



Ship Type: Dry Cargo/Bulk Trade Area: Worldwide

Bulletin 221 - 11/01 - RETLA Clauses - The Effect on Club Cover

Members may on occasions be requested to use RETLA clauses in bills of lading, particularly when carrying cargoes of steel or timber. A typical RETLA clause reads as follows:

"The term "apparent good order and condition" when used in this bill of lading with reference to iron, steel or metal products does not mean that the goods, when received, were free of visible rust or moisture. If the shipper so requests a substitute bill of lading will be issued omitting the above definition and setting forth any notations as to rust or moisture which may appear on the mate's or tally clerk's receipts".

The intended effect of this and similar clauses is to satisfy the carrier that clean bills of lading may be safely issued, even though the mate's receipts are claused, because responsibility for any claims for pre-shipment damage can still be denied.

Indeed, the clause has been upheld in the U.S. Ninth Circuit (California, Washington and Oregon) and there has also been a positive decision in the Southern District Court of New York. The U.S. Courts which have upheld the RETLA clause have done so based upon the following factors:

1. The RETLA clause was printed on the face of the bill of lading and was not confined to the fine print on the back;
2. The RETLA clause contained a provision that the shipper could request a substitute bill of lading which was claused to reflect the condition of the cargo noted in the Mate's receipts.

However, there remains a risk to Members using such clauses as, whilst some courts in the United States may have upheld the clause, other U.S. courts and courts in other jurisdictions have not. The only safe means of avoiding claims arising from pre-shipment damage is to ensure that the bill of lading is claused to reflect the apparent order and condition of the goods at the time of loading. Failure to properly describe the condition of the cargo leaves the carrier open to allegations of being a party to misrepresentation, particularly from third party purchasers of the cargo who have only contracted to do so based upon the bill of lading and who have not been shown any pre-shipment survey by the sellers.

Members who find themselves unable to defend a cargo claim arising from the issuance of a clean bill of lading under such circumstances, and have relied upon a RETLA clause in place of a proper description of the condition of the cargo, will have prejudiced their cover with the Club in accordance with proviso c.iv to Rule 2 (17). Such claims may only be payable if the Directors decide to exercise their discretion favourably.

RETLA clauses do not carry a recommendation from the Association.

Source of Information: R. Lingard (Specialist team) G. Daines (Claims Director)

