Neutral Citation Number: [2024] EWHC 2494 (Comm)

Case No: CL-2020-000615

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 07/10/2024

Before:

LIONEL PERSEY KC
SITTING AS A JUDGE OF THE HIGH COURT

Between:

STOURNARAS STYLIANOS MONOPROSOPI EPE	**Claimant**
- and -	
MAERSK A/S	**Defendant**

- - - - - - - - - - - -
- - - - - - - - - - - -

Alexander Wright KC and **Tom Nixon** (instructed by **Watson Farley & Williams LLP**) for the **Claimant**
John Passmore KC (instructed by **Campbell Johnston Clark**) for the **Defendant**

Hearing Dates: 23-25 and 29 January 2024
- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 07 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.
.....

Lionel Persey KC :

Introduction

1. Stournaras Stylianos Monoprosopi EPE ("**the Claimant**") was the purchaser of three consignments of copper shipped from Dubai pursuant to three purchase contracts made between the Claimant and Alembery General Trd Fzc ("**the Shippers**"). The 22 containers in which the consignments were shipped did not, however, contain copper. As was discovered upon their arrival in Piraeus, they had in fact been stuffed with worthless concrete blocks. The Claimant obtained default judgment against the Shippers in Dubai. The Shippers, however, had disappeared and the Dubai judgment remains unsatisfied.

2. The Claimant then turned its attention to other possible avenues of recovery. The Defendant ("**Maersk**") is the owner of the containership MAERSK KLAIPEDA ("**the Vessel**") on which the containers were shipped. It issued three clean Bills of Lading in respect of the cargo. The Claimant contends that Maersk should not have done so, alleging that Maersk knew or ought to have known that the cargo actually stuffed in the containers weighed far less than the Shippers had stated in their shipping instructions. Maersk ought, the Claimant says, either to have claused the bills of lading or not issued them at all. This is denied by Maersk.

3. I should at the outset record my thanks to Mr Alexander Wright KC and Mr Tom Nixon for the Claimant and to Mr John Passmore KC for Maersk who presented the parties' respective cases most ably and who provided me with considerable assistance.

The witnesses

4. The Claimant called one witness of fact, Ms Alexandra Kokiza, their head accountant. She had been in her position for 18 years. She was a good witness and is clearly a loyal employee of the Claimant. The principal of the Claimant did not give evidence although he was more particularly involved with the circumstances in which the shipment was made.

5. Maersk called four witnesses of fact. They were all good witnesses who gave their evidence with complete candour. It was clear to me that each of them was experienced and good at his job. Although they either did not have any experience or any recollection of these particular shipments, they gave helpful evidence about the way in which shipments are booked, the systems which Maersk uses and the way in which bills of lading come to be issued. The Maersk witnesses were as follows:-

(1) Mr Dolphin Raj. He is a Customer Experience Consultant based in Dubai. He has been employed by companies within the Maersk group for much of the time since 2012.
(2) Mr Sandeep Kasalkar. He is a Manager of the Cargo Execution Team.
(3) Mr Vinay Sriganesh. He has been with Maersk since 2004 and in his current role he handles process and system design for export documentation.
(4) Mr Alexandros Chronopoulos. He is a manager employed by Maersk at their Piraeus office.

The facts

The Shipment

6. The Claimant entered into three contracts ("**the Contracts**") for the purchase of copper scrap from the Shippers. These contracts were:

(1) No. 093110 dated 14 November 2019 (the "**First Contract**");
(2) No. 11310 dated 16 November 2019 (the "**Second Contract**"); and
(3) No. 10310 dated 16 November 2019 (the "**Third Contract**").

7. The price payable under the Contracts for the copper was based on a stipulated price per metric ton. This ranged from US$3,200/MT under the First Contract to US$4,700/MT under the Third Contract. As such, even if the containers shipped *had* contained copper rather than concrete blocks, a fraudulent over-declaration of the weights shipped would have led to the Claimant being required or potentially required to pay substantially more than it ought to have done.

8. Pursuant to the terms of the Contracts, the Claimant was to pay to the Shippers an advance (of varying amounts) against the receipt of an invoice. The Claimant duly paid the advance payments in the total sum of USD 279,261 over 14 to 19 November 2019 (the "**Advance Payments**"). As set out below, the Claimant does not now pursue any claim to recover the Advance Payments.

9. The Contracts also provided for the making of balance payments against shipping documents. A list of documents required for balance payment was enumerated. This list included the Bills of Lading. It is common ground that a stipulation that payment or balance payment be made against bills of lading (or certain documents including bills of lading) is commonplace in international transactions.

10. The Shippers subsequently engaged Maersk to carry the goods from Jebel Ali to Piraeus. Maersk received shipping instructions from the Shippers on 18 November 2019 as regards the First Contract and on 21 November 2019 as regards the Second and Third Contracts. The instructions were to carry a total of 14 containers ("**Containers**") listed therein. The shipping instructions contain the Shipper's declarations as to the gross (and tare) weight of each of the Containers, and stated that the goods contained in the Containers were copper wire scrap. These declared weights and descriptions – if accurate – would mean that the Shippers were shipping goods in conformity with the Contracts.

11. At some point in late November 2019, the Containers were presented to Maersk for shipment on board the Vessel. It was not disputed at trial that Maersk received the Containers already stuffed and sealed. It is not alleged in this case that Maersk knew what was contained inside the Containers. However, the Claimant argued that Maersk had, at the least, reason to believe that the Shippers were attempting to commit a fraud on the Claimant.

12. Pursuant to the *International Convention for the Safety of Life at Sea* ("**SOLAS**"), as amended in November 2014 through Resolution MSC.380 (94)), which came into force on 1 July 2016, a new system was introduced for the provision of information regarding the weighing and verification of the weight of each container shipped by Maersk. In substance, the Regulations require verification of the weight of the containers that a carrier is to carry. This is referred to as the "**Verified Gross Mass**" or "**VGM**" of a container. It comprises the total of the net cargo weight together with the tare weight. The weight of the goods shipped within a particular container can be calculated by deducting the tare weight from the VGM. I will deal with the Convention further below.

13. Maersk's undisputed evidence is that the VGMs of the Containers in this case were

measured by the operators of the Jebel Ali terminal, DP World.

14. The VGM certificates recorded the actual weights of the Containers as independently weighed by DP World. They are dated between 17 to 21 November 2019. This is before the Bills were issued.

