

## **The Clause an Apparent Good Order and Condition Under Turkish Law and The UK Position**

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The carrier is under an obligation to issue a bills of lading showing the leading marks, number of packages or pieces, or the quantity of weight and the apparent good order and condition of the goods (Turkish Commercial Code s. 1098/8). In order to decide whether the master exercised his duty or not we should apply prudent shipowner test that is dealing with the goods in his ordinary course of business without specific knowledge about the goods shipped. The close "in apparent good order and condition" regarding the shipped goods in sacks would indicate only condition of the sacks and condition of the goods in sacks<sup>2[2]</sup>. In other words the masters clause is not statement regarding physical condition of the goods<sup>3[3]</sup>. If there is not any clause stating condition of the goods there is no imply warranty that the goods are shipped in apparent good order in condition. The person claiming damages for loss or damage to the goods is under an obligation to prove that the goods shipped were delivered in good order and condition (TCC s. 1061<sup>4[4]</sup>).

The problem regarding the carriage of the oil and apparent good order and condition permutation has not dealt under Turkish law. This problem could be very serious particularly where claims concerning bulk liquid cargo (oil) are shortage and contamination. We can see here that Turkish law attaches importance to insert all possible conditions in relation to the cargo itself. This is an attempt to provide a buyer –who is down to chain- as much as information possible with regard to cargo. Therefore where the Master does not have an opportunity to examine or to judge the goods shipped he has only option and it is process of the shipment. The process of the shipment in some kinds of goods is extremely important as the process itself may have an impact on quality or quantity of the goods shipped. We reckon that there can be two possible scenarios:

1- 1- Contaminated Cargo and "shipped in apparent good order and condition" clause:

Generally speaking this clause would not be a prima facie evidence for the quality of the goods shipped. So in order to give a consideration to this clause to make a sense in context of parties intention we should admit that this clause refers to process of loading itself. That means that all process of loading –from shore installations to vessel's cargo tanks- was exercised properly. The word "properly" to be construed considering the "prudent shipowner" test whom is in his ordinary course of business. If the claimant claims damages for contaminated cargo he can not place reliance on this clause, because this clause purely is concerned with loading process and may be pre-loading preparation. This kind of cargo carriage requires specific preparation before loading, they are not compulsory but in a way they are. In other words if the shiowner do not comply with these pre-loading preparation he would be less favorable position towards his P&I Club. Those preparations namely are (they may change from one P&I Club to another):

- a- a- a certificate signed by the shippers at the port of loading that the vessels tanks are clean and suitable to receive the intended cargo;
- b- b- maintenance records including details of previous cargoes, surveys and cleaning operations;
- c- c- a record of all cargo operations on board the vessel, including pumping operations and inter-tank transfer.
- d- d- Samples should be taken from the top, middle and bottom of each vessel's cargo tank in the presence of a representative of the terminal and cargo interest.

In this scenario what this clause actually means that all process of shipment of the cargo is made properly with compliance to technique required and as shipowner we would not have any defense if the receiver proves that contamination of the cargo is due to some omission in loading process. But this process is to be referred until ships rail. If the ship itself is not cargoworthy the shipowner has statutory liability.

2-Shortage of the Cargo and "shipped in apparent good order and condition"

The receivers claim regarding the shortage of delivered cargo mainly is based on incorrect calculation. In this situation the shipowner is agreed with the shoreside loading figures. If any shortage which is up to %0,5 the shipowner might be held liable and he would be exempt from arguing that shoreside figures was wrong (this of course in situation where claimant is consignee not endorsee).

We must appreciate difficulties of the master he faces. On the one hand he is under an obligation to issue the bills of lading with all stipulations on it whereas on the other hand clause which he is going to insert a clause which is usual in trade.

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<sup>1[1]</sup> Barrister with Istanbul Bar since 1990.

<sup>2[2]</sup> CAGA, pg. 80.

<sup>3[3]</sup> TEKIL, pg. 243; WILDIERS, P.: *Le connaissance maritime*, Anvers 1961, pg. 19.

<sup>4[4]</sup> Carriers duty of care/Level of care: TCC s. 1061: "The carrier shall exercise a prudent carriers care and diligence in loading, stowing, carrying, handling the goods...".