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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERAS CHARTERING, LLC,

Plaintiff,

v.

HYUPJIN SHIPPING CO., LTD.,

Defendant.

Case No.: 2:16-cv-00188-RSM

PRETRIAL ORDER

JURISDICTION

This is a suit for demurrage arising out of the carriage of cargo loaded on board the M/V NORFOLK in Sattahip, Thailand and Masan, Korea, and carried to Guanta, Venezuela pursuant to the terms of two Liner Booking Notes. The Booking Notes are maritime contracts and therefore, Plaintiff’s claims fall within 28 U.S.C. §1331, and Plaintiff properly designated its claims under Rule 9(h) of the Federal Rules of Civil Procedure as admiralty and maritime claims.

CLAIM AND DEFENSES

Plaintiff, Teras Chartering, LLC (“Teras” or “Plaintiff”) will pursue at trial the following claims: breach of contract with respect to the Booking Note for the cargo loaded in Masan, Korea and discharged in Guanta, Venezuela. If Teras is the prevailing party, it is entitled to recover its attorneys’ fees and costs pursuant to the maritime contract at issue herein.

Defendant, Hyupjin Shipping Co., Ltd. (“Hyupjin” or “Defendant”) will pursue the following affirmative defenses and claim at trial:

1 1. Plaintiff's damages, if any, were caused in whole or in part by Plaintiff's own
2 negligence and/or unauthorized unilateral choices.

3 2. Plaintiff's damages, in any, were caused in whole or in part by the negligence of
4 third parties outside the control and responsibility of Hyupjin.

5 3. Plaintiff has failed to mitigate its damages.

6 4. Plaintiff breached the terms of the parties' agreements. As a result, to the extent
7 that Hyupjin is found liable to Plaintiff, such liability should be offset in an amount equivalent to
8 the value of Plaintiff's liability to Hyupjin for the breach.

9 5. Hyupjin reasonably relied upon Plaintiff's representations regarding its ability to
10 perform its obligations under the parties' agreement. Specifically, Plaintiff made representations
11 regarding the performance characteristics of the NORFOLK, as well as the vessel's anticipated
12 time of arrival and readiness for the loading or discharge of cargo at Sattahip, Masan, and Guanta.
13 As a result of its reliance, Hyupjin did not hire other available vessels that would have been able
14 to arrive in Guanta sooner and avoid the holiday period. Because Hyupjin relied on Plaintiff's
15 representations to its detriment, Plaintiffs should be estopped from asserting claims against
16 Hyupjin.

17 Defendant will assert the following claims at trial:

18 1. In the event Hyupjin is the substantially prevailing party, it is entitled, pursuant to
19 the terms of the Booking Notes, to recover its attorney fees and costs.

20 **ADMITTED FACTS**

21 1. The document Bates numbered TER-HYU 000178, at Section 11, provides for
22 demurrage of \$20,000 per day on a pro rata basis.

23 2. Teras Chartering LLC Liner Booking Note (Bates numbered P000011) dated
24 November 3, 2015 at para. 11, states that the demurrage rate is \$20,000 per day on a pro rata basis.

25 3. The document Bates numbered TER-HYU 000178 does not contain the term
26 "Grace Period."

1 4. The vessel M/V NORFOLK arrived ready for loading at Masan, Korea within the
2 laycan, as contracted for in Teras Chartering Liner Booking Note (Bates number P0000011), dated
3 November 3, 2015.

4 5. The NORFOLK issued a NOR at Guanta on December 21, 2015 at 12:48 local
5 time.

6 **ISSUES OF LAW**

7 A. The following is a list of the legal issues that Teras has identified as being in dispute.

8 1. Whether Hyupjin breached the terms of the Masan, Korea booking note.

9 2. Whether Hyupjin owes Teras demurrage for the delay in unloading the Masan,
10 Korea cargo in Guanta, Venezuela.

11 3. The total amount of demurrage/detention and labor, equipment and other costs
12 Hyupjin owes Teras under the terms of the Masan BN for delay in unloading Hyupjin's cargo.

13 4. The amount of pre-judgment interest Hyupjin owes on the demurrage charges for
14 the delay in unloading Hyupjin's cargo.

