Twentieth
INTERNATIONAL MARITIME LAW ARBITRATION MOOT
Rotterdam, 30th June – 5th July

AMITY LAW SCHOOL, DELHI
GGSIP UNIVERSITY

Memorandum For RESPONDENT

On behalf of
Omega Chartering Limited
(RESPONDENT)

Against
Panther Shipping Inc.
(CLAIMANT)

COUNSEL FOR RESPONDENT
FATEH SINGH KHURANA • SAOUMYA VASHISHT • SIDDHARTH DHAWAN
VATSALA CHAUHAN • VIDUSHI SINHA
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<tr>
<td>&amp;</td>
<td>And</td>
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<tr>
<td>A. OR ART.</td>
<td>Article</td>
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<tr>
<td>ARB</td>
<td>Arbitration</td>
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<tr>
<td>AUG.</td>
<td>August</td>
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<td>Cl.</td>
<td>Clause</td>
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<td>CORP.</td>
<td>Corporation</td>
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<td>DEC</td>
<td>December</td>
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<td>DOC.</td>
<td>Document</td>
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<td>ED.</td>
<td>Edition</td>
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<td>ICA</td>
<td>Inter-Club Agreement</td>
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<td>ICC</td>
<td>International Chamber of Commerce</td>
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<tr>
<td>INC.</td>
<td>Incorporated</td>
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<td>INT.</td>
<td>International</td>
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<td>JUL.</td>
<td>July</td>
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<td>JUN.</td>
<td>June</td>
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<tr>
<td>LMAA</td>
<td>London Maritime Arbitrators Association</td>
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<tr>
<td>LTD.</td>
<td>Limited</td>
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<td>M</td>
<td>metre</td>
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<tr>
<td>MAR.</td>
<td>March</td>
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<tr>
<td>MV OR M/V</td>
<td>Motor Vessel</td>
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<td>NO.</td>
<td>Number</td>
</tr>
<tr>
<td>NOV.</td>
<td>November</td>
</tr>
<tr>
<td>NYPE</td>
<td>New York Produce Exchange</td>
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INDEX OF AUTHORITIES

ASKINS, Stephen  
Shipping Issues Arising Out of the Ebola Outbreak  
Cited as: ASKINS/LINDERMAN/

LINDERMANN, 
Michelle  
in West Africa (2014)  
Available at: Steamship Mutual  
OGDEN, Victoria  
in para: § 45.

BAATZ, Yvonne  
Maritime Law  
4th Ed. (2017)  
Pp: 163  
Cited as: BAATZ in para: § 39.

BERG, VAN DEN  
The Law Applicable to the Form and Substance of the Arbitration Clause (1999)  
Published by: Kluwer Law International  
Pp: 115  
Cited as: VAN DEN BERG in para: § 4.

BLACKABY, Nigel  
Redfern and Hunter on International Arbitration,  
Cited as: REDFERN AND

PARTASIDES, 
Constantine  
Available at: Oxford University Press  
HUNTER

REDFERN, Alan  
pp: 322-345  
in para: § 3.

HUNTER, Martin
**BORN, Gary B.**  
*International Commercial Arbitration, Part One: Chapter 4. Interpretation of International Arbitration Agreements*  
2nd Ed. (2001)  
pp: 317-319

Cited as: **BORN; 2001** in para: §3, 8, 9, 10.

**CLIVE, Aston**  
The compensatory principle of damages in voyage charters  
Available at:  

Cited as: **CLIVE** in para: § 65.

**COGLIN, T.**  
*Time Charters.*

**BAKER, A.**  
7th Ed. (2014)

**KENNY, J.**  
Available at: Informa Law from Routledge,  
*KENNY*

**KIMBALL, J.**  
Lloyd's Shipping Law Library  
in para: § 31, 38.

**BELKNAP, T.**

**GORTON, Lars**  
Shipbroking and Chartering Practice (Lloyd's Practical Shipping Guides)  
Publisher: Informa Law from Routledge  
in para: § 80.
SOVTIC, Stefan B.  The Inter-Club Agreement - Certain aspects, Master Thesis Faculty of Law, University of Lund P. 10

Cited as: SOVTIC in para: § 81.

VERNON, RM  Tender and its Effects (1894) Available at: Cornell Law Library

Cited as: VERNON in para: § 22, 23.


Cited as: WEALE in para: § 52.
INDEX OF CASES

CANADA

Dell Computer Corp. v. Union des consommateurs
13 July 2007
Superior Court of Canada,
Citation: 2007 SCC 34
in para: § 2.

UNITED KINGDOM

Action Navigation Inc v. Bottiglie di Navigazione Spa (The Kista)
16 February 2005
Queen’s Bench Division (Commercial Court)
Citation: [2005] EWHC 177
in para: § 32.

Actis Co. Ltd. v. The Sanko Steamship Co. Ltd. (“The Aquacharm”)
15 October 1981
Court of Appeal
Citation: [1982] 1 C.A. 7.
in para: § 55.
Andre & Cie S.A. v. Orient Shipping (Rotterdam) B.V
9 October 1996
Queen’s Bench Division (Commercial Court)
Citation: [1997] 1 Lloyd’s Rep. 139
Cited as: UK 9 Oct. 1996.
in para: § 51.

Bolton v. Stone
10 May 1951
House of Lords
Citation: [1951] 1 All ER 1078
Cited as: UK 10 May 1951.
in para: § 45.

C.A. Venezolana De Navegacion v. Bank Line Ltd. (The “Roachbank”)  
27 July 1987
High Court (Queen's Bench Division)
Citation: [1987] 2 Lloyd's Rep 498
in para: § 51.

Classic Maritime Inc v. Limbungan Makmur Sdn Bhd and Another
13 September 2018
Queen’s Bench Division (Commercial Court)
Citation: [2018] EWHC 2389 (Comm)
Cited as: *UK 13 Sep. 2018.*

in para: § 46.

**Dera Commercial Estate v Derya Inc (The“SUR”)**

13 July 2018

England and Wales High Court (Commercial Court)

Citation: [2018] EWHC 1673 (Comm)

Cited as: *UK 13 Jul. 2018.*

in para: § 71, 75.

