

T-3124-24

FEDERAL COURT

T- -24

BY AND BETWEEN

ARGO SHIPS S.A.

Applicant

AND

ATLANTIC OCEAN SALT INC.

Respondent

**APPLICANT'S RECORD**  
**(Application *ex parte* for Recognition  
and Enforcement of an Arbitral Award)**  
(Rules 327 et seq.)

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Solicitors for Applicant, Argo Ships S.A.

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**FEDERAL COURT**

T- -24

**BY AND BETWEEN**

**ARGO SHIPS S.A.**

**Applicant**

**AND**

**ATLANTIC OCEAN SALT INC.**

**Respondent**

**Ex-Parte Notice of Application for Recognition  
and Enforcement of an Arbitral Award  
(Rules 327 et seq.)**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant for recognition and enforcement in Canada of an arbitral award granted against Atlantic Ocean Salt Inc. by Peter Jago, acting as sole arbitrator in London, England (United Kingdom) on August 5, 2024. The claim made by the Applicant appears on page 8 of the award.

THIS APPLICATION is brought *ex parte* under Rule 328 of the *Federal Court Rules* and, unless the Court orders otherwise, will be decided on the basis of written representations and without notice to the Respondent.

November 7, 2024

Issued by:  
Address of local office:

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30 McGill Street  
Montreal, Quebec  
H2Y 3Z7

## Application

1. The Applicant applies for recognition and enforcement of an arbitral award granted against Atlantic Ocean Salt Inc. by Peter Jago in London, England (United Kingdom) on August 5, 2024 under the [United Nations Foreign Arbitral Awards Convention Act, R.S.C.1985, c.16 \(2<sup>nd</sup> Supp.\), Article III et seq.](#)
2. The grounds for the application are:
  - the arbitral award is one to which the aforesaid United Nations Foreign Arbitral Awards Convention Act applies;
  - the Respondent appeared and participated in the arbitral process before the aforesaid Peter Jago that granted the arbitral award;
  - the Respondent was given prior warning by letter of demand, dated October 16, 2024 together with a copy of the arbitral award, that if payment was not made within ten (10) days, this application would be made to this Court; and
  - No payment, partial or otherwise, has been made to date.
3. The following documentary evidence is relied on in support of this application:
  - The Affidavit of Timon Karamanos-Cleminson, producing and certifying a copy of Arbitration Award and reasons and attesting to other matters under Rule 329;
  - The Affidavit of Tzeison Merkouris Stylopoulos, producing and certifying a copy of the arbitration agreement under

which the arbitral award was made, within the Charter Party contract, dated November 20, 2020 as amended, and particular reference is made to the box 25 "Arbitration in London, English law to apply" in Part I and clause 19 in Part II and attesting to other matters under Rule 329;

- The Affidavit of David G. Colford attesting to other matters including requirements under Rules 329, 331 and 332
  
- 4. The Respondent in this application resides at 7566 Silver Creek Crescent, London, Ontario N6P 0G6.
  
- 5. Memorandum of Fact and Law
  
- 6. Draft Judgment

Dated at Montreal this 7<sup>th</sup> day of November 2024



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Solicitors for Applicant, Argo Ships S.A.

I HEREBY CERTIFY that the above document is a true copy of the original issued of / filed in the Court on the \_\_\_\_\_ day of 07-nov-2024 A.D. 20\_\_\_\_  
Dated this \_\_\_\_\_ day of 14-nov-2024 20\_\_\_\_

## AFFIDAVIT

I, **TIMON KARAMANOS-CLEMINSON**, solicitor in England & Wales domiciled and residing in Athens, Greece having been duly sworn do depose and say that:

1. I am a solicitor by profession practicing law at Hill Dickinson International of 2 Deferas Merarchias Street, Piraeus 185 35, Athens, Greece;
2. I am a member of the following Bar / Law Societies, that is, The Solicitors Regulations Authority of England & Wales;
3. I became a member of the foregoing Bar / Law Societies following my legal education at BPP in London, England;
4. I am fully qualified to provide legal opinions on matters of English law, and in particular on the English law governing arbitration in England & Wales and the laws and procedures in relation thereto;
5. I was acting for and represented Argo Ships SA in arbitration proceedings in London before Peter Jago in the matter between Argo Ships SA and Atlantic Ocean Salt Inc. which led to the Arbitration Award being issued by Peter Jago on August 5, 2024;
6. I certify that the Arbitration Award of Peter Jago, dated August 5, 2024 in the matter between Argo Ships SA and Atlantic Ocean Salt Inc. is a true copy of the Arbitration Award and I attach a copy of the Arbitration Award as Exhibit A to this affidavit and I also certify that the arbitration agreement under which the Arbitration Award was made is attached as Exhibit B to this affidavit;
7. I have reviewed The Arbitration Act, 1996, c.23 as amended of the statutes of the United Kingdom and all other relevant statutes, and I certify as a matter of English law that all relevant delays to seek permission to appeal this award and to appeal this award or any other form of judicial review have expired and that the award is now executory;
8. Further to paragraph 7, I certify that that no appeal or other form of judicial review is pending and that any time prescribed for the making of an appeal or application for judicial review has expired;

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9. I have made careful and full enquiries, and I can state that as a matter of English law, and in fact, I am not aware of any impediment to recognition and enforcement of the Arbitration Award of Peter Jago, dated August 5, 2024 in the matter between Argo Ships SA and Atlantic Ocean Salt Inc.

10. I certify that I am not aware of any payment having been made by Atlantic Ocean Salt Inc. or on its behalf, and to my knowledge, the Arbitration Award remains unsatisfied.

AND I HAVE SIGNED

TIMON KARAMANOS-CLEMINSON

SWORN TO BEFORE ME AT

THIS 23 DAY OF OCTOBER 2024

Signature of Efrossini Kalogeraki  
\_\_\_\_\_  
Officer of the Canadian Diplomatic Service  
Efrossini Kalogeraki  
Consular Program Officer  
Agent Consulaire  
Embassy of Canada In Athens  
Ambassade du Canada à Athènes

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15231 Athens - Athènes, Greece - Grèce

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**THIS IS EXHIBIT A TO THE AFFIDAVIT OF  
TIMON KARAMANOS-CLEMINSON  
SWORN TO BEFORE ME AT ATHENS, GREECE  
THIS 23 DAY OF OCTOBER 2024**

**Efrossini Kalogeraki**  
Consular Program Officer  
Agent Consulaire  
Embassy of Canada in Athens  
Ambassade du Canada à Athènes



**OFFICER OF THE CANADIAN DIPLOMATIC  
SERVICE**

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# “SERENITY”

**Charterparty dated 28 December 2021**

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## ARBITRATION AWARD

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**IN THE MATTER OF THE ARBITRATION ACT 1996  
AND IN THE MATTER OF AN ARBITRATION  
BETWEEN**

**ARGO SHIPS SA**

**Claimants/Owners**

and

**ATLANTIC OCEAN SALT**

**Respondents/Charterers**

---

**ARBITRATION AWARD**

---

**WHEREAS**

1. By a voyage charterparty contained and/or evidenced in a fixture recap dated 28 December 2021 and incorporating the pro-forma Gencon 94 terms and additional clauses, Argo Ships SA (the "Owners") agreed to carry for Atlantic Ocean Salt (the "Charterers") a cargo of "33,500 mt (2.5% more or less in Owner's option) salt in bulk" (the "Cargo") on board MV SERENITY

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(the “Vessel”) from 1 safe port, 1 safe berth Damietta to 1 safe port, 1 safe berth Becancour, Canada. Box 25 of the Charterparty Part I provides “Arbitration in London, English law to apply” and clause 19 of the Charterparty Part II provides as follows:

*“19. Law and Arbitration*

*(a) The Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator. On the receipt by one party of the nomination in writing of the other party’s arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall be final.”*

2. Disputes having arisen out of the Charterparty, on 5 April 2022 I was informed by Hill Dickinson International (“HD”) that they represented the Owners and DMSP Law (“DMSP”) represented the Charterers, and that the parties had agreed to me, the undersigned, Peter Jago of 54 Priory Road, Kew, Richmond, Surrey, TW9, being appointed as sole arbitrator. DMSP subsequently confirmed my appointment and each of the parties paid one half of my appointment fee.
3. The seat of this arbitration is in England.
4. All of the following correspondence was sent to the relevant email addresses.
5. The reference proceeded with a full exchange of pleadings together with supporting documents, with the Owners having filed (a) Claim Submissions, and (b) Reply and Defence to Counterclaim Submissions, and with the Charterers having filed (c) Defence and Counterclaim Submissions, and (d) Reply to Defence to Counterclaim Submissions.
6. In addition, the Owners have adduced contemporaneous evidence / correspondence and two witness statements:
  - a. the First Witness Statement of Maria Spiliotopoulou, the operations manager at the Managers of the Vessel, Mercury Maritime Enterprises Co. SA.

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b. the First Witness Statement of Ray G. Gantuangco, the Chief Engineer of the Vessel during the relevant voyage.

7. Shortly after the completion of disclosure the Charterers failed and/or refused to actively participate in the reference. The Owners subsequently served Closing Submissions together with a number of invoices. The Charterers were given a reasonable opportunity to serve Closing Submissions but did not do so. On 14 May 2024 I confirmed that submissions were closed and that I would proceed to my award. I have taken into account all of the points raised by the parties in their respective submissions, even though I do not refer to each of the points in this Award.

## THE CLAIMS

8. The Owners claim for:
- a. Demurrage in respect of time spent at the load port and the discharge port in the sum of US\$ 305,456.25.
  - b. Damages for detention for a period spent at Les Rasades in the sum of US\$ 85,000.
  - c. Damages for additional costs arising from the Charterers failure to pay freight in the sum of US\$ 37,021.15.
9. The Charterers counterclaim for despatch in the sum of US\$ 23,028.39.

## THE BACKGROUND

10. The background to the dispute was fully set out by the parties in their submissions. The following is a brief summary of the facts.
11. As mentioned above, the Charterparty is dated 28 December 2021, and clause 22.1 (Fixture Recap) provided:

*“20 percent of estimated freight to be remitting on fixing from Canada in US Dollars to New York to be transferred to Owner’s account 1 day prior to Vessel’s arrival Damietta, provided Vessel has sent 48 and 24 hour Notice of Readiness to agents Damietta and to ops@AntaresNYcom, stating Vessel’s current position, ETA and cargo quantity to be loaded provided banking holidays don’t prevent transfers to be executed.*”

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*Upon completion of loading master to sign Bs/L marked "freight prepaid" which to be kept in Owner's protecting agent's custody and only to be released by port agents to Charterers upon receipt of 100 pct (LESS COMMISSION) of freight by Owners and then Owners to give written instruction to port agents to release Bs/L to Charterers.*

...

*...Balance to be payable in US Dollars within 3 banking days of loading and signing Bills of Lading by Master, it being understood that all original Bills of Lading to remain in agents custody until Owners receive balance freight upon which they are to be considered released." (Fixture Recap)*

12. On 28 December 2021 the Owners issued an invoice in the sum of US\$ 295,391.25 for the 20% freight payment. The sum fell due on the same day, being the day before the Vessel's arrival at Damietta. There is no dispute that the payment was not made on 28 December 2021.
13. The Vessel arrived at Damietta at 1000 LT on 29 December 2021, and served NOR at the same time. However, despite the Owners' demands, the Charterers did not pay the freight as required by clause 22.1, and instead they paid US\$ 150,000 on 31 December 2021.
14. In the meantime, on 29 December 2021 the Charterers asked the Master to send recent photographs of the Vessel's "tanktop/holds/hatches/deck and cranes". The Master did so and the Charterers said they were arranging for third party surveyors, TUV AUSTRIA ("TUV"), to go to the Vessel and inspect the holds. TUV attended on board the Vessel on 1 January 2022 and reported that the holds were not clean or suitable for the Cargo.
15. Following a further inspection by TUV on 3 January 2022, during which the holds were again rejected, the Owners arranged for cleaning between 3 January and 5 January 2022. TUV issued a certificate accepting the holds on 6 January 2022. However, whilst TUV say they issued the certificate following a visual inspection of the holds, the Master denies that any such inspection took place on 6 January 2022, as recorded in the contemporaneous Statement of Facts.
16. Clause 23.3. of the Charterparty provided:

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*“Holds are to be clean and ready and in all respects, free of residue from previous cargoes and with watertight hatches to SGS surveyor’s satisfaction prior to the tender of Notice of Readiness.*

*In case of rejection, time not to count as laytime or time on demurrage from rejection until passes and first Notice of Readiness always to be valid.”*  
(Rider Clauses)

17. In the event the Owners engaged SGS to carry out a holds inspection, which took place between 0015 LT and 0215 LT on 7 January 2022. SGS passed the holds as clean and ready to receive the Cargo.
18. The Cargo was loaded between 0215 LT and 1300 LT on 11 January 2022, and eventually 33,000mt of industrial grade salt in bulk was loaded.
19. On 11 January 2022 the Charterers made a further payment of US\$ 156,900 in respect of freight, notwithstanding the sum had become due on 28 December 2021. On the same day, and pursuant to Clause 22.1 the Owners issued an invoice for balance of the freight in the sum of US\$ 1,170,076.25 (net of commission) to the Charterers. The sum was due on 14 January 2022, being 3 banking days after completion of loading and the Master signing the bills of lading.
20. However, the Charterers failed to pay the freight which was due. Clause 8 of the Charterparty provided:  
  
*“The Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo, for freight, deadfreight, demurrage, claims for damages and for all other amounts due under this Charter Party including costs of recovery.”* (Proforma)
21. The Owners exercised a lien over the Cargo on 21 January 2022 as the Vessel approached Canada. The Owners also issued a lien over sub-freights due to the Charterers on 27 January 2022 and 2 February 2022.
22. At 1300 LT on 29 January 2022 the Vessel arrived at Poer Escoumins (Les Rasades), and served NOR which noted that the lien on the cargo and on the bill of lading remained in place, and that the Vessel was *“anchored in Rasades anchorage for the safety of human life, cargo and vessel.”*
23. The Charterers paid the full freight due on 2 February 2022, after which the Vessel shifted from Les Rasades to Becancour where discharge operations



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commenced at 2130 LT on 3 February. Discharge was completed at 0015 LT on 7 February 2022.

## DEMURRAGE

### *Time spent at the load port (Damietta)*

24. The Charterers disputed the Owners' calculation of demurrage at the loadport. In short they said that when NOR was tendered on 29 December 2021 the Master's photographs showed the presence of residues of previous black coal cargoes in the holds, which was confirmed by the subsequent inspection carried out by TUV. The Charterers submitted that time did not count until 7 January 2022 when a SGS inspector accepted the holds for loading.
25. It is not disputed that hold cleaning took place at times between 29 December 2021 and 7 January 2022.
26. However, clause 23.1 of the Charterparty states:  
  
*"At load port: Laytime for load shall commence in 12 hrs after valid notice given WIPON, WIFPON, WICCON, WIBON"*.
27. Accordingly, the scheme of clauses 23.1 and 23.3 is that a valid NOR could be tendered as per clause 23.1, and laytime and demurrage counted unless the Vessel was rejected by a SGS surveyor, in which case laytime and demurrage did not count from the time of such rejection until the holds were passed by SGS. The main reason for these provisions is that the Owners wished to avoid a scenario in which there was delay between the Vessel's arrival at the load port and an inspection by SGS. Accordingly, clause 23.3 made it clear that a NOR given in accordance with clause 23.1 was valid, and that time counted unless and until the Vessel was rejected by a SGS surveyor. This put the onus on the Charterers to arrange an inspection by a SGS surveyor promptly after the Vessel's arrival since it was in their interest to interrupt time counting if the holds required cleaning.
28. However, for reasons which were never explained, the Charterers did not appoint a SGS surveyor but instead appointed a TUV surveyor. Given that the Charterparty expressly provided for the appointment of a SGS surveyor, the rejection of the Vessel by the TUV surveyor was contractually irrelevant and invalid so far as interrupting the running of laytime or demurrage.

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29. In short, at no point after tendering NOR were the Vessel's holds rejected by SGS as envisaged by clause 23 with the result that time did not stop running until the completion of loading.

30. The Charterers also contended that on 7 January 2022 a valid NOR could only be tendered at 0330 LT following completion of lime washing. However, for the reasons stated above the NOR tendered on 29 December 2021 was valid, and in any event SGS had passed the Vessel at 0215 LT on 7 January 2022 and loading had commenced. Accordingly, not only is there is no contractual exception to laytime or demurrage for lime washing, but as a matter of fact any lime washing does not appear to have delayed loading.

31. In conclusion, I agree with the Owners' calculation of laytime and demurrage at the load port.

*Time spent at the discharge port (Becancour)*

32. The calculation of laytime and demurrage at the discharge port turns on whether, as the Charterers contend, there were breakdowns of the Vessel's grabs and cranes during discharge at Becancour.


33. If there were breakdowns, then it is clear that laytime and demurrage were interrupted as clause 34 provided, "*Anytime lost by reason of breakdown of vessel's cranes / grabs or vessel's equipment or by reason of neglect or fault of the vessel, it's Owners, master or crew shall not count as laytime or time on demurrage, pro rata to the number of cranes affected.*"

34. The Charterers say that the Vessel's cranes and grabs were inoperable or otherwise faulty, and that they were required to hire grabs from the shore. They rely on a Port Log produced by Gresco Ltee ("Gresco") who reported that the Vessel's no. 4 crane was "*defective*" between 0815 and 1000 LT on 4 February 2022, and that the same crane's grabs were "*inoperable*" between 1300 and 1345 LT on the same day.

35. However, the Owners deny that there were any breakdowns, and contend that the stevedores unilaterally rented shore grabs because they wanted to avoid the time it took to rig the ship's grabs to the ship's crane.

36. Accordingly, this issue turns on the weight of the factual evidence whether there any breakdowns or not.



- 
37. The Owners submitted a witness statement of Mr Ray G. Gantuangco, the Chief Engineer (“C/E”) on board the Vessel at the relevant time.
38. The C/E provided documentary evidence that the cranes and grabs had been inspected and certified by the Vessel’s classification society, DNV, as recently as the Vessel’s last dry docking in November 2021. Furthermore, they were inspected again at Damietta and were used without any issues for loading the Cargo.
39. The C/E also provided contemporaneous exchanges which establish that it was the stevedore’s own decision to engage the shore grabs in order to speed up the discharge operation. For instance, on 4 February Gresco wrote to the Charterers and to the Owners’ protecting agents, Navitrans, saying that the stevedores were switching to shore grabs to “*speed up process... as the ship’s crew take too much time to rig / unrig ships grabs*”. Navitrans responded that “*ships gear is at their disposal and fully functional*”.
40. There was similar correspondence over the following days, and the Master included a remark in the Statement of Facts that the cranes and grabs were in working order.
41. The Charterers did not provide any witness evidence of their own, and it is very telling that Gresco did not claim that the cranes or grabs were defective, but simply that the stevedores preferred to use shore grabs as this was quicker.
42. On balance I prefer the Owners’ evidence that there was no breakdown of the Vessel’s cranes or grabs for the purposes of clause 34.
43. As a result I accept the Owners’ laytime and demurrage calculations for the discharge port.
44. The Owners claim US\$ 305,456.25 in respect of demurrage. I have checked the Owners’ calculation and agree with it and I award the Owners demurrage in this sum. In addition, the Charterers’ counterclaim for despatch fails.

## DETENTION AND OTHER DAMAGES

### *Damages for detention at Les Rasades*

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The Charterers failed to pay the freight when it fell due according to the Charterparty, and this was compounded by the Charterers saying on several occasions that freight had been paid when this was not the case.

46. As explained by Maria Spiliotopoulou (“MS”) in her witness statement, on 11 January 2022, the day loading was completed, the Owners issued an invoice for the balance of freight outstanding in the sum of US\$ 1,170,076.25 which was due to the Owners by 14 January 2022 in accordance with clause 22.1 of the Charterparty.
47. As the freight due was not paid on 21 January 2022 the Owners exercised a lien over the Cargo pursuant to clause 8 of the Charterparty, and kept the Bill of Lading for the Cargo with their protective agents pending receipt of 100% of the freight payable (less commission) pursuant to clause 22.1.
48. As the Vessel approached Becancour MS began to investigate the most cost effective and safe way of maintaining their lien over the Cargo in the absence of payment. MS liaised with Navitrans and in a series of emails was advised:
  - a) Attempting to anchor at Becancour was undesirable because it is rock bottomed and so vessels tend to drag their anchors when winds pick up or move because of ice flows and current. Navitrans said, *“Becancour is never a great option, even in summer. Same goes for Quebec City, and to some extent Trois-Rivieres...which might be your best option,,generally vessels will stop at Les Rasades...”*.
  - b) Accordingly, whilst Les Rasades was not without its own challenges, it is a place where vessels generally stopped.
  - c) The Owners enquired whether the Cargo could be discharged into a bonded warehouse where they could continue to exercise their lien. However they were advised that neither this or tarping the Cargo on pier were realistic options.
  - d) Although there was a layby berth at Becancour, using the berth would have cost the Owners over CAD\$ 100,000 which was uneconomical.
49. The Charterers did not provide any evidence to contradict the advice which MS received from Navitrans. In their defence the Charterers put the onus on the Owners to justify their decision to order the Vessel to wait at Les Rasades, and I accept the evidence of MS and Navitrans that the only real

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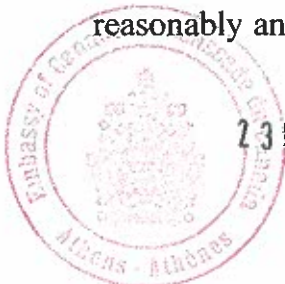


“show in town”, as they put it, was to anchor and wait there in order to protect their lien.

50. The Vessel was anchored at Les Rasades for 4 days and 6 hours from 1300 LT on 29 January 2022 until 1900 LT on 2 February 2022, as confirmed by the NOR and Port log.
51. In such circumstances owners often claim damages for detention at the charterparty demurrage rate, which is US\$ 33,000. However in this case the Owners have claimed damages for detention by reference to the Baltic Exchange Handysize Index for the whole period the Vessel remained at Les Rasades at the daily rate of US\$ 20,000 (US\$17,993.50 plus a daily bunker consumption of US\$ 2,000 comprising 3 MT of LSMGO, at about US\$670 per MT).
52. The Charterers have not objected to the Owners’ calculation of damages on this basis or submitted any contrary evidence, and I find that it was reasonable for the Owners to exercise their lien for freight and withhold the Bill of Lading for the Cargo at the Les Rasades anchorage. Accordingly, the Owners claim damages for detention in the sum of US\$ 85,000 succeeds.

*Other damages*


53. The Owners further claim as damages the costs and expenses incurred as a result of the Charterers’ failure to pay freight promptly in the sum of US\$37,021.15. Such costs are made up of:
  - A) the cost of obtaining Egyptian law advice (as a result of the Charterers’ failure to pay freight promptly and in full) in the sum of US\$ 2,000.
  - B) the cost of obtaining Canadian law advice in relation to the contractual lien in the sum of US\$ 12,686.50.
  - C) the cost of obtaining English law advice in relation to their rights as a result of the Charterers’ failure to pay freight promptly and in full in the sum of US\$ 22,334.65.
54. The Charterers submitted that the costs so claimed were excessive and exaggerated.
55. Where a charterer fails to pay freight promptly and in full they can reasonably anticipate the owners may take steps to protect their position by



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the exercise of a lien or liens on cargo, bill of lading freight, and sub-freights. In doing so it can again reasonably be expected that the owner will obtain legal advice from lawyers in the relevant jurisdictions, and such advice usually has to be provided promptly if not as a matter of urgency.

56. In this matter I consider it was perfectly in order for the Owners to obtain legal advice in Egypt, Canada and England, and I consider that the cost of such advice was reasonable. As a result, I allow the Owners' claim in the sum of US\$36,858.11.
57. Accordingly, I find that the Owners' claim in the total sum of US\$ 427,477.40 succeeds in full.
58. The Owners have claimed interest on the sum due to them from 28 December 2021, being the date when 20% freight was due and not paid. The difficulty with this is that not all of the sums on which interest is payable had been incurred by 28 December 2021. Accordingly I award interest on the sum of USD 427,477.40 from 7 March 2022, being 30 days from the completion of discharge, and by when the sums claimed should have been paid.
59. As regards costs, the Owners have succeeded in their claim in full and, given that Section 61(2) of the Act provides that the general principle is that costs should follow the event, I consider that the Owners are entitled to recover their costs from the Charterers on the basis as set out in Section 63(5) of the Act. I reserve my jurisdiction to determine the Owners' recoverable costs.
60. I also consider that the Charterers should be responsible for the payment of my fee. I have provided for interest to run on the Owners' recoverable costs and on my fee pursuant to the provisions of Section 49 of the Act.

**NOW I**, the said Peter Jago, having taken upon myself the burden of this reference and having carefully and conscientiously considered the submissions and evidence (all documentary) and having given due weight thereto, **DO HERBY MAKE, ISSUE AND PUBLISH** this my **ARBITRATION AWARD** as follows: -

**(A) I FIND, HOLD AND ORDER** that the Owners' claim succeeds in the sum of USD 427,477.40 (United States Dollars Four hundred and

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twenty-seven thousand four hundred and seventy-seven and forty cents) and the Charterers' counterclaim fails.

**(B) I THEREFORE AWARD AND ADJUDGE** that the Charterers shall pay the said sum of USD 427,477.40 (United States Dollars Four hundred and twenty-seven thousand four hundred and seventy-seven and forty cents) to the Owners together with interest thereon at the rate of 6% per annum and pro rata, compounded at three monthly rests, from 7 March 2022 until the date of payment of such sums to the Owners.

**(C) I FURTHER AWARD AND DIRECT** that the Charterers shall bear their own costs and shall forthwith pay to the Owners their recoverable costs in relation to this my Arbitration Award, on the basis as set out in Section 63(5) of the Arbitration Act 1996 (for the assessment of which, if not agreed, I hereby reserve my jurisdiction), together with interest thereon at the rate of 6% per annum and pro rata, compounded at three monthly rests, from the date of this my Arbitration Award until that of payment.

**(D) I FURTHER AWARD AND DIRECT** that the Charterers shall bear and pay the costs of this my Arbitration Award including interlocutory costs, which amount to a total of £8,250 (Pounds Sterling eight thousand two hundred and fifty) provided, however, that if in the first instance the Owners shall have paid any amount in respect of the said costs of this my Arbitration Award, they shall be entitled to the immediate reimbursement by the Charterers of the sum so paid, together with interest thereon, at the rate of 6% per annum and pro rata, compounded at three monthly rests, from the date of payment by the Owners until the date of reimbursement by the Charterers.

**(E) I HEREBY DECLARE** that this my Arbitration Award is final as to all matters determined herein and **I HEREBY RESERVE MY JURISDICTION** to determine by further award or awards any and all remaining issues between the parties.

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Dated: this 5th day of August 2024.

Signed: At the seat of the Arbitration in England.

*P. Jago*

---

**PETER JAGO**

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Consular Section - Section Consulaire  
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15231 Athens - Athènes, Greece - Grèce

THIS IS EXHIBIT B TO THE AFFIDAVIT OF  
TIMON KARAMANOS-CLEMINSON  
SWORN TO BEFORE ME AT ATHENS, GREECE  
THIS 23<sup>rd</sup> DAY OF OCTOBER 2024

Efrossini Kalogeraki  
Consular Program Officer  
Agent Consulaire  
Embassy of Canada in Athens  
Ambassade du Canada à Athènes

OFFICER OF THE CANADIAN DIPLOMATIC  
SERVICE



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15231 Athens - Athènes, Grèce



23 OCT 2024

From: "Fidelio Maritime & Trading" <chartering@fidelnav.gr>

To: chartering@mercurymaritime.gr

Subject: FW:MV Serenity 33500 mt salt Damietta / Becancour - fixture recap - C/Pdated Dec 27, 2021 (REF:210AAX700)

Ref.No: 225216

Date: Tue, 28 Dec 2021 00:15:23 +0200

---

TELiX MSG: 0AAX7-00 28/12/21 00:08

J / N

Confirm having fixed without subjects as follows:

Please advise immediately if you do not agree or if you see any mistakes.

Basis Gencon 94 C/P with following insertions, deletions, additions and alterations:

(Box 5/6/7 Rider Clause 18)

MV Serenity

Briefly described as:

MV Serenity

36599 mt dwt on 10.918 ssw TPC 46.10 mt on summer draft

Built 2011 Ice Class 1C

IMO 9544762

Loa 186.40m

Beam 27.80m

5 holds hatches

47,888 cbm grain

4 cranes 30 mt

4 x 15 cbm Peiner SMAG EGF (motor cable reel operated)

all abouts

-full description of Vessel as submitted

-Capacity plan and draft scale as submitted

-GA-plan as submitted

-Some recent pictures of Vessel's tanktop/ holds/hatches/deck and cranes as submitted

-Manufacturer and Type of hatch covers per Baltic Questionnaire as submitted

-Constants about 280 mt

-Vessel's recent history of port state control inspections including deficiencies and detentions, if any (No detentions)

-Vessel's sustainable service speed about 13 kn

Please advise/send:

-Copies of Vessel's Class , P and I Club, gear and sanitation certificates.

-Solid or permanent ballast on board.

-Unpumpable fuel, sludge or ballast on board.

-Last 3 cargoes carried (last cargo first): Coal before that drydock/special survey

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Vessel to have hydraulic hatch covers and Vessel is able to close hatches quickly in case of rain.

Owners warrant that this Vessel does not have any GMO residue from previous cargoes on board.

Vessel's grabs to be used for loading and discharge free of charge.

Vessel's estimated DWCC basis 10.67m fwd Becancour, Canada is: around 33500 (rvrtng with Master Stow plan within the next 12 hours)

(Box 3)

Owners are:

ARGO SHIPS S.A.  
80, BROAD STREET - MONROVIA LIBERIA

(Clause 20b)

Please advise also name of head Owner and full chain of tc Owners, if any.

ARGO SHIPS S.A.  
80, BROAD STREET - MONROVIA LIBERIA

Owners are performing

(Box 4)

ATLANTIC OCEAN SALT INC.  
7566 SILVER CREEK CRESCENT  
LONDON ONT N6P 0G6 CANADA

(Box 12)

33,500 mt (2.5 % more or less in Owner's option) salt in bulk, Charterer's option to load some salt products in big bags) as full cargo - no part cargo allowed.

(Box 10)

1 safe port, 1 safe berth Damietta

(Box 11)

1 safe port, 1 safe berth Becancour, Canada

(Box 9/21)

Laydays/cancelling: Dec 29/31, 2021

(Box 8)

Vessel's Itinerary: vs1 in ballast, eta Damietta 29 noon/pm  
Bunkers currently on board: ABT 460/480 MT VLSFO AND ABT 210/220 MTS  
Bunkering intentions: intention is Gibraltar

(Box 16a)

10,000 MT per WWD FHINC excluding super holidays

(Box 16b)

10,000 MT per WWD SSHINC excluding super holidays

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(Box 13)

Freight: USD 46.50 per MT Bill of Lading weight FIO spout or grab trimmed

(Box 14)

See Clause 22.1

(Box 20, Clause 28)

Demurrage: USD 33,000 / half despatch (HD) working time saved both ends, reversible.

RIDER

Clause 21

For discharge port/s:

GRESKO

Deepi Sandhu

Tel: +1 514 238 1886

Head office:

Gresco Ltee

299 Rue De La Commune Ouest  
Montreal, Quebec  
H2Y 2E1

Tel: +1 514 842 4051

email: agency@gresco.net

Clause 22.1

Paragraph 1 to read as follows:

20 percent of estimated freight to be remitting on fixing from Canada in US Dollars to New York and to be transferred to Owner's account 1 day prior to Vessel's arrival Damietta, provided Vessel has sent 48 and 24 hour Notice of Readiness to agents Damietta and to ops@AntaresNY.com, stating Vessel's current position, ETA and cargo quantity to be loaded provided banking holidays dont prevent transfers to be executed.

Upon completion of loading master to sign Bs/L marked "freight prepaid" which to be kept in Owner's protecting agent's custody and only to be released by port agents to Charterers upon receipt of 100pc (LESS COMMISSIONS) of freight by Owners and then Owners to give written instructions to port agents to release Bs/L to Charterers.

Clause 38

Delete: "Nor at loadport : to be tendered atdnfhinc" (This as wrongly inserted here and it stated in Clause 23 already)

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Clause 42 - delete Bimco AMS Clause for USA and replace same with:

Canadian Notification Requirements for Voyage Charter Parties

(a) As between Owners and Charterers, Owners shall be deemed to be the Conveyance Operating Carrier for the purposes of the Canada Customs Act and any relevant regulations, memorandums or notices issued by the Canada Border Services Agency ("CBSA").

(b) Subject to sub-clause (c) below, Owners will be responsible for obtaining a Marine Carrier Code (Bonded or Non-Bonded) as may be required and for providing the CBSA with the Advance Commercial Information by Electronic Data Interchange or otherwise on a timely basis.

(c) The Charterers shall provide Owners with all information necessary for the timely and accurate submission of Advance Commercial information to the CBSA.

(d) Each party shall indemnify the other party for any and all fines, penalties, expenses, loss, damage, delay or any other claim, including attorney's fees, arising from its failure to comply with this clause.

(e) For the avoidance of doubt, nothing contained in this clause is intended to vary any other provision of this charter as to responsibility for cargo and identity of carrier.

3.75 ttl here in New York plus Fidelio 1.25% commission will be paid directly by owners

Otherwise TO C/P Anarita dated Nov 24, 2020 where applicable and with logical alterations and following correction

Clause 23.6

Delete: Owner's responsibility to get vessel under and stay under loading spout during loading operation, maximum air draft 14.0 meters waterline/top of hatch coaming.

It is understood that comments on CP Details will not prejudice main terms per Recap as stated above. Main terms agreed overrule C/P proforma details.

end

Thanks vm for this fixture.

Please keep port agents and us closely advised of vsIs ETA

Please send us owner's banking details

+++

Best Regards,

Nikolas Fountoulakis

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Fidelio Maritime & Trading S.A.

A: 128, Syngrou Avenue 11745, Athens Greece  
E: chartering@fidelnav.gr  
P: +30210 710 1195 (ext 404)| M: +30 6947 103 477  
S: nfountoulakis

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<b>1. Shipbroker</b> <b>Antares Chartering &amp; Shipping, Inc.</b> <b>274 West Glen Avenue</b> <b>Ridgewood, NJ 07450</b> <b>Tel: (201) 385-0180</b> <b>acsny@AntaresNY.com</b>		<b>RECOMMENDED</b> <b>THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE</b> <b>UNIFORM GENERAL CHARTER (AS REVISED 1922, 1978 and 1994)</b> <b>(to be used for trades for which no specially approved form is in force)</b>	
		Part I	
<b>2. Place and date</b> <b>Ridgewood, NJ, November 24, 2020</b>		<b>3. Owners/ Place of Business (Cl.1)</b> <b>ANARITA MARITIME LTD.,</b> <b>80 BROAD STREET,</b> <b>MONROVIA, LIBERIA</b>	
<b>4. Charterers/ Place of business (Cl.1)</b> <b>Alnegm Alsatea</b> <b>Kism Rabea Alasar</b> <b>Alhatab Tower, after Sosna, Damietta 34511, Egypt.</b>		<b>5. Vessel's name (Cl.1)</b> <b>MV Anarita – built 2012</b> <b>4 cranes 36 mt &amp; 4 remote control grabs upto 12 cbm</b> <b>all abouts See Clause 18</b>	
<b>6. GT/NT (Cl.1)</b> <b>GT/NT 32839/19559</b>		<b>7. DWT all told on summer load line in metric tons (abt.) (Cl.1)</b> <b>58,018 dwt on 12.95 m ssw</b> <b>56,419 dwt on 12.68 m wsw</b> <b>See Clause 18</b>	
<b>8. Present position (Cl.1)</b> <b>Trading - open Tartous Nov 30, 2020</b> <b>ETA Damietta Dec 1, 2020 WP AGW WOG</b>		<b>9. Expected ready to load (abt.) (Cl.1)</b> <b>November 30, 2020:</b>	
<b>10. Loading port or place (Cl.1)</b> <b>1 SP ISB Damietta</b>		<b>11. Discharging port or place (Cl.1)</b> <b>1 ISP ISB Beancour</b>	
<b>12. Cargo (also state quantity and margin in Owners' option, if agreed, if full and completed cargo not agreed state "part cargo" (Cl.1)</b> <b>42,000 Spc MOLOO rock salt in bulk (to be narrow prior fixing by Owners)</b> <b>Charterer's option to substitute above with any of the following</b> <b>Upto about 8,500 mt of feed grade ground rock salt in bulk and /or</b> <b>Upto about 3,000 mt of Calcium Chloride in big bags about 90 x 90 x 120 cm and/or</b> <b>about 500 mt rock salt in big bags, both of which loaded on top of the bulk rock salt</b> <b>Understood to be all harmless</b>			
<b>13. Freight rate (also state whether freight prepaid or payable on delivery) (Cl.4)</b> <b>USD 18.50 pmt fiost basis 1/1</b> <b>All basis on intaken quantity fiot ex spout a/o grab</b> <b>trimmed / stowed resp.</b>		<b>14. Freight payment (state currency and method of payment, also beneficiary and bank accounts) (Cl.4)</b> <b>See Clause 22.1</b>	
<b>15. State if vessel's cargo gear shall not be used (Cl.5)</b>		<b>16. Laytime (if separate laytime for load and disch. is agreed, fill in a) and b). If total laytime for load and disch., fill in c) only) (Cl.6)</b> <b>a) Laytime for loading</b> <b>10,000 mts pwwd thinc excluding super holidays.</b> <b>b) Laytime for discharging</b> <b>10,000 mts pwwd sshinc excluding super holidays</b> <b>c) Total laytime for loading and discharging</b>	
<b>17. Shippers (state name and address) (Cl. 6)</b>		<b>18. Agents (loading) (Cl. 6)</b> <b>See Clause 21</b>	
<b>19. Agents (discharging) (Cl. 6)</b> <b>See Clause 21</b>		<b>20. Demurrage rate and manner payable (loading and discharging) (Cl.7)</b> <b>USD 15,000.00 per day pro rata half despatch working</b> <b>time saved, non reversible.</b>	
<b>21. Cancelling date (Cl.9)</b> <b>Laycan: November 30/December 4, 2020</b>		<b>22. General Average to be adjusted at (Cl.12)</b> <b>London, English law to apply.</b>	
<b>23. Freight Tax (state if for the Owners' account (Cl. 13 (c))</b> <b>Any dues a/o taxes on cargo to be for Charterer's acct.</b> <b>Any dues a/o taxes on Vessel to be for Owner's acct</b> <b>including premiums for breaking IWL/INL</b>		<b>24. Brokerage commission and to whom payable (Cl.15)</b> <b>As agreed.</b>	
<b>25. Law and Arbitration (state 19 (a) 19 (b) or 19 (c) of Cl.18, if 19 (c) agreed also state Place of Arbitration) (if not filled in 19 (a) shall apply) (Cl 19)</b> <b>Arbitration in London, English law to apply.</b> <b>(a) State maximum amount for small claims / shortened arbitration (Cl. 19)</b>		<b>26. Additional clauses covering special provisions, if agreed.</b> <b>Rider Clauses 18 to 43, both inclusive, to be deemed</b> <b>fully incorporated in this Charter Party agreement.</b>	

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature Owners  
**OCEAN AGENCIES LTD.**  
**as commercial managers**  
**and agents to owners**

Signature Charterers  
**ALNEGMA ALSATEA**  
**DAMIETTA, EGYPT**

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**OCEAN AGENCIES LTD**  
**2nd Floor, Marlborough House**  
**298 Regents Park Road**  
**London N3 2SZ**

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**PART II**  
**" Gencon " Charter (As Revised 1922, 1976 and 1994)**



1. It is agreed between the party mentioned in Box 3 as the Owners of the Vessel named in Box 5, of the GT/NT indicated in Box 6 and carrying about the number of metric tons of deadweight capacity all told on summer loadline stated in Box 7, now in position as stated in Box 8 and expected ready to load under this Charter Party about the date indicated in Box 9, and the party mentioned as the Charterers in Box 4 that:

The said vessel shall, as soon as her prior commitments have been completed, proceed to the loading port(s) or place(s) stated in Box 10 or so near thereto as as she may safely get and lie always afloat, and there load a full and complete cargo (if shipment of deck cargo agreed same to be at the charterers' risk and responsibility) as stated in Box 12, which the Charterers bind themselves to ship, and being so loaded the vessel shall proceed to the discharging port(s) or place(s) stated in Box 11 as ordered on signing Bills of Lading, or so near thereto as she may safely get and lie always afloat, and there deliver the cargo.

**2. Owners' Responsibility Clause**

The Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by personal want of due diligence on the part of the Owners or their Manager to make the Vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied, or by the personal act or default of the Owners or their Manager.

And the Owners are not responsible for loss, damage or delay arising from any other cause whatsoever, even from the neglect or default of the Master or crew or some other person employed by the Owners on board or ashore for whose acts they would, but for this Clause, be responsible, or from unseaworthiness of the Vessel on loading or commencement of the voyage or at any time whatsoever.

**3. Deviation Clause**

The vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and or assist Vessels in all situations, and also to deviate for the purpose of saving life and/or property.

**4. Payment of Freight See Clause 22.1**

(a) The freight at the rate stated in Box 13 shall be paid in cash calculated on the intaken quantity of cargo.

(b) Prepaid. If according to Box 13 freight is to be paid on shipment, it shall be deemed earned and non-returnable, Vessel and/or cargo lost or not lost. Neither the Owners nor their agents shall be required to sign or endorse bills of lading showing freight prepaid unless the freight due to the Owners has actually been paid.

(c) On delivery. If according to Box 13 freight, or part thereof, is payable at destination it shall not be deemed earned until the cargo is thus delivered. Notwithstanding the provisions under (a); if freight or part thereof is payable on delivery of the cargo the Charterers shall have the option of paying the freight on delivered weight/quantity provided such option is declared before breaking bulk and the weight/quantity can be ascertained by official weighing machine, joint draft survey or tally.

Cash for Vessel's ordinary disbursements at the port of loading to be advanced by the Charterers, if required, at highest current rate of exchange, subject to two (2) per cent to cover insurance and other expenses.

