MALDIVES MOOT COURT SOCIETY INTERNATIONAL MARITIME ARBITRATION

COMPETITION 2025

ON BEHALF OF

MALÉ DHONI DRIFTZ SHIPPING PVT. LTD. (SHIPOWNERS)

CLAIMANT

AGAINST

MAMMA MIA MARITIME SOCIETÀ P.A. (THE CHARTERERS)

RESPONDENT

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ABBREVIATION	FULL FORM
ISO	International Organization for Standardization
MARPOL	International Convention for the Prevention of Pollution from Ships
MGO	Marine Gas Oil
CIMAC	International Council on Combustion Engines
TEUs	Twenty-Foot Equivalent Units
USD	United States Dollar
NYPE	New York Produce Exchange
MIAC	Maldives International Arbitration Centre
Cl.	Clause
Int'l	International
Org.	Organization
&	And
Ltd.	Limited
UK	United Kingdom
¶	Paragraph
§	Section
Inc.	Incorporated
Ed.	Edition
Q.B.	Queen's Bench
Arb.	Arbitration

U.N.	United Nation
Rep.	Report
UNCITRAL	United Nations Commission On International Trade Law

STATEMENT OF FACTS

1. **The Charterparty Agreement and Bunker Supply** - On 12 February 2025, the Claimant and Respondent entered into a time charterparty incorporating ISO 8217:2010, MARPOL Annex VI, and CIMAC guidelines on bunker quality. The Respondent supplied bunkers at Laem Chabang. Although a Bunker Delivery Note and manifold sample were jointly drawn at delivery, subsequent testing revealed elevated levels of harmful chlorinated hydrocarbons not contemplated by the applicable standards.

2. **The Blackout and Diversion to Malé** - On 13 February 2025 at 15:38 hours, the Vessel suffered a sudden blackout while laden with 3,490 TEUs, including 280 refrigerated containers. The Master was compelled to divert to Malé for emergency repairs, debunkering, and tank cleaning. The Vessel remained incapacitated until 22 February 2025, when repairs were completed and she resumed her voyage.

3. **Survey Findings Confirm Defective Fuel** - A joint survey conducted after the incident confirmed contamination in the bunkers. Expert reports identified the same chlorinated hydrocarbons that have caused widespread failures in comparable industry incidents. The Respondent's delivery samples did not disclose these substances, but advanced testing of retained samples later established their presence, confirming that the bunkers supplied were defective and unfit for use.

4. **Cargo Deterioration** - During the nine-day deviation, the Vessel relied on limited marine gas oil (MGO) for essential operations. Several refrigerated containers were deprived of adequate power for prolonged periods, leading to spoilage of valuable cargo. The losses directly resulted from the unfitness of the Respondent's bunkers, which caused the blackout and necessitated the diversion.

5. **Exercise of Lien** - Upon arrival at discharge, the Claimant exercised a lien over 100 dry containers valued at approximately USD 1,000,000 to recover outstanding sums. These expenses arose from the Respondent's breach of its fuel supply obligations and are recoverable under the Charterparty.

6. **Dispute over seat of arbitration:** The Charterparty provided for arbitration under MIAC Rules with Malé as the venue, and incorporated English law as the governing law. The Vessel is Maldivian-flagged, incorporated in the Maldives, and place of pecuniary transaction is Maldives. The bunker supply at issue occurred at Laem Chabang.

SUMMARY OF ARGUMENTS

ISSUE I: The Respondent is liable for supplying unfit bunkers.

The Respondent breached contractual and regulatory obligations by supplying bunkers containing harmful contaminants in violation of ISO 8217:2010, MARPOL Annex VI, and CIMAC recommendations. The presence of chemicals rendered the fuel unsafe for machinery and directly caused the blackout. Even if the bunkers were nominally "on-spec," English law requires that they be fit for purpose, which they clearly were not.

ISSUE II: The Claimants are entitled to full hire.

Off-hire does not arise where the delay is caused by the charterer's own breach. The Respondent's defective bunkers caused the blackout and the deviation to Malé. Throughout, the Vessel remained under charterer's service, and therefore hire continued to accrue for the entire period. Further, as the delay stemmed from the Respondent's breach, full hire is payable for the entire period.

ISSUE III: The Respondent is liable for reefer cargo damage.

