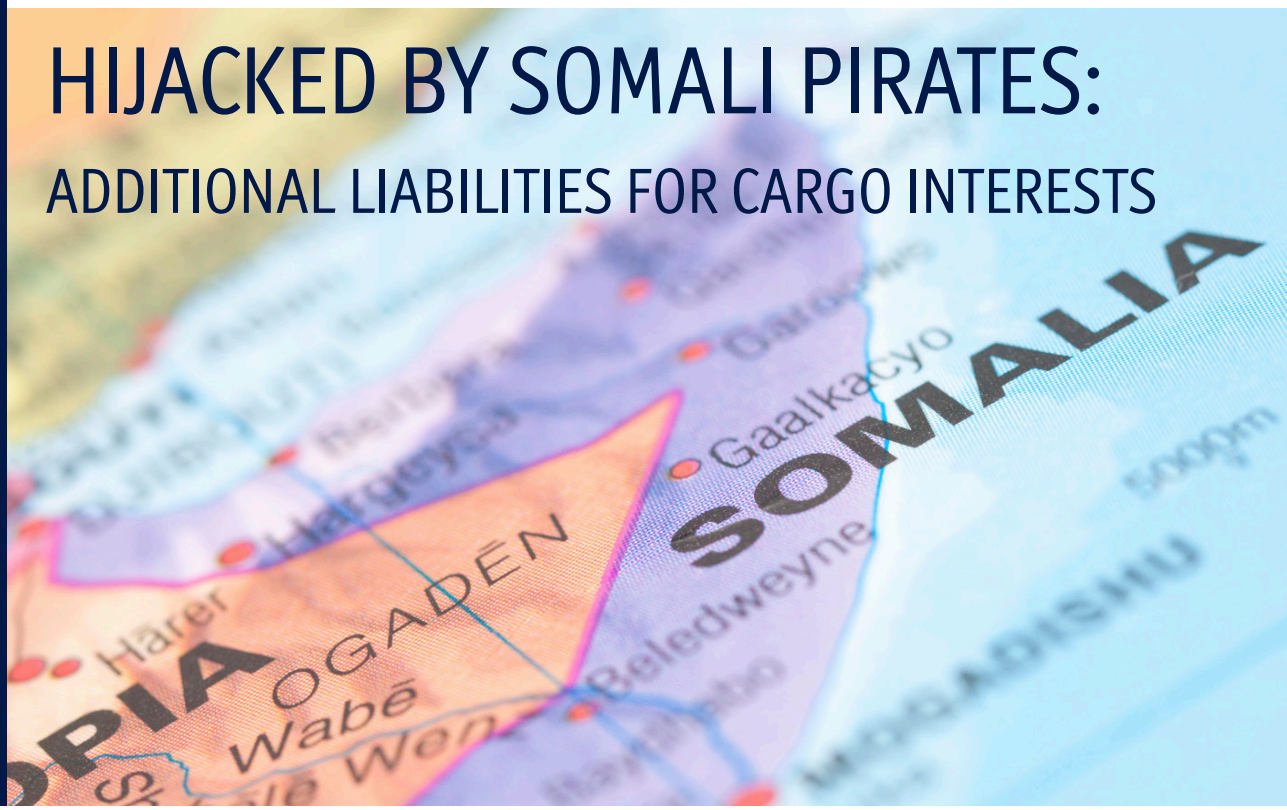
Shipping

November 2014

HIJACKED BY SOMALI PIRATES:

ADDITIONAL LIABILITIES FOR CARGO INTERESTS



In October 2014, the English High Court handed down an unfavourable judgment for cargo owners and their insurers in the context of Somali piracy[1]. Stephen Hofmeyr QC, sitting as Deputy High Court Judge, ruled that additional classes of expense – beyond that typically allowed by current General Average adjusting practice, could be recovered by shipowners from cargo interests. This included wages paid to crew and bunkers consumed during the period of a Somali hijack.

