

Shipowner's liability for pirates' attack

The MV Valle di Cordoba

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The MV Valle di Cordoba

- Oil/Chemical Tanker
- Flag: Italy
- LOA 176 metres
- GT: 25,064
- Build: 2005
- Cargo: 33.459 M/t of PMS Fuel (Premium Motor Spirit)
- Voyage: Abidjan (Ivory Coast) – Lagos (Nigeria)
- Owners: Navigazione Montanari (Italy)
- Charterers: Trafigura Beheer BV (Netherlands)



The attack

- 24th December 2010 at 23:20 hrs (LT)
Vessel's position: 16,5 miles off Cotonou



- A gang of 15-18 persons attacked and gained control of vessel and crew
- Pirates shoot to some crew members in the accommodations
- Arms used: Guns, knives, cutlasses to intimidate crew and damage cabins
- Chief engineer forced under threat to lock himself in the engine control room

The STS Transfer

- 25th December 2010 at 11.30 hrs (LT)
- AIS switched off
- Vessel under command of pirates directed to various courses to reach meeting point for the STS transfer on a 5.000/10.000 Mt tanker (unknown name and flag)
- 26th December 2010 at 20:30 hrs (LT) STS completed and approx. 5.000 Mt of PMS pumped on pirate's tanker barge
- Vessel proceeded under pirates' order to disembarkation point
- 27 th December 2010 at 04:00 hrs (LT) pirates disembarked



The Charterparty

- BP Voyage 3 (Beepeevoy3)

Cl. 4 «The vessel shall be loaded and discharged at any ... anchorage, submarine line, offshore location .. or any other place whatsoever as ordered by Charterers»

Cl. 24 « If, at any time after the vessel has completed loading the cargo ..., Charterers instruct the vessel to await for further orders at one or more locations, then all time spent to count as laytime

Cl. 47 Liberty Clause

The Charterparty/2

- Trafigura Chartering Clauses (incorporated in the C/p)

Cl. 4 In-transit loss clause:

"In addition to any other rights which Charterers may have, Owners will be responsible for the full amount of any in-transit loss if in-transit loss exceeds 0.5% and Charterers shall have the right to claim an amount equal to the FOB port of loading value of such lost cargo plus freight and insurance due with respect thereto

Cl. 18 «Owners shall be responsible for any time, costs, delays or loss suffered by Charterers due to failure to comply fully with Charterers' voyage instructions»

The Charterers' Order

- On 17 th December 2010 at 15.55 hrs (LT) Trafigura sent the following email to Owners:

«Charterers confirm OK to sail and kindly advise that we consider 50 nm offshore Lagos to be safe position for vessels and NOT LESS»

The Master's conduct

The AIS record system revealed that:

- 17.12.2010 (08:23) vessel anchored off Lagos (approx 7 NM) until 21.12.2010 and at 0:12 moved 18 NM away from shore
- No position on record up to 27.12.2010
- Position reported by the Owners on 24.12.2010 : 06.07.7N 02.37.2 E
- Position reported by Owners during the STS : 05.51.1 N 03.51.1 E

Conclusions:

The Vessel stayed at least from 17.12 up to 21.12 at 7NM and then 18NM so in breach of Charterers' orders to stay at not less than 50NM offshore

The Italian Arrest

- MV VALLE DI NERVION a sistership (same Owner) arrested at Ravenna on 13.10.2011 on behalf of Trafigura
- Security obtained up to USD 5.000.000,00 in relation to the value of the stolen cargo plus interest and costs
- 1952 Brussels Convention applicable because Trafigura is a Dutch Company so not Italian
- Owners prima facie liable for breach of Charterers' orders, recognized having facilitated the pirates attack off Lagos

The Italian Arrest/2

Art. IV Hague Visby (incorporated by Cl. 46 C/p)

2 . Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.

(c) Perils, dangers and accidents of the sea or other navigable waters

OWNERS cannot rely on Art. IV Hague Visby because Charterers' order was sent directly to the management not to the Master and Owners failed to evidence proper timely instructions to Master from Managers

The English Proceedings

In the London High Court it was held that :

(1) a loss by piracy does not fall within the meaning of «in-transit loss» so that Owners would not be liable for loss so caused; and (2) also if it did, Owners could nonetheless rely on the exceptions contained within the Hague Visby Rules (the «Rules») that were incorporated in the charterparty.

A different interpretation of the «in-transit loss» clause would have probably jeopardised Owners' P&I cover, due to standard provisions in Club rules prohibiting Owners to agree liability regimes more onerous than the one provided by the Rules.

The English Proceedings/2

The Court of Appeal confirmed the High Court decision and dismissed the appeal [Trafigura v. Navigazione Montanari, 2015 EWCA Civ 91].

The Court was referred extensively to the case of the Olympic Brilliance [1992] 2 Lloyd's Rep. 205

The Court rejected the Charterer's construction of the ITL clause because it would effectively make the Owner an insurer of the cargo. The wording of the ITL clause was not clear enough to achieve that result. Instead the clause refers to circumstances where the loss is unexplained and is purported to help in determining notoriously difficult oil shortage claims.

Conclusions

- Italy remains an extraordinary favourable jurisdiction for ship's arrests also in cases where the Charterers or Receivers right is not so straight
- A ship arrest to secure charterers' right of compensation for loss arising out of a piracy attack is generally allowed and no counter security is required
- Owners should not increase the likelihood of a piracy attack by diverting from Charterers' orders
- The Hague Visby Rules will not protect the Owner if the Charterers' order was directed to the Owner's management and remained neglected
- The ITL clause in a BPVoy3 C/p is not relevant for the above purposes