



BLACK SEA & WORLDWIDE

SHIPPING

Interlegal digest

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Q1 2023



Court finds hold reinspection should have been arranged with reasonable diligence

It is the recent case Pan Ocean Co Ltd v. Daelim Corporation (DL Lilac) [2023] EWHC 391 (Comm) in which, the arbitral tribunal found that the Charterers were in breach of an implied obligation to have the holds re-inspected without delay after a failed inspection and therefore they were not entitled to claim the vessel was off-hire for any of the 12 days between the Master calling for reinspection and when the reinspection eventually took place. However, the part of Tribunal decision was appealed in Commercial Court.

Background of case

The parties entered into a trip time charterparty on an amended NYPE 1993 form for the carriage of urea in bulk. The Charter Party incorporated the BIMCO Hold Cleaning/Residue Disposal for Time Charter Parties clause, which states the following: Vessel's holds on delivery or on arrival 1st load port to be clean swept/washed down by fresh water and dried so as to receive Charterers intention cargoes

in all respects free of salt, rust scale and previous cargo residue to the satisfaction of the independent surveyor.

If vessel fails to pass any holds inspection the vessel to be placed off-hire until the vessel passes the same inspection and any expense/time incurred thereby for Owners' account.

The vessel arrived at Jubail on 13 February 2017 and the hold inspection took place on 16 February 2017. Due to the presence of rust, paint flakes and cargo residue in the holds the vessel failed the inspection. On 19 February 2017, the Master notified the Charterers' agents that the vessel had been cleaned and requested reinspection, which was only carried out when the vessel reberthed 12 days later, on 4 March 2017. The Charterers claimed the vessel was off-hire during that entire period, however the Owners disagreed and also contended that the delay was in fact due to the cargo not being ready to load.

In arbitration, the tribunal supported the Owners' position that it should be an implied term of the charterparty that once the Master called for reinspection.

the Charterers were obliged to have the vessel reinspected without delay. Keeping the vessel at anchor for 12 days was unreasonable. As it was stated nothing in the charterparty for such kind of situation, without such an obligation the Charterers would not be obliged to keep any delay to a minimum and to re-berth as soon as possible. By the end, the Owners' claim succeeded in full.

The Commercial Court decision

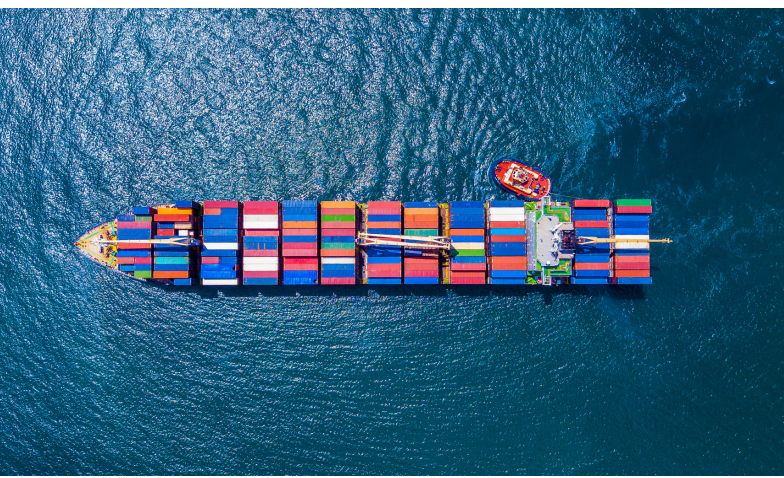
On appeal the Court found that the tribunal had applied the right test for implying a term as set out by the Supreme Court in *Marks & Spencer plc v. BNP Paribas* [2016] AC 742. Such a test involves determining, objectively, whether the term to be implied is necessary to give business efficacy to the contract or is so obvious that it goes without saying that it should be included in the contract.

The Charterers claimed that the tribunal had applied the wrong test because reasonableness was not of itself sufficient. However, the Court thought that the tribunal applied in fact the right test notwithstanding the reference to reasonableness.

The Court also disagreed with the Charterers position that the tribunal's findings meant that the implied term placed a strict obligation on the Charterers alone in situation where the Owners' co-operation is needed too, since there was no dispute that the charterparty required the Owners to agree to the appointment of an independent surveyor and they in fact had indicated that they would readily have done so.

However, soon it was proved that the tribunal was wrong to find that the Charterers were in breach of the implied obligation from the time when the Master called for a reinspection. The implied term required reasonable diligence to have the vessel reinspected without undue delay, but did not oblige an immediate reinspection upon the Master's notification.

