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# CMHF SPOTLIGHT

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## HIGHLIGHTS & BRIEFINGS

- ❑ The “Grand Amanda” Case Reading: English Court’s Decision On The Scope Of The Implied Indemnity
- ❑ Loss Prevention: Bulk Cargo In Jumbo Bags – Understanding The Risks

# The “Grand Amanda” – English Court’s Decision On The Scope Of The Implied Indemnity

*Sino East Transportation Ltd -v- Grand Amazon Shipping Ltd (Grand Amanda) [2025] EWHC 1990 (Comm)*

## ❖ Factual Background

- Grand Amazon Shipping Ltd (“Owners”) chartered the MV “Grand Amanda” (“the Vessel”) to Sino East Transportation Ltd (“Charterers”) in April 2014 under an amended NYPE 1946 form. The Vessel loaded a cargo of Uruguayan soybeans and a second cargo of Argentine soybeans respectively in two loading ports.
- The cargo were to be discharged in China under clean Bills of Lading (Congenbill 2007) incorporating the Hague / Hague-Visby rules and an agreement for London arbitration.
- Upon inspection during voyage, the Uruguayan cargo was found to be affected by self-heating and mould, and upon discharge at China, the Uruguayan cargo was found mildewed, discolored, caked and blackened. The Argentine cargo was discharged without issue.
- Cargo interests brought proceedings against Owners in the Wuhan Maritime Court, and Owners decided not to challenge jurisdiction. Owners tried to defend the claim based on inherent vice. The Chinese Courts held Owners being liable for failing to take care of the cargo and ruled in favor of the cargo interests, both at first instance, on appeal, and then in the People’s Supreme Court.
- Owners commenced arbitration under the Charterparty to seek Charterers for an indemnity of around USD6 million in respect of losses and expenses incurred, based on: a) the agreed allocation of liability under the Inter-Club Agreement (“ICA”); or b) the implied indemnity arising from the standard employment and agency provision in Clause 8 of NYPE form.

# The “Grand Amanda” – English Court’s Decision On The Scope Of The Implied Indemnity (Cont’d)

## ❖ Warm-Up: Implied Indemnities Under Charterparty

Before diving into the arbitration and court decisions, it may be helpful to brief the meaning of implied indemnity and a English court case *The Island Archon* [1994], which was also discussed in the Court for the current case.

- Clause 8 of NYPE 1946 Form provides that the ship master shall be under the orders and directions of the Charterers regarding vessel’s employment. An indemnity will normally be implied if the Owners suffer loss or incur liabilities which are effectively caused by complying with Charterers’ orders, unless by the terms of the charterparty the Owners consents to bear such loss. There must be an effective causation between the orders of Charterers and the loss suffered. It does not matter whether Charterers’ order is lawful, nor is it necessary to show any fault on the Charterers.
- As to “*The Island Archon*”. In that case, the vessel was ordered to ports in Iraq where cargo claims were brought against Owners based on unreliable cargo shortage / damage. Such claims succeeded and the vessel suffered detention. It was found that under the “Iraq system”, it was almost inevitable that spurious cargo claims would be made against a ship, and that those claims would be supported by local courts, regardless of the actual state of the cargo. Both the High Court and Court of Appeal decided that an indemnity should be implied as the risk for dubious cargo claims was not one which the Owners had agreed to bear under the charterparty, and the risk was not yet notorious when the charterparty was entered into.

## ❖ The Arbitration Proceedings

Charterers first argued that Owners’ choice was unreasonable to defend the cargo claim before the Chinese Court without filing anti-suit injunction in England, being in breach of the jurisdiction clause incorporated into the Bills of Lading. The Tribunal dismissed this argument, holding that an injunction would not have practically assisted Owners.

- **Dispute 1: Indemnity under ICA 1996 (as amended 2011)**

Charterers argued that the clause 4(c) of the ICA, namely whether “the claim has been properly compromised or settled and paid” should mean consensual settlement rather than any cargo claim established by an award or judgement. Furthermore, even if the clause 4(c) was satisfied, the correct apportionment of liability is 50/50 under clause 8(d).

At the time of final arbitration, Owners accepted Charterers’ argument regarding clause 4(c) as common ground, and the Tribunal concluded that a judgment was not within the wording of clause 4(c) of the ICA.

