JUDGMENT : Mr Justice Aikens: Commercial Court. 29th September 2008

The Claim

1. The claimant ("Statoil"), a Norwegian company trading in oil and gas, claims the sum of US$435,833.12 from the defendant, ("LD"), which is a United States company within the very well known Louis Dreyfus group of companies that trades in a large range of commodities. Statoil says that this sum is the balance of demurrage due to it under the terms of a contract for the sale of a cargo of so-called liquid propane gas ("LPG"), made in August/September 2006 between Statoil as sellers and LD as buyers ("the contract").

2. There was a short trial which lasted 1 ½ days on Tuesday and Wednesday, 23 and 24 September 2008. It was most efficiently conducted by Miss Hopkins, for Statoil, and Mr Holmes for LD.

3. I heard evidence from 4 witnesses. Statoil called, first, Mr Nils Breivik, an LPG trader employed by Statoil, who negotiated the terms of the contract in August and September 2006. Secondly, Statoil called Mr Ole Rostrup, who was the senior demurrage analyst of Statoil in the period November 2006 to April 2007. He was involved in calculating Statoil's claim for demurrage against LD under the contract and the discussions which took place with his opposite number at LD, Mr Ray Hodge, in that period.

4. LD called, first, Mr Patrick Gorgue, its LPG trader who negotiated the contract with Mr Breivik, through the medium of Mr Steffen Andersen, a broker with Lorentzen & Stemoco ("L&S"), who broked both the LPG contract and also the charterparty for the carrying vessel. LD also called Mr Ray Hodge, the manager of LD's vessels logistics department, who negotiated the demurrage issues with Mr Rostrup in the period November 2006 to April 2007.

5. The evidence of Mr Breivik and Mr Gorgue turned out to be of only peripheral importance to one of the four issues in the case and did not involve the other issues at all. Both were as helpful as they could be in the circumstances. Mr Rostrup and Mr Hodge's evidence was central to two of the issues in the case. I will have to make some findings on their evidence in the course of this judgment.

6. The dispute between the parties concerns four issues, which I can summarise briefly now, in the hope that this will be helpful as I go through the facts. The first issue is: what were the terms of the contract for the sale of the LPG? In particular, did the contract contain a term that demurrage claims had to be submitted by the sellers to the buyers within 90 days of the completion of discharge of the vessel and, further, that any claim made after that time bar would not be valid? LD says that it did; Statoil says that it did not.

7. The second issue concerns an agreement made between Mr Rostrup and Mr Hodge as to the amount of demurrage due from LD to Statoil. That agreement was made on about 26 January 2007, for a demurrage sum of US$103,527.84. For reasons which will become apparent in a moment, I will call this the "first settlement agreement" – without pre-judging the issues. It is accepted by LD that Mr Rostrup of Statoil had made an error in calculating this sum, because he had thought that the vessel had completed discharging on 13 October 2006, when in fact she had not completed discharging until 24 October 2006. The correct calculation for demurrage (which is agreed) would have been, in fact, some US$ 539,360.96. Mr Hodge accepted, in cross examination, that he realised that Mr Rostrup had made this mistake and he decided to keep quiet about it. The second issue, therefore, is whether the first settlement agreement is not binding on Statoil, either because it was void for unilateral mistake, or it is voidable (in equity) for unilateral mistake and Statoil have avoided it.

8. The third issue arises out of a telephone conversation that Mr Rostrup and Mr Hodge had on 19 March 2007. Mr Rostrup's evidence was that in the course of that conversation Mr Hodge agreed, on behalf of LD, to a second settlement agreement in relation to demurrage. Mr Rostrup says that Mr Hodge agreed to pay demurrage in the sum of US$ 539,360.96, less the sum already paid. Mr Hodge denies that he agreed to this on the telephone.

9. The fourth issue arises if there was a demurrage time bar provision in the contract, the first settlement agreement is not binding on Statoil and the second settlement agreement was not, in fact, made. In those circumstances, the question is: can Statoil now advance its demurrage claim in the full sum (which is agreed as a figure) of US$ 539,360.96.

An outline of the facts

10. On 28 July 2006, Statoil, as Charterers, concluded a charterparty for the LPG carrier ***"Harriette N"*** ("the vessel") with BW Gas, Oslo as agents for her owners. The charter was for one voyage from Norway to several possible ranges of discharge ports, to be nominated in due course. These ranges included the West Coast Mexico range. The cargo was to be 32,000 tons of LPG (5% more or less in owners' option). The charter provided for demurrage to be paid at the rate of US32,000 per day pro rata. The laycan range was 9 – 11 August 2006.

11. The negotiations for the contract between Statoil and LD were conducted through the medium of Mr Andersen, the broker at L&S. The two traders at Statoil and LD respectively did not email one another directly, nor did they talk to one another on the telephone. All material communications were made by each trader emailing Mr Andersen, who passed the information on to the other side. There was one relevant telephone call between Mr Breivik and Mr Andersen, which I will refer to below.

12. At 1822 hrs (European time) on 2 August 2006, Mr Andersen of L&S sent an email to Mr Gorgue giving him a *"firm indication*" (ie. an offer) from Statoil for the sale of 32,000 tons of LPG (plus or minus 5% at seller's option) on terms cif Topolobampo, which is a port on the West coast of Mexico. The terms offered included laytime of 30

days (Sundays and holidays included) and a demurrage rate of $40,000 a day or pro rata. That last proposal would mean, of course, that if the laytime were exceeded for the loading and discharging of the cargo, then the buyers would be liable to pay demurrage to the sellers at the agreed rate. The object of such a provision in a cif contract is to ensure that the first seller in a chain of such contracts, who will frequently be the charterer of the vessel, will be able to cover its liability to the shipowner for any demurrage incurred under the charterparty for the vessel.

13. The firm offer also included terms as to the price of the LPG and the delivery date. LD was asked to give a prompt reply.

14. At 1849 that day Mr Andersen sent an email to Mr Breivik at Statoil, forwarding LD's firm counter indication, subject to reconfirmation. The only difference at this stage was in the price. That was followed by another firm indication from Statoil, relayed by Mr Andersen to LD on 3 August at 0907 hours. Again, at this stage, the bargaining concerned the price.

