LLM International Trade Law

Carriage of Goods by Sea
Assignment Paper
Presentation by 10th of March 2006

There is a dispute among various parties regarding *inter alia* the seaworthiness of the vessel "The Timely Anchor" and the fire on board which consumed one party's cargo. The parties seek advice regarding their respective rights and obligations and how these can be legally enforced.

The parties and contracts involved are:

- Owners Co (O) owners of the "The Timely Anchor" (vessel) domiciled in England chartered the vessel under a demise charter party (using BARECON 2001) to:

- HireBoat Company (HB) domiciled in Germany
  who have sub-chartered the vessel for two years under a time charter (using NYPE 93) to:

- Temp Charter Co (TC) domiciled in Spain
  who have sub-chartered the vessel under a voyage charter (using GENCON 94) to:

- Fast & Dry (F&D) domiciled in Portugal
  who issued through their branch office in Argentina a CONLINEBILL bill of lading to:

- Shipper (S)
  who has shipped a first instalment of goods on the vessel from Buenos Aires to Lisbon which goods are lost to fire on the vessel during transit

An appraisal of the facts indicate the following:

Facts apparently agreed include: the engine was getting very hot before the vessel was returned to O; this was notified to O by the previous charterers who stated that the engine needed "checking over" before further employment; O took "no further steps" to check or repair the engine; fire caused substantial loss and damage to goods during the transit; an investigation established the cause of the fire to be "some quite obvious defect in the engine;" the goods owned by S were in good order upon shipment and correctly stowed; S has lost his goods and is claiming damages.

Facts apparently disputed include: O did not have time to "check over" the engine and/or repair same prior to delivering the vessel before cancellation date to HB; O says that, under the demise charterparty, HB must repair the vessel at their own expense; O claims that HB's engineer must have been negligent, failing to check the engine regularly and thus avoid the fire; various cross-claims between F&D and TC; whether the bill of lading was in order or "inappropriate" as alleged by TC; HB maintains that TC was not entitled to sub-charter the vessel and that HB can withdraw it.

Facts still to be established include: did O advise HB regarding the defect prior to or upon delivering the vessel; who undertook the investigation, was it impartial and thus conclusive; did the vessel engine need immediate repair when the defect was notified to O or would subsequent careful maintenance have avoided a fire; was the vessel seaworthy at the time delivered to HB; if not seaworthy, who was responsible for making it so; must TC contribute to any cargo claims; has S indeed lost his buyer or can he seek an accommodation for the first instalment and continue to furnish the remaining goods (loss mitigation of claim).

A. It is assumed that although O was aware of engine overheating he did not inform HB. It seems the "*Owners shall be liable for the cost of but not the time for repairs or renewals occasioned by latent defects in the Vessel, her machinery or appurtenances, existing at the time of delivery ..*"[1] However, O might argue that the latent defect (if proven) was not such as to incur the owner's liability[2] if this was "… *not discoverable by the exercise of reasonable care...*"[3] It is assumed that a survey was undertaken[4] upon the vessel delivery; this must be reviewed to see if the overheating engine issue had been dealt with. If not, the previous demise charterers and/or O might be liable for negligently withholding material information or indeed the surveyors for failing to discover any latent defect in the engine which defect led to the fire causing loss and damage.

   O wanted to deliver the vessel to HB before the cancellation deadline, knowing that for this obligation time is of the essence[5] and that HB had a cancellation option available.[6]

   O was notified by the previous demise charterer, before redelivering the vessel, that the engine was getting very hot. It seems neither they nor O checked over or repaired the engine. According to the charter party (C/P)[7] the owners must exercise "… *due diligence to make the Vessel seaworthy ... in hull, machinery and equipment* …" The question indicates that the C/P, by incorporating art. 30 (a) is subject to English Law whereunder seaworthiness is held to be an absolute requirement precluding a plea of due diligence or non-negligence.[8] This requirement attaches upon commencement of the voyage but does not continue thereafter.[9] This requirement has been moderated with seaworthiness reduced to "…*the duty to furnish a ship and equipment reasonably suitable for the intended use or service*"[10] respectively to an innominate or intermediate term by Diplock LJ[11] hence breach does not necessarily permit of repudiation but might sound only in an action for damages. Concerning seaworthiness, the C/P requires only the ".. *exercise [of] due diligence* …"[12]

