SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand

"Young MLAANZ" Case Note – Daniel Jackson

Who Pays the Pirates?

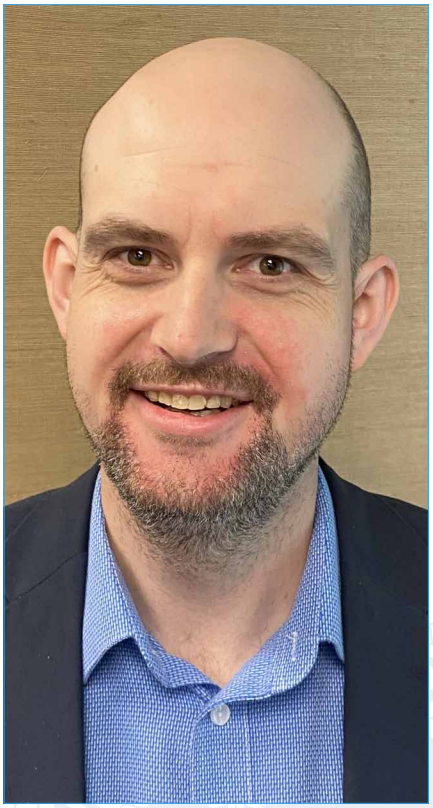
Herculito Maritime Ltd v Gunvor International BV [2024] UKSC 2

This case required the Supreme Court of the United Kingdom to consider who should pay the ransom for freeing a ship that had been seized by Somali pirates.

The MT Polar was captured by pirates on 30 October 2010 in the Gulf of Aden. It was released ten months later after the shipowner paid a random of US$7,700,000.

The Gulf of Aden is a "high risk area" for the purpose of marine insurance. The shipowner had taken out kidnap and ransom insurance before entering it.

The shipowner declared General Average. The ransom formed a major part of what was claimed. The General Average adjustment concluded that the cargo interests should pay US$5,914,560.75.



Oceanlaw solicitor Daniel Jackson

The cargo interests contended that they were not liable for the ransom payment. This claim was upheld by a panel of arbitrators, but was rejected on appeal by the Admiralty Court and the Court of Appeal. The cargo interests appealed to the Supreme Court, which dismissed their appeal.

The case turned on the interpretation of the voyage charter and the bills of lading.

Parties to a contract may agree that particular loss or damage will be covered by insurance, rather than the other party. In a shipping context this is known as an "insurance fund" or "insurance code".

The Supreme Court said that it must be shown that an insurance fund is a necessary consequence of what the parties have agreed. As General Average is a valuable right, a conclusion that the shipowner has given it up also requires a clear agreement to that effect. There was no general principle exempting charterers from liability for General Average or breaches of contract just because they have directly or indirectly provided the funds with which the shipowner insured the ship.

The Court concluded that there was nothing in the charter to indicate that an insurance fund had been agreed to. It distinguished the decision of the House of Lords in *The Evia (No 2)*, saying that the terms of the charter in that case were materially different and that tribunals should be cautious about following it in cases of differently-worded charters.

The Court concluded that the bill of lading did incorporate the parts of the war clauses relating to insurance, as they were relevant to carriage and therefore within the category of clauses considered

to be covered by general words of incorporation in a bill of lading. However, they did not preclude the shipowner from claiming against the cargo owners, particularly given that the cargo owners had not paid for the insurance.

Manipulation of charter clauses incorporated into a bill of lading can be permissible when necessary for them to make sense, but the Court held that these clauses were relevant and sensible without manipulation.

The Court also stated that the shipowner could not have relied on the war risks clause to deviate from the agreed route through the Gulf of Aden in the absence of a change in the nature of the piracy risk or a change in the degree of the risk that was sufficient to make the risk qualitatively different. This statement is highly relevant at the moment in the context of the Houthi attacks on shipping in the Red Sea.

Ed – please note that the full case note will be published in the next edition of the *MLAANZ Journal*.

Daniel Jackson
Solicitor
Oceanlaw New Zealand
p +64 3 548 4136
m +64 27 246 2981
Daniel@oceanlaw.co.nz

March 2024

Bio

Daniel Jackson is a solicitor at Oceanlaw New Zealand, practising in the areas of fisheries, maritime, resource management and Treaty law.

He has an LLB(Hons) and BA from Te Herenga Waka Victoria University of Wellington.

He has published articles in various journals, including the *Australian and New Zealand Maritime Law Journal*.