15 5. The amount of attorneys' fees' and costs incurred by Teras for pursuing this action
16 against Hyupjin and whether Hyupjin is liable under the contract for such fees and costs.

17 B. The following is a list of the legal issues that Hyupjin has identified as being in dispute.

18 1. Pursuant to the terms of the parties' agreement, as memorialized in the Sattahip
19 Booking Note, the Masan Booking Note, and the Addendum, was Hyupjin entitled
20 to load or discharge cargo within a reasonable time under the circumstances
actually existing?

21 2. Pursuant to the terms of the Sattahip Booking Note, the Masan Booking Note, and
22 the Addendum, how much free time and/or grace period was available to Hyupjin
for use in Guanta?

23 3. Were there any delays in the discharge of cargo in Guanta attributable to Hyupjin's
24 failure to discharge cargo within a reasonable time under the existing
25 circumstances?

26 **EXPERT WITNESSES**

1 a. The parties shall be limited to the following expert witnesses:

2 1. On behalf of Plaintiff: Roger Clark, Clark Manco International, Inc., 237 Linger
3 Lane, Suite 12, Sun City Center, FL 33573 will testify as to the meanings of the terms and
4 conditions contained in the Booking Notes, the meaning of other relevant shipping terms and
5 conditions, the determination of laytime, free time, grace period, and the calculation of the amount
6 of demurrage / detention owed by Hyupjin to Teras for loading its cargo in Masan, Korea and
7 unloading in Guanta, Venezuela.

8 2. On behalf of Defendant: (a) Mr. Dan Valente, 2448 76th Ave. S.E. #214, Mercer
9 Island, WA 98040, will testify as to the meanings of the terms and conditions contained in the
10 Booking Notes and the Addendum; the meaning of other relevant shipping terms and conditions;
11 the determination of laytime, free time, grace period, and detention; the calculation of demurrage;
12 and industry norms and practices.

13 (b) Mr. Roman Cross, Braemar Technical Services, Inc., 5 Hanover Square, New York,
14 NY 10004, may testify as to the operations aboard the vessel NORFOLK, particularly any delays
15 in transit or while engaged in cargo operations that were the result of mechanical failures.

16 **OTHER WITNESSES**

17 The names and addresses of witnesses, other than experts, to be used by each party at the
18 time of trial and the general nature of the testimony of each are:

19 a. On behalf of Plaintiff:

20 Eric Radford, 5358 33rd Ave., #302, Gig Harbor, WA 98335 may testify as to vessel
21 operations and management.

22 If necessary, Plaintiffs will call Anita Ray, 5358 33rd Ave., #302, Gig Harbor, WA 98335
23 to authenticate documents.

24 b. On behalf of Defendant:

25 Mr. B.S. ("Sam") Kim, Sea Apex Marine, c/o Nicoll Black & Feig, PLLC, 1324 4th Ave.,
26 Ste. 1650, Seattle, WA 98101 will testify concerning the parties' negotiations regarding the

1 Sattahip Booking Note, the Masan Booking Note, and the Addendum. Mr. Kim will also testify
2 regarding communications between the parties relating to the NORFOLK's voyage and arrival in
3 Guanta, and efforts to discharge cargo in Guanta.

4 Mr. Hyungwoo Han, Hyupjin Shipping Co., Ltd., c/o Nicoll Black & Feig, PLLC, 1324 4th
5 Ave., Ste. 1650, Seattle, WA 98101 may testify about the parties' negotiations regarding the
6 Sattahip Booking Note, the Masan Booking Note, and the Addendum. Mr. Han may also testify
7 regarding communications between the parties relating to the NORFOLK's voyage and arrival in
8 Guanta, and efforts to discharge cargo in Guanta. Mr. Han may also testify regarding Hyupjin's
9 communications with its customers and their representatives and agents regarding efforts to
10 discharge cargo in Guanta.

11 Mr. Lars Feller, CPC Consolidated Pool Carriers (Asia) Co., Ltd., 7th Floor, Kibin daiichi
12 bldg., 7-5-3, Tsukiji, Chuo-ku, Tokyo 104-0045, Japan may testify to the parties' negotiatio n s
13 regarding the Sattahip Booking Note, the Masan Booking Note, and the Addendum, and his
14 communications with Obaid Ahmed.

