

## **JUS5401 – Maritime Law - Contracts**

Spring 2012

**The language of examination for this course is English: students may answer in English ONLY, answers in any other language than English will be given a F (F for fail).**

### Part I

The shipowner Bulk Transport AS had the vessel M/V Breeze on time charter to Chartering Inc. The time charter was based on the Baltime 1939 form and was made subject to Norwegian law. The ship was ordered to load a cargo of 10,000 tons of steel coils at Santos, Brazil, for carriage to Florø, Norway.

During loading the master noticed that many of the steel coils were covered by surface rust (corrosion). Upon loading the shipper – being the seller/exporter of the cargo – presented bills of lading for the master's signature. The bills – which stated Florø as discharge port – were "clean" (contained no mention of corrosion). The master therefore added "10,000 tons of steel coils, *rust stained*".

The shipper objected to such marking, claiming that the degree of rust did not indicate any quality defect of the steel, and that some rust was inevitable since this type of steel products were generally stored outdoor in Brazil. The master was not convinced by this. He had, admittedly, little experience with steel products from Brazil but based on his knowledge of the European trade, the degree of rust on the present cargo was greater than normal.

The shipper persisted. He advised that unless "clean" bills were issued he (as seller) might suffer losses under the sales contract where "clean" bills were required to trigger the payment mechanism for the purchase price. The shipper therefore reserved the right to claim damages against Bulk Transport for unwarranted withholding of "clean" bills. The master found himself in a dilemma. He did not wish to cause the shipowners to become liable for unwarranted marking of the bills, and the shipper's explanation of outdoor storage in Brazil appeared as such plausible to him. He therefore decided to issue "clean" bills.

During the voyage to Norway the bills of lading had been passed on to the third party buyer/receiver who, without knowledge of the rust-issue, had paid against the documents. Upon discharge at Florø the receiver claimed damages against Bulk Carriers for the steel coils being covered by surface rust.

The master advised that the rust was pre-shipment. He claimed that this degree of rust was quite common on this type of steel products from Brazil, and that it did not indicate any quality defect which required marking of the bills.

The receiver disagreed and presented an expert report which stated that the degree of rust, on the European market, represented 5% reduction of the value of the cargo. The market value of the cargo at Florø was USD 1 mill. The receiver therefore claimed USD 50.000 in damages. The receiver invoked MC section 299 third para, cf. section 279.



Bulk Transport did not object to the expert report as such, nor to the assessed reduction in value, but claimed there was no basis for liability since the master could not be blamed for his conduct.

(Because of the unit – one unit per kilo – and weight of the cargo, it was irrelevant to go into limits of liability according to MC sections 280, 281.)

**Q1:** Is Bulk Transport liable for the master not having marked the bills? Give a reasoned answer.

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We now assume that the shipper did not claim damages for the USD 50.000 as described above, but instead as follows:

The market value for the steel coils had dropped 10% from the time of conclusion of the sales contract between the receiver and shipper, until the time of the shipment. It was also a fact that that under the terms of the sales contract the receiver/buyer was entitled to reject (not pay for) bills of lading containing remarks on quality, for example in terms of “steel coils, *rust stained*”.

The receiver now claimed that had the bills been properly marked, he would have taken advantage of the falling market and gotten out of the sales contract (by rejecting the bills) and instead purchased the steel coils at the lower market. This would have saved him USD 100,000 (the purchase price of USD 1 mill, reduced by 10%). Hence the receiver claimed USD 100.000 in damages, invoking MC section 300.

Bulk Transport did not deny that the receiver would have acted as described and thereby saved USD 100.000 if the bills had been marked. Bulk Transport disagreed, however, that the receiver by invoking MC section 300 could recover more than the USD 50.000 based on quantification of the quality defect at discharge port, cf. MC section 279.

**Q2:** Can Bulk Transport be held liable for the receiver’s claim of USD 100.00? Give a reasoned answer.

## Part II

When Bulk Transport received the claim for damages from the receiver, the initial thought was to claim indemnity/recourse from the shipper who was the one having insisted on obtaining “clean” bills of lading, cf. MC section 301 first para. However the shipper was located in a distant jurisdiction which complicated recovery of such a claim.

Bulk Transport therefore chose to claim indemnity from Chartering Inc. under the time charter. Bulk Transport argued, amongst other, that since issuing of bills of lading is generally done in the interest of the time charterer, the time charterer should bear the consequences resulting from the shipowner being exposed to liability vis-a-vis third party bill of lading holders. As part of this Bulk Transport submitted that Chartering Inc. must be vicariously responsible for the acts of the shipper. In support, Bulk Transport referred to Baltimore 1939 clauses 9 and 12, and also to MC section 382.

Chartering Inc. denied liability for indemnity and submitted that if a shipowner incurs liability vis-a-vis receivers because the master, being the shipowner's servant, fails to properly mark cargo documents, that must be the sole risk and responsibility of the shipowner.

**Q3:** Is Bulk Transport entitled to indemnity (wholly or partly) against Chartering Inc.? Give a reasoned answer.

Part III

**Q4:** Which party – the shipowner or the charterer – bears the cost of fuel consumed by the vessel during voyage(s), in

- a) voyage chartering,
- b) time chartering
- c) bare boat chartering?

**Q5:** Which convention for the carriage of goods by sea are the mandatory rules of MC chapter 13 based on?