

12/85

IN THE PRIVY COUNCIL

No. 13 of 1982

O N A P P E A L

FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

GEORGE KALLIS (MANUFACTURERS)
LIMITED

Appellant
(Plaintiff)

- and -

SUCCESS INSURANCE LIMITED

Respondent
(First Named Defendant)

RECORD OF PROCEEDINGS

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Solicitors for the Appellant

Solicitors for the Respondent

 O N A P P E A L

 FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

 GEORGE KALLIS (MANUFACTURERS)
 LIMITED

Appellant
 (Plaintiff)

- and -

SUCCESS INSURANCE LIMITED

Respondent
 (First Named Defendant)

RECORD OF PROCEEDINGS

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O N A P P E A L

FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

GEORGE KALLIS (MANUFACTURERS)
LIMITED

Appellant
(Plaintiff)

- and -

SUCCESS INSURANCE LIMITED

Respondent
(First Named Defendant)

10

RECORD OF PROCEEDINGS

No. 1

Writ of Summons - 19th January 1978

E.R.

1978 No. 230

In the Supreme
Court of
Hong Kong

No. 1
Writ of
Summons
19th January
1978

IN THE SUPREME COURT OF HONG KONG

COMMERCIAL LIST

HIGH COURT

20

BETWEEN GEORGE KALLIS (MANUFACTURERS)
LTD. Plaintiffs

and

SUCCESS INSURANCE LTD. 1st Defendant

SAN INTERNATIONAL
INSURANCE CO. (HONG KONG)
LTD. 2nd Defendant

30

a 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 the 1st Defendant Success Insurance Ltd. whose

In the Supreme Court of Hong Kong

No. 1
Writ of Summons
19th January 1978
(cont'd)

registered office is at 9th Floor, Prince's Building, Des Voeux Road Central, Hong Kong and the 2nd Defendant San International Insurance Co. (Hong Kong) Ltd. whose registered office is at No. 59, Des Voeux Road Central, Hong Kong.

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 George Kallis (Manufacturers) Ltd. whose address for service is c/o Rooms 403-413 HongKong & Shanghai Bank Building, Des Vouex Road Central, Hong Kong, and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

10

WITNESS The Honourable Sir Geoffrey Briggs, Chief Justice of Our said Court, the 19th day of January, 1978.

S.M. MAYO
Registrar.

20

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.

30

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.

STATEMENT OF CLAIM

1. The Plaintiffs' claim against the 1st Defendant is for US\$91,364.00 for loss under 3 policies of Marine Insurance subscribed by the 1st Defendant No. M/116768, M/116972 and M/116973 respectively.

40

2. The Plaintiffs' claim against the 2nd Defendant is for US\$31,900.00 for loss under a

policy of Marine Insurance subscribed by the 2nd Defendant No. M/32456.

In the Supreme Court of Hong Kong

3. Interest.

(Sd) Johnson, Stokes & Master
JOHNSON, STOKES & MASTER
Solicitors for the Plaintiffs.

No. 1
Writ of Summons
19th January 1978
(cont'd)

10 And the sum of \$526.00 (or such sum as may be allowed on taxation) for costs, and also, if the Plaintiffs 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 Plaintiffs or their Solicitors within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed.

20 This writ was issued by Johnson, Stokes & Master, of Hongkong & Shanghai Bank Building, Victoria, Hong Kong, Solicitors for the said Plaintiffs, whose address for business is P.O. Box 1750, Nicosia, Cyprus.

(Sd) JOHNSON, STOKES & MASTER

In the Supreme
Court of
Hong Kong

No. 2
Amended
Statement of
Claim - 12th
May 1978

No. 2

Amended Statement of Claim - 12th May
1978

Amended as in red pursuant to the Order of the
Honourable Mr Commissioner Mills-Owens dated the
9th day of May, 1980. Amended on the 12th day
of May, 1980.

Registrar.

No. 230 of 1978

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

10

Writ issued on the 19th day of January 1978.

BETWEEN GEORGE KALLIS (MANUFACTURERS)
LIMITED Plaintiff

and

SUCCESS INSURANCE LIMITED 1st Defendant

SAN INTERNATIONAL INSURANCE
COMPANY (HONG KONG)
LIMITED 2nd Defendant

AMENDED STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times 20
a manufacturing company incorporated in Nicosia,
Cyprus.

2. The Plaintiff has at all material times been
fully interested in and holder of 3 policies of
marine insurance made between Wantex Trader of
Hong Kong and the 1st Defendant, whereby the 1st
Defendant insured 3 consignments of goods on the
s.s. "TA SHUN" from Hong Kong to Limassol, Cyprus
including from warehouse to buyers' warehouse in 30
Nicosia, including marine risks, against all risks
of physical loss or damage from any external cause
whatsoever irrespective of percentage in
particular of the Seas Men-Of-War Fire Enemies
Pirates Rovers Thieves Jettisons Letters of Mart
and Countermart Surprisals Takings at Sea Arrests
Restraints and Detainments of all Kings Princes
and People of what Nation Condition or Quality
soever Barratry of the Master and Mariners and all
other Perils Losses and Misfortunes that have or
shall come to the Hurt Detriment or Damage of the 40

goods or any part thereof, including warehouse to warehouse, subject to the Institute Cargo Clauses (All Risks) 1/1/63, Institute, Theft, Pilferage and Non-Delivery (Insured Value) Clauses 16/7/28, Institute War Clauses 1/7/76; Institute, Riots and Civil Commotions Clauses 1/1/63.

In the Supreme Court of Hong Kong

No. 2
Amended
Statement of
Claim - 12th
May 1978
(cont'd)

	<u>Nos. of Policies</u>	<u>Dates of Issue</u>	<u>Goods covered</u>	<u>Insured Value</u>
10	M/116768	22nd July 1976	66 Bales of Quality 30001 Broken Twill	US\$38,380.00
	M/116972	7th August 1976	58 Bales of Quality 30001 Broken Twill	US\$31,900.00
	M/116973	1st August 1976	41 Bales of 100% Cotton Indigo Broken Twill Denim	US\$21,084.00

20 3. The Plaintiff has at all material times been fully interested in and holder of a policy of marine insurance made between the said Wantex Trader and the 2nd Defendant, whereby the 2nd Defendant insured 1 consignment of goods on the same ship and to the like effect as pleaded in paragraph 2 hereinabove.

	<u>No. of Policy</u>	<u>Date of Issue</u>	<u>Goods Covered</u>	<u>Insured Value</u>
30	M/32456	24th July 1976	58 Bales of Quality 30001 Indigo Broken Twill	US\$31,900.00

4. The Plaintiff is further entitled to the benefit of the said marine insurance policies (M/116768, M/116972 and M/116973) and (M/116768) procured by the said Wantex Trader inter alia by virtue of assignment by endorsement of the said policies by the said Wantex Trader.

40 4A. The said consignments of goods were transported from the factory of Wantex Trader to the godown of Seawise Shipping Company at Tokwawan, Kowloon, Hong Kong in 2 batches. The first batch was delivered to the said godown by Wing Lung Transportation Company on or about the 28th day of July, 1976. The second batch was delivered by the said Wing Lung Transportation Company to the said godown on or about the 3rd day of August, 1976. The said consignments of goods were stored in the

In the Supreme Court of Hong Kong

No. 2 Amended Statement of Claim - 12th May 1978 (cont'd)

said godown. ~~At some time~~ At a date or dates between the 3rd day of August, 1976 and the 18th day of August, 1976 the said consignments of goods ~~left~~ were taken from the said godown for ~~the commencement of the transit~~ loading as set out in paragraph 5 herein.

5. The said consignments of goods were duly shipped in accordance with Bills of Lading copies whereof may be inspected by arrangement with the Plaintiff's solicitors. Under Clause 13 of the said Bills of Lading and beyond the control of the said Wantex Trader and/or the Plaintiff, the said consignments were loaded onto one s.s. "TA HUNG" ~~on a date or dates between~~ ~~on~~ the 3rd and the 18th day of August 1976 at the port of Hong Kong. On or about the 21st day and the 22nd day of August 1976, the said consignments were forcedly discharged into a warehouse at Keelung, Taiwan. On or about the 17th day of November 1976, the said consignments were reshipped by the M.V. "INTELLECT", sailing from Keelung, Taiwan.

10

20

6. While the said policies remained in force and while the said consignments of goods were insured as aforesaid, the said consignments and all of them became a total loss by one or more of the aforesaid perils insured against.

PARTICULARS

On or about the 26th day of November 1976, the said m.v. "INTELLECT" was severely damaged by fire in the Malacca Straits. In consequence thereof, the said consignments were contaminated by oil and water and they became unidentifiable and unfit for on-carriage and they were sold in Singapore ~~at the price of S\$61,010.00.~~

30

6A. In the alternative, if, which is denied the said consignments of goods were not reshipped by the m.v. "INTELLECT", sailing from Keelung, Taiwan, the Plaintiff says that the said consignments were stolen by a person or persons unknown after the commencement of the transit, while the said policies remained in force and while the said consignments of goods were insured.

40

7. By reason of the matters aforesaid, the Plaintiffs became and were entitled to payments of the total value of US\$91,364 from the 1st Defendant and US\$31,900.00 from the 2nd Defendant, but the Defendants and each of them have failed to pay the same or any part thereof.

AND the Plaintiff claims:-

- (1) The said sums of US\$91,364.00 from the 1st Defendant.
- (2) US\$31,900.00 from the 2nd Defendant.
- (3) Interest thereon at such rate and for such period as this Honourable Court shall think fit.
- (4) Costs.

In the Supreme
Court of
Hong Kong

No. 2
Amended
Statement of
Claim - 12th
May 1978
(cont'd)

~~Dated this 24th day of January, 1978~~

Dated this 12th day of May, 1980

~~Johnson, Stokes & Master
Solicitors for the Plaintiff~~

Raymond Faulkner Esq.
Counsel for the Plaintiff

10

In the Supreme
Court of
Hong Kong

No. 3

Amended Statement of Defence - 10th
May, 1980

No. 3
Amended
Statement of
Defence - 10th
May 1980

Amended as in red pursuant to the Order of the
Honourable Mr Commissioner Mills-Owens dated the
9th day of May, 1980. Amended on the 10th day of
May, 1980.

(sgd) S.H. Mayo
Registrar

10

1978, No. 230

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

COMMERCIAL LIST

BETWEEN : GEORGE KALLIS (MANUFACTURERS)
LTD. Plaintiff

and

SUCCESS INSURANCE LTD. 1st Defendant 20

SAN INTERNATIONAL INSURANCE
COMPANY (HONG KONG) LTD. 2nd Defendant.

AMENDED DEFENCE OF 1ST AND 2ND DEFENDANTS

1. Paragraph 1 of the Amended Statement of Claim
is admitted.

2. It is not admitted that the Plaintiff is or at
any time has been fully interested in or interested
at all or holder of any policies of marine
insurance issued by the 1st Defendant herein to
Wantex Trader. However it is admitted that the
1st Defendant did issue to Wantex Trader 3 policies
of marine insurance in accordance with the
particulars set out in, and on the terms set out in
paragraph 2 of the Amended Statement of Claim
herein, and that the insured voyage was the carriage
of the goods in question from Hong Kong to Limassol,
Cyprus, on board the s.s. 'Ta Shun'. The 1st
Defendant will refer to the said policies of
marine insurance for their full terms and effect. 30

10 3. As to paragraph 3 of the Amended Statement of Claim herein, it is not admitted that the Plaintiff is or at any time has been fully interested in or interested at all or holder of any policy of marine insurance issued by the 2nd Defendant, but is admitted that the 2nd Defendant did issue to Wantex Trader a policy of marine insurance in accordance with the particulars set out in paragraph 3 of the Amended Statement of Claim herein whereby the 2nd Defendant insured 1 consignment of goods for a voyage on the 'Ta Shun' from Hong Kong to Limassol.

4. No admission is made as to the allegations in paragraphs 4 or 4(a) of the Amended Statement of Claim.

20 5. As to paragraph 5 of the Amended Statement of Claim herein, the bills of lading made available for inspection by the Plaintiff's Solicitors acknowledge shipment of goods on board the 'Ta Shun' on the 30th day of July 1976 for a voyage from Hong Kong to Limassol. It is denied that the goods in question were ever shipped on the 'Ta Shun'. If, (which is not admitted) the goods in question were shipped on or about the 17th August 1976 for a voyage to Keelung, Taiwan on the s.s. 'Ta Hung', The 'Ta Hung' arrived at Keelung on or about the 19th August 1976, and the goods in question were discharged between the 19th and the 27th August 1976, when the 'Ta Hung' completed discharge. The and the goods in question were stored ashore until ~~between the 31st October 1976 and the 16th November 1976 when the said goods were loaded on board the mv 'Intellect'~~. A new freight was demanded for the shipment on by the 'Intellect'. It is not admitted that the goods shipped on the 'Ta Hung' were the goods intended to be covered by the policies issued by the Defendants.

40 6. It is not admitted that the goods in question were reshipped on board the m.v. 'Intellect'. If they were shipped on the 'Intellect', they were shipped after the 31st October 1976, the date on which the 'Intellect' arrived at Keelung.

50 6.7. No admissions are made as to the alleged or any loss of or damage to the goods in question, but if they were lost or damaged as alleged or at all neither of the Defendants is under any liability to indemnify the Plaintiff as to the sums claimed or at all. The Defendants contracted to insure goods carried on the 'Ta Shun' from Hong Kong to Limassol. The Defendants never contracted

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to insure goods carried on the 'Ta Hung' to Keelung, or to insure any goods ashore in Keelung or whilst carried on the 'Intellect'. The voyage the Defendants contracted to insure was never commenced and the Defendants were never at risk. **If the goods were carried to Keelung, discharged there, and loaded on the 'Intellect', the Defendants put the Plaintiff to proof that the goods had not been damaged by handling and had not suffered natural deterioration during storage ashore.**

10

7-8. If (which is denied) the voyage insured was commenced and the Defendants were ever at risk, the Defendants were relieved from any liability under their policies on the grounds of change of voyage or alternatively on the grounds of breaches of warranties as to the carrying ship and the voyage. The Shipowner or Carrier could not have relied on any of the clauses of the 'Ta Shun' bill of Lading because this contract of affreightment applied to an affreightment which never took place; further or in the alternative such contract of affreightment was voidable or liable to be set aside on the grounds of the fraudulent misrepresentation set out in its face, namely that the goods in question had been shipped on board the 'Ta Shun' on the 30th July 1976 **for carriage to Limassol.** Further or in the alternative if (which is denied) the 'Ta Shun' bill of lading was a document upon whose provisions the Shipowner or Carrier was entitled to rely, the Shipowner or Carrier was not upon a true construction of clause 13 of the bill of lading entitled to ship the goods on the 'Ta Hung' in substitution for the 'Ta Shun' or to carry the goods to Keelung **or to land the goods there or to demand a new freight.** Further or in the alternative if (which is denied) upon a true construction of clause 13 the Shipowner or Carrier was prima facie so entitled, he could not be allowed in law to rely on clause 13 because the effect would be to frustrate the object of the adventure. Further or in the alternative the shipping of the goods on the 'Ta Hung' and the carrying of them to Keelung **and the landing of them and the demanding of a new freight** in the absence of lawful excuse constituted a fundamental breach of contract and the Shipowner or Carrier was not entitled to rely on any of the provisions in the 'Ta Shun' bill of lading.

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40

8-9. Further or in the alternative in the premises if (which is denied) the Defendants were ever 'on risk' and if (which is denied) there was any valid contract of affreightment in force for the voyage

50

to Keelung, the contract of affreightment and/or adventure were terminated upon discharge of the cargo at Keelung. Upon a true construction of clauses 1 and/or 2(i) of the Institute Cargo Clauses (All Risks) the insurances in question ceased to remain in force upon the discharge of the goods at Keelung or alternatively 60 days after discharge.

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No. 3
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(cont'd)

10 10. The Plaintiff is not entitled to rely on clause 4 of the Institute Cargo Clauses (All Risks) because the voyage was a different voyage. Further the Plaintiff is not entitled to rely on clauses 1, 2 or 4 of the said clauses because neither Wantex Trader nor the Plaintiff gave notice promptly or at all until after the alleged loss of the goods to the Defendants that the goods had been loaded on the 'Ta Hung' or that they had been carried to Keelung or that they had been discharged there or that they had been loaded on the 'Intellect' (if, which is not admitted, such was the case).

30 ~~9-11~~. Further or in the alternative Wantex Trader failed to disclose to the Defendants either at the time of the making of the insurance contracts or subsequently facts which were or ought to have been known to Wantex Trader and which were not known to the Defendants but which were material in that they would have influenced the Defendants in deciding whether to underwrite the risks and if so at what premium namely the fact that the goods were shipped on the 'Ta Hung' for Keelung for transshipment to Limassol. In the premises the Defendants are entitled to avoid the contracts of insurance.

40 ~~10-12~~ Further or in the alternative if (which is denied) the Defendants were ever 'on risk' the Plaintiff and/or Wantex are in breach of clause 9 of the Institute Cargo Clauses (All Risks) in that they have failed to preserve or exercise their rights against the carrier, bailee or other third party by instituting proceedings promptly or within one year or at all. In the premises the Defendants are entitled to avoid the policies, or alternatively the Defendants are entitled to cross-claim for breach of condition or breach of duty in any amount equal to the Plaintiff's claim herein, and the Plaintiff's claim is barred by the rule against circuity of action.

50 ~~11-13~~. Save as is hereinbefore expressly admitted, each and every allegation in the Amended Statement of Claim herein is denied as if the same were here set out and traversed seriatim.

In the Supreme ~~12.14.~~ In the premises the Plaintiff is not
Court of entitled to the sum claimed or any sum.
Hong Kong

No. 3
Amended
Statement of
Defence - 10th
May 1980
(cont'd)

~~Dated the 24th day of February, 1978~~

Dated the 10th day of May, 1980

~~(Sd.) D E A C O N S~~

~~Solicitors for the Defendants.~~

Sgd. Deacons

(D E A C O N S)

Solicitors for the Defendants

Amended Reply - 12th May 1980

In the Supreme
Court of
Hong Kong

No. 4
Amended Reply
12th May 1980

Amended as in red pursuant to the Order of the Honourable Mr Commissioner Mills-Owens dated the 9th day of May, 1980. Amended on the 12th day of May, 1980.

(sd) S.H. Mayo
Registrar

IN THE SUPREME COURT OF HONG KONG

10

HIGH COURT

BETWEEN GEORGE KALLIS (MANUFACTURERS)
LIMITED Plaintiff

and

SUCCESS INSURANCE LIMITED 1st Defendant
SAN INTERNATIONAL INSURANCE
COMPANY (HONG KONG)
LIMITED 2nd Defendant

AMENDED REPLY

20 1. Save in so far as the same consists in admissions and save as hereinbelow expressly admitted the Plaintiff joins issue with the Defendants and each of them upon their Amended Defence.

30 2. In answer to paragraphs 5, 6, 7 and 8 and 9 of the Amended Defence the Plaintiff repeats paragraph 5 of the Statement of Claim and avers that the shipment therein pleaded was within the terms of the Bill of Lading and within Clause 13 of the Bill of Lading which provided inter alia that the carrier was at liberty to forward any or all the goods by the "TA SHUN" or any other vessel, belonging either to it or any other company or individual, by any route direct or indirect, and at the vessel's option, to tranship at any place to any other vessels or to land or store or discharge the goods at any other place and to reship in the same or any other vessel with full liberty to return, call, deviate, delay or stay at any place even though outside the scope of the voyage or the route to or beyond the port of destination. In the
40 premises and in so far as is necessary the Plaintiff will rely upon the terms of Clause 1 of the Institute Cargo Clauses (All Risks).

The Plaintiff repeats paragraph 4A of the Amended Statement of Claim and says that the insurance and/or risk attached when the said consignments of goods left the said godown. Further, or in the alternative, the Plaintiff will aver that the shipment pleaded in paragraph 5 of the Amended Statement of Claim constitutes a reshipping or transshipment or variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.

10

3. Further or in the alternative the Plaintiff will rely upon Clause 4 of the Institute Cargo Clauses (All Risks) and will aver that the Plaintiff and/or Wantex Trader was at all material times held covered.

4. Further and in so far as is necessary the Plaintiff will rely upon the fact that neither it nor Wantex Trader had any knowledge that the shipment was effected in the manner pleaded in paragraph 5 of the Amended Statement of Claim until on or about the 1st December 1976 after the date of the damage to the m.v. "INTELLECT".

20

In the premises, the Plaintiff denies that it failed to give prompt notice as alleged in paragraph 10 of the Amended Defence. It is further denied that the Plaintiff is not entitled to rely on Clauses 1, 2 and/or 4 of the Institute Cargo Clauses (All Risks) as alleged in paragraph 10 of the Amended Defence or at all.

5. Further or in the alternative and in specific answer to the matters pleaded in paragraph 9 of the Amended Defence, it is denied that there were any facts which were material in the manner pleaded or at all which were not known to the Defendants. Further, if which is denied there were any such facts, it is denied that they were or ought to have been known to Wantex Trader the Plaintiff. It is denied that the Defendants are entitled to avoid the contracts of insurance whether as alleged or at all.

30

6. Paragraph 10 of the Amended Defence is denied. If which is denied it was the Plaintiff's duty or responsibility to institute proceedings against the parties referred to in paragraph 10 of the Amended Defence as alleged or at all, it is averred that the Plaintiff is and was at all material times entitled to claim from the Defendants irrespective of whether the Defendants intended themselves to seek reimbursement from any other party. Further or in the alternative, the Plaintiff has taken all reasonable steps to institute such proceedings by being party to proceedings in Singapore against the m.v. "INTELLECT".

40

~~Dated the 19th day of July, 1978~~

Dated the 12th day of May, 1980

~~Anthony Rogers -
Counsel for the Plaintiffs~~

50

Raymond Faulkner
Counsel for the Plaintiff

No. 5

Transcript of Evidence before Mr. Commissioner
Mills-Owens Q.C. - 13th, 14th and 15th May 1980

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

ACTION NO. 230 of 1978

BETWEEN

GEORGE KALLIS (MANUFACTURERS) LTD. Plaintiff

and

10 SUCCESS INSURANCE LTD. 1st Defendant
 SAN INTERNATIONAL INSURANCE CO.
 (H.K.) LTD. 2nd Defendant

Date: 13th May 1980 at 3.15 p.m.

Coram: Mr. Commissioner Mills-Owens Q.C.

Present: N.A. Phillips Q.C. and
 Raymond Faulkner (Robertson & Co.) for
 Plaintiff

 E.C. Mumford (Deacons) for 1st and 2nd
 Defendants

20 Transcript of the shorthand notes taken
 by the Court Reporters of the evidence
 in the above Action.

P.W.1 - CHEUNG Yiu-leung (Affirmed in Puntl)

XN BY MR. PHILLIPS:

Q. Mr. Cheung, do you speak any English?

A. A little.

Q. A little?

A. Yes.

30 COURT: Do you want to give your evidence in
 English or Cantonese?

A. I think Cantonese better.

Q. Do you live at 1015 Wong Tai Sin Low Cost
 Housing Estate at Kowloon?

A. Yes.

Q. Are you twenty-eight years of age?

A. Yes.

No. 5

Transcript of
Evidence
before Mr.
Commissioner
Mills-Owens Q.C.
13th, 14th and
15th May 1980

No. 5A

Plaintiff's
Evidence
Cheung
Yiu-Leung
Examination

In the Supreme Court of Hong Kong

COURT: Mr. Cheung, the interpreter will translate the question to you. Answer, please, in Cantonese and he will interpret for you.

No. 5A
Transcript of Evidence before Mr. Commissioner Mills-Owens Q.C. 13th, 14th and 15th May 1980
Plaintiff's Evidence Cheung Yiu-Leung Examination (cont'd)

- Q. What was your employment in 1978?
A. At that time I was employed by the Wantex Trading -- Trader, doing shipping work.
Q. Does that firm still exist?
A. It is not in existence now.
Q. When did you join it?
A. I cannot remember. 10
Q. When did it go out of business?
A. I cannot remember exactly when it was; possibly it was in the middle of 1977.
Q. Yes. About how many years had you worked for Wantex when it went out of business?
A. A little over two years.
Q. In 1976, what duties did you have to perform?
A. Also shipping.
Q. When you say 'shipping', what did you have to do about shipping? 20
A. To handle all documents in connection with exports.
Q. Did that include insurance?
A. That included insurance.
Q. Do you remember handling any shipments for a Cypriot buyer called Kallis?
A. Yes.
Q. What can you remember about those consignments?
A. You mean at that time?
Q. Let me ask you some specific questions. Did you arrange for one shipment for -- or more than one shipment of goods to Kallis? 30
A. More than one shipment.
Q. More than one. Did any of those shipments involve a company called the Sea Wise Shipping Company?
A. Yes.
Q. Was that the first shipment or a later one? Can you remember which shipment?
A. I can remember if I am allowed to refer to the documents in question. 40
Q. Did you bring some documents with you when you came to court today?
A. Yes.
MR. PHILLIPS: My Lord, may I hand up that bundle, which will be P.5. We'll no doubt be referring to those in the course of the evidence.
Q. Will you look at those and say if those are the documents you have brought. Are those the documents you brought today? 50
A. Yes.
Q. And where did you get them?
A. I obtained these documents from my former employer, Mr. SO.

COURT: Is that the gentleman who can't be located?

In the Supreme Court of Hong Kong

MR. PHILLIPS: Yes, my Lord.

No. 5A
Transcript of Evidence before Mr. Commissioner Mills-Owen Q.C. 13th, 14th and 15th May, 1980
Plaintiffs Evidence Cheung Yiu-Leung Examination (cont'd)

- 10 Q. Do those documents assist you to answer the question?
A. Yes.
Q. Now was Sea Wise involved in the first shipment to Kallis or a later shipment?
A. It involved the first and the second shipments.
Q. Could you take this bundle please and turn to page 7. That is a marine insurance application made by brokers called Shun Fai.
A. Yes.
Q. Do you remember the firm Shun Fai?
A. I do.
Q. Did you have dealings with them in relation to insurance?
A. Yes.
20 Q. This is an application for goods to be insured destined for Kallis.
A. Yes.
Q. And the ship is stated to be the Oceania Maru?
A. At the beginning that was the intention to put the cargo on this particular ship.
Q. But what then happened?
A. This shipping company in connection with this particular ship said that they could not accept
30 any further shipments because they had been fully booked.
Q. So what did you do?
A. We then tried to contact other shipping companies to find out whether they had any ship going to our destination.
Q. Did you find a company?
A. Yes, later we succeeded to find one of them.
Q. Which company?
A. It's English name is known as Sea Wise Shipping
40 Company.
Q. Do you know whether this company still exists?
A. It is no longer in existence now.
Q. Whom did you talk to at that company about this shipment?
A. At that time I talked to a salesman of this company, a Mr. YIP; in fact Mr. YIP came to my office to do the discussions with me.
Q. And what did you -- and what did he tell you?
A. He told me that there was a ship going to my
50 required destination.
Q. What was your required destination?
A. Limassol.
Q. And did he tell you the name of the ship?
A. Yes, he did - it was Ta Shun.
Q. Did he show you any documents?

of lading were issued to us, that would indicate that goods had already been put on board the ship.

In the Supreme
Court of
Hong Kong

Q. Was that the situation in this case or did something different happen in this case?

A. No difference.

Q. When did the goods leave the premises of Wantex?

10

A. If you want to know the date, I got to refer to our delivery order.

Q. Well I don't think we have that document.

A. Well it's very difficult to remember the date. Normally when we gave instructions to a transportation company to deliver the goods to a certain place or certain barges, a document would be signed and that would be the normal day for delivery.

Q. Yes. Did you ask a transportation company to take the goods to a dock that were destined to the Ta Shun?

20

A. At that time we were asked by the shipping company to deliver the goods to their godown.

Q. Where was that godown?

A. I cannot remember the exact location or address but it was in To Kwa Wan.

Q. And where were the premises of Wantex?

A. At Room 820 Star House, Tsimshatsui.

Q. Is that Kowloon?

A. Kowloon.

30

Q. And how did the goods get from Wantex to To Kwa Wan?

A. Well the goods were not transported directly to the godown from the Star House. In fact our goods were given to a factory which was responsible for doing additional work for us; we gave instructions to this factory to deliver the finished products to another factory which was responsible for making the goods into bales; those bales were then delivered to the godown of the shipping company.

40

Q. Do you know where the factory was that made the goods into bales?

A. In Kwun Tong, Kowloon.

Q. Now when the goods were taken from there to To Kwa Wan, were any documents given up in exchange for the goods?

A. Yes; mate's receipts were signed and returned.

Q. And what did you do with those?

50

A. After we have received the mate receipts, we then made enquiries from a shipping company as to when we would be able to exchange for bills of lading.

Q. Did a time come when they told you you could exchange them?

A. Yes.

Q. Would you take the yellow bundle and turn to page 10. Is that one of the bills of lading?

No. 5A
Transcript of
Evidence
before Mr.
Commissioner
Mills-Owens Q.C.
13th, 14th and
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Plaintiffs
Evidence
Cheung
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Examination
(cont'd)

Q. Do you remember any conversation with Sea Wise in which they gave you the information in that letter?

A. Yes, the information contained in this letter were obtained from Sea Wise and they were supplied to our customer by us.

Q. How long afterwards were you told that in fact the cargo had gone to Taiwan?

10 A. I have to refer to some documents first before I can say for sure.

Q. All right; let me try to help you by asking you to turn to page 68.

A. Yes.

Q. Is that a document which you saw?

A. Yes.

Q. When you received that letter, did you already know that the cargo had gone to Taiwan in Ta Hung?

20 A. Not to Taiwan in Ta Hung but to the destination in Ta Hung.

Q. How soon before you got that letter did you learn the goods had gone in Ta Hung?

A. I have to refer back to some documents first.

Q. Well are there any documents there that help you?

A. Can I turn the pages?

Q. Yes, please.

30 A. Well there were some documents but I'm unable to find any of them in this bundle. Well was your question about the date on which the ship Ta Hung left here?

Q. No.

A. They could be found perhaps in this document at page 68.

Q. No, that is not my question. When did you first discover the goods had been shipped in Ta Hung and not in Ta Shun?

40 A. Well it was another shipping company which receive a telex to Taiwan to the effect that the goods were shipped by Ta Hung and it was this shipping company who then passed this message to us. However, the date was not known.

Q. Turn back, please, to page 66. When you wrote that - or rather when Mr. SO wrote that letter, had you learnt that the goods had been shipped in Ta Hung or did you still think they were in the Ta Shun?

50 A. Well at that time I knew that the ship had been changed.

Q. Why is it that you didn't tell Kallis the ship had been changed?

A. Because at that time we were not sure of the situation so we asked our customer to contact the agency there so that it would be able to find out those goods would arrive at its destination by which particular ship.

In the Supreme Court of Hong Kong
 No. 5A
 Transcript of Evidence before Mr. Commissioner Mills-Owens Q.C. 13th, 14th and 15th May 1980
 Plaintiffs Evidence
 Cheung Yiu-Leung Examination
 (cont'd)

In the Supreme Court of Hong Kong
No. 5A
Transcript of Evidence before Mr. Commissioner Mills-Owens Q.C.
13th, 14th and 15th May 1980
Plaintiffs Cheung Yiu-Leung
Examination (cont'd)

- Q. Can you remember when you received the letter at page 68?
- A. It is possible that this letter was received a few days after the date shown in the letter.
- Q. Why did you not, when you got that letter, tell Kallis what had happened to the goods?
- A. At that time when we - I mean the exporters - made a complaint to the police about the fact that customer had failed to receive the goods, we request the police to make investigation into the matter. 10
- Q. What did the police say?
- A. After the police had examined our documents, we were then advised to get our own lawyer to attend to the matter.
- Q. But why did you not then immediately tell Kallis what had happened to the goods?
- A. A telex was sent out by Mr. SO and in fact we did not have any direct contact with the customer. It was possible the telex had been sent to the agents. 20
- Q. Well I shan't ask you any more about that but I expect Mr. Mumford will have a few more questions. I will ask you about a different subject.
- A. Yes.
- Q. The letter of the 30th October asked Wantex to pay some more freight.
- A. Sea Wise Shipping Company was an agent and our goods were handled by this agent, so we paid Sea Wise. In fact we did pay Sea Wise. 30
- Q. Did you pay again after the letter was received?
- A. No.
- Q. Do you remember receiving the letter at page 69?
- A. Yes.
- Q. Did you receive any explanation as to why Blue Sky had decided to tranship the cargo in Intellect after all? 40
- A. Yes.
- Q. What were you told?
- A. We were told that Sea Wise had owed them, that is Blue Sky, money so they wanted to detain the goods until the shipper had fully paid the money they owed.
- Q. Did you know whether the shipper had fully paid the money by the 23rd November or not?
- A. Well we weren't familiar with the other shippers so we were not sure whether they had made full payment. 50
- Q. Now I shall want to ask you a few questions about the documents you brought with you but it may be that my Lord will think it best that we do that tomorrow.

4.30 p.m. Court adjourns.
13th May 1980

14th May, 1980

10.10 a.m. Hearing resumes.

Appearances as before.

MR. MUMFORD: May I apologise for keeping the court waiting.

COURT: Not at all.

MR. PHILIPS: Mr. Cheung

P.W.1 - CHEUNG Yiu-leung - On former affirmation

XN. BY MR. PHILIPS (Continues):

10 MR. PHILIPS: Could Mr. Cheung have the file of documents please - the file contains first of all a number of packing lists.

COURT: P File you are talking about?

MR. PHILIPS: Yes.

A. Yes.

Q. The packing lists are headed Winsome Company?

A. Yes.

Q. What had that company done in relation to the goods?

20 A. This company was responsible for making the goods into bales, as seen in the packing list.

Q. And Wantex then typed out their own lists based on these packing lists?

A. Yes.

Q. In the margin somebody has written Ta Shun and the date?

A. Yes.

Q. Do you know who wrote that - was it Winsome or Wantex?

30 A. It was written by Wantex as a kind of record.

Q. When was it written?

A. After the goods have been delivered and documents had been prepared.

Q. Could you turn on please to a letter from Seawise dated the 5th of November?

A. Yes.

Q. Do you remember the receipt of that letter?

A. When this letter was received a date was chopped on the letter - it was the 8th of November.

40 Q. Can you tell us whether that letter was received before or after page 68 of the main bundle - if you cannot remember say so - I won't want you to work it out from the dates.

A. I cannot remember.

Q. Could you please turn on in the file to your photo-copies of telexes from Blue Line to Greate Ship?

In the Supreme Court of Hong Kong

No. 5A
Transcript of Evidence before Mr. Commissioner Mills-Owens Q.C. 13th, 14th and 15th May 1980
Plaintiffs Evidence Cheung Yiu-Leung Examination (cont'd)

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Cheung
Yiu-Leung
Examination
(cont'd)

- A. Yes.
- Q. Can you tell my Lord first of all who Great Ship were?
- A. It was another shipping company.
- Q. How was it that these telexes or copy telexes came to be received by Wantex?
- A. It was because we were informed by that shipping company that the goods were unable to reach their destination due to certain events, so we went to the shipping company to obtain copies of these telexes. 10
- Q. Would you please turn on to four documents with the heading Seawise Shipping Company that look like that - just make sure he has got the right one - could you tell my Lord what those documents are?
- A. These documents were signed and given to us by Seawise to show that they had received our goods.
- Q. Is this the document you described as a shipping order or is it something else? 20
- A. This is a copy of the shipping order, and in fact this is the Mate's Receipt I mentioned yesterday.
- Q. Yesterday, you mentioned two documents - a shipping order which Wantex made out and a Mate's Receipt which you subsequently received - were there two different documents?
- A. No, they are of the same kind of document because the set of shipping order has several copies. 30
- Q. Are you saying that there are carbons between the copies?
- A. Yes.
- Q. Do you know whether or not each copy has the same print on the top or this one for shipping order and the other something different?
- A. There is only one thing which is different - on the original it is printed shipping order while the copies do not have these words. 40

Plaintiff's
Evidence
Yiu-Leung
Cheung
Cross-
Examination

XXN. BY MR. MUMFORD:

- Q. Mr. Cheung, you told us yesterday that you were now aged about 30?
- A. I would be 30 by June this year.
- Q. So at the time of these events concerning the shipment of Kallis, you would have been aged about 26?
- A. Yes.
- Q. How long before 1976 had you been doing work involving arranging carriage of goods on ships and arranging insurance for these goods? 50
- A. About two to three years.
- Q. During that time were you an assistant to somebody else or were you entirely responsible yourself for making this kind of arrangements?

- 10 A. I was an assistant.
Q. Now in 1976 July/August, at the time of the Kallis shipments were you yourself entirely responsible for arranging for a ship to carry the goods and for their insurance or were you merely assisting somebody else?
A. I handled the matter on my own.
Q. Now how did you get in touch with Mr. YIP who you say represented Seawise?
10 A. I was told by Mr. YIP that they were aware that the ship by the name of OCEANIC MARU which would not go to that destination we desired, so they came to our office to talk about that with us.
Q. You are now saying 'us' - do you mean yourself or do you mean yourself and the superior?
A. With me.
Q. So Mr. YIP approached you and said that he had a vessel that would substitute for OCEANIC
20 MARU?
A. Yes.
Q. Had you had any dealings with Mr. YIP before?
A. No.
Q. Had you had any dealings with Seawise before?
A. No.
Q. Had you had any dealings with wellknown shipping companies such as NKK. or P. & O. or the container groups?
A. We had dealings with other shipping companies
30 but the destinations were different to the present one which is Limassol.
Q. Yes, I understand that - what I am asking you is, had you before shipped goods with shipping companies of first-class reputation such as the ones I mentioned?
A. Of course, yes.
Q. So it must have occurred to you did it not that it would have been possible to arrange shipment on the first-class line of that sort
40 to say Venice, Pyreus or even London with transshipment on to Cyprus?
A. Because during that period of time not many ships would go to that place.
Q. I agree but that does not answer the question - I suggested you could have shipped on a first-class line the major part on to Cyprus could you not?
A. Earlier I have already explained that during
50 that month the first ship which we were able to contact for the shipment to our destination was the OCEANIC MARU - however later our stuff was not accepted by it and that was why we changed to another ship.

COURT: Was transshipment permitted in the L/C?

MR. MUMFORD: I don't think the L/C made any provision one way or the other. Let me put it this way - I suggest to you that the attraction for Seawise was its low freight rate?

A. That was one of the correct reasons - another reason was that there was a term in the L/C that shipment must be commenced in July.

Q. That was not the answer you gave when I was asking the question just now was it - you picked it up from the question my Lord asked me - anyway you agreed that the low freight was one of the attractions, is that so?

10

A. As I mentioned yesterday that the rate of this shipping company was based on the rate set down by their Trade Union - that is Conference Line.

Q. Did you also state that Seawise is not a member of the Conference Line?

A. Right.

20

Q. Presumably when you say it was based on the Conference rate you mean it was the Conference rate less so much percent, is that right?

A. Yes.

Q. The point I just want to be clear about is this - do you agree or not that the relatively low freight demanded by Seawise was one of the chief reasons that you gave Seawise the shipment?

30

COURT: I thought he had agreed with that.

MR. MUMFORD: I though he had just now but he is appearing to be talking differently . .

COURT: I noted it down as one of the correct reasons.

MR. MUMFORD: I am much obliged - in that case granted that you were being given a low freight rate by a company you had not had any dealings before I take it you would have been very careful in your dealings with them?

40

A. Of course yes.

Q. Did you check with Mr. SO that it would be all right to entrust the goods to Seawise?

A. In fact Mr. SO had already agreed to this.

Q. Do you mean before Mr. YIP came to your office?

A. It was after.

Q. Perhaps you could correct me on this - I understand the situation to be Mr. YIP came to your office and then you yourself made the decision to let Seawise have the cargo, is that not so?

50

A. No, at the time when Mr. YIP came to my office to discuss the matter with me Mr. SO was also there. The conversation was within his hearing and with Mr. SO's agreement the shipment was entrusted to that company.

Q. At that time - at that meeting is it?

A. Yes.

Q. So that the decision was made very quickly - Mr. YIP came, offered the service and the service was accepted all at that one meeting?

10 A. Because at that time, the time for us was limited.

Q. Yes, about when was that meeting - in the middle of July or round the third week of July 1976, do you know?

A. It was a few days after the N.Y.K. - Mr. YIP then came to see us - if you want the exact date I have to refer to some documents illegible

20 Q. Well by all means do - I am not demanding the exact date - I would just like to know roughly when it was - if you have documents that would help please refer to them.

A. It was at the end of July.

Q. If you look at page 7 in the main bundle please, that is Shun Fai application for insurance on the OCEANIC MARU?

A. Yes.

30 Q. Then there is another one which I think is the next one in date on page 23 - that is dated 1st of August - that is Ta Shun?

A. Yes.

Q. On the other hand if one goes back to document 8, which is a policy issued pursuant to the application on page 7, you see there that insurance policy dated 22nd of July has had OCEANIC MARU changed into TA SHUN, that is page 8?

A. Yes.

40 Q. So it would look as if the meeting with Mr. YIP should have been on the 21st, 22nd or 23rd of July - sometime round there?

A. That was possible.

COURT: Why do you say there is a date next to the chop - oh I see, yes I am sorry - is that the date of the alteration?

MR. MUMFORD: No, I think not - the policy is on the 22nd - are you prepared to agree that it was some time between the 20th and the 25th - as I say I am not trying to tie you down to a particular date, just to get the period right.

50 A. I agree.

Q. I suggest you remember this Kallis shipment amongst so many because they caused so much trouble later on, is that right?

A. Yes.

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Plaintiffs Cheung Yiu-Leung - (cross - Examination (cont'd)

Q. But of course at the time you were making these arrangements you did not foresee all these difficulties?
A. Right.
Q. So it may be that your memory is not entirely accurate about the events leading up to the shipment?
A. It is possible that there were some discrepancies because it was a long time ago.
Q. Do you remember whether Mr. YIP told you at the meeting we have just been talking about, the name of the ship that would take your goods to Cyprus? 10
A. He did bring along with him a shipping list - surely the name of the ship concerned must have appeared in the list.
Q. Yes, what I ask you is do you remember whether he himself by word of mouth mentioned the name of the ship?
A. He did. 20
Q. And what was it?
A. TA SHUN
Q. Now the shipping list you mentioned - what kind of shipping list was that?
A. Every shipping company must have a shipping list which will tell the shipper the name of the certain ship and on a certain date it will go to a certain place.
Q. Mr. Cheung, we can get through this much quicker if you will just answer the questions as directly as you can - I did not ask you what kind of shipping lists shipping companies have to have - I asked you what kind of shipping list this was. 30
A. That particular shipping list had an item which indicated that TA SHUN would go to Limassol.
Q. What kind of list was it - was it Seawise list?
A. Yes.
Q. From what you said it is obvious the name TA SHUN was on it - do you remember any other name? 40
A. I cannot remember.

COURT: Is the document available?

MR. MUMFORD: I would think not - it has not been discovered in, any way, any one's list - it is not in the file Mr. Cheung brought with him, but at any rate this was a list apparently prepared by Seawise with the name of TA SHUN and certain other vessels on it.
A. Just now I have said I cannot remember exactly whether this particular list had one name or more than one name - some of the lists had one name, others had other names up to the end of the month. 50

Q. Are you speaking of Seawise list or shipping lists in general of shipping companies?

A. Seawise.

Q. So you saw other Seawise shipping lists after the first meeting with Mr. YIP?

A. Yes.

Q. Now as regards the particular list you saw on or about the 20th of July when Mr. YIP came to Wantex office, that list, surely you can remember whether it had just one name - one ship or more names on it?

A. I cannot be sure whether that list just had one name or more than one name because it was long time ago, and in fact Mr. YIP came to our office almost every day, during that period.

Q. But had hadn't come before - this was the first time is it not?

A. Yes.

Q. So we are talking of the first time Mr. YIP came to your office - did the list show dates of the vessels' arrival in Hong Kong and the dates of their departure or just the date of their departure?

A. It showed both the dates for its arrival and departure.

Q. And I suggest it also showed the destinations so that you can run down the list and see if any of the ships - anyone was suited to you?

A. Yes, on the list I was able to see the vessels' destination.

Q. Now as you had had no dealings with Seawise before, and they were offering a low rate of freight, did you not think it would be prudent to look in the newspaper to see if TA SHUN was really here?

A. Well one can only obtain an accurate date for a ship's arrival from the shipping company concerned - one cannot obtain an accurate date of its arrival on the newspapers.

Q. It may be so but it would be a simple check would it not to look at the newspapers, the list of ships in port to see if TA SHUN was there?

A. Yes, I agree but because this kind of thing had never happened to us before so we did not check the newspapers to find out whether the ship was in port or not, and normally we just obtain the information from the shipping company concerned.

Q. But you had no reason to believe that Seawise owned any ships?

A. Of course it did not own any ships because it was just an agent.

Q. So a man arrives, you have never had any dealings before, claims to be an agent of TA SHUN and you did not make any checks at all?

A. I did go to his shipping company.

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 Transcript of Evidence before Mr. Commissioner Mills-Owens Q.C. 13th, 14th and 15th May 1980
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 Cheung Yiu-Leung - (Cross - Examination
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Plaintiffs Cheung Yiu-Leung - (cross-examination)
(cont'd)

Q. Did you meet any people there?
A. I did.
Q. Did you meet Mr. FONG there?
A. While I was there I met a few people - one of them was surnamed CHEUNG - there was another one whose name I have already forgotten?
Q. Does the name FONG not mean anything to you at all in connection with Seawise?
A. Well I cannot remember that person's name so I cannot be sure whether this person whom you have mentioned had anything to do with this shipping
Q. Did you hear at that time or later that Mr. Fong controlled all the operations of Seawise?
A. It is difficult for me to give an answer to your question because I cannot remember the name of that person.
Q. You mean the name of the boss?
A. Well one of them surnamed CHEUNG.
Q. Was the boss?
A. One of the partners.
Q. I cannot understand why you should find my question difficult - simply yes or no - did you or did you not either then or later hear that Mr. FONG was the boss, either you did or you did not.
A. (Long pause) Really I cannot remember.
Q. Would you look at page B - you see the signature at the bottom?
A. Yes.
Q. One cannot be sure of course what it is but I suggest it very likely could be Thomas FONG.
A. Well according to this signature it is possible that it is Thomas FONG.
Q. As far as you remember it, it did not mean anything to you at the time?
A. Right.
Q. And are you saying that up to today, this moment, the name Thomas FONG still does not mean anything to you?
A. Right.
Q. I suggest that that is untrue because Mr. Thomas FONG'S name became notorious in connection with Seawise affairs at that time?
A. The person whom I had contact was not a Mr. FONG and that is why this name does not mean anything to me.
Q. I accept you cannot remember meeting him at the time, indeed you may not have done - what I am suggesting is you are not being entirely straight-forward now when you say FONG means nothing to you, because you are in the shipping business and the name became notorious in the shipping circles.
A. Well perhaps other people know this person but not me.

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- Q. Very well - now I would like you to look if you would at document 8 in the bundle. Now that is the first Insurance Policy taken out of this Kallis shipment, and this is the one where the name of the vessel is changed from OCEANIC MARU to TA SHUN -
- A. Yes.
- Q. You see there that the TA SHUN sailing date is given as 27th July, 1976?
- 10 A. Yes.
- Q. Now it would be correct would it not to say that the Insurance Company must have got its information from Shun Fai and Shun Fai must have got its information from you?
- A. Yes.
- Q. Were you entirely responsible, that is to say solely responsible for arranging insurance?
- A. Yes, as far as insurance was concerned.
- Q. Did Mr. SO leave it all to you?
- 20 A. I told him about everything which I had done.
- Q. But now the information that you gave to Shun Fai, I suppose in turn you got from somebody in Seawise?
- A. What information?
- Q. What sort of information do you think you may have wanted to get from the people from Seawise?
- A. Well they told us that there was such a ship going there, so we had to inform the Insurance Company that the ship had been changed.
- 30 Q. You say they told us - did they sometimes tell Mr. SO and sometimes tell you?
- A. Well Mr. SO Had given them instructions that if they had any information in connection with the shipment or documents in relation to that shipment they should contact me, so most of the time the contact was between myself
- Q. But I suppose if you were out then they might speak to Mr. SO?
- 40 A. That was the case.
- Q. And then Mr. SO would tell you the reported events?
- A. Yes.
- Q. So in the last ten days of July you and/or Mr. SO were receiving information from Seawise about the anticipated sailing date of the TA SHUN?
- A. Yes, the shipping company had records and of course the informations were obtained from Seawise.
- 50 Q. Do you remember who it was, who usually kept you up to-date, who in Seawise usually talked to you?
- A. Mr. YIP of Seawise.
- Q. I see, so he has, as it were, recruited you as his customer and trying to keep you up to-date?
- A. Yes.

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Cheung Yiu-Leung-(~~was~~- Examination (Cont'd)

- Q. Is it possible, do you think, there was also contact at a higher level - i.e. Mr. SO talking to one of the partners in Seawise?
- A. I believe no.
- Q. Was your desk in Wantex office so close to Mr. SO's that you would also know who he was talking to on the telephone?
- A. Well I might not be able to know everything - sometimes there was something confidential, then I would not be able to know it.
- Q. Because he spoke in a lower voice?
- A. Sometime that would be the case.
- Q. But anyway you were not monitoring these calls were you, checking up on who he was talking to?
- A. Of course.
- Q. So you are not really in a position to say are you whether there was any higher level contact between Mr. SO and the partners of Seawise or not?
- A. I was given the responsibility to handle this particular shipment by me, so he may not seldom have any contact with the shipping company.
- Q. Now if you would look please at page 24.

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COURT: Mr. Mumford, I have to rise at 12.30 to day because there is an injunction application. I am told it is now at 2.00 p.m. so if you want a break.

MR. MUMFORD: Much obliged - perhaps this would be a convenient time.

30

COURT: Very well - resume at quarter to.

11.31 a.m. Hearing adjourns.

11.50 a.m. Court resumes.

Appearances as before.

P.W. 1 - CHEUNG Yiu-leung (o.f.a.)

XXN. BY MR. MUMFORD: (continues)

- Q. We just turned to page 24, I think. This seems to be the second policy in terms of time. You remember the first one we looked at forecasted the Ta Shun would sail on the 27th July. This one forecasted it would sail on the 1st of August.
- A. Yes.
- Q. The policy is dated 31st July. And Shun Fai's application on page 4, page 23, stated the 1st of August.
- A. Yes.

40

<p>Q. So these insurance arrangements seem to have been made about a week after the ones - the documents we were looking at earlier, i.e. page 7 and 8.</p> <p>A. Yes.</p> <p>Q. I ask you to bear in mind that the sailing date is now the 1st of August.</p> <p>A. Yes.</p> <p>10 Q. Then if we turn back to pages 15 and 16, which seems to have been the last insurance arrangement in terms of time.</p> <p>A. Yes.</p> <p>Q. The application, page 15, is the 4th of August.</p> <p>A. Yes.</p> <p>Q. Policy date, page 16, is 31st of July. The sailing date is now the 7th of August.</p> <p>A. Yes.</p> <p>Q. The sailing date, they must have come from Seawise to you and were then passed on to the insurance people.</p> <p>20 A. Yes.</p> <p>Q. And I take it the same would apply to the later sailing dates, i.e. 1st of August, 7th of August.</p> <p>A. Yes.</p> <p>Q. The actual documents that you have referred to from your file, and you referred to them as delivery orders cum mate receipts - shipping orders and your mate receipts, they were in fact the same documents in each case?</p> <p>30 A. The original is the shipping order, the mate receipt is one of the copies.</p> <p>Q. Yes. But as to two of the consignments, the documents in question are dated the 27th July. And as to two of the consignments, the documents in question are dated the 28th July. There are four consignments. In other words, all the documents are dated the 27th or 28th July.</p> <p>40 A. Normally, insurance policy is issued one day earlier than the issue of the bill of lading.</p> <p>Q. But the actual insurance arrangements seems to have been made at different times.</p> <p>A. Yes.</p> <p>Q. Why was that?</p> <p>A. There were two reasons. The first one was that we had to obtain dates of arrival and departure of the ship from the shipping company. The second reason was - concerned L/C</p> <p>50 for partial shipment. For partial shipment, for example we had to make shipment in July and the rest of the shipment in August.</p> <p>Q. Yes, but as all the shipments would go on the same ship, would it not have been just as convenient to take out all the insurances at the same time?</p>	<p>In the Supreme Court of <u>Hong Kong</u></p> <p>No. 5A Transcript of Evidence before Mr. Commissioner Mills-Owens Q.C. 13th, 14th and 15th May 1980 Plaintiffs Evidence Cheung Yiu-Leung - Cross - Examination (cont'd)</p>
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In the Supreme A.
Court of
Hong Kong

No. 5A
Transcript
of Evidence
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Commissioner
Mills-Owens Q.C.
13th, 14th and
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(cont'd)

Because at that time we were told by Seawise that the ship would arrive in July and leave at the end of July. However, there were different shipments contained in the same L/C. That is to say, the first shipment would be in July, the second in August, and the third in September. At that time, the customer had issued us two L/Cs. One of the shipments was required to be carried out in August. We then made enquiries from Seawise whether there was any problem if we wanted the August shipment to be carried out. We were then told that since the ship was still in port they could accept the goods. So these goods were then loaded on to the same ship. That was the reason why there were different issue dates.

