



RPC

UK Legal Update

Lillehammer 2018

Gary Walkling

7 March 2018

Agenda

- Ted Baker v Axa: Duty to speak
- Axa v Arig: Inducement
- Gard v China National Chartering: Claims against co-insureds
- Leeds Beckett v Travelers: Accidental Damage / Gradual Deterioration
- Enterprise Act 2016: Paying claims within reasonable time

Enterprise Act 2016

- 4 May 2017: Implied term insurers will pay valid claims within reasonable time
- Includes reasonable time to investigate and assess claims
- “Reasonable” will be determined by all relevant circumstances
- No breach where reasonable grounds for disputing liability or quantum
- Remedy will be distinct from indemnity / interest
- Possible to contract out in some circumstances

Ted Baker Plc v Axa Insurance UK Plc



Ted Baker Plc v Axa Insurance UK Plc



Ted Baker Plc v Axa Insurance UK Plc

- Professional Accountants Clause

“Any particulars or details contained in the Insured's books of account or other business books or documents which may be required by the Company...**for the purpose of investigating or verifying any claim** hereunder **may be produced by professional accountants...**”

The Company will pay to the Insured the reasonable charges payable by the Insured to their professional accountants for producing such particulars or details...”

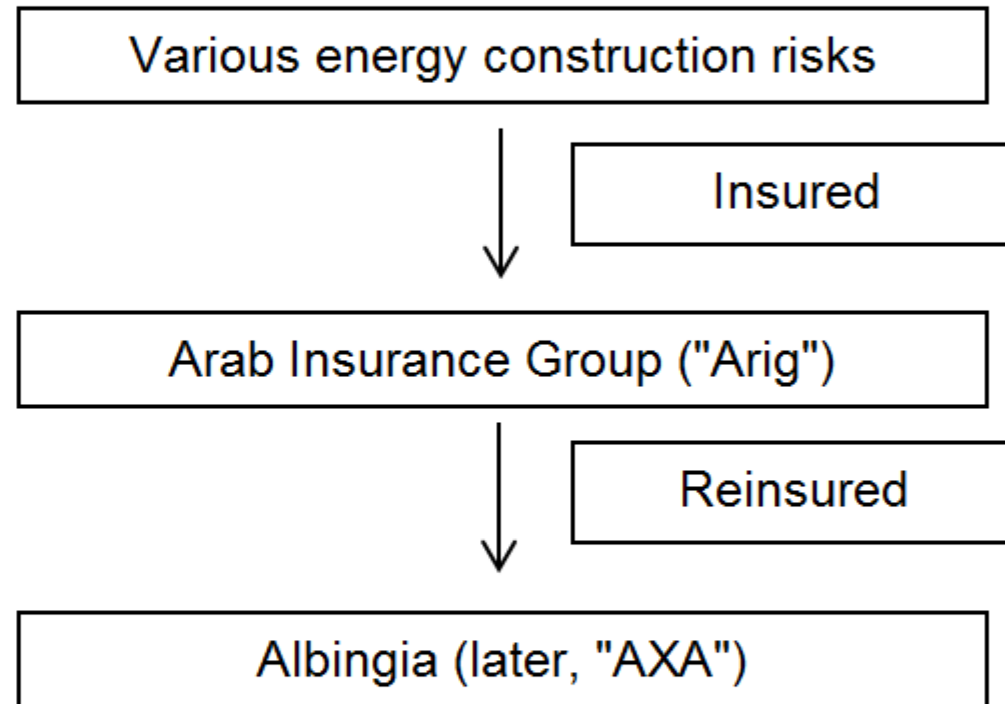
Ted Baker Plc v Axa Insurance UK Plc

- Claims Conditions

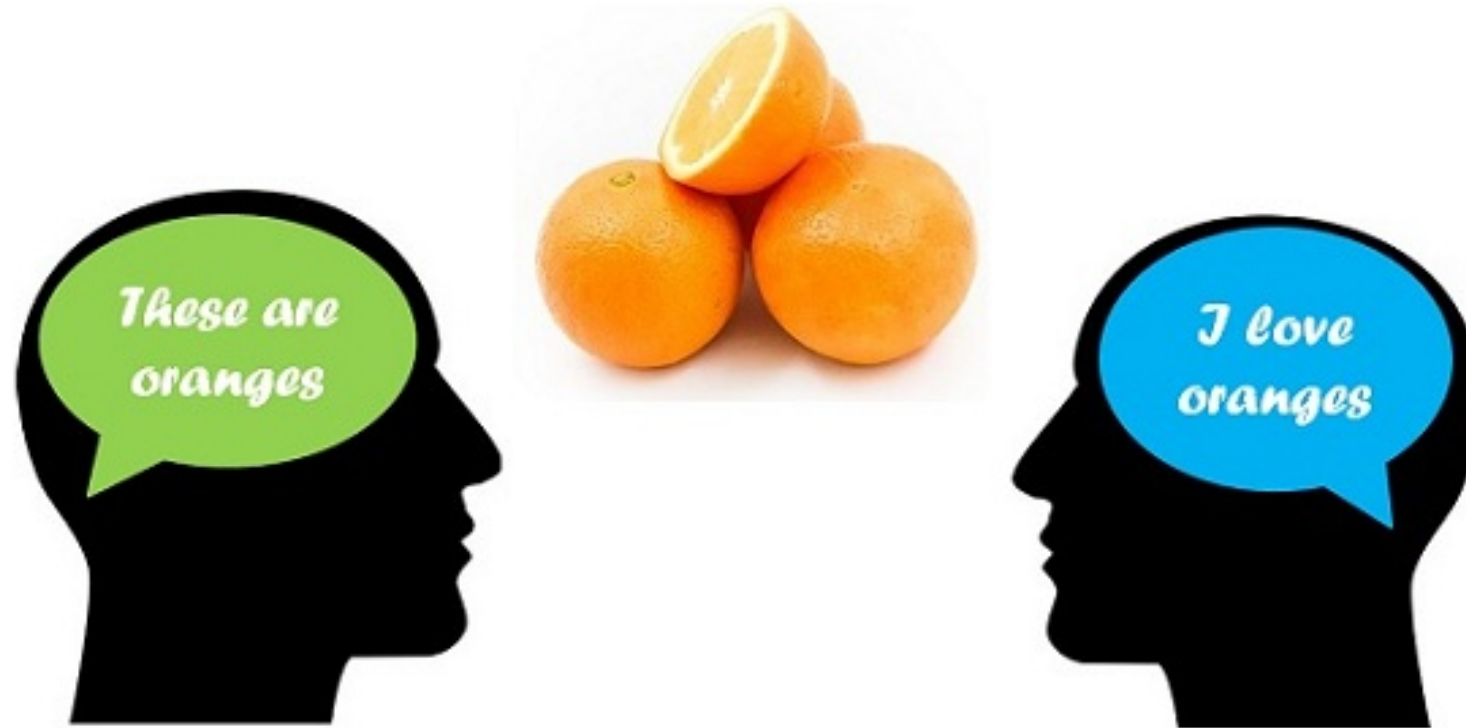
“...In the event of a claim being made under this Section **the Insured at their own expense shall...deliver to the Company** such books of account and other business books vouchers invoices balance sheets and other documents proofs information explanation and other evidence **as may be reasonably required by the Company for the purpose of investigating or verifying the claim...**”

If the terms of this condition have not been complied with...**no claims under this Section shall be payable...**”

Axa Versicherung AG v Arab Insurance Group



Axa Versicherung AG v Arab Insurance Group



Materiality: Objective, was the presentation fair?

Inducement: Subjective, would fair presentation have influenced the underwriter?

