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CONTENTS

Judgment of Tokyo Court of Appeal dated February 24, 1993 Docket No.: Heisei 3rd Year (Ne) 1192 M.V. "JASMIN"

Appeal from a judgement of the Tokyo District Court. Affirmed. (Our translation of the District Court judgement was published in this Bulletin No.22 and 23.)

JUDGMENT

Parties

Plaintiff-Appellant P-1: (The Oriental Fire & Marine Insurance Co., Ltd)
Plaintiff-Appellant P-2: (Daehan Fire & Marine Insurance Co., Ltd.)
Plaintiff-Appellant P-3: (Lucky Insurance Co., Ltd.)
Plaintiff-Appellant P-4: (Ankuk Fire & Marine Insurance Co., Ltd.)
Defendant-Respondent D-1: (Kansai Steamship Co., Ltd.)
Defendant-Respondent D-2: (Ebisu Marina S.A.)

Text of the Judgment

1. The appeal made by the appellants is dismissed.
2. The appellants are to bear the costs of this appeal.

Facts

I. Judgments demanded by the parties
1. The appellants
(1) The judgement of the Tokyo District Court shall be reversed.
(2) The respondents shall separately pay the following amounts of money:
Korean Won 142, 910, 778 to the Appellant P-1;
Korean Won 9, 961, 247 to the Appellant P-2;
Korean Won 26, 633, 954 to the Appellant P-3;
Korean Won 19, 934, 484 to the Appellant P-4.

In addition, the respondent D-1 shall pay each appellant interest thereon calculated at the rate of 6% per annum for the period from 10th June, 1988 to the date of actual payment, and the respondent D-2 shall pay each appellant interest thereon calculated at the rate of 5% per annum for the period from 22nd November, 1988 to the date of actual payment.

(3) The costs for both the original judgment and this appeal shall be borne by the respondents.
(4) A declaration of provisional execution.

2. The respondents
The same as the text of the judgment.

II. The assertions of the parties and the evidence thereof
1. The assertions of the parties
The assertions in this appeal have the same contents as those showed in the judgment at first instance (Facts and Reasons / II. The summary of the case) except the following additions. Therefore, this court quotes that part of the judgment.
[Note: The parts added or amended to the original judgment are in italics and those deleted are omitted by the translator.]

〈〈 II. The summary of the case
1. The case
In respect of damage to the rice bran extraction pellets (the cargo) carried by the cargo vessel "Jasmin" (the Ship) from Indonesia to Korea from April to May, 1986, the plaintiffs, asserting that their rights of suit were acquired by subrogation from the holders of the bills of lading, demand payment of damages from the defendant D-1 for his breach of obligations *of the carrier* under the contract of carriage by sea evidenced by the bills of lading and from the defendant D-2 for his breach of obligations *of the carrier* under the contract of carriage by sea evidenced by the bills of lading or for his tortious acts.

2. The facts not in dispute
(1) (Shipowner and time charterer)
The defendant D-2 was the owner (the shipowner) of the Ship and the defendant D-1 was its time charterer.
(2) (Time charter)
The time charter between the defendants D-2 and D-1 (the time charter) was made on a New York Produce form.
(3) (Issuance of bills of lading and descriptions thereon)
Karimata, a ships' agent at the port of Tjirebon, Indonesia signed the bills of lading for the carriage of the cargo (the bills of lading) on 26th and 27th April, 1986.
The signatures were made under the indication of "For the Master".
In this instance the appellants withdrew their admission of the above fact and the respondents made an objection to it.
The words "KANSAI STEAMSHIP COMPANY LTD [the name of the defendant D-1]

BILL OF LADING" were printed at the top of each bill of lading.

(*4*) (Governing law)

Japanese law was designated as the governing law in Art.2 of the back clauses of the bills of lading.

(*5*) (Navigation of the Ship)

The master loaded the Ship with 3,300 metric tons of the cargo in bulk and then the Ship left the port of Tjirebon on 27th April and entered the port of Incheon on 8th May, 1986.

(*6*) (Cargo battens along the side strakes of the Ship)

The master did not fit cargo battens along the side strakes prior to stowing the cargo.

(7) (Ventilators)

The ventilators of the Ship were mushroom-type natural ones which were only for exhaust. In other words, the Ship did not have ventilators with mechanical devices.

(8) (Placement of dunnage)

There was no dunnage placed along the side strakes of the Ship.

(*9*) (Fumigation prior to the unloading)

Prior to unloading the cargo, from 1600 hours 8th May to 1600 hours 10th May, 1986, the consignee had a fumigation operator close down the holds of the Ship and fumigate the cargo with cooled gas.

(*10*) (Discovery of the damage to the cargo)

It was discovered after the completion of fumigation and before the unloading that the part of the cargo stowed along the side strakes and the top surface of the cargo stowed in the holds were wet, solidified, discoloured and moldy.

(*11*) (Occurrence of damage after the unloading)

After unloading the cargo, the part which was considered to be sound was separated from the damaged part and stored in a warehouse ashore. However, this sound part became unusable because of mold.

3. Issues

No.1 (The identity of the carrier on the bills of lading)

Whether the defendant D-1 was the party (the carrier) to the contract of carriage by sea evidenced by the bills of lading.

(1) Whether the ocean carrier (hereinafter referred to as "the carrier") was identified by the legal nature of the time charter or the descriptions on the bills of lading and the interpretation thereof.

(2) Whether the demise clause was null and void under Art.15 Sec.1 of the International Carriage of Goods by Sea Act, 1957 (hereinafter referred to as "the Japanese COGSA").

No.2 (The duty of the carrier to exercise due diligence to make the ship seaworthy (cargoworthy): Assertions by the appellants under Art.5 Sec.1 Subsec.2 and 3 of the Japanese

COGSA)

(1) Whether the sweating of the hull was inevitable and predictable.

(2) Whether the cargo had the nature of dangerous goods in that it did not only become fermented and rotten but also became highly heated because of contact with water.

(3) Therefore, in order to prevent an accident of water damage caused by the sweating of the hull, whether the carrier should have provided ventilators for the ship's holds equipped with mechanical devices for good ventilation. (In this connection, the ventilators of the Ship were mushroom-type natural ones which were only for exhaust.)

(4) Also, in order to avoid contact between the cargo and water, whether the carrier should have fitted cargo battens along the side strakes prior to the stowage.

(5) Otherwise, whether the carrier should have stowed bagged cargo along the side strakes to avoid contact of the cargo with them.

(6) Whether the chief officer of the Ship should have taken into consideration the characteristics of the cargo mentioned above and measured its temperature during the period of the loading operation, namely, during the four days from 24th to 27th April, 1986 to confirm that the cargo was sufficiently matured, that is, that its temperature had became low enough (IMO code).

No.*3* (The cause of damage to the part of the cargo stowed along the side strakes)

3-1: (Inherent vice of the cargo ① / High temperature of the cargo / Assertion by the defendants under Art.4 Sec.2 Subsec.9 of the Japanese COGSA)

(1) Whether the cargo had been at the high temperature of 40°C since a point before the loading operation.

(2) If the cargo had been at the temperature of 40°C, whether it could become wet and rotten because of the dew along the side strakes caused by the difference between the temperatures of cool sea water and the cargo.

