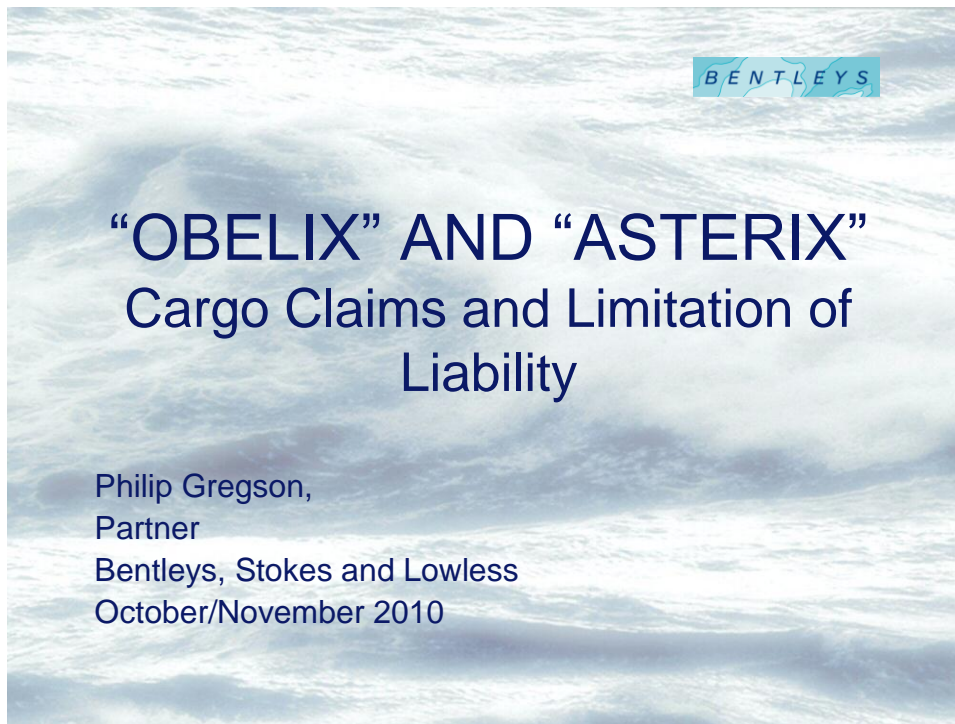


Trainingscamp IV

Oct. / Nov. 2010



“OBELIX” AND “ASTERIX” Cargo Claims and Limitation of Liability

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October/November 2010

presented by

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“ASTERIX” CARGO CLAIMS

BENTLEYS

- Nature of Collision meant that owners of lost or damaged cargo and containers would pursue Owners of OBELIX to satisfy their claims.
- No salvage security from cargo interests, no contribution to salvage award.
- No G.A.
- Owners of ASTERIX also directed claimants to OBELIX.
- Quickly had to establish procedures for dealing with the claims.

“ASTERIX” CARGO CLAIMANTS

BENTLEYS

- Cargo/container claims eventually divided into 5 groups:
 - “Schedule A” Cargo Claimants
 - “Settled” Claims
 - “Claims Agency” Claimants
 - “Challenger” Claimants
 - Limitation Fund Claimants

“SCHEDULE A” CARGO CLAIMANTS

BENTLEYS

- Had protection of a separate fund for claims as part of the main Jurisdiction Agreement.
- Claims set off against “Initial Limitation Fund” of US\$15 million.
- Several interests instructed own lawyers (not ASTRERIX lawyers who negotiated CJA and security).
- Claims for cargo, containers and other expenses arising out of collision.

“SCHEDULE A” CARGO CLAIMANTS

BENTLEYS

- All claims settled amicably on satisfactory proof of loss.
- No litigation.
- Total Claims: c. GBP 373,000
- Settlements: c. GBP269,000

SETTLED CLAIMS

BENTLEYS

- Interests who wanted to stay outside UK.
- 18 groups of claimants.
- Offered English law and jurisdiction and security provided by OBELIX's H&M underwriters in Germany.
- Some accepted only security, some jurisdiction and security.

SETTLED CLAIMS

BENTLEYS

- Most threatened proceedings in own jurisdiction.
- Represented by various lawyers/claims agencies in USA, Israel, Greece, Ivory Coast, Egypt and UK.
- By direct negotiation or by instruction of lawyers in above countries all these claims were settled amicably.
- Value of claims: c.GBP 1.03 million
- Settled: c.GBP 543,000

CLAIMS AGENCY

BENTLEYS

- UK claims agency was instructed by a large number of cargo interests.
- They wanted to avoid English law and jurisdiction and limitation of liability proceedings.
- In February 2000 OBELIX was arrested in South Africa.
- Demand for Sri Lankan jurisdiction and security of US\$5.6 million.

CLAIMS AGENCY

BENTLEYS

- OBELIX released within 4 days on provision of security - bank guarantee in South Africa.
- Any additional claims to be secured with Sri Lankan jurisdiction
- Further claims - security increased by US\$488,000
- No claims brought in Sri Lanka
- Maintaining bank guarantee in South Africa was costly!