15. The VGMs, as generated by DP World and provided to Maersk over 17-21 November 2019, showed that the weights of the Containers were in total only 40% of, and in respect of the First Bill only 30% of, the Shippers' declared weights. This is set out in the following table:

	Declared weights (kg)	**VGM weights (kg)**
First Bill Total	**52,110**	**16,200**
MRKU6501852	26,350	8,100
MRKU7670179	25,760	8,100
Second Bill Total	**100,210**	**44,000**
MSKU5432506	25,850	11,100
MRKU8145180	24,350	10,900
TGHU2778246	24,250	11,100
MRKU9027650	25,760	10,900
Third Bill Total	**198,560**	**82,900**
MSKU4261100	24,250	10,500
MRKU8347725	23,760	11,200
SUDU1437653	24,890	10,900
MRKU9560355	25,850	9,900
HASU1559181	24,350	10,000
MRSU0151430	24,670	9,800
TLLU2408092	25,660	10,400
PONU2040902	25,130	10,200
Overall Total	**350,880**	**143,100**

16. Because the VGM includes the tare weight of the Containers themselves, a comparison of the net weights of the cargo implied by the VGMs with those declared by the shippers in fact made the discrepancy between them even more acute.

17. According to the Bills, the Containers were shipped on board the Vessel over 25-26 November 2019. The First and Second Bills were issued and dated 26 November 2019. The Claimant's copy of the Third Bill is undated.

18. Maersk issued clean Bills, stating the Shippers' declared weights. There was no "clausing" of the Bills.

19. The Claimant was the named consignee under each of the Bills of Lading. The Bills of Lading were therefore "straight bills" and were not described as negotiable "to order" bills. It is common ground that, pursuant to s2(1)(b) of the *Carriage of Goods by Sea Act 1992* ("**COGSA 1992**"), the Claimant had "transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract."

20. Ms Kokiza's evidence is that on 26 November 2019, she made an application to access

Maersk's customer-facing online portal. She was unable to obtain entry. The Shipper presented the Claimant with the First and Second Bills on 26 November 2019. In reliance on the First and Second Bills, the Claimant made balance payments under the First and Second Contracts totalling US$459,031 (the "**Balance Payments**"). Ms Kozika gained access to the online portal on the morning of 27 November 2019. A "Documents" tab recorded the contents of the Bills and the Shippers' declared weights. A "Containers" tab recorded that the VGM weights, as contained in the certificates, were significantly less than those stated on the Bills. Upon discovering the discrepancy, Ms Kokiza raised it with Maersk all but immediately. No action was taken by Maersk. The Claimant obtained, and subsequently printed, a copy of the Third Bill from the portal. At some point prior to the Vessel's arrival at the discharge port, Maersk removed the Third Bill from their portal. The Claimant never received the Third Bill from the Shippers.

21. No Balance Payment was ever made in respect of the Third Contract. That is because, as Ms Kokiza explains in her statement, "the Shippers never presented the various shipping documents or the Third Bill of Lading, nor did they confirm that these goods were shipped".

22. Maersk's evidence is, broadly, that at the time they did not have a system in place to cross-check the VGM weights with the Shippers' declared weights, because those different sets of weights were dealt with by different departments. I will deal with this in more detail below. Maersk do now perform a manual check to ensure correspondence between VGM weights and declared weights and have a policy of fining those shippers whose containers have a discrepancy of 5,000kg or more. Each of the Containers would have failed that test, by a large margin. If there are issues with the cargo (e.g. severely damaged containers or a VGM exceeding lawful payloads) Maersk will refuse to load the cargo pending resolution of the issue.

23. Having departed Jebel Ali, the Vessel arrived at Istanbul. On 8 December 2019, the Vessel discharged the Containers at Marport Terminal, Almbarli Port, Istanbul, and transhipped them onto MSC HAMBURG on 20 December 2019. She sailed for Piraeus on 20 December 2019 and arrived on 26 December 2019.

24. Upon the MSC HAMBURG's arrival at Piraeus, the Claimant made arrangements for the Containers to be independently weighed. In the presence of representatives from the Claimant, their surveyors (SGS Greece SA) and the Piraeus Customs Authorities, the Containers listed under the First and Second Bills were weighed. It was confirmed that the VGM weights were in fact accurate, and the weights stated on the Bills of Lading were wrong. Upon opening those Containers, it was revealed that they did not contain copper scrap, but cement blocks.

25. The Claimant submits that by reason of Maersk's failure to clause the Bills or otherwise draw the Claimant's attention to the VGM weights, it became a victim of the Shippers' container fraud.

26. The Claimant attempted to gain access to the Containers listed under the Third Bill, but were blocked by the Piraeus Customs Authorities from doing so because they did not have access to the original Third Bill.

Proceedings in Dubai

27. The Claimant subsequently sought to sue the Shippers (and related individuals) in Dubai. Judgment was obtained without the defendants' participation. The Shippers cannot be traced and the judgment cannot in practice be enforced.

28. The documents filed in the Dubai proceedings do cast some light on some of the circumstances in which the shipments came to be made:

(1) Mr Stournaras agreed with the Shippers that the goods would not be loaded at Jebel Ali Port except under his personal supervision. On 25 November 2019 the Shippers took pictures of the agreed goods and sent them to Mr Stournaras to enable a permit to be issued by the port of Jebel Aliwhich allowed him to enter the port.

(2) The next day, the Shippers handed over to Mr Stournaras the original bill of lading and the remaining documents in accordance with the terms of contracts Nos. 093110 and 11310, and also provided the plaintiff with photographs of the trucks loaded with contracted materials. The balance of the sums due in respect of the first and second contracts were then paid in the sum of USD 459,031.

(3) The Shippers kept Mr Stournaras at his hotel on 27 November 2019. He later warned the Shippers that the weights on the bill of lading were not the same as the VGM announced on the official page of Maersk. This prompted him to ask them to assign a company to inspect the shipments sent by the Shippers. The Shippers delayed and procrastinated, and Mr Stournaras was unable to attend the loading carried out in accordance with the terms of the contract or to instruct the presence of a neutral and specialized company in order to monitor the shipment.

Maersk's Systems

29. Maersk is one of the largest container shipping lines in the world. It has more than 100,000 employees and more than 700 container vessels. It operates in about 130 countries and owns about 65 container terminals. It is involved in the movement of about 12 million containers every year.

30. As is to be expected in this industry the paperwork is not generated by the ship but rather by personnel ashore. Bills of lading are prepared in draft and then issued by customer service employees.

The GCSS

31. At the heart of Maersk's systems is the Global Customer Services System ("**GCSS**"). The GCSS is Maersk's booking management system for customers' shipments. It receives and processes customer booking enquiries and requests; it stores and processes data about containers, their quantity and weight; it issues bills of lading; and it interacts with and transfers data from other Maersk systems, including feeding VGM weights into Maersk's Portal. Maersk employees have access to the GCSS system. Some employees have read-only access whereas others can make limited amendments to system data. Mr Raj, for example, can only deal with bookings related to the UAE.

