QINGDAO MARITIME COURT OF THE PEOPLE'S REPUBLIC OF CHINA (CIVIL JUDGMENT)

30 December 2020

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CHINA PACIFIC PROPERTY INSURANCE CO LTD, QINGDAO BRANCH
v
TAIEI NAVIERA SA AND ANOTHER

[2020] L 72 MC No.1236

Before Presiding Judge: Wang Ailing,
People's Juror: Dong Wei,
People's Juror: Jiang Yun and
Clerk: Zheng Tongfang

Contract — Carriage of goods by sea — Bills of lading — Damaged cargo of soybeans — Liability — Subrogation.

This was CPIC Qingdao's claim that the two defendants be jointly and severally liable for economic loss suffered as a result of damaged cargo.

Bohi Co purchased 64,178 mt Brazilian soybeans from Louis Dreyfus Co Brasil SA. The cargo was carried by M/V Bulk Aquila from Santarem, Brazil to a Chinese port. Four bills of lading were issued for the cargo. On discharge the cargo was found to be heat damaged and mouldy. a third-party inspection company found that the damage was caused by the carrier/actual carrier's failure to ventilate the cargo in an effective manner. CPIC Qingdao, as the insurer, paid RMB4.89 million to the cargo receiver Bohi Co, and sought to reclaim this from the two defendants.

The first defendant, Taiei, was the registered shipowner of Bulk Aquila, and the second defendant MMSL was the bareboat charterer of the vessel.

Taiei requested that the court dismiss the plaintiff's claim against Taiei, arguing that when the cargo damage occurred Bulk Aquila was operating under the bareboat charter, and was thus under the control of MMSL. Taiei therefore should not be regarded as the carrier or actual carrier of the cargo or operator of the vessel, and should not be liable for the alleged cargo damage.

MMSL argued that the plaintiff's claim was groundless in that: (1) MMSL had exercised due diligence to make the vessel seaworthy and cargo-worthy prior to and at the time of commencing of the voyage; (2) the cargo damage was caused by high moisture content in the soybeans at the time of loading and a delay in discharge at the port of discharge, for which it should not be liable; (3) the heat damage should not be blamed on the crew's actions: the crew took all necessary precautions, and the delay at the port of discharge was out of their control; (4) the cause of cargo damage fell under the insurance exemption clauses, and so the plaintiff insurer should not have to indemnify the cargo receiver, and therefore should not be entitled to bring a claim against the defendants based on a subrogation right; and (5) the plaintiff failed to provide sufficient evidence to show the correct calculation of the amount of loss.

———*Held*, by Qingdao Maritime Court (Presiding Judge Wang Ailing) that MMSL failed to exercise due diligence to care for the cargo during its period of responsibility since the cargo holds were not ventilated properly, and was liable for 50 per cent of the damage to the cargo, in the amount of RMB2,445,000 plus interest to be paid to CPIC Qingdao.

(1) Although Taiei was the registered shipowner, the vessel was bareboat chartered to MMSL and under MMSL's possession, use and operation when the incident occurred. Therefore Taiei should not be considered the carrier and should not be liable for the damage to the cargo, and so CPIC Qingdao's claim against Taiei should be deemed inadmissible.

(2) Bulk Aquila was seaworthy and cargo-worthy before and at the time the voyage commenced. The cause of the damage, and the measurement of MMSL's level of liability, was therefore determined in relation to three measures. By taking all factors into consideration the court arrived at the decision that MMSL should bear 50 per cent of the liability.

(a) The quality of the soybeans was not suitable for carriage by sea, which was not the fault of MMSL.

(i) The measured moisture content of the soybeans exceeded the standards of measurement, and were thus outside the values considered safe for transportation.

(ii) Quarantined weeds were found in the cargo which must have been present before loading.

(iii) Although a clean bill of lading was issued, this does not mean that the soybeans were of good quality. Whether the cargo is in apparent good order or not can only be determined by expert knowledge of the cargo, and it can be determined that the master and the crew are not experts.

(b) The cargo holds were not ventilated properly by MMSL.

(i) The layer of wet, mouldy and caked cargo on the surface was caused by ship's sweat, which was the fault of the carrier as it did not ventilate the holds properly. This also caused an increase of the temperature of the cargo beneath the surface, leading to eventual heat damage.

(ii) The carrier ignored the changeable weather, temperature and humidity outside the holds, and used an insufficient measurement method to determine whether ventilation was required under these conditions.

(iii) The ventilation log showed inconsistencies and was not reliable.

(c) The delay in discharge of the cargo caused damage to the soybeans, but the delay was out of the control of MMSL.

(i) A sufficient quarantine permit was not obtained until 38 days after the vessel's arrival at the discharge port, causing delay in offloading the cargo.

(ii) MMSL chased the agent at the port of discharge and the charterers, urging them to complete berthing formalities, to mitigate any loss caused by the delay.

The plaintiff, China Pacific Property Insurance Co Ltd, Qingdao Branch (hereinafter referred to as "CPIC Qingdao"), was located at Shinan District, Qingdao City, China; the defendant, Taiei Naviera SA (hereinafter referred to as "Taiei"), was located at Panama City, Republic of Panama.

After accepting this case regarding a dispute over a contract of carriage of goods by sea filed by CPIC Qingdao against Taiei and MMSL Pte Ltd (hereinafter referred to as "MMSL") on 19 May 2020, this court applied a general procedure to try this case. Though submitted its Objection on Jurisdiction to challenge this court's jurisdiction over this case, the objection was rejected by this court and MMSL did not bring an appeal. This court held hearings for this case on 24 September, 7 December and 24 December 2020. The trial of this case has now been finalised.

[Editor's note: this case is provided by Ms Wang Ailing, Presiding Judge of this case, with due editorial work by the Editors. On 7 January 2022 the High People's Court of Shandong Province published the 2021 Shandong Province Excellent Judgments and this judgment was awarded the "First Class Prize".]

Wednesday, 30 December 2020

JUDGMENT

QINGDAO MARITIME COURT OF THE PEOPLE'S REPUBLIC OF CHINA:

I. Claims of the plaintiff and defence of the defendant

1. The plaintiff claimed as follows:

(a) that the two defendants be jointly and severally liable for the economic loss in the amount of RMB4.89 million and interest incurred thereon; and

(b) that the two defendants assume the court fee, preservation fee and other legal costs arising therefrom.

2. The plaintiff stated its facts and reasons as follows.

(1) In January 2019 Guangxi Bohi Agricultural Development Co Ltd (hereinafter referred to as "Bohi Co") purchased 64,178 mt Brazilian soybeans from Louis Dreyfus Co Brasil SA carried by M/V *Bulk Aquila* from Santarem, Brazil to a Chinese port. The soybeans were loaded on board on 31 January 2019, for which the agent issued bills of lading Nos 01, 02, 03 and 04 on behalf of the master.

