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Letters to the editors

We would welcome any comments readers may have on the articles in this Newsletter, or on any related topic, and would be happy to publish suitable commentary in a subsequent edition. Please contact the editors, whose details are on the back page.

STOP PRESS...

Hill Dickinson is delighted to announce that its Employment and Pensions Group has been further strengthened by the arrival in the London office of Nick Humphreys, a Partner with many years’ experience of contentious and non-contentious employment work. Nick joins from Bircham Dyson Bell, where as a partner he acted for several substantial multi-national and public sector clients. A keen horserider, Nick lives with his wife and children on a working farm in Sussex.

STOP PRESS...

We also welcome Diana Chetwynd-Palmer to our London office, as an Assistant Solicitor in our Marine, Trade and Energy Group. A South African national, Diana is qualified in England and South Africa and has wide experience of dry shipping litigation and arbitration involving all aspects of bill of lading and charterparty carriage of goods disputes. Diana lives in London and is a regular marathon runner.

STOP PRESS...

The Hill Dickinson Yacht Team recently participated in the annual Yacht Brokers Regatta in the Solent, involving 25 crews from all areas of the yacht industry. Hill Dickinson achieved 3rd place in the first race, and finished 14th overall. With good weather and excellent company, a good weekend’s sailing was had by all.





STOCZNIA GDYNIA SA -v- GEARBULK HOLDINGS LTD [2008] EWHC 944 (Comm)

This is a recent Commercial Court decision on an appeal by the shipyard Stocznia Gdynia SA (“the yard”) against an arbitration award granted in favour of the purchasers of three vessels, Gearbulk Holdings Ltd (“the purchasers”).

The facts

The yard and the purchasers entered into three identical contracts (save as to the dates) in which the yard agreed to construct and sell three bulk carriers, Hulls 24, 25 and 26 to the purchasers. The relevant terms of the contracts were:

10. Delay in delivery and deficiencies: seller’s default

The Contract Price of the Vessel shall be adjusted by way of reduction in the event of any of the contingencies set out in this Article. Such adjustment shall be effected by way of reduction of the amount of the delivery instalment of the Contract Price referred to at (e) in Article 5.3 hereof (it being understood by the Parties that any such reduction of the Contract Price shall [be] by way of liquidated damages and not by way of penalties).

The Purchaser shall not be entitled to claim any other compensation and the Seller shall not be liable for any other compensation for damages sustained by reason of events set out in this Article and/or direct consequences of such events other than liquidated damages specified in this Article.

10.1 Delay in Delivery

(a) In the event that delivery of the Vessel should be delayed beyond the Delivery Date, the Contract Price shall be reduced as follows:

(b) If the delay in delivery of the Vessel shall comprise a period of more than one hundred and fifty (150) days beyond the Delivery Date then the Purchaser may, at its option, terminate this Contract.

(c) Without any prejudice to, and separately from, the foregoing, the Purchaser shall also be entitled, at its option, to terminate this Contract in the event that, for any reason whatsoever, the Vessel shall not have been delivered to the Purchaser hereunder on or prior to 15 August 2003 [“the drop-dead date”].

10.6 Seller’s Default

The Purchaser shall also be entitled, but not bound, to declare the Seller in default and terminate the contract:

(a) if there is a major breach by the Seller of its obligation hereunder to proceed with the construction of the Vessel, such that, in the reasonable opinion of the Purchaser

(supported by the opinion of the Classification Society), the Vessel cannot be completed and delivered to the Purchaser on or before the date specified in Article 10(1)(c) hereof [the drop-dead date].

Upon the occurrence of any such event of default the Seller shall be entitled to terminate this Contract with the consequences hereinafter provided.

10.7 Effect of Termination

Upon termination of this Contract by the Purchaser in accordance with the provisions of Article 10 or any other provision of this Contract expressly entitling the Purchaser to terminate this Contract, the Seller shall forthwith repay to the Purchaser all sums previously paid to the Seller under this Contract, together with interest accrued thereon calculated at the rate of 1 month LIBOR per annum from the respective date(s) of payment of such sums until date of refund plus the original cost (invoice value) of the Purchaser’s Furnished Equipment if any delivered to the Seller.

It is however further expressly understood and agreed upon by the Parties hereto that, if the Purchaser terminates this Contract under this Article, the Purchaser shall not be entitled to any liquidated damages under Article 10.1, 10.2, 10.3 or 10.4 hereof.

The yard was in considerable financial difficulty and work on Hull 24 ceased in January 2003, and work on Hulls 25 and 26 never progressed beyond the design stage. The yard therefore failed to deliver the vessels either within 150 days of the delivery date or by the “drop-dead date”.

The purchasers sent three letters to the yard in which they stated that as a result of the yard’s failure to deliver the vessels in accordance with the provisions of Article 10.1(b) and (c) they were exercising their right to terminate the contracts. They called upon the yard to repay the pre-delivery instalments with interest thereon calculated at the rate of 1 month LIBOR per annum in accordance with the provisions of Article 5.10, a provision dealing with the Refund Guarantee, and making such refund a “fundamental term” of the contract.

Only in the third letter did the purchasers hold the yard in repudiatory breach and reserved their rights to claim damages at large.

The issues

The Arbitration Tribunal held that the purchasers were entitled to damages at common law for the repudiatory breach of contract by the yard. The yard was given leave to appeal on the following three issues.

The first issue was whether Article 10 provided a complete contractual code which excluded all rights of termination, particularly the purchasers’ common law right to terminate by acceptance of repudiatory breach. There is a presumption that no party intends to abandon any remedies for breach of contract arising by operation of law and “clear express words must be used in order to rebut this presumption” (Gilbert-Ash (Northern) Ltd -v- Modern Engineering (Bristol) Ltd [1974] AC 689).

The test of construction was whether there were any “clear words” in the contract to rebut this presumption and which therefore ousted the purchasers’ right to terminate the contract by acceptance of the yard’s repudiatory breach.

Mr. Justice Burton was unable to find any clear words to rebut the presumption that the purchaser retained its common law

rights arising from a repudiatory breach. Accordingly, the yard's failure to deliver the vessels was a repudiatory breach and Article 10 did not preclude the purchasers from accepting such repudiation.

The second issue was whether the exclusion clause in Article 10 of the contract excluded the purchasers' claim for damages. The Court had to be persuaded that the parties had intended that Article 10 should oust the yard's liability for damages. Counsel for the yard submitted that the "clear words" principle did not apply to the construction of exemption clauses:

"in relation to a commercial dispute between parties well able to look after themselves what the parties agreed (expressly or impliedly) is what mattered; and the duty of the courts is to construe their contract according to its tenor". (Photo Production Ltd -v- Securicor Transport Ltd (HL) [1980] 1 Lloyd's Rep 545

Counsel for the purchasers referred to one of the cardinal rules of construction, that in order to escape from the consequences of one's own wrongdoing clear words are necessary.

Mr. Justice Burton referred to the Appeal Court decision in Antaios Compania Naviera SA -v- Salen Rederierna AB (The Antaios) (No 2) [1984] 2 Lloyd's Rep. 235; [1985] 1 AC 191, in which it was stated that:

"if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense, it must be made to yield to business common sense."

