Campbell Johnston Clark
CJC EXCHANGE

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CJC Exchange is a weekly newsletter from **Campbell Johnston Clark**, incorporating with kind permission from **Gibson Shipbrokers** the most recent issue of the Gibson Sale & Purchase Market Report. A blend of market intelligence and relevant industry news, CJC Exchange is distributed free of charge to parties on the CJC mailing list who have given permissions to receive S&P updates from CJC. CJC Exchange is available to new subscribers here.

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Gibson Sale & Purchase Market Report

GIBSON SHIPBROKERS

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DRY CARGO – Taylor-Made

Recently most market commentary has surrounded the larger sizes, but behind the scenes handysize bulkers continue to be snapped up and certainly this is not surprising with the average timecharter rate now firming towards its earlier year high of close to US$24,500 pd. The continuing strengthening of values is illustrated by one of the recent acquisitions made by Taylor Maritime Investments in preparation for their IPO, the "**BASIC RAINBOW**" (38,486 dwt/blt 2011 Minami Nippon, Japan) has been reported at US$14.5m and this price looks like a leap in value in this rising freight market.

Contrastingly the average time charter rate for supramax bulkers is currently just over US$26,000 pd and hence supramax bulkers, especially older units, are also generating a fair amount of interest with a number of vessels being reported sold and this week's reported sale of Sinotrans controlled duo the "**GREAT PRAISE**" and "**GREAT LEGEND**" (52,424 dwt/blt 2006 Tsuneishi Cebu, Japan) at US$11.6m each compare very favourably to the sale of similar vessels sold back in February at region US$8m.

TANKERS – Frontline Makes a Beeline

Frontline made a splash this week with their announced purchase of 6 x VLCC resales under construction at Hyundai for a price of US$94.3m a piece. The vessels are due for delivery from 1h 2022 onwards and will be scrubber-fitted and alternative fuel ready. On the older side of the DPP segment the market was shaken this week by an announcement of changes to the taxation of certain product imports, and there have been reports of a number of sales of older vessels to Chinese buyers failing.

On the CPP side the mood has been markedly more upbeat, with a clear sense that buyers are looking to secure tonnage at or near the perceived bottom of the market. On that note, the **"MAERSK**

MIYAJIMA" (48,020 dwt/blt 2011 Iwagi) saw keen competition from a number of established buyers, bidding the price up to a relatively strong US$16.5m. Similarly, the DPP-trading LR1 **"MADISON"** (74,574 dwt/blt 2010 Hyundai) has been committed for a healthy US$18.5m.

NEWBUILDING – Patience is a Virtue... Or is it?

Steel plate price pressures remain in the headlines and it looks likely further rises will come due to factors outside the newbuilding market. This has led to the predictable outcome of some yards temporising sales activity in order see how pricing plays out and/or have the comfort or a forward orderbook. Moreover, many orders taken so far in the first half of this year will have their profit margins squeezed as the price of steel has dramatically risen so shipyards are not enjoying this situation any more than owners are in facing higher pricing to order.

There remain pockets of activity also as some of the main Korean yards sell out their remaining 2023 slots and there is some tanker contracting going on here in the LR2 and aframax sector. Container and LPG enquiry is ongoing also, so the newbuilding market is far from quiet despite the steel plate price situation. Moreover, the larger yards have marginally better bargaining power with the steel mills in Korea so can control their costs better than smaller yards but this seems to translate into confidence in taking orders (rather than temporising) not avoiding passing on the rising steel plate costs in pricing. Earlier deliveries also traditionally allow for better control of costs with a shorter time horizon.

RECYCLING – Scrap Scarcity

With Eid celebrations continuing into this week prolonging inactivity from Bangladesh and Pakistan, we can report some normality and activity is now beginning to return to the Sub-Cont industry with breakers once again focused on purchasing tonnage. Local demand from the end users is definitely there, but unfortunately there is not an abundance of opportunities out there, far from it. Steel prices remain firm across the Sub-Cont which is fuelling demand from breakers and buyers, but there is a little nervousness creeping in which may halt price improvements if sentiments turn, but with the supply of tonnage thin on the ground we expect rates to remain firm and at these levels, especially with increasing competition as cash buyers compete to secure what little tonnage there is.

