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In Re Oil Spill by the AMOCO CADIZ off the Coast of France on March 16, 1978

United States District Court, Northern District of Illinois (Eastern Division), April 18, 1984, as amended July 17, 1984.

MDL Docket No. 376

By Brad Schwartzberg※

Introduction:

The AMOCO CADIZ case is both long and complicated, and touches on many issues, one of which involves Piercing the Corporate Veil. In this case, the United States District Court held that the claimants were entitled to pierce the Corporate Veil, and thus found the parent company, Standard Oil, liable to the claimants for damages.

This essay will briefly examine the Court's reasoning behind allowing the Corporate Veil to be broken.

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Facts:

The facts involved in the AMOCO CADIZ case are quite lengthy and as a result, only those facts pertinent to the issue of Piercing the Corporate Veil shall be presented.

The oil tanker, AMOCO CADIZ ran aground off the coast of France on March 16, 1978 and subsequently spilled its cargo of crude oil. The AMOCO CADIZ lost steering when its hydraulic steering gear failed, and the vessel grounded twelve hours later. The registered owner of the AMOCO CADIZ was AMOCO Transport Company ("Transport"). Transport was a Liberian corporation all of whose stock was indirectly owned by Standard Oil Company ("Standard").

The AMOCO International Oil Company ("AIOC") was also a subsidiary of Standard, and was responsible for developing, planning and implementing measures necessary to meet the transportation requirements for the consolidated subsidiary companies of Standard. Standard and its consolidate subsidiaries, including AIOC and Transport, formed a large integrated petroleum and chemical company conducting operations on a worldwide basis.

In response to the grounding of the AMOCO CADIZ many law suits were filed. In addition to a lawsuit filed by France, actions for oil pollution damages were also brought by French Administrative Departments, and a number of French individuals, businesses and associations, all of whom are hereunder referred to as "Claimants".

The District Court, in its holding, found that both of the subsidiaries of Standard, Transport as well as AIOC were liable for the damages suffered by the Claimants. The Court held that AIOC, as the party which exercised complete control over the operation, maintenance and repair of the AMOCO CADIZ as

well as the selection and training of her crew members, breached its duty to ensure that the vessel was seaworthy and adequately maintained and repaired, and that the crew was properly trained.

In addition, the Court held that Transport, as nominal owner of the AMOCO CADIZ, breached its nondelegable duty to ensure that the veseel was seaworthy, properly maintained and repaired, and that the crew was adequately trained at the time of her final voyage.

Issue

Should Standard (the parent company) be held liable for the negligence of its subsidiaries, Transport and AIOC with respect to the design, operation, maintenance, repair and crew training of the AMOCO CADIZ ?

Holding:

The Court held that, "Standard, as an integrated multinational corporation which is engaged through a system of subsidiaries in the exploration, production, refining, transportation and sale of petroleum products throughout the world, is responsible for the tortious acts of its wholly owned subsidiaries and instrumentalities, AIOC and Transport". The Court found that Standard had exercised such control over its subsidiaries, AIOC and Transport, that those entities would be considered to be mere instrumentalities of Standard.

In addition, the Court reasoned that, "Standard itself was initially involved in and controlled the design, construction, operation and management of the AMOCO CADIZ and treated the vessel as if it were its own." Therefore, the Court held that Standard was liable for both its own negligence as well as the negligence of Transport and AIOC, and as a result, was liable to the Claimants for damages resulting from the grounding of the AMOCO CADIZ.

Conclusion:

The Court's ruling with respect to the issue of Piercing the Corporate Veil presents somewhat of a complicated situation for parent companies. On the one hand, it is quite important for a parent company to be sufficiently involved in the general activities of its subsidiaries. This involvement will ensure that the subsidiaries carry out the objectives of the parent company.

However, after the AMOCO CADIZ decision, a parent company must be careful not to involve itself too much in the activities of its subsidaries for fear of losing the protection offered by the Corporate Veil.

It appears now that corporations must walk a fine line between that of being a diligent parent company, and one that absorbs itself too heavily in the activities of its subsidiaries.

As a result, the Court found Transport liable for both its own negligence as well as the negligence of AIOC in its negligent operations, maintenance and training of the crew.

Special Note:

Although not specially related to the issue of Piercing the Corporate Veil, it should be noted that on January 11, 1988, a final decision regarding damages was handed down in the Amoco Cadiz case. The United States District Court ordered Amoco Corporation to pay 85.2 million dollars in damages for the oil spill off the French coast in 1978. Judge Frank Mcharr of the United States District Court said he knew of no larger award in the history of environmental law.

However, the 85. 2 million dollar award has satisfied neither party, and both said they would appeal. Despite the disappoitment of both parties, the decision

has, at least for the time being, brought an end to this decade-old dispute.

Comments from the Stand Point of Japanese Law

By Tameyuki Hosoi※※

Piercing the Corporate Veil is also a crucial issue under Japanese law.

If, however, the AMOCO CADIZ case fell under the jurisdiction of the Japanese legal system, the manner in which a Japanese Court would have dealt with the Corporate Veil issue may have been somewhat different than that of the U. S. Court.

Under Japanese law, the fact that a parent company holds all the shares of its subsidiary, as well as involves itself in the daily activities of its subsidiary, would of course be important factors, however, a Japanese court would possibly try to check into some other aspects of the relationship existing between and among corporations as well. Such aspects include, whether and to what extent directors of a parent company overlap with those of its subsidiary company, and whether and to what extent their accounting systems are linked with each other.

I do however appreciate the work of Mr. Brad Schwartzberg in properly summarizing the AMOCO CADIZ case which was decided in the U. S. District Court. The Court's reasoning in this case may offer some assistance to Japanese law practitioners in approaching similar matters in the future.

※※ Bengoshi, Tokyo (Attorney-at-law)

Court Decision

[Outline translated tentatively from Decision in Japanese]

Case Concerning Vessel No. 209

Decision of Tokyo District Court Dated May 30, 1986
Case No. (WA)1548 of 1980 Concerning Claim for Damages

Parties concerned

Plaintiff X−1 : (Hamburg, Federal Republic of Germany)

Plaintiff X−2 : (London, Great Britain)

Attorneys for the Plaintiffs :

Takeo KUBOTA, Attorney at Law and others

Defendant Y : (Tokyo, Japan)

Attorneys for the Defendant :

Hiromi NEMOTO, Attorney at Law and others

Text of the judgment

〈I〉 All the claims of the Plaintiffs are dismissed.

〈II〉 The costs of proceedings are to be borne by the plaintiffs.

Facts

I : Judgments Demanded by the Parties

〈I〉 Gist of the Claims

1. The Defendant shall pay the Plaintiff X−1 the sum of ¥727,650,000 and the interest thereon at 6% per annum from November 1, 1979 until its final payment, and the Plaintiff X−2 the sum of ¥44,750,475 and the interest thereon at 5% per annum from November 1, 1979 until its final payment.

