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**MALDIVES MOOT COURT SOCIETY**  
**INTERNATIONAL MARITIME ARBITRATION COMPETITION**  
**2025**

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**MEMORANDUM FOR RESPONDENT**

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**ON BEHALF OF:**

Mamma Mia Maritime  
Società P.A.  
(The Charterers)

**(RESPONDENT)**

**AGAINST:**

Malé Dhoni Driftz  
Shipping Pvt. Ltd.  
(Shipowners)

**(CLAIMANT)**

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**COUNSEL**

• Narmadha R • Kush Tripathi • Parth Dwivedi  
• Anusrea Goswami • Yash Pathak

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**STATEMENT OF FACTS**

Mamma Mia Maritime Società P.A. [*hereinafter*: “RESPONDENT”] is an Italian charterer engaged in international carriage of goods. Malé Dhoni Driftz Shipping Pvt. Ltd. [*hereinafter*: “CLAIMANT”] is a Maldivian shipowner and operator of MV *Raajje Dhivehi*, a Panamax container vessel. On 1 January 2025, the Parties entered into a six-month Time Charterparty [*hereinafter*: “CP”] on the NYPE 93 form, governed by English law and providing for arbitration under MIAC Rules.

Under the CP, CLAIMANT was obliged to provide and maintain the vessel in a seaworthy condition throughout the charter period, while RESPONDENT was responsible for the supply of ISO-compliant bunkers. On **1 February 2025**, RESPONDENT nominated Mango Sticky Fuel Co. Ltd. to deliver 2,500 MT of Marine Fuel Oil at Port Laem Chabang. The bunkers delivered were accompanied by proper certification and tested as “on-spec.” Relying on these assurances, RESPONDENT fulfilled its contractual obligation in good faith.

On **4 February 2025**, MV *Raajje Dhivehi* sailed for Genoa with 3,490 TEUs, including 280 refrigerated containers of frozen seafood. On 13 February 2025, the vessel allegedly experienced vibration and engine failure after switching to the supplied bunkers. CLAIMANT unilaterally diverted to Malé, incurring additional costs without providing RESPONDENT a reasonable opportunity to investigate or mitigate the issue. RESPONDENT maintains that any engine failure was caused by CLAIMANT’s failure to ensure the vessel’s machinery was fit to consume standard-compliant fuel, reflecting a breach of its seaworthiness obligations.

Following emergency repairs and fresh bunkering, the voyage resumed, but the vessel arrived in Genoa with significant delay on **18 March 2025**. CLAIMANT then withheld delivery of 100 containers valued at approximately USD 1 million, purporting to exercise a lien. This unlawful action disrupted RESPONDENT’s commercial commitments and exposed it to cargo claims.

Instead of acknowledging its own responsibility for unseaworthiness and delay, CLAIMANT commenced arbitration in Malé under the MIAC Rules, asserting damages for repairs, hire, and bunker costs. RESPONDENT objects to these claims, contending that (i) the vessel was off-hire during the breakdown period, (ii) CLAIMANT wrongfully exercised a lien over cargo, and (iii) the correct juridical seat of arbitration is England, consistent with the governing law of the CP.

Accordingly, RESPONDENT submits that CLAIMANT’s attempt to shift blame for its own failures is misplaced and seeks dismissal of CLAIMANT’s claims together with appropriate relief for the losses caused by the vessel’s delay and unlawful lien.

**SUMMARY OF ARGUMENTS**

**[ISSUE 1]**

The CLAIMANT contends that RESPONDENT breached Clause 43 by supplying contaminated bunkers. However, RESPONDENT submits that it duly discharged its obligation once the bunkers were supplied “on-spec” to the agreed ISO 8217:2010 standards. The bunkers were accompanied by certification confirming compliance, and no defect was apparent at the time of delivery.

The subsequent blackout was caused not by the fuel itself but by CLAIMANT’s negligent tank management. Joint survey reports indicated mixing with Residual Oil Bunkers (“ROB”) and leakage from the vessel’s storage system, which triggered the chemical reaction. Maritime practice recognises that charterers are not guarantors of future operational performance once fuel is on-spec at delivery. Hence, liability rests with CLAIMANT for failing to ensure the vessel’s machinery could safely consume the fuel provided.

**[ISSUE 2]**

CLAIMANT asserts hire is payable throughout the breakdown, arguing charterers cannot rely on their own breach. RESPONDENT submits instead that Clause 22 of the NYPE 93 expressly suspends hire when the vessel is “prevented from full working” by breakdown of machinery or similar causes. This language is absolute and does not depend on fault.

Thus, regardless of CLAIMANT’s attempt to characterise the blackout as stemming from RESPONDENT’s breach, the off-hire clause squarely applies. Courts have consistently held that even where disputes exist as to causation, the plain contractual wording governs. Therefore, hire ceased to accrue between 13 February and 22 February 2025, when the vessel was incapacitated and diverted for repairs.