The blackout and deviation was caused by defective bunkers, making the Respondent liable. The alleged tank leakage does not sever causation, as tribunals require the dominant cause to be assessed, which here was the contaminated fuel. The crew acted reasonably in allocating scarce MGO during an emergency; any cargo deterioration flowed directly from the Respondent's breach.

ISSUE IV: The Claimant validly exercised a lien over cargo.

Clause 27 of the Charterparty expressly authorizes a lien for outstanding sums, which here include hire, repair, debunkering, and replacement bunker costs. The validity of the lien is not displaced by the absence of a corresponding clause in bills of lading, as English law recognizes the Charterparty as controlling. The lien was thus lawful and enforceable.

ISSUE V: The seat of arbitration is the Maldives.

By selecting MIAC rules and Malé as the venue, the parties indicated an implied choice of the Maldives as the arbitral seat. The vessel's Maldivian flag, registry, and financial connections reinforce this. English substantive law does not determine the seat, and both English and UNCITRAL principles point to the Maldives as the proper arbitral forum.

ISSUE I: THE RESPONDENT IS LIABLE FOR SUPPLYING UNFIT BUNKERS

1. It is humbly submitted that the root cause of all the issues is the unfair and tainted bunkers provided by the respondent, because (**A**) the Respondent provided bunkers that were not on-spec, and (**B**) the defective bunkers directly caused damage to the engine.

A. Respondent provided bunkers that were not on- spec.

2. The Respondent was to supply suitable fuels, complying with CIMAC recommendations, ISO Standards and MARPOL standards. Also, the fuels bunkered must be compatible. However, the bunkers supplied by the Respondent (a) did not comply with ISO 8217:2010 and MARPOL standards, (b) breached CIMAC recommendations, and (c) were not fit for the purpose.

a. The bunkers did not comply with the ISO 8217:2010 and MARPOL standards.

3. ISO 8217:2010 and MARPOL Annex apply to the charterparty.[1] Clause 5.2 of ISO 8217, when read along with Regulation 18.3 of MARPOL Annex VI,[2] lays down that the bunker must not contain any material or substance that renders it unfit for ship machinery. This has been confirmed by the Court that the fuel must be free of unsafe contaminants,[3] and held bunkers to be defective when they caused harm to ship machinery, even after being "on-spec".[4]

4. In *casu*, the Respondent breached both the ISO 8217:2010 and MARPOL Annex VI rules. The experts' findings establish that the bunkers contained elevated chemicals.[5] These substances have not been contemplated as acceptable under ISO 8217:2010[6] and MARPOL's prohibition, as it does not fulfil the purpose contemplated. Accordingly, the Respondent is in breach of their bunker quality obligations under the Charterparty agreement.

b. The bunkers breached the CIMAC recommendations.

5. CIMAC recommendation has been expressly incorporated through Annexure A of the

[1] Bunker/ Fuel Oil Specifications, Annexure A, the Charterparty agreement.
[2] International Convention for the Prevention of Pollution from Ships (MARPOL) Annex VI, Regulation 18.3, Oct. 27, 1997, 2222 U.N.T.S. 3 (as amended), available at < https://marina.gov.ph/wp-content/uploads/2020/10/MARPOL-Annex-VI.pdf >
[3] *Indelpro S.A. de C.V. v. Valero Mktg. & Supply Co., No. 4:19-cv-04115, 2019 U.S. Dist.* LEXIS 219890 (S.D. Tex. Dec. 18, 2019).
[4] *Bominflot Bunkergesellschaft fur Mineraloele mbH & Co KG v.Petroplus Marketing AG (The''Mercini Lady'')*, [2010] EWCA Civ 1145.
[5] ¶ 20, the Factual proposition.
[6] Int'l Org. for Standardization, ISO 8217:2024, Petroleum Products—Fuels (Class F)—Specifications of Marine Fuels, cl. 5.2 (2024).

Charterparty.[7] Such industry standards, when contractually incorporated, get elevated from advisory to binding obligations.[8] CIMAC Recommendation 21 specifically warns against the presence of chlorinated hydrocarbons due to their corrosive impact on engines.[9]

6. *In casu*, the expert survey confirmed such contaminants in the Respondent's bunker, directly contravening CIMAC 21.[10] Accordingly, by supplying bunkers inconsistent with the incorporated CIMAC standards, the Respondents breached their contractual undertaking and delivered defective fuel.

c. Arguendo, the bunker was not fit for purpose.