(3) Whether the high temperature of the cargo would come under the inherent vice exception if the mariners engaged in the loading operation did not notice it for the following reasons:-

(a) No shimmer of heated air was seen.

(b) A breeze of wind-force 2 or 3 was blowing and therefore the heat exhaled.

(c) The difference between the temperatures of the air and the cargo was less than 10°C.

(d) The temperature of the deck where the loading operation was carried out rose to approximately 50°C and under such circumstances the mariners could not notice the high temperature of the cargo.

(e) The shipper's servant in charge who was on the scene of the loading operation did not complain of anything unusual.

3-2: (Inherent vice of the cargo ② / Corruption of the cargo / Assertion by the defendants under Art.4 Sec.2 Subsec.9 of the Japanese COGSA)

(1) Whether the cargo began to ferment or rot before the loading.

(2) Whether the inherent vice existed because the discoloration or mold was not seen and the rot was not found before the loading.
(3) If the fermentation or rot had already occurred, whether it was unnatural that the discoloration or mold occurred as in this case.
3-3: (Obligation to prevent any damage to the cargo / Placement of dunnage along the side strakes / Assertion by the plaintiffs under Art.4. Sec.2 Proviso of the Japanese COGSA)
(1) Whether it was usual that in the case of the carriage from a port near the equator, such as Tjirebon, to a port in a cold location, such as Incheon, the hull was cooled down by sea water and sweated.
(2) Whether the carrier had a duty of care to fit cargo battens along the side strakes in order to secure the space between the side strakes and the cargo and prevent contact between the cargo and the dew which formed on the hull, to enable the dew to be drained and to maintain the ventilation through the space between the side strakes and the cargo battens.
(3) If such dunnage was placed, whether the damage to the cargo would not have occurred in spite of its inherent vice.
3-4: (Obligation to prevent any damage to the cargo / Ventilation / Assertion by the plaintiffs under Art.4 Sec.2 Proviso of the Japanese COGSA)
(1) Whether the master had a duty of care to ventilate the holds only when the dew point in the open air was below that in the holds.
(2) Whether he failed to do so.
(3) If he performed such duty, whether the damage to the cargo would not have occurred in spite of its inherent vice.
3-5: (Obligation to prevent any damage to the cargo / Others / Assertion by the plaintiffs under Art.4 Sec.2 Proviso of the Japanese COGSA)
(1) Whether the master had a duty of care to prevent the damage by means of cleaning the holds, pitching tarpaulin above the deck, keeping the cargo away from the places at a high temperature, making stowage so as not to prevent ventilation and covering the cargo with mats. (Assertion in 2(4) of the plaintiffs' preliminary pleading dated 25th December, 1989)
(2) Whether he failed to do so.
(3) If he performed such duty, whether the damage to the cargo would not have occurred in spite of its inherent vice.
No.*4*: (The cause of the water damage on the top surface of the cargo)

(Inherent vice of the cargo ① / High temperature of the cargo / Assertion by the defendants under Art.4 Sec.2 Subsec.9 of the Japanese COGSA // Acts of employees of the cargo owner / Assertion by defendants under Art.4 Sec.2 Subsec.6 of the Japanese COGSA)

Whether the cause of the water damage on the top surface of the cargo was that the cargo was already at a high temperature before loading and that the formation of dew was caused by the difference between the temperatures of the cargo and the cool gas used for disinfecting

because the consignee had a fumigation operator close down the holds and fumigate them.
No.5: (The cause of the damage to the cargo after discharge / Assertion by the plaintiffs under Art.3 Sec.1 of the Japanese COGSA)

Whether the cause of the damage to the cargo after discharge was attributable to the breach of a duty of care of the carrier. (Whether the cause could be found in the high temperature of the cargo and the manner of custody in the warehouse.)

(In addition to the above, there are other issues, such as the extent of the damage and the effect of subrogation by the insurer.) 〉〉

2. Evidence

The descriptions of the inventories of evidence made in the first and this instance are quoted.

Reasons

1. This court determines that none of the claims of the appellants is justified. The reasons for this judgment are the same as those given in the judgment at first instance (Facts and Reasons / II. The summary of the case / 2. The facts not in dispute and III. The judgments on the issues) except the following additions and corrections. Therefore, this court quotes such part of the judgment.

[Note: The parts added or corrected are in italics and those deleted are omitted by the translator. All references to the numbers of evidence and the names of witnesses are also omitted.]

〈〈 III. The judgements on the issues

1. Re: Issue No.1 (The carrier on the bill of lading)

(1) As to the identification of the carrier on the bill of lading

The appellants pursued the contractual liability under the contract of carriage against the carrier evidenced by the bills of lading. They asserted that the carrier in this case was the respondent D-1, who was the time charterer, on the grounds that the legal nature of a time charter was the mixed contract of a bareboat charter and a contract of manning and that the provision of Art. 704 Sec.1 of the Commercial Code, which is applicable to a bareboat charter, is also applicable in itself (by analogy) or mutatis mutandis to a time charter. As mentioned above, the respondents D-2 and D-1 entered into the time charter.*

* Art. 704 Sec.1 of the Commercial Code provides:

If the lessee (the bareboat charterer) of a ship makes her available in navigation for the purpose of engaging in commercial transactions, he shall in relation to third persons have the same rights and duties as the owner in connection with matters relating to the use of the ship.

However, the bill of lading is the document which should be issued on a certain cause. The fundamental cause in this case was the existence of the charterparty between the cargo owner (the shipper) and the carrier. This charter was different from the time charter between the shipowner and the time charterer.

When the time charterer is given the right to make a sub-charterparty of the chartered ship under the time charter with the owner, he can do it for himself with a cargo owner. On the other hand, because the charterparty between the shipowner and the charterer is the only contract which creates their rights and obligations, the owner can legally make another charterparty (it may usually be a voyage charter) with a cargo owner. Furthermore, if the owner and the charterer intend that the former enters into another charterparty of the chartered ship with a third party, the owner can give the charterer an authority to make a charterparty on behalf of the owner among the provisions of the time charter. Consequently, although it is understood that the legal nature of a time charter is the mixed contract of a bareboat charter and a contract of manning, that does not mean in due course that it is only the time charterer who can be the party to a charterparty with the cargo owner. Also, unless the provision of Art.704 Sec.1 of the Commercial Code is applied to the third party liability of the time charterer, such as liability in respect of a collision, on the ground that it is fair that a party getting the profit should bear the loss, there are not any grounds on which the provision should be applied in itself or mutatis mutandis to the contractual liability of the carrier evidenced by the bill of lading. In short, since it is not considered that the respondent D-1 was the carrier evidenced by the bills of lading only because of the existence of the time charter, the above assertion by the appellants is not justified.

As mentioned above, the loading port of the carriage of the cargo by the Ship was Tjirebon, Indonesia and the port of discharge was Incheon, Korea. Therefore, the carriage was an international carriage of goods by sea and the bills of lading were those for an ocean vessel. Although the descriptions on them were not absolute evidence, they were prima facie evidence (under Art.9 of the Japanese COGSA). In general the carrier evidenced by the bill of lading should be identified by the descriptions on the bill of lading and the interpretation thereof.