(2) According to the bills of lading, the port of loading was Santarem, Brazil, the port of discharge was a Chinese port and the cargo receiver was to order. The plaintiff, CPIC Qingdao, was the cargo insurer. When *Bulk Aquila* commenced discharge at Qingdao port on 26 April 2019, the cargo was found to be heat damaged and mouldy. After a survey by a third-party inspection company, it was found that the damage was caused by the carrier/actual carrier's failure to ventilate the cargo in an effective manner. Thereafter CPIC Qingdao effected insurance indemnity in the amount of RMB4.89 million to the cargo receiver Bohi Co and obtained subrogation rights accordingly.

(3) According to the Certificate of Registry, the registered shipowner of *Bulk Aquila* was Taiei and the bareboat charterer was MMSL. The two defendants as the carrier and actual carrier should be jointly and severally liable for the plaintiff's losses. Therefore, to maintain the legitimate right and interest, the Plaintiff lodged the claim before this Court.

3. The defendant Taiei agreed that it was the registered shipowner of *Bulk Aquila*, and concluded the bareboat charter agreement with MMSL on 15 February 2013, under which *Bulk Aquila* was bareboat-chartered to MMSL with a charter period of 15 years plus minus three months. MMSL was entitled to use, occupy, control and operate the vessel and have the vessel manned, repaired and maintained during the charter period. Meanwhile,

a continuous synopsis record[1] also indicated that Taiei was the registered shipowner and MMSL was the bareboat charterer of *Bulk Aquila*. Therefore, when the cargo damage occurred, *Bulk Aquila* was still within the bareboat-charter period, and was not used, controlled or operated by Taiei. Taiei therefore states that it should not be regarded as the carrier or actual carrier of the cargo or operator of the vessel. Thus, Taiei should not be included as a qualified defendant in this case and should not be liable for the alleged cargo damage. Taiei requests this court dismiss the plaintiff's claim against Taiei. In addition to the submission of the above defence, the other defence opinions of Taiei remain the same as those of MMSL.

4. The defendant MMSL argued as follows.

(1) MMSL had exercised due diligence to make the vessel seaworthy and cargo-worthy prior to and at the time of commencing of the voyage. The alleged cargo damage should be irrelevant to the vessel. Regarding the voyage involved, *Bulk Aquila* possessed legitimate and valid ship certificates and a Certificate of Fitness for carrying bulk grain. Before loading the cargo at Santarem, the surveyor of the third-party survey company, Schutter do Brasil Ltda, had carried out cargo holds inspections on board and issued a Cargo Hold Inspection Report, stating that all cargo holds were dry, clean and in a suitable condition for loading bulk soybeans. Therefore MMSL had exercised due diligence to make *Bulk Aquila* seaworthy and cargo-worthy prior to and at the time of commencing of the voyage.

(2) The cargo damage was caused by high moisture content in the soybeans at the time of loading and a delay in discharge at the port of discharge, for which MMSL should not be liable.

(a) High moisture and inherent vice of soybeans should be regarded as the internal cause of heat damage. The moisture content of the soybeans at the time of loading was 13.23 per cent, which exceeded the safe moisture content measurement of 12.5 per cent, and was even higher than the Chinese national standard (GB1352-2009 Soybean) of 13 per cent. Meanwhile, in accordance with the Testing Report and Inspection and Quarantine Handling Notice issued by Qingdao Customs, quarantined plants (Cenchrus echinatus L, Ambrosia artemisiifolia L and other quarantine weeds etc) were found mixed in with the soybeans during inspection. That is to say, the soybeans had defects in quality at the time of loading. Where the moisture of soybeans is relatively high, other quality defects would increase the risk of heat damage.

(b) Delay in discharge should be regarded as the direct cause of heat damage, for which MMSL should also not be held liable. *Bulk Aquila* spent 49 days at sea from departure from the port of loading to arrival at Qingdao anchorage, which was normal for such a voyage. Bearing in mind the high moisture content and defects in quality of the soybeans, when the vessel arrived at Qingdao anchorage the safe storage period had already been passed and the risk of heat damage was high. If the discharge operation was commenced immediately after arrival, the cargo would not have sustained such a level of heat damage. However, the discharge was delayed for 38 days at the port of discharge. *Bulk Aquila* could not get alongside for discharge before the GMO (genetically modified organisms) certificate was provided by the cargo interests. It is clear that the delay in discharge was caused by the cargo receiver's failure to collect the GMO certificate in time or to complete the necessary import formalities.

(3) Heat damage beneath the surface of the cargo should not be attributed to the crew's actions in looking after the cargo: the occurrence and development of heat damage during the delay in discharge was beyond the crew's control. Considering that the cargo holds were a closed space and the soybeans had poor heat conductivity, even if air holes were opened for ventilation under suitable weather conditions, it could only remove/relieve the surface heat of the cargo, whilst the temperature and moisture of the soybeans beneath the surface would not be affected. Although ventilation would not have a fundamental effect on the condition of the cargo, the crew ventilated the holds when weather and sea conditions allowed. Though there were 10 days suitable for ventilation during which the crew did not ventilate the holds, such ventilation would have had no effect on most of the cargo that was beneath the surface. The heating and damage to the cargo beneath the surface should be deemed irrelevant to the reduced ventilation.

(4) As the cause of cargo damage falls under the exemption clauses as stipulated in the cargo transportation insurance, the plaintiff insurer CPIC Qingdao should not indemnify the cargo receiver and therefore was not entitled to bring a claim against the defendants based on a subrogation right. As analysed above, the damage was caused by the inherent nature of the soybeans (a strong respiration and humidity absorption ability),

[1] Editor's Note: a continuous synopsis record is a special measure under the International Convention for the Safety of Life at Sea (SOLAS) for improving maritime security at sea. According to SOLAS, all passenger and cargo ships of 500 gt and above must have a continuous synopsis record on board. The continuous synopsis record provides an onboard record of the history of the ship with respect to the information recorded therein.

inherent vice (high moisture) and poor quality (quarantined weeds) as well as the cargo receiver's fault in delay in discharge. These reasons all fell under the clauses in the insurance policy where the insurer can be exempted from liability. Sufficient grounds therefore exist for CPIC Qingdao to be exempt from liability for the damaged cargo. However, CPIC Qingdao mistakenly admitted liability under the insurance policy. Under such circumstances, CPIC Qingdao shall in no event obtain the subrogation rights to claim losses against the defendants, no matter whether the indemnity is paid to the cargo receiver or not.

