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CMH SPOTLIGHT

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“CMA CGM Libra” case - Insights, Impacts and Implications

“CMG CGM Libra” went aground in May 2011. Shipowners declared general average, but part of the cargo interests declined to contribute.

The disputes on seaworthiness and carrier’s due diligence have sailed straight up to Supreme Court, where the long-awaited judgment was handed down in November, 2021.

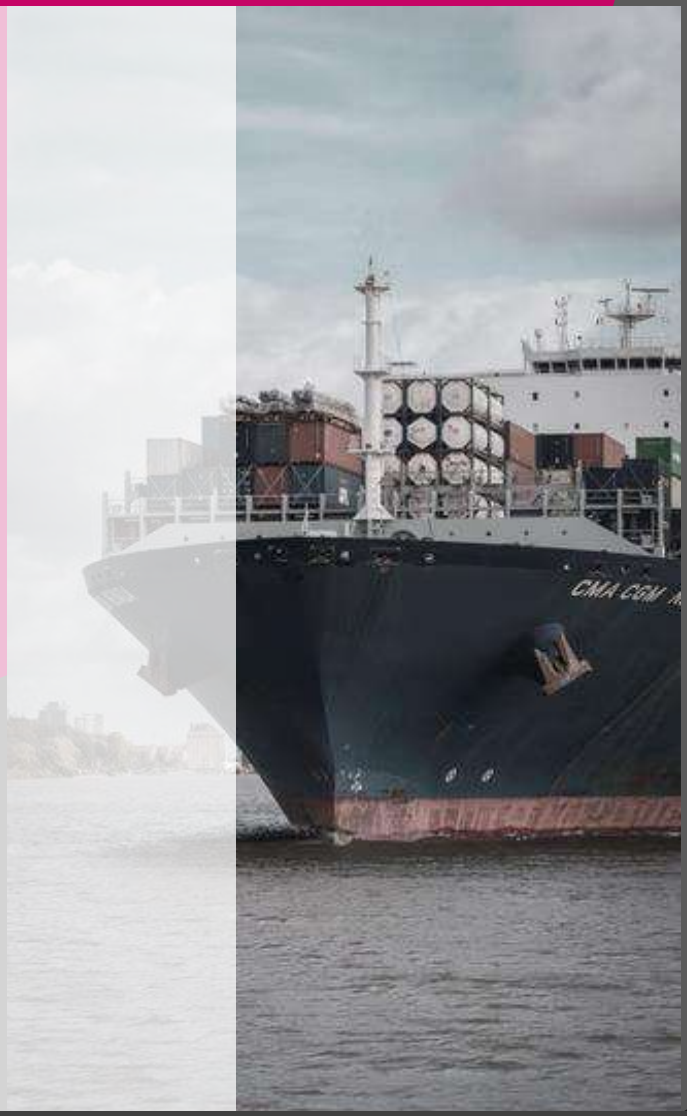
This Article is a quick tour for you to go through the legal principles in Supreme Court’s judgment, furnished with a further insight into its impact, and a discussion from insurance aspect.

“CMA CGM Libra” Insight: Supreme Court Judgment

Factual Background

On 17th May 2011, MV “CMA CGM LIBRA”, a 6000-TEU container ship, grounded while leaving the port of Xiamen, China. The ship’s chart had failed to update a warning derived from a Notice to Mariners that depths shown on the chart outside the fairway were shallower than recorded on the chart. The grounding occurred when the master sailed the vessel outside of the fairway to save a few minutes, expecting the waters to be deeper than they actually were.

General average expenditure in the global sum of around USD13 million was incurred, and Shipowners declared general average to recover around USD9 million from cargo interests. Approximately 8% of the cargo interests refused to pay GA contribution on the basis that the grounding arose out from actionable fault by Shipowners, and this led Shipowners to launch English Court proceedings to claim for about USD800,000 in general average contribution.



“CMA CGM Libra” Insight: Supreme Court Judgment (Cont’d)

Photo by David Iskander on Unsplash

Warm-Ups

Issues mainly regarding to unseaworthiness have been decided in the courts, and before we dive deeper, a few terms are explained / clarified here as a warm-up.

1. Seaworthiness

To clarify, “seaworthiness” may mean different things and standards under different jurisdictions. For “CMA CGM Libra” case, the courts only dealt with this issue under the Hague Rules.

2. Prudent Owners Test

This is a conventional test of unseaworthiness, namely “would a prudent owner have sent the ship to sea with the relevant defect without requiring it to be remedied, had he known of it?”

3. Article III Rule 1 of Hague Rules

It provides that the carrier shall be bound before and at the commencement of the voyage to exercise due diligence to make the ship seaworthy.

4. Article IV Rule 2 (a-q)

This Article lists seventeen exceptions which a carrier can rely on when faced with a claim, such as negligent navigation or nautical fault.

5. Actionable fault

Actionable fault exists when the person has no defence to the fault committed, i.e. it is fault which is not excusable under the contract, law or otherwise.

"CMA CGM Libra" Insight: Supreme Court Judgment (Cont'd)

Issues being put forward to the Supreme Court

Issue 1: Did the defective passage plan render the vessel unseaworthy for the purpose of Article III Rule 1 of the Hague Rules;

Issue 2: Did the failure of the master to exercise reasonable skill and care when preparing the passage plan constitute want of due diligence on the part of the carrier for the purpose of Article III Rule 2 of the Hague Rules?

Looking into Issue 1

Owners' assertion:

- A ship could only be unseaworthy if there was a defect affecting an "attribute" of the ship.
- Passage plan and working chart, as something 'extrinsic', were not attributes of the vessel but merely records of navigational decisions taken by the crew.

Admiralty Court and Court of Appeal's decision:

- The Admiralty Court judge applied "prudent owner test" and found that a prudent owner would not allow their vessel to depart with this defective passage plan; that is to say, the defective passage plan rendered the vessel unseaworthy before commencement of the voyage.
- Court of Appeal upheld the decision of Admiralty Court.

Supreme Court's findings and decision:

- The concept of unseaworthiness is not subject to an "attribute" threshold requiring there to be an "attribute" of the vessel which threatens the safety of the vessel.
- The prudent owner test is an appropriate test of seaworthiness in most cases.
- The Supreme Court upheld the decisions of both the Court of Appeal and first instance in that the vessel was unseaworthy because of the defective passage plan.

Main Disputing Issues Before Supreme Court

"CMA CGM Libra" Insight: Supreme Court Judgment (Cont'd)

Looking into Issue 2

Owners' assertion:

In proving that Shipowners had exercised due diligence to provide a seaworthy vessel at the beginning of the voyage, Owners argued that:

- It was enough that the ship was equipped with the necessary equipment and employed competent crew to enable safe navigation.
- Even if the ship was unseaworthy, there was no relevant failure to exercise due diligence, as Owners had provided all the equipment and instructions to allow the crew to create a proper passage plan, and thus the crew's failure to annotate it was not caused by carrier's lack of due diligence, but a nautical fault outside carrier's "orbit" of responsibility.

Admiralty Court and Court of Appeal's decision:

- It was not sufficient for Shipowners simply to employ competent crew and provide the necessary equipment to meet their due diligence obligations.
- Owners were responsible for the actions of the crew in failing to use reasonable skill to prepare the passage plan adequately.
- It was held owners had not exercised due diligence.

Supreme Court's findings and decisions:

- Providing the necessary equipment and competent crew is only one aspect of the owners' obligation to provide a seaworthy vessel.
- The carrier's obligation requires the carrier to ensure that a proper passage plan is prepared, not merely to provide a proper system to enable the crew to carry out the required planning exercise.
- Confirmation that the Shipowners' obligation under Article III Rule 1 to exercise due diligence to make the vessel seaworthy is non-delegable. It makes no difference that the task may have a navigational element to it or not. The carrier cannot escape from its seaworthiness responsibilities by delegating them to its servants or agents.
- Shipowners' argument on due diligence failed.

