

# THE TANKVOYAGER



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## ARBITRATION AWARDS . . . IN BRIEF

*FOLLOWING CASES WERE PUBLISHED BY THE SOCIETY OF MARITIME ARBITRATORS INC.,  
NEW YORK, UNDER U.S. LAW*

### [Stena Consul, SMA No. 3945, 31 Oct 06](#) [\(Asbatankvoy\) – Owner Award – HURRICANE --](#) [DEVIATION COSTS – FREIGHT](#)

The *Stena Consul* (hereinafter “Vessel”) was chartered to discharge at one or two ports on the Atlantic or Gulf coasts. Agreement was made on Asbatankvoy charter form inclusive of Charterer’s Standard Clauses 1-38 and Worldscale rate, hours, terms and conditions.

The Vessel departed the loadport, Trinidad, on August 20 and sailed for the U.S. Gulf where she was ordered to discharge at Garyville, Louisiana, and Sunshine, Louisiana. The Vessel tendered NOR upon arrival at Southwest Pass at 8/26:2200 (with an ETA Garyville 8/27:1400). At 2345, after taking on a pilot and proceeding upriver, the vessel was advised that Pilot Town would be evacuated on 8/27 at noon in anticipation of hurricane Katrina.

The terminal intended to discharge the vessel provided, however, that the vessel would sail the berth as soon as discharge was completed on 8/28. Giving no guarantee due to the impending hurricane, the Vessel anchored at Laplace (south of Garyville) to wait out the storm. At 8/27:1100, the vessel tendered a revised NOR to Charterer and, despite fair weather the terminal chose not to berth the vessel. While awaiting berthing, the Vessel received the following message, essential to this arbitration, from Charterer: “Pls proceed and calculate

*deviation as we discussed basis discharge Houston IE: Flat rate Trinidad to Houston all else deviation cost.”* Charterer then ordered the Vessel to proceed to Houston to discharge the entire cargo as soon as possible.

On September 13 the Charterer advised the Owner that they expected an invoice basis two discharge ports (Garyville and Houston). However, Owner submitted a total bill of US\$662,488 which included freight and demurrage per Trinidad to Houston voyage, steaming deviation to and from the Mississippi River and delays incurred there, tug and shifting expenses in Houston, and port expenses and tugs in Garyville. In short, Owner claimed an outstanding balance of US\$151,995 for freight and deviation costs.

Along with the above message from Charterer, the interpretation of Clause 23 (Diversion) of Charterer’s Standard Terms is at the center of this dispute and states:

*“Notwithstanding anything else to the contrary in this charter party and notwithstanding what loading and/or discharging port(s) may have been nominated and bills of lading issued, Charterer shall have the right to change its nomination of the loading and/or discharging port(s) in accordance with Part I C and D of the charter party.”*

*“Any extra time and expenses incurred by Owner in complying with Charterer’s*

*orders shall be for the Charterer's account and shall be calculated in accordance with Part II Clause 4(C) of this charter party and paid together with freight for any extra steaming time, port costs, bunkers consumed, or any other direct expenses incurred by Owner directly related by such request. Freight shall be based on the actual voyage performed. Charterer shall have the right to make as many changes as it deems necessary."*

Charterer argues that since it elected to treat Houston as a second discharge port under Clause 23 its payment of freight based upon discharging at Garyville and Houston in conjunction with deviation costs incurred on the Mississippi River was correct with nothing more being due. Charterer also states that under Asbatankvoy Part II, Clause 19 and Clause 6, Charterers are not liable for the delays incurred at Laplace, arguing "Katrina was an Act of God, not a storm, and prevented the vessel from berthing in Garyville".

In contrast, Owner states Charterer's request that "Owner calculate voyage freight as a *flat rate* from Trinidad to Houston with *all else* as deviation was clear"; therefore, Charterer's persistence to treat Houston as a second discharge port was inappropriate.

The Panel was undivided in its decision that "Charterer's request and its subsequent orders to the vessel amounted to a new election" to which both parties were bound under Clause 23. It also found Charterer's request that "all else" be treated as deviation costs was clear and unambiguous and held Charterer responsible for the steaming deviation and delays in the Mississippi River. Because of these findings the Panel deemed it unnecessary to "discuss the effect under the terms of ASBATANKVOY provisions of the Vessel's tenders at Southwest Pass and Laplace". This being said, it should also be observed that the Panel made note that the arrival of Hurricane Katrina was headlines news for days thus implying the delays were foreseen and as such, were not beyond Charterers' control as covered by Clause 6 of Asbatankvoy. Owner's claim for US\$151,995, along with interest and allowance towards Owner's attorney's fees, was awarded.

**[Jo Maple, SMA No. 3947A, 19 Jan 07 \(Asbatankvoy\) – Owner Award – FAILURE TO PROVIDE CARGO – LOST PROFITS](#)**

Arbitration arose after Charterers failed to provide cargo as contracted under Asbatankvoy for

which Owners seek recovery of US\$203,720 lost profits, plus interest and costs. Charterers did not respond to the arbitration request and thus two members of the Panel were appointed by the Owners with the third appointed by those two so chosen. The dispute proceeded on documents only.

