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στην

ΝΑΥΤΙΛΙΑ

LAYTIME AND DEMURRAGE

ΚΟΚΚΟΡΗ ΚΑΛΛΙΟΠΗ

Διπλωματική Εργασία

που υποβλήθηκε στο Τμήμα Ναυτιλιακών Σπουδών
του Πανεπιστημίου Πειραιώς ως μέρος των
απαιτήσεων για την απόκτηση του Μεταπτυχιακού
Διπλώματος Ειδίκευσης στην Ναυτιλία

Πειραιάς

ΝΟΕΜΒΡΙΟΣ 2012

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Πανεπιστήμιο Πειραιώς

CONTENTS

SUMMARY……………………………………………………………………………...P.6

1. BASIC CONTRACT LAW – BREACH AND DAMAGES………………P.8

1.1 ENGLISH CONTRACT LAW GENERALLY……………………….P.8

1.1.1 *WHAT IS A CONTRACT?*...P.8

1.1.2 *FORMATION OF A CONTRACT*……………………………..P.8

1.1.3 *INTERPRETATION OF CHARTERPARTY CLAUSES*……….P.9

1.2 CONDITIONS, WARRANTIES AND INNOMINATE TERMS AND REMEDIES FOR BREACH…………………………..P.10

1.2.1 *DAMAGES AND EFFECT OF BREACH*…………………......P.10

1.3 FRUSTRATION…………………………………………………….P.11

1.4 REPUDIATION…………………………………………………….P.12

1.5 THE MEANING AND NATURE OF DEMURRAGE………………P.13

1.5.1 *STANDARD CONDITIONS*……………………….................P.13

1.5.2 *WORKING DEFINITIONS OF DEMURRAGE*……………….P.14

1.6 THE NATURE AND MEANING OF DESPACH…………............P.15

1.6.1 *WORKING DEFINITIONS OF DESPATCH*…………………..P.16

1.7 WHEN DEMURRAGE ENDS ……………………………………….P.19

1.8 DETENTION-NATURE, MEANING AND WORKING DEFINITIONS………………………………………………………P.22

1.8.1 *THE SIGNIFICANCE OF DETENTION*………………………P.22

1.8.2 *WHEN DOES WRONGFUL DETENTION OCCUR*………….P.23

1.9 DETENTION OR DEMURRAGE? ………………………….........P.25

2. LAYTIME AND DEMURRAGE – GENERAL PRINCIPLES………….P.25

2.1 COMMENCEMENT OF LAYTIME………………………………….P.26

2.2 CHANGES TO THE BEGINNING OF LAYTIME………………….P.31

2.3 INTERRUPTIONS AND EXCEPTIONS TO LAYTIME……………P.32

2.3.1 *FAULT OF THE SHIPOWNER*……………………………….P.33

2.3.2 *BALLASTING – DEBALLASTING*……………………………P.33

2.3.3 *PRESENTATION OF THE BLS*………………………………..P.33

2.3.4 *COMMUNICATION WITH THE VESSEL*…………………….P.33

Πανεπιστήμιο Πειραιώς

2.3.5 *CONGESTION*……………………………………………………....P.34
2.3.6 *WEATHER*……………………………………………………….P.34
2.3.7 *INTERRUPTIONS*……………………………………………...P.34
2.3.8 *EXCEPTIONS*…………………………………………………….P.35
2.3.9 *CONOCO WEATHER CLAUSE*…………………………….....P.35
2.3.10 *HOLIDAYS*………………………………………………………..P.36
2.3.11 *STRIKE*………………………………………………………....P.36
2.3.12 *SHIFTING*……………………………………………………...P.36
2.4 DEMURRAGE…………………………………………………………...P.38
2.4.1 *DEFAULT OF THE SHIPOWNER*……………………………P.38
2.4.2 *EXCEPTIONS CLAUSES AND DEMURRAGE*………………P.39
2.4.3 *NOTICE OF READINESS AND COMMENCEMENT OF DEMURRAGE*……………………………………………..P.40
2.4.4 *PUMPING CLAUSE*…………………………………………...P.40
2.4.5 *THE END OF DEMURRAGE*………………………………….P.41
2.4.6 *DEMURRAGE TIMEBARS*…………………………………….P.41
2.5 DETENTION……………………………………………………………..P.44
2.6 DELAY BEFORE THE VESSEL REACHES ITS SPECIFIED DESTINATION………………………………………….P.45
2.7 DELAY AFTER THE END OF LAYTIME AND/OR DEMURRAGE………………………………………………………...P.46

3. SENDING AND RECEIVING DEMURRAGE CLAIMS AND RELEASING P&LS……………………………………………...P.48
3.1 DEMURRAGE IN FOB,CFR AND CIF CONTRACTS…………….P.48
3.2 THE IMPORTANCE OF TIMEBARS………………………………..P.49

4. NEGOTIATION OF DEMURRAGE CLAIMS WITH OWNERS AND COUNTERPARTIES AND DISPUTE RESOLUTIONS…………..P.50
4.1. DISPUTE RESOLUTION………………………………………………..P.50

5. NON DEMURRAGE CLAIMS IN CHARTERPARTIES AND CONTRACTS………………………………………………………………P.51
5.1. FREIGHT AND FREIGHT DIFFERENTIAL………………………..P.51

5.2. DEVIATION……………………………………………………………...P.52
5.3. HEATING……………………………………………………………...P.53
5.4. PORT COSTS/SHIFTING……………………………………………..P.53
5.5. COST FOR CIRCULATION/BLEDING
(TIME AND BUNKERS)………………………………………………...P.53
5.6. SPEED UP……………………………………………………………..P.53
5.7. DETENTION…………………………………………………………..P.54
5.8. ADDITIONAL WAR RISK PREMIUM……………………………......P.54

6. DEMURRAGE IN TRAFIGURA METHODS AND SYSTEMS…………P.54
6.1 FOB/CIF-CFR-DES…………………………………………………P.54
6.2 FOB/FOB OR CIF-CFR-DES/ CIF-CFR-DES………………………..P.58
6.3 BASIC RULES………………………………………………………...P.63

7. OPERATIONS' SUPPORT IN CLAIMS TEAM…………………………..P.63

CONCLUSION……………………………………………………………..P.64

BIBLIOGRAPHY…………………………………………………………P.65

Πανεπιστήμιο Πειραιώς

LAYTIME AND DEMURRAGE

The thesis below aims to provide a detailed explanation of both charter party and contract laytime and demurrage terms and highlight many areas where money can easily be lost or earned.

It explains the basics of laytime and demurrage in both charter parties and contracts in order to have a clear picture of how claims department functions in Trafigura and identify the important role of the other departments in the day to day claims' processing.

SUMMARY

To summarize, laytime and demurrage comprise one aspect of maritime law, in particular the law relating to voyage charters. Laytime is the period of time allowed by a shipowner to a carrier to carry out cargo loading or discharging operations. The laytime is prescribed in a contract, which is an exchange of obligations and an allocation of risks between the shipowner and the charterer. Each party agrees to accept the risk of certain foreseen circumstances. Laytime commences when the vessel has arrived at the agreed destination, is ready to load or discharge and has tendered a valid NOR. The beginning of laytime may change in proportion with the clauses of the contract. Demurrage is the agreed amount payable to the owner in respect of the delay to the vessel beyond the laytime, for which the owner is not responsible. It has been held that once the vessel is on demurrage, no exceptions will operate to prevent demurrage continuing to be payable, unless the exceptions clause is clearly worded to have this effect. Usually demurrage claim must be submitted within a specified period stated in the contract, failing which the claim will be deemed to have been waived. Demurrage is an important element for each trading company. Basic knowledge of the law relating to voyage charters and proper correspondence among the departments of the company are essential. The preparation of a claim requires contracts, cargo documents and proof of demurrage rate. There are two basic categories of deliveries, the FOB/CIF-CFR-DES when the vessel is company's fixture or TC and the FOB-FOB or CIF-CFR-DES/ CIF-CFR-DES when the vessel is not company's fixture.

Πανεπιστήμιο Πειραιώς

ΠΕΡΙΛΗΨΗ

Για να συνοψίσουμε, σταλία και επισταλίες περιλαμβάνει μία πτυχή του ναυτικού δικαίου, ιδίως της νομοθεσίας σχετικά με τη ναύλωση πλοίου. Σταλίες είναι το χρονικό διάστημα που επιτρέπεται από τον εφοπλιστή για τη διενέργεια φόρτωσης ή εκφόρτωσης. Η σταλία καθορίζεται από ένα συμβόλαιο, το οποίο είναι η ανταλλαγή των υποχρεώσεων και η κατανομή των κινδύνων μεταξύ του πλοιοκτήτη και του ναυλωτή. Κάθε συμβαλλόμενο μέρος συμφωνεί να δεχθεί τον κίνδυνο σε ορισμένες περιπτώσεις που προβλέπονται. Η σταλία αρχίζει όταν το πλοίο φτάσει στον προορισμό που έχει συμφωνηθεί, είναι έτοιμο να φορτώσει ή να εκφορτώσει και έχει υποβάλει ένα έγκυρο NOR. Η σταλία μπορεί να ξεκινήσει ανάλογα με τις ρήτρες της σύμβασης. Επισταλία είναι το συμφωνημένο ποσό που καταβάλλεται στον ιδιοκτήτη σε σχέση με την καθυστέρηση του σκάφους πέρα από την σταλία, για την οποία ο ιδιοκτήτης δεν είναι υπεύθυνος. Έχει κριθεί ότι από τη στιγμή που το πλοίο βρίσκεται σε επισταλία, καμία εξαίρεση δεν θα την εμποδίσει να συνεχίσει να καταβάλλεται, εκτός κι αν υπάρχει ρήτρα εξαίρεσης στο συμβόλαιο. Συνήθως το claim πρέπει να σταλεί εντός ορισμένης προθεσμίας που καθορίζεται στο συμβόλαιο. Αν δε σταλεί εντός αυτής της προθεσμίας το claim δεν θα γίνει αποδεκτό και δεν θα πληρωθεί. Η Επισταλία είναι ένα σημαντικό στοιχείο για κάθε εμπορική εταιρεία. Βασικές γνώσεις της νομοθεσίας σχετικά με τη ναύλωση του πλοίου και η σωστή συνεργασία μεταξύ των τμημάτων της εταιρείας είναι απαραίτητα. Η προετοιμασία του claim απαιτεί συμβόλαια, τα έγγραφα του φορτίου και την απόδειξη του demurrage rate. Υπάρχουν δύο βασικές κατηγορίες των παραδόσεων, η FOB / CIF-CFR-DES, όταν το πλοίο είναι κλείσιμο της εταιρείας ή TC και η FOB-FOB ή CIF-CFR-DES / CIF-CFR-DES, όταν το πλοίο δεν είναι κλείσιμο της εταιρείας.

1. BASIC CONTRACT LAW – BREACH AND DAMAGES

What follows in this first section of the paper, is a brief overview of the provisions of UK contract law in relation to demurrage and despatch clauses in a charterparty. Since this presentation is about laytime and demurrage rather than contract law, it is not the intention of this paper to examine basic contract law in any depth. The following are a merely a few basic points of importance.

1.1. ENGLISH CONTRACT LAW GENERALLY

1.1.1. *WHAT IS A CONTRACT?*

A contract is an exchange of obligations and an allocation of risk. Each party agrees to accept the risk of certain foreseen circumstances taking place. When dealing with any contractual issue it should be remembered that something may not be a party's fault, but it may be that party's responsibility under the contract.

1.1.2. *FORMATION OF A CONTRACT*

No formalities are required for the formation of a contract, such as a charterparty, under English law. A binding contract can be formed in all the following ways: 1. orally in discussions, 2. by an exchange of correspondence (which includes emails), 3. by the conduct of the parties.

Usually charterparty agreements are set out in standard industry forms, amended and signed by the parties, but agreement on all the key terms may have been reached at a much earlier time. The contract is formed at the point when what seems to be an "informal" agreement has been reached on what are referred to as "the essential terms".

Essential Terms

There are two types of "essential terms"

(a) Terms so important that if not settled make the contract unworkable due to uncertainty. These terms are clearly essential because if the contract was too vague the Court would not be able to enforce it.

(b) Terms that the parties require to be concluded as an essential prerequisite to the formation of the contract.

Πανεπιστήμιο Πειραιώς

Essential terms are those relating to, for example, the voyage route or the hire/freight rate. Provisions regarding rates of demurrage and despatch are not regarded as essential terms. This means a contract can be validly concluded without agreement being reached on rates of demurrage and despatch. This is because these can be dealt with by implying a "reasonable rate". In the case of Tradigrain SA & Others v King Diamond Shipping SA (The "Spiros C" [2000] 2 Lloyds Rep 319) Rix J held that in the absence of any agreed length of laytime, a term might be implied into a bill of lading so that cargo could be discharged within a reasonable amount of time: "The implied term that the shipper should unload the cargo shipped by him within a reasonable time is, in my judgment, soundly based as a matter of principle. Given that there is a binding contract of carriage between the shipowner and the shipper on the terms of the bill of lading, and that at the end of the sea passage, the cargo is to be discharged or at least received overboard by the shippers or the receivers as indorsees of the bills of lading, the time within which the shippers or receivers are to procure that this exercise is to be completed, in the absence of any more specific provision, must in principle be a reasonable time. The shipper or receiver cannot have an entitlement to keep the ship waiting for an unlimited time.". Preventing a Charterparty becoming Binding before Terms on Demurrage and Despatch are Agreed. The normal way of ensuring a charterparty does not become binding before a certain term have been confirmed is by the use of the words "subject to contract" or "subject to details". "Subject to contract" – this means that no agreement is concluded until the charterparty is set out in a document, even if agreement has already been reached on the essential terms. "Subject to details" - this requires all the details (i.e. non essential terms of the contract) to be agreed before a binding commitment is concluded.

1.1.3. *INTERPRETATION OF CHARTERPARTY CLAUSES*

If the parties have expressly provided for a specific event, then this will override what might otherwise be implied or assumed. It has also been decided as a matter of English law that if a charterparty is concluded on a standard form ("printed clauses") and extra clauses are added as "typed clauses", if there is any conflict between the typed clauses and the printed clauses on the standard form, the typed clauses will prevail. If the contract is clear then the court or arbitrators will not look behind the terms of the contract to the pre-contractual negotiations to assist them in the interpretation of it even if such interpretation is contrary to the parties' intentions. However, where it is unclear the

courts look at what is known as the "factual matrix" to assist them in interpretation, this would include, for example, expert evidence as to the meaning of certain words in trade usage. If there is scope for interpretation in a contract, this leads to uncertainty in the contract and it can also be expensive obtaining expert evidence to back up the preferred meaning. It is therefore important to make sure that all contracts are as specific and clear as possible in order that these additional costs can be avoided.

1.2. CONDITIONS, WARRANTIES AND INNOMINATE TERMS AND REMEDIES FOR BREACH

Under English contract law analysis there are three different categories into which a term in a contract can fall: a) Warranties – these are essentially minor terms, a breach of which does not give rise to the right to terminate the contract, but may give rise to a lesser remedy such as damages; b) Conditions – these include terms which go to the root of the contract, and terms which the parties have agreed gives one party the right to terminate if the other party is in breach of that term; and c) Innominate terms – these are terms which fall into either category (a) or (b) depending on how serious the breach is.

1.2.1. *DAMAGES AND EFFECT OF BREACH*

The demurrage/ laytime provisions in a charterparty are an important term of the contract since time is money to an Owner. However (unless it states otherwise in the charterparty) detention of a ship beyond its laytime is a breach of warranty, not a breach of condition (see above) and time is not held to the essence of the contract. In Atkieselskabet Reidar v Arcos Ltd [1927] 1 KB). Lord Justice Banks held: "The shipowner is not entitled, merely because the lay days have expired, and the contract is not completed, to treat the contract as at an end and to withdraw his ship. It is for this reason, I think, that the stipulation for a demurrage rate is so often inserted in the contract in order that, if the vessel has to remain in order to enable the Charterer to complete his obligation, either of loading or discharging, the parties may know what sum will have to be paid for the detention…time not being of the essence of the contract, the shipowner will not, except under some exceptional circumstances, be in a position to assert that the contract has been repudiated unless the vessel does remain for a sufficient time to enable that question to be tested." This generally means that if this term of the contract is breached (i.e. if it takes too long to load or discharge cargo), the lateness is penalised in the form of liquidated damages (demurrage) payable to the Owner in respect

of the breach and there is no right to repudiate the contract (see below) and treat it as at an end. Repudiation only becomes available in exceptional circumstances such as inordinate delay. Of course the circumstances will differ according to whether or not there is a demurrage provision and precisely what that provision provides for. "Liquidated damages" are a legal term for those damages agreed in advance by the parties. In other words, these damages are not those arising from any loss, they are any amount agreed under the contract and are payable even if there is no actual loss. In certain circumstances however it may be possible to claim damages in addition to demurrage. In the case of Richco International Ltd v Alfred C. Toepfer International (The Bonde) ([1991] 1 Lloyd's Rep. 136) Mr Justice Potter held that additional damages could be recoverable provided that: "…where a charter-party contains a demurrage clause, then in order to recover damages in addition to demurrage for breach of the Charterers' obligation to complete loading within the lay days, it is a requirement that the plaintiff demonstrate that such additional loss is not only different in character from loss of use but stems from breach of an additional and/or independent obligation."

