



# SEMAPHORE

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## Copper Scrap Fraud Highlights Exclusions in Bills of Lading

A carrier instructed to transport three shipments of copper scrap from Dubai to Piraeus subsequently found the first two shipments – which were paid for, with clean bills of lading – actually contained concrete blocks, with shippers disappearing before the third payment was made.

The TT Club has reported on the case of *Stournaras Stylianos Monoprosopi Epe v Maersk A/S* (“*Maersk Klaipeda*”) [2024] EWHC 2494 (Comm), in which shippers instructed the carrier to carry the three consignments in 22 containers. The consignees paid US\$459,000 for the first two consignments, relying on two clean straight bills of lading issued by the carrier.

On arrival at Piraeus the containers were found to contain worthless concrete blocks. The consignees obtained default judgment against the shippers in Dubai but could not enforce it because the shippers had disappeared.

The consignees then issued proceedings in the English Commercial Court against the carrier on the basis that the carrier should not have issued clean bills because there was a significant discrepancy, of around 40%, between the weights stated in the verified gross mass (VGM) certificates on loading and the weights stated in the bills.

The carrier responded by maintaining that VGM weighing, which was driven by safety and stowage requirements, was distinct from the issuance of bills and the carrier had no responsibility to cross check data between the two functions.

The work was done by different teams within the carriers’ organisation, for different purposes and there was no standard industry practice – at least in 2019 – requiring cross checks. The discrepancy could have been found by a surveyor instructed by the shippers.

The carrier counterclaimed for its losses resulting from the fraud, including cargo destruction and container demurrage, on the basis that the definition of “merchant” in the bills made the consignees jointly and severally liable with the shippers.

In its judgement, the Court dismissed the consignees’ claims and allowed the carrier’s counterclaim.

The carrier had no duty of care to cross check the weights in the absence of evidence of fraud and was not in breach of Article III.3(c) Hague Rules which required the carrier to indicate on the bill the apparent order and condition of the cargo.

This requirement was limited to external condition, as reasonably apparent to the master on loading, and the discrepancy in weight was not evident from a visual inspection of the sealed containers.

The consignees could not rely on an implied representation (negligent misstatement) in the bills that the carrier had no reason to suspect the declared weights were inaccurate. This was not contemplated by Hague Rules and was specifically negated by the proviso in Article III that the carrier is not required to include weights (in addition to other specified details) in the bill which it has reasonable grounds for suspecting to be inaccurate, or which it has no reasonable means of checking.

Further, the bills clearly stated that the information provided was “as declared by the shipper but without responsibility of or representation by the carrier”.

Commenting on the judgement, the TT Club says the carrier was not found liable on the facts of this case but the Court nevertheless recognised a possible duty of care is owed in cases where the carrier is actually aware of a substantial discrepancy between declared and verified weights.

Furthermore, the facts on which this judgment is based arose in 2019, three years after VGM was first introduced by the International Convention for the Safety of Life at Sea (SOLAS), and this was emphasised by the Court throughout the proceedings.

Since then, industry practice and data analysis techniques have evolved – the carrier itself introduced more sophisticated systems in 2020, following an incident. Expectations of the courts from carriers on more recent facts may therefore be greater.

This case also highlights the importance of attention to express exclusions and disclaimers in bills.

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