**[ISSUE 3]**

CLAIMANT argues that cargo losses, particularly to the reefer containers, were foreseeable consequences of the alleged fuel contamination. RESPONDENT rebuts this by emphasising the Owners’ overriding duty under Hague-Visby Rules Article III(1) to exercise due diligence to maintain seaworthiness during the voyage.

Here, CLAIMANT failed to maintain and operate the vessel’s machinery and reefer systems once problems arose. The cargo damage was therefore a result of inadequate onboard management, not

RESPONDENT's bunker nomination. Moreover, the reefer cargo interests' claims arise under separate contracts of carriage, for which CLAIMANT, as carrier, bears primary liability. RESPONDENT cannot be held secondarily liable for losses caused by the vessel's own operational breakdown.

**[ISSUE 4]**

CLAIMANT relies on Clause 27 to justify exercising a lien over 100 containers worth USD 1 million. RESPONDENT submits that this lien was unlawful and disproportionate. Clause 27 permits a lien only for amounts "due under this Charterparty," but at the time of withholding, no sums had been adjudicated or admitted as due.

Further, a lien must be exercised in good faith and proportionately. CLAIMANT's seizure of high-value cargo far exceeding the alleged outstanding sums caused disruption to RESPONDENT's commercial operations and exposed it to third-party claims. Maritime tribunals have held that wrongful or excessive lien exercises constitute a breach of the Owners' duty to carry goods with reasonable despatch. Accordingly, CLAIMANT's purported lien is invalid and unenforceable.

**[ISSUE 5]**

CLAIMANT submits that the juridical seat is Maldives because the arbitration was commenced under MIAC Rules. RESPONDENT, however, contends that Clause 26 expressly provides for English law to govern the arbitration agreement. As clarified in *Enka v Chubb* [2020] UKSC 38, an express choice of law strongly indicates the intended seat unless clearly displaced.

The MIAC Rules regulate arbitral procedure but do not, by themselves, override the parties' choice of English law. Applying the *Sulamérica* "closest and most real connection" test, the nexus points to England: both the Charterparty and the arbitration agreement are governed by English law, and London is the traditional hub of maritime arbitration. By contrast, the Maldives has no substantive connection apart from the MIAC's administrative role. Thus, the proper juridical seat is England, with MIAC functioning as the administering body only.

**ARGUMENTS ADVANCED**

**ISSUE 1: THE RESPONDENT IS NOT LIABLE FOR SUPPLYING “UNFIT BUNKERS”**

[¶ 1.] The RESPONDENT humbly submits that it is not liable for supplying “unfit bunkers,” as it fully discharged its contractual obligations by delivering ISO 8217:2010-compliant fuel from a reputable supplier, while the proximate cause of the blackout and ensuing losses was the CLAIMANT’s own failure to manage and clean its storage tanks, leading to commingling and contamination.

**A. THE RESPONDENT FULFILLED ITS CONTRACTUAL OBLIGATION BY SUPPLYING ON-SPEC BUNKERS**

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[¶ 2.] On 1 February 2025, the RESPONDENT procured 2,500 MT of MFO from Mango Sticky Fuel, a reputable Singapore supplier.<sup>1</sup> The bunkers were independently tested and certified ISO 8217:2010 compliant prior to delivery.<sup>2</sup>

[¶ 3.] Under Clause 9 of the NYPE Charterparty,<sup>3</sup> the RESPONDENT was only obliged to supply bunkers meeting the agreed ISO standard. In *ENI v Petrochem*,<sup>4</sup> the court held that compliance with ISO 8217 discharges a charterer’s duty; no wider warranty of suitability for a vessel’s specific engines is implied.

[¶ 4.] Academic authority<sup>5</sup> affirms that charterers “are not insurers of absolute fuel suitability; their obligation is to deliver fuel on the specified standard, not to guarantee flawless performance in all machinery.”

[¶ 5.] Therefore, by delivering on-spec bunkers, RESPONDENT discharged its contractual burden fully and cannot be held liable for subsequent engine failure.

**B. CONTAMINATION AND INSTABILITY AROSE FROM OWNERS’ IMPROPER TANK MANAGEMENT**

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[¶ 6.] The blackout occurred on 13 February 2025, when the vessel switched to newly supplied bunkers.<sup>6</sup> Evidence shows that bunkers were commingled with residual Marine Fuel Oil in uncleaned storage tanks, producing instability and contamination.

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<sup>1</sup> Case Record, Factual Matrix, p.4, ¶ 11.

<sup>2</sup> Case Record, Factual Matrix, p.5, ¶ 13.

<sup>3</sup> Case Record, Annexure-3 (CP), p.16, Cl. 9.

<sup>4</sup> *ENI v Petrochem* [2013] EWHC 3937 (Comm).

<sup>5</sup> *Scrutton on Charterparties and Bills of Lading*, 24th ed., p. 196, Sweet & Maxwell Ltd.