1.3. FRUSTRATION

A contract will be frustrated when a supervening event unforeseen by the parties and not due to their fault renders performance of the contract either impossible or radically different from that envisaged (Davis Contractors v Fareham UDC [1956] AC 696). If a claim for frustration succeeds, the performance of the contract is avoided and the contract becomes dissolved. This means that both parties are relieved from any further performance of the contract. Money paid is generally not recoverable and money which has not yet fallen due is not payable. Loss tends to lie where it falls. For example, 3 events which will generally frustrate the performance of a contract are: a) Destruction of a ship and cargo – if the goods are defined goods, it will be easier to argue that their destruction frustrates a contract. If they are not defined, the courts usually take the view that more can be obtained. In practical terms this often means that if cargo is destroyed before it is loaded, a charter will not be held to have been frustrated. (EB Aaby's v LEP Transport Limited (1948) 81 Ll L Rep. 465). If the vessel itself is destroyed, this will bring the contract to an end if the vessel has been specifically identified in the contract. (the "GULNES" 1937 59 Ll L Rep 144). B) Inordinate delay – The courts compare the length of the delay with the length of the contract in order to decide if the contract has been frustrated. It is also clear that in the event of delay the English courts will not accept

overhasty claims for frustration: Mere delay is insufficient but the delay must go on for so long that a reasonable business man would conclude that it was likely to interfere fundamentally with performance. C) Illegality – illegality by the law of the country where performance is required may provide a defence to the failure to perform the charterparty. This is because it is accepted that there is an implied term in the charterparty that the contractual obligations are valid and legal. Performance of the charterparty must be rendered impossible and not just difficult. Often parties make specific clauses in the charterparty to allow for cancellation in certain events e.g. the outbreak of war. These are known as force majeure clauses. Generally such clauses will allow the parties to agree that when the disrupting circumstances have been in existence for a specific period of time, either party may cancel the agreement by giving the other a certain period of written notice. The contract may also make specific provision for the financial consequences of such a cancellation.

1.4. REPUDIATION

A repudiation of a contract occurs when one party commits a breach of such seriousness that the other party becomes entitled as a result to treat himself as no longer bound to perform the contract and to claim damages for its loss. In order for a repudiation to occur the breach must go to the very root of the contract. This means that when considering if repudiation has occurred one must be mindful of the type of term breached (see above).

1.5. THE MEANING AND NATURE OF DEMURRAGE

Laytime and demurrage arise exclusively in transportation contracts and not in hire contracts. In a voyage charter the Owner or operator of the vessel is paid freight to carry the cargo. The Owner or operator agrees to a freight rate based upon his expectations of the time required to complete the voyage and the cost that will be involved in it. There are more costs involved for the Owner and operator in voyage charters than in time charters, for example the Owner or operator has to pay the port costs in a voyage charter whereas these are paid for by the Charterer in a time charter. As discussed above, a contract, apart from being an agreement to perform obligations (to carry cargo in exchange for the payment of money), is also a division of responsibilities and liabilities between the parties. The main risk in a charterparty is delay. The parties agree to be responsible for expected and unexpected events which occur during the

performance of the contract. When performing a voyage charter, it is known that time will be required to load and discharge the cargo. Therefore most forms of voyage charter stipulate a certain amount of time in which the Charterer is to load and discharge the cargo: this is known as laytime. If laytime is used up and exceeded then the Charterer is in breach and the Owner or operator of the vessel is entitled to a further payment for the use of the vessel by way of damages. The parties usually stipulate an agreed rate of damages payable to the Owner or operator if the laytime is exceeded: this is known as demurrage. Donaldson J sums up the situation in Navico AG v Vrontados Naftiki Etairia PE [1986] 1 Lloyd's Rep 379 as follows: "All the overhead and a large proportion of the running of the ship are incurred even if the ship is in port. Accordingly the shipowner faces serious losses if the processes take longer than he had bargained for and the carrying of freight on the ship's next engagement is postponed. By way of agreed compensation for these losses, the Charterer usually contracts to make further payments, called demurrage, at a daily rate in respect of determination beyond the laytime." A general definition of demurrage is: "..a payment provided by contract or by law for the use by the Charterer of time beyond which is conceived to be normally necessary for loading or discharging a ship or for the performance of certain functions relating thereto" (The Law of Demurrage by Tiberg, 4th ed. p2)

1.5.1. *STANDARD CONDITIONS*

There are two sets of standard conditions in common use which define demurrage. The first is "Charterparty Laytime definitions 1980" and the second is the "Voyage Charter Party Laytime Interpretation Rules 1993 (the Voylayrules)." These definitions have been agreed and issued jointly by BIMCO, CMI, FONASBA and Intercargo. The second set of definitions is a development of the first and is said better to reflect industry practice. A third set of definitions, sometimes used, is the "Baltic Code 2000", now the "Baltic Code 2002", issued by the Baltic Exchange in London. None of these definitions is determinative. Standard definitions can be slightly contradictory with each other and common usage in some trades. On their own, the standard definitions have no special force in a contract. Just because there is an agreed definition in existence, does not necessarily mean that the agreed definition applies to one's contract. Nevertheless as far as demurrage is concerned its basic meaning is well known to the courts. If one wants to give a particular set of standard definitions full force within a charterparty then one needs to incorporate those definitions into a charterparty by direct reference. "The Volayrules

Πανεπιστήμιο Πειραιώς

1993" define demurrage as follows: "DEMURRAGE" shall mean an agreed amount payable to the Owner in respect of delay to the vessel beyond the laytime for which the Owner is not responsible" It should be noted that even if this definition is incorporated into a charterparty, it can still be agreed in addition to this, that some or all laytime exceptions will be applicable to demurrage, or even a completely different event not referred to in laytime can be excepted. The "The Baltic Code 2000" has a very similar definition: "DEMURRAGE" - an agreed amount payable to the Owner in respect of delay to the vessel beyond the laytime for which the Owner is not responsible. Demurrage shall not be subject to exceptions which apply to Laytime unless specifically stated in the charter-party"

1.5.2. *WORKING DEFINITIONS OF DEMURRAGE*

Generally demurrage provisions are found in the charterparty. Alternatively, a charterparty may contain no demurrage provision at all. Use of standard liner terms often mean no demurrage and instead, when slow turn-around in a port is anticipated (perhaps because certain ports will be visited which are known to be constantly congested), the problem is dealt with by increased freight. Contractual demurrage provisions usually grant the Charterer a set amount of lay time, usually fixed in terms but occasionally described by less precise terms such as that the cargo is to be loaded with "customary quick despatch - CQD". This is defined as when a "charterer must load or discharge as fast as possible in the circumstances prevailing at the time of loading or discharging". After the end of laytime a rate of demurrage is customarily provided, sometimes for a certain period but usually for an undetermined length of time. Exception clauses, excusing the Charterer for delay due to specified occurrences are usually present in the charterparty. It makes sense for the parties to decide demurrage provisions, rather than any legislative bodies, for the parties can accurately price their time. Parties can therefore effectively agree whatever they please in relation to demurrage provisions. Most charters provide for demurrage on a daily basis (although usually pro rata) but demurrage could also be specified on an hourly or other basis. Unless a charter provides for portions of a day, prima facie the Owner is entitled to a whole day's demurrage if any time is used (Commercial Steamship Co v Bolton [1875] L.R 10 QB 346). These are some examples of provisions for demurrage where no term is put on the demurrage period: "If the Vessel be detained beyond her loading time the Charterers to pay Demurrage at the rate of ….. per running hour. "Demurrage shall be paid at the rate of three pence British Sterling per

gross register ton per running day and pro rata for any part of a day Such demurrage shall be paid day by day, when and where incurred" (Australian Grain Charter 1928) "Charterers shall pay demurrage at …% of the demurrage rate applicable to vessels of a similar size to the vessel as provided for in Worldscale current at the date of commencement of loading per running day and pro rata for part of a running day for all time by which the allowed laytime specified in clause 13 hereof is exceeded by the time taken to load and discharge and which under the provisions of this charter counts as laytime or for demurrage". Where the demurrage rate is expressed as a daily rate, that will be a negotiated rate that generally reflects the daily return that the Owner expects to make, but not always. Sometimes it is expressed by reference to Worldscale or may merely be agreed between the parties. Worldscale provides inter alia for standard demurrage rates according to ships' sizes based on deadweight capacity. This means that in the absence of any provision to the contrary, the size of the ship is important, not the amount of cargo carried. Provisions limiting recovery for demurrage in a charterparty are unusual. An example of a provision for demurrage where the demurrage period is limited is as follows: "Ten running days on demurrage at a rate stated in Box 18 per day or pro rata for any part of a day, payable day by day, to be allowed to the Merchants altogether at ports of loading and discharging". (Uniform General Charter 1976 Gencon). This clause is often struck out or amended. Exactly what payments will be made in relation to demurrage and when payments will begin to accrue will be determined by the terms of the charterparty. It is only by reading the charterparty that it is possible to determine the obligations on a vessel, whether they have been fulfilled, when laytime commenced, when it ended and the amount of demurrage due. Therefore in every case it is absolutely critical to read the contract.

1.6. THE NATURE AND MEANING OF DESPATCH

Despatch money is the money that is sometimes due from Owners to Charterers, shippers or receivers if the Charterers complete the loading or the discharging before laytime ends. In this sense is the opposite of demurrage. Despatch is sometimes referred to as a rebate from freight, since the full amount of laytime has been paid for in the freight or alternatively seen as a reward for Charterers for performing more than their duty. Despatch is only payable where the charter expressly provides for it. It is virtually unknown in the tanker trade. The Charterparty Laytime Definitions 1980 state: "DESPATCH means the money payable by the Owner if the ship completes loading or

Πανεπιστήμιο Πειραιώς

discharging before the laytime has expired.". The Voylayrules definition is: "DESPATCH shall mean an agreed amount payable by the Owner if the vessel completes loading or discharging before laytime has expired."

1.6.1. *WORKING DEFINITIONS OF DESPATCH*

The following are examples of despatch clauses found in charterparties: "Despatch money (which is to be paid to Charterers before Steamer sails) shall be payable for all time saved in loading (including Sundays and Holidays saved) at the rate of £10 sterling per day for Steamers up to 4,000 tons Bill Lading weight, and £15 sterling per day for Steamers of over 4,000 tons Bill of Lading weight…" (River Plate Charter-Party 1914 Centrocon). "If sooner despatched Owners to pay Charterers despatch at …. Per day or pro rata for part of a day for all time saved" (Baltimore Form C). The rate of despatch specified is often half of the demurrage rate. This is because the Owner may have difficulty obtaining another engagement at short notice or in advancing the date of the ship's next voyage, therefore his gain by having the vessel delivered back sooner may not be as great as he stands to lose by delay. Fewer charterparties provide for despatch than demurrage and hardly any tanker charterparties provide for despatch. Gencon 1976 for example provides for demurrage but not despatch. The length of time for which despatch money is payable depends upon the charterparty terms. Disputes arise as to whether the calculation should be based on "working days," "lay days" or calendar days saved. The most common interpretation given to despatch clauses is that the clause provides for the Owner to pay for all time saved to the ship, rather than working time saved, calculated in the way in which demurrage would be calculated, that is without taking account of the laytime exceptions. Less often, a clause may allow for such exceptions. The difference between "all time saved" and "working time saved" is that working days exclude non-working days i.e. Sundays where as "all time saved" usually includes Sundays. To give an example, if the charter allows 10 working days for loading and it actually takes 5 working days, concluding on say Wednesday, laytime would have expired the following Tuesday if all laytime allowed had been taken (a further 5 days, excluding Sunday as a non-working day.). Time saved is 6 days on an "all time saved" basis and 5 days on a "working time saved" basis. In Thomasson Shipping Co Ltd v Henry Peabody & Co of London Ltd ([1959] 2 Lloyd's Rep 269) there was a dispute over how time saved should be worked out in terms of hours and days. The despatch clause was a separate provision and provided for despatch money to be payable in respect of all working time saved.:

"Despatch money…shall be payable for all working time saved in loading and discharging at the rate of £100 per day, or pro rata for part of a day saved." To calculate the loading despatch, the Owners took the number of working hours saved and divided it by 24. The Charterers divided the same number by the number of hours customarily worked each day. In each case the result was multiplied by the daily rate of £100. The High Court held that the Charterers were right. McNair J said: "…the true effect of this clause, as a simple matter of construction, is that despatch money is payable at the rate of £100 per day and pro rata for each day upon which working time is saved." The words "all working time saved" meant in the view of the judge that Sundays and holidays should be excluded form time saved. The expression "day" signified a calendar day of 24 hours and not merely a period of 24 hours made up of separate periods of working hours. As obiter McNair J also said: "It seems to be that the addition of the word "working" here merely has the effect of excluding from the time saved Sundays and holidays, and possibly – though I express no concluded opinion on it – rainy days." Care needs to be taken regarding expressions such as "all time saved", "any time saved", "every hour saved" and similar expressions. These expressions may be placed in a charterparty in such a way that they are affected by immediately adjacent words and the presumption that despatch is to be calculated in the same way as demurrage is rebutted. In Nelson (James) & Sons Ltd v Nelson Line, Liverpool Ltd ([1907] 2 KB 705) the words "each clear day saved in loading" meant that the Charterers were not entitled to despatch money for a Sunday or a holiday after the end of loading." Often despatch clauses require separate calculations for loading and discharging. However, where there are more than one load or discharge ports, the time taken at all the load ports or all the discharge ports must first be added together. Separate calculations are not normally made for each port. In United British SS Co, Ltd v Minister of Food ([1951] 1 Lloyd's Rep 111) a charter party provided for the calculation of demurrage as follows: "Cargo to be discharged at the average rate of 1,000 tons for bulk and 750 tons for bags per weather working day, (Sundays and holidays excepted) (provided vessel can deliver at this rate). Vessel to pay despatch money at one-third of the demurrage rate for all time saved in discharging. Despatch or demurrage, if any, at discharging port(s) to be settled in London.". The laytime, based on the cargo discharged at each port, was exceeded at Southampton but not at London. The Owners argued that the two discharging times should be taken separately. The despatch money at London would then be deducted from the demurrage due at Southampton. The Charterers argued however that the total time allowable for discharge

at both ports should be the basis. The High Court held that the Charterers were right. Croom-Johnson J said: “If the parties wanted to make an agreement under which they were going to pay demurrage for delay at one point and only get one-third of the demurrage back, so as to speak, or credit for the equivalent of one-third of the demurrage, for any time they saved at the other port, they could no doubt have framed an appropriate clause which would have produced that result. It is quite plain that they have not done it, and it seems to me that, looking at this charterparty as a whole, when I see ‘cargo to be discharged at the average rate of’ so and so, I think these words really mean what they say. It looks to me as if it would have been simple to say ‘Cargo to be discharged at the average rate of so-and-so at each port.’ But they never did it.” This means that if an Owner wishes to have separate calculations at each port, a method which would usually be beneficial to an Owner since demurrage is nearly always set at a higher rate than despatch, he must use a clause of the type mentioned above. In the absence of such a clause, the Charterer usually has the right to average the time saved, and extra time used can then be set off against each other. In Compania Naviera Azuero SA v British Oil & Cake Mills Ltd and others ([1957] 1 Lloyd’s Rep 312) the laytime clause stated: “Cargo to be received at destination at an average rate of not less than 1,000 tons per weather working day…” Discharging was carried out at a higher rate than this at Belfast and a lower rate at Avonmouth. The Owners claimed that laytime should be calculated separately. For each port and despatch money or demurrage paid separately. Pearson J rejected this contention and said that there could be one calculation for both ports. The clause did not say “each destination” it spoke not of “average rates” but of “an average rate.” He said: “If some delay at one port is exactly offset by the expedition at the other port, the unloading will be completed and the ship will be released for further employment at the proper time. In that case, it would seem unreasonable that the shipowners should pay despatch money at one port and charge demurrage at the other port, and make a profit out of the difference of rates.” Furthermore, time began after a notice period at Belfast but upon the giving of notice of readiness at Avonmouth. Separate calculations would discriminate unfairly in favour of the Belfast receivers. The main assumptions regarding despatch clauses are as follows: it is assumed despatch clauses intend that the Owner will pay the Charterer for all time saved, calculated in the same way in which demurrage is calculated. These assumptions can however be displaced and should only be looked upon as a starting point. Bailhache J in Mawson Steamship Co v Beyer ([1913] 19 CC 59) stated that such prima facie assumptions were displaced when:

Πανεπιστήμιο Πειραιώς

"…either (a) lay days and time saved by despatch are dealt with in one clause and demurrage in another clause; or (b) lay days, time saved by despatch and demurrage are dealt with in one clause, but upon construction of that clause the court is of the opinion, from the collocation of the words, or other reason, that the days saved are referable to and used in the same sense as the lay days as described in the clause, and are not referable to or used in the same sense as days lost by demurrage." Morris J points out in Themistocles v Compagnie Intercontinentale de L' Hyperphosphate of Tangier ([1948] 82 Lloyd's Rep 232): "Parties who contract in reference to the charter of a vessel are free to provide for despatch money or not as they wish. They are free to agree that despatch money shall be calculated by any one of several possible methods. Unless terms of art are used, or unless the court is bound by some decision relating to a contract in virtually identical form, then while deriving such assistance as the decisions afford, the task of the court, as it seems to me, is merely one of the construction of particular words as used in a particular context." In London Arbitration (12/98 - LMLN 21.7.98-488) the arbitrators held that where the charter provided for 'half despatch all time saved both ends' despatch should be calculated taking into account laytime exceptions and could also be claimed for time during a period which would have been excluded if the ship had been loading. It was said that if the Owners wished otherwise they should have required more precise wording to reflect that.