Mr. Justice Burton found that it would flout business common sense if the provisions in Article 10, which excluded or limited liability in the events specifically provided for in Article 10, extended to exclude liability for repudiatory breach which, by virtue of his findings in relation to the first issue, stood outside and beyond the provisions of Article 10.

He concluded that Article 10 did not extend to exclude or limit liability in respect of damages for repudiatory breach, to which the provisions of Article 10 were inapplicable.

The third issue was whether upon termination of the contracts the purchasers then relied on the termination provisions and were precluded from subsequently claiming to have terminated at common law.

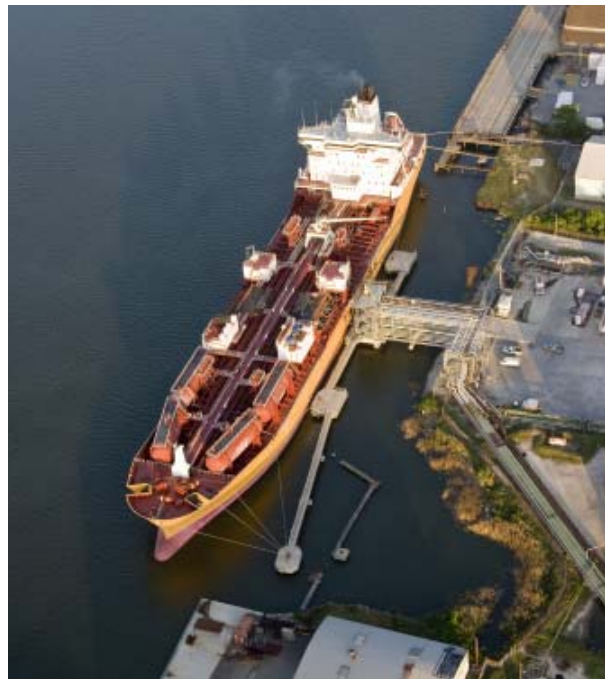
The purchasers' termination letters did not simply claim interest, but claimed interest in accordance with Article 10.7 for one month LIBOR per annum. In addition, the purchasers called on the Refund Guarantee in accordance with Article 5.10. The Refund Guarantee could only be enforced "in the event that the purchaser shall exercise its right to terminate this contract pursuant to any of the provisions hereof".

Therefore, after the purchasers had terminated the contracts by accepting the yard's repudiation the purchasers then enforced the terms of the contract and recovered monies pursuant to the Refund Guarantee in accordance with the terms of the contract. The purchasers had thereby affirmed the contract and elected against acceptance of the repudiation.

The appeal was allowed and the purchasers were precluded from claiming damages at common law.

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The recent decision in the "ELLI" and the "FRIXOS" on Shelltime 4

Owners fixing tankers on long-term charters will need to consider possible future changes in regulations and the cost of modifying their vessels to comply with the revised rules, following the judgment of the Court of Appeal in this case (Golden Fleece Maritime -v- ST Shipping [2008] EWCA Civ 584).

In this judgment, handed down on 23 May 2008, the Court of Appeal has held that where a vessel is chartered on Shelltime 4 (1984 version), and a change in regulations means that structural work will have to be carried out in order for the vessel to continue to be permitted to carry some of the cargoes agreed under the charter, then the Owners are obliged to carry out the structural work at their own expense.

The two tankers were fixed in August 2004 for periods of just over two years to carry crude oil and dirty petroleum products such as fuel oil.

They were not double-hulled, but were more or less "double-sided", with ballast tanks along the sides of each vessel. However, they were not completely double-sided, as there were two slop tanks aft of the cargo tanks which were sometimes used to carry cargo or cargo residues, and which were not protected by ballast tanks.

By the amendments to MARPOL adopted in December 2003, only double-hulled vessels could carry fuel oil cargoes after 5 April 2005. There was an exception for existing double-sided vessels, and in August 2004 it had not been clear how this exception would be applied. However, by February 2005 it had become clear that "ELLI" and "FRIXOS" would only be permitted to continue carrying fuel oil if the slop tanks were re-designated as void spaces and physical work was undertaken to prevent them being used for cargo or cargo residues.

Both the Commercial Court (Mr Justice Cooke) and the Court of Appeal (where the only judgment was given by Lord Justice Longmore) held that under the charter the Owners were obliged to undertake this structural work. However, the two Judges reached this conclusion by different lines of reasoning.

In the 1984 version of Shelltime 4, clause 1 lays down a series of requirements with regard to the condition of the vessel “at the date of delivery of the vessel under this charter”. These include at (b) and (c) that the vessel “shall be in every way fit to carry [the intended cargoes]” and “shall be in every way fit for the service”. Then, clause 3 imposes a “due diligence” obligation on the Owners to keep the vessel in this condition throughout the charter period. By contrast, in the 2003 revision the requirements in clause 1 are stated to apply not only on the date of delivery but “throughout the charter period”.

There is a further requirement in clause 1(g) of the 1984 version, that the vessel (at the date of delivery) “shall have on board all certificates, documents and equipment required from time to time by any applicable law to enable her to perform the charter service without delay”.

In addition, the charters of “ELLI” and “FRIXOS” included a rider clause which said “Owners further warrant that the vessel does, and will, fully comply with all applicable conventions, laws, regulations and ordinances . . . including MARPOL 1973/1978 as amended and extended” [emphasis added].

The Courts held that the Owners were in breach of this rider clause. However, if the Owners had only had this rider clause to contend with, they might possibly have escaped with the argument that they could comply with MARPOL simply by not carrying fuel oil.

Mr Justice Cooke decided the case on the basis of clause 1(b) and (c), together with the “due diligence” obligation under clause 3. He held that the words “fit to carry”/“fit for the service” required the vessel not only to be physically capable of carrying the intended cargoes but legally permitted to do so, and that if a change in the applicable law meant that the vessel was no longer legally permitted to carry all the intended cargoes, then the Owners would have as a part of “due diligence” to do work to enable the vessels again to be permitted to carry the intended cargoes.

However, Lord Justice Longmore’s judgment suggests a distinction between clause 1(b) and clause 1(c). He suggests that the words “fit for the service” in clause 1(c) may extend beyond the physical condition of the vessel only as far as to include certificates which relate directly to the physical condition and seaworthiness of the vessel, while the words “fit to carry” in clause 1(b) may go further and require the vessel to be legally permitted to carry the intended cargoes,

This is significant, because the words in clause 1(c) “in every way fit for the service” are the same as the words in line 22 of the NYPE 1946 form “tight, staunch, strong and in every way fitted for the service”. Thus Cooke J might have applied the same reasoning to the obligations of the Owners under the standard dry cargo form. However, following the distinction suggested in the Court of Appeal judgment, the reasoning of Cooke J will have to depend on the words “fit to carry” in clause 1(b), and cannot be applied to a charterparty on the NYPE form.