- Q. You are saying that originally you were only going to put the July shipment on Ta Shun. And then when Ta Shun was delayed, you found you could put the August shipment on also? 10
- A. Yes.
- Q. The sailing date of the Ta Shun was apparently getting later and later, was it not? 20
- A. Yes.
- Q. First of all, it was the 27th July. Then it was the 1st of August. And then the 7th of August.
- A. Yes. 30
- Q. Did not that make you uneasy and think that perhaps you should check up whether the Ta Shun was actually in Hong Kong or not?
- A. Most of the time, ships which do not belong to a trade union would not arrive accurately. For example, a ship should arrive today, it might arrive one or two days later.
- Q. Yes, but this was a difference of getting on for a fortnight, was it not?
- A. Almost ten days. 40
- Q. Well, from the 27th July to the 7th of August.
- A. Yes.
- Q. This was a company you had never had any dealings with before.
- A. Yes.
- Q. I suggest that it must have occurred to you to look in the newspaper to see if the Ta Shun was listed as a ship in port.
- A. That should be the case. 50
- Q. Have you actually had any training in insurance, insurance law, insurance practice?
- A. No.
- Q. Suppose the goods were shipped on the Ta Hung and not the Ta Shun, would it have occurred to you that it mattered? Would you have thought it mattered?

A. It would matter.

COURT: Can I just get something clear? Was it the witness's understanding that the vessel had not yet got here, and that was the reason for the dates being changed, or that the vessel was in fact here?

10 MR. MUMFORD: At an earlier date I think it may well have been a misunderstanding, my Lord, that the Ta Shun had not got here. But that could not have been the understanding after 28th July.

COURT: I am not sure at the moment what the explanation is that he is giving us. Perhaps you could clarify it.

Q. I think you told us, Mr. CHEUNG, that when you first saw Mr. YIP, that was around the 20th, 21st, 22nd of July, he was saying that the Ta Shun had not yet arrived.

20 A. Of course, as the ship would arrive at the end of the month.

Q. Did he say it would arrive at the end of the month?

A. Yes.

Q. Well, then from the 27th July, Seawise called for the first lot of cargo, shipment of cargo.

A. We asked him whether we could obtain the bill of lading on that day, and we were told that we could. Normally, when a ship arrives, a bill of lading would then be signed.

30 Q. Yes, but when Seawise called for the cargo on the 27th July, did they say then that the Ta Shun would arrive?

A. Yes.

Q. The thing that seems a little difficult to understand, they called for the cargo on or about the 27th July, did they not?

A. Yesterday I told the court in evidence that our goods were delivered to them before the 27th of July.

40 Q. But they cannot have been delivered very long before the 27th of July, can they?

A. Right, before the 27th July.

Q. Yes, but the shipping order is dated the 27th July. The earliest shipping orders are dated the 27th July.

A. The shipping order dated the 27th of July? Are you referring to the one which I have seen earlier?

50 Q. I am referring to the documents in your file. The earliest shipping orders or mate receipts are dated the 27th July. So I suggest the cargo must have been delivered to Seawise around that date, certainly not long before.

A. Yes.

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(cont'd)

- Q. So you do agree that the cargo was delivered to Seawise on the 27th, or possibly on the 26th?
- A. Yes, the goods were delivered to the godown of Seawise.
- Q. On or about the 27th July?
- A. On the 27th.
- Q. When Seawise called for that first cargo, did they say that the Ta Shun had arrived?
- A. Yes, they said that we could go there to sign a bill of lading. 10
- Q. Surely the first step was you delivered the cargo and you got the mates receipt, later they said you could go and sign the bill of lading, was it not?
- A. Yes.
- Q. And you sent off, first of all, the cargo you wanted to be shipped in July?
- A. Yes.
- Q. And about the same time, you said to them, "Can we have the July bill of lading?" and they said "Yes". 20
- A. Yes.
- Q. But I think you now know, do you not, that Ta Shun in fact was not in Hong Kong at that time at all?
- A. At that time I did not know. It was only later we received a message from Taiwan that the cargo arrived in Ta Shun and later the same cargo was taken away in Ta Hung. 30
- Q. You received a message that the cargo was taken to Taiwan in Ta Shun, is that what you say?
- A. Yes.
- Q. When did you get that message, do you remember?
- A. Yesterday while I was here, I checked my file, and I saw that letter, dated letter.
- Q. It seems strange, does it not, that Seawise should have told you that Ta Shun was in port, called for the cargo, when in fact Ta Shun was not here? 40
- A. We were not the only shipper asked to deliver our goods to them. In fact, all the shippers were asked to do the same.

COURT: Mr. Mumford, he has just referred to a letter. Is that a letter that we have seen or not?

MR. MUMFORD: The witness said there is a letter among the documents, my Lord, but in fact there is no document that says that the goods were carried in the Ta Shun from here to Taiwan. 50

COURT: I am puzzled. He said, "Yesterday I checked the file and saw that letter." So

presumably he is referring to some specific document. I am just wondering whether that is something that is actually in evidence yet, or is something that we have not yet seen.

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MR. MUMFORD: Perhaps I better ask the witness.

COURT: It is entirely up to you, but I am a bit puzzled by what his reference was.

10 Q. Can you identify for us the document which states that the cargo was taken in the Ta Shun to Taiwan?

COURT: It is not 68 he has in mind, is it?

Q. Could you have been thinking of document 78? That is your own letter, not a letter from anybody else. 68 is a circular from Taiwan, but it only refers to Ta Hung.

A. Here are two letters dated 30th of October and 23rd of November respectively.

20 Q. Yes, but the 30th of October letter only refers to Ta Hung, doesn't it? May I see the other one?

COURT: Show both of those letters to counsel.

MR. MUMFORD: Yes, my Lord, the witness is referring to the 30th of October letter from Blue Sky, which is 68. And he is referring to 69 which is that sort of certificate from Seawise saying "To whom it may concern, the merchandise is being trans-shipped".

A. Here is also another letter.

30 MR. MUMFORD: This, my Lord, is one of the letters in Mr. CHEUNG's bundle file. It is the one which is impossible to read from Seawise.

Q. I think in fact, Mr. CHEUNG, you are mistaken. I do not think any of the documents say that the goods went on the Ta Shun. Is it not the case that you said to Seawise, "Please let us have a July bill of lading" or "Can you let us have a July bill of lading"?

40 A. Of course we had to ask the shipping company if we could have it. And in fact, many shippers asked them whether they could sign and issue bills of lading for the month of July because they were also affected by the N.Y.K. ship.

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- Q. Yes, but when Seawise said, "Yes, we can let you have July bill of lading", and when indeed they did so, you surely must have thought that Ta Shun was in port, quite apart from what they told you?
- A. Yes.
- Q. Then when the sailing date was postponed and postponed, you have already agreed that it should be that you should have a look in the newspaper to make sure the Ta Shun was in port. 10
- A. Yes.
- COURT: But what I want to know is what was the explanation that was given for the sailing date being postponed.
- MR. MUMFORD: Yes, my Lord, I will ask that.
- Q. Were you given any explanation for the postponement of the sailing date, why it kept getting later and later?
- A. He said the ship was not yet to depart. 20
- Q. Did they say she was not ready?
- A. Yes.
- Q. Is it not the case that you really did not want to make a check? If there was something wrong, you did not want to know because you had got your bill of lading and that was all you wanted?
- A. At that time our company was in financial difficulties. Mr. SO then instructed me to make enquiries from the shipping company as to when we would be able to collect the bill of lading. By that time, our goods were available for shipment. One of the shipments was due to be delivered at the end of July, and that was a term imposed by the L/C. 30
- Q. Turn please to page 18. You see a little more than halfway down on the right hand side a stamp, "Shipped on board, 8th August, 1976"?
- A. Yes.
- Q. In fact all the bills of lading have similar stamps though the actual dates are different. I think you would probably agree to that, would you not? 40
- A. Yes.
- Q. What I would like to ask you is this, at what stage did that stamp come to be put on to the bill of lading?
- A. You are referring to this particular one?
- Q. Well, I am assuming, perhaps wrongly, that the system was the same for all four. If the system was different, we will have to go through each one. But if the system was the same, then we can just deal with the one and assume that the same procedure was followed for the others. 50

- A. The system is different.
- Q. I see. Well, I understood you to say yesterday that you did not fill the details in on the bill of lading, is that right or wrong, or did you fill it in, the details, in some of the bills of lading and not others?
- A. All bills of lading were filled in by the shipping company.
- 10 Q. And did they put the stamp on in each case, "Shipped on board"?
- A. Yes.
- Q. And did they put the date on for the "Shipped on board" stamp?
- A. Yes.
- Q. So that in each case when the bill of lading came in to your hand it was complete as we see it today?
- A. I am now referring to this particular bill of lading, it is page 18. This one was signed and issued on the 3rd of August. It was possible that the date below the chop "shipped on board" was also the 3rd of August. It was possible at that time due to certain things the date was altered to the 8th of August.
- 20 Q. I am afraid I do not quite understand. What certain things would cause the alteration of date?
- A. Sometimes some of the documents had to be handled according to the terms of the L/C before payment could be obtained
- 30 Q. Are you saying then that some of these bills of lading reflected the requirements of the L/Cs rather than what had actually happened to the goods?
- A. Normally, the date which appears on a bill of lading is the most important thing because this chop, "shipped on board", would only be put on the document when the goods are actually put on board the ship.
- 40 Q. It should have been put on the bill of lading when the goods have actually been loaded, but is it not the case that sometimes shipping companies will put such a stamp to oblige the shipper, to help the shipper?
- A. Yes.
- Q. Is it not in connection with some such system that the alterations were made on document 18?
- 50 A. It could be so.

COURT: Let me know when it is a convenient time to adjourn.

MR. MUMFORD: Very well, my Lord, it would be a convenient moment now.

In the Supreme COURT: Good. I am going to adjourn until 2.30.
Court of
Hong Kong 12.55 p.m. Court adjourns.

2.35 p.m. Court resumes.

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Transcript
of Evidence
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Q.C. 13th,
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Examination
(cont'd)

Appearances as before.

P.W. 1 - CHEUNG Yiu-leung. (o.f.a.)

XXN. BY MR. MUMFORD: (continues)

Q. Mr. CHEUNG, this morning we were discussing
the events just before the goods were
supposedly shipped on the Ta Shun.

A. Yes.

10

Q. I suggest that at about that time, Seawise
did tell you that the goods would be shipped
on Ta Hung, but they said the goods would go
to Cyprus on Ta Hung - I beg your pardon,
Limassol.

A. That was possible.

Q. Do you think they said it to Mr. SO or to you?

A. If this did happen, most likely they telephoned
me and told me about that.

Q. You did say yesterday that Seawise had said
that the goods would go on the Ta Hung, but
that they would go to a destination not to
Taiwan.

20

COURT: You may be right, but I cannot at the
moment recall that having specifically been
said.

MR. MUMFORD: Indeed I recollect it.

MR. PHILIPS: On the contrary. I would be somewhat
startled if that answer had been given. I
certainly have no recollection of it.

30

COURT: Are you able to tell me exactly when it
was? Perhaps it can be checked.

MR. MUMFORD: It was yesterday afternoon, my Lord.

COURT: Do you have a note of it, or anybody with
you? I can check my notes. I am afraid there
was a different shorthand writer here at the
time.

MR. MUMFORD: Yes, I have it here. There is a
reference to page 68 in the bundle, my Lord.

COURT: What time would that be about?

40

MR. MUMFORD: Fairly near the end.

COURT: Yes, there is a question, "When you received that, did you know the cargo had gone to Taiwan on the Ta Hung?" Answer, "Not Taiwan in Ta Hung, but to a destination in Ta Hung."

MR. MUMFORD: That is what I had in mind.

COURT: That was in the context of receiving document 68, the letter referred to in October.

10 MR. MUMFORD: As my learned friend rightly says, he did not say Seawise told him, he said he knew. So it is not quite the same.

COURT: Could you perhaps put it in a different way?

MR. MUMFORD: Yes.

20 Q. I am suggesting to you that Seawise did tell you that the goods would be shipped on the Ta Hung. They did not say the goods would go to Taiwan, they either said or implied that it would go to Limassol, is that right?

A. That was possible.

Q. You see, you have said that unfortunately Wantex was in financial difficulties.

A. Yes, only a little bit.

Q. Yes. And of course, they wanted to draw their letter of credit.

30 A. That was one of the reasons. But the most important thing was this, that the goods had already been made. There was no reason for us to keep the goods, and we had to pay the factory which made the goods for us.

Q. Yes, you had financed making the goods, so naturally you wanted to get the money back as soon as possible.

A. Yes.

Q. And the way you could do that was by drawing on the letter of credit.

A. Of course.

40 Q. To draw on the letter of credit, you needed a "shipped on board" bill of lading.

A. Yes.

Q. And so, I suggest, having got your "shipped on board" bill of lading, or having got the first one, you really did not want to know about any troubles or difficulties that might affect it.

A. I cannot say that I did not wish to know that, but in fact that did not occur to me at all.

50 Q. Is it not the case you had your bill of lading, you were able to draw the money. If some information came to you, or it was suggested the bill of lading was not really valid, or

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(cont'd)

- A. there was something wrong with it, that would upset the whole scheme, would it not? It is not a matter of affecting any scheme. In fact, when the shipping company issued the bill of lading to us, that was only an indication that the ship was here at the port and the goods had already been loaded on to the ship. It was only a document to show us that something had been done. I would also like to add this. If the ship was not here, and if the shipping company refused to issue us a bill of lading, it was impossible for us to present the L/C to the bank. 10
- Q. Exactly. That is the point I am trying to make. That is why, I suggest, you did not want to look too closely into what exactly was happening because you did not want the validity of the bill of lading to become suspect.
- A. I had more than one thing to be handled in my office. I could not spend all my time on one thing only. I made enquiries from the shipping company, and when the bill of lading was issued, I then sought the advice from my superior at the company, and eventually the document was then presented to the bank. 20
- Q. Did Mr. SO suggest that there was no need to make any checks on Seawise or Ta Shun?
- A. No.
- Q. Did the subject arise at all between you? In other words, did he suggest to you, or did you suggest to him it might be a good idea to make some checks? 30
- A. At that time, no.
- Q. What about the time when the Tai Shun sailing date was slipping further and further into the future? Did you not consider then, either of you, that perhaps you ought to check up?
- A. No.
- Q. I suggest that that was because you had the letter of credit. I suggest if the goods had been on consignment basis, then you would have been a lot more careful about what happened to the shipping company. 40
- A. If we did not have the L/C, the goods would not be shipped.
- Q. That does not follow. It is perfectly possible to ship goods without a letter of credit.
- A. Yes, but at that time we would only agree to have the goods shipped when we got the L/C. 50
- Q. I dare say. But what I am putting to you is supposing you had shipped the goods on consignment, it would have been at your risk, and you would have taken a lot more care of what happened to it. That is what I am putting to you.

- A. That is true.
- Q. And I suggest that in the normal course of events, if an exporter was shipping goods on consignment at his own risk, you would make careful checks as to the whereabouts of the ship, and the kind of ship it was, unless perhaps you were shipping on P & O or something like that.
- 10 A. Yes. But if we were unable to get the L/C, we would not ask the factory to produce the goods for us. We would try to find another customer who would agree to give us an L/C.
- Q. Yes. I do not think you quite understood my question. Perhaps I made it too long. Assume for the moment that you were shipping your own goods at your own risk and you had no L/C. We just assume that.
- A. Yes.
- 20 Q. Now if you go to one of the very big firms like Butterfield & Swire, or P & O, or Nedlloyd, or N.K.K., or one of the very big firms like that, it may well be that you won't feel necessary to make any checks.
- A. If at that time we were able to find a ship going to our destination from one of these firms as you have suggested, we would certainly not go to Seawise. I have something else to add. As I have said this before, originally we intended to get the shipment done by the Oceania Maru which also belongs to a large shipping company.
- 30 Q. Just for the moment I'm not asking you about what you actually did. I am putting a case to you, for example, which is 'A' that Wantex shipping its own goods at its own risk; 'B', in that case if it is shipped by a very big firm it would not be necessary perhaps to make any checks, that's what I'm suggesting.
- A. Yes.
- 40 Q. I'm suggesting further that if, on the other hand, again Wantex shipping their own goods at their own risk but they have to go to one of the smaller or hardly known at all shipping companies, then in the ordinary course of events they would make a careful check.
- A. We could have well done that.
- Q. I suggest in this case you did not, perhaps partly because you had the LC, partly because you were busy.
- 50 A. Well it is not a matter of busy or not; at that time I had something else to handle, I had some other shipments to do.

COURT: You are accepting then that - I take it from that last question - that they did not in fact ascertain or were not aware of the true position?

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Plaintiffs Evidence Cheung Yiu-Leung - cross - Examination (cont'd)

MR. MUMFORD: No, no, my Lord, I take it that ...

COURT: You are suggesting in this case they did not, partly because they had the LC and they were partly busy, which seems ...

MR. MUMFORD: They did not make the investigation.

COURT: Yes; you accept that they did not in fact make any investigation?

MR. MUMFORD: Yes, I'm suggesting that they didn't make any investigation - that's what the witness said. I'm not quite certain about the knowledge point because I'm trying to find out when it was, if at all, that the witness was informed that the goods had gone by Ta Hung to destination.

10

COURT: Well you suggested that Sea Wise did tell them the goods would be shipped on Ta Hung and they said they would get to Nimassol... (inaudible) ... that's possible. In a way that raises the suggestion that Sea Wise told them they would be shipped in Ta Hung and therefore it was done before they were in fact shipped in Ta Hung.

20

MR. MUMFORD: Yes.

COURT: But you haven't got beyond that. You've merely said if that was possible.

MR. MUMFORD: Yes. (Pause). My Lord, I understand from my learned friend that he would like to call the business manager of Oneness Shipping Company and that the business manager is here now. There seems to be apprehension that if he's not called now he might not come back again. I wonder if -- whether you'd give leave to interpose that witness?

30

COURT: If it is agreeable to ...

MR. PHILLIPS: My Lord, I suggest it's my friend; it's not so much my -- my friend has indicated that he was anxious to cross-examine him if the opportunity arose. As the opportunity has arisen, it seems only fair to tell him and to offer to call that witness so that he can ask any questions he wishes.

40

COURT: I see. All right, MR. CHEUNG, will you step down and wait outside for a while.

XN BY MR. PHILLIPS:

Q. Mr. Tse, would you tell my Lord your address?

A. Room 404 Ching Hoi House, Yue Kwong Estate, Aberdeen.

Q. In 1975 and 1976, were you business manager of Wantex - [Oneness] Shipping Company?

INTERPRETER: Do you have the Chinese name for that?

10 MR. PHILLIPS: Well perhaps he can have the yellow bundle. Perhaps we can refer him to page 39 of the yellow bundle.

A. Yes.

Q. Can you give my Lord any information about this bill of lading which was issued by your company?

A. How? How to tell you?

Q. Can you remember anything about this shipment?

20 A. I can tell you that the signature which appears on this document is mine. This particular shipment was required to go to Middle East but there was no ship available to go to this destination. However, the shipper succeeded to find this shipping company. We then succeeded in finding Ta Hung to carry this consignment of goods to Keelung and the goods were to be collected by the consignee as specified in this document.

Q. You signed the bill of lading as agent?

30 A. Yes; we were the agents for this particular ship.

Q. Who first came to see you about arranging this shipment?

A. A telephone communication was made between one of our staff and another person.

Q. When did you personally have any knowledge of this proposed shipment?

A. It was after the discussions and before the bill of lading was signed I already came to know this.

40 Q. Can you remember now how long before the bill of lading was signed?

A. I am not in a position to remember the date. Well the general practice is like this: after a shipping order has been signed and the ship arrives and goods have been loaded to the ship and then after the chief officer has signed a mate's receipt, we would then prepare a bill of lading based on the mate's receipt.

50 Q. This bill of lading had attached some riders setting out the cargo. If you will look in the bundle after the bill of lading you will see the lists.

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Tse Joi-Tim Examination (cont'd)

- A. Yes.
- Q. How did you know that those goods had been shipped aboard Ta Hung?
- A. First of all this Sea Wise or any shipping company or even the shipper has to produce a shipping order first if they have any goods to be shipped ...
- INTERPRETER: I don't quite understand; perhaps I can clarify?
- Q. Would you like me to ask another question? Let me try again. You signed this bill of lading; you stated that these goods had been put on board Ta Hung. 10
- A. Yes.
- Q. Did anybody check that the goods were put on board the Ta Hung?
- A. Yes.
- Q. Who checked?
- A. As I have said earlier to counsel, when this shipping company Sea Wise has some goods to be shipped, we would then supply a shipping order to this shipping company so that they can fill in the particulars of the goods in the shipping order. The shipping order would then go along to the ship, that is Ta Hung. On board the ship there will be a tallyman who is responsible for checking the mark as well as the quantity. Eventually the chief officer on board the ship will sign a mate's receipt. 20
- Q. And is that what happened on this case?
- A. I would never sign this bill of lading if the chief officer has failed to sign the tallyman's receipt. 30
- Q. Thank you very much for coming here to help us.
- A. Well this is my duty; I should do so.

Cross-Examination

XXN BY MR. MUMFORD:

- Q. What is the relationship between Oneness Shipping Company Limited and Sea Wise Agency Limited? 40
- A. Our company is a shipping agent and Sea Wise was just a customer of us.
- Q. I see; so it was not a case of the same people owning shares in both companies?
- A. I can tell you right away that our company has nothing whatsoever to do with Sea Wise. We did not own the other company and in fact the other company was just one of our customers. When we were approached and offered business, we then accepted it. That is all. 50
- Q. I see; and you didn't share the same offices?

A. Different.

Q. You didn't actually answer my specific question early on: I was asking you to confirm that the same people did not own both companies.

A. No.

Q. I see. Now you spoke earlier of certain cargo being required to go to the Middle East and no ship was available; the shipper managed to find a shipping company in Taiwan.

10 A. Yes.

Q. Is that what someone in Sea Wise told you?

A. Generally speaking there were not many ships going to the Mediterranean Sea.

Q. Well maybe not but I'm asking you is that what Sea Wise told you?

A. Well it is very difficult for me to answer this question because it was a long time ago and I am not in a position to tell you who told me that, who told me this.

20 Q. Well in-chief you gave it as your evidence. You stated this particular shipment was required to go to the Middle East; no ship was available and so on. Now how do you know all that is true?

A. Well this consignment of goods was to be transhipped to a certain place. We accepted the consignment in Hong Kong and shipped it to Keelung.

30 Q. Well is the position that you really do not know whether or not it was required to go to the Middle East or whether or not a ship was available? If you're saying that you do know that, then how do you know? What is the source of your information?

A. Well this matter is in fact very simple. According to the document, we accepted the consignment, goods were put on board the ship and everything was done properly.

40 Q. Yes, I'm not suggesting you did anything wrong. What I'm trying to test is some of the things you've said today, such as this particular shipment was required to go to the Middle East. Now just to take that in the first instance, how do you know?

A. When the shipping order was obtained, it was specified that the goods would be transhipped.

Q. Why did you put on the bill of lading "Cargo to be transhipped to the Mediterranean Sea and Taiwan by consignee themselves at their own risk and expense."? It was nothing to do with you, was it?

50 A. Well I would like to explain it to you. We were responsible for shipping the goods from Hong Kong to Keelung. However, although -- all the particulars inside here were put down at the request of the shipper.

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COURT: Let's just clarify one thing. There's been reference to the Middle East; is the witness equating that with the Mediterranean or is there some distinction between the two?

MR. MUMFORD: I suppose it could be said that the eastern end of the Mediterranean Sea is the Middle East. Perhaps I could just clarify that.

Q. You spoke earlier of the shipment being required to go to the Middle East. Did you mean by that the eastern end of the Mediterranean Sea? 10

A. Well this matter was a long time ago. I do not know English myself. What was written on this document was the correct information. I might have said something incorrectly in my evidence and you should not try to question me severely on the mistake which I have made.

Q. Subject to the directions of the learned judge, I'm entitled to put any questions I wish to, Mr. Tse. 20

A. Right. Well I would like to offer my apologies to you if you feel ...

Q. Not at all. I feel that - not that my feelings are very relevant - but I feel that by "Middle East" you may have meant the eastern end of the Mediterranean Sea.

A. Well he offered me a shipment of goods. I just put down the particulars given to me by him. I was only responsible for shipping the goods from Hong Kong to Keelung; and when the goods were in Taiwan, they were handed over to another company. I did not know what was happening there. 30

Q. No, no, I'm not suggesting that you did anything wrong, Mr. Tse. Can you actually read this bill of lading, I mean are you able to read the English?

A. You mean the details inside this box? 40

Q. Well any of it, any of the writing on the bill of lading.

A. As a matter of fact I do not know English, but in fact I do - there's no reason for me to tell you that I don't.

Q. Well as to that I couldn't say but I'm just asking you whether you can read the writing on this bill of lading or not.

A. I don't know how to read this myself but my fokis do. 50

Q. Well then was it one of your fokis who took down the particulars from Sea Wise and typed this in here at Sea Wise's request?

A. I'm quite sure that these informations do appear in the shipping order and these informations appearing on this bill of lading were copied from that shipping order.

Q. Yes; and was that done as a normal part of a system or was it done at the special request of Sea Wise?

A. There was no special system. Usual system was that we prepare it according to the informations supplied by the shipper.

10 Q. I see. Now are you able to say whether the cargo on this which is attached to the bill of lading was the property of the shipper Sea Wise or whether it was cargo which Sea Wise had collected from other people?

A. Well as far as transshipment business was concerned, I only knew this particular company Sea Wise; I do not know any particular individual customer.

20 Q. Was it your understanding that Sea Wise had undertaken to ship this cargo for various different cargo shippers and had then found that it had no ship to ship them in?

MR. PHILLIPS: My Lord, there's not a lot of money in this case and that's the only reason why I'm rising to intervene because so much of what my friend is asking is not on any footing admissible, and what this witness's understanding may or may not have been really cannot

30 carry us any further at all. All he can speak to is the-- the instructions he received and what he did. My Lord, I would really question whether we need take up so long on exploring avenues which cannot assist your Lordship.

COURT: Yes, I have to assume that Mr. Mumford is aiming his questions at something relevant of which I'm not aware. Try not to go -- to stray too far.

40 MR. MUMFORD: Yes, certainly, my Lord. I do appreciate that even if I get the answer I want, we'll have to establish what the basis of it is, but the way this particular witness gives his evidence the only thing I can do is to approach it in that way.

Q. Were you aware that Sea Wise had collected the cargo from various cargo shippers for shipment to the Middle East or to Nimassol or wherever but had been unable to find a ship?

50 A. Well they must have collected all these goods from their customers before they could ask me to tranship this cargos for them.

Q. Yes. You see, you can take it from me that --

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no, I'll rephrase that if I may. You see, I suggest that the shippers of this cargo were expecting the cargo to go direct from Hong Kong to the Middle East or whatever their destination might be.

- A. I'm not in a position to answer this question. I think Sea Wise would be in a position to know that.
Q. Unfortunately we cannot find anybody from Sea Wise.

10

COURT: That's a question he can't answer, so ...

MR. MUMFORD: Yes.

Q. What I would like to ask you is whether you have any idea, of your own knowledge, from what occurred in this transaction, as to whether the shippers had been informed that you were taking the cargo or not?

A. Well I'm not in a position to answer this question. I did not know whether the shippers knew that their goods would be shipped by me because I took this shipment from Sea Wise.

20

Q. All you know is that Sea Wise said to you "We have this cargo; please take it to Taiwan" and you did so?

A. Yes.

Q. Yes, thank you.

NO REXN BY MR. PHILLIPS

P.W.1 - CHEUNG Yiu-leung (o.f.a.) - Recalled

XXN BY MR. MUMFORD (continues):

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Yiu-Leung
Recalled
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Q. Mr. Cheung, you said earlier that it was possible it may have been that Sea Wise told Wantex that the goods were to be shipped on Ta Hung but that they, that is to say Sea Wise, said the goods would go to destination - not to Taiwan.

30

A. Yes; the answer I gave was one of Yes.

Q. Yes. Well I'd like to narrow down the time if possible. Did they say that before or after you received your first bill of lading from them?

40

A. It was long after the bill of lading was collected.

Q. Yes. I don't want to mislead you in any way. I asked you just now did they tell you it went on Ta Hung, and you said "Yes", but were you agreeing that you had said it was possible or were you agreeing that they had said it? Do you understand the question?

A. It was possible.

Q. Yes. Well I'm suggesting that they actually did. I mean, are you prepared to agree that or not?

50

COURT: Can you be more specific and say the occasion or the time or who it was who specifically said this?

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MR. MUMFORD: My Lord, I can't give particulars.

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COURT: You're putting that he told ...

MR. MUMFORD: Well I'm only drawing an inference from the circumstances - I'm not actually putting it to him; I'm suggesting that it actually did happen.

10 COURT: I see.

A. It was possible.

COURT: Mr. Cheung, what we want to know is do you recall anybody in fact telling you -- anybody from Sea Wise in fact telling you at any time before the last bill of lading was supplied to you that in fact the goods were not going on the Ta Shun but in fact going on the Ta Hung?

A. No.

20 Q. Do you remember Mr. SO saying anything about it?

A. I cannot remember.

Q. Well what's the basis on which you say it is possible it did happen?

A. Because after the bills of lading had been collected, some letters were received.

Q. Are you saying then that you are sure it did not happen before you received the bills of lading?

A. Right.

30 Q. But it's possible that it happened afterwards?

A. Yes.

Q. I'd like you to look, if you would, at document 78 -- I'm sorry, page 78. Now this letter of course was written by Mr. SO, so it's not, as it were, a statement made by you.

A. Right.

Q. Where is Mr. SO now?

A. In Hong Kong.

Q. Do you know his address?

40 A. I do not know his correct address.

Q. How do you know he's in Hong Kong?

A. Because I had contact with his younger brother as I was trying to look for him.

Q. You were able to discover he was in Hong Kong but you weren't actually able to make contact, is that what happened?

A. You mean direct contact?

Q. Yes.

50 A. I was able to find his younger brother and with the assistance of his younger brother he came out to see me.

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Q. I see. As regards the letter, which starts on page 78, it says "With reference to the captioned policies, we would like to draw your attention Since all the concerned goods were originally shipped per vessel Ta Shun on August 1st 1976 ...". Do you see that?

A. Yes.

Q. Then it goes on to say -

"However, after that we received a letter from the relevant shipping company Sea Wise inform ..." -

10

which I think means 'informing' -

"us that the said vessel never came to Hong Kong due to certain reason and all goods were put on the Ta Hung".

A. Yes.

Q. Now it may be that that letter was the first information that Wantex had that the ships had -- that the goods had actually been shipped on the Ta Hung.

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COURT: Which page are you referring to?

MR. MUMFORD: Well - "After that we received a letter from the relevant shipping company".

Q. Do you think that may be so? This letter referred to in the fourth line, the fourth and fifth line.

INTERPRETER: May I have the question?

Q. Well the fourth and fifth line of page 78 refers to a letter from Sea Wise informing the company that the goods had actually gone on Ta Hung.

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A. Yes.

Q. But that letter unfortunately has -- seems to have disappeared. It's not in your file, is it?

A. Right.

Q. So what I would like you to tell us if you could is can you say about when it was that you got the letter from Sea Wise saying that actually the goods had been shipped on Ta Hung but apparently not telling you that they had gone to Taiwan?

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A. You want to know the date?

Q. Well of course I imagine you can't say exactly but can you give us the period, say the first week in September, second week in August, whatever it might be - third week in October?

A. I can't remember even approximately.

Q. You can remember?

A. I can't.

Q. Well you did say yesterday that it was before
you received the letter of -- on page 68.

A. You mean to say that I knew that before I
received this letter at page 68?

Q. Well that's what you said yesterday. You
said that when you got the page 68 letter you
did know that the -- well you'd been told the
goods had been put in Ta Hung but that they'd
gone to destination in Ta Hung, and you
already knew that when you got the page 68
letter.

A. Yes.

Q. Well does that no help you to remember perhaps
when you did get the Sea Wise letter saying
that it had gone on Ta Hung?

A. Well yesterday I did mention that Sea Wise
informed their shippers that they had to
contact their agents at that place. You want
me to repeat it again?

Q. I don't want you to repeat what you've just
said again; I just want you to give an
indication when it was you got the letter from
Sea Wise saying the cargo was on Ta Hung.

A. It was sometime in September.

Q. I see.

MR. MUMFORD: My Lord, you did say you wanted to
rise earlier.

COURT: Yes, if that is a convenient moment.

MR. MUMFORD: That will be a convenient time, yes.

COURT: We'll adjourn till ten o'clock in the
morning.

4.20 p.m. Court adjourns

14th May 1980

15th May, 1980

10.05 a.m. Court resumes.

Appearances as before.

P.W. 1 - CHEUNG Yiu-leung (o.f.a.)

XXN. BY MR. MUMFORD : (continues)

Q. Would you turn to page 68 please of the bundle?
I expect you will remember this quite well by
now. This is a circular from Blue Sky
demanding a second freight.

A. Yes.

In the Supreme Court of Hong Kong

No.5C
Transcript of Evidence before Mr. Commissioner Mills-Owens Q.C. 13th, 14th and 15th May 1980
Plaintiffs Cheung Yiu-Leung
Recalled Cross-Examination (cont'd)

Q. You were asked by counsel for the plaintiff why having received this circular Wantex did not tell Kallis, the buyer, we never received a very clear answer, could you please tell us why Wantex did not inform Kallis?

A. Well, at that time Mr. SO did not know that, and we had to find out the true position first before we could inform the buyer. I beg your pardon, I should say Mr. SO was in fact aware of that, and that was why he asked for an investigation to be made.

Q. Who was deciding at this time what sort of replies should be given to messages, or what sort of action should be taken about these shipments? Was it you or Mr. SO?

A. Well, normally it was Mr. SO who was responsible for making a decision in respect of a customer's business or affair.

Q. And was this not in fact so all along? Was it not really Mr. SO who controlled the arrangements for the shipping of the goods, for the insurance?

A. Well, I just carried out the instructions given to me by Mr. SO.

Q. I suggest you attended to the formalities. The important decisions were made by Mr. SO.

A. Yes.

Q. And Mr. SO, I suggest, is avoiding being asked awkward questions by letting you come here in his place.

A. It could be so.

Q. Are you really able to tell us why Kallis were not informed, and do you know why the decision was made by Mr. SO, because if not, perhaps there is no point in wasting time to keep on asking?

A. I do not know.

Q. Were you consulted as to whether the buyers, Kallis, or whether the insurers should be told about the contents of this circular?

A. Yes.

Q. If you were consulted, were you told the reasons why it was decided not to tell Kallis or the insurers?

A. We did inform the insurance company.

Q. Yes, but not for over a month. What I meant was why you did not tell Kallis or the insurers at the time you received the circular?

A. At that time we wanted to find out the actual position first before Mr. SO would make a decision.

Q. You do not seem to have done anything about finding out the true position because the next document is dated some - well, it is dated the 23rd of November, which would seem to be 18 days or more after you got the circular.

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I beg your pardon, in your file, not in the bundle of documents. In your file, there is a Seawise letter dated 5th of November. You remember that letter?

In the Supreme Court of Hong Kong

A. Yes.

Q. Having received the Blue Sky circular and the Seawise Shipping Company letter, surely it must have been evident to you that the situation was serious enough to tell Kallis and the underwriters whether or not you were absolutely sure of the position or not.

A. Yes, we were aware of this matter, so we needed to check our telexes in order to get some information. At the moment I do not have those telexes with me.

Q. I suggest it would only take a matter of hours to check your telexes.

A. Yes, but the telex was not in my possession.

Q. Well, it was in the possession of you and Mr. SO between you, was it not?

A. Normally telexes were handled by another colleague of mine.

Q. Well, I accept that you personally may not have been in a position to do it, but surely Mr. SO was.

A. Yes.

Q. Would you look at document 63 please? This is the first of the telexes we have that Wantex sent after the trouble began to brew up.

A. Yes.

Q. That says, "Contact Cacoyanis ... for arrival of Ta Shun".

A. This telex was requesting that shipping company to make investigation into the arrival of that particular ship.

Q. Yes, indeed, but did you have anything to do with that telex? You see, there is not much point going through it or discussing it, my putting questions to you, if at the time you had nothing to do with it, and you are just speaking now as an outsider.

A. The name as shown in this telex was in fact supplied to the shipper by Seawise.

INTERPRETER: I am afraid I do not quite follow.

COURT: Who is he referring to as the "shipper" when he says, "The name in the telex was in fact supplied to the shipper by Seawise"?

Q. Who were you referring to as the shipper?

A. Exporter is the shipper.

Q. Wantex in this case?

A. Yes.

Q. So this was information supplied to Wantex, you say, by Seawise?

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Recalled
Cross-
Examination
(cont'd)

although in fact he knew at that time they
 were on the Ta Hung?
 A. It was after this telex had been sent we then
 came to know that it was Ta Hung. It was only
 later when we received those letters as
 contained in this file that we realized that
 the shipment was carried on board Ta Hung.
 Q. You told us yesterday you got the letter from
 Seawise saying the goods were on Ta Hung in
 10 September.
 A. Yesterday I did say so.
 COURT: Which is it, Mr. CHEUNG?
 A. It was a long time ago. I cannot remember
 dates.
 Q. Would you turn to page 65 please? Message to
 Kallis from Wantex dated 9th of October, 1976.
 "Ta Shun ... is now loading goods at Tripoli."
 Is that information that you got from Seawise
 and that you passed on to Mr. SO?
 20 A. Yes.
 Q. Where was Tripoli?
 A. This place is somewhere near the destination.
 Q. Did you ask Seawise where Tripoli was?
 A. After we were told of this place, we then
 checked newspapers trying to find out where it
 was. After that, we then informed the customer.
 Q. There is a Tripoli in Libya.
 A. I cannot remember.
 Q. Is that the one?
 30 COURT: Is there another one?
 MR. MUMFORD: Well, I believe there may be. I am
 not quite sure. I know there is one in Libya.
 Q. Was the one in Libya the one?
 A. I have no idea.
 Q. It might be Tunisia or Libya, round the north
 coast of Africa.
 COURT: He has no idea, so I will assume that is
 the one in Tunisia or Libya.
 40 Q. 66 is really only repeating the information on
 65, is it not?
 A. Yes.
 Q. 67, you suggest that Kallis should telex
 Seawise direct, you suggest that is nothing
 very helpful.
 A. Right.
 Q. 76, Wantex's solicitors, which I suggest could
 only be on Wantex's instructions, asked Seawise
 what the date was that Ta Shun arrived at
 Limassol and the goods in question were
 50 delivered. You see that there?
 A. Yes.

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In the Supreme Court of Hong Kong

No. 5C
Transcript of Evidence before Mr. Commissioner Mills-Owens Q.C. 13th, 14th and 15th May 1980
Plaintiffs Evidence
Cheung Yiu-Leung Recalled Cross-Examination (Cont'd)

Q. That was on the 29th of November.

A. Yes.

Q. And that was three to four weeks after you had been told at the very latest in the circular from Blue Sky that the goods had been loaded on Ta Hung and were to be re-loaded on Intellect.

A. It would take about a month for the ship to travel from Hong Kong to its destination. So we were unable to take the next step before we could make sure that the goods had not been received by the customer. 10

Q. Why ask when the Ta Shun would arrive at Limassol?

A. Because according to our bills of lading, the ship was Ta Shun. So when we tried to get information from the shipping company, we had also to refer back to Ta Shun.

Q. But you knew from document 68, the circular from Blue Sky, and also from the letter from Seawise dated 5th of November, which is now in your file, from those two documents you knew the goods had gone on the Ta Hung to Taiwan? 20

A. Yes.

Q. Would you turn to document 77 please? It is a telex from Wantex to Kallis dated 30th of November, 1976.

A. Yes.

Q. There is no suggestion in that letter that you had received definite information that the goods had gone on Ta Hung to Taiwan. 30

A. Right. That did not appear in the telex.

Q. And further on the 23rd of November, you had received a letter from Seawise claiming that the goods had been trans-shipped to the Intellect.

A. Yes.

Q. And I suggest that even if you had doubts about whether Seawise could be believed, you should have at least said, "We are informed by ship owners, agents or whatever goods trans-shipped on Intellect such and such a day". 40

A. Yes.

Q. Page 89 - perhaps I should just mention page 81. You do, at last, say on the 3rd of December to Kallis that you have been advised that the cargo has been trans-shipped on the Intellect. 50

A. Yes.

Q. Page 89, Wantex to Kallis again, 29th of December, very late in the day, you say you have done the necessary to extend the insurance cover, the insurance agent is noted. I suggest that is thoroughly misleading because actually by that time the insurance company had refused to extend the cover.

10 A. Refused. At that time we did write to the insurance company, and after that we received a reply, the date of which I have already forgotten, and in that letter our request was refused.

Q. In fact, the refusal of Success is on the 4th December at page 83. You can take it from me. I think that both refusals were at the beginning of December, whereas this telex on page 89 was the 29th of December, long after the refusals to extend the cover.

10 A. It was after we had received this letter at page 83 we then approached Shun Fai and asked them whether our request for insurance could be accepted.

Q. I put it to you that long before the 29th December, you knew the insurance company had refused to extend the cover.

20 A. I agree.

Q. I put it to you that Wantex up until the 3rd of December in this series of telexes was covering up for Seawise by not telling Kallis definitely the goods had gone on Ta Hung.

A. I do not agree.

Q. But you do not really know, do you, because the important decisions were made by Mr. SO.

A. It is possible.

30 Q. And I put it to you that the reason was that if Wantex got Seawise into trouble, Seawise might then turn round and say, "You knew all along those shipped-on-board bills of lading were not accurate."

A. Wantex did not cause any trouble to Seawise. No trouble was given to this shipping company as far as the shipment on Ta Shun was concerned.

40 Q. I suggest alternatively that Wantex deliberately turned a blind eye to the suspicious circumstances at the time these shipments were arranged and later.

A. I cannot be definite.

Q. And at the very least, Wantex did not make the sort of investigation they would have made, at the time of arranging shipment and later, that they would have made had it been their own cargo at their own risk.

A. In this matter, investigation was made. And in fact, I did mention in my evidence that we did go to a police station to make a complaint.

50 Q. Yes, but I am referring to the time of shipment, to the time of arranging the shipment, I should say.

A. I do not follow the question.

Q. That point, I think, in fact has been covered yesterday, so we will not ask you any more questions.

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No. 5C
 Transcript of Evidence before Mr. Commissioner Mills-Owens Q.C. 13th, 14th and 15th May 1980
 Plaintiffs Evidence
 Cheung Yiu-Leung Recalled
 Cross-Examination
 (cont'd)

- Q. Would you turn please to page 18?
You see there the date chop for
"shipped on board" has been changed.
- A. Yes.
- Q. It was suggested that the date originally
there was the 3rd of August.
- A. Yes.
- Q. You suggested that the date might have
been changed to make it comply with the
letter of credit requirement. 10
- A. Yes.
- Q. Can you tell us whether it would have
made any difference as far as the letter
of credit was concerned whether the date
of shipment was the 3rd or the 8th of
August?
- A. The letter of credit would be slightly
affected.
- Q. We have looked at the letters of
credit, and they provide for shipment
months. 20
- A. Yes.
- Q. How could it affect the letter of
credit whether shipment was on the
3rd or the 8th of the month of August?
- A. Before I can answer this question,
I would like to refer to the relevant
L/C.
- Q. Well, that is something that my Lord
can do for himself. What I want to ask
you is can you remember why this date
chop was altered? 30
- A. At that time, the customer, that is
Kallis, had given us two L/Cs. I would
like to refer back to those documents
concerned before I can tell you why the
date, that is the 8th, was chopped on
this document.
- Q. Well, all I want to know is whether
you can now remember the reason,
or can you not remember it without
looking at the letters of credit? 40
- A. I cannot remember.

COURT: Thank you, Mr. CHEUNG.

(Evidence ends.)

We certify that to the best of our skill
and ability the foregoing is a true transcript

of the shorthand note taken of the
evidence of the above proceedings.

In the Supreme
Court of
Hong Kong

Sgd. E. Toy
Elizabeth Toy

Sgd. N.M. Pereira
N. M. Pereira

Sgd. P.B. Cheung
Patricia B. Cheung

Dated the 26th day of September 1980.

No. 5C
Transcript
of Evidence
before Mr.
Commissioner
Mills-Owens
Q.C. 13th,
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In the Supreme
Court of
Hong Kong

No. 6

Formal Judgment - 10th July 1980

No. 6
Formal
Judgment
10th July
1980

Folio 230 of 1978

COMMERCIAL LIST

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

ACTION NO. 230 OF 1978

BETWEEN GEORGE KALLIS (MANUFACTURERS)
LIMITED Plaintiff 10

and

SUCCESS INSURANCE LIMITED 1st Defendant

SAN INTERNATIONAL INSURANCE
COMPANY (HONG KONG) LIMITED 2nd Defendant

BEFORE MR COMMISSIONER MILLS-OWENS, Q.C. IN COURT

JUDGMENT

Dated and entered the 10th day of July, 1980.

This action having been tried before Mr
Commissioner Mills-Owens, Q.C. without a jury at
the High Court of Justice, and the said Mr
Commissioner Mills-Owens, Q.C. having on the 10th
day of July, 1980 ordered that the judgment as
hereinafter provided be entered for the Plaintiff. 20

It is adjudged that the First Defendant do
pay the Plaintiff the sum of US\$91,264.00 and the
Second Defendant do pay the Plaintiff the sum of
US\$31,900.00.

It is further adjudged that the First and
Second Defendant do pay interest to the Plaintiff
at the rate of 10% per annum on the judgment
amounts from the 1st June, 1977 and the
Plaintiff's costs of action to be taxed. 30

Sgd. N.J. Barnett
Registrar.

No. 7

Reasons for Judgment of Mr. Commissioner
Mills-Owens Q.C. - 10th July, 1980

In the Supreme
Court of
Hong Kong

No. 7
Reasons for
Judgment of
Mr. Commissioner
Mills-Owens Q.C.
10th July 1980

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

COMMERCIAL LIST

ACTION NO. 230 OF 1978

BETWEEN

10 George Kallis (Manufacturers)
Ltd. Plaintiff

and

Success Insurance Ltd. 1st Defendant

San International Insurance Co.
(Hong Kong) Ltd. 2nd Defendant

Coram : Mr Commissioner Mills-Owens, Q.C.

Date : 10th July, 1980

J U D G M E N T

20 The Plaintiff's claim in this action against
the 1st Defendant is for the sum of US\$91,364.00
being the value of goods lost and covered by three
policies of marine insurance numbered M/116768,
M/116972 and M/116973 respectively. There is a
similar claim against the 2nd Defendant under a
policy of marine insurance number M/32456. The
facts are relatively straight forward and in
summary are as follows. The Plaintiffs are
manufacturers of jeans and carry on business in
Cyprus. In early 1976 they entered into contracts
with an entity known as "Wantex Traders" for the
30 supply of denim on CIF terms, Wantex being responsible
for arranging for the carriage of the goods from
Hong Kong to Limassol and for the insurance cover.
The precise legal status of Wantex was not established
in evidence but it appears to have been an
unincorporated firm which was then but is no longer
carrying on business in Hong Kong as denim
manufacturers. Pursuant to the contracts of sale
the plaintiff opened two letters of credit in
favour of Wantex. The first L/C was confirmed
40 irrevocable credit number 76/20546 dated 25th May

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Mr. Commissioner
Mills-Owens Q.C.
10th July 1980
(cont'd)

1976 and called for shipment of APPROX 50,000 YARDS 100% COTTON INDIGO BROKEN TWILL DENIM CIF Limassol in three equal shipments in June, July and August 1976. Amongst the documents required were "FULL SET of Ocean Clean "SHIPPED on BOARD" Bill(s) of LADING ... showing freight prepaid" as well as "INSURANCE Company's Policy or Certificate of Insurance covering the goods from warehouse to buyer's warehouse in Nicosia against Marine and War Risks, all risks as per Institute Cargo clauses including SR & CC clauses". The second was L/C 76/20661 dated 29th June 1976 and covered approx 80,000 yards quality 30001 INDIGO BROKEN TWILL comprising 25,000 yards indigo, 25,000 yards sky blue, 15,000 yards green and 15,000 yards brown all as per sample. The goods were required to be shipped on or before 31st July 1976 from Hong Kong to Limassol or Larnaca and as with L/C 76/20546 the documents required included "SHIPPED On BOARD" Bills of Lading and Insurance Policy or Certificate with the same cover. L/C 76/20661 was amended on 27th of June 1976 to permit the 25,000 yards Indigo to be shipped by way of second shipment on or before 31st August 1976.

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Apparently the first two shipments under L/C 76/20546 were effected without any problems arising and these proceedings do not concern them in any way. The outstanding shipment under L/C 76/20546 was a quantity of 16,667 yards of Indigo Broken Twill denim. This formed the subject matter of policy M/116973 issued by the 1st Defendant. The 80,000 yards of 30001 Indigo Broken Twill covered by L/C 76/20661 formed the subject matter of the other three policies of marine insurance. The goods were duly manufactured by Wantex and then delivered to a company by the name of Winsome Company with premises at Kwun Tong, Kowloon in order to be made up into bales for delivery to the godown of the shipping company. The deliveries to Winsome Company were evidenced by four packing lists (Exhibit P5) dated respectively 6th, 23rd, 27th July and 3rd August 1976. A Mr Cheung Yiu Leung who was then employed by Wantex and who apparently arranged for the shipment and insurance of the particular goods in question gave evidence as to the system adopted for preparation of the shipping documents. He said that Wantex typed out Shipping Orders addressed to the shipping company containing a description of the goods to be shipped together with their marks and destination. When the goods had been received

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by the shipping company the bottom copies would be endorsed as a form of Mate's Receipt, acknowledging receipt of the goods for shipment and this Mate's Receipt would be returned to the shippers. In due course the Mate's Receipts would be exchanged for Bills of Lading.

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(cont'd)

10 The original intention was to effect the July shipments on board a vessel named "Oceania Maru" operated by N.K.K. Lines. However Mr Cheung stated that they were informed that this vessel was not accepting any further goods for shipment and accordingly they looked for another carrier. There were apparently very few vessels sailing for the required destination namely Limassol, but on a date which is not entirely clear but must have been somewhere around 25th July 1976 contact was made with a Mr Yip of Seawise Shipping Company, which on its notepaper described itself as being fully owned and operated by Seawise Agency Limited.

20 Seawise then carried on business in Hong Kong as ship's agents and in particular they were the agents for a vessel by the name of "TA SHUN". Advertisements placed in the South China Morning Post in July 1976 described Seawise Shipping Company as the general agent for "Seawise Line" and "Blue Line". They stated that Blue Line offered a Mediterranean sea service for Tripoli-Benghazi-Piaraus (sic) including "(accept transshipment cargo to Limassol Alexandria)" and

30 the vessel TA SHUN was advertised as arriving and sailing on various dates towards the end of July and in early August. The impression given from reading the advertisements is that the vessel's arrival in Hong Kong was delayed for some unspecified reason but in the event Mr Cheung has told us that they did not in fact check the newspapers to find out if the vessel TA SHUN was in port.

40 Four Shipping Orders were made out by Wantex and two of these are dated 27th July and the other two are dated 28th July 1976. The office copies of the Shipping Orders dated 27th July 1976 are respectively endorsed with acknowledgments of receipt on 27th July 1976 of 58 and 66 bales respectively. The office copies of the remaining two Shipping Orders acknowledged receipt of further deliveries of 41 and 58 bales respectively on 30th July and 4th August 1976. In this case the signature was under the chop of "Seawise Godown"

50 and was the same as that on the two previous Mate's Receipts. These Mate's Receipts were then exchanged for four Bills of Lading numbered HK/LIM-16,17,21 and 23 respectively and the first

In the Supreme Court of Hong Kong

No. 7

Reasons for Judgment of Mr. Commissioner Mills-Owens Q.C. 10th July 1980 (cont'd)

two of these were dated 28th July 1976 and the latter two 3rd August 1976. Each of the Bills of Lading was a "Blue Sky Shipping Co. Ltd. "Bill of Lading and was signed by Seawise Shipping Company as agents for and on behalf of the master. Each Bill of Lading incorporated the following material particulars. The vessel was named as "TA SHUN"; The shipper was Wantex Trader; The port of loading was Hong Kong and the port of discharge Limassol. In each case the Bill of Lading was a "freight prepaid" Bill of Lading and each bore a super-imposed chop stating "SHIPPED ON BOARD" followed by a date. This last statement was clearly untrue because as will be seen the TA SHUN never called at Hong Kong during the material period. I shall return to the terms and conditions of the Bills of Lading in due course. Meanwhile the four marine insurance policies which are the subject matter of these proceedings had been issued by the defendants. It is agreed that there is no material distinction for present purposes between the terms of the policies issued by the 1st defendant and that issued by the 2nd defendant. In each case the Insured was Wantex Trader held to the order of the Cyprus Popular Bank Limited, Nicosia; the vessel named was the "ss TA SHUN" sailing from Hong Kong to Limassol and each of the policies was a valued policy. Under the words "Conditions of Insurance" the Policies stated that they were "including from warehouse to buyer's warehouse in Nicosia" and that they were subject inter alia to the Institute Cargo Clauses (All Risks) 1/1/63. Again I shall refer to the ICC Clauses in more detail later. In the first two policies the carrying vessel had originally been entered as "OCEANIA MARU" but had been amended to "TA SHUN".

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Having paid the freight and obtained Shipped on-Board Bills of Lading, Wantex presented the documents called for under the two L/Cs to the Hong Kong & Shanghai Bank and obtaining payment thereunder in about the 2nd week of August 1976. Thereafter in the normal course of events Wantex would have dropped out of the picture.