15 Mr. Stanley Cho, CPC Coli Project Cargo Korea, Ltd, #801 Doosan We've Pavilion,
16 Susong-dong Jongo-gu, Seoul, Korea may testify about the parties' negotiations regarding the
17 Sattahip Booking Note, the Masan Booking Note, and the Addendum.

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EXHIBITS

a. Admissibility Stipulated

Plaintiff's Exhibits:

Ex. No.	Description
1.	9/14/15 Booking Note for loading at Sattahip, Thailand, with Terms and Conditions (TER-HYU 000178-182).
5.	11/3/15 Booking Note for loading at Masan, Korea, with Terms and Conditions (TER-HYU 000183 and P000011-15).
6.	11/12/15 Notice of Readiness for loading at Masan, Korea (P000016).
7.	11/16/15 Statement of Fact / Time Sheet for Masan, Korea (P000017).
8.	12/21/15 Notice of Readiness @ Guanta Port, Venezuela (P000018).
18.	10/8/15 email from Stanley Cho to BSKIM (TER-HYU 000031).
19.	10/22/15 email from KM Park to Stanley Cho containing signed copy of 10/19/15 Addendum (TER-HYU 000053).
20.	12/22/15 emails from Stella Kim to Jessica Park and email fro COLI to Mr. Kim re Guant Arrival Report (TER-HYU 000156).
28.	Deck Log of MV NORFOLK 10/24/15 (no Bates number assigned).
29.	Deck Log of MV NORFOLK 10/28/15 (no Bates number assigned).
31.	10/30-11/3/15 email between Mr. Sam Kim, Sea Apex, Mr. Stanley Cho, COLI, and Korea@coliproject.com regarding agreement for no additional free time at Guanta for Masan loading (TERHYU 000068-79).
32.	12/18/15 email from Ms. Stella Kim, COLI Projects, to Mr. Sam Kim, Sea Apex, Owners estimate MV NORFOLK Dec 20 arrival at port of Guanta and departure Dec 23. (TER-HYU 000151).

39.	Roger Clark expert report of 2/22/2017 (MV NORFOLK Detention Analysis) and exhibits thereto (not Bates Stamped).
40.	Roger Clark supplemental expert report of March 30, 2017 and exhibits thereto (not Bates Stamped).

Defendant's Exhibits:

Ex. No.	Description
A-13	11.2.15-11.5.15 Email exchange between Lars Feller and Obaid Ahmad (cc: Emiko Karayama; Yoko Nishimura) re: MV 'NORFOLK' – Masan / Guanta (P000121-000126).
A-14	11.05.15 Email from Lars Feller to bskim (cc: Emiko Karayama; Marc Brockmann; Yoko Nishimura; Stanley Cho) re: MV 'NORFOLK' – Masan / Guanta (TER-HYU 000083-000087).
A-19	NORFOLK Deck log 12.21.15 – 12.31.15 (No Bates numbers - Ex. 57 to Teras 30(b)(6) Deposition of Eric Radford).

b. Authenticity Stipulated, admissibility disputed.

Plaintiffs Exhibits:

Ex. No.	Description
2.	10/19/15 Addendum for Sattahip to Guanta (P000006 and TER-HYU 000184).
3.	10.23.15 Email from Captain Tim English to WSS Thailand and Opath Banyen re: arrival on 10.24.15 (P000007)
24.	10/23/15 email from COLI to Mr. Kim re vessel eta Sattahip 0800 on Oct 24

	(TER-HYU000054).
25.	10/26/15 email from COLI to Mr. Kim re Norfolk arrived Sattahip at 0648 on Oct 24. (TER-HYU000056).
26.	10/30/15 email from COLI to Mr. Kim. Norfolk daily report NOR tendered 0718 on Oct 24 (TER-HYU000063-64).
27.	Texas Responses to Defendant's First Set of Interrogatories and Request for Production: P3. Response to Interrogatory No. 1. (No Bates number).
33.	12/23/15 email from Ms. Stella Kim, COLI Projects, to Mr. Sam Kim, Sea Apex, requesting Shipper have receivers extend warehouse hours to receivers terminal (TER-HYU 000157-177). Stipulate to admissibility of TER-HYU 000172-173 only.
34.	12/30/15 email from Stanley Cho, COLI, to Sam Kim, Sea Apex, requesting Shipper pressing PDVSA/receivers to work until completion at port of Guanta (TER-HYU 000164-165).

