

Circular From Gard

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Incorporation of 2011 Inter-Club Agreement in Charterparties

Owners and operators should review the wording of their existing charterparties after a recent LMAA arbitration tribunal found that the 2011 Inter-Club Agreement in its entirety was not properly incorporated in an NYPE charterparty.

The owners requested counter-security from their charterers for a claim they secured toward head owners, under Clause 9 of the 2011 Inter-Club Agreement (ICA). The charterparty, an amended NYPE 1946 form, contained a clause stating *“(l)iability for cargo claims, as between Charterers and Owners, shall be apportioned/settled as specified by the Interclub New York Produce Exchange Agreement effective from 1996 and its subsequent amendment.”*

The charterers refused to provide security to owners on the basis that the wording of the charterparty clause restricted the application of the ICA to address only *liability, apportionment and settlement* of cargo claims, not provision of security. The tribunal agreed with charterers that the ICA had not been fully incorporated in the charterparty, and the ICA would only apply in respect of charterer's liability for the cargo claim and apportionment and settlement thereof. See *London Arbitration 18/18 (2018) 1010 LMLN* 2.

Gard recommends that Members and clients incorporate the 2011 ICA into NYPE and ASBATIME charterparties. The purpose of the ICA is to encourage reasonable settlement and save costs by avoiding expensive legal disputes when dealing with cargo claims. The tribunal in this case considered that the decision did not undermine the intent of the ICA because the main purpose, swift apportionment of liability for cargo claims, was not affected. However, one of the main purposes of the 2011 ICA revision was to ensure the parties to a cargo claim would be able to secure themselves against their contractual counterparts without unnecessary difficulty. Gard's experience is that the security mechanism usually works smoothly and is a necessary element to protect Members against counterparty default, whether by insolvency or avoidance of settlement.

Although this conclusion was reached in arbitration and is therefore not a legally binding precedent, this may prompt others to challenge security requests on similar grounds. Gard therefore recommends Members and clients to review charterparty cargo handling clauses carefully, to ensure the 2011 ICA is clearly incorporated in its entirety. Gard is reviewing the potential implications of this arbitration award with other clubs within the International Group of P&I Clubs and Gard will update our Members and clients if necessary in due course. In the meantime, Members or clients having any questions or requiring assistance are encouraged to contact Gard.

Source of Information: Gard P&I Club