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Owner's right not to proceed via Gulf Of Aden

On account of the recent number of pirate attacks in the Gulf Of Aden, many owners have tried to employ the terms of the BIMCO Standard War Risk Clause for Time Charter 1993 (CONWARTIME 1993) to enable them not to proceed via the Gulf Of Aden as instructed by the charterers.

However the owner's legal right to do so under the CONWARTIME 1993 has not been defined until the case of The Triton Lark (2012).

In that case the master and the owners did not agree to transit the Gulf Of Aden which the Charterers insisted as many vessels were able to transit the Gulf Of Aden under naval escort.

The owners relied on clause 2 of the CONWARTIME 1993 which provided "The vessel unless the written consent of the owners be first obtained shall not be ordered to or required to continue to or through any port or place area or zone...where it appears that the vessel, her cargo, crew or other persons on board the vessel, in the reasonable judgement of the master and/or the owners, *may be, or are likely to be*, exposed to War Risks. Should the vessel be within any such place as aforesaid, which only become dangerous, or is likely to become dangerous, after her entry into it, she shall be at liberty to leave it."

It was held by the High Court on appeal that the meaning of the words 'may be, or are likely to be' were not two different degrees of risk but had the same meaning, and the only test was a 'real likelihood' whereas the arbitrators had used an incorrect test of a 'serious risk'.

It was also held the words 'exposed to War Risks' had a natural meaning of 'a dangerous situation', whereas the charterers had submitted this must be interpreted to mean the vessel being subject to a piracy attack or a failed attack and the owners submitted this meant simply being exposed to a risk of piracy.

In conclusion the CONWARTIME entitled an owner / master not to proceed to a place if there

was a real likelihood that the vessel would be exposed to acts of piracy which would make that a dangerous place. What is dangerous is a question of fact and may change with the situation. The situation to be considered would be that at the time the master / owners decides not to proceed on the voyage as instructed by the charterers. Further this is an objective test and the owners' judgement must be reasonable. Even if the owners had not made all possible enquiries will not automatically render his judgement unreasonable if it can be shown that had all necessary enquiries been made, this would have shown the owners' judgement to have been reasonable.

If the owners / master have satisfied their obligations as defined above under the CONWARTIME, the prolongation of the voyage via the Cape Of Good Hope would not be a deviation and further the charterers would continue to be liable to pay hire during the voyage via the Cape Of Good Hope.

Owner's legal rights under the CONWARTIME remains the same applies regardless whether the vessel's war risks insurance policy is amended to include the risk of piracy in view War Risks is defined under the CONWARTIME to include acts of piracy.