

Charter Party Failure

M.V. Dido

You are Senor Jose Gonsales. Please read through Part I of the Case Study, directing your attention towards the discrepancies in the charter party and Bill of Lading terms. What problems do you foresee with regard to this shipment?

The details provided in the text of Part I have intentionally been made as brief as possible so as to concentrate attention on the discrepancies between the charter party and the bills of lading. What facts and figures are given should therefore be taken to be correct.

CASE STUDY NO. 14

M.V. DIDO - CHARTER PARTY FAILURE

PART I

Senor Jose Gonsales is a major shipper from the port of Castellon, Spain. He trades mainly with the Middle East. He speaks fluent Arabic, which he picked up whilst a consultant with a multinational in Beirut. He has built up his present business as a trader entirely by himself, from his knowledge of and contacts in the Arab world.

Delmar S.A. is one of the biggest shipping agencies in Spain with offices in Bilbao, Vigo, Valencia and Barcelona. They have recently opened an agency in Castellon. The manager, Senor de Ros is an ambitious man in his forties, keen to make his mark as head of Delmar Castellon S.A.

In May 1996, Sr Gonsales contracted with Al Kutub Trading (Mr Hassan Kutub) and Gharabally & Co (Mr Jemal Gharabally) to supply them with 921 metric tonnes and 540 metric tonnes respectively, of marble and terrazzo tiles on pallets, shipment to be effected before 15th July, 1996.

It was agreed between Gonsales and Hassan Kutub that the Terrazzo tiles consignment of about 725 metric tonnes would be shipped on liner out basis. The whole consignment for Messrs. Gharabally was to be shipped on freight collect basis. The total value of the whole shipment was approximately \$250,000. Details of the cargo, supplies, invoices etc. are in the Appendices. As is customary in trade with Saudi Arabia, the goods would not be paid for until they arrived in Jeddah.

Senor Gonsales has a good business relationship with Mr Jemal Gharabally and there is mutual trust and confidence between them, developed over years of trading.

Messrs. Al Kutub are relatively new clients. Hassan Kutub is the scion of a wealthy Saudi family with diversified business interests. Gonsales values his contacts with them and is keen to develop them as clients. This is his biggest deal with them to date and Gonsales is concerned that nothing should go wrong.

Gonsales contacted Senor de Ros of Delmar Castellon on 2nd June and asked him to arrange shipment to Jeddah.

De Ros fixed the vessel Dido on a Gencon charter party to carry 2,600 tonnes of cargo on 22nd June. The charter party arrived at Delmar's Castellon office on 13th July. The charter party stated that Delmar were the charterers, as well as charterer's Agents who were entitled to 2.5% brokerage commission. Freight was to be prepaid, vessel loaded at 1000 m.t. a day, demurrage at \$2,000 per day.

The Dido was owned by Seamaid Shipping of Panama, and beneficially owned by Ali Oguz A Turkish industrialist. He has little knowledge of shipping - the Dido is his first vessel and he has operated it for about four months. The Master and crew are all Turkish.

The Dido had spent nearly all of June in Ceuta, Spain, waiting for cargo. The crew had not been paid for 45 days and were restive.

The Dido arrived at Castellon at 2100 hrs on Thursday, 8th July. Loading commenced at 0700 hrs on Friday, 9th July. The vessel worked two shifts on Friday and one shift on Saturday.

Ceased loading on Saturday at 1400 hrs. Loading was resumed on Monday (two shifts) and vessel sailed on Tuesday 13th July at 1600 hrs, after loading 2,162 metric tonnes as follows:

<u>SHIPPER</u>	<u>B/L</u>	<u>GOODS</u>	<u>M. TONNES</u>
Jose Gonsales	1,8,9,10	Pallets of tiles	1461
Others	2,3,4,5,6 & 7	Pallets of tiles	701

		TOTAL	2,162
			=====

All freights due under the Bills of Lading had been paid to Delmar S.A. on issue of the B/L's. On 14th July, 1996 the shipowner put his claim to Delmar S.A. as follows:

Deadfreight	438 mt	x	\$27	=	\$11,826
Demurrage	10/24 hrs	x	\$2,000	=	\$833
Freight	B/L No. 9 & 10			=	\$14,000

		TOTAL		=	\$27,209

Adopted by
the Documentary Committee of the Gen-
Council of British Shipping, London
and the Documentary Committee of The Japan
Shipping Exchange, Inc., Tokyo

RECOMMENDED
THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE
UNIFORM GENERAL CHARTER (AS REVISED 1922 and 1974)
INCLUDING "F.I.O." ALTERNATIVE, ETC.
(To be used for trades for which no approved form is in force)
CODE NAME: "GENCON"



Part I

1. Shipbroker I A N GENEVE		2. Place and date 22-06-96 CASTELLON	
3. Owners/Place of business (Cl. 1) SEAMAID SHIPPING ISTANBUL		4. Charterers/Place of business (Cl. 1) DELMAR S.A. CASTELLON, SPAIN	
5. Vessel's name (Cl. 1) DIDO		6. GRT/NRT (Cl. 1)	
7. Deadweight cargo carrying capacity in tons (abt.) (Cl. 1) 4874DWT / 264000 CBFT BALE		8. Present position (Cl. 1) TRADING	
9. Expected ready to load (abt.) (Cl. 1) 05-07-96		11. Discharging port or place (Cl. 1) JEDDAH	
10. Loading port or place (Cl. 1) CASTELLON		12. Cargo (also state quantity and margin in Owners' option, if agreed; if full and complete cargo not agreed state "part cargo") (Cl. 1) 2600 metric tonnes, General Cargo	
13. Freight rate (also state if payable on delivered or intaken quantity) (Cl. 1) As per B/L's PREPAID ON SIGNING OR RELEASING BILLS OF LADING, LESS COMMISSIONS AND D/A IF ADVANCED		14. Freight payment (state currency and method of payment; also beneficiary and bank account) (Cl. 4) U. S. DOLLARS	
15. Loading and discharging costs (state alternative (a) or (b) of Cl. 5; also indicate if vessel is gearless) FIOS,		16. Laytime (if separate laytime for load and disch. is agreed, fill in a) and b); if total laytime for load and disch., fill in c) only) (Cl. 6) SEE CLAUSES 6 AND 20 a) Laytime for loading 3 DAYS, WIBON, WIFPON b) Laytime for discharging c) Total laytime for loading and discharging	
17. Shippers (state name and address) (Cl. 6) Jose Gonsales SA 29 Plaza del Castro Castellon, Spain		19. Cancelling date (Cl. 10) 10-07-96	
18. Demurrage rate (loading and discharging) (Cl. 7) USD 2000 PDPR / FREE DEBPATCH		20. Brokerage commission and to whom payable (Cl. 14) 2.5% to DELMAR, CASTELLON, 2.5% to PESECA, MADRID, 2.5% to IAN, GENEVE	
21. Additional clauses covering special provisions, if agreed CLAUSES 18 - 34 ARE DEEMED TO BE INCORPORATED IN THIS CHARTERPARTY.			

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Conference (BIMCO), Copenhagen

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include Part I as well as Part II in the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict

Signature (Owners)	Signature (Charterers)
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BILL OF LADING

Shipper

JOSE GONSALES S.A.
29 Plaza del Castro
Castellon, Spain

Reference No

Consignee

Messrs. Al Kutub Trading
P O Box 368, Jeddah
Saudi Arabia

Notify address

Pre-carriage by	Place of receipt by pre-carrier		
Vessel	Port of loading		
Port of discharge	Place of delivery by on-carrier		
Marks and Nos.	Number and kind of packages; description of goods	Gross weight	Measurement

