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4TH NATIONAL LAW UNIVERSITY ODISHA

INTERNATIONAL MARITIME ARBITRATION MOOT, 2017

IN THE MATTER OF AN ARBITRATION

CONDUCTED BEFORE THE ARBITRAL TRIBUNAL

BETWEEN:

HINDUSTAN SHIPPING LIMITED …...CLAIMANT

V.

ATLANTIS SHIPPING PTE LIMITED …...RESPONDENT

MEMORANDUM ON BEHALF OF CLAIMANT

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TABLE OF ABBREVIATIONS

ABBREVIATION	FULL FORM
C/P	Charter Party
etc.	Etcetera
Corp.	Corporation
Pvt	Private
HSL	Hindustan Shipping Limited
ASPL	Atlantis Shipping Pte Ltd.
IMAM	International Maritime Arbitration Moot
NYPE	New York Produce Exchange
et al	et alia

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STATEMENT OF JURISDICTION

The parties, Atlantis Shipping Pte Ltd. and Hindustan Shipping Limited have agreed to submit the present dispute to the arbitral tribunal pursuant to Clause 16 of the C/P dated 11/12/2012.

The parties agree to accept the decision of the arbitral tribunal as final and binding.

STATEMENT OF FACTS

I. The Parties

Atlantis Shipping Pte Ltd. ["Owners"], a company located in Singapore, is the owner of the vessel named M.V. Pequod.

Hindustan Shipping Limited ["Charterers"], a company located in Mumbai, Maharashtra, charter the aforementioned vessel as per a Charter Party contract.

II. The Charter Party and the delay in delivery of vessel.

ASPL and HSL executed a charter party on 11th December, 2012 in which it was decided that on the date of delivery of vessel to charterer, the hire period of the vessel would start. The owner was involved in prior voyage before the delivery of the vessel to charterer which was known to the charterers through the letters. Through letters, the charterers were informed about the itinerary of the vessel which was based on the then loading schedule of the vessel. Due to poor weather and poor feeding of cargo the loading operation was abnormally delayed at Port of Singapore. Also at Port Kant there was no work due to rain.

The vessel was ready to deliver by 8.12.2012 and hired period was started from 11.12.2012, the date of delivery. Clause 56 provides for due diligence requirement on the part of owner.

III. Deductions from the charter hire made by the charterer.

The charterer only the presentation of statement of accounts informed the owners about the deductions made in the charter hire with respect to the charter hire paid to other vessels who could not berth owing to the alleged defect in crane/ cargo gear. The owners have disputed all the deductions made. In pursuance of the detailed reports made, there was at no time, a complete stoppage of cargo operations. Clause 32 empowers the charterer to make such deductions in case of no cargo work.

IV. Breach of the safe port warranty by the Charterer.

The charterer in breach of the safe port warranty in the C/P took the ship to Port Zanpar where it collided with an old sunk vessel causing the vessel to suffer damages and an oil spill.

V. Shipping of excluded cargo by the charterer without informing the owner.

The charterers had only enquired about whether the vessel has Adamantium carrying capabilities the answer to which was yes, and the owner communicated

the same to the charterer. But no contract was entered into with regard to carrying the highly reactive and dangerous Adamantium which are excluded cargo. However, the charterer shipped the same without informing the owner.

VI. Invocation of Arbitration

Atlantis Shipping Pte Ltd. invoked the arbitration clause as per Clause 16 of the C/P agreement and appointed Mr. Moby Johnson as their arbitrator. Hindustan Shipping Ltd. appointed Mr. Dick Nicholson as their arbitrator. The disputes will now be heard by this arbitral tribunal.

ISSUES FOR CONSIDERATION

I. Whether there was a delay in the delivery of the vessel?

II. Whether a clause entitling Charterers to deduct sums from charter hire paid to other vessels owing to the deficiency in the cranes/ cargo gear of MV Peqoud is valid?

III. Whether there existed a safe port warranty- incorporated or implied in the instant Charter party? Whether under the same, Charterers as Port Owners and Operators would be liable for the accident?

IV. Whether an oral variation of Charter Parties is permissible?

SUMMARY OF ARGUMENTS

I. **There was no delay in the delivery of the vessel.**

The intention of the parties has to be taken into consideration while interpreting any contract and the intention in the present case is to not accord time as the essence of the contract. In the light of extraneous circumstances, such as rain and bad weather, delay was made, which is beyond the owner's control. The owners while stipulating the expected readiness to had honest intention in their minds and made the calculations on reasonable grounds. Throughout the process of delivery, the owner even kept on informing the charterer about the itinerary of the vessel and exercised reasonable care on his part. Hence, there was no delay in the delivery of the vessel.

II. The clause entitling charterers to deduct sums from charter hire paid to other vessels owing to deficiency in the crane/ cargo gear of MV Pequod is invalid.

The clause entitling the alleged deductions is invalid as it relates to the collateral matter since it does not affect the 'use' of the ship. Further, only those deduction are permissible generally which fall within the scope of express provisions of the clause, which the present deductions do not. In fact the clause empowering the charterers to make such deductions is itself arbitrary and vaguely worded, which should not be given effect to. Lastly, the charterers are also not permitted to use the defence of equitable set-off as the same is not available in cases of hire in time charter.

III. There exists an implied safe port warranty under which the charterers are liable for the accident.

Since a safe port warranty is required to provide business efficacy to the contract and fulfills the bystander test, and since the charterer's liberty to choose the port is very high and unrestricted, a safe port warranty may be implied into the contract. The charterers are liable since they failed to nominate a safe port/ berth and ensure safety, thereby breaching the C/P. They are also liable as port owners since they were in breach of a duty to exercise reasonable diligence in ascertaining the condition of the berths. The owners are not liable since the master had exercised good navigation and seamanship.

IV. This oral variation of Charter party is invalid and not permissible.

Since there is no meeting of minds with regard to carrying Adamantium and the terms being ambiguous, no oral variation of the C/P has taken place. Even if a variation has taken place by virtue of the master's conduct, it is not valid since the master did not have knowledge of the cargo at the time of loading. Also, the master acted outside his authority in accepting the cargo and hence the owner has rights to claim compensation from the charterer for such breach of C/P.

