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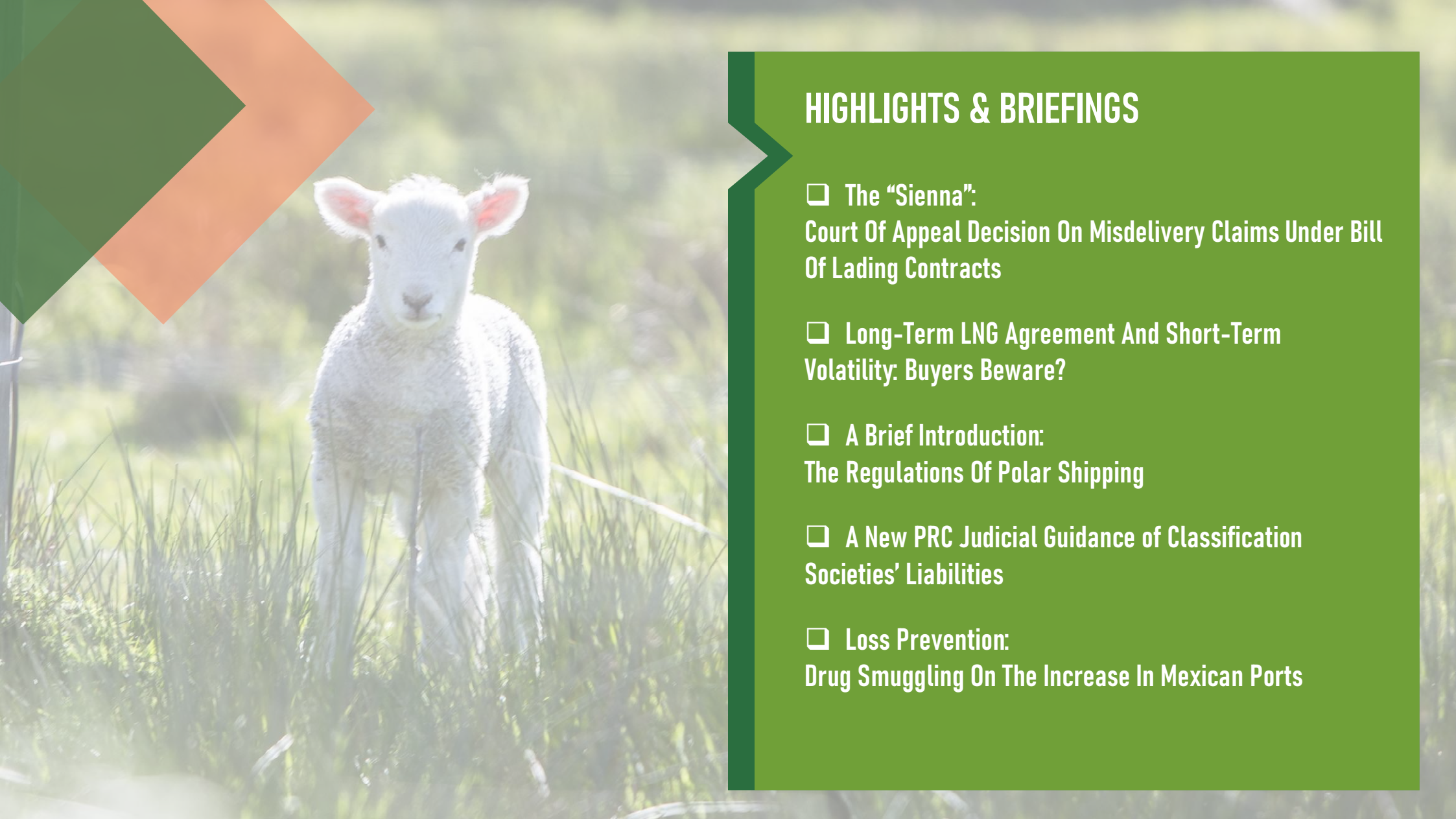

## HIGHLIGHTS & BRIEFINGS

- ❑ The “Sienna”:
Court Of Appeal Decision On Misdelivery Claims Under Bill Of Lading Contracts

- ❑ Long-Term LNG Agreement And Short-Term Volatility: Buyers Beware?