“CMA CGM Libra” Insight: Supreme Court Judgment (Cont’d)

Supreme Court’s findings / clarifications on other issues

1. Causation

Causation is key in cases as such. It is not enough for claimant to point out any defects in a passage plan and allege unseaworthiness. Such defects need to be sufficiently serious and be causative to the casualty.

2. Timing

Subject to factual matrix and causation, Shipowners’ liability may be potentially different in relation to i) working on the passage plan before the voyage and ii) execution and monitoring of the passage plan during the voyage.

- With i), Shipowners may be liable in event of master’s negligence in preparing a passage plan prior to the commencement of the voyage;
- with ii), Shipowners may not be liable for negligence during the voyage as they can rely on the Article IV Rule 2 (a) – nautical fault defence.

3. Hague Rules Article III vs. Article IV Rule 2(a)

- The fact that the defective passage plan involves nautical fault as exempted in Article IV Rule 2(a) is no defence to a claim for loss or damage caused by unseaworthiness.
- Article III obligation is overriding exemption under Article IV Rule 2(a). Unless carrier has met this seaworthiness obligation, he cannot rely on the nautical fault defence.

Supreme Court’s Clarification on other issues

Supreme Court's findings / clarifications on other issues (Cont'd)

4. Spreading of risks under Hague Rules

Shipowners submitted that Hague Rules aimed at spreading risks and allocating the cost of insurance between carrier and cargo interests.

The Supreme Court did not disagree, but pointed:

- Most negligent navigation would occur during the voyage rather than before, so the main burden of resulting cargo damage and general average claims will still fall on cargo interest anyway.
- For above reason, the Court saw no fundamental shift in the balance of risk between carriers and cargo interests by accepting the proposition that negligent passage planning can cause the vessel unseaworthy.

5. Remediable defects

Several leading commentaries suggest the remediable defects cannot make a ship unseaworthy. Supreme Court rejected this suggestion, and clarified:

- Remedial defects in the passage plan may constitute unseaworthiness, but not always will do.
- The defects will have to be sufficiently serious to satisfy the prudent owner test.
- There may be exceptional cases at the boundaries of seaworthiness where the prudent owner test does not apply. In such cases "it may be necessary to address a prior question of whether the defect relied upon sufficiently affects the fitness of the vessel to carry the goods safely on contractual voyage as to engage the doctrine of seaworthiness."

Supreme Court's Clarification on other issues

“CMA CGM Libra” Insight: Potential Impacts and Implications

Impact:
Is the decision pro-Owner or pro-Cargo interests?

Obviously the Supreme Court decision is warmly welcomed by cargo interests, but it does not necessarily spell out which interests the law leans to. The “CMA CGM Libra” case has very unusual fact matrix:

- The passage plan was seriously defective such as including wrong information, the plotting of wrong courses on the chart, the failure to do proper under-keel clearance calculation, and most importantly, a key warning from the port authority’s notice to mariners regarding the unchartered shallows outside the fairway not being marked on the charts.
- Shipmaster’s admission at trial that if the passage plan had been correctly annotated, he would not have sailed through that area. This is a fatal push of the case to a different course.

Implication: Lessons to be learnt for carriers

- To adopt more meticulous procedures in passage planning and in compliance with all relevant guidelines, and document such as evidence trail.
- To ensure charts are kept fully up to date, including the application of temporary and preliminary notices to mariners.
- Owners are not only obliged to exercise due diligence for the passage planning before commencement of voyage, the same is true for engaging specialists or agents to do other work of making vessel seaworthy, such as work done by ship repairer or the chief engineer on the ship’s engine.

Implication: for other contributing interest than ship

- To pro-actively deal with general average by preserving evidence.
- Consider to seek a counter-security from Shipowners if they believe that they have a defence to general average.
- To protect time-bar regarding defence to the general average.

“CMA CGM Libra” Insight: Potential Impacts and Implications

“CMA CGM Libra” Insight: Insurance Perspective

Quick look from General Average aspect

- General Average exits even if it arises due to a fault of the parties to the common maritime adventure.
- Important exception is, the party whose actionable fault caused the general average is not entitled to recover from other parties.
- Under York Antwerp Rules 1994 Rule D, issue of alleged fault is kept outside the average adjustment, but this does not prejudice any defence which may be open against the faulty party.
- In “CMA CGM Libra” case, Shipowners’ failure to fulfill Article III Rule 1 of Hague Visby Rules and which is causative to the loss is considered an actionable fault.

Insurance’s response in General Average denied due to actionable fault

- Usual H&M insurance policy covers ship’s proportion of general average.
- MIA 1906 section 39 provides if the ship is sent to sea in unseaworthy state with privity of the assured, the insurer is not liable for any loss attributed to the unseaworthiness. In reality, it is very difficult to prove that the assured is aware of the unseaworthiness and the causation to the loss, compared to actionable fault.
- P&I insurance covers Owners the contribution unrecoverable solely by reason of their breach of the contract of carriage, i.e. actionable fault.

A refund of general average contribution to all cargo interests?

In “CMA CGM Libra” case, there are 92% cargo interests who had paid their respective proportion of general average contribution. Can these cargo interests seek a refund after Court’s decision? Some market player’s view is:

- The payment of general average contribution constitutes acceptance of Owners’ entitlement of the same.
- There may be potential to argue the payment is under mistake or mis-representation. However, given the pace of the justice in such matters, the claim would be time-barred.

Off-Spec Bunker: A Brief Probe on Contracts, Loss Prevention and Insurance

It was reported at least 80 vessels were affected after receiving high sulphur fuel oil from Singapore in late February and March 2022. The bunker actually met ISO 8217 specification upon each delivery, but further screening identified contaminants of chlorinated hydrocarbons.

The tainted bunker caused failure of fuel system resulting in vessels' loss of power and blackout.

Off-spec bunkers can give rise to claims under an owner's hull and machinery insurance as well as under P&I Club cover, whether by way of an FD&D claim against time charterers or bunker suppliers and/or by way of a P&I claim, such as for deviation and delay in delivery of cargo.

Off-Spec Bunker: A Probe on Bunker Supply Contracts

Regardless of how bunker is purchased, a common feature is supplier's terms generally prevail. For a more balanced contract framework compared to seller's standard terms, buyer may try to negotiate by taking consideration of following key issues:

- **Due diligence with respect to sellers:**
  - On their market reputation, financial standing and insurance position;
  - Are they also physical supplier or only an intermediary;
  - How do they verify the quality of fuel supplied;
  - Seller's supply chain quality management procedures.
- **Due diligence with respect to the fuel:**
  - Any special parameters regarding storage, handling, treatment and use of the fuel on board;
  - Specific information in the Certificate of Quality.
- **Recommended contractual terms**
  - **Fuel specification** (commonly ISO 8217 Table 2): whether it is also back-to-back with charterparty requirement;
  - **Express warranty** that the fuel is free of contaminants, fit for purpose and complies with MARPOL.
  - **Protective sampling and quality testing regime**: such as a sample from each of the bunker supplier and the vessel should be analysed as opposed to only the supplier's sample. The agreed sampling and quality testing regime needs to match the charterparty so the buyer is not exposed to different test standards.
  - **Time bar**: it is recommended to link any time bar to 14 days after use of the bunkers.
  - **Limitation of liability**: it is recommended to bargain for at least twice the value of the fuel.
  - **The "OW Bunkers" issue**: if purchasing via broker or trader there is a risk they may not have paid their supplier. In the event of their insolvency, buyers have the risk for paying twice. It is sensible to include provision that sellers warrant they have paid for the bunkers, and buyer has right to request seller's paying evidence for the bunker before paying seller's invoice.
  - **Local rules and regulations:** It is recommended to exclude local rules and regulations either in their entirety or to limit their applicability to fuel sampling only.
  - **Lien:** avoid provisions that give sellers a lien on vessel or any rights of action against third parties. Similarly, a clause can also be included by which the sellers warrant that no third party has any right to claim against the buyer in relation to the fuel, or exercise any right of lien.
  - **Jurisdiction:** avoid application of US law (due to maritime lien rights).
  - **Seller's Insurance:** Seller should place insurance such as credit, professional indemnity and product liability insurance, and produce evidence at request.

