JUDGMENT : Mr Justice David Steel : Commercial Court. 21st October 2008

1. This action concerns two cargoes, one of High Speed Diesel ("the Gasoil cargo") and one of Mogas ("the Mogas cargo") carried on the vessel ETERNITY from India and the UAE to South Africa in October 2006.

2. The voyage was performed pursuant to a charterparty dated 19 September 2006 between the Claimants as Charterers and the Defendants as disponent Owners.

3. The charterparty was on an amended BPVoy4 form. It provided as follows:-

"1. CONDITION OF VESSEL

Owners shall, before, at the commencement of, and throughout the voyage carried out hereunder, exercise due diligence to make and maintain the Vessel, her tanks, pumps, valves and pipelines tight, staunch, strong, in good order and condition, in every way fit for the voyage and fit to carry the cargo stated in Sections C and D of Part 1 with the Vessel's machinery, boilers and hull in a fully efficient state, and with a full complement of Master, officers and crew who are fully qualified (as evidenced by internationally recognised certification and, where applicable, endorsements), and are experienced and competent to serve in the capacity for which they are hired. Owners undertake that the vessel shall be operated in accordance with the recommendations set out in the 1996 Edition of ISGOTT, as amended form time to time.

7.1 LAYTIME/DEMURRAGE

Charterers shall be allowed the number of hours stated in Section 1 of PART 1 [84 hours], together with any period of additional laytime arising under Clause 7.3.1, as laytime for loading and discharging and for any other purposes of Charterers in accordance with the provisions of the Charter.

7.4 Charterers shall pay demurrage at the rate stated in Section J of PART 1 per running day [$28,500], and pro rata for part of a running day, for all time that loading and discharging and any other time counting as laytime exceeds laytime under this Clause 7. If, however, demurrage is incurred by reason of the causes specified in Clause 17, the rate of demurrage shall be reduced to one-half of the rate stated in Section J of PART 1 per running day, or pro rata for part of a running day, for demurrage so incurred.

9. DOCUMENTATION

9.1 Owners undertake that for the duration of this Charter the Vessel shall have on board all such valid documentation as may, from time to time, be required to enable the Vessel to enter, carry out all required operations at, and leave, without let or hindrance, all ports to which the Vessel may be directed under the terms this Charter….

10. DRUGS AND ALCOHOL POLICY

10.1 Owners undertake that they have, and shall maintain for the duration of this Charter a policy on Drugs and Alcohol Abuse applicable to the Vessel (the "D & A Policy") that meets or exceeds the standards in the OCIMF Guidelines for the Control of Drugs and Alcohol Onboard Ship 1995 as amended from time to time.

10.2 Owners shall exercise due diligence to ensure that the D & A Policy is understood and complied with on and about the Vessel. An actual impairment, or any test finding of impairment, shall not in and of itself mean that Owners have failed to exercise due diligence…..

12. INERT GAS SYSTEM ("IGS")

12.1 Owners undertake that the Vessel is equipped with a fully functional IGS which is in full working order, and is or is capable of being fully operational on the date hereof and that they shall so maintain the IGS for the duration of the Charter, and that the Master, officers and crew are properly qualified (as evidenced by appropriate certification) and experienced in, the operation of the IGS. Owners further undertake that the Vessel shall arrive at the loading port with her cargo tanks fully inerted and that such tanks shall remain so inerted throughout the voyage and the subsequent discharging of the cargo. Any time lost owing to deficient or improper operation of the IGS shall not count as laytime or, if the vessel is on demurrage, as demurrage.

12.2 The Vessel's IGS shall fully comply with Regulation 62, Chapter 11-2 of the SOLAS Convention 1974 as modified by its protocol of 1978 and any subsequent amendments and Owners undertake that the IGS shall be operated by the Master, officers and crew in accordance with the operational procedures as set out in the IMO publication entitled "Inert Gas Systems" (IMO 860E) as amended from time to time…..

37. UNITED STATES COAST GUARD ("USCG") CERTIFICATE OF FINANCIAL RESPONSIBILITY / UNITED STATES COAST GUARD REGULATIONS

37.1 Owners undertake that the vessel shall carry on board a valid USCG Certificate of Financial Responsibility ("COFR") as required under the US Federal Oil Pollution Act 1990 and that for the duration of this Charter the said COFR shall be maintained in all respects valid for trading to ports in the USA.

