

INTRODUCTION

1. The Tribunal issued a Partial Final Award in this Reference on 8 February 2021 (“**the First Partial Final Award**”). This is our Second Partial Final Award in this Reference.

THE ARBITRATION PROCEEDINGS

2. The procedural history of this Reference is dealt with compendiously in the First Partial Final Award and is not repeated.
3. At the conclusion of the Phase I(b) hearing, on 5 February 2021, the parties indicated that, having reflected further, it would be possible to have all aspects of liability dealt with in advance of the Phase II hearing. Accordingly, the Tribunal ordered that closing submissions in Phase I(b) would be in writing, to be exchanged on 26 February 2021 and to be followed by supplementary submissions in writing (if so advised), exchanged on 5 March 2021 and limited to 20 pages if possible.
4. The parties duly exchanged written submissions in respect of Phase I(b) in accordance with the Tribunal’s direction.

THE ISSUES

5. This Second Partial Final Award accordingly addresses all outstanding issues of liability.

THE CONTENTIONS, RELEVANT LEGAL PRINCIPLES AND CONCLUSIONS

6. Set out in the attached reasons which form part of this Second Partial Final Award are (i) our findings of fact, (ii) a summary of the rival contentions of the parties on the outstanding issues of liability, (iii) the legal principles to which we have had regard in reaching our conclusions on these issues and (iv) our conclusions on these issues.

DISPOSITIVE AWARD

NOW WE, Julia Dias QC, Stephen Hofmeyr QC and Sir David Steel, having taken upon ourselves the burden of this reference and having carefully and conscientiously read and considered the submissions and documents put before us and given due weight thereto, **DO HEREBY MAKE, ISSUE AND PUBLISH** this our **SECOND PARTIAL FINAL AWARD** as follows:

- (a) **WE FIND HOLD AND DECLARE THAT** MSC was in breach of clause 78 the Charterparty in shipping the Cargo otherwise than in accordance with the IMDG Code.
- (b) **WE FIND HOLD AND DECLARE THAT** MSC was in breach of Article IV rule 6 of the Hague Rules in shipping the Cargo without giving Owners full information as to its hazardous characteristics such that Owners did not consent to such shipment with knowledge of the dangerous nature and character of the Cargo.
- (c) **WE FIND HOLD AND DECLARE** (by a majority) **THAT** MSC was not negligent in so shipping the Cargo.
- (d) **WE FIND HOLD AND DECLARE THAT** MSC's breaches of Charterparty were an effective cause of the explosion.
- (e) **WE FIND HOLD AND DECLARE THAT** Owners failed in breach of Article III rule 1 of the Hague Rules to exercise due diligence to provide a seaworthy vessel in that the pipework of the Vessel's CO₂ system had been incorrectly installed and this should have been detected by a reasonably diligent technician during the periodic scheduled inspections of the system.
- (f) **WE FIND HOLD AND DECLARE THAT** Owners did not fail to provide a seaworthy vessel in any other respects.
- (g) **WE FIND HOLD AND DECLARE THAT** Owners' failure to provide a seaworthy vessel had no causative impact in relation to the explosion or the crew's response thereto.
- (h) **WE FIND HOLD AND DECLARE THAT** Owners did not fail properly and carefully to carry, keep or care for the Cargo in breach of Article III rule 2 of the Hague Rules.
- (i) **WE FURTHER AWARD AND DIRECT** that all matters relating to party costs and the incidence as between the parties of the Tribunal's costs and expenses of this Second Partial Final Award are reserved.
- (j) **WE FURTHER DECLARE** that this **SECOND PARTIAL FINAL AWARD** is **FINAL** as to the matters herein determined.

We **RESERVE JURISDICTION** to ourselves to make a further Award or Awards as may be appropriate in respect of any outstanding issues between the parties.