PEMEX-REFINACION v. TBILISI SHIPPING CO. LTD., US: Dist. Court, SD New York 2004

(2004)
PEMEX-REFINACION, Plaintiff,
v.
TBILISI SHIPPING CO. LTD., Defendant.
TBILISI SHIPPING CO. LTD., Third-Party Petitioner,
v.
ING — COMMERCIAL (f/k/a ASEMEX or ASEGURADORA MEXICANA S.A.) and certain reinsurers, including ASSICURAZIONE GENERAL S.P.A, COLONIA BALTICA INSURANCE MANAGEMENT LTD., COMMERCIAL UNION ASSURANCE CO. P.L.C., COMPAGNIE BELGE D'ASSURANCES DE AVIATION, COMPAGNIE D'ASSURANCES MARITIMES, AERIENNES ET TERRESTRES, CORNHILL INSURANCE PLC, EAGLE STAR INSURANCE CO. LTD., ENGLISH & AMERICAN UNDERWRITER & AGENCY LTD., EXCESS INSURANCE CO. LTD., GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORP. PLC, INSURANCE COMPANY OF NORTH AMERICA UK LTD., LA NEUCHATELOISE, CIE SUIS D'ASSURANCES GLES A NEUCHATEL, LONDON & HULL MARITIME INSURANCE CO. LTD., THE LONDON ASSURANCE, MARITIME INSURANCE CO. LTD., OCEAN MARINE INSURANCE CO. LTD., ORION INSURANCE CO. P.L.C., PHOENIX ASSURANCE PLC, PRUDENTIAL REINSURANCE CO., ROYAL INSURANCE (UK) LTD., SCOTTISH LION INSURANCE CO. LTD., SPHERE DRAKE UNDERWRITING MANAGEMENT LTD., ZURICH RE (UK) LIMITED, Third-Party Respondents.

No. 04 Civ. 02705 (HB).
United States District Court, S.D. New York.

August 29, 2004.

OPINION & ORDER

HAROLD BAER, JR., District Judge.[1]

Plaintiff Petroleos Mexicanos Refinancion ("Pemex") moves for an order pursuant to 9 U.S.C. §§ 4, 5, 206 and 208, appointing Jack Berg ("Berg") as a replacement arbitrator for the deceased John P. Besman ("Besman") and compelling defendant Tbilisi Shipping Co. Ltd. ("Tbilisi Shipping") to arbitrate before the arbitration panel consisting of Pieter L.M. Vismans ("Vismans"), Lawrence J. Jacobson ("Jacobson") and Berg (collectively "the panel"). Tbilisi Shipping cross-moves for an order (i) dismissing Pemex's complaint for lack of subject matter jurisdiction pursuant to the Federal Rules of Civil Procedure ("Fed R. Civ. P.") 12(b)(1) and 12(b)(7) and, in the alternative, (ii) denying Pemex's motion to appoint an arbitrator; and (iii) compelling the Third Party Respondents to recommence arbitration with a newly constituted panel, pursuant to 9 U.S.C. §§ 4, 5, 206 and 208. For the following reasons, defendant's motion is granted-in-part and plaintiff's motion is denied.

I. BACKGROUND

A. The Cause of Action

This Court must determine whether, after the conclusion of arbitration, but prior to a decision being rendered, the death of one member of the three-member arbitration panel, mandates that the arbitration re-commence anew, or instead, whether a replacement arbitrator may be appointed.

On or about November 19, 1992, Pemex, a division of the Mexican state-owned oil company, entered into an agreement with Tbilisi Shipping, a Georgian corporation, to charter the tanker "TBILISI." (Affidavit of Terry L. Stoltz in Support of Motion to Appoint Arbitrator and Compel Arbitration ("Stoltz Aff.") ¶¶ 2-4.) Clause 55 of the Charter provided:

Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of ... NEW YORK, pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by Owner, one by Charterer and one by the two so chosen. The decisions of any two of the three on any point or points shall be final. []Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorneys' fees, and judgment may be entered upon any award made hereunder in any court have [sic] jurisdiction in the premises.
Id. ¶ 4 (emphasis added).

