

Circular Ref: 2017/0010**Date: 28 July 2017**

Cargo Sweat and Cargo Damage - Recent arbitration in London

In a recent arbitration (2017) 982 LMLN 3, the subject vessel was chartered out by disponent owners (the owners) to charterers (the charterers) on the NYPE form (the charter). The owners had themselves chartered the vessel from the head owners on the NYPE form (the head charter). Both the charter and the head charter incorporated the NYPE Inter-Club Agreement (the ICA).

Disputes arose under the charter. The owners claimed to recover €77,721.91 from the charterers in respect of monies expended in settling claims brought by the head owners following claims made by cargo interests against the head owners as carriers under the bills of lading. The charter also provided that

charterers shall handle cargo claims in the first instance and provide security to cargo interests in respect of cargo claims within a reasonable time of receipt of a request to do so.

The vessel loaded a total cargo of 45,861.457 mt of steel coils at Chengdu, PRC (between 4 and 7 April), Jingtang, PRC (between 13 and 15 April), and at Kaohsiung, Taiwan (between 20 and 23 April). On arrival in Antwerp, certain damage to the cargo of steel coils was noticed and surveyors were appointed, representing cargo interests, the owners and the charterers. The first claim concerned sweat damage to 10 coils in the amount of €5,110.02. That claim was eventually settled for €3,000. The second claim concerned some 79 coils, all showing some degree of condensation damage. That claim was originally presented in the amount of €65,000, and was eventually settled for €50,000. The cause of damage, as set out in a report from surveyors was the condensation damage. On investigation, difference in temperature between the two load ports also caused this kind of damage.

The owners brought arbitration proceedings against the charterers claiming damages of €77,721.91, of which €53,000 related to the settlement of the two cargo claims, and the balance of €24,721.91 represented surveyors' and legal fees on the basis that charterers failed to provide security to the cargo owners and handle the claim when the issues were mostly due to stowage factors and their decision to load in the hold in which cargo was already loaded in the previous port creating difference in temperature issues. The Owners' claim for 100 per cent reimbursement of the amounts paid in settlement of the cargo claims, together with the costs and expenses involved, failed as it was difficult on evidence to find one single sole cause of damage. But it did not follow that their claim for "damages" also failed. The owners had a valid claim for reimbursement of 50 per cent of those amounts, on the basis of clause 8(d) of the ICA.

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

(a) The arbitrations are expensive and in such cases evidence is the main issue. Therefore, successfully

negotiating such issues with the Charterers could have saved the cost of arbitration. However, such negotiations need to be based on legal and technical issues, especially when lawyers are involved.

- (b) FDD office has successfully resolved many such cases for its clients and their assistance could be taken from the start.

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

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