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Risk and Responsibility for loading, stowage and discharge of bagged cargo

A recent judgment has been handed down by the UK High Court concerning a dispute between cargo interests and the carrier over responsibility for cargo damage under a Synacomex 90 charter party.

Background

The vessel “Sea Mirror” (“the Vessel”) carried nearly half a million bags of rice from Karachi, Pakistan, to Abidjan, Ivory Coast, pursuant to two bills of lading. The bills of lading incorporated the terms of a booking note which in turn incorporated the terms of a voyage charter party on the Synacomex 90 Form. The Receivers brought claims in respect of alleged loss and damage arising from:

1. Wet and mouldy bags;
2. Bags allegedly being torn during loading and/or carriage and/or discharge; and
3. Alleged short delivery.

The issue between the parties was whether the carrier was responsible for loss and damage to the cargo caused by inadequate or improper loading, stowage and/or discharge. In the absence of an express agreement in a charter party, the carrier is responsible for loading, stowage and discharge but responsibility for those functions can be transferred by the use of clear words.

Clause 5 of the standard Synacomex 90 Form provides that

“Cargo shall be loaded, trimmed and/or stowed at the expenses and risk of Shippers/Charterers.....Cargo shall be discharged at the expense and risk of Receivers/Charterer.....Stowage shall be under Master’s direction and responsibility.”

The carrier accepted that the reference to stowage being under the Master’s responsibility meant that it would be liable for any damage caused by bad stowage. The question was whether the words “at the expense and risk of” transferred responsibility for cargo loss or damage occurring during loading and discharge from the carrier to the charterers or cargo interests. The cargo claimants argued that “risk” in Clause 5 referred to the fortuitous risk of loss or that, alternatively, that the words “at the expense and risk of” were concerned with allocating the risk of delay in cargo operations. If cargo claimant’s construction was right, loss or damage occurring during loading, discharge and stowage would remain with the carrier.

The Court’s Decision

The court held that the words, “at the expense and risk of” were sufficiently clear to transfer responsibility for loading and discharge to charterers and cargo interests. Flaux J concluded that “risk” in

this context was to be equated with “responsibility” and whereas stowage was the responsibility of the carriers, loading and discharge were the responsibility of the charterers/cargo interests. It followed that to the extent that damage to or loss of the bags of rice was caused by bad loading and/or discharge (as opposed to bad stowage), it was the responsibility of the cargo interests who could not recover in respect of such damage or loss from the carrier.

The Impact

This is an important decision in relation to cargo claims in some parts of the world where stevedoring practices are questionable. The case is also of significance in confirming the allocation of risk and responsibility under Clause 5 of the Synacomex 90 Form and provides clarification on what may constitute “clear words” for the purpose of transferring responsibility. Members using Synacomex 90 to carry bagged cargo and who can provide strong evidence (such as photos or video of bagged cargo being damaged during loading and/or discharge) should benefit from this decision.

The “SEA MIRROR” [2015] EWHC 1747 (Comm) decision

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk