JAPAN P&I CLUB
日本船主責任相互保険組合

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JAPAN P&I NEWS

To the Members

UK Supreme Court Judgement in the "Polar" [2024] UKSC2

In the case of the "Polar", which concerned whether cargo interests could rely on the terms of the voyage charterparty incorporated into the bills of lading to refuse to contribute to general average. The UK Supreme Court ruled that the holders of the bills of lading were liable to make general average contributions. Please find the article on this judgment written by our senior legal adviser William Turner.

(Summary)
The vessel was hijacked by pirates in the Gulf of Aden and released in exchange for the payment of a ransom of SU$7.7 million. The Owners declared a general average and claimed the general average contribution of US$5 million from the cargo interests. The cargo interests refused the Owners' claim for the contribution, which led to a dispute. The ransom was paid by K&R (kidnap and ransom) insurance and additional war insurance. Under the terms of the voyage charterparty, these additional insurance premiums were borne by the charterers. As the bills of lading extensively incorporated the voyage charterparty, the cargo interests relied on the terms of the voyage charterparty to reject the general average contributions.

Yours faithfully,

The Japan Ship Owners' Mutual Protection & Indemnity Association

Attachment: Article by William Turner

The Polar

A recent case in the Supreme Court The "Polar" [2024] has clarified the factors that the English courts will consider when determining the extent to which cargo interests will be liable for general average payments in cases where a vessel is seized and held for ransom. The court also considered the nature of Owners' rights and obligations to deviate to avoid potential attacks on the vessel in the Gulf of Aden.

Given the current situation in the Red Sea the case has relevance for our Members and we set out a brief summary below.

The MT Polar was on her way from St Petersburg, Russia to Singapore when she was seized and held by pirates in the Gulf of Aden from October 2010 to August 2011.

The voyage charterparty was made on amended BPVOY4 terms with various additional clauses. These included a Gulf of Aden clause and war risks clauses which provided that any additional insurance premium was for charterers' account up to a cap of US$40,000.

Before entering the Gulf of Aden, the Owners took out kidnap and ransom insurance. The Owner also paid an additional premium to ensure that their H&M and war risks policy, was extended to cover transit through the current JWC listed Areas.

Bills of lading were issued by the master. All the bills of lading incorporated the terms of the voyage charterparty.

Following its release the vessel arrived in Singapore and general average was declared. A general average guarantee and a general average bond were provided.
The Owners claimed almost US$5 Million under the bond and guarantee. Cargo interests denied liability in respect of the ransom and the Owners commenced arbitration.

Cargo interests argued that the Owners could not recover the ransom from them, because under the charterparty the Owners must take out kidnap and ransom insurance and war risks insurance, the premium for which was to be paid by charterers up to a capped amount, and those charterparty provisions had been incorporated into the cargo interests' bills of lading.

The arbitration tribunal concluded that the cargo interests were not liable to contribute to general average in respect of the ransom payment. The Owners appealed the decision.

Owners appeal was allowed with the court finding that the Owners bargain with charterers on kidnap and ransom and war risks insurance had been incorporated into the bills, but that this did not constitute a firm commitment by the Owners not to seek contribution in general average from the bill of lading holders.

Cargo interests appealed to both the Court of Appeal and then to the highest court, the Supreme Court who both dismissed the respective appeals.

The Supreme Court findings

The Supreme Court noted that there was no insurance code or fund agreed in the voyage charter. If there had

been such an insurance code then the parties would have needed to solely look to the insurers instead of each other for indemnification.

They found that there was no principle exempting charterers from liability in general average solely on the ground that they had provided the funds whereby Owners insured themselves against such damage.

In this case, the charterers obtained a benefit in that Owners could not refuse to undertake the Gulf of Aden passage. If there had existed an insurance code the charterparty clauses would have been incorporated into the bills of lading as they were relevant or directly related to the carriage. However, the court found there was not any sound basis for manipulating them in circumstances where this would result in a lack of clarity for bill of lading holders as to the insurance premium.

Comments

The court made clear that each charterparty must be interpreted based on consideration of its own detailed terms. Based on the specific wording of the charter the court determined that it would have been unacceptable for the Owners to refuse to transit the Gulf of Aden because the charter contained an express commitment to take that route. Due to the very specific wording in the charter the case is of limited application in determining Owners rights and obligations in respect of deviation to avoid attacks by Houthis in the Red Sea.

The case confirmed what has been common practice in cases where a vessel is seized by a third party and a ransom paid, which is that the holders of the bills of lading are in many cases liable to make a general average contributions. The Judgment is likely to be welcomed by ship owners as it further clarifies the approach the courts will take when determining the circumstances in which General average payments can be claimed from cargo interests.

William Turner
Senior Legal Adviser of Singapore Branch
Japan P&I Club