

Containership Special

Nigel Cooper QC
James M Turner QC
Nichola Warrender QC
Paul Dean, HFW

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With back to back wins, Quadrant Chambers demonstrates 'exceptional strength-in-depth for complex shipping disputes'

Legal 500 UK Awards 2020





“Succinct in his advice, astute in his views and savvy in the commercial dynamics of the shipping business.”

(Legal 500, 2021)

Nigel Cooper QC

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Areas of Expertise

Commercial Dispute Resolution	Insurance	Alternative Dispute Resolution
Shipping	Shipbuilding	Administrative Law & Judicial Review
International Arbitration	Energy	

Nigel has a commercial practice predominantly covering the fields of shipping, energy and insurance/reinsurance law.

He appears before the business and appellate courts in England & Wales, and has a strong arbitration practice advising on and acting in disputes before all the main international and domestic arbitral bodies. Nigel accepts appointments as an arbitrator and has acted as a mediator and as a party's representative in mediations. He has experience of public inquiries having appeared for the government in three major formal investigations.

Nigel's commercial practice covers most aspects of international trade and the carriage of goods, commodities, brokerage and commercial management disputes, fraud & illegality, and professional negligence. His shipping practice includes all forms of bill of lading and charterparty disputes; shipbuilding (including superyachts and military vessels) and off-shore construction; ship sale and purchase; limitation and collision actions, pollution and, occasionally, Merchant Shipping Act offences. In addition to his commercial shipping practice, Nigel has a specialist interest in disputes in the yachting and marine leisure market. In the energy sector, Nigel's work covers both upstream and downstream aspects of the industry. He has advised on and acted in disputes relating to drilling and exploration, to production and to the sale and purchase of energy products as well as on related issues such as the enforcement of related guarantees and the insurance of drilling units. Nigel's insurance & reinsurance practice extends to policy disputes in both the non-marine and marine sectors. In all areas of his practice, Nigel is experienced in dealing with related jurisdictional and enforcement issues, including early measures to ensure the preservation of assets.

Nigel has considerable experience of handling cases that are factually and technically complex with a corresponding level of documents or which have required him to become familiar with new areas of law (most recently cross-border insolvency). He is known for being approachable and believes in working as a team with those instructing him. Nigel has a global client base and is increasingly instructed for disputes with an overseas seat of arbitration.

Nigel is recommended as a leading silk for shipping and commodities (Chambers UK & Global), Shipping (Legal 500 UK and Asia Pacific) and for Energy (Legal 500 Asia Pacific).

What the Directories Say

“Very sharp and concise, simplifying what otherwise would be a complicated case.” (Legal 500 Asia Pacific, 2021)

“He is concise and clear in his views and has an excellent commercial understanding of how the shipping trade works.” (Chambers UK, 2021)

“He is absolutely magnificent: tenacious, diligent and extraordinarily calm.” (Chambers UK, 2021)

“Succinct in his advice, astute in his views and savvy in the commercial dynamics of the shipping business.” (Legal 500, 2021)



“His work is sharp & focused, and his advocacy has a deservedly excellent reputation.”

(Chambers & Partners UK, 2020)

James M. Turner QC

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Areas of Expertise

Shipbuilding

International Arbitration

Mediation

Energy

Commercial Dispute Resolution

Commodities & International Trade

Shipping

Banking

“An outstanding silk who is ... always on the ball” (Legal 500 Asia Pacific), James specialises in cross-border commercial disputes in international arbitration, energy, shipbuilding, offshore construction, shipping and banking.

“A skilled tactician who can be entrusted with anything” (Chambers UK), as an advocate – with “a deservedly excellent reputation” (Chambers UK) – he appears most often in arbitration, before tribunals operating under LCIA, ICC, HKIAC or LMAA Rules, as well as in ad hoc matters. His Court work is almost exclusively in the Commercial and Admiralty Courts and on appeals up to and including the Supreme Court.

Well-known for his “astute grasp of commercial realities” (Chambers UK) and ability “to crunch through the details of a very technical case” (Legal 500), much of James’s work requires the co-ordination of a range of expert specialisms, ideally suited to his down to earth approach and team-building skills that make him “extremely easy to work with” (Legal 500 Asia Pacific). Reflecting the invariably international character of his practice, James has extensive experience in dealing with foreign law and multi-jurisdictional disputes. He has a particular eye for appreciating and addressing cultural barriers in international arbitration.

James has given written expert evidence of English law in the Courts of New York, Italy, France, Germany, Spain, the Netherlands, Ireland, Belgium and Austria.

