Introduction

Coal Trade Review is a publication in which are reviewed shipping and contractual matters relevant to the international trade with coal, ores and mineral concentrates.

In this issue, the Editor reviews the following topics:

- The Shipping Conditions For Sales Of US Coal Basis FOBT Hampton Roads

- In What Circumstances The Shippers And Buyers Of Bulk Commodities May Become Liable Under The Bill Of Lading Contract Of Carriage For Damages Or Losses Caused By The Shipment Of Dangerous Goods

- CFR Buyers' Obligation To Arbitrate The Claims Under Bills Of Lading

- Rules For Incorporation Of Charterparty Terms Into The Bills Of Lading

If you have any comments about the matters reviewed in this edition, please address them to **editor@commoditylaw.eu**

Review Of The Shipping Conditions For Sales Of US Coal Basis FOBT Hampton Roads

by Vlad Cioarec, International Trade Consultant

Laycan Fixation and Vessel Nomination Notice

The buyers shall give to sellers 30 days' notice of the 10 days' laycan spread within which the buyers propose to present the vessel for loading the coal cargo. If the sellers will accept the laycan, then not later than 10 days prior to the first day of the laycan, the buyers shall have to nominate the vessel and declare the quantity of cargo required to be loaded with the 5% contractual tolerance.

Vessel Requirements

The vessel nomination is subject to acceptance by Norfolk Southern and hence, subject to their requirements.
The nominated vessel must be gearless or geared single deck, self-trimming bulk carrier.
The vessel must be classed Lloyd's 100A1 or equivalent and be described as “Bulk Carrier” in the Class Certificate.
The nominated vessel must have all the IMO required certificates valid, including a Certificate of Fitness for the Carriage of Solid Bulk Cargoes listing coal as a permitted cargo, a Certificate of Fitness for the Carriage of Dangerous Goods, the Bulk Carrier Booklet endorsed by the Flag State Administration, the International Ship Security Certificate, Maritime Labour Certificate, Safety Management Certificate and the Document of Compliance with the ISM Code.
The vessel must be less than 20 years old.
The nominated vessel must have sufficient deballasting capacity to enable the loading terminal operator to achieve the maximum loading rate applicable to that size of the vessel without the interruption of loading, i.e. the ballast water must be discharged at a rate which prevents the interruption of loading.

ETA Notice

If the vessel nomination is accepted by Norfolk Southern, the buyers will charter the vessel and then give the ETA Notice at least 14 days prior to the vessel's ETA at the Port of Hampton Roads.

ETA Updates

The buyers must ensure that the vessel's Master will give through the port agents the ETA notices at 7/5/3 days, 48 and 24 hours before the vessel's ETA at the pilot station. In the event that the Master fails to give any of the above-mentioned notices, the sellers will be allowed to add 24 hours extra to the laytime.

Conditions For The Vessel Substitution

The buyers may substitute the originally nominated vessel not later than 10 days before the ETA of the originally nominated vessel provided that:
- the substitute vessel complies with the contract requirements in respect of type, size and de-ballasting capacity to be able to load the cargo quantity ordered by the buyers within the contractual time allowed for loading;
- the substitute vessel will not arrive earlier than the ETA of the originally nominated vessel;
- the vessel's demurrage rate is not higher than that of the originally nominated vessel.

The Submission Of The Vessel's Loading Plan

At least 10 days prior to the vessel's ETA at the Lynnhaven Anchorage, the vessel's Master must provide through the vessel's agents the following information:
- the vessel's loading plan and hatch loading sequence;
- the estimated time needed for deballasting after berthing;
- the final quantity of cargo to be loaded based on the vessel's loading plan.

Conditions For The Vessel Presentation For Loading

The vessels arriving to load coal in bulk at the Lamberts Point Coal Terminal must comply with the United States Coast Guard regulations and Norfolk Southern loading conditions.
The vessel must present for loading with the cargo holds clean, dry, empty, free of waste material and remnants of previous cargo.
The vessel must pass the holds' inspection prior to berthing. The inspection of holds shall be made by the National Cargo Bureau surveyor who shall certify the cleanliness of holds by issuing the Certificate of Readiness to Load.
If the vessel has previously carried potential contaminants such as phosphates, sulphur, cement, salt, potash or iron ore, the National Cargo Bureau surveyor inspecting the holds must certify that the holds are not only clean but also free of contaminants.
If the vessel is an OBO (Ore/Bulk/Oil) Combination Carrier which has previously carried petroleum products, the Master must advise the loading terminal operator of this fact at least 24 hours before the vessel's ETA at Lynnhaven Anchorage. In such case the vessel will be called to berth only after the cargo holds had been declared clean and gas-free by a local marine chemist. All expenses and time incurred for making the holds gas-free and obtaining the Gas Free Certificate will be for the buyers' account.

NOR

The vessel's Master shall tender NOR upon the vessel's arrival at Lynnhaven Anchorage or off Cape Charles, at any time, day or night, including Saturdays, Sundays and Holidays, provided that the vessel has obtained the ISPS clearance and is in all respects ready to load coal in bulk.
The vessel shall be considered ready in all respects for loading if:
- she has obtained the ISPS clearance prior to the NOR tendering;
- she is not subject to an arrest order;
- she presents for loading in a seaworthy condition;
- she passes the holds' inspection prior to berthing.

If the Master tenders NOR before obtaining the ISPS clearance, the NOR shall be invalid and the Master will have to tender a new NOR upon receiving the ISPS clearance.
If the vessel is arrested or attached at berth by a U.S. Marshal prior to the commencement of loading, the sellers' loading obligation will be suspended until the U.S. Marshal will release the vessel from arrest. In such case, the Master will have to tender a new NOR after the vessel is released from arrest.
If, after berthing, the vessel is found by the port authorities not ready in all respects to load the coal cargo, the vessel's NOR shall be invalid and the Master will have to tender a new NOR after the vessel is in fact ready all respects for loading.
If the National Cargo Bureau surveyor rejects the holds, the Master may tender a new NOR only after he obtains the Certificate of Readiness to Load from the National Cargo Bureau surveyor.

Commencement Of Laytime

Norfolk Southern schedules the coal shipments at Lamberts Point Coal Terminal in function of the vessel's ETA. The sellers must have the coal cargo ready for loading on the vessel's expected readiness date, not sooner. Therefore, the commencement of laytime will depend amongst other

things upon whether the buyers' vessel tenders valid NOR before or after the expiry of the ETA pre-advice period.
If the vessel arrives at Hampton Roads and tenders valid NOR between 00:00 hours and 23:59 hours on the expected readiness date, the laytime will commence to run at 24 hours after the time of sellers' agents acceptance of NOR, unless the sellers or rather the terminal operators acting on their behalf start loading sooner in which case the laytime will commence to run from the time of commencement of loading.
If the vessel arrives at Hampton Roads and tenders valid NOR before the expected readiness date, the terminal operators acting on their behalf shall not be obliged to commence loading and the NOR shall not become effective before the expiry of the pre-advice period, that is, at 00:00 hours on the vessel's expected readiness date. In such case the 24 hours' Notice time shall commence to run from 00:01 hours on the vessel's expected readiness date.
If the sellers fail to have the coal cargo ready for loading on the vessel's expected readiness date, the sellers shall be responsible for the time spent on demurrage by the vessel due to the late arrival of rail cars with coal.
If the vessel fails to arrive by 23:59 hours on the expected readiness date due to unexpected delays on the approach voyage to the loading port, including but not limited to delays caused by bad weather, or fails to present ready in all respects for loading by 23:59 hours on the expected readiness date, the terminal operators shall assign a new loading date, in which case the laytime will commence to run from the time of commencement of loading. The buyers shall reimburse to sellers the rail cars' demurrage charges incurred due to delays caused by the vessel's late arrival or failure to present ready in all respects for loading on the expected readiness date. But the buyers shall only be liable for demurrage charges for rail cars used to carry and store the final quantity of coal stated in the vessel's loading plan. If by the time the Master communicates to the port agents the final quantity of cargo to be loaded based on the loading plan, the rail cars with coal have already been dispatched to Lambert's Point based on the maximum quantity stated in the vessel's nomination notice, the buyers shall have no liability for demurrage charges for the rail cars used to carry and store the surplus coal quantity in excess of the coal quantity stated in the vessel's loading plan.
The laytime shall cease to count at the time when the loading, trimming and final draft survey have been completed or when the cargo documents required to effect the Customs clearance are on board, whichever is the later.

Loading Conditions

The coal cargo shall be delivered free on board the vessel spout trimmed. Any extra trimming (beyond spout trimming) necessary due to the vessel's construction shall be for the buyers' account and any time lost thereby shall not count.

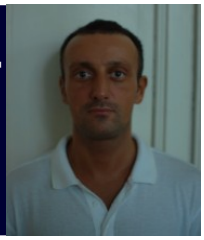
Cargo Weight Determination

The weight of cargo shall be determined based on the net weights of each individual rail car weighed while rolling over the rail electronic scales when directed for loading. The weight figure based on the rail scale results shall then be used for invoicing and issuance of Bills of Lading.
The Clause 22 of “AMWELSH 93” Charter Party has been specifically drafted to address this matter:

“The bills of lading shall be prepared in accordance with the dock or railway weight and shall be endorsed by the Master, agent or Owners, weight unknown, freight and all conditions as per this Charter, such bills of lading to be signed at the Charterers' or shippers' office within twenty four hours after the Vessel is loaded. The Master shall sign a certificate stating that the weight of the cargo loaded is in accordance with railway weight certificate. The Charterers are to hold the Owners harmless should any shortage occur.”

