**JUDGMENT : Mr. Justice Cooke:** Commercial Court. 12th November 2004

**Introduction**

1. This is an application by the Claimant (Lauritzen) for an interim injunction which is to bind the Defendant (the Owners), pursuant to section 44(2)(e) of the Arbitration Act 1996, in circumstances where both parties agree to the jurisdiction of this court to decide the issue, pending the hearing of the arbitration which will decide the dispute between them. The injunction sought is framed in three subparagraphs but the essence of Lauritzen's application is that the Owners should be prevented from acting inconsistently with two time charters for the Vessels Lady Racisce and Lady Korcula, which were concluded by the Owners with Cool Carriers, a predecessor to Lauritzen. Those Charters were each dated 27th March 1998 and provided for a charter period of ten years expiring in 2010.

2. Lauritzen and the Owners appointed arbitrators in September but apart from service of Points of Claim by Lauritzen on 9th November and of a proposed timetable, the arbitration has progressed no further. Lauritzen, which commenced the arbitration, wished to agree directions with the Owners but the Owners plan to apply for a stay of the arbitration pending the investigation of a complaint made by the Owners to the Competition Directorate-General of the European Commission in respect of the arrangements between the parties.

3. Lauritzen as Charterers manage a "pool" of "reefer" vessels of which the two "Lady" Vessels are part. The pool consists of a number of ships owned both by other related Lauritzen companies and external Owners who agreed to charter their ships to Lauritzen for it to manage on a fleet basis. The hire payable by Lauritzen to these Owners is calculated by reference to an elaborate formula depending upon the total revenue of the fleet which is then apportioned to the owners of pool ships in shares which vary according to the characteristics of each vessel, its days of availability for work in each month, its efficiency and its earning capability relative to the other fleet vessels, which is referred to as its "trade factor". As charterer, Lauritzen controls the trading of each pool vessel, negotiating its engagements, planning for its use in the fleet, scheduling its voyages and dealing with voyage operation, freight collection, cost control, accounting and claims handling. In this context it then informs the owners of the vessels in the pool of the hire due on a monthly basis and adjustments are made against an estimated contribution already paid.

4. For present purposes the detailed terms of the Charters do not matter. Lauritzen is entitled to a profit charge representing 6% of what is described as the "vessel return" which is the effective hire paid. In addition Lauritzen is entitled to an annual fee for management. Lauritzen is entitled to sublet the Vessel and is also entitled to charter in other Vessels for pool purposes. The Charters are on Cooltime 95 terms which include clause 50 which reads as follows: -

   *"Claims*

   *In the event that, in breach of the Charter, the Owners withdraw the Vessel from the Scheme or otherwise terminate the Charter before the effluxion of the Charter period, Cool Carriers shall be entitled, at its option, either*

   *(a) to be paid by the Owner a sum equivalent to 6.50% of the market time-charter rate for the Vessel as at the date of such withdrawal or termination for the period from the date of such withdrawal or termination until the effluxion of the Charter period; or*

   *(b) to charter in a substitute Vessel, and to be paid by the Owners the difference between the sums paid by way of hire or freight to the Owner of such substitute Vessel and the sums that would have been payable to the Owners had the Charter subsisted until the effluxion of the Charter period.*

   *The entitlement granted by this Clause shall not prejudice the exercise by Cool Carriers of any rights to damages or otherwise which Cool Carriers may have by reason of such withdrawal or termination.*

   *In the event that, by reason of any breach of any contract connected with the Scheme between Cool Carriers on the one hand and a third party, including the Owner or Disponent Owner of any other Vessel from the time employed in the Scheme, on the other, Cool Carriers has a claim against such third party other than a claim or part thereof relating to losses solely born by Cool Carriers then Cool Carriers will be obliged to pay the Owner such proportion of any sums which are due from such third party by reason of such breach as the payment due to the Owners by way of hire for the calendar month during which the breach occurred bore to the total of such payments to the Owners or Disponent Owners of all the Vessels employed in the Scheme for such calendar month, provided that, in the event that Cool Carriers fails, for whatsoever reason, to recover any such sum from such third party, then their obligation hereunder shall not be enforceable by the Owners and shall no longer arise."*

5. In 1997 a Croatian company called Mediteranska Plovidba (Medplov) owned a number of vessels which were chartered to Lauritzen on Cooltime terms. Medplov had participated in the pool since 1986. Medplov had two new Vessels under construction but was in financial difficulty and then approached Cool Carriers (of which Lauritzen is the successor) to discuss the possibility of cooperation between them to alleviate their financial problems. In consequence a shareholders agreement was entered into between Medplov, the parent company of Cool Carriers and the Liberian company which was incorporated as the owner of the Vessels (the Owners). Cool Carriers' parent company took a minority shareholding in the company which was then part- owned by it and Medplov. Financing was provided from Nedship Bank with a loan agreement which provided in terms for long-term charters as security for the loan, on Cooltime terms. The Vessels' commitment in the pool was thus connected to the financing arrangement. The two Vessels were delivered to Lauritzen under the charter-parties as new buildings, immediately following their construction in Split in 2000.

6. In early 2003, there was a change in the beneficial ownership and control of the Liberian company (the Owners) and thus of the Vessels. The sale and purchase of the Owners resulted in the repayment of the Nedship Bank loan, with new financing obtained elsewhere. The Owners then sought information and documentation from Lauritzen about the operation of the pool and the calculation of the revenue paid to the ship owners in it. Allegations were made of implied terms in the Charters and of partnership and fiduciary duties and of mismanagement of the pool and inadequate reward to the Owners. The exchanges on these subjects led to a reference to Arbitration with Lord Millett as sole arbitrator, with a hearing on 27-29 July 2004, resulting in an Award published on 18th October 2004 (the Duties Arbitration).

7. In addition to claiming that Lauritzen had breached various duties owed to the Owners under the Charters and had thus caused them loss, in a series of letters the Owners also informed Lauritzen of their desire to take the two Lady ships out of the pool, notwithstanding the fact that the Charters are due to run until 2010.

   i) By letter of 18th June 2004 the Owners solicitors wrote to Lauritzen stating that the pool was an illegal capacity cartel which did not qualify for exemption under the available block exemptions or under the provisions of Article 81 of the EC Treaty. The letter stated that it was not the "Owners' intention" to complain to the European Commission about this anti-competitive activity but sought, in accordance with its interpretation of the decision of the Commission in the East African Conference Report, to give notice of its desire to retake control of its Vessels not later than 31st December 2004.

   ii) By a further letter of 16th August 2004, the same solicitors wrote to Lauritzen's solicitors setting out extensive arguments about the position under the European Law of Competition. The letter made the threat that if there was no agreement to allow the Owners to leave the pool compensation free on 15th December 2004, the Owners would need to raise the matter with the European Commission.

   iii) Further exchanges followed between the parties in which Lauritzen maintained that the Charters were entirely lawful and that there was no justification for the Owners' stance.