Gibson Sale & Purchase Market Report

S&P SALES

Vessel Name	DWT	Built	Yard	Buyers	Price ($/m)	Notes
BULKERS						
TIGER SHANDONG	180,091	2011	Qingdao Beihai (CHN)	Richland Shipping	23.31	Auction sale. SS psd 5/21.
PHOENIX BEAUTY	169,150	2010	Sungdong (KRS)	Undisclosed buyer	23.5	SS psd 6/20.
SPRING AEOLIAN	83,478	2012	Sanoyas (JPN)	Costamare	21.3	SS due 1/22.
IOANNA L	81,837	2017	Tsuneishi Zhoushan (CHN)	Undisclosed buyer	28	BWTS fitted. SS due 9/22.
LEMESSOS QUEEN	76,565	2008	Imabari (JPN)	Undisclosed buyer	19	
S'HAIL AL MAFYAR	75,522	1999	Mitsui (JPN)	Chinese buyer	6.9	

DALIAN COSCO KHI DE107 + DE108	61,000	both 2022	DACKS (CHN)	Genco Shipping	29 each	
GH SEABIRD	63,997	2016	Yangfan (CHN)	Costamare	21.5	SS due 8/21.
PACIFIC HERO	58,912	2012	Kawasaki (JPN)	Taylor Maritime Investments	18.22	SS psd 1/20. Subject IPO.
HUA RONG 2	56,439	2013	Zhejiang Zhenghe (CHN)	Chinese buyer	RMB 120	Auction sale.
INDIGO TRAVELLER	55,596	2011	Mitsui (JPN)	Taylor Maritime Investments	15.8	Subject IPO.
TAI HAWK	52,686	2004	Oshima Zosen (JPN)	Jinhui	10.5	BWTS fitted.
CLIPPER ENDEAVOUR	52,483	2004	Tsuneishi Cebu (PHI)	Undisclosed buyer	9.75	No BWTS.
GREAT PRAISE	52,424	2006	Tsuneishi Cebu (PHI)	Undisclosed buyer	11.6	BWTS fitted. SS due 5/21.
GREAT LEGEND	52,385	2006	Tsuneishi Cebu (PHI)	Undisclosed buyer	11.6	BWTS fitted. SS due 8/21.
ZOE S	53,054	2002	Oshima Zosen (JPN)	Chinese buyer	8.5	SS due 11/22.
CS DREAM	50,780	2010	Oshima Zosen (JPN)	Densay Shipping	13.8	SS psd 2/20. BWTS fitted. Open hatch/Box holds.
FUSHUN	48,224	1997	Oshima Zosen (JPN)	Undisclosed buyer	6.5	
BASIC RAINBOW	38,468	2011	Minami Nippon (JPN)	Taylor Maritime Investments	14.5	SS psd 3/21. Subject IPO.
NORDCOLORADO + NORD RUBICON	37,500	2016	Zhejiang Ouhua (CHN)	Taylor Maritime Investments	18.05 + 18.28	Tier II. SS due 8/21 + SS psd 1/21. Subject IPO.
FOUR DIAMOND + FOUR EMERALD	34,053	2011+2013	Pha Rung (VNM)	Undisclosed buyer	20 en bloc	
DORY ORIENT ALLIANCE	34,529 33,500	2010 2012	SPP (KRS) Samjin (CHN)	Undisclosed buyer	20.5 en bloc	
TRIADES	28,496	2005	Shimanami (JPN)	Undisclosed buyer	8.2	SS psd 7/20.
LEAP HEART	28,050	2012	Imabari (JPN)	Taylor Maritime Investments	10	SS psd 12/20. Subject IPO.
TANKERS						
HYUNDAI ULSAN 3240+3241+3283+3284+3285+3286	299,240	2022-2023	Hyundai Ulsan (KRS)	Frontline	94.3 (565.8 en bloc)	$25.7m upgrades. LNG/Ammonia ready. Scrubber fitted.
SCF CAUCASUS + SCF URAL	159,200	both 2002	Hyundai Ulsan (KRS)	Edge Maritime (Sea Pioneer)	16 each	SS due 3/22. BWTS fitted.
BLACKCOMB SPIRIT + WHISTLER SPIRIT EMERALD SPIRIT + GARIBALDI SPIRIT TARBET SPIRIT PEAK SPIRIT	109,000 109,000 107,526 104,621	both 2010 both 2009 2009 2011	Hudong Zonghua (CHN) Hudong Zonghua (CHN) Tsuneishi (JPN) Sumitomo (JPN)	Teekay Tankers	129 en bloc	Declared purchase options.

