

Circular Ref: 2016/0002

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Laytime and demurrage**- Delay arising due to actions of Port Authority?**

In a recent *London Arbitration 16/15, (2015) 938 LMLN3*, the Claimant's vessel carrying a full cargo of bentonite (bulk cargo) was ordered by the Port Authority to discharge at a container terminal. Five days later after commencing discharge, the vessel was further ordered off the discharging berth by port authorities and proceeded to a standby berth, where she waited for three weeks. These actions of Port Authority resulted in a serious delay, with a bill for demurrage claim amounting to around half a million US dollars that the Owners of the vessel was claiming against the Charterers. The relevant Charterparty was GENCON 1976.

However, the Charterers argued that the delay was due to following factors for which they can't be blamed:

- a. There was an ingress of sea water into the vessel affecting the cargo, which delayed the discharge; and
- b. The Port Authority's order to shift was a *force majeure* event, which entitled the charterers to rely on Clause 19 (Force Majeure clause) of the Charter, therefore absolving them from any consequences arising out of delay and demurrage claim.

As to the first issue of ingress of water, the Tribunal accepted this was a matter of fact and will depend on evidence. With various evidence being adduced by two parties, the Tribunal considered that it was highly unlikely that there was any ingress of water during the loading, discharging or on passage based on evidence. The first defence therefore failed.

With regard to the Charterers' second ground of defence to the claim for demurrage, the Tribunal was not persuaded that the allocation of a not particularly suitable discharging berth was a force majeure event. Firstly, it was foreseeable that the vessel was likely to be ordered to vacate the berth if it was required for a container vessel that arrived later. In addition, according to the tribunal, for a force majeure clause to operate, the event should be unforeseeable and the clause specifically provides that force majeure event will interrupt the running of the laytime /demurrage.

The tribunal further commented that even if it were be said a force majeure event, the Charterers could not rely on it as the Charterers did not made any declaration about the Force Majeure, which was required pursuant to Clause 19 of the Charterparty. In any event, the provision of a suitable berth was something that was entirely within the responsibility of the Charterers, even though they have sub-chartered the vessel or the responsibility was on the receivers of the cargo. The Charterers were therefore held responsible for the vessel's delay and will have to pay demurrage with interest and costs.

For Andrew Liu's clients, the FDD team based out of Shanghai recommends the following:

- a. Force Majeure clauses are complex issue and the clients should seek guidance and notice of declaration, if required, should be sent immediately.
- b. Even though Port Authorities' action cannot be controlled, the liability can be passed to Charterers pursuant to a well-drafted Charterparty.

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