(5) The alleged losses were factually and legally groundless. The survey report provided by the plaintiff's surveyor Standard Marine Surveyors & Adjusters Co Ltd (hereinafter referred to as "SMC") adopted the amount of loss calculated by the cargo receiver unilaterally, which was groundless and should not be supported by the court. The plaintiff did not provide evidence such as a "daily processing report" or a "warehousing report of the products". As mentioned in the survey report, the plaintiff did not prove the source and quality of the allegedly sound Brazilian soybeans and therefore it cannot be confirmed: (a) whether they were sound soybeans suitable for mixed processing; (b) whether there was actual loss of oil in the soybean meal; (c) that the plaintiff sustained losses as a result of extra processing costs and materials due to the mixed processing; and (d) that the cargo receiver had conducted de-weeding of the quarantine weeds, and therefore they did not distinguish the costs and fees arising from de-weeding measures and mixed processing. Thus, the plaintiff should be liable for the consequences due to its failure to provide sufficient evidence.

(6) To sum up, MMSL submitted that the plaintiff's claim is factually and legally groundless, and should therefore be dismissed by the court.

II. Evidence of the parties

5. The plaintiff submitted the following evidence: (1) four sets of bills of lading, numbered 01, 02, 03 and 04; (2) the insurance indemnity payment slip; (3) the registry information of the vessel; (4) a ventilation and temperature log; (5) cargo information; (6) one set of photos; (7) the SMC report; and (8) the subrogation (right transfer) form issued by Bohi Co. The defendants raised no objection to this evidence. The court therefore confirmed the authenticity of the same.

6. The defendants submitted the following evidence: (1) Certificate of Registry; (2) Mate's Receipt; (3) stowage plan; (4) fumigation documents; (5) temperature and ventilation log; (6) notice of readiness; (7) Storage of cereals and pulses – practical recommendations; (8) the insurance adjustment report of Qingdao Dahua Marine Surveyors & Adjusters Co Ltd (the Dahua report); (9) the Application for Disclosure of Government Information; (10) the reply letter of Dagang Customs regarding the Application for Disclosure of Government Information; (11) an EMS express delivery waybill; and (12) the survey report issued by the plaintiff in case (2017) L 72 MC No.440. The plaintiff raised no objection to this evidence. The court therefore confirmed the authenticity of the same.

7. With regards to the evidence in dispute, the court decides as follows.

(1) The insurance policy the plaintiff adduced was affixed with an official stamp, which was consistent with the payment slips and therefore was admissible by this court.

(2) The bareboat charter agreement submitted by the defendant was consistent with the registry information concerning *Bulk Aquila* and was therefore admissible by the court.

(3) Regarding the copies of the Cargo Ship Safety Construction Certificate, the Cargo Ship Safety Equipment Certificate, the Safety Management Certificate, the Document of Compliance, the Certificate of Fitness and the Cargo Holds Inspection Certificate, since they were all affixed with the ship's stamp, the authenticity of these documents was therefore admissible by the court.

(4) The emails were printed out, the authenticity of which shall be ascertained in accordance with other evidence.

(5) The delivery note, GMO certificate, application for inspection and quarantine of imported cargo, berthing notice, Customs test report, Phytosanitary Certificate, inspection and quarantine handling notice, application for disclosure of government information, reply letter of Dagang Customs, EMS express delivery waybill and disclosed documents affixed with official stamps were consistent with each other, the authenticity of which can be ascertained by this court.

(6) The photos taken on 18 and 27 March, 6 and 22 April 2019 were stored on a CD, but the carrier did not provide the original to the court, and therefore the authenticity of these photos shall be identified in accordance with other evidence.

(7) The CWA report was notarised/legalised and the CWA expert had received inquiries from the parties and the court by video link, and so the authenticity of this evidence shall be admissible.

III. The court's finding of the facts

8. Based on the parties' statements and evidence after cross-examination, the following facts are recognised by this court.

9. The cargo was carried by *Bulk Aquila* which was registered by the defendant Taiei on 6 October 2014 with Panama as its port of registry, and operated by the bareboat charterer MMSL as per the bareboat charter agreement. The vessel was a steel bulk carrier built in 2014 with gross tonnage of 38,227, net tonnage of 21,630 and five cargo holds. The vessel held complete and valid ship certificates on board, was sufficiently manned and the cargo holds were in good condition prior to and at the time of commencement of the voyage.

10. On 24 January 2019 the plaintiff issued two insurance policies for Brazilian soybeans carried by *Bulk Aquila*, under which the insured was Bohi Co. The number of the insurance policies were AQID71024119Q000142R and AQID71024119Q000277Q with cargo quantities of 21,178 mt and 33,000 mt respectively and insured amounts of US$11,471,551 and US$17,547,783 respectively.

11. On 26 January 2019 Santarem-PA as the shipper's surveyor declared cargo information to *Bulk Aquila*, which stated that the cargo should be ventilated properly during its voyage at sea as per the IMO's recommendations.

12. On 31 January 2019 the agent issued four sets of bills of lading on behalf of the master, which stated that the shipper was Louis Dreyfus Co Brasil SA, the cargo receiver was to order, the notify party was Bohi Co, the port of loading was Santarem, Brazil, the port of discharge was a Chinese port, the name of vessel was *Bulk Aquila*, the cargo on board was Brazilian soybeans in bulk loaded in hold nos 1, 2, 3, 4 and 5, the gross weight was 54,178 mt, the cargo was in apparent good condition, and the freight was prepaid.

13. On 31 January the surveyor Schutter do Brasil Ltda conducted a survey on the cargo and issued a Cargo Quality Certificate, indicating that the moisture was 13.23 per cent, lower than the maximum of 14 per cent. According to the Stowage Plan, hold nos 1, 2, 4 and 5 were all full except hold 3. On 1 February, all cargo holds were fumigated over a period of 15 days. The Fumigation Notice required no ventilation should be conducted until 15 days of ventilation and the holds should be opened at sea in order to allow aeration.

14. Regarding the ventilation of *Bulk Aquila*, the temperature and ventilation log recorded the date, weather, relative wind direction, relative wind force, sea temperature, air humidity, cargo hold temperatures, whether there was ventilation or not, and the reason for no ventilation where applicable. According to the temperature and ventilation log, the carrier only measured temperature and humidity once a day during the voyage at sea and decided whether to ventilate or not. From 08.00 to 10.00 on 18 March 2019, all hatch covers were opened for the removal of fumigants and closed immediately after. The cargo holds were ventilated from 27 March to 8 April, 10 April to 19 April, 22 April, 24 April to 26 April. The cargo holds were not ventilated on the following days: 20 and 21 April due to heavy fog, sea spray on hold no 1 on 26 and 27 February, sea spray on hold nos 1 and 2 on 28 February, sea spray on hold no 1 on 1 March, bad weather on 2 and 3 March, sea spray on hold no 1 on 16 and 17 March, bad weather on 9 April and rain on 23 April.

