Inter-Club Agreement

Vol. 16 of "Sea Venture" dealt with the 1992 High Court decision in the "Hostencruiser" case, which answered some important questions in respect of the Inter-Club Agreement, with particular reference to containerised cargo. Vol. 17 contained the new 1998 Inter-Club Agreement which had been redrafted following the "Hostencruiser" decision.

In Ocean Focus Shipping v Hyundai Merchant Marine (the "Hawk") August 1998, the High Court was asked to decide whether, under the 1972 version of the Inter-Club Agreement, bills of lading issued by Charterers not in conformity with the mate's receipts, prevented Charterers from obtaining an indemnity from the Owners. This case had been the subject of an arbitration hearing and the arbitrators had held that failure to issue bills of lading in conformity with the mate's receipts did not prevent recovery under the Inter-Club Agreement. The Owners appealed against that decision.

The brief facts of the case were that the vessel was time-chartered on an NYPE form, incorporating the Inter-Club Agreement, for a trip carrying general cargo, including steel and timber. Claims arose for shortage, condensation and seawater damage which were handled and settled by the Charterers who had issued bills of lading. The Owners declined to contribute arguing that the Charterers, or their agents, had issued bills of lading not in conformity with the mate's receipts and that this was a bar to recovery under the Inter-Club Agreement even where there was no causal connection between the relevant discrepancies and the indemnity claim involved. Further, the Charterers had been unable to produce the relevant mate's receipts.

The Court came to the following conclusions:-

1. There is nothing in the wording of the Inter-Club Agreement or in the "Hostencruiser" decision to justify the Owners' contentions that the absence of a mate's receipt is a bar to recovery, whatever the cause of the loss.

2. Where a shortage claim is involved and where a question arises as to whether the relevant goods were ever delivered into the possession of the Owners or their agents at the port of loading, then, as held in the "Hostencruiser", it is for the Charterers to prove that the bill of lading was authorised in the sense that it was a bill which the master would have had the Owners' authority to sign. This normally means that the Charterers must prove that the relevant goods were actually received into the possession of the Owners. To prove this they may need to produce and rely on the relevant mate's or tally clerk's receipt. The bill will be authorised to the extent that the goods acknowledged in it have, in fact, been received by the Owners.

3. Where issues of the kind mentioned in 2) above do not arise then, prima facie, the bills will be authorised bills and any omission in the bills of lading or found in the receipts will not, in itself, constitute a bar to recovery under the Inter-Club Agreement.

4. Where, however, there is a causal connection between the cargo claims in respect of which the indemnity is sought and the discrepancy between mate's receipts and the relevant bills of lading, the Owners may be able to recover damages for breach of the charterparty. Such damages may either reduce or extinguish the contribution due to the charterers under the Inter Club Agreement.