

A squirrel with grey fur and a bushy tail is standing on a bed of yellow autumn leaves. The background is a soft-focus field of similar leaves. The image is overlaid with a dark brown diagonal shape on the right side, which contains the main title and publication information.

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CMH SPOTLIGHT

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Can Owners Be Held Liable To Pay The Bunkers Ordered By Time Charterers?

In traditional view under English law, only a party who has contracted to purchase bunkers is liable to pay for those bunkers. Therefore, where time charterers purchase bunker supplies, they are the only party contractually liable under the bunker supply contract, and the bunker supplier has no contractual recourse against the vessel owners.

The picture is different in US. By applying US Maritime Lien Act, US jurisdiction grants maritime lien to persons providing necessaries (such as bunker) to a vessel on the order of the owner or a person authorized by the owner. The Act also presumes (which can be rebutted) certain parties including a charterer to possess the authority from vessel owners. As a result, vessel owners have the risk to be held liable for the bunker expenses of charterers regardless of the provisions of the charterparty, if a claim is asserted in the US jurisdiction.

Interestingly, we came across, and would like to brief herein, a London arbitration which holds owners liable for paying the bunker ordered by time charterer, and a US court case where the owners successfully defeated a contractual bunker supplier's claim for payment.

Case Briefing 1: London Arbitration (28/22)

❖ Factual Background

- The claimant bunker supplier concluded a bunker supply contract with the vessel's time charterers. The general terms and conditions ("GTC") provided that the "Buyer" meant the nominated contracting party as well as the "vessel owner and/or charterer and/or operator to which the Products have been delivered to any/or any other party benefiting from the consumption of the Products".
- GTC also included a number of provisions regarding a maritime lien:
 - ❑ 15.1: "The Seller will have, and may assert a lien against the Vessel ..." and "it is expressly agreed between Seller and Buyer that the delivery of Marine Bunker/products creates a maritime lien in accordance with article 46 US Code § 31342 of the United States Federal Maritime Lien Act".
 - ❑ 15.2: "The Buyer agrees and warrants that a lien of the Vessel is thereby created for the Price of Products".
 - ❑ 15.4: "[The Seller] shall not be bound by any attempt by any person or entity to restrict, limit or prohibit its lien or liens attaching to a Vessel unless notice in writing of the same is given to the Seller before it sends its confirmation to the Buyer".
- As to the jurisdiction, the GTC is governed by English Law except that U.S. Maritime Lien Act will apply to any determination of the existence of a maritime lien regardless where the Seller commences any legal action against the Buyer.
- The time charterer defaulted on making payment for the bunker, and the bunker supplier commenced arbitration against time charterer, bareboat charterer and the registered owners of the vessel.



Case Briefing 1: London Arbitration (28/22) (Cont'd)

❖ The Tribunal's Finding And Decision

- Both time charterer and bareboat charterer are within the definition of “Buyer” under the GTC, and the time charterer had apparent or ostensible authority to bind the bareboat charterer under GTC.
- Notwithstanding that the supply of bunker would not create a maritime lien under English law, the tribunal determined the existence of the maritime lien by applying US maritime law which qualifies bunker as “necessaries” for which the non-payment would create a maritime lien.
- Bareboat charter and time charter both contained “no lien” provisions, but the Tribunal held that according to GTC clause 15.4, the “no lien” clauses were ineffective against the bunker supplier, and the notice of those clauses was not given to the bunker supplier before the issuance of its confirmation letter.

❖ Comments

- The contractual parties to a bunker contract?

The traditional position under English law is supported by “Yuta Bondarovskaya”[1997] case in which it was held that the time charterer purchasing bunkers are contracting in their own right and not as agents for the vessel owners. The arbitration award is a notable departure from this “Yuta Bondarovskaya” case.

- Maritime Lien

Bunker supplier often includes wording into GTC to bind the vessel or owners to a maritime lien, whilst owners assert that they have not authorized the creation of a maritime lien through “no lien” clauses in charterparties.