1.7. WHEN DEMURRAGE ENDS

As can be seen from the examples below, a charter may or may not specify a period for demurrage. If the period is not stated, demurrage will run until the contract is frustrated or repudiated or when loading or discharging is completed. In principle once laytime has overrun, demurrage runs continuously in the absence of an express provision to the contrary. The House of Lords have confirmed that the words "time so used does not count" do not apply after laytime has expired. Lord Diplock said in Dias Compania Naviera v Louis Dreyfuss Corporation [1971] 1 Lloyd's Rep 325: "once a vessel is on demurrage no exceptions will operate to prevent demurrage continuing to be payable unless the exceptions clause is clearly worded as to have that effect." This is sometimes expressed as "once on demurrage always on demurrage". This is true in that after laytime ends the Charterers are in breach of contract and the excepted periods do not generally interrupt demurrage. At this point the Owners can assert that but for the breach, the ship would not be detained during the otherwise excepted period, whether it be a Sunday, a

Πανεπιστήμιο Πειραιώς

holiday, a period of bad weather or a strike. However, if the charter stipulates that exceptions and interruptions apply to demurrage as well as to laytime then the demurrage will not run continuously. SHELLVOY 5 has an express provision of this type in clause 13(4): "…'time' shall mean laytime or time counting for demurrage, as the case may be." In SHELLVOY time counts for demurrage purposes until disconnection of hoses, but if the ship is delayed for more than an hour after disconnection, awaiting bills of lading or for other Charterer purposes, time counts until the end of the delay. This is to make a reasonable apportionment of the time needed before the ship is ready to sail. There are some instances when demurrage will stop either permanently or temporarily. In Tyne & Blyth Shipowning Co Ltd v Leach and others ([1900] 5 CC 155) a ship was sent to load under a port charter. There was port congestion so she had to wait in the roads. While waiting another vessel collided with her, without any fault on her part. Her Master had to take her to another port for repairs. On return to the loading port, she again had to wait to enter the port. Kennedy J held that on these facts demurrage stopped when the accident occurred and began again only when the ship returned to the loading port. In Petrinovic & Co Ltd v Mission Francaise des Transports Maritimes ([1941] 71 L1 l Rep 208) a ship arrived in Bordeaux to discharge cargo. German forces were advancing on the town and the ship Master feared for his safety and that the ship would be seized. He sailed before discharge could be completed. It was held that demurrage ceased on sailing. Atkinson J said: "…it is perfectly clear that the obligation to pay demurrage cannot continue if the ship is taken away finally for her own purpose, for her own safety, under such circumstances as to make it quite clear that there is no intention whatever of her coming back to the port of discharge to enable the discharge to be completed.". The most usual way for demurrage to end is when after the expiry of a reasonable time on demurrage, a stage is reached when the contract (charter) can be regarded as at an end. This stage is reached when either the Charterers by conduct or words show that they are unable to perform, or say that they are willing to perform but they are unable to do so – such conduct or words amount to a repudiation of the contract; or the frustration of the venture has put an end to the contract. The Charterers are not entitled to delay the ship indefinitely. If their conduct amounts to a repudiation, the Owners may accept it as such and sail away, claiming damages (Inverkip SS Co Ltd v Bunge & Co [1917] 2 KB 193). Alternatively the Owners may choose to leave the ship where she is – if so they can only claim demurrage at the agreed rate. In Dimech v Corlett ([1858] 12 Moo PC 199), it was held that if a charter provides for a fixed number of demurrage days, a ship must wait for

Πανεπιστήμιο Πειραιώς

those days to expire before sailing if the Charterer requires it and there is ground for believing that further cargo will be loaded. In Western Steamship Co Ltd v Amaral Sutherland & Co Ltd ([1913] 19 CC 1) Bray J held that if an Owner chose to remain after a reasonable time on demurrage had elapsed, when the charter does not provide for a fixed time on demurrage, then demurrage remained payable and the Owner was not entitled to claim damages for detention thereafter. In Inverkip Steamship Co v Bunge & Co ([1917] 22 CC 200) the Court of Appeal agreed with Bray J's judgment in the Western Steamship Co case. It held that the clause in the charter which dealt with demurrage and simply provided for a rate, was exhaustive on the subject and that the rate applied to the whole period during which the ship was detained. This meant the Owners were not entitled to claim damages exceeding the demurrage rate for the period the steamer was detained beyond a reasonable time after the termination of the lay days. Scrutton LJ stated: "Her days on demurrage are part of an unreasonable time for loading. Is the court to determine what is a reasonable degree of unreasonableness? In my view, the test of reasonable time is not one that is applicable. To enable the ship to abandon the charter without the consent of the Charterer, I think the shipowner must show either such a failure to load as amounts to repudiation of, or final refusal to perform the charter, which the shipowner may accept as final breach and depart claiming damages…or such a commercial frustration of the adventure by delay…as puts an end to the contract." The conclusion we can draw therefore is that a ship must normally remain for the full period of allowed laytime and thereafter on demurrage until loading or discharging is complete or the contract has come to an end. Why an Owner must keep his ship at the loading or discharge port after the time allowed to the Charterer to fulfil his obligations was discussed in Aktielseskabet Reidar v Arcos Ltd ([1926] 25 L1 L Rep 513). In this case the court left open whether it was because of an implied term in the charter or due to the fact it was necessary for the master to remain in port for a reasonable amount of time before he could be in a position to decide whether the conduct of the Charterers amounted to a repudiation of the contract. Bankes LJ stated: "I see no sufficient reason for construing the provision for demurrage as contained in the charterparty in the present case as a contractual extension of the lay days either for a reasonable time or for any other time, or as an implied term of the contract that the vessel shall remain for any time. I prefer to rest the necessity for remaining upon the ground that, time not being of the essence of the contract, the shipowner will not, except under some exceptional circumstances, be in a position to assert that the contract has been repudiated unless the vessel does remain for a

Πανεπιστήμιο Πειραιώς

sufficient time to enable that question to be answered.". Similarly, Lord Diplock said in Dias Compania Naviera SA v Louis Dreyfus Corporation ([1978] 1 WLR 261): "But unless the delay in what is often, although incorrectly, called re-delivery of the ship to the shipowner, is so prolonged as to amount to a frustration of the adventure, the breach by the Charterer sounds in damages only. The Charterer remains entitled to continue to complete the discharge of the cargo, while remaining liable in damages for the loss sustained by the shipowner during the period for which he is wrongfully deprived of the opportunity of making profitable use of his ship". This brings us back to the contractual analysis considered at the beginning of this paper, we can conclude that in contractual terms, laytime provisions relating to the amount of laytime allowed are warranties rather than conditions, and therefore a breach only results in liquidated damages being payable (demurrage) unless the delay is such as to bring the charter to an end by frustration or by a repudiation of the charter.

1.8. DETENTION – NATURE, MEANING AND WORKING DEFINITIONS

Damages for detention are unliquidated damages which accrue when a vessel is delayed by the fault of the Charterer or those whom he is responsible. Unliquidated damages are damages which have not agreed by the parties in advance (i.e. there has been no pre-estimate- cf demurrage which are pre-agreed damages). Where demurrage is accruing it will displace the right to claim detention. This is because the parties have agreed within the charterparty that in specific situations the Charterer has a time allowance, laytime, and will pay for extra time at an agreed rate, demurrage. Due to the nature of detention being an unliquidated damage, there will be no working definition of "detention" as such in a charterparty. What may be found however is an exception clause to exclude claims for detention. For example: "… in case of any delay by reason of a strike no claim…" (Moor Line v Distillers Co Ltd [1912] 2 KB 722)

1.8.1. *THE SIGNIFICANCE OF DETENTION*

If a vessel has suffered a significant delay and during this period freight rates have risen significantly, it is in the Owners' interests to maximise their income by claiming detention instead of demurrage. For example, if the vessel had been redelivered to the Owners when it should have been, the Owner would have had the opportunity to obtain a higher rate for his vessel. But, if the freight rates have fallen, which will mean demurrage rates have also fallen, the Charterer may try to insist that the Owner is only entitled to

damages for detention so that he pays the lesser amount. By recovering at the demurrage rate the vessel's Owner would obtain a windfall when compared with what he could have earned if the vessel had been redelivered.

1.8.2. *WHEN DOES WRONGFUL DETENTION OCCUR*

Wrongful detention can result from failure by the Charterers to load or to give orders for loading or discharge to take place (The Timna [1970] 2 Lloyd's Rep. 409) or some other breach by them. Detention often occurs when the Charterer wants to stop the vessel on the voyage. This may happen when his contract of sale has not been completed or because he expects to make an increased profit because the value of cargo is rising and he expects to make a significantly increased profit if he delays. Sometimes delays for market reasons are forseen and an extra clause is agreed in the charterparty for the vessel to perform floating storage. Often these are agreed at a daily rate, like a timecharter, with the cost of bunkers consumed during that period to be included or excluded. The downside for an Owner is that if cargo prices are rising significantly, then traders are quick to fill every vessel they can get their hands on with cargo. This puts an upward pressure on vessel rates and the Owners could miss out on a period of earning if they have not taken this into account. Another situation in which detention can arise is when the Charterer has only nominated the loading or discharging port at a late stage. This can have two effects. The first is that the vessel may have to alter course or even reverse track to reach the nominated port. The period of detention arising out of this has to be calculated by working out the extra time that was required. Of course if the Charterer did not have to nominate his loading or discharging port by the time that he did so under the terms of the charterparty, then he will not be in breach and detention cannot be claimed. The second problem that can arise is late notification to the port. In exceptional circumstances this might mean that the vessel cannot reach the usual anchorage to wait until the port is ready for it. Once the vessel becomes an arrived ship, the Charterer is entitled to the laytime that he has bargained for in the contract. The Charterer is under no obligation to act earlier if he could do so for the benefit of the vessel's Owner. Detention is excluded in the above instances because it would be unfair if the vessel's Owner was compensated twice for the same delay. Detention cannot be claimed while demurrage is running for the same reason. Demurrage is an exclusive remedy and the Owner is held to be properly compensated for delays by it. In London Arbitration (11/03) LMLN 619 (7th August 2003) Owners refused to allow the vessel to berth until they had received

assurances regarding provision of the original bill of lading. As the charter was a berth charter, the Tribunal found that time only commenced when the vessel came alongside and further the period waiting was not damages for detention. The Tribunal found that late arrival of the bill of lading was endemic and there was no real evidence that Owners would have been forced to discharge the cargo against their will had they gone alongside. This can be contrasted with the decision in Glencore Grain Ltd –v- Goldbeam Shipping Inc (The "MASS GLORY") [2002] 2 Lloyd's Rep 244 where again the cargo documents were not in order but in addition no one was allowed access to the vessel until an original bill of lading had been provided. In those circumstances the Charterers were proved to be in breach and damages for detention were payable. In London Arbitration (16/04) LMLN 1st September 2004, the Tribunal found that a vessel drifting off Lagos was nevertheless in the "customary waiting place" as stipulated in the charter. Therefore, N.O.R. was capable of being tendered and laytime ran; the claim was in demurrage not damages for detention. But if a ship cannot give a valid NOR because she cannot proceed to her specified destination, it is possible that Charterers are in breach of charter (for example, if there is a reachable on arrival provision in the charter) and it is open to Owners to claim damages for detention. However, if the ship arrives at a place from which NOR can be given, Owners need to give notice and trigger the commencement of laytime. This statement of the law was confirmed in London Arbitration 16/05 LMLN 17th August 2005 a case in which Owners could have given NOR on arrival at Fujairah but did not. Laytime therefore commenced following The Happy Day when discharge commenced. Owners could not claim damages for detention for the period from when they could have given NOR to the commencement of loading. Once loading (or discharging) has been completed the Charterers generally have no right to detain the vessel even though there may still be laytime available. At the load port, delays may occur in waiting for bills of lading to be issued or because of a disagreement concerning them. Some charterparties, may contain a provision to deal with such delays - such as SHELLVOY 5. In SHELLVOY 5, the clause states that if there is a delay of more than one hour after disconnecting hoses, laytime will run again. It is likely that this is an exclusive remedy for the vessel's Owners. Sometimes there is a requirement that the Charterers obtain a government licence or permission for the export or import of cargo. This can cause delays. The general view is that if the Charterers do everything they can to obtain a licence, no claim for detention will be successful. It will depend on the circumstances and the terms of the charterparty but usually some fault is needed on the part of the

Charterers in this type of circumstance for a claim in detention to succeed. In London Arbitration (20/04/) LMLN 15th September 2004, the Owners contended that the Charterers had prevented the vessel from sailing after completion of loading because of a problem with shut out cargo. But the Charterers said that the decision to sail was the Owners' decision and it was the Owners who had been negotiating with a view to loading the apparently shut out cargo. Lack of evidence showing that the Charterers had clearly detained the ship – for example by ensuring (either themselves or via agents) that the vessel was not given certain papers on time - led the Tribunal to conclude that the Owners had failed to show that Charterers had acted wrongfully. No damages for detention were therefore awarded. In another recent case, London Arbitration (9/05) LMLN 27th April 2005 damages for detention as a result of delays on the part of Charterers in making available the cargo documents were reduced because of bad weather which would have delayed the vessel from leaving the load port in any event. The risk of bad weather was the Owners'.

1.9. DETENTION OR DEMURRAGE?

Demurrage = liquidated damages. Detention = unliquidated damages

Demurrage payments are an exclusive remedy and while payments are being made for demurrage, no payments may be made for detention. Damages for detention are unliquidated damages and no sum is agreed in advance. Sometimes, a demurrage rate is applied to calculate detention payments. This is because the demurrage rate represents the daily value the parties put on the ship. However, it is open to the parties to show that the demurrage rate does not truly represent the damage suffered by the Owners (Nolisement v Bunge y Born [1917] 1 KB 160). Cases when it will be particularly appropriate to apply the demurrage rate will be those when there has been no significant movement in the market during the period of delay or alternatively the period of delay has not been for a long time. Alternatively, proving the actual market rate for the vessel is a matter of expert evidence and it can be quite costly and time consuming to do so. Damages for detention become payable either when there is no demurrage clause in the charterparty or if the charterparty specifies that demurrage should run for a fixed amount of time and that fixed time expires. Damages for detention are not usually payable when there is an exhaustive demurrage provision covering all delay (The Delian Spirit [1971] 1 Lloyd's Rep. 506). Damages for detention are also not payable for any period that the Charterers have bargained for before laytime starts to run "President Brand" [1967] 2 Lloyd's Rep

338). Lastly, a reminder that detention is distinct and separate from laytime. This means that the laytime exceptions, such as bad weather days, do not apply to detention and Owners can recover compensation for the entire period that the vessel is detained.

2. LAYTIME AND DEMURRAGE – GENERAL PRINCIPLES

Laytime and demurrage comprise one aspect of maritime law, in particular the law relating to voyage charters. 'Laytime' shall mean the period of time agreed between the parties during which the owner will make and keep the vessel available for loading and discharging without payment additional to the freight. 'Demurrage' shall mean an agreed amount payable to the owner in respect of delay to the vessel beyond the laytime, for which the owner is not responsible. If loading or discharging is not completed within the agreed laytime, then the shipowner is entitled to be compensated for the extra time taken. The demurrage rate fixed by the parties is intended to cover the vessel's daily running costs, plus the profit the shipowner would have been able to earn, had his vessel been released timeously. Similarly to the above, laytime and demurrage terms apply in the purchase and sales contracts between counterparties, details of which will be discussed later, however the important element is that laytime and demurrage terminology is the same in both charterparties and contracts.

