

PAX MOOT 2023 – PETER NYGH ROUND

REQUESTS FOR CLARIFICATIONS

GUIDING PRINCIPLE:

When the case does not mention circumstances that can be relevant in law, those circumstances do not exist. To what extent rights, duties or obligations exist or may be implied in law based on the known facts, is a matter for the court to decide. Furthermore, certain issues are by necessity vague, as to allow Moot teams to discuss them during submissions and pleadings.

Questions relating to the seat/headquarters:

1. Is CFuel headquartered in Lagos (Nigeria) or Lagos (Portugal)?
According to the facts of the case, CFuel is 'incorporated in Nigeria and headquartered in Lagos'. Nothing in the facts of the case suggests that CFuel's headquarters is in the European Union.
2. Is CFuel based in the city of Lagos in Nigeria or in the city of Lagos in Portugal?
See answer to question 1.
3. Did CFuel have any offices in Belgium or any other Member states and/or how did they conduct business within the EU?
See answer to question 1.
4. Who owned the infrastructure and equipment CFuel used at the Port of Antwerp to deliver the bunker fuel to the ms Gracious Advancer?
See answer to question 1.
5. Where is FGS domiciled?
According to the facts of the case, FGS is a Greek shipping company. Nothing in the facts of the case suggests that FGS is domiciled outside of the European Union.

Questions relating to the vessel's motor breakdown:

6. Where did the exhaust valve system of the vessel's motor break down?
When a vessel leaves the Port of Antwerp for the high seas, it is only a very short distance on the river Schelde before the border between Belgium and the Netherlands is reached. From the border it is still a long distance (>65 km as the crow flies) on the Westerschelde before it is on high seas. Therefore, the indication 'shortly', may not rule out that the vessel had already left Belgian territory but would rule out that it has reached the high seas.
7. Where exactly did the exhaust valves system of the motor of mc Gracious Advancer break down - was it still the Belgian territorial sea or rather the open sea?
See answer to question 6.



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8. When the breaking of the motor of the valves system of the vessel occurred, was the Ms gracious still in Belgian territorial sea?
See answer to question 6.
9. At which distance to the Belgian shore did the ship break down?
See answer to question 6.
10. Depending on the location where the ship broke down jurisdiction may differ, thus it is important to know whether the ship broke down in Belgium's exclusive economic zone, over the Belgian continental shelf or in international waters.
See answer to question 6.
11. Did the ms Gracious ship break down in Belgian waters?
See answer to question 6.
12. How far from the port of Antwerp did the vessel broke down – within the limits of the Kingdom of Belgium, within the limits of the Netherlands or in international waters?
See answer to question 6.
13. Could you precise where (i.e., territorial waters of Belgium, or the Netherlands) did the valves break down?
See answer to question 6.
14. How far away was the vessel (ms gracious advancer) from the port of Antwerp when the motor of the vessel broke down, whether the expression “shortly after leaving the port of Antwerp”?
See answer to question 6.
15. Did the event giving rise to the counterclaim occur in the Belgian territorial waters?
See answer to question 6.
16. Has the motor of the vessel broken down in the Belgian territorial waters?
See answer to question 6.
17. Was the vessel situated, at the time of the accident (break of valves system), within the territorial sea of any State or outside it?
See answer to question 6.
18. We would like to confirm the location of the vessel when the damage occurred.
See answer to question 6.

Questions relating to the crew's infection:

19. In which country's territorial waters did the crew of the ms Gracious Advancer suffer infections?
The case is sufficiently clear and does not require further clarification.

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20. In which country did the members of the crew of the ms. Gracious Advancer (employees of FGS) suffer infection?

The case is sufficiently clear and does not require further clarification.

Questions relating to the counterclaim:

21. Where exactly is FGS's main centre of interests located?

Not relevant for the aim of the case. See previous remarks for an indication on FGS's domicile. The facts are sufficiently clear and do not require further clarification.

22. Where do FGS and ASB NL have their headquarter and centre of main interests?

Regarding FGS, see the preceding answer. As to ASB NL, teams may assume that its insolvency proceedings are carried out in accordance with the applicable legislation. From there, we believe the case is sufficiently clear for further deductions and developing of legal argumentation by the teams.

