

Problem for Shipping Law Moot

1. It is early 2012 and the political environment in the Middle East is very tense and countries in the region are preparing for war, which might break out anytime.
 2. *MV Cape Albatross* is a vessel owned by Great Eastern Shipping Co. (GESCO), which has its registered office in Mumbai, India. The vessel was insured by Lombard General Insurance Co. under the Institute Time Clauses, Hulls 1995 with an additional warranty that in the event that the vessel has to sail into a war-zone, the owners must inform the insurers beforehand and an additional premium will be charged.
 3. The vessel was chartered to International Metal Traders (having its registered office in New Delhi, India) for transportation of 2000 metric tonnes of steel rods from Mina Zayed Port, Abu Dhabi to the port of Bandar Imam Khomeini. The consignee is one Excel Steel Co., based in Tehran. GESCO directed the Captain of the vessel to commence voyage from Le Havre, where she was unloading another cargo, to Abu Dhabi. On 3 May 2012 *MV Cape Albatross* left Le Havre and arrived in Mina Zayed Port on 8 May 2012.
 4. The cargo of 2000 mt of steel rods was loaded and the Bill of Lading was duly stamped and signed in 3 originals. The vessel set sail on 11 May 2012 at 08.00 hrs (UAE Time). However, a few hours after the commencement of the voyage, the Captain of the vessel realized that they were low on fuel and re-directed course towards the port of Fujairah for bunkering.
 5. The vessel reached port of Fujairah the same day at about 15.00 hrs. However, the vessel had to wait for berth for 4 days and was finally given a berth on 15 May 2012 at 10.00 hrs. Bunkering was completed in 2 days and the vessel finally set sail for Bandar Imam Khomeini on 17 May 2012 at 03.15 hrs.
 6. At 06.30 hrs the same day, just as the vessel entered the Persian Gulf, the captain and the crew of the *MV Cape Albatross* heard an announcement on the radio that a war had broken out between Iran and Iraq. At about 11.00hrs, the vessel, mistakenly presumed for carrying weapons and ammunition for the Iranian Government, was torpedoed by an Iraqi missile and the hull was badly damaged. As a result of the strike, almost 500 metric tonnes of cargo was lost in the seas. The cargo owners suffered a loss of about USD 3 million. The cargo was however insured by Lombard General Insurance Co. under the Institute Cargo Clauses (A) and as well as under the Institute War Clauses (Cargo).
 7. *MV Cape Albatross* sent out a distress call. In response to the distress call, the *Poseidon*, a tug boat owned by Titan Salvors Inc. (registered office in Mumbai, India) happened to be in the area, diverted to lend assistance. Lloyds Open Form 2000 (LOF 2000) was signed and SCOPIC¹ was incorporated and immediately invoked. The *Poseidon* managed to secure a towline aboard *MV Cape Albatross* and started to take her in tow and sailed off towards the port of Nahva Sheva in Mumbai for repair work. However, the tug boat was unsuccessful as the tug broke away and could not be rejoined by the Salvors. Somehow, *MV Cape Albatross*, on her own, managed to reach Saqr Port, Ras Al Khaimah where she berthed for 6 months until the time the political hostilities had died down and an official cease fire was signed. In the
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meantime, the cargo owners, International Metal Traders were duly informed of the loss of the cargo.

