

JAPAN P&I NEWS

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To the Members

Dear Sirs,

**Civil Order of Chinese Supreme Court Confirms that
Vessel's deviation due to liquefaction of nickel ore was justifiable**

The Chinese Supreme Court rendered its Civil Order in December 2015 confirming that it was justifiable under the contract of carriage for a vessel to deviate in order to check the safety of the cargo and carry out sun-drying operations, further to the liquefaction of a cargo of nickel ore.

Our owner members' bulk carrier commenced loading laterite nickel ore in Indonesia in February 2011 after checking the Shippers' cargo declaration stating that the cargo's moisture content (MC) was lower than the transportable moisture limit (TML). However, as the loaded cargo seemed to have excessive moisture, the Owners were concerned about liquefaction during sea carriage and decided to investigate the safety of the cargo. Although the sample analysis conducted by Owners revealed that the MC was more than the TML, the Shippers continued loading operations and the vessel was then forced to sail from the loading port since the local agents issued the B/L for the master. The vessel conducted the sun-drying operations off-port-limits in Indonesia and at a Filipino port after deviation until May 2011. However, the Owners were not able to confirm that the MC reduced to lower than the TML. Eventually the vessel sailed to the discharging port in China, further to pressure from their charterers.

Cargo receivers filed a lawsuit against Owners before the Shanghai Maritime Court in June 2011. The receivers claimed more than US\$ 2,000,000 from Owners, alleging that they had suffered financial losses due to a decrease in the market price of the cargo caused by the vessel's delay in arriving at the discharging port due to unreasonable deviation. While the first instance court's judgment in December 2012 rejected the receivers' claim in full, the appeal court's judgment in December 2014 held that the vessel's deviation was unreasonable under the contract of carriage, although the appeal judgment supported the previous judgment that the receivers could not demonstrate their actual financial losses.

The Supreme Court rejected retrial applications filed by both receivers and Owners by rendering its Civil Order in December 2015, which is summarised as follows:

1. The IMSBC Code was applicable to the carriage of the laterite nickel ore shipped on board.
2. The master was right to consider that the cargo loaded on board was unsuitable for safe carriage.
3. The carriers (the Owners) shall not be deemed to have accepted the cargo as being suitable for safe carriage only because of the issuance of clean B/L.
4. The appeal court had erred in considering that the vessel's deviation for sun-drying could be considered an unjustifiable deviation. The vessel made a justifiable deviation in order to seek to resolve the issues posed by the cargo during the voyage to China.
5. The receivers failed to demonstrate their actual loss.

Accordingly, the case was finalised in favour of the Owners.

Yours faithfully,

The Japan Ship Owners' Mutual Protection & Indemnity Association