



Case note: *The "Tai Prize"*

*Noble Chartering Inc v Priminds Shipping (HK) Co Ltd
(The "Tai Prize") [2021] EWCA Civ 87*

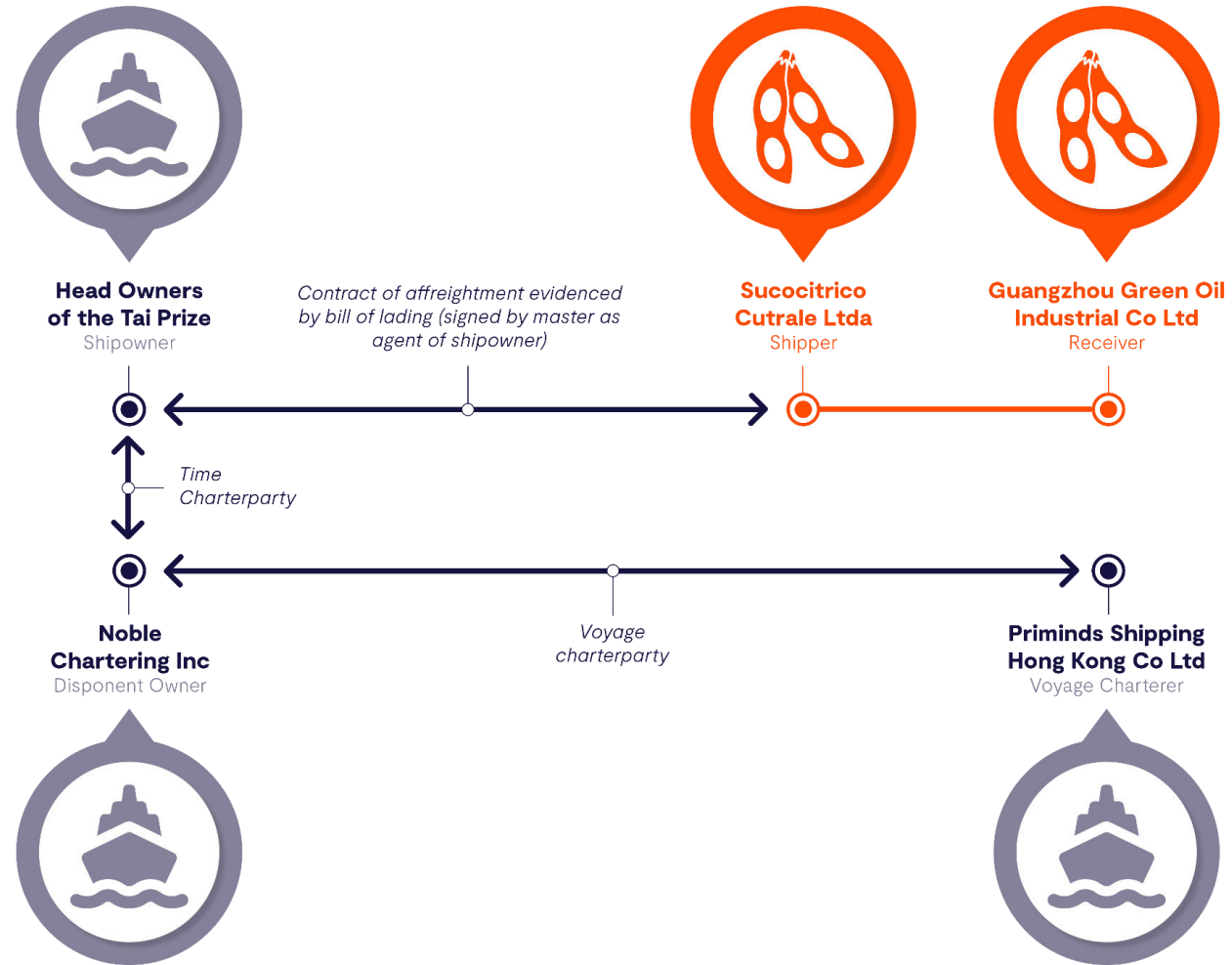
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MLAANZ 2021 NZ branch conference