15. Then at 1646 on 3 August, Mr Gorgue sent an email to L&S, the brokers, with a counter from LD, setting out full terms of a proposed contract. Under the heading "*Demurrage*" was the following:

"*As per Charter Party*

Any Demurrage claim shall be submitted by seller within 90 days after completion of discharge. any claim made after this time bar shall not be valid. buyer and seller shall agree to the demurrage amount by 90 days from buyer's receipt of seller's claim. thereafter, if any dispute outstanding, buyer shall pay all undisputed amounts promptly."

16. Towards the end of the email it states that the Shell International Trading and Shipping Company Ltd General Terms and conditions of sale for Petroleum products and feedstocks will govern the transaction, except as specifically set out above and where not in conflict with specific terms agreed.

17. At the end of the terms the email stated, *"Sellers contract administration will issue a full sales contract upon fixing"*. In other words, if the contract was agreed, it would be Statoil's contract administration department that would be responsible for finalising and issuing the full contract terms. It is usual in this trade for the seller's contract department to produce the agreed contract wording in full.

18. At 1733 hours on 3 August, L&S sent to Mr Gorgue at LD an email which started: "*thanks your counter to which Statoil accept/except:*". The email then set out a number of terms, which were under the same headings that Mr Gorgue had used in his previous email. Not all the headings were set out but only those where Statoil wished to make some counter offer to the terms proposed by LD.

19. Under the heading *"Demurrage:"* were the letters and numbers *"USD 40,000 PDPR"*. There was no reference to the remainder of the wording that had been under the heading "*Demurrage*" in the email sent by Mr Gorgue.

20. At the end of the email it stated that the Statoil General Terms and Conditions were to apply.

21. At 1752 hours on 3 August, Mr Gorgue emailed Mr Andersen of L&S in the following terms: *"we can accept/except"* and then a number of issues are dealt with. These do not include anything on demurrage. Under the heading *"other terms"* the email asks that the Statoil Standard Terms and conditions be sent for LD's review. This offer was stated to be open for 15 minutes.

22. At 1815 hours on 3 August, L&S sent an email to Mr Gorgue at LD, which stated: *"Statoil accept/except with validity until 18.30 Oslo today…"*. Under the heading "*other terms*" it states that Statoil will send its standard terms and conditions to LD. The email ends "*Subject other terms mutually agreed*". This last remark prompts a riposte from Mr Gorgue to L&S at 1821 hours, in which Mr Gorgue asks "*other terms: What other terms? We have sent full contract…please advise*".

23. At 1942 hours Mr Andersen sent simultaneous and identical emails (apart from the names of the addressees) to both Mr Breivik of Statoil and Mr Gorgue of LD. The emails stated: "*Tks a lot! Believe everything is according to what has been agreed. Please let me know if there is anything further to the recap. Nils/Patrick will go through it tonight*".

24. Attached to these emails was a *"recap"* of the full terms of the contract which Mr Andersen believed had been agreed between the parties. Under the heading "*Demurrage*" are the following terms:

"USD 40.000,-PDPR

Any Demurrage claim shall be submitted by seller within 90 days after completion of discharge. any claim made after this time bar shall not be valid. buyer and seller shall agree to the demurrage amount by 90 days from buyer's receipt of seller's claim. thereafter, if any dispute outstanding, buyer shall pay all undisputed amounts promptly"

25. On 4 August at 1456 hours, Mr Andersen of L&S sent to Mr Gorgue an email with a link at which he could find Statoil's general terms and conditions. The email also stated: "*Nils (ie. Mr Breivik) is reverting on the recap shortly. Will call you as soon as I have his reply*".

26. In fact, Mr Breivik decided that he wished to use wording of a recent contract concluded between Statoil and the London office or company in the LD group as the template for the contract terms in this contract with LD. Mr Breivik said in evidence that he talked to Mr Andersen on the telephone about this. I accept that evidence. Mr Breivik also said that he heard Mr Andersen talking to Mr Gorgue about this on the telephone at the same time as

he was making the telephone call to Mr Andersen and that Mr Gorgue agreed to that proposal. Mr Gorgue stated, in his evidence, that he had no such conversation with Mr A on the telephone.

27. Having heard the witnesses, I accept the evidence of Mr Gorgue on this point. There is nothing in the documents to suggest that there was any telephone conversation between Mr Andersen and Mr Gorgue at this stage on this topic. Mr Gorgue was, I am satisfied, an honest witness. I think Mr Breivik must have misheard or misunderstood what was going on in the office of L&S at the time.

28. However, that is of little importance, because at 1652 hours on 4 August, Mr Andersen sent an email to Mr Gorgue stating that Mr Breivik was proposing

"Patrick / Steffen

Nils is proposing to use the same contract between a deal recently concluded with your London office and Statoil. Further to the recap of yesterday he would like the below wording in the price clause, which is only formalities.

If this is ok with you they will issue the contract accordingly on Monday. I am unfortunately not in a position to comment on this other contract, as we are not subject to it.

Please let me know.

……."

29. In evidence Mr Breivik explained that this other contract was a contract for the sale of 20,500 MTs of commercial propane which was carried on the MT *Berge Odin,* in which the contract was subject to the general terms and conditions of Statoil. Mr Breivik had decided that the best way to deal with the *Harriette N* contract was to use the *Berge Odin* contract as a template for the present contract.

30. There was no response to this email from Mr Gorgue. Nor did Statoil issue the contract on Monday, 7th August 2006. In fact, although Mr Breivik created a deal sheet on Statoil's computer system on 7 August, he did not ask Statoil's contracts department to prepare the contract terms until 8 August 2006. The contract terms were prepared by that department on about 11 August 2006, but for some reason, which does not now matter, the terms were not sent to LD. The contract provision for demurrage in the contract terms prepared by the Statoil contracts department stated simply "*USD 40000 per calendar day pro rata*". The contract terms incorporate the general terms and conditions of Statoil.

31. Mr Breivik then went away on holiday during the latter half of August 2006.

32. On 11 August the vessel completed loading her cargo in Norway and bills of lading were issued. She then sailed for the nominated discharge port, ie. the West Mexico port of Topolobambo. She arrived there and tendered Notice of Readiness at 1830 hours on 5 September 2006.

33. On 19 September, Ms Elina Zak, who was then employed in LD's contracts department, telephoned Mr Breivik. She said that she had not received the full contract wording from Statoil, who, as the sellers, were supposed to draw up the contract documentation containing the terms that had been agreed between the parties. Ms Zak said that if Statoil did not produce the documentation by the following day, ie. 20 September, she would issue LD's own contract to cover the transaction. Ms Zak sent a fax to confirm this conversation. Mr Breivik said in evidence that he did not see it at the time. As the fax is addressed to both Mr Breivik and also Linda Gabarro, it is probable that Mr Breivik's associate saw it instead.