- ❑ A Brief Introduction:
The Regulations Of Polar Shipping

- ❑ A New PRC Judicial Guidance of Classification Societies’ Liabilities

- ❑ Loss Prevention:
Drug Smuggling On The Increase In Mexican Ports

# The "Sienna" – Court Of Appeal Decision On Misdelivery Claims Under Bill Of Lading

*Case briefing of Unicredit Bank A.G. v Euronav N.V. [2023] EWCA Civ 471*

## ❖ Factual Background

- The vessel "Sienna" was originally voyage-chartered by BP Oil International Limited ("BP") from Euronav ("carrier"), and a bill of lading ("B/L") was issued by Euronav in which BP was named as shipper and the cargo amount is 101,693 m.t.. Following the sale of cargo by BP to Gulf Petrochem FZC ("Gulf"), carrier, BP and Gulf entered into a novation agreement by which Gulf became the voyage charterer in place of BP.
- Unicredit had financed Gulf's purchase of part of the cargo in volume of 80,000 m.t., and requested the B/L being endorsed and sent to it. However, due to COVID restrictions, this had not been done by the time of discharge; rather, BP remained in possession of the B/L.
- Gulf requested carrier to discharge the cargo to it as the charterparty terms provided that carrier should discharge the cargo without production of the B/L if requested by the charterer.
- However, Gulf did not repay the purchase price of the 80,000 m.t. cargo to Unicredit. Once the B/L was subsequently endorsed to Unicredit, it brought a claim against carrier for misdelivery of cargo without production of B/L.

## ❖ The Commercial Court's Decision

Unicredit's claim failed on following two grounds:-

- **Issue 1: Mere receipt rule**

The judge accepted operation of "mere receipt rule" in this case, i.e. a B/L is not evidence of the contract of carriage when the carrier and the holder of the B/L are parties to a charterparty, but when such B/L is transferred from the charterer to a new holder, it becomes the evidence of the contract of carriage.

The question arising from this "mere receipt rule" is, whether the novation of the charter from BP to Gulf has the effect of transferring B/L to a new holder, and thus a B/L evidencing the contract of carriage comes into existence.

The judge rejected the argument that BP ceased to be the voyage charterer by effecting the novation agreement, and concluded that Unicredit had failed to establish that the B/L held by it evidenced the contract of carriage. Accordingly, the B/L held by Unicredit is merely a receipt, and Euronav's contractual obligations were set out in the charterparty alone to discharge the cargo without presentation of B/L if so ordered by voyage charterer. For this reason, the misdelivery claim failed.

# The "Sienna" – Court Of Appeal Decision On Misdelivery Claims Under Bill Of Lading (Cont'd)

## ❖ The Commercial Court's Decision (Cont'd)

- **Issue 2 : Causation**

The judge asked herself a question: What would happen to the Bank's security interest, had Owners initially refused to discharge without production of B/L.

Even had there been a B/L contract and Euronav breached the presentation rule at the time of discharge, the same loss would have been suffered by Unicredit as it would still authorize delivery to Gulf without presentation of the B/L, and thus Unicredit cannot paint itself as an innocent victim of the misdelivery.

Unicredit appealed against each of the findings in the first instance judgment.

## ❖ The Court Of Appeal Decision On Issue 1

The Court of Appeal judge held the Commercial Court finding on this issue was wrong. It identified the correct question to ask should be: "What was the presumed intention of the parties at the time that B/L was issued?"

The presumed intention of the parties in issuing the B/L as a mere receipt is that the holder of B/L is a charterer and the contractual relationship with the carrier for performance of the carriage remains governed by the charterparty. Otherwise, the B/L should be a document containing a contract of carriage.