**ENE Kos 1 Ltd v. Petroleo Brasileiro SA (The Kos) (No 2) (SC)**

2 May 2012

Supreme Court

Citation: [2012] UKSC 17

Cited as: *UK 2 May 2012.*

in para: § 33.

**Hadley v. Baxendale**

23 February 1854

Court of Exchequer

Citation: [1854] EWHC J70

Cited as: *UK 23 Feb. 1854.*

in para: § 58.
Harbour & General Works Ltd v Environment Agency

22 October 1999
Court of Appeal
Citation: [2000] 1 Lloyd’s Rep 65
in para: § 75.

Hogarth v. Miller

1889
House of Lords
Citation: (1889) 16 R 599
Cited as: UK 1889.
in para: § 56.

Ipsos S.A. v. Dentsu Aegis Network Limited (previously Aegis Group plc)

29 April 2015
Queen’s Bench Division (Commercial Court)
Citation: [2015] EWCH 1171 (Comm)
Cited as: UK 29 Apr. 2015.
in para: § 70

NYK Bulkship (Atlantic) NV v. Cargill International SA (The Global Santosh)

8 April 2014
Court of Appeal (Civil Division)
Citation: [2013] 1 Lloyd’s Rep. 455.
Cited as: *UK 8 Apr. 2014.*

in para: § 56.

**R&Q Insurance (Malta) Ltd and Others v Continental Insurance Co.**

8 December 2017

England and Wales (Commercial Court)

Citation: [2017] EWHC 3666 (Comm)

Cited as: *UK 8 Dec. 2017.*

in para: § 72.

**Santa Martha Baay Scheepvaart and Handelsmaatschappij NV v. Scanbulk A/S (The Rijn)**

27 March 1981

Queen’s Bench Division (Commercial Court)

Citation: [1981] 2 Lloyd's Rep 267


in para: § 27.

**SIB International SRL v. Metallschaft Corporation**

1989

Court of Appeal

Citation: [1989] 1 C.A. 362.

Cited as: *UK 1989.*

in para: § 65.
Sidemar S.P.A. v. Apollo Corporation
1978
Queen’s Bench Division (Commercial Court)
Citation: [1978] 1 Llyod’s Rep. 200
Cited as: UK 1978.
in para: § 54.

Transfield Shipping Inc v. Mercator Shipping Inc.
9 July 2008
House of Lords
Citation: [2008] UKHL 48
in para: § 59, 60, 64.

Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd.
12 April 1949
Court of Appeal
Citation: [1949] 2 K.B. 52
Cited as: UK 12 Apr. 1949.
in para: § 61.

Vogemann v. Zanzibar Steamship Company Limited (The “ZANZIBAR”)
1902
England and Wales Court of Appeal (Civil Division)
Citation: [1902] 7 Com. Cas. 254
Cited as: *UK 1902*

in para: § 55.

**UNITED STATES OF AMERICA**

**Flood v. Country Mutual Ins. Co.**

21 November 1968

Supreme Court of Illinois

Citation: 41 Ill.2d 91, 94 (1968)

Cited as: *USA 21 Nov. 1968.*

in para: § 7.

**Gangel v. DeGroot**

15 February 1977

Court of Appeals of the State of New York

Citation: 393 N.Y.S.2d 698 (N.Y. 1977)

Cited as: *USA 15 Feb. 1977.*

in para: § 8.

**Terminix Int’l. Co., L.P. v. Michaels**

19 March 1996

District Court of Appeal of Florida, Fourth District

Citation: 668 So. 2d 1013 (Fla. Dist. Ct. App. 1996)

Cited as: *USA 19 Mar. 1996.*

in para: § 7.
INDEX OF AWARDS

International Chamber of Commerce

Plaintiff v. Defendant

ICC Case No. 2138 of 1974

Journal du Droit International 1975 (pp. 934-938)

1974

Cited as: ICC Ct. Arb 2138/1974

in para: § 9

Distributor (Spain) v. Manufacturer (Italy) ICC Case No. 7920 of 1993

1993

Cited as: ICC Ct. Arb, 7290/1993

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<td>Arbitration Act</td>
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<td>Limitation Act, 1980: Specifying the period of action.</td>
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STATEMENT OF FACTS

1. The parties to this arbitration are Panther Shipping Inc. [hereinafter, CLAIMANT] and Omega Chartering Limited, [hereinafter, RESPONDENT].

2. The RESPONDENT, Omega Chartering Ltd. is a Chartering Company based in Liechtenstein.

3. The CLAIMANT, Panther Shipping Inc. is a Shipping Company based in Liberia.

18 Mar 16    CLAIMANT and RESPONDENT entered into a time Charterparty for a period of 50-55 days from West Coast to Wahanda carrying a cargo of harmless bulk products.

29 Mar 16    M/V Thanos Quest, hereinafter referred to as the vessel, delivered into the Charterparty.

07 May 16    Vessel arrived at Wahanda but was not allowed to berth. Held at anchorage until Port State Control cleared the crew on board, who was suspected of carrying the Ebola virus. RESPONDENT intimated CLAIMANT about ship being off hire from her arrival at Wahanda. CLAIMANT iterated that this is a situation beyond their control. Communicated to RESPONDENT that vessel remains on hire.

11 May 16    Port State Control inspected ship and found a number of crew members with high fever. Ship placed in quarantine for a minimum of 28 days. RESPONDENT again communicated to CLAIMANT that ship is off hire. CLAIMANTS in their reply repeated that this is not an off hire event and the ship remains on hire.
25 May 16 Wahanda port services communicated to RESPONDENT that Wahanda port is not suitable for cleaning due to current, change and other issues. Advised that ship owner should choose other port to do the cleaning.

08 Jun 16 CLAIMANT contacted RESPONDENT requesting to confirm the arrangements regarding the vessels bottom, propeller underwater inspection and cleaning if necessary, in accordance with Cl. 83. RESPONDENT asked for advice to solve the problem or offered a lump sum payment of USD 15,000 in its stead due to non-availability of underwater cleaning services.

09 Jun 16 CLAIMANT acknowledged non-availability of underwater cleaning services at Wahanda. Refused the lump sum payment as no inspection had been carried out. RESPONDENT agreed to pay cost of underwater cleaning against original invoice.

