

# Container stow collapses - a South African perspective

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7 May 2021

The world has been gripped by the Covid-19 pandemic for over a year, the effects of which are likely to have an ongoing impact on world trade for the foreseeable future. However, whilst elements of the shipping market are now showing signs of recovery, container stow collapses and the loss of containers overboard continue to plague the containerised shipping sector.



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According to a World Shipping Council (WSC) survey undertaken in 2020, an estimated average of 1,382 containers were lost at sea annually during the period 2008 to 2019, from approximately 6,000 container vessels.

The financial, operational and environmental consequences of these incidents are very significant.

Many such incidents occur during periods of heavy weather which result in damage to container lashings and twist locks, causing container stacks to collapse.

Such incidents are not uncommon off the South African coast. Indeed, South Africa's east coast is notorious for the heavy

winter swell to which it is exposed every year.

Following a collapsed stow, the vessel involved will frequently be required to seek refuge at the nearest port in order to survey the damage, assess the number of containers lost overboard, effect any necessary repairs and process any containers which may need to be discharged or trans-shipped.

## Port authority legislation

For the vessel to enter her chosen port of refuge the owners would generally need to approach the relevant port authority as well as the South African Maritime Safety Authority (Samsa) to request permission for the vessel to enter the port.

In allowing the stricken vessel to enter the port, the wider operations of the port may be placed at risk. As such, operational plans (approved by Samsa and the port authority), and in some cases, security and indemnities may be required by Samsa and/or the relevant port authority prior to the vessel being allowed to enter the port.

The vessel's P&I insurers will likely be involved given the potential cargo and pollution liabilities. It is also possible that the local authorities may impose fines on the vessel, and arrangements may need to be made for clean-up operations to be carried out. The carriers may also need to provide security to cargo interests in relation to potential cargo claims.

Once the vessel is in port, the South African lawyers and P&I representatives will attend to the facilitation of the casualty investigation, monitor access to the vessel, appoint experts, preserve evidence and oversee any repairs or remedial cargo operations. Crew statements may also need to be taken.

Casualty investigations can give rise to formal applications to the South African High Court by cargo interests or charterers for the preservation of critical evidence and access to the vessel. Usually, the parties will agree on a protocol governing these aspects to avoid the need for formal litigation.

The owners, charterers and their insurers will need to make the necessary arrangements for the damaged containers to be discharged, de-stuffed, inspected, repaired and back loaded either onto the same vessel or onto another vessel for trans-shipment. The cargo to be processed or disposed of may include potentially hazardous cargo requiring specialised treatment.

From a legal perspective, the South African Carriage of Goods by Sea Act 1 of 1986 (COGSA) enacts the Hague-Visby Rules. In other words, the heavy weather defence is recognized under South African law and may provide the carrier with a defence, depending upon the terms of the contracts of carriage and the circumstances of the incident.

In summary, should such an incident occur off the South African coast this winter, **interested parties would be well advised to act promptly to manage the following:**

- Appointing and monitoring local surveyors and experts for surveys of the containers, cargo and the vessel;
- Liaising with the South African authorities in relation to access to the port, remedial cargo operations and any clean-up requirements;
- Negotiating protocols governing the preservation of evidence and access to the crew;
- Attending to urgent applications to the High Court in relation to the preservation of evidence and access to the vessel;
- Crew statements;
- Negotiating and providing security both in respect of potential cargo claims as well as any fines imposed by the South African authorities; and

- Handling any cargo claims or other formal litigation flowing from the incident in South Africa.

## ABOUT THE AUTHOR

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