Off-Spec Bunker: Disputes in Time Charterparty

- **Express provision in Charterparty regarding quality of bunker**

It is generally accepted that the charterer is under an absolute obligation to provide bunkers of a reasonable quality which are suitable for the ship in question. If the charterparty includes express requirements regarding the type and grade of bunkers, the charterer will have to comply.

- **"Fit for purpose"**

Under English law, the fact the bunkers may comply with the basic contractual specifications is not enough. Even if not expressly specified, in the Charterparty there was also an implied term that the bunkers had to be fit for the purpose intended.

- **Causation**

In bunker disputes, Shipowners bear the burden of proof to establish whether the damage to the ship was caused by the off-spec bunkers or some other extraneous cause. If an owner burns bunkers in the knowledge that they are not suitable for burning, then an owner may break the chain of causation such that the charterer is not liable for any consequent damage.

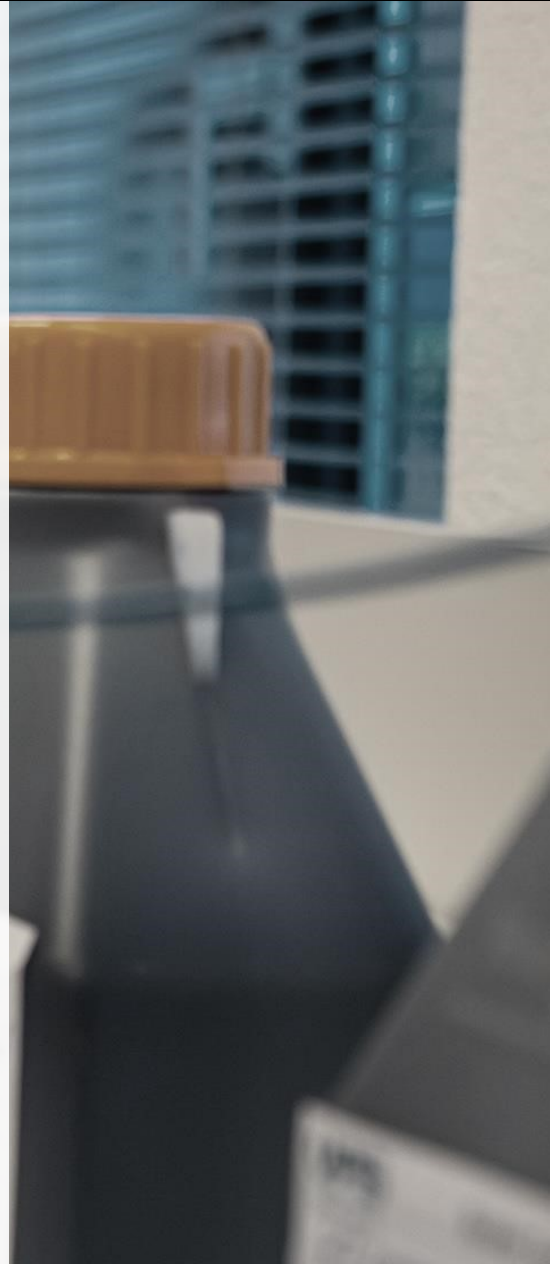
- **Mitigation**

If bunkers are off-specification and may have caused damage to the engine, the ship's crew will be under a duty to mitigate any loss, including de-bunkering arrangement, even when Charterers deny liability and not respond to de-bunkering operation.

When the off-spec bunker has not yet been consumed, dilemma arises on whether to de-bunker or not. If owners decide to consume the fuel, they might run the risk of engine damage, as well as facing a possible argument that they failed to mitigate their losses. On the other hand, if fuel is debunkered, then owners might face an argument that the fuel should have been consumed, providing it was safe to do so.

Given the risks, some lawyers said that it was "highly advisable that vessel owners rely on expert advice and act in a cautious and prudent manner".

In some cases, the off-spec bunker can be used after blending. However, it would be technically burdensome in order to comply with MARPOL, and documentarily difficult as the bunker debit note no longer represents the blended fuel onboard.



Off-Spec Bunker: A Touch on Property Insurance Aspect

Background

When off-spec bunker caused main engine failure and resulting in collision or grounding, exposures in relation to bunkers would be the following: -

a. Loss of bunkers onboard;

b. Contribution to Salvage / General Average depending on the value of Bunkers saved.

c. Third party liability such as pollution and damage to hull (Time charterer's liability). These issues are usually covered by P&I insurance.

Hereby we only discuss a) and b), i.e. from the **property exposure aspect** only.

How H&M Insurance responds:

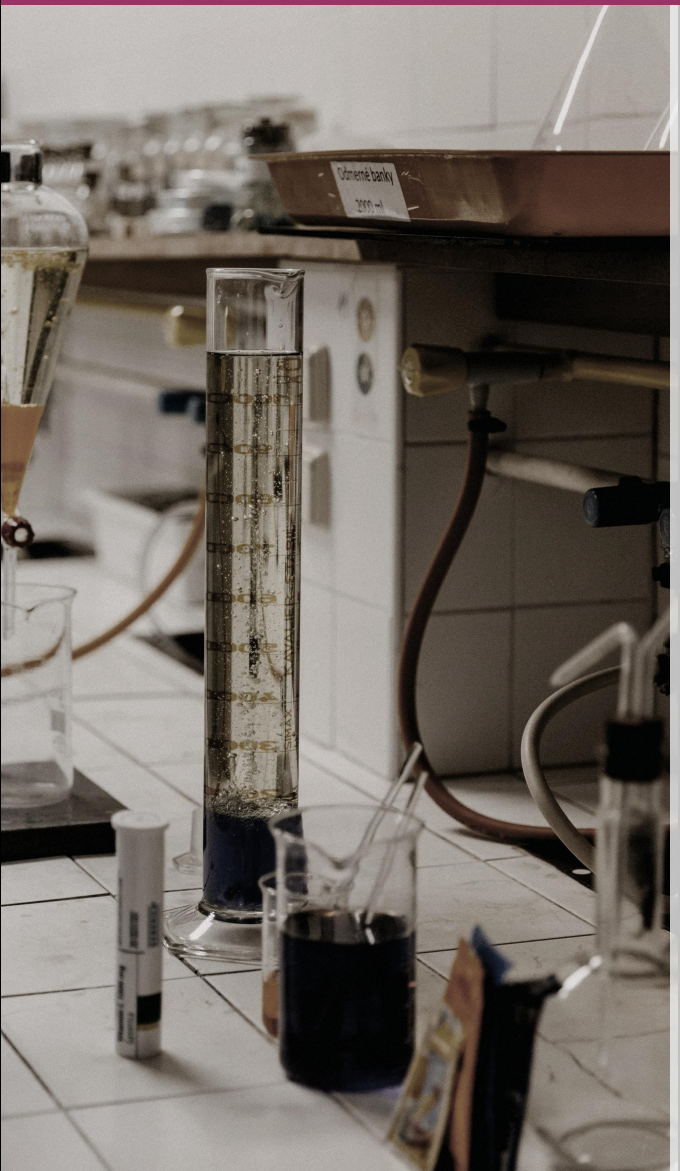
- If the insurance cover is on the basis of English Law, it generally provides for the interest insured as being Hull & Machinery, etc. or everything connected therewith.
- Unless there are any specific exclusions in H&M policy, if the bunkers are owned by the Owners, they would fall under the H&M policy.
- With respect to a partial loss, H&M policies do provide cover up to the sum insured without any adjustment of under-insurance, so the loss of bunker onboard can be recovered.
- In terms of total loss, the recovery under policy is the agreed sum insured (or agreed value of ship). It is suggested to review the sum insured to ensure there is margin for bunker's value, especially for those vessels with substantial quantity of bunker onboard.
- If the bunker is not owned by Owners but by time charterer, H&M insurance will not respond.
- There is a scenario where bunker supplier retains the title of the bunker after delivery, before buyer makes payment. Arguably, insurers can deny bunker claim due to ownership issue.