15 Jun 16 CLAIMANT entered into a Charterparty dated 15.06.2016 with Champion Chartering Corp for MV Thanos Quest. Delivery of Vessel to Champion Chartering Corp was before the cancelling date, i.e., 28 June 2016.

18 Jun 16 CLAIMANT communicated to RESPONDENT that they reserve their rights to revert in due course with their claim for costs/time/expenses for the vessel’s cleaning from fouling due to the prolonged stay at Wahanda.

22 Jun 16 RESPONDENT contacted Titan Shipbuilders and received a quote for USD 33,000 for underwater hull cleaning.

23 Jun 16

26 Jun 16 RESPONDENT intimated about heavy fouling of the vessel and details of next fixture by CLAIMANT. CLAIMANT then requested RESPONDENT to
advise their intention regarding arrangement for Vessel’s hull, flat bottom, rudder, propeller inspection and cleaning.

28 Jun 16 Champion Chartering Corp. cancelled the Charterparty with the CLAIMANT due to non-delivery of Vessel before cancelling date.

29 Jun 16 RESPONDENT delivered one day delivery notice to CLAIMANT and informed them that they are in talks with the receiver about the potential cargo claim. CLAIMANT again called upon RESPONDENT to carry out the inspection and cleaning of the vessel at South Island.

30 Jun 16 RESPONDENT repeated their offer of lump sum payment of USD 30,000 and reiterated that any voyage to South Island would not be contractual, and hence, RESPONDENT’S responsibility. CLAIMANT gave RESPONDENT final opportunity to comply with contractual terms and complete the cleaning of the vessel under Cl. 83 of the charterparty.

04 Jul 16 CLAIMANT delivered Vessel to Fairwind International, the next fixture for MV Thanos Quest.

05 Nov 17 RESPONDENT requested CLAIMANT to extend time in relation to Cargo Claim.

Oct 18 CLAIMANT began arbitration process. Both CLAIMANT and RESPONDENT appointed their arbitrators.

09 Nov 18 CLAIMANT served its claim on RESPONDENT.

17 Nov 18 RESPONDENT served its counterclaim on the CLAIMANT.

Dec 18 CLAIMANT gave its reply to RESPONDENTS counterclaim.
SUMMARY OF ARGUMENTS

This Tribunal is kindly requested to order that this Tribunal has jurisdiction over the present matter. [I, see below §§1- 18]. First, the Tribunal has the authority to decide upon its own jurisdiction. Second, however, the Tribunal does not have the jurisdiction to hear CLAIMANT’s pleading regarding nature and sufficiency of the notification given by RESPONDENT with regards to the Cargo Claim.

Further, the Tribunal is kindly requested to adjudge that the RESPONDENT has not breached the Charterparty in respect of Hull Cleaning and is thus, not liable for the costs incurred in its respect. [II, see below §§19 - 41]. First, RESPONDENT is relieved of its obligation to perform hull cleaning. Second, owing to CLAIMANT establishing RESPONDENT’s liability for hull cleaning, RESPONDENT is liable only to the extent of USD 33,000 (maximum liability) and not beyond. Third, RESPONDENT is not liable for the costs of the voyage to South Island.

This Tribunal is also kindly requested to hold that RESPONDENT is not liable to pay the damages as per the subsequent fixture [III, see below §§42 - 65]. First, that the delayed re-delivery was not caused by the gross personal negligence of RESPONDENT. Second, that there was no timely special knowledge of the next fixture. Third, RESPONDENT is not liable to compensate for loss of hire.

Finally, the Tribunal is requested to hold that CLAIMANT is liable for the payment of the Cargo Claim made by RESPONDENT [IV, see below §§66 - 82]. First, the Cargo Claim is not barred under clause 6 of the ICA. Second, the Cargo Claim is to be apportioned under the Inter Club Agreement.
ARGUMENTS ON JURISDICTION

I. THE TRIBUNAL HAS JURISDICTION OVER THE PRESENT MATTER.

1. This Tribunal is requested to kindly order that the tribunal has the jurisdiction to decide the present matter as the LMAA Terms are applicable in the present case. The Tribunal has the power to determine issues relating to its own jurisdiction (A), and that the Tribunal does not have the jurisdiction to determine whether the “nature and effect of the information given” is sufficient for the purposes given in clause 6 of the Inter Club Agreement. (B)

   A. The Tribunal has the power to determine issues relating to its own jurisdiction.

2. The Arbitral Tribunal has the power to determine issues relating to its own jurisdiction. The parties have executed a valid and binding Arbitration Clause in the Charterparty. [Cl. 80, PAGE 15, MOOT PROPOSITION]. Since Arbitration is “a creature that owes its existence to the will of the parties alone” [CANADA 13 Jul. 2007], the intention of the parties must be taken into consideration.

3. The Kompetenz-Kompetenz principle, allows the Tribunal to determine its own jurisdiction [P. 322, 345, REDFERN AND HUNTER] by construing the arbitration agreement according to its governing law [P. 1405-6, BORN].

4. Art. 16(1) of the UNCITRAL Model Law [UNCITRAL MODEL LAW] provides: “...the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and
void shall not entail ipso jure the invalidity of the arbitration clause” [UNICTRAL MODEL LAW, A. 16(1); VAN DEN BERG, p. 125].

The London Maritime Arbitration Association Rules are the procedural rules governing the arbitration [RULE 2.2, IMRAM RULES]. The seat of arbitration for the present matter is in England, pursuant to Rule 6(a) of the London Maritime Arbitrators Association Rules [RULE 6(a), LMAA RULES]. CLAIMANT and RESPONDENT, in the Arbitration Clause [Cl. 80, P. 15, MOOT PROPOSITION] have agreed that the governing the contract is English Law. Accordingly, the English Arbitration Act [ARBITRATION ACT] will be applicable as well.

Hence, the Tribunal may rule on its own substantive jurisdiction as to matters that have been submitted to arbitration in accordance with the Arbitration Clause [Cl. 80, P. 15, MOOT PROPOSITION] as well as the Kompetenz-Kompetenz principle.