On April 8, 2006, Owners and Charters fixed the carriage of 5,000 mt methanol, 5% more or less Owners' option, from Point Lisas, Trinidad to Cartagena, Colombia. Laydays were April 20-25 and agreed freight was a lump sum of US\$131,250. The Vessel tendered NOR after anchoring at the loadport on 4/19:1800 (and re-tendered NOR at 0001 on the first layday without prejudice to the earlier tender). Charterers nominated 4,750 mt methanol.

On 22 April, the Vessel's tanks passed inspection, but Charterers failed to give berthing orders. The Vessel continued to await orders at Point Lisas until 28 April when Charterers sent a message that the cargo transaction had failed. The Vessel subsequently sailed for Curacao to load cargo for other charterers which had been booked well before this Charterers' cancellation and were already scheduled to discharge Cartagena, thus giving Owners no time to mitigate damages.

In ruling in full for Owners the Panel stated, "*A valid charter party existed; the Vessel was ready and able to load the cargo and perform the voyage as required; Charterers failed to provide the cargo as agreed; and Owners made reasonable efforts to mitigate their losses.*"

The Owners were awarded US\$225,675 in lost profits, interest, allowance towards arbitration costs, and reimbursement for arbitrators' fees and expenses paid on Charterers' behalf. It should be noted that the arbitration award failed to discuss how the lost profits had been calculated and that initially there was a discrepancy as to the Charterers' corporate identity.

**[M/T Magpie, SMA No. 3948, 07 Nov 06 \(Asbatankvoy\) – Owner Award – PUMP WARRANTY – INTEREST ON UNCONTESTED DEMURRAGE](#)**

This demurrage dispute arose between the Owners and Charterers under an amended Asbatankvoy charter regarding the application and interpretation Charterer's pump warranty clause (Clause 5 Pumping):

*"Owner warrants that the Vessel will discharge the entire cargo within 24 hours or maintain 100 PSI at the Vessel's manifold providing shore facilities can accept. Any delays due to the Vessel's inability to discharge within 24 hours or*

*maintain 100 PSI at the Vessel's manifold will be for Owner's account and will not count as used laytime or demurrage if on demurrage."*

Failing to achieve 100 PSI at the manifold, the Vessel discharged at two berths in an aggregate time of 34H 15M. In their laytime calculation, Charterers deducted all time in excess of the 24H warranty period, 10H 15M, since the Vessel failed to meet the 100 PSI requirement.

Owners argued that Charterers' interpretation of Clause 5 was inaccurate as it did not give a true account of the actual *delay* damages and was thus contrary to law. Likewise, there is nothing in the clause that grants Charterers the right to arbitrarily and totally disregard all time beyond the 24H discharge period. As such, Owners presented a formula which they felt accurately calculated the actual time lost basis the Vessel's underperformance (reduced pressure at the manifold). In short, the formula determines what the Vessel should have achieved had she pumped to the terminal's limitations rather than simply deducting all time in excess of 24H. The "Pumping Performance Formula" as put forth by Owners is as follows:

$$Q2 = Q1 \times (H2/H1)$$

*Where Q1 = average actual discharge rate; H1 = average actual pumping pressure; H2 = warranted pumping pressure per C/P; and Q2 = discharge rate at warranted pressure.*

By applying this formula, Owners reduced the net used laytime by 1H 19M and claimed \$ 17,167.61 in demurrage due plus interest on the total outstanding demurrage.

Charterers disagreed with Owner's arguments stressing that Clause 5 "has been in place and applied in a manner supporting Charterer's position for at least the past 30 years." Charterers further argued that their offer to pay the accepted portion of the demurrage was disregarded by Owners, therefore no interest should be charged to them. Both parties are asking for reimbursement of all legal expenses, costs, and arbitrators fees.

The Panel majority granted Owner's claim along with interest. In short, the Panel majority feels "the Pumping Warranty Clause" makes two statements: the first sentence defines the warranty while the second

sentence includes the remedy should the Vessel fail to meet the discharge standards. It requires that "*any DELAYS due to the Vessels' inability...will not count...*" thus it was the Panel majority's view that the Charterer's election to completely cancel all time beyond 24H is an inaccurate interpretation of Clause 5 as it does not consider the time actually lost (delays) and thus is a "*penalty which is not enforceable*".

The Panel also noted that although pump warranty clauses such as Clause 5 had been read in the Charterer's manner for the past 30 years, "*simple acquiescence is insufficient to overrule the law or to amend the contract*". Past readings of a clause are irrelevant.

This being said, the award of legal fees, costs, and arbitrators fees to both Owners and Charterers was denied by the Panel on the basis that said parties, by their own explanation to the Panel, entered into arbitration for the simple purpose of "*having the meaning and operation of the pumping warranty clause decided, with the stated intention to apply that to future charters*". Additionally, Owners were granted interest on the full demurrage amount as there was no proof submitted by Charterers that they offered payment for the uncontested demurrage that was allegedly rejected by Owners.