8. In consequence, on 15th September 2004, Lauritzen commenced arbitration proceedings against the Owners to determine the alleged breaches of the EC Treaty, the validity of the Charters and the claim of the Owners to withdraw the Vessels in December 2004 (the Withdrawal Arbitration). Lauritzen sought an undertaking from the Owners that it would not withdraw the Vessels pending the final determination of these issues in the arbitration. On 29th September 2004 the Owners' solicitors appointed their arbitrator in this reference. On the same day, the Owners refused to give the undertaking sought and maintained that the Charters were contracts for services, that specific performance would not be obtainable and that damages would be an adequate remedy.

9. Lauritzen commenced proceedings in these Courts on 7th October 2004 but before the matter came before me, Lord Millett published his award in the Duties Arbitration, holding that Lauritzen was a fiduciary and owed implied duties to the Owners under the Charters. The claim that there was a partnership had been abandoned by the Owners but their other arguments as to the existence of duties were upheld by the Arbitrator.

10. In addition to the Duties Arbitration and the Withdrawal Arbitration, on 19th October 2004, the Owners made a formal complaint to the European Commission concerning the alleged incompatibility of the pool system and the Charters with Article 81 of the EC Treaty. Portions of that complaint bear quotation: -

    *i)* ***"3.1 Relevant market***

    *Like the other two major specialised reefer operations, NYK Reefers ("NYK") and Seatrade (see below, Section 3.2), the Pool operates on practically all reefer trades but the main ones are the following:*

    - *Banana trades: East Coast of Central America (Argentina/Brazil)/Ecuador to Northern Europe (Hamburg-Antwerp range, including Sheerness, United Kingdom);*
    - *Fruit trades from Chile to Europe and the US;*
    - *Noboa/Sunkist ("NOBSK") trade, which is a trade in three routes: 1) Noboa bananas from Ecuador to the US West coast; 2) off-loading bananas in Port Hueneme (California, US) and loading citrus from Sunkist to transport bananas and citrus to Japan; 3) off-loading bananas/citrus and loading cars for transport back to Peru;*
    - *Fruit trades between South Africa and Europe.*

    *In addition to these trades, ones that are worth mentioning are fruit trades from Brazil to the US and Europe and kiwi/apples from New Zealand to Europe."*

    *ii)* ***"(iii) The issue of vessel capacity***

    *It is argued that market power in the specialised reefer transport market cannot be measured exclusively by reference to the total number of vessels or total tonnage. Use of such a crude measure would ignore the fact that many vessels are either idle or not sufficiently modern or large to complete effectively on many routes. The transport of fruit by specialised reefer vessels is dominated by larger ships with a capacity exceeding 300,000 cu.ft., as customers (mainly the fruit majors) demand vessels of a certain capacity for transporting their significant volumes of cargo. Market power for the transportation of fruit lies in the hands of those owners and/or operators that control the largest number of vessels of the size.*

    *The Pool's fleet, for example, consists mainly of modern (i.e. built between 1990 and 2000) and large vessels (>370,000 cu.ft), which gives the Pool great strength in a market which is currently characterised by a dearth of orders for new vessels (see below, Section 3.2)"*

*iii)* ***"Market share estimates***

*In terms of global market shares in 2002, the Drewry report estimates that the "Big 3" (i.e. LauritzenCool, NYK and Seatrade) controlled 30% of the market capacity, a calculation which includes all vessels of all capacities and all specialisations. However, according to some market sources, LauritzenCool/the Pool's individual market share in 2004 was at least 30% of the active reefer market, and perhaps higher if one were to base the calculation only on the number of large and modern vessels (see above, Section 3.1(a)(iii)).*

*iv) … the fact that the Lady vessels are both modern and have high capacities means that they would be in high demand on the market and could exercise considerable competition vis-à-vis the Pool. LN is of the view that this clearly demonstrates an effect on the market and that the restriction of competition, due to Clause 50 of the Agreement, therefore constitutes a breach of Article 81(1)."*

11. It can be seen that stress is placed in this complaint upon both the size of reefer vessels and their age in the context of marketability and competition and that the Lady Vessels are considered highly desirable, being ships which "could exercise considerable competition vis-à-vis the Pool".

**The orders sought**

12. The injunction sought by Lauritzen takes the following form: -

*"1. Until the Final Award of the arbitrators in the Arbitration herein as to the alleged entitlement of the Defendant to withdraw the Vessels "LADY RACISCE" and "LADY KORCULA" the Defendant, their managers, servants or agents must not: -*

*(a) take any step preventing the performance of the time charters each dated 27th March 1998 between the Claimant and the Defendant in respect of each of the vessels "LADY RACISCE" and "LADY KORCULA"*

*(b) employ the "LADY RACISCE" or the "LADY KORCULA" in a manner inconsistent with the time charters each dated 27th March 1998 between the Claimant and the Defendant in respect of each of the vessels "LADY RACISCE" and "LADY KORCULA"*

*(c) fix the "LADY RACISCE" or the "LADY KORCULA" with any third party for employment in respect of any period prior to 3rd March 2010 in the case of the "LADY RACISCE" and 4th December 2010 in the case of the "LADY KORCULA"."*

13. Regardless of the factual circumstances the Owners maintain that, as a matter of historical legal principle, the Court could not make orders in the form set out in paragraphs (a) and (b) above. The reason for this is that such orders are said to be pregnant with an affirmative obligation to perform the charter-party which is tantamount to specific performance and it is trite law that specific performance of a charter-party is not an available remedy. The same objection is not said to apply to (c) above which is framed as the enforcement of an implied negative covenant which does not equate to an order for specific performance inasmuch as the Owners could, in law, if not in practical commercial reality, consistently with such an order keep the Vessels idle without performance of the Charters or performance of any alternative employment.