2. The costs of proceedings shall be borne by the Defendant.
3. Declaration of provisional execution.

〈II〉 Response to the Gist of Claims

The same as the text of the judgment.

Ⅱ: Assertions by the Parties

〈I〉 Grounds for the Claims

1. The Plaintiff X−1 is a company which owns and operates vessels, and the Plaintiff X−2 is a company which conducts sale of vessels and acts as a broker in charter party, etc.
2. The Defendant is a company which conducts sale/purchase and foreign trade of various merchandise.
3. A purchase agreement as per the following was concluded between the Plaintiff X−1 and the Defendant on October 20, 1978 for a vessel No. 209 which was being built at a Shipping Company (Z) which was not the party to the case. The remaining work was to be conducted by (N) who was not a party to the case.

   Contents

   (1) Price of Vessel (a multi−purpose cargo ship of 18,000 D/W) : US $ 6,150,000

   (2) Time of Delivery : Within 5 months following conclusion of the Purchase Agreement

   (3) Method of Settlement :

   ① Upon execution of the Purchase Agreement 10% of the price is to be paid in cash, and a Letter of Credit is to be opened for the remaining 90%.

   ② Under the Letter of Credit, 15% is to be paid upon start of the construction, 25% upon launching, and 50% upon delivery of the Vessel.

4. (Role of the Broker)

   Concerning the above purchase, (I) who was not the party to the case

acting as the broker for the Defendant, and the Plaintiff X−2 as the broker for the Plaintiff X−1 participated in the transaction. These brokers had the agency right for negotiating the purchase price, the method of settlement and the time of delivery to conclude the purchase agreement on behalf of their clients. Even if the said brokers had no right of representation for concluding the purchase agreement, they were nevertheless messengers to communicate the intent of their respective clients to the other party.

5. (Specification of the Object)

The object of the Purchase agreement was the Vessel No. 209 being built at (Z) and the content of the object of purchase was fully specified as below.

(1) The Vessel was originally ordered by a German shipowner (P), and since the Plaintiff X−1 is also a German shipowner, the Plaintiffs had obtained sufficient information concerning the Vessel through the technical supervisor.

(2) On September 11, 1978 which was prior to commencement of the formal negotiation for the purchase of the Vessel, the Plaintiff X−1 already had in hand the general specifications for the Vessel. The general specifications contained all the main items concerning the Vessel, and any expert reading the specifications could fully understand the kind of vessel which would ultimately be built, and could therefore proceed with the transaction.

(3) The Plaintiff X−1 had further received documentations such as engine drawings, specifications, etc. which were examined by the experts, so they were fully aware of the contents of the object of purchase.

In said drawings and specifications, there was also a vessel identified as #210, but the Plaintiff X−1 was fully aware that the Vessels #209 and #210 were sister ships and therefore they did not mind the difference in numbers.

6. (Legal Character of the Purchase Agreement)

In view of (1) and (2) below, the present Agreement is a purchase agreement and not a ship building contract.

(1) The Defendant is a trading firm engaged in the sale/purchase of merchandise and not a shipbuilder, and they have no facilities to build ships nor are they engaged in building of ships as a business.

(2) The content of telex exchanges between (I) and the Planintiff X−2 was negotiation for sale/purchase of the Vessel, and not that for a ship building contract. A purchase agreement becomes valid if an agreement concerning transfer of the property right and payment therefor is reached, and the purchase agreement is therefore deemed to have been concluded in the present case.

Even if the present Agreement were a contract for building a ship, this Agreement was fully valid as such since the ship to be completed was specified by specifications, and the price therefor, the manner of payment, the time of delivery, etc. were all agreed upon.

7. (Reservation Clauses in the Present Agreement)

The present Agreement contains following reservation clauses, but none of them expressly states that the Agreement will not become valid unless they are settled.

(1) "Inspection of the Vessel before Launching"

This reservation clause literally concerns inspection immediately before launching, and is different from "the inspection before conclusion of the agreement". It is a matter of common sense to conduct inspection of the ship immediately prior to launching of a vessel. This is because inspection of the ship's bottom, etc. is easier while the ship is still in the dry dock.

According to the above mentioned method of settling payment, a part of the payment was already made prior to launching, and therefore the Agreement was effected before launching, thus making the inspection an incidental obligation for the buyer to perform after

validation of the Agreement and before launching.

(2) "Approval of the Detailed Specification, Design Drawings and List of Makers as Part of the Purchase Agreement"

This reservation clause was provided because preparing the detailed specifications, etc. is necessary for eventual regular inspection and routine repair work, and also because it was necessary to obtain the Buyer's approval on performance of the remaining engineering works according to the design drawings, etc. Therefore, this was also a matter of performing incidental obligation after the Agreement was effected.

Shipbuilding usually involves preparation of a great number of detailed specifications, design drawings, etc. If an agreement is held invalid unless all these are agreed upon, then it is not certain when the agreement can be finally concluded. It then becomes practically impossible to build a ship.

(3) "Preparation of Ship Building/Purchase Agreement"

Purchase of a ship is an ordinary contract by agreement and requires no special forms.

Ship prices in the international market fluctuate extremely, and it takes a considerable period of time to discuss the details and reach an agreement during which time the fluctuation continues. Therefore, the parties first agree on important items to secure the deal, and then prepare the agreement from at later date. If the above mentioned agreement on important points were held as not binding the parties, the parties would be free to release themselves from the contractual obligations under the pretext of market fluctuations, thus bringing about excessive unfairness.

(4) "Approval by the Japanese Government"

Obtaining an export license is one of the obligations to be performed by the Defendant after the conclusion of the Agreement, and it does not concern validation thereof.

The Defendant had consulted with the Ministry of International Trade & Industry in advance concerning the sale/purchase of the present Vessel, and had obtained an advance approval from MITI concerning the payment method. Therefore, there arose no situation where the export license was unobtainable in this case.

The building permit had already been obtained.

8. (Recognition by the Defendant)

The Defendant themselves had recognized as per the following that the Purchase Agreement for the Vessel was valid.

(1) The Defendant stated in their telex dated November 13, 1978 that "(Y) shall do their best in performing their obligation", thus recognizing that they had the obligation to perform under the Agreement.

(2) The Defendant proposed to the Plaintiffs a substitute ship in January, 1979 in order to free themselves from being accused by the Plaintiffs for their failure to perform the Agreement.

9. (The Defendant's Failure to perform the agreement)

The Defendant, however, did not perform the said Purchase Agreement on the ground that this Vessel could not be obtained from (Z). This was because the ship prices at that time had soared and an offer from another buyer to buy the Vessel at a higher price was made to (Z). The creditors of (Z) opposed selling the Vessel to the Defendant at a price agreed with them.