It should be noted that a dissenting arbitrator argued that the application of "The Pumping Performance Formula" should be denied basis "well accepted SMA Award precedent" including the recent, *Blystad Shipping & Trading, Inc. v. Global Petroleum Corp.* (SMA No. 3421) in which the Panel stated:

*"Should the Panel, as it has held that the Owner breached the pumping warranty the Owner submits that the excess pumping time be based on the difference between the actual pumping time and what it would have been at 100 PSI not the difference between the actual and the 24 hour limitation. The Panel concurs with Charterer's position that Owner failed to comply with both parts of the warranty and can not choose an alternative method in calculating the demurrage resulting from the breach. In addition, acquiring the data to make such a calculation would be very burdensome or impractical in many cases."*

\* \* \* \* \*

**FOLLOWING CASES WERE PUBLISHED BY THE LLOYD'S MARITIME LAW NEWSLETTER,  
LONDON, UNDER ENGLISH LAW**

**London Arbitration 13/06 – Owner Award -- SHORT  
OUTTURN OF GASOIL – RIGHT TO DEDUCT  
FREIGHT – INDEPENDENT SURVEYOR**

In this dispute Owners seek to recover US\$83,450 deducted by Charterer from the freight invoice due to the short outturn of a cargo of gasoil. There was a difference of 317.269 m.t. (about 1.06% of the 29,992.802 m.t. bill of lading quantity) measured by the shore tank figures at the loadport as compared to the shore tank figures at the dischargeport. Charterer's deduction was quantified basis the loss in excess of 0.5% of the bill of lading quantity.

This voyage charter was fixed on a product tanker (ex dry dock) on an amended Asbatankvoy form with the following relevant terms:

*Part II ...*

*2. Freight*

*Freight shall be at the rate stipulated at Part I and shall be computed on intake quantity ... Payment of freight shall be made by charterer without discount upon delivery of cargo at destination...*

*Plus, incorporated Special Provisions:*

*9) Cargo clause*

*9.1 Cargo retention*

*In the event that any cargo remains on board the vessel upon completion of discharge, charterers shall have the right to deduct from freight an amount equal to the fob price of such cargo plus freight and insurance with respect thereto as determined by an independent surveyor provided that the volume of cargo remaining on board is liquid and pumpable and reachable by the vessel's fixed pumps or would have been liquid and pumpable and reachable but for the fault or negligence of the owners...*

*9.3 Cargo clingage*

*If the vessel is ex dry dock, ex lay-up or ex dry cargo, a value of cargo determined by fob price for such cargo, plus freight and insurance with respect thereto, will be deducted for any short outturn of cargo quantity (as determined by an independent surveyor specified by the charterers) calculated by comparing the bill of lading quantity versus discharge quantity basis receiving short tank gauges. For any short cargo due to clingage, freight and insurance shall be deducted from freight to the extent that such quantity exceeds 0.5% of the bill of lading quantity.*

*9.4 Intransit loss*

*Owners will be responsible for the full amount of any intransit loss which exceeds 0.4% of total cargo. Charterers shall have the right to deduct the intransit loss from freight due owners, based on an amount equal to the fob price, plus freight and insurance with respect thereto. Intransit loss is defined as the difference between net volume after loading and before unloading at the*

*discharge port basis vessel's measurements taken by charterers' independent inspector in accordance with ASTM/API procedures.*

Charterers justify their deduction from freight basis clause 9.3. Despite the title of the referenced clause, "Cargo clingage," charterers argue that clingage does not qualify the phrase referenced in the first sentence, "any short outturn of cargo quantity," thus warranting their deduction and further stating that these types of cargo clauses are commonly incorporated in tanker charter parties to limit the time and costs of investigating and arguing over outturn shortages. In their defense, Charterers cite the Court of Appeal ruling in *The Olympic Brilliance* [1982] wherein it was held that the relevant clause allowed a deduction from freight on a final basis, not a "security" basis.

Owners refute Charterer's argument and find that the entirety of clause 9.3 deals solely with clingage and does not support Charterer's deduction as the surveyor was appointed by the cargo buyer and was therefore not independent; and, more importantly, there was no finding of clingage mentioned in the survey report whatsoever. Owners reason that the short outturn may have occurred due to 1) gasoil remaining in the vessel/shore lines; and/or 2) seawater and gasoil mixing in the storage tank; and/or 3) defects / inaccuracies of the storage tank.

In ruling for the Owners, the Panel held that clause 9.3 did in fact pertain solely to short outturn due to clingage as the limiting words in the first sentence "ex dry dock, ex lay-up or ex dry cargo" all pertain to instances occasioning clingage. And, as the survey report did not reference clingage as the cause of the outturn loss, clause 9.3 was inapplicable.

As a side note, the Panel held that the surveyor was in fact independent even though not "specified by charterers" as expressly stipulated in the clause on account that they were deemed "specified" for the purposes of this arbitration. With reference to *The Olympic Brilliance*, in contrast to the instant dispute, the pertinent clause was not on point as it allowed for a deduction without having to prove that the shortage was due to a specific occurrence.

Owners were awarded US\$83,450 plus interest and costs.

**London Arbitration 14/06 – Owner Award – CHEMICAL CARGO ALLEGEDLY DIS-COLORED – CHARTERERS’ REFUSAL TO DISCHARGE WITHOUT SECURITY – DEMURRAGE LIABILITY**

The Vessel was chartered to carry a cargo of styrene monomer from Al Jubail to three ports/anchorage on the Shellvoy 5 form.

No problems occurred at the first two discharge ports – Kaohsiung and Taichung. However, at the third and final port, Ulsan, it appeared that part of the cargo was discolored. Because of this, Charterers refused to discharge the cargo unless the Owners were able to provide security. Owners, on the other hand, maintained that Charterers were not entitled to security, arguing that the condition of the cargo had not changed since its loading.