Case Briefing 1: London Arbitration (28/22)

❖ Comments (Cont'd)

● Maritime Lien (Cont'd)

Commonly accepted view under English law is that maritime liens are procedural issue to be determined by the *lex fori* (“Halcyon Isle” [1981] case), and where the *lex fori* does not recognize a maritime lien in respect of bunker supplies, no maritime lien should be recognized. Also, a maritime lien in respect of bunker supply cannot be created over a vessel without the vessel owners’ consent.

The arbitration award also departs from the above views, as it concluded that a maritime lien would arise under the GTC unless a challenge was communicated to the bunker supplier prior to the contract being entered to.

● What Can Improve Owners’ Position?

Owners may make a clear endorsement on any bunker delivery receipts they are asked to sign, e.g. “*Goods and/or services being hereby acknowledged and/or ordered solely for the account of Messrs [] Charterers of M/V [] and not for account of said vessel or her Owners. Accordingly, no lien or any claim against said vessel or her Owners can arise thereof.*”

Owners may require charterers to advise details of each bunker stem ordered so that owners may, prior to the supply, put the bunker supplier on notice that they will not be responsible for same.

At this writing, London Arbitration 28/22 is subject to an application for an extension of time for leave to appeal and the development is to be seen.





Case Briefing 2: Sing Fuels Pte Ltd v. M/V Lila Shanghai

❖ Factual Background

- The ship owners time-chartered the vessel to Bostomar Bulk Shipping Pte Ltd. (“Bostomar”) with “no lien” clause in the charterparty, and the latter sub time-chartered the vessel to Medmar. Medmar purchased bunker from Sing Fuels Ptd Ltd (“Sing Fuel”) via a bunker broker - Mr. Mylonakis, but defaulted payment.
- Sing Fuels arrested the vessel when she called US, and pursued an action in rem against the vessel in the US District Court, claiming to be entitled to a maritime lien over the vessel according to the US Maritime Lien Act. The Court found in owners’ favor, and Sing Fuels appealed to the US Court of Appeals.

❖ Court Of Appeal Judgment

- The US Maritime Lien Act presumes an agent of a vessel owners or a charterer possesses the authority from vessel owners to obtain vessel’s necessities, and grants the provider or seller of such necessities a maritime lien on the vessel; however, in this case, Sing Fuels had not proven that it acted “on the order of the owner or a person authorized by the owner” as required by the Act.
- The court noted Sing Fuels never contacted the vessel owners about the bunker supply contract or its terms, nor did Sing Fuels check whether the Mr. Mylonakis ever communicated with owners and was authorized to purchase the bunkers.

Case Briefing 2: Sing Fuels Pte Ltd v. M/V Lila Shanghai

❖ The Tribunal's Finding And Decision (Cont'd)

- Sing Fuels' argued that the Mr. Mylonaskis was Medmar's apparent agent and thereby triggering the statutory presumption he had authority to bind the vessel under the Act.
- Court of Appeal held this argument failed as this presumption of authority relies on an agency relationship that actually exists, in other words, the alleged principle Medmar should have communicated to the third party (Sing Fuels) that the Mr. Mylonaskis had authority to act on the principal's behalf, as an agent cannot create his own authority. However, the case fact is Sing Fuels had never been in direct contact with Medmar, so it failed to prove that it had relied on any act or omission by Medmar.
- Court of Appeals upheld the district court's decision.

❖ Comments

Unlike many other jurisdictions, bunker supply is recognized as maritime lien in US, and that's why Sing Fuels waited only for the vessel to call at US to exercise its claim. Notably from this judgment, the right of maritime lien in US is not absolute; it is still a must to prove the agency relationship exists deriving from apparent or ostensible authority from the purchaser.





