# Cargo Interests Liable to Contribute to Ransom Payment under General Average


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In a recent decision, the Supreme Court concluded that the cargo interests were liable to pay a contribution, on general average, for the ransom payment that the Shipowner had to pay to release the vessel that was held by the pirates.

This is an important decision for any trader who is involved in a case affected by piracy or any conflict, like the recent attacks in the Red Sea or the war in Ukraine.

## Background facts

The M/V POLAR was on a voyage charter from St Petersburg to Singapore. The charterparty provided for additional Gulf of Aden and war risks clauses, with an additional insurance premium for charterers' account, up to a cap of USD40,000. Before entering the Gulf of Aden High Risk Area, the Shipowner took out Kidnap and Ransom (K&R) insurance for a single voyage, not exceeding 14 days from 25 October 2010, and provided cover of up to USD 5 million in respect of "ransom which has been surrendered under duress".

When she was transiting through a High Risk Area in the Gulf of Aden, off the East coast of Africa, the M/V POLAR was attacked by the Somali pirates and was seized from October 2010 to August 2011. The pirates asked for a ransom of around USD 7 million, which was paid by the Shipowner to release the vessel. The Shipowner declared general average and requested the cargo interests to contribute to the amount that was paid for the ransom.

The cargo interests argued that the insurance cover between the Owners and the Charterers precluded the Owners from seeking a contribution from the cargo interests in general average. The cargo interests argued that the Shipowner should have recovered the ransom payment from the insurers under the terms of the insurance cover, for which the premium was paid by the Charterers.

## The legal issues

The cargo interests' argument was that, under the charterparty terms, the Shipowner had to take out kidnap and

ransom (K&R) insurance and war risks insurance. The premium of this insurance was paid by the Charterers. Those charterparty provisions in relation to the K&R and war risks insurance were incorporated into the bills of lading. Therefore, the cargo interests denied liability in respect of the contribution to the payment of the ransom.

The Owners issued arbitration proceedings. The Tribunal concluded that the cargo interests were not liable to pay general average contributions in respect of the ransom payment.

The Shipowner appealed the Tribunal's decision.

The Tribunal's decision was later reversed, in appeal, by the judge of the first instance, Sir Nigel Teare. The reasoning for that decision was that the agreement between the Shipowner and the Charterers on the K&R and war risks insurance did not preclude the Shipowner from seeking a contribution in general average from the bill of lading holders.

The cargo interests appealed the Court's decision.

The Court of Appeal confirmed the first instance decision, dismissing the appeal.

The cargo interests appealed the Court of Appeal decision to the Supreme Court.

## Court Decisions

The Supreme Court examined the extent to which the terms of the charterparty regarding the provision of war risks insurance were to be incorporated into a bill of lading, and if so, whether the cargo owners had to contribute the payment of ransom under general average.

The six bills of lading incorporated the terms of the voyage charterparty, including the insurance provisions and the York Antwerp Rules on general average.

The Court analysed previous decisions, including The Ocean Victory and the Evia (No 2), where similar issues had arisen.

It was established that, under a demise charter or a time charter, contractual parties could agree that a specific loss was to be covered by insurance. In such circumstances, the parties would seek recourse against insurers rather than their contractual counterparty. When there is a joint insurance for the benefit of both parties, the parties cannot claim against each other in respect of an insured loss.

However, in this case, in the absence of joint names insurance, it could not be concluded that the parties agreed to look to the insurers for indemnification rather than to each other.

The construction of a charterparty must be considered on the basis of its own specific terms. Practitioners



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should look at what the parties actually agreed on the insurance point, on a case-by-case basis.

In this case, the principal issue was as to whether, on the proper interpretation of the voyage charter, and in particular the K&R and the war risks insurance clauses, the Shipowner was precluded from making a claim against the bills of lading holders. In other words, the question was as to whether the parties intended to create an insurance fund, which would be the only way to pay for the loss or damage and to avoid litigation between the parties.

## Conclusion

The Supreme Court concluded that:

- For the Shipowner to have given up a right to general average would require a clear agreement to that effect.
- Furthermore, this was not a case of joint names insurance.
- There is no principle exempting Charterers from liability for their breaches of contract or, in general average, only on the basis that they have provided the funds to pay the insurance premium, whereby the Shipowners insured themselves against the relevant loss or damage.
- If the parties wish to provide that there be no right of recovery or subrogation in respect of loss or damage covered by insurance, they should clearly state so.
- The insurers will rate their risk also on the basis of the fact they have or do not have rights of subrogation.

The Supreme Court concluded that in this case, on the proper interpretation of the voyage charter and the insurance provisions, the Shipowner was not precluded from claiming against the Charterers in respect of losses



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arising out of risks for which additional insurance had been obtained. The insurance provisions were incorporated into the bills of lading. On the proper interpretation of those clauses, the Shipowner was not precluded from claiming such losses against the bills of lading holders.

The Supreme Court confirmed the Court of Appeal's decision, dismissing the appeal.

## Contact us

If you have any further question, please contact our specialist shipping & logistics lawyers by emailing online.enquiries@la-law.com or by calling 0344 967 0793.



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