## ❖ The Court Of Appeal Decision On Issue 1 (Cont'd)

When the charterparty ceased to perform that function upon the novation, yet BP was still the holder of B/L, it is prima facie to render the B/L a contract of carriage between BP and carrier, unless the novation agreement evidences the contrary intention. If the BP demonstrated to the carrier that it was no longer holder of B/L and had no further interests in the goods or the remainder of the voyage, a novation may well evidence such intention.

However, according to the factual matrix of this case, although BP passed title to Gulf and had been paid in respect of the financed cargo of 80,000 m.t., there is no evidence before the Court that it had divested itself of title in relation to the rest of the cargo onboard the Vessel. BP at this stage remained holder of B/L. At the time of the novation agreement, carrier knew nothing about whether BP retained title or an interest in the cargo onboard, and it is impossible to attribute to carrier, from the mere existence of the novation agreement, an intention that all contractual relations with BP should cease.

Therefore, the Court found that the B/L was not a mere receipt in BP's hands at the time of discharge, it had become a document containing contract with BP from the date of novation agreement, and remained so at the date of discharge.

Even the court is wrong in holding that the B/L acquired contractual status in BP's hands after novation agreement, carrier was still in breach of contract as the s2(1) of Carriage of Goods By Sea Act 1992 has the effect that upon endorsement of the B/L to Unicredit subsequent to discharge, a contract on the terms of the B/L came into existence retrospectively.

# The “Sienna” – Court Of Appeal Decision On Misdelivery Claims Under Bill Of Lading (Cont’d)

## ❖ The Court of Appeal Decision On Issue 2

The court upheld the finding in first instance, that had carrier initially refused to discharge the cargo without production of B/L, Unicredit would still have instructed carrier to discharge so, and carrier’s obligation to deliver against a B/L is a contractual one which can be varied by express consent of the B/L holder.

The appeal was accordingly dismissed as the causation is not established.

# Long-Term LNG Agreements And Short-Term Volatility: Buyers Beware?

The war in Ukraine has brought the price shock to commodity markets. What if unforeseen market movement under a long-term sale and purchase agreement ("SPA") create an arbitrage opportunity for a party if it is willing to breach the agreement for a higher profit in other markets? Does the innocent buyer have adequate protection? Could it recover from the contract-breaking seller?

This article will consider how standard contract conditions relating to pricing, damages and remedies may respond in such a scenario; whether such conducts of breach can allow buyer to recover more than the scope of typical liquidated damages clauses; and whether the such conduct can give rise to non-contractual causes of action for the innocent buyer against a contract-breaking seller.

## ❖ Price Reopener Clause

A reopener clause in SPA will usually identify a trigger, set out a procedure for price adjustment negotiation and dispute resolution, and provide criteria for the pricing revision. Where there is a price spike in spot markets offering a seller a better return, the seller is less likely to consider breaching the contract if it can revise the price via such clause.

Triggers in the price reopener clause are frequently pinned to whether market conditions have "substantially changed as compared to what it reasonably expected", or if the buyer cannot maintain a "reasonable market margin", or sometimes it is additionally required that the change has created hardship for one of the parties.

In a well-known arbitration case *Gas Natural v Atlantic LNG*, the tribunal concluded that "change" in the price reopener clause meant a meaningful departure from a parallel movement between the price formula and the market value of natural gas; "substantial" meant a change which was material and had occurred consistently over a meaningful period, and was reasonably expected to persist.

In a case law *Superior Overseas Development Corporation*, the price reopener was triggered on a "substantial change in the economic circumstances leading to substantial economic hardship." The Court of Appeal held that the expression of "substantial" meant real or something more than day-to-day difficulties, and the operation of the clause would offset all the hardship, not leaving any party on the borderline of substantial hardship.