(2) As to the carrier on the bill of lading

〈 1 〉 The appellants asserted that the carrier evidenced by the bills of lading was the respondent D-1 because of the indication of "KANSAI STEAMSHIP COMPANY LTD BILL OF LADING" at the top of each of them. However, as mentioned below, there were some facts in the bills of lading based on which the carrier could be identified, such as the description "For the master", the signature at the space for signature in the bills of lading and the demise clause among their back clauses. Therefore, such indication on the bills of lading shall be considered to mean that the forms of the bills of lading were exclusively for the respondent own purposes, that the indication was only for contact purposes, or at most

that the respondent D-1 participated in the charterparty with the carrier evidenced by the bills of lading as someone like a time charterer. In consequence, the above assertion of the appellants is not justified.

〈2〉 ① *As mentioned above, Karimata, a ships' agent at the port of Tjirebon, Indonesia signed the bills of lading on 26th and 27th April, 1986. In this instance the appellants withdrew their admission to the fact that the signatures were made under the indication of "For the Master" and the respondents made an objection to it. However, such fact was only a constructive one for proving who was the carrier on the bills of lading. Therefore, although it was not possible to admit it, the appellants can change their position on it. Anyway, there was a description "For the Master" and a signature at the space for signature in each bill of lading. Though a stamp was put on the part "e Master" and sealed with the tally of Karimata, it is not considered on the facts that the manner to delete a description in the bill of lading was to cross it and to seal and sign near the crossing, that such part of the description was deleted by the affixing of the stamp. It was only that the affixed stamp covered part of the description by accident.*

② The indication of "For the Master" on the bills of lading, under which the ship's agent, Karimata, made its signature, is generally understood to be an indication that the shipowner was the party to the contract of carriage of goods by sea (that is, he was the carrier).

③ *As mentioned above, the Ship owned by the respondent D-2 was loaded with the cargo and then left the port of Tjirebon on 27th April and entered the port of Incheon on 8th May, 1986. The master for the voyage was Mr.Okamoto and it was the respondent D-2 who employed him and the other mariners. Mr.Okamoto obtained his technical license of master in 1968 and has been on board the Ship since it was newly built. The building of the Ship was ordered by the respondent D-2 and completed on 17th October, 1980. The place from which Mr.Okamoto was given the business instructions and to which he reported was the virtual office in Japan of the respondent D-2, which was located in Ehime prefecture. According to the above facts, it is recognized that Mr.Okamoto was employed as the master of the Ship by the respondent D-2 about October, 1980 and that the contract of employment made between them at that time was the mixed contract of mandate or quasi-mandate which consisted of his employment as the master of the Ship and the grant of the associated authority.*

The extent of the authority of a master is legally fixed (Art.713 of the Commercial Code).

④ There is the following stipulation in the time charter *which was made on a New York Produce form as mentioned above:*

"It is agreed that the Master authorizes the Charterer or his agents to sign bills of lading on behalf of the Master in conformity with mate's or tally clerk's receipts as well as this time charter."

⑤ *When the owner enters into a time charter of his ship and entrusts the charterer with its operation, it is understood in the present shipping practice that the owner authorizes the charterer or his agents to conclude the contract evidenced in a bill of lading on behalf of him although there is no specific stipulation in the time charter.*

⑥ Under the grain voyage charter (to the effect that the cargo was to be carried from Tjirebon to Incheon) made between the defendant and *the time charterer D-1* and Peter Kramer, the defendant D-1 gave the voyage charterer, Peter Kramer or his agent (in this case Karimata, ships' agent, was his agent) the authority to sign bills of lading on behalf of the master.

⑦ There were signatures of Karimata, the Ship's agent, in the bills of lading which acknowledged that he received the freights on behalf of the shipowner/master.

⑧ Each bill of lading contained the so-called demise clause which provided:

"If the Vessel is not owned by or chartered by demise to [D-1] (as may be the case notwithstanding anything which appears to the contrary) this bill of lading shall have effect only as a contract with the owner or demise charterer, as the case may be, as principal made through the agency of [D-1], who acts as agent only and shall be under no liability whatsoever in respect thereof."

⑨ Even if a time charter was concluded, the power to instruct and supervise the master and other mariners was retained in the hands of the shipowner who employed them.

⑩ On the bills of lading it was stated that *the Consignee was "the Tjirebon branch of N Bank (an Indonesian bank) or order"* and that the Notify Party was the Korean fodder company, buyer of the cargo (and to whom the plaintiffs paid out the sum payable under the policies).

Based upon the facts found above, it is to be held that it was not the time charterer but the shipowner who was indicated on the bills of lading as the responsible party in the capacity of carrier.

(3) The appellants asserted that the demise clause was null and void under Art.15 Sec.1 of the Japanese COGSA. However, a bill of lading clause confining the carrier to be the shipowner, such as the demise clause in this case, does not make the responsibility of the carrier on the bill of lading ambiguous. It does not restrict the carrier's responsibility and conflict with the effect of the provision in Art.15 Sec.1 of the Japanese COGSA. Therefore, it shall not be contrary to the prohibition of special agreements provided in Art.15 of the Act.

Consequently, the demise clause shall have the effect it purports to have *and the assertion of the appellants is not justified.*

2. Re: Issue No.2 (A duty of the carrier to exercise due diligence to make the ship seaworthy and cargoworthy)

The appellants asserted that the Ship was not seaworthy (cargoworthy). However, facts

were not found sufficient to support their assertion. On the contrary, according to the following facts not in dispute and the facts found on the evidence, it should be said that the Ship was seaworthy. Therefore, the above assertion of the appellants is not justified.

(1) First of all, there was a possibility that the water damage to the cargo would occur due to sweating of the hull because the sweating was likely to occur in case of the carriage of an absorbent cargo like agricultural products from a humid place in the tropics or subtropics to a cold district.

(2) Secondly, as mentioned above, the ventilators of the Ship were mushroom-type natural ones, in other words, the Ship did not have ventilators with mechanical devices.

(3) However, the ventilation system of the Ship was common to other bulk carriers. At the present time a lot of grain and vegetable pellets are carried on vessels of the same type.

(4) According to the above facts, it cannot be said that the Ship was not seaworthy (cargoworthy) because she had no ventilators with mechanical devices. It should be said that the carrier fully exercised due diligence to make her seaworthy (cargoworthy) at the commencement of the voyage.

(5) Thirdly, as mentioned above, the Ship did not place any dunnage along the side strakes. However, the carrier had no duty to place dunnage as stated below. Also, the carriage of grain (including vegetable pellets) from the tropics to temperate zones is done in bulk, that is, without any measures like setting special materials inside the side strakes which shut off the heat (in the manner of preventing the cargo coming into direct contact with the side strakes). Therefore, it cannot be said that the Ship was not seaworthy (cargoworthy) because of not placing any dunnage and the carrier is considered to have fully exercised due diligence to make her seaworthy (cargoworthy) at the commencement of the voyage.

(6) In addition, the appellants also asserted that the manner of stowage of the cargo was included in the matters of seaworthiness (cargoworthiness). However, since it is considered to be a matter of Art.3 or 4 of the Japanese COGSA, it is not discussed here.