B. The Tribunal does not have the jurisdiction to decide upon the “nature and sufficiency of information” pleading of CLAIMANT.

CLAIMANT has disputed the nature and sufficiency of the information given to it with regards to the Cargo Claim by RESPONDENT [P. 82, PO2, MOOT PROPOSITION]. The Tribunal, however, does not have the jurisdiction to determine whether the information given by RESPONDENT to CLAIMANT with regards to the Cargo Claim is sufficient.

Arbitration agreements are construed narrowly with respect to scope [USA 21 Nov. 1968; USA 19 Mar. 1996]. If equivocal, the scope of a commercial arbitration clause must be read conservatively [USA 15 Feb. 1977]. The agreement to arbitrate must be express, direct and unequivocal as to the issues or disputes to be submitted to arbitration [P. 318 – 319, BORN].

Arbitration clauses must be interpreted restrictively, resolving doubts about the coverage of particular disputes against coverage [P. 318 – 319, BORN; ICC Ct. Arb 2138/1974].
The scope of the arbitration clause is to be interpreted “strictly” [ICC Ct. Arb, 7290/1993]. National courts often apply either neutral, generally-applicable rules of contract construction or “anti-arbitration” presumptions to the interpretation of arbitration agreements [P. 318-319, BORN].

The Arbitration Clause in the Charterparty provides, “should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at London, one to be appointed by each of the parties hereto, and the third person by the two so chosen; their decision, or that of any two of them, shall be final and for the purpose of enforcing any award this agreement may be made a rule of the court. English law to apply. The arbitrators shall be commercial men conversant with shipping matters. The Contract to be construed in accordance with English Law. Arbitration to be in London” [Cl. 80, P. 15, MOOT PROPOSITION].

In order to understand the scope of the Arbitration Clause, the clause must be interpreted through the words used and the intention of CLAIMANT and RESPONDENT. The Clause provides for arbitrators who are conversant with shipping matters [Cl. 80, P. 15, MOOT PROPOSITION].

The Arbitration Clause, further clearly specifies that the “Contract is to be construed in accordance with English Law.” This dispute resolution clause has been provided by CLAIMANT and RESPONDENT to resolve disputes arising out of the Charterparty.

The Tribunal does not have the jurisdiction to interpret the “nature and sufficiency of the information provided” by CLAIMANT to RESPONDENT under Clause 6 of the Inter-Club Agreement. Arbitration is a creature that owes its existence to the will of the parties alone, in as much as, the Tribunal derives its power from the arbitration clause between the parties.

Pursuant to this, upon a close reading of the Arbitration Clause, three phrases must be considered carefully to interpret the scope of the agreement:
Upon reading the above three phrases, it is clear that the arbitration clause is limited specifically to the Charterparty itself. It does not in any way confer authority upon the tribunal to decide or interpret third party agreements which do not directly affect the dispute.

CLAIMANT has pleaded that Notification provided by RESPONDENT to CLAIMANT with regards to the Cargo Claim was improper and insufficient in nature. This requires the Tribunal to interpret and explain Clause 6 of the Inter Club Agreement. This view is incorrect in as much as this is beyond the scope of the powers of the Tribunal.

The Tribunal may apply the wordings of the clause to the present dispute, but it may in no way interpret Clause 6 according to its own understanding. Therefore, the Tribunal does not possess the authority to determine the nature and sufficiency of the information provided by RESPONDENT to CLAIMANT.

**CONCLUSION TO THE FIRST ISSUE**

The Tribunal has the authority to decide upon the its own jurisdiction. However, it may not decide upon the nature and sufficiency of the Cargo Claim Notification given by RESPONDENT to CLAIMANT.
ARGUMENTS ON MERITS

II. THAT THE RESPONDENT HAS NOT BREACHED THE CHARTERPARTY IN RESPECT OF HULL CLEANING AND IS THUS, NOT LIABLE FOR THE COSTS INCURRED IN ITS RESPECT.

19 RESPONDENT has not breached the Charterparty in respect of hull cleaning and is thus not liable for the costs incurred. RESPONDENT is relieved of its obligation to perform hull cleaning (A). Owing to the CLAIMANT establishing RESPONDENT’S liability for hull cleaning, RESPONDENT is liable to the extent of USD 33000 and not beyond (B). RESPONDENT is not liable to pay the voyage costs (C).

A. RESPONDENT is relieved of its obligation to perform hull cleaning.

20 RESPONDENT is relieved of its obligation to perform hull cleaning. There has been no breach of Charterparty with respect to hull cleaning as RESPONDENT has fulfilled all its obligations in this regard. It is evident from RESPONDENT’S e-mail to Wahanda port services, inquiring about bottom cleaning of vessel and companies that did the cleaning, [P. 29, MOOT PROPOSITION] that RESPONDENT attempted; and was willing, to fulfil its obligation.

21 As communicated by Wahanda Port Services, cleaning was not possible due to dirty underwater and poor visibility at Wahanda port, and were suggested to choose another port [P. 28, MOOT PROPOSITION], therefore, it was not possible to arrange hull cleaning before re-delivery and RESPONDENT was prevented from carrying out leaning. As per clause 83(d) of the Charterparty, if RESPONDENT was prevented from carrying out cleaning, the parties shall agree a lump sum payment in full and final settlement. CLAIMANT also rejected
the offer of USD 20,000, and later USD 30,000, for lump sum payment towards hull cleaning \[P. 41, 43, MOOT PROPOSITION]\).

22 An attempted performance of a contract or obligation which is frustrated by the act of the party to whom performance is due is called tender \[VERNON\]. RESPONDENT had arranged for the vessel cleaning at the North Titan Port, after re-delivery of vessel, and CLAIMANT’s refusal to accept it was unreasonable. The offer of arrangement at North Titan Port was an ‘attempted performance’ of the obligation.

23 ‘A tender of performance is a complete discharge; thus, in a contract for the sale of goods, if the vendor satisfies all the terms of the contract as to delivery and there is a refusal to accept the goods on the part of the purchaser, the vendor is discharged from further performance.’ \[VERNON\]

24 Accordingly, RESPONDENT’s offer of vessel’s hull cleaning at North Titan Port was of ‘tender of performance’ and its refusal therefore relieved RESPONDENT of its obligation to perform hull cleaning.