~~On request the Owners shall provide free of charge cranes/winches from the crew to operate the Vessel's cargo handling gear, unless local regulations prohibit this, in which latter event shore labourers shall be for the account of the Charterers. Cranes/winches shall be under the Charterers' risk and responsibility and as stevedores to be deemed as their servants but shall always work under the supervision of the Master.~~

~~(c) Stevedore Damage See Clause 27~~

~~The Charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the Vessel caused by Stevedores. Such damage shall be notified as soon as reasonably possible by the Master to the Charterers or their agents and to their Stevedores, failing which the Charterers shall not be held responsible. The Master shall endeavour to obtain the Stevedores' written acknowledgement of liability.~~

~~The Charterers are obliged to repair any stevedore damage prior to completion of the voyage, but must repair stevedore damage affecting the Vessel's seaworthiness or class before the Vessel sails from the port where such damage was caused or found. All additional expenses incurred shall be for the account of the Charterers and any time lost shall be for the account of and shall be paid to the Owners by the Charterers at the demurrage rate.~~

**6. Laytime See Clause 23**

~~(a) Separate laytime for loading and discharging~~

~~The cargo shall be loaded within the number of running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count.~~

~~The cargo shall be discharged within the number of running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count.~~

~~(b) Total laytime for loading and discharging~~

~~The cargo shall be loaded and discharged within the number of total running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count.~~

~~(c) Commencement of laytime (loading and discharging)~~

~~Laytime for loading and discharging shall commence at 13:00 hours, if notice of readiness is given up to and including 12:00 hours, and at 06:00 hours next working day if notice given during office hours after 12:00 hours. Notice of readiness at loading port to be given to the Shippers named in Box 17 or if not named, to the Charterers or their agents named in Box 18. Notice of readiness at the discharging port to be given to the Receivers or, if not known, to the Charterers or their agents named in Box 19.~~

~~If the loading/discharging berth is not available on the Vessel's arrival at or off the port of loading/discharging, the Vessel shall be entitled to give notice of readiness within ordinary office hours on arrival there, whether in free pratique or not, whether customs cleared or not. Laytime or time on demurrage shall then count as if she were in berth and in all respects ready for loading/discharging provided that the Master warrants that she is in fact ready in all respects. Time used in moving from the place of waiting to the loading/discharging berth shall not count as laytime.~~

~~If, after inspection, the Vessel is found not to be ready in all respects to load/dischARGE time lost after the discovery thereof until the Vessel is again ready to load/dischARGE shall not count as laytime.~~

~~Time used before commencement of laytime shall count.~~

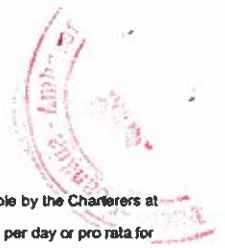
~~Indicate alternative (a) or (b) as agreed in Box 16.~~



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**PART II**  
**" Gencon " Charter (As Revised 1922, 1976 and 1994)**



5. Loading/Discharging

(a) Costs/Risks

The cargo shall be brought into the holds , loaded , stowed and/or trimmed ,  
 tallied, lashed and/or secured and taken from the holds and discharged by the  
 Charterers, free of any risk, liability and expenses whatsoever to the Owners.  
 The Charterers shall provide and lay all dunnage material as required for the  
 proper stowage and protection of the cargo on board , the Owners allowing the  
 use of all dunnage available on board. The Charterers shall be responsible for  
 and pay the cost of removing their dunnage after discharge of the cargo under  
 this Charter Party and time to count until dunnage has been removed.

(b) Cargo Handling Gear

Unless the Vessel is gearless or unless it has been agreed between the parties  
 that the Vessel's gear shall not be used and stated as such in Box 15, the  
 Owners shall throughout the duration of loading/discharging give free use of  
 the Vessel's cargo handling gear and of sufficient motive power to operate all  
 such cargo handling gear. All such equipment to be in good working order.  
 Unless caused by negligence of the stevedores, time lost by breakdown of the  
 Vessel's cargo handling gear or motive power - pro rata the total number of  
 cranes/winchs required at that time for the loading/discharging of cargo  
 under this Charter Party - shall not count as laytime or time on demurrage.

50 7. Demurrage See Clause 21.1

51 Demurrage at the loading and discharging port is payable by the Charterers at

52 the rate stated in Box 20 in the manner stated in box 20 per day or pro rata for

53 any part of a day. Demurrage shall fall due day by day and shall be payable

54 upon receipt of the Owner's invoice.

55 In the event the demurrage is not paid in accordance with the above, the

56 Owners shall give the Charterers 06 running hours written notice to rectify the

57 failure. If the demurrage is not paid at the expiration of this time limit and if the

58 vessel is in or at the loading port, the Owners are entitled at any time to

59 terminate the Charter Party and claim damages for any losses caused thereby.

60

61 8. Lien Clause

62 The Owners shall have a lien on the cargo and on all sub-freights payable in

63 respect of the cargo, for freight, deadfreight, demurrage, claims for damages

64 and for all other amounts due under this Charter Party including costs of

65 recovering same.

66

67 9. Cancelling Clause

68 (a) Should the Vessel not be ready to load (whether in berth or not) on the

69

**OCEAN AGENCIES LTD**  
**2nd Floor Marlborough House**  
**298 REGENTS PARK ROAD**  
**LONDON N3 2SZ** *LC*

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PART II  
" Gencon " Charter (As Revised 1922, 1976 and 1994)

cancelling date indicated in Box 21, the Charterers shall have the option of cancelling this Charter Party.

(b) Should the Owners anticipate that, despite the exercise of due diligence, the Vessel will not be ready to load by the cancelling date, they shall notify the Charterers thereof without delay stating the expected date of the Vessel's readiness to load and asking whether the Charterers will exercise their option of cancelling the Charter Party, or agree to a new cancelling date.

Such option must be declared by the Charterers within 48 running hours after the receipt of the Owners' notice. If the Charterers do not exercise their option of cancelling, then this Charter Party shall be deemed to be amended such that the seventh day after the new readiness date stated in the Owners' notification to the Charterers shall be the new cancelling date.

The provisions of sub-clause (b) of this Clause shall operate only once, and in case of the Vessel's further delay, the Charterers shall have the option of cancelling the Charter Party as per sub-clause (a) of this Clause.

10. Bills of Lading

Bills of Lading shall be presented and signed by the Master as per the "Congenbill" Bill of Lading form, Edition 1994, without prejudice to this Charter Party, or by the Owners' agents provided written authority has been given by Owners to the agents, a copy of which is to be furnished to the Charterers. The Charterers shall indemnify the Owners against all consequences or liabilities that may arise from the signing of bills of lading as presented to the extent that the terms or contents of such bills of lading impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners under this Charter Party.

11. Both-to-Blame Collision Clause

If the Vessel comes into collision with another vessel as a result of the negligence of the other Vessel and any act, neglect or default of the Master, Mariner, Pilot or the servants of the Owners in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify the Owners against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or non-carrying vessel or her owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying Vessel or the Owners. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

12. General Average and New Jason Clause

General Average shall be adjusted in London unless otherwise agreed in Box 22 according to York-Antwerp Rules 1994 and any subsequent modification thereof. Proprietors of cargo to pay the cargo's share in the general expenses even if same have been necessitated through neglect or default of the Owners' servants (see Clause 2)

If General Average is to be adjusted in accordance with the law and practice of the United States of America, the following Clause shall apply: " In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owners are not responsible, by statute, contract or otherwise, the cargo shippers, consignees or the owners of the cargo shall contribute with the Owners in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving vessel is owned or operated by the Owners, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Owners, or their agents, may deem

14. Agency See Clause 21

~~In every case the Owners shall appoint their own Agent both at the port of loading and the port of discharge.~~

15. Brokerage

A brokerage commission at the rate stated in Box 24 on the freight, dead-freight and demurrage earned is due to the party mentioned in Box 24.

~~In case of non-execution 1/3 of the brokerage on the estimated amount of freight to be paid by the party responsible for such non-execution to the Brokers as indemnity for the latter's expenses and work. In case of more voyages the amount of indemnity to be agreed.~~

16. General Strike Clause

(a) If there is a strike or lock-out affecting or preventing the actual loading of the cargo, or any part of it, when the Vessel is ready to proceed from her last port or at any time during the voyage to the port or ports of loading or after her arrival there, the Master or the Owners may ask the Charterers to declare, that they agree to reckon the laydays as if there were no strike or lock-out. Unless the Charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, the Owners shall have the option of cancelling this Charter Party. If part cargo has already been loaded, the Owners must proceed with same, (freight payable on loaded quantity only) having liberty to complete with other cargo on the way for their own account.

(b) If there is a strike or lock-out affecting or preventing the actual discharging of the cargo on or after the Vessel's arrival at or off port of discharge and same has not been settled within 48 hours, the Charterers shall have the option of keeping the Vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharging until the strike or lock-out terminates and thereafter full demurrage shall be payable until the completion of discharging, or of ordering the Vessel to a safe port where she can safely discharge without risk of being detained by strike or lock-out. Such orders to be given within 48 hours after the Master or the Owners have given notice to the Charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at such port, all conditions of this Charter Party and of the Bill of Lading shall apply and the Vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance to the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

(c) Except for the obligations described above, neither the Charterers nor the Owners shall be responsible for the consequences of any strikes or lock-outs preventing or affecting the actual loading or discharging of the cargo.

17. War Risks ("Voywar 1993)

(1) For the purpose of this Clause, the words:

(a) "The Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master, and

(b) "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, wartime operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all Vessels or imposed selectively against Vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other Persons on board the Vessel.

(2) If at any time before the Vessel commences loading, it appears that, in the



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**PART II**  
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<p>sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the goods to the Owners before delivery."</p> <p>13. <b>Taxes and Dues Clause See Box 23.</b></p> <p>(a) <del>On Vessel—The Owners shall pay all dues, charges and taxes customarily levied on the Vessel, however the amount thereof may be assessed.</del></p> <p>(b) <del>On cargo—The Charterers shall pay all dues, charges, duties, and taxes customarily levied on the cargo, however the amount thereof may be assessed.</del></p> <p>(c) <del>On freight—Unless otherwise agreed in Box 23, taxes levied on the freight shall be for the Charterers' account.</del></p>	<p>196</p> <p>197</p> <p>198</p> <p>199</p> <p>200</p> <p>201</p> <p>202</p> <p>203</p> <p>204</p> <p>205</p> <p>206</p>	<p>reasonable judgement of the Master and/or the Owners, performance of the Contract of Carriage, or any part of it, may expose, or is likely to expose, the vessel, her cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Contract of Carriage, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks, provided always that if this Contract of Carriage provides that loading or discharging is to take place Within a range of ports, and at the port or ports nominated by the Charterers the Vessel, her cargo, crew, or other persons onboard the Vessel may be exposed, or may be likely to be exposed, to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies Within the range for loading or discharging, and may only cancel this</p>
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Contract of Carriage if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.

- (3) The Owners shall not be required to continue to load cargo for any voyage, or to sign Bills of Lading for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo ( or any part thereof ), crew or other persons on board the Vessel (or any one or more of them) may be or are likely to be, exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfillment of the Contract of Carriage. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the cargo had been carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route, the Owners having a lien on the cargo for such expenses and freight.
- (4) If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo, crew or other persons on board the Vessel may be, or are likely to be, exposed to War Risks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.
- (5) The Vessel shall have liberty: -
- (a) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery or in any way whatsoever which are given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government which so requires, or any body or group acting with the power to compel compliance with their orders or directions;
  - (b) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;
  - (c) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;
  - (d) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;
  - (e) to call at any other port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions;
  - (f) where cargo has not been loaded or has been discharged by the

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on the Vessel's arrival or in case frost sets in after the Vessel's arrival, the Master for fear of being frozen in is at liberty to leave without cargo, and this Charter Party shall be null and void.

(b) if during loading the Master, for fear of the Vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for the Owners' benefit for any port or ports including port of discharge. Any part cargo thus loaded under this Charter Party to be forwarded to destination at the Vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Charterers, freight being paid on quantity delivered ( in proportion if lumpsum ), all other conditions as per this Charter Party.

(c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Master or the Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under section (b) or to declare the Charter Party null and void unless the Charterers agree to load full cargo at the open port.

*Port of discharge*

(a) Should ice prevent the Vessel from reaching port of discharge the Charterers shall have the option of keeping the Vessel waiting until the re-opening of navigation and paying demurrage or of ordering the Vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after the Master or the Owners have given notice to the Charterers of the impossibility of reaching port of destination.

(b) If during discharging the Master for fear of the Vessel being frozen in deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest accessible port where she can safely discharge.

(c) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and the Vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

19. Law and Arbitration

(a) This Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator, the decision of the three-man tribunal thus constituted or any two of them, shall be final. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall be final.

For disputes where the total amount claimed by either party does not exceed the amount stated in Box 25 \*\* the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association.

(b) This Charter Party shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and should any dispute arise out of this Charter Party, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen, their decision or that of any two of them shall be final, and for purpose of enforcing any award, this agreement may be made a rule of the Court. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.



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<p>Owners under any provisions of this Clause, to load other cargo for the Owner's own benefit and carry it to any other port or ports whatsoever, whether backwards or forwards or in a contrary direction to the ordinary or customary route.</p> <p>(6) If in compliance with any of the provisions of sub-clauses (2) to (5) of this Clause anything is done or not done, such shall not be deemed to be a deviation, but shall be considered as due fulfilment of the Contract of Carriage.</p> <p><b>18. General Ice Clause</b>  <i>Port of loading</i></p> <p>(a) In the event of the loading port being inaccessible by reason of ice when the Vessel is ready to proceed from her last port or at any time during the voyage or</p>	<p>337 338 339 340 341 342 343 344 345 346 347 348</p>	<p><del>For disputes where the total amount claimed by either party does not exceed the amount stated in Box 25** the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc.,</del></p> <p><del>(c) Any dispute arising out of this Charter Party shall be referred to arbitration at the place indicated in Box 25, subject to the procedures applicable thereto. The laws of the place indicated in Box 25 shall govern this Charter Party.</del></p> <p><del>(d) If Box 25 in Part 1 is not filled in, sub-clause (a) of this Clause shall apply.</del></p> <p><del>(a), (b) and (c) are alternatives; indicate alternative agreed in Box 25.</del></p> <p><del>** Where no figure is supplied in Box 25 in Part 1, this provision only shall be void but the other provisions of this Clause shall have full force and remain in effect.</del></p>
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**OCEAN AGENCIES LTD**  
**2nd Floor Marlborough House**  
**298 Regents Park Road**  
**LONDON N3 2SZ** *Jc*



Rider to Charter Party MV "Anarita" - dated November 24, 2020

Clause 18:

- M/V =ANARITA= FLAG: LIBERIAN/ TYPE: BULK CARRIER  
OFFICIAL NUMBER: 15345/ CALL SIGN: D5AB7/ IMO NUMBER: 9636008  
- TELEX/PHONE/FAX: 463711734/773205732/783025479  
- BUILT 2012 APRIL/ YARD: YANGZHOU DAYANG SHIPBUILDING CO. LTD.  
- MAIN ENGINE: DOOSAN MAN B&W 6S50MC-C7  
- CLASS NOTATION: BV HULL. MACH BULK CARRIER. BC-A GRAB(20) CSR,  
. HOLD 2,4 MAY BE EMPTY , ESP, UNRESTRICTED NAVIGATION,  
. AUT-UMS, VERISTAR-HULL, INWATERSURVEY, MON-SHAFT.  
- P/I: UK MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA)  
- GT/NT: 32,839.00/19,559.00 INTERNATIONAL  
. 33,689.21/31,519.67 SUEZ  
. /27,222.00 PANAMA  
- SUMMER/WINTER/TROPICAL DWAT AND RESPECTIVE DRAFT AND TPC:  
. SUMMER 58,018.0MT ON 12.950 M 59.24MT  
. SUMMER(FW) 58,018.0MT ON 13.241 M 59.30MT  
. WINTER 56,419.0MT ON 12.680 M 59.19MT  
. TROPICAL 59,618.0MT ON 13.220 M 59.30MT  
. TROPICAL(FW) 59,582.0MT ON 13.511 M 59.36MT  
. PANAMA 50,801.0MT ON 12.040 M 57.30MT TROPICAL FW 0.9954 GMS/CC  
- CONSTANTS EXCLUDING FW: 450 MT; LIGHT WEIGHT 10,952 MT; FWA: 291 mm  
. BUNKERS CAPACITY (98%):2,174.4MT IFO / 98.7MT MDO; FW: 389.8MT  
. BALLAST 17,347MT + CH NO.3 15,174.9MT. FULL DEBALLASTING TIME 24 HOURS.  
- LOA: 189.99 M; BEAM: 32.26 M; MOULDED DEPTH: 18.00 M; LBP: 185.00 M  
. DISTANCES: KEEL TO HIGHEST POINT 45.167M; BOW TO AFT LAST HATCH: 159.85M  
  
- GRAIN CAPACITY 71,549.4 M3 HOLDWISE: BALE CAPACITY 69,760.7 M3 HOLDWISE:  
  
. HOLD 1 - 13,254.20 12,922.80  
. HOLD 2 - 14,891.10 14,518.80  
. HOLD 3 - 14,804.70 14,434.60  
. HOLD 4 - 14,891.10 14,518.80  
. HOLD 5 - 13,708.20 13,365.50  
- DISTANCE FROM WATERLINE TO TOP HATCH COAMINGS  
. LADEN : 7.35 M  
. LIGHT BALLAST: 1- 15.4 m; 2- 15.0 m; 3- 14.6 m; 4- 14.2 m; 5- 13.8 m  
. HEAVY BALLAST: 1- 12.8 m; 2- 12.6 m; 3- 12.3 m; 4- 12.1 m; 5- 11.9 m -  
FLOODED NO.3  
- DISTANCE FM WATERLINE TO HIGHEST POINT (METRES) WITH FULL BUNKERS:  
. LIGHT BALLAST 39.0m; HEAVY BALLAST 36.3m; FULLY LADEN 32.2m.  
- HOLDS ARE CO2 FITTED; NATURAL VENTILATION.



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**Rider to Charter Party MV "Anarita" - dated November 24, 2020**

- HATCH COVERS STEEL WEATHER-TIGHT DOUBLE SKIN FOLDING TYPE WITH FLAT TOP.

. TWO-PANEL COVER SETS FOR FOLDING TYPE HATCH COVERS TO BE STOWED AT END OF HOLD HATCHES (TWO GRAIN AND CEMENT LOADING SCUTTLES PROVIDED).

- NUMBER OF GEAR/GRABS AND ITS CAPACITY (WT/CBM):

. 4 SINGLE DECK CRANES, 36 MT SWL EACH, TYPE GLB3628-2/28,828GR, MCGREGOR, CHINA.

. BETWEEN HOLDS NO 1-2, 2-3, 3-4, 4-5 FITTED ON CENTER LINE

. CRANE OUTREACH BEYOND SHIP SIDE 11.87 M.

. 4 PS 12 M3 REMOTE CONTROL GRAB (CAPACITY 12/9/7/5 M3 BY KICK OUT PLATES)

. TARE 8700KG, SWL 20.1 MT (WHEN CRANES WORK ON . GRAB DUTY THE TOTAL

. WEIGHT OF GRAB+CARGO NOT TO EXCEED 28.8 MT).

. DIMENSION HATCHES(M): NO.1- 17.20 X 17.02, NO.2,3,4,5 - 20.64 X 18.64

- DIMENSION HOLDS (M) LENGTH X BREADTH X HEIGHT TO TOP HATCH COAMINGS:

. HOLD 1 - 28.81 X 32.21 X 18.58

. HOLD 2 - 30.10 X 32.21 X 18.58

. HOLD 3 - 30.10 X 32.21 X 18.58 HEIGHT OF ALL HATCH COAMINGS 2.20 M.

. HOLD 4 - 30.10 X 32.21 X 18.58

. HOLD 5 - 29.67 X 32.21 X 18.58

. FLAT TANKTOP DIMENTIONS (M) B x L BREADTH FORE/AFT IN:

. HOLD 1 8.92/23.50X28.38 - 515.06 M2

. HOLD 2 23.50X27.52 - 646.72 M2

. HOLD 3 23.50X25.80 - 606.30 M2

. HOLD 4 23.50X27.52 - 646.72 M2

. HOLD 5 12.16/23.50X27.52 - 588.91 M2

. TOTAL TANK TOP - 3,003.71 M2

- STRENGTH (PERMISSIBLE LOADS), MT/M2 OF:

. TANKTOPS: HOLD 1,3,5 - 25 MT/SQ.M HOLD 2,4 - 19 MT/SQ.M

. ABOVE TANKTOP STRENGTH APPLICABLE FOR UNIFORM/HOMOGENEOUS

. BULK CARGOES OR FLAT BASE BREAKBULK CGOES.

. WEATHER DECK: 4.00 MT/SQ.M, HATCHCOVERS: 1.5 MT/SQ.M

. ALTERNATE HOLDS LOADING: 1-3-5.

all details "ABOUT" given in good faith but without guarantee.

**GRABS to be used for loading and discharge free of charge.**

All abouts

**Please advise:**

-quantity to be loaded

-GA- and loading plans

-full itinerary including ETA Damietta and transit time to Becancour



**Rider to Charter Party MV "Anarita" - dated November 24, 2020**

Last 3 cargoes carried by this Vessel: MDF, wheat, grains.

Owners guarantee that vessel is fully H + M & P and I covered and will remain so for the entire voyage. Furthermore, Owners guarantee that the vessel is fully fitted and certified for this trade incl. ISM / ISPS / ITF.

**Clause 18.1 - Shifting and Warping:**

When the berth/place where the vessel is to load or discharge is not available upon her arrival at or off loading or discharging port, shifting expenses from anchorage or waiting berth shall be for Owners' account and shifting time used shall not count, as laytime or time on demurrage.

Warping: Both at loading - and discharging port.

Vessel shall be warped as required anytime day/night FHINC/SSHINC. Such warping shall be for Owners' account, PROVIDED PERFORMED BY THE VESSEL'S CREW WITHOUT PARTICIPATION OF SHORE LINESMEN, PILOTS AND TUGS, but time used to count.

Overtime so payable to officers and crew and bunkers so consumed shall be for Owners' account.

**Clause 19- Cargo and Quantity:**

The Master to advise estimated intake/stow plan latest on tendering Notice of Readiness. The Master to declare exact quantity/stow plan upon berthing.

Cargo quantity to be determined by joint draft survey both ends.

**Clause 20 - Notices:**

For the loading port:

The Master upon fixing to advise quantity to be loaded and ETA loading port followed by 7/5/3/ days ETA notice and 48 and 24 hours definite notice of Vessel's ETA.

For the discharge port:

The Master upon sailing to advise quantity loaded on board and ETA discharge port. The Master to give 10/7/5/3/ days ETA notice and 2/1 days and 12 hours definite ETA notice.

Notices to be send to agents load and discharge port, respectively as well as to ops@AntaresNY.com.

**Clause 21 – Agents:**

Owners' agents nominated by Charterers:

At loading port:



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Skype alaa.zolfakar  
FB www.facebook.com/seamarshipping.eg

Info@seamarshipping-eg.com  
chartering@seamarshipping-eg.com

Contact Details:  
Address : 13 Halabo st. Off Abo Warda st. El-Gomrok - Alexandria – Egypt, Postal Code : 21513  
Tel/Fax : 002 03 486 28 47 - 002 03 486 28 48  
Mobiles : 002 011 2750 1040 - 002 011 1375 8858 - 002 011 2866 4626

For discharge port/s:  
Owners may pick their own agents for the discharge port or brokers could suggest that Owners contact:

Mustafa  
ops@reford.ca

Robert Reford  
360 St Jacques, Suite 1010  
Montreal, Quebec H2Y 1R2  
Tel: +1 (514)-845-5201 ext 4608  
Direct line : (514)-286 4608  
Cel: +1(514)-641-3399

<http://www.robertreford.com>

At both load port and discharge port, Owners to make themselves familiar and satisfy themselves with port restrictions via their own agents.

Owners to check with their own agents to assure that their Vessel is suitable for calling, loading and unloading at the loading/discharge port/s resp. and that the ports/berths are safe for Owner's Vessel.

**Clause 22 - Freight:**  
See Box 13 for freight rates.

**Clause 22.1:**



The Embassy of Canada does not  
validate the content of this document.  
L'ambassade du Canada ne valide pas  
le contenu de ce document.



**Rider to Charter Party MV "Anarita" - dated November 24, 2020**

25 pct of estimated freight to be transferred in US Dollars from New York to Owner's bank account 1 day prior to vessel's arrival Damietta provided vessel has sent 48 and 24 hour Notice of Readiness to agents Damietta stating ETA and cargo quantity to be loaded.

If for whatever reason Vessel does not arrive and tender Notice of Readiness at Damietta, and/or fails repeated inspection, then all advanced freight payments to be returned by Owners immediately and without questions.

Balance to be payable in US Dollars in New York within 3 banking days of completion of loading and signing of Bills of Lading by Master, it being understood that all original Bills of Lading to remain in agent's custody until Owners receive balance freight upon which they are to be considered released.

Full freight deemed earned as cargo being loaded onboard, discountless and nonreturnable Vessel and/or cargo lost or not lost.

Master has the right to reject cargo for which clean Bs/L cannot be issued and Charterers to immediately replace such cargo with new/undamaged cargo for which clean Bs/L can be signed.

All payments to be make in US Dollars in New York less commissions via Owner's correspondent bankers (to be advised within Owner's freight invoice).

In case "Freight prepaid" Bills of Lading are required then same to be immediately released after Owner's receipt funds on Owner's bank account.

Balance of freight, if any, plus demurrage or less despatch money, if any, to be settled within 30 days after final discharge and receipt of Owner's final account accompanied by appropriate laytime calculations supported by relevant documents including NoR/SoF for all ports.

**Clause 22.2 - Bills of Lading:**

Shippers require 3/3 original Bill of Lading, 7 copies non-negotiable duly signed and stamped and 2 non-negotiable copies and marked "payable as per Charter Party".

**Clause 22.3-Cargo Quantity:**

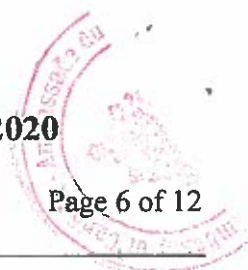
Final loaded quantity to be established at loading port by draft survey. Bills of Lading and freight to be in accordance with the draft survey quantity.

Owners are not responsible for the amount of big bags, but only for total amount of cargo in metric tons.

**Clause 23 - NoR and Laytime both ends:**

NoR cannot be tendered before laycan.





**Load rate:** 10,000 mts pwwd fhinc excluding Super Holidays

NoR at loadport : to be tendered atdnfhinc excluding Super Holidays, WIPON, WIBON, WCCON, WFPON.

At load port : Laytime for load shall commence in 12 hrs after valid notice given WIPON, WIFPON, WICCON, WIBON.

Time used before commencement of laytime shall not count.

Sealing of cargo holds with ramneck tape after loading, if required, to be for Owner's time and account

**Discharge rate:** 10,000 metric ton pwwd shinc excluding Super Holidays

NoR at discharge port : to be tendered atdnshinc excluding Super Holidays, WIPON, WIBON, WCCON, WFPON.

At discharge port : Laytime for discharge shall commence in 12 hours after valid notice given WIPON, WIFPON, WICCON, WIBON.

It is understood that Super Holidays include noon Dec 24 through noon Dec 26 as well as noon December 31 and noon January 2.

**Clause 23.1. – Deleted.**

**Clause 23.2 - Opening and closing of Hatches:**

All opening/closing of hatches are to be for Owners' time and expense.

**Clause 23.3 - Clean Holds:**

Holds are to be clean and ready in all respects, free of rust-scale, free of residue from previous cargoes and with watertight hatches to SGS surveyor's satisfaction prior to the tender of Notice of Readiness.

In case of rejection, time not to count as laytime or time on demurrage from rejection until passes and first Notice of Readiness always to be valid.

**Clause 23.4 - Lime Washing:**

Same not required by Charterers but if Owners wish to Lime Washing or apply other suitable hold protection same to be for Owner's time and account.



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vouch for the content of this document.  
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le contenu de présent document.

**Clause 23.5 - Machine Cleaning:**

Upon completion of discharge, Charterers are to be responsible to leave the holds machine clean.

**Clause 23.6 - Owner's Responsibility:**

Owners will be responsible in complying with arrival/sailing conditions with respect to draft and air draft.

Owner's responsibility to get vessel under and stay under loading spout during loading operation, maximum air draft 14.0 meters waterline/top of hatch coaming.

**Clause 24 - Stevedore damage:**

Both at loading and discharging ports the stevedores, although appointed by the Charterers / shippers / receivers or their agents, to be under supervision of the Master, who will be responsible for the vessel's seaworthiness. Charterers / shippers / receivers or their agents are not directly responsible for stevedores' act or defaults.

All stevedore damages caused to the ship during loading and discharging operations are to be settled directly between Owners and stevedores. Damages affecting vessel's seaworthiness caused by the stevedores during loading and discharging operations are to be repaired at the berth prior to vessel's departure. Any time so lost may be recovered from stevedores.

The manner in which minor damages are to be repaired is to be worked out directly between Owners and stevedores. Minor damages not affecting vessel's seaworthiness to be repaired at first favourable possibility, no later than 24 hours after occurrence, prior to vessels departure. Master or Owners or their agents are to notify in writing to the stevedores any damages as soon as they occur or as prompt as possible and Charterers or their agents are to give the Master their assistance to obtain stevedores acknowledgement of liability for such damage. If requested by Owners, Charterers to render utmost assistance to secure settlement from stevedores for any stevedores damages.

**Clause 25 – Vessel's lights:**

Vessel to be equipped with sufficient lights to enable night work free of expense to the Charterers.

**Clause 26 - Laytime exceptions:**

Laytime shall be suspended for but not limited to any or all of the following reasons:

- A) If vessel does not have all hatches open and ready to load/unload upon berthing, even it vessel is already on demurrage.
- B) In case the Master request that work or repairs be carried out to the vessel during loading and discharging time and time activity interferes with normal loading and discharging, all time so used not to count as laytime or time on demurrage, even if vessel is already on demurrage.



C) In case the Port Authority required vessel to un-berth the vessel for safety reasons, even if the vessel is already on demurrage.

**Clause 27 - Ballasting/Deballasting:**

Vessel to be suitable for quick ballasting and deballasting, and her Master to be co-operative in ballasting and deballasting the vessel in order to prevent loading and discharging delays or stoppages.

**Clause 28 - Bunkers deviation clause:**

The vessel shall have liberty as part of the contract voyage and at any stage thereof may proceed to any port or ports whatsoever, on the direct and/or customary route or routes between any of the ports of loading or discharge name in this Charter and may there take oil bunkers in sufficient quantity only to complete the respective voyage and in accordance with draft restrictions required at discharging port(s).

**Clause 29 - Confidentiality:**

This fixture is strictly private and confidential.

**Clause 30 - Grab discharge:**

Vessel is to be suitable in every respect for grab discharge and free of all hold timbers. No cargo is to be stowed in deep tanks, or any places which are not directly accessible to grabs after bulldozers have untrimmed the cargo. In which event, any expense over and above the costs of normal loading trimming grab discharge and untrimming by bulldozers of cargo as and when stowed in the square of the hatch shall be for Owners' account deductible from settlement. Extra time used for loading and/or discharging over spout trimmed from such places not accessible after untrimming by bulldozers shall not count.

The stevedores are not responsible for any consequences arising from damage caused by loading and discharging apparatus, to unprotected tunnels or other restricted areas or projections in the vessel holds preventing or hindering the operation of the grabs or other apparatus in the normal loading and discharging of the ship, unless reported by the Captain/stevedores always to be responsible for Owner's grabs and grabs to be redelivered in the same condition as on delivery except for normal wear and tear.

**Clause 31:**

Owners confirm the vessel is a self trimming single deck bulk carrier fully suitable in every respect to carry salt in bulk and loading/discharging by grabs and mechanical equipment in vessels holds customarily used by Charterers/receivers. Vessel not to have centreline beams in hatches or obstructions in holds/on tanktops.

Vessel is to be classed highest Lloyds or equivalent and entered with a top rated P and I club for the duration of this Charter Party.



**Clause 32:**

The Vessel is to be fully suitable for this trade and have all relevant cargo and/or gear and/or vessel certificates on board. Possession of current ITF (or bonafide agreement acceptable to IFT) certificate and ISM/ISPC certified.

**Clause 33:**

Complying with U.S. Public Law 85-742 Part 9 (Safety and Health Regulations for Longshoring) and/or any amendments thereto, respectively any similar rules/legislations applicable in the country of loading. Applicable for calling U.S. ports entering U.S. waters only.

**Clause 34:**

Charterers to have free use of vessel's cranes and grabs for loading and discharging discharging of the cargo.

Vessel to supply power and cranes and grabs in good working order anytime day/night FHINC/SSHINC free of expenses to the Charterers. Anytime lost by reason of breakdown of vessel's cranes / grabs or vessel's equipment or by reason of neglect or fault of the vessel, it's Owners, master or crew shall not count as laytime or time on demurrage, pro rata to the number of cranes affected.

**Clause 35:**

Owners warrant that the performing vessel under this Charter Party is not listed by U.S. State Department as unacceptable for U.S. cargoes in view of its having traded in areas deemed unfriendly to the U.S.

**Clause 36:**

Any delay and/or extra expenses incurred due to vessels crew wages not complying with those laid down to the ITF or bona fide agreement acceptable to ITF to be for the Owners' account.

**Clause 37:**

Owners warrant that at the time of nomination, the vessel is entered with a recognized first class P & I Club and will remain so for the entire voyage and that the premiums are fully paid up

**Clause 38:**

Owners warrant throughout the currency of this Charter they will provide the vessel with following certificates: Certificates issued pursuant to Section 311 (p) of Clean Water Act. (U.S. Federal pollution Control Act) and amendments. Certificates required by any other national or local government evidencing financial responsibility in the event of discharging of oil or other hazardous substance. In no case shall Charterers be liable for any damages resulting from Owners' failure to obtain or have on board such certificates or Owners failure to comply in any other way with existing or future law enacted by



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any national or local governments. Any time lost NoR at loadport : to be tendered at discharge by reason of Owner's noncompliance, time not to count and Owners shall hold Charterers harmless against and all consequential loss / damage, expense or claims.

**Clause 39:**

Owners remain responsible in the event of any loss of time or boycott of the vessel by or any labour problems with shore labour, seamen's unions/tugboats, pilots or local authorities arising by reason of vessels flag, nationality or registry, ownership, management or agents, the nationality of any member of the crew or crew employment conditions. Any time lost not to count as laytime or time on demurrage.

**Clause 40:**

Owners to place Charterer's agents in funds well in advance or latest prior to vessel's arrival at both load and discharge ports covering vessels disbursements and all other Owners expenses. If Owners fail to do so, then all extra charges/expenses that arise due to delays, disruptions in loading / discharging the cargo and/or the entrance and/or departure of the vessel due to improper / insufficient and/or timely funds received by the agents, will be for Owner's account and time.

**Clause 41:**

During the currency of this Charter Party, the Owners shall procure that both the vessel and "the company" (as defined by ISM code) shall comply with the requirements of the ISM code. Upon request, the Owners shall provide a copy of the relevant Document of Compliance (DOC) and Safety management Certificate (SMC) to the Charterers except as otherwise provided in the Charter Party, loss, damage, expenses or delay caused by failure on the part of the Owners or "the Company" to comply with ISM code shall be for the Owner's account.

**Clause 42 - Bimco AMC Clause:**

A) If the vessel loads or carries cargo destined for the US or passing through US ports in transit, the Owners shall comply with the current U.S. Customs Regulations (19 CFR 4.7) or any subsequent amendments thereto and shall undertake the role of carrier for the purposes of such regulations and shall, in their own name, time and expense:

- I) Have in place a SCAC (Standard Carrier Alpha Code)
- II) Have in place a ICB (International Carrier Bond) and
- III) Submit a cargo declaration by AMS (Automated Manifest System) to the U.S. Customs.

B) The Charterers shall provide all necessary information to the Owners and/or their agents to enable the Owners to submit a timely and accurate cargo declaration.

The Charterers shall assume liability for and shall indemnify, defend and hold harmless the Owners against any loss and/or damage whatsoever (including consequential loss and/or damage) and/or any



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**Rider to Charter Party MV "Anarita" - dated November 24, 2020**

expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Charterers failure to comply with any of the provisions of this sub- clause. Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, all time used or lost shall count as laytime or, if the vessel is already on demurrage, time on demurrage.

c) The Owners shall assume liability for and shall indemnify, defend and hold harmless the Charterers against any loss and/or damage whatsoever (including consequential loss and/or damage) and any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Owners failure to comply with any of the provisions of this sub-clause (a). Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, all time used or lost shall count as laytime or, if the vessel is already on demurrage, time on demurrage.

D) The assumption of the role of carrier by the Owners pursuant to this Clause and for the purpose of the US Customs Regulations (19 CFR 4.7) shall be without prejudice to the identity of carrier under any Bill of Lading, other contract, law or regulation.

**Clause 43 - ISPS Clause for Voyage Charter Parties:**

A) (I) From the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of Solas (ISPS Code) in relation to the vessel, the Owners shall procure that both the vessel and "the Company" (as defined by the ISPS Code) shall comply with the requirements of the ISPS Code relating to the vessel and "the Company". Upon request, the Owners shall provide a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) to the Charterers. The Owners shall provide the Charterers with the full style contract details of the Company Security Officer (CSO).

(II) Except as otherwise provided in this Charter Party, loss, damage expense or delay excluding consequential loss, caused by failure on the part of the Owners or "the Company" to comply with requirements of the ISPS Code or this Clause shall be for the Owners' account.

B)(I) The Charterers shall provide the CSO and the Ship Security Officer (SSO)/Master with their full style contract details and any other information the Owners require to comply with the ISPS Code.

(11) Except as otherwise provided in this Charter Party, loss, damage, expense excluding consequential loss, caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account and delay caused by such failure shall be compensated at the demurrage rate.

C) Provided that the delay is not caused by the Owners' failure to comply with their obligations under the ISPS Code, the following shall apply:

(I) Notwithstanding anything to the contrary provided in this Charter Party, the vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code.



(II) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code shall count as laytime or time on demurrage if the vessel is on laytime or demurrage. If the delay occurs before laytime as started or after laytime or time on demurrage has ceased to count, it shall be compensated by the Charterers at the demurrage rate.

D) Notwithstanding anything to the contrary provided in this Charter Party, any additional costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be for the Charterer's account, unless such costs or expenses result solely from the Owners' negligence. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

ISPS charges if any to be for Owner's account.

**OCEAN AGENCIES LTD**  
2nd Floor, Marlborough House  
298 Regents Park Road  
London N3 2SZ *LC*

23 OCT 2024



**AFFIDAVIT of ARGO SHIPS S.A.**

I, TZEISON MERKOURIS STYLOPOULOS, business executive, domiciled and residing at Salaminos 7, 174 55, Alimos, Greece, having been duly sworn do depose and say that:

1. I am the sole director officer of the Managers of Argo Ships S.A.;
2. Argo Ships SA is a body corporate under the laws of Liberia, having its head office in Monrovia, Liberia at 80 Broad Street, Monrovia, 1000-10 Liberia;
3. On or about December 28, 2021, the applicant entered into a voyage charter party with the respondent, Atlantic Ocean Salt Inc., for a voyage from Egypt to Bécancour, Quebec, Canada carrying a cargo of salt; during the voyage, various disputes arose which were referred to arbitration pursuant to clause 19 of the aforesaid charter which reads as follows:

**19. Law and Arbitration**

- (a) The Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree on a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall be final.

4. I attach a copy of the aforesaid voyage charter party as Exhibit A to this affidavit;
5. Hill Dickinson International was appointed to act for the Applicant and DMSP Law was appointed to act for the Respondent. The parties agreed on the appointment of

1000770195.1

23 OCT 2024





Peter Jago, of 54 Priory Road, Kew, Richmond, Surrey, TW9 to act as sole arbitrator;

6. The Respondent appeared in the arbitral proceedings through the aforesaid DMSP Law firm, and made submissions in response to those of Applicant (although DMSP later on, in the arbitration reference, notified the Applicant and the sole arbitrator that it had ceased to act for the Respondent);
7. On August 5, 2024, the aforesaid Peter Jago rendered an Arbitration Award, which I attach as Exhibit B to this affidavit;
8. As appears in the said Award, the Respondent was adjudged to pay the Applicant the sum of US \$427477.40 together with interest thereon at the rate of 6% per annum and pro rata, compounded quarterly from March 7, 2022 until the date of payment;
9. The Respondent was also adjudged to pay the fees of Peter Jago, in the amount of British Pounds £ 8,250; the award provided that if Applicant paid these fees, then Respondent was to reimburse the Applicant the aforesaid amount together with interest thereon at the rate of 6% per annum and pro rata, compounded quarterly, from the date of payment made by Applicant to the date of reimbursement by Respondent;
10. The Applicant paid Peter Jago his fees on August 6, 2024 and I attach a copy of Mr. Jago's acknowledgement of same date as Exhibit C to this affidavit;
11. The Applicant was also awarded its recoverable costs together with interest thereon at a rate of 6% per annum and pro rata, compounded quarterly from the date of the Award until the date of payment. The Applicant's recoverable costs have not yet been assessed by Peter Jago, the sole arbitrator, and Applicant reserves its rights to amend its application to ask for recognition and enforcement of whatever assessment is issued;

1000770195.1





12. On behalf of the Applicant, I confirm that after having made careful and full inquiries through my English and Canadian solicitors, that the Applicant knows of no impediment to registration of the recognition and enforcement of the arbitral award;

13. I certify that no payment of any kind has been made by Atlantic Ocean Salt Inc. or on its behalf, and that the Arbitration Award remains unsatisfied.

AND I HAVE SIGNED

TZEISON MERKOURIS  
STYLOPOULOS

SWORN TO BEFORE ME AT - *Ambassade du Canada*  
THIS 23 DAY OF OCTOBER 2024

\_\_\_\_\_  
Officer of the Canadian Diplomatic  
Service

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*Ambassade du Canada*  
  
Efrossini Kalogeraki  
Consular Program Officer  
Agent Consulaire  
Embassy of Canada in Athens  
Ambassade du Canada à Athènes

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THIS IS EXHIBIT A TO THE AFFIDAVIT OF  
**TZEISON MERKOURIS STYLOPOULOS**  
SWORN TO BEFORE ME AT ATHENS, GREECE  
THIS 23 DAY OF OCTOBER 2024

\_\_\_\_\_  
OFFICER OF THE CANADIAN DIPLOMATIC  
SERVICE

**Efrossini Kalogeraki**  
Consular Program Officer  
Agent Consulaire  
Embassy of Canada in Athens  
Ambassade du Canada à Athènes



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16231 Athens, Greece - Grèce



23 OCT 2024



From: "Fidelio Maritime & Trading" <chartering@fidelnv.gr>  
To: chartering@mercurymaritime.gr  
Subject: FW:MV Serenity 33500 mt salt Damietta / Becancour - fixture recap - C/Pdated Dec 27, 2021 (REF:210AAX700)  
Ref.No: 225216  
Date: Tue, 28 Dec 2021 00:15:23 +0200

---

TELiX MSG: 0AAX7-00 28/12/21 00:08

J/N

Confirm having fixed without subjects as follows:  
Please advise immediately if you do not agree or if you see any mistakes.

Basis Gencon 94 C/P with following insertions, deletions, additions and alterations:

(Box 5/6/7 Rider Clause 18)  
MV Serenity

Briefly described as:

MV Serenity  
36599 mt dwt on 10.918 ssw TPC 46.10 mt on summer draft  
Built 2011 Ice Class 1C  
IMO 9544762  
Loa 186.40m  
Beam 27.80m  
5 holds hatches  
47,888 cbm grain  
4 cranes 30 mt  
4 x 15 cbm Peiner SMAG EGF (motor cable reel operated)  
all abouts

- full description of Vessel as submitted
- Capacity plan and draft scale as submitted
- GA-plan as submitted
- Some recent pictures of Vessel's tanktop/ holds/hatches/deck and cranes as submitted
- Manufacturer and Type of hatch covers per Baltic Questionnaire as submitted
- Constants about 280 mt
- Vessel's recent history of port state control inspections including deficiencies and detentions, if any (No detentions)
- Vessel's sustainable service speed about 13 kn

Please advise/send:

-Copies of Vessel's Class , P and I Club, gear and sanitation certificates.