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However as I have said, the vessel TA SHUN, despite the statements on the face of the Bills of Lading was not in Hong Kong and never came to Hong Kong at the material time. What in fact happened was that Seawise arranged for the goods in question to be carried on the vessel "TA HUNG" from Hong Kong to Keelung where they were discharged into customs warehouses. It is agreed between the parties that the vessel TA HUNG was

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10 in the same ultimate beneficial ownership as TA SHUN and a Mr Tse Joy Tim the business manager of Oneness Shipping Company Limited stated that his company were the agents for the TA HUNG. Mr Tse identified Oneness Bill of Lading No. KAO-3 as the Bill of Lading signed by him under which the goods were carried from Hong Kong to Keelung. That Bill of Lading names Seawise Agency Limited as the shipper and Blue Sky Shipping Limited as the consignee. It will be recalled that Blue Sky were the carriers under the four Bills of Lading for carriage Hong Kong/Limassol aboard the vessel TA SHUN. The Oneness Bill of Lading described the port of loading as Hong Kong and port of discharge as Keelung but incorporated three important endorsements on its face namely:-

20 "TRANSHIPMENT FROM HONG KONG TO MEDITEREAN SEA VIA TAIWAN";
"957 P'KGS GENERAL CARGO (FULL DETAILS AS PER RIDERS ATTACHED)"; and
"CARGO TO BE TRANSIT TO MEDITEREAN SEA AT TAIWAN BY CONSIGNEE THEMSELVES AT THEIR OWN RISKS AND EXPENSES".

30 As I understand the evidence of Mr Tse these endorsements would have been copied from the Shipping Order prepared by the shipper namely Seawise Agency Limited. The riders to the Oneness Bill of Lading comprised cargo manifests of Seawise Navigation Panama SA and gave a breakdown of the 957 packages. In particular 633 packages were listed as being cargo laden at the port of Hong Kong on board the "MV TA HUNG ex TA SHUN bound for Limassol sailing 17th August 1976." They included the goods consigned by Wantex to the Plaintiff. Mr Tse told the Court in cross-examination that Oneness had no particular connection with Seawise and that Seawise was merely a customer. I am satisfied having seen
40 Mr Tse and been taken through the totality of the documentary evidence that the goods were in fact shipped on board TA HUNG and carried to Keelung where they were discharged into customs warehouses on or about the 20th August 1976.

50 The evidence as to what happened to the goods after discharge in Keelung is sparse. In paragraph 5 of the Defence it was originally pleaded that the goods were discharged from TA HUNG and stored until a day between 31.10.76 and 16.11.76 when they were loaded on board the "MV INTELLECT". However this pleading was amended on 9th May 1980 shortly before the trial began and the question of whether the goods were ever loaded

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onto the INTELLECT was put in issue. In the event I am satisfied from the documentary evidence, on the balance of probabilities, that the cargo ex TA HUNG including the four shipments consigned to the Plaintiff was stored in Customs warehouses from about 20.8.76 to 10.11.76 when it was re-shipped aboard the MV INTELLECT which sailed from Keelung on about the 16th November 1976. This appears in particular from the manifest and freight list of Shin Shin Navigation Co. SA who were the owners of the MV INTELLECT and which listed 957 packages the details of which correspond to the goods shipped aboard the TA HUNG from Hong Kong to Keelung. The INTELLECT in fact sailed from Keelung for Hong Kong and after loading at Hong Kong on 19th November 1976 then sailed for Suez and the Mediterranean. Four certificates of transhipment were put in evidence each dated November 25th 1976 certifying that the cargo shipped under the four Blue Sky Bills of Lading consigned to the plaintiff was transhipped on board the MV INTELLECT. The genuiness of these certificates of transhipment is evidenced by the fact that there were 13 similar certificates of transhipment in respect of goods shipped by Cottontex to other consignees in Cyprus as to which shipments there is no dispute and in respect of which insurance claims were settled by the 1st Defendant.

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During the early hours of 27th November 1976 there was a serious fire on board MV INTELLECT in the Malacca Straits causing very extensive damage. The plaintiff's goods were stowed in number 4 lower hold and although not affected by the fire were so saturated with sea water and fuel oil that on subsequent survey they proved to be unidentifiable and a total loss. However the findings in the survey report of Messrs. Perfect Lambert & Co. are clearly consistent with the plaintiff's goods being stowed in No.4 lower hold and Mr Bailey in his statement on 28th April 1980 said he had no reason to believe that the manifest was incorrect in showing that these cargoes were on board. The confusion as to whether the plaintiff's goods were in fact on board the INTELLECT appears to have arisen because the original manifest made no reference to the goods ex TA HUNG/TA SHUN. This perhaps was because the vessel was on a voyage charter to Messrs. Dongsan Construction and Engineering Co. of Seoul and the bulk of the cargo had been loaded at Busan and comprised various construction materials destined for Cairo. Mr Bailey refers to the fact that the plaintiff's cargoes were listed separately in a supplementary manifest a copy of which he attaches to his statement.

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In the event I am satisfied that the plaintiff's goods were damaged as a result of the fire and consequent firefighting operations on the MV INTELLECT at the end of November 1976 and that they were a total loss.

I therefore turn now to consider the issues and defences raised in answer to the Plaintiff's claim in these proceedings.

Issues

10 The issues at their simplest may be stated as follows:-

- (1) Did the goods ever come on risk?
- (2) If they did, did they remain on risk up to the time of loss.

Defences

The defences may be summarised as follows:-

- (1) That the goods never came on risk and the insured transit never began.
- (2) Carriage on the "TA HUNG" was not covered.
- 20 (3) If the goods ever came on risk there was a change of voyage discharging the insurers.
- (4) There was material non disclosure entitling the defendants to avoid the contracts of insurance.
- (5) The adventure terminated at Keelung.
- (6) The goods were not "held covered" under clause 4 of the Institute Cargo Clauses (All Risks) ("ICC") because prompt notice was not given by the Assured.
- 30 (7) There was a breach of the Sue and Labour Clause (the "Bailee Clause") i.e. Clause 9 of the ICC Clauses.

Before turning to consider each of these defences it is perhaps convenient at this point to deal with some introductory matters. Counsel for the defendants commenced his address by referring the Court to two sections of the Marine Insurance Ordinance Cap. 329. He referred to s.17 which provides:-

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"17 Insurance is uberrimae fidei. - A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party."

This is of course merely declaratory of the common law applicable to all contracts of insurance. However if I understand his submission correctly Mr Mumford contended that this imposed on the Assured a duty of disclosure at every stage during the subsistence of the Policy regardless of whether or not it was a "held covered" situation and he cited a dictum of Scrutton L.J. in Leon v. Casey 1932 2 K.B. 576 at p.579 where he said "In consequence of the fact that insurance has always been regarded as a transaction requiring the utmost good faith between the parties in which the assured is bound to communicate to the insurer every material fact within his knowledge not only at the inception of the risk but at every subsequent stage while it continues up to and including the time when he makes his claim, the Common Law Courts invented the order for Ship's papers, an order which is made as soon as the writ is issued in an action on a policy of marine insurance."

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It will be observed that there Scrutton L.J. was dealing with the history of the Order for Ships papers and not specifically with the particular question of the extent to which an assured must notify underwriters of matters which affect the risk after the insurance policy has been concluded.

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Under s.18 of Cap. 329 the obligation of the assured is to disclose to the insurer "before the contract is concluded every material circumstance etc." Cory v. Patton 1872 L.R. 7 QB 304; Ionides v. Pacific Fire & Marine Insurance 1872 L.R. 7 QB 517 and Lishman v. Northern Maritime Insurance 1875 LR 10 CP 179 are all authority for the proposition that an assured need not communicate to the Underwriters facts which come to his knowledge material to the risk insured against after the contract of insurance has been concluded. In Lishman the Court of Exchequer Chamber comprised no less than 6 judges who concurred in the judgment of Bramwell B. that a failure to disclose material information obtained subsequent to the conclusion of the contract of insurance did not vitiate the policy.

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10 Accordingly, in my view the true position is that once the contract of insurance has been concluded there is no continuing duty of disclosure upon the assured to draw to the attention of underwriters details of circumstances which might affect the extent of the risk they face under the contract. So long as the terms of the policy apply the cover continues and there is no specific duty on the Assured to draw to the attention of the underwriters further matters coming to his knowledge. The position is different if a "held covered" situation arises where clearly there is a duty upon the Assured to give prompt notice and if he fails to do so the cover will lapse.

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20 Mr Mumford then cited s.50 of Cap. 329 for the proposition that the issues must be approached on the basis that Wantex is the actual Plaintiff and that any defence which would be available to the Defendants against any claim by Wantex must equally be available to them against the Plaintiff who is merely an assignee of Wantex's interest. S.50(2) provides as follows:-

30 "(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected."

40 The particular significance of this is that whereas the conduct of the Plaintiff as assignee of the four policies in question is not impugned, Mr Mumford has heavily criticized the conduct of Wantex and indeed submits that there may have been a conspiracy between Wantex and Seawise to issue false Bills of Lading when Wantex well knew that the vessel TA SHUN was not in Hong Kong and that the goods would never be shipped by that vessel. If Wantex was the Assured and the Defendants were able to make good these criticisms of Wantex's conduct then clearly they would be entitled to avoid liability by reason of material non-disclosure. Paragraphs 2 and 3 of the Amended Defence put in issue the Plaintiff's interest in the policies of insurance. However I was informed when Counsel for the Plaintiff was opening his case that the Defendants now admit the Plaintiff's interest in the goods and in the policies. This interest can only have arisen by way of assignment since the assured was either "M/S Wantex Trader"

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(Policy M/116768) or "M/S Wantex Trader held to the order of Cyprus Popular Bank Ltd." No doubt the interest of Wantex was assigned at the time that it drew under the Letters of Credit during the second week of August which presumably was the time when the policies of insurance and other documents were endorsed to the order of the Cyprus Popular Bank Ltd.

The position in law seems to be clear.
Ivamy on Marine Insurance 2nd Ed. page 335 puts
it as follows :-

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"Generally a marine insurance policy is assignable. The assignee has a right to sue in his own name, but may be met by any defence available to the insurer against the assignor"

Thus in Pickersgill v. London and Provincial Marine Insurance Company 1912 3 K.B. 614 a claim under a policy on a vessel by an innocent assignee failed because there had been material non-disclosure by the assured who was the assignor. Similarly in Bank of New South Wales v. South British Insurance Co. Ltd. 1920 4 Lloyds List L.R. 266 the Plaintiffs, who were a bank, were pledgees and assignees of policies from the assured as against whom the policy was null and void because they were enemy aliens. The Plaintiffs' claim in consequence failed. Thus it seems to me that Mr Mumford is correct when he contends that the present claim must be approached as if Wantex was the actual Plaintiff. I accept that the Defendants are entitled to maintain against the Plaintiff's claim any defence available to them against Wantex notwithstanding that it is accepted that the Plaintiffs are truly in the position of innocent assignees of the policies.

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I turn now to consider the various defences.

1. Did the goods come on risk?

The first line of Defence is that the goods never came on risk and the insured transit never began. The defence contentions put at their simplest are, as I understand them, put as follows. The insured transit was for carriage on board the vessel TA SHUN from Hong Kong to Limassol; the goods were never shipped on board the TA SHUN which never came to Hong Kong; instead the goods were shipped aboard a different vessel namely TA HUNG for carriage on a different voyage namely from Hong Kong to Keelung where they were discharged and stored; that this was not the

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insured transit and that therefore the risk never attached. The defendants rely upon ss. 43 and 44 of Cap. 329 which read as follows:-

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"43. Alteration of port of departure. -
Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach."

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"44. Sailing for different destination -
Where the destination is specified in the policy and the ship, instead of sailing for that destination sails for any other destination, the risk does not attach."

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Thus it is contended that Limassol is the destination specified in the policies and that TA HUNG never sailed for Limassol which would involve passage ex-Hong Kong in a south-westerly direction but rather followed a north-easterly course for a different destination namely Keelung and that accordingly the risk did not attach.

The Plaintiff's case is that the insured transit did indeed commence well prior to loading on board the vessel TA HUNG by virtue of the terms of the policies of insurance and in particular by reason of the "warehouse to warehouse" provision in Clause 1 ("Transit clause") of the Institute Cargo Clauses (All Risks) 1/1/63 which formed part of the subject policies. The relevant warehouse to warehouse clause is in the following terms:-

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"1. This insurance attaches from the time the goods leave the warehouse or place of storage at the place named in the policy for the commencement of the transit, continues during the ordinary course of transit and terminates either on delivery

Sub-clauses (a) (b) and (c) are not relevant to the present issue.

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It is not in dispute that the policies covered transit from warehouse to warehouse, indeed they say so in terms. Thus since the goods were at all material times in Hong Kong being the place named in the policy for the commencement of the transit, the insurance would in accordance with the wording of the warehouse to warehouse clause attach from the time that the goods left their last warehouse or place of storage in Hong Kong for delivery to the carriers or their agents. Thus the Plaintiffs say that on the facts of the present case the

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insured transit began and the cover attached from the moment that the goods left Winsome's warehouse (or the place where they were stored by Winsome) on their journey to "Seawise Godown" and that since the endorsements on the Mate's receipts acknowledging receipt of the four deliveries were dated respectively 27th, 27th, 30th July and 4th August, that cover attached under each of the policies at latest by such dates all of which were well prior to the loading and departure of TA HUNG on 17th August.

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As they point out, the cover is needed by the sellers when the goods leave the sellers' place of storage to protect them against obvious risks of loss or damage en route to the carrying vessel and by way of illustration of the commercial aspects my attention was drawn to a passage in Goodacre on Marine Insurance Claims 1973 Ed. at page 130. The paragraph commences with the words "it is particularly important to note that cover does not attach until the goods leave for the commencement of the transit. This effectively rules out journeys to and from packers' premises and whilst there being packed, such additional risk requiring special provision in the policy." Winsome were the firm employed by Wantex to make the goods up into bales. It is tolerably clear from Mr. Cheung's evidence that the goods went from Wantex to Winsome and then from Winsome direct to Seawise Godown. That being so the Plaintiff contends that by the operation of the warehouse to warehouse clause the risk attached when they left Winsome's place of storage. Alternatively if the goods were in fact returned to Wantex before delivery to Seawise Godown then the insured transit began when they left Wantex's place of storage for delivery to Seawise. In any event the cover attached before the goods arrived at Seawise Godown.

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Mr Mumford says however that Clause 1 of the ICC can only refer to the transit specified in the policy, that being a transit on the vessel TA SHUN from Hong Kong to Limassol and that such transit never took place and that therefore it follows that the goods could never have commenced any such transit since the carrying vessel TA SHUN was never in Hong Kong and in fact the goods were shipped to Taiwan on TA HUNG. He contends that the identity of the carrying vessel specified in the policy is of fundamental importance and cannot be changed without underwriter's agreement and that the risk only attaches to goods in transit for carriage on the named vessel. He says that the policy named TA SHUN and that TA SHUN never sailed

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under s.43 of Cap. 329 from the place of departure specified in the policy namely Hong Kong; that under s.44 TA SHUN never sailed for any destination and TA HUNG sailed for a different destination namely Taiwan; and that therefore the risk did not attach.

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10 In my view the insured transit did begin and the risk did attach when the goods left their place of storage, whether that was at Winsome's or at Wantex's premises is immaterial, for carriage to Seawise Godown. It is important not to lose sight of the fact that the cover required was all risks cover on cargo. The purpose of the warehouse to warehouse clause is to ensure that cargo owners' interests are covered from the moment that the goods are despatched to carriers' agents for shipment by the intended carrying vessel and for the intended voyage. If the lorries carrying the goods to
20 Seawise Godown had caught fire and goods been destroyed, it could hardly in my view be a defence to a claim on the underwriters that the vessel TA SHUN had not yet arrived and that in the event the vessel did not call at Hong Kong at all. The fact is the goods did leave a place of storage for the intended transit on TA SHUN from Hong Kong to Limassol under the cover of Seawise Shipping Orders addressed to the master of the TA SHUN asking him to receive the goods for shipment. In these
30 circumstances in my view the cover attached. The fact that the goods were in the event carried on another vessel which sailed for Keelung is more material to the other main issue namely that of whether the goods remained on risk up to the time of loss.

S.43 of Cap. 329 seems to me to be of no relevance. The place of departure named in the policy was Hong Kong and the goods did in fact depart from Hong Kong albeit on the vessel TA HUNG. There was no alteration of the port of departure.

40 As to s.44 I deal below with the question of whether the TA HUNG sailed for a different destination from that specified in the policy. Again however it seems to me that s.44 is irrelevant in that the risk had already attached by virtue to the warehouse to warehouse clause before the TA HUNG sailed at all. The consequences of a change of destination after commencement of the risk are dealt with in s.45 and it seems to me that
50 it is that section rather than s.44 which may affect the position. This I deal with below.

2. Carriage on TA HUNG

The Defendants then say that even if the insured

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transit commenced, that nevertheless the policy provided for carriage on the vessel TA SHUN and that carriage on the vessel TA HUNG took the adventure outside the ambit of the insurance cover. Mr Mumford submits that the ship is an essential element in the risk and contends that the vessel cannot be changed unless a forced discharge situation arises. He says the risk only attaches to the goods carried on the vessel named in the policy; that the identity of the carrying vessel is of paramount importance and materiality of which the Court should take judicial notice and that it is indeed a rule of law that the identity of the vessel is material.

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For the plaintiff Mr Philips accepts that in the 19th century the identity of the carrying vessel was almost always material. But this he says was at a time when marine insurance was largely transacted from the floor at Lloyds and underwriters considered individual risks with some nicety and would pay regard to the identity of the particular vessel as a factor to be weighed in accepting the risk and fixing the premium. However he says that there has been more recently a substantial change and that one now has floating policies and open cover for declaration where underwriters will accept risks as to the precise identity of the vessel. He is supported in this by a passage in Arnould on Marine Insurance Vol. 9 British Shipping Laws para. 241 where the learned authors of the text state:-
"A merchant who has ordered goods from abroad may be anxious to effect an immediate insurance on them, while he is ignorant of the particular ship by which they may be sent. By the laws and practice of all maritime states, it is allowable under such circumstances to effect a policy on goods "on board ship or ships"; indeed insurance by a named ship is probably now the exception rather than the rule." The last sentence of footnote 11 is of significance in this context when it states "in view of the vast changes which have taken place in the business of cargo insurance in the past 150 years, it is submitted that the view previously taken in this work can no longer be supported". Even as long ago as 1872 Chief Baron Kelly said in Ionides v. Pacific Fire & Marine Insurance Co. 1872 LR 7 Q.B. 517 at p. 524-5

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"Authorities have been cited to shew that in a certain class of cases the precise name of the ship mentioned in the policy is not material as for example where the Leonard was written instead of the Leopard (Hall v. Molineaux 6 East 385)".

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10 However, Mr Philips' answer to the defence that the goods were not covered by reason of a failure to ship on the TA SHUN is founded principally upon the wording of the Institute Cargo Clauses. He puts his arguments as follows: His primary point is that what was here done was done pursuant to a liberty granted by the contract of affreightment namely by Clause 13 of the TA SHUN Bill of Lading; alternatively he says that
20 what occurred comes within the meaning of "Deviation" in the extended cover provision of paragraph 3 of Clause 1 of the ICC. By way of further alternative he says that in any event the identity of the carrying vessel was not of the essence of the contract of insurance and points to the fact that no evidence was adduced by the defendants as to the materiality of the identity of the carrying vessel. In the final alternative he relies upon Clause 4 of the ICC and contends
that a "held covered" situation arose.

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Clause 1 paragraph 3 of the ICC is in the following terms:-

30 "This insurance shall remain in force (subject to termination as provided for above and to the provisions of Clause 2 below) during delay beyond the control of the assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment."

40 The words in brackets have no application to the present issue. Thus the extended cover given by this Clause covers a specified catalogue of events namely:- delay beyond the control of the assured; any deviation; forced discharge; reshipment and transshipment. It also extends to any variation of the adventure arising from an exercise of any liberty granted to shipowners or charterers under the contract of affreightment. The contract of affreightment relied upon is that contained in or evidenced by the four TA SHUN Bills of Lading issued by Seawise as agents for Blue Sky Shipping Company Ltd. of Taiwan who were no doubt the charters of the vessel TA SHUN.

The material provisions of the Bills of Lading are as follows. They commence on their face with the words

50 "Received from the shipper hereinafter named the goods or packages .. to be transported under or on deck by the vessel named below to the port of discharge subject to all the

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terms and conditions of this Bill of Lading with liberty to delay sailing, to deviate for the purpose of .. or otherwise, 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 discharge and/or loading goods and or .. any other purpose whatsoever .. subject to the stipulations, exceptions and conditions mentioned on the face and on the back hereof written, typed, stamped or printed."

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Further down they continue:-

"It is agreed that 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 carrier, 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 carrier unless by express waiver signed by a duly authorised agent of the carrier."

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Further down on the face of the document at the bottom left hand corner appear the words "IN ACCEPTING THIS BILL OF LADING the shipper, consignee and owner of the goods and the holder of this Bill of Lading expressly accept and agree to all its stipulations, exceptions and conditions whether written, typed, stamped or printed as fully as if signed by such shipper, consignee owner of the goods and/or holder of this Bill of Lading".

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The terms on the reverse of the Bill of Lading are in common form. They commence with a Clause Paramount incorporating the Hague Rules which are in any event incorporated by virtue of the provisions of the Carriage of Goods by Sea Ordinance Cap. 46. Under Article I of those rules "Carrier" is defined as including the owner or the charterer who enters into a contract of carriage with a shipper. The Clause Paramount also incorporates a demise clause in common form. Clause 13 on the reverse of the Bill of Lading which is the liberty clause particularly relied upon by the Plaintiffs is in the following terms:-

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"13 (Forwarding) The carrier shall have liberty to forward any or all of the goods described herein to the destination by the above or any other vessel, by rail or any other conveyances belonging either to it or to any other company or individual, by any route direct or indirect, and at vessels' option, to tranship 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 reship in the same or other vessel proceeding by any route or to forward by lighter, rail or any other conveyance, whether departing or arriving 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, discharging or reshipment, and also the carrier shall have liberty to retain the goods on board until the vessels return or other voyage, to proceed to any other ports or places, with full liberty to return, call, deviate, delay or stay as elsewhere in this bill of lading provided, at any place or places even though outside scope of the voyage or the route 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 the services as hereinabove 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 or during the voyage which in the judgment of the carrier or the master is likely to give rise to capture, seizure, detention, damage, delay or disadvantage to, or loss of, the vessel for any part of the goods or passengers, to make it unsafe, imprudent, inadvisable or unlawful 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

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does not expect to discharge. The above
rights are not affected by abandonment of
the vessel by her crew or to the underwriter."

I note in passing that the Seawise Shipping
Orders completed by Wantex themselves also
incorporated on their face the following reference
"other terms and conditions as per carriers bill
of lading".

Mr Philips' first point then is that the
terminology of Clause 13 of the Bill of Lading
entitled the carrier in this case Blue Sky but
acting through their agents Seawise to substitute
a different vessel ab initio and to ship the goods
in that substituted vessel to the extent that the
goods need never in fact even be loaded on the
vessel named in the Bill of Lading at all. His
contention is that the policy cover extends to
cover precisely such a shipment and that it is
not even necessary for the underwriters to be
notified. He says that Wantex implicitly agreed
to the terms of the contract of affreightment set
out on the reverse of the Blue Sky Bills of
Lading when they received the blank form Shipping
Orders from Seawise, filed in the details and
returned therein. Thus he says that the terms of
the contract of carriage are the Bill of Lading
conditions accepted by Wantex and in due course by
the plaintiffs who affirmed them by calling on
Blue Sky to make arrangements for speedy delivery
and that therefore the only issue is one of
construction of the liberty clause. This seems
to me to be quite correct.

The opening words of Clause 13 are "carrier
shall have liberty to forward ... the goods ... by
the above or any other vessel ... and at vessels'
option to tranship .. to any other vessel,
vessels ... to reship in the same or other
vessel .." Mr Mumford says that since the clause
uses the word "forward" this necessarily means
that the original shipment is not encompassed by
the clause which only covers what takes place
after the goods have been loaded on the original
vessel. He points out that if it was intended
that the liberty should extend to the original
vessel then the clause could have read "the
carrier shall have liberty to ship" any or all of
the goods etc. However, we have of course to
construe the words that have been used not words
that might have been used, and I have come to the
view that the plaintiffs construction of the
clause is the correct construction namely that it
not only permits transshipment and reshipment but
also permits a vessel to be substituted for the

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named carrying vessel in the Bill of Lading. It would indeed seem illogical if the true situation was that the carrier could tranship by vessel or vessels even immediately after the transit had commenced by the named vessel in which case the goods would be covered by paragraph 3 of Clause 1 of the ICC but that there should be no cover without further express agreement in the event of initial shipment aboard a different vessel because the named vessel was some reason not available.

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Mr Mumford referred to para. 110 in Halsbury's Laws of England 4th Ed. Vol. 25 where the text states "It is an implied condition in a marine policy that the ship named in it is not to be changed after the commencement of the risk without necessity or the underwriters' consent". Whilst this no doubt is the position at Common Law, we are dealing here with a policy expressly incorporating a clause provided that the insurance is to remain in force during any variation of the adventure arising from the exercise of a liberty granted under the Contract of Affreightment. If, as a matter of construction, Clause 13 of the Blue Sky Bill of Lading permits substitution of the carrying vessel then by virtue of the extended cover provisions of Clause I of the ICC the change of vessel is effected with the underwriters consent.

There is no reference in the text to the ICC and I would therefore construe it as referring to a situation obtaining in the absence of the ICC. To put the matter into context, clauses such as Clause 13 of the TA SHUN Bill of Lading are extremely common and normally purport at least to give the carriers very wide liberty to deviate, tranship etc. The existence of such clauses must be well known to underwriters who nevertheless are content to extend all risks cover in accordance with the terms of the ICC. Provided that the risk falls within the extended cover of para. 3 of Clause 1 of the ICC the underwriters are not entitled to notice and having regard to the width of the extended cover and of the liberty clause it seems to me that as a matter of construction that there is no necessity to obtain underwriters consent for either a change or even a substitution of carrying vessel as here occurred.

Thus since I am of the view that carriage on the vessel TA HUNG did not take the adventure outside the ambit of the insurance cover because of the provisions of para. 3 of Clause 1 of the ICC and Clause 13 of the Bill of Lading, it is strictly not necessary for me to deal with Mr Philips' alternative submissions that are

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summarized above and I do not in fact intend to do so. However I would say in passing that there seems to be considerable substance in his contention that the identity of the carrying vessel was not a matter of any particular concern to the underwriters in the present case. Indeed in any situation where the carrier is given such wide liberty to forward, re-ship and tranship the goods in other vessels and where ex hypothesi underwriters do not know the identities of those vessels at the time that the policies are issued, it would appear that the identity of the carrying vessel is of no real concern to them. The reality of the matter no doubt is that underwriters are well aware that the goods may be carried in other vessels for part or even all of their transit and they adjust their premiums to take this risk into account.

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3. Change of Voyage

The third main line of defence advanced is that there was a change of voyage resulting in the defendants being discharged from liability under Section 45 of Cap. 329. Section 45 provides as follows:-

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"45. Change of voyage - (1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs."

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Thus the Defendants say that whereas the destination contemplated by the policies of insurance was Limassol, the TA HUNG sailed from Hong Kong for Keelung. Thus it is contended that the destination for the purposes of s.45 changed and the Defendants were thereby discharged. The plaintiffs accept that if the destination was changed to Keelung then there was a change of voyage but their contention is that what occurred was merely a deviation and not a change of voyage and they say that deviation is covered by the express provisions of the ICC. To use the appropriate terminology, the Plaintiffs say that

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the "terminus a quo" was Hong Kong and that the destination or "terminus ad quem" was always Limassol. That being so, they say that the destination was not changed even though the goods were in fact shipped aboard the TA HUNG for Keelung since this was part of the carriage under the contract of affreightment to Limassol. Blue Sky had, through its agents Seawise, issued Bills of Lading by which it was contractually bound to carry the goods to Limassol. Limassol was the contractual destination and so the argument goes, the fact that they chose to perform the first leg of the contractual voyage with one vessel before transshipping for on-carriage under the contract of affreightment does not make the end of the first leg the new terminus ad quem. Even the Oneness Bill of Lading made it plain on its face that the object of the carriage was for the goods to be transhipped and on-carried to the Mediterranean. That coupled with the letter of 18th August 1976 from Seawise to Worldwide Marine Corporation certainly make it clear that the carriage to Taiwan was merely intended as the first leg of a much longer transit to the Mediterranean.

S.45 of Cap. 329 speaks in terms of a change of the destination of the ship. However the plaintiffs say that where the contract of insurance permits transshipment one has to read s.45 as referring to a change of destination under the contract of affreightment and they refer to Arnould at para. 438-440 to illustrate the distinction between deviation and a change of voyage. Arnould states "It is sometimes a matter of very nice discrimination to draw the line between an intention to deviate and a change of the voyage; the test in all cases is whether the terminus ad quem, specified in the policy, remains the ultimate place of intended destination; if it does then the design though formed before sailing of putting into any other port or taking an intermediate voyage, on the way to such ultimate place of destination does not amount to a change of the voyage and the underwriter remains liable for all loss incurred prior to its being actually carried into effect; i.e. as long as the vessel is on the direct course of the voyage insured, and before she has reached the dividing point."

This passage of course illustrates the distinction between a change of voyage and a deviation but in a case such as the present must be read in the light of and subject to the provisions of the Institute Cargo Clauses. In Hewitt -v- London General Insurance Co. Ltd. 1925 23 Lloyds List Reports p. 243 the vessel sailed with the

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intention of deviating and the issue was whether this of itself avoided the risk. At page 244-5 Branson J. said "the defendants set up a number of defences. Firstly it is said that the policy never attached at all. It is said that at common law a voyage policy does not attach where the ship sails with an intention to deviate, if the deviation is sufficiently material; that there is no express provision on the point in the Marine Insurance Act 1906; and that consequently the common law rule is preserved by s.91. In my opinion that proposition is untenable." Further on he cites Lord Davey in Thames and Mersey Marine Insurance Co. Ltd. -v- Van Laun & Co. 1917 2 KB 48 for the proposition that "the usual test is whether the ultimate terminus a quem remains the same". He then goes on "The cases cited by Mr Davies on the other hand show conclusively to my mind that at common law the policy will attach notwithstanding an intention to deviate existing before the inception of the voyage provided that the terminus a quo and the terminus a quem remain unaltered." Branson J. goes on to cite a passage from the judgment of Lindley L.J. in Simon Israel & Co.-v- Sedgwick 1893 1 Q.B. 303. In that case the insurance was upon merchandise from the Mersey or London to any port in Spain this side of Gibraltar and then to any place in the interior. The plaintiffs despatched goods from Bradford expecting that they would be landed on this side of Gibraltar. By some blunder they were shipped on a vessel from Liverpool to Carthage and the Bills of Lading were made out to Carthage. In those circumstances the Court of Appeal held that the decision of the case depended on the true construction of the policy and that if it was a policy from Bradford to Madrid the underwriters would be liable. However the Court held that upon the true construction of the policy it was not a policy from Bradford to Madrid but was a policy from Liverpool to some port on this side of Gibraltar and that consequently the goods having started on a voyage to the other side of Gibraltar the policy did not apply. Lindley L.J. said "Plaintiffs say that upon the true construction of the policy this is a policy from Bradford to Madrid. If it is then I think it is not denied by their opponents that the underwriters would be liable. Underwriters would have been liable if the terminus a quo and the terminus a quem had remained the same although the voyage involved a deviation to a port on the other side of Gibraltar".

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Thus, the Plaintiffs contend that as Limassol remained throughout the terminus a quem

for the goods that there was no change of voyage caught by s.45 of Cap. 329 but that there was merely a deviation which itself is expressly envisaged and covered by the extended cover provisions of Paragraph 3 of Clause 1 of the ICC. In this context S.49 (1)(a) of Cap. 329 provides that deviation or delay in prosecuting the voyage contemplated by the policy is excused where authorised by any special term in the policy. Mr Mumford on the other hand contends that there was indeed a change of voyage giving rise to a "held covered" situation which is dealt with in Clause 4 of the ICC, the change of voyage clause. That clause provides as follows:-

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"4. Held covered at a premium to be arranged in case of change of voyage or of any omission or error in the description of the interest vessel or voyage."

In these circumstances he contends that notice must be given to the underwriters of the change of voyage and an additional premium paid if cover is to continue. He says that even if the risk did attach when the goods left the warehouse or place of storage in Hong Kong, that nevertheless once the goods were loaded upon the vessel TA HUNG for carriage to Keelung there was a change of voyage bringing about the discharge of the underwriters from liability under s. 45. Thus he says that paragraph 3 of Clause 1 of the ICC has no application; that the intention of the carriers was no more than to carry the goods in the opposite direction from the carriage intended by the contract of affreightment and to discharge them in Taiwan with no definite plans for on-shipment. He points to the false statement of the TA SHUN Bills of Lading that the goods had been shipped on-board and further to the "outrageous" demand for second freight and says that the circumstances whereby the goods came to be carried to Taiwan on the TA HUNG were wholly inimical to the fundamental objectives of the contract of carriage.

He cited Glynn v. Margetson 1893 A.C. 351 for the proposition that however wide the terms of the liberty clause may be they must be read subject to the words which describe the voyage and must not be construed so as to defeat the main object and intent of the contract. In that case, the goods in question were oranges, a perishable cargo, and the contract of affreightment was for carriage of the oranges from Malaga to Liverpool. In fact, after the vessel left Malaga she proceeded in the opposite direction to Burriana, took on cargo and then retraced her course and went on to Liverpool.

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The oranges arrived in a damaged condition owing to the delay and it was held that the deviation in question was not justified and that the ship-owners were liable. Lord Herschell said at page 355, "My Lords, the main object and intent as I have said of this charterparty is the carriage of oranges from Malaga to Liverpool. That is the matter with which the shipper is concerned; and it seems to me it would be to defeat what is the manifest object and intention of such a contract to hold that it was entered into with a power to the ship-owner to proceed anywhere that he pleased, to trade in any manner that he pleased, and to arrive at the port at which the oranges were to be delivered when he pleased." Lord Halsbury said at page 357, "Looking at the whole of the instrument, and seeing what one must regard, for a reason which I will give in a moment as its main purpose, one must reject words indeed whole provisions if they are inconsistent with what one assumes to be the main purpose of the contract. The main purpose of the contract was to take on board at one port and to deliver at another port a perishable cargo". Again at page 359 he says, "My Lords, I also concur with my noble and learned friend on the woolsack that the particular words which give the liberty are to be construed to refer to a liberty to deliver in the course of a voyage which has been agreed upon between the parties." Mr. Phillips accepts these propositions as principles of construction. Mr. Mumford then refers to Scrutton on Charterparties 18th Edn. page 262 for the following passage :-

"All these clauses must be construed in the light of the commercial adventure undertaken by the shipowner. Thus a clause giving leave "to call at any ports" will only allow the shipowner to call at ports which will be passed in the ordinary course of the named voyage in their geographical order; the addition of the words 'in any order' will allow the shipowner to depart from the geographical order; but even when there are general words, which literally construed, would give liberty to call at ports outside the geographical voyage, these will be cut down by the special description of the voyage undertaken, to ports on the course of that voyage." Footnote 93 however states, "The words of such a clause may however be wide enough to entitle the shipowner even to alter the named destination of the ship, and (by virtue of a clause giving liberty to tranship) to forward the goods by another ship from the new destination:" citing Hadji Ali Akbar v. Anglo-Arabian 1906 11 Com.Cas. 219. The note continues, "Addition of the words (although in a

contrary direction to or out of or beyond the route of the said port of delivery' will protect the shipowner unless the use of the liberty is such as to frustrate the contract;" citing Connolly Shaw Limited v. A/S Det Nordenfjeldske D/S. 1934 49 LLR 183. In Hadji Ali Akbar a cargo of assafoetida was shipped at Bandar Abbas on the Defendant's vessel "Arabistan" for London. There was a wide liberty clause permitting deviation, transshipment and reshipment. During the voyage, the destination of vessel on which the goods were shipped was changed from London to Cardiff where the goods were transhipped into a small steamer and by it the goods were carried to London. It was held that the exceptions were wide enough to cover the total abandonment of the final destination to London and were reasonable and did not defeat the object of the Bill of Lading contract to carry the goods to London. At page 226, Bigham J. said "No doubt the object of the Bill of Lading contract is that the Plaintiffs shall have their goods carried to London, and if the liberties were of such a kind that if put into operation they would defeat the object, it might be possible to disregard them in construing the document. They are, however, not of such a kind." IN Connolly Shaw Limited, (supra) the goods were lemons shipped for carriage from Palermo to London. The vessel proceeded from Palermo to Valencia where she loaded potatoes, then direct to Hull and then back to London to discharge the lemons. The question was whether the deviation to Hull was justified under a wide liberty clause. It was held that the clause gave the ship liberty to call at any port or ports whether beyond the port of delivery or not which she could call at in the course of her voyage without frustrating the object of the voyage namely the safe carriage of a perishable cargo. Branson J. at page 190 says this, "then the question here upon that view of the case is to see whether these liberties are inconsistent with the carrying out of the contract. If they were followed to their extreme it is quite plain that they would be. You could not expect a cargo of lemons to survive a voyage round the Horn, and perhaps back again round the Horn, before they were taken from Palermo to London; but I do not think it is right to say that once you find that a liberty has been reserved in general language, which if followed to its extreme would in a particular case result in a frustration of that contract, therefore you can disregard the liberty altogether. It seems to me that the proper way in which to apply the liberty is this. Insofar as the liberty which has been reserved can be used without frustrating the contract, then there is no reason for disregarding it in construing the contract.

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It can stand with that limitation, and why it should be necessary to disregard it altogether I do not see, nor do I find any authority for the proposition that one should disregard it altogether. So in construing this clause, I think it would be perfectly right to read it as allowing any of the liberties therein reserved to the extent to which they could be used without frustrating the contract." And at page 191 he says, "Now I have to apply this to the circumstances of the present case. I read this clause as giving the ship liberty to call at any port or ports whether beyond the route of the port of delivery or not which she could call at in the course of this voyage without frustrating the object of the voyage, that is to say the safe carriage of the cargo, subject to the exceptions which are provided by the Bills of Lading." I have set out above in some detail the material provisions of the Blue Sky Bills of Lading. In particular, they permit on their face the vessel "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 discharge and/or loading goods .. and/or any other purpose whatsoever." Clause 13 on the reverse gives the carrier liberty to forward the goods "by any route, direct or indirect and at vessel's option to tranship at any place or places ..." It continues "... and also the carrier shall have liberty .. to proceed to any other ports or places, with full liberty to return, call, deviate, delay 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 route to or beyond the port of destination." These provisions seem to me clearly wide enough to cover carriage of the goods on board the vessel TA HUNG to Keelung notwithstanding that this was effectively in the opposite direction from the normal geographical route for a voyage from Hong Kong to Limassol.

Can it then be said that by shipping the goods on the vessel "TA HUNG" to Keelung for transhipment and on-carriage pursuant to the liberties granted in the contract of affreightment that the contract was thereby frustrated. It seems to me not. The cargo was not a cargo of perishable goods. On the evidence there were relatively few sailings direct from Hong Kong to Limassol and in my view the purpose of carriage to Keelung was not inimical to the contract of affreightment but was rather for the purpose of transhipment and on-carriage to Limassol. There

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is of course no evidence as to precisely what was intended to happen when the goods reached Taiwan on the TA HUNG but the reasonable inference must be that this carriage was for the purpose of the goods being transhipped to another vessel which presumably was then anticipated to call at Keelung.

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10 In my view what occurred was a deviation and not a change of voyage resulting in discharge of the underwriters under s. 45 of Cap. 329. The terminus ad quem remained Limassol throughout. This appears to be accepted as the determining factor in a case such as the present where there may be transhipment. I find that the purpose of carriage on the vessel TA HUNG to Keelung was for transhipment and onward carriage to Limassol and although, in the event, the goods after discharge at Keelung remained for some considerable time in storage in the customs warehouse, nevertheless
20 the ultimate intended destination of the goods remained throughout as Limassol. Under s.46 of Cap. 329 where a ship without lawful excuse deviates from the voyage contemplated by the policy the insurer is discharged from liability. However, under s. 49, one of the lawful excuses envisaged is where deviation is authorised by any special term in the policy. Paragraph 3 of Clause 1 of the ICC in terms extends cover to any deviation and during any variation of the adventure arising from
30 the exercise of a liberty granted to shipowners or charterers under the contract of affreightment. I find that the carriage to Keelung on the TA HUNG did not frustrate the contract of affreightment and accordingly the cover continued and the Defendants were not thereby discharged from liability.

4. Material non-disclosure

40 The next defence that is relied upon is that there was material non disclosure entitling the Defendants to avoid the contracts of insurance. It is said that Wantex knew or ought to have known that the goods were not in fact to be shipped on the TA SHUN, that this was a material circumstance known to Wantex as the assured before the contracts of insurance were concluded and that as there was a failure to disclose this the Defendants may avoid the contracts.

S. 18 of Cap. 329 provides as follows :-

50 "18 Disclosure by assured. -- (1) Subject to the provisions of this section, the assured must disclose to the insurer before the contract is concluded, every material

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circumstance which is known to the assured,
and the assured is deemed to know every
circumstance which, in the ordinary course
of business ought to be known by him. If
the assured fails to make such disclosure,
the insurer may avoid the contract.

(2) Every circumstance is material which
would influence the judgment of a prudent
insurer in fixing the premium, or determining
whether he will take the risk. .."

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The four policies of insurance are dated
respectively 22nd July, 24th July, 31st July and
31st July although in the case of the policies
issued by the 1st Defendant, the marine insurance
application in each case bears a later date than
the policy itself. This discrepancy in date was
not explained in evidence but nothing turns upon
it. In order to sustain this line of defence
therefore the Defendants must establish that Wantex
either actually knew or ought to have known prior
to the policy dates that I have set out that the
goods were not to be shipped on TA SHUN.

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Mr. Mumford formulated what he referred to
as a 3 tiered submission. In the first place he
says Wantex knew that the goods were never to be
shipped on the TA SHUN and had come to a special
arrangement with Seawise. As to this he concedes
that it is very difficult to prove that in fact
Wantex actually knew that the TA SHUN was not in
Hong Kong and would not carry the goods. Mr.
Cheung denied any such suggestion. However, Mr.
Mumford says that the subsequent behaviour of
Wantex was quite inconsistent with the behaviour
of an outraged deceived shipper who would at once
have informed the insurance company and
instituted proceedings against Seawise. He has
referred to the "devious" way in which Wantex
behaved from 7th October onwards as strongly
supporting a conclusion by inference that Wantex
was trying to cover-up for Seawise or avoid
causing trouble for them and he has specifically
drawn attention to a number of the letters and
telexes in the agreed bundle to support his
argument.

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What is clear is that Seawise quite
improperly did issue "SHIPPED ONBOARD" Bills of
Lading at a time when the TA SHUN was not in Hong
Kong. How far if at all Wantex was a party to this
deception is not clear. Wantex no doubt were
anxious to be able to get shipped Bills of Lading
to enable them to draw under the letters of credit.
They no doubt pressed Seawise to supply them with

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shipped Bills of Lading. This by itself would be quite normal. No doubt most exporters will want to obtain the documents which enable them to draw under credits in their favour as soon as possible. By the same token, Seawise also would be anxious to receive the freight due to it as soon as possible but could not expect to be paid other than against shipped Bills of Lading. Clearly Seawise will have known that the indorsement "SHIPPED ONBOARD" was false since the vessel was not here. There is however no evidence that Wantex actually knew of its falsity and the only witness called to testify on the point Mr. Cheung, said Wantex, by which I understand him to refer to himself and Mr. So, did not know the goods were not being shipped on the TA SHUN. Thus in effect I am asked to infer the existence of a conspiracy between Mr. Cheung (or Mr. So) of Wantex and Seawise to issue false Bills of Lading. The onus of establishing a defence of material non-disclosure rests on the Defendants and although many of the criticisms of Wantex's subsequent behaviour are well-founded, they have not in my view made out a sufficient case for inferring the existence of the suggested conspiracy. Indeed the fact that Wantex subsequently made reports to the police strongly suggests that they did not feel that they themselves had anything to hide. Equally the fact that Cottontex also received bills of lading with the same false indorsements suggests that this was not the product of a specific conspiracy between Seawise and Wantex but rather the outcome of Seawise's need to get the freight as soon as possible. The onus of establishing a conspiracy of the type suggested by Mr. Mumford is a heavy one and the evidence falls far short of the standard of proof required. Mr. Mumford's argument under the first tier therefore fails.

Alternatively, Mr. Mumford then says that Wantex deliberately turned a blind eye to what was happening and as his third-tier says that on any view Wantex failed to make the kind of checks and investigations which they would be expected to make in the ordinary course of business; that if they had made such checks they would have discovered that TA SHUN never called at Hong Kong at all at the time in question. Thus, so the argument goes, if in the ordinary course of business they ought to have known that the goods were not being shipped on the TA SHUN then they are deemed under s.18 of Cap. 329 to have known this fact and were under a duty to disclose it, and that as they did not do so the insurers can avoid liability.

As I have stated, Mr. Cheung's evidence was they did not in fact check the newspapers to

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ascertain the arrival date of the TA SHUN. He said he relied upon the information supplied by Seawise. Had they checked the South China Morning Post they would have been put on enquiry in the following circumstances. The issue for 27th July indicated that TA SHUN was expected to arrive on 30th July. Thus when they received the Bills of Lading No. LIM-16 and LIM-17 bearing "Shipped Onboard" endorsements dated 28th July they would have realised that it was highly unlikely that the vessel would have arrived 2 days early and that the goods could actually have been loaded onboard in the time available. Equally if they had looked at the issue for 30th July, they would have seen that notwithstanding that they held "Shipped Onboard" Bills of Lading dated 28th July that the vessel was not due until 2nd August.

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Thus if the representatives of Wantex had not simply relied on what they were told by Seawise and had checked the newspapers for the arrival date of the TA SHUN they would have ascertained, prior at least to the conclusion of 2 of the policies, namely M/116972 and M/116973 that the vessel's agents were issuing false bills of lading. This then poses the question of whether the fact that TA SHUN was not in Hong Kong at the time that Seawise was issuing "Shipped Onboard" Bills of Lading was a fact which ought to have been known to Wantex in the ordinary course of business because it was advertised in the newspapers. Mr. Mumford says that it was elementary common sense to check advertisements of ships movements and he relies upon a statement of Mr. Fritz Pleitgen the general manager of the export department of Gilman & Co. Ltd. In his statement Mr. Pleitgen says that where non-conference or little known shipping lines are used that his staff make a point of carrying out a check of the arrival and departure dates of vessels independently of the information supplied by the booking agents. He says that so far as he is aware based upon his experience and conversations with his opposite numbers in big companies in Hong Kong that this is the procedure adopted by other exporters.

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There is apparently no authority directly in point as to the meaning of the words in s.18 "every circumstance which in the ordinary course of business ought to be known to him". Such authorities as there are relate to the question of whether the knowledge of an agent of the insured can be imputed to his principal so as to affect the principal with that knowledge. This was the question raised in Australia and New Zealand Bank

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v. Colonial and Eagle Wharfs Limited 1960 1 Lloyds
241 cited by Mr. Philips. In that case a clerk
had been guilty of breach of duty and the question
was whether under s. 18 the Company employing him
was deemed itself to have knowledge of or was
affected by the knowledge of the clerk its
servant. McNair J. in holding that it was only
the knowledge of a limited class of servants
which was to be imputed to the proposer of any
insurance said this at page 251:-

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"The contention of the 3rd Party is, however,
that, since the law as stated in relation to
marine insurance in s. 18 of the Marine
Insurance Act 1906 (namely that the "assured
is deemed to know every circumstance which in
the ordinary course of business ought to be
known by him ..") applies equally to non-
marine insurance, (A) both of these facts
should have been known to the Board of the
defendant company (i) if they had made such
enquiries as to their system as a reasonably
prudent wharfing company in the ordinary
course of business would have made; .."

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and at page 252 he continues :-

"As to (A) (i) the submission that the Board
of the defendant company ought to have known
the material facts because they would have
known them if they had made such inquiries
as to their system as a reasonable prudent
Board of such company in the ordinary course
of business would have made, in my judgment
fails both in law and on the facts. I have
been referred to no authority to suggest that
a board of a company proposing to insure owe
any duty to carry out a detailed investigation
as to the manner in which the company's
operations are performed and I know of no
principle involved which leads to that
result. If a company is proposing to insure
wages in transit, I cannot believe that they
owe a duty to the insurers to find out how the
weekly wages are in fact carried from the Bank
to their premises, though clearly they must
not deliberately close their eyes to defects
in the system and must disclose any suspicions
or misgivings they have. To impose such an
obligation upon the proposer is tantamount to
holding that insurers only insure persons
who conduct their business prudently, whereas
it is a commonplace that one of the purposes
of insurance is to cover yourself against
your own negligence or the negligence of your
servants ..."

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Again at page 254 he says:-

"These judgments make it clear to my mind that it is not the knowledge of all agents or servants that is imputed to the proposer of any marine insurance, but only the knowledge of quite a limited class, namely the broker who actually places the insurance, the master or the ship-agent or, to use Lord Halsbury's phrase ' His general agent for the management of his shipping business'. On the facts of the present case, Henderson was not within that limited class. Though in a sense the key man in the sense that a mistake by him would mean the failure of the system his duties were almost entirely clerical; it was not established that he had any discretion or executive authority; he was not superior to the head clerks in the warehouse but co-ordinate with them. He was not in my judgment a person within the class of those who were under a duty to report to the company."

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As Mr. Mumford says however that case is factually far removed from the present one. Here we are concerned with whether either Mr. Cheung or Mr. So of Wantex should have made enquiries and ascertained that TA SHUN was not in Hong Kong when Seawise, by issuing shipped Bills of Lading was representing that it was here. As I have said the onus of establishing a defence of material non-disclosure is squarely on the defendants and I am not persuaded that they have discharged this burden. It is for them to demonstrate that in the ordinary course of Wantex's business the representatives of that company ought to have known the TA SHUN was not here. I accept that Mr. Cheung was told by Seawise the agents for TA SHUN that the vessel had arrived when they called for the goods on 27th July. Although with the benefit of hindsight it would no doubt have been more prudent for further enquiries to have been made, he was entitled to accept that statement at its face value and he apparently did so. Whatever might have been the ordinary course of business or practice for other larger organisations such as Gilmans, Jebsons and Jardines we are concerned here with the knowledge that ought to have been acquired in the ordinary course of Wantex's business and as to that we have virtually no evidence. Although Cheung did accept that it might have been a good idea to check the newspapers for the arrival date of the TA SHUN he in fact did not do so. Having been told and accepted that TA SHUN had arrived by 27th July I

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am not aware of any basis for suggesting that the representatives of Wantex were nevertheless under a duty to treat that information with suspicion and pursue an investigation into whether in fact the vessel was here. I find that such information was not information which ought to have been known to Wantex in the ordinary course of business and it follows therefore that the defence of material non-disclosure fails.

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10 5. Termination of Adventure

As has been seen the TA HUNG left Hong Kong for Keelung on 17th August 1976. On arrival at Keelung the goods were discharged into customs warehouse where they apparently remained until loaded on the MV INTELLECT which then sailed for Suez and the Mediterranean via Hong Kong on about 16th November 1976. There is no evidence as to what if anything happened to the goods whilst in Keelung save that they were apparently stored in
20 the customs warehouse for a period of some 82 days.

Mr. Mumford contends in these circumstances that the adventure terminated in Keelung and that as no prompt notice was given to underwriters and as in any event more than 60 days expired after discharge at Keelung that cover lapsed and the goods were not on risk at the time of loss.

Mr. Philips approaches the matter by asking the question, was the contract of affreightment terminated. He submits that there are three
30 possible ways in which the contract of affreightment could have terminated and that none of these three alternatives apply, accordingly he says that the contract of affreightment remained in force, the adventure continued and the goods were on risk on 27th November when the fire occurred on MV INTELLECT.

The three possible ways in which he suggests that the contract of affreightment could have terminated are (1) by agreement, (2) by reason of
40 impossibility, (3) by repudiation duly accepted. As to (1) this alternative need not be considered as there is no suggestion that there was any such agreement. (2) As to impossibility he says that while there may have been considerable delay this of itself did not frustrate the contract of affreightment which was to get the denim to Limassol. Denim is not a perishable commodity and there was no frustrating event. (3) As to the
50 third alternative, he accepts that it is arguable that there may have been repudiation by Blue Sky but says that this was never accepted by the plaintiffs who, as the innocent party, elected to

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keep the contract in being; that therefore the contract of affreightment never terminated. He contends that the initial carriage to and discharge at Keelung for transshipment and on-carriage was within the liberty granted to the carriers under Clause 13 of the Bill of Lading and therefore within the extended cover given by Clause 1 of the ICC notwithstanding the extensive delay that occurred. He says that even if Blue Sky were deliberately delaying at Keelung in order to blackmail the shippers into paying second freight and thus outside the liberty that nevertheless this was covered under the heading of delay beyond the control of the assured and therefore nevertheless within the extended cover.

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I turn to consider the position under the ICC. Paragraph 1 of the transit clause deals with when cover attaches and when it terminates. As I have found the cover attached when the goods left their place of storage in Hong Kong for delivery to Seawise Godown. Paragraph 1 of the transit clause goes on to provide that cover then "continues during the ordinary course of transit and terminates on delivery (a) .. (b) ... (c)". Counsel, no doubt for good reason, did not address any arguments on the meaning of the words "during the ordinary course of transit" and it was not suggested that cover lapsed because what occurred was not in the ordinary course of transit. Curiously, the words "continues during the ordinary course of transit" were excluded from the warehouse to warehouse clause in the 1/1/58 version of the Institute Cargo Clauses but were reintroduced in the 1/1/63 version. However in the context of a transit clause incorporating wide extended cover and liberty provisions, no doubt the words "in the ordinary course of transit" must be construed in the light of and qualified by the wide umbrella of the cover thereby provided.