2.1 COMMENCEMENT OF LAYTIME

Once the laytime and demurrage clause is triggered, the mere passage of time earns money for the owner. Thus, it is in the interests of the owner that the clause is triggered as early as possible and in the interests of the charterer that the clause is triggered as late as possible. Three conditions must be satisfied before the charterer can be required to start loading and discharging; a) The vessel must have arrived at the agreed destination, b)The vessel must be ready to load or discharge her cargo, c)The vessel must tender a valid NOR.

In more detail, the law distinguishes between port and berth charters; in case when a berth charter has been agreed, it is clear that the vessel is arrived when she is at the berth. Thus, if there is congestion within or outside the port, the owner bears the cost of the delay.

On the other hand, when a port charter has been agreed, the laytime clause is triggered as soon as the vessel has arrived at the port and charterer is responsible to pay

for the time lost due to unavailability of a free berth. However, in this latter case, a vessel must not only be within the nominated port, but in a part of a port where is at the immediate and effective disposition of the charterer.

The commercial interests of the parties regarding the NOR differ. Owner wants laytime to start as early as possible, while the charterer wants laytime to start as late as possible and will therefore seek to attack the validity of the NOR on formal or substantive grounds. It is clear that for the NOR to be valid, when the vessel has arrived at the specific destination, she must be in all respects ready to load or discharge her cargo. She must be physically ready, for example the holds (tanks when it comes to oil) must be clear and available, be properly equipped and be expected to be ready to sail after completion of loading. For example, some repairs to the engines may be needed and, provided these would not interrupt loading and are expected to be completed during loading, then the vessel may still be in a state of readiness to load. Although most modern tankers have segregated ballast tanks, it was not uncommon until recently for tankers to use their own tanks to carry ballast on the non-carrying voyage. However, the presence of ballast in the cargo tanks did not prevent notice of readiness being tendered at the load port, although it was and it is common for the most tankers charters to exclude from laytime time spent in deballasting.

An example of the above is the Tres Flores case and also the Virginia M case.
The dispute in The Tres Flores case arose when the holds of the vessel were inspected by port authorities and they were found to be infested. It was not until the ordered fumigation was completed that she was held to be ready. However, a distinction must be made between infestation prior loading and infestation discovered after loading but before discharge. In this case the vessel is ready to discharge, but the cargo is not ready to be discharged.

In the Virginia M case, it was held that the taking of fresh water or bunkers to enable the vessel to discharge the total quantity of cargo in most ports of the world may be a mere formality and can be concurrent with discharge operations. Thus, they would not prevent the vessel from tendering a valid NOR.
Vessel shall also be legally ready, for instance she must have all her papers and permits in order. It should be noted that it is the vessel's duty to have on board whatever documentation is required at the specific port.

The usual clearances that the vessel must receive are from Customs, Immigration and Health authorities and also the Coast Guard in some countries. Provided that the

master has no reason to believe that these clearances will be withheld, he may declare his vessel to be ready. In other words, a valid NOR can be tendered even though there are some further preliminaries to be done. Latter can be carried out sometime after the vessel has arrived.

In London arbitration 19/04, the tribunal had to consider an additional clause according to which, if owners failed to obtain customs clearance 6 hrs after the tender of the NOR, the notice of readiness would not be considered valid. However, it went on to say that only if customs inspectors failed the vessel after an inspection, would the vessel not be considered cleared. The tribunal found that there was a delay in obtaining customs clearance, but this was not due to any fault of the vessel and that since there was no question of the vessel failing an inspection, the tribunal held that the NOR tendered was valid. However, relevant clauses may provide that this time will not count as laytime.

Another issue which might easily create disagreement between the parties is the free pratique. Free pratique is permission of licence granted by the port medical authorities to a vessel upon arrival from a foreign port for her crew to go ashore and for the local people to go on board. In case a vessel fails to receive free pratique, quarantine restriction is imposed and charterers do not have unrestricted access. As a result, she cannot be considered ready. However, the actual obtaining of free pratique is not a requirement at common law before a ship can be considered ready, when same is considered to be a mere formality. The clause 'whether in free pratique or not' adds nothing. The clause 'vessel being in free pratique' provides that any time lost for these formalities shall not count as laytime or demurrage. On the other hand, if the charter provides that the vessel must always be in free pratique, this means there is an explicit requirement that the vessel shall be in free pratique when the notice of readiness is given.

There is nothing to prevent the parties from agreeing additional requirements that must be met before the vessel can be considered to be legally ready. In The Freijo the charter contained a clause according to which the vessel should be in free pratique, which could only be obtained at inner anchorage. An additional clause, however, provided that laytime should start 36hrs from arrival. This means that either the vessel was able to proceed at least at inner anchorage, when free pratique would be a condition precedent to the commencement of laytime or would be held up off the port, in which case the additional clause operated.

In London arbitration 6/84 an additional clause in the charter provided that the vessel had to comply with all port formalities, including a Gas Free Certificate, before

tendering notice of readiness. The vessel berthed only 13 days after her arrival due to congestion and charterers argued that laytime could not commence until after the Gas Free Certificate was obtained, whereas owners argued that laytime commenced 6hrs after her arrival. The arbitrators held the charterers to be in breach of the reachable on arrival clause. Had a berth been available on the vessel's arrival, she would have berthed and the Gas Free Inspection would have been completed and a certificate would have been issued. In the Permeke, the vessel arrived off New York and tendered a notice of readiness. US law prohibited foreign flag vessels from off loading oil in US waters, unless they held a Tank Vessel Examination Letter (TVEL). The charter did not specifically mention that the vessel should be in possession of this letter, bur provided that she should have on board all necessary certificates and also owners warranted at the time of the fixture that she was eligible to trade at US waters. Owners argued that TVEL was a mere formality, but the tribunal held that laytime did not begin to run until six hours after the TVEL was issued.

If a permit is normally obtained by the charterers or those for whom charterers are responsible, then charterers are bound to act with reasonable diligence to obtain this as soon as possible and enable the vessel to become an arrived vessel.

As mentioned before, the third requirement of the commencement of laytime is the tender of the NOR from the vessel to the agents of the shippers or charterers and not only to the agents of the owners. At common law the NOR may be given either orally or in writing or if no notice is given, the shipowner must show that the charterer was aware that the vessel was ready to load at her specified destination at the first load port. Notice need not be given, in the absence of specific requirements to the contrary, at subsequent load ports or at discharge ports. The logic behind this is quite simple. When a vessel arrives at the first load port, she may well have on board a cargo from the previous charter for discharge at that port. Whilst the new charterers, through their agents, may well be aware of her arrival, they will not know, until they are so informed, that she has completed discharge and she is now at their complete disposal. Once charterers know that she is available, they can order her to load and then proceed to subsequent load and discharge ports. Needless to say that this practice does not happen so simply and additional notice requirements are invariably included in the charterparties.

A common provision in the oil industry is the requirement for the NOR to be tendered within office hours (e.g. Sonangol, PPMC, Ecuadorian contracts). If a written notice of readiness is given to the charterers or their agents outside office hours, then such

Πανεπιστήμιο Πειραιώς

notice will be deemed to have been tendered at the commencement of office hours on the next working day.

It sometimes happens that a charter or a contact between the merits provides for one or more notices to be given in advance of arrival. Thus, a vessel may be required to signal her ETA at the discharge port on sailing from the load port for example 72, 48 and 24hrs before her arrival (PDVSA contracts). Failure to give these will not prevent the vessel from giving notice of readiness on arrival, but if any delay is caused thereafter which can be shown to arise from the failure to give notice, then the charterer or the buyer will be able to claim damages for breach of the notice provision of an amount equal to that which would otherwise have been claimed by the shipowner as demurrage.

It is usual for a charter to specify two dates, the laycan (lay= laydays and can = cancelling), and provide that the laytime cannot commence before the earlier date and if the ship is not ready by the later date, the charterers have the option to cancel the charter (e.g. clause 17 of BP Voy 3). A relevant clause, mentioning loading and delivery window, usually exists in the contracts with suppliers and receivers.

It is important to understand the effect of an invalid NOR, particularly in relation to a case where no further notice had been tendered after the original invalid NOR. In the Happy Day case, the vessel arrived off Conchin to discharge her cargo. At the time of her arrival off the port, she was unable to enter because she missed the tide. Nevertheless, the master tendered NOR. She was only able to resume her voyage into the port on the next tide, the following morning, berthing and commencing discharge the same day. No further notice was presented. However, discharge was very slow and took three months to be completed. The dispute was referred to arbitration and the tribunal found that the charterparty was a berth charter and the NOR given on arrival off the port was invalid. They also held that laytime commenced on the first occasion on which it would have commenced, had a valid NOR been presented. The charterers appealed, claiming that as the notice was invalid, laytime never commenced and therefore they were entitled to despatch in respect of the full amount of laytime allowed. In the High Court it was held that the invalid NOR was not accepted by charterers and the mere facts of the commencement and continuation of discharge did not infer charterers' waiver of their right to claim the invalidity of the NOR. The Court of Appeal concluded that the charterers had effectively waived any right to rely on the invalidity of the original NOR even though it was invalid because it had been tendered prematurely. The NOR had been tendered in a valid form, the charterers had accepted the vessel as ready to discharge and

Πανεπιστήμιο Πειραιώς

discharge had been completed to the charterers' instructions. At no time had the charterers rejected the NOR or reserved their position. They had not indicated that another NOR had to be tendered to trigger the start of laytime. Laytime commenced as per the terms of the charter party. The judgment no doubt comes as a relief to ship owners.

Thus, laytime can commence under a voyage charterparty requiring service of notice of readiness when no valid NOR has been tendered in circumstances where i) a notice of readiness, valid in form is tendered to the charterers or the receivers as required by the charterparty prior to the arrival of the vessel, ii) the vessel thereafter arrives and is, or is accepted to be, ready to discharge and iii) discharge commences to the order of the charterers or receivers, without either having given an intimation of rejection or reservation in respect of the NOR previously tendered or any indication that further notice is required before laytime commences. In such circumstances, the charterers may be deemed to have waived reliance upon the invalidity of the original notice as from the time of commencement of discharge and laytime will commence according to the regime provided in the charter. For instance, the doctrine of waiver may be invoked in such a case when the commencement of loading by the charterer or the receiver is not accompanied by a rejection or reservation of the validity of the NOR.

2.2 CHANGES TO THE BEGINNING OF LAYTIME

The merits of the charterparty (or contracts) may include clauses in their agreement, which may have an effect to the beginning of laytime.
The most common clause is the ‘Whether in berth or not (WIBON)’ clause and has the effect of advancing the commencement of laytime from when it would otherwise start. In the case of a charter that names a berth as the specified destination or expressly gives the charterer the right to select the berth, this expression means that, if a berth is not available, laytime starts to run once the vessel arrives at a position within the port where she is at the immediate and effective disposition of the charterer. The point of arrival must be within and not outside of the port limits. It is thus not necessary for the vessel to have reached the designated berth and contractual destination, provided that the berth is not available.

The ‘Whether in port or not (WIPON)’ clause can cover cases where vessel is to call a port with no waiting area within their limits; the vessel must reach a usual waiting area and must be at the immediate and effective disposition of the charterer.

‘Time lost waiting for berth to count a laytime’. The effect of this clause is that any time waiting for a berth counts against laytime. To that extend it is similar to a WIBON provision, but the major difference is that the place where the vessel waits need not necessarily be within port limits. The vessel may able to say ‘we have gone as far as we can’. If the waiting place is within the port limits, then the clause will have little effect in a port charter, while same would advance the running of laytime in the case of a berth charterparty. It is obvious that this clause takes effect if there is congestion at the berth and not when the vessel is forced to wait by weather or other causes.

‘Time lost in waiting for berth to count in full’. This clause has raised disputes. Owners argued that this clause had the effect of ensuring that all time spent by the vessel in waiting for a berth, should count ‘in full’ without the application of ay charterparty exceptions. However, it was held that any time lost meant any ‘laytime lost’.

A reachable on arrival clause has no effect when laytime commences. However, this clause may give rise to a claim for detention for any delay preventing the vessel from reaching her berth and may also affect the meaning to be given to any provision by which charterers are excused from responsibility for delay in the vessel getting into berth after the nor has been tendered. Owners will be able to recover at the demurrage rate without any laytime exceptions or interruptions applying. Reachable on arrival means that when the vessel arrives at the port and she is in all respects ready to load or discharge, the charterer guarantees that there will be a berth to which she can proceed without delay. There may be many reasons why a berth cannot be reached. It may be because another vessel is occupying it or because there is not sufficient water to enable the vessel to get to the berth.

In the Kyzikos case, the vessel was unable to berth because of fog. The WIBON provision was ineffective to accelerate the commencement of laytime prior to arrival at berth and owners should have had a valid claim for damages for detention for the period prior to berthing because of the ‘always accessible clause’. Had the cause of delay been congestion, the WIBON clause would have been effective, laytime would have commenced on arrival at the port and the effect of the ‘always accessible’ clause would have been minimal.

2.3 INTERRUPTIONS AND EXCEPTIONS TO LAYTIME

Interruptions to laytime are used to cover those periods when laytime does not run because they are outside of the definition of laytime as expressed in the laytime clause. Excepted periods, on the other hand, are those periods which are within the definition of laytime, but are nevertheless excluded by an exception clause. The same phenomenon may be either an interruption or an exception to laytime, depending on the terms of the concerned charter. Thus, adverse weather would be an interruption to laytime where this was defined in terms of weather working days. On the other hand, an additional clause providing that ‘any time lost would not count as laytime’ is an exception, so a causal connection must be shown to prove that time was actually lost because of weather. Time could be lost only if the vessel concerned was in berth or position where loading could take place, whereas time may be interrupted whether the vessel was in berth or not once adverse weather is shown to exist.

An exceptions clause will normally be construed as applying only to the period covered by laytime. It will not protect the charterer after the vessel has come on demurrage, unless it explicitly so provides. Also, exceptions clauses will be limited to the loading and discharging operations unless they clearly state that they are also to apply to the preliminary operation of bringing down the cargo to the loading place or removing it after discharge.

2.3.1. *FAULT OF THE SHIPOWNER*

Laytime and or demurrage will not run in case there is a delay caused by fault of the shipowner. For example it would be a wrongful act to remove a vessel from the loading berth for bunkering whether laytime was still running or whether the vessel was on demurrage and if this interfered with cargo operations. It is supported that there is no fault of the shipowners if the vessel bunkered and cargo was not available and there was no impediment to the operations of the charterers. However, the decision in the Stolt Spur case, which itself makes no distinction between laytime and time on demurrage, suggests that in both cases, time will not run where the shipowner’s conduct results in the charterer being deprived of the use of the ship, even if no delay in cargo operations results from his actions. Whether that decision is consistent with previous cases will have to wait further judicial consideration.

Πανεπιστήμιο Πειραιώς

2.3.2. *BALLASTING – DEBALLASTING*

As already mentioned, if deballasting or ballasting can be carried out concurrently with cargo operations, then the vessel will not be prevented from becoming an arrived ship and laytime and demurrage will continue to run until cargo operations are complete. If deballasting or ballasting are carried out or continue after cargo operations are complete, then laytime and demurrage will not be prolonged thereby. If deballasting or ballasting delay/interrupt cargo operations (for example, while ballast is being taken in, the rate of discharge of the cargo is reduced), then if it is necessary for these operations to be carried out at the time they are carried out for the safety of the vessel or the cargo, then the time lost will not be due to the fault of the shipowner and must count.

2.3.3. *PRESENTATION OF THE B/LS*

The usual rule is that the master may refuse to commence discharge until an original bill of lading is presented. Laytime will continue to run. However, this is not a reason to keep the vessel outside the port. In practice however on tanker ships an LOI is usually given to the shipowners for discharge of the cargo without presentation of the original BLs.

2.3.4. *COMMUNICATION WITH THE VESSEL*

One London arbitration arose because of a delay caused by the port agents being unable to establish communications with the vessel concerned which was lying in the roads, when a berth became unexpectedly available. The arbitrators held that a vessel waiting offshore must keep open communication channels to a reasonable degree and operate them on a reasonable schedule. The burden of proof was on the charterers to show that vessel had failed to do this.

2.3.5. *CONGESTION*

Congestion is probably the most common cause of delay, although it is not usually expressly mentioned as an exception. It is usually excepted by reason of a more general

Πανεπιστήμιο Πειραιώς

phrase such as obstructions or hindrances beyond the control of either party. It has been held that such an exceptions clause applied, even where commencement of laytime was accelerated by virtue of a WIBON provision.

2.3.6. *WEATHER*

Periods of adverse weather are often excluded from laytime. This may be either because such periods of time do not come within the definition of the type of laytime allowed by the charter, e.g. weather working days, or because they are excluded by a specific clause. In the latter case, the charterer needs to show a causal link between the weather conditions and the delays.