Assuming that there was no purchase agreement concerning this Vessel between the Defendant and (Z), and the agreement between the Defendant and the Plaintiff X−1 was a purchase agreement for an article owned by a third party, the Defendant consistently represented themselves as the seller during the negotiation for sale/purchase with the Plaintiffs and did not indicate to the Plaintiffs that there was a need to acquire the ownership of the Vessel from (Z). Threrfore, the Plaintiffs believed that the Defendant was the owner of the Vessel.

10. (Damages Suffered by the Plaintiff X−1)

The Vessel was later sold to (SP) in Singapore for US $ 12,201,885. Although the delivery was on August 17, 1979, the price negotiation must have been made 4 or 5 months prior to the delivery, and therefore the above price was that prevalent in the spring of said year. The Defendant was supposed to have delivered the Vessel to the Plaintiff X–1 at around May, 1979 if the Defendant had fulfilled the purchase agreement. This means that the Plaintiff X–1 would have acquired the Vessel having a market value of ca. US $ 12,200,000. Therefore, the damage suffered by the Plaintiff X–1 due to the Defendant's failure to fulfill their obligation was US $ 6,050,000, the balance between the purchase price of US $ 6,150,000 agreed by the Plaintiff X–1 and the Defendant and the said amount of US $ 12,200,000.

11. (Foreseeability of the Ship Price Rise)

In the autumn of 1978 when the Plaintiffs and the Defendant were negotiating the sale of the Vessel, the shipping industry was booming and the prices kept rising because of shortage of ships. Since the Defendant was specialized in sale/purchase of ships, they were fully aware of this skyrocketing of prices.

12. (Relation with the Plaintiff X–2)

On September 29, 1978, the Defendant promised the Plaintiff X–2 through (I)'s telex that they would pay the brokerage corresponding to 3% of the price in the transaction of this Vessel (US $ 184,500). They further promised that they would pay the brokerage to the Plaintiff X–2 from the sales price when it is paid.

Therefore, the Plaintiff X–2 has the right to demand the brokerage of US $ 184,500 from the Defendant .

If Article 550 of the Commercial Code (a broker can demand his remuneration only after preparation of the agreement) was applicable to this case, then since the Defendant did not perform the Purchase Agreement for the Vessel and infringed the Plaintiff X–2's right to demand the brokerage, the Plaintiff X–2 has the right for damages corresponding to

US $ 184,500 due to tort.

13. (Demand for Payment)
The Plaintiffs respectively demanded the Defendant to pay said damages by a letter dated October 18, 1979, and the Defendant refused to pay by their letter dated October 31 of the same year. Therefore, said demand for payment is deemed to have reached the Defendant by 31st of said month at the latest.

14. Therefore, the Plaintiff X−1 demanded the Defendant to pay ¥727,650,000 which is equivalent to US $ 3,000,000 converted at US $ 1 to ¥242.55, the latter sum being a portion of said damage of US $ 6,050,000, and the arrears at the legal commercial interest rate of 6% per annum from November 1, 1979 until its final payment as the damage for failure to fulfill the debts ; and the Plaintiff X−2 demands the Defendant to pay ¥44,750,475 which is equivalent to US $ 184,500 converted at US $ 1 to ¥242.55 mainly as the brokerage and secondarily as the damages due to tort, and the arrears at 5% per annum as provided by the Civil Code from November 1, 1979 until its final payment.

〈II〉 Admission and denial of the Grounds for Claim and Assertions by the Defendant

1. The fact cited as the ground 1 for Claim is not known.
2. The fact 2 is admitted.
3. Of the fact 3, it is admitted that an agreement was reached between the Plaintiff X−2 and (I) by telex exchange as described by the ground 3 for claims, but validation thereby of the Purchase Agreement between the Plaintiff X−1 and the Defendant is denied.
4. (Concerning the Role of a Broker)
Of the fact 4, it is admitted that (I) on the side of the Defendant and the Plaintiff X−2 on the side of the Plaintiff X−1 participated as brokers respectively and carried out the negotiation.
However, the Plaintiff X−2 and (I) merely acted as brokers and they did

not act as agents in legal matters. It is the general understanding that a broker does not have the authority to act as an agent in concluding the agreements, and the Plaintiff X−1 had planned to negotiate directly with the Defendant at a later date.

5. (Concerning Specification of the Object)

Of the fact 5, the point that the object of the sale/purchase was specified is disputed. As mentioned below, the concrete content of the Vessel was not specified.

(1) (Regarding 5 (2))

Outline specifications for the Vessel was sent by (İ) to (U) who was an agent in Germany for the Plaintiff X−1 and who is not the party to the case on Septemer 11, 1978.

Said specifications merely showed the outline of the Vessel and the concrete content of the Vessel was not clear unless reference was made to the detailed specifications. Only after the detailed specifications are finalized, and the types, performances and makers for various equipments to be mounted on the ship are determined, the building of a ship can be started.

In said outline specifications, the Plaintiff X−1 noted " ? " marks, etc. indicating that they had no intention of approving the outline specifications without modification.

(2) (Reparding 5 (3))

The Defendant did send to the Plaintiffs via (I) the detailed specifications prepared by (N), but they have not sent the detailed specifications prepared by (Z).

When a pro forma agreement on the price of US $ 6,150,000 was reached, said detailed specifications had not yet been presented to the Plaintiffs and the above mentioned price of the Vessel was determined not based on the detailed specifications.

The Plaintiff X−1 issued 35 questions immediately upon receipt of said detailed specifications, indicating that they had no intention of

approving the detailed specifications without modification.

The detailed specifications prepared by (Z) was different from those prepared by (N) in respect of engine output, etc. in addition to other contradictory points. The latter contained dubious hand-written changes to the Vessel number. The most important specifications for the general part of the vessel such as the class and rules which are applicable to the Vessel are also missing.

Therefore, the specifications as alleged by the Plaintiffs did not have the character of specifying the content of the Vessel.

6. (Legal Character of the Present Agreement)

The present Agreement involved a vessel being constructed, and the Agreement insofar as it concerned the remaining work was undeniably a ship building contract.

Even a trading company such as the Defendant without its own shipbuilding facilities can become a party to a ship building contract if sub-contractors are used.

The Plaintiff X-1 did not intend to approve the detailed specifications as mentioned above. As it is impossible to commence building of a ship if the detailed specifications are not finalized, the content of works to be completed in the present case was not specified.

7. (Reservation Clauses of the Present Agreement)

Of 7, it is admitted that the understanding between the Plaintiffs and the Defendant (the purchase agreement as stated in the Ground 3 for the Claim) had the reservation as asserted by the Plaintiffs (Provided, however, the reservation (3) should have been translated as "conclusion of the agreement for "building/sale & purchase"). The reason for attaching the reservation clauses was to express the intent of the parties that the agreement on the building/sale & purchase would be concluded only when the parties discussed, negotiated and agreed on the reservation clauses. (Therefore, the parties are merely required by this understanding to consult and negotiate faithfully and in accordance with the commercial ethics

at that stage, and they are not legally bound. Said understandings are described in a document which is generally referred to as "the Letter of Intent".)