Guidelines

In A Nutshell

New Launch Of Nordic Marine Insurance Plan Of 2013, Version 2023

The Nordic Marine Insurance Plan is regularly updated every 4 years. The 2023 Version of the Nordic Plan was launched and can be adopted immediately. While full amendments in clauses and the commentary can be seen in the official website [NordicPlan](#), we are shortlisting a few highlights of the material changes herein for your reference:

- Clause 5-23: Time-limit for notification of a casualty is extended from six months to twelve months in this new version.
- Chapter 7: Co-insurance of mortgagees
 - ❑ Amendments to Cl. 7-1, provides the notice of mortgage takes effect from the time it reaches the insurer or the claims leader, and any special requirements of the mortgagee shall not take effect unless and until they are specifically agreed by the insurer.
 - ❑ If the co-insurers are represented by a claims leader, the claims leader is authorized to accept such special requirements on behalf of the co-insurers, provided that the special requirements are within customary market practice according to Cl. 9-2, sub-clause 3 (b).
 - ❑ Amendments to Cl. 7-3 expressly state that provision of security for policy-covered loss or liability can be made without participation of the mortgagee.



New Launch Of Nordic Marine Insurance Plan Of 2013, Version 2023 (Cont'd)

- Clause 8-2: Protection of third parties against subrogation claims from the insurer.

A new sub-clause 2 is added to emphasize that the liability of the assured and co-insured third parties to each other shall not be excluded nor discharged by reason of co-insurance. The co-insurance is meant to provide financial cover for any liability the co-insured might get against the assured, but not to affect the liability between the assured and the co-insured.

This amendment is to emphasize the legal position in the Nordic countries against the English law position as shown in the UK Supreme Court Case (2017) “Ocean Victory”, where English Supreme Court held that the owner cannot bring a recourse claim against the bareboat charterer (as co-assured) and further down the contractual chain although the sub-charterer is not co-assured. This new sub-clause 2 therefore preserves the insurer’s right to recover damages from any party external to the assured’s insurance arrangements such as a time charterer, or shipper of dangerous goods.

- Clause 12-12: Choice of repair yard

The clauses were amended by introducing an increase in the maximum contribution from H&M insurers in case fuel consumption for removal can be reduced by choosing a more expensive yard than the cheapest. Sub-clause 2 provides for an incentive in form of an extra allowance (in addition to the 20% rule), which is applicable for repair alternatives requiring relatively shorter removal voyages with corresponding lower emissions due to reduction in fuel consumption.

New Launch Of Nordic Marine Insurance Plan Of 2013, Version 2023 (Cont'd)

- Clause 12-5: Losses that are not recoverable

The original clause itself in letter (a) provides the insurer is not liable for crew's wages and maintenance and other ordinary expenses connected with the running of the vessel during the period of repair, unless this is specially agreed. Amendment is made regarding its commentary with the purpose to emphasize that the insurer must respond quickly and appropriately when being asked by the assured for such special agreement. If the insurer does not provide within reasonable time a concrete answer to a specific request from the assured, the assured can consider its request accepted by the insurer.

- Clause 15-11: The time limit to establish total loss of the vessel was extended from six to twelve months.

- Clause 16-9: Choice of repair yard (Loss of Hire insurance)

This clause is mainly about allowance from Loss of Hire insurer when choosing an expensive but fast shipyard rather than a cheap but slow ship yard. A new sub-clause 2 is introduced and describes how tenders shall be adjusted for the purpose of comparison. Sub-clause 3 provides a revised limitation for insurer's liability.

- Clause 16-11: Extra costs incurred in order to avert or minimize loss (Loss of Hire insurance)

The amendment is mainly addition of the wording "If loss is averted or minimized for the benefit of several interests, the insurer is only liable for such proportion of the extra costs attributed to the interest insured."





Loss Prevention: Diverting To Remove Spent Fumigants

- Some European ports impose strict local requirements for the residual fumigant gas levels in the vessel holds. On arrival at anchor off the discharge port, the chemists will measure if the amount of residual fumigant gas exceeds 1ppm; otherwise the vessel must remain at anchor for ventilation which may lead to delay as long as three weeks.
- Some authorities request the residual gas levels to be recorded in the holds and on deck during passage. If such records are poor or incomplete, further delays and fines might be incurred.
- Charterers may request removal of fumigation sleeves earlier during the voyage, so to allow the holds to be ventilated for the remaining passage and to avoid potential delay in discharge port.
- Vessels are also increasingly requested by charterers to divert to an intermediate port to remove fumigants from the cargo hold before calling European discharge port. Operator should consider below if such request is made:
 - ❑ Whether the load port instructed a “full voyage” fumigation or not.
 - ❑ How long is the fumigation period as instructed by the fumigation company.
 - ❑ What are the written instructions from the charterer regarding fumigation and ventilation.
 - ❑ Whether charterer is engaging a qualified fumigation company to remove the waste, bear in mind the removal of spent fumigants should not be carried out by crew.

