MARITIME DISPUTES NEWSLETTER – ISSUE 1: MARITIME DECISIONS

30 OCTOBER 2019 • ARTICLE

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

Could mortgagee claim as co-insured under war risks policy where vessel scuttled by owner? (Brillante Virtuoso)

In a significant decision, the English court has held that on the balance of probabilities, a vessel owner had orchestrated a "fake" attack by pirates and the scuttling of his own ship. This wilful misconduct of the owner did not disable the mortgagee, who was a co-insured under a war risks insurance policy, from making a claim. However, the loss in question was not caused by any of the insured perils under the policy. The mortgagee's claim was therefore dismissed.

Suez Fortune Investments Ltd & Anr v Talbot Underwriting Ltd & Ors (Brillante Virtuoso) [2019] EWHC 2599 (Comm)

Commercial Court considers whether valid notice of readiness had been given in time (Alpha Harmony)

In a judgment which highlights the issues that can arise where head charters and sub-charters are not on identical terms, the English Commercial Court has held that while a sub-charterer was entitled to cancel the sub-charter because the notice of readiness was not delivered during the permitted hours, amendments to the head charter meant that the disponent owner could not do the same.

Bilgent Shipping PTE Ltd v ADM International SARL & Ors (Alpha Harmony) [2019] EWHC 2522 (Comm)

Security maintenance clauses in ship finance transactions: are they enforceable? (The Alkyon)

In this important judgment, which confirms that the written terms of a loan agreement are paramount in determining whether a lender may accelerate its loan and enforce its security, the High Court held that a claimant bank could rely on a borrower's breach of a security maintenance covenant as an "event of default". As a result, lenders can, with greater confidence, protect their own security by accelerating and enforcing without necessarily waiting for a payment default.

Natwest Markets Plc & Ors v Stallion Eight Shipping Co. SA (The Alkyon)

Click here for the FULL BRIEFING

No termination of bareboat charterparty for loss of class (The Arctic)

In a notable decision, upholding the initial decision of an LMAA tribunal, the Court of Appeal has held that a term in a long term Barecon 89 bareboat charterparty requiring charterers to keep a vessel in class was not a 'condition' in the legal sense that entitled the owners to terminate the charter. The expiry of the vessel's certificate a week after she had arrived at port for repairs and maintenance but before she entered drydock did not therefore enable owners to terminate the charter.

ARK Shipping Company LLC v Silverburn Shipping (IOM) Ltd (The Arctic) [2019] EWCA Civ 1161

Click here for the FULL BRIEFING

Court of Appeal considers causation issues in relation to force majeure clauses (Classic Maritime Inc v Limbungan Makmur Sdn Bhd & Anr)

In construing an exceptions clause which provided that charterers would not be responsible for failure to load resulting from accidents at a mine or other causes beyond the parties' control, the Court of Appeal has suggested that, notwithstanding commentary to the contrary, it may sometimes be necessary to prove causation to rely on a force majeure clause and show that, but for the force majeure event, the contract could and would have been performed.

Classic Maritime Inc v Limbungan Makmur Sdn Bhd & Anr [2019] EWCA Civ 1102

Incorporation of standard terms into bunker agreements (The Manifesto)

Providing a useful reminder of the law on incorporation of terms, the High Court has held that OW Bunkers' standard terms and conditions, which included a London arbitration clause, had been accepted by bunker purchasers by conduct. The terms and conditions, which had been amended to include the London arbitration clause, had been brought to the attention of the purchasers in a proforma email, and sales order confirmations also contained hyperlinks to the terms.

Cockett Marine Oil DMCC v ING Bank NV & Ors (The Manifesto) [2019] EWHC 1533 (Comm)

Supreme Court considers determination of "constructive total loss" (The Renos)

The Supreme Court's decision in The Renos provides important guidance for shipowners and insurers on the costs that can be taken into account in determining whether a vessel is a constructive total loss under its hull and machinery policy. The findings that (i) costs incurred before notice of abandonment was given were to be taken into account, but (ii) SCOPIC charges were not to be taken into account, are in line with industry expectations, and will promote certainty moving forward.