- Solid or permanent ballast on board.
- Unpumpable fuel, sludge or ballast on board.

-Last 3 cargoes carried (last cargo first): Coal before that drydock/special survey





Vessel to have hydraulic hatch covers and Vessel is able to close hatches quickly in case of rain.

Owners warrant that this Vessel does not have any GMO residue from previous cargoes on board.

Vessel's grabs to be used for loading and discharge free of charge.

Vessel's estimated DWCC basis 10.67m fwd Becancour, Canada is: around 33500 (rvrting with Master Stow plan within the next 12 hours)

(Box 3)  
Owners are:

ARGO SHIPS S.A.  
80, BROAD STREET - MONROVIA LIBERIA

(Clause 20b)  
Please advise also name of head Owner and full chain of tc Owners, if any.

ARGO SHIPS S.A.  
80, BROAD STREET - MONROVIA LIBERIA

Owners are performing

(Box 4)  
ATLANTIC OCEAN SALT INC.  
7566 SILVER CREEK CRESCENT  
LONDON ONT N6P 0G6 CANADA

(Box 12)  
33,500 mt (2.5 % more or less in Owner's option) salt in bulk, Charterer's option to load some salt products in big bags) as full cargo - no part cargo allowed.

(Box 10)  
1 safe port, 1 safe berth Damietta

(Box 11)  
1 safe port, 1 safe berth Becancour, Canada

(Box 9/21)  
Laydays/cancelling: Dec 29/31, 2021

(Box 8)  
Vessel's Itinerary: vsI in ballast, eta Damietta 29 noon/pm  
Bunkers currently on board: ABT 460/480 MT VLSFO AND ABT 210/220 MTS  
Bunkering intentions: intention is Gibraltar

(Box 16a)  
10,000 MT per WWD FHINC excluding super holidays

(Box 16b)  
10,000 MT per WWD SSHINC excluding super holidays

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(Box 13)

Freight: USD 46.50 per MT Bill of Lading weight FIO spout or grab trimmed

(Box 14)

See Clause 22.1

(Box 20, Clause 28)

Demurrage: USD 33,000 / half despatch (HD) working time saved both ends, reversible.

#### RIDER

Clause 21

For discharge port/s:

GRESKO

Deepi Sandhu

Tel: +1 514 238 1886

Head office:

-----  
Gresco Ltee

299 Rue De La Commune Ouest  
Montreal, Quebec  
H2Y 2E1

Tel: +1 514 842 4051

email: agency@gresco.net

Clause 22.1

Paragraph 1 to read as follows:

20 percent of estimated freight to be remitting on fixing from Canada in US Dollars to New York and to be transferred to Owner's account 1 day prior to Vessel's arrival Damietta, provided Vessel has sent 48 and 24 hour Notice of Readiness to agents Damietta and to ops@AntaresNY.com, stating Vessel's current position, ETA and cargo quantity to be loaded provided banking holidays dont prevent transfers to be executed.

Upon completion of loading master to sign Bs/L marked "freight prepaid" which to be kept in Owner's protecting agent's custody and only to be released by port agents to Charterers upon receipt of 100pc (LESS COMMISSIONS) of freight by Owners and then Owners to give written instructions to port agents to release Bs/L to Charterers.

Clause 38

Delete: "Nor at loadport : to be tendered atdnfhinc" (This as wrongly inserted here and it stated in Clause 23 already)



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Clause 42 - delete Bimco AMS Clause for USA and replace same with:

Canadian Notification Requirements for Voyage Charter Parties

(a) As between Owners and Charterers, Owners shall be deemed to be the Conveyance Operating Carrier for the purposes of the Canada Customs Act and any relevant regulations, memorandums or notices issued by the Canada Border Services Agency ("CBSA").

(b) Subject to sub-clause (c) below, Owners will be responsible for obtaining a Marine Carrier Code (Bonded or Non-Bonded) as may be required and for providing the CBSA with the Advance Commercial Information by Electronic Data Interchange or otherwise on a timely basis.

(c) The Charterers shall provide Owners with all information necessary for the timely and accurate submission of Advance Commercial Information to the CBSA.

(d) Each party shall indemnify the other party for any and all fines, penalties, expenses, loss, damage, delay or any other claim, including attorney's fees, arising from its failure to comply with this clause.

(e) For the avoidance of doubt, nothing contained in this clause is intended to vary any other provision of this charter as to responsibility for cargo and identity of carrier.

3.75 ttl here in New York plus Fidelio 1.25% commission will be paid directly by owners

Otherwise TO C/P Anarita dated Nov 24, 2020 where applicable and with logical alterations and following correction

Clause 23.6

Delete: Owner's responsibility to get vessel under and stay under loading spout during loading operation, maximum air draft 14.0 meters waterline/top of hatch coaming.

It is understood that comments on CP Details will not prejudice main terms per Recap as stated above. Main terms agreed overrule C/P proforma details.

end

Thanks vm for this fixture.

Please keep port agents and us closely advised of vsls ETA

Please send us owner's banking details

+++

Best Regards,

Nikolas Fountoulakis

23 OCT 2024





Fidello Maritime & Trading S.A.

A: 128, Syngrou Avenue 11745, Athens Greece  
E: chartering@fidelnav.gr  
P: +30210 710 1195 (ext 404)| M: +30 6947 103 477  
S: nfountoulakis

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<b>1. Shipbroker</b> <b>Antares Chartering &amp; Shipping, Inc.</b> 274 West Glen Avenue Ridgewood, NJ 07450 Tel: (201) 385-0180 acsny@AntaresNY.com		<b>RECOMMENDED</b> <b>THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE</b> <b>UNIFORM GENERAL CHARTER (AS REVISED 1922, 1978 and 1994)</b> (to be used for trades for which no specially approved form is in force)	
		Part I	
<b>2. Place and date</b> <b>Ridgewood, NJ, November 24, 2020</b>		<b>CODE NAME: " GENCON "</b>	
<b>3. Owners/ Place of Business (Cl.1)</b> <b>ANARITA MARITIME LTD.,</b> <b>80 BROAD STREET,</b> <b>MONROVIA, LIBERIA</b>		<b>4. Charterers/ Place of business (Cl.1)</b> <b>Alnegm Alsatea</b> <b>Kism Rabea Alasar</b> <b>Alhatab Tower, after Sosna, Damietta 34511, Egypt.</b>	
<b>5. Vessel's name (Cl.1)</b> <b>MV Anarita - built 2012</b> <b>4 cranes 36 mt &amp; 4 remote control grabs upto 12 cbm</b> <b>all abouts See Clause 18</b>		<b>6. GT/NT (Cl.1)</b> <b>GT/NT 32839/19559</b>	
<b>7. DWT all told on summer load line in metric tons (abl.) (Cl.1)</b> <b>58,018 dwt on 12.95 m ssw</b> <b>56,419 dwt on 12.68 m wsw</b> <b>See Clause 18</b>		<b>8. Present position (Cl.1)</b> <b>Trading - open Tartous Nov 30, 2020</b> <b>ETA Damietta Dec 1, 2020 WP AGW WOG</b>	
<b>9. Expected ready to load (abl.) (Cl.1)</b> <b>November 30, 2020:</b>			
<b>10. Loading port or place (Cl.1)</b> <b>1 SP I SB Damietta</b>		<b>11. Discharging port or place (Cl.1)</b> <b>1 ISP ISB Becancour</b>	
<b>12. Cargo (also state quantity and margin in Owners' option, if agreed. If full and completed cargo not agreed state " part cargo " (Cl.1)</b> <b>42,000 5pc MOLOO rock salt in bulk (to be narrow prior fixing by Owners)</b> <b>Charterer's option to substitute above with any of the following</b> <b>Upto about 8,500 mt of feed grade ground rock salt in bulk and /or</b> <b>Upto about 3,000 mt of Calcium Chloride in big bags about 90 x 90 x 120 cm and/or</b> <b>about 500 mt rock salt in big bags, both of which loaded on top of the bulk rock salt</b> <b>Understood to be all harmless</b>			
<b>13. Freight rate (also state whether freight prepaid or payable on delivery) (Cl.4)</b> <b>USD 18.50 pmt fiost basis I/I</b> <b>All basis on intaken quantity flot ex spout a/o grab</b> <b>trimmed / stowed resp.</b>		<b>14. Freight payment (state currency and method of payment, also beneficiary and bank account) (Cl.4)</b> <b>See Clause 22.1</b>	
<b>15. State if vessel's cargo gear shall not be used (Cl.5)</b>		<b>16. Laytime (if separate laytime for load, and disch. is agreed, fill in a) and b). If total laytime for load, and disch. fill in c) only) (Cl.6)</b> <b>a) Laytime for loading</b> <b>10,000 mts pwwd fhinc excluding super holidays.</b> <b>b) Laytime for discharging</b> <b>10,000 mts pwwd sshinc excluding super holidays</b> <b>c) Total laytime for loading and discharging</b>	
<b>17. Shippers (state name and address) (Cl. 6)</b>			
<b>18. Agents (loading) (Cl. 6)</b> <b>See Clause 21</b>			
<b>19. Agents (discharging) (Cl. 6)</b> <b>See Clause 21</b>			
<b>20. Demurrage rate and manner payable (loading and discharging) (Cl.7)</b> <b>USD 15,000.00 per day pro rata half despatch working</b> <b>time saved, non reversible.</b>		<b>21. Cancelling date (Cl.9)</b> <b>Laycan: November 30/December 4, 2020</b>	
		<b>22. General Average to be adjusted at (Cl.12)</b> <b>London, English law to apply.</b>	
<b>23. Freight Tax (state if for the Owners' account (Cl. 13 (c)))</b> <b>Any dues a/o taxes on cargo to be for Charterer's acct.</b> <b>Any dues a/o taxes on Vessel to be for Owner's acct</b> <b>including premiums for breaking IWL/INL.</b>		<b>24. Brokerage commission and to whom payable (Cl.15)</b> <b>As agreed.</b>	
<b>25. Law and Arbitration (state 19 (a) 19 (b) or 19 (c) of Cl.19; if 19 (c) agreed also state Place of Arbitration) (if not filled in 19 (a) shall apply) (Cl. 19)</b> <b>Arbitration in London, English law to apply.</b> <small>(a) State maximum amount for small claims / shortened arbitration (Cl. 19)</small>		<b>26. Additional clauses covering special provisions, if agreed.</b> <b>Rider Clauses 18 to 43, both inclusive, to be deemed</b> <b>fully incorporated in this Charter Party agreement.</b>	

It is mutually agreed that the Contract shall be performed subject to the conditions contained in this Charter which shall include Part I as well as Part II. In the event of a conflict between the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners) <b>OFFAN AGENCIES LTD.</b> <b>as commercial managers</b> <b>and agents to owners</b> 	Signature (Charterers) <b>ALNEGM ALSATEA</b> <b>DAMIETTA, EGYPT</b> 
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 2nd Floor, Marlborough House  
 298 Regents Park Road  
 London N3 2SZ

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**PART II**  
" Gencon " Charter (As Revised 1922, 1976 and 1994)

1. It is agreed between the party mentioned in Box 3 as the Owners of the Vessel named in Box 5, of the GT/NT indicated in Box 6 and carrying about the number of metric tons of deadweight capacity all told on summer loadline stated in Box 7 now in position as stated in Box 8 and expected ready to load under this Charter Party about the date indicated in Box 9, and the party mentioned as the Charterers in Box 4 that:

The said vessel shall, as soon as her prior commitments have been completed, proceed to the loading port(s) or place(s) stated in Box 10 or so near thereto as she may safely get and lie always afloat, and there load a full and complete cargo (if shipment of deck cargo agreed same to be at the charterers' risk and responsibility) as stated in Box 12, which the Charterers bind themselves to ship, and being so loaded the vessel shall proceed to the discharging port(s) or place(s) stated in Box 11 as ordered on signing Bills of Lading, or so near thereto as she may safely get and lie always afloat, and there deliver the cargo.

**2. Owners' Responsibility Clause**

The Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by personal want of due diligence on the part of the Owners or their Manager to make the Vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied, or by the personal act or default of the Owners or their Manager.

And the Owners are not responsible for loss, damage or delay arising from any other cause whatsoever, even from the neglect or default of the Master or crew or some other person employed by the Owners on board or ashore for whose acts they would, but for this Clause, be responsible, or from unseaworthiness of the Vessel on loading or commencement of the voyage or at any time whatsoever.

**3. Deviation Clause**

The vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and or assist Vessels in all situations, and also to deviate for the purpose of saving life and/or property.

**4. Payment of Freight See Clause 22.1**

(a) The freight at the rate stated in Box 13 shall be paid in cash calculated on the intaken quantity of cargo.

(b) ~~Prepaid~~ If according to Box 13 freight is to be paid on shipment, it shall be deemed earned and non-returnable, Vessel and/or cargo lost or not lost. Neither the Owners nor their agents shall be required to sign or endorse bills of lading showing freight prepaid unless the freight due to the Owners has actually been paid.

(c) ~~On delivery~~ If according to Box 13 freight, or part thereof, is payable at destination it shall not be deemed earned until the cargo is thus delivered. Notwithstanding the provisions under (a), if freight or part thereof is payable on delivery of the cargo the Charterers shall have the option of paying the freight on delivered weight/quantity provided such option is declared before breaking bulk and the weight/quantity can be ascertained by official weighing machine, joint draft survey or tally.

Cash for Vessels ordinary disbursements at the port of loading to be advanced by the Charterers, if required, at highest current rate of exchange, subject to two (2) per cent to cover insurance and other expenses.

~~On request the Owners shall provide free of charge cranes/winches from the crew to operate the Vessel's cargo handling gear unless local regulations prohibit this, in which latter event shore labourers shall be for the account of the Charterers. Cranes/winches shall be under the Charterers' risk and responsibility and as stowdore to be deemed as their servants but shall always work under the supervision of the Master.~~

~~(c) Stevedore Damage See Clause 27~~

~~The Charterers shall be responsible for damage (beyond ordinary wear and tear) to any part of the Vessel caused by Stevedores. Such damage shall be notified as soon as reasonably possible by the Master to the Charterers or their agents and to their Stevedores, failing which the Charterers shall not be held responsible. The Master shall endeavour to obtain the Stevedores' written acknowledgement of liability.~~

~~The Charterers are obliged to repair any stevedore damage prior to completion of the voyage, but must repair stevedore damage affecting the Vessel's seaworthiness or class before the Vessel sails from the port where such damage was caused or found. All additional expenses incurred shall be for the account of the Charterers and any time lost shall be for the account of and shall be paid to the Owners by the Charterers at the demurrage rate.~~

**6. Laytime See Clause 23**

~~(a) Separate laytime for loading and discharging~~

~~The cargo shall be loaded within the number of running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count.~~

~~The cargo shall be discharged within the number of running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count.~~

~~(b) Total laytime for loading and discharging~~

~~The cargo shall be loaded and discharged within the number of total running days/hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count.~~

~~(c) Commencement of laytime (loading and discharging)~~

~~Laytime for loading and discharging shall commence at 13:00 hours, if notice of readiness is given up to and including 12:00 hours, and at 06:00 hours next working day if notice given during office hours after 12:00 hours. Notice of readiness at loading port to be given to the Shippers named in Box 17 or if not named, to the Charterers or their agents named in Box 18. Notice of readiness at the discharging port to be given to the Receivers or, if not known, to the Charterers or their agents named in Box 19.~~

~~If the loading/discharging berth is not available on the Vessel's arrival at or off the port of loading/discharging, the Vessel shall be entitled to give notice of readiness within ordinary office hours on arrival there, whether in free pratique or not, whether customs cleared or not. Laytime or time on demurrage shall then count as if she were in berth and in all respects ready for loading/discharging provided that the Master warrants that she is in fact ready in all respects. Time used in moving from the place of waiting to the loading/discharging berth shall not count as laytime.~~

~~If, after inspection, the Vessel is found not to be ready in all respects to load/dischargo time lost after the discovery thereof until the Vessel is again ready to load/dischargo shall not count as laytime.~~

~~Time used before commencement of laytime shall count.~~

~~Indicate alternative (a) or (b) as agreed in Box 16.~~



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**PART II**  
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5. Loading/Discharging

(a) Costs/Risks

The cargo shall be brought into the holds, loaded, stowed and/or trimmed, tallied, lashed and/or secured and taken from the holds and discharged by the Charterers, free of any risk, liability and expenses whatsoever to the Owners. The Charterers shall provide and lay all dunnage material as required for the proper stowage and protection of the cargo on board, the Owners allowing the use of all dunnage available on board. The Charterers shall be responsible for and pay the cost of removing their dunnage after discharge of the cargo under this Charter Party and time to count until dunnage has been removed.

(b) Cargo Handling Gear

Unless the Vessel is gearless or unless it has been agreed between the parties that the Vessel's gear shall not be used and stated as such in Box 15, the Owners shall throughout the duration of loading/discharging give free use of the Vessel's cargo handling gear and of sufficient motive power to operate all such cargo handling gear. All such equipment to be in good working order. Unless caused by negligence of the stevedores, time lost by breakdown of the Vessel's cargo handling gear or motive power - pro rata the total number of cranes/winches required at that time for the loading/discharging of cargo under this Charter Party - shall not count as laytime or time on demurrage.

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7. Demurrage See Clause 21.1

Demurrage at the loading and discharging port is payable by the Charterers at the rate stated in Box 20 in the manner stated in Box 20 per day or pro-rata for any part of a day. Demurrage shall fall due day by day and shall be payable upon receipt of the Owner's invoice.

~~In the event the demurrage is not paid in accordance with the above, the Owners shall give the Charterers 96 running hours written notice to rectify the failure. If the demurrage is not paid at the expiration of this time limit and if the vessel is in or at the loading port, the Owners are entitled at any time to terminate the Charter Party and claim damages for any losses caused thereby.~~

8. Lien Clause

The Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo, for freight, deadfreight, demurrage, claims for damages and for all other amounts due under this Charter Party including costs of recovering same.

9. Cancelling Clause

(a) Should the Vessel not be ready to load (whether in berth or not) on the

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**PART II**  
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139	14. Agency See Clause 21
140	<del>In every case the Owners shall appoint their own Agent both at the port of</del>
141	<del>loading and the port of discharge.</del>
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143	15. Brokerage
144	A brokerage commission at the rate stated in Box 24 on the freight , dead-freight
145	and demurrage earned is due to the party mentioned in Box 24.
146	<del>In case of non-execution 1/3 of the brokerage on the estimated amount of</del>
147	<del>freight to be paid by the party responsible for such non-execution to the</del>
148	<del>Brokers as indemnity for the latter's expenses and work. In case of mere</del>
149	<del>voyagee the amount of indemnity to be agreed.</del>
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151	16. General Strike Clause
152	(a) If there is a strike or lock-out affecting or preventing the actual loading of the
153	cargo, or any part of it, when the Vessel is ready to proceed from her last port or
154	at any time during the voyage to the port or ports of loading or after her arrival
155	there, the Master or the Owners may ask the Charterers to declare, that they
156	agree to reckon the laydays as if there were no strike or lock-out. Unless the
157	Charterers have given such declaration in writing (by telegram, if necessary)
158	within 24 hours, the Owners shall have the option of cancelling this Charter
159	Party. If part cargo has already been loaded, the Owners must proceed with
160	same, ( freight payable on loaded quantity only ) having liberty to complete with
161	other cargo on the way for their own account.
162	(b) If there is a strike or lock-out affecting or preventing the actual discharging
163	of the cargo on or after the Vessel's arrival at or off port of discharge and same
164	has not been settled within 48 hours, the Charterers shall have the option of
165	keeping the Vessel waiting until such strike or lock-out is at an end against
166	paying half demurrage after expiration of the time provided for discharging
167	until the strike or lock-out terminates and thereafter full demurrage shall be
168	payable until the completion of discharging, or of ordering the Vessel to a safe
169	port where she can safely discharge without risk of being detained by strike or
170	lock-out. Such orders to be given within 48 hours after the Master or the
171	Owners have given notice to the Charterers of the strike or lock-out affecting
172	the discharge. On delivery of the cargo at such port, all conditions of this
173	Charter Party and of the Bill of Lading shall apply and the Vessel shall receive
174	the same freight as if she had discharged at the original port of destination,
175	except that if the distance to the substituted port exceeds 100 nautical miles,
176	the freight on the cargo delivered at the substituted port to be increased in
177	proportion.
	( c ) Except for the obligations described above, neither the Charterers nor the
	Owners shall be responsible for the consequences of any strikes or lock-outs
	preventing or affecting the actual loading or discharging of the cargo.
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179	17. War Risks ("Voywar 1993)
180	(1) For the purpose of this Clause, the words:
181	(a)The " Owners " shall include the shipowners, bareboat charterers,
182	disponent owners, managers or other operators who are charged with the
183	management of the Vessel, and the Master, and
184	(b) "War Risks" shall include any war (whether actual or threatened), act of
185	war, civil war, hostilities, revolution, rebellion, civil commotion, warlike
186	operations, the laying of mines (whether actual or reported), acts of piracy,
187	acts of terrorists, acts of hostility or malicious damage, blockades
188	(whether imposed against all Vessels or imposed selectively against
189	Vessels of certain flags or ownership, or against certain cargoes or crews
190	or otherwise howsoever), by any person, body, terrorist or political group,
191	or the Government of any state whatsoever, which, in the reasonable
192	judgement of the Master and/or the Owners, may be dangerous or are
193	likely to be or to become dangerous to the Vessel, her cargo, crew or other
194	Persons on board the Vessel.
195	(2) If at any time before the Vessel commences loading, it appears that, on the



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sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the goods to the Owners before delivery." 196  
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13. Taxes and Dues Clause See Box 23. 199

(a) ~~On Vessel—The Owners shall pay all dues, charges and taxes customarily levied on the Vessel, however the amount thereof may be assessed.~~ 200  
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(b) ~~On cargo—The Charterers shall pay all dues, charges, duties, and taxes customarily levied on the cargo, however the amount thereof may be assessed.~~ 202  
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(c) ~~On freight—Unless otherwise agreed in Box 23, taxes levied on the freight shall be for the Charterers' account.~~ 205  
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reasonable judgement of the Master and/or the Owners, performance of the Contract of Carriage, or any part of it, may expose, or is likely to expose, the vessel, her cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Contract of Carriage, or may refuse to perform such part of it as may expose, or may be likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks, provided always that if this Contract of Carriage provides that loading or discharging is to take place Within a range of ports, and at the port or ports nominated by the Charterers the Vessel, her cargo, crew, or other persons onboard the Vessel may be exposed, or may be likely to be exposed, to War Risks, the Owners shall first require the Charterers to nominate any other safe port which lies Within the range for loading or discharging, and may only cancel this

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Contract of Carriage if the Charterers shall not have nominated such safe port or ports within 48 hours of receipt of notice of such requirement.

(3) The Owners shall not be required to continue to load cargo for any voyage, or to sign Bills of Lading for any port or place, or to proceed or continue on any voyage, or on any part thereof, or to proceed through any canal or waterway, or to proceed to or remain at any port or place whatsoever, where it appears, either after the loading of the cargo commences, or at any stage of the voyage thereafter before the discharge of the cargo is completed, that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo (or any part thereof), crew or other persons on board the Vessel (or any one or more of them) may be or are likely to be, exposed to War Risks. If it should so appear, the Owners may by notice request the Charterers to nominate a safe port for discharge of the cargo or any part thereof, and if within 48 hours of the receipt of such notice, the Charterers shall not have nominated such a port, the Owners may discharge the cargo at any safe port of their choice (including the port of loading) in complete fulfilment of the Contract of Carriage. The Owners shall be entitled to recover from the Charterers the extra expenses of such discharge and, if the discharge takes place at any port other than the loading port, to receive the full freight as though the cargo had been carried to the discharging port and if the extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route, the Owners having a lien on the cargo for such expenses and freight.

(4) If at any stage of the voyage after the loading of the cargo commences, it appears that, in the reasonable judgement of the Master and/or the Owners, the Vessel, her cargo, crew or other persons on board the Vessel may be, or are likely to be, exposed to War Risks on any part of the route (including any canal or waterway) which is normally and customarily used in a voyage of the nature contracted for, and there is another longer route to the discharging port, the Owners shall give notice to the Charterers that this route will be taken. In this event the Owners shall be entitled, if the total extra distance exceeds 100 miles, to additional freight which shall be the same percentage of the freight contracted for as the percentage which the extra distance represents to the distance of the normal and customary route.

(5) The Vessel shall have liberty: -

(a) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery or in any way whatsoever which are given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government which so requires, or any body or group acting with the power to compel compliance with their orders or directions;

(b) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;

(c) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;

(d) to discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;

(e) to call at any other port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions;

(f) where cargo has not been loaded or has been discharged by the

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on the Vessel's arrival or in case frost sets in after the Vessel's arrival, the Master for fear of being frozen in is at liberty to leave without cargo, and this Charter Party shall be null and void.

(b) if during loading the Master, for fear of the Vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for the Owners' benefit for any port or ports including port of discharge. Any part cargo thus loaded under this Charter Party to be forwarded to destination at the Vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Charterers, freight being paid on quantity delivered (in proportion if lumpsum), all other conditions as per this Charter Party.

(c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Master or the Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under section (b) or to declare the Charter Party null and void unless the Charterers agree to load full cargo at the open port.

Port of discharge

(a) Should ice prevent the Vessel from reaching port of discharge the Charterers shall have the option of keeping the Vessel waiting until the re-opening of navigation and paying demurrage or of ordering the Vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after the Master or the Owners have given notice to the Charterers of the impossibility of reaching port of destination.

(b) If during discharging the Master for fear of the Vessel being frozen in deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest accessible port where she can safely discharge.

(c) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and the Vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

19. Law and Arbitration

(a) This Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator, the decision of the three-man tribunal thus constituted or any two of them, shall be final. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall be final.

For disputes where the total amount claimed by either party does not exceed the amount stated in Box 25 the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association.

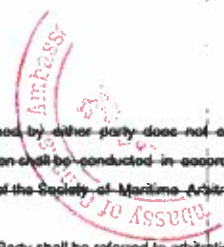
(b) This Charter Party shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and should any dispute arise out of this Charter Party, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for purpose of enforcing any award, this agreement may be made a rule of the Court. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.



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**" Gencon " Charter (As Revised 1922, 1976 and 1994)**

<p>Owners under any provisions of this Clause , to load other cargo for the  Owner's own benefit and carry it to any other port or ports whatsoever,  whether backwards or forwards or in a contrary direction to the ordinary or  customary route.</p> <p>(6) If in compliance with any of the provisions of sub-clauses (2) to (5) of this  Clause anything is done or not done, such shall not be deemed to be a  deviation, but shall be considered as due fulfilment of the Contract of  Carriage.</p> <p><b>18. General Ice Clause</b></p> <p><i>Port of loading</i></p> <p>(a) In the event of the loading port being inaccessible by reason of ice when the  Vessel is ready to proceed from her last port or at any time during the voyage or</p>	<p>337 338 339 340 341 342 343 344 345 346 347 348</p>	<p><del>For disputes where the total amount claimed by either party does not exceed  the amount stated in Box 25 the arbitration shall be conducted in accordance  with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators,  Inc.</del></p> <p><del>(c) Any dispute arising out of this Charter Party shall be referred to arbitration at  the place indicated in Box 25, subject to the procedures applicable thereto. The  laws of the place indicated in Box 25 shall govern this Charter Party.</del></p> <p><del>(d) If Box 25 in Part 1 is not filled in, sub-clause (a) of this Clause shall apply.</del></p> <p><del>(a), (b) and (c) are alternative; indicate alternative agreed in Box 25.</del></p> <p><del>Where no figure is supplied in Box 25 in Part 1, this provision only shall be void but  the other provisions of this Clause shall have full force and remain in effect.</del></p>
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**OCEAN AGENCIES LTD**  
**2nd Floor Marlborough House**  
**298 Regents Park Road**  
**LONDON N3 2SZ** *Jc*

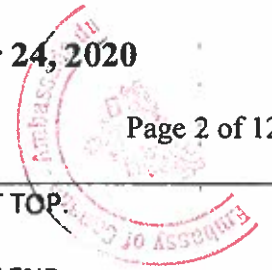
23 OCT 2024



Clause 18:

- M/V =ANARITA= FLAG: LIBERIAN/ TYPE: BULK CARRIER
- OFFICIAL NUMBER: 15345/ CALL SIGN: D5AB7/ IMO NUMBER: 9636008
- TELEX/PHONE/FAX: 463711734/773205732/783025479
- BUILT 2012 APRIL/ YARD: YANGZHOU DAYANG SHIPBUILDING CO. LTD.
- MAIN ENGINE: DOOSAN MAN B&W 6S50MC-C7
- CLASS NOTATION: BV HULL. MACH BULK CARRIER. BC-A GRAB(20) CSR,
- . HOLD 2,4 MAY BE EMPTY , ESP, UNRESTRICTED NAVIGATION,
- . AUT-UMS, VERISTAR-HULL, INWATERSURVEY, MON-SHAFT.
- P/I: UK MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA)
- GT/NT: 32,839.00/19,559.00 INTERNATIONAL
- . 33,689.21/31,519.67 SUEZ
- . /27,222.00 PANAMA
- SUMMER/WINTER/TROPICAL DWAT AND RESPECTIVE DRAFT AND TPC:
- . SUMMER 58,018.0MT ON 12.950 M 59.24MT
- . SUMMER(FW) 58,018.0MT ON 13.241 M 59.30MT
- . WINTER 56,419.0MT ON 12.680 M 59.19MT
- . TROPICAL 59,618.0MT ON 13.220 M 59.30MT
- . TROPICAL(FW) 59,582.0MT ON 13.511 M 59.36MT
- . PANAMA 50,801.0MT ON 12.040 M 57.30MT TROPICAL FW 0.9954 GMS/CC
- CONSTANTS EXCLUDING FW: 450 MT; LIGHT WEIGHT 10,952 MT; FWA: 291 mm
- . BUNKERS CAPACITY (98%):2,174.4MT IFO / 98.7MT MDO; FW: 389.8MT
- . BALLAST 17,347MT + CH NO.3 15,174.9MT. FULL DEBALLASTING TIME 24 HOURS.
- LOA: 189.99 M; BEAM: 32.26 M; MOULDED DEPTH: 18.00 M; LBP: 185.00 M
- . DISTANCES: KEEL TO HIGHEST POINT 45.167M; BOW TO AFT LAST HATCH: 159.85M
  
- GRAIN CAPACITY 71,549.4 M3 HOLDWISE: BALE CAPACITY 69,760.7 M3 HOLDWISE:
  
- . HOLD 1 - 13,254.20 12,922.80
- . HOLD 2 - 14,891.10 14,518.80
- . HOLD 3 - 14,804.70 14,434.60
- . HOLD 4 - 14,891.10 14,518.80
- . HOLD 5 - 13,708.20 13,365.50
- DISTANCE FROM WATERLINE TO TOP HATCH COAMINGS
- . LADEN : 7.35 M
- . LIGHT BALLAST: 1- 15.4 m; 2- 15.0 m; 3- 14.6 m; 4- 14.2 m; 5- 13.8 m
- . HEAVY BALLAST: 1- 12.8 m; 2- 12.6 m; 3- 12.3 m; 4- 12.1 m; 5- 11.9 m - FLOODED NO.3
- DISTANCE FM WATERLINE TO HIGHEST POINT (METRES) WITH FULL BUNKERS:
- . LIGHT BALLAST 39.0m; HEAVY BALLAST 36.3m; FULLY LADEN 32.2m.
- HOLDS ARE CO2 FITTED; NATURAL VENTILATION.





- HATCH COVERS STEEL WEATHER-TIGHT DOUBLE SKIN FOLDING TYPE WITH FLAT TOP.

. TWO-PANEL COVER SETS FOR FOLDING TYPE HATCH COVERS TO BE STOWED AT END OF HOLD HATCHES (TWO GRAIN AND CEMENT LOADING SCUTTLES PROVIDED).

- NUMBER OF GEAR/GRABS AND ITS CAPACITY (WT/CBM):

. 4 SINGLE DECK CRANES, 36 MT SWL EACH, TYPE GLB3628-2/28,828GR, MCGREGOR, CHINA.

. BETWEEN HOLDS NO 1-2, 2-3, 3-4, 4-5 FITTED ON CENTER LINE

. CRANE OUTREACH BEYOND SHIP SIDE 11.87 M.

. 4 PS 12 M3 REMOTE CONTROL GRAB (CAPACITY 12/9/7/5 M3 BY KICK OUT PLATES)

. TARE 8700KG, SWL 20.1 MT (WHEN CRANES WORK ON . GRAB DUTY THE TOTAL

. WEIGHT OF GRAB+CARGO NOT TO EXCEED 28.8 MT).

. DIMENSION HATCHES(M): NO.1- 17.20 X 17.02, NO.2,3,4,5 - 20.64 X 18.64

- DIMENSION HOLDS (M) LENGTH X BREADTH X HEIGHT TO TOP HATCH COAMINGS:

. HOLD 1 - 28.81 X 32.21 X 18.58

. HOLD 2 - 30.10 X 32.21 X 18.58

. HOLD 3 - 30.10 X 32.21 X 18.58 HEIGHT OF ALL HATCH COAMINGS 2.20 M.

. HOLD 4 - 30.10 X 32.21 X 18.58

. HOLD 5 - 29.67 X 32.21 X 18.58

. FLAT TANKTOP DIMENTIONS (M) B x L BREADTH FORE/AFT IN:

. HOLD 1 8.92/23.50X28.38 - 515.06 M2

. HOLD 2 23.50X27.52 - 646.72 M2

. HOLD 3 23.50X25.80 - 606.30 M2

. HOLD 4 23.50X27.52 - 646.72 M2

. HOLD 5 12.16/23.50X27.52 - 588.91 M2

. TOTAL TANK TOP - 3,003.71 M2

- STRENGTH (PERMISSIBLE LOADS), MT/M2 OF:

. TANKTOPS: HOLD 1,3,5 - 25 MT/SQ.M HOLD 2,4 - 19 MT/SQ.M

. ABOVE TANKTOP STRENGTH APPLICABLE FOR UNIFORM/HOMOGENEOUS

. BULK CARGOES OR FLAT BASE BREAKBULK CGOES.

. WEATHER DECK: 4.00 MT/SQ.M, HATCHCOVERS: 1.5 MT/SQ.M

. ALTERNATE HOLDS LOADING: 1-3-5.

all details "ABOUT" given in good faith but without guarantee.

**GRABS to be used for loading and discharge free of charge.**

All abouts

**Please advise:**

-quantity to be loaded

-GA- and loading plans

-full itinerary including ETA Damietta and transit time to Becancour



23 OCT 2020



Last 3 cargoes carried by this Vessel: MDF, wheat, grains.

Owners guarantee that vessel is fully H + M & P and I covered and will remain so for the entire voyage. Furthermore, Owners guarantee that the vessel is fully fitted and certified for this trade incl. ISM / ISPS / ITF.

**Clause 18.1 - Shifting and Warping:**

When the berth/place where the vessel is to load or discharge is not available upon her arrival at or off loading or discharging port, shifting expenses from anchorage or waiting berth shall be for Owners' account and shifting time used shall not count, as laytime or time on demurrage.

Warping: Both at loading - and discharging port.

Vessel shall be warped as required anytime day/night FHINC/SSHINC. Such warping shall be for Owners' account, PROVIDED PERFORMED BY THE VESSEL'S CREW WITHOUT PARTICIPATION OF SHORE LINESMEN, PILOTS AND TUGS, but time used to count.

Overtime so payable to officers and crew and bunkers so consumed shall be for Owners' account.

**Clause 19- Cargo and Quantity:**

The Master to advise estimated intake/stow plan latest on tendering Notice of Readiness.

The Master to declare exact quantity/stow plan upon berthing.

Cargo quantity to be determined by joint draft survey both ends.

**Clause 20 - Notices:**

For the loading port:

The Master upon fixing to advise quantity to be loaded and ETA loading port followed by 7/5/3/ days ETA notice and 48 and 24 hours definite notice of Vessel's ETA.

For the discharge port:

The Master upon sailing to advise quantity loaded on board and ETA discharge port. The Master to give 10/7/5/3/ days ETA notice and 2/1 days and 12 hours definite ETA notice.

Notices to be send to agents load and discharge port, respectively as well as to ops@AntaresNY.com.

**Clause 21 – Agents:**

Owners' agents nominated by Charterers:

At loading port:



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Seamar SHIPPING AGENCY  
Import & Export License

www.seamarshipping-eg.com  
Skype alaa.zolfakar  
FB www.facebook.com/seamarshipping.eg

Info@seamarshipping-eg.com  
chartering@seamarshipping-eg.com

Contact Details:

Address : 13 Halabo st. Off Abo Warda st. El-Gomrok - Alexandria – Egypt, Postal Code : 21513  
Tel/Fax : 002 03 486 28 47 - 002 03 486 28 48  
Mobiles : 002 011 2750 1040 - 002 011 1375 8858 - 002 011 2866 4626

For discharge port/s:

Owners may pick their own agents for the discharge port or brokers could suggest that Owners contact:

Mustafa  
ops@reford.ca

Robert Reford  
360 St Jacques, Suite 1010  
Montreal, Quebec H2Y 1R2  
Tel: +1 (514)-845-5201 ext 4608  
Direct line : (514)-286 4608  
Cel: +1(514)-641-3399

<http://www.robertreford.com>

At both load port and discharge port, Owners to make themselves familiar and satisfy themselves with port restrictions via their own agents.

Owners to check with their own agents to assure that their Vessel is suitable for calling, loading and unloading at the loading/discharge port/s resp. and that the ports/berths are safe for Owner's Vessel.

**Clause 22 - Freight:**

See Box 13 for freight rates.

**Clause 22.1:**



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25 pct of estimated freight to be transferred in US Dollars from New York to Owner's bank account 1 day prior to vessel's arrival Damietta provided vessel has sent 48 and 24 hour Notice of Readiness to agents Damietta stating ETA and cargo quantity to be loaded.

If for whatever reason Vessel does not arrive and tender Notice of Readiness at Damietta, and/or fails repeated inspection, then all advanced freight payments to be returned by Owners immediately and without questions.

Balance to be payable in US Dollars in New York within 3 banking days of completion of loading and signing of Bills of Lading by Master, it being understood that all original Bills of Lading to remain in agent's custody until Owners receive balance freight upon which they are to be considered released.

Full freight deemed earned as cargo being loaded onboard, discountless and nonreturnable Vessel and/or cargo lost or not lost.

Master has the right to reject cargo for which clean Bs/L cannot be issued and Charterers to immediately replace such cargo with new/undamaged cargo for which clean Bs/L can be signed.

All payments to be make in US Dollars in New York less commissions via Owner's correspondent bankers (to be advised within Owner's freight invoice).

In case "Freight prepaid" Bills of Lading are required then same to be immediately released after Owner's receipt funds on Owner's bank account.

Balance of freight, if any, plus demurrage or less despatch money, if any, to be settled within 30 days after final discharge and receipt of Owner's final account accompanied by appropriate laytime calculations supported by relevant documents including NoR/SoF for all ports.

**Clause 22.2 - Bills of Lading:**

Shippers require 3/3 original Bill of Lading, 7 copies non-negotiable duly signed and stamped and 2 non-negotiable copies and marked "payable as per Charter Party".

**Clause 22.3-Cargo Quantity:**

Final loaded quantity to be established at loading port by draft survey. Bills of Lading and freight to be in accordance with the draft survey quantity.

Owners are not responsible for the amount of big bags, but only for total amount of cargo in metric tons.

**Clause 23 - NoR and Laytime both ends:**

NoR cannot be tendered before laycan.



**Load rate:** 10,000 mts pwwd fhinc excluding Super Holidays

NoR at loadport : to be tendered atdnfhinc excluding Super Holidays, WIPON, WIBON, WCCON, WFPON.

At load port : Laytime for load shall commence in 12 hrs after valid notice given WIPON, WIFPON, WICCON, WIBON.

Time used before commencement of laytime shall not count.

Sealing of cargo holds with ramneck tape after loading, if required, to be for Owner's time and account

**Discharge rate:** 10,000 metric ton pwwd shinc excluding Super Holidays

NoR at discharge port : to be tendered atdnshinc excluding Super Holidays, WIPON, WIBON, WCCON, WFPON.

At discharge port : Laytime for discharge shall commence in 12 hours after valid notice given WIPON, WIFPON, WICCON, WIBON.

It is understood that Super Holidays include noon Dec 24 through noon Dec 26 as well as noon December 31 and noon January 2.

**Clause 23.1. – Deleted.**

**Clause 23.2 - Opening and closing of Hatches:**

All opening/closing of hatches are to be for Owners' time and expense.

**Clause 23.3 - Clean Holds:**

Holds are to be clean and ready in all respects, free of rust-scale, free of residue from previous cargoes and with watertight hatches to SGS surveyor's satisfaction prior to the tender of Notice of Readiness.

In case of rejection, time not to count as laytime or time on demurrage from rejection until passes and first Notice of Readiness always to be valid.

**Clause 23.4 - Lime Washing:**

Same not required by Charterers but if Owners wish to Lime Washing or apply other suitable hold protection same to be for Owner's time and account.



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**Clause 23.5 - Machine Cleaning:**

Upon completion of discharge, Charterers are to be responsible to leave the holds machine clean.

**Clause 23.6 - Owner's Responsibility:**

Owners will be responsible in complying with arrival/sailing conditions with respect to draft and air draft.

Owner's responsibility to get vessel under and stay under loading spout during loading operation, maximum air draft 14.0 meters waterline/top of hatch coaming.

**Clause 24 - Stevedore damage:**

Both at loading and discharging ports the stevedores, although appointed by the Charterers / shippers / receivers or their agents, to be under supervision of the Master, who will be responsible for the vessel's seaworthiness. Charterers / shippers / receivers or their agents are not directly responsible for stevedores' act or defaults.

All stevedore damages caused to the ship during loading and discharging operations are to be settled directly between Owners and stevedores. Damages affecting vessel's seaworthiness caused by the stevedores during loading and discharging operations are to be repaired at the berth prior to vessel's departure. Any time so lost may be recovered from stevedores.

The manner in which minor damages are to be repaired is to be worked out directly between Owners and stevedores. Minor damages not affecting vessel's seaworthiness to be repaired at first favourable possibility, no later than 24 hours after occurrence, prior to vessels departure. Master or Owners or their agents are to notify in writing to the stevedores any damages as soon as they occur or as prompt as possible and Charterers or their agents are to give the Master their assistance to obtain stevedores acknowledgement of liability for such damage. If requested by Owners, Charterers to render utmost assistance to secure settlement from stevedores for any stevedores damages.

**Clause 25 – Vessel's lights:**

Vessel to be equipped with sufficient lights to enable night work free of expense to the Charterers.

