



## Fact Scenario for Mock Mediation and Arbitration

In 1998 an Asian family with long established shipping roots entered into a contract of time charter for 5 x 175,000 dw new building dry bulk carriers with an established iron ore exporter / charterer located in Katong-Siglapztan, a fictitious country rich in mineral resources with an economy noted for its oligarchs, runaway inflation, high interest rates and a tightly knit community of very sharp commodity traders. The charterer is a company owned by an old man. He ran the company with an iron fist but maintained a good performance record in his dealings. During the charter period, he has openly declared that his only children – a pair of twins (son and daughter) will succeed him one day. The charter period is for 10 years duration. Charter rate is fixed at US\$25,000 per day.

**For dispute resolution, the following was agreed in the charters:**

*This Contract shall be governed by and construed in accordance with the laws of Katong-Siglapztan.*

*Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.*

*The arbitration shall be conducted in accordance with the Maritime Arbitration Rules of Singapore which are current at the time when the arbitration proceedings are commenced.*

Expiry of time charter for the first 3 vessels was due in early 2008 and for the balance 2 vessels, due in Dec 2008. In early 2008, the dry bulk time charter market became extremely volatile with charter rates scaling new heights. Owners were demanding and getting away with ever rising charter hire rates with each passing day and Charterers became very anxious as to when the market would stabilize. The operations of the charterer had been taken over by the twins by then and they became very anxious to lock in the vessels though renewals of their time charter for another 5 years. Schooled in Katong-Siglapztan and then in prestigious universities abroad, they do not share the same rapport with the owners as their father did and the negotiations become prolonged and heated. Eventually, they were able to persuade owners to renew the first 3 of the vessels for another 5 years at \$25,000 despite spot market rates hovering around \$100,000/day at that time. For the balance 2 vessels, it was agreed verbally that they will be renewed on same terms but at \$35,000/day when their time charter expired in Dec 2008, subject to a reconfirmation by either of the twins on Dec 24th 2008.

Shortly after renewal of the first 3 vessels in early 2008, the spot market for time charters reversed trend and started to plummet in the 2nd half of 2008. In the months leading up to Dec 2008, the market was in the throes of an unprecedented historical collapse. Despite numerous attempts by the owners to contact the twins till Christmas day, only 1 call was answered by the son who advised that the renewal "should be OK" but that he needed to check with "the old man" who was then very ill. Otherwise their calls to clarify what "should be OK" went unanswered as the charterers office was closed when the patriarch passed away suddenly. When the funeral was over in early 2009, the son resumed the dialogue and declared that there was no renewal of the charter at USD35,000/day since they did not reconfirm in time owing to the sudden demise of the father.

Although the market had crashed to \$3,000/day by then, he acknowledged the old ties which had between them for the past 10 years and out of respect to their relations, was willing to confirm the renewal of the charter for the 2 vessels at \$15,000/day, which was still way in excess of the current market then. The period will also be for 5 years. Owners were incensed by this about turn as they see this as an act of extremely bad faith on part of charterers. They reminded charterers about their desperation to renew the charters only months before and how they had accommodated the Charterer then by fixing below market. The owners insisted that the 2 vessels be renewed at \$35,000/day in accordance with their verbal discussions. Charterers disagreed as they maintained that a "subject confirmation" was part of the agreement and since there was no confirmation, there was therefore no renewal. Charterer started a chat group on various social media platforms and portrayed owners to be greedy, heartless and insensitive in their responses to charterers' situation and the existing market in advancing their claims.

At the expiry of the existing charter, the owners kept the 2 ships on hire and but invoiced the charterers at \$35,000/day for them, insisting that it was the renewed rate. The Charterers instead pay \$15,000/day instead, saying that was the applicable rate and remind owners that the 1st 3 ships continue to be on hire at a very profitable rate of \$25,000/day when the spot market was doing much worse and that they should not be too greedy. After 6 months of failed negotiations, owners withdrew the 2 vessels from the charter and made a claim on the charterers for their "losses" by serving notice of arbitration. They also commence proceedings to sue charterers in Singapore for defamation based on postings on their chat groups. The parties, once very friendly at all levels now become totally hostile communicate only through their counsel.

The time bar for claims under Katong-Siglapztan law is 12 years. Progress on the claims settlement was slow and counsel met frequently to seek avenues for resolution. Although notice of arbitration had been served and a Tribunal was constituted, mediation through an arb-med-arb protocol was discussed by counsel as an additional tool to try and save costs and preserve the relationship.

Notes for arbitration:

- The main dispute will be over the renewal of the remaining vessels. A secondary point would be an application by the owners for disclosure of communications between members of the Charterer's family.
- There is controversy over the manner of reply received during the period of extreme volatility when the market plunged.
- The charterer's operations was managed by a self-made but wily patriarch who kept everything in his head, operated out of a mobile phone and had only one personal assistant to keep track of any English correspondence. The patriarch himself had little education and did not understand English. The patriarch was grooming his children – a pair of twins (son and daughter, both well-educated) to take over, but they are relatively inexperienced and make plenty of mistakes (which the father then had to remedy). When asked for documents, the twins said there were few (if any) to be discovered.
- When asked for copies of emails, they said the emails were routinely deleted at regular intervals by the personal assistant from their Yahoo account, in order to save storage space and expense.
- There was some credible evidence that there were revealing confidential email exchanges or letters passing between father and the twins leading to a complete breakdown in their relationship. Owners were unable to detail the contents of these exchanges but submitted that the breakdown was due to the father lambasting and humiliating the twins for their childish folly in agreeing to renew 3 ships at \$35,000 per day and then particularly over the son's conduct for the renewal of the balance 2 ships by saying "it should be OK" when he had not checked with his father. Such private parental chastisement is protected from disclosure under pain of penal sanction under the Privacy Laws for Katong-Siglapztan (drafted after draconian Swiss model).



Figure 7.3 Historical ship values, spot earnings and three-year TC rates for Capesize dry bulk carriers