25 Moreover, CLAIMANT had merely opted for cleaning at South Island instead of North Titan Port because that is the port of delivery of vessel to Fairwind International for the Replacement fixture \[P. 56, MOOT PROPOSITION\] and thus, CLAIMANT tried to re-position the vessel for its own commercial advantage.

B. Owing to CLAIMANT establishing RESPONDENT’s liability for hull cleaning, RESPONDENT is liable only to the extent of USD 33,000 (maximum liability) and not beyond.

26 Owing to CLAIMANT establishing RESPONDENT’s liability for hull cleaning, the RESPONDENT is liable only to the extent of USD 33,000 (maximum liability) and not beyond. RESPONDENT had arranged for cleaning at North Titan Port \[P. 41, MOOT PROPOSITION\], which CLAIMANT refused. Had CLAIMANT accepted the offer for vessel
cleaning by Titan Shipbuilders at North Titan Port, it would have cost USD 33,000 [P, MOOT PROPOSITION].

27 ‘Where a promisor has the choice of how his promise shall be performed, it is presumed for the purpose of calculating damages that he would have chosen the way which would have brought least benefit to the promise’ [UK 27 Mar. 1981].

28 This principle, that an option is presumed to have been exercised in the way which reduces damages to a minimum, is established very well and should be applied in the present case as well. CLAIMANT had opted for vessel cleaning at South Island which cost USD 41,000. The similar cleaning services could have been availed at lower costs at North Titan Port. Therefore, while computing liability it is to be presumed that RESPONDENT would have chosen Titan Shipbuilders for cleaning as compared to South Island Port Agency Co. Ltd., as it would have reduced the cost incurred.

29 Even if RESPONDENT is liable for de-fouling as per the costs that have actually been incurred by CLAIMANT, he is not liable for USD 41,000. On comparison of the ‘Statement of Vessel Disbursement’ [P. 53, MOOT PROPOSITION], ‘Invoice’ [P. 52, MOOT PROPPOSITION] by South Island Port Agency Co. Ltd. And the ‘Quotation’ [P. 39, MOOT PROPOSITION] by Titan Shipbuilders, North Titan Port the differentiating item is ‘BOOTOPING ABOVE WATER LEVEL 4m CLEANING BY MAN POWER HAND TOOLS’, that is, the charges for hull cleaning above water level which amounted to a total of USD 13,000 [P. 52, MOOT PROPOSITION]. Clause 83 of Charterparty stipulates that the RESPONDENT is liable only for inspection and cleaning of underwater parts [P. 18, MOOT PROPOSITION].

30 ‘Under ordinary contract principles as applied in the general maritime law, charter language is to be interpreted to give full effect to the plain meaning of the words used. The charter should be read as a whole.'
Unambiguous provisions of the charter should be given their plain meaning and a court may not look beyond the words chosen by the parties to determine their intent’ [COGHLIN/BAKER/KENNY]. Since the Charterparty only obligates the RESPONDENT for performing underwater cleaning [P. 18, MOOT PROPOSITION], therefore, clause 83 should not be interpreted to include above water cleaning as well.

Whether particular expenses are within the scope of an implied indemnity under an NYPE Charterparty, it is entitled, as a matter of law, to ask the question: was this type of risk one that the ship-owners agreed to bear, at the time the charter was concluded’ [UK 16 Feb. 2005]. CLAIMANT assumed ‘the risk of fouling’ (type of risk) above the water level while concluding the Charterparty; and that such fouling is covered under ‘ordinary wear and tear’ [Cl. 4, NYPE2015] and thus, principle of indemnity does not apply here.

The owners are not entitled to an indemnity against things for which they are being remunerated by the payment of hire. There is therefore no indemnity in respect of the ordinary risks and costs associated with the performance of the chartered service’ [UK 2 May 2012]. CLAIMANT is being remunerated for the above water level fouling by payment of hire.

Consequently, RESPONDENT should be liable only for USD 28,000 (41,000 – 13,000). In any case, RESPONDENT’s liability does not exceed USD 33,000.

C. RESPONDENT is not liable for the costs of voyage to South Island.

RESPONDENT is not liable to pay the voyage costs to South Island. As per the ‘Final Hire Statement’ the costs beyond hull cleaning include: 1) the daily hire charges for the period of cleaning and; 2) the costs of bunker consumed during voyage to South Island [P.54, MOOT PROPOSITION].

Clause 83(d) of ‘Omega Chartering Rider Clauses’ states: “Cleaning in accordance with this Clause shall always be carried out prior to redelivery. If, nevertheless, Charterers
are prevented from carrying out such cleaning, the parties shall, prior to but latest on redelivery, agree a lump sum payment in full and final settlement of Owners’ costs and expenses arising as a result of or in connection with the need for cleaning pursuant to this Clause” [P. 18, 19, MOOT PROPOSITION].

37 As stated above, under 83(d) [P. 18, 19, MOOT PROPOSITION] the parties are to agree a lump sum payment in full and final settlement of Owners’ costs and expenses in connection of cleaning. CLAIMANT’s costs and expenses in connection of de-fouling are USD 41,000 [P. 52, 53, MOOT PROPOSITION].

38 Unambiguous provisions of the charter should be given their plain meaning and a court may not look beyond the words chosen by the parties to determine their intent [COGHLIN/BAKER/KENNY]. Therefore, 83(d) does not provide for lump sum payment in respect of ‘loss of time’ of Owners as a result of cleaning. Thus, RESPONDENT is not liable for the daily hire charges for the period of cleaning.

39 The time charterer agrees to pay hire for every minute that the ship is at the charterer’s disposal from her delivery until redelivery [BAATZ]. The cleaning took place after redelivery of vessel when vessel was not at the disposal of RESPONDENT and thus, CLAIMANT is not entitled to daily hire for the time period of de-fouling.

40 In regard to the costs of bunker consumed during voyage to South Island, the cost was not incurred in connection to hull cleaning. The vessel would have travelled to South Island, regardless of the fact the vessel bottom had been cleaned or not, as that was the place of delivery of vessel to Fairwind International [P. 56, MOOT PROPOSITION].

