

# THE CHARTERER

THE CHARTERERS P&I CLUB NEWSLETTER

January 2008

## CORRESPONDENTS' EXPERTISE VITAL TO GOOD SERVICE

*By Ken Norman – Editor*

We at the Charterers Club are conscious of the fact that we only meet the majority of our correspondents if there is a serious casualty, if we visit their office or if they visit us in London. For some correspondents none of these things may come to pass but nevertheless a relationship continues to exist between The Club and their man on the spot without the two parties ever having met. It is a curious situation but one of the many wonders of the correspondent network which we value.

When The Charterers Club opened its doors for business over twenty years ago it published a list of correspondents and whilst the list has changed we are pleased to say many of those names are still listed today. Of course, the opportunity to act for the Club has increased considerably since then as charterers P&I cover in those days did not produce the number of claims and disputes which it does today. This is due partly to the size of our business but also to the change in the contractual position charterers face and which is far more onerous now than it has ever been. More and more liabilities have been placed at the door of charterers over the last

five years prompting a manifold increase in incidents requiring the use of correspondents worldwide.

This increase in liabilities and claims has gone hand in hand with the expansion of the Charterers Club portfolio which has doubled in the last five years and now covers in excess

of 8,000 vessels annually. Much of this increase is due to The Club's first class reputation for claims handling which is due in no small measure to the reliable service given by its correspondents and also by other experts who are called upon at short notice to assist our claims team. If this reputation is to be maintained then we must continue to find new ways of enhancing our service which includes greater use of the expertise which exists within The Club's



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correspondent network. This newsletter contains a mixture of advice, anecdotes and information which we hope will be interesting to the network and, of course, to our clients. We also hope it will encourage correspondents to air their views and share their knowledge on a regular basis to help us serve our clients more effectively.

## **The Achilleas – No overturn of crucial decision on overrun – See page 4**

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# THE CARIBBEAN – A DIFFERENT PERSPECTIVE

*By Rupert Steer – Caribbean correspondent*

When instructing a surveyor to make an urgent visit to a vessel, will I ever grow accustomed to being told: “Sorry, I have something to do in town today”? Is there a solution to Carnival that means that someone will attend during the event, rather than waiting for the music to stop and the rum to run dry before thumbing the diary to see when there might be an available window, perhaps next week?

After twelve years spent as a correspondent plying the blue waters of the Bahamas down to the muddy rivers of Guyana I have come to the conclusion that few nations in the region recognize a common bond with their neighbours. There is more trade between Felixstowe and Antigua than between St. Lucia and St. Vincent. Trinidad and Barbados are seemingly always in one dispute or another, whether it's fishing rights, mineral rights, or supplies of natural gas. The Netherlands Antilles are breaking up their federation, but missed the date in 2006, maybe 2007.

Of the fifteen CSME (Caribbean Single Market and Economy) states committed to full integration at various times over the last ten years, only two have adopted the keystone Caribbean Court of Justice as their final court of appeal, three maintain exchange controls, and none have fully cleared the way for mobility of labour.

A UK passport holder is free to travel between Grenada and Guadeloupe, but the French islands remain a part of Europe, rather than the Caribbean, so the Grenadian needs a visa. A \$1,000 work permit is required to do business in Grand Cayman (unless the Chief Immigration officer can be persuaded otherwise), but only a dark suit is required in



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Trinidad. For a meeting in St. John, USVI, leave the suit at home, and if it is in Bermuda, just wear the top half.

If Barbados is “Little England”, then the region is “Little Europe”, boasting nations speaking English, French, Spanish and Dutch each as a first language, but even the English speaking territories are divided by a common tongue. Ask for akee in Jamaica, and you will be given “vegetable-brain”, eaten with salt fish. Ask for akee in Barbados and you will receive a cluster of small round fruit with a crisp skin, popped to expose the thin green flesh and large seed.

But behind the politics and idiosyncracies lies the human face of the Caribbean. Aside from the daily frustrations, being a correspondent in the Caribbean has its compensations, not least of which is the outlook it affords on life. Years spent crossing London Bridge twice a day had led me to the conclusion that there was no alternative, until round one of life's hidden corners I found the way to this beautiful island which has become home. This new perspective has me wondering whether a people that puts life before work, takes time out to talk to the next person in the queue, produces a disproportionate number of centenarians, smiles more than frowns, gets by where few

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things work for very long, laughs at life's inconveniences, and only reads about "road rage", is holding on to something lost long ago in more developed places, something truly worthwhile to pass on to the children. There is the common ground of the Caribbean.