On December 6, 1992, while performing a voyage under the Charter, the TBILISI loaded parcels of unleaded gasoline and diesel oil at Salina Cruz, Mexico. Stoltz Aff. ¶ 5. These parcels were later cross-contaminated during their discharge in La Paz and Guyamas, Mexico. Id. Although Pemex was able to salvage the cargo, in so doing, it sustained salvage costs and other losses. Id. ¶ 6. Pemex subsequently withheld $530,320.00 of the charter hire as security for its claim against Tbilisi Shipping, for the damages resulting from the contamination of the unleaded gasoline and diesel oil. Id.

On April, 1, 1993, Tbilisi Shipping demanded arbitration pursuant to the Charter and nominated Jacobson as its arbitrator. Stoltz Aff. ¶ 8. Pemex nominated Besman as its arbitrator on April 20, 1993. Id. On April 22, 1993, Jacobson and Besman appointed Vismans as the third member and chairman of the panel. Id.

On May 18, 1993, Steamship Mutual, Tbilisi Shipping's Protection and Indemnity Club ("P&I Club"), issued a Letter of Undertaking ("LOU") for $530,320.00, in consideration of (i) Pemex's payment of the withheld hire and (ii) Pemex's refraining from arresting the TBILISI and from attaching other property of Tbilisi Shipping, except to the extent that Pemex's claim exceeded the amount of the security provided for in the LOU. Stoltz Aff. ¶ 9.

The proceedings remained dormant until November 1993, when, in response to Chairman Vismans' inquiry, Pemex's counsel reported that it was still translating documents in support of its claim. Id. at Exh. 3 (In the Matter of the Arbitration between Tbilisi Shipping Co. v. Pemex Refinancion, SMA No. 3226, at 1195 (December 5, 1995). The next date of activity was not until a year and a half later, when, on March 17, 1995, the panel was provided with a "brief outline of [Pemex's] claims together with preliminary documentation." Id. Following this submission, Tbilisi Shipping filed an application to the arbitrators to have Pemex's claim dismissed as time-barred. Id. ¶ 10. Although the panel ruled unanimously that the claim was not time-barred, they directed Pemex "to move forward as expeditiously as possible." Id. The partial final award also ordered Tbilisi Shipping to pay $2,500.00 in attorney's fees and the arbitrators' fees. Id. Finally, on January 15, 1996, Pemex filed its Statement of Claim. Supplemental Affidavit of Jeremy J.O. Harwood ("Harwood Supp. Aff.") ¶ 19.) On March

22, 2002, the P&I Club posted a second LOU in the amount of $707,819.60, plus interest, costs and attorney's fees as the arbitrators may award, to avoid the arrest of the TBILISI. Stoltz Aff. ¶ 11.

Since that time, the panel, having held 16 hearings and amassed over 2000 pages of transcripts as well as hundreds of exhibits, has completed its evidentiary stage. Id. at ¶ 13. Ultimately, on July 7, 2003, more than 10 years since the appointment of the panel, Pemex submitted its Main Post Hearing Brief. Id. After this submission, but prior to Tbilisi Shipping's submission of its Main Post Hearing Brief, and before final panel deliberations commenced, Besman, Pemex's appointed arbitrator, died. Memorandum of Law in Opposition to Plaintiff's Motion to Dismiss Plaintiff's Complaint and Grant its Third Party Petition to Compel Arbitration Anew ("Tbilisi Memo") at 7.