Usually (and always depending on the express clauses agreed) the weather must be adverse to cargo operations and not simply prevent other operations, such as shifting into berth and also weather must be adverse to the particular type of cargo sought to be loaded or discharged (this latter usually applies to dry cargoes and not oil). Thus, periods of rain may well prevent the discharge if sugar, but would have no effect on the discharge of a cargo of crude oil from a tanker. In a London arbitration where the vessel concerned had to leave the loading point because of an adverse weather, it was held that whilst it was true that, indirectly, the loading operation was suspended because of the bad weather, nevertheless the effective cause of cessation of loading was the vessel having to leave the loading point because of its un-safety. No evidence had been produced that the bad weather actually prevented loading and the weather exclusion clause was inapplicable.

2.3.7. *INTERRUPTIONS*

As previously mentioned, interruptions to laytime are those periods when laytime does not run because they are outside of the definition of laytime, whereas exceptions to laytime are within the definition of laytime but are excluded by an additional clause.

The most common laytime clauses which provide for weather to interrupt time are the weather working days and working or running days or hours, weather permitting. In such a descriptive laytime clause, although there need not be a causative connection with the delay, nevertheless there must be a causative link between the weather and the possibility of loading or discharging. The question to be asked seems to be: could cargo of the type intended to be loaded or discharged be safely loaded or discharged without undue risk due

to the weather conditions then prevailing at the place where the parties intended the cargo operations to take place?

2.3.8. *EXCEPTIONS*

Where the reference to adverse weather being excluded is not part of the clause defining the laytime but is contained in an exceptions clause, then different considerations apply. In this case what must be shown is not only that the weather was adverse, but that the adverse weather was the proximate cause of the loss of loading or discharging time, as the case may be.

Laytime would not be interrupted if the intended berth was occupied, regardless of the effect of the weather on the vessel then in berth.

2.3.9. *CONOCO WEATHER CLAUSE*

According to this well known clause, often used in conjunction with Asbatankvoy charters, delays in berthing for loading or discharging and any delays after berthing which are due to weather conditions shall count as one half laytime or, if on demurrage, at one half demurrage rate.

The Conoco weather clause speaks of 'berthing' rather than 'getting into' berth. If a berth is not available, then the clause is of no effect to that delay and charterer is in breach of his duty to designate and procure a berth reachable on arrival under asbatankvoy clause 9. To take advantage of the Conoco weather clause, the charterer has to prove that delays in berthing were due to weather conditions. An adverse weather clause cannot protect the charterer if there is no cargo ready to load. In other circumstances i.e. where a berth and cargo were available and berthing was clearly delayed because of the weather conditions, the Conoco weather clause would reduce the laytime and or the demurrage to one half without the need to prove the weather bad enough to be a 'storm' under clause 8 of the Asbatankvoy.

2.3.10. *HOLIDAYS*

As with weather, holidays may either be outside the definition of laytime and thus constitute an interruption to laytime, or may be an exception to laytime. The principal

Πανεπιστήμιο Πειραιώς

examples of the former are where laytime is expressed in 'working days', 'weather working days'. These terms are mostly used in connection with dry cargoes and not oil.
The laytime clause may, after defining laytime, add the phrase 'Sundays and holidays' excepted. However, unlike weather, even as an exception, it is not normally necessary to show causation. To incorporate an element of causation, it would be necessary for a holiday exception to be expressed in some words as 'time lost due to holidays not to count as laytime'.

2.3.11. *STRIKE*

To take advantage of a strike clause, it will normally be necessary to show causation between a strike and any loss of time.
A common source of conflict between owners and charterers is where delay occurs to a vessel as a result of berth congestion following the end of a strike. Whether such consequential delays are excluded by the terms of a strike clause will, as usual, depend on the wording of a particular clause.

2.3.12 *SHIFTING*

Shifting may be required: from anchorage to berth and from one berth to another.
The cost of proceeding from anchorage to berth is traditionally to be part of the cost of the carrying voyage as practically is part of the sea passage to reach destination.
It is common for a charter to include a provision allowing loading or discharging at more than one berth. Laytime will continue to run during shifting in the absence of a provision to the contrary.

It not infrequently happens that a vessel is forced to shift at the behest of neither the shipowner or the charterer. This may happen either because of the weather and/or on the orders of the port or other local authorities. In this case, if the weather first prevents loading or discharging and then has the added effect of forcing the vessel to leave her berth then time stops. It is only when cargo operations are curtailed that time stops, not when the effect of the weather is to tender the presence of the vessel unsafe.
The cost of shifting from anchorage to berth is at the expense of the shipowner. Payment for shifts thereafter permitted under the terms of the charter and made on the orders of the charterer will depend on the terms of the charter. If this provides for cargo operations at

more than one berth and nothing further is said, then payment is included in freight. However, particularly in tanker charters, subsequent shifts may be specifically said to be at the expense of the charterer.

With regard to involuntary shifts, one argument frequently advanced is that, if the vessel is forced to leave the berth for the safety of the vessel and the cargo, whether because of weather or other constraints, the cost of shifting will fall to the shipowner, notwithstanding that laytime will continue to run.

2.4 DEMURRAGES

As previously mentioned, the default of the charterer is not normally a question that arises with regard to demurrage, since if by the terms of the charter the charterer has agreed to load or discharge within a fixed period of time, that is an absolute and unconditional engagement for the non-performance of which he is answerable, whatever may be the nature of the impediments which prevent him from performing to time, unless these are covered by exceptions in the charter or arise from the loading or unloading being illegal by the law of the place where they are to be carried out, or arise from the fault of the shipowner or those for whom he is responsible. It is, of course, not uncommon for delays to occur without the fault of either the shipowner or the charterer. From time to time efforts have been made by charterers to exclude their liability for demurrage in such circumstances by the addition of limiting words to the relevant demurrage clause. A typical example might be a clause providing for demurrage to be payable 'provided that such detention shall occur by default of the charterer or his agents'. This type of clause does not appear to have found much favour with the courts since, in effect, it goes contrary to the whole concept of fixed laytime.

2.4.1 *DEFAULT OF THE SHIPOWNER*

The decision in the Stolt Spur case, which itself makes no distinction between laytime and time on demurrage, suggests that in both cases, time will not run where the shipowner's conduct results in the charterer being deprived of the use of the ship, even if no delay in cargo operations results from his actions. Whether that decision is consistent with previous cases will have to wait further judicial consideration. However, this decision is whether demurrage, being liquidated damages for detention, can be claimed in

respect of a period when the owner is making use of his vessel and therefore whether she is being detained by the charterer.

This it is suggested raises issues relating to the nature of the voyage charter as compared to a time charter. In the latter, a charterer is entitled to occupy the whole of the vessel reserving only proper and sufficient space for the crew, fuel, stores etc. Further, the master although appointed by the owners is to be under the employment of the charterers. Given this wide degree of control, it is difficult to envisage more than one time charter operate concurrently, except by way of sub charter. In a voyage charter, the charterer gets the right to load his cargo in certain parts of the vessel. Even when there is only one single charter, the charterer does not get control of the whole vessel. He pays for what he gets by way of freight and that entitles him to occupy a limited part of the vessel, have his cargo transported from A to B and allows him a certain time to load and discharge his cargo.

If the time allowed for cargo operations is exceeded, then the charterer's occupation of that part of the vessel he has been allowed to occupy continues in breach of the contract, and it is suggested that it is for that, that liquidated damages become available.

The authorities clearly establish that demurrage can run concurrently under more than one charter and that if an owner does receive demurrage from more than one charter, that is not unjust enrichment. It is therefore suggested that the nature of demurrage as liquidated damages for detention is also no impediment to demurrage being claimed where, as happened in The Stolt Spur, the vessel loads or discharges other cargoes whilst waiting to discharge the cargo in question.

2.4.2 *EXCEPTIONS CLAUSES AND DEMURRAGE*

It has been held that once the vessel is on demurrage no exceptions will operate to prevent demurrage continuing to be payable unless the exceptions clause is clearly worded so as to have this effect. For example, whether shifting time from anchorage to berth is excluded once demurrage has begun to run will normally depend on whether there is an appropriate exceptions clause to that effect.

Most tanker charters contain a provision according to which in certain specified circumstances the demurrage rate shall be at half rate. For example, in the Asbatankvoy it is provided that if demurrage shall be incurred at ports of loading and/or discharge by

reason of fire, explosion, storm or by strike, lockout, stoppage or restrain of labour or breakdown of machinery or equipment...the rate of demurrage shall be reduced to one-half of the amount stated.

In The Thanassis A case, the jetty and the pipes running along it were damaged when another ship collided with it. As a result, part of the facility was completely destroyed and the Thanassis A was delayed whilst the jetty was repaired. The charterers claimed that only half demurrage should be payable because there had been a breakdown of equipment. The arbitrator rejected that contention and, on appeal, the judge held that so far as the damage to the jetty was concerned this could not properly be described as a breakdown of machinery or equipment.

2.4.3 *NOTICE OF READINESS AND COMMENCEMENT OF DEMURRAGE*

Two questions which have come before the courts are whether notice provisions apply when a vessel arrives at a second load port or discharge port already on demurrage and whether any period specified thereafter before the commencement of time also applies to the commencement of demurrage. In the absence of any express provisions to the contrary, the answer given is generally 'NO' to both questions.

It follows from the aforementioned and the general principle that laytime clauses do not apply to time of demurrage that, if there is a provision advancing the commencement of laytime in a berth charter, such us the WIBON provision or a 'time lost' clause, it will be inapplicable when a vessel arrives at load or discharge ports on demurrage and in the absence of any provision to the contrary, time will not start until the vessel berths.

2.4.4 *PUMPING CLAUSE*

Most oil tanker charters contain an additional clause whereby, in its simplest form, the vessel warrants that she can discharge her entire cargo in 24 hours or maintain 100 p.s.i. back pressure at the vessel's manifold, terminal permitting.

Disputes often arise because the charterers simply deduct all pumping time in excess of 24 hours. Owners usually assert in reply that the extended discharge was the fault of the terminal, often in providing hoses which are insufficient in number or size or by limiting pressure or rate of discharge.

Πανεπιστήμιο Πειραιώς

It sometimes happens that, the terminal will ask the vessel to reduce the pumping rate. Needless to say, that the vessel should ensure that any such request is made in writing. In that case, it would seem that the vessel pumped at a reduced rate throughout discharge, but that would be relatively unusual. It is far more common for a terminal to require a reduced rate for one or more periods of a couple of hours or so. Even this can result in discharge taking longer than 24 hours, but such periods will be treated as being outside the warranty, provided that the vessel maintains 100 p.s.i. during the period when no restrictions apply. In any case most chartrparties provide for Letters of Protests to be lodged in the cases that Terminal restricts (by any means) vessel's discharge capability.

2.4.5 *THE END OF DEMURRAGE*

When it comes to tanker ships most charter parties provide for demurrage to cease on hoses disconnection (at both load and discharge ports). There are, however, a few cases in which demurrage has stopped at some different point, either temporarily or permanently. When it comes to dry ships demurrage usually stops to count at completion of loading or discharging.

In the Tyne & Blyth Shipowning Co Ltd v. Leach and others, the vessel was sent to Poti to load under a port charter. Owning to congestion she was forced to wait in the roads and, whilst she was there, was stuck by another vessel without any fault on her part. Because of the damage she sustained, her master took her to Constantinople for repair. On return she again had to wait for a berth. On these facts, demurrage ceased when the accident occur, but resumed again when she returned to Poti.

2.4.6 *DEMURRAGE TIME BARS*

It is not uncommon to find an additional clause in the voyage charters requiring owners to submit any claim for demurrage within a specified period, often 90 days, failing which the claim will be deemed to have been waived. Apart from a desire to dispose of any such claim promptly, the reason behind the inclusion of such a clause is often that there is a corresponding provision in the relevant contract of sale of cargo, requiring the charterers to submit their claim against the shippers or the receivers within a specified period.

The courts and arbitration tribunals are willing to uphold the validity of such clauses, however they will only do so where the words which give rise to a time bar defence are clear and unambiguous.

In London Arbitration 11/90, the relevant clause required any claim to be submitted to the charterers within 90 days of final discharge, failing which it was deemed to be waived and absolutely barred. The problem in that case was that whilst the owners had the required disport documentation, they did not have the corresponding documentation from the load port, where the agents were owners' agents although nominated by charterers. Owners did not particularly press the agents until the last moment. On these facts, the tribunal concluded that the claim was time barred.

In London Arbitration 18/91, there was a similar provision, but the problem was slightly different. What happened here was that the owners, having presented their demurrage claim with supporting documentation within the stipulated period subsequently increased it outside the 90-day limit. In so doing, they relied on the same documentation as had previously been put forward. The tribunal held that were entitled to increase their demurrage claim, as the clause did not limit the amount due.

In London Arbitration 25/92, the clause required the claim to be presented to charterers in writing with supporting documents within 90 days. The owners sent their claim through the broking chain, but apparently it was only passed on by the charterers' brokers to their principals after the 90 days. The tribunal held the claim to be time barred. However, it is not clear from the brief report of the case whether the claim went missing between the intermediate brokers and the charterers' brokers or were simply sat on by the charterers' brokers who then ignored the hasteners. If it was the latter alternative, it is suggested that the owners would have a good argument that presentation to the charterers' brokers was, under the normal principles of agency, sufficient to meet the requirements of presentation to the charterers.

In London Arbitration 26/92, the relevant time bar provision simply referred to 'supporting documents' (including, but not limited to, vessel timesheets signed by the vessel's agents and terminal log). The only document the owners failed to send timeously was a load port notice of readiness, which took some time to get from the agents, who were the charterers' agents. As a load port notice was not specifically required by the clause and the information it would have contained was evidenced by the appropriate statement of facts, the tribunal held that the owners had met their obligations.

Although not specified in the brief report of this case, it is perhaps significant that it was the charterers' agents who were slow in procuring the missing document and there is no doubt that where the problem arises with someone on the charterers' side, arbitrators will be reluctant to allow charterers to take advantage of a time bar provision.

In London Arbitration 4/98, the tribunal held that, in relation to documents, the requirement that they be produced was subject to the provision 'if they exist'.

The Waterfront Shipping Co. Ltd v. Trafigura A.G., The Sabrewing case, involved a tanker charter on the BPVOY3 form for carriage of gasoline from NY to Vancouver. Clause 16 contained the usual undertaking that the vessel should discharge within 24hrs or maintain a minimum 100 p.s.i. throughout discharge, terminal permitting. Clause 16 also provides that charterers will not consider any claim for additional time used in the absence of specific documents being provided, essentially signed pumping logs and, where no signature can be obtained a note of protest. Clause 23 contained the standard time bar clause, namely that a claim must be submitted with 'supporting documentation substantiating each and every part of the claim' within 90 days of the completion of discharge.

The vessel was already on demurrage on arrival at the disport. Discharge took more than 24hrs. Owners submitted a demurrage claim within 90 days but did not include any document described as a pumping log (signed or otherwise) or any note of protest under clause 16. The charterers claimed that the claim was time barred because of this failure. It is relevant to mention that charterers had, in fact, received from a third party full details of the pumping record within 90 days, so it appeared that they actually had the relevant information.

The Court held that clauses 16 and 23 clearly required the owners to provide specific documents, and there was no substance in owners' defence that that the charterers would have received the relevant pumping information from a third party within the 90 days. The charterers were entitled to look only at the documents supplied by the owners. It was also held that even where the missing documentation related to only one part of the claim, the whole claim was time barred and not just that part of it to which the missing documents related.

However, within less than 12 months after the 'Sabrewing', another case came along which may cast some doubt on whether such a strict upholding of a time bar clause in this way will always be appropriate.

In the Eternity case, the demurrage claim and the application of a time bar clause was only one small aspect of this case, however, the demurrage time bar issue was important here, following the 'Sabrewing' case, because it involved the same clauses and also because the amount claimed was almost $1 million.

This time the charter was on the BPVOY4 form for cargoes of diesel and mogas from India/UAE to South Africa. The vessel encountered a long delay during discharge at Mossel Bay, which accounted most of the claim. Owners accepted that they did not submit with their claim (sent within 90 days) a pumping log signed by 'a terminal representative' at Mossel Bay.

The charterers said that this meant that the owners could not claim 'additional time' and, in any event, following the 'Sabrewing' case, the whole claim was time barred because one composite of the claim was submitted without the appropriate supporting documentation required by the charter, i.e. the pumping log signed by a Terminal Representative. In response, owners said that they were prepared to agree that part of the claim was time-barred (i.e. the part for which they did not provide a signed pumping log), but that the principle in the 'Sabrewing' should not apply to time bar the whole claim.