The certificate required to be signed by the Master is the Mate's Receipt. The Master inserts a weight disclaimer on the Mate's Receipt and Bills of Lading to avoid prima facie evidence for the weight figure stated therein.

In What Circumstances The Shippers And Buyers Of Bulk Commodities May Become Liable Under The Bill Of Lading Contract Of Carriage For Damages Or Losses Caused By The Shipment Of Dangerous Goods



by Vlad Cioarec, International Trade Consultant

A potential liability in international commodity trade is the liability for the shipment of dangerous goods. Given that the Bill of Lading forms used in the commodity trade contain or incorporate charter party clauses providing for the settlement of disputes based on the English law[1], the shippers and buyers of commodities may become liable under the Bill of Lading contract of carriage if their cargoes cause damage to or loss of the ships. The intermediate holders of the Bills of Lading do not remain liable under the contract of carriage after they endorsed over the Bills of Lading to the next buyers in the chain, but the shippers remain liable as the original party to the Bill of Lading contract of carriage, because the shippers' liability under the Bill of Lading does not pass by endorsement to the subsequent holders. The section 3(3) of the UK COGSA 1992 has the following provisions:

"This section, so far as it imposes liabilities under any contract on any person, shall be without prejudice to the liabilities under the contract of any person as an original party to the contract."

The provisions of section 3(3) of UK COGSA 1992 are similar to the provisions of section 1 of the Bills of Lading Act 1855. Based on this similarity, in the English law case **Effort Shipping Company Ltd. v. Linden Management S.A. and Others (The "Giannis N.K.")**[2], Lord Lloyd of Berwick made the following comments:

"Whereas the rights under the contract of carriage were to be transferred, the liabilities were not. The shippers were to remain liable, but the holder of the bill of lading was to come under the same liability as the shippers. His liability was to be by way of addition, not substitution. […] [T]he shippers have not been divested of their liability for shipping dangerous goods by the operation of the Act of 1855.
It is satisfactory that this conclusion accords with the recommendations of the Joint Law Commissions[3], and that the result would have been the same under section 3(3) of the Carriage of Goods by Sea Act 1992."

Lord Hobhouse of Woodborough made a similar interpretation in The "Berge Sisar"[4] case:

"How did endorsement affect the liabilities of the shipper? The answer was given in Fox v. Nott (1861) 6 H&N 630 and Smurthwaite v. Wilkins (1862) 11 CB (ns) 842. The endorser is not liable after he has endorsed over the bill of lading to another who is; the shipper remains liable as an original party to the contract. Two considerations seem to have weighed with the courts in these and the later cases. The words "subject to the same liabilities" were to be contrasted with the words "have transferred to him." The liability of the endorsee was to be additional to that of the original contracting party."

1 There are also Bill of Lading forms providing for the settlement of disputes in Singapore based on the Singapore law but since the Singapore Bills of Lading Act is based on English COGSA 1992 the issues are equally applicable whether English COGSA or Singapore Bills of Lading Act apply.
2 [1998] UKHL 1
3 See the paragraph 3.24 of the Joint Report of the Law Commission and the Scottish Law Commission, "Rights of Suit in respect of Carriage of Goods by Sea" (Law Com No. 196; Scot Law Com No. 130), HC 250, 1991.
4 See Borealis AB v. Stargas Ltd. & Ors, [1998] EWCA Civ. 1337, [1998] 4 All ER 821; See Borealis AB v. Stargas Limited and Others and Bergesen D.Y. A/S [2001] UKHL 17; [2001] 2 All ER 193; [2001] 1 Lloyd's Rep. 663.

In the sales of bulk commodities the buyers at the end of the chain can become subject to liabilities under the Bill of Lading contract of carriage only if they become the lawful holders of the Bills of Lading and exercise their rights thereunder either by demanding delivery of the goods transported under the Bills of Lading or by making a claim against the carriers. If the buyers do not become the lawful holders of the Bills of Lading, they cannot be held liable under the Bills of Lading.
As regards the possibility that the buyers may become liable as Bill of Lading holders for loss or damage caused to ships by the dangerous cargoes, the drafters of the UK COGSA 1992 had made in their Joint Report[5] the following comments:

"3.22 It was also suggested to us that special provision should be made so that the consignee or indorsee should never be liable in respect of loss or damage caused by the shipper's breach of warranty in respect of the shipment of dangerous cargo. This is said to be a particularly unfair example of a retrospective liability in respect of something for which the consignee/indorsee is not responsible. However, we have decided against such a special provision. We do not think that liability in respect of dangerous goods is necessarily more unfair than liability in respect of a range of other matters over which the holder of the bill of lading has no control and for which he is not responsible, as for instance liability for loadport demurrage and deadfreight. Also, it may be unfair to exempt the indorsee from dangerous goods' liability in those cases where he may have been the prime mover behind the shipment. Furthermore, it is unfair that the carrier should be denied redress against the indorsee of the bill of lading who seeks to take the benefit of the contract of carriage without the corresponding burdens."

The practical importance of the English law provisions stating the conditions for the imposition of liabilities upon the Bill of Lading holders is that it give the carriers the possibility to recover from the Bill of Lading holders when it is not possible to start a legal action directly against the shippers.
Since the adoption of the UK Carriage of Goods by Sea Act in 1992, there have been several cases involving claims for liability under the Bill of Lading contract of carriage for the shipment of dangerous goods: two for damage to ships, The "Baltic Flame"[6] and The "Berge Sisar"[7], one for loss of a ship, The "Ythan"[8]. The common feature of these cases was that the shipowners sought to recover the losses incurred primarily from the commodity buyers due to the impossibility to bring legal actions against the shippers.
The carrier can either claim damages based on the common law obligation of the shippers not to ship a dangerous cargo or alternatively, an indemnity based on the art. IV Rule 6 of the Hague-Visby Rules.
In case of a claim for indemnity based on the art. IV Rule 6 of the Hague-Visby Rules the carrier has to prove that the provisions of art. IV Rule 6 are applicable in that case. In the English law case **Mediterranean Freight Services Ltd. v. BP Oil International Ltd. (The "Fiona")**[9], Judge Diamond held that:

"What the carrier has to prove is: a) that the shipper shipped goods of an "inflammable, explosive or dangerous nature"; b) that neither the carrier, the master nor any agent of the carrier consented to the shipment of such goods with knowledge of their nature and character and c) that the carrier suffered damages or expenses "directly or indirectly arising out of or resulting from such shipment

5 The Joint Report of the Law Commission and the Scottish Law Commission, "Rights of Suit in respect of Carriage of Goods by Sea" (Law Com No. 196; Scot Law Com No. 130), HC 250, 1991.
6 See Petroleo Brasiliero S.A. and Others v. Mellitus Shipping Inc. (The "Baltic Flame") [2001] EWCA Civ 418; [2001] 2 Lloyd's Rep. 203.
7 See Borealis AB v. Stargas Ltd. & Ors, [1998] EWCA Civ. 1337, [1998] 4 All ER 821; See Borealis AB v. Stargas Limited and Others and Bergesen D.Y. A/S [2001] UKHL 17; [2001] 2 All ER 193; [2001] 1 Lloyd's Rep. 663.
8 [2005] EWHC 2399 (Comm); [2006] 1 Lloyd's Rep. 457.
9 [1993] 1 Lloyd's Rep. 257

(i.e. from the shipment of the goods of the described class)"."

Judge Diamond held that the carrier's right to an indemnity does not depend on whether the shipper knew of the dangerous nature and character of the goods or was at fault in permitting their shipment or not warning the carrier of their dangerous nature. Lord Lloyd of Berwick gave a similar opinion in **Effort Shipping Company Ltd. v. Linden Management S.A. and Others (The "Giannis N.K.")**[10]:

"[T]he liability of a shipper for shipping dangerous goods at common law, when it arises, does not depend on his knowledge or means of knowledge that the goods are dangerous."

What matters is whether the shipment of dangerous goods was a contributory cause of the loss.
The shippers and lawful holders of Bills of Lading can become liable for the ship's damage or loss caused by the shipment of dangerous goods if the cargo that caused the damage to or loss of the ship had unusual characteristics/hazards and/or if the cargo that caused the damage to or loss of the ship was misdescribed and/or misdeclared in the shipping documents and/or charter party.

Liability For The Ship's Damage Caused By The Cargo's Unusual Characteristics/Hazards

The fact that many commodity cargoes possess potential hazards that may cause damage to or loss of the carrying ships does not mean that the carriers can always invoke the dangerous goods' liability of the shippers and/or consignees. The provisions of art. IV Rule 6 of the Hague-Visby Rules cannot be invoked by the carrier if the shipper proves that the carrier has received the cargo on board *"with knowledge of their dangerous character"*[11].
In **The "Athanasia Comninos"**[12] Mustill J. held that by contracting to carry goods of a specific description, the carrier consents to the presence in his ship of goods possessing the attributes of the goods so described and bears the risk of loss even if those attributes include the capacity to create dangers which the accepted methods of carriage are not always sufficient to overcome[13].
In **The "Athanasia Comninos"** Mustill J. held that by issuing the Bills of Lading for the coal cargo the carrier accepted the risks known to be associated with the carriage of that type of coal. Those risks included the hazard that the methane emitted from the coal would combine with the air to create an explosive mixture[14]. Accordingly, the explosion which occurred in the ship's hold was within the area of risk assumed by the carrier.
A prudent carrier must anticipate that a cargo declared as possessing hazards may become physically dangerous during the voyage. Since the IMO Codes describe the attributes which a commodity normally possesses, a prudent carrier ought to have the knowledge of such attributes[15] and take the precautions necessary for safe carriage.
In seeking to determine the nature and characteristics of a hazardous cargo, the English Courts take into account the hazard history of the cargo and the relevant IMO Code provisions which ought to be known by a prudent carrier[16].