By the end, the Court found that the tribunal should have considered when the reinspection would have taken place if both parties had exercised reasonable diligence to ensure it took place without delay, rather than to found that the vessel was immediately back on-hire as soon as the Master gave notification that the hold cleaning had been completed. The issue was remitted back to the tribunal for its reconsideration in light of the Court's decision.



DEMURRAGE CLAIM: HOW TO COMBAT UNLAWFUL CARGO DETENTION?

Demurrage claim: how to combat unlawful cargo detention?

Our clients quite often apply to us upon demurrage claims: each new case is more interesting than the previous one.

Recently, our Client, acting as the Charterer under voyage charter party, applied to us due to demurrage accrual by the Shipowner; the Client treated part of demurrage as unlawful.

The Vessel was chartered for sea carriage from Ukraine to Turkey. It should be noted that vessels got stuck at the entrance to Sulina Canal for a long time.

When the Vessel stayed in queue for ca. 50 days, the Shipowner filed a claim on demurrage recovery amounting to 570,000\$.

But why it was unlawful? Because Sulina Canal was closed for passage due to bad weather, so demurrage shall not accrue under such circumstances, as per charter party. Therefore, the Charterer objected on legal grounds.

As the result, we persuade the Shipowner to reduce partially its claim and, first and foremost, to abstain from cargo detention, having facilitated discharge of the whole goods without incurring demurrage and additional costs.

[Details of the case](#)

Beijing Convention on the Judicial Sale of Ships



A brief background

As we know, judicial bodies in many countries are empowered to sell the vessel in order to satisfy the claim against such vessel or her owner, usually in the framework of the procedure for enforcement of lien on the vessel or maritime lien. In most jurisdictions, judicial sale of the vessel has the legal effect of transferring net title to the buyer, thereby canceling all rights and interests previously related to the vessel, including mortgages and maritime liens. However, legal effects of foreign judicial sales differ; there are even examples of jurisdictions that do not recognize legal effects of the judicial sale conducted in another state.

Beijing Convention: what are its specifications and main goal?

The Convention is expected to facilitate legal defense for buyers of ships sold in the framework of court proceedings and to protect the interests of both shipowners and creditors. First of all, it is aimed to fix uniform rules whereunder the net title acquired by the buyer on such vessel will be recognized internationally, jointly with demand on issuing a Certificate of Sale only in compliance with certain guarantees, including notice to the

shipowner, creditors and other persons. In general, the judicial sale effected in one State Party should have the same effect in every other State Party.

Such guarantees should have a positive effect on the price obtained in the process of judicial sale of the vessels, for the benefit of both shipowners and creditors, including the lien holder.

However, it should be noted that the Convention applies only to legal effects of the judicial sales; therefore, in fact the rules of judicial sales of ships shall remain the prerogative of national legislation.



Does the Convention prescribe any additional rules or requirements?

Apart from the aforesaid, the Convention provides the following additional legal effects caused by launching judicial sale:

1. Mandatory exclusion of the vessel from the Ship Register or transfer of the existing registration at the buyer's request;
2. Prohibition to arrest the vessel by claim arising from the right or interest that existed in respect of this vessel before; and
3. Granting exclusive jurisdiction to the state where the judicial sale took place, in respect of considering the appeal against such sale.

What else interesting?

The Convention also provides practical mechanisms aimed to protect rights of the parties interested in the vessel by issuing two documents: a Notice of Judicial Sale and a Certificate of Judicial Sale, jointly with launching Online Register of such documents with free access thereto for any concerned person or entity, while the International Maritime Organization (IMO) will act as a depository for such notifications and certificates.



Also, creditors of debtor vessels, in particular mortgagees, will also have more guarantees for defense of their rights.

When and under which circumstances will the Convention enter into force?

Today, the Convention has already been adopted by the UN General Assembly, so the signing ceremony is going to be held in 2023 in Beijing as soon as possible. Its further application will depend on ratification, acceptance or approval by the signatory states, as well as on its openness to joining by any non-signatory state. The Convention will enter into force 180 days after deposit of the third instrument of ratification, the document on acceptance, approval or joining thereof.

We hope that adoption of the Beijing Convention will improve the process of acquiring vessels at auctions held by the court decisions and will make it safer. Interlegal law team is always ready to provide qualified legal assistance to your business and to assist in understanding the nuances of its international regulation.