James has considerable experience of applications for injunctive relief (freezers, delivery up, restraining orders and anti-suit injunctions), as well as receivership and interpleader.

James has a First Class Master’s Degree in German Law and speaks and reads German and Dutch fluently. He accepts instructions and appointments in either language. He also reads French.

James accepts appointments as arbitrator in a range of international commercial disputes. His experience as arbitrator over more than 20 years includes ICC, LCIA, NAI (Netherlands Arbitration Institute), LMAA and ad hoc references. He is on the arbitration and mediation panels of the Shanghai and the Asian (formerly Kuala Lumpur) International Arbitration Centres. In May 2021, James became the first non-Dutch arbitrator on the UNUM list of arbitrators. Formerly TAMARA, UNUM Transport & Mediation is the leading Dutch maritime dispute resolution service.

James qualified as a CEDR-Accredited mediator in 2001 and has extensive experience of mediation, both as mediator and as counsel.

What the directories say

- » “He is an outstanding silk who is extremely easy to work with and always on the ball.” (Legal 500 Asia Pacific, 2021)
- » “Very responsive and very analytical.” (Legal 500, 2021)

“Nichola Warrender is perhaps the hardest-working human being who has ever lived and she has an eye for detail which would make most spreadsheets ashamed of themselves.”

(Chambers UK, 2021)



Nichola Warrender QC

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Areas of Expertise

Shipping	Commodities & International Trade	Professional Negligence
Insurance	Commercial Dispute Resolution	Aviation & Travel
Shipbuilding	International Arbitration	Banking
Energy	Alternative Dispute Resolution	

She is an experienced barrister who enjoys a broad commercial litigation and arbitration practice with particular emphasis on shipping, carriage of goods, commodities, shipbuilding, energy and construction and related insurance and finance disputes.

She undertakes drafting and advisory work in all of her practice areas. She regularly appears as an advocate in the High Court and in arbitration, as sole counsel and as a junior.

Nichola is a meticulous and persuasive advocate with a wide range of experience within her fields of specialism and in more general commercial disputes. Many of her cases involve issues of jurisdiction, private international law or require careful analysis of complex factual, expert and technical or legal issues. She has experience in various forms of pre-emptive remedies such as freezing orders, anti-suit injunctive and other pre-action relief and has obtained or resisted most forms of pre-trial applications.

She adopts a modern, efficient and user-friendly approach to her work. She is a team player who works well with others to efficiently manage and prepare a case for trial/arbitration. Nichola believes in combining a good command of the issues and commercial understanding of her clients' needs with sound intellectual legal analysis and practical advice. She aims to deliver thorough, well-prepared and effective presentation of the case both on paper and in person to achieve the best results for her clients.

Nichola is happy to be instructed on urgent matters and at short notice when available.

Nichola is recommended as a leading barrister for shipping.

What the directories say

“Nichola Warrender is perhaps the hardest-working human being who has ever lived and she has an eye for detail which would make most spreadsheets ashamed of themselves.” (Chambers UK, 2021)

“Thorough, hard-working, and able to adopt independent positions.” (Legal 500, 2021)

“Nichola pays exceptional attention to detail and has an excellent memory; she is very valuable on long-running matters involving complex facts and multiple expert disciplines.” (Chambers UK, 2020)

“She has an incredible eye for detail” (Chambers UK, 2020)

“Her attention-to-detail is outstanding, she is highly personable, and is a persuasive orator.” (Legal 500, 2020)

“She is extremely detailed and thorough.” (Legal 500, 2019)

“She is unbelievably hard-working and has an immense capacity to absorb information. She is also extremely user-friendly and a pleasure to deal with.” (Chambers UK, 2019)



"He is very clear, clam and thoughtful, always trying to think outside of the box with every possibility considered. He has enormous experience and knowledge in shipping."

(Chambers 2021)



Paul Dean

Partner

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Paul is Global Head of Shipping at HFW, the world's leading shipping and maritime law firm, managing over 200 specialist shipping lawyers across our worldwide network of 20 offices.

For the last two years Paul has been recognised by Lloyd's List as one of the 100 most influential people in the maritime industry and one of the market's Top 10 lawyers.

Paul specialises in offshore and marine, focusing mainly on charter parties, bills of lading, shipbuilding, rig disputes, collisions, fire and explosion, salvage, general average, groundings, total loss, towage, seismic and limitation.

