27/83

IN THE PRIVY COUNCIL No. 7 of 1982

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN:

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.) and 84 Others — Appellants (Defendants)

- and -

HONG KONG ISLANDS SHIPPING CO. LIMITED — Respondent (Plaintiff)

(and Cross Appeal)

RECORD OF PROCEEDINGS

Messrs. Clyde & Co.
30 Mincing Lane,
London, EC3R 7BR

Solicitors for the Appellants

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

Solicitors for the Respondent

IN THE PRIVY COUNCIL No.7 of 1982

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN :

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.)	Appellants 1st Defendant
CENTURY INSURANCE COMPANY LIMITED	2nd Defendant
GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.	3rd Defendant
GUARDIAN ASSURANCE COMPANY LIMITED	4th Defendant
UNION INSURANCE SOCIETY OF CANTON LIMITED	5th Defendant
RELIANCE MARINE INSURANCE COMPANY LIMITED	6th Defendant
MALAYAN OVERSEAS INSURANCE CORPORATION	7th Defendant
THE NEW INDIA ASSURANCE COMPANY LIMITED	8th Defendant
NATIONAL INSURANCE COMPANY LIMITED	9th Defendant
SOUTH CHINA INSURANCE COMPANY LIMITED	10th Defendant
YASUDA FIRE AND MARINE INSURANCE COMPANY LIMITED	11th Defendant
TRANS-ORIENT DEVELOPMENT CO.	12th Defendant
SADDIK AMIN SEIF EL-DIN & SON	13th Defendant
GHAZI ABD AL-RABMAN AL-DOUBY	14th Defendant
HAJEE AHMED YAKUB MEMON	15th Defendant
OMAR SALEIM AL-KHANBASHI	16th Defendant
ALI ROZI AL-KHOTANLY	17th Defendant
INTERNATIONAL DISTRIBUTING EST.	18th Defendant
YOUSUF SAEED MUKRED	19th Defendant
MOOQUBEL AL-HAG	20th Defendant
AL-SAWAI STORES	21st Defendant
O.A. ALSAINI ELAMOUDI	22nd Defendant

AHMED MOHAMMED SHAMSHAAN	23rd Defendant
OMAR KHAMIS BAMURSHID	24th Defendant
MAREI ABDULLAH BUGSHAN	25th Defendant
MOHAMMED S. HANTOOSH	26th Defendant
ABUBAKER AHMED BANAFA	27th Defendant
ALI HAZZA & MOGBOUL ALI	28th Defendant
ABDUI GHANI ALI	29th Defendant
MOHAMED SAEED SALEH & SONS	30th Defendant
ABDUL WAHAB MIRZA	31st Defendant
MOHAMED SALHD M. BAESHEN	32nd Defendant
SAIED AHMED BANAAMA	33rd Defendant
ABDUL SATTAR ALMAIMANI	34th Defendant
ABDULHADI BOGHSAN	35th Defendant
YASSEEN ESTABLISHMENT	36th Defendant
SHARIEF MOHAMED SAAD AL-JUDI	37th Defendant
ALJAZEERAH MODERN EXHIBITION	38th Defendant
SALEH ALI ANSARI	39th Defendant
SAID HASSAN AS-SUFI	40th Defendant
SAAD ATIQULLAH AL-HARABI	41st Defendant
MOHAMED HOSSAIN BANAFEI	42nd Defendant
BASALAMAH GROCERY	43rd Defendant
MOHAMED ALI SULIMANI	44th Defendant
AHMED ALI HUSSAIN	45th Defendant
MOHAMED ABDULHAFIZ BIN SHAIHOON	46th Defendant
SULIMAN AL ABDUL AZIZ ALHAMEED	47th Defendant
SIDDIQUE AMIN SAIFUDDIN	48th Defendant
OMER MOHAMED BASALAMAH	49th Defendant
OMER SAAD AL-KHAMBASHI	50th Defendant
NAFE MUBARAK AL-HARABI	51st Defendant
ABDULRAHMAN A. ABDUSSABOOR	52nd Defendant
SYED MOHSIN ADBULLAH BASURRAH	53rd Defendant
OMER SALEM SHEIBA AL-KHAMBASI	54th Defendant
M.Y.M.Y. DEHLAVI	55th Defendant
AHMED NASER ALI	56th Defendant
SALEM A. AL-MUHDHAR	57th Defendant
OMAR SAAD ALKHAMBASI	58th Defendant
OMAR HINNAWI	59th Defendant

ABDUL RAHMAN A.H. BAKHSH	60th Defendant
ABDULRAHMAN AHMED BANAFA	61st Defendant
HAMZA M. BOGARY	62nd Defendant
ARABIAN GULF ASSOCIATION FACTORIES	63rd Defendant
FOLAD A. BOKARI	64th Defendant
TARGOUN AMIN KHOTANLY	65th Defendant
ABDUR RAHMIN QARI ARTOSHI	66th Defendant
MOHAMED TAHIR TURKSTANI	67th Defendant
MOHAMED AHMED BAFAIL	68th Defendant
SAEED ABDUL ILAH GENERAL TRADING ENTERPRISES	69th Defendant
ALLIED TEXTILE LEATHER INDUSTRIES	70th Defendant
CHANDABHAI & SONS	71st Defendant
MOHAMED OTHMAN BAOMAR	72nd Defendant
KASEEK ESTABLISHMENT	73rd Defendant
MOHAMED OMAR ALHAJ BAJAAFAR	74th Defendant
AHMED DAHMAN BASMOUSA AL AMOUDI	75th Defendant
ABDULLAH DAHMAN BAMOUSA	76th Defendant
NAFE BIN MOBARAK ALHARBI & ABOUD BIN ABDULLAH ALHARBI	77th Defendant
AHUJA RADIOS	78th Defendant
INTERNATIONAL BOOK HOUSE PVT. LTD.	79th Defendant
AHMED ALI HUSSAIN	80th Defendant
MARAI BIN SALIM BARABAA	81st Defendant
MOHAMED AHMED NASHER	82nd Defendant
MOHAMMED SALIM BAKLAMIS	83rd Defendant
AHMED ABDULLA ALI AL-SHAIBANI	84th Defendant
SAEED KASSEM ANAMM	85th Defendant

- and -

HONG KONG ISLANDS SHIPPING CO. LIMITED	Respondent (Plaintiff)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT REPRODUCED.

No.	Description of Document	Date
1	General Average Adjustment	
2	Exhibit "RAP 1" to the Affidavit of R.A.Powell sworn 1st May 1979 being copy Writ of Summons	1st May 1979
3	Exhibit "CAP 1" to the Affidavit of C.A.Potts sworn loth October 1979 being copy Writ of Summons	10th October 1979
4	Such portions of Exhibit "CAP 6", being Cargo Underwriters Letters of Guarantee and Schedules thereto as are not considered relevant to the subject matter of the Appeal	10th October 1979
5	Order of the Honourable Mr. Justice Zimmern being Order for renewal of Summons	6th November 1979
6	Such portions of Exhibit "RAP 1" being Cargo Underwriters' Letters of Guarantee, Schedules and Letter of Authorisation as are not considered relevant to the subject matter of the Appeal	8th February 1980

IN THE PRIVY COUNCIL P.C.Appeal No.7 of 1982

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN :

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.) and 84 others — Appellants (Defendants)

v.

HONG KONG ISLANDS SHIPPING CO. LIMITED — Respondent (Plaintiff)

(and Cross Appeal)

RECORD OF PROCEEDINGS

No.1

WRIT OF SUMMONS

1978, No.3727

In the Supreme Court of Hong Kong

No.1
Writ of Summons
25th October 1978

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
COMMERCIAL LIST

BETWEEN :

HONG KONG ISLANDS SHIPPING CO.LTD. 1st Plaintiff

- and -

HONG KONG ATLANTIC SHIPPING CO.LTD. 2nd Plaintiff

- and -

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd). 1st Defendant

CENTURY INSURANCE COMPANY LIMITED 2nd Defendant

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD. 3rd Defendant

GUARDIAN ASSURANCE COMPANY LIMITED	4th Defendant	
UNION INSURANCE SOCIETY OF CANTON LIMITED	5th Defendant	
RELIANCE MARINE INSURANCE COMPANY LIMITED	6th Defendant	
MALAYAN OVERSEAS INSURANCE CORPORATION	7th Defendant	
THE NEW INDIA ASSURANCE COMPANY LIMITED	8th Defendant	10
NATIONAL INSURANCE COMPANY LIMITED	9th Defendant	
SOUTH CHINA INSURANCE COMPANY LIMITED	10th Defendant	
YASUDA FIRE AND MARINE INSURANCE COMPANY LIMITED	11th Defendant	
TRANS-ORIENT DEVELOPMENT CO.	12th Defendant	
SADDIK AMIN SEIF EL-DIN & SON	13th Defendant	
GHAZI ABD AL-RABMAN AL-DOUBY	14th Defendant	
HAJEE AHMED YAKUB MEMON	15th Defendant	20
OMAR SALEIM AL-KHANBASHI	16th Defendant	
ALI ROZI AL-KHOTANLY	17th Defendant	
INTERNATIONAL DISTRIBUTING EST.	18th Defendant	
YOUSUF SAEED MUKRED	19th Defendant	
MOOQUEBEL AL-HAG	20th Defendant	
AL-SAWAI STORES	21st Defendant	
O.A. ALSAINI ELAMOUDI	22nd Defendant	
AHMED MOHAMMED SHAMSHAAN	23rd Defendant	30
OMAR KHAMIS BAMURSHID	24th Defendant	
MAREI ABDULLAH BUGSHAN	25th Defendant	
MOHAMMED S. HANTOOSH	26th Defendant	
ABUBAKER AHMED BANAFA	27th Defendant	
ALI HAZZA & MOGBOUL ALI	28th Defendant	
ABDUI GHANI ALI	29th Defendant	
MOHAMED SAEED SALEH & SONS	30th Defendant	
ABDUL WAHAB MIRZA	31st Defendant	
MOHAMED SALHD M. BAESHEN	32nd Defendant	
SAIED AHMED BANAAMA	33rd Defendant	40

	ABDUL SATTAR ALMAIMANI	34th Defendant
	ABDULHADI BOGHSAN	35th Defendant
	YASEEN ESTABLISHMENT	36th Defendant
	SHARIEF MOHAMED SAAD AL-JUDI	37th Defendant
	ALJAZEERAH MODERN EXHIBITION	38th Defendant
	SALEH ALI ANSARI	39th Defendant
	SAID HASSAN AS-SUFI	40th Defendant
10	SAAD ATIQULIAH AL-HARABI	41st Defendant
	MOHAMED HOSSAIN BANAFEI	42nd Defendant
	BASALAMAH GROCERY	43rd Defendant
	MOHAMED ALI SULIMANI	44th Defendant
	AHMED ALI HUSSAIN	45th Defendant
	MOHAMED ABDULHAFIZ BIN SHAIHOON	46th Defendant
	SULIMAN AL ABDUL AZIZ ALHAMEED	47th Defendant
	SIDDIQUE AMIN SAIFUDDIN	48th Defendant
20	OMER MOHAMED BASALAMAH	49th Defendant
	OMER SAAD AL-KHAMBASHI	50th Defendant
	NAFE MUBARAK AL-HARABI	51st Defendant
	ABDULRAHMAN A.ABDUSSABOOR	52nd Defendant
	SYED MOHSIN ADBULLAH BASURRAH	53rd Defendant
	OMER SALEM SHEIBA AL-KHAMBASI	54th Defendant
	M.Y.M.Y. DEHLAVI	55th Defendant
	AHMED NASER ALI	56th Defendant
30	SALEM A. AL-MUHDHAR	57th Defendant
	OMAR SAAD ALKHAMBASI	58th Defendant
	OMAR HINNAWI	59th Defendant
	ABDUL RAHMAN A.H.BAKHSH	60th Defendant
	ABDULRAHMAN AHMED BANAFA	61st Defendant
	HAMZA M. BOGARY	62nd Defendant
	ARABIAN GULF ASSOCIATION FACTORIES	63rd Defendant
	FOLAD A. BOKARI	64th Defendant
	TARGOUN AMIN KHOTANLY	65th Defendant
40	ABDUR RAHMIN QARI ARTOSHI	66th Defendant

MOHAMED TAHIR TURKSTANI	67th Defendant
MOHAMED AHMED BAFAIL	68th Defendant
SAEED ABDUL ILAH GENERAL TRADING ENTERPRISES	69th Defendant
ALLIED TEXTILE LEATHER INDUSTRIES	70th Defendant
CHANDABHAI & SONS	71st Defendant
MOHAMED OTHMAN BAOMAR	72nd Defendant
KASEEK ESTABLISHMENT	73rd Defendant
MOHAMED OMAR ALHAJ BAJAAFAR	74th Defendant
AHMED DAHMAN BASMOUSA AL AMOUDI	75th Defendant
ABDULLAH DAHMAN BAMOUSA	76th Defendant
NAFE BIN MOBARAK ALHARBI & ABOUD BIN ABDULLAH ALHARBI	77th Defendant
AHUJA RADIOS	78th Defendant
INTERNATIONAL BOOK HOUSE PVT. LTD.	79th Defendant
AHMED ALI HUSSAIN	80th Defendant
MARAI BIN SALIM BARABAA	81st Defendant
MOHAMED AHMED NASHER	82nd Defendant
MOHAMMED SALIM BAKLAMIS	83rd Defendant
AHMED ABDULLA ALI AL-SHAIBANI	84th Defendant
SAEED KASSEM ANAMM	85th Defendant

ELIZABETH THE SECOND, BY THE GRACE OF GOD, OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OF OUR OTHER REALMS AND TERRITORIES QUEEN, HEAD OF THE COMMONWEALTH, DEFENDER OF THE FAITH :

TO CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.)

of 613, Asian House, 1, Hennessy Road, Hong Kong.

TO CENTURY INSURANCE COMPANY LIMITED

of Room 802, Prosperous Building, 48-52, Des Voeux Road, Central, Hong Kong.

TO GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LIMITED

of 42nd Floor, Connaught Centre, Hong Kong.

TO GUARDIAN ASSURANCE COMPANY LIMITED

of 1401 Bank of Canton Building, Des Voeux Road, Central, Hong Kong.

TO UNION INSURANCE SOCIETY OF CANTON LIMITED

of Room 210, Swire House, 9, Connaught Road, Central, Hong Kong.

TO RELIANCE MARINE INSURANCE COMPANY LIMITED

of 13th Floor, Wing On Central Building, 26, Des Voeux Road, Central, Hong Kong.

TO MALAYAN OVERSEAS INSURANCE CORPORATION

of 39, Chunghsiao West Road, Sec. 1, P.O. Box 954, Taipei, Taiwan.

TO THE NEW INDIA ASSURANCE COMPANY LIMITED

of 15/17 Wyndham Street, 6th Floor, Hong Kong.

TO NATIONAL INSURANCE COMPANY LIMITED

of 4th Floor, Man Cheung Building, 15, Wyndham Street, Hong Kong.

TO SOUTH CHINA INSURANCE COMPANY LIMITED

of 70, Section 1, Hankou Street, Taipei, Taiwan 100.

TO YASUDA FIRE AND MARINE INSURANCE COMPANY LIMITED

of Wang Kee Building, 5th Floor, 34-37, Connaught Road, Central, Hong Kong.

TO TRANS-ORIENT DEVELOPMENT CO.

of P.O.Box 1163, Jeddah, Saudi Arabia.

TO SADDIK AMIN SEIF EL-DIN & SON

of P.O.Box 753, Mecca, Saudi Arabia.

TO GHAZI ABD AL-RABMAN AL-DOUBY

of King Abdullah Faisal Street, Mecca, Saudi Arabia.

TO HAJEE AHMED YAKUB MEMON

of Faisal Street, Mecca, Saudi Arabia.

TO OMAR SALEIM AL-KHANBASHI

of Tahet Amarat Al-Shraf, Jeddah, Saudi Arabia

TO ALI ROZI AL-KHOTANLY
of Jeddah, Saudi Arabia.
TO INTERNATIONAL DISTRIBUTING EST.
of Prince Nawaf Bldg., No.4-1st Floor 411, Jeddah, Saudi Arabia.
TO YOUSUF SAEED MUKRED
of P.O. Box 867 Hodeidah, Yemen Arab Republic.
TO MOOQUBEL AL-HAJ
of Hodeidah, Yemen Arab Republic
TO AL-SAWAI STORES
of Taiz, Yemen Arab Republic.
TO O.A. ALSAINI ELAMOUDI
of P.O.Box 252, Jeddah, Saudi Arabia.
TO AHMED MOHAMMED SHAMSHAAN
of P.O.Box 2070, Jeddah, Saudi Arabia.
TO OMAR KHAMIS BAMURSHID
of P.O.Box 629, Jeddah, Saudi Arabia.
TO MAREI ABDULLAH BUGSHAN
of Awkaf Street, Khaskia, Jeddah, Saudi Arabia.
TO MOHAMMED S. HANTOOSH
of Jeddah, Saudi Arabia.
TO ABUBAKER AHMED BANAFA
of P.O.Box 1176, Jeddah, Saudi Arabia.
TO ALI HAZZA & MAGBOUL ALI
of P.O.Box 165, Jeddah, Saudi Arabia.
TO ABDUI GHANI ALI
of P.O.Box 868, Taiz, Yemen Arab Republic.
TO MOHAMED SAEED SALEH & SONS
of P.O.Box 720, Hodeidah, Yemen Arab Republic
TO ABDUL WAHAB MIRZA
of P.O.Box 257, Mecca, Saudi Arabia.
TO MOHAMED SALHD M. BAESHEN
of Jeddah, Saudi Arabia.
TO SAIED AHMED BANAAMA
of Jeddah, Saudi Arabia.
TO ABDUL SATTAR ALMAIMANI
of Bab El Majeedi, Medina, Saudi Arabia.
TO ABDULHADI BOGSHAN
of P.O.Box 177, Jeddah, Saudi Arabia.

TO YASEEN ESTABLISHMENT
of P.O.Box 726, Jeddah, Saudi Arabia.
TO SHARIEF MOHAMED SAAD AL-JUDI
of Al-Qushashia, Mecca, Saudi Arabia.
TO ALJAZEERAH MODERN EXHIBITION
of P.O.Box 1127, Jeddah, Saudi Arabia.
TO SALEH ALI ANSARI
of P.O.Box 1773, Jeddah, Saudi Arabia.
TO SAID HASSAN AS-SUFI
of P.O.Box 514, Jeddah, Saudi Arabia.
TO SAAD ATIQULLAH AL-HARABI
of P.O.Box 425, Mecca, Saudi Arabia.
TO MOHAMED HOSSAIN BANAFEI
of P.O.Box 1304, Jeddah, Saudi Arabia.
TO BASALAMAH GROCERY
of P.O.Box 1770, Jeddah, Saudi Arabia.
TO MOHAMED ALI SULIMANI
of P.O.Box 730, Jeddah, Saudi Arabia.
TO AHMED ALI HUSSAIN
of Mecca, Saudi Arabia.
TO MOHAMED ABDULHAFIZ BIN SHAIHOON
of P.O.Box 830, Jeddah, Saudi Arabia.
TO SULIMAN AL ABDUL AZIZ ALHAMEED
of P.O.Box 704, Mecca, Saudi Arabia.
TO SIDDIQUE AMIN SAIFUDDIN
of P.O.Box 753, Mecca, Saudi Arabia.
TO OMER MOHAMED BASALAMAH
of P.O.Box 822, Jeddah, Saudi Arabia.
TO OMER SAAD AL-KHAMBASHI
of P.O.Box 514, Mecca, Saudi Arabia.
TO NAFE MUBARAK AL-HARABI
of P.O.Box 481, Mecca, Saudi Arabia.
TO ABDULRAHMAN A. ABDUSSABOOR
of P.O.Box 1295, Jeddah, Saudi Arabia.
TO SYED MOHSIN ABDULLAH BASURRAH
of P.O.Box 946, Jeddah, Saudi Arabia.

TO OMER SALEM SHEIBA AL-KHAMBASHI
of Taht Amarut Al-Shraf, Jeddah, Al-Khaskia, Saudi Arabia.
TO M.Y.M.Y. DEHLAVI
of P.O.Box 428, Mecca, Saudi Arabia.
TO AHMED NASER ALI
of Jeddha, Saudi Arabia.
TO SALEM A. AL-MUHDHAR
of P.O.Box 249, Jeddah, Saudi Arabia.
TO OMAR SAAD ALKHAMBASI
of P.O.Box 629, Jeddah, Saudi Arabia.
TO OMAR HINNAWI
of c/o P.O.Box 1295, Jeddah, Saudi Arabia.
TO ABDUL RAHMAN A.H. BAKHSH
of Mecca, Saudi Arabia.
TO ABDULRAHMAN AHMED BANAFA
of P.O. Box 688, Jeddah, Saudi Arabia.
TO HAMZA M. BOGARY
of P.O.Box 1800, Jeddah, Saudi Arabia.
TO ARABIAN GULF ASSOCIATION FACTORIES
of P.O.Box 2143, Jeddah, Saudi Arabia.
TO FOLAD A. BOKARI
of Qabil Street, Jeddah, Saudi Arabia.
TO TARGOUN AMIN KHOTANLY
of Jeddah, Saudi Arabia.
TO ABDUR RAHIM QARI ARTOSHI
of Mecca, Saudi Arabia.
TO MOHAMED TAHIR TURKSTANI
of P.O.Box 450, Medina, Saudi Arabia
TO MOHAMED AHMED BAFAIL
of Sooqus Sagir, Mecca, Saudi Arabia.
TO SAEED ABDUL ILAH GENERAL TRADING ENTERPRISES
of P.O.Box 695, Hodeidah, Yemen Arab Republic.
TO ALLIED TEXTILE LEATHER INDUSTRIES
of Post Box 45, 3438, Inside Raipur Gate, Kotni Diwal, Ahmedabad, India.

TO CHANDABHAI & SONS

of Post Box 34, Dariapur, Dabgarwad, Ahmedabad-1, India

TO MOHAMED OTHMAN BAOMAR

of P.O.Box 1219, Jeddah, Saudi Arabia.

TO KASEEK ESTABLISHMENT

of P.O.Box 1367, Jeddah, Saudi Arabia.

TO MOHAMED OMAR ALHAJ BAJAAFAR

of P.O.Box 1279, Jeddah, Saudi Arabia.

TO AHMED DAHMAN BASMOUSA AL AMOUDI

of P.O.Box 1485, Jeddah, Saudi Arabia.

TO ABDULLAH DAHMAN BAMOUSA AL AMOUDI

of P.O.Box 1157, Jeddah, Saudi Arabia.

TO NAFE BIN MOBARAK ALHARBI & ABOUD BIN ABDULLAH ALHARBI

of P.O.Box 481, Mecca, Saudi Arabia.

TO AHUJA RADIOS

of 215, Okhla Industrial Estate, New Delhi 110020, India.

TO INTERNATIONAL BOOK HOUSE PVT. LTD.

of Indian Mercantile Mansions (Extn), Madam Cama Road, Bombay 1, India.

TO AHMED ALI HUSSAIN

of Mecca, Saudi Arabia.

TO MARAI BIN SALIM BARABAA

of P.O.Box 1425, Jeddah, Saudi Arabia.

TO MOHAMED AHMED NASHER

of Hodeidah, Yemen Arab Republic.

TO MOHAMMED SALIM BAKLAMIS

of P.O.Box 145, Mecca, Saudi Arabia.

TO AHMED ABDULLA ALI AL-SHAIBANI

of Hodeidah, Yemen Arab Republic.

TO SAEED KASSEM ANAMM

of c/o (Messrs. Al-Negah Store), Hodeidah, Yemen Arab Republic.

WE Command you that within 8 days after the service of this writ on you, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of

HONG KONG ISLANDS SHIPPING CO.LTD. of 9th Floor, Realty Building, 71, Des Voeux Road, Central, Hong Kong

and HONG KONG ATLANTIC SHIPPING CO.LTD. of 80 Broad Street, Monrovia, Liberia

and take notice that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS The Honourable Chief Justice of Our said Court, the 25th day of October, 1978.

S.H.MAYO
Registrar.

Note :- This writ may not be served more than 12 Calendar months after the above date unless renewed by order of the Court.

Directions for Entering Appearance.

The defendant may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court in Victoria, Hong Kong, or (2) by sending them to the Registry by post.

Note :- If the defendant enters an appearance, then, unless a summons for judgment is served on him in the meantime, he must also serve a defence on the solicitor for the Plaintiff within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

POINTS OF CLAIM

1. By contracts contained in or evidenced by bills of lading, all of which were in the same form, the 1st and/or 2nd Plaintiff (s) agreed to carry goods on board the motor vessel 'Potoi Chau' from ports in the Far East to Jeddah, Hodeidah, Aden, and Bombay. The said contracts provided inter alia that General Average should be adjusted according to the York/Antwerp Rules 1950, and the said Plaintiff (s) will refer to the said contracts for their full terms and effect.

2. On the 25th October 1972 the said vessel in the course of the said voyage encountered cyclonic

weather and at 2120 hours ran aground at a position 11°13'N, 51°08'E off the coast of the Somali Republic. The ship and cargo concerned in the joint adventure were thereby imperilled.

3. Thereafter the 1st and/or 2nd Plaintiff (s) its servants or agents intentionally and reasonably made sacrifices of ship and cargo and incurred extraordinary expenditure to preserve the said ship and cargo from peril, and in particular engaged the tug 'Svitzer' to assist in refloating operations and jettisoned approximately 2311.5 tons of cargo. Full particulars of the said sacrifices and expenditure are contained in an Adjustment signed by Messrs. Stevens, Elmslie & Co. and dated 31st August 1977. Copies of the said Adjustment and/or extracts therefrom have been delivered to the Defendants.

4. The said vessel was refloated on the 21st November 1972 and proceeded to Aden, where she arrived on the 24th November 1972. All cargo except cargo for Bombay was discharged, temporary repairs were effected and the said vessel proceeded to Bombay, where she arrived on the 2nd January 1973. After discharge of Bombay cargo the vessel on survey was found to be a commercial constructive total loss and the voyage was abandoned on the 16th January 1973. Cargo for Jeddah and Hodeida was subsequently carried from Aden to destination by the 1st and/or 2nd Plaintiff's vessel 'Chik Chau' and 'Lamtong Chau'.

5. The 12th to 85th Defendants inclusive, who were consignees of cargo shipped on the said vessel for the said voyage, and whose cargo was insured by the 1st to 11th Defendants inclusive, in return for delivery of their cargo without payment of cash deposits signed Average Agreement with the 1st and/or 2nd Plaintiff (s) whereby the 12th to 85th Defendants respectively agreed to pay to the 1st and/or 2nd Plaintiff (s) the proportions of General Average chargeable to their respective consignments. Further by contracts in writing the 1st to 11th Defendants inclusive in consideration of the 1st and/or 2nd Plaintiff (s) releasing to the said consignees their respective shipments respectively insured by the 1st to 11th Defendants without payment of cash deposits guaranteed payment of the respective proportions of General Average attaching to the respective consignments insured by them. Accordingly the 1st and/or 2nd Plaintiff (s) or its/their Agents did release to the said 12th to 85th Defendants their respective consignments without demanding from them payment of cash deposits. In the

premises the 12th to 85th Defendants are liable to pay the respective proportions of General Average attaching to the goods consigned to them and or the 1st to 11th Defendants under their respective Guarantees are liable to pay the proportions of General Average attaching to the consignments insured by them. Full particulars have been supplied to the Defendants of the amounts payable by them but the Defendants have failed to pay the same or any part thereof.

AND the 1st and/or 2nd Plaintiff (s) claim (s):-

1. Against the 1st Defendant and the Defendants insured by it as follows :-

12th Defendant	US$	187.48
13th Defendant		6,319.85
14th Defendant		1,469.27
15th Defendant		6,826.12
16th Defendant		2,706.60
17th Defendant		1,270.32
18th Defendant		869.17
19th Defendant		1,077.39
20th Defendant		2,194.68
21st Defendant		1,152.79
	US$	24,073.67
Less Credit		242.89
	US$	23,830.78

Against the 2nd Defendant and the Defendants insured by it as follows :-

22nd Defendant	US$	4,434.43
23rd Defendant		2,257.65
24th Defendant		2,870.34
25th Defendant		1,957.16
26th Defendant		2,472.36
	US$	13,991.94
Less Credit		151.12
	US$	13,840.82

Against the 3rd Defendant and the Defendants insured by it as follows :-

27th Defendant	US$	1,568.88
28th Defendant		3,229.89
29th Defendant		1,285.13
30th Defendant		2,531.89
	US$	8,615.79
Less Credit		144.41
	US$	8,471.38

Against the 4th Defendant and the Defendants insured by it as follows :-

31st Defendant	US$	707.34
32nd Defendant		592.93
33rd Defendant		741.65
34th Defendant		1,354.48
35th Defendant		1,495.60
36th Defendant		845.65
37th Defendant		5,419.79
38th Defendant		2,012.09
39th Defendant		2,914.81
40th Defendant		2,848.60
41st Defendant		157.20
42nd Defendant		683.74
43rd Defendant		1,321.78
44th Defendant		1,112.05
45th Defendant		3,432.53
46th Defendant		4,582.95
16th Defendant		682.91
47th Defendant		1,328.44
48th Defendant		2,968.46
49th Defendant		1,465.15
50th Defendant		2,554.79
51st Defendant		1,588.87
52nd Defendant		612.32
53rd Defendant		1,400.04
54th Defendant		2,683.32
55th Defendant		1,736.76
56th Defendant		717.73
57th Defendant		2,933.65
58th Defendant		2,253.21
59th Defendant		5,086.48
60th Defendant		3,701.32
61st Defendant		1,292.64
62nd Defendant		382.78
63rd Defendant		2,222.84
64th Defendant		487.44
65th Defendant		447.67
66th Defendant		414.06
45th Defendant		620.01
67th Defendant		1,143.20
68th Defendant		2,265.75
69th Defendant		1,042.41
70th Defendant		4,670.61
71st Defendant	US$	2,874.34
	US$	79,800.39

Against the 4th Defendant and the Defendants insured by it as follows :-

55th Defendant	US$	1,736.76
60th Defendant		3,701.32
69th Defendant		1,042.41
70th Defendant		4,670.61
71st Defendant		2,874.34
	US$	14,025.44

Against the 5th Defendant and the Defendants insured by it as follows :-

31st Defendant	US$	707.34
32nd Defendant		592.93
33rd Defendant		741.65
34th Defendant		1,354.48
35th Defendant		1,495.60
37th Defendant		5,419.79
38th Defendant		2,012.09
39th Defendant		2,914.81
40th Defendant		2,848.60
41st Defendant		157.20
42nd Defendant		683.74
44th Defendant		1,112.05
45th Defendant		3,432.53
46th Defendant		4,582.95
16th Defendant		682.91
47th Defendant		1,328.44
48th Defendant		2,968.46
49th Defendant		1,465.15
50th Defendant		2,554.79
51st Defendant		1,588.87
52nd Defendant		612.32
53rd Defendant		1,400.04
54th Defendant		2,683.32
56th Defendant		717.73
57th Defendant		2,933.65
58th Defendant		2,253.21
64th Defendant		487.44
65th Defendant		447.67
66th Defendant		414.06
67th Defendant		1,143.20
68th Defendant		2,265.75
	US$	54,002.77

Against the 6th Defendant and the Defendants insured by it as follows :-

72nd Defendant	US$	25,718.35
73rd Defendant		9,867.00
74th Defendant		41,524.48
75th Defendant		12,029.21
76th Defendant		9,290.47
	US$	98,429.51

Against the 7th Defendant and the Defendants insured by it as follows :-

77th Defendant	US$	2,812.50
78th Defendant		1,076.57
	US$	3,889.07

Against the 8th Defendant and the Defendants insured by it as follows :-

79th Defendant	US$ 3,172.23	
Less Credit	37.18	
		US$ 3,135.05

Against the 9th Defendant and the Defendants insured by it as follows :-

80th Defendant	US$ 596.57	
81st Defendant	241.14	
82nd Defendant	1,276.20	
		US$ 2,113.91

Against the 11th Defendant and the Defendants insured by it as follows :-

83rd Defendant	US$ 1,844.44	
84th Defendant	1,565.83	
85th Defendant	166.33	
	US$ 3,576.60	
Less Credit	16.30	
		US$ 3,560.30
		US$305,099.42

2. Interest.

(Sgd) Johnson Stokes & Master

And the sum of $526.00 or such sum as may be allowed on taxation) for costs, and also, if the 1st and/or 2nd Plaintiff(s) obtain(s) an order for substituted service, the further sum of $500.00 (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the 1st and/or 2nd Plaintiff(s) or its/their Solicitors within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed.

This writ was issued by Johnson, Stokes & Master, of Hongkong & Shanghai Bank Building, Victoria, Hong Kong, Solicitors for the said Plaintiff, whose address(es) ~~is~~ are at 9th Floor, Realty Building, 71, Des Voeux Road, Central, Hong Kong 80 Broad Street, Monrovia, Liberia, respectively.

In the Supreme Court of Hong Kong

No.1
Writ of Summons
25th October 1978
(continued)

And the sum of $526.00 (or such sum as may be allowed on taxation) for costs, and also, if the 1st and/or 2nd Plaintiff(s) obtain an order for substituted service, the further sum of $500.00 (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the Plaintiff or its Solicitors within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed.

This writ was issued by Johnson, Stokes & Master, of Hongkong & Shanghai Bank Building, Victoria, Hong Kong, Solicitors for the said Plaintiff, whose ~~address~~ registered office(s) ~~is~~ are situate at 9th Floor, Realty Building, 71, Des Voeux Road, C., Hong Kong and 80 Broad Street, Monrovia, Liberia, respectively.

(Sgd) Johnson Stokes & Master

Plaintiff's Evidence

No.2
Affidavit of Roderick Andrew Powell
1st May 1979

No. 2

AFFIDAVIT OF RODERICK ANDREW POWELL

1978, No. 3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

COMMERCIAL LIST

BETWEEN

HONG KONG ISLANDS SHIPPING CO. LTD. Plaintiff

- and -

CASTLE INSURANCE CO.LTD. (Formerly Pacific & Orient Underwriters (H.K.) Ltd.) 1st Defendant

and

84 Others

A F F I D A V I T

I, RODERICK ANDREW POWELL, of Flat D1, 78

Repulse Bay Villas, Repulse Bay, Hong Kong, Solicitor of the Supreme Court of Hong Kong and partner in the firm of Messrs. Norton, Rose, Botterell & Roche which practises in association with the firm of Messrs. Johnson, Stokes & Master, Solicitors for the Plaintiff in this action and having the conduct of this action on its behalf, make oath and say as follows :

1. The Plaintiff to whom Average Guarantees have been addressed is claiming against the 1st to 11th Defendants inclusive, proportions of General Average due respectively by the 12th to 85th Defendantsinclusive, insured and guaranteed by the said 1st to 11th Defendants, and due under an Adjustment signed by Messrs. Stevens Elmslie & Co. and dated 31st August 1977, full particulars of which appear from the points of claim endorsed on the Writ herein which was issued on 25th October 1978 and a copy of which is exhibited hereto marked "RAP I". The said Writ has not yet been served.

2. I am now instructed by the Plaintiff herein that Hong Kong Atlantic Shipping Co., Ltd. of Monrovia, Liberia were the Owners of the M.V. "POTOI CHAU" at the time or times in question. It thus appears to me that the said Hong Kong Atlantic Shipping Co., Ltd. may, in addition to or in the alternative to the said Plaintiff, be entitled to claim proportions of General Average under the said Adjustment and is therefore a proper party to add as a Plaintiff herein and I humbly pray that this Honourable Court Order that the said Hong Kong Atlantic Shipping Co., Ltd. be added as 2nd Plaintiff herein and that the Writ and points of claim endorsed thereon accordingly be amended as underlined in red on the exhibit hereto marked "RAP 1".

SWORN at 1604 Bank of Canton)
Bldg. Victoria, Hong Kong) Sd. R.A.Powell
this 1st day of May 1979)

Before me,

(Sd.) Robertson
Solicitor, Hong Kong

This Affidavit is filed on behalf of the Plaintiff.

In the Supreme Court of Hong Kong

Plaintiff's Evidence

No.3
Affidavit of Christopher Andrew Potts

19th July 1979

No. 3

AFFIDAVIT OF CHRISTOPHER ANDREW POTTS

1978, No.3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

(COMMERCIAL LIST)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. Plaintiff

- and -

CASTLE INSURANCE CO. LTD. (Formerly Pacific & Orient Underwriters (H.K.) Ltd.) 1st Defendant

and

84 Others

A F F I D A V I T

I, CHRISTOPHER ANDREW POTTS of Flat 18A, Braemar Hill Mansion, 35 Braemar Hill, Hong Kong, solicitor of the Supreme Court of Hong Kong, employed by the firm of Messrs. Norton, Rose, Botterell & Roche as assistant to RODERICK ANDREW POWELL whose Affidavit was filed herein on 4th May 1979 and which firm practises in association with the firm of Messrs. Johnson, Stokes & Master, solicitors for the Plaintiff in this action and also having the conduct of this Action on its behalf, make oath and say as follows:-

1. I am also instructed by Hong Kong Atlantic Shipping Co.Ltd., the intended 2nd Plaintiff.

2. The said intended 2nd Plaintiff wrote to Messrs. Johnson, Stokes & Master in its letter dated 16th July 1979 consenting to be joined as 2nd Plaintiff herein. The said letter is exhibited hereto marked "CAP 1".

3. I humbly pray that this Honourable Court make the Order prayed in the said Affidavit of RODERICK ANDREW POWELL.

SWORN at 1604-6 Bank of Canton Building 6 Des Voeux Road Hong Kong this 19th day of July 1979) Sd. C.A.Potts

Before me,

(Sd.) Illegible

Solicitor empowered to administer oaths

This Affidavit is filed on behalf of the Plaintiff.

No.3(a)

EXHIBIT "CAP 1"

Telex: 74362 HKIS HX
Cable Address:
"ISLANDSHIP" HONG KONG
Tel: 5-254481 (10 lines)

HONG KONG ATLANTIC SHIPPING CO.LTD.
(INCORPORATED IN LIBERIA)
SHIP OWNERS, OPERATORS AND SHIPPING AGENTS
10TH FLOOR, REALTY BUILDING, DES VOEUX ROAD-C- HONG KONG

Our ref:
Your Ref : CAP/RAP/Pl/78 Date: 16th July, 1979

Johnson, Stokes & Master,
Hong Kong and Shanghai Bank Building,
Hong Kong.

Dear Sirs,

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

BETWEEN:
HONG KONG ISLANDS SHIPPING CO.LTD.
Plaintiff

- and -

In the Supreme Court of Hong Kong

Plaintiff's Evidence

No.3(a)
Exhibit "CAP 1"

19th July 1979
(continued)

CASTLE INSURANCE CO.LTD. 1st Defendant
(Formerly Pacific & Orient Underwriters (H.K.) Ltd.)

and

84 Others

We hereby consent to being joined as 2nd Plaintiff in the above action.

Yours faithfully,

HONG KONG ATLANTIC SHIPPING CO.LTD.