15. On 21 March 2019 *Bulk Aquila* arrived at Qingdao anchorage and rendered notice of readiness the same day. On 24 April Bohi Co obtained the GMO certificate and applied for inspection on 25 April. The vessel came alongside on 26 April ,commenced discharge on 28 April and completed discharge on 20 May.

16. On 27 April 2019 (before discharge), a joint survey was carried out by a third-party survey company appointed by the plaintiff and the defendants. According to the joint survey record, a layer of apparent mouldy, wet, caked, rotten and discoloured cargo was found across the surface of the cargo in all five holds, accompanied by a mouldy and rotten odour. The condition of the cargo beneath the surface remained unknown.

17. SMC issued a survey report on behalf of the plaintiff, which stated as follows.

> (1) The main cause of wet and mouldy cargo on the surface was due to a large quantity of heat and moisture discharged by microorganisms due to multiplying and respiration, and the moisture discharged would condense on hatch covers or bulkheads after encountering cold air (ship's sweat). The ship's sweat would drop on to the surface of the cargo, causing the cargo on the surface to be wet, mouldy and caked. With the rising heat and moisture, the moisture in the cargo on the surface would increase accordingly. The carrier should be liable for the occurrence of ship's sweat, as it did not ventilate the holds in a timely and effective manner.
>
> (2) The main cause of heat damage was that the soybeans on board were not suitable for long-term storage because the high moisture content and the temperature of soybeans would increase rapidly due to the multiplication of microorganisms. Because the carrier did not ventilate the holds in a timely or effective manner, a layer of caked cargo formed on the surface, which further caused the temperature of

the cargo in the middle and bottom of the holds to increase, leading to heat damage.

(3) Regarding loss of cargo, on 23 October 2019, 54,178 mt of the cargo discharged from *Bulk Aquila* was processed by mixing it with 245,500 mt of sound Brazilian soybeans by Bohi Co, yielding 233,000 mt soybean meal, 59,800 mt crude soybean oil and 56,500 mt soybean oil (Grade I). After review, the reasonable amount of loss shall be ascertained as follows:

Loss of crude soybean oil: RMB3,906,700.

Loss of refined soybean oil: RMB1,468,800.

Extra costs due to storage and transportation of soybeans: RMB30,840.

Intertek survey fee: RMB51,773.

Total: RMB5,458,113.

(4) SMC's final conclusion was that the soybeans involved were found damaged at the time of discharge and sustained heat damage to various extents. It was caused by the crew's poor ventilation of the holds. The damage should be covered by the insurance policy. After communication and negotiation between the insurer and the insured, the insurer effected RMB4.89 million to the insured for the cargo damage.

18. Dahua issued a survey report on behalf of the defendant MMSL, stating as follows.

(1) The vessel was seaworthy and cargo-worthy prior to and at the time of commencing of the voyage, and during the voyage at sea the crew measured temperatures and recorded ventilation measures taken. There were 10 days suitable for ventilation where the crew did not conduct ventilation which could have dissipated heat discharged by the surface cargo. However, ventilation would not have affected the cargo 10 cm to 15 cm beneath the surface. Therefore, lack of ventilation over those 10 days was not main cause of heat damage.

(2) The average moisture content of soybeans at the time of loading was 13.23 per cent, which was unsafe for carriage by sea. Due to the high moisture content, the soybeans would emit moisture shortly after the vessel departed from the loading port. As a result, a large quantity of moisture and heat would be generated which would result in the rising temperature of the cargo. The relatively high moisture and rising temperature would lead to multiplying of microorganisms and mould, as a result of which the soybeans would become mouldy and caked. Therefore, the inherent nature and high moisture of soybeans were the cause of heat damage.

(3) The vessel spent 87 days from departure to discharge, 38 days of which were spent waiting for discharge at the port of discharge due to the cargo receiver's failure to complete import formalities in time. The high moisture content of the soybeans meant that the cargo's safe storage period was less than 40 days. Apparent heat damage was first found during the time waiting for discharge at the port of discharge, a delay which increased the heat damage to the cargo. If the soybeans were discharged immediately after the vessel arrived at Qingdao port, the damage could have been avoided.

(4) The vessel sailed across the sea from the southern hemisphere to the northern hemisphere and the temperature during the voyage was relatively high. When the vessel arrived at Qingdao port, the temperature suddenly decreased. This created conditions in which ship's sweat would form, which would have been difficult to discharge by ventilation alone.

(5) The survey concluded as follows.

(a) A 10 cm to 15 cm thick layer of mouldy and caked cargo was mainly found on the surface. Underneath the mouldy layer, the cargo condition appeared better. The discoloured soybeans were mixed with sound soybeans and the extent of discoloration varied, which followed a typical pattern of heat damage due to the high moisture content of the soybeans.

(b) The cause of heat damage was the high moisture content of the soybeans before loading, and the inherent nature (self-heating) of soybeans. The heat damage was first found after the vessel arrived at Qingdao anchorage and worsened due to the delay in discharge. If the cargo was discharged without delay, the heat damage would have been avoided entirely.

(c) Proper ventilation can only dissipate heat discharged by the cargo on the surface: it has no effect on the cargo beneath the surface. Ship's sweat is difficult to be removed by ventilation, which would also facilitate mould growth. The high moisture content of soybeans, the high temperature at the time of loading and delayed discharge were the fundamental causes of heat damage in this case, which could not be solved by ventilation.

(d) The soybeans could still be used for production after a blending process, as the key quality parameters were not compromised. Based on the sampling result, the cargo receiver's blending process mitigated the effects of heat damage to some extent. However, as the cargo receiver apparently randomly adjusted the processing plan, the quality of the resulting products was affected and the consumption of materials would be increased. As a result, the process was not as effective as it might have been under optimal conditions.

19. According to the CWA report issued by the expert Chris Ellyatt, CWA was of the following opinions.

(1) The majority of cargo damage was caused by the condition of the cargo at loading and the subsequent delay at Qingdao anchorage. It was unlikely that the crew could have taken any further action that would have had a significant impact on the condition of the cargo at discharge. While it appeared that the cargo receiver was able to mitigate the effects of heat damage through blending (mixed processing), it was unclear that this process was as effective as it might have been under optimal conditions. CWA agreed with SMC regarding the reductions in the claim value, though it was CWA's opinion that the plaintiff should provide further supporting evidence to prove the alleged value of the claim. The master confirmed that cargo temperatures in the ventilation log were taken from the sounding pipes. The sounding pipes on this vessel were surrounded by the cargo when loaded, and therefore could provide a reasonable indication of the cargo temperature in the vicinity of the pipe.

