MARITIME DISPUTES NEWSLETTER – MARCH 2020: MARITIME DECISIONS

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SCROLL DOWN FOR THE LATEST MARITIME DECISIONS MADE BY THE ENGLISH COURTS.

Plan your passage carefully! (CMA CGM Libra)

In a significant decision, the English Court of Appeal has upheld the decision of the lower court that an inadequate passage plan that caused a vessel's grounding rendered the vessel unseaworthy. The decision, which was given by an experienced maritime bench made up of Lord Justices Flaux, Haddon-Cave and Males, emphasises the importance of ensuring that ship passage plans are fit for purpose.

Alize 1954 & Anr v Allianz Elementar Versicherungs AG & Ors [2020] EWCA Civ 293

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Indemnities regarding statements concerning apparent order and condition of cargo (Tai Prize)

Charterers will be relieved by the Commercial Court's decision that a general implied indemnity was not owed to disponent owners in respect of statements concerning the apparent order and condition of cargo. The court also provided a useful reminder that, by presenting a draft bill of lading with a reference to apparent good order and condition, a shipper is doing no more than inviting the Master to make a representation of fact in accordance with his own assessment of the apparent condition of the cargo.

Priminds Shipping (HK) Co Ltd v Noble Chartering Inc [2020] EWHC 127 (Comm)

Ascertaining who the parties to a time charter contract are (Grand Fortune)

In the context of a recap time charter, the Commercial Court has provided useful guidance on how to ascertain who the parties to a contract are, confirming that where a contract is evidenced in writing but the parties cannot be ascertained from the relevant document, recourse can be had to extrinsic evidence of what the parties said and did up to the point the contract was concluded.

Americas Bulk Transport Limited (Liberia) v Cosco Bulk Carrier Limited (China) [2020] EWHC 147 (Comm)

Default judgment in *in rem* proceedings (Force India)

In a case concerning *in rem* proceedings against an arrested vessel, the Admiralty Court has noted that since other parties may have a claim against the vessel, pursuant to the Civil Procedure Rules it is not appropriate to grant judgment in default of a defence unless the court is satisfied that the claim has been proved.

Qatar National Bank QPSC v The Owner of the Yacht Force India [2020] EWHC 103 (Admlty)

Damages for breach of warranty in yacht building agreement

The English Commercial Court has held that the appropriate measure of damages for breach of a warranty to sell a yacht of satisfactory quality was the difference between the purchase price and the yacht's value at the time of the hearing. Although such a measure transferred the risk of depreciation onto the defendant, the depreciation was suffered as a result of the defendant's expressed intention to repair the faults with the yacht and the claimant's resulting decision not to reject it.

France & Anr v Discovery Yacht Sales Limited & Anr [2019] EWHC 3552 (Comm)

Did failure to provide documents as part of demurrage claim lead to claim being time-barred? (Amalie Essberger)

In a useful decision for owners, the English High Court has found that a claim for demurrage was not time-barred where documents supporting the claim were not all submitted at the same time. Although the documents all had to be provided within a certain time frame, where it was obvious that the documents were already within charterers' possession, owners were not obliged to resubmit them or draw attention to that fact.

"Amalie Essberger" Tankreederei GmbH & Co KG v Marubeni Corporation [2019] EWHC 3402 (Comm)

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MAIB reports – can they be used in maritime arbitration or court disputes? (The Ocean Prefect)

It was commonly considered that MAIB reports were inadmissible in arbitration or court disputes, but this view had been cast into doubt by the Court of Appeal in a decision regarding the use of Air Accident Investigation Branch (AAIB) reports (*Rogers v Hoyle*). However, the English High Court has now confirmed that MAIB reports may well be inadmissible in maritime disputes, and that it will be necessary to seek the court's consent to use them, even in arbitration.

