SEMAPHORE

Newsletter of the Maritime Law Association of Australia and New Zealand

# Tai Prize Case Emphasises Orthodox Approach – with Possible "Wrinkle"

The possible "wrinkle" of an indemnity being left open in certain circumstances when a draft Bill of Lading is presented, was focused upon by Chapman Tripp solicitor Zane Fookes in his Case Note to conference on the *Tai Prize* case.

This case, *Noble Chartering Inc v Priminds Shipping (HK) Co Ltd (The "Tai Prize")* [2021] EWCA Civ 87, relates to a consignment of soya beans that were damaged before loading, where the shipper should have known about the condition of the cargo.

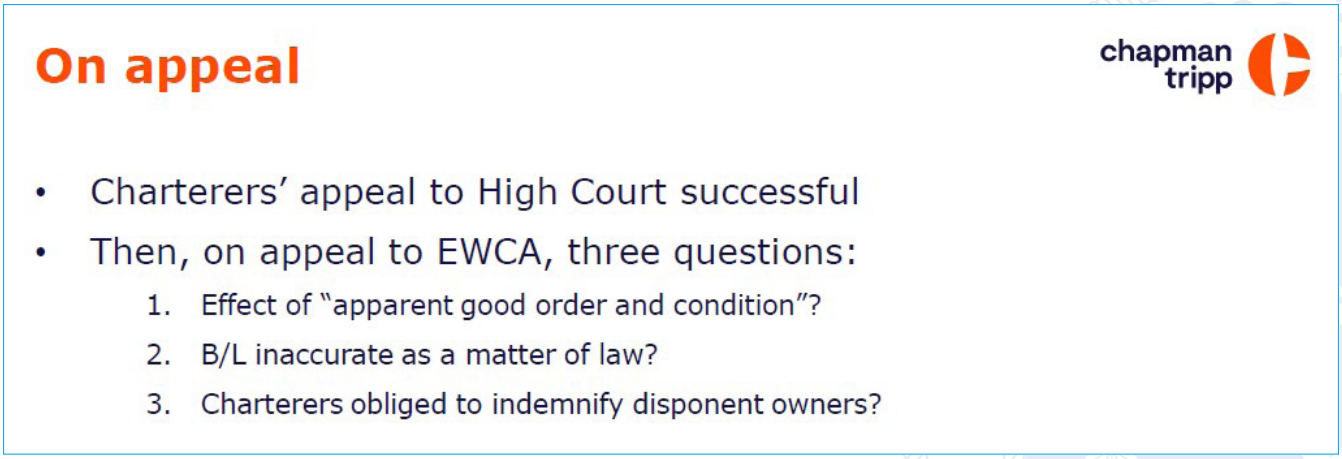
The Tai Prize was a Panamian-flagged bulk carrier that was time-chartered by its owners to Noble Chartering Inc. Noble then voyage-chartered the ship to Priminds Shipping Hong Kong Co, the respondents in the claim, for a shipment of soya beans from Brazil to China.

The 63,000-tonne cargo was loaded from silos via mechanical hoppers and a Bill of Lading was issued by the master as agent for the head owners, incorporating the Hague Rules. When the cargo was unloaded at Guangzhou, heat and mould damage to some of the cargo was discovered.

This led to a sequence of claims between parties. The consignee claimed under the Bill of Lading terms as signed by the master. The head owner unsuccessfully tried to defend the case and was held liable for approximately US$1 million to make good the loss.

The owner then instigated London arbitration proceedings under the time charter party for a 50% contribution from Noble Chartering, which in turn sought to recover the settlement of that claim from Priminds under the voyage charter party.

The arbitrator found the Bill of Lading was inaccurate in stating that the cargo was in good order and condition. While the damage to the cargo was not visible to the master, the shippers had the means of discovering that the cargo was not in good condition prior to loading, or alternatively the master could have stopped the loading from time to time to check the condition.




*The Court of Appeal addressed three key questions*

The arbitrator found the voyage charterers were liable – the draft Bill of Lading amounted to an implied warranty by the voyage charterers as to accuracy as to apparent good order and condition of the cargo.

The arbitration decision was appealed to the United Kingdom Commercial Court, which reversed the arbitrator's decision on the basis the master was in no reasonable position to know the cargo was spoiled. It finally reached the Court of Appeal, which upheld the Commercial Court's finding.

Mr Fookes said the court addressed three key questions:

- what was the effect of the statement "apparent good order and condition" on a draft bill of lading?
- was the Bill of Lading inaccurate as a matter of law?
- are charterers obliged to indemnify disponent owners against an inaccurate statement as to apparent good order and condition on a draft bill of lading?

On the first point, the court found that "apparent good order and condition" refers to external condition apparent on reasonable examination by the master, and in turn "reasonable examination" depends on conditions at the load port at the time of shipment.

It does not mean the master is an expert in the cargo nor should regular cargo operations reasonably be interrupted for inspections.

In terms of the accuracy of the Bill of Lading, the issue is whether the cargo was in good order and condition "so far as met the eye" – and it is the master's eye which counts. No damage was reasonably apparent to the master at the time of loading. So, no statement in the Bill of Lading was inaccurate as a matter of law.

On the third point, it was unlikely the draft Bill of Lading was saying something different to the signed Bill of Lading. As "everyone in the shipping trade knows" (*Nogar Marin*), it is the master's responsibility to decide whether to issue a clean Bill of Lading. The tender of a draft Bill of Lading is simply an invitation to the master to make a representation of fact consistent with his own assessment of the apparent condition of the cargo at the time of shipment.

Therefore, the court found there could be no implied indemnity for shippers tendering a draft Bill of Lading. It would be inconsistent with textbooks and case law (*Nogar Marin*) and inconsistent with the Hague Rules to imply an indemnity in relation to a statement as to apparent condition of cargo in a draft Bill of Lading.

Mr Fookes quoted the Court of Appeal's decision at paragraph [57] which left open the possibility of an indemnity being implied in certain circumstances: "It is, perhaps, not impossible that the particular circumstances in which a draft Bill of Lading is tendered may amount to a representation of some kind by the shippers as to the condition of the cargo. In particular, I would wish to leave open the possibility that, by tendering a draft bill containing a statement that the cargo is in apparent good order and condition, the shippers make an implied representation that they are not actually aware of any hidden defects or damage which, if known to the master, would mean that he could not properly sign the bill as tendered."

However, this indemnity was not applicable in *Tai Prize*, as there was no factual finding in the arbitral award as to the shippers' knowledge of damage prior to loading.

In conclusion, Mr Fookes observed that the main takeaways from the case were:

- the restatement of the orthodox approach to "apparent good order and condition"
- the possibility of indemnity being left open in certain circumstances
- the importance of factual findings in arbitration

June 2021