

Our Services

Claims service has been our most important focus from the beginning. We have started with a crew of highly experienced staff with a background in Shipping and in Charterers Liability. Together with our strong financial backing this provides a safe haven for Charterers looking not only for balance sheet protection but also for someone who understands them when there is a problem.

But even when there is no dispute or claim, we can assist clients with regard to reviewing and advising on Charter Party issues or other documents of transport they use or intend to use. From our experience we know that during Charter Party negotiations clients may wish to discuss ad-hoc the terms or conditions they don't feel comfortable with. We provide such service without delaying the client's business by immediate responses and practical advice.

Furthermore it is our intention to provide clients on a regular basis via this newsletter with practical information on legal and operational issues, which they may find useful.

To start with, here below we will discuss briefly some practical issues concerning the incorporation of the well known NYPE Inter Club Agreement (ICA).

How to deal with the NYPE Interclub Agreement (ICA)

The latest edition of the ICA was made and agreed in 1996 between the P&I Clubs being members of the International Group (IG).

The ICA is incorporated in many NYPE C/P's. As a matter of fact, by virtue of clause 27 (cargo-claims) it is a standard term of the NYPE 93 form. Otherwise this agreement will frequently be found in the rider.

The ICA is designed to operate with the NYPE C/P and Asbatime form. Parties to a C/P are free to incorporate it in any other form but this would require quite some manipulation which may give rise

to confusion and disputes.

The purpose of the ICA was to avoid disputes between IG P&I Clubs about liability for cargo-claims by specifying who is liable for what.

From a charterers' perspective there is nothing against agreeing to it. When they agree to it they can improve their position by adding "...and responsibility..." to clause 8 or "cargo-claims" to clause 26 of the NYPE C/P. In particular the latter amendment would be beneficial to charterers.

However when charterers are in a position to amend the C/P along those lines, and thereby make clear that owners are liable for cargo-claims, delays or related fines in general or cargo-handling in particular, the question arises if charterers' interests are actually served by incorporating the ICA in their C/P. From a legal point of view the answer to it is "no". In that case charterers will be better off without the ICA.

Throughout the years there have been different versions of the ICA. The previous edition came into force in 1984. Usually the latest edition will be incorporated in the C/P but this does not necessarily have to be the case.

There are differences between these versions which could be of importance to clients.

For example, under the 1996 version claims to which the ICA apply include legal costs incurred by the original claimant (often a cargo-receiver under the B/L) and legal costs of defending such claim. It has been held that the ICA 1984 does not apply to costs in defending the original claim.

So, assuming that the original claim will be lodged with the owners under the B/L (the owners as carriers) and the older version of the ICA has been incorporated in the C/P, the costs which owners incurred in defending the claim under the B/L can not be recovered from charterers under the ICA.

There are more differences between both versions, whereby the ICA 1984 may give the charterer some more room to "manoeuvre" (provided of course that owners settled the claim in first instance under the B/L) but it would go too far to discuss this at length in this newsletter.

To summarize:

- If the C/P incorporates the ICA, under the ICA charterers can improve their position by adding the provisions in the C/P as referred to here above.
- If the C/P makes owners responsible for all cargo-claims (including claims as a consequence of cargo-handling, stowage etc.) charterers will legally be in a better position if they do not incorporate the ICA at all.
- If charterers incorporate the ICA in their C/P they may try to include the older version of the ICA instead of the latest edition.

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