Insight Article

Through Transport

From time to time different bodies have tried to categorise and name particular types of transport performed by several companies or means of transport.Today there is no universal legal definition and terms such as through transport, combined transport, multimodal transport and successive transport are used interchangeably to describe the situation where goods are carried in different stages, possibly by different means of transport, from one destination to another."Multimodal transport" is often also mentioned in the same context and is defined in the United Nations Convention on Multimodal Transport of Goods, 24th May 1980 Article 1.1. as a transport by at least two different modes of transport, e.g. a combination of sea and road transport.To avoid unnecessary complication this article will use the abbreviation "TT" for "through transport" covering all the different types of transport mentioned above and "TT Operator" for the contractual carrier who issues a "TT document" (usually a bill of lading).

Published 13 May 2025

The basic principle of liability in shipping is a presumption that the carrier is only liable for fault or negligence during the part of the transport he performs himself.For sea transport this principle is founded in the Hague and Hague-Visby Rules, according to which the carrier is entitled to exclude liability for loss or damage or delay to the cargo during a stage of the transport not performed by his ship.The period of a carrier□s responsibility for shipped goods is based on the "tackle-to-tackle" principle. If the Hamburg Rules apply the situation is different as the contractual carrier remains responsible for the entire sea voyage together with each actual carrier, the cargo responsibility period liability is based on the "port-to-port" principle. For through transport the carrier who issues the TT document (referred to here as the TT Operator) takes on responsibility for the entire voyage vis-à-vis the shipper and/or cargo interests. That means that the TT Operator accepts responsibility for acts and omissions by himself and his agents and servants including any other person whose services he uses for the performance of the contract, i.e. another sub-contractor who actually performs the carriage. The TT Operator is responsible for loss of or damage to the goods occurring between the time of taking the goods into custody from the shipper and the time of delivery. Thus, although the transport is divided into several different stages, with different actual carriers involved, the entire transport is looked at as one voyage under one contract. The TT Operator is the contractual carrier who usually performs one leg of the voyage himself and sub-contracts the other legs of the voyage. For commercial or other reasons carriers often want to issue bills of lading covering the entire voyage, dispensing with the inconvenience of the shipper having to deal with different carriers and different documentation for each individual stage of the transport. TT bills of lading are normally issued in one of two different ways: (1) The carrier issues a bill of lading according to which he is to arrange for the through transport only as shipper's agents, without assuming liability for the entire carriage or (2) The carrier contractually assumes liability for the entire voyage. If the carrier is only acting as an agent for the shippers, no liability is assumed for the pre-shipment or on-carriage. The standard "Conline" bill of lading is an example of these types of bills where clause 4 reads as follows: " *Clause 4, Period of responsibility: The carrier or his agent shall not be liable for loss of or damage to the goods during the period before loading and after discharge from the vessel, however such loss or damage arises.* " If the cargo is lost or damaged during the transit the cargo interests have to sue the actual carrier during the leg of the voyage in which the incident happened. Depending on the jurisdiction and applicable law the actual carrier may in his defence rely on the terms of the contract he has with the TT operator or he may rely on the terms of the through bill of lading. In practice, however, many jurisdictions will not permit this restriction of liability under the through bill of lading and will allow proceedings against the TT Operator as the contractual carrier. In particular, in situations where the contractual carrier accepted the goods in apparent good order and it is unknown where the loss or damage occurred he might find difficulties in limiting his liability to the stage of the voyage performed by himself. In contrast, other TT documents and these are in a sense the pure TT documents provide for the contractual carrier to be responsible for the cargo vis-à-vis cargo interests for the entire voyage from the time the goods are taken in charge to the final delivery, i.e. including pre-shipment and on-carriage transport from the contractual carrier's own vessel. An example is the "FIATA" bill of lading clause 2 of which reads as follows: " *Clause 2, Issuance of the Combined Transport Bill of lading 2.1. By the issuance of this combined transport bill of lading the freightforwarder (a) undertakes to perform and/or in his own name to procure the performance of the entire transportfrom the place at which the goods are taken in charge to the place*

designated for delivery in this bill of lading " As with the situation where the carrier simply claims to act as an agent for the shipper, liability for cargo damage may depend on the local jurisdiction where the claim is presented. In summary, it is important always to read the terms of the individual TT document in order to ascertain if the carrier accepts liability for the entire voyage or not, and on which terms. Due to the lack of uniform terminology it is not always enough to rely on the name of a particular TT document, as one cannot be sure that the terms of the document are always in conformity with the heading.

