The Tai Prize: the Court of Appeal issues important new judgment on implied indemnities in charterparties

The Court of Appeal has today handed down judgment in the *Tai Prize* in which James Leabeater QC and Rani Noakes appeared for the appellant disponent owners and Alex Wright appeared for the respondent voyage charterers. The Court of Appeal complimented counsel on both sides for having made their written and oral submissions "*with considerable skill*".

The dispute related to the carriage of a cargo of soyabeans. An LMAA arbitrator found the beans were damaged before loading, as shippers should have known; however, the master could not reasonably have discovered the damage due to the means of loading. On discharge receivers brought a successful claim against the head owners. Head owners sought to recover 50% of that liability from the disponent owners under the Inter-Club Agreement and a settlement was agreed between those parties. The disponent owners then sought to recover their liability from the voyage charterers on the basis that the cargo should not have been described by shippers as being in "apparent good order and condition" in the draft bill of lading.

Owners sought to uphold the arbitrator's decision that owners were entitled to an indemnity because the condition of the cargo was misdescribed in the draft bill of lading; the master had no reason to identify the mistake; and that misdescription, on the findings of the arbitrator, had caused the loss.

The Court of Appeal dismissed the appeal, upholding the decision of HHJ Pelling QC to allow an appeal from the arbitrator's decision under s.69 of the Arbitration Act 1996. The leading judgment was given by Lord Justice Males, with whom Bean and Rose LJJ agreed.

The Court of Appeal held that (1) the words "apparent good order and condition" in the draft bill of lading were only an invitation to the master to make his own reasonable assessment of the cargo, and did not amount to a representation by the shippers, (2) that so construed, the description in the draft bill of lading was not inaccurate, and (3) there was no necessity to imply an indemnity in the circumstances, applying the *Nogar Marin* [1988] 1 Lloyd's Rep 412. He left open the question of what the result would have been had charterers/shippers actually known of the defective condition of the cargo, having some sympathy for Owners' submission that if that had been the case then it might be unfair for a charterer to escape liability. However, the issue did not arise on the arbitrator's findings, in which shippers were held only to have imputed (or constructive) knowledge.

James and Rani were instructed by Nicholas Woo, Lisa Wortley, Melanie Bonte and Xiaguang Ni of Birketts LLP. Alex was instructed by Darryl Kennard and Andrew Hawkins of Penningtons Manches Cooper LLP.

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