Quadrant CHAMBERS

Quadrant on Shipping

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EDITORIAL by Poonam Melwani KC

We are pleased to share the seventh edition of Quadrant on Shipping, which we hope you will find interesting and informative.

The past year has seen significant developments across the maritime world – legally, commercially, and geopolitically. From the continuing impact of conflict in key shipping regions to evolving regulatory frameworks and major judicial decisions. Against that backdrop, the shipping industry continues to demonstrate resilience and agility.

This edition includes a summary of key developments, as well as articles about some of the cases that have shaped the market over the last 12 months. As in previous years, many of the articles are written by counsel who appeared in the cases, highlighting the breadth and depth of Quadrant's involvement across the sector.

Of course, much of shipping litigation plays out before arbitral tribunals rather than the judiciary. Quadrant members have been involved in novel issues arising from sanctions legislation and the regular addition of new designations, shipbuilding disputes resulting from the huge increase in orders over recent years, ship performance disputes and much more. Whilst the new Arbitration Act 2025 has not diluted the high hurdle for appeals from Arbitration Awards, it *may* be the case that there is a greater judicial willingness to grant permission to appeal with several of the articles in this publication concerning section 69 appeals.

Outside of the courtroom, we are delighted to continue our involvement in industry events in London and around the world. Quadrant is proud to support and sponsor **London International Shipping Week 2025** with this year's theme of "London: Managing the winds of change in global shipping". Members of Quadrant will be speaking at and attending a variety of events over the course of the week and we hope to meet and catch up with many of you in person. Early next year we are sponsoring the **International Congress of Maritime Arbitrators 2026 (ICMA XXIII)** being held in Singapore. We look forward to welcoming you to the many seminars and events hosted by Chambers, including of course, our annual **Shipping Review of the Year**, taking place in February 2026, when we will reflect on the year just gone, and consider what lies ahead.

Key in the year just gone has been the continued support of our clients and colleagues. Thanks to you we have continued to grow with several new junior tenants and lateral hires, have been involved in challenging and interesting cases and have again been recognised with short-listings and awards at all levels.

Thank you for the trust you have put in us. We have greatly enjoyed working with you and hope that we have consistently shown you the excellence, respect, collaboration and good judgment that we are committed to delivering.

Poonam is Head of Quadrant Chambers, she practises commercial, insurance, energy and shipping law, providing advisory and advocacy services.

Praised as "*clever, imaginative and user-friendly ... diligent and fights very hard for her clients*" and "*Sagacious, very easy to work with, discerning and clear sighted*" Poonam has been ranked as a 'Leading Silk' over many years by the Legal Directories and was announced as Shipping Silk of the Year at the Chambers & Partners UK Bar Awards 2024.

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Shipping – A Year in Review

Authors: Conor Fenton-Garvey, Jamie Farmer & Michael Nguyen-Kim

The last year has been an eventful one, with continued economic and geopolitical uncertainty creating both challenges and opportunities for businesses operating in the shipping industry. Likewise, a slew of new cases and legislative reforms generated significant changes to both principle and practice.

As for geopolitical developments, the most dramatic has undoubtedly been the disruption caused by the Israel-Palestine conflict, which substantially reduced shipping activity in the Red Sea as a result of several attacks on merchant vessels by Houthi rebel groups. This resulted in a substantial and sustained increase in freight rates over the course of 2024. This more than counteracted the influx of additional tonnage which had been ordered across the industry during the COVID-19 pandemic. It is unclear, however, whether rates will hold up in the coming year, given the resurgence of protectionist economic policies amongst major economies such as the United States, which may result in a downturn in international trade.

The continued instability around the Red Sea, hot on the heels of the Russia-Ukraine War and the COVID-19 pandemic, has given rise to various disputes. For example, ***The Rubymar*** [2025] EWHC 664 (Comm) is the first Commercial Court decision arising from Houthi attacks (analysed below by Guy Blackwood KC and Robert Ward on page 9) and concerned an asymmetrical jurisdiction clause in an insurance policy. The key issue in dispute was whether English proceedings, brought under the jurisdiction clause, should be stayed in favour of Cypriot proceedings initiated by the assured.

As for COVID-19, the decision of Henshaw J in ***The Sagar Ratan*** [2025] EWHC 193 (Admiralty), handed down in February 2025, was the first time the English court has considered the widely used BIMCO Infectious or Contagious Diseases Clause for Time Charter Parties 2015 ("the BIMCO Clause") and, in particular, the meaning of the phrase "Affected Area". Henshaw J held that an "Affected Area" would include a port or place where (i) the risk of quarantine or other restrictions is one of general application arising from a qualifying disease, such as a blanket requirement to quarantine all vessels for 14 days regardless of test results, or (ii) there is a risk of quarantine or other restrictions because of the relevant vessel having previously visited a port affected by the Disease. This decision will no doubt be of great practical utility in dealing with the myriad of claims arising out of the disruption occasioned by the COVID-19 pandemic.

In addition, the past year has also brought the typical stream of authorities concerning novel points of shipping law. Arguably the most important decision of last year was that of the Supreme Court in ***The Giant Ace*** [2024] UKSC 38, which concerned the long-debated question of whether the one-year time bar in Article III Rule 6 under the Hague/Hague-Visby Rules applies to misdelivery and other breaches occurring after discharge of the goods. The Supreme Court held that under both the Hague and Hague-Visby Rules, Article III Rule 6 operated as a time bar in respect of all breaches of duty on the part of the carrier, including misdelivery of the goods, up to and including delivery of the goods.

Also handed down by the Supreme Court this year was the long-awaited decision in ***The MSC Flaminia*** [2025] UKSC 14. Here, the Supreme Court decided that the 1976 Limitation Convention does permit a charterer, whose right to limit arises

because it falls within the definition of "shipowner", to limit its liability in relation to claims by the actual owner in respect of losses suffered by (and only by) the owner. The appellant time charterer had sought an order that it was entitled to limit its liability to the owner of a ship, the respondent, which arose out of an explosion on the MSC Flaminia that took place in July 2012 as a result of the loading of a dangerous cargo of DVB. The owner sought compensation for various costs incurred following the explosion, including costs relating to decontamination and discharge of cargo, and removing waste and firefighting water from the ship's hold. As well as rejecting the Owners' argument that the Charterer could not limit its liability, the court gave some important clarity on the scope of Article 2.1 (see Tom Griffiths' article on page 11).

Indeed, the past year has been somewhat of an *annus mirabilis* for limitation claims, with two further notable decisions in the area being handed down by the High Court. Firstly, in a case arising out of the sinking of the X-Press Pearl off Sri Lanka in 2021, the High Court was asked to consider the scope of the phrase "*charterer … of a seagoing ship*" in the definition of "shipowner" under Article 1(2) of the 1976 Convention (***Sea Consortium Ltd and Others v Bengal Tiger Line Ltd Pte and Others*** [2024] EWHC 3174 (Admiralty)). The case confirmed the decision of Teare J in ***The MSC Napoli*** [2008] EWHC 3002 (Admlty) that slot charterers are included within the Article 1(2) definition, so that there is no requirement that the 'charterer' in question has the right to use or direct the use of the entire cargo carrying capacity of the ship. It should normally be sufficient for a party to be considered an Article 1(2) 'charterer' that its relevant contract obliges an owner or disponent owner to make part of the carrying capacity of a ship available to that party for the carriage of goods which that party will have contracted, or will be obliged to contract, to undertake as carrier.

If that wasn't enough, Cockerill J's decision in ***Réseau de Transport d'Électricité v Costain Ltd & Others*** [2025] EWHC 73 (Admlty) provides an important framework for the application of cause of action estoppel and abuse of process in limitation claims (discussed by Chirag Karia KC and Jakob Reckhenrich in their article on page 16).

Finally, as for legislative reform, the big development was of course the enactment of the Arbitration Act 2025 (the "**2025 Act**"), which received Royal Assent on 24 February 2025. The 2025 Act applies to arbitral proceedings (and related court proceedings) commenced after 1 August 2025 and amends the Arbitration Act 1996 ("**the 1996 Act**") in a number of key respects. One welcome amendment is that an arbitral tribunal can now issue an award on a summary basis on a claim, defence or issue under s. 7 if that claim, defence or issue has no real prospect of success. More controversial has been s. 11. Where a party has objected to the arbitral tribunal's substantive jurisdiction under s. 67 of the 1996 Act and the tribunal has already ruled on that objection, s. 11 provides that for such cases procedural rules of court may be introduced to prevent grounds of objection or evidence not previously before the tribunal from being introduced (unless the applicant could not have done so through reasonable diligence) and to prevent evidence that was heard by the tribunal from being re-heard by the court.

As is inevitable, many of the developments arising out of the 2025 Act and the cases above have prompted debate. This is a good thing. The constant stream of new decisions and reforms, and the vitality with which they have been discussed, ensures that English shipping law remains vibrant and flexible, enriched by the contributions of its practitioners and responding aptly to the changing realities of global commerce.

This article was orginally produced for Chambers & Partners UK. Quadrant Chambers are ranked as a band one leading shipping and commodities set with Chambers UK Bar and Chambers Global.

Conor joined Quadrant Chambers in October 2024, following the successful completion of his pupillage. He accepts instructions across Chambers' core areas, including commercial litigation, civil fraud, shipping, insurance, banking and commodities. Conor is particularly interested in insurance work, having undertaken a secondment in DWF's marine insurance team. Conor is currently on secondment at Kennedys advising on marine insurance matters.

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Jamie joined Quadrant Chambers in October 2024 following his successful completion of pupillage. He accepts instructions, led and unled, across Chambers' core practice areas and beyond, including shipping, energy, commodities, insurance, aviation, banking and commercial dispute resolution.

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Michael joined Quadrant Chambers in October 2024 following the successful completion of pupillage. He practices across all of Chambers' core areas. Since commencing practice, Michael has been instructed as a junior in a number of high-profile matters. These include a six-day Admiralty Court trial regarding the recoverability of charges under a port's standard terms (Port of Sheerness Ltd v Swire Shipping Pte Ltd [2025] EWHC 7 (Admlty), a week-long ad-hoc arbitration concerning a US$15m guarantee for the purchase price of a grain supply contract, and a pending SIAC arbitration regarding the construction of a fleet of LNG carriers (worth c. US$1b).

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The Taikoo Brilliance [2025] EWHC 1878 (Comm)

Authors: Chris Smith KC, Maya Chilaeva & Sam Mitchell

This was the hearing of two s. 69 appeals, each of which raised a point of general importance under the Hague / Hague-Visby Rules ("HVR"), namely:

1. Whether proceedings brought solely to obtain security amount to a "suit" for the purposes of the one-year time bar in Article III,6; and
2. What must be "stated" on the bill of lading for cargo to be "deck cargo" within Article I(c).

The context for these issues was a dispute over whether the owners of ***TAIKOO BRILLIANCE*** were liable under four bills of lading for the misdelivery of a cargo of timber. The owners contended that the claim was time barred under Article III,6 of the HVR. The cargo interests refuted this on the basis that: (a) proceedings to obtain security had been commenced in time; (b) some of the cargo was carried on deck such that the HVR did not apply at all to that cargo.

