

SEA VENTURE

JANUARY 2021



1. Federal Judge Upholds Arbitration Clause



Do you deal with crew claims in the United States? In this article, Stephanie Hayward reports on an interesting development and explains that pursuant to a recent Federal Court decision, federal law does not need to be applied to issues relating to the enforcement of arbitration clauses, and that state law can apply.

2. Sandy Struthers-An Appreciation



Read our appreciation of the life of Sandy Struthers, the former Chairman of Steamship Mutual who died recently.

3. Steamship Mutual News



In our news section we bring you information about items of interest at the Club and in this edition you can read about our Steamship Mutual Extranet and our partnership with Mental Health Support Solutions (MHSS). We hope you enjoy our newsletter and look forward to seeing you in 2021.

Federal Judge Upholds Arbitration

By Stephanie Hayward



The enforceability of arbitration clauses in US seafarers' employment contracts, where the performance of the contract was outside the United States has been discussed in an earlier article. [Click to see article](#)



A recent Federal Court decision may be an opening to enforce arbitration clauses in US seafarers' contracts where performance of the contract is within the United States and between US Citizens.

FFA

The Federal Arbitration Act ("FAA") allows for a seafarer's claim to be arbitrated, however an agreement to arbitrate, which is subject to a relationship which is entirely between citizens of the United States, is deemed not to fall under the New York Convention ("the Convention") unless:

"that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states"

he had never read through the document

Recent Decision of the United States District Court of New Jersey

In the federal court decision in the case of *Anthony Kozur v F/V Atlantic Bounty, LLC Et al*, [Civil Action no. 18-08750] of 18 August 2020 the Federal Court found that federal law does not need to be applied to issues relating to the enforcement of arbitration clauses and that state law can apply.

Background

Anthony Kozur ("Plaintiff") was a commercial fisher and had been working for the defendants since 2009. For every trip, the plaintiff signed a manifest which he knew to be an employment agreement. The manifest contained an arbitration clause. The manifest comprised a number of pages, and for the relevant trip the manifest was on the galley table open at the signature page. The plaintiff was aware that the document contained terms, but admitted that he had never read through the document.

During the trip the plaintiff was injured when



he slipped and fell, twisting his back. He filed a complaint in the District Court of New Jersey alleging Jones Act Negligence, Unseaworthiness and Maintenance and Cure. The defendant filed a motion to compel arbitration pursuant to the arbitration clause in the employment contract.

Defendant's Motion to Compel Arbitration

The court considered whether there was an agreement to arbitrate and whether the dispute was one that fell within the scope of that agreement.

Agreement to Arbitrate

On this issue the court was satisfied that there was an agreement to arbitrate and the dispute fell within the scope of the agreement. The plaintiff could read English, was aware the document was an employment agreement and included a number of pages that contained

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terms. The plaintiff however admitted that he had not read the document and had never seen the arbitration clause. The court considered *Atalese v. U.S. Legal Servs. Grp.*, [L.P., 99 A.3d 306, 313 (N.J.2014)] which found that the words that compose an arbitration agreement needed to be a clear and unambiguous confirming that the party was choosing to arbitrate the disputes rather than have them dealt with in a court of law.

The court found that the parties had an agreement to arbitrate

The court found that the arbitration agreement in the manifest signed by the plaintiff, but not read, was clear and unambiguous and confirmed that in signing the manifest, the plaintiff was giving up his right to a trial by judge or jury and the “...language is *more than sufficient for a valid and enforceable arbitration clause....*”

The court was also satisfied that the dispute fell within the scope of the agreement and the arbitration clause also stated that the plaintiff was

“agreeing to, arbitrate any dispute arising from his work as a crewmember”.

Enforcement of the Arbitration Clause under the FAA

The FAA provides for arbitration of maritime transactions or contracts. However “*maritime transactions*” do not include contracts of employment involving seafarers. In the circumstances, the plaintiff’s employment contract was found to be exempt from enforcement under the FAA.

The arbitration clause in the contract provided

“if the agreement to arbitrate is determined to be exempt from the enforcement under the Federal Arbitration Act, the law of the State of New York shall be applied in determining the validity and enforceability of this agreement”

The court found that the parties had an agreement to arbitrate under both New York and New Jersey law.

Enforceability of the Arbitration Clause under State Law

The plaintiff submitted that the FAA prohibited enforcement of the arbitration clause under state law and further that the arbitration clause was not enforceable under New Jersey law. However the arbitration clause provided for the laws of the state of New York apply.