He regularly speaks at and chairs offshore vessel conferences and has been teaching on the BIMCO panel for their "Using SUPPLYTIME" course for over 10 years, the review committee for the SUPPLYTIME 2005 revision and on the drafting committee for BIMCO's new standard form Offshore Dismantling Services Agreement DISMANTLECON. Experience gained working for an International Group P&I club specialising in offshore vessels, enables Paul to combine practical understanding with the legal role.

Paul is identified in the Legal Directories as one of the leading individuals in his fields.



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**LISW21
CYBER IN SHIPPING
16 SEPTEMBER 2021**

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 A background image for the event featuring glowing binary code (0s and 1s) and the words "Data Breach" and "Cyber Attack" in a stylized, glowing font.

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Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

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What is happening?

- NotPetya – Maersk US\$300 million
- CMA CGM – 2 weeks
- IMO – 1 week
- Cyber incident on a ship every day
- Attacks on shipping rose 900% in 3 years to 2020
- New victim of ransomware every 10 seconds
- Cyber interference includes:
 - Spoofing – HMS Defender
 - 'Ethical' hackers demonstrating they can take control of ships
- “Cyber crime is one of the biggest threats to shipping’s security...” Lloyds List 26.05.21



<https://www.hfw.com/cyberowl-hub>

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Containership vulnerability

Risks to containerships are more profound compared to other tonnage:

- Cargo management systems are a more attractive target to the hacker due to complexity of containership loading and stability
- Reefers/pressurised containers also raise the risks:
 - Food – less likely
 - Chemicals, dangerous goods?
- Containerships tend to have more connectivity to
 - enable remote support BUT
 - raises the cyber risk, if that connectivity is not well-managed
- The bigger issue is operational
 - Tight turnaround times in port
 - Time to remediate short
 - Cost of delay high (current market)

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Regulations, Seaworthiness and Risk

- Seaworthiness and due diligence
- ISPS code – sufficient?
- IMO MSC. 428 (98) – compliance enough?
- Commercial risk = protection against key financial exposures
- Contracts

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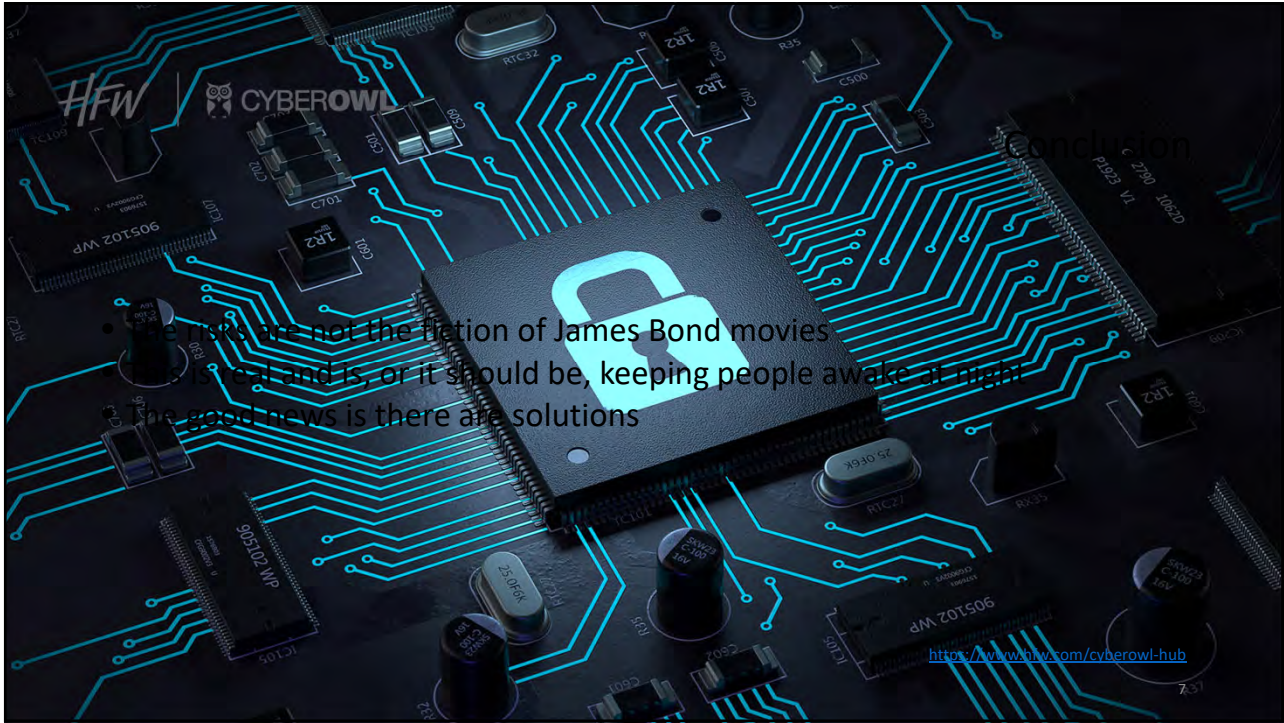
Solutions