7. *A*rguendo, even if all contractual specifications were met, the Respondents are still liable because the bunkers were not fit for purpose. It is an overriding obligation under English law to provide bunkers fit for purpose.[11] Even if the bunkers matched their description but were nevertheless held defective because they could not be safely used.[12]
8. In *casu*, the bunkers contained the chemicals categorised as harmful and the vessel's machinery failed immediately upon use, evidencing inherent unsuitability. Thus, the Respondents breached the fundamental duty of fitness for purpose, which stands independent of contractual specifications.

B. The defective bunkers directly caused the Vessel's engine damage.

9. The fuel supplied by the Respondent was the primary cause of the engine damage and blackout as (a) Principle of causation affirms the respondent's fault, (b) expert evidence confirms causation too, and (c) the said causation is reinforced by the inherent harmfulness of chemicals.

a. Principle of causation affirms the respondent's fault.

10. Under English law, causation can be inferred from the sequence of events where no alternative explanation is credible.[13] In *casu*, the Vessel's machinery was in sound condition and fully operational prior to consuming the Respondent's bunkers. However, it suffered a breakdown

[7] Bunker/ Fuel Oil Specifications, Annexure A, the Charterparty agreement.
[8] *The Fjord Pearl* [2016] EWHC 2457 (Comm); *The Elli and The Frixos* [2008] EWHC 1986 (Comm).
[9] CIMAC Recommendation No. 21, Recommendations Regarding Fuel Quality for Diesel Engines (June 2003),availabe at <https://www.cimac.com/cms/upload/Publication_Press/Recommendations/Recommendation_21_rev1.pdf>.
[10] Bunker/ Fuel Oil Specifications, Annexure A, the Charterparty agreement.
[11] *Dalmare SpA v. Union Maritime Ltd and Another (The "Union Power")* [2012] EWHC 3537 (Comm).
[12] *Ashington Piggeries Ltd v. Christopher Hill Ltd,* [1972] AC 441 (HL).
[13] *Gard Marine & Energy Ltd. v. China National Chartering Co. Ltd. (The "Ocean Victory")*, [2017] UKSC 35 (U.K.).

immediately after the use of bunkers provided by the Respondent. This immediate before-and-after chronology provides compelling inference that the defective bunkers caused the damage.

b. Expert evidence confirms causation.

11. Even if circumstantial indicators alone were insufficient, tribunals place decisive reliance on expert conclusions in technical disputes.[14] Here, the independent joint surveyor, appointed by both parties, confirmed the presence of elevated chlorinated chemicals in the Respondent's bunkers. It was further identified as the direct cause of the vessel's machinery failure.[15] Given the neutrality of the expert and the absence of any credible alternative explanation, the expert findings carry determinative weight and firmly establish causation.

c. Causation is reinforced by the inherent harmfulness of chemicals.

12. The inherent harmful nature of the chemicals in the bunkers is corrosive and unsafe and further reinforces the causation.[16] Such affected bunkers have been held unfit even without proof of every specific consequence, underscoring the presence of a dangerous component.[17] The pattern of industry incidents confirms this: in the 2022 Singapore contamination,[18] the same chemicals caused widespread engine failures across more than 200 vessels, while the 2018 Houston outbreak produced identical damage.[19]
13. In *casu*, the recurrence of identical harm from the same contaminants eliminates any reasonable doubt. It firmly establishes that the Respondents' bunkers were the proximate cause of the Vessel's breakdown.