Owners subsequently claimed US\$72,876 in demurrage whereas Charterers argued they were not liable for demurrage basis three points: Owners were in breach of the contract attributable to “breakdowns or inefficiency of the vessel” (Part II, Clause 14(c)), the cargo was contaminated due to this breach, and subsequently the Vessel was delayed. Charterers counterclaimed for damages stemming from Owners’ alleged breach of the charter.

On inspection at the load port, all samples from the shore tanks showed the color of cargo to be <10 (10 being the maximum acceptable level), however, this does not necessarily mean that *all elements* had a color of <10. After loading, no samples were taken from the Vessel’s tanks.

At Ulsan, three sets of samples were taken from 4 of 5 tanks to be discharged there. All sample sets showed the color was <10 or “only very slightly over the maximum of 10”. In only one tank, and at the Vessel’s cargo manifold and pump strainer, was there a consensus among the samples taken that the color was substantially >10. However, there was no evidence to verify the color at either the load port or at the first two discharge ports. It is worth noting that part of the cargo from the tank in question was discharged at Kaohsiung and Taichung without any issue related to discoloration. Additionally, although the Vessel’s tanks, lines, and pumps were initially rejected at the loadport for which additional cleaning was performed, there was no proof that this was causatively linked to the issue at hand.

Based on the facts, Charterers were unable to prove that the cargo was in a different condition at Ulsan than it had been at the load port. As such, there was no breach of contract, no relevant exception to demurrage, and Charterers possessed no leverage for a counterclaim.

Charterers also had no justification for their actions which was the sole cause of the delay. Finally, Charterers were under the obligation, set forth in Shellvoy 5, to discharge cargo within the laytime stated.

In short, Charterers could not refuse to discharge the cargo regardless as to whether Owners had provided security for possible losses. To do so would be inconsistent with the express obligation on Charterers to take delivery in a timely manner. Rather, should there be some question as to the integrity of the cargo the remedy available to Charterers would be to arrest the ship during or after the discharge operation.

The tribunal awarded Owner’s claim in full and dismissed Charterers’ counterclaim.

**The “Count”, English Commercial Court EWHC 3222, 12 Dec 06, (ASBATANKVOY) – Owner Award – SAFE PORT WARRANTY – CHANNEL BLOCKAGE – PREVAILING CONDITIONS DO NOT AMOUNT TO A TEMPORARY HAZARD**

Chartered on Asbatankvoy form and fixed to discharge “1, 2 or 3 safe ports East Africa Mombasa/Beira range”, the *Count* arrived at Charterer’s nominated discharge port Beira and tendered NOR on 29 June 06. On the day of the *Count*’s arrival another vessel grounded and blocked the channel. This grounded vessel was subsequently re-floated only to ground again on 1 July. The *Count* was eventually able to proceed to berth on 4 July but, having concluded operations on 9 July, was unable to depart the berth until 13 July due to an inbound container ship which had grounded at almost the same spot where the prior vessel had grounded.

At arbitration, the Shipowners successfully claimed damages from the Charterers for detention in respect to the delayed departure; the result of the grounded container ship. It was the Panel’s decision that Charterers failed in their obligation to provide a safe port; a somewhat unusual decision in that the delay was caused by another Vessel which had grounded.

Charterers subsequently appealed to the High Court on the basis that the arbitrators had erred in law for two reasons. First, the Charterers argued that the Arbitration Panel was wrong to find that the port was unsafe in the abstract by reference to the fact that two other vessels had grounded there. Rather, it was Charterer’s position that the Panel should have asked whether the port was safe for the *Count* itself since the *Count* did enter and leave the port safely with the second blockage of the port occurring after the nomination date. Second, since the delay was temporary and did not

frustrate the venture the port could not be deemed unsafe.

However and in contrast to Charterer's position, the Panel found that at the time of the nomination the characteristics of the port of Beira were such as to make it foreseeably unsafe since the buoys were out of position due to shifting sands and there was no procedure in place to monitor changes in the configuration of the channel.

Further and important to note, the arbitrators had not based their decision that the port was unsafe on the basis of a temporary hazard. Rather, it was deemed that there was a continuing risk to vessels attending the port because of the aforementioned buoys being out of position and the lack of an adequate system for monitoring the channel. The High Court subsequently upheld the arbitrators' decision.

#### **London Arbitration 1/07 – Owner Award – TIME CHARTER PERFORMANCE WARRANTY – UNDER-CONSUMPTION OF BUNKERS**

This arbitration is the result of a dispute over the calculation of a credit for the under-consumption of bunkers under a time-charter contract. Likewise, Charterers sought damages for breach of the Performance Warranty, however, this aspect of the arbitration was not discussed in any detail.

The clause relevant to the under-consumption dispute is as follows:

*“Clause 61 (Service Speed including Vessel's full speed/consumption including laden/ballast and port consumptions) – In good weather and smooth sea, it is understood good weather means winds of maximum Beaufort 4 and/or Douglas Sea State 3, about 14.0 knots (ballast)/13.5 knots (laden) on about 32.5 mt IFO at sea 2.0/3.0 mt IFO at port.”*

Charterers agreed that a credit was due to Owners for the under-consumption of bunkers resulting from slow steaming. Likewise, regarding the usage of “about” in Clause 61, both parties agreed that a margin of 5% was to be used in the calculation. However, the dispute concerned the application of this 5% margin.

Charterers felt the calculation should be the difference between the Vessel's actual consumption and what her consumption would have been at 32.5 mts IFO per day less 5%.