It was held that the clause (which was virtually identical to the clause in the 'Sabrewing') did not require owners to submit only one composite claim (even though they did so). That meant it was open to owners to submit a number of separate claims, all of which could be looked at independently. The finding appears to go directly against the 'Sabrewing' decision.

2.5 DETENTION

A claim for detention will arise when a vessel is delayed by default of the charterer or those for whom he is responsible. It sometimes happens, particularly in the tanker trade, that a charterer asks the shipowner to interrupt the carrying voyage, either because there has been some obstacle in completing the contract or the contracts of sale, or because he anticipates a more advantageous sale because the price of that commodity is rising, and agrees damages for the detention of the vessel thereby caused. It is, however, common that these are assessed at the demurrage rate and the parties may agree on the additional bunkers consumed. In cases where the possibility of detention is anticipated before the charter is executed, there may well be an additional provision allowing, say, for the vessel to be detained for up to 30 days as floating storage. In such

circumstances, payment for this period is usually made basis of a daily hire, either inclusive or exclusive of additional bunkers consumed. In effect, the clause therefore turns the charter from a voyage charter into a time charter for the period of detention.

In London Arbitration 12/90, the question arose as to whether a clause providing for compensation for delay and/or deviation resulting from the charterers giving late orders or changing orders, to be paid for at the demurrage rate, was sufficient to cover a situation where, having loaded the cargo, the vessel was instructed to wait first ten days before the charterers nominated the discharge port and then a further eleven days before being instructed to proceed. In these circumstances, the owners argued that they should be entitled to compensation reflecting the vessel's market rate which was twice the demurrage rate. However, the tribunal held that the clause was sufficient to cover the circumstances.

Like demurrage, damages for detention are calculated on a running day basis, i.e. the laytime exceptions do not apply; and neither normally will demurrage exceptions.

2.6 DELAY BEFORE THE VESSEL REACHES ITS SPECIFIED DESTINATION

In Mikkelsen v. Arcos Ltd, a vessel was ordered from Lenngrad to Yarmouth with a cargo of timber. After arriving at Yarmouth, the vessel was instructed to proceed to Boston Lincs., which she did. The owners claimed, inter alia, for the time the vessel was detained at Yarmouth. Court held that the owners were justified, being entitled for remuneration for the service of keeping the goods in the vessel, while arrangements for her going to Boston were being made.

The case of the owners of Panaghis Vergottis v. William Cory & Son concerned a vessel under charter to load at Barry Dock under a dock charter. The vessel anchored at Barry roads but was unable to gain admittance to the dock because the shipper failed to have one-third of the cargo available for loading, as required by the dock authority. It was held that the charterers were liable for detention of the vessel because there was an implied term in the charterparty that the defendants would do whatever was reasonable in order to enable the plaintiff's vessel to get into the dock and so become an arrived vessel.
In case of a berth charter where a vessel is prevented from getting to a loading berth owing to an obstacle created by the charterer or owing to a default of the charterer in performing his duty, then it is well established that the shipowner has done all that is

needful to bring the vessel to the loading place and that the charterer must pay for the subsequent delay.

A vessel may be further delayed at the port of discharge because of the late nomination. For example, at Milford Haven, 48 hours' notice is required of the arrival of a VLCC. This is so that an appropriate number of tugs is provided. A vessel might have to wait off Milford Haven, if nomination of this port was left to the last minute. Whether such delay would give rise to a claim for damages for detention will, it is suggested, depend on whether the charter is a port or berth charter. If the latter, then a claim will lie, but if the former, then the charterer is entitled to offset any unused laytime or, if the vessel is on demurrage, then demurrage will be payable during the delay.

If a breach of the charter or other default by the charterer results in the vessel being delayed after she has reached her specified destination, then the general rule is that damages for detention are not claimable and the charterer is entitled to apply his laytime against the delay. Also, it is now generally accepted that demurrage payments are payments of the liquidated damages for delay beyond the laytime allowed during the loading and discharging operations. As such, demurrage is an exclusive remedy and the shipowner is properly compensated for any delay by the payment of demurrage.

2.7 DELAY AFTER THE END OF LAYTIME AND/OR DEMURRAGE

There may be delays after the completion of loading or discharging operations when the shipowner may claim for detention, if he can show that these arose from the default of the charterer.

In the Owners of the Steamship Nolisement v. Bunge and Born the loading was completed within 8 days, being some 19 days before the laytime expired. On completion of loading, the master applied to the charterers for the bills of lading and orders as to destination, but they were not forthcoming for three days, as the charterers had not made up their minds as to where the vessel should proceed. By concession, the parties agreed that 24 hours' delay was reasonable, but the shipowners claimed damages for the further two days. The court held that the charterers had no right to detain the vessel after the loading was completed and they were under the obligation to present the bills of lading for the master's signature within reasonable time after the vessel was loaded and the charterers had committed a breach of contract and were liable for the detention of the vessel.

In the tanker trade, it is customary to allow a short period of two or three hours for the necessary documentation relating to loading to be produced. Such period is not laytime, but is in effect a free period of detention. If the documentation is not provided within this period, then a claim will lie for the excess period.

In the Owners of the Spanish steamship Sebastian v. Sociedad Alos Hornos de Vizcaya, the case involved the shipment of coal from Norfolk, Virginia, to Spain. After the charter had been entered into, but before loading commenced, the US Government prohibited the export of coal to Spain without licence. This was not forthcoming until 15 days after loading was complete, despite the efforts of the charterers' agents, who were also the shippers' and owners' agents, to get it earlier. Loading was completed within the allowed laytime, but the owners claimed damages for detention, or alternatively, demurrage for the delay thereafter. In these circumstances, the charterers had become bound to obtain this licence and it was their duty to obtain it without unreasonable delay and the arbitrators have set down that they did procure the licence to export this coal from the US to Spain without any delay; that they did all that was necessary to proceed with the matter and that the delay in this case should fall on the owners rather than the charterers.

It would therefore seem that where, on completion of loading or discharging, some further step must be taken by the charterers to enable the vessel to sail, or permission obtained, the duty of the charterers is to take all reasonable steps to enable the vessel to sail as soon as possible, but that the period of delay whilst these are taken if not unreasonable will not form the basis of a claim for detention. Presumably, the level of diligence required by the charterers would be the same as the required to enable the vessel to become an Arrived ship.

In the Boujadora, the dispute concerned a disagreement about the quantity of cargo to be shown in the bills of lading. Charterers presented inaccurate figures and refused to accept the master's qualification of them. In the High Court it was held that the indemnity provision in the charter included liability for delay caused by the presentation of inaccurate figures. The charterers were therefore liable for the delay. It should be noted that there was an express finding that the actions of the master had been reasonable throughout.

In London arbitration 6/92, a dispute arose as to whether the charterers should be liable to pay for the delay whilst a draft survey was carried out after loading. As the survey had been organized by the charterer, who also paid for it, it was reasonable that

they should meet the cost of the delay to the vessel since the laytime clock stopped on completion of loading.

3. SENDING AND RECEIVING DEMURRAGE CLAIMS AND RELEASING P&L

3.1 DEMURRAGE IN FOB, CFR AND CIF CONTRACTS

Under an FOB delivery, seller is liable to pay demurrage to the buyer and under a CIF/CFR and DES buyer is liable to pay demurrage to the seller. The most obvious difference between a charterparty and a sales contract is that a sales contract reflects only half the voyage i.e. the loading element in an FOB contract or the discharge element in a DES/CIF or CFR contract. The laytime allowance will reflect this. It will usually be no more than half laytime allowed under the charterparty. The result is that the demurrage claims for loading and discharging do not necessarily match the owner's claim under the corresponding charterparty. If the charterer hopes to recover all demurrage he has to pay to the shipowner, he must be particularly careful when agreeing laytime and demurrage terms in his sales contracts.

A second important difference is that the commencement of laytime in a sales contract may be different to the commencement of laytime under the charterparty.

Demurrage rate may be the one stated in the charterparty, but a number of GTCs, such as PPMC GTCs, provide for the AFRA demurrage rate.

Considering the aforementioned, we have 3 simple potential scenarios of voyages:

a. Trafigura purchases cargo fob (under a contract) - charters a ship (under a charter party) and sales cargo des (under a contract).

In that case: Trafigura will receive a demurrage claim from the shipowner (counting time at load and discharge port minus laytime allowance agreed in the charter party) and will send a demurrage claim to the supplier (for time spent at load port minus laytime allowance agreed in the contract) and a second demurrage claim to the receiver (for time spent at discharge port minus laytime allowance agreed in the contract).

b. Trafigura purchases cargo fob (under a contract) – and sales cargo fob (under a contract). In that instance we are only involved in load port operation and we do not fix a ship for carrying the cargo.

In that case: Trafigura will receive a demurrage claim from the receiver (counting time at load port minus laytime allowance agreed in the contract) and will send a demurrage claim to the supplier (for time spent at load port minus laytime allowance agreed in the contract).

c. Trafigura purchases cargo cfr or cif or des (under a contract) and sales cargo cfr or cif or des (under a contract). In that instance we are only involved in discharge port operation and we do not fix a ship for carrying the cargo.

In that case: Trafigura will receive a demurrage claim from the supplier (counting time at discharge port minus laytime allowance agreed in the contract) and will send a demurrage claim to the receiver (for time spent at discharge port minus laytime allowance agreed in the contract).

In all the above instances we will have two figures:

- The claimed figure which is the amount actually claimed (either payable or receivable) and
- The P&L figure which is the amount actually expected to be paid or received (either payable or receivable).

The above two figures might be identical.

There are many reasons for which the above figures are not usually the same.

In any case, the target remains to ensure that the demurrage losses are minimized and the profit is maximized.

In order to achieve this, the claims handler needs to timely get all documentation from all relevant departments (documents, contracts and recap) and after studying them carefully send claims as soon as possible and always within time bars. On the other side, when the payable claims are received claims handler needs to review same and be able to provide an accurate p&l provision.

3.2 THE IMPORTANCE OF TIME BARS

Time bars in both charterparties and contracts are absolute and parties need to strictly follow them. If a claim is received outside the time bar limits or if same is not properly and fully documented based on agreed terms, then the other party has the right to reject full or part of the claim as the case might be. Therefore, it is to the best interest of the parties to strictly follow time bar provisions in the charter parties and contracts and that might be translated to high amounts of money either payable or receivable.

Taking the above into account, it is important to realise that, in cases under which Trafigura does not charter the ships, it is of utmost importance to ensure that laytime and demurrage clauses in contracts are similar and back to back in order not to take the risk of getting time barred. For this reason, trafigura do try to include a clause in her contracts asking for documents and recaps from counterparties (when ships are not chartered by her) enabling her to timely send out her claims, even if a counterparty decides for any reason not to claim demurrage from her.

4. NEGOTIATION OF DEMURRAGE CLAIMS WITH OWNERS / COUNTERPARTIES AND DISPUTE RESOLUTION:

Importance of information been given to the claims team timely.

This enables claims individuals to send proper claims and make accurate provisions in the p&ls. Importance of demurrage clauses being clear and consistent and take into account any particular facts that may take place in the whole operation.
This might seriously affect demurrage negotiations which usually take place months or even years in many instances after the events.

Actual performance and evidence.

Another important element of demurrage negotiation is not only the actual performance of the vessel at the port but also the way the owner / supplier or receiver in each case supports this and documents it in the demurrage claim presented to another party.

For example, a ship might have performed in line with her pumping guarantee however if pumping logs signed and stamped and covering all the hours of discharging are not included in the demurrage claim, the charterers might very easily reject the claim as time bared.

4.1. DISPUTE RESOLUTION

i. Negotiation – this is the most common way that the vast majority of claims are finalised, both with shipowners and counterparties.

ii. Commercial settlement – in some rare cases for certain commercial reasons (especially with counterparties and barge owners) the traders might decide to finalise a claim commercially to a figure different than the one that should be agreed if strict contract terms were followed.

iii. Arbitration – this is a friendly way of solving a dispute outside courts, providing that the charter party or contract has an arbitration provision. Usually arbitrations are done as per LMAA rules (when London arbitration applies) and the set of conditions that the Act provides, guide the members and their respective lawyers.

iv. Mediation – this is a different way of handling a dispute where the parties decide to discuss and take one mediator to assist in that process and help them to find a middle ground on which to compromise, rather than accept a decision imposed by a third party.

v. Court proceedings – same applies when the charter party or contract provides for the parties to follow this route to solve their dispute under a claim. Usually, this is more time consuming than the arbitration and more costly than the arbitration. However, the Courts decisions are published automatically and then can be used by everyone in the industry, while arbitration awards under LMAA are only published if both parties accept; otherwise they remain strictly private and confidential.

5. NON DEMURRAGE CLAIMS IN BOTH CHARTERPARTIES AND CONTRACTS

5.1. FREIGHT AND FREIGHT DIFFERENTIAL

Most of the freight agreements in tanker charterparties are done on the basis of WSHTC. This is a standard method of calculation in which the parties agree to use the WS flat rate as published by the WS Association and only state in the cp the WS percentage in which this rate will apply. I.e.
If we have,
min 35,000 mt of cargo carried
WS agreed in the cp 150

WS flat rate (for transfer from port x to port z) = 5 usd pmt
Bl 34,800 mt

Freight is calculated as below
35,000 mt x 5 usd pmt x 150 pct (WS) = 262,500 usd

This is done as the charterers in this industry usually do not know the final ports of call (for either load or discharge) when ship is fixed and by agreeing WS terms and a percentage on WS flat rates, they do have flexibility in ordering the ship wherever they want without having to provide for thousands of freight rates in the recap. The WS association is doing all the work for them in that instance and the parties just have to properly use the WS book when calculating the freight for a specific voyage.
In the contracts with suppliers / receivers the port of delivery is usually clearly stated. In some instances traders might agree with their customers to give them the flexibility to call at more than one port or even call at a different port than the initial one agreed. In that instance contract includes a freight differential clause under which the counterparty ordering the change is liable to the other party for the additional freight that will incur.

For example, please note the voyage report of M/T Selendang Kencana, our agreed contract with PMI, a copy of the recap we had with the owners and our freight differential claim and demurrage claim to PMI.

5.2. DEVIATION

The most common situations where deviation incurs are the below:

a. When the ship is instructed to follow different orders i.e. is initially sent towards AG and then instructed to go to WAF. In that case the elements charged are time spent due to additional mileage plus bunkers corresponding to additional steaming.

b. When the ship is instructed to call a port for additives / waiting or other reason, but no cargo operations are carried out. In this case, there will be charges for additional time spent due to additional mileage, time spent at port and bunkers for both. Moreover we will probably have to pay for port costs in that port.

c. When the freight agreed is lumpsum and not WS and the ship is asked to call to a port for either load or discharge (when such port is not covered by the freight). In

that instance we usually have additional time spent due to additional miles steamed, time spent at port, bunkers at both plus port costs.

5.3. HEATING (FUEL AND CRUDE OIL)

In case that cargo needs heating then the parties have to agree whether owner or charterer is liable for that cost. This might include cost for heating up the cargo and / or cost for maintenance of loaded or heated up temperature depending on the request and on cp agreement.

5.4. PORT COSTS / SHIFTING

As per WSHTC certain port costs are for charterers account and some for owners. In the first case owners might pay the costs directly to agents and then recharge to charterers or charterers might be requested to settle with the agents directly.
When charterers require the vessel to shift berths to facilitate their needs (i.e. multiple suppliers or suppliers' request – in latter cost is rechargeable to them) the costs shall be covered by them. Usually ship owners pay the costs and then claim remuneration from charterers.

5.5. COST FOR RECIRCULATION / BLEDING (TIME AND BUNKERS)

In certain cases (always providing charter party permits) ship might be asked to do some cargo circulation or blending with the agreement that costs shall be paid by charterers after receipt of a fully documented claim supporting the expenditure.

5.6. SPEED UP

In certain cases charterers might ask owners to proceed to a port at a speed higher than the one agreed in the charter party. This is usually done on the basis that additional bunkers consumption for the speed up will be paid by charterers always upon receipt of adequate supporting documentation proving the same.

Πανεπιστήμιο Πειραιώς

5.7. DETENTION

As per detailed previous description.

5.8. ADDITIONAL WAR RISK PREMIUM

Charged in certain areas of the world by the insurance underwriters as additional insurance fees on top of the standard fee annually paid due to the fact that these areas are considered to be high risk areas with regards to war or warlike situations / terrorists and relevant perils.

Most voyage charterparties have an AWRP clause stating who is liable for the costs in case a vessel calls one of the awrp areas and under which supporting documentation cost is rechargeable (if latter is the case).

