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SHIPPER IN A BILL OF LADING IS NOT A "SHIPPER" UNLESS BOUND BY THE CONTRACT OF CARRIAGE WITH THE CARRIER

In shipping as well as any transportation industry, the Bill of Lading plays an important role and is considered as one of the most important documents, which the Carrier is obliged to issue to the named 'Shipper', at the time of accepting the Cargo on board the transporting vehicle. But, "Is the named 'Shipper', legally authorised to transport the shipment?" OR "Is the named 'Shipper' actually bound by the Contract of Carriage with the Carrier?" These questions were answered in a recent case of MVV Environment Devonport Ltd vs. NTO Shipping, GmBH & CO KG (The Nortrader) [2020] EWHC 1371 (Comm).

In this Case, an application was filed before EWHC by the Claimant (The named 'Shipper' in the Bill of Lading), requesting to set aside an Arbitration Award pronounced by London Maritime Arbitrators Association (LMAA) where it allowed the claim of Euro 700,000 against the named Shipper in the Bill of Lading. However, the Honourable Court, after scrutinising and reviewing all the documents, pronounced that the 'Shipper' to the Bill of Lading is not the actual shipper and thereby got the claim dismissed against it.

In order to understand the exact scenario, the facts of the aforementioned case are detailed hereunder:

1. The Claimant (or Seller), entered into a Sale Agreement with a Buyer Company in Netherlands for the sale of leftover residue known as Unprocessed Incinerator Bottom Ash (UIBA). The Sale Agreement was based on "Ex-Works" terms where the Buyer Company had to collect the consignments from the Claimant (or Seller)'s plant in Plymouth and transport to Buyer's Plant in Netherlands, on its own cost.

Take criticism seriously, but not personally. If there is truth or merit in the criticism, try to learn from it. Otherwise, let it roll right off you

- MS. HILLARY CLINTON

2. Since the Sale Agreement was Ex-Works, the risk and title of the consignments had transferred to the Buyer Company, from the moment they collected the consignment from the Claimant (or Seller)'s Plant.

3. Buyer Company then chartered a Vessel with the Carrier (or "Defendant") for the carriage of its consignment. There were 34 shipments in total. At the time of preparing the draft of the Bills of Lading, the Buyer Company's Agent wrongfully mentioned the name of the Claimant (or Seller) as the Shipper and the Buyer company's name as the Consignee and the draft was approved by the Buyer Company.

4. When the Agent, forwarded the draft Bills of Lading, with the Claimant (or Seller)'s name as the Shipper, even the Claimant (or Seller) did not respond to the mistake and remained silent.

5. The claim of Euro 700,000 by the Carrier (or Defendant) arose when the 34th shipment was loaded on board the ship chartered by the Buyer from Carrier (or "Defendant") and two explosions occurred injuring the Chief Engineer and also damaging the vessel.

6. The Contract of Carriage entered into by the Carrier (or "Defendant") and the Buyer Company had an Arbitration Clause with reference to Arbitration under LMAA.

7. The Carrier (or "Defendant") invoked the same against the named shipper in the Bill of Lading, claiming an amount of Euro 700,000/- against the loss incurred by the Carrier (or Defendant).

8. The LMAA pronounced an Arbitral Award holding the named Shipper liable obliging them to pay to the Carrier (or Defendant), the said claim against which the said application was filed by named Shipper (or Claimant (or Seller)) before the EWHC to set aside the Arbitral Award.

In any transportation industry, when a loss is incurred by the Carrier, it is a usual practice that the Carrier shall proceed against the parties to the Bill of Lading claiming the loss incurred. In this case also, the Carrier followed the same procedure by claiming the loss against the named Shipper. However, when the application was filed, the main Issue which the Honourable Court considered in this case is "Whether either Buyer or its Agent had any express or implied authority to enter into the Contract with the Carrier (or Defendant), as the Agents for Claimants (or Seller)?"

The Honourable Court mentioned that there lies no evidence to prove that either the Buyer Company or its Agent had any type of authority, either express or implied, to enter into a Contract as Agents for the Claimant (or Seller) thereby to bind them in a Contract of Carriage with the Carrier (or Defendant). Even when the Defendant argued that the Claimant (or Seller) had silently accepted the entries made in the draft of the Bill of Lading and had not raised any objection to delete their names from the Bill of Lading, the Honourable Court refuted the same by concluding that mere silence shall not amount to any expressed or implied agreement, which would authorise a Third Party to enter into a Contract on its behalf.

