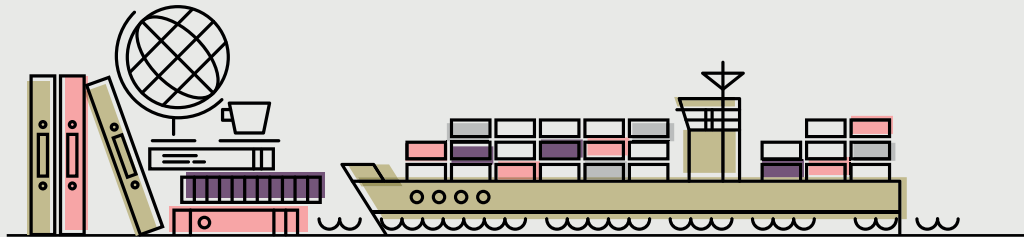


Point 45



Commercial, maritime and arbitration law bullet points from 4-5 Gray's Inn Square

“INTERMEDIARY BROKERS” CAN RECOVER COMMISSION ON HIRE SETTLEMENT

- “Intermediary brokers”, who were not agents of either party to a time charter, owed no fiduciary duties to disclose the full facts of the transaction to the parties. They had no duty to disclose charterers’ underlying commercial position to owners, including that charterers were willing to pay significantly more hire.
- The agreements under which the “intermediary brokers” received their commission from owners were not unenforceable on grounds of public policy / illegality. They were not secret from charterers, who were aware that commissions were payable to owners, but chose not to enquire as to their amount.
- Sums paid under a settlement agreement between owners and charterers retained the character of “Charter Hire” for the purposes of the commission agreements.

CH OFFSHORE LITD V INTERNAVES CONSORCIO NAVIERO SA & ORS. [2020] EWHC 1710 (Comm) Moulder J, 1 July 2020

In November 2007, via C’s shipbrokers, the defendant shipbrokers / consultants (“Ds”) passed tender invitations from PDVSA to C (owners of tug supply vessels, “AMETHYST” and “TURQUOISE”) to enter into charters for two such vessels. C’s bid in respect of “AMETHYST”, led to negotiations via the Ds outside the tender procedure. The tender expired on 15 December 2007 as no bid met its requirements. However, negotiation regarding “AMETHYST” continued via the Ds and C’s broker. In January 2008, C offered “TURQUOISE” through these channels and negotiations proceeded for both vessels in tandem. That month, C then signed commission agreements with the Ds, and charterparties for both vessels were concluded between C and PDVSA. However, another PDVSA company had entered into an agreement for two different vessels, so C’s vessels were not needed. Hire instalments were not made, and C withdrew its vessels from the charterparties. C commenced English court proceedings against PDVSA and others in respect of these matters which were settled in April 2015, US\$60m being paid to C in June 2015.

The Ds pursued C in English arbitration under the commission agreements. The tribunal upheld their claim, and C sought herein to appeal pursuant to s. 69 Arbitration Act 1996, Bryan J giving permission. However, Moulder J held that the tribunal had made no errors of law.

