

CMHF SPOTLIGHT

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Breach Of Duty Of Fair
Presentation Of Risk Leads To
Avoidance Of Insurance
Contract
- LMAA Award On VOYWAR 1993:
Alternative Discharge And
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- Loss Prevention:
Carrying Containers On Bulk
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English Court Case: Breach Of Duty Of Fair Presentation Of Risk Leads To Avoidance Of Insurance Contract

Case briefing of Cometsambre SA v Lloyd's Insurance Company SA HIG 5321 [2026] EWHC 1837 (Comm)

❖ Factual Background

- The claimant, Cometsambre SA, is a Belgian scrap metal dealer. In early 2008, it decided to charter vessels to transport scrap cargoes and approached Antwerp Insurance Claims Associates NV (“AMICA”) via a broker to obtain Charterer’s Liability insurance. AMICA is the coverholder for Lloyd’s Insurance Company SA (the “Insurer”), which is 100% reinsured by Lloyd’s syndicates.
- Through a broker-provided charterer’s liability questionnaire, Cometsambre completed details of the intended trade. AMICA was informed that the cargo would consist of scrap that was non-oily, non-radioactive, and non-dangerous, specifically shredded “steep scrap” meeting HMS 1/HMS 1+2 or ISRI specifications.
- Charterer’s Liability cover (the “Cover”) was confirmed in March 2008. Cometsambre did not renew the Cover in 2009, but between 2010 and 2022 it renewed the Cover on essentially the same terms, governed by English law. Between 2010 and 2022, Cometsambre notified only a minor claim in 2012 for stevedore damage and, in 2021, a potential claim relating to a grounding at Alexandria.
- In June 2022, Cometsambre’s cargo was involved in a fire onboard the chartered vessel “Lowlands Mimosa”, prompting shipowners’ arbitration against Cometsambre for breach of charterparty in relation to dangerous cargo. Cometsambre sought indemnity from the Insurer for the arbitration claim and associated legal costs.
- AMICA later learned that Cometsambre’s cargo had been involved in multiple other fire incidents—10 in total between 2014 and 2022, including five between May 2020 and October 2021. The Insurer denied cover for the “Lowlands Mimosa” matter, alleging breach of the duty of fair presentation due to (i) the nature of the scrap shipped and (ii) failure to disclose the five fire incidents occurring between 2020 and 2021.

English Court Case: Breach Of Duty Of Fair Presentation Of Risk Leads To Avoidance Of Insurance Contract (Cont'd)

❖ The Legal Framework

The Insurance Act 2015 sets out the duty of fair presentation and the remedies available to insurers where that duty is breached:

- Section 3(4) requires an assured to (a) disclose every material circumstance it knows or ought to know, or (b) provide the insurer with sufficient information to put the insurer on notice that it needs to make further enquiries in order to reveal such material circumstances.
- Section 7(3) provides that a circumstance is material if it would influence the judgment of a prudent insurer in determining whether to take the risk, and if so, on what terms.
- Section 8 allows insurers certain remedies, including a) avoiding the insurance contract where the insurer would not have entered into it at all had there been no breach of the duty of fair presentation; and b) where insurer would still have entered into the insurance contract but on different terms, then treating the contract as if it had been entered on those different terms.

❖ The Commercial Court Decision

Each renewal of an insurance contract is a new contract. Here, it is the 2022 renewal that governs the cover dispute. The Court's reasoning turned on the following key issues:

1. Expected level of fire risks

When the risk was first presented through the Charterer's Liability questionnaire, the cargo was described as non-combustible or of low fire risk.

English Court Case: Breach Of Duty Of Fair Presentation Of Risk Leads To Avoidance Of Insurance Contract (Cont'd)

❖ The Commercial Court Decision (Cont'd)

2. Materiality

Although the cargo was stated to be of low risk, the actual extent of any fire risk would depend partly on the exact nature of the cargo. Consequently, the occurrence of five cargo fires in relatively quick succession, after 12 years with no fires, suggested that additional information about the cargo and Cometsambre's procedures could be relevant. Such information was material to the Insurer in assessing (i) the likely extent of fire risk and (ii) whether the risk profile had changed.