(1) "Inspection of the Ship before Launching"

This reservation clause means inspection of the ship is required before conclusion of the agreement.

The Vessel was left unfinished on the berth for about 7 months after (Z) went bankrupt, and the quality of ship could have deteriorated considerably depending on the storage conditions. Therefore, the Plaintiffs expressed their intention to inspect the Vessel before definitely indicating their intent to conclude the Agreement .

If the Plaintiff X−1 and the Defendant concluded an agreement for building/sale & purchase of a ship, the supervisor of the shipowner would normally be stationed at the shipbuilding yard to consecutively inspect the building of the ship, and there would have been no need for providing this reservation clause.

(2) "Approval of the Detailed Specifications, Design Drawings, and the Makers' List as Parts of the Purchase Agreement"

This reservation clause is an expression of the Defendant's reasonable purpose to review the detailed specifications, etc. to approve the same before indicating their final intent to conclude the Agreement since the ship's final price is determined based on the detailed specifications.

As mentioned above, the detailed specifications received by the Defendant were not enough to specify the content of the Vessel and the Plaintiff X−1 did not intend to approve the same without modification.

(3) "Conclusion of an Agreement for Building/Sale & Purchase"

A shipbuilding agreement usually contains a provision for price adjustment, and parties need to agree on the degree of adjustment depending on the lack of weight tons and speed. Unless an agree-

ment is reached concerning this point, the negotiation is terminated.

A shipbuilding agreement also contains a provision for quality assurance. However, as the Vessel in this case was left standing on the berth for some time, there was a need to reach a special agreement concerning the quality assurance in view of the guarantee period given by the manufacturers of machineries mounted on the Vessel.

The reservation clause was provided in order to express the intent of the parties to conclude the agreement after negotiating the above matters.

If the agreement had already been concluded, then providing reservation for conclusion is self-contradictory.

(4) Approval by the Japanese Government

To obtain the export license from the Japanese Ministry of International Trade & Industry, the formal agreement signed by the parties must be submitted. Telex describing the above mentioned understanding was regarded unsatisfactory for this purpose.

8. ("Self-recognition" as Asserted by the Plaintiffs)

As mentioned above, the understandings between the Plaintiffs and the Defendant have no legal binding power, but they give rise to obligations under the ethics in commerce. Therefore, the Defendant proposed a substitute vessel to the Plaintiff X-1.

9. ("Failure to perform the agreement" as Asserted by the Plaintiffs)

As the creditors of (Z) decided to complete the Vessel at (Z), the Defendant (N) could not acquire the Vessel.

Since the Purchase Agreement was not concluded validly, there can be no failure to fulfill the agreement.

10. (Damage Suffered by the Plaintiff X-1)

The agreement between the Plaintiff X-1 and the Defendant concerning the price of US $ 6,150,000 for the Vessel was subject to change depending on the manufacturers of the machineries mounted on the Vessel, the

specification changes or on the increase in weight tons after completion. The Vessel was sold as a secondhand ship to (SP). In the case of secondhand ships, 10% of the price is usually paid upon conclusion of the agreement, and the remaining amount is paid as a lump sum upon delivery. Therefore, the price includes the interest up to the delivery time. Thus, it is necessary to deduct the interest.

11. (Concerning the Plaintiff X–2)
In the brokerage of 3% of the ship's price as asserted by the Plaintiff X–2 is included the amount due to the Plaintiff X–1 as the address commission (return commission) for the shipowner. No agreement has been reached concerning this amount, and therefore there was no agreement on the amount which the Plaintiff X–2 was entitled to.

12. (Demand for Payment)
The ground 13 for claims is admitted as a fact, except that the letter dated October 31, 1979 should be the letter dated October 30.

13. The ground 14 is disputed.

Reasons

〈I〉 By the examination of the representative of the plaintiff X–2 and the proceedings, the ground 1 for claim can be admitted as a fact, and the ground 2 is not disputed by the parties.

〈II〉 There is no dispute among the parties that an agreement was reached on the ship's price, delivery date, and method of payment as described in the ground 3 for claims dated October 20, 1978 by the telex exchange between (I) and the Plaintiff X–2. We shall now examine whether or not the above agreement can be deemed as conclusion of the Purchase Agreement between the Plaintiff X–1 and the Defendant.
By the comprehensive examination of the Exhibits (omitted) the following facts 1 to 5 are admissible.

1. At about the end of July, 1978 (O) who is acting as a broker in sale &

purchase of vessels at the Deffendant Company, was asked for consultation by (T) who was Representative Director/Senior Managing Director of (Z) concerning the disposal of the Vessel which was left unfinished on the berth of (Z) at the time. The Vessel was originally being built by the order or a company under the control of a German Company (P), but as the business of (Z) declined and (Z) filed an application for composition at Kobe District Court on February 8, 1978, the work on the ship was suspended leaving 45 days to launching (the main engine was not yet mounted). It usually takes about 3 months from launching to completion.

2. (O) met (T) at (Z)'s main office in Kobe on about August 20 of the same year, and was told that the agreement by (Z)'s creditors would be secured for the disposal of the Vessel, and that the Vessel was highly recommendable since it was in comparatively good condition. (O) planned to cause the Defendant to purchase the Vessel, to have the building completed at (N), and to sell the completed ship to a third party ; from the end of August to the beginning of September of the same year, (O) went with the assistant business manager and the assistant basic design manager of (N) to (Z)'s Shipyard to see the Vessel. Those employees of (N) inspected the then current state of the Vessel down to minor details and concluded that there would be no problems in resuming the work at (N). Accordingly, (O) proposed to (T) the sum of ¥350,000,000 as the price of the Vessel, and (T) accepted the same.
3. On the other hand, (K) who was in charge of the sale/purchase of vessels at the Shipping Section of (I) obtained information concerning the Vessel from an employee of the Defendant Company, met (O) on about August 20, 1978, and proposed to act as a broker in the transaction of the Vessel. He communicated to the Plaintiff X−2 through the London Branch of (I) the information concerning the Vessel near completion (which consisted of simple information such as deadweight tonnage, loading capacity, of containers, etc.), and additionally sent the information on container

weight, etc. The plaintiff X–2 relayed these information to (U) who was the agent for the Plaintiff X–1. (O) further prepared the outline specifications at the end of August of the said year concerning the Vessel slated for completion, and delivered them to (U) on or about September 11 of the said year via the Plaintiff X–2. These outline specifications contained data on major items concerning the Vessel such as the principal dimensions, deadweight tonnage, gross tonnage, class and rules, capacity, service speed, endurance, crew requirement, deck machineries, hatch covers, main engine, etc., and the Plaintiff X–2 commented the following when they sent the outline specifications to (U). "We are currently trying to obtain the full specifications of the Vessel, but the enclosed documents explain the provisional specifications of the Vessel and will be useful in forecasting the work needed to bring the Vessel to meet the standards required by you."