**Clause 26 - Laytime exceptions:**

Laytime shall be suspended for but not limited to any or all of the following reasons:

- A) If vessel does not have all hatches open and ready to load/unload upon berthing, even it vessel is already on demurrage.
- B) In case the Master request that work or repairs be carried out to the vessel during loading and discharging time and time activity interferes with normal loading and discharging, all time so used not to count as laytime or time on demurrage, even if vessel is already on demurrage.



C) In case the Port Authority required vessel to un-berth the vessel for safety reasons, even if the vessel is already on demurrage.

**Clause 27 - Ballasting/Deballasting:**

Vessel to be suitable for quick ballasting and deballasting, and her Master to be co-operative in ballasting and deballasting the vessel in order to prevent loading and discharging delays or stoppages.

**Clause 28 - Bunkers deviation clause:**

The vessel shall have liberty as part of the contract voyage and at any stage thereof may proceed to any port or ports whatsoever, on the direct and/or customary route or routes between any of the ports of loading or discharge name in this Charter and may there take oil bunkers in sufficient quantity only to complete the respective voyage and in accordance with draft restrictions required at discharging port(s).

**Clause 29 - Confidentiality:**

This fixture is strictly private and confidential.

**Clause 30 - Grab discharge:**

Vessel is to be suitable in every respect for grab discharge and free of all hold timbers. No cargo is to be stowed in deep tanks, or any places which are not directly accessible to grabs after bulldozers have untrimmed the cargo. In which event, any expense over and above the costs of normal loading trimming grab discharge and untrimming by bulldozers of cargo as and when stowed in the square of the hatch shall be for Owners' account deductible from settlement. Extra time used for loading and/or discharging over spout trimmed from such places not accessible after untrimming by bulldozers shall not count.

The stevedores are not responsible for any consequences arising from damage caused by loading and discharging apparatus, to unprotected tunnels or other restricted areas or projections in the vessel holds preventing or hindering the operation of the grabs or other apparatus in the normal loading and discharging of the ship, unless reported by the Captain/stevedores always to be responsible for Owner's grabs and grabs to be redelivered in the same condition as on delivery except for normal wear and tear.

**Clause 31:**

Owners confirm the vessel is a self trimming single deck bulk carrier fully suitable in every respect to carry salt in bulk and loading/discharging by grabs and mechanical equipment in vessels holds customarily used by Charterers/receivers. Vessel not to have centreline beams in hatches or obstructions in holds/on tanktops.

Vessel is to be classed highest Lloyds or equivalent and entered with a top rated P and I club for the duration of this Charter Party.



23 OCT 2024



**Rider to Charter Party MV "Anarita" - dated November 24, 2020**

**Clause 32:**

The Vessel is to be fully suitable for this trade and have all relevant cargo and/or gear and/or vessel certificates on board. Possession of current ITF (or bonafide agreement acceptable to IFT) certificate and ISM/ISPC certified.

**Clause 33:**

Complying with U.S. Public Law 85-742 Part 9 (Safety and Health Regulations for Longshoring) and/or any amendments thereto, respectively any similar rules/legislations applicable in the country of loading. Applicable for calling U.S. ports entering U.S. waters only.

**Clause 34:**

Charterers to have free use of vessel's cranes and grabs for loading and discharging discharging of the cargo.

Vessel to supply power and cranes and grabs in good working order anytime day/night FHINC/SSHINC free of expenses to the Charterers. Anytime lost by reason of breakdown of vessel's cranes / grabs or vessel's equipment or by reason of neglect or fault of the vessel, it's Owners, master or crew shall not count as laytime or time on demurrage, pro rata to the number of cranes affected.

**Clause 35:**

Owners warrant that the performing vessel under this Charter Party is not listed by U.S. State Department as unacceptable for U.S. cargoes in view of its having traded in areas deemed unfriendly to the U.S.

**Clause 36:**

Any delay and/or extra expenses incurred due to vessels crew wages not complying with those laid down to the ITF or bona fide agreement acceptable to ITF to be for the Owners' account.

**Clause 37:**

Owners warrant that at the time of nomination, the vessel is entered with a recognized first class P & I Club and will remain so for the entire voyage and that the premiums are fully paid up

**Clause 38:**

Owners warrant throughout the currency of this Charter they will provide the vessel with following certificates: Certificates issued pursuant to Section 311 (p) of Clean Water Act. (U.S. Federal pollution Control Act) and amendments. Certificates required by any other national or local government evidencing financial responsibility in the event of discharging of oil or other hazardous substance. In no case shall Charterers be liable for any damages resulting from Owners' failure to obtain or have on board such certificates or Owners failure to comply in any other way with existing or future law enacted by



any national or local governments. Any time l NoR at loadport : to be tendered atdnFhinc ost by reason of Owner's noncompliance, time not to count and Owners shall hold Charterers harmless against and all consequential loss / damage, expense or claims.

**Clause 39:**

Owners remain responsible in the event of any loss of time or boycott of the vessel by or any labour problems with shore labour, seamen's unions/tugboats, pilots or local authorities arising by reason of vessels flag, nationality or registry, ownership, management or agents, the nationality of any member of the crew or crew employment conditions. Any time lost not to count as laytime or time on demurrage.

**Clause 40:**

Owners to place Charterer's agents in funds well in advance or latest prior to vessel's arrival at both load and discharge ports covering vessels disbursements and all other Owners expenses. If Owners fail to do so, then all extra charges/expenses that arise due to delays, disruptions in loading / discharging the cargo and/or the entrance and/or departure of the vessel due to improper / insufficient and/or timely funds received by the agents, will be for Owner's account and time.

**Clause 41:**

During the currency of this Charter Party, the Owners shall procure that both the vessel and "the company" (as defined by ISM code) shall comply with the requirements of the ISM code. Upon request, the Owners shall provide a copy of the relevant Document of Compliance (DOC) and Safety management Certificate (SMC) to the Charterers except as otherwise provided in the Charter Party, loss, damage, expenses or delay caused by failure on the part of the Owners or "the Company" to comply with ISM code shall be for the Owner's account.

**Clause 42 - Bimco AMC Clause:**

A) If the vessel loads or carries cargo destined for the US or passing through US ports in transit, the Owners shall comply with the current U.S. Customs Regulations (19 CFR 4.7) or any subsequent amendments thereto and shall undertake the role of carrier for the purposes of such regulations and shall, in their own name, time and expense:

- I) Have in place a SCAC (Standard Carrier Alpha Code)
- II) Have in place a ICB (International Carrier Bond) and
- III) Submit a cargo declaration by AMS (Automated Manifest System) to the U.S. Customs.

B) The Charterers shall provide all necessary information to the Owners and/or their agents to enable the Owners to submit a timely and accurate cargo declaration.

The Charterers shall assume liability for and shall indemnify, defend and hold harmless the Owners against any loss and/or damage whatsoever (including consequential loss and/or damage) and/or any



23 OCT 2024



expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Charterers failure to comply with any of the provisions of this sub- clause. Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, all time used or lost shall count as laytime or, if the vessel is already on demurrage, time on demurrage.

c) The Owners shall assume liability for and shall indemnify, defend and hold harmless the Charterers against any loss and/or damage whatsoever (including consequential loss and/or damage) and any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Owners failure to comply with any of the provisions of this sub-clause (a). Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, all time used or lost shall count as laytime or, if the vessel is already on demurrage, time on demurrage.

D) The assumption of the role of carrier by the Owners pursuant to this Clause and for the purpose of the US Customs Regulations (19 CFR 4.7) shall be without prejudice to the identity of carrier under any Bill of Lading, other contract, law or regulation.

**Clause 43 - ISPS Clause for Voyage Charter Parties:**

A) (I) From the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of Solas (ISPS Code) in relation to the vessel, the Owners shall procure that both the vessel and "the Company" (as defined by the ISPS Code) shall comply with the requirements of the ISPS Code relating to the vessel and "the Company". Upon request, the Owners shall provide a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) to the Charterers. The Owners shall provide the Charterers with the full style contract details of the Company Security Officer (CSO).

(II) Except as otherwise provided in this Charter Party, loss, damage expense or delay excluding consequential loss, caused by failure on the part of the Owners or "the Company" to comply with requirements of the ISPS Code or this Clause shall be for the Owners' account.

B)(I) The Charterers shall provide the CSO and the Ship Security Officer (SSO)/Master with their full style contract details and any other information the Owners require to comply with the ISPS Code.  
(11) Except as otherwise provided in this Charter Party, loss, damage, expense excluding consequential loss, caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account and delay caused by such failure shall be compensated at the demurrage rate.

C) Provided that the delay is not caused by the Owners' failure to comply with their obligations under the ISPS Code, the following shall apply:

(I) Notwithstanding anything to the contrary provided in this Charter Party, the vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations or measures imposed by a port facility or any relevant authority under the ISPS Code.



(II) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code shall count as laytime or time on demurrage if the vessel is on laytime or demurrage. If the delay occurs before laytime as started or after laytime or time on demurrage has ceased to count, it shall be compensated by the Charterers at the demurrage rate.

D) Notwithstanding anything to the contrary provided in this Charter Party, any additional costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be for the Charterer's account, unless such costs or expenses result solely from the Owners' negligence. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

ISPS charges if any to be for Owner's account.

**OCEAN AGENCIES LTD**  
2nd Floor, Marlborough House  
298 Regents Park Road  
London N3 2SZ *JK*

23 OCT 2024



THIS IS EXHIBIT B TO THE AFFIDAVIT OF  
**TZEISON MERKOURIS STYLOPOULOS**  
SWORN TO BEFORE ME AT ATHENS, GREECE  
THIS 23 DAY OF OCTOBER 2024

OFFICER OF THE CANADIAN DIPLOMATIC  
SERVICE



**Efrossini Kalogeraki**  
Consular Program Officer  
Agent Consulaire  
Embassy of Canada in Athens  
Ambassade du Canada à Athènes

Embassy of Canada - Ambassade du Canada  
Consular Section - Section Consulaire  
48, rue Ethnikis Antistaseos Street  
15231 Athens - Athènes, Greece - Grèce

The Embassy of Canada does not  
validate the content of this document.

L'Ambassade du Canada ne valide pas  
le contenu du présent document.



**“SERENITY”**

**Charterparty dated 28 December 2021**

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**ARBITRATION AWARD**

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23 OCT 2024





**IN THE MATTER OF THE ARBITRATION ACT 1996  
AND IN THE MATTER OF AN ARBITRATION  
BETWEEN**

**ARGO SHIPS SA**

**Claimants/Owners**

and

**ATLANTIC OCEAN SALT**

**Respondents/Charterers**

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**ARBITRATION AWARD**

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**WHEREAS**

1. By a voyage charterparty contained and/or evidenced in a fixture recap dated 28 December 2021 and incorporating the pro-forma Gencon 94 terms and additional clauses, Argo Ships SA (the "Owners") agreed to carry for Atlantic Ocean Salt (the "Charterers") a cargo of "33,500 mt (2.5% more or less in Owner's option) salt in bulk" (the "Cargo") on board MV SERENITY





(the “Vessel”) from 1 safe port, 1 safe berth Damietta to 1 safe port, 1 safe berth Becancour, Canada. Box 25 of the Charterparty Part I provides “Arbitration in London, English law to apply” and clause 19 of the Charterparty Part II provides as follows:

*“19. Law and Arbitration*

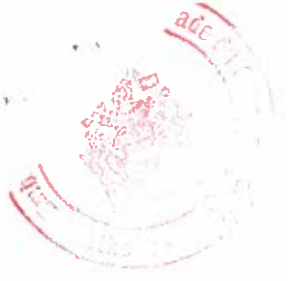
*(a) The Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator. On the receipt by one party of the nomination in writing of the other party’s arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall be final.”*

2. Disputes having arisen out of the Charterparty, on 5 April 2022 I was informed by Hill Dickinson International (“HD”) that they represented the Owners and DMSP Law (“DMSP”) represented the Charterers, and that the parties had agreed to me, the undersigned, Peter Jago of 54 Priory Road, Kew, Richmond, Surrey, TW9, being appointed as sole arbitrator. DMSP subsequently confirmed my appointment and each of the parties paid one half of my appointment fee.
3. The seat of this arbitration is in England.
4. All of the following correspondence was sent to the relevant email addresses.
5. The reference proceeded with a full exchange of pleadings together with supporting documents, with the Owners having filed (a) Claim Submissions, and (b) Reply and Defence to Counterclaim Submissions, and with the Charterers having filed (c) Defence and Counterclaim Submissions, and (d) Reply to Defence to Counterclaim Submissions.
6. In addition, the Owners have adduced contemporaneous evidence / correspondence and two witness statements:
  - a. the First Witness Statement of Maria Spiliotopoulou, the operations manager at the Managers of the Vessel, Mercury Maritime Enterprises Co. SA.

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- b. the First Witness Statement of Ray G. Gantuangco, the Chief Engineer of the Vessel during the relevant voyage.
7. Shortly after the completion of disclosure the Charterers failed and/or refused to actively participate in the reference. The Owners subsequently served Closing Submissions together with a number of invoices. The Charterers were given a reasonable opportunity to serve Closing Submissions but did not do so. On 14 May 2024 I confirmed that submissions were closed and that I would proceed to my award. I have taken into account all of the points raised by the parties in their respective submissions, even though I do not refer to each of the points in this Award.

**THE CLAIMS**

8. The Owners claim for:
- a. Demurrage in respect of time spent at the load port and the discharge port in the sum of US\$ 305,456.25.
  - b. Damages for detention for a period spent at Les Rasades in the sum of US\$ 85,000.
  - c. Damages for additional costs arising from the Charterers failure to pay freight in the sum of US\$ 37,021.15.
9. The Charterers counterclaim for despatch in the sum of US\$ 23,028.39.

**THE BACKGROUND**

10. The background to the dispute was fully set out by the parties in their submissions. The following is a brief summary of the facts.
11. As mentioned above, the Charterparty is dated 28 December 2021, and clause 22.1 (Fixture Recap) provided:

*“20 percent of estimated freight to be remitting on fixing from Canada in US Dollars to New York to be transferred to Owner’s account 1 day prior to Vessel’s arrival Damietta, provided Vessel has sent 48 and 24 hour Notice of Readiness to agents Damietta and to ops@AntaresNYcom, stating Vessel’s current position, ETA and cargo quantity to be loaded provided banking holidays don’t prevent transfers to be executed.*”



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*Upon completion of loading master to sign Bs/L marked "freight prepaid" which to be kept in Owner's protecting agent's custody and only to be released by port agents to Charterers upon receipt of 100 pct (LESS COMMISSION) of freight by Owners and then Owners to give written instruction to port agents to release Bs/L to Charterers.*

...

*...Balance to be payable in US Dollars within 3 banking days of loading and signing Bills of Lading by Master, it being understood that all original Bills of Lading to remain in agents custody until Owners receive balance freight upon which they are to be considered released." (Fixture Recap)*

12. On 28 December 2021 the Owners issued an invoice in the sum of US\$ 295,391.25 for the 20% freight payment. The sum fell due on the same day, being the day before the Vessel's arrival at Damietta. There is no dispute that the payment was not made on 28 December 2021.
13. The Vessel arrived at Damietta at 1000 LT on 29 December 2021, and served NOR at the same time. However, despite the Owners' demands, the Charterers did not pay the freight as required by clause 22.1, and instead they paid US\$ 150,000 on 31 December 2021.
14. In the meantime, on 29 December 2021 the Charterers asked the Master to send recent photographs of the Vessel's "tanktop/holds/hatches/deck and cranes". The Master did so and the Charterers said they were arranging for third party surveyors, TUV AUSTRIA ("TUV"), to go to the Vessel and inspect the holds. TUV attended on board the Vessel on 1 January 2022 and reported that the holds were not clean or suitable for the Cargo.
15. Following a further inspection by TUV on 3 January 2022, during which the holds were again rejected, the Owners arranged for cleaning between 3 January and 5 January 2022. TUV issued a certificate accepting the holds on 6 January 2022. However, whilst TUV say they issued the certificate following a visual inspection of the holds, the Master denies that any such inspection took place on 6 January 2022, as recorded in the contemporaneous Statement of Facts.
16. Clause 23.3. of the Charterparty provided:

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*“Holds are to be clean and ready and in all respects, free of residue from previous cargoes and with watertight hatches to SGS surveyor’s satisfaction prior to the tender of Notice of Readiness.*

*In case of rejection, time not to count as laytime or time on demurrage from rejection until passes and first Notice of Readiness always to be valid.”*  
(Rider Clauses)

17. In the event the Owners engaged SGS to carry out a holds inspection, which took place between 0015 LT and 0215 LT on 7 January 2022. SGS passed the holds as clean and ready to receive the Cargo.
18. The Cargo was loaded between 0215 LT and 1300 LT on 11 January 2022, and eventually 33,000mt of industrial grade salt in bulk was loaded.
19. On 11 January 2022 the Charterers made a further payment of US\$ 156,900 in respect of freight, notwithstanding the sum had become due on 28 December 2021. On the same day, and pursuant to Clause 22.1 the Owners issued an invoice for balance of the freight in the sum of US\$ 1,170,076.25 (net of commission) to the Charterers. The sum was due on 14 January 2022, being 3 banking days after completion of loading and the Master signing the bills of lading.
20. However, the Charterers failed to pay the freight which was due. Clause 8 of the Charterparty provided:  
  
*“The Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo, for freight, deadfreight, demurrage, claims for damages and for all other amounts due under this Charter Party including costs of recovery.”* (Proforma)
21. The Owners exercised a lien over the Cargo on 21 January 2022 as the Vessel approached Canada. The Owners also issued a lien over sub-freights due to the Charterers on 27 January 2022 and 2 February 2022.
22. At 1300 LT on 29 January 2022 the Vessel arrived at Poer Escoumins (Les Rasades), and served NOR which noted that the lien on the cargo and on the bill of lading remained in place, and that the Vessel was *“anchored in Rasades anchorage for the safety of human life, cargo and vessel.”*
23. The Charterers paid the full freight due on 2 February 2022, after which the Vessel shifted from Les Rasades to Becancour where discharge operations





commenced at 2130 LT on 3 February. Discharge was completed at 0015 LT on 7 February 2022.


## DEMURRAGE

### *Time spent at the load port (Damietta)*

24. The Charterers disputed the Owners' calculation of demurrage at the loadport. In short they said that when NOR was tendered on 29 December 2021 the Master's photographs showed the presence of residues of previous black coal cargoes in the holds, which was confirmed by the subsequent inspection carried out by TUV. The Charterers submitted that time did not count until 7 January 2022 when a SGS inspector accepted the holds for loading.
25. It is not disputed that hold cleaning took place at times between 29 December 2021 and 7 January 2022.
26. However, clause 23.1 of the Charterparty states:  
  
*"At load port: Laytime for load shall commence in 12 hrs after valid notice given WIPON, WIFPON, WICCON, WIBON"*.
27. Accordingly, the scheme of clauses 23.1 and 23.3 is that a valid NOR could be tendered as per clause 23.1, and laytime and demurrage counted unless the Vessel was rejected by a SGS surveyor, in which case laytime and demurrage did not count from the time of such rejection until the holds were passed by SGS. The main reason for these provisions is that the Owners wished to avoid a scenario in which there was delay between the Vessel's arrival at the load port and an inspection by SGS. Accordingly, clause 23.3 made it clear that a NOR given in accordance with clause 23.1 was valid, and that time counted unless and until the Vessel was rejected by a SGS surveyor. This put the onus on the Charterers to arrange an inspection by a SGS surveyor promptly after the Vessel's arrival since it was in their interest to interrupt time counting if the holds required cleaning.
28. However, for reasons which were never explained, the Charterers did not appoint a SGS surveyor but instead appointed a TUV surveyor. Given that the Charterparty expressly provided for the appointment of a SGS surveyor, the rejection of the Vessel by the TUV surveyor was contractually irrelevant and invalid so far as interrupting the running of laytime or demurrage.

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29. In short, at no point after tendering NOR were the Vessel's holds rejected by SGS as envisaged by clause 23 with the result that time did not stop running until the completion of loading.
30. The Charterers also contended that on 7 January 2022 a valid NOR could only be tendered at 0330 LT following completion of lime washing. However, for the reasons stated above the NOR tendered on 29 December 2021 was valid, and in any event SGS had passed the Vessel at 0215 LT on 7 January 2022 and loading had commenced. Accordingly, not only is there is no contractual exception to laytime or demurrage for lime washing, but as a matter of fact any lime washing does not appear to have delayed loading.
31. In conclusion, I agree with the Owners' calculation of laytime and demurrage at the load port.

*Time spent at the discharge port (Becancour)*

32. The calculation of laytime and demurrage at the discharge port turns on whether, as the Charterers contend, there were breakdowns of the Vessel's grabs and cranes during discharge at Becancour.
33. If there were breakdowns, then it is clear that laytime and demurrage were interrupted as clause 34 provided, "*Anytime lost by reason of breakdown of vessel's cranes / grabs or vessel's equipment or by reason of neglect or fault of the vessel, it's Owners, master or crew shall not count as laytime or time on demurrage, pro rata to the number of cranes affected.*"
34. The Charterers say that the Vessel's cranes and grabs were inoperable or otherwise faulty, and that they were required to hire grabs from the shore. They rely on a Port Log produced by Gresco Ltee ("Gresco") who reported that the Vessel's no. 4 crane was "*defective*" between 0815 and 1000 LT on 4 February 2022, and that the same crane's grabs were "*inoperable*" between 1300 and 1345 LT on the same day.
35. However, the Owners deny that there were any breakdowns, and contend that the stevedores unilaterally rented shore grabs because they wanted to avoid the time it took to rig the ship's grabs to the ship's crane.
36. Accordingly, this issue turns on the weight of the factual evidence whether there any breakdowns or not.



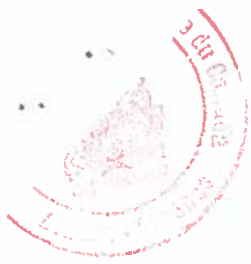


- 37. The Owners submitted a witness statement of Mr Ray G. Gantuangco, the Chief Engineer (“C/E”) on board the Vessel at the relevant time.
- 38. The C/E provided documentary evidence that the cranes and grabs had been inspected and certified by the Vessel’s classification society, DNV, as recently as the Vessel’s last dry docking in November 2021. Furthermore, they were inspected again at Damietta and were used without any issues for loading the Cargo.
- 39. The C/E also provided contemporaneous exchanges which establish that it was the stevedore’s own decision to engage the shore grabs in order to speed up the discharge operation. For instance, on 4 February Gresco wrote to the Charterers and to the Owners’ protecting agents, Navitrans, saying that the stevedores were switching to shore grabs to “*speed up process...as the ship’s crew take too much time to rig / unrig ships grabs*”. Navitrans responded that “*ships gear is at their disposal and fully functional*”.
- 40. There was similar correspondence over the following days, and the Master included a remark in the Statement of Facts that the cranes and grabs were in working order.
- 41. The Charterers did not provide any witness evidence of their own, and it is very telling that Gresco did not claim that the cranes or grabs were defective, but simply that the stevedores preferred to use shore grabs as this was quicker.
- 42. On balance I prefer the Owners’ evidence that there was no breakdown of the Vessel’s cranes or grabs for the purposes of clause 34.
- 43. As a result I accept the Owners’ laytime and demurrage calculations for the discharge port.
- 44. The Owners claim US\$ 305,456.25 in respect of demurrage. I have checked the Owners’ calculation and agree with it and I award the Owners demurrage in this sum. In addition, the Charterers’ counterclaim for despatch fails.

**DETENTION AND OTHER DAMAGES**

*Damages for detention at Les Rasades*





45. The Charterers failed to pay the freight when it fell due according to the Charterparty, and this was compounded by the Charterers saying on several occasions that freight had been paid when this was not the case.
46. As explained by Maria Spiliotopoulou (“MS”) in her witness statement, on 11 January 2022, the day loading was completed, the Owners issued an invoice for the balance of freight outstanding in the sum of US\$ 1,170,076.25 which was due to the Owners by 14 January 2022 in accordance with clause 22.1 of the Charterparty.
47. As the freight due was not paid on 21 January 2022 the Owners exercised a lien over the Cargo pursuant to clause 8 of the Charterparty, and kept the Bill of Lading for the Cargo with their protective agents pending receipt of 100% of the freight payable (less commission) pursuant to clause 22.1.
48. As the Vessel approached Becancour MS began to investigate the most cost effective and safe way of maintaining their lien over the Cargo in the absence of payment. MS liaised with Navitrans and in a series of emails was advised:
- a) Attempting to anchor at Becancour was undesirable because it is rock bottomed and so vessels tend to drag their anchors when winds pick up or move because of ice flows and current. Navitrans said, *“Becancour is never a great option, even in summer. Same goes for Quebec City, and to some extent Trois-Rivieres...which might be your best option,,generally vessels will stop at Les Rasades...”*.
  - b) Accordingly, whilst Les Rasades was not without its own challenges, it is a place where vessels generally stopped.
  - c) The Owners enquired whether the Cargo could be discharged into a bonded warehouse where they could continue to exercise their lien. However they were advised that neither this or tarping the Cargo on pier were realistic options.
  - d) Although there was a layby berth at Becancour, using the berth would have cost the Owners over CAD\$ 100,000 which was uneconomical.
49. The Charterers did not provide any evidence to contradict the advice which MS received from Navitrans. In their defence the Charterers put the onus on the Owners to justify their decision to order the Vessel to wait at Les Rasades, and I accept the evidence of MS and Navitrans that the only real

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“show in town”, as they put it, was to anchor and wait there in order to protect their lien.

50. The Vessel was anchored at Les Rasades for 4 days and 6 hours from 1300 LT on 29 January 2022 until 1900 LT on 2 February 2022, as confirmed by the NOR and Port log.
51. In such circumstances owners often claim damages for detention at the charterparty demurrage rate, which is US\$ 33,000. However in this case the Owners have claimed damages for detention by reference to the Baltic Exchange Handysize Index for the whole period the Vessel remained at Les Rasades at the daily rate of US\$ 20,000 (US\$17,993.50 plus a daily bunker consumption of US\$ 2,000 comprising 3 MT of LSMGO, at about US\$670 per MT).
52. The Charterers have not objected to the Owners’ calculation of damages on this basis or submitted any contrary evidence, and I find that it was reasonable for the Owners to exercise their lien for freight and withhold the Bill of Lading for the Cargo at the Les Rasades anchorage. Accordingly, the Owners claim damages for detention in the sum of US\$ 85,000 succeeds.

*Other damages*

53. The Owners further claim as damages the costs and expenses incurred as a result of the Charterers’ failure to pay freight promptly in the sum of US\$37,021.15. Such costs are made up of:
  - A) the cost of obtaining Egyptian law advice (as a result of the Charterers’ failure to pay freight promptly and in full) in the sum of US\$ 2,000.
  - B) the cost of obtaining Canadian law advice in relation to the contractual lien in the sum of US\$ 12,686.50.
  - C) the cost of obtaining English law advice in relation to their rights as a result of the Charterers’ failure to pay freight promptly and in full in the sum of US\$ 22,334.65.
54. The Charterers submitted that the costs so claimed were excessive and exaggerated.
55. Where a charterer fails to pay freight promptly and in full they can reasonably anticipate the owners may take steps to protect their position by



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the exercise of a lien or liens on cargo, bill of lading freight, and sub-freights. In doing so it can again reasonably be expected that the owner will obtain legal advice from lawyers in the relevant jurisdictions, and such advice usually has to be provided promptly if not as a matter of urgency.

56. In this matter I consider it was perfectly in order for the Owners to obtain legal advice in Egypt, Canada and England, and I consider that the cost of such advice was reasonable. As a result, I allow the Owners' claim in the sum of US\$36,858.11.
57. Accordingly, I find that the Owners' claim in the total sum of US\$ 427,477.40 succeeds in full.
58. The Owners have claimed interest on the sum due to them from 28 December 2021, being the date when 20% freight was due and not paid. The difficulty with this is that not all of the sums on which interest is payable had been incurred by 28 December 2021. Accordingly I award interest on the sum of USD 427,477.40 from 7 March 2022, being 30 days from the completion of discharge, and by when the sums claimed should have been paid.
59. As regards costs, the Owners have succeeded in their claim in full and, given that Section 61(2) of the Act provides that the general principle is that costs should follow the event, I consider that the Owners are entitled to recover their costs from the Charterers on the basis as set out in Section 63(5) of the Act. I reserve my jurisdiction to determine the Owners' recoverable costs.
60. I also consider that the Charterers should be responsible for the payment of my fee. I have provided for interest to run on the Owners' recoverable costs and on my fee pursuant to the provisions of Section 49 of the Act.

**NOW I**, the said Peter Jago, having taken upon myself the burden of this reference and having carefully and conscientiously considered the submissions and evidence (all documentary) and having given due weight thereto, **DO HERBY MAKE, ISSUE AND PUBLISH** this my **ARBITRATION AWARD** as follows: -

**(A) I FIND, HOLD AND ORDER** that the Owners' claim succeeds in the sum of USD 427,477.40 (United States Dollars Four hundred and

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twenty-seven thousand four hundred and seventy-seven and forty cents) and the Charterers' counterclaim fails.

**(B) I THEREFORE AWARD AND ADJUDGE** that the Charterers shall pay the said sum of USD 427,477.40 (United States Dollars Four hundred and twenty-seven thousand four hundred and seventy-seven and forty cents) to the Owners together with interest thereon at the rate of 6% per annum and pro rata, compounded at three monthly rests, from 7 March 2022 until the date of payment of such sums to the Owners.

**(C) I FURTHER AWARD AND DIRECT** that the Charterers shall bear their own costs and shall forthwith pay to the Owners their recoverable costs in relation to this my Arbitration Award, on the basis as set out in Section 63(5) of the Arbitration Act 1996 (for the assessment of which, if not agreed, I hereby reserve my jurisdiction), together with interest thereon at the rate of 6% per annum and pro rata, compounded at three monthly rests, from the date of this my Arbitration Award until that of payment.

**(D) I FURTHER AWARD AND DIRECT** that the Charterers shall bear and pay the costs of this my Arbitration Award including interlocutory costs, which amount to a total of £8,250 (Pounds Sterling eight thousand two hundred and fifty) provided, however, that if in the first instance the Owners shall have paid any amount in respect of the said costs of this my Arbitration Award, they shall be entitled to the immediate reimbursement by the Charterers of the sum so paid, together with interest thereon, at the rate of 6% per annum and pro rata, compounded at three monthly rests, from the date of payment by the Owners until the date of reimbursement by the Charterers.

**(E) I HEREBY DECLARE** that this my Arbitration Award is final as to all matters determined herein and **I HEREBY RESERVE MY JURISDICTION** to determine by further award or awards any and all remaining issues between the parties.

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Dated: this 5th day of August 2024.

Signed: At the seat of the Arbitration in England.

*P. Jago*

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**PETER JAGO**

23 OCT 2024



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THIS IS EXHIBIT C TO THE AFFIDAVIT OF  
**TZEISON MERKOURIS STYLOPOULOS**  
SWORN TO BEFORE ME AT ATHENS, GREECE  
THIS 23 DAY OF OCTOBER 2024



OFFICER OF THE CANADIAN DIPLOMATIC  
SERVICE

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Consular Program Officer  
Agent Consulaire  
Embassy of Canada in Athens  
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**Kleopatra Diamanti**

**From:** Peter Jago <pjago1976@gmail.com>  
**Sent:** 06 August 2024 18:58  
**To:** Kleopatra Diamanti  
**Cc:** Timon Karamanos; Katerina Botsini  
**Subject:** Re: M/V SERENITY: Claimant Owners' Closing Submissions [HD-EUR.22000268.1]  
**Attachments:** SERENITY aw.pdf

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Dear Colleagues,

I confirm with thanks receipt of payment for my Award which is now released and attached.

Kind regards  
Peter Jago

On Tue, 6 Aug 2024 at 10:25, Kleopatra Diamanti <[Kleopatra.Diamanti@hildickinson.com](mailto:Kleopatra.Diamanti@hildickinson.com)> wrote:

Dear Mr Jago,

We hope you are well and we thank you for your below email.

We have been advised by our clients that they have earlier today paid the costs of the Award to the requested bank account. A copy of the bank payment advice is attached and we will also forward you the corresponding SWIFT once available.

We hope the above assists and we look forward to receiving a copy of the Award upon receipt of the funds.

Best regards

Kleopatra Diamanti  
Associate  
Hill Dickinson International  
2 Deferas Merarchias St, Piraeus 185 35

23 OCT 2024



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*Celebrating 30 years in Greece*



**From:** Peter Jago <[pjago1976@gmail.com](mailto:pjago1976@gmail.com)>  
**Sent:** Monday, August 5, 2024 4:45 PM  
**To:** Kleopatra Diamanti <[Kleopatra.Diamanti@hilldickinson.com](mailto:Kleopatra.Diamanti@hilldickinson.com)>  
**Cc:** ATLANTIC OCEAN SALT <[sales@atlanticoceansalt.com](mailto:sales@atlanticoceansalt.com)>; Timon Karamanos <[Timon.Karamanos@hilldickinson.com](mailto:Timon.Karamanos@hilldickinson.com)>; Katerina Botsini <[Katerina.Botsini@hilldickinson.com](mailto:Katerina.Botsini@hilldickinson.com)>  
**Subject:** Re: M/V SERENITY: Claimant Owners' Closing Submissions [HD-EUR.S46.24]

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NOTICE OF PUBLICATION OF AWARD

Dear Sirs,

23 OCT 2024



## AFFIDAVIT OF DAVID G. COLFORD

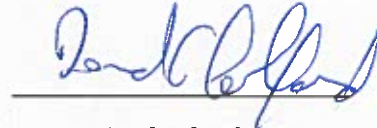
I, David G. Colford, advocate, practicing law at the office of Cabinet d'Avocats Brisset Bishop Inc., at 2110-1002 Sherbrooke Street West, having been duly sworn do depose and say that:

1. I am a member of the Barreau du Quebec and am one of the Canadian solicitors for the Applicant, Argo Ships SA;
2. I refer the Court to the Affidavits of Tzeison Merkouris Stylopoulos from the ship owner, Argo Ships S.A., and Timon Karamanos-Cleminson, the English Solicitor of Argo Ships S.A., and in particular to the Arbitration Award;
3. As appears in the Arbitration Award, the place of arbitration was London, England (United Kingdom) and the governing law was English law;
4. The award of 6% per annum and pro rata, compounded "at three monthly rests", an English phrase meaning compounded "quarterly" has been awarded at the discretion of the arbitrator in accordance with English law influenced by the current rate for debt of 8% in England, but then providing a feature applicable to commercial trade debts and the cost of borrowing, namely, a compounding feature; such exercise of discretion compares favourably with a calculation of interest plus the additional indemnity of interest available under the Civil Code of Quebec, which I attach as Exhibit 1 to this affidavit;
5. As the Award was rendered in US dollars and British pounds, I have consulted the Bank of Canada website at <https://www.bankofcanada.ca/> on October 1, 2024, and have determined that the exchange rates on August 6, 2024, the date after the date of the Arbitration Award (August 5, 2024 being a bank holiday in Canada) from Canadian dollars to US dollars and British pounds is 0.725 and 0.5709, respectively, and I attach an extract from the Bank of Canada website for August 6, 2024 as Exhibit 2 to this affidavit;
6. The address for service of Argo Ships SA in Canada is the office of Cabinet d'Avocats Brisset Bishop Inc., 2110-1002 Sherbrooke Street West, Montreal, Quebec, Canada, H3A 3L6, attention: David Colford / Luce Bourbeau;

7. The address for service of the debtor/ respondent, Atlantic Ocean Salt Inc., a body corporate under the laws of Canada, is 7566 Silver Creek Crescent, London, Ontario, N6P 0G6, as appears on an extract from the Corporate Registry maintained by Industry Canada at <https://ised-isde.canada.ca/cc/> and attached hereto as Exhibit 3 to this affidavit;
  
8. On or about October 16, 2024, I caused a formal demand to be made on Respondent by letter sent by courier, and I attach a copy of the letter and proof of delivery as Exhibit 4 to this my affidavit;
  
9. The reason why the Applicant has made this application *ex parte* is because despite personal delivery of the letter of demand and the warning contained therein that this proceeding would be instituted if payment was not made, there was no response from the Respondent nor any intervention made by any other party on Respondent's behalf;
  
10. I have made careful and full enquiries of the court dockets in Quebec, the cause of action arose, and in the Federal Court, and there is no record of any legal proceeding having been instituted against the Respondent;
  
11. I have made an enquiry with the Office of the Canadian Superintendent of Bankruptcy concerning whether the Respondent has made a filing or a proposal under the Bankruptcy and Insolvency Act, it has reported that it has no information about the Respondent, and I attach its report dated October 29, 2024 as Exhibit 5 to this affidavit;
  
12. I can state that I am not aware of any impediment to recognition and enforcement of the Arbitration Award of Peter Jago, dated August 5, 2024 in the matter between Argo Ships SA and Atlantic Ocean Salt Inc.;
  
13. I certify that I am not aware of any payment having been made by Atlantic Ocean Salt Inc. or on its behalf, and to my knowledge, the Arbitration Award remains unsatisfied.


14. As this application should not have been necessary, but for the lack of response from the Respondent, I am asking for an award of a lump sum of \$1,500, being seven (7) units of Column III of the Tariff (7 x \$170) plus various disbursements.

AND I HAVE SIGNED



David G. Colford

SWORN TO BEFORE ME AT MONTREAL  
THIS 5<sup>th</sup> DAY OF NOVEMBER 2024



*Laurie Neysmith*  
COMMISSIONER FOR OATHS FOR THE  
CITY AND JUDICIAL DISTRICT OF MONTREAL

THIS IS EXHIBIT 1 TO THE AFFIDAVIT OF  
**DAVID G. COLFORD**  
SWORN TO BEFORE ME AT MONTREAL, QUEBEC  
THIS 5<sup>th</sup> DAY OF NOVEMBER 2024

  
\_\_\_\_\_  
COMMISSIONER FOR OATHS FOR THE  
CITY AND DISTRICT OF MONTREAL



## CALCUL DU TAUX LÉGAL ET INDEMNITÉ ADDITIONNELLE

### RÉFÉRENCES

Montant initial: 427477.40 \$

Période: du 2022-03-22 au 2024-10-16

### CALCUL DU TAUX LÉGAL ET DE L'INDEMNITÉ ADDITIONNELLE

Début	Fin	Taux	Référence	Nombre de jours	Intérêts
2022-01-01	2022-03-31	5 %	(2021)	10	585.59
2022-04-01	2022-06-30	5 %	(2022)	91	5328.83
2022-07-01	2022-09-30	6 %	(2022)	92	6464.86
2022-10-01	2022-12-31	7 %	(2022)	92	7542.34
2023-01-01	2023-03-31	9 %	(2022)	90	9486.48
2023-04-01	2023-06-30	10 %	(2023)	91	10657.66
2023-07-01	2023-09-30	10 %	(2023)	92	10774.77
2023-10-01	2023-12-31	10 %	(2023)	92	10774.77
2024-01-01	2024-03-31	10 %	(2023)	91	10628.54
2024-04-01	2024-06-30	10 %	(2024)	91	10628.54
2024-07-01	2024-09-30	10 %	(2024)	92	10745.33
2024-10-01	2024-12-31	10 %	(2024)	15	1751.96

### Résultats incluant l'indemnité additionnelle

Intérêts totaux: 95369.67 \$

Dette totale (capital et intérêts): 522847.07 \$

Intérêts journaliers: 101.57 \$

Dette due depuis 939 jours

## Résultats excluant l'indemnité additionnelle

Intérêts totaux: 54940.24 \$

Dettes totale (capital et intérêts): 482417.64 \$

Intérêts journaliers: 58.51 \$

Dettes dues depuis 939 jours

\* Calculé conformément à l'article 83 C.p.c. et ne tient pas compte de l'article 490 C.p.c.

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Propulsé par



THIS IS EXHIBIT 2 TO THE AFFIDAVIT OF  
**DAVID G. COLFORD**  
SWORN TO BEFORE ME AT MONTREAL, QUEBEC  
THIS 5<sup>th</sup> DAY OF NOVEMBER 2024

*David G. Colford*  
COMMISSIONER FOR OATHS FOR THE  
CITY AND DISTRICT OF MONTREAL





## Daily exchange rates: Lookup tool

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All Bank of Canada exchange rates are indicative rates only, obtained from averages of aggregated price quotes from financial institutions. For details, please read our full [Terms and Conditions](#).

### US dollar (USD)

Date	USD → CAD	CAD → USD
2024-08-06	1.3794	0.7250

### UK pound sterling (GBP)

Date	GBP → CAD	CAD → GBP
2024-08-06	1.7515	0.5709



THIS IS EXHIBIT 3 TO THE AFFIDAVIT OF  
**DAVID G. COLFORD**  
SWORN TO BEFORE ME AT MONTREAL, QUEBEC  
THIS 5<sup>th</sup> DAY OF NOVEMBER 2024

*Marie-Nadine D.*  
COMMISSIONER FOR OATHS FOR THE  
CITY AND DISTRICT OF MONTREAL





Government  
of Canada

Gouvernement  
du Canada

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→ [Search for a Federal Corporation](#)

## Federal Corporation Information - 1240936-4

**⚠** Beware of scams and other suspicious activities. See [Corporations Canada's alerts](#).

### **i** Note

This information is available to the public in accordance with legislation (see [Public disclosure of corporate information](#)).

[Order copies of corporate documents](#)

### Corporation Number

1240936-4

### Business Number (BN)

706186475RC0001

### Corporate Name

ATLANTIC OCEAN SALT INC.

### Status

Active

### Governing Legislation

*Canada Business Corporations Act - 2020-10-11*

[Order a Corporate Profile](#) [[View PDF Sample](#)] [[View HTML Sample](#)].

[Find existing extra-provincial registrations of this corporation on Canada's Business registries](#) **i**

## Registered Office Address

7566 Silver Creek Cresent  
London ON N6P 0G6

Canada

### **Note**

Active CBCA corporations are required to update this information within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

## **Directors**

**Minimum** 1

**Maximum** 10

AHMED ELDESSOUKI  
7566 Silver Creek Crescent  
London ON N6P 0G6  
Canada

### **Note**

Active CBCA corporations are required to update director information (names, addresses, etc.) within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

## **Individuals with significant control**

No information has been filed.

[Learn more about when this information must be filed.](#)

### **Note**

Active CBCA corporations are required to update this information annually (with their annual return) and within 15 days of a change in their ISC register via the Online Filing Centre. A corporation key is required. If you are not authorized to update this information, you can contact either the corporation or Corporations Canada. We will inform the corporation of its reporting obligations.

## Annual Filings

**Anniversary Date (MM-DD)**

10-11

**Date of Last Annual Meeting**

2023-09-20

**Annual Filing Period (MM-DD)**

10-11 to 12-10

**Type of Corporation**

Non-distributing corporation with 50 or fewer shareholders

**Status of Annual Filings**

2024 - Not due

2023 - Filed

2022 - Filed

## Corporate History

**Corporate Name History**

2020-10-11 to Present

ATLANTIC OCEAN SALT INC.