Liability under TT documents

International Conventions

Depending on the method of transport a number of different international conventions may apply compulsorily or by agreement to the individual legs of the voyage. For the sea voyage, the Hague or Hague-Visby Rules normally apply, or in rare circumstances the Hamburg Rules. Other applicable conventions could be the CMR-Convention (signed at Geneva 19th May 1956, modified 5th July 1978) for transport by road or the CIM Convention (present version signed at Bern 9th May 1980) for rail transport. The latter two conventions mainly apply in Europe and a brief overview of their terms was given in Gard News 100 (1985). The Warsaw Convention (as amended at The Hague 1955) unifies certain rules relating to international carriage by air. The United Nations Convention on International Multimodal Transport of Goods dated Geneva 24th May 1980, commonly referred to as The Multimodal Convention, was described in Gard News 136 (1994). This Convention, however, is not yet in force and it is unlikely that it will come into force in the near future. As the Multimodal Convention is based on the Hamburg Rules, some caution should be applied before incorporating it or some of its terms into bills of lading, as this might prejudice P&I cover.

National Law

Obviously national laws may vary and will always have to be studied carefully depending on the jurisdiction where claims arise. As far as United States is concerned it is worth noting that US COGSA is under revision. One of the possible changes could be a move towards uniform rules for multimodal transport.

Contractual Terms

As described above, the terms of a TT document may vary considerably and it is important to study individual contracts carefully to asses what liability is assumed by the carrier. Some standard documents as the "Combidoc" contain the special set of multimodal transport rules called the 1975I.C.C. Uniform Rules for a Combined Transport Document (298) prepared by International Chamber of Shipping. These rules have now been replaced with a new set of Unctad/I.C.C. Rules (481) based upon the Multimodal Convention. Thus, attention is drawn to the comment concerning cover in the section above relating to international conventions. The I.C.C. Rules do not have the force of law and are only applicable if incorporated into a TT document and to the extent the Rules are not superseded by any compulsorily applicable international convention or national law. In this connection special attention should be paid to the new BIMCO document "Multidoc 95" to be published in the near future which is based on the Unctad/I.C.C. Rules and will replace "Combidoc". To the

extent "Multidoc 95" provides for liability in excess of the Hague or Hague-Visby Rules Members are reminded of the Association's Rule 34 (1) (b) (ii) according to which P&I Cover is excluded for liabilities that would not have been incurred by our Member if the cargo had been carried on terms no less favourable to our Member than the Hague or Hague-Visby Rules (save where the Hamburg Rules apply by force of law). Together with "Multidoc 95" BIMCO is also intending to publish a revision of "Combiconbill" based on the Hague-Visby Rules which may be considered as a commercial alternative to "Multidoc 95". Ifno convention or local law applies compulsorily to a particular leg of a voyage or if it is unknown at which stage the damage took place the TT document normally includes express provisions concerning liability and compensation. If it is known where the damage took place liability is usually assessed based on either a network or a switch-back principle. Switch-back means that liability is based on the terms of the sub-contract whereas network means that liability is based on what it would have been if the claimant had entered into a direct contract with the actual carrier. If it is unknown where the damage took place both network and switch-back bills of lading stipulate certain special limitation amounts. Otherwise, the damage is usually based on the liability and limitation that would have applied to the ocean voyage. Usually the claimant will choose to sue the TT Operator under the TT bill of lading regardless of where the damage took place or if it is unknown where the damage took place. In some situations, however, the claimant might have an interest in suing the actual carrier for example if the TT Operator is bankrupt or the claim under the TT bill of lading is invalid for some other reason. Some TT bills of lading try to avoid this circumvention of the contract by inserting a Himalaya clause and by inserting a so-called Circular Indemnity Clause. A Circular Indemnity Clause may read: *"The Merchant undertakes that no claim or allegation shall be made against any servant, agent or sub-contractor of the carrier which imposes or attempts to impose upon any of them or any vessel owned by any of them any liability whatsoever in connection with the goods, and if any such claim or allegation should nevertheless be made to indemnify the carrier against all consequences thereof."* The legal problem involved when a claimant wants to sue the actual carrier is that he does not have any direct contract with the actual carrier. The individual legs of the voyage are normally arranged by the TT Operator by way of sub-contracting and the documents thus issued are contracts between the actual carrier and the TT Operator only. Under Scandinavian statutory law, and under some decisions of US courts, the actual carrier may be liable to the cargo interests under the terms of the original TT bill of lading, although he may not have been liable at all (or to a lesser extent) under his own bill of lading (or other document issued by him to the contractual carrier). Under English Law a recent decision concerning the M/V"K.H. ENTERPRISE" dealt with the same problem. It is described on page 15 of this issue.