OCEAN CROWN	108,943	2007	SWS (CHN)	Vietnamese buyer	15.3	Xihe forced sale. Coated. Traded dirty.
OCEAN TAIPAN	108,936	2008	SWS (CHN)	Undisclosed buyer	17	Xihe forced sale. Coated. DD due 6/21.
MADISON	74,574	2010	Hyundai Mipo (KRS)	Hayfin	18.5	Coated. Dirty trading. SS psd 12/20.
MAERSK MIYAJIMA	48,020	2011	Iwagi (JPN)	Vietnamese buyer	16.5	Pump-room.
HERMITAGE BRIDGE	47,880	2003	Hyundai Mipo (KRS)	Dubai buyer	7.8	Ice 1A. Pump-room.
NAVIG8 CONSTELLATION	45,281	2013	ShinaSB (KRS)	Undisclosed buyer	18.8	IMO II. 22 grades. Declared purchase option.
MENTOR	13,014	2007	Sekwang (KRS)	Indian buyer	5.5	Epoxy. IMO II.
SOFIE THERESA + SUSANNE THERESA	3,450	2004 + 2006	Dearsan (TRK)	NRP	2.6 + 3.5	Basis BB back. Marineline.
CONTAINERS / RO-RO / REEFER / PCC						
SAMSUNG HULL NO.S HI 2428 + 2429 + 2442 + 2443	120,000	2022-2023	Samsung (KRS)	Wan Hai Lines	111.4 each	13000 TEU. Gearless.
BARRY BARO	42,200 23,679	2004 2004	Szczecinska (POL) Guangzhou Wenchong (CHN)	Undisclosed buyer	10 each	3091 TEU. Geared. 1740 TEU. Geared.
KANWAY GALAXY	24,386	1997	Shin Kurushima (JPN)	Chinese buyer	6.25	1613 TEU. Geared.
GREEN PIONEER	26,599	2010	Hyundai Mipo (KRS)	MOL	34	34,490 cbm. SS psd 5/21. Against TC to Trammo.

NEWBUILDING ORDERS

Ordering Client	Vessel Type	Size / No. of units	Shipyard (Country)	Delivery	Price ($m)	Notes
BULKERS						
Magni Partners	Newcastlemax	210,000 dwt x 4	New Times (CHN)	2023-2024	est 67	Dual fuel.
U-Ming	Newcastlemax	210,000 dwt +2	Qingdao Beihai (CHN)	2022-2023	50.5*	*Declared purchase options. Conventional fuel.
TANKERS						
Hengyi Petrochemical (CDB FL)	MR	49600 dwt x 4+4	GSI (CHN)	2023-2024	35	IMO II/III.
Peninsula Shipping	Chemicals	17,900 dwt x 1	Hyundai Mipo (KRS)	2023	23.5	
John T Essberger Group	Chemicals	6,600 dwt x 4+4	CM Jinling Dingheng (CHN)	2023-2024		Stainless Steel. Ice 1A. LNG dual fuel.
CONTAINERS / RO-RO / REEFERS / PCC						
ICBC Financial Leasing	Containership	24,000 TEU x 1	Jiangnan Shipyard	2023		Against long TC to MSC. Scrubber fitted.
ICBC Financial Leasing	Containership	24,000 TEU x 1	Hudong Zonghua (CHN)	2023		Against long TC to MSC. Scrubber fitted.