Issue 1: What counts as a "suit"?

Cargo interests arrested a sister ship in Singapore to obtain security. Liability was to be determined in London arbitration, commenced more than a year after the cargo was discharged.

Arguably, there was already authority for the proposition that "suit" means proceedings capable of deciding liability on the merits: ***The Leni*** [1992] 2 Lloyd's Rep 48 ("to enforce the claim"); ***Thyssen v Calypso*** [2000] 2 Lloyd's Rep 243 (arrest/security alone does not stop time; proceedings must remain "valid and effective").

The Court, although approaching the question from first principles (commercial certainty , finality and allowing owners to "clear their books"), confirmed this. "Suit" means proceedings capable of determining liability; steps taken solely to obtain security do not stop time running for the purposes of the time bar.

Issue 2: What is a sufficient "deck cargo" statement?

Two of the four bills stated that some cargo was carried on deck and identified the amount, but not which exact parcels were being so carried. Owners argued that, where cargo is part on/part under deck, Article I(c) requires the bill of lading to identify the precise parcels carried on deck; cargo interests asserted that a statement of quantity was sufficient.

The Court declined to lay down a bright-line rule. It held that the arbitrator was entitled to treat the statements on these bills (recording the number of pieces carried on deck) as sufficient on the facts. The judgment notes that best practice may call for greater detail – particularly where cargoes are heterogeneous or commingled – but the Rules themselves do not require a uniform approach in every case.

Key take-away points for practitioners:

- Article III,6: to stop the one-year time bar, proceedings must be capable of determining liability. An arrest for security alone will not constitute a "suit".
- Article I(c): whether or not goods are "deck cargo" is a fact-sensitive enquiry. For homogeneous cargoes, stating quantity may be enough; for mixed cargoes, parties should expect closer scrutiny and consider identifying units stowed on deck more precisely if they wish to exclude them from the definition of "goods".

NB – the question of permission to appeal on both of the above issues is yet to be determined.

Counsel: Chris Smith KC, Maya Chilaeva and Sam Mitchell (for owners), instructed by HFW; Nigel Eaton KC and Helen Morton (for cargo interests), instructed by Preston Turnbull LLP.

"A silk with an extraordinary intellect, coupled with great practicality." (Legal 500, 2025)

Chris has a broad practice encompassing all areas of commercial law, with a particular focus on dry shipping, commodities, energy, and insurance disputes. Chris is recommended as a leading barrister in in both Chambers and Partners UK and Global editions, and in the Legal 500 UK, EMEA and Asia Pacific editions.

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Maya has a broad commercial practice spanning international arbitration, commercial litigation, insurance and shipping disputes. Despite her level of call, she has already appeared at every level of the English Court system, including the Supreme Court and Court of Appeal, as well as the High Court (in both trials and interlocutory applications). She also acts in arbitrations under ICC, LCIA, UNCITRAL, LMAA and GAFTA Rules.

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Sam joined Quadrant Chambers on 20 December 2022, upon successful completion of pupillage. Sam regularly appears in both arbitral proceedings and the High and County Courts and accepts instructions across chambers' core and specialist areas, including shipping, commercial litigation, fraud, insolvency, insurance, private international law, aviation and financial services.

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15-19 SEPTEMBER 2025
LONDON INTERNATIONAL
SHIPPING WEEK

We are proud to be a Silver Sponsor of London International Shipping Week 2025

Tuesday, 16 September

LISW25: Headwinds of Change – Shipping and shipbuilding in an era of tariffs, geopolitical instability and climate change regulation

The shipping industry faces a unique set of challenges as the world heats up – physically, politically and militarily. Powered to its present position and shape by globalisation and a largely common regulatory framework, what are the legal issues that arise, and how will those issues influence and alter with the industry's development in the second quarter of the 21st century? Panellists including James M. Turner KC, Nichola Warrender KC and Koye Akoni of Quadrant Chambers, and Edward Liu of Haiwen & Partners LLP, will draw on their extensive combined experience, pool their thoughts and look ahead.

Register here.

Tuesday, 16 September

Quadrant Chambers LISW Reception - Celebrating London International Shipping Week.

Wednesday, 17 September

Junior Shipping Seminar: Time Bar Toolkit: A crash-course on common limitation issues and how to manage them

Saira Paruk, Caleb Kirton, Michael Nguyen-Kim & Paul Best (Preston Turnbull) will be covering the common limitation issues in shipping and how to manage them.

The seminar will be in three parts, addressing:

» Notice-of-claim

» Time bar provisions

» Instances of conflicting time bar terms

Each part will give an overview of typical examples, summarise how the law generally interprets these clauses or resolves conflicts between them and highlight practical takeaways from decided cases (including ***The Alion*** [2025] EWHC 368 (Comm)).

Register here.

Thursday, 18 September

LISW25: Offshore Talking Heads

Our panellists, Simon Rainey KC (author of the leading textbook on offshore contracts) and Andrew Leung of Quadrant Chambers, alongside Paul Dean, Global Head of Shipping at HFW and Helena Biggs, Senior Lawyer at Gard will be discussing recent issues they have observed in the ever-changing offshore contracts environment. Simon and Paul bring to the discussion more than 75 years combined experience of working on offshore contracts.

Register here.

The Article III Rule 6 Time Bar Applies to Breaches After Discharge under BOTH the Hague and Hague-Visby Rules

FIMBank Plc v KCH Shipping Co. Ltd (The Giant Ace) [2024] UKSC 38

Author: Simon Rainey KC

In ***FIMBank Plc. v KCH Shipping Co. Ltd***, the UK Supreme Court has ruled that the one-year time bar in Article III Rule 6 of the Hague and Hague-Visby Rules applies to claims for misdelivery occurring after discharge, up until delivery. The decision resolves a long-standing legal debate and clarifies that the time bar is not confined to the so-called "period of responsibility" (i.e., between loading and discharge) under the Rules.

Delivering the lead judgment, Lord Hamblen stated that the time bar covers "breaches of duty by the carrier which occur after discharge but before or at the time of delivery," including misdelivery. It may also apply to pre-loading breaches, provided there is a sufficient connection to the goods in question.

Case Background

FIMBank brought a claim against carrier KCH Shipping Co. Ltd for alleged misdelivery of cargo, relying on bills of lading governed by the Hague-Visby Rules and issued on the Congenbill form. The claim was initiated after the one-year limitation period had expired. FIMBank argued the time bar did not apply since:

1. Delivery occurred after discharge.
2. The Rules do not regulate obligations after discharge.
3. The Congenbill contract disapplied the Rules post-discharge via Clause 2(c), which stated the carrier bore no liability after discharge.

An arbitral tribunal rejected FIMBank's arguments, ruling that the time bar applied even to post-discharge misdelivery and that Clause 2(c) did not override the Rules. The Commercial Court upheld the tribunal's decision.

Court of Appeal and Supreme Court Rulings

While the Court of Appeal agreed the Hague-Visby Rules applied to post-discharge misdelivery claims, it distinguished the position under the original Hague Rules, suggesting they only applied during the "period of responsibility."

However, the Supreme Court disagreed. It ruled that under both sets of Rules, Article III Rule 6 operates as a comprehensive time bar extending to all breaches of carrier duty—including misdelivery—until delivery occurs. The Court emphasized that the Rule's objective is to provide finality and avoid complex disputes about the timing of discharge.

Rejecting the "period of responsibility" argument, the Court stated that while this period determines when the carrier is subject to heightened duties and restricted immunities, it does not limit the scope of Article III Rule 6. The Court also declined to follow contrary decisions from Malaysia and Australia, noting they lacked international consensus and conflicted with English legal principles.

On the contractual issue, the Court reaffirmed that Clause 2(c) of the Congenbill did not override the Rules or exclude the time bar. The provision addressed liability but did not alter the operation of Article III Rule 6.

Conclusion

This decision brings clarity to the interpretation of time bars under both the Hague and Hague-Visby Rules, confirming they apply beyond the discharge point up to delivery. The ruling is expected to have significant implications for international shipping law and future misdelivery claims.

Simon Rainey KC of Quadrant Chambers and Matthew Chan of Twenty Essex acted for the carriers, KCH, and were instructed by Kyri Evagora and Thor Maalouf of Reed Smith LLP.

Read the full article here.

Simon is one of the best known and most highly regarded practitioners at the Commercial Bar. He has a reputation which is second to none for his intellect and legal analysis ("fantastically intelligent and tactically astute"). He is acclaimed for his advocacy skills ("a stunning advocate") and his cross-examination ("excruciatingly superb"). But he is equally well known to his clients as a cheerful team player, who rolls up his sleeves in long and complex trials and arbitrations and who prides himself on high standards of client care ("incredibly user friendly" and "lovely to work with").

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RUBYMAR: Asymmetric Jurisdiction Clauses, the Hague Convention and Parallel Proceedings

Berytus Insurance & Reinsurance v. Golden Adventure Shipping [2025] EWHC 664 (Comm)

Authors: Guy Blackwood KC & Robert Ward

This case represents the first Commercial Court decision arising from Houthi attacks on merchant shipping in the Gulf of Aden, specifically concerning the ***mv RUBYMAR.*** Insurers, represented by Guy Blackwood KC and Robert Ward, instructed by Clyde & Co, sought negative declaratory relief in the English courts. Subsequently, the assured commenced proceedings for a total loss of the vessel in Cyprus. The assured challenged the jurisdiction of the English Court.

The dispute centred around whether English proceedings, brought under a jurisdiction clause in the insurance policy, should be stayed in favour of Cypriot proceedings initiated by the assured.

The policy's jurisdiction clause was asymmetrical:

1. It subjected the insurance to English law.
2. It obliged the assured to sue in Cyprus.
3. It reserved the right for insurers to bring proceedings in any court "which has or claims jurisdiction in relation to that matter".
4. It stated the assured submitted to the **non-exclusive** jurisdiction of the Cypriot courts and that it waived any objection on grounds of inconvenient forum to proceedings brought either in Cyprus or any other country.

The assured argued the Hague Convention on Choice of Court Agreements required the English court to stay its proceedings in favour of the Cypriot courts, claiming the clause designated Cyprus as the exclusive forum.

However, the Court rejected this. It ruled that the Hague Convention did not apply because the policy clause did not meet the criteria for an exclusive jurisdiction agreement under Article 3. Paragraph [4] expressly referred to Cyprus' jurisdiction as **non-exclusive**, and the agreement allowed insurers to sue in other jurisdictions. Even if the Convention applied, the Court held that an **asymmetrical** clause (which grants differing rights to each party) would not fall within its scope, aligning with reasoning in ***Etihad Airways v. Flother*** [2022] QB 303 at [82]-[87].

As an alternative, the assured contended under English common law that insurers were bound to sue in Cyprus unless strong reasons justified otherwise. They relied on ***Antec International v. Biosafety*** [2006] EWHC 47, where a non-exclusive jurisdiction clause in favour of English courts was interpreted as requiring strong justification to proceed elsewhere. The Court distinguished that case, highlighting that the ***Rubymar*** clause was explicitly **asymmetrical** and included a forum non conveniens (FNC) waiver. The English court concluded that insurers had a clear contractual right to sue outside Cyprus.