Sd. Joseph Chow

Joseph Chow
Director

This is the exhibit marked "CAP 1" referred to in the Affidavit of CHRISTOPHER ANDREW POTTS Sworn this 19th day of July 1979

Before me,

Sd. Illegible

Solicitor empowered to administer oaths

No. 4

MEMORANDUM OF APPEARANCE (1)

1978, No.3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

COMMERCIAL LIST

BETWEEN:

HONG KONG ISLAND SHIPPING CO.LTD. 1st Plaintiff

- and -

HONG KONG ATLANTIC SHIPPING CO.LTD. 2nd Plaintiff

- and -

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.) and 84 Others Defendants

Please enter an appearance for the 1st Defendant CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.) and the 3rd Defendant GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD. and the 4th Defendant GUARDIAN ASSURANCE COMPANY LIMITED and the 5th Defendant UNION INSURANCE SOCIETY OF CANTON LIMITED and the 8th Defendant THE NEW INDIA ASSURANCE COMPANY LIMITED and the 9th Defendant NATIONAL INSURANCE COMPANY LIMITED and the 11th Defendant YASUDA FIRE AND MARINE INSURANCE COMPANY LIMITED and the 25th Defendant MAREI ABDULLAH BUGSHAN and the 32nd Defendant MOHAMED SALHD M. BABSHEN and the 35th Defendant ABDULHADI BOGHSAN and the 38th Defendant ALJAZEERAH MODERN EXHIBITION and the 39th Defendant SALEH ALI ANSARI and the 40th Defendant SAID HASSAN AS-SUFI and the 44th Defendant MOHAMED ALI SULIMANI and the 45th Defendant AHMED ALI HUSSAIN and the 46th Defendant MOHAMED ABDULHAFIZ BIN SHAIHOON and the 50th Defendant OMER SAAD AL-KHAMBASHI and the 51st Defendant NAFE MUBARAK AL-HARABI and the 53rd Defendant SYED MOHSIN ADBULLAH BASURRAH and the 55th

No.4
Memorandum of Appearance (1)
26th September 1979
(continued)

Defendant M.Y.M.Y. DEHLAVI and the 61st Defendant ABDULRAHMAN AHMED BANAFA and the 66th Defendant ABDUR RAHIM QARI ARTOSHI and the 67th Defendant MOHAMED TAHIR TURKSTANI and the 68th Defendant MOHAMED AHMED BAFAIL and the 72nd Defendant MOHAMED OTHMAN BAOMAR and the 74th Defendant MOHAMED OMAR ALHAJ BAJAAFAR and the 75th Defendant AHMED DAHMAN BASMOUSA AL AMOUDI and the 76th Defendant ABDULLAH DAHMAN BAMOUSA and the 79th Defendant INTERNATIONAL BOOK HOUSE PVT.LTD. in this action.

Dated the 26th day of September, 1979.

Signed DEACONS
Solicitors for the above-named Defendants.

Whose address for service is Messrs. Deacons of 6th Floor, Swire House, Chater Road, Victoria in the Colony of Hong Kong, Solicitors for the above-named Defendants.

No.5
Memorandum of Appearance(2)
28th September 1979

No. 5

MEMORANDUM OF APPEARANCE (2)

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
COMMERCIAL LIST
1978, No. 3727

BETWEEN: HONG KONG ISLANDS SHIPPING CO.LTD. 1st Plaintiff
HONG KONG ATLANTIC SHIPPING CO.LTD. 2nd Plaintiff
and
CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.) and 84 Others Defendants

Please enter an appearance for the 2nd Defendant CENTURY INSURANCE COMPANY LIMITED in this action.

Dated the 28th day of September 1979

Signed DEACONS

Solicitors for the 2nd Defendant

Whose address for service is Messrs. Deacons of 6/F., Swire House, Chater Road, Victoria, Hong Kong, Solicitors for the 2nd Defendant

No. 6

AFFIDAVIT OF CHRISTOPHER ANDREW POTTS

1978, No. 3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

(COMMERCIAL LIST)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO. LTD. — 1st Plaintiff

and

HONG KONG ATLANTIC SHIPPING CO.LTD. — 2nd Plaintiff

and

CASTLE INSURANCE CO.LTD. (Formerly Pacific & Orient Underwriters (HK) Ltd.) — 1st Defendant

and

84 Others

A F F I D A V I T

I, CHRISTOPHER ANDREW POTTS of Flat 18A, Braemar Hill Mansion, 35 Braemar Hill Road, Hong Kong, solicitor of the Supreme Court of Hong Kong employed by the firm of Norton, Rose Botterell & Roche which firm practises in association with the firm of Johnson, Stokes & Master, solicitors for the Plaintiffs in this

action, having the conduct of this action on their behalf and being duly authorized by them to make this Affidavit, make oath and say as follows :-

1. A true copy of the Writ of Summons in this Action indorsed with Points of Claim, issued on 25th October 1978 and amended on 26th July 1979 is exhibited hereto marked "CAP 1". The action concerns claims by the 1st and 2nd Plaintiff Shipowners and/or Operators against the 12th to 85th Defendants, consignees of cargo lately laden aboard the vessel "POTOI CHAU" (hereinafter collectively referred to as "the concerned in cargo") for General Average contributions arising from a casualty suffered by the "POTOI CHAU" in 1972 and as appear from an Adjustment prepared in Hong Kong and dated 31st August 1977 and against the 1st to 11th Defendants (hereinafter collectively referred to as "the guarantors") on General Average Guarantees executed by them or on their behalf in respect of parcels of cargo which were respectively insured by them and liability to pay General Average contributions concerning which cargo is the liability of the respective concerned in cargo. I verily believe that the Plaintiffs have a good cause of action against the Defendants in respect of the matters aforesaid.

2. In March 1978 my firm received instructions to recover the respective unpaid General Average contributions from the guarantors. By its telex dated 10th April 1978, a copy of which is exhibited hereto marked "CAP 2", my firm telexed Messrs. Clyde & Co., London, which firm has, at all material times, been in receipt of instructions from all, or most of, the guarantors to defend the claims for General Average contributions. The said telex set out, inter alia, the names which were then available to my firm of the respective guarantors, also the amounts respectively claimed, and requested Messrs.Clyde & Co.'s confirmation of their instructions to act on behalf of all such guarantors, notifying Messrs. Clyde & Co. that this firm would shortly be issuing proceedings against such guarantors in Hong Kong and requesting that solicitors be appointed in this Colony to accept service of proceedings in order to avoid the necessity for personal service or, in relation to the guarantors not resident within this jurisdiction, the necessity to obtain the Court's leave to serve proceedings out of the jurisdiction. The said Clyde & Co., by their telex dated 11th April, a copy of which is exhibited hereto marked

"CAP 3", confirmed their instructions on behalf of the guarantors listed in this firm's telex dated 11th April 1978 and advised that they had instructed Messrs. Deacons, Hong Kong to act on behalf of the concerned in cargo. Accordingly, by my firm's letter dated 12th April 1978, a copy of which is exhibited hereto marked "CAP 4", Messrs. Deacons were requested, inter alia, to confirm as soon as possible whether or not they had instructions to accept service of proceedings on behalf of all the guarantors listed in the telex to Messrs. Clyde & Co. dated 11th April. By their letter dated 15th April 1978, a copy of which is exhibited hereto marked "CAP 5". Messrs. Deacons, inter alia, advised of their instructions on behalf of the guarantors listed in the said letter and that they had instructions to accept service of proceedings and enter an appearance in the action on behalf of all such guarantors except South China Insurance Co.Ltd. (subsequently named as the 10th Defendant) from whom instructions were anticipated very shortly. Messrs. Deacons in their said letter also requested that my firm include as Defendants in any proceedings the insured (the concerned in cargo) as well as the insurers (the guarantors) in order that a counterclaim for particular average losses could be made without the need to issue and serve fresh proceedings on the ground that this would be an adequate method of overcoming the problems which were envisaged. It is respectfully submitted that such request to include as Defendants the concerned in cargo amounted to an implied representation that Messrs. Deacons also had instructions to accept service of proceedings and enter appearance on behalf of the concerned in cargo if the concerned in cargo were named as Defendants in the proceedings.

3. Proceedings were duly issued on 25th October 1978 and the guarantors, named as Defendants 1 to 11, were, in some cases, different from those on whose behalf Messrs. Deacons had stated that they had instructions to accept service and enter an appearance. Accordingly, the Writ of Summons was delivered to Messrs. Deacons in crder to enable them to obtain fresh instructions to enable them to endorse their acceptance of service on behalf of all the named Defendants, including the concerned in cargo, named as Defendants 12 to 85 who, at Messrs. Deacons' request and in reliance on Messrs. Deacons' implied undertaking to accept service on their behalf, had been added as Defendants. The

return of the Writ duly endorsed was not forthcoming in spite of several reminders and in particular when in March 1979, it was sought to obtain the return of the original Writ in order to seek leave to join Hong Kong Atlantic Shipping Co.,Ltd. as 2nd Plaintiff. The Writ was ultimately returned on 20th March 1979 and, after some difficulty in obtaining the consent of Hong Kong Atlantic Shipping Co.Ltd. to be joined as 2nd Plaintiff, duly amended on 26th July 1979 and again delivered at the office of Messrs. Deacons who returned the amended Writ on the grounds that they had no authority to accept proceedings on behalf of any of the Defendants. Various correspondence and telephone conversations then took place between my firm and Messrs. Deacons when Messrs. Deacons, in spite of the terms of their letter of 15th April 1978, again denied authority to accept service of proceedings and enter an appearance on behalf of any of the Defendants. Accordingly, on 18th September 1979, my firm effected service in Hong Kong on the 1st, 2nd, 3rd, 4th, 5th, 8th, 9th and 11th Defendants. On 26th and 28th September, Messrs. Deacons entered unconditional appearances on behalf of the 1st, 2nd, 3rd, 4th, 5th, 8th, 9th, 11th, 25th, 32nd, 35th, 38th, 39th, 40th, 44th, 45th, 46th, 50th, 51st, 55th, 61st, 66th, 67th, 68th, 72th, 74th, 75th, 76th and 79th Defendants.

4. In the circumstances, I respectfully ask that an order for substituted service of the said Writ be made by service of the same on Messrs. Deacons, or in the alternative that leave to issue concurrent Writs for service on the following Defendants out of the jurisdiction, and to serve them, or notices of them, by way of substituted service on Messrs. Deacons and to send copies of the said concurrent Writs, or notices of them, to the following Defendants at their last known addresses (as appear from the Writ issued herein) In Saudi Arabia, Yemen Arab Republic, India and Republic of China, be granted: 6th, 7th, 12th-21st; 22nd-24th, 26th, 27th-30th, 31st, 33rd, 34th, 36th, 37th; 41st-43rd; 47th-49th; 52nd-54th; 56th-60th; 62nd-65th; 69th-71st; 73rd, 77th, 78th, 80th-85th.

5. In the case of the 10th Defendant, I respectfully ask that leave to issue a concurrent Writ for service out of the jurisdiction, and to serve it, or notice of it, by way of substituted service on Messrs. Deacons and to serve a copy of it by sending the same to the last known

address of the 10th Defendant (as appears in the Writ issued herein), in the Republic of China, be granted.

6. The grounds for my application in paragraphs 4 and 5 above are :

(1) At all material times, the 6th Defendant was the disclosed principal of Wing On Fire & Marine Insurance Co., Ltd. on whose behalf Messrs. Deacons in their letter of 15th April 1978 agreed to accept service of proceedings and enter an appearance. The sources of my said belief are Cargo Underwriters' Letter of Guarantee, copies of which are exhibited hereto marked "CAP 6", and which were signed by the said Wing On Fire & Marine Insurance Co., Ltd. as agents for the 6th Defendant.

(2) Messrs. Deacons have entered appearances for the 72nd, 74th, 75th and 76th Defendants insured by the 6th Defendant.

(3) Messrs. Deacons, in their letter of 15th April 1978 represented themselves as having instructions to accept service of proceedings and to enter an appearance on behalf of the 7th Defendant and those concerned in cargo insured by the 7th Defendant and subsequently named as the 77th and 78th Defendants.

On the aforesaid grounds, I verily believe that the Writ has come to the knowledge of the Defendants set out in paragraph 4 hereof through Messrs. Deacons and/or through their principals, Messrs. Clyde & Co., and that the proposed method of service will best bring the matter to the personal attention of the said Defendants themselves and that the requirements of RSC Ord. 65 will thus be satisfied by the proposed method of service. Alternatively, if this Honourable Court is not disposed to order substituted service on the said Defendants in the manner herein requested, I respectfully submit, in support of my alternative application for leave to issue concurrent Writs for service out of the jurisdiction and to serve them or notices of them by way of substituted service on Messrs. Deacons, and by posting copies thereof as requested aforesaid, that the action begun by Writ is properly brought against Defendants duly served within the jurisdiction and on whose behalf Messrs. Deacons have entered Appearance and that

the said Defendants set out in paragraph 4 hereof are necessary and proper parties thereto. Further, in support of my request that service of concurrent Writs, or notices thereof, for service without the jurisdiction be made by way of substituted service on Messrs. Deacons and that copies thereof be sent to the Defendants as requested aforesaid, I respectfully refer to the addresses of the relevant Defendants as appear from the Writ of Summons herein, some of which addresses are inqdequate and submit that, notwithstanding the fact that no concurrent Writs, or notices thereof, for service without the jurisdiction have been issued and hence no efforts have so far been made to serve the said Defendants without the jurisdiction, there is a practical impossibility of actual service that, arising out of Messrs. Deacons' involvement on behalf of the said Defendants and their instructions as previously described, the method of substituted service asked for on behalf of the Plaintiffs is one which in all reasonable probability, if not certainty, will be effective to bring knowledge of the concurrent Writs, or notices of them, to the said Defendants and that this is a fit and proper case for the Court to grant leave to effect substituted service by the method asked for on behalf of the Plaintiffs.

7. In the case of the 10th Defendant, the grounds of my said application are that the action begun by Writ is properly brought against persons duly served within the jurisdiction and that the 10th Defendant which is out of the jurisdiction is a necessary or proper party thereto. Further, in support of my application for substituted service by the method asked for, I respectfully refer to exhibit "CAP 5" hereto, Messrs. Deacons' letter dated 15th April 1978, in which they represented that they have instructions to act for, inter alia, South China Insurance Co., Ltd. (subsequently named as the 10th Defendant) and that instructions to accept service and enter an Appearance on behalf of the said South China Insurance Co., Ltd. were anticipated very shortly. I verily believe that, Messrs. Deacons have, throughout, had instructions to act on behalf of the 10th Defendant and that the method of service asked for is one which in all reasonable probability, if not certainty, will be effective to bring knowledge of the Writ or the concurrent Writ, or notice thereof to the Defendant. Alternatively, in the event that this Honourable Court thinks that there is not a fit and proper case for the

method of substituted service asked for in relation to the 10th Defendant, I ask that leave be granted to issue a concurrent Writ and that notice of such concurrent Writ be served on the 10th Defendant in Taiwan.

8. Further, I ask for an order that as against the Defendants set out in paragraph 4 hereof and the 10th Defendant, that the Writ herein, and any concurrent Writs issued as a result of this application be extended for 12 months beginning with the day next following the 25th October 1979. I respectfully submit that there is sufficient or good reason for this Honourable Court justifying the exercise of its discretion to extend the validity of the Writ and any concurrent Writs issued herein arising out of the aforesaid grounds, namely that the delay in making this application leading to the service of the Writ herein by substituted service or otherwise has been induced, or contributed to, by the words or conduct of the Defendants' solicitors.

SWORN at 1604 Bank of Canton Building, 6 Des Voeux Road, C., HONG KONG Dated the 10th day of October 1979) Sd. C.A.Potts

Before me,

Sd. Illegible

Solicitor empowered to administer oaths

This Affidavit is filed on behalf of the Plaintiffs.

No.6(a)
Exhibit "CAP 2"
10th October 1979

No. 6 (a)

EXHIBIT "CAP 2"

This is the exhibit marked "CAP 2" referred to in the Affidavit of CHRISTOPHER ANDREW POTTS Sworn this 10th day of October 1979
Before me,
Sd. Illegible
Solicitor empowered to administer oaths

OUTWARD
11/4/78

111412 PTS
AAD
051884181
884181 CLYDES G
85242 JISEM HX

HX85242/97 JISEM 1315 10/4/78

Your ref: RE/M.1544

RE: "POTOI CHAU"

AS YOU KNOW, WE ARE INSTRUCTED BY OWNERS OF "POTOI CHAU" IN CONNECTION WITH THE REFUSAL OF THE FOLLOWING INSURANCE COMPANIES TO HONOUR THEIR GUARANTEES IN RESPECT OF CERTAIN CARGO INTERESTS' LIABILITY IN GENERAL AVERAGE, AND WE UNDERSTAND THAT YOU ACT FOR SOME OR ALL OF SUCH COMPANIES WHICH ARE :

		BALANCE DUE
1.	CASTLE INS.CO.LTD.	USDOLS 23,830.78
2.	PACIFIC AND INTERNATIONAL UNDERWRITERS LTD.	13,840.82
3.	GENERAL ACCIDENT FIRE AND LIFE ASSOCIATION CORPORATION LTD.	1,127.68
4.	HONGKONG AND SHANGHAI INS.CO.LTD.	
5.	UNION INS.SOCIETY OF CANTON LTD.	76,963.15
6.	WING ON FIRE AND MARINE INS.CO.LTD.	
7.	MALAYAN OVERSEAS INS. CORPORATION	88,681.74

		(cont'd)	BALANCE DUE	
8.	THE NEW INDIA ASSURANCE CO.LTD.	USDOLS	3,889.07	
9.	NATIONAL INS.CO.LTD. (UNIT-ROYAL)		3,135.05	
10.	SOUTH CHINA INS.CO. LTD.		2,113.91	
11.	YASUDA FIRE AND MARINE INS.CO.LTD.		3,560.30	
		USDOLS.	217,142.50	

PLEASE CONFIRM YOU ARE INSTRUCTED ON BEHALF OF ALL SUCH COMPANIES. WE WILL VERY SHORTLY BE ISSUING PROCEEDINGS AGAINST SUCH COMPANIES IN HONG KONG AND WOULD ASK THAT YOU APPOINT SOLICITORS HERE TO ACCEPT SERVICE OF PROCEEDINGS IN ORDER TO AVOID THE NEED FOR PERSONAL SERVICE OR, IN RELATION TO NOS.7, 9 AND 10 MENTIONED ABOVE, THE NEED TO OBTAIN LEAVE TO SERVE OUT OF THE JURISDICTION IF SUCH LEAVE IS REQUIRED.

WE HAVE READ SOME OF THE RECENT CORRESPONDENCE INCLUDING YOUR LETTER 15TH MARCH TO STEVENS ELMSLIE. WE DO NOT IMPLY THAT ANY OF THE COMPANIES MENTIONED ABOVE ARE NOT REPUTABLE INSURERS, BUT NEVERTHELESS WE CAN UNDERSTAND IN THE CIRCUMSTANCES OUR CLIENTS CONSIDERING THAT IN FUTURE THEY SHOULD ONLY TAKE G.A.DEPOSITS WHERE THE ALTERNATIVE IS TO ACCEPT A GUARANTEE FROM ONE OF THE ELEVEN COMPANIES MENTIONED.

ON THE SUBJECT OF EARLIER CORRESPONDENCE, WE WOULD MENTION THAT WE ARE INSTRUCTED TO MAKE AVAILABLE DOCUMENTS TO YOU AS REQUESTED, OR SUCH OF THEM AS ARE AVAILABLE, AND THIS WILL BE DONE IN THE USUAL WAY UPON DISCOVERY.

REGARDS R.A. POWELL

85242 JISEM HX
884181 CLYDES G
AAD 007'27

No. 6 (b)

EXHIBIT "CAP 3"

This is the Exhibit marked "CAP 3" referred to in the Affidavit of CHRISTOPHER ANDREW POTTS Sworn this 10th day of October 1979
Before me,
Sd. Illegible
Solicitor empowered to administer oaths

85242 JISEM HX
8814720 CLYDES G

11/4/78 KG 11.55

ATTN. MR. POWELL

POTOI CHAU

1. WE CONFIRM WE ACT BEHALF THE INSURERS LISTED IN YOUR TELEX

2. WE HAVE INSTRUCTED DEACONS BEHALF CARGO INTERESTS. PLEASE CONTACT THEM

REGARDS
CLYDE AND CO.

8814720
85242 JISEM HX

No. 6 (c)

EXHIBIT "CAP 4"

This is the exhibit marked "CAP 4" referred to in the Affidavit of CHRISTOPHER ANDREW POTTS Sworn this 10th day of October 1979
Before me,
Sd. Illegible
Solicitor empowered to administer oaths

RAP/Pl/78 12th April, 1978

Messrs. Deacons,
Swire House, 6th Floor,
Hong Kong. BY HAND

Attention: Mr Peter Jolly

Dear Sirs,

Re: "POTOI CHAU"

Further our telephone conversation this morning we now enclose a copy of the telex sent by us yesterday to Messrs. Clyde & Co. which lists the insurance companies against whom we are about to commence proceedings. We would be obliged if you would confirm as soon as possible whether or not you have instructions to accept service on behalf of all such insurers, and in this respect we would mention that Messrs. Clyde & Co. have today advised us that they do act on behalf of all the insurers mentioned.

When correspondence reaches you, it may contain copies of previous correspondence between your instructing solicitors and our clients' Average Adjusters. In relation to such correspondence, we would refer you to the statement contained in Clydes' letter of the 15th March where they alleged that the failure of navigational equipment in severe storm weather conditions was clear evidence of unseaworthiness of the vessel, and that thus the burden has switched from cargo to shipowners to bring themselves within one of the excepted perils under the Hague Rules if they are to make good their contention that the casualty arose without the actionable fault of the ship. Clydes, as you will see, specifically state that if our clients consider that the vessel was seaworthy

at the commencement of the voyage and they had exercised due diligence to make her so, then the onus lies on them to prove it and not upon cargo interests. May we refer you to Clause 4 in the Bill of Lading which specifically provides that the shipper or owner of the goods shall have the burden of proving unseaworthiness or lack of due diligence in relation to seaworthiness before and at the beginning of the voyage or otherwise. It would appear to us that Clause 4 being specifically incorporated in the contract rather than by an incorporation of general rules would take precedence, and thus the onus lies upon cargo interests to prove not only causative unseaworthiness, but also that such causative unseaworthiness resulted from a lack of due diligence on the part of the shipowner.

In relation to the facts of the matter we can but say that when we considered the facts that are available to us and to Messrs. Clyde & Co., we were astonished that a few of the underwriters concerned had decided not to honour their obligations under the G.A. guarantees, and thus we indicated in our telex, a copy of which is enclosed, that we can understand our clients instructing their adjusters in the future to refuse to accept guarantees from the named companies.

We feel we should also mention at the outset that we do not in due course wish to be met with the situation where underwriters plead time bar merely because we have not also taken proceedings against the owners of cargo lately laden aboard the vessel. Would you, therefore, please confirm that you are instructed on behalf of all cargo interests who have not yet paid their contribution in General Average and whose liabilities were guaranteed in this respect by the 11 companies mentioned on the enclosed copy telex, and that they are all prepared to accede to our request that they grant an open extension of the time bar determinable upon 3 months' written notice.

Yours faithfully,

No. 6 (d)

EXHIBIT "CAP 5"

D E A C O N S
SOLICITORS & NOTARIES
AGENTS FOR TRADE MARKS
& PATENTS

G.P.O. BOX 277
SWIRE HOUSE,
6TH FL. CHATER ROAD
HONG KONG

General Off.Tel. 5-260181
Cables "OTERY" HONG KONG
Telex : 73475 OTERY HX
74163 SELAW HX
Telecopier: Rank Xerox 400
5-265887

Your ref: RAP/Pl/78
Our ref: PGVJ:IN-C78/4236

HONG KONG 15th April, 1978

Messrs. Johnson, Stokes & Master,
Hongkong and Shanghai Bank Bldg.,
Hong Kong.

Attn: Mr. R.A.Powell

Dear Sirs,

"POTOI CHAU"

Thank you for your letter of the 12th April with its enclosure, we confirm we have now heard from professional clients in London that we act for the following insurers :-

1. Castle Insurance Co.Ltd.
2. Pacific and International Underwriters Ltd.
3. General Accident Fire and Life Assurance Corp. Ltd.
4. Hongkong and Shanghai Insurance Co.Ltd.
5. Union Society of Canton Ltd.
6. Wing On Fire and Marine Insurance Co.Ltd.
7. Malayan Overseas Insurance Corp.
8. The New India Assurance Co.Ltd.
9. National Insurance Co.Ltd. (PER Royal Insurance).

10. South China Insurance Co.Ltd.

11. Yasuda Fire and Marine Insurance Co.Ltd.

We have instructions to accept service and enter an Appearance from the above except South China Insurance Co.Ltd. from whom instructions are anticipated very shortly. We also have instructions from Mingtai Fire and Marine Insurance Co.Ltd., who are not creditors under the general average but wish to recover their particular average losses from shipowners.

To this end and in particular reply to the final paragraph of your letter, we should be obliged if you would include as Defendants in any proceedings the insured as well as the insurers in order that a Counter-claim for particular average losses can be made without the need to issue and serve fresh proceedings (except of course for Mingtai Fire and Marine Insurance Co.Ltd.). We believe this would be an adequate method of overcoming the problems which you envisage in your letter.

We have only just received the voluminous documents in this matter from London and are not in a position to comment further on the matter.

As soon as we have the final instructions with regard to South China Insurance Company Limited, we will be in touch with you.

Yours faithfully,

Sd. Deacons

This is the Exhibit marked "CAP 5" referred to in the Affidavit of CHRISTOPHER ANDREW POTTS Sworn this 10th day of October 1979

Before me,
Sd. Illegible

Solicitor empowered to administer oaths

No. 6 (e)

EXHIBIT "CAP 6"

This is the exhibit marked "CAP 6" referred to in the Affidavit of CHRISTOPHER ANDREW POTTS Sworn this 10th day of October 1979

Before me,
Sd. Illegible

Solicitor empowered to administer oaths

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Messrs. Stevens, Elmslie & Co.
Average Adjusters,
10th Floor, Union House,
Hong Kong.

Dear Sirs,

s.s.
m.v. "Potoi Chau"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,

Sd.

Postal Address: No.26 Des Voeux Rd.,C.,
Wing On Central Bldg.,
13th Fl. Hong Kong

Agents: The Reliance Marine Ins.Co.Ltd.

Address for correspondence regarding claims and settlement under adjustment if different from above - as above -

L No.	Marks & Nos.	No. of Pkges	Description of Goods	Policy No.	Insured Value
1	A.A.B. JEDDAH MADE IN HONG KONG C/NO.1/833	833 cartons	WOODEN CLOTHES PEGS	W72/ 6305	Stg. £2,860.00

In the Supreme Court of Hong Kong

No.7
Memorandum of Appearance

17th December 1979

No.7

MEMORANDUM OF APPEARANCE

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
COMMERCIAL LIST
1978, No.3727

BETWEEN: HONG KONG ISLANDS SHIPPING CO.LTD. 1st Plaintiff

HONG KONG ATLANTIC SHIPPING CO.LTD. 2nd Plaintiff

- and -

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.) & 84 Others Defendants

Please enter an appearance for RELIANCE MARINE INSURANCE COMPANY LIMITED, the 6th Defendant in this action.

Dated the 17th day of December, 1979.

Solicitors for the 6th Defendant

Whose address for service is Messrs. Deacons of 6/F., Swire House, Chater Road, Victoria, Hong Kong, Solicitors for the 6th Defendant.

To: The Registrar of Supreme Court

The above-named Plaintiffs or their Solicitors, Messrs. Johnson, Stokes & Master.

No. 8

SUMMONS

1978, No.3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

(COMMERCIAL LIST)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO. LTD.	1st Plaintiff
and	
HONG KONG ATLANTIC SHIPPING CO.LTD.	2nd Plaintiff
and	
CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (H.K.) Ltd.)	1st Defendant
CENTURY INSURANCE COMPANY LIMITED	2nd Defendant
GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.	3rd Defendant
GUARDIAN ASSURANCE COMPANY LIMITED	4th Defendant
UNION INSURANCE SOCIETY OF CANTON LIMITED	5th Defendant
RELIANCE MARINE INSURANCE COMPANY LIMITED	6th Defendant
MALAYAN OVERSEAS INSURANCE CORPORATION	7th Defendant
THE NEW INDIA ASSURANCE COMPANY LIMITED	8th Defendant
NATIONAL INSURANCE COMPANY LIMITED	9th Defendant
SOUTH CHINA INSURANCE COMPANY LIMITED	10th Defendant
YASUDA FIRE AND MARINE INSURANCE COMPANY LIMITED	11th Defendant
TRANS-ORIENT DEVELOPMENT CO.	12th Defendant

SADDIK AMIN SEIF EL-DIN & SON	13th Defendant
GHAZI ABD AL-RABMAN AL-DOUBY	14th Defendant
HAJEE AHMED YAKUB MEMON	15th Defendant
OMAR SALEIM AL-KHANBASHI	16th Defendant
ALI ROZI AL-KHOTANLY	17th Defendant
INTERNATIONAL DISTRIBUTING EST.	18th Defendant
YOUSUF SAEED MUKRED	19th Defendant
MOOQUBEL AL-HAG	20th Defendant
AL-SAWAI STORES	21st Defendant
O.A. ALSAINI ELAMOUDI	22nd Defendant
AHMED MOHAMMED SHAMSHAAN	23rd Defendant
OMAR KHAMIS BAMURSHID	24th Defendant
MAREI ABDULLAH BUGSHAN	25th Defendant
MOHAMMED S. HANTOOSH	26th Defendant
ABUBAKER AHMED BANAFA	27th Defendant
ALI HAZZA & MAGBOUL ALI	28th Defendant
ABDUI GHANI ALI	29th Defendant
MOHAMED SAEED SALEH & SONS	30th Defendant
ABDUL WAHAB MIRZA	31st Defendant
MOHAMED SALHD M.BAESHEN	32nd Defendant
SAIED AHMED BANAAMA	33rd Defendant
ABDUL SATTAR ALMAIMANI	34th Defendant
ABDULHADI BOGHSAN	35th Defendant
YASEEN ESTABLISHMENT	36th Defendant
SHARIEF MOHAMED SAAD AL-JUDI	37th Defendant
ALJAZEERAH MODERN EXHIBITION	38th Defendant
SALEH ALI ANSARI	39th Defendant
SAID HASSAN AS-SUFI	40th Defendant
SAAD ATOQULLAH AL-HARABI	41st Defendant
MOHAMED HOSSAIN BANAFEI	42nd Defendant
BASALAMAH GROCERY	43rd Defendant
MOHAMED ALI SULIMANI	44th Defendant

AHMED ALI HUSSAIN	45th Defendant
MOHAMED ABDULHAFIZ BIN SHAIHOON	46th Defendant
SULIMAN AL ABDUL AZIZ ALHAMEED	47th Defendant
SIDDIQUE AMIN SAIFUDDIN	48th Defendant
OMER MOHAMED BASALAMAH	49th Defendant
OMAR SAAD AL KHAMBASHI	50th Defendant
NAFE MUBARAK AL-HARABI	51st Defendant
ABDULRAHMAN A.ABDUSSABOOR	52nd Defendant
SYED MOHSIN ADBULLAH BASURRAH	53rd Defendant
OMER SALEM SHEIBA AL-KHAMBASI	54th Defendant
M.Y.M.Y. DEHLAVI	55th Defendant
AHMED NASER ALI	56th Defendant
SALEM A. AL-MUHDHAR	57th Defendant
OMAR SAAD ALKAMBASHI	58th Defendant
OMAR HINNAWI	59th Defendant
ABDUL RAHMAN A.H.BAKHSH	60th Defendant
ABDULRAHMAN AHMED BANAFA	61st Defendant
HAMZA M. BOGARY	62nd Defendant
ARABIAN GULF ASSOCIATION FACTORIES	63rd Defendant
FOLAD A. BOKARI	64th Defendant
TARGOUN AMIN KHOTANLY	65th Defendant
ABDUR RAHIM QARI ARTOSHI	66th Defendant
MOHAMED TAHIR TURKSTANI	67th Defendant
MOHAMED AHMED BAFAIL	68th Defendant
SAEED ABDUL ILAH GENERAL TRADING ENTERPRISES	69th Defendant
ALLIED TEXTILE LEATHER INDUSTRIES	70th Defendant
CHANDABHAI & SONS	71st Defendant
MOHAMED OTHMAN BAOMAR	72nd Defendant
KASEEK ESTABLISHMENT	73rd Defendant
MOHAMED OMAR ALHAJ BAJAAFAR	74th Defendant
AHMED DAHMAN BASMOUSA AL AMOUDI	75th Defendant

ABDULLAH DAHMAN BAMOUSA	76th	Defendant
NAFE BIN MOBARAK ALHARBI & ABOUD BIN ABDULLAH ALHARBI	77th	Defendant
AHUJA RADIOS	78th	Defendant
INTERNATIONAL BOOK HOUSE PVT. LTD.	79th	Defendant
AHMED ALI HUSSAIN	80th	Defendant
MARAI BIN SALIM BARABAA	81st	Defendant
MOHAMED AHMED NASHER	82nd	Defendant
MOHAMMED SALIM BAKLAMIS	83rd	Defendant
AHMED ABDULLA ALI AL-SHAIBANI	84th	Defendant
SAEED KASSEM ANAMM	85th	Defendant

Let all parties attend the Judge in Chambers, at the Supreme Court, Hong Kong, on Thursday the 10th day of January 1980, at 9.30 o'clock in the forenoon, on the hearing of an application on the part of the Plaintiffs for an order that the Writ of Summons herein be re-amended by preparation of a fresh document in the form annexed hereto and re-issued and that the costs of this application to be the Defendants' in any event.

Dated the 21st day of December, 1979

S.H. MAYO
Registrar L.S.

This Summons was taken out by Messrs. Johnson, Stokes & Master, of Rooms 403-413 Hongkong & Shanghai Bank Building, No.1 Queen's Road Central, Hong Kong, Solicitors for the Plaintiffs.

Johnson Stokes & Master

To the abovenamed 1st Defendant and its Solicitors Messrs. Deacons

(Estimated time 20 minutes)

ELIZABETH THE SECOND, BY THE GRACE OF GOD, OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OF OUR OTHER REALMS AND TERRITORIES QUEEN, HEAD OF THE COMMONWEALTH DEFENDER OF THE FAITH:

TO CASTLE INSURANCE COMPANY LIMITED (Formerly Pacific & Orient Underwriters (H.K.) Ltd.)

of 613 Asian House, 1, Hennessy Road, Hong Kong.

TO CENTURY INSURANCE COMPANY LIMITED

of Room 802, Prosperous Building, 48-52 Des Voeux Road, Central, Hong Kong.

TO GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LIMITED

of 42nd Floor, Connaught Centre, Hong Kong.

TO GUARDIAN ASSURANCE COMPANY LIMITED

of 1401 Bank of Canton Building, Des Voeux Road, Central Hong Kong.

TO UNION INSURANCE SOCIETY OF CANTON LIMITED

of Room 210, Swire House, 9, Connaught Road, Central, Hong Kong

TO RELIANCE MARINE INSURANCE COMPANY LIMITED

of 13th Floor, Wing On Central Building, 26, Des Voeux Road, Central Hong Kong.

TO MALAYAN OVERSEAS INSURANCE CORPORATION

of 39, Chunghsiao West Road, Sec.1, P.O. Box 954, Taipei, Taiwan.

TO THE NEW INDIA ASSURANCE COMPANY LIMITED

of 15/17, Wyndham Street, 6th Floor, Hong Kong.

TO NATIONAL INSURANCE COMPANY LIMITED

of 4th Floor, Man Cheung Building, 15, Wyndham Street, Hong Kong.

TO SOUTH CHINA INSURANCE COMPANY LIMITED

of 70, Section 1, Hankou Street, Taipei, Taiwan 100.

TO YASUDA FIRE AND MARINE INSURANCE COMPANY LIMITED

of Wang Kee Building, 5th Floor, 34-37 Connaught Road, Central, Hong Kong.

TO TRANS-ORIENT DEVELOPMENT CO.

of P.O.Box 1163, Jeddah, Saudi Arabia

TO SADDIK AMIN SEIF EL-DIN & SON

of P.O.Box 753, Mecca, Saudi Arabia

TO GHAZI ABD AL-RABMAN AL-DOUBY

of King Abdullah Faisal Street, Mecca, Saudi Arabia

TO HAJEE AHMED YAKUB MEMON

of Faisal Street, Mecca, Saudi Arabia

TO OMAR SALEIM AL-KHANBASHI

of Tahet Amarat Al-Shraf, Jeddah, Saudi Arabia

TO ALI ROZI AL-KHOTANLY

of Jeddah, Saudi Arabia

TO INTERNATIONAL DISTRIBUTING EST.

of Prince Nawaf Bldg., No.4-1st Floor 411, Jeddah, Saudi Arabia

TO YOUSUF SAEED MUKRED

of P.O.Box 867, Hodeidah, Yemen Arab Republic

TO MOOQUBEL AL-HAG

of Hodeidah, Yemen Arab Republic

TO AL-SAWAI STORES

of Taiz, Yemen Arab Republic

TO O.A. ALSAINI ELAMOUDI

of P.O.Box 252, Jeddah, Saudi Arabia

TO AHMED MOHAMMED SHAMSHAAN

of P.O.Box 2070, Jeddah, Saudi Arabia

TO OMAR KHAMIS BAMURSHID

of P.O.Box 629, Jeddah, Saudi Arabia

TO MAREI ABDULLAH BUGSHAN

of Awkaf Street, Khaskia, Jeddah, Saudi Arabia

TO MOHAMMED S. HANTOOSH
of Jeddah, Saudi Arabia

TO ABUBAKER AHMED BANAFA
of P.O.Box 1176, Jeddah, Saudi Arabia

TO ALI HAZZA & MAGBOUL ALI
of P.O.Box 165, Jeddah, Saudi Arabia

TO ABDUI GHANI ALI
of P.O.Box 868, Taiz, Yemen Arab Republic

TO MOHAMED SAEED SALEH & SONS
of P.O.Box 720, Hodeidah, Yemen Arab Republic

TO ABDUL WAHAB MIRZA
of P.O.Box 257, Mecca, Saudi Arabia

TO MOHAMED SALHD M. BAESHEN
of Jeddah, Saudi Arabia

TO SAIED AHMED BANAAMA
of Jeddah, Saudi Arabia

TO ABDUL SATTAR ALMAIMANI
of Bab El Majeedi, Medina, Saudi Arabia

TO ABDULHADI BOGSHAN
of P.O.Box 177, Jeddah, Saudi Arabia

TO YASEEN ESTABLISHMENT
of P.O.Box 726, Jeddah, Saudi Arabia

TO SHARIEF MOHAMED SAAD AL-JUDI
of Al-Qushashia, Mecca, Saudi Arabia

TO ALJAZEERAH MODERN EXHIBITION
of P.O.Box 1127, Jeddah, Saudi Arabia

TO SALEH ALI ANSARI
of P.O.Box 1773, Jeddah, Saudi Arabia

TO SAID HASSAN AS-SUFI
of P.O.Box 514, Jeddah, Saudi Arabia

TO SAAD ATIQULLAH AL-HARABI
of P.O.Box 425, Mecca, Saudi Arabia

TO MOHAMED HOSSAIN BANAFEI
of P.O.Box 1304, Jeddah, Saudi Arabia

TO BASALAMAH GROCERY
of P.O.Box 1770, Jeddah, Saudi Arabia

TO MOHAMED ALI SULIMANI
of P.O.Box 730, Jeddah, Saudi Arabia

TO AHMED ALI HUSSAIN
of Mecca, Saudi Arabia

TO MOHAMED ABDULHAFIZ BIN SHAIHOON
of P.O.Box 830, Jeddah, Saudi Arabia

TO SULIMAN AL ABDUL AZIZ ALHAMEED
of P.O.Box 704, Mecca, Saudi Arabia

TO SIDDIQUE AMIN SAIFUDDIN
of P.O.Box 753, Mecca, Saudi Arabia

TO OMER MOHAMED BASALAMAH
of P.O.Box 822, Jeddah, Saudi Arabia

TO OMAR SAAD AL-KHAMBASHI
of P.O.Box 514, Mecca, Saudi Arabia

TO NAFE MUBARAK AL-HARABI
of P.O.Box 481, Mecca, Saudi Arabia

TO ABDULRAHMAN A. ABDUSSABOOR
of P.O.Box 1295, Jeddah, Saudi Arabia

TO SYED MOHSIN ABDULLAH BASURRAH
of P.O.Box 946, Jeddah, Saudi Arabia

TO OMER SALEM SHEIBA AL-KHAMBASHI
of Taht Amarut Al-Shraf, Jeddah, Al-Khaskia, Saudi Arabia

TO M.Y.M.Y. DEHLAVI
of P.O.Box 428, Mecca, Saudi Arabia

TO AHMED NASER ALI
of Jeddah, Saudi Arabia

TO SALEM A. AL-MUHDHAR
of P.O.Box 249, Jeddah, Saudi Arabia

TO OMAR SAAD ALKAMBASHI
of P.O.Box 629, Jeddah, Saudi Arabia

TO OMAR HINNAWI
of c/o P.O.Box 1295, Jeddah, Saudi Arabia

TO ABDUL RAHMAN A.H. BAKHSH
of Mecca, Saudi Arabia

TO ABDULRAHMAN AHMED BANAFA
of P.O.Box 688, Jeddah, Saudi Arabia

TO HAMZA M. BOGARY
of P.O.Box 1800, Jeddah, Saudi Arabia

TO ARABIAN GULF ASSOCIATION FACTORIES
of P.O.Box 2143, Jeddah, Saudi Arabia

TO FOLAD A. BOKARI
of Qabil Street, Jeddah, Saudi Arabia

TO TARGOUN AMIN KHOTANLY
of Jeddah, Saudi Arabia

TO ABDUR RAHIM QARI ARTOSHI
of Mecca, Saudi Arabia

TO MOHAMED TAHIR TURKSTANI
of P.O.Box 450, Medina, Saudi Arabia

TO MOHAMED AHMED BAFAIL
of Sooqus Sagir, Mecca, Saudi Arabia

TO SAEED ABDUL ILAH GENERAL TRADING ENTERPRISES
of P.O.Box 695, Hodeidah, Yemen Arab Republic

TO ALLIED TEXTILE LEATHER INDUSTRIES
of Post Box 45, 3438, Inside Raipur Gate, Kotni Diwal, Ahmedabad, India.