CSSC Shipping Leasing	Containership	24,000 TEU x 1	Jiangnan Shipyard	2023		Against long TC to MSC. Scrubber fitted.
CSSC Shipping Leasing	Containership	24,000 TEU x 1	Hudong Zonghua (CHN)	2023		Against long TC to MSC. Scrubber fitted.
Sinokor	Containership	1,800 TEU x 6+6	Hyundai Mipo (KRS)	2022-2023	26-27	
Namsung Shipping	Containership	1,800 TEU x 2	Hyundai Mipo (KRS)	2022	26-27	
Dongjin Shipping	Containership	1,800 TEU x 1	Hyundai Mipo (KRS)	2022	26-27	
Cosmoship	Containership	1,500 TEU +2	Guangzhou Wenchong (CHN)	2023	22-23	Declared purchase options. Tier III.

Recycling Activity

Vessel Name	BUILT	DWT	LWT	Delivery	Price ($/lwt)	Notes
CHEMICAL TANKER						
TAIHUA GLORY	1995 / Japan	11,533	3,258	as-is UAE	738	incl 750 tons of St-St content
TANKER						
CAVALIER	1995 / Japan	47,629	9,606	Bangladesh	565	

Recycling Prices (US$/LWT)

	Bangladesh	Pakistan	India	Turkey
Tank/Cont/Ro-Ro/Capes/LPG/PCC	530/570	520/560	510/525	270/280
Dry Cargo/Bulk/Tween/Gen Cargo	510/530	510/520	500/510	260/270

Newbuild and Second Hand Values *($ million)*

	Newbuild	5 Year Old	10 Year Old
Tankers			
VLCC	94	70	47
SUEZMAX	63.5	47	32
AFRAMAX	52.5	41	26
MR	36.5	27.5	18
Bulkers			
CAPESIZE	55^	35	28.5
KAMSARMAX / PANAMAX	30^	27.5k	20k / 18.5p
ULTRAMAX / SUPRAMAX	28^	23u	15s
HANDYSIZE	25^	20	14

^=Chinese price (otherwise based upon Japanese / Korean country of build)

Indices

	C.O.B Friday
BDI	2869
$/Yen	108.71
VLCC	
AG/East	36.5
TD3 (WS)	

CJC Market News

Campbell Johnston Clark (CJC) is a medium-sized international law firm advising on all aspects of the shipping sector, from ship finance to dry shipping and comprehensive casualty handling, and all that happens in between. Today, we have offices in London, Newcastle, Singapore and Miami.

Septo Trading and Tintrade Limited [2021] EWCA Civ 718

The Facts

Septo Trading (the "**Buyer**") agreed to buy and Tintrade Limited (the "**Seller**") agreed to sell a cargo of high-sulphur fuel oil, as per IS0 8217:2010 specifications ("**ISO**"). The contract was contained in an e-mail confirmation (the "**RECAP**") which incorporated the BP 2007 General Terms and Conditions for FOB Sales ("**BP Terms**").

The RECAP provided, *inter alia*, that the determination of quality and quantity were to be done by a first-class independent inspector whose results were to be binding on the parties, save for fraud or manifest error. Furthermore, while the BP Terms were incorporated, it was to apply, "*where not in conflict with the above"* (referring to the RECAP).

The BP terms provided at Section 1.2 stated that the certificate of quality was to be binding only for invoicing purposes and did not preclude the Buyer's right to make a claim in respect of quality. Additionally, Section 1.3 stated that the Seller would be obliged, in certain conditions, to provide the same quality of the cargo at the vessel's permanent hose connection in accordance with the quality certificate issued.

The Seller then nominated Ventspils as the port of loading. SGS Latvija Ltd ("**SGS**") were jointly retained to perform the quantity and quality inspection. SGS were presented with agreed instructions to, *inter alia,* obtain representative composite samples from the shore tanks. After sampling, the analysis done showed that the Total Sediment Potential ("**TSP**") recorded was 0.04%, well below the ISO maximum limit of 0.1%. SGS then issued a quality certificate dated 2 July 2018 in this regard.

The Buyer then sold the cargo to another buyer. Upon analysis, it was found that the TSP was 0.37%, exceeding the maximum value permitted by ISO. Further analyses were done on the samples collected by SGS and a mix of on-spec and off-spec results were obtained. The Buyer then made a quality claim against the Seller.