# Long-Term LNG Agreements And Short-Term Volatility: Buyers Beware? (Cont'd)

## ❖ Remedial Regime in SPA & Wilful Misconduct Exclusion Clause

SPA will contain clauses on available remedies and capped damages, and sometimes it also contain an exclusion clause providing that such remedial regime will not apply where the loss is caused by a breach of contract that arises "as a result of wilful misconduct". Such exclusion clause is likely to be highly beneficial to a buyer facing arbitrage so their recovery can go beyond the scope of the remedial regime.

Where the contract does not itself define "wilful misconduct", it will usually mean knowingly, intentionally or recklessly committing misconduct. In order to dis-apply the capped damages clauses, the buyer will need to show that the seller's conduct was misconduct that in fact amount to a breach of contract.

In practice to prove such misconduct may be difficult, for example, a seller may circumvent a breach by manipulating the delivery schedule; therefore buyers are suggested to be alert to this possibility when considering when and how to negotiate with sellers on future delivery quantities and potential notices of delay.

## ❖ " Lawful Act " & " Unlawful Act " Economic Duress

It has been relatively well-established under English law that a threat to break a contract is sufficient of being deemed in certain circumstances as an illegitimate threat giving rise to a cause of action for "unlawful act" economic duress.

Recent case laws also clearly established that the doctrine of "lawful act" economic duress exists as a ground for the restitution of payments by an innocent buyer if it can show sufficient causation between the illegitimate (but lawful) threat and the threatened party making payments while there is a lack of other reasonable alternative to giving into the threat.

Buyer may argue that the deliberate manipulation of delivery schedules or agreements create a situation and manoeuvre the claimant into a position of vulnerability, so to obtain a remedy in one or both of the "unlawful act" and "lawful act" duress.

# A Brief Introduction To The Regulations Of Polar Shipping

## ❖ The Antarctic Treaty System

The 1959 Antarctic Treaty was established in order to ensure the Antarctic was used for peaceful scientific purposes. It designated Antarctica as a Special Conservation Area and put a hold on competing states' claims to sovereignty.

The Treaty's Environmental Protocol mandates Parties to establish contingency plans and respond promptly and effectively to environmental emergencies that could harm the Antarctic environment.

Article 16, Annex VI to the protocol sets requirements for environmental protection measures and response actions for operators of advance-notice activities as defined by the Antarctic Treaty; and if an operator does not take prompt and effective response action in the event of an environmental emergency, they will be liable to pay for the costs of that response action up to the limitation amount as set by the Annex. But the Annex VI has not yet entered into force until now. An 'operator' is defined as the natural or juridical person that organises activities to be carried out in the Antarctic, not an operator of a ship.

## ❖ International Code For Ships Operating In Polar Waters (The "Polar Code")

Since entering into force on 1 January 2017, certain ships operating in polar waters are subject to mandatory requirements of the Polar Code in addition to other requirements already established for all ships under MARPOL and SOLAS. Key provisions include:-

- **Ship Design and Construction**

  The requirements include enhanced ice strengthening, specialised navigation equipment and other safety features to ensure that the ship can withstand the polar environment. Ships must undergo an assessment prior to receiving a valid Polar Ship Certificate on board.

# A Brief Introduction To The Regulations Of Polar Shipping (Cont'd)

## ❖ International Code For Ships Operating In Polar Waters (The "Polar Code") (Cont'd)

### ● Crew Training and Certification

This mandates that all crew members onboard ships operating in polar waters are adequately trained and certified on various topics such as ice navigation, emergency response and polar survival techniques. The crew who are in charge of navigational watch will have to complete appropriate training and the minimum requirements for training have been mandatory under the STCW Convention and Code since 1 July 2018.

### ● Environmental Protection

This includes limits on the discharge of pollutants and requirements for the safe handling and storage of hazardous materials, aiming to minimize the environmental impact of shipping activities in polar waters.