Loss Prevention: Diverting To Remove Spent Fumigants (Cont'd)

- During the process of removing fumigants at an intermediate port, consider:
 - ❑ Take photos which can identify the hold, the old seal number, and the new seal number that will be applied thereafter.
 - ❑ Take photo or video evidence of the full operation.
 - ❑ The fumigation company should monitor the gas levels in the holds both before and throughout the entry. If there are excessive gas levels found, the impacted areas need to be adequately labeled as such and secured to prevent entry.
 - ❑ To avoid claims of re-infestation, the hatches should not be left open for an extended length of time, attempt to limit exposure of the cargo to 30 minutes or less.
 - ❑ Whether the weather condition on the remaining voyage to the discharge port allow for adequate ventilation.
 - ❑ During the voyage, the crew should keep exact records of the ventilation and gas levels on board.
 - ❑ Charterer's request to divert is likely to constitute a deviation under the bill of lading contract which could result in loss of P&I cover for the carrier. Thus, Vessel owners or operators should enquire their P&I Club to discuss the operation and to assess any potential impact on cover upon charterer's request for such of deviation.





Market Snapshot

G7 And Australia In Negotiation For a Price Cap For Russian Oil

- G7 and Australia have been in intense negotiation to adopt a fixed price cap on Russian oil. The price cap is scheduled to take effect on 5th December, 2022 so to ensure the global oil market is not throttled when US and EU sanctions are in force.
- Sources say the price cap will be a fixed price that will be reviewed regularly, rather than a floating price linked to discount of any benchmark index. G7 countries' concern behind is that, Russia as world's largest oil producer can manipulate oil demand-supply imbalance and affect the floating prices of the index.
- Market observers guessed the price cap pushed by G7 and Australia will aim to reduce inflation by bringing as much Russian crude oil to the global market as possible while restricting the profit of Russia to support its conflict with Ukraine.
- As part of the US and EU sanctions, the insurance ban will cause more than 90% of the insurers in the world to avoid insuring Russian-linked oil tankers starting in December. A steady price cap could enable insurers to start new contracts more confidently without fear that the price could be adjusted by the countries buying Russian oil.
- Russia has stated that they will not ship oil to countries that impose price caps.

Black Sea Grain Initiative Extended For 4 Months

- After announcing their exit from the Black Sea Grain Initiative in October, Russia eventually renewed its participation to this grain deal for another 4 months on 2nd Nov, although UN and Ukraine were targeting one-year commitment of Russia.
- Three Ukrainian ports – Odesa, Chornomorsk and Yuzhne were included in the deal, and Ukraine said more than 10 million tonnes of food products had been exported from these ports since July.
- Ukraine sought to include two more ports – Mykolaiv and Olvia into the grain deal, and would set aside a portion of harvested wheat for partner countries to purchase on behalf of African countries which are facing food crisis.
- Russia is trying to export Russian fertilizer through the Black Sea, though fertilizer is not part of Western sanctions. The first shipment will be a batch of 20,000 tonnes of Russian fertilizer from Netherlands to Malawi in the end of November, carried by a UN-chartered vessel.

Cyber Security Warnings - Hackers Could Create Another “Ever Given-level” Incident

- Warnings of cyber risks in shipping industry said that the hackers could easily cause Suez Canal to suffer a repeat of the disaster at the same level as “Ever Given” grounding incident.
- Recent cyber incidents revealed that hackers can take control of vessels by spoofing the positioning systems in key waters or ports, planting malware on vessels to manipulate files, execute commands and gain full admin control of the machines, and spread the malwares through the unintentional insiders.
- Research data showed:
 - ❑ 54% of vessels being monitored have 40-180 connected devices onboard, including not only expected devices (e.g. business workstations, PCs, printers and computer phones), but also systems that used to be regarded as isolated (e.g. cargo computers and engine monitoring systems).
 - ❑ More than 60% of the computers onboard the monitored vessels have various unofficial or crew-installed software.
 - ❑ 30% of computers make frequent use of the local administrator account giving the user full rights to the machine.