ARGUMENTS ADVANCED

A. There was no delay in the delivery of the vessel.

1. There was no delay in the delivery of the vessel as **(i)** The intention of the parties has to be given effect to, **(ii)** Delivery time of vessel is not the essence of the present charter party, **(iii)** There was abnormal delay in loading operation of the vessel which was outside owner's control, and **(iv)** There was honest calculation of the date of the expected readiness to load.

i) The intention of the parties has to be given effect to.

2. At the time of interpreting a contract, the court will ascertain that meaning which is conveyed to a reasonable person having all background knowledge which would have been available to him at the time of the making contract.[1] Courts thereby are bound to look the literal language and the circumstances surrounding execution when determining the intention of the parties as to the scope of an agreement.[2] The cardinal rule of contract interpretation is to ascertain and "give effect to the expressed intentions of the parties"[3] and fulfil, to the extent possible, the reasonable shared expectations of the parties' intent at the time of contract.[4]

3. In the present matter, therefore, the nature of the C/P, the surrounding circumstances and the intention of the parties need to be looked at for determining what constituted 'delay' in the delivery of vessel.

ii) Delivery time of vessel is not the essence of the present charter party

4. It is an established principle of law that merely because of the specification of the time on or before which a contract is to be performed, would not make the time, the essence of the contract.[5] The intention to treat time as the essence may be evidenced by circumstances which are sufficiently strong in this direction.[6] If a contract does not specify the time for performance, the law will imply that the parties intended that the

[1] The Investors Compensation Scheme v. West Bromwich Building Society, (1998) 1 W.L.R. 896 (H.L.).
[2] Spanski Enterprises, Inc. v. Telewizja Polska, S.A. Slip Copy, (2013) WL 81263 (S.D.N.Y. 2013); Matter of Korosh v. Korosh, 99 A.D.3d 909 (2012); Banco Espirito Santo, S.A. v. Concessionaria Do Rodoanel Oeste S.A., 100 A.D.3d 100 (2012).
[3] *In re* Motors Liquidation Co., 460 B.R. 603 (Bkrtcy.S.D.N.Y. 2011); Maser Consulting, P.A. v. Viola Park Realty, LLC 936 N.Y.S.2d 693 (2012); *In re* Lehman Brothers Inc., 478 B.R. 570, (S.D.N.Y. 2012).
[4] Cordis Corp. v. Boston Scientific Corp. 868 F.Supp.2d 342 (2012).
[5] Ram Kishan v. Bhavi Chand, A.I.R. 1988 Del 20 (India).
[6] Sind Biscuits Manufacturing Co., Kanpur v. Delight Engineering Works, Moradabad, 1984 A.W.C. 211 All (India).

obligation under the contract should be performed within a reasonable time.[7] Court has held that if condition of contract itself provides for extension of time, time would naturally be not the essence of the contract.[8] If the charterer was aware that his voyage is based in the conclusion of the one before, he is said to have accepted the risk of delay, which is passed on to him by the owner.[9]

5. It is necessary to note that there was prior enrollment of the vessel to another charterer which the HSL was well aware of.[10] Further, the words 'above itinerary based on the present loading schedule of the vessel'[11] shows that the delivery of vessel was dependent on the progress in loading work at Port of Singapore. In addition, the owner had allowed for extension of validity time of offer up to 16.11.2012 on the request of owner from the letter dated on 6.11.2012, 9.11.2012 and 15.11.2012.[12]

6. The charterer was constantly informed by the owner that the subsequent letter was only tentative and that the owner reserved right to update on the progress with further changes as per the circumstances.[13] Moreover, the facts show that there was no objection by the charterer to any of the letters written by the owner in relation to more time taken by the vessels at the other ports. Such conduct of the parties makes it evident that they never intended to make delivery time as an essence of the charter. 6. Hence there was no obligation on the part of the owner to hand over the possession of vessel by any particular date.

iii) There was abnormal delay in loading operation of the vessel which was outside owner's control.

7. Delay attributable to causes beyond one's control of which he has neither acted negligently nor unreasonably is acceptable in a contract.[14] Any bargain cannot be made on the tacit condition that such a thing will not happen in any degree.[15] Natural calamity over which there is no human control[16] or 'Act of God' cannot be foreseen and hence,

[7] Hungerford Investment Trust Ltd. v. Haridas Mundhra, A.I.R. 1972 S.C. 1826 (India).
[8] Anand Construction worker v. State of Bihar, A.I.R. 1973 Cal 550 (India).
[9] Martin Dockray, Cases and Materials on Carriage of Goods by Sea 208 (Cavendish Publishing Ltd. 3rd ed. 2004) (1987).
[10] IMAM Moot Proposition, 2017, at 5.
[11] IMAM Moot Proposition, 2017, at 5.
[12] IMAM Moot Proposition, 2017, at 2, 4 and 6.
[13] IMAM Moot Proposition, 2017 at 9.
[14] Fyffes Group Ltd. and Carribbean Gold Ltd. v. Reefer Express Lines Pty Ltd. and Reefkrit Shipping Inc., (1996) 2 Lloyd's Rep 171, 222; Rajkishor Mohanty v. Banabehari Patnaik, A.I.R. 1951 Ori. 291 (India).
[15] F.A. Tamplin Ateamship Co v. Anglo Mexican Petroleum Products Co., (1916) 2 A.C. 397.
[16] Ruchi Soya Industries Limited v. Om oil and Flour Mills Pvt. Ltd., (2007) 34 P.T.C. 133 (Intellectual Property Appellate Board of India).

cannot be guarded against.[17] The inevitable delay due to bad weather or other circumstances which may naturally exist in the course of any voyage cannot be foreseen by the owner, so he can never be sure that he would arrive at a port on a fixed and certain date/time.[18] He cannot be blamed for the weather or for berthing difficulties.[19]

8. In the present matter, the owner vide letter dated on 19.11.2012 informed the charterer that due to poor weather and poor feeding of cargo operation was abnormally delayed in vessel at Port of Singapore,[20] and due to rain, the work was stalled for 2 hours.[21] It is important to note that the factors such as *act of god*, enemies, fire, dangers and accidents of seas etc. are mutually accepted by the owners and the charterers.[22] It is due to these factors, delivery happened at a later date.

iv) There was honest calculation of the date of the expected readiness to load.