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Paragraph 1 of the transit clause then provides that cover continues until delivery in three alternative circumstances. I need not set them out as they clearly do not apply here. Thus under (a) the goods never reached their destination Limassol; under (b) the assured never "elected" to use any warehouse or place of storage to which the goods were delivered; under (c) the goods never reached the final port of discharge, again Limassol. Paragraph 2 of the transit clause again has no application since the goods never reached the final port of discharge (Limassol). Under the extended cover provisions of paragraph 3 of the transit clause, it is then provided that the insurance remains in force in certain defined

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circumstances including any variation of the adventure arising from the exercise of a liberty under the contract of affreightment. The terms of the Blue Sky Bills of Lading are clearly wide enough to permit the carrying vessel TA HUNG to call at Keelung, discharge the goods and store them and for them to be reshipped on another vessel to destination. Thus the cover remained in force subject only to the question of whether the contract of affreightment terminated.

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Clause 2 of the ICC, the "termination of adventure clause" deals with the circumstances where the contract of affreightment or adventure is terminated at a port or place other than the named destination or before delivery of the goods owing to circumstances beyond the control of the assured. In such circumstances then subject to prompt notice being given the cover remains in force for certain specified periods. The clause does not define the circumstances in which the contract of affreightment or adventure may terminate and in any event it has no application to the facts of the present case in that no notice was given and the period of storage in Keelung exceed the period specified in the clause. Mr. Philips says that he does not rely on the held covered provisions in the termination of adventure clause and understandably so. He concedes that if the contract of affreightment or adventure terminated on discharge at Keelung then he must fail. Thus the simple question is, did the contract of affreightment or adventure terminate at Keelung and the onus of establishing this is again on the defendants.

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I have set out above the outline of Mr. Philip's argument. Mr. Mumford says that the contract of affreightment was terminated when Blue Sky demanded new freight by their circular of 30th October. He says that this was not merely a repudiatory act but was a breach of contract since the time for performance had arrived and that therefore by this act Blue Sky brought the contract to an end. He goes on to argue that Blue Sky had made it clear they would not carry the goods free and that on-carriage must therefore have been under a new contract and the plaintiff would have had to pay new freight at destination. He says that the authenticity of the transshipment certificate is very dubious. In the alternative he submits that if the contract of affreightment did not terminate that in any event the adventure terminated. His contention was that by analogy with the law of general average the physical adventure terminated when the ship and the goods parted company. He said however that if the owner of the TA HUNG had

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arranged for the on-carriage it might be argued that the adventure continued but that doesn't arise since it didn't happen.

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It cannot be correct in my view to say that the adventure terminated once the goods and the carrying vessel TA HUNG parted company and that cover thereupon lapsed. This would be quite inconsistent with the extended cover and liberty provisions of the transit clause. When the termination of adventure clause speaks in terms of "either the contract of affreightment is terminated .. or the adventure is otherwise terminated" the use of the word "otherwise" suggests as a matter of construction that the two should be equated. It seems to me, bearing in mind the provisions of s. 3 of Cap. 329 that the adventure we are concerned with is the carriage of the goods by sea exposed to maritime perils from Hong Kong to Limassol. So long at least as the goods were destined for Limassol and the goods would continue to remain exposed to maritime perils the adventure continued.

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Did the contract of affreightment continue and did the goods remain exposed to future maritime risks. In my view clearly they did. There is no suggestion or hint in the evidence that the goods were ever destined for Taiwan. After discharge at Keelung they were not imported but were held in customs warehouse presumably in bond pending on-carriage.

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Although there was no direct evidence as to the identity of the vessel originally intended to on-carry the goods from Taiwan, the letter of 18th August from Seawise to World-Wide Marine Corporation who were the agents for the MV INTELLECT suggests that plans had already been made to on-ship on that vessel. We do not know when INTELLECT was originally anticipated to depart Keelung. The report of Mr. Bailey shows that she loaded her main cargo at Busan on 22nd October 1976 and arrived at Keelung on 30th October 1976. The departure was then however delayed by repair work to her boilers and she did not leave until 16th November 1976. There was clearly substantial delay but not such delay in my view as would be sufficient to frustrate the commercial objectives of the contract of affreightment. It was delay within the liberty of the transit clause or in any event was delay beyond the control of the assured within transit clause. Indeed it has not been suggested that as delay it was in any way under the control of either Wantex or the plaintiffs.

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10 I accept Mr. Philips's analysis of the situation when he says that by its demand for new freight Blue Sky merely repudiated its obligations under the contract of affreightment but that the contract continued in being and Blue Sky's obligations thereunder continued because neither Wantex nor the plaintiff accepted such repudiation. In fact as appears from the transshipment certificates dated 25th November 1976 and the telex of 27th November 1976 Blue Sky by their agents did arrange for the goods to be on-carried pursuant to its obligations under the Bills of Lading. I see no reason to doubt the authenticity of these transshipment certificates. Similar certificates were issued in respect of the Cottontex goods and I accept them at their face value.

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20 Accordingly, I find that the contract of affreightment and adventure did not terminate when the goods were discharged into customs warehouse in Keelung and that the insurance remained in force during storage in Taiwan and during re-shipment and on-carriage in the MV INTELLECT. Cover continued to attach at the time that the goods were a total loss as a result of the fire on 27th November 1976.

6. Held Covered

30 As I have come to the view that the goods came on risk and remained on risk up to the time of loss it is not necessary for me to consider the alternative submissions of Counsel based upon the held covered provisions of Clause 4 of the ICC namely the "Change of voyage clause".

7. Sue and Labour

The final matter raised by way of defence that I must deal with is an allegation that there was a breach of Clause 9 of the ICC namely the "Bailee clause" which provides as follows :-

40 "9. It is the duty of the assured and their agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss and to ensure that all rights against carriers, bailees or other 3rd parties are properly preserved and exercised."

50 As pleaded the complaint in the defence was that the Plaintiff and/or Wantex had failed to preserve or exercise their rights against the carrier, bailee or other 3rd party by instituting proceedings promptly or within 1 year or at all. During his opening, Mr. Philips stated that if the

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point was pursued evidence would be adduced that proceedings in rem had been commenced in Singapore against the MV INTELLECT and that further sister-ship proceedings had also been commenced against the "HUMANITY". In the event, no doubt as a result of discussions between Counsel, Mr. Mumford limited himself to a contention that there had been a breach of Clause 9 before loss and it was unnecessary for the evidence indicated by Mr. Philips to be adduced.

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In its final form the point was but faintly argued. Mr. Mumford said that the plaintiffs were bound to act with utmost good faith and as if uninsured and should therefore even before loss have taken prompt action to obtain security by arresting one or more of the vessels involved; that the failure to do so was a breach of Clause 9 entitling the Defendants to damages in an amount equal to the plaintiffs claim; that thus the claim is barred by the rule against circuity of action.

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I confess that I find the suggestion that the plaintiffs are under a duty to sue and labour even prior to the loss somewhat startling. It may be that I have not truly understood Mr. Mumford's submissions but I fail to see how the assured can take measures to avert a loss unless it is reasonably apparent that it is about to occur or to minimise a loss which has not already occurred. I cannot accept the suggestion that it would have been a reasonable measure for the Plaintiffs or Wantex to arrest any of the vessels involved prior to the date of the loss by fire on the MV INTELLECT and I hold that there was no breach of Clause 9 entitling the underwriters to a set-off or to damages.

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As I pointed out during the course of the proceedings there is a typographical error in the amount of the plaintiffs claim which should be for US\$91,264 against the 1st Defendant. This is because the insured value of the goods shipped under policy M/116768 was US\$38,280 and not US\$38,380 as pleaded. There will accordingly be judgment for the Plaintiff against the 1st Defendant in the sum of US\$91,264 and against the 2nd Defendant in the amount of US\$31,900.00. I award interest at the rate of 10% per annum to run from 1st June 1977 which I choose as being a date some 6 months from the date of the loss and a reasonable period within which to investigate and meet the Plaintiff's claim. The Plaintiffs are also entitled to their costs.

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(R. Mills-Owens)

Commissioner of the High Court
N.A. Philips, Q.C. & R. Faulkner (Robertson & Co.)
for Plaintiff.
E.C. Mumford (Deacons) for 1st & 2nd Defendants.

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Notice of Appeal - 23rd July 1980

In the Court
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Civil Appeal No. 133 of 1980

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IN THE SUPREME COURT OF HONG KONG

COURT OF APPEAL

(ON APPEAL FROM THE HIGH COURT JURISDICTION)
(COMMERCIAL LIST)
(ACTION NO. 230 OF 1978)

BETWEEN :

10	GEORGE KALLIS (MANUFACTURERS) LIMITED	and	Plaintiffs (Respondent)
	SUCCESS INSURANCE LIMITED	and	1st Defendant. (Appellant)
	SAN INTERNATIONAL INSURANCE COMPANY (HONG KONG) LIMITED		2nd Defendant.

NOTICE OF APPEAL

20 TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the above-named 1st Defendant (Appellant) on appeal from that part of the Judgment herein of Mr. Commissioner Mills-Owens, Q.C. given at the trial of this action on the 10th day of July 1980 whereby it was ordered that the 1st Defendant (Appellant) do pay the Plaintiffs (Respondent) herein US\$91,264.00 with interest and costs for an order that the Plaintiffs' (Respondent's) claim against the 1st Defendant (Appellant) be dismissed with costs.

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AND for an order the Plaintiffs (Respondent) may be ordered to pay the 1st Defendant (Appellant) its costs of this appeal to be taxed.

AND FURTHER TAKE NOTICE that the grounds of this appeal are that :-

1. The learned Commissioner misdirected himself on the facts, or alternatively his finding was against the weight of the evidence, in holding that the information that the 'Ta Shun' had not arrived at a time when Wantex Traders had already been given 'shipped on board' bills of lading for

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the 'Ta Shun' was not information which ought to have been known to Wantex Traders in the ordinary course of their business.

2. The learned Commissioner was wrong in law in holding that the test was whether the said information ought to have been known to the said Wantex Traders in the ordinary course of their business, the true test being whether the said information ought to have been known to reputable firms in general exercising the usual care and skill to be expected of such firms in the ordinary course of their business. 10

3. The learned Commissioner erred in law in holding that the risk on the insured goods ever attached under the policies issued by the 1st Defendant (Appellant).

4. If the risk did attach, the learned Commissioner erred in law in holding that, in the absence of any notice by the said Wantex Traders or the Plaintiffs (Respondent) to the 1st Defendant (Appellant), the risk under the 1st Defendant's (Appellant's) policies continued whilst the insured goods were loaded on a ship other than that specified in the said policies, were carried in a direction geographically opposite to that on which they should have been carried, and were landed and stored in Taiwan whilst a second freight was demanded for their carriage to the original destination although freight had already been paid (hereinafter referred to as 'the aforesaid events') and in particular : - 20 30

(a) The learned Commissioner erred in law in holding that the aforesaid events amounted to a deviation within the meaning of Clause 1 of the Institute Cargo Clauses (All Risks) so that cover continued under that Clause.

(b) The learned Commissioner erred in law in holding:-

(i) That the said 'Ta Shun' bills of lading were documents on which the Owners of the 'Ta Shun' or Blue Sky Shipping Co.Ltd. or Seawise Shipping Co. were entitled to rely. 40

(ii) That Blue Sky Shipping Co. Ltd. or Seawise Shipping Co. were carriers or were in any event entitled to rely on any provisions of the said bills of lading.

(c) In the premises, and in the absence of any evidence that the Owners of the 'Ta Shun' purported to exercise any liberties under the

said bills, the learned Commissioner erred in law in holding that there had been and 'exercise of a liberty granted to shipowners or charterers under the contract of affreightment' within the meaning of Clause 1 of the said Clauses so that cover continued under that Clause, or that there was any effective contract of affreightment granting any liberties.

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- 10 (d) In any event, even if one of the parties concerned was prima facie entitled to rely on the liberties contained in the said 'Ta Shun' bills of lading :-
- (i) The learned Judge erred in law in holding that the aforesaid events constituted a 'variation of the adventure arising from the exercise of a liberty granted to shipowners etc.' within the meaning of Clause 1 of the said Clauses, so that
20 cover continued under that Clause, in that he should have held that 'exercise' in law meant valid or lawful exercise, and the aforesaid events could not in any event in law constitute a valid or lawful exercise of any liberty granted under any contract of affreightment.
- (ii) In the alternative the learned Judge
30 erred in law in construing the liberties granted by the 'Ta Shun' bills of lading so as to permit such a variation of the adventure as was represented by the aforesaid events.

5. The learned Commissioner erred in law or alternatively misdirected himself as to the facts in holding that neither did the contract of affreightment terminate nor did the adventure terminate within the meaning of Clause 2 of the said Clauses on the happening of the aforesaid events.

- 40 6. The learned Commissioner erred in law in holding that the insured was not bound to communicate to the insurers facts material to the risk after the making of the contract of insurance and that the insured was not in breach of Clause 9 of the said Clauses in failing to take any steps to ensure the release and prompt on shipment of the insured goods from Taiwan.

50 AND FURTHER TAKE NOTICE that the 1st Defendant (Appellant) reserves the right to and intends to add to these grounds of appeal when a transcript of the evidence is available.

Dated the 23rd day of July, 1980.

Signed Illegible Solicitors for the 1st Defendant (Appellant)

To the abovenamed Plaintiff (Respondent) and to Messrs. Robertson & Co., Hong Kong.

No. 10

Formal Judgment - 3rd October 1981

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of Appeal of
Hong Kong

CIVIL APPEAL NO. 133 OF 1980

No. 10
Formal
Judgment
3rd October 1981

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT

(COMMERCIAL LIST) ACTION NO. 230 OF 1980

BETWEEN

SUCCESS INSURANCE LIMITED

Appellant
(1st Defendant)

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and

GEORGE KALLIS (MANUFACTURERS)
LIMITED

Respondents
(Plaintiffs)

BEFORE THE HONOURABLE SIR ALAN HUGGINS, VICE-PRESIDENT
THE HONOURABLE MR. JUSTICE LEONARD AND THE HONOURABLE
MR. JUSTICE CONS

O R D E R

Dated the 3rd day of October 1981

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UPON MOTION by way of appeal from the judgment
of Mr. Commissioner Mills-Owens, Q.C. dated the 10th
day of July, 1980

AND UPON HEARING Counsel for the 1st Defendant
and for the Plaintiffs

AND UPON READING the said judgment dated the
10th day of July, 1980

THIS COURT DID ORDER that the said appeal
should stand for judgment AND the said appeal
standing this day for judgment in the presence of
Counsel for the 1st Defendant and for the Plaintiffs

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THE COURT DOTH ORDER that this appeal be
allowed and the said judgment of Mr. Commissioner
Mills-Owens, Q.C. dated the 10th day of July, 1980
for the said Plaintiffs be set aside and judgment
entered for the said 1st Defendant with costs to
be taxed

AND IT IS ORDERED that the Plaintiffs do pay
to the 1st Defendant its costs occasioned by the
said appeal, such costs to be taxed.

N.J. Barnett
Registrar

L.S.

In the Court
of Appeal of
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No. 11A

Reasons for Judgment of Sir Alan Huggins
V.-P - 3rd October, 1981

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IN THE COURT OF APPEAL

1980, No. 133
(Civil)

BETWEEN

SUCCESS INSURANCE LTD.

Appellant
(1st Defendant)

and

GEORGE KALLIS (MANUFACTURERS)
LTD.

Respondent
(Plaintiff)

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Coram: Sir Alan Huggins, V.-P., Leonard & Cons,
JJ.A.

J U D G M E N T

Sir Alan Huggins, V.-P. :

The Respondent Plaintiff, a Cypriot company,
bought denim material from a Hong Kong firm called
Wantex Trader for delivery to Limassol. Wantex
negotiated policies of insurance with the Appellant
Defendant and the Respondent claimed as the
consignee of the goods and as assignee of the
benefits of the policies. It is common ground
before us that the goods were lost as a result of
a peril which was covered if the policies were in
force at the time of the loss. The Insurer
contends that the policies were void for non-
disclosure of material facts and, alternatively,
that the goods never came on risk under the
policies or, if they did, that the cover
terminated before the loss occurred.

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There were three policies, dated
respectively 22nd July 1976, 31st July 1976, and
31st July 1976. The first and third policies were
issued pursuant to applications bearing date one
day after that of the policies, and the second
pursuant to an application bearing date five
days before that on the relevant application.
They were All Risks policies which included the
Warehouse to Warehouse Clause of the Institute
Cargo Clauses dated 1st January 1963 and the
condition "including from warehouse to buyer's
warehouse in Nicosia".

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10 The Schedule named the carrying vessel as the Ta Shun and the voyage as from Hong Kong to Limassol. The first policy stated that the vessel would sail on or about 27th July 1976, the second that she would sail on or about 7th August 1976 and the third that she would sail on or about 1st August 1976. In fact, the Ta Shun did not call at Hong Kong at the relevant time and never loaded the goods in question. Nevertheless, there were issued to Wantex received for shipment Bills of Lading dated 28th July 1976 for 66 bales, 3rd August 1976 for 58 bales, and 3rd August 1976 for 41 bales. They were on forms issued by the Blue Sky Shipping Co. Ltd. and signed by Seawise Shipping Co. for and on behalf of the master "as agents". They named the vessel as the Ta Shun, the port of loading as Hong Kong, and the port of discharge as Limassol. Each bore an incorrect endorsement, "shipped on board" with a date, the date of the endorsement on the first being 28th July 1976, that on the second 8th August 1976 and that on the third 3rd August 1976. With these irregular documents Wantex drew under Letters of Credit accepted by their purchasers.

30 In fact all the goods left Hong Kong in a vessel named Ta Hung under a shipped-on-board Bill of Lading issued by the Oneness Shipping Co. Ltd. "as agents". The shipper was declared as Seawise Agency Ltd., the port of loading as Hong Kong, the port of discharge as Keelung, and the consignee as Blue Sky Shipping Co. Ltd. There were three material endorsements - "Transshipment from Hong Kong to Mediterranean Sea via Taiwan", "Cargo to be transit (sic) to Mediterranean Sea at Taiwan by Consignee themselves at their own risks and expenses" and "Freight Collect". The goods were discharged into a Customs godown in Keelung on or about 20th August 1976 and remained there until November 1976. They were then loaded aboard the m.v. Intellect and sailed for Limassol. Having called at Hong Kong that vessel proceeded until she suffered a casualty in the Malacca Straits on 27th November 1976, when the goods were lost.

50 For the purposes of the first issue raised on the appeal it may be assumed that the loss of the goods allegedly insured under the two later policies would be covered if the policies were not avoided. The Insurer contends that Wantex failed to disclose that these goods were never shipped aboard the Ta Shun and that irregular Bills of Lading had been issued in respect of them. The contention is founded upon ss. 17 & 18 of the Marine Insurance Ordinance, which read :

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"17. Insurance is uberrimae fidei. - A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

18. Disclosure by assured. - (1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

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(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

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(3) In the absence of inquiry the following circumstances need not be disclosed, namely:-

(a) Any circumstance which diminishes the risk;

(b) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know;

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(c) Any circumstance as to which information is waived by the insurer;

(d) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

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(4) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact.

(5) The term "circumstance" includes any communication made to, or information received by, the assured."

What is said is that Wantex ought to have known at

10 the latest by 31st July 1976 (the date appearing on the 2nd and 3rd policies) that the vessel had still not arrived in Hong Kong and that consequently the endorsements on the first Bill of Lading, to the effect that the goods to which it related had been shipped on board on 28th July 1976, must be wrong. The learned Judge found that Wantex did not know of the non-arrival of the vessel and that it was under no obligation to acquaint itself as to the arrival or non-arrival of the vessel. This conclusion is challenged by the Insurer as being unjustified by the evidence. Indeed, Mr. Rokison points out that the Judge apparently accepted the evidence of a Mr. Pleitgen that substantial business houses with specialist export departments made a practice of checking the movements of non-conference vessels in which their goods were to be carried. Yet the Judge adopted a different standard of conduct for small businesses. This, it was submitted, was wrong. Reliance was also placed on the answers of Mr. Cheung of Wantex which, it was said, admitted that he ought to have looked in the newspaper to see if the Ta Shun had arrived.

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40 In my view the duty on an assured is not as high as that contended for by the Insurer here. It is one thing to say that an assured is to be deemed to know information which has been sent to his office and which, in the ordinary course of business, ought to have been noted and acted upon (e.g., the casualty slip in London General Insurance Co. Ltd. v. General Marine Underwriters Association Ltd., 1921 1 K.B. 104) but quite another to say that he must go out and look for information, even though an extraordinarily prudent man might do so. The present case is stronger in favour of the Assured than was Australia and New Zealand Bank, Ltd. v. Eagle Wharves, Ltd. 1960 2 Lloyd's Rep. 241, where the information not disclosed related to the manner in which a company's own operations were performed.

50 The next issue is whether the goods ever came on risk. It is common ground that if they did, it was when they left the Winsome godown. However, the contention of the Appellant is that when they left that godown they did so upon a voyage other than that in respect of which they were insured. The first argument is that the goods never started upon the insured voyage, because the policy covered a named ship and the goods were never loaded aboard that ship. It is true that the modern tendency is not to insert the name of a particular vessel in policies insuring goods carried by sea, but, where a ship is named, then one must look to the terms of the policy to

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ascertain whether the cover extends to an alternative vessel for the whole or part of the voyage.

On behalf of the Assured it is contended that there were reasons why the identity of the carrying vessel was not vital in the present case. The first reason was that there was liberty in the contract of affreightment to employ another vessel and there was a "variation of the adventure arising from the exercise of a liberty granted to the ship-owners or charterers under the contract of affreightment" within para. 3 of cl. 1 of the Institute Cargo Clauses. The relevant contracts of affreightment were, of course, the Ta Shun Bills of Lading. Clause 1 begins :

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"If the vessel is not owned by or chartered by demise to this Company (as may be the case notwithstanding anything that appears to the contrary) this Bill of Lading shall take effect only as a contract with the owner or demise charterer, as the case may be, as principal, made through the agency of this Company which acts an agent only and shall be under no personal liability whatsoever in respect thereof."

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Unfortunately, there was before the trial judge no evidence as to the status of the Blue Sky Shipping Co. Ltd. There is thus no evidence that it was the owner or demise charterer of the Ta Shun and, therefore, the "carrier" under these Bills of Lading. Both parties appeared to assert that it was probably a mere charterer, though I confess I do not understand why that should be any more likely than that it was the owner. However, under cl. 13 of the Bills of Lading, only the carrier was granted any liberty :

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"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 conveyances belonging either to it or any other company or individual, by any route direct or indirect, and at vessel's option, to tranship at any place or places to any other vessel, vessels or means or transportation, ..."

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Mr. Philips objects that this is a technical ground for opposing the claim and that it was Blue Sky which throughout purported to exercise the liberties: if it was not the owner, it was at least the agent of the owner. I have much sympathy with that objection. The contract was on

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a Blue Sky form; Blue Sky in a letter at page 182 of the record says that Union Creative Shipping Ltd. is its agent and in a letter at page 204 Seawise says that it had been, but was no longer, agent of Blue Sky and that Union Creative Shipping Ltd. is "the owner's present agent"; it was Blue Sky which was the consignee under the Ta Hung Bill of Lading, which was liable for the Ta Hung freight and which made arrangements for onward carriage from Keelung, something which it would be unlikely to do if it was acting as agent only and was under no personal liability in respect of the Bill of Lading; indeed, Blue Sky expressly asserted that it had suffered loss. In the absence of evidence that the company was a mere charterer, or that someone else owned the Ta Shun, I would have thought it not unreasonable for the Judge to proceed on the basis that Blue Sky was the owner, and, therefore, the carrier. It is true that the letter at page 182 asserts that Wantex had consigned the goods in the Ta Hung for transshipment, but that was clearly inaccurate on any view of the facts. Wantex consigned the goods to Limassol in the Ta Shun, with liberty to employ another vessel and to tranship. It seems to me that the Judge was entitled to conclude that Blue Sky, as owner, had the goods consigned to it at Keelung for transshipment and that there was insufficient evidence of any intent either at that time to send the goods to Keelung for the purpose of perpetrating a fraud or thereafter in fact to detain them in Keelung pending payment of further freight.

Secondly it was argued that, even if there was liberty to substitute another vessel, that vessel never sailed for the destination specified in the policy and the risk did not attach even though the carriage had in fact commenced when the goods left the warehouse. Section 44 of the Marine Insurance Ordinance provides :

"Sailing for different destination. - Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach."

In so far as the Institute Cargo Clauses appeared to provide otherwise, Mr. Rokison submitted, the statute must prevail. The Judge took the view that s.44 was overridden by cl. 1 of the Institute Cargo Clauses and that cl. 4 also applied. With respect, I cannot agree. I accept that a policy may expressly override s.44, just as a policy including para. 3 of cl. 1 of the Institute Cargo Clauses may override s.46(1). However, it seems

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Hong Kong

No. 11A
Reasons for
Judgment of
Sir Alan
Huggins V.-P.
3rd October
1981
(cont'd)

In the Court
of Appeal of
Hong Kong

No. 11A
Reasons for
Judgment of
Sir Alan
Huggins V.-P.
3rd October
1981
(cont'd)

to me that there is no fundamental conflict between the Ordinance and the Institute Cargo Clauses. Clause 1 deals with the time at which the risk attaches, provided that it attaches at all.

Section 44 states that the risk shall not attach at all in the circumstances indicated. It is here that the basic nature of the contracts is material, for the governing factor is that in spite of the inclusion of the Warehouse to Warehouse Clause, the contract of insurance is a contract of marine insurance and the contract of carriage is a contract of carriage by sea. The Warehouse to Warehouse Clause is incidental to the main purpose of the insurance policy. Obviously such a conclusion poses difficulties for an assured, but it seems to me that it would be wrong that the Warehouse to Warehouse Clause should have the effect of binding the Insurer to cover the goods on a voyage wholly different from that which was originally contemplated by the parties. As in the deviation cases (e.g. Glynn v Margetson & Co. 1893 A.C. 351) I think one must have regard to the main object of the contract and construe it accordingly. Prima facie the taking of the goods to Keelung was wholly inconsistent with a voyage from Hong Kong to Limassol. It was suggested that cl. 13 of the Bill of Lading was wide enough to permit the transshipment at Keelung, but, if they could properly have been taken to Keelung, why should they not properly have been taken to Rio de Janeiro? I do not think cl. 13 should be construed as permitting forwarding by a route so "indirect" as that taken by the Ta Hung. The clause must be construed in the light of the commercial adventure contemplated by the parties.

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As for cl. 4 of the Institute Cargo Clauses, that reads :

"Held covered at a premium to be arranged in case of change of voyage, or of any omission or error in the description of the interest vessel or voyage."

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There was here no "change of voyage" as that phrase is understood in marine insurance, but a substitution of an entirely different voyage before the planned voyage began; nor was there any "omission or error" in description of the interest vessel or voyage: there was a change of intention because of a casualty to the interest vessel.

Equally, I do not think there was a "deviation" within the meaning of para. 3 of cl. 1.

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It was emphasized by Counsel for the Assured

10 that, if the Insurer's contention is correct, a shipper whose goods have been loaded aboard a permitted ship at a time when she was still destined for the port to which the goods were consigned might nevertheless find that his goods were uninsured on the transit from warehouse to ship, by reason of the vessel's destination having been changed before she sailed. That is a formidable objection but I do not think it can justify forcing upon the Insurer a risk out of all proportion to that which was originally contemplated by the parties. It was conceded that where a marine policy contained no Warehouse to Warehouse Clause the risk would normally attach on loading over the rail. Nevertheless, in such a case the risk would not attach if the vessel subsequently sailed for the wrong destination. As Mr. Rokison submitted, that is only different in degree from our case.

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20 It was argued that if this had been a Held Covered situation the Respondent could not have succeeded, because prompt notice was not given. This argument turned upon where lay the duty to give notice, for it was admitted that Wantex did not give notice even when it did become aware of the shipment to Keelung, and clearly the Respondent did not become aware of it until after the casualty. Under s.50(2) of the Ordinance:

30 "Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon on his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected."

40 It is contended by the Insurer that it is entitled to put up against the assignee the defence that the assignor failed to give notice. An assignee is affected by his assignor's non-disclosure (William Pickersgill & Sons Limited v. London and Provincial Marine and General Insurance Co. Ltd. 1912 3 K.B. 614), but no case has been cited to us as to the application of the subsection to a case of notice required by the policy. It would undoubtedly be hard upon the assignee if it were adversely affected by a default for which it was in no way to blame, but it would be no less
50 hard on the insurer if it were held that the assignor were relieved of his contractual burden.

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For the reasons I have given I think this appeal must be allowed. However, in case I be held to be wrong so far, I will briefly consider the Appellant's contention that, if the risk did attach, it terminated before the casualty.

If the risk attached by virtue of cl. 1 of the Institute Cargo Clauses, that clause itself provided that it should continue "during the ordinary course of transit". The Insurer contends that the goods ceased to be in the ordinary course of transit long before the casualty and it suggests different points of time at which the risk may have terminated. The first was when the goods were loaded into the Ta Hung and the second when the Ta Hung issued Bills of Lading for Keelung. Here we have other aspects of matters already considered. Whilst I would hold that the identity of the vessel alone was not vital, I agree that the shipment to Keelung cannot be brought within the cover given by the policy. Such a shipment would, in any event, then constitute a voluntary change of destination under s.45 and the Insurer would be discharged: even if cl. 4 of the Institute Cargo Clauses would have applied, prompt notice was not given. It seems to me that the change of destination was voluntary in the sense that no sufficient cause has been shown to justify it. It was not proper to send the goods to Keelung on the chance that a vessel could be found to take them to their intended destination, more especially when eventually they returned to Hong Kong in the Intellect en route for Limassol.

The next dates suggested for termination of the insurance were that on which the goods were discharged at Keelung, and alternatively that when they were detained there in store, for the purpose of an unjustified demand for further freight. I have already said that on the evidence I think the judge was justified in concluding that there was no foundation in fact for holding that the case is analogous to Thames and Mersey Marine Insurance Company Ltd. v. H.T. Van Laun & Co. (1905) 1917 2 K.B. 48 Note. Even if there was a repudiation of the relevant (Ta Shun) contract of carriage while the goods were in Keelung, the repudiation was not accepted.

The final date suggested for termination of the cover was that on which the goods were loaded into the Intellect. It does not seem to me that such shipment would have been outside the liberty granted by cl. 13 of the Bill of Lading and the loss, in those circumstances, would have been covered.

IN THE COURT OF APPEAL OF HONG KONG
CORAM: SIR ALAN HUGGINS V.-P., LEONARD & CONS JJ.A.

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J U D G M E N T

Leonard, J.A. :

I also would allow this appeal

No. 11B
Concurring
Judgment of
Leonard J.A.
3rd October
1981

IN THE COURT OF APPEAL OF HONG KONG

CORAM: SIR ALAN HUGGINS V.-P., LEONARD & CONS JJ.A.

No. 11C
Reasons for
Judgment of
Cons J.A.
3rd October
1981

J U D G M E N T

Cons, J.A. :

10 In early 1976, a firm by the name of Wantex
sold a quantity of denim material to the plaintiffs
who are manufacturers of jeans in Cyprus. The
material was to be sent under C.I.F. contracts to
Limassol. Many of the consignments were sent off
with no problem but then in the July there was
difficulty in obtaining shipping space. The ship
which Wantex had wanted to use was full. Late in
the month Wantex managed to make contact with a
Seawise Shipping Company (Seawise) which at that
20 time was advertising in the Shipping Section of
the South China Morning Post as general agents of
"Blue Line". The advertisements announced the
arrival of the s.s. "Ta Shun", that she would
depart for Tripoli-Benghazi-Piraeus and would
accept "transhipment cargo to Limassol Alexandria."

30 Wantex placed shipping orders with Seawise
and delivered three consignments of denim from the
warehouse where it had been sent to be packaged.
The receipt of the denim at the warehouse of
Seawise was acknowledged by three separate
documents which were then exchanged for three
Bills of Lading. Each Bill of Lading was stamped
with a chop that the goods had been "shipped on
board" and was made out on a printed form, which
bore the heading "Blue Sky Shipping Co. Ltd. of
Taipei, Taiwan" (Blue Sky). The signature was
that of Seawise, "for and on behalf of the master".

40 In further pursuance of their C.I.F.
obligations Wantex arranged insurance, by three
separate policies issued by the defendants. They
are all in similar terms, the ship being named as
the "Ta Shun" and the voyage "From Hong Kong" "To
Limassol". Only the expected sailing date varies,

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Hong Kong

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(cont'd)

the latest being the 7th August. The Institute Cargo
Clauses (All Risks) 1/1/63 were expressly included.
In due course, the policies were assigned to the
plaintiffs.

Despite the chop applied to the Bills of
Lading, the denim had in fact not been shipped on
board the "Ta Shun", for that vessel ran into
difficulties and had to put in elsewhere. Instead
Seawise made arrangements for the goods to be put
on board another ship, the "Ta Hung". She is not a
sister ship of the "Ta Shun" although there does
seem to be some connection between the respective
owning companies. However, it goes no further than
that and the "Ta Hung" is managed by completely
separate agents, the Oneness Shipping Co. Ltd.
(Oneness) who treated Seawise as any other customer.

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The "Ta Hung" sailed on or about the 17th
August. Her destination was not the Mediterranean
but northwards to Keelung. She carried the
plaintiffs' three consignments of denim under a
Bill of Lading issued by Oneness and which gave as
shipper the Seawise Agency Ltd., a company which
owns Seawise, and Blue Sky as consignee and notify
party. There was an endorsement, "Transshipment
from Hongkong to Mediterranean Sea via Taiwan,
957 packages general cargo (Full details as per
riders attached); Cargo to be transit to
Mediterranean Sea at Taiwan by consignee themselves
at their own risks and expenses."

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It was not until two and a half months after
the discharge in Keelung that Blue Sky complied
with that endorsement. In the meantime the goods
were stored in a customs warehouse. On or about the
16th November Blue Sky put the goods aboard another
vessel, the "Intellect", belonging to the Shiu
Shiu Navigation Co., S.A. which indeed was bound
for the Mediterranean. However, as she passed
through the Malacca Straits there was a serious
fire on board. Although the goods in question were
not directly affected they became so saturated with
oil and water that they had to be written off
completely.

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In an action to recover for that loss the
learned Commissioner below gave judgment for the
plaintiffs. The defendants now appeal.

The primary argument that was put forward
may be simply formulated - the adventure which the
defendants, as Underwriters, insured never took
place; the carriage on board the "Ta Hung" and
the "Intellect" was an adventure with which they
had no concern what soever.

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10 The plaintiffs do not agree. They say it was the same adventure and although not carried out in the manner originally contemplated it was still within the terms of the policies. The plaintiffs rely upon the first paragraph of Clause 1 of the Institute Cargo Clauses and on the Forwarding Clause of the Bills of Lading, which granted very wide liberties as to the way in which the cargo might be carried. The combined effect of these two clauses, say the plaintiffs, constrains us to look at the adventure not from the point of view of the ship, but from the point of view of the cargo and to conclude that the adventure consisted in the carriage of the cargo from the warehouse in Hong Kong to the warehouse in Limassol regardless of how that was done, so long as it was done under the original contract of affreightment whether directly or by means of subcontracting.

In the Court of Appeal of Hong Kong

No. 11C
Reasons for Judgment of Cons J.A.
3rd October 1981
(cont'd)

20 It is convenient here to set out the two clauses. The first paragraph of Clause 1 of the Institute Cargo Clauses reads :-

"1. This insurance attaches from the time the goods leave the warehouse or place of storage at the place named in the policy for the commencement of the transit, continues during the ordinary course of transit and terminates either on delivery

30 (a) to the Consignees' or other final warehouse or place of storage at the destination named in the policy,

(b) to any other warehouse or place of storage, whether prior to or at the destination named in the policy, which the Assured elect to use either

(i) for storage other than in the ordinary course of transit

or

(ii) for allocation or distribution, or

40 (c) on the expiry of 60 days after completion of discharge overseas of the goods hereby insured from the overseas vessel at the final port of discharge,

whichever shall first occur."

And the Forwarding Clause from the Bills of Lading :-

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"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 conveyances belonging either to it or any other company or individual, by any route direct or indirect, and at vessel's option, to tranship at any place or places to any other vessel, vessels or means for 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 reshipe in the same or other vessel proceeding by any route, or to forward by lighter rail or any other conveyance, whether departing or arriving or scheduled to depart or arrive before or after the vessel named herein and always subject to the conditions and exception 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, discharging or reshipment, and also 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 deviate, delay 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 route to or beyond the port of destination." 10 20 30

The argument of the plaintiffs, as I understand it, runs as follows. By reason of the first paragraph of Clause 1 the insurance attaches when the cargo leaves the warehouse; likewise the insurance continues to attach "during the ordinary course of transit"; the "ordinary course of transit" includes any form of transit permitted by the Bills of Lading; the instant Bills of Lading permit the substitution of another ship for that named therein; therefore the cargo remained covered when it was upon the "Ta Hung" instead of the "Ta Shun"; the instant Bills of Lading permit reshipment by another vessel; therefore the cargo remained covered when upon the "Intellect"; the instant Bills of Lading permit carriage "by any route direct or indirect"; therefore the goods remained covered on the indirect route via Keelung. 40

The reasoning is impressive and, as counsel pointed out, it gives to the merchant what one assumes he really wants, namely door to door cover for his goods. Yet it seems to me that it does not take into account the third paragraph of Clause 1. This paragraph provides that the insurance shall remain in force during certain particular 50

contingencies which would not in themselves be considered as part of the ordinary course of transit and then further extends the cover "during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment". In my view the two paragraphs must be read together, the latter qualifying the former. Thus we arrive back at the crucial question 'what was the adventure contemplated in the present instance?', for until we know that, it is not possible to say whether what subsequently occurred was merely a variation of that adventure or was some other and different adventure.

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(cont'd)

I have not found it an easy question to answer. I have eventually come to the conclusion that the view of the Underwriters is to be preferred. I am content to look upon the door to door coverage as an adventure in itself. It is a commercial enterprise. But I do not see it as the adventure contemplated by the policies. One has to look at the context in which they were issued and one then sees immediately that the adventure was basically a maritime transaction. I agree with counsel for the underwriters, the inclusion in the policies of a warehouse to warehouse clause, described at one stage of the argument as an "additional frill", does not change the basic nature of the transaction. Such a clause does no more than cover certain risks only incidental to the main purpose of the policy, which is to insure the goods against the perils of the sea, and in this instance, when encountered in relation to a particular ship.

It is suggested that underwriters no longer set the same store by the identity of a named ship as they did in times past. The learned Commissioner quoted from Arnould, 9 British Shipping Laws para 241: "insurance by a named ship is probably now the exception rather than the rule". That may well be so, but is not sufficient to justify our completely ignoring the exception when it is expressly made.

In the present instance the cargo was taken from Hong Kong by a ship different from that named in the policies and in a direction almost completely opposed to what one would have expected from the destination specified, with intention to reship on a yet further vessel. In my judgment that is more than a variation of the adventure originally contemplated. It is a completely different adventure.

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It was suggested that if this were so, uncertainty would arise over the land carriage of goods booked upon a particular ship which was expected but had not yet arrived. If a loss occurred during that carriage, and the ship ultimately did not call, the loss would not be covered by the policy.

If the circumstances were similar to those that obtained here in the present instance, that would necessarily follow. And if such circumstances are at all common, exporters would be wise to guard against them separately. But the position is in principle no different from that where a ship subsequently sails for a different destination. Sec. 44 of the Marine Insurance Ordinance, Cap. 329, provides that the risk then shall not attach, although otherwise it would have done so as the goods were taken over the rail.

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I find it therefore necessary to refer only briefly to the other arguments which were put forward to show that even if the risk had attached in the first instance it was no longer attached by the time of the loss. To some extent these arguments are only particular aspects of the primary argument. I refer to those based on the identification of the ship, and the sailing for a different destination. The change of voyage argument is closely allied to them, for it could only succeed if the "voyage" were taken to be that of the goods themselves rather than that of the vessel. Furthermore it would in my view have failed in any event, for the Plaintiff cannot overcome the lack of notice by Wantex.

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There is a suggestion that the real reason behind shipping the goods to Keelung was the hope of obtaining extra freight and that the detention of the goods there was nothing but an attempt to hold the cargo owners to ransom.

The learned Commissioner did not accept this. He found that in so doing Seawise had the genuine intention of getting the goods ultimately to Limassol. I would not disturb that finding, which disposes of the argument based on Thames & Mersey Marine Insurance Co. Ltd. v. H.T. Van Laun & Co. (1917) 2 K.B. 48 note, and the suggestion that Blue Sky there repudiated the contract. Even had they done so the repudiation was not accepted, and I am not satisfied the circumstances were sufficient to have frustrated the adventure.

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There was much argument as to whether Seawise

or Blue Sky were in any event entitled to rely upon the liberties granted by the Bills of Lading on the grounds that the liberties -

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1. Were granted NOT to them but to the owners of the Ta Shun,
2. were inconsistent with the main object of the contract, reliance being placed upon Glynn V. Margetson (1893) A.C. 351, or
3. could only be exercised subject to the Transshipment Clause which substituted a new contract of affreightment with each transshipment and thereby brought into operation Clause 2 of the Institute Cargo Clauses.

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The third point was raised only very late in the argument. That and the second must be points of general concern outside the particular circumstances of this case. All are points of considerable difficulty no longer material to the decision in this case. I would prefer to leave a decision upon them until such time as it may become necessary.

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There is the final matter of non-disclosure. It is clear that if Wantex had followed the advertisements relating to the Ta Shun in the Shipping Section of the South China Morning Post they would have realized from the arrival dates subsequently announced that the first shipped on board Bill of Lading was irregular. The defendants say that Wantex should have kept in touch in the ordinary course of their business; in that case, by reason of sec. 18 of the Ordinance they are deemed to have known of the irregularity; because they failed to bring it to the attention of the Underwriters before the issue of the second and the third policies, the Underwriters are entitled to avoid at least those two policies.

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The defendants adduced evidence that it was the custom of Gilman & Co.Ltd. and other exporters in Hong Kong, when making use of non-conference or little known shipping lines, to make a point of checking the arrival and departure dates of vessels independently of the information supplied by the booking agents. And answers were extracted in the cross-examination of the witness from Wantex which might be taken as accepting that as a prudent practice. The learned Commissioner appears to have drawn a distinction between "large organizations" and others, in which presumably he put Wantex, when considering what is

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"the ordinary course of business". With respect I do not think he was entitled to draw that distinction. Nevertheless I am inclined to agree with my Lord Vice President and the Commissioner that Wantex were not under an obligation to investigate information from Seawise which, on the face of it, they had no reason to suspect.

For these reasons I would also allow the appeal.

-3 OCT 1981

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No. 12

Notice of Motion for leave to Appeal to
Privy Council - 17th October, 1981

In the Court
of Appeal of
Hong Kong

No. 12
Notice of
Motion for
leave to appeal
to Privy
Council - 17th
October 1981

1980 No. 133 (Civil)

IN THE COURT OF APPEAL OF HONG KONG

On Appeal from the High Court Commercial List
Action No. 230 of 1978

BETWEEN

SUCCESS INSURANCE LTD.

Appellant
(1st Defendant)

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and

GEORGE KALLIS (MANUFACTURERS)
LTD.

Respondent
(Plaintiff)

Hon. Leonard, V.P.
Hon. Cons. J.A.
Hon. Zimmern, J.A.
sitting at
Sun Hung Kei Centre.

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TAKE NOTICE that the Court of Appeal will be
moved* as soon as Counsel can be heard by Counsel
for the above named Respondent for an Order that
the Respondent be granted leave to appeal to Her
Majesty Queen Elizabeth the Second in Council from
the Order of the Court of Appeal made herein on the
3rd of October, 1981.

Dated the 17th day of October, 1981.

Sgd. Robertson, Double & Boase
Solicitors

* on Friday the 10th day of November 1981 at
ten o'clock in the forenoon.

In the Court
of Appeal of
Hong Kong

No. 13

Order Granting Leave to Appeal to Privy
Council - 10th November 1981

No. 13
Order granting
Leave to
Appeal to
Privy
Council
10th November
1981

1980, No. 133 (Civil)

IN THE COURT OF APPEAL OF HONG KONG

On Appeal from the High Court Commercial List
Action No. 230 of 1978

BETWEEN

SUCCESS INSURANCE LTD.

Appellant
(1st Defendant)

10

and

GEORGE KALLIS (MANUFACTURERS)
LTD.

Respondent
(Plaintiff)

BEFORE THE HONOURABLE MR. JUSTICE
LEONARD, V.P.,
MR. JUSTICE CONS, J.A. AND MR. JUSTICE
ZIMMERN, J.A. IN COURT

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O R D E R

UPON the application by the Respondent.

AND UPON hearing Counsel for the Respondent
and Counsel for the Appellant IT IS ORDERED
that the Respondent do have leave to appeal to Her
Majesty Queen Elizabeth the Second in Council
from the Order of the Court of Appeal made
herein on the 3rd day of October 1981 and that
the Respondent do pay into Court the sum of
HK\$75,000.00 as the security for the costs of
this appeal and that the Respondent to take all
necessary steps to procure the despatch of the
record to England within 3 months. Costs of
Today in the appeal.

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Dated the 10th day of November, 1981.

N.J. Barnett
Registrar

Plaintiff's Exhibits "P.1" - Letter of
Credit No. 76/20546 - 25th May 1976

Plaintiff's
Exhibits
"P.1"
Letter of
Credit No.
76/20546
25th May
1976

Προς την ΛΑΤΙΚΗΝ ΚΥΠΡΙΑΚΗΝ ΤΡΑΠΕΖΑΝ ΛΙΜΕΣΑ, Ένταυθα 00001
Κύριοι, Ένταυθα παρακαλείσθε όπως αναζητήτε ~~XXXXXXXXXX~~ ΑΕΡΟΠΟΡΙΚΩΙ υπο δραχμίων τηλεγραφικήν είσοδοισιν/ ~~XXXXXXXXXX~~ την κάτωθι
αυτάκινητων πιστωσιν δια λογαριασμών και υπ' ευθύνην μου. Ίσως παραρτήτε κατωτέρω τον τύπον και το κείμενον της επιστολής της οποίας θα απευθύνετε
προς τον σκοπόν τούτον προς τους δικαιούτους μέσω των ανταποκριτών σας όπως ως δια ταύτης καθορίζεται θα διεκπερήσωσιν την/τας εναντι της πιστώσεως
πληρωμήν/μας (Negotiation). Νοείται ότι τους Ανταποκριτάς σας τούτους εδωσάμε να αντικαταστήσθη καθ' ολοκληρώσετον χρόνον κατά την κρίσιν σας υπο
την απόλυτον έμου ευθύνην.

Messrs. Mantex Trader, Nicosia, 25th May, 1976
Am. 820 Star House, N. J. Barnett
FCOM, Registrar

CONFIRMED

HONG KONG
IRREVOCABLE CREDIT No. 76/20546 (which must be quoted in all correspondence)

We hereby authorize you to draw on ourselves,
at sight for account of, Messrs. G. Kallis (Mfrs) Ltd., P.O. Box 1750, Nicosia
for the sum of ~~XXXX~~ / Approximately US \$57,500.--
(Say: Approx. Fifty seven Thousand five Hundred U.S. Dollars)

Your draft(s) should bear the clause "Drawn under Letter of Credit of THE CYPRUS POPULAR BANK LTD No. 76/20546
dated 25.5.76" and must be accompanied by the undermentioned documents (marked X) which must be presented
for negotiation in Hong Kong not later than the 10th September, 1976

- (X) COMMERCIAL INVOICE(S) in quadruplicate, bearing at foot your stamp (rubber stamp) and underneath your signature, in the name of accreditors, and certifying that the goods are of Hongkong origin (at least 25%) on Cyprus Commonwealth Preference Certificate Form B (2). Invoices to state also the exact weight, composition and construction of the material.
- (X) FULL SET (at least two) of Ocean Clean "SHIPPED ON BOARD" Bill(s) of LADING, issued to our Order or to Order and endorsed to our Order, and showing freight prepaid ~~XXXXXXXXXX~~ and claused: Notify to Messrs G. Kallis (Mfrs) Ltd., P.O. Box 1750, Nicosia, and The Cyprus Popular Bank Ltd., Nicosia.
- () PARCEL POST RECEIPT(S) issued to our order for a/c of accreditors, bearing the Number of this L/C.

- () Clean "Air-Way Bills" issued to our Order, for a/c of accreditors, marked airfreight prepaid/payable at destination and claused notify accreditors and us.
- (X) Packing List in triplicate.
- (X) INSURANCE Company's Policy or Certificate of Insurance issued to our Order, or to Order and endorsed to our Order, claused "claims payable in Cyprus", for the invoice value plus 10%, covering the goods from warehouse to buyer's warehouse in Nicosia against: Marine and War Risks, all risks as per Institute Cargo clauses including B.R. & U.C. clauses.

- An amount equal to 2% on the C.I.F. Invoice value of the goods to be deducted from amount payable to you and remitted to us. Such amount not to be shown on the invoices but on a separate statement in the name of Messrs. Agathangelos Onissiforou & Sons Ltd., P.O. Box 176, Larnaca, representing their commission.
INSURANCE will be covered by accretor(s) at this end without any responsibility on our part.

Evidencing shipment ~~XXXX~~ of the following goods ~~XXXXXXXXXX~~ / CIF: LIMASSOL
APPROX. 50000 YARDS 100% COTTON INDIGO BROKEN TWILL DENIM

It must be confirmed on the invoices that the goods shipped are in accordance with your Sales Note No. 75/0193 dated 24.4.76.

- * 1st shipment to be effected upto 30th June, 1976
- 2nd " " " " one month after the first, and
- 3rd " " " " " " " " second.

In three about equal Consignment(s) ~~XXXXXXXXXX~~ as indicated above.
from Hong Kong to Limassol, Cyprus per S/S or M/S ~~XXXXXXXXXX~~
(Partial shipments if allowed are understood against pro-rata drawings)

Transshipment ~~permitted~~ / prohibited
SPECIAL INSTRUCTIONS: 1) All Bank charges outside Cyprus are for your account
2) If shipment is effected prior to the latest date allowed, documents must be presented for negotiation not later than 10 (ten) days from date of shipment. 3) The B/Lading must bear the following clause:- "Vessel is not scheduled to call on its current voyage at Famagusta, Kyrenia and Karavostasi, Cyprus".

On execution the negotiating Bank should forward to us one complete set of original documents (at least three invoices) by registered air mail and the remaining documents by subsequent registered air mail.

Απαλλάσσει υμάς ολοκληρώσεως ευθύνης εάν δι' ολοκληρώσεως λόγον οι ανταποκριταί σας δεν θέλωσιν λάβει όλα τα ως άνω αναφερόμενα έγγραφα ή εάν τα λαβόντα έγγραφα διασέσωσιν τον ως άνω αναφερομένον.
Παρακαλείσθε επιπροσθέτως όπως υπο πλήρη ευθύνην μου δώσετε οδηγίας εις τους ανταποκριτάς σας όπως εναντι παραδόσεως των άνω έγγραφων πληρώσωσιν την αξίαν της τραπεζικής/αποδείξεών την τραπεζικην και πληρώσωσιν ταύτην κατά την λήξιν της/Παρακαλείσθε όπως εναντι παραδόσεως των άνω εγγραφων αποδείξετε δια λογαριασμόν μου την τραπεζικην και πληρωσέτε ταύτην εις την λήξιν της.
Ός παραρτηθέντα απεναντι της ως άνω πιστώσεως καταθέτω παρ' υμίν σημερινήν λίρας Κύπρου NIL
όσον ποσόν εξασφαλίζει προνομιακώς και πάσαν εξ ολοκληρώσεως λόγω ασχέτου προς την παρούσαν πιστώσιν απαιτήσιν της Τραπεζής είτε αυτή υφίσταται σήμεραν είτε θέλε παραχρή εις τό μελλον.
Εάν λόγω υποτιμησεως του έμπορεύματος ή δι' ολοκληρώσεως άλλων αιτίων θέλωσιν η/καταβολή ή επιπροσθετον ασφαλείαν της έπιστολής σας, υποχρεούμαι να συμμορφωθώ άμεσα προς την απαιτήσιν σας, άλλως δικαιώσεθ εις την λήξιν ολοκληρώσεως 5-εστίου ή άλλου μέσου προς περιεργασίαν των συνεφερότων σας.
(CYPRUS POPULAR BANK)

Form No. 89 200 BI 5046

Plaintiff's Exhibits "P.1" - Letter of Credit
No. 76/20661 - 29th June 1976

Plaintiff's Exhibits
"P.1" - Letter of
Credit No. 76/20661
- 29th June 1976

00004

(2)

ΕΓΓΡΑΜΜΑ ΔΙΑ 2,000 ΘΥΝΔΙΚΑΔΕΣ
ΠΑΙΔΙΚΑ JEANS TESCO-ΑΓΓΛ

Προς την ΛΑΪΚΗΝ ΚΥΠΡΙΑΚΗΝ ΤΡΑΠΕΖΑΝ ΛΙΜΙΤΕΔ, Ένταθα

Κύριοι, Έντολή έμου παρακαλείσθε όπως ανοίξετε ~~πρωτότυπο~~ ΑΕΡΟΠΟΡΙΚΗΣ από θραύσια τηλεγραφική είδοποίηση/ΠΡΟΚΑΤΑΡΚΤΗ την κατά
δυνατότητα πίστωση δια λογαριασμόν επί υπ' ευθύνην μου. Ίδω παραθέτω λεπτομέρεια των όρων και το κείμενον της ενστάλης της οποίας θα απαιτήσετε
προς την ομοίαν τούτων προς τους δικαιούτους μέσω των ανταποκριτών σας όπως ως δια ταύτας καθορίζεται θα διανεμηθούν την/τάς έναντι της πιστώσεως
πληρωμή/σας (Negotiation). Νοείται ότι τους Ανταποκριτές σας τούτους δύνασθε να αντικαταστήσετε καθ' οιονδήποτε χρόνον κατά την κρίσιν σας υπό
την απόλυτην έμου ευθύνην.

