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BRIDGE LOOK-OUT

LONDON HIGH COURT JUDGEMENT ON GENERAL AVERAGE –
PAY ATTENTION TO THE YORK ANTWERP RULES 2016

LONDON HIGH COURT JUDGEMENT ON GENERAL AVERAGE – PAY ATTENTION TO THE YORK ANTWERP RULES 2016

In the unappealed London High Court Judgment in the case of the „STAR ANTARES“ dated 10th of November 2023, the Bill of Lading contained the following standard General Average clause:

“General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1994, or any subsequent modification thereof, in London unless another place is agreed in the Charter Party.”

In light of the above-mentioned General Average clause, the judge decided that such a phrase would mean that the latest version of General Average rules,

namely the York-Antwerp Rules 2016, apply when drawing up the General Average adjustment.

Regrettably, the court proceedings had neither investigated nor discovered the real intention of the contracting parties when agreeing to the above-mentioned General Average clause in the Bill of Lading. Therefore, it is doubtful that the relevant parties were in agreement to use the latest version of the York-Antwerp Rules, i.e. the YAR 2016.

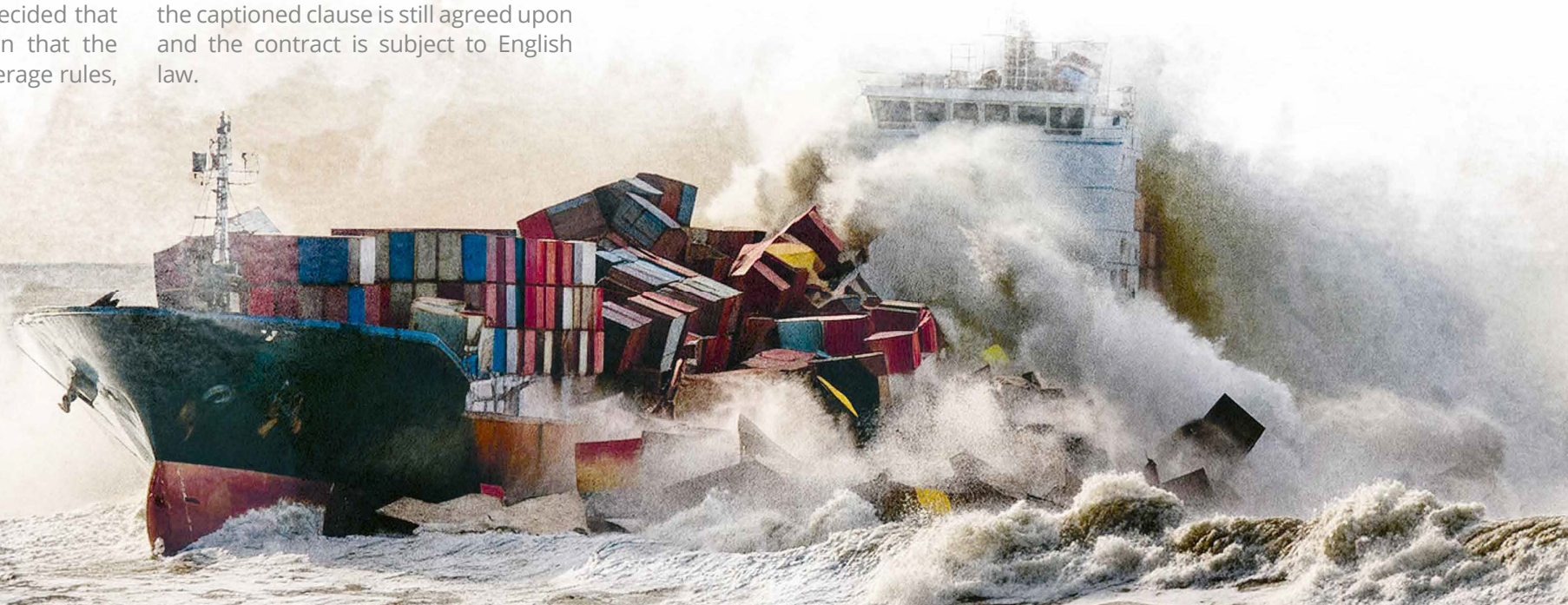
However, this unappealed judgement forces the Adjusters to use the version of YAR 2016 instead of the YAR 1994, if the captioned clause is still agreed upon and the contract is subject to English law.