(2) There are two possible rules which can be followed when performing ventilation. These are the "dew point rule" and the "three degree rule". The dew point rule required that the cargo holds should be ventilated when the dew point of the air outside is lower than the dew point of the air in the hold. This is achieved by measuring the dry-bulb and wet-bulb air temperatures both outside and inside the hold, and thus calculating the dew points. The decision whether to ventilate is then made by comparing the two dew points. Theoretically, this gives the most valuable information since it is a direct indication of the moisture content in the air. However, the dew point rule has one major practical shortcoming when implemented during a voyage, ie the lack of regular access to the holds. These impracticalities led to the use of the three degree rule as a workable alternative. This rule states that the cargo holds should be ventilated when the temperature of the air outside is more than 3 degrees lower than the cargo temperature. Rather than relying on measurement of the dew point in the holds, which is often impractical, the three degree rule is based upon the temperature of the cargo itself. This is taken at loading and is assumed to remain relatively constant for the duration of a normal voyage. The three degree rule is an excellent alternative to the dew point rule, providing a scientific framework for ventilation, whilst being practically feasible to carry out during a voyage.

(3) According to the three degree rule based on the cargo temperatures of 25.9 to 26.8 °C for hold nos 1 to 5, there was therefore a total of 11 days out of 105 total days of voyage/delay on which the crew should have performed ventilation of hold nos 1 to 3, but the crew did not do so. For hold nos 4 and 5, there were a total of nine days out of 105 on which the crew should have performed ventilation but did not (or six days after the charterers' instructions to do so). It must be emphasised, however, that any damage occurring as a result of lack of ventilation is, by definition, restricted to the immediate surface layer of cargo in a bulk stow, since ventilation has no effect on the cargo beneath this layer.

20. On 27 December 2019 CPIC Qingdao indemnified the insured, Bohi Co, in the amount of RMB4.89 million. On the same day, Bohi Co issued a Subrogation Right Transfer Form to the plaintiff, confirming the transfer of recovery rights to the plaintiff.

21. The two defendants applied to Qingdao Customs to disclose the information in relation to cargo declaration. The Test Report and Inspection and Quarantine Handling Notice disclosed by Qingdao Customs stated that quarantined weeds were found in 54,178 mt of the soybeans, and that Customs required the cargo receiver to remove the weeds from the soybeans.

22. It was also found out that, according to the Chinese national standard (GB1352-2009), the standard is applicable to commercial soybeans used for purchase, storage, transportation, processing and sales, and specified that the moisture content of which should not exceed 13 per cent.

23. The plaintiff lodged its claim before this court on 18 May 2020.

IV. Reasoning of the court

24. This court holds that this case concerns a dispute involving a contract of carriage of goods by sea. The cargo involved was carried by Panama-registered *Bulk Aquila* from Brazil to China. Taiei is the registered shipowner and MMSL is the bareboat charterer. As a foreign-related element is involved in the carriage contract and insurance contract, it shall be deemed a foreign-related civil case. After the case was accepted by this court, MMSL filed an Objection on Jurisdiction on the ground that the arbitration clause in the charterparty was incorporated into the bill of lading and requested the court to dismiss the plaintiff's claim; or alternatively to order the plaintiff to commence arbitration and terminate the court proceedings in China.

25. After examination, this court found that whether the arbitration clause and choice of law clause in the charterparty can be incorporated into the bill of lading is a procedural issue, which shall be determined in accordance with the law where the court is located (lex fori), ie Chinese law

shall be the applicable law to determine this issue. As the Chinese Maritime Code only provides the incorporation of a voyage charterparty into the bill of lading instead of a time charterparty, the agreement of incorporation of the time charterparty into the bill of lading would not be a valid incorporation according to the law. Thus, the arbitration clause in the time charterparty cannot be used as a basis to solve the dispute arising from the carriage. Considering the port of destination is Qingdao port, China, which is under the jurisdiction of this court, MMSL's Objection on Jurisdiction was dismissed by this court and MMSL did not bring an appeal.

26. Article 269 of the Maritime Code provides that:

> "The parties to a contract may choose the law applicable to such contract, unless the law provides otherwise. Where the parties to a contract have not made a choice, the law of the country having the closest connection with the contract shall apply."

Article 41 of the Law of the People's Republic of China on Application of Law for Foreign-related Civil Relationships provides that:

> "the parties to a contract may choose the law applicable to such contract by agreement. Where the parties to a contract have not made a choice, the law of the habitual residence of a party whose fulfilment of obligations can best reflect the characteristics of the contract or of the place having the closest connection with the contract shall apply."

27. As the parties all referred to Chinese law in court hearings, in line with article 8 of the Interpretations of the Supreme People's Court on Several Issues Concerning Application of the Law of the People's Republic of China on Application of Law for Foreign-Related Civil Relationships (I), "where the parties have referred to the law of the same country and do not have objection on the application of the law, the people's court may identify that the parties have chosen the applicable law". In addition, as the port of discharge and the place where the cargo damage was found are both in China, Chinese law shall be the law applied, it having the closest connection with this case. Therefore, Chinese law shall be the applicable law in this case.

28. The key issues in dispute will be analysed as follows. First, regarding the legal relationships between the parties.

(1) Taiei is the registered shipowner of *Bulk Aquila* and MMSL is the bareboat charterer who operates the vessel in accordance with the bareboat charter agreement. The agent issued bills of lading on behalf of the master. The issue is who shall be regarded as the carrier in this case.

(2) The plaintiff alleged that Taiei should be the carrier as it was the registered shipowner and the master was the shipowner's agent. MMSL should be actual carrier as it was the bareboat charterer. The two parties should be jointly and severally liable for cargo damage.

(3) Taiei argued that it should not be the carrier or actual carrier as the vessel was bareboat chartered to MMSL and it was under MMSL's possession, use and operation when the incident occurred.

(4) This court finds that, as per article 72.2 of the Maritime Code: "the bill of lading may be signed by a person authorised by the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier". Although Taiei was the registered shipowner, the vessel was bareboat chartered to MMSL and under MMSL's possession, use and operation. The bareboat charter information had been recorded in the ship registry information and disclosed to the public. In fact, Taiei never engaged in the operation of the vessel, and as such, the master should be regarded as MMSL's agent rather than Taiei's agent. Therefore, Taiei shall not be considered the carrier and should not be liable for cargo damage. This court finds the plaintiff's claim for damages against Taiei inadmissible.