Longmore LJ described this reasoning, even when based on clause 1(b), as “difficult”, and did not adopt it in his judgment. Thus this interpretation of clause 1(b) and clause 3 does not have the authority of the Court of Appeal, but it may still have the authority of a judgment from the Commercial Court which has not been overruled by the Court of Appeal.

Instead, Longmore LJ decided the case on the basis of clause 1(g).

It is not easy to make sense of this sub-clause in the context of the 1984 version and of the words “at the date of delivery of the vessel under this charter”. It would be absurd to say that at the date of delivery the vessel must have on board all the documents which might be required in any port to which the Charterers might choose to send her. One reading, which seems quite natural and is suggested by Wilford on Time Charters (2003 edition, 38.6-7), is to say that at the date of delivery the vessel must have on board a reasonable selection of certificates which are likely to be required.

However, Longmore LJ picks up on the words “required from time to time” and says that the sub-clause means that if at any time during the charter period applicable law requires the vessel to have a certain certificate in order to perform the charter service, then the vessel must have that certificate at that time.

Given the way that the charter service was defined at clause 1(b), it would follow that the Owners were required to obtain certificates permitting the vessel to carry fuel oil under the amendments to MARPOL, and therefore the Owners were required to undertake the structural work involved.

Lord Justice Longmore’s reasoning in support of this interpretation of clause 1(g) is very brief, consisting of one paragraph of about eleven lines. It also gives great weight to “from time to time”, and no weight at all to “at the date of delivery”. Indeed, this interpretation seems to disregard the “shape” of the 1984 version of Shelltime, and it may be questioned whether it is consistent with the treatment of clause 3(ii) “if at any time” by the Court of Appeal in the “FINA SAMCO” [1995] 2 Lloyd’s Rep. 344.

However, though the reasoning may be brief and quite surprising, nevertheless this is now the law as established by the Court of Appeal. It has the effect that there is much less difference between the 1984 version of Shelltime 4 and the 2003 revision.

This judgment also has the practical effect that Owners who are fixing vessels on long-term charter would be well advised to include express provisions to deal with possible changes in regulations. If the market at the time of fixing is in favour of Owners, then it may be possible to cancel out the effect of this judgment completely. For example, I have seen wording attached to clause 1(b) to the effect that “trading is always restricted to the suitability of the vessel as constructed when delivered into this charter”.

If the market is more evenly balanced between Owners and Charterers, it may be appropriate not to amend clause 1(b) but to add a provision for sharing the cost of any physical work required in proportion to the remaining length of the charter and the expected useful life of the vessel after the end of the charter.

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Robert Gay is a Solicitor with Hill Dickinson LLP and a Supporting Member of the London Maritime Arbitrators Association. He is preparing a detailed comparison between the 1984 version of Shelltime, the 2003 version of Shelltime, and ShellNGTime, which is expected to be published in the autumn of this year.

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(1) Serena Navigation Ltd (2) The London Steamship Owners Mutual Insurance Association Ltd -v- (1) Dera Commercial Establishment and (2) Standard Chartered PLC [2008] EWHC 1036 (the LIMNOS)

This judgment concerned the interpretation of the words “goods lost or damaged” within Article IV Rule 5 (a) of the Hague-Visby Rules. Surprisingly, this is the first occasion on which the interpretation of these words has been considered by the Courts.

The relevant passage in the Hague-Visby Rules states:

“Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 666.67 [Special Drawing Rights] per package or unit or 2 [Special Drawing Rights] per kilogram of gross weight of the goods lost or damaged, whichever is the higher.”

Facts

The hearing before Mr Justice Burton concerned a preliminary issue which had arisen in relation to the cargo owner’s (First Defendant) counterclaim against the Claimant, the owner/carrier of a quantity of US corn from Louisiana to Aqaba on the LIMNOS (the “Vessel”). The bill of lading held by the cargo owner, to which the carrier was a party, incorporated the Hague-Visby Rules.

Following bad weather a small quantity of cargo in the holds (about 7 or 12 M/T) was wet damaged. An attempt was made to segregate and dispose of the damaged corn. However, some of it was not properly segregated and was discharged together with the sound cargo. In consequence, about 250 tonnes was accepted as being damaged cargo and falling within the definition of “goods lost or damaged” under Article IV Rule 5 (a) of the Hague-Visby rules. The cargo owner claimed this damage amounted to US\$1,742.40. This was known as the “Conceded Tonnage”.

However, the cargo owner claimed additional losses amounting to about US\$1.5 million which arose as a consequence of the wet damage (the “Consequential Losses”) for the following reasons.

As a condition of allowing discharge of cargo from the holds in which wet damage had occurred, the Jordan Silos and Supply General Co required that the cargo be fumigated, chemically treated and then transferred to pre-fumigated and disinfected silos. This operation resulted in an increase in the number of broken kernels and a depreciation in the value of the cargo amounting to US\$362,142.

The whole cargo acquired a reputation as a distressed cargo and its sound arrived market price was depressed by US\$13 per M/T resulting in a loss of US\$571,842.26.

Further expenses were incurred by the cargo owners as a result of the requirements of Jordan Silos.

Cargo owner’s claim

The cargo owner claimed that the consequential losses fell into the category of economic damage and that as such it was recoverable by a cargo owner under the Hague-Visby Rules (this was an agreed point) and that such damage should fall within the meaning of “goods lost or damaged” under Article IV Rule 5(a). In view of this and given that the economic damage (consequential losses) affected the whole cargo, the cargo owner claimed that limitation of liability should be by reference to the gross weight of the whole cargo i.e. 43,999.86 tonnes. This would easily exceed the amount claimed by the cargo owner.

The carrier disagreed with this interpretation and claimed that “goods lost or damaged” encompassed only goods that were physically lost or physically damaged and did not include economic loss. As a result, the carrier claimed to be entitled to limit liability by reference to the conceded tonnage only. The cargo owner submitted that the carrier’s interpretation was wrong, as (1) this would be inconsistent with acceptance of economic damage elsewhere in the Hague-Visby Rules and (2) it “flouts business common sense”, in circumstances where there is a small amount of physical damage and a large economic loss claim, to limit liability by reference to the weight of the physical damage.

Held

Mr Justice Burton considered the meaning of the words “goods lost or damaged” and held that the words are not to be construed in the same way as loss or damage as interpreted in the field of contract and tort which includes economic and physical loss. He rejected the cargo owner’s interpretation of the Rule and held that “goods lost or damaged” refers to two categories of goods (1) goods that are lost in the sense of being missing or destroyed and (2) goods that are damaged in the sense of not being lost, but surviving in damaged form. The words “goods lost or damaged” did not include economic damage. He further commented that although there were anomalies as to both the construction and effect of the owner’s interpretation it was not “inappropriate or contrary to good commercial sense”.

As a result, the carrier was found to be entitled to limit liability in respect of the cargo owner’s claim by reference to the Conceded Tonnage. It is not known if this decision will be appealed, but if it is we will report the outcome in a subsequent edition of this Newsletter.

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Piracy in the Gulf of Aden

Piracy is rampant in the Gulf of Aden, becoming a real issue for anyone seeking to pass through this busy waterway, whether aboard a yacht, cruise liner or commercial vessel.