[14] *Miramar Maritime Corp. v. Holborn Oil Trading Ltd. (The Miramar),* [1984] A.C. 676 (H.L.).
[15] ¶ 20, the Factual proposition.
[16] *Indelpro S.A. de C.V. v. Valero Mktg. & Supply Co., No. 4:19-cv-04115, 2019 U.S. Dist.* LEXIS 219890 (S.D. Tex. Dec. 18, 2019).
[17] *Ashington Piggeries Ltd v. Christopher Hill Ltd*, [1972] AC 441 (HL).
[18] *Indelpro S.A. de C.V. v. Valero Mktg. & Supply Co.,* 652 F. Supp. 2d 682 (S.D. Tex. 2009).
[19] *Veritas Petroleum Services, VPS Identifies Houston Fuel Contamination, Riviera Maritime Media (Aug. 7, 2023), <https://www.rivieramm.com/news-content-hub/news-content-hub/vps-identifies-houston-fuel-contamination-76957>.*

ISSUE II: THE CLAIMANT IS ENTITLED TO FULL HIRE AMOUNT

14. It is humbly submitted that the claim of the respondent, that the period from 13th February to 22nd February was off-hire, is flawed. It cannot be sustained because (A) off-hire cannot be invoked when loss of time is caused by the charterer's own breach of the charterparty, and (B) It was engaged in the operations of Respondent's during the period.

A. Off-hire cannot be invoked when loss of time is caused by the Charterer's own breach.

15. The Respondent cannot claim damages from the Claimant. This is because, (a) Respondent's own actions resulted in damages, and (b) the causation of the delay rests with the Respondent.

a. Respondent's own actions resulted in damages

16. Off-hire cannot be invoked when the delay arises from the Charterers' breach. The Courts have held that Charterers cannot rely on off-hire for their own defaults. In *Sig Bergerson v. Mobil Shipping & Transportation Co.* and *Board of Trade v. Temperley* (1927)[20], off-hire was denied where delay flowed from Charterers' breach. *Fraser v. Bee* confirms the same where Charterers failed to supply what the contract required.
17. *In casu*, Clause 43 required Charterers to provide "suitable fuels" under ISO 8217:2010.[21] The joint survey found contaminants in the new bunkers, making them unfit and causing a blackout. The delay followed directly from Charterer's supply of defective fuel. Since the Charterer cannot benefit from their own breach, hire remains payable for the disputed period.

b. Causation of the delay rests with Charterers

18. Where Charterers cause the delay, the off-hire clause does not apply. In *James Nourse Ltd v. Elder Dempster & Co Ltd*[22], hire continued where bunkers supplied by Charterers caused delay. The court rejected reliance on cesser or off-hire when the fault lay with Charterers.
19. *In casu*, the nine-day delay (13–22 Feb) resulted solely from the defective bunkers supplied by Charterers. The blackout and engine damage were their responsibility. Accordingly, the off-hire clause cannot protect them. Hire is payable in full.

[20] *Sig Bergerson v. Mobil Shipping & Transportation Co.*; *Board of Trade v. Temperley* (1927).
[21] Bunker/Fuel oil specification, Annexure, the Charterpart agreement.
[22] *James Nourse Ltd. v. Elder Dempster & Co. Ltd*., [1932] 1 K.B. 299.

B. The vessel was engaged in an operation required by the Respondent and thus remained on-hire.

20. The vessel was engaged in an operation required by the Respondent and thus, remained on-hire because of (a) the application of the Berge Sund principle, and (b) the continuing hire obligations of the Respondent.

a. The application of Berge Sund principle

21. The Berge Sund principle considers the actual service that the Charterers required, and not what they hoped to achieve as a result.[23] The vessel engaged in bunkering, even if it delays other tasks, remains on-hire as long as the bunkering is done under the Charterer's account.
22. *In casu,* the vessel stayed on-hire because she was performing an operation required by the Respondent. The ship re-routed to have necessary repairs and get new bunkers after the earlier supply was found unfit. The diversion to Malé for repairs, debunkering contaminated fuel, and re-bunkering were all necessary to resume the voyage. These operations fell within the Respondent's duty under Clause 43 and cannot place the vessel off-hire.[24]

b. Continuing hire obligation of the Respondent

23. Hire continues where the delay stems from the Charterer's own breach. In *Temperley* and *James Nourse*, the Courts confirmed that off-hire applies only to delays linked to Owners' responsibilities, not when time is lost because of Charterers' fault.[25]
24. *In casu*, the blackout and nine-day delay arose from defective bunkers supplied by Charterers. The remedial operations were necessary to complete their voyage. Accordingly, the off-hire clause cannot apply, and Charterers remain liable for full hire.

