Andrew Jackson
Solicitors LLP

Case Study: Cargo claims and the appointment of liability

The decision of the Court of Appeal in the case of Transgrain Shipping (Singapore) Pte Ltd v Yangtze Navigation (Hong Kong) Ltd [2017] EWCA Civ 2107 confirms that appointment of liability depends on identifying the cause of the claim without regard to questions of legal or moral culpability.

When a vessel was not paid by the receivers it was ordered to wait off the discharge port for over four months.

The vessel 'Yangtze Xing Hua' was chartered on an amended New York Produce Exchange form, incorporating the 1996 version of the New York Produce Exchange Form Inter-Club Agreement ("the ICA"), to carry soya bean meal from South America to Iran.

During its waiting time, the cargo overheated and partly spoilt, leading to a claim for cargo damage by the receivers, which was settled by the vessel owner for 2.6m. This, together with unpaid hire, was claimed by the vessel owners from the charterers.

It was common ground that liability should be settled in accordance with the ICA, particularly by reference to the sweeping-up provisions at paragraph 8(d) of the ICA, which states that cargo claims (including claims for delay to cargo) are to be apportioned 50:50 between the owners and charterers "unless there is clear and irrefutable evidence that the claim arose out of the act or neglect of the one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim."

In tribunal proceedings the charterers argued that the cargo damage had been caused by the negligence of the crew in not properly monitoring and maintaining the cargo temperatures. The tribunal rejected this, finding that the damage was caused by the inherent nature of the cargo combined with the length of time the vessel was anchored at the discharge port.

The charterers also argued that the word "act" in paragraph 8(d) of the ICA referred to a "culpable" act, and, unless the tribunal could find the charterers at fault for ordering the vessel to wait, the correct apportionment should be 50:50. The tribunal also rejected this argument, stating that there was no requirement of culpability.

After failing at the High Court, the charterers appealed to the Court of Appeal where they repeated their argument that paragraph 8(d) required a culpable act, otherwise apportionment should be on a 50:50 basis.

The owners argued that the ICA was concerned with identifying the cause of the underlying claim and that the word "act" in the phrase "act or neglect" meant any causative act, whether culpable or not.

The Court of Appeal held that the critical factual question was that of causation: "Does the claim 'in fact' arise out of the act, operation or state of affairs described? It does not depend upon legal or moral culpability, nor is there any stated or obvious criterion against which such culpability is to be judged."

The charterers appeal was dismissed, and the decision of the tribunal and the High Court were upheld.

Paul Newbon
Shipping and Transport

Summary

In this case, the Court of Appeal has reiterated that the critical question is one of causation and apportioning blame accordingly, and that the issue of legal or moral culpability is not relevant.

It should therefore be noted that even where a 'reasonable decision' is taken, it may lead to liability if it is 'clear and irrefutable' that the 'act' resulting from that decision caused the cargo losses claimed.

If your business would like to learn more about the services of the Shipping and Transport department and how Paul can help with disputes arising from the carriage of goods, you can contact him directly by emailing paul.newbon@andrewjackson.co.uk or speak to one of the team today by calling 01482 325242

Hull Office
T: +44 (0)1482 325 242

Grimsby Office
T: +44 (0)1472 267 770

York Office
T: +44 (0)1904 275 250

Scarborough Office
T: +44 (0)1723 882 500

w: andrewjackson.co.uk
e: enquiries@andrewjackson.co.uk
@AJLawTalk

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