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[1] BARECON 2001, Part II, art. 3(c)
[2] The Cargo ex Laertes (1887) 12 PD 187, 56 LJP 108, 6 Asp MLC 174, 36 WR 111, 57 LT 502
[3] The Antigoni (1991) 1 Lloyd's Rep. 209
[4] BARECON 2001, Part II, art. 7 Surveys on Delivery and Redelivery
[5] Torvald Klaveness A/S v Arni Maritime Corporation, *The Gregos* (1994) 4 All ER 998
[6] BARECON 2001, Part II, art. 3(c) Delivery
[7] BARECON 2001, Part II, art. 3 (a)
[8] Steel v State Line Steamship Co (1877) 3 App. Cas. 72; Kopitoff v Wilson (1876) 1 QBD 377 at p 380
[9] McFadden v Blue Star Line (1905) 1 K.B 697 per Channell J. "*The ordinary warranty of seaworthiness does not take effect before the ship is ready to sail nor does it continue to have effect after she has set sail. It takes effect at the time of sailing alone.*"
[10] President iof India v West Coast Steamship Co (1963) 2 Lloyd's Rep 278 at p 281, per District Judge Kilkenny
[11] Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd (1962) QB 26
[12] BARECON 2001, Part II, art. 3(a) Delivery

The previous demise charterers were obliged to "…*maintain the Vessel, her machinery ... and spare parts in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice...*"[13] as also to "… *at their own expense ... whenever required, repair the Vessel during the Charter Period …*"[14] This indicates they were obliged to address and correct the cause of engine overheating and be responsible for the "… *repairs of latent defects …*" at their own expense[15] and to return the vessel to O "… *in the same good order and condition as when received, ordinary wear and tear excepted*."[16] They might seek exemption claiming engine overheating was a result of normal wear and tear. If successful, O would be liable for the repair expenses.

Withholding hire puts HB in breach of the C/P[17] enabling O to terminate the contract[18] and withdraw the vessel.[19] HB could counterclaim for termination if they can show that due to "… *any act or omission …*" by the owners they were "… *deprived of the vessel ... for a period of fourteen (14) running days after written notice …*" [20] but, in another case, a five month delay on a 24 month charter did not entitle the charterers to repudiate.[21] If the C/P incorporates an "anti-technicality clause" this provides a grace period during which the vessel could not be withdrawn pending rectification of late payment.[22] HB might also seek a temporary injunction to prevent O withdrawing the vessel due to non-payment of hire pending dispute settlement.[23]

It is suggested that, being aware of the engine overheating and the nature and duration of the subsequent voyage, it was incumbent upon O to check over the engine and ensure it was in order at the time the voyage commenced. There is authority finding defective engines make a vessel unseaworthy[24] which, if applied to this case would make O liable. HB could then claim damages and, if he proves the breach robbed him, as "… *the party not in default of substantially the whole benefit of the contract,*"[25] to repudiate the C/P.

O might try to show that the overheating engine did not make the vessel unseaworthy; hence the surveyors did not note it; that correct maintenance would have avoided any problem(s); that the previous charterer's crew handled the engine without any problem; that insufficient crew and/or the negligence of HB's engineer had exacerbated any "latent defect"[26] O might then avoid liability and insist that HB bears the cost of repairs.[27] O may also seek protection by claiming that "… *the shipowners were not deprived of protection by s 502*[28] *by reason of the fact that the fire was due to the unseaworthy condition of the vessel …*" and "… *the actual loss occurred without the 'actual fault or privity' of the shipowners …*"[29]