In this case, the sole and exclusive responsibility to transport the Consignment from Claimant's (or Seller) Plant to Netherland lied with the Buyer Company and the Sale Agreement entered into by them was that of Principal/Principal and not of Principal/ Agent in order to argue that the Buyer Company is authorised to enter into and/or to argue that it had authority to instruct its Agent to enter into any Contract on behalf of Claimant (or Seller).

The decision of the EWHC is an eye opener to all the Carriers engaged in the transportation business and helps them to realize the importance of understanding whom they are dealing with and that the Shipper in the Bill of Lading is appropriately identified. Moreover, since Bill of Lading is one of the important documents in transportation industry and is considered as an "Evidence of Contract of Carriage" which function is often interpreted to mean "the Bill of Lading is a Contract of Carriage between the Carrier and the Shipper", it is time to realise that the said function actually mean that "IT IS THE EVIDENCE OF THE CONTRACT OF CARRIAGE ENTERED INTO BETWEEN THE CARRIER AND THE CARGO OWNER, in order to carry out the transportation of Cargo, as per the sales agreement between the seller and the buyer" and not the interpretation meant first above.

BUSINESS OPERATIONS IN COVID: WORK FROM HOME THE NEW NORMAL

The Global Pandemic Covid 19 has transformed the world and has changed everything overnight. Though various countries are doing their best to develop the vaccine, we haven't still found the actual cure for the said virus. In an effort to curb the spread of the virus a new system was introduced in the name of lockdown, social distancing became the new norm, online education is the not a single subject rather it is the new source of learning and schooling.

As far the professional front goes, we were all introduced to the concept of "work from home" as the companies and authorities around the world had no other option than providing flexible working conditions to keep the business operations active. It is one of the biggest changes the world has ever

witnessed and accepted quite willingly.

WORK FROM HOME – A FEASIBLE SOLUTION

Considering the chaos that has erupted due to the pandemic, most of the companies are afraid of going back to the traditional working style as they understand the responsibility and the risk of the virus. The concept of working from home is not new and has been around for a while but we had put the same to use only during exceptional situations; it is not something that sprung up all of a sudden as a novel idea just that it became a reality when the pandemic happened.

We cannot consider work from home as a replacement for the traditional way of working; it is simply another way to supplement the operations of an organization. Although the professional change that we endure today is attributed to Coronavirus, it is to be noted that many companies across the globe have been promoting home based work for over a decade but often scoffed at as an impractical experiment. It is out and clear that the Pandemic has struck and people are hunkered down. The only way out is to teach inexperienced business owners and managers in adapting to this new phenomena.

With the lockdown in place, more than 3 billion people excluding the essential workers like defence and healthcare officials have been pushed to work from home. Work from home could be as successful as the traditional working style if the companies/employers have an agenda and follow the most important aspects as listed below:

I. CLARITY AND LUCIDITY

Business leaders should clarify goals and job roles to the entire team. This transition is a great move in understanding the overall business operations, processes, job descriptions and performance standards. Overall business clarity will result in better performance outcome and enhanced motivation towards work.

II. COMMUNICATE

Communication is considered one of the most important elements for a team's success, but it will be of utmost importance when working remotely. It will greatly help in terms of decision making/taken and reaching out to the members for effective working of the newly amended and customized internal business processes.

III. CONNECT

To address these challenges, it's high time we focus on personal interaction. Employees working from home are most likely to feel left out and discriminated, which lowers efficiency and commitment. Leaders themselves who are not used to conducting virtual meetings can feel stressed about managing the work and team in an orderly fashion. Thus it is very important for employers and employees to connect on a regular basis to maintain a rapport and relationship.

IV. ACCEPTANCE OF THE CHANGE

Develop values and behaviours towards a well-organized way of managing the day. Have a tempo, do plenty of exercise and eat a balanced diet. If you are naturally an extrovert, make sure that still happens. Engage yourself with others through various platforms in a positive conversation.

V. LEADER'S ACTIONS AND DUTIES

The basic infrastructure must be completely set even before the concept is put to action. It becomes the duty of the Business Leader/ company to ensure that all his team members and employees have the basic technological infrastructure in place. Not all employees would carry the required grounding such as laptops, wifi networks, mobile devices, a comfortable home atmosphere etc in such cases the company would have to pitch in their support.

