

27, 1983

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL NO. 7  
OF 1982  
ON APPEAL  
FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

CASTLE INSURANCE CO. LIMITED

Appellants  
(Defendants)

- and -

HONG KONG ISLANDS SHIPPING  
CO. LIMITED

- and -

HONG KONG ATLANTIC SHIPPING  
CO. LIMITED

Respondents and  
Cross Appellants  
(Plaintiffs)

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CASE FOR THE RESPONDENTS AND CROSS  
APPELLANTS

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RECORD

155 Line 25

1. This is an Appeal from a Judgment of the Court of Appeal of Hong Kong (Sir Alan Huggins V-P, Leonard J.A. and Silke J.) given on 8th July, 1981 allowing in part on appeal from a Judgment and Order of the Supreme Court of Hong Kong (Mr. Commissioner Mayo) given on 15th October 1980 setting aside an Order of the Registrar (Mr. Registrar Barrington-Jones) dated 23rd July 1979.

146

151

147

2. The question in this Appeal is whether claims by the Second Plaintiffs as Owners of the motor vessel "POTOI CHAU" against the Defendants, being Owners of cargo on board the vessel and cargo Underwriters, for general average contribution are time barred. The Shipowners' principal contention is that the 6-year period of limitation begins to run from the date of issue of the general average adjustment, and accordingly that the Second Plaintiffs' claims were not time barred on 23rd July 1979, the date upon which the Second Plaintiffs were joined as Plaintiffs in the Action. The cargo Owners and Underwriters' principal

contention is that the six year period of limitation begins to run from the date of the casualty giving rise to the general average Acts (25th October 1972) and that the Second Plaintiffs' claims were therefore time barred by 23rd July, 1979.

3. The Court of Appeal of Hong Kong held (1) that the claim against cargo Underwriters, which was brought under certain Guarantees given by Underwriters in order to prevent a lien on their assured's goods being exercised by the Plaintiffs was not time barred, but (2) that the claim against cargo Owners brought under the general law, the bills of lading and General Average agreements signed on behalf of cargo Owners was time barred.

Sir Alan Huggins  
V-P 168 line 1  
to 170 line 12  
Leonard J.A.  
190 line 22 to  
line 40.

4. By an Order dated 21st January 1982 the Court of Appeal of Hong Kong granted the Defendants' final leave to appeal to Her Majesty in Council against the first part of their said judgment and granted the Plaintiffs

Sir Alan Huggins  
V-P 151 line 30  
to 167 line 29.  
Leonard J.A. 179  
line 15 to 190  
line 23.

199 line 20

RECORD

final leave to cross-appeal to  
Her Majesty in Council against  
the second part.

THE FACTS

5. In October 1972 the vessel "POTOI  
CHAU", owned by the Second Plaintiffs,  
Hong Kong Atlantic Shipping Co.  
Limited ("the Shipowners") and  
managed by the First Plaintiffs  
Hong Kong Islands Shipping Co,  
Limited ("the Managers") was in  
the Indian Ocean. The vessel was  
on a voyage from Hong Kong, Port  
Klang and Singapore to Jeddah,  
Hodeidah, Aden and Bombay laden  
with a cargo of timber, steel  
bars and general cargo.

10 line 45

6. On 25th October 1972 the vessel  
encountered a cyclone and was  
driven aground and stranded on  
the coast of Somalia.

11 line 5

7. The Managers engaged the salvage  
tug "SVITZER" under a Lloyds Open  
Form of salvage agreement. After  
about 2,300 tons of cargo had been  
jettisoned, the vessel was finally

refloated on 21st November  
1972 and towed to Aden.

8. At Aden all the cargo  
remaining on board except  
for that destined for Bombay 11 line 20  
was discharged. The Aden  
cargo was duly delivered  
and the Jeddah and Hodeidah  
cargo was forwarded to those  
ports in other vessels at  
the Shipowners' expense.  
Temporary repairs were carried  
out at Aden to enable the  
vessel to proceed to Bombay.

9. The vessel arrived at Bombay  
in January 1973. The remaining  
cargo was discharged and 11 line 25  
delivered there. The vessel  
was surveyed and found to be  
a constructive total loss.  
The voyage was abandoned on  
16th January 1973.