6. DEMURRAGE IN TRAFIGURA – METHODS

The basic documents which claims need in order to prepare and send a claim are contracts with all details (i.e. laycan and special if any trader's/operations' agreements, cargo documents (i.e. NOR, SOF, ullage reports in case of prorated time, LOP and pumping logs if discharge port) and proof of demurrage rate (i.e. in most cases copy of the recap). Trafigura has two basic categories of deliveries/voyages and p&ls the FOB/CIF-CFR-DES (i.e. vessel is our fixture or our TC) and the FOB/FOB or CIF-CFR-DES/CIF-CFR-DES (i.e. vessel is not our fixture). Reference Seminar 'Laytime and Demurrage'Trafigura – claims department March 2010

6.1. FOB/CIF-CFR-DES

In this category we first check when the vessel has completed loading and receive copies of cargo documents from agents or ops (this is relatively easy and fast since vessel is chartered by Trafigura). Then, we check contracts and loading window through pluto and we discuss any details (if required) with operators. When all above items are available we can prepare our claim and send same. Same day that claim is sent data is recorded in pluto accounts module and claims module as well. Then we need to follow

vessel's itinerary and check when she arrives / completes at discharge port. After cargo is discharged we follow same procedure as above i.e. since all supporting documents are available (i.e. contract, documents and recap) we send claim. Same time we record same in Pluto accounts and claims module . After all discharge ports claims have been sent ,complete p&l is prepared and sent to deals desk, traders and ops. This will include data from all voyage legs for both payable and receivable claims. Also this is the time that p&l complete flag is ticked in claims module (note: in that final stage if owners actual claim is received we report / record same as received otherwise as estimate i.e. only recorded in claims module and not accounts). In case owners have claimed for a certain cost in the middle of the voyage, we send a p&l including only that cost. Same is recorded in pluto accounts and claims module.

From: Rania Panagiotidou Sent: Mon 23/11/2009 18:05
To: Naphtha Deals Desk
Cc: Claims; P&L Public Folder; Sebastian Gallie; Sarah Wainwright; Geneva Naphtha Operations
Subject: Malbec,deal 43250, Naphtha, bl 14/11/09, voy Murmansk- Terneuzen, Voy id 34184

Owners are claiming for $7,474.00 (deal 43250-Inv 116453)being Seca charges for vessels moving within Seca area
Claim agreed in full and will be paid together with freight

Thanks +regards

Claim Type	Deal ID	Vessel	Voyage	Trade	Counterparty	Cost Code	Status	Claim Amount	Claim P&L	Estimated Cost
Deviation	43250	Malbec	34184		Handytankers K/S- Copenhagen	C10D	Settled	(7,474.00)	(7,474.00)	(7,474.00)
Totals								(7,474.00)	(7,474.00)	

Cost Code	Deal	Trade	Parcel	Voyage	Unapproved	Pluto Value
C10D - Freight Deviation	43250 - Malbec -				(7,474.00)	(7,474.00)

Reference Seminar 'Laytime and Demurrage'Trafigura – claims department March 2010

Πανεπιστήμιο Πειραιώς

RE: Marida Marguerite, Deal: 40441, Gasoline, b/l: 15/06/09, Voy: Petit Couronne/Paldiski, Voy I... M

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Respond | Actions | Junk E-mail | Options | Find

From: Stelios Abatis
Sent: Thu 26/11/2009 12:02
To: Gasoline Deals Desk
Cc: Claims; P&L Public Folder; Jose Larocca; John Bell; Tallinn Gasoline and Gasoline components
Subject: RE: Marida Marguerite, Deal: 40441, Gasoline, b/l: 15/06/09, Voy: Petit Couronne/Paldiski, Voy Id: 29783

Good day,

Demurrage claim to Petroplus has been agreed at $ 28,912.50
Sales Inv Nr: 72898/Deal: 40441

Thanks and Regards

From: Harris Liaos
Sent: 29 October 2009 10:12
To: Gasoline Deals Desk
Cc: Claims; P&L Public Folder; Jose Larocca; Andrew Brown; John Bell; Tallinn Gasoline and Gasoline components
Subject: RE: Marida Marguerite, Deal: 40441, Gasoline, b/l: 15/06/09, Voy: Petit Couronne/Paldiski, Voy Id: 29783

Good Morning,

Pls note that Owners' demurrage claim has been agreed for $ 22,787.58. **(Purchase Inv Nr: 107217/Deal: 40441).**

Thanks & Regards

From: Harris Liaos
Sent: 25 June 2009 19:15
To: Gasoline Deals Desk
Cc: Claims; Disbursements; P&L Public Folder; Toula Gerakis; Jose Larocca; Jason Liddell; Andrew Brown; John Bell; Tallinn Gasoline and Gasoline components
Subject: Marida Marguerite, Deal: 40441, Gasoline, b/l: 15/06/09, Voy: Petit Couronne/Paldiski, Voy Id: 29783

Good Afternoon,

Please note breakdown below with regards to the M/T Marida Marguerite voyage:

	Claim	P&L	
Net Profit (Loss)	**6,124.92**	**(0.00)**	
	=====================		
Load (Petit Couronne)			
Owners	**(22,787.58)**	**(22,787.58)**	*
Petroplus	28,912.50	22,787.58	**

Reference Seminar 'Laytime and Demurrage' Trafigura – claims department March 2010

Marida Marguerite, Deal: 40441, Gasoline, b/l: 15/06/09, Voy: Petit Couronne/Paldiski, Voy Id: 29...M

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Respond | Actions | Junk E-mail | Options | Find

From: Harris Liaos
Sent: Thu 25/06/2009 19:15
To: Gasoline Deals Desk
Cc: Claims; Disbursements; P&L Public Folder; Toula Gerakis; Jose Larocca; Jason Liddell; Andrew Brown; John Bell; Tallinn Gasoline and Gasoline components
Subject: Marida Marguerite, Deal: 40441, Gasoline, b/l: 15/06/09, Voy: Petit Couronne/Paldiski, Voy Id: 29783

Good Afternoon,

Please note breakdown below with regards to the M/T Marida Marguerite voyage:

	Claim	P&L	
Net Profit (Loss)	**6,124.92**	**(0.00)**	
Load (Petit Couronne)			
Owners	**(22,787.58)**	**(22,787.58)**	*
Petroplus	28,912.50	22,787.58	**
Discharge(Paldiski)			
Owners	**(0.00)**	**(0.00)**	*
Storage	0.00	0.00	***

*Owners: **(Purchase Inv Nr: 107217/Deal: 40441):** Owners' demurrage claim has been received for $ 22,787.58 counting time
used at ports basis 60hrs laytime allowance. At P&L pls provide for this amount and we will revert once claim is agreed.

Petroplus: **(Sales Inv Nr: 72898/Deal: 40441): Vessel arrived within agreed laycan with our suppliers.
Claimed fm NoR+6 up to hoses off basis 24hrs laytime allowance. At P&L claim is to be kept b2b with Owners.

***Storage: Time used is for our account since cargo discharged to our storage.

Thanks & Regards

Reference Seminar 'Laytime and Demurrage' Trafigura – claims department March 2010

Claims

File View Tools Reports

Claims — Drag a column header here to group by that column.

Deals\Deal: 40441 (2) - 10k Reformate Petroplus CIF Paldiski Mid May — Claims: 2 Items

Claim Type	Deal ID	Vessel	Voyage	Trade	Counterparty	Cost Code	Status	Claim Amount	Claim P&L	Estimated Cost	TC Voyage
Demurrage	40441	Marida Marguerite	29783		Heidmar UK Ltd.	C11	Settled	(22,787.58)	(22,787.58)	(22,787.58)	
Demurrage	40441	Marida Marguerite	29783	232250	Petroplus Marketing A.G.	I11	Agreed	28,912.50	28,912.50	28,912.50	
Totals								**6,124.92**	**6,124.92**		

Estimated Costs — Drag a column header here to group by that column.

Deals\Deal: 40441 (2) - 10k Reformate Petroplus CIF Paldiski Mid May — Costs: 2 Items

Cost Code	Deal	Trade	Parcel	Voyage	Unapproved	Pluto Value
C11 - Vessel Demurrage Co	40441 - 10k Refor			29783 - Marida	(22,787.58)	(22,787.58)
I11 - Vessel Demurrage Inc	40441 - 10k Refor	232250 - Petroplu			28,912.50	28,912.50

Reference Seminar 'Laytime and Demurrage' Trafigura – claims department March 2010

6.2. FOB/FOB or CIF-CFR-DES/CIF-CFR-DES

In this category we check when vessel completed loading and try to get copies of cargo documents from ops. This is not always feasible taking into account that vessel is not our fixture. Then, we check contract and loading/delivery windows through Pluto and we discuss any details (if required) with operators. (ATTACH EXAMPLE) For that type of p&ls this is the time that p&l complete flag is ticked in claims module. Data recorded in claims module is the one showing estimated (and not actual) claims that are expected to be received . Only claims module is updated and not accounts since no actual claim exists yet. There is a case that we do manage to get copies of cargo docs and recap so we can claim our counterparty despite claim is not received yet. In that case p&l is sent as per attached. (SEE EXAMPLE) relevant data is recorded in claims module the day that claim and p&l is sent out. I.e. we record receivable claim that is sent (actual) and estimated claim that we expect to receive (estimate). In that cases p&l complete flag is ticked when initial p&l is sent out . At a later stage when payable claim is received an amended p&l is issued. (SEE EXAMPLE) accounts + claims module in Pluto records now also this new claim (this shall happen same day that p&l is send with updated info). In case counterparty has claimed for a certain cost prior completion of the voyage (or in any case

prior the above procedure of calculating / sending claims is completed) we send a p&l including only that cost (example attached) . Same is recorded in Pluto accounts and claims module. The way we proceed from then on is to send subsequent p&ls when a claim is agreed (for both payable and receivable claims – SEE EXAMPLES ATTACHED) and when funds are received (SEE EXAMPLE ATTACHED)

Authentic, Deal: 42079, Crude Oil, B/L 26.09.09, Djeno, Voy id: 32438 - Message (Rich Text)

From: Nikos Vasileiou   Sent: Wed 11/11/2009 17:07
To: Crude Deals Desk
Cc: Claims; P&L Public Folder; London Crude Operations; Ben Luckock; Wendy Moss; Ezad Mirfakhraei; Roald Goethe (Comoditex); Andy Summers; Rohan Fernando
Subject: Authentic, Deal: 42079, Crude Oil, B/L 26.09.09, Djeno, Voy id: 32438

Kindly find below complete demurrage P&L for the loading operations of M/T Authentic at Djeno:

	Claim	P/L	
Net (loss)	(0.00)	(0.00)	
Sun International Ltd	(48,000.00)	(48,000.00)	*
Consult Co	48,000.00	48,000.00	**

* This is an estimation only, as per available inspector's report, counting time from NOR+6hrs up to hoses off Bss 36hrs full laytime allowance and estimated demurrage rate of US$ 40,000.00. Please provide for full and we will revert once claim is received. Notification time bar 24/11/2009. Time bar to receive a claim 25/12/2009.

** Calculation b2b with Sun International. Claim will be submitted to Consult Co as soon as a claim is received from Sun International. Notification time bar 24/11/2009. Time bar to send a claim 25/12/2009.

Claims

Deals\Deal: 42079 (2) - Sep Nkossa 24/25; Authentic   Claims: 2 Items

Claim Type	Deal ID	Vessel	Voyage	Trade	Counterparty	Cost Code	Status	Claim Amount	Claim P&L	Estimated Cost	TC Voyage
Demurrage	42079	Authentic	32438	245920	ConsultCo Trading Limited	I11	Awaiting Receipt	48,000.00	48,000.00	48,000.00	
Demurrage	42079	Authentic	32438	245921	Sun International Ltd	C11A	Awaiting Receipt	(48,000.00)	(48,000.00)	(48,000.00)	
Totals								**0.00**	**0.00**		

Estimated Costs

Deals\Deal: 42079 (2) - Sep Nkossa 24/25; Authentic   Costs: 4 Items

Cost Code	Deal	Trade	Parcel	Voyage	Unapproved	Pluto Value
C11A - Demurrage Cost - Tr	42079 - Sep Nkos	245921 - Sun Inte	113655		0.00	(48,000.00)
C24N - Port Costs - Owners	42079 - Sep Nkos				0.00	(193,906.44)
I11 - Vessel Demurrage Inc	42079 - Sep Nkos	245920 - Consult			0.00	48,000.00
I24N - Port Costs Recharge	42079 - Sep Nkos				0.00	193,906.44

Reference Seminar 'Laytime and Demurrage' Trafigura – claims department March 2010

Mare Baltic, Deal: 45106/45282,Fuel Oil,B/L 05.11.09,Augusta-Marsaxlokk,Voy id: 33589 - Message (HTM...

Message | Developer

Reply | Reply to All | Forward | IM | Call | Delete | Move to Folder | Create Rule | Other Actions | Block Sender | Safe Lists | Not Junk | Categorize | Follow Up | Mark as Unread | Find | Related | Select

Respond | Actions | Junk E-mail | Options | Find

From: Irene Karapetrou Sent: Tue 17/11/2009 17:50
To: Fuel Deals Desk
Cc: Claims; P&L Public Folder; London Fuel Operations; Fuel P&L; Paul Green
Subject: Mare Baltic, Deal: 45106/45282,Fuel Oil,B/L 05.11.09,Augusta-Marsaxlokk,Voy id: 33589

Good day,

Please note P&L breakdown below in regards to M/T Mare Baltic

	Claim	P/L	
Net Profit (Loss)	**(13,000.00)**	**(4,000.00)**	
Discharging (Augusta/Marsaxlokk)			
TOTSA	**(13,000.00)**	**(13,000.00)**	*
Esso Belgium	**11,805.55**	**9,000.00**	**

*TOTSA: Vessel arrived after delivery dates. This is an estimate counting time from all fast laytime allowance of 36hrs and demurrage rate of $ 17,000 .P&L counts time from commencement of loading .Time bar to receive a claim is 03/02/2010.

* Esso: Vessel arrived within delivery dates. Claimed from NOR +6 till hoses off basis 40hrs prorated laytime allowance. P&L reflects
deductions due to awaiting berth and terminal readiness. In case we do not receive a claim from TOTSA claim, claim will be amended
to nil.

Reference Seminar 'Laytime and Demurrage' Trafigura – claims department March 2010

Claims

File View Tools Reports

Views

Claims — Drag a column header here to group by that column.

Deals\Deal: 45106 (1) - Mare Baltic; 1/3 Nov 36kt from Totsa — Claims: 1 Items

Claim Type	Deal ID	Vessel	Voyage	Trade	Counterparty	Cost Code	Status	Claim Amount	Claim P&L	Estimated Cost	TC Vo
Demurrage	45106	Mare Baltic	33589	267571	Totsa Total Oil Trading SA	C11A	Awaiting Receipt	(13,000.00)	(13,000.00)	(13,000.00)	
Totals								**(13,000.00)**	**(13,000.00)**		

Estimated Costs — Drag a column header here to group by that column.

Deals\Deal: 45106 (1) - Mare Baltic; 1/3 Nov 36kt from Totsa — Costs: 1 Items

Cost Code	Deal	Trade	Parcel	Voyage	Unapproved	Pluto Value
C11A - Demurrage Cost - Tr	45106 - Mare Balti	267571 - Totsa To	120172		(13,000.00)	(10,000.00)

Claims

File View Tools Reports

Views

Claims — Drag a column header here to group by that column.

Deals\Deal: 45282 (1) - 5/7 Nov; 19kt sale to Esso — Claims: 1 Items

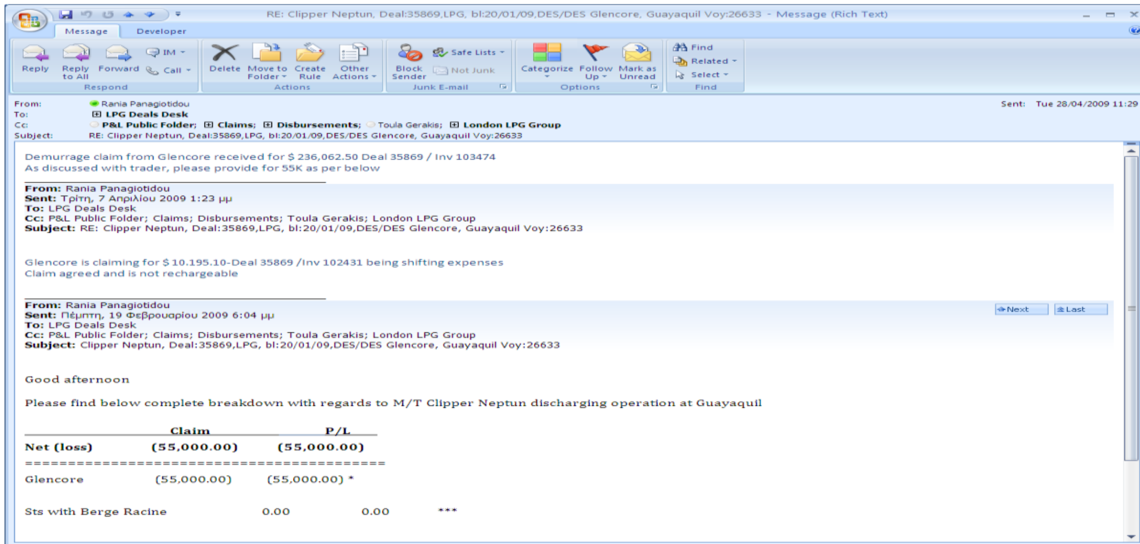
Claim Type	Deal ID	Vessel	Voyage	Trade	Counterparty	Cost Code	Status	Claim Amount	Claim P&L	Estimated
Demurrage	45282	Mare Baltic	33589	267680	Esso Belgium, div of ExxonMobil Pet & Chem BVBA	I11	Sent	11,803.81	9,000.00	9,
Totals								**11,803.81**	**9,000.00**	

Estimated Costs — Drag a column header here to group by that column.