*14.* Nonetheless, the Owners maintained that, as the result of Lord Diplock's speech in the ***Scaptrade*** [1983] 2 AC 694 at page 700-701, it was not now possible for a Court to make an order in any of the forms sought because in substance, if not in form, it amounted to a decree of specific performance. The critical part of Lord Diplock's speech reads as follows: - *"To grant an injunction restraining the ship owner from exercising his right of withdrawal of the Vessel from the service of the Charterer, though negative in form, is pregnant with an affirmative order to the ship owner to perform the contract; juristically it is indistinguishable from a decree for specific performance of a contract to render services; and in respect of that category of contracts, even in the event of breach, this is a remedy that English Courts have always disclaimed any jurisdiction to grant."*

15. I was referred to a series of authorities in relation to the history of granting injunctions in relation to charter-parties. The primary authority is that of ***De Mattos v Gibson*** (1859) 4 DeG & J 276 which concerned a voyage charter for the carriage of coal from the River Tyne to Suez. The matter first came before the Court for an interim injunction until the disposal of the matter at a final hearing. The Court of Appeal in Chancery granted the injunction in circumstances where the Vice Chancellor had refused. The Vice Chancellor had held that specific performance of a Charter of this kind was unavailable because it was impossible for the Court to police performance of the obligations which were uncertain in ambit. He referred to ***Lumley v Wagner*** 1 DeGM & G 604 and rejected the argument that the contract, in containing positive obligations to ship coal to Suez involved a negative obligation not to carry coal for others or employ the ship otherwise than in accordance with the charter. He took the view that any other ship could carry the Claimant's coal as well, or probably better and that the whole matter sounded only in damages. On appeal however the Court looked only to see if there was a serious issue to be tried but Knight Bruce LJ took the view that a Court of Equity could act to restrain the commission or continuance of a breach of a contract involving a trading ship and the interim injunction was duly granted. When the matter came before the Lord Chancellor on appeal from the decision of the Vice Chancellor at trial, he likewise held that specific performance was not available because the contract obligations were too uncertain and indefinite to enable the Court to carry it out but, on a proper construction of the Charter which involved the carriage of a full and complete cargo, he held that the affirmative agreement to carry the coals to Suez necessarily implied that the Vessel should not be employed for any other person or purpose. Moreover his judgment included these words: -

*"A person who hires a vessel under a charter-party does so not merely from a wish to have his goods conveyed to a particular place, but upon a careful choice of the vessel itself as best adapted for his purposes. Many considerations may influence him in the selection, and after these have determined him to bind himself and the owner of a particular vessel in a contract for its employment, he would be surprised to be told that all he wanted was to have his goods conveyed to their destination, and that it was immaterial to him in what manner, or by what conveyance this was accomplished. I think that a vessel engaged under a charter-party ought to be regarded as a chattel of a peculiar value to the charterer, and that although a Court of Equity cannot compel a specific performance of the contract which it contains, yet that it will restrain the employment of the vessel in a different manner, whether such employment is expressly or impliedly forbidden, according to the principle so full expressed in the case of* ***Lumley v Wagner****. In such cases the Court repudiates the idea of indirectly compelling performance where it could not directly decree it. It gives all the relief in its power, without looking to the effect which may be ultimately produced by the restraint which it places on the party who is disposed to break his contract."*

16. In ***Lumley v Wagner***, there was an express negative covenant on the part of the opera singer not to use her talents at any other theatre, but the Court in ***De Mattos*** regarded itself following this decision so that although it was not possible to order specific performance of a contract for services of this kind, it was possible to restrain a defendant from providing those services elsewhere. It was accepted that the effect of such an injunction might in practice result in the fulfilment of the contractual obligations which were incapable of giving rise to a decree of specific performance, but there was a disclaimer of doing indirectly what could not be done directly. The Court gave such relief as it could without looking to the effect which may be ultimately produced by the restraint which was placed upon the party which was disposed to break the contract.

17. The Privy Council in ***Lord Strathcona Steamship Company Limited v Dominion Coal Company Limited*** [1926] AC 108 relied on ***De Mattos v Gibson***, not only in the context of enjoining a third party from interfering with a charter but also in granting an injunction which prevented a new owner who bought a ship subject to charter from "*employing or using or allowing to be employed or used the said steamship…in any way inconsistent with or different from the employment and use provided for it in said time charter-party during the existence of said time charter-party.*"

18. In two reported decisions of the Court of Appeal in 1971 and 1975, that Court granted in one case a final and in the other an interim injunction restraining the defendants from employing the vessels concerned in a manner which was inconsistent with the charterparty in question or employing them in any way except in accordance with those terms. In the ***Georgios C*** [1971] 1 Lloyd's Rep. 7, Donaldson J granted an ex parte injunction "restraining the defendants from employing the vessel in a manner which was inconsistent with the charter-party." It appears that the inter partes injunction which followed this was one which restrained the owners "from employing the ***Georgios C*** in any way except in accordance with the terms of the charter-party." The Court of Appeal upheld the Judge's decision. In the ***Oakworth*** [1975] 1 Lloyd's Rep. 581, Donaldson J, on an inter partes basis discharged an ex parte injunction given earlier on the footing that the intermittent voyage charter which provided for 6 shipments fairly evenly spread over two 12 month periods was not such as to give rise to enforcement by injunction. The Court of Appeal disagreed, holding that an injunction could be granted on any charter where it appeared that the other party to the contract was about to break the contract and send the ship on a voyage entirely inconsistent with the charter. In that case it was conceded that damages would be an inadequate remedy because the defendant had no assets and no means except the vessel and its freight earning capacity. The Court held that the defendant should be restrained from "*using or allowing the motor vessel to be used in any way inconsistent with or different from the employment and use provided in the charter-party*".

19. It is against this background that the decision of the House of Lords in the ***Scaptrade*** must be seen. The House of Lords was concerned with the question of giving relief from forfeiture in circumstances where an owner had justifiably withdrawn his vessel in accordance with the terms of the charter. Lord Diplock held that the remedy of relief from forfeiture was unavailable, in part because a Court of Equity would not grant specific performance in respect of it. In this context he equated an injunction restraining the ship owner from exercising his right of withdrawal of the vessel (a contractual right given to him under the charter) with an order for specific performance.

20. An order restraining a party from exercising a contractual right, whether justifiably or not, is, both in form and substance, different from an order which restrains an owner from employing the vessel outside the charter. As the earlier authorities, to which I have referred, make plain, an injunction which restrains the defendant from employing the vessel outside the time charter does not in itself compel performance of the charter even though in practice, if the defendant is restrained from other gainful employment for the vessel, it is likely that performance under the charter will continue.

