



Commercial Court interprets “Affected Area” under the BIMCO Infectious Diseases Clause: *Bunge S.A v Pan Ocean Co. Ltd. (The “Sagar Ratan”)* [2025] EWHC 193 (Admiralty)

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Summary

The recent decision of *Henshaw J in Bunge S.A v Pan Ocean Co. Ltd. (The “Sagar Ratan”)* [2025] EWHC193 (Admiralty) analyses issues that often arise out of shipping delays caused by infectious diseases. The decision concerns (i) the meaning of “Affected Area” in the widely used BIMCO Infectious or Contagious Diseases Clause for Time Charter Parties 2015; (ii) the meaning of “detention...for quarantine” in an off-hire clause; and (iii) the application of the ‘inefficiency’ principle (as per *The Berge Sund* [1993] 2 Lloyd’s Rep. 453) for the purposes of off-hire.

Background

The claimant (“Owners”) brought an appeal under s.69 of the Arbitration Act 1996 in respect of an arbitration award made in favour of the defendant (“Charterers”) concerning the vessel “Sagar Ratan” (the “Vessel”) under a trip time charter from the Philippines via Australia to China. The arbitration concerned the delay which arose when, on arrival in Bayuquan, China, members of the Vessel’s crew tested positive for COVID-19. Rather than leaving the Vessel stationary in quarantine, Owners decided to sail to Ulsan, South Korea, to replace the crew. The Vessel then returned to Bayuquan and discharged her cargo. The parties disputed liability for hire and other expenses between the time of the first positive tests at Bayuquan and the eventual commencement of discharge at Bayuquan (the “Period of Delay”).

The tribunal had found as follows:

- » The Vessel was off hire during the Period of Delay, pursuant to off-hire provisions contained in Additional Clauses 38 and 50 of the charterparty.
- » Owners were not entitled to rely on Additional Clause 129, which was an amended form of the BIMCO Infectious or Contagious Diseases Clause for Time Charter Parties 2015 (the “BIMCO Clause”).
- » The Vessel was not delayed due to visiting an “Affected Area” pursuant to Additional Clause 129 but, rather, the delay was brought about solely by the positive tests of the crew members.

Permission to appeal was granted to Owners in respect of three questions of law:

- » Question 1: On the true construction of the BIMCO Clause, is a port or place an “Affected Area” if it carries “a risk of quarantine or other restrictions” or does that definition implicitly exclude situations where a) the crew had a Disease upon arrival there, and/or b) the risk was no greater upon arrival there than it was when the charterparty was concluded?
- » Question 2: For the purposes of an off-hire clause, is there a “detention” for “quarantine” if the vessel can and does avoid quarantine by changing the crew at another port?
- » Question 3: Is the vessel off-hire in respect of a period when it can and does comply with the service immediately required?

DECISION

Question 1

The relevant parts of Additional Clause 129 provided:

“Disease” means a highly infectious or contagious disease that is seriously harmful to humans.



“Affected Area” means any port or place where there is a risk of exposure to the Vessel, crew or other persons on board to the Disease [Limb 1] and/or to a risk of quarantine or other restrictions being imposed in connection with the Disease [Limb 2].

(h) If, notwithstanding Sub-clauses (b) to (f), the Vessel does proceed to or continue to or remain at an Affected Area:

(iii) Any additional costs, expenses or liabilities whatsoever arising out of the Vessel visiting or having visited an Affected Area, including but not limited to screening, cleaning, fumigating and/or quarantining the Vessel and its crew, shall be for the Charterers’ account and the Vessel shall remain on hire throughout.”

Owners argued that, on the plain meaning of Additional Clause 129, Bayuquan was an “Affected Area” because it carried “a risk of quarantine or other restrictions” (i.e. Limb 2 of the definition) when the Vessel arrived with crew infected with COVID-19. At the material time, the authorities at Bayuquan tested all arriving foreign vessels for COVID-19 and, if any positive tests were received, imposed restrictions. Therefore, the Vessel was on-hire for the duration of the Period of Delay under Additional Clause 129(h)(iii).

Henshaw J rejected this argument. The word “where” in the definition of “Affected Area” was most naturally directed at a characteristic of the port or place itself, such as the policies or other measures it has introduced in response to the Disease in general, rather than to a risk arising because a particular vessel happened to arrive with an infected crew. Moreover, Owners’ construction produced “problematic” results: it would mean that if a crew member had a Disease, then any port in the world that regarded the Disease as sufficiently dangerous to require quarantining would be an “Affected Area” [39].

Henshaw J instead held that a port is an “Affected Area” within Limb 2 if, in connection with a Disease, it imposes or may impose quarantine or other restrictions on incoming vessels in general or particular categories of vessel (in particular, vessels who have previously visited specified destinations); but is not an “Affected Area” purely on the basis that there is a risk of quarantine or other restrictions being imposed in the event that an incoming vessel has one or more crew members infected with the Disease [52]. Examples of an “Affected Area” would include a port or place where (i) the risk of quarantine or other restrictions is one of general application arising from a qualifying disease, such as a blanket requirement to quarantine all vessels for 14 days regardless of test results, or (ii) there is a risk of quarantine or other restrictions because of the relevant vessel having previously visited a port affected by the Disease [41]-[42]. This interpretation of “Affected Area” was said to apply whether or not the rest of the BIMCO Clause, as in the present case, was amended [26].

