

Circular Ref: 2018/0005

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Place of Redelivery and other issues

- Interesting arbitration

In a recent arbitration 11/18, (2018) 1000 LMLN 2 in London, a dispute arose as to meaning of the term of redelivery raising very interesting questions, along with other issues.

Facts

- i. The subject vessel was chartered by her owners (“the owners”) to a company (“the head Charterers”) on an amended Shelltime 4 form for a time charter trip carrying cargoes of palm oils from the Far East to/via various safe ports and berths, for a period of between 40 to 75 days, with redelivery on dropping outward pilot “**med/black sea**”.
- ii. The head Charterers sub-chartered the vessel to another company (“the sub-charterers”) for a series of time charter trips, also under the Shelltime 4 form. Under the sub-charter the vessel loaded palm oil at Indonesian and Malaysian ports and then sailed to Pasir Gudang, Malaysia where she discharged most of the cargo and loaded further cargo. She sailed from Pasir Gudang on 20 December 2011 for Aqaba, Jordan, calling at other ports enroute to discharge and/or load cargo.
- iii. The vessel arrived at Aqaba leading to off-spec cargo dispute at Aquaba, resulting in claim against the head Charterer and sub-charterers, but not against the Owners. However, Owners ended up giving the extra-judicial security of USD 900,000 to the Aquaba court to get the vessel released, in spite of the fact the Owners or the vessel was not named in the writ by the receivers.
- iv. The vessel arrived at Aqaba on 23 January the following year, completed discharged on 4 Feb, and sailed on 21 Feb. The head Charterers subsequently purported to redeliver the ship at Izmit, on the Sea of Marmara.
- v. The Owners sued the Head Charterers for redelivering the vessel in breach of the redelivery clause and for deducting hire from 4 Feb until 21 Feb. The relevant off-hire provision was Clause 21 in the relevant charterparty:

On each and every occasion that there is loss of time(v) due to detention of the vessel by authorities at home or abroad attributable to legal action [emphasis added] against or breach of regulations by the vessel, the vessel’s owners, or Owners (unless brought about by the act or neglect of Charterers [emphasis added]); then without prejudice to Charterers’ rights under Clause 3 or to any other rights of Charterers hereunder or otherwise, the vessel shall be off-hire from the commencement of such a loss of time until she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers

than that at which such loss of time commenced ...

The Head Charterers and the sub-charterers counter claimed on the basis of the breach of Art. III (2) of Hague/Hague-Visby rules for damaging the cargo on-route to the discharge port. There was a separate arbitration between the Head Charterers and the sub-charterers. Both arbitrations were heard concurrently pursuant to LMMA rules.

It was held by the Tribunal that “med/Black Sea” does mean the range and since Sea of Marmara was in between the range, the subject vessel was redelivered correctly. In order to pass Sea of Marmara, the Owners have to spend more money to reach Aegean Sea or Black Sea. There was also a finding of fact that the cargo was off-spec before the cargo was loaded.

Even though the action of receivers was not against the Owners or against the vessel, the fact was clearly that the vessel was detained for all purpose, and accordingly it was construed as “legal action’ against the vessel. The Owners’ argument succeeded that the vessel should not have been off-hired as it was the Charterers’ fault in loading the off-spec cargo and they have delegated it to the sub-charterer to load the same. The finding of fact was crucial. In addition, the Charterers’ arguments failed that even if they were liable to hire, the Vessel took long in providing the security for the vessel, and it broke the chain of causation, and that receivers’ action was an independent action based on the assumption that cargo was damaged on-route.

The Tribunal added that, if contrary to the findings, the vessel *had* been off hire during the period in question, the owners would have been entitled to an indemnity under clause 13 of the charter, which provided:

The master ... shall be under the orders and directions of the Charterers as regards employment of the vessel, agency and other arrangements...The Charterers hereby indemnify Owners against all consequences or liabilities that may arise:(1) ... from the master ... otherwise complying with Charterers or their agents orders ...

FDD department of ALCO’s advice to clients of Andrew Liu is as follows:

- (a) The place of redelivery should be thought of carefully before agreeing on any fixture.
- (b) ALCO’s advice to the Owners is that they should always attempt to get the vessel released in all circumstances rather than relying on Charterers or other party based on alternative security. Liaising with their P and I Club at this stage is useful as any delay can affect the hire issues as well.
- (c) ALCO’s advice to the Charterers are that they should ensure the soundness of cargo at the load port to avoid issues that arose in this case. Such cases can be costly. Any delegation of such duty to the sub-charterers may not come handy in their case against the Owners.

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