21. Thus it may be that in accordance with the dictum of Lord Diplock, an injunction in the form set out in paragraph 12(a) might be impermissible but that in paragraph 12(c) would be in accordance with the authorities as, in my judgment, would be an injunction in the form set out in paragraph 12(b). If the formula utilised in the ***Strathcona,*** the ***Georgios C*** and the ***Oakworth*** decisions is followed, there can be no objection in principle to the granting of an injunction.

**The nature of the Charters**

22. The Owners contend that these Charters are different from the time charters, the voyage charter and the intermittent voyage charter to which the earlier authorities related. It is said that the two Charters here, as found by Lord Millett in the Duties Arbitration, involve elements of mutual trust and cooperation arising out of the

pooling arrangement which make them akin to other contracts involving personal services, where negative injunctions will not be granted if their effect in practice, even if not in form, is to compel performance. Reliance is based on the decision of the Court of Appeal in ***Warren v Mendy*** [1989] 1WLR 853 where the Court refused to grant an injunction restraining the breach of a boxer's management contract because the contract was one for the performance of personal services which involved the exercise of some special skill or talent and this psychological, physical or material need to maintain these skills and talent meant that the injunction would have the effect, however framed, of compelling performance. Where a high degree of mutual trust and confidence is involved and trust has been betrayed and confidence lost, the Court will take such matters into account and be less ready to grant an injunction. In those circumstances, negative stipulations of the contract would not be enforced, if to do so would effectively compel performance of positive obligations. In that case relief was sought against a potential new manager who might be the only alternative manager. Nourse LJ said this: -

*"It is well settled that an injunction to restrain a breach of contract for personal services ought not to be granted where its effect will be to decree performance of the contract. Speaking generally, there is no comparable objection to the grant of an injunction restraining the performance of particular services for a third party, because, by not prohibiting the performance of other services, it does not bind the servant to his contract. But a difficulty can arise, usually in the entertainment or sporting worlds, where the services are inseparable from the exercise of some special skill or talent, whose continued display is essential to the psychological and material, and sometimes to the physical, well being of the servant. The difficulty does not reside in any beguilement of the court into looking more tenderly on such who breach their contracts, glamorous though they often are. It is that the human necessity of maintaining the skill or talent may practically bind the servant to the contract, compelling him to perform it. (Page 859)"*

.....

*"This consideration of the authorities has led us to believe that the following general principles are applicable to the grant or refusal of an injunction to enforce performance of the servant's negative obligations in a contract for personal services inseparable from the exercise of some special skill or talent. (We use the expressions "master" and "servant" for ease of reference and not out of any regard for the reality of the relationship in many of these cases.) In such a case the court ought not to enforce the performance of the negative obligations if their enforcement will effectively compel the servant to perform his positive obligations under the contract. Compulsion is a question to be decided on the facts of each case, with a realistic regard for the probable reaction of an injunction on the psychological and material, and sometimes the physical, need of the servant to maintain the skill or talent. The longer the term, for which an injunction is sought, the more readily will compulsion be inferred. Compulsion may be inferred where the injunction is sought not against the servant but against a third party if either the third party is the only other available master or if it is likely that the master will seek relief against anyone who attempts to replace him. An injunction will less readily be granted where there are obligations of mutual trust and confidence, more especially where the servant's trust in the master may have been betrayed or his confidence in him has genuinely gone."* (Page 867).

23. By contrast, Lauritzen relied upon the decision of the Court of Appeal in ***Re Regent International Hotels (UK) Limited v Pageguide Limited*** (unreported) where, after referring to ***De Mattos, Lord Strathcona, Lumley v Wagner*** and ***Evans, Marshall v Bertola*** [1973] 1 WLR 349,the Court was prepared to grant an injunction restraining hotel owners from taking any steps to prevent or hinder hotel managers from performing management functions and the operation of the Dorchester Hotel in accordance with contracts concluded between them. The facts there, in Lauritzen's contention, are similar to those of the current charter-parties with the additional management functions involved in running the pool. Consideration was there given to the effect on the prestige and goodwill of the hotel managers which could not be compensated for by an award of damages.

24. Lord Millett, in his award in the Duties Arbitration, describes the pool as a proprietary pool and described the way in which such a pool operated as follows: -

*"Proprietary pools are owned and administered by an independent party which may but need not own one or more of the participating vessels and which carries on the business of operating the pool. In this case decisions are taken by the operator, which is responsible for marketing and commercially operating the vessels in the pool. It acts as a disponent owner, giving instructions to the masters, appointing port agents and paying for services rendered. It does so as principal, not as agent for the members, and the relations between the operator and the members will normally be governed by a pool agreement or constitution which each member is required to accept on entering the pool. Whatever the nature of the pool, each shipowner remains responsible for obtaining and financing his vessel, for crewing and maintaining it, and for the normal voyage costs, though he may subcontract some of these responsibilities to a specialised ship manager who would be expected to work in close co-operation with the pool operator."* (Award paragraph 4).

*"In my opinion it is beyond argument that the pool operator undertook an obligation to operate the System in the interests of the ship owners (of which it might be one) and not its own. It is true that the relationship was governed by the terms of a charterparty, a contractual document which normally creates an exclusively commercial relationship between owner and hirer. But Cooltime 95 is very different from the ordinary charterparty. While it constitutes the pool operator the disponent owner in return for the payment of hire in the normal way, it does not entitle the hirer to retain for its own benefit the profits generated by employing the vessel. Subject only to the deduction of a fee and profit charge, it undertakes to pay the net profits generated by the employment of the vessels in the pool to the participating owners. The business of operating the pool is the business of the pool operator and not of the ship owners, just as the business of a professional trustee is that of the trustee and not of*

*the beneficiaries; but the profits made by employing the vessels for the carriage of goods, which would normally belong to the charterer, belongs in this instance to the owners. The pool operator was, therefore, responsible for making profits for the collective benefit of the members of the pool and is obliged to act in their interests and not its own. That is of the essence of a fiduciary obligation."*

*49. This conclusion accords with that of Mr. Packard (op. cit. at p. 45) that "Shipping pools are founded on the concept of mutual trust".*

*Participating owners in a proprietary shipping pool do not operate the pool themselves; they place their trust in the pool operator to do it for their benefit. By engaging itself to do so the operator assumes obligations of a fiduciary character.* (Page 345-346)."