32. Customer services employees, such as Mr Raj, deal with customer enquiries and problems when they are made known to Maersk, checking the status of customer requests and solving issues related to booking confirmations, booking amendments, arranging for draft bill of lading copies, and issuing bills of lading. These requests are made known to them through various channels, such as the Portal, email and telephone calls. Booking requests are processed by a system called "Auto book tool", but when that system cannot process a request due to some validation requirement, the customer service team gets

involved in doing checks on proposed bookings. This might involve checking that the proposed cargo is acceptable for the proposed destination, for example, checking whether there are any restrictions on alcohol imports into certain countries. Once a booking is confirmed, the next stage of the process can start, which is usually the preparation of a draft bill of lading for review by the customer.

The Portal

33. Maersk also operates a customer portal that is of relevance to this case ("**the Portal**"). At the time of the shipment by the Shippers in this case it was called "mymaersk.com". It is now called "maersk.com". The Portal's main purpose is to allow customers to manage bookings, to enable them to provide necessary information to Maersk as the carrier, and also to review information about, and track, their shipment. Customers don't always use the Portal. There are other options. For example, some freight forwarders use their own bespoke systems that synchronise with Maersk's systems. In this case, the Portal was used by both the Shippers and the Claimant.

CODS

34. CODS is a system which generates data from the GCSS and is used to search per vessel or imports or exports per country. It has a different set up to the GCSS and, unlike the GCSS, displays the data that it derives from the GCSS in Excel. It is not used in the generation of bills of lading.

VGM

35. Prior to its amendment by MSC.380(94) SOLAS provided (in Chapter VI, Part A, Regulation 2):

> "… Cargo information
>
> 1 The shipper shall provide the master or his representative with appropriate information on the cargo sufficiently in advance of loading to enable the precautions which may be necessary for proper stowage and safe carriage of the cargo to be put into effect. Such information shall be confirmed in writing and by appropriate shipping documents [meaning "a document used by the shipper to communicate the verified gross mass of the packed container"] prior to loading the cargo on the ship.
>
> 2 The cargo information shall include:
>
> 1 in the case of … cargo carried in cargo units, a general description of the cargo, the gross mass … of the cargo units, and any relevant special properties of the cargo …
>
> …
>
> 3 Prior to loading cargo units on board ships, the shipper shall ensure that the gross mass of such units is in accordance with the gross mass declared on the shipping documents ..."

36. Resolution MSC.380(94) introduced specific methods for verification of gross mass in order to raise standards of compliance with the provisions above. The relevant IMO Guidelines (MSC.1/Circ.1475: Guidelines Regarding the Verified Gross Mass of a Container Carrying Cargo) confirm that verification of gross mass is "[t]o ensure the safety of the ship, the safety of workers both aboard ships and ashore, the safety of cargo and overall safety at sea".

37. With these aims in mind, the Resolution provided that:

> "… 4 In the case of cargo carried in a container … the gross mass according to paragraph 2.1 of this regulation shall be verified by the shipper, either by:
>
> 1. weighing the packed container using calibrated and certified equipment; or
> 2. weighing all packages and cargo items … and adding the tare mass of the container to the sum of the single masses, using a certified method approved by the competent authority of the State in which packing of the container was completed ....
>
> … 5 The shipper of a container shall ensure the verified gross mass is stated in the shipping document. The shipping document shall be:
>
> 1. signed by a person duly authorised by the shipper; and
> 2. submitted to the master or his representative and to the terminal representative sufficiently in advance, as required by the master or his representative, to be used in the preparation of the ship stowage plan.
>
> 6 If the shipping document, with regard to a packed container, does not provide the verified gross mass and the master or his representative and the terminal representative have not obtained the verified gross mass of the packed container, it shall not be loaded on to the ship ..."

38. It is noteworthy that it is for the shipper to ensure that the VGM is verified. The purpose of obtaining the VGM is so that it can be used in developing the ship's stowage plan.

The Bills of Lading

39. The Bills of Lading were each on an identical, Maersk standard, form. They are similar to bills of lading used by other container shipping lines.

40. The face of the Bills of Lading:

(1) Records the Shippers as "Shipper" and the Claimant as "Consignee".

(2) Gives the "Port of Loading" as Jebel Ali and the "Port of Discharge" as Piraeus.

(3) Under the heading "Particulars furnished by Shipper", includes the information set out by the Shippers in their shipping instructions. Those particulars included (1) an identification of the number of containers furnished by the Shippers, which were said to contain copper scrap; (2) A declaration that the copper scrap had a unit price "*U/P*" corresponding to the prices set out in the Contracts, i.e., US$3,200/MT for the First Contract, US$4,200/MT for the Second Contract, and US$4,700/MT for the Third Contract; and (3) the declared weights which I have tabulated in paragraph 15 above.

(4) Following this, it is stated "Above particulars as declared by Shipper, but without responsibility of or representation by Carrier (see clause 14)".

(5) In the box "Carrier's receipt", states the number of containers shipped under each Bill.

(6) States "... Shipped, so far as ascertained by reasonable means of checking, in apparent good order and condition unless otherwise stated herein, the total number or quantity of Containers or other packages or units indicated in the box entitled "Carrier's Receipt" for carriage from the Port of Loading … to the Port of Discharge … such carriage being always subject to the terms, rights, defences, provisions, conditions, exceptions, limitations and liberties hereof (INCLUDING ALL THOSE TERMS AND CONDITIONS ON THE REVERSE HEREOF NUMBERED 1-26…"

41. It is common ground that the terms on the reverse of the Bills were incorporated. These

terms include:

(1) That "Carrier" means Maersk AS;

(2) That "Container" is defined as "… any container (including an open top container), flat rack, platform, trailer transportable tank pallet or any other similar article used to consolidate the Goods and any connected equipment …";

(3) That "Goods" are defined as "…the whole or any part of the cargo and any packaging accepted from the Shipper and includes any Container unit supplied by or on behalf of the Carrier …"

(4) That "Merchant" is defined as including "… the Shipper, Holder, Consignee, Receiver of the Goods, any Person owning or entitled to possession of the Goods or of this bill of lading and anyone acting on behalf of such Person ..."

