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In the Matter of the Arbitration

between

Koch Shipping Inc.
as Charterer and Flint Hills Resources, LP,
as Consignee

FINAL AWARD

and

Standard Tankers Bahamas Limited,
as Disponent Owner of the M/T GLEN
MAYE,

Under an ASBATANKVOY Charter Party dated
July 25, 2007

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Before: Jack Berg
Louis G. Juliano
David W. Martowski, Chairman

Appearances: Cichanowicz Callan Keane Vengrow & Textor, LLP
on behalf of Koch Shipping Inc. and Flint Hill Resources, LP
by James M. Textor, Esq.

Standard Tankers Bahamas Limited
by Robert D. Tracy, Esq.

THE PARTIES

Koch Shipping Inc. ("KSI") and Koch Supply & Trading ("KST") are affiliated corporate entities. KSI provides marine transportation for KST owned cargoes. Flint Hills Resources, LLC ("FHR") owns and operates two refineries within the Port of Corpus Christi. FHR is a subsidiary of Koch Industries and is also affiliated with KSI and KST. KST purchases crude oil and feedstock cargoes on behalf of FHR for delivery to its two refineries. FHR owns and operates the

private Ingleside Oil Terminal located at the entrance to the Port of Corpus Christi which is connected by pipeline to FHR's refineries. Standard Tankers Bahamas Limited ("STB") is the international chartering subsidiary of the ExxonMobil Corporation and charters tank vessels both in and out for employment in its worldwide carriage of petroleum products.

NEGOTIATING THE CHARTER PARTY

In mid July 2007, KST negotiated a FOB sales contract with Shell Oil for the purchase of 795,000 bbls. plus or minus 5% of Forties Blend Crude Oil for delivery at Hound Point, UK. KST subsequently contacted various tanker brokers to obtain a vessel to deliver the Shell cargo to FHR's Ingleside Terminal in Corpus Christi.

The charter negotiations commenced on June 23, 2007 and subjects were lifted on June 25. STB was advised that it was KSI's intention to load at Hound Point for discharge at Corpus Christi. KSI asked STB what volume of cargo the Vessel could load at 41 and 43 feet SWAD at Corpus Christi. The Master responded with cargo lift quantities. The response made no mention of under keel clearance restrictions (UKC). The GLEN MAYE was fixed by KSI to lift the Shell cargo at Hound Point for delivery to Corpus Christi

The charter party was executed on the ASBATANKVOY form, dated July 25, 2007, with certain agreed amendments, including rider clauses confirming cargo lift quantities at specified Vessel drafts. At issue in this proceeding is the application of the registered owner's UKC restrictions, as advanced by STB in this proceeding. It is conceded there is no express UKC charter provision in the head charter between the registered owner and STB nor is there a reference of any sort to UKC in the charter between KSI and STB.

THE VESSEL

The M/T GLEN MAYE is a SUEZMAX 1992-built tank vessel of 151,850 metric tons with a length overall of 272 meters; a beam of 45.6 meters; and a salt water draft of 17.122 meters. At all relevant times the Vessel was operating under

a time charter party between Mitsui O.S.K. Lines, Ltd, as her registered Owner (“MOSK”), and STB, as charterer, dated August 12, 2004.

THE PORT OF CORPUS CHRISTI

The Port of Corpus Christi has no published or *de facto* UKC policy or restriction. The Army Corps of Engineers dredged the main channel to a depth of about 49 feet for a reported channel depth of 47 feet. Vessels are regularly permitted to proceed into the Port on a positive tide with a maximum 45 foot salt water arrival draft (“SWAD”). Local pilots generally require a two-foot cushion allowing vessel transit at a maximum of 45 feet. Shortly prior to the Vessel’s call at Corpus Christi, FHR had dredged its Ingleside Terminal berth to a water depth of 45 feet and had in place a maximum vessel draft limitation of 43 feet SWAD.

BACKGROUND FACTS

Based on the Master’s response to KSI’s inquiry for different cargo lifts, KSI decided to partially load the Vessel so she could discharge without lighterage in Corpus Christi. Prior to the Vessel’s arrival at Hound Point, KSI issued orders for the Vessel to load 795,000 bbls. Forties crude oil but always consistent with 43 feet SWAD at Corpus Christi. After loading and departure Hound Point, KSI was advised the Vessel was loaded too deep for a 43 feet SWAD at Corpus Christi.