CLAIMS AGENCY

BENTLEYS

- In March 2001 agreed a detailed mechanism for dealing with claims.
- All to be paid at 65% of proven loss.
- Interest payable for 2 years from date of collision.
- Once claim agreed – payment within 42 days.
- Provision for nominated arbitrator to adjudicate in event of dispute as to claim.

CLAIMS AGENCY

BENTLEYS

- Importantly – bank guarantee in South Africa to be replaced by a Letter of Undertaking provided by H&M underwriters.
- No legal costs to be paid.
- Operation of agreement subject to English law and jurisdiction.
- Settled nearly 250 individual claims amicably.
- No need to resort to arbitrator.

CLAIMS AGENCY

BENTLEYS

- Total value of claims as notified
GBP 2,919,524
- Settled at GBP1,897,690
- = 65%

“CHALLENGER” CARGO INTERESTS

BENTLEYS

- So called here because they attempted to challenge the owner's right to limit.
- Group of 65 cargo interests represented by small London law firm
- Instructions through Lloyd's market.
- Adopted aggressive position from day one.
- Agreed English law and jurisdiction and accepted H&M u/w letters of undertaking.

LIMITATION OF LIABILITY

BENTLEYS

- In 1998 UK applied 1976 Convention (no 1998 Protocol).
- Limitation proceedings commenced in November 1998.
- Service on Owners of ASTERIX as per provisions of Collision Jurisdiction Agreement - via London lawyers.
- September 1999 - established limitation fund of GBP 3,473,168.30

LIMITATION OF LIABILITY

BENTLEYS

- Under English law limitation fund can only be established by cash payment into court.
- No bank guarantee of other form of security is acceptable.
- November 1999 – applied to Court for a Decree of Limitation to confirm right to limit liability.
- Required to notify all known claimants of application - in writing.

LIMITATION OF LIABILITY

BENTLEYS

- Full hearing before Admiralty Judge took place in March 2000.
- Granted Limitation Decree
 - Amount of limitation fund confirmed,
 - Required to notify all known claimants.
 - Required to advertise granting of Decree in each of countries where possible cargo claimants.

“CHALLENGER” CARGO INTERESTS

BENTLEYS

- After November 1999 application for Decree these interests demanded disclosure of a large number of ship's documents.
- Wanted to see if there had been a breach of Article 4 of 1976 Convention
- *A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would result.*

“CHALLENGER” CARGO INTERESTS

BENTLEYS

- OBELIX interests confident that Owners conduct was not an issue.
- Agreed to provide copies of relevant documents to allow investigation into cause of collision.
- Unfortunately, requests became more and more onerous.
- Owners refused to provide any more documents.

LIMITATION OF LIABILITY

BENTLEYS

- At hearing in March 2000 Challenger interests asked Court to refuse a Limitation Decree and to order Owners to provide a large number of additional documents.
- Admiralty Judge refused – saying that Challenger interests had *“lost sight of reality”* and that their requests were *“an expensive expedition up a blind alley”*.
- Challenger interests appealed to Court of Appeal.

LIMITATION OF LIABILITY

BENTLEYS

- Court of Appeal hearing in June 2001.
- Judgement fully supported Owner's right to limit liability and the Admiralty Judge's granting of the Decree.
- Confirmed that *"it was only the personal act or omission of a shipowner which defeated the right to limit"*.

LIMITATION OF LIABILITY

BENTLEYS

- Court said that in a collision between ship A and ship B, the owner or cargo of ship A can only defeat the right to limit of the owner of ship B *"if they can prove that the owner of ship B intended that it should collide with ship A, or acted recklessly with the knowledge that it was likely to do so"*.
- As a result of this judgment - in collision cases the right to limit is now almost impossible to defeat.

“CHALLENGER” CARGO INTERESTS

BENTLEYS

- Spent in excess of £70,000 on the disclosure exercise.
- After Court of Appeal judgment also had to pay OBELIX costs of defending the appeal.
- BUT - no end to their quest to disrupt the limitation proceedings.
- Procedure allows each claimant against a limitation fund to inspect the claim documents of every other claimant in order to verify the claim - but most don't bother.

“CHALLENGER” CARGO INTERESTS

BENTLEYS

- Challenger demanded full disclosure from every other claimant.
- Inspected all claim documents of other claimants and challenged the claims of several other claimants.
- Ended up before the Admiralty Registrar in several mini-trials seeking to have other claims excluded. Delayed distribution.
- More costs!!

“CHALLENGER” CARGO INTERESTS

BENTLEYS

- Challenger interests continued to cause problems.
- Then decided to challenge OBELIX rights of subrogation under Art. 12 of 1976 Limitation Convention.
- Questioned rights in respect of ASTERIX settlement, port authority settlement and settled cargo claims.
- Also wanted court to apportion liability for the collision.