(7) Finally, the appellants also asserted that the negligence of the carrier should be recognized under Art.5 Sec.1 Subsec.2 because the first officer of the Ship did not measure the temperature of the cargo during the period of the loading operation. However, it is not understood that the mariners of the Ship had a duty to measure the temperature at the time of shipment (it is the duty of the shipper). Therefore, the assertion of the appellants is not justified.

3. Re: Issue No.*3* (The cause of damage to the cargo stowed along the side strakes)

(1) First of all, this court examines whether the cargo had been at the high temperature of 40°C since a point before the commencement of the loading operation.

〈 1 〉 Around 8 o'clock in the morning of 28th April, 1986, which was the day after the Ship departed from the loading port, the chief officer of the Ship was aware of an unusually high temperature inside the holds, went there with the third officer and measured the temperature

of the cargo by thrusting a 1m-long thermometre into it about 50cm to 1m in depth. The cargo temperature was as high as 40.5°C, which was far beyond the atmospheric temperature of 30°C.

〈2〉 As only about 20 hours had elapsed from the departure to the taking of the above measurement, it is not considered that the cargo could have been heated up from outside during such period. On the other hand, the proliferation of bacteria could internally raise the temperature of the cargo. For bacteria to proliferate, however, both moderate temperature and moisture are required. Since the water content in a normal cargo is only about 11.5% and it is inconceivable in the light of experience that bacteria would rapidly proliferate at such a moisture level, it could not be inferred that the change of temperature was caused by the proliferation of bacteria.

〈3〉 Although the master, to prevent the cargo from heating up, kept the hatches open in the daytime during the voyage, except during the periods when the weather became rough, the temperature of the cargo had fluctuated in the range of 37 to 41.3°C over the period of carriage. (The measurement of temperature was made at a different spot each time.) When the measurement was made at the time of discharge in the port of Incheon, a considerable quantity of cargo showed the high temperature of maximum 41°C its core.

Upon the above findings, it is found that a part of the cargo had been at a high temperature well before the loading operation was commenced.

The plaintiffs asserted that an inside part of the cargo was at an ordinary temperature at the time of discharge (as high as 30°C, which was around the atmospheric temperature at the loading port). However, it is not improbable that there was a part at the high temperature and a part at an ordinary temperature among the cargo loaded in such a great amount and therefore the finding just mentioned shall not be reversed only by this fact referred to by the plaintiffs.

(2) Secondly, it is apparent that, when the cargo of pellets in bulk was at the high temperature of 40°C, dew occurred along the side strakes as a result of their being cooled down by sea water (its temperature ranged from 29°C to 12°C) and caused water damage to the cargo.

(3) Then, this court considers whether the high temperature of the cargo would come under the definition of inherent vice if the mariners engaged in the loading operation did not notice it.

According to the evidence, the situation at the time of the loading was found to be as follows:

〈1〉 No shimmer of the heated air went up out of the cargo and there was no sign which indicated the high temperature of the cargo.

〈2〉 The heat was exhaled as a breeze of wind-force 2 or 3 was blowing.

〈3〉 The temperature at the port of Tjirebon ranged from 31°C to 35°C and that in the hold was in the region of the first half of the 40s°C. It was very hot.

〈4〉 As the temperature of the deck where the operation was carried out rose to 50°C or 60°C, the mariners working in such a situation could not notice the high temperature of the cargo.

〈5〉 The shipper's representative who was on the scene of the loading operation did not complain of anything unusual.

Under the situation found above, it could not be said that the mariners were at fault in being unaware of the high temperature of the cargo and therefore it should be said that the defect of the cargo fell under the inherent vice exception.

(4) Then, this court decides whether it was obligatory or not to install dunnage along the side strakes.

The plaintiffs asserted that the carrier had a duty of care to fit the side strakes with wooden boards (dunnage) in order to secure the space between the side strakes and the cargo and prevent contact between the dew which formed on the hull and the cargo, to enable the dew to be drained and to maintain the ventilation through the space between the side strakes and cargo battens. The expert, Mr. Koga, stated his view to the same effect.

However, according to the evidence, the following facts could be found:

〈1〉 The shipper did not demand the fitting of cargo battens inside the Ship. Also, the clause in the voyage charterparty requiring the placement of dunnage was purposely deleted.

〈2〉 In the report made by the expert commissioned by the plaintiff P-4, there was no statement that the lack of cargo battens was the cause of the damage.

〈3〉 If the placement of dunnage, such as cargo battens along the side strakes, was required, it would necessitate considerable expense and time for the cargo operation. In consequence, the aim of the parties to the sales contract who opted for shipment in bulk in order to save expense and time of the stevedoring operation would not be achieved.

〈4〉 In the carriage of grain in bulk, ship's sweat has often caused damage to the cargo in the past. However, if the shipper strictly controls the cargo before the loading, ensuring that it is a low temperature and moisture content, such damage as caused by the sweating of the hull in transit is substantially decreased. Consequently, it is no longer required of the carrier to place dunnage, such as wooden boards, along the side strakes for the carriage of grain in bulk.

The above facts are found and, based upon them, it cannot be considered that the carrier had the obligation to place dunnage as the plaintiffs asserted.

Meanwhile, the expert, Mr. Koga, maintained that the space between the cargo and the side strakes should have been secured by stacking sacks containing grain up the side without taking the grain out of a part of the sacks. However, the shipper required the carriage in bulk, not in such a special mode. In addition, as found above, it is recognized that, even if the cargo shipped in bulk was stowed along the side strakes without securing any space, the sweat damage would not have occurred as long as the shipper appropriately controlled the

pre-shipment cargo. Therefore, the expert's view is unacceptable.

(5) Then, this court decides in respect of the ventilation.

The plaintiffs asserted that the damage occurred due to the master's failure in performing his duty to ventilate the holds only when the dew point in the open air was below that in the holds.

However, as found above, the master kept the hatches open and ventilated the holds in the daytime only during the voyage. It is not said that such manner of ventilation was inappropriate. Furthermore, it can hardly be concluded that the damage was caused by insufficient ventilation because the cargo remained at a high temperature despite such special manner of ventilation.

(6) And finally, this court decides whether the master had other duties to prevent the damage.

The points the plaintiffs asserted will be discussed below.

〈1〉 The holds were clean and suitable for accommodating the cargo before shipment.

〈2〉 There was no evidence which supported the allegation that the cargo operation was carried out in rainy weather.

〈3〉 As well, no evidence was found to support the allegation that the crew put the cargo adjacent to places which were at a high temperature.

〈4〉 As damage to the cargo is rather more likely to occur in the case of the cargo being covered with wooden boards or mats, generally shippers do not require the master to take such a measure.

As found above, the allegation that the master breached the other duties to prevent the damage was not established.

In addition, when the cargo is carried in bulk, its greater part is stowed in conditions of poor ventilation. There is a regulation in the Stowage of Goods on Board Act which states how to prevent sweating of the hull in the carriage of grain in bulk. However, the regulation may not be applicable to this case because it is considered to have been promulgated well before it become popular for the shipper to take the abovementioned measures to prevent sweating in the carriage of grain in bulk. Also, according to the following evidence, in the present situation, where such manner to make carriage of grain in bulk safe becomes common, it is found that the cargo damage will not occur within the term of the voyage even if the cargo is carried in such a way that ventilation cannot be expected and further that in most cases grain is carried in bulk on ships which have only natural ventilators like the Ship and stowed directly against the side strakes. Therefore, the assertion of the plaintiffs in this regard is not justified.

