

A large, red-painted ship's propeller and rudder assembly is shown in a shipyard. The propeller has four large, curved blades. The rudder is a large, rounded structure. The background shows the dark, industrial interior of a shipyard with various structures and equipment.

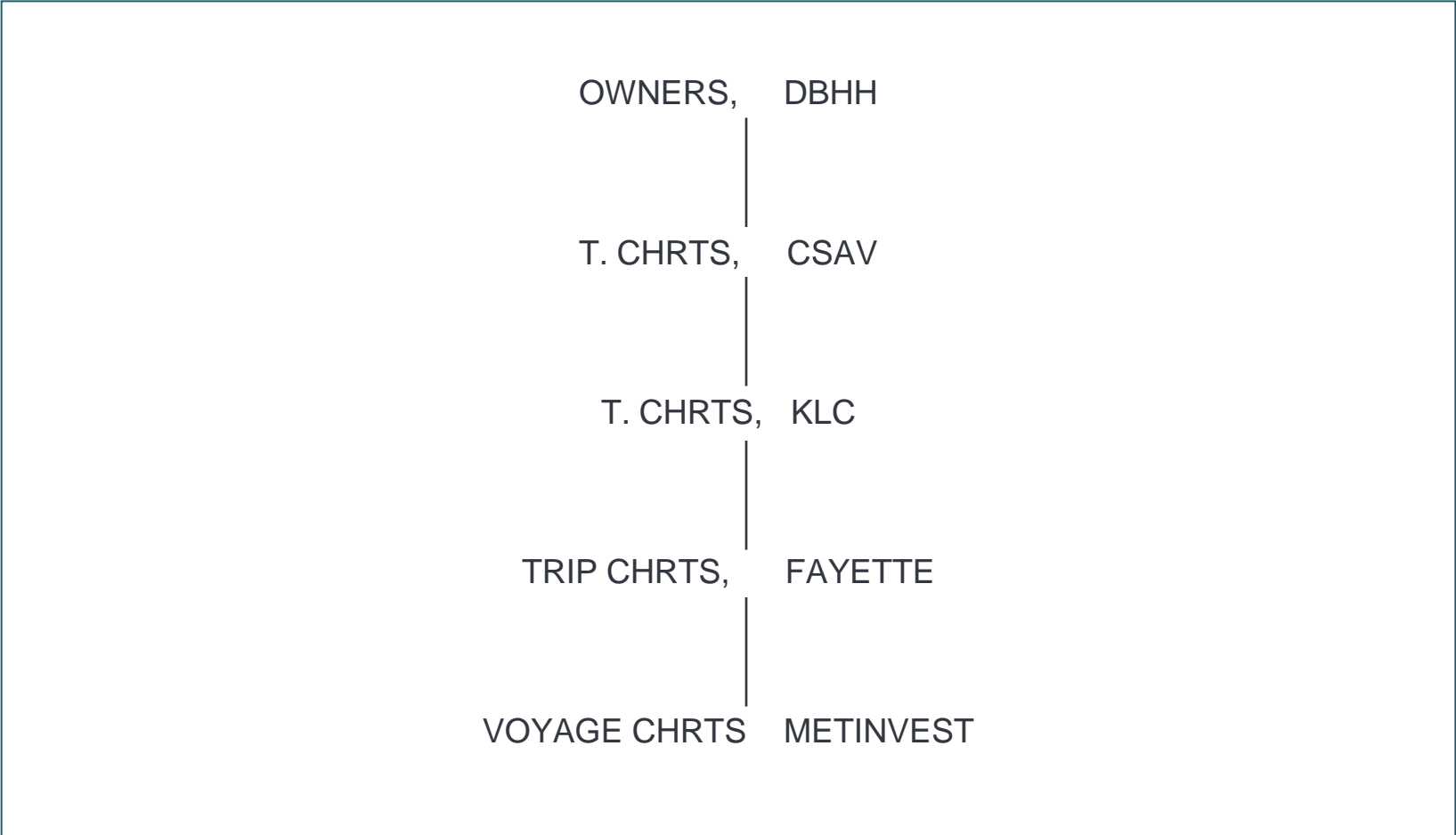
CLYDE & Co

SHIPOWNERS RIGHT TO FREIGHT

“BULK CHILE” [2013]

**Beth Bradley, Legal Director
Clyde & Co LLP June 2013**

THE CHARTERING CHAIN



BILL OF LADING

- Shippers: Metinvest
- Signed; Fayette as agent for Master
- Incorporated Voyage Charter (Fayette – Metinvest)
- Freight prepaid
- Freight not in fact pre-paid but paid by Metinvest to Fayette On 12 April 2011

NOTICES OF LIEN AND WITHDRAWAL

- KLC failed to pay hire on 18 Jan and 1 Feb 2011
- Owners “notice of lien” to Fayette and Metinvest on 1 Feb directing payment of hire/freight to Owners
- Owners 2nd notice on 5 Feb extending lien to cargo
- Anti technicality notice on 18 Feb
- KLC rehabilitation proceedings 15 Feb
- Vessel withdrawn 26 Feb
- Metinvest pay freight to Fayette April 2011

DBHH CLAIM FOR FREIGHT

FIRST INSTANCE, ANDREW SMITH J

- Prima facie obligation under B/L for Metinvest to pay DBHH the freight
- B/L directed freight to Fayette
- Notices of 1 and 5 Feb were valid notices of lien
- Metinvest liable to pay DBHH freight

COURT OF APPEAL

DBHH CLAIM FOR FREIGHT

- Established principle that Owners can claim freight from the shipper at any time
- Distinction between “direct” claim for freight and lien on freight
- Lien assigns freight to Owner
- Direct claim Owner entitled to freight but permits a third party to be paid the freight
- Bill of Lading freight is Owners consideration for carrying the cargo. Usually Owner permits it to be paid in accordance with terms of the sub charter. Owner can redirect monies.

IF TIME CHARTERER NOT IN DEFAULT?

- No restriction on Owner. Time charterer does not need to be in default. Owner can redirect the freight.
- Time charterer collects freight on Owners' behalf and has authority to do so; until Owner revokes authority.
- Court of Appeal said would rarely happen in practice.

CONCLUSION

- Notices of 1 and 5 Feb were an explicit warning to Metinvest that they risked paying freight twice.
- It did not matter that Metinvest had paid Fayette. They were liable to the Owner.
- Decision favourable to Owners.
- Charterers exposed to paying freight more than once.

Beth Bradley
Legal
Director
June 2013

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