Defendant's Exhibits:

Ex. No.	Description
A-22	Report of Roman Cross dated February 22, 2017 including curriculum vitae (No Bates numbers).
A-23	Report of Daniel Valente (included with Defendant's Expert Witness Disclosure dated February 22, 2017). (No Bates numbers).
A-24	Rebuttal report of Daniel Valente dated March 24, 2017 (No Bates numbers).

c. Authenticity and admissibility disputed:

Plaintiff's Exhibits:

Ex. No.	Description
4.	10/31/15 Statement of Fact / Time Sheet – Sattahip (P000008-10).
9.	Statement of Facts – Guanta, Venezuela (TER-HYU 000222-226).
10.	12/20/15 Noon Report email from MV NORFOLK master (P000098-99).
11.	12/31/15 Noon Report email from MV NORFOLK master (P000100).
12.	Wilhelmsen Final Disbursement Account (P000042-45).
13.	Barwil de Venezuela Statement of Facts (P000081).
14.	KPI Bridge Oil Invoice and payment re same (P000101-103).
15.	Argent Marine Operations Invoice (P000104-105).
16.	Text messages between Obaid Ahmad and Stanley Cho (P000233-243).
17.	Dock dues spread sheet (P000244).
21.	Engine room log of MV NORFOLK for 12/21/15 – 12/31/15 at Guanta (not Bates Stamped).
22.	Engine room log of MV NORFOLK for 11/12- 11/17 2015 at Port of Masan (not Bates Stamped).
23.	Documents related to Masan Port/Berth and fuel costs (P000256-279).
30.	Laytime calculation at Guanta ex Sattahip (P000045-P000046)
33.	12/23/15 email from Ms. Stella Kim, COLI Projects, to Mr. Sam Kim, Sea Apex, requesting Shipper have receivers extend warehouse hours to receivers terminal (TER-HYU 000157-171 and 174-177).
35.	Port of Guanta Laytime Calculation spreadsheets (P000245-246).
36.	10/3/14 Marine Insurance P&I Club News 13/10/2014. If a ship “has apparently a clean bill of health, such that there is no reason to fear delay, then even though

	she has not been given her pratique, she is entitled to give notice of readiness” . Source: Skuld P&I Club. (no Bates number assigned).
37.	6/1/98 GARD P&I “NOR and commencement of laytime”. If the vessel is ready subject only to a mere formality then the notice may still be able to be tendered. (no Bates number assigned).
38.	Public Internet site Selinger Group Dry Cargo Maps - Port of Guanta: working days of 24 hours and no work on Christmas Day (no Bates number assigned).

Defendant’s Exhibits:

Ex. No.	Description
A-1	07.17.15 Email from bskim to dclee (cc: kmpark) re: VERE//Drum, (POL: Sattahip port, Thailand) (TER-HYU 000001).
A-2	09.01.15 Email from Obaid Ahmad to Jim Greenke; Ladislav Jakubec; Brent Adair (cc: Joe Sanders; Marc Marling) re: FW: 8,741 cbm/1,538mt ex Sattahip to Guanta (TERAS 000762-000763).
A-3	09.03.15 Email from korea@coliproject.co.kr to bskim (cc: kmpark; ‘Jane Kim’; dclee) re: VERE // Drum, (POL : Sattahip port, Thailand) (TER-HYU 000004-000005).
A-4	09.10.15 – 09.15.15 Email exchange between bskim and korea@coliproject.co.kr (cc: kmpark; ‘Jane Kim’; dclee) re: VERE // Drum, (POL : Sattahip port, Thailand) (TER-HYU 000009-000012).
A-5	10.01.15 Email from korea@coliproject.co.kr to kmpark; bskim; dclee (cc: ‘Jane Kim’) re: MV.NORFOLK (Sattahip-Guanta) // REQ INFORMATION (TER-HYU 000019).