TO CHANDABHAI & SONS
of Post Box 34, Dariapur, Dabgarwad, Ahmedabad-1, India

TO MOHAMED OTHMAN BAOMAR
of P.O.Box 1219, Jeddah, Saudi Arabia

In the Supreme Court of Hong Kong

No.8
Summons
21st December 1979
(continued)

TO KASEEK ESTABLISHMENT
of P.O.Box 1367, Jeddah, Saudi Arabia

TO MOHAMED OMAR ALHAJ BAJAAFAR
of P.O.Box 1279, Jeddah, Saudi Arabia

TO AHMED DAHMAN BASMOUSA AL AMOUDI
of P.O.Box 1485, Jeddah, Saudi Arabia

TO ABDULLAH DAHMAN BAMOUSA AL AMOUDI
of P.O.Box 1157, Jeddah, Saudi Arabia

TO NAFE BIN MOBARAK ALHARBI & ABOUD BIN ABDULLAH ALHARBI
of P.O.Box 481, Mecca, Saudi Arabia

TO AHUJA RADIOS
of 215, Okhla Industrial Estate, New Delhi 110020, India

TO INTERNATIONAL BOOK HOUSE PVT. LTD.
of Indian Mercantile Mansions (Extn), Madam Cama Road, Bombay 1, India.

TO AHMED ALI HUSSAIN
of Mecca, Saudi Arabia

TO MARAI BIN SALIM BARABAA
of P.O.Box 1425, Jeddah, Saudi Arabia

TO MOHAMED AHMED NASHER
of Hodeidah, Yemen Arab Republic

TO MOHAMMED SALIM BAKLAMIS
of P.O.Box 145, Mecca, Saudi Arabia

TO AHMED ABDULLA ALI AL-SHAINBANI
of Hodeidah, Yemen Arab Republic

TO SAEED KASSEM ANAMM
of c/o (Messrs. Al-Negah Store), Hodeidah, Yemen Arab Republic

WE Command you that within 8 days after the service of this Writ on you, inclusive of the day of service, you do cause an Appearance to be entered for you in an action at the suit of

HONG KONG ISLANDS SHIPPING CO.LTD. of 9th Floor, Realty Building, 71, Des Voeux Road, Central, Hong Kong and

HONG KONG ATLANTIC SHIPPING CO.LTD. of 80 Broad Street, Monrovia, Liberia.

and take notice that in default of your so doing the Plaintiffs may proceed therein, and judgment may be given in your absence.

WITNESS The Honourable
Chief Justice of Our said Court, the
day of , 1978

Registrar

Note:- This Writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

Directions for Entering Appearance

The Defendant may enter an Appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court in Victoria, Hong Kong, or (2) by sending them to the Registry by post.

Note: If the Defendant enters an Appearance, then, unless a Summons for judgment is served on him in the meantime, he must also serve a Defence on the solicitor for the Plaintiff within 14 days after the last day of the time limited for entering an Appearance, otherwise judgment may be entered against him without notice.

POINTS OF CLAIM

1. By contracts contained in or evidenced by Bills of Lading, all of which were in the same form, the 1st and/or 2nd Plaintiffs agreed to carry goods on board the motor vessel "POTOI CHAU" from ports in the Far East to Jeddah, Hodeidah, Aden, and Bombay. The said contracts provided inter alia that General Average should be adjusted according to the York/Antwerp Rules 1950,

and the said Plaintiffs will refer to the said contracts for their full terms and effect.

2. On the 25th October 1972, the said vessel in the course of the said voyage encountered cyclonic weather and at 2120 hours ran aground at a position 11°13' N, 51°08' E off the coast of the Somali Republic. The ship and cargo concerned in the joint adventure were thereby imperilled.

3. Thereafter the 1st and/or 2nd Plaintiffs its/their servants or agents intentionally and reasonably made sacrifices of ship and cargo and incurred extraordinary expenditure to preserve the said ship and cargo from peril, and in particular, engaged the tug "Svitzer" to assist in regloating operations and jettisoned approximately 2,311.5 tons of cargo. Full particulars of the said sacrifices and expenditure are contained in an Adjustment signed by Messrs. Stevens, Elmslie & Co. and dated 31st August 1977. Copies of the said Adjustment and/or extracts therefrom have been delivered to the Defendants.

4. The said vessel was refloated on the 21st November 1972 and proceeded to Aden, where she arrived on the 24th November 1972. All cargo except cargo for Bombay was discharged, temporary repairs were effected and the said vessel proceeded to Bombay, where she arrived on the 2nd January 1973. After discharge of Bombay cargo the vessel on survey was found to be a commercial constructive total loss and the voyage was abandoned on the 16th January 1973. Cargo for Jeddah and Hodeida was subsequently carried from Aden to destination by the 1st and/or 2nd Plaintiff's vessel "Chik Chau" and "Lamtong Chau".

5. The 12th to 85th Defendants inclusive, who were consignees of cargo shipped on the said vessel for the said voyage, and whose cargo was insured by the 1st to 11th Defendants inclusive, in return for delivery of their cargo without payment of cash deposits signed Average Agreement with the 1st and/or 2nd Plaintiffs whereby the 12th to 85th Defendants respectively agreed to pay to the 1st and/or 2nd Plaintiffs the proportions of General Average chargeable to their respective consignments. Further by contracts in writing the 1st to 11th Defendants inclusive in consideration of the 1st and/or 2nd Plaintiffs releasing to the said consignees

their respective shipments respectively insured by the 1st to 11th Defendants without payment of cash deposits guaranteed payment of the respective proportions of General Average attaching to the respective consignments insured by them. Accordingly the 1st and/or 2nd Plaintiffs or its/their Agents did release to the said 12th to 85th Defendants their respective consignments without demanding from them payment of cash deposits. In the premises the 12th to 85th Defendants are liable to pay the respective proportions of General Average attaching to the goods consigned to them and/or the 1st to 11th Defendants under their respective guarantees are liable to pay the proportions of General Average attaching to the consignments insured by them. Full particulars have been supplied to the Defendants of the amounts payable by them but the Defendants have failed to pay the same or any part thereof.

AND the 1st and/or 2nd Plaintiff's claim :-

1. Against the 1st Defendant and the Defendants insured by it as follows :-

12th Defendant	US$ 187.48
13th Defendant	6,319.85
14th Defendant	1,469.27
15th Defendant	6,826.12
16th Defendant	2,706.60
17th Defendant	1,270.32
18th Defendant	869.17
19th Defendant	1,077.39
20th Defendant	2,194.68
21st Defendant	1,152.79
	US$24,073.67
Less Credit	242.89
	US$23,830.78

Against the 2nd Defendant and the Defendants insured by it as follows :-

22nd Defendant	US$ 4,434.43
23rd Defendant	2,257.65
24th Defendant	2,870.34
25th Defendant	1,957.16
26th Defendant	2,472.36
	US$13,991.94
Less Credit	151.12
	US$13,840.82

Against the 3rd Defendant and the Defendants insured by it as follows :-

27th Defendant	US$	1,568.88
28th Defendant		3,229.89
29th Defendant		1,285.13
30th Defendant		2,531.89
	US$	8,615.79
Less Credit	144.41	

Further, the 1st and/or 2nd Plaintiffs will allow credit to the 3rd Defendant in respect of the interest of Ahmed Mohammed Banafa (Bs/L No. SJE1 & SJE12) 1,626.54

And in respect of the interest of Abdo and Ahmed Taher Al-Zaghir 5,717.16

7,488.11 7,488.11

US$ 1,127.68

Against the 4th Defendant and the Defendants insured by it as follows :-

36th Defendant	US$	845.65
43rd Defendant		1,321.78
59th Defendant		5,086.48
61st Defendant		1,563.53
62nd Defendant		382.78
63rd Defendant		2,222.84
	US$	11,423.06

Against the 5th Defendant and the Defendants insured by it as follows :-

55th Defendant	US$	1,736.76
60th Defendant		3,701.32
69th Defendant		1,042.41
70th Defendant		4,670.61
71st Defendant		2,874.34
	US$	14,025.44

	The 1st and/or 2nd Plaintiffs will allow credit to the 5th Defendant in respect of the interest of Ali Zaid Al Quraishi & Brothers (B/L HJ-17)	1,127.73
		US$ 12,897.71

Against the 6th Defendant and the Defendants insured by it as follows :-

16th Defendant	US$	682.91
31st Defendant		707.34
32nd Defendant		592.93
33rd Defendant		741.65
34th Defendant		1,354.48
35th Defendant		1,495.60
37th Defendant		5,419.79
38th Defendant		2,012.09
39th Defendant		2,914.81
40th Defendant		2,848.60
41st Defendant		157.20
42nd Defendant		683.74
44th Defendant		1,112.05
45th Defendant		3,432.53
46th Defendant		4,582.95
47th Defendant		1,328.44
48th Defendant		2,968.46
49th Defendant		1,465.15
50th Defendant		2,554.79
51st Defendant		1,588.87
52nd Defendant		612.32
53rd Defendant		1,400.04
54th Defendant		2,683.32
56th Defendant		717.73
57th Defendant		2,933.65
58th Defendant		2,253.21
64th Defendant		487.44
65th Defendant		447.67
66th Defendant		414.06
67th Defendant		1,143.20
68th Defendant		2,265.75
	US$	54,002.77

	The 1st and/or 2nd Plaintiffs will allow credit to the 6th Defendant in respect of the interest of Abdul Rahman Ahmed Banafa (B/L No.HJ-1)	270.89
		US$ 53,731.88

Against the 7th Defendant and the Defendants insured by it as follows :-

72nd Defendant	US$	25,718.35
73rd Defendant		9,867.00
74th Defendant		41,524.48
75th Defendant		12,029.21
76th Defendant		9,290.47
	US$	98,429.51
The 1st and/or 2nd Plaintiffs will allow credit to the 7th Defendant in respect of the interest of Abdullah Hassan Aljefri (Bs/L No. KJ-5 and KJ-26)		9,747.77
		US$ 88,681.74

Against the 8th Defendant and the Defendants insured by it as follows :-

77th Defendant	US$	2,812.50
78th Defendant		1,076.57
	US$	3,889.07

Against the 9th Defendant and the Defendants insured by it as follows :-

79th Defendant	US$	3,172.23
Less Credit		37.18
	US$	3,135.05

Against the 10th Defendant and the Defendants insured by it as follows :-

80th Defendant	US$	596.57
81st Defendant		241.14
82nd Defendant		1,276.20
	US$	2,113.91

Against the 11th Defendant and the Defendants insured by it as follows :-

83rd Defendant	US$	1,844.44
84th Defendant		1,565.83
85th Defendant		166.33
	US$	3,576.60
Less Credit		16.30
	US$	3,560.30
	US$	223,949.16

2. Interest

And the sum of $526.00 or such sum as may be allowed on taxation) for costs, and also, if the 1st and/or 2nd Plaintiff obtains an order for substituted service, the further sum of $500.00 (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the 1st and/or 2nd Plaintiff or its/their Solicitors within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed.

This Writ was issued by Johnson, Stokes & Master, of Hongkong & Shanghai Bank Building, Victoria, Hong Kong, Solicitors for the said Plaintiffs, whose addresses are at 9th Floor, Realty Building, 71, Des Voeux Road, Central, Hong Kong and 80 Broad Street, Monrovia, Liberia, respectively.

No. 9

SUMMONS

No.9
Summons
5th January 1980

1978, No. 3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

COMMERCIAL LIST

BETWEEN: HONG KONG ISLANDS SHIPPING CO. LTD. 1st Plaintiff

HONG KONG ATLANTIC SHIPPING CO.LTD. 2nd Plaintiff

and

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.) and 84 Others Defendants

Before Hon. Zimmern, J.

Let all parties concerned attend the Judge in Chambers at the Supreme Court, Hong Kong on Friday the 8th day of February, 1980 at 10:00 o'clock in the forenoon, on the hearing of an

application on the part of the 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 9th, 11th, 25th, 32nd, 35th, 38th, 39th, 40th, 44th, 45th, 46th, 50th, 51st, 53rd, 55th, 61st, 66th, 67th, 68th, 72nd, 74th, 75th, 76th and 79th Defendants for an Order that the 2nd Plaintiff be struck out as a party to this action on the grounds that at the date of application to and order of Mr. Registrar Barrington-Jones giving leave to amend the writ by adding the 2nd Plaintiff as a party the time limited for the 2nd Plaintiff's claim against the said Defendants had expired and that the order granting such leave was therefore incorrectly made.

Dated the 5th day of January, 1980

S.H. MAYO
Registrar

This Summons was taken out by Messrs. Deacons of 6th Fl., Swire House, Chater Road, Victoria, Hong Kong, Solicitors for the said Defendants.

(To the abovenamed Plaintiffs or their Solicitors, Messrs. Johnson, Stokes & Master)

(Estimated time not exceeding ½ day)

No. 10

AFFIDAVIT OF PETER GEIRION VALENTINE JOLLY

1978 No. 3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

COMMERCIAL LIST

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. — 1st Plaintiff

HONG KONG ATLANTIC SHIPPING CO.LTD. — 2nd Plaintiff

and

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.) and 84 Others — Defendant

---

I, PETER GEIRION VALENTINE JOLLY of 3 Berkeley Bay Villas, Hirams Highway, Sai Kung, New Territories, Hong Kong, make oath and say as follows :-

1. I am a partner in the firm of Messrs. Deacons, Solicitors and Notaries, 6th Floor, Swire House, Hong Kong and I have conduct of this matter on behalf of the Defendants referred to in the Summons issued on their behalf dated the 5th day of January, 1980. The facts herein deposed to are within my own knowledge unless otherwise stated.

2. I beg leave to refer to the Affidavit of Roderick Andrew Powell filed in this Action on the 4th day of May, 1979. That Affidavit was purportedly sworn by Mr. Powell in support of the application which was subsequently granted by Mr. Registrar Barrington Jones on the 23rd day of July, 1979 giving leave to join the second-named Plaintiffs, Hong Kong Atlantic Shipping Co.Ltd. as a party. In that Affidavit Mr. Powell disposes that he is instructed by

the Plaintiff, Hong Kong Islands Shipping Co. Ltd., that Hong Kong Atlantic Shipping Co.Ltd. of Monrovia were the owners of the vessel "POTOI CHAU" at the time pertinent to this Action. Mr. Powell does not however point out to this Honourable Court that at the time of the ex parte application for joinder (July 1979) the claim for proportions of general average referred to in paragraph 1 of his said Affidavit are out of time, six years having elapsed since the provision of the General Average Guarantees (the last of which was given in May 1973) and/or the occurrence giving rise to the General Average situation.

3. As will appear from the Statement of Claim, the vessel "POTOI CHAU" ran aground on the 25th day of October, 1972. The Defendants have contended and will contend that the cause of the casualty was due to the negligence and unseaworthiness of the vessel and that therefore the Defendants' cargo owners would not be liable for general average at all. Following the efforts of the tug "SVITZER", the vessel was refloated on the 21st day of November, 1972 whereafter she proceeded to Athen, arriving on the 24th of November, 1972 where the majority of the cargo was discharged save for that destined for Bombay, which cargo was discharged at Bombay on the 2nd of January, 1973, the vessel having undergone temporary repairs at Athen for the purposes of completing that voyage.

4. In my humble submission the time limited for a claim for General Average and under the General Average Guarantees have expired before the making of the application to join the 2nd Plaintiff as a party, six years having been elapsed.

5. It is my further humble submission that the inclusion of the 2nd Plaintiff deprives the Defendants in this matter of a Defence of time bar upon which the Defendants will otherwise be entitled to rely. I therefore respectfully crave for an Order in terms of the Summons herein.

SWORN at the Courts of Justice)
Victoria, Hong Kong, this 4th) Sd. P.G.V.Jolly
day of February, 1980)

Before me,
(Sd.) Alexander Tsang
Solicitors
A Commissioner for Oaths

This Affidavit is filed on behalf of the Defendant.

No. 11

NOTICE

1978, No. 3727

In the Supreme Court of Hong Kong

No.11
Notice
6th February 1980

IN THE SUPREME COURT OF HONG KONG
HIGH COURT
(COMMERCIAL LIST)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO. LTD. — 1st Plaintiff

HONG KONG ATLANTIC SHIPPING CO. LTD. — 2nd Plaintiff

and

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (H.K.) Ltd.) and 84 Others — Defendants

N O T I C E

HEREBY TAKE NOTICE that on the Hearing of the Plaintiffs' application to re-amend the Writ of Summons herein and the 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 9th, 11th, 25th, 32nd, 35th, 38th, 39th, 40th, 44th, 45th, 46th, 50th, 51st, 53rd, 55th, 61st, 66th, 67th, 68th, 72nd, 74th, 75th, 76th and 79th Defendants' application for an Order that the 2nd Plaintiff be struck out, before the Judge in Chambers on Friday the 8th day of February 1980 at 10:00 o'clock in the forenoon, in the event that it be ordered that the 2nd Plaintiff be struck out, application will be made for leave to amend to correct the name of the 1st Plaintiff to "Hong Kong Atlantic Shipping Co.Ltd."

Dated the 6th day of February, 1980.

This Notice was served by JOHNSON, STOKES & MASTER of 403-413 Hongkong & Shanghai Bank Building, 1 Queen's Road, Central, Hong Kong, Solicitors for the Plaintiffs.

(To the abovenamed Defendants or their Solicitors, Messrs. Deacons)

(Sd.) Illegible

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12
Affidavit of Roderick Andrew Powell

8th February 1980

No. 12

AFFIDAVIT OF RODERICK ANDREW POWELL

1978, No. 3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

(COMMERCIAL LIST)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. 1st Plaintiff

HONG KONG ATLANTIC SHIPPING CO.LTD. 2nd Plaintiff

and

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (H.K.) Ltd.) and 84 Others Defendants

A F F I D A V I T

I, RODERICK ANDREW POWELL of Flat D1, 78 Repulse Bay Villas, Hong Kong, Solicitor of the Supreme Court of Hong Kong, partner in the firm of Messrs. Norton, Rose, Botterell & Roche which firm practises in association with the firm of Messrs. Johnson, Stokes & Master, Solicitors for the Plaintiffs in this Action, having the conduct of this Action on the Plaintiffs' behalf, make oath and say as follows :-

1. I beg leave to refer to my Affidavit filed herein on 4th May 1979 and to the Affidavit of PETER GEIRION VALENTINE JOLLY filed herein on 5th February 1980 and to the amended Points of Claim herein. There are now produced and shown to me and exhibited hereto marked "RAP-1" copies of eleven bundles, each of which summarize the name of the respective Underwriter sought liable to pay cargo consignees' contributions in General Average, provide a breakdown of amounts due from the respective Underwriters in accordance with the consignments insured by that

Underwriter and which attach Cargo Underwriters' Letter of Guarantee. I respectfully beg leave to refer to the said Letters of Guarantee, all of which are in substantially the same wording, for example :

> "In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or special charges for which the said goods are legally liable under an adjustment drawn up in accordance with the Contract of Affreightment."

Exhibited hereto marked "RAP-2" are two samples of Lloyd's Average Bond and Lloyd's General Average Bond and Guarantee made respectively between the 1st Plaintiffs as "Owners of the Ship or Vessel called the M.V. "POTOI CHAU" of the first part and the several persons whose names or firms are set and subscribed hereto being respectively consignees of cargo on board the said Ship of the second part" and between "the Corporation of Lloyd's and the 1st Plaintiff" (hereinafter called "the Shipowner") and which provide that in consideration of delivery of the respective consignments, payment will be made to the said Owner of the Ship of the proper and respective proportion of any Salvage and/or General Average and/or particular and/or other charges which may be chargeable. I respectfully submit that in relation to the guarantees which form part of the bundle "RAP-1", the time expressly agreed by the parties thereto to be the time at which liability under the guarantees arises is the time when a contribution becomes legally due under an Adjustment. In relation to the documents which form Exhibit "RAP-2", this is also impliedly the case as the earliest time at which the liability of the goods to contribute can be ascertained is the date upon which the Average Adjustment, or statement drawn up in accordance with the Agreement in the Contract of Carriage, is signed.

It is respectfully submitted that since the Adjustment of Messrs. Stevens, Elmslie & Co. was signed on 31st August 1977, time could not have commenced to run under the Statute of Limitations until such date and accordingly, the dates of provision of the General Average Guarantees and/or the events giving rise to liability to contribute in General Average are

irrelevant, and that on this ground, leave granted by Mr. Registrar Barrington Jones on 23rd July 1979 to join the 2nd Plaintiff was given correctly as, in my humble submission, the time limited for claims for General Average contributions had not expired before the making of the application to join the 2nd Plaintiff as a party.

2. I also beg leave to refer to the Bills of Lading issued in respect of the subject shipments, a copy sample of which is exhibited hereto marked "RAP-3" and which is on the 1st Plaintiff's form and in the conditions which appear on the face and the reverse thereof the 1st Plaintiff is referred to as either "the Company" or "the Carrier". By Clause 28 of the conditions :

> "(General Average) General Average shall be adjusted, stated and settled according to York Antwerp Rules 1950."

By clause 29 of the Conditions :

> "(Jason Clause) In the event of accident, danger, damage, or disaster, before or after commencement of the voyage, resulting from any cause whatsoever whether due to negligence or not, for which or for the consequences of which, the Carrier is not responsible by statute, contract, or otherwise, the goods, shippers, consignees or Owners of the goods shall contribute with the Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred, and shall pay Salvage and special charges incurred in respect of the goods."

It is my humble submission that the 1st Plaintiffs who, whilst not being the legal Owners of the vessel, (the 2nd Plaintiffs being the legal Owners), were the Carriers named in the Contract of Carriage and, as such, have a right and a duty on behalf of their principals to bring proceedings not only under the guarantees which, or most of which, were actually addressed to them, but also in their own right and on their own behalf under the Agreement to General Average provided in Clause 28.

3. In or about February or March 1979,

consideration was given to the joinder of the 2nd Plaintiff with the intention of simplifying and clarifying the complicated issues before the Court which were made even more complicated than was necessary due to the 1st Plaintiff suing in its own capacity and also as agent on behalf of the registered Owners of the "POTOI CHAU".

I respectfully submit that the 1st Plaintiff is the party having ultimate title to sue in respect of the claimed General Average contributions; also that the 1st Plaintiff throughout the material time, was acting as Agent for an unnamed principal, namely the 2nd Plaintiff; and that by virtue of the terms or conditions of the said Bills of Lading in which the 1st Plaintiff was named as Carrier and having paid away money by way of General Average and other expenses and charges in connection with the said casualty on behalf of the 2nd Plaintiff, the said 1st Plaintiff is the proper person to sue for General Average contributions. Even if a new cause of action by the 2nd Plaintiff might have been time-barred in July 1979, the time when the 2nd Plaintiff was joined herein, the pleaded cause of action was not time-barred it having been protected by the issue of these proceedings brought by the 1st Plaintiff as agent of the 2nd Plaintiff well within the time-bar period. I respectfully submit, therefore, that the Defendants cannot be said to have suffered any prejudice by the joinder of the 2nd Plaintiff which was, in reality, already a party to the proceedings, and that in all the interests of Justice this Honourable Court should affirm the decision of Mr. Registrar Barrington Jones.

SWORN at)
)
this day of)
February, 1980)

Before me,

Solicitor empowered to
administer oaths

This Affidavit is filed on behalf of the Plaintiffs.

1978, No.3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

(COMMERCIAL LIST)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. — 1st Plaintiff

HONG KONG ATLANTIC SHIPPING CO.LTD. — 2nd Plaintiff

and

CASTLE INSURANCE COMPANY LTD. (formerly Pacific & Orient Underwriters (H.K.) Ltd.) and 84 Others — Defendants

---

The exhibits referred to in the Affidavit of RODERICK ANDREW POWELL filed herein on the . day of February, 1980

Exhibits Marked	No. of Sheets
"RAP-1"	61
"RAP-2"	5
"RAP-3"	1

JOHNSON, STOKES & MASTER
Solicitors for the 1st & 2nd Plaintiffs

No.12 (a)

EXHIBIT "RAP-1"

"POTOI CHAU"

Castle Insurance Co.Ltd. (formerly Pacific & Orient Underwriters (H.K.) Ltd.)
613, Asian House,
1, Hennessy Road,
HONG KONG

G.A.Guarantees signed by: P & O, H.K.

Settlement requested from: P & O, c/o W.K.Webster & Co., London

"POTOI CHAU"

CASTLE INSURANCE CO.LTD.
(Formerly Pacific & Orient Underwriters (Hong Kong) Ltd.)

Interest of: c/o W.K.Webster & Co., London

Int. No.	Policy No.	BALANCE		FINAL BALANCE
		To Pay	To Receive	To
		US$		
63	H101203516	187.48	-	
70	H/40120925/0	634.86	-	
71	H/401202058/0	246.11	-	
72	H/401202059/0	2,971.71	-	
73	H/401202060/0	792.78	-	
74	H/401202061/0	1,260.04	-	
75	H/401202062/0	414.35	-	
76	H/401202063/0	550.29	-	
77	H/401202064/0	391.97	-	
78	H/401202065/0	527.01	-	
79	H/401202066/0	2,043.02	-	
80	H/401202067/0	1,130.65	-	
81	H/401202068/0	674.25	-	
82	H/401202069/0	376.91	-	
83	H/401202070/0	270.00	-	
84	H/401202071/0	412.33	-	
85	H/401202072/0	1,222.73	-	
86	H/401202073/0	696.23	-	
87	H/401202075/0	2,706.60	-	

Int. No.	Policy No.	BALANCE To pay	BALANCE To Receive	FINAL BALANCE To
		US$		
	Brought forward	17,509.32		
93	H001203036/0	1,270.32	-	
112	H/401202118/0	869.17	-	
151	H/401202007/0	1,077.39	-	
154	H/401202097/0	2,194.68	-	
157	H101203466/0	1,152.79	-	
		US$24,073.67		
	Credit:			
	Proportion paid of Clyde & Co.'s account, ex £989.57 at page 174, £122.65 @ 1.8235	-	US$ 223.65	
	Commission and Interest thereon, ex US$ 160.43 at page 275	-	19.24	
		US$ 24,073.67	US$ 242.89	US$23,830.78

PACIFIC & ORIENT UNDERWRITERS (HONGKONG) LIMITED
INSURANCE & REINSURANCE-FIRE ACCIDENT MARINE

Suite 701, Great China House, 14/14A Queen's Road Central, Hong Kong

Telephones: H-246294, 247397, 248530
Cables: "POUND" HONG KONG
INSURANCE EFFECTED AT LLOYD'S LONDON

Singapore Office: P & O Building (Corner Market & Cecil Streets) Singapore 1
Telephone: 73446/9

Malaysia Office: 70 Jalan Silang, 2nd Floor, Kuala Lumpur, Malaysia
Telephone: 82285/6

Brunei Office: 72 Jalan Roberts, Bandar Seri Begawan Telephone:4495

United Kingdom Office: 47 Mark Lane, London E.C.3
Telephone: 01-623 1521

and at Johore Bahru, Batu Pahat, Malacca, Ipoh, Penang, Alor Star, Kota Bahru, Kuching, Sibu, Kota Kinabalu, Sandakan

HONG KONG
16th December 1972

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Messrs. Stevens Elmslie & Co.,
Average Adjusters,
10th Floor, Union House,
Hongkong.

Dear Sirs,

s.s. "POTOI CHAU"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,

Pacific & Orient Underwriters Ltd.
701 Great China House,
14/14A Queen's Road C. Hongkong.

PACIFIC & ORIENT UNDERWRITERS (HONGKONG) LTD.

(Sd.)

B/L NO.	MARKS & NO.	NO.OF PKGES	DESCRIP. OF GOODS	POLICY NO.
HJ-51	RI/TO JEDDAH MADE IN HONGKONG	13 Cartons	Tinplate and Bake-lite Candle Lamp	H101203516 Insured for US$ 466.-

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Dear Sirs,

s.s.
m.v. "POTOI CHAU"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,

Postal Address: PACIFIC & ORIENT UNDERWRITERS (HONGKONG) LTD.

(Sd.)

Address for correspondence regarding claims and settlement under adjustment if different from above

701 Great China House,
14/14A Queen's Road C,
Hongkong.

No.	Marks & Nos.	No.of Pkges	Description of Goods	Policy No.	Insured Value
HJ-64	S.A.A.2493 MECCA VIA JEDDAH No.4/10	7 cases	Plastic toy	H/40120925/0	Stg. £332.00
HJ-66	S.A.S.2609 MECCA VIA JEDDAH No.1/5	5 cartons	Plastic toys	H/401202058/0	US$ 347.00
HJ-67	S.A.S.2648 MECCA VIA JEDDAH No.1/81	81 cartons	Plastic toys, P.V.C. purse & Plastic hair clip	H/401202059/0	Stg. £1543.00
HJ-68	S.A.S.2657 MECCA VIA JEDDAH No.1/21	21 cartons	Plastic toys	H/401202060/0	US$ 1254.00
HJ-69	S.A.S.2671 MECCA VIA JEDDAH No.1/7 & 14/23	17 cartons	Plastic flowers & Cotton handbags	H/401202061/0	Stg. £669.00
HJ-70	S.A.S.2692 (ADD)MECCA VIA JEDDAH No.1/6	6 cartons	Photographic film	H/401202062/0	Stg. £224.00
HJ-72	AL-DOUBY 2584 MECCA VIA JEDDAH No.1/12	12 cartons	Plastic flowers	H/4010202063/0	Stg. £285.00
HJ-73	AL-DOUBY 2605 MECCA VIA JEDDAH No.1/11	11 cartons	Plastic flowers	H/401202064/0	Stg. £347.00
HJ-74	AL-DOUBY 2628 MECCA VIA JEDDAH No.1/17	17 cartons	Plastic flower vase	H/401202065/0	Stg. £275.00

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"
8th February 1980
(continued)

No.	Marks & Nos.	No.of Pkges	Description of Goods	Policy No.	Insured Value
HJ-75	YAKUB 2602 MECCA VIA JEDDAH No.1/6 & 15/16	8 cases	Cotton purse	H/401202066/0	US$ 2684.00
HJ-76	YAKUB 2612 MECCA VIA JEDDAH No.1/5	5 cases	P.V.C. Toy wallets	H/401202067/0	US$ 1458.00
HJ-77	YAKUB 2658 MECCA VIA JEDDAH No.14	152 cases	Cotton purse	H/401202068/0	US$ 880.00
HJ-78	YAKUB 2663 MECCA VIA JEDDAH No.1/4	4 cartons	Plastic flowers	H/401202069/0	US$ 484.00
HJ-79	YAKUB 2664 MECCA VIA JEDDAH No.1	1 case	Metal Key Chain	H/401202070/0	US$ 358.00

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Dear Sirs,

s.s.
m.v. " "

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,

Postal Address: PACIFIC ORIENT UNDERWRITERS (HONGKONG) LTD.

(Sd.)

Address for correspondence regarding claims and settlement under adjustment if different from above

701 Great China House,
14/14A Queen's Road C., Hongkong

B/L No.	Marks & Nos.	No. of Pkges	Description of Goods	Policy No.	Insured Value
HJ-80	YAKUB 2665 MECCA VIA JEDDAH No.1	1 case	Toy bangles	H/401202071/0	US$550.00
HJ-81	YAKUB 2666 MECCA VIA JEDDAH No.1/2	2 cases	Aluminium wares	H/401202072/0	Stg.£660.00
HJ-82	YAKUB 2668 MECCA VIA JEDDAH No.1/14	14 car-tons	Plastic flowers	H/401202073/0	US$1007.00
HJ-83	BASUJERA JEDDAH No.1/10	10 cases	Metal watch bands, Aluminium combs, cuff-links & Hair band	H/401202075/0	US$3823.00

In the Supreme Court of Hong Kong

Plaintffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Messrs.

Dear Sirs,

s.s.
m.v. "POTOI CHAU"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,

Postal Address:

701 Great China House
Queen's Road Central
Hongkong

Address for correspondence regarding claims and settlement under adjustment if different from above

PACIFIC ORIENT UNDERWRITERS (HONGKONG) LTD.

(Sd.)

B/L No.	Marks & Nos.	No. of Pkges	Description of Goods	Policy No.	Insured Value
HJ-93	A.R.K.7025 JEDDAH MADE IN HONGKONG C/No.9388-9392	5 cases	GENT'S P.V.C. IMITATION LEATHER JACKETS	H001203036/0	STG. £715/-

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Messrs.

Dear Sirs,

s.s.
m.v. "POTOI CHAU"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,

Postal Address:

701 Great China House
14/14A Queen's Road
Central, HONGKONG

Address for correspondence regarding claims and settlement under adjustment if different from above

PACIFIC & ORIENT UNDERWRITERS
(HONGKONG) LTD.

(Sd.)

B/L No.	Marks & Nos.	No. of Pkges	Description of Goods	Policy No.	Insured Value
J-114	I.D.E. 291/21 JEDDAH MADE IN HONG KONG No.1/20	20 cartons	P.V.C. WALLETS	H/401202118/0	£520/-

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)

Exhibit "RAP-1"

8th February 1980

(continued)

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Messrs. 20 MAR 1978

Dear Sirs,

s.s.
m.v. "POTOI CHAU"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,

HOLMS TRADING CO.
(Sd.)
Manager

Postal Address: P.O.Box 14826,
Hongkong

PACIFIC & ORIENT UNDERWRITERS
(HONGKONG) LTD.

(Sd.)

701 Great China House,
14 Queen's Road C,
HONGKONG

Address for correspondence regarding claims and settlement under adjustment if different from above

B/L No.	Marks & Nos.	No. of Pkges	Description of Goods	Policy No.	Insured Value
HH-8	MOOQBEL 63/H630/72 HODEIDAH & A.R.NO.1/10	10 cases	Cotton Goods	H/401202097/0	US$2898.00
	Y.S.M. 57/H601/72 HODEIDAH Y.A.R.	3 cases	Belts	H/401202007/0	US$580.00
HH-3	NO. 1/3				

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Messrs. Stevens, Elmslie & Co.
Average Adjusters,
10th Floor, Union House,
Hong Kong.

Dear Sirs,

s.s.
m.v. "POTOI CHAU"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,

Postal Address:
PACIFIC & ORIENT UNDERWRITERS (HK) LTD.
Suite 701 Great China House,
14/14A Queen's Rd., Central,
Hongkong

Address for correspondence regarding claims and settlement under adjustment if different from above

PACIFIC & ORIENT UNDERWRITERS (HONGKONG) LTD.
(Sd.)

B/L No.	Marks & Nos.	No.of Pkges	Description of Goods	Policy No.	Insured Value
H-11	A.S.S. HODEIDAH MADE IN HONGKONG NO.1/10	10 cases	Plastic travelling bags	H/101203466/0	£610.00

"POTOI CHAU"

Century Insurance Co.Ltd.,
Room 802, Prosperous Building,
48-52, Des Voeux Road, C.,
HONG KONG

G.A.Guarantees signed by: HK General Agents, Pacific & International Underwriters Ltd.

Settlement requested from: Century c/o Phoenix Assurance Co.Ltd. London

"POTOI CHAU"

Interest of: CENTURY INSURANCE CO.LTD.
c/o Phoenix Assurance Co.Ltd.
London.

Int. No.	Policy No.	BALANCE To Pay	BALANCE To Receive	FINAL BALANCE To pay
29	MOOO659	US$ 4,434.43	-	
107	MOOO830	2,257.65	-	
108	MOOO826	2,870.34	-	
109	MOOO829	1,957.16	-	
110	MOOO827	2,472.36	-	
		US$13,991.94		
Credit:				
Proportion paid of Clyde & Co.'s account ex £989.57 at page 174, £78.29 @ 1.78075		-	US$ 139.41	
Commission and Interest thereon, ex US$160.43 at page 275		-	11.71	
		US$13,991.94	US$ 151.12	US$13,840.82

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Messrs.

Dear Sirs,

s.s.
m.v. "POTOI CHAU"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,
The Century Insurance Company Limited
GENERAL AGENTS
Pacific & International Underwriters Ltd.
(Sd.)

Postal Address:

Room No.802, Prosperous Building, Nos.48-52 Des Voeux Road Central, 8th Floor, Hong Kong.