25. Despite these passages in the award and the Owners' arguments as to the special nature of the relationship between the Owners and Lauritzen, I am unable to equate arrangements of this kind with those in ***Warren v Mendy***. There is no real doubt in my mind that the ship managers can continue to manage the vessels and give appropriate orders to the officers and crew of the vessels and that the services rendered by Lauritzen are not so "personal" nor involve such a degree of skill and talent in the context of man management as to make a negative injunction unavailable, whether as a matter of principle or of discretion. There is no psychological or physical element of the kind which surfaces in cases which involve the world of entertainment or sport. The position here is much closer to that of the ***Pageguide*** case and, in reality, little different from any of the charter-party cases where injunctions have previously been granted. The fiduciary element where trust and loyalty are involved, centres upon the discretionary decision making of Lauritzen in the employment of the vessel but above all in relation to the accounting for the pool as a whole. That is where issues have arisen between the parties which led to the Duties Arbitration and continuing disputes as to the reward to be paid under the pooling arrangements to the owners. Those matters do not touch upon the workability of the future arrangements in the event of an injunction being granted, even if the Owners decide to continue under the charter-party in circumstances where the injunction does not compel them to do so but merely prevents them from employing the Vessel for other purposes.

26. The evidence is that the Vessels continue to trade and to operate normally in the pool despite the financial disputes between the parties and the allegations of anti-competitiveness. Although the parties, in the course of their dispute have been abusive about one another, there is nothing in the material before me upon which I could conclude that the continuation of the current arrangements is unworkable, even if it that was relevant in the context of any possible injunction to be granted. If an injunction was to be granted until the determination of the current disputes between the parties, that would not present any insuperable problems in the interim period. Lauritzen and the Owners have shown themselves capable of cooperating with each other and working together on a day-to-day basis, despite their differences and such matters as dry-docking have been arranged without apparent difficulty.

27. In short, despite the nature of the pool and its management, and the existence of fiduciary duties found by Lord Millett, I do not find that the relationship between the parties is anything like those which exist in the entertainment or sporting worlds where "the services are so linked to some special skill or talent whose continued display is essential to the psychological, material or physical well-being of the 'servant'". Here there are commercial arrangements made between independent companies involving the employment of no named individuals, where the services are not "personal" in nature, notwithstanding the fiduciary obligations owed by one commercial entity to another.

**Mandatory injunction**

28. The Owners also argued that any order of the kind sought by Lauritzen would amount to a mandatory injunction and that the appropriate criterion which had to be satisfied if the Court was to grant such an injunction was "*a high degree of assurance that the Claimant is right"*. There are a number of answers to this contention.

i) For the reasons I have already given, any order which I might make would not be a mandatory order since it would be framed in accordance with the existing authorities to restrain the Owners from use of the Vessel outside the charter-party contracts into which they freely entered. The orders made would be negative in form and negative in substance and there would be no compulsion, for the reasons given above, to perform the charters – only a financial incentive to do so in the absence of any other legitimate available employment.

ii) As the decision in ***Zockoll Group Ltd v Mercury Communication Ltd*** (1998) FSR 354, upon which the Owners relied, indicates at page 365, semantic arguments over the characterisation of an injunction as "*mandatory"* or *"prohibitory"* are barren. The question of substance is whether the granting of the injunction would carry the higher risk of injustice which is normally associated with the grant of a mandatory injunction. Mandatory injunctions generally carry a higher risk of injustice if granted at the interlocutory stage: they usually go further than the preservation of the status quo by requiring a party to take some new positive step or undo what he has done in the past and an order requiring a party to take positive steps usually causes more waste of time and money if it turns out to have been wrongly granted than an order which merely causes delay by restraining him from doing something which it appears at the trial he was entitled to do. A mandatory order usually gives a party the whole of the relief which he claims in the writ and makes it unlikely that there would be a trial.

iii) Here, notwithstanding ingenious arguments advanced to the contrary, any injunction granted would perpetuate the status quo and would not require some new positive step to be done by anyone. It would also only

perpetuate the current situation until determination of the issues between the parties, whether by the arbitration route or in the context of the EC investigation.

iv) Regardless of whether or not the Court can feel a high degree of assurance that a claimant will establish his right, there are circumstances in which it is appropriate to grant a mandatory injunction at an interlocutory stage, namely where the risk of injustice if the injunction is refused sufficiently outweighs the risk of injustice if it is granted.

29. In my judgment it is clear that any injunction which I might grant in the present case would not be a mandatory injunction, but even if it were to be so categorised, I would still have to consider the comparative risk of injustice to the Claimant or Defendant in the grant or refusal of the orders sought.

**The test for interim injunctions**

30. I need not recite the test as set out in ***American Cyanamid Co v Ethicon Ltd*** [1975] AC 396 as refined in ***Bath and North East Somerset District Council v Mowlem Plc*** [2004] BLR 153 (CA). In paragraph 11 of the latter decision, Mance LJ set out the principles which apply to interlocutory injunctions granted pursuant to Section 37(1) of the Supreme Court Act 1981 and it is to those that I have regard, bearing in mind the issues and authorities to which I have already made reference.

**Serious issue to be tried**

31. It is common ground between the parties that the issues which arise in the Withdrawal Arbitration constitute serious issues to be tried. Lauritzen has not suggested that the Court can have a high degree of assurance that it is right in the arguments it puts forward but it is clear that it has some strong arguments to put in relation to the issues which arise between the parties.

**Damages as an inadequate remedy**

32. In accordance with the principles enunciated by Mance LJ, the Court must consider whether, if the Claimant were to succeed at trial in establishing the rights for which it contends, it would be adequately compensated by an award of damages for the loss sustained as a result of the Defendant continuing to do what was sought to be enjoined between the time of the application and the time of final determination of the issues. If damages would not provide an adequate remedy then the Court has to consider whether, if the Defendant were to succeed at trial in establishing its right to do that which was sought to be enjoined, it would be adequately compensated by the Claimant's undertaking in damages for the loss suffered.

33. It was common ground between the parties that an investigation by the Commission would ordinarily be expected to take between 16 and 20 months although it was not unknown for an investigation to last 3 years.

34. Although there was no evidence before the Court as to the likely time to be taken in the balance of the Duties Arbitration or in the Withdrawal Arbitration, the Court has judicial knowledge of the usual duration of such matters and the likelihood that, absent any stay, a final determination would occur within an equivalent or shorter period than Commission investigations.