To Messrs. Alex Traders, Nicosia, 29th June, 1976
P.O. Box 1750, the House,
Nicosia,

IRREVOCABLE CREDIT No. 76/20661 (which must be quoted in all correspondence)

We hereby authorize you to draw on ourselves,
at sight for account of Messrs. G. Kallis (Mfrs) Ltd., P.O. Box 1750, Nicosia
for the sum of ~~USD~~ Approximately US \$92,800.--
(Say: Approx. ninety two thousand eight hundred U.S. dollars)

Your draft(s) should bear the clause "Drawn under Letter of Credit of THE CYPRUS POPULAR BANK LTD No. 76/20661
dated 29.6.76" and must be accompanied by the undermentioned documents (marked X) which must be presented
for negotiation in Hong Kong not later than the 10th August, 1976

X) COMMERCIAL INVOICE(S) in quadruplicate, bearing at foot your stamp (rubber stamp) and underneath your signature, in the
name of accreditors, and certifying that the goods are of Hong Kong origin on
Cyprus Commonwealth Preference Certificate of Consignment and origin
Form 3. Invoices also to state the exact weight, composition and
construction of the material.

X) FULL SET (at least two) of Ocean Clean "SHIPPED on BOARD" Bill(s) of LADING issued to our Order or to Order and
endorsed to our Order, and showing freight prepaid ~~XXXXXXXXXXXX~~ and claused: Notify Messrs G. Kallis
(Mfrs) Ltd., P.O. Box 1750, Nicosia, and The Cyprus Popular Bank Ltd.,
Nicosia.

() PARCEL POST RECEIPT(S) issued to our order for a/c of accreditors, bearing the Number of this L/C.

() Clean "Air-Way Bills" issued to our Order, for a/c of accreditors, marked airfreight prepaid/payable at destination and
claused notify accreditors and us.

X) Packing List in triplicate.

X) INSURANCE Company's Policy or Certificate of Insurance issued to our Order, or to Order and endorsed to our Order,
claused: claims payable in Cyprus, for the invoice value plus 10%, covering the goods from warehouse to buyer's ware-
house in Nicosia against Marine and War risks, all risks as per
Institute Cargo clauses, including S.C.C. clauses, including
transitment risks, in case of transitment.

Evidencing shipment of the following goods ~~XXXXXXXXXX~~ / CIF: LINE 111/112/113/114
approx. 60,000 yards quality 3001 INERT BLENDED TAIL 60-50g
10x10, 10 oza/square yd, Double reshrun, width 45"
Shades and quantity per shade:- app. 25,000 yds Indigo dyed Navy as
per sample, app. 25,000 yds Sky Blue as per sample, 15,000 yds Green
as per sample and app. 15,000 yds brown as per sample.

All other details as per Order No. 5024 placed through Messrs.
Agathangelos Christoforou & Sons Ltd., P.O. Box 176, Larnaca, and the
Invoices must so certify.

In Hong Kong Consignment(s) on or before 31st July, 1976
from Linasol of Larnaca per S/S or M/S ~~XXXXXXXXXX~~
Cyprus ~~XXXXXXXXXX~~

Transshipment permitted ~~XXXXXXXXXX~~

SPECIAL INSTRUCTIONS: 1) All Bank charges outside Cyprus are for your account.
2) If shipment is effected prior to the latest date allowed, documents must be presented for negotiation not later than
10 (Ten) from date of shipment. 3) The B/Lading must bear the following
clause: "Vessel is not scheduled to call on its current voyage at
Amoudia, Kyrenia and Paravostasi, Cyprus."

On execution the negotiating Bank should forward to us one complete set of original documents (at least three invoices) by
registered air mail and the remaining documents by subsequent registered air mail.

Απαλλάσσω ύμεις οιασδήποτε ευθύνης εάν δι' οιαδήποτε λόγον οι ανταποκριτές σας δεν ήθελον λάβει όλα τα ως άνω αναφερόμενα έγγραφα ή εάν
τά λαβήντα έγγραφα διαφέρουν των ως άνω αναφερομένων.
Παρακαλείσθε επικρατήσθε όπως υπό πλήρη ευθύνην μου δύνασθε όθνησας εις τους ανταποκριτές σας όπως έναντι παραδόσεως των άνω έγγραφων
πληρώσω την αξίαν της τραπεζικής/αποδοχού την τραπεζικην και πληρώσω τούτην κατά την λήξιν της/Παρακαλείσθε όπως έναντι παραδόσεως των
άνω έγγραφων αποδεχθήτε δια λογαριασμόν μου την τραπεζικην και πληρώσθη τούτην εις την λήξιν της.
Ός προκαταβολήν άπέναντι της ως άνω πιστώσεως καταθέτω παρ' ύμιν σήμεραν λίρας Κύπρου NIL

10 80 20 50 500

Plaintiff's Exhibits "P.1"
 Marine Insurance Application
 for Policy No. M116768
 23rd July 1976

00007

EXHIBITS

Plaintiff's Exhibits "P.1" Marine Insurance Application for Policy No. M116768 23rd July 1976

(2)



SHUN FAI & CO., (INSURANCE) LTD.

G. P. O. BOX 13602
 303, GENERAL COMMERCIAL BUILDING,
 156-164, DES VOEUX ROAD, C.
 HONG KONG

TEL. 5-431281-2
 5-443401

迅輝有限公司
 (專營水火意外保險)
 香港中環德輔道中
 一五六五-一六四四
 通明商業大廈三〇三
 電話：五十四三二八
 五十四三二八
 五十四三二八

洋面保險投保書
 MARINE INSURANCE APPLICATION

Dear Sirs,

請發保單
 Please issue Policy

海保單 (..... stamped & 5 copies)

保戶名稱
 in Name of: JAMES BRADY

For Office Use

D/N No.

Policy No. 116768

Account No.

標號及號碼 Marks & Nos.	貨物名稱及數量 Description of Goods
IC76/20661 G. KALLIS 76/0071 LOT 1 LIMASSOL CYPRUS NO. 59/124 MADE IN HONGKONG	66 bales Quality 30001 BROKEN TWILL

總保額
 Amount Insured: US\$50230.00

保費：全額
 Terms: All Risks, & War. & S.R.C.C. & / or The goods from warehouse to buyer's warehouse in Nicosia against Marine and War risks, all risks as per institute cargo clauses, including S.R.C.C. clauses.

船名 Oceanic Maru
 per ss. sailing on / about 23.07.1976.

航空公司
 Airline under Waybill No.

貨物包裝及保單
 Parcel Post / Air Parcel Post under Parcel Post Receipt No.

由 Warehouse of Hongkong 到 Warehouse of Limassol
 From To

賠償地點
 Claim payable in: Limassol

保單號碼
 Closing Risk note No. (.....)

1976年7月23日
 Hongkong, 23.07.76

Yours faithfully,
 (Signature of Applicant)

Plaintiff's Exhibits "P.l." - Policy
M116768 by Success Insurance Ltd.
22nd July 1976

EXHIBITS
Plaintiff's
Exhibits
"P.l."
Policy M116768
by Success
Insurance Ltd.
22nd July 1976

THE SCHEDULE

Policy No. M/116768

The Insured

M/s. Wantex Trader

Amount Insured UNITED STATES DOLLARS THIRTY EIGHT
THOUSAND TWO HUNDRED EIGHTY ONLY.-- (US\$38,280.00)

10 s.s. "TA SHUN"
SHIP OR VESSEL FROM Hong Kong

SAILING ON OR ABOUT 27/7/76
FINAL DESTN. IF ON CARRIAGE
TO Limassol

MARKS & NUMBERS INTEREST AND VALUE

LC76/20661
G. KALLIS
76/0071
LOT 1
20 LIMASSOL CYPRUS
NO. 59/124
MADE IN HONG KONG (66) Bales Quality 30001
BROKEN TWILL.

STAMPED THE HONG KONG AND SHANGHAI
BANKING CORPORATION 662500

-So Valued-

Conditions of Insurance:-

Including from warehouse to buyer's warehouse in
Nicosia.
30 Including marine risks.

THE CYPRUS POPULAR BANK LTD.

Lloyd's Agent at Limassol.

Cyprus

By
Orphanides & Murat,
Post Office Box 15,
19 Evagoras Avenue,
Famagusta, Cyprus.
Date 22nd July 1976.

40 In Witness Whereof this Policy has been signed
for and on behalf of SUCCESS INSURANCE LIMITED.
121 Sgd. Illegible
Authorized Signature

EXHIBITS

Plaintiff's
Exhibits
"P.l."
Policy M116768
by Success
Insurance Ltd.
22nd July 1976
(cont'd)

SUCCESS
HOLDINGS

SUCCESS INSURANCE LIMITED

911-5 Prince's Building, G.P.O. Box 735,
Hong Kong.
Tel. 5-240036. Cable: SUCCESSHOLD.
Telex: 74320 ALEXC HX.

WHEREAS it has been proposed to The Success Insurance Limited by the insured named in the Schedule as well in their own name as for and in the name and names of all and every other person or persons to whom the subject matter of this Policy does may or shall appertain in part or in all to make with the said Company the insurance hereinafter mentioned and described. 10

NOW THIS POLICY WITNESSETH that in consideration of the said person or persons effecting this Policy paying to the said Company the premium as arranged the said Company takes upon itself the burden of such insurance to the amount stated in the Schedule and promises and agrees with the Insured their Executors Administrators and Assigns in all respects truly to perform and fulfil the Contracts contained in this Policy. 20

AND it is hereby agreed and declared that the said insurance shall be and is an Insurance (lost or not lost) upon the interest as stated in the Schedule.

AND the said Company promises and agrees that the Insurance aforesaid shall commence upon the said Freight Goods and Merchandise from the time when the Goods and Merchandise shall be laden on board the said Ship or Vessel Craft or Boat as stated in the Schedule and continue until the said Goods and Merchandise be discharged and safely landed at as stated in the Schedule. 30

AND that it shall be lawful for the said Ship or Vessel in the voyage so insured as aforesaid to proceed and sail to and touch and stay at any Ports or Places whatsoever without prejudice to this Insurance. 40

AND touching the Adventures and Perils which the said Company is contended to bear and does take upon itself in the Voyage so Insured as aforesaid they are of the Seas Man-of-War Fire Enemies Pirates Rovers Thieves Jettisons Letters of Mart and Countermart Surprisals Takings at Sea Arrests Restraints and Detainments of all Kings Princes and People of what Nation Condition or 50

Quality soever Barratry of the Master and Mariners and all other Perils Losses and Misfortunes that have or shall come to the Hurt Detriment or Damage of the aforesaid subject matter of this insurance or any part thereof.

EXHIBITS

Plaintiff's Exhibits "P.l." Policy M116768 by Success Insurance Ltd. 22nd July 1976 (cont'd)

10 AND in case of any Loss or Misfortune it shall be lawful to the Insured their Factors Servants and Assigns to sue labour and travel for in and about the Defence Safeguard and Recovery of the aforesaid subject matter of this Insurance or any part thereof without prejudice to this Insurance the charges whereof the said Company will bear in proportion to the sum hereby insured.

AND it is expressly declared and agreed that the Acts of Insurer or Insured in Recovering Saving or Preserving the Property Insured shall not be considered a waiver or acceptance of abandonment.

20 AND it is declared and agreed that Corn Fish Salt Fruit Flour and Seed are warranted free from average unless general or the Ship be stranded sunk or burnt and that Sugar Tobacco Hemp Flax Hides and Skins are warranted free from average under Five Pounds per Centum and that all other Goods also the Ship and Freight shall be warranted free from average under Three Pounds per Centum unless general or the Ship be stranded sunk or burnt.

30 (1) Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or war-like operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

40 Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

50 (2) Warranted free of loss or damage caused by strikers locked-out workmen or persons taking part in labour disturbances, riots, or civil commotions.

EXHIBITS

Plaintiff's
Exhibits
"P.L."
Policy M116768
By Success
Insurance Ltd.
22nd July 1976
(cont'd)

(3) (a) Should the risks excluded by Clause 1 (F.C. & S. Clause) be reinstated in this policy by deletion of the said clause or should the risks or any of them mentioned in that clause or the risks of mines, torpedoes, bombs or other engines of war be insured under this Policy, Clause (b) below shall become operative and anything contained in this contract which is inconsistent with Clause (b) or which affords more extensive protection against the aforesaid risks than that afforded by the Institute War Clauses relevant to the particular form of transit covered by this insurance is null and void.

10

(b) This Policy is warranted free of any claim based upon loss of, or frustration of, the insured voyage or adventure caused by arrests restraints or detentions of Kings Princes Peoples Usurpers or persons attempting to usurp power.

This insurance shall not insure to the benefit of any carrier or Fire Insurance Company.

20

Sgd. G. Kallis (Mfrs) Ltd.

THE CYPRUS POPULAR BANK LTD.
NICOSIA BRANCH.

INSTITUTE DANGEROUS DRUGS CLAUSE

It is understood and agreed that no claim under this policy will be paid in respect of drugs to which the various International Conventions relating to Opium and other dangerous drugs apply unless,

(1) the drugs shall be expressly declared as such in the policy and the name of the country from which, and the name of the country to which they are consigned shall be specifically stated in the policy; and

30

(2) the proof of loss is accompanied either by a licence, certificate or authorization issued by the Government of the country to which the drugs are consigned showing that the importation of the consignment into that country has been approved by that Government, or alternatively, by a licence, certificate of authorization issued by the Government of the country from which the drugs are consigned showing that the export of the consignment to the destination stated has been approved by that Government; and

40

(3) the route by which the drugs were conveyed was usual and customary.

Plaintiff's Exhibits "P.1"
 Bill of Lading No. HK/LIM-17
 Issued on Blue Sky Shipping Co.
 Ltd. Form 28th July 1976

00010/

LIM-17

Stamp

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BLUE SKY SHIPPING CO., LTD.

TAIPEI TAIWAN, R. O. C.

EXHIBITS

Plaintiff's Exhibits "P.1"
 Bill of Lading No. HK/LIM-17
 Issued on Blue Sky Shipping Co. Ltd. Form 28th July 1976

BILL OF LADING

RECEIVED from 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 under or on deck by the vessel named below 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 otherwise, to call at any port or ports of 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 discharge 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 delivered or transhipped from the vessel's tackle, 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 written, typed, stamped or printed.

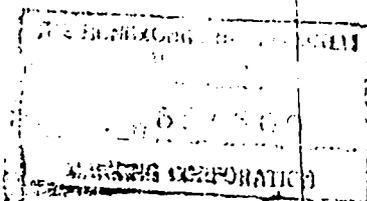
Freight for the said goods and primage, if any, to be paid, by the Shipper in advance, on delivery of this Bill of Lading, in cash without discount, or at the port of discharge or destination by the Consignee, as may be agreed upon and declared as below. Freight and primage, if any, paid in advance or 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.

It is agreed that 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 carrier, master and/or vessel in every contingency whatsoever, 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 carrier unless by express waiver signed by a duly authorized agent of the carrier.

VESSEL: _____ VOY: _____ MASTER: _____
 SHIPPER: _____
 PORT OF LOADING: _____ DESTINATION: (If goods to be transhipped at port of discharge)
 PORT OF DISCHARGE: _____
 CONSIGNEE: _____

NOTIFY PARTY: _____

PARTICULARS FURNISHED BY SHIPPER OF GOODS

MARK AND NUMBERS	PACKAGES	DESCRIPTION OF GOODS	WEIGHT	MEASUREMENT
		 BLUE SKY SHIPPING CO. LTD. TAIPEI TAIWAN		
				 SHIPPED ONBOARD 28 JUL 1976
		ORIGINAL		FREIGHT PREPAID



U.S. KALLIS (MFRS) LTD.,
 P.O. BOX 1750, NICOSIA,

IN ACCEPTING THIS BILL OF LADING the shipper, consignee and owner of the goods and the holder of this Bill of Lading expressly accept and agree to all its stipulations, exceptions and conditions, whether written, typed, stamped, or printed, so fully as if signed by such shipper, consignee, owner of the goods and/or holder of this Bill of Lading.

FREIGHT CHARGED ON	RATE	PER	FREIGHT
DECLARED VALUE			
TOTAL PAYABLE AT			

IN WITNESS WHEREOF, the Master or agent of the said vessel has signed all of this tenor and date, one of which being accomplished, the others to stand void.

Date at SHIPPER. 28 JUL 1976

For and on behalf of the Master
 BLUE SKY SHIPPING CO.
 By _____ As Agent

(This signature does not constitute an endorsement)

EXHIBITS

Plaintiff's
Exhibits
"p.1"
Bill of
Lading
No.HK/LIM-17
issued on
Blue Sky
Shipping Co.
Ltd. form -
28th July
1976
(Contd.)

The following are the conditions and exceptions referred to on the face of this Bill of Lading

1. (Clause Paramount) This Bill of Lading shall have effect subject to the provisions of any laws, rules or regulations at the place of shipment, or, if not, to those at the place of delivery, which have been enacted in order to incorporate the rules of the International Convention for the Unification or Certain Rules relating to Bill of Lading at Brussels of August 25, 1924 (hereinafter called the Hague Rules) and are compulsorily applicable to the contract of carriage contained herein.

10

If there are no such laws, rules or regulations in force both at the place of shipment and delivery, this Bill of Lading shall have effect subject to the provisions of the Hague Rules.

Such laws, rules, regulations or the Hague Rules shall be deemed to be incorporated herein and the vessel and/or carrier shall be entitled to all of the rights and immunities set forth in said laws, Rules regulations or the Hague Rules.

20

Nothing herein contained shall be construed to be a surrender of any of the rights or immunities or an increase of any of the responsibilities or liabilities of the vessel and/or carrier under said laws, rules, regulations or the Hague Rules and if any term of this Bill of Lading be repugnant to said laws, rules, regulations or the Hague Rules to any extent, such term shall be null and void to that extent but no further.

30

The monetary units mentioned in said laws, rules, regulations or the Hague Rules and this Bill of Lading are to be taken to be lawful currencies of the country concerned.

The vessel and/or carrier shall be entitled to the full benefit of, and right to all limitations of or exemptions from, liability authorized by any provisions of any laws of any other country whose laws shall apply.

40

If the vessel is not owned by or chartered by demise to this Company (as may be the case notwithstanding anything that appears to the contrary) this Bill of Lading shall take effect only as a contract with the owner or demise charterer, as the case may be, as principal, made through the agency of this Company which acts as agent only and shall be under no personal liability whatsoever in respect thereof.

EXHIBITS

If however, it shall be adjudged that any other than the owner or demise charterer is carrier and/or bailee of the goods, all limitations of and exonerations from liability provided by law or by the terms hereof, shall be available to each other.

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- 10 2. (Unknown) Contents, quality, quantity, weight, numbers and value unknown and the vessel and/or carrier are not responsible for quantity, weight, measurement, gauge, specifications, brands, countermarks, number, or declaration or description of contents of packages.
3. (General Immunities) 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, rain, water of any kind, spray, snow, frost, ice or climate effects.
- 20 (2) War, acts of war or of enemies, warlike operations, blockade, bombs, mines, torpedoes or other engines of war, atomical radiation, arrest or restraint of princes, rules or peoples, seizures, under legal process, civil commotion, any act or default of dock or canal authorities.
- (3) Mobs, riots, pirates, robbers, thieves or pilferers by land or water, uprising or mutiny among passengers and/or crew.
- 30 (4) Chemical action, fermentation, change of character, mould, mildew, dampness, sweat, evaporation, liquefaction, rust, decay, rotting, soiling of packages, stain, country damage, injury caused by other cargo in contact or proximity and/or smell from other goods insufficient ventilation, dust, coal dust, fuel oil, vermin, rats, wastage in bulk or weight, germination, or any other loss or damage arising from Inherent defect, quality or vice of the goods. .
- 40 (5) Leakage, drainage, ullage, breakage, bending, cracking, checking, splitting, flaw, dent, hook-holes, chafage, shrinkage, heat, heating, fire or water on board, in bulk in craft or on wharf and/or on shore, collapse or destruction of or damage to wharf, pier and/or their coverings.
- 50 (6) Explosion of, loss or damage from machinery, boilers or steam however caused, latent or

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- other defects prior to or at the time of shipment or 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, risk of lighter or craft or of transshipment, or the consequences of any act or omission of the shipper, consignee and/or owner of the goods his agent or representative. 10
- (8) Insufficiency of packing, inaccuracy, obliteration, insufficiency, inadequacy or absence of marks, numbers, addresses and description of goods, number of pieces in bundles or broken, bundles, reasonable wear and tear 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, combination of workmen or others whether ashore or afloat, desertion of mariners, workmen or labourers, barratry, misfeasance, embezzlement. 20
- (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. 30
4. (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. 40
5. (Loading and Discharging) The goods shall not be deemed to have been "shipped" until the vessel's tackle shall have been hooked into 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 agent, and for the 50

convergence 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".

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10 6. (Government 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 of 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 this contract; and the vessel and/or carrier shall not be responsible for any loss, damage, expense and/or delay in delivery resulting either directly therefrom.

30 7. (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.

8. (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.

40 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 when 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.

50 9. (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

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laws or regulations of the port of shipment, discharge of 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.

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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.

10. (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 provided in Article 20, shall make good and bear all loss, 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.

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11. (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 platina, 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.

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12. (Storage) Goods may be stowed in poop, fore-castle, 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,

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insulated or ventilated stowage is not to be furnished by the carrier unless contracted for at an increased freight rate.

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10 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 use thereof used in the process of refrigeration unless shown to have been caused by actual fault of the vessel and/or carrier.

20 13. (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 conveyances belonging either to it or any other company or individual, by any route direct or indirect, and at vessel's option, to tranship at any place or places to any other vessel, vessels or means or 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 reship in the same or other vessel proceeding by any route, or to forward by lighter rail or any other conveyance, whether
30 departing or arriving or scheduled to depart or arrive before or after the vessel named herein and always subject to the conditions and exception 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, discharging or reshipment, and also the carrier shall have liberty to retain the goods on board until the vessel's return or other voyage, to
40 proceed to any other ports or places, with full liberty to return, call, deviate, delay 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 route to or beyond the port of destination.

50 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 the services as hereinabove

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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 give rise to capture, seizure, detention, damage, delay or disadvantage to, or loss of, the vessel or any part of the goods, or passengers, to make it unsafe, imprudent, inadvisable or unlawful 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.

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The above rights are not affected by abandonment of the vessel by her crew or to the underwriter.

14. (Transshipment) The liability of the vessel and/or carrier for any alleged loss of or damage to any goods shall be confined to its own route, and the vessel and/or carrier shall not be liable jointly or to any extent for any loss or damage occurring upon the route of any other connecting carriers, even though the freight for the whole transport has been collected by this company.

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

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The carrier, in making arrangements for any transshipping or forwarding vessel or means of transportation not operated by this carrier shall be considered solely the forwarding agent of the shipper consignee and/or owner of the goods and without any other responsibility whatsoever.

The carriage by any transshipping or forwarding carrier and all transshipment 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 and may exempt the on-carrier from liability for negligence.

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10 The shipper expressly authorizes the carrier to arrange with any such transshipping 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 lower than the valuation or limitation herein, provided that the shipper shall not be compelled to pay a rate higher than that applicable to the valuation contained in such bill of lading.

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Goods shall be forwarded as soon as practicable but the carrier does not guarantee that the forwarding conveyance shall have room at ports of transshipment.

Pending or during the transshipment the goods may be stored ashore or afloat at their risk and expense and the carrier shall not be liable for detention or delay.

20 It is agreed that should there be no tonnage available at the on-carrying rates shown in this Bill of Lading, the difference shall be paid by the consignee before delivery further, the shipper, consignee and/or owner of the goods, jointly and severally shall be liable for all additional costs of every nature including, but not limited to, storage, cartage or handling charges.

30 For dutiable goods transhipped, the carrier may give such undertaking as Customs require at port of transshipment with respect to dealing with goods at port where duty is payable and all charges and risks incurred shall be on account of the shipper, consignee and/or owner of the goods.

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

40 Goods forwarded by rail are deliverable at any railway station within or nearest to the port of destination and must 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, shown herein is subject to change in accordance with the tariffs of the connecting rail carrier in effect upon receipt by it of the goods.

15. (Port Restrictions) Should the port of destination or call be inaccessible on account of ice, shallow water, blockade or interdict, or should entry into, discharge at and/or sailing from the port be impeded or deemed by the master to be

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unlawful, unsafe and/or inadvisable or which the master reasonably anticipates is or threatens to be impeded, unlawful, unsafe and/or inadvisable at any time, in consequence of sanitary, customs or labour regulations, epidemics, strikes, lockouts, boycott, bad weather, congestion of port, war or fear of war or warlike operations, disturbances or absence by any cause of facilities for discharging or delivery, or any other cause whatsoever, the master and/or carrier shall be at liberty, without notice, to delay or detain the vessel at or off any port or ports to return the goods to the port of shipment or retain the goods on board until the 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 available means by land water or air, in all cases at the sole risk and expense of the shipper consignee and/or owner of the goods.

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

16. (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 required for 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 and/or carrier's responsibility shall cease when the goods are so discharged. Quarantine expenses of whatever nature or kind shall be borne by the shipper, consignee and/or owner of the goods.

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17. (Fire) Neither the vessel, the carrier nor any corporation owned by, subsidiary to or associated or affiliated with the carrier shall be liable to answer for 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 reason or by means of any fire whatsoever, where-soever and howsoever, unless such fire shall be caused by its actual fault or privity.

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18. (Packing and Marking, etc.) The vessel and/or carrier shall not be liable for loss of or damage to the goods due to inefficiency of packing, nor for incorrect delivery or delay in delivery unless each package shall have been distinctly, correctly and permanently marked by the shipper

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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, dues, duty, tax or import, loss, damage, detention, costs and expenses of whatsoever nature sustained or incurred by or levied upon the vessel or carrier in connection with the goods or by reason of the goods, howsoever caused, including any action or requirement of any government or governmental authority or person purporting to act under the authority hereof, any proceeding against or involving the goods by way of attachment, seizure, attempted seizure, interpleader, insufficient, inadequate or incorrect marking, numbering or addressing of packages or description of the contents or weights, failure of the shipper to procure consular, Board of Health or other certificates to accompany the goods or to comply with laws or regulations of any kind imposed 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.

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Goods which cannot be identified as to marks or numbers, cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for, shall be allocated for completing 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, shipped by either the same or another shipper, shall be divided in proportion among the several shipments.

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19. (Recondition, etc.) If the goods or the packing of the goods shall become damaged or loosened in part or in whole during transit and in the judgment of the master or carrier, be insufficient for further transportation, the vessel and/or carrier shall have liberty to mend, gather, repack, recondition, renew or re Cooper the same at the expense of the shipper, consignee and/or owner of the goods.

20. (Freight) The freight mentioned on the face hereof has been calculated and based upon the particulars of the goods as furnished by the shipper to the carrier.

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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.

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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 had the freight actually paid on the said goods.

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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 them irrevocably under all circumstances whatsoever the vessel and/or goods lost or not lost or the voyage broken up or abandoned.

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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.

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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 performances of the obligation of each of them hereunder.

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 an 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.

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22. (Delivery) The vessel and/or carrier retain

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the option of delivery at all times from the vessel's side or from craft, hulk, custom-house, warehouse, 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 deck, shall be borne by the shipper, consignee and/or owner of the goods.

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10 23. (Optional Delivery) Optional delivery is only granted when arranged prior to the shipment of goods, and is so expressed herein.

Consignees desiring to avail themselves of the option so expressed must give notice in writing to the carrier or its agent at the first 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 port at the vessel's option and the vessel's and/or responsibility shall then cease.

20 24. (Discharge of Goods) The goods may be discharged, without notice of arrival or discharge, as soon as the vessel is ready to discharge them, rain or fine, 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 shipper, consignee and/or owner of the goods, any custom of the port to the contrary notwithstanding.

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

40 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 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.

50 Demurrage for detention of the vessel, if caused by the consignee not taking delivery as fast

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as the vessel can discharge shall be paid by the shipper, consignee and/or owner of the goods at the current rate of charterage.

25. (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.

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26. (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.

27. (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 and 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 it acting as agent therefor of the shipper, consignee and/or owner of the goods.

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28. (General Average) General Average shall be adjusted, stated and settled according to York Antwerp Rules, 1974.

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.

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30. (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

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ship to a salvage or reward or remuneration for such service, such reward or remuneration shall be treated in the same manner, as if the assisting ship was owned or operated by another company or individual.

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10 31. (Notice of Claim) The vessel and/or carrier shall not be liable for any claim unless the notice thereof 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, if the loss or damage is not apparent, within 3 days of the delivery, 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, and unless written claim with particulars be likewise presented within 30 days after the presentation of the notice herein provided for.

20 If written notice of claim and claim are not so given, the vessel and/or carrier shall be considered prejudiced thereby and the claim waived and such waiver may be pleaded in and shall constitute a defense to any suit or proceedings that may be brought against the vessel and/or carrier in an action for said claim.

30 The notice 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 herein required.

The vessel and carrier reserve the right not to recognize declaration or statement by the claimants in a claim of the percentage, degree, or extent of loss, damage shortage, leakage, and/or breakage not determined or ascertained by a joint survey made in conjunction with the vessel's or carrier's representative or survey or representing the vessel and/or carrier.

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

32. (Amount of Claims Valuation) All claims for which the vessel and/or carrier may be liable shall be adjusted and settled on the value declared by the shipper or on the net invoice cost plus disbursements, whichever shall be the least.

50 The vessel and/or carrier shall have the option of replacing any lost or damaged goods.

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In case of any loss of or damage to or in connection with goods exceeding in actual value £100 per package or in case of goods not shipped in packages, per customary freight unit, the value of the goods shall be deemed to £100 per package or per unit, on which basis the freight is adjusted and the vessel's and/or carrier's liability, if any, shall be determined on the basis of a value of £100 per package as per customary freight unit, or pro rata in case of partial loss or damage unless the nature of the goods and a valuation higher than £100 shall have been declared in writing by the shipper before shipment and inserted in this Bill of Lading and extra freight paid, if required, and in such case if the actual value of the goods per package or per customary freight unit shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

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It is specifically agreed that the aggregate of all packages, parts or pieces which are component parts of, and when assembled form a single article shall, for the purpose of the foregoing £100 limitation clause, be deemed a single package or freight unit.

33. (Governing Law) Unless otherwise herein expressly provided, the contract evidenced by this Bill of Lading shall be construed and governed by Chinese Law.

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34. (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 (illegible) which (illegible) and/or (illegible) chargeable, and that in all instances where it may be possible to contract against the consequences of negligence, the vessel and/or carrier, although negligent, shall not be under any liability whatsoever. If any part or any (illegible) of this contract (illegible) that circumstances shall not affect the validity of any other part of (illegible)

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Nothing in this Bill of Lading shall operate to limit or (illegible) and/or (illegible) from, or limitation of liability.

35. (Superseding Clause) All agreements or freight engagements for the shipment of the goods except liquid in bulk are superseded by this Bill of Lading and all its terms and conditions, whether

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EXHIBITS

Plaintiff's
Exhibits
"P.1"
Bill of
Lading
No. HK/LIM-17
issued on
Blue Sky
Shipping Co.
Ltd. form
28th July 1976
(Contd.)

written, typed, stamped or printed, are accepted and agreed by the shipper or holder hereof to be binding as fully (illegible) by the shipper or holder, any local customs or privileges to the contrary notwithstanding. The terms of contract for transportation of liquid goods in bulk shall be superseded only in so far as they may be inconsistent with the terms hereof.

10 If required by the vessel and/or carrier, (illegible) signed bill of lading duly endorsed must be surrendered to the agent of the vessel at the port of discharge in exchange for delivery order.

36. (Cotton) Description of the condition of the cotton does not relate to the insufficiency of the torn condition of the covering, nor to any damage resulting therefrom and the vessel and/or carrier shall not be responsible for damage of such nature.

20 37. (Cargo Via Suez or Panama Canal) The vessel is intended to sail by Suez or Panama Canal but the carrier reserves the right to change the route before, at, or after sailing on the voyage and/or at any stage thereof. In the event that circumstances shall arise which render it advisable or desirable to do so in its judgment or in that of the master of the vessel. If such change of route involves discharging part cargo in order to allow of taking additional bunkers at any place or places, the master shall have liberty to discharge 30 any portion of the cargo at such place as he thinks advisable and to arrange for same to be forwarded by other means to its destination at vessel's expense but at cargo owner's risk.

40 38. (Both to Blame Collision) 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 may 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 and set off receipted or recovered 50 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

EXHIBITS

Plaintiff's Exhibits "P.1" Bill of Lading No. HK/LIM-17 issued on Blue Sky Shipping Co. Ltd. form 28th July 1976 (Contd.)

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.

39. (War Risk Clause) In the event of, in the opinion of the carrier or the master, the imminence or existence of war, hostilities, or war-like operation between any nations or between any nation and any local government, people, or troops of any other nation whether before or after declaration of war or of occupation or (illegible) of intercourse, commercial or otherwise, between any nations or between any nation and any hostilities (illegible) of any other nation, 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 incidental to, resulting from, or consequent upon such (illegible) declarations, cessations or discriminations, and shall have the rights 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 or places to return the goods to the port of loading or to retain the goods until the vessel's return or other voyage, 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 available means, or to finally discharge the goods at any port or ports or place or places whereupon the responsibility of the vessel and/or carrier shall cease, in all cases at the risk and expense of the shipper, consignee, and/or owner of the goods, and also shall have liberty to carry contraband, explosives, munitions, or warlike stores and to navigate the vessel armed or unarmed.

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Anything done or not done by reason of or in compliance with this clause is within the contract voyage and the shipper, consignee and/or owner of the goods shall pay the full freight stipulated herein, if not prepaid and if prepaid the vessel and/or carrier shall be entitled to retain the same. If within goods do not satisfy all requirements of any authorities for importation into the country of destination 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 not being permitted to be landed at destination the vessel and/or carrier may land them at any other port or ports or place or places or return them to the port of loading, charging in either case freight and/or forwarding expense thereon.

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EXHIBITS

Nothing herein shall be deemed in any way to restrict or prejudice any other rights, liberties and exceptions whereas the carrier or the master shall be entitled under this Bill of Lading or otherwise.

Plaintiff's
Exhibits
"P.1"
Bill of
Lading No.
HK/LIM-17
issued on
Blue Sky
Shipping Co.
Ltd. form
28th July
1976
(Contd.)

A 40. (Refrigerated Cargo) If before loading cargo in any insulated space the Carrier obtains the certificate of the Classification Society's Surveyor or other competent person that such insulated space and the refrigerating machinery are in the opinion of the Surveyor or the other competent person fit and safe for the conveyance of refrigerated cargo, the existence of vessel's class together with the production of the aforesaid certificate shall be conclusive evidence against the Charterer and/or Shipper, that the vessel's insulated space and refrigerating machinery were before and at the beginning of the voyage fit and safe for the reception, carriage and preservation of the goods.

B

Consignees to take delivery of refrigerated cargo as soon as vessel is ready to deliver, otherwise cargo will be landed at wharf at consignee's risk and expense.

C 41. (Timber) Any statement hereon that Timber has been shipped in apparent good order and condition does not involve any admission by the Carrier as to the absence of stains, warps, shakes, splits, holes or broken pieces, and this Clause is deemed to constitute express notice to all persons taking delivery on the terms of this Bill of Lading that such timber does or may contain pieces so selected.

EXHIBITS

Plaintiff's Exhibits "P.1" Invoice No. 0294/76A issued by Wantex Trader 26th July 1976

Plaintiff's Exhibits "P.1." - Invoice No. 0294/76A issued by Wantex Trader - 26th July 1976

WANTEX TRADER

Rm. 820 Star House, Kowloon, Hong Kong. Tel: 3-661229 3-661220

Invoice No. 0294/76A Date 26.07.1976.

For A/C and Risk

G. KALLIS (MFRS) LTD. P.O. Box 1750, Nicosia.

10

Order. No. 5024 Sales Note No. 76/0076 dd' 30.06.1976 Country Origin Hongkong Made.

Shipment of 66 bales 30000 yards Quality 30001 Broken Twill. 061544

Drawn Under Letter of credit of The Cyprus Popular Bank Ltd. No. 76/20661, dated 29.06.1976.

Carrier Port of Discharge Destination TA SHUN LIMASSOL ****

SHIPPING MARK	DESCRIPTIONS	PER YARD	IN US DOLLARS CIF. LIMASSOL	
Lo76/20661	Quality 30001 Broken			
G. KALLIS	Twill 80X50, 10X10			
76/0071	10 ozs/square yd double			
LOT 1	preshrunk width 45"			
LIMASSOL	brown 15000 yards sulphur			
CYPRUS	dyed as per sample	US\$1.16	<u>US\$34800.00</u>	
NO.59/124	green 15000 yards sulphur			
MADE IN	dyed as per sample	Cif		
HONG KONG	Exact weight - 10 ozs per sq.yard. Composition -	Limassol	US\$34800.00	30
66 Bales, 30000 yards.	100% cotton construction of the material - 80X50 10X10		=====	

(US Dollars thirty four thousand eight hundred only)

THE CYPRUS POPULAR BANK LTD. NICOSIA.

We hereby certify that goods are of Hongkong Origin, and that other all details as per Order No. 5024 placed through Messrs. Agathangelos Onissiforou & Sons Ltd., P.O. Box 176 Larnaca as instructed by this credit. WANTEX TRADER. Sgd. Illegible Manager.

40

I certify that above to be the signature of K.L. SO Manager, duly authorised to sign on behalf of WANTEX TRADER. Date. Sgd. Illegible 26.07.1976

Plaintiff's Exhibits "P.l." - Packing List issued
by Wantex Trader - 29th July, 1976

WANTEX TRADER - Rm. 820 Star House, Kowloon, Hong Kong. Tel: 3-661229, 3-561220
G. Kallis (Mfrs) Ltd. 0294/76A Wantex Trader Hong Kong 29.7.76

Re: Packing List.

Shipment of 66 bales 30000 yds, Quality	<u>Shipping Mark</u>
30001 Broken Twill 80x50 10x10 10ozs/ square yd. double preshrunk width 45" brown	LC76/20661
15000 yards as per sample green 15000 yards	G. KALLIS
as per sample exact weight 10 ozs per sq.yd.	76/0071
composition - 100% cotton. construction of	LOT 1
the material 80x50 10x10	LIMASSOL CYPRUS
	NO. 59/124 MADE IN HONG KONG
Per ss "TA SHUN" from Hong Kong	
To Limassol on 29.7.76	

155.

Bales Nos.	Colours	Length	Per	Piece(s)				Total Pcs/Yds.	G/Wt Wt In Lbs.	N/Wt	
59	Green	74-	72-	77-	72-	79½	88½)	6/	463-	372	362
60	Green	101-	83-	99-	86½	94½	...)	5/	464-	372	362
61	Green	96-	76-	94-	86½	87½	...)	5/	440-	354	344
62	Green	84-	67-	77-	80½	83½	78½)	6/	470½	377	367
63	Green	83-	83-	97-	87½	94½	...)	5/	445-	358	348
64	Green	66-	67-	91½	66½	88½	80½)	6/	460-	369	359
65	Green	92-	96½	88½	91½	88½	...)	5/	457-	367	357
66	Green	72-	84-	62-	76½	60½	90½)	6/	445½	358	348
67	Green	73-	84-	62-	88½	89½	64½)	6/	461½	370	360
68	Green	94-	63-	40-	85½	84½	88½)	6/	455½	366	356

EXHIBITS
Plaintiff's
Exhibits
"P.l."
Packing List
issued by
Wantex Trader
29th July 1976

EXHIBITS
 Plaintiff's
 Exhibits
 "P.1"
 Packing List
 issued by
 Wantex
 Trader
 29th July
 1976
 (Contd.)

Re: Packing List (2)

69	Green	56-	76-	62½	73½	87½	93½)	6/	449-	361	351
70	Green	105-	81-	93½	97½	84½	...)	5/	461½	370	360
71	Green	100½	94-	67½	81½	89½	...)	5/	433-	348	338
72	Green	101-	98-	94½	80½	86½	...)	5/	460½	369	359
73	Green	97-	86-	76-	71-	44-	71½)	6/	445½	358	348
74	Green	96-	77-	68-	89-	95-	40-)	6/	465-	373	363
75	Green	92-	88-	77-	68½	67½	77½)	6/	470½	377	367
76	Green	109-	93-	79-	83-	99-	...)	5/	463-	372	362
77	Green	100-	79-	93-	85-	40-	62½)	6/	459½	369	359
78	Green	105-	100-	79-	103-	68½	...)	5/	455½	366	356
79	Green	107½	81-	77-	91-	94-	...)	5/	450½	362	352
80	Green	71-	89-	94-	96-	91-	...)	5/	441-	354	314
81	Green	101-	107-	80-	85-	79½	...)	5/	452½	363	353
82	Green	74-	82-	87-	80½	76½	59½)	6/	459½	369	359
83	Green	72-	59-	80-	82½	89½	86½)	6/	Illegible	376	366
84	Green	101-	88-	61-	86-	74-	45-)	6/	455-	366	356
85	Green	119-	83-	84-	51-	65-	61-)	6/	463-	372	362
86	Green	106-	68-	81-	84½	55½	62½)	6/	457½	367	357
87	Green	96-	86-	85½	91½	90½	...)	5/	449½	361	351
88	Green	113-	60-	59-	95-	82-	55½)	6/	464½	372	362
89	Green	62-	91-	56-	85-	79½	51½)	6/	425-	342	332
90	Green	114-	105½	68-	69-	92½	...)	5/	449-	361	351
91	Green	76-	88-	74-	63-	79-	58½)	6/	438½	352	342
33 bales									15000 yards		
92	brown	101-	106-	72-	93½	79½	...)	5/	452-	363	353
93	brown	87-	78-	87-	69-	48-	84-)	6/	453-	364	354
94	brown	108-	94-	83-	88-	80-	...)	5/	453-	364	354
95	brown	100-	76-	89-	84-	96-	...)	5/	445-	358	348

Re : Packing List (3)

96	brown	100-	84-	74-	79-	53-	63½)	6/	453½	364	354
97	brown	101-	90-	82-	89-	96-	...)	5/	458-	368	358
98	brown	104-	103-	91-	68-	75½	...)	5/	441½	355	345
99	brown	94-	79-	79½	73½	42½	93½)	6/	462-	371	361
100	brown	102-	75-	83-	75-	53-	83½)	6/	471½	378	368
101	brown	98-	75-	89-	94-	82½	...)	5/	438½	352	342
102	brown	77-	84-	86-	73-	77-	51-)	6/	448-	360	350
103	brown	87-	94-	71-	90-	66-	63-)	6/	471-	378	368
104	brown	75-	73-	83-	93-	71-	65-)	6/	462-	371	361
105	brown	95-	93-	86-	93½	80½	...)	5/	448-	360	350
106	brown	102-	101½	87-	79½	83½	...)	5/	453½	364	354
107	brown	67-	65-	72-	90-	73-	76-)	6/	448	356	346
108	brown	65-	99-	74-	59½	81½	84½)	6/	463½	372	362
109	brown	83-	80-	93-	40-	83½	83½)	6/	463-	372	362
110	brown	100-	82-	83-	85½	85½	47½)	6/	483½	388	378
111	brown	86-	77-	90-	62½	67½	84½)	6/	467½	375	365
112	brown	83-	73-	85-	80-	83-	50-)	6/	454-	365	355
113	brown	85-	83-	89-	92-	46-	70½)	6/	465½	374	364
114	brown	64-	64-	61-	75½	93½	89½)	6/	447½	359	349
115	brown	72-	75-	89-	89-	76½	53½)	6/	455-	366	356
116	brown	85-	90-	97-	57½	60½	85½)	6/	475½	381	371
117	brown	103-	95-	88-	71½	96½	...)	5/	454-	365	355
118	brown	108½	67-	69-	67½	59½	81½)	6/	453-	364	354
119	brown	81-	89-	78-	59½	60½	86½)	6/	454½	365	355
120	brown	70-	88-	71-	93-	62½	51½)	6/	436-	351	341
121	brown	47-	95-	99-	43½	76½	...)	5/	361-	492	482
122	brown	62-	83-	67-	88-	81-	85-)	6/	466-	474	464
123	brown	87-	76-	91-	78½	90½	...)	5/	423-	340	330
124	brown	94-	83-	98-	92-	91½	65½)	6/	524-	419	409
33 bales									15000 yards		
66 bales									30000 yards		
..... MEASUREMENT - Nos. 59,123 (65 bales)									46"x23½"x18½"		
- No. 124 (1 bale)									46"x23½"x21"		

EXHIBITS
 Plaintiff's Exhibits
 "p.1" Packing List
 Issued by Vantex
 Trader 29th July 1976
 (Contd.)

EXHIBITS

Plaintiff's Exhibits "P.1" Marine Insurance Application Form for Policy No. M116972 4th August 1976

PLAINTIFF'S EXHIBITS "P.1" MARINE INSURANCE APPLICATION FORM FOR POLICY No. M116972 4th AUGUST 1976

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00015



SHUN FAI & CO., (INSURANCE) LTD.

G. P. O. BOX 13602
303, GENERAL COMMERCIAL BUILDING.
156-184, DES VOEUX ROAD, C.
HONG KONG

TEL. 5-431281-2
5-443401

迅輝有限公司
(香港水坑口外德輔道)
電話：五五二二二二
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洋面保險投保書
MARINE INSURANCE APPLICATION

Dear Sirs,

請發保單
Please issue Policy
Risk Note (... 2 stamped & 4 copies)

保戶名稱 WAITEX TRADER TO ORDER OF THE CYPRUS
in Name of POPULAR BANK LIMITED NICOSIA

For Office Use

D/N No. _____

Policy No. 116972

Account No. _____

Marks & Nos.	Description of Goods
LC76/20661 G.KALLIS 76/0076 LOT 2 LIMASSOL CYPRUS NO. 1/58 MADE IN HONGKONG	58 bales Quality 30C01 BROKEN TWILL

總保額 US\$31900.00
Amount Insured
Terms: All Risks, & War & R.C.C. & ...
The goods covering from warehouse to buyer's warehouse in Nicosia against Marine and War risks, all risks as per institute cargo clauses, including S.H.S.C.C. Clauses.
"CLAIMS PAYABLE IN CYPRUS"

船名 TA SHUN
per s.s. sailing on/about 01.08.1976.
航空公司 Airlines under Waybill No.
Parcel Post / Air Parcel Post under Parcel Post Receipt No.
From Warehouse of Hongkong To Warehouse of Limassol Via
Claim payable in Cyprus.
Closing Risk note No.

Yours faithfully,

Hongkong, 4.3.76

(Signature of Applicant)

EXHIBITS

Plaintiff's
Exhibits
"P.1"
Policy
No. M/116972
issued by
Success
Insurance
Ltd. 31st
July 1976
(Contd.)

SUCCESS
HOLDINGS

SUCCESS INSURANCE LIMITED

911-5 Prince's Building, G.P.O. Box 735,
Hong Kong. Tel: 5-240036, Cable:
SUCCESSHOLD. Telex: 74320 ALEXC HX.

WHEREAS it has been proposed to The Success Insurance Limited by the insured named in the Schedule as well in their own name as for and in the name and names of all and every other person or persons to whom the subject matter of this Policy does may or shall appertain in part or in all to make with the said Company the insurance herein-after mentioned and described.

10

NOW THIS POLICY WITNESSETH that in consideration of the said person or persons effecting this Policy paying to the said Company the premium as arranged the said Company takes upon itself the burden of such insurance to the amount stated in the Schedule and promises and agrees with the Insured their Executors Administrators and Assigns in all respects truly to perform and fulfil the Contracts contained in this Policy.

20

AND it is hereby agreed and declared that the said insurance shall be and is an Insurance (lost or not lost) upon the interest as stated in the Schedule.

AND the said Company promises and agrees that the Insurance aforesaid shall commence upon the said Freight Goods and Merchandise from the time when the Goods and Merchandise shall be laden on board the said Ship or Vessel Craft or Boat as stated in the Schedule and continue until the said Goods and Merchandise be discharged and safely landed at as stated in the Schedule.

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AND that it shall be lawful for the said Ship or Vessel in the voyage so insured as aforesaid to proceed and sail to and touch and stay at any Ports or Places whatsoever without prejudice to this Insurance.

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AND touching the Adventures and Perils which the said Company is contended to bear and does take upon itself in the Voyage so Insured as aforesaid they are of the Seas Man-of-War Fire Enemies Pirates Rovers Thieves Jettisons Letters of Mart and Countermart Surprisals Takings at Sea Arrests Restraints and Detainments of all Kings Princes and People of what Nation Condition or

EXHIBITS

Quality soever Barratry of the Master and Mariners and all other Perils Losses and Misfortunes that have or shall come to the Hurt Detriment or Damage of the aforesaid subject matter of this insurance or any part thereof.

Plaintiff's Exhibits "P.1" Policy No. M/116972 issued by Success Insurance Ltd. - 31st July 1976 (Contd.)

10

AND in case of any Loss or Misfortune it shall be lawful to the Insured their Factors Servants and Assigns to sue labour and travel for in and about the Defence Safeguard and Recovery of the aforesaid subject matter of this Insurance or any part thereof without prejudice to this Insurance the charges whereof the said Company will bear in proportion to the sum hereby insured.

AND it is expressly declared and agreed that the Acts of Insurer or Insured in Recovering Saving or Preserving the Property Insured shall not be considered a waiver or acceptance of abandonment.

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AND it is declared and agreed that Corn Fish Salt Fruit Flour and Seed are warranted free from average unless general or the Ship be stranded sunk or burnt and that Sugar Tobacco Hemp Flax Hides and Skins are warranted free from average under Five Pounds per centum and that all other Goods also the Ship and Freight shall be warranted free from average under Three Pounds per Centum unless general or the Ship be stranded sunk or burnt.

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(1) Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or war-like operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the Vessel concerned or, in the case of a collision, any other vessel involved therein is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

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Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom or piracy.

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(2) Warranted free of loss or damage caused by strikers locked-out workmen or persons taking part in labour disturbances, riots, or civil commotions.

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EXHIBITS

Plaintiff's
Exhibits
"P.1"
Policy No. M/116972
issued by
Success
Insurance
Ltd. -
31st July
1976
(Contd.)

(3) (a) Should the risks excluded by Clause 1 (F.C. & S. Clause) be reinstated in this policy by deletion of the said clause or should the risks or any of them mentioned in that clause or the risks of mines, torpedoes, bombs or other engines of war be insured under this Policy, Clause (b) below shall become operative and anything contained in this contract which is inconsistent with Clause (b) or which affords more extensive protection against the aforesaid risks than that afforded by the Institute War Clauses relevant to the particular form of transit covered by this insurance is null and void.

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(b) This Policy is warranted free of any claim based upon loss of, or frustration of, the insured voyage or adventure caused by arrests restraints or detentions of Kings Princes Peoples Usurpers or persons attempting to usurp power.

This insurance shall not insure to the benefit of any carrier or Fire Insurance Company.

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INSTITUTE DANGEROUS DRUGS CLAUSE

It is understood and agreed that no claim under this policy will be paid in respect of drugs to which the various International Conventions relating to Opium and other dangerous drugs apply unless,

(1) the drugs shall be expressly declared as such in the policy and the name of the country from which, and the name of the country to which they are consigned shall be specifically stated in the policy; and

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(2) the proof of loss is accompanied either by a licence, certificate or authorization issued by the Government of the country to which the drugs are consigned showing that the importation of the consignment into that country has been approved by that Government, or alternatively, by a licence, certificate of authorization issued by the Government of the country from which the drugs are consigned showing that the export of the consignment to the destination stated has been approved by that Government; and

40

(3) the route by which the drugs were conveyed was usual and customary.

EXHIBITS

S/A No

H/L No. HK/LIM-21

BLUE SKY SHIPPING CO., LTD.

TAIPEI TAIWAN, R. O. C.

00018

Plaintiff's Exhibits "P.1" Bill of Lading No. HK/LIM-21 issued on Blue Sky Shipping Co. Ltd. Form - 3rd August 1976

BILL OF LADING

RECEIVED from 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 under or on deck by the vessel named below 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 otherwise, 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 discharge 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 delivered or transhipped from the vessel's tackle, when and where the vessel's responsibility shall cease, in like apparent good order and condition at the port of discharge mentioned below, or as 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 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 in 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.

It is agreed that 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 carrier, master and/or vessel in every contingency whatsoever, 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 carrier unless by express waiver signed by a duly authorized agent of the carrier.

VESSEL: PA SHUN VOY. MASTER:
 SHIPPER: WAI TAK TRADER
 PORT OF LOADING: HONGKONG DESTINATION: (If goods to be transhipped at port of discharge)
 PORT OF DISCHARGE: LIVERPOOL
 CONSIGNEE: THE CYPRUS POPULAR BANK LIMITED, Nicosia,
 Nicosia, C. KYLLIS (INCORPORATED IN HONG KONG)
 NOTIFY PARTY: THE CYPRUS POPULAR BANK LTD, Nicosia

PARTICULARS FURNISHED BY SHIPPER OF GOODS

MARK AND NUMBERS	PACKAGES	DESCRIPTION OF GOODS	WEIGHT	MEASUREMENT
1010/1006 3 WALLS 75/0075 LOT 2 LHASOL CYPRUS NO. 1/50 MADE IN HONG KONG	50 BAGS	WALLS IN NOT SPECIFIED TO BALL OF ITS CURRENT VOYAGE AT SYDNEY, KYRIN, AND KAVAYOSKI, CYPRUS		
	TOTAL	FIFTY EIGHT BAGS ONLY		

SHIPPED ONBOARD
 - 8 AUG 1976
 FREIGHT PREPAID

ORIGINAL

IN ACCEPTING THIS BILL OF LADING the shipper, consignee and owner of the goods and the holder of this Bill of Lading expressly accept and agree to all its stipulations, exceptions and conditions, whether written, typed, stamped, or printed, as fully as if signed by such shipper, consignee, owner of the goods and/or holder of this Bill of Lading.