Idled Boxship Fleet Sails Past 1 Million TEUs as Blankings Fail to Stop Freight Rate Erosion

- According to market data, by end of October 2022, number of inactive containerships (i.e. those have been idling for more than 14 days) reached a capacity of 1.2 million TEU, being 4.6% of global cellular fleet. This is a significant increase by comparison to February 2022 when inactive boxships (mostly in drydock) counted for a capacity of 442,000 TEU, representing 1.8% of the global fleet.
- With cargo demand weakened, carriers tends to cull some voyages or even suspend services – the number of blank sailing advisories from Asia-Europe and transpacific carriers was growing in the past October, while some Asia-North Europe loops have been voided for consecutive weeks.
- The imbalance of surplus open tonnage and weakened demand is pressing down the daily hire; it was seen that the recent charters were typically concluded for short term of 6 months at a low-mid level of rate.
- Meanwhile, as China posted a decline in the export in October, it seems carriers’ blanking strategies cannot halt the erosion of spot and short-term rates effectively, and some experts believe that more radical capacity reduction plans may be required to avoid a collapse in contract rates.

The US Approved Salvage Of The Sanctioned VLCC , The “Young Yong”

- On 26th October 2022, a fully laden VLCC “Young Yong” ran aground off Indonesia’s Riau Islands near a key gas pipeline connecting to Singapore. No leakage or injuries was reported.
- On 3rd November, the US issued sanctions against a number of vessels which are claimed to be supporting Iran’s Quds Force, and the “Young Yong” is among the black list. As a result, she lost her Djibouti flag and ABS class.
- It was said that the US OFAC was closely involved in all aspects of the handling of the supertanker because the ship may carry evidence on traffic data and navigational history.
- OFAC gave green light to some transaction to enable the vessel’s refloating and escort to port, as well as to ensure the safety of the crew; but no cargo delivery has been approved.
- The “Young Yong” was refloated on 10th November after lightering 44,000 tonnes of oil, and was subsequently towed to nearby anchorage.

Dry Bulk Shipping Market Underperformed But Expected To Turn Positive

- Since its post-summer peak in early October, the dry bulk shipping market has generally been declining due to the softened performance of the iron ore trade.
- The capsize market is particularly subdued and underperforming.
- The main weakness in the dry bulk market has been the drop in China’s real estate sector, with investments in 2022 having already been noted a 10% decline compared to 2021. The construction industry accounts for more than a third of demand for steel in China.
- In November, Chinese regulators issued a major plan to reinforce and boost real estate sector. This will inject revival into the steel mills to increase the production, and give positive shift to dry bulk market expected in the final month of 2022.
- Yet, the dry bulk market's recent resurgence may be hampered by the brief halt caused by the Chinese Lunar New Year.

IG P&I Clubs: 2023/24 Policy Year Renewal Update

The date of 2023/24 P&I renewal are being closer. The following is a summary of the renewal circulars from different P&I Club, position as at 30th November, 2022.

❖ Britannia

- Target a 10% and 15% increase on ETC for P&I and FDD respectively.
- The minimum deductibles of claims for Crew, Cargo and all others will increase to USD7,000, USD19,500 and USD13,500 respectively in P&I cover but no general change of deductible in FDD cover.

❖ Gard

- An increase of between 5-7% for members with acceptable records.
- 5% Owner's General Discount on the agreed ETC.

❖ London Club

- No general increase for P&I and FDD is set and renewal terms will be based on individual Member's risk profiles.

❖ Japan Club

- General increase of 10% for P&I class and 15% for FDD class.

❖ Shipowners Club

- No general increase would be applied, but a 10% increase in premiums would be applied to yacht sector and dry cargo vessels.
- All deductibles under USD 50,000 would be increased by 10% but subject to a minimum increase of USD500.