So, to paraphrase Mr. Spock of Star Trek fame, the message from the many peoples of the Caribbean is: "Live slow and prosper". I continue to struggle with the concept, but perhaps after another twelve years I will have it mastered.

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## SPEED IS THE KEY TO GOOD SETTLEMENTS IN NORTH AFRICA

*By Shtewi Legal and Pandi Services – Tripoli, Libya*

Libya has undergone the biggest political change since the revolution in 1969. The Libyan Government, as a result of a concerted effort to re-establish links with the Western powers, is now enjoying an unprecedented interest in their country and its resources. Several large corporations including Shell Transport and Trading and Texaco Oil have opened offices in Tripoli and have negotiated contracts with the local oil companies to redevelop their oilfields. Also, further offshore drill test sites are being established.

This upsurge in interest plus the unprecedented oil price has resulted in a booming economy with the Government announcing several major projects relating to infrastructure and communications. In addition, there are plans to build a completely new Freeport outside Tripoli and to establish a Hong Kong style International commercial base including several new hotels to accommodate the upsurge in visitors.

This change has resulted in a substantial increase in International trade as well as an increased demand for technical equipment and building materials for oil exploration both ashore and offshore and for the purpose of updating existing oilfields.

Unfortunately, this increase in International awareness has not extended to the judiciary which often gives decisions contrary to the

existing law. Despite the fact that Libya has ratified the Hague Rules, rarely will ship owners and charterers be given the benefit of the exceptions contained within those rules. In addition, in cases involving cargo, judges tend to find in favour of the importer, usually a government body. In these circumstances it is essential to maintain a pragmatic view when handling claims and an early settlement, even before the vessel has departed, very often produces the least expensive result.

Face to face negotiation is still the way business is done in North Africa and maintenance of trust is essential. The correspondent's biggest weapon is to be able to tempt claimants with an immediate settlement which, although it may be less than they would probably receive in the long run, is more attractive than protracted arguing and court action. Defendants, when dealing with the local correspondent, must give clear instructions and be prepared to act quickly when a settlement is agreed.

Any deviation or delay will not only jeopardise chances of a satisfactory settlement but can seriously compromise the correspondent's standing and his position in future cases. It should be remembered that most things often move slowly in the MAGHREB, except where money is at stake.

# THE *ACHILLEAS* – NO OVERTURN OF CRUCIAL DECISION ON OVERRUN

By Ian Ross – Ross and Co. Solicitors

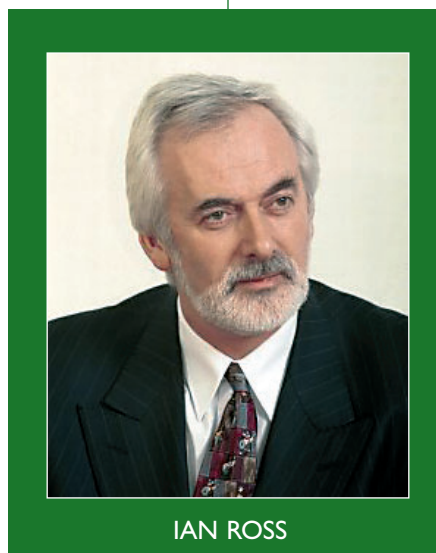
Few shipping cases can have generated as much interest in recent months among maritime lawyers and the shipping interests they represent, as the *Achilleas*. It has been a long wait and a number of live disputes under charterparties have been kept on ice while three distinguished judges of the Court of Appeal have been debating whether to decide in favour of shipowners or charterers. Now the wait is over. The Court gave their judgment a few weeks ago and a number of experienced practitioners are surprised at the outcome.

Firstly some background. Most London arbitrations are settled amicably long before they reach a full hearing and the publication of an Arbitration Award. *Transfield Shipping Inc v Mercator Shipping Inc* – more popularly known as the *Achilleas* is now a very notable exception to that general rule. Not only did the dispute make its way to a full award from three highly experienced London Arbitrators – David Farrington, Bruce Buchan and Christopher Moss, but the award then became the subject of an appeal to the High Court and then yet a further appeal to the Court of Appeal, (who gave their judgment on September 6th 2007). So what was all the legal fuss about?

The case concerned “overrun”. Overrun has been defined as “the period of time from when a vessel should have been redelivered in accordance with the charterparty until her time of actual redelivery”. In other words overrun is when the time charterer fails to redeliver the vessel at the agreed time in the

charterparty. The particular issue which arose in the *Achilleas* was what was the level of damages the charterers should pay for late redelivery.