37.2 Owners undertake that the Vessel shall for the duration of this Charter either comply with all applicable USCG Regulations or carry on board appropriate waivers from the USCG if in any respect whatsoever the Vessel does not so comply.

38. EXCEPTIONS

38.1 The provisions of Articles III (other than Rule 8) IV, IV bis and VIII of the Schedule to the Carriage of Goods by Sea Act, 1971 of the United Kingdom shall apply to this Charter and shall be deemed to be inserted in extenso herein. This Charter shall be deemed to be a contract for the carriage of goods by sea to which the said Articles apply, and Owners shall be entitled to the protection of the said Articles in respect of any claim made hereunder."

4. The IMO publication referred to in clause 12.2 of the charterparty provides as follows;

*"**3.12 Isolation of cargo tanks from the inert gas deck main** (regulation 62.11)*

3.12.1 For gas-freeing and tank entry some valve or blanking arrangement is always fitted to isolate individual cargo tanks from the inert gas main.

3.12.2 The following factors should be considered in choosing a suitable arrangement:

1 protection against gas leakage or incorrect operation during tank entry;

2 ease and safety of use;

3 facility to use the inert gas main for routine gas-freeing operations;

4 facility to isolate tanks for short periods for the regulation of tank pressures and manual ullaging;

5 protection against structural damage due to cargo pumping and ballasting operations when a cargo tank is inadvertently isolated form the inert gas main.

3.12.3 In no case should the arrangement prevent the proper venting of the tank

5.1 Inerting of tanks

5.1.3 When all tanks have been inerted, they should be kept common with the inert gas main and maintained at a positive pressure in excess of 100 mm water gauge during the rest of the cycle of operation.

6.2 Product contamination by other cargoes

Contamination of a product may affect its odour, acidity or flashpoint specifications, and may occur in several ways: those relevant to ships with an inert gas main (or other gas line) interconnecting all cargo tanks are:

…..

2 Vapour contamination through the inert gas main. This is largely a problem of preventing vapour from low flashpoint cargoes, typically gasolines, contaminating the various high flashpoint cargoes listed in 6.1.1, plus aviation gasolines and most hydrocarbon solvents. This problem can be overcome by:

2.1 removing vapours from low flashpoint cargoes prior to loading; and

2.2 preventing ingress of vapours of low flashpoint cargoes during loading and during the loaded voyage.

When carrying hydrocarbon solvents where quality specifications are stringent and where it is necessary to keep individual tanks positively isolated from the inert gas main after a cargo has been loaded, pressure sensors should be fitted so that the pressure in each such tank can be monitored. When it is necessary to top up the relevant tanks, the inert gas main should first be purged of cargo vapour. "

5. Following the vessel's arrival at her intended discharge port, Mossel Bay, the Charterers contend that (a) the Gasoil cargo was found to be damaged in that its flashpoint was significantly lower than upon loading and (b) the Mogas cargo was found to be damaged in that it had suffered an increase in its density and/or a deterioration in its octane rating and/or had diminished in quantity.

6. Whilst in any event relying on the fact of the damage as sufficient evidence of the Owners' actionable breach, the Charterers contend that the damage was caused by contamination of the Gasoil cargo with vapour phase low boiling point gasoline components from the Mogas cargo which resulted from the Owners' failure adequately to separate the vapour phases of the two cargoes from the common Inert Gas (IG) line. The Charterers submit that this resulted from the unsatisfactory state of the vessel's IG isolation valves and/or control mechanisms and/or from the crew's inexperience and/or incompetence in handling two disparate cargoes.

7. Thus, the Charterers contend that the Owners were in breach of their duties as bailees and/or carriers for reward and/or to deliver the cargoes in the same good order and condition as they were in when shipped and/or in breach of the allegedly strict obligations imposed pursuant to clause 12.1 and/or 12.2 (and the provisions of the IMO Guidelines referred to therein) and/or (in so far as the same are relevant) their obligations under Article III of the Hague-Visby Rules.

8. The Charterers' claim is for approximately 65,000,000 Rand (which at current exchange rates is approximately US$ 8.3 million).

9. The Owners originally pleaded that by reason of section 5.1.3 of the IMO publication (as referred to in clause 12.2) there was a term to be implied into the Charterparty that the Charterers "*would give express instructions if it was necessary to keep any of the tanks isolated from the inert gas main*" and that, since no such instructions were given, they were under no duty to ensure such separation.