Address for correspondence regarding claims and settlement under adjustment if different from above

B/L No.	Marks & Nos.	No. of Pkges	Description of Goods	Policy No.	Insured Value
HJ- 7	ALSWAINI V-107 JEDDAH MADE IN HONGKONG CTN./NO. 1/50	50 cartons	Transistor Radios	MOOO659	US$5,863.00

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Messrs. Stevens, Elmslie & Co.,
Average Adjusters,
10th Floor,
Union House,
Hongkong

Dear Sirs,

s.s.
m.v. "POTOI CHAU"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,
The Century Insurance Company Limited
GENERAL AGENTS
Pacific & International Underwriters Ltd.
(Sd.)

Postal Address: Room 802, Prosperous Building, Nos.48-52 Des Voeux Road C., 8th Floor, Hong Kong

Address for correspondence regarding claims and settlement under adjustment if different from above

B/L No.	Marks & Nos.	No.of Pkges	Description of Goods	Policy No.	Insured Value
HJ-110	O.K.B. 233/72 JEDDAH NO.1-4	4 cases	Girls' Knitted Nylon Slacks	MOOO826	US$3,732.30
	O.K.B. 231/72 JEDDAH NO.1-10	10 cases	Ladies' Knitted Nylon Slacks		
HJ-112	M.S.H. 214/72 JEDDAH NO.1-12	12 cases	Ladies' & Girls' Stretch Nylon Slacks	MOOO827	US$3,224.65

B/L NO.	Marks & Nos.	No.of Pkges	Description of Goods	Policy No.	Insured Value
					US$
HJ-111	M.A.B. 224/72 JEDDAH NO.1-20	20 cases	Gent's & Boys' Imitation Leather Jackets	MOOO829	2,831.40
	A.M. SHAMSAN 234/72 JEDDAH NO.1-5	5 cases	Ladies' & Girls' Knitted Nylon Slacks	MOOO830	US$ 2,937.22
HJ-109	A.M. SHAMSAN 233/72 JEDDAH NO.6-10	5 cases	Ladies' & Girls' Knitted Nylon Slacks		
	A.M. SHAMSAN 239/72 JEDDAH NO.6-7	2 cases	Boys' Imitation Leather Jackets		

"POTOI CHAU"

General Accident Fire & Life Assurance Corporation Ltd.

G.A.Guarantees signed by: Singapore Office

Settlement requested from: (London Office)
Marine & Aviation Department,
Ibex House, 42/47 Minories,
London, EC3N 1BX

Local Office : 42nd Floor,
Connaught Centre,
HONG KONG

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.

GENERAL AVERAGE GUARANTEE

DATE: 29th December, 1972

The Singapore Shipping Agencies (Pte) Ltd.,
Chartered Bank Chambers,
Singapore 1.

Dear Sirs,

RE: GENERAL AVERAGE - s.s. "POTOI CHAU"
Voyage: Singapore to Jeddah
Assured:M/s. Indo Commercial Society (Private) Limited

In consideration of the delivery in due course to the Consignees of the Merchandise specified below, without collection of a deposit on account of Average, we, the undersigned Underwriters, hereby guarantee to the Shipowners on account of the concerned the payment of any contribution to General Average and/or Salvage and/or Charges which may hereafter be ascertained to be due in respect of the said Merchandise.

We further agree to arrange a prompt payment on account if required by you, so soon as such payment may be certified to by the Adjusters.

Yours faithfully,
General Accident Fire & Life Assurance Corpn. Ltd.

(Sd.)

f. Manager for the Far East

PARTICULARS OF GOODS REFERRED TO IN THIS GUARANTEE

Port of Shipment	Port of Destination	Marks & Nos.	Goods	Insured Value
Singapore	Jeddah	As Per B/L.	1000 ctns. Pineapple Juice	US$ 3,234/-
		B/L.No. SJE-10		

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.

GENERAL AVERAGE GUARANTEE

DATE: 29th December, 1972

The Singapore Shipping Agencies (Pte) Ltd.,
Chartered Bank Chambers,
Singapore 1.

Dear Sirs,

RE: GENERAL AVERAGE - s.s."POTOI CHAU"
Voyage: Singapore to Jeddah
Assured: M/s.Indo Commercial Society (Private) Limited

In consideration of the delivery in due course to the Consignees of the Merchandise specified below, without collection of a deposit on account of Average, we, the undersigned Underwriters, hereby guarantee to the Shipowners on account of the concerned the payment of any contribution to General Average and/or Salvage and/or Charges which may hereafter be ascertained to be due in respect of the said Merchandise.

We further agree to arrange a prompt payment on account if required by you, so soon as such payment may be certified to by the Adjusters.

Yours faithfully,
General Accident Fire & Life Assurance Corpn. Ltd.

(Sd.)

f. Manager for the Far East

PARTICULARS OF GOODS REFERRED TO IN THIS GUARANTEE

Port of Shipment	Port of Destination	Marks & Nos.	Goods	Insured Value
Singapore	Jeddah	As Per B/L. B/L No. SJE-1	2000 ctns. Canned Pineapples	US$ 7,172/-

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.

GENERAL AVERAGE GUARANTEE

DATE: 29th December, 1972

The Singapore Shipping Agencies (Pte) Ltd.,
Chartered Bank Chambers,
Singapore 1.

Dear Sirs,

RE: GENERAL AVERAGE - s.s. "POTOI CHAU"
Voyage: Singapore To Jeddah
Assured: M/s. Indo Commercial Society (Private) Limited

In consideration of the delivery in due course to the Consignees of the Merchandise specified below, without collection of a deposit on account of Average, we, the undersigned Underwriters, hereby guarantee to the Shipowners on account of the concerned the payment of any contribution to General Average and/or Salvage and/or Charges which may hereafter be ascertained to be due in respect of the said Merchandise.

We further agree to arrange a prompt payment on account if required by you, so soon as such payment may be certified to by the Adjusters.

Yours faithfully,
General Accident Fire & Life Assurance Corpn. Ltd.
(Sd.)

f. Manager for the Far East

PARTICULARS OF GOODS REFERRED TO IN THIS GUARANTEE

Port of Shipment	Port of Destination	Marks & Nos.	Goods	Insured Value
Singapore	Jeddah	As Per B/L.	2000 ctns. Pineapple Juice, 4 Bundles Empty ctns.	US$ 6,494/-
		B/L No. SJE-12		

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.

GENERAL AVERAGE GUARANTEE

DATE: 29th December, 1972

The Singapore Shipping Agencies (Pte) Ltd.,
Chartered Bank Chambers,
Singapore 1.

Dear Sirs,

RE: GENERAL AVERAGE - s.s. "POTOI CHAU"
Voyage: Singapore to Jeddah
Assured: M/s. Indo Commercial Society (Private) Limited

In consideration of the delivery in due course to the Consignees of the Merchandise specified below, without collection of a deposit on account of Average,we, the undersigned Underwriters, hereby guarantee to the Shipowners on account of the concerned the payment of any contribution to General Average and/or Salvage and/or Charges which may hereafter be ascertained to be due in respect of the said Merchandise.

We further agree to arrange a prompt payment on account if required by you, so soon as such payment may be certified to by the Adjusters.

Yours faithfully,
General Accident Fire & Life Assurance Corpn. Ltd.

(Sd.)
f. Manager for the Far East

PARTICULARS OF GOODS REFERRED TO IN THIS GUARANTEE

Port of Shipment	Port of Destination	Marks & Nos.	Goods	Insured Value
Singapore	Jeddah	As Per B/L.	2000 ctns. Canned Pineapples & Juice, 4 Bundles Empty ctns.	US$6,846/-
		B/L.No. SJE-23		

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)

Exhibit "RAP-1"

8th February 1980

(continued)

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.

GENERAL AVERAGE GUARANTEE

DATE: 16th May, 1973

The Hodeidah Shipping & Transport Co.Ltd.
Agents for The Hongkong Island Shipping Company Ltd.,
Hodeidah (Y.A.R.)

Dear Sirs,

RE: GENERAL AVERAGE - s.s. "POTOI CHAU"
Voyage: Singapore to Hodeidah
Assured: M/s. J.B.Rupa & Co.
Consignees: M/s. Abdul Ghani Ali

In consideration of the delivery in due course to the Consignees of the Merchandise specified below, without collection of a deposit on account of Average, we, the undersigned Underwriters, hereby guarantee to the Shipowners on account of the concerned the payment of any contribution to General Average and/or Salvage and/or Charges which may hereafter be ascertained to be due in respect of the said Merchandise.

We further agree to arrange a prompt payment on account if required by you, so soon as such payment may be certified to by the Adjusters.

Yours faithfully,
General Accident Fire & Life Assurance Corpn. Ltd.

(Sd.)
f. Manager for the Far East

PARTICULARS OF GOODS REFERRED TO IN THIS GUARANTEE

Port of Shipment	Port of Destination	Marks & Nos.	Goods	Insured Value
Singapore	Hodeidah	As Per B/L No. SHO-14	3 Cases Nylon Shirt/ Short	US$1,746/-

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.

GENERAL AVERAGE GUARANTEE

DATE: 29th December, 1972

The Singapore Shipping Agencies (Pte) Ltd.,
Chartered Bank Chambers,
Singapore 1.

Dear Sirs,

RE: GENERAL AVERAGE - s.s. "POTOI CHAU"
Voyage: Singapore to Hodeidah
Assured: M/s. M.A.Al-Abdulrazak

In consideration of the delivery in due course to the Consignees of the Merchandise specified below, without collection of a deposit on account of Average, we, the undersigned Underwriters, hereby guarantee to the Shipowners on account of the concerned the payment of any contribution to General Average and/or Salvage and/or Charges which may hereafter be ascertained to be due in respect of the said Merchandise.

We further agree to arrange a prompt payment on account if required by you, so soon as such payment may be certified to by the Adjusters.

Yours faithfully,
General Accident Fire & Life Assurance Corpn. Ltd.

(Sd.)

f. Manager for the Far East

PARTICULARS OF GOODS REFERRED TO IN THIS GUARANTEE

Port of Shipment	Port of Destination	Marks & Nos.	Goods	Insured Value
Singapore	Hodeidah	As Per B/L.	3,818 Pkgs. of 5,800 pieces Keruing Timber	US$12,095/-

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.

GENERAL AVERAGE GUARANTEE

DATE: 29th December, 1972

The Singapore Shipping Agencies (Pte) Ltd.
Chartered Bank Chambers,
Singapore 1.

Dear Sirs,

RE: GENERAL AVERAGE - s.s. "POTOI CHAU"
Voyage: Singapore to Hodeidah
Assured: M/s. M.A.Al-Abdulrazak

In consideration of the delivery in due course to the Consignees of the Merchandise specified below, without collection of a deposit on account of Average, we, the undersigned Underwriters, hereby guarantee to the Shipowners on account of the concerned the payment of any contribution to General Average and/or Salvage and/or Charges which may hereafter be ascertained to be due in respect of the said Merchandise.

We further agree to arrange a prompt payment on account if required by you, so soon as such payment may be certified to by the Adjusters.

Yours faithfully,
General Accident Fire & Life Assurance Corpn. Ltd.

(Sd.)

f. Manager for the Far East

PARTICULARS OF GOODS REFERRED TO IN THIS GUARANTEE

Port of Shipment	Port of Destination	Marks & Nos.	Goods	Insured Value
Singapore	Hodeidah	As Per B/L.	5 Cases (235 doz.) Ready Made Garments	Stg. £1,431.-

"POTOI CHAU"

Guardian Royal Exchange Assurance Group,
Civic Drive, Ipswich,
IPI 2AN, ENGLAND.

G.A.Guarantees signed by: (a) Hongkong & Shanghai Insurance Co.Ltd., Bank of Canton Building, 11th Floor, 6, Des Voeux Road,C., H.K.

(b) Union Insurance Society of Canton Ltd., Swire House, H.K.

(c) Wing On Fire & Marine Insurance Co.Ltd., Wing on Central Building, 26 Des Voeux Road, C., H.K.

Settlement requested from: Guardian, U.K.

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"
8th February 1980
(continued)

UNION INSURANCE SOCIETY OF CANTON, LIMITED
Incorporated in Hong Kong

LG.72/430

Hong Kong 16th November, 1972

Stevens, Elmslie & Co.,
Hong Kong.

Dear Sirs,

In consideration of your delivering to Consignees the undermentioned cargo ex "POTOI CHAU" from Hong Kong to Jeddah, Saudi Arabia covered under our Policy No.HS72/25804 for US$ 5,100.- I hereby guarantee that this Society will pay any just claim for General Average, Special and/or other charges as may properly be found due in respect of said cargo.

Yours faithfully,

(Sd.) Illegible

Marine Manager

B/L No.	Policy No.	Mark Number	Pack-ages	Interest	Insured Value
J-17	HS72/25804 14.9.72	TAMCUH JEDDAH SAUDI ARABIA STYLE NO.PB 501 CONTENT: 6 DOZEN CARTON NO.1/16 MADE IN HONG KONG	16 Cartons	Poplin Pants	US$5,100.-
		-- DO -- STYLE NO. PM 501 CARTON NO. 1/36	36 Cartons	Poplin Pants	

UNION INSURANCE SOCIETY OF CANTON, LIMITED
(Incorporated in Hong Kong)

00390
LG. 72/436

Hong Kong, 22nd November,1972

Stevens, Elmslie & Co.,
Hong Kong.

Dear Sirs,

In consideration of your delivering to Consignees the undermentioned cargo ex "POTOI CHAU" from Hong Kong to Jeddah covered under our Policy No. K72/W/85957 for Stg. £1,076.- I hereby guarantee that this Society will pay any just claim for General Average, Special and/or other charges as may properly be found due in respect of said cargo.

Yours faithfully,

(Sd.) Illegible

Marine Manager

B/L No.	Policy No.	Mark Number	Pack-ages	Interest	Insured Value
J-62	K72/W/ 85957 2.10.72	HILAL MECCA VIA JEDDAH SC41-72 MADE IN HONG KONG NOS.346 TO 349	4 Cartons	Plastic Toys	Stg.£1,076.-
		- DITTO - SC36-72 NOS. 243 to 245	3 Cartons	Hair Ornaments	
		- DITTO - SC40-72 C/NOS.305 to 310	6 Cases	Plastic B/O Goods	
		- DITTO - SC24-72 C/NOS. 158 to 160	3 Cases	Aluminium Hair Bands, Bracelet, Necklace & Brooches	
		- DITTO - BH 1315 C/NO.133	1 Case	Aluminium Hair Bands	

B/L No.	Policy No.	Mark Number	Pack-ages	Int-erest	Insured Value
		HILAL MECCA VIA JEDDAH SC28-72 NOS.235 to 240	6 Pack-ages	Brass Water Sprayer	

UNION INSURANCE SOCIETY OF CANTON, LIMITED
(Incorporated in Hong Kong)

LG.72/434

Hong Kong 20th November, 1972

Stevens, Elmslie & Co.,
Hong Kong.

Dear Sirs,

In consideration of your delivering to Consignees the undermentioned cargo ex "POTOI CHAU" from Hong Kong to Jeddah covered under our Policy No. HS72/25384 for US$ 4,774.- I hereby guarantee that this Society will pay any just claim for General Average, Special and/or other charges as may properly be found due in respect of said cargo.

Yours faithfully,

(Sd.) Illegible

Marine Manager

B/L No.	Policy No.	Mark Number	Pack-ages	Int-erest	Insured Value
HJ-95	HS72/ 25384 15.9.72	A.R.B. 7201 MECCA JEDDAH NO.1-25, 184-191, 217-233, 334-338 MADE IN HONG KONG	55 Cases	Plastic Rosary	US$ 4,774.-

UNION INSURANCE SOCIETY OF CANTON, LIMITED
(Incorporated in Hong Kong)

LG.72/435

Hong Kong 20th November, 1972

Stevens, Elmslie & Co.,
Hong Kong.

Dear Sirs,

In consideration of your delivering to Consignees the undermentioned cargo ex "POTOI CHAU" from Hong Kong to Hodeidah, Y.A.R. covered under our Policy No. SF72/98013 for Stg. £576.- I hereby guarantee that this Society will pay any just claim for General Average, Special and/or other charges as may properly be found due in respect of said cargo.

Yours faithfully,

(Sd.) Illegible

Marine Manager

B/L No.	Policy No.	Mark Number	Packages	Interest	Insured Value
HH-7	SF72/ 98013 18.9.72	SAEED A.G. HODEIDAH NO.1/110	110 Cartons	Mentholed White Petroleum Jelly	Stg.£576.-

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

UNION INSURANCE SOCIETY OF CANTON, LIMITED
(Incorporated in Hong Kong)

LG.72/432

Hong Kong 17th November, 1972

Stevens, Elmslie & Co.,
Hong Kong.

Dear Sirs,

In consideration of your delivering to Consignees the undermentioned cargo ex "POTOI CHAU" from Hong Kong to Ahmedabad v. Bombay covered under our Policy No. HS72/26038 for I.Rs. 50,100.- I hereby guarantee that this Society will pay any just claim for General Average, Special and/or other charges as may properly be found due in respect of said cargo.

Yours faithfully,

(Sd.) Illegible

Marine Manager

B/L No.	Policy No.	Mark Number	Packages	Interest	Insured Value
HBO-9	HS72/ 26038 19.9.72	ALLIED AHMEDABAD VIA BOMBAY NOS.1/24	Dry, arsenicated buffalo rawhides, shaved, stretched, transparent, unburnt free from sunburn, freshly slaughtered, bright and of healthy appearance 90% of first quality 10% seconds as under:- 5 L/Tons 30/40 lbs. Average Wt. 3 L/Tons 40/50 lbs. Average Wt.		I.Rs. 50,100

UNION INSURANCE SOCIETY OF CANTON, LIMITED

(Incorporated in Hong Kong)

LG.72/433

Hong Kong 17th November, 1972

Stevens, Elmslie & Co.,
Hong Kong.

Dear Sirs,

In consideration of your delivering to Consignees the undermentioned cargo ex "POTOI CHAU" from Hong Kong to Ahmedabad via Bombay covered under our Policy No. HS72/26039 for I.Rs. 31,000.- I hereby guarantee that this Society will pay any just claim for General Average, Special and/or other charges as may properly be found due in respect of said cargo.

Yours faithfully,

(Sd.) Illegible

Marine Manager

B/L No.	Policy No.	Mark Number	Pack-ages	Interest	Insured Value
HBO-10	HS72/ 26039 19.9.72	CS AHMEDABAD VIA BOMBAY NOS. 1/15 15 Bundles	Dry Arsenicated Buffalo Hides, 30/40 lbs. - weight range - 90% first and 10% seconds - 5 Long Tons		I.Rs. 31,000.-

"POTOI CHAU"

Interest of: Wing On Fire & Marine Insurance Co.Ltd.

Int. No.	B/L No.	Policy No.	BALANCE To Pay US$	BALANCE To Receive US$	FINAL BALANCE To Pay
28	HJ-1	W72/6305		270.89	
33	HJ-12	W72/6058	707.34		
34	HJ-13	W72/6388	592.93		
35	HJ-14	W72/6387	741.65		
3	HJ-16	W72/6647	1,354.48		
40	HJ-19	W72/6670 + 6671	1,495.60		
46	HJ-25	W72/6731	5,419.79		
48	HJ-27	W72/6736	2,012.09		
49	HJ-29	W72/6656	2,914.81		
50	HJ-30	W72/6650	2,848.60		
51	HJ-33	W72/6539	157.20		
52	HJ-34	W72/6651	683.74		
54	HJ-36	W72/6352	1,112.05		
55	HJ-38	W72/6354	2,812.52		
56	HJ-41	W72/6557	4,582.95		
57	HJ-42	W72/6733	682.91		
58	HJ-43	W72/6735	1,328.44		
59	HJ-44	W72/6655	2,968.46		
60	HJ-46	W72/6565	1,465.15		
61	HJ-48	W72/6732	2,554.79		
6	HJ-49	W72/6564	1,588.87		
66	HJ-54	W72/6351	612.32		
67	HJ-56	W72/6538	1,400.04		
68	HJ-57	W72/6734	2,683.32		
88	HJ-84	W72/6545	717.73		
Carried forward US$			43,437.78	270.89	

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Messrs. Stevens, Elmslie & Co.,

Dear Sirs,

m.v. "POTOI CHAU"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

MALAYAN OVERSEAS INSURANCE CORPORATION

(Sd.) Y.J.Hsi

Y.J.Hsi, Manager
Marine & Casualty Department
P.O.Box 954, Taipei, Taiwan, R.O.C.

Address for correspondence regarding claims and settlement under adjustment if different from above

SHIPPER	B/L NO.	MARKS & NOS.	PACK-AGES	CON-SIGNEE	INSURED VALUE US$	POLICY NO.
DAN YUNG	KJ-21	BAOMAR JEDDAH No.1-320	320 Bundles	To Order	42,955.00	KH-02345
"	KJ-24	BAJAAFAR JEDDAH No.1-515	515 Bundles	"	69,465.00	KH-02343
"	KJ-22	DAHMAN JEDDAH No.1-521	521 Bundles	To Order of Banque du Liban et D'outre	68,937.00	KH-02342
"	KJ-23	BAMUSA JEDDAH No.1-446	446 Bundles	To Order of Bantional Bank of Pakistan	58,630.00	KH-02360
KEUN HWA	KJ-10	BAJAAFAR JEDDAH No.1-416	416 Bundles	To Order	58,080.00	KH-02349

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

SHIPPER	B/L NO.	MARKS & NOS	PACKAGES	CONSIGNEE	INSURED VALUE US$	POLICY NO.
	KJ-09	BAJAAFAR JEDDAH No.1-208, 1-137	345 Bundles	To Order	47,861.00	KH-02359
Ya	KJ-05	ALJEFRI JEDDAH No.1-50, 1-20	70 Bundles	"	9,779.00	KH-02347
Specific Commercial Co.	KJ-06	BAJAAFAR JEDDAH No.1-20 1-10, 1-10	40 Bundles	"	5,522.00	KH-02362
"	KJ-03	BAOMAR JEDDAH No.1-58 1-31, 1-167	256 Bundles	"	36,729.00	KH-02344
"	KJ-04	KASEEH JEDDAH No.1-3,000	3,000 Coils	To The Order Banque du Caire	12,342.00	KH-02348
Kaohsiung Steel Co.	KJ-26	ALJEFRI JEDDAH No.1-47, 1-20	67 Bundles	To Order	10,736.00	KH-02346
			Total:		US$421,036.00	

"POTOI CHAU"

Malayan Overseas Insurance Corporation,
39, Chunghsiao West Road, Sec. 1,
P.O. Box 954,
TAIPEI, TAIWAN

G.A. Guarantee signed by : M.O.I.C., Taipei

Settlement requested from: - " -

Local Representative : Wardley Insurance Co. Ltd.,
6th Floor, Solar House,
HONG KONG

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Messrs. Stevens, Elmslie & Co.,
Average Adjusters,
P.O.Box 776,
Hong Kong.

Dear Sirs,

s.s.
m.v. "Potoi Chau"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,

For THE NEW INDIA ASSURANCE CO.
(Sd.) Illegible
Manager

Postal Address: The New India Assurance Co.,
No.9, Rm.908 Ice House Street, Hong Kong

Address for correspondence regarding claims and settlement under adjustment if different from above

B/L No.	Marks & Nos.	No.of Pkges	Description of Goods	Policy No.	Insured Value
HJ-24	CHTC CH/14963 JEDDAH No. 1/18	10 Ctns. & 8 Cases	Ladies Iron Girdle(Belt) & Aluminium A-go-go Belt	606/02/33122	£1,507.00

(STAMP) I N D I A

THREE RUPEES FIFTY NAYE PAISE

29 JAN 1973

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

LETTER OF GENERAL AVERAGE GUARANTEE

To: Hongkong Islands Shipping Co.Ltd.,
Agents. M/s. New India Maritime Agencies Pvt. Ltd.,

Name of the Vessel:- s.s. Potoi Chau Voy.6/72

Accident:- Vessel got stranded on 26/10/72

Cargo:- 1 case electrolytic condensers

Name of Average Adjusters :- M/s. Stevens Elmslie & Co.

Dear Sirs,

In consideration of your delivering to the under-mentioned Consignee the goods specified below without payment of a deposit we undertake to guarantee the due payment of the General Average Contribution and/or special charges that may be properly found to be due on the said goods upon the completion of the Average Statement by the Adjusters.

Marks & Nos.	B/L No.	Consignees	Description of goods	Policy No. & Date	Insured Value
ASE-1824 DELHI VIA BOMBAY MADE IN HONG KONG No.1	HBO-6 24.9.72	M/s. Ahuja Radios	1 case Electrolytic condensers	Cert. 355962 2121 dt.20.10.72	RS. 11,180/-

For The New India Assurance Co.Ltd.
(Sd.) N.Baharaman
ASST. MANAGER

Bombay
29.1.1973

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

"POTOI CHAU"

South China Insurance Co.Ltd.,
70, Section 1, Hankou Street,
Taipei, Taiwan 100.

G.A. Guarantee signed by : South China, Taipei

Settlement requested from: - " -

Local Claim Settling Agent believed to be : Gilman & Co.Ltd.,
Connaught Centre,
42nd Floor, H.K.

10

CARGO UNDERWRITERS' LETTER OF GUARANTEE

STEVENS, ELMSLIE & CO.

Subject to production of G.A. Counter Guarantee and the other necessary papers.

Dear Sirs,

m.v. "POTOI CHAU"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,

Postal Address: FOR SOUTH CHINA INSURANCE CO.LTD.

(Sd.) Illegible
Manager

SOUTH CHINA INS. CO.LTD.
44, SEC.1 CHUNGKING S.R.
TAIPEI, TAIWAN, REP. OF CHINA

Address for correspondence regarding claims and settlement under adjustment if different from above

B/L No.	Marks & Nos.	No. of Pkges	Description of Goods	Policy No.	Insured Value US$
CJ-10	A.A.H. 0163 JEDDAH MADE IN TAIWAN C/No. 1-47	1,680 prs. (47 cartons)	Ladies Cork Sandals	MF72/75246	1,663.20

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

SOUTH CHINA INSURANCE CO.LTD.

Head Office:
44 Chungking South Road
Section 1, Taipei, Taiwan,
Republic of China

Cable Address
"SOUTHINS" TAIPEI
Telephones:371121-7

June 13, 1973

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Supplementary

Vessel: S.S. "POTOI CHAU"
Voyage: Keelung to Jeddah

Dear Sirs,

In consideration of your delivering to the Consignees the goods described below without collection of a cash deposit, the under-signed Underwriters hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

We further agree to arrange a prompt payment on account if required on presentation of a certificate from the Average Adjuster.

FOR SOUTH CHINA INSURANCE CO.LTD.
(Sd.) Illegible
Manager

Yours faithfully,

B/L No.	Marks & Nos.	No.of Pkges	Description of goods	Policy No.	Insured Value
CJ-11	M.B.S.B J922490/72 JEDDAH C/No.1-10 MADE IN TAIWAN	10W/ Cases	CHILDREN NYLON SOCK ART No.6111.. 1,000 Dozs	MF72/75343	£275.00

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Vessel: S.S. "POTOI CHAU"
Voyage: Keelung - Hodeidah

Date April 30, 1973
Port

Messrs. HONG KONG ISLAND SHIPPING CO.LTD.

Dear Sirs,

In consideration of your delivering to the Consignees the goods described below without collection of a cash deposit, we, the undersigned Underwriters, hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

We further agree to arrange a prompt payment on account if required on presentation of a certificate from the Average Adjuster.

FOR SOUTH CHINA INSURANCE CO.LTD.
Yours faithfully,

(Sd.) Illegible
Manager

B/L No.	Marks & Nos.	No.of Pkges	Description of Goods	Policy No.	Insured Value
CHD-1	A 50 (H) M N	600 Gross	Toy rubber Balloons	MF72/ 74936	£212.00
CHD-2	A 204 (H) M N	1,960 sets	"	MF/72 74937	£468.00

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit
"RAP-1"

8th February 1980

(continued)

"POTOI CHAU"

Yasuda Fire & Marine Insurance Co.Ltd.

G.A.Guarantee signed by: Interest No.39 & 175)
B/L Nos.HJ-18 &)
HH-36)

Yasuda's General Agents,
William S.T.Lee Insurance Agency Ltd. H.K.

Interest Nos.173 & 174)
B/L Nos.HH-34 & 35) 10

W.K.Webster & Co.,
London

Settlement requested from: (Tokyo Head Office)
Marine Claims Department,
26-1, Nishi-Shinyuku
Itchome,
Shinjuku-ku,
TOKYO,JAPAN.

Local Office:

Wang Kee Building,
5th Floor, 34-37 20
Connaught Road, C.
HONG KONG

CARGO UNDERWRITERS' LETTER OF GUARANTEE

Messrs. Paclloyd Shipping Co.Ltd.
14th Floor, Jardine House,
20 Pedder Street,
Hong Kong

Dear Sirs,

s.s.
m.v. "Potoi Chau"
Voy.No. 6/72

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

Yours faithfully,

(Sd.) Illegible

Postal Address: Wang Kee Building
5th Floor, Connaught
Road C. Hongkong

Address for correspondence regarding claims and settlement under adjustment if different from above

Same as the above

B/L No.	Marks & Nos.	No. of Pkges	Description of Goods	Policy No.	Insured Value
					US$
J-18	M.S.B. JEDDAH SAUDI ARABIA MADE IN HONG KONG C/No.1-61	(61) Cartons	Aluminium and metal household utensils	HKM/79192	2,422.00

THE YASUDA FIRE & MARINE INSURANCE COMPANY LIMITED

(Incorporated in Japan)

GENERAL AGENT - WILLIAM S.T. LEE INSURANCE AGENCY LTD.

5TH FLOOR, WANG KEE BUILDING
34-37 CONNAUGHT ROAD C.
HONG KONG

Telegrames: YASUDAFIRE
HONGKONG
Telephones: 5-222191-3
Our ref: YG/73/32

HONG KONG 4th May, 1973

Paclloyd Shipping Co.Ltd.,
Jardine House, 14th Floor,
20 Pedder Street,
Hongkong.

Dear Sirs,

s.s. "POTOI CHAU"

In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment.

B/L No: HH-36
Marks & Nos.: A.N.S.
1252/72
HODEIDAH
No.1-2

No. of Pkgs.: 2 cases
Description of Goods: Plastic P.V.C.Wallets
Policy No. HKM/79225
Insured Value: £90.00

Yours faithfully,

THE YASUDA F. & M. INSURANCE COMPANY LTD.
General Agents, WILLIAM S.T.LEE INSURANCE AGENCY LTD.

(Sd.) Illegible
Director

CWL/aw

AVERAGE GUARANTEE

(For Signature by Underwriters of Cargo to avoid collection of Deposits in those cases in which it is practicable to do so)

Vessel: "POTOI CHAU"

Voyage: Hong Kong to Hodeidah

Messrs. Master & Owners

Dear Sirs,

In consideration of the delivery in due course to the Consignees of the Merchandise specified at foot hereof, without collection of a deposit on account of Average, we, the undersigned Underwriters, hereby guarantee to the Shipowners on account of the concerned the payment of any contribution to General Average and/or Salvage and/or Charges which may hereafter be ascertained to be due in respect of the said Merchandise.

We further agree to arrange a prompt payment on account if required by you, so soon as such payment may be certified to by the Average Adjusters.

For and on behalf of The Yasuda Fire & Marine Insurance Co.Ltd.

(Sd.) Illegible

As Agents

PARTICULARS OF GOODS REFERRED TO IN THIS GUARANTEE

B/L	Port of Shipment	Port of Destination	Marks Nos.	Packages	Goods	Total Insured Value
HH 35	Hong Kong	Hodeidah	Al Shaibani SA/46/72 Hodeidah Nos.1/4 & 5	4 cases 1 case	Bags Hose Pump	£284.00
HH 34	Hong Kong	Hodeidah	Al Shaibani SA/29/72 Hodeidah Nos.1/10	10 cases	Bags	£550.00

W.K.Webster & Co.
Market Buildings,
29 Mincing Lane,
London EC3R 7EL

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(a)
Exhibit "RAP-1"

8th February 1980

(continued)

"POTOI CHAU"

Royal Insurance Co.Ltd.

G.A.Guarantee signed by: National Insurance Co. Ltd. (Unit-Royal) Bombay

Settlement requested from: Royal Insurance Co. Ltd.
Marine Department,
P.O.Box No.144,
New Hall Place,
Liverpool, L69 3EN
ENGLAND

Local Representative: Taikoo Royal Insurance Co.Ltd.
3rd Floor, Swire House.
HONG KONG.

"POTOI CHAU"

Interest of: Royal Insurance Co.Ltd.Liverpool

Int. No.	Policy No.	BALANCE To Pay US$	BALANCE To Receive US$	FINAL BALANCE To Pay
224	72/B12888	3,172.23	-	
	Credit:			
	Proportion paid of Clyde & Co.'s account, ex £989.57 at page 174, £18.23 @ 1.87	-	34.09	
	Commission and Interest thereon, ex US$160.43 at page 275	-	3.09	
		US$ 3,172.23	US$ 37.18	US$ 3,135.05

(stamp) I N D I A

THREE RUPEES FIFTY NAYE PAISE

11 JAN 1973

AVERAGE GUARANTEE

(For Signature by Underwriters of Cargo)

Name of Vessel : s.s. "POTOI CHAU"

Voyage : Hong Kong to Bombay

Accident : Grounded off the Coast of Somali on 26th October 1972

Cargo : 44 cases Reader's Digest Books

Name of Adjusters: Messrs. Stevens, Elmslie & Co. Hong Kong

To: Messrs. New India Maritime Agency Private Ltd., Bombay.

In consideration of the delivery in due course of the Cargo to the Consignees against the signature to an Average Bond in the usual and ordinary form, and without collection of a Deposit on account of Average, Salvage and Charges, we hereby guarantee to you the payment of any contribution to General Average and/or Salvage and/or Charges which may hereafter be ascertained to be properly due in respect of said Cargo.

We further agree to make a prompt payment on account, if required, so soon as the details enabling us to do so are supplied by the Average Adjusters.

B/L No.	Marks & Nos.	Packages and Description of Goods	Insured Value	Insurance Policy/ Cert. No.
HBO-11 dated 19-9-1972	I.B.H. BOMBAY O/No.230 No.1/44	44 cases Books	US$5,000.-	73/B12888 dated 15-9-1972

For (Illegible)

(Sd.) Duaray Branch Manager

12, Jamshedji Tata Road,
BOMBAY 400 020

No. 12(b)

EXHIBIT "RAP-2"

LLOYD'S GENERAL AVERAGE BOND AND GUARANTEE

SETTLEMENT OF CLAIMS ABROAD

AN AGREEMENT made this day of 19 BETWEEN the Corporation of Lloyd's (hereinafter called "Lloyd's") of the first part Messrs. HONGKONG ISLAND SHIPPING CO.LTD. (hereinafter called "the Shipowner") of the second part and the other several Persons whose names or firms are subscribed hereto (hereinafter called "the Consignees") of the third part WHEREAS the ship or vessel "POTOI CHAU/ CHIK CHAU" D/- 12-3-73 lately arrived the port of HODEIDAH on a voyage from SINGAPORE/ADEN/ HODEIDAH and it is alleged that during such voyage the vessel met with a casualty and sustained damage and loss and that sacrifices were made and expenditure incurred which may form a charge on the cargo or some part thereof or be the subject of a Salvage and/or a General Average Contribution but the same cannot be immediately ascertained and in the meantime it is desirable that the cargo shall be delivered NOW THEREFORE THESE PRESENTS WITNESS and the Parties hereto severally agree as follows :-

1. The Shipowner agrees with the Consignees that he will deliver to them respectively or to their order respectively their respective consignments particulars whereof are contained in the Schedule hereto on payment of the freight payable on delivery if any and the Consignees in consideration of such delivery agree for themselves severally and respectively that they will pay as herein provided the proper and respective proportion of any Salvage and/or General Average and/or Particulars and/or other Charges which may be chargeable upon their respective consignments particulars whereof are contained in the Schedule hereto or to which the Shippers or Owners of such consignments may be liable to contribute in respect of such damage loss sacrifice or expenditure. And the Consignees further promise and agree forthwith to furnish to the Shipowners a correct account and particulars of the amount and value of the cargo delivered to them respectively in order that any such Salvage and/or General Average

and/or Particular and/or other Charges may be ascertained and adjusted in the usual manner.

2. In consideration of the delivery as aforesaid by the Shipowner of the said merchandise to the Consignees respectively without the requirement of any cash deposit Lloyd's hereby guarantee to the Shipowner the due payment by the Consignees and/or their Underwriters of the whole of the said Salvage and/or General Average and/or Particular and/or other Charges which may be properly chargeable against the said merchandise.

3. Lloyd's further agrees with Shipowner that Lloyd's will pending the preparation of the usual Average Statement make interim payment or payments to the Shipowner in respect of the amounts which may ultimately be found due to him from the Consignees respectively in respect of the matters aforesaid. Provided always that Lloyd's shall only be liable to make any such payment upon the receipt of and to the amount shown by a Certificate in writing stating the proper amount of any such payment; such Certificate to be signed by the Adjuster or firm of Adjusters who may be employed in the preparation of the said Average Statement.

4. In consideration of these presents the Shipowner hereby assigns to Lloyd's all the sum which may be due and payable by the Consignees respectively to the Shipowner in respect of the aforesaid Salvage and/or General Average and/or Particular and/or other Charges and all his right and title to recover the same from the Consignees respectively whether under the Contract of Affreightment or under this Agreement or otherwise howsoever. And the Consignees hereby take cognizance of and admit the receipt of notice of the assignment herein contained.

5. The Consignees in consideration of these presents hereby severally certify and warrant to Lloyd's (i) that the merchandise specified in the first column of the Schedule hereto is respectively insured by the Policy or Policies specified in the second column; (ii) that such Policy or Policies have been fully subscribed for the amount appearing in the third column. The Consignees hereby severally assign to Lloyd's all their respective rights under such Policy or Policies in respect of the recovery thereunder of the sums which may be due and payable by them respectively to the Shipowner

in respect of the aforesaid Salvage and/or General Average and/or other Charges and severally undertake to do all things necessary to make such assignment valid and effectual. Provided always and it is hereby declared that nothing herein contained shall in any way relieve the Consignees from their personal liability in respect of the whole or any part of the aforesaid sums which Lloyd's may not be able for any reason whatever to recover under the aforesaid Policy or Policies.

FOR THE CORPORATION OF LLOYD'S
By Special Authority

.....

