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## CLIENT BRIEFING

### SEAWORTHINESS AND THE CARRIAGE OF STEEL AUSTRALIAN DECISION INCREASES THE BURDEN ON STEEL CARRIERS

#### Introduction

A recent decision by the Federal Court of Australia in the matter of Stemcor (A/SIA) Pty Ltd (“cargo interests”) and CV Scheepvaartonderneming Ankergracht (“Carriers”), concerning the carriage of steel coils from Japan to Australia, held the Carriers liable for corrosion damage to the cargo caused by condensation within the cargo holds.

In holding the Carriers liable, the Court found that, as it was practicable to install dehumidifiers in the vessels, the Carriers had failed to exercise due diligence to make the ships seaworthy and to make the holds fit and safe for the carriage and preservation of the coils.

#### Factual Background

The two shipments were carried under an affreightment contract which required the consignee to use the carrier’s vessels unless there was no vessel available at the time. The two vessels were general cargo ships with a single hold, serviced by three folding hatch covers, and a tween deck. The shipping manager responsible for the selection of the shipping line used to carry the two cargoes was familiar with the vessels, and that the vessels had been employed by other consignees for the carriage of steel cargoes.

The steel coils had been manufactured at a steel mill in Fumabashi, Japan and imported into Australia by the consignee for resale in the Australian market. Some of the coils were galvanised and some were aluzinc coated. The shipments were amongst the first shipments to Australia of coils of the type in question during the Northern Hemisphere winter.

If the surface of freshly galvanised or aluzinc coated steel is permitted to come into contact with water, either as a result of direct wetting or by condensation of vapour, corrosion in the form of white rust will occur. Whilst it is possible to provide temporary protection to the steel through the application of a chromate coating, this was not done as the end receiver required unchromated steel. Instead, a light oil coating was applied to the coils which provided only a very limited period of protection against corrosion.

Prior to loading on board the vessels the coils were wrapped in a single sheet of Kraft paper, lined with a film of plastic, the overlaps of which are not usually sealed. After the coil is wrapped it is then fitted with an outer metal wrapper composed of waste steel sheets and secured with flat metal strapping bands around the circumference of the coil. In addition, the packaging of the coils included a standard symbol and note requiring that they be kept dry and that they be handled with care.

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As it relates to the loading and carriage of the steel coils, the Court made the following findings:

1. The bills of lading, mate's receipts and shipping orders did not indicate that the steel coils were being shipped unchromated and the Carriers were otherwise not informed that the coils were shipped unchromated.
2. The coils were packed in a way that is regarded as adequate in the industry and in a manner consistent with the general practice in the industry.
3. Rain was experienced during the loading of both vessels.
4. A number of coils in the first shipment were wet from rain prior to their loading, whilst other wet cargo was loaded with the coils on the second shipment.
5. Water was present in the holds of both vessels prior to commencement of their respective voyages. Water entered the holds on and within other items of cargo that were loaded, including timber packaging and dunnage.
6. The only means available to remove water on both voyages were mopping the floors, wiping the cargo and operating the ventilators.
7. There was a high probability that conditions for condensation would be created in the hold during the course of the voyages if free water was not eliminated or if moist air was introduced into the hold. However, there was no evidence of any industry practice or custom as to the temporary installation and use of dehumidifiers on vessels to stabilise the hold atmosphere.
8. Condensation occurred on each voyage after the loading of the coils and during the course of the respective voyages of each vessel.
9. The coils were highly susceptible to corrosion damage from exposure to moisture and there was a foreseeable risk of such exposure occurring during the course of carriage from Japan to Australia.

### **Australian Law and the Hague-Visby Rules**

It was common ground between the parties that their contractual relationship was governed by the Australian *Carriage of Goods by Sea Act 1991* ("COGSA"), being a statutory modification of the Hague-Visby Rules.

Cargo interests relied on a breach of Article 3, rule 1 or rule 2. That is to say that the Carriers did not exercise due diligence to make their vessels seaworthy and their holds fit for carriage of the coils or, alternatively, did not carefully and properly care for the coils during the voyages. The Carriers obligation under Article 3 is to provide a ship fit to carry the particular cargo on the particular voyage to the particular destination.

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The Carriers are, however, only required to exercise due diligence to provide a seaworthy ship.

The Carriers, for their part, relied on paragraphs (i), (m) and (n) of Article 4, rule 2, namely that cargo interests failed to pack the coils sufficiently to prevent the ingress of water, whether in liquid or vapour form.

The 'essential question' in the eyes of the Court was whether the Carriers were entitled to assume that the packaging of the steel coils was such that water in any form could not penetrate the packaging, or whether cargo interests were entitled to assume that there would not be sufficient water in any form, either as liquid or vapour, in the holds of the vessels for condensation to occur on the coils.

The Court found that the method of packaging employed by cargo interests, whilst in accordance with usual practice, would not prevent the entry of water vapour in the air. Nonetheless, the Court held that, in the circumstances, where the coils were known to be sensitive to moisture and it was known or ought to have been foreseen by the Carriers that water would be admitted into the holds on other cargo and on dunnage and possibly because of rain, the vessels were not seaworthy for the purpose of carrying the coils in question on the voyages in question at the relevant time of the year.

The Court found that corrosion was caused by the failure on the part of the Carriers to carry, keep and care for the coils properly and carefully during the voyages in question where the vessels had neither dehumidification systems nor heating systems installed.

In light of those circumstances, the Court held it was reasonable for the Carriers to take steps to ensure that water could not be admitted into the holds or, if that was not practicable, to install a dehumidification system to remove excess water from the holds. As the Court found it was practicable to install dehumidifiers in the vessels (at a cost of A\$200,000 plus A\$115,400 installation costs, or A\$22,000 per month to hire), the Carriers failed to exercise due diligence to make the ships seaworthy and to make the holds fit and safe for the carriage and preservation of the coils.

### **Conclusion**

This decision represents an extension of the degree of due diligence Carriers must exercise when considering the cargoworthiness of their vessels for the carriage of particular cargoes.

Cargo interests, and in particular shippers, will in almost all circumstances possess superior knowledge of the inherent characteristics of the cargo and its carriage requirements. Whilst the Court found that cargo interests responsible for selection of the Carrier to carry the steel coils were familiar with the vessels, and were also aware of the nature of the holds of the vessels (including the absence of dehumidifiers), the Court nonetheless found the Carrier liable for damage to the cargo.

This decision therefore means steel carriers will, in order to protect their interests where carriage is subject to Australian COGSA legislation, be under pressure to:

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1. make specific inquiries with a shipper as to the nature of the packaging of steel cargo;
2. make specific inquiries with the shipper as to the precise carriage requirements of steel cargo; and
3. where necessary, install expensive equipment necessary to accommodate the specific carriage requirements of steel cargo, even in the absence of specific requests by shippers.

The decision of the Court is presently under Appeal. Should the appeal be affirmed it will almost certainly require steel Carriers to investigate the installation of special equipment, such as dehumidifiers and heaters, on vessels employed in the steel trade between Asia and Australia.

A further HFW update will be issued when the Appeal has been delivered.

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