LA marine

Charterers' liability for cargo claims and the effect of the Inter-Club Agreement

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A recent London arbitration decision has looked at how a receiver's claim for the diminution in the value of a cargo, which arose solely because of the delay by a ship caused by the owners of the vessel, should be interpreted against the backdrop of the Inter-Club Agreement (ICA) wording.

Background

An owner and a charterer had entered into a charterparty on the New York Produce Exchange Form with supplementary clause. The charterparty incorporated the ICA of "February 1970 as amended in May 1984, or any subsequent modification or replacement thereof".

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The latest version of the ICA is the 1996 Agreement. This defines cargo claims as claims for loss, damage shortage, over carriage or delay to cargo.

In addition to the ICA, the parties had agreed to an addendum to the charterparty, that in the event the vessel was required to carry cargo to Somaliland, the charterers were to be fully liable for all cargo claims, however they were caused, even claims for unseaworthiness.

The claim

A decision was made to carry cargo to Somaliland. However, en route to Somaliland the vessel was diverted by the owners to Goa. The deviation took 36 days. On arrival in Somaliland, a cargo claim was presented by the cargo receivers to the charterers, which appears to have been entirely based on the diminution of the price of the cargo, caused by the delayed arrival. The delay which had resulted in the claim, appeared to have entirely been caused by the owners who had diverted the ship to Goa. The charterers settled the "cargo claim" for a figure of USD216,800 and then deducted that sum from hire payable to the owners.

The owners rejected the deduction from hire because they asserted that the charterers were fully liable for the "cargo claim."

There was clear tension between the underlying ethos of the ICA and the addendum which required the charterers to be responsible for any claims if the vessel was ordered to Somaliland, even if the owners' wrongful interference with the use of the vessel had caused the claim.

The Arbitration Tribunal's approach

- They ordered that the question of whether the charterers' agreement to be responsible for all cargo claims included the settled claim, by way of a preliminary issue. The two parties agreed that for the purposes of the preliminary issue 1) the vessel was unseaworthy, 2) the deviation was a breach of the charterparty and 3) the value of the cargo had fallen and the delay in arrival were directly linked to the fall in value.

- Their approach was to look at the construction of the clause imposing liability on the charterers for the call in Somaliland. The question posed to them was whether the settlement of the claim for the diminution of the price of the cargo was a "cargo claim" in the classic sense. If the settled claim *was* a cargo claim, then the owners were entitled to reject liability for the deduction from hire. If it was not, then the supplementary clause would not help the owners to avoid liability.

- The way to do this was to look at the natural meaning of those words. The description of a "cargo claim" in the supplementary clause must have the same as the wording in the ICA and the charterers attempt to argue that it had a different meaning would end in a strange result if the same phase meant different

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things in the same contract.

- On that basis they decided that the claim for diminution in the value of the cargo fell within the definition of “cargo claim” and that the charterers’ were not entitled to deduct the cargo claim from hire.

Need advice?

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