Cometsambre argued that the five fires were not material for the purposes of Section 3(4) because no charterer's liability claim had resulted. The Court rejected this. It preferred the evidence of Lloyd's underwriting expert, who explained that fires were "*paradigm example of an incident capable of giving rise to a claim.*" On that basis, the information had to be disclosed even if no claim ultimately materialised.

3. Insurer put on notice

Cometsambre argued that the insurers should have known the general risks associated with a steel scrap business, but they didn't require Cometsambre to fill in an updated questionnaire, nor did they ask for any further information about risk management, claims or fires.

The Court disagreed. It held that the duty of fair presentation rests primarily on the assured, and that Cometsambre's submission amounted to an attempt to shift that duty onto the Insurer. On the Court's findings, the Insurer had not been put on notice that they needed to enquire about any change in fire incidence compared with previous years. Nor could the Insurer be presumed to have known about the fires.

English Court Case: Breach Of Duty Of Fair Presentation Of Risk Leads To Avoidance Of Insurance Contract (Cont'd)

❖ The Commercial Court Decision (Cont'd)

4. Was disclosure requirement waived by Insurer?

In this case, the questionnaire was prepared by the insurance broker. Its limited scope reflected information provided by Cometsambre, rather than details specifically requested by the Insurer. The Court also held that the absence of a renewal questionnaire from the Insurer could not reasonably be understood as a waiver of disclosure of material circumstances.

On the evidence, the Court further found that the insurers' conduct and communications did not indicate that they were uninterested in the fire incidents occurring in 2020/2021, particularly given the significant period before those fires occurred.

5. Inducement

To rely on the remedies under Section 8 of Insurance Act 2015, the Insurer would need to show he was induced by the incomplete disclosure of risks in determining whether to write this risk and on what terms. The Insurer provided following submissions:

- i. The premium was low; it would not have been commercially viable to write the business if there had been a realistic prospect of fires leading to large claims.
- ii. The pattern and increasing frequency of fires likely reflected poor scrap quality and/or inadequate sorting before shipment.

English Court Case: Breach Of Duty Of Fair Presentation Of Risk Leads To Avoidance Of Insurance Contract (Cont'd)

5. Inducement (Cont'd)

- iii. Despite two fires, the Insurer renewed cover for another exporter because a) the cargo had a minimum level of debris, b) the fires were caused by hot work rather than the cargo itself, and c) the premium was about six times higher than Cometsambre's.

By accepting above evidence, the Court accepted that the Insurer would not have written the business at all, nor would he write the business at a different term (e.g. a higher premium).

In light of analysis on all these key issues, the Court held that Insurer was entitled to avoid the policy and return the premium to Cometsambre.

❖ Comment

- Although the Insurance Act 2015 provides for insurers' presumed knowledge in certain circumstances and for waiver of disclosure, the duty to make a fair presentation of risk rests squarely with the assured.
- Disclosure of material facts or circumstances is not limited to claims that have materialised or confined to the particular class of insurance being renewed. The question is whether the information would influence the judgment of a prudent insurer in deciding whether to take the risk - and, if so, on what terms. Where there is any uncertainty as to materiality, it should be disclosed.

Case briefing of London Arbitration 8/26, a helpful guidance on the interpretation of VOYWAR 1993.