4. On September 28 of the said year, the Plaintiff X–2 sent to (I) by telex the so–called firm offer of the Plaintiff X–1 (an offer which becomes confirmed if responded within a certain period of time) ; "The price of US $ 6,000,000 is to be paid in cash upon delivery, on condition that inspection of the Vessel be performed prior to launching at (Z), that the detailed specifications, design drawings and the makers' list as parts of the Purchase Agreement be approved ; and that the building/sale & purchase agreement be entered at a later date and an agreement on details be reached." In response, (I) communicated to the Plaintiff X–2 by telex the following. "We are authorized by the Seller (Defendant) to accept the offer of the Buyer. Provided, however, the price will be the sum obtained by deducting the total commission equivalent to 3% including the commission of the Buyer from US $ 6,300,000, and the method of payment shall be 100% by Letter of Credit to be opened upon signing of the Agreement to be paid upon delivery, or 50% in cash before the delivery and the remaining 50% upon delivery. The delivery shall be in about 5 months from the execution of the agreement subject to approval by

the Japanese Government. We are given the discretion of lowering the price to US $ 6,100,000, but we expect your best efforts to realize the highest possible price." The plaintiff X–2 telexed back on the same day that "the amount arrived at by deducting 3% commission including the Buyer's commission from the price of US $ 6,150,000 is confirmed, and all the conditions except that on the method of payment are approved." Thus, the agreement on the price, delivery, and reservation clauses on the Vessel was reached.

There followed negotiation via telex between (I) and the Plaintiff X–2 concerning the method of payment, and re–confirmation on the price, delivery and reservation clauses which were agreed as above was made on October 19 of the same year. On the following day or 20th, an agreement on the method of payment was reached as described in the Ground 3 (3) of the Claim.

5. The above telexes negotiation between the Plaintiff X–2 and (I) were identified as "Re : Resale of the Newly Built Ship of 18,000 Deadweight Tonnage", and the Plaintiff X–1 was referred to as the Buyer and the Defendant as the Seller. The telexes received from (I) by the Plaintiff X–2 were always sent to the Defendant, who made no objection to these telexes.

   The above facts are admitted, and there are no evidences to discredit the admission.

   Then, it is recognized that a negotiation was proceeding between (I) and the Plaintiff X–2 for a vessel completed to a stage leaving 45 days to launching (and an additional period of 3 months to completion) based on the assumed completion of the vessel under the outline specifications. An agreement is recognized to have been reached on October 20, 1978 concerning the price, delivery date and method of payment. Since the above negotiation was identified in the telexes as "Resale", the Plaintiff X–1 as the Buyer and the Defendant as the Seller, it is clear that the negotiation involved conclusion of a purchase agreement.

The result of personal examination of the representative of the Plaintiff X–2 reveal that the Plaintiff X–1 received through the Plaintiff X–2 in early October of 1978 the drawings such as "capacity plan", "midship section" and "general arrangement", and on about 10th of the same month, they received detailed specifications for "machinery part" and "electric part", and "the list of subcontractors". (Provided, however, it is recognized that these detailed specifications included some which were assumedly intended for the vessles #210 and #212 which were the sister ships of the present Vessel.) The Plaintiff X–2 and (I) reached an agreement on the price as early as on September 29, 1978 and the subsequent negotiation involved the method of payment as recognized in the above. At the time when an agreement on price was reached, the Plaintiff X–2 had not yet received said drawings, detailed specifications and the list of sub–contractors.

Building of the Vessel, however, had already been commenced as admitted above leaving only 45 days to launching, and the details of the Vessel to be built must have been determined when building was commenced as testified by the witness (TK). Since the parties could have learned the fundamental matters of the content already determined from above mentioned outline specifications, it is reasonable to understand that the Vessel was fully specified for purpose of sale.

From the fact admitted above that (I) told the Plaintiff X–2 that they were authorized by the Seller (Defendant) to accept the offer of the Plaintiff X–1 at the time of above mentioned negotiation and that the Defendant did not object to this when the telex was sent to them, (I) can be assumed to have been authorized by the Defendant to act as agent to conclude the above purchase agreement.

From the above review, it is concluded that an agreement was reached between the Plaintiff X–1 and the Defendant on the Vessel concerning the transfer of the right to specific property and its price which were requisites of the purchase agreement.

If an agreement is reached between the parties concerning the above mentioned matters which are generally held requisites of a purchase agreement, a purchase agreement is deemed to have been effected at the time such an agreement was reached. But the parties can also include the matters generally considered incidental as the requisites of the purchase agreement if they recognize their importance specially.

In such a case, a purchage agreement cannot be deemed to have been effected unless an agreement on these incidental matters has also been reached. We shall therefore examine whether or not there are any factors regarded important enough to be included as the requisites for validating the sales agreement of October 20, 1978.

Of these reservation clauses, we shall first examine "the approval of the detailed specifications, design drawings, and the makers' list which constitute parts of the purchase agreement".

According to the Exhibits the following facts 1 to 4 are recognized.

1. It is admitted as above that the Plaintiff X−1 received on or about October 10, 1978 through the Plaintiff X−2 the detailed specifications of "machinery part", etc. and "list of subcontractors". When sending them, the Plaintiff X−2 additionally noted the following to (U) ; "Please confirm that the Buyer agrees to the specifications of the Vessel and has an intention to purchase the Vessel". Immediately after that, the Plaintiff X−1 telexed the Plaintiff X−2 on October 13 that they would like to know as to 10 items such as the deck machineries ; the name of the subcontractors selected from the list of the subcontractors, the availability of drawings or the result of calculation on 35 items such as the engine room arrangement, the result of trial operation at plants of the main engine and generators, and the earliest date on which the Plaintiff X−1 can obtain these, if available, and the telex was transmitted to the Defendant via (I).
2. In response to the above, (I) telexed on 15th of the same month that the Defendant would respond to these technical questions of the

Buyer after an agreement on the method of payment has been reached. The Plaintiff X–2 further told (I) that they "were anxiously awaiting the response of the Seller to the questions of the Buyer". The Plaintiff X–2 also told (I) on 19th of the same month that "the Buyer is very much disappointed at your failure to give complete responses to the Buyer's questions", and asked the Seller to place the top priority on 4 items out of 10 and 3 out of 35 items and to respond to their questions on them, and added that responses on other items would be most helpful.

3. On 20th of October, however, (I) gave the name of the subcontractors for 4 items only as the response by the Seller, and explained that the reason for inability to answer to other questions was because shortness of the staffs at (Z) after bankruptcy caused some confusion in preparing documents, etc.

   They also transmitted the Seller's response that they would like to discuss in detail the Plaintiff X–1's questions dated 13th of the same month with the inspector of the Buyer at the shipyard in Japan.