9. It is generally accepted that, the statement of expectation as to when the ship arrives or likely to arrives has to be made honestly and on reasonable ground.[23] In the case of *Louis Dreyfus & Co Lauro*,[24] the court accepted that the owners were honest in their calculations, where the ship was already under another voyage, and the owner made an honest statement of expected dates on reasonable ground, but some delay occurred for which he is not responsible, with the result that he was late with the second charter.[25]

10. The expression "diligence" is said to mean a measure of prudence and activity expected from, and ordinarily exercised by, a reasonable man under the particular circumstances which is *not measured by any absolute standard*, but depending on the relative facts of the 'special case".[26]

[17] Queen v. Commissioners of Sewers of Essex, (1885) 14 QBD 561 (D).
[18] Evera SA Commercial v. North Shipping Co Ltd, The North Anglia, (1956) 2 Lloyd's Rep 367 (Q.B.), as per Devlin J.
[19] HV Gas Supply & Trading SAS v. Naftomar Shipping & Trading Co Ltd Inc., (The Azur Gaz), (2005) EWHC 2528 (Comm).
[20].IMAM Moot Proposition, 2017 at 7..
[21] IMAM Moot Proposition, 2017 at 11.
[22] IMAM Moot Proposition, 2017, Lines 99-101 at 29.
[23] Samuel Sanday & Co. v. Keighley, Maxteed & Co., (1922) 27 Com Cas 296 (C.A.).
[24] Louis Dreyfus & Co Lauro, (1938) 60 Lloyd's Rep 94.
[25] Louis Dreyfus & Co Lauro, (1938) 60 Lloyd's Rep 94.
[26] M.W. Silva v. The Attorney General, (1960) 62 NLR 121.

11. In the present matter through the letter dated 10.11.2012, the owner stated the itinerary included time of delivery of vessel, under normal circumstances.[27] Further, the said itinerary was said to be based on the *present loading schedule of the vessel* at Port of Singapore.[28] This shows that the schedule has been made honestly and on reasonable ground and that the owners had no intention to unnecessarily manipulate the charterers. The owner even kept on updating the figures related to vessel discharged coal and balance to discharge, through the letters dated 30.11.2012, 03.12.2012, 04,12,2012, 05.12.2012 and 06.12.2012.[29] The owner also kept the charterers informed about the respective delays owing to rain[30], poor feeding of cargo and bad weather.[31] Further, the letter dated 7.12.2012 shows that as soon as the owner accomplished the discharging of coal with all possible speed and uninterrupted efforts, the vessel had sailed from Kant to Turan for delivery.[32] All these efforts are evident of the fact that he took reasonable care on his part.

12. The owner regretfully failed to deliver on estimated date which has been due to unforeseen events occurred during the progress. This was beyond the control of owner and therefore it would not be right to attribute negligence on the part of owner.

13. Hence, in conclusion, it can be drawn that there was no delay in delivery of the vessel by the owner to the charterer.

B. <u>The clause entitling charterers to deduct sums from charter hire paid to other vessels owing to deficiency in the crane/ cargo gear of MV Pequod is invalid.</u>

14. The clause entitling charterers to deduct sums from charter hire paid to other vessels owing to deficiency in the crane/ cargo gear of MV Pequod is invalid as **(i)** Deduction contemplated in clause is regarding the collateral matter, **(ii)** The deduction made by charterer does not fall within the scope of express provisions of the clause, **(iii)** It is arbitrary and vaguely worded clause, and **(iv)** Charterers are not allowed to make deductions under the doctrine of equitable set-off.

[27] IMAM Moot Proposition, 2017 at 5.
[28] IMAM Moot Proposition, 2017 at 5.
[29] IMAM Moot Proposition, 2017 at 9-13.
[30] IMAM Moot Proposition, 2017 at 11.
[31] IMAM Moot Proposition, 2017 at 7.
[32] IMAM Moot Proposition, 2017 at 14

15. The general principle states that the charterers are required to pay the full amount of each hire instalment.[33] The Court of Appeal in *Federal Commerce ltd* v. *Molena Alpha Inc (The Nanfri),*[34] suggested that charterers are entitled to deduct sums from charter hire only when the deduction is permitted by the C/P or by the doctrine of equitable set off, is reasonable and is made in good faith.

i) Deduction contemplated in clause is regarding the collateral matter.

16. If the deduction is made regarding the breach of collateral matters i.e. which do not relate to use of the vessel, even if they are expressly mentioned in the C/P contract would not be available as the charterers did not lose a minute of the ship's time because of any of these breaches.[35] If the claim does not relate to the use of the ship itself, it will be considered as an invalid deduction.[36]

17. In the present case, the charterer did not lose any of the ship's time because of the payment made to other vessels which could not berth, for what so ever reason. A deduction could be made would be available only if the charterer had been deprived of the use of the ship because of the owner's fault. Hence, it can be acceptable that charterers may deduct sum from charter hire because of the defect in crane/ cargo gear owing to which there is complete stoppage of work, however, deductions contemplated, like in the present clause, which do not affect the working of the vessel per se cannot be termed as valid deductions as per law established.

18. Therefore, the clause envisaging such deductions to be made by the charterer from the advance charter hire is an invalid clause.

ii) The deduction made by charterer does not fall within the scope of express provisions of the clause.

[33] Terence Coglin, et al., Time Charters p. 312 ¶16A.4 (7th ed.2014).
[34] Federal Commerce ltd. v. Molena Alpha Inc (The Nanfri), (1979) A.C. 757.
[35] Leon Corp v. Atlantic Lines and Navigation Co Inc., (1985) 2 Lloyd's Rep. 470 (Q.B.), as per Hobhouse, J.
[36] Aliakmon Maritime Corporation v. Trans Ocean Continental Shipping Ltd. and Frank Truman Export Ltd. (The "Aliakmon Progress"), (1978) 2 Lloyd's Rep 499.

19. In considering whether a deduction can be made under the *express terms* of the C/P, it may be necessary to fulfil following circumstances: [37]

1) The deduction must fall within the scope of the clause in the first place. If it does not, the charterer may be unable to deduct at all.
2) If the clause obliges the charterer to follow any particular procedure like requirement of notice of deduction or to provide documentary support or vouchers for the amount to be deducted, it must be followed.
3) Whether the clause merely entitle the charterer to deduct by way of security of his claim, leaving the owner to dispute the deduction and claim the sums back or is the deduction intended in itself to constitute a final determination of the party's rights.

(a) There was not complete stoppage of cargo operations at any point of time.