NOTICE OF CANCELLATION IN RESPECT OF WAR RISKS

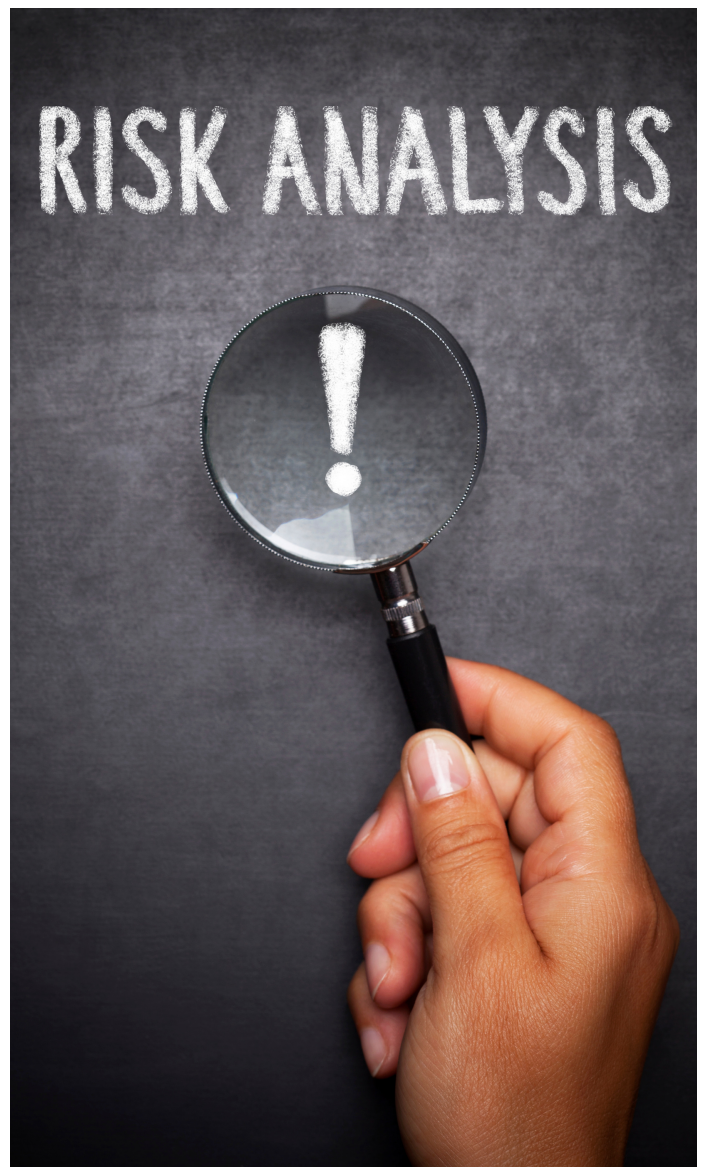
The MECO Group, an international team of reputable, dedicated and knowledgeable marine insurers issued the Circular to Assureds dated 24 December 2022 containing important information regarding changes to War Risk cover.

All parties directly underwriting insurance are ultimately reliant on the support of the global reinsurance treaty market. The treaty market has determined to impose certain exclusions regarding the current Russian aggression in Ukraine, which has come into effect at midnight on 31st December 2022, the common renewal date for most reinsurance treaty programmes.

All direct underwriters, including themselves are therefore in a position where they need to give all their Assureds notice of cancellation in respect of war risks.

Other than the provisions for automatic and immediate cancellation, cover for war risks can always be cancelled with a notice

period. Since 1 January 2023 the following changes terms and conditions were set out.



Territorial and conflict exclusion clause

A new clause was added that reads as follows:

Excluding all loss, damage, liability, cost or expense

- caused by or arising from or in connection with any Russia-Ukraine conflict and/or any expansion of such conflict; or
- in any area or territory or territorial waters where Russian armed forces, Russian-backed forces, and/or Russian authorities, are engaged in conflict within the territories (including territorial waters) of the Russian Federation, Belarus, the Republic of Moldova, Ukraine and any occupied / annexed regions of Ukraine including the Crimean Peninsula;
- arising from capture, seizure, arrest, detainment, confiscation, nationalisation, expropriation, deprivation or requisition for title or use, or the restraint of movement of vessels and cargo in the territories (including territorial waters) of the Russian Federation, Belarus, the Republic of Moldova, Ukraine and any occupied / annexed regions of Ukraine including the Crimean Peninsula.

Definition of war perils

The following additional perils will be defined as war perils:

- strikes, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions;
- terrorism, or any person acting maliciously or from a political motive;
- confiscation, nationalisation, expropriation, deprivation or requisition.

