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THE NINTH NATIONAL LAW UNIVERSITY ODISHA

BOSE & MITRA & CO. INTERNATIONAL MARITIME

ARBITRATION MOOT, 2022

IN THE MATTER OF ARBITRATION TO BE

ADJUDICATED BY THIS ARBITRAL TRIBUNAL BETWEEN

CASPIAN TRADERS LIMITED ...CLAIMANTS

AND

TAWE …FIRST DEFENDANTS

CRUZ …SECOND DEFENDANTS

MEMORANDUM FOR DEFENDANTS

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-LIST OF ABBREVIATION-

ABBREVIATION	EXPANSION
&	And
¶	Paragraph
AC	Appeal Cases (3rd Series)
All ER	All England Law Reports
App. Cas.	Appeal Cases (2nd Series)
Anr.	Another
Art.	Article
B/L	Bill of Lading
BomLR	Bombay Law Reporter
CBNS	Common Bench Reports, New Series
Ch D	Chancery Division
Cir.	Court of Appeals (federal)
Cl.	Clause
Co.	Company
COGSA	Carriage of Goods by Sea Act
CompCas	Civil Court Cases

Corp.	Corporation
Doc.	Document
ed.	Edition
Eng. Rep.	English Reports
EWCA	England and Wales Court of Appeal
Exch	Exchequer Reports
HL	House of Lords
HR	Hague Rules
HVR	Hague Visby Rules
i.e.	That is
IAA	International Arbitrational Act of Singapore
Inc.	Incorporated
Int.	International
KB	King's Bench
Lloyd's Rep.	Lloyd Law Reports
LMCQ	Lloyd's Maritime and Commercial Law Quarterly
LS	Lenova Shipping Ltd.
NSWLR	New South Wales Law Reports
Prof.	Professor

QB	Queen's Bench
QBD	Queen's Bench Division
§	Section
SCC	Supreme Court Cases
SCMA	Singapore Chamber of Maritime Arbitration
SGHC	Singapore International Commercial Court
SLR	Singapore Law Reports
UKSC	United Kingdom Supreme Court
UKPC	United Kingdom Privy Council
UKHL	United Kingdom House of Lords
U.S.	United States Reports
USD	United States Dollar
v.	Versus
WLR	Weekly Law Reports

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CASES

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MISCELLANEOUS

-STATEMENT OF JURISDICTION-

The Defendants have approached the tribunal under the arbitration clause present in the addendum to the B/L, dated 25 November, 2020, read with the Rule 2 of the Singapore Chamber of Maritime Arbitration **["SCMA"]** Rules and § 2A of the International Arbitration Act of Singapore **["IAA"]**. The parties agree to accept the decision of the arbitral tribunal as final and binding.

-STATEMENT OF FACTS-

-THE PARTIES-

The Claimant, Caspian Traders Ltd. issued a claim for arbitration against Tawe Ltd. (first defendants) and against Cruz SA (second defendants). In both proceedings Caspian claimed $600,000 for the loss of the converters.

THE CONTRACT OF CARRIAGE

On 2oth November 2020, Caspian Traders Limited (Caspian) entered into a contract of carriage with Tawe, the owners of MV Odyssefs, for the carriage of twenty hydrogen fuel cell converters, each weighing approximately one tonne, from Santos, Brazil to Chennai. Each converter cost $30,000.

-THE COMBICON BILL OF LADING-

On 25th November 2020, the cargo was shipped and a B/L was issued by Tawe, in Santos, in the form of Combicon Bill of Lading,2016. Additional clauses were incorporated through an addendum providing the carrier rights to trans ship on any terms whatsoever, relieving him from the liability after discharge & limiting hi liability to $500 per package unit. Hague Rules governed the contract. On 1 December 2020, Tawe discharged the goods from Odyssefs at Cartagena and transhipped the goods to Hidalgo, owned by Cruz. Another B/L was issued by Cruz in Cartagena, Colombia in the form of Combicon Bill of Lading,2016. Through the addendum, the carrier's liability was limited to a sum of 1,000 Sterling per package unit. Hague Rules were incorporated by virtue of Clause Paramount.The B/L,in both the cases, is governed by English Law and disputes are to be settled via SCMA Rules. The B/L made no mention of the value of goods

-CHRONOLOGY OF EVENTS-

DATE	EVENTS
20 November 2020	Caspian Traders Ltd (Claimants) contracted with Tawe Ltd (first defendants), the owners of the MV Odyssefs, for the carriage of twenty hydrogen fuel cell converters from Santos, Brazil to Chennai.

25 November 2020	• . The Cargo was shipped. • Bill of Lading was issued by Tawe in Santos.
1 December 2020	• The Odyssefs arrived at Cartagena, Colombia. • Tawe discharged the cargo and transshipped it on to the Hidalgo, owned by Armadores Cruz SA. • Tawe received a bill of Lading issued by Cruz.
25 August 2021	Caspian issued a claim for arbitration against Tawe.
3 September 2021	Caspian issued a claim for arbitration against Cruz.

-CLAIM-

The Defendants claim that their liability is limited to amount per package unit according to the addendum to the B/L. Tawe, are entitled to limit their liability to a sum of $500 per package, making it a total of $10,000 and Cruz are entitled to limit their liability to 1,000 sterling per unit making it a total of 20,000 sterling (approximately $27,600).

-APPROACHING THE TRIBUNAL-

The Defendants invoked the arbitration cl. in the addendum and claim that the tribunal shall comprise of a sole arbitrator under § 9 of the IAA.

-ISSUES RAISED-

ISSUE -I

WHETHER THE ARBITRAL PANEL SHALL CONSIST OF A SOLE ARBITRATOR?

ISSUE - II

WHETHER THE HAGUE/HAGUE VISBY RULES ARE ENFORCEABLE BY LAW?

ISSUE - III

WHETHER THERE HAS BEEN A BREACH OF CONTRACTUAL DUTY BY TAWE LTD.?

ISSUE - IV

WHETHER THE SECOND DEFENDANTS ARE LIABLE FOR FAILURE TO SHOW DUE DILIGENCE IN PROVIDING A SEAWORTHY VESSEL?

ISSUE - V

WHETHER THE CLAIMANTS ARE ENTITLED TO THE AMOUNT OF COMPENSATION CLAIMED FROM THE DEFENDANTS?