FREIGHT CHARGED ON	RATE	PER	FREIGHT
DECLARED VALUE			
TOTAL PAYABLE AT			

IN WITNESS WHEREOF, the Master or agent of the said vessel has signed all of this tenor and date, one of which being accomplished, the others to stand void.

Date at HONG KONG, - 3 AUG 1976
 SHIPPER.

For and on behalf of the Master
 SEAWISE SHIPPING CO.

(This signature does not constitute an endorsement)

EXHIBITS

Plaintiff's Exhibits "P.1." - Invoice
issued by Wantex Trader - 6th August,
1976

Plaintiff's
Exhibits
"P.1"
Invoice
issued by
Wantex Trader
6th August
1976

Invoice No. 0294/768 Date 06.08.1976
For A/C and Risk
G. KALLIS (MFRS) LTD. WANTEX TRADER
P.O. Box 1750, Rm. 820 Star House,
Nicosia. Kowloon, Hong Kong.
Tel: 3-661229 3-661220

10 Order No. 5024
Sales Note No. 76/0076 dd' 30.06.1976
County Origin Hong Kong made

Shipment of 58 bales 25000yards Quality 30001
Broken Twill

Drawn Under Letter of credit of The Cyprus
Popular Bank Ltd. No. 76/20661,
dated 29.06.1976.

20	Carrier	Port of Discharge	Destination
	TA SHUN	LIMASSOL	****
	SHIPPING	DESCRIPTIONS	PER YARD
	MARK		IN US DOLLARS
			CIF CYPRUS
			OF LIMASSOL
	LC76/20661	Quality 30001	
	G. KALLIS	Broken Twill 80x50,	
	76/0076	10x10, 10 ozs/square	
	LOT 2	yd. double preshrunk	
	LIMASSOL	width 45"	
	CYPRUS	25000 yards sulphur dyed sky blue	
	NO. 1/58	as per sample.	
30	MADE IN	Exact weight - 10 ozs per sq. yard.	
	HONG KONG	Composition - 100% cotton	
	58 bales	construction of the	
	25000 yards.	material 80 x 50 @ US\$1.16	US\$29,000.00
		10x10 Cif Limassol	US\$29,000.00
			=====

(US Dollars twenty nine
thousand only)

Goods are of Hongkong Origin

THE CYPRUS POPULAR BANK LTD.

40 We hereby certify that goods are of Hongkong Origin,
and that other all details as per Order No. 5024
placed through Messrs. Agathangelos Onissiforou &
Sons Ltd., P.O. Box 176 Larnaca as instructed by
this credit.

WANTEX TRADER. Sgd. Illegible Manager
I certify that above to be the signature of K. L. SO,
Manager, duly authorised to sign on behalf of
WANTEX TRADER. THE HONG KONG GENERAL
CHAMBER OF COMMERCE Sgd. Illegible Manager
Date August 5, 1976.

EXHIBITS
 Plaintiff's
 Exhibits
 "P.1"
 Packing List
 Issued by
 Wantex Trader
 8th August
 1976

Plaintiff's Exhibits "P.1." - Packing List Issued
 by Wantex Trader - 8th August, 1976

WANTEX TRADER

Rm 820 Star House, Kowloon, Hong Kong. Cable Add. "KAVERON" Tel. 3-661229. 3-651220
G. Kallis (Mfrs) Ltd. 0294/76B Wantex Trader Hongkong 8.8.1976

Re : Packing List

Shipment of 58 bales 25000 yards
 Quality 30001 Broken Twill 80x50
 10x10 10 ozs/square yrd. Double pre-
 shrunk width 45" sulphur dyed sky blue
 as per sample
 Exact weight - 10 ozs per sq. yd.
 Composition - 100% cotton
 Construction of the material -
 80x50 10x10
 Shipment per ss "TA SHUN" 8.8.76

Shipping Mark
 LC/76/20661
 G. KALLIS
 76/0076
 LOT 2
 LIMASSOL CYPRUS
 No. 1/58
 MADE IN HONG KONG

Bales Nos.	Colours	Length	Per Piece(s)					Total		G/Wt Pcs/Yds.	N/Wt Wt in Lbs	Meas't		
1	Skyblue	74-	55-	75½	83½	77½	84½)	6/	450-	361	351	46	23½	19
2	Skyblue	72-	66-	73-	93-	74½	72½)	6/	451-	362	352	46	23½	19
3	Skyblue	100-	99-	87-	84½	84½	...)	5/	455-	365	355	46	23½	19
4	Skyblue	76-	98-	86-	78-	61½	62½)	6/	462-	371	361	46	23½	19
5	Skyblue	82-	65-	83-	72-	52-	92½)	6/	446½	359	349	46	23½	19
6	Skyblue	87-	79-	78-	69-	83½	77½)	6/	474-	380	370	46	23½	19
7	Skyblue	114½	97-	76-	71-	82½	...)	5/	441-	354	344	46	23½	19

Re : Packing List (2)

8	Skyblue	93-	97-	78½	81½	89½	...)	5/	439½	353	343	46	23½	19
9	Skyblue	102-	70-	93½	87½	93½	...)	5/	4461½	359	349	46	23½	19
10	Skyblue	84-	83-	94½	92½	77½	...)	5/	431½	347	337	46	23½	19
11	Skyblue	100-	89-	99-	86-	79-	...)	5/	453-	364	354	46	23½	19
12	Skyblue	98-	79-	73-	58-	71½	77½)	6/	457-	367	357	46	23½	19
13	Skyblue	75-	80-	80-	97-	98½	68½)	6/	499-	400	390	46	23½	19
14	Skyblue	80-	94-	87-	82-	70-	86-)	6/	499-	400	390	46	23½	19
15	Skyblue	101-	93-	85-	88½	87½)	...)	5/	455-	365	355	46	23½	19
16	Skyblue	87-	85-	94½	72½	60½	65½)	6/	465-	373	363	46	23½	19
17	Skyblue	105-	93-	86-	80½	87½	...)	5/	452-	363	353	46	23½	19
18	Skyblue	105½	95-	90-	85½	65½	...)	5/	441-	354	344	46	23½	19
19	Skyblue	110-	63-	83-	99-	96½	...)	5/	451½	362	352	46	23½	19
20	Skyblue	69-	73-	87-	82-	79-	77½)	6/	467½	375	365	46	23½	19
21	Skyblue	103-	79½	90½	85½	86½	...)	5/	445-	358	348	46	23½	19
22	Skyblue	102½	90-	79-	97-	85½	...)	5/	454-	365	355	46	23½	19
23	Skyblue	86-	67	59-	52½	94½	93½)	6/	452½	364	354	46	23½	19
24	Skyblue	73-	86-	92-	55-	70½	79½)	6/	456-	366	356	46	23½	19
25	Skyblue	78-	86-	81-	68-	90½	71½)	6/	475-	381	371	46	23½	19
26	Skyblue	86-	81-	81-	92½	88½	...)	5/	429-	345	335	46	23½	19
27	Skyblue	74-	86-	84-	81-	77½	57½)	6/	460-	369	359	46	23½	19
28	Skyblue	91-	92-	86½	78½	94½	...)	5/	442½	356	346	46	23½	19
29	Skyblue	114½	99-	93-	85-	50-	...)	5/	441½	354	344	46	23½	19
30	Skyblue	103½	83-	76-	57-	66-	70½)	6/	456-	366	356	46	23½	19
31	Skyblue	79-	98-	86½	85½	87½	...)	5/	434½	349	339	46	23½	19
32	Skyblue	82-	86-	61-	82½	82½	64½)	6/	458½	368	358	46	23½	19
33	Skyblue	106½	51-	81-	65-	72-	82½)	6/	458-	368	358	46	23½	19
34	Skyblue	73-	87-	79-	82-	82½	...)	5/	403½	325	315	46	23½	19
35	Skyblue	52-	61-	72-	87-	89-	45½)	6/	406½	327	317	46	23½	19
36	Skyblue	57-	60-	77-	68-	69½	63½)	6/	395-	318	308	46	23½	19
37	Skyblue	85-	80-	60-	93½	73½	...)	5/	392-	316	306	46	23½	19

167.

EXHIBITS
 Plaintiff's
 Exhibits
 "P.1"
 Packing List
 Issued by
 Wantex Trader
 8th August
 1976
 (Contd.)

RE : Packing List (3)

38	Skyblue	86-	64-	93-	96½	59½	...)	5/	399-	322	312	46	23½	19
39	Skyblue	102-	81-	80-	82-	48-	...)	5/	393-	317	307	46	23½	19
40	Skyblue	98-	76-	86-	73½	85½	...)	5/	419-	337	327	46	23½	19
41	Skyblue	92-	99-	85-	84-	45-	...)	5/	405-	326	316	46	23½	19
42	Skyblue	91-	72-	84½	64½	88½	...)	5/	400½	323	313	46	23½	19
43	Skyblue	77-	85-	80-	95-	52½	...)	5/	389½	314	304	46	23½	19
44	Skyblue	77-	73-	73-	69-	58½	62½)	6/	413-	333	323	46	23½	19
45	Skyblue	89-	85-	73-	82-	82½	...)	5/	411½	331	321	46	23½	19
46	Skyblue	97-	86-	91-	68-	91½	...)	5/	433½	349	339	46	23½	19
47	Skyblue	73-	92-	76-	96-	65-	...)	5/	402-	324	314	46	23½	19
48	Skyblue	101-	46-	97-	84-	82-	...)	5/	410-	330	320	46	23½	19
49	Skyblue	63-	92-	80-	40-	65½	60½)	6/	401-	323	313	46	23½	19
50	Skyblue	82-	92-	84-	83-	60-	...)	5/	401-	323	313	46	23½	19
51	Skyblue	87-	81-	66-	82½	85½	...)	5/	378-	305	295	46	23½	19
52	Skyblue	74-	77-	69-	85½	92½	...)	5/	398-	312	311	46	23½	19
53	Skyblue	83-	87-	74-	87½	91½	...)	5/	423-	340	330	46	23½	19
54	Skyblue	68-	78-	48-	68½	64½	69½)	6/	396½	320	310	46	23½	19
55	Skyblue	97-	91-	75-	63-	91½	...)	5/	417½	336	326	46	23½	19
56	Skyblue	59-	74-	58-	73½	61½	60½)	6/	386½	312	302	46	23½	19
57	Skyblue	101½	85-	82-	86-	...	...)	5/	354½	287	277	46	23½	19
58	Skyblue	122-	87-	87-	75-	...	...)	4/	371-	300	290	46	23½	19

58 bales Skyblue 25000 yards

Plaintiff's Exhibits "P.1" - Marine Insurance Application Form for Policy No. M116973 - 1st August, 1976

Plaintiff's Exhibits "P.1" Marine Insurance Application Form for Policy No. M116973 - 1st August, 1976

00023



SHUN FAI & CO., (INSURANCE) LTD.

G. P. O. BOX 13602 - 303, GENERAL COMMERCIAL BUILDING, 156-164, DES VOEUX ROAD, C.

HONG KONG

TEL. 5-431281-2 5-443401

Vertical Chinese text: 申輝有限公司 (香港中環德輔道中...)

洋面保險投保書 MARINE INSURANCE APPLICATION

Dear Sirs,

Please issue Policy Risk Note (...2...stamped &...5...copies)

in Name of... HANTEX TRADER TO ORDER OF THE CYPRUS POPULAR BANK LTD

For Office Use section with fields for D/N No., Policy No. (116/73), and Account No.

Table with 2 columns: Marks & Nos. (LC-76/20545, LOT 3, LTHASSOL CYPRUS) and Description of Goods (41 Bales, 100% Cotton Indigo Broken Twill Denim)

Amount Insured: US\$21084.00 Terms: All Risks, & War & S.R.C.C. & / or

TA SHUI sailing on / about August, 1, 1976. From HONGKONG To LTHASSOL Claim payable in CYPRUS

Signature area with 'Yours faithfully' and handwritten signature.

Hongkong, 1.8.76 19

EXHIBITS

Plaintiff's Exhibits "P.1" Policy No. M/116973 issued by Success Insurance Ltd. 31st July 1976

Plaintiff's Exhibits "P.1." - Policy No. M/116973 issued by Success Insurance Ltd. - 31st July, 1976

The Insured Policy No. M/116973
M/s. Wantex Trader held to the order of the Cyprus Popular Bank Ltd.

Amount Insured UNITED STATES DOLLARS TWENTY ONE THOUSAND & EIGHTY FOUR ONLY. (US\$21,084.00)

SHIP OR VESSEL FROM SAILING ON OR ABOUT
s.s. "TA SHUN" Hong Kong 1/8/76 10

TO Limassol FINAL DESTN. IF ON CARRIAGE

MARKS & NUMBERS INTEREST AND VALUE

LC-76/20546
G. KALLIS
75/0193 (41) Bales of 100% Cotton
LOT 3 Indigo Broken Twill
LIMASSOL CYPRUS Denim.
NO. 1/41
MADE IN HONG KONG So Valued

Conditions of Insurance;- 20

Including from warehouse to buyer's warehouse in Nicosia.
Including Marine risk.

STAMPED No. 662597

Lloyds Agent at Limassol
Claims, if any, payable at Cyprus.

By Orphanides & Murat,
Post Office Box 15,
19 Evagoras Avenue,
Famagusta, Cyprus. 30

and settlement thereof shall be made in conformity with the laws and customs of England.
Date 31st July, 1976.

In Witness Whereof this Policy has been signed for and on behalf of SUCCESS INSURANCE LIMITED,

Sgd. Illegible
Authorized Signature

EXHIBITS

SUCCESS
HOLDINGS

SUCCESS INSURANCE LIMITED

911-5 Prince's Building, G.P.O. Box 735,
Hong Kong. Tel: 5-240036, Cable:
SUCESSHOLD. Telex: 74320 ALEXC HX.

Plaintiff's
Exhibits
"P.1"
Policy No.
M/116973
issued by
Success
Insurance Ltd.
31st July
1976
(Contd.)

10 WHEREAS it has been proposed to The Success
Insurance Limited by the insured named in the
Schedule as well in their own name as for and in
the name and names of all and every other person
or persons to whom the subject matter of this
Policy does may or shall appertain in part or in
all to make with the said Company the insurance
hereinafter mentioned and described.

20 NOW THIS POLICY WITNESSETH that in
consideration of the said person or persons
effecting this Policy paying to the said Company
the premium as arranged the said Company takes
upon itself the burden of such insurance to the
amount stated in the Schedule and promises and
agrees with the Insured their Executors
Administrators and Assigns in all respects truly
to perform and fulfil the Contracts contained in
this Policy.

AND it is hereby agreed and declared that
the said insurance shall be and is an Insurance
(lost or not lost) upon the interest as stated in
the Schedule.

30 AND the said Company promises and agrees
that the Insurance aforesaid shall commence upon
the said Freight Goods and Merchandise from the
time when the Goods and Merchandise shall be laden
on board the said Ship or Vessel Craft or Boat as
stated in the Schedule and continue until the said
Goods and Merchandise be discharged and safely
landed at as stated in the Schedule.

40 AND that it shall be lawful for the said Ship
or Vessel in the voyage so insured as aforesaid
to proceed and sail to and touch and stay at any
Ports or Places whatsoever without prejudice to
this Insurance.

50 AND touching the Adventures and Perils which
the said Company is contended to bear and does
take upon itself in the Voyage so Insured as
aforesaid they are of the Seas Man-of-War Fire
Enemies Pirates Rovers Thieves Jettisons Letters
of Mart and Countermart Surprisals Takings at Sea
Arrests Restraints and Detainments of all Kings
Princes and People of what Nation Condition or

EXHIBITS

Plaintiff's
Exhibits
"P.1"
Policy No.
M/116973
issued by
Success
Insurance
Ltd.
31st July
1976
(Contd.)

Quality soever Barratry of the Master and
Mariners and all other Perils Losses and Mis-
fortunes that have or shall come to the Hurt
Detriment or Damage of the aforesaid subject
matter of this insurance or any part thereof.

AND in case of any Loss or Misfortune it
shall be lawful to the Insured their Factors
Servants and Assigns to sue labour and travel for
in and about the Defence Safeguard and Recovery
of the aforesaid subject matter of this Insurance
or any part thereof without prejudice to this
Insurance the charges whereof the said Company
will bear in proportion to the sum hereby insured.

10

AND it is expressly declared and agreed that
the Acts of Insurer or Insured in Recovering Saving
or Preserving the Property Insured shall not be
considered a waiver or acceptance of abandonment.

AND it is declared and agreed that Corn Fish
Salt Fruit Flour and Seed are warranted free from
average unless general or the Ship be stranded sunk
or burnt and that Sugar Tobacco Hemp Flax Hides and
Skins are warranted free from average under Five
Pounds per centum and that all other Goods also the
Ship and Freight shall be warranted free from
average under Three Pounds per Centum unless
general or the Ship be stranded sunk or burnt.

20

(1) Warranted free of capture, seizure,
arrest, restraint or detainment, and the
consequences thereof or of any attempt thereat;
also from the consequences of hostilities or war-
like operations, whether there be a declaration of
war or not; but this warranty shall not exclude
collision, contact with any fixed or floating
object (other than a mine or torpedo), stranding,
heavy weather or fire unless caused directly (and
independently of the nature of the voyage or
service which the Vessel concerned or, in the
case of a collision, any other vessel involved
therein is performing) by a hostile act by or
against a belligerent power; and for the purpose
of this warranty "power" includes any authority
maintaining naval, military or air forces in
association with a power.

30

40

Further warranted free from the consequences
of civil war, revolution, rebellion, insurrection,
or civil strife arising therefrom or piracy.

(2) Warranted free of loss or damage caused
by strikers locked-out workmen or persons taking
part in labour disturbances, riots, or civil
commotions.

50

EXHIBITS

Plaintiff's
Exhibits
"P.1"
Policy No.
M/116973
issued by
Success
Insurance
Ltd. -
31st July
1976
(Contd.)

10 (3) (a) Should the risks excluded by Clause 1 (F.C. & S. Clause) be reinstated in this policy by deletion of the said clause or should the risks or any of them mentioned in that clause or the risks of mines, torpedoes, bombs or other engines of war be insured under this Policy, Clause (b) below shall become operative and anything contained in this contract which is inconsistent with Clause (b) or which affords more extensive protection against the aforesaid risks than that afforded by the Institute War Clauses relevant to the particular form of transit covered by this insurance is null and void.

(b) This Policy is warranted free of any claim based upon loss of, or frustration of, the insured voyage or adventure caused by arrests restraints or detentions of Kings Princes Peoples Usurpers or persons attempting to usurp power.

20 This insurance shall not insure to the benefit of any carrier or Fire Insurance Company.

INSTITUTE DANGEROUS DRUGS CLAUSE

It is understood and agreed that no claim under this policy will be paid in respect of drugs to which the various International Conventions relating to Opium and other dangerous drugs apply unless,

30 (1) the drugs shall be expressly declared as such in the policy and the name of the country from which, and the name of the country to which they are consigned shall be specifically stated in the policy; and

40 (2) the proof of loss is accompanied either by a licence, certificate or authorization issued by the Government of the country to which the drugs are consigned showing that the importation of the consignment into that country has been approved by that Government, or alternatively, by a licence, certificate of authorization issued by the Government of the country from which the drugs are consigned showing that the export of the consignment to the destination stated has been approved by that Government; and

(3) the route by which the drugs were conveyed was usual and customary.

EXHIBITS

Plaintiff's Exhibits "P.1"
- Bill of Lading
HK/LIM-23
issued on Blue Sky Shipping Co. Ltd. Form - 3rd August 1976

Plaintiff's Exhibits "P.1" - Bill of Lading HK/LIM-23 issued on Blue Sky Shipping Co. Ltd. Form - 3rd August 1976

S/O No.
Bill No. HK/LIM-23

BLUE SKY SHIPPING CO., LTD.

TAIPEI TAIWAN, R. O. C.

Stamp
14
00026

BILL OF LADING

RECEIVED from 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 under or on deck by the vessel named below 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 otherwise, 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 discharge 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 delivered or transhipped from the vessel's tackle, 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 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.

It is agreed that 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 carrier, master and/or vessel in every contingency whatsoever, 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 carrier unless by express waiver signed by a duly authorized agent of the carrier.

VESSEL: TA SHUN VOY. MASTER: *N.B. Blank*
SHIPPER: WANTEX TRADER
PORT OF LOADING: HONG KONG DESTINATION: (If goods to be transhipped at port of discharge)
PORT OF DISCHARGE: LIMASSOL
CONSIGNEE: TO ORDER OF THE CYPRUS POPULAR BANK LTD, Nicosia
NOTIFY PARTY: MESSRS. G. KALLIS (MERS) LTD, P.O. BOX 115, Nicosia

PARTICULARS FURNISHED BY SHIPPER OF GOODS

MARK AND NUMBERS	PACKAGES	DESCRIPTION OF GOODS	WEIGHT	MEASUREMENT
LC-76/20546 G. KALLIS 75/0195 LOT 3 LIMASSOL CYPRUS MADE IN HONGKONG	41 BALES	"VESSEL IS NOT SCHEDULED TO CALL ON THIS CURRENT VOYAGE AT PAFOS, GYTHIA AND KARAVOSTASSI, CYPRUS." 100% COOTON INDIGO DYEEN TWILL DENIM		
	TOTAL	FOURTY ONE BALES ONLY		



SHIPPED ONBOARD
6 3 AUG 1976

ORIGINAL

FREIGHT PREPAID

IN ACCEPTING THIS BILL OF LADING the shipper, consignee and owner of the goods and the holder of this Bill of Lading expressly accept and agree to all its stipulations, exceptions and conditions, whether written, typed, stamped, or printed, as fully as if signed by such shipper, consignee, owner of the goods and/or holder of this Bill of Lading.

FREIGHT CHARGED ON	RATE	PER	FREIGHT
DECLARED VALUE			
TOTAL PAYABLE AT			

IN WITNESS WHEREOF, the Master or agent of the said vessel has signed all of this tenor and date, one of which being accomplished, the others to stand void.
Date at HONG KONG, 3 AUG 1976
SHIPPER.

For and on behalf of the Master
SEAWAY SHIPPING CO.

By *[Signature]*
Agent

This signature does not constitute an endorsement

EXHIBITS

Plaintiff's
Exhibits
"P.1"
Invoice No.
0305/76
issued by
Wantex
Trader -
1st
August
1976

Plaintiff's Exhibits "P.1." - Invoice
No. 0305/76 issued by Wantex Trader
1st August 1976

Invoice No. 0305/76	Date 01.08.76
For A/C and Risk	
G. KALLIS (Mfrs) Ltd.	WANTEX TRADER
P.O. Box 1750,	Rm. 820 Star House,
Nicosia, Cyprus.	Kowloon, Hong Kong.
Tel: 3-661229	3-661220

Order No.
Sales Note No. 75/0193 dd' 24.04.1976
Country Origin Hongkong Made.

Shipment of 41 bales, 16667 yards 100% Cotton
Indigo Broken Twill Denim

Drawn Under Letter of Credit of The Cyprus Popular
Bank Limited, No. 76/20546, dated 25.05.1976.

Carrier	Port of Discharge	Destination
TA SHUN	LIMASSOL	****

<u>SHIPPING MARK</u>	<u>DESCRIPTION</u>	<u>PER YARD</u>	<u>IN US DOLLARS</u> <u>CIF LIMASSOL</u>	
LC-76/20546 G. KALLIS 75/0193 LOT 3 LIMASSOL CYPRUS NO. 1/41 MADE IN HONGKONG	100% Cotton Indigo Broken Twill Denim Goods are of Hongkong Origin Exact weight - 9½ ozs. per sq.yd. Composition - 100% cotton Construction of the Material - 80x50 10/10 <u>Code 30001 80x50 10/10 44/45"</u>			20
41 bales-		@ US\$1.15	<u>US\$19,167.05</u>	30
16667 yards-		Cif Limassol	US\$19,167.05	
			=====	

(Us Dollars nineteen thousand
one hundred sixty seven and
cents five only)--

We hereby certify that goods are of Hongkong Origin, and
that shipped are in accordance with our Sales note
75/0193. dated 24.4.1976.

WANTEX TRADER
Sgd. Illegible
Manager

40

I certify that above to be the signature of K.L. SO,
Manager, duly authorised to sign on behalf of WANTEX
TRADER.

THE HONG KONG GENERAL CHAMBER OF COMMERCE
Sgd. Illegible Manager

Date 31.07.1976

Plaintiff's Exhibits "P.1." - Packing List issued by
Wantex Trader - 1st August 1976

WANTEX TRADER - Rm 820 Star House, Kowloon, Hong Kong. Cable ADD "KAMERON" Tel.3-661229. 3-651220

G. Kallis (Mfrs) Ltd. 0305/76

Wantex Trader Hongkong 01.08.76

Re : Packing List.

Shipment of 41 bales 16667 yards	<u>Shipping Mark</u>
100% Cotton Indigo Broken Twill	LC-76/20546
Denim Exact weight - 9-1/4 ozs per	G. KALLIS
sq. yards. Composition - 100% cotton	75/0193
Construction of the material 80x50	LOT 3
10x10s	LIMASSOL CYPRUS
Shipment per ss "TA SHUN" to	NO. 1/41
Limassol on 03.08.1976	MADE IN HONG KONG

177.

Bales Nos.	Length	Per	Piece(s)	Total Pcs/Yds.	G/Wt Wt In	N/Wt Lbs.	Measurement
1	100½	105½	98½ 92- ...)	4/	396½	297 287	46 18½ 22½
2	83-	92-	64- 97- 71-)	5/	407-	304 294	46 18½ 22½
3	100½	104-	77- 75- 46-)	5/	402½	301 291	46 18½ 22½
4	83-	67-	75- 89- 89-)	5/	403-	301 291	46 18½ 22½
5	79-	63-	94- 88- 81-)	5/	405-	303 293	46 18½ 22½
6	101-	92-	78- 94- 40-)	5/	405-	303 293	46 18½ 22½
7	63-	76-	94- 85- 72-)	5/	390-	292 282	46 18½ 22½
8	103-	89-	45- 57- 88-)	5/	382-	286 276	46 18½ 22½

EXHIBITS
Plaintiff's
Exhibits "P.1."
Packing List issued
by Wantex Trader
1st August 1976

EXHIBITS
 Plaintiff's
 Exhibits
 "P.1"
 Packing List
 issued by
 Wantex
 Trader
 1st August
 1976
 (Contd.)

Re : Packing List (2)

9	100-	98-	40-	80½	83½)	5/	402-	301	291	46	18½	22½
10	88-	88-	83-	70½	78½)	5/	408-	305	295	46	18½	22½
11	101-	100½	92-	97½	...)	4/	391-	293	283	46	18½	22½
12	82-	88½	89½	93½	54½)	5/	408-	305	295	46	18½	22½
13	56-	89-	86-	84½	87½)	5/	403-	301	291	46	18½	22½
14	108-	112½	91½	91½	...)	4/	403½	301	291	46	18½	22½
15	101-	105-	63-	46½	95½)	5/	411-	307	297	46	18½	22½
16	75-	99-	80-	92-	64½)	5/	410½	307	297	46	18½	22½
17	100-	56-	76-	70-	89½)	5/	391½	293	283	46	18½	22½
18	109-	90-	89-	72½	63½)	5/	424-	317	307	46	18½	22½
19	112½	99-	92½	87½	...)	4/	391½	293	283	46	18½	22½
20	101½	77-	90-	89-	79½)	5/	437-	326	316	46	18½	22½
21	105-	104-	88½	81½	...)	4/	379-	384	374	46	18½	22½
22	118-	40-	92½	78½	78½)	5/	407½	305	295	46	18½	22½
23	85-	76-	95-	85-	78½)	5/	419½	313	303	46	18½	22½
24	95-	92-	89½	81½	56½)	5/	414½	310	300	46	18½	22½
25	51-	88-	79-	88-	94-)	5/	400-	299	289	46	18½	22½
26	101½	85-	84½	73-	70½)	5/	414½	310	300	46	18½	22½
27	67-	58-	87-	79½	77½							
	51½	...)	...)	...)	...)	6/	420½	314	304	46	18½	22½
28	118½	75½	77-	95-	49-)	5/	415-	310	300	46	18½	22½
29	79-	75-	81-	87½	85½)	5/	408-	305	295	46	18½	22½
30	84-	97-	83-	74-	86-)	5/	424-	317	307	46	18½	22½
31	92-	83-	40-	89½	88½)	5/	393-	294	284	46	18½	22½
32	105-	80-	74-	87½	75½)	5/	422-	315	305	46	18½	22½
33	86-	98-	70-	94½	66½)	5/	415-	310	300	46	18½	22½
34	93-	85-	85-	54-	87½)	5/	404½	302	292	46	18½	22½

Re : Packing List (3)

35	112-	60-	85-	86-	59½)	5/	402½	301	291	46	18½	22½
36	89-	91-	86-	46-	75½)	5/	387½	290	280	46	18½	22½
37	100-	112½	91½	52½	44½)	5/	401-	300	290	46	18½	22½
38	65-	91-	83-	92½	84½)	5/	416-	311	301	46	18½	22½
39	107-	97-	83½	90½	40½)	5/	418½	313	303	46	18½	22½
40	106½	94-	81-	42-	87½)	5/	411-	307	297	46	18½	22½
41	85-	72-	97-	80-	87½)	5/	421½	315	305	46	18½	22½
41 bales							16667	yards				

EXHIBITS
 Plaintiff's
 Exhibits
 "P.1"
 Packing List
 Issued by Wantex
 Trader 1st
 August 1976
 (Contd.)

EXHIBITS

Plaintiff's
Exhibits
"P.1"
Letter Seawise
Shipping Co.
to Worldwide
Marine Corporation
18th August 1976

Plaintiff's Exhibits "P.1."
Letter - Seawise Shipping Co. to
Worldwide Marine Corporation - 18th
August 1976

SEAWISE SHIPPING COMPANY
(Fully owned and operated by Seawise
Agency Ltd.)

1603, Loon Kee Building,
267-275 Des Vouex Road, Central,
Hong Kong.

10

CABLE: SEAWISECO

TELEX: HX83773

TEL.No. 5-446881

5-446876

Date 18th August, 76

Your ref: Our ref: SWS 00125/76

Worldwide Marine Corp.,
9FL., No. 172
Nanking E. Rd., Sec. 2
Taipei
Taiwan, R.O.C.

20

Attn. Mr. M.N. Lo

Dear Sir,

We are pleased to forward you an original and
duplicate bill of lading by different envelope as
for your perusal.

Herewith, we enclose an original one to you.

Thanks for your kind attention.

Yours faithfully,

Sgd. Illegible

Oneness Shipping Company Limited
 HONG KONG
BILL OF LADING

00039

Bill No.

340
 158
 KAO-3

EXHIBITS
 Plaintiff's Exhibits "P.1" - Bill of Lading No. KAO-3 issued by Oneness Shipping Co. Ltd. - 16th August 1976

ON BOARD by the shipper named herein, the goods or packages said to contain goods hereinafter mentioned, in apparent condition unless otherwise indicated in this bill of lading, to be transported to the port of discharge or so near thereunto as safely get, lie and leave, always afloat at all stages and conditions of water and weather, and there to be delivered or transferred to the consignee and on the performance of all obligations of the shipper and consignee and each of them.

I agreed that the custody and carriage of the goods are subject to all the terms on the front and back hereof whether stamped or printed which shall govern the relations, whatsoever they may be, between the shipper, consignee and the carrier or agency wheresoever, whenever and howsoever occurring and also in the event of or during deviation, or of conversion or of unseaworthiness of the ship at the time of loading or inception of the voyage or subsequently, and none of the terms of lading shall be deemed to have been waived by the carrier unless by express waiver signed by a duly authorized agent.

If requested, one signed bill of lading duly endorsed must be surrendered to the agent of the carrier at the port of discharge for a delivery order.

SEAWISE AGENCY LTD.,

Loading: HONG KONG Vessel: "TA HUNG" Voy. No. _____
 Discharge: KEELUNG Destination: (If goods to be transhipped) _____
 at port of discharge _____
 Agent: BLUE SKY SHIPPING CO., LTD., 1, LAINE 37, CHANG AN E. RD., SEC 1, TAIPEI, TAIWAN. MR. T.H. CHAN TEL: 5613665
 Party: - DO -

Marks & Nos.	No. of Pkgs.	Description of goods.	Measurement or Gross weight
	TRANSHIPMENT VIA TAIWAN	FROM HONGKONG TO MEDITERREAN SEA	DUPLICATE
VARIOUS	957 PKGS =====	GENERAL CARGO (FULL DETAILS AS PER RIDERS ATTACHED)	
TOTAL: NINE HUNDRED & FIFTY SEVEN (957) PACKAGES ON			
CARGO TO BE TRANSIT TO MEDITERREAN SEA AT TAIWAN BY CONSIGNEE THEM-SELVES AT THEIR OWN RISKS AND EXPENSES.			
FREIGHT COLLECT			

EIGHT @ per
 221.67 TEAS/TONS
 ONE\$50.00 PER TEAS/TON
 =ONE\$11,083.50

IN WITNESS whereof, the commander of the said ship has affirmed to THREE (3) Bills of Lading, all this tenor and date, the one Bills accomplished, the other to stand avoid.
 Dated in HONG KONG 16TH AUG., 1976 for the Master.

ONENESS SHIPPING CO., LTD.

It is due to ship, cargo and/or ship lost or not lost. Shippers are requested to note particularly the terms and conditions of this Bill of Lading with reference to the validity of their insurance upon their goods. Terms and Conditions as per back hereof.

General Manifest of the Cargo laden at the port of **HEBRUSO**

Navigation Panama S.A. "P1" General Manifest of Seawise Navigation Panama S.A. Master **"TA HUNG"** 17th August 1976
 Board M. V. **BEINGHAZI, TRIPOLI,** bound for **LIMASSOL VIA TAMAR.** Sailing **17TH AUG., 1976.**

Gross Tonnage Net Tonnage Volume

L. No.	Shippers	Consignees	Marks & Numbers	No. of Packages	Description	Weight Ton	Measurement CBM	FREIGHT	
								Rate	Prepaid Collect
100	COTONTEX. ✓		-TARIQUS MARKS AS PER LIST ATTACHED -	20 BALES	PAST COLOUR PLAIN DYED COTTON PLAIN TETTE.		9.968		
100-10	COTONTEX. ✓			9 BALES	PAST COLOUR PRINTED COTTON PLAIN TETTE, BOTH SIDES RAISED.		3.397		
100-11	COTONTEX. ✓			3 BALES	- D -		1.508		
100-12	COTONTEX. ✓			2 BALES	- D -		0.895		
100-13	COTONTEX. ✓			3 BALES	- D -		1.299		
100-14	GLASS METAL WORKS LTD., ✓			2 CASES	STEEL OLD COPPER PLATED TACK BUCKS		0.311		
100-15	SEAWISE SHIPPING CO., ✓			71 BALES	100 COTTON DENIM PLAIN GOODS.		24.093		
100-16	WANTEX TRADERS. ✓			58 BALES	DECO BROWN TWILL QUALITY 300 L		20.073		
100-17	WANTEX TRADER. ✓			66 BALES	BROWN TWILL QUALITY 300 L.		23.600		
100-18	COTONTEX. ✓			3 CASES	PAST COLOUR PRINTED 65/65% BLEND POPLIN.		1.025		
100-19	CANCELLED.								
100-20	WANTEX TRADER. ✓			7 BALES	100 INDIGO BROKEN TWILL DENIM.		2.348		
100-21	WANTEX TRADER. ✓			58 BALES	BROWN TWILL.		19.483		
100-22	WANTEX TRADER. ✓			25 BALES	100 INDIGO BROKEN TWILL DENIM.		8.182		
100-23	WANTEX TRADER. ✓			41 BALES	100 COTTON INDIGO BROKEN TWILL DENIM.		13.690		
100-24	WANTEX TRADER. ✓			12 BALES	DECO BROWN TWILL DENIM WARP.		3.922		
100-25	WANTEX TRADER. ✓			9 CASES	TC ENDED POPLIN DYED 65 GYSETEX 55% COTTON.		2.777		
100-26	WANTEX TRADER. ✓			25 BALES	100 COTTON INDIGO BROKEN TWILL DENIM.		8.171		
100-27	WANTEX TRADER. ✓			7 BALES	100 COTTON INDIGO BROKEN TWILL DENIM.		2.350		
100-28	CATHAY TEXTILE CORP., LTD. ✓			56 CTNS	CC 4 DYE DENIM (INDIGO) BLEND.		10.260		
100-29	CATHAY TEXTILE CORP., LTD. ✓			11 CTNS	CC 4 DYE DENIM (INDIGO) BLEND.		2.015		
100-30	CATHAY TEXTILE CORP., LTD. ✓			77 CTNS	CC 4 DYE DYE DENIM (INDIGO)				

Gross Tonnage

Net Tonnage

bound for KEELUNG, TAIWAN, LINGAO Sailing 17th August, 1976.

Master

Shippers	Consignees	Mtd. & Numbers	No of Packages	Description	Weight Ton	Measurement CBM.	Rate	FREIGHT	
								Prepaid	Collect
SHIPPING COMPANY	BLUE SKY SHIPPING CO., LTD. 1, KANG 37, CHANG AN E. RD., SIC 1. TAIPEI, TAIWAN MR. T.H. CHAN TEL: 5613665	VARIOUS MARKS AS PER LIST ATTACHED -	ONE (1) LOT						
1) A.S.I. INTERNATIONAL HONG KONG	✓		13 CARTONS	LAUNDRY COTTON & 40% POLYESTER BLEND		3.189			
2) SEAWISE SHIPPING CO.,	✓		246 CARTONS	FLUORESCENT LAMPERS AND RADIO		11.694			
1) HO. TANG LINEN CO., LTD.	✓		22 CASES	COTTON GOODS		9.276			
1-2) HO. TANG LINEN CO., LTD.	✓		12 CASES	SEMI GOODS COTTON GOODS		5.775			
1-3) HO. TANG LINEN CO., LTD.	✓		6 CASES	COTTON GOODS		2.879			
1-4) NETUNE INC.	✓		25 CASES	MADE GARMENTS (POLYESTER/COTTON)		14.018			
M-1) COTTONTEX	✓		3 CASES	COLOURED PURLIN.		1.006			
M-2) COTTONTEX	✓		20 BALES	GENEVO DYED NAVY COTTON DENIM DRESS TWEED.		5.982			
M-3) COTTONTEX	✓		8 BALES	COLOUR PRINTED COTTON TWEED, BOTH SIDES RAISED.		3.079			
M-4) COTTONTEX	✓		7 BALES	COLOUR PRINTED COTTON TWEED BOTH SIDES RAISED		3.167			
M-5) COTTONTEX	✓		3 BALES	COLOUR PRINTED COTTON TWEED, SHIRTINGS		1.542			
M-6) COTTONTEX	✓		3 BALES	COLOUR PRINTED COTTON TWEED, BOTH SIDES RAISED.		1.318			
M-7) COTTONTEX	✓		9 BALES	COLOUR PRINTED COTTON					

Plaintiff's Exhibits "P.l." - Telex -
Appellant to Wantex Trader - 5th October
1976

EXHIBITS

Plaintiff's
Exhibits
"P.l." -
Telex
Appellant to
Wantex Trader
5th October
1976

05/10 0950 PTS
080284221+
84221 DENIM HX
2442 JET

NICOSIA 5.10.1976

MESSAGE FROM G KALLIS CYPRUS.

10 WITH REF TO SHIPMENT OF DENIM UNDER LC 76/20661
AND AS SHOWN ON COPY DOCUMENTS IN OUR HANDS YOU
SHIPPED GOODS PER SS TA SHUN. COPIES OF THE BILLS
OF LADING SHOW SHIPMENTS ON 28TH JULY AND 3RD
AUGUST. IT IS NOW 5TH OCTOBER AND WE HAVE NO
EVIDENCE THAT THIS VESSEL CAME TO CYPRUS.
WERE THE GOODS TRANSHIPPED FROM ANYWHERE? CAN YOU
FIND OUT WHERE TRANSHIPMENT WAS MADE AND WHICH
VESSEL IS GOING TO BRING THE GOODS TO CYPRUS?
20 PLEASE ASK YOUR SHIPPING COMPANY AND LET US KNOW BY
TELEX RETURN AS THIS IS VERY URGENT. WE NEED THE
GOODS URGENTLY BECAUSE AS WE EXPLAINED BEFORE WE
HAVE TO COMPLETE AN ORDER FOR EXPORT AND WE NEEDED
THE GOODS TO BE HERE ONE MONTH AGO.
REGARDS KALLIS.

2442 JET
84221 DENIM HX

EXHIBITS

Plaintiff's
Exhibits
"P.l."
Telex
Appellant to
Wantex Trader
7th October
1976

Plaintiff's Exhibits "P.l." - Telex -
Appellant to Wantex Trader - 7th October
1976

07/10 1917 PTS
84221 DENIM HX
2442 JET

NICOSIA 7.10.1976

MESSAGE FROM G KALLIS CYPRUS FOR WANTEX;

ON THE QUESTION OF SHIPMENT OF DENIM PER SS TA SHUN
UNDER OUR LC 76/28661 PLEASE NOTE THE FOLLOWING:

10

1) THE BILLS OF LADING YOU HAVE PRESENTED US
SHOW DIRECT SHIPMENT FROM HONG KONG TO LIMASSOL.

2) THE CYPRUS AGENTS OF TA SHUN SAY THAT THIS
SHIP NEVER CALLS TO CYPRUS.

3) IF THIS IS THE CASE IT MEANS THAT YOU IN
COLLABORATION WITH BLUE SKY SHIPPING CO. LTD HAVE
MADE FALSE DECLARATIONS IN ORDER TO GET PAID FROM
THE BANK BEFORE THE EXPIRY OF THE LC.

4) IT IS 2 MONTHS NOW FROM THE DATE THAT THE
BILLS OF LADING EVIDENCE SHIPMENT AND SO FAR THERE
IS NO SIGN OF TA SHUN.

20

5) WE HAVE TO PAY PENALTIES TO OUR CUSTOMERS
AND EXPECT TO RECEIVE GOODS FROM US.

6) WE HOLD YOU RESPONSIBLE TOGETHER WITH THE
SHIPPING CO FOR ALL THE AMOUNT OF THE LC UNLESS
WITHIN 24 HOURS FROM NOW YOU GIVE US A CLEAR
EXPLANATION OF WHAT GOES ON AND WHERE THE CARGO IS.
OTHERWISE WE SHALL IMMEDIATELY HAND THE MATTER TO
OUR SOLICITORS TO TAKE LEGAL ACTION AGAINST YOU
AND THE SHIPPING CO WHICH ISSUED THE BILLS OF
LADING.

30

COPY OF THIS MESSAGE IS BEING SENT TO MESSRS AS
ONISSIFOROU.

2442 JET

84221 DENIM HX

Plaintiff's Exhibits "P.l." - Telex -
Wantex Trader to Appellant - 7th October
1976

EXHIBITS
Plaintiff's
Exhibits
"P.l." Telex
Wantex Trader
to Appellant
7th October
1976

2442 JET

84221 DENIM HX

WANTEX HGKG TLXNR 1115/10 7/10/76

RYT5

PLS CONTACT:

CACOYANNIS P.L. AN CO TLX 2390 PILCACO PHONE

10 3154-5 (LIMASSOL AGENT) FOR THE ARRIVAL OF TA SHUN

RGDS+

2442 JET0

EXHIBITS

Plaintiff's
Exhibits
"P.l."

Plaintiff's Exhibits "P.l." - Telex
Messrs. A.G. Onissiforou from Appellant
8th October 1976

Telex - Messrs.

A.G. 2493+
Onissiforou 2493 ONISIFORU
from Appellant
8th October 2442 JET
1976

8.10.1976

THE FOLLOWING TLX WAS SENT TO MESSRS WANTEX HONG
KONG:

2442 JET

10

NICOSIA 7.10.1976.

MESSAGE FROM G KALLIS CYPRUS FOR WANTEX:

ON THE QUESTION OF SHIPMENT OF DENIM PER SS TA SHUN
UNDER OUR LC 76/20661 PLEASE NOTE THE FOLLOWING:

1) THE BILLS OF LADING YOU HAVE PRESENTED US SHOW
DIRECT SHIPMENT FROM HONG KONG TO LIMASSOL.

2) THE CYPRUS AGENTS OF TA SHUN SAY THAT THIS
SHIP NEVER CALLS TO CYPRUS.

3) IF THIS IS THE CASE IT MEANS THAT YOU IN
COLLABORATION WITH BLUE SKY SHIPPING CO LTD HAVE
MADE FALSE DECLARATIONS IN ORDER TO GET PAID FROM
THE BANK BEFORE THE EXPIRY OF THE LC.

20

4) IT IS 2 MONTHS NOW FROM THE DATE THAT THE
BILLS OF LADING EVIDENCE SHIPMENT AND SO FAR THERE
IS NO SIGN OF TA SHUN.

5) WE HAVE TO PAY PENALTIES TO OUR CUSTOMERS WHO
EXPECT TO RECEIVE GOODS FROM US.

6) WE HOLD YOU RESPONSIBLE TOGETHER WITH THE
SHIPPING CO FOR ALL THE AMOUNT OF THE LC UNLESS
WITHIN 24 HOURS FROM NOW YOU GIVE US A CLEAR
EXPLANATION OF WHAT GOES ON AND WHERE THE CARGO IS.
OTHERWISE WE SHALL IMMEDIATELY HAND THE MATTER TO
OUR SOLICITORS TO TAKE LEGAL ACTION AGAINST YOU AND
THE SHIPPING CO WHICH ISSUED THE BILLS OF LADING.

30

COPY OF THIS MESSAGE IS BEING SENT TO MESSRS AG
ONISSIFOROU.

2442 JET
2493 ONISIFORU

Plaintiff's Exhibits "P.1." - Telex
Wantex Trader to Appellant - 9th October
1976

EXHIBITS
Plaintiff's
Exhibits
"P.1." Telex
Wantex Trader
to Appellant
9th October
1976

2442 JET

84221 DENIM HX

WANTEX HGKG TLXNR 1139/10 9.10/76

MSG TO G KALLIS NICOSIA

RYT7

10 AS TA SHUN FIRST TIME CALLS CYPRUS, AND NOW IS
LOADING GOODS AT TRIPOLI, THEIR AGENT -CACOYANNIS
P.L. AND CO. WILL CONTACT REGARDING HER ARRIVING
DURING COMING NEXT WEEK

RGDS+

2442 JETT

EXHIBITS

Plaintiff's
Exhibits "P.1."
Letter Wantex
Trader to
Appellant
11th October
1976

Plaintiff's Exhibits "P.1." - Letter
Wantex Trader to Appellant - 11th
October 1976

WANTEX TRADER

Rm. 820 Star House Kowloon, Hong Kong.
Cable ADD: "KAMERON" TEL: 3-661229, 3-661220
TELEX: 84221 ANSWER BACK HX DENIM

Hongkong, 11th October, 1976

Messrs G. Kallis (Mfrs) Ltd.
P.O. Box 1750,
Nicosia, Cyprus.

10

Dear Sirs,

We also feel surprised at Ta Shun hasn't arrived to Cyprus by now. Therefore, we phoned to the shipping company, and they told us, this is the first sail of Ta Shun to Cyprus, and she is loading goods in Tripoli so delay the arrival to Cyprus. Please attend to the agent "Cacoyanis P. L. & Co." who will contact you regarding Ta Shun arriving date. If you have any problem, please telex directly to 83773 Sewis to enquire the real situation of the ship and the definite arriving date.

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Thanking you in advance.

Yours faithfully,
W A N T E X T R A D E R

Sgd. K.L. So
K.L. SO
Manager,
KLS/lk

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Plaintiff's Exhibits "P.1." - Telex
Wantex Trader to Appellant - 14th October
1976

EXHIBITS
Plaintiff's
Exhibits "P.1."
Telex - Wantex
Trader to
Appellant - 14th
October 1976

2442 JET
84221 DENIM HX

WANTEX HGKG TLXNR 1168/10 14/10/76

MSG TO GEORGE KALLIS - NICOSIA

RE SHIPMENT PER TA SHUN

10 PLS SEND TELEX DIRECT TO SEAWISE FOR THE ARRIVING
OF TA SHUN TELEX NUMBER IS 83773 ANSWER BACK
83773 SEWIS

REGDS+
2442 JET

EXHIBITS

Plaintiff's
Evidence
"P.1."
Letter - Blue
Sky Shipping
Co. Ltd. to
Wantex Trader
30th October
1976

Plaintiff's Evidence "P.1." - Letter -
Blue Sky Shipping Co. Ltd. to Wantex
Trader - 30th October, 1976

BLUE SKY SHIPPING CO. LTD.

Our ref:
Taipei, October 30, 1976

To: WANTEX TRADER
HONG KONG

(Agreed Typed
Version)

We regret to inform you that the cargo you
have consigned with Seawise Shipping Company via
m/v "TA HUNG" to be transhipped at Keelung for
the port(s) at Mediterranean area as listed in
the attachment hereto is still in the warehouse
at Keelung because Seawise Shipping Company has so
far refused to settle the freight accounts with us
regarding said cargo in spite of our repeated
requests therefor since the time right after the
loading of the cargo on m/v "TA HUNG". Under these
circumstances, please be given to understand that
we can not arrange the onward carriage as we are
not in a position and are unable to suffer any
further loss which might incur to us if transhipment
were arranged at this end without receiving the
freight favouring us and the reimbursements of
warehouse charges and other expenses already
incurred.

10

20

Under these unfortunate circumstances, we
would, in order to smoothly solve the problem so
that your cargo can reach the destination(s), beg
your cooperation by paying to us through our agent
Messrs. Union Creative Shipping Ltd. all the sums
stated in the attachment hereto in exchange of a
Memo Bill of Lading for each Bill of Lading already
issued, whereupon your cargo will be loaded on m/v
"INTELLECT". ETA Keelung November 1st, ETD Keelung
November 6th for different ports at Mediterranean
area.

30

In the meantime, would you please kindly
acknowledge the receipt of this circular letter
and the attachment by signing on the space provided
on the copy paper.

40

BLUE SKY SHIPPING CO. LTD., TAIPEI

Sgd. Illegible

c.c. Union Creative Shipping Ltd., Hong Kong.

Plaintiff's Evidence "P.1" - Letter -
Blue Sky Shipping Co. Ltd. to Wantex
Trader - 30th October 1976 (Photocopy)

00068

78

Blue Sky Shipping Co. Ltd.
SALES PROMOTION AND MARKETING SERVICES
SHIP MANAGERS AGENTS

Our Ref: FS-232/76

Taipei, October 30, 1976

TO: WANTEX TRADER

We regret to inform you that the cargo consigned with
Sea Line Shipping Company via M/V "A HUNG" to Keelung, for
the ports of the Mediterranean area, is stuck at Keelung, due
to a change of cargo at Keelung because of the company's
request for freight accounts with the company's cargo
inspector. Under these circumstances, please be given to
understand that we can not arrange the onward carriage as we are not in a
position and are unable to suffer any further loss which might incur if
if transshipment were arranged at this end without receiving the freight
favouring us and the reimbursements of warehouse charges and other expenses
already incurred.

Under these unfortunate circumstances, we would, in order to smoothly
solve the problem so that your cargo can reach the destination(s), beg your
cooperation by paying to us through our agent WASTS, Union Creative Shipping
Ltd. all the sums stated in the attachment hereto in exchange of a Memo Bill
of Lading for each Bill of Lading already issued, whereupon your cargo will
be loaded on M/V "INTELLECT", ETA Keelung November 1st, ETD Keelung November 6th
for different ports at Mediterranean area.

In the meantime, would you please kindly acknowledge the receipt of this
circular letter and the attachment by signing on the space provided on the copy
enclosed.

BLUE SKY SHIPPING CO., LTD. TAIPEI

cc: Union Creative Shipping Ltd. Hong Kong

EXHIBITS

Plaintiff's
Exhibits
"P.1"
Letter
Seawise
Shipping Co.
to Wantex Trader
- 23rd November
1976

Plaintiff's Exhibits "P.1." - Letter
Seawise Shipping Co. to Wantex Trader
23rd November 1976

SEAWISE SHIPPING COMPANY

(A Fully owned and operated by Seawise Agency Ltd.

19/F1. Fortune House,
61 Connaught Road, Central,
Hong Kong.

Your ref. Our ref. Date 23 Nov. 1976

To: Wantex Trader
Rm. 820 Star House,
Kowloon.

10

TO WHOM IT MAY CONCERN

m.v. 'TA SHUN'
m.v. 'TA HUNG'

WE ARE HEREBY ON BEHALF OF BLUE SKY SHIPPING
COMPANY TAIPEI TO ADVISE YOU THAT ALL MERCHANDISES
LOADED ON M.V. "TA SHUN" AND M.V. "TA HUNG" HAD
BEEN TRANSHIPPED TO M.V. "INTELLECT" IN KEELUNG,
TAIPEI PLEASE ADVISE YOUR CONSIGNEES ACCORDINGLY.

20

EXHIBITS

Plaintiff's
Evidence
"P.1" Telex
Appellant to
Blue Sky
Shipping Co.
Ltd. 26th
November 1976

Plaintiff's Evidence "P.1." - Telex
Appellant to Blue Sky Shipping Co.Ltd.
26th November 1976

26/11 1239 PTS

22509 BLUELINE

2442 JET
NICOSIA CYPRUS 26.11.76

10 1) BL NO HK/LIM-23 DATED 3.8.76 COVERING
SHIPMENT OF 41 BALES 100 PCENT COTTON INDIGO BROKEN
Twill DENIM S S TASHUN.