❖ Skuld

- Expect an increase at the P&I renewal and it will be necessary to achieve an overall ETC adjustment of 10% for the mutual product before any adjustments to the Group Excess of Loss contract.

❖ Steamship Mutual

- 7.5% general increase applied to all classes of business.
- 10% increase in P&I deductibles to apply to all deductibles which are USD 50,000 or less, but no general change in FDD sector.

❖ UK Club

- 10% of general increase on all mutual premium rates.
- The standard deductible will remain unchanged at USD15,000 per accident, including fees and expenses.

IG P&I Clubs: 2023/24 Policy Year Renewal Update (Cont'd)

❖ West Of England

- 10% and 15% standard surcharge has been set to apply to P&I and FDD covers' mutual premium rate respectively.
- No change will be made to the Rules Deductible for P&I entries; however all other deductibles will be increased by 10% and a minimum increase of USD2,500 will be applied.
- For FDD entries, no change will be made to the one fourth deductible formula.

❖ American Club

- No general increase in P&I and FDD renewal but implement a mandatory minimum 10% increase on expiring rates overall.
- All deductibles from USD10,000 to USD50,000 per claim will be increased by 10%, and any below the USD10,000 threshold will be increased in all cases by USD1,000.

❖ UK Defence Club

- Minimum premium increase of 5% across the Association's Membership.

❖ Standard Club

- Apply a general increase of 10% to P&I and FDD premiums.
- Increase all P&I deductibles by 10%, subject to a minimum increase of USD 2,000 for crew and cargo claims. No change to FDD deductible.

❖ North Of England

- General increase of 10% for P&I class and 15% for FDD class.
- P&I deductibles for all crew and people-related claims below USD50,000 will be increased by a minimum of USD2,500; all cargo and other claims deductibles will be increased by a minimum of USD1,000.
- FDD Rules deductibles remain one fourth with the minimum of USD10,000 per claim, but remove the maximum deductible limit of USD150,000.

The Swedish Club has not issued their circular regarding the 2023/24 renewal yet.

Please note despite the announced increases in premium and /or deductibles, the specific renewal quotations will be subject to Members' individual loss performance and risk profile.

Revision Of Lloyd's Open Form Fee Charging Structure

- With effect from 1 Jan 2023, Lloyd's Salvage Arbitration Branch (LSAB) will introduce a new LOF management/oversight fee in addition to its current hourly-rate charging structure for handling Lloyd's Open Form (LOF) cases.
- The new LOF management/oversight fee will be calculated at 0.025% of the total salved value, at a minimum of GBP1,000 and capped under GBP10,000 per LOF casualty. This is to subsidize the running costs incurred by Lloyd's to benefit the maritime sector under the LOF framework.
- It means under each LOF-utilized casualty, involved parties are expected to agree to share the total salved values with LSAB, and such information will be treated as confidential without disclosure to other external party.

LNG Carrier Rates Smash All Records Ahead Of Europe's Winter

- According to market sources, all generations of LNG carriers have set new rates records in October 2022. Modern 174,000 m³ two-stroke ships is closely at USD500,000/day, and steam-turbine vessels of 145,000 m³ reaches nearly USD250,000/day.
- Despite that LNG fleet has expanded more than 4% this year, market has still seen a surge of demand, largely because Europe's imports raised by 62% in September 2022, year on year.
- For Europe, imports from US could substitute Russian pipeline supplies; whilst US Freeport LNG's exports, once halted in June 2022 due to fire, are expected to be resumed in mid-Dec 2022 once regulators give green light.
- As winter is coming in Europe, 7.5% of fleet capacity (compared to an average of 4.8% between January and August) was tied up in mid-Oct waiting at ports or anchorages as import capacity struggles to accommodate the soaring volumes.
- Additionally, it is reported that 22 vessels were deployed for storing LNG in late-Oct, and it is expected that more tonnage could be withdrawn from trading market as older vessels are converted to floating storage or FSRUs to boost import capacity.

Happy reading, take care and see you in December!

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