(5) Clause 5.1, which provides that "… The liability of the Carrier for loss of or damage to the Goods occurring between the time of acceptance by the Carrier of custody of the Goods at the Port of Loading and the time of the carrier tendering the Goods for delivery at the Port of Discharge shall be determined in accordance with Articles 1-8 of the Hague Rules save as otherwise provided in these Terms and Conditions. These articles of the Hague Rules shall apply as a matter of contract ..." ;

(6) Clause 14.2, which provides that "… No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars ...";

(7) Clause 14.3, which provides that "… the Shipper warrants to the Carrier that the particulars relating to the Goods as set out on the reverse thereof have been checked by the Shipper on receipt of this bill of lading and that such particulars, and any other particulars furnished by or on behalf of the Shipper, are adequate and correct …"

(8) Clause 15.2, which provides that "… the Merchant shall be liable for and shall indemnify the Carrier against all loss, damage, delay, fines, attorneys fees, and/or expenses arising from any breach of any of the warranties in clause 14.3 or elsewhere in this bill of lading and from any other cause whatsoever in connection with the Goods for which the Carrier is not responsible …"

The Claims and Counterclaims

42. The Claimant claims the sums of USD 459,031, EUR 38,771.40 and AED 10,651 from Maersk. It puts its case in three ways:-

(1) First, it says that Maersk was in breach of Article III rule 3(c) of the Hague Rules (as contractually incorporated into the Bills of Lading). This Article required Maersk to carry out its assessment of the "apparent order and condition of the goods", which it was then required to record in the Bills of Lading. The Claimant submits that the weight discrepancy here was so serious that it cast obvious doubt as to the order and condition of the goods.

(2) Secondly, it claims in tort on the basis of the established torts of deceit or negligent misstatement. The claim in deceit was withdrawn in the Claimant's written Closing Note. Maersk's defence is that it gave no representation as to the weight of the consignments, because the Bills of Lading included the standard printed words "weight unknown". However, the Claimant says that there are two answers to that: (a) the representation relied upon relates not to the weight *simpliciter* but whether or not Maersk had reasonable grounds to suspect that the declared weights were not representative of the goods received; and (b) in any event, the "weight unknown" formulation is not sufficient to negative liability where the carrier knew or ought to have known that the figure declared by the shipper is wrong.

(3) Thirdly, on the basis that a carrier owes a named consignee a tortious or implied contractual duty of care to take reasonable steps not to issue a clean bill of lading which includes, without qualification, shipper's particulars that a reasonably competent carrier would know or suspect on reasonable grounds to be fraudulent.

43. Maersk has a counterclaim against the Claimant for an indemnity against all loss, damage, delay etc. arising from the Shippers' breach of warranty under clauses 14.3 and 15.2 of the Bills of Lading and also pursuant to clauses 22.2 and 22.4 of the Bills.

The Claims

What Maersk knew and what it ought to have known

44. Central to each of the ways in which the Claimant advances its case is its assertion that Maersk knew or ought to have known that there was a significant discrepancy between the shipper's alleged weight of the cargoes and their actual weight. The present case differs from many of those to which I was referred because (1) it involves cargo that was laden in containers, and (2) the traditional role of the master and mate have been largely superseded by the shore-based systems that Maersk operate in relation to container shipments.

45. When these shipments were made in 2019, I find that Maersk had no system in place which compared the weight data provided to it by the shipper with the VGM data that was obtained from DP World. The weight of the cargo as stated in the shipper's instructions was that used in the draft and the issued bills of lading. The VGM data was used separately for the purposes of creating the stowage plan. The customer services team operated on the basis, or assumption, that Maersk was obliged to record the shipper's weights. Mr Raj told me that the system was set up in a way so that the weights and other information provided were used because that was "the objective that has been set in the system". It was Maersk's understanding that whatever weight the shipper declared in the shipping instruction would be included in the draft bill of lading. Maersk did not validate the data that was provided to them by the shipper.

46. In the case of these shipments the VGM weight data was received by Maersk from DP World via Electronic Data Interchange ("**EDI**"). This data received via EDI confirmed that the data was received from the Terminal and this information was displayed on GCSS. It was, however, displayed on a different screen or tab to the shipper's declared weight.

47. The VGM weights are used by the cargo execution team for the purpose of creating a stowage plan. The main stowage plan is prepared by stowage planners from Maersk. A load list is prepared by the customer services team. The stowage planner prepares the stowage plan and the VGM data is fetched from the GCSS booking system. Where no VGM for a container is provided by the cut-off date for document completion then the container is removed from the load list and it will not be loaded.

48. It was not the practice of Maersk employees to call up data in order to compare the shipper's declared weight with the verified VGM. The bill of lading would simply state the shipper's declared weight. Mr Sriganesh told me, and I accept, that Maersk had no reason to suspect that a shipper-declared VGM and a shipper-declared weight or a terminal-declared VGM and a shipper-declared weight would be grossly different. So,

and because of that assumption, there were no checks; that is why the export documentation teams did not check for any discrepancies.

49. This practice changed in early to mid-2020 as the result of an incident involving the collapse of a stack of containers on board one of Maersk's vessels, the AOTEA MAERSK. After that collapse it was realised that the actual weight of a container shipped on board that vessel considerably exceeded the declared weight. Maersk therefore introduced procedures in order to try and minimise VGM misdeclarations. These followed a x3 or threefold test pursuant to which, on a daily basis, a consolidated spreadsheet is generated which shows a list of the declared and VGM weights for various shipments. Customer services then go through the list and apply the threefold tests. These are where (1) the discrepancy between VGM and weight in shipping instruction is +/- 5000 kgs; (2) the declared VGM exceeds allowable payload; or (3) the declared VGM is less than tare weight of the container. If any of these threefold tests is failed, then the customer (i.e. the shipper) is informed and a penalty charge is levied. I was told that several cases of fraud had been discovered after these new procedures had been put in place.

50. It was put to Mr Raj and Mr Sriganesh that their systems (at least in 2019) created an obvious risk of fraud. They denied this, saying that they prepared shipping documentation based on the shipping instruction that they had received and that they were not allowed to make any changes to that shipping instruction.

51. The Claimant submitted in its closing submissions that what it alleged to be shortcomings in Maersk's systems were egregious. The relevant systems by which Maersk gathered, processed and displayed and the manner in which Maersk personnel were trained to use these systems created, it argued, an extreme risk that Maersk would issue bills of lading that give irrevocable effect to a shipper's container fraud. That is so even though the data that would prove such a container fraud (or, at least, put Maersk on notice of such a fraud) was easily accessible by any Maersk employee, and that Maersk personnel knew that consignees would rely upon bills issued by them to make payment under international sale contracts.

