

# THE CANADIAN MARITIME LAW ASSOCIATION

## Carriage of Goods Committee

**Report to the Board of Directors, meeting at Ottawa, on April 25, 2024:**

Since the last Meeting:

CARRIAGE OF GOODS BY WATER REFORM efforts

Nothing more to report – there are no on-going consultations involving Transport Canada.

BILLS OF LADING REFORM

Uncitral (United Nations Commission on International Trade Law) Working Group VI  
(Negotiable Cargo Documents)

[https://uncitral.un.org/en/working\\_groups/6/negotiablecargodocuments](https://uncitral.un.org/en/working_groups/6/negotiablecargodocuments)

This is an effort by UNCITRAL to take advantage of all of the work undertaken in past conventions to focus solely on issues arising from negotiable cargo documents, including electronic negotiable cargo documents. The proposed convention will cover such topics as the issuance of a negotiable document, evidentiary effects, extent of rights of a holder, liability of a holder, delivery of the goods and all issues surrounding the use of electronic means and electronic records.

The next meeting of the Working Group VI will take place in New York, on May 6-10, 2024.

BIMCO – GENCON voyage charter 2022

A well-attended and successful meeting was held in Montreal at the McGill Law Faculty Auditorium last Wednesday February 14, 2024 between 13:00 – 14:30 hours where John Weale provided an overview and commentary on the revised voyage charter party form that is commonly used. Richard Desgagnes and Jean-Marie Fontaine are to be commended for their organization of the meeting.

CASELAW developments

The decision of the English Court of Appeal in MUR Shipping BV v RTI Ltd. [2022] EWCA Civ.1406 was heard by the UK Supreme Court on March 6-7, 2024 and taken under reserve.


This action arose from a contract of affreightment which provided for seven voyages and which required payment of freight in US Dollars. Shortly after the contract was agreed to, the USA declared sanctions against certain Russian persons as a result of the invasion of the Ukraine by Russia. The charterer was related to a Russian “person” on the list and was fairly certain it would not be able to make its freight payments at all in US dollars, or if it was able to, in a timely

manner, due to the intermediate bank uncertainty about whether it was proscribed or not. The contract provided at s.36.3(d) A Force Majeure Event is an event or state of affairs which meets all of the following criteria: (d) it cannot be overcome by reasonable endeavours from the Party affected.

The charter offered to pay the freight in Euros and assume the costs of converting into US dollars. The ship owner rejected the offer and withdrew the ship. The charterer sued the ship owner for extra costs it incurred to charter replacement ships. It was understood that the motivation behind the ship owner's rejection of the offer was that the market had changed and more favorable rates were achievable. The ship owner maintained that reasonable endeavours were restricted to performance of the contract, and that the contract did not compel it to accept a non-compliant alternative performance, however reasonable, of the contract.

The arbitrators held that the charterer was entitled to the damages, which was overturned by the Commercial Court judge, who in turn was overturned by the Court of Appeal with one dissent.

Dated at Montreal, this 25<sup>th</sup> day of April 2024



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David G. Colford  
Chair

**Members:**

Jeremy Bolger  
John O'Connor  
Gavin Magrath  
Shelly Chapelski  
Jean-Marie Fontaine  
Peter Cullen  
Barry Oland  
Peter Swanson  
Marc Isaacs  
Gordon Hearn  
Eric Machum  
Victoria Leonidova  
Marel Katsivela  
Rui Fernandes – ex officio