The assured's argument that parallel proceedings should be avoided was also rejected. The Court noted that parallel proceedings are a foreseeable risk in non-exclusive jurisdiction agreements, and this alone was not grounds to grant a stay, citing ***Dexia Credit Local SA v. Patrimonio de Trentino SpA*** [2024] EWHC 2717 at [153]-[155] and [164].

This ruling provides further support for the view that asymmetrical jurisdiction clauses do not fall within the Hague Convention, and provides a valuable example of the court's approach to the interpretation and application of non-exclusive jurisdiction clauses.

Guy Blackwood KC and Robert Ward, instructed by Mike Roderick and Will Oakhill of Clyde & Co appeared on behalf of successful insurers

Read the full article here.

Guy has a comprehensive commercial practice, which includes insurance & reinsurance, large contractual disputes, international and investment treaty arbitration, banking & finance, civil fraud, energy & utilities, commodities and shipping, shipbuilding and offshore construction. Guy particularly enjoys oral advocacy, in which Guy has a track record in the Commercial and Appellate Courts.

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Rob has developed a busy practice spanning the breadth of Chambers' practice areas including shipping, commercial disputes, international arbitration and aviation. He has appeared as sole counsel in the High Court and County Court and as a junior in several high value matters. He is regularly instructed on charterparty and bill of lading disputes in court proceedings and in arbitrations, particularly under LMAA Rules, and also has experience in relation to wet shipping matters such as collisions.

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Quadrant Chambers Welcomes Two New Members

Quadrant Chambers welcomes Zhi Yu Foo and Thomas Griffiths as new tenants on 1 October 2025 following successful completion of pupillage.

They are available to accept instructions and will develop their practices in line with Chambers' core areas of work.

Quadrant Chambers welcomes Andrew Stevens

"It is with great pleasure that we welcome Andrew Stevens to Quadrant Chambers. Andrew is a standout advocate with a strong record of success in complex commercial litigation & high-profile international arbitration. I have no doubt he'll make an immediate & lasting impact to both our clients and our practice."

Poonam Melwani KC, Head of Quadrant Chambers

"I am delighted to be joining the stellar lineup of barristers at Quadrant Chambers where I look forward to continuing to develop my practice in commercial litigation, international arbitration & dispute resolution in London & around the world. I have, over the years, worked with & against many of the extremely talented & exceptionally well supported members of Quadrant Chambers. Our shared depth of experience in London, Asia Pacific & the Middle East – with Quadrant having won 'Set of the Year' at the Legal 500 Middle East & North Africa Awards 2025 – is a particularly exciting prospect."

Andrew Stevens

Andrew is a highly skilled commercial barrister, widely recognised in the directories as a "*first class*" advocate, who is "*exceptionally bright*", "*incredibly sharp*" and "*always a few steps ahead of the competition*". Andrew has extensive experience in high-value commercial litigation & international arbitration across the world's major dispute resolution centres, most notably the Asia-Pacific region & the Middle East. He is frequently instructed in complex commercial disputes across a wide range of sectors, from energy and construction to shipbuilding, shipping and commodities.

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Limitation in the Supreme Court: No Qualification on "Claims"

MSC Mediterranean Shipping Co SA v Conti 11 Container Schiffahrts-GmbH & Co KG MS (The "MSC Flaminia") [2025] UKSC 14

Author: Tom Griffiths

Introduction

Can a charterer limit its liability under the 1976 Limitation Convention for claims by a shipowner in respect of losses originally suffered by the shipowner itself? Before the Court of Appeal in 2023, the answer had been "no" and this exception was quickly coined the "Flaminia Rule". Following a universal settlement of all claims between the parties, the rule might have been expected to stand. However, the Supreme Court exceptionally allowed the appeal to progress and in a judgment of Lord Hamblen, the Flaminia Rule was abolished as swiftly as it had arisen.

Facts

While in the mid-Atlantic, the MSC Flaminia and much of its cargo were severely damaged following the explosion of a cargo of divinylbenzene and the subsequent fire onboard. London arbitrators found that owners were entitled to an indemnity and/or damages for shipment of a dangerous cargo. Charterers responded by seeking to limit their liability to owners under the amended 1976 Limitation Convention. In particular, they sought to limit their liability in respect of payments for preventative measures to guard against an oil leak, the costs of discharging and decontaminating the cargo, and the costs of removing firefighting water and waste from the vessel.

"Flaminia Rule"

Lord Hamblen firstly found that the Flaminia Rule involved a gloss on the word "claims" which was unsupported on the ordinary meaning of the language in the Convention. Owners argued that the main purpose of limitation was to protect shipowners and a qualification was therefore required to prevent limitation being used against them. However, Lord Hamblen pushed back on this submission, stressing that limitation is rooted in the policy of promoting trade by sea and recent conventions have extended the same benefits to charterers and other groups in recognition of their importance to that trade.

Owners also submitted that, without the Flaminia Rule, they may find themselves in the absurd position of paying for their own claim as well as depleting the fund available for other claimants. However, Lord Hamblen dismissed these concerns, observing that the claims which would substantially deplete the fund – loss of or damage to the ship and consequential loss therefrom – were beyond the scope of the Convention. Accordingly, the "Flaminia Rule" was rejected and charterers were in principle entitled to limit.

Article 2.1

When considering which claims were limitable, Lord Hamblen refused to adopt a wide interpretation of Article 2.1 of the Convention. The claims were for costs of repairs, and the fact that they were consequential on property damage did not mean that they fell under Article 2.1(a). Nor were any of the claims within Article 2.1(f) (mitigation costs). The payments for measures to prevent pollution and costs of removing firefighting water were repair costs and as such their "main or dominant purpose" was not to avert limitable loss. Ultimately, only the claim for the costs of discharging and decontaminating the cargo were limitable, under Article 2.1(e).

Comment

Beyond addressing the Flaminia Rule, the judgment provides welcome clarity and focus to the approach to interpreting the Limitation Convention. However, several narrower issues remain unresolved. Notably, the court declined to resolve a problem on which the High Court and Court of Appeal differed: between two parties falling within the extended definition of "shipowner" under the Convention (including owners and charterers) would a claim for the cost of putting up and paying out of the fund be limitable? For now, we will have to wait.

Tom joined Quadrant Chambers in Autumn 2025 following the successful completion of his pupillage and will be developing his practice across Chambers' core areas. Before pupillage, Tom was a paralegal in the shipping department of Reed Smith where he advised owners, charterers and P&I clubs on a range of shipping, arbitration and insurance matters.

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"Quadrant has stellar barristers at all seniority levels, covering every possible type of shipping and shipbuilding disputes"

Legal 500 2025

Court interprets "Affected Area" Under the BIMCO Infectious or Contagious Diseases Clause for Time Charter Parties 2015

Bunge S.A v Pan Ocean Co. Ltd. (The "Sagar Ratan") [2025] EWHC 193 (Admiralty)

Authors: Gemma Morgan, Mark Stiggelbout & Conor Fenton-Garvey

In Bunge S.A v Pan Ocean Co. Ltd., Henshaw J addressed legal questions concerning delays caused by infectious diseases under a time charterparty. The decision examined: (i) the meaning of "Affected Area" in the BIMCO Infectious or Contagious Diseases Clause for Time Charter Parties 2015; (ii) what constitutes "detention…for quarantine" under an off-hire clause; and (iii) the application of the 'inefficiency' principle for determining off-hire periods.

Background

The dispute concerned the vessel Sagar Ratan, which was delayed after crewmembers tested positive for COVID-19 upon arriving in Bayuquan, China. Rather than quarantining there, Owners sailed the vessel to Ulsan, South Korea, to change the crew before returning to Bayuquan to discharge cargo. The arbitrators ruled that the vessel was off hire during the delay period and rejected Owners' reliance on the BIMCO clause.

Owners appealed under s. 69 of the Arbitration Act 1996 on three questions of law:

1. Was Bayuquan an "Affected Area" under the BIMCO clause?
2. Did the vessel suffer "detention…for quarantine" if it avoided formal quarantine by sailing elsewhere?
3. Was the vessel off hire during a period when it was still able to comply with Charterers' orders?

Decision

Question 1: Affected Area

The BIMCO clause defines "Affected Area" as "any port or place where there is a risk of exposure to the Vessel, crew or other persons on board to the Disease [Limb 1] and/or to a risk of quarantine or other restrictions being imposed in connection with the Disease [Limb 2]". Owners argued that Bayuquan qualified under Limb 2 because arriving vessels with COVID-19-positive crew faced restrictions. Henshaw J rejected this, holding that "Affected Area" was most naturally directed at a characteristic of the port or place itself, such as the policies or other measures it has introduced in response to the Disease in general, rather than to a risk arising because a particular vessel arrived with an infected crew. Thus, Bayuquan was not an "Affected Area" purely on the basis that there was a risk of restrictions being imposed on the vessel; Bayuquan did not impose restrictions on incoming vessels in general or particular categories of vessel (e.g. vessels which had previously visited specified destinations). Accordingly, the BIMCO clause was not triggered.

Question 2: Detention for Quarantine

Under Additional Clause 38, "detention and expenses for quarantine" were for Owners' account. Henshaw J accepted that the vessel had been detained for quarantine, as it could not enter Bayuquan to discharge cargo. He emphasised that "detention" includes

situations where a vessel cannot fulfil its service due to external constraints, even if it can move elsewhere. The fact that the vessel was not prevented from proceeding elsewhere did not negate "detention".

Question 3: Inefficiency and Off-Hire

Owners argued that the diversion to replace crew was the service immediately required, citing The Berge Sund. Henshaw J distinguished this case, stating that crew changes due to illness were not part of a vessel's ordinary charter service. As the vessel could not discharge cargo until crew were replaced, it was inefficient and therefore off hire under Additional Clause 50 during the delay.

Analysis

This judgment is the first court interpretation of the BIMCO clause's "Affected Area" definition. The court adopted a narrow, policy-based definition, rejecting an interpretation that could render most ports affected during global outbreaks. While some may therefore welcome it as commercially reasonable, others may see it as limiting the clause's broad wording and protective reach. Henshaw J refused permission to appeal.

Mark Stiggelbout, instructed by Penningtons Manches Cooper, acted for the claimant.

Gemma Morgan and, at the consequentials hearing, Conor Fenton-Garvey, instructed by Preston Turnbull LLP, acted for the defendant.

Read the full article here.

Gemma is a sought after junior with instructing solicitors and lay clients. She acts in a range of commercial disputes particularly in the fields of shipping, commodities, energy/offshore and construction (shipbuilding). Gemma is identified by Legal Week as one of its ten Stars at the Bar for 2016 in a profile piece on the most promising young barristers. Gemma is consistently recommended by Chambers UK as a 'Leading Junior'. She has been identified as "a junior to play close attention to" and is "especially noted for handling complex shipbuilding cases and matters of a highly technical nature".

