

Brillante Virtuoso ruled a constructive total loss



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In an \$80m claim by the owner of the *Brillante Virtuoso* and Piraeus Bank, the High Court ruled that the suezmax tanker was a constructive total loss following a pirate attack in the Gulf of Aden.

Reed Smith acted for Piraeus Bank, the second claimant, in this lengthy trial.

- *Brillante Virtuoso* was held a constructive total loss after an incendiary device was detonated in the engine room following a pirate attack in July 2011.
- The owner was entitled to an indemnity on the basis that the ship was a constructive total loss and a further indemnity in respect of salvage, tug and agents' costs.
- The Court considered that the most appropriate location for repairs may not necessarily be based on the cheapest quotation and other important commercial considerations were also to be taken into account. In addition, the Court ruled that a contingency figure of around 10% should be added to repair cost estimates in cases where there are limits to the full inspection of the ship.

Suez Fortune Investments, the owner of the *Brillante Virtuoso*, and Piraeus Bank were successful before the High Court of London where it was held that the ship was a constructive total loss (CTL) following a pirate attack in the Gulf of Aden in July 2011.

The Court's decision that the ship was a CTL entitles the owner to an indemnity on that basis and a further indemnity in respect of sue and labour (salvage, standby tug and agents' costs).

In his judgment handed down on 15 January 2015, Mr Justice Flaux raised some issues of note that the Court considered when deciding on issues of quantum. These included deliberations of the prudent uninsured owner when assessing the appropriate location for repairs and the application of contingency figures when reviewing cost estimates.

The judgment handed down in January was the first stage of a two-part trial. A second hearing will determine the issues of liability.

Circumstances of the loss

The hull was insured for \$55m, with an additional \$22m increased cover. The ship was sailing from the Ukraine to China with a cargo of fuel oil when it was boarded by pirates off Aden masquerading as the port authorities. The armed gang overpowered the crew and ordered the master to sail to Somalia. When the engine stopped and could not be restarted, an explosion was detonated which engulfed the engine room and accommodation.

The claimants' case was that the ship was rendered a CTL as a result of the pirate attack, which was an insured peril. The insurer's defence was that the *Brillante Virtuoso* was in breach of a warranty in the insurance policy by calling at Aden, although the owner claimed that this call was to embark a security team and was with the insurer's knowledge.

Cost of repairs in the Middle East versus China

The Court considered that, despite the cost of repairs in this case being 17.5% more expensive in Dubai than in China, the prudent uninsured owner would have still favoured repair in Dubai. The proper and appropriate location for repairs will depend on the individual circumstances of the case. In his ruling,

Mr Justice Flaux highlighted a number of reasons why the more expensive yard might be preferred, including:

- risks incurred through further towage;
- costs of insurance for the tow;
- loss of income; and
- the reputation of the yards, not only with regard to the quality of workmanship but, importantly, accuracy of cost estimates and the risk of delays.

Application of a contingency figure to repair cost estimates

The Court was guided by a previous decision in *Angel v Merchants Marine Insurance Co*¹, in which the Court of Appeal determined that a “large margin ought to be added to the figures of cost of repair to cover risks of this sort”.

In this case, there were limitations in inspecting the *Brillante Virtuoso* to ascertain the full extent of the damage, and some machinery and equipment could not be tested. Mr Justice Flaux was firmly of the opinion that the applicable contingency should be 10%.

Implications

The claim has been closely followed and widely discussed by the London insurance market. It also indicates a more commercial approach is likely to be followed in future CTL cases and perhaps ship repair claims more generally going forward.

1 *Angel v Merchants Marine Insurance Co* [1903] 1 KB 811 at 816