-SUMMARY OF ARGUMENTS-

I. THAT THE ARBITRAL TRIBUNAL SHOULD CONSIST OF A SOLE ARBITRATOR

The Defendants submit that the parties have impliedly chosen Singapore as the seat of arbitration in their agreement. Accordingly, the IAA acts as the lex arbitri by virtue of being the law of the seat, and also under the SCMA Rules. The mandatory provisions of the IAA prevail over the rules adopted by the parties in case of inconsistency between the two. § 9 of the IAA, which provides for a sole arbitrator, can be considered a mandatory provision on the basis of its construction and intention, and thus, prevails over r. 8.2 of the SCMA Rules, which provides for three arbitrators. Moreover, § 9 requires the parties to make an express determination of the number of arbitrators, which adoption of the rules does not seem to achieve. Further, it specifically seeks to override Art. 10(2) of the Model Law, which is similar to r. 8.2 and, therefore, upholding r. 8.2 over § 9 would lead to the same result that § 9 seeks to override.

II. THAT THE HAGUE/ HAGUE VISBY RULES ARE NOT ENFORCEABLE BY LAW

It is submitted by the defendants that Hague & Hague Visby Rules are not enforceable by law in the instant contract of carriage. The B/L, in the instant dispute, has been signed in non-contracting states. As per Article X of the Hague Rules, the rules apply to the B/L signed in contracting states. Under English Law, Hague & Hague Visby rules do not have the 'force of law'. Further, it is submitted that the rules have been incorporated through voluntary incorporation. In such cases, the rules do not have the force of law and are not mandatorily applicable. Thus, it is submitted that, in the instant dispute, the Hague & Hague Visby Rules are not enforceable by law.

III. THAT TAWE IS LIABLE FOR BREACH OF CONTRACTUAL OBLIGATION

The defendants submit that, there has been no breach of contractual duty on part of Tawe. The carrier was under no obligation to ensure the sea-worthiness of Hidalgo, as according to Hidalgo B/L, they were the 'shipper'. The cargo was safely discharged from Odyssefs, the MV owned by Tawe. Further, the parties had incorporated a clause in the addendum to the B/L that the carrier is free to tranship goods on any terms whatsoever, any and all liabilities shall cease once the goods are discharged from Odyssefs. Article III Rule 1 of Hague and Hague/Visby Rules cannot render the Clause 2, null and void since the rules do not have the force of law and

are only applicable to the contract by the virtue of contractual obligation. Hence, it is submitted that Tawe, the first defendants, are not liable for breach of contractual duty.

IV. THAT THE SECOND DEFENDANTS ARE NOT LIABLE FOR FAILURE TO SHOW DUE DILIGENCE IN PROVIDING A SEAWORTHY VESSEL CLAIMED

It is humbly submitted that the second defendants are not liable for failure to provide a seaworthy vessel as they did not owe the duty of care towards the claimants. *Firstly*, the Claimants do not have the title to sue since they are not a party to the contract of carriage evidenced by the B/L issued by the second defendants. *Secondly*, the second defendants being the sub-carrier, are protected as third parties by Clause 15 of the Odyssefs B/L. Therefore, Cruz cannot be held liable for failure to show due diligence in providing a seaworthy vessel.

V. THAT THE CLAIMANTS ARE NOT ENTITLED TO THE AMOUNT OF COMPENSATION CLAIMED FROM THE DEFENDANTS

The Defendants humbly submit that the Limited liability for which the First Defendants can be held liable is to be construed in accordance with the contractually agreed Clauses of the addendum to the respective bill of lading. The Claimants have given complete liberty to the First Defendants to tranship goods on whatsoever terms by way of clause 2 of the addendums to the Odyssefs B/L, therefore stands bound by the Clause paramount inserted in the addendums to the Hidalgo B/L and subsequently not entitled to claim the gold value of the monetary terms. The Second Defendants humbly submits that they are protected as third parties by Clause 15 of Odyssefs B/L and are entitled to limit their liability under the terms of their sub-bailment with First Defendants to £1,000 per unit. The Second Defendants have inserted the application of the whole of HR1924 but Article IX. Therefore, the Second Defendant's liability is limited to nominal value and not gold value.

-ARGUMENTS ADVANCED-

I. THAT THE ARBITRAL TRIBUNAL SHALL CONSIST OF A SOLE ARBITRATOR

1. The Defendants submit that the arbitral tribunal shall consist of a sole arbitrator, since the seat of arbitration is Singapore **[A],** the IAA governs the *lex arbitri* **[B],** and § 9 of the IAA prevail over Rule 8.2 of the SCMA.

A. THAT SINGAPORE IS THE SEAT OF ARBITRATION

2. As per the principle observed in *Shashoua v. Sharma*[1], designation of Singapore as the venue of arbitration in the instant dispute[2] with no designation of an alternative place as the seat, in the absence of any significant contrary indicia, provides sufficient evidence that Singapore is the seat of arbitration intended by the parties.[3] Moreover, r. 32.1 of the SCMA Rules[4] adopted by the parties provides that the seat of arbitration shall be Singapore unless otherwise agreed by the parties. Where the seat of the arbitration is Singapore, the International Arbitration Act (Chapter 143A)[5] shall apply unless otherwise agreed by the parties.

3. In the present case, the parties in Cl.1 of the addendum to the B/L have agreed upon settlement of disputes via SCMA and there is no express mention of a seat of arbitration. Hence, IAA will be applied and the seat of arbitration will be Singapore.

B. THAT THE IAA GOVERNS THE ARBITRATION AS LEX ARBITRI

4. When parties to an arbitration agreement choose the seat of arbitration in a particular country, that brings with it submission to that country's laws.[6] It has been held that in the

[1] *Shashoua* v *Sharma* 2009 EWHC 957 (Comm).
[2] IMAM Case Study Addendums (Cl.1) 3.
[3] *Id.*
[4] Singapore Chambers of Maritime Arbitration Rules, 2022.
[5] International Arbitration Act, 2002
[6] Nigel Blackaby et.al., Redfurn and Hunter on International Commercial Arbitration ¶3.61 (Oxford University Press, 6th Ed. 2015); Habas Sinai V. VSC [2013] EWHC 4071 (Comm.).

absence of an express choice of law, there is assumed to be an implied choice for the law of the seat to govern the arbitration agreement[7] which, for Singapore, would be the IAA.[8]

5. R. 32.1 of the SCMA Rules also provides that the IAA shall be the law of arbitration, i.e. *The lex arbitri*, where the seat of arbitration is Singapore.[9] While parties may adopt certain rules of arbitration, the law of the arbitration is normally determined by the law of the situs or the seat of the arbitration. Unless parties 'opt out' of the application of the International Arbitration Act (IAA), an arbitration that is international is governed by the Model Law and the International Arbitration Act. The intention to opt out of the International Arbitration Act must be expressly made.[10] This further means that the IAA continues to apply even after the adoption of institutional rules, as is expressly clarified in § 15(2) of the Act too.