Bunker Insurance, a choice of remedy?

This can be considered by time charterer who owns bunker onboard the vessel, and by owners whose H&M policy excludes bunker.

- Cover is based on the value of the maximum quantity of bunkers on board the vessel at any time.
- It covers loss and contamination of actual amount of bunkers owned by owners or charterers onboard the vessel at the time of incident, as well as bunker's contribution to general average and salvage.
- In the above-mentioned scenario that the bunker supplier retains the title of the bunker before the buyer's payment, it is suggested to keep the insurers remain on risk even bunkers are yet to be transferred to Owners/Charterers by seeking an appropriate endorsement in the policy.

Off-Spec Bunker: Golden Rules On Loss Prevention



The consequence of burning off-specification bunkers can be severe with breakdown of the vessel's machinery, as well as with incurred time and expenses for de-bunkering and deviation. From a loss prevention perspective, the following will present different aspects in this issue.

1. Sampling

It is recommended that at least five samples are taken. Three should be for the receiving vessel (one for MARPOL, one for fuel testing programme and one for retention), the fourth should be given to the bunker supplier and the fifth may be held by a responsible independent party, such as a bunker surveyor, for safe keeping and reference in case of a dispute.

- **MARPOL Sample**
  - Mandatory, and make sure it is complying with MARPOL.
  - If the supplier does not provide a MARPOL sample or if the bunker delivery note does not contain all the required information, a notification to the ship's flag state and the bunker port state is to be issued.
- **Commercial Sample**
  - The parties (supplier, charterer, owners) to decide on the location and sampling practice preferably before bunkering operation.
  - IMO has published a guidance document MEPC.1/Circ.875 on best practice to be followed by suppliers for commercial sample. It states that the samples are to be taken at the receiving ship's manifold.

2. Preserving evidence

- If bunker barge is not following best practice on taking representative samples, notify charterer immediately.
- Photographic/video evidence should be maintained as evidence to show that the receiving ship followed the best practice.
- Make sure bunker delivery note (BDN) is in accordance to MARPOL Annex VI requirements;
- Seal number shall be inserted into BDN as well to avoid disputes on validity. If such is not feasible, crew shall issue letter of protest to supplier and notify charterer that owners do not accept that they are bound by the barge's samples;

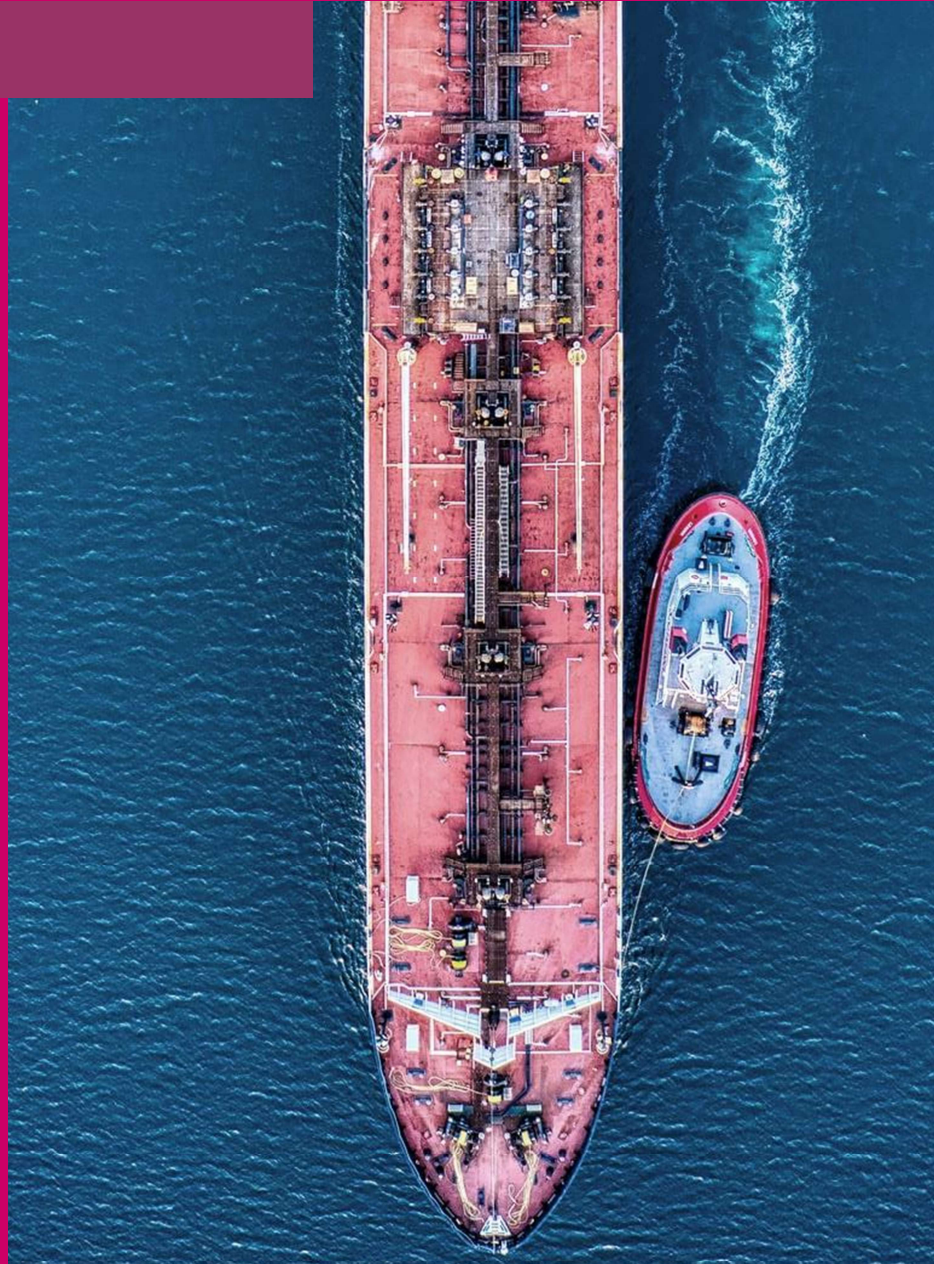
Off-Spec Bunker: Golden Rules On Loss Prevention (Cont'd)