The court case of the “STAR ANTARES” has already been discussed by various law firms and P&I Clubs but the crucial question for Shipowners is still: what is the practical consequence of the judgement in case of a General Average situation?

In this edition of our Bridge Look-Out, we intend to address the practical consequence of the captioned judgement and the main difference between the YAR 1994 and the YAR 2016.

The most significant difference between the YAR 1994 and the YAR 2016 is related to Rule XXIII and the time bars given therein, which does not exist within the YAR 1994 or any earlier version.

At first, the YAR 2016 introduced a one-year time bar for the collection of General Average contributions from Cargo Interests following the completion and issuance of the General Average adjustment. This time bar will undoubtedly have a serious impact on Shipowners' recovery from Cargo Interests for General Average disbursements.



Usually, Cargo Interests appoint law firms or recovery agents to challenge the Shipowners' claim in General Average, especially by arguing that the Shipowner did not exercise due diligence in making the vessel seaworthy prior to the commencement of the voyage. Depending on the circumstances of the case, the discussions and negotiations can be very lengthy and additional expert evidence may become necessary. It can, therefore, be expected that the majority of cargo contributions cannot be collected within the given one-year time bar.

To extend or stop the time bar, Shipowners either need to agree with Cargo Interests to a time extension or need to commence court proceedings. For both options, all Cargo Interests need to be contacted individually to seek

a time extension or to serve the writ. Certainly, this is practically impossible, especially for container vessels.

Finally, the Shipowners and their Insurers may not be interested in incurring considerable legal fees to commence legal proceedings for a rather small cargo contribution on share. Taking the aforementioned into account, it is safe to conclude that Cargo Interests will follow the strategy to heavily delay the discussions to let their case become time-barred.

Secondly, the YAR 2016 introduced a six-year time bar for the issuance of the General Average adjustment. At first sight, a six-year time bar seems to be adequate to issue a General Average adjustment but there may be circumstances which can delay the adjusting process, such as

salvage remuneration negotiations or in case of postponed final repairs.

Accordingly, if the General Average adjustment cannot be issued within the six-year time bar, the same procedure as outlined above by either agreeing to a time extension or commencing legal proceedings against each Cargo Interest applies.

In summary, the newly introduced time bars in the YAR 2016 will certainly cause considerable problems for Shipowners and their P&I and FD&D Underwriters, because Cargo Interests will delay the discussions to let the case become time-barred. The aforementioned strategy of Cargo Interests will certainly apply to container vessels' Shipowners who will have to deal with a very high number of Cargo Interests.

We, therefore, highly recommend that Shipowners check their Charter Parties, Bills of Lading or Fixing Notes and negotiate a clear wording making only the YAR 1994 applicable. The following wording can be used by way of example:

"General average shall be adjusted, stated and settled according to York-Antwerp Rules 1994 in London"

Should you have any further questions or are interested to discuss suitable insurance products to protect your best interest in terms of General Average, please feel free to contact your designated claims handler at GEORG DUNCKER.

EDITOR

Tobias Thesen

Director

T: +49 40 37 60 04 27

E: Tobias.Thesen@georg-duncker.com

WWW.GEORG-DUNCKER.COM



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HAMBURG (HQ)

Georg Duncker GmbH & Co. KG
Alter Wall 20-22
20457 Hamburg, Germany

T +49 40 376004 0

E hamburg@georg-duncker.com

SINGAPORE

Georg Duncker Insurance Brokers (Asia) Pte. Ltd.
80 Robinson Road, #16-03
Singapore 068898

T +65 6916 3760

E singapore@georg-duncker.com

ROTTERDAM

Georg Duncker Insurance Brokers Benelux C.V.
Westplein 12
3016 BM Rotterdam, Netherlands

T +31 10 226 3842

E rotterdam@georg-duncker.com

HOUSTON

Georg Duncker Insurance Brokers North America LP
1980 Post Oak Blvd., Suite 100
TX 77056 Houston, United States

T +1 346 331 4760

E houston@georg-duncker.com