

Coronavirus: Club Cover and Contracts of Carriage

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This Guide discusses questions of Club cover and contracts of carriage in various scenarios based on general enquiries concerning the Coronavirus pandemic. (*Legal issues in relation to charterparties are discussed in our FD&D Guide.*)

Please note that in all scenarios reference to Club cover is always subject to the specific terms of entry (including deductible) for the entered vessel and the merits of each individual case.

1. There is an outbreak of Coronavirus amongst the crew on board the Member's vessel.

The Member is covered for the liability which it incurs under the crew contracts to pay damages or compensation for the illness or death from the infection of any member of the crew of the entered vessel, including costs for hospital medical and repatriation, funeral or other expenses incurred in relation to any infected crew member who is on board the entered vessel or proceeding to or from that vessel under a contract in force.

Reasonable disinfection costs of the entered vessel are also covered as well as additional costs or expenses incurred by the Member as a consequence of an infectious disease such as Coronavirus.

Cover will not be engaged, however, for costs incurred as a result of mere suspicion of infection or routine precautionary measures if there has not been an outbreak of the disease on board the entered vessel. These are regarded as operational costs.

There is also cover for a crew member who contracts Coronavirus in transit to join the vessel or during repatriation after disembarking (including while under quarantine whilst under a contract in force).

It should be noted that there are complex logistics, administrative difficulties and, in some countries, an uncompromising and harsh approach by the authorities which can prevent or inhibit the ability to provide medical aid to the crew on board the vessel or ashore or carry out crew changes. The Club will do its utmost to provide advice and assistance to the Member for such matters, drawing on the experience and knowledge which it has developed over the past few months as well as deploying the assistance of its network of local correspondents.

2. A crew member becomes gravely ill with Coronavirus symptoms during a laden voyage and it is decided to divert the vessel to a port to provide medical care.

The carrier is likely to be permitted to make the deviation under the Hague or Hague Visby Rules on the grounds that it is an attempt to save life at sea or reasonable and as such will not itself be a breach of the contract of carriage, subject to the question of unseaworthiness (discussed below).

The carrier remains obliged to continue to the discharge port after the diversion. Depending on safe manning requirements, it may be necessary to replace the sick crew member to continue with the necessary complement of crew.

There is P&I cover for fuel, insurance, wages, stores, provisions and port charges attributable to the diversion, in excess of those which would have been incurred but for the diversion, provided that such costs and expenses are incurred with the approval of the Club. In addition, the sick crew member's medical, hospital and repatriation expenses are covered.

If there is any doubt as to whether the diversion is a lawful deviation, the Member should contact the Club and discuss the option of taking out SOL cover for unauthorized deviation.

There might be some practical constraints in disembarking the crew member at the nearest port such as: local regulations prohibiting the crew member to come ashore; complex procedural / administrative requirements to be completed in advance; unsuitable or inadequate local medical facilities or repatriation capacity. The Club can assist with assessment of the most suitable disembarkation port by obtaining guidance from local correspondents about such matters if the Member provides adequate notice and sufficient details of its intentions.

3. A crew member who has signed off is subsequently diagnosed with Coronavirus.

Usually the Member will not be liable for the ill health of a crew member who has signed off unless the illness was contracted in the course of employment (including in transit to or from the vessel) in which case the Member may be liable for the cost of medical care and compensation under the terms of the crew member's employment.

There is P&I cover for the Member's liability for the cost of medical care, expenses and compensation for the illness and, in the sad event of the infection being fatal, funeral expenses. There is no fixed approach as to how the Club may assess the incubation period to determine the likelihood of post-disembarkation Coronavirus illness being attributed to the period of employment.

4. There is cargo damage as a result of deterioration due to delay from quarantine restrictions imposed at the discharge port due to crew infection (actual or potential).

The carrier may be able to rely on exceptions to liability for cargo damage pursuant to Article IV rule 2 (g) ("restraint of princes") or (h) ("quarantine restrictions") of the Hague and Hague Visby Rules. This is subject to the question of whether, when the voyage began, the vessel was seaworthy in that its crew did not suffer from physical disability or incapacity as to prevent them from performing their duties competently. It is possible in principle for infection of the crew to make a vessel unseaworthy (prior to the Hague Rules it was held by the English Courts that a vessel was unseaworthy because of its call at a port with a particular infection problem leading to quarantine restrictions).