4. On 20th of the same month, the Plaintiff X–2 told as the response from the Plaintiff X–1 that "X–1 is prepared to go to Japan with two of their technical supervisors". However, on 27th of the same month (I) told that the creditors of (Z) are affected by many offers to purchase the Vessel at prices higher than that quoted by the Defendant, and the Defendant cannot conclude the agreement to purchase the Vessel from (Z) prior to November 10th, and therefore the Defendant was no longer in a position to respond to the aforementioned questions nor to receive the inspector of the Buyer.

The above facts are recognized, and there are no evidences to discredit the above recognition.

It is admitted as above mentioned that the Plaintiff X–1 provided "the approval of detailed specifications, design drawings and the makers' list which constituted a part of the Purchase Agreement" as reservation

clause from the stage when the first firm offer of purchasing the Vessel for US $ 6,000,000 was made, and according to the facts 1 to 4 admitted above, the Plaintiff X−1 immediately asked questions on multiple items concerning the detailed specifications of the machinery part" etc. for the Vessel, and the list of subcontractors immediately after they received them ; requested immediate response, and planned to come to Japan for direct consultations on the parts which the Defendant could not answer. Thus, it is assumed that it was important matters for the Plaintiff X−1 if they could approve the detailed specifications or makers' list, and it is reasonable to understand that these were requisites for validating the agreement for them.

According to the Exhibit, the Plaintiff X−1 is recognized to have asked many questions on the drawings on 13th of October after they received the said general arrangement and the midship section in the beginning of October, the questions being whether the detailed drawings such as the engine room arrangement and the list of drawings approved by the former shipowner were available or not. When considering these facts, it is reasonable to understand that approval of the design drawings was also important for the Plaintiff X−1 and that the approvability was held as one of the requisites for validating the agreement.

The Plaintiff argued that "Shipbuilding usually involves preparation of a great number of detailed specifications, design drawings, etc. If an agreement is held invalid unless all these are agreed upon, then it is not certain when the agreement can be finally concluded." In the present case, however, the Plaintiff X−1 had, as recognized above, asked questions on the detailed specifications, design drawings and makers' list on October 13, 1978 and planned to come to Japan to discuss the matters which the Defendant could not answer then, and they are recognized as having demonstrated their positive attitude in making approval. According to the Exhibit, the Plaintiff X−2 is recognized to have told (I) on November 13 of the same year that "the Buyer has no questions other

than those asked on October 13 and 19". According to these facts, there is a limit to the matters which require approval before the agreement is concluded in the detailed specifications, etc., and since a decision to approve was expected shortly in the present case, the above assertion by the Plaintiff cannot be adopted.

The representative of the Plaintiff X−2 personally stated that the Plaintiff X−1 indicated that they had no objection to the above mentioned detailed specifications, design drawings and makers' list and approved them, but the Plaintiff X−1 is recognized in the above as having asked many questions on the detailed specifications, etc. and urgently asked for answers ; and in view of these facts, the statement that the Plaintiff X−1 had approved the detailed specifications, etc. cannot be trusted. (That the plaintiff X−2 communicated to (I) that there were no questions other than those asked on October 13 and 19 is recognized as above, but since there is no evidence that the Defendant responded to the questions, it does not mean that they approved the detailed specifications, etc.)

The representative of the Plaintiff X−2 personally made a statement that the representative of the Plaintiff X−1 had personally obtained information on the Vessel from (P) before negotiation for the present Purchase Agreement was started, and that he was confident that the specifications of the Vessel were at the standard the Plaintiff X−1 desired. The fact that the Plaintiff X−1 subsequently obtained the detailed specifications of the Vessel and asked numerous questions is recognized as above. In view of this fact, the statement that the Plaintiff X−1 firmly believed in advance that the Vessel was at a standard which the Plaintiff desired based on the specifications cannot be adopted.

Having thus perused the case, it should be understood that the parties deemed the reservation clause of "approval of the detailed specifications, design drawings and makers' list which constitute a part of the Purchase Agreement" as a requisite for effecting the Purchase Agreement, and that the Plaintiff X−1 presented said reservation clause when making the first

firm offer on September 28, 1978. The approval as mentioned in the reservation clause was in the final analysis not given in the present case.

We shall now discuss another reservation clause of "conclusion of an agreement for building/sale & purchase".

According to the Exhibits, and testimonies of the witnesses, the following facts 1 to 4 are recognized.

1. On October 15, 1978 when the negotiation concerning the method of payment was still going on, the Plaintiff X−2 told (I) that the Buyer was prepared to come to Japan during that weekend, asked if the Defendant had the agreement form ready and if the standard Japanese form should be used or not, and stated that the Buyer wished to obtain a form of contract before they departed for Japan.
2. On 20th of the same month, the Plaintiff X−2 told (I) that the Plaintiff X−1 was prepared to come to Japan with two of their technical supervisors, and at that time they further told that an agreement form experienced by the Plaintiff X−1 in other negotiations was proposed as the basis for the present negotiation, and that the Plaintiff X−1 wished to hear the opinion of the Defendant concerning the said agreement form before their departure for Japan.
3. On 27th of the same month, (I) told the Plaintiff X−2 that the Defendant indicated that they were not in a position to receive the inspectors of the Buyer since they were unable to conclude an agreement to acquire the Vessel from (Z) prior to November 10 of the same year and also that the Defendant indicated that they were not in a position to comment on the proposed form. In the final analysis, the agreement was not prepared in the present case.
4. The form experienced by the Plaintiff X−1 in other purpose and proposed as a basis for the present case contained the price adjustment clause that the ship's price would be reduced per knot if the speed of the completed ship was less than that specified in the agreement, and the quality assurance clause providing free repair of any

defective parts within a predetermined period after delivery of the completed ship. These clauses are generally important for the parties to contracts, and their interests often collide over such clauses.

The said form contains 20 articles and is quite detailed and lengthy.

The above facts are admitted and there are no evidences to contradict the admission.

The first firm offer made on September 28, 1978 by the Plaintiff X–1 contained these reservation clauses, and the facts admitted above indicate that the Plaintiff X–1 asked the Defendant questions concerning an agreement form to be used before an agreement on the method of payment for the Vessel was reached, and proposed an agreement form which they experienced previously as the form for the present case; since the proposed agreement form contained clauses such as the price adjustment clause and quality assurance clause over which the interests of parties would usually cause conflict, it is reasonable to interpret that it was important for the Plaintiff X–1 to use an agreement form containing such clauses as price adjustment clause and the quality assurance clause, and that they had the intent to hold them as requisites for effecting the Purchase Agreement. These reservation clauses are considered to have been included in order to express their intent.

