



White Paper Shipping Law & Practice 2025

RICHARD SOUTHERN KC

The Judge, by Siegfried Charoux



What is the latest judicial thinking on letters of indemnity and the concept of undisclosed principals in shipping contracts?

What are LOIs?

LOIs are typically given by one party to a contract to his counterparty in consideration of the counterparty complying with a request to do something that he is not contractually obliged to do.

Take care that the proposed action is lawful: Brown Jenkinson v Percy Dalton [1957] 2 Lloyd's Rep 1.

Counterparty Risk

The most common type of LOA, and the particular one with we are concerned today, is when the charterer requests the shipowner to discharge the cargo at the discharge port without production of the original bills of lading.

Owner is potentially liable for misdelivery;

Such liability is not insured by standard P&I Club cover.

Value of any LOI depends on the ability of the issuer to make good his promises, unless it is backed by a bank or parent company guarantee.

Yangtze Navigation v TPT Shipping Ltd (and others)
[2024] EWHC 2371 (Comm)
The “*Xing Zhi Hai*”

Carriage of logs from New Zealand to India

LOI issued by charterer (“TPT Shipping”) to owner for discharge without production of bills of lading

Bill of lading holders claimed against owner for misdelivery

Owner claimed on the LOI

Charterer went into administration, then liquidation

Counterparty risk!

Owner alleged charterer signed charter and LOI as agent for undisclosed principals: “TPT Forests” and “Exporters”

Undisclosed Principals

Where A and B make a contract, but A is secretly acting as the agent of C, even though that arrangement is not known to B, C can sue B and be sued by B on the contract.

*“It is, we think, too firmly established to be now questioned, that, where a person employs another to make a contract of purchase for him, he, as principal, is liable to the seller, though the seller never heard of his existence, and entered into the contract solely on the credit of the person whom he believed to be the principal though in fact he was not. **It has often been doubted whether it was originally right so to hold; but doubts of this kind come now too late: for we think that it is established law that, if on the failure of the person with whom alone the vendor believed himself to be contracting, the vendor discovers that in reality there is an undisclosed principal behind, he is entitled to take advantage of this unexpected godsend ...”***

Armstrong v Stokes (1872) L.R. 7 Q.B. 598 at 603-604 Blackburn J.

Sui Yin Kwan v Eastern Insurance [1994] AC 199

"(1) An undisclosed principal may sue and be sued on a contract made by an agent on his behalf, acting within the scope of his actual authority.

(2) In entering into the contract, the agent must intend to act on the principal's behalf.

(3) The agent of an undisclosed principal may also sue and be sued on the contract.

(4) Any defence which the third party may have against the agent is available against his principal.

(5) The terms of the contract may, expressly or by implication, exclude the principal's right to sue, and his liability to be sued. The contract itself, or the circumstances surrounding the contract, may show that the agent is the true and only principal."

(1) Authority must be actual

Authority may be express or implied, but it must be actual.

No scope for apparent authority in this context.

(2) Intention

The agent must intend to act on behalf of the principal when making the contract. Despite appearances, this question is not subjective: *The Magellan Spirit* [2016] EWHC 454 (Comm) at [17] per Leggatt J.

I do not accept, however, that [the agent's] subjective state of mind is relevant for this purpose, let alone decisive. It is one thing to infringe the objective principle – as the doctrine of undisclosed principal undoubtedly does – by allowing the existence of contractual rights and obligations to depend on an intention which is not communicated to the other contracting party. But it would go a step further, and would give rise to wholly unacceptable uncertainty, if such rights and obligations were to depend on a purely private intention of the supposed agent which was not even communicated to the supposed principal before the contract was made.

Propositions (3) (4) and (5)

Proposition 3 is unsurprising: the agent signed the contract, so the counterparty ought to be able to sue the agent.

Proposition 4 follows the same reasoning: if you do sue the principal it would hardly be fair if the principal could disown conduct of his agent.

Proposition 5 is surely obvious. There cannot be an undisclosed principal where the contract, or the surrounding circumstances, expressly or by implication exclude that possibility.

The Playboy Election

Playboy Club v Banca Nazionale del Lavoro [2018] 1 WLR 4041, in which Lord Sumption added a sixth key principle:

“...the third party must irrevocably elect whether to sue the agent or the undisclosed principal.”

You can sue either, but you can't sue both.