<sup>6</sup> Case Record, Factual Matrix, p.5, ¶ 15.

¶ 7.] In *The Athanasia Comninos*,<sup>7</sup> the court held that Owners bear liability where compliant bunkers become contaminated through improper tank preparation or mixing. Similarly, *The Union Power*<sup>8</sup> confirms that contamination occurring after delivery, during shipboard handling, is attributable to Owners.

¶ 8.] Here, CLAIMANT failed to properly clean tanks before loading RESPONDENT's fuel. The mixing of fresh and residual fuels was the proximate cause of breakdown.

¶ 9.] Thus, the blackout and resulting cargo loss cannot be linked to RESPONDENT's supply but to the Claimant's negligent tank management.

### C. CHARTERERS ARE NOT ABSOLUTE GUARANTORS OF FITNESS BEYOND SPECIFICATIONS

¶ 10.] The CLAIMANT contends that later GC-MS testing revealed contaminants such as DH-DCPD and TH-DCPD.<sup>9</sup> However, these compounds are not part of the mandatory ISO 8217 testing regime. As *ENI v Petrochem*<sup>10</sup> makes clear, charterers are not required to anticipate every conceivable contaminant absent an express contractual guarantee.

¶ 11.] In *The Elli & The Frixos*,<sup>11</sup> the court emphasised that charterers are not absolute guarantors of bunker fitness: if bunkers meet agreed specifications, they are deemed compliant, even if particular engines later react adversely.

¶ 12.] Benjamin<sup>12</sup> similarly notes that "specification compliance suffices; liability cannot extend to idiosyncratic vessel sensitivities unknown to the supplier." The CLAIMANT's vessel may have had heightened sensitivity, but that risk falls on Owners who know their machinery best.

¶ 13.] Accordingly, the RESPONDENT cannot be held liable where bunkers were objectively on-spec but allegedly unsuitable for CLAIMANT's particular vessel.

### CONCLUSION TO THE ISSUE 1

¶ 14.] In conclusion, the RESPONDENT fully discharged its obligations by supplying ISO 8217:2010-compliant bunkers from a reputable source. The subsequent blackout arose from the CLAIMANT's own negligent tank management and commingling, not from any defect in supply. As charterers are not absolute

<sup>7</sup> *The Athanasia Comninos* [1990] 1 Lloyd's Rep 277.

<sup>8</sup> *The Union Power* [2012] 2 Lloyd's Rep 220.

<sup>9</sup> Case Record, Factual Matrix, p.6, ¶ 20(1).

<sup>10</sup> *ENI v Petrochem* [2013] EWHC 3937 (Comm).

<sup>11</sup> *The Elli & The Frixos* [2008] 2 Lloyd's Rep 119.

<sup>12</sup> *Sale of Goods*, 11th ed., Benjamin, para. 17-024.

guarantors of bunker fitness beyond agreed specifications, the RESPONDENT bears no liability for the alleged cargo damage.

**ISSUE 2: THE CLAIMANT IS NOT ENTITLED TO HIRE FROM 13–22 FEBRUARY 2025**

[¶ 15.] The RESPONDENT humbly submits that the CLAIMANT is not entitled to hire for the period between 13–22 February 2025, as the Vessel was completely incapacitated by machinery breakdown, which automatically triggered Clause 22 of the NYPE 93 Charterparty<sup>13</sup> and suspended hire irrespective of fault.

**A. CLAUSE 22 AUTOMATICALLY SUSPENDS HIRE DURING MACHINERY BREAKDOWN**

[¶ 16.] On 13 February 2025, immediately after switching to new bunkers, the Vessel suffered a complete blackout, disabling both propulsion and reefer systems. The Vessel remained inoperative until 22 February 2025.<sup>14</sup>

[¶ 17.] Clause 22 of the NYPE 93 Form stipulates that hire ceases when the Vessel is “prevented from the full working of the Vessel by deficiency of crew, breakdown of machinery, or any other cause preventing the efficient working of the Vessel.”

[¶ 18.] In *The Berge Sund*,<sup>15</sup> it was held that where machinery breakdown prevents performance, the off-hire clause is engaged regardless of the cause. The blackout here rendered the Vessel incapable of performance; thus hire was suspended.

[¶ 19.] Similarly, in *The Aquacharm*,<sup>16</sup> the court adopted a broad interpretation of off-hire clauses, ruling that any period where the vessel is not fully efficient falls within the clause unless expressly excluded. A total blackout is a classic off-hire event.

**B. FAULT OR CAUSATION IS IRRELEVANT ONCE AN OFF-HIRE EVENT OCCURS**

[¶ 20.] In *The Mareva AS*,<sup>17</sup> it was established that once an off-hire event occurs, hire is suspended automatically, irrespective of fault. Charterers are entitled to withhold hire for the period of inefficiency.

<sup>13</sup> Case Record, Annexure-3 (CP), p.19, Cl. 22.