2) BL NO. HK/LIM-16 DATED 28.7.76 COVERING
SHIPMENT OF 58 BALES INDIGO BROKEN TWILL QUALITY
30001 PER S S TA SHUN

3) BL NO HK/LIM-21 DATED 3.8.76 COVERING
SHIPMENT OF 58 BALES INDIGO BROKEN TWILL PER S S
TA SHUN.

4) BL NO HK/LIM-17 DATED 28.7.76 COVERING
SHIPMENT OF 66 BALES BROKEN TWILL QUALITY 3001 PER
S S TASHUN.

20 WITH REFERENCE TO THE ABOVE CONSIGNMENTS PLS NOTE
THAT TO DATE WE CANNOT TRACE THE WHEREABOUTS OF
THE CARRYING VESSEL TA SHUN. WE HOLD YOU
RESPONSIBLE FOR ANY LOSS OR NON DELIVERY OF THE
ABOVE GOODS AND SHALL TAKE LEGAL ACTION UNLESS
WE ARE INFORMED BY RETURN TO TLX NO 2442 CYPRUS
AS TO THE WHEREABOUTS OF THE CARRYING VESSEL.
REGARDS KALLIS

2442 JET
22509 BLUELINE
T
30 26

EXHIBITS

Plaintiff's
Exhibits
"P.1"
Telex
Appellant
to Wantex
Trader 26th
November
1976

Plaintiff's Exhibits "P.1." - Telex
Appellant to Wantex Trader - 26th
November 1976

NC
O
26/11 1026 PTS
080284221+
84221 DENIM HX
2442 JET
10 NICOSIA-CYPRUS 26.11.76 10
MESSAGE FROM G. KALLIS FOR THE ATTN. OF WANTEX.
RE SHIPMENT PER S/S TA SHUN UNDER LCS NOS 76/20661
and 76/2354 PLS NOTE THAT SO FAR WE HAVE NO NEWS
OF THIS SHIP AND NOBODY CAN GIVE US AN EXPLANATION
AS TO ITS WHEREABOUTS. MEANTIME PLS NOTE THAT THE
INSURANCE OF THE GOODS WILL EXPIRE AND CONSEQUENTLY
WILL NOT BE COVERED IN CASE OF DAMAGE. PLS SEE
THAT YOU INSURE THE GOODS AGAIN.
20 ALSO CONTACT THE SHIPPING CO WHO ISSUED THE BILL 20
OF LADING AND ASK THEM TO TELL YOU IF THEY HAVE ANY
NEWS ABOUT THE GOODS. WHY DONT YOU GIVE US THEIR
ADDRESS AND TELEX NO IN HONG KONG? ON BILL OF LADING
THERE IS NO FULL ADDRESS AND TLX. DO YOU KNOW IF
GOODS HAVE BEEN RECENTLY TRANSHIPPED? PLS TLX BACK
URGENTLY BY RETURN.
REGARDS KALLIS
2442 JET
84221 DENIM HXO
2442 JET
30 CAN YOU PLEASE GIVE ME THE TELEX NO OF BLUE SKY 30
SHIPPING CO. LTD TAPEI TAIWAN R O C
26/11 1115 PTS
179+
NP
26/11 1116 PTS
97+
NA
26/11 1116 PTS
0197+
CARRIER LIMASSOLO 40
26/11 1118 PTS
012+
40 DER
26/11 1118 PTS
012+
TLX ENQUIRIES CY
2442 JET
CAN YOU PLEASE GIVE ME THE TELEX NO OF BLUE SKY
SHIPPING CO LTD TAPEI TAIWAN R O C 50
SHALL I WAIT PLS?
MOM MOM
22509
TKS

EXHIBITS

Plaintiff's Exhibits "P.1." - Telex
Appellant to Respondent - 27th November
1976

Plaintiff's
Exhibits
"P.1"
Telex -
Appellant to
Respondent
27th November
1976

27/11 0823 PTS
080274320+
74320 ALEXC HX
2442 JET
NICOSIA-: CYPRUS 27.11.76

10 RE: INSURANCE POLICIES NOS M/116793, M/116972
AND M/116768 COVERING GOODS SHIPPED PER S S TA
SHUN.
PLS NOTE THAT THE GOODS COVERED BY THE ABOVE
POLICIES HAVE NOT YET BEEN DISCHARGED AT LIMASSOL
AND DESPITE OUR EFFORTS WE HAVE NOT BEEN ABLE TO
TRACE THE WHEREABOUTS OF THE CARRYING VESSEL.
UNDER THE CIRCUMSTANCES WE RESERVE OUR RIGHTS TO
LODGE A CLAIM FOR THE LOSS OR NON-DELIVERY OF THE
GOODS COVERED BY THE ABOVE POLICIES IN DUE COURSE.
20 PLS ACKNOWLEDGE RECEIPT TO TLX NO 2442 CYPRUS.
REGARDS

G. KALLIS (MANUFACTURERS) LTD.

2442 JET

74320 ALEXC HXO

EXHIBITS

Plaintiff's
Exhibits
"P.1" -
Telex -
Blue Sky
Shipping Co.
Ltd. to
Appellant
27th
November
1976

Plaintiff's Exhibits "P.1." - Telex -
Blue Sky Shipping Co. Ltd. to Appellant
27th November 1976

2442 JET
22509 BLUELINE

TO NLESIA - CYPRUS
FM BLUELINE - TAIPEI
NOV 27 76 REF. SO-6039/76

RYTLX26 NOTED
RE BLADING HK/LIM-16, 17, 21 and 23 PER SS TA SHUN.
WE HAVE ALREADY ARRANGED TRANSHIPMENT ABOVE-
MENTIONED CARGOES AT KEELUNG ON MV INTELLECT, VSL
NOW ON THE WAY FOR MED SEA , ETA PIRAEUS DEC 28TH.
THE SAID CARGOES WL BE TRANSHIPPED AT PIRAEUS,
GREECE WHERE OUR AGENT NAME N ADDRESS AS FLWS:

10

ADAMAR SHIPPING CO., LTD.
5-7 FILELLINON STREET
PIRAEUS
GREECE
TELEX 213144
CABLE ADASHIPCO PIRAEUS
TELEPHONE 4523570/72

20

PLS CONTACT THEM DIRECTLY FOR FURTHER DETAILS.

TKS N. RGDS BLUELINE TAIPEI

HOW RCVD PLS+?
2442 JET
22509 BLUELINE
MMMNO

EXHIBITS

Plaintiff's
Exhibits
"P.1"
Telex -
Appellant to
Blue Sky Co.
Ltd. - 29th
November 1976

Plaintiff's Exhibits - "P.1." - Telex
Appellant to Blue Sky Shipping Co.Ltd.
29th November 1976

29/11 1402 PTS
08522500
22509 BLUELINE

2442 JET
NICOSIA 29.11.76
MESSAGE FROM G KALLIS (MANUFACTURERS) LTD. CYPRUS

10 WITH REF TO YOUR TLX UNDER REF SO-6039/76 OF
27.11.76 PLS NOTE THAT ACCORDING TO THE BILLS OF
LADING ALREADY IN OUR HANDS YOU HAVE UNDERTAKEN
DISCHARGE THE GOODS AT LIMASSOL WITHOUT TRANSHIPMENT.
ACCORDING TO YOUR ABOVE TLX NOT ONLY YOU HAVE
CHANGED THE NAME OF THE VESSEL BUT YOU HAVE OR
YOU SHALL BE TRANSHIPPING THE GOODS ONE OR MORE
TIMES.
AS THE ABOVE GOODS ARE VERY URGENTLY REQUIRED WE
SHOULD LIKE YOU TO MAKE ALL NECESSARY ARRANGEMENTS
20 FOR THE DISCHARGE OF THE GOODS AT LIMASSOL THE
SOONEST POSSIBLE GIVING US AT SAME TIME FULL
DETAILS INCLUDING THE NAMES OF THE VESSELS AND THE
EXPECTED DATE OF THEIR ARRIVAL TO THE FINAL PORT OF
DISCHARGE.
WE RESERVE OUR RIGHTS TO ASK FOR COMPENSATIONS
BECAUSE OF LATE OR NON DELIVERY OR LOSS OF THE
ABOVE GOODS.
THKS REGARDS
KALLIS
30 2442 JET

22509 BLUELINE

EXHIBITS

Plaintiff's
Exhibits
"P.1"
Letter - Shea
and Co. to
Seawise
Shipping Co.
29th
November
1976

Plaintiff's Exhibits "P.1." - Letter -
Shea and Co. to Seawise Shipping Co.
29th November 1976

SOLICITORS & C.
SOUTH CHINA BUILDING
NOS 1-3 WYNDHAM STREET, 18TH FL.
HONG KONG.

Our ref. A-10677-SA
Your ref.

Hong Kong 29th November 1976

10

Messrs. Seawise Shipping Company,
Fortune House 19th floor,
61 Connaught Road Central,
Hong Kong.

Dear Sirs,

re: Bill of Lading No. HK/LIM/
16,17,20 to 27 inclusive

We have been consulted by Messrs. Wantex Trader
upon 10 bill of Ladings respectively dated 28th July,
3rd and 8th August 1976 for the following consignment
to Limassol consigned to Messrs. G. Kallis (Mfrs.)
Ltd. Nicosia:-

20

HK/LIM/21	58 bales Indico	8th Aug., 1976
HK/LIM/16	58 bales Indico	28th July 1976
HK/LIM/17	66 bales Indico	28th July, 1976
HK/LIM/25	9 cases poylin dyed	3rd Aug., 1976
HK/LIM/26	25 bales Indico	3rd Aug., 1976
HK/LIM/24	12 bales Indico	3rd Aug., 1976
HK/LIM/20	7 bales Indico	3rd Aug., 1976
HK/LIM/27	7 bales Indico	3rd Aug., 1976
HK/LIM/22	25 bales Indico	3rd Aug., 1976
HK/LIM/23	41 bales Indico	3rd Aug., 1976

30

As your goodselves are the shipping agents
herein, we shall be obliged to be informed on behalf
of our client as to the date on which m.v. Ta Shun
arrived at Limassol, and the date on which the goods
were delivered to the consignee.

Yours faithfully,

REFER OUR TELEX NO. 1314/11 DATED 30/11/1976
With the Compliments of
WANTEX TRADER.
Rm 820 Star HOUse, Kowloon
Hong Kong.

40

EXHIBITS

Plaintiff's Exhibits "P.1." - Telex
Wantex Trader to Appellant - 30th
November 1976

Plaintiff's
Exhibits
"P.1"
Telex Wantex
Trader to
Appellant
30th November
1976

73848 ALTEX HXT
2442 JET
84221 DENIM HX

MSG TO G KALLIS NICOSIA

WANTEX HGKG TLXNR 1314/11 30/11/76

RYT26/11

10 REFER TO THE PROBLEM OF TA SHUN STATED PER YOUR
TELEX, PLS NOTE THAT WE HAVE CONTACT THE SHIPPING
CO HERE BUT STILL HAVE NOT RECEIVE ANY DEFINITE
ANSWER REGARDING TA SHUN. WE HOWEVER ALREADY
AUTHORIZED OUR LAWYER SHEA AND CO TO FIGHT FOR THE
MATTER (PHOTO COPY SEND TODAY) TRUST WILL GIVE
YOU RESULT SOONEST AT PRESENT WE CAN ONLY PROVIDE
THE FOLLOWING DETAILS OF THE CONCERNED SHIPPING
CO

20 SEAWISE SHIPPING COMPANY
19 FLOOR, FORTUNE HOUSE
61 CONNAUGHT ROAD CENTRAL
HONGKONG.
TELEX : 83773 SEWIS
TEL. : 5-448081

RGDS+
2442 JET
84221 DENIM HXO

EXHIBITS

Plaintiff's
Exhibits
"P.1"
Letter
Wantex Trader
to Shun Fai &
Co. (Insurance)
Ltd.
1st
December
1976

Plaintiff's Exhibits "P.1." - Letter
Wantex Trader to Shun Fai and Co.
(Insurance) Ltd. - 1st December 1976

Hongkong 1st December 1976.

Shun Fai & Co. (Insurance) Ltd.
303, General Commercial Bldg.,
156-164 Des Voeux Rd. C.,
Hongkong.

Dear Sirs,

re: Your Policy no. M/116768	Insured Value	US\$38280.00	10
" " no. M/116971	Insured Value	US\$12760.00	
" " no. M/116972	Insured Value	US\$31900.00	
" " no. M/116973	Insured Value	US\$21084.00	

With reference to the captioned policies, we would like to draw your kindly attention to the fact that since all the concerned goods were originally shipped per vessel "Ta Shun" on August 1st, 1976. However, after that, we have received a letter from the relevant shipping company 'Seawise Shipping Company, Hongkong' informed that the said vessel never came to Hongkong due to a certain reason. To this end, all goods were transmitted to another vessel "Ta Hung", she was sailed on the same day as "Ta Shun".

Later on, we received another information from the master shipping company 'Blue Sky Shipping Co.Limited, Taiwan.' advised that "Ta Hung" will not on voyage to our indicated destination LIMASSOL, she only back to Taiwan. To which, all the concerned merchandise were keeping by them, and they explaint that they have some problem not yet settle with 'Seawise Shipping Company, Hongkong' (photo copy enclosed herewith).

However, on 23rd November 1976 'Seawise Shipping Co.' inform that all goods now been shipped per ss. "Intellect" from Taiwan direct to LIMASSOL on 17th November, 76, as per instruction enclosed.

Under these alterations, we are, therefore would much obliged if you can advised your principal the aforesaid occasions, and issue the relevant endorsement of the captioned policy to us earliest convenience.

Finally, please accept our apologies for the inconvenience you have suffered.

Yours faithfully,
W A N T E X T R A D E R,

K.L. SO,
Manager
KLS/cc. Encl.

EXHIBITS

Plaintiff's
Exhibits
"P.1"
Letter
Wantex Trader
to Shun Fai &
Co. (Insurance)
Ltd.
1st December 1976
(Contd.)

EXHIBITS

Plaintiff's Exhibits "P.1." Letter Seawise Shipping Co. to Shea and Co. 2nd December 1976

Plaintiff's Exhibits "P.1." - Letter Seawise Shipping Co. to Shea and Co. 2nd December 1976

SEAWISE SHIPPING COMPANY

(A Fully Owned and Operated By Seawise Agency Ltd.)

19/F1. Fortune House, 61 Connaught Road, Central Hong Kong.

CABLE: SEAWISECO
TELEX: 83773 SEWIS
TEL. 5-448001

10

Your ref. Our ref. SWS 00289/76 2nd Dec. 76

Shea & Co., South China Bldg., 18/fl., No. 1-13 Wyndham Street, Hong Kong.

Dear Sir,

B/L No. HK/LIM 16, 17, 20 to 27
Transshipment Cargo

With reference to your letter ref: A-10677-SA of 29th November, 1976, we are pleased to advise you that the above shipment already tranship to our principal another vessel M.V. "Intellect", she ETA Limassol around and December 76/early January 77. Your clients already known about this information.

20

Also, we cannot advise you when consignee will take delivery cargo due to we don't know port regulation in there.

Yours faithfully,

30

REFERENCE: OUR TELEX DATED 3/12/76
TELEX NUMBER 1234/12.

- URGENT
- for your record
- for your comments/reply
- ✓ for your attention
- for your approval
- please telephone
- please cable/telex
- please acknowledge receipt
- please countersign and return
- please pay by cash/cheque

With the compliments of
WANTEX TRADER
Rm.820 STAR HOUSE
KOWLOON HONG KONG
TEL:3-661229,
3-661220
CABLE "KAMERON"
TELEX: HX 84221 DENIM

40

Plaintiff's Exhibits "P.1." - Telex
Wantex Trader to Appellant - 3rd
December 1976

EXHIBITS
Plaintiff's
Exhibits
"P.1."
Telex - Wantex
Trader to
Appellant - 3rd
December 1976

RCA 03 0403
2442 JET
84221 DENIM HX

WANTEX HGKG TLXNR 1324/12 3/12/76

MSG FROM WANTEX HGKG TO G. KALLIS NICOSIA

ADVISED BY SEAWISE TODAY ALL YOUR CARGO BEING
TRANSHIP BY MV INTELLECT ARRIVING AROUND END
DECEMBER 76

10

SEAWISE LETTER COPY FOLLOWED

RGDS

EXHIBITS

Plaintiff's Exhibits "P.l." Richards Hogg International Circular to Cargo Owners undated

Plaintiff's Exhibits "P.l." - Richards Hogg International Circular to Cargo Owners - undated

RICHARDS , HOGG INTERNATIONAL
AVERAGE ADJUSTERS

G.P.O. Box 3387
10th Floor, Gammon House,
12 Harcourt Road,
Hong Kong.

Your ref: 10
our ref :

TO WHOM IT MAY CONCERN

"INTELLECT"

We have been requested by the Shipowners to issue the following notice to all interested parties with cargo on board the above mentioned vessel.

"On 27th November 1976 when in the Malacca Straits a fire broke out on board the vessel. Salvage services were rendered and the 'Intellect' has now been towed to Jurong Anchorage Singapore where she now lies.

20

We Shin Shin Navigation Co. S.A. have now been advised by our Surveyors that the vessel is a commercial total loss and is unfit to complete the voyage. In these circumstances Owners regret that it is necessary to declare the voyage abandoned and cargo is accordingly advised that it should undertake its own urgent arrangements to discharge the cargo."

30

In addition, the Shipowners further instruct us to advise you that as they have incurred expenses of a General Average nature, they will only release cargo if General Average Security is provided in the form of completed Average Bonds and Cargo Underwriters' Guarantees. Therefore to this end we enclose the necessary form(s) and request you to arrange for their early completion and return to us.

Finally, it should be noted that Salvors (Messrs. Selco) will require acceptable Salvage Security in terms of the Lloyd's Standard Form of Salvage Agreement 'No Cure - No Pay' under which their services were rendered.

In view of the foregoing we suggest that you immediately contact your Underwriters and obtain their instructions and assistance in order that the necessary arrangements can be put in hand promptly.

Yours faithfully,
Richards Hogg International

Plaintiff's Exhibits "P.I." - Letter
Respondents to Wantex Trader - 4th
December 1976

EXHIBITS

Plaintiff's
Exhibits
"P.I."
Letter
Respondents to
Wantex Trader
4th December
1976

SUCCESS HOLDINGS

SUCCESS INSURANCE LIMITED
911-5 Prince's Building,
G.P.O. Box 735
HONG KONG.

10 Your ref: our ref: SIL.76918 hong kong
4th December 1976

Messrs. Wantex Trader,
Room 820 Star House,
KOWLOON.

Dear Sirs,

re: Our Policy No. M/116768 Insured Value US\$38,380.00
" " No. M/116971 Insured Value US\$12,760.00
" " No. M/116972 Insured Value US\$31,900.00
" " No. M/116973 Insured Value US\$21,084.00

20 We acknowledge receipt of your letter of 1st December
with enclosures addressed to Shun Fai & Co. (Insurance)
Ltd. on the captioned subject and in reply regret to
advise that we are unable to endorse the policies as
requested, for which please accept our apologies.

Yours faithfully,
SUCCESS INSURANCE LIMITED
Sgd. Illegible
Manager.

HML/al
cc: Shun Fai & Co. (Insurance) Ltd.

EXHIBITS

Plaintiff's Exhibits "P.l." Letter Wantex Trader to Respondents 9th December 1976

Plaintiff's Exhibits "P.l." - Letter Wantex Trader to Respondents - 9th December 1976

WANTEX TRADER

Rm. 820 Star House, Kowloon, Hong Kong. Cable Add: "KAMERON" Tel: 3-661229, 3-661220 Telex 84221 Answer Back HX DENIM

Hongkong 9th December 1976 Your ref SIL-76918

Messrs.Success Insurance Ltd., 911-5 Prince's Building, Hong Kong. 10

Dear Sirs,

re: Your Policy No. M/116768 Insured Value US\$38,380.00 " " No. M/116971 Insured Value US\$12,760.00 " " No. M/116972 Insured Value US\$31,900.00 " " No. M/116973 Insured Value US\$21,084.00

We acknowledge receipt of your letter of 4th December., which regarding to the captioned policies. We however, immensely regret to note that you are unable to endorse the policies as we requested. To which, we would like to draw your attention to the fact that the above mentioned, we actually dealing with Messrs. Shun Fai & Co. (Insurance) Ltd., and we will contact them directly for this matter. 20

Yours faithfully, W A N T E X T R A D E R

Sgd. Illegible K. L. So, Manager. 30

KLS/cc cc: Shun Fai & Co. (Insurance) Ltd.

Plaintiff's Exhibits "P.I." - Letter
Wantex Trader to Respondents - 10th
December 1976

EXHIBITS

Plaintiff's
Exhibits
"P.I."
Letter Wantex
Trader to
Respondents
10th December
1976

WANTEX TRADER

Rm. 820 Star House, Kowloon, Hong Kong.
Cable Add: "KAMERON" Tel: 3-661229, 3-661220
Telex 84221 ANSWER BACK HX DENIM

Hongkong 10th December 1976

RECEIVED STAMP 13 DEC 1976

10 Messrs. Success Insurance Ltd.,
9115-, Prince's Building,
Hongkong.

Dear Sirs,

re: Your Policy No. M/116768 Insured Value US\$38,380.00
" " No. M/116971 Insured Value US\$12,760.00
" " No. M/116972 Insured Value US\$31,900.00
" " No. M/116973 Insured Value US\$21,084.00

20 We would refer to your letter of the 4th December,
1976 (reference SIL-76918), advising us that you are
not prepared to issue your Endorsements in respect
of the Charge of Voyage on the above policies. To
our understanding, this happening is completely
beyond our control and we believe that under the
terms as provided by the ICC (A/R) Clauses, your
company should cover the deviation, probably at on
A.P. to be arranged. However, if you have any
specific reasons to decline such coverage, please
advise us soonest.

Your attention will be much appreciated.

30 Yours faithfully,
W A N T E X T R A D E R

Sgd. Illegible
K.L. So,
Manager.

KLS/cc.

cc: Shun Fai & Co. (Insurance) Ltd.

EXHIBITS

Plaintiff's
Exhibits
"P.l."
Telex
Appellant to
Wantex Trader
23rd December
1976

Plaintiff's Exhibits - "P.l." - Telex
Appellant to Wantex Trader - 23rd
December 1976

23/12 1402 PTS
84221 DENIM HX
2442 JET
NICOSIA 23.12.76

MESSAGE FROM G KALLIS (MANUFACTURERS) NICOSIA-CYPRUS

RE OUR TLX OF 26.11.76 REGARDING SHIPMENTS PER S S
TA SHUN UNDER LC NOS 76/20661 AND 76/20546 PLS
CONFIRM URGENTLY THAT INSURANCE POLICIES HAVE BEEN
AMENDED TO COVER TRANSHIPMENT AT KEELUNG ON MV
INTELLECT.

10

FURTHER WE ARE ADVISED BY BLUE LINE THAT
ADDITIONAL TRANSHIPMENT WILL BE EFFECTED AT PIRAEUS
EX MV INTELLECT EXPECTED TO ARRIVE AT PIRAEUS
GREECE ON OR ABOUT 28.12.76.

PLS SEE THAT INSURANCE POLICIES NOS M/116768,
M/116972, M/116973 SUCCESS INSURANCE LTD. AND
M/32456 OF SUN INTERNATIONAL INSURANCE CO (HONG
KONG) LTD ARE PROPERLY AMENDED.

20

ALTHOUGH ALL TRANSHIPMENTS HAVE BEEN EFFECTED
WITHOUT REPEAT WITHOUT OUR CONSENT, BUT UNDER
LIBERTIES GRANTED BY RESPECTIVE BLS. YOUR URGENT
CONFIRMATION SHALL BE GREATLY APPRECIATED.

REGARDS
KALLIS
2442 JET

84221 DENIM HXO

Plaintiff's Exhibits "P.l." - Telex
Wantex Trader to Appellants - 29th
December 1976

EXHIBITS

Plaintiff's
Exhibits
"P.l."
Telex - Wantex
Trader to
Appellant
29th December
1976

2442 JET

84221 DENIM HX
2442 JET

WANTEX HGKG TLXMR 1391/12 29/12/76

RYT 24

10 YOUR SHIPT PER TA SHUN UNDER LC76/20661, 76/20546
BOTH NOW ARE ARRANGING RE-SHIPMENT PER INTELLECT
FROM HONG KONG TO LIMASSOL VIA PIRAEUS

WE HAVE DONE THE NECESSARY TO EXTEND OUR INSURANCE
COVER THROUGHOUT TRANSITMENTS, (SIC) EXTENSION, AND
BOTH INSURANCE AGENT HAS NOTED AND KEPT RECORD
UNDER HIS FILE , THAT CONCERNED GOODS HAS BEEN
TRANSHIPPED BY INTELLECT FROM KEELUNG , HONGKONG,
TO PIRAEUS

20 RGDS;
2442 JET
84221 DENIM HXO

EXHIBITS

Plaintiff's
Exhibits
"P.l."
Letter
Seawise
Agency Ltd.to
San Inter-
national
Insurance Co.
30th December
1976

Plaintiff's Exhibits "P.l." - Letter
Seawise Agency Ltd. to San International
Insurance Co. - 30th December 1975

SEAWISE SHIPPING COMPANY
(A Fully Owned and Operated by Seawise Agency Ltd.)

19/F1. Fortune House,
61 Connaught Road, Central
Hong Kong.

Cable: SEAWISECO Telex: 83773 SEWIS
Tel. 5-448081

10

Your ref: Our ref: SWS 00315/76 30th Dec. 76

San International Insurance Co. HK Ltd.,
No. 59, Des Voeux Rd., C.,
Hong Kong.

Dear Sir,

Ref: M.V. "Ta Hung"
M.V. "Ta Shun"

Referring to your letter dated 16th Dec.,
76, contents are duly noted, we, first of all,
advise you that we have been not the agent for
the Blue Sky Shipping Co. Ltd. Taipei as well
as their Steamers named as follows since the end of
Oct. 1976.

20

- 1) M.V. "Ta Hung"
- 2) M.V. "Ta Shun"
- 3) M.V. "Intellect"
- 4) M.V. "Humanity"
- 5) M.V. "Win Ho"

As mentioned as the above, we would like to
explain your questions with the best of our
knowledge as follows:-

30

- 1) M.V. "Ta Hung" built 1951, D.T. 4070
M.V. "Ta Shun" built 1947, D.T. 4500
- 2) M.V. "Ta Hung" arrived Hong Kong at
16/8/76 and sailed at 18/8.76 to Mid-Sea
ports via Keelung.
- 3) M.V. "Ta Hung": also carried the general
cargo of M.V. "Ta Shun" due to the
omission calling Hong Kong.

If you hope to have more details, please
directly requiry to owner's present Agent in Hong Kong.
Creative Union Shipping Ltd. H-262777

40

Trusting the above will comply with your
request.

Yours faithfully,

Plaintiff's Exhibits "P.l." - Telex
Wantex Trader to Orphanides and Murat
26th March 1977

EXHIBITS

Plaintiff's
Exhibits
"P.l." Telex
Wantex Trader to
Orphanides and
Murat - 26th
March 1977

26/03 1103 PTS

2468 ROTA 26.3.77 NICOSIA

2442 JET

TO: MESSRS ORPHANIDES AND MURAT, LLOYDS AGENTS
LIMASSOL

10 WE SHALL BE GREATLY PLEASED IF YOU CAN FURNISH
US WITH THE FOLLOWING INFORMATIONS:

- A) THE OWNER OF M.V. TA SHUN AND SINCE WHEN
- B) THE FLAG OF THE ABOVE M.V.
- C) THE WHEREABOUT OF M.V. TA-SHUN
- D) ANY OTHER INFORMATION RELEVANT TO OUR ABOVE
INQUIRIES

AS THIS INFORMATION IS NEEDED URGENTLY WE UNDER-
TAKE TO PAY ALL TELEX AND OTHER EXPENSES AT YOUR
REQUEST.
YOUR URGENT REPLY SHALL BE GREATLY APPRECIATED.

20 2442 JET

2468 ROTATO

EXHIBITS

Plaintiff's
Exhibits
"P.l." Letter
Orphanides
and Murat to
Appellants
29th March
1977

Plaintiff's Exhibits "P.l." - Letter
Orphanides and Murat to Appellants
29th March, 1977

ORPHANIDES & MURAT

P.O. Box 80, Limassol, CYPRUS.

Messrs. G. Kallis (Manufacturers) Ltd.
P.O. Box 1750,
Palsuriotissa - NICOSIA.

LIMASSOL 29th March, 1977

Your ref Our ref LLOYD'S ENQUIRIES

10

Dear Sirs,

Vessel "TA SHUN"

With reference to your telex enquiry regarding
the above vessel we advise you as follows :-

A. "TA SHUN" was of Panamanian flag and was
registered in the name of Messrs. Hung Navigation
Co.Ltd., Panama. Since October 1976 the vessel was
renamed "CHENG LUNG" but she retained the Panamanian
flag; the Owners are now given:-

Messrs. Foremost Express Co. S.A.
Room B - 12th Floor, Golden Mansion,
31 Chia-Nan Road,
SEC2 TAIPEI, TAIWAN.

20

B. The last time the vessel under the name
"TA SHUN" was recorded in world-wide arrival/sailing
records was in June 1976 as follows:- Arrived
PENANG 28/6/76.

C. The present position of the vessel under
her new name "CHENG LUNG" is that she sailed from
Hong Kong on 7th January, 1977 for UJANG PANDANG.

30

Further on the above subject and from
unofficial information it would appear that cargo
for Cyprus alleged as loaded per the vessel "TA
SHUN" in Far East was actually loaded or transhipped
to vessel "INTELLECT" which was on fire in the Straits
of Malacca wherefrom she was towed to Singapore and
eventually the vessel was abandoned as a constructive
total loss.

In concluding we enclose our debit note in
the amount of £17.750 mils and we shall be glad to
have your remittance in settlement.

40

Yours faithfully,
ORPHANIDES & MURAT.
Sgd. Illegible

Plaintiff's Exhibits "P.1." - Letter
Respondents to Orphanides and Murat
22nd April, 1977

EXHIBITS
Plaintiff's
Exhibits "P.1."
Letter
Respondents to
Orphanides and
Murat - 22nd
April 1977

SUCCESS INSURANCE LIMITED

911-5 Prince's Building, G.P.O. Box 735,
Hong Kong.

Your ref CFSC 165-6-7/77 Our ref MCA-552
OML/157/76/GA
Hong Kong 22nd April 1977

10 Orphanides & Murat
Head Office Division
P.O. Box 80
Limassol
CYPRUS.

Dear Sirs,

Re: 'TA SHUN' - Hongkong/Limassol
Policy Nos. M/116768, M/116972,
M/116973 & M/116971

20 Reference is made to the captioned subject resting
with your letter dated 29th March 1977.

30 For your information, the above consignments were
initially shipped per s.s. 'TA SHUN' scheduled
from Hongkong to Limassol but due to certain
dispute, these consignments were transhipped at
Keelung per s.s. 'INTELLECT'. The Insured had
subsequently informed us of the transhipment and
requested for endorsement in extending the
transhipment cover but such request was rejected
officially by this company. Under the circumstance,
there is no liability attaching to the consequences
arising whilst the goods were under carriage per
s.s. 'INTELLECT'.

Kindly therefore inform the consignees to refer
the matter direct with the shippers for attention.

Yours faithfully,

Sgd. Illegible
Michael Chan
KF/lc

EXHIBITS

Plaintiff's Exhibits "P.l."

Letter - San International Insurance Co. (Hong Kong) Ltd. to W.E. Cox & Co. (Recoveries) Ltd. - 28th April 1977

Plaintiff's Exhibits "P.l." - Letter San International Insurance Co. (Hong Kong) Ltd. to W.E. Cox & Co. (Recoveries) Ltd. - 28th April 1977

SAN INTERNATIONAL INSURANCE CO. (HONG KONG) LTD.

No. 59, Des Voeux Road, Central, Hong Kong.

28th April, 1977.

W.E. Cox & Co. (Recoveries) Ltd.

Cox House,
47 The Terrace,
Gravesend, Kent.
DA12 2DL ENGLAND.

10

Your Ref: FC.815/77/DRF
Our Ref : OS/76/142

Dear Sirs,

"TA SHUN"

Our Policy No. M/32456

We thank you for your copied letter addressed M/s. Orphanides & Murat dated 6th April, contents of which have been noted with great interest. However, we believe that the following information might also be of interest to you.

20

The above policy was in fact issued on 24th July for goods to be shipped per s.s. "TA SHUN" expected to sail from Hong Kong to Limassol on/about 27th July 1976. On 2nd December the shipper in Hong Kong requested us to grant extension of the above policy to cover the same goods per s.s. "INTELLECT" sailing from Keelung to Limassol. In view of the considerable lapse of time, we have carried out an investigation and discovered the following:-

30

- 1) s.s. "TA SHUN" omitted to call on Hong Kong, instead, s.s. "TA HUNG" called Hong Kong on 16.8.76 and departed on 18.8.76 which was said to have also carried the goods of "TA SHUN".
- 2) s.s. "TA HUNG" arrived Keelung on 20.8.76 and the goods were said to have discharged into the port warehouse on 21-22.8.76.
- 3) The shipper in Hong Kong should have aware of the deviation and change of vessel, at least on/about 30.10.76 when the shipping company advised them of all changes.

40

4) The goods were said to have been finally loaded on s.s. "INTELLECT", and departed Keelong for Limassol on 17.11.76.

10 We were never advised of any of the above changes until the 2nd December 1976 when we were asked to give extension cover on the captioned policy. In reply, we advised our assured of the automatic cessation of insurance covering within the terms and conditions of the policy. Also, neither any further extension was granted nor any subsequent policy was issued by us.

We trust these information might be of assistance to you. Moreover, we enclose photostat copies of the Shipping Company and their agents' letters which are self-explanatory. In case you may require any more information we would be too pleased to assist.

Yours faithfully,

Sgd. Illegible

20

A. TAM
Assistant Manager

AT/
Encl.

EXHIBITS

Plaintiff's Exhibits
"P.1."
Letter - San International Insurance Co. (Hong Kong) Ltd. to W.E. Cox & Co. (Recoveries) Ltd. - 28th April 1977
(cont'd)

EXHIBITS

Plaintiff's
Exhibits
"P.l." - Letter
National Bank
of Greece S.A. to
Respondents
12th May 1977

Plaintiff's Exhibits "P.l." - Letter
National Bank of Greece S.A. to
Respondents - 12th May 1977

NATIONAL BANK OF GREECE S.A.
INCORPORATED IN GREECE WITH LIMITED LIABILITY
LARNACA BRANCH 535
Zinonos Kitieos 39, Larnaca,
CYPRUS.

Larnaca 12th May 1977

Double Registered

DATE STAMPED 18 MAY 1977

10

Messrs
SUCCESS INSURANCE LTD.
911-5 Prince's Building
G.P.O. Box 735
HONG KONG.

Dear Sirs,

Your Policy No. M/116971 dd.31.7.76 for
US\$12760.- covering 25 bales Indigo
Broken Twill Denim per s.s. "TA SHUN"
from Hong Kong to Limassol

20

We are the holders/beneficiaries of the above
Policy of Insurance and your Agents in Cyprus,
Messrs. Orphanides & Murat, have given us copy of
your letter of 22nd April, 1977, ref. MCA-552/OML/
157/76/GA by which you are informing them that
you have refused to endorse the Policy to cover
transshipment per m.v. "INTELLECT" and that no
liability attaches to the Policy as a result of
the "INTELLECT" casualty.

30

We were very worried to read the contents of
the said letter and we are at a loss to understand
why you have refused to endorse the Policy to
cover transshipment and we are very anxious to
receive your explanation as soon as possible,
because the settlement of our claim is now a matter
of urgency. At the same time we would like to draw
your attention to the fact that our interpretation
of the terms and conditions of the Policy is that
the Institute Cargo Clauses (all risks), which
conditions are type-written on the Policy also cover
deviation, forced discharge and transshipment
effected beyond the control of the Assured-Vide
Transit Clause of the Institute Cargo Clauses.

40

At the same time this Policy was issued for
the account of Messrs. Wantex Trader held to the

EXHIBITS

Plaintiff's
Exhibits
"P.l." - Letter
Respondent to
National Bank
of Greece S.A.
20th May 1977

Plaintiff's Exhibits "P.l." - Letter
Respondent to National Bank of Greece
S.A. - 20th May 1977

SUCCESS INSURANCE LIMITED

HONG KONG

MCA-631 20th May, 1977
OML/157/76/GA

National Bank of Greece S.A.
Larnaca Branch 535
Zinonos Kitieos 39
Larnaca,
CYPRUS.

10

Dear Sirs,

Re: Claim under Policy No. M/116971
s.s. 'TA SHUN/INTELLECT' Hongkong to Limassol
General Average - Fire on 26.11.1976
Covering 25 Bales Indigo Broken Twill Denim

Reference is made to your letter dated 12th May
1977, contents of which have been noted.

In order to put you more clearly in picture, we
would advise that the consignment covered by the
above policy, in the very outset, was under
arrangement to be shipped from Hong Kong to
Limassol. Whilst at Keelung, the On-Carriers,
Blue Sky Shipping Co., Ltd. had refused to tranship
the cargoes to destination initially arranged
with the Original Carriers, Seawise Shipping Co.
due to certain monetary disputes and because of
such an unhappy event, the subject consignment
among the others was left in the warehouse of
Keelung. In solving the problem, the On-Carriers
had decided to load all the concerned cargoes
onto m/v "Intellect" scheduled to visit Keelung
on 1.11.1976 and depart on 6.11.1976 for different
ports at Mediterranean area provided that the
shippers agreed to pay all the incurred freight
charges. This announcement was circulated to all
respective shippers officially on 30.10.1976 which
we understand, a copy of same had served to our
Insured. Underwriters, in the normal practice,
would have no objection in granting the extension
for the transhipment as we did to other of our
Insureds provided prompt notification be given to
us immediately the Insured become aware of the
event. However, such a material fact was not
disclosed by the Insured to Underwriters until
1.12.1976 at which time we had already obtained

20

30

40

10 information that the vessel "Intellect" had involved with a casualty on 26.11.1976. Under the circumstances, we felt we were acting quite correct in rejecting the requested endorsement by the Insured as it was against the insurance principle, as well as the benefit of Underwriters, in granting cover to an insurance interest against its fortuitous event which had already become materialized as appeared in this case. Although the Institute Cargo Clauses (All Risks), as you pointed out, cover deviation, forced discharge and transshipment effected beyond the control of the Insured but you probably have overlooked that the cover shall only put in force provided prompt notice be given to Underwriters (please vide Transit Clause (1) and Termination of Adventure Clause (2) jointly) whereas as you could observe, the prompt notice compliance was totally ignored by the Insured.

20 Hoping the foregoing will solicit your full understanding of our position that we are render helpless in giving the claim our consideration.

Yours faithfully,

SUCCESS INSURANCE LIMITED

Sgd. Illegible
Michael Chan Director
KF/lc

EXHIBITS
Plaintiff's
Exhibits
"P.1."
Letter
Respondent to
National Bank
of Greece S.A.
20th May 1977
(cont'd)

EXHIBITS

Plaintiff's
Exhibits
"P.1."
Telex
Wantex
Trader to
Appellant
2nd June
1977

Plaintiff's Exhibits "P.1." - Telex
Wantex Trader to Appellant - 2nd June
1977

2442 JETO
2442 JET
84221 DENIM HX

WANTEX HGKG TLXNR 477/6 2/6/77

DOCUS WILL AIR TO U AGAIN
AS WE ALSO CONFUSED HOW THE SHIPPING CO TRANSHIP
THE GOODS BETTER FOR U CONTACT SEAWISE SHIPPING
CO

10

REGDS+
2442 JET 0

Plaintiff's Exhibits "P.2." - Survey
Report - Perfect Lambert & Co. - 11th
July 1977

EXHIBITS

Plaintiff's
Exhibits
"P.2."
Survey Report
Perfect Lambert
& Co. - 11th
July 1977

PERFECT, LAMBERT & CO.
River House,
119-121 Minorities,
LONDON EC3N 1PP
Telephone: 01-709 9644

11th July 1977

10 Our Ref C.57031/DAB/AC
Your Ref MR. WATSON

S U R V E Y R E P O R T

"INTELLECT"

On fire Nos. 3 and 4 hatches
and accommodation.

All Holds Flooded

In accordance with instructions received from
MESSRS. RICHARDS HOGG INTERNATIONAL and acting in
the General Interest, we duly proceeded to
20 Singapore to investigate and report on the condition
of the vessel's cargo following reports of fires
in Nos. 3 and 4 hatches and the subsequent flooding
of the vessel's holds.

According to information before us, we
understand that the vessel caught fire after
loading a general cargo at Far Eastern ports and
during the voyage to the first port of discharge
Suez. At the height of the fire, the Master and
crew abandoned the vessel which was then beached
30 by the Salvors, Selco, and following the
extinguishing of the fires the vessel was
refloated and towed to Singapore.

Lloyd's open form was signed with the
Salvors on the 29th November, 1976, and the contract
was terminated at Singapore on the 4th January,
1977.

The vessel is owned by Messrs. Shin Shin
Navigation Company S.A. of Taipei, and was on a
Voyage Charter to Messrs. Dongsan Construction &
40 Engineering Company of Seoul.

The vessel has six hatches, was built in 1957
and is of 5,957 tonnes gross, 3,424 nett. The
weather deck hatches are covered by means of wooden

EXHIBITS
 Plaintiff's
 Exhibits
 "P.2."
 Survey
 Report
 Perfect
 Lambert &
 Co. - 11th
 July 1977
 (cont'd)

hatch boards and tarpaulins. The engine room and accommodation is situated between Nos. 3 and 4 hatches.

Details of the voyage and events as obtained from Captain Cheng, Shipowners representative, at Singapore, were as follows:-

22.10.76.	Commence loading cargo at Busan, South Korea.	
28.10.76	Complete loading, v/l sails for Keelung.	10
30.10.76	V/l arrives off Keelung and anchors. Subsequently repair work carried out on v/l's "Donkey" boiler, v/l also obtains two fresh lifeboats.	
10.11.76.	Vessel berths at Keelung and commences loading cargo.	
13.11.76.	Complete loading, vessel moves berth.	
16.11.76.	Vessel sails for Hong Kong.	20
18.11.76.	Vessel berths at Hong Kong.	
19.11.76.	Commence loading cargo at Hong Kong.	
20.11.76.	Complete loading 2054 hours. Vessel sails for Suez.	
21.11.76. 1600 hrs.	Wind NE Force 7. Moderate gale, high sea and rough swell. Vessel shipping seas on deck at all times.	
	2000 hrs. Vessel rolling moderately.	30
27.11.76. 0445 hrs.	Position 3° 48' 0 N, 99° 37' E. Smoke noted to be issuing up from No. 3 hatch starboard side air pipe.	

Master's Note of Protest then continues with the events as follows:-

"On 27th November, 1976, at time 0445 LMT position Lat. 03° 48' N, Long 99° 37' E found some smoke from air pipe of Hatch No. 3 starboard side and immediately ordered use

40

10 of fire extinguishers and sounded fire alarm for all crew members to fight fire with water hose. At the time 0520 (LMT) fire could not be brought under control and alter course to 222° (T) 0545 hours (LMT) send XXX message out to all ships. At 0710 (LMT) anchored at position Lat. 03° 31' N, Long 99° 32' E, and all crew members continue fighting fire, but still unable to kill the fire, therefore cable Selco for tugs and salvage at the time 2135 hours (LMT).

EXHIBITS
Plaintiff's
Exhibits
"P.2."
Survey Report
Perfect Lambert
& Co. - 11th
July 1977
(cont'd)

20 On 28.11.76. at 1030 hours fire in Hold No. 3 became very intense and spread to crew cabins. It became very difficult and beyond means to control fire and I ordered standby lifeboats. Vessel was listing to portside at 17° when tugboat 'SALVIRILE' arrived at 1300 hours. Capt. Hanopol of tugboat 'SALVIRILE' ordered his crew to cut anchor chain of m.v. "INTELLECT" at 1540 hours and towed ship to beach at Telok Baharu at 1940 hours (Position 3° 25' N 99° 26.5 E). Later two more tugboats 'SALVIPER' and 'SALVIGILANT' arrived to assist fighting fire after picking up the crew members from lifeboats. Fire became very intense again and spread to Hold No. 4 Fire Fighting continued up to 30.11.76. 2000 hours when Hold No. 3 fire was put out but fire in Hold No. 4 still burning.

30 On 2.12.76. about 0900 hours all fires brought under control and put out.

In fighting fire from the start, fearing fire spreading, used sea water hoses directed onto other holds and flooded same. Extent of damage unknown.

40 At 1800 hours tugboat 'SEA TENDER' arrived and all crew members were transferred on board for sailing to Singapore with the exception of Master, Chief Officer, Chief Engineer, and First Engineer who stayed behind onboard 'SALVIPER'. On 7.12.76. 2300 hours tugboats 'SALVIPER' and 'SALVIGILANT' towed m.v. "INTELLECT" from beached position after pumping out water from holds to float vessel. Thereafter operations to tow vessel to Singapore began. Vessel arrived Singapore port on 10.12.76. at 1200 hours and anchored at the Western Anchorage."

50 The vessel's Log Books, up until the 6th November, are reported to have been destroyed in

EXHIBITS

Plaintiff's
Exhibits
"P.2."
Survey Report
Perfect
Lambert & Co.
11th July
1977
(cont'd)

the fire but the Log Book covering the period 7th November up to the time of the fire was saved.

Subsequent to arrival at Singapore, Messrs. Selco effected discharge of the deck cargo and crates of Gypsum Board in No. 5 Tween Deck to their flat top barge No. SML 2001.

The deck cargo included Personal Effects, timber steel structure and general cargo.

The bulk of the cargo loaded was at Busan and comprised mainly of Fabricated Steel sections, scaffolding, timber, Gypsum Board and associated general for the construction of a hotel in Cairo. This cargo was shipped by Messrs. Dongsan Construction & Engineering Co. Limited of Seoul, the Building Contractors, and was consigned to the Contract - El - Shama Hotel and Tourism Company S.A.E. Cairo. This cargo was loaded on deck and in Nos. 1, 2 and 5 hatches.

10

The remaining hatches were filled with general cargo loaded at Busan, Keelung and Hong Kong for Suez, Benghazi, Tripoli and Piraeus.

20

Examination of the vessel following our arrival at Singapore showed the accommodation to be gutted and that Nos. 3 and 4 hatches were covered with tarpaulins only, the hatchboards having been burned away.

Details of our preliminary findings based on limited access to the hatches were as follows:-

No. 1 - Flooded to a height of about 12 feet in
Hatch - the Tween Deck.

30

Examination was confined to the Tween Deck and showed the bulk of the cargo to be saturated or rusted to varying extent.

No. 2 - Flooded to a height of about 12 feet in
Tween the Tween Deck.
Deck and

Lower Examination showed the cargo to be
Hold similarly affected but that fuel oil had been carried up with the water leaving a coating of oil over all the cargo stowed in this hatch. This coating of oil had, however, reduced the degree of rusting to the steelwork stowed in this hatch.

40

10	<u>No. 3 Tween Deck and Lower Hold</u> -	According to information before us the fire started in this hatch and it was flooded in the fire fighting operation. The weather deck hatchboards were burned away as were the Tween Deck hatchboards and examination of the contents of this hatch showed all cargo visible to be burned/charred and/or saturated to varying extent.	<u>EXHIBITS</u> Plaintiff's Exhibits "p.2." Survey Report Perfect Lambert & Co. 11th July 1977 (cont'd)
20	<u>No. 4 Tween Deck</u> -	Again the weather deck hatchboards were burned away but apparently the fire had not destroyed the Tween Deck hatchboards. All cargo visible in the Tween Deck was also burned/charred and saturated to varying extent.	
		It was not possible to gain access to the Lower Hold at this stage.	
30	<u>No. 5 Tween Deck and Lower Hold</u> -	A stow of Gypsum Board in the square of the hatch had been discharged by the Salvors to their barge SML 2001. Remaining bundles of the Gypsum Board in stow in the wings showed no evidence of direct wetting but had suffered considerably through condensation.	
		In the Lower Hold we found that this hold had been virtually flooded and that a stow of 1000 Tons of Cement in the fore part had set almost solid.	
		General cargo stowed in the after part was extensively rusted/corroded and/or saturated.	
40	<u>No. 6 Hatch</u> -	It was not possible to gain access to this hatch at this time but all cargo visible was apparently sound.	
		Subsequent to arrival at Singapore, Shipowners abandoned the voyage and Cargo Owners were duly requested to take delivery of their cargo at Singapore.	
		Funds for effecting discharge and forwarding of the Dongsan Construction Co., cargo were duly provided by the cargo Interests concerned and were remitted to Singapore on the 14th January, 1977.	

EXHIBITS

Plaintiff's
Exhibits
"P.2."
Survey Report
Perfect
Lambert & Co.
11th July
1977
(cont'd)

Prior to receipt of funds, we had arranged cargo space on the Cross World Navigation Services (S) Pte. Ltd.'s vessel "SAUDI FORTUNE" and had also arranged for the hire of a large flat topped barge and heavy crane from Messrs. Selco in order that the heavy steel girders making up the Construction cargo could be transhipped direct from one vessel to the other at Jurong Anchorage.

The "SAUDI FORTUNE" was brought into position at 2000 hours on the 17th January and transhipment of the Dongsan cargo commenced at 0230 hours on the 18th January.

10

Stern anchors for both vessels were required by the Port Authority and were duly streamed by Messrs. Selco.

Transhipment proved to be slow because of length and weight of the steel girders and also because of the contamination by fuel oil and was only finally completed to the "SAUDI FORTUNE" at 0530 hours on the 29th January, 1977.

20

In order to speed up the operation a further barge and crane was also hired to discharge the badly damaged cargo which was subsequently landed at Pasir Panjang Wharf Singapore.

Prior to and during the course of discharge, joint examination of this cargo was carried out by ourselves and representatives of Messrs. Dongsan Construction & Engineering Co. Limited, and agreements reached as to what should be forwarded and what should be landed for disposal ashore.

30

The "SAUDI FORTUNE" had insufficient space to take all the acceptable cargo and about six hundred measurement tons, mainly scaffolding and timber was also landed pending the availability of another on carrying vessel.

Details of the cargo forwarded to destination and the cargo that was subsequently disposed of at Singapore are shown in the attached Schedule.

40

As no further funds were forthcoming from the Cargo Interests concerned in the remaining cargo onboard, we subsequently discussed the matter at length with Messrs. Selco and following these discussions Messrs. Selco advised that they would fund the discharge and sorting of this remaining cargo.

No. 6 hatch cargo was subsequently discharged to barge over the period 11th - 13th February using a "lorry crane" placed on the vessel's deck and all cargo from this hatch was landed at Pasir Panjang Wharf.

EXHIBITS

Plaintiff's Exhibits "P.2." Survey Report Perfect Lambert & Co. 11th July 1977 (cont'd)

10 No. 6 hatch was without a Tween Deck and we found that all cargo in stow at the bottom of the hatch to a height of about two feet had been immersed in an admixture of water and fuel oil. The majority of the cargo, however, was apparently sound and was subsequently forwarded to destination per the vessel "IRENE XILAS".

20 Following this operation and with the assistance of Messrs. Selco staff and stevedores, part of the fire/water damaged debris was shifted in No. 4 Tween Deck to gain access to No. 4 Hold and examination revealed that this cargo space had not been affected by fire but that all cargo in this space was saturated by sea water and fuel oil.

The cargo in this hold comprised mainly of textiles, cotton goods, novelties, hardware, tyres and electrical goods however perusal of the relevant manifests also showed that amongst the cargo was a consignment of Taiwanese Jade made up of 3,360 pieces and with an advised Invoice value of US\$58,560.00.

30 It was evident that the bulk of the packages would collapse on handling, however, following protracted discussions with Messrs. Selco it was agreed that this cargo should be discharged, landed and sorted with a view to recovering the Jade and any other cargo of value with Messrs. Selco funding the operation.

40 A more detailed examination of the cargo stowed in No. 3 Tween Deck, No. 3 Lower Hold and No. 4 Tween Deck at this time confirmed that all the cargo was burned out and saturated and that it would not be a commercial proposition to land and sort this cargo. Whilst not all cargo was visible, of course, perusal of the vessel's cargo plan and manifest indicated that the only consignment likely to have any reasonable value in these three cargo spaces was a consignment of 238 bundles of pipes stowed at the bottom of No. 3 Lower Hold.

50 Bearing the situation in mind with regard to Nos. 3 and 4 hatches and in an endeavour to keep discharging and landing costs to a minimum, we duly obtained Customs and Port Authority

EXHIBITS

Plaintiff's
Exhibits
"p.2."
Survey Report
Perfect
Lambert & Co.
11th July
1977
(cont'd)

permission to effect sale of all unidentifiable debris in No. 3 Tween Deck, No. 4 Tween and No. 3 Lower Hold "As discharged to barges alongside the vessel" and thus enabling us to segregate any identifiable or likely pieces during the discharging operation.

Prospective buyers were taken out to the vessel on the 28th February and offers received on the 2nd March however interest provided minimal and the highest offer received was only SD9,500.00.

10

Estimated discharging costs at this time were in excess of SD30,000.00 so in the circumstances we did not proceed with this sale and subsequently arranged with Messrs. Selco to shift the unidentifiable debris in the squares of Nos. 3 and 4 Tween Decks and No. 3 Lower Hold in order that the pipes could be discharged from the bottom of No. 3 Lower Hold and the saturated cargo from No. 4 Lower Hold.