Ocean Prefect Shipping Ltd v Dampskibsselskabet Norden AS [2019] EWHC 3368 (Comm)

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Mortgagee bank ordered to pay indemnity costs in relation to claim where owner was found to have scuttled its own vessel (Brillante Virtuoso)

Following its finding that a vessel had been lost by reason of the wilful misconduct of her owner and not by reason of an insured peril, the Commercial Court has held that the claimant ship mortgagee should pay indemnity costs, including for the period after the owner's claim had been struck out. Although the mortgagee had not itself acted fraudulently or pursued a claim dishonestly, on an objective basis it had a very weak case with a high chance of failure. This took the case out of the norm, and justified the order for indemnity costs.

Suez Fortune Investments Ltd & Anr v Talbot Underwriting Ltd & Ors [2019] EWHC 3300 (Comm)

Commercial Court considers meaning of "usual and reasonable" route, and whether a failure to adopt such a route is a breach of Article III rule 2 of Hague-Visby Rules (The Santa Isabella)

The High Court has observed that, if an owner chooses to take a longer route than the direct sea track, it must be both "usual and reasonable" bearing in mind the interests of all those involved. However, owners will be reassured by the finding it was not necessary to carry out a detailed analysis of the effect of different climatic conditions on cargo in making that assessment.

Alianca Navegacao E Logistica LTDA v Ameropa SA [2019] EWHC 3152 (Comm)

No withdrawal from time charter under BIMCO non-payment of hire clause for previous unpair hire instalments (The Caravos Liberty)

The English Commercial Court has held that an owner does not have the right to withdraw a vessel under the BIMCO "Non-Payment of Hire Clause for Time Charter Parties" in respect of non-payment of an earlier hire payment. This should therefore be borne in mind for the future.

Quiana Navigation SA v Pacific Gulf Shipping (Singapore) Pte Ltd (Caravos Liberty) [2019] EWHC 3171 (Comm)

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Meaning of "supporting documents" in charterparty time bar clause (The Tiger Shanghai)

A tribunal's decision that a surveyor's report on the cutting of new cement feeder holes in a vessel's hatch covers was a "supporting document" and should have been provided to defendant owners within the time specified in a time bar provision has been upheld by the Commercial Court. The document was supportive of the claim advanced, and the fact that it was "reasonably arguably privileged" could not assist where it was accepted that it was not actually privileged. The claim was therefore time barred.

MUR Shipping BV v Louis Dreyfus Company Suisse SA (The Tiger Shanghai) [2019] EWHC 3240 (Comm)

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Were insurers liable to pay under General Average Guarantees, even though there was a potential defence to General Average under York-Antwerp Rules? (BSLE Sunrise)

The Commercial Court has handed down an important decision for marine insurers, holding that a defence of actionable fault will be available under the standard form AAA/ILU general average guarantee. The decision confirms the well established and settled practice of the shipping industry, and means that very clear wording will be required to contract out of such a right.

Navalmar UK Limited v Ergo Versicherung AG & Anr (BSLE Sunrise) [2019] EWHC 2860 (Comm)

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No set-off clause did not prevent operation of prevention principle

A decision made in the context of a claim under a ship finance agreement has found that a no-set off clause did not prevent a defendant from relying on the prevention principle to justify a failure to repay the loan. The decision will be a relief to borrowers, and is a useful reminder to lenders of the importance of caution when serving loan-to-value notices – overstating any shortfall may amount to a repudiatory breach of the loan agreement.

TMF Trustee Limited & Ors v Fire Navigation Inc & Ors [2019] EWHC 2918 (Comm)

Commercial Court considers whether negotiating damages available in relation to breach of negative covenant in ship MOA (The Lory)

The English court has taken the unusual step of granting an injunction to restrain the purchaser of a bulk carrier sold for the purposes of demolition only from trading the vessel further. However, the court rejected arguments that the claimant was entitled to "negotiating" damages in relation to earlier fixtures, holding that the contractual rights in question were analogous to non-compete obligations, for which such damages are not available.

Priyanka Shipping Ltd v Glory Bulk Carriers PTE Limited (The Lory) [2019] EWHC 2804 (Comm)

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