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Mark has a broad international commercial practice, with particular emphasis in shipping, commodities, insurance, international arbitration, aviation, and energy disputes. He is recommended as a leading practitioner in both of the independent guides to the market - Chambers UK and the Legal 500. He is described as "*Highly intelligent, logical and an excellent legal brain. He is a razor sharp cross-examiner*".

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Conor joined Quadrant Chambers in October 2024, following the successful completion of his pupillage. He accepts instructions across Chambers' core areas, including commercial litigation, civil fraud, shipping, insurance, banking and commodities. Conor is particularly interested in insurance work, having undertaken a secondment in DWF's marine insurance team. Conor is currently on secondment at Kennedys advising on marine insurance matters.

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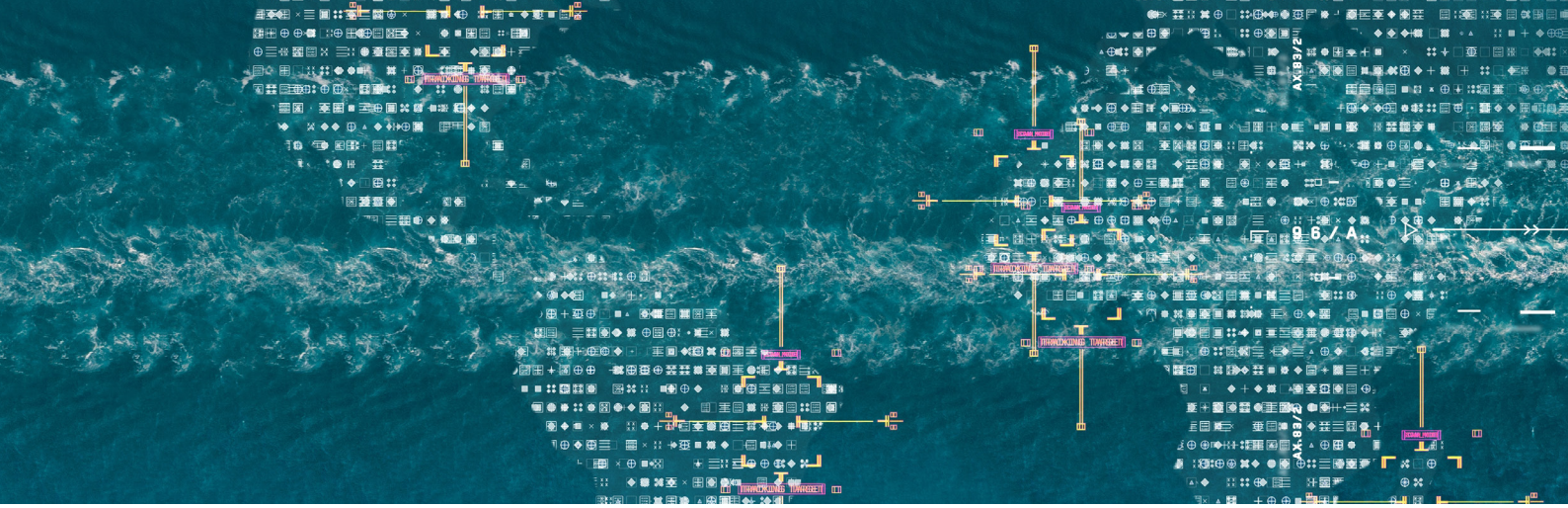

Avoiding a Head-On Collision - (it is not just about the side lights)

KIVELI c/w AFINA I - Monford Management Limited v Afina Navigation Limited [2025] EWHC 1210 (Admiralty)

Author: Nigel Cooper KC

In ***KIVELI c/w AFINA I - Monford Management Limited v Afina Navigation Limited*** [2025] EWHC 1210 (Admiralty), the Admiralty Court (Bryan J.) clarified the test for the operation of Rule 14 of the Collision Regulations and also provides guidance as to the responsibilities of a stand-on vessel under Rule 15.

The judgment now provides detailed guidance on the operation of Rule 14 and its inter-play with Rule 15. That guidance should help avoid similar situations arising in the future, not least because the Judge understood the need to ensure that his construction of Rule 14 could be easily understood by professional seafarers and amateur sailors alike.

The judgment also clarifies that even if Rule 15 (crossing situations) governs the obligations of both vessels, a stand-on vessel, may still be substantially to blame for the Collision if her actions (or inactions) are a serious breach of the ColRegs and are the effective cause of a collision. An argument that the navigating officer was caught on the horns of a dilemma will not succeed where their actions are simply a further link in a chain of failures by a stand-on vessel.

Facts

The two vessels collided at about 06:01 local time on 13 March 2021 off the Southwest Greece ("the Collision"). There was good visibility, good weather and both vessels were in open water. The Collision occurred when KIVELI turned to port as AFINA I was turning to starboard. The bow of KIVELI hit the port side of AFINA I's no. 4 cargo hold at an angle of approximately 90° and became embedded putting AFINA I at risk of sinking. The vessels spent the next 20 days locked together and both suffered significant damage.

The vessels were in sight of each other and a risk of collision arose at C-22 (i.e. 22 minutes before the Collision). At this time the vessels' headings were 7° off reciprocal, the range between the vessels was just over 8.6nm. Shortly after this time, KIVELI made two minor alterations of course to port increasing the passing distance to starboard with AFINA I and another vessel directly ahead of her. AFINA I commenced turning to starboard at C-5. KIVELI saw AFINA I turning to starboard but took no action prior to turning hard to port at about C-1.20.

The issues

There were two essential issues for the Court in respect of liability:

1. Were the vessels (at any material time) on reciprocal or nearly reciprocal courses so as to involve a risk of collision, alternatively where there was any doubt as to whether such a situation existed for the purpose of Rule 14 of the ColRegs?

2. Were the vessels (at any material time) crossing so as to involve a risk of collision pursuant to Rule 15 of the Collision Regulations?

The governing rule

Following a detailed analysis of the language of the Rule, the relevant authorities and other materials (including the guidance of the nautical assessor), the Judge concluded that Rule 14 was the governing rule from C-22. In reaching this conclusion, he determined that:

1. The structure of Rules 14 and 15 is such that Rule 14 takes precedence.

2. Rule 14 will apply ([185]):

   a. When vessels are meeting on reciprocal or near reciprocal courses so as to involve a risk of collision (Rule 14(a) is the definitional provision);

   b. Rule 14(b) is a deeming provision and applies (i) when a vessel sees the other ahead or nearly ahead and (ii) by night she would see the masthead lights of the other vessel in a line or nearly in a line or both side lights.

   c. When a vessel is in any doubt as to whether the two vessels are meeting on reciprocal or near reciprocal courses so as to involve a risk of collision pursuant to Rule 14(c).

The Judge rejected the argument that Rule 14 would only apply if both vessels had been able to see both sidelights of the other vessel at the same relevant point(s) in time. Rule 14(b) is not a defining provision for the purposes of Rule 14(a) and the words 'and/or' in Rule 14(b) are to be be read disjunctively. The Judge also rejected an argument that Rule 14(c) merely compels the vessel in doubt to act accordingly while the other vessel is able to do nothing.

Application of the rules

The Judge concluded that a risk of collision arose at C-22 at a time when KIVELI and AFINA I were meeting on reciprocal or nearly reciprocal courses and each could see the other ahead or nearly ahead and each would see the masthead lights of the other in line or nearly in line. Accordingly, Rule 14 applied to as from C-22.

KIVELI was at fault for not turning to starboard after C-22 and instead initially making small alterations to port and then her final catastrophic turn to port. There was also a serious failure of lookout on the part of KIVELI. AFINA I was at fault because her turn to starboard was late and was not sufficiently substantial. The Judge also held that, even if there was a crossing situation with KIVELI as stand-on vessel, she was at fault for failing to turn to starboard (under Rule 17(a)(ii)) and because she should not have made her alterations of course to port or her final turn to port.

The Judge further held that once Rule 14 applies when a risk of collision arises, it

continues to apply thereafter unless and until the risk of collision has passed.

Apportionment

The principles to be applied by the Judge were common ground. The correct approach is to consider and weigh the faults of each vessel separately and individually and then to arrive at an apportionment of liability that justly reflects the relative degree of fault as between the two vessels.

The Court concluded that KIVELI was 80% to blame for the Collision and AFINA I was 20% to blame for the Collision. Notably, the Judge concluded that his apportionment would have been the same even if he had concluded that the vessels were in a crossing situation given the serious failures he had identified in the navigation of the KIVELI.

Practical matters

The case highlights the importance of agreeing before trial an agreed plot or plots (whether static or animated) and also agreed transcripts of each vessel's audio files. Because of the large measure of agreement between the parties, there were only a small number of facts in dispute at trial.

Conclusion

The Judgment provides clarification as to the proper approach to be taken to determining when a head-on situation within Rule 14 arises as well as emphasising that knowledge of and adherence to the ColRegs is a fundamental aspect of good seamanship.

The Court of Appeal has granted permission to appeal on grounds relating to the proper interpretation of Rules 14 and 15.

Nigel Cooper KC, instructed by MFB Solicitors (Mark Seward, Nico Saunders, Captn. Amarinder Singh Brar and Ellie Hall) and Tatham & Co. (Chris Farmer and Simon Tatham), acted for AFINA I.

Read the full article here.

Nigel appears before the business and appellate courts in England & Wales, and has a strong arbitration practice advising on and acting in disputes before all the main international and domestic arbitral bodies both in London and elsewhere. His shipping practice includes all forms of bill of lading and charterparty disputes; shipbuilding (including superyachts and military vessels) and off-shore construction; ship sale and purchase;, arrest, limitation and collision actions, pollution and, occasionally, Merchant Shipping Act offences.

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Tonnage Limitation & Res Judicata: the Right to Limit is a Cause of Action; and Declarations Mean What They Say

Réseau de Transport d'Électricité v Costain Ltd & Others [2025] EWHC 73 (Admlty)

Authors: Chirag Karia KC & Jakob Reckhenrich

The legal nature of a shipowner's right to limit liability under the 1976 Limitation Convention has hitherto been obscure. While it has been held to be procedural for choice of law purposes, other dicta have suggested it is substantive. In ***Réseau de Transport d'Électricité v Costain Ltd & Others*** [2025] EWHC 73 (Admlty), Cockerill J clarified that the right to limit liability is substantive in nature for the purpose of cause of action estoppel.

The case also reaffirmed that once a court has issued an unambiguous declaration, a party cannot revisit its meaning or avoid its consequences by reliance on the arguments run at the original hearing. This principle applies independently of doctrines like res judicata or issue estoppel.

Background

In November 2016, the anchor of the dumb barge ***STEMA BARGE II*** damaged a high-voltage undersea cable in the English Channel, owned by RTE. Three companies connected with the barge initiated limitation proceedings in England in 2020. RTE accepted that two of the companies (as owner and charterer) could limit, but the third—Stema UK—claimed a right to limit as the "operator" of the barge under Article 1(2) of the Limitation Convention, which was not accepted.