### ● Search and Rescue

All ships operating in polar waters are required to have appropriate search and rescue capabilities, including the provision of dedicated rescue equipment, training for crew members on how to respond to emergencies, necessary quantity of food rations and fresh water, as well as the type of equipment that should be carried on board.

### ● Voyage Planning

This requires all ships operating in polar waters have a detailed voyage plan in consideration of factors such as ice conditions, weather forecasts, and the availability of emergency response resources.

MSC approved an amendments to the Polar Code that safety of voyage planning applies to non-SOLAS ships, including fishing vessels of 24m length overall and above, pleasure yachts of 300 GT and upwards (not engaged in trade) and cargo ships of 300-500 GT.

# A New PRC Judicial Guidance of Classification Societies' Liabilities

## ❖ Factual Background

- In October 2016, the tail shaft of a Panamax bulker "Tiger Pioneer" broke down at sea. Consequently, the engine room experienced water ingress, causing the vessel a loss of power.
- The shipowner arranged salvage and permanent repair for "Tiger Pioneer", and the total incurred loss (including the loss of earning) is more than RMB50,000,000.00.
- After settling the shipowners' insurance claim, the Hull & Machinery insurer sought recourse from i) the maker and deep processing manufacturer of the tail shaft which broke down, ii) the vessel's classification society, and iii) the inspection agency of the processor, claiming that they should bear joint and several liability for losses caused by the defective parts of the ship.
- The case is heard in PRC court. This article will focus on whether the classification society should be liable for failing to detect the defective tail shaft in PRC jurisdiction.

## ❖ Court Decisions

The Court of First Instance held that the classification society should not be liable for the losses caused by the defective tail shaft, based on the following reasoning:-

- The concerned tail shaft is a product produced and processed for sale, so the quality issue of the tail shaft falls within the scope of the Product Quality Law of the People's Republic of China.
- The defendant classification society, who was only expected to follow its published classification rules for conducting tests and inspections with due diligence, was not supposed to monitor the whole manufacturing process of the tail shaft in question.
- The facts showed that the defects on the parts could not be detected by the available inspection methods which are specified in the classification rules; therefore, the defendant classification society shall be considered to have exercised due diligence and not to be at fault.

The court of second instance upheld the decision.

## ❖ Other Issues

Under the PRC Product Quality Law, the producer and processer of a product shall bear strict liability towards a tort claim. An issue being discussed in the court is that, whether the classification society is deemed as a product quality inspection agency, thus becomes liable if failing to find out the defects during inspection.

Court's judgement indicates no support to such opinion. Some lawyers opined that product quality inspection agencies are examined and certified by relevant authorities, and they are not allowed to carry out inspection unless they are entrusted by the administrative departments. Classification society is providing services to shipowners on contractual basis, not being certified nor entrusted by relevant authorities; therefore they shall not be deemed as a product quality inspection agency within the definition of PRC Product Quality Law.

# Loss Prevention : Drug Smuggling On The Increase In Mexican Ports

Mexico has seen an increase in the number of cases involving illegal drugs being smuggled on merchant vessels calling Mexican ports in the past 12 months, and the recent rise of incidents has been experienced in ports located both in the Gulf of Mexico and the Pacific Ocean coastline.

As advised by the correspondents of IG P&I Clubs, if the drugs are found on the vessel, the local authorities and the Navy will board the vessel to perform an inspection. Once the drugs are removed from the vessel, the crew will be summoned for interrogation by the Federal District Attorney's Offices ("FDAO"). Usually, a lawyer will also be present to assist crew members during the interrogation.

The consequences for the crew and owners can be severe if drugs are found onboard even where they may have no involvement. Since 2019, there have been several incidents where crew have been kept in custody for months and ships being under detention for a lengthy period.