❖ Factual Background

- Against the backdrop of the ongoing Russia/Ukraine conflict, the vessel was voyage-chartered on Gencon 1994 terms, incorporating VOYWAR 1993 at clause 17, for the carriage of ammonium nitrate from the Azov Sea to a Black Sea discharge port. After loading, Russian authorities prevented the vessel from transiting the Kerch Strait on security grounds associated with the cargo.
- On 7 February 2023, the Owners notified the Charterers that the vessel was in the war zone and requested that they revert their solution—e.g., by nominating an alternative safe port for discharge—within 48 hours, as required by the VOYWAR 1993 clause in the governing charterparty.
- On 15 February 2023, the Owners informed the Charterers that the cargo would have to be discharged at the load port and sought confirmation. The Charterers responded on 28 February 2023, nominating four possible alternative discharge ports. The Owners rejected these and insisted that only one alternative discharge port be nominated.
- Following an official order from Russian authorities on 13 March 2023 prohibiting the vessel from transiting the strait with the cargo, the Charterers ordered the vessel to return to the load port for discharge on 15 March 2023. The vessel completed discharge on 27 March 2023.
- The Owners claimed damages for detention at demurrage rate from 15 February to 15 March, contending that the Charterers failed to nominate an alternative safe port promptly after the VOYWAR clause had been invoked.

❖ Alternative Discharge Under VOYWAR

The charterparty incorporated, at Clause 17, the wording of the BIMCO Standard War Risks Clause for Voyage Chartering 1993 (“VOYWAR 1993”), which provides that:

“The Owners shall not be required...to proceed or continue on any voyage, or on any part thereof,at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo (or any part thereof), crew ...may be, or are likely to be, exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for the discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfilment of the Contract of Carriage...”

The Tribunal held that, under clause 17 and the contract as a whole, the Charterers had an implied duty to cooperate by giving prompt instructions to ensure timely discharge at a suitable port. This duty extended to nominating an alternative safe port under VOYWAR 1993.

On 15 February 2023 the Owners unequivocally asked the Charterers to give alternative orders under clause 17, the latter’s response on 25 February and later actions until 15 March 2023 did not amount to compliance with that request. Therefore, the Tribunal decided that the Charterers’ delay and indecision unjustifiably detained the vessel, and the Owners were entitled to recover damages for detention.

LMAA Award On VOYWAR 1993: Alternative Discharge And Frustration (Cont'd)

❖ Contractual War Risks Regime vs. Doctrine Of Frustration

The Charterers argued that the voyage charter has been frustrated by the intervention of Russian authorities, which made the transit of the Kerch Strait impossible.

The Tribunal agreed that the performance of the contractual voyage was no longer possible, but the charterparty was not frustrated. It was held that the VOYWAR 1993 provided a contractual regime tailored to such war-related impossibility, leaving no scope for doctrine of frustration to operate alongside it. In essence, where parties allocate war-risk impossibility through a clause, they cannot escape that allocation regime by invoking frustration when the risk materialises unfavorably.

❖ Key Takeaways

- Each decision depends on both precise facts and the wording of the war risks clauses in the charterparty. When invoking VOYWAR 1993 and its later versions, owners must make sure they are entitled to request nomination of an alternative port in the specific circumstances.
- Where a war risks clause applies, frustration arguments face a high threshold, even where the original voyage becomes impossible.
- As a side note, under VOYWAR 1993 and 2013, if owners reasonably judge exposure to war risks, they “may” by notice request charterers to nominate an alternative port. Under VOYWAR 2025, they “shall” make such a request by notice. In all versions, if charterers fail to nominate within 48 hours (72 under VOYWAR 2025), owners may discharge the cargo themselves.

Loss Prevention: Carrying Containers On Bulk Carriers

Bulk carriers are sometimes used to carry large quantity of containers, and in certain circumstances some modification is required on the vessel. Bulker operators will need to follow the guidance from vessels' classification society, flag State and insurers.

❖ Operational Considerations

● Seaworthiness

At the start of the voyage, the bulk carrier must comply with all Class and statutory requirements for container operations—including being suitably equipped to load, handle, stow, secure, care for, keep safe, and discharge containers.

If a bulk carrier requires additional equipment or modification, any changes to arrangements, fittings, operating limits should be updated to vessel documentation.

Crew capabilities should be also assessed to adapt to containers handling on bulk carriers.

● Structure and stability reassessment

Existing strength calculations may account for sea pressure, not container cargo loading. Therefore, tank top, deck, and hatch cover loading limits must be evaluated and followed.