While the High Court initially accepted Stema UK's position, the Court of Appeal reversed that decision, issuing a declaration that *"Stema UK is not entitled to limit its liability"* Notably, during those proceedings, Stema UK had briefly advanced but then abandoned a different argument—that it could limit liability under Article 1(4) as a person for whose acts the shipowner was responsible.

In the substantive damages claim, Stema UK attempted to revive the Article 1(4) argument. RTE and two other parties applied to strike out that plea.

Court's decision

Cockerill J held, for three independent reasons, that Stema UK was not entitled to pursue the Article 1(4) argument:

1. **Finality of the Declaration:** The Court of Appeal's declaration was clear and unambiguous: Stema UK was not entitled to limit its liability. It was impermissible to go behind that declaration based on arguments advanced at the original hearing. This is an application of the principles set out in ***Gordon v Gonda*** [1955] 1 WLR 885 and ***Winston Gibson v Public Services Commission*** [2011] UKPC 24.
2. **Cause of Action Estoppel:** The right to limit under the Convention is a substantive right and thus subject to cause of action estoppel. This also applies in respect of parties not involved in the limitation proceedings as a limitation degree is binding against the world.
3. **Abuse of Process:** In any event, Stema UK's attempt to re-argue Article 1(4) was an abusive on ***Henderson v Henderson*** grounds. The argument could and should have been made in the original limitation action.

This decision clarifies the nature of the right to limit and reaffirms the status of an unappealed declaration. The Court of Appeal refused Stema UK permission to appeal, ruling that the appeal had no real prospect of success.

Chirag Karia KC and Jakob Reckhenrich, instructed by Alex Kemp and Jenny Salmon of HFW LLP, acted for the successful applicant.

Read the full article here.

Chirag is a leading commercial silk with a broad commercial, international arbitration, energy, insurance, shipping and international trade practice. He appears in the Commercial Court, the Court of Appeal, the UK Supreme Court and international arbitrations. He is listed as a *'Leading Silk'* for Shipping and Commodities disputes by Chambers UK, Chambers Global, The Legal 500 UK, The Legal 500 Asia Pacific and Who's Who Legal and for Commercial disputes by Legal 500 EMEA.

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Jakob practises across the whole range of Chambers' core areas, with many of his matters having an international element. Jakob is regularly instructed at all stages of proceedings, providing advice, settling pleadings and appearing at interlocutory hearings and trials, both led and as sole counsel. Jakob is ranked as a "Rising Star" in Commodities by Legal 500.

"Jakob is a conscientious, committed and clever barrister who produces exceedingly high-quality work at speed." (Legal 500, 2025)

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"Paramount" Means "Paramount": Contracting Out of the Hague Rules Time Bar (or not)

The Alion (Tanga Pharmaceuticals Plastics Limited and others v Emirates Shipping Line FZE [2025] EWHC 368 (Comm))

Authors: Ben Coffer & Caleb Kirton

In ***The Alion***, the Commercial Court rejected an attempt by a carrier to rely on contractual terms imposing a shorter time bar than that provided by Article III.6 of the Hague Rules. The Rules had only been incorporated contractually via a clause paramount in the carrier's standard bill of lading.

The ***ALION*** suffered a main engine failure giving rise to claims for salvage indemnity and particular average. Although the claims were issued within the standard one-year time period under Article III.6 of the Hague Rules, service was delayed by an additional year due to difficulties locating the carrier in Dubai.

The carrier's bill of lading incorporated the Hague Rules via a clause paramount. However, clause 18 sought to impose additional limitations. It included:

» A 20-day notification requirement for non-cargo claims (the "20-day Provision").

» A one-year time bar requiring actual service or jurisdiction over the carrier within that period (the "Service Provision").

The carrier argued that since the Hague Rules were incorporated contractually, the parties were free to modify them, citing ***Dairy Containers v Tasman Orient Line*** [2004] UKPC 22.

Mr Justice Bright dismissed the carrier's summary judgment application, holding that Clause 18 did not override Clause 2 or Article III.6. The Court emphasized the authoritative effect of a "clause paramount," which signals that the Hague Rules should prevail over inconsistent contractual terms. For a different time bar to apply, there must be "clear words" indicating an intention to depart from the one-year limit – as established in ***MUR Shipping BV v RTI Ltd*** [2024] UKSC 18.

The Judge found no such clarity in Clause 18, nor any language indicating that it was meant to override the Hague Rules. He stressed that under Article III.8, clauses that attempt to lessen the carrier's liability or alter the time limit in a way inconsistent with the Rules are void.

A key argument from the carrier was that the Service Provision did not offend Article III.8 because Article III.6 does not define when suit is considered brought, and that different jurisdictions treat the issue differently. The carrier contended that defining suit as requiring service/jurisdiction was not inherently inconsistent with the Rules.

The Judge rejected this, reasoning that such a definition could allow arbitrary and unfair standards ("suit shall not be considered to have been brought unless pigs fly"). He found the clause incompatible with the Hague Rules.

Additionally, the Judge rejected the carrier's attempt to apply the 20-day Provision to the salvage indemnity claim. While the carrier relied on ***The Limnos*** [2008], Bright J preferred the more recent reasoning in ***The Thorco Lineage*** [2023], agreeing with Sir Nigel Teare that a maritime lien constitutes a specific kind of damage to the goods, not merely economic harm to the owner.

This judgment reaffirms the precedence of the Hague Rules even where incorporated by a clause paramount.

Benjamin Coffer and Caleb Kirton appeared for the successful Claimants, instructed by Mark Lloyd, Freddie Mehlig and Samantha Butler at Kennedys.

Read the full article here.

Ben is recognised by the market as a stand-out junior and is ranked in Tier 1 by both Chambers & Partners (Shipping) and the Legal 500 (Shipping & Commodities). He was named Shipping Junior of the Year 2019 at the Chambers & Partners Bar Awards and was shortlisted in 2020 (Legal 500), 2022 (Chambers & Partners) and 2023 (Chambers & Partners). He is also recognised by the directories as a leading junior in Commodities and Insurance. Most recently, Ben was featured in Doyle's Guide for Maritime, Shipping & Transport Law.

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Caleb specialises in commercial arbitration and litigation and accepts instructions, led and unled, in all of Chambers' core areas and beyond. Caleb previously experienced the full spectrum of commercial disputes through a unique combination of positions, including serving as a Judicial Assistant / Law Clerk in the Supreme Court (2023–24) and Court of Appeal (2019–20) and undertaking a yearlong internship in Shell International Limited's Global Litigation department. In these roles, Caleb became familiar with how clients and courts operate day to day and assisted in various high-profile cases.

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Port Charges and Statutory Interpretation

Port of Sheerness Limited v Swire Shipping Pte Limited [2025] EWHC 7 (Admlty)

Author: Zhi Yu Foo

Introduction

If it takes longer than expected to discharge cargo from a vessel, is a port entitled to charge a "period toll" for the vessel's extended stay?

In ***Port of Sheerness v Swire Shipping*** [2025] EWHC 7 (Admlty), Registrar Davison answered that question in the negative. While this decision turned on contractual interpretation, the Registrar's obiter comments on the scope of triple recovery under s. 64 of the Medway Ports Authority Act 1973 (the "Act") is of wider interest.

Background

The bulk carrier mv ***KIATING*** (the "Vessel"), sub-chartered to Swire Shipping ("Swire"), berthed at the Port of Sheerness (the "Port") to discharge its cargo. The Port had estimated that discharge would take about 42 hours, but problems with the stow meant that it took substantially longer. The Port therefore imposed additional charges, including a "period toll". The primary purpose of the toll was to protect the Port's income streams where its capacity was reduced by a vessel's detention at the Port, although it would be levied even where the detention did not cause any loss.

The contract between the parties stated that the Port could charge the toll "*where a vessel remains alongside at the docks for a longer period than necessary for loading and discharging of cargo*". The main question was whether the toll was payable if it took longer than objectively necessary to perform cargo operations (the Port's case) or only where vessels overstayed by remaining at berth after completing discharge (Swire's case).

Interpretation and Triple Recovery

Registrar Davison preferred Swire's interpretation as the word "*remains*" suggested overstaying and it was more commercially sensible. That decided the case for Swire, but the Registrar considered several further arguments.

Most interestingly, the Port made an "*eye-catching*" claim that it was entitled to treble the value of the toll under s. 64 of the Act: "*If the owner of any vessel … refuses to pay, any charges payable by such owner or person to the Authority … he shall be liable to pay to the Authority a sum equal to three times the amount of such charges…*" s. 3 of the Act provides: "'*charges' includes charges, rates, tolls and dues of every description for the time being payable to the Authority under any enactment*". The Registrar held that s. 64 applies only to charges payable under an enactment, thereby avoiding a "*manifestly unfair*" result.

The outcome is understandable – it is difficult to justify a private commercial entity having the right to triple recovery. However, the Registrar's reasoning is, with respect, unconvincing. Per *Bennion on Statutory Interpretation (7th Ed)* at §18.3, "*An inclusive definition is used to enlarge the meaning of the defined term to cover things that are not or might not otherwise be caught. It 'does not normally affect the width of the term being enlarged*'". Applying that principle, the Port contended that "*charges*" did not exclude the toll. It is surprising that the Registrar thought this was not seriously arguable and dismissed it. Similar provisions exist in legislation governing other UK port authorities. Their proper interpretation may well be tested again in an appropriate case.

Zhi joined Quadrant Chambers in Autumn 2025 following the successful completion of pupillage. He accepts instructions across all of Chambers' core areas. Before pupillage, Zhi spent a year as a judicial assistant in the Commercial Court, where he assisted in several significant cases on shipping, commodities, and arbitration.

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Enforceability of Himalaya Clause and Exclusive Jurisdiction Clause by Carrier's Subcontractor

Maersk Guinea-Bissau SARL v Almar-Hum Bubacar Balde SARL [2024] LMLN 2/8/24; [2024] EWHC 993 (Comm)

Author: Paul Henton

> *"Quadrant Chambers continues to be involved in market-leading cases in shipping, with the set fielding a large number of silks and juniors specialising in maritime matters."*
>
> Legal 500 2025

Can a contractual carrier's local affiliate or sub-contractor enforce in its own right the "Himalaya" and exclusive jurisdiction clause (EJC) provisions in the carrier's bill of lading, and recover damages/an indemnity for their breach? This was one of the several important issues determined by Jacobs J in ***Maersk Guinea-Bissau SARL v Almar-Hum Bubacar Balde SARL*** [2024] LMLN 2/8/24; [2024] EWHC 993 (Comm). The case is believed to be the first reported example of such relief being granted to the subcontractor.

The case concerned 13 bill of lading contracts for carriage of containerised timber from Guinea-Bissau to China. Maersk A/S was the contractual carrier. Maersk GB was the operator of Maersk's offices in Guinea-Bissau, and the entity which concluded the contracts on Maersk A/S's behalf. The Defendant (Almar-Hum) was the shipper and thus the party which lodged the relevant shipping instructions with Maersk GB. The Maersk terms (if incorporated) included an EJC in favour of English High Court jurisdiction, and a Himalaya clause whereby Almar-Hum promised not to sue the carrier's subcontractors or affiliates.