**Certificates and Filings****Certificate of Incorporation**

2020-10-11

[Order copies of corporate documents](#)[Start New Search](#)[Return to Search Results](#)**Date Modified:**

2024-09-13

THIS IS EXHIBIT 4 TO THE AFFIDAVIT OF  
**DAVID G. COLFORD**  
SWORN TO BEFORE ME AT MONTREAL, QUEBEC  
THIS 5<sup>th</sup> DAY OF NOVEMBER 2024

  
\_\_\_\_\_  
COMMISSIONER FOR DEATHS FOR THE  
CITY AND DISTRICT OF MONTREAL



WITHOUT PREJUDICE

BY COURIER

October 16, 2024

Our File: 22575-3

ATLANTIC OCEAN SALT INC.  
7566 Silver Creek Crescent  
London, Ontario  
N6P 0G6

Attention: Ahmed Eldessouki, President

RE: M.V. "SERENITY"  
Arbitration Award, dated August 5, 2024  
Amount: US \$427,477.40 + £8,250 plus interest

Dear Sirs:

We are Canadian solicitors who have been instructed by Argo Ships SA, ("Owners"), to notify you that an Arbitration Award has been issued against you, as Charterers, on August 5, 2024, with respect to amounts owing, arising from the voyage charter party, dated December 28, 2021 entered into by you and Owners.

We are attaching a copy of the Arbitration Award to this letter.

All relevant delays to seek permission to appeal and to appeal this award have expired and the award is now executory.

We have been instructed to make formal demand for the immediate payment for US \$427,477.40, the capital amount of the Arbitration Award, together with interest at the rate of 6% per annum and pro rata, compounded quarterly, from March 7, 2022 until the date of payment. As of the date of this letter, US\$499,365.22 is owing and interest continues to accrue.

In addition, the Award provides that Charterers are liable for the Arbitrator's costs, being British pounds £ 8,250, and further provides that if Owners have paid those costs, then they are entitled to be reimbursed by you with interest at the rate of 6% per annum and pro rata, compounded quarterly, from August 6, 2024, the date of payment by our client until the date of payment. As of the date of this letter, the sum of £8,346.28 is owing and interest continues to accrue.

1002 SHERBROOKE STREET WEST, SUITE 2110, MONTRÉAL, QC, CANADA H3A 3L6  
TEL 514 393-3700 | FAX 514 393-1211 | [WWW.BRISSETBISHOP.COM](http://WWW.BRISSETBISHOP.COM)

Our client's legal costs and disbursements have been awarded, and we are waiting for their assessment by the arbitrator, and you will be advised in due course. They are presently estimated at €102,413.50 plus interest.

Should you choose to make payment in Canadian dollars, please consult the Bank of Canada website at <https://www.bankofcanada.ca/>: the exchange date is that of the Arbitration Award:

- a) The rates quoted for US dollars and British pounds are \$1 Can/US\$ 0.725 and \$1 Can/0.5709 GBP, respectively;
- b) As of Tuesday August 6, 2024 (the day after the date of the Arbitration Award, August 5, being a bank holiday in Canada), the sum of US \$ 499,365.22 or Can \$688,779.61 is owing for the award plus £8,346.23 or Can \$ 14,619.43 (US \$10,599.09) for the arbitrator's costs.

Unless we receive payment of the sum of Can \$ 703,399.04(or US\$ 509,964.31), on or before Wednesday, October 23, 2024, our instructions to proceed with filing an application for registration and enforcement of the Arbitration Award in the Federal Court, in Canada, without any further notice or delay. All of our client's rights to further claim for recovery of its legal costs and disbursements are reserved.

Payment may be made in trust to us in either Canadian or US dollars and our bank details are as follows:

TD CANADA TRUST  
525 Viger West, Suite 100  
Montreal, Quebec  
Canada, H2Z 0B2  
Bank No: 41601-004  
Swift Code: TDOMCATTOR

Canadian Trust Account No: 5367906  
Beneficiary: Cabinet d'Avocats Brisset Bishop inc. in Trust  
US Trust Account No: 7348930  
Beneficiary: Cabinet d'Avocats Brisset Bishop inc. in Trust

Do govern yourselves accordingly.

Yours truly,

**Cabinet d'Avocats Brisset Bishop Inc.**

Per: 

David G. Colford

Enclosure

**“SERENITY”**

**Charterparty dated 28 December 2021**

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**ARBITRATION AWARD**

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**IN THE MATTER OF THE ARBITRATION ACT 1996  
AND IN THE MATTER OF AN ARBITRATION  
BETWEEN**

**ARGO SHIPS SA**

**Claimants/Owners**

and

**ATLANTIC OCEAN SALT**

**Respondents/Charterers**

---

**ARBITRATION AWARD**

---

**WHEREAS**

1. By a voyage charterparty contained and/or evidenced in a fixture recap dated 28 December 2021 and incorporating the pro-forma Gencon 94 terms and additional clauses, Argo Ships SA (the "Owners") agreed to carry for Atlantic Ocean Salt (the "Charterers") a cargo of "33,500 mt (2.5% more or less in Owner's option) salt in bulk" (the "Cargo") on board MV SERENITY

(the "Vessel") from 1 safe port, 1 safe berth Damietta to 1 safe port, 1 safe berth Beancour, Canada. Box 25 of the Charterparty Part I provides "Arbitration in London, English law to apply" and clause 19 of the Charterparty Part II provides as follows:

*"19. Law and Arbitration*

*(a) The Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a third arbitrator. On the receipt by one party of the nomination in writing of the other party's arbitrator, that party shall appoint their arbitrator within fourteen days, failing which the decision of the single arbitrator appointed shall be final."*

2. Disputes having arisen out of the Charterparty, on 5 April 2022 I was informed by Hill Dickinson International ("HD") that they represented the Owners and DMSP Law ("DMSP") represented the Charterers, and that the parties had agreed to me, the undersigned, Peter Jago of 54 Priory Road, Kew, Richmond, Surrey, TW9, being appointed as sole arbitrator. DMSP subsequently confirmed my appointment and each of the parties paid one half of my appointment fee.
3. The seat of this arbitration is in England.
4. All of the following correspondence was sent to the relevant email addresses.
5. The reference proceeded with a full exchange of pleadings together with supporting documents, with the Owners having filed (a) Claim Submissions, and (b) Reply and Defence to Counterclaim Submissions, and with the Charterers having filed (c) Defence and Counterclaim Submissions, and (d) Reply to Defence to Counterclaim Submissions.
6. In addition, the Owners have adduced contemporaneous evidence / correspondence and two witness statements:
  - a. the First Witness Statement of Maria Spiliotopoulou, the operations manager at the Managers of the Vessel, Mercury Maritime Enterprises Co. SA.

- b. the First Witness Statement of Ray G. Gantuangco, the Chief Engineer of the Vessel during the relevant voyage.
7. Shortly after the completion of disclosure the Charterers failed and/or refused to actively participate in the reference. The Owners subsequently served Closing Submissions together with a number of invoices. The Charterers were given a reasonable opportunity to serve Closing Submissions but did not do so. On 14 May 2024 I confirmed that submissions were closed and that I would proceed to my award. I have taken into account all of the points raised by the parties in their respective submissions, even though I do not refer to each of the points in this Award.

## **THE CLAIMS**

8. The Owners claim for:
- a. Demurrage in respect of time spent at the load port and the discharge port in the sum of US\$ 305,456.25.
  - b. Damages for detention for a period spent at Les Rasades in the sum of US\$ 85,000.
  - c. Damages for additional costs arising from the Charterers failure to pay freight in the sum of US\$ 37,021.15.
9. The Charterers counterclaim for despatch in the sum of US\$ 23,028.39.

## **THE BACKGROUND**

10. The background to the dispute was fully set out by the parties in their submissions. The following is a brief summary of the facts.
11. As mentioned above, the Charterparty is dated 28 December 2021, and clause 22.1 (Fixture Recap) provided:

*“20 percent of estimated freight to be remitting on fixing from Canada in US Dollars to New York to be transferred to Owner’s account 1 day prior to Vessel’s arrival Damietta, provided Vessel has sent 48 and 24 hour Notice of Readiness to agents Damietta and to ops@AntaresNYcom, stating Vessel’s current position, ETA and cargo quantity to be loaded provided banking holidays don’t prevent transfers to be executed.*”

*Upon completion of loading master to sign B/L marked "freight prepaid" which to be kept in Owner's protecting agent's custody and only to be released by port agents to Charterers upon receipt of 100 pct (LESS COMMISSION) of freight by Owners and then Owners to give written instruction to port agents to release B/L to Charterers.*

*... Balance to be payable in US Dollars within 3 banking days of loading and signing Bills of Lading by Master, it being understood that all original Bills of Lading to remain in agents custody until Owners receive balance freight upon which they are to be considered released." (Fixture Recap)*

12. On 28 December 2021 the Owners issued an invoice in the sum of US\$ 295,391.25 for the 20% freight payment. The sum fell due on the same day, being the day before the Vessel's arrival at Damietta. There is no dispute that the payment was not made on 28 December 2021.
13. The Vessel arrived at Damietta at 1000 LT on 29 December 2021, and served NOR at the same time. However, despite the Owners' demands, the Charterers did not pay the freight as required by clause 22.1, and instead they paid US\$ 150,000 on 31 December 2021.
14. In the meantime, on 29 December 2021 the Charterers asked the Master to send recent photographs of the Vessel's "tanktop/holds/hatches/deck and cranes". The Master did so and the Charterers said they were arranging for third party surveyors, TUV AUSTRIA ("TUV"), to go to the Vessel and inspect the holds. TUV attended on board the Vessel on 1 January 2022 and reported that the holds were not clean or suitable for the Cargo.
15. Following a further inspection by TUV on 3 January 2022, during which the holds were again rejected, the Owners arranged for cleaning between 3 January and 5 January 2022. TUV issued a certificate accepting the holds on 6 January 2022. However, whilst TUV say they issued the certificate following a visual inspection of the holds, the Master denies that any such inspection took place on 6 January 2022, as recorded in the contemporaneous Statement of Facts.
16. Clause 23.3. of the Charterparty provided:

*“Holds are to be clean and ready and in all respects, free of residue from previous cargoes and with watertight hatches to SGS surveyor’s satisfaction prior to the tender of Notice of Readiness.*

*In case of rejection, time not to count as laytime or time on demurrage from rejection until passes and first Notice of Readiness always to be valid.”*  
(Rider Clauses)

17. In the event the Owners engaged SGS to carry out a holds inspection, which took place between 0015 LT and 0215 LT on 7 January 2022. SGS passed the holds as clean and ready to receive the Cargo.
18. The Cargo was loaded between 0215 LT and 1300 LT on 11 January 2022, and eventually 33,000mt of industrial grade salt in bulk was loaded.
19. On 11 January 2022 the Charterers made a further payment of US\$ 156,900 in respect of freight, notwithstanding the sum had become due on 28 December 2021. On the same day, and pursuant to Clause 22.1 the Owners issued an invoice for balance of the freight in the sum of US\$ 1,170,076.25 (net of commission) to the Charterers. The sum was due on 14 January 2022, being 3 banking days after completion of loading and the Master signing the bills of lading.
20. However, the Charterers failed to pay the freight which was due. Clause 8 of the Charterparty provided:

*“The Owners shall have a lien on the cargo and on all sub-freights payable in respect of the cargo, for freight, deadfreight, demurrage, claims for damages and for all other amounts due under this Charter Party including costs of recovery.”* (Proforma)
21. The Owners exercised a lien over the Cargo on 21 January 2022 as the Vessel approached Canada. The Owners also issued a lien over sub-freights due to the Charterers on 27 January 2022 and 2 February 2022.
22. At 1300 LT on 29 January 2022 the Vessel arrived at Poer Escoumins (Les Rasades), and served NOR which noted that the lien on the cargo and on the bill of lading remained in place, and that the Vessel was *“anchored in Rasades anchorage for the safety of human life, cargo and vessel.”*
23. The Charterers paid the full freight due on 2 February 2022, after which the Vessel shifted from Les Rasades to Becancour where discharge operations

commenced at 2130 LT on 3 February. Discharge was completed at 0015 LT on 7 February 2022.

## DEMURRAGE

### *Time spent at the load port (Damietta)*

24. The Charterers disputed the Owners' calculation of demurrage at the loadport. In short they said that when NOR was tendered on 29 December 2021 the Master's photographs showed the presence of residues of previous black coal cargoes in the holds, which was confirmed by the subsequent inspection carried out by TUV. The Charterers submitted that time did not count until 7 January 2022 when a SGS inspector accepted the holds for loading.
25. It is not disputed that hold cleaning took place at times between 29 December 2021 and 7 January 2022.
26. However, clause 23.1 of the Charterparty states:  
  
*"At load port: Laytime for load shall commence in 12 hrs after valid notice given WIPON, WIFPON, WICCON, WIBON"*.
27. Accordingly, the scheme of clauses 23.1 and 23.3 is that a valid NOR could be tendered as per clause 23.1, and laytime and demurrage counted unless the Vessel was rejected by a SGS surveyor, in which case laytime and demurrage did not count from the time of such rejection until the holds were passed by SGS. The main reason for these provisions is that the Owners wished to avoid a scenario in which there was delay between the Vessel's arrival at the load port and an inspection by SGS. Accordingly, clause 23.3 made it clear that a NOR given in accordance with clause 23.1 was valid, and that time counted unless and until the Vessel was rejected by a SGS surveyor. This put the onus on the Charterers to arrange an inspection by a SGS surveyor promptly after the Vessel's arrival since it was in their interest to interrupt time counting if the holds required cleaning.
28. However, for reasons which were never explained, the Charterers did not appoint a SGS surveyor but instead appointed a TUV surveyor. Given that the Charterparty expressly provided for the appointment of a SGS surveyor, the rejection of the Vessel by the TUV surveyor was contractually irrelevant and invalid so far as interrupting the running of laytime or demurrage.

29. In short, at no point after tendering NOR were the Vessel's holds rejected by SGS as envisaged by clause 23 with the result that time did not stop running until the completion of loading.
30. The Charterers also contended that on 7 January 2022 a valid NOR could only be tendered at 0330 LT following completion of lime washing. However, for the reasons stated above the NOR tendered on 29 December 2021 was valid, and in any event SGS had passed the Vessel at 0215 LT on 7 January 2022 and loading had commenced. Accordingly, not only is there is no contractual exception to laytime or demurrage for lime washing, but as a matter of fact any lime washing does not appear to have delayed loading.
31. In conclusion, I agree with the Owners' calculation of laytime and demurrage at the load port.

*Time spent at the discharge port (Becancour)*

32. The calculation of laytime and demurrage at the discharge port turns on whether, as the Charterers contend, there were breakdowns of the Vessel's grabs and cranes during discharge at Becancour.
33. If there were breakdowns, then it is clear that laytime and demurrage were interrupted as clause 34 provided, "*Anytime lost by reason of breakdown of vessel's cranes / grabs or vessel's equipment or by reason of neglect or fault of the vessel, it's Owners, master or crew shall not count as laytime or time on demurrage, pro rata to the number of cranes affected.*"
34. The Charterers say that the Vessel's cranes and grabs were inoperable or otherwise faulty, and that they were required to hire grabs from the shore. They rely on a Port Log produced by Gresco Ltee ("Gresco") who reported that the Vessel's no. 4 crane was "*defective*" between 0815 and 1000 LT on 4 February 2022, and that the same crane's grabs were "*inoperable*" between 1300 and 1345 LT on the same day.
35. However, the Owners deny that there were any breakdowns, and contend that the stevedores unilaterally rented shore grabs because they wanted to avoid the time it took to rig the ship's grabs to the ship's crane.
36. Accordingly, this issue turns on the weight of the factual evidence whether there any breakdowns or not.

37. The Owners submitted a witness statement of Mr Ray G. Gantuaqueo, the Chief Engineer ("C/E") on board the Vessel at the relevant time.
38. The C/E provided documentary evidence that the cranes and grabs had been inspected and certified by the Vessel's classification society, DNV, as recently as the Vessel's last dry docking in November 2021. Furthermore, they were inspected again at Damietta and were used without any issues for loading the Cargo.
39. The C/E also provided contemporaneous exchanges which establish that it was the stevedore's own decision to engage the shore grabs in order to speed up the discharge operation. For instance, on 4 February Gresco wrote to the Charterers and to the Owners' protecting agents, Navitrans, saying that the stevedores were switching to shore grabs to "*speed up process...as the ship's crew take too much time to rig / unrig ships grabs*". Navitrans responded that "*ships gear is at their disposal and fully functional*".
40. There was similar correspondence over the following days, and the Master included a remark in the Statement of Facts that the cranes and grabs were in working order.
41. The Charterers did not provide any witness evidence of their own, and it is very telling that Gresco did not claim that the cranes or grabs were defective, but simply that the stevedores preferred to use shore grabs as this was quicker.
42. On balance I prefer the Owners' evidence that there was no breakdown of the Vessel's cranes or grabs for the purposes of clause 34.
43. As a result I accept the Owners' laytime and demurrage calculations for the discharge port.
44. The Owners claim US\$ 305,456.25 in respect of demurrage. I have checked the Owners' calculation and agree with it and I award the Owners demurrage in this sum. In addition, the Charterers' counterclaim for despatch fails.

## **DETENTION AND OTHER DAMAGES**

*Damages for detention at Les Rasades*

45. The Charterers failed to pay the freight when it fell due according to the Charterparty, and this was compounded by the Charterers saying on several occasions that freight had been paid when this was not the case.
46. As explained by Maria Spiliotopoulou (“MS”) in her witness statement, on 11 January 2022, the day loading was completed, the Owners issued an invoice for the balance of freight outstanding in the sum of US\$ 1,170,076.25 which was due to the Owners by 14 January 2022 in accordance with clause 22.1 of the Charterparty.
47. As the freight due was not paid on 21 January 2022 the Owners exercised a lien over the Cargo pursuant to clause 8 of the Charterparty, and kept the Bill of Lading for the Cargo with their protective agents pending receipt of 100% of the freight payable (less commission) pursuant to clause 22.1.
48. As the Vessel approached Becancour MS began to investigate the most cost effective and safe way of maintaining their lien over the Cargo in the absence of payment. MS liaised with Navitrans and in a series of emails was advised:
- a) Attempting to anchor at Becancour was undesirable because it is rock bottomed and so vessels tend to drag their anchors when winds pick up or move because of ice flows and current. Navitrans said, “*Becancour is never a great option, even in summer. Same goes for Quebec City, and to some extent Trois-Rivieres...which might be your best option,,,generally vessels will stop at Les Rasades...*”.
  - b) Accordingly, whilst Les Rasades was not without its own challenges, it is a place where vessels generally stopped.
  - c) The Owners enquired whether the Cargo could be discharged into a bonded warehouse where they could continue to exercise their lien. However they were advised that neither this or tarping the Cargo on pier were realistic options.
  - d) Although there was a layby berth at Becancour, using the berth would have cost the Owners over CAD\$ 100,000 which was uneconomical.
49. The Charterers did not provide any evidence to contradict the advice which MS received from Navitrans. In their defence the Charterers put the onus on the Owners to justify their decision to order the Vessel to wait at Les Rasades, and I accept the evidence of MS and Navitrans that the only real

“show in town”, as they put it, was to anchor and wait there in order to protect their lien.

50. The Vessel was anchored at Les Rasades for 4 days and 6 hours from 1300 LT on 29 January 2022 until 1900 LT on 2 February 2022, as confirmed by the NOR and Port log.
51. In such circumstances owners often claim damages for detention at the charterparty demurrage rate, which is US\$ 33,000. However in this case the Owners have claimed damages for detention by reference to the Baltic Exchange Handysize Index for the whole period the Vessel remained at Les Rasades at the daily rate of US\$ 20,000 (US\$17,993.50 plus a daily bunker consumption of US\$ 2,000 comprising 3 MT of LSMGO, at about US\$670 per MT).
52. The Charterers have not objected to the Owners’ calculation of damages on this basis or submitted any contrary evidence, and I find that it was reasonable for the Owners to exercise their lien for freight and withhold the Bill of Lading for the Cargo at the Les Rasades anchorage. Accordingly, the Owners claim damages for detention in the sum of US\$ 85,000 succeeds.

*Other damages*

53. The Owners further claim as damages the costs and expenses incurred as a result of the Charterers’ failure to pay freight promptly in the sum of US\$37,021.15. Such costs are made up of:
  - A) the cost of obtaining Egyptian law advice (as a result of the Charterers’ failure to pay freight promptly and in full) in the sum of US\$ 2,000.
  - B) the cost of obtaining Canadian law advice in relation to the contractual lien in the sum of US\$ 12,686.50.
  - C) the cost of obtaining English law advice in relation to their rights as a result of the Charterers’ failure to pay freight promptly and in full in the sum of US\$ 22,334.65.
54. The Charterers submitted that the costs so claimed were excessive and exaggerated.
55. Where a charterer fails to pay freight promptly and in full they can reasonably anticipate the owners may take steps to protect their position by

the exercise of a lien or liens on cargo, bill of lading freight, and sub-freights. In doing so it can again reasonably be expected that the owner will obtain legal advice from lawyers in the relevant jurisdictions, and such advice usually has to be provided promptly if not as a matter of urgency.

56. In this matter I consider it was perfectly in order for the Owners to obtain legal advice in Egypt, Canada and England, and I consider that the cost of such advice was reasonable. As a result, I allow the Owners' claim in the sum of US\$36,858.11.
57. Accordingly, I find that the Owners' claim in the total sum of US\$ 427,477.40 succeeds in full.
58. The Owners have claimed interest on the sum due to them from 28 December 2021, being the date when 20% freight was due and not paid. The difficulty with this is that not all of the sums on which interest is payable had been incurred by 28 December 2021. Accordingly I award interest on the sum of USD 427,477.40 from 7 March 2022, being 30 days from the completion of discharge, and by when the sums claimed should have been paid.
59. As regards costs, the Owners have succeeded in their claim in full and, given that Section 61(2) of the Act provides that the general principle is that costs should follow the event, I consider that the Owners are entitled to recover their costs from the Charterers on the basis as set out in Section 63(5) of the Act. I reserve my jurisdiction to determine the Owners' recoverable costs.
60. I also consider that the Charterers should be responsible for the payment of my fee. I have provided for interest to run on the Owners' recoverable costs and on my fee pursuant to the provisions of Section 49 of the Act.

**NOW I**, the said Peter Jago, having taken upon myself the burden of this reference and having carefully and conscientiously considered the submissions and evidence (all documentary) and having given due weight thereto, **DO HERBY MAKE, ISSUE AND PUBLISH** this my **ARBITRATION AWARD** as follows: -

**(A) I FIND, HOLD AND ORDER** that the Owners' claim succeeds in the sum of USD 427,477.40 (United States Dollars Four hundred and

twenty-seven thousand four hundred and seventy-seven and forty cents) and the Charterers' counterclaim fails.

**(B) I THEREFORE AWARD AND ADJUDGE** that the Charterers shall pay the said sum of USD 427,477.40 (United States Dollars Four hundred and twenty-seven thousand four hundred and seventy-seven and forty cents) to the Owners together with interest thereon at the rate of 6% per annum and pro rata, compounded at three monthly rests, from 7 March 2022 until the date of payment of such sums to the Owners.

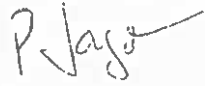
**(C) I FURTHER AWARD AND DIRECT** that the Charterers shall bear their own costs and shall forthwith pay to the Owners their recoverable costs in relation to this my Arbitration Award, on the basis as set out in Section 63(5) of the Arbitration Act 1996 (for the assessment of which, if not agreed, I hereby reserve my jurisdiction), together with interest thereon at the rate of 6% per annum and pro rata, compounded at three monthly rests, from the date of this my Arbitration Award until that of payment.

**(D) I FURTHER AWARD AND DIRECT** that the Charterers shall bear and pay the costs of this my Arbitration Award including interlocutory costs, which amount to a total of £8,250 (Pounds Sterling eight thousand two hundred and fifty) provided, however, that if in the first instance the Owners shall have paid any amount in respect of the said costs of this my Arbitration Award, they shall be entitled to the immediate reimbursement by the Charterers of the sum so paid, together with interest thereon, at the rate of 6% per annum and pro rata, compounded at three monthly rests, from the date of payment by the Owners until the date of reimbursement by the Charterers.

**(E) I HEREBY DECLARE** that this my Arbitration Award is final as to all matters determined herein and **I HEREBY RESERVE MY JURISDICTION** to determine by further award or awards any and all remaining issues between the parties.

Dated: this 5th day of August 2024.

Signed: At the seat of the Arbitration in England.

A handwritten signature in black ink, appearing to read "P. Jago". The signature is written in a cursive style with a long horizontal stroke extending to the right.

---

**PETER JAGO**

Dear Customer,

The following is the proof-of-delivery for tracking number: 816658421918

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**Delivery Information:**

---

<b>Status:</b>	Delivered	<b>Delivered To:</b>	Residence
<b>Signed for by:</b>	H.Houda	<b>Delivery Location:</b>	
<b>Service type:</b>	FedEx Standard Overnight		
<b>Special Handling:</b>	Deliver Weekday; Residential Delivery		LONDON, ON,
		<b>Delivery date:</b>	Oct 17, 2024 13:01

---

**Shipping Information:**

---

<b>Tracking number:</b>	816658421918	<b>Ship Date:</b>	Oct 16, 2024
		<b>Weight:</b>	0.2 LB/0.09 KG
<b>Recipient:</b>		<b>Shipper:</b>	
LONDON, ON, CA,		MONTREAL, PQ, CA,	

<b>Reference</b>	22575-3
------------------	---------

FedEx Express proof-of-delivery details appear below; however, no signature is currently available for this shipment. Please check again later for a signature.

Thank you for choosing FedEx

THIS IS EXHIBIT 5 TO THE AFFIDAVIT OF  
**DAVID G. COLFORD**  
SWORN TO BEFORE ME AT MONTREAL, QUEBEC  
THIS 5<sup>th</sup> DAY OF NOVEMBER 2024

*Genevieve Tremblay*



---

COMMISSIONER FOR OATHS FOR THE  
CITY AND DISTRICT OF MONTREAL



Government  
of Canada

Gouvernement  
du Canada

**Bankruptcy and Insolvency Records Search (BIA) search results |  
Résultats de la recherche dans le Registre des dossiers de faillite et d'insolvabilité (LFI)**

2024-10-29

Search Criteria | Critères de recherche :

Name | Nom = Atlantic Ocean Salt Inc., Name Type | Type de nom =  
Corporation | Personne morale  
22575-3

Reference | Référence :

A search of the Office of the Superintendent of Bankruptcy records has revealed no information, for the period 1978 to 2024-10-25, based on the search criteria above-mentioned.

Une recherche dans le registre du Bureau du surintendant des faillites n'a révélé aucune information pour la période allant de 1978 à 2024-10-25, selon les critères de recherche susmentionnés.

Canada



Protecting the  
Integrity of the  
Insolvency System

Protéger l'intégrité  
du système  
d'insolvabilité



Government  
of Canada

Gouvernement  
du Canada

## Search results - Bankruptcy and Insolvency Records Search

**i** To see detailed information on any listing, click on the name of the business or individual below. **Don't forget to print the information or save it to your desktop.**

**Search Criteria** Atlantic Ocean Salt Inc. > Corporation

[BIA \(Bankruptcy and Insolvency Act\) Records](#)

[Search](#)

[CCAA \(Companies' Creditors Arrangement Act\) Records](#)

**i** **Matches found: 0 Tokens Remaining: 0**

**Note:** Don't forget to print or save the details of the results of your search, even if only to show that there has been no bankruptcy or insolvency.

[View details of the results](#)

## MEMORANDUM OF FACT AND LAW

### I- The Facts

1. On or about December 28, 2021, Argo Ships S.A., the Applicant, entered into a voyage charter party with Atlantic Ocean Salt Inc., the Respondent, for the carriage of a cargo of salt from Egypt to Becancour, Quebec;

Affidavit of Merkouris, paragraphs 3 and 4, page 48

2. The charter party governed the essential terms of the carriage of the cargo, namely, the port of loading, the port of discharge, the nature and amount of cargo to be carried, the Respondent's responsibility to load and unload the cargo within a specific amount of time, failing which it would pay demurrage and other expenses and the freight. The charter party also provided for the forum of where any disputes under the charter party would be adjudicated, namely, in London, England (United Kingdom) in accordance with English law;

Affidavit of Merkouris, Exhibit A, pages 54-77

3. During the performance of the contract there were various delays with respect to the loading, the discharge, the failure to pay the freight owing when it was due, and other issues, for which the Applicant made claims for demurrage and other compensation and which were disputed by Respondent;

Affidavit of Merkouris, paragraph 3, page 48

4. In accordance with the charter party, the dispute was referred to arbitration in London, England before a sole arbitrator, Peter Jago, at which submissions were made by both the Applicant and the Respondent;

Affidavit of Merkouris, paragraphs 5 and 6, pages 48-49

5. On August 5, 2024, the sole arbitrator, Peter Jago, issued his Arbitration Award in favour of the Applicant directing the Respondent to pay the Applicant the sum of US \$ 427,477.40, assessing his fees at £8,250 and reserving his jurisdiction to assess the legal costs awarded in favour of the Applicant.

Affidavit of Merkouris, paragraphs 7, 8 and 9; page 49

Affidavit of Merkouris, Exhibit B, pages 79-92

6. On August 6, 2024, the Applicant paid Peter Jago his fees which were acknowledged.

Affidavit of Merkouris, paragraph 10, page 49

7. On October 16, 2024, the Applicant caused its Canadian solicitors to write a letter of demand for payment of the sums awarded under the Arbitration Award and to formally notify the Respondent of the Arbitration Award and to warn the Respondent that if payment was not made within a specified delay, the Applicant would seek to have its Arbitration Award recognized and enforced by proceedings before the Federal Court.

Affidavit of Colford, paragraph 8, page 97

Affidavit of Colford, Exhibit 4, pages 110-126

8. Despite personal delivery of the letter of demand and the warning contained therein, there was no response from Respondent or anyone on their behalf.

Affidavit of Colford, paragraph 9, page 97

9. Herein, the Applicant has made an application for recognition and enforcement of an arbitral award rendered in London, England (United Kingdom) by Peter Jago

on August 5, 2024 against the Respondent, Atlantic Ocean Salt Inc. and in favour of the Applicant, Argo Ships S.A., pursuant to the United Nations Foreign Arbitral Awards Convention Act, R.S.C.1985, c. 16 (2<sup>nd</sup> Supp.) as amended.

## **II – The Issue**

10. Is Applicant entitled to recognition and enforcement of the Arbitration Award of August 5, 2024 under Canadian Maritime Law?

## **III – Submissions**

11. Canada is a party to the 'Convention on the Recognition and Enforcement of Foreign Arbitral Awards', adopted by the United Nations Conference on International Commercial Arbitration in New York on June 10, 1958, which Canada ratified in the above cited statute, which itself incorporated by reference the convention as a schedule to the Act.

United Nations Foreign Arbitral Awards Convention Act, R.S.C.1985, c. 16 (2<sup>nd</sup> Supp.) as amended, s.2

Tab 1

12. The purpose of the convention is to obviate the necessity for successful parties to an agreement to arbitrate in their commercial contracts to recommence legal action after an arbitration award in their favour and debate the merits of their disputes with their contracting party in order to justify their position as creditors and to obtain judicial enforcement of awards in their favour.

United Nations Foreign Arbitral Awards Convention Act, opt.cit.,  
schedule, at Tab 1, Article III:

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

#### Article IV

**1** To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

**(a)** The duly authenticated original award or a duly certified copy thereof;

**(b)** The original agreement referred to in article II or a duly certified copy thereof.

13. The Federal Court has jurisdiction to apply this statute and accompanying convention in matters over which it has jurisdiction, such as demurrage arising from contracts of carriage by water and has Rules of Practice to govern the implementation of the convention.

Compania Maritima Villa Nova S.A. v Northern Sales Co. [1992] 1 F.C.550, 137 N.R.20 (F.C.A.) at Tab 2

Rules 326 to 334

14. To fulfill the requirements of the Rules, the Applicant is relying on three affidavits:

The Affidavit of Tzeison Merkouris Stylopoulos ("Merkouris"), pages 48-95

The Affidavit of Timon Karamanos-Cleminson ("Karamanos"), pages 4-47

The Affidavit of David G. Colford, "Colford", pages 96-129

15. The procedure is by way of application pursuant to Rule 327 and Rule 329(1) has the following requirements for affidavit(s) to show:

(a) a statement confirming that the foreign judgment or arbitral award was not fully satisfied as at the filing of the application;

Affidavit of Merkouris, paragraph 13, page 50

Affidavit of Karamanos, paragraph 10, page 5

Affidavit of Colford, paragraph 11, page 97

(b) a statement confirming that the debtor appeared in the original proceeding;

There is evidence in the award itself that the Respondent participated in the arbitral proceedings and contested various parts of the Applicant's claim and moreover, advanced a counter claim which was ruled upon. Moreover, it was represented during the arbitral proceedings by English counsel.

Affidavit of Merkouris, paragraphs 5 and 6, pages 48-49

Affidavit of Merkouris, Exhibit B, "Arbitral Award", paragraphs 2,5,7,24, 30, 32, 34, 52, and 54, pages 81, 82, 85, 86, 89

(c) an address in Canada for service on the creditor;

Argo Ships S.A.  
c/o Cabinet d'Avocats Brisset Bishop Inc.  
2110-1002 Sherbrooke Street West  
Montreal, Quebec  
H3A 3L6  
Attention: David Colford / Luce Bourbeau

Affidavit of Colford, paragraph 6, page 96

- (d)** the name and usual or last known address of the debtor;

Atlantic Ocean Salt Inc.  
7566 Silver Creek Crescent,  
London, Ontario  
N6P 0G6

Affidavit of Colford, paragraph 7, Exhibit 3, p. 97

- (e)** a statement indicating whether interest has accrued on the amount payable under the foreign judgment or arbitral award in accordance with the law of the state of the originating court or arbitral tribunal and, if interest has accrued, the rate of interest, the day from which it is payable, the amount due at the time of the filing of the application and, if applicable, the day on which interest ceases to accrue;

Affidavit of Merkouris, paragraph 4, Exhibit A "Charter Party" Box 25  
"Arbitration in London, English law to apply", page 59

Affidavit of Merkouris, paragraphs 8, 9, 11, page 49

Affidavit of Karamanos, paragraphs 4, 5, 7,8, page 4

Affidavit of Colford, paragraph 4, page and Exhibit 1, pages 101-102

- (f)** if applicable, the rate of exchange into Canadian currency prevailing on the day on which the foreign judgment was rendered or the arbitral award was made, as ascertained from a chartered bank in Canada;

Affidavit of Colford, paragraph 5, Exhibit 2, Bank of Canada website for August 6, 2024 (August 5, 2024 having been a bank holiday in Canada), page 103

- (g)** a statement confirming that, having made careful and full inquiries, the applicant knows of no impediment to registration of the foreign judgment or recognition and enforcement of the arbitral award;

Affidavit of Merkouris, paragraph 12, page 50

Affidavit of Karamanos, paragraph 9, page 5

Affidavit of Colford, paragraphs 10, 11 and 12, Exhibit 5 (Enquiry with the Canadian Office of the Superintendent of Bankruptcy) pages 97, 128-129

- (h)** a statement confirming that the foreign judgment or arbitral award is executory, that no appeal or other form of judicial review is pending and that any time prescribed for the making of an appeal or application for judicial review has expired.

Affidavit of Karamanos, paragraphs 2, 4, 7 and 8, page 4

- (i)** **(2)** The affidavit shall be accompanied by an exemplified or certified copy of the foreign judgment or arbitral award, any reasons — including dissenting reasons — and, in the case of an arbitral award, a copy of the arbitration agreement under which the award was made.

Affidavit of Merkouris, paragraphs 3 and 4, Exhibit A “Charter Party” Box 25 and clause 19, pages 48, 59, 64

Affidavit of Merkouris, paragraph 7, Exhibit B “Arbitration Award”, pages 49, 79-92

Affidavit of Karamanos, paragraph 6, Exhibit A « Arbitration Award »,  
pages 4, 7-20

16. Rule 331 requires that “unless the Court orders otherwise, an amount payable under a foreign judgment or an arbitral award shall be converted into the equivalent amount in Canadian currency on the basis of the rate of exchange, ascertained from a chartered bank in Canada, that was prevailing on the day on which the judgment was rendered or the award was made.”

The date of the arbitral award is August 5, 2024 and, since August 5, 2024 was a public holiday in Canada, on August 6, 2024, the exchange rate of US dollars and British pounds is 0.725 and 0.5709 respectively.

Affidavit of Colford, paragraph 5, Exhibit 2, pages 96, 103

17. Rule 332 governs both pre-judgment and post-judgment **Interest**

**332 (1)** Any interest on the amount payable under a foreign judgment or an arbitral award that has accrued to the day on which the judgment is registered or the award is recognized shall be added to the amount payable under the judgment or award.

**Interest rate**

**(2)** Unless the Court orders otherwise, the amount payable under a foreign judgment that is registered or an arbitral award that is recognized as a result of an application under rule 327 bears interest from the day on which it is registered or recognized at the rate set out in section 3 of the *Interest Act*.

Affidavit of Merkouris, paragraphs 8 and 9, page 49

Interest Act, R.S.C.1985, c.I-15, section 3, i.e. 5% per annum, simple interest –  
TAB 3

18. There is no requirement that the application be served on the Respondent prior to registration and a judgment recognizing and granting enforcement. In any event, the Respondent was hand delivered a letter of demand dated October 16, 2024 on October 17, 2024. There has been no response to that letter.

Affidavit of Colford, paragraph 9, and Exhibit 4, pages 97, 110-126

19. This application would not have been necessary but for the lack of response, at the very least, of the Respondent. Therefore, the Applicant asks for an award of the lump sum of \$1,500 in legal costs for this application being seven (7) units of column III of the Tariff plus disbursements.

Affidavit of David G. Colford, paragraph 14, page 98

#### **IV – Order Sought**

20. Accordingly, the Applicant asks this Court to issue Judgment recognizing and ordering enforcement of the Arbitration Award of Peter Jago, dated August 5, 2024 according to the terms set forth in the attached draft Judgment, to wit,
  1. The Application is granted;
  2. The Arbitral Award rendered in favour of Argo Ships S.A. and against Atlantic Ocean Salt Inc. in London, England (United Kingdom) by Peter Jago on August 5, 2024 is recognized and given full enforcement as a judgment of this Court;

3. Atlantic Ocean Salt Inc. is ordered to pay Argo Ships S.A. in Canadian currency, the sum of \$ 688,779.61 with interest at the rate of 6% pro rata, compounded quarterly from March 7, 2022 to the date of this judgment and at the rate of 5% simple interest from the date of this judgment to the date of payment;
4. In addition, Atlantic Ocean Salt Inc. is ordered to pay Argo Ships S.A., in Canadian currency, the sum of \$14,619.43 with interest at the rate of 6% pro rata, compounded quarterly, from August 6, 2024 until the date of this judgment and at the rate of 5% simple interest from the date of this judgment to the date of payment;
5. In further addition, the rights of Argo Ships S.A. to be reimbursed their legal costs and disbursements incurred and awarded by the aforesaid Peter Jago which remain to be assessed are fully reserved;
6. The whole with costs in favour of Argo Ships S.A., which are taxed in the lump sum of \$1,500.00

Draft Judgment, page 140

Dated at Montreal, this 7<sup>th</sup> day of November 2024



---

David G. Colford  
Cabinet d'Avocats Brisset Bishop Inc.  
2110 – 1002 Sherbrooke Street West  
Montreal, Quebec H3A 3L6  
Tel: 514 393 3700  
[davidcolford@brissetbishop.com](mailto:davidcolford@brissetbishop.com)  
Solicitor for Argo Ships S.A.

**FEDERAL COURT**

T- -24

**BY AND BETWEEN**

**ARGO SHIPS S.A.**

**Applicant**

**AND**

**ATLANTIC OCEAN SALT INC.**

**Respondent**

**Presiding:**

**At \_\_\_\_\_, this day of \_\_\_\_\_, 2024**

**Upon Applicant’s Application ex parte** for recognition and enforcement of an arbitral award rendered in London, England (United Kingdom) by Peter Jago on August 5, 2024 against the Respondent pursuant to the United Nations Foreign Arbitral Awards Convention Act, R.S.C.1985, c. 16 (2<sup>nd</sup> Supp.) as amended, having reviewed the materials and affidavits contained in the Applicant’s Motion Record, having heard counsel and having considered the matter, the Court rendered the following:

**JUDGEMENT**

1. The Application is granted;
2. The Arbitral Award rendered in favour of Argo Ships S.A. and against Atlantic Ocean Salt Inc. in London, England (United Kingdom) by Peter Jago on August 5, 2024 is recognized and given full enforcement as a judgment of this Court;
3. Atlantic Ocean Salt Inc. is ordered to pay Argo Ships S.A. in Canadian currency, the sum of \$ 688,779.61 with interest at the rate of 6% pro rata, compounded quarterly from March 7, 2022 to the date of this judgment and at the rate of 5% simple interest from the date of this judgment to the date of payment;
4. In addition, Atlantic Ocean Salt Inc. is ordered to pay Argo Ships S.A., in Canadian currency, the sum of \$14,619.43 with interest at the rate of 6% pro rata, compounded quarterly, from August 6, 2024 until the date of this judgment and at the rate of 5% simple interest from the date of this judgment to the date of payment;

5. In further addition, the rights of Argo Ships S.A. to be reimbursed their legal costs and disbursements incurred and awarded by the aforesaid Peter Jago which remain to be assessed are fully reserved;
  6. The whole with costs in favour of Argo Ships S.A., which are taxed in the lump sum of \$1,500.00
-

# TAB 1



CANADA

CONSOLIDATION

CODIFICATION

## United Nations Foreign Arbitral Awards Convention Act

## Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères

R.S.C. 1985, c. 16 (2nd Supp.)

S.R.C. 1985, ch. 16 (2<sup>e</sup> suppl.)

### NOTE

*[1986, c. 21, assented to 17th June, 1986]*

### NOTE

*[1986, ch. 21, sanctionné le 17 juin 1986]*

Current to October 14, 2024

Last amended on July 2, 2003

À jour au 14 octobre 2024

Dernière modification le 2 juillet 2003

## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

### Published consolidation is evidence

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

### Inconsistencies in Acts

**(2)** In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

## LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

## NOTE

This consolidation is current to October 14, 2024. The last amendments came into force on July 2, 2003. Any amendments that were not in force as of October 14, 2024 are set out at the end of this document under the heading "Amendments Not in Force".