34. On 20 September Statoil sent an email to LD with the contract wording. It contained precisely the same wording as had been prepared by Statoil's contract department but not sent on 11 August 2006.

35. On 25 September, Ms Zak sent a fax to Linda Gabarro in the Statoil contracts department acknowledging receipt of the email of 20 September. The fax suggested a number of changes to the contract wording. In particular, Ms Zak wished to incorporate the Shell general terms and conditions, rather than those of Statoil. However, there was no suggestion that a demurrage time bar provision should be added. At the end of the fax it states: "*please confirm your acceptance or revert with your comments, if any*".

36. In fact, as the parties agree, there was no further communication on the topic of the contract terms until the dispute about the contract terms arose between the parties in April 2007.

37. Meanwhile the vessel had berthed at Topolobambo on 23 September. She discharged one parcel of the cargo between 23 – 25 September then left the berth for the anchorage. She berthed and discharged the second parcel between 11 – 13 October. She went to the berth and discharged her third and last parcel of the cargo between 23 – 24 October 2006.

38. After the vessel had discharged her second parcel, her owners sent a first demurrage statement with supporting documents to Statoil, via L&S. This first demurrage invoice was for US$ 449,041.67. On 3 November 2006, that is some time after the vessel had finally left the discharge port, the owners sent to Statoil, via L&S, a second demurrage statement and calculations, together with a second demurrage invoice. That invoice was for US$774,357.64.

39. Mr Rostrup was in charge of all dealings concerning the owners' claim for demurrage and for calculating the demurrage claim that Statoil was to make on LD. In cross examination he accepted that if he had examined carefully the owners' first demurrage calculation, which went up to 16 October 2006, he would have seen that there was to be a further parcel of cargo to discharge. He accepted also that he looked at both the first and second demurrage calculations of the owners and that on 9 November 2006 he sent an email to the owners, via

L&S, asking them to confirm that the second one was the correct one to deal with. He received an answer the same day saying that the claim for US$774,357.64 was the one he should deal with, ie. the second, larger, claim.

40. He also accepted that he did not look carefully at the calculations made by the owners at that stage.

41. On 13 November 2006 Mr Rostrup sent a letter to Mr Hodge of LD, enclosing the demurrage claim against LD together with supporting documents. The demurrage calculation had been made using a software programme on a computer, into which dates and rates of demurrage were added. The time for the commencement and ending of "*laytime*" were entered by Mr Rostrup. In fact the date for the ending of "*laytime*", which Mr Rostrup put into the programme, was what he thought was the date when discharging had finally finished. He erroneously stated this to be 13 October 2006. In fact, that was the date when the discharge of the second parcel of cargo had been completed. As I have already noted, the completion of the discharge of the third parcel of cargo was only completed on 24 October 2006.

42. In cross – examination, Mr Rostrup admitted freely that if he had looked through all the documentation that he had received from the owners properly, this mistake would not have been made by him. He said that he had been put off by the fact that the first demurrage calculation of the owners had been submitted to him before the final completion of discharge by the vessel. When he looked at the documents he calculated that the hoses were off on 13 October. Then, when he saw the second demurrage calculation of the owners, he appreciated that the dates and figures were different and he tried to find out why they were. He noticed two things. First, there were references to the waiting time at the Panama canal. Secondly, there was a reference to a disconnection of hoses on 24 October. He thought that was a mistake. So he continued to use the date for the final disconnection of hoses on 13 October that had been used by the owners in their first demurrage calculation. He admitted frankly that he looked at the documents too quickly and that this resulted in a mistake on his part.

43. As a result of this error, the figure for demurrage due from LD that was produced by the programme was only US$ 137,694.50. That was the claim that was sent by Mr Rostrup to Mr Hodge of LD under cover of a letter dated 13 November 2006. Supporting documents were sent with the letter. These included a Statement of Facts showing that the vessel had completed her final discharge at 1520 hours on 24 October 2006.

44. Thereafter there was correspondence between the vessel's owners, Statoil, LD and PMI Trading (buyers from LD) about the amount of demurrage due. This continued until the end of 2006 and into 2007. Owners insisted that they were entitled to demurrage of about US$747,477.43: see the email of 18 January 2007. LD queried the time for the commencement of laytime used by Statoil, and claimed that Statoil was only entitled to US$103,527,84: see email of 25 January 2007. LD sent a demurrage calculation to PMI Trading on 25 January 2007, which indicated that PMI owed LD a sum of US$ 540,444.44.

45. On 26 January 2007, Mr Rostrup sent an email to Mr Hodge stating that he agreed with Mr Hodge's revised figure for demurrage of US$103,527.84. On the same day Mr Rostrup sent a letter to Mr Hodge headed *"Demurrage claim: Harriette N. B/L 11/8 06"*. It said "*please find our revised invoice and credit enclosed*". The demurrage invoice was for the sum agreed and asked for a telegraphic transfer by 2 February 2007.

46. It is agreed that this exchange between Mr Rostrup and Mr Hodge constituted, at least prima facie, an agreement between Statoil and LD that the demurrage payable by LD to Statoil in respect of the sale contract, ie. what I have called "the first settlement agreement". However, this is subject to the arguments raised by Issue Two which I have outlined above.

47. In cross examination, Mr Hodge accepted that he had done a calculation for demurrage, based upon an assumption that the vessel had completed discharge by 13 October 2006, ie. the date that Mr Rostrup had used. This was done at some stage before 5 February 2007. He accepted that he knew that Mr Rostrup had made a mistake about the date of final completion of discharge and therefore the calculation of the demurrage due to Statoil from LD. Mr Hodge said that the fact that Mr Rostrup had made a mistake was discussed by him and colleagues in LD. It was decided that Mr Hodge would not tell Mr Rostrup of his mistake, but leave things to see whether he realised it. Mr Hodge also said in evidence that it was decided within LD that it would not reduce its demurrage claim against its buyers, PMI Trading, despite the reduced demand being made by Statoil.