PROS AND CONS OF WORKING FROM HOME

Every new beginning and a new change always has its own good and bad. It brings a lot of changes and development within the people and the society; similarly work from home also carries its own advantages and disadvantages.

I. ADVANTAGES :

1. Flexible schedule

You can take breaks at any moment, feel no rush to hang up on your family members when they call, and eat lunch at any weird time you want.

2. No commuting or Transportation cost

We can avoid the difficult commuting that we have to undergo everyday through the scuffling and the traffic; also companies can completely cut off on their transportation cost.

3. Time management

One of the biggest benefits is time saving factor as we neither have to get ready to office nor travel long hours up and down and this would further lead to more productivity and efficiency in your job.

4. Custom Environment

We can design our work place at home as per our choice and set up the noise level just the way we want it. We don't have to stick to our regular cubicles and places.

5. Dress Code

We can wear any clothes that look decent and formal in case of video calls and if not we are allowed to dress as per our choice thus giving us a break from our usual dress code.

6. Easier to conduct meetings and make calls

We don't have to scramble to find a conference room or deal with a particularly chatty co-worker. As far as our homes are comfortable enough to attend meeting we can do it quite pleasantly.

7. Cost effective for companies

Work from home is cost effective for companies/ employers as well since no rent to be paid for office space, transportation vendors, food vendors, cleaning staff can all be avoided.

8. Family time

We have all craved for family time and holidays during our traditional working days and now we get to spend a lot of time with family and its one of best things Corona has given us.

II. DISADVANTAGES

1. Leaders/Managers find it difficult to monitor performance.
2. Difficulty sticking to a routine.
3. Missing important calls or pings.
4. Excess work and over load of assignments as some companies don't follow the usual timing.
5. No weekends off as we are anyways at home.
6. Network and Wi-Fi Issue including increase in the telecommunication cost.
7. Boredom and Toll on Mental Health as there is absolutely no staff integration.
8. Distractions due to visitors, family members.
9. Laziness and Obesity since we end up sitting in the same place.
10. In case of children at home, parents find it difficult to balance between work and child.

CONCLUSION

The COVID-19 pandemic has demonstrated the interconnected nature of our world – and that no one is safe until everyone is safe. We must admit that along with the damage the virus has caused, it has also taught us the new facets of living which have become our new normal. Similarly we must accept work from home as we did with our traditional working style as adaptation is the need of the hour and those showing resilience will not have trouble down the line.

Organizations and individuals need to come together to build a culture that will be less disruptive and beneficial for both parties. As the world recovers from the pandemic, it is important to understand that we are venturing into uncharted waters and there are many new things to learn

HOT TIPS

BIMCO: A look into 2020 fleet growth

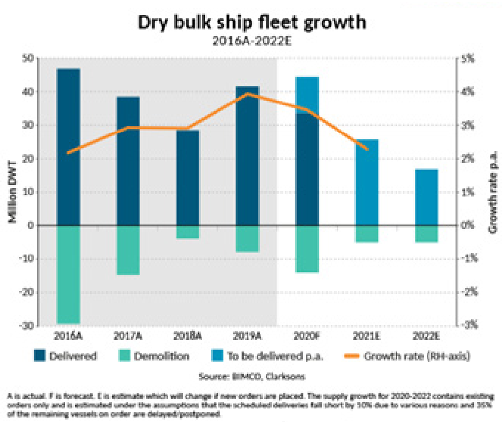
BIMCO has released an overview of the three main shipping sectors and their respective fleet growths so far this year taking into account the impact of the COVID-19 and other geopolitical developments on the global trade.

Bulkers

The dry bulk fleet has seen both deliveries and demolitions rise over the course of the pandemic while contracting has fallen steeply. So far this year, the dry bulk fleet has grown by 2.8% and breached 900 million deadweight tonnes (DWT) for the first time. Currently, at 903.3 million DWT, BIMCO expects full-year growth to reach 3.5%.

On the other hand, the order book has fallen to 63.4 million DWT, its lowest level since April 2004. Deliveries have risen by 7.8 million DWT from this time last year, with 33.9 million DWT of new capacity arriving on the sea in the year to date.

