CMH SPOTLIGHT

January 2026

Publication by CM Houlder Insurance Brokers Limited, a China Merchants Group subsidiary.

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- "Happy Aras": General Average Claim Fails Due To Incompetent Master
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HIGHLIGHTS & BRIEFINGS

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Charterparty Damages For Late Delivery

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General Average Claim Fails Due To Incompetent Master

❑ Loss Prevention:
Mandatory Reporting Of Containers Lost At Sea Starts 1 January 2026

The “Skyros” & “Agios Minas” - Charterparty Damages For Late Delivery

Case briefing of Skyros Maritime Corporation & another -v- Hapag-Lloyd AG (Skyros and Agios Minas) [2025] EWCA Civ 1529

This case involved a Tribunal ruling that the Owners were entitled to damages for the overrun period, based on the difference in market rates. However, the Commercial Court overturned this arbitration award, replacing it with only nominal damages. The Court of Appeal later reversed the lower Court’s decision, restoring the Tribunal’s original award. A summary of the arbitration award and the judgment of the English Commercial Court is available in our previous CMH Spotlight 2025.03 Issue (https://www.cmhoulder.com/news/3). For warm-up, key briefing can be found below.

❖ Factual Background

- The MV “Skyros” and “Agios Minas” (“the Vessels”) were chartered to Hapag-Lloyd AG (Charterers). During the service for Charterers, the Owners of the Vessels entered into memoranda of agreements (“MOAs”) to sell the Vessels to third party buyers. Under the MOAs, Owners were prohibited from entering into any further fixtures after the expiry of the existing charters.

- The Charterers missed the redelivery dates for both the Vessels and subsequently paid the hire for the overrun period at the rates agreed in charterparties. However, by the time the Vessels were due to be redelivered, the market rate for chartering similar vessels had risen significantly, and Owners commenced arbitration proceeding seeking damages for late redelivery in the normal way under the case law *The Achilleas [2009],* i.e. difference between the market rate and the hire rates under the charterparties for the overrun period.

- Charterers resisted the claim on the basis that Owners suffered no loss as a result of their breach, as the MOAs prevented the Vessels being chartered out even if the redelivery was on time.

❖ The Arbitration Award

In the arbitration, Owners claimed for difference on the basis of i) quantum meruit; ii) user damages; iii) res inter alios acta / remoteness; and iv) negotiating damages. The arbitrators decided in favour of the Owners, awarding them "user damages".

As to the Charterers' defence regarding MOAs, the arbitrators determined that the MOAs were too remote to have any effect on the assessment of damages under the charterparty. The principle of remoteness worked both ways: it prevented the Owners from recovering losses connected to the MOAs and also precluded the Charterers from using the MOAs to defend against a claim under the charterparties.

Charterers appealed the award to the Commercial Court to determine the question that, whether the Owners are entitled to more than nominal damages if evidence shows that the Owners would not have chartered out the Vessels even after a timely redelivery.

❖ The Commercial Court's Decision

The Court dismissed all of Owners' arguments and held that the Owners were only entitled to nominal damages. In the judgment, the Court examined different types of damages, finding that none of them applied in this case. For ease of reference, we will focus on the principle of **res inter alios acta** and the Court's reasoning in application of the usual measure of damages established in *The Achilleas*.

The "Skyros" & "Agios Minas" - Charterparty Damages For Late Delivery (Cont'd)

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

- Res inter alios acta

This term refers to the principle that a contract made by third parties cannot affect the rights of a non-party. The Owners argued that the terms of the MOAs should be disregarded under this principle, asserting that they should not impact the Owners' recoverable losses, given that there was no relationship to them.

The Court disagreed, following the Court of Appeal's decision in *Slater v. Hoyle & Smith*. The Court ruled that the principle of res inter alios acta does not apply in two situations: i) when an onward contract (i.e., the MOAs) pertains to the same specific goods as those redelivered under the main contract (i.e., the charterparties), and ii) when the intended use of those goods was known to or at least contemplated by the parties at the time the main contract was agreed.