52. I disagree. Although Maersk could have organised the data available to it differently in 2019 I do not consider that it should have done so. There is no evidence that at that time Maersk had any reason to consider that the shippers would provide fraudulent data to them and that they should therefore have checked the shippers' weights against the VGM data. As Mr Sriganesh said in evidence:

> "… there was no reason to suspect that those weights were wrong … there's no reason to suspect that a shipper-declared VGM and a shipper-declared weight or a terminal-declared VGM and a shipper-declared weight would be grossly different …"

Claim 1: Breach of Article III.3(c) of the Hague Rules

53. Article III Rule 3 of the Hague (and also of the Hague-Visby) Rules provides as follows:

> "… After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing, among other things-
> (a) The leading marks necessary for identification of the goods …;
> (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
> (c) The apparent order and condition of the goods:

> Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable grounds for suspecting not accurately to represent the goods actually received, or which he has no reasonable means of checking ..."

54. Maersk issued Bills of Lading which each stated "… SHIPPED, as far as ascertained by reasonable means of checking, in apparent good order and condition unless otherwise herein stated, the total number of Containers or other packages or units indicated in the box entitled "Carriers' Receipt" for carriage …"

55. The Claimant contends that Maersk should not have issued unclaused bills of lading in circumstances where they knew or ought to have known that the cargo was not in good order and condition. Maersk submits that they did not owe a duty directly to a consignee and that, even if they did owe such a duty, they were not in breach of it.

56. It is first necessary to consider whether the apparent order and condition of cargo includes the weight of that cargo. Three authorities were referred to by Maersk in this context:

(1) The cases begin with *The Peter de Grosse* [1875] 1 P 414. This case concerned a cargo of feathers in bags found upon discharge to be damaged externally and internally. Sir Robert Phillimore said this of the bill of lading wording, "Shipped in good order and well-conditioned":

> "fairly construed … the result must be that apparently, and so far as met the eye, and externally, they were placed in good order on board this ship."

(2) Next is *The Tromp* [1921] P 337, which concerned a cargo of potatoes in bags. The bags and contents were found to be wet. The bill of lading acknowledged shipment "in good order and condition … 2923 bags of potatoes, 140,304 kilos …". Further wording stated: "weight, quality condition and measure unknown" (the word "weight" was added to the printed wording before the master signed). Sir Henry Duke, President, said this:

> "… The words "weight and measure unknown" do not qualify the acknowledgment that there were shipped 2923 bags. The words "quality, condition unknown" do not cover the whole area of the representation made by the words "shipped in good order and condition." The representation made by the bill of lading, including the qualifying words, is that 2923 bags of potatoes were shipped in good order, and that the weight, quality, condition and measure of the goods were unknown. In *Compania Naviera Vasconzada v. Churchill & Sim* Channell J. distinguished the meanings of "condition" and "quality" as those terms are applied to goods, and defined "condition" as referring usually to external appearance. The goods there under consideration consisted of sawn timber. "In good order" and "in good condition" may perhaps have the same meaning when they relate to deals or planks, because the external state of the goods is there apparent. All that appears to the eye upon a shipment of potatoes in bags is the state of the packages. The good order of the shipment and the condition and quality of the goods are, or at any rate may be, separate matters. The defendants, while they guarded themselves by the qualifying words in the bill of lading from making any representation as to the condition and quality of the potatoes shipped on the Tromp, made a representation as to the state of the bags. Bags of potatoes in good order are not externally wet ..."

(3) Finally, in *The Tai Prize* [2021] 2 Lloyd's Rep 3611 Males LJ reviewed authorities including The *Peter der Grosse* (above), *Silver v Ocean Steamship Co Ltd* [1930] 1 KB 416 and *The David Agmashenebeli* [2003] 1 Lloyd's Rep. 92, and said this:

> " … 47. Several points are clear from these cases.
>
> 48. First, a statement in a bill of lading as to the apparent order and condition of the cargo refers to its external condition, as would be apparent on a reasonable examination.
>
> 49. Second, what amounts to a reasonable examination depends on the actual circumstances prevailing at the load port. The master's responsibility is to take reasonable steps to examine the cargo, but he is not required to disrupt normal loading procedures. If cargo is loaded at night, as in *Silver v Ocean Steamship Co Ltd*, the master must do the best he can in the prevailing conditions. For example, he is not required to wait until daylight, when visibility would be better. In the same way, he is not required, if a grain cargo is loaded continuously from silos, to pause the loading from time to time in order to let the dust settle and examine the cargo in the vessel's holds. I read the arbitrator's comment that this 'was obviously not the modus operandi of loading soya beans' as meaning that it would not have been reasonable for the master to insist on this being done. With other kinds of cargo, however, it may be much easier for the master to observe the condition of the cargo without needing to disrupt the loading process. Steel cargoes, as in *The Nogar Marin*, *The Sea Success* and *The Saga Explorer*, are an example. In such cases the master will have an opportunity to observe the condition of the cargo as it is brought alongside and before it is loaded. In the case of bulk grain cargoes, however, he may only be able to observe the surface condition of the cargo after it has been loaded in each hold.
>
> 50. Third, what matters is what is reasonably apparent to the master or other servants of the carrier. The bill of lading contains a representation by the master and says nothing about what may be apparent to anyone else, such as the shipper, who may have other means of examining the cargo.
>
> 51. Fourth, the statement relates to the apparent order and condition of the cargo at the time of shipment, that is to say of receipt by the carrier, and not at any earlier time.
>
> 52. Fifth, the statement is based upon the reasonable examination of the cargo which the master has (or should have) undertaken. As Mustill LJ put it in *The Nogar Marin* ([1988] 1 Lloyd's Rep 412) at p. 422 col 2: 'Everyone in the shipping trade knows that the master need not sign a clean bill just because one is tendered; everyone knows that it is the master's task to verify the condition of the goods before he signs.' …"

57. None of these cases concerned cargo that was stuffed into containers. Nor did any of them actually consider the particular question that I have to decide. They do, however, each confirm that a statement in a bill of lading as to the good order and condition of the cargo that has been shipped refers to its external condition as would be apparent from a reasonable examination. The weight of a container would not be apparent from an inspection of the external condition of the container.

58. The Claimant accepts that it is the right of the shipper, and the shipper alone, to demand a bill of lading that contains an Article III rule 3(c) declaration in the first instance. This is the effect of the authorities relied upon by Maersk, namely *Scrutton on Charterparties* (24th Ed) 8-036 and *Carver on Bills of Lading* (5th Ed) 9-159.

59. The Claimant submits, however, that once a demand for an Article III rule 3(c) declaration has been made, (1) the carrier is obliged to include it, and (2) the carrier has a contractual duty to perform a reasonable check of the apparent order and condition of the goods prior to making the declaration, and to make an accurate declaration thereof; see *The David Agmashenebeli* (above) and *The Tai Prize* (above).