AL KUTUB
JEDDAH

655 Pallets STC
TERRAZZO & MARBLE TILES
30X40 cms

725,000 KGS

"SHIPPED ON BOARD"
F.I. LINER OUT
FREIGHT PREPAID

ORIGINAL

Particulars furnished by the Merchant

Freight details, charges etc	SHIPPED on board in apparent good order and condition, weight, measure, marks, numbers, quality, contents and value unknown, for carriage to the Port of Discharge or so near thereunto as the Vessel may safely get and lie always afloat, to be delivered in the like good order and condition at the aforesaid Port unto Consignees or their Assigns, they paying freight as indicated to the left plus other charges incurred in accordance with the provisions contained in this Bill of Lading. In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its stipulations on both pages, whether written, printed, stamped or otherwise incorporated, as fully as if they were all signed by the Merchant. One original Bill of Lading must be surrendered duly endorsed in exchange for the goods or delivery order. IN WITNESS whereof the Master of the said Vessel has signed the number of original Bills of Lading stated below all of this tenor and date, one of which being accomplished the others to stand void.
Daily demurrage rate (additional Clause A)	

* Applicable only when document used as a Through Bill of Lading

Freight payable at
CASTELLON

Number of original Bs/L

3

Place and date of issue

CASTELLON, 13 JULY 1996

Signature

CAPTAIN SULEIMAN ONEDIN
MASTER, MV DIDO

Suleiman Onedin

BILL OF LADING

B/L No. 8.

Shipper
 Jose Gonsales S.A.
 29 Plaza del Castro
 Castellon. Spain

Reference No

Consignee
 Messrs. Al Kutub Trading
 P O Box 368, Jeddah
 Saudi Arabia

Notify address

Pre-carriage by* Place of receipt by pre-carrier

Vessel Port of loading

Port of discharge JEDDAH Place of delivery by on-carrier

Marks and Nos.	Number and kind of packages; description of goods	Gross weight	Measurement
AL KUTUB JEDDAH	175 Pallets Tiles MARBLE & TERRAZZO 30X60 cms 40X40 cms	196,000 KGS	

"SHIPPED ON BOARD"
 Freight Pre-Paid
 F.I.O.S.

ORIGINAL

Particulars furnished by the Merchant

Freight details, charges etc Daily demurrage rate (additional Clause A1)	<p>SHIPPED on board in apparent good order and condition, weight, measure, marks, numbers, quality, contents and value unknown, for carriage to the Port of Discharge or so near thereunto as the Vessel may safely get and lie always afloat, to be delivered in the like good order and condition at the aforesaid Port unto Consignees or their Assigns, they paying freight as indicated to the left plus other charges incurred in accordance with the provisions contained in this Bill of Lading. In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its stipulations on both pages, whether written, printed, stamped or otherwise incorporated, as fully as if they were all signed by the Merchant.</p> <p>One original Bill of Lading must be surrendered duly endorsed in exchange for the goods or delivery order.</p> <p>IN WITNESS whereof the Master of the said Vessel has signed the number of original Bills of Lading stated below all of this tenor and date, one of which being accomplished the others to stand void.</p>
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* Applicable only when document used as a Through Bill of Lading

Freight payable at CASTELLON Number of original B/L 3	Place and date of issue CASTELLON 13 JULY 1996 Signature CAPTAIN SULEIMAN ONEDIN MASTER, MV DIDO
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Suleiman Onedin

BILL OF LADING

Shipper

JOSE GONSALES S.A.
29 PLAZA DEL CASTRO
CASTELLON, SPAIN

Reference No

Consignee

GHARABALLY & CO
P O BOX 32
JEDDAH, SAUDI ARABIA

Notify address

Pre-carriage by*

Place of receipt by pre-carrier*

Vessel

DIDO

Port of loading

CASTELLON

Port of discharge

JEDDAH

Place of delivery by on-carrier*

Marks and Nos

Number and kind of packages; description of goods

Gross weight

Measurement

20	262 PALLETS MARBLES TILES	250,000	KGS
Gharabally			
JEDDAH	30X40 cms		

In well reinforced pallets with
24M² per pallet.