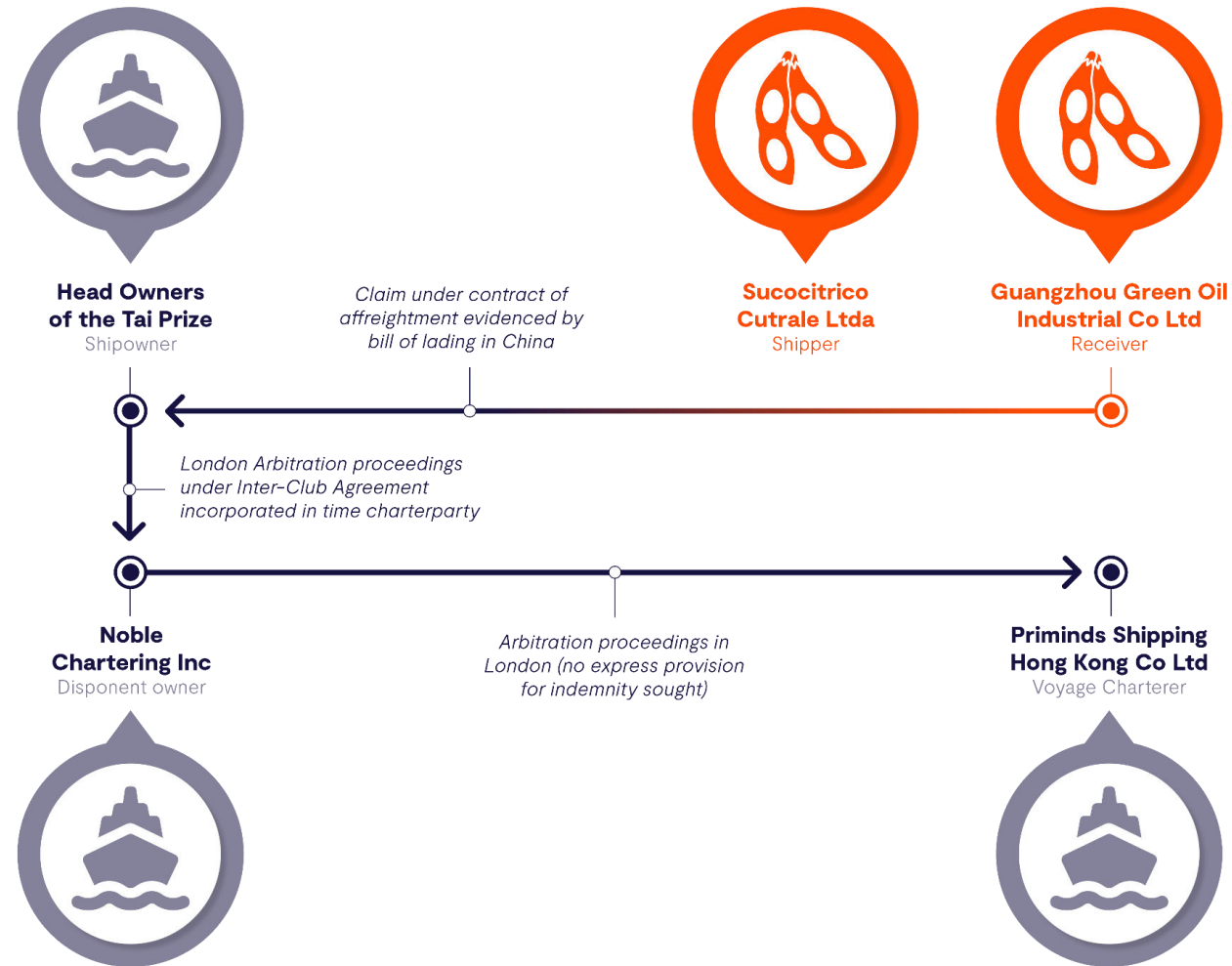
The Tai Prize



Parties



A sequence of claims...



Arbitral finding

- **Cargo not in apparent good order and condition:**
While damage not reasonably visible to master during loading, shippers had means of discovering damaged condition of cargo.
- **Voyage charterers liable under implied warranty:**
draft bill of lading amounted to an implied warranty by the voyage charterers as to accuracy as to apparent good order and condition of the cargo

On appeal

- Charterers' appeal to High Court successful
- Then, on appeal to EWCA, three questions:
 1. Effect of "apparent good order and condition"?
 2. B/L inaccurate as a matter of law?
 3. Charterers obliged to indemnify disponent owners?

Issue #1: Apparent good order and condition

- Refers to external condition apparent on reasonable examination
- “Reasonable examination” = depends on conditions at load port
- What is reasonably apparent to master or other servants of carrier
- Relevant time is time of shipment
- Based on reasonable examination master has (or should have) undertaken

Issue #2: B/L inaccurate as a matter of law?

- Issue is whether cargo was in good order and condition “so far as met the eye” – and it is the master’s eye which counts
- So, no statement in B/L inaccurate as a matter of law

Issue #3: Indemnity?

- Unlikely draft B/L saying something different to signed B/L
- As “everyone in the shipping trade knows” (*Nogar Marin*), it is master’s responsibility
- Not necessary to give charterparty business efficacy
- Inconsistent with textbooks and case law (*Nogar Marin*)
- Inconsistent with Hague Rules

Hague Rules

Art III(3) After receiving the goods into his charge the carrier or the master or the agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
- (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
- (c) ***The apparent order and condition of the goods.***

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

Art III(4) Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c).

Art III(5) The ***shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him,*** and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.”

Possibility of an indemnity?

- CA [57]: It is, perhaps, not impossible that the particular circumstances in which a draft bill of lading is tendered may amount to a representation of some kind by the shippers as to the condition of the cargo. In particular, I would wish to leave open the possibility that, by tendering a draft bill containing a statement that the cargo is in apparent good order and condition, the shippers make an implied representation that they are not actually aware of any hidden defects or damage which, if known to the master, would mean that he could not properly sign the bill as tendered.

Takeaways

- Restatement of orthodox approach to “apparent good order and condition”
- Possibility of indemnity left open in certain circumstances
- Importance of factual findings in arbitration



Questions?

Thank you for your time today

14 May 2021 - Zane Fookes (solicitor, Chapman Tripp)