In this case, since the MOAs involved the same specific goods (the Vessels), the Court concluded that the res inter alios acta doctrine does not apply, and the MOAs must be considered when assessing damages.

- The usual measure of damages according to *The Achilleas*

The usual measure of damages for late redelivery under a time charterparty, as established in *The Achilleas* case, is the difference between the vessel's charter rate and her market rate during the period of overrun, if the market rate is higher. However, in the present case, it was held that the Owners were not entitled to recover the usual measure of damages from the Charterers, since the MOAs prevented the Owners from entering the market and earning hire at the market rate anyway.

The "Skyros" & "Agios Minas" - Charterparty Damages For Late Delivery (Cont'd)

❖ The Court of Appeal's Decision

Owners were granted leave to appeal, on whether the existence of the MOAs must be disregarded in assessment of damages, and whether Owners were entitled in principle to recover user damages.

- In assessing damages, the Court identified two key questions when assessing damages: i) how much an innocent party has lost due to a breach, and ii) how much of their loss is recoverable.
    - When considering question i), two out of the three appeal judges agreed that the principle of res inter alios acta applies. It was clarified that this principle does not only apply to collateral benefits (the narrow interpretation adopted by the trial judge), but also apply to collateral matters. In the context of present case, it means that the MOAs or any arrangements which the Owners may have made for the future deployment of the Vessels after redelivery arise independently of the circumstances giving rise to the Charterers' breach. The late redelivery means that the Owners have lost the opportunity to conclude a new fixture at the market rate, which is the loss that should be compensated, while whether the Owners could or would in fact have done so is res inter alios acta and is disregarded for purpose of assessing the damages.
    - Question ii) requires an evaluation of remoteness of loss, i.e. whether the loss was within the reasonable contemplation of the parties. In *The Achilleas*, the House of Lords held that the shipowner was only entitled to recover the usual measure of damages (market vs. contract rate for the overrun period), and this did not require knowledge of the shipowner's arrangements for the next charter. The Court of Appeal therefore concluded that in this case, the usual measure of damages for late redelivery applied, regardless of whether the Owners would or could have chartered the Vessels further.

The "Skyros" & "Agios Minas" - Charterparty Damages For Late Delivery (Cont'd)

❖ The Court of Appeal's Decision (Cont'd)

- Regarding whether the Owners were entitled to recover user damage (this type of common law damage applies when a person wrongfully uses another's property, making them liable for a reasonable sum to the property owner, even if no actual loss is incurred), the Court rejected this submission, since late redelivery under time charter was not comparable to the invasion of property rights on which the principle was based. The Court determined that it was not justified to extend the user damage principle to a novel situation where the usual compensatory principle established in *The Achilleas* could provide the appropriate award.

- The judgment looked as if it undermines the compensatory principle of English law, as the Owners received damages even though they had no chance to earn further hire. The Court of Appeal noted that "*The normal measure may either over- or under- compensate the Owners in some cases.*" Nevertheless, the Court considered that to be an acceptable and justified trade-off to promote certainty and avoid the need for intrusive inquiries into Owners' future plans.

❖ Comment

- It is an important decision that clarifies that compensatory damages are assessed by reference to contractual entitlements and market condition. The collateral benefits or matters, regardless of how such could affect the claimant's recovery, are simply not the wrongdoer's concern.

- It remains to be seen whether the Court of Appeal decision is the final word on the matter or whether it would sail further to the Supreme Court.