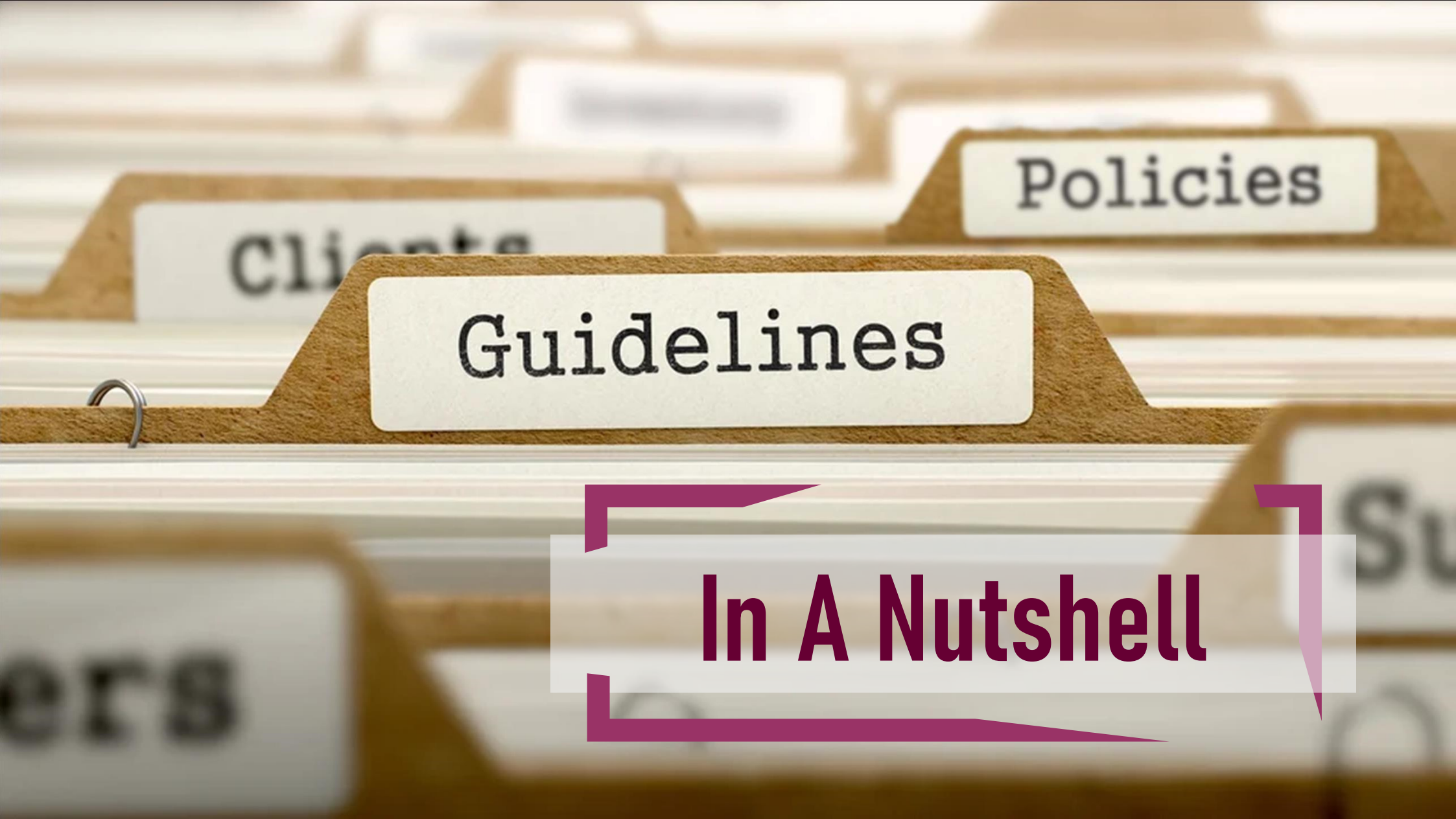
2. Preserving evidence (Cont'd)

- Always seek instruction or protest if vessel is being asked to sign a BDN that does not conform with the pre-agreed arrangements;
- The BDN should be signed by the supplier's representative and counter-signed by the vessel's representative after bunkering;
- A prudent owner shall also retain other evidentiary documents such as vessel's oil record book / PMS records / bunker tank soundings and measurements / consumption records / third party fuel oil analysis for previous stems / engine lubricating oil analysis results / maintenance records, etc..

3. Precaution on bunkering procedure

- Always order or accept fuel according to the engine maker's recommendations.
- Off- spec bunker may still comply with ISO 8217 specification but contains other contaminants falling out of ordinary test. It is advisable to use more advance testing such as GC/MS by an independent fuel analysis contractor such as Lloyd's Register, FOBAS or VPS.
- Check the supplier's paperwork to ensure that the bunkers delivered conform in terms of quantity and specification with what has actually been delivered.
- Whenever possible, place new bunkers into empty tanks. New fuel oil should not be used until analysis results have been received.
- Bunkers from different suppliers should not be mixed.
- Where the bunker supply comes from a barge, the chief engineer should be watchful if the supply is being circulated in the barge tanks on a regular basis. The circulating process may be disguising a nasty cocktail and one should also be wary of the "cappuccino" effect.
- Witnessing of the tests is to be encouraged as is the agreement of a common testing methodology under a charterparty and a bunker supply contract.





In A Nutshell

In A Nutshell – Who Is An "Operator" For The Purpose of Limitation Convention

Derived from:

(1) Splitt Chartering APS (2) Stema Shipping A/S (3) Maibau Baustoffhandel GmbH (4) Stema Shipping (UK) Limited (Claimant) v. (1) Saga Shipholding Norway AS (2) RTE Reseau De Transport D'Electricitie SA and others (Stema Barge II) [2021] EWCA Civ 1880

Factual Background

- **Involved parties:**

1) Splitt Chatering ApS : Registered Owner of barge "STEMA BARGE II"
2) Stema Shipping A/S: chartered "STEMA BARGE II" and sold rock armour to 3)
3) Stema Shipping (UK) Limited: purchaser and receiver of rock armour
4) RTE: owner of the damaged submarine cable

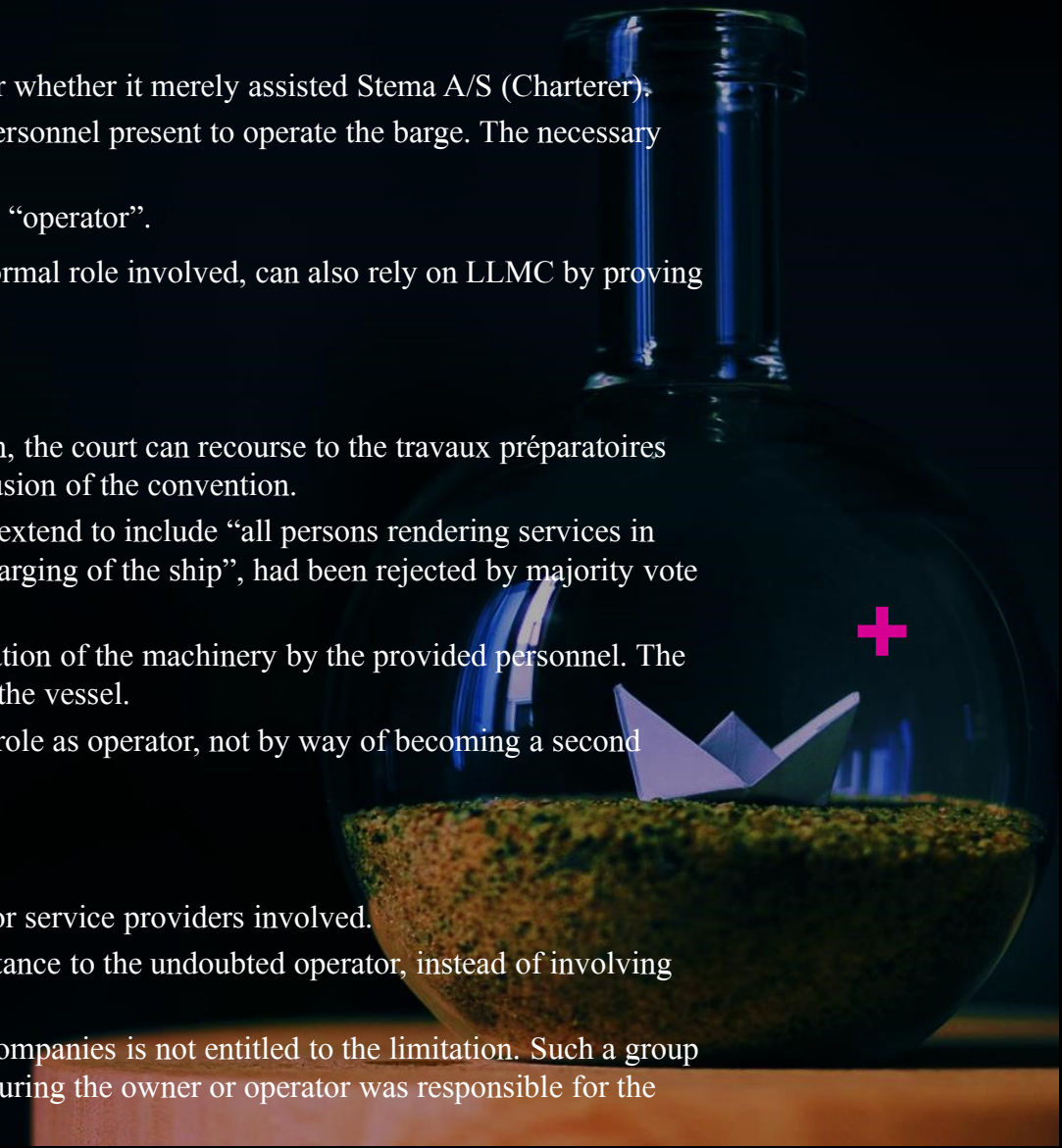
1), 2) and 3) are associated companies under same group.