<sup>14</sup> Case Record, Factual Matrix, p.5, ¶ 14-15.

<sup>15</sup> *The Berge Sund* [1993] 2 Lloyd’s Rep 453.

<sup>16</sup> *The Aquacharm* [1982] 1 Lloyd’s Rep 7.

<sup>17</sup> *The Mareva AS* [1977] 1 Lloyd’s Rep 368.

¶ 21.] *The Apollo*<sup>18</sup> confirms that the decisive question is whether the Vessel was able to provide chartered services. During 13–22 February 2025, the Vessel was wholly unavailable for propulsion and cargo services, so Respondent derived no benefit from the charter.

¶ 22.] Academic authority<sup>19</sup> underscores that time charter hire is “the price of the ship’s services, not a fixed rent.” If the ship cannot perform, hire is not payable.

¶ 23.] Therefore, regardless of the cause of the breakdown, the Vessel’s nine-day incapacity suspended hire under Clause 22.

### C. THE CLAIMANT CANNOT RELY ON *THE NANFRI* EXCEPTION

¶ 24.] The CLAIMANT may rely on *The Nanfri*,<sup>20</sup> which holds that charterers cannot suspend hire for inefficiencies caused by their own breach. However, this principle does not apply to the present facts.

¶ 25.] RESPONDENT supplied bunkers that were independently tested and ISO 8217:2010-compliant.<sup>21</sup> The proximate cause of the blackout was Owners’ failure to clean and prepare tanks, leading to commingling and contamination.

¶ 26.] Consequently, the breakdown was attributable to the CLAIMANT’s negligence, not RESPONDENT’s breach. As such, *The Nanfri* is distinguishable and cannot preclude suspension of hire.

¶ 27.] To award CLAIMANT USD 360,000 for a period when the Vessel was completely unusable would contradict the commercial intent of the time charter that charterers pay only when they can derive benefit from the Vessel’s services. Thus, the RESPONDENT humbly submits that the CLAIMANT is not entitled to hire between 13–22 February 2025.

### CONCLUSION TO THE ISSUE 2

¶ 28.] In conclusion, the Vessel’s total incapacity between 13–22 February 2025 automatically triggered Clause 22 of the NYPE 93 Charterparty, suspending hire irrespective of fault. The Nanfri exception does not apply, as the breakdown stemmed from the CLAIMANT’s negligent tank management rather than any breach by the RESPONDENT. Accordingly, the CLAIMANT is not entitled to the claimed hire of USD 360,000 for this period.

<sup>18</sup> *The Apollo* [1978] 1 Lloyd’s Rep 200.

<sup>19</sup> *Scrutton on Charterparties and Bills of Lading*, 24th ed., p. 273, Sweet & Maxwell Ltd.

<sup>20</sup> *The Nanfri* [1978] 1 Lloyd’s Rep 132 (CA).

<sup>21</sup> Case Record, Factual Matrix, p.5, ¶ 13.

**ISSUE 3: THE RESPONDENT IS NOT LIABLE FOR THE DAMAGE TO THE REEFER CARGO**

¶ 29.] RESPONDENT respectfully submits that it bears no liability for the damage to the reefer cargo, as the loss was exclusively caused by the CLAIMANT’s failure to exercise due diligence and properly care for the cargo during the blackout, in breach of their obligations under the Hague-Visby Rules, and the NYPE Charterparty. These has been further elaborated as follows:

**A. THE CONTRACT WITH SHIPPERS DOES NOT TRANSFER CUSTODY OBLIGATIONS TO THE RESPONDENT**

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¶ 30.] The RESPONDENT, under the Contract of Carriage with Tuk Tuk Ocean Guardians Co. Ltd.,<sup>22</sup> undertook commercial responsibility for carriage. However, pursuant to Clause 36 of the NYPE Charterparty, “navigation of the vessel, insurance, crew, and all other similar matters remain the responsibility of the Owners.”<sup>23</sup> Custody, monitoring, and preservation of reefer cargo therefore fell exclusively on the CLAIMANT.

¶ 31.] Article III(2)<sup>24</sup> of the Hague-Visby Rules imposes a strict obligation on carriers to “properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods.” This duty is non-delegable in practice and attaches to the party with physical custody and control and here, the CLAIMANT.

¶ 32.] In *The Fjord Wind*,<sup>25</sup> Owners were held liable for reefer cargo deterioration caused by failure to safeguard power supply. Academic commentary stresses that “reefer cargo requires heightened vigilance, and any lapse by the carrier is treated as a strict breach.”<sup>26</sup>

¶ 33.] Thus, while RESPONDENT contracted with shippers, ultimate custodial liability for cargo preservation lies with CLAIMANT under both Hague-Visby and the ICA framework.