10 [1998] UKHL 1
11 See The "Athanasia Comninos" [1990] 1 Lloyd's Rep. 277
12 [1990] 1 Lloyd's Rep. 277
13 For a similar opinion see General Feeds Inc. v. Burnham Shipping Corporation (The "Amphion"), [1991] 2 Lloyd's Rep. 101. *"If there is a known risk of danger to the ship, which cannot be altogether avoided by strict compliance with the rules of safe carriage, then by agreeing to carry goods of that description the shipowner may be held to have accepted that risk for himself."*
14 This is not necessary the case with all coal cargoes. Not all coals emit methane during the carriage.
15 See the paragraph 152 of the English law case Compania Sud Americana De Vapores S.A. v. Sinochem Tianjin Import And Export Corporation (The "Aconcagua"), [2009] EWHC 1880 (Comm)
16 See the English law case Compania Sud Americana De Vapores S.A. v. Sinochem Tianjin Import And Export Corporation (The "Aconcagua"), [2009] EWHC 1880 (Comm)

If the cargo's characteristics are not different from those listed in the IMO Codes, then the cargo would not be considered dangerous by the English Courts. If a physically dangerous cargo is properly described by the shipper and an accident occurs due to a known property of the cargo, then the carrier bears the risk of loss even if he had taken the precautions necessary for the carriage of cargo.
If, however, the cargo possesses hazardous characteristics of a different kind from what the carrier would anticipate from such cargo, then the cargo has unusual characteristics[17]. In **The "Athanasia Comninos"[18]** Mustill J. established the rule that the carriers must prove that the unusual characteristics of the cargo in question created risks of a different kind from those which the carriers could expect to encounter. Mustill J. said that:

"the risks must be of a totally different kind (whether in nature or degree) from those attached to the carriage of the described cargo, before shipment of the particular cargo can be regarded as a breach of duty[19]."

In the claims for ship's damage or loss caused by the cargo's unusual characteristics, the English Courts try to determine whether the shipper's description of cargo in the Bills of Lading along with the cargo information provided in the declaration submitted before shipment constituted proper notice about the cargo's potential hazards. If the carrier proves that the unusual hazard was a cause of the loss or that the cargo created risks which he did not contract to bear, he can succeed in a legal action against the shipper under the Bill of Lading contract of carriage and possibly even against the consignee.
If a commodity shipment has unusual characteristics/hazards, this is something which the shippers should know[20]. In case of coal, the mining companies should know the coal dangerous characteristics and warn the port operators and carriers. There is a similar obligation in case of all hazardous bulk cargoes.
An example of case where the ship's damage was caused by the cargo's unusual characteristics was **Mediterranean Freight Services Ltd. v. BP Oil International Ltd. (The "Fiona")[21].**
In that case, BP had shipped on board the vessel "Fiona" a cargo of fuel oil for the carriage to New York. BP had discovered before the shipment that a change in refinery methods was producing a fuel oil which could give off substantial quantities of explosive gas. It had not however given the shipowner this information before loading the cargo.
The fuel oil cargo shipped on board the vessel "Fiona" was a blend of two types of residual fuel oils that had the greatest propensity to produce hydrocarbon gases in amounts exceeding the lower explosive limit at temperatures below the flashpoint of the cargo. At discharge port the fuel oil cargo exploded causing damage to the ship.
The shipowner blamed the shipper BP for the ship's damage and started a legal action to recover the loss from BP. The shipowner's claim was based on the following allegations:
-that the ship carried previously fuel oil cargoes with no problem;
-that the fuel oil cargo shipped by BP was dangerous on the grounds that it had a propensity known to BP but not to the shipowner or to other shipowners to produce light hydrocarbon vapours which could and did give rise to an explosive atmosphere in the vessel's tanks;
-that the shipowner did not consent to the shipment of the cargo with knowledge of its nature and character and that the explosion and the loss resulting from it arose from such shipment.

17 See The "Athanasia Comninos", [1990] 1 Lloyd's Rep. 277
18 See The "Athanasia Comninos", [1990] 1 Lloyd's Rep. 277
19 In The "Athanasia Comninos", [1990] 1 Lloyd's Rep. 277, the excessive gasiness of the coal cargoes in question was not deemed sufficient to create new hazards.
20 See The "Athanasia Comninos", [1990] 1 Lloyd's Rep. 277
21 (CA) [1994] 2 Lloyd's Rep. 506

Based on the evidence provided by the experts' reports, Judge Diamond, Q.C., held that the fuel oil cargo had dangerous characteristics which were wholly different from those commonly associated with fuel oil cargoes by the fact that no special precautions would have been considered necessary by a prudent owner provided that the flashpoint of the cargo was over 60 degrees Celsius and it was not carried within 10 degrees Celsius of that flashpoint.
The shipment by BP of fuel oil in circumstances where the shipowner did not know of its flammability hazard and could not reasonably be expected to become aware of it, had the result that precautions have not been taken to guard against that hazard which might have been taken had the nature of the problem been made known to the shipowner before or at the time of shipment.
Cases of claims for ship's damage caused by the cargo's unusual characteristics were also reported in LPG trade.
In April and May 1986 a series of consecutive shipments of propane made by Kuwait Petroleum Corporation from Mina Al-Ahmadi terminal in Kuwait turned out to be off-specification upon arrival at discharge ports because of contamination with sulphur compounds.
The history repeated in October and November 1993 with a number of propane cargoes shipped by Saudi Aramco from Yanbu terminal in Saudi Arabia.
In all those propane contamination cases the sulphur compounds caused corrosion to ship's tanks and the shipowners incurred time and expense to remove the rust scale and clean the ship's tanks in order to be fit to receive the next cargoes.
The investigations made in 1993 by SGS surveyors and CWA's chemical experts revealed that the ship's cargo tank walls were contaminated with elemental sulphur and that the contamination occurred due to the unusual characteristics of the cargo and the various reaction possibilities of the sulphur compounds.
The sulphur compounds are normally eliminated by the desulphurisation processes during the LPG production provided that these processes are functioning well.
The experts found that this was not the case at Saudi Aramco's Yanbu refinery in 1993.
In the opinion of Mr. David Robert Jones, one of the chemical experts that investigated the propane contamination on board the ship “Baltic Flame” at the origin of contamination was a defect in the production cycle, the most probable in the Merox/dehydration units of the refinery which are located last on the propane stream before the propane is liquefied and refrigerated for storage and transportation. The experts were of the opinion that this defect allowed the carry-over of hydrogen sulphide from the production process to the vessel and the formation and carry-over of polysulphides.
In the article “Copper Corrosion Contamination in LPG Transportation” submitted at Gastech 1996, SGS surveyors Gerrit Vermeiren and D. Beernaert explained that:

“the molecular structure [of Polysulphides] either may grow or decompose to respectively heavier or lighter Polysulphides with the absorption or release of Elemental Sulphur […] Propane containing Polysulphides can meet the required specifications for Copper Corrosion [at time of shipment]. However, once the Polysulphides decompose in lower Polysulphides and Elemental Sulphur, this Elemental Sulphur will turn the Propane off-specification for Copper Corrosion. […] Besides the contamination of the Propane cargo by the decomposition of the Polysulphides, the low solubility of the Elemental Sulphur in Propane and the tendency of this Elemental Sulphur to migrate to the cargo tank material will cause a serious contamination of the cargo tank surface of the gas carrier.”

The experts investigation reports revealed that Yanbu terminal procedures for the verification of the condition of cargo were inadequate and insufficient to determine the presence of sulphur compounds. In the opinion of CWA's experts, *“the presence of these “contaminants” was not noted during loading because the load port analysis, which is performed unilaterally by the shippers, is*

inadequate to properly describe the sulphur compounds which are present."
The shipowners blamed the charterers and shipper Saudi Aramco for the damage caused by the propane cargoes to their vessels. In The "Baltic Flame"[22] and The "Berge Sisar"[23] cases, the shipowners brought claims also against the intended receivers. The shipowners' claims were based on the allegations that apart from the voyages with propane cargoes shipped by Saudi Aramco their vessels had regularly carried propane without any problem or complaint and that the propane cargoes shipped by Saudi Aramco had damaged the carrying vessels' tanks due to their unknown propensity to corrode, reason for which those propane cargoes could be considered dangerous.
In **The "Berge Sisar"**[24] case the claim failed due to the fact that the intended receivers Borealis AB did not actually exercise the right of control over the cargo by presenting the Bills of Lading and nominating the port of discharge and/or by requesting delivery of the cargo. The Bills of Lading stated the destination as *"one or more safe ports Netherlands"*, but they were issued in paper form and it took more time for the sellers and buyers in the chain to transfer the Bills of Lading from one to another than for the vessel to sail from Yanbu terminal, in Saudi Arabia to Stenungsund terminal, in Sweden so that Stenungsund terminal was nominated by the voyage charterers. Upon the ship's arrival at Stenungsund terminal, the intended receivers rejected the cargo and re-sold it to Dow Europe in Holland on CIF Terneuzen terms, at a discount price. Following the rejection of cargo by Borealis, the charterers gave instructions to the vessel to carry on the cargo from Stenungsund terminal, in Sweden, to Terneuzen terminal, in Holland and discharge there the cargo against the charterers' letter of indemnity. The cargo was discharged at Terneuzen terminal between 17th and 24th November 1993. The Bills of Lading were endorsed and forwarded to Borealis on 18th January 1994 and then by Borealis to Dow Europe on 20th January 1994, that is, long after delivery of the cargo. The company Borealis AB was just an intermediate holder of the Bills of Lading who endorsed over the Bills of Lading to the next buyers in the chain, Dow Europe. After the endorsement of the Bills of Lading to Dow Europe on 20th January 1994, it was no longer be subject to the liabilities under the contracts of carriage. The only company which would have become liable under the provisions of section 3(1)(c) of COGSA 1992 was Dow Europe which took delivery of the cargo and then became the lawful holders of the Bills of Lading.
In **The "Baltic Flame"**[25] case Petroleo Brasiliero S.A. brought two legal actions as lawful holders of the Bills of Lading against the shipowner Mellitus Shipping Inc. for the cargo contamination. The shipowner counterclaimed based on the experts' investigation report for the ship's tanks cleaning costs arguing that the propane cargoes were contaminated before shipment and by making claims under the contracts of carriage as lawful holder of the Bills of Lading, Petroleo Brasiliero S.A., became liable under the contracts of carriage contained therein for the loading of a dangerous cargo. Although the case was ultimately settled by mediation out of Court, it remained a good example of how the shippers' fault can give rise to dangerous goods' liability to the commodity buyers.