- Maritime Cyber Security Review
 - Commercial
 - Operational
 - Technical
 - Compliance
 - Legal
 - Insurance
- Vessel Operational Technology (OT) risk assessment and mitigation
 - IT (Information Technology)
 - OT (NB: understanding of high risk systems on containerships)
 - Data
- Vessel Cyber security monitoring
- Cyber breach
 - Planning

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The Scenario...

- » The laden container vessel “LOTSA STUFF” (“the Vessel”) with a capacity of 20,000 TEUs is bound for the high-tech container terminal (“the Terminal”) at Port A (“the Port”) on a high-speed monthly liner service operated by Containers 4 U Ltd (“Containers 4 U”).
- » The Vessel is owned by Big Investments Inc (“Owners”) and demise chartered to Bare Boat Ltd (“BareBoat”) who had entered into a 10-year time charter on NYPE form with Containers 4 U. The latter has vessel-sharing agreement (“VSA”) whereby it has agreed to provide 25% of the slots on the Vessel on this service to its VSA partner, Boxes R Us Plc (“Boxes R Us”). None of the charterparties incorporated the BIMCO cyber-security clause 2019 or similar.
- » As she was scheduled to have a routine service of her cargo management system, a third-party engineer (“Mr X”) boards the Vessel whilst at anchorage at the Port. He connects his company-issued computer to the cargo handling computer but to complete his service he asks to use the ship’s printer to print out some diagnostic reports. The Chief Officer agrees. Mr X hands him a USB device. The Chief Officer plugs it into the business IT computer with access to the printer. Mr X takes the print outs, completes the service and disembarks as soon as the Vessel berths at the Terminal.
- » Meanwhile the Master is preparing for a Port State Control inspection about which he had been notified via email on the business IT computer on route from the anchorage to the berth. This is the first time the Vessel has called at the Port. On being notified of the inspection, the Master advised the Terminal by email that the inspection will be taking place but he does not anticipate there will be any problems.
- » Shortly after berthing, the Chief Officer notes that the business IT computer has frozen. A ransomware note appears on the screen demands that the reader gets in touch with the enclosed contact details within 24 hours to get details of the ransom demand. He reports this to the Master. The Chief Officer then spots that the cargo handling system computer is also now malfunctioning. None of the cargo management applications are accessible.
- » The PSC inspectors have boarded and have decided to detain the Vessel at berth because of the cyber-security incident. This is just as well since the Terminal’s computers are now down and the computer-controlled chariots cannot be used to take any unloaded containers to their designated storage space within the container yards at the Terminal. On this occasion, the Terminal has not (yet) received a ransomware note but this has been the fourth cyber-security incident in as many months at the Port, all of which have involved a ransomware note in the similar format as is now displayed on the ship’s business IT computer screen.
- » Owners/BareBoat are blaming Containers 4 U for sending the Vessel to an unsafe Port/Terminal. The Terminal/Port are blaming the Vessel not only for delaying discharge operations but also for infecting the Terminal computer systems via the email from the Master. They have offered to make alternative arrangements for transporting containers when unloaded but only if a letter of indemnity is given for the additional costs of the same. Boxes R Us are blaming Containers 4 U for failing to do its due diligence before chartering the Vessel and demanding that alternative arrangements for discharge are made by to minimise delays to its bill of lading holders.
- » Meanwhile, there is one other container vessel already waiting at anchorage and two others on route to the Port who are also expecting a speedy discharge at the Terminal.