The facts were complex but in very brief summary: The bookings were made by Almar-Hum's UBO using Maersk's online booking portal. Draft bills of lading were drawn up for approval, pending payment of relevant charges. However, unbeknownst to Maersk, Almar-Hum and its UBO were in dispute with various organs of the Guinea-Bissau State over alleged export tax debts. Maersk GB soon became "caught in the middle" of those disputes: with the Judiciary Police attending Maersk GB's premises and demanding the final bills be drawn up and surrendered to their custody. In the meantime, the goods had already been shipped and the carrying vessel departed for China. They were thus held at transshipment ports until the consignees could procure the bills from the Guinea-Bissau authorities and surrender them to Maersk A/S. Almar-Hum then brought proceedings against Maersk GB (but not Maersk A/S) before the Courts of Guinea-Bissau, claiming over US$10 million in damages allegedly arising from this course of events.

The Maersk entities accordingly claimed damages/an indemnity for Almar-Hum's breaches of the EJC and Himalaya clauses in the bills. The claims were defended on numerous grounds, but of particular interest to shipping practitioners is the issue identified at the outset of this article. The issue is an important one, given that it is relatively common in anti-suit and breach of EJC cases for the overseas litigation "targets" to include local affiliates as well as (or perhaps instead of) the contractual carrier itself. Thus, so the argument went, whilst Maersk A/S had the contractual rights of suit, arguably only Maersk GB had suffered the relevant loss.

The Judge had no difficulty holding that *Maersk A/S* could enforce the EJC and Himalaya clause to the extent of its own loss and damage. As to *Maersk GB's* claim to enforce those provision, the Judge distinguished between the position under the Contracts (Rights of Third Parties) Act 1999 and at common law.

Under the 1999 Act, the Himalaya clause was prima facie enforceable under s. 1(1) since it expressly so provided and/or purported to confer a benefit on Maersk GB. However, the effect of s. 6(5) is that s. 1 confers "no rights on a third party" in the case of a contract for carriage of goods by sea. As such, Maersk GB's entitlement was limited to availing itself of exclusion or limitation provisions. In practical terms, this meant it could rely on the clauses to claim a declaration of non-liability, but not to claim damages in its own right.

However, the position was different under common law:

- First, It is well-established that a well-drafted Himalaya clause can give rise to a collateral contract between the carrier's agent or subcontractor (Maersk GB) and the shipper (Almar-Hum), enforceable by the subcontractor: see the ***Starsin*** [2004] 1 AC 715 at [93] (Lord Hoffmann).
- However, the authorities on rights of enforcement under Himalaya contracts to date had not extended to the enforcement of ECJs. See the leading case of the ***Mahkutai*** [1996] AC 650, in which the Privy Council held that an ECJ was not a "benefit" within the wording of the Himalaya clause in that case.
- But in a first-of-its-kind reported decision, the Judge was prepared to distinguish the Privy Council's reasoning in ***Mahkutai***, which had concerned a more narrowly worded Himalaya clause, whereas the Maersk terms Himalaya clause expressly stipulated for a positive right of enforcement extending to and encompassing enforcement of the ECJ.
- The Judge's analysis drew support from practitioner commentary: notably passages from *Carver on Bills of Lading* had envisaged such a finding in an appropriate case. The Judge also cited *obiter dicta* on the nature of such collateral contracts - notably Lord Wilberforce's analysis in the ***Eurymedon*** [1975] AC 154- which supported and buttressed his conclusion that such express right of enforcement could sound in damages.

Some of the other important issues in the case are summarised in the LMLN article here. The full judgment is available here.

Paul is an experienced Commercial practitioner in the fields of Shipping, Energy, Aviation, Commodities and International Trade. He has been recommended in the directories for many years (Chambers UK, Chambers Global, Legal 500 UK, Legal 500 Asia Pacific and Who's Who Legal). He is ranked band 1 for Shipping in both Chambers UK and Legal 500 UK. He was awarded the Legal 500 Junior Barrister of the Year 2024 for Shipping, Commodities and Aviation.

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Anti-Suits and Rights of Third Parties

Manta Penyez Shipping Inc and another v Zuhoor Alsaeed Foodstuff Company [2025] EWHC 353 (Comm)

Author: Tom Griffiths

Introduction

Ordinarily, an anti-suit injunction may only be obtained on a contractual basis by parties to the contract in question. Third parties must resort to showing that foreign proceedings are "inequitable or vexatious or oppressive". However, where the Contracts (Rights of Third Parties) Act 1999 has not been excluded, it may be possible for a third party to claim an anti-suit on either basis. ***The Manta Penyez Shipping Inc and another v Zuhoor Alsaeed Foodstuff Company*** [2025] EWHC 353 (Comm) is a valuable reminder of when this may occur.

Facts

The Manta Penyez was chartered for a voyage from Russia to Yemen. The charter provided for London-seated arbitration. Bills of lading were issued to the sellers but before discharge they exercised their right to redirect the cargo to Djibouti. Charterers responded by seeking to arrest the vessel in Djibouti to secure their claim against owners for misdelivery and return of freight. A bank guarantee was issued to procure the release of the vessel and was accepted by charterers. Clause 1 of the guarantee required charterers to refrain from (1) detaining the vessel or associated vessels and (2) advancing any legal proceedings in Yemen in relation to the charter. Despite the guarantee, charterers continued to progress proceedings in Djibouti and Yemen, including arresting a sister vessel in Yemen. The owners of both vessels applied for a final anti-suit injunction in the English Court to restrain the Yemeni and Djibouti proceedings.

Contractual basis

While owners were not a party to the guarantee, Mrs Justice Cockerill had no difficulty in finding that they were entitled to enforce clause 1 of the guarantee as the requirements of s. 1 of the Contracts (Rights of Third Parties) Act 1999 were clearly satisfied. Firstly, clause 1 purported to confer a benefit on owners by protecting them against suit in Yemen and related proceedings. Further, there was no indication that the parties did not intend the term to be enforceable by owners, and both owners were expressly identified in the guarantee. The existence of an express contractual covenant not to sue, enforceable by owners, was therefore established to the requisite "high degree of probability" and the Djibouti and Yemeni proceedings were found to be in breach of the covenant. Without any strong reasons militating against the grant of an anti-suit injunction, Mrs Justice Cockerill granted a final injunction on the contractual basis.

Alternative basis

However, Mrs Justice Cockerill would also have been prepared to grant a final injunction on the grounds that the proceedings were "inequitable or oppressive or vexatious". Specifically, charterers' conduct in commencing against owners of the sister ship went against the arbitration agreement in the charter. Further, seeking further relief from the owners of the sister ship in relation to the same dispute that was already subject to arbitration amounted to a collateral attack on the arbitration with the possibility that charterers may double-recover.

Comment

In her judgment, Mrs Justice Cockerill observed that reliance on the Contracts (Rights of Third Parties) Act 1999 to support an anti-suit injunction is "slightly unusual" as many contracts exclude the operation of the Act. However, the judgment is a clear indication that the court will not hesitate to give effect to the Act in appropriate cases.

Tom joined Quadrant Chambers in Autumn 2025 following the successful completion of pupillage and will be developing his practice across Chambers' core areas. Before pupillage, Tom was a paralegal in the shipping department of Reed Smith where he advised owners, charterers and P&I clubs on a range of shipping, arbitration and insurance matters.

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Who Has the Right to Limit?

SEA Consortium Pte Ltd v Bengal Tiger Line Pte Ltd (The X-Press Pearl) [2024] EWHC 3174 (Admlty)

Authors: Simon Rainey KC, Natalie Moore, Benjamin Coffer & Tom Bird

The case arose from the fire and subsequent sinking of the ***X-PRESS PEARL*** on 2 June 2021 near Colombo, Sri Lanka. The vessel's owners—including registered, bareboat, and disponent owners—sought to limit their liability for losses resulting from the casualty, invoking Article 6 of the Convention on Limitation of Liability for Maritime Claims 1976 (as amended). A limitation decree was granted, and a limitation fund was constituted.

At the time, the ***X-PRESS PEARL*** was transporting containers under various contracts for Maersk, Bengal Tiger Line, and MSC. These companies, referring to themselves as "slot charterers," also sought to limit their liability, raising the question of whether they qualified as "shipowners" under the Convention.

Article 1(1) of the Convention allows shipowners and salvors to limit liability. Article 1(2) defines "shipowner" to include the "owner, charterer, manager, or operator of a sea-going ship". The core issue was whether these slot charterers met the definition of "charterer."

In ***The MSC Napoli*** [2009] 1 Lloyd's Rep. 246 Teare J held that slot charterers who contracted for a defined number of TEU container slots on a vessel qualified as "charterers" under Article 1(2). In that case, the slot charterers paid what was described as "slot charter hire" for container space, regardless of whether it was used, and issued their own bills of lading.

In the current case, Andrew Baker J considered whether the reasoning in The MSC Napoli extended and applied to each of Maersk, Bengal Tiger Line, and MSC. He concluded that all three qualified as Article 1(2) "charterers". He found that:

- It was not essential to Teare J's reasoning in ***The MSC Napoli*** that the "slot charter hire" in that case was given that title or that it was payable for the allocated slots, "used or not used".
- Each party's specific contractual arrangements must be examined to determine if they meet the definition of "charterer."
- A party will typically qualify as a "charterer" under Article 1(2) if the contract obliges a shipowner to make part of a ship's capacity available for that party to carry goods as a carrier.

Andrew Baker J emphasized that even companies identifying as NVOCCs (non-vessel operating common carriers) could fall under this definition, depending on the contractual terms involved. However, he noted it was not necessary to make a final determination on that point in the current applications.

The ruling offers clarity on interpreting Article 1(2), underlining that substance takes precedence over form. Courts will assess the actual contractual arrangements rather than the labels used by the parties, to determine if a party qualifies for limitation of liability.

Legal representation in the case included Simon Rainey KC, Natalie Moore, Andrew Leung and Joseph Gourgey for the claimants (instructed by Campbell Johnston Clark); Benjamin Coffer for Bengal Tiger Line (instructed by Mays Brown Solicitors); and Tom Bird for Maersk (instructed by Stephenson Harwood LLP).

Read the full article here.

Simon is one of the best known and most highly regarded practitioners at the Commercial Bar. He has a reputation which is second to none for his intellect and legal analysis ("fantastically intelligent and tactically astute"). He is acclaimed for his advocacy skills ("a stunning advocate") and his cross-examination ("excruciatingly superb"). But he is equally well known to his clients as a cheerful team player, who rolls up his sleeves in long and complex trials and arbitrations and who prides himself on high standards of client care ("incredibly user friendly" and "lovely to work with").

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Natalie has a broad commercial practice with particular experience in international commerce and shipping. She regularly appears in the Commercial Court and in arbitration, both as sole and junior counsel. Natalie is consistently ranked as a leading junior barrister in the directories, where she has been described as *"an excellent junior", "an intelligent and persuasive advocate"* and *"a rising star"* with *"a razor sharp legal mind"*.