The Seller relied on the fact that the RECAP expressly stated that the SGS quality certificate issued was to be binding on parties. The Buyer responded stating that the BP Terms did not preclude a claim for damages.

At first instance, the Judge found no inconsistency between the RECAP and BP Terms. As such, Buyer's claim for damages was not precluded. Additionally, the Judge found that the cause of the off-spec cargo was of shore origin, that the product loaded was "*fundamentally incompatible"*. Further, it was found that the samples taken were unrepresentative of what was loaded. Therefore, judgment was given in favour of the Buyer.

The Seller appealed, contending that the Judge had erred by giving no effect to the RECAP term, effectively deleting it from the contract. The Buyer, by a respondent's notice, further relied on Section 1.3 of the BP Terms to support their position, submitting that it was a condition of the contract that the cargo received at the vessel's permanent hose connection would be as the quality certificate issued by SGS.

Judgment

Lord Justice Males gave the Judgment of the Court (with whom Phillips and Moylan L.J agreed).

Males L.J stated that the law regarding inconsistencies or conflicts in documents is well settled.

The starting point is *Pagnan SpA v Tradax Ocean Transportation SA [1987] 3 All ER 565* where the Court of Appeal set out the proper approach. At the outset, a Court should approach the construction of the contract without any pre-conceived assumptions and should not endeavour to avoid nor find an inconsistency. Instead, it should approach the documents in a, "*cool and objective spirit to see whether there is inconsistency or not":* per Bingham L.J (as he then was). The Court of Appeal then stated that for terms to be inconsistent, they need to contradict or be in conflict with one another, so much so "*that effect cannot fairly be given to both clauses."* In that case, the Court held that there was no inconsistency. Parties had agreed that the special terms were to prevail if they were inconsistent with the standard form terms.

Pagnan was followed in a subsequent Court of Appeal case: *Alexander v West Bromwich Mortgage Co Ltd [2016] EWCA Civ 496*. However, in that case, the term in question had the effect of completely transforming or negating the other and thus, was inconsistent.

Males L.J then set out the need to distinct between a term that qualifies another and one that transforms or negates it completely. To ascertain where the present case stood, it was necessary to determine whether the clauses could be read together to give effect to both. His lordship stated that this would require a practical approach bearing in mind business common sense. Furthermore, Males L.J stated that the ultimate object is to determine the intention of the parties from the language used in the relevant commercial setting.

In his discussion, Males L.J found that the RECAP clause meant that parties agreed that the quality certificate was intended to be binding for all purposes. However, when read against Section 1.2 of the BP Terms, his lordship stated that the latter had the result of depriving the RECAP term of, "*all practical effect"*. Thus, the two terms could not be fairly and sensibly read together and were in conflict. His lordship gave the following reasons:

1. firstly, that the particular BP Term had the effect of depriving the RECAP Term of all effect;

2. secondly, that a regime that provides for a certificate of quality to be binding is distinct from one that is not;

3. thirdly, that the RECAP term providing the certificate of quality to be binding is a central feature of the contract and it is unlikely that parties wanted to derogate from this through the printed terms (i.e. the BP Terms), and

4. lastly, a finding that parties meant a contractual scheme to which the certificate of quality was not binding but merely evidence cannot be a, "*commercially reasonable interpretation of what they have done in this case"*.

Likewise, and for similar reasons, his lordship held that Section 1.3 too had no application as it provided for a different regime altogether from that set out in the RECAP which essentially deprives the latter term of practical effect.

The Seller's appeal was therefore allowed.

London Arbitration 13/21

Claimant owners (the "Owners") time-chartered the vessel to the respondent charterers (the "Charterers") under a head-charterparty (the "Head Charter").
Clause 14(c) of the Head Charter provided:

> *"Consequential Damages – Neither party shall be liable to the other for any consequential damages whatsoever arising out of or in connection with the performance or non-performance of this Charter Party …*
>
> *'Consequential damages' shall include, but not be limited to, loss of use, loss of profits, shut-in or loss of production and costs of insurance, whether or not foreseeable at the date of the Charter Party."*

The charterers sub-time-chartered the vessel to a third party (the "Sub Charter").