4. Re: Issue No.*4* (The cause of the damage to the top surface of the cargo)

According to the evidence, the following facts are found as the situation before and after the fumigation by gas:

(1) It was required to remove the damp on the surface of the cargo prior to fumigation by

gas. Therefore, if the cargo was found to be damaged, the fumigation would not be done immediately after the arrival of the Ship at the port of discharge.

(2) On arrival of the Ship at Incheon, the hatches were opened and the cargo inspection was carried out. No damage to the cargo was found in such inspection. The cargo surveyor appointed by the consignee, who was on board and looked into the cargo inside the holds, also did not give any notice of claims for damage. However, as a result of the discovery of harmful insects by the plant quarantine officers, it became necessary to effect fumigation. (The plaintiffs said that nobody on the consignee's side observed the condition of the cargo at this point. However, had harmful insects not been discovered, there would have been no necessity for the fumigation. It is unthinkable that the water, mold or caking damage to the cargo would not have been found whereas harmful insects were discovered. Consequently, the plaintiffs' assertion may not be adopted.)

(3) The cargo had remained at a high temperature since a point before loading.

(4) The master found plenty of drops of water beneath the steel structures of the holds during the extraction of gas after the completion of fumigation. The top surface of the cargo stowed under such steel structures as hatch openings (the reverse side of hatch covers) and hatch coamings was considerably wet.

According to the above facts, it is recognized that the cause of the water damage on the surface of the cargo was the drops of water which were generated on the reverse side of the hatch covers or other spots by closing the holds and fumigating them with methylbromide gas. In consequence, it is concluded that the damage on the top surface of the cargo was caused by both the inherent vice of the cargo, that is, its high temperature, and the act of the employees of the cargo owner, that is, the fumigation.

5. Re: Issue No.5 (The cause of the damage to the cargo after discharge)

With regard to the condition of the cargo after discharge, the following facts may be found on the evidence:

(1) In the warehouses, the cargo appraised as sound had been stored and a portion of it had remained at a high temperature since a point before the loading.

(2) In the warehouses, the cargo was piled up nearly to the ceiling and cooling down operations, such as spreading out the cargo or exposing it to fresh air, were not carried out.

(3) Dew formed on the surface of the cargo exposed to fresh air and on that part mold developed.

According to the above facts, it is recognized that the cause of the mold occurring in the warehouses after discharge was that the cargo rapidly absorbed the dew on its surface which occurred due to the high temperature of the cargo and the omission of measures for cooling it down. Therefore, as it is held that this damage was also caused by both the latent defect, that is, high temperature of the cargo, and the act of the employees of the cargo owner, that is, control of the cargo after discharge, the causation between the carrier's act and the cargo

damage is not confirmed. 〉〉

II. In conclusion, as the affirmed judgment has the same effect as the above holdings, it is just and proper. On the other hand, as this appeal has no basis, it should be dismissed. The burden of the costs for the appeal is held as in the text of the judgement under Art.95, 93 and 89 of the Civil Procedure Code.

Environmental Liabilities Ensuing from Ship Ownership/Time Charter by Demise under Japanese Law

By Tameyuki HOSOI*

It will perhaps be worthwhile to review the general exposure of a flag of convenience ownership, the parent company, its subsidiary company or the company's directors individually to evaluate potential civil, criminal and administrative environmental liabilities under Japanese law in this era in which environmental protection is increasingly emphasised.

I would particularly like to focus on whether or not shipowners are still liable to third parties or the public in the case of a time charter by demise with a lien or indemnity clause to the effect that the charterers are to indemnify the owners for any claims against the owners arising out of the operation of the vessel by the charterers or out of any neglect of the charterers in relation to the vessel or the operation thereof.

Casualty preventing regulations

The three following statutes of Japan (collectively, the "Statutes") provide how a vessel (particularly a very large vessel of 200 metres or more in length as far as the Maritime Traffic Safety Law as below is concerned) should navigate within Japanese territorial waters, what lights, shapes and other facilities she must be equipped with and so forth to prevent a collision accident or the like:

(i) the Regulations for Preventing Collision at Sea Act, 1977 as amended (Kaijo Shohtotsu Yobo Ho), which is a Japanese version of the Convention on the International Regulations for Preventing Collisions at Sea, London, 20 October 1972 (1972 Nen no Kaijo ni okeru Shohtotsu no Yoboh no tameno Kokusai Kisoku ni kansuru Johyaku):

(ii) the Maritime Traffic Safety Law, 1972 as amended (Kaijo Kohtsu Anzen Ho): and

(iii) the Port Regulations Law, 1948 as amended (Kohsoku Ho).

---

* Attorney-at-law and Marine Proctor, Tokyo, Partner
Aoki, Christensen & Nomoto Law Office

However, it is primarily a ship's personnel represented by her master who should first observe the Statutes, and it is unlikely under ordinary circumstances that her foreign owners and/or their directors are directly suspected to have breached the Statutes (as long as a vessel is equipped with lights, shapes, echo signal devices, etc. in the manner as provided in the Convention above).

Criminal Code

Chapters 11 and 28 of Part 2 of the Criminal Code of Japan, 1907 as amended (Kei Ho), provide typical criminal charges to be imposed when smooth marine traffics are disturbed or endangered by a collision, etc. and/or a human life is lost or injured thereby.

However, these provisions are in principle applied to an individual who has actually committed an act causing such incident, e.g., a ship's master (and a crew member). The owners are usually not subject to criminal proceedings, although the vessel herself could in fact be occasionally detained by the authorities concerned while their investigation is pending.

Marine Pollution Prevention Act, 1970 as amended

(Kaiyo Osen oyobi Kaijo Saigai no Bohshi ni kansuru Hohritsu)

This Act provides the concepts of: –

(i) the International Convention for the Prevention of Pollution of the Sea by Oil, London, 12 May 1954 (1954 Nen no Abura ni yoru Kaisui no Odaku no Bohshi no tame no Kokusai Johyaku):

(ii) the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 29 December 1972 (Haiki Butsu Sonota no Mono no Tohki ni yoru Kaiyo Osen no Bohshi ni kansuru Johyaku): and

(iii) the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships 1973, London, 17 February 1978 (1973 Nen no Senpaku ni yoru Osen no Bohshi no tameno Kokusai Johyaku ni kansuru 1978 Nen no Gitei Sho).

The Act in principle prohibits or limits dumping, discharging, leaking or throwing out a vessel, her bilge, wastes, oil, and hazardous material such as LNG in or on the water, and shipowners shall naturally be involved in various occasions on which they are required to

perform their duties imposed by the Act.

However, in the case of a vessel being chartered by demise or lease, it should in principle be her charterers and her master, but not the owners, who shall primarily be responsible to take necessary steps and to cope with the authority's orders, etc., although the owners may occasionally be forced to encounter a tragedy; for instance, the destruction by the maritime authorities of a vessel which has caught serious fire and is considered to be extremely dangerous to its surroundings.