10. In all, cargo was delivered to  
74 consignees (the 12th to 85th  
Defendants in this Action).  
Before delivery of any of the 11 line 32

RECORD

cargo it had been asserted on behalf of Shipowners that they had a lien on each parcel of cargo for general average sacrifices and expenditure, salvage charges and particular average. The Managers however agreed on the Shipowners' behalf to deliver each parcel of cargo to the consignees without payment of cash deposits provided that :-

- a) each consignee signed an Average Agreement agreeing to pay their proper and respective proportion of salvage, general average and particular average and
- b) the interested cargo Underwriters guaranteed payment.

11. This offer was accepted and all the consignees signed Average Agreements. In all 18 sets of cargo Underwriters, Companies and Syndicates were involved as insurers of the cargo delivered to the 74 consignees and guarantees were signed in respect of each.

parcel by the relevant Underwriters.  
The last Agreements and Guarantees  
were signed in May and June 1973.

12. The Managers instructed Stevens  
Elmslie & Co., Average Adjustors 11 line 10  
in Hong Kong, to draw up a  
General and Particular Average  
Adjustment.

13. Pursuant to the Arbitration  
Clause contained in Lloyd's  
Open Form of Salvage Agreement  
an Arbitration was held in London  
to determine the remuneration  
due to the salvors. By an Award  
dated 9th January 1976, the  
Arbitrator, Mr. Barry Sheen Q.C.  
(as he then was) awarded £120,000  
by way of reward and £28,583.01  
by way of interest to the salvors.

14. The Average Adjustment was drawn  
up and was delivered to the 11 line 15  
Managers on 31st August 1977.

15. By a Writ of Summons endorsed 1 line 15  
with the Points of Claim and  
dated 25th October 1978, the

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Managers as Plaintiffs commenced an action in the Supreme Court of Hong Kong against the Underwriters (the 1st to 11th Defendants) and the consignees (the 12th to 85th Defendants). The claim in each case was for the general average contribution found to be due in the Average Adjustment. Against the consignees the claim was pleaded under the general law, under the bills of lading (which incorporated the York Antwerp Rules 1950) and under the Average Agreements. Against the Underwriters the claim was pleaded under the Guarantees.

12 line 3

12 line 5

Although Points of Defence have not yet been served the Defendants have stated in correspondence and in an Affidavit filed herein, that the claims will be resisted on the basis that the stranding of the vessel was caused by unseaworthiness or by actionable negligence on the part of Shipowners and that no general average is therefore payable.

58 line 20



17. Orders for substituted service and for service out of the jurisdiction of the Supreme Court of Hong Kong (upon which nothing now turns) were obtained and appearances were entered on behalf of 7 Underwriters and 22 consignees on 26th September 1979 and by further Underwriters on 28th September 1979 and 17th December 1979. 21 22 38
18. Meanwhile, the Plaintiffs had applied ex parte (the Defendants not having entered appearances) to amend the Writ of Summons to add the Shipowners as Second Plaintiffs. The application, which was supported by Affidavits dated 1st May 1979 and 19th July 1979 was granted by Mr. Registrar Barrington-Jones on 23rd July 1979. 16 line 20 16 line 20 18 147
19. By a Summons dated 5th January 1980 the 31 Defendants (9 Underwriters and 22 consignees) who had entered appearances applied for an Order that the Second Plaintiffs be struck out as a party to the Action 55 line 20

RECORD

on the ground that by the date of the application for and Order giving leave to amend the Writ of Summons by adding them as a party the time limited for their claim (namely 6 years) had expired, their claim was statute barred and the order incorrectly made.

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20. By his Judgment and Order dated 15th October 1980 Mr. Commissioner Mayo held that the claims of the Second Plaintiffs were statute barred against both Underwriters and consignees, set aside the Order of Mr. Registrar Barrington-Jones and struck out the Second Plaintiffs.

155 line 10

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21. The Plaintiffs appealed and on 8th July 1981 the Court of Appeal (Sir Alan Huggins V-P., Leonard J.A. and Silke J.) held that the Second Plaintiffs' claims against the consignees were statute barred but that their claims against the Underwriters under the Guarantees were not

statute barred. They therefore allowed the Appeal in part by restoring the Order of the Registrar and giving leave to join the Second Plaintiffs, subject to the condition that their action should be limited to claims against the first 11 Defendants under the Letters of Guarantee. It is from the imposition of that condition that the Plaintiffs now appeal.

Sir Alan Huggins  
V-P. 171 line 50  
Leonard J.A.  
294 line 48  
Silke J. 195 line  
22.