**B. OWNERS BREACHED THEIR DUTY OF SEAWORTHINESS AND DUE DILIGENCE DURING THE BLACKOUT**

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¶ 34.] On 13 February 2025, immediately after consuming new bunkers, the vessel suffered a complete blackout at 1538 hrs, disabling reefer plug-ins and leaving 370 containers unplugged for more than 48

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<sup>22</sup> Case Record, Factual Matrix, p.3-4, ¶ 6-7.

<sup>23</sup> Case Record, Annexure-3 (CP), p.23, Cl. 36.

<sup>24</sup> International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Hague Rules) (adopted 25 August 1924, entered into force 2 June 1931) 120 LNTS 187, as amended by the Hague-Visby Rules (adopted 23 February 1968, entered into force 23 June 1977) 1412 UNTS 127, art III(1).

<sup>25</sup> *The Fjord Wind* [2000] 2 Lloyd’s Rep 191.

<sup>26</sup> Debattista, *Hague-Visby Rules in the 21st Century*, LMCLQ 2019.

hours.<sup>27</sup> The joint survey at Genoa confirmed salvage at only 40% of original cargo value, amounting to losses of USD 2.24M.<sup>28</sup>

[¶ 35.] The CLAIMANT had 120 MT of MGO reserves and an emergency generator, but instead of supplying power to reefers, the Master prioritised propulsion and de-bunkering operations.<sup>29</sup> This operational choice directly caused cargo deterioration.

[¶ 36.] In *The Star Sea*,<sup>30</sup> the House of Lords held that Owners' duty of due diligence extends to the crew's conduct in emergencies. Similarly, in *The Kapitan Sakharov*,<sup>31</sup> Owners were held liable for reefer deterioration due to inadequate monitoring.

[¶ 37.] Journal literature reinforces this ideology such as per Scrutton emphasises that a failure to preserve perishable cargo amounts to a serious breach of seaworthiness obligations, regardless of concurrent causes.<sup>32</sup>

[¶ 38.] Accordingly, CLAIMANT's neglect failing to channel MGO to reefers and ignoring perishable cargo for 48+ hours<sup>33</sup> constitutes breach of seaworthiness and due diligence obligations under Hague-Visby Article III(1).

### **C. THE INTER-CLUB AGREEMENT AND BURDEN OF PROOF CONFIRM LIABILITY ON OWNERS**

[¶ 39.] Clause 58 of the Charterparty incorporates the Inter-Club Agreement (ICA 1996/2011),<sup>34</sup> which allocates 100% liability to Owners where loss results from their handling, custody, or care of cargo.

[¶ 40.] In *Volcafe Ltd v CSAV*,<sup>35</sup> the Supreme Court clarified that the burden of proof rests with carriers to demonstrate due diligence. Owners cannot satisfy this burden, as logbooks and survey evidence show reefers remained unplugged during the blackout. Benjamin<sup>36</sup> notes that liability attaches to the party "whose breach is the proximate and effective cause of the loss." Here, that party is the CLAIMANT, since operational negligence — not the mere delivery of bunkers — caused reefer spoilage.

<sup>27</sup> Case Record, Factual Matrix, p.5-6, ¶ 15-19.

<sup>28</sup> Case Record, Factual Matrix, p.8-9, ¶ 28.

<sup>29</sup> Case Record, Factual Matrix, p.5, ¶ 16.

<sup>30</sup> *The Star Sea* [2001] 1 Lloyd's Rep 389 (HL).

<sup>31</sup> *The Kapitan Sakharov* [2000] 2 Lloyd's Rep 255.

<sup>32</sup> Scrutton on Charterparties and Bills of Lading, 24th ed., p. 193, Sweet & Maxwell Ltd.

<sup>33</sup> Case Record, Factual Matrix, p.6, ¶ 19.

<sup>34</sup> Case Record, Annexure-4 (VD), p.29, Cl. 58.

<sup>35</sup> *Volcafe Ltd v CSAV* [2018] UKSC 61.

<sup>36</sup> Michael Bridge (ed), Benjamin's Sale of Goods (11th edn, Sweet & Maxwell 2020) para 17-003.

[¶ 41.] The RESPONDENT’s role was limited to supplying ISO 8217:2010-compliant bunkers, confirmed as on-spec by tests.<sup>37</sup> Subsequent contamination arose from mixing with old fuel and CLAIMANT’s failure to manage tanks.<sup>38</sup>

[¶ 42.] Accordingly, both the ICA and Volcafe principles confirm liability rests with CLAIMANT, not the RESPONDENT.

### **CONCLUSION TO THE ISSUE 3**

[¶ 43.] In conclusion, the RESPONDENT bears no liability for the reefer cargo losses, which stemmed from the CLAIMANT’s failure to preserve and monitor perishable goods during the blackout. Under the Hague-Visby Rules, the NYPE Charterparty, and the Inter-Club Agreement, custodial and due diligence obligations rested squarely with the Owners. As the proximate cause of spoilage was CLAIMANT’s operational neglect, liability cannot be shifted to the RESPONDENT.