Liability For The Ship's Damage Or Loss Caused By Misdescription And Misdeclaration Of Cargoes

The casualties' and incidents' investigation reports revealed that the hazardous bulk cargoes are often misdescribed and misdeclared in the shipping documents and charter parties.

22 Petroleo Brasiliero S.A. and Others v. Mellitus Shipping Inc. (The "Baltic Flame"), [2001] EWCA Civ 418; [2001] 2 Lloyd's Rep. 203.
23 Borealis AB v. Stargas Ltd. & Ors, [1998] EWCA Civ. 1337, [1998] 4 All ER 821; Borealis AB v. Stargas Limited and Others and Bergesen D.Y. A/S [2001] UKHL 17; [2001] 2 All ER 193; [2001] 1 Lloyd's Rep. 663.
24 Borealis AB v. Stargas Ltd. & Ors, [1998] EWCA Civ. 1337, [1998] 4 All ER 821; Borealis AB v. Stargas Limited and Others and Bergesen D.Y. A/S [2001] UKHL 17; [2001] 2 All ER 193; [2001] 1 Lloyd's Rep. 663.
25 Petroleo Brasiliero S.A. and Others v. Mellitus Shipping Inc. (The "Baltic Flame"), [2001] EWCA Civ 418; [2001] 2 Lloyd's Rep. 203.

The shippers and consignees can become liable in case of ship's damage or loss caused by wrongly described cargoes or by the shippers' failure to give proper warning about the hazards which the carrier cannot reasonably foresee.
If the carrier is able to gather evidence that the cargo that caused the ship's damage or loss was not what the shipper described in the Bill of Lading or declared before shipment, he can recover the loss through a claim against the shipper and possibly even against the consignee.
In case of a claim for damages or losses caused by a dangerous cargo, the carrier has to prove that the misleading description of cargo or incorrect declaration was a contributory cause of the damage/ loss, since it denied the carrier's opportunity to take the precautions necessary for the safe carriage.
An example of such case was the foundering of the ship "Thor Emilie" in February 2000. The vessel "Thor Emilie" chartered to carry a cargo of "Oxyde Zinc Ore" was instead loaded with "Zinc Skimmings". The shipper declared before loading that the cargo was not dangerous.
The casualty investigators concluded in their report that the false description of the cargo of Zinc Skimmings as "Oxyde Zinc Ore" in charter party has been a "decisive contributory cause". Based on that description, the Master could not anticipate that during the voyage the cargo would generate so much hydrogen in the cargo hold that led to explosion.
The ship "Thor Emilie" had been fully seaworthy if the cargo had been harmless. However, the ship did not meet the necessary requirements for the carriage of "Zinc Skimmings", neither in construction nor in equipment[26].
Another example is the English law case, **Micada Compania Naviera S.A. v. Texim[27].**
In that case a vessel chartered to carry "iron ore" was instead loaded with a cargo of "iron ore concentrate" that had a moisture content higher than that declared by the shippers and higher than the transportable moisture limit. A couple of days after the ship departed from the loading port, the cargo liquefied and the ship had to deviate to a port of refuge. The shipowners sought to recover the costs incurred to discharge, treat and reload the cargo and costs for the time lost thereby.
The English Court held that the misdeclaration of moisture content created a danger for the vessel that the Master could not have foreseen and therefore, the cargo was dangerous.
Shipping casualties and incidents attributed to misdeclaration and misdescription of ores and mineral concentrates continue to be reported to this day. The commodities involved were Zinc Concentrate, Iron Ore Concentrate, Iron Ore Fines, Coal and Nickel Ore. Common to all these commodities is their propensity to liquefy if shipped with a moisture content in excess of their transportable moisture limit.
The casualties' and incidents' investigation reports revealed that there had been cases when no information regarding the characteristics of the cargo had been provided by the shippers to Masters[28] or the shippers provided inaccurate information[29].
Of the above-mentioned commodities, for "iron ore fines" there were no specific guidelines in the IMSBC Code at the time when the shipping casualties and incidents were reported[30].
Nonetheless, the sub-section 7.2.4 of the 2004 Edition of BC Code applicable at the time provided that:

"Cargoes, which contain a certain proportion of small particles and a certain amount of moisture may liquefy[31]."

26 See IMO document DSC/Circ. 10/10 March 2003 – "Incidents Reports Involving Dangerous Cargoes – Zinc Skimmings".
27 [1968] 2 Lloyd's Rep. 57
28 See MARS Report No. 200923/2009, MARS Report No. 200842/2008, MARS Report No. 94016/1994
29 See MARS Report No. 95001/1995
30 Between 2007 and 2010.
31 See Section 7 of IMSBC Code Regulation 7.2.1.

In other words, cargoes containing a large quantity of fine particles and a high moisture content are prone to liquefaction and therefore, they should be tested by the shippers as advised in the Appendix 1 of the IMSBC Code.
The IMSBC Code requirement for the provision of certificates of moisture content and transportable moisture limit by the shippers is intended to be applicable to all commodities which may liquefy regardless of whether they are specifically identified or not in the IMSBC Code as posing a liquefaction risk.
It is thought that the Indian and Indonesian shippers misdescribed the iron ore fines cargoes as "iron ore" in order to avoid the IMSBC Code requirement for the provision of certificates of moisture content and transportable moisture limit.
There had also been cases when it was found that the shippers declared an inaccurate moisture content and cases when the shippers declared an inaccurate transportable moisture limit. In the former cases the cargoes that liquefied during the sea carriage were shipped from open stock piles that did not have protection against rain. The rain fallen between the time of cargo sampling and loading increased significantly the moisture content of cargo, so that the analysis of cargo samples had as result an inaccurate moisture content. In those cases the Masters could not determine how much rain had fallen at the loading terminal between the time of cargo sampling and loading and what effect the rain fallen would have on the cargoes' moisture content.
Shipping casualties and incidents attributed to the incorrect declaration of cargo were also reported in the sea carriage of coal.
There is a wide range of coal products that are shipped on board by the vessels for carriage by sea.
The shippers of coal describe their cargoes in the Bills of Lading in function of the commercial use of the coal product in question.
The coal described as "steam coal" or "steam non-coking coal" is used in boilers in electric generating plants to produce steam for electricity generation.
The coal described as "metallurgical coal" is used as a feedstock in the production of coke which is then used in steel production as a fuel and reducing agent to smelt iron ore in a blast furnace.
However, the trade names of coal products do not have any relevant meaning for the carriers, since such descriptions do not say anything about the characteristics and potential hazards of coal cargoes[32].
In the English law case The "Athanasia Comninos"[33] the cargo was described in the Bills of Lading as "DEVCO 2XO Steam Coal". The Court held that if the coal so described had any special characteristics, this was not common knowledge and the carrier did not consent to take any additional risks created by these characteristics, simply by including that description in the contract of carriage.
Each coal product has its own characteristics.
The coal cargoes containing a large quantity of fines may liquefy. The IMSBC Code stipulates that coal cargoes containing 75% particles less than 5 mm should be declared as Group A cargo.
There are also coals, particularly lower rank coals, which may emit methane and coals that may self-heat spontaneously.
Due to coals' range of properties which the mining companies should be aware of, the shippers have the obligation to provide before loading a cargo declaration in which to mention the cargo's characteristics so that the ship's Master to take the precautions necessary for the safe carriage of cargo[34].