THE CONTRACTS

22. The bills of lading were in materially identical terms in relation to each consignee. The relevant portion reads :-
- "28. (General Average) General Average shall be adjusted, stated and settled according to YORK ANTWERP RULES, 1950".
23. Average Agreements or Bonds in 2 different forms, namely the Lloyds Bond and Guarantee and the Lloyds Average Bond were
- 118 and 119  
retyped at 120  
Retyped 120 line  
35  
110  
113

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entered into by the various consignees. It is common ground that nothing turns on the difference. The relevant portions read :-

Lloyd's Bond and Guarantee

110 line 32  
retyped at  
122 line 28

1. "The consignee .... agree that .... will pay the proper and respective proportion of any G.A. .... which may be chargeable upon their respective consignments ..... or to which the shippers or Owners of such consignment may be liable to contribute."

111 line 7  
retyped at  
122 line 35

2. Lloyd's hereby guarantee to the Shipowner the due payment by the consignee and/or their Underwriters of the whole of the G.A. .... which may be properly chargeable against the said merchandise.

Lloyds Average Bond

113 line 32  
retyped at  
122 line 10

"..... hereby agree that they will pay ..... the proper and respective proportion of any G.A. .... which may be chargeable upon their

respective consignments or to  
which the Shippers or Owners of  
such consignment may be liable  
to contribute."

24. The Guarantees provided by  
Underwriters were in 4 different  
forms. The relevant portions  
read :-

Form 1

We ..... guarantee the payment of 122 line 1  
G.A. for which the said goods are  
legally liable under an adjustment  
drawn up in accordance with the  
contract of affreightment. An  
example is at page 67 of the Record 67

Form 2

We ... guarantee ... the payment 122 line 5  
of any contribution to G.A. which  
may hereafter be ascertained to  
be due in respect of the said  
merchandise. An example is at  
page 80 of the Record. ... 80

or

RECORD

122 line 19 We hereby guarantee to you  
payment of any contribution  
to G.A. which may hereafter be  
ascertained to be properly due  
in respect of the said cargo.

109 An example is at page 109 of  
the Record.

Form 3

122 line 9 We guarantee that we will pay any  
just claim for G.A. as may be  
properly found due in respect of  
the said cargo. An example is  
88 at page 88 of the Record.

Form 4

122 line 14 We undertake to guarantee the due  
payment of the G.A. that may be  
properly found to be due on the  
said goods upon the completion of  
the Average Statement by the  
Adjusters. An example is at  
99 page 99 of the Record.

THE ISSUES

25. It is common ground that the

relevant period of limitation  
in this Action is 6 years.

The issue between the parties  
is when the cause of action  
against the Defendants arose  
and time therefore began to run.  
As Sir Alan Huggins V-P pointed  
out in the Court of Appeal of  
Hong Kong there are 4 possible  
dates :-

156 line 30

- a) The date of the general  
average loss of the cargo
- b) The date of the safe arrival  
of the ship
- c) The dates of the General  
Average Bonds and Guarantees.
- d) The date of publication of  
the General Average Adjusters'  
Statement. ("the Adjustment").

of which only (d) fell within 6  
years of the application to join  
the Second Plaintiffs. The  
Defendants contend that in each  
case time began to run at the  
date of the loss or possibly the  
date of the safe arrival of the  
vessel. The Plaintiffs contend

that in each case time began to run at the date of the Adjustment. The issue in relation to the 1st to 11th Defendants (the Appeal) depends on the true construction of the Guarantees. The issue in relation to the 12th to 85th Defendants (the Cross-Appeal) depends on the general law, the true construction of the York Antwerp Rules 1950 and the true construction of the Bonds.

Sir Alan  
Huggins V-P  
158 line 35

26. It is also common ground that the answer to the question whether a cause of action has arisen involves the application to the particular circumstances of the test formulated by Lord Reid in Central Electricity Board v Halifax Corporation (1963) A.C. 785 H.L., following Lord Esher M.R. in Coburn v Colledge (1897) I.Q.B. 702, namely whether or not the Plaintiff can allege every fact which it would be necessary for him to prove if traversed in order to succeed.
27. It is convenient to deal first



with the Cross-Appeal and questions arising in relation to the consignees' liability. Every Judge in the Courts below did so.

