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# Risks Associated with Letters of Indemnity

Michael Collett KC

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White Paper

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## Unicredit AG v. Euronav NV [2023] EWCA Civ 471

- Misdelivery claims by financing banks
  - Breach must be an effective cause of the bank's loss
  - Necessary for bank to show it would have enforced its security



## Types of Security

- (1) Bills of lading.
- (2) Sale contract letters of indemnity (or “LOIs”).
- (3) Trust Receipt Loans.
- (4) Assignments of the proceeds of sale.

## (1) Bills of Lading

- Pledge:
  - Bassano v. Toft [2014] EWHC 377 (QB)
  - Official Assignee of Madras v Mercantile Bank of India [1935] AC 53 at 58-59
  - The Future Express [1992] 2 Lloyd's Rep. 79 and [1993] 2 Lloyd's Rep. 542

## (1) Bills of Lading

- Measure of damages recoverable by pledgee is value of the goods
  - *Swire v. Leach* (1865) 18 CB (NS) 479
  - *Scipion Active Trading Fund v. Vallis Group Ltd* [2021] EWHC 1451 (Comm)
  - *The Sanix Ace* [1987] 1 Lloyd's Rep. 465

## (1) Bills of Lading

- Measure of damages recoverable in contract is proven loss caused by breach
  - The Houda [1994] 2 Lloyd's Rep. 541
  - Glyn Mills Currie & Co. v. East and West India Dock Co., (1882) 7 App.Cas. 591
  - The Nika [2021] 1 Lloyd's Rep. 109
  - Unicredit Bank v. Euronav [2022] EWHC 957 (Comm), [2023] EWCA Civ 471

## (2) Sale Contract Letters of Indemnity (LOIs)

- Significant cases
  - Trafigura v. Kookmin [2005] EWHC 2350 (Comm)
  - Credit Agricole Corporate & Investment Bank v. PPT Energy Trading Co Ltd [2022] SGHC(I) 1
  - UniCredit Bank AG v Glencore Singapore Pte Ltd [2022] SGHC 263

## (2) Sale Contract Letters of Indemnity (LOIs)

- Wording

“From: PPT Energy Trading Co Ltd

To: Credit Agricole Corporate and Investment Bank, Singapore Branch for account of Zenrock Commodities Trading Pte Ltd

We refer to our contract dated 2 April 2020 in respect of our sale to Zenrock Commodities Trading Pte Ltd of a shipment of 920,191.814 US barrels of Djeno Crude Oil shipped on board the vessel Indigo Nova at the port of Djeno Terminal, Congo with bills of lading dated 06 April 2020.

To date we are unable to provide you with the requisite shipping documents in relation to the said sale ...

## (2) Sale Contract Letters of Indemnity (LOIs)

“In consideration of your making payment of the full invoiced price of USD23,662,732.50 (and payment when due of any subsequent shortfall apparent on any final invoicing and set out in any final invoice) for the shipment **at the due date for payment under the terms of the above contract** without having been provided with the above documents, we hereby expressly warrant that at the time property passed under the contract we had marketable title to such shipment, free and clear of any lien or encumbrance, **and that we had full right and authority to transfer such title to you**, and that we are entitled to receive these documents from our supplier and transfer them to you.

We further agree to protect, **indemnify and save you harmless from and against any and all damages, costs and expenses** (including reasonable legal fees) **which you may suffer or incur by reason of the original bills of lading and other documents remaining outstanding or breach of warranties given above ...”**

## (3) Trust Receipt Loans

- BNP Paribas v. Bandung Shipping Pte Ltd [2003] SGHC 111

## (4) Assignment of proceeds of sale

- The “true” security?



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**LONDON**

20 EssexStreet  
London WC2R 3AL

T +44 (0)20 7842 1200

F +44 (0)207842 1270

E [enquiries@twentyessex.com](mailto:enquiries@twentyessex.com)

W [twentyessex.com](http://twentyessex.com)

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**SINGAPORE**

Maxwell ChambersSuites  
#02-03

28 Maxwell Road  
Singapore069120

T +65 62257230

F +65 62249462

E [singapore@twentyessex.com](mailto:singapore@twentyessex.com)

W [twentyessex.com](http://twentyessex.com)