20. Timely, punctual and continuous payment of hire in advance is a primary obligation of the charterer and also an absolute one which, as Lord Wright said in *The Petrofina*,[38] is not excused by accident or inadvertence. The only exception from this rule is deemed to be found in the wording clause 15 of NYPE 46 form which provides that in cases where the *full working of the vessel is prevented* and the speed is reduced owing to any defect or break-down of any part of hull, machinery or equipment of the ship, the deduction from the hire would be permitted.[39]

21. In the present case, the impugned clause which authorises the charterers to deduct the sum from charter hire only allows the deduction in the circumstance where there is *no cargo work* owing to the defective crane/ cargo gear.[40] It is important to note that the present C/P contract has been approved by the NYPE Form.[41] It allows, only those deductions which arise due to prevention of full working of the vessel. It has to be brought to the notice of the charterers that at no point of time was there complete stoppage of cargo operations and at least one crane was functional throughout.[42] There have been reliable detailed reports regarding the same.[43] Since, the clause allows

[37] Bassindale, John (ed), Deductions from freight and hire, (1996), Clifford Chance Maritime Review 18.
[38] A/s Tankexpress v. Compagnie Financiere Belge Des Petroles SA (The Petrofina), (1948) 2 All ER 939 at 946.
[39] NYPE Form, Clause 15.
[40] IMAM Moot Proposition, 2017, Additional Clauses to M.V Pequod, Clause 32 at 36.
[41] IMAM Moot Proposition, 2017 at 26.
[42] IMAM Moot Proposition, 2017 at 17.
[43] IMAM Clarifications, 2017, Clarification 15.

deductions only if there is complete stoppage of cargo operations, the deductions made by the charterer does not in fact fall within the scope of the clause from which the charterers claim to get authority for such deductions.

(b) The notice requirement stands unfulfilled.

22. If the provisions of the C/P envisage the requirement of notice or intimation of any manner in relation to deductions made by the charterer, it must be fulfilled.[44]

23. In the present case, Additional Clause 37, sub clause (c) requires the charterer to give owners 30 days' notice regarding their dissatisfaction with the performance of the vessel or to rectify the defect, if any. Subsequent to this notice or intimation only, the owners would investigate into the matter and take appropriate steps to correct the situation.[45] Clause 64 also stipulates that there has to be intimation of the deduction which would entitle the owners to dispute such deduction within 15 days, if they feel so.[46] Hence, the notice has to be made at correct time, giving owners the opportunity to acknowledge and accept/ dispute the deductions.

24. However, in the present case, it is only on the presentation of statement of accounts and settlement of bills did the charterers enclosed the deductions made pursuant to the charter hire paid to other vessels owning to deficiency in crane/ cargo gear.[47] There is no mention in the facts of the case that the charterers informed the owners about the defect. Hence, the charterers failed their obligation to first, give 30 days' notice and secondly, the notice regarding deductions.

(c) The impugned deduction is contrary to terms of the Charter Party.

25. Charterers are generally allowed to deduct only when it is permitted by the terms of C/P.[48] Under the NYPE Form, the charterer has no right to withhold hire except those expressly provided in the charter for off hire or advances,[49] and hire is payable in full without deductions permitted by Clause 5 and Clause 15 and other express provisions as are described in the charter.[50] It has been held in the case of *The Astra*[51] that the

[44] Bassindale, John (ed), Deductions from freight and hire, (1996), Clifford Chance Maritime Review 18.
[45] IMAM Moot Proposition, 2017, Additional Clauses to M.V Pequod, Clause 37 at 37.
[46] IMAM Moot Proposition, 2017, Additional Clauses to M.V Pequod, Clause 64 at 48.
[47] IMAM Moot Proposition, 2017, Note 1 at 54.
[48] Seven Seas Transportation v. Atlantic Shipping Co. SA, (1975) 2 Lloyd"s Rep. 188.
[49] Terence Coglin, et al., Time Charters p. 312 ¶16A.4 (7th ed.2014).
[50] The Uranus, (1977) AMC 586 (Arb. Ay N.Y. 1977).

obligation to make punctual payment of hire as provided by clause 5 of NYPE 46 is a condition to the contract since it goes to the roots of the contract. Accordingly, clause 5 treats a failure to make punctual treatment of hire by the charterer sufficiently serious to entitle the ship owner to even withdraw/terminate the contract.[52]

26. *The Nanfri*,[53] is the best known for when the charterer may deduct and set off against hire, a claim for damages in limited circumstances that is, where in breach of contract, the owners have actually deprived the charterer of the use of the whole or part of the ship.[54] Further, in *The Treana*,[55] the arbitrators found that the charterers's deduction from hire under speed and consumption warranties for gear failure and other minor differences were not justified.

27. In the present matter, clause 5 of the C/P stipulates for punctual and regular payment of hire, failure of which gives to owner, the right of even withdrawal of the vessel.[56] The other clauses which allow for deductions by the charterer relate to more material breach by the owner such as deficiency, negligence and default of men or stores, fire, breakdown or damages to hull, machinery or equipment, detention by average accidents to ship etc. which prevent the full working of the vessel and those defects or breakdown of hull, machinery or equipment which reduces the speed of the vessel or the cost of extra fuel consumption,[57] or when the vessel is unable to perform due to breakdown or is withdrawn or terminated due to owner's fault,[58] or when the vessel is deviated from the course of voyage caused by sickness or accident to the crew or due to negligence in performing duties and obligations by the master.[59] The words like, "*preventing full working*", "*unable to perform*", "*deviation from the course of voyage*" etc., shows the material mature with regard to which the deductions may be allowed. The deductions relating to the payment of charter hire to the other waiting vessel owing to deficiency in the crane/ cargo gear is of comparatively minor nature, as distinguished from other clauses and does not relate to use of the vessel which could deprive the charterer the full

[51] Kuwait Rocks Co. v. AMN Bulkcarriers Inc (The Astra), (2013) EWHC 865 Comm. (Q.B.).
[52] Kuwait Rocks Co. v. AMN Bulkcarriers Inc (The Astra), (2013) EWHC 865 Comm. (Q.B.).
[53] The Nanfri, (1979) A.C. 757.
[54] Martin Dockray, Cases and Materials on Carriage of Goods by Sea 316 (Cavendish Publishing Ltd. 3rd ed. 2004) (1987).
[55] The Treana, SMA 2929 (Arb. at N.Y. 1992).
[56] IMAM Moot Proposition, 2017, Clause 5, Line 49-54 at 27.
[57] IMAM Moot Proposition, 2017, Clause 14, Line 90-96 at 29.
[58] IMAM Moot Proposition, 2017, Clause 15, Line 97-98 at 29.
[59] IMAM Moot Proposition, 2017, Additional Clauses to M.V Pequod, Clause 32 at 35.

enjoyment of the vessel. Hence, the impugned clause which allows such deduction is invalid.

iii) It is arbitrary and vaguely worded clause.