Shifting was duly effected over the period 4th - 6th March, using Selco's heavy lift crane and grab and debris ex No. 3 was dumped into No. 2 Lower Hold and ex No. 4 into No. 5 hold.

20

Subsequently the pipes in No. 3 Lower Hold were discharged by Messrs. Selco to their barge L9 and the saturated cargo in stow in No. 4 Lower Hold was discharged by stevedores to three barges. Sorting of this cargo was carried out as far as practicable on the vessel, also, as expected, the bulk of the packages in this stow collapsed on handling.

30

During the course of discharge we duly arranged landing space at Pasir Panjang Wharf and also arranged sale by Tender of all unidentifiable cargo ex No. 4 Lower Hold.

All cargo discharged ex No. 4 Lower Hold proved to be unidentifiable with the exception of 2980 pieces of Jade which was bagged up on the vessel and was subsequently landed at the premises of Messrs. Selco for security purposes.

40

The remainder of the cargo ex this hatch being unidentifiable, no further sorting was required and sale was effected on an "Entire contents of barge" basis as landed at this wharf.

Realisations were as follows:-

1st Barge	-	S.D. 48,000.00
2nd Barge	-	S.D. 1,010.00
3rd Barge	-	<u>S.D. 12,000.00</u>
TOTAL:		<u>S.D. 61,010.00</u> Gross

EXHIBITS
 Plaintiff's
 Exhibits
 "P.2."
 Survey Report
 Perfect
 Lambert & Co.
 11th July
 1977
 (cont'd)

10 The outturn condition of the pipes ex No. 3 Lower Hold proved to be poor and, with the agreement of the cargo Underwriters concerned, they were also disposed of to best advantage at Singapore and gross proceeds of sale amounted to S.D.63,000.00.

Also sold at Singapore were the damaged packages ex No. 6 Lower Hold.

With all cargo of any likely value discharged ex Nos. 3 and 4 hatches, discharging operations were halted on the 16th March, leaving a variety of fire and water damaged debris in Nos. 1 Lower Hold, No. 2 Lower Hold, No. 3 Tween Deck and Lower Hold, No. 4 Tween Deck and Lower Hold, and No. 5 Lower Hold.

20 Hatches were then covered as far as possible, bearing in mind that Nos. 3 and 4 hatches were without hatchboards.

Details of the various outturns of cargo, sales and cargo forwarded to destination will be found in the attached schedule No. 1, together with the apportionments of damage.

30 All consignments not listed in Schedule No. 1 were not identified on discharge and are assumed to have collapsed in stow as a result of the fire and/or flooding and that the remaining contents either forms part of the fire/water damaged debris remaining on the vessel or formed part of the unidentifiable cargo disposed of at Singapore.

These consignments are listed in Schedule No. 2, together with our apportionments of damage based on our findings at Singapore.

EXHIBITS
Plaintiff's
Exhibits
"p.4."
Certificate
of Tranship-
ment from
Worldwide
Marine Corp.
25th November
1976

Plaintiff's Exhibits "P.4" - Certificate
of Transshipment from Worldwide Marine
Corp. - 25th November, 1976

WORLDWIDE MARINE CORP.
9FL No. 172 NANKING E. RD. SEC 1.
TAIPEI, TAIWAN, R.O.C.
P.O. BOX 58483 TAIPEI
TEL. 5119201-9

Our Ref. No.
Your Ref No.

Date: Nov. 25 1976

10

CERTIFICATE OF TRANSHIPMENT

We, Worldwide Marine Corporation Taipei, Taiwan,
the agent handling mv "INTELLECT" at Keelung,
Taiwan during her voyage departing from Keelung
November 16th, 1976 for several ports in
Mediterranean Sea area, hereby certify that the
cargo covered under the Bill of Lading mentioned
below was transhipped on board mv "INTELLECT" At
Keelung, the vital details of the said Bill of
Lading being as follows:-

20

B/L NO. HK/LIM-16 VESSEL: TA SHUN
B/L Issued by: BLUE SKY SHIPPING CO., LTD.
PORT OF LOADING: HONG KONG
PORT OF DISCHARGE: LIMASSOL
SHIPPER: WANTEX TRADER
CONSIGNEE: TO ORDER OF THE CYPRUS POPULAR BANK
LTD. NICOSIA.
NOTIFY PARTY: G. KALLIS (MFRS) LTD. P.O. BOX 1750
NICOSIA THE CYPRUS POPULAR BANK LTD.
NICOSIA.

30

MARKS AND NUMBERS: LC76/20661
G. KALLIS
76/0071
LOT 1
LIMASSOL NO. 1/58
CYPRUS MADE IN HONG KONG

NUMBER OF PACKAGES: 58 BALES
DESCRIPTION OF GOODS: INDIGO BROKEN TWILL QUALITY
30001

SHIPPED ON BOARD ON: 28 JUL 1976
DELIVERY of the cargo is subject to simultaneous
surrendering of the said Bill of Lading and this
CERTIFICATE OF TRANSHIPMENT.

40

This 25th day of November in the year of 1976.

WORLDWIDE MARINE CORPORATION
Sgd. Illegible
M.N. LO
General Manager

Plaintiff's Exhibits "P.4." - Certificate
of Transhipment from Worldwide Marine Corp.
25th November, 1976

EXHIBITS
Plaintiff's
Exhibits
"P.4."
Certificate of
Transhipment
from Worldwide
Marine Corp.
25th November
1976

WORLDWIDE MARINE CORP.
9FL No. 172 NANKING E. RD. SEC.1,
TAIPEI, TAIWAN, R.O.C.
P.O. BOX 58483 TAIPEI
TEL. 5119201-9

10 Our ref. No.
Your ref. No. Date: Nov. 25, 1976

CERTIFICATE OF TRANSHIPMENT

20 We, Worldwide Marine Corporation Taipei, Taiwan,
the agent handling mv "INTELLECT" at Keelung,
Taiwan during her voyage departing from Keelung
November 16th, 1976 for several ports in
Mediterranean Sea area, hereby certify that the
cargo covered under the Bill of Lading mentioned
below was transhipped on board mv "INTELLECT" at
Keelung, the vital details of the said Bill of
Lading being as follows:-

30 B/L NO. HK/LIM-17
B/L Issued by: BLUE SKY SHIPPING CO., LTD.
VESSEL : TA SHUN
PORT OF LOADING: HONG KONG
PORT OF DISCHARGE: LIMASSOL
SHIPPER: WANTEX TRADER KOWLOON.
CONSIGNEE: TO ORDER OF THE CYPRUS POPULAR BANK
LTD. NICOSIA
NOTIFY PARTY: THE CYPRUS POPULAR BANK LTD. NICOSIA
AND G. KALLIS (MFRS) LTD. P.O. BOX
1750, NICOSIA.
MARKS AND NUMBERS: LC76/20661
G. KALLIS
76/0071
LOT 1
LIMASSOL NO. 59/124
CYPRUS MADE IN HONG KONG
40 NUMBER OF PACKAGES: 66 BALES
DESCRIPTION OF GOODS : BROKEN TWILL QUALITY 30001
SHIPPED ON BOARD ON: 28 JUL 1976
DELIVERY of the cargo is subject to simultaneous
surrendering of the said Bill of Lading and this
CERTIFICATE OF TRANSHIPMENT.

This 25th day of November in the year of 1976.

WORLDWIDE MARINE CORPORATION
Sgd. Illegible
M.N. LO
General Manager

EXHIBITS

Plaintiff's Exhibits "P.4." Certificate of Transshipment from Worldwide Marine Corp. 25th November 1976

Plaintiff's Exhibits "P.4." - Certificate of Transshipment from Worldwide Marine Corp. - 25th November, 1976

WORLDWIDE MARINE CORP.
9FL. No. 172 NANKING E. RD. SEC 1,
TAIPEI, TAIWAN, R.O.C.
P.O. BOX 58483 TAIPEI
TEL. 5119201-9

Our ref. No. _____
Your ref. No. _____ Date Nov. 25, 1976 10

CERTIFICATE OF TRANSHIPMENT

We, Worldwide Marine Corporation Taipei Taiwan the agent handling mv "INTELLECT" at Keelung, Taiwan during her voyage departing from Keelung November 16th, 1976 for several ports in Mediterranean Sea area, hereby certificate that the cargo covered under the Bill of Lading mentioned below was transhipped on board mv "INTELLECT" at Keelung, the vital details of the said Bill of Lading being as follows:- 20

B/L NO. HK/LIM-21
B/L ISSUED BY: BLUE SKY SHIPPING CO., LTD.
VESSEL: "TA SHUN"
PORT OF LOADING: HONG KONG
PORT OF DISCHARGE: LIMASSOL
SHIPPER: WANTEX TRADER
CONSIGNEE: TO ORDER OF THE CYPRUS POPULAR BANK LIMITED NICOSIA
NOTIFY PARTY: MESSRS G. KALLIS (MFRS) LTD. P.O. BOX 1750 NICOSIA THE CYPRUS POPULAR BANK LTD. NICOSIA. 30
MARKS AND LC76/20661 LIMASSOL CYPRUS
NUMBERS: G. KALLIS NO. 1/58
76/0076 MADE IN HONG KONG
LOT 2

NUMBER OF PACKAGES: 58 BALES
DESCRIPTION OF GOODS : BROKEN TWILL
SHIPPED ON BOARD ON: AUG. 3, 1976
DELIVERY of the cargo is subject to simultaneous surrendering of the said Bill of Lading and this CERTIFICATE OF TRANSHIPMENT. 40

This 25th day of November in the year of 1976.

WORLDWIDE MARINE CORPORATION
Sgd. Illegible
M.N. LO
General Manager

Plaintiff's Exhibits "P.4." - Certificate
of Transshipment from Worldwide Marine
Corp. - 25th November 1976

EXHIBITS
Plaintiff's
Exhibits
"P.4."
Certificate of
Transshipment
from Worldwide
Marine Corp.
25th November
1976

WORLDWIDE MARINE CORP.
9FL. No. 172 NANKING E. RD. SEC1,
TAIPEI, TAIWAN, R.O.C.
P.O. BOX 58483 TAIPEI
TEL. 5119201-9

10 Our ref No.
Your ref. No. Date Nov. 25, 1976

CERTIFICATE OF TRANSHIPMENT

20 We, Worldwide Marine Corporation Taipei, Taiwan
the agent handling mv "INTELLECT" at Keelung,
Taiwan during her voyage departing from Keelung
November 16th, 1976 for several ports in
Mediterranean Sea area, hereby certify that the
cargo covered under the Bill of Lading mentioned
below was transhipped on board mv "INTELLECT" at
Keelung, the vital details of the said Bill of
Lading being as follows:-

B/L No. HK/LIM-23
B/L ISSUED BY: BLUE SKY SHIPPING CO., LTD.
VESSEL: "TA SHUN"
PORT OF LOADING: HONG KONG
PORT OF DISCHARGE: LIMASSOL
SHIPPER: WANTEX TRADER
CONSIGNEE: TO ORDER OF THE CYPRUS POPULAR BANK
LTD. NICOSIA
30 NOTIFY PARTY: MESSRS. G. KALLIS (MFRS) LTD. P.O. BOX
1750 NICOSIA AND THE CYPRUS POPULAR
BANK LTD. NICOSIA.
MARKS AND LC-76/20546 LIMASSOL CYPRUS
NUMBERS: G. KALLIS NO. 1/41
75/0193 MADE IN HONG KONG
LOT 3
NUMBER OF PACKAGES: 41 BALES
DESCRIPTION OF GOODS : 100% COTTON INDIGO BROKEN
Twill DENIM
40 SHIPPED ON BOARD ON: AUG. 3, 1976
DELIVERY OF the cargo is subject to simultaneous
surrendering of the said Bill of Lading and this
CERTIFICATE OF TRANSHIPMENT.

This 25th day of November in the year of 1976.

WORLDWIDE MARINE CORPORATION
Sgd. Illegible
M.N. LO
General Manager

EXHIBITS

Plaintiff's
Exhibits
"P.5.
Letter
Seawise
Shipping Co.
Ltd. to
Wantex Trader
5th November
1976

Plaintiff's Exhibits "P.5." - Letter
Seawise Shipping Co. to Wantex Trader
5th November 1976

LETTER FROM SEAWISE SHIPPING CO. TO WANTEX TRADER
DATED 5TH NOVEMBER, 1976

Dear Sir,

Re: M.V. "Ta Shun"
M.V. "Ta Hung"

We understand from some of shippers whom have received circular from M/s Blue Sky Shipping Co. Ltd., Taipei which stated therein "Because Seawise Shipping Co. has so far refused to settle the freight accounts with us"... We have pleasure to take this opportunity to clarify the above matter that the above freight had already settled with M/S Blue Sky Shipping and account with supporting vouchers submitted to Owner for a long time. Also, the Owner still owe us our expenses over US\$20,000.00.

10

However, the Owner didn't wish to tranship these cargoes due to no ship calling Taiwan at that moment. Presently, the Owner realised the situation is unfavourable to them and the Owner try to avoid the lost of warehouse expenses which Owner want to recover this loss from all the shippers.

20

Therefore, we are very sorry to let all the shippers inconvenient for this unfortunates cases, but this transhipment has under instructed by the M/S Blue Sky Shipping Co. Ltd. Taipei due to our company as agent for them only in Hong Kong.

30

Under this circumstance, in our opinion to protect all the shippers whom should not pay any charges to the owner under any condition. Also please take the legal action to against the owner and claim for the lost, if required we would like to assist for all concerns.

Meanwhile, until present moment we have no any relationship with M/S Blue Sky Shipping Co. Ltd., Taipei, and our responsible for this case should be clearly released. If have any question, please direct contact Owner.

40

Thank you.

Yours faithfully,

SEAWISE SHIPPING CO.

Plaintiff's Exhibits "P.5." - Telex
from Blue Sky Shipping Co. Ltd. - 9th
November, 1976

75105 CRATE HX
75105 CRATE HX
22509 BLUELINE

TO CREATSHIP HKG
FROM BLUELINE TPE
NOV 9 76 REF. SO-5981/76

10 ATTN: MR Y C TONG - GENERAL MANAGER

REF TO L/CALL FRM MR CHU OF W'RWIDE MARINE WITH YOU
MOMENT AGO. THE MED SEA CGO NOW STORED IN KEELUNG
GODOWN WL BE ALL LOADED ON MV 'INTELLECT' AND WE
WL ISSUE ONE B/L TO COVER ALL CGO AS A WHOLE WITH
SHIPPER BLUE SKY SHIPPING CO. LTD, CONSIGNEE YOUR
GOODSELVES AND IN TRANSIT AT HKG. THEN FOR CGO
FOR WHICH FREIGHT AND GODOWN CHGE HAS BEEN PAID,
TRANSIT B/L WL PLS ISSUE YR END ON OUR BEHALF FOR
20 EACH DESTINATION CONCERNED AND SUCH CGO WL BE
CARRIED ONWARD BY MV 'INTELLECT' WITHOUT DISCHG
AT HKG. OTHER CGO WL BE DISCHD AT HKG.

KINDLY BE GIVEN TO U'STAND THAT THIS WAY IS FOR
TWO PURPOSES: FIRST TO EXPRESS FAIRNESS TO SHPRS
WHO HAS PAID THE FRT AND GODOWN CHGE AS WE RQSTED
AND SECONDLY TO MAKE GESTURE TO PRESS OTHER SHPRS
TO PAY WHAT HV RQUESTED. TFORE PLS KINDLY KEEP
TRYING TO CONVINCEN THEM BY LETTING THEM KNOW OUR
WAY OF DOING.

EXHIBITS

Plaintiff's
Exhibits
"p.5."
Telex from
Blue Sky
Shipping
Co. Ltd. - 9th
November, 1976

(Agreed Typed
Version)

EXHIBITS

Plaintiff's
Exhibits
"P.5"
Telex from
Blue Sky
Shipping
Co.Ltd. -
9th November,
1976
(PHOTOCOPY)

7.

75105 CRATE HK
75105 CRATE HK
22507 BLUELINE

TO CREATESHIP HK
FROM BLUELINE TPE
NOV 9 76 REF. SO-5981/76

ATTN: MR Y C TONG - GENERAL MANAGER

REF TO L/CALL FRM MR CHU OF W'RWIDE MARINE WITH YOU MOMENT AGO.
THE MED SEA CRT NOW STORED IN KEELUNG GODOWN WL BE ALL LOADED ON
MV 'R'INTELLECT'OR AND WE WL ISSUE ONE B/L TO COVER ALL CRT AS
A WHOLE WITH SHIPPER BLUE SKY SHIPPING CO LTD, CONSIGNEE YOUR
GOODSELVES AND IN TRANSIT AT HKG. THEN FOR CRT FOR WHICH FREIGHT
AND GODOWN CHGE HAS BEEN PAID, TRANSIT B/L WL PLS ISSUE YR END ON
OUR BEHALF FOR EACH DESTINATION CONCERNED AND SUCH CRT JL BE CARRIED
ONWARD BY MV 'R'INTELLECT'OR WITHOUT DISCHG AT HKG. OTHER CRT JL B
DISCHD AT HKG.

KINDLY BE GIVEN TO U'NSTAND THAT THIS WAY IS FOR TWO PURPOSES: FIRSTLY
TO EXPRESS FAIRNESS TO SHPRS WHO HAS PAID THE FRT AND GODOWN CHGE
AS WE RSTED AND SECONDLY TO MAKE TESTURE TO PRESS OTHER SHPRS TO
PAY WHAT HV RSTED. THERE PLS KINDLY KEEP TRYING TO CONVINCCE THEM
BY LETTING THEM KNOW OUR WAY OF DOING.

Plaintiff's Exhibits "P.5." - Telex
from Blue Sky Shipping Co. Ltd. - 8th
November 1976

EXHIBITS

Plaintiff's
Exhibits
"P.5"
Telex from
Blue Sky
Shipping
Co. Ltd. -
8th November
1976
(AGREED TYPED
VERSION)

75105 CRATE HX
75105 CRATE HX
75105 CRATE HX
22509 BLUELINE

10 TO CREATESHIP HKG
FROM BLUELINE TPE
NOV 8 76 REF. SO-5977/76

ATTN: MR Y C TONG - GENERAL MANAGER

RE: MED SEA CGO

AAA
TKS YR TLX NO. 376 NOV 6. CGO WL BE LOADED ONMV
INTELLECT AS INSTRUCTED.

RRR
MC INTELLECT ETD KEE CORRECTED NOV 10. KINDLY ADV
IF ANY OTHER SHPRS PAY FOR TRANSHIPMENT.

20 CCC
REF TO YR L/CALL WITH MR M N LO. BRIEF DETAILS OF
STORY REGARDG SEAWISE DISHONESTY IN REMITTANCE
USD 10,000.- AS FLOWS:-

- AUG 20 OUR TLX REF. SO-5723/76 TO SEAWISE ASKG
THEM TO REMIT USD 10,000.- AS PART OF FRT OF
MED SEA CGO CARRIED BY MV "TA HUNG"
- AUG 23 SEAWISE TLX TO US ADVSG THAT REMITTANCE
WUD BE EFFECTED WITHIN THE WEEK
- AUG 31 OUR TLX REF. SO-5753/76 TO SEAWISE ASKG
THEM IF REMITTANCE EFFECTED.
- 30 - SEPT 1 OUR TLX REF. SO-5766/76 TO SEAWISE ASKG
INFOR RE REMITTANCE
- SEPT 1 SEAWISE TLX TO US IN REPLY ADVSG REMITTANCE
USD 10,000.- ALDY EFFECTED AUG 31.
- SEPT 2 OUR TLX REF. SO-5773/76 TO OUR BANKER
CHECKG IF REMITTANCE FROM SEAWISE RECEIVED.
- SEPT 2 OUR BANKER'S TLX TO US GIVG REPLY IN
NEGATIVE.
- 40 - SEPT 6 OUR TLX REF. SO-5785/76 TO SEAWISE TELLG
THEM REMITTANCE NOT RCVD TFORE ASKG FOR TT NBR
AND ACTUAL TIME OF REMITTANCE.

EXHIBITS

- Plaintiff's Exhibits "p.5"
Telex from Blue Sky Shipping Co. Ltd. -
8th November 1976
(Contd.)
(Agreed typed version)
- SEPT 7 SEAWISE TLX TO US ADVSG OTHER THINGS WITHOUT MENTIONG ANYTHING ABT REMITTANCE.
 - THEN MR M N LO REPEATEDLY CHECKED WITH SEAWISE BY L/CALL AND SEAWISE ADVSD THAT REMITTANCE WAS ACTUALLY REMITTED AUG 31 IN TELE CONVERSATN.
 - SEPT 17 OUR TLX REF. SO/5831/76 TO OUR BANKER AGAIN CHECKG IF REMITTANCE RCVD.
 - SEPT 17 OUR BANKER'S TLX IN REPLY STILL IN NEGATIVE.
 - SEPT 18 OUR TLX REF. SO-5833/76 TO SEAWISE AGAIN ASKG FOR (1) ACTUAL DATE OF REMITTANCE (2) TT NBR (3) FROM WHAT BANK AND (4) THRU WHAT BANK OR BANKS. 10
 - SEPT 20 SEAWISE TLX TO US ADVSG THAT THEY WERE ASKG THEIR BANKER BNP TO TRACE AGAIN AND RECONFIRMED THAT THEY ALDY ADVD THE BANK TO TT OUR A/C LONG TIME AGO.
 - FINALLY WE FOUND ALL SEAWISE'S WORDS WERE TOTALLY FALSE. TFORE SEPT 27 OUR TLX REF. SO-5862/76 TO SEAWISE ASKG THEM TO HAND OVER USD 10,000.- TO OUR FRIEND AT HKG, MR CHEUNG, BUT SO FAR NO RESPONSE FROM SEAWISE REGARDG THIS MATTER AND WE DID NOT RCV EVEN ONE CENT FRM THEM IN THIS RESPECT. 20

TKS N REGARDS.

BLUELINE TAIPEI

HOW RCVD PLS?

RCD WELL AND TKS?

TKS N BIBI.

75105 CRATE HK*
75105 CRATE HK*
75105 CRATE NY
22509 BLUELINE

TO CREATESHIP HK*
FROM BLUELINE TPE
NOV 8 76 REF. 50-5977/76

ATTN: MR Y C TONG - GENERAL MANAGER

RE: MED SEA CSD

AAA
TKS YR TLY NO. 376 NOV 6. CSD WL BE LOADED ON MV INTELLECT AS
INSTRUCTED.

MMW INTELLECT STD HES CORRECTED NOV 10. KINDLY ADV IF ANY OTHER
SHIPS PAY FOR TRANSHIPMENT.

CCC
REF TO YR L/CALL WITH MR M N LO. BRIEF DETAILS OF STORY REGARDS
SEAWISE DISHONESTY IN REMITTANCE USD 10,000.- AS FLLWS:-

- AUG 20 OUR TLY REF. 50-5723/76 TO SEAWISE ASKT THEM TO REMIT
USD 10,000.- AS PART OF FIT OF MED SEA CSD CARRIED BY
MV 'RIPITA HUNT' 772.
- AUG 23 SEAWISE TLY TO US ADVST THAT REMITTANCE WUD BE EFFECTED
WITHIN THE WEEK.
- AUG 31 OUR TLY REF. 50-5753/76 TO SEAWISE ASKT THEM IF REMITTANCE
EFFECTED.
- SEPT 1 OUR TLY REF. 50-5766/76 TO SEAWISE ASKT INFO RE REMITTANCE.
- SEPT 1 SEAWISE TLY TO US IN REPLY ADVST REMITTANCE USD 10,000.-
ALDY EFFECTED AUG 31.
- SEPT 2 OUR TLY REF. 50-5773/76 TO OUR BANKER CHECKT IF REMITTANCE
FROM SEAWISE RCV'D.
- SEPT 2 OUR BANKER'S TLY TO US TIME REPLY IN NEGATIVE.
- SEPT 6 OUR TLY REF. 50-5785/76 TO SEAWISE TELLS THEM REMITTANCE
NOT RCV'D FEORE ASKT FOR IT NTR AND ACTUAL TIME OF REMITTANCE.
- SEPT 7 SEAWISE TLY TO US ADVST OTHER THINGS WITHOUT MENTIONG
ANYTHING ABT REMITTANCE.
- THEN MR M N LO REPEATEDLY CHECKED WITH SEAWISE BY L/CALL AND
SEAWISE ADVST THAT REMITTANCE WAS ACTUALLY REMITTED AUG 31 IN
TELE CONVERSATH.
- SEPT 17 OUR TLY REF. 50-5831/76 TO OUR BANKER AGAIN CHECKT IF
REMITTANCE RCV'D.
- SEPT 17 OUR BANKER'S TLY IN REPLY STILL IN NEGATIVE.
- SEPT 18 OUR TLY REF. 50-5833/76 TO SEAWISE AGAIN ASKT FOR
(1) ACTUAL DATE OF REMITTANCE (2) IT NTR (3) FROM WHAT BANK
AND (4) THRU WHAT BANK OR BANKS.
- SEPT 20 SEAWISE TLY TO US ADVST THAT THEY WERE ASKT THEIR BANKER
WHP TO TRACE AGAIN AND RECONFIRMED THAT THEY ALDY ADVST THE BANK
TO TT OUR A/C LONG TIME AGO.
- FINALLY WE FOUND ALL SEAWISE'S WORDS WERE TOTALLY FALSE. FEORE
SEPT 27 OUR TLY REF. 50-5862/76 TO SEAWISE ASKT THEM TO HAND OVER
USD 10,000.- TO OUR FRIEND AT HK*, MR CHEUNG, BUT SO FAR
NO RESPONSE FROM SEAWISE REGARDS THIS MATTER AND WE DID NOT RCV
EVEN ONE SENT FROM THEM IN THIS RESPECT.

TKS N REGARDS

BLUELINE TAIPEI

HOW RCV'D PLS+?
700 WELL AND TKS +?
TKS N RPTI FR+

75105 CRATE HK*
22509 BLUELINE

EXHIBITS

Plaintiff's
Exhibits
"P.5"
Telex from
Blue Sky
Shipping Co.
Ltd.
8th November
1976
(PHOTOCOPY)

EXHIBITS
 Plaintiff's
 Exhibits "P.5."
 Bill of
 Lading No.
 HK/LIM-16
 issued on
 Seawise
 Shipping
 Company form
 27th July
 1976

Plaintiff's Exhibits "P.5." - Bill of
 Lading No. HK/LIM-16 issued on
 Seawise Shipping Company form - 27th
 July 1976

SEAWISE SHIPPING COMPANY
 (Wholly Owned and Operated by Seawise Agency Ltd.)

B/L No. OFFICE COPY S/O No. HK/LIM-16
 To: Hongkong July 27, 1976

The Commanding Officer of M.S. "TA SHUN"
 Voy

Please Receive On Board :
 from Messrs. WANTEX TRADER Tel.No.3-661220
 Address: Room 820, Star House, Kowloon.
 the undermentioned goods in good order and
 condition for shipment to LIMASSOL with
 transhipment at and sign attached Mate's
 Receipt upon completion of Loading;-
 Consigned to:
 Notify Party:

10

PARTICULARS FURNISHED BY SHIPPER OF GOODS

20

Marks & Nos.	No. of Packages	Description of Goods	Gross Weight	Measure- ment
--------------	--------------------	-------------------------	-----------------	------------------

LC76/20661

G. KALLIS

76/0071

LOT 1

LIMASSOL CYPRUS

NO. 1/58

MADE IN

HONGKONG

58 bales INDIGO BROKEN TWILL QUALITY
 30001

30

TOTAL FIFTY EIGHT BALES ONLY.

Received (58) (fifty eight) bales only
 27th July 1976 Sgd. Illegible

Owners and/or agents of the ship not responsible
 for cargo being shut out and lighter demurrage.
 Measurement and weight to be stated for each item
 separately.

Other terms and conditions as per Carriers Bill of
 Lading.

40

Received on board SEAWISE SHIPPING COMPANY

No. of packages

Stowed in hatch No.

Date

Checker

Commanding Officer

If any "Carrier's Bill"

P10174

Plaintiff's Exhibits "P.5." - Bill of Lading No. HK/LIM-17 issued on Seawise Shipping Company form - 27th July 1976

EXHIBITS
Plaintiff's Exhibits "P.5." - Bill of Lading No. HK/LIM-17 issued on Seawise Shipping Company form 27th July 1976

SEAWISE SHIPPING COMPANY

(Wholly Owned and Operated by Seawise Agency Ltd.)

B/L No. OFFICE COPY S/O No. HK/LIM-17

To: Hongkong July, 27, 1976

The Commanding Officer of M.S. "TA SHUN"
Voy

10 Please Receive on Board:
from Messrs. WANTEX TRADER Tel.No.3-661220
Address Room 820, Star House, Kowloon.
the undermentioned goods in good order and
condition for shipment to LIMASSOL with transshipment
at and sign attached Mate's RECEIPT upon
completion of Loading:-
Consigned to:
Notify Party:

PARTICULARS FURNISHED BY SHIPPER OF GOODS

20 Marks & Nos. No. of Description Gross Measure-
Packages of Goods Weight ment

Lc76/20661
G. KALLIS
76/0071
LOT 1
LIMASSOL CYPRUS
No. 59/124
MADE IN 66 Bales BROKEN TWILL QUALITY 30001
HONGKONG

30 Total Sixty six bales only.

Received (66) (sixty six) Bales only
27th July 1976. Sgd. Illegible

Owners and/or agents of the ship not responsible
for cargo being shut out and lighter demurrage.
Measurement and weight to be stated for each item
separately.
Other terms and conditions as per Carriers Bill of
Lading.

40 Received on board SEAWISE SHIPPING COMPANY
No. of packages
Stowed in hatch No.
Date Checker Commanding Officer

D. Henry 876174

EXHIBITS

Plaintiff's Exhibits "P.5." Bill of Lading No. HK-LIM-21 issued on Seawise Shipping Company form 28th July 1976

Plaintiff's Exhibits "P.5." - Bill of Lading No. HK/LIM-21 issued on Seawise Shipping Company form - 28th July 1976

SEAWISE SHIPPING COMPANY

(Wholly Owned and Operated by Seawise Agency Ltd.)

B/L No. OFFICE COPY S/O No. HK-LIM-21
To: Hongkong 28.07.1976
The Commanding Officer of M.S."TA SHUN" Voy.

Please Receive on Board:
from Messrs. Wantex Trader Room 820, Star House, 10
Address Kowloon. Tel.No.3-661220
the undermentioned goods in good order and
condition for shipment to LIMASSOL with
transshipment at and sign attached Mate's
Receipt upon completion of Loading:-
Consigned to: TO ORDER OF THE CYPRUS POPULAR BANK
Notify LIMITED, NICOSIA.
Party: MESSRS. G. KALLIS (MFRS) LTD. P.O.
BOX 1750, NICOSIA.
THE CYPRUS POPULAR BANK LTD. NICOSIA. 20

PARTICULARS FURNISHED BY SHIPPER OF GOODS

Marks & Nos.	No. of Packages	Description of Goods	Gross Weight	Measure-ment
LC76/20661 G. KALLIS 76/0076 LOT 2 LIMASSOL CYPRUS NO. 1/58 MADE IN HONGKONG	58 Bales	INDIGO BROKEN TWILL		30
Total Fifty eight bales only.				

"Vessel is not scheduled to call on its current voyage at Famagusta, Kyrenia and Karavoustasi, Cyprus."
SEAWISE GODOWN Received fifty eight (58) bales
Sgd. Illegible 4.8.76

Owners and/or agents of the ship not responsible for cargo being shut out and lighter demurrage. Measurement and weight to be stated for each item separately. 40
Other terms and conditions as per Carriers Bill of Lading.

Received on board SEAWISE SHIPPING COMPANY
No. of packages
Stowed in hatch No.
Date Checker Commanding Officer.

Plaintiff's Exhibits "P.5." - Bill of Lading No. HK/LIM-23 issued on Seawise Shipping Company form - 28th July 1976

EXHIBITS

Plaintiff's Exhibits "P.5." - Bill of Lading No. HK/LIM-23 issued on Seawise Shipping Company form 28th July 1976

SEAWISE SHIPPING COMPANY

(Wholly owned and Operated by Seawise Agency Ltd.)

B/L No. OFFICE COPY S/O No. HK/LIM-23

To: Hongkong July, 28, 1976

The Commanding Officer of M.S. "TA SHUN" Voy.

Please receive On Board:

10 from Messrs. WANTEX TRADER, Room 820, Star House, address Kowloon. Tel.No.3-661220. the undermentioned goods in good order and condition for shipment to LIMASSOL with transshipment at and sign attached Mate's Receipt upon completion of Loading;-

Consigned to: TO ORDER OF THE CYPRUS POPULAR BANK LTD. NICOSIA.

Notify Party: MESSRS. G. KALLIS (MFRS) LTD. P.O. BOX 1750, NICOSIA.

20 THE CYPRUS POPULAR BANK LTD. NICOSIA.

PARTICULARS FURNISHED BY SHIPPER OF GOODS

Marks & Nos.	No. of Packages	Description of Goods	Gross Measure-Weight ment
--------------	-----------------	----------------------	---------------------------

LC-76/20546 "Signed Bill of lading
G. KALLIS 2/five copies"
75/0193

30 LOT 3
LIMASSOL CYPRUS
NO. 1/41 41 bales 100% COTTON INDIGO BROKEN
MADE IN TWILL DENIM
HONGKONG

Total: Forty one bales only.

"Vessel is not scheduled to call on its current voyage at Famagusta, Kyrenia and Karavostassi, Cyprus."

Received forty one (41) Bales

SEAWISE GODOWN

Sgd. Illegible 30.7.76

40 Owners and/or agents of the ship not responsible for cargo being shut out and lighter demurrage. Measurement and weight to be stated for each item separately.

Other terms and conditions as per Carriers Bill of Lading.

Received on board SEAWISE SHIPPING COMPANY

No. of packages

Stowed in hatch No.

Date Checker

Commanding Officer.

EXHIBITS

Plaintiff's Exhibits "P.5."

Declaration from Success Insurance Ltd. to Cottontex 5th November 1976

Plaintiff's Exhibits "P.5." - Declaration from Success Insurance Ltd. to Cottontex - 5th November 1976

SUCCESS HOLDINGS

SUCCESS INSURANCE LIMITED

911-5 Prince's Building,
G.P.O. Box 735, Hong Kong.
Tel: 5-240036. Cable: SUCESSHOLD.
Telex: 74320 ALEXC HX

Insured Messrs. Cottontex
Amount Insured US\$2,273.--
Endorsement No. Illegible attaching to and forming part of Policy No. Illegible

10

It is hereby declared and agreed that the subject consignment of the captioned policy will be extended to cover for storage in the customs at Keelung and reshipment by s.s. "INTELLECT" sailing on/about. 10/11/1976 from Keelung, Taiwan to Limassol and/or other final destination as stated in the policy.

20

In consideration thereof, an additional premium as arranged, will be charged to the Insured.

Other terms and conditions remain unchanged.

For Attachment

Hongkong, 5th November 1976

Sgd. Illegible
Success Insurance
Limited

EXHIBITS

Plaintiff's Exhibits "P.5"
Copy extract from South China Morning Post
15th July 1976

THURSDAY, JULY 15, 1976

SOUTH CHINA MORNING POST

SS SEAWISE LINE

FOR JEDDAH

TWILIGHT Arr. 20/8 Sails 25/8

BLUE LINE

MEDITERRANEAN SEA SERVICE
FOR TRIPOLI-BI-NHMAZI-PIAREUS
(ACCEPT TRANSHIPMENT CARGO TO
LIMASSOL ALEXANDRIA)

TA SHUN Arr. 25/7 Sails 28/7
EVERGOLDEN Arr. 16/8 Sails 20/8

FOR DAMMAM

PIONEER EAGLE Arr. 22/7 Sails 24/7

TRS: SEAWISE GODOWN
45, NGAN HON ST. G/F. KOWLOON

General Agents: SEAWISE SHIPPING CO.
1602 Road, Keel Bldg. 257, Des. Voeux Rd., C. H. K.
Tel: 5-446876, 5-446881, 5-446807

Arya National Shipping Line
(Formerly National Line)

CONFERENCE MEMBER

EXPRESS DIRECT SERVICE TO PERSIAN GULF

For: Kuwait and Khorramshahr

ARYA SEEM Due July 15 Sails July 16
Buoy A-50

TRS: COMPANION GODOWN COMPANY LIMITED
55-57 Wang Lung Street, Tsuan Wan, N.T. Kowloon,
Tel: 12-206898, 12-219937.
Macau Agent: San Heng Company,
Rua Visconde Fago De Arco, 71,
Tel. 2512

Far East General Agents:
ASEA TRANSPORTATION LTD.
St. George's Building, 18/F, 2, For. House St. Tel: 5-235096

KYOWA LINE
日本郵船株式会社

SOUTH PACIFIC ISLANDS REGULAR SERVICE
M.V. "ASIAN PALM"
Closes At Hong Kong: 16th July 76

M.V. "TAIMEI MARU"
Closes At Hong Kong: 10th August 76

To:

NOUMEA, SUVA, LAUTOKA, APIA,
PAGO PAGO

Accepting cargo from Hong Kong by container
with transshipment at Yokohama or Kobe.
Calling Apia, Pago Pago. Subject to inducement.

General Agents:
DAHZUN ENTERPRISES LIMITED
大成企業有限公司
13, Pottinger St., 2/F, C.
Tel: 5-261895, 5-231819

SAN SHIN LINE

REGULAR FULL CONTAINER SERVICE

TO/FROM JAPAN

VESSEL	Voy	Tokyo	Osaka	Hongkong	Tokyo	Osaka
"YOHKOH MARU"	15	—	—	24/7	29/7	30
"KYOKKO MARU NO. 3"	24	20/7	21/7	26/7	2/8	3
"FAR EAST FRIENDSHIP"	43	21/7	23/7	1/8	7/8	9
"YOHKOH MARU"	16	29/7	31/7	5/8	12/8	13
"KYOKKO MARU NO. 3"	25	2/8	3/8	9/8	16/8	17

Also accept cargoes to Yokohama (via Tokyo) & Kobe (via Osaka)
Refrigerated containers available

CY/CFS: Inbound: HIT (Berth 2) LTD.
Berth No.2, Kwai Chung, N.T.

Outbound: Fung Lee Hong Godown, Ltd.
Lot M STT 127, Kwai Chung, N.T.

GENERAL AGENTS:
FUNG LEE HONG, LTD.
1509 Connaught Centre, H.K. Tel: 5-250 14 1/7

EVERGREEN LINE NON-CONFERENCE INDEPENDENT

H.K. - U.S. EAST COAST FULL CONTAINER SERVICE

To: NEW YORK, NEWARK, BALTIMORE & CHARLESTON.
Also accepting C.Y. cargo for: BOSTON, MONTREAL, TORONTO,
PHILADELPHIA & SAVANNAH (via NEW YORK, BALTIMORE &
CHARLESTON)
(HONGKONG To NEW YORK Direct 24 Days)

Vessel	Closing	Hong Kong	New York	Baltimore	Charleston
EVER SUPERS	7/8	8/8	9/8	4/9	6/9

H.K. - CARIBBEAN SEA EXPRESS SERVICE

DIRECT CALLING PORTS:
Cristobal, Aruba, Curacao, La Guaira,
San Juan & Santo Domingo.
Maracaibo, Puerto Cabello via La Guaira.

ALSO ACCEPTING CARGO FOR:
Colon, Panama City, Balboa

WEDNESDAY, JULY 21, 1976

SEAWISE LINE

FOR JEDDAH

LEDESCO TRES Arr 20/8 Sails 25/8
 TWILIGHT Arr 20/8 Sails 25/8

BLUE LINE

MEDITERRANEAN SEA SERVICE
 FOR PIAREUS-BENGHAZI-TRIPOLI
 (ACCEPT TRANSHIPMENT CARGO TO
 LIMASSOL ALEXANDRIA)

TA SHUN Arr 28/7 Sails 30/7
 HUMANITY Arr 22/8 Sails 24/8

FOR DAMMAM

PIONEER-EAGLE Arr 25/7 Sails 28/7

TRS: SEAWISE-GODOWN
 45, NGAN HON ST. G/F, KOWLOON

SEAWISE SHIPPING CO.

1600 Loong Kee Bldg. 267 Des Voeux Road, H.K.
 Tel: 5-446876, 5-446887, 5-446807

Anya National Shipping Line

(Iranian National Line)

CONFERENCE MEMBER

EXPRESS DIRECT SERVICE TO PERSIAN GULF

For: Dubai, Kuwait and Khorramshahr

A VESSEL Due August '76 Sails August

TRS: COMPANION GODOWN COMPANY LIMITED
 55-57 Wang Lung Street, Tsuen Wan, N.T. Kowloon,
 Tel. 12-206898, 12-219937.

Macao Agent: San Hung Company,
 Rua Visconde Paço De Arcos 71,
 Tel. 2512

Far East General Agents:

ASIA TRANSPORTATION LTD.

St. George's Building, 18/F., 2, Ice House St., Tel: 5-235096

SANSHIN LINE

REGULAR FULL CONTAINER SERVICE

TO/FROM JAPAN

VESSEL	Voy	Tokyo	Osaka	Hongkong	Tokyo	Osaka
"YOKOH MARU"	15	—	—	24/7	29/7	30/7
"KYOKKO MARU NO. 3"	24	Slid	Slid	26/7	2/8	3/8
"FAR EAST FRIENDSHIP"	43	21/7	23/7	1/8	7/8	9/8
"YOKOH MARU"	16	29/7	31/7	5/8	12/8	13/8
"KYOKKO MARU NO. 3"	25	2/8	3/8	9/8	16/8	17/8

Also accept cargoes to Yokohama (via Tokyo) & Kobe (via Osaka)

Refrigerated containers available

CY/CFS Inbound: HIT (Berth 2) LTD.

Berth No 2, Kwai Chung, N.T.

Outbound: Fung Lee Hong Godown Ltd.
 Lot # STT 127 Kwai Chung, N.T.

GENERAL AGENTS:

FUNG LEE HONG, LTD.

1509 Connaught Centre, H.K. Tel: 5-25014 1/7

KYOWA LINE

SOUTH PACIFIC ISLANDS REGULAR SERVICE

M.V. "TAIMEI MARU"

Closes At Hong Kong 10th August 76

M.V. "SANSEI-MARU"

Closes At Hong Kong 10th September 76

To: NOUMEA, SUVA, LAUTOKA, APIA,
 PAGO PAGO, HONIARA, RAROTONGA,
 PAPEETE.

Accepting cargo from Hong Kong by container
 with transshipment at Yokohama or Kobe.
 Calling Apia, Pago Pago. Subject to inducement.

General Agents:

DAKZUN ENTERPRISES LIMITED

19, Pottinger St., H.K.
 Tel: 5-261885, 5-231819



EVERGREEN LINE

NON-CONFERENCE
 INDEPENDENT

H.K. - U.S. EAST COAST FULL-CONTAINER SERVICE

To: NEW YORK, NEWARK, BALTIMORE & CHARLESTON.

Also accepting C.Y. cargo for: BOSTON, MONTREAL, TORONTO,
 PHILADELPHIA & SAVANNAH (via NEW YORK, BALTIMORE &
 CHARLESTON)

(HONGKONG To NEW YORK Direct 24 Days)

Vessel Closing Hong Kong
 CFS CY Arrived/Sails

H.K. CARIBBEAN SEA EXPRESS SERVICE

DIRECT CALLING PORTS:

Cristobal, Aruba, Curacao, La Guaira,
 San Juan, Santo Domingo & Kingston
 † Maracaibo, Puerto Cabello via La Guaira

† Direct to Amapala

EXHIBITS

Plaintiff's Exhibits "P.5"
Copy extract from South China Morning Post
27th July 1976

N. J. Barnett
Registrar

1976

TUESDAY, JULY 27, 1976

SEAWISE LINE

FOR JEDDAH

TWILIGHT Arr. 20/8 Sails 25/8
LEDESCO TRES Arr. 20/8 Sails 25/8

BLUE LINE

MEDITERRANEAN SEA SERVICE
FOR PIAREUS-BENGHAZI-TRIPOLI
(ACCEPT TRANSHIPMENT CARGO TO
LIMASSOL-ALEXANDRIA)

TA SHUN Arr. 30/7 Sails 31/7
HUMANITY Arr. 22/8 Sails 24/8

FOR DAMMAM

PIONEER EAGLE Arr. 28/7 Sails 29/7

TRS: SEAWISE GODOWN
45, NGAN HON ST. G/F, KOWLOON.

General Agents: SEAWISE SHIPPING CO.
1600-1601, Loans, Keen Bldg., 267 De C. Voors, Rd. C. H. K.
Tel: 5-446876, 5-446887, 5-446807

Arya National Shipping

(Iranian National Line)

CONFERENCE MEMBER
EXPRESS DIRECT SERVICE TO PERSIA

For: Dubai, Kuwait and Khorramshahr

UNIVERSAL VENTURE Due August 18 Sails

TRS: COMPANION GODOWN COMPANY LIMITED
55-57 Wang Lung Street, Tsuen Wan, N.T. K.
Tel: 12-206898, 12-219937

Macao Agent: San Hing Company
Rua Vitoria Passo De Anjos 71,
Tel: 2512

Far East General Agents

ASEA TRANSPORTATION LTD.

57, George Street, Building 18/F, 2, Lee House, S.H. K.

SAN SHIN LIN

REGULAR FULL CONTAINER SERVICE

TO/FROM

JAPAN

VESSEL	Via Tokyo Osaka Hongkong		
	24	Sid	Sid
"KYOKKO MARU NO. 3"	24	Sid	29/7
"FAR EAST FRIENDSHIP"	43	Sid	1/8
"YOKKOH MARU"	16	29/7	31/7, 5/8
"KYOKKO MARU NO. 3"	25	4/8	5/8, 10/8
"WHITE ROSE"	162	3/8	7/8, 14/8

Also accept cargoes to Yokohama (via Tokyo) & Kobe in
Refrigerated containers available

CY/CFS: Inbound: HIT (Berth 2) LTD.
Berth No 2, Kwai Chung, N.T.

Outbound: Fung Lee Hong Godown Ltd.
Lot # STT. 127, Kwai Chung, N.T.

GENERAL AGENTS:

FUNG LEE HONG, LTD.

509 Connaught Centre, H.K. Tel: 5-25014/7

DONG SUE LINES

FOR JAKARTA SEMARANG ARR DEP

m.v. "DONG WON" 30/7 1/8

FOR JAKARTA

M.V. "DONG KWANG" 2/8 4/8

DONG WOO SHIPPING CO.

Rm 403, Korea Centre Bldg., 119-121, Connaught Rd. C.
H.K. Tel: 5-446732, 5-447487, 5-446401

FROTA OCEANICA BRASILEIRA
Frota Line

REGULAR SERVICE

To Rio De Janeiro & Santos

FROTATOKYO Due 14/8 Sails 15/8
FROTABEIRA Due 15/8 Sails 16/8

AGENTS:

C. F. SHARP & CO (HK) LTD.

1, Duddell St. Tel: 5-22508/7

KYOWA LINE

SOUTH PACIFIC ISLANDS REGULAR SERVICE

M.V. "TAIMEI MARU"

Closes At Hong Kong 10th August 76

M.V. "SANSEI MARU"

SUMA LIN

COPENHAGEN

HONG KONG/EUROPE

REGULAR INDEPENDENT SERVICE

TRANSIT TIME 32/34 DAYS VIA SUEZ

ETA ETD LOADING FO.

m.v. IKINOS Sailed

m.v. ALBERT BORNHOFEN ETA From 20A

Plaintiff's Exhibits "P.5." - Letter
Seawise Shipping Co. Ltd. to Cottontex
30th October 1976

EXHIBITS
Plaintiff's
Exhibits
"P.5." - Letter
Seawise Shipping
Co.Ltd. to
Cottontex - 30th
October 1976

SEAWISE SHIPPING COMPANY

(A Fully Owned and Operated by Seawise Agency Ltd.)

19/F1. Fortune House
61 Connaught Road, Central
Hong Kong.

Your ref: Our ref: SWS 00241/76

Date 30TH OCT. 1976.

10

COTTONTEx
801, WAH YING CHEONG CENTRAL BLDG.
HONG KONG.

Dear Sirs,

Re: S.S. Tai Shun covering shipment of
85 packages of Pieces goods from
Hong Kong to Limassol sailing on/
abt. 15.8.76

20

We regret to advise you that the above steamer had
not calling Hong Kong due to damage of part of the
engine.

Therefore, we had shipped your cargoes from Hong
Kong to Keelung per s.s. TAI HUNG sailed on 17th
August, 1976.

30

At the time being, all your cargoes are storing in
Keelung customs warehouse, and expect to load on
board s.s. "INTELLECT" of Blue Sky Shipping Co. Ltd
which expected to arrive Keelung for 30/10/76 and
expected to depart Keelung ~~5/11/76~~, 10/11/76
sailing for Limassol.

Sorry for inconvenience, we are.

Yours faithfully,
SEAWISE SHIPPING CO.
Sgd. Illegible
As Agents.

Taiwan. T.H. Chan

EXHIBITS

First Named
Defendant's
Exhibits
"D.1."

Unsigned
Statement of
Fritz Pleitgen
Undated

First Named Defendant's Exhibits "D.1."
Unsigned Statement of Fritz Pleitgen
Undated

Fritz Pleitgen of Elizabeth House, Causeway
Bay, Hong Kong states:-

I am the General Manager of the Export
Department of Gilman & Co. Ltd. and have been so
employed for nearly 10 years. I am also a member
of the Hong Kong Shippers Council (Complaints
Section).

10

I am responsible for the export from Hong
Kong of a large volume of goods every year,
currently running at HK\$70 million per annum.
Part of my duties is the booking of space on ocean-
going vessels and the arranging of insurance of the
goods where necessary.

As a general rule, when dealing with
reputable shipping lines, such as Hapag Lloyd, Ben
Lines and other conference line operators the mates
receipt and subsequent Bill of Lading are adequate
evidence that the goods have been shipped on a
particular vessel on a particular date for a
particular voyage.

20

However, on occasions, our customers require
that we use non-conference or other little known
shipping lines because they offer much lower rates
of freight. On such occasions and particularly
where I have not done business with the particular
shipping company before, I make a point of checking
the arrival and departure dates of the vessel
independently of the information given to me by the
agents. This is done by a perusal of the shipping
lists published in the daily newspapers and, where
necessary, by checking through our own shipping
company.

30

It is our practice also to send to our
customer a notice confirming that the goods in
question have been shipped and giving the expected
arrival date at the port of discharge. This
notice cannot be sent until such time as I am as
sure as possible that the information given to the
customer is correct. To do this, I have to be sure
that the goods are on board the particular vessel
and that the vessel has left on her voyage.

40

As far as I am aware the above is the
procedure adopted by other exporters in Hong Kong.
I know this from my conversations with my opposite
numbers in such companies as Jardines, Jebsens and
Swire.

.....
F. Pleitgen

50

EXHIBITS

First named Defendant's Exhibits "D.1"
signed Statement of Fritz Pleitgen
Undated

First named
Defendant's
Exhibits
"D.1"
signed
Statement of
Fritz
Pleitgen
undated

Fritz Pleitgen of Elizabeth House, Causeway Bay,
Hong Kong states:-

I am the General Manager of the Export Department
of Gilman & Co. Ltd. and have been so employed for nearly
10 years. I am also a member of the Hong Kong Shippers Council
(Complaints Section).

I am responsible for the export from Hong Kong
of a large volume of goods every year, currently running
at HK\$70 million per annum. Part of my ^{Staff's responsibility} ~~responsibility~~ is the booking
of space on ocean-going vessels and the arranging of insurance
of the goods where necessary.

As a general rule, when dealing with reputable
shipping lines, such as Hapag Lloyd, Ben Lines and other
conference line operators the mates receipt and subsequent
Bill of Lading are adequate evidence that the goods have
been shipped on a particular vessel on a particular date for
a particular voyage.

However, on occasions, our customers require that
we use non-conference or other little known shipping lines
because they offer much lower rates of freight. On such
occasions and particularly where I have not done business
with the particular shipping company before, ^{my staff} ~~I~~ make a point
of checking the arrival and departure dates of the vessel
independently of the information given ^{booking} ~~to me~~ by the (agents).
This is done by a perusal of the shipping lists published
in the daily newspapers and, ~~where necessary,~~ by checking
through our own shipping company, <sup>and by telephoning the Shipping Company
concerned DIRECTLY for latest arrival</sup>

It is our practice also to send to our customer
a notice confirming that the goods in question have been
shipped and giving the expected arrival date at the port
of discharge. This notice cannot be sent until such time

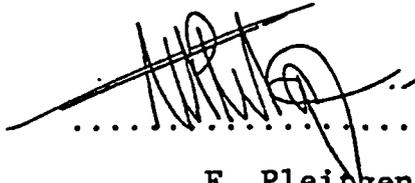
EXHIBITS

412

First named
Defendant's
Exhibits
"D.1"
signed
Statement
of

Fritz as I am as sure as possible that the information given to
Pleitgen the customer is correct. To do this, I have to be sure
undated that the goods are on board the particular vessel and
that the vessel has left on her voyage.

As far as I am aware the above is the procedure
adopted by other exporters in Hong Kong. I know this from *experience*
and ~~my~~ conversations with my opposite numbers in such companies
as Jardines, Jepsens and Swire.


.....
F. Pleitgen

O N A P P E A L

FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

GEORGE KALLIS (MANUFACTURERS)
LIMITED

Appellant
(Plaintiff)

- and -

SUCCESS INSURANCE LIMITED

Respondent
(First Named Defendant)

RECORD OF PROCEEDINGS

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

Pritchard Englefield & Tobin,
23 Great Castle Street,
London
W1N 8NQ.

Solicitors for the Appellant

Solicitors for the Respondent