in relation to these operations. A good LOI should deal not only with liability and cost aspects of the operation but also the requirements for the documentation issue, i.e. bills of lading. Intertanko members have access to a recommended LOI wording for insertion in charterparties. A suggested stand-alone LOI wording is also included at the end of this section. An LOI without an accompanying bank guarantee is only as good as the credit of the party issuing it and with high value cargos, it is important to consider the solvency of the party issuing the LOI. Gard's charterers and traders underwriters have a facility available for charterers and traders to obtain approval of an LOI wording and adjustments in the insurance terms to accept the liabilities (with exception of cargo claims due to failed blending) arising under the LOI.

4. Taking samples:

Taking proper and representative samples of any cargo loaded is vital to protect shipowners if allegations of cargo contamination arise. Blending and commingling operations are usually more complicated than a normal loading or discharge operation and prudent sampling is even more important. Retained vessel crew samples could be key for a shipowner to prove that the cause of any failed blend was due to the requested blending process or pre-shipment characteristics of the products, rather than, for example, insufficient vessel line or tank cleaning.

5. Whether the operation is blending or commingling, Gard recommends that owners obtain a letter of indemnity (LOI). For blending operations, there is no cover under Rule 34 for a failed blend, so owners must rely on the LOI for recourse in the event of a cargo claim. Although there may be cover for cargo claims arising from

commingling, an LOI will protect the owner or disponent owner in the event the requestor does not comply with the bill of lading documentary requirements and cover is therefore compromised. Below is a suggested wording that addresses documentary issues with respect to both blending and commingling.

LOI recommended wording

LETTER OF INDEMNITY FOR BLENDING/COMMINGLING CARGOES ON BOARD AND SUBSTITUTING BILLS OF LADING

To: [insert name of shipowners] The Owners of the [insert name of ship] [insert address]

[insert date]

Dear Sirs,

Ship: [insert name of ship] Voyage: [insert details] Charterparty dated [insert date] between [insert name of parties] Bills of Lading [insert identification numbers, dates and places of issue]

The above vessel has loaded the following cargo(es):

a) at [place]...on [date]...,...m/t of [type of cargo]... b) at [place]...on [date]...,...m/t of [type of cargo]...

and bills of lading have been issued as follows:

Bills of lading [insert identification numbers, dates and places of issue]

Further to the above, the vessel is to load/ has loaded [delete as appropriate] the following cargo(es):

c) at...on...,...m/t of... d) at...on...,...m/t of...

and bills of lading were to be/have been [delete as appropriate] issued accordingly. Bills of lading [insert identification numbers, date and place of issue]

We, [insert name of requesting party], Charterers of the above vessel under the above charterparty, now wish the cargo(es) referred to in (...[a, b, c or d]) and (...[a, b, c or d]) above to be blended/commingled on board the vessel and hereby request you order the vessel to perform the said blending/commingling of the cargo(es).

We also request you to substitute the original bills of lading for the cargo(es) referred to in (...[a, b, c or d]) and (...[a, b, c or d]) above with new bills of lading for cargo(es) referred to in (...[a, b, c or d]) and (...[a, b, c or d]). The new bills of lading are to be issued in the same form and content as the substituted bills, except as follows:

(i) [insert details of changes, e.g., to issue date, shipper, consignee, etc.]

(ii) they will contain in description of the cargo the following statement: "...m/t of...blended/commingled on board from ...m/t of...loaded at...on... and...m/t of ... loaded at...on..."

(iii) they will contain the following exclusion of carrier's liability: "the carrier shall not be liable for any loss or damage to the cargo whatsoever and howsoever arising from the blending/commingling, whether or not arising from negligence on the part of the carrier, their servants or agents"

In consideration of your complying with our above request, we hereby agree as follows:

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature and howsoever arising, including but not limited to any liability in connection with change of quantity, quality or pumpability and/or any damage to the vessel including tanks, pumps and lines, and which you may sustain by reason of blending/commingling cargo(es) on board and/or by issuing bills of lading in accordance with our request.

2. To accept full responsibility and risk for the success or otherwise of the blending/commingling operation and the consequences of any failure of whatsoever nature and howsoever arising from the operation, whether or not arising from your, your servants' or your agents' negligence.

3. To pay you on demand the amount of any loss, damage or expense of whatsoever nature and howsoever arising which you, your servants or agents may incur or be faced with incurring by reason of blending/commingling cargo(es) on board and/or by issuing bills of lading in accordance with our request.

4. To treat all time used during or arising from blending/commingling cargo(es) on board and/or by issuing bills of lading as time on hire/laytime or time on demurrage [delete as appropriate].

5. To provide to your satisfaction, and as a pre-requisite to the commencement of any blending/commingling operation, the following:

(a) A letter of indemnity in these terms, with authorised signatures.

(b) Surrender of all of the original bills of lading for the cargo(es) referred to in (... [a, b, c or d]) and (...[a, b, c or d]) together with written confirmation from the holders/transferees of those bills of lading that they have lawful title to the cargo(es) and are authorised in their own right and by the owners of the cargo(es) to: (i) Authorise the blending/commingling operation and substitution of those original bills of lading as requested herein. (ii) Accept substitution of those bills of lading by new bills of lading in the terms stated above, such substitution taking effect at the time of issue of the new bills of lading.

6. In the event of any proceedings being commenced against you or any of your servants or agents in connection with blending/commingling cargo(es) on board

and/or issuing bills of lading in accordance with our request, to provide you or them on demand with sufficient funds to defend the same.

7. If, in connection with blending/commingling cargo(es) on board and/or issuing bills of lading in accordance with our requests, the ship or any other ship or property in the same or associated ownership, management or control should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the vessel (whether by virtue of a caveat being entered on the ship's registry or otherwise), to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property or to remove such interference and to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or interference may be justified.

8. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.

9. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice in London.

Yours faithfully,

For and on behalf of [insert name of Requestor] The Requestor

.....

[insert full details of the office to which any demand or notice is to be addressed.]

Important
The decision whether to accept both the request and a LOI is a commercial decision for Shipowners to take after a careful and detailed assessment outside the scope of their P&I cover. Acceptance of a Letter of Indemnity in the form set out above does not reinstate P&I cover and you may be at risk of significant financial exposure. You should therefore satisfy yourself of the financial standing of the party providing the Letter of Indemnity.

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Additional Resources

For more information on blending and practical issues, see [Gard Guidance on Maritime Claims and Insurance](#) (section 20.2.5).

[INTERTANKO - Blending Clause](#) (access available for members of Intertanko).

For more details on the general aspects of switching bills of lading, see [Gard - When irresistible force meets immovable object](#).

For more information on our recommendations and best practices for liquid cargo sampling, please see [Gard – Importance of sampling liquid cargoes](#)