“Happy Aras” – General Average Claim Fails Due To Incompetent Master

Case briefing of In Unity Ship Group S.A. v Euroins Insurance JSC [2026] EWHC 7(Admlty)

❖ Factual Background

- The MV “Happy Aras” (“the Vessel”) grounded off Datca Peninsula at 20:58 local time on 20th March 2023 while performing a voyage from Reni, Ukraine to Mersin, Turkey with a cargo of soya beans.
- The Vessel sustained serious damage, prompting salvage, lightering and transshipment operations that continued until 13th June 2023. The Owners declared General Average (“GA”), and the GA claim was adjusted at USD3,140,040.97, with cargo’s proportion calculated at USD1,271,095.89.
- The voyage charterparty and the bill of lading incorporated the Hague Rules and provided for adjustment of GA in London under the York / Antwerp Rules 1994, and the GA Guarantee was governed by English law with jurisdiction in the High Court in London.
- The cargo insurers defended against the liability and quantum of the GA contribution, arguing the vessel was unseaworthy due to an incompetent Master and defective passage plan.

❖ The Law

- According to the judgment in *The CMA CGM Libra*, a shipowner is not entitled to recover GA contribution from the cargo interests where the loss or expenditures was caused by his “actionable fault” which includes any causative breach of the relevant contract of carriage.
- Article IV Rules 1 & 2(a) provide as follows:

  “1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy…in accordance with the provisions of paragraph 1 of Article III.

  Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this Article.

  2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

  (a) Act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship.”

"Happy Aras" – General Average Claim Fails Due To Incompetent Master (Cont'd)

❖ **Disputing Issue 1: Whether the passage plan was defective to render the vessel unseaworthy**

As noted in *The CMA CGM Libra,* passage planning is the subject of guidelines published by the International Maritime Organization, specifically Resolution A.893(21), adopted in November 1999.

The passage plan was prepared by the Second Officer and signed by both the Master and the Chief Engineer on a standard form. It included a series of courses and Way Points, along with information on the minimum available depth for each section of the voyage, the under keel clearance, the fixing method and the fixing intervals.

The plan was described by the cargo insurers' expert before the Court as "a basic type", attracting quite many criticisms for its lack of no-go areas around the Datca Peninsula and cross track limits (to indicate the maximum permitted deviation from the planned route). Desirably, the cross track limits as well as proximity alarms should also have been featured in the passage plan and entered into the radar, though such are not mandatorily required by the Guidelines. Besides, cargo insurers' expert opined that the passage plan was incomplete as it did not contain Way Points for certain transits through canals and straits.

Despite the alleged defects in the passage plan, both the plaintiff and defendant's experts admitted that, had the passage plan been followed, the grounding would not have occurred. That means, the cargo insurers could not establish a casual link between the passage plan's deficiency and the grounding, hence their defence on this aspect failed.

"Happy Aras" – General Average Claim Fails Due To Incompetent Master (Cont'd)

❖ **Disputing Issue 2: Whether the Master was incompetent to render the Vessel unseaworthy**

The evidence showed that multiple failures of Master during the voyage:

- Failure to make and record required fixes into the deck log after taking over the OOW (Office of the Watch) at 20:00.
- An early deviation from the passage plan, intended to "cut the corner", was not recorded in the deck log.
- The Master sent the lookout officer downstairs to brew tea between two crucial Way Points, where a lookout is required under the Safety Management System (SMS).
- The Master failed to make a necessary course alteration at a crucial Way Point. Soon after this failure, the Vessel ran aground. Data analysis showed that the vessel grounded at its sailing speed without attempting to alter course or reduce speed.
- Failure to monitor radar or input cross-track limits alarms.
- Apparent disregard to BNWAS (Bridge Navigational Watch Alarm System) warning, taking no meaningful action in response to the BNWAS alerts.
- Failure to keep any lookout. Nautical twilight ended at 20:18, and at this point, the Master should have been able to see the land of Dacta Peninsula with its nearly 280m above sea level.
- The entries in deck log suggested that the Vessel took avoidance some 23 minutes before grounding, but this is inconsistent with AIS data and the analysis of experts, including Owners' appointed expert.