Attacks

With more than 17 years without a stable government in Somalia, and a transitional government which admits that it has no control over its own waters, it is no surprise that the surrounding waters are being exploited by opportunists looking to raid and then ransom the passing vessels.

Attacks in the area are rife and have increased by 20% in comparison with this time last year; 31 hijackings and attempted hijackings were recorded in 2007. Whilst attacks have traditionally been upon commercial vessels, this is no longer the case. Starting the trend in 2005, the Seaborne Spirit was the first cruise ship to be attacked in the area, with 310 passengers on board.

In April this year the French luxury yacht Le Ponant, carrying 30 crew, was hijacked and held hostage for a week as it made its way between the Seychelles and the Mediterranean. The yacht was seized and sailed towards the pirate lair of Haradere, 310 miles north of the Somali capital, Mogadishu. After the ransom was paid by the owners, reportedly as high as US\$2 million, French Special Forces were deployed in a helicopter raid, capturing six of the twelve seagoing terrorists alive and recovering a substantial part of the ransom.

In consequence of this hijacking, the Somali authorities have appointed a private French military company, Secopex, to boost security off the country's coast by creating a coastal intelligence unit.

An extensive report has been circulated by the Captain of the S/Y Dolphin, an 89ft sailing yacht, describing the desperate situation faced by seafarers on vessels small and large in the Gulf.

More recently, a small yacht, the S/Y Rockall, carrying four people, including a woman and a child, was seized near the town of Lasqorey (Northern Somalia) while sailing from Egypt to Thailand. The Somali pirates who kidnapped the four cruising sailors have now doubled their ransom demand to US\$2 million. They are reportedly being held captive in an encampment in the de facto independent republic of Somaliland

Commercial vessels continue to face severe problems with piracy. A Russian tug boat and six crew were held to ransom in March

for six weeks, being released upon payment of a US \$700,000 ransom. In April a Basque tuna boat, the Playa de Bakio, was commandeered and her crew of 26 seized by pirates wielding grenade-launchers. After being held for one week, the crew were released following negotiations. The Spanish Government declined to confirm the payment of a US\$1.2 million ransom.

In May, a Dutch ship, the M/V Amiya Scan, en route from Kenya to Romania, and its nine Russian and Filipino crew were seized by pirates. After 4 weeks, they were released after payment of US\$1.25 million.

A current incident concerns the MV Lehmann Timber which was hijacked in May en route to the Gulf of Suez. The 121m freighter has a crew of 15 and is loaded with steel. Reports worryingly indicate that several of the crew are sick and food and water are running short.

United Nations Security Council

In light of the deteriorating situation, the UN Security Council passed their first resolution on piracy which was adopted unanimously on 2 June 2008. The resolution was put forward by France, the USA, Britain and Panama. The resolution focuses on Somalia and allows a Member State (with the agreement of the transitional Government of Somalia) to enter Somalia's territorial sea in order to deter or repress acts of piracy using "all necessary means".

Although the resolution will expire in six months' time, no doubt the international shipping community will closely follow the effect this has upon the frequency of attacks.

Hull War Risks

With the perilous nature of these waterways in mind, changes have been made to the Listed Areas for Hull War, Strikes, Terrorism and Related Perils by the London Market Joint War Committee. Last amended on 7 August 2006, the List was revised on 2 May 2008 to include the Gulf of Aden, and the description of Somalia has been altered to reflect an increased navigational area.

Insurers are warning that if your yacht or ship sails within these waters or is planning to do so, immediate steps should be taken to contact them to ensure appropriate cover is in place. It is understood that premiums of between 0.01%-0.025% of value are currently being quoted.

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Spoiling the ship for a ha'porth of tar? How slow steaming can backfire

With crude oil prices rising almost daily, the newspapers are full of fuel economy advice to motorists, and while seagoing vessels cannot meaningfully carry less ancillary equipment or accelerate more slowly, many Owners and Charterers are seeking to mitigate progressively costlier bunker consumption by slow steaming, the marine equivalent of keeping one's speed down. This article briefly considers some of the possible practical, contractual and other legal disadvantages to this seeming obvious way of saving money.

Slow steaming might reduce consumption of bunkers and lubes, but unless the procedure is well managed there is an increased risk of machinery failure, particularly with slow speed engines, which are designed to operate at a high load and to steam slowly only for short periods, for example during manoeuvring. They are far less suited to prolonged slow steaming, at least without a great deal of extra cleaning and inevitably costly additional maintenance. For example, without proper care excess cylinder oil can collect in scavenge and exhaust trunking spaces. This is susceptible to carry-over, and can cause an explosive combustion when higher temperatures are generated by any subsequent increase in engine speed. This can lead to serious main engine or turbocharger damage.

Prolonged running of engine machinery below its optimum design criteria can give rise to poor combustion, and where no proper cleaning or maintenance is carried out this can cause a build-up of soot deposits in the uptake economiser, which increases the risk of an exhaust uptake fire. In severe cases this could lead to the meltdown of the economiser, or even an uncontrolled engine room fire. There is also the possibility of increased wear on the stern tube bearing, due to the loss of the dynamic oil wedge which is needed for proper lubrication. This is a particular issue with large slow speed engines.

Consideration should also be given to a vessel's auxiliary machinery during any lengthy period of slow steaming. Generally, overall plant design is such that certain auxiliary machinery - boilers, pumping systems and diesel generators - may not be required to run during voyages which are being prosecuted with the utmost despatch (a common charterparty requirement), because a main engine at full load can in addition to propelling the vessel produce enough ancillary power, for example by use of a shaft generator. If, however, it becomes necessary to run such auxiliary machinery as a consequence of slow steaming, in assessing any savings account would have to be taken of the increased expenditure and maintenance that would be needed.

Looking briefly at the contractual side, when considering slow steaming the parties should first be fully aware of their obligations under any charterparty, such as the one outlined above. Owners would also need to note any specific maintenance clauses, for example under lines 36-38 of the NYPE form the "... Owners shall.....keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service". This is supplemental to the Owners' warranty of seaworthiness under lines 5 and 22 of that form. Consideration would also have to be given to how any additional maintenance might impact on other charterparty clauses, such as, again, the obligation to prosecute a voyage with the utmost despatch, and under a bill of lading incorporating the Hague-Visby Rules slow steaming might amount to a deviation under Article IV Rule 4. Within the wider legislative framework, poor combustion due to slow steaming could occasion breaches of local or international air pollution regulations, such as MARPOL Annex VI.

In conclusion, parties intending to slow steam should ensure that such would not put them in breach of contractual or other legal obligations. Owners should also ensure that proper slow steaming procedures are implemented and followed, and that the vessel's engineers are fully aware of the potential mechanical consequences as summarised above.

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Category 1 status for the British Virgin Islands

The government of the British Virgin Islands has recently announced that the Virgin Islands Shipping Registry, a member of the Red Ensign Group, has been granted Category 1 status by the UK government. Thus it can now register yachts of up to 3000 gross tons, and general cargo ships of unlimited tonnage. However, until sufficient expertise is recruited by the Registry there will still be a restriction on specialised vessels, such as oil tankers, ore carriers and cruise liners.