32 See the US law case Boykin v. Bergesen DY A/S, 835 F. Supp. 274 – District Court, ED Virginia 1993. *"Pinnacle [coal] is only a brand name and the shipper must look to the type of coal, not simply the brand name it attaches to its particular product."*

33 [1990] 1 Lloyd's Rep. 277

34 See the US law case Ente Nazionale Per L'Energia Electrica v. Baliwag Navigation, Inc., 774 F.2d 648, 655 (4th Cir. 1985). Due to the dangerous nature of coal cargoes, the shippers of coal have the duty to ascertain the true nature and characteristics of their cargo and to warn the ship's Master of the foreseeable hazards inherent in the

In case of ship's damage caused by the shippers' failure to adequately warn the carrier, the shippers and possibly even the consignees can be held liable for the carrier's financial loss.
An example of such case is the US law case **Boykin v. Bergesen DY A/S**[35].
In that case US Steel sold a cargo of coking coal to China Steel basis FOB Hampton Roads, Norfolk terms. The cargo was shipped on board the vessel "Berge Charlotte" chartered by the buyers China Steel from the shipowners Bergesen.
The shipper declared that the coal cargo was a type of coal that did not pose problems with methane emission. Because for the sea carriage of that coal type there was no requirement in the BC Code for ventilation, the ship's Master did not ventilate the cargo holds continuously.
In fact, the coal cargo in question was a type of coal that emitted methane gas for a long period of time after being mined. In the absence of continuous ventilation of cargo holds, the methane emitted by the coal cargo accumulated in the ship's holds exploded causing damage to the ship and the death of Master and four crew members.
The shipowners found evidence that the shippers knew that their coal could emit dangerous levels of methane for a long period of time after being mined and they knew that the coal cargoes could emit methane after being loaded in the ship's holds. An internal memo within the shippers' organisation contained the recommendation that the coal must be continuously ventilated during the carriage on board the ships.
The US Court held that the internal memo created a duty on the part of the shippers to make known the special propensities of the coal cargo to shipowners and their masters. The shippers' failure to warn the shipowner about the cargo's special characteristics was the proximate cause of the cargo explosion on board and the damage to the vessel.
Shipping casualties and incidents attributed to cargo misdeclaration and misdescription were also reported in the sea carriage of DRI Fines (Direct Reduced Iron Fines) and HBI Fines (Hot Briquetted Iron Fines).
DRI Fines are produced during the Direct Reduced Iron production process, while HBI Fines are produced during the Hot Briquetted Iron production process.
DRI Fines and HBI Fines are commodities in high demand in the international trade due to their commercial value for steel making. These commodities are sold to international buyers under various trade names: "Direct Reduced Iron Briquettes, Hot-moulded, Fines (from HBI Production and handling process)", "DRI Fines 1", "Direct Reduced Iron, hot-moulded, fines", "Venezuelan Iron Concentrate Material Unsifted", "HBI Fines", "Metallized Fines", "Hot Briquetted Iron Fines", "Metallic (HBI) Fine", "HBI Metallized Fines"[36]. The cargoes of DRI Fines and HBI Fines are also described in the shipping documents as "Settling Pond Fines", "Sedimentation Fines", "Quench Tank Fines", "HBI Process Fines", "HBI Fines & Chips", "Fines & Chips", "HBI Chips", to indicate how the fines were generated during the production process. For instance, the dust particles that precipitate from the process gas through the Classifier and Settling Pond are referred to as "Settling Pond Fines", the fines and chips generated after the briquettes are mechanically screened are referred to as "HBI Fines & Chips" or as "Fines & Chips"[37].
Mixtures of HBI and DRI by-products with iron ore fines or fines obtained from the steel manufacturing process (i.e. mill scale) are also shipped. These mixtures are sold to international buyers under various descriptions that do not include the terms "DRI", e.g. "re-oxidised iron fines", "iron fines (blend)", "iron ore pellet chips", "oxide fines", "pond fines", "sludge fines", "remets", "clarifier slush and dust", "spent iron fines" and "lodos". The investigation of ship casualties and incidents involving these cargoes revealed that they were misdescribed in charterparties and Bills of

cargo of which the ship's Master cannot reasonably be expected to be aware.

35 835 F. Supp. 274 – District Court, ED Virginia 1993

36 See the IMO document DSC 12/INF. 4 at www.imo.org

37 See the report "Hazards and risks associated with the carriage of Direct Reduced Iron (A) Briquettes, hot-moulded Fines" submitted by Venezuela at the 11th session of the Sub-Committee on Dangerous Goods, Solid Cargoes and Containers – IMO document DSC 11/4/3.

Lading as “iron ore” and “iron ore fines”[38] and that the cargo blends had a higher proportion of DRI Fines than those declared by the shippers[39].

An example of such case was the cargo shipped on board the vessel “Karteria” in August 1999 at Convent Louisiana, in US. The cargo was described in charter party as “iron ore in bulk” and in the Bill of Lading as “iron ore fines”. During the sea carriage, explosions occurred in two of the cargo holds due to the accumulation of hydrogen generated by the cargo, which could not have been the case with a cargo of iron ore fines. The analysis of cargo samples taken during discharge by the surveyors investigating the incident revealed that only 40% of the cargo were “iron ore fines”. The remaining 60% of the cargo were DRI Fines.

Similarly to DRI Fines, the cargoes of HBI Fines are capable of generating overnight great volumes of hydrogen, much greater than the Hot Briquetted Iron[40]. This unknown hazard caused a series of casualties and incidents on board the vessels that loaded cargoes of HBI Fines from Venezuela.

The cargo shipped on board the vessel “California” in August 2003 at Palua, Venezuela, exploded during the voyage causing damage to vessel and injuries to two crew members.

The cargo shipped on board the vessel “Swift Fair” in January 2004 at Palua, Venezuela, put the vessel in danger due to the excessive generation of hydrogen.

The cargo shipped on board the vessel “Ythan” in February 2004 at Palua, Venezuela, exploded during the voyage causing the sinking of vessel and the death of Master and five crew members.

The cargo shipped on board the vessel “California” was described in the Bills of Lading as “HBI Fine”, the cargo shipped on board the vessel “Swift Fair” was described in the Bills of Lading as “Venezuelan Comsigua[41] Metallized Fine (HBI) in Bulk” and the cargo shipped on board the vessel “Ythan” was described in the Bills of Lading as “Metallic HBI Fines Orinoco Iron “Remet”, Material Unsifted”. In The “Ythan” case, the investigation of the casualty revealed that the cargo was actually a mixture of Hot Briquetted Iron and Direct Reduced Iron Fines[42].

The shipowners blamed the charterers Primetrade AG and the shippers Comsigua and Orinoco Iron for the damage/loss to the vessels caused by the cargoes. The shipowners contended that by describing the cargoes as “HBI Fines” the charterers and shippers induced the Masters in error as to the precautions necessary to be taken for carriage because the HBI Fines have properties closer to DRI rather than HBI and should have been carried under inert conditions rather than natural or mechanical ventilation as recommended by the shippers. For Hot Briquetted Iron, which pose a lesser hazard than Direct Reduced Iron, the carriage under inert gas blanket was not required in the BC Code (the previous edition of IMSBC Code).

At the time of the incidents there were no guidelines in the BC Code for the carriage of Hot Briquetted Iron and Direct Reduced Iron cargoes consisting of fines[43] and small particles. The BC Code provided only that the cargoes of Hot Briquetted Iron and Direct Reduced Iron cargoes should not contain more than 5% of fines.

In case of cargoes not listed in the IMO Codes, the carriers and ships' Masters rely on the shippers for the provision of information about the cargo and proper instructions for carriage.

In The “Ythan” case the shipper's instructions faxed to the Master stated specifically that:

38 See the IMO document DSC 16/5/6 at www.imo.org

39 See the IMO document DSC 13/4/5 at www.imo.org

40 See the IMO document DSC 10/17 – par. 4.15 at www.imo.org

41 Comsigua and Orinoco Iron were the name of producers.

42 See “Ythan” casualty report in IMO document MSC 79/12/1 at www.imo.org. Due to the numerous incidents caused by the cargo blends containing DRI Fines, France proposed at IMO that the inclusion of DRI Fines in homogenous cargoes of briquettes or pellets should be prohibited. See IMO document DSC 11/6/6 – “Total loss of the bulk carrier “Adamandas””.

43 For HBI and DRI, “fines” are defined in the IMSBC Code as particles up to 6.35 mm in size.

"Orinoco Iron Remet Fines to be loaded on your vessel are safe to transport without the use of Inert Gas or other special precautions[44]."

Unscientific cargo description and wrong instructions for carriage were misleading for the Masters of the ships "California", "Swift Fair" and "Ythan". In the English law, if the shipper does not provide adequate instructions he will be liable in case of damages or losses caused by a cargo not listed in the IMO Codes. The fact that the shipper was unaware at the time of shipment of the potential dangers or peculiar characteristics is irrelevant[45].
It is thought that the reason why the shippers and commodity traders misdeclared and misdescribed the cargoes of DRI fines as "iron ore" and "iron ore fines" and the cargoes of HBI fines as "HBI" was to avoid the higher freight costs imposed by the necessity to comply with the IMSBC Code requirements for the carriage of DRI products. The IMSBC Code requirements for the carriage of Direct Reduced Iron under an inert gas blanket made the carriage of DRI Fines and HBI Fines much more expensive than the carriage of iron ore, iron ore fines or hot briquetted iron.
In a Circular issued in December 2012, the International Group of P&I Clubs recommended that the cargo blends containing DRI Fines should be declared and described by the shippers using the Bulk Cargo Shipping Name of "DRI(C) By-product fines" and that such cargoes be carried under inert conditions in accordance with the IMSBC Code provisions[46].
Following the ship "Ythan" casualty, the SOLAS Convention was amended to include the following provisions:

"In all documents relating to the carriage of dangerous goods in solid form in bulk by sea, the bulk cargo shipping name of the goods shall be used (trade names alone shall not be used)."

Similar provisions were included in the IMSBC Code in the Section 1 Chapter VII Regulation 7-2. Furthermore, in the Section 4 of the IMSBC Code were included the following provisions:

"4.1.1. Each solid bulk cargo in this Code has been assigned a Bulk Cargo Shipping Name (BCSN). When a solid bulk cargo is carried by sea it shall be identified in the transport documentation by the BCSN. The BCSN shall be supplemented with the United Nations (UN) number when the cargo is dangerous goods. […]
4.1.3. Correct identification of a solid bulk cargo facilitates identification of the conditions necessary to safely carry the cargo and the emergency procedures, if applicable."

