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Worldwide: MV Saldanha

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This case raised the question of whether the detention by pirates of the MV SALDAHNA (the 'Vessel'), or the effects of piracy entitled charterers to argue that the vessel was off-hire in accordance with cl.15 of the NYPE form of Charterparty agreed by the parties in the Charterparty dated 25th June 2008.

The Vessel was seized by Somali Pirates on the 22nd February 2009 and was sailed to waters close to the town of Eyl, Somalia where it remained until the 25th April 2009. The Vessel was released and by the 2nd May 2009 had reached a position close to where it was at the time it was seized.

Generally under a time charter hire is payable continuously unless charterers can bring themselves within any of the exceptions provided for in the Charterparty. In this instance the Charterparty provided that:

"strike of officers and/or crew or deficiency of...stores, fire, breakdown or damage to hull, machinery or equipment, grounding, detention by average, accidents to ship or cargo, dry-docking for the purpose of examination or painting the bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost..."

The Charterers refused to pay hire for the Vessel for the period from when it was seized up to the date on which it had returned to the position at which it was seized being the 2nd May 2009. They argued the event fell under the exceptions within clause 15 for three reasons:

- a. The event amounted to an '*average accident*';
- b. The incident fell under the '*default and/or deficiency of men*' clause because the crew had failed to take recognised anti-piracy precautions before and during the attack and that this constituted a 'default of men' exception
- c. The event fell under the '*any other cause*' clause

In hearing an appeal from the arbitration Mr Justice Gross agreed with the tribunal finding against the charterers for the following reasons:

1. The incident could not be described as an '*accident*', and that an '*accident to the ship*' was not a usual expression used to declare that the ship had been seized by pirates.
2. The '*default of men*' clause had been amended over the years to include the further wording: '*including strike of officers and/or crew*'. This focused the clause to address scenarios where there was a refusal to perform duties and although this did not restrict the clause to these scenarios it was a pointer towards a narrower construction of the exception. The Judge agreed with the tribunal that a 'deficiency of men' is where the Owner cannot provide enough men and a 'default of men' is where the men refuse to work despite being sufficient in number, and on this basis the charterers had failed to bring their situation into the meaning of this wording.
3. The Judge distinguished between '*any other cause*' and '*any other cause whatsoever*' referring to a judgment by Rix J in the *Laconian Confidence* [1997] 1 Lloyd's Rep.139, at p. 150-151. In this case it was held that in the absence of '*whatsoever*' the phrase '*any other cause*' should be construed '*in some limited way reflecting the general context of the charter and the clause*', and '*that the un-amended words...do not cover an entirely extraneous cause*'. The judge rejected the charterers

submissions that 'any other cause' was a sweeping up expression to prevent '*disputes founded on nice distinctions*' and held that seizure by pirates was a totally extraneous cause.

As a result the Judge held the charterers could not bring themselves within the ambit of clause 15 of the Charterparty and he went further to say that even within a bespoke clause dealing with seizure of the vessel at clause 40 of the Charterparty, piracy was not covered. The charterers were liable to pay the hire and although it was noted that this was a misfortune for the charterers he held that there was no reason to distort the meaning of clause 15. The Judge commented that if parties wish to cover piracy this could be done expressly in the 'seizures' or 'detentions' clause.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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Gibraltar is a territory outside the EU customs union, yet in close proximity to Spain, France and Portugal.

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In our bulletin on 30 July 2009 we reported on the decision of Justice Moore in the Federal Court of Australia in Leonie's Travel Pty Ltd v International Air Transport Association, Qantas Airways Limited & Ors. Qantas was found not liable to pay travel agent commissions and to have not breached its Contract with the travel agents. That decision has now been overturned on appeal to the Full Court of the Federal Court of Australia in Leonie's Travel Pty Ltd v Qantas Airways Limited [2010] FCAFC 3

[Survey of Shipping Primary Equity Offerings in the 2009 U.S. Public Market \(Holland & Knight\)](#)

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[EPA Reviewing PCB Rules and MARAD Foreign Transfer Approvals \(Blank Rome LLP\)](#)

On April 7, 2010, the Environmental Protection Agency (EPA) published an Advance Notice of Proposed Rulemaking (ANPRM), 75 Fed. Reg. 17,645, announcing its intent to reassess its regulations governing the existing use of polychlorinated biphenyls (PCBs) under the Toxic Substances Control Act (TSCA).

[Commencement of laytime: common pitfalls and](#)

errors (Clyde & Co)

Determining when laytime commences is essential for both owners and charterers. **Mondaq 2010. All Rights Reserved**

DOT Issues NPRM Relating to DBE Requirements (Foley & Lardner)

On May 10, 2010, the United States Department of Transportation (DOT) issued a Notice of Proposed Rulemaking (NPRM) regarding additional proposed changes to the Disadvantaged Business Enterprise (DBE) regulations at 49 CFR Part 26 (Part 26), applicable to all recipients of federal grants through an agency within DOT, including the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA).

Container Detention Charges Decision Sparks Debate (DLA Phillips Fox)

The New South Wales Consumer, Trader & Tenancy Tribunal's recent decision in *D V Kelly Pty Ltd v China Shipping (Australia) Agency Co Pty Ltd* [2010] NSWCTTT 136 has caused considerable debate and cast doubt over the enforceability of container detention charges. The case concerned the distinction between liquidated damages and penalty clauses in contracts, and has already caused ripples throughout the entire Australian shipping industry.

Decarbonising The Shipping Sector - Extension Of The EU Emissions Trading Scheme (Freshfields Bruckhaus Deringer)

It is estimated that approximately 75 per cent of the world's trade is carried by ships and with increased globalisation this figure is set to increase.

New Proposed FAA Re-Registration Requirement (Foley & Lardner)

All owners, lessors, and lessees of U.S.-registered aircraft and holders of security interests and aircraft mortgages in such aircraft, should be aware of a new proposed rule that is about to be adopted by the Federal Aviation Administration (FAA).

New Commercial Court Decision will Impact on Aviation Lessors (Ince & Co)

The decision of the Commercial Court in London in *ACG Acquisition XX LLC v Olympic Airlines SA* in a judgment delivered on 21 April 2010 will have sent shockwaves through the operating lessor community.