The measure of damages. The judges at first instance and also at the Court of Appeal were presented with two distinct and fundamentally opposed approaches and views, one the traditional view and the other a much newer way of looking at such claims. The traditional approach to delayed redelivery is that the measure of damages should be the difference between the market rates on the one hand and the charterparty rate on the other hand for the period from the time when the vessel should have been redelivered until the time of her actual redelivery.



The new way looks instead at the loss of profit on the entire subsequent charterparty and says there is no reason why those sums should not be claimed.

The difference between the two approaches is not merely an academic one. In the *Achilleas* the damages payable by charterers under the traditional approach were US\$158,301.17. The damages applying the new approach and calculating owners loss of profit on the subsequent charterparty were US\$1,364,584.37.

Those arguing for the traditional view pointed to a body of law and practice which is found in leading English cases and leading textbook

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writers. There ample support is found, so it was argued in the Court of Appeal, for the traditional view. The traditionalists argued that no court should depart from such an approach unless satisfied that they are clearly wrong. It was also argued that the rule was simple, certain and fair and above all one which was adopted in practice by the shipping market.

Contrary views. The owners of the *Achilleas* whose vessel had been redelivered late said that the traditionalists had greatly overstated the position. There were in fact no English cases which had in fact decided as a matter of absolute principle the damages which should apply in a case like this. Whichever way the charterers tried to argue it, the fact remained, (so owners said) that they had undoubtedly suffered a loss of US\$ 1,364,584.37 on account of charterers breach of contract. On that basis they were entitled to be put in the same position as if that breach had never occurred. Owners accepted that they were not entitled to recover in respect of any losses which even though they were caused by the breach were too remote. However, no one could ignore the fact that the arbitrators, having heard all the evidence of the parties to the contract thought that those losses were not too remote.

What did the judge decide and what did the English Court of Appeal decide? Were damages to be limited to approximately US\$160,000 or US\$1.3 million?

Having reviewed all the arguments and authorities the Judge at first instance had no doubt that the traditionalists were wrong. He said:

“To award damages in this case on the basis of the difference between the market rate and the charter rate for the overrun would compensate the owners for only a fraction of the true loss caused by the breach.” He also said:

“I have not come to the conclusion I have reached with any sense of regret. As Lord Atkinson observed .....it is a general principle of law that in giving damages for breach of contract the party complaining should so far as it can be done by money be placed in the same position as he would have been if the contract had been performed. That is a ruling principle. It is a just principle.”

Did the Court of Appeal accept or reject the approach adopted by the majority of arbitrators and the judge at first instance? The approach was accepted – no overturn they said. They emphasized the importance of matters such as the likely business knowledge of the charterer. They thought that a charterer of a time chartered vessel would know and if not certainly ought to know that a new fixture was very likely to be entered into by the owner so as to follow as closely as possible the redelivery of the vessel. That conclusion was reinforced by the fact that this particular charterer was well aware of the chartering market and should have been wary about the danger of late delivery given their background knowledge. They held that there was no fixed rule that damages for late delivery of a time chartered vessel was limited to the overrun period measure. On that basis the Court of Appeal decided that owners were entitled to the full sum of their claim plus interest plus costs.

## SUMMARY

The decision in the *Achilleas* has been watched and waited with great anticipation by owners and charterers alike. It is likely to have a big impact on the negotiations for damage compensation arising out of late delivery. Changes are likely to be needed to the tactics to be adopted by charterers once late delivery is known to be unavoidable. Of course the case could reach the highest court in the land – the House of Lords, but until then the *Achilleas* sounds a clear note of warning for charterers and their advisers.

# HUMAN TOUCH WORKS WONDERS

*By Peter Jones – Managing Director of Shipserve Piraeus.*

When the Managers of the Charterers Club invited us to consider being their correspondent in Greece, it was necessary for us to consider carefully whether we were suited to assist them from a charterer's perspective, for since the coming into being of SHIPSERVE on 20th February 1979, we had solely confined our range of services to those providing Protection and Indemnity cover for shipowners. This was not surprising since Piraeus is one of the most important, if not the most important, shipping centre in the world and is predominately the domain of the shipowner and those serving his day to day requirements. Therefore to take up the interests of charterers may have prejudiced our position with our established shipowner clientele.