10. In the alternative, on the basis that they were under a duty to segregate, the Owners further contended that:

a) The obligations imposed under clause 12 are rendered no more than "*due diligence*" obligations by reason of the partial incorporation of the Hague-Visby Rules.

b) To the extent that the crew failed to close the isolation valves or take other steps to ensure the segregation of the vapour phases, such failure constituted an act, neglect or default of the Master and/or servants of the carrier in the management of the vessel and hence gives rise to a defence under Article IV rule 2(a).

11. The Owners have a counterclaim for demurrage in the sum of US$ 822,755.17. The relevant demurrage provisions are as follows:

"19. PART A. LOADING AND DISCHARGE OF THE CARGO

19.3.2 the Vessel shall discharge cargo at the maximum safe rate and in any event shall, in the case of cargoes of one or more segregated grades/parcels discharged concurrently or consecutively, discharge a full cargo

within twenty-four (24) hours, or pro rata in the case of a part cargo, or shall maintain a minimum discharge pressure of seven (7) bar at the Vessel's manifold throughout the bulk of the discharge provided always that the cargo is capable of being received within such time or at such pressure. If restrictions are imposed by the Terminal during discharge, or if physical attributes of the Terminal restrict the discharge rate or pressure, Owners shall only be relived of the aforesaid obligation for the period and to the extent such restrictions or attributes impede the discharge rate or pressure. The Terminal shall have the right to gauge discharge pressure at the Vessel's manifold.

19.4 Any additional time used as a result of the inability of the Vessel to discharge the full cargo within twenty-four (24) hours, or pro rata in the case of a part cargo, or to maintain a minimum discharge pressure of (7) bar at the Vessel's manifold thorough out the discharge or failure by the Vessel to meet any lesser performance required pursuant to a restriction imposed by the Terminal, shall be for Owners' account and shall not count as laytime or, if the Vessel is on demurrage, as demurrage.

19.7 No claim by Owners in respect of additional time used in the cargo operations carried out under this Clause 19 shall be considered by Charterers unless it is accompanied by the following supporting documentation:

19.7.1 the Vessel's Pumping Log signed by a senior officer of the Vessel and a Terminal representative showing at hourly intervals the pressure maintained at the Vessel's manifold throughout the cargo operations; and

19.7.2 copies of all NOPs issued, or received, by the Master in connection with the cargo operations; and

19.7.3 copies of all other documentation maintained by those on board the Vessel or by the Terminal in connection with the cargo operations.

20. CLAIMS TIME BAR

20.1 Charterers shall be discharged and released from all liability in respect of any claim for demurrage, deviation or detention which Owners may have under this Charter unless a claim in writing has been presented to Charterers, together with all supporting documentation where possible substantiating each and every constituent part of the claim, within ninety (90) days of the completion of discharge of the cargo hereunder."

12. The bulk of this claim for demurrage arose out of the fact that the Vessel was detained for a substantial period of time at Mossel Bay, where she only discharged part of the Gasoil cargo and was then ordered to proceed to Cape Town to discharge the rest of the Gasoil cargo and then the Mogas cargo.

13. The total amount of laytime allowed under the charterparty was 84 hours. The Owners say that, principally as a result of delays experienced at Mossel Bay and Cape Town, the total amount of time that the Vessel spent on laytime and demurrage was 754 hours and 37 minutes and have calculated their claim for demurrage accordingly. A documented demurrage claim for the entire period was sent to the Charterers on 7 December 2006.

14. The Charterers do not accept the Owners' demurrage calculation and in any event deny any liability for demurrage on two grounds. First, the delays experienced resulted from the Owners' actionable default and, therefore, did not count as laytime or time on demurrage and/or the Charterers are entitled to claim as damages a sum equivalent to any liability for demurrage such that the claim fails for circuity of action. Secondly, the demurrage claim submitted by the Owners was deficient and, consequently, any claim for demurrage is now time-barred. In this regard, the documentation which was sent to the Charterers in December in support of the Owners' demurrage claim included, it was contended, copies of the vessel's Cargo Pumping Log signed by the Chief Officer but not by the "*Terminal Representative*".