"Happy Aras" – General Average Claim Fails Due To Incompetent Master (Cont'd)

❖ **Disputing Issue 2: Whether the Master was incompetent to render the Vessel unseaworthy (Cont'd)**

The key issue was whether the Master's failure constituted incompetence (rendering the vessel unseaworthy) or merely negligence (potentially covered by Hague Rules Article IV Rule 2). The Owners asserted that the evidence did not establish the Master's incompetence to the extent of rendering the Vessel unseaworthy, and that an isolated or occasional error should not imply incompetence.

Based on the evidence, the Court found "*the grounding was not the product of an isolated error. The errors were numerous and egregious and can be characterized as a complete dereliction of duty.*" Applying the "prudent owner" unseaworthiness test – whether a reasonably prudent owner, knowing the relevant facts, have allowed this vessel to put to sea with this Master and crew – the Court concluded that the Master's conduct render the Vessel unseaworthy.

❖ **Disputing Issue 3: Whether the Plaintiff discharged the burden of proof to show due diligence under Article IV(1) of the Hague Rules once unseaworthiness was established.**

The Owners relied on a statement from the Owner/Manager indicating that the Master had prior positive evaluations, certificates and a favorable reference from a reputable third-party company in the industry.

However, case law indicates that relying solely on certificates of competence held by a seaman is insufficient (*The Eurasian Dream*). As noted in *The Makedonia,* "a man may be well qualified and hold the highest grade in certificates of competency and yet have a disabling lack of will and inclination to use his skill and knowledge so that they are well-nigh useless to him".

"Happy Aras" – General Average Claim Fails Due To Incompetent Master (Cont'd)

❖ Disputing Issue 3: Whether the Plaintiff discharged the burden of proof to show due diligence under Article IV(1) of the Hague Rules once unseaworthiness was established. (Cont'd)

Furthermore, the Owners failed to disclose specific details on the performance evaluation conducted prior to the Master's appointment to the Vessel. Additionally, there was no evidence of supervision in any of the forms such as regular or random checks by marine superintendents or other qualified managerial staff. Neither the Master, beneficial Owner nor ship manager attended trial to give evidence.

In light of above, the Court held that the Vessel was unseaworthy by reason of the incompetence of the Master, and that the Owners failed to discharge their burden of proving due diligence in appointing and supervising the Master. Consequently, the cargo insurers successfully defended against liability.

As the GA claim failed on liability, the Court did not dive into details on the quantum of claim but briefly concluded that if liability had been established, the GA expenses claimed would have been awarded.

❖ Comment

The judgment is based on precedent case authorities and does not set any new principles or provide any novel applications. However, for ship operators, the disputing issues and evidence could serve as a reminder of what due diligence should be exercised to maintain the vessel seaworthiness under the liability regime in the contracts of carriage.

Loss Prevention: Mandatory Reporting Of Containers Lost At Sea Starts 1 January 2026

Following IMO amendments to the International Convention for the Safety of Life at Sea (SOLAS), the new regulations require all containers lost at sea being reported, effective from 1st January 2026. This aims to enhance maritime safety and safeguard the marine environment.

According to data published by the World Shipping Council, 576 containers were lost in 2024, with 35% of these losses occurring in the region of Cape of Good Hope. This is attributed to the significant rerouting of vessels from the Suez Canal, exposing them to more challenging weather and sea conditions.

The requirements are detailed in Resolution MSC.550(108) and apply to any ship carrying one or more freight containers, as well as to any ship that observes containers lost at sea. Key points include:-

- **Reporting by the Master**. The Master must promptly report both the loss and any sighting of drifting containers.
- **Required information**. The report should include the ship's identity, positions of lost/drifting containers, date and time of the incident, and to the extent it is known, the number of containers lost/drifting, their descriptions (size & type) and whether any Dangerous Goods are involved (with UN numbers).
- **Follow-up reports**. If the initial report lacks complete required information, follow-up reports are necessary.
- **Reporting Templates**. IMO circular CCC.1/Circ.7 contains reporting templates for ease of compliance.

For a ship having lost containers, a thorough inspection is expected at earliest, safe and practicable opportunity. If a ship is abandoned or the Master is unable to report, the operating company (ship owning company or the ISM management company) must assume the reporting obligation to the fullest extent possible.