*(NB: Since the tribunal’s findings on clause 4(c), the ICA has been amended in July 2025 which makes clear that the ICA does respond to an award or judgement.)*

However, the Tribunal stated that, should the ICA be applicable for this case, the amount of the cargo claims and the associated costs should have been apportioned 100% to Charterers, as it was considered that the shipment of a microbiologically unstable cargo (without Owners breaking the chain of causation) may itself be attributed to an “act” of the charterers.

# The “Grand Amanda” – English Court’s Decision On The Scope Of The Implied Indemnity (Cont’d)

## ❖ The Arbitration Proceedings (Cont’d)

- Dispute 2: Implied Indemnity Arising From Clause 8 Of NYPE 1946

The Tribunal ruled in favor of Owners for their claim as under implied indemnity. It was held that Owners’ liability to cargo interests arising from cargo’s inherent vice was not part of the ordinary cost or risk that Owners had agreed to bear under charterparty. Charterers were held liable to indemnify Owners against their liability to cargo interests including the cost incurred in Chinese Court proceedings.

Charterers appealed the arbitration award under s.69 of the Arbitration Act 1996 (point of law) on the implied indemnity issue. The ground of appeal was:

*“Where liability is wrongly imposed on an owner by a foreign court following shipment of a lawful harmless and permitted cargo that is affected by inherent vice, can the owner recover that liability from a time charterer under the general implied indemnity.”*

## ❖ The High Court Proceedings

The Charterers’ arguments are summarised as below:

1. This cargo was lawful and harmless and was delivered at a port within the Charterparty limits. Therefore, Owners had agreed to bear the risks involved in this carriage. It does not make difference between cases where claims are due to inherent vice and where otherwise.

# The “Grand Amanda” – English Court’s Decision On The Scope Of The Implied Indemnity (Cont’d)

## ❖ The High Court Proceedings (Cont’d)

2. In *The Island Archon* case, although the risk of “Iraq system” was known at the time the order was given to proceed to Iraq, the risk was not notorious at the date the charter was concluded. Charterers submitted that the proper interpretation of *The Island Archon* is that the general implied indemnity does not apply where a risk has not changed between the time entering into the charterparty and the time of loss. In current case, Charterers argued that Owners must have been aware of, and therefore accepted, the risk of an adverse judgement from the Chinese Courts.
3. Charterer further argued that the ICA provided a complete code for the allocation of responsibility for cargo claims. The implied indemnity should not operate at all in the circumstances, or alternatively only to the extent the ICA apportionment would have been 50/50.

The Court dismissed the appeal and assessed the scope of the implied indemnity in details.

### As to Charterers’ 1<sup>st</sup> argument

- The judge rejected Charterers’ argument that where an order was lawful, the Owners would bear all risks involved in the carriage. The justification for the implied indemnity to Owners arose from the freedom granted to the Charterer to give orders as to the employment of the ship. Implied indemnity can co-exist with an express right of indemnity, and can also arise in situations where the cargo is lawful and permitted yet gives rise to a loss.

## ❖ The High Court Proceedings (Cont’d)

### As to Charterers’ 2<sup>nd</sup> argument

- As to Charterers’ argument that *The Island Archon* decision was based on a change in circumstances between time of charterparty and time of loss, the judge disagreed. It was held that the decision did not support the proposition that Owners had implicitly agreed to bear all risks that do not arise from an external change of circumstances after the date of the charterparty. Charterers’ argument that no implied indemnity arises in absence of an external change is incorrect in law.
- The indemnity is not limited to “unusual” circumstances, and there is no rule of law or general principle that Owners should be taken to necessarily have assumed the risk arising from ordinary cargo claim. It was also held that a certain type of loss being foreseeable is no more than a factor to consider, such is not determinative and does not preclude reliance on the implied indemnity.
- Besides, the Court noted that the Tribunal found it was not self-evidently foreseeable that inherent vice would fail to defend the cargo claim, and the adverse judgement in the Chinese Courts were not “almost inevitable”. Therefore, there was no basis to say that Owners had implicitly assumed the risk of wrongful foreign judgments.