### **ISSUE 4: THE CLAIMANT’S LIEN OVER CARGO IS UNENFORCEABLE**

[¶ 44.] The RESPONDENT humbly submits that the CLAIMANT’s lien over cargo exercised at Genoa was unlawful and unenforceable, as it was imposed for disputed and unliquidated claims, exceeded the contractual limits of the Charterparty, and caused wrongful interference with third-party cargo interests.

#### **A. A LIEN CANNOT BE EXERCISED FOR DISPUTED OR UNLIQUIDATED CLAIMS**

[¶ 45.] On 20 March 2025 at Genoa, the CLAIMANT exercised a lien over 100 containers of cargo worth USD 1 million to secure alleged claims for vessel repairs, fuel survey costs, and replacement bunkers.<sup>39</sup> These sums were contested, unquantified, and not due at the time.

[¶ 46.] In *The Bulk Chile*,<sup>40</sup> the English Court of Appeal held that a lien may only be exercised for “sums due and payable,” not for disputed damages or contingent claims. At Genoa, none of the Owners’ claims were crystallised or admitted; thus, the lien was unlawful ab initio.

[¶ 47.] Similarly, *The Western Moscow*<sup>41</sup> confirmed that wrongful lien for unliquidated damages constitutes breach of charter. The CLAIMANT’s lien here, based on disputed bunker and repair costs, mirrors this wrongful conduct.

<sup>37</sup> Case Record, Factual Matrix, p.5, ¶ 13.

<sup>38</sup> Case Record, Factual Matrix, p.6, ¶ 20.

<sup>39</sup> Case Record, Factual Matrix, p.7, ¶ 23.

<sup>40</sup> *The Bulk Chile* [2013] 2 Lloyd’s Rep 639.

<sup>41</sup> *The Western Moscow* [2012] EWHC 1224 (Comm).

[¶ 48.] As Scrutton<sup>42</sup> observes, a lien is “a possessory remedy, not a coercive device” and cannot be misused as leverage in contested claims. The CLAIMANT’s action represents precisely such misuse.

### **B. THE CLAIMANT EXCEEDED THE CONTRACTUAL SCOPE OF THE LIEN CLAUSE**

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[¶ 49.] Clause 27 of the NYPE Charterparty<sup>43</sup> limits the Owner’s lien to “amounts due under this Charter.” The CLAIMANT’s extended its lien to unliquidated damages for repairs and survey costs — claims falling outside the contractual scope.

[¶ 50.] In *The Cebu*,<sup>44</sup> it was held that lien clauses must be exercised strictly within charterparty limits. A lien imposed beyond the clause’s express scope is unlawful and unenforceable.

[¶ 51.] Moreover, the lien here attached to cargo belonging to independent shippers/receivers, not directly to the RESPONDENT. In *The Spiros C*,<sup>45</sup> courts held that lien rights are construed strictly against Owners where third-party cargo interests are affected, as commercial disruption renders such liens excessive.

[¶ 52.] Therefore, by extending lien rights beyond the charterparty and interfering with third-party cargo, the CLAIMANT exceeded its legal and contractual authority.

### **C. WRONGFUL LIEN CONSTITUTES BREACH OF CHARTERPARTY AND EXPOSES CLAIMANT TO LIABILITY**

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[¶ 53.] Wrongful exercise of lien is not merely unenforceable but amounts to a breach of charterparty, entitling charterers to damages. In *The Western Moscow*,<sup>46</sup> Owners were held liable for commercial losses resulting from an invalid lien.

[¶ 54.] At Genoa, the CLAIMANT’s lien caused substantial disruption to commercial trade: shippers and receivers were unable to access 100 containers, creating exposure to third-party claims and reputational loss for the RESPONDENT.

[¶ 55.] Tetley<sup>47</sup> highlights that misuse of lien against third-party cargo can amount to wrongful interference or even conversion, exposing Owners to claims in tort.

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<sup>42</sup> Scrutton on Charterparties and Bills of Lading, 24th ed., p. 208, Sweet & Maxwell Ltd.

<sup>43</sup> Case Record, Annexure-4 (CP), p.20, Cl. 27.

<sup>44</sup> *The Cebu* [1983] 1 Lloyd’s Rep 302.

<sup>45</sup> *The Spiros C* [2000] 2 Lloyd’s Rep 319.

<sup>46</sup> *The Western Moscow* [2012] EWHC 1224 (Comm).

<sup>47</sup> William Tetley, *Marine Cargo Claims* (4th edn, Thomson Carswell 2008) 1047.

[¶ 56.] By seeking to secure disputed claims through cargo detention, the CLAIMANT acted in a commercially abusive manner inconsistent with good faith performance of charter obligations. Such conduct renders the lien unenforceable and shifts liability for resulting losses onto the CLAIMANT.