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[13] BARECON 2001, Part II, art. 10(a)(i) Maintenance and Repairs
[14] BARECON 2001, Part II, art. 10(b) Operation of the Vessel
[15] BARECON 2001, Part II, art. 13 (a) Insurance and Repairs
[16] BARECON 2001, Part II, art. 10(f) Use of the Vessel's Outfit, Equipment and Appliances
[17] BARECON 2001, Part II, art. 11(a) Hire
[18] BARECON 2001, Part II, art. 28(a)(i) Charterers' Default
[19] The Scaptrade (1983) 2 Lloyd's Rep. 253 at p 257
[20] BARECON 2001, Part II, art. 28(b) Owner' Default
[21] Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd (1962) QB 26
[22] The Libyaville (1975) 1 Lloyd's Rep. 537; The Afovos (1982) 1 Lloyd's Rep. 562 at p 567
[23] The Chrysovalandou Dyo (1981) 1 Lloyds's Rep. 159; The Balder London (1983) 1 Lloyd's Rep. 492
[24] Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd (1962) QB 26
[25] quoting Lord Wilberforce in Bunge Corporation, New York v Tradax Export SA, Panama (1981) 1 W.L.R. 711, (1981) Lloyd's Rep. 1
[26] Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd (1962) QB 26, alcoholic engineer
[27] BARECON 2001, Part II, art. 10(a)(i) Maintenance and Repairs
[28] s 502 of the Merchant Shipping Act, 1894
[29] Louis Dreyfus & Co Ltd v Tempus Shipping Co Ltd (1931) All E.R. 577

B. There is documentary evidence stating the fire started in the engine room. But, how reliable and impartial is the report, does it show the cause of the fire and allocate liability for its occurrence. These issues need to be clarified. It appears the fire emanated in the engine room due to some obvious defect in the engine, but the actual cause is not given. HB might avoid liability by showing that they could not foresee the probability of fire or the result of negligence by their servants.[30] HB might try to use this same case to show that O, knowing of the reported overheating, could reasonably be expected to foresee the consequences of taking no corrective action.

HB has an insurable interest in the vessel and as obliged by the C/P[31] insurance cover is available. Provided cover is under the MAR form of policy then "*The current ICC waive breach of the implied warranties of seaworthiness and fitness of the ship in circumstances only where neither the assured nor their servants are privy to such unseaworthiness or unfitness*."[32] This appears to cover the loss and damage incurred as also any unwitting negligence by the crew provided neither HB nor his "servants" were privy to the overheating engine or the probable consequences thereof. If so, HB would have recourse to the insurer and would "… *effect all insured repairs and shall undertake settlement and reimbursement from the insurers of all costs in connection with such repairs …*"[33] As the assured's rights are subrogated to the insurer, a recovery claim might be made upon O by the insurer if O's contributory negligence is established.[34] However, quoting Chuah[35] referring to *The Aposotolis*,[36] "*It seems clear that any act or omission which is claimed to render the ship unseaworthy must pass the test of causation – it must be the operative and proximate cause of the ship's unseaworthiness*." This view is supported by another case in which it was held that "…'*the owner of a British sea going ship' shall not be liable for 'any loss or damage happening without his actual fault or privity' where goods on board his ship are lost or damaged by reason of fine on board the ship*."[37]

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[30] Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd, [1961] 1 All ER 404 **Held** − The test of liability for the damage done by fire was the foreseeability of the injury by fire (see p 415, letter *g*, post) and, as a reasonable man would not, on the facts of this case, have foreseen such injury, the appellants were not liable in negligence for the damage, although their servants' carelessness was the direct cause of the damage.

