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LIMITATION FUND - Owners' be careful

In a new Hong Kong case, a very reputed maritime jurisdiction like England, *Floata Consolidation Ltd v Man Hee Ling (Hong Kong) Vehicles Ltd and Others* - [2016] HKCFI 622, High Ct of Hong Kong SAR (Court of First Instance) (Peter Ng J) - 12 April 2016, it was made clear that the fault of the derrick operator, and person in charge, on the barge (Mr S) fault cannot be attributed as 'personal act or omission' of the ship owners' for the purpose of article 4 of the 1976 Limitation Convention. Therefore, the decree of limitation granted by the Hong Kong Court would not be set aside.

As to the facts of the case, on 11 March 2015, upon the application of the claimant owner of the barge *Floata 97*, the court granted a decree of limitation under the *Merchant Shipping (Limitation of Shipowners Liability) Ordinance*, Cap 434 in relation to an incident which took place on 23 March 2014 when the barge was carrying out midstream operations (loading and unloading containers) beside the vessel *Heung-A Singapore* at the North Lamma Anchorage. However, the cargo owner who lost cargo in the container relied on the admission of guilt of Mr S under sections 34(4) and (5) of *Merchant Shipping (Local Vessels) (General) Regulation*, Cap 548F on the basis that the cargo was not loaded, stowed and secured so as to prevent loss of the cargo overboard, and was fined HK\$2,500 to argue that limitation fund be set aside on this basis.

The Court clarified that, first, Mr S was not a director of the claimant or part of its senior management. Secondly, even if Mr S was the person in charge of the barge, that would not improve the Defendant's position. Every vessel had someone in charge of it. Normally, it was the master but that still it did not make his act or omission that of the company (*The Leerort* [2001] 2 Lloyd's Rep 291, *The Saint Jacques II* [2003] 1 Lloyd's Rep 203 and *The Lady Gwendolen* [1965] 1 Lloyd's Rep 335 considered).

FDD department based in Shanghai advice to Andrew Liu's clients is as follows:

- (a) The clients should be careful that the acts and omissions of the employee should not be attributed to the ship owners, otherwise they would not be able to limit their liability as per the *Limitation Convention 1976*.
- (b) The FDD department has advised many clients in relation to the issue of ISM Code and its effects on the above issue of attribution of personal act or omission. A little bit of care can save millions to the company.

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