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MARINE LAW FIRM

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Spring Round-Up

A summary of recent English decisions and items of interest in the world of marine insurance, shipping and cargo.

The 'OCEAN VICTORY'

Gard Marine and Energy Limited v China National Chartering Co Ltd and Daiichi Kisen Keisha [2017] UKSC 35

This decision of the Supreme Court gives long awaited clarification in relation to three issues.

1. The first is with regard to the characteristics of an unsafe port. The port of Kashima in Japan was subject to 'long waves' and the entrance was also susceptible to storms. In this case, both events occurred together. The Supreme Court found that this did not make the port unsafe because it was an 'abnormal occurrence' that the two events coincided. This combination of sea and weather conditions was not reasonably foreseeable. Consequently, the charterers had not breached their unsafe port warranty.
2. Secondly, the Supreme Court went on to give obiter comments on whether the owners would have been entitled to claim against the demise charterers and down the charter chain, had they breached the safe port warranty. The Court opined the owners would not have been able to claim because the bareboat charterparty provided for joint insurance.
3. Lastly, the Court considered whether the charterers would have been able to limit their liability pursuant to the 1976 Convention, in the event they had breached the safe port warranty. In the Supreme Court's opinion, they would not be able to limit based on the decision in the 'CMA Djakarta' [2004].

Volcafe v CSAV [2017] 1 Lloyd's Rep.32

Another instalment in this case, which is of key importance to cargo claims. The Supreme Court has now granted permission to appeal.

In our Winter Round Up, we reported that the Court of Appeal had decided that the carrier, by showing a prima facie case of inherent vice, could shift the burden of proving negligence onto the cargo interests.

The suggestion that the carrier could shift the burden of proof with the mere suggestion that the cargo had inherent vice did not sit well against a backdrop where the carrier has traditionally had to prove it is not liable for damage to cargo in its custody. The Supreme Court's decision to review this finding is much needed and welcomed.

Continued overleaf ▶

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New LMAA Terms 2017

Arbitrations from 1 May 2017 will be subject to the new terms. The key features are:

1 Improvements to the appointment procedure where there is a default by one party or a failure to agree.

2 Greater emphasis on the fact that tribunals should take *'Without prejudice save as to costs'* offers or *'sealed offers'* into account when exercising their discretion on costs.

3 For the Small Claims Procedure, where a financial limit has not been agreed by the parties, the limit is US$100,000.

London Arbitration 9/17 - The General Strike clause in Gencon 94

A London Tribunal has given guidance on this clause. A strike occurred after the vessel's arrival at the discharge port of Chittagong and came to an end before laytime expired. No notice was given by the owners but both the charterers and the receivers were aware of the strike and did nothing. The tribunal held that laytime continued to run during the period of the strike.

Midtown Acquisitions LP v Essar Global Fund Ltd [2017] EWHC 519 (Comm)

The English High Court was prepared to swiftly enforce a foreign judgment. Judgment was given in a Court in Manhattan against Essar for around US$172 million. They were the guarantors of one of their bankrupt subsidiary companies who defaulted. Following their admission of liability various arguments were raised as to why the judgment was not enforceable in England. Nonetheless, the English judge found that the judgment could be enforced in the UK.

Nautical Challenge Ltd v Evergreen Marine (UK) Ltd [2017] EWHC 453 (Admty).

This is one of the very few 'pure' collision cases which reach the Courts. Vessel A was exiting a narrow channel and Vessel B was entering it. Vessel A was approaching Vessel B on its starboard bow. The Colregs crossing rule says Vessel A has priority. The narrow channel rule says Vessel A must manoeuvre to pass Vessel B port to port. Teare J held that the narrow channel rule has priority following the Hong Kong decision in Kulemesin v HKSAR [2013] 16 HKCFA 195.

Kyokuyo Co Ltd v A.P Moller-Maersk A/S [2017] EWHC 654 (Comm)

Finally, a useful judgment relating to package limitation isues.

- The parties to the contract had intended to issue bills of lading. Delays in the carriage meant that waybills were used instead.
- The Hague-Visby Rules do not usually apply to waybills, whereas they are compulsorily applicable for bills of lading.
- The Court found that the contract was still 'covered by a bill of lading' because the parties had contemplated using a bill of lading when they initially contracted.
- The Court also considered what was a 'unit' for the purposes of the Hague / Hague Visby Rules. Large unpacked pieces of Tuna were placed in 3 containers for transport. The Carrier argued the container was the unit but the Court held each piece of Tuna was. In *The River Gurara* [1998] it was held that a container was not a package. The pieces of Tuna were not bundled together, therefore each was a package for limitation purposes.