Having reviewed the case as in the above, at least the reservation clauses of "approval of the detailed specifications, design drawings and the makers' list which constitute part of the Purchase Agreement" and "conclusion of the building/sale & purchase agreement" are the requisites for validating the present Purchase Agreement, and it must be said that a Purchase Agreement was not effected in this case since none of the above has been effected.

According to the Exhibits, it is recognized that (I) told the Plaintiff X–2 on October 27, 1978 that the Defendant was endeavouring to maintain the agreement with the Plaintiff X–1; that the Defendant was still doing their best to perform their obligations on November 13 of the same year;

on January 5, 1979 (I) transmitted to the Plaintiff X–2 the intent of the Defendant that "We feel it is our duty to fulfill the promise with you. Currently we are making every effort to offer you a substitute ship", and asked them to further relay the message to the Plaintiff X–1, and the Defendant actually made an offer of a substitute ship to the Plaintiff X–1 on February 28 of the same year.

These facts allow interpretation that the Defendant did recognize the validation of the Purchase Agreement and that they had the obligation as a Seller arising therefrom. However, as the witness (M) testified, the agreement of October 20, 1978 should be understood as having created obligations under the code of ethics in commerce if not validated the purchase agreement, and therefore the Defendant is understood to have recognized such obligation under the commercial ethics, to have told the Plaintiffs that they felt obliged, and made the offer of a substitute ship in order to discharge their obligation. It then transpires that these facts do not affect the above mentioned judgment that there existed no valid purchase agreement between the Plaintiff X–1 and the Defendant.

〈III〉 Having reviewed the case, the validation of the Purchase Agreement for the Vessel cannot be recognized between the Plaintiff X–2 and the Defendant.

Introduction for 'KAIUN' (Shipping)

(No. 723 December~No. 726 March)

The Japan Shipping Exchange, Inc. has been publishing the monthly magazine named 'Kaiun' (Shipping) in Japanese since 1921.

This magazine has been valued and is working as an opinion leader in shipping circles and other concerns in Japan.

Undermentioned are the contents of its recent issues, from December in 1987 to March in 1988 edition.

We hope you will find information you are seeking in the following articles.

OPINION

[December] Page

ITF has long regarded offshore registered vessels as FOC vessels. Vessels registered in places such as Bermuda, Bahama, Cayman Islands or Gibraltar, even though they fly the British flag, are being treated as FOC vessels by ITF.

On the other hand, vessels registered in Kerguelen Islands, Hong Kong, Isle of Man, and on the NIS are regarded as FOC vessels where the vessels' beneficial owners are confirmed to be domiciled out of the registration countries (or mainlands).

According to a Norwegian seafarer, ex-seafarers are appreciated as a very good work force from the shore side because they are familiar with machinery and maintenance work and are less reluctant towards weekend work being more flexible as to working hours. Seafarers' on board working customs and experience have received high respect from employers on the shore side.

* *Let arbitrators out of veils* 32

by Tanimoto, Hironori

In London and New York programmes exist for the education and discipline of arbitrators. Professional arbitrators are active and some are very well known here in Tokyo.

On the other hand arbitrators registered with The Japan Shipping Exchange, Inc., are non-professional, and generally perform the function of an arbitrator at the same time as maintaining their main business.

Isn' t it possible for the concerned industries to deposit money and form support system for arbitrators' education, their participation at international conventions or the publication of their studies ?

[January]

* *Shipbuilding industry entering the final stage of rationalization* 102

by Fujiwara, Koichi

The shipbuilding industry's climate remains difficult : a long depressed shipping market, continued rising exchange rates of the Yen, etc.

In this regard, the Japanese shipbuilding industry is going to clear the first hurdle for its survival.

It is hoped that those who have already made plans for facility disposal or business mergers will make further efforts to strengthen the business ground, while those who are considering such questions will make an effective scheme by reading the future.

* *The changing structure of seaborne cargo movement* 93

by Hamada, Tetsu

The rapid growth of Asian NICS such as Korea and Taiwan and changes in the industrial structure of developed countries have encouraged international specialization of industries and a great change of world seaborne trade.

In these circumstances, the trans-Paciffic trade as the biggest route has increased its trade volume remarkably. Of the eastbound routes, Far East cargoes especially have expanded their share. Japan-NICS-American trade amounts to

80 % of the total trans–Pacific trade.

* *Shipping, cargo movement, economy in Hong Kong* 28

by Koyanagi, Toshikazu

Considering the future of trade and economy in Hong Kong there are three problems not to be ignored : its return to China, urgent adjustment of the Won linked with the U. S. Dollar, and its relation with China.

The future directions for Hong Kong's shipowners are : (1) diversification of business to spread risks ; (2) entering into increasing Chinese trade ; (3) utilization of Hong Kong's merits, not only geographically but also economically such as the current system pledged after its reversion in the fields of finance, trade and taxation.

[February]

* *Arrival of large volume transport by Intermodal and its problems* 10

by Oda, Hisashi

Once Japan's shipping was internationally competitive, but at that time it didn't have an idea and initiative for establishing a new order in the world shipping market and still does not today.

I think that can be ascribed to the Japanese lack of experience in the world arena.

The industry seems as if it would expect a delay in the collapse of the old shipping order instead of a new development.

Policies on balance of trade payment, shipbuilding, and the stabilization of employment should be made in order to realize their own purpose and must not hinder the internationalization of shipping, or the balance of supply and demand.

Otherwise the effect of these measures will remain limited.

* *Recent progress of Hamburg Rules* 26

by Ohara, Miyuka

Isn't it time for Japan to discuss the ratification of the Hague–Visby Rules in order to prepare for the new circumstances at this stage ?

* *My simple question* 26

by Enomoto, Kisaburo

Japan's oceangoing shipping has made a continuous effort to develop modern ships provided with the newest equipment and to reduce crew numbers in order to revive its international competitiveness.

Is this measure really effective ? I would answer no.

Isn't it better for us to take a lead in the ending of competition resulting from a never–ending pursuit of rationalization and effectiveness?

It is high time that we positively hire developing countries' ratings and promote work sharing in international shipping.

* *"Perestroika" in shipping* 72

by Ohki, Godo

It is unbearable to see that many shipping companies are all doing business in a similar manner, namely engaging in everything from liners, and tankers to trampers and this circumstance has resulted in a fierce competition among themselves.

Now, so–called liner companies should distinguish themselves from others by further concentrating on Intermodal Transport.

On the other hand, tanker operators and trampers ought to withdraw from liner business and develop a new specialized ships business.

Isn't "Perestroika" in the industry an urgent task ?

[March]

* *A wave of information processing and the role of transport division of trading companies* 28

by Kodama, Hideki

S. C. NET Center was set up by 8 trading houses and 12 shipping companies in order to systemize information of seaborne trade between Shippers and Lines. The role of the transport division is not limited to negotiation with shippers on means and win the low freight. It is a division in charge of logistics. It assists production and sales plan by feeding back information which was gathered by

systematic distribution network. This is a role of transport division of trading houses in information age.