Upon arrival at Corpus Christi, the registered owner refused to allow the Vessel to enter the port based upon its UKC 15% policy. The Master advised the Vessel that it must lighter about 106,409 bbls. Furthermore, FHR’s Ingleside Terminal advised it would not accept the Vessel at its berth because of its projected SWAD of 43 feet 4 inches.

As the registered owner would not allow the Vessel to discharge without lighterage and the discharge terminal would not allow it alongside because it was over draft, KSI arranged for a lighterage operation to be performed by American Eagle Tankers. The lighterage was accomplished between August 28-29 at a cost of \$184,083.35, including survey fees.

THE DISPUTE

The Vessel was denied the right to discharge alongside the nominated berth in Corpus Christi because she was in excess of the terminal's required 43 foot maximum draft and because the Master and STB steadfastly refused to allow the Vessel to proceed into the port for discharge because it insisted on a 15% UKC. As a result, the Vessel had to be lightered before proceeding to the berth. The lighterage operation was arranged and paid for by KSI.

KSI and FHR now seek to recover the lighterage expenses in the amount of \$184,083.35 plus interest, attorneys' fees, arbitrators' fees and costs.

PROCEEDINGS

KSI and FHR appointed Jack Berg as arbitrator and STB appointed Louis G. Juliano. The two then selected David W. Martowski as chairman of the panel. Hearings were held in New York City on December 7-9, 2010 at which a number of witnesses testified and voluminous documents were received into evidence. Main and Reply Briefs were exchanged and these proceedings were formally closed on March 31, 2011.

THE CONTENTIONS

KSI contends that the charter does not contain a UKC restriction, therefore, STB essentially misdescribed the Vessel when it furnished cargo lifting information at various SWAD drafts. KSI further argues that the charter is a port charter and that both STB and the Master knew before the subjects were lifted that the Vessel was to discharge at Corpus Christi. KSI maintains Vessel personnel breached KSI's voyage orders by loading the Vessel deeper than 43 feet SWAD Corpus Christi. This required the lighterage in question.

STB contends that the charter provision concerning 43 SWAD related to arrival offshore Corpus Christi at Aransas Pass and not to the Ingleside Terminal. STB further argues that KSI negligently issued voyage orders requiring the Vessel to transit to the Ingleside Terminal with a 43-foot draft in contravention of the

charter's safe berth provision. STB contends KSI had actual and constructive knowledge of the Vessel's UKC policy before the fixture was completed. Also, it is argued that KSI's broker was aware of the UKC policy and that this information is imputed to KSI. STB maintains the responsibility for the broker's failure to include the UKC policy in the charter rests with KSI.

DISCUSSION AND DECISION

The panel majority finds for KSI and FHR and concludes they are entitled to recover their claims in full. The reasons for our decision now follow. Mr. Juliano's Dissent is attached as Appendix A.

STB has argued that the charter is not a named port charter simply because Koch's voyage orders directed the Vessel to discharge at Corpus Christi. STB further contends that the main channel into the port as well as the Ingleside Terminal berth were unsafe for the GLEN MAYE because of variations in water depths in and about the channel and at the berth. The panel agrees that the charter is not a named port charter but nevertheless concludes that the channel and the berth were safe for the Vessel at a draft of 43 feet. Corpus Christi harbors many petroleum facilities and the port's pilots regularly bring vessels in at a draft of 45 feet, allowing a two foot UKC. With respect to the Ingleside Terminal berth, Koch routinely brings vessels alongside with drafts not exceeding 43 feet, with a two foot UKC. We reject STB's unsafe port and unsafe berth arguments.

STB maintains Koch was aware of the Vessel's UKC requirement through its vetting process and because STB itself provided KSI's broker notice of the UKC requirement prior to the completion of the fixture. It is argued that the broker's failure to convey this information to KSI and to subsequently include the UKC requirement in the charter party was the fault of KSI's broker which may be attributable to KSI. STB further contends KSI had first hand knowledge of the Vessel's UKC policy from its previous charter of the GLEN MAYE.