"SHIPPED ON BOARD"
F.I.O.S.
FREIGHT COLLECT

ORIGINAL

Particulars furnished by the Merchant

<p>Freight details, charges etc</p>	<p>SHIPPED on board in apparent good order and condition, weight, measure, marks, numbers, quality, contents and value unknown, for carriage to the Port of Discharge or so near thereunto as the Vessel may safely get and lie always afloat, to be delivered in the like good order and condition at the aforesaid Port unto Consignees or their Assigns, they paying freight as indicated to the left plus other charges incurred in accordance with the provisions contained in this Bill of Lading. In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its stipulations on both pages, whether written, printed, stamped or otherwise incorporated, as fully as if they were all signed by the Merchant.</p> <p>One original Bill of Lading must be surrendered duly endorsed in exchange for the goods or delivery order.</p> <p>IN WITNESS whereof the Master of the said Vessel has signed the number of original Bills of Lading stated below all of this tenor and date, one of which being accomplished, the others to stand void.</p>
<p>Daily demurrage rate (additional Clause A)</p>	

* Applicable only when document used as a Through Bill of Lading

Freight payable at

DESTINATION

Place and date of issue

CASTELLON, 13 JULY 1996

Number of original Bs/L

3

Signature

CAPTAIN SULEIMAN ONEDIN
MASTER, MV DIDO

Suleiman Onedin

BILL OF LADING

Shipper
JOSE GONSALES S.A.
29 PLAZA DEL CASTRO
CASTELLON, SPAIN

Reference No

Consignee
GHARABALLY & CO.
P O BOX 32
JEDDAH, SAUDI ARABIA

Notify address

Pre-carriage by* Place of receipt by pre-carrier*

Vessel **DIDO** Port of loading **CASTELLON**

Port of discharge **JEDDAH** Place of delivery by on-carrier*

Marks and Nos.	Number and kind of packages; description of goods	Gross weight	Measurement
21 GHARABALLY JEDDAH	305 PALLETS MARBLE TILES TERRAZZO TILES 30X40 cms	250,000 KGS	

In well reinforced pallets with 24M² per pallet

"SHIPPED ON BOARD"
 F.I.O.S.
 FREIGHT COLLECT

ORIGINAL

Particulars furnished by the Merchant

Freight details, charges etc Daily demurrage rate (additional Clause A)	<p>SHIPPED on board in apparent good order and condition, weight, measure, marks, numbers, quality, contents and value unknown, for carriage to the Port of Discharge or so near thereunto as the Vessel may safely get and lie always afloat, to be delivered in the like good order and condition at the aforesaid Port unto Consignees or their Assigns, they paying freight as indicated to the left plus other charges incurred in accordance with the provisions contained in this Bill of Lading in accepting this Bill of Lading the Merchant expressly accepts and agrees to all its stipulations on both pages, whether written, printed, stamped or otherwise incorporated, as fully as if they were all signed by the Merchant.</p> <p>One original Bill of Lading must be surrendered duly endorsed in exchange for the goods or delivery order.</p> <p>IN WITNESS whereof the Master of the said Vessel has signed the number of original Bills of Lading stated below all of this tenor and date, one of which being accomplished the others to stand void</p>
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* Applicable only when document used as a Through Bill of Lading

Freight payable at DESTINATION	Place and date of issue CASTELLON, 13 JULY 1996
Number of original B/L 3	Signature

CAPTAIN SULEIMAN ONEDIN
 MASTER, MV DIDO

Suleiman Onedin

PART II

Senor de Ros, the Delmar Castellon Manager approached the shippers and asked them to contribute pro rata to the shipowner's claim. The shippers, including Sr Gonsales refused. On Friday, 16th July at 1730 hrs local time, Senor de Ros sent a telex to PESECA S.A., cargo brokers for Sr Gonsales stating that Delmar, Castellon were not the charterers, but only the charterer's Agents, and that their name had appeared on the charter party as charterers through an oversight. They also informed the shipowner that they were not charterers and therefore not liable for the claim put in by him.