Pemex sought to appoint Berg as Besman's replacement. Stoltz Aff. ¶ 14. Tbilisi Shipping objected to the unilateral appointment of Berg and insisted that the arbitration recommence commence anew before a newly commissioned panel. Id. ¶ 15. On April 8, 2004, Pemex filed a motion in this court, seeking to enforce the appointment of Berg as a replacement arbitrator. Tbilisi Shipping cross-moved for an order compelling the Third Party Respondents, Pemex's insurer and reinsurers, to recommence arbitration with a newly constituted panel

B. The Insurers and Reinsurers of the Claim

Pemex has acknowledged that the damaged cargo was insured under a policy of marine insurance issued by Asegurdora Mexicana S.A.[2] ("Asemex"), and that Asemex has paid Pemex N$[Pesos] 3,933,569 in full and final satisfaction of the anticipated recovery. Harwood Supp. Aff. ¶¶ 23-25. Pemex further admits to having supplied Asemex with a subrogation receipt for its entire cargo claim. Id. ¶ 26 and Exhs. 6 and 6a. The subrogation receipt states, inter alia, "(...) the insurance company once having effected the payment of the indemnity due will acquire all rights and actions against third parties by way of subrogation up to the amount paid in respect of the damages suffered by the insured." Id.

In addition, Asemex has disclosed that it has reinsurance for at least 85% of the anticipated contamination claim. Stoltz Affirm. ¶¶ 3-4. Asemex has reported payment of N$[Pesos] 3,173,184 from a collective of over two dozen reinsurers,[3] some of whom are syndicates of two insurance companies, Lloyd's and Resolute Management, Inc.[4] Harwood Supp. Aff. ¶ 25; Stoltz Affirm. ¶¶ 3-4.

On August 16, 2004, following the Court's July 28, 2004 request that Pemex either submit revised ratification letters that evidence consent to be bound by this Court's judgment or consider joinder of the insurers and reinsurers, Pemex submitted amended ratifications from ING Insurance International B.V. ("ING") (the company that absorbed Seguros Comercial America, S.A. de C.V., the company which had previously absorbed Asemex), Lloyd's, and Resolute Management, Inc. ("RMI"). These letters all reference the litigation in this Court and contain the following ratification language:

We understand that you are pursuing a recovery for the contamination against the owner of TBILISI in arbitration in New York and in related litigation in the United States District Courts for the Southern District of New York (entitled Pemex-Refinacion v. Tbilisi Shipping Co. Ltd., Docket No. 04 CV 02705 (HB)(GWG)). . . We confirm that insofar as we are interested in the recovery, we authorize you to continue to pursue a recovery on our behalf in

arbitration, and in any related litigation, and we agree to be bound by the decisions of the arbitrators and the courts.
Notice of Filing of Ratifications, Exhs. 1-3.

Tbilisi Shipping asserts, based on the pre-amendment ratification letters that Asemex and its reinsurers, not Pemex, are the real parties in interest. On such grounds, Tbilisi Shipping asks the Court to compel the third party petitioners, the alleged real part in interest, to recommence the arbitration before a new panel.

II. DISCUSSION

A. Standing

Tbilisi Shipping argues that Pemex's insurers and reinsurers are the real parties in interest, under Fed R. Civ P. 17(a) because Pemex has been "paid in full" for the principal amount of its claim." Harwood Aff. Ex. B ¶ 5 (citing to page 11 of Pemex's opposition brief, dated August 14, 2002, filed in Petroleos Mexicanos Refinancion v. M/T KING A (ex-TBILISI), 02 CV 1215, 2003 U.S. Dist. LEXIS 21882, at *7 (D.N.J. April 15, 2003)). Pemex maintains that despite its insurer's and reinsurer's interest in the arbitration, it posses an independent interest in the claim for "unreimbursed interest on the damages suffered." Stoltz Aff. Exh. 5, at p.5.

Rule 17(a) requires that "[e]very action shall be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 17(a). "If the subrogee has paid an entire loss suffered by the insured, it is the only real party in interest and must sue in its own name. If it has paid only part of the loss both the insured and insurer ... have substantive rights against the tortfeasor which qualify them as real parties in interest." Ocean Ships, Inc. v. Stiles, 315 F.3d 111, 116 (2d Cir. 2002) (quoting United States v. Aetna Cas. & Sur. Co., 338 U.S. 366, 380-81 (1949)). In this case, since Pemex has not been reimbursed for the interest on the damages it suffered, it retains an interest in this suit. See Id. (holding that a party's "payment of the $5000 deductible created a sufficient independent interest."). Therefore, Pemex may sue in its own name to recover for costs not covered by the policy.