Disputes arose between the parties as to the legitimacy of the final voyage under the Head Charter and Owners withdrew the vessel from Charterers' service.

Owners subsequently commenced arbitration proceedings and submitted that Charterers had failed to pay hire and other sums due under the Head Charter, which amounted to a total of US$ 365,855.94.

Charterers did not submit any specific defences against the claim however argued that Owners had committed a repudiatory breach of the Head Charter by withdrawing the vessel early, as a result of which the Charterers suffered loss and damage which exceeded the amount of owners claim. They submitted that Owners' withdrawal of the vessel caused their sub-charterers to terminate the Sub Charter, causing damage and loss to Charterers.

As a result, Charterers counterclaimed for damages under three heads of loss:

(1) A loss of hire under the Sub Charter;
(2) The loss of the right to a demobilisation fee of US$150,000; and
(3) A loss of profit they would have made under a proposed renewal of the Sub Charter, amounting to the sum of US$1,800,000.

Charterers counterclaim amounted to the total sum of US$2,168,500.

The preliminary issue before the Tribunal was therefore:

> *"Whether clause 14(c) of the [head] Charterparty exempts Owners from liability for all three heads of loss claimed by the Charterers, viz. losses in respect of hire and demobilisation fee under the [sub-time charter] and loss of profit resulting from a loss of tender.*

Owners argued that clause 14(c) exempted liability for all three heads of loss claimed by the Charterers as they were all types of consequential loss. An exemption from liability for consequential loss would be interpreted as an exemption from such loss as was within the second limb of Hadley v Baxendale (1854) 9 Exch 341.

The second limb of the rule in Hadley v Baxendale covered damage which the parties might reasonably have contemplated because of special knowledge.

The prima facie measure of loss for prematurely withdrawing a vessel from a time charter was the price of obtaining a substitute charter for the remainder of the charter period. This was not claimed by Charterers. Clause 14(c) also restricted Charterers ability to recover damages for 'loss of use' (which would have been a direct and natural consequence of the withdrawal of the vessel) as this was included in the definition of "consequential damages".

Owners therefore proposed that the preliminary issue should be answered – "Clause 14(c) of the [head charter] exempts Owners from liability (if any) for all three heads of loss claimed by Charterers".

Held,

Since Charterers had not raised any defences or objections to Owners' claim, the only potential defence to the claim which might arise was if the counterclaimed sums fell to be set-off against Owners' claims under the doctrine of equitable set-off.

The Tribunal ruled that the three heads of loss counterclaimed by Charterers were "consequential losses" within clause 14(c) of the Head Charter. Therefore, by consequence of Charterers counterclaim being debarred, it inevitably followed that Owners' claim had to succeed.

Accordingly, Owners were entitled to the answer to the preliminary issue which they had proposed and to a partial final award in their favour for the full sum claimed.

Liberian Registry Hits 200 Million Gross Tons Milestone

The Liberian International Ship and Corporate Registry (LISCR) has this week highlighted its continued rapid growth by announcing that it has hit a historic milestone in reaching a fleet size of 200 million gross tons. This news cements the LISCR as the fastest growing ship registry in the world, second behind Panama and before the Marshall Islands, which currently sits in third place.

The LISCR has grown year on year since 2019, with sustained growth credited to its expansion into new markets, flexibility and augmenting of staff and services. Greek and German shipowners continue to choose the LISCR as their number one choice, whist the registry is also fast becoming the go-to registry for shipowners in Japan, South Korea, and China.

Chief Operating Officer of the LISCR, Alfonso Castillero, commented, *"This historic milestone, and rapid growth of the Liberian Registry over the course of the past two years is a testament not only to the quality of service and responsiveness provided by the Liberian Registry, but to the trust placed in the Liberian Registry by a majority of the world's quality shipowners and operators."*

According to data from the LISCR, 524 ships were registered in 2020 and 276 ships have been registered to date in 2021 - of which 28% were newbuild deliveries, bringing the average age of its fleet to 10.8 years. The Liberian fleet currently stands at 4,750 vessels and 200 million gross tons. By comparison, Panama, which remains the largest flag state worldwide, reports a total of 8,484 vessels in its registry, representing a total of 227 million gross tons.

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