A. The Cross Appeal

The Cross-Appellants Case -

The General Law

28. Where general average expenditure is incurred or a sacrifice made, as a matter of commercial convenience, indeed practicability, an adjustment of the rights and liabilities of the parties to the maritime adventure must be made before it can be ascertained whether any sum is due from one party to another and if so, how much. Until an Adjustment is made, firstly no party who has incurred expenses or made a sacrifice will know whether he is a debtor or a creditor, and therefore if an action were to proceed whether he would be a Plaintiff or Defendant. Such uncertainty is particularly likely where,

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as here, there has been jettison of cargo. Secondly, any claimant who does commence an action will be unable either to quantify or to particularise his claim: he would be at risk of being struck out. Thirdly, much of the expense to be adjusted including major items such as salvage and the cost of the Adjustment itself will not be known until long after the general average act and, in the case of the cost of the Adjustment, not until the Adjustment is prepared. Unless all parties are content to allow an action for general average contribution to lie dormant, unquantified and unparticularised until an Adjustment is prepared, the only type of action which could be pursued to Judgment would be an action for a declaration (which well might not dispose of potential issues between the parties, and for which no cause of action is necessary). Moreover, unless such an action proceeded more slowly than the salvage Arbitration the Plaintiff would be

prevented from bringing a later action for a proportion of the salvage by the rule in Henderson v Henderson (1843) 3 Hare 100.

29. The view that no cause of action accrues until after an Adjustment has been drawn up is supported by the earlier authorities, such as Brandeis Goldschmitt & Co. v Economic Insurance Co. (1922) 11 Ll. L. 42 and THE CHRISTEL VINNEN (1924) 18 Ll. L. 376 both first instance decisions. Sir Alan Huggins V-P in his Judgment accepted that the statement in the former case to the effect that a general average liability cannot be ascertained until there has been an Adjustment was "incontestable". These authorities are in no way affected by Norevro Traders v Hardy & Co. (1923) 16 Ll. L. 319 nor by the decision of the House of Lords in Hain Steamship Co. v Tate & Lyle Ltd. (1936) 55

Sir Alan Huggins  
V-P. 159 line 25

RECORD

Ll. L. 159, neither of which was concerned with questions of limitation or of when the cause of action arose.

30. The decision of Megaw J. in Chandris v Argo Insurance Co. Ltd. (1963) 2 Ll. Rep. 65 and of Kerr J. in THE "NIMROD" (1973) 2 Ll. Rep 91 (in which Kerr J., obiter, expressed his agreement with Megaw J.'s Judgment) are wrong and should not be followed. The core of Megaw's Judgment is at page 73 of (1963) 2 Ll. Rep.

"There is then a cause of action if those facts exist which it is essential for a Plaintiff to plead in order to prevent his Statement of Claim from being susceptible of being struck out as not showing a cause of action".

Leonard J.A.  
187 line 5

As Leonard J.A. pointed out in the Court below this reasoning is circular. Further it does not apply the test laid down in Central Electricity Generating

Board v Halifax Corporation

(1963) A.C. 785.

The Cross Appellants Case - The

York Antwerp Rules

31. Even if, at common law, a cause of action arises the date of the general average loss, where, as here, the contract of carriage is subject to the York Antwerp Rules the cause of action does not arise until an Adjustment has been drawn up.

32. The Rules clearly envisage that an Adjustment will be drawn up. Indeed, the Rules are rules for drawing up an Adjustment. The Rule of Interpretation reads:-

"In the Adjustment of general average the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith".

Rules D, XIII and XXI all contemplate that an Adjustment will be drawn up.

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It is difficult to see how Rule  
XXI

"Interest shall be allowed on  
expenditure, sacrifices and  
allowances charged to general  
average at the rate of 5 per  
cent per annum, until the date  
of the general average  
statement....."

can be operated unless and  
until an Adjustment has been  
drawn up.

33. The whole scheme of adjusting  
general average under the Rules  
envisages the Adjustment being  
carried out, a written statement  
being drawn up and thereafter  
those parties to the adventure  
who are creditors in general  
average claiming the sums shown  
to be due to them in the Adjustment  
from the debtors. Accordingly, it  
is submitted, when the contract  
contained in or evidenced by the  
Bill of Lading provides expressly  
for General Average to be adjusted,  
stated and settled according to  
York Antwerp Rules, this means in

accordance with an Adjustment prepared under those Rules, and unless and until such an Adjustment is drawn up and published no liability in respect of general average arises between the parties to the contract.