35. The Owners maintained that they would apply for a stay of the Withdrawal Arbitration pending the determination by the Commission on their investigation into the anti-competitive nature of the pooling arrangement and the charters. The evidence shows that there is no procedure for staying the Commission inquiry and that if an award is published by arbitrators which is inconsistent with a later Commission decision, that award would be subject to annulment. Without in anyway wishing to pre-empt any decision by any arbitrators about a stay, the Court must therefore work upon the assumption that it is likely that there will be a stay of the Withdrawal Arbitration if the EC Commission decides to investigate, since there is substantial overlap between the matters which fall to be determined in each. The Court must therefore reckon that there will be no resolution of matters between the parties for a period of anything up to about 2 years and possibly a little longer. Whilst that period is longer than would ordinarily be the case in relation to proceedings in this Court, it is not so far removed from it as to give rise to any particular considerations beyond those which ordinarily apply when granting an interim injunction.

36. I turn then to the question whether damages would be an adequate remedy to the Claimant, should it ultimately prove to be right in relation to its contentions about the validity of the charters.

37. Founding its argument upon ***De Mattos,*** Lauritzen contended that there was a presumption in charter cases that damages are not an adequate remedy because a ship is to be treated as having peculiar value to the charterers. There is therefore, in its submission, no need for any detailed factual inquiry. The Lord Chancellor at pages 298 and 299 states that a person who hires a vessel under a charter does so not merely from a wish to have his goods conveyed to a particular place but upon a careful choice of the vessel itself as best adapted for his purposes. In the context of many cargoes today that would not be the case as the liner trades illustrate. There can be no doubt however that in the context of 10 year time charters concluded for pooling purposes, a careful choice of the vessel involved and that a vessel engaged under such a charter-party must be regarded as a chattel of a peculiar value to the charterer. Whilst therefore I do not regard ***De Mattos*** as setting out any principle of law or presumption of law or fact, in my judgment the words used by the Lord Chancellor are apt to apply in the present case. Leaving aside sister ships, there is a certain uniqueness about an individual ship but the importance of its particular characteristics will depend upon the use to which it is intended to be put. In some circumstances it may be of great significance that it has a particular characteristic whilst in others that may be of no significance whatsoever. The particular characteristics of the two Lady Vessels here are their modernity, their speed and their

capacity. They are both refrigerated vessels and container carriers with a maximum speed of 21.6 knots banana laden with Controlled Atmosphere ability. They are effectively about as good as any reefer vessel can get, on the evidence before me, for the trade in which they are employed.

38. In ***The Oakworth***, the Master of the Rolls made reference to the inadequacy of damages. It is clear that he did not assume that damages would not be adequate simply because of the nature of the 2 year intermittent voyage charter-party. The point is reinforced by the decision of the Court of Appeal in ***The Stena Mautica (No 2)*** [1982] 2 Lloyd's Rep 323, where the Court considered the question of adequacy of damages in a case involving a ship sale where property passed and specific performance was available. I do not consider therefore that the inadequacy of damages can be assumed merely by virtue of the fact that ships are involved in charter-party situations but the factors to which I have already drawn attention and the reference to ***De Mattos*** do highlight the particularity which attaches to ships and their employment by charterers.

39. The decisions in ***Regent International*** and ***Bath v Mowlem*** both show that in assessing the inadequacy of damages so as to justify an injunction, the Court can take into account not only the unquantifiability of damages to be suffered and, the difficulty of assessment, but the irrecoverability of damages at law because of a liquidated damages or exception clause or because loss is suffered not by the applicant himself but by others or in some intangible way. The purpose of an interlocutory injunction is protection not just against loss which would sound in damages but against violation of any right where damages would not be adequate compensation. Loss of goodwill, loss of reputation and, in the context of a reefer pool, loss of competitiveness or marketability are all matters which can be taken into account.

40. The Owners state that there are comparable substitute vessels available to replace the two Lady Vessels. They do not maintain that there are vessels of directly comparable specification but that there are other vessels which could carry out the same functions. The Owners thus implicitly recognised that the Lady vessels are superior to any of those which they suggest could be used as substitutes. The individual characteristics of those vessels are different and invariably the vessels are of lesser quality in one way or another. Nonetheless the Owners maintain that they are sufficiently suitable to carry out any trade for which Lauritzen might require them.

41. The Owners also maintain that there would be no loss of net income if the two vessels were not replaced, because although the income derived from the earning capacity of these vessels would be lost, an equivalent cost in Vessel Revenues (i.e. net hires) would be saved and Vessel Revenue is calculated by a formula designed to equate net hire with earning capacity. This is not so however since the net income would inevitably be affected by having two less modern vessels and the complex calculation of net hires depends upon variable factors from month to month, including the off hire days for each vessel, with the result that in some months the effect is that one vessel subsidises another whilst in another month the position is reversed. Moreover the pool operates on the basis of having a large number of available vessels which can be used to fulfil worldwide commitments in circumstances where the fulfilment of long-term Contracts of Affreightment depends upon careful planned scheduling of appropriate vessels with additional backup vessels to cater for contingencies. It is self-evident that a reduction in the fleet capacity may result in some reduction in the ability to service existing clients or to take on new work, in the reputation of the fleet, in the marketability of the pool and the possible loss of market share which is hard to quantify in money terms.

42. It is also suggested by the Owners that Lauritzen would not suffer any damage from refusal of the injunction inasmuch as, when addressing the adequacy of damages if an injunction is not granted, the comparison should be between Lauritzen's position if the injunction is not granted with the position if it is granted, which, for the reasons above, means only an injunction which does not mandate performance of the charter but allows the vessel to remain idle. There is therefore, it is said, nil income to Lauritzen even if the injunction is granted if the Vessel remains idle. This however fails to take account of the evidence that these vessels would be highly competitive with the pool, if there was no injunction, with the result that, as is clearly intended by the Owners, they should earn maximum revenues elsewhere by taking advantage of the current high market rates. With two modern vessels of the speed, capacity and characteristics of these vessels no longer available to Lauritzen but available instead to one of its competitors, Lauritzen's competitive edge may damaged, its fleet diminished, the marketability of that fleet prejudiced and its reputation and credibility injured. Its competitors might gain at its expense, regardless of any question of immediate loss of revenue. Its market share might be affected with all the difficulties involved in establishing the loss caused.

