

IMIF BUFFET LUNCHEON

Friday 24th February 2017

Venue: Norton Rose Fulbright LLP, 3 More London Riverside, London, SE1 2AQ

Host: Harry Theochari, Global Head of Transport, Norton Rose Fulbright LLP

Speaker: Nikos Tsakos, Shipowner and Chairman of Intertanko

Subject: "The State of the Tanker sector"



Perils of the seas

- Thursday 24 November 2016, 00:01
- by [Michael Grey](#)



B Atlantic: Maybe the owners should have supplied the crew with depth charges.

The repercussions of the B Atlantic case are still bouncing around in the English legal system

YOU probably recall the song about those unfortunates who "sailed on the sloop *John B*" and their subsequent difficulties with repatriation. Rather closer to real life was the fate of crew of the bulker *B Atlantic*, which was seized by the Venezuelan authorities after a quantity of cocaine was discovered in an underwater search in Lake Maracaibo, just before the ship was due to sail with a cargo of coal.

That was in 2007, but the repercussions of this case are still bouncing around in the English legal system, and were last week the subject of an excellent lecture by Simon Moore and his colleague

Paul Hofmeyr of Stephenson Harwood, at one of the regular International Maritime Industries Forum meetings in London.

It was the more extreme demonstrations of justice, Venezuelan-style, which brought this case to everyone's attention when the saga first began. The whole crew and the ship were initially detained, and while most of the crew were eventually released, the master and second officer (who was also the security officer) were put on trial, found guilty in 2010 and given heavy custodial sentences for complicity in drug smuggling, despite a lack of evidence.

Although the intervention of the Ukrainian government seems to have been efficacious in securing the release of these captives relatively soon after their trial, the ship was not released and was subsequently abandoned by its despairing owners, before it was actually confiscated by the authorities after the trial.

The 24-year-old ship was heavily insured and although ship values had plummeted in the aftermath of the bank crisis in 2008, the owners claimed on their war risk insurance for the loss of their vessel. Insurers rejected the claim.

The ensuing legal case centred on the correct interpretation of standard war risk clauses, and whether an owner is covered for detentions and confiscations of a vessel where the detention is in connection with drug smuggling. The judge at first instance agreed with the insurer's rejection but at a subsequent trial the judge found in favour of the owners, which to put it bluntly, put the cat among the pigeons and produced clouds of gloom in the insurance market. However, on appeal, this decision was reversed.

There were all sorts of interesting angles to this convoluted story. For a start, the passage of time, its abandonment and the market, had made the ship virtually worthless, but the \$23m claim was clearly the "pot of gold" that kept the parties heavily engaged. Indeed, even though the appeal has been lost, the owner has now applied to the Supreme Court for permission to appeal to this body. It is what is at stake that counts.

There had been clearly no guilt attached to the owner in the smuggling of the drugs adhering to the vessel's underwater parts, so it did seem somewhat unfair that the owner was being in effect punished by the permanent loss of his ship, whatever its value. It was, however, found to be immaterial in law as to what part the owner might have played in all this and the case has revolved on the main issue of the exclusion claimed by the insurer. It was, said Mr Moore, heavily fought on the facts.

It was also revealed that the owner had been warned that the war risk policy was not adequate insurance for this sort of risk and special insurance ought to have been bought. It had even been suggested that the whole case was a "put up job by the Venezuelan government" in order to acquire a free ship, which seemed more amusing than plausible.

Dreadful places

I would have made a hopeless lawyer, because it always seems to me that the peripheral issues of these complex cases are always rather more interesting than the dry as dust interpretations of what might constitute "malicious acts by third parties". I would have argued that anyone sending a ship to a place where the legal regime was so flaky was foolhardy in the extreme. The outrage of the *Nissos Amorgos* case is one that fails to fade in the memory, while risking the lives and liberty of any crew in a place where drugs cartels are out of control, must surely be regarded as irresponsible.

The use of the war risks policy might have been inappropriate, but if we listen to the political rhetoric about the “war on drugs”, it surely would have been, in practical terms, a “war zone” which the ship entered on its final voyage.

It is also very difficult to forget about the situation of ships' crews in these dreadful places, with no one in their right mind believing that the crew of a ship, however vigilant, can prevent the activities of underwater drug smugglers. The ship, I have been told, ought to have employed its own underwater protectors to maintain sub-sea vigilance while it was in port. Maybe the owners should have supplied the crew with depth charges.

However, can anyone be absolutely assured that the so called “independent underwater team” has not been penetrated by the cartels? It gets more like a plot dreamed up for a James Bond film.

As for this \$23m pot of gold for which everyone is striving, I'd like to think that the former master and second officer, who clearly will not be looking for further voyages to Venezuela and have ended up with criminal records, might be briefing their own counsel to sue for a worthwhile chunk of this sum to compensate them for their ordeal, which ought, perhaps, to be added to the list of more regular “perils of the sea”. It might, I would suggest, be a very proper use of the money.

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