[31] BARECON 2001, Part II, art. 13(a) Insurance and Repairs

[32] Brown, Robert H., *Marine Insurance, volume one, principles and basic practice,* 6th ed. (London, Witherby & Co Ltd, 1998) page 105

[33] BARECON 2001, Part II, art. 13(a) Insurance and Repairs

[34] Brown, Robert H., *Marine Insurance, volume one, principles and basic practice,* 6th ed. (London, Witherby & Co Ltd, 1998) page 267, 268

[35] J.C.T. Chuah, *Law of International Trade*, 2nd ed. (London, Sweet & Maxwell, 2001) 7-06 at p 206

[36] A. Meredith Jones & Co Ltd v Vangemar Shipping Co Ltd (The Aposotolis) (1997) 2 Lloys's Rep. 241

[37] Virginia Carolina Chemical Co v Norfolk and North American Steam Shipping Co (1912) 1 KB 229

C. We do not know the content of S's sales contract. If subject to English law and thus the Sale of Goods Act 1979 then property in the goods will pass when the parties intend that it shall be transferred.[38] In general, risk will pass together with property.[39] Having lost his cargo of ascertained goods, S claims on F&D for restitution. This is probably incorrect. S should look to his buyer to pay assuming property and/or risk in goods passed. If the buyer declines, S will have an action against him for the price.[40] It is assumed the goods, duly ascertained and evidenced in a bill of lading, were unconditionally appropriated to the contract[41] and risk and property in them passed to the buyer upon delivery to the carrier.[42] S thus fulfilled his delivery obligations[43] and the buyer has a corresponding payment obligation.[44]

If S had to conclude a contract of carriage with the carrier 'on behalf of the buyer', and did so, and the contract made was reasonable, then the buyer cannot refute that delivery was made.[45] If however risk and property still vests in S at the time of loss,[46] then S would claim against his insurer. The buyer need not pay, as goods were not delivered. If risk and property passed e.g. upon loading of the goods, the claim would be made by the buyer against his insurers under his marine cargo policy. The sales terms determine which policy will be claimed upon. If S sold under classic FOB terms[47] then his buyer must (should) have insured the goods and will claim under his policy. If S sold CIF or similar, his buyer will claim under S's policy. If the buyer is new and S sold FOB he might have taken out a seller's contingency insurance policy[48] to cover him if his buyer's insurance was inadequate.

The bill of lading used, and the format indicated in the C/P i.e. Congengill form edition 1994,[49] incorporate the Hague Rules per Art. 2 Paramount Clause, thus F&D could assume the role of carrier as the "*charterer who enters into a contract of carriage with the shipper.*[50] It seems a latent defect (e.g. engine getting very hot), not discoverable by due diligence, does not make the vessel unseaworthy so S may expect difficulty in succeeding against the carrier; if S has concluded the contract of carriage and transferred his rights and duties to a lawful holder of the bill of lading[51] e.g. to the buyer by indorsement, then S loses his right to sue the carrier. In view of the above, it is suggested that a practical and commercial solution, providing risk and property passed to the buyer, would be for the buyer to pay S and to make a claim against the carrier[52] or alternatively, and more probably, claim under the insurance policy to compensate the loss of goods.

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[38] Sale of Goods Act 1979 s17
[39] Sale of Goods Act 1979 s20A (1)(a)
[40] Sale of Goods Act 1979 s49
[41] Sale of Goods Act 1979 s18 Rule 5
[42] Shepherd v Harrison (1871) LR5 HL 116; s18, r 5(2)
[43] Federspiel (Carlos) & Co SA v Charles Twigg & Co Ltd (1957) 1 Lloyd's Rep. 240
[44] Sale of Goods Act 1979 s27, s28
[45] Sale of Goods Act 1979 s32 (2)
[46] for example having sold on Ex Ship or terms of a similar nature
[47] Pyrene Co Ltd v Scindia Navigation Co Ltd (1954) 2 QB 402, FOB sales categorised by Devlin J.
[48] Marine Insurance Act 1906, s.7(1)
[49] Gencon Charter 1994, Part II, art. 10. Bills of Lading
[50] The Hague Rules as amended by the Brussels Protocol 1968, Article I (a)
[51] Carriage of Goods by Sea Act 1992, s2(1)(a); Mitsui & Co Ltd v Flota Mercante Grancolombiana SA; The Cuidad de pasto and Cuidad de Neiva (1988) 2 Lloyd's Rep. 208 at 211
[52] Carriage of Goods by Sea Act 1992, s3(1)(b)