Below are a few loss prevention recommendations:-

- Immediate notification to the authorities is essential when the crew find suspicious package onboard. There is always a risk that not notifying the authorities immediately after the discovery of suspicious packages can be seen as an indication that the crew and/or the owners are in some way involved in drug smuggling.
- If the vessel has called high risk ports of drug smuggling, it is important that anti-drug searches are carried out prior to departure, and where possible underwater searches too. It is preferable that prior to carrying out the underwater inspection, the local authorities are informed in writing by the vessel's local agents and they may choose to supervise the inspection.
- Consider strengthening security watches when at anchor or alongside in a port in Mexico.
- Operators and masters of vessels trading to and from high-risk areas are recommended to familiarize themselves with, and ensure their onboard procedures refer to the IMO revised guidelines for the prevention and suppression of the smuggling of drugs (IMO Res MSC.228(82)).
- It is important that the crew, owners, their agents and other representatives fully cooperate with the authorities. Any aggressive approach should be avoided as this can be detrimental to securing an early release of the vessel and her crew.


# Market Snapshot

Photo by lucas Favre on Unsplash

## BIMCO Estimated 15,000 Ships To Be Scrapped By 2032

- Analysts have long been talking up prospects for a soaring of vintage ships heading for demolition amid a period of growing-green regulations and the global merchant fleet getting older and older.
- BIMCO has forecast more than 15,000 ships built in 2000s, equivalent to more than a quarter of today's trading fleet, could be recycled by 2032, up more than 100% on the last 10 years.
- This forecast is based on the historical recycling pattern, which shows about 50% of bulk, tanker, and container deadweight capacity has been recycled by the time the ships would have been 25 years old, and 90% by 30-35 years old.
- Clarksons estimates that 31% of the current fleet by tonnage would be D or E rated under the recently-enacted Carbon Intensity Indicator (CII), if assuming no changes in speed or the technology status of these vessels. If these vessels are not to be refitted, they will have to be replaced.

## India Is Driving Up Ton Mile Demand In Dry Bulker Market

- It is observed that the war in Ukraine has a significant impact in the seaborne coal trade, with India's coal imports from Russia increased and lifting up the ton-mile demand.
- India is one of the world's largest importers of coal. The seaborne coal imports increased from 2021 to 2022 by 19%. This year, the imported coal volumes will be expected to have an increase of 8% compared to 2022.
- India's top four exporters of coal are Indonesia, Australia, South Africa and Russia. Since 2021, India has purchased more coal from Russia. According to market data, the coal imported from Russia in 2022 has tripled compared to 2021, and in 2023 by May, the imported Russian coal stood in equivalence to 50% of the same in 2022.
- Market resource expected that, if India continues to import more coal from distant countries like Russia, rates for the trade may increase, especially for Kamsarmax and Capesize bulkers.

## Black Sea Grain Deal Extended for Two Months

- The Ukraine Black Sea grain deal has been extended for two more months till 18th July 2023, although Russia had initially appeared unwilling to extend the pact unless a list of demands regarding its own agricultural exports was met.
- Russia, Ukraine, Turkey and the U.N. made up a Joint Coordination Centre (JCC) in Istanbul, aiming to authorize and inspect ships to implement the Black Sea export deal. The flow of ships through the corridor had been grinding to a halt when the deal was about to expire on 18th May, but after the extension, the exports are resumed.
- The extension helped to drive down grain prices on 17th May with Chicago wheat futures Wv1 and corn futures Cv1 both falling by around 4%.
- Insofar, Some 30.3 million tonnes of grain and foodstuffs has been exported from Ukraine under the Black Sea deal.

## Iran Seized Three Oil Tanker In Gulf - U.S. Navy Increase Presence In The Region

- Iran has seized three oil tankers, i.e. “Advantage Sweet”, “Niovi” and “Purity” in Gulf of Oman, the narrow Strait of Hormuz and port of Asaluyeh respectively within a period of 19 days in May 2023.
- The seizure of “Advantage Sweet” appears to be in response to the US seizure of Empire Navigation’s 159,000-dwt tanker “Suez Rajan”, and the seizure of the “Purity” occurred when the US Navy plans to increase its patrolling in and around the Strait of Hormuz.
- About a fifth of the world’s crude oil and oil products fleet passes through the Strait of Hormuz, a narrow choke point between Iran and Oman. Heightened military activity and geopolitical tensions in these regions continue to pose serious threats to commercial vessels, associated with the potential for miscalculation or misidentification.

