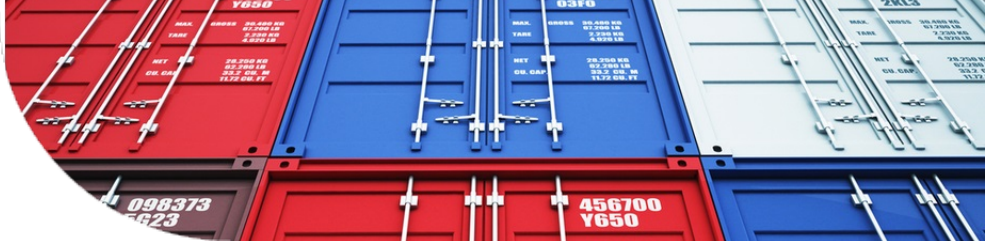

Explosive Cargoes – Transporting Ticking Time Bombs

The MV Ruby has recently docked at the port in Great Yarmouth, and is awaiting repairs to its hull and propeller, which were damaged last month in a storm. The 12 year-old, bulk cargo carrier is like any other vessel of its kind, save for one fact: It is currently carrying 20,000 tons of potentially explosive ammonia nitrate. Putting this danger into context, 2,750 tons of the substance caused the goliath explosion at the port in Beirut in 2020, killing at least 70 people and injuring 4,000 others.

Local politicians have been advised that the cargo is 'safe' despite the vessel needing repairs but how can this be the case? How does the shipping industry deal with the transportation of such dangerous cargoes like ammonia nitrate?

The IMO's Dangerous Goods Code and the continued risk to voyages:

The International Maritime Organisation (IMO) published the Dangerous Goods Code in 1965. The code has undergone numerous updates and amendments to reflect changes in shipping, and ever-increasing dangerous cargoes.

The latest edition was published in 2022 and sets out comprehensive requirements for the transport of dangerous goods, which it splits up into 9 classes, ranging from corrosive substances (class 8) to explosives (class 1). A key feature of the code is the requirement for the shipper to fill out the *Dangerous Goods Declaration* (DGD) which ensures the goods are correctly identified, classified, packaged, and labelled. The declaration is of paramount importance as it makes clear that the goods are subject to the right regulation and degree of safeguards, thereby reducing the risk of any catastrophe from occurring.

Despite the fact the code is followed in around 150 countries, with 98% of ships following it's requirements, the shipping industry continues to see significant incidents occurring, especially on container ships. The recent fire and explosion on the YM Mobility in Ningbo, China, was caused by overheating EV batteries.

Similar incidents have also occurred within the last 4 months, including the fire on board the Northern Juvenile, in the South China Sea, and the MSC Cape Town III in Colombo. These events demonstrate the continued risk posed to seafarers and voyages, regardless of how many safeguards are put in place. It is therefore necessary for parties involved in the carriage of these cargoes to address these risks on a contractual basis.

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com

How do parties deal with the risk of dangerous goods?

Cargo exclusion clauses:

Under English common law, when goods are carried under a contract of affreightment, there is an implied undertaking that the cargo will not be shipped, unless the carrier is expressly made aware or ought to be made aware of the dangerous nature of the cargo. It is irrelevant that the shipper of the goods might not (or could not) have been aware themselves (*Shipping Co Ltd v Linden Management SA (The Giannis NK) [1998] 1 Lloyd's Rep 337*).

Many charterparties additionally incorporate the Hague or Hague-Visby Rules ("H-VR") which make express provision for situations where the carrier is not made aware of the dangerous nature of the cargo. Clause 6 of the H-VR's allow the carrier to destroy, render innocuous, or discharge the cargo without the need to provide compensation to the shipper. Furthermore, the shipper of the dangerous cargo will be liable for the damages and expenses that arise out of the shipment.

It is standard for charterparties to include a cargo exclusions clause which rigidly lists all the various types of cargo that cannot be carried on the vessel, under any circumstances. The list will not only include the most obvious types of dangerous goods, such as nuclear materials or loaded bombs, but may also include a blanket exclusion such as "cargoes as listed in the latest International Maritime Dangerous Goods Code or any subsequent modification or amendments thereof." Through these clauses, the shipowners can ensure that the vessel is only used for the carriage of safe cargoes which do not require any additional protectionist measures at great cost.

The parties may also wish to make clear who bears the risk of carrying certain cargoes. They will likely agree express protection clauses or indemnities. These clauses will crystalize which party will be responsible for lost time and expenses arising out of situations where the vessel becomes unable to berth due to concerns surrounding the volatility of the cargo in question. This is one such issue the MV Ruby has endured. Prior to docking in Great Yarmouth, the vessel had been traversing European coasts in search of a berth but was refused my multiple countries, such as Sweden and Denmark, all of whom deemed the risks associated with the cargo to be too high.

Warranty clauses:

If the Charterer does intend to carry dangerous goods on the vessel, it is equally important that they have assurances that the vessel is up to the task. The Charterparty will undoubtedly include warranty and assurance clauses such as the MARPOL Clause. MARPOL is the international convention covering the prevention of pollution from ships and which covers dangerous goods which, by their very nature, have a high risk of polluting when incidents do occur. The MARPOL clause warrants that the vessel is fully compliant with the Marine

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com

Pollution Convention. This guarantees that the vessel is suitable for the carriage of the cargo and has the correct mechanisms in place for dealing with any unforeseen accident or incident.

Another example is the SOLAS clause which warrants that the vessel complies fully with SOLAS safety regulations currently in force. This requires all relevant certificates and documentation in respect of the compliance be kept on board the vessel for inspection when required.

The combined effect of these clauses is that the parties can make clear that the vessel is suitable for transporting the intended dangerous cargoes.

Conclusion:

The MSC Irena, MSC Loreto, and MSC Cappellini are amongst the very largest container ships in the world. All three set sail in 2023 and boast a carrying capacity of 24,346 containers. The ever-increasing size of like vessels places a corresponding emphasis on the need to ensure that all cargoes transported are safe and innocuous. The fire on board the YM Mobility was the result of batteries being overheated. Infolink has recently reported an increase in the shipment of energy-storage cells by 35% in 2024. Increased global demand for such cargoes, which are more dangerous than they first appear, will only drive up the likelihood of like future incidents occurring. It has therefore never been more important to ensure that the carriage of dangerous cargoes is correctly regulated. It is equally important that the parties are completely transparent with each other about any risks associated with the cargo to be carried.

Need Advice on Shipping Dangerous Goods?

We work with shipowners, charterers, and logistics providers to offer expert guidance on the transportation of dangerous goods, including compliance with the IMO Dangerous Goods Code and contractual risk management. Find out more about our Maritime law services or contact us at online.enquiries@LA-law.com.

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com