SEMAPHORE

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Charterers Argue for Limitation as "Shipowners"

An owner and bareboat charterer have successfully claimed limitation of liability in the English Admiralty Court and three slot charterers argued for the same on the basis they could also be considered as shipowners, following the loss of a containership in Sri Lanka.

The case involved is *Sea Consortium Pte Ltd & Ors v Bengal Tiger Line Pte & Ors (The X-Press Pearl)* [2024] EWHC 3174 (Admlty), which followed the newly-built, 2756-TEU X-Press Pearl catching fire and sinking near Colombo in May 2021, resulting in a total loss.

According to the TT Club, slot charterers Bengal Tiger Line (BTL), Mediterranean Shipping Company (MSC) and Maersk sought orders and declaratory relief under the Convention on Limitation for Maritime Liability Claims (LLMC) from the English Admiralty Court.

They argued they were "shipowners" for the purposes of the Convention and were therefore entitled to limit liability for the cargo loss.

The Court's judgement took into consideration that the inclusion under the Convention of "charterer" within the definition of "shipowner" is intended to prevent cargo claimants from avoiding limitation by claiming against charterers. Otherwise, shipowners could limit indemnity claims from charterers, leaving charterers to bear the excess of cargo claims over the limit.

Relying on the *MSC Napoli* ([2008] EWHC 3002 (Admlty)) case, the court decided there was no reason to find that "charterer" as contemplated by the Convention excluded a slot charterer.

A contrary decision would discourage the use of slot chartering, which has become a well-established and efficient way to organise the carriage of goods. It would therefore normally be sufficient for the applicable contract to oblige an owner to make part of the carrying capacity of a ship available.

This could in principle extend to a party characterising itself as a non-ship-owning common carrier (NVOCC), rather than a charterer.

The Court then compared the contracts between the owner and BTL, MSC and Maersk against the contract considered in the *MSC Napoli* case:

- BTL's "fixed slots contract" was materially identical
- MSC's "connecting carrier agreement" differed only in the lack of obligation to pay for unused slots, and this was not sufficient to take the agreement outside the scope of the Convention
- Maersk's "agreement for transport services" differed because Maersk did not undertake to pay for used and unused slots, but only for containers actually carried – again, this was not sufficient to take the agreement outside the scope of the Convention

The Court therefore granted the owner permission to constitute a limitation fund, at an amount calculated to be about US$20 million.

Commenting on the case, the TT Club says this judgment provides useful confirmation of the *MSC Napoli* case and applies the earlier judgment to agreements with different names but with basically the same substance.

The result is that parties should not be discouraged from part-chartering a ship by the risk that they might be unable to limit under the Convention.

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