This upgraded status has been the result of several years' work in conjunction with the Maritime and Coastguard Agency (MCA) and other UK government departments. The lifting of the Category 2 tonnage restriction will result in another flag of choice for owners, and particularly for megayachts seeking to register under a Red Ensign flag.

The Red Ensign Group consists of the UK, UK Crown Dependencies and those UK Overseas Territories that operate shipping registers. Currently Category 1 status is conferred on the UK, Isle of Man, Cayman Islands, Bermuda and Gibraltar, and now the British Virgin Islands. Anguilla, Falkland Islands, Guernsey, Jersey, Montserrat, St Helena and Turks & Caicos currently hold Category 2 status.

Generally, Category 1 administrations can register ships of any tonnage, type and length, while Category 2 can only register ships of up to 150 gross tons and pleasure vessels up to 400 gross tons. Pleasure vessels are those used for sport or pleasure, and which are not commercially operated.

As well as handling the full range of yacht-related legal services, Hill Dickinson can register vessels with any flag state, provide advice on ownership structures and incorporate companies in any jurisdiction.

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A package of powers for ports - the draft Marine Navigation Bill

With a consultation period of 6 May to 25 July this year, this draft Bill contains proposals for the improvement of safety at sea and in our ports, to deal with wrecks and further to empower various bodies responsible for maritime matters. Amending and supplementing rather than repealing current legislation, such as the Harbours Act 1964, the Pilotage Act 1987 and the Merchant Shipping Act 1995, the proposals largely enhance existing powers. In summary, they:

- enable the Secretary of State for Transport to direct any harbour authority which is performing its functions inadequately;
- empower harbour authorities to give general directions to shipping;
- authorise a “competent harbour authority” to relinquish unwanted pilotage powers;
- allow the powers and duties of a redundant or otherwise defunct harbour authority to cease, while ensuring that any remaining obligations are appropriately met;
- herald the introduction of compulsory standards for harbour masters and pilots;
- improve the regulation of pilotage exemption certificates;
- modernise some of the powers of the General Lighthouse Authorities;
- implement the Nairobi International Convention on the Removal of Wrecks 2007 (“the Nairobi Wreck Convention”), concerning the marking and removal of wrecks and the recovery of associated costs.

In slightly more detail, there are three types of proposal:

Port Safety Measures

Clause 1 – removal of unwanted pilotage powers

Status as a competent harbour authority under the Pilotage Act 1987 could be removed, thus relieving inactive authorities of onerous duties to furnish pilotage services, and enabling them to make it clear that none are provided.

Clauses 2, 8 and 17 - standards for harbour masters and pilots

Currently there are no regulations on who harbour authorities may select to be harbour masters and pilots, and the proposals seek to ensure that such are trained and qualified to suitable levels.

Clauses 3, 4 and 5 - pilotage exemption

Under the Pilotage Act 1987, if a master or first mate is suitably qualified and holds a pilotage exemption certificate, he can act as his own pilot. The proposed measures would enable all competent harbour authorities better to monitor and control the use of such certificates, and act (by suspension or revocation) in cases of misuse.

Clause 6 - general directions by harbour authorities

Currently, a harbour authority can give general directions to shipping only if permitted by its own local legislation, and the draft Bill proposes that all harbour authorities will have such a power.

Clause 7 - power to direct harbour authorities

Intended as a last resort and expected to be rarely used, the proposed power would enable the Secretary of State for Transport

to direct harbour authorities where there are significant failures in the exercise of their statutory functions, and when that causes or is likely to cause injury or loss of life, damage to a vessel or something on it, or pollution.

Clause 9 - closure of harbours

These proposed powers would enable the Secretary of State for Transport in certain circumstances to order and administer the permanent closure of a defunct harbour, and any necessary transfer of property and harbour authority functions.

General Lighthouse Authority Measures

These proposals seek to redefine the geographical areas of responsibility of each of the three General Lighthouse Authorities, to allow them to use assets to generate income, and to secure pension arrangements.

Removal and Marking of Wrecks

Clause 15 – the Nairobi Wreck Convention

Following its adoption on 18 May 2007 and open for signature until 18 November 2008, this Convention will come into force 12 months after the date on which ten States have either ratified it or signed it without reservation. It is believed that currently only Estonia has done so.

This clause supplements the Merchant Shipping Act 1995 by adding sections 255A to 255U, detailing what would be new obligations to report on, mark and remove wrecks which pose a hazard to navigation or the marine environment.

Following service of a “wreck removal notice” by the Secretary of State for Transport, a shipowner who fails to comply will commit an offence. Any other body incurring costs in locating, marking or removing a wreck can recover from the shipowner, subject to any right of limitation under section 185 (enacting the 1976 Convention, which by article 2 (d) allows limitation in respect of wreck removal), and all vessels with a gross tonnage of 300 or more must have valid and certified wreck removal insurance. The insurer can rely on any defences available to the shipowner, and also on any wilful misconduct of the shipowner, but the Third Parties (Rights against Insurers) Act 1930 does not apply.

When they come into force, these provisions will plainly be of great interest and importance to public bodies who may incur costs in marking or removing a wreck, to owners of vessels of 300 GT and above, and to providers of marine insurance.

Clause 16 - marking wrecks

Currently a wreck can only be marked by some physical means, so there can be a hazardous delay until a ship has managed to deploy a light or buoy. The draft Bill seeks to amend the Merchant Shipping Act 1995 so that harbour, conservancy or general lighthouse authorities can mark wrecks using non physical devices, such as automatic identification systems which can signal the position of a wreck from a transmitter located elsewhere.

We will circulate updates on the Nairobi Wreck Convention in subsequent editions of this Newsletter, but if in the meantime you would like any further details please get in touch with Tony Goldsmith, the Newsletter editors or your regular contact at Hill Dickinson.

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A new liability regime for the carriage of goods by sea

Since 2002, the United Nations Commission on International Trade Law (UNCITRAL) has been developing new text for a Convention on the carriage of goods wholly or partly by sea. This exercise is near completion: the final text is due to be adopted by the UN General Assembly in New York in November 2008.

The underlying rationale of this initiative is to create a new liability regime to supersede the Hague, Hague-Visby and Hamburg Rules and the US Carriage of Goods by Sea Act 1936, with talk of proposals for regional alternatives to the existing regimes. The draft Convention is significantly longer and more detailed than other liability Conventions of its kind, consisting of some 100 articles, including provisions relating to jurisdiction and arbitration, to which a state needs to 'opt-in'.

The main provisions are as follows:

Scope of application

The draft Convention applies to contracts of carriage where receipt and delivery are within different states and if the port of loading and the port of discharge of the same sea carriage are in different states, and where the place of loading, receipt, delivery or discharge is in a Contracting State. Provision has also been made for the Convention to apply to electronic transport documents where the issue and subsequent use of the electronic document meets with the consent of both the carrier and the shipper.

As with other regimes, the draft Convention does not extend to charterparties and contractual arrangements relating to the use of a ship or any space on it.

