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Panel Discussion from Seatrade Maritime Logistics Middle East 2025: Evaluating Freight Forwarder/NVOCC Liability for Uncleared or Abandoned Shipments

At the Seatrade Maritime Logistics Middle East 2025, held from May 6–8 at Dubai World Trade Centre, a pivotal panel discussion addressed the pressing issue: "Is it justified for freight forwarders/NVOCCs to absorb liability for uncleared or abandoned shipments?"



THOUGHT for the MONTH

Don't be pushed around by the fears in your mind. Be led by the dreams in your heart.

ROY T BENNETT



The session was moderated by Adv. Joy, General Secretary of the Dubai Shipping Agents Association (DSAA), who provided expert guidance throughout the discussion. The panel featured industry experts including Mr. Madhu Madathil, Capt. Sumit Taper, Adv. Biju Joseph, and Mr. Abdul Hafis, each bringing valuable insights from their respective fields.

The discussion was inaugurated by Ms. Nayana Nandakumar, General Manager of DSAA, whose dedication to the

association has been instrumental in its initiatives. The panel delved into the complexities surrounding the responsibilities of freight forwarders and NVOCCs when dealing with shipments that are either uncleared or abandoned. Key points included the legal implications, financial burdens, and the need for clearer contractual terms to delineate responsibilities. The consensus underscored the importance of industry-wide collaboration to establish standardized practices and

mitigate undue liabilities on service providers.

This session was part of the broader agenda of Seatrade Maritime Logistics Middle East 2025, which serves as a central platform for maritime professionals to discuss and shape the future of the industry. The event is organized by Informa Markets and held under the patronage of the UAE Ministry of Energy and Infrastructure ■

Case Analysis: Bunge SA VS Pan Ocean co. Ltd [2025] EWHC 193 (Admiralty)

Johana George

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The Claimant Bunge S.A. (“Owners”) brought an appeal u/s 69 of the Arbitration Act, 1996 against an LMAA award in favour of the Defendants Pan Ocean Co. Ltd. (“Charterers”) on disputes regarding time charter of the vessel Sagar Ratan (“the Vessel”).

FACTS

The Owners chartered the Vessel to the Charterers under a fixture recap and an amended NYPE for a one-time charter trip from the Philippines via Australia to China carrying a cargo of alumina in bulk. In March 2022, when the Vessel

arrived in Bayuquan, the crew tested positive for COVID-19. The Owners arranged for the replacement of the infected and sailed to Ulsan, South Korea. The Vessel then sailed back to Bayuquan. The Charterers deducted the hire and expenses for such Period of Delay, including replacement.

The dispute was regarding whether or not the Vessel was off-hire for the relevant period of delay, which was resolved by a final arbitration award in the Charterers' favour. The Tribunal held that the Vessel had been off-hire for the period of delay. Hence, the hire and additional expenses incurred by Charterers were for the Owners' account, since the cause of the delay was the crew's infection, and they sought to appeal the award to the High Court.

INTERPRETATION OF BIMCO CLAUSE [CL. 129]

Cl. 129 of amended the BIMCO Infectious and Contagious Diseases Clause for Time Charter Parties, 2015 (the "BIMCO Clause") defined 'Affected Area' as any port or place where there is a risk of exposure to the Vessel, crew or other persons on board to the Disease and/or to a risk of quarantine or other restrictions. The pre-condition for the expenses to be charged from the Charterers' account is that the Vessel should proceed to/continue/remain at the Affected Area. The Vessel, then, remains on hire throughout. Compliance with Cl. 129 shall not be considered a deviation or an off-hire event, but rather a proper fulfilment of the Charter Party obligations.

Therefore, the first and main issue was whether Bayuquan was within the definition of "Affected Area" or not. The Tribunal concluded a port will be an Affected Area under the Cl. 129 only if it imposes or may impose, in connection with a Disease, quarantine or other restrictions on incoming vessels in general or particular categories of vessel (vessels who previously visited specified destinations); and not on the basis that there is a risk of quarantine or other restrictions being imposed on an incoming vessel with one or more crew members infected with the Disease.

In the present case, the quarantining of the Vessel was not brought about by visiting an 'Affected Area', but solely by the actual infected status of the crew. Moreover, it did not arise from any policy of quarantining incoming vessels in

general or vessels that had visited particular countries. In other words, it resulted essentially from a characteristic of the Vessel/crew rather than a characteristic of the place to which Charterers ordered the Vessel to proceed.

It was further held that the purpose of the Cl. is to protect the Owners where, as a result of the Charterers' decision to visit an Affected Area, any delay or cost has arisen. It must not be conceived as a blanket protection for Owners for a delay encountered on a visit to an Affected Area, howsoever incurred and regardless of all other provisions in the Charterparty.