15. At the CMC heard in June Mr Justice Flaux ordered the following preliminary issues to be tried:

i) Whether a term is to be implied to the effect that the Claimants would give the Defendants express instructions if it was necessary to keep any of the tanks isolated from the inert gas main.

ii) The true nature and extent of the obligations imposed by the Defendants under (a) clause 12.1 and (b) clause 12.2 of the Charterparty and, in particular, whether clause 38 has the effect of rendering the obligations contained therein no more than "due diligence" obligations and, if so, in what precise terms.

iii) Would the failure of the crew to close the IG valves and/or to take other steps to ensure the segregation of the vapour phases of the cargoes from the common IG line constitute an act, neglect or default of the Master and/or servants of the carrier in the management of the vessel within Article IV Rule 2(a) of the Hague/Hague-Visby Rules?

iv) Whether, in the light of the Defendants' failure to provide pumping logs signed by the Terminal representative, any claim for demurrage is time-barred.

Issue 1

16. In the event the first of these preliminary issues was not pursued as it was conceded by the Owners that no such term was to be implied.

Issue 2

17. Are the obligations under clauses 12.1 and 12.2 absolute or by virtue of clause 38 subject only to the requirements of due diligence?

18. The Charterers submitted that the obligation was an absolute one. The major planks of their case can be summarised as follows:

i) Clause 12 involves an "undertaking" that the vessel was equipped with a fully functional IGS which "shall" be so maintained for the duration of the charter and which "shall" be operated in accord with IMO procedures. Those were words only consistent with a strict and absolute obligation which, as such, conflicted with the "due diligence" provisions incorporated by clause 38.

ii) This contrast is reflected elsewhere in the charterparty. For instance Clause 1 merely requires the exercise of "due diligence" in regard to seaworthiness but at the same time imposes an "undertaking" as regards operation in accord with the ISGOTT Safety Guide including the use of inert gas systems. Other express commitments to "undertake" matters included valid USCG documentation (clause 37) and a specified drugs and alcohol policy (clause 10).

iii) Since the vessel's description included an IGS (which was in any event a SOLAS requirement), the provisions of Clause 12 on the Owner's case would add nothing.

iv) Further, the Charterers' approach was consistent with the principle that clause 12 which has specific application should take precedence over clause 38 which is of general application and, further, which does not express any paramountcy.

19. The Owner's case can be summarised equally succinctly:

i) An "undertaking" is no more than a promise which may or may not import an absolute obligation.

ii) Indeed the "undertaking" in clause 1 to the effect that operations would be in accord with ISGOTT in fact sets a standard no higher than that of due diligence: ISGOTT simply contains advice and recommendations for the safe carriage of petroleum products.

iii) The impact of Clause 12 was to guarantee the existence of an IGS as required for vessels over 20,000 dwt but there is no necessary conflict with either clause 1 or clause 38 in regard to the standard of care required in maintaining and operating the IGS. Accordingly there is no need for recourse to the principle that where there is a conflict between different provisions in a charterparty the more specific provision will prevail.

iv) Whilst clause 38 is entitled "exceptions" and contains no express reference to it being a clause paramount, it provides that the provisions of Article III and IV are to be deemed to be inserted "in extenso" and further to the effect that the Owners are entitled to the protection of the Articles in respect "any claim".

20. In my judgment the Owners' submissions are to be preferred. I add the following further considerations:

a) Whilst it is correct that in the face of a conflict between provisions the more specific and tailored provision should prevail, such only arises if the conflict is clear and direct. In ***Marifortuna Naviera SA v. Government of Ceylon [1970] 1 Lloyd's Rep 247***, the relevant clause imposed a specific obligation to meet certain expenses, with an exception for force majeure. It followed that there was a direct conflict since the clause would have been largely redundant if the paramount clause was treated as applicable.

b) Likewise in ***Sabah Flour and Feedmills SDN v. Comfez [1988] 2 Lloyd's Rep 18***, there was a direct conflict between the time limit specified under Art III r. 6 and that specified under clause 34.

c) Of more assistance for present purposes is the decision in ***The Leonidas [2001] 1 Lloyd's Rep. 533*** which concerned a speed warranty in a charter with a clause paramount. Langley J recorded the requirement that a court should seek to reconcile any potentially conflicting clause together:

"In my judgment the arbitrators were right both to address first the question whether the two clauses could and should be construed so as not to conflict and to conclude that they could. They can sensibly and commercially be read together so that the speed warranty is to apply as such but subject to the owners establishing, if it be material, that the cause of the vessel failing to reach 11 knots was one or more of the statutory exceptions. If it were otherwise the clause paramount would be emasculated in a manner which is contrary to its express terms. I do not think the wording permits any reliance on s. 5 of the United States Act as it says in terms that the owner is not to be deemed to be surrendering any of its rights or immunities under the Act. In any event cl. 5 is of no relevance if the speed warranty and the clause paramount are not in conflict."

d) There is in my judgment a direct analogy with the terms of NYPE standard form. This imposes an apparently unqualified and absolute obligation to deliver the vessel "in every way fitted for the service" and to "keep the vessel in a thoroughly efficient state". Yet it is well established that the effect of clause 24 of the standard form which contains a clause paramount is not to establish any conflict but replaces those obligations with an undertaking that due diligence will be exercised to make the vessel seaworthy before and at the beginning of each voyage: ***The Saxon Star [1959] AC 133***; also see ***The Satya Kailash [1984] 1 Lloyd's Rep 588***.