- **Facts**

Dumb barge "STEMA BARGE II" dragged anchor off Dover during a bad storm in late 2016, and damaged the submarine cable owned by RTE. It was recognized that the Registered Owner and the Charterer could limit their liability under the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC 1976).

Stema UK did not have any formal role in respect of the barge's management or operation, but its personnel operated the machinery of the barge whilst the barge was off Dover and were involved in monitoring the weather and in the decision to leave the barge at anchor during the storm. The issue is whether this associated company was the operator of the barge within the scope of Article 1(2) of LLMC 1976 and consequently entitled to limit liability.

In A Nutshell – Who Is An "Operator" For The Purpose of Limitation Convention



Admiralty Court's Judgment in 2020

- The Judge asked himself whether Stema UK was operator of the barge off Dover, or whether it merely assisted Stema A/S (Charterer).
- The Judge's finding is although Charterer was the operator of the barge, it had no personnel present to operate the barge. The necessary operation of the barge was in fact performed by Stema UK alone.
- Judge decided Stema UK is not merely assisting, and it can also fall within the term "operator".

As a result, the term "operator" is given wide meaning, and indicates a party, without formal role involved, can also rely on LLMC by proving limited services to a ship at a particular time / location.

Court of Appeal's Judgment in 2021

- When construing the ordinary meaning of words used in an international convention, the court can recourse to the travaux préparatoires (official negotiation records for the convention) and the circumstances of the conclusion of the convention.
- The travaux préparatoires revealed that a proposal that limitation protection should extend to include "all persons rendering services in direct connection with the navigation, management or the loading, stowing or discharging of the ship", had been rejected by majority vote of the contracting parties.
- The term "operator" must entail more than the mere provision of personnel or operation of the machinery by the provided personnel. The term must relate to operation at a higher level, involving management or control of the vessel.
- It is decided that Stema UK's actions were plainly assistance to the Charterer in its role as operator, not by way of becoming a second operator.

Comments

- For purpose of "operator" under LLMC, the term is not a "catch all" for all parties or service providers involved.
- A second or alternative operator is not ruled out, but such is usually providing assistance to the undoubted operator, instead of involving management or control of the vessel.
- Limitation of liability may be lost to a group of companies if one of its associated companies is not entitled to the limitation. Such a group can take steps to bring all its associates within the umbrella of the protection by ensuring the owner or operator was responsible for the actions of the associates.

In A Nutshell – Notices of Redelivery

A notice of redelivery (NOR) is to enable the owners to have enough time to fix the ship for her next employment. An example for NOR provided under C/P:-

"Charterers are to give Owners not less than 20/15/10/7 days approximate notice of vessels expected date of re-delivery, and probable port and 5/3/2/1 day(s) definite notice of redelivery".

- **Is NOR a prerequisite for redelivering a ship?**

No, Charterers can redeliver without NOR. Although such is in breach of C/P, Owners will not be able to reject the redelivery and insist in continuing the charter.

- **An approximate NOR**

- There is no absolute obligation to redeliver on the approximate date given.
- Owners cannot claim damages on basis that timing of such a notice is incorrect, if such an approximate NOR was deemed reasonable and given honestly when issued.

- **A definite NOR**

- It needs to be correct and accurate.
- If charterer redelivers the vessel within the period permitted by C/P, but giving a definite NOR within a shorter time frame without serving any notice, charterer is in breach of C/P, and the breach will occur on the date of redelivery (not before, even though the charterer is obviously in breach when issuing NOR).
- Owners can claim damages but will still be obliged to take delivery of the vessel.

- **An NOR with reservations**

- If Charterers tender a redelivery notice with reservations such as "AGW, WP, WOG", they can, in contravention with the previous notice, decide to employ the vessel for another voyage if it is within the allowed charter period.
- Subsequently, even if Owners already fix the ship for next employment, they cannot refuse Charterers' order nor claim damages for loss of cancelling the next fixture. (The Zenovia [2009]).
- To avoid this risk, Owners should insist on an unqualified notice from charterers.

- **Damages**

The amount of damages payable by Charterers will be measured by putting Owners in the position in which they would have been in had notice(s) been properly tendered (The Great Creation [2014]).

- For actual redelivery later than the time specified in NOR, Owners can claim damages at the C/P hire rate for the "overspill" period.
- For NOR issued with notice period shorter than that provided in C/P, owners will be entitled to the hire which would have been earned during the balance of the notice period after Charterers' actual (premature) redelivery.
    - For example, if 20 days' notice is required and charterers only give a notice 7 days before redelivering the vessel then the starting point for damages would the amount of hire during the 13 days after actual redelivery.
    - Credit will then be given to Charterers for the hire earned by owners in any subsequent C/P in reasonable mitigation of their loss.
- Usually, Owners cannot claim additional damages for loss of business opportunity / lost profits in relation to the lost follow-on fixture due to Charterers' late redelivery, unless such follow-on fixture was also fixed by Owners and informed to charterers at time of fixing current C/P. Owners may be able to claim damages for the loss of such follow-on fixture, e.g. if such fixture is above market rates at the time of fixing.

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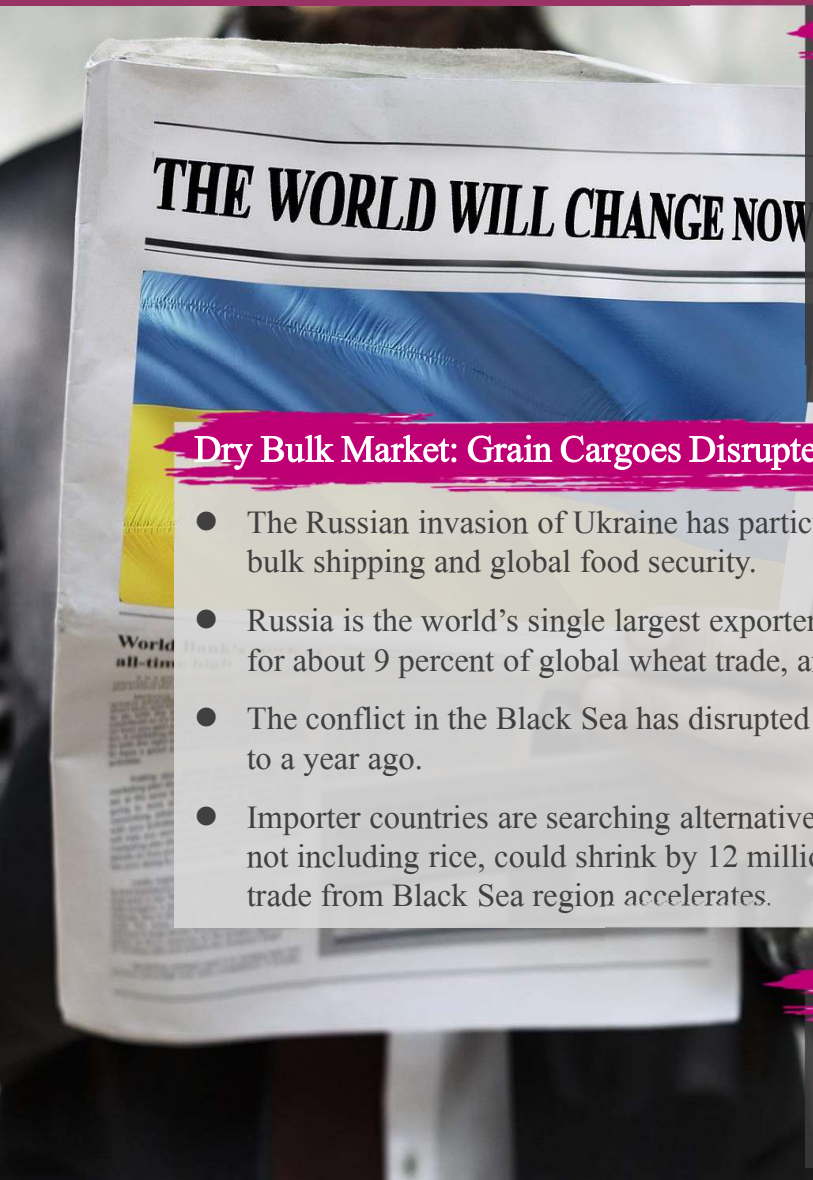
Market Snapshot: Ukraine Crisis Related News



