

# DETERMINING THE SCOPE OF CHARTERERS' AGENTS: *THE GLOBAL SANTOSH*

*NYK Bulkship (Atlantic) NV v Cargill International SA*

[2016] UKSC 20

## CLAUSE 49

“Should the vessel be captured or seized or detained or arrested by any authority or by any legal process during the currency of this Charter Party, the payment of hire shall be suspended until the time of her release, ***unless such capture or seizure or detention or arrest is occasioned by any personal act or omission or default of the Charterers or their agents. ...***

# THE RELEVANT ACTORS

**NYK Bulkship  
(Atlantic) NV**  
**(Owner)**

One time charter trip:  
“Intention cement via  
Sweden to Nigeria”

**Cargill International SA**  
**(Charterer)**

Voyage charter-party

**IBG  
Investments Ltd**  
**(cargo purchaser)**

Sale contract for cement

**Transclear SA**  
**(cargo seller)**

Likely sub-charter but  
charter chain below  
Sigma unknown

**Sigma Shipping Ltd**  
**(Sub-charterer)**

# THE *GLOBAL SANTOSH*



## LOWER COURTS

**Arbitration:** Split decision. Majority for **Cargill**.

**High Court (Field J):** IBG's failure to discharge the cargo to pay demurrage were omissions *in the course of performing the discharging operation*. Found for **NYK**.

**Court of Appeal:** NYK's sphere of responsibility vs Cargill's sphere of responsibility. Found for **NYK**.

## LORD SUMPTION (AND LORDS NEUBERGER, MANCE AND TOULSON)

- Where sub-let, the charter party operates as a **contract under which rights are enjoyed and obligations performed vicariously.**
- Were IBG or Transclear vicariously exercising Cargill's rights or obligations under the charter party?

## CARGILL'S RIGHTS AND OBLIGATIONS FOR CARGO HANDLING (CLAUSE 8)

- Right to direct vessel in accordance with Sigma's requirements.
- Obligation to ensure cargo handling done properly.
- Obligation to pay for cargo handling.
- Lord Sumption: "The defective performance of cargo handling operations is one thing. An absence of cargo handling operations is another".

## PRACTICAL CONSEQUENCES

- Likely to impact other clauses defining the scope of responsibility between owners, charterers and their agents.
- Rejects the “sphere of responsibility” approach.
- Reflects the commercial risks involved.



QUESTIONS?