Of this, just less than half of the tonnage comes from the 70 new Capesize ships that have been delivered (15.5 million DWT). Given that an average Capesize ship carries



six loads a year, these new ships can carry 495 loads (200,000 tonnes) a year. The 111 new Panamax ships will be able to carry an additional 893 loads (75,000 tonnes), as these average seven loads a year.A sharp increase in fleet growth, as a result of these deliveries, has been somewhat offset by an increase in demolitions, but the fleet continues its growth, because even a 69.4% increase in demolitions, compared with last year, only amounts to 8.7 million DWT being demolished.The pandemic and the poorer outlook have caused a 59.1% fall in contracting activity, as owners have not wanted to invest during a recession plagued by uncertainty. Only 108 new dry bulk ships have been ordered in 2020, totalling 7.5 million DWT, BIMCO's data shows.

Of these, 10 are Capesize ships (210,000 DWT) all of which have been ordered by Chinese leasing interests. The most popular ship size has proven to be Handymaxes, of which 62 have been ordered, totalling 3.5 million DWT, the majority of which have a capacity of between 60,000 and 65,000 DWT.

Containerships

The container shipping fleet has grown by 1.6% since the start of the year, reaching a total capacity of 23.2 million TEU. BIMCO expects that, over the whole year, the fleet will expand by 2.1%, which will mark a four-year low. The association expects a total of 300,000 TEU to be demolished this year, so far this year 169,647 TEU have been demolished. The reopening of demolition yards on the Indian subcontinent, and the poor conditions in the container shipping charter market, saw owners pushed to getting rid of some of their older and substandard ships between June and August. The youngest container ship to have been demolished this year was 15 years old. These newly demolished ships include some of the largest container ships ever to be demolished. At 9,600 TEU, the Sine Maersk (built 1998) is the largest container ship ever to be demolished.

"Though these used to be among the largest container ships sailing, they are now far outclassed by the latest deliveries, and given the cascading that has resulted in ever-larger ships on smaller trades, it has proven unattractive to keep these ships trading, even on the smaller trades," BIMCO said.

So far this year, four ships above 6,000 TEU have been demolished. The pandemic has also greatly dampened the appetite for new ships; in the first eight months of this year, contracting activity has been 33.5% lower than last year, as only 162,834 TEU has been ordered. This, combined with a normal pace of deliveries, has sent the container shipping order book to its lowest level since September 2003. The share of the order book made up by Ultra Large Container Ships (ULCS 15,000+ TEU) has fallen below 50% (at 47.4%), as five new ULCS (all 23,000 TEU) have been ordered, while 13 have been delivered totalling 301,724 TEU. There are 927,296 TEU of ULCS on order as per early September.

Tankers

In contrast to the other major shipping sectors, the crude oil tanker sector has seen very little demolition in the first six months of the year. In fact, only seven crude oil tankers were demolished in the first eight months of 2020, totalling 681,832 DWT.Year to date, no VLCCs have been demolished, while 26 were delivered, resulting in the VLCC fleet growing by 7.9 million DWT. This is on top of the 68 VLCCs delivered in 2019, which led to the VLCC fleet growing by 8.6%. The last VLCC to be demolished was in June 2019, with only four having been demolished since October 2018.BIMCO expects demolition activity to rise as freight rates and actual demand for tanker shipping falls, with total crude oil demolition coming to 7.5 million DWT in the full year and 1 million DWT of product tankers being demolished. So far this year, 547,334 DWT of oil-product tankers have been removed.

Over the full year, BIMCO expects that the oil product tanker fleet will grow by 2.7% and the crude oil tanker fleet by 2.4%. This represents a marked slowdown from last year, when they grew by 4.6% and 6.2% respectively. Total tanker deliveries have totalled 16.2 million DWT so far this year, a 43.9% drop from last year. This slowdown in fleet growth will continue in the coming years, as the pandemic has lowered contracting activity. Contracting for crude oil tankers has fallen by 37.9% so far this year compared with last, BIMCO said.

At 4.1 million DWT, product tankers are the only segment in which there have been more new orders in the first eight months of this year than the same period of last year (+31.9%). Ten of these orders are for a series of 50,000 MR tankers placed by Bahri.The lower contracting activity fits with the poorer outlook, which is also reflected in the value of second-hand tankers. Prices for 10-year-old VLCCs and LR2s both fell by 19.2% and 18.4% respectively from the start of the year to late-August. A new VLCC is worth 7.5% less now than at the start of the year, and the value of an LR2 has fallen by 1.7% – drops of $7.35 million and $0.86 million respectively

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