While Pemex's continuing interest in this litigation makes it a real party in interest, there is a second question with respect to whether Pemex's insurer, ING, and the reinsurers, Lloyd's and RMI must be joined due to their interest in the suit. It is clear that "an insurer is required to be joined as a real party in interest, pursuant to Rule 17(a), if it has paid an insured pursuant to an insurance contract because it then has a stake in the litigation." Reliant Airlines, Inc., et al. v. County of Broome, 90 Civ. 537, 1993 U.S. Dist. LEXIS 10110, at *7 (N.D.N.Y. July 19, 1993). The rationale behind requiring real parties in interest to be joined is to "protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata." Notes of Advisory Committee, Fed. R. Civ. P. 17(a), 1966 Amendment. A court has discretion to determine when ratification is permissible and "[t]his discretion must be exercised in a manner consistent with the Rule's purpose to protect the defendant from subsequent litigation and to finally resolve the dispute at hand." Motta v. Res. Shipping & Enters. Co., 499 F. Supp. 1365, 1371 (S.D.N.Y. 1980) (citing Prudential Lines, Inc. v. Gen. Tire Int'l Co., 74 F.R.D. 474, 476 (S.D.N.Y. 1977)). And, "[w]hile Fed. R. Civ. P. 17(a) requires that every action be prosecuted in the name of the real party in interest, it also provides that: no action shall be dismissed on the ground that it is not prosecuted in the name

of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by ... the real party in interest; and such ratification ... shall have the same effect as if the action had been commenced in the name of the real party in interest." B.R.I. Coverage Corp. v. Air Canada, 725 F. Supp. 133, 136 (E.D.N.Y. 1989).

While this Court found the original ratification letter from Asemex to be deficient in its failure to evidence, expressly, a willingness to be bound by the judgment reached herein, and also queried whether ratification letters were necessary from the reinsurers, Pemex recently submitted three new ratifications that wholly allay the Court's concerns. These ratification letters confirm (1) that the parties authorize Pemex to pursue recovery on their behalf in the arbitration and "in any related litigation," and (2) that the parties "agree to be bound by the decisions of the arbitrators and the courts." Notice of Filing of Ratifications, Exhs. 1-3. Therefore, I find that because Asemex, Lloyd's, and RMI "have ratified commencement and maintenance of this action by plaintiff and have agreed to be bound by any judgment" (B.R.I. Coverage Corp., 725 F. Supp. at 136), the suit may properly proceed in the absence of these parties.

B. The Substitute Arbitrator

The "general rule" established by the Second Circuit dictates that "where one member of a three-person arbitration panel dies before the rendering of an award and the arbitration agreement does not anticipate that circumstance, the arbitration must commence anew with a fresh panel." Trade & Transport v. Natural Petroleum Charterers Inc., 931 F.2d 191, 194 (2d Cir. 1991) (citing, inter alia, CIA De Navegacion Omsil, S.A. v. Hugo Neu Corp., 359 F. Supp. 898, 899 (S.D.N.Y. 1973). In the instant case, the Charter does not address the appointment of a new arbitrator following the death of a panel member. Furthermore, Besman died not only "prior to the rendering of an award," but before Tbilisi Shipping had the opportunity to submit its Main Post Hearing Brief, and before final panel deliberations commenced. Tbilisi Memo at 7. Therefore, absent Pemex's demonstration of "special circumstances," the general rule that the arbitration must commence anew is applicable here. Marine Prods. Export Corp. v. M.T. Globe Galaxy, 977 F.2d 66, 68 (2d Cir. 1992). "Special circumstances" meriting the appointment of a replacement arbitrator typically include instances where vacancies have occurred during the very early stages of arbitration or where a panel has rendered a final decision with respect to only some of the issues raised in the arbitration (i.e. a bifurcated arbitration). See e.g., Trade and Transport, 931 F.2d at 194-195; Home Ins. Co. v. Banco de Seguros Del Estado, 98 Civ. 6022, 1999 U.S. Dist. LEXIS 22478, at *4-5 (S.D.N.Y Feb. 17, 1999).