6. In the instant dispute, the parties intended Singapore as the seat and adopted the Rules, which indicates their intention to have the IAA govern their agreement. Hence, it is submitted that the IAA governs the arbitration as lex arbitri.

C. THAT § 9 OF THE IAA PREVAILS OVER RULE 8.2. OF THE SCMA RULES

7. As per § 15A(1),[11] if parties have adopted rules of arbitration, a provision of which is inconsistent with a mandatory provision of the IAA, the latter will prevail. The IAA doesn't specifically list out the mandatory provisions. It is then a matter of language and statutory interpretation to decide whether any particular provision has mandatory effect.[12]

8. § 9 of the IAA provides that if the number of arbitrators is not determined by the parties, there shall be a single arbitrator (emphasis added)[13]. It lays down the fixed position that parties cannot circumvent. Similarly constructed provisions in the Model Law, such as Art.

[7] *Sulamerica* v. *Enesa Engenharia* [2012] EWCA 638 (Civ).
[8] Alastair Henderson, *Lex Arbitri, Procedural Law and the Seat of Arb*, 26 Singapore Academy of Law Journal 886, 890 (2014); International Arbitration Act, 2002 (Sing.).
[9] *Sembawang Engineers & Constructors Pte Ltd.* v. *Covec Pte Ltd*. [2008] SGHC 229; Robert Merkin & Johanna Hjalmarsson, Singapore Arbitration Legislation 25 (Routledge, 2nd ed. 2016); *NCC International AB* v. *Alliance Concrete Pte Ltd.* [2008] 2 SLR(R) 565; *Navigator Investments Services Ltd.* v. *Acclaim Insurance Brokers Pty* [2009] SGCA 45; *Car & Cars Pte Ltd.* v. *Volkswagen AG* [2009] SGHC 233.
[10] *John Holland Pty Ltd (fka John Holland Construction and Engineering Pty Ltd)* v *Toyo Engineering Corp (Japan)* [2001] 1 SLR(R) 443, [2001] 2 SLR 262, Choo Han Teck JC
[11] International Arbitration Act, § 15A (1), 2002 (Sing.).
[12] Henderson, *supra* note 8.
[13] Alastair Henderson et al., *Arbitration procedures and practice in Singapore: overview*, Practical Law, https://uk.practicallaw.thomsonreuters.com/; Henny Mardiani, *Arbitration in Singapore*, 16 JOURNAL OF ARBITRATION STUDIES 217, 222 (2006); MERKIN , *supra* note 6, at 47

33(1)[14] which allows parties to agree on a time period for correction of award but applies in the absence of agreement, has been considered as fundamental and non-derogable.[15]

9. Further, § 9 specifically deviates from Art. 10(2) of the Model Law, which provides for three arbitrators. The provision for a sole arbitrator in a national legislation in contrast to the default provision in the Model Law is a deliberate choice (possibly aimed at reducing the cost and burden imposed on parties).[16] The word "Notwithstanding" signifies that in spite of or despite that Article, the particular § would have a full operation.[17] Thus, this provision of the IAA was intended to override the corresponding provision of the Model Law, which has otherwise been given the force of law in Singapore.[18] In order to prevail over Rule 8.2 of the SCMA, § 9 needs to be a mandatory provision. Thus, based on its construction and intention, § 9 can be seen as a mandatory provision.

10. § 9 requires that a specific number of arbitrators be defined by the parties by agreement.[19] It, thereby, does not seem to allow for the determination to be made by adopting rules of arbitration or any other method. Nonetheless, agreement by adoption of r.8.2. would not expressly[20] determine the number of arbitrators, but only provide a number in the absence of agreement. Further, 8.2 is similar to Art. 10(2) of the Model Law, also providing for three arbitrators, essentially leading to the same result that § 9 seeks to override. Thus, it is submitted that § 9 prevails over Rule 8.2. Therefore, in the present dispute, there shall be a sole arbitrator.

II. THAT THE HAGUE & HAGUE VISBY RULES ARE NOT APPLICABLE TO THE CONTRACT

11. It is submitted that by the Defendants that the Hague & Hague Visby Rules are not enforceable by law, as the B/L is signed in the non-contracting states **[A]**,the Hague and

[14] United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration* 1985, with amendments as adopted in 2006 (Vienna: United Nations, 2008), UN Doc. A/40/17, available from http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf.
[15] U.N. Secretary-General, *Analytical Commentary on Draft text of a Model Law on International Commercial Arbitration: Rep. of the Secretary-General*, ¶ 45 U.N. Doc. A/CN. 9264 (25 March 1985); *Noble China Inc.* v. *Lei Kat Cheong* 42 OR.3d 69 (Ontario Super. Ct., 1998) (China).
[16] *Departmental Advisory Committee on Arbitration Law, REPORT ON THE ARBITRATION BILL*, at ¶ 79 (1996); Itochu Corp. v. Johann M.K. Blumenthal GmbH & Co. Kg [2012] EWCA 996 (Civ).
[17] *Chandavarkar Sita Ratna Rao* v. *Ashalata S. Guram*, 1987 AIR 117.
[18] International Arbitration Act, § 3(1), 2002 (Sing.).
[19] Lawrence G. S. Boo, *SIAC and Singapore Arbitration*, 1 ASIAN BUSINESS LAWYER, 32 (2008); *Itochu Corp. v. Johann M.K. Blumenthal GmbH & Co. Kg* [2012] EWCA 996 (Civ).
[20] Merkin, *supra* note 9, at 47

Hague Visby are not compulsorily applicable under English Law **[B]**, and the HR are only applicable by the virtue of agreement. **[C].**

A. THAT THE BILL OF LADING IS SIGNED IN THE NON-CONTRACTING STATES

12. It is submitted that the B/L, issued by Tawe, was issued in Brazil and the B/L, issued by Cruz, was issued in Colombia.[21] Neither Brazil nor Colombia is party to the Hague Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924[22] or the Brussels Protocol to that Convention of 1968[23]. As per Article X[24], the rules are applicable to the bills of lading issued in contracting states. In the instant case, the bill of lading is not issued in a contracting state, therefore HR will not be applicable.

