

Circular Ref: 2017/0002

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Cargo Claim - What happens if no one is a fault: Inter Club Agreement

In a recent case of *Transgrain Shipping (Singapore) PTE Ltd v. Yangtze Navigation (Hong Kong) Co Ltd & Anor (MV Yangtze Xing Hua)* [2016] EWHC 3132 (Comm), it was decided by the Commercial Court that Inter-Club agreement (ICA agreement') between the Charterers and the Owners is governed by the understanding that this is incorporated in the charterparty to avoid long delay and to avoid benefitting the lawyers out of costly litigation in these cargo claims. The ICA agreement is introduced in the charterparty through an appropriate ICA clause.

In this case, in an appeal from the arbitration award, where the vessel was chartered on the NYPE form and on request of the receivers & charterers, the vessel had to remain at anchor near the discharge port in Iran for four months. When the cargo of soya bean was discharged, it was found to have been damaged due to overheating. The ship Owners had to settle the claim with the receivers, and thereby claimed against the Charterers pursuant to the ICA Clause.

Even though the Charterers were not at fault for the cargo damage, they were nevertheless held liable pursuant to ICA clause in the charterparty.

Clause 8 (d).of the ICA agreement provides that:

All other cargo claims whatsoever (including claims for delay to cargo): 50% Charterers 50% Owners unless there is clear and irrefutable evidence that the claim arose out of the act or neglect of the one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim.

In this case, it was clear that that the vessel remained at anchor for four months on the instructions of the Charterers, and therefore they should bear the risk.

FDD department' that is based in Shanghai advice to the client of Andrew Liu is that:

- (a) Owners should put Charterers on notice as soon as possible, if there is a risk of cargo loss;
- (b) The Owners should also seek P & I Club's assistance in relation to the risk of cargo damage;
- (c) The Charterers and the Owners should seek FDD' assistance to protect your interests in such cases that resulted from the request of the receivers. We have successfully assisted recently the Charterers and the Owners by suggesting appropriate legal measures to protect their interests by mitigating the loss, especially in the similar circumstances.

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