Deals\Deal: 45282 (1) - 5/7 Nov; 19kt sale to Esso — Costs: 1 Items

Cost Code	Deal	Trade	Parcel	Voyage	Unapproved	Pluto Value
I11 - Vessel Demurrage Inc	45282 - 5/7 Nov; 1	267680 - Esso Bel	121105		0.00	9,000.00

Reference Seminar ‘Laytime and Demurrage’Trafigura – claims department March 2010



RE: Clipper Neptun, Deal:35869,LPG, bl:20/01/09,DES/DES Glencore, Guayaquil Voy:26633 - Message (Rich Text)

From: Rania Panagiotidou
To: LPG Deals Desk
Cc: P&L Public Folder; Claims; Disbursements; Toula Gerakis; London LPG Group
Subject: RE: Clipper Neptun, Deal:35869,LPG, bl:20/01/09,DES/DES Glencore, Guayaquil Voy:26633
Sent: Tue 28/04/2009 11:29

Demurrage claim from Glencore received for $ 236,062.50 Deal 35869 / Inv 103474
As discussed with trader, please provide for 55K as per below

From: Rania Panagiotidou
Sent: Τρίτη, 7 Απριλίου 2009 1:23 μμ
To: LPG Deals Desk
Cc: P&L Public Folder; Claims; Disbursements; Toula Gerakis; London LPG Group
Subject: RE: Clipper Neptun, Deal:35869,LPG, bl:20/01/09,DES/DES Glencore, Guayaquil Voy:26633

Glencore is claiming for $ 10.195.10-Deal 35869 /Inv 102431 being shifting expenses
Claim agreed and is not rechargeable

From: Rania Panagiotidou
Sent: Πέμπτη, 19 Φεβρουαρίου 2009 6:04 μμ
To: LPG Deals Desk
Cc: P&L Public Folder; Claims; Disbursements; Toula Gerakis; London LPG Group
Subject: Clipper Neptun, Deal:35869,LPG, bl:20/01/09,DES/DES Glencore, Guayaquil Voy:26633

Good afternoon

Please find below complete breakdown with regards to M/T Clipper Neptun discharging operation at Guayaquil

	Claim	P/L	
Net (loss)	**(55,000.00)**	**(55,000.00)**	
Glencore	(55,000.00)	(55,000.00) *	
Sts with Berge Racine	0.00	0.00	***

Claims

File View Tools Reports

Claims — Drag a column header here to group by that column.

Deals\Deal: 35869 (1) - Clipper Neptun - Glencore (Jan 09 Nom) - to FSU   Claims: 1 Items

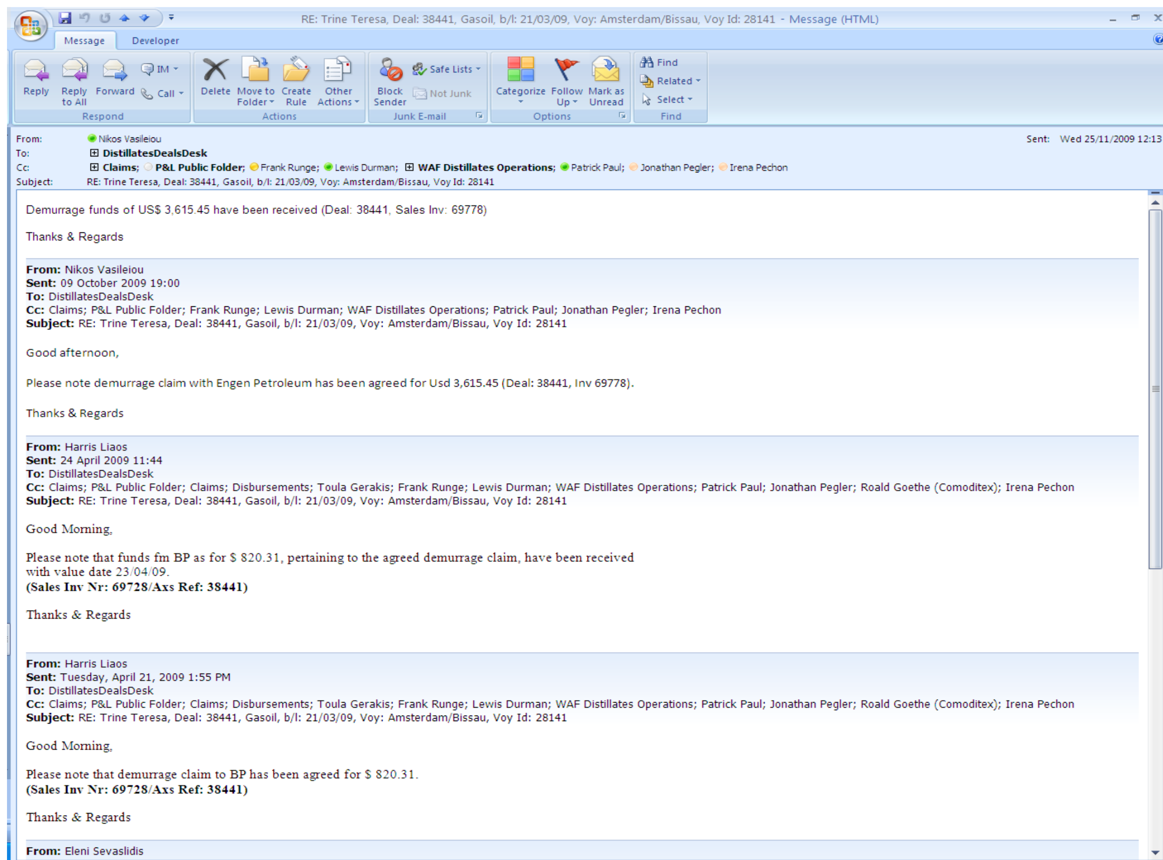
Claim Type	Deal ID	Vessel	Voyage	Trade	Counterparty	Cost Code	Status	Claim Amount	Claim P&L	Estimated Cost	TC Voyage
Demurrage	35869	Clipper Neptun	26633	198348	Glencore Energy UK Limited	C11A	Counter	(236,062.50)	(55,000.00)	(55,000.00)	
Totals								**(236,062.50)**	**(55,000.00)**		

Estimated Costs — Drag a column header here to group by that column.

Deals\Deal: 35869 (1) - Clipper Neptun - Glencore (Jan 09 Nom) - to FSU   Costs: 3 Items

Cost Code	Deal	Trade	Parcel	Voyage	Unapproved	Pluto Value
C11A - Demurrage Cost - Tr	35869 - Clipper N	198348 -Glencor	84149		(55,000.00)	(55,000.00)
C24 - Port Cost - Agents	35869 - Clipper N				0.00	(13,146.30)
C24S - Vessel Shifting Expe	35869 - Clipper N			26633 - Clipper	0.00	(10,195.10)

Reference Seminar ‘Laytime and Demurrage’Trafigura – claims department March 2010



RE: Trine Teresa, Deal: 38441, Gasoil, b/l: 21/03/09, Voy: Amsterdam/Bissau, Voy Id: 28141 - Message (HTML)

From: Nikos Vasileiou
To: DistillatesDealsDesk
Cc: Claims; P&L Public Folder; Frank Runge; Lewis Durman; WAF Distillates Operations; Patrick Paul; Jonathan Pegler; Irena Pechon
Subject: RE: Trine Teresa, Deal: 38441, Gasoil, b/l: 21/03/09, Voy: Amsterdam/Bissau, Voy Id: 28141
Sent: Wed 25/11/2009 12:13

Demurrage funds of US$ 3,615.45 have been received (Deal: 38441, Sales Inv: 69778)

Thanks & Regards

From: Nikos Vasileiou
Sent: 09 October 2009 19:00
To: DistillatesDealsDesk
Cc: Claims; P&L Public Folder; Frank Runge; Lewis Durman; WAF Distillates Operations; Patrick Paul; Jonathan Pegler; Irena Pechon
Subject: RE: Trine Teresa, Deal: 38441, Gasoil, b/l: 21/03/09, Voy: Amsterdam/Bissau, Voy Id: 28141

Good afternoon,

Please note demurrage claim with Engen Petroleum has been agreed for Usd 3,615.45 (Deal: 38441, Inv 69778).

Thanks & Regards

From: Harris Liaos
Sent: 24 April 2009 11:44
To: DistillatesDealsDesk
Cc: Claims; P&L Public Folder; Claims; Disbursements; Toula Gerakis; Frank Runge; Lewis Durman; WAF Distillates Operations; Patrick Paul; Jonathan Pegler; Roald Goethe (Comoditex); Irena Pechon
Subject: RE: Trine Teresa, Deal: 38441, Gasoil, b/l: 21/03/09, Voy: Amsterdam/Bissau, Voy Id: 28141

Good Morning,

Please note that funds fm BP as for $ 820.31, pertaining to the agreed demurrage claim, have been received
with value date 23/04/09.
(Sales Inv Nr: 69728/Axs Ref: 38441)

Thanks & Regards

From: Harris Liaos
Sent: Tuesday, April 21, 2009 1:55 PM
To: DistillatesDealsDesk
Cc: Claims; P&L Public Folder; Claims; Disbursements; Toula Gerakis; Frank Runge; Lewis Durman; WAF Distillates Operations; Patrick Paul; Jonathan Pegler; Roald Goethe (Comoditex); Irena Pechon
Subject: RE: Trine Teresa, Deal: 38441, Gasoil, b/l: 21/03/09, Voy: Amsterdam/Bissau, Voy Id: 28141

Good Morning,

Please note that demurrage claim to BP has been agreed for $ 820.31.
(Sales Inv Nr: 69728/Axs Ref: 38441)

Thanks & Regards

From: Eleni Sevaslidis

Reference Seminar 'Laytime and Demurrage'Trafigura – claims department March 2010

6.3. BASIC RULES

When claims are sent, same are recorded in Pluto / claims module in order claims dept to be able to monitor same. When all claims for a voyage are sent out, p&l is issued and claims flag is ticked in claims module. The above is done even if payable claims are not yet received and in that case estimations are put and are updated when actual claims are received. When a payable or receivable claim is not received / sent (i.e. claimed amount is zero) no recordings are made anywhere in Pluto. There is only one complete p&l being sent out and same day claims flag is ticked in claims module. Actual claims (payable and receivable) are recorded in accounts (invoices) and claims module (each entry corresponds to an invoice) (the only exception is the on account payments [see below] for which each entry corresponds to more than one invoices).

Estimated claims (payable and receivable) are recorded in claims module only. When and if a claim is sent / received for that specific case, then an invoice is booked and is attached to that entry in claims module with necessary amendments which make claim actual and not estimate. Reference Seminar 'Laytime and Demurrage'Trafigura – claims department March 2010

7. OPERATIONS SUPPORT IN CLAIMS TEAM

The following information is important to be provided from the operators, who have direct connection with the vessel's voyage to the claims team, so that correct claims are submitted to the counterparties and amounts paid to the owners are only the proper ones. Also, proper information assists greatly in accurate p&ls being issued for both payable and receivable claims.

1. Financial hold notices
2. Nominations for narrowing the loading / discharge ranges (or a note when a counterparty has not done so in time.
3. Vessel's delays due to offspec cargo disputes.
4. Vessels delays due to incorrect documentation / certificates (vessel not legally ready).
5. Requests to owners for heating / circulation and speeding up and subsequent correspondence.
6. Requests to owners for deviation.
7. Change of discharge port or geographical rotation.
8. When we ask master to tender NOR at different times to different parties.
9. When operators put owners on notice for the delays incurred (whatever that delay might be).

Reference Seminar 'Laytime and Demurrage'Trafigura – claims department March 2010

CONCLUSION

Trafigura's ability to handle claims effectively makes it one of the most successful trading companies in the world. Although the company follows traditional shipping methods for handling claims, the use of the Pluto Software and P&I makes them stand out in the international shipping industry. Pluto is a premiere software for accurately recording and tracking the ship's voyage. The software allows the claims team to be adequately informed of the ship's position and allows for timely sent claims. P&l is a picture of ship's itinerary which reflects all the costs gained or lost. It is accessible to all company employees and it guarantees an effective cooperation among the employees.

BIBLIOGRAPHY

Laytime and Demurrage	John Schofield, M.A. fith edition, LLP 2005
Seminar 'Laytime and Demurrage'	Trafigura – claims department March 2010
THE MEANING AND NATURE OF DEMURRAGE, DETENTION AND DESPATCH	SIÂN MORRIS SYNDICATE ASSOCIATE & SOLICITOR STEAMSHIP INSURANCE MANAGEMENT SERVICES LTD
Βιβλιογραφική αναφορά: κείμενο σε ιστοσελίδα	Παπαδόπουλος, Α. (1992) 'Επιδοτούμενες Ακτοπλοϊκές Γραμμές', http://www.iospress.gr/ios2002/ios20021013a.htm, τελευταία επίσκεψη: 15/01/2003.
London Arbitration	(12/98 - LMLN 21.7.98-488)
LondonArbitration	(11/03) LMLN 619 (7th August 2003)
London Arbitration	(16/04) LMLN 1st September 2004
London Arbitration	16/05 LMLN 17th August 2005
London Arbitration	(20/04/) LMLN 15th September 2004
London Arbitration	(9/05) LMLN 27th April 2005
London arbitration	19/04
London arbitration	6/84
London Arbitration	11/90
London Arbitration	18/91
London Arbitration	25/92
London Arbitration	26/92
London Arbitration	4/98
London Arbitration	12/90
London arbitration	6/92
The Law of Demurrage	Hugo Tiberg
Case of Tradigrain SA & Others v King Diamond Shipping SA	(The "Spiros C" [2000] 2 Lloyds Rep 319) Rix J
Australian Grain Charter 1928	
Uniform General Charter 1976	

Gencon	
Donaldson J sums up the situation in Navico AG v Vrontados Naftiki Etairia PE [1986]	1 Lloyd’s Rep 379
Atkieselskabet Reidar v Arcos Ltd [1927] 1 KB).	Lord Justice Banks
Richco International Ltd v Alfred C. Toepfer International (The Bonde)	([1991] 1 Lloyd's Rep. 136)
The Volayrules 1993	
River Plate Charter-Party 1914 Centrocon	
Baltimore Form C	
Thomasson Shipping Co Ltd v Henry Peabody & Co of London Ltd ([1959]	2 Lloyd’s Rep 269
Nelson (James) & Sons Ltd v Nelson Line, Liverpool Ltd	([1907] 2 KB 705)
United British SS Co, Ltd v Minister of Food ([1951]	1 Lloyd’s Rep 111)
Compania Naviera Azuero SA v British Oil & Cake Mills Ltd and others	([1957] 1 Lloyd’s Rep 312)
Bailhache J in Mawson Steamship Co v Beyer	([1913] 19 CC 59)
Themistocles v Compagnie Intercontinentale de L’ Hyperphosphate of Tangier	([1948] 82 Lloyd’s Rep 232) Morris J
Lord Diplock said in Dias Compania Naviera v Louis Dreyfuss Corporation	[1971] 1 Lloyd’s Rep 325
In Inverkip Steamship Co v Bunge & Co	([1917] 22 CC 200)
Tyne & Blyth Shipowning Co Ltd v Leach and others	([1900] 5 CC 155)
Petrinovic & Co Ltd v Mission	([1941] 71 L1 l Rep 208)

Francaise des Transports Maritimes	
Inverkip SS Co Ltd v Bunge & Co	[1917] 2 KB 193
In Dimech v Corlett	([1858] 12 Moo PC 199)
Aktielseskabet Reidar v Arcos Ltd	([1926] 25 L1 L Rep 513)
Nolisement v Bunge y Born	[1917] 1 KB 160)
In Western Steamship Co Ltd v SHELLVOY 5	([1913] 19 CC 1) Bray J
Amaral Sutherland & Co Ltd	([1913] 19 CC 1) Bray
President Brand	[1967] 2 Lloyd's Rep 338)
The Delian Spirit	[1971] 1 Lloyd's Rep. 506

Πανεπιστήμιο Πειραιώς