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Ben is recognised by the market as a stand-out junior and is ranked in Tier 1 by both Chambers & Partners (Shipping) and the Legal 500 (Shipping & Commodities). He was named Shipping Junior of the Year 2019 at the Chambers & Partners Bar Awards and was shortlisted in 2020 (Legal 500), 2022 (Chambers & Partners) and 2023 (Chambers & Partners). He is also recognised by the directories as a leading junior in Commodities and Insurance. Most recently, Ben was featured in Doyle's Guide for Maritime, Shipping & Transport Law.

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Tom has a broad commercial practice with a focus on shipping, commodities & marine insurance. He is recommended as a leading junior by Chambers UK and the Legal 500 where he is variously described as "very responsive, personable, very good with clients", "extremely intelligent", "very thorough", "commercial", "tenacious and talented", with "first-class" advocacy skills. Tom won Shipping, Commodities & Aviation Junior of the Year at the Legal 500 Bar Awards 2023, an award he was also shortlisted for in 2022. Most recently, Tom was featured in Doyle's Guide for Maritime, Shipping & Transport Law.

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Sanctions at Sea: Court Considers Risks of US Prosecution When Ordering Sale of Cargo

O v C [2025] 1 All ER (Comm) 977

Authors: Luke Parsons KC & Mark Stiggelbout

In ***O v C*** [2025] 1 All ER (Comm) 977, the Commercial Court made an order permitting the sale of cargo stuck onboard a vessel, with payment of the proceeds into court, notwithstanding the owners' concerns that making such a payment might entail them breaching US sanctions.

The charterers had loaded naphtha onto the vessel. Shortly thereafter, the charterers were added by the US Office of Foreign Assets Control ("OFAC") to its list of specially designated nationals and blocked persons pursuant to US Executive Order 13846. The owners purported to terminate the charter and refused to discharge and deliver the cargo to the charterers. The charterers subsequently purported to sell the cargo to another company ("B"). The owners disputed the veracity of that sale and refused to deliver to B.

In ongoing arbitration proceedings, the charterers disputed that the owners were subject to US sanctions, being a Liberian company owned by a Marshall Islands company. The owners maintained that they were subject to US sanctions, being headquartered in New York and listed on its stock exchange. The charterers claimed damages for conversion of the cargo. The owners claimed damages and an indemnity for the delay and other consequences of the charterers becoming sanctioned.

The owners applied to court pursuant to s. 44 of the Arbitration Act 1996, seeking an order that the cargo could be sold and the proceeds paid into a blocked account with a US financial institution, a course of action for which they held an OFAC license. The charterers equivocated in their opposition to a sale, and opposed any proceeds being paid into a US account, which might prevent them ever accessing the funds. They argued that any proceeds should be paid into court. The owners opposed payment into court because it was not permitted by OFAC and would risk the owners, their parent company and their US personnel breaching US sanctions. The expert evidence was that the risk of prosecution was low if a party acts in accordance with a court order. B was notified of the application but did not appear.

Sir Nigel Teare held that there was good reason to sell the cargo, having regard to safety factors, the economic implications of keeping it on board and the improbability of B opposing any sale. As to the destination of the proceeds, the court would not lightly exercise its discretion to order a party to do something that was, or might be, contrary to a foreign law. However, it was relevant to consider whether there was a real, as opposed to a fanciful, risk of prosecution. As the owners had opposed payment into court, there were powerful arguments for the US authorities not prosecuting the owners. There was therefore no real risk of prosecution. Alternatively, any risk was so low as to be outweighed by the possible harm to the charterers if they prevailed in the arbitration but could not access the proceeds.

The case illustrates the complexities of navigating US sanctions. Although the normal order of payment into court was ultimately made, it was largely because the owners had opposed such a course that the judge considered the risk of US prosecution to be sufficiently low.

Luke Parsons KC & Mark Stiggelbout acted for the owners (instructed by Faz Peermohamed and Rebecca Cawley of Stann Law).

"*Luke Parsons is a charming advocate and one of the best barristers at the Bar.*" (Chambers UK, 2025)

Luke is a Commercial silk whose practice encompasses insurance & reinsurance, international trade, sale of goods, & shipping. He won Shipping Silk of the Year at the Chambers UK Bar Awards 2023 & 2014 & at Legal 500 Awards 2018. Most recently, Luke was featured in Doyle's Guide for Maritime, Shipping & Transport Law.

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Mark has a broad international commercial practice, with particular emphasis in shipping, commodities, insurance, international arbitration, aviation, and energy disputes. He is recommended as a leading practitioner in both of the independent guides to the market - Chambers UK and the Legal 500. He is described as "*Highly intelligent, logical and an excellent legal brain. He is a razor sharp cross-examiner*".

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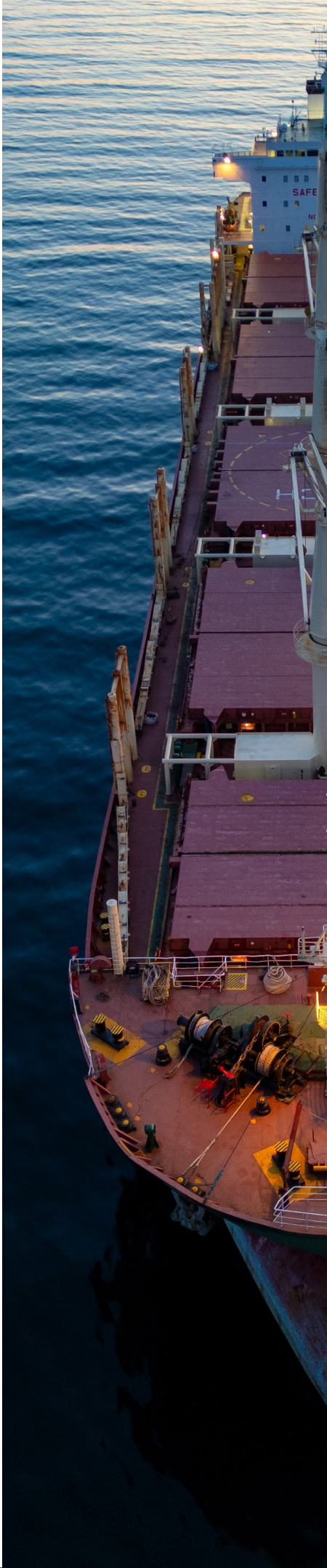

Damages for Cancellation Under SALEFORM 2012: Orion Shipping and Trading Ltd v Great Asia Maritime Limited

Orion Shipping and Trading Ltd v Great Asia Maritime Ltd [2024] EWHC 2075 (Comm)

Author: Paul Toms KC

This case concerned the cancellation by Buyers of a MOA for the purchase of a Capesize Bulk Carrier on the terms of the SALEFORM 2012 form as amended.

The Buyers cancelled the MOA on account of the failure of the Sellers to tender NOR and deliver the Vessel prior to the agreed cancelling date under clause 14 of SALEFORM 2012 (as set out below).

The Buyers brought a claim for damages against the Sellers. They claimed loss of bargain damages reflecting the difference between the contract price and the market price of the Vessel.

The Tribunal held that the Buyers were entitled to damages as claimed but the Sellers challenged that determination before the Commercial Court on a s. 69 appeal.

Clause 14 of the SALEFORM provided as follows:

"Should the Sellers fail to give Notice of Readiness in accordance with Clause 5(b) or fail to be ready to validly complete a legal transfer by the Cancelling Date the Buyers shall have the option of cancelling this Agreement... In the event that the Buyers elect to cancel this Agreement, the Deposit together with interest earned, if any, shall be released to them immediately.

Should the Sellers fail to give Notice of Readiness by the Cancelling Date or fail to be ready to validly complete a legal transfer as aforesaid they shall make due compensation to the Buyers for their loss and for all expenses together with interest if their failure is due to proven negligence and whether or not the Buyers cancel this Agreement".

Before Mrs Justice Dias, the Buyers advanced two reasons why they were entitled to loss of bargain damages.

Firstly, they argued that the Sellers had repudiated the MOA at common law which, as was common ground, would give rise to a right to claim loss of bargain damages.

Secondly, and alternatively, they argued that the loss of bargain damages were *"due compensation ... for ... loss and for all expenses ..."* within the meaning of clause 14 having been caused by *"proven negligence"*.

The first argument was rejected on the principal basis that, on its true construction, the MOA did not, whether in clause 14 or clause 5, in fact contain any obligation on the part of the Sellers to tender NOR or to be ready to deliver by the Cancelling Date. Rather clause 14 simply gave the Buyers the contractual right to cancel in a particular scenario i.e. where NOR had not been tendered or the Sellers were not ready to deliver by the specified date. The position was, therefore, analogous to a cancellation clause in a time charter.

The second argument was rejected on the basis that:

(1) The loss and expenses recoverable under clause 14 had to be caused by the failure to give NOR or to be ready to complete a legal transfer by the Cancelling Date;

(2) This was *prima facie* a reference to accrued loss and expenses at the point of cancellation and not to prospective losses and expenses;

(3) The Buyers' decision to terminate did not *"transform the case as a matter of law into one of non-delivery"*;

(4) Buyers' position was uncommercial: *"In circumstances where Buyers would otherwise recover no damages at all [given there was no breach], I see no great injustice in limiting recovery to accrued losses and wasted expenses. On the contrary, it is difficult to see why, in circumstances where Sellers are not in breach of condition, they should nonetheless be liable for the loss of the entire bargain when Buyers have a choice whether to cancel or not".*

As matters stand, therefore, absent a repudiation or renunciation, a Buyer cancelling an MOA on SALEFORM 2012 will not be entitled to loss of bargain damages.

However, the dispute was heard by the Court of Appeal in July 2025. It remains to be seen whether they take a different view than Mrs Justice Dias.

Paul specialises in commercial and international trade disputes. He is described in the legal directories as *"very erudite and quick on his feet; he has an unparalleled eye for detail and is careful, considered and astute"* (Chambers UK) and *"a talented and effective advocate ... clearly respected by judges. He quickly gets to the heart of the issues and gives first-rate advice."* (Legal 500, 2023). He has been recommended for many years in the leading legal directories

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Overlapping Arbitration Clauses: CAFI v. GTCS Trading

CAFI v. GTCS Trading DMCC [2025] EWHC 1350 (Comm)

Author: Benjamin Coffer

In ***CAFI v. GTCS Trading DMCC***, the Commercial Court confirmed that a single dispute may fall within the scope of two separate arbitration clauses in different contracts, allowing a claimant to choose which clause to invoke.

The case concerned two contracts for the sale of wheat. After a dispute arose under the first contract—with the seller alleging repudiation by the buyer—the parties entered into a second contract for the same cargo at a reduced price. This second agreement included a "Termination Clause" stating that the first contract was "terminated and considered void."

The seller initiated arbitration under the first contract's GAFTA arbitration clause. However, the buyer argued that the Termination Clause, contained in the second contract, barred the seller's damages claim. The GAFTA Board of Appeal refused to consider the clause's effect, reasoning that it fell under the second contract's arbitration clause, outside their jurisdiction. The Board thus awarded damages to the seller without considering the buyer's defence.