Automatic cancellation

A new provision was added that will cease cover immediately:

Upon the occurrence of any hostile detonation of any nuclear weapon of war, whatsoever or whensoever such detonation may occur.

Notice of cancellation

The notice of cancellation period will be reduced from seven to three days' written notice.



Interlegal

INTERLEGAL TEAM DEFENDED THE
CLIENT'S INTERESTS IN THE DISPUTE
UPON VESSEL COLLISION

COLLECTED BY INTERLEGAL

Interlegal team defended the Client's interests in the dispute upon vessel collision

The Client applied to Interlegal for damage recovery. It was owner of the vessel that collided another vessel moored at the Galati port (Romania); therefore, for the purpose of charging damages, owner of the suffered vessel seized the Client's barges and filed a claim on charging total amount of 200 thousand USD.

The main problem was that the suffered party demanded for the Letter of Undertaking in aggregate loss amount as lien, duly issued and signed by the Client's underwriters. However, at the moment when the dispute arose, the Client had no valid P&I insurance and treated the loss amount as highly increased.

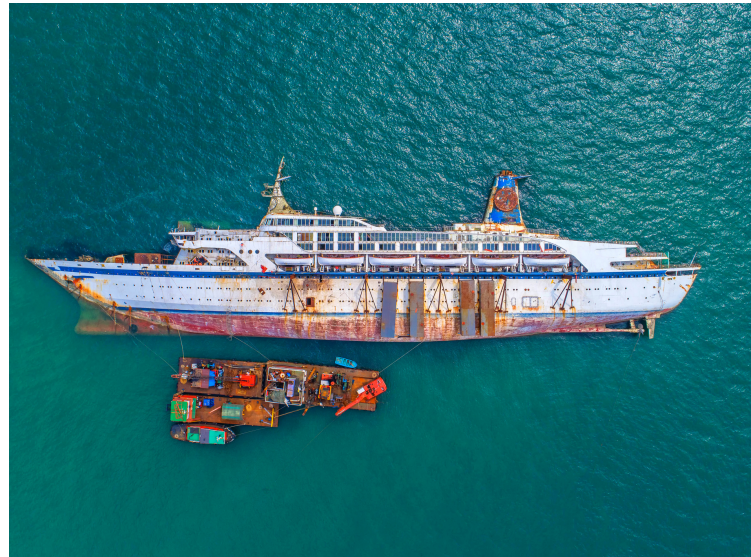
Due to prompt involvement and qualified legal support, the Parties signed amicable agreement and settled all the issues concerning losses, resulting in vessel release.

[**Details of the case**](#)

Limitation under the Hague-Visby Rules where there is physical damage and economic loss

As the general practice, in case when only part of a cargo suffers some minor physical damage, then an economic loss is suffered in respect of the whole of the cargo, such as diminution in market value due to delay, a liability to pay salvors, or transshipment costs. Therefore, there is a big question arises, whether the economic loss is limited by reference to the weight of the whole cargo, just the physically damaged cargo, or is it unlimited under the Hague Visby Rules (hereinafter - "HVR")?

Earlier, the *Limnos* [2008] 2 Lloyd's Rep 166, gave an answer to above issue. It was held that the words "the goods lost or damaged" only encompass goods which are physically lost or damaged, so that where an incident causes limited physical damage but substantial consequential economic losses, the carrier can limit its liability by reference to the weight of cargo physically damaged. However, it led to many controversies, most notably that if there was very minor physical damage the entire claim might be limited to a few dollars, but if there was no physical damage at all, the economic loss claim would be unlimited.



