LA Marine Logistics bulletin

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Shippers Beware!

Compania sud Americana de Vapores SA v Sinochem Tianjin Import and Export Corporation The Aconcagua [2009] EWHC 1880 (Comm.)

Many incidences at sea are caused by a combination of events as a result of the actions of different parties rather than by a sole cause. The Commercial Court in London recently spent several weeks hearing a dangerous cargo case in which the charterer of a vessel was trying to obtain an indemnity from the defendant shipper. The indemnity was for damage caused by an explosion of a cargo of calcium hypochlorite which had been loaded on board a vessel in 20 TEU.

"The cargo self ignited and exploded causing considerable damage to the ship"

The container had unfortunately been stowed in a position where it was surrounded on three sides by a bunker tank. The bunker tanks had been heated up by the crew during the course of the voyage. The cargo self ignited and exploded causing considerable damage to the ship. The charterer had paid the owners of the ship some USD 27,750,000 in damages. They were now looking to be reimbursed by the shipper of the calcium hypochlorite on the basis that under the Hague Rules Act. IV. Rule 6 they were entitled to an indemnity. The bill of lading stated the category of calcium hypochlorite would ignite at temperatures around 60°C. In fact it ignited at temperature a lot lower than this. Whatever description was or should have been used, maximum ventilation and keeping the cargo away from "sources of heat" were included in the Bill of Lading.

The Court spent a considerable amount of time deciding whether the heating of a bunker tank by the crew was causative of the explosion rather than the cargo's critical ambient temperature before ignition. The charterers had alleged that the calcium hypochlorite had (unknown to them and presumably the shippers) an abnormally high thermal instability – being prone to self ignite at ordinary cargo temperature. On that basis it was claimed that the most likely cause of the explosion was self ignition rather than being caused by the heating bunker tanks. The heating of the bunker tank was insufficient to have had any significant effect. The explosion would have occured whether it had been stowed near the bunker tank or not. The Court decided that the cargo that had been shipped on board was of in fact of a dangerous nature. The shipper failed to meet the burden of proof in establishing that the heating of the bunker tank was the cause of the explosion rather than the make up of the cargo itself. The Judge determined that the likelihood was that it was the cargo that had self ignited rather than being ignited by the bunker tank.

The Court also decided that the heating of the bunker tank had not resulted from any unseaworthiness of the vessel. In addition, even if the heating had constituted an act, neglect or default in the management of the vessel, that act in itself was an excepted peril. On either analysis the shippers were to blame.

In those circumstances the Court's view was that the charterer was entitled to a full indemnity under Article IV Rule 6 of the Hague Rules from the shipper.

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