When a vessel runs aground or sinks off the coast of Japan and her owners do not remove her therefrom, the owners (probably their representative directors) could be imprisoned for up to six months and/or fined up to ¥500,000 according to Articles 43 and 55 of the Act.

Civil liabilities

Under Article 842 of the Commercial Code, 1989 as amended (Shoh Ho), the claims which have arisen from the necessity for the continuance of the voyage claims are, amongst others, considered to give rise to maritime lien against the vessel.

As a result, the owners may not usually divest themselves of a liability due to a maritime lien claimed by a third party such as a supplier of bunker or other necessities regardless of whether the charterers should indemnify the owners under the indemnity clause of the time charter by demise.

The following claims are thus given maritime lienable rights:

a) Expenses of preservation of the vessel at the last port.
b) All public dues levied on the vessel in respect of the voyage.
c) Pilotage and towage.
d) Claims of the master and other mariners which have arisen from their contracts of employment, i.e., crew wages.
e) Claims in respect of the equipment and food and bunkers of the vessel for her last voyage.
f) Cargo claims provided by Article 19 of Japan's International Carriage of Goods by Sea Act, 1957 as amended (Kokusai Kaijo Buppin Unso Ho), which is the Japanese version of the Hague-Visby Rules.
g) Claims which may be limited by Japan's Limitation of Shipowners Liability Act, 1975 as amended (Senshu Sekinin Seigen Ho), which is the Japanese version of the Convention on the Limitation of Liability for Maritime Claims, 1976, London, 19 November 1976 (Kaiji Saiken Sekinin Seigen Johyaku).
h) Claims which may be limited by Japan's Oil Pollution Damage Compensation Act, 1975 as amended (Yudaku Songai Baisho Hosho Ho), in compliance with International Convention for the Prevention of Pollution of the Sea by Oil, London, 12 May

1954, Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 19 November 1976, etc.

An injured shore staff as a third party would thus be able to bring an action against the owners directly in respect of his monetary loss and damage due to the injury.

It might accordingly be wiser and more prudent that the owners arrange for a co-assured protection scheme to be made with a competent P&I mutual insurance association (in cooperation with the charterers).

Administrative environmental laws

There are many other laws concerning environmental protection. However, those provide for a broad range of causes which may deteriorate environments, and do not necessarily specify vessels as the subject of the laws.

I have, therefore, taken the liberty to refer to some of those laws hereunder, just in case a vessel is involved in rather extreme circumstances:

- Air Pollution Prevention Act, 1968 as amended (Taiki Osen Bohshi Ho)
- Natural Environment Reservation Act, 1972 as amended (Shizen Kankyo Hozen Ho)
- Wastes Disposition Act, 1970 as amended (Haikibutsu Shori Ho)
- Inland Sea Environment Reservation Act, 1973 as amended (Seto Naikai Kankyo Hozen Tokubetsu Sochi Ho)
- Natural Park Act, 1957 as amended (Shizen Koen Ho)
- Nuisance Counter-Measurement Act, 1967 as amended (Kohgai Taisaku Kihon Ho)
- Harbour Act, 1950 as amended (Kohwan Ho)

Limitation of liability

In case a vessel shall be involved in the aforesaid situations, the owners as well as the (demise) charterers shall be entitled to limit the amount of their liabilities in compliance with the Limitation of Shipowner's Liability Act, 1975 as amended, which is the Japanese version of the Convention on the Limitation of Liability for Maritime Claims, 1976 London, 19 November 1976.

The liabilities may also be co-assured by a P&I mutual insurance association scheme.

Corporate veil, etc.

A parent company of the owners, any of its subsidiary companies or any of the company's directors individually would unlikely be exposed to civil/criminal liabilities unless it is proved that the owners have little substance of an independent corporate entity.

However, many factors are usually taken into account in considering whether to pierce the corporate veil and in assessing the liability of company directors.

Since this area of the law is quite complex, a full factual account of events is necessary to determine the full extent of liability arising under these laws.

Lastly, I hereby thank Mr. W. S. Martin for his assistance and cooperation.

Notes
on
MEMORANDUM OF AGREEMENT
for the sale and purchase of ships
Code Name: "NIPPONSALE 1993"

The Documentary Committee of the Japan Shipping Exchange, Inc. (Chairman : Yutaka Mizutani) officially adopted the draft of the revised MEMORANDUM OF AGREEMENT for the sale and purchase of ships, to be known as "NIPPONSALE 1993", at its general meeting in September 1993. The purpose of the revision is, generally, to update the "NIPPONSALE" form so as to reflect recent developments in practice in the sale and purchase of ships.

The main points of the revision are as follows:

1. **Titles are provided for each clause for users' convenience.**

2. **The Preamble makes clear the fact that the agreement is concluded after the Buyers accept the Vessel as a result of their superficial inspection of it.**
   This practice has been one of the most remarkable features of NIPPONSALE.

3. **The clause concerning the Government's Export and Import Licence, (former Clause 1.), is deleted.**
   These Licences used to be required for the sale and purchase of ships in many countries, but now they are not necessarily required. It should be considered the subject-matter of additional clauses which may be agreed between the parties.

4. **The clause for payment of a 10% deposit (former Clause 3.) and the clause for payment of the balance of the Purchase Money (former Clause 4.(a)) are dealt with in the same clause (Clause 2. PAYMENT) but in different paragraphs.**
   The characteristics of the two payments are different, i.e. while the 10% deposit should be paid immediately after the agreement is concluded as security for the fulfilment of the agreement, the balance of the Purchase Money should be remitted and paid with certainty after the Notice of Readiness for delivery. However, the manner and time of the two payments are, practically, often almost the same and in many cases the parties stipulate two simultaneous payments in an additional clause. Thus Clause 2. reflects

this practice for the users' convenience.

5. **The clause concerning establishing a Letter of Credit (former Clause 4.(b)) is deleted.**
   In recent times Letters of Credit are not commonly used as a method of guarantee for payment.

6. **Concerning payment of the 10% deposit (Clause 2.(a)) and taking over the Vessel (Clause 7. NOTICE OF READINESS AND LIQUIDATED DAMAGES), in both cases the Buyers are now permitted three (3) banking days in which to perform: in the case of the deposit this must be paid within 3 banking days of the date of the Agreement, while taking over the Vessel must take place within 3 banking days of receipt of the above notice.**

7. **The clause concerning the physical condition of the Vessel at the time of delivery is newly stipulated in Clause 5. DELIVERY CONDITION.**

8. **The term "demurrage" in Clause 7. is replaced by "liquidated damages" because the former is properly an expression only applicable to describe certain liquidated damages arising in voyage charterparty situations and legally the latter is the proper wording for the purposes of this clause.**
   However, as far as understanding by the business community is concerned, practically there is no change at all.

9. **The Sellers shall deliver the belongings of the Vessel to the Buyers without charge (Clause 10. BELONGINGS AND BUNKERS, 1st paragraph). But, the Buyers shall buy remaining bunkers and unused lubricating oils, at prices determined by reference to supporting vouchers (Clause 10. 2nd paragraph).**
   This change reflects recent practice. Usually, the Sellers do not want to withdraw and forward the belongings of the Vessel considering the cost of doing so.
   In practice, vouchers are used for deciding the prices of bunkers and lubricating oils because to determine the current market price at the port of delivery sometimes causes problems and takes time.