60. The Claimant submits that these contractual duties are in place in part to protect the consignee, and are enforceable by them; *Carver* 2-013, *The Saga Explorer*, s2(1) COGSA 1992. Maersk suggests that whether or not that right transfers under COGSA 1992 "*is unclear*" (para 41(7) of its skeleton, and FN 40) but identify neither authority nor logic as to why it should not.

61. The Claimant developed its case is as follows.

62. First, the Claimant submitted that Maersk failed to comply with its duty to perform a reasonable check of the apparent order and condition of the goods it received for shipment, and declare the true apparent order and condition of the goods on the Bills. It relied upon the following points:

(1) The apparent order and condition of goods received must be judged against the stated description of those goods; see e.g. *The Sea Success* [2005] 2 Lloyd's Rep. 692 at 12(3)*; Trade Star Lines Corp v Mitsui & Co Ltd* [1997] C.L.C. 174 at 177. These cases do not in my view assist the Claimant. The *Sea Success* was a case involving the application of a charterparty term which required the master to reject any cargo that was subject to clausing of the bills. Aikens J (as he then was) found that the arbitrators had correctly found that the apparent good order and condition of the cargo depended primarily on the nature of the goods and the way in which they were described in the bills of lading tendered for signature by the master. In *Trade Star Lines Corp v Mitsui & Co Ltd* the Court of Appeal had to consider whether it was an implied term of the NYPE charterparty that the master was under a duty to the charterers to clause mate's receipts for the cargo shipped if it was not in good order and condition. The Court of Appeal, in dismissing the appeal, held that a term should not be implied that the master was required to tell the charterer what he already knew or was deemed to know. The cases do not provide any guidance as to what the carrier must do in order to determine whether the goods received comply with its stated description.

(2) While the statement on the face of the Bills confirms the apparent order and condition of the total number or quantity of Containers or other packages or in the box entitled "Carrier's Receipt", that does not mean that Maersk are entitled to ignore plain evidence that the goods contained inside those containers are in poor order and condition. The Claimant is I consider correct to say that the carrier is not entitled to ignore clear evidence that the goods contained inside the containers are in poor condition. It accepts however, that in most cases a reasonable inspection will only involve looking at the external shell. Clear evidence that the contents of a container were not in good condition would be, for example, if Maersk saw a container being dropped from a height and heard glass shattering, or if a reefer said to contain frozen fresh fish gave off an offensive odour suggestive of rotting. In such cases a bill would either have to be claused or not issued. The Claimant further contends that it cannot seriously be contended that Containers said to contain 10,000kg of copper, but only weighing 2,000kg, are in "good order and condition".

It is plain that something serious has gone wrong with the contents. I agree that if the carrier is aware of a discrepancy such as this when it comes to issue a bill of lading then it ought to draw attention to this fact.

(3) A reasonable check of the apparent order and condition of the goods ought to have included cross-referencing the shippers' description of the weight with the certified VGMs. Here the Claimant assumes what it needs to prove when it submits that a reasonable check of the apparent order and condition of the goods ought to have included cross-referencing the shipper's description of the weight with the certified VGMs. This assumes that any reasonable carrier of containers would, in 2019, have cross-checked the weight declared by the shipper with the weights assessed for the purposes of assessing the VGM. I do not believe that such an assumption is appropriate in the circumstances of the present case. The Claimant has not established that there was any appreciation by carriers at this time that there could be discrepancies or that consignees might become the victims of the shipper's fraud. Establishing the VGM was introduced purely for safety purposes. That is the purpose for which it was used by Maersk. The fact that Maersk could have collated and cross-checked the evidence of weights at the time does not, in my view, mean that it should have done.

(4) This duty is not negatived by clause 14.2. A "weight unknown clause" is subject to the consideration that "A stage must be reached where the discrepancy between cargo actually loaded and cargo alleged to have been loaded is so great that it must be obvious to any master that the bill of lading quantity is fallacious. If no protest is made by a master a bill of lading quantity may, in my view, even if the bill is claused "weight etc. unknown", give rise to the implication that the quantity loaded was not wildly at odds with the bill of lading quantity…" *(per Phillips J. (as he then was) in The Sirina [1988] 2 Lloyd's Rep 613 at 615)*. I consider that there is much to be said for the views expressed, obiter, by Phillips J. in *The Sirina.* His observation should, however, be put in context. It was made immediately following his statement that there is authority for the proposition that "weight … unknown" prevents a bill of lading from being even prima facie evidence of the quantity shipped. In the present case it is necessary for the Claimant to establish that Maersk ought to have known that the weight of the container was significantly different to that declared by the shipper. That brings us back to the Claimant's assumption that Maersk ought to have appreciated that there were differences in the declared weight and the verified VGM. For the reasons that I have already given I do not consider this assumption to be correct.

63. Secondly, the Claimant submits that insofar as the statement on the face of Bills is to be read as limited only to the "external shell" of the Containers – and thus *excludes* any consideration of the order and condition of the goods received for shipment, even where defects are obvious - then the Bills were not issued in accordance with the shippers' instructions, in violation of Article III rule 3(c).

64. I do not agree with this. The Bills of Lading complied with the shipping instructions. They contained all of the information conveyed in those instructions. The Claimant relies upon the decision of Evans J. (as he then was) in *The Boukadora* [1989] 1 Lloyd's Rep 393 at 399 (lhc) in which he observed that it is "a basic and implied requirement that the bills as presented shall relate to goods actually shipped and that they shall not contain a misdescription of the goods which is known to be incorrect". This statement does not assist in determining whether the carrier does in fact know that the bill which it is intending to

issue is inaccurate. I am satisfied that Maersk provided a full description in the Bills of Lading in accordance with the Shippers' request and that they are entitled to rely upon Clause 14.2 of the Bill of Lading.

65. It follows from the above that I do not consider that Maersk was in breach of Article III Rule 3(c) of the Hague Rules. It is therefore unnecessary for me to decide whether the Claimant is entitled to enforce these rights pursuant to section 2(1)(b) of COGSA 1992. If, however, Maersk had been in breach then I consider that the Claimant would have been entitled to claim against them. The wording of the section is in my view wide enough to transfer all such rights to the consignee: see e.g. *Carver* (above) at 9-174.

Claim 2: Mis-statement

66. I have already referred to the fact that a plea in deceit was maintained up until service of the Claimant's Written Closing Note. There was no basis for the making of such a plea in any of the written evidence before me and it was never suggested to any of the Maersk witnesses that Maersk was liable for anything that might amount to deceit. The plea should never have been made.