* *Trans-Pacific services vs. European services* 68

by Ohki, Godo

In U.S.A. a law has imposed severe restrictions on cooperative actions among conference members.

On the other hand, European countries have approved the tradition of British shipping and esteemed the existence of the shipping conference as a necessary evil.

By the way, in case of Japan after World War II, it has been adopting a neutral policy.

Trans–Pacific services have been exposed to awful competition and consequently freight rates have decreased and the accumulated debts have troubled the companies.

On the other hand, European services have been operated on the comparatively stable profit earning. This difference depends in principle on each country's shipping policy and degree of restriction on cooperative activities in conference members under an anti–monopoly law each country.

INTERVIEW

[December]

Mr. Basil Papachristidis, INTERTANKO 42

Japan has a great influence to persuade Iran and Iraq to stop attacking vessels in the Persian Gulf.

As one of the world leaders the Japanese voice is very important even if the Japanese naval presence in the Gulf is impossible because of the Constitutional regulations.

[January]

Mr. Hori, Takeo, president, NCA 24

On the intermediate results last September we made a profit for the first time since we started the business.

Opening the European route, our long cherished desire will be realized this year and with its opening our expansion policy stops for a while.

The task left to us is to improve the established routes. Among other things we are eager to fly to Chicago. Air cargo transport has showed double figure increase and we expect the ratio of air cargo transport to continue to increase.

[February]

* *Mr. Ogawa, Hiroshi, General Manager,* 38

Tokyo Branch of Mitsui O. S. K Lines, Limited

Imported goods are becoming popular. Parallel imports, without going through general import agents, are on the increase. Such importers are typically small and scattered all over the country, which makes it rather difficult for us, as shipping companies, to deal properly with each request. In order to cope with this emerging situation we are adopting a system to have a designated expert for each type of merchandise.

The prospect of competition with air transportation does not worry us unduly in view of the high cost of air freight. Some shippers are starting "just in time" concepts involving transportation by sea.

NEWS FLASHES

[December]

(policy) The Council for Rationalization of Shipping and Shipbuilding Industries discussed on the trans-Pacific trade and flagging out. 37

(shipbuilding) Mitsubishi ; Tsuneishi, Onomichi, Minaminihon ; Mitsui, etc. have entered into the last stage of disposal of facilities. 39

REPORTAGE

A reduction policy for employment adjustment within certain limits was strongly opposed with a call for security of employment.

When it comes to the concrete countermeasures, however, the traditional opinion took the lead.

The Convention closed without creating an effective means to confront the reduction now rapidly under way, nor were prospects found the restructuring of Union's activities.

It is inevitable that these difficult circumstances will accelerate the abandonment of modernized ships and voices appealing for the introduction of mixed crews become louder and louder.

If the Union ignores this reality, it will be difficult to apply brakes against the current trend. The Union is requested to change its way of thinking and to act frankly.

REPORTS

I had an opportunity to participate in an investigation of offshore registries in Europe. I selected NIS because the system is the most comprehensive among many registries and interesting for Japan.

[February]

Although the Kerguelen Ship Registry has secured employment of French officers, there is no similar consideration for the ratings. This is producing a threat of their losing work places. In this circumstance, however, no special countermeasures have been made. In France a change of employment is relatively easily accepted by seafarers.

[March]

Most Japanese companies which have recently started up in Thailand are export oriented. Therefore, Thailand is becoming an export or production base for Japan.

An interdependent relation between Japan and Thailand will strengthen further and economic ties between two countries will become much closer.

When it comes to investment in Thailand, only one thing remains to be worried about. That is the very poor port facilities. The Port of Bangkok has several restrictions due to its being a river port such as drafts or length of vessels entering

into the port. The Port Authority is planning to facilitate gantry cranes or to ban the use of vessels' derricks. In this cricumstance some troubles can't be avoided.

TALK

[January]

* *Shipping and Shipbuilding are far from declining.* 18

How we maintain the international competitiveness is the biggest task we are faced with now. If we can keep it, Japanese shipping companies can survive. For that purpose we are increasing dollar–based costs and reducing Yen–based costs.

In this sense we are calling for mixed crews on Japanese flag vessels. Shore side, we think that liner operations do not necessarily need Tokyo head office. *(Miyaoka, Kimio)*

For a manager to overcome difficulties, it is the most important that he takes measures with a strong will to survive as a shipbuilder.

We are now making our utmost efforts to reduce the redundancy.

Fortunately we are dealing with this matter by transfering redundant workers to other works since we are producing 700 kinds of goods.

As our company started its business as a shipbuilder, the shipbuilding department is like an eldest son. I usually say to that department, "The depressed market is no excuse for you to produce a deficit." *(Iida, Yohtaro)*

* *The future of America's economy* 66

The potential demand for consumption and housing is great although America's econmy is going to turn to recession. One problem is how this will affect econmic cycles.

Japan has made a substantial effort to reduce financial deficit and has managed to get a favourable result largely due to an increase in exports to America. In a sense America has helped Japan. Now it is America's turn to reduce its deficit and helping America is our turn.

We should encourage the restructuring of Japanese Industries based on the acknowlegement that helping America has merits for Japan. *(Toshida)*

The next U. S. President will give high priority to a balanced budget and deficit reduction. Implementation of such a policy will bring about a lowering of living standards and a decline of consumption expenditure.

As a result, the trade deficit will decline while the U. S. econmy enters a recession. However judging from the current U. S. vitality, a recession seems to be far from reality. *(Nagasaka)*

[March]

* *Restoration of Japanese Liner Services after World War II* ·····10

Messrs. Yagi and Kobayashi have been engaged deeply in Japan's oceangoing shipping since its restoration after World War II. Today I wish you to tell its story. (Fukuda)

Reopening of Liner operation was determined in November 1950. At that time 13 services were applied for by 43 companies because of the open conference.

In the resumption the discussion was made for business licences between "selective" and "for everybody". At that time the latter opinion was supported in the influence of equality principle under the U.S. occupation. Therefore, everybody burst into the trans–Pacifif services. This route seems to have had a symptom for overcompetition since then. (Yagi)

According to a record of that time, a line operated twice a month U.S. Pacific coast service from Japan as a part of eastbound via Panama round–the–world services. It rejected to join the conference and adopted a rate 10 % less than the conference tariff.

The Conference tried to compete with it by lowering rates by 5–25 % on all items, but this act was ruled illegal by the U. S. Supreme Court.

In March 1953 conference decided to place tariff of 10 items on open market. Since then freight competition has bogged down. (Kobayashi)

PEOPLE

[February]

ESSAY

[December]

I heard that in China maritime laws may be enacted in 1988 at the earliest. Although the details are unknown, it seems to be a complete code of laws comprising laws relating to carriage of goods by sea, shipowners' limitation of liabilities, salvage, general average, lien, etc.

Regular Features

[December]

[January]

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