In contrast, the Owners argued that the correct approach was “the difference between the Vessel's actual consumption and what would have been consumed if the relevant warranted consumption had been 32.5 mts IFO plus 5%”.

In normal instances, Charterers would be interested in matters concerning a vessel steaming slower than warranted and/or consumption higher than warranted. The word “about” did not mean that the 5% margin only applied in one direction, i.e. that Owners were allowed “only a margin for slow steaming and a margin only for over-consumption” before they could be held to be in breach. The correct meaning of “about” should be applied on the “basis of plus/minus”; therefore, application for this dispute is the Vessel would consume 32.5 metric tons IFO per day plus or minus 5%.

By the aforementioned application of the word “about”, Owners are not in breach if the Vessel consumed between 30.875 and 34.125 mt per day. Further, since Charterer's claim is for damages, they are only entitled to be put in the same position as if the Owners had performed their *minimum* obligations i.e. 34.125 mt per day.

It was agreed that the Vessel consumed 629.6 mt. Thus, had Owners performed to their minimum obligations the Vessel could have consumed 738.95, mt through the application of 32.5 mt plus 5%. Thus, there was a savings of 109.35 mt for a total credit of US\$19,136.

Charterers' claim for damages failed as it was determined Owners were not in breach of the C/P. Again, Charterers' claim was not discussed in detail. As Owners had already been given a credit of US\$6,800, Owners were awarded the remaining balance of US\$12,336 plus interest and other costs.

Worth noting, but not of any particular relevance, is that in light of modern machinery the Panel felt that shipowners should be able to provide a bunker consumption warranty that was more accurate than a 5% margin. However, the Panel affirms that it is common practice to use a 5% margin to resolve disputes when the word “about” is used in the Performance Warranty Clause.

\* \* \* \* \*

## WHAT CONSTITUTES A SAFE PORT / BERTH?

Intrinsic within the majority of charter parties is the need for the charterer to provide a safe berth and/or a safe port for the particular chartered Vessel. This is well defined by J. Bond Smith in the "Tulane Law Review" (Vol. 49, No. 4 p. 861), wherein he states,

"...a safe port is a place where a chartered vessel may enter, load or discharge, and leave without legal restraint and at which the vessel will encounter no perils greater than those of the sea. Whether a port is safe is a fact to be determined in each case having regard to the vessel concerned..."

However, as we just saw in the English Commercial Court's decision in the *Count* (recapped above), this definition has been somewhat broadened. In the *Count's* situation, she was able to reach, discharge at and depart from Beira all the while safely afloat. However, because two other dissimilar vessels did ground in the channel (delaying the *Count*), and since the buoys were found to be out of position (including at the time of the port nomination) with no procedure in place to monitor changes in the configuration of the channel, the port was deemed unsafe by the London arbitration panel whose decision was later upheld by the Court.

In an effort to reaffirm and further define what constitutes a safe port it is necessary to review the germane historical precedent. As one can imagine, there are a myriad of cases, both English and U.S., on the topic of what constitutes a safe berth/port. Here are a few in no particular order.

- In the London case of *Kodros Shipping Corp. v. Empresa Cubana de Fletes (The Evia)* 1982, hostilities broke out and delayed the Vessel. Despite the hostilities, the Charterer was found to not be liable for the detention of the ship because the outbreak of the hostilities was considered an abnormal event not to be anticipated at the time of the voyage orders.
- In the New York arbitration *M/V Bahama Spirit*, SMA 3849, June 4, 2004 the Panel made note that "when a charter party names a specific port/berth, the owner is charged with the express or constructive knowledge of existing conditions at the named port/berth". The safe port/berth exposure is subsequently shifted to the shipowner. In this situation, the discharge port where the Vessel had grounded was named in the Contract of Affreightment (COA). In determining the berth was safe, the Panel emphasized the naming of the berth in the COA along with the fact that Owners had shipped to the berth many times in the past and had even visited the berth during the negotiation of the COA.

Other safe port / berth issues that can arise include bridge obstructions, adverse weather, draft and strikes. For example, depending upon how the Vessel's characteristics were defined and whether the berth is named at the time of fixture, a bridge obstruction could cause a port to

be considered unsafe. Likewise, should adverse weather be seasonal it can be considered a known condition thus causing a port or berth to be deemed unsafe. Also, depending upon the cause of an insufficient draft determines whether a port is safe. Finally, although a number of contracts stipulate that delays due to tug strikes are for the Shipowners' account, should the Charterer not exhaust all efforts and means to conduct operations, the strike, albeit a tug strike, could cause a port to be deemed unsafe.

Last, and interesting if for no other reason than the differentiation between English and U.S. rulings, is the contradictory approach regarding responsibility for costs when standby tugs are necessitated for safety. For example, if due to adverse currents or swells tugs are required to standby during vessel operations at berth, English law has determined the costs of these tugs to be for the owners' account. In the *Isabelle*, [1982] 2 Lloyd's Rep. 81, in determining the cost of standby tugs to be for the shipowner, the judge held that, "*It is for the owners to bring the vessel to the berth for loading and it must be for them to keep the vessel at the berth for that purpose.*" In contrast, New York arbitration has determined the cost of additional tugs in order to make a berth safe to be for the charterers' account. In short, the charterer is deemed to have breached their obligation to provide a safe berth. This is explained in the *M/V Vorras*, SMA 2207 (1986).