D. TC will surely resist any demand to give F&D a Letter of Indemnity (LOI) for apparently unspecified and unquantified expenses. An LOI could be of an unlimited nature and might be construed as an implicit acknowledgement of liability. Furthermore, a claim against owners by charterers for *inter alia* expenses was rejected, it being held that "…*the counterclaim succeeded, although not to the extent of the surveyor's fees* ***and other expenses****, which was rejected on the basis of the fire exception in the Hague Rules*."[53]

The C/P defines the owners' responsibilities in Clause 2 thereof. This Clause makes no mention of collateral liability beyond "… *loss of or damage to the goods or for delay in delivery* …" and that owners are not liable for "… *loss of or damage to the goods* …" unless caused by "*personal want of due diligence on the part of the Owners or their Manager* " [54] and also excludes "… *the neglect or default of the Master or crew.*"[55] It is probable F&D will not easily obtain a LOI. There is also a statutory limit on the owner's liability plus a 1 year time-bar for claims.[56]

It is unclear what expenses F&D might anticipate. F&D used a bill of lading format, the Conline rev. 1978 which, under Article 17. Identity of Carrier, states that F&D are neither the carrier nor act as principals. It also seems that the charterer cannot be held to be an agent of the owner unless the owner has duly authorised such agency.[57] Whether a bill is a charterer's or owner's bill will depend upon the circumstances, which vary from case to case.[58] This does not help the shipper S who, from the bill of lading itself, cannot readily identify the owner or carrier. This can be critical due to 12 month time-bar for bringing an action which, if passed, destroys any rights to claim the claimant might have.[59] Having apparently shifted liability to the owner or carrier, it is uncertain what claims and/or expenses F&D might expect. Had F&D not used the bill format they did, F&D might have been construed as the carrier[60] and thereby assumed carrier obligations.

TC claims the bill issued was "inappropriate." This probably derives from the Art. 10. Bills of Lading clause in the C/P that expressly stipulates a Congenbill Bill of Lading form, Edition 1994. It seems F&D were free to use a different format but only if they indemnify the owner for any terms more onerous than those in the underlying C/P.[61] The C/P foresees bills issued by the Master or its Agents stating "… *Owners shall appoint their own Agent ... at the port of loading* …"[62] whereby written authority is required that agents may so issue bills. It is unknown whether written authority was obtained by F&D from the (disponent) owner HB to permit their branch office to issue bills "on behalf of the Master." If not, it is possible the owners will not be bound.[63]

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[53] Macieo Shipping Ltd v Clipper Shipping Lines Ltd (2000) QB All ER (D) 529
[54] Gencon Charter 1994, Part II, art. 2. Owners' Responsibility Clause
[55] Gencon Charter 1994, Part II, art. 2. Owners' Responsibility Clause
[56] Hague Rules Art. IV, 5 - 1 year time-bar for claims per Art. III, 6; see The Antares (1987) 1 Lloyd's Rep. 424
[57] *The Antares* (No. 2) (1986) 2 Lloyd's Rep. 633
[58] Sunrise Maritime Inc v Uvisco Ltd; The Hector (1998) 2 Lloyd's Rep. 287
[59] Hague Rules, Art. III, 3.6. see *The Antares* (1987) 1 Lloyd's Rep. 424
[60] Hague Rules, Art. I (a)
[61] Gencon Charter 1994, Part II, art. 10. Bills of Lading; Mustill J. in Gulf Steel v Al Khalifa Shipping Co (1980) 2 Lloyd's Rep. 261 at p 265
[62] Gencon Charter 1994, Part II, art. 14. Agency
[63] Baumwoll Manufactur von Carl Scheiber v Furness (1893) A.C. 8

There is however authority holding that owners would be bound, despite a demise clause[64] on the basis that "*…the clause in the charterparty was ineffective to rebut the presumption that the master acted as servant of the shipowners* ."[65] But, in another case, where line operators chartered in additional, temporary tonnage, the Court of Appeal held that a bill signed by the Master is an owner's bill.[66]

TC claims F&D owes them freight. However, , shipment is made "on freight on delivery terms." The C/P indicates[67] that such freight is not "*… deemed earned until the cargo is thus delivered*." This accords with common law.[68] Failure to deliver the goods due to an excepted event e.g. fire, is irrelevant[69] as such exceptions are designed to protect the carrier against an action for non-delivery but do not grant any rights to claim unearned freight. It appears TC has no actionable claim for freight.