8. The hull and machinery of the vessel was repaired and on 9 December 2012, she again set sail for her port of destination, Bandar Imam Khomeini. However, on 11 December 2012, in another unfortunate event, *MV Cape Albatross* collided with another vessel, *HMS Devonshire*, owned by White Star Line, Liverpool, England. While there was severe damage to the hull and machinery of *HMS Devonshire*, *MV Cape Albatross* suffered a total loss, and at about 00.30hrs GMT, she eventually sank 10 nautical miles off the coast of Kish Island, along with all her crew and cargo on board. There were 27 people on board, including the Captain.
9. The owners, GESCO duly sent a notice for claim to Lombard Insurance Co. for the damage caused by the missile attack on 17 May 2012 and for the total loss of the vessel. They sent a back-dated letter for 3 May 2012 addressed to the insurers. The part contents of the letter were as follows:
 - a. *".....We are the owners of MV Cape Albatross insured by Lombard Insurance vide Policy No. 4527/2011. This is to intimate to you that the subject matter vessel has to load a consignment of cargo at Mina Zayed Port for delivery at Bandar Imam Khomeini. The vessel is currently at Le Havre and will commence voyage to Abu Dhabi in a short while from now..... "*
10. In order to assess the damage and causation of the loss, three teams of Marine surveyors were appointed by GESCO, White Star Line and Lombard Insurance respectively. While GESCO's surveyors' were of the opinion that both vessels were responsible for the collision and that liability should be apportioned equally, White Star Line's and Lombard's surveyors' were of the opinion that *MV Cape Albatross* was negligent of poor navigation and that the vessel may have not been fully seaworthy after the repair works at Ras Al Khaimah.
11. In a suit before the Hon'ble High Court of Bombay, the White Star Line obtained a judgment against GESCO to the effect that *MV Cape Albatross* was negligent as the Captain and the crew did not follow the Rules of navigation as laid down in the Collision Regulations 1972. The court held that the lightings on the starboard side of *MV Cape Albatross* was not functional and that the Captain of the vessel had not checked for sea-trials after the repair works were carried out at Saqr Port, Ras Al Khaimah. *HMS Devonshire* was held not liable for the collision.
12. Based on the surveyor's report, the underwriters refuted liability on the grounds that the vessel, at the time of collision, was not seaworthy and that they received no such letter, purported to have been sent on 3 May 2012 that that there was a blatant breach of warranty of in the insurance policy. GESCO filed a suit before the Bombay High Court for US\$ 30 million. Their main contention was that the Hon'ble High Court of Bombay had no jurisdiction to hear the case filed by White Star Line as the collision did not occur in Indian territorial waters. The Hon'ble High Court set up a 3 member investigation commission and sought their opinion.
13. The investigation commission duly submitted its report to the Hon'ble High Court wherein it was stated that Lombard was not liable for indemnity and the findings matched with the surveyors' report that *MV Cape Albatross* had been negligent in many aspects. However, GESCO objected to the constitution of the commission as 2 out of the 3 members of commission were former in-house counsels of Lombard

Insurance Co. and therefore, according to them, it was a clear violation of principles of natural justice. Lombard on the other hand contended that, as per the relevant provisions of Marine Insurance Act, 1963, there was a clear breach of warranty by the GESCO, apart from negligent navigation. These contentions of GESCO were rejected by the Court on 25 January 2013 and Lombard Insurance Co. successfully defended the suit in wake of the earlier judgment of the Hon'ble High Court of Bombay.

14. However, in a separate suit, the Hon'ble High Court of Bombay had earlier allowed the indemnity claim of USD 12 million by the cargo owners, International Metal Traders, against Lombard Insurance, for the loss of the cargo arising from the missile attack and the subsequent collision with *HMS Devonshire*. In view of this case by International Metal Traders, Lombard Insurance sought subrogation rights from them in order to re-claim from the ship-owners. Accordingly the cargo owners issued a letter of subrogation in favour of the insurers.

15. The Hon'ble Bombay High Court passed a common judgment on 25 January 2013 holding that the Lombard Insurance could re-claim from the ship-owners under their rights of subrogation and that the ship-owners were not entitled for claim from Lombard Insurance for the loss of the vessel and her crew as there was fraud and breach of warranty by the ship-owners. This judgment was also based on the opinion of the 3 member commission.

16. GESCO has now preferred an appeal the Hon'ble Supreme Court of India against the final judgment of the Hon'ble High Court of Bombay dated 25 January 2013. The matter has been listed for hearing on 10 March 2013.

Prepare written submissions and oral arguments for the parties accordingly.

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