48. Discussion between Statoil and owners on the demurrage due to them continued. On 2 February 2007 the owners sent an email to L&S, which was passed onto Mr Rostrup at Statoil. This stated:

"TO STATOIL ASA V/ OLE K ROSTRUP
FROM LORENTZEN&STEMOCO AS V/ ARNE VESETH
PLEASE FIND ATTACHED VOUCHERS AND INVOICE FROM BERGESEN SENT TO STATOIL 06.11.06
Best regards
Arne B Veseth
Lorentzen & Stemoco AS
Operation dep.
Direct: +47 22527716
Mobile: +47 41649248
Mail: lorops@lorstem.no
Msn: arneveseth@hotmail.com

Arne / Irene
Pls look at Statoil Laytime calculation.
The vessel disconnected 24th Oct. 2006.
Not 16th Sept.
Pls ask Charterer to revert / confirm settlement of demurrage.
Now almost 4 months old."

49. Mr Rostrup said that he read this on Monday, 5 February 2007 and he immediately did two things. First, he looked at what he thought was the final terms of the sale contract to see if there was any demurrage time bar provision in it. (He examined the version that had been prepared by the contract department of Statoil on about 11 August 2006). He was satisfied that it did not. Then he looked carefully at all the documentation that he had been sent by the owners. At first he thought that the owners had originally sent incomplete documentation, in particular about the final stages of the discharge of the cargo. But in cross examination he admitted that the owners had, all along, sent all the correct information and that he had made a mistake and had not looked carefully enough at the documents at the time he prepared the calculation he had sent to LD.

50. Also on 5 February 2007, Mr Rostrup wrote to Mr Hodge. The letter stated:
"……
With reference to this demurrage claim, this have been settled based on inadequate documentation. I have today received new information that the vessel did not complete discharging before 24/10 – 06, most likely to two berths.
I have this morning checked if the amount we have agreed upon have been received, and it have not. Therefore I have enclosed our revised demurrage claim for this amounting to 549 360,96 USD. You can disregard the revised invoice amounting to 103 527,84 USD sent to you 29/1 – 07.
We do apologise for this error.
Please confirm receipt of our amended demurrage claim. ……"

51. Mr Rostrup accepted in cross examination that the reference to "inadequate information" was wrong and misleading. In fact, he had had all the correct information that he needed.

52. The invoice enclosed with the letter was for a demurrage sum of US$549,360.96. The calculation had been done using the same software as before. The critical difference in the calculation was the date for the end of "laytime", which was now stated to be 1640 hours on 24 October 2006, not 13 October 2006, as before.

53. The letter also enclosed other supporting documents, such as the NOR, statements of facts, notes of protest and the time log of the vessel.

54. The following day Mr Rostrup sent an email to Mr Hodge asking him if he had received the letter and enclosures. Mr Hodge sent an email to Mr Rostrup the same day, 6 February 2007. This stated:
"… It is not our policy to accept additional revisions after review has already been made and agreement has been reached. ……."

55. In response to this, on 7 February 2007, Mr Rostrup emailed Mr Hodge, stating that he (Mr Rostrup) had made a mistake about what he called "the issue of the second berth". He invited LD to reopen the demurrage question. There was no answer to this email. Mr Rostrup chased again on 7 February. On 13 February 2007, Mr Hodge sent an email to Mr Rostrup saying:
"…..
Ole:
Hariette N: We have forwarded below to our receiver who maintain their position. They also point out that the berth is the same, not a second berth! ……"

In cross examination, Mr Hodge admitted that the statement in that email was not true. He had not asked PMI Trading about the position and they had not made any statement on it.

56. At some time during early February 2007, LD and PMI Trading agreed on the demurrage due to be paid by the latter to the former under their sale contract. On 20 February PMI Trading paid LD the sum of US$539,361.11 by way of demurrage under their sale contract. In the light of this, it is clear that the statement in Mr Hodge's email to Mr Rostrup on 14 February 2007 that "Dreyfus has no intention of being out of US$400,000 plus" by way of demurrage, presumably as a result of the revised claim by Statoil, is misleading. LD had obviously made a claim on PMI Trading based on correct dates and figures and had every intention of obtaining what they regarded as their full entitlement to demurrage from their buyers - whatever Statoil might be claiming from LD.

57. Therefore the statement, in the same email, that LD regarded demurrage as a "pass along claim" is also not true, at least in this particular case.

58. Mr Rostrup pressed Mr Hodge for an answer on the revised claim on 26 February and 12 March 2007 but got no answer. Finally, he rang Mr Hodge on 19 March. There is a dispute about what, if anything, was agreed in that telephone conversation. However, there is no doubt that the two men discussed the demurrage claim and the issue of the start time for laytime on the first or second occasions that the vessel went in to berth. Mr Rostrup had taken the start of laytime in each case to be midnight on the appropriate day. Mr Hodge stated that it should be 0600

hours in each case and that was the basis on which he had settled with PMI Trading. The discussion went back and forth.

59. Mr Rostrup's evidence was that he agreed that the laytime should start as from 0600 hours and he would tell the trader that is what he had agreed and he would confirm that to Mr Hodge the following day. As a result of that, Mr Rostrup said, Mr Hodge agreed to pay the full demurrage claim put forward by Statoil, subject to confirmation of the adjustment for the 6 hours.

60. Mr Hodge's evidence was that he did not agree that at all. His evidence was that Mr Rostrup agreed to consider the reduction of the 6 hours, but would have to check with his trader on whether he could agree. He did not agree to pay the whole claim, subject to this adjustment. Mr Hodge said, in cross examination, that he had only limited authority to agree changes in demurrage claims. However, there was no suggestion that he told Mr Rostrup this, or that Mr Rostrup knew or ought to have known of any restrictions on the authority of Mr Hodge.

61. I will have to make my findings on what (if anything) was agreed in that telephone call under Issue Three.

62. On the following day, Mr Rostrup sent an email to Mr Hodge, which stated as follows:
"……
With reference to pleasant conve4rsation yesterday, without prejudice for future transactions we hereby agree to settle this claim at 539 360,96 USD adjusting for the 6 hours NOR.
We will forward our revised invoice amounting to 539 360,96 USD and a credit for the invoices amounting to 549 360,96 USD and 103 527,74 USD.
Thank you for the agreement on the Hedda BL: 25/8 – 06 amounting to 98 576,39 USD. ……."

This was followed by a letter of the same date from Statoil to LD, enclosing a revised invoice and credits *"as agreed 19/3 – 07"*.

63. There was no response to this email and letter from LD. Mr Hodge neither agreed with it, nor protested that he had agreed no such thing in the telephone conversation of 19 March.

