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## Bulletin 752 - 03/11 - Trade allowances - Sudan

**The Clubs correspondents have unfortunately observed an increase in prevalence in the incidence of shortage claims for cargoes imported into the Sudan in both Bulk and bagged form.**

Although in Port Sudan it is extremely easy for receivers to arrest a vessel for an alleged shortage, it has not been unknown in past experienced for ships to be arrested for shortages as small as 50 tons. Although it is relatively easy to have the arrest order lifted by placing a Letter of Undertaking with the court. However, the resultant court action can be a long and slow winded affair. Court procedures in Sudan up to a first instance judgement normally takes in the region of two years.

In the past it has been accepted that one of the strongest defences in the Sudanese Courts is a foreign arbitration defence. For the foreign arbitration defence to be successful the charterparty terms should be fully incorporated into the bill of lading to ensure that such a defence can be submitted to the courts for consideration.

There has been a recent court judgment in Sudan in respect of the incorporation of charterparty terms into bills of lading. It has become well established in Sudanese law that the proper incorporation of a charterparty into a bill of lading and the inclusion of an arbitration provision is sufficient for the Sudan courts to decline jurisdiction. This has been particularly helpful in the defence of grain shortage claims because until now the Sudan courts have been extremely reluctant to accept the concept 0.5% transit allowances or similar.

In the recent case of the *Tortuga*, the judgment addresses the question of the sufficiency of incorporation. In essence, the judge decided that references in the standard form of Congen b/l such as "to be used with charterparties" are too vague unless the charterparty is clearly and specifically identified and the intention of the parties to incorporate the c/p and arbitration clause is likewise clear. Similarly, the wording "freight payable as per c/p" is only effective in respect of the amount of freight payable, and is not in itself sufficient to imply incorporation of the charterparty.

Thus it is essential that there be clear clausing on the face of the bill of lading - eg:

"This b/l incorporates all terms and conditions of c/p dated .....(date), at ..... (place) and is subject to the arbitration clause..... (number) providing for arbitration in .....(place of arbitration)."

Source of Information:

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