Recourse

Although the liability of the contractual carrier is based on the terms of the TT document and the carrier is on the front line in defending or settling claims alleging loss of or damage to cargo interests, the ultimate exposure depends on the carrier's recourse possibilities against the actual sub-contractor for possible fault or neglect. The recourse often fails due to practical problems: typically the sub-contractor is insolvent or there are difficulties in proving at which stage of the voyage the damage occurred. In addition, the sub-contractor might be able to limit his liability to a larger extent than the sea carrier. It is prudent to ensure that the contracts with the sub-contractors are on back-to-back terms with the TT document or perhaps even

on more favourable terms for the TT Operator as regards recourse. For example, to the extent this is permissible under local law, one might consider altering the timebar in either the TT document or the sub-contract giving the TT Operator sufficient time to pursue a recourse. Typically, a timebar shorter than a year is agreed in the TT document e.g. nine or 11 months which, to the extent this is not in conflict with any law or convention, affords the carrier a better chance to pursue a recourse action against the actual carrier in time. Securing protection against insolvent sub-contractors is obviously not an easy task. A cautious selection of sub-contractors might be a good start. In addition, the TT Operator should ensure that the sub-contractors have adequate liability insurance.

Scope of the P&I Cover

Whilst cover is available under Rule 34 (1) (b) for a Member's liability under a through or transhipment bill of lading or other form of contract providing for carriage partly to be performed by the ship, Rule 57 (c) restricts this cover for the period whilst the cargo is in the care of another carrier, to contracts that have been approved by the Association or to situations where the liability relates to customary lighterage. The reason for this restriction is the basic principle of P&I cover that liabilities, losses, costs and expenses incurred by the Member must arise in direct connection with the operation of the entered ship. The present Rule 57 (c) reads as follows: " *The Association shall not cover under a P&I entry: (c) liability for cargo during successive transports whilst the cargo is in the care of another carrier, unless either the transport is performed under a form of contract approved by the Association providing for carriage partly to be performed by the Ship, or the liability relates to contractual lighterage in ports where such lighterage is customary.* " From 20th February 1996 the wording of the Rule 57 (c) will be slightly amended to read: " *(c)liabilities, costs and expenses in respect of the carriage of cargo arising out of contracts of carriage providing for carriage partly to be performed by the Ship and partly by means of transport other than the Ship, unless the transport is performed under a form of contract approved by the Association.* " The above amendment has been adopted by the Committee in order to harmonise the Rule with the clause in the International Group Pooling Agreement. It will result in little change to the form practised, however, the reference to contractual and customary ligtherage has been deleted meaning that this is only covered if approved by the Association. As TT contracts vary considerably it is difficult to give general guidelines for an approval as much depends on the exact circumstances of a particular trade. Generally, approval is given to through transport documents that exclude liability falling upon the Member for the cargo whilst outside his care, custody or control, if permissible under the governing law of contract. For other documents approval will depend upon a number of factors and depend as with all insurance on an overall review of the risk and alteration hereof. In particular, it is a condition for obtaining P&I cover that all available rights and defences for the individual legs of the voyage are maintained in the TT document. Insofar as other sea voyages are concerned this principle is established in Rule 34 (1) (b) (ii) according to which the cover does not include liabilities, costs and expenses which would not have been incurred by the Member if the cargo had been or could have been carried on terms no less favourable to the Member than those laid down under the Hague or Hague-Visby Rules (save where the contract of carriage is on terms less favourable to the Member solely because of the incorporation by operation of law of the Hamburg Rules). For carriages other than by sea, the approval will depend on whether or not the voyage is performed subject to the appropriate

national law or standard rail, road, or air convention applicable to the particular leg of the voyage. Alternatively, the inland voyage will be approved if it is governed by I.C.C. Rules or similar terms as mentioned above. In addition to the above, it is a condition for the approval that the Member as contractual carrier has preserved the right of recourse against the actual carrier or another third party e.g. a terminal involved in the voyage. At the very least it would be prudent to ensure that the sub-contract is on back-to-back terms with the TT document. If after a claim has arisen the recourse for practical reasons cannot be enforced (such as insolvency of a sub-contracting actual carrier), cover is still available. Some of the other points that will be looked at when the Association is asked to approve a TT document might include (a) the geography i.e. in which countries the inland transport will take place and (b) necessary storage i.e. is the cargo intended to be stored in between the different legs of the voyage and if so under what conditions and for how long? The Association also checks to see whether the bill of lading includes a Liberty clause and if this is wide enough to allow for transhipment and other arrangements that might be contemplated. If there is no liberty clause or if it is not wide enough, the carrier might lose the right to rely on the Hague or Hague-Visby defences due to unlawful deviation. An additional deviation cover might then be necessary. It is important to evaluate the geography of the trade as the Association has experienced problems with hijacking and thefts during inland transport in, for example, Mexico and Colombia and thus it has been necessary for our Members to take special precautions. Russia is a risk area for hijacking. If approval is given, the P&I cover includes liability for damage to or loss of the cargo whilst in the care of another carrier; however, the cover does not extend to other liabilities and does not, for instance, include damage to the container itself or damage caused by the container. A review of the scope of the P&I cover was provided in an article in Gard News 108 (1988). Additional cover with underwriters such as the TT Club which deal with insurance of containers and third party liabilities should be considered. If upon review the Association is not in a position to approve the particular TT document under the normal P&I entry, the Insurance Department is often able to assist with providing a special market cover acting as agents, only.