Although Pemex advances several creative theories as to why its claim merits a finding of "special circumstances," all of its arguments are unpersuasive. Pemex first contends that the "partial final award [issued by the panel] before Besman's death, deciding that the claim was not time-barred," is "tantamount to a ruling on liability," making the arbitration a "bifurcated" proceeding, and warranting classification as "special circumstances." Pemex Memorandum of Law in Support of Motion to Appoint an Arbitrator and to Compel Arbitration ("Pemex Memo") at 7. However, the partial final award, holding that Pemex's claims were not time-barred, reflected only a procedural determination that Pemex had filed its claim for damages in a timely manner. Stoltz Aff. Exh. 3 (In the Matter of the Arbitration between Tbilisi Shipping Co. v. Pemex Refinancion, SMA No. 3226, at 1195 (December 5, 1995)). And, as Pemex is well aware, Tbilisi Shipping has "never disputed its liability for the losses incurred

by Pemex." Tbilisi Shipping's Notice of Cross-Motion and Third-Party Petition, Exh K (Pemex's Main Post Hearing Brief) at 24. Therefore, this arbitration has always involved only the single-faceted issue regarding the quantum of damages, and it is undisputed that no final decision was rendered on that account. Cf. Trade and Transport, 931 F.2d at 195-196; Home Ins. Co. v. Banco de Seguros Del Estado, 1999 U.S. Dist. LEXIS 22478, at *4-5. Instead, the panel heard the totality of testimony and admitted the entirety of evidence, yet had not yet rendered a decision at the time that Besman passed. This situation is exactly the type that warrants a new proceeding, and is in no sense comparable to the truly "bifurcated" proceedings, wherein an arbitrator passes away after the panel has rendered a decision in a liability phase, but prior to the commencement of testimony on the damage phase. See, e.g., Trade and Transport, 931 F.2d at 195-196; Home Insurance Co. v. Banco de Seguros Del Estado, 1999 U.S. Dist. LEXIS 22478, at *4-5.

Courts have rejected the general rule and appointed replacement arbitrators after a partial final decision was rendered, but always before proceedings had commenced with respect to the unresolved issues. See Trade and Transport, 931 F.2d at 195-196; Home Insurance Co. v. Banco de Seguros Del Estado, 1999 U.S. Dist. LEXIS 22478, at *4-5. Given the crucial role that arbitrators play, from assessing the credibility of witnesses to serving as advocates for their respective appointees, it makes sense that it is only in instances where a panel is completely without power to revisit an issue that the Court has approved the appointment of a replacement. See Cia de Navegacion Omsil, S.A. v. Hugo Neu Corp., 359 F. Supp. 898, 899 (S.D.N.Y. 1973) ("[h]is questions to witnesses and counsel, his comments along the way, his observations during interim deliberations may have subtle and possibly decisive impacts upon the end result.") In the instant case, the unresolved "second half" of the arbitration, relating to the quantum of damages, had progressed almost to the point of completion — "[a]ll that remains to be done to submit the matter to the panel for deliberation and decision is for Tbilisi Shipping to send in its Main Post Hearing Brief and for each party to file a reply brief." Pemex Memo at 4. Therefore, this is the exact type of case that falls under "the general rule" that arbitration must begin afresh upon the death or incapacitation of a panel member. Marine Prods. Export Corp., 977 F.2d at 68.