We should first note that the broker referred to, MJLF, was not KSI's broker but, in fact, MJLF represented both parties to the transaction. So the alleged broker's fault in not conveying UKC information it had and for failing to include a UKC restriction in the fixture may not be attributable to KSI as STB suggests. Furthermore, the charter party incorporated an administration clause 1.7 which allowed either party to challenge and/or offer corrections to the broker's recap. STB did not timely challenge the alleged UKC omission in the recap.

STB has argued that Koch had actual knowledge of the registered owner's UKC policy by virtue of a prior dispute it had on the GLEN MAYE back in 2005. The registered owner did in fact delay the discharge of the GLEN MAYE due a UKC issue at Nederland, Texas. There was no UKC clause in that charter party. The dispute was quickly resolved and the vessel was permitted to discharge with only a six inch clearance.

We should first emphasize that the 15% UKC that the registered owner and STB insist should be applied is well beyond the boundary of commercial acceptability and the generally recognized industry standard of two feet. If an owner wishes to impose a UKC, especially one which materially affects the performing vessel's cargo payload, that requirement should be specifically negotiated and included in the fixture note and charter party. It is undisputed that neither the fixture note nor the charter party contained any reference to a UKC provision. KSI assumed, and correctly so, that a two foot UKC would safely permit the GLEN MAYE to transit the Corpus Christi channel and berth at Ingleside Terminal. In the panel's view, the pre-fixture and post-fixture inquiries should have alerted STB to the fact that KSI intended to load the Vessel so that it could berth at Ingleside Terminal without lightering. It was STB's insistence on a 15% UKC that made it necessary for the Vessel to lighter. STB further exacerbated the problem by overloading the Vessel by four inches at Hound Point. STB attributes the overloaded condition to KSI's fault. However, the Vessel was not loaded at a KSI

facility and, more importantly, it is the ship's officers that must monitor the quantity being loaded to make certain the required arrival draft is maintained.

So, regardless of whether STB or the registered owner would have agreed to waive the 15% UKC, as they had in 2005, the Ingleside Terminal would not take the Vessel because she was over the terminal's maximum 43 foot SWAD and the SWAD the voyage orders called for.

The pre-fixture negotiations indicate what information was exchanged and, more importantly, what was not. The negotiations commenced on July 23, 2007 and the subjects were lifted two days later, on July 25. On July 23, KSI asked STB what volume of cargo could be loaded at 41 feet and 43 feet. That same day STB emailed the Master, advising that the Vessel was on subjects for loading at Hound Point and discharge at Corpus Christi with lighterage off Corpus Christi. It is inexplicable why STB expected at that point that the Vessel would be lightered on arrival at Corpus Christi. The dissenting opinion refers to two emails dated July 23 sent by Christopher Tovar to the Master, prior to lifting of subjects, advising the Master that the vessel would be partially lightered before proceeding to berth in Corpus Christi. STB does not suggest that KSI ever advanced the idea of lightering nor is there any evidence to detail what prompted Tovar to so advise the Vessel. The dissenting opinion concedes that Tovar's advices regarding lightering "remains an unanswered question". However, Tovar is employed by STB and could have been examined on this point had he been produced as a witness. STB elected not to produce Tovar as a witness so the background for his emails regarding lightering remains unanswered. STB obviously knows the answer but has elected not to share this information with the panel.

On July 24 the Master responded to the cargo lift inquiries for 41 and 43 feet SWAD. The email response furnished full cargo amounts with lighterage as well as the figure of 825,423 bbls. at 43 feet SWAD. The response made no mention of any UKC restriction. After receiving the Master's response for the different cargo lifts

at different drafts on July 27, KSI decided to partially load the Vessel so there would be no need for lighterage.

The GLEN MAYE is a SUEZMAX tank vessel capable of loading up to one million barrels of product. It makes no commercial sense whatsoever for KSI to charter a vessel of this capacity and size, decide to short load to only 43 feet SWAD, absorb deadfreight of \$231,942, and then plan to further absorb lighterage expense of \$185,000 at discharge. That should have been apparent to STB and the Vessel.