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[23] Sig. Bergesen D.Y. & Co. v. Mobil Shipping and Transportation Co. *(The "Berge Sund")* [1993] 2 Lloyd's Rep. 453 at 460.
[24] Clause 43, the Charterparty Agreement.
[25] *Board of Trade v. Temperley* (1927); *James Nourse Ltd. v. Elder Dempster & Co. Ltd*., [1932] 1 K.B. 299.

ISSUE III: THE RESPONDENT IS LIABLE FOR THE DAMAGE TO THE REEFER CARGO

25. It is humbly submitted that the Respondent is liable for the damage to the Reefer Cargo. This can be understood in light of two arguments: (**A**) The Reefer got damaged due to the Respondent's actions, and (**B**) The Claimant's crew was justified in its actions.

A. Respondent's Actions Led to Damage in Cargo

26. The Respondent bears liability for the damage to the Reefer Cargo under the Inter-Club New York Produce Exchange Agreement, 1996 (as amended in 2011).[26] Section 8(d) expressly provides that if such claims arise due to the negligent actions of one of the parties, that party stands completely liable for the loss to Cargo.[27] Such an event initiated a chain of causation, resulting in damage to the Cargo.
27. In *casu*, the Respondent's negligence, and breach of contractual duty,[28] in providing the right bunkers for the vessel was the primary event that led to damage to the engine and the blackout[29]. Due to this engine damage, the ship had to be diverted to Malé port for repair. It was in-course to Malé, that the reefer cargos got damaged. And therefore, the damage to the Reefer containers during this period shall stand as the liability of the Respondent.[30]
28. The Respondent cannot argue that the minor leak interrupted the whole event. This is because, *firstly,* the Bunkers were contaminated from the initial stage, and was the primary cause of damage[31]. *Secondly,* the minor leakage does not constitute a *novus actus interveniens.*[32] The engine damage, resulting in consequential diversion to Malé, happened due to contaminated bunkers and not the minor leakage. Thus, the minor leakage did not cause a break in the chain of causation, and the damage to reefer cargo was foreseeable[33].

B. The Master's actions were reasonable and justified

[26] Clause 58, the Charterparty agreement.
[27] Inter-Club New York Produce Exchange Agreement § 8(d) (1996, as amended 2011).
[28] Clause 43, the Charterparty Agreement.
[29] *Triad Shipping Co. v. Stellar Chartering & Brokerage Inc. (The Island Archon*), [1994] 2 Lloyd's Rep. 227 (Q.B.).
[30] *Albacora S.R.L. v. Westcott & Laurance Line, Ltd.,* [1966] 2 Lloyd's Rep. 53 (Q.B.).
[31] *Islander Shipping Enters. S.A. v. Empresa Mar. del Estado S.A. (The Khian Sea), [1979] 1 Lloyd's Rep. 545 (Q.B.), Aktieselskabet Reidar v. Arcos Ltd., [1927] 1 Lloyd's Rep. 285 (K.B.).*
[32] *The Oropesa,* [1943] 1 All E.R. 211(K.B.).
[33] *Overseas Tankship (U.K.) Ltd. v. Morts Dock & Eng'g Co. (The Wagon Mound No. 1),* [1961] A.C. 388 (P.C.).

29. It is submitted that the Master was entitled to take urgent measures in sudden and unforeseen emergencies to safeguard the vessel, crew, and cargo. *In casu*, the blackout and serious engine malfunction required immediate action, and the Master's decisions, **(a.)** necessitated by sudden and unforeseen condition, **(b.)** the master acted diligently in the emergency situations[34], and was reasonable to ensure safe navigation.

a. The Situation was a sudden and unforeseen condition

30. Under English law, when sudden and unforeseen conditions arise, the Master has the clear discretion to act as necessary to protect the Cargo, the crew, and the Vessel.[35]

31. *In casu*, the blackout left the ship drifting mid-sea for 10 hours.[36] The fuel supply system was completely damaged, with the engine and its auxiliaries facing severe issues.[37] Such a situation was sudden and unforeseeable and could not have been anticipated.
32. Further, the mid-sea drifting vessel constituted a threat even to the life of the ship crew and the 3,490 TEUs valued at USD 32,100,000.00, and 280 reefer cargo value at USD 5,600,000.00.[38] This added to the graveness of the situation and thus created an emergency situation for the Master to act in. The Claimant's actions were the only prudent means to safeguard the vessel and cargo, and mitigate further losses.[39]