The Cross-Appellants Case -  
The Bonds

35. Average Bonds or Agreements were signed by or on behalf of the consignee undertaking to pay the general average contributions due. Two forms of bond were signed by the consignees in this case, some signing one form, others another. The forms however have the following matters in common:-
- the consignees will pay their respective proportion of, inter alia, general average.
- the consignees will furnish accounts and particulars to enable general average to be
- 110 line 32  
retyped at  
122 line 28  
and 113 line  
32. Retyped  
at 122 line  
35
- 110  
113  
122
- 110 line 43  
113 line 45

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ascertained and adjusted in the usual manner.

111 line 14

provision is made for interim

payments in respect of the amounts

114 line 15

which may ultimately be found due

to the Shipowners to be made pending

the Average Statement provided these

are certified to be due by a

Certificate of the Adjuster or Firm

of Adjusters employed to prepare

the Average Statement.

36. On the true construction of the Bonds they contemplate, and indeed provide for an Adjustment to be drawn up. The charges which the consignees agree that they will pay are to be ascertained by that Adjustment. Any sums which become payable prior to or pending the proportion of that Adjustment are interim payments only and it is a condition precedent to such payments that they be certified in writing by the Adjuster. Given that the parties have agreed that payment shall be made on the basis of an Adjustment by an Adjuster or Firm



of Adjusters, rather than, for example, the Court, it follows that the making of such an Adjustment is a necessary pre-requisite for the establishment of a cause of action for the payment of any sum in general average.

37. Further, it would make no sense if, prior to the preparation of an Adjustment, the Shipowners would have no cause of action for an interim payment of say 20 per cent without a certificate yet would have cause of action for 100 per cent of the contribution. The liability which each consignee undertakes by signing the Bonds is a separate liability from any which he may be under at common law and is to make interim payments after certificates and full payment after Adjustment.

B. The Appeal:-

The Respondents Case - The Guarantee

RECORD

122 and  
Schedule

38. It is common ground that the various forms of Guarantees signed by or on behalf of the first 11 Defendants give rise to a separate obligation (the obligation of these Defendants under their policies being to the consignees) and that these Defendants are primary or principal obligors thereunder.
39. It is possible for an undertaking or guarantee in respect of general average to give rise to a new and separate liability to pay general average governed by a wholly different limitation period from the original liability under the contract of carriage. In Union of India v E.B. Aaby's Rederi (1975 A.C. 797 H.L.) a claim for general average made under the contract of carriage was time barred by virtue of a one year contractual period of limitation. However, the High Commission of the consignees (the Union of India) has given a written undertaking, in order to raise

a lien being exercised by Shipowners, that they would pay "any general average contribution which may be legally due".

The House of Lords held that the undertaking gave rise to a new and separate contract and cause of action subject only to the normal 6 year time bar. If a new and separate contract can arise when the consignee himself gives an undertaking a fortiori when a third party does so.

40. Each of the 4 forms of guarantee refer either to an Adjustment expressly or to the amount of general average being ascertained.

Form 1 guarantees the payment of general average. 122 line 1  
67 line 22

"for which the goods are legally liable under an Adjustment.....  
....." 122 line 1  
67 line 35  
and Schedule

Until an Adjustment has been drawn up the goods or more accurately the Owners of the goods cannot be

legally liable "under" it.

They may, if the Shipowners are wrong in their arguments on the Cross-Appeal be legally liable quite apart from it. But the Underwriters have not bound themselves to discharge any liability "under" an Adjustment.

41. It could be argued that as a matter of strict law an Adjustment cannot found liability because it does not of itself give rise to legally binding rights and obligations. However the answer to the question whether Underwriters have bound themselves to pay any sum due by way of general average before or only after an Adjustment has been drawn up must depend on the intention of the parties ascertained from the words used against the commercial background of normal dealings between Shipowners consignees and Underwriters in respect of general average contributions. These include the matters of commercial convenience set out in paragraph 28 above, the fact that the sum

due by way of general average cannot be known until an Adjustment has been drawn up, and the notorious reluctance of Underwriters, well documented in the English authorities, to pay general average contributions until after the Adjustment has been produced to them.

