

Circular Ref: 2019/0003

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Last Cargo on a Time chartered vessel and subsequent Dispute

In a recent *London Arbitration 1/19*, the vessel was chartered on an amended NYPE 1946 form for “2–3 laden legs of minimum duration 40 days”. Line 22 of the charterparty provided for the carriage of “any ordinary cargo”.

Additional clause 29 contained an extensive list of cargo exclusions and restrictions, and included:

Under the currency of this Charter Party, Charterers are allowed to load one dirty cargo out of sulphur, salt, petcoke and concentrates as per relevant protective clause and provided not the last cargo.

Coal not to be allowed as last cargo [emphasis added].

Additional clause 34 contained an agreement concerning the condition of the holds on redelivery (the ILOHC provision):

Charterers shall have the option of redelivering the Vessel without cleaning of holds against paying the Owners a lump sum of USD5,000 lumpsum, including removal of dunnage/bark/debris.

In this case, the charterers loaded the last cargo which was not allowed, but they just redelivered the vessel on time on 29 January. The Owners claimed damages for nine days, they took to clean the vessel and deliver the vessel into the next fixture.

However, the Owners failed to recover successfully the damages, whilst the Tribunal agreed that there was a breach. The reasons as to why the Owners failed to get any damages were - the owners had not provided any evidence of any cleaning operations, or of losses or extra costs, there was no evidence of any possible follow - on fixture being missed and there was only the owners' assertion that the vessel was fixed on subjects on 7 February for a steel cargo, subjects apparently being lifted on 9 February.

FDD department's advice to the clients of Andrew Liu is as follows:

- a) It is important to analyse the breach and possible damages very carefully. To commence the arbitration without proper preparation will result in huge cost outlay. This will include costs for running your arbitration and also if you lose the arbitration, then you will have to pay the other sides' costs.
- b) ALCO's FDD department runs many arbitrations in a year and we only progress after doing thorough

analysis. At times, we act as a consultant to guide the clients of Andrew Liu to act behind the covers even when Club has appointed some other lawyers to act on behalf of the client. The legal team should not have taken the arbitration forward for the Owners in this case without thorough analysis.

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

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