The period of responsibility of the carrier begins when the goods are received and ends when the goods are delivered. Application of the Convention is therefore not limited to port-to-port transport: instead it offers a regime encompassing door to door transport when one leg of the journey is a sea leg to which the Convention applies. However, the Convention will not operate so as to obviate the application of any unimodal convention where the loss, damage or delay was caused on a leg other than the sea leg and such other convention is mandatorily applicable in the state where the damage occurred.

Carrier's obligations

As with the Hague-Visby Rules, the carrier is required properly and carefully to receive, load, handle, stow, carry, care for, unload and deliver the goods. However, the carrier's duty to exercise due diligence to make the ship seaworthy, and properly to man, equip and supply the ship before and at the beginning of the voyage, as exists under the Hagues-Visby

Rules, has been changed so as to impose a continuing duty with which the carrier is obliged to comply throughout the voyage.

The carrier's liability remains fault-based, with the burden of proving liability for loss of or damage to the goods, and also for delay in delivery, resting with the claimant. However, the carrier can absolve itself from liability if it can prove that the loss, damage or delay was not attributable to its fault or that it was caused or contributed to by one of a number of exceptions. These exceptions are similar to but more exhaustive than those contained in Article IV Rule 2 of the Hague-Visby Rules, including for example loss or damage caused while taking reasonable measures to avoid or attempt to avoid damage to the environment. However, a notable exclusion from the carrier's exceptions is that relating to nautical fault as found in Article IV Rule 2(a) of the Hague-Visby Rules. So the exception that the carrier shall not be liable for the "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" does not appear.

Limits of liability

Carrier limits of liability have been set at a maximum of 875 SDRs per package or 3 SDRs per kilogram of weight, whichever amount is higher, marking a slight increase on the 835 SDRs and 2.5 SDRs provided for under the Hamburg Rules.

A carrier's liability for delay has been set at two and a half times the freight with reference to economic loss caused by delay. The total amount payable for economic loss is subject to a limitation level similar to that recoverable for physical loss.

As with the Hague-Visby Rules, a carrier loses its right to limit if the loss, damage or delay resulted from a personal act or omission done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result. Claims or disputes will be time-barred if they are instituted after two years from the day the carrier delivered the goods, or the last day on which the goods should have been delivered.

Special rules for volume contracts

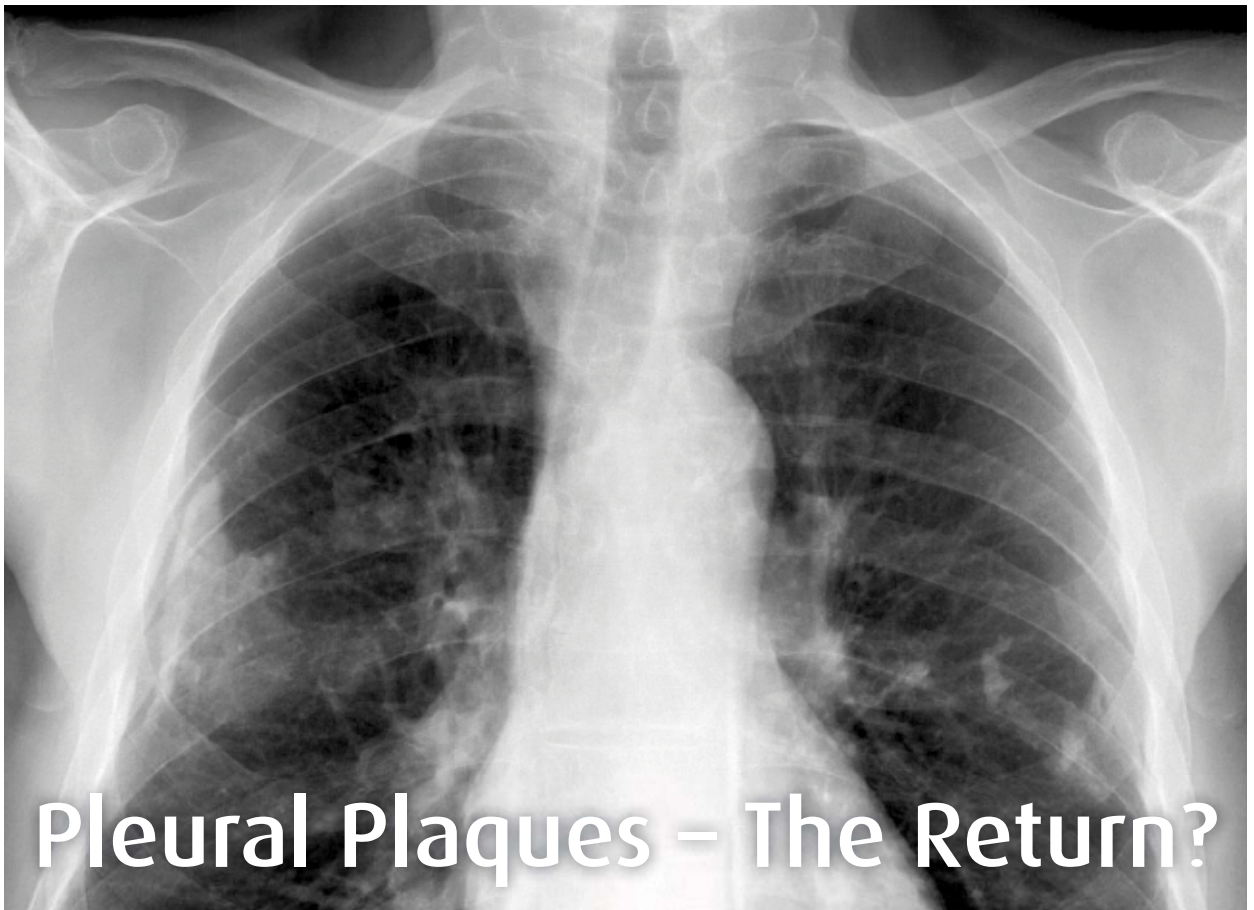
The draft Convention also provides that with regard to volume contracts, as between carrier and shipper, the parties may agree to a greater or lesser level of liability than that provided for in the Convention. This, in theory, could place a carrier in a strong bargaining position, with the freedom not only to impose stringent terms on a weaker shipper, but also to circumvent the application of the Convention altogether.

Conclusions

It remains to be seen whether the draft Convention will be widely ratified. Entry into force will take place 12 months after ratification by 20 states. It is worth noting that one of the key protagonists throughout the drafting process has been the United States. Early ratification on their part may trigger other states to follow suit. Any reluctance to deviate from the widely ratified and well settled provisions of the Hague-Visby Rules may be outweighed by the need for states to acknowledge that the UNCITRAL draft Convention should exist, not as an alternative to the Hague-Visby Rules, but as an alternative to the very real possibility of regional regulation particularly within the EU, the United States and South East Asia.

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Pleural Plaques – The Return?

Pleural plaques form a localised area of scarring on the pleura, and are the most common result of exposure to asbestos. However, they do not normally cause any adverse symptoms, and in Grievs & Others -v- FT Everard & Sons Limited & Others on 17 October 2007 the House of Lords ruled that they are not a compensatable condition. As reported on page 6 in the January 2008 edition of this Newsletter, this was on the basis that pleural plaques do not give rise to any disability or direct risk of other asbestos-related disease, and so do not constitute an actionable injury.