YANGTZE NAVIGATION: THE EVIDENCE

Companies in NZ cut down trees and export the logs - “Exporters”

TPT Forests (“Forests”) provides export marketing services to Exporters by “Log Marketing and Sales Agency Agreements” (LMSAAs). Forests finds buyers, sells the logs as agent for the Exporters, and arranges as agent for the shipping of the logs.

TPT Shipping (“Shipping”) was the chartering arm of the TPT group.

The key part of that evidence was that in 2004 Shipping had been set up quite deliberately as the chartering arm of the TPT group, to protect the wider group from the risk of chartering vessels.

The analysis against Shipping

First the Judge concluded that Shipping was the charterer and was not acting as agent for TPT Forests as undisclosed principal when making the charter.

Shipping was set up to do exactly that. That being so, there was no evidence to show that Shipping intended not to agree the LOI in the same capacity. On the contrary:

“... against the background of the rationale for incorporating Shipping, Forests would not wish to open itself up to a liability that it had studiously avoided by virtue of that incorporation of Shipping in circumstances where it was not party to the Charters and was not in any way obliged to issue a letter of indemnity or able to request discharge without production of the bill of lading.”

Separate Corporate Personality

Per Leggatt J in *The Magellan Spirit* (again), cited in *Yangtze Navigation*:

The ordinary intention of someone who conducts trading activities through the vehicle of a one-man company is precisely to avoid incurring personal liability under contracts made by the company; and it would be inconsistent with that intention for the company to contract as agent for its beneficial owner. ...

*Where a contract is made by or on behalf of a named legal person and there is nothing in the terms of the contract or surrounding circumstances to indicate to the other contracting party that the named person is making the contract as an agent, then the presumption must be that the named person is contracting as a principal. That presumption is capable of being displaced; but in order to displace it, **convincing proof** is needed that the named party was – **contrary to appearances** – contracting on behalf of an undisclosed principal.”*

Cf Saloman v Saloman [1897] AC 22.

The analysis against the Exporters

Under the LMSAAs Forest was to arrange, as agent of the Exporters, shipment of the logs on vessels that had been chartered by Shipping.

By contrast, Forests had no authority under the LMSAAs to authorise the issuance of LOIs on behalf of Exporters. The only way Forests could obtain such authority from Forests was to follow a written regime in the LMSAAs. It was not followed. The dichotomy was significant.

The same reasons that applied in respect of Forests also applied to Exporters.

The Outcome

Permission to serve the Claim Form on Forests and the Exporters out of the jurisdiction was refused: the owners had not shown on the evidence that they had the better of the argument that those companies were undisclosed principals.

The case is a reminder of the dangers of LOIs: if the party promising to indemnify may not be able to pay, the security of the LOI is illusory.

It also is a reminder that the doctrine of undisclosed principals can only be invoked where there is convincing proof that the signatory to a contract in truth intended to make the contract as agent for another person.

It is further a reminder of the importance of separate corporate personality.

What can owners do to avoid such losses?

Refuse to discharge the cargo until original bills of lading are produced. And claim demurrage in the meantime. (Subject to commercial considerations.)

Assess counterparty risk carefully; if not satisfied:

Only accept LOIs that are backed by a parent company guarantee;

Only accept LOIs that are backed by a bank – the P&I Clubs provide a standard wording to be signed by banks.

Require use of electronic bills of lading – and refuse to deliver without such bills being produced.

Require use of sea waybills wherever possible.

Siegfried Charoux's Judge (again)





Richard Southern KC

Call: 1987

Silk: 2006

Richard Southern KC is first and foremost an advocate. He specialises in commercial litigation and arbitration, including shipping, energy, commodities and international trade, professional negligence, marine and non-marine insurance, and reinsurance.

As a silk since 2006 Richard has advised and represented his clients in the Commercial Court, the Court of Appeal, arbitrations under the rules of the London Court of International Arbitration, the London Maritime Arbitration Association and others, in mediations, and at a wide variety of other hearings.

7 King's Bench Walk

7 King's Bench Walk
Temple
London EC4Y 7DS

+44 (0)20 7910 8300
seniorclerks@7kbw.co.uk

These slides are provided only for training and information purposes.

These slides may be circulated only within the firm to which the original presentation was made. Please do not share externally.

No responsibility or liability is accepted for any errors or omissions.

These slides are no substitute for taking legal advice (from members of 7KBW) and are not to be relied upon.

©7KBW

Barristers regulated by the [Bar Standards Board](#).