b. The Master Acted Diligently in the Emergency Situation

33. The Master acted diligently by using emergency MGO to supply only the emergency switches and sailed the ship at the most economical speed.[40] The Master considered the conditions of the ship and the distance to the Malé port and accordingly, decided to charge just the necessary switches, acting in the moment.[41]
34. In such conditions, with the blackout lasting more than 70 hours, it was difficult for the Master to charge the reefer containers or maintain them at a temperature of -18°C.[42] This led to a break in the cold chain, leading to damage and decay in the Reefer Cargo. Thus, the Claimant cannot be made liable for the damages to the Reefer Cargo. Consequently, the respondent is liable for the damage to the reefer cargo.

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[34] *Scaramanga v. Stamp* (1880) 5 C.P.D. 295 (C.A.).
[35] *The Bywell Castle,* (1879) 4 P.D. 219 (C.A.).
[36] ¶14, the Factual proposition.
[37] ¶15, the Factual proposition.
[38] ¶ 6, the Factual proposition.
[39] *Whistler Int'l Ltd. v. Kawasaki Kisen Kaisha Ltd. (The Hill Harmony)*, [2001] 1 Lloyd's Rep. 147 (H.L.).
[40] ¶16, the Factual proposition.
[41] *The Winona*, (1943) 77 Lloyd's List L. Rep. 156.
[42] ¶ 7, the Factual proposition.

ISSUE IV: THE CLAIMANT'S LIEN OVER THE CARGO IS ENFORCEABLE

35. It is humbly submitted that the lien of the cargo is enforceable because (**A.**) There is amount that stands as due under the Charterparty, and (**B.**) The Claimants are not barred from claiming the lien by the applicable law.

A. There is an amount that stands due under the charterparty

36. Cl. 27 of the Charterparty entitles the Shipowners to claim lien for any amount due under the Charterparty. The outstanding cost of 1,275,000.00 stands due because **(a)** the On-hire costs are due and payable, and **(b)** Consequential costs arose from the Respondent's supply of wrong bunkers.

a. The On-Hire Costs are Due and Payable Under the Charterparty

37. The Surveyor and Testing Cost, the Cost of New Bunker, Port Charges, On-Hire cost and Miscellaneous Cost are related costs undertaken during the repair period. A combined reading of cl. 41, cl. 7 and cl. 27 clearly shows that if the above costs are incurred during the On-Hire period, it shall be done at the expense of the Respondent.[43]
38. The period of February 13th, 2025 to February 22nd, 2025 is a part of the on-hire period.[44] Since all the costs have been incurred in this period, during the repair of the ship, it shall stand as a due amount under the Charterparty, for the Respondents to pay.

b Other Direct Consequential Cost Due Because of Wrong Bunkers

39. The Engine Repairing Cost, De-bunkering & Tank-Cleaning Cost and Claimant's Agency & Other necessary operations are direct consequential costs. These had to be undertaken due to the wrong bunkers supplied by the Respondents,[45] which were also the primary reason for the blackout.
40. In English law, there are two essentials to be proven for recovery of losses suffered by the Claimant due to breach of contract by the defendant.[46] First, the position and condition had the contract be performed, and second, foreseeability of the consequences at the time of contract.[47]
41. *In casu*, had the bunkers supplied by the Respondents been on specifications and fit for the engine, the engine would not have malfunctioned. Further, on reading 'Bunker/Fuel Oil Specification' clauses of Annexure A, the obligation upon the Respondents to provide engine-fit bunkers is clear. This signifies that the malfunction of the engine from wrong bunkers was within the foreseeability of the parties. Therefore, damages arising from breach shall be claimable by the Claimants.

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[43] Clause 7, 27 and 41, the Charterparty agreement.
[44] *Pleading 2,* memorial.
[45] ¶ 20[1], the Factual proposition.
[46] Simon Baughen, *Shipping Law* 255 (8th ed. 2023).
[47] *Henry v. Baxendale*, (1854) 9 Ex. 341.

