Vessel Sharing Agreements

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Vessel Sharing Agreements (VSAs) are predominantly used by alliances of container lines to pool their resources on popular routes. There is no widely accepted standard form in circulation, so VSAs are usually bespoke. This article discusses some of the difficulties that arise under VSAs and how to mitigate these problems in advance.

Introduction

The commercial pressure to settle disputes within ongoing alliances probably explains the lack of any reported decisions on VSAs. This means that, in the aftermath of a casualty, the parties' rights and obligations under a VSA can be the source of considerable disagreement.

Access to crew, vessel and documents

The VSA will often include a requirement that the shipowner assists the VSA partners in obtaining evidence and statements from the crew. This is, ostensibly, to enable the other VSA partners, who will have issued their own bills of lading to cargo interests for their own slot allocation, to obtain evidence to defend those cargo claims. There is a tension between whether such provisions entitle the VSA partners to have access to the crew to conduct interviews and obtain evidence themselves directly, or merely to receive copies of statements taken by the shipowner's own solicitors.

Similarly, many VSA partners will want their own surveyors to examine the ship and its paperwork at length, rather than relying on documents provided by the shipowner – a situation often compounded by the existence of local rights in any port of refuge to obtain a court order for access, or to require that the master and crew give testimony.

VSA partners may interpret such rights widely in a bid to seek out evidence on which a cause of action can be founded under the VSA itself, rather than merely for handling cargo claims. The difficulty with such an approach is that, in the immediate aftermath of an incident, the crew are usually fully employed attending to their duties on board and do not have the capacity to respond to queries from the surveyors and lawyers appointed by each of the VSA partners (of which there can be several).

There are strong arguments for the parties to a VSA to draft provisions that clearly regulate the amount of access that will be given, the timing of such access and the waiving of any local rights that might exist. In particular, VSAs should clearly set out how many surveyors and experts may be sent following a casualty in order to prevent a scrum for access from developing in the port. By the same token, and as a counterbalance, VSAs should provide for reasonable access to documents and witness evidence.

Security for cargo claimants

Many cargo claimants will try to bring proceedings against the ship itself, rather than the carrier that issued their bill of lading. VSAs commonly provide that each carrier must handle and defend its own cargo claims in the first instance, but few go so far as to require that each VSA partner in its role as carrier must put up security in advance of the ship calling at its next port.

The absence of such a provision often leads to the parties involved incurring significant legal costs from debating who will secure the cargo interests' actions against the ship, as well as the type and value of such security. It also increases the risk of a cargo interest arresting the ship and disrupting the liner service while the VSA partners continue to argue. The parties to a VSA should avoid this situation if possible by requiring that each VSA partner, in its role as carrier, voluntarily put up any necessary security prior to a port call.

Advice

Drafting clauses that deal with these two issues could significantly improve the ability of the parties to a VSA to handle the aftermath of a casualty in an efficient and cohesive manner, rather than arguing over such rights through their solicitors and the local courts.