28. It is established principle of contract law that arbitrary, uncertain and vaguely worded clauses, to which no definite meaning can be given to, without adding further terms, should not be given effect to.[60] Parties may reach agreement on essential matters of principle, but leave important points unsettled so that their agreement is incomplete.[61]

29. In the case of *The Nanfri* also, the court while ruling upon what all deductions can be validly made, discussed whether the charterers were entitled unilaterally to deduct disputed items from charter hire, and indicated that unilateral determination of what amount would be deducted shouldn't be given effect to.[62] The Astra,[63] has indicated that making disputed deductions in hire are high-risk activities, exposing the charterer to the loss of the ship from charter and a significant damages claim. Therefore, failing agreement, charterers are supposed to pay the full hire punctually or pay the disputed amount into escrow. [64]

30. Further, it suggested that one cannot deduct from hire a claim which has not been quantified and may turn out to be invalid.[65]

31. If disputed claims be allowed, it would leave the owners at the mercy of the charterers as the charterers would deduct any amount claimed by them even if it ultimately turns out that the claim was unwarranted in whole or in part.[66]

32. In the present case, the impugned clause, Additional Clause 32, is also an arbitrary and vaguely worded clause. Though the clause gives right to the charterers to deduct the sums from charter hire which they paid to the waiting vessel but who is to determine that what is the rate at which is paid. There is no calculation provided in the clause or in fact

[60] Joseph Chitty, Chitty on Contracts, Vol. 1, 223 (Professor Hugh Beale ed., Sweet & Maxwell Publications, 13th ed. 1896) 1826.
[61] Western Broadcasting Services v. Seaga, (2007) UKPC 19.
[62] The Nanfri, (1979) A.C. 757 at 52.
[63] Kuwait Rocks Co v. AMN Bulkcarriers Inc (The Astra), (2013) E.W.H.C. 865 (Comm).
[64] Kuwait Rocks Co v. AMN Bulkcarriers Inc (The Astra), (2013) E.W.H.C. 865 (Comm).
[65] The Nanfri, (1979) A.C. 757 at 29.
[66] The Nanfri, (1979) A.C. 757 at 9.

the whole C/P provisions for the same. The owners have disputed the deduction on various grounds.[67] If the charterers are allowed to unilaterally decide the amount, this would affect the interest of the owners to a large extent. Hence, such ambiguity in the clause should not be permitted as per principles of contract law.

iv) Charterers are not allowed to make deductions under the doctrine of equitable set-off.

33. A set-off is nothing but a debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor.[68] The hire payable under a time C/P is in the same position as freight payable under a voyage C/P, and under a settled rule of law freight is payable in full without deduction.[69]

34. In *The Hamlet*,[70] the arbitrators found that the NYPE Form does not contain any provision which allowed the charterer to offset its claim against the ship from earned hire. There is no right to set off any cross claim against a claim for freight, as was confirmed by the House of Lords in *Aries Tanker Corporation* v. *Total Transport Ltd. (the Aries)*,[71] and it was also thought that if this was the position concerning freight, then the position concerning time charter hire would be the same. Recognizing the same position, MacKinnon L.J. in *Sea and Land Securities Ltd.* v. *William Dickinson and Co. Ltd.*,[72] referred to the "continuous and unbroken liability" of the charterers to pay the hire.

35. In the present case, claim is the owner's claim on the charter hire and counter claim is deduction in the hire with respect to charter hire paid to other vessels owing to deficiency in crane and cargo gear by the charterer. As discussed above, the doctrine of equitable set off so as to set off the deduction and the charter hire does not apply to the cases of hire in time charter. Further the impugned deduction does not even go to the root of the contract; hence, it would be no injustice if these deductions are not permitted.

36. Therefore, deductions made are invalidated because of reasons above stated, making invalid the clause providing the same too.

[67] IMAM Moot Proposition, 2017, at 17.
[68] Henry Campbell Black, Black's Law Dictionary, (Bryan A. Garner ed., West Group, 7th ed. 1999) (1891).
[69] The Nanfri, (1979) A.C. 757 at 37.
[70] The Hamlet, SMA 2780 (Arb. at NY 1991).
[71] Aries Tanker Corporation v. Total Transport Ltd. (the Aries), (1977) 1 W.L.R. 185.
[72] Sea and Land Securities Ltd. v. William Dickinson and Co. Ltd., (1942) 72 Ll.L.Rep. 159, 163.

C. <u>There was an implied safe port warranty in the present Charter party and the charterers are liable for the accident.</u>

37. There was an implied safe port warranty in the present Charter party and the charterers are liable for the accident as **(i)** There exists an implied safe port warranty, **(ii)** The charterer is liable for the accident during movement of the ship from outer anchorage area to the berth under the safety clauses in the Charter party, **(iii)** The charterers are liable for the accident and the owners are not liable for the accident, and **(iv)** The charterers are liable to compensate for the accident.

i) There exists an implied safe port warranty

38. A term is implied into a contract when such a term is necessary to give business efficacy to the contract.[73]The term must be so obvious that it goes without saying,[74] and the officious bystander test[75] that while the parties were making their bargain, an officious bystander, were to suggest some express provision for it in their agreement, they would testily suppress him with a common "Oh, of course!"[76] should be fulfilled. The more the charterer has the liberty to choose the port, the greater the necessity to imply a safe port warranty.[77] The lesser the specifications and information the charterer provides to the owner, the more it will be implied there exists a safe port warranty.[78] When the port is not named, a safe port warranty maybe implied.[79] The language of the C/P is to be used to determine the existence of an implied warranty and terms showing an indication towards charterers being expected to keep the ship safe shall be indication of implied safe port warranty, as opposed to cases where the terms of the contract explicitly show that the charterer was not envisaged to keep the ship safe, like striking out the term 'safely'.[80]

39. In the present case, it is necessary that a safe port warranty be implied, for without the same, the ship maybe harboured at any unsafe port, leading to the accidents to the