10. **The legal condition of the Vessel at the time of delivery is newly stipulated in Clause 13. ENCUMBRANCES ETC.**

11. **Clause 14. DEFAULT AND COMPENSATION makes it clear that the Sellers shall make due compensation when they default in the delivery of the Vessel within the**

time specified in the agreement due to their negligent or intentional acts or omissions, as well as returning the deposit.

NIPPONSALE 1993 is sold at the price of six hundred Japanese yen. It may be ordered by facsimile (Fax No. 81 3 3279 2785).
(The new form of "NIPPONSALE" is attached to the end of this Bulletin.)

Issued 16/12/1965
Amended 13/ 7/1971
Amended 16/ 3/1977
Amended 9/ 9/1993

The Documentary Committee of The Japan Shipping Exchange, Inc.

MEMORANDUM OF AGREEMENT

Code Name : NIPPONSALE 1993

Date.....

IT IS THIS DAY MUTUALLY AGREED between the Sellers mentioned in (i) below ("the Sellers") and the Buyers mentioned in (ii) below ("the Buyers") that the Sellers shall sell and the Buyers shall buy the Vessel named in (iii) below with particulars mentioned in (iv) - (viii) below ("the Vessel"), which has been accepted by the Buyers as a result of their superficial inspection of the Vessel at .....and examination of her Class Records, on the following terms and conditions :

(i) Sellers: .....

.....

(ii) Buyers: .....

.....

(iii) Vessel's name: .....

(iv) Flag: .....(v) Class: .....

(vi) Built (year and builder's name): .....

(vii) Gross register tonnage: .....(viii) Summer dead-weight tonnage .....

1. PRICE

The Purchase Price of the Vessel shall be .....

.....

2. PAYMENT

(a) As security for the fulfilment of this Agreement, the Buyers shall pay a deposit of ten (10) per cent of the Purchase Money to a bank nominated by the Sellers within three (3) banking days from the date of this Agreement, in the names of the Sellers and the Buyers, which shall be paid to the Sellers as a part of the Purchase Money in the same manner as the ninety (90) per cent of the Purchase Money hereunder. Any interest earned on the deposit shall be for the Buyers' account and any bank charges on the deposit shall be borne equally by the Sellers and the Buyers.

(b) The Buyers shall remit the balance of the Purchase Money by telegraphic transfer to the said bank immediately after the Notice of Readiness for Delivery is tendered by the Sellers as per clause 7 of this Agreement. This balance shall be paid out to the Sellers together with the said ten (10) per cent deposit against the Protocol of Delivery and Acceptance being duly signed by the representatives of both parties at the time of delivery of the Vessel.

3. DOCUMENTATION

At the time of delivery of the Vessel, the Sellers shall furnish the Buyers with the following documents:

(a) the Bill of Sale, duly attested by a Notary Public, specifying that the Vessel is free from all debts, encumbrances and maritime liens,

(b) a letter from the Sellers undertaking to supply a Deletion Certificate from the ..... Registry promptly after the Vessel's delivery, and

(c) such other documents as may be mutually agreed.

Closing and exchange of documents shall take place at .....

4. DELIVERY PLACE AND TIME

(a) The Sellers shall deliver the Vessel to the Buyers at / in .... not before ....., and not later than ..... ("the cancelling date").

(b) In the event the Sellers fail to make the Vessel ready for delivery on or before the cancelling date, the Buyers shall have the option of maintaining or cancelling this Agreement, provided such option shall be declared in writing within forty-eight (48) hours (Saturdays, Sundays and Holidays excepted) from the cancelling date. However, any delay not exceeding thirty (30) days caused by force majeure and/or by repairs in order to pass the inspection under clause 6 of this Agreement shall be accepted by the Buyers.

(c) The Sellers shall keep the Buyers informed of the Vessel's itinerary and give the Buyers thirty (30) / fifteen (15) / seven (7) / three (3) days notice of approximate expected place and date of readiness for delivery.

5. DELIVERY CONDITION

The Sellers shall deliver to the Buyers the Vessel substantially in the same condition as when the Vessel was inspected by the Buyers at the place mentioned in the preamble, fair wear and tear excepted, but free from outstanding recommendations and average damage affecting her present class with all her class, national and international trading certificates clean and valid at the time of delivery.

6. DRYDOCKING

For the inspection by the Classification Society mentioned in (v) of the preamble of the Vessel's bottom and other underwater parts below the summer load line ("bottom and other underwater parts"), the Sellers shall place the Vessel in drydock at the port of delivery or near thereto prior to delivery.

If the rudder, propeller, bottom or other underwater parts be found broken, damaged or defective so as to affect the Vessel's clean certificate of class, the same shall be made good at the Sellers' expense to the Classification Society's satisfaction so as to retain the Vessel's class without qualification.

While the Vessel is in drydock and if required by the Buyers or the Classification Society's surveyor, the tail-end shaft shall be drawn, and should the same be condemned or found defective so as to affect the Vessel's clean certificate of class, it shall be renewed or made good at the Sellers' expense to the Classification Society's satisfaction so as to retain the Vessel's class without qualification.

The cost of drawing and replacing the tail-end shaft shall be borne by the Buyers unless the Classification Society requires the tail-end shaft to be drawn, made good or renewed.

The expense of putting the Vessel in and taking her out of drydock and the drydock dues

including the fee of the Classification Society's surveyor shall be paid by the Buyers unless the rudder, propeller, bottom, other underwater parts or tail-end shaft be found broken, damaged or defective as aforesaid, in which event the Sellers shall pay these expenses.

The Sellers shall pay all costs of transporting the Vessel to the drydock and from the drydock to the place of delivery.

7. NOTICE OF READINESS AND LIQUIDATED DAMAGES

When the Vessel has been approved by the Classification Society's surveyor following the inspection stipulated in the preceding clause, the Vessel shall be deemed ready for delivery and thereupon the Sellers shall tender to the Buyers a notice of readiness for delivery.

The Buyers shall take over the Vessel within three (3) banking days from the day of the receipt of such notice inclusive.

In the event of the Buyers not taking delivery of the Vessel within the period specified above, the Buyers shall pay to the Sellers the sum of ..... per day as liquidated damages, but such detention shall not exceed ten (10) days.

8. FORCE MAJEURE

Should the Vessel become an actual or constructive total loss before delivery or not be able to be delivered through outbreak of war, political reasons, restraint of Governments, Princes or People, or any other cause which either party hereto cannot prevent, this Agreement shall be deemed to be null and void, and the deposit shall at once be returned in full to the Buyers.

9. ALLOCATION OF RISK

The Vessel with everything belonging to her shall be at the Sellers' risk and expense until she is delivered to the Buyers, and after the delivery of the Vessel in accordance with this Agreement the Sellers shall have no responsibility for any possible fault or deficiency of any description.

10. BELONGINGS AND BUNKERS

The Sellers shall deliver to the Buyers the Vessel with everything belonging to her at the time of the superficial inspection mentioned in the preamble including all spare parts, stores and equipment, on board or on shore, used or unused, except such things as are in the normal course of operations used during the period between the superficial inspection and delivery. Forwarding charges, if any, shall be for the Buyers' account.