## Panama Canal Imposes Additional Shipping Restrictions Amid Worsening Drought

- A severe drought is affecting the Panama Canal's water level. The canal has imposed higher fees for transiting and requested the ships to decrease their cargo weight and draft. This decision is according to a protocol of transit fees and weight restrictions that becomes effective when drought worsens.
- From 24th May, Neo-Panamax vessels transiting the waterway will be allowed drafts of up to 44.5 feet, and further restrained to 44 feet from 30th May. The decrease of draft could translate to 40% less cargo on certain containerships. Ordinarily, a 50-feet draft is considered normal.
- Containerships will be most affected, as shippers will have to split heavier cargo into more containers; consequently, it will take more ships to move the same amount of goods, causing freight increase and potential congestion at the canal. A few containership carriers have announced weight limits or imposed container fees around USD300-500 per box effective from 1st June.
- LNG ships are not as affected by the draft changes as the vessels have fewer draft than those carrying heavier commodities.
- Sources say some shippers are already considering alternative routes. For example, Asia-to-US cargo can take routes through the Suez Canal, or use ports in southern California, which would involve loading containers onto trucks or trains bound for Midwest and East Coast of US.

## Fuel EU Maritime Moves Forward – Shipowners Suggested To Prepare Early

- The EU's regulatory bodies have reached agreement on new regulations to cut greenhouse gas emissions (GHG) from ships trading within or calling at ports in the EU and the European Economic Area (EEA), which includes Iceland and Norway.
- The Fuel EU Maritime regulation is likely to enter force in 2025, and it will cover a range of operational issues, including the adoption of shore power from 2030, and the use of renewable fuels. They will apply to ships of more than 5,000 gross tonnes or more, carrying cargoes or passengers, as set out in the present Monitoring, Reporting and Verification (MRV) requirements.
- The GHG intensity requirements in the regulation are set as a percentage reduction relative to a reference value of 91.16 gCO2e/MJ. The reduction requirement increases from an initial 2% between 2025 and 2030, to 6% between 2030 and 2035, and14.5%, 31%, 62% and 80% in the five-year periods thereafter until mid-century.
- Ships that fail to comply will be penalized, and the levels will increase steadily over the 25-year period. Owners and operators who are likely being affected by this new regulation are recommended to make preparation long before 2025.

## 20+ Year-Old Tankers Set To Make Up 11% Of All Tanker Demand By Mid-2025

- Tankers aged above 20 years but still working used to be rare in the market, as major charterers tend not to take on tankers older than 15 years old. By February 2022 before the Russia- Ukraine war, tankers aged 20+ made up 3% of the global tanker fleet. However, according to market data, these tankers may represent 11% of all tanker demand by mid-2025.
- Since the start of the Ukraine war, on the crude side, the average work-rate of old aframaxes has almost quadrupled. On the products side, 20+ year-old medium-range tankers have seen their average work-rate more than doubled. Overall, tankers aged 20 above have seen their rates increased by 84%, measured by average ton-miles performed per ship each quarter.
- The phenomenon is partly attributed to few newbuilds being in the pipeline, and partly because of sprawling of so-called dark fleet hauling cargoes for the likes of Venezuela, Iran and Russia.
- These aged tankers are mostly substandard tonnage posing higher risks of oil spill and other accidents. Earlier in this May, a 26-year old tanker “Pablo” caught fire in Malaysian waters, causing death of three crewmember and extensive oil pollution to coastal areas.