It is recommended that ship owners, operators and ship masters familiarize themselves with the newly amended SOLAS regulations and ensure timely compliance.

Moreover, extensive efforts should be made to review and update the Safety Management Systems (SMS), develop necessary forms and procedures, and provide crew training to adequately prepare the bridge team for the new reporting obligations and proper record-keeping.

Market Snapshot

World Oil Market Faces Significant Surplus In First Quarter

- In its recent report, the International Energy Agency (IEA) warns of a significant surplus in the global oil market, projecting an excess supply of 4.25 million barrels per day in the first quarter of 2026. A surplus of this size would be around 4% of world demand.
- This surplus, driven by a faster supply increase than demand, is mostly attributed to the output boost from OPEC+ or the other petroleum exporting countries since April 2025, after years of cuts.
- Concerns about geopolitics and possible oil market disruptions continued to drive buying. Oil prices have risen about 6% since the start of the year, amid fears of disruptions, particularly following the U.S. actions in Venezuela and tensions with Iran.
- Moreover, the first quarter is the season when planned shutdowns and maintenance will be carried out for global oil refiners. This will result in lower demand temporarily, building up further surplus.

Oil Tanker Rates Jump As US Push Into Venezuela Shifts Flows

- With U.S. control over the Venezuela's energy sector following the capture of Nicolás Maduro, more Venezuelan crude is set to flow into American markets, primarily via mid-sized tankers. This shift could also redirect U.S. West Texas Intermediate crude to Europe, tightening vessel availability.
- As sanctions ease, shipowners may expect higher rates on some routes as current and future oil flows are redirected. In mid-January, for routes from the Caribbean to the US Gulf, routes from US Gulf to Europe, as well as those from east Mexico to US Gulf, the tanker rates all experienced significant spike due to lack of immediately-available vessels in the region.
- Despite the optimism surrounding potential exports, analysts caution that Venezuela's oil production faces numerous challenges, casting a shadow on the sustainability of this newfound flow. With estimates suggesting substantial production growth in the coming years, how the energy landscape evolves remains uncertain.

The Gradual Return of Ships To The Red Sea Hits A Key Milestone Yet Uncertainty Resounds

- After more than two years of avoiding the Red Sea, major container line Maersk announced the decision to redirect some of services through the Suez Canal, a sign that the risks of attacks tied to conflict in the region diminished.
- The services announced by Maersk as returning to Suez Canal are smaller ships operating outside the alliance, but market analysts viewed it a turning point for all major container lines, as Maersk has generally been the most risk-aversing carrier in the segment.
- In contrast, just days after Maersk's announcement, CMA CGM has abruptly reversed its own Red Sea plans, rerouting three major Asia-Europe services back around the Cape of Good Hope and raising fresh doubts about the predictability of global ocean supply chains.
- CMA CGM's reversal highlighted a fundamental problem of unpredictability, and indicated that the broader market remains hesitant regarding the future of Red Sea stability.
- By the week ending January 11, 26 containerships transited the Suez Canal, whilst traffic around the Cape of Good Hope surged to 203 voyages.

Maritime Piracy Surges In 2025 As Singapore Straits Emerges As World's Most Dangerous Waters

- The International Maritime Bureau reported 137 incidents of maritime piracy and armed robbery in 2025, showcasing an upward trend from previous years. Notably, the Singapore Straits accounted for 80 incidents -- almost double that of 2024 -- indicating not just frequency but an alarming increase in violence, with firearms used in many cases.
- Globally, the 2025 figures reveal that 121 vessels were boarded, four were hijacked, two were fired upon, and 10 attacks were attempted. The use of weapons continues to escalate. Guns were reported in 42 incidents in 2025 compared to 26 in 2024, while knives appeared in 33 incidents.
- While piracy incidents are decreasing in some regions, such as the Indonesian archipelago, areas like the Gulf of Guinea still face challenges. The need for consistent naval presence, especially near the Somali coast, remains vital for ensuring maritime safety and safeguarding global supply chains.