64. At some stage in the course of the next month, lawyers became involved. On 23 April 2007, Mr Hodge sent an email to Mr Rostrup, in the following terms:
"……
We refer to your invoice number 204920 dated 26th January 2007 for the demurrage we agreed was due in the sum of USD 103,527.84 in respect of the above shipment. We are making arrangements to pay this amount shortly.
As regards the separate claim (and documents) sent to us on 5th February 2007 in respect of the above shipment, we regret that the claim is invalid because it was not submitted within the 90 days of completion of discharge. The claim is therefore timebarred and we cannot accept.
Would you please confirm receipt of the payment of USD 103,527.84 in due course. ……"

The cases of the parties and the issues

65. Thereafter battle was joined. Statoil's case, in its final form, is as follows: (i) there is no demurrage time bar in the contract terms as agreed by the parties; (ii) the agreement of January 2007 that the demurrage due in respect of the contract was US$103,527.84 was not binding on Statoil, because of its unilateral mistake. Either the contract had never existed or was void, or, alternatively, it was voidable and Statoil had avoided it; (iii) there was an oral agreement between Mr Rostrup and Mr Hodge in the telephone conversation of 19 March 2007 that LD would pay demurrage in respect of the contract, in the sum of US$539,360.96. Because LD had paid the sum of US$ 103,527.84, therefore Statoil was entitled to be paid the balance of US$436,833.12, together with interest.

66. LD's case is as follows: (i) there is a demurrage time bar provision in the contract, in the terms set out in the recap sent by L&S to both sides on 3 August 2006; (ii) the agreement made in January 2007 for the payment of US$103,527.84 cannot be impeached for unilateral mistake; it is final and that sum has been paid; (iii) even if it is not binding, Statoil cannot claim any further sum by way of demurrage, because of the 90 day demurrage time bar in the contract. Therefore Statoil's claim must fail.

67. The issues are therefore as follows: Issue one is: what are the terms of the contract and, in particular, do they contain a demurrage time bar provision? Issue two: is the agreement of 26 January 2007, (ie. that the demurrage due from LD to Statoil under the contract is US103,527.84) not binding on Statoil because of its unilateral mistake? Issue three: did Mr Rostrup and Mr Hodge make an oral agreement on 19 March 2007 that LD would pay to Statoil demurrage totalling US$539,360.96. It is agreed by Miss Hopkins and Mr Holmes that if there was such an agreement, then it would supersede the January 2007 "first settlement agreement", assuming that was binding on Statoil up to that point. Issue Four assumes that there was a demurrage time bar clause in the contract and that there was no oral agreement on 19 March that LD would pay the full demurrage claim. (It does not matter whether the first settlement agreement was binding or not). The question then is: can Statoil recover the balance of the demurrage which it says is due from LD under the contract?

Issue One: What were the contract terms: did they contain a demurrage time bar clause?

68. There is no dispute about the legal principles to be applied. The court has to review what the parties said and did and from that material infer the parties' objective intentions as to the terms, as expressed to each other: see

Pagnan SpA v Feed Products Ltd [1987] *2 Lloyd's Rep 601 at 610 and 614 per Bingham J.* and the cases there cited.

69. In this case it is agreed that the relevant material constitutes the email exchanges between Statoil and L&S and LD and L&S, to which I have already referred above.

70. It is also accepted by both sides that it is possible for parties to agree the principal terms of a contract, which will make it a binding contract, whilst leaving over other terms to be agreed at a later stage. See the ***Pagnan case at 619, per Lloyd LJ.*** If the principal terms have been agreed and the parties are, to use Bingham J's phrase in the ***Pagnan case*** "*sorting out details against the background of a concluded contract*", then the strict requirements of positive offer and positive acceptance are not necessarily appropriate. If one party makes a proposal for terms and the other does not object to it when asked if it has objections, that can, in appropriate circumstances, be taken as acceptance of that term: the ***Pagnan case at 614 per Bingham J.***

71. There are two distinct periods. The first is in the period 2 – 4 August 2006; the second is in the period 19 – 25 September 2006.

72. Looking first at the August exchanges, it is clear that Statoil's first proposal, on 2 August 2006, did not include any demurrage time bar. It is equally clear that when Mr Gorgue responded at 16.46 hours on 3 August 2006, the full terms of the proposed contract he set out included a demurrage time bar under the heading "*demurrage*". That email asked Statoil (via L&S) to advise.

73. The response, via L&S, at 1733 hours that day is the source of the argument between the parties. It says "*thanks your counter to which Statoil accept/except*". It then sets out, under the heading "*Demurrage:*" the figures and letters: "*USD 40,000 PDPR*". Miss Hopkins submits that this means that Statoil had rejected the demurrage time bar clause. Furthermore, she submits that when Mr Gorgue responded to this at 1752 hours that day, using the same phrase "*accept/except*" and without making any reference to the demurrage terms, that meant that LD had accepted Statoil's rejection of the demurrage time bar clause and so that is the end of the issue.

74. Mr Holmes argues to the contrary. He submits that, on the true construction of the Statoil email of 1733 hours, Statoil was only rejecting the demurrage rate proposed by LD, ie. the charterparty rate. The failure positively to reject the demurrage time bar clause in Statoil's email at 1733 hours meant that Statoil had accepted it. He submits that this construction is given force by the fact that when Mr Andersen of L&S came to write the recap terms, which he sent at 1942 hours that day, he included the full demurrage time bar provisions in them. Those terms always remained, subject to further agreement on standard terms in the September exchanges.

75. In my view, the correct interpretation of the Statoil email is that Statoil was indicating to LD that it rejected the proposed demurrage time bar provision in the demurrage clause. In an exchange of emails in which contract terms are negotiated on the basis of "*accept/except*" (which is standard in both shipping and the oil and gas trades), the parties and the brokers do not have to spell out what is being accepted. They have to identify sufficiently where proposed terms are being rejected and another term is being put forward instead. That is what Statoil was doing, when indicating, under the heading "*Demurrage:*" the numbers and letters only, without any reference to a demurrage time bar clause. There was no need for Statoil to say "*we reject your demurrage time bar provision proposal*". The Statoil email was indicating what Statoil would be prepared to agree to in relation to demurrage as a whole.

76. It is particularly noteworthy that LD did not try to reintroduce the demurrage time bar provisions in its response at 1752 hours of 3 August. It follows that Mr Andersen was wrong to include the demurrage time bar clause in the recap wording.