Meanwhile Delmar S.A. had found additional cargo at ANCONA, Italy for the Dido to compensate for the deadfreight. Accordingly, the Dido proceeded to Ancona and completed loading 409 tonnes of wire netting for Jeddah on 27th July, 1996. Freight prepaid Bills of Lading were issued by the Master.

Under Italian Foreign Exchange regulations, the ship's disbursements were to be paid by the shipowner in a hard currency. It is not possible for the ship's Agent to pay these disbursements in Italian Lira. After the vessel completed loading, the owner waited for the freight to be paid to him, so that he in turn could pay the disbursements.

The freight was not paid and on 28th July, 1996 the vessel's Agents arrested the Dido for non-payment of disbursements, where upon the shipowner paid the disbursements on his own account to release the ship. Despite repeated appeals to the Italian shippers, the freight was not paid.

The Dido proceeded towards Suez. The shipowner gave the Italians an ultimatum - either they pay the freight or he would not proceed to Jeddah. The Italians who were concerned that the shipowner would not, in any case, complete the voyage offered to pay the freight on vessel's arrival in Jeddah.

A reminder of his claim to Delmar S.A. in Spain regarding the \$27,209 outstanding was also made. There was no response from Castellon.

The Dido's ETA was 8th August, 1996. The vessel did not arrive. There was concern and suspicion now on both sides.

On 23rd August, 1996, it was heard on the grapevine that the Dido was off the coast of Turkey and that the owner had decided to discharge and sell the cargo at a convenient port.

PART III

1400 hrs, Thursday, 26th August, 1996

Vessel Dido reported to be in Famagusta, Cyprus discharging her cargo.

Notes

Saturday and Sunday are holidays - all courts, lawyers' offices etc. are closed.

Monday, 30th August, 1996 is a National Turkish holiday. It is also the Bank Holiday weekend in the UK. Lloyd's offices are closed.

Famagusta is in the Turkish part of Cyprus - the Turkish Federated State of Kibris (TFSK). It is impossible to cross the border from the Greek to Turkish Cyprus. Famagusta is only accessible via Turkey.

Because of the holiday season, it is extremely difficult to get a seat on the limited flights available to the TFSK.

PART IV

1200 hrs, Tuesday, 31st August, 1996

Vessel Dido reported to have left Famagusta at 1300 hrs on 30th August, 1996. According to vessel's sailing documents "Destination: To Order".

Shipowner sends a telex to all shippers and Delmar S.A. informing them that if they wanted their cargo in Jeddah, he would have to be compensated for all the monies due to him i.e. freight, demurrage, deadfreight, damages for detention in Ancona and demurrage for the month of August while the ship was waiting for these monies to be paid.

The telex received by Gonsales is as below:-

90452 JEG E
25623 SEAM TK
31.8.82
Attn: Mr J Gonsales
From: Sea Maid Shipping

M.V. DIDO

As you are aware, we have not been paid the freight, deadfreight, and demurrage for the Dido under the C/P dated 2nd June, 1996. Furthermore, on charterers' instructions we proceeded to Ancona and loaded 408 tonnes of wire netting for which we have not been paid anything so far, despite our repeated appeals.

Due to these non-payments, we have been delayed considerably with consequent loss of earnings.

To compensate us for the expenses incurred, loss of earnings, etc. your contribution is \$110,000. When this amount is paid your cargo will be discharged in Jeddah.

Regards
Seamaid Shipping
Istanbul
90452 SEG E
25623 SEAM TK

When Gonsales rang up Sr de Ros of Delmar, he was most unhelpful. He maintained that he was only a ship's Agent and not the charterer and therefore not liable under the C/P. As far as he was concerned, Sr Gonsales was the charterer.

