The importance of Paramount Clauses

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Clauses incorporated in charterparties can have wide-ranging consequences in terms of liability.

In today’s market, the focus when negotiating charterparties is often on trading exclusions. However, it is important Members take care in relation to other clauses that can have wide-ranging consequences in terms of liability, in particular those incorporating the Hague and Hague-Visby cargo liability regimes, often in the form of Paramount Clauses. The consequences of incorporation or form of incorporation of such clauses in a charterparty are not always obvious and the key issues are set out below.

Incorporation of the Hague and Hague-Visby Rules

Where the Hague/Hague Visby Rules (the Rules) are incorporated so as to apply to a charterparty generally, their application will not be limited to cargo claims. Owners may, therefore, benefit from the application of these defences in respect of claims that they would otherwise have been liable for under the charterparty. This can have a significant impact on owners’ defence of claims outside the context of the cargo loss or damage claims on which the Rules themselves are focused.
For example, effective incorporation of the Rules has been held to:

- Reduce what would otherwise have been an absolute warranty of seaworthiness under a charterparty to an obligation to exercise due diligence to make the ship seaworthy before and at the beginning of the voyage, with effect that:
  - owners were not liable for transhipment costs incurred due to their inability to perform because of the breakdown of engine-room machinery;¹
  - owners avoided liability where a performance warranty was breached due to an engine breakdown.²

- Entitle owners to rely on the negligent navigation exception where:
  - contact damage was caused by a lightning vessel chartered by the owners of the mother ship;³
  - the vessel damaged a jetty owned by charterers.⁴

- Enable owners to rely on the one year time bar in respect of any claim by charterers for physical loss or damage to goods or a liability for financial loss sustained in relation to goods shipped or intended to be shipped, including:
  - costs of a substitute vessel;⁵
  - loss of non-cargo items, such as charterers’ lashing and loading equipment;⁶
  - standby costs of cargo lifting equipment;⁷
  - the costs of a substitute cargo purchased to mitigate losses resulting from delay in carriage.⁸

**Application limited to cargo related claims**

Even where a charterparty restricts the application of the rules as, for example, in Shellvoy 4, where the Rules apply only to “loss or damage or damage arising in connection with cargo”, the defences will not be limited in application only to claims for physical loss or damage of the cargo. They will usually also extend to any claims of the sort normally brought by cargo interests with reference to the cargo,⁹ such as storage and transhipment costs.

Therefore, if charterers do wish to limit the application of the Rules to claims for physical loss or damage to cargo, or at least to claims made in connection with cargo, charterers should ensure the incorporating clause contains appropriate limitations. Where claims have arisen charterers

¹ The Saxton Star [1958] 1 Rep 73
² The Leonidas [2001] 1 Lloyd’s Rep 533
³ The Satya Kailash [1984] 1 Lloyd’s Rep 588
⁵ The Marinor [1996] 1 Lloyd’s Rep 301
⁶ The Seki Rolette [1998] 2 Lloyd’s Rep 638
⁸ The Stolt Sydness [1997] 1 Lloyd’s Rep 273
⁹ The Casco [2005] 1 Lloyd’s Rep 565
should also be careful to check whether those claims might be subject to the one year time bar and, where this may be the case, take appropriate steps to protect time.

Wider application of the Rules

Similarly, owners wishing to benefit from the wider application of the Rules should check the charterparty wording carefully for any relevant limitations. Owners should also be careful to ensure that the Rules are incorporated and that no contractual warranties or undertakings are given in relation to the cargo that might be construed as a waiver of owners’ defences under the Hague/Hague Visby regimes. In particular, owners should be wary of any cargo related clauses that would prevail over other terms, for example, those using terminology such as “notwithstanding anything herein...”.