21. For all those reasons I accept the Owners' construction as regards Issue 2.

Issue 3

22. I turn now to the second live issue namely whether any failure to close the isolation valves of the IGS or any failure to maintain the valves in good condition are to be characterised as a failure in the management of the vessel.

23. Of course, the purpose of an IGS taken as a whole might be regarded as the protection of the vessel. Indeed such a system comes into its own when the vessel concerned is in ballast. But protection against tank explosion by introducing inert gas is one thing whilst the avoidance of contamination of different parcels through the inert gas main is quite another.

24. In ***The Iron Gippsland [1994] 1 Lloyd's Rep. 335*** it was held by Carruthers J in the Supreme Court of New South Wales in a contamination claim of like kind to the present that the defence under Article IV r. 2(a) of the Hague-Visby Rules was not available:

"It is true that inert gas systems were installed on tankers fundamentally for the protection of the vessel. However, the purpose of the inert gas system is primarily to manage the cargo, not only for the protection of the cargo but for the ultimate protection of the vessel from adverse consequences associated with that cargo. Thus, essentially the inert gas system is concerned with the management of the cargo and, in my view, damage occasioned to cargo by mismanagement of the inert gas system cannot be categorized as neglect or fault in the management of the ship.

Consistently with the principles enunciated in ***The Tenos,*** *I must hold that the subject damage was not occasioned by an act of neglect or default in the management of the ship but rather in the management of the cargo."*

25. Whether or not it is appropriate to start from the proposition that "the purpose of the inert gas system was primarily to manage the cargo", I have no doubt that failure to operate (or maintain) properly those parts of the IGS available for the purpose of avoiding contamination of cargo "cannot be categorised as neglect or default in the management of the ship."

26. The separation valves have two purposes: one purpose being the avoidance of contamination: the other to facilitate gas freeing: see ***IMO Publication on IGS supra.*** Dual purpose fittings can give rise to borderline cases. In ***Gosse Millerd v Canadian Government Merchant Marine (1927) 29 Ll. L. Rep. 190*** the principle was set out as follows: "*If the cause of the damage is solely, or even primarily, a neglect to take reasonable care of the cargo, the ship is liable, but if the cause of the damage is a neglect to take reasonable care of the ship, or some part of it, as distinct from the cargo, the ship is relieved from liability; but for if the negligence is not negligence towards the ship, but only negligent failure to use the apparatus of the ship for the protection of the cargo, the ship is not so relieved.*"

27. Against that background it is my judgment that the cause of the damage in the present case was indeed primarily a failure to care for the cargo. The Claimants placed some reliance on the decision in ***The Hector [1955] 1 Lloyd's Rep. 218*** where seawater entered cargo holds when tarpaulins came adrift from the hatches due to the failure of the crew to lash them or fit locking bars. The carrier was held to be protected under Article IV. r 2 on the basis that the whole of the appliances which go to make a properly seaworthy hatch are to be regarded as part of the mechanism for securing the safety of the ship.

28. This decision has been subjected to justifiable academic criticism. But in any event it is no direct assistance. Here there was a failure to use or maintain the equipment the primary purpose of which at the relevant time was the avoidance of damage to cargo. The vessel was not engaged in gas freeing at any material time so that the distinction that is sought to be drawn by the Defendants that the want of care only indirectly affected the cargo does not arise.