13. According to Article X of the HVR the rules are applicable if: (a) the bill of lading is issued in a contracting State, or (b) the carriage is from a port in a contracting State, or (c) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them are to govern the contract.[25] In the present case, none of the conditions apply since the B/L is not issued in a contracting, carriage is not from a port in contracting states and the legislation of state does not bring the rules into mandatory application.[26] In the present case, there is no clause incorporating HVR in the B/L or addendum, the mere mention of English law with no express reference to the COGSA, 1971 does not make the rules enforceable by law.[27]

14. Thus, it is submitted that the Hague & Hague Visby rules are not enforceable by law since the B/L is issued in non-contracting states.

B. THAT THE HAGUE/ HAGUE VISBY RULES ARE NOT COMPULSORILY APPLICABLE UNDER ENGLISH LAW

15. It is submitted that the parties in the addendum to the B/L, have agreed that the B/L will be governed by the English Law. Under English law, HR are incorporated by the virtue of COGSA,1924. However, HR cannot be incorporated by the virtue of an English Law Clause.[28]Under English law, neither the HR nor the HVR have mandatory effect over such

[21] IMAM Case Study 3.
[22] Id.
[23] Id.
[24] Hague Rules, 1924.
[25] Hague Visby Rules, 1968.
[26] The MSC Amsterdam [2007] EWCA Civ 794; [2007] 2 Lloyd's Rep 622.
[27] Hellenic Steel Company v Svolamar Shipping Company Ltd [1991] 1 Lloyd's Rep 370.
[28] *Vita Food Products Inc* v *Unus Shipping Co Ltd* [1939] UKPC 7,

a bill of lading.[29] § 1(2) of the Act[30] provides that the Rules *"shall have the force of law"*. However, the mere fact that English law is the applicable law of the bill of lading contract is not in itself sufficient to apply the Rules. [31]

16. The mere fact that English law is applicable law of the bill of lading contract is not in itself sufficient to apply the rules. In *The Kominos S*[32], the HR did not apply on the contract concerned therein because although the applicable law was the English Law, the port of shipment was in a non-contracting state, thus the conditions of Article X (a), (b) and (c) of the Rules[33] were not satisfied. Therefore, the English Law was applicable, however COGSA 71 was not.

17. By the principle observed in *The MSC Amsterdam*[34], HVR were not applicable even though the port was a contracting state because the rules are not compulsorily applicable under the English Law. Therefore, Hague & Hague Visby Rules will not be enforceable by law since they are not compulsorily applicable under the English Law.

C. THAT THE HAGUE RULES ARE APPLICABLE ONLY BY THE VIRTUE OF AGREEMENT

18. As already established in **(II) [A] & [B],** the B/L is not issued in contracting states, which implies that the B/L is not enforceable by law. The parties in the addendum to the B/L, have inserted a clause incorporating Hague Rules. The Rules can apply either mandatorily, in which case they will have 'the force of law', or voluntarily, through incorporation by what is known as a 'clause paramount'[35]In the latter case, the rules will not have the force of law.[36]In the instant case, the parties have inserted a clause paramount in the second B/L, however, there is no clause paramount in the first B/L. Therefore, the HR are applicable only by voluntary contractual implication.

19. When a document is incorporated into a contract, it becomes a part of the latter as if it was fully set out therein.[37] When the HR are incorporated into a contract, they do not have the force of law, and can be displaced by contrary clauses found elsewhere in the contract,

[29]The River Gurara [1996] 2 Lloyd's Rep 53, QB, 63.
30 § 1(2), Carriage of Goods by Sea Act,1971
31 Hellenic Steel Company v Svolamar Shipping Company Ltd (Komninos S) [1991] 1 Lloyd's Rep 370.
[32] Ibid.
[33] Hague Visby Rules, 1968.
34 The MSC Amsterdam [2007] EWCA Civ 794; [2007] 2 Lloyd's Rep 622.
[35] Simon Baughen, *Shipping Law* (Routledge, 6th ed. 2015) 94.
[36] Richard Aikens, *Bills of Lading* (Routledge,2nd ed.2006).
[37] BLACK'S LAW DICTIONARY (West Pub. Co., 5th ed. 1979).

pursuant to general principles of contractual construction.[38] Since in the given case the Rules have been incorporated voluntarily, they do not have the force of law and must be construed in accordance with the rest of contract.[39]

20. Thus, it is submitted that the HR and HVR, as applied to the instant case, do not have the 'force of law' since the B/L is signed in non-contracting states, the English Law does not mandatorily incorporate the HR and the rules are only applicable by the virtue of agreement.

III. THAT TAWE IS NOT LIABLE FOR BREACH OF CONTRACTUAL OBLIGATION

21. The defendants submit that there has not been a breach of contractual duty by Tawe, as they were under no obligation to ensure the sea-worthiness of the vessel **[A]**, that Article III Rule 8, cannot render Cl. 2 null and void. **[B],** and the addendum will prevail over the pre-printed terms of the bill of lading.**[C].**

A. THAT THE DEFENDANTS WERE UNDER NO OBLIGATION TO MAINTAIN THE SEAWORTHINESS OF THE VESSEL

22. Under Article III r. 1[40], the carrier is liable to ensure that the ship is seaworthy, properly equipped and fit and safe for the carriage and voyage.[41] The obligation to maintain seaworthiness is an innominate obligation.[42] The vessel must be in such a state at the start of the voyage that it can perform the contract voyage in safety, both as regards the vessel itself and the particular cargo to be carried on the voyage.[43]In the instant dispute, Tawe is the owner of MV Odyssefs, the goods were discharged from its custody in a safe condition at Cartagena. Thus, the ship, whose carrier was Tawe, was seaworthy. The burden to proof that this ship was unseaworthy lies with the claimants.[44] This has been held by the court of appeal, in the *Torenia*[45] and the *Fiumana Societa di Navigazione* v *Bunge & Co Ltd.*[46]

[38] BAUGHEN, supra note, at 35; W.R. Varnish v. Kheti [1948] 82 Lloyd's Rep. 525.
[39] Volcafe Ltd. v. Compania Sud Americana de Vapores SA [2018] UKSC 61, 11 (Eng.).
[40] Hague Rules, 1924.
[41] Id.
[42] *Hong Kong Fir Shipping Co. Ltd.* v *Kawasaki Kisen Kaisha Ltd.* [1962] 2 QB 29.
[43] Simon Baughen, *Shipping Law* (Routledge, 6th ed. 2015) 81.
[44] Id.
[45] *Aktieselskabet de Danske Sukkerfabrikker* v. *Bajamar Compania Naviera SA* [1983] 2 Lloyd's Rep 210.
[46] *Fiumana Societa di Navigazione* v *Bunge & Co Ltd* [1930] 2 KB 47.