To conclude, it is reasonable to assume that the recent decision in the *Count*, only

works to further broaden the definition of what constitutes a safe port. No longer can it be unequivocally stated that should a vessel be able to reach, lie at and depart always safely afloat, that the port is safe. Likewise, the

grounding of a dissimilar vessel is not necessarily moot. Rather, the question to be asked is *what was the root cause of the grounding?* As we saw in the *Count*, and albeit dissimilar ships, the groundings resulted from the somewhat

longstanding misplacement of the buoys along with the fact that the Port of Beira failed to have the proper oversight regarding the buoys' placement.

## \*\*\* INDUSTRY NEWS \*\*\*

**OSG TO ACQUIRE HEIDMAR LIGHTERING...**Overseas Shipholding Group Inc. is set to acquire the Heidmar Lightering business from Heidmar Inc., itself a subsidiary of Morgan Stanley Capital Group Inc. Consisting of a fleet of four International Flag Aframax tankers and two U.S. Flag workboats, the operation primarily provides crude oil lightering services in the U.S. Gulf. Under the agreement, OSG will acquire the lightering fleet as well as a 50% residual interest in two specialized lightering Aframax tankers further increasing OSG's Aframax cargo and logistical system in the Atlantic basin.

**PLEA DEAL RESULTS IN RECORD FINE FOR OSG...**Fined \$27.8 million with an additional \$9.2 million being paid toward marine environmental projects nationwide, OSG recently pleaded guilty in the US District Court for Massachusetts to deliberate Vessel pollution over a five year period near the following U.S. cities: Portland, ME, Wilmington, NC, Boston, Los Angeles and San Francisco. OSG was charged with 12 offences including conspiracy, false statements, obstruction of justice, and violations of the Clean Water Act and the Oil Pollution Act of 1990.

**BTC PIPELINE TANKER TRAFFIC ...**Since its official inauguration on July 13, the Baku-Tbilisi-Ceyhan (BTC) pipeline has seen well over 60.3 million barrels of crude loaded at the Haydar Aliyev Sea Terminal. As of the beginning of the year, over 80 tankers had berthed at the sea terminal with the majority of the crude destined for Italy. Other destinations include the United States, Israel, Brazil and France.

**ERIKA KNOWN TO BE AT RISK BEFORE DISASTER...**February saw the French oil company Total and 14 other defendants accused of criminal responsibility in the wreck of the *Erika*. The Ship foundered before breaking in two on December 12, 1999 sending blankets of oil over 240 miles of the French coast.

A tribunal in Paris was told that prior to being chartered by Total the ship had been identified as a potential risk and that Total had agreed to use the ship even though it failed to satisfy internal safety rules. The ship was the only one available to Total at the time.

**PRESTIGE STILL LEAKING OIL...**The Spanish government has now admitted that one of the cracks in the tanks of the sunken tanker *Prestige* had not been properly sealed back in November 2002. Repsol, the company responsible for sealing two sections of the split ship on the sea bed, has subsequently been ordered to carry out a new inspection and issue a new report.

**HULL INTEGRITY SYSTEM...**Shell International Trading and Shipping Company has become the first ship operator to install Lloyd's Register's Hull Integrity system onboard one of its managed vessels, the *LNG Rivers*, prior to being installed on sister ships *LNG Sokoto* and *LNG Bayelsa*. Enabling owners and operators to manage the structural integrity of their ships, Hull Integrity works to ensure sound structural inspection programs are being employed by providing training for ship's officers and superintendents in how to carry out inspections, ship-specific hull inspection guides and user-friendly software for recording and analysis.

With the ability to be utilized by both ship and shore based personnel, the Hull Integrity system facilitates structural inspection preparation by reviewing previous inspection results, enabling the recording of results prior to review by shore superintendents while likewise, allowing the Vessel to review the superintendents' comments. Furthermore, as the system is web enabled the shore based personnel are able to review the inspection reports received from their ships, produce drydock repair lists and analyze the stored data to identify recurrent issues.

**PROPOSED PRICE CHANGES AT THE PANAMA CANAL...**Late January saw the Panama Canal Authority's (ACP) Board of Directors give authorization to proceed with a formal proposal to restructure the Canal's pricing system and certain regulations. The full proposal can be accessed at [www.pancanal.com](http://www.pancanal.com). As obtained from the ACP, two elements of the proposal include:

- **Maximum Displacement Draft vs. Arrival Draft:** The ACP is proposing a change for vessels charged based on their displacement to simplify and streamline the process. The Canal proposes that the charge is based upon the maximum displacement draft instead of the arrival draft to assess tolls according to the specified tonnage rate.
- **Tolls:** The adjustments and implementation dates of proposed tolls depend on each segment that transits the Canal: container vessels, passenger vessels, general cargo, refrigerated cargo, dry bulk, tankers and vehicle carriers. The proposal calls for an average increase of 10 percent per year over three years. Of note, tolls for non-container segments have not increased in the last four years.

Meanwhile, recently released metrics for the period of October through December 2006 saw the Canal experience an increase in net tonnage, total transits and transits of supers while experiencing no accidents. Tonnage increased 11.75 to 79.9 million PC/UMS tons from 71.5 PC/UMS tons while total Canal transits increased 8% to 3,568 transits from 3,299 transits. Likewise, transits of supers, Vessels with 91 feet or more in beam requiring additional transit time and navigation skills, increased 14.6 percent to 1,968 transits from 1,718 transits.