Lloyd's Agents at HODEIDAH

(Sd) Illegible

Owner, Master or Agent of Vessel to sign here

SCHEDULE

DESCRIPTION AND QUANTITY OF CARGO	NUMBER OF POLICY AND INSURANCE CERTIFICATE IF ANY	AMOUNT INSURED	SIGNATURE OF CONSIGNEES
SINGAPORE/ HODEIDAH S/15 SHO-15 A.T.ZAGIR SPECIAL KERUING HODEIDAH BLUE/WHITE M.A.A.WING BRAND 3818 Pkgs Said to Contain 5800 Pcs Usual Keruing Timber	-	-	SHORTSHIPPED FROM ADEN HENCE SHORTLANDED AT HODEIDAH

LLOYD'S AVERAGE I

AN AGREEMENT made this 8th day of February 1973 BETWEEN M/s Hongkong Island Shipping Co.Ltd. Owner of the Ship or Vessel called the m.v. POTOI CHAU of the first part and the several Persons whose names or Firms are set and subscribed hereto being respectively consignees of Cargo on board the said Ship of the second part

WHEREAS the said Ship lately arrived in the Port of BOMBAY on a voyage from HONGKONG and it is alleged that during such voyage the Vessel met with a casualty and sustained damage and loss and that sacrifices were made and expenditure incurred which may form a Charge on the Cargo or some part thereof or be the subject of a salvage and/or a general average contribution but the same cannot be immediately ascertained and in the meantime it is desirable that the Cargo shall be delivered

NOW THEREFORE THESE PRESENTS WITNESS and the said Owner in consideration of the agreement of the parties hereto of the second part hereinafter contained hereby agrees with the respective parties hereto of the second part that he will deliver to them respectively or to their order respectively their respective consignments particulars whereof are contained in the Schedule hereto on payment of the freight payable on delivery if any and the said parties hereto of the second part in consideration of the said Agreement of the said Owner for themselves severally and respectively and not the one for the others of them hereby agree with the said Owner that they will pay to the said Owner of the said Ship the proper and respective proportion of any salvage and/or general average and/or particular and/or other charges which may be chargeable upon their respective consignments particulars whereof are contained in the Schedule hereto or to which the Shippers or Owners of such consignments may be liable to contribute in respect of such damage loss sacrifice or expenditure and the said parties hereto of the second part further promise and agree forthwith to furnish to the Owner of the said Ship a correct account and particulars of the value of the goods delivered to them respectively in order that any such salvage and/or general average and/or particular and/or other charges may be ascertained and adjusted in the usual manner.

AND WHEREAS at the request of the Owner of the said Ship the parties hereto of the second part have respectively deposited or agreed to deposit in the Bank of in the joint names of M/s. New India Maritime Agencies P.Ltd nominated on behalf of the said Owner and M/s. James Finley & Co.Ltd. nominated on behalf of such Depositors (which persons are hereinafter called "the Trustees") the sum of 75% + 10% on the amount of the estimated value of their respective interests NOW IT IS HEREBY FURTHER AGREED that the sum so deposited by the said parties respectively shall be held as security for and upon trust for the payment to the parties entitled thereto of the salvage and/or general average and/or particular and/or charges payable by the said parties hereto of the second part respectively as aforesaid and subject thereto upon trust for the said Depositors respectively

PROVIDED ALWAYS that the Trustees may from time to time pending the preparation of the usual statement pay to the said parties of the first part in respect of the amounts which may ultimately be found due from the said Depositors respectively and pay or refund to the parties hereto of the second part or any of them in respect of the amounts which may ultimately be found due to them such sums out of the said deposits as may from time to time be certified by the Adjuster or Adjusters who may be employed to adjust the said salvage and/or general average and/or particular and/or other charges to be a proper sum or proper sums to be advanced by the Trustees on account of the said amounts AND IT IS HEREBY DECLARED AND AGREED that any payment or payments on account which shall be made by the Trustees under or in accordance with the Statement or in pursuance of any Certificate to be made or given by the said Adjusters as aforesaid shall discharge such Trustees from all liability in respect of the amounts so paid and it shall not be necessary for them to enquire into the correctness of the Statement or Certificate PROVIDED ALWAYS that the deposits so to be made as aforesaid shall be treated as payments made without prejudice and without admitting liability in respect of the said alleged salvage and/or general average and/or particular and/or other charges and as though the same had been made by the Depositors respectively for the purpose only of obtaining delivery of their goods and in like manner all amounts returned by the Trustees to the

Depositors shall be received by the latter respectively without prejudice to any claim which the Master or Owner of the said Ship may have against them respectively And nothing herein contained shall constitute the said Adjuster or Adjusters an arbitrator or arbitrators or render his or their Certificate or Statement binding upon any of the parties

IN WITNESS whereof the Owner of the said Ship or Vessel or its Master or Agent on behalf of the Owner and the parties hereto of the second part have hereunto set their hands or firms the day and year first above written

Witness to the Signature of) M/s Hongkong Islands Shipping Co.Ltd., Hongkong
M/s New India Maritime Agencies P. Ltd., Bombay

(Sd.) Illegible

As Agents

S C H E D U L E

No. of Bill of Lading	Description and Quantity of Cargo	Signature and Address of Consignees	Witness to Signature of Consignees N.B.Witnesses must add their Addresses and Occupations
BO 10 dt 19-9-72	15 BUNDLES OF DRY ARSENICATED BUFFALO HIDES	(Sd.) Manager For Manilal Patel & Co. CLG. A/C 38 Cawasji Patel St Fort, Bombay DABGARWAD, AHMEDABAD-1	38 CAWASJI PATEL ST FORT, BOMBAY For Manilal Patel & Co. CLG. A/C (Sd.)

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(b) Exhibit "RAP-2"

8th February 1980

(continued)

AVERAGE AGREEMENT

(To be used in conjunction with Underwriters' guarantee)

AN AGREEMENT made this first day of March 1973 BETWEEN
Owner of Ship or Vessel called the "POTOI CHAU" of the first part and the several Persons whose names or Firms are set and subscribed hereto being respectively consignees of Cargo on board the said Ship of the second part

WHEREAS the said Ship lately arrived in the Port of on a voyage from and it is alleged that during such voyage the vessel met with a casualty and sustained damage and loss and that sacrifices were made and expenditure incurred which may form a Charge on the Cargo or some part thereof or be the subject of a salvage and/or a general average contribution but the same cannot be immediately ascertained and in the meantime it is desirable that the Cargo shall be delivered NOW THEREFORE THESE PRESENTS WITNESS and the said Owner in consideration of the agreement of the parties hereto of the second part hereinafter contained hereby agrees with the respective parties hereto of the second part that he will deliver to them respectively or to their order respectively their respective consignments particulars whereof are contained in the Schedule hereto on payment of the freight payable on delivery if any and the said parties hereto of the second part in consideration of the said Agreement of the said Owner for themselves severally and respectively and not the one for the other of them hereby agree with the said Owner that they will pay to the said Owner of the said Ship the proper and respective proportion of any salvage and/or general average and/or particular and/or other charges which may be chargeable upon their respective consignments particulars whereof are contained in the Schedule hereto or to which the Shippers or Owners of such consignments may be liable to contribute in respect of such damage loss sacrifice or expenditure and the said parties hereto of the second part further promise and agree forthwith to furnish to the Owner of the said Ship a correct account and particulars of the value of the goods delivered to them respectively in order that any such salvage and/or general average and/or particular and/or other charges may be ascertained and adjusted in the usual manner.

IN WITNESS whereof the Owner of the said Ship or Vessel or its Master or Agent on behalf of the Owner and the parties hereto of the second part have hereunto set their hands or firms the day and year first above written

Witness to the signature of

.....

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(b)
Exhibit "RAP-2"

8th February 1980

(continued)

S C H E D U L E

No. of Bill of Lading	Description of Cargo	Quantity	Signature and Address of Consignees	Witness to Signature of Consignees
HJ-62	Plastic Hair Ornaments	3 ctns.	(Sd.)	(Sd.)
	Plastic Toys Tea Set	4 ctns.	M.Y.M.Y. DEHLAVI P.O.BOX 428 MECCA	
	Brass Water Sprayer	6 cases		
	Plastic Battery operated Goods	6 ctns.		
	Plastic & Aluminium Imitation Jewellery	3 cases		
	Aluminium Hair Bands	1 case		
	Total	23 packages		

(TERMS OF THIS BILL OF LADING CONTINUED ON BACK HEREOF)

118.

By .....

.....
SHIPPING AGENT

IN WITNESS WHEREOF
Bills of Lading have been signed the same tenor and date, one of which being accomplished, the others to stand void.

EXHIBIT "RAP 3"

RAP3

TRIPLICATE

BILL OF LADING

HONG KONG ISLANDS SHIPPING CO., LTD.

Shipper

CENTER TRADING CO., LTD.

Consignee

TO ORDER.

Notify Party

AHMED SAED BALBAID JEDDAH.

Name of Vessel | Voy. No.

POTOI CHAU

Port of Loading | Port of Discharge

KEELUNG | JEDDAH

Final Destination (if on-carriage)

Shipped on board by the shipper hereinafter named, the goods or packages said to contain goods hereinafter mentioned, in apparent good order and condition, unless otherwise indicated in this Bill of Lading, at the port of loading mentioned below, to be transported by the vessel named below or transhipped to the port of discharge subject to all the terms and conditions of this Bill of Lading with liberty to delay sailing, to deviate for the purpose of saving or attempting to save life or property or othersise, to call at any port or ports or place or places, once or oftener, in or out of, or beyond, the customary or advertised route, in any order, forward or backward, for the purpose of discharging and/or loading goods and/or mail, embarking and disembarking passengers or crew, taking in fuel or other necessary supplies (either for the present or return voyage) and/or any other purpose whatsoever, to dry-dock with or without the goods on board, to sail with or without pilot, to tow or be towed, and/or to assist vessels in all situations and circumstances; the goods being marked and numbered as indicated below, and to be discharged or transhipped from the vessel's side, when and where the vessel's responsibility shall cease, in like apparent good order and condition at the port of discharge mentioned below, or so near thereto as the vessel may always safely get, lie and leave always afloat at all stages and conditions of water and weather, subject to the stipulations, exceptions, and conditions mentioned on the face and on the back hereof whether written, typed, stamped or printed.

Freight for the said goods and primage if any to be paid by the shipper in advance, on delivery of this Bill of Lading, in cash without discount, or at the port of discharge or destination by the consignee, as may be agreed upon and declared as below. Freight and primage if any paid in advance or payable at destination, to be considered as earned whether the Vessel or Goods be lost or not lost at any stage of the entire transit or the voyage be broken up or abandoned.

The custody and carriage of the goods are subject to all the terms on the face and back hereof which shall govern the relations, whatsoever they may be, between the shipper, consignee and/or owner of the goods and the Company, master and/or vessel in every contingency wheresoever, whenever and howsoever occurring and also in the event of deviation, or of unseaworthiness of the vessel at the time of loading or inception of the voyage or subsequently, and none of the terms of this Bill of Lading shall be deemed to have been waived by the Company unless by express waiver signed by a duly authorized agent of the Company.

Marks and Numbers	Packages	Description of Goods	Gross Weight	Measurement
KHALED BALBAID JEDDAH C/NO. 1-16 MADE IN TAIWAN REP. OF CHINA	16 Cases VVVVVVVVV	CENTER BRAND AUTO LAMP BULBS		
		SAY TOTAL: SIXTEEN (16)CASES ONLY.		
		"FREIGHT PREPAID"		
		Particulars Furnished by Shipper		

Freight Charge On	Rate	Per	Freight
TOTAL			

THE CHANG HWA COMM'L BANK, LTD. BRNO. 22592 FOREIGN DEPARTMENT

In accepting this Bill of Lading, the shipper, consignee and/or owner of the goods agrees to be bound by all the stipulations, exceptions and conditions, whether written, printed or stamped on the face or back hereof, as fully as if they were all signed by such shipper, consignee and/or owner of the goods, notwithstanding any local law or privileges to the contrary, and agree that all agreements or freight engagements for, and all connection with the shipment of the goods are superseded by this Bill of Lading.

Prepaid at	Payable at	Exchange Rate
TAIPEI		

Place of B(s)/L Issue	Dated	L/C No.
	AUG 31 1972	

EXHIBIT "RAP 3"

CONDITIONS OF SHIPMENT MUTUALLY AGREED.

(Clause Paramount) The Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels, the 25th August 1924, as enacted in the country of shipment shall apply to this contract. When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply.

1. (Description, quality, quantity, weight, measure not value unknown) and the goods and/or carrier are not responsible for quantity, weight, marks, numbers, quality, description, contents, measure, value, kind or existence of packages.

2. (General Exemptions) Neither the vessel nor the carrier shall be responsible for loss of or damage to or in connection with goods arising or resulting from—

(1) Act of God, perils, dangers or accidents of the sea or other navigable waters, acts, neglect of any kind, spray, snow, frost, ice or dispatch of vessels.

(2) War, acts of war or of enemies, warlike expeditions, blockade, hostilities, invasion, requisition or other exploits of war, civil commotions, revolt or usurpation of powers, riots or peoples, seizure under legal process, civil commotion, any act or default of dock or canal authorities.

(3) Mobs, riots, plunder, robbery, violence or pillage by land or water, upsetting or anything among passengers and/or crews.

(4) Criminal action, fumigation, change of character, mould, mildew, dampness, sweat, evaporation, liquefaction, rust, decay, rotting, spilling of package, stain, country damage, injury caused by other cargo in contact or proximity and/or smell from other goods, insufficient ventilation, dust, and dust, fuel oil, vermin, rats, wastage in bulk or weight, pumpmiction, or any other loss or damage arising from inherent defect, quality or vice of the goods.

(5) Leakage, breakage, chips, breakage, bending, cracking, chafing, splitting, flaw, dent, hook-holes, chafage, shrinkage, heat, sweating, fire or water on board, in hulk, in craft or on wharf and/or on shore, collapse or destruction of or damage to wharf, pier and/or their coverings.

(6) Explosion of, loss or damage from machinery, boilers or steam however caused, latent or other defects prior to or at the time of shipment or in the beginning of or during the voyage or otherwise in hull, tackle, boilers or machinery or other equipments or appurtenances not discoverable by due diligence.

(7) Sinking, stranding, grounding, touching, collision, wreck, fire, jettison, quarantine, epidemics, fumigation, sick of lighter or craft or of transshipment, or the consequences of any other omission of the shipper, consignee and/or owner of the goods, his agent or representative.

(8) Insufficiency of packing, inaccuracy, obliteration, insufficiency, inadequacy or absence of marks, numbers, addresses and description of goods, number of pieces in bundles or bulked bundles, accessible were said true of packing.

(9) Congestion of port, strikes, lockouts, boycott, stoppage or restraint of labour from whatever cause, whether partial or general, sabotage or other labour disturbances, combinations of workmen or others whether subject or effect, desertion of seamen, workmen or labourers, breaking, malicious, embezzlement.

(10) Error in judgment, negligence or default of pilot, master, officers, engineers, crew, stevedores or other persons in the service of the vessel and/or Carrier whether in the navigation or in the management of the vessel or otherwise.

3. (Seaworthiness) Neither the vessel nor the carrier shall be liable for loss or damage arising or resulting from unseaworthiness of the vessel unless caused by want of due diligence on the part of the Carrier to make the vessel seaworthy before and at the beginning of the voyage, or otherwise and the shipper, consignee and/or owner of the goods shall have the burden of proving unseaworthiness or lack of due diligence.

4. (Loading and Discharging) The goods shall not be deemed to have been "shipped" until the vessel's tackle shall have been hooked onto or made fast to them, or they are on the deck, and they shall be deemed to have been "delivered" by the carrier at the moment when free of the vessel's tackle or deck. In accepting custody of, and issuing their receipts for the goods prior to their being "shipped" and in retaining custody thereof after they are "delivered", the carrier acts solely as agents, and for the convenience and account of the shipper, consignee and/or owner of the goods, at whose risk as against loss or damage from whatever cause, the goods shall remain up to the moment of being "shipped" and from the moment when they are "delivered".

5. (Governmental Orders) The vessel shall have liberty to comply with any orders or directions as to loading, employment, departure, arrival, routes, ports of call, stoppage, requisition, discharge, destination, delivery or otherwise howsoever given by any Government or any Department thereof, or any person acting or purporting to act with the authority of a Government, or any Department thereof, or by any Committee or person having or purporting to have, under the terms of the war risk insurance on the vessel or otherwise, the right to give such orders or directions. Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfillment of the contract; and the vessel and/or carrier shall not be responsible for any loss, damage, expense and/or delay in delivery resulting, either directly or indirectly therefrom.

6. (Goods in Custom-House, etc.) Goods in the custom-house, warehouse or godown, or in lighter or craft, or on wharf or pier before loading on, or after discharge from the vessel are at the risk of the shipper, consignee and/or owner thereof, and neither the vessel nor the carrier shall be responsible for any loss of or damage to such goods under any circumstances.

7. (Goods on Deck, Live Animals, Perishable Goods, etc.) The carrier shall have liberty to carry any goods on deck which are usually carried on deck in the trade.

Goods carried on deck, live animals, birds, reptiles, fish, plants, meat, butter, fruits, vegetables, goods in crates, bales or bags, all perishable goods, glass, crockery, castings, any articles of a fragile or brittle nature, and any unprotected pieces are taken at the risk of the shipper, consignee and/or owner of the goods, and the vessel and/or carrier shall not be liable for any loss thereof or damage thereto howsoever caused, but in all other respects the custody and carriage of such goods shall be governed by the terms and conditions of this Bill of Lading.

8. (Dangerous Goods, Contraband Goods, etc.) If any goods of an inflammable, explosive, damaging or dangerous nature be shipped without previous declaration and arrangement, or if any goods be shipped which are contraband or prohibited by the laws or regulations of the port of shipment, discharge or call or any place during transit, such goods, upon discovery, may be rendered innocuous, thrown overboard, or be discharged at any port or place or be otherwise dealt with according to the master's discretion without any liability attaching to the vessel and/or Carrier, and their loss damage or destruction as well as any consequent loss, cost, penalty and/or damage to the vessel, carrier, passenger, crew and/or goods, and all responsibility direct or indirect whatsoever shall fall upon the shipper, consignee and/or owner of the goods.

It is further mutually agreed that if any such goods shipped with such previous declaration and arrangement shall become a danger to the vessel, carrier, crew, passenger and/or goods, they may in like manner be landed at any place or destroyed or rendered innocuous or thrown overboard without any liability on the part of the carrier.

9. (Heavy Lifts) Any package weighing over two tons of 2,000 lbs. gross must be declared in writing before shipment, and the weight be stencilled clearly on the package, and in the event of omission thereof or the actual weight being in excess of that declared, the shipper, consignee and/or owner of the goods, in addition to paying the freight pro rata in Article "C" of Hamburg-Amerika Linie Bremen Agency, damage, cost or expense, directly or indirectly incurred or suffered thereby by the vessel and/or carrier or any person or property whatsoever, and shall also pay any additional charges and expenses of handling.

10. (Valuable Goods) The vessel and/or carrier shall not be accountable to any extent for any loss of or damage to or in connection with gold, silver, bullion, currency, specie, jewellery, precious stones, precious metals, securities, documents, pictures, embroideries, works of art, or any other valuable goods whatever, unless the nature and the value of the goods shall have been declared in writing by the shipper before shipment and inserted in this Bill of Lading and freight prepaid as per tariff. Upon application the carrier shall quote rates based on a higher valuation than that provided for in Article 20.

11. (Stowage) Goods may be stowed in poop, forecastle, deckhouse, shelter deck, passenger space or any other covered space commonly used in the trade and suitable for carriage of goods, and when so stowed, shall be deemed for all purposes to be stowed under deck. Specially cooled, heated, insulated, or ventilated stowage is not to be furnished by the carrier unless contracted for at an increased freight rate.

Goods carried in any such cooled, heated, insulated or ventilated compartments are at the risk of the Shipper, Consignee and/or Owner thereof and subject to all the conditions, exceptions and limitations as to the carrier's liability and other provisions of this Bill of Lading, and further the carrier shall not be liable for any loss or damage occasioned by the temperature or failure of any refrigerator plant or part thereof, or by or in any material or supply or the thereof used in the process of refrigeration unless shown to have been caused by actual fault of the vessel and/or carrier.

12. (Forwarding) The carrier shall have liberty to forward any or all the goods described herein to their destination by the above or any other vessel, by rail or any other conveyance, belonging either to it or any other company or individual, by any route direct or indirect, and at vessel's option, to transship at any place or places to any other vessel, vessels or means of transportation, or to land or store, or to discharge the goods at any other port or place, or to put into hulk, craft or lighter, to ship in the same or other vessel proceeding by any route, or to forward by lighter, rail or any other means and/or direction or arrive or scheduled to depart or arrive before or after the vessel named herein and always subject to the conditions and exceptions of the forwarding conveyance and at the risk of the shipper, consignee and/or owner of the goods, and the vessel and/or carrier shall not be liable for the risk of transshipment, landing, storing. Exchanging or reshipment, and that the carrier shall have liberty to retain the goods on board until the vessel's return or other voyage, to proceed to any other ports or places, with full liberty to return, call, tow, ship or stay as elsewhere in this Bill of Lading provided, at any place or places even though outside the scope of the voyage or the same to or beyond the port of destination.

When the goods leave the vessel's tackle, or deck, as herein provided, the delivery thereof and performance under this contract shall be considered complete and the vessel and/or carrier shall be considered free from any further responsibility in respect thereof.

Further the vessel and/or carrier shall be entitled to render services as herein above provided at the risk and expense of the shipper, consignee and/or owner of the goods, whenever in any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgment of the carrier or the master is likely to prevent loss, damage, detention, damage, delay or disadvantage to, or loss of, the vessel or any part of the goods or passengers, or to put vessel, goods or passengers inadvisable for any reason to commence or proceed on or continue the voyage or in any case where the goods are consigned to a port where the vessel does not expect to discharge.

The above acts are not to be considered as exercise or any obligation in or to the goods shall be entitled to the same rights and exemptions, even though the freight for the whole transit has been collected by this company.

A delivery at the point of transshipment from the vessel's tackle, or deck, of the goods, enumerated in this Bill of Lading or part to the terms hereof, to the connecting carrier shall absolve the vessel and/or carrier from all claims or liabilities of every description.

The carrier, in making arrangements for any transhipping or forwarding vessel or means of transportation not operated by the carrier shall be considered only the forwarding agent of the shipper consignee and/or owner of the goods and will not any other responsibility whatsoever.

The carriage by any transhipping or forwarding carrier and all transhipment or forwarding shall be subject to all the terms, conditions and exceptions whatsoever in the regular form of bill of lading, freight note, contract or other shipping document used at the time by such carrier, whether issued for the goods or not, and even though such terms and conditions may be less favourable to the shipper, consignee and/or owner of the goods than the terms and conditions of this Bill of Lading and may contain more stringent requirements as to notice of claim or commencement of suit or may exempt the on-carrier from liability for negligence.

The shipper expressly authorizes the carrier to arrange with any such transhipping or forwarding carrier that the lowest valuation of the goods or limitation of liability contained in the Bill of lading or shipping document of such carrier shall apply even though by reason of the value of the goods the shipper shall not be compelled to pay a rate higher than that at present published by such carrier contained or published therein.

Goods shall be forwarded as soon as practicable but the carrier does not guarantee that the forwarding conveyance shall leave from at ports of transhipment.

During or during transhipment the goods may be stored ashore or afloat at their sole risk and expense of the carrier, all of the liable for detention, or delay.

It is agreed that if there be no cargo available at the on-carriage rates shown in this Bill of lading, the difference shall be paid by the consignee before delivery, or, the shipper, consignee and/or owner of the goods, jointly and severally shall be liable for all additional costs of every nature and description, limited to, storage cartage or handling charges. For distributing or transshipped cargo there may be such undertaking as to the carriage of transshipment with respect to dealing with goods at port where duty is payable and all charges and gain accruing thereon shall be for account of the shipper, consignee and/or owner of the goods.

On-carriage fees on goods, if any are to be borne by the shipper consignee and/or owner of the goods.

Goods forwarded by rail are deliverable at any railway station within or nearest to the port of destination and shall be taken away by the consignee immediately after arrival, otherwise the consignee or owner of the goods shall be liable for any expenses incurred. Rail freight, if any, unless herein is subject to change in accordance with tariffs of the connecting rail carrier in effect upon receipt of the goods by the rail carrier.

13. (Port Restrictions) Should the port of destination or call be inaccessible on account of ice, shallow water, the bar or harbour regulations, or should entry into, delay in, or departure from such port be considered dangerous by the master to be reasonable cause or fear that the vessel may be detained after the master reasonably may consider it or otherwise be impeded, or barred, or safe and or inadvisable at any time, in consequence of sanitary, customs or like regulations, or prevailing conditions, ice, floods, boycott, bad weather, congestion of port, war or fear of war, civil disturbances, disturbances or absence of facilities for discharging or delivery, or any other cause whatsoever, the carrier and/or master shall be at liberty to discharge the goods at the vessel at such port or ports as risks the goods or any part thereof, or to forward the same to the port of destination by vessel's return or other voyage or to discharge and store the goods at any other port or place or to forward the same to the port of destination by any other means by land water or the aircraft, at the sole risk and expense of the shipper, consignee and/or owner of the goods.

In the event of any delay or detention of the vessel due to any of the aforementioned causes, demurrage shall be paid by the shipper, consignee and/or owner of the goods. The said demurrage shall be paid per day by the shippers, consignees and/or owners of the goods according to the freight charged.

14. (Quarantine) In case of quarantine, sanitary or other similar regulations or restrictions the goods may be discharged into any depot or lazaretto, hulk or other vessel as may be by the vessel's despatch, or should this be impracticable, the master may discharge the goods at a safe port of call, at his option, at the risk and expense of the shipper, consignee and/or owner of the goods and the vessel's entire liability in respect of the goods shall cease when the goods are so discharged. Quarantine expenses of whatever kind shall be borne by the shipper, consignee and/or owner of the goods.

15. (Pipe) Neither the Vessel, the Carrier nor any corporation owned by, subsidiary to or associated or affiliated with the same shall be liable for any leakage, failure to receive or make good any loss of or damage to the goods occurring at any time and even though before loading on or after discharge from the vessel by means of or by means of any fire whatsoever, whensoever and howsoever, unless such fire shall be proved to have arisen from actual fault or privity.

16. (Packing and Marking, etc.) The Vessel and/or Carrier shall not be liable for loss of or damage to the goods arising or resulting from insufficient or inadequate packing or for incorrect delivery or delay in delivery unless such package shall have been distinctly marked on the outside of the goods before shipment with the name of the consignee and the port or place of destination. The shipper, consignee and/or owner of the goods shall be liable and shall indemnify the vessel and/or carrier for any payment, fine, duty, duty tax of import, loss damage, detention, extra cost expense of whatsoever nature sustained or incurred by or levied upon the Vessel or Carrier in connection with the goods by reason of the goods however caused, including any action or requirement of any government or governmental authority or person purporting to act under the authority thereof, any proceeding against or involving the goods by any of the aforesaid, unless, in the case of fine, confiscation, insufficient, inadequate or incorrect marking, numbering or addressing of packages or description of the contents or weight, default of the shipper to procure consular, Board of Health or other certificates to accompany the goods or to comply with laws of regulations for any said shipment with respect to the goods by the authorities at any port or place or any act or omission of the shipper, consignee and/or owner of the goods.

Goods which cannot be identified as to marks or numbers, cargo overages, liquid packages and any unmarked goods not otherwise accounted for, shall be allocated the copyrighting delivery to the various consignees of goods of like character in proportion to any apparent shortage, loss of weight or damage, and shall be accepted as good delivery.

Loss of or damage to the goods stowed without separation from other goods in bulk of like quality, caused by either the act or omission of any shipper, shall be divided in proportion among the several shipments.

17. (Reconsignment, etc.) If the goods or the packing of the goods shall become damaged or lessened in part or in whole during the voyage in the judgment of the master or carrier, be insufficient for further transportation, the vessel and/or carrier shall have liberty to tranship, repack, recondition, tranship or reconsign the same at the expense of the shipper, consignee and/or owner of the goods.

18. (Freight) The freight mentioned on the face hereof or to be advised after has been or is to be calculated and based upon the particulars of the goods as furnished by the shipper to the carrier.

The shipper warrants the accuracy of the marks, numbers, weight, measurement, number of packages, quantity and nature and value of the goods, but the carrier may at any time open the packages and examine, weigh, measure and value the goods.

If such particulars prove to be inaccurate or incomplete, the shipper, consignee and/or owner of the goods shall be liable for and shall pay to the carrier, as and by way of liquidated and ascertained damages and not as a penalty, a sum equal to double the freight which would have been charged if the said particulars had been correctly declared plus any losses, costs and expenses directly or indirectly incurred or suffered because of any such misdescription less the freight actually paid on the said goods.

Full freight shall be paid on damaged or unsound goods.

Full freight shall be considered completely earned on shipment whether the freight be stated or intended to be prepaid or to be collected at destination; and the carrier shall be entitled to all freight and other charges due hereunder whether actually paid or not and to receive and retain same irrevocably under all circumstances whatsoever the vessel and/or goods lost or not lost or the voyage broken up or abandoned.

All unpaid freight or other charges shall be paid in full and without any offset, counterclaim or deduction in the currency named in this Bill of Lading, or at carrier's option, in other currency at the highest rate of exchange for Bankers' sight bill current on the day of the vessel's entry at the custom-house of her port of discharge or on the day of the withdrawal of the delivery order, whichever the highest.

The Shipper, Consignee and/or Owner of the goods shall be jointly and severally liable to the carrier for the payment of all freight or other charges and for the performance of the obligation of each of them hereunder.

19. (Lien) The Carrier, Master or Agent and all others who, pursuant hereto, perform any service or expend any money or incur any charge or liability for or in connection with or on account of the goods shall have a lien upon the said goods for freight, dead-freight, demurrage, storage and all other charges, expenditures and damages which may be so incurred, and all of the same shall also be borne by the Shipper, Consignee and/or Owner of the goods; the Carrier, Master or Agent and all such others may enforce such lien by public or private sale and with or without notice or by legal proceedings.

20. (Delivery) The Vessel and/or Carrier retain the option of delivery at all times from the vessel's side or from craft, hulk, custom-house, wharfhouse, wharf or quay. In all cases at the risk of the Shipper, Consignee and/or Owner of the goods, and all expenses incurred by delivery otherwise than from the vessel's tackle, or dock shall be borne by the Shipper, Consignee and/or Owner of the goods.

21. (Optional Delivery) Optional delivery is only granted when arranged prior to the shipment of goods and is an expressed bargain.

Consignees desiring to avail themselves of the option to expressed must give notice in writing to the carrier or its agent at final port of vessel's call named in the option at least 24 hours prior to the vessel's arrival there, otherwise the goods shall be landed at any of the optional ports at the vessel's option and the Vessel's and/or the Carrier's responsibility shall then cease.

22. (Discharge of Goods) The goods may be discharged, without notice of arrival or discharge, as soon as the vessel is ready to discharge them, in navy or free wharfage, continuously day and night, Sundays and Holidays included, onto wharf or quay or into warehouse, or into lighter, hulk, lazaretto or craft or on any other place and be stored there at the risk and expense of the shippe, consignee and/or owner of the goods, any custom of the port to the contrary notwithstanding.

In any case, the carrier's liability is to cease as soon as the goods leave the vessel's tackle, or deck,

If the consignee is not ready to take delivery of the goods as soon as the vessel is ready to discharge them or within such time as is provided by the regulations of the port, the vessel and/or carrier shall be at liberty to land and warehouse or discharge the said goods into lighter, hulk, craft, or at any other suitable place, at the risk and expense of the shipper, consignee and/or owner of the goods without notice, and if the goods so discharged or warehoused be unclaimed 30 days or more after arrival of the vessel, they shall be at the carrier's option, be sold, abandoned or otherwise dealt with, solely at the risk and expense of the Shipper, Consignee and/or Owner of the goods, but the Vessel and/or Carrier shall have a lien thereon.

Demurrage for detention of the vessel, if caused by the consignee not taking delivery as fast as the vessel can discharge shall be paid by the shipper, consignee and/or owner of the goods at the current rate of charterage.

23. (Notification) Neither the vessel nor the carrier shall be bound to give notice of arrival of the goods at destination and failure to notify the parties mentioned on the face hereof shall not relieve the shipper, consignee and/or owner of the goods from any obligation herein contained, nor create any liability against the vessel and/or carrier.

24. (Over-Carriage, etc.) Goods over-carried shall be returned, and goods shortlanded shall be forwarded to the destination by land, sea or air at the carrier's option and expense, but the Vessel and/or Carrier shall be free from liability for any loss, delay, depreciation or damage, or for loss of market.

22. (Lighterage) The Carrier does not undertake to lighter the goods from or to shore at any port. Lighterage at all ports shall be at the risk and expense of the shipper, Consignee and/or Owner of the goods. It is expressly stipulated that all lighterage services rendered shall be deemed to have been rendered by an independent carrier or person, if such services be procured by the Carrier they shall be deemed to be and to have been so procured by the carrier acting as agent thereof of the shipper, consignee and/or owner of the goods.

25. (General Average) General Average shall be adjusted, stated and settled according to YORK ANTWERP RULES, 1950.

26. (Jason Clause) In the event of accident, danger, damage, or disaster, before or after commencement of the voyage, resulting from any cause whatsoever whether due to negligence or not, for which or for the consequences of which, the Carrier is not responsible by statute, contract, or otherwise, the goods, Shippers, Consignees or Owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay Salvage and special charges incurred in respect of the goods.

27. (Sister Ship Clause) In the event of any ship belonging to or operated by the carrier rendering service to the ship carrying the goods enumerated in this Bill of Lading, entitling the assisting ship, to a Salvage reward or remuneration for such service, such reward or remuneration shall be treated in the same manner, as if the assisting ship were owned or operated by another company or individual.

28. (Notice of Claim) The Vessel and/or Carrier shall not be liable for any claim unless the Notice of Claim be given in writing to the Carrier or its agent at the place of delivery before or at the time of removal of the goods from the custody of the vessel or Carrier, or, in the event of non-delivery, within 30 days after the day on which the goods should have been delivered, at the port of discharge.

If written Notice of Claim and Claims are not so given, the Vessel and/or Carrier shall be considered prejudiced thereby and the claim waived and such notice may be placed in and shall constitute a defence to any suit or proceedings that may be brought against the Vessel and/or Carrier in an action for said claim.

The Notice of Claim in writing need not be given if the state of the goods has, before or at the time of their delivery, been the subject of joint survey or inspection, in which case proper notation of loss or damage made on the certificate or similar document shall constitute the Notice of Claim herein required.

No suit shall be maintained unless instituted within one year after the day on which the goods were delivered, or shall have been delivered, at the port of discharge, notwithstanding any provisions of laws of any country or state to the contrary.

29. (Amount of Claims Valuation) The Carrier's liability shall be limited to Sterling £100 or its equivalent in any other currency per package or customary freight unit for any loss of or damage to or in connection with any goods whatsoever subject to the provisions of the International Carriage of Goods by Sea Act, 1936 and with respect to goods packed in containers, the entire contents of each container shall be deemed as one unit.

30. (Validity) It is intended that the terms of this contract shall be valid, enforceable and available to the Vessel and/or Carrier so far as and whenever the laws will permit even where there has been negligence, for which the Vessel and/or Carrier are chargeable, and that in all instances where it may be possible to contract against the consequences of negligence the Vessel and/or Carrier, although not specifically mentioned, shall not be under any liability whatsoever. If any part or any term of this contract is not enforceable, that circumstance shall not affect the validity of any other part or term hereof.

Nothing in this Bill of Lading shall operate to limit or deprive the Vessel and/or Carrier of any statutory protection from, or limitation of liability.

31. (Separate Bills of Lading) All agreements or freight engagements for the ship or part of the goods are superseded by this Bill of Lading with its terms and conditions, whether written, typed, stamped or printed, are accepted and agreed by the shipper or holder hereof to be binding as fully as if signed by the shipper or holder, any local customs or privileges to the contrary notwithstanding.

If required by the Vessel and/or Carrier, one signed Bill of Lading duly endorsed must be surrendered to the Agents of the Vessel at the port of discharge in exchange for delivery order.

32. (Cotton) Deficiency of or for condition of the contents or any claim for deficiency of or for condition of the covering, or to any damage arising therefrom and the Vessel and/or Carrier shall not be responsible for such damage.

33. (Cape of Good Hope or Panama Canal) The vessel is intended to sail via Suez or Panama Canal but the Carrier reserves the right to change the route, whether or not after sailing on the voyage and/or at any stage thereof, in the event that circumstances shall arise which cause it advisable or desirable to do so in the Carrier's judgment or in that of the Master of the Vessel. If such change of route involves discharge and reshipping or storage of cargo in order to allow taking additional bunkers at any place or places, the Master shall have liberty to discharge any portion of the cargo at such place or ports as he may consider necessary and to forward the same to destination at vessel's expense but at such ports, risks, liabilities and exemptions as provided herein.

34. (In-Bulk Clause Optional) If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss and liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods or any part of them, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact.

35. (War Risk Clause) In the event of, in the opinion of the carrier, or the master the imminence or existence of war hostilities, or warlike operations between any nations and any governments, people, or groups of any other nations whether before or after declaration of war, or of cessation or prohibition of intercourse, commerce or otherwise, between any nations or between any hostilities or blockade of any other nations or of any discrimination against the Vessel and/or Carrier for any reason whatever, the Carrier or the Master shall not be liable for any loss or damage occasioned by, resulting from, or consequent upon such situations, operations, cessations or discrimination, and shall have the right without notice before or after commencement of the voyage to cancel the contract of carriage, to alter or depart from the proposed, advertised or customary route, to delay or detain the Vessel at or off any port or ports or place or places, to tranship the goods at any port or ports or place, to return the goods to the port or place or ports or place or places of shipment, to discharge or to store the goods at any port or ports or place or places and thence to forward the same to the destination by any mode of transport, or to deviate from the contract voyage in any manner whatsoever, and the Carrier shall be entitled to full freight and charges, and in addition to all other rights, liberties and immunities conferred by this clause, in all cases at the risk and expense of the shipper, consignee and/or owner of the goods. Any goods shipped which are explosive, inflammable, dangerous, contraband or likely to become so during the voyage may be discharged at any time or place or destroyed without compensation and all liability whatsoever.

Any increase in insurance premiums and any additional expenses resulting from the above causes shall be for the account of the goods and shall be paid by the shipper, consignee and/or Owner of the goods, and shall pay the Vessel and/or Carrier, if not prepaid, and if prepaid the Vessel and/or Carrier shall be entitled to retain the same. In addition, goods discharged by all requirements of any authorities for importation into any country shall be at the risk of the Shipper, Consignee and/or Owner of the goods shall indemnify the Carrier against any expense or detention of the Vessel arising in consequence thereof. In the event when the goods cannot be delivered at the Destination the Vessel and/or Carrier may land them at any other port or ports or place or places or return them to

Nothing herein shall be construed as a waiver of any rights or immunities of the Carrier or the Master shall be entitled under this Bill of Lading or otherwise.

CENTER TRADING CO., LTD.

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.12(c)
Exhibit "RAP-3"

8th February 1980

(continued)

Civil Appeal No.178 of 1980

IN THE COURT OF APPEAL

On Appeal from the High Court of Justice
(High Court Action No.3727 of 1978)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. — Plaintiff (Appellant)

and

CASTLE INSURANCE CO. LTD. (formerly Pacific & Orient Underwriters (H.K.) Ltd.) and 84 Others — Defendants (Respondents)

Extracts from Hong Kong Islands Shipping Co.Ltd. Bill of Lading - Conditions of Shipment mutually agreed

21. (Lien) The Carrier, Master or Agent and all others who, pursuant hereto, perform any service or expend any money or incur any damage or liability for or in connection with or on account of the goods shall have a lien upon the said goods for freight, deadfreight, demurrage, storage and all other charges, expenditures and damages which may be so incurred, and all of the same shall also be borne by the Shipper, Consignee and/or Owner of the goods; the Carrier, Master or Agent and all such others may enforce such lien by public or private sale and with or without, notice or by legal proceedings.

