

## The 'Star Polaris' Shines a Light on Shipbuilders' Guarantee Liabilities

---

December 16, 2016 Simon Curtis

---

**PRACTICES** Shipping Dispute Resolution, Shipping

---

In an important new decision for shipowners and shipbuilders, *Star Polaris LLC v. HHIC-Phil Inc*<sup>1</sup>, the High Court in London has considered in detail the wording typically found in commercial shipbuilding contracts which excludes the shipbuilder's liability for "consequential or special losses, damages or expenses" arising from construction defects discovered after the vessel's delivery.

The "Star Polaris," a newbuilding bulk carrier, had suffered a serious engine failure some six months after delivery and within the relevant post-delivery guarantee period. Subject to arguments in mitigation that the engine damage had been exacerbated by the negligence of the vessel's Chief Engineer, the shipbuilder conceded that the failure had been caused by breaches of its quality obligations under the shipbuilding contract; it accepted responsibility for the cost of the repairs at another shipyard and certain expenditure incurred by her purchaser in connection therewith.

But the purchaser sought additionally to recover as damages its loss of income during the period of the repairs, as well as an alleged diminution in the vessel's value. It argued that the exclusion of "consequential or special losses," contained in Article IX.4 of the relevant contract, only applied to losses falling within the so-called "second limb" of *Hadley v. Baxendale*<sup>2</sup>, namely indirect losses which do not "directly and naturally result in the ordinary course of events"<sup>3</sup> from the breach of contract in question. The purchaser said that, by this measure, his losses of income and value were not "consequential" but "direct" in nature and were therefore fully recoverable.

The shipbuilder contended in response that the term "consequential or special losses" simply referred to losses which were "consequent upon" a breach of its quality obligations - if the purchaser's alleged losses were the consequence, direct or otherwise, of such a breach, these were automatically excluded by Article IX.4. An experienced London arbitration tribunal agreed with the shipbuilder and dismissed the purchaser's claims.

Against this background, Sir Jeremy Cooke, sitting in the High Court, upheld the arbitrators' award. The Judge decided:

1. affirming the decision of the High Court in *The Seta Maru*<sup>4</sup>, that Article IX of the contract constituted a "complete code" in respect of the shipbuilder's post delivery obligations in relation to construction defects; it therefore comprehensively defined the scope of the shipbuilder's responsibilities, rather than simply limiting its liabilities;
2. that the arbitration tribunal was right to conclude that the term "consequential" in Article IX.4 was not intended to import into the contract the principles of interpretation in *Hadley v. Baxendale*, but was instead used, in a "cause and effect" sense, to exclude the shipbuilder's liability for all financial loss resulting from the relevant defect and its repair;
3. that the intent of Article IX.4 was, other than in respect of "documented expenses" incurred by the Buyer in taking the vessel to a place of repair, to limit the Builder's liability to the cost of repairing the guarantee defect and any damage caused to the vessel thereby;

4. that a claim for diminution in value of the vessel as a result of undergoing guarantee defect repairs was a claim for “consequential or special losses” and therefore excluded by Article IX.4.

This common sense decision of the High Court, confirming the arbitrators’ award, is to be welcomed as giving expression to the clear intention of the parties that, other than as regards defined categories of repair expenditure, the risk of financial loss consequent upon the discovery of a guarantee defect had been assumed by the shipowner, rather than the shipbuilder. Such allocation of risk has been long understood and accepted by the maritime community, it being always open to the shipowner to place loss of hire and earnings insurances to manage the exposures involved.

It should, however, be emphasised that, the decision, although of substantial shipbuilding importance, is to be viewed in its context - *Star Polaris* does not alter the general approach of the English court towards the interpretation of exclusions of “consequential,” “special” or “indirect” loss when used in other commercial contracts.

For more information please contact the lawyer listed below.

---

<sup>1</sup> [2016] EWHC 2941 (Comm)

<sup>2</sup> [1854] EWHC J70

<sup>3</sup> Chitty on Contracts (31st Edition) para 15-009

<sup>4</sup> [2000] 1 Lloyd’s Law Reports 36. Haynes Boone CDG, in team led by Simon Curtis, represented the builders in this appeal, as well as at the arbitration.