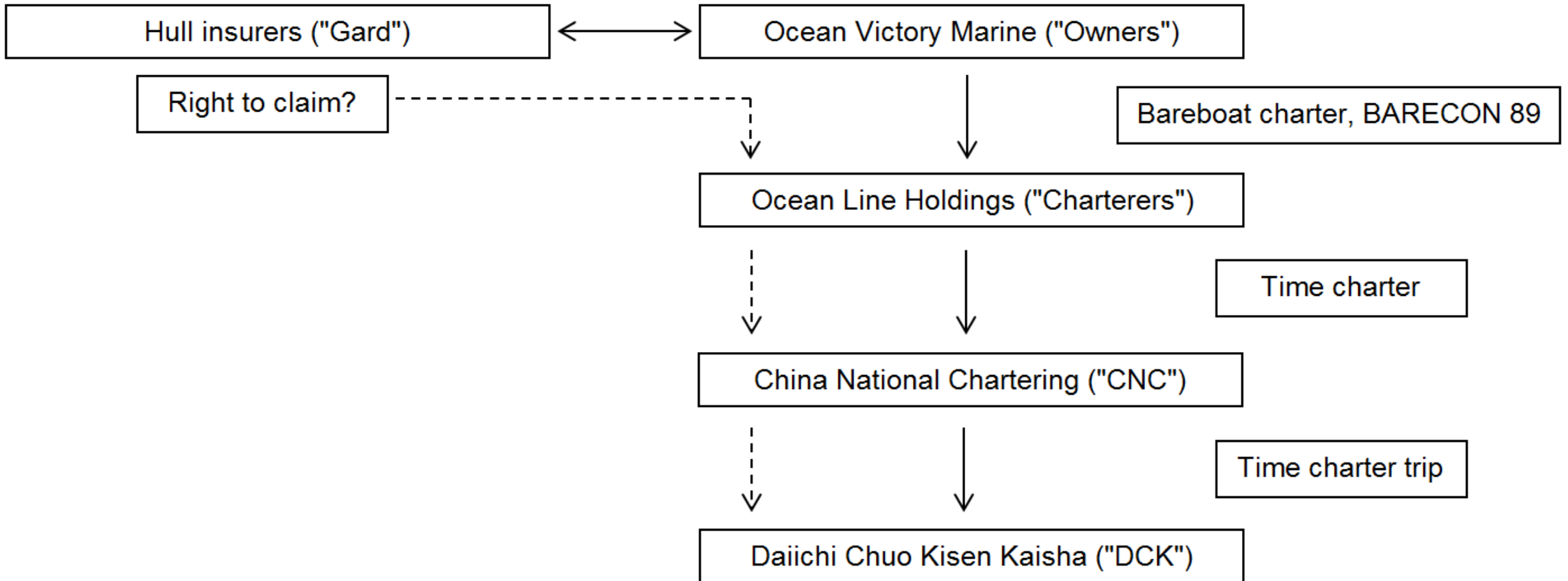
Axa Versicherung AG v Arab Insurance Group



Gard v CNC (“*The Ocean Victory*”)



Gard v CNC (*"The Ocean Victory"*)



Gard v CNC (“*The Ocean Victory*”)

- BARECON 89 Clause 12

“(a) During the Charter period **the Vessel shall be kept insured by the Charterers at their expense**...to protect the interests of both the Owners and the Charterers...**all insurance policies shall be in the joint names of the Owners and the Charterers**...

The Charterers shall, subject to the approval of the Owners and the Underwriters, effect all insured repairs and shall undertake settlement of all costs in connection...

The Charterers...remain responsible for and to effect repairs and settlement of costs and expenses...in respect of all other repairs not covered by the insurances...

(c) **Should the Vessel become a... total loss...all insurance payments...shall be paid to the Mortgagee, if any...who shall distribute the moneys** between themselves, the Owners and the Charterers according to their respective interests. ”

Gard v CNC (“*The Ocean Victory*”)



Gard v CNC (“*The Ocean Victory*”)

- BARECON 2017 Clause 17(a)

“...(ii) Notwithstanding that the parties are co-assured, these insurance provisions shall **neither exclude nor discharge liability between the Owners and the Charterers** under this Charter Party, but are intended to secure payment of the loss insurance proceeds as a first resort to make good the Owner’s loss. If such payment is made to the Owners it shall be treated as **satisfaction (but not exclusion or discharge)** of the Charterers’ liability towards the Owners. For the avoidance of doubt, **such payment is no bar to a claim by the Owners and/or their insurers against the Charterers to seek indemnity by way of subrogation.**

(iii) **Nothing herein shall prejudice any rights of recovery of the Owners or the Charterers (or their insurers) against third parties.**”

Leeds Beckett University v Travelers



Leeds Beckett University v Travelers



ACCIDENTAL DAMAGE:

- Covered by general policy wording
- Not wilful or deliberate
- Chance event
- Not inevitable
- **Inevitability assessed prospectively**
- Not due to inherent characteristics
- External fortuitous event
- Ordinary rules of construction

Leeds Beckett University v Travelers

- “The insurance provided under this Section does not cover
 1. Damage caused by or consisting of
 - (a) inherent vice latent defect **gradual deterioration** wear and tear frost change in water table level its own faulty or defective design or materials...

but this shall not exclude subsequent Damage which itself results from a cause not otherwise excluded.”

Leeds Beckett University v Travelers



2004



2018

The process of slowly becoming progressively worse over time

Leeds Beckett University v Travelers

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Leeds Beckett University v Travelers

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Summary





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