Global LNG Supply Set To Jump In 2026, Limiting Price And Spurring Demand

- It is predicted that the supply of global LNG will increase significantly this year, easing the constraints seen since the 2022 Ukraine war and dampening prices.
- According to market analysts, at least 35 million metric tons of new capacity would be added to market this year, primarily from the U.S. and Qatar. This could lift global LNG up to 10% year-on-year, leading to a total supply in a range of 460 million and 484 million metric tons.
- The additional supply will pressure global prices on the LNG. Average range for Asian spot LNG is forecast at USD9.50 - 9.90 per mmBtu, down from an average of USD12.45 in 2025. The predicted benchmark for EU ranges from USD9.50 to USD9.74 per mmBtu, down from an average of USD14.20 last year.
- China’s 2025 import of LNG slumped amid weak industrial demand, U.S. tariffs and strong domestic and piped supply. This year, China’s demand for seaborne LNG is predicted to rise by around 12% from 2025.

China Merchants Energy Shipping Expands Container Ship Fleet

- China Merchants Energy Shipping has signed a shipbuilding agreement with China Merchants Industry for the construction of four 3,000 TEU conventional-fueled container vessels, equipped with scrubbers. The total investment for this venture is projected to be approximately RMB 1.3 billion (USD180 million), with deliveries scheduled between 2027 and 2028.
- This strategic move aims to optimize the company's container shipping fleet and align with its broader business development goals. The subsidiary shipyard was chosen for its advantageous delivery timelines, superior construction conditions, and reliability, making it the preferred option after thorough evaluation.
- Once operational, these new vessels will enhance loading capacity and operational efficiency, ultimately bolstering the company's market competitiveness and service capabilities. China Merchants Energy Shipping currently manages a diverse fleet, including very large crude carriers, LNG carriers, and roll-on/roll-off vessels, reinforcing its position in the Asia-Pacific shipping market and beyond.

Greenland Control And Tariffs Threaten To Destabilise Transatlantic Shipping

- Donald Trump has reaffirmed his intention to impose tariffs on European nations opposing his claim to Greenland, creating escalating tensions in transatlantic trade. Reports indicate that westbound rates on container trades from Europe to the U.S. have already plunged by 40% since early 2025, despite a 5.9% increase in container imports from Northern Europe.
- Trump announced on 17th January that eight European countries would face increasing tariffs starting at 10% on 1 February and rising to 25% on 1st June. Although these tariff threats have yet to be formalized, experts warn of their potential to ignite a trade war that could destabilise NATO and heighten geopolitical risks.
- As a traditional shipping chokepoint, Greenland is recognized as a pivotal territory in future maritime logistics. Trump's interest in Greenland indicates his strategy to secure Arctic routes amid global tensions.

Bulkers Ride China's Bauxite Surge

- China has achieved a record in bauxite imports, with discharges into its ports reaching approximately 213 million tonnes in 2025, marking a 25% increase from the previous year. This influx has positioned bauxite as a significant growth driver in the dry bulk market, providing a rare boost in demand for large bulk carriers.
- Globally, bauxite discharges rose to an estimated 241.4 million tonnes, growing 21% year-on-year, and China now accounts for about 88% of all ocean-traded bauxite. The country mainly imports from West Africa, particularly Guinea, which supplied roughly 72% of global bauxite discharges and three-quarters of China's imports.
- This increasing demand has led to enhanced fleet utilization, with major vessel classes like Newcastlemaxes dominating the trade. China's robust aluminium production further supports this growth, as high global copper prices encourage aluminium substitution.
- While some risks loom, particularly concerning Guinea's plans for domestic processing, the outlook for bauxite remains strong in the near term.

Happy Chinese New Year, Happy Reading!

Editor: Summer Hao
summerhao@cmhoulder.com

Acknowledgments

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