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INTER-CLUB AGREEMENT – TIME TO AMEND?

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THE INTER-CLUB AGREEMENT

The Inter-Club Agreement represents an important tool for P&I Clubs in balancing liabilities across the shipping industry. Rather than fight over the spoils after defending their members' liabilities, P&I Clubs prefer to settle claims according to a simple method, and have for a number of years operated the Inter-Club Agreement (ICA). This important agreement rarely comes up for judicial interpretation.

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Transgrain Shipping (Singapore) Pte Ltd v Yangtze Navigation (Hong Kong) Co Ltd (The MV Yangtze Xing Hua)

- Whether the term "act" requires culpability

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Recovering the costs of defeating a claim

ICA 1996:

(3) For the purposes of this Agreement, cargo claims(s) means claims for loss, damage… and include:
(c) all legal…costs reasonably incurred in the defence of or in the settlement of the claim made by the original person

(4) Apportionment under this Agreement shall only be applied to cargo claims where…
(c) The claim has been properly settled or compromised and paid.

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London Arbitration 10/15

Cargo interests' claim against Owners dismissed because cargo insufficiently packed. Owners sought to recover costs of €66,691 incurred from Charterers

Charterers argued that it was a pre-condition to recovery that there was some liability to a third party .

Owners rejected this.

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Tribunal found in favour of Charterers.

- It was clear from the apportionment provisions of the ICA that the phrase "*cargo claims*" required there to be a liability.
- This view reinforced by clause 4(c) which required that "*the claim has been properly settled or compromised*"
- Clause 3 had to be read in light of the above; consequently a claim for the costs of successfully defending a cargo claim was not intended to be covered.
- If no liability to cargo interests it was difficult – if not impossible – to know whether there should be an apportionment or not, and if so, what it should be.

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London Arbitration 10/15

- "*It might be thought that this was a slightly curious conclusion to reach but the ICA had been the subject of careful consideration by P&I Clubs over the years and, given the practical and legal expertise brought to bear upon it, the tribunal did not think that if it had been intended that the ICA should give rise to claims for indemnity in respect of costs of successfully defending proceedings, that it would not have been spelt out.*"

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London Arbitration 30/16

Cargo claim succeeded in Iranian court against Charterers on grounds that quality sold by them deficient but dismissed against Owners.

Owners said Charterers 100% liable for claim and sought to recover US$372,148 costs incurred defending foreign court proceedings.

Charterers said legal costs did not fall within clause 3 of the ICA and constitute a cargo claim. Clause 4(c) of the ICA required that a cargo claim had to be settled or compromised.

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London Arbitration 30/16

The tribunal found in favour of the Owners.

- Reasoning of 10/15 difficult to follow.
- Clause 3 of ICA clear in stating that "*Cargo claims …include ..all legal, correspondents…costs in defence or settlement of the claim*". Statement that definition applied "*for the purpose of the Agreement*" meant clauses 4(c) was to be read in light of clause 3 and not the other way round.
- Clause 3(c) referred to costs incurred in "*defence or settlement*" which suggested a successful defence that did not lead to any payment.

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London Arbitration 30/16

Any different interpretation would produce a commercially surprising result – if claim settled for 10% all costs incurred would be recoverable but if defeated completely no costs would be recoverable under the ICA.

It might be that in such case it would be expected that the defeated claimant would be found liable to pay the costs of the successful defence so that there would be no need for apportionment under the ICA. This highlighted the difficulty in trying to establish the intention of the draftsman rather than construing the terms of the agreement.

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The provision of security

ICA 2011:

"(9) *If a party to the charterparty provides security to a person making a Cargo Claim, that party shall be entitled upon demand to acceptable security for an equivalent amount in respect of that Cargo Claim from the other party to the charterparty, regardless of whether a right to apportionment between the parties to the charterparty has arisen under this Agreement …"*

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The provision of security

- The terms "*acceptable security*" and "*an equivalent amount*" are too vague to be enforceable and therefore void for uncertainty. In particular, no guidance is provided as to what is "*acceptable*" and to which party the term applies. The term amount to an agreement to agree and are unenforceable.
- Clause 9 only applies in favour of a party giving security directly to a cargo claimant and so does not apply to the middle parties in a charter chain.
- Terms of incorporation – "*Cargo claims to be settled in accordance with…*" only incorporates apportionment provisions but not those relating to security.