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1<sup>er</sup> juin 2009, prévoient ce qui suit :

### Codifications comme élément de preuve

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

### Incompatibilité – lois

**(2)** Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

## MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

## NOTE

Cette codification est à jour au 14 octobre 2024. Les dernières modifications sont entrées en vigueur le 2 juillet 2003. Toutes modifications qui n'étaient pas en vigueur au 14 octobre 2024 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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**TABLE OF PROVISIONS****An Act to implement the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

	<b>Short Title</b>
1	Short title
	<b>Interpretation</b>
2	Definition of Convention
	<b>Convention Approved</b>
3	Convention approved
4	Limited to commercial matters
	<b>Inconsistent Laws</b>
5	Inconsistent laws
	<b>Courts</b>
6	Application to court
	<b>Publication</b>
7	Publication of notice
	<b>Regulations</b>
8	Regulations
	<b>Coming into Force</b>
*9	Coming into force

**SCHEDULE****Convention on the Recognition and Enforcement of Foreign Arbitral Awards****TABLE ANALYTIQUE****Loi de mise en œuvre de la Convention des Nations Unies pour la reconnaissance et l'exécution des sentences arbitrales étrangères**

	<b>Titre abrégé</b>
1	Titre abrégé
	<b>Définition</b>
2	Définition de Convention
	<b>Approbation</b>
3	Approbation
4	Restriction
	<b>Incompatibilité</b>
5	Incompatibilité
	<b>Tribunaux</b>
6	Demande au tribunal
	<b>Publication</b>
7	Avis
	<b>Règlements</b>
8	Règlements
	<b>Entrée en vigueur</b>
*9	Entrée en vigueur

**ANNEXE****Convention pour la reconnaissance et l'exécution des sentences arbitrales étrangères**



R.S.C. 1985, c. 16 (2nd Supp.)

S.R.C. 1985, ch. 16 (2<sup>e</sup> suppl.)

## An Act to implement the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards

## Loi de mise en œuvre de la Convention des Nations Unies pour la reconnaissance et l'exécution des sentences arbitrales étrangères

### Short Title

### Titre abrégé

#### Short title

**1** This Act may be cited as the *United Nations Foreign Arbitral Awards Convention Act*.

#### Titre abrégé

**1** *Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères.*

### Interpretation

### Définition

#### Definition of *Convention*

**2** In this Act, *Convention* means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations Conference on International Commercial Arbitration in New York on June 10, 1958, as set out in the schedule.

#### Définition de *Convention*

**2** Dans la présente loi, *Convention* s'entend de la Convention pour la reconnaissance et l'exécution des sentences arbitrales étrangères adoptée par la Conférence des Nations Unies sur l'arbitrage commercial international tenue à New York le 10 juin 1958 et dont le texte est reproduit en annexe.

### Convention Approved

### Approbation

#### Convention approved

**3** The Convention is approved and declared to have the force of law in Canada during such period as, by its terms, the Convention is in force.

#### Approbation

**3** La Convention est approuvée et a force de loi au Canada pendant la durée de validité prévue par son dispositif.

#### Limited to commercial matters

**4 (1)** The Convention applies only to differences arising out of commercial legal relationships, whether contractual or not.

#### Restriction

**4 (1)** La Convention n'est applicable qu'aux différends découlant d'un rapport commercial de droit, contractuel ou non contractuel.

#### When applicable

**(2)** The Convention applies to arbitral awards and arbitration agreements whether made before or after the coming into force of this Act.

#### Application

**(2)** La Convention s'applique aux sentences arbitrales rendues et aux conventions d'arbitrage conclues avant ou après l'entrée en vigueur de la présente loi.

## Inconsistent Laws

### Inconsistent laws

**5** In the event of any inconsistency between the provisions of this Act, or the Convention, and the provisions of any other law, the provisions of this Act and the Convention prevail to the extent of the inconsistency.

## Courts

### Application to court

**6** For the purpose of seeking recognition and enforcement of an arbitral award pursuant to the Convention, application may be made to any superior, district or county court.

R.S., 1985, c. 16 (2nd Supp.), s. 6; 2002, c. 8, s. 178.

## Publication

### Publication of notice

**7** The Minister of Justice shall cause a notice of the day the Convention comes into force and of the day it ceases to be in force to be published in the *Canada Gazette* within sixty days after its coming into force or ceasing to be in force, and a notice so published shall be judicially noticed.

## Regulations

### Regulations

**8** The Minister of Justice may make such regulations as are necessary for the purpose of carrying out the Convention or for giving effect to any of the provisions thereof.

## Coming into Force

### Coming into force

**9** This Act shall come into force on a day to be fixed by proclamation.

\* [Note: Act in force August 10, 1986, see SI/86-154.]

## Incompatibilité

### Incompatibilité

**5** Les dispositions de la présente loi et la Convention l'emportent sur les dispositions incompatibles de toute autre loi.

## Tribunaux

### Demande au tribunal

**6** Une demande de reconnaissance et d'exécution d'une sentence arbitrale aux termes de la Convention peut être faite à toute cour supérieure, de district ou de comté.

L.R. (1985), ch. 16 (2<sup>e</sup> suppl.), art. 6; 2002, ch. 8, art. 178.

## Publication

### Avis

**7** Le ministre de la Justice fait publier dans la *Gazette du Canada* avis de la date d'entrée en vigueur de la Convention ou de sa date de cessation d'effet dans les soixante jours suivant cette date. L'avis est admis d'office.

## Règlements

### Règlements

**8** Le ministre de la Justice peut prendre les règlements nécessaires à l'exécution de tout ou partie de la Convention.

## Entrée en vigueur

### Entrée en vigueur

**9** La présente loi entre en vigueur à la date fixée par proclamation.

\* [Note: Loi en vigueur le 10 août 1986, voir TR/86-154.]

## SCHEDULE

(Section 2)

# Convention on the Recognition and Enforcement of Foreign Arbitral Awards

## Article I

**1** This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

**2** The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

**3** When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

## Article II

**1** Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

**2** The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

**3** The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

## Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of

## ANNEXE

(article 2)

# Convention pour la reconnaissance et l'exécution des sentences arbitrales étrangères

## Article premier

**1** La présente Convention s'applique à la reconnaissance et à l'exécution des sentences arbitrales rendues sur le territoire d'un État autre que celui où la reconnaissance et l'exécution des sentences sont demandées, et issues de différends entre personnes physiques ou morales. Elle s'applique également aux sentences arbitrales qui ne sont pas considérées comme sentences nationales dans l'État où leur reconnaissance et leur exécution sont demandées.

**2** On entend par « sentences arbitrales » non seulement les sentences rendues par des arbitres nommés pour des cas déterminés, mais également celles qui sont rendues par des organes d'arbitrage permanents auxquels les parties se sont soumises.

**3** Au moment de signer ou de ratifier la présente Convention, d'y adhérer ou de faire la notification d'extension prévue à l'article X, tout État pourra, sur la base de la réciprocité, déclarer qu'il appliquera la Convention à la reconnaissance et à l'exécution des seules sentences rendues sur le territoire d'un autre État contractant. Il pourra également déclarer qu'il appliquera la Convention uniquement aux différends issus de rapports de droit, contractuels ou non contractuels, qui sont considérés comme commerciaux par sa loi nationale.

## Article II

**1** Chacun des États contractants reconnaît la convention écrite par laquelle les parties s'obligent à soumettre à un arbitrage tous les différends ou certains des différends qui se sont élevés ou pourraient s'élever entre elles au sujet d'un rapport de droit déterminé, contractuel ou non contractuel, portant sur une question susceptible d'être réglée par voie d'arbitrage.

**2** On entend par « convention écrite » une clause compromissoire insérée dans un contrat, ou un compromis, signés par les parties ou contenus dans un échange de lettres ou de télégrammes.

**3** Le tribunal d'un État contractant, saisi d'un litige sur une question au sujet de laquelle les parties ont conclu une convention au sens du présent article, renverra les parties à l'arbitrage, à la demande de l'une d'elles, à moins qu'il ne constate que ladite convention est caduque, inopérante ou non susceptible d'être appliquée.

## Article III

Chacun des États contractants reconnaîtra l'autorité d'une sentence arbitrale et accordera l'exécution de cette sentence

procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

## Article IV

**1** To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

- (a)** The duly authenticated original award or a duly certified copy thereof;
- (b)** The original agreement referred to in article II or a duly certified copy thereof.

**2** If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for the recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

## Article V

**1** Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- (a)** The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b)** The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c)** The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (d)** The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e)** The award has not yet become binding on the parties, or has been set aside or suspended by a competent

conformément aux règles de procédure suivies dans le territoire où la sentence est invoquée, aux conditions établies dans les articles suivants. Il ne sera pas imposé, pour la reconnaissance ou l'exécution des sentences arbitrales auxquelles s'applique la présente Convention, de conditions sensiblement plus rigoureuses, ni de frais de justice sensiblement plus élevés, que ceux qui sont imposés pour la reconnaissance ou l'exécution des sentences arbitrales nationales.

## Article IV

**1** Pour obtenir la reconnaissance et l'exécution visées à l'article précédent, la partie qui demande la reconnaissance et l'exécution doit fournir, en même temps que la demande :

- a)** l'original dûment authentifié de la sentence ou une copie de cet original réunissant les conditions requises pour son authenticité;
- b)** l'original de la convention visée à l'article II, ou une copie réunissant les conditions requises pour son authenticité.

**2** Si ladite sentence ou ladite convention n'est pas rédigée dans une langue officielle du pays où la sentence est invoquée, la partie qui demande la reconnaissance et l'exécution de la sentence aura à produire une traduction de ces pièces dans cette langue. La traduction devra être certifiée par un traducteur officiel ou un traducteur juré ou par un agent diplomatique ou consulaire.

## Article V

**1** La reconnaissance et l'exécution de la sentence ne seront refusées, sur requête de la partie contre laquelle elle est invoquée, que si cette partie fournit à l'autorité compétente du pays où la reconnaissance et l'exécution sont demandées la preuve :

- a)** que les parties à la convention visée à l'article II étaient, en vertu de la loi à elles applicable, frappées d'une incapacité, ou que ladite convention n'est pas valable en vertu de la loi à laquelle les parties l'ont subordonnée ou, à défaut d'une indication à cet égard, en vertu de la loi du pays où la sentence a été rendue; ou
- b)** que la partie contre laquelle la sentence est invoquée n'a pas été dûment informée de la désignation de l'arbitre ou de la procédure d'arbitrage, ou qu'il lui a été impossible, pour une autre raison, de faire valoir ses moyens; ou
- c)** que la sentence porte sur un différend non visé dans le compromis ou n'entrant pas dans les prévisions de la clause compromissoire, ou qu'elle contient des décisions qui dépassent les termes du compromis ou de la clause compromissoire; toutefois, si les dispositions de la sentence qui ont trait à des questions soumises à l'arbitrage peuvent être dissociées de celles qui ont trait à des questions non soumises à l'arbitrage, les premières pourront être reconnues et exécutées; ou
- d)** que la constitution du tribunal arbitral ou la procédure d'arbitrage n'a pas été conforme à la convention des parties, ou, à défaut de convention, qu'elle n'a pas été conforme à la loi du pays où l'arbitrage a eu lieu; ou

authority of the country in which, or under the law of which, that award was made.

**2** Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

- (a)** The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b)** The recognition or enforcement of the award would be contrary to the public policy of that country.

## Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

## Article VII

**1** The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

**2** The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

## Article VIII

**1** This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

**2** This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

## Article IX

**1** This Convention shall be open for accession to all States referred to in article VIII.

**2** Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**e)** que la sentence n'est pas encore devenue obligatoire pour les parties ou a été annulée ou suspendue par une autorité compétente du pays dans lequel, ou d'après la loi duquel, la sentence a été rendue.

**2** La reconnaissance et l'exécution d'une sentence arbitrale pourront aussi être refusées si l'autorité compétente du pays où la reconnaissance et l'exécution sont requises constate :

- a)** que, d'après la loi de ce pays, l'objet du différend n'est pas susceptible d'être réglé par voie d'arbitrage; ou
- b)** que la reconnaissance ou l'exécution de la sentence serait contraire à l'ordre public de ce pays.

## Article VI

Si l'annulation ou la suspension de la sentence est demandée à l'autorité compétente visée à l'article V, paragraphe 1e), l'autorité devant qui la sentence est invoquée peut, si elle l'estime approprié, surseoir à statuer sur l'exécution de la sentence; elle peut aussi, à la requête de la partie qui demande l'exécution de la sentence, ordonner à l'autre partie de fournir des sûretés convenables.

## Article VII

**1** Les dispositions de la présente Convention ne portent pas atteinte à la validité des accords multilatéraux ou bilatéraux conclus par les États contractants en matière de reconnaissance et d'exécution de sentences arbitrales et ne privent aucune partie intéressée du droit qu'elle pourrait avoir de se prévaloir d'une sentence arbitrale de la manière et dans la mesure admises par la législation ou les traités du pays où la sentence est invoquée.

**2** Le Protocole de Genève de 1923 relatif aux clauses d'arbitrage et la Convention de Genève de 1927 pour l'exécution des sentences arbitrales étrangères cesseront de produire leurs effets entre les États contractants du jour, et dans la mesure, où ceux-ci deviendront liés par la présente Convention.

## Article VIII

**1** La présente Convention est ouverte jusqu'au 31 décembre 1958 à la signature de tout État Membre des Nations Unies, ainsi que de tout autre État qui est, ou deviendra par la suite, membre d'une ou plusieurs institutions spécialisées des Nations Unies ou partie au Statut de la Cour internationale de Justice, ou qui aura été invité par l'Assemblée générale des Nations Unies.

**2** La présente Convention doit être ratifiée et les instruments de ratification déposés auprès du Secrétaire général de l'Organisation des Nations Unies.

## Article IX

**1** Tous les États visés à l'article VIII peuvent adhérer à la présente Convention.

**2** L'adhésion se fera par le dépôt d'un instrument d'adhésion auprès du Secrétaire général de l'Organisation des Nations Unies.

## Article X

**1** Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

**2** At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

**3** With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

## Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

**(a)** With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

**(b)** With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

**(c)** A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

## Article XII

**1** This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

**2** For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

## Article X

**1** Tout État pourra, au moment de la signature, de la ratification ou de l'adhésion, déclarer que la présente Convention s'étendra à l'ensemble des territoires qu'il représente sur le plan international, ou à l'un ou plusieurs d'entre eux. Cette déclaration produira ses effets au moment de l'entrée en vigueur de la Convention pour ledit État.

**2** Par la suite, toute extension de cette nature se fera par notification adressée au Secrétaire général de l'Organisation des Nations Unies et produira ses effets à partir du quatre-vingt-dixième jour qui suivra la date à laquelle le Secrétaire général de l'Organisation des Nations Unies aura reçu la notification, ou à la date d'entrée en vigueur de la Convention pour ledit État si cette dernière date est postérieure.

**3** En ce qui concerne les territoires auxquels la présente Convention ne s'applique pas à la date de la signature, de la ratification ou de l'adhésion, chaque État intéressé examinera la possibilité de prendre les mesures voulues pour étendre la Convention à ces territoires, sous réserve le cas échéant, lorsque des motifs constitutionnels l'exigeront, de l'assentiment des gouvernements de ces territoires.

## Article XI

Les dispositions ci-après s'appliqueront aux États fédératifs ou non unitaires :

**a)** en ce qui concerne les articles de la présente Convention qui relèvent de la compétence législative du pouvoir fédéral, les obligations du gouvernement fédéral seront les mêmes que celles des États contractants qui ne sont pas des États fédératifs;

**b)** en ce qui concerne les articles de la présente Convention qui relèvent de la compétence législative de chacun des États ou provinces constituants, qui ne sont pas, en vertu du système constitutionnel de la fédération, tenus de prendre des mesures législatives, le gouvernement fédéral portera le plus tôt possible, et avec son avis favorable, lesdits articles à la connaissance des autorités compétentes des États ou provinces constituants;

**c)** un État fédératif partie à la présente Convention communiquera, à la demande de tout autre État contractant qui lui aura été transmise par l'intermédiaire du Secrétaire général de l'Organisation des Nations Unies, un exposé de la législation et des pratiques en vigueur dans la fédération et ses unités constituantes, en ce qui concerne telle ou telle disposition de la Convention, indiquant la mesure dans laquelle effet a été donné, par une action législative ou autre, à ladite disposition.

## Article XII

**1** La présente Convention entrera en vigueur le quatre-vingt-dixième jour qui suivra la date du dépôt du troisième instrument de ratification ou d'adhésion.

**2** Pour chacun des États qui ratifieront la Convention ou y adhéreront après le dépôt du troisième instrument de ratification ou d'adhésion, elle entrera en vigueur le quatre-vingt-dixième jour qui suivra la date du dépôt par cet État de son instrument de ratification ou d'adhésion.

## Article XIII

**1** Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

**2** Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

**3** This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

## Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

## Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

- (a)** Signatures and ratifications in accordance with article VIII;
- (b)** Accessions in accordance with article IX;
- (c)** Declarations and notifications under articles I, X and XI;
- (d)** The date upon which this Convention enters into force in accordance with article XII;
- (e)** Denunciations and notifications in accordance with article XIII.

## Article XVI

**1** This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

**2** The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

## Article XIII

**1** Tout État contractant pourra dénoncer la présente Convention par notification écrite adressée au Secrétaire général de l'Organisation des Nations Unies. La dénonciation prendra effet un an après la date où le Secrétaire général de l'Organisation des Nations Unies aura reçu la notification.

**2** Tout État qui aura fait une déclaration ou une notification conformément à l'article X pourra notifier ultérieurement au Secrétaire général de l'Organisation des Nations Unies que la Convention cessera de s'appliquer au territoire en question un an après la date à laquelle le Secrétaire général aura reçu cette notification.

**3** La présente Convention demeurera applicable aux sentences arbitrales au sujet desquelles une procédure de reconnaissance ou d'exécution aura été entamée avant l'entrée en vigueur de la dénonciation.

## Article XIV

Un État contractant ne peut se réclamer des dispositions de la présente Convention contre d'autres États contractants que dans la mesure où il est lui-même tenu d'appliquer cette convention.

## Article XV

Le Secrétaire général de l'Organisation des Nations Unies notifiera à tous les États visés à l'article VIII :

- a)** les signatures et ratifications visées à l'article VIII;
- b)** les adhésions visées à l'article IX;
- c)** les déclarations et notifications visées aux articles premier, X et XI;
- d)** la date où la présente Convention entrera en vigueur, en application de l'article XII;
- e)** les dénonciations et notifications visées à l'article XIII.

## Article XVI

**1** La présente Convention, dont les textes anglais, chinois, espagnol, français et russe font également foi, sera déposée dans les archives de l'Organisation des Nations Unies.

**2** Le Secrétaire général de l'Organisation des Nations Unies remettra une copie certifiée conforme de la présente Convention aux États visés à l'article VIII.

# TAB 2

A-319-89

**Northern Sales Company Limited (Appellant)**  
(Defendant)

v.

**Compania Maritima Villa Nova S.A. (Respondent)**  
(Plaintiff)

*INDEXED AS: COMPANIA MARITIMA VILLA NOVA S.A. v. NORTHERN SALES CO. (C.A.)*

Court of Appeal, Heald, Mahoney and Stone, J.J.A.—Winnipeg, November 4; Ottawa, November 20, 1991.

*Maritime law — Foreign maritime arbitral awards — Carriage by sea — Charterparty providing for settlement of disputes in London — Dispute over demurrage charges settled by arbitration there — Application in Federal Court for enforcement of award — Appeal from Trial Division determination of points of law: (1) Award enforceable in Canada notwithstanding plaintiff's failure to enforce demurrage claim against receiver; (2) Plaintiff's failure to enforce claim for demurrage against receiver not depriving arbitrators of jurisdiction pursuant to reference; (3) 1985 arbitral award enforceable in Federal Court of Canada under 1986 United Nations Foreign Arbitral Awards Convention Act; (4) Enforceability of award in Canada not affected by fact plaintiff's original cause of action statute barred under laws of England when action commenced in Canada — Act not ultra vires Parliament — Nature of arbitration award at common law.*

*Constitutional law — Distribution of powers — United Nations Foreign Arbitral Awards Act intra vires Parliament as Act valid federal legislation for enforcement in Canada of foreign arbitral awards having federal character in constitutional sense — Act not overly broad in view of presumption statutes not intended to exceed jurisdiction — Enforcement of award herein falling within federal legislative competence over navigation and shipping.*

*Federal Court jurisdiction — Trial Division — Creation of cause of action for enforcement of foreign maritime arbitral awards legitimate Canadian maritime law within Federal Court Act, s. 2 — Enforcement of award within federal legislative competence over navigation and shipping.*

A-319-89

**Northern Sales Company Limited (appelante)**  
(défenderesse)

a c.

**Compania Maritima Villa Nova S.A. (intimée)**  
(demanderesse)

*RÉPERTORIÉ: COMPANIA MARITIMA VILLA NOVA S.A. c. NORTHERN SALES CO. (C.A.)*

Cour d'appel, juges Heald, Mahoney et Stone, J.C.A.—Winnipeg, 4 novembre; Ottawa, 20 novembre 1991.

*Droit maritime — Sentences arbitrales étrangères en matière maritime — Transport maritime — Charte-partie prévoyant le règlement de litiges à Londres — Litige portant sur les droits de surestaries résolu à Londres suite à une procédure d'arbitrage — Demande à la Cour fédérale visant l'exécution de la sentence — Appel de la décision de la Section de première instance sur des points de droit: (1) La sentence est exécutoire au Canada malgré l'omission de la demanderesse de faire exécuter sa demande en recouvrement des droits de surestaries contre le réceptionnaire; (2) L'omission de la demanderesse de faire exécuter sa demande en recouvrement des droits de surestaries contre le réceptionnaire n'a pas pour effet de priver les arbitres de la compétence qui leur est conférée par le renvoi; (3) La sentence arbitrale de 1985 peut être exécutée devant la Cour fédérale du Canada en vertu des dispositions de la Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères de 1986; (4) Le caractère exécutoire de la sentence au Canada n'est pas touché par le fait que le fait générateur du litige de la demanderesse était prescrit en vertu des lois de l'Angleterre au moment où l'action a été introduite au Canada — La Loi n'est pas exorbitante du Parlement — Nature de la sentence arbitrale en common law.*

*Droit constitutionnel — Partage des pouvoirs — La Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères n'est pas exorbitante du Parlement puisqu'il s'agit d'une loi fédérale valide visant l'exécution au Canada de sentences arbitrales étrangères dont la nature est, du point de vue constitutionnel, fédérale — La portée de la Loi n'est pas trop générale compte tenu de la présomption selon laquelle les lois ne visent pas à excéder la compétence — L'exécution de la sentence en cause relève de la compétence législative fédérale relativement à la navigation et aux bâtiments et navires.*

*Compétence de la Cour fédérale — Section de première instance — La naissance de la cause d'action à l'égard de l'exécution de sentences arbitrales étrangères en matière maritime relève du droit maritime canadien au sens de l'art. 2 de la Loi sur la Cour fédérale — L'exécution d'une sentence relève de la compétence législative fédérale relativement à la navigation et aux bâtiments et navires.*

*Conflict of laws — Foreign maritime arbitral awards — Charterparty calling for settlement of disputes in London — Time limitation for bringing action in Canadian court for enforcement of arbitral award governed by Canadian law.*

The appellant entered into a charterparty agreement in January 1978 with the respondent as owner of the *Grecian Isles* for the carriage of a cargo of grain from Vancouver to Bombay, India. The charterparty contained an arbitration clause providing that disputes would be referred to arbitrators in London, England. A dispute over demurrage was settled by arbitration in May 1985. An action for the enforcement of the arbitral award was instituted in the Trial Division in May 1987. This was an appeal from the affirmative answers given by Strayer J. to the following questions put to the Court by the parties on points of law: (1) Was the award enforceable in Canada under the provisions of the *United Nations Foreign Arbitral Awards Convention Act*? (2) Could the award be enforced in Canada even if the original cause of action was statute-barred under the laws of England when action was commenced in Canada? (3) Could the award be enforced in Canada even if the plaintiff failed to enforce its claim for demurrage against the receiver of the goods? (4) Did the failure of the plaintiff to enforce its claim against the receiver of the goods deprive the arbitrators of jurisdiction? Upon this appeal the appellant also raised a constitutional question as to whether the *United Nations Foreign Arbitral Awards Convention Act* was *ultra vires* Parliament by reason of its encroachment on provincial jurisdiction.

*Held*, the constitutional question should be answered in the negative, the answers given by the Motions Judge should be confirmed and the appeal dismissed.

The argument against the enforceability of the award was without foundation as a failure by the respondent to enforce its claim against the receiver would not preclude a determination by arbitrators that the appellant was liable for a portion of the respondent's claim. Nor did that alleged failure deprive the arbitrators of any jurisdiction pursuant to the reference. The contested liability of the appellant for demurrage was the very matter they were authorized to decide and did decide. The appellant's real complaint was that the arbitrators did not take into account a particular defence which it had advanced.

There was no doubt that Parliament did possess the power to adopt the Act as valid federal legislation for the recognition and enforcement in Canada of foreign arbitral awards having a federal character in a constitutional sense. Whether a particular award is one whose enforcement falls within the proper ambit of the legislation may, however, have to be determined in individual cases. Secondly, express language limiting the operation of the Act to awards falling within the federal legislative sphere was not necessary. There is a *presumptio juris* as to the

*Conflit des lois — Sentences arbitrales étrangères en matière maritime — La charte-partie prévoit le règlement des litiges à Londres — Le droit canadien régit le délai pour intenter devant un tribunal canadien une action en exécution d'une sentence arbitrale.*

En janvier 1978, l'appelante a conclu avec l'intimée, propriétaire du *Grecian Isles*, une charte-partie prévoyant le transport d'une cargaison de grain de Vancouver à Bombay, en Inde. La charte-partie contenait une clause compromissoire prévoyant que les conflits seraient soumis à des arbitres à Londres (Angleterre). Un conflit sur les droits de surestaries a été réglé suite à un arbitrage en mai 1985. En mai 1987, une action a été introduite devant la Section de première instance en vue de l'exécution de la sentence arbitrale. Il s'agissait en l'espèce d'un appel des réponses positives données par le juge Strayer aux questions suivantes soulevées devant la Cour par les parties sur certains points de droit: (1) La sentence peut-elle être exécutée au Canada en vertu des dispositions de la *Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères*? (2) La sentence peut-elle être exécutée au Canada même si le fait générateur du litige était prescrit en vertu des lois de l'Angleterre au moment où l'action a été introduite au Canada? (3) La sentence peut-elle être exécutée au Canada même si la demanderesse n'a pas fait exécuter sa demande en recouvrement des droits de surestaries contre le réceptionnaire de la cargaison? (4) L'omission par la demanderesse de faire exécuter sa demande contre le réceptionnaire de la cargaison prive-t-elle les arbitres de compétence? L'appelante a également soulevé dans cet appel la question constitutionnelle de savoir si la *Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères* est exorbitante du Parlement au motif qu'elle empiète sur une compétence provinciale.

*Arrêt*: la question constitutionnelle devrait recevoir une réponse négative, les réponses données par le juge des requêtes devraient être confirmées et l'appel rejeté.

L'argument à l'encontre du caractère exécutoire de la sentence était sans fondement puisque l'omission par l'intimée de faire exécuter sa demande contre le réceptionnaire n'empêchait pas les arbitres de statuer que l'appelante était redevable à l'intimée pour une partie de sa demande. De même, l'omission présumée n'a pas eu pour effet de priver les arbitres de la compétence qui leur est conférée par renvoi. L'obligation contestée de l'appelante d'acquitter les droits de surestaries était la question même qu'ils étaient en droit de régler et ils l'ont effectivement réglée. La véritable plainte de l'appelante porte sur le fait que les arbitres n'ont pas tenu compte d'un certain moyen de défense qu'elle avait invoqué.

Il n'y a aucun doute que le Parlement possédait effectivement le pouvoir d'adopter la Loi à titre de législation fédérale valide visant la reconnaissance et l'exécution au Canada de sentences arbitrales étrangères dont la nature est, du point de vue constitutionnel, fédérale. La question se posera toutefois de savoir, lors d'affaires particulières, si l'exécution d'une certaine sentence se situe dans la juste portée de la législation. En deuxième lieu, il n'est pas nécessaire d'utiliser des termes explicites pour restreindre l'application de la Loi à des sen-

existence of the *bona fide* intention of a legislative body to confine itself to its own sphere and a presumption of similar nature that general words in a statute are not intended to extend its operation beyond the territorial authority of the legislature. Thirdly, the kind of award with which the Court was here concerned—having regard to its origin in a charterparty agreement, an undoubted maritime contract, and to the underlying claim for demurrage, an undoubted maritime claim—fell within “Canadian maritime law” as this term is now understood, and such law rests on the legislative competence of Parliament under subsection 91(10) of the *Constitution Act, 1867*. It was important to bear in mind the nature of an arbitration award at common law. It is the award coupled with the implied promise to pay it which creates a fresh cause of action.

Parliament could invest the Trial Division with jurisdiction to entertain this cause of action. The three requirements for the existence of jurisdiction in the Trial Division (set by the Supreme Court of Canada in *ITO—International Terminal Operators*) were met in the case at bar. (1) The statutory grant of jurisdiction was found in section 6 of the Act and in paragraph 22(2)(j) of the *Federal Court Act*. (2) The existing body of federal law essential to the disposition of the case and nourishing the jurisdiction was found in Canadian maritime law, which includes arbitral awards of this kind. (3) That law was “a law of Canada”.

With respect to the limitation of action question, it is well-established in both Canadian and English law that limitation statutes of this nature are procedural in character and the relevant provisions are those of the *lex fori*. Thus the matter of the limitation period applicable to an action in a Canadian court to enforce an award is governed by Canadian law—subsection 39(2) of the *Federal Court Act* which provides that the action must be commenced within six years of the date that the cause of action arose. In this case, the cause of action arose on the date of the award: May 24, 1985, and the action was instituted in the Trial Division in 1987, well within the six-year limitation period.

#### STATUTES AND REGULATIONS JUDICIALLY CONSIDERED

- Constitution Act, 1867*, 30 & 31 Vict., c. 3 (U.K.) (as am. by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5], ss. 91(10), 92(13),(14),(16).  
*Federal Court Act*, R.S.C., 1985, c. F-7, s. 2, 22(2)(j), 39(2).  
*Federal Court Rules*, C.R.C., c. 663, RR. 474 (as am. by SOR/79-57, s. 14), 1101.  
*Limitations Act 1980*, 1980, c. 58 (U.K.), s. 7.

tences se situant dans le cadre législatif fédéral. Il existe une présomption *de juris* quant à l'existence de l'intention véritable d'un organisme législatif d'agir dans les limites de sa compétence et une présomption semblable que les termes généraux employés dans une loi n'ont pas pour effet d'étendre son application au-delà de la compétence territoriale de la législature. En troisième lieu, le genre de sentence sur laquelle la Cour devait se prononcer en l'espèce—quant à son origine dans la charte-partie, un contrat sans aucun doute maritime, et quant à la demande sous-jacente de recouvrement de droits de surestaries, une demande sans contredit maritime—relève du «droit maritime canadien» tel que nous le connaissons aujourd'hui, un tel ensemble de règles de droit relevant de la compétence législative du Parlement en vertu du paragraphe 91(10) de la *Loi constitutionnelle de 1867*. Il est important de garder à l'esprit la nature d'une sentence arbitrale en common law. La sentence, jointe à la promesse implicite de la payer, crée une nouvelle cause d'action.

Il était du ressort du Parlement de conférer à la Section de première instance la compétence de connaître de cette cause d'action. Les trois conditions nécessaires à l'existence de la compétence de la Section de première instance (formulées par la Cour suprême du Canada dans l'arrêt *ITO—International Terminal Operators*) ont été respectées en l'espèce. (1) L'attribution de la compétence par une loi se trouve à l'article 6 de la Loi et à l'alinéa 22(2)(j) de la *Loi sur la Cour fédérale*. (2) Le droit maritime canadien, qui inclut les sentences arbitrales de ce genre, renferme l'ensemble actuel de règles de droit fédérales essentiel à la résolution de l'affaire et constituant le fondement de l'attribution de la compétence. (3) Cette loi était «une loi du Canada».

Au chapitre du délai de prescription d'une action, le droit canadien et le droit anglais prévoient clairement que les lois de ce genre en matière de prescription sont de nature procédurale et que les dispositions pertinentes sont celles de la *lex fori*. Ainsi, le droit canadien régit la question relative au délai de prescription applicable à une action en exécution d'une sentence intentée devant un tribunal canadien—le paragraphe 39(2) de la *Loi sur la Cour fédérale* prévoit que le délai de prescription est de six ans à compter du fait générateur du litige. En l'espèce, le fait générateur est survenu le jour où la sentence a été rendue, soit le 24 mai 1985, et l'action a été intentée devant la Section de première instance en 1987, bien avant que le délai de prescription de six ans ne soit écoulé.

#### LOIS ET RÈGLEMENTS

- Limitations Act 1980*, 1980, chap. 58 (R.-U.), art. 7.  
*Loi constitutionnelle de 1867*, 30 & 31 Vict., chap. 3 (R.-U.) (mod. par la *Loi de 1982 sur le Canada*, 1982, chap. 11 (R.-U.), annexe de la *Loi constitutionnelle de 1982*, n° 1) [L.R.C. (1985), appendice II, n° 5], art. 91(10), n° 92(13),(14),(16).  
*Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères*, S.C. 1986, chap. 21, art. 3, 4(2), 6, ann., art. V 1c), d), XI.

*The International Commercial Arbitration Act*, S.M. 1986-87, c. 32, C.C.S.M., C151.

*United Nations Foreign Arbitral Awards Convention Act*, S.C. 1986, c. 21, ss. 3, 4(2), 6, Sch., Art. V 1(c), (d), XI.

*Loi sur la Cour fédérale*, L.R.C. (1985), chap. F-7, art. 2, 22(2*i*), 39(2).

*Loi sur l'arbitrage commercial international*, L.M. 1986-87, chap. 32, CPLM C151.

*Règles de la Cour fédérale*, C.R.C., chap. 663, Règles 474 (mod. par DORS/79-57, art. 14), 1101.

#### CASES JUDICIALLY CONSIDERED

##### APPLIED:

*Di Iorio et al. v. Warden of the Montreal Jail*, [1978] 1 S.C.R. 152; (1976), 35 C.R.N.S. 57; 8 N.R. 361; *Canadian Broadcasting Corporation et al. v. Quebec Police Commission*, [1979] 2 S.C.R. 618; (1979), 101 D.L.R. (3d) 24; 48 C.C.C. (2d) 289; 14 C.P.C. 60; 28 N.R. 541; *Doleman & Sons v. Ossett Corporation*, [1912] 3 K.B. 257 (C.A.); *Bloemen (F.J.) Pty. Ltd. v. City of Gold Coast Council*, [1973] A.C. 115 (P.C.); *Agromet Motoimport v. Maulden Engineering Co. (Beds.) Ltd.*, [1985] 1 W.L.R. 762 (Q.B.D.); *Whitbread v. Walley*, [1990] 3 S.C.R. 1273; (1990), 77 D.L.R. (4th) 25; [1991] 2 W.W.R. 195; 52 B.C.L.R. (2d) 187; 120 N.R. 109; *Tropwood A.G. et al. v. Sivaco Wire & Nail Co. et al.*, [1979] 2 S.C.R. 157; (1979), 99 D.L.R. (3d) 235; 10 C.P.C. 9; 26 N.R. 313; *ITO—International Terminal Operators Ltd. v. Miida Electronics Inc. et al.*, [1986] 1 S.C.R. 752; (1986), 28 D.L.R. (4th) 641; 34 B.L.R. 251; 68 N.R. 241; *Monk Corp. v. Island Fertilizers Ltd.*, [1991] 1 S.C.R. 779; (1991), 80 D.L.R. (4th) 58; 123 N.R. 1; *Seapearl (The Ship M/V) v. Seven Seas Dry Cargo Shipping Corporation of Santiago, Chile*, [1983] 2 F.C. 161; (1982), 139 D.L.R. (3d) 669; 43 N.R. 517 (C.A.); *Eurobulk Ltd. v. Wood Preservation Industries*, [1980] 2 F.C. 245; (1979), 106 D.L.R. (3d) 571 (T.D.); *Atlantic Lines & Navigation Co. Inc. v. Didymi (The)*, [1988] 1 F.C. 3; (1987), 39 D.L.R. (4th) 399; 78 N.R. 99 (C.A.).

##### CONSIDERED:

*Attorney-General for Canada v. Attorney-General for Ontario*, [1937] A.C. 326 (P.C.).

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#### COUNSEL:

*Morse Silden and Mathew Bernard Nepon* for appellant (defendant).

*Peter F. M. Jones* for respondent (plaintiff).

*Lewis E. Levy* for intervenor.

#### JURISPRUDENCE

##### DÉCISIONS APPLIQUÉES:

*Di Iorio et autre c. Gardien de la prison de Montréal*, [1978] 1 R.C.S. 152; (1976), 35 C.R.N.S. 57; 8 N.R. 361; *Société Radio-Canada et autre c. Commission de police du Québec*, [1979] 2 R.C.S. 618; (1979), 101 D.L.R. (3d) 24; 48 C.C.C. (2d) 289; 14 C.P.C. 60; 28 N.R. 541; *Doleman & Sons v. Ossett Corporation*, [1912] 3 K.B. 257 (C.A.); *Bloemen (F.J.) Pty. Ltd. v. City of Gold Coast Council*, [1973] A.C. 115 (P.C.); *Agromet Motoimport v. Maulden Engineering Co. (Beds.) Ltd.*, [1985] 1 W.L.R. 762 (Q.B.D.); *Whitbread c. Walley*, [1990] 3 R.C.S. 1273; (1990), 77 D.L.R. (4th) 25; [1991] 2 W.W.R. 195; 52 B.C.L.R. (2d) 187; 120 N.R. 109; *Tropwood A.G. et autres c. Sivaco Wire & Nail Co. et autres*, [1979] 2 R.C.S. 157; (1979), 99 D.L.R. (3d) 235; 10 C.P.C. 9; 26 N.R. 313; *ITO—International Terminal Operators Ltd. c. Miida Electronics Inc. et autre*, [1986] 1 R.C.S. 752; (1986), 28 D.L.R. (4th) 641; 34 B.L.R. 251; 68 N.R. 241; *Monk Corp. c. Island Fertilizers Ltd.*, [1991] 1 R.C.S. 779; (1991), 80 D.L.R. (4th) 58; 123 N.R. 1; *Seapearl (Navire M/V) c. Seven Seas Dry Cargo Shipping Corporation de Santiago (Chili)*, [1983] 2 C.F. 161; (1982), 139 D.L.R. (3d) 669; 43 N.R. 517 (C.A.); *Eurobulk Ltd. c. Wood Preservation Industries*, [1980] 2 C.F. 245; (1979), 106 D.L.R. (3d) 571 (1<sup>re</sup> inst.); *Atlantic Lines & Navigation Co. Inc. c. Didymi (Le)*, [1988] 1 C.F. 3; (1987), 39 D.L.R. (4th) 399; 78 N.R. 99 (C.A.).

##### DÉCISION EXAMINÉE:

*Attorney-General for Canada v. Attorney-General for Ontario*, [1937] A.C. 326 (P.C.).

#### DOCTRINE

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#### AVOCATS:

*Morse Silden et Mathew Bernard Nepon* pour l'appelante (défenderesse).

*Peter F. M. Jones* pour l'intimée (demanderesse).

*Lewis E. Levy* pour l'intervenant.

## SOLICITORS:

*Kushner, Gordon & Silden*, Winnipeg, for appellant (defendant).

*Paterson, MacDougall*, Toronto, for respondent (plaintiff).

*Deputy Attorney General of Canada* for intervenor.

*The following are the reasons for judgment rendered in English by*

STONE J.A.: This is an appeal from an order of the Trial Division [(1989), 29 F.T.R. 136] made on June 12, 1989, responding to certain questions posed by that Division by order of February 1, 1989, made pursuant to Rule 474 of the *Federal Court Rules* [C.R.C., c. 663 (as am. by SOR/79-57, s. 14)], in response to a request for directions for the determination of certain points of law raised in the pleadings.

The issues in this appeal centre on the enactment of the *United Nations Foreign Arbitral Awards Convention Act* [S.C. 1986, c. 21], (the "Act"), a federal statute, which was assented to June 17, 1986, and was proclaimed in force August 10, 1986. Scheduled to and approved in section 3 of the Act is the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" (the "Convention") which was adopted by the United Nations Conference on an International Commercial Arbitration at New York June 10, 1958. Canada acceded to that Convention May 12, 1986. We were told that uniform legislation has been enacted by all of the provinces of Canada as well as by the Yukon and Northwest Territories for implementation of the Convention. In the Province of Manitoba, the implementing legislation has taken the form of *The International Commercial Arbitration Act*, S.M. 1986-87, c. 32, C.C.S.M., C151.

By subsection 4(2) of the Act, the Convention is to apply to "arbitral awards and arbitration agreements whether made before or after the coming into force of this Act".

The appellant company, which carries on business as a buyer, seller and supplier of grains, entered into

## PROCUREURS:

*Kushner, Gordon & Silden*, Winnipeg, pour l'appelante (défenderesse).

*Paterson, MacDougall*, Toronto, pour l'intimée (demanderesse).

*Le sous-procureur général du Canada* pour l'intervenant.

*Ce qui suit est la version française des motifs du jugement rendus par*

LE JUGE STONE, J.C.A.: Il s'agit d'un appel d'une ordonnance rendue par la Section de première instance [(1989), 29 F.T.R. 136] le 12 juin 1989, par laquelle elle statuait sur certaines questions qu'elle avait elle-même soulevées dans une ordonnance rendue en vertu de la Règle 474 des *Règles de la Cour fédérale* [C.R.C., chap. 663 (mod. par DORS/79-57, art. 14)] le 1<sup>er</sup> février 1989 en réponse à une demande visant à obtenir des directives pour qu'il soit statué sur certains points de droit soulevés dans les actes de procédure.

Les points en litige soulevés par le présent appel visent l'adoption de la *Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères* [S.C. 1986, chap. 21] (la «Loi»), une loi fédérale sanctionnée le 17 juin 1986 et proclamée le 10 août 1986. Reproduite en annexe et approuvée à l'article 3 de la Loi, la «Convention pour la reconnaissance et l'exécution des sentences arbitrales étrangères» (la «Convention») a été adoptée par la Conférence des Nations Unies sur l'arbitrage commercial international tenue à New York le 10 juin 1958. Le Canada y a adhéré le 12 mai 1986. On nous a fait part que toutes les provinces du Canada de même que le Yukon et les Territoires du Nord-Ouest avaient adopté une législation uniforme visant à donner effet à la Convention. Au Manitoba, cette législation a pris la forme de la *Loi sur l'arbitrage commercial international*, L.M. 1986-87, chap. 32, CPLM, C151.

En vertu du paragraphe 4(2) de la Loi, la Convention s'applique aux «sentences arbitrales rendues et aux conventions d'arbitrage conclues avant ou après l'entrée en vigueur de la présente Loi».

Le 17 janvier 1978, la compagnie appelante, entreprise qui achète, vend et transporte le grain, a conclu

a charterparty agreement on January 17, 1978, with the respondent as owner of the vessel *Grecian Isles*, for carriage of a cargo of grain from the port of Vancouver to the port of Bombay, India. Clauses 10 and 17 of the charterparty are relevant. They read:

10. "CENTROCON" ARBITRATION CLAUSE

All disputes from time to time arising out of this contract shall, unless the parties agree forthwith on a single Arbitrator, be referred to the final arbitrament of two Arbitrators carrying on business in London who shall be members of the Baltic and engaged in the Shipping and/or Grain Trades, one to be appointed by each of the parties, with power to such Arbitrators to appoint an Umpire. Any claim must be made in writing and Claimant's Arbitrator appointed within 9 (nine) months of final discharge and where this provision is not complied with the claim shall be deemed to be waived and absolutely barred. No award shall be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his acting be taken before the award is made.