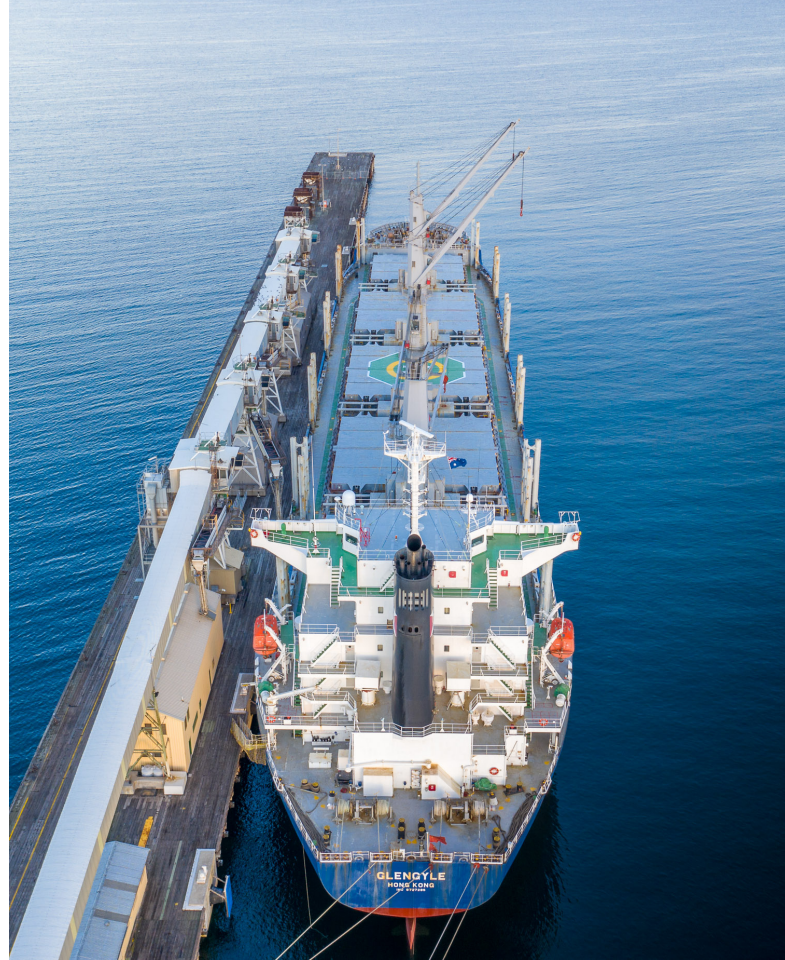
We remind that Article IV(5)(a) of the Hague-Visby Rules limit's the carrier's liability for "loss or damage to or in connection with the goods" by reference to the higher of two alternative figures: 666.67 SDR per package or unit or 2 SDR per kilogram of gross weight of "the goods lost or damaged".

In the recent important judgment handed down in case *Trafigura PTE Ltd v TTK Shipping Ltd* ("The Thorco Lineage") [2023] EWHC 26 (Comm), the argument that Article IV(5)(a) of the HVR limits claims for economic loss by reference only to the weight of cargo which suffers physical damage was rejected. Rather, it was held that the limit is to be calculated by reference to the weight of cargo physically or economically damaged,

including but not limited a diminution in market value, a liability to a third party such as salvors, or a requirement to transship or incurring other costs.

A brief background

The claim arose out of the grounding of the Vessel “THORCO LINEAGE” following a loss of main engine power. The Claimant was the owner of a cargo of zinc calcine which was on board of the vessel at the time of the engine failure. Salvors re-floated the vessel, but had a lien on the cargo in respect of the cargo interests’ liability for salvage remuneration, which was subsequently settled for USD 7.355 million. In addition, a small part of the cargo was physically damaged in the re-floating efforts, causing losses of about USD 300,000.



The cargo interests argued that the grounding had been caused by a breach of unseaworthiness under HVR and claimed damages in respect of their payments to salvors and the damage to the cargo, as well as on-shipment costs. Relying on The Limnos case, the carrier argued that its liability for all of the losses was limited by reference to the weight of the small quantity of cargo which had suffered physical damage.

The Carriers’ attempt to limit their liability was rejected by Judge of Commercial Court.

It was held that given that the delegates to the conventions leading to the Rules clearly intended Article IV(5)(a) to limit “economic losses which arise in connection with the goods but



Interlegal

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VOYAGE CHARTER PERFORMANCE: LEGAL SUPPORT FROM A TO Z

Voyage Charter performance: legal support from A to Z

The Client, acting as vessel Voyage Charterer, applied to Interlegal for legal support at the stage of signing the Charter Party on sea transportation from Chornomorsk to one of the Chinese sea ports.

The Parties agreed as per Charter Party, inter alia, freight prepayment amounting to 1 million USD by cost remittance to deposit account within 3 days from the moment of signing the Charter Party, which should be released in favor of the Shipowner after issuing Bills of Lading.

As per the Charter Party, extra war risk insurance for the first 7 days shall be payable at the Shipowner's expense, while for the later period it shall be payable at the Charterer's expense, based on invoice issued by the Shipowner's P&I Club. The dispute concerned the following: the Charterer desired to pay only H&M insurance war risks, while the Shipowner insisted on additional insurance payments, such as Loss of Hire and Crew Allowances, having significantly increased the claim amount.

[Details of the case](#)



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