SHIPPING

INNOVATIVE THINKING IN LONDON RECENT TRENDY DECISIONS

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- Whilst the outcome of the UK's vote to exit the European union remains unclear, London continues to be the most trusted jurisdiction for resolving shipping and trading disputes.
- 80% of all maritime arbitrations take place in London.
- Singapore is London's strongest competitor - SIAC, SCMA, LMAA and ICC.
- However, Singapore does not allow any right of appeal and therefore the Singapore courts do not advance the law on carriage of goods by sea in the unprecedented manner, London does.
- 2 recent decisions demonstrate London’s constant innovation on the current state of the law.

Alize 1954 v Allianz Elementar Versicherungs AG (The CMA CGM LIBRA) [2019] EWHC 481 (Admlty) (8 March 2019)

- The CMA CGM LIBRA Grounded on 17 may 2011 whilst leaving the port of Xiamen, China.

- The vessel had been navigated outside the buoyed fairway and ran aground on a shoal in an area where there were charted depths of over 30 metres.

- The vessel's passage plan had not provided for the vessel to leave the buoyed fairway. However, it did not contain a clearly marked warning of the danger created by the presence of depths less than those charted.

- The 8% cargo traders who refused to pay their GA contribution argued that the unsafe and negligently prepared passage plan rendered the vessel unseaworthy and caused the casualty and as such that they had a defence of actionable fault.

- The Court concluded that the navigation of the LIBRA had been negligent, that the passage plan was defective and that the defective passage plan was causative of the grounding.

- The Court also found that if there had been a warning on the working chart about charted depths being unreliable, the master would not have ventured outside the buoyed fairway.

- Given the negligent navigation exception in the Hague Rules, these conclusions were not of themselves sufficient to give cargo traders a defence.

- The Court had to be persuaded that the defective passage plan rendered the vessel unseaworthy.

- The owners submitted that passage planning is part of navigation and not itself an aspect of seaworthiness.

- The Court rejected Owners' argument that a carrier's duty under article III r.1 of the Hague Rules was discharged by putting in place proper systems.

- The Court also rejected Owners' argument that due diligence was exercised because their ISM contained appropriate guidance for passage planning and their due diligence obligation did not concern things done by the crew in their capacity as navigators.

- The Judge held that the provision of a proper passage plan is necessary to ensure that the vessel will be safely navigated.

- The master and second officer could, by the exercise of reasonable care and skill, have prepared a proper passage plan and as such due diligence was not exercised.

VOLCAFE LTD AND OTHERS V COMPANIA SUD AMERICANA DE VAPORES SA [2018] UKSC 61

Facts

- Coffee beans were shipped under BL terms making the carrier contractually responsible for preparing and stuffing the containers.
- Moisture damage on coffee beans is preventable by dressing containers. In this case, despite lined containers, some of the beans suffered condensation damage.
- Cargo owners claimed that the carrier was in breach of its obligation under article III(2) of the Rules to properly and carefully load, handle, stow, carry, keep, care for and discharge the cargo, by failing to use adequate or sufficient materials to dress the containers.
- The carrier attempted to rely on the 'inherent vice' exception under article IV(2)(m). The cargo owners' response was that any inherent characteristic only led to damage because of the carrier's negligence.

Commercial court

- The Commercial Court at first instance found there was a presumption that any damage during shipment had been caused by the carrier's negligence, overturning the conventional view on burden of proof.
- The carrier was unable to show it had taken all reasonable steps and was unable to rely on the inherent vice exception because it could not show that inherent vice had caused the damage rather lack of a sound system of carriage.

Court of appeal

- The Court of Appeal reverted to the long-established principles in this area overturned this decision. It accepted that the carrier as bailee bore a legal burden of bringing itself within an Article IV defence.
- However, applying *the Glendarroch* case, the Court of Appeal held that the carrier could establish a 'prima facie' case of inherent vice by proving that the moisture had come from the coffee beans. This shifted the burden of proof back onto cargo owners to demonstrate that the damage was caused by the negligence of the carrier.

Supreme Court

- The Supreme Court overturned the Court of Appeal's decision, ruling that where cargo is shipped in good order and damage is caused during shipment, a carrier has the burden of proof that the effective cause of the damage was not the carrier's negligence.

- Critically, the article IV(2) defences will not be available to a carrier unless the burden of proof against negligence is satisfied.

- Lord Sumption held that there is no general legal principle that a cargo claimant bears the burden of proving negligence.

- This judgment represents a new framework for all parties involved in the sale of goods and legitimising a stance once described as "heresy" in an 1894 textbook on carriage of goods by sea.

- Where the Hague Rules apply, and cargo is shipped in good order, the starting point is that the carrier is responsible for damage. Any Article IV(2) defences that are raised will be useless unless accompanied by a rebuttal of this presumption of negligence.

- A carrier must show that it took all reasonable steps to rebut this burden of proof. This will often go on to determine liability where it is unclear what actually caused the damage, which is a common occurrence.

- In cargo claims, claimants will now be able to rely solely on proof of damage as their cause of action. As part of the increased obligations to rebut the presumption of liability, a carrier will now be obliged to further particularise the carriage and storage arrangements for the goods.