FEES AND COSTS

The panel majority has carefully considered all of the facts and circumstances, the nature and value of the claims, the relative level of effort, the reasonableness of the expenditures and the level of success achieved by the prevailing party. Based upon the foregoing criteria, the panel majority awards KSI and FHR attorneys' fees and costs in the amount of \$71,728.59. The panel majority also assesses the entirety of the arbitrators' fees, as set forth in Appendix B of this Final Award, against STB.

AWARD

KSI is hereby awarded the sum of \$282,362.81, which is calculated as follows:

Lighterage Expenses	\$184,083.35
Interest ¹	\$ 26,550.87
Attorneys' Fees and Costs	<u>\$ 71,728.59</u>
Total due KSI	\$282,362.81

If this award is not satisfied within 30 days from the date hereof, interest at the prime lending rate published by the Federal Reserve Bank will resume and


¹ The panel majority awards interest on the award at the prime lending rate as published by the Federal Reserve Bank for the period from October 18, 2007 to the date of this Final Award

continue to accrue on the principal amount of \$184,083.35 until the award shall be fully satisfied or reduced to judgment, whichever first occurs.


Judgment may be entered on this award in any Court having jurisdiction in the premises in accordance with Clause 24 of the Charter.



Jack Berg



Louis G. Juliano
(Dissenting)



David W. Martowski

New York, New York
May 27, 2011

APPENDIX A

(LOUIS JULIANO'S DISSENT)

Appendix A

Dissenting Opinion

Synoptic Overview

The contentions set forth by STB regarding prior notice of a UKC policy together with its stated lightering requirements at Corpus Christi were, in my view, meritorious and persuasive and should have resulted in STB being the prevailing party in this dispute.

Before proceeding further, it would be well to note that, despite three full days of hearings, with testimony from five witnesses, coupled with, in my view, an inordinate number of exhibits, it still would have required a crystal ball to divine what assumptions, if any, were made, what omissions or misunderstandings took place, in order to produce the actions that followed in formulating this charter party.

That being said, the bone of contention that has wended its way throughout this dispute has been the shadowy UKC of the M/V GLEN MAE, STB contending that it gave notice of the UKC to KSI and/or that KSI had pre-existing knowledge, having chartered the vessel two years prior, and, KSI contending it did not have notice of the UKC, the absence of which in the charter attested to that fact.

Discussion

Firstly, I agree with my Panel colleagues that the charter herein is not a named port charter. There is no particular port named in the charter and no evidence in the record that could transmute this charter into a port charter. Moreover, the testimony clearly demonstrates that the term port charter is not utilized in everyday dealings, but, that charters "generally fix on broad ranges" as appears in the charter in dispute.

Returning now to the gravamen of this dispute, I am of the opinion that STB produced convincing and persuasive evidence that notice was given, having been

imputed to KSI by e-mail served upon brokers MJLF , i.e., that the vessel had aUKC requirement^{fn1}.

Also, evidence of notice consisted of prior knowledge of KSI, by virtue of the fact that KSI had the M/V GLEN MAE on charter in 2005, which involved a UKC incident similar to the one in dispute. Still further evidence of a UKC was found in charterer's exhibit 5 which was overlooked by KSI's Vessel Operations Coordinator, Aaron Montgomery.

In conclusion, on the question of notice, notice requirements were more than amply satisfied. KSI's argument that the failure to include the UKC in the charter is unavailing. The testimony demonstrates that it would have been abnormal to include the UKC in the charter party according to KSI's Freight Trader, Currie Evans, a person responsible for chartering black oil cargo tankers.

The Lighterage Conundrum

The M/V GLEN MAE was offered to KSI on July 23rd, 2007 and was on subjects by the evening of the same day. Herein, I submit, begins something gone awry which Panel members find "inexplicable". On the evening of July 23rd, at 4:19 p.m., Exxon's Christopher Tovar sent an e-mail to the master of the vessel stating that the vessel is "on subjects with Koch for a Voyage 34 loading at Hound Point, UK for discharge US Gulf (**lightering offshore Corpus Christle (sic) proceeding in to berth at Corpus Christi**) (emphasis added). At 4:30 pm on the same evening brokers MJLF sent an e-mail to STB's John Crowley requesting the master of the vessel to provide "the lift on 43'SWAD and 41'SWAD at Corpus Christi". Fifteen minutes later, at 4:45pm, Exxon's Tovar passed on the request of the broker and , once again, reiterated " **for discharge via partial lightering and then proceeding to berth**".