It was hence concluded that Bayuquan is not an 'Affected Area' under Cl. 129.

INTERPRETATION OF DETENTION FOR QUARANTINE [CL. 38]

The next issue is whether there is a detention for quarantine when the Vessel avoids quarantine by changing the crew at another port, relating to detention and deviation expenses under Cl. 38 and Cl. 50. In the present case, the burden is on the Charterers to establish that the clauses operate to relieve them of liability for hire in the Period of Delay (per *The Berge Sund* [1993] 2 Lloyd's Rep. 453, 459).

Clause 38 stipulates that standard quarantine time and expenses incurred upon the Vessel's entering port shall be borne by the Charterers' account, but any time of detention and expenses for quarantine due to pestilence, illness, etc. of the Master, officers and crew shall be for the Owners' account. In the present case, the Tribunal held that the detention for quarantine was imposed at Bayuquan due to the illness of the crew and that the Vessel was off-hire then. The Vessel's subsequent action in sailing to another port to replace crew does not alter the fact that a quarantine procedure had prevented its entry into Bayuquan, and would continue to do so until the Vessel's crew were not infected. It was concluded that there can be detention for quarantine if a vessel has to spend time sitting in quarantine, or travelling/waiting for a crew change

because of quarantine, before it is permitted to enter or berth at a port.

INTERPRETATION OF 'SERVICE IMMEDIATELY REQUIRED' [CL. 50]

Clause 50 states that in the event of deviation from the course of the voyage or putting back whilst on voyage, due to sickness or accident to the Master, officers, or crew the hire would be suspended from the time of the Vessel's inefficiency in port or at sea until the time when the Vessel is again efficient in the same position or equidistance position to the destination. Every directly related expense, including bunkers consumed during such suspension period, would be for the Owners' account.

For the purposes of an off-hire clause, a vessel is deemed 'inefficient' if it is unable to perform the service immediately required of it. Hence, in the present case, it had to be analysed if the Vessel was capable of performing the service immediately required, after the crew members had tested positive for COVID-19.

The Court held that the finding that Cl. 50 was triggered, indicates that the Vessel did not perform the service immediately required. In the present case, the service required was discharge at Bayuquan, not a detour to South Korea in order to replace an infected crew, however reasonable that course may have been, given the course of events.

The Court, discussing the precedents relied upon by the parties, held that in the reasoning of *The Berge Sund* that cleaning exercise could be a service immediately required, it was in the ordinary way, an activity required by a time charterer. When an activity is not in the ordinary way, as in the case of delay by engine breakdown, the Vessel would be off-hire. Similarly, crew illness, which results in quarantine restrictions, is not in the ordinary way of a Charter Party. Accordingly, the Vessel was not providing the service immediately required, and was off hire, during the Period of Delay pursuant to Clause 50, whether or not it was also off hire pursuant to Clause 38.

The Court concluded that the Tribunal did not err in law and the appeal was dismissed.

SIGNIFICANCE

The case highlights the practical risks of delay and deviation tied to port protocols. It is a significant decision in

maritime law, particularly concerning off-hire provisions, the interpretation of the BIMCO Clause and the scope of the phrase “Affected Area” ■



HOT NEWS

U.S. Congress Reintroduces SHIPS for America Act to Revitalize Maritime Industry



In a significant legislative development, the U.S. Congress has reintroduced the Shipbuilding and Harbor Infrastructure for Prosperity and Security (SHIPS) for America Act, aiming to revitalize the nation's maritime sector and strengthen national security.

The bipartisan initiative, led by Senators Mark Kelly (D-Ariz.) and Todd Young (R-Ind.), along with Representatives John Garamendi (D-Calif.) and Trent Kelly (R-Miss.), seeks to expand the U.S.-flagged international fleet by 250 ships over the next decade. This move is a strategic response to China's growing dominance in global shipbuilding and maritime commerce.

Key Provisions of the Act:

- **Fleet Expansion:** Increase the number of U.S.-flagged vessels to enhance competitiveness in international trade.
- **Infrastructure Investment:** Allocate funds to modernize shipyards and port facilities, bolstering the domestic shipbuilding industry's capacity.
- **Workforce Development:** Implement programs to recruit, train, and retain skilled maritime professionals, ensuring a robust workforce to support industry growth.
- **Maritime Security Advisor:** Establish an Office of the Maritime Security

Advisor within the White House to coordinate a comprehensive national maritime strategy.

- **Maritime Security Trust Fund:** Create a dedicated fund to finance maritime security programs and infrastructure projects.

This legislative effort aligns with broader national objectives to restore America's maritime leadership and reduce reliance on foreign-flagged vessels, particularly in light of China's substantial investment in its maritime capabilities ■

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