E. By withholding hire TC risks withdrawal of the vessel.[70] However, a grace period is allowed in the C/P granting some latitude.[71] Failure to pay after receipt of written notice from HB could be taken as repudiation enabling HB to withdraw the vessel.[72] Effective banking days must be borne in mind to avoid withdrawal due to late payment[73] and full payment is required i.e. without deduction(s).[74] Paying overdue hire prior to the owner exercising his right to withdraw will not protect the charterer[75] unless the owner waives his rights. In view of the "dramatically" rising freight market any delay in paying hire exposes TC to risk of vessel withdrawal.

HB maintains that TC was not entitled to sub-charter the vessel. In the absence of an express agreement to this end the C/P allows that "… *the Charterers shall have the liberty to sublet the Vessel …*"[76] albeit TC remains responsible for ultimately fulfilling the C/P. This claim is unfounded and does not permit HB to withdraw the vessel on these grounds.

HB also claims that TC must "contribute" to any cargo claims. Usually the expression contribution is used in relation to general average. Unless otherwise agreed the C/P states that "*Time charter hire shall not contribute to general average*."[77] This clause would free TC of any obligation to contribute to cargo claims. However, this same clause imposes upon TC the obligation to ensure that all bills issued incorporate certain clauses.[78] The bill format fails to include the New Jason clause. This omission could be construed as extending the owner's liability thus TC must indemnify HB. If however "cargo claims" has a more limited definition, as between owner and charterer, then these would be dealt with as per Art. 27. Cargo Claims.

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[64] i.e. Clause 17 of the Conline bill
[65] Manchester Trust Ltd v Furness, Withy & Co Ltd (1895) 2 Q.B. 539
[66] Owners of Cargo Lately Laden on Board the Rewia v Caribbean Liners (Caribtainer) Ltd (*The Rewia*) (1991) 2 Lloyd's Rep. 325
[67] Gencon Charter 1994, Part II, art. 4. Payment of Freight under item (c)
[68] Dakin v Oxley (1864) 143 ER 938 at p 946, dicta of Willes CJ
[69] Hunter v Prinsep (1808) 10 East 378
[70] NYPE 93, clause 11 (a) Hire Payment, see *The Tropwind* (1982) 1 Lloyd's Rep. 232 at p 234
[71] NYPE 93, clause 11 (b) Grace Period
[72] *The Afovos* (1982) 1 Lloyd's Rep. 562 at p 566 per Griffiths LJ
[73] *The Mihalios Xilas* (1979) 2 Lloyd's Rep. 303
[74] Western Bulk Carriers K/S v Li Hai Maritime Inc The 'Li Hai' [2005] All ER (D) 61 (May)
viz. vessel was withdrawn when $500 was deducted from hire due
[75] *The Laconia* (1977) 1 Lloyd's Rep. 315
[76] NYPE 93, clause 18 Sublet
[77] NYPE 93, clause 25, General Average
[78] the York-Antwerp Rules 1974 as amended 1990 and the New Jason Clause

In addition to the advisory comments given above, the parties are further advised on their respective rights and obligations and legal enforcement:

- O

A recent case, The Happy Ranger,[79] dealing with latent defect and negligence might weigh against O. Briefly, the defendant assumed control of a vessel on its maiden voyage without having the ship's hooks proof tested. This was "… *causative of the accident's occurrence.*" The defendant vessel owner was held not to have shown due diligence and thus could not rely on Art. III, r 1 of the Hague-Visby Rules. It was further agreed at trial that, due to the latent defect, the vessel was unseaworthy.