However, in view of this, on 23 June 2008 the Damages (Asbestos-Related Conditions) (Scotland) Bill was introduced. This still has to go through the normal Scottish Parliamentary process, but as it has cross-party support it is likely to be formally enacted by this Christmas. It will have retrospective effect.

The Bill provides that asbestos-related pleural plaques are a personal injury which is not negligible, so a person who has them may recover damages. This therefore reverses any rule of law in Scotland (such as the above decision) which says that asbestos-related pleural plaques are not a personal injury, or are negligible. However, a claimant is still required to prove that he has developed the condition. The Bill deals in the same way with asbestos-related pleural thickening and asbestosis which have not caused, are not causing and are not likely to cause an impairment of a person's physical condition. This is being addressed as well because there is currently test case litigation in England as to whether, like pleural plaques, these conditions should also be treated as not constituting actionable injuries.

For calculating time limitation deadlines in Scotland, the Bill purposively states that no account should be taken of the period from 17 October 2007 (when the English House of Lords held that pleural plaques are not an actionable injury) to the date when the resulting Act comes into force. The Act will be treated for all purposes as having always had effect (i.e. it will apply retrospectively), but it will not affect any claims which have already settled or have been determined by a Court.

The Act will only apply to claims brought in Scotland, so we may see the unattractive and inequitable comparison of an English worker who has developed pleural plaques as a result of exposure to asbestos by a company based in Scotland being able to recover damages, whereas an English worker with the same condition following exposure to asbestos by a company based in England cannot. It is presumably for this very reason that Bridget Prentice, the Parliamentary Under Secretary of State for Justice, has announced that the English Government will begin a consultation (which is expected to conclude in time for the Queen's Speech in November) to consider options, including restoring the right to compensation for pleural plaques. Mrs Prentice significantly said that "... I hope that as a result my Honourable Friends will see serious action from the Government, who are committed to helping people with pleural plaques and asbestos-related diseases."

Within the criminal law there has been much recent press commentary on possible executive action to reverse an unwelcome House of Lords decision. These proposals would be an example of that in the civil arena, and it is quite possible that by the end of this year damages could once again be awarded for pleural plaques in both England and Scotland.

We will issue updates on this in subsequent editions of this Newsletter.

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The Maritime Labour Convention 2006

The International Labour Organisation Maritime Labour Convention 2006 will have far-reaching implications for the superyacht and commercial shipping industry if and when it comes into force. Currently, only three Member States have ratified it (Liberia, Bahamas and Marshall Islands) but the ILO seeks to have it in force by 2011, even though the ratification level - 30 ILO Member States with at least 33% of the gross tonnage - has been set deliberately high for widespread application. After ratification, it will as usual be up to Member States to implement its provisions effectively with domestic legislation.

Summary

The Convention establishes comprehensive minimum requirements for almost all aspects of the working environment of seafarers, including conditions of employment, hours of work and rest, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection. It combines rights and principles with specific standards, and gives detailed guidance on how to implement the standards at national level.

It is intended to be the “fourth pillar” of the international regulatory régime for quality shipping, complementing three other key Conventions - the International Convention for the Safety of Life at Sea 1974, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, and the International Convention for the Prevention of Pollution from Ships 1973/1978.

Except for a few specific exclusions and areas where flexibility is provided, such as where national authorities can exempt from some aspects ships of 200 GT and below that do not go on international voyages, the Convention will apply to all ships (and to the seafarers on board) that are ordinarily engaged in commercial activities.

In this first of three articles we highlight some of the accommodation and mess requirements, which are likely to have significant impact on the newbuild industry. In the second article we will examine the mandatory requirements for “Conditions of Employment”, and in the third we will look at shipowners’ liability for health, medical care and provision of social security.

Implications for newbuilds

Member States will have to pass laws to ensure that every ship (other than those navigating exclusively in inland waters, or waters within or closely adjacent to sheltered waters or

areas where port regulations apply) has accommodation and recreational facilities for the crew, working or living on board, that is consistent with the promotion of their health and well-being. For example, there must be adequate headroom in all crew accommodation where full and free movement is necessary, with minimum headroom of 203cm, though some limited reduction may be permitted where it is deemed reasonable and will not result in discomfort to the crew. All accommodation must be adequately insulated.

There must be no direct openings into sleeping rooms from cargo and machinery spaces, or from galleys, storerooms, drying rooms or communal sanitary areas. Bulkheads separating such places from sleeping rooms and external bulkheads must be constructed from steel or other approved substances, and they must be water and gas tight.

Sleeping and mess rooms must also be adequately ventilated and heated with air and heating systems (unless an exemption applies), and all sanitary spaces must have ventilation to the open air. With respect to requirements for lighting, subject to special arrangements as may be permitted in passenger ships, sleeping rooms and mess rooms shall be lit by natural light and provided with adequate artificial light. Each berth must be at least 198cm x 80cm, and floor space per single berth room must be greater than the minimum dimensions provided (e.g. 4.5m² in a ship of less than 3,000 GT; 5.5m² for those of between 3,000–10,000 GT and 7m² in ships of 10,000 GT or over). There is also a requirement that for ships of less than 3,000 GT, other than passenger ships and special purpose ships, sleeping rooms must not be occupied by more than two seafarers, and the area of the room must not be less than 7m². Passenger ships have different rules. They can accommodate up to 4 crew per room (7.5m² for 2 people; 11.5m² for 3; 14.5m² for 4), whereas for special purpose ships sleeping rooms may accommodate more than four people provided the floor area is not less than 3.6m² per person.

These are just some of the many and very specific requirements set by the Convention. Others concern the furniture that must be included, special rules for the captain, chief engineer and chief navigating officer relating to the provision of a sitting-room adjoining their sleeping rooms, and mess and sanitary requirements.

Also, for vessels carrying 15 or more crew and engaged in voyages of more than 3 days’ duration, there must be separate hospital accommodation, although the competent authority (for example the UK MCA) may relax this requirement for ships engaged in coastal trade.

Policing these new rules

This will be carried out by or under the authority of the captain, with the results being made available to the authorities on request. The Member States will also have responsibility for introducing a system of inspection and certification. A maritime labour certificate, once issued, will constitute “prima facie” evidence that the ship has been duly inspected and complies with the Convention. Detailed measurements and calculations are inevitable, and these provisions are likely to have a very great impact on vessel design.

The second and third articles on this Convention will appear in subsequent editions of this Newsletter, but if in the meantime you would like any further details please get in touch with Charles Morgan, the Newsletter editors or your regular contact at Hill Dickinson.

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Mediation: the new European Directive

Mediation has received new impetus from the new European Union Mediation Directive. This should standardize the practice and greatly encourage the development of mediation throughout the EU, and probably beyond.