### As to Charterers’ 3<sup>rd</sup> argument

- The judge held ICA does not provide a “complete code” for the imposition of liability in respect of cargo claims. For cargo claims that do not fall within the scope of ICA, the other provisions of the charterparty (if applicable) and the ordinary law apply.

# The “Grand Amanda” – English Court’s Decision On The Scope Of The Implied Indemnity (Cont’d)

## ❖ The High Court Proceedings (Cont’d)

After considering the parties’ arguments, the judge accepted that the *“risk of a microbiologically unstable cargo resulting in damage and liability arises directly out of the orders of charterers, who have discretion over the particular cargo selected for shipment and the selection of ports of loading and discharge”*. As Owners had no control over those decisions, the judge agreed with the Tribunal that it was the shipment of such cargo that caused the loss in question, and since there is no break in the chain of causation, Owners’ claim were to succeed under the implied indemnity.

## ❖ Comments

- The question of implied indemnity is whether the Charterers’ order was an effective cause of a loss which Owners had not contractually agreed to bear. This applies even when Charterers’ orders are legitimate and the cargo loaded are lawful and permitted.
- The foreseeability of a risk does not impose a blanket assumption on Owners that they have accepted such risks and are precluded from implied indemnity. Owners’ reliance on implied indemnity is not subject to a pre-condition that there is change in risk or circumstances.
- The amended 2025 ICA has made clear that a claim can be settled for the purpose of Clause 4(c) by a decision of a Court or Tribunal. It is recommended that Owners specifically incorporate the 2025 ICA into NYPE and Asbatime charterparties.

## ❖ Background

Jumbo bags, also known as Flexible Intermediate Bulk Containers (FIBCs), are industrial containers designed for bulk materials, but not considered as bulk cargo. They may be used by shippers to avoid IMSBC Code requirements for cargoes that may liquefy (Group A), or which pose chemical hazards (Group B). As the cargo has been loaded in bags, it is the IMDG Code that applies

It has been observed more Group A cargoes are being loaded into FIBCs, some of which fall under UN 3077 (Environmentally Hazardous Substances, Solid, N.O.S., Not otherwise specified). Where the cargo has a UN number under the Code, a supporting dangerous goods declaration must also be provided by the shipper.

FIBCs typically hold 500 kg to 3,000 kg, come in various sizes and shapes, and are made from woven polypropylene with an inner polyethylene layer. They must comply with standards like ISO 21898, specifying details such as their maximum compressive load and safe stacking height to prevent overloading.

## ❖ Potential Risks: Bags

- Deformation of bags during the voyage

During ships' motions in heavy weather, the cargo may move within the bags and the bags may change shape, which would result in material consolidation (or reduction in volume) in the bags. As the uniform shape of the bags and the level surface are affected, such may give rise to uneven load distribution and compromised stability.

# Loss Prevention: Bulk Cargo In Jumbo Bags (Cont'd)

## ❖ Potential Risks: Bags (Cont'd)

Followed by the reduced stability, the tensile strength of the bags would be the confining action to prevent the flow of the material. If a bag ruptures, its inherent stabilising actions are reduced and would potentially cause an increase in destabilising forces in the entire stowage.

- **Movement of bags during the voyage**

During the heavy rolling motions of a ship, shifting of bags is another associated risk. Without a shoring between the bags, the cargo may shift, and the bags will seek to fill the voids between them. During sideways pressure the cargo can be compressed and can also rise within the bags, creating even more slackness in the transverse direction. The shifting of such cargo on several decks can result in the vessel taking a severe list.

- **Bag integrity**

The integrity of bag should be considered, which must be sturdy and well-constructed to withstand the rigours of handling during loading, unloading, and transportation. If the bags are damaged, torn, or compromised, it can lead to spillage, contamination, and a loss of product integrity.

## ❖ Potential Risks: Stowage

Higher stacks experience greater acceleration forces during transportation. Loading heavier items on top of FIBCs can cause damage due to shifting. Excessive top weight has also been a direct cause of bag failure.

### ❖ Potential Risks: Stowage

When loading Group A cargoes or materials which are prone to caking into FIBCs, determining the maximum safe stow height is paramount. Such height primarily depends on the maximum permitted stacking load of the specific FIBC, usually shown on the bag itself.