Tanker loaded with barrels of Russian oil loses buyer

- It was reported that more than 20 tankers that have departed from Russian ports since the invasion , together carrying almost 8.5 million barrels of oil, now listed their status as “For Orders” or “Drifting”, which indicates a lack of destination.
- A few tankers were said to make a sharp U-turn in Atlantic Ocean on their way to U.S., as the oil lost buyer midway.
- Some countries, like India, Singapore and Turkey, have sharply increased their receipts of Russian oil in the weeks since the invasion.

Dry Bulk Market: Grain Cargoes Disrupted

- The Russian invasion of Ukraine has particularly strong implications for the seaborne grains trade, with a potentially significant impact on both dry bulk shipping and global food security.
- Russia is the world’s single largest exporter of wheat, accounting for about 20 percent of global wheat trade in the 2020/21 season. Ukraine accounted for about 9 percent of global wheat trade, and other than wheat, Ukraine is also one of world’s biggest exporter of corn and oilseed.
- The conflict in the Black Sea has disrupted the flow of grains from the region, and as a result, grain prices have soared up by more than 20% compared to a year ago.
- Importer countries are searching alternative suppliers from India, Romania, US, Australia, Brazil and Argentina, but sources say the global grains trade, not including rice, could shrink by 12 million tons this season, and the gap will be wider if the war stretches to summer time when usually the grain trade from Black Sea region accelerates.

Experts Confirm Cyber Incidents Up Since Invasion of Ukraine; Insurance Adapting

Market sees a recent increase in cyber incidents, and recommended cyber insurance coverage to be a standard part of risk management for insureds, even to small or medium-size enterprises. Additionally, underwriters are adapting the underwriting process to solve challenges.

Market Snapshot: Ukraine Crisis Related News (Cont'd)

China State Refiners Shun New Russian Oil Trades

- Chinese state-owned refiners are honoring existing Russian oil contracts but avoiding new ones despite steep discounts, as they are unwilling to be seen as supporting Moscow by buying extra volumes of oil where their actions could be seen as representing the Chinese government.
- Although Russian oil is hugely discounted, there are many issues like securing shipping insurance and payment obstacles.
- Major China buyers - PetroChina, CNOOC and Sinochem have shunned Russia's ESPO blend for May loading.

EU sanction update

EU Commission has announced the fifth package of EU sanctions against Russia for increase financial pressure on Russia. The sanction content include:

- an import ban on coal from Russia. Russia accounts for 40% of natural gas imports, 25% of oil imports and about 45% of all coal the EU consumes.
- a full transaction ban on four key Russian banks, among them VTB, these banks represent 23% of market share in the Russian banking sector.
- a ban on Russian vessels and Russian-operated vessels from accessing EU ports.
- specific new import bans, to cut the money stream of Russia and its oligarchs, on products from wood to cement, from seafood to liquor.
- a general EU ban on participation of Russian companies in public procurement in Member States, or an exclusion of all financial support, be it European or national, to Russian public bodies.

Ukraine Says Russia Planting Mines in Black Sea as Shipping Perils Grow

- Ukraine accused Russia of planting mines in the Black Sea and said some of those munitions had to be defused off Turkey and Romania as risks to vital merchant shipping in the region grow.
- According to Ukraine's foreign ministry, these drifting mines were found March 26-28, 2022 off the coasts of Turkey and Romania, which not only threatens the Black and Azov Seas, but also the Kerch and Black Sea Straits.
- Russian officials did not respond immediately, but earlier this month Russia's main intelligence agency accused Ukraine of laying mines to protect ports and said several hundred of the explosives had broken from cables and drifted away, which was denied by Ukraine.
- London's marine insurance market has widened the area of waters it considers high risk in the region and insurance costs have soared, and P&I Clubs advised that Vessels navigating in the Black Sea shall maintain lookouts for mines and pay attention to local navigation warnings.

Barge's surcharge in Europe attributed to Ukraine effect

Barge operator Contargo stated that imposed "emergency surcharge" of €25 ($27.4) per container contributed by the surging cost of fuel related to Russia's invasion of Ukraine and the charge would apply until further notice and be levied in addition to existing bunker and diesel surcharges.

Market Snapshot: Ever Forward Refloated After 35-Day Salvage Operation

- On her way from Port Baltimore to Norfolk, the Hong Kong flagged "Ever Forward" grounded outside the Craighill shipping channel of Chesapeake Bay on 13th March 2022, with 4,964 containers onboard.
- The appointed salvors of Donjon-SMIT made two refloat attempts using multiple tugboats on 29th and 30th March, but it turned out unsuccessful due to the ground force of "Ever Forward" in laden condition.
- An emergency wetland license was issued by the state of Maryland for dredging operation to Donjon-SMIT; the licensee is also required to assess the dredged area for impacts to a natural oyster bar and develop a plan for any mitigation to the Maryland Department of the Environment, after ship's removal.
- A depth of 43 feet was dredged around the ship by removing 206,280 cubic yards of material. During 9th April to 16th April, crane barges lightered 500 containers which were then taken to Baltimore.

Photo by U.S. Coast Guard

- Throughout the operation, fuel tankers on the ship were monitored and anti-pollution equipment were pre-staged for deployment in the event of a fuel release.
- After 35-day-long salvage operation, "Ever Forward" was refloated on 17th April during a high spring tide, with 2 pulling barges and 6 tugs pushing and pulling in tandem.
- Following the refloating, "Ever Forward" was towed to the Annapolis Anchorage Grounds for inspection. She will eventually reload the containers that had been removed and continue her voyage to port of Norfolk.
- The Owners, Evergreen, has reported no damage so far.
- Maryland Comptroller is urging Evergreen to start a USD100 million responsibility fund that can be used to pay for labor hours and resources spent by the federal, state and local agencies, compensation to watermen and the seafood industry during the harvest season, and any economic or environmental impact caused by the incident.

Market Snapshot: Ever Forward Refloated After 35-Day Salvage Operation

Photo by Dominik Lückmann on Unsplash

Market Snapshot: Containership Orderbook Hits Highest Mark Since 2008

- Skyrocketing demand for container capacity along with pending environmental regulations (EEXI, CII, and ETS) which are aging out older container vessels have been driving strong order volume for containerships.
- By BIMCO calculation, the containership orderbook has already crossed 6.5 million TEU for the first time in 15 years. Total of 6.2 million TEUs are scheduled for delivery between 2022 and 2024.
- Major carriers including MSC, ONE, and Evergreen are all planning vessels near or exceeding the ever-largest 24,000 TEU capacity mark, others such as Maersk chose to order vessels in a more versatile level of 15,000 – 16,000 TEU.
- Many of the world's leading shipyards have reported that their order slots are now filled till 2025 for containerships. Yet orders continue to be placed as carriers see the market need for newer and more efficient tonnage.

