

Circular Ref: 2020/0005**Date: 29 April 2020**

Charterparty Dispute – Indemnity Claims and Time Bar

In a new London Arbitration 1/20, the subject vessel was chartered on an amended Gencon 1994 form for the carriage of potash from Israel to Brazil. The cargo was carried on Congenbill bills of lading. It was discharged at Brazilian ports in early summer 2006.

Facts

- The Brazilian cargo receivers brought claims for shortage against the Owners under the bills of lading. The Brazilian court of first instance published its judgment in August 2010 holding the owners liable.
- Owners lost appeal in Brazil in September 2017.
- In August 2018 the owners commenced London arbitration proceedings against the charterers under the charterparty, seeking an indemnity in respect of their liability in the Brazilian proceedings. The owners' claim was brought under an express indemnity provision in the charterparty, clause 10, which provided:

Bills of Lading shall be presented and signed by the Master as per the 'Congenbill' Bill of Lading form, Edition 1994, without prejudice to this Charter Party, or by the Owners' agents provided written authority has been given by Owners to the agents, a copy of which is to be furnished to the Charterers. The Charterers shall indemnify the Owners against all consequences or liabilities that may arise from the signing of bills of lading as presented to the extent that the terms or contents of such bills of lading impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners under this Charter Party.

- The Charterers contended that the claim was time-barred on the basis that the cause of action accrued in 2006, when the cargo was discharged short, alternatively when the first instance judgment was given in August 2010.
- The Owners argued that their cause of action for indemnity did not arise until, at the earliest, their liability had been established by the final and unappealable determination of the appeal court in Brazil. The Owners submitted that time ran either from the date of the issue of the appeal judgment or from the date when they paid the amounts ordered by the appeal court.

The Tribunal **held** that:

1. Limitation Act 1980 will apply pursuant section 13(1) of the Arbitration Act 1996. The relevant period of limitation was six years from the date when the cause of action first accrued.
2. The majority considered that in the present case time for limitation purposes started to run when the owners paid the cargo according to the judgment, that is after the appeal was dismissed.
3. There was a dissenting view from one of the arbitrator. This arbitrator had argued that this will bring uncertainty and Charterers might have to deal with the indemnity claim even after 20 year!

FDD department of ALCO advice to Andrew Liu's clients is that:

- a) Arbitration for indemnity claim should be commenced asap by any party to charterparty to avoid protracted litigation or arbitration on such issues
- b) FDD Department regularly appoints suitable arbitrator for ALCO's clients, particularly when their claim is not supported by any insurer.

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