(Continued over)

1000 hrs, Friday, 3rd September, 1996

It is learnt that the cargo has been discharged under a court order in Famagusta. On enquiry to Istanbul, the shipowner replies as follows:

90452 JEG E
25623 SEAM TK
3.9.82
Attn: Mr J Gonsales
From: Seamaid Shipping

M.V. DIDO

We confirm that your cargo per B/L's 1,8,9 & 10 is under arrest at Famagusta according to our right of lien per charter party dated 2nd June, 1996, clause 12, for non-payment of freight. The cargo is safe and in good condition.

On payment of \$65,000 we will lift the arrest of the cargo and for \$105,000 the cargo will be shipped to Jeddah.

Regards
Seamaid Shipping
90452 JEG E
25623 SEAM TK

PART V

1000 hrs, Tuesday, 14th September, 1996

Reported that M.V. Dido is outside Famagusta Roads.

PART VI

0900 hrs, Wednesday, 15th September, 1996

Same source reports that M.V. Dido was at Famagusta only to land a seaman. The vessel left at 1500 hrs on Tuesday. According to port documents, vessel's destination to order.

The I.M.B. uses its contacts and hears an unconfirmed rumour that the vessel is bound for Israel to load a cargo.

PART VII

What Actually happened

The I.M.B. was informed about the matter on Wednesday, 25th August, 1996. Enquiries were made to locate the vessel. At 1000 hrs on Thursday it was reported to the Bureau that the Dido was at Famagusta, Cyprus discharging her cargo. We went back to Sr Gonsales with the information. He gave us irrevocable power of attorney to take whatever steps we felt were necessary to protect his and the consignee's interest.

Our investigator flew out (despite the general difficulty in getting a seat on the flight) from London on the morning of Friday, 27th, reaching Ercan Airport in TFSK at 1800 hrs.

A quick check with the port and a prominent shipping Agent established that the cargo was not being illegally sold. The vessel had been at Famagusta since 22nd August and a court order for the cargo in favour of the shipowner had been issued on 25th August, 1996. There were seven defendants named in the action i.e. all the consignees, and Delmar S.A. as charterers.

News had leaked that someone representing cargo interests would be arriving in Famagusta. As a precaution, the vessel had left the port and was outside territorial waters.

On Tuesday, 31st August, a local lawyer was instructed to enter a caveat against the court order to prevent the disposal of the cargo without notice to the I.M.B. The caveat was entered on Thursday, 2nd September. Meanwhile the cargo was checked and found to have been discharged in lots, according to the B/L's and in good condition.

While the I.M.B. investigator was in Famagusta he spoke to the shipowner to explore the possibility of a settlement. Several meetings were held. It was clear the shipowner had legitimate demands against the charterers. However from Sr Gonsales' point of view, having paid all the freight on time, the shipowners' demands were unacceptable.

Through its contacts in the Eastern Mediterranean, the I.M.B. placed a watch for the Dido, meanwhile continuing to negotiate with the shipowner. We were certain that without a counterclaim i.e. arresting the Dido, the shipowner would not lower his demands: approximately US. \$100,000 for the cargo to be discharged in Jeddah.

On the 14th September we received a report that the vessel had anchored a few hours previously outside Famagusta. Our lawyer was instructed to obtain a court order from the Admiralty court in Famagusta arresting the vessel. Whilst this was being prepared, the Dido sailed. According to Port sources, the vessel sailed: destination unknown.

However, through certain non-official channels, we learnt that it was proceeding to Israel to load a cargo.

On the evening of 15th September, 1996, a lawyer was instructed in Haifa to arrest the Dido as soon as she entered the port limits of either Haifa or Ashdod. All the papers for the arrest were prepared on the morning of 16th September, 1996. The Dido reported to Ashdod Port Control at 0730 hrs in the morning. It docked at 1130 hrs and was arrested at 1300 hrs for non-performance of contract and illegal deviation.

The vessel was arrested by an order from the Admiralty Court under the Israeli equivalent of the Admiralty Courts Act of 1861. Under this act, the jurisdiction of the Admiralty Court was restricted to cargoes bound to or from Israel, Israeli vessels, or other Israeli interests in the adventure. We learnt that the owner was planning to get the arrest lifted on jurisdictional grounds. This was a real possibility, as Israel is not a signatory to the International Convention on Maritime Law (Arrest of Vessels), Brussels 1952.