The use of mediation to resolve commercial disputes has completed the established path for the acceptance of new ideas. First they may be ignored. If they persist, they may be treated with derision and even hostility. And then suddenly they are pure orthodoxy, part of mainstream thinking. One can think of parallel examples in science and social justice. But this does not mean that mediation is yet deeply engrained nor yet an integral part of the civil justice system in England and Wales, although plainly that is its destination. This much is clear from recent keynote speeches by two of the most senior members of the English judiciary. And the enactment of the new European Union Mediation Directive will hasten that process.

The Directive (IP/08/628: Brussels, 23 April 2008) follows the European Green Paper issued by the Commission in 2002 and the European Code of Conduct for Mediators launched in July 2004. EU Member States have until June 2011 to give effect to the Directive, in respect of cross-border disputes. The key elements are:

- Formal recognition of the importance of mediation as part of access to justice.
- Powers for the Courts of all EU states to “invite” parties to mediate.
- Protection as regards limitation periods (prescription) where mediation is used.
- Direct Court enforceability of settlement agreements made in mediation.
- Protection for mediators/mediation providers from being called as witnesses, save in very limited circumstances.

What does the British Government think? In a bulletin issued on 18 June 2008, Bridget Prentice, Parliamentary Under Secretary of State at the Ministry of Justice said:

“The Government believes that Courts should be the last resort for people involved in civil or family disputes and has supported this proposal as a means of encouraging the use of mediation in cross-border disputes throughout the European Union. The UK gave priority to this initiative in the early stages of its negotiation during our Presidency of the EU in 2005 and I welcome its agreement.”

This is not to say, of course, that mediation should be used in all cases, but its enormous potential is recognised at the very highest level by the English judiciary. For example, in a speech on 29 March 2008, the Lord Chief Justice (Lord Phillips) made his views clear:

“... It is madness to incur the considerable expense of litigation ... without making a determined attempt to reach an amicable settlement. The idea that there is only one just result of every dispute, which only the court can deliver is, I believe, often illusory.... Parties should be given strong encouragement to attempt mediation before resorting to litigation.”

Cases that are referred to mediation will often need thorough investigation, preparation and consideration before the parties can be ready to mediate. This can be before, but currently it is more usual during and in parallel to litigation (or arbitration).

There has been a significant increase in the use of mediation in England and Wales in recent years. Perhaps it has not spread more quickly because, even now, nearly ten years after the reform of the rules of civil justice (the Woolf Reforms), there remain misconceptions. There is an enduring need to explain what mediation is and how it works. But the way ahead seems clear. As Sir Anthony Clarke, the Master of the Rolls, observed in his address to the Second National Conference of the Civil Mediation Council on 8 May 2008:

“Experience .. shows even now that far too many people know far too little about mediation. I think we can all agree that this has to change. ADR [Alternative Dispute Resolution] in general and mediation in particular, where it is the appropriate ADR mechanism, must become an integral part of our litigation culture. It must become such a well established part of it that when considering the proper management of litigation it forms as intrinsic and as instinctive a part of our lexicon and of our thought processes, as standard considerations like what, if any, expert evidence is required...”

Will mediation eventually become compulsory here, as in some US jurisdictions? We think not, or perhaps not yet, but the Directive does not preclude compulsory mediation. Indeed, it expressly contemplates that national legislation can provide for compulsory mediation (or even make a refusal to mediate subject to sanctions). Some say that compulsory mediation would amount to a denial of access to the Courts and thus a breach of Article 6 of the Human Rights Convention. But there is a world of difference between deferring trial or the continuation of proceedings pending mediation, and an absolute refusal to permit access to a Court and a compulsion to mediate, to the exclusion of judicial determination. Perhaps, instead of direct and enforceable measures, we will see (much) greater pressure applied by the Courts in EU Member States, and by our judiciary, to “encourage” parties to mediate.

Mediation is a process of managed negotiation where the parties negotiate their own deal, but it has a timetable, a structure and dynamics which “simple” negotiation lacks. It is a process in which hard issues are confronted and difficult things are said. It is not a soft compromise, not an inevitable 50/50. It is effective in resolving intractable cases, even those involving allegations of fraud or dishonesty. It is quick and comparatively inexpensive, and often preserves relationships and reputations. It works; cases settle.

At the right time, it pays to talk.

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Mediation will now be a familiar process to many Hill Dickinson clients, as its use in disputes in England has developed in recent years to a stage where it is well established. The situation in Greece is less well developed, and this is probably even more the case elsewhere in the Eastern Mediterranean. However, things are slowly changing.

Greece is, of course, renowned as a shipping centre, which is why the firm has an office there. Many shipping contracts, such as charterparties, are made subject to English law, as are many marine insurance policies. For this reason, many ship owners and charterers based in Greece have experience of the English legal system, both court and arbitration. Mediation is as much a feature of shipping and marine insurance litigation as it is of other types. In this way, an increasing number of those involved in shipping in Greece have gained some knowledge and experience of mediation, albeit probably still a minority.

Outside shipping, mediation has been slow to catch on. Consideration of mediation is part of the Greek Court system. A date for discussion of mediation is fixed when an action is commenced. However, in practice usually only lip service is paid to it by the parties' lawyers.

There is, though, some enthusiasm for it among the Greek judiciary. There are two or three Greek organisations set up to promote mediation in the Greek system. Also, the new European Directive (see the previous article) should cause the system in Greece to change. Changing the culture may be a longer term project.

Against this background, the Eastern Mediterranean Mediation Association - EMMA - has recently been formed.

The genesis for this initiative was the realisation that there are now several individuals based in Greece who have been trained and accredited in mediation, mostly by CEDR in the UK. Hitherto, at least in shipping, mediations involving Greek parties have been conducted in London. Occasionally, mediators have

been brought to Greece. The presence of a body of mediators on the ground in Greece now offers an alternative.

The members of EMMA are drawn from the ranks of English and Greek law firms and the P&I clubs. The English law firms involved are Hill Dickinson (John Pople), Clyde & Co (Martin Hall) and Ince & Co (Jonathan Elvey). The Greek lawyers are Ioanna Anastassopoulou of Vgenopoulos & Partners, Vassiliki Skordaki of Skordaki & Associates and Seraphim Voliotis of Akis SA. From the P&I clubs are Tony Fielder of the UK Club (also legally qualified) and Capt. John Owen of the North of England Club (soon to join the Swedish Club). In addition, there is Tom Hutcheson, who divides his time between Scotland, where he offers mediation services, and Greece.

EMMA has two primary objectives: first to promote alternative dispute resolution generally (particularly mediation) and second to conduct mediations locally.

Initially, the focus will naturally be on Greece, as the members of EMMA are all based there, and the obvious starting point is the shipping community, as most members have experience of shipping. Longer term, however, EMMA aims to extend its activities elsewhere in the region and in non-shipping sectors.

It will be obvious that mediation in Greece is only likely to be relevant where at least one party is based there. Where two or all parties are Greece-based, the attraction is obvious. It will be more convenient to deal with the matter here than in London. Also, when only one party is based in Greece, the availability of a mediation service here may assist a non-Greek party already convinced of the merits of mediation to persuade the Greek party to mediate.

Naturally, EMMA also offers Greek speaking and bilingual mediation services.

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