42. It could therefore have been argued successfully by Underwriters had an action been brought against them on the Guarantee in Form 1 that they could not at that stage be legally liable "under an Adjustment" before an Adjustment had been drawn up, and that the intention of the parties was that no claim could be advanced until then. In such circumstances the absence of an Adjustment would be fatal to the Shipowners' claim. 122 line 1 -- 67 line 22 and Schedule
42. Form 2 does not make the liability of Underwriters dependent upon an Adjustment in express terms. The undertaking is to pay any contribution to general average 122 line 5 80 line 1 and Schedule

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etc. "...which may hereafter be ascertained to be due in respect of the said merchandise..."

80 line 25

However, it also contains an undertaking to make payments on account if required by the Shipowners as soon as these are certified by the Adjusters.

44. Thus the form not only contemplates that there will be an ascertainment of sums due at a later date, but further contemplates that there will be an Adjustment and that it will be drawn up by Adjusters. It is submitted that as a matter of construction the subsequent ascertainment of contribution due upon which Underwriters' liability does expressly depend, is the Adjustment prepared by Average Adjusters. It cannot have been the intention of the parties that the Shipowners should be able to claim the entire sum due, without any certificates or Adjustment at any time after the Guarantee was given, when payments on account are not to be made until after an Adjuster's Certificate and

a request by the Shipowners.  
Certificates from the Adjusters  
are conditions precedent to any  
payment.

45. Similarly, although Form 3 does not make Underwriters' liability dependent upon an Adjustment expressly, it is an undertaking to pay any just claim for general average, etc. " ... as may properly be found due in respect of the said cargo." "Found due" clearly envisages that a third party will make an assessment. This can only refer to an Adjustment or to a decision of the Court. The use of the words "just" and "properly" are more apt in the case where an Adjustment is contemplated, since this postulates that the justness and propriety of the assessment can be challenged in and examined by the Court. It would on the other hand be an odd use of language to undertake to pay on a Judgment provided that it is just and proper. On the true construction of Form 3, it is submitted that the
- 122 line 9  
88 line 1  
and Schedule

RECORD

undertaking is to pay sums found due by an Adjustment provided that it is just and proper.

122 line 14      46. Form 4, like Form 1 does refer  
95 line 1            to an Adjustment in terms. The  
                         undertaking guarantees payment of  
                         general average contribution etc.  
                         " ... that may be properly found  
                         to be due on the said goods upon  
                         the completion of the Average Statement  
                         by the Adjusters". On the wording  
                         of this form no sum could be due  
                         until the Average Statement has  
                         been completed.

47. In relation to the Guarantees generally, the Plaintiffs rely on the facts that Form 1 and Form 4 refer to an Adjustment in terms, and it is submitted, clearly makes the liability of Underwriters dependent upon an Adjustment being drawn up and published. Although Forms 2 and 3 are perhaps not quite so clear in this respect, their commercial purpose is the same, and Courts have emphasised on numerous occasions the undesirability



of drawing narrow distinctions between one contract and another based on slightly different forms of words.

CONCLUSIONS

On the Appeal

48. The Court of Appeal were correct in their conclusion that the Guarantees were new and separate contracts and that on the construction of each of the 4 forms the drawing up of an Adjustment was a condition precedent to any cause of action for general average contribution and that the Second Plaintiffs' claims are not statute barred against the First 11 Defendants.
  
49. The Court of Appeal were wrong in their conclusion that at common law, on the construction of the York-Antwerp Rules and on the construction of the Bonds a cause of action for

RECORD

general average contribution  
arose when the general average  
loss or expenditure was incurred  
and that the Second Plaintiffs'  
claims are time barred against  
the 12th to 85th Defendants.

Settled  
3 Essex Court  
Temple,  
London,  
EC4Y 9AP

Kenneth Rokison

David Grace

IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL NO. 7 OF 1982  
ON APPEAL  
FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

CASTLE INSURANCE COMPANY  
LIMITED

Appellants  
(Defendants)

- and -

HONG KONG ISLANDS SHIPPING  
COMPANY LIMITED

- and -

HONG KONG ATLANTIC SHIPPING  
COMPANY LIMITED

Respondents and  
Cross-Appellants  
(Plaintiffs)

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CASE FOR THE RESPONDENTS AND CROSS-  
APPELLANTS

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Norton, Rose, Botterell & Roche  
Kempson House,  
Camomile Street,  
London, EC3A 7AN

Tel: (01) 283 2434

Ref: RG/46/B.143871Z