## Australia-Asia Iron Ore Green Corridor Could Reach 20 Vessels By 2030

- Market analysts estimated that ships powered by clean ammonia could be deployed on the iron ore trade routes between West Australia and East Asia by 2028 and reach 5% adoption by 2030.
- Ammonia was identified as the most likely zero-emission fuel for the green corridor, so the forecast rests on the validation and acceptance of ammonia as a safe marine fuel and the development of sufficient bunkering infrastructure.
- Regarding to the supply of ammonia, Pilbara region of Australia is a viable option for bunkering on the route, if production ramps up as forecast; whilst Singapore remains well-positioned to serve as a bunkering hub.
- To enable the adoption of green ammonia, the industry will also need to adequately address and overcome the safety and environmental risks of ammonia. If all goes well as expected, it is estimated that some 360 vessels could operate on clean ammonia on the corridor by 2050.

## Seasonal Rising Tide Of China Coal Imports

- As per Chinese Customs data, in April 2023, China's total coal purchase was 40.68 million tons, being their 3rd highest tally ever albeit slightly dropped from a 15-month high in March.
- Data showed that in April, the imported coals from Australia have reached 3.89 million tons, which is a 75% increase from March. Australia's share of coals constituted 10% of April's imports and doubling the level of the prior month.
- In spite of the rising tide of imports, April and May are typically a time of seasonally weak demand for electricity, as the weather in China warms but temperatures are not high enough to spur an increase in demand for air conditioning. According to market sources, the benchmark price at Qinhuangdao Port, China, has dropped to its lowest since the start of last year.

## Number Of Containers Lost At Sea Plummets In 2022

- The World Shipping Council ("WSC") has released its annual "Containers Lost at Sea" report, which mentioned that in 2022, there were 661 containers lost at sea, being 0.00026% of the estimated 250 million containers shipped annually, representing the lowest loss rate since 2008.
- The WSC credited the reduction to the improved container safety, but still reminded that constant vigilance shall be retained, as the data showed that the number of containers lost during the last three years (2020-2022) stands at 2,301 on average, increasing from a figure of 779 lost on average each year during the period from 2017 to 2019.
- As per the WSC, figures of lost containers could be affected by significant loss incidents happened in the same year; whilst container safety is also a shared responsibility across the supply chain with key factors such as proper packing, stowage, securing of container and accurate weight reporting.
- To improve container safety, the WSC has proposed a mandatory reporting scheme of lost containers, which will be considered by the Maritime Safety Committee in its MSC 107 this year.

# AI And Automated Ships Pose New Challenges In Casualty Liability

- Sir Nigel Teare, the 2022-2023 Chairman of the Association of Average Adjusters has cautioned that AI and automated ships will pose difficulties in determining casualty liability under the Hague Rules, especially in respect of carrier's due diligence.

- The discussion derived from the "CMA CGA Libra" case, in which both the Court of Appeal and the Supreme Court held that the defective voyage plan was not a navigation negligence (thus cannot be entitled to exemption under Hague Rules); rather, it rendered the vessel unseaworthy before commencement of voyage, and Owners were in breach of the due diligence as this duty cannot be delegated to ship master or other servants (see our previous CMH Spotlight 2022.04 issue). The adjuster extended the question to automated vessels, raising a question that what if an error of such is committed by computer or software that is purchased by the Owner.

- One of the judge sitting in "CMA CGM Libra" case had mentioned in the judgement that in such a case an Owner would be able to say that he had committed no breach of due diligence because the defect came about when the ship was not under his control or "in his orbit".

- It was inferred by the adjuster that, unless the Owner could and should have detected the error before the commencement of the voyage, if the error is the result of the artificial intelligence of the computer, then that might well be regarded as negligent navigation by the computer just as if it had been an error by the officer of the watch. Software engineers might be engaged to give expert evidence in addition to marine engineers or master mariners.

# Happy Reading, See You In June!

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# Acknowledgments


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