Though, if not exceeding the stacking load on the bottom bags, there is no fixed regulated limit for stack height. However, it is worth mentioning that cargo's tendency to compact must also be considered, e.g. automotive-grade urea compacts more readily than agricultural-grade urea, so a lower stow height for the automotive grade could prevent it from compacting too much.

### ❖ Potential Risks: Cargo

Many cargoes transported in FIBCs present inherent chemical hazards, which would have potential to release toxic and flammable gases. Such gases released may not be detectable, as common personal gas monitors generally detect oxygen, flammable gas (usually methane), carbon monoxide, and hydrogen sulphide.

Additionally, certain Group A cargoes, like copper concentrates, possess self-heating properties. When these cargoes are bagged, heat can become trapped, significantly increasing the risk of fire within the bag.

### ● Incompatible chemicals in the same hold

Due to possible chemicals reaction, loading multiple different chemicals into the same hold requires careful consideration so to avoid chemical incompatibility or contamination, even if they are in the FIBCs.

With torn FIBCs, it might lead to the admixture of incompatible chemicals, causing fires and further reactions within the hold, incurring significant costs from lost goods, clean-up and delays.

Bagged chemical cargoes can also impose physical threats to other goods in the same hold. For example, if chemical-filled FIBCs are stowed above other cargo and the bags' integrity is compromised, the contents, if leaks out, can severely damage the underlying goods.

### ● Fire Hazards

It is observed that fire incident caused by stevedores' discarded cigarettes at loading and discharge ports, igniting the plywood and packaging of FIBCs. Alarmingly, these fires sometimes led to the release of toxic gases from the affected cargo, making firefighting much more complex.

## ❖ Loss Prevention Recommendation

### ● Pre-loading preparations

- Request cargo details and dangerous goods declaration:

Start by asking shippers for detailed information about the cargo to understand the risks, specifically its shipping name (not just common trade names). If it is a hazardous cargo under the IMDG Code, a dangerous goods declaration is essential.

- Obtain Safety Data Sheets (SDS) for bagged chemicals:

For bagged chemicals, the shipper must provide the SDS. These documents are crucial for identifying any associated hazards and checking for chemical incompatibilities, especially when multiple bagged chemicals are loaded into the same hold.

- Cross-reference with IMSBC Code for bulk-hazardous cargoes:

When typical hazardous bulk cargoes are shipped in packages, it is suggested to consult the IMSBC Code for precautions and to be aware of any bulk-related hazards.

- Request evidence of packaging assessment:

Ask shippers for evidence that they have assessed the cargo's properties against the packaging's strength and fill capacity. This ensures the packaging has sufficient tensile strength for the material's weight, plus a safety factor.

### ❖ Loss Prevention Recommendation

#### ● Loading and Stowage

- Follow cargo securing manuals and codes:

Ensure cargo is loaded in strict accordance with the vessel's Cargo Securing Manual (CSM), the Code of Safe Practice for Cargo Stowage and Securing (CSS Code), and the IMDG Code.

- Consider compartmentalisation for stability:

Compartmentalising the stow into units is recommended. This can reduce forces that lead to destabilisation while increasing the restraining forces, improving overall stability.

- Supervise stevedores and enforce safety protocols:

To maintain safety, crew members should closely supervise stevedores. This includes enforcing no-smoking policies and ensuring proper enclosed space entry protocols are followed, especially if the cargo may emit hazardous gases.



# Market Snapshot

## UN Growth Report: Shipping Faces Perfect Storm Of Stalled, Longer Routes, and Surging Costs

- According to the latest Review of Maritime Transport released by the UN Trade and Development body (UNCTAD), global seaborne trade growth is forecast to slow dramatically to just 0.5% percent in 2025.
- This marked slowest pace of growth in recent years, following a modest 2.2% expansion in 2024, as the industry struggles with challenges like geopolitical tensions and climate change.
- The rerouting effects due to Red Sea crisis have elevated container, bulker and tanker freight rates through 2024 and 2025. The impact falls disproportionately on vulnerable economies, as higher freight costs can be translated into more expensive imports and food insecurity.
- The climate challenge looms large over the industry, as the GHG emission rose by 5% in 2024. Only 8% of the world fleet's tonnage is currently equipped to use alternative fuels.
- The challenge extends to ports, which strife with congestion, longer waiting time and pressure to upgrade. UNCTAD emphasized the urgent need to invest in digital systems to cut costs and delays, while noting many developing countries continue to lag in digitalisation.