“CHALLENGER” CARGO INTERESTS

BENTLEYS

- OBELIX interests eventually decided to settle Challenger claims outside limitation fund to avoid costs of lengthy trial and uncertainty of outcome.
- Negotiated settlement in an amount less than their eventual distribution entitlement.
- Settlement = GBP291,303.81
- Eventual distribution from fund
= GBP 302,422.37

LIMITATION OF LIABILITY

BENTLEYS

- Bentleys maintained records of all claims – kept court informed of details of claims against fund.
- Several procedural hearings before Admiralty Registrar to agree arrangements for distribution.
- Final distribution of limitation fund in December 2003 by Bentleys. Court agreed to transfer fund to Bentleys Client Account for distribution.

LIMITATION OF LIABILITY

BENTLEYS

- Article 12 of 1976 Convention allows the person setting up the fund to acquire by subrogation rights against the fund in respect of any settled claims.
- Owners of OBELIX able to file against the fund all those claims they had settled.
- Resulted in Owners of OBELIX recovering 92.5% of their own limitation fund.
- Claimants' costs agreed and paid in 2004.

LIMITATION OF LIABILITY

BENTLEYS

- As result of Challenger settlement being less than fund entitlement had to make a secondary distribution of the difference.
- Size of fund increased with accrued interest to GBP 5,427,951.72.
- Owners of OBELIX recovered GBP 5,042,567.60.
- Total value of claims against limitation fund GBP16,091,481.57

BENTLEYS

“OBELIX” AND “ASTERIX” Cargo Claims and Limitation of Liability

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SCHEDULE A

The following parties are, together, the "Asterix Interests":

1.	The Owners of the vessel "ASTERIX"	
2.	The Bareboat Charterers of the vessel "ASTERIX", Asterix Shipping Company Ltd	
3.	ABC Transport Company Limited (the time charterer)	
4.	DEF Container Feeder Services (a slot charterer)	
		<u>Containers (and Cargo)</u>
5.	H Shipping Co. Ltd.	43
6.	HL Container Line	32
7.	P.D.Z. Lines Sdh. Bhd.	3
8.	Diamond Shipping Co. Ltd.	1
9.	Rais Hassan Saadi LLC	4
10.	Baloni Shipping (UK) Ltd.	19
11.	YM Line, Taiwan	11
12.	Fairmacs Shipping and Transport Services PVT. Ltd.	1
13.	Everywhere International Corporation	8
14.	MYS International Shipping Corporation	2
15.	IAL Container Line (UK) Ltd.	3
16.	O-O Container Line Ltd.	1
17.	Romav	1
18.	Cleve and Zonen	1
19.	Asha Clearing Agency PVT Ltd.	1
20.	Ornate Multi Modal Carriers	3
21.	CY Shipping Co. Ltd	4
22.	China Sea Network Limited	2
		<u>Cargo Only</u>
23.	SCL Marine and TMBC Lines	2 B/L's
24.	Forwarder Systems	51 B/L's
25.	No-cargo Forwarders Inc.	54 B/L's
26.	Cleve & Zonen	5 B/s

"OBELIX"
LIMITATION FUND CLAIMS SUMMARY

	Claim	Total amount of Claim in £ Sterling	Settlement by Owners	%age	Distribution	Secondary distribution of £11,707.25	
						%age	£
A	Limitation Fund Claimants	£1.139.889,93		7,0838%	£384.505,77	7,5026%	£878,35
B	Settled Claims (Prior to August 2000)	£1.023.681,99	£542.797,05	6,3616%	£345.306,70	6,7378%	£788,81
C	ASTERIX claims	£4.062.141,79	£3.985.197,84	25,2441%	£1.370.234,89	26,7366%	£3.130,12
D	ASTERIX Salvage claim	£3.135.338,71	£3.125.597,94	19,4845%	£1.057.607,22	20,6365%	£2.415,96
E	Schedule A Claimants						
	(i) Group 1	£366.367,26	£262.595,46	2,2768%	£123.582,39	2,4114%	£282,31
	(ii) Group 2	£6.895,00	£6.132,71	0,0428%	£2.325,81	0,0454%	£5,31
F	Claims Agency claimants	£2.919.524,06	£1.897.690,64	18,1433%	£984.808,99	19,2160%	£2.249,67
G	Challenger Cargo Interests	£898.294,08	£291.303,81	5,5824%	£291.303,81		
H	Charterers claims	£143.400,00	£105.428,64	0,8912%	£48.371,45	0,9438%	£110,50
I	Ports Authority	£2.395.948,75	£671.975,72	14,8895%	£808.197,44	15,7699%	£1.846,22
		£16.091.481,57	£10.888.719,81	100,0000%	£5.416.244,47	100,0000%	£11.707,25
	For Secondary Distribution	£15.193.187,49					
	Fund for distribution (01.12.03)	£5.427.951,72		Secondary	£11.707,25	Totals	
	Proportions						
	(i) to Fund Claimants	7,0838%	£384.505,77	7,5026%	£878,35	£385.384,12	
	(ii) to OBELIX	92,9162%	£5.031.738,70	92,4974%	£10.828,90	£5.042.567,60	
		100,0000%	£5.416.244,47	100,0000%	£11.707,25	£5.427.951,72	