Market Snapshot: Shanghai Lockdown Impacts Logistics and Shipbuilding

- The Shanghai lockdown caused significant disruptions in logistics, extending from delayed ship schedule, soaring trucking costs, port congestion, warehousing problems and production all the way along the supply chain within China.
- The lockdown brought down spot rates. The carriers are mostly looping from north and east China going south, but now with extra capacity, carriers are selling lower spot rates from ex-south China ports.
- Some of China's biggest shipyards such as Shanghai Waigaoqiao Shipbuilding, Jiangnan Shipyard and Hudong-Zhonghua Shipbuilding has been forced to shut down temporarily since mid-March and declared force majeure as Shanghai goes into Covid lockdown.
- In mid-April, Guangzhou has become the latest port city to undergo mass Covid-testing, causing delays of mother-vessel schedule by 5-7 days due to irregular feeder or barge services.

Market Snapshot: Hardening H&M Insurance Market To Stoke Higher Ship Opex

- Lloyd's market continues to adjust its premium base upwards to bring the marine book more sustainable and profitable, with sources predicting a further H&M insurance premium increase by up to 10% in 2022/2023, depending on owners' claim records.
- Following a loss making 2020 on flat gross premium, the wider Lloyds' market made significant profitability gains in 2021, and it was the first time in several years that the combined ratio was below the breakeven threshold of 100%, with 2021's figure reaching 93.5%.
- As the H&M premium had been low for long time, some players have exited the marine insurance market, vessel owners can hardly count on market competition to lower insurance costs.
- The fundamentals that led to the hardening of the Lloyds H&M insurance market are unlikely to alter. However, Lloyds predicts that the rate of increase in the coming year will be lower than in 2021.

Market Snapshot: Southeast Asia's First E-Methanol Plant Planned for Singapore

- Maersk, partnering with PTT Exploration and Production Public Company and other 5 companies, is developing the production and supply chain to establish a green e-methanol pilot plant in Singapore that converts captured biogenic carbon dioxide into a marine fuel.
- These companies plan to complete a feasibility study by the end of 2022.
- Maersk, as the first large shipping company to order next-generation vessels that will operate on methanol, reported that it had laid the groundwork which when scaled by 2025 will supply well beyond the green methanol needed to fuel the line's first 12 methanol-ready dual-fuel containerships.
- Methanol is being positioned as the only market-ready and scalable solution ready for the industry, with expectations that ammonia which is also considered a strong contender could require at least two more years of development before being ready for the commercial market.

Photo by Boris Stefanik on Unsplash

Market Snapshot: The future of the seaborne LNG trades

LNG market outlook:-

- Demand of LNG is seen on an upward trend up to 2025 by mainstream market analysts, as propelled by Asia's phasing out of coal.
- Key variables include political uncertainty (such as inclusion of LNG in EU taxonomy to be confirmed) and black swan events (what if Russia halts Nord Stream 1 LNG flow to avenge the imposed sanctions).

LNG shipping forecast:

- The tortuous LNG market amid unforeseen geopolitical and regulatory risks has dragged the LNG shipping spot market on a roller coaster, where the rate reached high point of USD205,000 / day and the plunged substantially to USD28,000 – USD36,000 per day in beginning of 2022. Nevertheless, the LNG shipping market is largely priced around time charters, which can take seven-to-10-year terms.
- LNG trade is seen growing at a higher clip than pipeline transport, and should represent 48% of all traded gas by 2030, growing to 56% by 2050
- Orderbook for newbuild is furnished standing at close to 30% of the current fleet size, and Qatari owner Nakilat has orders for as many as 100 carriers worth some USD20bn, absorbing 60% of global LNG shipbuilding capacity through 2027.

Market Snapshot: Somali Police Force Inaugurates New Counter-Piracy Centre

- Attacks attributed to Somali pirates peaked in 2011 (237 incidents recorded), but international and private security responses have brought the pirates attacks down during past years to nearly zero now. However, there is concern that piracy cells could return with Somalia's current political turmoil.
- A new counter-piracy centre has been funded by EU and developed by UN to help Somali Police Force combat piracy, enhance surveillance of pirate threats along international shipping routes, and help the country to expand its blue economy.
- This new USD3 million facility forms part of UN, consisting of a furnished headquarters block with information technology equipment, a detention facility, a floating jetty and boat ramp and an accommodation unit.

Euronav And Frontline To Merge Into World's Biggest Tanker Fleet

- Belgian oil tanker giant Euronav is negotiating merger with Norwegian company Frontline to become the world's biggest oil tanker company. The new fleet will consist of 115 tankers, 69 VLCCs, 57 Suezmax tankers, and 20 smaller Aframax ships, with all ships sailed under Frontline flags but the rudder of the new group would be in charge of Euronav.
- There is a consensus Euronav shareholders will hold 51% of the new entity, those of Frontline the other 49% according to both parties' announcement, but it is without reckoning with the Belgian Saverys family who has the biggest package of shares(13,22%) in Euronav through Compagnie Maritime Belge (CMB).
- CMB prefers a merger with CMB-Tech for becoming a forerunner in greening the maritime sector by focusing on sustainable energy (e.g. ammonia and hydrogen).
- The Saverys family will have to convince the majority of other shareholders at the general assembly in May, and for the merger to become reality, they would need 75% of the shareholders' agreement.

Market Snapshot: IG Clubs' 2022/23 P&I Renewal Results

2021 policy year is a heavy year with challenges of Covid-19, record IG pool claims, surging crew claims and resultantly higher reinsurance costs – all are hardening the market during 2022 P&I renewal. Insofar 10 IG Clubs have published their post-renewal results to report they have achieved respective underwriting goals for 2022/23 renewal.

North P&I

- With 15% general increase on mutual premiums, North have achieved total annual premium expected to exceed USD450 million.
- North has maintained combined membership at over 250 million GT.

The Swedish Club

- In implementing a 12.5% general increase for 2022/2023, Swedish Club had reported that its renewal result is in line with targets and achieve a volume growth (year on year) of 5% for P&I.
- Member's retention rate was reported 94% throughout the renewal process.

Skuld

- Skuld reported that all of the renewal targets agreed by the club board for 2022/23 P&I renewal were met.
- Furthermore it continued to increase its market share across all other lines of business including marine hull, charterers P&I, offshore and fixed premium.

Gard

- Gard reported a record P&I renewal for 2022, with 99.6% tonnage retention rate and increase of 11.1 million GT that came through at the renewal date. The total Owners' mutual tonnage amounted to 260 million GT.

West of England (WOE)

- WOE had achieved renewal targets by implementing premium rate increases and term changes across the membership; it also rationalised its business by not offering renewal terms to those members with underperforming records.

Photo by Behnam Norouzi on Unsplash

Market Snapshot: IG Clubs' 2022/23 P&I Renewal Results (Cont'd)

Photo by Konstantin Evdokimov on Unsplash

UK P&I

- The Club achieved uplift of premium in line with its target. The combined mutual owned and chartered tonnage stands in excess of 250 million gross tons, following an increase in mutual owned tonnage to 150 million tonnes. 99% of all existing Members renewed for 2022/23 policy year.

Steamship Mutual

- With a general increase of 12.5%, Steamship Mutual has achieved increase of 11.76% including the value of terms.
- Taking into account the growth of 4.8 million GT in owned-business at renewal, The Club's owned entered tonnage exceeded 110 million GT at the beginning of current policy year.

Shipowners Club (SOP)

- As the leading mutual P&I insurer for the smaller and specialist vessel sector, SOP has achieved a 7.3% increase in premium for the financial year ending on 31st December, 2021.
- Both underwriting results and investment return reported surplus and brought the Club's free reserve to USD396.4 million.

London P&I

- The Club's 2022 renewal strategy focused on the sufficiency of member rating and deductible levels. Additionally, renewal terms were not offered to a number of members with consistently challenging records.
- Retention rate during renewal is reported over 90%, and the Club's mutual entry following the renewal stands at 44.1 million GT; the comparative position 12 months ago was 48.9 million GT.

Standard

- With retention rate of 98% at renewal, the Club now insures 158 million GT, taking into account of the growth by 11 million GT during the renewal.
- The Club's joint venture partnerships with Tokio Marine Nichido Fire (Japan), Korean P&I Club (South Korea) and Ping An (China) have also supported its expansion.

Happy reading, take care and see you in May!

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