Container securing systems must be comprehensively assessed to ensure operational load limits are not exceeded. This includes confirming the strength of securing components through renewed calculations.

Reinforcement of deck sockets or lashing plates may involve welding, which requires risk assessment, gas-freeing procedures, hot-work permits, and testing to confirm adequate strength - especially near fuel tanks.

Container loading can change stability behavior. Large values of metacentric height (GM) will place increased racking and shearing forces on the hull, cargo and lashing equipment; large roll angles may generate forces that exceed the maximum safe working load (SWL) of lashing plan limits.

Verifications should confirm hull stress limits are not exceeded and deck lashing loads stay within agreed parameters for the specific lashing equipment and maximum GM.

Loss Prevention: Carrying Containers On Bulk Carriers (Cont'd)

- **Hatch cover strength**

Bulk carrier's hatch covers are generally not designed for container loads. Overall strength, point load limits, and hatch sealing arrangements may be compromised unless manufacturers and Class confirm suitability.

Structural deformation and excessive gasket compression can harm weathertightness, and bulk carriers' typically low freeboard can expose deck cargo to harsher environmental conditions than on conventional container vessels.

- **Cargo securing**

Securing guidance is set out in the IMO Code of Safe Practice for Cargo Stowage and Securing (CSS Code), and supported by SOLAS mandatory publication - the Cargo Securing Manual (CSM). If the CSM does not contain details on container lashing under "Non-Standardised Cargo", the CSM will need to be updated to the satisfaction of Class and the flag State.

Use approved lashing plan(s) specifying the required combination of equipment (e.g., cones, deck sockets, twist locks, lashing rods, turnbuckles), and ensure all lashing equipment is properly certified so its SWL covers voyage forces. All lashing certification should be provided to the master and kept in the CSM.

Plan how lashings will be applied and inspected in holds. Crew should also be well trained and prepared for inspections in enclosed space and access to devices such as twist locks.

- **Dangerous goods**

Dangerous goods must be carried in accordance with the IMDG Code. The vessel's Document of Compliance (DoC) may need updating to reference the IMDG class of dangerous cargo (not only "group" as for many bulk cargoes).

Bulk carriers may not have the same fixed under-deck firefighting appliances (FFA) as container vessels. Additional firefighting equipment may be required, with proper FFA plan updates and crew training.

- **Crew**

Crew must understand carriage requirements and shipper instructions, including ventilation, inspection, and actions for spill/fire. These matters will need to be incorporated into the Safety Management System (SMS).

When carrying containerised dangerous cargo, crew must be familiar with emergency response procedures (EMS) and medical first aid guide (MFAG) entries for all dangerous cargo on board.

❖ Contractual Consideration

● Bill of lading and deck cargo

Most dry bulk B/Ls don't cover deck carriage. Standard forms (e.g., Congenbill) typically lack a clear, express liberty to carry cargo on deck. When issue B/L for deck cargo, it is important to ensure that the B/L is properly claused to state the cargo is actually carried on deck. Carriers may also consider to add following lines:

“The cargo is carried on deck at the sole risk of the Shipper. The Carrier shall in no case be responsible for loss of or damage to deck cargo whatsoever and howsoever caused, even if caused by the negligence of the Carrier or his servants or agents.”

Shipowners are also suggested to consult their P&I Clubs on potential cover implications to better protect their positions.

● Charterparties

In the context of time charterparty, if charterers want to carry containers on a bulk carrier, owners should confirm whether charterers are entitled to give orders for container carriage under the charter terms.

Under typical NYPE wording, charterers are responsible for loading/stowage/trim “at their expense under the supervision of the Captain.” The responsibility may be shifted to owners if the master interferes with cargo operations or negligently fails to intervene to ensure safety of ship, crew, and cargo - so crew must be familiar with container-related operational and safety requirements to supervise properly.

Container-vessel charters usually include specific terms (e.g., max stack height, vessel fittings/equipment warranties, reefer handling requirements such as power/ventilation/temperature). These are not typical for bulk charters, so they should be negotiated in advance to reduce dispute risk.