23. In its most fundamental sense, providing a seaworthy vessel requires the vessel being structurally fit for the intended voyage, 'fit to meet and undergo the perils of sea and other incidental risks to which of necessity she must be exposed in the course of a voyage'[47] The vessel provided by Tawe[48] was seaworthy, thus, there was no breach of Art. III r.1.[49]

24. The requirement that the ship should be fit for the charter service, imposes on the owners an obligation to ensure that the ship is seaworthy at the time of delivery. The said has also been held by the Court of Appeal in The Madeleine,[50] The Hongkong Fir,[51] and The Derby.[52] This obligation of the shipowner, of seaworthiness, is with regards to the cargo that the vessel is supposed to carry[53]. In the present dispute, the cargo, for the performance of contract of carriage, was seaworthy at the time of voyage till the time it discharged the cargo at the port of Cartagena.

25. The owner of the vessel is under an obligation to ensure that the vessel is seaworthy before and at the beginning of the voyage. This covers the period "from at least at least the beginning of the loading until the vessel starts on her voyage.[54] In the instant dispute, the first defendants are the shipowners of Odyssefs, and are only liable for the seaworthiness of the vessel owned by them.

26. The vessel that has been admitted to be unseaworthy, is owned by Cruz. In the contract between Tawe and Cruz, the B/L provides that Tawe is the shipper.[55] The obligation to ensure seaworthiness is not the shipper's responsibility. Art. IV r. 3[56] provides that, the shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants. The shipowner cannot be held liable for negligence on part of an independent contractor[57],with whom he contracted for the performance of contract.[58] The

[47] *Kopitoff* v. *Wilson* [1876] 1 QBD 377 (Eng.); *Steel* v. *State Line Steamship* (1877) 3 App. Cas. 72 (Eng.); *Gilroy, Sons & Co* v. *W R Price & Co.* [1893] AC 56 (Eng.); *Virginia Carolina Chemical Co.* v. *Norfolk and North American Steam Shipping Co.* [1912] 1 KB (Eng.) 229.
[48] IMAM Case Study 3.
[49] Hague Rules, 1924.
[50] *Cheikh Boutros Selim El-Khoury* v. *Ceylon Shipping Lines Ltd*. [1967] 2 Lloyd's Rep. 224.
[51] *Hong Kong Fir Shipping Co. Ltd.* v. *Kawasaki Kisen Kaisha Ltd.* [1961] 2 Lloyd's Rep. 478.
[52] *Alfred C. Toepfer Schiffahrtsgesellschaft* v. *Tossa Marine Co. Ltd.* [1985] 2 Lloyd's Rep. 325.
[53] *Eridania* v. *Rudolf A Oetker* [2000] 2 Lloyd's Rep 191.
[54] The Steel Navigator, 23 F.2d 590 (2nd Cir. 1928); *CHS Inc. Inberica* v. *Far East Marine* [2012] EWHC(Comm.) (Eng.) 3747.
[55] IMAM Case Study 3.
[56] Hague Rules, 1924.
[57] *W Angliss & Co (Australia) Proprietary Ltd* v. *P & O Steam Navigation Co* [1927] 2 KB 456.
[58] Martin Dockeray, *Cases and Materials on Carriage of Goods by Sea*, 173.

same has been held in the cases of The Rossmore[59] and The Colima.[60] It has been observed that a line is to be drawn whether the carrier can be held liable or not. In the instant dispute, Hidalgo, was owned by Cruz, and thus, Art III r.1[61] cannot hold Tawe liable on failure to maintain due diligence.

27. It was held in the case of *Maxine Footwear Co Ltd v Canadian Government Merchant Marine Ltd* [62], that no facts or clause in the case extend the carrier's duty of due diligence, therefore the carrier was not held liable for breach of duty under Art. III r1.[63] The condition is somehow similar to the instant case, there is no cl. in the B/L or the addendum that aims to extend the carrier's duty of due diligence. On the other hand, Cl. 2 of the addendum provides that any liability of the carrier shall cease once the goods are discharged from Odyssefs.[64] Thus, the carrier will not be liable for the unseaworthiness of Hidalgo.

28. Therefore, it is submitted that Tawe was under no obligation to maintain the seaworthiness of Hidalgo, and his liability had ceased in relation to the contract after the goods discharged from Odyssefs.

B. THAT ARTICLE III RULE 8 OF HAGUE AND/OR HAGUE/VISBY CANNOT RENDER CL. 2 OF THE ADDENDUM NULL AND VOID

29. As per Art III r.8[65], "*Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connexion with, goods arising from negligence, fault, or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in this Convention, shall be null and void and of no effect."* As per this, the carrier cannot evade his liability. However, in a case where the rules[66] apply by the virtue of contractual incorporation, Art.III r. 8[67]cannot render a clause null and void. It is only applicable where the rules have force of law.[68] In the instant dispute, as already established in **II,** the HR& HVR do not have force

[59] Rossmore House, 269 N.L.R.B. (N.L.R.B-BD 1984) 1176.
[60] The Colima, 82 F. (1897)665.
[61] Hague Rules, 1924.
[62] *Maxine Footwear Co Ltd* v. *Canadian Government Merchant Marine Ltd* [1957] SCR 801.
[63] Hague Rules, 1924.
[64] IMAM Case Study (Addendum B/L 1, Cl.2) 3.
[65] Hague Rules, 1924 & Hague Visby Rules, 1968.
[66] *Id*
[67] *Id.*
[68] Simon Baughen, *Shipping Law* (Routledge, 6th ed. 2015) 101.

of law since they are applicable only by the virtue of agreement. Thus, Cl. 2[69] cannot be rendered null and void by these rules.