The Buyers shall take over and pay the Sellers for remaining bunkers and unused lubricating oils at last purchased prices evidenced by supporting vouchers. Payment under this clause shall be made on or prior to delivery of the Vessel in the same currency as the Purchase Money.

The Sellers shall provide an inventory list for the Buyers at the time of delivery.

11. EXCLUSIONS FROM THE SALE

The Sellers have the right to take ashore crockery, plate, cutlery, linen and other articles bearing the Sellers' flag or name, provided they substitute for the same an adequate number of similar unmarked items. Books, cassettes and forms etc., exclusively for use on the Sellers' vessels, shall be taken ashore before delivery.

Personal effects of the Master, Officers and Crew including slop chest, and hired equipment, if any, are excluded from this sale and shall be removed by the Sellers prior to delivery of the

Vessel.

12. CHANGE OF NAME ETC.

The Buyers undertake to change the name of the Vessel and alter the funnel markings upon delivery of the Vessel.

13. ENCUMBRANCES ETC.

The Sellers shall deliver to the Buyers the Vessel free from all debts, encumbrances and maritime liens.

The Sellers hereby undertake to indemnify the Buyers against all consequences of claims made against the Vessel in respect of liabilities incurred prior to the time of delivery.

14. DEFAULT AND COMPENSATION

Should the Buyers fail to fulfil this Agreement, the Sellers have the right to cancel the Agreement, in which case the deposit shall be forfeited to the Sellers. If the deposit does not cover the Sellers' loss caused by the Buyers' non-fulfilment of this Agreement, the Sellers shall be entitled to claim further compensation from the Buyers for any loss and for all expenses.

If the Sellers should default in the delivery of the Vessel with everything belonging to her in the manner and within the time herein specified, the deposit shall at once be returned to the Buyers and in addition the Sellers shall, when such default is due to their negligent or intentional acts or omissions, make due compensation for loss caused by their non-fulfilment of this Agreement.

15. ARBITRATION

Any dispute arising out of this Agreement shall be submitted to arbitration held in Tokyo by the Tokyo Maritime Arbitration Commission ("TOMAC") of The Japan Shipping Exchange, Inc. in accordance with the Rules of TOMAC and any amendments thereto, and the award given by the arbitrators shall be final and binding on both parties.

The additional clauses from 16 to ..... shall be deemed to be fully incorporated in this Agreement.

IN WITNESS WHEREOF the Sellers and the Buyers have signed and executed TWO COPIES of this Agreement the day and year first above written.

THE SELLERS	THE BUYERS
By :	By :
Title :	Title :

DISTANCE TABLES FOR WORLD SHIPPING

EIGHTH EDITION

THE JAPAN SHIPPING EXCHANGE, INC.
TOKYO, JAPAN

(A) **Published:** March, 1992

(B) **Features:**

1. 499 Ports and Harbours are included in the headings, and the total number of the route mentioning distance or distances is 47,000.
2. 29 Junction Points will enable users to calculate quite easily the distances of more than 200,000 routes which are not available from the Tables at first hand.
3. The total number of ports and harbours listed in the Tables is 1,450.
4. The following data are attached:
   - Charts showing Straits, Channels, Islands en route and/or Junction Points
   - List of the Ports and Harbours in this Work

All Descriptions are in English.

(C) **Size:** 6-6/8 in. x 4-1/8 in.

(D) **Text:** About 780 Pages.

Next page is a Order Form of 'Distance Tables for World Shipping'.

Specimen of 'Distance Table for World Shipping'

TOKUYAMA TOKYO

Wellington	BU En	5161	Yap		1529
Weston		2119	Yentai (Yantai)	KA	651
Wonsan	KA	426	Yokkaichi	BU	398
Wrangell	BU N	4205 (5468)	Yokohama	BU	525
Yangon (Rangoon)	KA TA	3683	Zamboanga	BU SB	1770

TOKYO (Tokyo, Japan) to

Abadan	B	6828	Bintulu	M B	2524
Aberdeen W.	4219	(4894)	Bislig	M SR	1848
Abu al Bukhoosh	B	6495	Blang Lancang	B	3414
Acajutla	6901	(7035)	Bluff	N En	5154
Acapulco	6296	(6430)	Bombay	B	5363
Adelaide	N En	5320	Bontang Terminal	B	2659
Aden	B	6582	Brisbane	N En	3965
Alexandrovsk	TS	1156	Buenos Aires	MS	10673
Amsterdam	B S	11331		B SU GH	12063
Anchorage		3338		B Ma GH	12215
Angaur		1758		P	13169
Antwerp	B S	11283	Butuan	M SR	1826
Arun Terminal	B	3414	Cagayan	M SR	1877
Arzannah		6566	Calcutta	B	4564
Arzew	B S	9677	Caldera		9218
Astoria	4202	(4877)	CAPE OF GOOD HOPE		
Auckland	N Se	4823		B SU	8365
Augusta	B S	8915		B Ma	8517
BALBOA	7715	(7849)	Cebu	M SB	1791
Balikpapan	M SB	2669	Chalna		4514
	M B	2763	Chittagong	B	4443
Bandar Abbas		6326	Chungjin	TS	1033
Bandar Khomiynye	B	6817		BU	1041
Bangkok	E	3030	Cinta Terminal	B	3218
Banjarmasin	M SB Mk	2937	Coatzacoalcos	P	9175 (9309)
Batangas	B	1817	Colombo	B	4504
Beira	B Ma	7496	Coos Bay	N	4313
Beirut	B S	8217	Copenhagen	B S	11835
Belawan	B	3285	Curacao	P	8469 (8603)
Belem	P	10031 (10165)	Dalian	BU	1194
Bellingham	4252	(5007)	Damman		6670

Abbreviations of Channels. Straits and Junction Points ('M'=Mikomoto Junction, 'B'=Batan Island Junction)

Distance shown in nautical miles

Via East of New Ireland (5-00S, 154-00E)

Via Cape of Good Hope Junction (34-25S, 18-10E)

Junction Point (Capital letters)

Via Malacca Strait

Distance calculated as the shortest route to navigate on lat. 35-00N between the two points, lat. 35-00N long. 145-00E and lat. 35-00N, long. 150-00W

Distance of the shortest route customarily taken by the merchant ships

Via Panama Canal

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Total ¥

METHODS OF PAYMENT
(Tick appropriate box)

☐ We enclose a cheque for ¥
Cheques should be made payable to Cornes & Co., Ltd. and drawn in Yen on a Japanese Bank.
N.B. For cheques drawn on bank accounts of Japanese banks, please do not fail to add the above mentioned ¥1,500 as bank handling charges.
☐ Please send us a pro-forma invoice.
(Books will be sent upon receipt of payment)

Signature _____ Date _____

THE JAPAN SHIPPING EXCHANGE, INC.
(Nippon Kaiun Shukaisho)
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Mitsui Rokugo-kan, Muromachi 2-3-16,
Nihonbashi, Chuo-ku, Tokyo 103, Japan
TELEX: 2222140 (SHIPEX)
TELEFAX: 03 3279 2785
CABLE ADDRESS: SHIPEXCHANGE
KOBE OFFICE
Meikai Bldg., 32, Akashi-machi, Chuo-ku, Kobe 650, Japan