## P&I Claims Hit A Ten-Year Peak

- According to market resources, the P&I claims have hit a ten-year peak, with fires and EV cargo being an increasing driver of major losses. Net claims is said to reach USD3.1 billion, which is up 25% year-on-year and 16% above the 5-year average.
- 2024/25 is one of the worst years on record for pool claims. Historically, pool claims have shown substantial back-year deterioration, meaning the current figures may be an underestimate. Assuming the 2024/25 pool claims deteriorate in line with historical trends, the overall cost may reach around USD775 million.
- The claim trend reflects risks associated with ageing fleet, the growing prevalence of mis-declared or hazardous cargo, inflationary pressure on materials and labour, war-related incidents and rerouting, and sanctions / tariff related costs.
- Free reserve across the IG Group rose 4.81% to USD5.96 billion, but the reserves per tonnage remains below pre-2020 levels.

## LNG Carrier Spot Rates Could Remain Depressed Until 2027

- The current charter market for LNG tankers appeared to be extremely weak, dragged down by record newbuilding deliveries and project delays.
- Market observers saw the spot charter rates around USD32,000 per day for modern 174,000 cubic meter MEGI and XDF vessels described as “subdued”, in the aftermath of a spot market crashing after a warm winter in end 2024 and early 2025.
- The newbuilding boom started in 2022, when LNG spot rate surged following the commencement of Russia-Ukraine war, and the shift-away from Russian gas cargoes. Also, it was a time of much concern on energy security and shippers wanted to lock in tonnage on long term deals.
- Some analyst forecast that the spot rates could likely remain depressed well into 2026, when a further batch of newbuilding deliveries are expected, and possibly even into first half of 2027, as it takes time for new LNG project to soak up the shipping tonnage.

## LNG Scrapping Sets Annual Record

- LNG carriers demolition sales have already reached an annual record with nearly 3 months of the year still to go. Data shows 0.8 million dwt worth of LNG carriers have been sent for demolition this year due to the weak market conditions.
- Market sources said this pattern would be expected to continue as demand for old steam-turbine LNG tonnage remained weak and many old units remain unsold or laid-up.
- According to analysts, at present no segment except LNG seems to be opening for recycling. For example, the container sector is on track to record its lowest demolition total for the past 20 years.
- The record scrapping of LNG this year may on the other hand play a positive role to ease the current tonnage demand-supply imbalance, given the desultory picture on the spot rate market.

## Tariffs Split Container Shipping: U.S. Imports Sink As Global Trade Grows

- According to BIMCO Container Shipping Market Overview for September 2025, the container shipping industry is experiencing an unprecedented divergence in the market, with US-bound trade lanes suffering significant declines whilst routes to other regions show surprising strength.
- For the trade lanes non-US bound, the ship demand is forecast to increase by 4.5% - 5.5% for 2025, and maintaining it at 2.5% - 3.5% for 2026. BIMCO expected a balanced supply-demand development in 2026, while estimating the average market conditions in 2025 to be worse than that in 2024.
- North American import volumes have shown negative year-on-year growth since April, with BIMCO forecasting a 2% contraction for 2025, due to the implementation of tariff increases.
- The situation of US-bound lanes could worsen with the potential implementation of currently paused reciprocal tariffs on Chinese imports in mid-November. The upcoming USTR ship fee plan, set to take effect in mid-October and targeting vessels built in China or operated by Chinese carriers, will add further complexity to the market.

## China Still Dominates Ship Orders Despite US Port Fee Push

- Global shipping companies move ahead with commercial vessel orders from Chinese shipyards, despite the US targeting those ships with steep port fees.
- According to market data, China's share of global orders by tonnage had jumped to 73% in 2024. During the first 8 months of 2025, Chinese shipyards captured 53% of all global ship orders by tonnage. This was on par with full-year 2023 levels before the USTR paved the way for the port fees.
- MSC, the largest containership operator, placed orders for 12 vessels to be built in China since USTR announced the port fees in April. MSC, Hapag-Lloyd, Maersk and CMA CGM, has taken China-linked ships off US trade routes, limiting or negating the new fees.

