

## Shipping & Transport - Denmark

### Policyholder liable to compensate cargo insurer pursuant to insurance certificates

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[Facts](#)  
[Decision](#)  
[Comment](#)

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#### Facts

A Danish seller sold 30 trailers to a buyer in Venezuela on cost, insurance and freight terms (CIF). The seller contracted a Danish carrier to transport the trailers and take out cargo insurance. The carrier contracted the transportation to a sub-carrier, which issued a booking confirmation from which it followed that the trailers could be loaded on deck. On this basis, the carrier confirmed the booking to the seller. The carrier requested a proposal for cargo insurance of the trailers from a cargo insurer. The quotation given to the carrier set out that: "The trailers are to be carried by truck from Poland to Hamburg where they will be shipped by vessel below deck to Venezuela. Cover is pursuant to Institute Cargo Clauses (A)."

The carrier accepted the quotation and forwarded a copy of the commercial invoices and bills of lading to the cargo insurer. The cargo insurer issued two insurance certificates with reference to Institute Cargo Clauses (A). A number of the trailers were loaded onboard the deck of the cargo ship *Flinterstar* in Hamburg. During the voyage the vessel encountered rough weather which resulted in the trailers loaded on deck being lost overboard. As a result of the loss, the cargo insurer paid compensation in the amount of \$1.3 million to the buyer pursuant to the insurance certificates. Subsequently, the insurer instituted proceedings in Denmark against the carrier to recover the amount paid under the certificates. The insurer submitted that the insurance would not have been issued on Institute Cargo Clauses (A) terms (which provided coverage for deck cargo) if the carrier had informed the insurer that the trailers would be loaded on deck.

#### Decision

The Maritime and Commercial Court decided that the carrier should indemnify the cargo insurer for the compensation that the insurer had paid to the buyer pursuant to the insurance certificates. The court referred to the fact that it was stipulated in the quotation for insurance that the cargo would be loaded below deck, and that the insurer would not have confirmed the insurance if it had been informed that the cargo would be loaded on deck. The court further reasoned that:

*"The purpose of the insurance certificates was to grant the holder of the certificates a right to insurance cover and a right to demand payment in case of an insurance event. Consequently, [the insurers] were obliged to pay out the insurance compensation to the holder of the certificate B [the buyer] irrespective that correct information had not been provided by MB [the carrier]. On this basis, and because MB [the carrier] was under an obligation to provide correct information about the transport – information which was available when the insurer was approached – the court finds that MB [the carrier] must indemnify the insurers."<sup>(1)</sup>*

#### Comment

It follows from the evidence presented before the court that the carrier had failed to advise the insurer that the quotation it had given, which was based on loading the cargo below deck, did not comply with the agreed method of transportation. Pursuant to general Danish insurance law, failure to provide relevant information to the insurer may result in the insured losing its right to coverage. However, such a failure cannot, as a general rule, result in the insured becoming liable towards the insurer.

It followed from the judgment that, due to the issuance of the insurance certificate, the insurer had become liable to pay compensation to the holder of the certificates, regardless of the fact that the insurance taken out did not cover deck cargo. This was because the certificate included no information about the fact that the insurance was contingent on the cargo being carried below deck. However, it may be asked whether a policyholder should know – or ought to know in all circumstances – that the use of an insurance certificate has the legal implication that coverage which

does not follow from the policy arises under the certificate nonetheless. If the policyholder did not know this, it could be questionable whether it could be made liable to indemnify the insurer when an obligation to pay under the certificate arises.

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#### Endnotes

(1) Maritime and Commercial Court decision, January 20 2015 (Case S-27-12)

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