44 See "Ythan" casualty report in IMO document MSC 79/12/1 at www.imo.org

45 See the English law case Effort Shipping Company Ltd. v. Linden Management S.A. and Others (The "Giannis N.K."), [1998] UKHL 1

46 Following the incidents involving cargoes of HBI Fines shipped from Venezuela, the commodity "DRI Fines" was individually classified in the IMSBC Code under the Bulk Cargo Shipping Name of Direct Reduced Iron (C) (By-product fines) with the requirement to be carried under inert conditions. The IMSBC Code carriage requirements for DRI Fines are equally applicable to the cargoes of HBI Fines.

CFR Buyers' Obligation To Arbitrate The Claims Under Bills Of Lading

by Vlad Cioarec, International Trade Consultant

The Charter Party Bills of Lading transferred to CFR/CIF buyers become contracts of carriage.
By incorporation in the Charter Party Bills of Lading, the charter party terms and conditions become a part of the contracts of carriage and are binding upon those making claims for breach of such contracts of carriage[1].
Despite the fact that the Charter Party Bill of Lading forms published by BIMCO to be used for commodity shipments indicate that are issued pursuant to the charter party terms and conditions, the CFR buyers and/or subrogated cargo underwriters making claims under the contracts of carriage contained in the Charter Party Bills of Lading often try to force the shipowners to litigate the claims in their jurisdiction.
To fail to refer a dispute to arbitration and instead to commence litigation is a breach of contract of carriage[2]. The shipowner's remedy depends on the circumstances of the case.
If the arbitration clause of charter party stipulates that the place of arbitration is to be London and the legal action has been brought in an English Court, the shipowner's remedy is to ask the Court to stay the legal action and to compel arbitration in accordance with the Section 9 of UK Arbitration Act 1996 which provides as follows:

"(1) A party to an arbitration agreement against whom legal proceedings are brought (whether by way of claim or counterclaim) in respect of a matter which under the agreement is to be referred to arbitration may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter.
.....
(4) On an application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed."

If the arbitration clause of charter party stipulates that the place of arbitration is to be New York and the legal action has been brought in an US Court, the shipowner's remedy is to ask the Court to stay the legal action and to order the parties to proceed to arbitration in accordance with the Section 3

1 See US law case **Son Shipping Co v. De Fosse & Tanghe, 199 F.2d 687 (2nd Cir. 1952)**. The case was a claim by the receiver for the short delivery of an oil cargo. The Bill of Lading clause incorporating the charter party terms stipulated that: *"This shipment is carried under and pursuant to the terms of the charter dated **Antwerp, June 29th, 1948** between **Son Shipping Company** and **De Fosse & Tanghe**, charterer and all the terms whatsoever of the said charter except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this shipment."* The Court held that the Bills of Lading specifically referred to the charter party and, in language so plain that its meaning is unmistakable, incorporated in the Bills of Lading all the terms "whatsoever" of the charter party "except the rate and payment of freight specified therein". The Court held that *"[w]here terms of the charter party are, as here, expressly incorporated into the bills of lading they are a part of the contract of carriage and are binding upon those making claim for damages for the breach of that contract just as they would be if the dispute were between the charterer and the shipowner"*. For a similar opinion see US law case **Ibeto Petrochemical Industries Limited v. M/T Beffen, 475 F.3d 56 (2nd Cir. 2007)**. The case was a claim for contamination of an oil cargo. The Bill of Lading clause incorporating the charter party terms stipulated that: *"This shipment is carried under and pursuant to the terms of the Charter Party dated **31 December 2003** between **Chemlube International, Inc.** as Charterer and **Bryggen Shipping and Trading A/S** as Owner and all conditions and exceptions whatsoever thereto."* The District Court of New York held that: *"Although Ibeto was not a subscriber to the Charter Party, it was bound by the Bill of Lading to abide by the Charter Party terms, which included arbitration in London."*

2 See the English law case **Schiffahrtsgesellschaft Detlef Von Appen GmbH v. Wiener Allianz Versichrungs AG & Voest Alpine Intertrading GmbH (The "Jay Bola"), [1997] EWCA Civ 1420; [1997] 2 Lloyd's Rep. 279**.

and 4 of Federal Arbitration Act which provide as follows:

*"**Section 3** Stay of proceedings where issue therein referable to arbitration*

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement …

***Section 4** Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination*

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court ... for an order directing that such arbitration proceed in the manner provided for in such agreement. ...
The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed."

If the arbitration clause of charter party stipulates that the place of arbitration is to be London and the legal action has been brought in an US Court or in any other foreign jurisdiction which recognizes the New York Convention[3], the shipowner's remedy is to ask the Court to stay the legal action and to order the parties to proceed to arbitration in accordance with the Article II paragraph 3 of the New York Convention which provides as follows:

"The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."

If the arbitration clause of charter party stipulates that the place of arbitration is to be London or New York and the legal action has been brought in a foreign jurisdiction that does not recognize the New York Convention[4], the shipowner's remedy is to ask an English or an US Court, depending to what jurisdiction belongs to, to issue an anti-suit injunction order against the claimant to restrain him from continuing or taking further steps in the legal proceedings commenced in the foreign jurisdiction in breach of the charter party arbitration clause incorporated into the Bill of Lading contract of carriage and also from starting other proceedings elsewhere than before the arbitration tribunal constituted according to the arbitration clause.
When asked to stay the legal proceedings or to issue anti-suit injunction and to compel arbitration, the Courts look at the terms and conditions inserted on the face and the back of the Charter Party Bill of Lading to determine whether the arbitration clause of charter party is properly and validly incorporated into the contract of carriage evidenced by the Charter Party Bill of Lading and whether

3 The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted at New York, June 10, 1958.

4 For an example of such case see Schiffahrtsgesellschaft Detlef Von Appen GmbH v. Wiener Allianz Versichrungs AG & Voest Alpine Intertrading GmbH (The "Jay Bola"), [1997] EWCA Civ 1420; [1997] 2 Lloyd's Rep. 279.

it is binding upon the third party holder of Charter Party Bill of Lading or subrogated underwriter[5].
The only International Conventions on the carriage of goods by sea that include provisions on this matter are the 1978's United Nations Convention on the Carriage of Goods by Sea ("Hamburg Rules") and 2008's "United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea" ("Rotterdam Rules").
The Article 22 paragraph 2 of the Hamburg Rules stipulates that:

"Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith."

The Article 76 paragraph 2 of the Rotterdam Rules provides that:

"[A]n arbitration agreement in a transport document or electronic transport record to which this Convention applies by reason of the application of article 7[6] is subject to this chapter unless such a transport document or electronic transport record:
(a) Identifies the parties to and the date of the charter party ....; and
(b) Incorporates by specific reference the clause in the charter party .... that contains the terms of the arbitration agreement."

An example of such clause was provided in the English law case **Primetrade AG v. Ythan Limited (The "Ythan")**[7], where the Charter Party Bills of Lading had the following wording:

*"All terms and conditions of Charter Party dated **Zug, January 16th, 2004** between **Phoenix Bulk Carriers Ltd., Monrovia, Liberia** and **Primetrade AG, Zug,** inclusive of Arbitration Clause are deemed incorporated in this Bill of Lading."*

To ensure the compliance with these rules of incorporation when authorising the ship agents to sign the Charter Party Bills of Lading, the Master's letter of authorisation should include instructions that the Bill of Lading clause incorporating the charter party terms to identify the parties to and date of the charter party and include an express reference to the arbitration or dispute resolution clause.
In United States where the Hague Rules are still in force, there are no statutory provisions concerning the requirements for valid incorporation of a charter party arbitration clause into the Bill of Lading. Similarly, in United Kingdom where the Hague-Visby Rules apply. That's why when the US and English Courts are asked to decide disputes as to whether a charter party arbitration clause has or has not been properly incorporated into the Bill of Lading, they follow the rules adopted in previous cases[8].
For the CFR buyers of commodities, the importance of understanding the effect of incorporation into the Bill of Lading of charter party arbitration clause is that the failure to initiate arbitration

5 The Courts will also take into consideration whether the court in foreign jurisidiction where the claimant started legal action will allow the anti-suit injunction or not.
6 The Article 7 of the Rotterdam Rules stipulates that: *"this Convention applies as between the carrier and the consignee, controlling party or holder that is not an original party to the charter party."*
7 [2005] EWHC 2399 (Comm); [2006] 1 Lloyd's Rep. 457
8 The US Courts apply the rules adopted in US case law to determine whether a charter party arbitration clause is incorporated into the Bill of Lading contract of carriage, irrespective of the law governing the charter party. See Duferco Steel Incorporated v. M/V Kalisti, 121 F.3d 321 (7th Cir. 1997); Steel Warehouse Company Incorporated v. Abalone Shipping Limited of Nicosai, 141 F.3d 234 (5th Cir. 1998); Barna Conshipping v. M/V Saturnus (S.D. Tex. 2010).

proceedings within the time-limit prescribed by the charter party arbitration clause[9] or by the applicable law means that the claim would be time-barred and the CFR buyer as third party holder of Charter Party Bill of Lading would not be able to recover from the shipowner. Since most charterparties incorporate either Hague Rules or Hague-Visby Rules, if a claimant does not initiate arbitration proceedings within the one year time-limit[10] and instead chooses to commence Court proceedings and the shipowner obtains a stay of Court proceedings after the lapse of one year, this will mean a defeat of the claim which is time-barred[11].