Unseaworthiness is a breach of Article III rule 1 unless the carrier establishes that it occurred despite the exercise of due diligence. In the case of crew infection resulting in quarantine delays, or deviation to land a sick crew member, this may involve examining extent of the sanitary measures on board the vessel to check and safeguard the crew from infection by reference to standard industry practice.

There is P&I cover for the Member's liability for cargo damage resulting from breach of the carrier's unseaworthiness obligations under the contract of carriage.

5. Restrictions at the intended discharge port prevent the vessel from calling there to discharge cargo.

If it is not possible for the vessel safely to reach the nominated discharge port and the bill of lading terms (either expressly or by incorporation of the terms of a charterparty) include a provision which gives the carrier liberty to discharge the cargo at an alternative port (for example or the BIMCO clauses for infectious or contagious diseases, or a clause permitting discharge at a port “so near thereto as she may safely get”) the carrier may do so provided that the cargo can be safely delivered to the consignee at that alternative port. Otherwise, all the parties involved may wish to consider making an agreement with the carrier for switching the full set of original bills of lading with replacement bills nominating the alternative port.

There is no cover for liabilities arising from delivery of cargo at an uncontractual discharge port. It is important for the Member therefore to be certain that there is adequate liberty under the contract of carriage to discharge at an alternative port or to be certain of the integrity of switch the bills of lading. It is prudent for the Member also to obtain a Letter of Indemnity (“LOI”) to cover the risk of wrongful discharge in such circumstances.

6. Coronavirus restrictions delay the bills of lading in transit and the vessel is ready to discharge the cargo before they can be presented.

The carrier will be exposed to misdelivery claims if the cargo is discharged without presentation of an original bill of lading regardless of the fact that the non-production was due to restrictions caused by the pandemic. The carrier might, however, have agreed a term in the relevant charterparty by which it is contractually obliged to discharge the cargo against provision of an LOI in an agreed form.

There is no cover for liabilities arising from delivery of cargo without production of original bills of lading. It is important for the Member therefore to ensure that the terms of the LOI adequately cover its exposure for misdelivery of the cargo and is satisfied that the guarantor issuing the LOI is of adequate financial standing to meet its potential indemnity obligations under the LOI.

7. Expenses and costs (such as payment of wages, accommodation and subsistence allowances) are incurred as a result of the crew being held in quarantine as a precautionary measure when they are in transit on their way to board the entered vessel or in the course of repatriation after they sign off.

In the absence of such matters being the consequence of the occurrence of Coronavirus on board the entered vessel they will not be covered by P&I. These expenses are considered as operational costs. There would be an exception for a crew member who became infected while in quarantine (as stated in the commentary for scenario 1.) or who has to be repatriated due to failing a health check in the embarkation port prior to boarding (in which case the cost of repatriation is covered).

8. The crew who are due to sign off are obliged to remain on board the vessel because of travel restrictions or logistical problems due to Coronavirus, resulting in the Member incurring additional costs for the crew contract extensions or crew overlap.

The costs are operational and are not covered. The Member will, however, be liable for any illness or injuries which occur to the overstaying crew during the extended period while the crew contract remains in force.

9. A visitor on board the entered vessel, such as a superintendent or surveyor, contracts a Coronavirus infection while on board the vessel.

Usually third-party visitors are permitted to board vessels only upon signing a form of waiver / indemnity which acknowledges that they are boarding at their own risk and waive any right to claim damages for personal injury or death. In some jurisdictions, however, such waivers are rendered invalid by statute and the Member may be held liable to the visitor for the consequences of infection by Coronavirus. Also, superintendents may be engaged in terms which enable them to bring personal injury claims against the Member.

There is P&I cover for liability to pay compensation for personal injury, illness and death of any persons on board or in relation to the entered ship if it is proved (the burden of proof being on the claimant) that it was caused by negligence on behalf of the Member (in addition to cover in relation to crew and passengers).