28. (General Average) General Average shall be adjusted, stated and settled according to YORK ANTWERP RULES, 1950.

29. (Jason Clause) In the event of accident, danger, damage, or disaster, before or after commencement of the voyage, resulting from any cause whatsoever whether due to negligence or not, for which or for the consequences of which, the Carrier is not

responsible by statute, contract, or otherwise, the goods, Shippers, Consignees or Owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay Salvage and special charges incurred in respect of the goods.

N.J.Barnett
Registrar

Civil Appeal No.178 of 1980

IN THE COURT OF APPEAL

On Appeal from the High Court of Justice
(High Court Action No.3727 of 1978)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO. LTD. — Plaintiff (Appellant)

and

CASTLE INSURANCE CO.LTD. (formerly Pacific & Orient Underwriters (H.K.) Ltd.)
and
84 Others — Defendants (Respondents)

Extracts from Hong Kong Islands Shipping Co.Ltd. Bill of Lading - Conditions of Shipment mutually agreed

JOHNSON, STOKES & MASTER
Solicitors for the Plaintiff (Appellant)
HONG KONG

(CAP/RAP/Pl/78)

D1 We... guarantee the payment of G.A. for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment 151

D3 We...guarantee...the payment of any contribution to G.A. which may hereafter be ascertained to be due in respect of the said merchandise.
164

D5 We guarantee that we will pay any just claim for G.A. as may be properly found due in respect of the said cargo.
178

D8 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 Adjuster.
192

D9 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.
205

D11 see D3
202

Lloyd's Bond and Guarantee

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".

2. Lloyd's hereby guarantee to the ship owner 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.
207

Lloyd's Average Bond

".....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".
209

No.13

NOTICE

1978, No. 3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

(COMMERCIAL LIST)

BETWEEN:

10 HONG KONG ISLANDS SHIPPING CO.LTD. 1st Plaintiff

HONG KONG ATLANTIC SHIPPING CO.LTD. 2nd Plaintiff

and

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (H.K.) Ltd.) and 84 Others Defendants

20 N O T I C E

HEREBY TAKE NOTICE that on the adjourned hearing of the Plaintiffs' application to re-amend the Writ of Summons herein and the 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 9th, 11th, 25th, 32nd, 35th, 38th, 39th, 40th, 44th, 45th, 46th, 50th, 51st, 53rd, 55th, 61st, 66th, 67th, 68th, 72nd, 74th, 75th, 76th and 79th Defendants'

In the Supreme Court of Hong Kong

No.13
Notice

2nd October 1980

(continued)

application for an Order that the 2nd Plaintiff be struck out, before the Judge in Chambers on Tuesday the 7th day of October 1980 at 10:00 o'clock in the forenoon, the Plaintiffs will apply for an Order as prayed in the Affidavit of Christopher Andrew Potts filed herein on 11th October 1979, a copy of which and of the exhibits thereto is attached.

Dated the 2nd day of October, 1980.

Johnson Stokes & Master

This Notice was served by JOHNSON, STOKES & MASTER of 403-413, Hongkong & Shanghai Bank Building, 1 Queen's Road, Central, Hong Kong, Solicitors for the Plaintiffs.

(To the abovenamed Defendants or their Solicitors, Messrs. Deacons.)

No.14
Notice

11th October 1980

No.14

NOTICE

1978, No 3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

(COMMERCIAL LIST)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. — 1st Plaintiff

HONG KONG ATLANTIC SHIPPING CO.LTD. — 2nd Plaintiff

and

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (H.K.) Ltd.) and 84 Others — Defendants

N O T I C E

HEREBY TAKE NOTICE that on delivery of Judgment concerning the 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 9th, 11th, 25th, 32nd, 35th, 38th, 39th, 40th, 44th, 45th, 46th, 50th, 51st, 53rd, 55th, 61st, 66th, 67th, 68th, 72nd, 74th, 75th, 76th and 79th Defendants' application for an Order that the 2nd Plaintiff be struck out, by Mr. Commissioner Mayo in Chambers on Wednesday the 15th day of October 1980 at 0915 hours, the Plaintiffs will apply for an Order that the Writ herein renewed by the Order of the Honourable Mr. Justice Zimmern dated 6th November 1979 for a period of 12 months from the 25th day of October 1979 be renewed as against the Defendants who have, to date, not been served for a further period of 12 months from the 25th day of October 1980 on the grounds deposed to in the Affidavit of CHRISTOPHER ANDREW POTTS filed herein on 11th October 1980.

Dated the 11th day of October, 1980.

Johnson Stokes & Master

No. 15

AFFIDAVIT OF CHRISTOPHER ANDREW POTTS

1978, No.3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

(COMMERCIAL LIST)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. and — 1st Plaintiff

HONG KONG ATLANTIC SHIPPING CO.LTD. — 2nd Plaintiff

and

CASTLE INSURANCE CO. LTD. (Formerly Pacific & Orient Underwriters (H.K.) Ltd.) — 1st Defendant

and

84 Others

In the Supreme Court of Hong Kong

Plaintiffs' Evidence

No.15
Affidavit of Christopher Andrew Potts
11th October 1980
(continued)

A F F I D A V I T

I, CHRISTOPHER ANDREW POTTS of Flat 18A, Braemar Hill Mansion, 35 Braemar Hill Road, Hong Kong ,solicitor of the Supreme Court of Hong Kong with the firm of Norton, Rose, Botterell & Roche which firm practises in association with the firm of Johnson, Stokes & Master, solicitors for the Plaintiffs in this action, having the conduct of this action on the said Plaintiffs' behalf and being duly authorized by them to make this Affidavit, make oath and say as follows :

1. The original of the Writ of Summons in this action indorsed with Points of Claim, issued on 25th October 1978, amended on 26th July 1979 and renewed by the Order of Mr. Justice Zimmern dated 6th November 1979 for a period of 12 months from 25th October 1979 is exhibited hereto marked "CAP-1".

2. I respectfully ask for an Order that as against the Defendants on whose behalf Messrs. Deacons have, to date, not entered Appearances herein, that the Writ herein, and any concurrent Writs which may be issued be extended for a further period of 12 months beginning with the day next following the 25th October 1980.

3. I respectfully submit that there is sufficient or good reason which justifies this Honourable Court exercising its discretion to further extent the validity of the Writ and any concurrent Writs issued herein for the reasons which hereinafter appear.

4. Appearances to the Writ issued herein were entered by Messrs. Deacons on behalf of the Defendants specified in the Notice filed herein on 11th October 1980 on 26th and 28th September and 17th December 1979. On 6th November 1979, by Order of the Honourable Mr. Justice Zimmern, the Writ herein was renewed for 12 months from the 25th day of October 1979 and therefore, as against certain of the Defendants herein on whom no service has been effected, the renewed Writ is due to expire on 25th October 1980.

5. By my Affidavit filed herein on 11th October 1979, the Plaintiffs sought, inter alia, an Order leading to substituted service or service out of the jurisdiction upon the Defendants

specified therein. Subsequent to the filing of the said Affidavit, it was found to be necessary to substantially amend the Points of Claim indorsed on the Writ. Accordingly, on behalf of the Plaintiffs I caused to be issued on 21st December 1979 a Summons seeking amendment of the Writ which Summons was returnable on 10th January 1980 before the Honourable Mr. Justice Zimmern.

6. In the events which happened, the said Summons was pre-empted by issuance on 5th January 1980 by Messrs. Deacons on behalf of the Defendants which they represent of a Summons seeking an Order that the 2nd Plaintiff be struck out which Summons was returnable on 8th February 1980. At the hearing of the said Summons to amend the Writ, my firm consented on behalf of the Plaintiffs to adjournment of the application to amend the Writ to 8th February 1980, the date upon which Messrs. Deacons' clients' application to strike out the 2nd Plaintiff was to be heard.

7. Messrs. Deacons' application to strike out the 2nd Plaintiff was part heard before the Honourable Mr. Justice Zimmern on 8th February 1980 and adjourned together with the Plaintiffs' application to amend the Writ to a date to be fixed and which was duly fixed before the Honourable Mr. Justice Zimmern on 19th May 1980.

8. Unfortunately, the Honourable Mr. Justice Zimmern, before whom Messrs. Deacons' application on behalf of their clients had been part heard on 8th February was taken ill and the resumed hearing which was due to take place on 19th May 1980 before Mr. Commissioner Mills-Owens was again adjourned to a date to be fixed as the Counsel instructed by Messrs. Deacons was, shortly before the hearing of the Summons, himself taken ill and became incapable of speech.

9. Subsequent to the adjournment ordered by Mr. Commissioner Mills-Owens certain "without prejudice" discussions took place between my firm and Messrs. Deacons which discussions came to nought and, after the long vacation had intervened, the respective Summonses were restored before Mr. Justice Zimmern for 7th and 8th October 1980. Again, because of the fateful circumstances with which this case appears to have become associated, the Honourable Mr. Justice Zimmern was once more taken ill, although fortunately it proved possible for Messrs. Deacons' application to strike out the 2nd Plaintiff to be fully heard

before Mr. Commissioner Mayo between 7th to 9th October 1980, only a matter of days before expiry of the renewed Writ as against the Defendants so far not served.

10. It has doubtless been appreciated by this Honourable Court that this case involves issues of substance and of procedure which are of a highly complex nature, involving as it does, in particular, a considerable number of Defendants outside the jurisdiction in the Middle East where, for political and other reasons, the question of service out of this jurisdiction directly on the said Defendants is likely to pose the most exasperating difficulties and therefore, if such service is to take place, it is of the utmost importance from the point of view of all parties concerned that what is ordered to be served on the said Defendants by substituted service or by other manner of service is a Writ which accurately states the parties, the Plaintiffs' cause of action and which accurately particularises the Plaintiffs' claim.

11. At the forthcoming hearing before Mr. Commissioner Mayo on 15th October, it is humbly anticipated that all the outstanding issues referred to herein will be resolved thus leading to service of an accurate Writ upon the Defendants so far not yet served.

12. I respectfully submit that the grounds outlined herein are ample to enable this Honourable Court to exercise its discretion to renew the Writ herein for a further period of 12 months.

SWORN at 1604 Bank of Canton) Building H.K. Dated the) Sd. C.A.Potts
11th day of October, 1980)

Before me,

Sd. M.R.Symonds
Solicitor empowered to administer oaths

This Affidavit is filed on behalf of the Plaintiffs.

No. 16

AFFIDAVIT OF PETER GEIRION VALENTINE JOLLY

1978, No. 3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

BETWEEN:

HONG KONG ISLANDS SHIPPING CO. LTD.	1st Plaintiff
HONG KONG ATLANTIC SHIPPING CO.LTD.	2nd Plaintiff
and	
CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.)	1st Defendant
CENTURY INSURANCE COMPANY LIMITED	2nd Defendant
GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPORATION LTD.	3rd Defendant
GUARDIAN ASSURANCE COMPANY LIMITED	4th Defendant
UNION INSURANCE SOCIETY OF CANTON LIMITED	5th Defendant
RELIANCE MARINE INSURANCE COMPANY LIMITED	6th Defendant
MALAYAN OVERSEAS INSURANCE CORPORATION	7th Defendant
THE NEW INDIA ASSURANCE COMPANY LIMITED	8th Defendant
NATIONAL INSURANCE COMPANY LIMITED	9th Defendant
SOUTH CHINA INSURANCE COMPANY LIMITED	10th Defendant
YASUDA FIRE AND MARINE INSURANCE COMPANY LIMITED	11th Defendant
TRANS-ORIENT DEVELOPMENT CO.	12th Defendant

SADDIK AMIN SEIF EL-DIN & SON	13th Defendant	
GHAZI ABD AL-RABMAN AL-DOUBY	14th Defendant	
HAJEE AHMED YAKUB MEMON	15th Defendant	
OMAR SALEIM AL-KHANBASHI	16th Defendant	
ALI ROZI AL-KHOTANLY	17th Defendant	
INTERNATIONAL DISTRIBUTING EST.	18th Defendant	
YOUSUF SAEED MUKRED	19th Defendant	10
MOOQUBEL AL-HAG	20th Defendant	
AL-SAWAI STORES	21st Defendant	
O.A. ALSAINI ELAMOUDI	22nd Defendant	
AHMED MOHAMMED SHAMSHAAN	23rd Defendant	
OMAR KHAMIS BAMURSHID	24th Defendant	
MAREI ABDULLAH BUGSHAN	25th Defendant	
MOHAMMED S.HANTOOSH	26th Defendant	
ABUBAKER AHMED BANAFA	27th Defendant	
ALI HAZZA & MOGBOUL ALI	28th Defendant	
ABDUI GHANI ALI	29th Defendant	20
MOHAMED SAEED SALEH & SONS	30th Defendant	
ABDUL WAHAB MIRZA	31st Defendant	
MOHAMED SALHD M.BAESHEN	32nd Defendant	
SAIED AHMED BANAAMA	33rd Defendant	
ABDUL SATTAR ALMAIMANI	34th Defendant	
ABDULHADI BOGHSAN	35th Defendant	
YASEEN ESTABLISHMENT	36th Defendant	
SHARIEF MOHAMED SAAD AL-JUDI	37th Defendant	
ALJAZEERAH MODERN EXHIBITION	38th Defendant	30
SALEH ALI ANSARI	39th Defendant	
SAID HASSAN AS-SUFI	40th Defendant	
SAAD ATIQULLAH AL-HARABI	41st Defendant	
MOHAMED HOSSAIN BANAFEI	42nd Defendant	
BASALAMAH GROCERY	43rd Defendant	
MOHAMED ALI SULIMANI	44th Defendant	
AHMED ALI HUSSAIN	45th Defendant	
MOHAMED ABDULHAFIZ BIN SHAIHOON	46th Defendant	40

SULIMAN AL ABDUL AZIZ ALHAMFED	47th Defendant	
SIDDIQUE AMIN SAIFUDDIN	48th Defendant	
OMER MOHAMED BASALAMAH	49th Defendant	
OMER SAAD AL-KHAMBASHI	50th Defendant	
NAFE MUBARAK AL-HARABI	51st Defendant	
ABDULRAHMAN A.ABDUSSABOOR	52nd Defendant	
SYED MOHSIN ADBULLAH BASURRAH	53rd Defendant	
OMER SALEM SHEIBA AL-KHAMBASI	54th Defendant	
M.Y.M.Y. DEHLAVI	55th Defendant	
AHMED NASER ALI	56th Defendant	
SALEM A. AL-MUHDHAR	57th Defendant	
OMAR SAAD ALKHAMBASI	58th Defendant	
OMAR HINNAWI	59th Defendant	
ABDUL RAHMAN A.H.BAKHSH	60th Defendant	
ABDULRAHMAN AHMED BANAFA	61st Defendant	
HAMZA M. BOGARY	62nd Defendant	
ARABIAN GULF ASSOCIATION FACTORIES	63rd Defendant	
FOLAD A. BOKARI	64th Defendant	
TARGOUN AMIN KHOTANLY	65th Defendant	
ABDUR RAHIM QARI ARTOSHI	66th Defendant	
MOHAMED TAHIR TURKSTANI	67th Defendant	
MOHAMED AHMED BAFAIL	68th Defendant	
SAEED ABDUL ILAH GENERAL TRADING ENTERPRISES	69th Defendant	
ALLIED TEXTILE LEATHER INDUSTRIES	70th Defendant	
CHANDABHAI & SONS	71st Defendant	
MOHAMED OTHMAN BAOMAR	72nd Defendant	
KASEEK ESTABLISHMENT	73rd Defendant	
MOHAMED OMAR ALHAJ BAJAAFAR	74th Defendant	
AHMED DAHMAN BASMOUSA AL AMOUDI	75th Defendant	
ABDULLAH DAHMAN BAMOUSA	76th Defendant	
NAFE BIN MOBARAK ALHARBI & ABOUD BIN ABDULLAH ALHARBI	77th Defendant	

AHUJA RADIOS	78th Defendant
INTERNATIONAL BOOK HOUSE PVT. LTD.	79th Defendant
AHMED ALI HUSSAIN	80th Defendant
MARAI BIN SALIM BARABAA	81st Defendant
MOHAMED AHMED NASHER	82nd Defendant
MOHAMMED SALIM BAKLAMIS	83rd Defendant
AHMED ABDULLA ALI AL-SHAIBANI	84th Defendant
SAEED KASSEM ANAMM	85th Defendant

I, PETER GEIRION VALENTINE JOLLY of 3 Berkeley Bay Villas, Hirams Highway, Sai Kung, New Territories, Hong Kong make oath and say as follows :-

1. I am a Partner in the firm of Messrs. Deacons, Solicitors & Notaries, 6th Floor, Swire House, Hong Kong and I have conduct of this matter on behalf of the Defendants referred to in the Summons issued herein dated the 5th day of January 1980. The facts deposed to are within my own knowledge unless otherwise stated and are true to the best of my knowledge information and belief.

2. I refer to the Affidavit of Mr.Christopher Potts sworn on the 10th day of October 1979 and filed on the 11th day of October 1979 (hereinafter referred to as Potts' 1979 Affidavit) and the Affidavit of Mr. Christopher Potts sworn on the 11th day of October 1980 (hereinafter referred to as Potts' 1980 Affidavit).

3. The present dispute between the ship-owners on the one hand and the cargo-underwriters and cargo-owners on the other hand involves two sets of claims :-

(1) The claim by the ship-owners against the cargo-underwriters and cargo-owners for general average contributions, namely the subject of the claim in Action No.3727 of 1980. Whether the ship-owners will succeed in this general average contribution claim will depend on whether, inter alia, the vessel was unseaworthy.

(2) The claim by certain cargo-owners

against the ship-owners for particular average loss. The success of this particular loss claim will depend on whether the vessel was unseaworthy resulting in the particular average loss (consisting largely of jettison of the cargo of certain cargo-owners) the cargo-owners who have this particular average loss claim are the Defendants represented by Deacons in this action (hereinafter referred to as the P.A. Defendants) and some other cargo-owners not named as Defendants in this action. The total claim for particular average loss amounts to over US$200,000.

4. Paragraph 2 of Potts' 1979 Affidavit refers to my letter dated 15th April 1978 (CAP-5) to Johnson, Stokes & Master. The 2nd paragraph on Page 2 of my letter deals with the last paragraph on Page 2 of Johnson, Stokes & Masters' letter dated 12th April 1978 ("CAP-4"). It can be seen that the last paragraph of "CAP-4" seeks a time extension in relation to the ship-owners' claim against the cargo-owners. Deacons was of course receiving instructions from Clyde & Co. London Solicitors as to

(a) claims by ship-owners for general average against cargo-underwriters and its defence;

(b) claims for particular average loss by cargo-owners against ship-owners.

Deacons did not receive instructions from those cargo-owners who have no particular average loss claims (hereinafter referred to as the G.A. Defendants) to represent them. (Even up to now Deacons have no instructions from these G.A. Defendants). It was therefore quite out of the question for Deacons to grant time extensions for all cargo-owners (i.e. the G.A.Defendants and P.A. Defendants). My reply ("CAP-5") to the last paragraph of "CAP-4" makes the point quite clearly :-

(i) No time extension for ship-owners claim in general average against cargo-owners can be given.

(ii) In order for the ship-owners to protect its time limit it is better for the ship-owner to issue a Writ in time against all cargo-owners and serve the said Writ in time.

(iii) When (ii) above is done, the P.A. Defendants can then counter-claim against the ship-owners for particular average loss.

In my respectful submission therefore it is quite erroneous for Johnson, Stokes & Master to read into my reply in "CAP-5" (2nd paragraph, 2nd page) and implied representation that Deacons has instructions to accept service and enter appearances on behalf of all cargo-owner Defendants. To illustrate this there is now produced and shown to me a letter dated 20th April 1978 from Johnson, Stokes & Master to Deacons marked "PGVJ-1".

5. In late June 1979 while attempting to obtain security of US$260,000 from the ship-owners in respect of the aforesaid particular average loss claims Johnson, Stokes & Master contended that the majority of such claims were time-barred. As a result of this, the whole position on the Defendants' side of the action had to be looked at by Messrs. Clyde & Co.

6. Subsequent to this, there was an exchange of correspondence between the two firms of solicitors. There are now produced and shown to me the following letters :-

(a) a letter dated 31st July 1979 from Johnson, Stokes & Master to Deacons ("PGVJ-2(a)")

(b) a letter dated the 9th of August 1979 from Johnson, Stokes & Master to Deacons (PGVJ-2(b)")

(c) a letter dated 10th September 1979 from Deacons to Johnson, Stokes & Master (PGVJ-2(c)")

(d) a letter dated 13th September 1979 from Johnson, Stokes & Master to Deacons (PGVJ-2(d)")

(e) a telex dated 26th September 1979 from Johnson, Stokes & Master to Deacons ("PGVJ-2(e)")

It is to be noted that even 5 days after the 13th September 1979 despite the clear intention to seek substituted service as set out in the 4th paragraph of "PGVJ-2(d)", no step was taken

either

(i) to obtain leave for substitute serve before the Writ expires on the 26th October 1979

(ii) to obtain leave for service out of the jurisdiction before the Writ expires on the 26th October 1979.

(iii) to obtain leave for a renewal of the Writ before it expires on the 26th October 1979.

It remains that to this day over one year after the 18th September 1979 (or about 18 months after the claim was time barred against the Defendants) following Defendants have still not been served :-

(i) 7th and 10th Defendants

(ii) all the G.A.Defendants (i.e. the non-P.A.Defendants)

7. My brief comments as to the Potts' 1979 Affidavit are as follows :-

(a) That the Affidavit was sworn on the 10th of October 1979 and the application for renewal was not made until the 6th of November 1979 when it was much too late. Therefore both the Affidavit and the application were made too late.

(b) There can be no basis for substituted service on Deacons as Deacons do not represent the non-served Defendants.

(c) The G.A.Defendants have never had any notice of this action and neither Deacons nor Clyde & Co. to the best of my knowledge have ever informed these G.A. Defendants of this action.

(d) The 72nd, 74th, 75th and 76th Defendants were not insured by the 6th Defendant (see paragraph 6(2) of Potts' 1979 Affidavit)

(e) Deacons have entered an appearance for the 6th Defendant on the 17th December 1979 so that paragraph 6(1) and (2) of Potts' 1979 Affidavit are no longer relevant.

(f) The 77th & 78th Defendants were never insured by the 7th Defendant.

(g) As was said before Deacons never had any contact with those G.A. Defendants now proposed to be served by the methods suggested in Potts' Affidavit. It is therefore clear that service on Deacons will serve no function and will in fact cause prejudice to all those G.A. Defendants who should of course be properly served, if it is considered that this action should be allowed to continue against them.

(h) It is submitted that these G.A. Defendants' addresses are adequately set out in the Writ and that they should be properly served.

(i) I take issue with paragraph 8 of Potts' 1979 Affidavit.

(j) Mr. Justice Zimmern should not have granted the renewal of Writ, especially not in November 1979 when the Writ had expired and the claim was time barred.

8. My comments as to Potts' 1980 Affidavit are as follows ;-

(a) There is no justification and reason for further renewing the Writ for another year.

(b) The allegation in paragraph 5 of Potts' 1980 Affidavit about substantial amendments is quite incorrect. The proposed amendments are quite minor and could not possibly justify inaction for one year. It is also to be noted that in the Summons of 21st December 1979 there was no application relating to service consequential upon the granting of the order allowing amendment.

(c) The "without prejudice" discussion related to discussion about the possibility of disposing of the Defendants' Summons to strike out the 2nd Plaintiff. There was no discussion at all about renewal of the Writ or service of the Writ and there was nothing in these discussions which could possibly amount to representations to Johnson, Stokes &

Master that it was not necessary to serve the proceedings out of the jurisdiction. In any event Deacons could not and have no authority to make representations that would in effect be prejudicing the rights of the overseas G.A.Defendants.

(d) It is not accepted that the question of service out of the jurisdiction will pose difficulties in the circumstances. This Honourable Court has come across many instances of Middle East consignees who have to be notified and inconvenience is no reason or excuse for taking relaxed steps that would cause prejudice to overseas Defendants.

(e) Since October 1978 the Writ of Summons could have been served but was not. By the 18th September 1979 it was clear to Johnson, Stokes & Master that steps must be taken to serve the amended Writ on the overseas Defendants and it could have been done but was not. If the amended Writ had been served in September 1979, and those overseas Defendants had entered appearances, then Johnson, Stokes & Master's problem relating to renewal and service would be solved whatever the outcome of the then pending applications by Johnson, Stokes & Master and Deacons.

9. For all the above reasons and for the reasons stated at paragraphs 6/8/3 and 6/8/3B (pages 57 and 58) of the White Book 1979, I respectfully submit that :-

(a) the Writ should not be renewed further.

(b) there should be no order for service outside the jurisdiction.

(c) there should be in any event no substituted service.

(d) the claim by the Plaintiffs against the non-served overseas Defendants should be allowed to die.

SWORN at the offices of Messrs. Alexander Tsang & Co. of 9/F., Swire House, Chater Road, Hong Kong Dated the 15th day of October, 1980) Sd. P.G.V.Jolly

Before me,

Sd. Illegible

Solicitor, Hong Kong

No.16(a)
Exhibit "PGVJ-1"

15th October 1980

No.16(a)

EXHIBIT "PGVJ-1"

JOHNSON, STOKES & MASTER
In Association with Norton Rose Botterell & Roche
SOLICITORS, NOTARIES, AGENTS FOR TRADEMARKS & PATENTS

HONGKONG AND SHANGHAI BANK BUILDING,
HONG KONG (G.P.O.BOX 387, HONG KONG)

Telephone: 5-256261
Cables: JISEM HONGKONG
Telex: 35242 HX Date: 20th April, 1978
Our
Ref: RAP/P1/78

Your ref: PGVJ:IN-078/4236

Messrs. Deacons,
Swire House, 6th Floor,
Chater Road,
Hong Kong.

Dear Sirs,

Re: "POTOI CHAU"

Thank you for your letter of the 15th April. We await hearing from you with regard to instructions on behalf of South China Insurance Company Limited.

Whilst we will give further consideration to the matter we do not anticipate we will be instructed to join anybody other than the

insurers as defendants, as we are particularly instructed at the present time to pursue proceedings under the terms of the G.A.guarantees We also note that you do not state you are instructed on behalf of cargo interests - merely on behalf of their insurers.

Yours faithfully,

Sd. Johnson Stokes & Master

This is the Exhibit marked "PGVJ-1" referred to in the Affidavit of P.G.V.JOLLY Sworn before me this 15th day of October 1980

Sd. Illegible
Solicitor

No.16(b)

EXHIBIT "PGVJ-2(a)"

JOHNSON, STOKES & MASTER
In Association with Norton Rose Botterell & Roche
SOLICITORS, NOTARIES, AGENTS FOR TRADEMARKS & PATENTS

HONGKONG AND SHANGHAI BANK BUILDING,
HONG KONG (G.P.O.BOX 387, HONG KONG)

Telephone: 5-256261
Cables: JISEM HONGKONG
Telex: 85242 HX Date: 31st July, 1979

Our ref: CAP/RAP/P1/78
Your ref: PGVJ:IN-C78/4236

Messrs. Deacons,
Swire House, 6th Floor,
HONG KONG

Dear Sirs,

"POTOI CHAU"
Folio No.377 of 1978

We refer to your refusal to accept service of the amended Writ of Summons in the above and our subsequent telephone conversation on 30th July when you said that you would attempt to clarify the position with your professional clients and would request that before the end

of this week, you either inform us of your instructions to accept service on behalf of all the Defendants or indicate which of the Defendants on whose behalf you are still without instructions to accept service.

Yours faithfully,

Sd. C.A.Potts
C.A.POTTS
for Johnson, Stokes & Master

No.16(b)
Exhibit "PGVJ-2(a)"
15th October 1980
(continued)

This is the Exhibit marked "PGVJ-2(a)" referred to in the Affidavit of P.G.V.JOLLY before me this 15th day of October 1980

Sd. (Illegible)
Solicitor

No.16(c)
Exhibit "PGVJ-2(b)"
15th October 1980

No.16(c)

EXHIBIT "PGVJ-2(b)"

JOHNSON, STOKES & MASTER
In Association with Norton Rose Botterell & Roche
SOLICITOR, NOTARIES, AGENTS FOR TRADEMARKS & PATENTS

HONGKONG AND SHANGHAI BANK BUILDING,
HONG KONG (G.P.O.BOX 387, HONG KONG)

Telephone: 5-256261
Cables: JISEM HONGKONG
Telex: 85242 HX

Date: 9th August, 1979

Our ref: CAP/RAP/P1/78
Your ref: PGVJ:IN-C78/423

Messrs. Deacons,
Swire House, 6th Floor,
HONG KONG

Dear Sirs,

"POTOI CHAU"
Folio No.377 of 1978

We refer to our letter of 31st July and look forward to hearing from you in response thereto.

Yours faithfully,

Sd. Johnson, Stokes & Master

This is the Exhibit marked "PGVJ-2(b)" referred to in the Affidavit of P.G.V.JOLLY before me this 15th day of October 1980

Sd: (Illegible)

Solicitor

No.16(c)
Exhibit "PGVJ-2(b)"
15th October 1980
(continued)

No.16(d)

No.16(d)
Exhibit "PGVJ-2(c)"
15th October 1980

EXHIBIT "PGVJ-2(c)"

CAP/RAP/P1/78
PGVJ:CY-C78/4236

10th September 1979

Messrs. Johnson, Stokes & Master,
Hongkong and Shanghai Bank Bldg.,
Central,
Hong Kong

WITHOUT PREJUDICE

Dear Sirs,

Re: "POTOI CHAU"
Folio No.377 of 1978

We refer to your letters of the 31st July and 9th August and to our recent telephone conversations with Mr. Potts.

As mentioned over the telephone we are still awaiting formal instructions with regard to acceptance of service. The recent developments have, we believe, caused a serious re-thinking of the situation by underwriters and they are as yet undecided on the position they should adopt.

We would however refer to the recent amendment to the Writ to include Hong Kong Atlantic Shipping as a 2nd Plaintiff. It is our understanding that this company was in fact the owner of the "Potoi Chau" at the material time rather than Hong Kong Island Shipping Ltd. and it is therefore this company which has the potential claim in general average.

All the Bonds were given on or before March 1973 and it is our contention therefore that the proceedings instituted in October of last year in the name of Hong Kong Island Shipping were taken in the name of the wrong Plaintiff and the addition of Hong Kong Atlantic Shipping in July 1979 means that the proceedings by the proper Plaintiff are out of time.

It is however our clients' desire to obtain as much information as soon as possible with regard to the vessel herself and in this regard we would refer to your Mr. Powell's offer, late in June of this year, to provide for examination the Chief Officer of the vessel. We believe that such examination would be of only minimal value bearing in mind that the Chief Officer's recollection must of necessity have dimmed over the past seven years, unless you are able first to disclose to us the documentation about which owners received a long letter from Messrs. Clyde & Co. some considerable time ago. This letter deals with matters which would affect the vessel's seaworthiness having regard to the number of items of equipment, particularly in the navigation section, which failed leading the vessel to run aground.

Our present instructions do not enable us to accept service on behalf of any of the defendants named in the above proceedings. We await hearing from you.

Yours faithfully,

No.16(e)

EXHIBIT "PGVJ-2(d)"

JOHNSON, STOKES & MASTER
In Association with Norton Rose Botterell & Roche
SOLICITOR, NOTARIES, AGENTS FOR TRADEMARKS & PATENTS

HONGKONG AND SHANGHAI BANK BUILDING,
HONG KONG (G.P.O.BOX 387, HONG KONG)

Telephone: 5-256261
Cables: JISEM HONGKONG
Telex: 85242 HX

Date: 13th September, 1979

Our ref: CAP/RAP/Pl/78
Yor ref: PGVJ:CY-C78/4236

Messrs. Deacons,
Swire House, 6th Floor,
HONG KONG

Dear Sirs,

Re: "POTOI CHAU"

We thank you for your letter of 10th September written "Without Prejudice".

You state in your second and final paragraphs that you are still awaiting formal instructions with regard to acceptance of service and that your present instructions do not enable you to accept service on behalf of any of the Defendants. This is contradictory to what is stated in your letter of 15th April 1978 in which you confirmed your instructions to act for most of the Underwriters subsequently named as Defendants in the proceedings and your instructions to accept service and enter an appearance on behalf of those Underwriters with the exception of South China Insurance Co.Ltd. from whom you said you anticipated instructions "very shortly".

Concerning the Consignee Defendants, all, or most of whom are, or were, insured by the relevant Defendant Underwriters, it would be exceptional if the Defendant Underwriters were not subrogated to the rights of such Consignees and it would, therefore, follow that the

instructions which you represented yourselves as having would also extend to the relevant Consignees.

We are taking steps to serve direct the Underwriter Defendants and, failing your acceptance, within 5 days of the date of this letter, of service on behalf of all the Defendants, we will apply for an Order for substituted service on you.

Concerning your allegation that the proceedings issued in October 1978 were issued on behalf of the wrong Plaintiff and therefore, the claim by Hong Kong Atlantic Shipping Co. Ltd. being time barred, this is, needless to say, denied. Hong Kong Islands Shipping Co. Ltd., the managing/operating company to whom the G.A. guarantees were addressed have, in our opinion, perfect right to claim G.A. contributions and the fact that their undisclosed principals are subsequently disclosed and joined as Plaintiffs in no way derogates from that right. Of course, however, in the unlikely event of our being found wrong in this respect, it would follow that your clients particular average claims, so far as not validly extended would fail on the same principle.

Yours faithfully,

Sd. Johnson Stokes & Master

No. 16(f)

EXHIBIT "PGVJ-2(e)"

Outward
26/9/79

261206 PTS
AAD
73475
73475 OTERY HX
85242 JISEM HX

HX85242/256 JISEM 1115 26/9/79

ATTN: MR. P. JOLLY

RE: "POTOI CHAU"

WE REFER OUR TELECON SEP 24 WHEN YOU WERE TO REVERT LATER THAT DAY WITH LIST OF DEFENDANTS ON WHOSE BEHALF YOU HAVE INSTRUCTIONS TO ACCEPT SERVICE.

FOR YOUR INFORMATION, WE HAVE SERVED DIRECT THE 1ST, 2ND, 4TH, 5TH, 8TH, 9TH AND 11TH DEFENDANTS AFTER CONFIRMATION OF ITS REGISTERED OFFICE, WE WILL BE SERVING DIRECT THE 3RD DEFENDANT. THE 6TH AND 7TH DEFENDANTS ARE OUT OF THE JURISDICTION AND WE WILL OBTAIN ORDER FOR SERVICE ON THEM ABROAD. YOU HAVE INFORMED US YOU DO NOT ACT FOR THE 10TH DEFENDANT.

THE 2ND DEFENDANT HAS INFORMED US THAT IT HAS INSTRUCTED HASTINGS AND CO.

KINDLY ACCEPT THIS TLX AS NOTICE THAT, IF WE GET THE OPPORTUNITY, WE WILL ENTER JUDGMENT IN DEFAULT IN APPROPRIATE CASES.

IT WOULD BE A GOOD DEAL SIMPLER FOR ALL CONCERNED IF YOU WOULD NOW, AS AGREED, PROVIDE US WITH DEFINITIVE LIST OF THOSE ON WHOSE BEHALF YOU HAVE AUTHORITY TO ACCEPT SERVICE, ALSO IF YOU COULD INDICATE WHICH DEFENDANTS ON WHOSE BEHALF YOU INTEND TO ENTER APPEARANCES.

REGARDS POTTS

73475 OTERY HX
85242 JISEM HX
AAD 003'14
5

In the Supreme Court of Hong Kong

No.17
Judgment of Mr.Commissioner Mayo

15th October 1980

No. 17

JUDGMENT OF MR. COMMISSIONER MAYO

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

ACTION NO.3727 OF 1978

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. 1st Plaintiff

and

HONG KONG ATLANTIC SHIPPING CO.LTD. 2nd Plaintiff

and

CASTLE INSURANCE CO.LTD. (Formerly Pacific & Orient Underwriters (HK) Ltd.) and 84 Others Defendants

Coram: Mr. Commissioner Mayo
Date: 15th October 1980

J U D G M E N T

This is an application by 31 of the defendants in this action to strike out an order made by the Registrar ex parte for the joinder of the 2nd plaintiff.

The main argument advanced in support of the application is that the 2nd plaintiff should not have been added as a party as its claim is statute barred.

In its points of claim the 1st plaintiff made a claim against the 12th to 85th defendants under Average Agreements which were entered into in consideration of the 1st plaintiff delivering to them cargo without payment of cash deposits. The claims against the 1st to 11th defendants are based upon their being guarantors of the various payments of the proportions of general average attaching to the consignees of cargo i.e. the 12th to 85th defendants.

The claim for General Average arises out of a voyage of the "Potoi Chau" from various ports in the Far East to Jeddah, Hodeidah, Aden and Bombay in October 1972 when the said vessel encountered cyclonic weather conditions necessitating sacrifices of ship and cargo and the incurring of various items of expenditure.

The agreements and guarantees I have referred to were entered into in late 1972 and early 1973, the last guarantee being concluded in May 1973.

In view of the large number of cargo owners it took a considerable amount of time for the Adjusters Messrs. Stevens & Elmslie & Co. to prepare an Average Adjustment and they did not deliver this until the 31st August 1977. The Writ in these proceedings was issued on the 25th October 1978 and the order joining the 2nd plaintiff as a party was made by the Registrar on the 23rd July 1979.

Mr. Waung, who represented the defendants argued that his clients would be severally prejudiced by the addition of the 2nd plaintiff as they would be thereby deprived of defences it would have both as to the plaintiffs lack of title and the time bar.

The most important matter which has to be determined in this application is when does time run from on a claim based on General Average.

Mr. Waung submitted that as the relevant Bills of Lading provided that General Average should be adjusted according to the York Antwerp Rules 1950 and the publication of an adjustment had not been made a condition precedent to the existence of a course of action. Liability to contribute arose when sacrifices were made or expenditure incurred. The authority for this proposition was contained in the leading case on this subject Chandris v. Argo Insurance Co. Ltd. and others (1). Mr. Waung also cited the case of Nimrod (2) as having followed the principles laid down by Megaw J. (as he then was) in the Chandris case. Mr. Waung went on to argue that if it was clear that the 2nd plaintiff

(1) Lloyds 1963 Vol. 2 P.65
(2) Lloyds 1973 Vol. 2 P.91

was statute barred I should make an order to strike out the 2nd plaintiff from the proceedings. He referred to the case of Lucy v. Henleys Telegraph Works (3) where a similar situation had prevailed. In particular he referred to a passage in the judgment of Megaw L.J. on p.412 of the report which reads as follows :

> "The addition of a new and different party is not correcting the name of a party: it is not a matter of mistake. The inference is inevitable that an amendment to add a completely new and different defendant is not permissible where a relevant of limitation affecting the proposed defendant has expired."

The plaintiffs were represented by Mr. Mumford. He emphasised the practical problems which would be encountered if time ran from the date of the sacrifices or expenditure. In particular he referred to the difficulty or impossibility of cargo owners formulating claims prior to the finalisation of the Average Adjustment. He suggested that some cargo owners might not even know immediately whether or not they had a claim, on account of the numerous imponderables and the paucity of information which may be available.

He pointed out that the Salvage award in the instant case had not been determined until 1976 and Clyde & Co., the solicitors who had also acted for some of the defendants had not rendered their bill of costs to the Adjusters until April 1976.