43. The evidence shows that the two Lady Vessels are unique and of particular value to Lauritzen and could not be replaced by vessels of comparable modernity, speed or characteristics. Lauritzen intends to use these vessels, in accordance with its current plans, for the 2005-2008 NOBSK contract which is recognised to be its most important contract involving the use of eight or possibly ten vessels, depending upon the particular routing of the vessels in the trade pattern connected with that contract. Whilst the Owners maintain that other vessels might be found to fulfil the NOBSK contract, there is no doubt that these vessels are well suited to performance under that contract and the loss of these vessels to Lauritzen would require rescheduling and use of other vessels that might not be so well suited, even if, as the Owners maintain, such vessels would be functional. These Lady Vessels can fairly be referred to as "*flag ship vessels*" of the pool. They were built with some input from Lauritzen, although the degree of input is the subject of dispute. They are among the newest reefer vessels in the world with probably only four comparable new builds launched worldwide since these vessels entered service. In the Lauritzen fleet list, only three vessels out of the thirty-six, other than the Lady Vessels were built later than 1993, namely the Pacific

Reefer (1999), the Ivory Girl (1996) and the Mexican Reefer (1994). Lauritzen's marketing claim is that it manages a pool which represents the market's most modern and versatile reefer vessels – a claim which relies to some considerable extent upon the Lady Vessels in the fleet.

44. The Lady Vessels are versatile, having been used in the Atlantic trade, the Pacific trade and other trades also. They have not been used exclusively for the NOBSK trade (Pacific) which has more stringent requirements but their suitability for this trade marks them out.

45. What however appears to me to be of vital importance is the evidence which shows that, if the Lady Vessels were not the subject of an injunction, these ships would be lost to competitors of Lauritzen with a consequent possible loss of market share, loss of competitiveness and loss of reputation. Whilst these matters are difficult to establish, I am satisfied on the evidence that this is the position and, given that this is so, the problems of establishing the actual amount of loss and damage in relation to them are such that damages cannot be seen as an adequate remedy for Lauritzen.

46. In these circumstances, Lauritzen does not have to show that it would be unable to carry out any particular trade, such as the NOBSK trade, without these vessels or that by a reshuffling of its fleet and obtaining other vessels, it could not fulfil all its current requirements. The loss of these two vessels will affect the ability of Lauritzen efficiently to carry out existing contracts but also to gain other business and, when gained, to fulfil it efficiently.

**The NOBSK trade**

47. Lauritzen have maintained that the NOBSK contract which has been secured for 2004-2008 could not be performed without the two Lady Vessels and the Owners have gone to some length in argument to establish that there are other vessels available which could be used in that trade. The NOBSK trade is a regular liner service which combines the requirements of Noboa (banana exporters in Ecuador) with Sunkist (citrus exporters in California). The route involves the transportation of bananas from Ecuador to California where a portion of the bananas are discharged and replaced by citrus fruits, and then onward carriage of the combined cargo to Japan for discharge. There the vessels used in the trade either load cars in Japan and return direct to South America or steam to New Zealand in ballast and load deciduous fruits such as kiwi fruit for carriage to Europe prior to returning to South America. The evidence shows that eight vessels are needed for the NOBSK trade if the direct route from Japan to South America is followed but in the event of the additional Antipodean leg, a further two vessels are needed because of the additional time taken in transit.

48. Mr. Fisher, Lauritzen's solicitor, at paragraph 36 of his witness statement says that Lauritzen has advised him that, from their investigations, there are no other vessels available comparable to the Lady Vessels because they are controlled by other operators on long-term charter-parties of at least 12 months and usually more. Approaching competitors is problematic and Lauritzen's evidence is that neither Star Reefers nor Seatrade are prepared to make their vessels available to Lauritzen as substitutes for the Lady Vessels at anything close to a reasonable market price. It is said that in the present buoyant market, chartering in of comparable vessels would be impossible in practical terms and no substitute comparable vessels are available. The Owners take issue with these points.

49. In Mr. Fisher's third statement he states on instructions that 8 vessels are required to be entirely committed to the NOBSK contract for the forthcoming 4 years, of which 4 as a minimum must have a capacity of no less than 590,000 cu.ft. The recap of the terms agreed between Lauritzen and Kelso/Pacific Fruit Limited, to which the latter agreed on October 11th, 2004, reveals a list of vessels assigned for performance of this contract. This consists of the Dominica and the St. Lucia (644,000 cu.ft.) 4 Wild class vessels (500,000 cu.ft.) 2 Crown class vessels (548,000 cu.ft.) and the 2 Lady vessels (590,000 cu.ft.). In addition, the list included 4 Hansa class vessels (590,000 cu.ft.) but these were chartered out to Fyffes at some point between October 6th and October 17th. Lauritzen also put forward 4 Summer class vessels (590,000 cu.ft.) and 4 "Family" vessels (759,000 cu.ft.). The current position with regard to the latter is that Lauritzen's counterparty has agreed to the use of the Summer vessels for a maximum of one or two occasions in case of emergency provided they are equipped for CA whilst the Family vessels are acceptable but only on the basis that there would be cargoes which did not fill the ships.

50. Lauritzen calculates that, if the Family vessels were used full-time on the trade, including New Zealand, and the additional space not utilised for further cargoes, its loss over the period of the NOBSK contract would be some $13.872 m.

51. It was maintained by the Owners that, in accordance with the decision of the House of Lords in Garden Cottage Foods Limited v Milk Marketing Board [1984] AC 130 and the speech of Lord Diplock at page 140, the appropriate time for assessing the adequacy of damage was the date of the application to the Court for an injunction. In fact Lord Diplock was there referring to the date for assessment of the "status quo" and it is self-evident that the Court must consider the adequacy of damages at the point where it makes its decision. If a party takes it upon itself to take actions which result in damages being an inadequate remedy in respect of its claims against a defendant, that is however a matter which the Court would plainly take into account in the context of exercising its discretion whether or not to grant an injunction.

52. Lauritzen has to continue to manage the pool and to take decisions about the use of vessels in the midst of uncertainty over the future of the Lady vessels which are the subject of dispute. Mr. Fisher's third statement at paragraphs 7 – 13 explains the current position and how the opportunity arose to fix the 4 Hansa vessels to Fyffes. At the point where this occurred Lauritzen remained hopeful that there was sufficient cover with the

remaining vessels which had been suggested to Kelso/Pacific for the NOBSK contract. The decision cannot be characterised as unreasonable in circumstances where it is not clear that the counterparty had by then rejected the Summer class or placed limitations on the use of the Family class vessels.

53. Nonetheless, the Owners maintain that other vessels could be obtained by way of replacement but of the 26 vessels suggested, apart from those specifically mentioned already, the 6 Star reefer vessels, including the Tundra Class vessels, and the 7 Seatrade vessels are, on Lauritzen's evidence now unavailable to it because the competitors are not prepared to charter them to Lauritzen on a long-term basis. The Owner's evidence is that the Star Vessels could be chartered in, the only question being one of price. On Lauritzen's evidence this appears to leave the Ivory Girl which Lauritzen say is unsuitable because her cubic capacity is too small at 566,000 cu.ft.