17. Demurrage and/or despatch at loading port to be settled between Owners and Charterers. Demurrage and/or despatch at discharging port to be settled Between Owners and Receivers. Charterers will remain responsible for settlement of demurrage but in any case such settlement to be effected not later than sixty days from completion of discharge, provided demurrage calculations have been agreed by all parties.

The Motions Judge, Strayer J., at page 138, set out the following additional facts:

The defendant states that discharge of the cargo was completed on May 20, 1978, and that, in accordance with paragraph 17 as quoted above, any claim for demurrage which the plaintiff might have had against the defendant charterer would have arisen on July 20, 1978, sixty days after completion of discharge of cargo. It is apparent that the defendant disputed its liability to pay demurrage. The parties do not allege in their pleadings, nor did they indicate in court any agreement, as to when this dispute was referred to arbitration. They do, however, agree that it was so referred, that a hearing took place in London, England on May 13, 1985, at which the plaintiff was represented but at which the defendant made only a written submission, and that the award was released by the arbitrators on May 24, 1985. The claim presented by the plaintiff owner for demurrage was in the amount of (U.S.) \$150,392.25. The arbitrators awarded the owner (U.S.) \$53,168.40 together with interest and costs.

The action was instituted in the Trial Division on May 19, 1987, for enforcement of this arbitral award. The pleadings in that action gave rise to the points of

avec l'intimée, propriétaire du navire *Grecian Isles*, une charte-partie prévoyant le transport, de Vancouver à Bombay, en Inde, d'une cargaison de grain. Les clauses 10 et 17 de la charte-partie sont pertinentes et elles sont ainsi libellées:

[TRADUCTION] 10. CLAUSE COMPROMISSOIRE «CENTROCON»

Tout conflit découlant de ce contrat est, sauf si les parties conviennent immédiatement d'un arbitre unique, soumis, pour arbitrage final, à deux arbitres, membres de la Baltic, exerçant à Londres et œuvrant dans l'expédition et/ou le commerce du grain. Chaque partie nomme un arbitre; les arbitres ont le pouvoir de nommer un surarbitre. Toute réclamation est soumise par écrit, et l'arbitre du demandeur est nommé dans les 9 (neuf) mois du dernier déchargement; à défaut de respecter cette disposition, la partie est réputée avoir renoncé à la réclamation alors prescrite. La sentence ne peut être contestée ni invalidée pour le motif que l'un ou l'autre des arbitres n'a pas la compétence exigée, sauf si une objection à sa nomination est soulevée avant que la sentence ne soit rendue.

17. Les droits de surestaries ou d'expédition au port de chargement sont réglés entre les armateurs et les affrèteurs. Les droits de surestaries ou d'expédition au port de déchargement sont réglés entre les armateurs et les réceptionnaires. Les affrèteurs demeurent responsables du règlement des droits de surestaries mais dans tous les cas, ce règlement doit s'effectuer dans les soixante jours à compter de la fin du déchargement, pourvu que toutes les parties se soient entendues sur le calcul de droits de surestaries.

Le juge des requêtes Strayer a également décrit les faits suivants à la page 138:

La défenderesse déclare que la cargaison a fini d'être déchargée le 20 mai 1978 et que, conformément au paragraphe 17 précité, toute réclamation que la demanderesse pourrait avoir contre elle relativement aux droits de surestaries aurait dû être intentée le 20 juillet 1978, c'est-à-dire soixante jours après la fin du déchargement de la cargaison. Il est manifeste que la défenderesse refuse d'acquitter les droits de surestaries. Les parties ne mentionnent pas dans leurs plaidoiries la date à laquelle ce différend a été soumis à l'arbitrage, ni ne se sont entendues devant la Cour à ce sujet. Elles conviennent cependant qu'il l'a effectivement été, qu'une audience a eu lieu à Londres, en Angleterre, le 13 mai 1985, au cours de laquelle la demanderesse était représentée, alors que la défenderesse n'a présenté que des arguments écrits, et admettent en outre que la sentence a été rendue par les arbitres le 24 mai 1985. La demanderesse armateur a soumis une demande en recouvrement de droits de surestaries au montant de 150 392,25 \$ (U.S.). Les arbitres lui ont accordé 53 168,40 \$ (U.S.) avec intérêts et dépens.

Le 19 mai 1987, la demanderesse a intenté une action devant la Section de première instance en vue de l'exécution de la sentence arbitrale. Les actes de

law which were formulated as questions by the order of February 1, 1989, being namely:

(a) [I]s the Arbitration Award ("the Award") referred to in paragraph 5 of the statement of claim herein enforceable or maintainable in Canada under the provisions of the *United Nations Foreign Arbitral Award[s] [Convention] Act*, Stat. Canada 1986, c. 21?

(b) [C]an the Award be enforced or maintained in Canada if the plaintiff's original cause of action is statute barred under the laws of England?

(c) [C]an the Award be enforced or maintained in Canada if the plaintiff has failed to enforce its claim for demurrage under the Charter Party ("the Charter Party") dated the 17th day of January, 1978 against the receiver of the goods carried on board the *Grecian Isle[s]*?

(d) [D]id the Plaintiff's failure to enforce its claim for demurrage under the Charter Party against the receiver of the goods carried on board the *Grecian Isle[s]* deprive the arbitrators of jurisdiction?

After discussing the respective positions of the parties and expressing his views thereon, Strayer J. answered these four questions at pages 143-144 as follows:

(a) The award is enforceable in Canada and in this court pursuant to the provisions of the *United Nations Foreign Arbitral Award Act*:

(b) the enforceability of the award in Canada would not be affected by the fact that the plaintiff's original cause of action was statute-barred under the laws of England when action was commenced in Canada for enforcement, provided that it would be open to a Canadian court to refuse recognition or enforcement of the award if the defendant provides proof that the arbitration was commenced (as defined in the *U.K. Limitation Act, 1980*) in England after the expiration of the relevant limitation period as defined by English law, and that the defendant pleaded or raised the limitation defence before the arbitrators;

(c) the award can be enforced and maintained in Canada notwithstanding the plaintiff's failure to enforce its claim for demurrage against the receiver; and

(d) the plaintiff's failure to enforce its claim for demurrage against the receiver did not deprive the arbitrators of jurisdiction.

procédure de l'action ont soulevé des points de droit soumis sous la forme de questions par l'ordonnance rendue le 1<sup>er</sup> février 1989, lesquelles sont ainsi libellées:

(a) La sentence arbitrale («la sentence») mentionnée au paragraphe 5 de la déclaration ci-jointe peut-elle être exécutée ou maintenue en vigueur au Canada en vertu des dispositions de la *Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères*, Stat. Canada 1986, chap. 21?

(b) La sentence peut-elle être exécutée ou maintenue en vigueur au Canada si le fait générateur du litige est prescrit en vertu des lois de l'Angleterre?

(c) La sentence peut-elle être exécutée ou maintenue en vigueur au Canada si la demanderesse n'a pas fait exécuter sa demande en recouvrement des droits de surestaries en vertu de la charte-partie («la charte-partie») en date du 17 janvier 1978 contre le réceptionnaire de la cargaison transportée à bord du *Grecian Isle[s]*?

(d) L'omission de la demanderesse de faire exécuter sa demande en recouvrement des droits de surestaries en vertu de la charte-partie contre le réceptionnaire de la cargaison transportée à bord du *Grecian Isle[s]* a-t-elle rendu les arbitres incompetents?

Après avoir analysé les prétentions respectives des parties et avoir fait part de son opinion à ce sujet, le juge Strayer a répondu aux quatre questions, aux pages 143 et 144, de la façon suivante:

(a) La sentence arbitrale est exécutoire au Canada et devant cette Cour conformément à la *Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères*;

(b) le caractère exécutoire de la sentence au Canada n'est pas touché même si le fait générateur du litige était prescrit en vertu des lois de l'Angleterre au moment où les procédures d'exécution ont été engagées au Canada, pourvu qu'une cour canadienne puisse refuser de reconnaître ou d'exécuter la sentence, si la défenderesse fournit la preuve que la question a été soumise à l'arbitrage (défini à la *Limitation Act, 1980* du R.-U.) en Angleterre après l'expiration du délai de prescription prévu par le droit anglais et que la défenderesse a plaidé ou a invoqué devant les arbitres le moyen de défense fondé sur la prescription;

(c) la sentence peut être exécutée et maintenue en vigueur au Canada nonobstant l'omission de la demanderesse de faire exécuter sa demande en recouvrement de droits de surestaries contre le réceptionnaire; et

(d) l'omission de la demanderesse de faire exécuter sa demande en recouvrement de droits de surestaries ne porte pas atteinte à la compétence des arbitres.

After this appeal was launched, the appellant gave notice of the following constitutional question pursuant to Rule 1101 of the *Federal Court Rules*:

Is the *United Nations Foreign Arbitral Awards Convention Act*, S.C. 1986, c. 21 *ultra vires* The Parliament of Canada by reason of its violation of Sections 92(13), 92(14), 92(16) of the *Constitution Act, 1867*?

This notice was served on the Attorney General of Canada and on the Attorney General of Manitoba. It led the Attorney General of Canada, with leave of the Court, to intervene in this appeal, to file a memorandum of facts and law and to appear by counsel. The Attorney General of Manitoba has not intervened.

In its written argument, the appellant attacks all four answers of the learned Motions Judge but restricted its oral submissions to answers (a) and (b) without abandoning its attacks on answers (c) and (d). I am able to deal with these two attacks shortly. Article V 1(c) and (d) of the Convention were in question in relation to answers (c) and (d). They read:

#### Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

The learned Motions Judge stated, at pages 142-143:

I will deal with these questions together because I believe they involve essentially the same issue. Like counsel for the defendant, I believe the permissible grounds to refuse recognition

Une fois le présent appel interjeté, l'appelante a donné avis de la question constitutionnelle suivante, conformément à la Règle 1101 des *Règles de la Cour fédérale*:

[TRADUCTION] La *Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères*, S.C. 1986, chap. 21 est-elle exorbitante du Parlement du Canada au motif qu'elle viole les paragraphes 92(13), 92(14) et 92(16) de la *Loi constitutionnelle de 1867*?

L'avis a été signifié au Procureur général du Canada et à celui du Manitoba. Le Procureur général du Canada est, par conséquent, avec l'autorisation de la Cour, intervenu dans cet appel, il a déposé un exposé des faits et du droit et il a comparu par procureur. Le Procureur général du Manitoba, quant à lui, n'est pas intervenu.

Dans sa plaidoirie écrite, l'appelante a contesté les quatre réponses du juge des requêtes, mais elle a limité ses observations orales aux réponses a) et b), sans toutefois se désister de sa contestation des réponses c) et d). Je peux traiter de ces deux contestations brièvement. Les paragraphes V 1c) et d) de la Convention sont concernés par les réponses c) et d). Ils portent que:

#### Article V

1. La reconnaissance et l'exécution de la sentence ne seront refusées, sur requête de la partie contre laquelle elle est invoquée, que si cette partie fournit à l'autorité compétente du pays où la reconnaissance et l'exécution sont demandées la preuve:

c) que la sentence porte sur un différend non visé dans le compromis ou n'entrant pas dans les prévisions de la clause compromissoire, ou qu'elle contient des décisions qui dépassent les termes du compromis ou de la clause compromissoire; toutefois, si les dispositions de la sentence qui ont trait à des questions soumises à l'arbitrage peuvent être dissociées de celles qui ont trait à des questions non soumises à l'arbitrage, les premières pourront être reconnues et exécutées; ou

d) que la constitution du tribunal arbitral ou la procédure d'arbitrage n'a pas été conforme à la convention des parties, ou, à défaut de convention, qu'elle n'a pas été conforme à la loi du pays où l'arbitrage a eu lieu; ou

Le juge des requêtes a écrit, aux pages 142 et 143:

Je traiterai de ces deux questions en même temps parce que je crois qu'elles se recoupent. Je partage l'avis de l'avocat de la défenderesse selon lequel les motifs permis pour refuser la

and enforcement must be found in Article V of the Convention. He relies on paragraph 1(c) of that article with respect to both of these questions, arguing in effect that if, as he alleges, the plaintiff owner should have settled the demurrage with the receiver as stated in paragraph 17 of the charterparty, then the determination by the arbitrators partially in favour of the plaintiff must not have given effect to the requirements of paragraph 17 and therefore, in the words of paragraph V 1(c) of the Convention

"[t]he award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, . . ."

I am unable to conclude that if the plaintiff failed to enforce its claim for demurrage against the receiver paragraph V 1(c) would prevent the enforceability of the award. It appears to me that the "difference" contemplated by the submission to arbitration was the contested liability of the defendant to pay demurrage by virtue of paragraph 17 of the charterparty. What the defendant complains of instead is that a particular defence which it feels it had was not adequately taken into account by the arbitrators in the settlement of the "difference" which was referred to them. No authority has been cited to me, nor does it appear reasonable to conclude, that the failure, real or hypothetical, of the plaintiff to enforce its claim against the receiver precluded any determination by the arbitrators that the defendant was liable for a portion of the plaintiff's claim. It appears to me that the arbitrators decided the very "difference", namely the existence and extent of the defendant's liability under the charterparty for demurrage, which was referred to them by the parties. It was for them to decide what effect if any the plaintiff's failure to settle demurrage should have on the defendant's liability.

For the same reason I am unable to conclude that this alleged failure of the plaintiff to enforce demurrage against the receiver deprived the arbitrators of any jurisdiction pursuant to the reference. The jurisdictional argument must also be justified, if at all, under Article V 1(c) of the Convention on the basis that the determination of liability of the defendant notwithstanding the plaintiff's failure was a matter not referred to the arbitrators in the submission. The terms of the submission must be taken to have been in accordance with paragraph 10 of the charterparty, quoted above, which was to govern "all disputes from time to time arising out of this contract". The contested liability of the defendant for demurrage was surely the "dispute" referred to the arbitrators: that was the very matter they were authorized to decide and did decide. The defendant's real complaint is that the arbitrators did not take into account a particular defence which it feels it had. That is not a basis for refusing recognition within the language of Article V of the Convention.

reconnaissance et l'exécution sont énoncés à l'article V de la Convention. Il invoque le paragraphe 1(c) de cet article relativement à ces deux questions, soutenant que si la demanderesse armateur devait régler les droits de surestaries avec le réceptionnaire conformément au paragraphe 17 de la charte-partie, la décision des arbitres favorisant partiellement la demanderesse n'a donc pas dû être conforme aux exigences énoncées au paragraphe 17 ni par conséquent, aux termes du paragraphe V 1(c) de la Convention

que la sentence porte sur un différend non visé dans le compromis ou n'entrant pas dans les prévisions de la clause compromissoire, ou qu'elle contient des décisions qui dépassent les termes du compromis ou de la clause compromissoire . . .

Je ne peux pas conclure que si la demanderesse ne faisait pas exécuter sa demande de paiement des droits de surestaries contre le réceptionnaire, le paragraphe V 1(c) empêcherait l'exécution de la sentence. Il me semble que le «différend» visé par la clause compromissoire était l'obligation contestée de la défenderesse de payer les droits de surestaries conformément au paragraphe 17 de la charte-partie. Ce qui fait plutôt l'objet de la plainte de la défenderesse c'est que les arbitres, en réglant le «différend» qui leur avait été soumis, n'ont pas tenu compte de manière satisfaisante d'un moyen de défense auquel elle croyait avoir droit. Aucune doctrine ni jurisprudence ne m'a été citée et il ne me paraît pas raisonnable de conclure que l'omission, réelle ou hypothétique, de la demanderesse de faire exécuter sa demande contre le réceptionnaire empêchait les arbitres de décider que la défenderesse était en partie redevable à la demanderesse. Il me semble que les arbitres ont déterminé le «différend» qui leur a été soumis par les parties, c'est-à-dire l'existence et l'étendue de l'obligation de la défenderesse d'acquiescer les droits de surestaries en vertu de la charte-partie. Il leur fallait décider quel effet, le cas échéant, l'omission de la demanderesse de régler les droits de surestaries devrait avoir sur l'obligation de la défenderesse.

Pour la même raison, je suis incapable de conclure que cette omission présumée de la demanderesse de faire exécuter le paiement des droits de surestaries contre le réceptionnaire a eu pour effet de priver les arbitres de la compétence qui leur est conférée par le renvoi. Il importe également de justifier de l'argument portant sur la compétence et fondé sur l'article V 1(c) de la Convention en tenant compte du fait que la question de la détermination de l'obligation de la défenderesse, malgré l'omission de la demanderesse, n'a pas été soumise aux arbitres dans le compromis. Il faut présumer que les termes de la clause compromissoire étaient conformes au paragraphe 10 de la charte-partie, susmentionnée, qui devait régir «tout conflit découlant de ce contrat». Le «conflit» soumis aux arbitres était certainement l'obligation contestée de la défenderesse d'acquiescer les droits de surestaries: il s'agissait là de la question qu'ils étaient en droit de régler et qu'ils ont effectivement réglée. La véritable plainte de la défenderesse porte sur le fait que les arbitres n'ont pas tenu compte d'un certain moyen de défense qu'elle croyait avoir le droit d'invoquer. Cela ne constitue pas une raison pour refuser de reconnaître une sentence au sens de l'article V de la Convention.

I am in respectful agreement with these views.

I turn now to the issues which arise out of answers (a) and (b). The issue in relation to the first of these answers is the constitutional question which I shall repeat here for the sake of convenience:

Is the *United Nations Foreign Arbitral Awards Convention Act*, S.C. 1986, c. 21 *ultra vires* The Parliament of Canada by reason of its violation of Sections 92(13), 92(14), 92(16) of the *Constitution Act, 1867*?

Although this question was not before the Trial Division, some argument was addressed to the learned Motions Judge as to the competence of Parliament to adopt the Act. The views he expressed were in the context of Article XI of the Convention, which he referred to as a "federal state clause". That Article reads:

*Article XI*

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

The learned Judge expressed himself as follows on the question of Parliament's competence, at page 140:

Section 6 of the 1986 Act says that an application to enforce awards pursuant to the Convention "may be made to the Federal Court". As for the jurisdiction of Parliament to so provide, consistently with the "federal state clause" of the Convention Parliament must be taken to have legislated those aspects of

Je suis respectueusement d'accord avec cette opinion.

J'en viens maintenant aux points en litige soulevés par les réponses a) et b). La première réponse soulève une question constitutionnelle que je répéterai pour plus de commodité:

[TRADUCTION] La *Loi sur la Convention des Nations Unies concernant les sentences arbitrales étrangères*, S.C. 1986, chap. 21 est-elle exorbitante du Parlement du Canada au motif qu'elle viole les paragraphes 92(13), 92(14) et 92(16) de la *Loi constitutionnelle de 1867*?

Bien que cette question n'ait pas été soumise à la Section de première instance, on a soumis au juge des requêtes un moyen portant sur la compétence du Parlement d'adopter la Loi. Les opinions du juge se situent dans le contexte de l'article XI de la Convention, qu'il a appelé la «clause relative à l'État fédératif», et qui est ainsi libellé:

*Article XI*

Les dispositions ci-après s'appliqueront aux États fédératifs ou non unitaires:

a) en ce qui concerne les articles de la présente Convention qui relèvent de la compétence législative du pouvoir fédéral, les obligations du gouvernement fédéral seront les mêmes que celles des états contractants qui ne sont pas des États fédératifs;

b) en ce qui concerne les articles de la présente Convention qui relèvent de la compétence législative de chacun des États ou provinces constituants, qui ne sont pas, en vertu du système constitutionnel de la fédération, tenus de prendre des mesures législatives, le gouvernement fédéral portera le plus tôt possible, et avec son avis favorable, lesdits articles à la connaissance des autorités compétentes des États ou provinces constituants;

c) un État fédératif partie à la présente Convention communiquera, à la demande de tout autre État contractant qui lui aura été transmise par l'intermédiaire du Secrétaire général de l'Organisation des Nations Unies, un exposé de la législation et des pratiques en vigueur dans la fédération et ses unités constituantes, en ce qui concerne telle ou telle disposition de la Convention, indiquant la mesure dans laquelle effet a été donné, par une action législative ou autre, à ladite disposition.

Le juge s'est ainsi exprimé sur la question de la compétence du Parlement, à la page 140:

L'article 6 de la Loi de 1986 prévoit qu'une demande d'exécution d'une sentence aux termes de la Convention «peut être faite à la Cour fédérale». En ce qui a trait à la compétence du Parlement pour légiférer dans ce sens, conformément à la «clause relative à l'État fédératif» de la Convention, il faut

the Convention which are within its jurisdiction. "Navigation and shipping" is a head of jurisdiction assigned to Parliament. There is ample jurisprudence to the effect that maritime law in a very broad sense is within that assignment of legislative power and that such laws can be considered "laws of Canada" within the meaning of s. 101 of the Constitution Act, 1867. The settlement of disputes over charterparties must be taken to be within "navigation and shipping".

This means that Parliament had jurisdiction to give the Convention the force of law in areas within its authority such as "navigation and shipping", and that the Federal Court has jurisdiction because there has been a specific statutory grant of authority to it by Parliament to decide claims arising out of a law of Canada. [Footnote omitted.]

The *vires* of the Act is brought into question because it purports to deal with the enforcement of "foreign arbitral awards" *simpliciter*, not being limited in its scope to awards falling under heads of federal legislative competence. Section 6 provides the legal mechanism by which enforcement may be achieved. It reads:

6. For the purpose of seeking recognition and enforcement of an arbitral award pursuant to the Convention, application may be made to the Federal Court or any superior, district or county court.

The appellant advances three arguments for declaring the Act to be *ultra vires*. First, as a foreign arbitral award originates in contract its enforcement in Canada falls within provincial competence under one or more of subsections 92(13), (14) or (16) of the Constitution Act, 1867 [30 & 31 Vict., c. 3 (U.K.) (as am. by Canada Act 1982, 1982, c. 11 (U.K.), Schedule to the Constitution Act, 1982, Item 1) [R.S.C., 1985, Appendix II, No. 5]] as a matter of: "Property and Civil Rights", "The Administration of Justice" or "a merely local or private Nature". Secondly, and in the alternative, the Act is *ultra vires* because it is overly broad in that it is not limited to matters falling within federal competence. Because of this, it runs afoul of the decision of the Privy Council in *Attorney-General for Canada v. Attorney-General for Ontario [Labour Conventions Case]*, [1937] A.C. 326 (P.C.). Thirdly, and as a corollary to this last argument, while the Parliament of Canada may have legislative competence to enact laws for the recognition and enforcement of foreign arbitral awards, it may only do so by appropriate language that restricts the cause of action to enforcement of awards arising

présumer que le Parlement a légiféré sur les aspects de la Convention qui relèvent de sa compétence. «La navigation et les expéditions par eau» en sont un exemple. Il existe beaucoup de jurisprudence soutenant que le droit maritime relève, dans un sens très large, de la compétence du pouvoir législatif et que les lois qui en découlent sont des «lois du Canada» au sens de l'article 101 de la Loi constitutionnelle de 1867. Le règlement des litiges relatifs aux chartes-parties doit être placé sous la rubrique «navigation et expéditions par eau».

Cela veut dire que le Parlement avait la compétence voulue pour donner force de loi à la Convention dans des domaines relevant de son autorité tels que «la navigation et les expéditions par eau» et que la Cour fédérale a compétence parce que le Parlement l'a habilitée à statuer sur des réclamations faites en vertu d'une loi du Canada. [Renvoi omis.]

La portée de la Loi est mise en cause parce qu'elle prétend traiter de l'exécution de «sentences arbitrales étrangères» purement et simplement sans se limiter aux sentences qui sont du ressort de la compétence législative fédérale. L'article 6 prévoit la procédure judiciaire par laquelle il est possible d'obtenir l'exécution de cette sentence. Il porte que:

6. Une demande de reconnaissance et d'exécution d'une sentence arbitrale aux termes de la Convention peut être faite à la Cour fédérale ou à toute cour supérieure, de district ou de comté.

L'appelante soumet trois moyens pour faire déclarer la Loi inconstitutionnelle. En premier lieu, puisqu'une sentence arbitrale étrangère tire son origine d'un contrat, son exécution au Canada relève de la compétence provinciale en vertu de l'un ou l'autre des paragraphes 92(13), (14) ou (16) de la Loi constitutionnelle de 1867 [30 & 31 Vict., chap. 3 (R.-U.) (mod. par la Loi de 1982 sur le Canada, 1982, chap. 11 (R.-U.), annexe de la Loi constitutionnelle de 1982, n° 1) [L.R.C. (1985), appendice II, n°5]], comme matière portant sur: «la propriété et les droits civils», «l'administration de la justice» ou «une nature purement locale ou privée». En deuxième lieu, et subsidiairement, la Loi est inconstitutionnelle en raison de sa portée trop générale, puisqu'elle ne se limite pas aux questions relevant de la compétence fédérale. En conséquence, elle va à l'encontre de la décision du Conseil Privé dans l'affaire *Attorney-General for Canada v. Attorney-General for Ontario [Affaire des conventions du travail]*, [1937] A.C. 326 (P.C.). En troisième lieu, et à titre de corollaire à la dernière prétention, l'appelante soutient que, bien que le Parlement du Canada puisse posséder la compé-

out of matters within federal legislative competence. Such language, it is said, is absent from the Act.

As for the first point, both the respondent and the intervenor submit that not all contracts fall within provincial competence although many clearly do so. Other contracts are governed by federal law and the Trial Division may be invested by Parliament with jurisdiction in relation to them. Section 6, they say, is to be read as creating a federal cause of action for the recognition and enforcement of foreign arbitral awards falling within federal legislative competence. This becomes all the more evident, it is contended, when it is seen that the provincial and territorial legislatures at the request of the Government of Canada have enacted corresponding legislation for the recognition and enforcement of awards falling within their respective fields of competence. What they are saying, in effect, is that by adopting the Act Parliament has done no more than honour Canada's federal legislative obligation in Article XI of the Convention.

I am persuaded by these submissions. In my view, Parliament did possess the power to adopt the Act as valid federal legislation for the recognition and enforcement in Canada of foreign arbitral awards having a federal character in a constitutional sense. Questions will no doubt arise in individual cases as to whether a particular award is one whose enforcement falls within the proper ambit of the legislation.

The second attack upon the *vires* of the Act is that it is overly broad given the generality of section 6 and the Convention itself which is for the enforcement of literally any "foreign arbitral award". Section 6, as the appellant points out, is not expressly limited to the recognition and enforcement of awards falling within the federal legislative sphere. The result, it is said, is that Parliament has not done that which the Privy Council required of it in the *Labour Conven-*

tence législative d'adopter des lois visant la reconnaissance et l'exécution de sentences arbitrales étrangères, il ne peut le faire que par un libellé approprié qui limite la cause d'action à l'exécution des sentences découlant de matières qui relèvent de sa compétence législative. L'appelante prétend que la Loi n'utilise pas un tel libellé.

En ce qui a trait au premier point, à la fois l'intimée et l'intervenant prétendent que tous les contrats ne relèvent pas de la compétence provinciale, bien que ce soit le cas pour nombre d'entre eux. Certains contrats sont régis par le droit fédéral, et le Parlement peut investir la Section de première instance de la compétence à leur endroit. L'article 6, prétendent-ils, doit être interprété comme créant une cause d'action à caractère fédéral visant la reconnaissance et l'exécution de sentences arbitrales étrangères relevant de la compétence législative fédérale. Cette interprétation devient d'autant plus évidente, selon l'intimée et l'intervenant, lorsqu'on voit que, à la demande du Gouvernement du Canada, les législatures provinciales et territoriales ont adopté une législation correspondante qui prévoit la reconnaissance et l'exécution de sentences relevant de leurs domaines de compétence respectifs. En fait, ils prétendent qu'en adoptant la Loi, le Gouvernement n'a fait ni plus ni moins que respecter l'obligation législative fédérale du Canada prévue à l'article XI de la Convention.

Ces observations m'ont convaincu. À mon avis, le Parlement possédait effectivement le pouvoir d'adopter la Loi à titre de législation fédérale valide visant la reconnaissance et l'exécution au Canada de sentences arbitrales étrangères dont la nature est, du point de vue constitutionnel, fédérale. La question se posera sans doute de savoir, lors d'affaires particulières, si l'exécution d'une certaine sentence se situe dans la juste portée de la législation.

En deuxième lieu, on conteste ce que l'on estime être la trop grande portée de la Loi, étant donné la généralité de l'article 6 et de la Convention elle-même, qui prévoit littéralement l'exécution de toute «sentence arbitrale étrangère». L'article 6, comme l'appelante le souligne, ne se restreint pas expressément à la reconnaissance et à l'exécution de sentences se situant dans le cadre législatif fédéral. En conséquence, prétend-on, le Parlement n'a pas res-

*tions Case, supra*, where Lord Atkin stated, at page 352:

It follows from what has been said that no further legislative competence is obtained by the Dominion from its accession to international status, and the consequent increase in the scope of its executive functions. It is true, as pointed out in the judgment of the Chief Justice, that as the executive is now clothed with the powers of making treaties so the Parliament of Canada, to which the executive is responsible, has imposed upon it responsibilities in connection with such treaties, for if it were to disapprove of them they would either not be made or the Ministers would meet their constitutional fate. But this is true of all executive functions in their relation to Parliament. There is no existing constitutional ground for stretching the competence of the Dominion Parliament so that it becomes enlarged to keep pace with enlarged functions of the Dominion executive. If the new functions affect the classes of subjects enumerated in s. 92 legislation to support the new functions is in the competence of the Provincial Legislatures only. If they do not, the competence of the Dominion Legislature is declared by s. 91 and existed ab origine. In other words, the Dominion cannot, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the constitution which gave it birth.

The appellant contends that limiting words to the effect that the Act "shall only apply so far as this Parliament has jurisdiction to so enact", were required in order to save it from being declared *ultra vires*.

In my opinion, the Act should not be regarded as overly broad. The Supreme Court of Canada has made it clear that legislation which may, arguably, be *ultra vires* because of its generality is not to be automatically so viewed. In *Di Iorio et al. v. Warden of the Montreal Jail*, [1978] 1 S.C.R. 152, Dickson J. (as he then was) stated, at page 200:

It is a well-recognized rule of construction that if words in a statute are fairly susceptible of two constructions of which one will result in the statute being *intra vires* and the other will have the contrary result the former is to be adopted: *McKay et al. v. The Queen* ([1965] S.C.R. 798), at p. 804. We should not lightly decide that enabling legislation is beyond the constitutional competence of the enacting body.

This same principle was re-stated by Beetz J. in *Canadian Broadcasting Corporation et al. v. Quebec*

pecté les exigences énoncées par le Conseil privé dans l'*Affaire des conventions du travail*, précitée, dans laquelle lord Atkin a dit, à la page 352:

[TRADUCTION] De ce qui précède, il faut conclure que son nouveau statut international, et les attributions exécutives plus étendues qui en découlent, ne confèrent pas au Dominion une plus vaste compétence législative. Il est vrai, comme l'a noté le juge en chef dans ses motifs, que l'Exécutif est maintenant revêtu du pouvoir de conclure des traités; d'autre part, le Parlement du Canada, envers lequel il est responsable, le rend comptable de ces traités. Si le Parlement n'en veut pas, ils ne pourraient être faits ou alors les ministres subiraient le sort prévu par la Constitution. Mais cela est vrai de toutes les attributions de l'Exécutif par rapport au Parlement. Rien dans la Constitution actuelle ne permet d'étendre la compétence du Parlement du Dominion jusqu'au point où elle irait de pair avec l'extension des attributions de l'Exécutif du Dominion. Si les nouvelles attributions portent sur les catégories de sujets énumérés à l'article 92, la législation les appuyant relève uniquement des législatures provinciales. Dans le cas contraire, la compétence de la législature du Dominion est définie à l'article 91 et elle existait au départ. En d'autres termes, le Dominion ne peut par de simples promesses à des pays étrangers se revêtir d'une autorité législative incompatible avec la Constitution à laquelle il doit son existence.

L'appelant soutient que, pour éviter que la Loi soit déclarée inconstitutionnelle, il fallait restreindre la portée du texte de façon à ce que la Loi ne s'«applique que dans la mesure où ce Parlement a compétence pour l'adopter».

À mon avis, on ne devrait pas considérer la Loi trop générale. La Cour suprême du Canada a clairement affirmé qu'une législation susceptible, pourrait-on avancer, d'être inconstitutionnelle en raison de la généralité de ses termes ne doit pas être automatiquement vue comme telle. Dans l'affaire *Di Iorio et autre c. Gardien de la prison de Montréal*, [1978] 1 R.C.S. 152, le juge Dickson (tel était alors son titre) a dit, à la page 200:

C'est un principe bien reconnu d'interprétation que si un texte d'une loi est également susceptible de deux interprétations, dont l'une aurait pour effet de rendre la loi *intra vires* et l'autre de la rendre invalide, la première doit prévaloir: *McKay et al. c. La Reine* ([1965] R.C.S. 798), à la p. 804. Il ne faut pas décider à la légère qu'une loi autorisant des décisions administratives dépasse la compétence constitutionnelle du corps législatif qui l'a adoptée.

Le juge Beetz a de nouveau énoncé le même principe dans l'affaire *Société Radio-Canada et autre c. Com-*

*Police Commission*, [1979] 2 S.C.R. 618, at page 641. His words are most instructive. He said:

Many statutes are drafted in terms so general that it is possible to give them a meaning which makes them *ultra vires*. It is then necessary to interpret them in light of the Constitution, because it must be assumed the legislator did not intend to exceed his authority:

There is a *presumptio juris* as to the existence of the *bona fide* intention of a legislative body to confine itself to its own sphere and a presumption of similar nature that general words in a statute are not intended to extend its operation beyond the territorial authority of the Legislature.

(Fauteux J.—as he then was—in *Reference re The Farm Products Marketing Act* ([1957] S.C.R. 198), at p. 255.)

In order to give effect to this principle a court may, in keeping with the Constitution, limit the apparently general scope of an enactment, even when the constitutionality of the provision has not been disputed and the Attorney General has not been impleaded. That is what this Court did in *McKay v. The Queen* ([1965] S.C.R. 798).

I am satisfied that this principle applies to the case at bar. Express language for limiting the operation of the Act was not necessary in the circumstances.

The appellant does not seriously contend that Parliament cannot provide by legislation for the enforcement of an award of the kind made May 24, 1985. I myself have no difficulty in this regard. Nevertheless, I should add here a few words on why it is that I am of this view. That award, as we have seen, was made pursuant to a clause in a charterparty agreement. The parties chose to provide in that agreement for resolution of disputes by binding arbitration in London pursuant to clause 10. A submission to arbitration was made by the respondent when the claim for demurrage was not settled within the 60-day time limit provided for in clause 17.

It is important to bear in mind the nature of an arbitration award at common law. In *Doleman & Sons v. Ossett Corporation*, [1912] 3 K.B. 257 (C.A.), at page 267, Fletcher Moulton L.J., had this to say in that connection:

A complainant by taking out a writ can cause his opponent to be ordered to appear before the Court, and the parties must

*mission de police du Québec*, [1979] 2 R.C.S. 618, à la page 641. Ses mots sont des plus révélateurs. Il a dit:

Bien des lois sont rédigées en termes si généraux qu'il est possible de leur donner un sens qui les rende *ultra vires*. Il importe alors de les interpréter à la lumière de la Constitution parce que l'on doit présumer que le législateur n'a pas voulu excéder sa compétence:

[TRADUCTION] Il existe une présomption *de juris* quant à l'existence de l'intention véritable d'un organisme législatif d'agir dans les limites de sa compétence et une présomption semblable que les termes généraux employés dans une loi n'ont pas pour effet d'étendre son application au-delà de la compétence territoriale de la législature.

(Le juge Fauteux,—il n'était pas encore juge en chef—dans *Renvoi re The Farm Products Marketing Act* ([1957] R.C.S. 198), à la p. 255.)

Pour mettre ce principe en œuvre, une cour peut, au nom de la Constitution, restreindre la portée apparemment générale d'une disposition et ce, même lorsque la constitutionnalité de la disposition n'a pas été attaquée et que le procureur général n'a pas été mis en cause. C'est ce que cette Cour a fait dans *McKay c. La Reine* ([1965] R.C.S. 798).

Je crois que ce principe s'applique à l'affaire en l'espèce. En l'occurrence, il n'était pas nécessaire d'utiliser des termes explicites pour restreindre l'application de la Loi.

L'appelante ne prétend pas sérieusement que le Parlement ne peut prévoir, dans une loi, l'exécution d'une sentence de la nature de celle rendue le 24 mai 1985. Je n'éprouve aucune difficulté à cet égard. Néanmoins, je devrais, en quelques mots, faire connaître les motifs qui appuient mon opinion. Cette sentence, comme nous l'avons vu, a été rendue conformément à une clause d'une charte-partie. Les parties ont choisi de prévoir, à la clause 10 de cette entente, le règlement des conflits par une procédure d'arbitrage obligatoire, tenue à Londres. L'intimée a eu recours à l'arbitrage parce que la demande en recouvrement des droits de surestaries n'a pas été réglée dans la limite des soixante jours prévue à la clause 17.

Il est important de garder à l'esprit la nature d'une sentence arbitrale en common law. Dans l'affaire *Doleman & Sons v. Ossett Corporation*, [1912] 3 K.B. 257 (C.A.), à la page 267, le lord juge Fletcher Moulton s'est ainsi exprimé sur ce sujet:

[TRADUCTION] Le plaignant peut, au moyen d'un bref, obliger la partie opposée à comparaître devant la Cour dont la décision

accept its decision. But it has long been a practice in certain classes of contracts for the contracting parties to name a private tribunal to whom contractually they give authority to settle disputes under that particular contract. If a dispute has been brought before the private tribunal thus constituted, and an award made, that award is binding on both parties and concludes them as to that dispute. In effect the parties have agreed that the rights of the parties in respect of that dispute shall be as stated in the award, so that in essence it partakes of the character of "accord and satisfaction by substituted agreement." The original rights of the parties have disappeared, and their place has been taken by their rights under the award.

Such an award is not, of course, self-executing. Clause 17 of the charterparty provides no mechanism for collecting the award. On the other hand, the courts have had no difficulty in finding that parties to an arbitration submission impliedly agree to honour an award and that this agreement affords a foundation for enforcing the award in the ordinary courts. The award coupled with the implied promise to pay it creates a fresh cause of action. This was recognized in *Bloemen (F.J.) Pty. Ltd. v. City of Gold Coast Council*, [1973] A.C. 115 (P.C.), where Lord Pearson stated, at page 126:

It is true—as the cases above referred to show—that when an arbitrator fixes a sum to be paid by one party to the submission by way of damages for breach of contract the award creates a fresh cause of action superseding that arising out of the breach.

The same view was expressed in *Agromet Motoimport v. Maulden Engineering Co. (Beds.) Ltd.*, [1985] 1 W.L.R. 762 (Q.B.D.). Otton J. discussed the effect of an arbitral award in the light of the decided cases, and then added, at page 772:

In my judgment, the action on the award and the action to enforce an award is an independent cause of action. It is distinct from and in no way entangled with the original contract or the breach occurring from it, as reflected in the award. I have come to the conclusion that there is nothing repugnant in implying such a term into the contract . . . In my view, therefore, there is such an implied term that an award will be honoured when it is made. That implied term is, of course, in the original agreement . . . and the implied term continues, that if the award is not honoured, there is then a breach of that implied term . . .

See also Mustill and Boyd, *The Law and Practice of Commercial Arbitration in England* (London, 1982),

lie les parties. Il existe cependant une pratique ancienne selon laquelle, pour certaines catégories de contrats, les parties contractantes nomment un tribunal privé auquel elles donnent, par contrat, le pouvoir de régler des conflits découlant du contrat en cause. Lorsqu'un conflit est soumis à un tribunal privé ainsi constitué et qu'une sentence est rendue, celle-ci lie alors les deux parties et tranche, quant à elles, le conflit. En fait, les parties ont convenu que leurs droits à l'égard de ce conflit sont ceux établis par la sentence, et qu'essentiellement, celle-ci prend alors la nature d'une «dation en paiement aux termes d'une nouvelle convention.» Les droits originaux des parties sont anéantis, et la sentence leur en attribue de nouveaux.

Une telle sentence ne peut, de toute évidence, s'exécuter d'elle-même. La clause 17 de la charte-partie ne prévoit aucune procédure visant à faire valoir la sentence. Toutefois, les tribunaux n'ont jusqu'à présent éprouvé aucune difficulté à conclure que les parties à une procédure d'arbitrage conviennent implicitement de respecter la sentence et que cet acquiescement fournit les assises d'une action en exécution de la sentence devant les tribunaux communs. La sentence, jointe à la promesse implicite de la payer, crée une nouvelle cause d'action. Lord Pearson, dans l'affaire *Bloemen (F.J.) Pty. Ltd. v. City of Gold Coast Council*, [1973] A.C. 115 (P.C.), a reconnu ce principe à la page 126:

[TRADUCTION] Il est vrai—comme les affaires précitées le démontrent—que lorsqu'un arbitre fixe un montant à payer par une partie ayant soumis le conflit à l'arbitrage, montant qui représente des dommages-intérêts pour violation de contrat, la sentence crée une nouvelle cause d'action qui se substitue à celle qui découle de la violation du contrat.

Le juge Otton a exprimé la même opinion dans l'affaire *Agromet Motoimport v. Maulden Engineering Co. (Beds.) Ltd.*, [1985] 1 W.L.R. 762 (Q.B.D.) dans laquelle il a analysé l'effet d'une sentence arbitrale en fonction de la jurisprudence et où il a déclaré, à la page 772:

[TRADUCTION] À mon avis, l'action concernant une sentence et l'action visant à exécuter cette sentence ont des causes d'action distinctes. Celle de la seconde est différente et n'est en aucune façon liée au contrat original ni à sa violation, constatée par la sentence. J'en suis venu à la conclusion qu'il n'y a rien de répugnant à supposer l'existence d'une telle condition au contrat . . . À mon avis, il est donc entendu implicitement que la sentence rendue sera respectée. Cette condition implicite fait partie, évidemment, de l'entente originale . . . et elle continue d'exister si la sentence n'est pas respectée; il y a alors violation de cette condition implicite . . .

Voir également Mustill and Boyd, *The Law and Practice of Commercial Arbitration in England* (Londres,

at pages 568-569; Walton and Victoria, *Russell on the Law of Arbitration*, 20th ed., (London, 1982), at pages 357-358; 382-385.

