

Circular Ref: ALCO 2022/0011

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Cargo Claims – Issues of ‘Title to Sue’

In a new *LMMMA arbitration case (2022)* 1106 LMLN 3, in relation to the claim for cargo damage, the Owners raised the issue of ‘title to sue’ to defend the case. It is a very interesting case involving novel legal arguments.

FACTS

- The first Claimants chartered the subject vessel from the respondent owners for a voyage from India to African ports with a cargo of bagged rice.
- The cargo was covered by 14 bills of lading, each of which incorporated the charterparty and its London arbitration clause. The cargo was discharged at Liberia and Ivory Coast ports.
- The Claimants brought arbitration proceedings against the Owners contending that several of the first to seventh claimants were the Owners and/or entitled to possession of the cargo shipped under the different bills of lading.
- The Owners pointed out, in respect of each of bill of lading, there was absence of endorsements. They also contented that Claimants also raised the issue of a range of alternative claimants and it clearly raised the issue of title of sue.
- The Claimants’ Reply submissions asserted that the Liberian cargo was sold on CIF terms to the third Claimant on a date prior to discharge, and that the Ivory Coast cargo was sold on CIF terms to the seventh claimant, also on a date prior to discharge.

- The Reply submissions also asserted (without annexing any documentary support) that neither the claimant re-sold the cargo before the vessel arrived at the respective discharging ports, and further both of buyers had paid for the cargo in full and that the relevant bills of lading had been delivered to the respective claimants (3rd and 7th) after the cargo had been discharged. Accordingly the third and seventh claimants were lawful holders of bills under COGSA 1992 and have title to sue.
- The issue raised by the Owners were whether 3rd or 7th claimant had resold the cargo or was there any other arrangement like salvage arrangement for damaged cargo other than the sales contract.
- Owners' argued that 1st claimant who might have sold the cargo on salvage agreement would then retain the title to sue, and then 1st claimant recourse lies through charterparty and not bill of lading.

Award

Based on various testimonies and evidence presented by Claimants, the Tribunal was not satisfied that those Claimants had proved that they have title to sue in their claim for cargo damage.

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

- a) The issue of 'title to sue' is a very strong weapon whenever Owner's receive a cargo claim but it is a complex argument.
- b) FDD department over the last few years have resolved many cases in favour of Owners or Disponent owners, even when the Club cover was prejudiced due to the issuance of LOI by using novel legal arguments in multi-party disputes involving big law firms. In addition, ALCO FDD team managed to get the settlement sum reimbursed for the clients from the Club. These types of cases require extreme effort and novel arguments both in fact and law and pushing various parties on various aspects of cases.
- c) FDD department is available 24 x 7 to resolve the cases for the clients and clients should not hesitate to call FDD department. It's a resource available to clients of ALCO.

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