

Circular Ref: 2022/0013

Date: 30 July 2022

InterClub Agreement (“ICA”) (revisited)

In a new arbitration case *London Arbitration 23/22*, issue of ICA were revisited pursuant to ICA clause in the charterparty.

Facts

- By a charterparty the vessel was chartered by the owners to the charterers, and there sub-chartered for the carriage of a cargo of soybeans from Brazil to China.
- The charterparty incorporated the terms of the Inter-Club Agreement (ICA) under clause 4(c) of which a settlement with cargo owners was binding if it had been “*properly settled or compromised and paid*”.
- On discharge of the cargo it was found that a quantity of the cargo was damaged by heat. The cargo interests advanced the cargo claim against the owners for USD52,927.46. The owners thereafter settled that claim at USD36,765.
- The Owners sought to recover that sum from the charterers by contending that cargo was loaded with excessive moisture content.
- The sub-charterers’ survey before loading eliminated Owner’s contention.
- The charterers contended that there was “clear and irrefutable evidence” that the owners had been at fault.

Clause 8 of the ICA provided that liability for cargo claims was to be divided as “*50% Charterers and 50% Owners unless there is clear and irrefutable evidence that the claim arose out of the act or neglect of the one or the other ... in which case that party shall then bear 100% of the claim*”.

It was held by LMAA Small Claims Tribunal that the Owners were entitled to recover half of the settlement sum from the charterers as there was no “clear and irrefutable evidence” of neglect by the charterers or owners and there were possible scenarios. Accordingly there had to be a 50:50 apportionment of the claim.

FDD department of ALCO advice to the clients of Andrew Liu is:

- a) Collation of evidence is a key to succeed in cargo claims.
- b) FDD department has been assisting clients of ALCO in collating evidence, guiding clients to protect

their claim, and also have acted as consultant to the clients, whereby it supervises the handling of claims by external lawyers appointed by the Club or handle the claim for clients (where the Club cover is prejudiced).

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

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