41 Thus, CLAIMANT tried to re-position the vessel for its own commercial advantage. Therefore, RESPONDENT is not liable for these costs.
CONCLUSION TO THE SECOND ISSUE

RESPONDENT has not breached the terms of the Charterparty, and is thus, not liable to pay for the costs of Hull Cleaning as RESPONDENT had been relieved of its obligation to perform Hull Cleaning. Alternatively, even if RESPONDENT is found to be liable for Hull Cleaning, it is liable only till the extent of USD 33,000 and is not liable for the costs of the voyage to South Island.

III. RESPONDENT IS NOT LIABLE TO PAY THE DAMAGES AS PER THE SUBSEQUENT FIXTURE.

42 RESPONDENT is not liable to pay the damages as per the subsequent fixture and RESPONDENT seeks to establish the same, by relying upon the following grounds: The late re-delivery was not caused by the negligence of RESPONDENT (A); RESPONDENT did not have any special knowledge of the Next Fixture (B); Effectively, there is no loss of hire in the present matter (C). CLAIMANT is liable to give credit for hire received under the replacement fixture.

A. That the delayed re-delivery was not caused by the gross personal negligence of RESPONDENT.

43 The late delivery was not caused by the gross personal negligence of RESPONDENT, rather, the delay is owing to the applicability of the force majeure clause. There is absolutely no basis for liability of RESPONDENT. The Vessel was in any case off-hire as per Clause 17 of the Charterparty as well as the fact that full working of the vessel was being prevented. Moreover, RESPONDENT must be paid damages to the tune of USD 375,000,000 for the overpaid hire.
1. **Force Majeure clause is applicable in the present case.**

After the loading of the cargo was completed on 20.04.2016, the Vessel sailed for Wahanda [P. 66, pp. 3, MOOT PROPOSITION]. RESPONDENT was detained by the Port State Control [P. 24, MOOT PROPOSITION] and had to comply with the orders or directions or recommendations given by the Port Authority [P. 48, pp. 16 (a), MOOT PROPOSITION].

Moreover, there is no negligence if the damage is not a reasonably foreseeable consequence of his conduct [UK 10 May 1951]. RESPONDENT could by no means could have foreseen detention owing to the outbreak of Ebola virus [P.23, MOOT PROPOSITION]. A rapid escalation of a disease may amount to force majeure in any event [ASKINS/LINDERMAN/ODGEN], thereby RESPONDENT is justified in taking the defence for the same.

Further, no alternative could have been adopted thereby it is a force majeure event [UK 13 Sep. 2018] Since delivery of goods was to be at Wahanda, there was no alternative available with RESPONDENT.

2. **There is no basis of liability for RESPONDENT as per Rotterdam Rules.**

There is no basis of liability as RESPONDENT shall be relieved of all or part of its liability if it is proved that an event such as quarantine restrictions, interference by or impediments created by governments, public authorities, rulers or people including detention, arrest are the circumstances causing or contributing to the loss, damage, or delay [A. 17(3)(d), ROTTERDAM RULES]. Thereby, detention by the Port State Control [MOOT PROPOSITION, P. 24] as quarantine restriction shall fall under the ambit of the Rules.
Further, Hague Visby Rules provides that Carrier shall not be liable for the loss or damage arising from certain events including quarantine restrictions [§4(2)(H), HAGUE-VISBY RULES].

3. **The Vessel was off-hire from 07.05.2016 until 26.06.2016.**

Claimant was considered to be fully liable for this delay when Vessel was off-hire from 07.07.2016 until 26.06.2016 [P. 25, MOOT PROPOSITION] since arrival at Wahanda [P. 25, MOOT PROPOSITION]. The Port State Control had reasonable grounds for suspecting that one or more crew members was carrying the Ebola virus [P. 72, pp. 8, MOOT PROPOSITION] and found a number of crew members with a high fever and quarantined the vessel for a minimum of 28 days [P. 24, MOOT PROPOSITION], causing a delay in berthing from 07.05.2016 until 26.06.2016 [P. 72, pp. 8, MOOT PROPOSITION].

i. **Vessel was off-hire in accordance with Clause 17 of the Charterparty.**

Clause 17 of the Charterparty states that in the event of loss of time from detention by Port State Control or other competent authority or any similar cause preventing the full working of the Vessel, the hire and overtime, if any, shall cease for the time thereby lost [A. 18, ROTTERDAM RULES]. Thereby, the Port State Control quarantine of Vessel MV Thanos Quest for a minimum of 28 days [P. 24, MOOT PROPOSITION] does not make Respondent liable for damages.

ii. **Full working of the Vessel was prevented.**

The question is whether the vessel is fully efficient and capable in herself of performing the service immediately required by the charterers [UK 27 Jul. 1987]. Preventing the full working of the vessel does not necessarily require the vessel to be inefficient in herself [UK
Even if MV Thanos Quest is not inefficient in herself, there may be prevention of full working of the vessel.

Three necessary conditions that must be met to trigger NYPE off-hire clause: (a) There must be loss of time to the Charterer. (b) It is caused by an event that falls within the named clauses. (c) It has the effect of preventing the full working of the Vessel [WEALE]. Similarly, in the present matter, there has been a loss of a minimum of 28 days since the Vessel was quarantined [P. 24, MOOT PROPOSITION]. Moreover, the event falls under the off-hire clause in the Charterparty [P. 71, Cl. 17, MOOT PROPOSITION].

The full working of the Vessel is being prevented as it is being held at anchorage [P. 25, MOOT PROPOSITION] and was unable to proceed immediately to berth [P. 66, pp. 4, MOOT PROPOSITION].

In the case of Apollo [UK 1978], wherein the crew was suspected of having typhus and were not allowed to discharge by the port health authorities, it prevented the full working of the vessel, bringing the off-hire clause into play [UK 1978].

iii. Efficient working Vessel can also be placed off-hire.

Efficient working vessel can also be placed off-hire. The object of the off-hire clause is to provide for the possible loss of time [VOGEMANN]. There was an immediate loss of time [UK 15 Oct. 1981] after the detention of the Port Authorities [MOOT PROPOSITION, P. 24]. All causes that are fortuitous and not the natural result of the ship following the Charterer’s orders [SCANBULK A/S] shall be accepted as causes for loss of time. The detention was not a natural result of the ship following the Charterers’ orders.