9 See The Clause 33 paragraph (c) of Australian Wheat Charter 1990 which stipulate that: *"Any claim must be made in writing and the claimant's arbitrator appointed within six months of the Vessel's arrival at the final port of discharge, otherwise all claims shall be deemed to be waived."*

10 Hague Rules and Hague-Visby Rules require that the legal action be started within one year from the date when the goods were delivered or the date when they should have been delivered.

11 See the US law cases Thyssen Inc. v. Calypso Shipping Corp S.A., 310 F.3d 102 (2nd Cir. 2002) and Cargill Ferrous International v. M/V Sea Phoenix, 325 F.3d 695 (5th Cir. 2003).

Rules For Incorporation Of Charterparty Terms Into The Bills Of Lading

by Vlad Cioarec, International Trade Consultant

The Rules Adopted In US Jurisprudence For Incorporation Into The Bill Of Lading Of Charter Party Terms

The Charter Party Bills of Lading transferred to CFR/CIF buyers become contracts of carriage.
The question whether such contracts of carriage incorporate the charter party terms depends on the shipowners' ability to prove that the holder of Charter Party Bill of Lading had either actual or constructive notice of the incorporation of charter party terms. A holder of a Charter Party Bill of Lading cannot be bound by the terms of charter party of which he had no notice[1].
When a third party holder of Charter Party Bills of Lading commences a legal action in US Courts against the shipowner, the shipowner's application to stay the legal action and to compel arbitration may succeed only if it can prove that the holder of Charter Party Bill of Lading had either actual or constructive notice of the incorporation of charter party terms.
If the letter of credit or collection instructions require the presentation of charter party along with the Bills of Lading and the CFR buyers obtain the charter party along with the Bills of Lading following the payment of the price, they shall be deemed to have actual notice of the incorporation of charter party terms. Article 22 of UCP600 which stipulates the requirements with regard to the Charter Party Bills of Lading does not require the presentation of charter party along with the Charter Party Bills of Lading but it does not prohibit the presentation of charter party when the letter of credit has such requirement.
If the letter of credit or collection instructions did not require the presentation of charter party along with the Bill of Lading and the CFR buyer obtained solely the Charter Party Bill of Lading, the question is whether the CFR buyer had constructive notice of the incorporation of charter party terms into the contract of carriage contained in the Charter Party Bill of Lading.
In the US case law the rule is that a third party holder of Charter Party Bill of Lading had constructive notice of the incorporation of charter party terms when the Bill of Lading clause incorporating the charter party terms identifies the charter party by date and/or place where the charter party was signed and/or parties to the charter party. The actual information required to identify the charter party intended to be incorporated depends on the Charter Party Bill of Lading form used and whether the vessel is under one charter party or in a chain of charter parties.
If the vessel is in a chain of charter parties agreed on the same date and the Bills of Lading fail to provide information about the signatory parties, none of the charter parties is deemed incorporated into the Bills of Lading on the grounds that the Bills of Lading did not identify sufficiently the charter party intended to be incorporated. In **Volgotanker Joint Stock Co. v. Vinmar International Ltd.**[2], there were two voyage charter parties for one voyage, a head voyage charter party and a sub-voyage charter party both dated January 12, 1998. The head voyage charter party had a London arbitration clause, while the sub-voyage charter party had a New York arbitration clause. The Bill of Lading showed the charter party date only. The Court for the Southern District of New York held that the charter party date alone in the Bill of Lading was not enough to identify adequately which of the two existing charter parties was intended to be incorporated.
If, however, the vessel is in a chain of charter parties agreed at different dates, the identification of

1 See the US law case Steel Warehouse Company Incorporated v. Abalone Shipping Limited of Nicosai, 141 F.3d 234 (5th Cir. 1998).
2 No. 01 CV 5064, 2003 WL 23018798 (S.D.N.Y. 2003)

Charter Party by date alone is deemed sufficient for the identification of charter party sought to be incorporated. The relevant cases in the US case law are **Thyssen Inc. v. Calypso Shipping Corp S.A.**[3] and **Barna Conshipping, S.L. v. M/V Saturnus**[4].

In **Thyssen Inc. v. Calypso Shipping Corp S.A.**[5] the vessel was under two charter parties, a head time charter party between the shipowner, Calypso Shipping Corp S.A. and Western Bulk Carriers, and a sub-voyage charter party between Western Bulk Carriers and the CFR seller, Metalsrussia Corp Ltd.. Because the Charter Party incorporation clause of Bills of Lading indicated the date of the sub-voyage charter party, the US District Court held that the Bills of Lading incorporated the terms of sub-voyage charter party and the identification of Charter Party by date alone was sufficient for the identification of charter party intended to be incorporated. The Court held that:

"[T]he existence of a specific charter party of a particular date, combined with the repeated references to the charter party on both sides of the Bills of Lading, are sufficient to incorporate all the charter party terms."

In appeal, the US Court of Appeals for the Second Circuit upheld the decision of the District Court saying that the charter party terms were properly incorporated into the Bills of Lading and that the charter party terms bound both the shipowner and the third party holder of the Charter Party Bills of Lading.

In **Barna Conshipping, S.L. v. M/V Saturnus**[6] the vessel was in a chain of three charter parties: a head time charter party between the shipowner, S-Bulk and Grand China Shipping (Hong Kong) Co. Ltd., a voyage charter party between Grand China Shipping (Hong Kong) Co. Ltd. and Oldendorff, and a sub-voyage charter party between Oldendorff and Barna Conshipping. Because the Charter Party incorporation clause of Bills of Lading indicated the date of the sub-voyage charter party, the US Court held that the Bills of Lading incorporated the terms of sub-voyage charter party and the identification of Charter Party by date alone was sufficient for the identification of charter party intended to be incorporated.

Except for the situation when there were two or more charter parties concluded at the same date, for Charter Party Bills of Lading issued in CONGENBILL form the US Courts accept the incorporation of charter party terms provided the Charter Party incorporation clause stipulate the Charter Party date[7]. Given that the CONGENBILL form has a blank space for insertion of Charter Party date only, the identification of the parties is not a condition for incorporation of Charter Party.

In **Continental Insurance Company v. Polish Steamship Company**[8] the US Court of Appeals for the Second Circuit held that when the Charter Party Bill of Lading is in a CONGENBILL form the date of the charter party alone is sufficient to identify the charter party sought to be incorporated. The relevant passage of the Court decision is quoted below:

"While it would have been preferable to identify the charter party in more detail, i.e. by mentioning the location and parties involved, we find that the specification of the date of the charter party, along with the references to charter parties made on the bill's face and overleaf, suffice to identify the relevant charter party with the specificity needed to give effect to the intended incorporation."

Unlike the Charter Party Bills of Lading issued in the CONGENBILL form, the Bills of Lading issued in the form prescribed by ASBATANKVOY and VEGOILVOY charterparties allow the identification of Charter Party not just by date, but also by naming the charterer and

3 310 F.3d 102 (2nd Cir. 2002)
4 (S.D. Tex. 2010)
5 310 F.3d 102 (2nd Cir. 2002)
6 (S.D. Tex. 2010)
7 See Steel Warehouse Company Incorporated v. Abalone Shipping Limited of Nicosai, 141 F.3d 234 (5th Cir. 1998).
8 346 F.3d 281 (2nd Cir. 2003)

shipowner/disponent owner. For the proper incorporation of Charter Party terms in such Bills of Lading it would be necessary to indicate in the Bill of Lading both the Charter Party date and the parties thereto, not just the Charter Party date or the parties, unless the shipowner proves that it could not comply with this rule due to charterer's fault.
In **Amoco Overseas Company v. S.T. Avenger**[9], the shipowner issued the Bill of Lading with the following Charter Party incorporation clause:

*"This shipment is carried under and pursuant to the terms of the charter dated ..... between **MESSRS. OCEAN COURIER, INC.** and **MESSRS. MONTEDISON MILANO AMOCO** as charterer, and all the terms whatsoever of the contract/charter except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this shipment."*

The shipowner could not mention the Charter Party date in the Bill of Lading because the charterer forwarded the formal Charter Party for signature two days after shipment. Furthermore, the shipowner did not know at the time of shipment the exact name of charterer because the vessel's fixture was negotiated through brokers which had instructions not to reveal the name of charterer until the agreement was reached. The only information the shipowner had about the charterer at the time of Bill of Lading issuance was from the charterer's broker letter confirming the terms of vessel's fixture (fixture recap). This named the charterer as "Amoco (London)". Only when the formal charter party was forwarded to the shipowners for signature was the charterer specifically named as Amoco Trading International Limited.
The cargo was lost during the carriage and Amoco Overseas Oil Company (i.e. Bill of Lading holder) sued the shipowner to recover the value of the cargo. The shipowner asked the Court for the Southern District of New York to stay the legal proceedings to allow the settlement of claim by arbitration pursuant to the charter party arbitration clause incorporated into the Bill of Lading.
In the legal proceedings the Bill of Lading holder contended that the Bill of Lading's clause incorporating the charter party terms did not identify the charter party with sufficient specificity to incorporate it into the Bill of Lading, because the space in the Charter Party incorporation clause for the insertion of the Charter Party date was left blank and the charterer was improperly named.
The shipowner argued that the space in the Charter Party incorporation clause for the insertion of the Charter Party date was left blank and the charterer was improperly named, because the charterer had sent the formal charter party to shipowner for signature after the shipment of cargo and the issuance of Bill of Lading.
The Court for the Southern District of New York accepted the shipowner's arguments on the ground that although the charterer's name inserted in the Charter Party incorporation clause was improper, this showed the Master's attempt to identify the charterer and the shipowner's intention to incorporate the Charter Party terms into the Bill of Lading based on the information they had at the time of shipment.
Except for such obvious circumstances, the Bills of Lading issued for oil cargoes in the form prescribed by Asbatankvoy charter party have to mention both Charter Party date and parties thereto. In **Ibeto Petrochemical Industries Limited v. M/T Beffen**[10], the Bill of Lading clause incorporating the charter party terms had the following provisions:

