

Circular Ref: 2020/0006

Date: 29 May 2020

ICA Notice – Issues

In the new arbitration 3/20, an issue about the indemnity claim under the ICA clause arose and it raised interest point.

Facts

- In this case, the subject vessel was time-chartered on the NYPE form dated 22 May 2013 for a period of (in the event) 20 months. Clause 27 of the charter expressly incorporated the Inter-Club NYPE Agreement 2011 (the ICA) and contained a Clause Paramount. The charterers' house bills of lading were issued pursuant to the charterparty by the charterers. Enroute the vessel's crew accidentally pumped water into No 2 cargo hold. That gave rise to a claim in respect of the cargo stowed in that hold which was wholly or partially submerged in water as a result. The Cargo was delivered on or about 8 March 2015.
- Cargo receivers gave notice to the charterer of its intention to pursue a cargo claim against it as contractual carrier, although no claim had yet been formally presented. By various emails, information was passed by the cargo receiver to the charterer and by the charterer to the owners, and extensions of time were given by the charterer to cargo receivers, and by the owners and their P&I Club to the charterer.

Legal Issue

The issue in dispute was whether, following the expiry of 24 months from the date of delivery of the cargo, the charterer was now precluded by the time bar provision in clause (6) of the ICA from bringing any claim against the owners in respect of G's intended cargo claim

Held

The arbitrator analysed Clause 6 of ICA that has been incorporated

Time Bar

(6) Recovery under this Agreement by an Owner or Charterer shall be deemed to be waived and absolutely barred unless written notification of the Cargo Claim has been given to the other party to the charterparty within 24 months of the date of delivery of the cargo or the dates the cargo should have been delivered, save that, where the Hamburg Rules or any national legislation giving effect thereto are compulsorily applicable by operation of law to the contract of carriage or to that part of

the transit that comprised carriage on the chartered vessel, the period shall be 36 months. Such notification shall if possible include details of the contract of carriage, the nature of the claim and the amount claimed [emphasis added].

- They further held that first sentence of the Clause 6 needs to be just a simple notice and there is a strict time limit. The second sentence though ideally required details, but it is not always possible in ICA indemnity claims to give exact details until the claims are settled.
- Clause (6) of the ICA operated in an entirely different way from a conventional time bar for a cargo claim. The period allowed for notification ran from the date of delivery and not from the date when the cause of action accrued which, in the case of an indemnity might not be for a number of years, as and when the liability to cargo interests crystallised.

FDD department of ALCO regularly advise the clients of Andrew Liu on the following aspects:

- a) Notice of Indemnity and seeking indemnity pursuant to the charter party clauses.
- b) FDD department is available 24x 7 to advise the clients.

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