67. The Claimant accepted in its Skeleton Argument that Maersk did not make any representation as to the actual weight of the goods shipped. In support of its claim of negligent mis-statement, the Claimant therefore relies on an implied representation that:

> "... The Bills of Lading contained an implied representation that the Defendant had no actual knowledge of facts or matters that would lead it to have reasonable grounds for suspecting that the shipper's particulars do not accurately represent the goods actually received for shipment ..."

68. The Claimant submits that this is consistent with the term discussed in *The Tai Prize* (above) and with the proviso in Article III rule 3 of the Hague Rules, namely that:

> "... Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking ..."

69. Maersk's primary response to this claim is to say, quite simply, that the proviso to Article III rule 3 of the Hague Rules leaves no room for the implication of any representation by the carrier as to the particulars of the cargo. I agree.

70. The Claimant relies upon the following (obiter) observation in the judgment of Males LJ in *The Tai Prize* (above)

> "… 58. It is perhaps not impossible that the particular circumstances in which a draft bill of lading is tendered may amount to a representation of some kind by the shippers as to the condition of the cargo. In particular, I would wish to leave open the possibility that, by tendering a draft bill containing a statement that the cargo is in apparent good order and condition, the shipper make an implied representation that they are not actually aware of any hidden defects or damage which, if known to the master, would mean that he could not properly sign the bill as tendered …"

71. *The Tai Prize* does not in my view assist the Claimant. The Court of Appeal was there dealing with a situation in which a shipper invited the carrier to make a representation to the shipper and third parties who might become interested in the bill of lading. It is not

impossible in such circumstances to see why the shipper may in those circumstances be held liable if he knew something which meant that the carrier could not make the representation. The situation here is quite different. Maersk stated on the face of the Bill of Lading the information with which it had been supplied by the Shippers and made clear that this information was "as declared by the Shipper but without responsibility of or representation by the Carrier".

72. The Claimant further submits that a reasonable person reading the Bills (and, presumably, knowing of the proviso to Article III rule 3 of the Hague Rules) would infer that any honest and reasonable carrier would exercise the liberty granted by the proviso, and would not record without caveat anything that it has reasonable grounds to believe to be untrue, particularly where the information in the possession of the carrier that falsifies the shipper's particulars (a) is in the form of certified weights from a terminal which the carrier's personnel are trained to regard as accurate and (b) points out a scale of discrepancy – across each of the containers referenced in the Bills – that cannot be innocently explained.

73. This submission is, I consider, an attempt to reverse engineer a duty by assuming that the carrier has knowledge of the necessary facts. It too seeks to cut across the statement on the face of the Bills of Lading as well as clause 14.2. These quite clearly provide that Maersk has made no representations as to the weight of cargo shipped and has no responsibility in respect thereof.

74. I have no hesitation in rejecting the Claimant's case that Maersk made negligent misstatements in the Bills of Lading.

Claim 3: Duty of care

75. The final way in which the Claimant puts its case is to aver that the Carrier is under a duty to take reasonable care to not issue a clean bill of lading that included, without qualification, shipper's particulars that a reasonable competent carrier would know or suspect on reasonable grounds to be fraudulent.

76. The Claimant accepts that this is a novel duty and that there is no direct authority for the proposition. It relies, however, upon the fact that the requirement to measure VGMs only came into force on 1 July 2016 and the ample authority dealing with the way in which courts will recognise new duties of care.

77. In *Caparo Industries plc v Dickman* [1990] 2 AC 605 the House of Lords set out a tripartite test for the determination of new duties of care. The damage has to be foreseeable, there has to be proximity between the parties and the duty of care contended for must be fair and reasonable. I was referred to *Robinson v Chief Constable of West Yorkshire Police* [2018] AC 736 in which the Supreme Court reviewed the circumstances in which a duty of care might arise in tort. Lords Reed JSC and Mance DPSC explained that the tripartite test adumbrated in *Caparo* did not set out the only circumstances in which a duty of care would be imposed. Rather,

> "the characteristic approach of the common law in such situations is to develop incrementally and by analogy with established authority" [27]. "…[i]n the ordinary run of cases, courts consider what has been decided previously and follow the precedents (unless it is necessary to consider whether the precedents should be departed from). In cases where the question whether a duty of care arises has not previously been

decided, the courts will consider the closest analogies in the existing law, with a view to maintaining the coherence of the law and the avoidance of inappropriate distinctions" [29].

It is outside the established categories of cases that "the law will proceed incrementally, and all three stages of the Caparo analysis will be material" [83].

78. It is generally recognised that carriers owe consignees a duty of care in respect of *their own* misrepresentations in the bills of lading that they issue. The Claimant submits that the duty of care advanced under this head of claim – to prevent *others* from using the bill of lading as an instrument of fraud, once a carrier is put on notice of that fraud - is a natural and incremental extension of that duty.

79. The Claimant says that when considering that incremental extension, the *Caparo* test is fully satisfied:

(1) As regards foreseeability of harm, one of the key functions of a bill of lading is as a receipt – to confirm what goods have been received. Bills of lading are routinely relied upon as evidence of the state of the goods upon shipment, so that a consignee can confirm that the goods shipped are as purchased, and pay for them. It was patently foreseeable that the Claimant may have relied upon the Bills of Lading when making payment to the Shippers. It was thus foreseeable that, if care was not taken when issuing the Bills, Maersk might give effect to the Shippers' fraud and cause loss.

(2) As regards proximity, the Claimant only argues that such a duty is owed to the Claimant as named consignee under a "straight" bill of lading. This is plainly a narrow and identifiable class – and readily fulfils any requirement for "proximity". There may be something to be said for a *wider* duty being owed to anyone who may reasonably foreseeably (and does in fact) become a holder of a *negotiable* bill of lading; however, that argument does not arise in the present case.

(3) As regards whether any such duty would be fair, just and reasonable:

(1) The advent of containerisation has led to ample opportunity for sellers to commit fraud on purchasers of goods. This case is just one example of many.

(2) It is the firm policy of the law to minimise the impact of fraud, in particular in the sphere of international trade.

(3) Following the recent amendments to SOLAS and the VGM regime, Maersk, as carriers, are in a highly privileged position to prevent this fraud.

(4) Equally, if they ignore the VGMs that are provided to them and instead issue clean bills that uncritically contain the shipper's misrepresentations as to the weight, they positively facilitate that fraud and cause loss to innocent parties. That loss, in the case of fraud, is unlikely to be recoverable in practice from the fraudster (as this case shows).

(5) This is not a "pure omission" case, as Maersk positively increased the risk of fraud in issuing the Bills as they are. It is a "positive act" case, in which courts are more willing to impose duties on a defendant to protect a claimant from third party malice; see *Rushbond plc v JS Design Partnership* [2021] EWCA Civ 1889 at [48]-[53].