#### **CONCLUSION TO THE ISSUE 4**

[¶ 57.] In conclusion, the lien exercised by the CLAIMANT at Genoa was unlawful and unenforceable, as it was imposed for disputed and unliquidated claims, exceeded the contractual limits of Clause 27 of the NYPE Charterparty, and wrongfully interfered with third-party cargo interests. Consistent with *The Bulk Chile*, *The Western Moscow*, and *The Spiros C*, such misuse of lien constitutes a breach of charter and exposes the CLAIMANT to liability for commercial losses caused.

#### **ISSUE 5: THE SEAT OF ARBITRATION IS ENGLAND**

[¶ 58.] RESPONDENT respectfully submits that the juridical seat of arbitration under Clause 26 of the Charterparty is England, not Maldives.<sup>48</sup> The provision draws a clear line between (i) the governing law of the arbitration agreement, expressly designated as English law, and (ii) the procedural rules to be applied, namely the MIAC Rules. The Tribunal must interpret the clause in a manner that harmonises both choices, rather than conflating institutional rules with curial supervision.<sup>49</sup>

##### **A. EXPRESS CHOICE OF ENGLISH LAW AS THE DECISIVE INDICATOR**

[¶ 59.] Clause 26 explicitly provides that “*the law governing this arbitration agreement shall be English law.*”<sup>50</sup> This express designation is decisive. As clarified by the UK Supreme Court in *Enka Insaat v Chubb* [2020] UKSC 38,<sup>51</sup> where parties expressly choose the law governing the arbitration agreement,<sup>52</sup> there is a strong presumption that the juridical seat aligns with that law unless displaced by very clear wording.<sup>53</sup> The Respondent therefore submits that English courts were intended as the supervisory authority.

[¶ 60.] The English Court of Appeal in *C v D* [2007] EWCA Civ 1282 confirmed this approach<sup>54</sup>: an express choice of English law demonstrates an intention for England to serve as the seat, even when institutional

<sup>48</sup> M Hirsch, ‘The Place of Arbitration and the Lex Arbitri’ (1979) 34 *Arb J* 42; A Redfern and M Hunter (eds), *Law and Practice of International Commercial Arbitration* (4th edn, Sweet & Maxwell 2004) para 2-02.

<sup>49</sup> ICC Case No 14470, Final Award (2008), 19 *ICC Intl Ct Arb Bull* 85.

<sup>50</sup> Case Record, Annexure-3 (CP), p.19-20, Cl. 26.

<sup>51</sup> *Enka Insaat ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38.

<sup>52</sup> William W Park, *Arbitration of International Contract Disputes* (2nd edn, Oxford University Press 2012) 1783, 1788–89.

<sup>53</sup> A Yoong, ‘Of Principle, Practicality, and Precedents: The Presumption of the Arbitration Agreement’s Governing Law’ (2021) 37 *Arbitration International* 653, 18.

<sup>54</sup> *C v D* [2007] EWCA Civ 1282.

rules may appear to suggest otherwise. To ignore this designation would render the parties' express choice nugatory and violate the principle of effective contractual interpretation.<sup>55</sup>

[¶ 61.] Commercially too, this makes sense.<sup>56</sup> The Charterparty itself is governed by English law, and maritime arbitration is historically centred in London. It would be incoherent for parties trading under an English law contract to subject their disputes to Maldivian curial law. The express choice of English law must therefore prevail in determining the seat.<sup>57</sup>

### **B. INCORPORATION OF MIAC RULES DOES NOT FIX MALDIVES AS SEAT**

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[¶ 62.] CLAIMANT argues that reference to MIAC Rules necessarily means that the seat is Maldives. This is incorrect. Institutional rules regulate procedure but do not, without express wording, establish curial supervision. The distinction between “venue” and “seat” is fundamental.<sup>58</sup> MIAC Rules may dictate administrative aspects, but the juridical seat remains distinct.

[¶ 63.] In *Shagang South-Asia v Daewoo Logistics* [2015] EWHC 194 (Comm),<sup>59</sup> the High Court held that the incorporation of institutional rules cannot override an express choice of law pointing elsewhere. Similarly, *Sulamérica v Enesa* [2012] EWCA Civ 638 confirms that arbitration agreements must be construed harmoniously with the parties' legal choices, not by letting institutional references displace them.<sup>60</sup>

### **C. THE “CLOSEST AND MOST REAL CONNECTION” TEST CONFIRMS ENGLAND**

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[¶ 65.] Even if ambiguity were alleged, the *Sulamérica* “closest and most real connection” test confirms England as the seat.<sup>61</sup> The test requires identifying the system of law with the strongest connection to the

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<sup>55</sup> Award in ICC Case No 11869 (2011) XXXVI *YB Comm Arb* 47, 57.

<sup>56</sup> Nigel Blackaby, Constantine Partasides, Alan Redfern and Martin Hunter, *Redfern and Hunter on International Commercial Arbitration* (6th edn, Oxford University Press 2015) 439.