30. *Special tailor-made clauses*, clearly drafted to cover specific factual situations, are given effect where the application of other clauses would render them of no practical value. Such clauses are not affected by the HR, where if it was to be held otherwise, it would deprive the special clause of substantially all effect. Thus, when there is a conflict between the incorporated HR and the express terms and provisions of the contract, the conflict is resolved with accordance to ordinary contractual principles, without reference to Art. III Rule 8 of the HR. [70]

31. Furthermore, to protect itself from liabilities, the carrier is supposed to word its exception clauses in the B/L, so that it specifically covers the loss due to breach of that obligation.[71] A clause in conflict with the rules may prevail when the rules have been voluntarily incorporated.[72] Article III (8)[73] shall only apply if rules are mandatorily applicable and have the 'force of law'[74]. In the instant dispute, the carrier has worded the exception clause,[75] and the rules have been voluntarily incorporated.

32. There is no express provision in the Hague Rules, which bars the shipowners from relying on exception unless it is proven that loss occurred due to his negligence.[76] Mocotta J, observed that the shipowners are protected from charterer's claims by an exception clause.[77] In the present case, the loss was not due to Tawe's negligence. Thus, as per the said precedent, they cannot be barred from relying on Cl.2.

33. Cl. 2, provides for liberty to transhipment, *on any terms whatsoever*, and relieves the carrier from *any and all liability*. When there is a clause of transhipment, it falls out of Art III r.2[78] and thereby, also falls out of the scope of Art III r.8[79]. In the instant case, the cargo was lost after transhipment, therefore, Art III r8[80] cannot render the cl.2, null and void and hold the carrier liable. The use of terminology *any and all liability*[81], gives rise to fact in advance

[69] Supra note 64.
[70] The Tasman Discoverer [2002] 2 Lloyd's Rep. 528 (CA).
[71] *Supra*, 30(Shipping law).
[72] Shipping Law; *The Strathnewton* [1983] 1 Lloyd's Rep 219, CA.
[73] Article III Rule 8 Hague Rules, 1924; Hague Visby Rules,1968.
[74] *Roya Netherlands Steamship Co.* v. *the Hollandia*, [1983] 1 AC 565
[75] Supra note 64.
[76] *Albacora SRL* v *Westcott and Laurance Line*,[1966] 2 Lloyd's Rep 53, 64.
[77] Martin Dockeray, *Cases and Materials on Carriage of Goods by Sea*, 215.
[78] Hague Rules, 1924.
[79] The Tapti [1936] 1 K.B. 565.
[80] Hague Rules, 1924.
[81] Supra note 64.

that the carrier is not to be held liable in any circumstances[82] which arise after discharge of goods from Odyseffs.[83] Such terminology is thus sufficient warning that the person entrusted with the goods would not be responsible for loss caused by his own acts or that of his servants.[84] Thus, in the instant dispute, Tawe is relieved from liability after discharge from Odyssefs by incorporating Cl.2 in the addendum to the B/L and is thus not liable for the actions of Cruz. Therefore, it is humbly submitted that Article III Rule 8 cannot render Cl. 2 null and void, and the carrier is relieved from the liability arising after discharge.

C. THAT THE ADDENDUM WILL PREVAIL OVER THE PRE-PRINTED TERMS OF BILL OF LADING

34. The B/L is not the contract in itself, but only an evidence to the contract.[85] There are a variety of clauses in the B/Whilst the B/L evidences a contract, not all terms of B/L are of contractual force. It was held in *the Kerman*[86], where the issue of B/L is between the carrier and the original party to the contract, the court looked beyond the terms of contract of carriage.[87]

35. A B/L is typically a piece of paper with pre-printed clauses, there are instances where the carrier incorporates additional clauses to the B/L through an addendum. The B/L should be construed as a whole, but all clauses should not be given equal importance.[88] The House of Lords, in the *Starsin*[89],observed that greater weight should be given to terms which the parties have chosen to incorporate than pre-printed terms. Thus, in cases where there is a contradiction between pre-printed terms and stamped[90] and typed clauses[91],the typed clauses will prevail. It is a well-established principle, that the incorporated terms will prevail. [92] In the instant dispute, the parties have incorporated Cl.2, in the addendum which relieves the carrier from liability, thus this clause will prevail over the terms of B/L.

[82] *Joseph Travers & Sons Ltd. v. Cooper* [1915] 1 KB 73; *Balkrishan R. Dayma v. Bank of Jaipur Ltd*., (1971) 41 CompCas (Bom) 557.
[83] Supra note 64.
[84] *Balkrishan R. Dayma v. Bank of Jaipur Ltd*., (1971) 41 CompCas 557 (Bom); *Joseph Travers & Sons Ltd. v. Cooper* [1915] 1 KB 73; *Price & Co. v. Union Lighterage Co*. [1904] 1 KB 412.
[85] *Crooks v Allan (1879) 5 Q.B.D ;Finmoon v Baltic Reefers* [2012] 2 Lloyd's Rep. 388
[86] *Kerman v. The city of New York*, [1982] 1 Lloyd's Rep. 62, 67.
[87] Richard Aikens, *Bill of Lading*, (Routledge, 2nd Ed.)
[88] Ibid.
[89] *Starsin Onwers of Cargo & ors. v. Owner and/or demise charterers of the ship or vessel Starsin* [2004] 1 A.C. 715
[90] *Varnish & Co. Ltd. v Owners of the Kheti (The Kheti)* (1949) 82 Ll. L. Rep. 525.
[91] *United British SS. Co. v Minister of Food* [1959] 1 Lloyd's Rep. 11.
[92] *Sabah Flour and Feedmills Sdn Bhd v Comfez Ltd*. [1988] 2 Lloyd's Rep. 18 as cited in *Finagra Ltd. v O.T. Africa Line Ltd.* [1998] 2 Lloyd's Rep. 622.

36. Furthermore, a specially negotiated clause will take precedence over a merely incorporated clause.[93] Where a special clause is included in the contract, the maxim *specialibus generalia non derogan*t should apply and the special tailormade clause, dealing with a very specific situation, should not be overridden by the Paramount clause.[94] In the instant dispute, Clause incorporated by the parties, will take precedence and it will not be overridden by HR or the terms of B/L. Thus, it is submitted that the terms of addendum will prevail over the terms of the B/L. Therefore , the defendants humbly submit that there has not been a breach of contractual duty by the first defendants .

IV. THAT THE SECOND DEFENDANTS ARE NOT LIABLE FOR FAILURE TO SHOW DUE DILIGENCE IN PROVIDING A SEAWORTHY VESSEL

37. It is humbly submitted that the second defendants cannot be held liable for failure to provide a seaworthy vessel since the claimants do not have the title to sue as they are not a party to the contract of carriage entered between Cruz and Tawe. Therefore, Cruz do not owe the duty of care to the claimants **[i]** and Cruz are protected as third parties by Clause 15 of the Odyssefs Bill of Lading **[ii]**.