Both O and the previous demise charterer were aware of the engine problem. If it is shown that O was negligent in failing to "check over" and/or advise HB of the matter and/or to effect remedial repairs to the engine prior to delivery of the vessel, then it is suggested O is liable, for furnishing an unseaworthy vessel, if a causal nexus is proven between an engine latent defect and the resulting fire. Thus, to provide for a probable claim for repairs from HB, O would be well advised to prepare a counter-claim upon the previous demise charterer who, if O can show that they failed to properly maintain the vessel, could be made liable in turn.

It is suggested HB does not have irrefutable grounds for repudiating the C/P and, if he does so, O might claim for invalid repudiation and damages. HB needs to prove that the fire sprang from a defective engine which should have been repaired prior to delivery. He must show that O was negligent and failed to exercise due diligence, that the vessel was unseaworthy upon commencement of the voyage making O directly responsible for the fire and the consequences thereof. If he cannot do this, as noted above he can claim on his insurer. He needs then to prove that he was not privy to the unseaworthiness.

HB is not entitled to withhold hire albeit he might make compensatory deductions therefrom. O can insist upon full payment which, if not forthcoming, gives O grounds to terminate the C/P and claim damages. O's allegations of negligence regarding HB's engineer could be hard to prove. Any evidence may have been destroyed in the fire and supporting statements be difficult to obtain.

- HB

Because HB is the demise charterer he is responsible for effecting repairs to the vessel during the tenure or the C/P.[80] It is suggested that to protect his interests vis a vis O the repairs must be done by HB who should then reclaim the cost of same from O[81] or alternatively, from HB's insurer. In a rising freight market, HB is strongly advised to ensure prompt payment of hire to avoid vessel withdrawal. Advice as otherwise given to O above, where relevant to HB's relationship to O, is held restated herein.

[79] Parsons Corp and others v CV Scheepvaartonderneming, The Happy Ranger (2006) All ER (D) 127 (Feb) (2006) EWHC 122 (Comm) – vessel was specially built for heavy lift shipping hence ship's hooks were critical to proper performance (as a vessel's engine would be)
[80] Barecon 2001, Art. 10.(a)(i) & (b)
[81] Barecon 2001, Art. 3. (c)

- TC
  Withholding hire from HB is highly speculative. In the prevailing freight market TC risks having the vessel withdrawn, obliging TC to cover himself at much higher market rates. HB will not be browbeaten but more likely pleased to have the chance of repudiation, TC should pay hire promptly to secure his commercial interests. As stated above, TC was entitled to sub-charter the vessel and HB has no grounds, on this count, to withdraw the vessel. If they did, TC could claim for damages i.e. the cost of booking alternative freight. The issue of contribution as noted above should give TC no cause for concern in the event of a general average claim. Any other cargo claims between TC and HB would be dealt with by arbitration as foreseen in the C/P.

- F&D
  It is difficult to see how F&D can justify demanding an indemnity (LOI) from TC. Unless trade usage foresees this, it is unlikely that TC will be inclined to concur. Any obligation runs rather in the opposite direction. By issuing a Conline instead of a Congenbill bill of lading, F&D automatically indemnifies TC for any consequences arising out to so doing. If F&D did not obtain written authorisation from the (disponent) owner to use the agents who issued the bill, the indemnity could extend to cover this point also. However, as noted above, F&D need not pay freight as the cargo was not delivered.

- S
  Depending on his terms of sale S could or should be looking to his buyer to pay for the goods. If this is impossible, S will or should have a valid insurance claim on insurers. A claim for consequential damages (presumably loss of profits) will be difficult to claim (beyond any agreed % in his insurance policy) due to remoteness of damages. Although S could sue the carrier (provided he can identify and sue this entity within the time bar) the more practical, commercial solution would be to claim on the insurers and subrogate his rights to them.

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