❖ Insurance Consideration

Unless already agreed, carrying containers on vessels not designed for it is likely a material change from the risk originally accepted. To avoid prejudice to cover, bulker operators should inform their H&M and P&I underwriters as soon as practicable.



Market Snapshot

LNG Shipping: Pacific LNG Trade On The Rise

- The LNG shipping market is increasingly shaped by Pacific-facing supply options, as disruptions to Middle Eastern flows, uncertainty around Qatari recovery, and Europe's low gas inventories intensify competition for US LNG cargoes.
- With European and Asian importers drawing from the same US pool, routes that offer reliable feedgas and shorter, more flexible delivery are becoming more valuable. Emergence of Mexico's LNG export corridor created a Pacific Outlet for US-produced gas outside the established Gulf Coast export system.
- Energía Costa Azul (ECA) LNG, a 3.25 mtpa single-train project near Ensenada, is Mexico's first LNG liquefaction facility on the Pacific coast. It is supplied with Permian gas through a cross-border pipeline for export to Asian markets, and has sent its first commissioning cargo to South Korea in early July.
- ECA's capacity is modest and constrained by existing Mexico import/regasification commitments through 2028. Looking ahead, the floating AMIGO LNG project off Guaymas, Sonora, is reported near FID, targeting up to 5.2 mtpa and operations in 2028, potentially strengthening Mexico's Pacific LNG export corridor.

Container Carriers Eye Return To Suez Route

- Multiple carriers have announced partial returns of services through the Suez Canal recently, after nearly three years of commercial shipping lines avoiding the Red Sea trade lane due to attacks by Yemen-backed Houthi rebels.
- Mediterranean Shipping Company (MSC) has officially announced a partial return to a Suez route on the Asia-Europe trade lane. Maersk and Hapag-Lloyd are also shifting an Asia-Europe service in the Gemini network back through the Red Sea and Suez Canal.
- The Ocean Alliance - formed by CMA CGM, COSCO, Evergreen and OOCL – is offering partial operations through the Suez as well.
- Some market players expected that, at this pace, it may be reasonable to see a normalisation of Suez Canal transits by the end of 2026. A return to the Suez Canal route for Asia-Europe trade would free up significant shipping capacity and put downward pressure on the container ship rates, which presently remain at peak levels since 2024.

CMB.Tech Rides Tanker Boom But Sounds Warning On Record Orderbook

- CMB.Tech (formerly known as Euronav) reported strong results in Q2 2026, driven by elevated tanker earnings amid ongoing Middle East disruption and supportive dry-bulk commodity demand. Net profit rose to USD364.4 million.
- VLCC average time charter equivalent spot rates averaged \$126,790 in Q2 - nearly triple the same quarter of last year - while suezmax rates averaged \$123,405, again more than three times the prior-year level. Overall, average earnings for both segments were well above the 10-year quarterly average.
- The company credits the tanker strength to regional disruptions, but urges caution for the medium term: if conditions normalize in the Middle East, an initial restocking “bounce” may be followed by trade flows reverting toward historic levels.
- CMB.Tech also points to the fast-growing global tanker orderbook as a key risk to future market balance. Over the past months, the orderbook experienced the strongest period of newbuilding investment in the last 50 years (620 VLCCs and suezmax units on order).

Panama Canal To Conserve Water As Prolonged El Niño Looms

- The Administrator of the Panama Canal is warning that the upcoming El Niño season will be longer and is taking precautions now to conserve water. The current water levels of Gatun Lake (the canal’s main water body) are lower than they were in August 2022, which was considered the worst drought in the canal’s history.
- While spring lake levels allowed some increased traffic, the deteriorating water outlook has resulted in fewer transit slots than earlier planned: Neopanamax capacity will drop to nine daily transits from 3 September (with further reductions to follow), while Panamax capacity will fall from 25 to 23 on 15 September. The canal is also delaying draft restrictions for the Neopanamax locks.
- To manage demand, the canal authority is urging customers to book appointments via its system, or to consolidate cargo for larger container vessels. For long-term viability during dry seasons, the authority is pressing ahead with projects including the Río Indio Reservoir and trade-expansion initiatives such as building new ports and an LPG pipeline.