Scenario – scene 1

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MV LOTSA STUFF



PORT A

High speed monthly liner service – Containers 4 U Ltd

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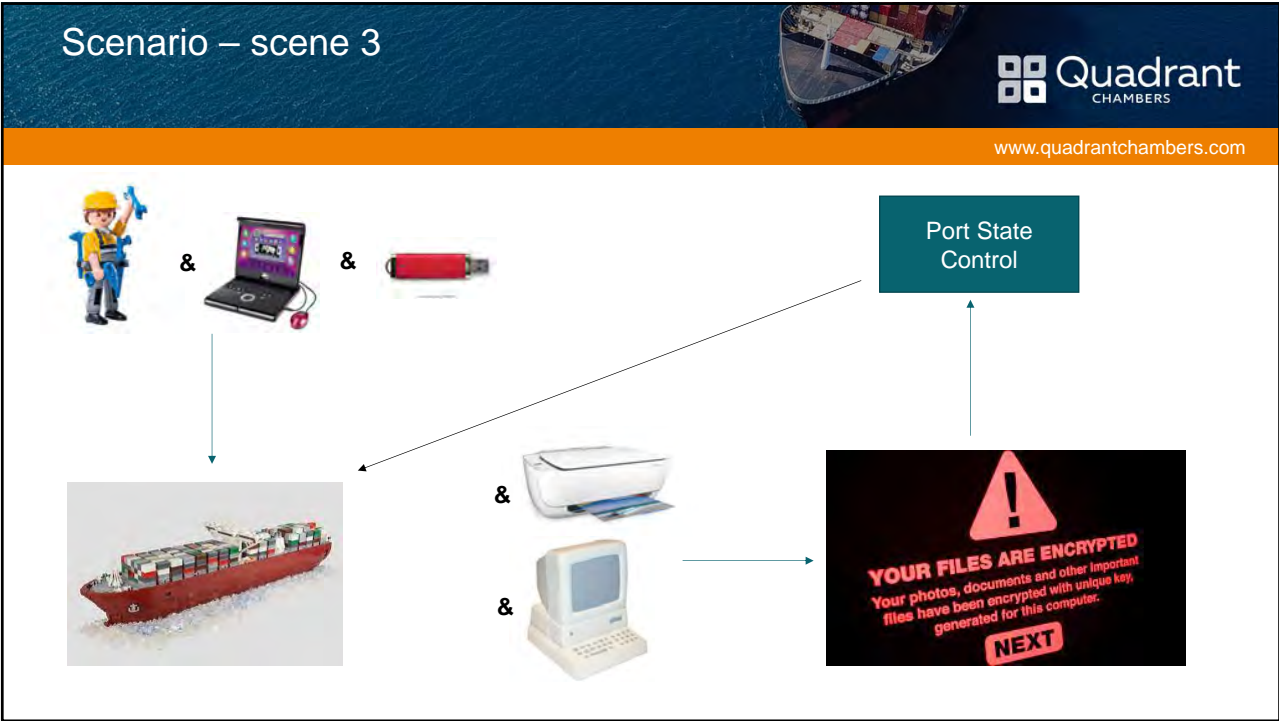
Scenario – scene 2

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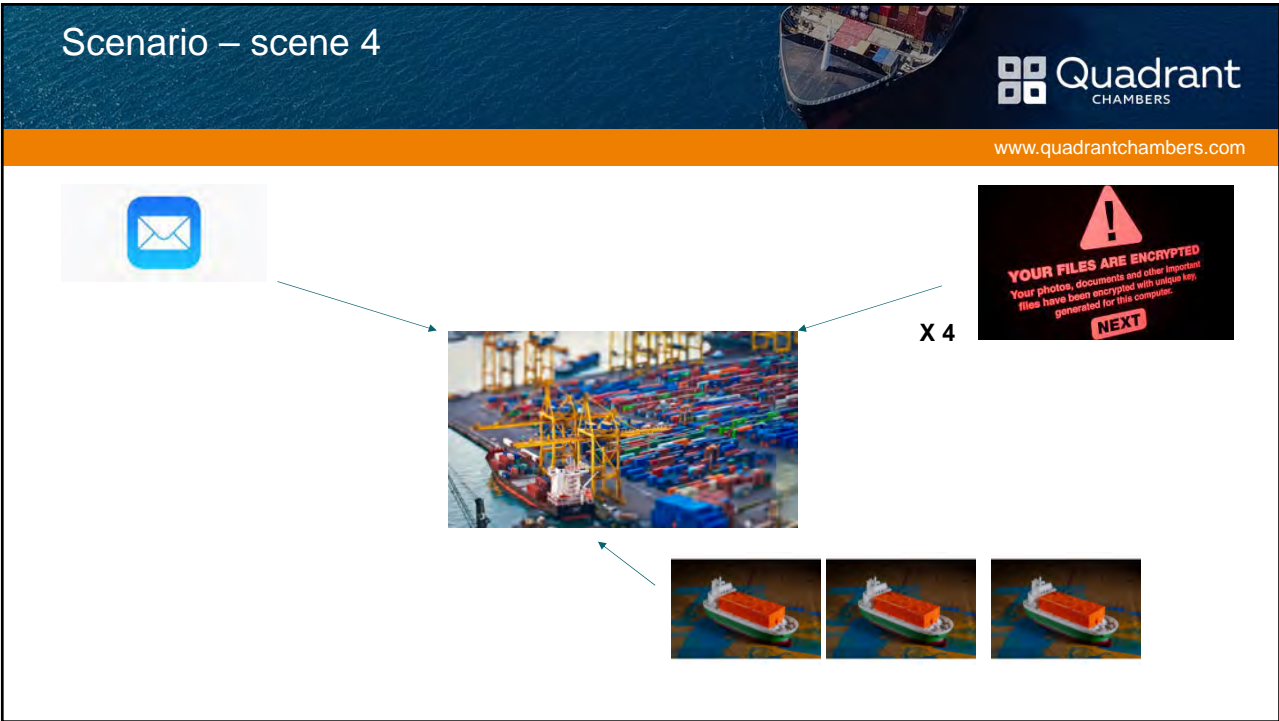
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graph TD; A[Big Investments Inc - Owner] --> B[Bare Boat Ltd (Demise)]; B --> C[Containers 4U (Time)]; C --> D(Boxes R Us (VSA)); E[BIMCO-CYBER SECURITY CLAUSE 2019];
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LONDON INTERNATIONAL
SHIPPING WEEK