## VLCC Market Shows Dramatic Surge In September

- The VLCC market surged dramatically in September, with benchmark rates nearly doubling over 2 weeks, signaling a significant regime shift in the sector. According to market resource, the benchmark rose from around USD45,000 / day on 1<sup>st</sup> September to USD87,500 / day on 18<sup>th</sup> September. The intra-September average was roughly around USD65,300 / day.
- The benchmark of USD87,500 / day marked more than double of the 2025 year-to-date average in around USD41,500 / day, and about five times of the 5-year average (circa. USD17,400 / day) calculated from 19<sup>th</sup> September 2020 to 18<sup>th</sup> September 2025 .
- The fundamental tonne-mile demand is the key drive for VLCC rates. Voyages in and out of Middle East Gulf were in demand, and trans-Atlantic to Pacific voyages rebounded from their summer lows. There is a real supply and demand pressure.
- Secondly, sanctions and trade friction diverted Russian-related flows and lifted demand for compliant capacity, while the compliant VLCC fleet hasn't grown meaningfully since 2021 as older units drifted to shadow fleet. Lastly, 4<sup>th</sup> quarter is historically VLCC's strongest quarter, and OPEC+ increases output higher into year-end.

## New Data Clears Biofuels For Extended Deployment

- The Global Centre for Maritime Decarbonisation (GCMD) has recently published results from its 6-month project trial, showing that long-term use of biofuels on oceangoing ships can be done safely without hitting performance or costs.
- The project was launched with Japan's NYK in May 2024, and put a B24 blend – 24% fatty acid methyl ester (FAME) mixed with very low sulphur fuel oil (VLSFO) aboard a PCTC vessel. Main engines and generators clocked 2,888 and 1,813 running hours respectively on the B24 blend, and the subsequent dry dock confirming no abnormal wear, sludge build-up or hardware damage.
- The fuel and lube oil sampling showed the blend remained with ISO specs despite acid values rising during the storage. No microbial growth was detected. The engine maker confirmed that the engines and fuel systems in compatibility with continuous B24 use, if proper handling and maintenance protocols are followed.
- Recent analysis indicated that nearly a third of global shipping could run on biofuels in 2030, as up from less than 1% today.

## X-Press Feeders Refuses USD250 Million Court-Ordered Payment in X-Press Pearl Case

- X-Press Feeders, the former operator of the containership “X-Press Pearl” has announced that it cannot comply with the Sri Lankan Supreme Court’s interim payment order in amount of USD250 million as part of a broader compensation ruling issued in July.
- In May 2021, “X-Press Pearl” caught fire and sank off Sri Lanka’s coast. The vessel was carrying 1,486 containers, including 25 tons of nitric acid loaded in India, along with 297 tonnes of Heavy Fuel Oil and 51 tonnes of Marine Fuel Oil.
- The ship had attempted to address a leaking nitric acid container before the disaster, requesting permission to discharge the leaked container at ports in Qatar and India, but both requests were rejected.
- There was a severe impact on the environment, with microplastic granules covering 80km of Sri Lanka’s western coast, halting the local fishing activities for months.
- Sri Lanka’s Supreme Court in July ordered the Owners of the vessel, X-Press Feeders, to pay USD1 billion in damages for the pollution.
- The Owners later secured a London admiralty court order limiting their liability to USD25 million, a decision Sri Lanka has appealed. Sri Lanka also filed a separate lawsuit against the Owners in Singapore, but it has been put on hold pending London court decision.
- The Owners maintained that it had already contributed over USD170 million through its insurers for wreck removal, environmental remediation and compensation claims in cooperation with Sri Lankan authorities.
- The London P&I Club, involved in this case, characterised the July ruling “an extraordinary and deeply troubling turn of events”, as the court levied an interim payment of USD1 billion, despite having heard no witness testimony, admitted no expert evidence and allowed no cross-examination of facts.
- One of the most contested aspect of Sri Lankan court ruling concerns the rejection of limitation of liability principles which forms cornerstones of international maritime conventions. The Owners are concerned that the precedent set by this Sri-Lankan ruling would establish an unprecedented level of risk for the global shipping industry.

# Happy Reading, See You In October!

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# Acknowledgments

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