A. THAT THE CLAIMANTS DO NOT HAVE THE TITLE TO SUE

38. The defendants humbly submit that the claimants do not have the title to sue since they were not a party to the contract contained in the B/L issued by the second defendants either at Common Law or under COGSA, 1992.

39. The doctrine of privity of contract states that only a party to a contract may sue or be sued on it. Third parties can neither sue, nor be sued, however closely connected with it they may be.[95]

40. The Court of Appeal has also made clear multiple times that a real (rather than fictitious) contract must be implied even under the *Brandt* v. *Liverpool*[96] doctrine, which provides for an implied contract between the endorsee and the carrier. It has been emphasised that the

[93] *Finagra Ltd. v. O.T. Africa Line Ltd*. [1998] 2 Lloyd's Rep. 622; *Sabah Flour & Feedmills SDN. v. Comfez Ltd*.[1988] 2 Lloyd's Rep. 18.

[94] *Marifortuna Naviera S.A.* v. *Government of Ceylon* [1970] 1 Lloyd's Rep. 247

[95] Paul Todd, *Bills of Lading & Bankers Documentary Credits* (Routledge, 4th ed. 2007) 114.

[96] Brandt v. Liverpool [1924] 1 KB (Eng.)575.

courts will not artificially extend the doctrine to reach a commercially just solution.[97] Bingham L. J. observed that it is necessary to identify conduct supporting the contract argued for or, at least, conduct inconsistent with there being no contract between the parties. There can be no implied contract if the parties would have acted exactly as they did, in the absence of a contract.[98]

41. Moreover, it has been generally recognized that in order to be able to imply a contract, it is necessary for offer, acceptance and consideration to be present in the transaction.[99] In the instant case, Tawe is named as both the shipper and consignee in the B/L issued by the second defendants and the claimants are not a party to the contract of carriage evidenced by the B/L.

42. Hence it is submitted that no implied contract arose between claimants and the second defendants. Therefore, Cruz do not owe the duty of care towards the claimants and cannot be held liable.

B. CRUZ ARE PROTECTED AS THIRD PARTIES TO THE CONTRACT

43. It is humbly submitted that the second defendants cannot be held liable for failure to provide a seaworthy vessel as they are protected as third parties to the contract by Cl. 15 of the Odyssefs B/L.

44. Moreover, the doctrine of privity also suggests that a contract cannot, as a general rule, impose obligations arising under it on any person except the parties to it.[100]

45. The Privy Council from the New Zealand Court of Appeal in *New Zealand Shipping Co Ltd v AM Satterthwaite & Co Ltd (The Eurymedon)*[101] relied on the clauses added in the B/L and reasoned to give third parties, the benefits of the limitation and exemption clauses contained in the B/L to give effect to the clear intentions of a commercial contract.

46. In the instant case, the second defendants were protected as third parties to the contract of carriage evidenced by the Odyssefs B/L and Cl. 15 of the B/L relieves the second defendants from any liability arising out of the shipment.[102]

47. Moreover, the decision of House of Lords in *The Aliakmon* was that, in relation of goods, the general duty of care, is owed only to the party who is either the owner of those goods

[97] *Id*, at 124.
[98] The Aramis [1989] 1 Lloyd's Rep. 213.
[99] *Id*.
[100] *Supra*, 92.
[101] *New Zealand Shipping Co Ltd* v *AM Satterthwaite & Co Ltd (The Eurymedon)* [1973] 1 NZLR (CA NZ) 174.
[102] Combicon Bill, 2016 Clause 15.

or entitled to the immediate possession of them.[103].Therefore, in the instant case, the second defendants being the sub-carriers were not entitled to the immediate possession of the cargo and hence, cannot be held liable.

V. CLAIMANTS ARE NOT ENTITLED TO THE COMPENSATION THAT IT HAS CLAIMED FROM THE DEFENDANTS

48. It is humbly submitted that that neither of the Defendants is liable to pay any amount for the lost converters **[A]**; and in the alternative, the Defendants are entitled to limit the amount in accordance with the limitation of liability as stipulated in the contractually agreed clauses **[B]**.

A. NEITHER OF THE DEFENDANTS IS LIABLE TO PAY ANY AMOUNT FOR THE LOST CONVERTERS

49. The Defendants are not liable to pay any amount for the 20 Hydrogen Fuel Cell Lost Converters. It is humbly submitted that Clause 2 of the Addendums to the Odyssefs B/L exonerate the First Defendants from any liability of the lost goods **[i]**; and The Second Defendants are protected as Third Parties by Clause 15 of the Odyssefs B/L **[ii]**.

i. Clause 2 of the Addendums to the Odyssefs B/L exonerate the First Defendants from any liability for the lost goods

50. Clause 2 of the Addendums to the Odyssefs B/L stipulates:

"The Carrier has liberty to trans ship goods on any terms whatsoever, and any and all liability in the Carrier, whether in contract, tort, bailment or otherwise, shall cease once goods are discharged from the Odyssefs."[104]

51. The First Defendant's carrier 'M/V Odyssefs' shipped the Claimant's 20 Hydrogen Fuel Cell Converters from Santos, Brazil to Cartagena, Columbia[105] and the loss occurred after the goods were discharged from the Odyssefs.[106] The insertion of above-mentioned clause

[103] *Leigh & Silivan Ltd. v. Aliakmon Shipping Co. Ltd*. [1986] 1 AC 785.
[104] Supra note 64.
[105] IMAM Case Study (Clarifications) 2.
[106] IMAM Case Study 3.

clearly states that no liability stands attached to the First Defendants after the goods are being discharged from the Odyssefs.

52. Furthermore, it has already been established in **[II],** that the Hague and/or Hague-Visby Rules were applicable to the carriage not by operation of law but only by virtue of agreement between the parties[107] and Clause 11 of the Combicon Bill 2016 form, which says that the liability of the carrier shall be determined by Hague/ Visby Rules[108] is to be regarded as deleted by way of Clause 2 of the Addendum to the Odyssefs B/L.[109] Therefore, as already established in **III[B]** Article III Rule 8 of Hague/ Hague Visby Rules cannot overrule the above mentioned clause.[110]

ii. The Second Defendants are protected as Third Parties by Clause 15 of the Odyssefs B/L

53. It is humbly submitted that Clause 15(a) of the Odyssefs B/L on the Combicon Bill 2016 form[111], while defines the meaning of 'servant' for the purpose of contract, within its definition includes- *"direct or indirect servant, agent or sub-contractor (including their own sub-contractors), or any other party employed by or on behalf of the carrier, or whose services or equipment have been used to perform this contract whether in direct contractual privity with the carrier or not.*"[112]

54. The Second Defendants comes within the purview of this definition and thereby can use all the defences and limitations available to a servant by the applicability of this clause.