(5) MMSL shall be the carrier of the voyage, because the agent at loading port was authorised by MMSL to issue the bills of lading for the cargo carried by *Bulk Aquila*. Article 71 of the Maritime Code provides that:

> "A bill of lading is a document which serves as an evidence of the contract of carriage of goods by sea and the taking over or loading of the goods by the carrier, and based on which the carrier undertakes to deliver the goods against surrendering the same. A provision in the document stating that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking."

Article 78.1 provides that:

> "The relationship between the carrier and the holder of the bill of lading with respect to their rights and obligations shall be defined by the clause of the bill of lading."

(6) Accordingly, Bohi Co as the holder of the bills of lading and the cargo receiver agreed to the contract of carriage of goods by sea with MMSL based on the bills of lading. The plaintiff as the cargo insurer indemnified Bohi Co according to the insurance contract and obtained the subrogation rights. Article 252.1 of Chinese Maritime Code provides that:

> "Where the loss of or damage to the subject matter insured within the insurance coverage

is caused by a third person, the right of the insured to demand compensation from the third person shall be subrogated to the insurer from the time the indemnity is paid."

Therefore, the plaintiff shall have the subrogation rights.

29. Secondly, regarding liability for damage to the cargo.

(1) Article 46 of the Chinese Maritime Code provides that:

"The responsibilities of the carrier with regard to the goods carried in containers covers the entire period during which the carrier is in charge of the goods, starting from the time the carrier has taken over the goods at the port of loading, until the goods have been delivered at the port of discharge."

Article 48 provides that:

"The carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried."

Article 51 provides that:

"The carrier shall not be liable for the loss of or damage to the gods occurred during the period of carrier's responsibility arising or resulting from any of the following reasons: … (8) act of the shipper, owner of the goods or their agents; (9) nature or inherent vice of the goods; ... (12) any other cause arising without the fault of the carrier or his servant or agent ..."

(2) *Bulk Aquila* was seaworthy and cargo-worthy before and at the time the voyage commenced. MMSL's compensation liability shall be subject to the extent of its fault after the cause of damage is determined.

30. Based on the parties' claim and defence as well as the expert's opinion and survey reports, the cause of cargo damage shall be determined in line with the following: (a) whether the quality of soybeans involved is suitable for carriage at sea; (b) whether the ventilation was proper; and (c) the damaging effect on the cargo of the delay in discharge.

31. Regarding whether the quality of soybeans involved was suitable for carriage by sea.

(1) As per article 62.1 of the Contract Law of China, the quality of soybeans in this case should be determined in accordance with the Chinese national and industrial standard. The Chinese standard (GB1352-2009) requires that the moisture content of soybeans should not exceed 13 per cent for storage, transportation, processing and sales. The Quality Certificate indicated that the moisture was 13.23 per cent, which was lower than the maximum value of 14 per cent but higher than the Chinese national standard of 13 per cent. In this regard, the plaintiff alleged that 13 per cent is a standard for storage of soybeans rather than transportation of soybeans. Different countries have different standards on this issue. Where the soybeans are tested as meeting the standards at the time of loading, the cargo quality shall be deemed to be free of defects. The defendant argued that, based on the shipping practice for the carriage of soybeans from South America to China, a moisture content of lower than 12.5 per cent is a safe value for shipping. The actual measured moisture content of 13.23 per cent exceeds not only the safety value of 12.5 per cent but also the Chinese national standard of 13 per cent. Thus, the soybeans in this case shall be deemed as having inherent vice.

(2) This court holds that the Chinese national standard of 13 per cent is not limited to storage of soybeans only, because the standard expressly states that it is for the storage, transportation, processing and sales of soybeans. Given the carriage of soybeans at sea belongs to the transportation element of this stated standard, the Chinese national standard shall be applied in this case. Therefore, this court will not support the plaintiff's allegation that it was not a standard for transportation of soybeans. As alleged by the plaintiff, the soybeans were imported from Brazil via ocean transportation and different countries have different standards. Although the moisture content exceeds 13 per cent, it does not mean they cannot be carried by sea or that cargo damage would unavoidably occur. According to Dahua's survey report, it found out that the internal cause of cargo heating was the high moisture content of the soybeans, whilst the cause and worsening of heat damage should be attributed to the delay in discharge, which can prove that the high moisture content is not the sole or direct cause of the cargo damage. The SMC surveyor also admitted in the hearing, when being questioned by the parties, that a moisture content of 13.23 per cent was relatively high. In addition, according to the Testing Report and Inspection and Quarantine Handling Notice issued by Qingdao Customs, quarantined weeds were found in the cargo, and as a result the cargo receiver was ordered by Customs to remove the weeds from the soybeans. Considering it was impossible for the quarantined weeds to enter the holds during the voyage, they must have been present before loading. Due to the existence of the quarantined weeds, the risk of heating would have been increased. Therefore, the soybeans in this case shall be deemed as having inherent vice because quarantined weeds were found.

(3) The plaintiff further alleged that since the master did not raise any question on the quality

of the cargo when the clean bills of lading were issued, it means that the carrier was aware of the quality of the cargo at the time of loading.

(4) In this view, this court holds that, as article 75 of the Maritime Code states:

> "If the bill of lading contains particulars concerning the description, mark, number of packages or pieces, weight or quantity of the goods with respect to which the carrier or the other person issuing the bill of lading on his behalf has the knowledge or reasonable grounds to suspect that such particulars do not accurately represent the goods actually received, or, where a shipped bill of lading is issued, loaded, or if he has had no reasonable means of checking, the carrier or such other person may make a note in the bill of lading specifying those inaccuracies, the grounds for suspicion or the lack of reasonable means of checking."

This is only a provision for remarks by the carrier in the bill of lading where the carrier can make a note on the bill of lading concerning the description, mark, number of packages or pieces, weight or quantity of the goods, whilst the quality of the cargo is excluded. Article 76 provides that:

> "If the carrier or the other person issuing the bill of lading on his behalf made no note in the bill of lading regarding the apparent order and condition of the goods, the goods shall be deemed to be in apparent good order and condition."

Where the goods the carrier received are not in apparent good order, the carrier has right to make a remark on the bill of lading. Where the carrier does not make any remark, it should be deemed that the carrier has waived the right of clausing and would undertake all consequences arising therefrom. Whether the cargo is in apparent good order or not can only be determined by expert knowledge of the cargo, and it can be determined that the master and the crew are not experts. The issuing clean bill of lading shall be based on regular observations or knowledge and other regular or reasonable inspection methods, but the quality of cargo cannot be determined by the above. Meanwhile, when the bill of lading was issued, the master did not have access to the Quality Certificate. Therefore, although the clean bill of lading was issued, it does not mean that the soybeans were of perfect quality.