We commenced civil proceedings in the District court at Haifa and upon filing a bank guarantee for \$46,000 we obtained an attachment upon the vessel for the sum of \$320,000 on 7th October, 1996.

The Admiralty Court Judge lifted the first arrest order after the final hearing on 8th October, 1996. However, the vessel still had the civil attachment upon it and was by now effectively stopped from leaving the harbour unless the matter was decided in court.

Meanwhile the crew had become very concerned about the possibility that their wages would not be paid if the owner became insolvent as a result of this trouble. They approached the ITF in Ashdod. The ITF demanded that all wages up to 30th September be paid immediately or else they would arrest the vessel. The shipowner paid \$25,000 in back wages to the crew and the ITF took a lien on the freight for the next voyage to cover the remainder. The next payment to the ITF at Ashdod for crew's wages would fall due on 22nd October if the vessel remained under arrest.

The Dido had loaded 2,000 tonnes of soya bean meal for Alexandria whilst under arrest in the hope that the arrest would be lifted. The freight on this voyage had been liened to the ITF for crew's wages. The Letter of Credit for this shipment had been extended from the 30th September, 1996 to 17th October, 1996. The Receivers declared they would not extend it further under any circumstances as they feared that the cargo would be spoilt in the heat of the holds. The shippers of the cargo in Israel threatened that they would arrest the vessel if it did not leave Ashdod by noon on Sunday, 17th October (Sunday is a working day in Israel) this would give them just enough time to cash the Letter of Credit before close of banking hours on that day.

From all accounts the shipowner was in desperate financial straits. He had no money to pay the crew's wages if the ITF demanded it on 22nd October, 1996, and if the Israeli shippers arrested his vessel on 17th October, 1996, he would have little option but to abandon the vessel.

Our initial demands on arresting the vessel were that the shipowner release Gonsales' cargo from Famagusta, ship it to Jeddah at his cost and pay Sr Gonsales \$30,000 in legal, investigative and commercial costs (actual costs incurred by Gonsales estimated at \$20,000). In return we would release the vessel. However, it was decided that since the shipowner had no money left it was not practical to demand costs as well.

We felt it was not in our client's interest to keep the vessel under arrest beyond the 17th October, 1996,

- i) The Israeli shippers would arrest the vessel. There is no precedent which puts their claim superior to ours. Nevertheless, from a commercial viewpoint, it would not be in our interest to get involved in a long, legal battle. Legal costs in Israel are high.
- ii) Sr Gonsales would not get his cargo at Famagusta released. In order to meet his selling commitment to the Saudi Arabian consignees he would have to ship a new consignment which would cost him approximately \$250,000. He would have to meet additional legal costs in Famagusta - the case would take up to 15 months to be decided. Regardless of how the decision went, port costs at US\$150 per day would have to be met by the cargo before it was released. The material gain at the end of the day therefore, would be very little, if not non-existent.

- iii) The ITF would arrest the vessel on 22nd October, 1996 and their claim on the vessel would be the first.

A settlement was reached on Saturday, 16th October, 1996. The shipowner agreed to release the cargo at Famagusta and ship it to Jeddah at his cost on free-in/liner-out basis.

As the shipowner had no funds, the details of the payment of freight are complicated. We have not gone into it because it is not relevant in the context of this case as an exercise in the resolution of charter party failures.

The Dido was released from the attachment at 1110 hrs on 17th October, 1996, but was delayed due to a pilot's strike in Ashdod, it eventually sailed at 2100 hrs.

The cargo at Famagusta belonging to Senor Gonsales was released on Monday, 18th October, 1996 and shipped on free-in/liner-out basis on 3rd November, 1996 and arrived in Jeddah on 6th November, 1996. Messrs Al Kutub and Gharabally continue to trade with Sr Gonsales and are his major trading partners in Saudi Arabia.