(6) The proposed duty is limited in scope. It only arises once Maersk has been put on notice of the fraud; it is only proposed to be owed to named consignees under a straight bill; it does not *oblige* Maersk to take any positive step, but rather to ensure that any bills that they *do* issue do not facilitate fraud; and it can be discharged simply by clausing the bills appropriately.

80. Maersk denies that it owes a duty of care. It makes the following points:-

(1) Assuming that a carrier "knows" that a shipper's declared weight for a container is wrong, what level of discrepancy would be required for that carrier to "know" that the weight is fraudulent, or to "suspect" that it is fraudulent on "reasonable grounds"? What level of shortage of weight leads to knowledge of fraud, or reasonable grounds for suspicion of fraud? Does the type of goods matter, in terms of attraction to fraudsters? Do different types of goods require different levels of shortage, perhaps depending on value? On the alternative formulations, which are said to encapsulate the same duty, what counts as "notice of fraud"? Is it "notice that a fraud was being committed", or notice of reasonable grounds for suspicion? What if a shipper is suspected of fraud, has containers rejected by the carrier, but returns to ship further containers with correct weights? To what extent should the carrier take assurances of the shipper, or concerns of the consignee, into account? Overall, what level of skill in fraud-detection would be required, bearing in mind that this is not something that carriers usually do? Once the alleged duty is analysed in this way, it becomes difficult to understand how it would operate in practice, and how a carrier could arrange its systems to be sure of compliance.

(2) A duty of care of the sort alleged would be inconsistent with Art III rule 3 and, therefore, with the contract. This is enough to rule it out. Art III rule 3 governs the circumstances in which, and the extent to which, the carrier is required to make representations as to the particulars of the cargo. In effect, it also provides for the level of care which the carrier must take in making such representations.

(3) The fact that in the case of straight bills the consignee does not become a party to the contract of carriage until the bill of lading is issued is not a reason for tacking onto the contract extra duties on matters comprehensively governed by its terms.

(4) Art III rule 3 confers a right on the shipper rather than the consignee, and, to the extent that the shipper does not demand representations from the carrier, the carrier is entitled to issue a bill of lading in which it makes no representations at all. It is well known that it is for the consignee to determine whether to purchase against bills of lading with restricted representations by the carrier. If the consignee wants more comfort from the bill of lading, it should make a sale/purchase contract for a bill of lading with further representations from the carrier.

(5) VGM requirements are nothing to do with the commercial relationship between a shipper/seller and a consignee/buyer, or between the shipper or consignee and the carrier.

(6) The alleged duty would involve the carrier being held responsible for a representation as to weight which the carrier has expressly (and rightly) declined to make.

(7) A carrier is generally not responsible for pre-sealed containers being packed with one sort or weight of goods rather than another, or for preventing or compensating purely economic loss caused by a shipper to a consignee. Further, it is not the carrier's job to police fraud by shippers, and (at some level, at least) this is what the alleged duty of care would involve.

(8) It is open to consignees to take precautions against shippers' fraud, such as ensuring the presence of an experienced representative (i.e. a reputable surveyor) when containers are sealed. There is no good reason to hold carriers responsible for consignees' avoidable mistakes.

(9) The Claimant did not need a duty of care on the part of the Maersk for protection against this fraud. Apart from using a reputable surveyor when the containers were

sealed (or at the very least for the Certificate of Quality and sampling for a lab test report), the Claimant could have read the contract and shipping documents with greater care and noticed that they contained multiple red flags, including the fact that it appears that the all-important inspection for the Certificate of Quality did not take place at all. Alternatively, it could have delayed the decision to make the further payments (in fact made on 27 November 2019) until later that same day, after it had gained access to Maersk's portal and seen the VGMs.

(10) It is quite wrong to suggest that if a carrier in the position of Maersk issues bills of lading with shippers' declared weights whilst ignoring VGMs then they "positively facilitate fraud". Once it is understood (as the Claimant should have done) that such a bill of lading contains no representation by the carrier as to the contents of the container, except to the extent revealed by a reasonable examination of the container's external condition, the carrier's role is shown to be "inert".

(11) And finally, it is not foreseeable that a consignee will suffer loss by relying upon a carrier in relation to cargo weight where the carrier states that the weight is declared by the shipper without responsibility of, or representation by, the carrier.

81. I consider that where a consignee under a straight bill of lading can establish that the carrier knew or ought to have known when issuing the bill that there was a substantial discrepancy between the shipper declared weights and the actual verified weights it has a strong case that the carrier ought not to issue an unclaused bill or ought not to have issued a bill at all. It seems to me that such a discrepancy would give rise to an assumption on the part of the carrier that the proposed bill was being used as an instrument of fraud. In such circumstances, it would in my judgment be fair, just and reasonable to impose a duty of care upon the carrier, owed to the named consignee, to ensure that its bills are not used as an instrument of fraud, once they have been put on notice of that fraud.

82. The Claimant's case, however, fails on the facts as I have found them to be above. There was, as I have held, no evidence that Maersk had any reason to consider in 2019 that the shippers would provide fraudulent data to them and that they should therefore have checked the shippers' weights against the VGM data. Maersk was not under a duty to compare the shipper-declared weights with the VGM-verified weights.

Conclusion on the Claims

83. The Claimant's claims fail for the reasons I have endeavoured to give above.

The Counterclaim

84. Maersk submits that pursuant to clause 15.2 of the Bills of Lading, the Claimant as Merchant is liable to indemnify Maersk against "all loss, damage, delay, fines, attorney fees and/or expenses arising from any breach of any of the warranties in clause 14.3", including in particular the warranty that the particulars in the bills of lading were correct. Its claim was initially advanced under all three Bills of Lading. Maersk accepted, however, in its Closing Submissions that it could not advance a claim under the third Bill. Their remaining counterclaim is for

(1) AED 35,541.66 in relation to Maersk invoices;
(2) EUR 8,409.60 in relation to cargo destruction costs;
(3) EUR 5,420 in relation to container demurrage.

These claims were supported by the evidence of Mr Chronopoulos and were not really challenged in cross-examination.

85. The only issue, therefore, is whether the Claimant is liable for the sums counterclaimed. It says that it is not liable because had Maersk complied with its duties it would not have issued clean Bills as it did. It therefore says that the counterclaim must fail for circuity of action.

86. I have already held that Maersk was not in breach of contract or duty in issuing clean Bills of Lading in the present case. It follows from this that no circuity of action is present. Nor do I consider that Maersk was negligent. There is, therefore, no defence to Maersk's counterclaim. I find that it succeeds in the sums set out above.

Summary

87. I dismiss the Claimant's claims. I allow Maersk's counterclaim in the amounts set out in paragraph 84 above.