The loss of time had the result that the payment of hire shall cease until she be again in an efficient state to resume her service [UK 1889]. The payment of hire should be suspended until the time of her release [UK 8 Apr. 2014]. Thereby, there should be no
payment of hire for the minimum of 28 days during which the Vessel had been quarantined by the Port State Control [P. 24, MOOT PROPOSITION].

B. That there was no timely special knowledge of the next fixture.

RESPONDENT is by no means liable for the damages on account of the cancellation of the Next Fixture as there was no timely special knowledge. Communication of such knowledge should have been at the time of entering the contract and there was absolutely no foreseeability as to the Fixture, thereby, the principle of remoteness is applicable.

1. Special knowledge must be at the time of entering the contract.

An assumption of responsibility can be presumed or what arises from special circumstances known to or communicated to the party who is in breach, at the time of entering into the contract, which because he knew about, he can be expected to provide for [UK 23 Feb. 1854].

Thereby, for such assumption to arise, RESPONDENT should have been communicated the same at the time of entering the contract or Charterparty dated 18.03.2016 [P. 65, MOOT PROPOSITION]. The type of loss had to be within the reasonable contemplation of the parties at the time the contract was made [UK 9 Jul. 2008] but this was not the case in the present matter. The ‘special knowledge’ was only made available by CLAIMANT on 26.06.2016 by an email [P.34, MOOT PROPOSITION].

2. Absence of foreseeability.

The correct test for determining foreseeability was whether when taking the contract as a whole and considering the background, the contracting parties would have considered that the loss is not just foreseeable, but would also have been sustained in the normal course of events [UK 9 Jul. 2008].

Foreseeability depends on whether the damages were within the contemplation of the defendant, not in the sense that they were probable but rather in the sense that there was a
serious possibility of their occurrence or that they were not unlikely to occur [UK 12 Apr. 1949]. In the present matter, the loss was not foreseeable as the late re-delivery occurred only due to the occurrence of a force majeure event which was the detention by the Port State Control owing to the sudden outbreak of Ebola virus [P. 24, MOOT PROPOSITION].

C. RESPONDENT is not liable to compensate for loss of hire.

RESPONDENT is not liable to compensate for the loss of hire and has duly paid the overrun costs to CLAIMANT. At most, CLAIMANT could be entitled to damages calculated as difference between the Charterparty rate of hire and the market rate of hire for the period of overrun and is by no means entitled to damages calculated as the loss of hire under the Next Fixture [P. 24, pp. 11(3)(a), MOOT PROPOSITION]. Moreover, RESPONDENT on 04.07.2016 procures the Replacement Fixture [P. 68, pp. 20, MOOT PROPOSITION], thereby, CLAIMANT is liable to give credit to RESPONDENT for the same.

1. Overrun costs paid by RESPONDENT.

According to the terms of the Charterparty, it is expressly mentioned that RESPONDENT is liable to pay USD 7500 daily including overtime [P. 4, MOOT PROPOSITION]. RESPONDENT has already paid the overrun costs to CLAIMANT as per the same for a period of 91.1215 days [P. 52, MOOT PROPOSITION]. Furthermore, RESPONDENT has already paid hire for the period of overrun of the Charterparty [P. 24 pp. 11(3)(a), MOOT PROPOSITION].

2. Damages, if any, to be paid only for 2 years of the Next Fixture.

It would be undesirable and uncommercial for damages for late delivery to be limited to the period of the overrun unless the owners could show that they had given their charterers special information of their follow-on fixture. However, a loss of profits from a fixture beyond the overrun period was not within the reasonable contemplation of the parties because the charterers did not assume liability for losses arising from the loss of a
following fixture [UK 9 Jul. 2008]. Thereby, since RESPONDENT did not have such reasonable contemplation, damages should not be paid for a fixture beyond the overrun period under any circumstance.

3. **Claimant is liable to give credit for hire received under the Replacement Fixture.**

The amount received for the Replacement Fixture is to be deducted from the total amount payable by RESPONDENT as damages. Account might be taken of the vessel’s earning beyond the contract period in order to determine what credit should be given but without extending the calculation of actual loss beyond that period [CLIVE]. If the same is not followed, “one would be involved in calculations to the end of the ship’s working life” as stated by STUAGHTON J in the Noel Bay case [UK 1989].

**Conclusion to the Third Issue**

RESPONDENT is not liable to pay the damages as per subsequent fixture since the delayed re-delivery was not caused by the gross personal negligence of RESPONDENT. There had been no special knowledge of the next fixture, and therefore, RESPONDENT is not liable to compensate for the loss of hire.

**IV. Claimant is Liable for the Payment of the Cargo Claim Made by Respondent.**

Claimant is liable for payment of the cargo claim and RESPONDENT seeks to establish the same, by relying upon the following grounds: Cargo Claim is not barred under Clause 6 of the Inter Club Agreement (A); Cargo Claim is to be apportioned under the Inter Club Agreement (B).
A. Cargo Claim is not barred under Clause 6 of the Inter Club Agreement.

There is absolutely no time bar to the recovery as a formal written notice had been sent to CLAIMANT. Moreover, RESPONDENT is well within the limitation period owing to application of English law.

1. Claim is by no means time-barred with respect to Clause 6 of the ICA.

Recovery shall be deemed to be waived and absolutely barred unless written notification of the Cargo Claim has been given to the other party to the Charterparty within 24 months of the date of delivery of the cargo or the date the cargo should have been delivered [Cl. 6, INTER CLUB AGREEMENT] [P. 76, Cl. 3, MOOT PROPOSITION]. The formal notice of claim against CLAIMANT is sent by RESPONDENT through the mail dated 07.07.2016 [P. 45, MOOT PROPOSITION], which is well within the 24 months period, thereby, not barred.