The buyer appealed under s. 67 of the Arbitration Act, arguing that the dispute over the Termination Clause also fell within the first contract's arbitration clause. The Commercial Court agreed, with Mr Justice Henshaw holding that jurisdiction clauses are not necessarily mutually exclusive. A dispute can indeed fall within the scope of two different arbitration agreements, granting claimants discretion over which forum to use.

The conclusion that two or more jurisdiction clauses can apply to the same dispute raises some practical difficulties. The claimant presumably has a choice as to which clause to invoke. But there is an obvious possibility of concurrent competing arbitral proceedings. There is no mechanism in the Arbitration Act 1996 (or its successor) for dealing with concurrent arbitral proceedings. A court or tribunal would presumably have to fall back on ordinary principles of issue estoppel and abuse of process

The Board made a further significant error. Having found that it had no jurisdiction to determine the issue as to the meaning of the Termination Clause, the Board nevertheless went on to make an unconditional award of damages in favour of the seller. The Court agreed with the buyers that this was a serious procedural irregularity, an excess of jurisdiction and an obvious error of law: the full house of arbitral failings under the 1996 Act.

In the context of s. 69, the Court accepted that the relevant question of law —whether damages could be awarded without resolving the Termination Clause's effect – had been "in play" even if not explicitly argued. It was sufficient that the parties' submissions "crystallised an issue" which had to be determined in order for the Board to reach their decision. That should make this a useful judgment for practitioners seeking permission to appeal under s. 69 in future cases.

Benjamin Coffer acted for the successful appellants, instructed by Damian Honey and Joshua Prest at HFW.

Read the full article here.

Ben is recognised by the market as a stand-out junior and is ranked in Tier 1 by both Chambers & Partners (Shipping) and the Legal 500 (Shipping & Commodities). He was named Shipping Junior of the Year 2019 at the Chambers & Partners Bar Awards and was shortlisted in 2020 (Legal 500), 2022 (Chambers & Partners) and 2023 (Chambers & Partners). He is also recognised by the directories as a leading junior in Commodities and Insurance. Most recently, Ben was featured in Doyle's Guide for Maritime, Shipping & Transport Law.

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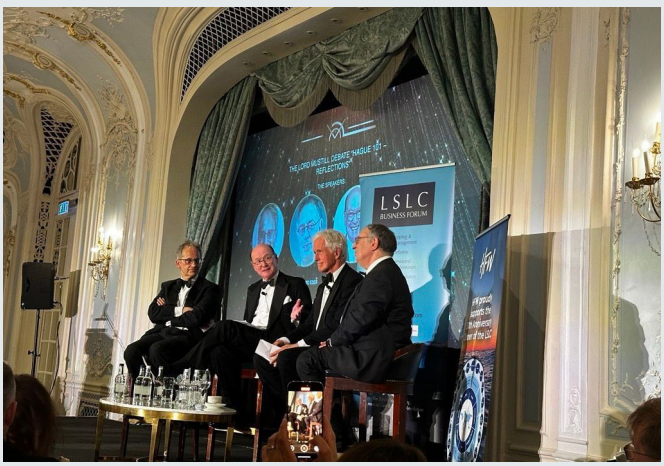
We were delighted to support the Singapore Chamber of Maritime Arbitration (SCMA) Conference as a Gold Sponsor this year with Henry Ellis speaking on “Climate Change and Maritime Disputes - Towards a greener future”.



We were pleased to support the 30th Anniversary of the London Shipping Law Centre as gold sponsor and had an enjoyable evening with friends and colleagues.

It was a lively and entertaining debate on “Hague 101 – Reflections” between Simon Rainey KC, Timothy Young KC and Sir Bernard Eder chaired by The Hon. Mr Justice Foxton.

Here’s to the continued impact and legacy of the LSLC — We look forward to the next 10-year celebration!

Upcoming Events

Tuesday, 16 September

LISW Breakfast Seminar

- Headwinds of Change – shipping and shipbuilding in an era of tariffs, geopolitical instability and climate change regulation

James M. Turner KC, Nichola Warrender KC, Koye Akoni & Edward Liu (Haiwen & Partners LLP)

Tuesday, 16 September

LISW Quadrant Reception

Wednesday, 17 September

Junior Shipping Seminar

- Time Bar Toolkit: A Crash-Course on Common Limitation Issues and How to Manage Them

Saira Paruk, Caleb Kirton, Michael Nguyen-Kim & Paul Best (Preston Turnbull)

Thursday, 18 September

LISW Breakfast Seminar

- Offshore Talking Heads

Simon Rainey KC, Andrew Leung, Paul Dean (HFW) & Helena Biggs (Gard)

Wednesday, 12 November

Quadrant Chambers Piraeus Drinks Reception

Thursday, 13 November

Quadrant Chambers Piraeus Shipping Law Seminar 2025

Check out www.quadrantchambers.com/events or email marketing@quadrantchambers.com for more information.

Discrepancies in Weight: A Novel Duty of Care to Consignees

Stournaras Stylianos Monoprosopi EPE v Maersk A/S [2024] EWHC 2494 (Comm)

Author: Zhi Yu Foo

In ***Stournaras Stylianos Monoprosopi v Maersk*** [2024] EWHC 2494 (Comm), Lionel Persey KC (sitting as a High Court Judge) (the "Judge") held that a carrier issuing bills of lading owed the consignee a duty of care to prevent those bills from being used as instruments of fraud where the carrier is put on notice of the fraud.

Stournaras purchased copper from Shippers to be shipped in containers with payment against documents. Maersk issued three clean bills of lading (the "Bills") for the containers naming Stournaras as the consignee. The Bills stated Shippers' declared weights under the heading *"Particulars furnished by Shipper"*. That information was *"as declared by the Shipper but without responsibility of or representation by the Carrier"*. Stournaras paid Shippers against the Bills, who then disappeared.

The containers in fact contained concrete and weighed far less than their declared weights, as evidenced by the Verified Gross Mass ("VGM") measured by the terminal before shipment. This information was available to Maersk, but it did not compare the declared weights with the VGM. Stournaras argued that Maersk ought to have done so and therefore ought not have issued clean Bills. The Judge disagreed and dismissed the claim.

However, the Judge accepted that *"where a consignee under a straight bill of lading can establish that the carrier knew or ought to have known when issuing the bill that there was a substantial discrepancy between the shipper declared weights and the actual verified weights", it was "fair, just and reasonable to impose a duty of care upon the carrier, owed to the named consignee, to ensure that its bills are not used as an instrument of fraud, once they have been put on notice of that fraud."*

Longmore J found a similar duty in ***Shinhan Bank Ltd v Sea Containers Ltd*** [2000] 2 Lloyd's Rep 406. Clean receipts evidencing receipt of goods were issued by the buyer to the seller in advance of actual delivery. The seller's bank paid the seller against the receipts, but the seller became insolvent prior to delivery and the buyer refused to pay. The bank successfully sued the buyer in deceit and negligence. Longmore J held that such receipts were analogous to bills of lading, and that *"The issuer of a receipt does … assume a responsibility that it is true so far as he knows; if he knows or should know … that it will be shown to third parties such as bankers, he is under a duty of reasonable care to ensure that it represents the true facts."*

Where the carrier knows or ought to know the relevant facts, i.e. discrepancies between the cargo and statements which the shipper seeks to include on the bill of lading, there is a strong case for the imposition of such a duty. There is unlikely to be any good reason for such discrepancies, and in the shipping context where payment is often made against documents rather than goods, the carrier may justifiably assume that a false bill of lading is intended to be used as an instrument of fraud. The real difficulty for consignees is in establishing that the carrier knew or ought to have known in the first place.

Zhi joined Quadrant Chambers in October 2025 following the successful completion of pupillage. He accepts instructions across all of Chambers' core areas. Before pupillage, Zhi spent a year as a judicial assistant in the Commercial Court, where he assisted in several significant cases on shipping, commodities, & arbitration.

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Can a Party Recover Substantial Damages for a Loss That, in Fact, They Could or Would Not Have Suffered?

Hapag-Lloyd AG v Skyros [2024] EWHC 3139 (Comm)

Author: Caleb Kirton

Can a party recover substantial damages for a loss that, in fact, they could or would not have suffered?

This was the question in ***Skyros***.

The ***SKYROS*** and ***AGIOS MINAS*** were time chartered by the defendant Owners to the claimant Charterers. Each was redelivered late. In the overrun period, Charterers paid charter hire, but the market rate was, by that time, higher. Owners had, however, sold both vessels to third-party buyers through Memoranda of Agreement (the '**MoAs**'), and they were to be delivered to their buyers immediately upon redelivery by Charterers. Owners could and would not, therefore, have re-chartered them at the higher marker rate in the overrun period.

Owners, nevertheless, claimed substantial damages for the (apparently) lost hire that they could, hypothetically, have earned had they been able to re-charter the vessels from their contractual redelivery dates.

No then-existing authority had determined if such a claim was valid.

The Tribunal held that it was. Applying first principles, it agreed that Owners were entitled to substantial damages in *quantum meruit* and/or under the doctrines of negotiating or user damages. It also concluded that the MoAs, being contracts with third parties, were *res inter alios acta* and, therefore, too remote to affect any measure of common-law damages.

Charterers appealed.

They contended that the aim of contractual damages—i.e., to put the innocent party in the position they would have been in had the contract been performed—would not be achieved if Owners received substantial damages: by the MoAs, Owners had agreed not to re-charter the Vessels upon redelivery but, instead, to immediately deliver them to their buyers. In those circumstances, although Charterers had breached the charterparties through late redelivery, that caused no loss to Owners.

The High Court (Bright J) agreed.

It rejected the three bases of claim accepted by the Tribunal. A *quantum meruit* claim, it reasoned, was excluded by the contractually agreed rate of hire, which continued during the overrun period. User damages were unavailable because throughout Owners had (through the crew) retained possession of the vessels, and Charterers had paid hire to employ them. Negotiation damages were, likewise, inapt because the charterparties neither created nor protected a valuable asset, the wrongful use of which could be compensated.

That left Owners' claim for conventional damages, the normal measure of which for late redelivery was the difference between the charter and market rates of hire during the overrun.

The Court, reversing the Tribunal, concluded that the MoAs were relevant in applying this measure. That was because the MoAs, as follow-on contracts, were evidentially relevant as to whether Owners were free to rehire the Vessels at the increased market rates. If they were excluded, Owners would recover sums that they would not, in fact, have earned. Consequently, although follow-on contracts are generally irrelevant, they will be material in circumstances like these as, otherwise, the law would compensate a fictitious loss.

Caleb specialises in commercial arbitration and litigation and accepts instructions, led and unled, in all of Chambers' core areas and beyond. Caleb previously experienced the full spectrum of commercial disputes through a unique combination of positions, including serving as a Judicial Assistant / Law Clerk in the Supreme Court (2023–24) and Court of Appeal (2019–20) and undertaking a yearlong internship in Shell International Limited's Global Litigation department. In these roles, Caleb became familiar with how clients and courts operate day to day and assisted in various high-profile cases.

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