In both New Jersey and New York, courts have held there to be no language in the FAA that explicitly pre-empts the enforcement of state arbitration statutes.

The court referred to *Mitsubishi* [473 U.S at 628] in which the First Circuit stated that

“By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum”

The court was also required to give consideration as to whether the requirement for uniformity of admiralty law precludes state law from compelling arbitration of a seafarer’s claim. The court found that the general requirement of uniformity does not preclude application of state law to the issue of arbitration. The court therefore found that there was no reason to preclude enforcement of the arbitration clause under state arbitration law. In the circumstances, the defendant’s motion to compel arbitration was granted.

Discussion

The case suggests that federal law need not be applied to issues concerning the enforceability of an arbitration clause in a seafarer’s employment contract, and that state law can apply. Whilst this verdict from the District Court of New Jersey does not amount to binding precedent, it may still be persuasive to other Federal District Courts.

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Members should therefore carefully consider arbitration clauses in employment contracts and ensure they are clear and unambiguous, and make clear that the seafarer is giving up their right to a trial by judge or jury. To ensure that there can be little dispute that the seafarer was not aware of the contents of the contract, employers may wish to have the seafarer sign or initial each page of the contract, including the page setting out the arbitration clause. Having such a procedure in place would, of course, require careful scrutiny of the returned contract to ensure all of the relevant pages had indeed been initialled.

If you have any questions about the article please email stephanie.hayward@simsi.com

Sandy Struthers-An Appreciation



It is with great sadness that we report the death of former Steamship Mutual Chairman Sandy Struthers at the age of 91. We offer his daughters and wider family our condolences, and look back with appreciation on his many years of devoted service to the Club.

For Alastair James Struthers (always known as Sandy), shipping was part of his heritage. The family business, J&A Gardner, was a well established name in Scottish shipping, founded in 1860 and at its peak had around a dozen coasters, all named after Celtic saints, mainly carrying stone from their quarries in Ballachulish. They joined Steamship Mutual in the 1920s, the start of a long association with the Club. Sandy's father A F Struthers was a Committee member in 1933, eventually becoming Chairman. Sandy joined the Board in 1963 and was subsequently Chairman of the Clubs and the Trust.

Sandy was Chairman of Caledonian MacBrayne, the Scottish ferry company, serving the Highlands and Islands as well as further afield. In the 1980s they secured a long term contract from the British government to supply the Falkland Islands and South Georgia, after the Falklands war.

Sandy contributed a wealth of experience to the Club. He was generous with his time, and one of his great skills, so important to a P&I Club, was his ability to see the bigger picture. He encouraged the Club to grow, leading to expansion in South America and the ultimate establishment of a Steamship office in Rio, now celebrating its 35 year anniversary.

Like his father before him, Sandy rose to be Chairman of Steamship Mutual in 1986. He was held in great esteem both for his work and his humour by his fellow Directors and the Managers. We are grateful for his time and commitment to the club over the years.

Sandy had a love for racing and held positions as deputy Senior Steward and chair of the Disciplinary Committee of the Jockey Club.

He was also one of the life presidents of the National Horseracing College.

Sandy Struthers was part of Steamship Mutual for many years. We will miss him but will remember with gratitude and warmth his devotion to the Club and his abiding good nature.





Extranet = Extra Convenience

The Steamship Mutual Extranet is a valuable tool for both Members and Brokers. The Cover Documents section includes Certificates of Entry, Blue Cards and MLC certificates check your claims record.

In the Underwriting Reports section you will find information about loss ratios, release calls and claims developments. You can access your statements and invoices on the Accounting page and find contact details for the people you deal with on My Team. The Steamship Mutual Extranet is not just for renewal time, it is a useful tool year round. For more details, and to see a brief film showing the capabilities of the extranet, go to the Home Page of the Steamship Mutual website.

<https://www.steamshipmutual.com/>



Mental Health Support Solutions (MHSS)

The Covid-19 pandemic has highlighted the importance of seafarers, but their skilled and difficult jobs can also take their toll on mental health. Steamship Mutual has partnered with Mental Health Support Solutions to allow crew members on Members' entered vessel free access to confidential and professional psychological support. Members' crew can access one-to-one confidential counselling whether they are on board or ashore. For more information see the Steamship website

[Click to see the webpage](#)