[73] The Moorcock, (1889) 14 PD 64.
[74] BP Refinery (Westernport) Pty Ltd v. The Shire of Hastings, (1978) 52 AJLR 20.
[75] United India Insurance Co. Ltd vs Manubhai Dharmasinhbhai Gajera, (2008) 10 S.C.C. 404 (India).
[76] Satya Jain v. Ahmed Rushdie, A.I.R. 2013 S.C. 434 (India).
[77] Mediterranean Salvage And Towage Ltd v. Seamar Trading And Commerce Inc ('The Reborn'), (2009) 2 Lloyd's Rep 639.
[78] *Id.*
[79] Vardinoyannis v. The Egyptian General Petroleum Corporation, (The "Evaggelos Th."), (1971) 2 Lloyd's Rep 200.
[80] *Id.*

ship, and there arising a possibility of not being able to complete the voyage or damage to cargo and the consequential end of C/P. Safe port warranty maybe implied because it is a necessity for successful completion of the voyage with such efficacy as both parties have intended, and hence without the safe port warranty there cannot be business efficacy to the contract.

40. "That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place"[81] gives rise to an *ejusdem generis*[82] and hence the term 'any place' is to be understood as any place where a ship would rest for loading and unloading.[83] A port or a berth being a place where ship rests for loading and unloading,[84] like a dock or wharf is a place is a place where ship rests for loading and unloading,[85] it falls within the meaning of 'any place' and hence there exists an implied safe port warranty, with the language of the C/P suggesting so.

41. Since the C/P contains the term "any place where the vessel may safely lie afloat, when a bystander is to suggest safe berth or port, either the ports can reasonably assumed to testily suppress him with a common "Oh, of course!", thereby fulfilling the officious bystander test.

42. The fact that Port Zanpar is not named in the C/P, and not all relevant specifications and information about the port/berth necessary for berthing were communicated to the owners beforehand, and thus the charterers having exercised much high liberty in choice of the port and berth, without consulting the owners' about unloading at Port Zanipur at all, makes implying the port safe warranty a necessity.

ii) The charterer is liable for the accident during movement of the ship from outer anchorage area to the berth under the safety clauses in the Charter party.

43. The general rule is that the port shall be safe for the purpose of proceeding to it, using it and departing from it, and that the adjacent areas that the ship should traverse to enter or leave should be safe.[86] The safe berth warranty places an obligation on the charterer

[81] IMAM Moot Proposition, 2017, Clause 6, Line 62 at 29.
82 Amar Chandra Chakraborty v. The Collector of Excise, 1973 SCR (1) 533 (India); Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal, A.I.R. 2010 S.C. 1325 (India).
[83] Park SS v. Cities Service Oils, (1951) A.M.C. 851.
[84] Henry Campbell Black, Black's Law Dictionary, (Bryan A. Garner ed., West Group, 7th ed. 1999) (1891).
[85] *Id.*
[86] Terence Coglin, et al., Time Charters p. 227 (7th ed.2014).

that to provide a safe port, one which permits safe egress and ingress.[87] The term "safely lie always afloat" means the charterers are obligated to choose a port where the vessel can safely enter.[88] If the approach were divorced from the safe port limits, it would be a mockery of the safe port warranty to say it would be safe place if one could overcome the obstacles there to get in or get out.[89] When a sunk vessel made entry into the wharf unsafe and caused accident, it was held entry to wharf constitutes part of safe port warranty.[90]

44. Thus, despite the outer anchorage area not falling within the geographical and legal limits of the Port, the charterers are liable since the safe port warranty extends to entry into the port, which the ship was at the time of the accident, involved in. The decision in *APJ Priti*[91] need to be distinguished as there existed no safe port warranty and only a safe berth warranty in *APJ Priti*, in which case alone is it is be read that a safe berth obligation does not extend to approach and departure,[92] but only to movement within the port.

iii) The charterers are liable for the accident and the owners are not liable for the accident.

(a)<u>*The Charterers are liable for the accident.*</u>

45. The duty of a charterer to nominate a safe port is a non - delegable one.[93] The charterers have a strict liability[94] in ensuring the ship is directed to a safe port, and the master has a right to rely on the instruction provided by the charterer that the port being ordered into by the charterer is safe in compliance with the C/P[95] and this duty of the charterer is removed only when the owner has full information about the hazard and still chose to enter the port.[96]

[87] The Oceanic First, SMA 1158 (Arb. At N.Y. 1977).
[88] The Caroline Horn SMA 649 (Arb. At N.Y. 1971).
[89] The Tropical Veneer, SMA 1172 (Arb. At N.Y. 1977).
[90] The Moorcock, [1886-90] All ER 530.
[91] APJ Priti (1987) 2 Llyod's Rep 37 (C. A.).
[92] The Greek Fighter, (2006) 1 Llyod's Rep. Plus 99 at 320-323.
[93] The Evia No. 2, (1982) 2 Lloyd's Rep 307.
[94] *Id.*
[95] The Kanjenjunga, (1989) 1 Ll LR, 354.
[96] Ore Carriers of Liberia, Inc. v. Navigen Co.,79 F.2d 521 (2d Cir. 1935).

46. In the present case, on a C/P which contained a safe port warranty the charterer is under a strict liability to nominate only a safe port,[97] on which if the owner relies and decides to move to the berth to comply with the order, hence the liability lies with the charterer[98] and not owner.[99]

(b) <u>The owners are not liable for the accident</u>

47. The owner has a responsibility to ascertain the safety of the port before agreeing to the C/P only if he has been sufficiently informed of the port and its details and had a choice in deciding the port.[100] The owner shall be held liable only if there is negligence on the part of the master,[101] which led to the accident, or he has failed to exercise good navigation[102] and seamanship[103] and the primary duty is on the charterer to ensure safety, who has a strict liability.[104] Under express orders by the charterer to move to a port, the owner is entitled to rely on the authorization by charterer[105] that the port is safe,[106] especially when the master is unfamiliar with the conditions of the port[107] and only a duty of ordinary care,[108] and no extra-ordinary care[109] is expected of the master.[110] The master when has a duty to obey the orders of port authorities.[111] The master can exercise his rights to refusal only if as per his information the port is unsafe, otherwise it would amount to breach of C/P.[112]

48. In the current case, in the absence of a named port, the owner is given neither a choice in the selection of the port, nor knowledge and specifications about the port, hence the burden of ensuring safety of the port is non-delegable on the charterer[113]and not the owner. The owner does not have the option to ensure the safety of the port as the