**INADEQUATE RECEPTION FACILITIES...**In coordination with the U.S. Coast Guard (USCG), INTERTANKO has developed a format for reporting problems encountered with port reception facilities in the United States. Problems include facilities being unwilling to take wastes, restrictions on when and where they would take wastes and an unwillingness to report such incidents for fear of jeopardizing business relationships. The USCG recommends an inadequate port reception facility be reported immediately to the local Captain of the Port as recommended in 33 CFR 158.167 (orally, in writing or via telephone) or to INTERTANKO's North America office at (fax) +1 703 841-0389. INTERTANKO in turn will submit them to USCG Headquarters for their further investigation. The idea of the program is to retain the anonymity for the tanker operator while also providing the USCG with sufficient information to conduct an investigation.

**SINGLE HULL PHASE OUT...**The single hull phase out in India has been extended by a non-committal Government. The Government is said to be reconciled to the fact that the country could not hope to switch over to a double hull tanker regime totally by 2010, the deadline set by the International Maritime Organization (IMO). Currently only 40% of India's tanker fleet is of the double hull type compared with the International position of about 70%. India's Shipping Minister conceded that at least 30% of the present single hull tankers needed immediate conversion but due to the present market conditions none could be offered for conversion into double hull by 2010.

IMO meanwhile has indicated that single hull tankers could operate beyond 2010 and up until 2015 provided their age was less than 25 years. Some countries accepting single hull tankers beyond 2010 include Japan, Singapore and Panama.

**SHIP TRANSPORT OF COMPRESSED NATURAL GAS (CNG)...**An alliance has been formed amongst Sea NG, Marubeni and Teekay Shipping for the worldwide commercial deployment of Sea NG's Coselle system for transporting CNG by ship. The only marine vessel fully approved by any international marine classification society (ABS) for the carriage of CNG, the intention of the Coselle ship is transport moderate volumes of natural gas (30 to 700 mmscf/d) over medium distances (200 to 1,500 miles).

**GLOBAL LNG MARKET EXPECTED TO DOUBLE BY 2010...**According to PriceWaterhouseCoopers (PWC) the global market for LNG is expected to grow rapidly until the end of the decade, doubling in size by 2010. Qatar, Nigeria and Australia will lead the growth according to PWC.

**BP'S TANKER PROBLEMS CONTINUE...** Having already experienced cracked rudders and the loss of two anchors, BP's new fleet of oil tankers are now having to replace mooring bitts on three of four ships after tests showed they were defective. The tests were conducted after the bitt on the *Alaskan Navigator* broke off as a tug boat pulled on a mooring

line. The spring of 2005 saw two of the ships laid up for weeks after cracks were discovered in their rudders whereas this past December saw two ships each lose a 16 ton anchor in the Gulf of Alaska.

**HYDRO'S PETROLEUM ACTIVITIES TO MERGE WITH STATOIL...**The final plan has been signed by the Statoil ASA's and Norsk Hydro ASA's respective Board of Directors to de-merge in order to then merge Hydro's petroleum activities with Statoil. The reason for the merger is a mutual desire to create a globally competitive player in the petroleum industry and to be the world's biggest offshore operator. The new company will be comprised of around 31,000 employees and will be called StatoilHydro ASA.

**STOLT'S REVOKED AMNESTY...**Representing Stolt-Nielsen Transportation Group Ltd, White & Case have sued the Justice Department under the Freedom of Information Act (FOIA) to release information on prior amnesty deals. Currently the only company to have ever been removed from the amnesty program by the Department of Justice (DOJ), Stolt's amnesty was removed when the company allegedly continued to engage in illegal antitrust activity even after it said it had stopped. However, in the amnesty agreement with Stolt-Nielsen the Justice department didn't specify a date beyond which Stolt agreed to stop its illegal behavior and now White & Case want to look at other agreements to see whether those agreements included a specified cut-off date.

**REVISED MARPOL...**On 1 January 2007 significant changes were introduced to MARPOL. In particular and albeit with some exceptions, vegetable oils which were previously categorized as being unrestricted will now be required to be carried in chemical tankers. Likewise, revisions to MARPOL Annex I (oil) include the following:

- Regulation 22 - Pump-room bottom protection: on oil tankers of 5,000 tonnes deadweight and above constructed on or after 1 January 2007, the pump-room shall be provided with a double bottom.
- Regulation 23 - Accidental oil outflow performance: applicable to oil tankers delivered on or after 1 Jan 2010; construction requirements to provide adequate protection against oil pollution in the event of stranding or collision.