Chinese Vessel Export Volume Jumps 36.4% In July

- Driven by strong global demand and faster deliveries, China's ship exports surged in July 2026. According to customs data, exports in July reached 656 vessels worth RMB48.82 billion (USD7.2 billion), up 36.4% in volume and 84.6% in value year-on-year.
- Over the first seven months, total exports hit 4,046 units valued at RMB268.14 billion (USD39.55 billion), with value rising 32.7%.
- Tanker exports led the growth, with July shipments jumping 171.4% in volume and 212.9% in value year-on-year.
- Container ship exports also doubled in volume year-on-year, boosted by eco-friendly vessel deliveries. However, affected by adjusted delivery cycles of large ultra-large container ship orders, the cumulative export volume and value in the first seven months declined moderately.
- Bulk carriers maintained steady growth, with July exports rising 9.5% in volume and 52.6% in value, reflecting sustained global dry bulk demand and China's cost-performance advantage.

Dry Bulk Owners Face More Challenges Amid Grain Trade Disruption

- Global grain shipping faces a cargo shortage. Ukraine and Russia, which export a third of the world's wheat via the Black Sea, saw shipments plummet from 6.3 million tonnes in August 2025 to under 2.5 million this month due to the worsening conflict - an unprecedented disruption analysts warn will cause major grain shortages ahead.
- Compounding the crisis, fertilizer shipments from the Arabian Gulf have nearly halted after the Strait of Hormuz closure. Normally, 25% of global fertilizer and 40% of urea trade passes through this chokepoint, much destined for Africa. Without sufficient fertilizer, African harvests would be impacted, worsening the existing famines.
- Meanwhile, 120 - 150 bulk carriers remain trapped in the Gulf with little chance of rejoining the fleet soon. When they do, the grain cargo shortage may force owners to switch to other bulk trades, driving up global food prices.
- Europe has yet to feel the full impact despite rising food inflation, but the broader implications for world food security are severe.

CMA CGM Joins USD434 Million Expansion Of Saudi Arabia's Jeddah Port

- Red Sea Gateway Terminal (RSGT) and CMA CGM have signed a USD434 million agreement to develop a new container terminal at Saudi Arabia's Jeddah Islamic Port, adding up to 2.6 million TEUs of annual capacity.
- The project, developed in partnership with the Saudi Ports Authority (Mawani), includes deep-water berths for next-generation vessels, advanced equipment, and 10 new ship-to-shore cranes.
- The expansion aims to accommodate growing Saudi trade volumes and strengthen Jeddah's role on key East-West shipping routes via the Red Sea. The deal aligns with Saudi Vision 2030 and the National Transport and Logistics Strategy, supporting the Kingdom's transformation into a global logistics hub.
- For CMA CGM, it secures a larger foothold at a strategic gateway, enhancing network control and customer reliability. CMA CGM currently has interests in 64 port terminals worldwide.

China Merchants Firms Charter Deal For Five MPP Newbuilds

- China Merchants Energy Shipping (CMES) has secured long-term charter deals for five multipurpose newbuildings, adding 422,500 dwt to its general cargo fleet. The vessels are scheduled for delivery in 2029-2030.
- CMES signed for three 84,500 dwt vessels from CMB Financial Leasing and two from China Merchants Financial Leasing. The initial three-year charter period costs approximately RMB721 million (USD107 million), with CMES holding four three-year extension options and purchase options at each charter's end based on book values.
- CMES plans to use the larger multipurpose tonnage for fleet renewal and expansion across existing trades. The company already operates smaller multipurpose newbuildings, having ordered two 62,000 dwt MPPs in 2023 as part of a USD508 million investment programme, reinforcing its commitment to growing its general cargo operations.

Happy Reading, See You In September !

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