Whilst the last hijacking by Somali pirates of a major commercial vessel was back in May 2012, a considerable number of General Average recovery actions remain unresolved, so the judgment gives the potential for shipowners and their insurers to make significant additional recoveries from cargo interests. The additional liability for cargo interests will be felt most acutely for hijackings in 2011 and 2012, which were typically for longer periods, and also for hijackings where the cargo made up a high proportion of the value of the property released (such as where crude oil was being carried).

Whilst in the *LONGCHAMP*, which was hijacked in the Gulf of Aden on 29 January 2009 and released on 28 March 2009, the sums being challenged by cargo interests were modest (less than US$50,000), the costs of the decision for cargo interests in other cases could well exceed US$1 million.

Up until now, the Average Adjusters Association has rejected calls to allow claims for crew wages and bunkers consumed during the hijacking to be allowed in General Average.

Mr Hofmeyr QC took a different view. He felt that it was legitimate to look at the savings made by the shipowners in negotiating the ransom to a lower level, and accepted that the difference between the pirates' first demand and the agreed ransom was a "saving" against which costs incurred whilst negotiating that ransom could be claimed. In his view, *"the reduction in the amount of the ransom was only achieved by a process of negotiation which necessarily involved a shipowner incurring expenditure"*, and that this

1 The *LONGCHAMP* [2014] EWHC 3445 (Comm)


expenditure was *"incurred in substitution for the saving of the ransom i.e. the initial demand and amount paid"*. These "substituted expenses" could be allowed in General Average under Rule F of the York-Antwerp Rules.

The judgment will be a disappointment for those cargo interests who have sought to delay or challenge their General Average contribution by alleging actionable fault or unseawothiness on the part of the ship (arguments which have never succeeded in a Somali piracy context), rather than promptly settle their General Average contribution. On the basis of the *LONGCHAMP*, those cargo interests are now likely to have to foot a larger bill. Leave to appeal has been granted.

For more information, please contact the authors of this Briefing:

Richard Neylon
Partner, London
T: +44 (0)20 7264 8100
E: richard.neylon@hfw.com

Michael Ritter
Associate, London
T: +44 (0)20 7264 8000
E: michael.ritter@hfw.com

HFW's London office is part of an international network of 13 offices in 11 countries. For further information about shipping related issues in any other jurisdiction, please contact:

James Gosling
Partner, London
T: +44 (0)20 7264 8382
E: james.gosling@hfw.com

Stanislas Lequette
Partner, Paris
T: +33 1 44 94 40 50
E: stanislas.lequette@hfw.com

Jeremy Davies
Partner, Geneva
T: +41 (0)22 322 4810
E: jeremy.davies@hfw.com

Dimitri Vassos
Partner, Piraeus
T: +30 210 429 3978
E: dimitri.vassos@hfw.com

Simon Cartwright
Partner, Dubai
T: 971 4 423 0520
E: simon.cartwright@hfw.com

Paul Apostolis
Partner, Singapore
T: +65 6411 5343
E: paul.apostolis@hfw.com

Paul Hatzer
Partner, Hong Kong
T: +852 3983 7666
E: paul.hatzer@hfw.com

Nick Poynder
Partner, Shanghai
T: +86 21 2080 1001
E: nicholas.poynder@hfw.com

Gavin Vallely
Partner, Melbourne
T: +61 (0)3 8601 4523
E: gavin.vallely@hfw.com

Nic van der Reyden
Partner, Sydney
T: +61 (0)2 9320 4618
E: nic.vanderreyden@hfw.com

Hazel Brewer
Partner, Perth
T: +61 (0)8 9422 4702
E: hazel.brewer@hfw.com

Jeremy Shebson
Partner, São Paulo
T: +55 (11) 3179 2903
E: jeremy.shebson@hfw.com

Lawyers for international commerce hfw.com

São Paulo London Paris Brussels Geneva Piraeus Dubai Shanghai Hong Kong Singapore Melbourne Sydney Perth