2. It was not possible to include details when formal notice was given.

When formal notice was given, it was not possible to include details of contract of carriage, nature of the claim and amount claimed [P. 76, pp. 3, MOOT PROPOSITION]. A joint survey and subsequent joint inspection was scheduled once cargo was fully discharged [P. 44, MOOT PROPOSITION]. RESPONDENT was in discussions with Receivers as to what a substantial claim would be [P. 58, MOOT PROPOSITION], quantum of the claim and issues arising in relation to the contract of carriage [P. 57, MOOT PROPOSITION].

As much information as possible in relation to the underlying cargo claim has been emphasised [UK 29 Apr. 2015] and the same had been given by RESPONDENT.

The claim can be particularised within the six-year limitation period applicable to contractual claims pursuant to the UK Limitation Act, 1980 [UK 13 Jul. 2018].
i. **Fault of Receiver, not RESPONDENT.**

Moreover, even within the 24 month period, discussions were ongoing and RESPONDENT regularly sent updates and duly sought time extensions on 23.05.2017, 23.08.2017 and 23.11.2017 [P. 56, 57, MOOT PROPOSITION]. RESPONDENT had been granting back-to-back extensions to the Receivers since the Receivers had in the first instance not started any claim [P. 57, MOOT PROPOSITION]. Acknowledgements within limitation period meant that recovery of the sums in question was not statute-barred [UK 8 Dec. 2017].

3. **RESPONDENT had 6 years to make such claim.**

In particular, provisions of Clause 6 (time-bar) shall apply notwithstanding any provision of the Charterparty or rule of law to the contrary [Cl. 2, INTER-CLUB NEW YORK PRODUCE EXCHANGE AGREEMENT 1996 (AS AMENDED SEPTEMBER 2011)]. As per Charterparty, English law is to apply [P. 15, pp. 80, MOOT PROPOSITION].

Thereby, national legislation is compulsorily applicable by operation of law and the period for sending the written notification shall be 36 months [P. 76, pp. 3, MOOT PROPOSITION][Cl. 6, INTER-CLUB NEW YORK PRODUCE EXCHANGE AGREEMENT 1996 (AS AMENDED SEPTEMBER 2011)]. Moreover, as per Section 5 of the Limitation Act, 1980 the limitation period for action is set at 6 years [S. 5, LIMITATION ACT, 1980].

4. **For justice to be served, time extension must be granted by the court.**

Court is to finally rule as to whether justice required an extension of time to be given. [UK 22 Oct. 1999]. In the case of an application under Section 41(3) of the Arb. Act [ARBITRATION ACT] if there was an inordinate delay, the same may be excusable in
circumstances where the responding party has good reason for the delay and it will no doubt come forward with that evidence. [UK 13 Jul. 2018].

B. Cargo claim is to be apportioned under the ICA.

As per the Charterparty, CLAIMANT agreed that liability for cargo claims, as between CLAIMANT and RESPONDENT, shall be apportioned as specified by the Inter-Club New York Produce Exchange Agreement [P. 10, Cl. 53, MOOT PROPOSITION].

Special consideration must be given to the fact that Challand is one of the principal producers of tea and since there is reduced production of tea, the price of tea is likely to rise considerably [P. 21, MOOT PROPOSITION].

1. 100% of the claim is for the Owners’ account pursuant to Clause 8(a) of the ICA.

100% liability of the claim shall rest upon CLAIMANT in case the claim is arising out of the unseaworthiness and/or error or fault in the navigation or management of the vessel [P.71, pp. 4, MOOT PROPOSITION][Cl. 8 (a), INTER CLUB AGREEMENT].

There is clearly an error as well as fault in the management of the MV Thanos Quest by CLAIMANT. CLAIMANT had guaranteed that the Vessel would always be maintained in safe condition during ballast conditions [P. 8, Cl. 64, MOOT PROPOSITION]. However, as per the Joint Survey Report, it was found the damage was caused by improper use of the ballasting system by the crew [P. 46, MOOT PROPOSITION].

Under a time-charter the crew is employed by the ship-owner, who is also responsible for the nautical operation and maintenance of the vessel and the supervision of the cargo [P. 88, GORTON/IHRE/HILLENIUS/SANDEVARN], therefore, CLAIMANT is liable for 100% cargo claim.
2. Alternatively, 50% of the cargo claim is for Owners’ account pursuant to Clause 8(b) of the ICA.

81 Alternatively, as per the Inter Club Agreement, 50% of the claim shall be paid by CLAIMANT according to Clause 8 (b) of the Inter-Club Agreement. The clause places the responsibility for the loading, stowing, trimming and discharging on the charterers but it also places some responsibility on the Master acting on behalf of the owners [P.10, SOVTIC].

3. Damages for Owners’ breach of Clause 27 and 53 should be paid.

82 Damages equivalent to 100% of cargo claim must be paid by CLAIMANT for breach of the Clauses 27 and 53 of Charterparty. As per the Charterparty, cargo claims between the Owners and the Charterers were to be settled in accordance with the Inter-Club Agreement [P. 71 ,pp. 3, MOOT PROPOSITION][Cl. 27, Inter Club Agreement] and even the Owners agree that the liability for cargo claims, shall be apportioned as specified in the Inter-Club Agreement. Therefore, the Cargo Claim is to be apportioned under the Inter Club Agreement.

CONCLUSION TO THE FOURTH ISSUE

CLAIMANT is liable for the Cargo Claim made by RESPONDENT since the Cargo Claim is not barred under the Inter Club Agreement as the period of Limitation is 6 years. Further, the Cargo Claim is to be apportioned under the Inter Club Agreement.
REQUEST FOR RELIEF

In response to the Tribunal’s Procedural Orders, Counsel makes the above submissions on behalf of RESPONDENT. For the reasons stated in this Memorandum, Counsel respectfully requests this Tribunal to adjudge, declare and hold that:

I. The arbitral tribunal is not authorized to decide upon the nature and insufficiency pleading of CLAIMANT.

II. RESPONDENT has not breached the Charterparty, and is therefore, not liable for the costs incurred in respect of Hull Cleaning.

III. RESPONDENT is not liable to pay damages as per the Subsequent Fixture.

IV. CLAIMANT is liable for the payment of the Cargo Claim made by RESPONDENT.

Dated this 29th Day of April 2019

[SIGNATURES]

SOLICITORS FOR RESPONDENT

KNIGHT & PROTECTOR

SOLICITORS