Bayuquan, therefore, was not an “Affected Area”, since the quarantine imposed depended entirely on the actual infected status of the crew, and did not arise from any policy of quarantining incoming vessels in general or vessels who had visited particular ports [45]. Accordingly, the tribunal had committed no error of law as regards Additional Clause 129 [52].

Question 2

Additional Clause 38 provided that “any time of detention and expenses for quarantine due to pestilence, illness and etc. of Master, officers and crew shall be for Owners’ account”. Following **The Jalagouri** [2000] 1 Lloyd’s Rep. 515, Henshaw J held that “detention” had a broad meaning, i.e., “physical or geographical constraint upon the vessel’s movements in relation to her service under the charter”. The fact that a vessel was not prevented from proceeding elsewhere did not negate “detention” (**The Doric Pride** [2005] 2 Lloyd’s Rep. 470) [57].

Accordingly, Henshaw J held that a “detention...for quarantine” was imposed on the Vessel at Bayuquan. The Vessel’s subsequent action in sailing to another port to replace the crew did not alter the fact that a quarantine procedure had prevented the Vessel’s entry into Bayuquan. Henshaw J rejected Owners’ argument that as quarantine was avoided, there was no “detention...for quarantine”, because determining whether a restraint is a “detention” depends on whether it impedes the core venture of the charterparty, not merely by whether it prevents movement in any direction. The tribunal were, therefore, correct to find that Additional Clause 38 had been triggered [60]-[61].

Question 3

Question 3, in its literal terms, asked a question the answer to which was well-established: a vessel will be “inefficient” for the purposes of an off-hire clause where it cannot perform the service immediately required of it [63]. The real dispute between the parties, however, was whether the Vessel performed the service immediately required of it by sailing to Ulsan to replace its crew.



Owners relied on **The Berge Sund**, where it was held that an unexpected and extraordinary cleaning exercise was nonetheless the service immediately required, to argue that the unexpected and extraordinary crew change, which was a reasonable course of action to enable the Vessel to comply with Charterers' orders (discharging cargo at Bayuquan), was the service immediately required of the Vessel.

Henshaw J rejected this submission because, in **The Berge Sund**, the cleaning exercise could be the service immediately required because "cleaning is in the ordinary way an activity required by a time charterer". Conversely, crew illness which resulted in quarantine restrictions was not "in the ordinary way" of a charterparty so as to mean the vessel remains on hire. Accordingly, the Vessel was not providing the service immediately required and was off hire during the Period of Delay pursuant to Additional Clause 50. The tribunal was correct to find as such [71]-[72].

Analysis

Henshaw J's decision is the first time a court has grappled with the BIMCO clause and the width of the phrase "Affected Area". What was said to be Owners' "overly wide" interpretation was rejected in favour of a narrower one thought to strike "a fair balance between the parties" [44]. It may alleviate concerns that, at certain times, restrictions imposed in connection with COVID-19 could have rendered most ports in the world an "Affected Area". However, some market participants had considered that this was indeed the consequence of the plain wording, in the context of a global pandemic, and may question whether the definition's use of the word "where" justified a narrower reading of the remaining words of the clause. The decision once again raises the tension between a literal meaning of a clause and a more purposive one, this time in the context of a standard form clause drafted by an industry body.

Henshaw J refused permission to appeal to the Court of Appeal.

Mark Stiggelbout, instructed by Penningtons Manches Cooper, acted for Owners.

Gemma Morgan and, at the consequential hearing, Conor Fenton-Garvey, instructed by Preston Turnbull LLP, acted for Charterers.



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Gemma Morgan

"Gemma is an extremely effective advocate, combining a real mastery of technical issues with superb strategic awareness. Her advocacy is a brilliant blend of steely authority and charm, which is extremely persuasive, especially in cross-examination of expert witnesses." (Legal 500, 2025)

Gemma is a sought after junior with instructing solicitors and lay clients. She acts in a range of commercial disputes particularly in the fields of shipping, commodities, energy/offshore and construction (shipbuilding). She provides an efficient and thorough service and combines accurate legal analysis and advice with practical commercial and tactical awareness. She has extensive experience of heavy and technically-complex cases, in particular those in the shipping and energy sectors, and enjoys working well as part of a team. Gemma is identified by Legal Week as one of its ten Stars at the Bar for 2016 in a profile piece on the most promising young barristers.

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‘Highly intelligent, logical and an excellent legal brain. He is a razor sharp cross-examiner.’ (Legal 500, 2025)

Mark has a broad international commercial practice, with particular emphasis in shipping, commodities, insurance, international arbitration, aviation, and energy disputes. He is recommended as a leading practitioner in both of the independent guides to the market - Chambers UK and the Legal 500.

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Conor joined Quadrant Chambers in October 2024, following the successful completion of his pupillage. He accepts instructions across Chambers' core areas, including commercial litigation, civil fraud, shipping, insurance, banking and commodities.

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