77. What about the effect of the recap, however? I accept that if Statoil had agreed to the recap terms that were sent out by L&S, then the demurrage time bar provisions would be part of the contract. But Statoil did not do so. Mr Breivik told Mr Andersen that he wished to use the *Berge Odin* template for this contract and this information was passed on to Mr Gorgue by Mr Andersen in the email of 1652 of 4 August 2006. In the same email, Mr Andersen indicated that Statoil would issue the contract on the following Monday, ie. 7 August. That is clear confirmation that Statoil had not accepted the recap terms that had been sent out by L&S.

78. We know that Statoil's contract department had produced full contract wording on 11 August, although that was not sent to LD until 20 September 2006. The wording does not contain any demurrage time bar clause. However, it was not suggested that I could use those terms as an aid to what had in fact been agreed between the parties at the time Mr Andersen sent the recap.

79. On this analysis, I can conclude that even if all the terms had not been agreed by the time the recap was sent out, the parties had agreed, as shown by their objective intentions as expressed to one another, that they had not agreed a demurrage time bar provision in the contract. The recap was wrong in putting one in its terms.

80. Moreover, it is clear that the recap was not agreed by the parties. Neither Statoil nor LD responded to say that those terms were agreed. This is not surprising because of Mr Breivik's decision to use the *Berge Odin* contract terms as a template for this contract. But then that was not followed up because of the problems in the contract department of Statoil.

81. I now move onto the September exchanges. These start with Ms Zak's fax of 19 September. It is clear from this that she considered the terms of the contract had not finally been agreed. That is reiterated in the second fax of

the same date, sent after Ms Zak and Mr Breivik had spoken on the telephone. Then Statoil sent the terms that had been prepared on 11 August, which did not include a demurrage time bar clause. Ms Zak commented on those terms in her fax of 25 September, particularly on the issue of whose standard terms and conditions should be employed. However, it is clear that Ms Zak did not attempt to re-introduce a demurrage time bar clause into the contract terms.

82. There was no further communication on the issue of contract terms thereafter. I am quite satisfied that, from 3 August, the principal terms of the sale contract had been agreed between the parties. Those did not include a demurrage time bar clause. Some other terms were not at that stage agreed. But they were agreed, effectively, when Statoil received and did not object to the terms set out in Ms Zak's fax of 25 September 2006. Statoil's lack of objection to those terms is to be regarded as acceptance of them.

83. Accordingly, the answer to Issue One is: the terms of the contract did not include a demurrage time bar clause.

Issue Two: Is the agreement of 26 January 2007 as to demurrage payable not binding on Statoil because of its unilateral mistake.

84. It is common ground that Mr Rostrup made a mistake when putting information into the software to calculate the demurrage due from LD to Statoil under the terms of this contract. He mistakenly believed that the vessel had completed discharge on 13 October, so he put in that date in the "laytime ended" dialogue box in the template used to do the calculations on his computer. It is now common ground that Mr Hodge of LD was aware, when he agreed the demurrage figure on 26 January 2007, that Mr Rostrup had made this error. It is also clear that LD had discussed this fact and had decided not to inform Mr Rostrup of his mistake, but would wait to see if he spotted it himself. Mr Rostrup only did so when the error was pointed out by the owners, on 2 February 2007, that is after the "first settlement agreement" between LD and Statoil had been made.

85. Miss Hopkins accepts that, prima facie and considered objectively, on 26 January 2007 the parties had agreed a compromise contract as to the demurrage due in respect of this contract. (Mr Rostrup also accepted that this was so in his cross – examination). But Miss Hopkins advances two arguments in favour of a conclusion that, either at law or in equity, the contract is not binding. First, she submits that the unilateral mistake of Mr Rostrup, which was actually known by Mr Hodge, has the consequence that there was no binding contract, or it was void for mistake at common law. Alternatively, she submits that, in equity, the contract is voidable and that the court should declare the contract rescinded.

86. Mr Holmes submits first that, as the common law rules stand, the unilateral mistake in this case does not fall within the narrow ambit of circumstances which mean that, in law, the apparent objective consent of the parties will be negatived. Secondly, there is no wider rule in equity on which Statoil could rely, even in theory, to claim rescission of the contract. Thirdly, on the facts of this case, even if there were such a wider rule, equity would not grant relief. This is so in this case because the unilateral mistake of Mr Rostrup was entirely due to his own negligence.

87. I will deal first with Miss Hopkins' submission based upon the effect at common law of a unilateral mistake. The general rule at common law is that if one party has made a mistake *as to the terms of the contract* and that mistake is known to the other party, then the contract is not binding. The reasoning is that although the parties appear, objectively, to have agreed terms, it is clear that they are not in agreement. Therefore the normal rule of looking only at the objective agreement of the parties is displaced and the court admits evidence to show what each side subjectively intended to agree by way of terms. If it is clear from such evidence that there was not consensus, then there can be no contract, because the parties have not truly agreed on the terms. Some of the cases talk of such a contract being "void", but I think it is clearer to say that there was never a contract at all.

88. However, if one party has made a mistake about a fact on which he bases his decision to enter into the contract, but that fact does not form a term of the contract itself, then, even if the other party knows that the first is mistaken as to this fact, the contract will be binding. That was the effect of the decision of the Court of Queen's Bench, on appeal from the County Court, in ***Smith v Hughes [1871] LR 6 QB 597,*** see particularly at ***603 per Cockburn CJ,*** and ***607 per Blackburn J.*** The correctness of that decision and the analysis in it has never been doubted.

89. Miss Hopkins and Mr Holmes have told me that neither has been able to find a case with facts similar to the present case, so I have to proceed on first principles. It seems to me that I have to ask, first of all, what, objectively, are the terms of the parties' agreement of 26 January 2007? Secondly, what was the state of mind of the two parties at that time? Thirdly, does that mean that the parties have not, in fact, reached consensus on the terms of the contract?

90. The agreement of 26 January 2007 was, in my view, a contract of compromise, whereby LD, as the buyers under the contract, agreed to settle their liability for demurrage under the terms of the contract as agreed in August 2006, for the sum of US$103,527.84. It was a compromise because there were arguments about when laytime started and the effect of the hurricane Lane on the amount of time to count. That is clear from the email sent by Mr Rostrup to Mr Hodge on 22 January 2007.

