Demurring on demurrage: Court of Appeal renders Owner's bliss as to scope of demurrage far from eternal

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Demurrage constitutes the liquidated damages payable by a charterer to a shipowner when loading/unloading operations exceed permitted laytime. In K-*Line v Priminds* the Court of Appeal was asked to define the scope of the damages that are liquidated by demurrage, in order to decide when damages beyond demurrage can be recovered (as, for example, in this case, damage to cargo caused by an extended period in the ship's hold). The Commercial Court had decided that all that needed to be shown was a separate head of loss (i.e. other than the loss of freight earning capacity), such that damage to cargo following an extended stint in a cargo hold due to exceeding laytime for loading/unloading operations would likely be recoverable. The Court of Appeal, however, found that there *also* needed to be a breach of a separate obligation to the obligation to load/unload within laytime (for example, failure to provide a full cargo) before additional damages could be recoverable.

Background

In July 2014 K Line PTE Ltd (the "Owners") and Priminds Shipping (HK) Co., Ltd (the "Charterers") entered into a charterparty for 9 voyages, subsequently extended to 12 through an addendum in July 2015, on a Norgrain form contract, subject to amendments agreed between the parties (none of which are of particular relevance for the present dispute) (the "Contract").

Clause 19 of the Contract provided that "*Demurrage at loading and/or discharging ports, if incurred, to be declared by Owners upon vessel nomination but maximum USD 20,000 per day or pro rata/despatch half demurrage laytime saved at both ends*".

The Eternal Bliss (the "Vessel") was nominated by the Owners for the June 2015 laycan and subsequently completed loading of over 70,000 tonnes of soybeans (the "Cargo") at Tubarao on 11 June 2015. Following good sailing the Vessel arrived at the destination anchorage on 29 July 2015, but was unable to proceed to unloading for 31 days, due to congestion and a lack of availability of space for discharged cargo at the port. It was therefore not until the end of August that discharge of the cargo commenced and, due to this delay (or at least assumed for the purposes of this case), the Cargo had begun to cake and develop significant growths of mould.

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