B. The Claimants Cannot be Barred from Claiming Lien Under Applicable Law

42. The Respondents might argue that the Claimants don't have the right to claim lien over the cargoes, since the cargo owner was not a party to the Agreement. However, under the applicable common law, the excuse does not stand. This is because **(a)** The onus was on the Time Charterers to get the contractual lien in favour of ship-owners, and **(b)** Barring lien will violate the principle of *Ex Turpi Causa Non Oritur Actio.*[48]

a. The Onus was on the Time Charterers to get a lien in favour of the ship-owners

43. Under applicable governing law, a valid exercise of a contractual lien requires cargo owners to be parties to the contract.[49] However, the obligation to procure the contractual lien in favour of ship-owners from cargo owners lies upon the time charterers.[50]

44. In *the Aegnoussiotis* case, Donaldson J. elaborated on how the obligation lies upon the Respondent to procure a contractual lien in favour of the Claimant from the cargo-owners. Since, *in casu*, the governing law is also English law, the obligation shall lie on the Time Charterers.

b. Barring Lien Will Violate Ex Turpi Causa Non Oritur Actio

45. The principle of *Ex Turpi Causa Non Oritur Actio* stands of paramount importance in contractual law.[51] Its application in the English maritime law was also discussed by Donaldson J. in *The Aegnoussiotis* case.[52] Formulating his reasoning upon this principle, he prevented the Respondent from taking advantage of their own breach of obligation. This further stands in line with the Court of Appeal's reasoning in the *Tonnelier case.*[53]

46. *In casu*, the obligation was on the Time Charterers to procure the lien in favour of the ship-owners. Therefore, the breach of the obligation can't be used as an obligation to prevent the Claimant from claiming a lien over the cargo for its outstanding amount.

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[48] *Holman v. Johnson*, (1775) 1 Cowp. 341 (K.B.).
[49] Andrew W. Baker et al., *Time Charters* ¶ 30.9, at 581 (8th ed. 2025).
[50] id.
[51] *Holman v. Johnson*, (1775) 1 Cowp. 341 (K.B.).
[52] *Aegnoussiotis Shipping Corp. of Monrovia v. A/S Kristian Jebsens Rederi Bergen (The Aegnoussiotis),* [1977] 1 Lloyd's Rep. 283 (Q.B.).
[53] *Tonnelier v. Smith*, (1897) 2 Comm. Cas. 258.

ISSUE V: THE SEAT OF ARBITRATION SHOULD BE IN THE MALDIVES

47. The Claimant respectfully submits that the seat of arbitration is the Maldives, and not England, as reflected in the express adoption of MIAC Rules and the parties' evident intention. This can be understood in light of the following arguments: (A) Under the applicable legal framework, the Maldives shall be the seat of arbitration, and (B) The substantive governing law does not determine the seat of arbitration.

A. The Maldives shall be the seat of arbitration

48. It is a settled English law principle that if the parties do not explicitly agree on the seat of arbitration, it must be decided on **(a.)** the basis of the implied choice of the parties, and **(b.)** based on the closest and most real connection to the contract.[54]

a. Parties impliedly chose the Maldives as the seat of arbitration

49. It was held in the *Sulamerica* case that the conduct of the parties can be used to understand the implied choice of the parties concerning the seat of arbitration.[55] The conduct can be understood from terms of the contract laid down between the parties.
50. *In casu*, the parties explicitly chose MIAC rules to govern the procedure of the arbitration proceedings. They categorically left out the English law to govern only the substantive part of the arbitration. This choice of MIAC rules as procedural law signifies an implied choice of the parties to adopt Maldives as their seat of arbitration.[56]
51. Further, under the doctrine of Kompetenz-Kompetenz[57], the tribunal itself has authority to determine its jurisdiction, including the seat, thereby reinforcing Maldives as the proper seat notwithstanding the substantive law of the contract.

b. The Maldives stands in the closest and most real connection to the contract

52. The closest and most real connection test uses the intention, circumstances, and conduct of the parties to determine the closest choice of seat of arbitration.[58] Various factors, like the procedural law, origin of the goods and vessel involved, convenience of the parties, place of transaction, etc, are considered while determining the closest connection.

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[54] *Shashoua & Ors v. Sharma*, [2009] EWHC (Comm) 957 (Eng.).
[55] *Lesotho Highlands Dev. Auth. v. Impregilo SpA,* [2005] UKHL 43, [2006] 1 A.C. 221 (H.L.), *Sulamérica Cia. Nacional de Seguros S.A. v. Enesa Engenharia S.A.,* [2012] EWCA (Civ) 638.
[56] Clause 26, the Charterparty Agreement.
[57] *Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs, Gov't of Pak.*, [2010] UKSC 46, [2011] 1 A.C. 763.
[58] *Naviera Amazónica Peruana S.A. v. Compañía Internacional de Seguros del Perú,* [1988] 1 Lloyd 's Rep. 116 (Q.B.).