91. Was it a term of this contract that this compromise was reached on the understanding that the discharge was completed on 13 October 2006? In my view it was not. It is true that Mr Rostrup sent to Mr Hodge a hard copy of the calculation sheet, which showed that he had put in the information that *"laytime ended"* on 13 October 2006. It is also true that Mr Hodge saw this sheet and annotated it with his revised figures before the agreement was

reached. But the date for the completion of discharge was not a term of the contract of compromise as to the amount of demurrage due on this sale contract.

92. What was the state of mind of the parties? Mr Rostrup believed that the vessel had completed her discharge on 13 October 2006. He put the data into the computer software programme on that assumption. Mr Hodge knew that Mr Rostrup had made that assumption, but he said nothing about it to Mr Rostrup – either way.

93. On this analysis, the facts fall outside the classic circumstances in which the courts have admitted evidence of subjective states of mind of the parties to see whether the unilateral mistake of one which was known to the other, has created a situation where there was not, in fact, agreement. So the unilateral mistake does not affect the objective agreement of the parties.

94. However, Miss Hopkins referred me to a report of a decision of the Singapore Court of Appeal in: ***Chwee Kin Keong and others v Digilandmall.com Pte Ltd [2005] 1 SLR 502.*** In that case the unilateral mistake of the sellers was in accidentally putting on its website a much lower price for laser printers than was correct. The wrong price was the result of an error by one of the seller's employees, whose work on the seller's website accidentally altered the price of the printers from S$3,854 to S$66 per printer. The finding of the trial judge was that buyers had actual knowledge that the price was a mistake, but went ahead and ordered large quantities at the advertised low price. (See paragraph 38 of the judgment of Chao Hick Tin JA on appeal). The sellers refused to deliver the printers at that price. The judge declared the contracts void under the common law doctrine of unilateral mistake. The Court of Appeal, after an exhaustive judgment which examined both the common law and equitable doctrine on mistake, upheld the judgment.

95. To my mind this decision falls squarely within the classic rule. There was a unilateral mistake by the seller about the price of the printers. The buyers knew that the mistake had been made, but went ahead and "*snapped up the offer*" (***Tamplin v James (1880) 15 Ch D 215 at 221 per James LJ).*** Plainly, when the subjective evidence was examined, the parties were not agreed as to the most fundamental term of the contract: the price.

96. So this case does not assist Miss Hopkins on her first submission. The common law rule on the circumstances when a unilateral mistake will mean a prima facie agreement is not binding is well settled. It only applies when there is a unilateral mistake as to a contract term. There was no such mistake by Mr Rostrup in this case.

97. Miss Hopkins' second submission on this issue proceeds on the basis that there is a wider rule in equity. The argument is that if there is a unilateral mistake by one party as to a fundamental assumption he has made, which mistake is known to the other party as being the basis for concluding the contract then, even if that assumption does not become a term of the contract, this unilateral mistake will give rise to a jurisdiction of the court, in equity, to grant rescission of the contract.

98. For this proposition Miss Hopkins relies particularly on statements made by Andrew Smith J in ***Huyton SA v Distribuidora Internacional De Productos Agricolas SA de CV [2003] 2 Lloyd's Rep 780 at paragraph 455.*** One of the grounds for holding that the sale contract concerned should not be binding was the allegation, by Huyton, that it had entered into the sale contract on the mistaken belief that the goods were stored at warehouses owned or leased by a particular party and not in a factory. At paragraph 455 of his judgment, Andrew Smith J. appears to accept the proposition that there is an equitable jurisdiction of the court to set aside a contract on grounds of unilateral mistake in circumstances where the common law would refuse to hold there was no binding contract. However, he said that this jurisdiction was "limited by and subject to" a number of considerations, which he then set out.

99. Andrew Smith J. does not specifically set out the principle of equity, nor the authority on which it is based. In setting out the considerations to which the equitable jurisdiction to give relief is said to be subject, he refers to five cases. First, ***Bell v Lever Bros [1932] AC 161,*** which is a common mistake case and deals with the common law principles. Secondly, ***Associated Japanese Bank (International) Ltd v Credit du Nord SA [1989] 1 WLR 255,*** which is a decision of Steyn J. on common mistake as to the existence of the subject matter of the contract. In that case he reviews both the common law principles and equitable doctrines.

100. Thirdly, Andrew Smith J refers to ***William Sindall plc v Cambridgeshire County Council [1994] 1 WLR 1016,*** which concerned (amongst other issues) an allegation of mutual, or common, mistake as to the existence of a sewer under land the subject of a sale of land. Only Evans LJ dealt expressly with the question of what type of mistake might give rise to an equitable jurisdiction to rescind a contract if the common law would not, on the facts, treat the contract as not binding because void. He suggested that there must be some type of mistake which is "fundamental" which is wider than the kind of "serious and radical mistake" which means the agreement is void and of no effect at law. He suggested that this category of "fundamental mistake" is not limited: see page 1042C. But all these comments are *obiter,* as he concludes that the existence of the sewer had no fundamental consequences in any event. Russell LJ agreed with this judgment and with the judgment of Hoffmann LJ. He dealt with the mistake issue by saying that equity could not be invoked where the contract had expressly provided for who is to bear the risk of the mistake.

101. Fourthly, ***The "Lloydiana" [1983] 2 Lloyd's Rep 313,*** a decision of Sheen J on an application to set aside a security guarantee (to procure the release of a vessel from arrest) on the ground that it had been agreed on the basis of a common mistake that the defendant had been Charterers of the ship in question and that the English court had jurisdiction over the *Lloydiana* for the plaintiff's claim. Sheen J dealt very shortly with a submission that there was

an equitable jurisdiction to rescind the guarantee, based on ***Solle v Butcher [1950] 1KB 671.*** It was not a unilateral mistake case.

102. Lastly, Andrew Smith J refers to the decision of the Court of Appeal in ***Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd,*** now reported at ***[2003] QB 679.*** That was another case of common mistake, this time as to the distance between a ship that contracted to tow another ship in distress. The "fundamental assumption" of both sides was that the ships were only 35 miles apart but in fact they were 410 miles. On learning the true distance, the ship that had contracted to tow cancelled the contract, but claimed five days' hire to which it said it was entitled under the express contract terms. The defendant disputed the claim on the ground that the fundamental common mistake as to the distance meant that the contract was either void at law or could be rescinded in equity. The Court of Appeal affirmed the decision of Toulson J, who gave judgment for the claimant.