Pemex also argues that because the deceased arbitrator was its representative to the panel, it may "waive its right to object and agree to proceed before a substitute arbitrator who had not attended all the hearings." Pemex Memo at 6 (citing Conoco Shipping Co v. Palm Shipping, Inc. 86 Civ. 4550, 1987 U.S. Dist. LEXIS 382, at *2 (S.D.N.Y. Jan. 23, 1987)). Pemex argues that since the reasoning behind the general mandate for new arbitration proceedings after the death of an arbitrator is "to avoid forcing a party to proceed over its objection before a panel where its own arbitrator would not have the full benefit of participating in the hearings," its willingness to waive any objection should constitute an exception to the rule. Pemex Memo at 5. The same precedent that Pemex cites in favor of its position, however, holds oppositely. Although Pemex is correct that parties may waive the right to new arbitration after the death of a panel member, all parties, not just the party who lost its representative, must waive their right. Conoco, 1987 U.S. Dist. LEXIS 382, at *4 ("[the defendant] could agree [with plaintiff's motion to appoint a new arbitrator] if it wished; but that willingness is not present, and I do not think it right to compel the procedure."). Because the defendant in this case objects to the waiver of a replacement, the arbitration must re-commence. Id.

Pemex's concern that restarting the arbitration might "lead to future arguments in the confirmation proceedings about the P&I Club's obligations to pay Pemex under the first LOU" because "the first LOU specifically refers to an award `in the arbitration already

commenced'" is also without merit. Pemex Memo at 8. As Tbilisi Shipping correctly asserts, the LOU entitles Pemex to file for a bond from the P&I Club to secure its claim[5] and "any need for concern would be obviated since Pemex's subrogees have security for the claim directly from the Club." Tbilisi Memo at 21. In addition, in a letter dated April 28, 2003,[6] counsel for Tbilisi Shipping wrote to Pemex's counsel, "renewing the Club's commitments [under the LOU], in the event a new arbitration is ordered." Id. at 22. Therefore, the bond protection offered by the LOU, in addition to the P&I Club's written renewal of its commitment, is more than sufficient to ensure that the P&I Club will uphold its commitment to Pemex.

Finally, while the Court agrees with Pemex's sentiment that it is a regrettable loss of time and money to restart an eleven year-old arbitration, I am nonetheless unwilling to rewrite the contract, agreed to by the parties. Conoco, 1987 U.S. Dist. LEXIS 382, at *4-5 (holding "it would do violence to the parties' underlying contract were I to grant the present petition [to appoint a replacement arbitrator]" where the arbitration agreement was silent with respect to appointment of replacement arbitrators following the death of a panel member.) This decision to order the recommencement of such a protracted proceeding is made easier because it appears that at least some of the fault for the extensive length of this arbitration lies with Pemex. It is undisputed that it took Pemex three years to submit its initial Statement of Claim and it was not until 1997 and 1999, respectively, that Pemex disclosed the identity of its insurers and reinsurers. Stoltz Aff. at Exh. 3 (In the Matter of the Arbitration between Tbilisi Shipping Co. v. Pemex Refinancion, SMA No. 3226, at 1195 (December 5, 1995)); Tbilisi Memo at 4-6. Furthermore, it seems to me that this case, rather than portraying an aberration of lingering arbitration as Pemex contends, is sadly indicative of a common and disturbing trend in such proceedings. As Judge Frankel noted in Osmil over 30 years ago, the problems with arbitration are extensive — "[t]his is one of too many cases where the advantage of speed (among other benefits) sought through the use of arbitrators has not been realized." In re Cia de Navegacion Omsil, S.A., 359 F. Supp. 898 (S.D.N.Y. 1973). I can only hope that counsel, having had the opportunity to try this case once before, will be more expedient in their prosecution of their claims this second time around.