[97] Park Steamship Co. v. Cities Service Oil Co., 1951 AMC 851 (2dCir. 1951).
[98] Cities Service v. Gulf Refineries, 79 F.2d 521 (2d Cir. 1935) .
[99] Nassau Sand & Gravel v. Red Star Towing, 1933 AMC 54 (2d Cir. 1932).
[100] Mediterranean Salvage And Towage Ltd v. Seamar Trading And Commerce Inc ('The Reborn'), (2009) 2 Lloyd's Rep 639.
[101] The Cepheus, 1990 AMC 1058; The M/VAurora, S.M.A. No. 3609 (Fox, Nelson and Busch: 2000).
[102] Tweedie Trading Co. v. New York & Boston Dyewood Co., 3127 F. 278 (2dCir. 1903).
[103] Emraldian v. Wellmix Shipping Ltd. (The Vine), (2010) E.W.H.C. 1411 (Comm.).
[104] The Evia No. 2, (1982) 2 Lloyd's Rep 307.
[105] Venore Transport v. Oswego Shipping Corporation, 498 F. 2d 469 (2d Cir. 1974).
[106]Cities Service v. Gulf Refineries, 79 F.2d 521 (2d Cir. 1935).
[107] *Id.*
[108] The MV Chesapeake Bay, S.M.A. No. 3677 (Arnold, Berg and Szostak; 2001).
[109] Hastorf v. O'Brien, 173 F. 346, 347 (2d Cir. 1909).
[110] The Eastern City, (1958) 2 Llyod's Rep 127 (C.A.).
[111] Indian Maritime Pilot Regulations, Rule 14 (1)
[112] The Konkar Victory, SMA 1798 (Arb. At N. Y. 1983).
[113] The Evia No. 2, (1982) 2 Lloyd's Rep 307.

port was not named at the time of signing the C/P and the vessel was ordered into port later.

49. Further, there was express authorization by the charterer to move into the port,[114] on which authorization the master is entitled to rely on completely,[115] especially considering the special knowledge that the charterers have of the port by virtue of them being the owners and he did rely. The standard of ordinary duty of care required in this present case is, therefore, not disregarding the opinion of the local agent who in this case is the charterer by virtue of being the port owner, about the safety and depth of waters of the port, and act in reliance of that opinion and so far this being the case the master is not negligent. Measuring the depth through technology like GPS, SONAR, etc., after assurance received from the port owners-the charterers - with regard to the depth and safety would amount to exercise of extraordinary care, which is not required from the owners and hence the master was not negligent. Even in the case the master was negligent, the negligence could not have broken the chain of causation, as it was a hidden, unknown obstruction that led to the accident and not the manner of navigation.[116]

50. Not refusing to enter the port is not a waiver of the rights [117]under safe port warranty as the as per the knowledge made available to master, the port was not unsafe[118] and the master is entitled to rely on this opinion.

51. Since good navigation and seamanship need not mean an extra-ordinary care on the part of the master but only ordinary care[119] and hence non-usage of technology like GPS and SONAR to measure the depth does not amount bad navigation and lacking seamanship as the master is entitled to rely on assurance of the charter, and also because the master had conducted good navigation by seeking the opinion of the locals. The master has not breached duty of good navigation and seamanship as under the given circumstances of non-informing the master about the sunk vessel, he could not have avoided the danger despite good navigation.[120]

[114] IMAM Moot Proposition, 2017 at 19.
[115] The Solomon, S.M.A. 3107 (Arb. At N. Y. 1990).
[116] The Ocean Victory, (2014) 1 Lloyd's Rep 59.
[117] The Kanjenjunga, (1990) 1 Lloyd's Rep. 391 (H.L.).
[118] US v. Relaible Transfer Co., 421 U.S. 397 (1975).
[119] The Oceanic First, SMA 1158 (Arb. at N. Y 1977).
[120] Venore Transport v. Oswego Shipping Corporation, 498 F. 2d 469 (2d Cir. 1974).

52. The act of the master would have been negligent and lacking good navigation and seamanship only if he had led the vessel into the port disregarding the advice of the local agent,[121] or once presented with the actual depth or unsafety of the port[122] after letting him know of the sunk vessel he still chose to go to the port.

53. Hence the owners are not liable for the accident.

(c) The charterers as port owners are liable for the accident

54. At common law there is an implied term in the contract between the occupier and the visitor that the occupier's premises shall be reasonably safe[123]. The occupier's duty must be held to have been breached if any injury is caused to a contractual visitor by any defect in the premises,[124] The port owners have a liability to provide safe port to the vessel, in tort[125] as well as contract, the breach of which the port owner has to compensate the ship owner. An implied safe port contract maybe assumed between the port owner and ship owner,[126] and the port owner can be held liable for not providing at least due diligence standard of safety including the duty to ascertain the condition of the berth, to make it safe or warn the ship of any hidden hazard or deficiency known to the wharfinger or which, in the exercise of reasonable care and inspection, should be known to him and not reasonably known to the ship owner.[127] Wharfinger or dock owner or Port Authority owe a continuing duty of care to the ship owner to provide the vessel with a safe berth, to see that the berth was safe for the vessel to lie at, or failing that, to give warning that it was not and that the advertised depth had not been maintained.[128] In case of any hidden defect in the docking facilities, the dock owner, has a duty to supervise the docking procedure The Habour Pilot/ Port officer is empowered to remove obstructions and demand charges for that from the obstruction- causing vessels.[129]

55. In the current scenario, the port owners were under a duty to warn the master of the old sunk vessel, inform that the advertised depth could not be maintained due to the old sunk vessel and notify the new depth, and provide a safe approach to the vessel and

[121] The Star B, S.M.A. 3813 (Arb. At N. Y. 2003).
[122] The Zaneta, (1970) A.M.C. 807.
[123] Sushil Ansal v. State (through CBI), (2014) 6 S.C.C. 173 (India).
[124] *Id.*
[125] CaRisbrooke Shipping v. Bird Port Limited "Charlotte C", (2005) E.W.H.C. 1974.
[126] The Moorcock, [1886-90] All ER 530.
[127] Trade Banner Line, Inc. v. Caribbean Steamship Co., 521 F.2d 229 (5th Cir. 1975).
[128] Ports Authority of Fiji v Sofe Shipping Enterprises Ltd, (2000) FJCA 23.
[129] Indian Ports Act, No. 15 of 1908, § 10 India Code (1908).

supervise the same. Since this obligation of the port owners have not been met, and this caused the accident, and there was no negligence on the part of the master which broke the causal link, the charterer in the capacity of port owner is liable for the accident.

iv) The charterers are liable to compensate for the accident.