(5) Article 51.9 of the Maritime Code provides that "the carrier shall not be liable for the loss of or damage to the goods occurred during the period of carrier's responsibility resulting from the nature or inherent vice of the goods". Considering that soybeans with a high moisture content would demonstrate high respiration during the voyage which may cause self-heating in the cargo, this court holds that a high moisture content mixed with quarantined weeds shall be deemed as inherent vice. However, it shall be emphasised that although high moisture and the quarantine weeds are relevant to the cargo damage, it does not mean that soybeans cannot be carried at sea because they are not the direct cause of the cargo damage. The reason for the cargo damage should be determined by considering the facts regarding ventilation, duration of the voyage, etc. The aforesaid inherent vices can only mitigate the carrier's liability to some extent. However, to what extent the carrier's liability can be reduced shall be subject to other reasons.

32. Regarding whether the ventilation was sufficient in this case.

(1) Although the soybeans in this case had a high moisture content above the Chinese national standard, and the cargo was mixed with quarantined weeds, based on the surveyors' answers in the court hearing, soybeans can be transported to the port of destination without damage if they are carried under suitable temperature and humidity conditions. The carrier should properly and carefully carry the cargo during its period of responsibility with due consideration of the nature of the soybeans in this case as well as common shipping practice. The defendant should have taken measures such as measuring the temperature and humidity levels inside and outside the holds, and opening air holes or hatch covers to ventilate the holds when weather/sea conditions allowed.

(2) In respect of the effect of ventilation on the prevention of cargo damage, SMC held that the layer of wet, mouldy and caked cargo on the surface was caused by ship's sweat, which was the fault of the carrier as it did not ventilate the holds properly. Due to the carrier's failure to provide proper ventilation, a caked layer was formed on the surface which further resulted in an increase of the temperature of the cargo beneath the surface, leading to eventual heat damage. Dahua argued that considering soybeans in bulk are a poor conductor of thermal energy, ventilation should have no effect on dissipating heat discharged by the cargo beneath the surface. Therefore, the reduced ventilation hours may only concern the layer of damaged cargo on the surface, whilst the cargo beneath the surface would not be affected by ventilation. The CWA expert stated in his report that natural ventilation would have no effect the cargo. However, when being questioned in the hearing, the CWA expert did not deny that ventilation would have an effect on the cargo on the surface. Therefore, though

natural ventilation would not prevent the self-heating of soybeans, it can keep the temperatures inside and outside the holds in a balanced condition and reduce the extent of cargo damage.

(3) The temperature and ventilation log recorded the date, weather condition, relative wind force, relative wind direction, sea temperature, air humidity, temperature inside each hold, whether ventilation was applied and its reason. According to the ventilation log, the carrier only measured the temperature and humidity once a day and decided whether to ventilate accordingly. The Fumigation Notice required no ventilation should be conducted until 15 days after fumigation exposure and the holds should be opened on the sea in order to allow aeration. The cargo holds were fumigated on 1 February and should be opened for ventilation on 16 February after 15 days. However, the vessel did not ventilate the holds from 16 February to 26 March. According to the ventilation log, the cargo holds were ventilated except the following days: bad weather on 2 and 3 March, sea spray on hold no 1 from 2 February to 1 March and from 16 March to 17 March, and sea spray on hold no 2 on 28 February.

(4) To clarify, the defendant argued that the crew ventilated the holds strictly in accordance with the three degree rule. This rule states that the cargo holds should be ventilated when the temperature of the air outside is more than 3 degrees lower than the cargo temperature at the time of loading. However, the three degree rule is not the sole applicable rule to determine ventilation or not. The Dahua report stated that the crew may decide ventilation or not under either the dew point rule or three degree rule. The dew point rule states that the cargo holds should be ventilated when the dew point of the air outside is lower than the dew point of the air in the holds. After the xamination of the surveyor appointed by the defendants, it was confirmed that the three degree rule is applicable to cargo with a constant temperature during the voyage, which is consistent with the CWA expert's statement that "the Three Degree Rule is based upon the temperature of the cargo itself and this is taken at loading and is assumed to remain relatively constant for the duration of a normal voyage".

(5) With respect to the soybeans involved, considering the high moisture content and long duration of the voyage, more effective measures should have been taken to measure the cargo temperature. Apparently, the crew only measured the cargo temperature via sounding pipes once a day, which was not sufficient to reflect the frequent variations in the temperature/humidity/weather outside the holds during the voyage. This means that the defendant did not exercise due diligence in its care of the cargo. Moreover, both the Dahua report and CWA expert report stated that there were several days on which the crew should have performed ventilation in accordance with the three degree rule, but did not.

(6) Therefore, this court finds that the cargo holds were not ventilated properly based on the following reasons.

(a) The cargo holds should have been ventilated but were not during duration of the voyage (from 16 February to 21 March). On 26 January 2019 Santarem-PA as the shipper's surveyor disclosed cargo information to *Bulk Aquila*, according to which the cargo holds should have been ventilated properly during voyage at sea as per the IMO's recommendations. The Fumigation Notice also required ventilation after 15 days of exposure and the holds should have been opened on the sea in order to allow aeration. However, the carrier did not ventilate the holds in line with the above requirement, which was clearly improper.

(b) The carrier ignored the changeable weather, temperature and humidity outside the holds but merely ventilated the holds in accordance with the three degree rule, ignoring the fact that the temperature measured via sounding pipes was higher than the temperature measured at the time of loading.

(c) The cargo holds should have been ventilated according to the three degree rule but were not from 22 to 26 March.

(d) When the vessel stayed at the anchorage waiting for discharge from 27 March to 26 April, the cargo holds were not opened for ventilation. According to the CWA report, "the hatch covers were opened at the request of CWA to maximise ventilation inside the holds". It can prove that the hatch covers could be opened for maximum ventilation when the vessel stayed at Qingdao anchorage.

(e) The ventilation log is not reliable, because it records a date of 1 July 2016, but the voyage was conducted in the first half of 2019. It is an editable spreadsheet in which the temperature was recorded as ranging from 33 to 36°C on 1 February whilst the cargo temperature at the time of loading was only 25°C. It is illogical that the sounding pipe temperatures could rise 10 degrees overnight.

(f) Based on the above, the court holds that MMSL did not exercise due diligence to care for the cargo as it did not ventilate the holds properly during its period of responsibility. Therefore, the court finds that MMSL should be liable for damage to the cargo in this respect.