*"This shipment is carried under and pursuant to the terms of the Charter Party dated **31 December 2003** between **Chemlube International, Inc.** as Charterer and **Bryggen Shipping and Trading A/S** as Owner and all conditions and exceptions whatsoever thereto."*

After delivery, the CFR buyer, Ibeto Petrochemical Industries Ltd. claimed that the oil cargo was

9 387 F. Supp. 589 (S.D.N.Y. 1975).
10 475 F.3d 56 (2nd Cir. 2007).

contaminated with sea water and started legal proceedings in Nigeria and New York against the shipowner. The shipowner asked the Court for the Southern District of New York to stay the legal proceedings in US, to enjoin the legal action pending in Nigeria and to compel arbitration in London in accordance with the charter party arbitration clause. The US Court of Appeals for the Second Circuit held that the identification of charter party by date (December 31, 2003) and by the parties thereto (Chemlube as Charterer and Bryggen Shipping and Trading as Owner) was sufficient to identify the relevant charter party and therefore to give effect to the incorporation of the arbitration clause under the provision incorporating *"all conditions and exceptions whatsoever"*.

As it can be seen from the case studies afore-mentioned, the US Courts do not distinguish between the arbitration clause and the other clauses of charter party. The arbitration clauses are to be treated like any other contract provisions[11]. There is no requirement for an express reference to the arbitration clause in the Bill of Lading clause incorporating the charter party terms. The US Courts held that the general words of incorporation are sufficient to incorporate a charterparty arbitration clause into the Bill of Lading contract of carriage.

This rule is different from that adopted in English jurisprudence which does not require the identification of Charter Party by date or parties thereto, but that the Charter Party arbitration clause to be expressly incorporated into the Bill of Lading. For Charter Party Bills of Lading issued in CONGENBILL form that expressly incorporates the Charter Party arbitration clause or dispute resolution clause, the English Courts would accept the incorporation irrespective of whether the Charter Party date is indicated or not. The US Courts would not accept incorporation where the Charter Party date is not indicated or where the parties are not identified in the charter party incorporation clause on the ground that it is not possible to incorporate a charter party which is not identified in any way[12].

The Rules Adopted In English Jurisprudence For Incorporation Into The Bill Of Lading Of Charter Party Terms

When a Charter Party Bill of Lading is transferred to a third party under a CFR or CIF sale contract, the legal relationship between the transferee and the shipowner is governed by the terms of Bill of Lading contract of carriage. The incorporation of charter party terms into the Bill of Lading contract of carriage depends on the wording of Bill of Lading clause which incorporates the charter party terms and the wording of charter party clause sought to be incorporated.

The English rule of incorporation makes a distinction between the charter party clauses which are directly germane to the subject-matter of the Bill of Lading, i.e. the charter party clauses referring to the shipment, carriage and discharge of the goods, and the charter party clauses which are ancillary to the subject-matter of the Bill of Lading, i.e. safe port warranty, war risks clause, arbitration clause, jurisdiction clause.

The charter party clauses referring to the shipment, carriage and delivery of goods, such FIOS terms, demurrage provisions, lien clause, can be incorporated by general words into the Bill of Lading contract of carriage, provided that such clauses can be read as part of the Bill of Lading contract of carriage. If these clauses impose obligations on the charterers, it cannot be incorporated into the Bill of Lading contract of carriage[13].

The charterparty governing law clause can also be incorporated by general words into the Bill of Lading contract of carriage[14]. But the incorporation of arbitration and jurisdiction clauses can be

11 See Son Shipping Co. v. De Fosse & Tanghe, 199 F.2d 687 (2nd Cir. 1952).

12 See United States Barite Corp. v. M/V Harris, 534 F. Supp. 328 (S.D.N.Y. 1982); MacSteel International USA v. M/V Jag Rani (S.D.N.Y. 2003).

13 See Miramar Maritime Corp. v. Holborn Oil Trading (The "Miramar"), [1984] A.C. 676; [1984] 2 Lloyd's Rep. 129; Tradigrain S.A. and Others v. King Diamond Shipping S.A. (The "Spiros C"), [2000] 2 Lloyd's Rep. 319

14 See The "Njegos" [1936] P.90; (1935) 53 L1.L. Rep.286; Caresse Navigation Ltd. v. Office National de l'Electricite and Others, [2013] EWHC 3081 (Comm).

achieved only by express reference in the Bill of Lading clause incorporating the charter party terms and/or by express words in the charter party clause itself[15].
In **The "Annefield"[16]** the English Court of Appeal made the following comments:

"[A] clause which is directly germane to the subject-matter of the bill of lading (that is, to the shipment, carriage and delivery of goods) can and should be incorporated into the bill of lading contract, even though it may involve a degree of manipulation of the words in order to fit exactly the bill of lading. But if the clause is one which is not thus directly germane, it should not be incorporated into the bill of lading contract unless it is done explicitly in clear words either in the bill of lading or in the charter party.
Applying this test, it is clear that an arbitration clause is not directly germane to the shipment, carriage and delivery of goods ... It is, therefore, not incorporated by general words in the bill of lading. If it is to be incorporated, it must be either by express words in the bill of lading itself (for example, if there were added in this case: "including the arbitration clause as well as the negligence clause") or by express words in the charter party itself (as indeed happened in The "Merak" when the words were: "Any dispute arising out of the charter or any bill of lading issued hereunder"). If it is desired to bring in an arbitration clause, it must be done explicitly in one document or the other ..."

In **The "Merak"[17]**, the Charter Party Bills of Lading incorporated by general words the terms of NUBALTWOOD Charter Party. It was argued that although the Bills of Lading did not expressly incorporate the arbitration clause, this was specifically incorporated by its own provisions which stipulated that:

"Any dispute arising out of the charter or any bill of lading issued hereunder shall be referred to arbitration."

The English Courts will look to the wording of charter party clause sought to be incorporated to see if the charter party clause can be read as part of the Bill of Lading contract of carriage[18].
In **Hamilton & Co. v. Mackie & Sons[19]**, Lord Esher M.R. said that:

"[T]he conditions of the charterparty must be read verbatim into the bill of lading as though they were there printed in extenso. Then if it was found that any of the conditions of the charterparty on being so read were inconsistent with the bill of lading they were insensible and must be disregarded. The bill of lading referred to the charterparty, and therefore when the condition was read in, "All disputes under this charter shall be referred to arbitration", it was clear that the condition did not refer to disputes arising under the bill of lading, but to disputes arising under the charterparty. The condition therefore was insensible, and had no application to the present disputes, which arose under the bill of lading."

Therefore, the shipowners should stipulate in their charterparties that the disputes arising under the Charter Party Bills of Lading would also have to be settled by arbitration. Examples of such charter party clauses are: Clause 26 of GAFTA Charter Party No.1, Clause 33 of Australian Wheat Charter "AUSTWHEAT 1990" form, Clause 33 of Polish Coal Charter Party "POLCOALVOY" form and Clause 54 of BHP Billiton Voyage Charter Party form.
The Clause 26 (Law and Arbitration Clause) of GAFTA Charter Party No.1 has the following

15 See Siboti K/S v. BP France S.A. [2003] EWHC 1278 (Comm); [2003] 2 Lloyd's Rep. 364.
16 [1971] 1 Lloyd's Rep. 1
17 [1964] 2 Lloyd's Rep. 527
18 See Tradigrain S.A. and Others v. King Diamond Shipping S.A. (The "Spiros C"), [2000] 2 Lloyd's Rep. 319
19 (1889) 5 T.L.R. 667

provisions:

"That the Charter Party shall be deemed to have been made in England and to be performed in England and shall be construed and take effect in accordance with the laws of England. Any dispute arising out of or under this Charterparty or any bill of lading issued thereunder shall be referred to Arbitration in accordance with the Arbitration Rules Form No: 127 of the Grain and Feed Trade Association ..."

The Clause 33 paragraph (b) of Australian Wheat Charter Charter "AUSTWHEAT 1990" form has the following provisions:

"Any dispute arising under this Charterparty or any Bill of Lading issued hereunder ... shall be referred to arbitration in London ..."

The Clause 33 (Arbitration Clause) of Polish Coal Charter Party "POLCOALVOY" form has the following provisions:

*"**(a) Settlement of claims.** Any claim under this Charter Party or any Bill of Lading issued thereunder shall be notified in writing. Claims under the Charter Party shall be referred to arbitration within two years and claims under any Bill of Lading within one year of completion of discharge, otherwise the claim shall be deemed waived and absolutely barred.*

(b) Place and procedure of arbitration.

….....

(2) If arbitration in London is agreed, this Charter Party and any Bill of Lading issued thereunder shall be governed by and construed in accordance with English law and any dispute arising out of this Charter Party or any Bill of Lading issued thereunder shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force."

The Clause 54 of BHP Billiton Voyage Charter Party form has the following provisions:

"Any dispute arising out of this Charter Party or any Bill of Lading issued hereunder shall be referred to arbitration in London in accordance with the Arbitration Act 1996 and any statutory modification or re-enactment in force. English law shall apply."