^{fn1} The other Panel members conclude that since MJLF was acting as broker for both disputants, the notice is not imputable to KSI. I respectfully disagree. In a dual agency, as existed in this case, where the agent MJLF represented KSI and STB in connection with the same business transaction, i.e. the chartering of the M/V GLEN MAE, whatever information was imparted to MJLF by STB, it is submitted, KSI, became privy to, by imputation, a natural consequence flowing from an agency relationship. It seems incomprehensible that imputation can be put on hold, immobilized and left in limbo because a dual agency existed.

Who, or what, prompted Tovar to make these statements concerning lightering remains an unanswered question.

One thing seems clear from the evidence, and, that is, KSI's intention was to load the vessel to 43' SWAD in order to bring the vessel directly to the pier at Ingleside without lighterage. Intention, however, is one thing, communication of intention is something else, and therein lies the rub. There is little doubt, in my view, that there was a complete lack of communication or understanding with the result that the parties assembling this charter, having divergent intentions, produced a charter which was incongruous at best.

The master replied to the 4:45 pm e-mail and did so directly to Gordon Craik, KSI's Freight Trader, (also responsible for chartering black oil cargo tankers) providing the vessel's lift capabilities and lightering requirements. Assuming that KSI was not put on notice by MJLF of the vessel's UKC, and, keeping in mind, that it was always KSI's intention to proceed directly to the berth at Ingleside, the fact that the vessel replied with these sizeable lighterage requirements should have been a "red flag" and put KSI on notice that these amounts signified a rather considerable UKC, and this was not what KSI intended or what was bargained for. As stated previously, Gordon Craik received these vessel lighterage figures directly from the master during the early morning of the 24th. The vessel did not go off subjects until 1700 hours of that day. Therefore, there was ample time to reject the vessel knowing it had these sizeable lighterage requirements.

Craik testified that had he been informed of the UKC policy, he would have looked for an alternative vessel. (which begs the question, why wasn't he informed previously, especially when the vessel was on subjects). Craik only became aware of the vessel's UKC, incredibly, nearly two weeks later, in communications with KSI's Aaron Montgomery, KSI's Vessel Operations Coordinator. To re-iterate, subjects were not lifted until 1700 hours on the 24th. Craik had ample opportunity to call off negotiations and continue his search for a vessel that was capable of proceeding to the berth without lightering.

Notwithstanding the apparent lack of communication or misunderstanding, the parties forged ahead and the vessel was ultimately fixed at 2:51pm on the 25th of

July, 2007, the completed charter, (a) failing to list the berth at Ingleside in Corpus Cristi Bay (Part I, D, Discharging Ports), but, (b) nevertheless, including lighterage requirements under "Owner's Additional Clauses" (Vessel Lifts), a discordant scenario, at best, for a charterer who wanted the vessel to proceed directly to the berth.

Finally, while I concur with the other members of the Panel that the responsibility for the proper loading of the vessel fell upon the vessel's complement, the overloading by 4 inches was not fatal to STB's position in this dispute.


By virtue of Owner's Additional Clauses in the Charter Party, KSI must have been aware that the vessel had sizeable lightering requirements upon arrival off Corpus Christi. Therefore the overloading of 4 inches, in my view, is rendered moot, because the overload would have become assimilated in the lightering which was required by the UKC of the vessel.

If anything was owed by STB, it would be the proportional expense of lightering 4 inches of the overload.

In any event, although the vessel arrived overloaded, KSI lightered the vessel, and did so, meeting UKC requirements, ostensibly to get the cargo to the pier, preferring to wait to a later time to settle accounts. The cliché "In for a penny, in for a pound" seems appropriate here.

Conclusion

Therefore, for reasons heretofore stated, and, in view of the charter which reflected STB's position, i.e., to proceed to a staging area in the Gulf off Corpus Christi with lighterage requirements, and, no countervailing intention expressed by KSI to proceed directly to the berth, KSI's claims for lighterage expenses and for attorney's fees and costs should be denied.


Louis G. Juliano

Branchburg, New Jersey
27 May, 2011