103. That case was a common mistake case. The Court of Appeal reiterated the rule that a contract would only be held void at common law by reason of common mistake if the mistake of both sides concerned a fundamental assumption of a state of affairs (positive or negative) and the mistake rendered performance of the essence of the obligation impossible.

104. The Court of Appeal also considered whether there was any equitable principle which widened the circumstances in which a court could rescind a contract for common mistake when the common law would hold it was binding. The court declared that there was no jurisdiction to grant rescission of a contract on the ground of common mistake where that contract is valid and enforceable according to ordinary principles of contract law: paragraph 157.

105. With respect to Andrew Smith J. I must disagree with his conclusion that there is an equitable jurisdiction to grant recission of a contract where one party has made a unilateral mistake as to a fact or state of affairs which is the basis upon which the terms of the contract are agreed, but that assumption does not become a term of the contract. None of the cases he cites at paragraph 455 of his judgment is authority for the existence of that jurisdiction. The ***Great Peace*** decision strongly suggests that there is no such jurisdiction in the case of a unilateral mistake. If there is no such jurisdiction in the case of a common mistake, I fear I am unable to see how, in logic, one can devise a rationale for an equitable jurisdiction in the case of a unilateral mistake, at least where there has been no misrepresentation by the other party. Therefore Miss Hopkins' second argument must fail *in limine*.

106. Even if I am wrong on that, I would be inclined to say that in this case it would not be proper to exercise the jurisdiction in Statoil's favour. The mistake was entirely the result of carelessness by Mr Rostrup, as he was constrained to admit in cross examination. If I had held there was jurisdiction to grant recission, I would have held, on the facts of this case, that it would not be just and equitable to grant it.

Issue Three: was there an oral agreement between Mr Rostrup and Mr Hodge on 19 March 2007 that LD would pay demurrage in the sum of 539,460.96?

107. It is common ground that if there was such an oral agreement, it would supersede the "first settlement agreement" of 26 January 2007 and it would be irrelevant whether there was a demurrage time bar provision in the contract.

108. I have concluded that, on the balance of probabilities, an agreement was reached in the telephone conversation between Mr Rostrup and Mr Hodge. Overall, I preferred the evidence of Mr Rostrup because it accords with what such corroborative evidence as there is. Mr Hodge, on the other hand, admitted that he had, on two occasions, effectively lied to Mr Rostrup about the position being adopted by PMI Trading.

109. The position on 19 March was this: LD had known all along that Statoil had made an error in calculating the demurrage due from them to Statoil. The staff at LD had decided to wait and see if Statoil, in particular Mr Rostrup, spotted it. When he did, LD's first reaction was to say that they did not reopen agreements already made. But at the same time, LD had received US$ 539,361.11 demurrage from PMI Trading, so had profited considerably from Mr Rostrup's mistake. At this stage, as Mr Hodge stated in evidence, he did not think that there was any demurrage time bar clause in the contract. Apart from the agreement of 26 January 2007, there was nothing to prevent Statoil from attempting to claim the balance of the demurrage that it now said was due.

110. Therefore LD was in the weaker position. It had traded on Mr Rostrup's mistake and had money in hand from PMI Trading; yet it knew that demurrage was a *"pass along"* claim. Although (as he admitted) Mr Hodge had tried to claim that PMI Trading were being difficult about the demurrage now sought, he knew that was not the case.

111. I am satisfied that the two men discussed the whole demurrage claim and focused on the start of laytime point. Mr Rostrup agreed to concede that laytime between midnight and 0600 hours would not count, but he said that he must check that with the Statoil trader. Mr Hodge agreed that if this was conceded then LD would pay the full amount. The following day that was confirmed in the email sent by Mr Rostrup, which he followed up by sending the letter enclosing the invoice and credits.

112. I do not accept the submission of Mr Holmes that the email was an attempt to impose an agreement that had not already been concluded. Mr Rostrup's English, although good, is not perfect. In my view the phrase *"we hereby agree to settle this claim…adjusting for the 6 hours NOR*" is consistent with Mr Rostrup's evidence with what had been agreed in the telephone call the previous evening. That was that LD agreed to pay the sum in full, if Statoil agreed to take off the 6 hours, and Mr Rostrup said that created no difficulties but he had to check with his trader.

113. It is striking that there was no email response from Mr Hodge either to Mr Rostrup's email of 20 March or to the letter of the same date which enclosed a revised invoice and credits "*as agreed 19/3 – 07*". If there had been no agreement, I would have expected the same kind of reaction as Mr Hodge had made when Mr Rostrup first sent the revised claim on 5 February 2007. In other words, an email along the lines: *"as I have said before, we do not accept additional revisions after review has already been made and agreement has been reached on 26 January 2007"*.

Issue Four: if there was no agreement on 19 March 2007, can Statoil now advance a claim for the balance of the demurrage?

114. In the light of my conclusions on Issues One and Three, this point does not arise. If I had held that the contract did contain a demurrage time bar, that there was a binding agreement on 26 January 2007, but no binding agreement was concluded in the telephone conversation of 19 March 2007, then I would have been against Miss Hopkins on this point. Miss Hopkins accepted that the claim set out in the documents sent on 5 February 2007 was submitted more than 90 days after the completion of discharge. But she sought to argue that the claim advanced on 5 February 2007 was simply a reformulation of the claim previously advanced in November 2006 and so was not covered by the wording of the demurrage time bar provision.

115. In my view that argument is unsustainable for two reasons. First, the time bar provision refers to "*any claim",* which is very broad. It is, in my view, impossible to restrict the width of that wording so as to permit a *"reformulated"* claim, which is four times the size of the original, to be admitted over 90 days after completion of discharge. Secondly, (unless my conclusion on Issue Two is wrong), the claim for demurrage due under this contract had been compromised on 26 January 2007. Any rights to further demurrage that had existed had been compromised.

Conclusion

116. The result is that I find that Statoil succeeds in its claim for the balance of the demurrage, ie. for US$ 435,833.12, based upon the oral agreement made on 19 March 2007, which superseded that made on 26 January 2007. I heard no separate argument on the question of interest payable, if any. If that is in issue, I will hear argument about it.

117. I repeat that I am very grateful to counsel for the concise and efficient way in which they dealt with the evidence and their submissions in this trial. It was a model of how a short trial of a comparatively modest claim should be handled in the Commercial Court.

Ms Philippa Hopkins (instructed by Ince & Co, Solicitors, London) for the Claimant
Mr Michael Holmes (instructed by ReedSmith, Solicitors, London) for the Defendant