<sup>57</sup> Soumil Jhanwar, ‘Jurisdictional Issues in International Arbitration Cases: A Uniformized Approach’ (2020) 9(1) *Indian J Arbitration Law* 142, 154–55.

<sup>58</sup> Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014) 2053; Loukas A Mistelis, *Arbitral Seats – Choices and Competition* in Stefan Kroll et al (eds), *International Arbitration and International Commercial Law: Synergy, Convergence and Evolution* (Wolters Kluwer 2011) 376–77.

<sup>59</sup> *Shagang South-Asia v Daewoo Logistics* [2015] EWHC 194 (Comm).

<sup>60</sup> *Sulamérica Cia Nacional de Seguros SA v Enesa Engenharia SA* [2012] EWCA Civ 638.

<sup>61</sup> Julian D M Lew, ‘The Law Applicable to the Form and Substance of the Arbitration Clause’ in Albert Jan van den Berg (ed), *Improving the Efficiency of Arbitration Agreements and Awards: 40 Years of Application of the New York Convention* (9 ICCA Congress Series, Kluwer Law International 1999) 114, 138.

arbitration clause.<sup>62</sup> Here, both the Charterparty and the arbitration agreement are governed by English law, creating a powerful nexus to England.

[¶ 66.] By contrast, Maldives’ connection is minimal.<sup>63</sup> The only links are the vessel’s Maldivian flag and the MIAC’s administrative base. However, the law of the flag governs registry and navigation, not arbitration, and the institutional presence of MIAC does not confer curial authority. As *Naviera Amazonica v Compania Internacional de Seguros* [1988] 1 Lloyd’s Rep 116 makes clear,<sup>64</sup> courts must anchor arbitration to the system of law most closely connected with the parties’ real commercial intention — which here is England.

[¶ 67.] Further, London is the established hub of international maritime arbitration, offering neutrality, predictability, and a developed jurisprudence.<sup>65</sup> Parties engaging in an English law charter could not reasonably have intended Maldivian supervision. Thus, applying *Sulamérica* and *Naviera Amazonica*, the “closest and most real connection” lies with England.<sup>66</sup>

#### **CONCLUSION TO THE ISSUE 5**

[¶ 68.] For these reasons, the Tribunal should find that the juridical seat of arbitration is England. The express choice of English law in Clause 26, reinforced by *Enka v Chubb* and *C v D*, is determinative. The incorporation of MIAC Rules does not alter this, as confirmed by *Shagang South-Asia* and *Sulamérica*. Finally, the “closest and most real connection” test under *Sulamérica* and *Naviera Amazonica* confirms England as the only commercially coherent seat.

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<sup>62</sup> Christian Borris, *Commentary on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (2012 edn).

<sup>63</sup> Id.

<sup>64</sup> *Naviera Amazonica v Compania Internacional de Seguros* [1988] 1 Lloyd’s Rep 116.

<sup>65</sup> Yarik Kryvoi, ‘London as the World’s Leading Dispute Resolution Hub: Numbers and Challenges’ (17 May 2023, talk delivered at the 2023 London International Disputes Week, Merchant Taylors’ Hall, City of London).

<sup>66</sup> Girsberger and Voser, *supra* n 43, 148; Tapobrata Mukhopadhyay, ‘The Possible Conflict of Law Rules Employed in International Commercial Arbitration to Discern the Governing Law: An Analysis’ (2013) 2(2) *Indian J Arbitration Law* 5.

**STATEMENT OF RELIEF SOUGHT**

**For the above reasons, RESPONDENT respectfully requests the Tribunal to:**

1. Declare that the juridical seat of arbitration is England, as the arbitration agreement is governed by English law, and the reference to MIAC Rules does not displace the parties' express choice.
2. Hold that RESPONDENT duly fulfilled its obligations by supplying ISO 8217:2010 compliant bunkers, and that the engine breakdown arose from the CLAIMANT's own bunker tank mismanagement, for which the RESPONDENT bears no liability.
3. Declare that CLAIMANT is not entitled to hire for the period 13–22 February 2025, as the Vessel was validly off-hire under Clause 22 of the Charterparty.
4. Declare that RESPONDENT bears no liability for alleged reefer cargo damage, such losses being attributable to CLAIMANT's operational failures and its duty as carrier under the Hague-Visby Rules.
5. Declare that CLAIMANT's purported lien exercised at Genoa was invalid and unlawful, as it extended to disputed, unliquidated sums and interfered with the rights of third-party cargo interests, contrary to Clause 27 of the Charterparty.

**And to order that:**

6. CLAIMANT bears the costs of this arbitration, including the fees and expenses of the Tribunal, along with the administrative costs of the proceedings.

**AND/OR**

*Any other reliefs that this Hon'ble Tribunal may deem fit and proper in the interests of justice, equity, and good conscience.*

**AND FOR THIS ACT OF KINDNESS, THE RESPONDENT, AS IN DUTY BOUND, SHALL  
EVER PRAY**