29. For all those reasons I accept the Charterers' submission on issue 3

Issue 4

30. I turn now to the demurrage claim. As noted, the recap telex provided for a laytime period of 84 hours with a demurrage rate of $28,500 per day. The laytime calculation tendered by the Owners was based on the following chronology:

Laytime commenced	28 September 2006	06.01
Hoses connected	30 September 200	616.12
Loading Sikka		
Laytime ceased	1 October 2006	12.24
Laytime commenced	4 October 2006	20.48
Loading Jebel Ali		
Laytime ceased	5 October 2006	11.50
Laytime commenced	22 October 2006	08.48
Discharging Mossel Bay		
Hoses disconnected	25 October 2006	18.16
At anchor		
Laytime ceased	10 November 2006	21.54
Laytime commenced	12 November 2006	4.45
Discharging Cape Town		
Laytime ceased	20 November 2006	9.00

31. This timetable accordingly gave rise to a demurrage claim of $796,357.

31. It was common ground that following the delay in discharge whilst the vessel lay at anchor between 25 October and 10 November discharge resumed not to a shore terminal but "*ship to ship*" (STS). It was common ground that for the purposes of the preliminary issue it was to be assumed that the Owners failed to furnish a pumping log signed by "*a terminal representative*" either in respect of the period of discharge at Mossel Bay or thereafter. The Charterers accordingly contended that the Owners could not claim "*additional time*" under clause 19.7 and in any event the entire claim was barred by reason of the want of appropriate supporting documentation under Clause 20.

32. The Owners by amendment accepted that part of their claim was so barred by reason of the failure to serve appropriately signed pumping logs in regard to the use of a terminal for the discharge at Mossel Bay. But otherwise it was submitted the "additional time" at anchor and at Cape Town was not used for "cargo operations carried out under this clause 19" and further that the absence of supporting documentation for the Mossel Bay discharge did not bar the claim for the balance.

33. In short it was contended by the Owners that the provision of the specified documentation had no application to STS discharge. It was only in the context of discharge to a *"terminal"*, it was submitted, that the warranty that the cargo was *"capable of being received within such time or at such pressure"* was furnished. (Although again there were no admissions as to the capabilities of the receiving ship during the STS operation.) The Charterers responded by contending that "*additional time*" meant any additional time used in the cargo operations.

34. In my judgment the Owners are correct. The whole thrust of clause 19 is directed at operations involving a terminal by which is meant a shore installation with an associated representative. As a matter of language it is wholly inappropriate to describe an STS operation as involving a terminal.

35. This still leaves the further point made by Charterers that, in consequence of the presentation of the demurrage claim in composite form, the absence of the signed pumping log for the Mossel Bay discharge furnished a defence to the entire claim by virtue of Clause 20.

36. For this latter submission, the Claimants relied on ***The Sabrewing* [2008] 1 Lloyd's Rep. 286** where a similar point arose and where the court concluded:

"In my judgment, however, the particular wording of clause 23 and the fact that, in the present case, only one composite claim for demurrage was made by owners, means that Mr Kimmins' argument has to be rejected, despite its initial superficial attraction. Clause 23 required owners to present ***"a claim in writing"*** *(my emphasis) within 90 days of discharge of cargo,* ***"together with supporting documentation substantiating each and every constituent part of the claim"*** *(my emphasis). Unless such a claim, with supporting documentation, is presented within the relevant time period, charterers are released* ***"from all liability in respect of any claim for demurrage",*** *ie not merely that particular constituent part of the claim that is not supported by relevant documentation. Accordingly, if, as here, only one composite claim for demurrage was made, owners are time-barred in respect of the entirety of the claim, notwithstanding that the absence of documents only relates to one constituent part of the claim. It is clear from the particulars of claim, the invoice and the supporting documents, that only one single claim for demurrage was made in the present case."*

37. I confess that I find the proposition that a claim put in on time but in respect of part of which the accompanying documents are non contractual gives rise to a bar to the entire claim is a commercially surprising construction. I am not persuaded that the clause requires the Owners to submit only one composite claim (even though they would usually do so and in fact did so). In my judgment it was open to the Owners to present a number of separate claims if so advised and in those circumstances the lack of documentation for one or more parts of the claim would not constitute a bar to the balance.

38. In my judgment it cannot have been the intention of the parties that the choice to present a composite claim would give rise to a different outcome. Even if a composite claim was required, I am not persuaded that on its proper construction the effect of clause 20 was such that the failure to provide all "supporting documentation" (whether needed by reason of the requirements of clause 19 or otherwise) for one constituent part of the claim discharged liability for the entire demurrage claim

39. For all those reasons I accept the Owners' submission on Issue 4.

Nigel Jacobs Q.C. & Robert Thomas (instructed by Waltons & Morse) for the Claimant
Gavin Kealey Q.C. & N.G. Casey (instructed by MFB Solicitors) for the Defendant