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The Affected Parties (Internal)/Contracts

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OWNERS: BIG INVESTMENTS INC
Bareboat/Demise Charterparty

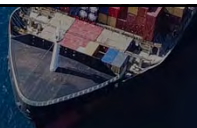
BAREBOAT CHARTERERS: BARE BOAT LTD
Time Charterparty

TIME CHARTERER: CONTAINERS 4 U
Vessel Sharing Agreement [Slot Charter]

VSA PARTNER/SLOT CHARTERER: BOXES R US
Bills of Lading/Contracts of Carriage

BILL OF LADING HOLDERS/OWNERS OF CARGO: Various

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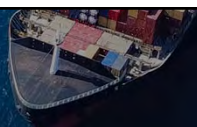
Other Affected Parties (External)/Contracts

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- ❖ The Port/ Terminal Operator
- ❖ Other Port Users: Waiting and Arriving (Container) Vessels
- ❖ Insurers
- ❖ Other Users of the Liner Service

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BIMCO Cyber Security Clause 2019

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- ❖ In this Clause the following terms shall mean:
- ❖ **“Cyber Security Incident”** is the loss or unauthorised destruction, alteration, disclosure of, access to, or control of a Digital Environment.
- ❖ **“Cyber Security”** is technologies, processes, procedures and controls that are designed to protect Digital Environments from Cyber Security Incidents.
- ❖ **“Digital Environment”** is information technology systems, operational technology systems, networks, internet-enabled applications or devices and the data contained within such systems.

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BIMCO Cyber Security Clause 2019



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- a) Each Party shall:
 - i. implement appropriate Cyber Security measures and systems and otherwise use reasonable endeavours to maintain its Cyber Security;
 - ii. have in place appropriate plans and procedures to allow it to respond efficiently and effectively to a Cyber Security Incident; and
 - iii. regularly review its Cyber Security arrangements to verify its application in practice and maintain and keep records evidencing the same.
- b) Each Party shall use reasonable endeavours to ensure that any third party providing services on its behalf in connection with this Contract complies with the terms of subclause (a)(i)-(iii).

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BIMCO Cyber Security Clause 2019



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- c) If a Party becomes aware of a Cyber Security Incident which affects or is likely to affect either Party's Cyber Security, it shall promptly notify the other Party.
 - i. If the Cyber Security Incident is within the Digital Environment of one of the Parties, that Party shall:
 - 1) promptly take all steps reasonably necessary to mitigate and/or resolve the Cyber Security Incident; and
 - 2) as soon as reasonably practicable, but no later than 12 hours after the original notification, provide the other Party with details of how it may be contacted and any information it may have which may assist the other Party in mitigating and/or preventing any effects of the Cyber Security Incident.
 - ii. Each Party shall share with the other Party any information that subsequently becomes available to it which may assist the other Party in mitigating and/or preventing any effects of the Cyber Security Incident.
- d) Each Party's liability for a breach or series of breaches of this Clause shall never exceed a total of USD _____ (or if left blank, USD 100,000), unless same is proved to have resulted solely from the gross negligence or wilful misconduct of such Party.

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