In deciding to make ourselves available as correspondents for the The Charterers Club we considered there would be no conflict providing we made clear in every case, who our clients were and that all parties fully understood whose interests we were protecting.

We are pleased to say that acting for charterers interests has proven to be harmonious and that our fears of causing prejudice unfounded. In fact it is fair to say that those shipowners with whom we have come into contact have welcomed our involvement, seeing it as a positive factor in achieving prompt resolutions.

Here in Greece it is crucial to readily understand the culture of the players. Good service and the resolution of problems require appreciation of that culture and it has taken

many years to develop such appreciation. The art of the game is patience, understanding and the ability to develop relationships; in other words, the human touch. The vast majority of problems are capable of resolution without litigation or arbitration provided they are given dedicated attention.

There is a mine of information in the community here. It is that information which causes us to obtain a great deal of knowledge, and to put it to good use. There is always someone within the immediate vicinity to tap into for information. There is more reciprocity here than is realised.

We look upon ourselves as basically and essentially a field extension of the P&I Underwriter; their eyes and ears so to speak.

Throughout the world, the job of the correspondent is to give the best possible service and advice to the client (charterer or shipowner) and his insurer as quickly as possible. Speed is of the essence and no correspondent could survive in Greece if he did not respond to all calls with alacrity.

Fortunately, the transformation in technology has made it possible for parties to communicate at the touch of a button, speeding up claims handling and generally making work easier and more efficient. While no one doubts the advantages that these advances have brought to the industry when it comes to personal service we prefer the human touch.

We are proud to belong to a worldwide network of correspondents, who we sincerely believe feel as we do.

# 2007 GROWTH AND 2008 DEVELOPMENTS

We are pleased to advise that the Club continues to expand and now insures around 190 actively chartering clients. In line with this increase in activity the Club has been recruiting additional staff, most notably Emma Rios and Yang Shi, who both joined the claims team; as well as Sam Castle and Carolyn Murray, who have been recruited to help with claims administration.

We have also recently appointed Heinz Gohlish (see page 8) as Underwriting Manager, to take on overall responsibility for the production of all underwriting documentation and to assist in general underwriting duties. Gilles Legue will also be joining the Underwriting team as an Underwriting assistant in early 2008, having previously worked for a Parisian Insurance broker.

Further expansion is planned during 2008 and the Club is actively recruiting at present. We are presently setting up a servicing centre in Hong Kong that will concentrate on providing FD&D service to clients in that region. During 2008 we also have plans for the creation of service operations in both Dubai and Shanghai in order to provide regional clients with the benefit of local service in those time zones.



## CONTACT DETAILS

Correspondents are reminded that they should immediately notify The Club of any changes to their details otherwise this may cause instructions to be delayed.

The Club continues to list correspondent's details in the Terms and Conditions book, but we now regard the details displayed on The Club's website to be the official version as changes can be made at short regular intervals thus ensuring accuracy. Correspondents are requested to regularly check their details held on The Club's website and inform us of any errors without delay.

# HEINZ GOHLISH APPOINTMENT

Heinz Gohlish originally joined The Charterers Club in 2003 as an underwriting consultant working on special projects in support of underwriting and marketing objectives. Since that time his expertise has been invaluable during, what has been, a prolonged period of expansion in the Club's membership and scope of business.

We are delighted to announce that Heinz has successfully applied for the position of Underwriting Manager and will have overall responsibility for the underwriting back – up processes as well as developing, managing and training an administration team to enhance customer service. His appointment recognises the Club's expanded and more diverse membership base, as well as the Club's intention to continuously review and develop its management systems. Heinz will also be one of the points of contact for general underwriting enquiries and assist in underwriting new business and negotiation of renewals, reporting to the Class Underwriter Gavin Ritchie. An area where his particular experience will be

beneficial is in the management of the Club's European, American and Middle East membership.

Heinz is returning to familiar ground having held a senior position in a major London based P&I Club as a specialist in charterers' liability for over 12 years, underwriting the Club's complete chartering portfolio as well as mutual members in Europe, Africa and the Middle East. Subsequently, Heinz was the Executive Director of the liability department for a Lloyd's broker for four years. He was most recently employed for ten years in various marine consultancy projects, primarily for ship and port operators but also for port authorities and banks. Heinz also brings practical sea going experience to the Club having served at sea in the Canadian Navy for over ten years on a variety of ships as a navigator and operations officer.



HEINZ GOHLISH

Heinz's post graduate degree is in economics and he is a member of the International Association of Maritime Economists (IAME) as well as the Nautical Institute (MNI).

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