It is well established that Parliament possesses a broad power in respect of "Navigation and Shipping" under subsection 91(10) of the *Constitution Act, 1867*: *Whitbread v. Walley*, [1990] 3 S.C.R. 1273. As was pointed out by La Forest J. in that case, when a court is called upon to determine whether impugned provisions are in pith and substance legislation in respect of the body of uniform federal law known as "Canadian maritime law" it is to have regard to the decided cases dealing with the scope and content of the Trial Division's jurisdiction in respect of maritime and admiralty matters. In the course of his judgment, La Forest J. was at pains to point out that such cases have a bearing on the scope of Parliament's legislative jurisdiction over navigation and shipping. At pages 1289-1290 he stated:

On the contrary, it must be remembered that the inquiry as to the validity and scope of the jurisdiction over maritime and admiralty matters granted to the Federal Court by s. 22 of the *Federal Court Act*, R.S.C. 1970 (2nd Supp.), c. 10, has been conducted, in accordance with this Court's decisions in *Quebec North Shore Paper Co. v. Canadian Pacific Ltd.*, [1977] 2 S.C.R. 1054, and *McNamara Construction (Western) Ltd. v. The Queen*, [1977] 2 S.C.R. 654, with reference to s. 101 of what is now the *Constitution Act, 1867*. That provision provides for the establishment by Parliament of a "General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada". As pointed out by Laskin C.J. in *Quebec North Shore Paper Co.* and *McNamara* (at pp. 1065-66 and p. 658 respectively), these words mean that a grant of jurisdiction to the Federal Court (or to any other court created under s. 101) will only be valid and effective if some "applicable and existing federal law" is necessary to its exercise. Put the other way round, s. 101 requires that any jurisdiction granted to the Federal Court be supported or nourished by an existing body of law that is subject to Parliament's legislative jurisdiction.

In the case of the Federal Court's jurisdiction over maritime and admiralty matters, that body of law is referred to in s. 22 of the *Federal Court Act* as "Canadian maritime law". As already explained, this Court has ruled that such a body of law does exist. It has also found that it is federal law that comes within Parliament's power to legislate in respect of navigation and shipping under s. 91(10) of the *Constitution Act, 1867*: see *ITO*, at p. 777. It follows that an inquiry as to the scope and substantive content of the Federal Court's jurisdiction over

1982), aux pages 568 et 569; Walton and Victoria, *Russell on the Law of Arbitration*, 20<sup>e</sup> éd., (Londres, 1982), aux pages 357 et 358, et 382 à 385.

Il est bien reconnu que le Parlement possède un vaste pouvoir en matière de «navigation et bâtiments ou navires» en vertu du paragraphe 91(10) de la *Loi constitutionnelle de 1867*: *Whitbread c. Walley*, [1990] 3 R.C.S. 1273. Comme le juge La Forest l'a souligné dans cette affaire, lorsqu'un tribunal est appelé à décider si, par leur caractère véritable, les dispositions attaquées constituent une législation portant sur l'ensemble de règles de droit fédérales uniformes appelé le «droit maritime canadien», il doit considérer la jurisprudence qui étudie la portée et le contenu de la compétence conférée à la Section de première instance en matière maritime et d'amirauté. Dans son jugement, le juge La Forest a pris soin de souligner que ces affaires avaient une conséquence sur la portée de la compétence législative du Parlement relativement à la navigation et aux bâtiments et navires. Aux pages 1289 et 1290, il a dit:

Au contraire, il ne faut pas oublier que l'examen de la validité et de l'étendue de la compétence relative aux questions maritimes et d'amirauté conférée à la Cour fédérale par l'art. 22 de la *Loi sur la Cour fédérale*, S.R.C. 1970 (2<sup>e</sup> suppl.), ch. 10, a été effectué, conformément aux arrêts de notre Cour *Quebec North Shore Paper Co. c. Canadien Pacifique Ltée*, [1977] 2 R.C.S. 1054, et *McNamara Construction (Western) Ltd. c. La Reine*, [1977] 2 R.C.S. 654, en fonction de l'art. 101 de ce qui est maintenant la *Loi constitutionnelle de 1867*. Cette disposition prévoit que le Parlement pourra créer une «cour générale d'appel pour le Canada, [et établir] d'autres tribunaux pour assurer la meilleure exécution des lois du Canada». Comme l'a fait remarquer le juge en chef Laskin dans les arrêts *Quebec North Shore Paper Co.* et *McNamara* (aux pp. 1065 et 1066, et à la p. 658, respectivement), cela signifie que l'attribution d'une compétence à la Cour fédérale (ou à tout autre tribunal créé en application de l'art. 101) ne sera valide et ne produira des effets que s'il existe «une législation fédérale applicable» nécessaire à son exercice. Autrement dit, l'art. 101 exige que toute compétence accordée à la Cour fédérale soit appuyée ou fondée sur un ensemble de règles de droit assujetties à la compétence législative du Parlement.

Quant à la compétence de la Cour fédérale sur les questions maritimes et d'amirauté, cet ensemble de règles de droit est mentionné à l'art. 22 de la *Loi sur la Cour fédérale* comme étant le «droit maritime canadien». Comme je l'ai déjà expliqué, notre Cour a décidé qu'un tel ensemble de règles de droit existait bel et bien. Elle a aussi conclu qu'il s'agissait de règles de droit fédérales relevant de la compétence législative du Parlement en matière de navigation et d'expédition par eau qui est visée au par. 91(10) de la *Loi constitutionnelle de 1867*;

Canadian maritime law is simultaneously an inquiry as to the scope and content of an important aspect of Parliament's exclusive jurisdiction over navigation and shipping.

The definition of "Canadian maritime law" in section 2 of the *Federal Court Act* [R.S.C., 1985, c. F-7] reads:

2. . . .

"Canadian maritime law" means the law that was administered by the Exchequer Court of Canada on its Admiralty side by virtue of the *Admiralty Act*, chapter A-1 of the Revised Statutes of Canada, 1970, or any other statute, or that would have been so administered if that Court had had, on its Admiralty side, unlimited jurisdiction in relation to maritime and admiralty matters, as that law has been altered by this Act or any other Act of Parliament.

Its content has been the subject of several recent decisions of the Supreme Court of Canada: *Tropwood A.G. et al. v. Sivaco Wire & Nail Co. et al.*, [1979] 2 S.C.R. 157; *ITO—International Terminal Operators Ltd. v. Miida Electronics Inc. et al.*, [1986] 1 S.C.R. 752; *Monk Corp. v. Island Fertilizers, Ltd.* [1991] 1 S.C.R. 779. In *Monk, supra*, Iacobucci J. speaking for a majority, summarized the reasons and conclusions of McIntyre J. in *ITO, supra*, in so far as they are relevant to the present discussion, at page 795 as follows:

(1) The second part of the s. 2 definition of Canadian maritime law provides an unlimited jurisdiction in relation to maritime and admiralty matters which should not be historically confined or frozen, and "maritime" and "admiralty" should be interpreted within the modern context of commerce and shipping.

(2) Canadian maritime law is limited only by the constitutional division of powers in the *Constitution Act, 1867*, such that, in determining whether or not any particular case involves a maritime or admiralty matter, encroachment on what is in pith and substance a matter falling within section 92 of the *Constitution Act* is to be avoided.

(3) The test for determining whether the subject matter under consideration is within maritime law requires a finding that the subject matter is so integrally connected to maritime matters as to be legitimate Canadian maritime law within federal competence.

The maritime and admiralty law of Canada, though in many respects traditional and of ancient origins, is not to be cribbed and confined to the law which was

voir *ITO*, à la p. 777. Par conséquent, un examen de la portée et du contenu quant au fond de la compétence de la Cour fédérale en matière de droit maritime canadien constitue aussi un examen de la portée et du contenu d'un aspect important de la compétence exclusive du Parlement sur la navigation et les expéditions par eau.

La définition de «droit maritime canadien» figure à l'article 2 de la *Loi sur la Cour fédérale* [L.R.C. (1985), chap. F-7] ainsi libellé:

2. . . .

«droit maritime canadien» Droit—compte tenu des modifications y apportées par la présente loi ou par toute autre loi fédérale—dont l'application relevait de la Cour de l'Échiquier du Canada, en sa qualité de juridiction de l'Amirauté, aux termes de la *Loi sur l'Amirauté*, chapitre A-1 des Statuts révisés du Canada de 1970, ou de toute autre loi, ou qui en aurait relevé si ce tribunal avait eu, en cette qualité, compétence illimitée en matière maritime et d'amirauté.

Son contenu a été l'objet de plusieurs décisions récentes rendues par la Cour suprême du Canada: *Tropwood A.G. et autres c. Sivaco Wire & Nail Co. et autres*, [1979] 2 R.C.S. 157; *ITO—International Terminal Operators Ltd. c. Miida Electronics Inc. et autre*, [1986] 1 R.C.S. 752; *Monk Corp. c. Island Fertilizers Ltd.*, [1991] 1 R.C.S. 779. Dans l'affaire *Monk*, précitée, le juge Iacobucci, s'exprimant au nom de la majorité, a ainsi résumé les motifs et les conclusions du juge McIntyre dans l'affaire *ITO*, précitée, dans la mesure où ils sont pertinents au présent débat, à la page 795:

(1) La seconde partie de la définition du droit maritime canadien à l'article 2 prévoit une compétence illimitée en matière maritime et d'amirauté, qu'une méthode historique ne saurait autoriser à limiter ni à figer; au contraire, les termes «maritime» et «amirauté» doivent être interprétés dans le contexte moderne du commerce et des expéditions par eau.

(2) Le droit maritime canadien n'est limité que par le partage constitutionnel des compétences établi par la *Loi constitutionnelle de 1867*, de sorte qu'en déterminant si une affaire donnée soulève une question maritime ou d'amirauté, on doit éviter d'empiéter sur ce qui constitue, de par son caractère véritable, une matière relevant de l'art. 92 de la *Loi constitutionnelle*.

(3) Le critère permettant d'établir si la question examinée relève du droit maritime exige de conclure que cette question est entièrement liée aux affaires maritimes au point de constituer légitimement du droit maritime canadien qui relève de la compétence législative fédérale.

Le droit maritime et d'amirauté du Canada, bien que traditionnel et archaïque sous de nombreux aspects, ne doit pas être enfermé ni limité au droit

administered by the Exchequer Court of Canada on its Admiralty side and which is recognized in the first part of the "Canadian maritime law" definition but, as the second part of that definition indicates, it has potential for growth albeit within acknowledged constitutional constraints. This was recognized in *ITO*, *supra*, and was the subject of the following additional observations of Iacobucci J. in *Monk*, *supra*, at pages 800-801:

Finally, I would say that the claims of *Monk* are maritime in character and are not in any way an encroachment of what is in pith and substance a matter falling within s. 92 of the *Constitution Act, 1867* . . .

I should also like to add that the approach I have taken in this matter corresponds with McIntyre J.'s urging that the terms "maritime" and "admiralty" should be interpreted within the modern context of commerce and shipping and should not be static or frozen. Such terms should rather be capable of adjusting to evolving circumstances unencumbered by rigid doctrinal categorization and historical straightjackets.

It thus seems to me to be entirely proper for a court, faced with determining whether an award may be recognized and enforced in accordance with the Act, to have regard to its origin in a charterparty agreement, an undoubted maritime contract, and to the underlying claim for demurrage, an undoubted maritime claim, for it is that agreement and that claim which allows for the award to be made and it is the existence of the award which opens the way to its enforcement by legal action.

In my opinion, the creation of a cause of action for the recognition and enforcement of the foreign arbitral award in issue, arising as it does from a breach of the charterparty agreement for payment of demurrage, is a maritime matter or is so integrally connected to a maritime matter as to be legitimate Canadian maritime law. The award derives indirectly from the charterparty, and amounts, in reality, to a finding of validity and proper quantification of the demurrage claim. If that agreement had not called for submission to arbitration, the respondent would have been entitled to sue on the original claim in the Trial Division which, as we shall see, has been invested with express jurisdiction over claims of that kind. So too

dont l'application relevait de la Cour de l'Échiquier du Canada, en sa qualité de juridiction de l'Amirauté, et reconnu dans la première partie de la définition de «droit maritime canadien»; comme l'indique la deuxième partie de la définition, il est susceptible d'extension, bien que cette dernière doive s'opérer dans les limites des contraintes constitutionnelles reconnues. C'est ce qu'on a décidé dans l'affaire *ITO*, précitée, et le juge Iacobucci a formulé, à ce sujet, les observations supplémentaires suivantes dans l'affaire *Monk*, précitée, aux pages 800 et 801:

Finaleme nt, je dirais que les demandes de *Monk* ont un caractère maritime et qu'elles n'empiètent d'aucune façon sur ce qui constitue, «de par son caractère véritable», une matière qui relève de l'art. 92 de la *Loi constitutionnelle de 1867* . . .

Je tiens aussi à ajouter que ma façon d'aborder cette question est en harmonie avec le point de vue du juge McIntyre lorsqu'il dit que les termes «maritime» et «amirauté» doivent être interprétés dans le contexte moderne du commerce et des expéditions par eau, et qu'ils ne doivent pas être statiques ou figés. On devrait plutôt pouvoir adapter ces termes selon l'évolution des circonstances sans être prisonniers du carcan des classifications doctrinales rigides ou des limites historiques excessives.

Il me semble par conséquent tout à fait approprié pour un tribunal qui doit décider si une sentence peut être reconnue et exécutée en conformité avec la Loi, de tenir compte de son origine dans la charte-partie, un contrat sans aucun doute maritime, et de la demande sous-jacente de recouvrement de droits de surestaries, une demande sans contredit maritime, puisque cette entente et cette demande permettent de rendre une sentence, et c'est l'existence de la sentence qui ouvre la voie à son exécution par procédure judiciaire.

À mon avis, la création d'une cause d'action visant la reconnaissance et l'exécution de la sentence arbitrale étrangère en litige, découlant comme elle le fait de la violation de la charte-partie relativement au paiement des droits de surestaries, est une matière maritime ou si étroitement liée aux affaires maritimes qu'elle constitue légitimement du droit maritime canadien. La sentence découle indirectement de la charte-partie et se résume, en réalité, à une conclusion reconnaissant la validité et le montant approprié de la demande de droits de surestaries. Si cette entente n'avait pas prévu le recours à l'arbitrage, l'intimée aurait été en droit d'intenter des poursuites sur le fondement de la demande originale devant la Section de

would the appellant be entitled to sue in the Trial Division were the shoe on the other foot, in respect of, say, a claim for despatch. Indeed, an arbitration clause *per se* does not oust the jurisdiction of the Trial Division although it does provide a basis, in the interests of justice, for staying an action brought in contravention of it: *Seapearl (The Ship M/V) v. Seven Seas Dry Cargo Shipping Corporation of Santiago, Chile*, [1983] 2 F.C. 161 (C.A.). In my view, enforcement of the present award falls within federal legislative competence over navigation and shipping.

I am similarly of the view that Parliament had competence to invest the Trial Division with jurisdiction to entertain this cause of action. In *Eurobulk Ltd. v. Wood Preservation Industries*, [1980] 2 F.C. 245 (T.D.), it was held that jurisdiction existed in the Trial Division to enforce a foreign arbitral award made pursuant to a charterparty agreement. See also *Atlantic Lines & Navigation Co. Inc. v. Didymi (The)*, [1988] 1 F.C. 3 (C.A.). In *ITO*, *supra*, the Supreme Court of Canada summarized the three requirements for the existence of jurisdiction in the Trial Division of this Court. Speaking for the Court, McIntyre J. stated, at page 766, that to support such jurisdiction,

1. There must be a statutory grant of jurisdiction by the federal Parliament.

2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction.

3. The law on which the case is based must be "a law of Canada" as that phrase is used in s. 101 of the *Constitution Act, 1867*.

These requirements, in my view, are satisfied in the case at bar. The statutory grant of jurisdiction by the Parliament of Canada is found in section 6 of the Act and in paragraph 22(2)(f) of the *Federal Court Act*, which reads:

22. . . .

première instance qui, comme nous le verrons, a été investie de la compétence explicite de connaître des demandes de cette nature. L'appelante, d'un point de vue opposé, aurait également été en droit d'intenter devant la même Cour une action en réclamation pour diligence. En effet, une clause compromissoire en soi ne prive pas la Section de première instance de sa compétence, bien qu'elle crée effectivement un fondement, dans l'intérêt de la justice, permettant de suspendre une action instruite contrairement à cette clause: *Seapearl (Navire M/V) c. Seven Seas Dry Cargo Shipping Corporation de Santiago (Chili)*, [1983] 2 C.F. 161 (C.A.). À mon avis, l'exécution de la présente sentence relève de la compétence législative fédérale en matière de navigation et de bâtiments ou navires.

Je suis également d'avis qu'il était du ressort du Parlement de conférer à la Section de première instance la compétence de connaître de cette cause d'action. Dans l'affaire *Eurobulk Ltd. c. Wood Preservation Industries*, [1980] 2 C.F. 245 (1<sup>re</sup> inst.), on a conclu que la Section de première instance avait compétence pour rendre exécutoire une sentence arbitrale prononcée à l'étranger conformément à une charte-partie. Voir aussi l'affaire *Atlantic Lines & Navigation Co. Inc. c. Didymi (Le)*, [1988] 1 C.F. 3 (C.A.). Dans l'arrêt *ITO*, précité, la Cour suprême du Canada a résumé les trois conditions nécessaires à l'existence de la compétence de la Section de première instance de cette Cour. S'exprimant au nom de la Cour, le juge McIntyre a, à la page 766, déclaré que, pour pouvoir conclure à cette compétence:

1. Il doit y avoir attribution de compétence par une loi du Parlement fédéral.

2. Il doit exister un ensemble de règles de droit fédérales qui soit essentiel à la solution du litige et constitue le fondement de l'attribution légale de compétence.

3. La loi invoquée dans l'affaire doit être «une loi du Canada» au sens où cette expression est employée à l'art. 101 de la *Loi constitutionnelle de 1867*.

À mon avis, ces exigences sont respectées en l'espèce. L'attribution de la compétence par une loi du Parlement du Canada se trouve à l'article 6 de la Loi et à l'alinéa 22(2)f) de la *Loi sur la Cour fédérale*, ainsi libellé:

22. . . .

(2) Without limiting the generality of subsection (1), it is hereby declared for greater certainty that the Trial Division has jurisdiction with respect to any one or more of the following:

(i) any claim arising out of any agreement relating to the carriage of goods in or on a ship or to the use or hire of a ship whether by charter party or otherwise;

The existing body of federal law essential to the disposition of the case and nourishing the jurisdiction is found in Canadian maritime law. That law is "a law of Canada". To repeat, I have no doubt that the kind of award with which we are here concerned falls within "Canadian maritime law" as this term is now understood, and that such law rests on the legislative competence of Parliament under subsection 91(10) of the *Constitution Act, 1867*.

In my opinion, the constitutional question should be answered in the negative.

The final issue arises from the learned Motion Judge's answer to question (b). The appellant contends that it was an error for the Judge to have held that the time limitation for bringing the action in the Trial Division is not governed by the laws of England. Alternatively, it is argued that the action is time barred by the laws of Canada.

Section 7 of the *Limitations Act 1980*, 1980, c. 58 (U.K.) is relied on by the appellant as laying down the applicable limitation period. It reads:

7. An action to enforce an award, where the submission is not by an instrument under seal, shall not be brought after the expiration of six years from the date on which the cause of action accrued.

The learned Motions Judge was of the opinion that Canadian law rather than English law governs. At page 141, he stated:

It is well-established in both Canada and English law that limitation statutes of this nature are procedural in character and the relevant provisions are those of the *lex fori*. Thus Canadian law governs the matter of the limitation period applicable to an action in a Canadian court to enforce an award. [Footnotes omitted.]

I respectfully agree with this view. The foreign arbitral award, as I have already stated, gave rise to a fresh cause of action which may be asserted in the Trial Division. Even if the U.K. statute applied, it

(2) Il demeure entendu que, sans préjudice de la portée générale du paragraphe (1), la Section de première instance a compétence dans les cas suivants:

i) une demande fondée sur une convention relative au transport de marchandises à bord d'un navire, à l'usage ou au louage d'un navire, notamment par charte-partie;

Le droit maritime canadien renferme l'ensemble actuel de règles de droit fédérales essentielles à la résolution de l'affaire et qui constitue le fondement de l'attribution de compétence. Ces lois sont des «lois du Canada». Je le répète, je suis convaincu que le genre de sentence en cause en l'espèce relève du «droit maritime canadien», tel que nous le connaissons aujourd'hui, et que ce droit relève de la compétence législative du Parlement en vertu du paragraphe 91(10) de la *Loi constitutionnelle de 1867*.

À mon avis, la question constitutionnelle doit recevoir une réponse négative.

Le dernier point en litige découle de la réponse du juge des requêtes à la question b). L'appelante soutient que le juge a commis une erreur en concluant que le délai dans lequel il faut instruire l'action devant la Section de première instance n'est pas régi par les lois de l'Angleterre. Subsidiairement, elle prétend que l'action est prescrite en vertu des lois du Canada.

L'appelante s'appuie sur l'article 7 de la *Limitations Act 1980*, 1980, chap. 58 (R.-U.) pour établir le délai de prescription applicable. Il porte que:

[TRADUCTION] 7. Une action visant l'exécution d'une sentence, lorsque le compromis n'est pas un acte revêtu d'un sceau, doit être intentée dans un délai de six ans à compter de la date où le fait générateur du litige est survenu.

Selon le juge des requêtes, le droit canadien, et non le droit anglais, régit cette question. À la page 141, il a dit:

Le droit canadien et le droit anglais prévoient clairement que les lois de ce genre en matière de prescription sont de nature procédurale et que les dispositions pertinentes sont celles de la *lex fori*. Ainsi, le droit canadien régit la question relative au délai de prescription applicable à une action en exécution de sentence intentée devant un tribunal canadien. [Renvois omis.]

Je suis respectueusement d'accord avec cette opinion. Je l'ai déjà mentionné, la sentence arbitrale étrangère a créé une nouvelle cause d'action qu'il est possible de faire valoir devant la Section de première

provides a limitation for bringing an action to enforce an award. But no such award can exist until after it is made. It is only then that it may be enforced in the courts.

Counsel submits, in the alternative, that the matter of limitation is governed by the provisions of subsection 39(2) of the *Federal Court Act*, which reads:

39. . . .

(2) A proceeding in the Court in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.

In my view, the "cause of action arose" on the date of the award, May 24, 1985, at the earliest. The action in the Trial Division was instituted well within the six-year limitation period prescribed by the subsection.

In summary, I would answer the constitutional question in the negative, confirm the answers given by the order of the Trial Division made June 12, 1989, and dismiss this appeal with costs to the respondent. As the intervenor does not seek costs, none should be allowed.

HEALD J.A.: I agree.

MAHONEY J.A.: I agree.

instance. Même si la loi anglaise s'appliquait, elle prévoit un délai pour intenter une action en exécution d'une sentence. Mais une telle sentence n'existe qu'après avoir été rendue. Alors seulement peut-on demander son exécution devant les tribunaux.

Les avocats soutiennent, subsidiairement, que la question de prescription est régie par les dispositions du paragraphe 39(2) de la *Loi sur la Cour fédérale*, ainsi libellé:

39. . . .

(2) Le délai de prescription est de six ans à compter du fait générateur lorsque celui-ci n'est pas survenu dans une province.

À mon avis, le «fait générateur [est] survenu» au plus tôt le 24 mai 1985, jour où la sentence a été rendue. L'action a été intentée devant la Section de première instance bien avant que le délai de prescription de six ans prévu au paragraphe ne soit écoulé.

En résumé, je répondrais négativement à la question constitutionnelle, je confirmerais les réponses données dans l'ordonnance rendue par la Section de première instance le 12 juin 1989, et je rejetterais le présent appel avec dépens en faveur de l'intimée. Comme l'intervenant ne demande aucuns frais, aucuns ne lui seront adjugés.

LE JUGE HEALD, J.C.A.: Je souscris à ces motifs.

LE JUGE MAHONEY, J.C.A.: Je souscris à ces motifs.

# TAB 3



CANADA

CONSOLIDATION

CODIFICATION

## Interest Act

## Loi sur l'intérêt

R.S.C., 1985, c. I-15

L.R.C. (1985), ch. I-15

Current to October 14, 2024

À jour au 14 octobre 2024

Last amended on June 18, 2008

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## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

### Published consolidation is evidence

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

### Inconsistencies in Acts

**(2)** In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

## LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

## NOTE

This consolidation is current to October 14, 2024. The last amendments came into force on June 18, 2008. Any amendments that were not in force as of October 14, 2024 are set out at the end of this document under the heading "Amendments Not in Force".

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1<sup>er</sup> juin 2009, prévoient ce qui suit :

### Codifications comme élément de preuve

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

### Incompatibilité – lois

**(2)** Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

## MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

## NOTE

Cette codification est à jour au 14 octobre 2024. Les dernières modifications sont entrées en vigueur le 18 juin 2008. Toutes modifications qui n'étaient pas en vigueur au 14 octobre 2024 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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## TABLE OF PROVISIONS

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R.S.C., 1985, c. I-15

L.R.C., 1985, ch. I-15

## An Act respecting interest

## Loi concernant l'intérêt

### Short Title

### Titre abrégé

#### Short title

**1** This Act may be cited as the *Interest Act*.

R.S., c. I-18, s. 1.

#### Titre abrégé

**1** *Loi sur l'intérêt*.

S.R., ch. I-18, art. 1.

### Rate of Interest

### Taux d'intérêt

#### No restriction except by statute

**2** Except as otherwise provided by this Act or any other Act of Parliament, any person may stipulate for, allow and exact, on any contract or agreement whatever, any rate of interest or discount that is agreed on.

R.S., c. I-18, s. 2.

#### Nulle restriction sauf les dispositions des lois

**2** Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, une personne peut stipuler, allouer et exiger, dans tout contrat ou convention quelconque, le taux d'intérêt ou d'escompte qui est convenu.

S.R., ch. I-18, art. 2.

#### Interest rate when none provided

**3** Whenever any interest is payable by the agreement of parties or by law, and no rate is fixed by the agreement or by law, the rate of interest shall be five per cent per annum.

R.S., c. I-18, s. 3.

#### Taux d'intérêt lorsque non fixé

**3** Chaque fois que de l'intérêt est exigible par convention entre les parties ou en vertu de la loi, et qu'il n'est pas fixé de taux en vertu de cette convention ou par la loi, le taux de l'intérêt est de cinq pour cent par an.

S.R., ch. I-18, art. 3.

#### When per annum rate not stipulated

**4** Except as to mortgages on real property or hypothecs on immovables, whenever any interest is, by the terms of any written or printed contract, whether under seal or not, made payable at a rate or percentage per day, week, month, or at any rate or percentage for any period less than a year, no interest exceeding the rate or percentage of five per cent per annum shall be chargeable, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent.

R.S., 1985, c. I-15, s. 4; 2001, c. 4, s. 91.

#### Lorsque le taux par an n'est pas indiqué

**4** Sauf à l'égard des hypothèques sur immeubles ou biens réels, lorsque, aux termes d'un contrat écrit ou imprimé, scellé ou non, quelque intérêt est payable à un taux ou pourcentage par jour, semaine ou mois, ou à un taux ou pourcentage pour une période de moins d'un an, aucun intérêt supérieur au taux ou pourcentage de cinq pour cent par an n'est exigible, payable ou recouvrable sur une partie quelconque du principal, à moins que le contrat n'énonce expressément le taux d'intérêt ou pourcentage par an auquel équivaut cet autre taux ou pourcentage.

L.R. (1985), ch. I-15, art. 4; 2001, ch. 4, art. 91.

#### Recovery of sums paid otherwise

**5** If any sum is paid on account of any interest not chargeable, payable or recoverable under section 4, the

#### Recouvrement des sommes payées

**5** En cas de paiement d'une somme à compte d'un intérêt non exigible, payable ou recouvrable en vertu de

sum may be recovered back or deducted from any principal or interest payable under the contract.

R.S., c. I-18, s. 5.

## Interest on Moneys Secured by Mortgage on Real Property or Hypothec on Immovables

### No interest recoverable in certain cases

**6** Whenever any principal money or interest secured by mortgage on real property or hypothec on immovables is, by the mortgage or hypothec, made payable on a sinking fund plan, on any plan under which the payments of principal money and interest are blended or on any plan that involves an allowance of interest on stipulated repayments, no interest whatever shall be chargeable, payable or recoverable on any part of the principal money advanced, unless the mortgage or hypothec contains a statement showing the amount of the principal money and the rate of interest chargeable on that money, calculated yearly or half-yearly, not in advance.

R.S., 1985, c. I-15, s. 6; 2001, c. 4, s. 92.

### No rate recoverable beyond that so stated

**7** Whenever the rate of interest shown in the statement mentioned in section 6 is less than the rate of interest that would be chargeable by virtue of any other provision, calculation or stipulation in the mortgage or hypothec, no greater rate of interest shall be chargeable, payable or recoverable, on the principal money advanced, than the rate shown in the statement.

R.S., 1985, c. I-15, s. 7; 2001, c. 4, s. 93(E).

### No fine, etc., allowed on payments in arrears

**8 (1)** No fine, penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage on real property or hypothec on immovables that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.

### Interest on arrears

**(2)** Nothing in this section has the effect of prohibiting a contract for the payment of interest on arrears of interest or principal at any rate not greater than the rate payable on principal money not in arrears.

R.S., 1985, c. I-15, s. 8; 2001, c. 4, s. 94.

l'article 4, cette somme peut être recouvrée ou déduite de tout principal ou de tout intérêt à payer en vertu du contrat.

S.R., ch. I-18, art. 5.

## Intérêt sur deniers garantis par hypothèque sur immeubles ou biens réels

### Il ne peut être recouvré d'intérêt dans certains cas

**6** Lorsqu'un principal ou un intérêt garanti par hypothèque sur immeubles ou biens réels est stipulé, par l'acte d'hypothèque, payable d'après le système du fonds d'amortissement, d'après tout système en vertu duquel les versements du principal et de l'intérêt sont confondus ou d'après tout plan ou système qui comprend une allocation d'intérêt sur des remboursements stipulés, aucun intérêt n'est exigible, payable ou recouvrable sur une partie quelconque du principal prêté, à moins que l'acte d'hypothèque ne fasse mention du principal et du taux de l'intérêt exigible à son égard, calculé annuellement ou semestriellement, mais non d'avance.

L.R. (1985), ch. I-15, art. 6; 2001, ch. 4, art. 92.

### L'intérêt recouvrable ne peut dépasser le taux ainsi mentionné

**7** Lorsque le taux d'intérêt mentionné en vertu de l'article 6 est moindre que celui qui serait exigible en vertu de quelque autre disposition, calcul ou stipulation de l'acte d'hypothèque, il n'est exigible, payable ou recouvrable sur le principal avancé aucun intérêt plus élevé que le taux ainsi mentionné.

L.R. (1985), ch. I-15, art. 7; 2001, ch. 4, art. 93(A).

### Pas d'amende sur les versements arriérés

**8 (1)** Il ne peut être stipulé, retenu, réservé ou exigé, sur des arrérages de principal ou d'intérêt garantis par hypothèque sur immeubles ou biens réels, aucune amende, pénalité ou taux d'intérêt ayant pour effet d'élever les charges sur ces arrérages au-dessus du taux d'intérêt payable sur le principal non arriéré.

### Intérêt sur les arrérages d'intérêt

**(2)** Le présent article n'a pas pour effet de prohiber un contrat pour le paiement d'intérêt, sur des arrérages d'intérêt ou de principal, à un taux ne dépassant pas celui payable sur le principal non arriéré.

L.R. (1985), ch. I-15, art. 8; 2001, ch. 4, art. 94.

### Overcharge may be recovered back

**9** If any sum is paid on account of any interest, fine or penalty not chargeable, payable or recoverable under section 6, 7 or 8, the sum may be recovered back or deducted from any other interest, fine or penalty chargeable, payable or recoverable on the principal.

R.S., c. I-18, s. 9.

### When no further interest payable

**10 (1)** Whenever any principal money or interest secured by mortgage on real property or hypothec on immovables is not, under the terms of the mortgage or hypothec, payable until a time more than five years after the date of the mortgage or hypothec, then, if at any time after the expiration of the five years, any person liable to pay, or entitled to pay in order to redeem the mortgage, or to extinguish the hypothec, tenders or pays, to the person entitled to receive the money, the amount due for principal money and interest to the time of payment, as calculated under sections 6 to 9, together with three months further interest in lieu of notice, no further interest shall be chargeable, payable or recoverable at any time after the payment on the principal money or interest due under the mortgage or hypothec.

### Exception

**(2)** Subsection (1) does not apply

**(a)** to any mortgage on real property or hypothec on immovables given by a joint stock company or any other corporation, nor to any debenture issued by them, for the payment of which security has been given by way of mortgage on real property or hypothec on immovables; or

**(b)** to any prescribed mortgage on real property or prescribed hypothec on immovables given by a prescribed entity, nor to any prescribed debenture issued by it, for the payment of which security has been given by way of mortgage on real property or hypothec on immovables.

### Regulations

**(3)** For the purposes of paragraph (2)(b), the Governor in Council may, by regulation,

**(a)** prescribe entities; and

**(b)** prescribe classes of mortgages and hypothecs given by those entities and classes of debentures issued by them.

R.S., 1985, c. I-15, s. 10; 2001, c. 4, s. 95; 2008, c. 28, s. 155.

**11 to 14** [Repealed, 1992, c. 1, s. 146]

### Les surcharges peuvent être recouvrées

**9** En cas de paiement d'une somme à compte d'un intérêt, d'une amende ou pénalité qui ne sont pas exigibles, payables ou recouvrables en vertu des articles 6, 7 ou 8, cette somme peut être recouvrée ou déduite de tout autre intérêt, amende ou pénalité exigibles, payables ou recouvrables sur le principal.

S.R., ch. I-18, art. 9.

### Nul autre intérêt n'est payable

**10 (1)** Lorsqu'un principal ou un intérêt garanti par hypothèque sur immeubles ou biens réels n'est pas payable, d'après les modalités de l'acte d'hypothèque, avant qu'il se soit écoulé plus de cinq ans à compter de la date de l'hypothèque, alors, si, à quelque époque après l'expiration de ces cinq ans, la personne tenue de payer ou ayant le droit de payer en vue d'éteindre ou de racheter l'hypothèque offre ou paie à la personne qui a droit de recevoir l'argent la somme due à titre de principal et l'intérêt jusqu'à la date du paiement calculé conformément aux articles 6 à 9, en y ajoutant trois mois d'intérêt pour tenir lieu d'avis, nul autre intérêt n'est exigible, payable ou recouvrable à une époque ultérieure sur le principal ni sur l'intérêt dû en vertu de l'acte d'hypothèque.

### Exception

**(2)** Le paragraphe (1) ne s'applique pas :

**a)** à l'hypothèque sur immeubles ou biens réels consentie par une compagnie par actions ou une personne morale, non plus qu'aux débentures émises par elles, dont le remboursement a été garanti au moyen d'une telle hypothèque;

**b)** à l'hypothèque sur immeubles ou biens réels visée par règlement qui est consentie par une entité prévue par règlement, non plus qu'aux débentures visées par règlement qui sont émises par elle, dont le remboursement a été garanti au moyen d'une telle hypothèque.

### Règlements

**(3)** Pour l'application de l'alinéa (2)b), le gouverneur en conseil peut, par règlement :

**a)** prévoir des entités;

**b)** prévoir des catégories d'hypothèques consenties par ces entités et des catégories de débentures émises par elles.

L.R. [1985], ch. I-15, art. 10; 2001, ch. 4, art. 95; 2008, ch. 28, art. 155.

**11 à 14** [Abrogés, 1992, ch. 1, art. 146]

## AMENDMENTS NOT IN FORCE

— 1996, c. 17, ss. 17, 18

**17 Section 4 of the *Interest Act* is replaced by the following:**

### When annual rate not stipulated

**4 (1)** Except as to mortgages on real property, whenever any interest is, by the terms of any written or printed contract, whether under seal or not, made payable at a rate or percentage per day, week, month, or any rate or percentage for any period less than a year, no interest exceeding the rate or percentage prescribed by regulation shall be chargeable, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent, calculated in accordance with the regulations.

### Regulations

**(2)** The Governor in Council may make regulations for the purposes of subsection (1).

— 1996, c. 17, ss. 17, 18

**18 Section 6 of the Act is replaced by the following:**

### Interest recoverable in certain cases

**6 (1)** Whenever any principal money or interest secured by mortgage on real property is, by the mortgage, made payable on a sinking fund plan, on any plan under which the payments of principal money and interest are blended, on any plan that involves an allowance of interest on stipulated payments or on any fund or plan described in the regulations, no interest whatever shall be chargeable, payable or recoverable on any part of the principal money advanced unless the mortgage contains an express statement showing the amount of the principal money and the rate of interest chargeable on that money, calculated in accordance with the regulations.

### Regulations

**(2)** The Governor in Council may make regulations for the purposes of subsection (1).

## MODIFICATIONS NON EN VIGUEUR

— 2001, ch. 4, art. 175 et 176

L.R., ch. 1-15.

**175 (1) Le paragraphe 4(1) de la *Loi sur l'intérêt* est remplacé par ce qui suit :**

### Lorsque le taux annuel n'est pas indiqué

**4 (1)** Sauf à l'égard des hypothèques sur immeubles ou biens réels, lorsque, aux termes d'un contrat écrit ou imprimé, scellé ou non, quelque intérêt est payable à un taux ou pourcentage par jour, semaine ou mois, ou à un taux ou pourcentage pour une période de moins d'un an, aucun intérêt supérieur au taux ou pourcentage fixé par règlement n'est exigible, payable ou recouvrable sur une partie quelconque du principal, à moins que le contrat n'énonce expressément le taux d'intérêt ou pourcentage par an auquel équivaut cet autre taux ou pourcentage, calculé conformément aux règlements.

### Entrée en vigueur

**(2) Le paragraphe (1) prend effet à l'entrée en vigueur de l'article 91 de la présente loi ou à celle de l'article 17 de la *Loi de mise en œuvre de l'Accord sur le commerce intérieur*, chapitre 17 des Lois du Canada (1996), la dernière en date étant à retenir.**

— 2001, ch. 4, art. 175 et 176

L.R., ch. 1-15.

**176 (1) Le paragraphe 6(1) de la *Loi sur l'intérêt* et l'intertitre le précédant sont remplacés par ce qui suit :**

## Intérêt sur deniers garantis par hypothèque sur immeubles ou biens réels

### Intérêt recouvrable dans certains cas

**6 (1)** Lorsqu'un principal ou un intérêt garanti par hypothèque sur immeubles ou biens réels est stipulé, par l'acte d'hypothèque, payable d'après le système du fonds d'amortissement, d'après tout système en vertu duquel

— 2001, c. 4, ss. 175, 176

R.S., c. I-15.

**175 (1) Subsection 4(1) of the *Interest Act* is replaced by the following:**

**When annual rate not stipulated**

**4 (1)** Except as to mortgages on real property or hypothecs on immovables, whenever any interest is, by the terms of any written or printed contract, whether under seal or not, made payable at a rate or percentage per day, week, month, or any rate or percentage for any period less than a year, no interest exceeding the rate or percentage prescribed by regulation shall be chargeable, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent, calculated in accordance with the regulations.

**Coming into force**

**(2) Subsection (1) comes into force on the later of the coming into force of section 91 of this Act and section 17 of the *Agreement on Internal Trade Implementation Act*, chapter 17 of the Statutes of Canada, 1996.**

les versements du principal et de l'intérêt sont confondus, d'après tout plan ou système qui comprend une allocation d'intérêt sur des remboursements stipulés, ou d'après un fonds ou un système prévu par règlement, aucun intérêt n'est exigible, payable ou recouvrable sur une partie quelconque du principal prêté, à moins que l'acte d'hypothèque ne fasse expressément mention du principal et du taux de l'intérêt exigible à son égard, calculé conformément aux règlements.

**Entrée en vigueur**

**(2) Le paragraphe (1) prend effet à l'entrée en vigueur de l'article 92 de la présente loi ou à celle de l'article 18 de la *Loi de mise en œuvre de l'Accord sur le commerce intérieur*, chapitre 17 des Lois du Canada (1996), la dernière en date étant à retenir.**

— 1996, ch. 17, art. 17 et 18

**17 L'article 4 de la *Loi sur l'intérêt* est remplacé par ce qui suit :**

**Lorsque le taux annuel n'est pas indiqué**

**4 (1)** Sauf à l'égard des hypothèques sur biens-fonds, lorsque, aux termes d'un contrat écrit ou imprimé, scellé ou non, quelque intérêt est payable à un taux ou pourcentage par jour, semaine ou mois, ou à un taux ou pourcentage pour une période de moins d'un an, aucun intérêt supérieur au taux ou pourcentage fixé par règlement n'est exigible, payable ou recouvrable sur une partie quelconque du principal, à moins que le contrat n'énonce expressément le taux d'intérêt ou pourcentage par an auquel équivaut cet autre taux ou pourcentage, calculé conformément aux règlements.

— 2001, c. 4, ss. 175, 176

R.S., c. I-15

**176 (1) Subsection 6(1) of the *Interest Act* and the heading before it are replaced by the following:**

## Interest on Moneys Secured by Mortgage on Real Property or Hypothec on Immovables

### Interest recoverable in certain cases

**6 (1)** Whenever any principal money or interest secured by mortgage on real property or hypothec on immovables is, by the mortgage or hypothec, made payable on a sinking fund plan, on any plan under which the payments of principal money and interest are blended, on any plan that involves an allowance of interest on stipulated payments or on any fund or plan described in the regulations, no interest whatever shall be chargeable, payable or recoverable on any part of the principal money advanced unless the mortgage or hypothec contains an express statement showing the amount of the principal money and the rate of interest chargeable on that money, calculated in accordance with the regulations.

### Coming into force

**(2) Subsection (1) comes into force on the later of the coming into force of section 92 of this Act and section 18 of the *Agreement on Internal Trade Implementation Act*, chapter 17 of the Statutes of Canada, 1996.**

### Règlements

**(2)** Le gouverneur en conseil peut, par règlement, prendre les mesures nécessaires à l'application du paragraphe (1).

— 1996, ch. 17, art. 17 et 18

**18 L'article 6 de la même loi est remplacé par ce qui suit :**

### Intérêt recouvrable dans certains cas

**6 (1)** Lorsqu'un principal ou un intérêt garanti par hypothèque sur biens-fonds est stipulé, par l'acte d'hypothèque, payable d'après le système du fonds d'amortissement, d'après tout système en vertu duquel les versements du principal et de l'intérêt sont confondus, d'après tout plan ou système qui comprend une allocation d'intérêt sur des remboursements stipulés, ou d'après un fonds ou un système prévu par règlement, aucun intérêt n'est exigible, payable ou recouvrable sur une partie quelconque du principal prêté, à moins que l'acte d'hypothèque ne fasse expressément mention du principal et du taux de l'intérêt exigible à son égard, calculé conformément aux règlements.

### Règlements

**(2)** Le gouverneur en conseil peut, par règlement, prendre les mesures nécessaires à l'application du paragraphe (1).

**FEDERAL COURT**

**BY AND BETWEEN:**

ARGO SHIPS S.A.

Applicant

**A N D :**

ATLANTIC OCEAN SALT INC.

Respondent

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**APPLICANT'S RECORD**  
**(Application *ex parte* for Recognition**  
**and Enforcement of an Arbitral Award)**  
(Rules 327 et seq.)

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ORIGINAL

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