However Mr. Mumford's main argument was that a course of action had not arisen until the amount being claimed had been determined. He said that a cargo owner would find himself in an impossible position if he had to commence litigation prior to an adjustment being made as it would be open to the defendants to resist the claim on the grounds that there were insufficient particulars of the claim for it to be maintained.

In support of this Mr. Mumford also argued

---

(3) 1971 1 Q.B. 393

that it was clear from the documentation that it was the intention of the parties that no moneys should be payable until after the Adjustment had been concluded. He referred to the case of "evje" (4) where it had been held that time ran from the date of the supporting documentation being concluded. With respect I do not think that this case is of much assistance to the plaintiff as the facts of the "Evje" were rather different to those in the present case. In the "Evje" case the usual form of Bond was not entered into and reliance was placed upon an exchange of correspondence which the Indian High Commissioner in London had entered into. In the final letter, when instructions were given to release the cargo, the solicitors for the ship owners wrote in the following terms "We thank you for your letter of the 23rd February and note that we may apply to you for settlement when our adjustment of General Average is completed." This indicated a different situation to the wording of bonds and contracts which are used in normal cases. Certainly there is nothing in the documentation exhibited to the affidavits before me which revealed that a separate contract had been entered into providing that the course of action was postponed until the settlement of the Average Adjustment.

Mr. Mumford also contended that although a ship owner may have a lien on cargo where average claims remained outstanding this did not mean that there had to be a right of action vested in the ship owner. With respect I disagree with Mr. Mumford and consider that this is further indication that a right of action existed from the date of the sacrifice or expenditure.

In addition to the contention that the 2nd plaintiff was not statute barred Mr. Mumford argued that this was an appropriate case for the Court to exercise its discretion in his clients favour and permit the 2nd plaintiff to remain a party to the proceedings. He said that a similar situation had arisen in an unreported case recently before the Court of Appeal in Hong Kong Mapimantan Timbers Co. v. Mighty Dragon Shipping Co. S.A. (5). In that case

---

(4) 1974 2 Lloyds Law Reports 57

(5) Civil Case No.57 of 1979

the Court of Appeal had permitted the amendment of a writ to allow the addition of a 2nd plaintiff notwithstanding that it was statute barred. It is clear that the circumstances of that case were unusual. One of the reasons why the 2nd plaintiff had become statute barred was that although leave to add the party had been sought within time the application had been adjourned as a result of the parties legal advisors having given an inaccurate estimate of time for the hearing of the application. This resulted in an adjournment which meant that the hearing was outside the time limit.

However the main thrust of Mr. Mumford's argument was the practical difficulties which would arise if time did run from 1972. It would seem to me that this argument can work both ways. Equally formidable problems are likely to arise if time runs from the date of the delivery of the adjustment. If this was so it would be in the hands of a ship owner to postpone an adjustment indefinitely. Perhaps even more important than this it may be necessary for the Courts to have to entertain claims where the subject matter of the dispute had occurred many years ago and insuperable difficulties may arise in establishing in any detail what transpired.

In the present case I understand that it is the intention of the defendants to argue that the question of General Average does not arise due to the unseaworthiness of the "Potoi Chau". It will become progressively more difficult for evidence to be adduced either to establish this or rebut it and it would seem to me that it would be unsatisfactory for the limitation period to run from the date of the delivery of the Adjustment. In any event it would appear to be clearly established from the authorities that time does not run from this time.

I am satisfied that a course of action did arise at the time of the adventure and accordingly the 2nd plaintiff's claim is now statute barred. I am also satisfied that I should not exercise any discretion in favour of the plaintiffs as submitted by Mr. Mumford. This application therefore succeeds and the Registrar's Order will be set aside.

Costs shall be to the defendants.

(S.H.Mayo)
Commissioner of the High Court

Mr. Mumford instructed by (Johnson, Stokes & Master) for Plaintiffs

Mr. William Waung instructed by (Deacons) for Defendants

No.18

ORDER OF MR. COMMISSIONER MAYO

1978, No. 3727

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

(COMMERCIAL LIST)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. Plaintiff

and

CASTLE INSURANCE CO.LTD. (Formerly Pacific & Orient Underwriters (H.K.) Ltd.) 1st Defendant

and

84 Others

BEFORE MR. COMMISSIONER MAYO OF SUPREME COURT IN CHAMBERS

O R D E R

UPON hearing the Counsel for the Plaintiff and the Counsel for the Defendants IT IS ORDERED that :-

1. The application by 31 Defendants in this action to strike out an order made by the Registrar ex parte for the joinder of the

In the Supreme Court of Hong Kong

No.18
Order of Mr. Commissioner Mayo
15th October 1980
(continued)

2nd Plaintiff succeeds and the Registrar's Order be set aside and that the costs of this application be to the Defendants in any event.

2. The time for lodging appeal be extended for four weeks from the date hereof.

3. The Plaintiffs do have leave to amend the Writ of Summons in this action as per draft. However, amendments must be indicated in the re-amended pleadings.

4. All costs thrown away as result of amendment to the Defendants in any event. No certificate for Counsel.

5. The Writ in this action be extended for one year from date of its expiration.

6. The Plaintiffs do have leave to serve process outside jurisdiction.

7. Costs in the cause.

Dated the 15th day of October 1980.

N.J.Barnett
Registrar

No. 19

NOTICE OF APPEAL

Civil Appeal No.178 of 1980

IN THE COURT OF APPEAL

On Appeal from the High Court of Justice
(High Court Action No. 3727 of 1978)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. — Plaintiff (Appellant)

and

CASTLE INSURANCE CO.LTD. (formerly Pacific & Orient Underwriters (H.K.) Ltd.)

and

84 Others — Defendants (Respondents)

NOTICE OF APPEAL

TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the above-named Hong Kong Islands Shipping Co.Ltd., on appeal from the order herein of the Honourable Mr. Commissioner Mayo made on the 15th day of October 1980, whereby it was ordered that the order of Mr. Registrar Barrington-Jones dated the 23rd day of July 1979 joining Hong Kong Atlantic Shipping Co.Ltd. as Second Plaintiffs be set aside.

And for an order that the thirty-one defendants who applied for the said order do pay the Plaintiffs the costs of this Appeal to be taxed.

AND FURTHER TAKE NOTICE that the grounds for this Appeal are :-

(1) That the learned Commissioner, for the reasons set out at (2) to (5) below, was

wrong in law in holding that the Second Plaintiffs claim was statute barred;

(2) That as between the parties to the adventure a cause of action for General Average contribution under the York/Antwerp Rules arises when an Adjustment is published;

(3) That in any event the Average Agreements signed by the Defendant cargo interests gave rise to no cause of action until an Adjustment was published.

(4) That the guarantees signed by the first eleven Defendants gave rise to no cause of action until an Adjustment had been published and the persons guaranteed had made default;

(5) That some at least of the expenditure in respect of which the Plaintiffs claim contribution, for example the Salvage Award and costs connected therewith and the cost of the Adjustment, arose less than six years before the joinder of the Second Plaintiff, so that on any view the Second Plaintiffs claim for contribution to that expenditure cannot be statute barred;

(6) That the learned Commissioner should as a matter of discretion have allowed the Second Plaintiff to remain a party to the action by reason of the facts that

(a) the First Plaintiff has in any event a good arguable case against the Defendants which is likely to proceed to trial;

(b) the Defendants will incur no additional burden in having to defend the claim of the Second Plaintiff since the Defence (if any) will be the same;

(c) the Plaintiffs will be severely prejudiced if the First Plaintiffs claim fails solely on the ground that it should have been brought by the Second Plaintiff, unless the Second Plaintiff remains a party to the action;

(d) the failure to join the Second Plaintiff initially was mere technical inadvertence which has caused no prejudice whatsoever to the Defendants.

AND FURTHER TAKE NOTICE that the Plaintiffs

reserve the right to amend and/or add further grounds of Appeal.

DATED the 10th day of November 1980.

Sd. Johnson Stokes & Master

JOHNSON, STOKES & MASTER
Solicitors for the Plaintiff (Appellant)

No.20

JUDGMENT OF SIR ALAN HUGGINS V-P, LEONARD J.A. AND SILKE, J.

IN THE COURT OF APPEAL 1980, No.178 (Civil)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. — Appellant (Plaintiff)

and

CASTLE INSURANCE CO. LTD. (formerly Pacific & Orient Underwriters (H.K.) Ltd.) — Respondents (Defendants)

and

84 Others

Coram: Sir Alan Huggins, V.-P., Leonard, J.A. & Silke, J.

J U D G M E N T

Sir Alan Huggins, V.-P.:

Cargo owners received Bills of Lading in respect of goods shipped in the m.v. "Potoi Chau" for a voyage from the Far East to the Middle East and Bombay. Those Bills of Lading provided for general average to be adjusted in accordance with the York/Antwerp Rules 1950. A

general average loss occurred and the vessel was taken to Aden for temporary repairs. The present action is against cargo owners and against the insurers of other cargo owners for general average contribution, the caro owners' insurers being sued under Letters of Guarantee given in consideration of the delivery of the cargo without payment of cash deposits.

The main question which now arises is At what date did time begin to run for the purposes of the Limitation Ordinance? If it be held that the period of limitation has expired, it would be necessary to consider whether the lower court should, in the exercise of its discretion, have extended the period.

The action was instituted by a company which, although its name appeared on the Bills of Lading as the apparent shipowners, may have been merely manager or agent acting on behalf of the shipowner. The action was commenced within six years of the casualty. The Plaintiff sought to join as second Plaintiff the company which claims to be owner of the ship, and the Registrar made an order ex parte allowing the joinder. On appeal Mr. Commissioner Mayo set aside that order on the ground that the claim of the proposed second plaintiff was out of time and that, if there were any discretion to extend the time, that discretion should not be exercised in its favour.

When does the right to claim general average contribution arise?

Four possible dates have been suggested as that on which time begins to run :

(a) The date of the general average loss;

(b) The date of safe arrival of the ship;

(c) the dates of the General Average Bonds and Guarantees; and

(d) the date of publication of the General Average Adjuster's statement.

Of these only the last was within six years of the date of the application for joinder of the proposed second plaintiff.

Since time begins to run from the date when a cause of action arises, it is necessary to consider what is the nature of an action for general average contribution. This was

discussed in Australian Coastal Shipping Commission v. Green 1971 1 Q.B. 456, 478 :

" We so rarely have to consider the law of general average that it is as well to remind ourselves of it. It arises when a ship, laden with cargo, is in peril on the sea, such peril indeed that the whole adventure, both ship and cargo, is in danger of being lost. If the master then, for the sake of all, throws overboard some of the cargo, so as to lighten the ship, it is unjust that the owner of the goods so jettisoned should be left to bear all the loss of it himself. He is entitled to a contribution from the shipowner and the other cargo-owners in proportion to their interests: see the exposition by Lord Tenterden quoted by Cresswell J. in Hallett v. Wigram (1850) 9 C.B. 580, 607-608 and Burton v. English (1883) 12 Q.B.D. 218. Likewise, if the master, for the sake of all, at the height of a storm, cuts away part of the ship's tackle (as in Birkley v. Presgrave (1801) 1 East 218) or cuts away a mast (as in Attwood v. Sellar & Co.(1880) 5 Q.B.D. 286), or, having sprung a leak, puts into a port of refuge for repairs and spends money on them (as in Svendsen v. Wallace Bros. (1885) 10 App.Cas. 404), it is unfair that the loss should fall on the shipowner alone. He is entitled to contribution from the cargo owners for the loss or expenditure to which he has been put. In all such cases the act done by the master is called a 'general average act': and the loss incurred is called a 'general average loss'."

The shipowner has the duty of suing on behalf of all the interests concerned and for that reason has a lien upon all the cargo saved: Crooks v. Allan (1879) 5 Q.B.D. 38. Normally that lien cannot be exercised until the vessel is brought to a place of safety, but in theory I see no reason why it should not be exercised before that if an owner of cargo were in a position to demand the earlier release of his goods. No such problem arose here and the cargo owners signed Lloyd's Average Bonds in lieu of a cash deposit when the vessel arrived. In addition cargo underwriters signed Letters of Guarantee in various forms, although most of them were not in the form approved by the Committee of Lloyd's: see Lowndes and Rudolf on General Average and York Antwerp Rules (10th ed.) 491 (1105).

Unless the terms of a contract of carriage make provisions to the contrary, it seems to me that in principle the right to claim contribution must arise at the moment of a general average loss or of the incurring of liability to a general average expenditure, whichever is the first, or alternatively when the vessel arrives in a place of safety. In practice it is never likely to be material which of those two dates is taken and Mr. Waung for the Respondents was content to take the latter date for the purposes of this appeal, but for myself I can see no sufficient reason for not taking the former. It is true that the right is liable to be defeated, if subsequently nothing is saved, but other rights liable to defeasance are not unknown to the law. It was submitted that because the extent of the right to contribution falls to be assessed upon the arrived values, and the assessment therefore cannot be made until the vessel reaches safety, no cause of action arises until then. That assumes that an action for general average contribution is an action for a liquidated sum, but no authority for that has been cited to us and the proposition is inconsistent with the whole doctrine of general average. Valuation is never a precise art and where several (and possibly very many) valuations are involved the resulting assessment of contribution must inevitably be inexact. One must not carry the analogy too far, but a claim to general average contribution is no more a claim for a liquidated sum than is a claim for contribution in tort. Both counsel accept General Electricity Board v. Halifax Corporation 1963 A.C. 785 as laying down the ingredients of a cause of action. At p.800 Lord Reid said :

> " Both parties founded on the judgment of Lord Esher M.R. in Coburn v. Colledge, and I am content for the purposes of this case to apply the test which he there states. First he quotes a definition he had given in an earlier case, 'every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the court.' Then he says: 'If the plaintiff alleges the facts which, if not traversed, would prima facie entitle him to recover, then I think he makes out a cause of action'."

Counsel for the appellant Plaintiff has cited several cases in support of his contention

that there must be an adjustment before a cause of action arises. The first is Brandeis, Goldschmidt & Co. v. Economic Insurance Co.Ltd. (1922) 11 Lloyd's Rep. 42. That was a claim by cargo owners not against other interests in the adventure but against their own insurers. They had been obliged to make a general average deposit in respect of a general average loss and sought indemnity in the like sum from the insurers. That claim, of course, fell to be considered in the light of the terms of the contract of insurance, which were incorporated in the policy. The Judge reluctantly came to the conclusion that under the terms of the policy the cargo owners could not recover a general average contribution unless there had been an adjustment, even though he was satisfied that there never would in fact be such an adjustment. Mr. Staughton relies upon the reiteration in the judgment of the statement that a general average liability cannot be ascertained until there has been an adjustment of some kind. The statement itself is incontestable, but it does not follow that an action for a general average contribution cannot be commenced until there has been such an adjustment. That case does not assist the Appellant.

On the face of it Noreuro Traders Ltd. v. E. Hardy & Co. (1923) 16 Lloyd's Rep. 319 is against the appellant, but Mr. Staughton seeks to distinguish it. What happened was this. A casualty occurred shortly before the First World War. It was not known whether there was a general average bond but no adjustment was made at the time in the place appointed. Subsequently a provisional adjustment was made in England on such evidence as was available, but this was admittedly inaccurate as the vessel had been torpedoed and sunk with all her papers. An action was brought upon the basis of this adjustment but was adjourned for a proper adjustment to be carried out in accordance with the charterparty. After the war the average bond was found and a proper adjustment was obtained, which showed that the claim should be for a smaller amount. The writ having been based upon the inaccurate, provisional adjustment it was necessary to amend the writ as well as the statement of claim. However, some payments had been made in sterling on the basis of the provisional adjustment and the question arose as to the material rate of exchange for deducting those payments. It was held that the rate of exchange at the date of the casualty should be

used throughout. Rowlatt, J. said :

> " Now the question has arisen as to the basis of the claim for an average contribution. It is not an action which reposes upon the average adjustment as if the average adjustment was like an architect's certificate in a builders' contract. I suppose the right was well understood before there were average adjusters, when simple operations like the cutting away of a mast, or something of that sort, or the throwing overboard of some cargo were the incidents that gave rise to these claims. It seems to me that the right as founded upon the sacrifice, upon the expenditure, is only quantified by the adjustment."

Later in his judgment the learned Judge regarded it as settled that liability must be taken to have attached at the date of arrival. It does not seem to me to matter that the case was not concerned with a statute of limitations: the following principles appear -

(i) the right to general average contribution arises at the time of the sacrifice;

(ii) liability attaches upon arrival at a place of safety; and

(iii) the liability is only quantified by the adjustment.

On the other hand, there are obiter dicta in The Christel Vinnen (1924) 18 Lloyd's Rep. 376 which do appear to support the view that the cause of action for general average contribution arises only when there has been an assessment. The issue, which came before the Court by consent, was whether some expenses incurred by the ship in discharging cargo and reloading that part which had not been damaged were a general average expenditure. It was held that they would have been a general average expenditure were it not for the fact that the casualty was due to the unseaworthiness of the vessel. However, the Judge observed at p.376 :

> ".....it must not be taken, apart from consent, that I should consider that the shipowners had any claim in general average at the time they put it forward in their counterclaim, for at that time they had not prepared any average statement or informed the cargo-owners' cargo-owners'

> proportion of the general average was, according to the view of the shipowners."

I think this must be read in context and it must not be assumed that Hill, J. was disagreeing with the views expressed by Rowlatt, J. in Noreuro Traders Ltd. v. E. Hardy & Co. Clearly an action for general average contribution cannot proceed to judgment until the liability has been quantified and all that Hill, J. was saying was that he would not have proceeded to judgment on the issue of liability to contribute alone had the parties not consented to ask him so to do. In Chandris v Argo Insurance Co.Ltd. 1963 2 Lloyd's Rep. 65, 78 Megaw, L.J. appeared to attach no weight to these observations and I respectfully do the same.

In Tate and Lyle Ltd. v.Hain Steamship Co. Ltd. (1934) 49 Lloyd's Rep. 123 (C.A.) and (1936) 55 Lloyd's Rep. 159 (House of Lords) the question was whether the shipowners had a lien for general average contribution which they were able to enforce against the plaintiffs, who were claiming repayment of a deposit under a Lloyd's General Average Bond. The plaintiffs became indorsees of Bills of Lading from Farr & Co. after the casualty. In the course of his dissenting judgment in the Court of Appeal Greer, L.J. said at p. 134 :

> " The somewhat unusual circumstances under which the general average sacrifices and general average expenses were incurred by the ship raise some difficult questions of law. (1) Does contribution become due from the merchant who is the owner of the cargo at the time the sacrifice has been made, or the expenses incurred, subject to the condition that the goods shall afterwards arrive at the port of discharge, or is the only obligation imposed by law an obligation on the merchant who is the owner of the goods under the bills of lading at the time the vessel reaches its port of discharge? (2) Has the ship a lien on the cargo to secure the due contribution of the owner of the goods which attaches to the goods at the time of the general average sacrifices or the incurring of the general average expenses, or is the lien only one which becomes available at the port of discharge as against the then holder of the bill of lading, whose contract under the decisions such as

Leduc v. Ward, 20 Q.B.D. 475, is entirely governed by the terms of the bill of lading?

I cannot find that these questions have ever been definitely settled in any of the decided cases, but the law has been frequently stated by Judges and jurists of authority in commercial matters in words which lead me to conclude that both the liability and the lien come into existence as soon as the sacrifice has been made or the expenses have been incurred, but that the liability and the lien are subject to be defeated by the non-arrival of the cargo at the port of destination."

The House of Lords agreed with Greer, L.J. Lord Atkin said at p.174 :

" The result is that at the time the casualty occurred and the general average sacrifice and expenses were incurred the ship was still under the charter. In respect of the Cuban sugar the charterers appear to have been at the time the owners of the goods; and I think it clear that on principle the contribution falls due from the persons who were owners at the time of the sacrifice, though no doubt it may be passed on to subsequent assignees of the goods by appropriate contractual stipulations. The place of adjustment does not seem to have a bearing upon the question against whom the contribution has to be adjusted."

The Plaintiffs in the present case submit that this decison also is distinguishable on the ground that it was not concerned with a statute of limitation, but I think it is very much in point.

I come next to Morrison Steamship Co.Ltd. v. Greystoke Castle 1947 A.C. 265. There a collision occurred between the Greystoke Castle and the Cheldale for which the former was held three quarters to blame and the latter one quarter. The owners of cargo in the Greystoke Castle became liable to general average contribution and they claimed against the owners of the Cheldale one quarter of that contribution. By a majority the House of Lords held that the cargo owners' liability to contribute arose from, and therefore at the time of, the casualty

even though it might be divested or diminished by the subsequent chances of the voyage, as Greer, L.J. had held in the Court of Appeal in Tate and Lyle Ltd. v. Hain Steamship Co.Ltd. (supra). Mr. Staughton once more emphasized that the case was not directly concerned with limitation of actions, but the principle there stated appears to me no less relevant in that context.

In Chandris v. Argo Insurance Co.Ltd.(supra) Megaw, J. was dealing with an action brought by shipowners against their insurers more than six years after losses and of termination of adventures but less than six years after the relevant average adjustments were completed. The insurers contended that the action was statute barred. Some of the arguments there rejected by the learned Judge were identical to those which have been addressed to us. It was said on behalf of the shipowners that they had no claim against the insurers in respect of the general average losses until the adjustments were complete. As in our case the adjustments took a long time to complete. The Judge rightly pointed out that even then the adjustment was in no way conclusive. With reference to the York Antwerp Rules 1924 he said at p.78 :

> " It is, I think, a fair conclusion from the terms of the Rules that the parties contemplated, and provided, that an average statement should be produced. It does not, however, appear to me to be a legitimate conclusion that the parties contemplated or provided that the publication of an average statement should be a condition precedent to a cause of action arising."

Mr. Staughton submitted that the second sentence in that passage was inconsistent with Central Electricity Board v. Halifax Corporation, but I do not think it is. Although that case was based upon policies of insurance, it was directly in point. We were invited to reject the words of Megaw, J. at p.80, where he said : sic

> "I find it difficult to see how a lien can exist (except, perhaps by some express contractual provision) unless there is, co-existing, a presently enforceable legal right to payment. There is no doubt that the shipowner's lien exists at law, as Lord Justice Greer said, as soon as the sacrifice has been made or the expenses incurred. If a lien at law, then a cause of action."

Nothing in the later cases appears to me to cast doubt on the judgment in that case, which I respectfully adopt as a valuable and entirely correct statement of the law, as Kerr, J. appears to have done in The Nimrod 1973 2 Lloyd's Rep. 91, 97 :

> "If I had to decide this point, I would unhesitatingly apply the reasoning of Mr. Justice Megaw in Chandris v. Argo and also hold that any claim under the bond began to accrue at the time of the casualty or at the date of the bond, if later."

I must here refer briefly to Union of India v. E.B.Aaby's Rederi A/S 1975 A.C. 797, since it is relied upon heavily by Mr. Staughton. I shall have to return to it later. At p.816F Lord Salmon said :

> "There are many differences between the liability to pay general average contribution under the common law and the liability to pay such contribution under the charterparty which incorporates the York/Antwerp Rules. At common law, e.g., no general average would be payable by the charterers if the general average expenditure had been due to a breach of the shipowners' warranty of seaworthiness. Under the York/Antwerp Rules, however, even if the expenditure had been incurred by reason of the ship's unseaworthiness, general average contribution would nevertheless be payable by the charterers unless the unseaworthiness was caused by lack of due diligence on the part of the shipowners. Indeed, in the present case, the real dispute between the parties seems to be whether or not the general average expenditure has been so caused."

The decision of the House turned initially upon the construction of the "Centrocon" arbitration clause in the charterparty, under which any claimant was required to appoint an arbitrator within twelve months of final discharge. As we shall see, however, there was later a new contract.

The conclusion I have reached is that at Common Law the cause of action for general average contribution arises at the time of the casualty, subject to defeasance if the vessel does not reach safety, and that nothing in the York/Antwerp Rules postpones that cause of action.

The Bonds and Guarantees

What I have already said indicates my view that the Lloyd's Average Bond is not to be construed so as to deprive the Appellants of any cause of action until the adjustment is complete where the form is signed by the cargo-owners or their agents, as in The Nimrod. It remains to consider the terms of the other documents.

The form of "Letter of Guarantee" signed by the 1st Defendant's predecessors and a number of the other insurers was in these terms :

> " In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of General Average and/or Salvage and/or Special Charges for which the said goods are legally liable under an adjustment drawn up in accordance with the contract of affreightment."

The signature is signed in their own names and not as agent for the cargo-owners. No doubt, as Mr. Staughton contended, the parties to the letters understood that the insurers would not pay until the adjustment had been drawn up. However, the letters were given because there was an existing liability to contribute and an existing lien in respect of that liability. The wording was unhappy because of the use of the present tense at a time when, ex hypothesi, no adjustment had been drawn up. The insurers could not be called upon to pay under the Letters of Guarantee until there was a proper adjustment, but that does not affect the liability of the cargo-owners. If the cargo-owners themselves or their agents had signed a bond containing the words "are legally liable under an adjustment drawn up.....", I would have held that there was no sufficient indication of an intention to alter the position existing at Common Law: the cargo-owners were not liable under the adjustment but by virtue of the general average loss. The insurers were not liable for the general average loss save, under the policy of insurance, to the cargo-owners themselves. The Letters of Guarantee introduced an entirely new cause of action and I think there is no doubt but that both parties contemplated the drawing up of a Statement of Adjustment. Mr. Waung conceded that the documents created a primary obligation and not a secondary one, and that the points of

claim correctly did not plead a demand on the cargo-owners and a default. At first sight there would seem to be no reason why the signatories should not, if they thought fit, agree that there should be a Statement of Adjustment in a particular form as a condition precedent to the insurers' liability to the shipowners, but, if the insurers chose to agree, they would have to accept the consequence that the period of limitation would run from the date of the adjustment. Mr. Waung, however,relies upon The Albisola 1936 American Maritime Cases 1740 for the proposition at p.1746,

> " Since the agreement in its essence was intended to take the place of the lien, it would seem but reasonable that the ship owner's rights under it should rise no higher than what they would be if he were asserting his lien."

The material part of the agreement there under consideration was as follows :-

> ".....so much of the losses and expenses aforesaid as upon an adjustment of the same to be stated by Johnson & Higgins, Average Adjusters, according to the provisions of the contract of affreightment and to the laws and usages applicable, may be shown by the statement to be a charge upon said cargo, ...shall be paid by us.....",

and the Judge continued

> " This is a familiar form of average agreement, and substantially similar agreements or bonds have been before the courts many times. I do not find that the contention has ever been made that the legal operation and effect of an average agreement of this kind is anything more than to fix the measure of the obligor's liability and secure payment of the amount unless it shall afterward appear that it was not a case for general average."

He indicated what he meant by "an average agreement of this kind" when he said :

> "As a result, the practice early obtained of exacting agreements of this kind from the cargo owners, sometimes in the form of a bond with surety, sometimes accompanied by a deposit, and sometimes guaranteed by

the underwriters."

As I understand him, Mr. Waung submits that the Judge was not merely saying that clear words are required to displace a presumption that the parties to such an agreement do not intend to do more than "fix the measure of the obligor's liability and secure payment of the amount unless it shall afterwards appear that it was not a case for general average", but that there was a positive rule of law that however the agreement is worded it cannot give the obligor any right which he would not otherwise have had. The statement of principle set out in the first passage cited from the judgment in The Albisola must be read in its context, namely the argument that the agreement bound the cargo owner to contribute the amount shown to be due by the average statement regardless of the cause of stranding. That is what the Judge had in mind when he referred to the shipowners' rights not rising higher than what they would be if he were asserting his lien. I do not believe that the Judge purported to lay down a positive rule of law such as that contended for by the insurers here.

I now return to Union of India v. E.B.Aaby's Rederi A/S (supra). What happened there was that the appellants, the cargo owners, sought the discharge of a general average lian upon their goods. Their High Commission in London executed a written undertaking to pay "any general average contribution which may be legally due". The question was whether that altered the liability under the charterparty, which by the time action was brought was defeated by the shipowners' failure to appoint an arbitrator within the twelve months fixed by the "Centrocon" arbitration clause. On this part of the case the House of Lords held that the undertaking created a new contract which was subject to no time limit save such as might be imposed by statute. In the circumstances the shipowners' claim was not barred. In the case at bar the question is, similarly, whether there has been a new contract which is not time barred and I would hold that there has. I find myself unable to construe the Letters of Guarantee of which p.151 of the record is an example otherwise than as meaning "we hereby guarantee the payment of general av erage.....for which the said goods are legally liable, provided that our liability shall not arise until an adjustment shall have been drawn up in accordance with the contract of

affreightment". It seems to me that the only reasonable conclusion is that the Statement of Adjustment was to be a condition precedent of of the insurers' liability and that until such condition was fulfilled no cause of action against the insurers arose under the agreement.

I have not arrived at that conclusion without some misgivings: it is a question of construction of the Letter of Guarantee and the trend of the authorities now appears to be to throw to the winds the old rule that the intention of the parties (or, in the case of a statute, that of the Legislature) had to be gathered from the words actually used and not by guessing at the intention in the light of the surrounding circumstances, which might be contrary to what had been said - a rule which had the great benefit of certainty. The signatories to the Letters of Guarantee are insurers and one would expect them to agree to undertake no liability greater than, or different from, that of their insured. Thus the Lloyd's form of guarantee to which I have already alluded guarantees

> ".....the due payment to the Shipowners of any contribution for General Average and/or Salvage and/or other Charges which may be properly chargeable against the said merchandise."

The insurers may, however, limit their liability to the amount recoverable under the relevant policy or policies of insurance. On the other hand it is not unknown for a ship's insurers to agree to pay the whole of a small loss, without contribution, to avoid disproportionate expense in collecting from cargo owners. In theory there is no reason why an insurer should not do exactly what the Indian High Commission did in Union of India v. E.B.Aaby's Rederi A/S and, if he does not take the trouble to ensure that he uses a form of words which covers only the liability he means to undertake, I fail to see why the Courts should assume the task of re-writing his Letter of Guarantee for him.

The second form of Letter of Guarantee is exemplified at p.154 of the record and was in these terms :

> " In consideration of the delivery in due course to the Consignees of the Merchandise specified below, without collection of a deposit on account of

Average, we , the undersigned Underwriters, hereby guarantee to the Shipowners on account of the concerned the payment of any contribution to General Average and/or Salvage and/or Charges which may hereafter be ascertained to be due in respect of the said Merchandise.

We further agree to arrange a prompt payment on account if required by you, so soon as such payment may be certified to by the Adjusters."

Here again I think we are driven to the conclusion that payment was to be dependent upon presentation of the Adjusters' certificate. This form of guarantee was signed by the 3rd Defendant and the 11th Defendant, and that signed by the 9th Defendant was so similar that its effect must be the same.

Mr. Staughton accepted that the third form, exemplified at p.178, might be capable of a different interpretation. It reads :

" In consideration of your delivering to .....the undermentioned cargo ex '.....' from.....covered under our Policy(ies) No.(s)....for.....I hereby guarantee that this.....will pay any just claim for General Average, Special and/or other charges as may properly be found due in respect of said cargo."

Here there is no direct reference to a general average statement or certificate, but it seems to me that the words "any just claim which may properly be found due (sc. any claim for such just contribution as may properly be found due) are not synonymous with "any claim for such contribution as is justly due" (or "as may /now/ be properly chargeable"). Accordingly I think any claim by the proposed plaintiff against the 5th Defendant would not be statute barred.

The fourth form, such as that at p.192 of the record, reads :

" In consideration of your delivering to the under-mentioned Consignees the goods specified below without payment of a deposit we undertake to guarantee the due payment of the General Average Contribution and/or special charges that may be properly found

to be due on the said goods upon the completion of the Average Statement by the Adjusters."

This is capable of two interpretations, depending upon whether the words "upon the completion of the Average Statement by the Adjusters" are taken to qualify "the due payment" or the words "properly found to be due". However, whichever interpretation is correct - and I think that grammatically it must be the second - the production of the Average Statement is clearly intended to be a condition precedent to liability. The 8th Defendant is therefore in the same position as the 5th Defendant.

Whether the causes of action of the 1st and 2nd Plaintiffs are substantially the same

The next issue raised is whether, despite the fact that some of the claims by the proposed 2nd Plaintiff would be statute barred, the fact that the 2nd Plaintiff (as shipowner)is relying upon substantially the same cause of action as the 1st Plaintiff set up by his writ prevents time from running against from the date of the 1st Plaintiff's writ. Mr. Staughton based his argument upon Firestone Planations Co. v. The United States of America 1945 American Maritime Cases 746 and Kalimantan Timbers Co. v Mighty Dragon Shipping Co. S.A. 1979 Civil Appeal No.57. The short answer to the argument is that the cause of action set up by the proposed 2nd Plaintiff is not substantially the same as that set up by the 1st Plaintiff. It was suggested that the 1st Plaintiff might be the agent of the 2nd Plaintiff, but that is not how the claim was originally framed. Even if it had been framed in that way it would have been open to the objection that an agent has no cause of action in his own right.

Discretion

Finally it was contended on behalf of the Plaintiff that the Commissioner did have a discretion and was wrong in declining to exercise it in favour of joining the proposed 2nd Plaintiff.

The power to join additional parties stems from Order 15 rule 6. However, where a party is joined under the provisions of that rule there must of necessity be further procedural consequences: the writ and pleadings will require amendment: per Widgery, L.J. in Braniff

v. Holland and Hannen & Cubitts (Southern) Ltd. 1969 3 All E.R. 959, 961A. Order 20 rule 5(2) permits an amendment in the discretion of the Judge even where any relevant period of limitation current at the date of issue of the writ has expired, but, says Mr. Staughton, that power is expressly limited to amendments under paragraph (3), (4) and (5) and the amendment he seeks is not within those paragraphs. I have already said that the cause of action now sought to be set up is not the same as that presently before the Court, but it arises out of substantially the same facts and it follows that I think the amendment is within paragraph (5). There would, therefore, be a discretion under paragraph (2). If that be wrong, paragraph (2) has no application. Mr. Staughton submits that paragraph (1) is not limited by the later provisions of the rule and should be given its full width. He relies upon Brickfield Properties Ltd. v. Newton 1979 1 W.L.R. 862, where Sachs, L.J. at p.875 agrees with the observations of Lord Denning, M.R. to that effect in Sterman v E.W. and W.J.Moore 1971 Q.B.59 in preference to those of Widgery, L.J. in Braniff v. Holland and Hannen & Cubitts (Southern) Ltd. (supra at p.1541). I adopt that view and, whether this case is within paragraph (5) or not, I think the Judge had a discretion.

As this is not a case like Firestone Plantations Co. v. The United States of America (supra), where in truth the plaintiff is setting up the same cause of action as was set up, within time, by the original plaintiff, I think one must apply the general rule, which is that a party should not be joined for the purposes of raising a stale claim: see Mabro v. Eagle Star & Dominions Insurance Co.Ltd. 1932 1 K.B. 485 and Braniff v. Holland and Hannen & Cubitts (Southern) Ltd. Mr. Staughton submits that Mabro v. Eagle Star & Dominions Insurance Co.Ltd. is no longer good law and he suggests that all the recent cases where what I have called "the general rule" has been applied have been cases of joining defendants. He submits that different considerations apply to the joinder of a plaintiff. I see no reason why that should be so.

I think Mr. Commissioner Mayo was right to decline to exercise his discretion in favour of the plaintiff. I would allow the appeal to the extent of giving leave to join the 2nd plaintiff subject to the condition that its action shall be

limited to claims against the 1st to 11th Defendants under the Letters of Guarantee.

Reliance was also placed on The Puerto Acevado (1978) 1 Lloyd's Rep. 38. In that case cargo owners who were claiming against a ship arrested the ship. Her insurers gave an undertaking to honour any claim against the shipowners. The insurers agreed to accept service and enter into appearance on behalf of the shipowners. Then a defence was filed denying liability and alleging that the vessel was under demise charter at the material time. The cargo owners sought to join the demise charterers, but the period of limitation under the Hague Rules had expired. The Court of Appeal allowed the joinder, saying that the demise charterers, who were insured by the same P. & I. Club, could raise any objection they thought fit at a later date. That, of course, was not a case under the Ordinance and is also distinguishable on the ground that the Plaintiff in the case before us was in no way misled by the Defendant in bringing the action in its own name. I do not think that case assists the Plaintiff.

Leonard, J.A.

Leonard, J.A. :

On the 25th October 1972 the M.V. Potoi Chau, which was bound from various ports in the Far East with cargo to Jeddah, Hodeidah, Aden and Bombay, encountered a cyclone and ran aground off the north east coast of the Somalia Republic. On the 30th October 1972 salvage operations commenced. These were not immediately effectual and on the 4th November 1972 the jettisoning of cargo to lighten the vessel commenced. By the 20th November 1972 a total of approximately 2,300 tons of cargo had been jettisoned. The vessel was refloated and went under her own power to Aden where she arrived on the 24th November 1972. There she underwent temporary repairs and all cargoes were discharged except for a small quantity bound for Bombay, Jeddah and Hodeidah. She then went to Bombay and between the 24th January 1973 and 10th February 1973 cargo intended for Jeddah and Hodeidah was loaded and carried on other vessels. Salvage arbitration took place and a substantial sum was awarded to the salvors by a general salvage award published on the 22nd January 1976. The appellant, Hong Kong Islands Shipping Co.Ltd. ("Islands") was the manager of the vessel. The

second plaintiff in the court below, Hong Kong Atlantic Shipping Co.Ltd. ("Atlantic") was her owner. Defendants 12 to 85 were the owners of the parcels of cargo on board which eventually reached destination and they were variously insured with defendants 1 to 11, all of whom are insurance companies. For the purposes of this appeal the bills of lading issued to them may be regarded as having been in identical terms. All were on forms printed for and bearing the letterhead of Islands and were signed by one or other of various shipping agents in ports in the Far East "for the master by_____ as shipping agent" and all contained the following terms :

> "21. (Lien) The Carrier, Master or Agent and all others who, pursuant hereto, perform any service or expend any money or incur any damage or liability for or in connection with or on account of the goods shall have a lien upon the said goods for freight, deadfreight, demurrage, storage and all other charges, expenditures and damages which may be so incurred, and all of the same shall also be borne by the Shipper, Consignee and/or Owner of the goods; the Carrier, Master or Agent and all such others may enforce such lien by public or private sale and with or without, notice or by legal proceedings.
>
> 28. (General Average) General Average shall be adjusted, stated and settled according to YORK ANTWERP RULES, 1950.
>
> 29. (Jason Clause) In the event of accident, danger, damage,or disaster, before or after commencement of the voyage, resulting from any cause whatsoever whether due to negligence or not, for which or for the consequences of which, the Carrier is not responsible by statute, contract, or otherwise, the goods, Shippers, Consignees or Owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay Salvage and special charges incurred in respect of the goods."

As I understand it when signing these bills of lading for the "master" the shipping agents did so as sub-agents for Atlantic, the owner of the

vessel. I understand however that it may be contended at the trial that Islands was the principal with whom the contract of affreightment was made.

In order to secure release of their cargo without payment of cash deposits the 12th to 85th defendants inclusive signed average agreements with Islands agreeing to pay the proportion of general average chargeable to their respective consignments and the 1st to the 11th defendants guaranteed, in terms which I will discuss later, payment of the respective proportion of general average attaching to their respective consignments in consideration of their being released from the ship's lien without cash deposits having been paid.