54. The Owners point out that the Family vessels have been used previously for the NOBSK trade but accept that there has been a reduction in the volumes to be carried. It now transpires that the Summer class vessels are not acceptable to Lauritzen's counterparty save on an emergency basis which is unsurprising since they were built in the mid 1980's and do not qualify as "modern" vessels which are normally considered as those built from 1990 onwards. Whilst the Owners are right in saying that the Ivory Girl, at 566,000 cu.ft. is comparable to the Wild class and Crown class vessels and could be used as one of the 4 ships in the trade which do not require a capacity of 590,000 cu.ft., this does not meet the point that Lauritzen do need 4 vessels of at least that capacity. Despite the attack made on the evidence from Lauritzen which undoubtedly developed over time, I do not consider that this evidence was dishonest nor that it was misleading. It did reflect the changing position reflected in the negotiations with Lauritzen's counterparty for the NOBSK trade and the changing commitments concluded at this time of the year for the coming year.

55. Whilst I am not satisfied that the Star vessels or the Seatrade vessels are unavailable to Lauritzen and I consider that it is likely that these entities would charter vessels to Lauritzen at a price, there remains a real risk that damages would be an inadequate remedy. It is accepted by the Owners that they cannot rely on the availability of the Tundra vessels which are part of the Star fleet and the other 3 relevant Star vessels, the Columbian Star, the Costa Rican Star and the Cote D' Ivorian Star have been recently chartered to Dole. So far as the Seatrade vessels are concerned, it is not suggested that the Polar vessels can be used. Lauritzen say that the 4 E class vessels and the Discovery Bay are not sophisticated enough because of lack of speed, CA, container capacity or size. On this there is a conflict of evidence between the parties which I cannot resolve on an interlocutory basis, but the evidence shows that the E class vessels were not available to Lauritzen as of the 19th October in any event.

56. I consider Lauritzen's evidence to be unsatisfactory in alleging the impossibility of chartering in vessels from their competitors since the evidence shows that Lauritzen were negotiating with Star Reefers at one point and failed to secure charter arrangements because of an inability to agree on price and Mr. Harr did obtain an offer for Star vessels. Furthermore Mr. Harding of Star Reefers apparently told the Owner's solicitors that it was prepared to make tonnage available to Lauritzen if agreement could be reached on price. It is clear also that Lauritzen have a tonnage sharing agreement with Seatrade and cooperate with them on the South African route although, as is pointed out by Lauritzen, this does not mean that they would cooperate with a competitor on the Atlantic or Pacific route.

57. It is suggested by the Owners that there are vessels which are available to Lauritzen within the pool or in the ReeferShip pool which is a joint venture operation between Lauritzen and others or under a tonnage sharing arrangement with NYK. In this context Lauritzen's evidence is that the ReeferShip vessels are not acceptable for the NOBSK trade because they are too slow and many have no CA capability whilst others are old. So far as chartering from NYK is concerned, 6 vessels will be utilised in the NOBSK trade for 2005 but all other potentially suitable NYK vessels are already fixed elsewhere. The pool's own vessels are already fully engaged and it is said that none are available to perform the trade over and above those identified earlier in this judgment.

58. Whilst it is not possible to make a final determination on an interlocutory basis as to the availability of vessels to which Lauritzen has no automatic access, the material put forward by Lauritzen is persuasive and I am left in no doubt of the difficulties that would be involved in finding external vessels to service the NOBSK contract. Whilst I cannot be satisfied that there are no possible arrangements to be made which will enable the NOBSK trade to be fulfilled without the two Lady vessels, and common sense suggests that this is ultimately unlikely to be the case, I do find that the replanning necessary and the difficulties involved in servicing this business and Lauritzen's other business without the two Lady vessels makes these vessels special to Lauritzen so that their removal from the fleet would be something for which damages are unlikely to be an adequate remedy. If alterations could be made in the planning and ships juggled to meet the various commitments, there must be some overall impact upon Lauritzen's fleet, its capacity for business and its loss of competitiveness and market share. These factors drive me to the conclusion that damages would not adequately recompense them for the loss of the two ships.

59. By contrast it is clear to me that damages would be an adequate remedy for the Owners should the injunction be wrongly granted. Lauritzen's parent company has given an undertaking in damages to this Court and there is no doubting the substance of that company and its ability to pay any loss and damage that might flow from the injunction in preventing Owners obtaining the charter rates available in the current rising market over the period until determination of the disputes between the parties. There is no difficulty in adducing expert evidence as to market rates and the loss suffered. If any fine were to be imposed which was caused by reason of this injunction, that also would be easily capable of compensation in damages.

**Balance of convenience**

60. This only arises if there is doubt as to the adequacy of damages to either party or both. Many of the same factors arise in relation to balance of convenience as arise in relation to the adequacy of damages. The Owners contend additionally however that the injunction would in practice result in the continued performance of a contract which may be unlawful as well as performance of a contract requiring mutual trust and confidence where the parties are at loggerheads. Whilst the former is the position, should the Owners succeed in arbitration or in their complaint to the European Commission, this has been of little consequence in the past and the Owners, having complained to the Commission would undoubtedly receive lenient treatment for complaining at the first opportunity (since coming under new ownership) and then being prevented by this Court from employing the ship otherwise than in accordance with the charters. As to the latter point, I have already found that, although there is a degree of mutual trust and confidence required, there is no practical difficulty in the continued performance of the charters and the management of the vessel and that the monetary elements can be resolved through the arbitral process.

61. The ingenious argument that the effect of injunction would change rather than preserve the status quo is both bold and ill founded. The current position is that the vessels are under charter and the serving of a notice stating an intention to withdraw does not make the withdrawal part of the status quo.

62. If Lauritzen are right in their contentions, based on the evidence which they have adduced, that they would lose existing and new business, their competitive edge and suffer a reduction in their market share, then the balance of convenience must clearly favour the granting of an injunction. Those matters are far harder to quantify than the loss which the Owners would suffer from being restrained from employing the vessel otherwise than in accordance with the charters. That loss is readily quantifiable on the basis of expert evidence.

63. Notwithstanding the delay therefore in Lauritzen taking these proceedings, I consider that the balance of convenience clearly favours the granting of an injunction in the terms set out in paragraph 12 (b) and (c).

Steven Berry QC and Simon Bryan (instructed by Fishers) for the Claimant
Andrew Popplewell QC and Karen Troy-Davies (instructed by Watson, Farley & Williams) for the Defendant