55. Clause 15(b) of the Odyssefs B/L expressly exonerates a servant from any liability in any circumstances whatsoever to the merchant or any other party of the contract for any delay or loss whatsoever kind arising or resulting directly or indirectly from any act neglect or default on the servant's part while acting in the course of or in connection with the performance of the contract.[113].Therefore, the Second Defendants are also not liable for the claim that has been claimed by the defendants.

[107] IMAM Case Study (Addendum to B/L 1- Cl.4, Addendum to B/L 2- Cl.3) 3
[108] Combicon Bill, 2016, Cl. 11.
[109] Supra note 64.
[110] Supra note 64.
[111] Combicon Bill, Cl. 15(a).
[112] Id.
[113]Combicon Bill, Cl. 15(b).

B. IN THE ALTERNATIVE, THE DEFENDANTS ARE ENTITLED TO LIMIT THE AMOUNT IN ACCORDANCE WITH THE LIMITATION OF LIABILITY AS STIPULATED IN THE CONTRACTUALLY AGREED CLAUSES

56. It is humbly submitted that the Limited liability for which the First Defendants can be held liable is to be construed in accordance with the Clause 3 of the addendum to the Odyssefs bill of lading, which states that- *"In the case of loss or damage neither the Carrier nor the ship shall be liable in any circumstances for any sum in excess of $500 per package or unit."*[114]

57. It is humbly mentioned that the above mentioned clause is in accordance with Clause 10(b) of the Combicon Bill Form 2016 which states that the limited liability whatsoever agreed between the parties should not exceed the limit of 2 Special drawing Rights per kg of gross weight of the goods lost[115] and 10(c) of Combicon Bill 2016 which stipulates that higher compensation may be claimed by the shipper only when the value of the goods has been stated on the face of the B/L at the place and time they are delivered to the carrier for delivery.[116] In the present case, the value of the goods is not mentioned,[117] thereby, making the claimants lose their right to substitute the limited liability with higher compensation.

58. The Clause Paramount mentioned in Clause 4 of the addendum to the Hidalgo B/L says: "*The contract contained in or evidenced by this bill of lading is subject to the HR1924, save that Article IX of the said Rules shall not apply*."[118]

59. It is humbly submitted that the Second Defendants are entitled to limit their liability under the terms of their sub-bailment with First Defendants to £1,000 per unit, making their liability £20,000 (approximately$27,600) because of Clause 4 of the addendum to the Hidalgo bill of lading.[119] This amount is in fact more than the amount mentioned in Art. 4 Rule 5 of HR1924.

60. It is humbly submitted that Article IX of HR,1924 which states that monetary units are to be taken to be gold value[120], stands deleted by way of Clause Paramount which says that Article IX of the said rules shall not apply. The Second Defendants have inserted the application of the whole of HR but Article IX. Therefore, the liabilities should be construed

[114] IMAM Case Study (Addendum Cl.3) 3.
[115] Combicon Bill, 2016, Cl. 10(b).
[116] Combicon Bill, 2016, Cl. 10 (c).
[117] IMAM Case Study (Clarifications) 2;3.
[118] IMAM Case Study (Clarifications) 3.
[119] IMAM Case Study 6.
[120] Hague Rules, 1924, Article IX

accordingly and consequently, the Second Defendant's liability is limited to nominal value and not gold value.

61. In the *Tasman Discover Case*[121]**,** the Court of Appeal decided that the parties had contractually modified the Hague Rules, both by deeming their scope to be extended to carriage in inland waterways, and by deeming the package limitation to be "£100 Sterling, lawful money of the United Kingdom", thereby fixing a specific, stand-alone limitation of liability written in terms of national currency, without any reference to gold value, or the essential linkage between Article IV rule 5 and Article IX of the Hague Rules. As a consequence, the Court allowed the carrier's appeal and held that its liability was limited to the nominal value. Thus, it is humbly submitted that the same reasoning follows in this case, thereby making the Second Defendants liable only for the nominal value.

62. The Claimants have given complete liberty to the First Defendants to tranship goods on whatsoever terms by way of clause 2 of the addendums to the Odyssefs B/L, therefore stands bound by the Clause paramount inserted in the addendums to the Hidalgo B/L and subsequently not entitled to claim the gold value of the monetary terms.

63. *The Pioneer Container Case*[122] established the validity of 'Himalaya clauses' in relation to the law of carriage of goods and considered occasions where a party may be bound by a contractual clause, they were not originally privy to. The Judicial Committee of the Privy Committee upheld the first instance decision and found that the clause regarding Taiwanese jurisdiction in the secondary bills of lading operated to bind both the carrier and the cargo owner as the cargo owner had granted the carrier complete discretion to sub-bail the goods, thus making it irrelevant that the cargo owner had been unaware of the clause's existence.

64. Thus, the defendants humbly submit, before the present tribunal, that the claimants are not entitled to amount of compensation they have claimed from the defendants.

[121] *Dairy Containers Ltd* v. *The Ship "Tasman Discoverer*" [2002] 1 NZLR 265; [2001] 2 Lloyd's Rep 665

[122] *The Pioneer Container KH Enterprise* v. *Pioneer Container* [1994] 1 Lloyd's Rep 593.

-PRAYER-

In light of the above submissions, the Defendants request the tribunal to declare:

(1) That the tribunal should consist of a sole arbitrator.
(2) That the first defendants are not liable for the breach of contractual duty.
(3) That the Clause 2 protects the defendants from liability after discharge of goods from Odyssefs.
(4) That Art. III r. 8 cannot strike Clause 2 of the addendum to Odyssefs B/L.
(5) Claimants are not a party to the contract with the second defendants and hence have no title to sue.
(6) That the Claimants are not entitled to the quantum claimed & liability of the defendants is limited as per the clauses in the addendum.

AWARD costs in favour of the Defendants.

COUNSEL *for* DEFENDANTS