A-6	10.06.15 Email from korea@coliproject.co.kr to kmpark; bskim; dclee (cc: 'Jane Kim') re: MV.NORFOLK (Sattahip-Guanta) // REQ INFORMATION (TER-HYU 000026).
A-7	10.08.15 – 10.13.15 Email exchange between korea@coliproject.co.kr and bskim; kpark (cc: 'Jane Kim'; dclee) re: MV.NORFOLK (Sattahip-Guanta) // LAYCAN EXTENSION MATTER (TER-HYU 000031-000037). Teras stipulates to the admissibility of TER-HYU 000031 ONLY, listed above at Teras Ex. 18.
A-8	10.14.15 Email from stanley.cho@coliproject.co.kr to kmpark; bskim (cc: dclee; jane.kim@coliproject.co.kr) re: MV.NORFOLK (Sattahip-Guanta) // DELIVERY DATE (TER-HYU 000040-000041).
A-9	10.16.15 Email exchange between stanley.cho@coliproject.co.kr and kmpark; bskim (cc: dclee; jane.kim@coliproject.co.kr) re: MV.NORFOLK (Sattahip-Guanta) // DELIVERY DATE (TER-HYU 000043-000046).
A-10	10.26.15 – 10.27.15 Email exchange between stanley.cho@coliproject.co.kr, korea@coliproject.co.kr and kmpark; bskim (cc: dclee; jane.kim@coliproject.co.kr) re: MV.NORFOLK (Sattahip-Guanta) // CGO READY and re: VERE // Pipe Spool, Painted Pipe (POL : MSN) (TER-HYU 000058-000060).
A-11	10.31.15 Email korea@coliproject.co.kr to bskim (cc: dclee; kmpark; stanley.cho@coliproject.co.kr) re: VERE // Pipe Spool, Painted Pip (POL : MSN) (TER-HYU 000070).
A-12	11.02.15 Email from korea@coliproject.co.kr to bskim (cc: dclee; kmpark; stanley.cho@coliproject.co.kr) re: VERE // Pipe Spool, Painted Pip (POL : MSN) (TER-HYU 000071-000072).

A-15	11.05.15 Email exchange between Lars Feller and Obaid Ahmad (cc: Emiko Karayama;Yoko Nishimura) re: MV ‘NORFOLK’ – Masan / Guanta (TER-HYU 003545).
A-16	12.14.15 – 12.17.15 Email exchange between korea@coliproject.co.kr and kmpark; bskim (cc: dclee; Stanley Cho) re: MV.NORFOLK (Sattahip&Masan-Guanta) // UPDATE MVMT and CGO CONDITION INFO (TER-HYU 000146-000148).
A-17	12.21.15 Email from stanley.cho@coliproject.co.kr to kmpark; bskim (cc: dclee; stella.kim@coliproject.co.kr) re: MV.NORFOLK (Sattahip &Masan-Guanta) // REQ UPDATE MVMT (TER-HYU 000153-000154).
A-18	01.22.16 Email from korea@coliproject.co.kr to bskim (cc: dclee; kmpark; stella.kim@coliproject.co.kr re: MV “NORFOLK” (TER-HYU 000172-000173).
A-20	11.03.15 Email from korea@coliproject.co.kr to bskim (cc: dclee; kmpark) re VERE // Pipe Spool, Painted Pip (POL:Masan) (TER-HYU 000076).
A-21	11.04.15 Email from korea@coliproject.co.kr to Stanley.cho@coliproject.co.kr; bskim@seaapex.com (cc:dclee) re MV. NORFOLK (Masan Guanta) // Pipe Spool, Painted Pipe (POL:MSN) (TER-HYU 000082).

ACTION BY THE COURT

- a. This case is scheduled for trial without a jury on March 5, 2018 at 9:00 a.m.
- b. Trial briefs shall be submitted to the court on or before February 28, 2018.

This order has been approved by the parties as evidenced by the signatures of their counsel.

This order shall control the subsequent course of the action unless modified by a subsequent order.

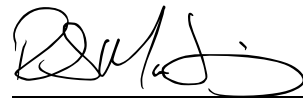
This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

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DATED this 26th day of February, 2018.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

FORM APPROVED

/s/ Tim Lord
Attorney for Plaintiff

/s/ Jeremy B. Jones
Attorney for Defendant