33. Regarding the effect on the cargo as a result of delay in discharging.

(1) The soybeans are genetically modified goods imported from Brazil which should be subject to statutory inspections and quarantine. Article 33 of the Regulations on Administration of Safety of Agricultural Genetically Modified Organisms (2017 Amendment) provides that

> "When introducing agricultural genetically modified organisms from outside the territory of the People's Republic of China or exporting agricultural genetically modified organisms to the People's Republic of China, the introducing unit or the company outside the territory of China shall make a declaration for inspection and quarantine to the exit-entry inspection and quarantine agency at the port on the strength of the safety certificate of agricultural genetically modified organisms issued by the competent agricultural administrative department of the State Council and the relevant documents of approval. Only for those passing the quarantine an application may be made to the Customs for going through relevant formalities."

Article 37 provides that:

> "where agricultural genetically modified organisms are imported from abroad, without the GMO certificate and approval documents issued by the Agricultural Administration Department or inconsistent with the certificate or approval documents, the cargo imported should be returned or destroyed."

Meanwhile, the Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine and Regulations for the Implementation of the Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine also provide that the cargo interests should complete inspection and quarantine formalities before the sales contract is concluded.

(2) *Bulk Aquila* arrived at Qingdao anchorage on 21 March 2019, but Bohi Co did not obtain the Inspection and Quarantine Permit until 25 April, which resulted in a 38-day delay to discharge. Delay in completion of import/quarantine/inspection formalities is the direct cause of delay in discharge, for which Bohi Co shall be at fault. While waiting for discharge, MMSL entered into email exchanges with the agent at the port of discharge and the charterers, chasing them to complete berthing formalities. Moreover, considering the discharge was only delayed for 38 days, MMSL had a limited right to dispose of the cargo within such short time. Except ventilating cargo holds properly, it was difficult for MMSL to take other reasonable or effective measures to mitigate loss. Therefore, MMSL shall not be considered at fault in this regard. In addition, considering *Bulk Aquila* is simply a bulk carrier for the carriage of goods, it cannot be used as a warehouse to store bulk soybeans for a long time. The duration of the voyage increased from 49 days sailing from Brazil to Qingdao, China (from 1 February to 21 March 2019) to 87 days due to another 38 days' stay at Qingdao anchorage waiting for discharge. Therefore, the delay in discharge should be regarded as contributing to the cargo damage.

In summary, the safe carriage of soybeans at sea is subject to the nature of soybeans, the duration of the voyage, ventilation and sea conditions, etc. In this case, the cargo had a relatively high moisture content and there were quarantined weeds mixed in cargo holds, which suggests the cargo possessed inherent vice, but this does not mean the cargo was not suitable for carriage by sea; the carrier had not exercised due diligence to care for the cargo as the ventilation measures were not proper, which contributed to the damage to the cargo; and the 38-day delay in discharge at Qingdao anchorage also contributed to the damage to the cargo. By taking all factors into consideration, the court holds that MMSL shall bear 50 per cent of the liability for damage to the cargo.

34. Regarding how to determine the quantum of loss.

(1) Article 55 of the Maritime Code provides that "the amount of indemnify for the damage to the goods shall be calculated on the basis of the difference between the values of the goods before and after the damage, or on the basis of the expenses for the repair. The actual value shall be the value of the goods at the time of shipment plus insurance and freight".

(2) The plaintiff suggested that the loss could be mitigated by mixed processing (by mixing sound soya beans with damaged soya beans), which is recognised as the best loss mitigation method by Dahua's surveyor and CWA's expert. Thus, the plaintiff's attempt at loss mitigation can be admitted. However, both the Dahua surveyor and CWA's expert were of the opinion that the amount of loss calculated in the SMC report was groundless and should not be supported by the court.

(3) This court holds that the SMC report was issued by a qualified surveyor who accepted inquires in the hearing. The Dahua report and CWA's expert also recognised the Plaintiff's blending processing method and its efforts for mitigating loss. Meanwhile, the Dahua surveyor and CWA's expert also participated in the sampling of the blending process of the soybeans,

and they had questions about the consumption of materials and loss mitigation effect. Since the defendants did not provide solid evidence to the contrary, this court finds the amount of loss determined in SMC's report reasonable and admissible.

(4) According to the SMC report, Bohi Co processed 54,178 mt of the soybeans discharged from *Bulk Aquila* by mixing it with 245,500 mt of sound cargo on 23 October 2019, yielding 23,300 mt of soybean meal, 59,800 mt of crude soybean oil and 56,500 mt of Grade I soybean oil. Based on this, the reasonable amount of loss shall be measured as follows:

Loss of crude soybean oil: RMB3,906,700.

Loss of refined soybean oil: RMB1,468,800.

Extra costs due to storage and transportation of soybeans: RMB30,840

Intertek survey fee: RMB51,773

Total: RMB5,458,113.

After negotiation and communication with the insurer, it was confirmed that the insurer shall effect indemnity in the amount of RMB4.89 million to the insured. This court finds that RMB4.89 million is a necessary and reasonable restoration cost and therefore supports the plaintiff's claim for this amount of loss.

V. Judgment of the court

35. In summary, this court holds that MMSL failed to exercise due diligence to care for the cargo during its period of responsibility since the cargo holds were not ventilated properly, and therefore it should be liable for damage to the cargo. Considering both parties' faults, the court finds MMSL 50 per cent liable for the damage, ie MMSL shall compensate the plaintiff for cargo damage in the amount of RMB2,445,000 plus the interest incurred from the date of claim on 18 May 2020. Pursuant to articles 46, 48, 51, 55, 71, 72.2, 75, 76, 78.1, 252.1 and 269 of the Maritime Code, article 62 of the Contract Law of the People's Republic of China, article 41 of the Law of the People's Republic of China on Application of Law for Foreign-related Civil Relationships, article 8 of the Interpretations of the Supreme People's Court on Several Issues Concerning Application of the Law of the People's Republic of China on Application of Law for Foreign-Related Civil Relationships (I) and article 64 of the Civil Procedure Law, the judgment is made as follows.

(1) MMSL shall compensate the plaintiff for damage to the cargo in the amount RMB2,445,000 plus interest accrued thereon (to be calculated as per the LPR interest published by the National Interbank Center from 18 May 2020 to the date of payment by MMSL).

(2) The plaintiff's claim against Taiei shall be dismissed.

36. If MMSL fails to perform its payment obligation of the adjudicated amount to the plaintiff within the designated period, the interest for delayed payment should be double paid as per article 253 of the Civil Procedure Law of the People's Republic of China.

37. The court fee for accepting the case is RMB45,920, for which RMB22,960 shall be undertaken by the plaintiff and RMB22,960 shall be undertaken by MMSL.

38. If dissatisfied with this judgment, a Statement of Appeal may be submitted to this court by the plaintiff within 15 days from the date of service of this judgment, and by the defendants within 30 days from the date of service of this judgment, for appeal to the Shandong High People's Court. The Statement of Appeal shall be submitted through this court, and copies of the same shall be provided according to the number of persons in the opposite party.