Meanwhile, MARPOL Annex II (noxious liquid substances carried in bulk) now has a new categorization system for noxious and liquid substances. As obtained from the IMO, these are:

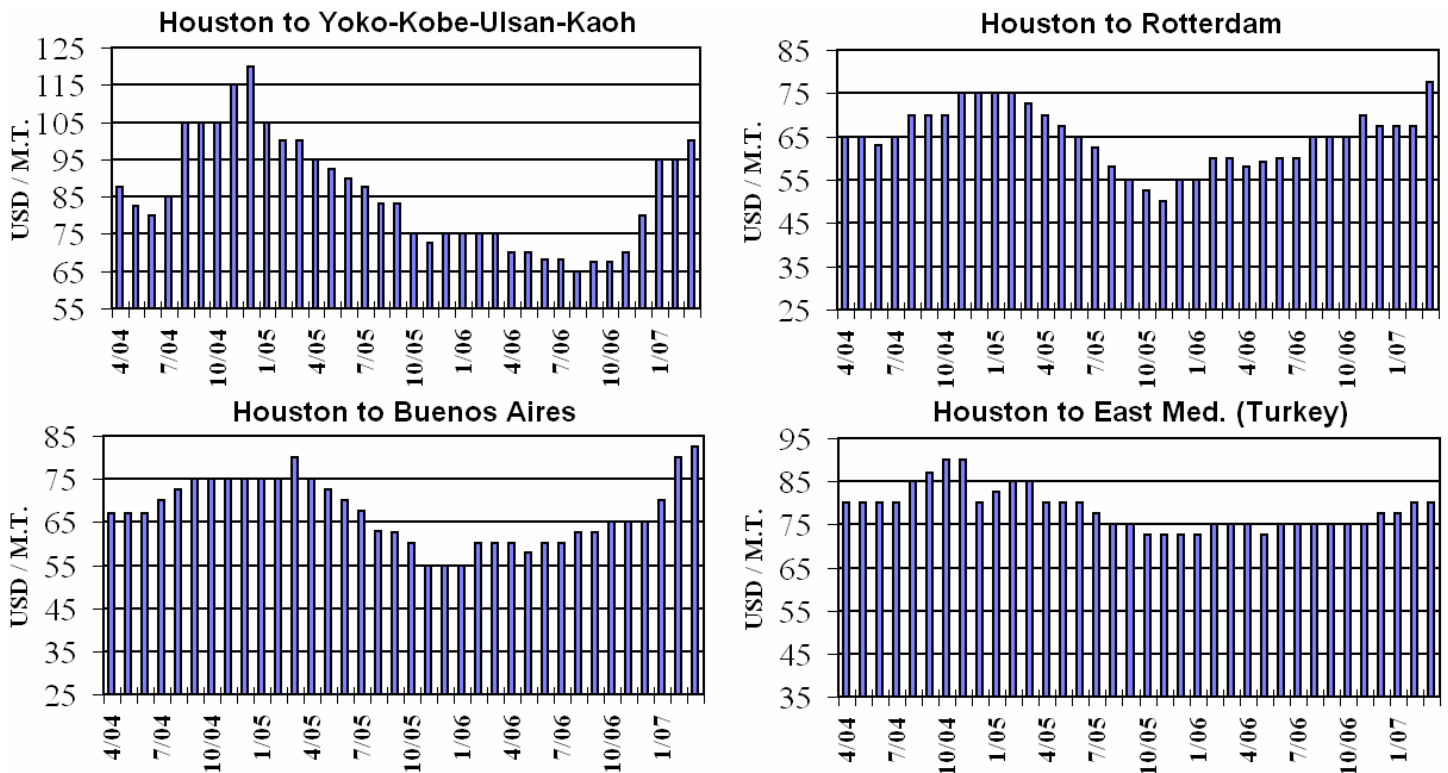
- **Category X:** Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a major hazard to either marine resources or human health and, therefore, justify the prohibition of the discharge into the marine environment;
- **Category Y:** Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a hazard to either marine resources or human health or cause harm to amenities or other legitimate uses of the sea and therefore justify a limitation on the quality and quantity of the discharge into the marine environment;
- **Category Z:** Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a minor hazard to either marine resources or human health and therefore justify less stringent restrictions on the quality and quantity of the discharge into the marine environment; and
- **Other Substances:** substances which have been evaluated and found to fall outside Categories X, Y or Z because they are considered to present no harm to marine resources, human health, amenities or other legitimate uses of the sea when discharged into the sea from tank cleaning or deballasting operations. The discharge of bilge or ballast water or other residues or mixtures containing these substances are not subject to any discharge requirements of MARPOL Annex II.

Finally and further to the above, the revised annex includes a number of other significant changes. In particular, technological improvements such as efficient stripping techniques have enabled significantly lower permitted discharge levels of certain products. This has been incorporated in Annex II. Thus, for ships constructed on or after 1 Jan 07, the maximum permitted residue in the tank and its associated piping has been reduced to a maximum of 75 liters for products in categories X, Y and Z. Previously these limits had been set at a maximum of 100 or 300 liters depending on the product category.

\* \* \* \* \*

## MARKET TRENDS THROUGH MARCH 2007

1,000-1,500 M.T. Lot Size ♦ IMO-2 tonnage, non-exotic ♦ +\$10 / M.T. stainless steel stowage



Source: International Tanker Chartering, Inc.

\* \* \* \* \*

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### PROGRAM LOCATIONS / DATES:

#### INTRO TO TANKER OPERATIONS AND DEMURRAGE

Singapore – April 17-18, 2007, 8:30 a.m. – 5 p.m.  
 New York – May 22-23, 2007, 8:30 a.m. – 5 p.m.  
 Houston – September 18-19, 2007, 8:30 a.m. – 5 p.m.

#### ADVANCED DEMURRAGE COURSE

Singapore – April 19-20, 2007, 8:30 a.m. – 5 p.m.  
 New York – May 24-25, 2007, 8:30 a.m. – 5 p.m.  
 Houston – September 20-21, 2007, 8:30 a.m. – 5 p.m.

For a printer friendly registration form, please click [here](#).

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