Sveriges Angfartygs Assurans Forening (The Swedish Club) & Ors v Connect Shipping Inc & Anr (The Renos) [2019] UKSC 29

Click here for the FULL BRIEFING

Anti-suit injunctions – Chinese shipowner restrains cargo interests' Chinese court action (The Confidence Ocean)

In this interesting decision, the High Court granted an interim anti-suit injunction order restraining cargo interests from continuing foreign court proceedings in breach of an English law and arbitration agreement, even though they were not party to the arbitration agreement and the foreign court proceedings had been on foot for over a year.

Qingdao Huiquan Shipping Company v Shanghai Dong He Xin Industry Group Co Ltd (The Confidence Ocean) [2018] EWHC 3009 (Comm)

Click here for the FULL BRIEFING

All decked out – English High Court clarifies deck exclusion clauses (The Elin)

The High Court has confirmed that an exclusion clause which stated that a carrier was not responsible for loss or damage to cargo "howsoever arising" was sufficient to exclude the carrier's liability for negligence and unseaworthiness in respect of loss or damage to cargo carried on deck.

Aprile SPA & Ors v Elin Maritime Ltd (The Elin) [2019] EWHC 1001 (Comm)

Click here for the FULL BRIEFING

Insured perils of piracy and loss caused by malicious acts (The Creola)

The High Court has refused a yacht owner's claim for an indemnity for damage said to result from piracy or malicious acts. There had been no threat of violence or use of force directed against a person as the yacht had been abandoned when looters broke in, and the subsequent flooding of the vessel was a by-product of the looting. However, the claimant was able to recover the damage as a loss caused by perils of the seas.

McKeever v Northernreef Insurance Co SA (The Creola)

Court interprets provisions regarding disputed invoices under BIMCO charterparty (The Atlantic Tonjer)

The considerable importance of cash flow to shipowners has been highlighted by the High Court in upholding a clause in a charterparty limiting the time by which charterers were entitled to challenge invoices rendered by owners.

Boskalis Offshore Marine Contracting BV v Atlantic Marine & Aviation LLP (The Atlantic Tonjer) [2019] EWHC 1213 (Comm)

Pirate ship hijackings – who pays for the delay? (The Eleni P)

The High Court has found that a typical time charterparty capture/seizure/arrest off-hire clause did not apply where a vessel was captured by pirates because the words "by any authority or by any legal process" applied to all of the clause's off-hire events. Nevertheless, the High Court proceeded to hold that the vessel was off-hire under the separate clause that specifically addressed piracy.

Eleni Shipping Ltd v Transgrain Shipping B.V. (The Eleni P) [2019] EWHC 910 (Comm)

Click here for the FULL BRIEFING

Ship passage plans – no room for error! (The CMA CGM Libra)

The High Court has, surprisingly to some, held that a defective passage plan that caused a casualty rendered the vessel unseaworthy, precluding the owner from claiming against the cargo interests in general average. The decision is being appealed to the Court of Appeal.

Alize 1954 & Anr v Allianz Elementar Versicherungs AG & Ors (The CMA CGM Libra) [2019] EWHC 481 (Admlty)

Click here for the FULL BRIEFING

Fire on board! When can an owner rely on the "fire" defence under the Hague-Visby rules? (The Lady M)

The Court of Appeal has provided useful guidance on the scope of the "fire" defence that may be available to a vessel's owner/carrier under the Hague-Visby Rules, in particular where a fire on board a vessel is started deliberately.

Glencore Energy UK Ltd & Anr v Freeport Holdings Ltd (The Lady M) [2019] EWCA Civ 388

Click here for the FULL BRIEFING

READ ABOUT RECENT ARBITRATION AWARDS.

READ ABOUT OTHER NOTABLE DECISIONS.

GO BACK TO THE MARITIME DISPUTES NEWSLETTER HOMEPAGE.

KEY CONTACTS

ANDREW WARD
PARTNER • LONDON
T: +44 20 7863 8950
award@wfw.com

DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.