III. CONCLUSION

For the foregoing reasons, plaintiff's motion to appoint a replacement arbitrator is denied, and it is ordered that a new arbitration proceeding must be commenced. Within 20 days of the date of this order, each party shall appoint a new arbitrator; provided however, that the defendant is at liberty to reappoint the arbitrator which it previously selected; and, it is further ordered that within 20 days after the appointments of the parties' arbitrators, those arbitrators shall select a third arbitrator, and that arbitration shall go forward in accordance with the terms of the arbitration agreement; and, it is further ordered that the Clerk is instructed to close these motions, and remove this case from my docket.

[1] Lauren Yates, a summer 2004 intern in my Chambers and second-year law student at the Benjamin N. Cardozo School of Law, provided substantial assistance in the research and drafting of this Opinion.

[2] On January 1, 1997, Asemex was absorbed by Seguros Comercial América ("SCA"), Sociedad Anónima de Capital Variable [variable capital corporation] via corporate merger. Notwithstanding, SCA continues to maintain an "Asemex Division" to which the present

claim is assigned. Therefore, Pemex's insurer will continue to be referred to as Asemex herein. Stoltz Affirm. Exh. 11.

[3] Counsel for Pemex has submitted a letter from Heath Marten's Horner Ltd, dated December 31, 1991, outlining the identities of the reinsurers and the percentages of the risk they covered. Harwood Letter to the Court of July 16, 2004 (Attachment). These amounts are reproduced below: 51.4980%, Various Lloyds Underwriters; 3.330%, Indemnity Marine Assurance Co. Ltd.; 2.8860% (80% Sphere Drake Insurance p.l.c., 20% Dai-Tokyo Insurance Company (U.K.) Limited); 3.773%, Insurance Company of North America (U.K.) Limited `G' A/C; 4.4400%, Orion Insurance Company PLC; 2.6640% (80% Royal Insurance (UK) Limited, 20% British & Foreign Marine Insurance Company Limited); 2.2190%, Zurich Re (UK) Limited; 3.1080% (40% London Assurance, 20% Sun Insurance Office Ltd, 40% Alliance Assurance Company Ltd; 3.3300%, Phoenix Assurance plc; 3.3290%, Ocean Marine Insurance Company Limited; 3.3300%, Commercial Union Assurance Company plc; 2.6640%, General Accident Fire and Life Assurance Corporation plc; 2.2200%, AXA Marine & Aviation Insurance (UK) Limited; 2.2190%, Cornhill Insurance Public Limited Company; 2.2200% (55% Baltica Insurance Company (UK) Limited, 45% Colonia Insurance Company (UK) Limited); 1.3320%, La Neuchateloise, Compagnie Suisse D'Assurance Generales A Neuchatel; 1.1100%, Excess Insurance Company Limited; 1.1090%, Maritime Insurance Company Limited; 1.3320%, Assicurazioni Generali S.P.A.; 1.5540%, Scottish Lion Insurance Company Ltd; 0.3330%, Compagnie d'Assurances Maritimes Aeriennes et Terrestres.

[4] It is unclear from the evidence submitted by the parties which of the reinsurers are represented by Lloyd's or Resolute Management, Inc., and which, if any, are independent reinsurers.

[5] The third paragraph of the LOU states, inter alia, that "[u]pon demand to cause to be filed a bond in form and sufficiency of surety satisfactory to the court in the above principal amount of $530,320 securing your alleged cargo claim against the [TBILISI] in the [arbitration] proceedings." Stoltz Aff. Exh 2.

[6] The letter stated, in relevant part, that:

[t]he Club also agrees, if a "new arbitration" is ordered, "to pay and satisfy the amount of such judgment or agreement, as aforesaid, up to [sic] and not exceeding the sum of $530,320 inclusive of costs and attorneys' fees, if awarded, plus interest for a total of $94,000, or a lesser amount so judgment or contemplated by said settlement," in the event of a final arbitration award made in the new arbitration under the captioned charter, as stated in Paragraph 2 of the first LOU, or by way of a settlement as also stated therein.

Tbilisi Shipping Notice of Cross-Motion and Third Party Petition, Exh. M.