THE GRAND AMANDA

UNLESS EXPRESSLY EXCLUDED, CHARTERERS MAY OWE AN IMPLIED INDEMNITY TO OWNERS, ARISING FROM CHARTERERS' ORDERS, FOR A LIABILITY IMPOSED ON OWNERS BY A COURT, WHICH HAS NOT PERMITTED THE APPLICATION OF A CONTRACTUAL DEFENCE SUCH AS INHERENT VICE, EVEN IF THE COURT WAS IN ERROR.

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In the *GRAND AMANDA* [2025] EWHC 1990 case, the ship was let by Owners to Charterers for a trip time charter on an amended NYPE 1946 form. The charterparty stated that Owners were responsible for the ship, crew and equipment, and that Charterers were responsible for risks arising due to the cargo carried. Clause 8 of the charterparty stated that "...The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency..." The charterparty also included an Inter-Club Agreement (ICA) 2011 clause apportioning liability for cargo claims between Owners and Charterers depending on the cause of the claim.

In accordance with Charterers' orders, the ship carried a cargo of soyabeans in bulk from Uruguay and Argentina to China. CONGENBILL 2007 bills of lading were issued in respect of the cargo, incorporating Hague or Hague-Visby Rules Article IV(2)(m), which provides that "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from - ... (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods ..." The bills incorporated the terms of the charterparty, which provided for all disputes to be determined in England.

On discharge in China, the first parcel of cargo was found to be mildewed, discoloured, caked and blackened. Cargo interests and their insurers commenced proceedings against Owners in the Chinese court for cargo loss and damage. Although the bills of lading provided for disputes to be determined in England, Owners decided to defend the Chinese proceedings rather than dispute jurisdiction. The Chinese court decided that Owners were liable for failure to take adequate care of the cargo and rejected Owners' inherent vice defence under Article IV(2)(m).

Owners commenced proceedings against Charterers in England in accordance with the charterparty seeking to recover the amount for which they had been found liable by the Chinese Court.

The English Court rejected Owners' claim against Charterers under the ICA 2011 clause because the liability had been established by an award or judgment rather than by consensual settlement. If the liability had been settled, compromised or paid, then the loading of cargo suffering inherent vice for carriage to China would have been a relevant "act" for the purposes of ICA Clause 8(d), where the "act" was not the mere shipment of the cargo but the shipment of unstable cargo.[1]

However, the Court also decided that Charterers were liable to Owners under the implied indemnity at clause 8 of the charterparty. The Court explained that the implied indemnity arises when:

1. **Owners comply with a request from Charterers, which request exceeds the contractual risks accepted by Owners at the time of entering the charterparty and which gives rise to a liability to a third party;**

2. **Charterers' lawful order was an effective cause of Owners' loss.**

For the risk to have been accepted by Owners at the time of entering the charterparty, the risk must have been known to Owners or capable of being known, such as being a notorious risk. The risks can be identified by the construction of the charterparty and an informed judgment of the broad range of physical and commercial hazards incidental to the charter service. These risks could be exceeded, for instance, by Charterers requesting Owners to sign bills of lading which impose more onerous obligations on Owners than envisaged by the charterparty.

The implied indemnity does not apply to ordinary trading risks borne by Owners and for which Owners are remunerated by the payment of hire. The English Court held that the risk of a court failing in error to apply the defence of inherent vice was not an ordinary cost or risk associated with the performance of the charter service. Such a court action is not one of the broad range of physical and commercial hazards which are normally incidental to a chartered service and, therefore, arose as a consequence of Charterers' order to load that cargo for that voyage.

The *GRAND AMANDA* is likely to be an important decision for Owners chartering on terms that include NYPE 1946 clause 8 or the same wording as, under English law, it may give them the right to recover liabilities from Charterers which have been incurred where Owners have been found liable due to a foreign court erring in applying a contractual defence.

1. Following the Court's decision, the International Group published an amended version of the ICA clause 2011 which will apply the terms of the ICA if liability has been established by an award or judgment. See the Club's Circular dated 3 July 2025