56. Subrogation is a statutory right that arises only once when the insurer settles the claim of the assured[130] and does not terminate or puts an end to the right of the assured to sue the wrong-doer[131] and recover the damages for the loss.[132] The person who has breached the contract is liable to make good the loss and damage caused by the breach of the contract.[133]

57. Since the owner has right to sue the charterer for the amount not obtained from the insurer, and since the right to subrogation comes into picture only after the insurer has paid the owner for all the loss, the owner has not lost his right to sue and claim damages from the charterer, and consequentially the charterer is liable to make good the damages.

D. The oral variation of charterparty is not Permissible

58. The oral variation of charterparty is not Permissible as (i) Oral variation of the Charter party has not taken place, and (ii) The variation made by master is not a valid one and does not supersede the Charter party.

i) Oral variation of the Charter party has not taken place

(a)There is no valid proposal

59. A proposal must be sufficient enough to permit the conclusion of contract by mere acceptance.[134] If there is uncertainty in the proposal by lacking specifications of quantity, etc. then it does not amount to valid proposal.[135]

60. In the present case the charterer not having mentioned the specifications of Adamantium, quantity of Adamantium to be shipped and the hire rate for carrying Adamantium, when the question of whether the vessel can carry adamantium was posed,

[130] Marine Insurance Act, No. 11 of 1963, § 79 India Code (1963).
[131] Oberai Forwarding Agency v. New India Assurance Co. Ltd., 2002 (2) S.C.C. 407 (India).
[132]Economic Transport Organization v. Charan Spinning Mills (P) Ltd., 2010 (3) AWC 2551 (SC) (India).
[133] Indian Contract Act, No. 9 of 1872, § 73 India Code (1872).
[134] Scammell G & Nephews Ltd. v. Ousten, (1941) All ER 14.
[135] Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union, A.I.R. 1957 S.C. 95 (India).

a mere acceptance of the proposal is not possible as the specifications are not complete and hence does not give rise to a contract. Thus, since the specifications of terms are not complete in the offer, there is no valid proposal, an acceptance of which could bind the parties. Hence, the answering in affirmative to the question of whether the the vessel has Adamantium carrying capability does not amount to creation of a binding contract, since there is no proposal, and it amounts to merely answering a query.

(b)<u>*There is no valid contract*</u>

61. A contract is valid only if there is meeting of minds and consent from both parties.[136] Intention of parties to be is to be ascertained by words and conduct as ascertained by a reasonable man and the intention is to be given effect to.[137] For an oral variation to be valid, the terms of the contract cannot be ambiguous.[138] The court is not to look into the subjective evidence of any party's intentions.[139] Merely quoting the price does not amount to showing intention to contract through conduct.[140]

62. In the present case, there is no meeting of minds with regard to carrying Adamantium, with the owner not intending to carry it, there is no valid variation of contract. A reasonable man's test would show that the conduct of the owners does not give rise to a contract due to lack of intention to enter into a legal obligations arising from contract since the owners merely answered a query without quoting the quantity or price of cargo to be carried. Since there is ambiguity in the terms, the owners and charters could not have said to agree to a term in the contract which varied the existing terms of excluded cargo of the existing C/P.

ii) The variation made by master is not a valid one and does not supersede the Charter party.

63. A master is authorised to sign the Bill of Lading on behalf of the owner accepting cargo different from that in the C/P only if the risk produced by that cargo is not of a different nature than that the owner has chosen to undertake in the C/P.[141] Master has no authority to agree to carry a cargo and sign such Bill of Lading that shall cause the

[136] Indian Contract Act, No. 9 of 1872, § 13 India Code (1872).
[137] Bhagwandas Goverdandhas Kedia v. Girdharilal Puushottamdas, A.I.R. 1966 S.C. 543 (India).
[138] Flack v. Williams, (1900) A.C. 176 (P.C.).
[139] Marley v. Rawlings, (2014) U.K.S.C. 2.
[140] Scancarriers A/s v. Aotearoa International Ltd., (1985) 2 Lloyd's Rep. 419.
[141] Atlantic Oil Carriers, Ltd. v. British Petroleum Company, Ltd., (1957) 2 Lloyd's Rep 55 (Q.B.).

altering of the terms of the C/P.[142] Further, the master's allowing the carriage of a cargo shall supersede the existing C/P only if the master has had sufficient knowledge as to the contents of the cargo.[143] Merely the master agreeing to carry does not waive off the claim that the owners can have against the charterers[144] especially if the master lacked knowledge of the contents of the cargo[145] and when the cargo fell outside the limits of the risks articulated by the charter.

64. In the current matter, there being no oral variation of C/P to carry Adamantium, the nature of Adamantuim Grade I being that of dangerous cargo,[146] the risk being taken by its carriage is not one articulated in the C/P and hence the master does not have authority to accept the cargo, and since the acceptance is invalid, there exists a right on the owner against the charterer. Thus the variation of in terms of cargo made by the master is not a valid one. Further, since the master was not aware that Adamantium Grade I was being loaded, there is no valid variation which can supersede the existing C/P on terms of whether Adamantium is excluded cargo.

65. Hence there is no valid oral variation of C/P and the charterers are liable for the damage and loss caused by such shipping breaching the charterparty.

[142] Sea Success v. African Maritime, (2005) EWHC 1542 (Comm).
[143] S. S. Ardennes (Cargo Owners) v. S.S. Ardennes (Owners), (1951) 1 K.B. 55.
[144] Chandris v. Isbrandsten- Moller, (1951) 1 K.B. 240.
[145] Micada v. Texim (1968) 2 Lloyd's Rep 52 (Q.B.).
[146] Merchant Shipping (Carriage of Cargo) Rules, Section 2 (j), 1995.

PRAYER

In the light of the above submissions, Owners request the tribunal to:

ADJUDGE that

I. There was no delay in the delivery of the vessel.

II. The clause entitling the charterers to deduct sums from charter hire paid to other vessels owing to deficiency in the crane/ cargo gear of MV Pequod is invalid.

III. There exists an implied safe port warranty under which the charterer is liable for the accident.

IV. There is no oral variation of the Charter party that has taken place, and any such variation by the master is not permissible.