53. *In casu*, the vessel is registered at Malé port and has the Maldives flag attached to it,[59] the port is registered to the Maldives, the pecuniary transaction is to take place in the Maldives,[60] and the parties voluntarily adopted MIAC rules as the procedural rules for the arbitration.[61] This implies that the Maldives, as against England, is a more closely connected and convenient seat of arbitration for the parties.

B. Substantive Law does not determine the Seat of Arbitration

54. The substantive law does not determine the seat of arbitration. This can be understood by referring to the (a.) English Laws, and (b.) International Laws.

a. Substantive Law won't determine the Seat of Arbitration as laid down by English law

55. It is a settled law that the substantive law is not the sole determinant of the seat of arbitration,[62] various other factors have to be taken into consideration when determining the substantive, the primary being the intention, convenience, and the conditions of the parties.[63] The governing law agreed upon is, though an important factor, can be rebutted by the above considerations.
56. In *casu*, though the parties have adopted English law as the substantive applicable law, due to the presence of other factors, as elaborated before, the preferred and convenient seat of arbitration shall be the Maldives.

b. Doctrine of Separability Confirms Maldives as the Seat

57. By the doctrine of separability[64], the arbitration clause stands independent of the substantive contract. Its express reference to the MIAC Rules establishes the Maldives as the seat, unaffected by the choice of English law for the main contract.

c. The Maldives shall be the seat of arbitration under conventional international law

58. The UNCITRAL Model Law, to which the Maldives is a party,[65] gives certain rules for those cases where the seat of arbitration is not specifically mentioned. In such cases, those places, to which the subject matter of the contract is closely connected, shall be considered as the main seat of arbitration for the arbitration dispute.[66]

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[59] Annexure A, the Charterparty agreement.
[60] Clause 11, the Charterparty agreement.
[61] Clause 26, the Charterparty agreement.
[62] *Enka Insaat Ve Sanayi AS v. OOO Insurance Company Chubb* [UKSC 38].
[63] *Sulamerica CIA Nacional de Seguros SA & Ors. v. Enesa Engenharia SA & Ors* EWCA Civ 638.
[64] *Fiona Trust & Holding Corp. v. Privalov,* [2007] EWCA (Civ) 20 (Eng.).
[65] Arbitration Act, Act No. 10 of 2013, § 2 (Maldives).
[66] UNCITRAL Model Law on Int'l Com. Arb. art. 20(1), June 21, 1985, 24 I.L.M. 1302.

59. The Maldives should be considered as the default seat of arbitration. The tribunal decides the seat of arbitration when it has not been mentioned explicitly by the parties in their agreement.[67] It favours the place where the subject matter of the dispute is closely connected to[68].

60. *In casu*, the most closely connected seat of arbitration shall be the Maldives. Considering the registry at Maldive Port, the Malé flag on the vessel, the place of pecuniary transaction as Maldives, and the preferential application of the MIAC rules, Maldives stands as the closest seat to the Arbitration.

[67] *BNA v. BNB*, [2019] SGCA 84 (Sing. C.A.).
[68] U.N. Comm'n on Int'l Trade Law, UNCITRAL Model Law on International Commercial Arbitration art. 1(3)(b), (4), U.N. Doc. A/40/17, Annex I (1985).

PRAYER

For the foregoing reasons, Malé Dhoni Driftz Shipping Pvt. Ltd**.,** the Claimants, respectfully prays that this Honourable Tribunal to:

I. Declare that the Respondent is liable for supplying unfit bunkers;
II. Declare that the period from 13 to 22 February 2025 remained on-hire and hire is payable in full;
III. Declare that the Claimant is not liable for the damage to the Reefer Cargo;
IV. Declare that the Claimant's lien over the cargo is valid and enforceable under the Charterparty; and
V. Declare that the Maldives is the proper seat of arbitration.

Respectfully submitted,

Malé Dhoni Driftz Shipping Pvt. Ltd