The adjustment of general average was not completed and published by the average adjusters until 31st October 1977.

On the 25th September 1978, exactly six years from the date of grounding,a writ was issued in which Islands was named as sole plaintiff. On the 23rd July 1979 an application was made ex parte to the Registrar to amend the writ by adding as second plaintiff the name of Atlantic. This application was made after correspondence between the solicitors for the parties to which I do not consider it necessary to refer save to remark that it does appear that there was some confusion on the part of the defendant's solicitors as to the nature of their instructions and those defendants from whom they emanated.

On the 5th January 1980 an inter partes summons was issued on behalf of the first eleven defendants (with the exception of the 7th and 10th) and on behalf of 22 of defendants 12th to 85th for an order that the second plaintiff, Atlantic be struck out as a party to the action on the grounds that at the date of the ex parte application and the order of the Registrar giving leave to amend the writ by adding Atlantic as a party the time limited for Atlantic's claim against the said defendants had expired and that the order granting such leave was therefore incorrectly made. This application was beset by misfortune arising from illnesses but was heard and determined by Mr. Commissioner Mayo, as he then was, on the 15th October 1980 whereupon he ordered that the Registrar's order should be set aside. It is against this order that this appeal is brought.

The guarantees entered into by the 1st to 11th defendants differed as to those to whom they were addressed and their precise terms. Thus some were addressed to shipping agents, some to the average adjusters, some to Islands, some to unnamed persons. They were in varying forms. Some read :

Form 1

"In consideration of your delivering the goods described below without payment of a cash deposit, we hereby guarantee the payment of general average and/or salvage and/or special charges for which the said goods are legally liable under and adjustment drawn up in accordance with the contract of affreightment."

Form 2

"this society will pay any just claim for general average special and/or other charges as may properly be found due in respect of the said cargo."

Form 3

"the due payment of the general average contribution and/or special charges that may be properly found to be due on the said goods upon the completion of the average statement by the adjusters."

Form 4

"the payment of any contribution to general average which may hereafter be ascertained to be due in respect of the said merchandise"

At page 207 of the Record there is exhibited a form of Lloyd's Bond and Guarantee heading in part :-

"1. The consignees.....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.

2. Lloyd's hereby guarantee to the ship owner 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."

No consignee is identified in this document and I do not think I need concern myself with it.

It was contended throughout on behalf of the insurers that time ran in their favour for the purposes of limitation from the respective dates of their guarantees the last of which was given in May 1973. The average adjusters' statement was not delivered until the 31st August 1977. The writ was issued on 25th October 1978 and Atlantic was joined as second plaintiff pursuant to an order of the Registrar of the 26th July 1979. By that date unless time ran against Atlantic as from 31st August 1977 any action by Atlantic would have been barred by limitation. Mr. Staughton, Q.C. for the appellant made four basic submissions :

(I) Where by contract the parties to a maritime adventure agree that their relationship will be governed by the York/Antwerp Rules it becomes a term of their contract that general average will be adjusted in accordance with those rules and that an adjustment statement will be produced. It follows, he suggested, that no cause of action to recover general average contribution arises until the adjustment is produced.

(II) His second submission was narrower and was to the effect that by the express or implied terms of the bonds and guarantees in this case an adjustment had to be produced and no cause of action could arise until that had been done.

(III) The third submission was that since,as was common case, Islands had commenced its action in time Atlantic as an undisclosed principal was entitled to intervene even if at the time of joinder its claim would otherwise have been time barred.

(IV) His fourth submission was that in any event this court had a descretion to allow joinder even if Atlantic's claim was otherwise barred and that discretion should have been exercised in his client's favour.

In support of his first proposition Mr. Staughton referred to Central Electricity Board v. Halifax Corporation(1) . It was provided by the Electricity Act 1947 that cash held by a local authority in its capacity as an "electricity undertaker" should, on the vesting date, vest in the predecessors of the appellant. Shortly before the vesting date April 1st 1948 the respondents had transferred an accumulated sum of £34,500, derived from revenues of the electricity undertaking, to its general rate account at the bank. The appellants claimed that this fund vested in them. By section 15 of the Act it was provided that any question arising as to whether any property was held by a local authority in its capacity as an authorised undertaker should be determined by the Minister of Health. That the sum of £34,500 was so held was not determined by the minister until after 18th September 1958. The respondents refused to pay and action against them commenced on March 6th 1959 for £34,500 under the provisions of the Electricity Acts whereupon the respondents claimed the benefit of the Limitation Act.

At page 799 Lord Reid observed :

"Accordingly, the period of limitation in this case is six years and the only question is when that period began to run. There are two possibilities. If the cause of action accrued when this sum vested in the appellants' predecessors in 1948, then clearly this action is statute-barred and fails. But if, as the appellants contends, the cause of action only accrued when the Minister gave his decision in 1958, then this appeal must succeed. This depends on what is meant by a cause of action accruing.

Both parties founded on the judgment of Lord Esher M.R. in Coburn v. Colledge, and I am content for the purpose of this case to apply the test which he there states. First he quotes a definition he had given in an earlier case, 'every fact which it would be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment of the court.' Then he says:

'If the plaintiff alleges the facts which, if not traversed, would prima

(1) (1963) A.C. 785

> facie entitle him to recover, then I think he makes out a cause of action.'

If the appellants had brought an action to recover this sum within six years of the vesting date they would have alleged that this sum had been held or used by the respondents before the vesting date wholly or mainly in their capacity of electricity undertakers and that on the vesting date it had vested in them by virtue of the Act. But they would not at that time have been able to prove their allegation that the sum had been held or used by the respondents in that capacity. It is not disputed that the only competent method of proving that allegation is to produce a decision of the Minister, because in effect the Act forbids the court to inquire into that matter and puts a decision on that matter within the exclusive jurisdiction of the Minister. So in this case that allegation could only have been proved in court after the Minister had given his decision.

The respondents say that the need for a decision by the Minister would only have arisen if they had traversed the allegation that they had held the money in their capacity of electricity undertakers, and they might not have done that. So, on Lord Esher's definition, a decision of the Minister cannot be a part of the cause of action. The appellants say that a decision by the Minister was a condition precedent to the bringing of an action. By facts which it would be necessary to prove if traversed, Lord Esher must have meant facts which could competently be proved in court when the action was brought, and this fact could not competently be proved in court when the action was brought, because it could not be proved in court until the Minister had given his decision."

He went on to hold that the effect of the Minister's decision was merely to prove that the sum had belonged to appellants ever since the vesting date and that

> "a cause of action can exist although one of the facts essential to the cause of action can only be proved otherwise than

by evidence led in court and has not yet been proved when action is brought. If the appellants had begun an action within six years of the vesting date, and had applied to the Minister for his decision when the respondents traversed their allegation that the sum sued for had been held or used by the respondents in their capacity of electricity undertakers, proceedings in the action could, if necessary, have been stayed to await the Minister's decision. But they did not do that and, in my judgment, this action is barred by section 2(1)(d) of the Limitation Act. I would therefore dismiss this appeal."

Although this case does indicate in general terms when a cause of action accrues it does not assist us in determining the question as to when all the facts necessary for the appellant or Atlantic to prove, to entitle them to judgment, must have come into existence. Mr. Staughton also referred us to Brandeis Goldschmidt & Co. v. The Economic Insurance Co.Ltd.(2).

In that case the plaintiff firm were owners of a cargo shipped in a german vessel from Australia to Antwerp which vessel owing to the war took shelter at Syracuse. While there the cargo was held covered by underwriters a fire broke out and sacrifices had to be made to save the cargo. This cargo was undamaged and the plaintiffs made good their claim to it and got delivery on making a general average deposit of 40% of its value. Normally a marine underwriter would have reimbursed the insurer the sum paid as deposit and availed himself of any rights which remained, if there were on the eventual settlement a reduction, but here no one would produce a general average statement; the war having intervened the shipowner neither knew or cared about it. The plaintiff sought to recover its deposit from the underwriters. The policy did not exclude liability to pay general average but the institute cargo clauses formed part of the policy and Clause 4 of them said

"General average and salvage charges payable according to foreign statement or per York/Antwerp Rules if in accordance with the contract of affreightment."

---

(2) (1922) 11 Ll. L.R.42

There had been no foreign statement nor statement according to the York/Antwerp Rules and the underwriters contended that they did not have to pay unless and until there was.

Bailache, J. was of the opinion, because of section 66 of the Marine Insurance Act, that had there been a general average sacrifice the underwriter would have been immediately liable independently of any average statement but that :

> "when the code deals with general average expenditure...the underwriter is only liable for the proper proportion of the expenditure which the person making the expenditure is himself liable for and it is obvious that in that case the liability cannot be ascertained until there has been some adjustment....and in as much as an adjustment is necessary to this ascertainment....it seems to me I must hold that there is an express provision in the policy which prevents the assured recovering unless and until some one or other has made an adjustment either according to foreign law or according to York/Antwerp Rules an adjustment which would show precisely what is the sum payable by those underwriters."

He felt, however much he might regret that the underwriters took the point, that they were entitled to succeed.

Again I do not find great assistance from this case. It does not deal with limitation and it arose on most unusual circumstances. The preparation of an average statement can be a precondition to the existence of a cause of action if the parties agree that it shall but I must bear in mind, when considering if they have so agreed, that it is in no way conclusive as between the parties. A further observation I would make is that Bailache, J. has used the word "ascertained" throughout. Liability even if not ascertained in amount may have accrued.

That an average statement is in no way conclusive was recognised by Rowlatt, J. in Noreuro Traders Ltd. v. Hardy & Co. (3) when he said at page 321 :

---

(3) (1923) 16 Ll. L.R. 319

> "Now the question has arisen as to the basis of the claim for an average contribution. It is not an action which reposes upon the average adjustment as if the average adjustment was like an architect's certificate in a builder's contract. I suppose the right was well understood before there were average adjusters..... It seems to me that the right as founded upon the sacrifice, upon the expenditure, is only quantified by the adjustment."

He was there not concerned with any question of limitation nor with a case to which the 1950 York/Antwerp Rules applied nor with a case where underwriters had entered into a bond or guarantee but it is to be noted that he treated the right to general average as accruing at the date of the sacrifice.

Hill, J. advanced a contrary view in the Christel Vinnen (4) when he said :

> "It must not be taken, apart from consent, that I should consider that the shipowners had any claim in general average at the time they put it forward in their counter-claim, for at that time they had not prepared any average statement or informed the cargo-owners of what the cargo-owners' proportion of the general average was, according to the view of the shipowners."

What is there in the York/Antwerp Rules 1950 suggesting that an adjustment statement is a precondition for the accrual of a cause of action? They start with a "rule of interpretation" which provides that

> "In the adjustment of general average the following lettered and numbered rules shall apply to the exclusion of any Law and Practice inconsistent therewith. Except as provided by the numbered rules general average shall be adjusted according to the lettered rules".

At first sight then the one would expect the rules to apply primarily to questions of quantification of rights and liabilities rather than to their accrual - to provide an agreed basis on which the average adjuster is to work. Rule A defines a general average act. Rule B reads :

> "General average sacrifices and expenses

(4) 18 Ll. L.R. 376

shall be borne by the different contributing interests on the basis hereinafter provided." (emphasis added)

Again this rule suggests that what the compilers of the rules are concerned with is the giving of guidance to the adjuster as to his method of procedure in quantifying liabilities.

The most one can say about the rules as I read them is that they envisage that an adjustment shall be made in accordance with their provisions by an average adjuster. It would appear from the account of their history and development as given in Chapter 10 of Lowndes & Rudolf's work on The Law of General Average and the York/Antwerp Rules that, although the original purpose of the meetings held at Glasgow 1860, York 1864 and Antwerp 1877 was to obtain international agreement on such questions as what exact losses must be regarded as general average, and how such losses should be calculated and borne, by mutual legislation in the countries concerned, it was realized by 1878 that

> "the most effectual mode of procedure will be by a general agreement on the part of shipowners, merchants and underwriters to insert in bills of lading and charterparties the words 'general average, if any payable according to York and Antwerp Rules' and in policies of insurance to add to the foreign general average clause the words 'or York and Antwerp Rules' so that the clause will run thus 'general average payable as per foreign adjustment (or custom) or York and Antwerp Rules, if so made up'."

As a result of this 1878 resolution the intention to proceed by mutual legislation in the countries concerned was dropped. In the various meetings which followed it was realized that while the object - to secure uniformity of practice - remained that object could best be attained by inserting in bills of lading, charterparties and insurance policies words or paragraphs incorporating rules commonly current at their date. The York/Antwerp Rules would therefore apply only if the parties to such agreements agreed that they should and the phrases incorporating them must therefore be construed as must any other contractual terms. While assistance can be had from decisions in other jurisdictions as to their effect it is against the background of our general law of

contract that their effect in any particular case is to be considered.

Since the rules themselves do not provide either that an adjustment made by a professional average adjuster shall be final or that an adjustment shall be a precondition to payment and since they are silent as to limitation there is considerable difficulty in concluding that it follows from their incorporation that no cause of action to recover a general average contribution arises until an (admittedly inconclusive) adjustment statement has been completed. Mr. Staughton has argued most attractively that it is impractical commercially to suggest that action should be brought before the statement has been prepared because no party who has incurred expense will know whether he will eventually be found to be a creditor or a debtor. If a claimant does start an action, he suggests, he will be unable to particularise and may be struck out. Thirdly and perhaps most importantly, he suggests that some of the expenses which the adjuster must take into account may not be incurred or ascertained until some date much later than the date of the casualty. For example, the amount of a salvage award, the costs in obtaining it and the costs of the adjustment cannot be known until the statement is prepared. In the instant case the costs of the adjustment itself came to some US$ 115,017.73. All these matters seem to me to go to the question when should the action be brought on rather than to the question when does the cause of action accrue.

In Tate & Lyle Ltd. v. Hain Steamship Co. Ltd. (5) Greer, L.J. posed himself the following questions of law relating to general average contributions :

> "Does contribution become due from the merchant who is the owner of the cargo at the time the sacrifice has been made, or the expenses incurred, subject to the condition that the goods shall afterwards arrive at the port of discharge or is the only obligation imposed by law an obligation on the merchant, who is the owner of the goods under the bills of lading at the time the vessel reaches its port of discharge (2) Has the ship a lien on the cargo to secure the due contribution of the

(5) (1934) 49 Ll. L.R. 123

> owner....which attaches to the goods at the time of the general average sacrifices .....or is the lien only one which becomes available at the port of discharge as against the then holder of the bill of lading."

He concludes that

> "both the lien and the liability come into existence as soon as the sacrific has been made or the expenses have been incurred but that the liability and the lien are subject to be defeated by the non-arrival of the cargo at the port of destination."

This is to say that the cause of action accrues as soon as the sacrifice has been made. Greer, L.J. was in the minority in the Court of Appeal but his conclusion on this point of law was affirmed in the House of Lords (6) where Atkin, L.J. said at page 174 :

> "I think it clear that on principle the contribution falls due at the time of the sacrifice though no doubt it may be passed on to subsequent assignees by appropriate contractual stipulations. The place of adjustment does not seem to have a bearing upon the question against whom the contribution has to be adjusted."

This case appears to me to establish that a cause of action in respect of general average accrues at the time of the sacrifice but that is not to say that its accrual may not be postponed by agreement. Questions as to the effect of the York/Antwerp Rules did not arise in this case nor did any question of limitation arise. So that it is only of assistance as a starting point. The question as to the effect of the York/Antwerp Rules on limitation remains but the case does establish that subject to any effect incorporation of the rules may have the cause of action accrues at the time of sacrifice.

The question as to the effect on limitation of importing the York/Antwerp Rules 1924 into insurance policies by use of the clause reading:

---

(6) (1936) Ll. L. Rep. 159

> "General average and salvage to be adjusted according to.....York/Antwerp 1924"

arose for consideration in five actions dealt with together which may be cited under the name Chandris v. Argo Insurance Co.Ltd. and Others (7). In that case Megaw, J. although accepting:

> "that there are cases in which it has not been reasonably possible to complete the adjustment within 6 years"

and that

> "an insurer is not disposed to make payment unless and until a professional average adjustment has been made and presented to him."

held that the parties

> "contemplated, and provided, that an average statement should be produced but that they did not contemplate or provide that its publication should be a condition precedent to a cause of action arising" (I would comment that the later holding is not surprising since an adjustment statement is not binding between the parties) "and that in the absence of express provision liability arose when a sacrifice was made or expenditure incurred."

In Union of India v. E.B.Aaby's Rederi A/S (8) the appellants chartered the respondents vessel Evje under a charterparty providing that the vessel had a lien for general average which was payable according to the York/Antwerp Rules 1950 and to be settled in London. It incorporated the "Centrocon" arbitration clause to deal with all disputes from time to time arising out of the contract and further provided that

> "any claim must be made in writing within twelve (12) months of final discharge and where this provision is not complied with the claim shall be deemed to be waived and absolutely barred."

In February 1966 the vessel incurred general

---

(7) (1963) 2 Ll. L.Rep. 65
(8) (1975) A.C. 797

average expenditure and to avoid exercise of the lien the respondents obtained from the appellants High Commission in London an undertaking to pay "any general average contribution which may be legally due". The adjustment was completed on 24th February 1967 whereupon on the 30th March 1967 the respondents applied for payment of contribution. A dispute as to the seaworthiness of the vessel ensued and in April 1971 the appellants contended that the claim was barred by the failure to appoint an arbitrator within 12 months. It was there held that a fresh contract came into existence upon the acceptance of the undertaking and that fresh contract varied the charterparty in that the respondents' claim was subject to no time limit save such as might be imposed by statute. It is clear however that had it not been for the fresh contract the claim would have been barred since the respondents' arbitrator was not appointed within 12 months of discharge. The Chandris case was cited in argument but not mentioned in the judgment.

In The Nimrod(9) Kerr, J. remarked obiter:

> "I agree that it (the general average bond) founds a separate cause of action in the sense that it creates an obligation separate from that which is created by the general average act itself and the liability to contribute at common law. But... the effect of the wording of the general average bond is not to postpone the accrual of the cause of action to the publication of the general average adjustment. If I had to decide this point I would unhesitatingly apply the reasoning of Megal, J. in Chandris v. Argo and also hold that any claim under the bond began to at the time of the casualty or at the date of the bond if later."

Mr. Staughton seeks to persuade us not to accept Chandris v. Argo and The Nimrod as authoritative for six reasons. He suggests firstly that the reasoning of Megaw, J. does not apply to a claim by shipowner against cargo but only to a claim by a shipowner against his insurers. Clearly Kerr, J. regarded it as applying equally to a claim against cargo and I must confess that I cannot see why there should be a distinction when one has to decide when the cause of action accrued.

(9) (1973) 2 Ll.L.Rep. 91

Secondly, he suggests that Megaw, J. was in error in failing truely to apply the test adumurated in Central Electricity Generating Board v. Halifax. Megaw, J. may perhaps be regarded as arguing in a circular fashion when he says at page 73 :

> "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."

but this must be read in context. It follows three comments which he makes on a quotation from Lord Guest, the comments being that a cause of action does not depend upon the knowledge of the plaintiff, secondly that the facts must exist and thirdly that existence of a cause of action does not depend on the ability to prove the facts. Read in the context of these comments the sentence is no more than reiteration of Lord Guest's test.

Thirdly, he suggests that the decision cannot be applied here if one considers the wording of the Lloyd's average bond (quoted in appendix 3 to the 10th Edition of Lowndes & Rudolf) which enables payment to be made to the shipowner from monies to be deposited in joint names "from time to time pending the preparation of the usual statement". This he suggests is a powerful indication that there was to be an adjustment. This form was used in a number of instances in this case (although not in all). In none of the bonds however is it unequivocally stated that the preparation and publication of an adjustment statement is to be a condition precedent to payment or to the accrual of liability. I cannot regard the wording of the bonds as fixing the date of the accrual of a cause of action.

Fourthly, he argues, Kerr J. refers to the Evje at first instance and did not have the advantage of having before him the decision of that case in the House of Lords as it was not then decided which he suggests is powerful authority for concluding that a cause of action did not accrue until the publication of the adjustment. This case as I have pointed out turns on the undertaking given by the representative of the Government of India. Both Chandris v. Argo Insurance Co.Ltd. and The Nimrod were quoted by the successful respondent in argument in the House

of Lords. No suggestion was made that they were incorrectly decided.

Fifthly, he points out that Kerr, J. was expressing only a tentative view obiter. Kerr, J.'s choice of the word "unhesitatingly" makes me question the use of the "tentative" although it is clear that what he said was obiter.

Sixthly, he points to the guarantees as distinct from the bonds and suggests that on the wording of these there must be an adjustment before liability arises. There is much force in this for there is a distinction to be drawn between the bonds given in exchange for the release of a lien against a cargo owner and the "guarantee" of an insurance company - a stranger to the contract of affreightment, I shall consider this point when dealing with Mr. Staughton's second basic submission for I would hold that on the first basic submission he made to us Mr. Staughton fails.

As to the second which was to the effect that by the express or implied terms of bonds and guarantees used in this case an adjustment had to be produced and no cause of action arose until that was done, I am persuaded that Kerr, J. was correct in holding in The Nimrod that the reasoning of Megaw, J. in Chandris v. Argo Insurance Co.Ltd. applied equally to a claim for general average made by one party to the adventure against another as it did to a claim by a cargo owner against his insurer. In both cases therefore time began to run when sacrifices were made or expenditure incurred. Does the same reasoning apply to the case where the shipowner claims against an insurance company who enters into a contract with the shipowner on the shipowner releasing the cargo owner's lien?

In the Albisola (10) the stranding resulting in the sacrifice was caused by negligence which in the absence of the Jason Clause was found fatal but it appeared that in order to obtain delivery a cargo owner had signed an agreement that

> "so much of the losses and expenses aforesaid as, upon an adjustment of the same to be stated by Johnson & Higgins average adjusters according to the provisions of the contract of affreightment and to the laws and usages applicable, may be shown by

(10) (1936) A.M.C. 1740

the statement to be a charge on the cargo .....shall be paid by us."

Kirkpatrick, J. observed :

"This is a familiar form of average agreement and substantially similar agreements or bonds have been before the courts many times. I do not find that the contention has ever been made that the legal operation and effect of an average agreement of this kind is anything more than to fix the measure of the obligor's liability and secure payment of the amount unless it shall afterwards appear that it was not a case for general average"

and later

"Since the agreement in its essence was intended to take the place of the lien, it would seem but reasonable that the shipowner's rights under it should rise no higher than what they would be if he were asserting his lien."

This must, of course, be read in the light of the fact that negligence operated to defeat the claim. Again on the authority of The Logan (11) Lowndes & Rudolf 10th Edition observe at para. 470 :

"The courts of the United States have held that the cause of action accrues at the termination of the adventure, though the alternative which they had to consider was the publication of an adjustment, and not the date of a sacrifice or expenditure."

In The Logan however the goods were released without securing a guarantee - the essence of the decision was to the effect that adjustment has no binding force being neither an account stated nor an award, that the right to contribution accrued and became enforceable upon the arrival of the ship at the port of destination and the delivery of the cargo. It was held further

"that the amount of the required contribution may then be unliquidated is no obstacle, for in proper sequence liquidation comes after accrual, and can be made in the suit or action wherein the right is presented for liquidation."

(11) (1936) A.M.C. 993

In our case it is immaterial whether the right accrues at the port of destination or at the time of sacrifice or expenditure subject to its being defeated by non-arrival of the ship at the port of destination. The better view seems to me to be that it accrues at the time of sacrifice or expenditure. The statutory period had, on either view, elapsed. I would not be prepared to construe the York/Antwerp Rules or the bonds as fixing the date of publication of the adjustment as the date from which the statute should run but I must look to the wording of the guarantees to see if they like the undertaking given by the representative of the Government of India in the Evje case constituted a fresh contract which would cause time to run not from the date of the sacrifice but from the date of publication of the adjustment. I turn then to their wording in the light of the fact that prior to their being entered into, no relationship existed between the insurance companies concerned and the plaintiffs.

Those in form 1. These appear at pages 151, 152, 153, 154, 155, 156, 157, 160, 161, 176, 187, 191, 195, 196, 197, 200 and 201. They are variously addressed the majority to Messrs. Stevens Elmslie the adjusters, some simply to Messrs, one to Islands and two to Paclloyd (presumably shipping agents) many are undated. While they are clearly intended to create legal responsibility they are informal. At the time they were entered into their signatories clearly understood that no adjustment had been drawn up so that the use in them of the present tense is inexplicable. The goods were not liable under an adjustment. To give this form any sense in the circumstances under which it was drawn up it is necessary to regard it as reading :

> "In consideration of your delivering the goods described below without receiving a cash deposit we hereby guarantee the payment of such general average and/or salvage and/or special charges as may be found to be due in respect of the goods under an adjustment to be drawn up in accordance with the contract of affreightment."

or in some such words. Clearly in many cases the signatories anticipated that the adjustment would be drawn up by Stevens Elmslie and that when it was then and then only would liability arise.

Those in form 2. These are to be seen at pages 178, 179, 180, 181, 182 and 183. of the record and without exception are addressed to Stevens Elmslie. It seems clear that those who signed undertakings in this form were reserving the right to question the adjustment to be made by that firm; the use of the words "just" and "properly" so indicate. Before their liability to pay could arise however the charges had to be "found to be due". They could only "be found to be due" after an adjustment had been made, and if necessary challenged and corrected. I do not think there can be any doubt but that those who signed this form and addressed it to the adjusters anticipated that their liability would not arise until those adjusters had completed their work.

Form 3 (at page 192) is addressed to Islands. Again we find a reservation of the right to question the adjustment but payment is clearly not to be made before the adjustment is completed.

Form 4 (at page 164 to 170 inclusive and page 202) is addressed to shipping agents either in Singapore or Hodeidah. It is perhaps less clear in that it does not refer explicitly to the making of an adjustment and the phrase used is "hereafter be ascertained to be due". However, it is clear that immediate liability to pay is not envisaged. Since Mr. Waung has not contended that only a secondary liability is imposed on his clients time must run in their favour from the date of ascertainment and not from any earlier date.

I would therefore hold that the liability of Defendants 1 to 11 arose at the earliest when the adjustment was published and in the case of Forms 2 and 3 after a reasonable time thereafter, within which they might wish to question the adjustment, had passed.

Mr. Staughton seeks to support his third proposition that Atlantic is entitled to intervene in the proceedings, as Islands undisclosed principal, even if at the date of joinder its claim was statute-barred firstly by reference to Firestone Plantations Co. v. United States of America (12) a case in which the facts are somewhat scantily reported. From the report we know only that Firestone Plantations Co. filled its "libel" alleging that it was the

---

(12) (1945) A.M.C. 746

owner of cargo damaged during a voyage within time and that after the period of limitation had expired Firestone Tire & Rubber Co. filed a petition for leave to intervene alleging that it had purchased the cargo and become its owner during the voyage and prior to arrival of the vessel at New York . We are not told what interest Planations had in the cargo, from whom Tire & Rubber had purchased it, nor what was the relationship between Planations and Tire & Rubber. The respondent objected to the intervention on the ground that Tire & Rubber was seeking to substitute itself for Plantations when it was too late for Tire & Rubber itself to sue. Tire & Rubber was permitted to intervene on the basis that Plantations had a right to sue in that a consignor might sue for the consignee and the consignee's interest entitled it to participate. "The running of the statute of limitations was stopped by the filing of the libel and therefore did not run against the motion or petition to intervene". I must confess that I do not understand this sentence but take it that the word "time" should be inserted after the word "therefore". I do not see how this case can be extended to cover the relationship of principal and agent.

In the Kalimantan case it would appear that an order of court had been made on 5th October 1978 giving leave to amend the writ by the addition of a second plaintiff Cosmos. The writ should have been amended within 14 days (O.20 r.9) but the plaintiffs failed to avail themselves of the order within time. On 24th December 1979 they applied for an enlargement of the time and the return date was 7th February 1979. /The casualty occurred on 5th February 1978. Time under the Hague rules ran from "the date when the goods should have been delivered"/ The matter could not be dealt with on 7th February 1979 as contrary to the applicant's expectations it was opposed and eventually it was fixed for 3rd April by which date more than one year must have elapsed from the date when the goods should have been delivered. Kalimantan sued as owners of cargo insured with the insurance company and had sold the cargo to Cosmos. Both signed letters of subrogation in favour of the insurers. Hence the order of 5th October 1978. Firestone Plantations Co. v. The United States of America was commented on in that case and explained on the basis if a party in whom the original right of action was vested brought his action within one year, it would be no answer to a claim by the

person who had come to stand in his shoes that that person had not commenced proceedings until the year had elapsed. The court concluded that "time stopped running under the rules when suit was brought by Kalimantan, in the same capacity i.e. as owner". The court went on to hold, citing the Puerto Acevedo (13) that it had a discretion to add a party and distinguished the case before it from Mabro v. Eagle, Star and British Dominions Insurance Co. Ltd. (14) on the basis that the application for extension of time was made within the limitation period.

Mr. Staughton argues, if I understand him correctly, that the instant action was started in time by Islands and Atlantic is entitled to intervene as undisclosed principal even if at the date of joinder Atlantic would have been time barred. I do not think this valid for it cannot be said that Islands brought the action "in the same capacity" as Atlantic would do as was said in the Kalimantan Case.

I turn then to Mr. Staughton's final proposition that a discretion exists to join a party even if that means depriving a defendant of a time bar under the statute of limitations.

The Kalimantan Case decided that a discretion exists to add a party where the one year limitation period under the Hague rules had passed. Does the same discretion exist and if it does should it be exercised in favour of a party seeking to be joined where the period prescribed is under the statute of limitations? O.15 r.6 (2)(b)(ii) confers a discretion to add a party but Mabro v. Eagle, Star & British Dominions Insurance Co.Ltd. and Braniff v. Holland & Hannen & Cubitts (Southern) Ltd. (15) suggest that it is not possible for the court to disregard the statute and that the discretion conferred by the rule will not be exercised where its exercise would involve depriving a defendant of a vested right. Mr. Staughton points out that a discretion to allow a plaintiff to amend his writ is conferred by O.20 r.5(1). Rule 5(2) reads as follows :

> "(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made

---

(13) (1978) 1 Ll. L.R.38
(14) (1932) 1 K.B. 485
(15) (1969) 1 W.L.R. 1533

> after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so."

It is peculiarly worded in that it is not exclusive. It does not say as it might have done :

> "The court shall not grant an application for leave to make the amendment if it is made after any relevant period of limitation current at the date of issue of the writ has expired unless it is one of the amendments mentioned in paragraph (3, (4) or (5). If it is one of the amendments mentioned in paragraph (3), (4) or (5) the court may grant such leave in the circumstances mentioned in that paragraph."

Mr. Staughton points out that he does not apply under paragraph (3), (4) or (5) although his application is similar to (3). He seeks to add a party rather than to correct its name and his application is not defeated by rule 5(2).

I would agree that a discretion exists but its extent appears on the authorities to be rigorously circumscribed. It does not extend so as to permit an amendment by which one who does not sue in the same capacity as the original plaintiff may be added as a co-plaintiff if to add him would be to defeat the statute.

In any event the trial judge has refused to exercise his discretion in favour of the appellant and I am far from being persuaded that he was wrong. Automatically to do so might encourage the prolongation of cases in which parties claiming general average were concerned. There are good practical reasons why such cases should be heard speedily because as time passes it becomes progressively more difficult for cargo owners to establish such defences as unseaworthiness. The discretion of the original judge is not lightly to be interfered with by this court.

I would allow this appeal insofar as the defendants 1 to 11 are concerned but would not allow any amendment effecting the remaining defendants.

I would grant liberty to apply as to costs if the order as to these is not agreed between the parties.

Silke, J.:

Silke, J.

I have had the benefit of reading in draft the judgment of My Lord the Vice President.

I too would hold that that which I might term the general cause of action arises at the time of the casualty. I, with respect, share his misgivings as to the construction of the Letters of Guarantee in the light of the trend of modern authorities but it seems to me to be the only reasonable conclusion that can be come to in respect of those that lie for consideration here.

The matter having been dealt with in so full a manner in his judgment and being, with deference, in agreement with the conclusions reached therein and the reasoning therefor I do not think there to be anything that I can usefully add.

In the event I would allow the appeal and restore the order of the Registrar joining Hong Kong Atlantic Shipping Co.Ltd. as second plaintiff, but only in respect of its claims as against the 1st to the 11th defendants.

8th July 1981

In the Court of Appeal

No.21
Defendants' Motion
11th July 1981

No. 21

DEFENDANTS' NOTICE OF MOTION FOR LEAVE TO APPEAL TO PRIVY COUNCIL

Civil Appeal No.178 of 1980

IN THE COURT OF APPEAL

On Appeal from the High Court of Justice
(High Court Action No. 3727 of 1978)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO. LTD. Plaintiff (Appellant)

and

CASTLE INSURANCE CO. LTD. (formerly Pacific & Orient Underwriters (H.K.) Ltd.) and 84 Others Defendants (Respondents)

Hon. Huggins, Ag.C.J.
Hon. Zimmern, J.
Hon. Barker, J.

NOTICE OF MOTION FOR LEAVE TO APPEAL TO PRIVY COUNCIL

TAKE NOTICE that the Court of Appeal will be moved on the 21st day of July 1981 at 2.30 o'clock in the afternoon or so soon thereafter as Counsel for the Respondents can be heard on an application of the Respondents for leave to appeal to Her Majesty in Council from so much of the Judgment of the Court of Appeal given on the 8th day of July, 1981 which allowed in part the Appeal from the Order of Mr. Commissioner Mayo made on the 15th day of October, 1980 on the ground that under the Average Guarantee cause of action against the cargo Underwriters did not arise until after the Average Adjustment Statement was published.

Dated the 11th day of July, 1981

Sd. Deacons
(D E A C O N S)
Solicitors for the Defendants (Respondents)

No. 22

PLAINTIFFS' NOTICE OF MOTION FOR LEAVE TO APPEAL TO PRIVY COUNCIL

Civil Appeal No.178 of 1980

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE

(HIGH COURT ACTION 1978 No.3727)

Hon.Huggins, Ag.C.J.
Hon.Zimmern, J.
Hon. Barker, J.

B E T W E E N:-

HONG KONG ISLANDS SHIPPING CO.LTD. — Plaintiff (Appellant)

and

CASTLE INSURANCE CO. LTD. (formerly Pacific & Orient Underwriters (H.K.) Ltd.) and 84 Others — Defendants (Respondents)

NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE PRIVY COUNCIL

TAKE NOTICE that the Court of Appeal will be moved on the 21st day of July 1981 at 2.30 p.m. o'clock in the afternoon or so soon thereafter as Counsel for the Appellant can be heard on the application of the Appellant for leave to support the judgment of the Court of Appeal given on the 8th day of July 1981 on other grounds in so far as the appeal was allowed in part, and to appeal against the said judgment in so far as the appeal was disallowed against the consignees, the grounds of the cross-appeal and appeal being that the causes of action against the consignees and insurers were not time barred and that the 2nd Plaintiff should be allowed to join in the 1st Plaintiff's action and that if these contentions are wrong the Court's discretion should have been exercised in the 2nd Plaintiff's favour so as to permit

In the Court of Appeal

No.22
Plaintiffs' Motion
20th July 1981
(continued)

it to be joined in the action.

Dated the 20th day of July, 1981

Sd. Johnson, Stokes & Master

JOHNSON, STOKES & MASTER
Solicitors for the Appellant
(Plaintiff)

No.23
Order of The Hon. Sir Alan Huggins, V.P. The Hon. Mr. Justice Zimmern and the Hon. Mr. Justice Barker
21st July 1981

No. 23

ORDER OF THE HONOURABLE SIR ALAN HUGGINS, V.P., THE HONOURABLE MR. JUSTICE ZIMMERN AND THE HONOURABLE MR. JUSTICE BARKER

Civil Appeal No. 178 of 1980

IN THE COURT OF APPEAL

(On Appeal from the High Court of Justice
High Court Action No. 3727 of 1978)

BETWEEN :

HONG KONG ISLANDS SHIPPING CO.LTD.	Plaintiff (Appellant)
and	
CASTLE INSURANCE CO.LTD. (formerly Pacific & Orient Underwriters (H.K.) Ltd.) and 84 Others	Defendants (Respondents)

BEFORE THE HONOURABLE SIR ALAN HUGGINS, VICE-PRESIDENT, THE HONOURABLE MR. JUSTICE ZIMMERN AND THE HONOURABLE MR. JUSTICE BARKER

O R D E R

UPON reading the Defendants' notice of motion for leave to appeal to Privy Council and the Plaintiff's notice of motion for leave to appeal to Privy Council dated the 11th day of

July, 1981 and the 20th dayof July, 1981 respectively AND UPON hearing Counsel for the Defendants and Counsel for the Plaintiff

IT IS ORDERED that both the Defendants and the Plaintiff do have leave to appeal and to cross-appeal to Her Majesty in Council from the Judgment of the Court of Appeal dated the 8th day of July, 1981 on condition that the Record of Appeal be prepared and despatched within four (4) months from the date hereof.

AND IT IS ORDERED that the costs of the Defendants' application and the costs of the Plaintiff's application be costs in the appeal

Dated the 21st day of July, 1981.

J.G. Roy
Acting Registrar

No.24

ORDER GRANTING LEAVE TO APPEAL AND CROSS-APPEAL TO HER MAJESTY IN COUNCIL

Civil Appeal No.178 of 1980

IN THE COURT OF APPEAL

(On Appeal from High Court Action No.3727 of 1978)

BETWEEN:

HONG KONG ISLANDS SHIPPING CO.LTD. Plaintiff (Appellant)

and

CASTLE INSURANCE CO.LTD. (formerly Pacific & Orient Underwriters (H.K.) Ltd.) and 84 Others Defendants (Respondents)

BEFORE THE HONOURABLE SIR ALAN HUGGINS, VICE-PRESIDENT, IN CHAMBERS

In the Court of Appeal

No.24
Order granting leave to appeal and cross-appeal to Her Majesty in Council

21st January 1982

(continued)

O R D E R

Upon reading the notice of motion dated the 22nd day of December, 1981 filed herein

And upon reading the affidavit of Peter Geirion Valentine Jolly sworn on the 22nd day of December, 1981 and the exhibits therein referred to

IT IS ORDERED BY CONSENT that the Defendants be granted final leave to appeal to Her Majesty in Council from the judgment of the Court of Appeal given on the 8th day of July 1981

IT IS FURTHER ORDERED that the Plaintiff do have final leave to cross-appeal to Her Majesty in Council from the said judgment of the Court of Appeal given on the 8th day of July 1981.

Dated the 21st day of January, 1982.

L.S.

Registrar

IN THE PRIVY COUNCIL No. 7 of 1982

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN:

CASTLE INSURANCE COMPANY LIMITED (formerly Pacific & Orient Underwriters (HK) Ltd.) and 84 Others — Appellants (Defendants)

- and -

HONG KONG ISLANDS SHIPPING CO. LIMITED — Respondent (Plaintiff)

(and Cross Appeal)

RECORD OF PROCEEDINGS

Messrs. Clyde & Co.
30 Mincing Lane,
London, EC3R 7BR

Solicitors for the Appellants

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

Solicitors for the Respondent