23. Which law is the most desirable for each party regarding the counterclaim?

There is no information on the substantive law of Belgium and of Nigeria, so it is not clear which of these laws may be 'desirable' for either of the parties.

Questions relating to reputational damages:

24. Should "reputational damage" be understood in the same sense as "defamation" for the purpose of the counterclaim?

It should be understood as reputational damage to the green image of FSG. It is likely that when such an accident occurs on board of a ship and its crew has to be evacuated as a result of poisoning due to toxic fumes, there will be extensive media coverage in national and international press. A crew having to be evacuated due to toxic fumes compromises FSG's green image.

25. We would like to confirm how the reputational damages are claimed to have occurred.

See answer to question 24.

26. Regarding the reputational damage that FGS institutes – what are they related to?

See answer to question 24.

27. In which countries does FGS suffer reputational damages?

This should be part of the legal argumentation by the Moot teams.

Questions relating to the choice of law and jurisdiction:

28. Was there a choice of law in the contract between CFuel and ASB NL?

According to the facts of the case there is no choice of court agreement and the parties have not agreed on the applicable law.

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29. Were there any agreements as to the choice of substantive or procedural law between parties, i.e., as contained within the contract between CFuel and ASB NL, or between FGS and ASB Americas, or as agreed between any of the parties otherwise?

See answer to question 28.

30. Are there any provisions in the contracts between CFuel and ASB NL and ASB Americas and FGS that may be deemed as constituting a jurisdiction or a choice-of-law agreement?

See answer to question 28.

31. Have provisions regarding the insolvency process, applicable law, and jurisdiction been regulated in the contracts signed between FGS and ASB?

See answer to question 28.

Questions relating to the insolvency proceedings:

32. Were CFuel and FGS informed of the opening of the insolvency proceedings and if so on which date?

FGS learned about the insolvency proceedings after the claim had been filed before the court in Belgium.

33. Who has informed CFuel about insolvency proceedings in the Netherlands and Denmark?

See answer to question 32.

34. Was CFuel informed of the insolvency proceeding for ASB NL?

See answer to question 32.

35. When was FGS informed of the opening of the insolvency proceedings for ASB NL?

See answer to question 32.

36. Is the insolvency practitioner the one who informs CFuel of the ongoing insolvency proceedings in the Netherlands? When was FGS aware that the insolvency proceedings had started?

See answer to question 32.

37. What has been the outcome and legal typology of the insolvency proceedings initiated in ASB NL and ASB DK (pending or finished, guilty or fortuitous, etc.)?

As to ASB NL, we believe the case is sufficiently clear and does not require further clarifications. As to ASB DK, the facts provide no reason to take into consideration insolvency proceedings in Denmark.

38. On which grounds were the insolvency proceedings opened for ASB Denmark?

The facts provide no reason to take into consideration insolvency proceedings in Denmark.

39. Were the insolvency proceedings opened for ASB Americas, and if so, when?

According to the facts, there are no insolvency proceedings opened against ASB Americas.

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40. Has an application for recognition of the foreign insolvency proceedings in Rotterdam been filed according to art.15 par.2 of the UNCITRAL Model Law on Cross-Border Insolvency, and then sent to the competent court?

Presumably, the necessary steps have been taken according to the legislation applicable to cross-border insolvency cases in Belgium in order to recognise the extraterritorial effects of the insolvency proceedings opened in the Netherlands.

41. Did the insolvency official of ASB NL submit the application for recognition of a foreign proceeding according to Article 15(2) of Uncitral Model Law on Insolvency?

See answer to question 40.

42. Is there a group representative for the insolvency proceedings in the Netherlands and Denmark?

This question is not relevant for the case. We believe the facts are sufficiently clear and do not require further clarification.

43. Has the Insolvency representative of ASB NL made any request or applications to Belgian Courts?

See answer to question 40.

44. Could you clarify whether the proceedings have been recognised by the Court of Antwerp or, at least, if the Dutch insolvency official has submitted an application to that end?

See answer to question 40.

45. Could you precise whether the insolvency proceedings affecting ASB NL in the Netherlands entail a stay of proceedings under Dutch law?

Presumably the facts of the case reflect the state of law in the case of commencement of insolvency proceedings in the Netherlands.

46. Have the insolvency proceedings in Rotterdam become effective in the Netherlands?

Yes.

47. Does the type of the insolvency proceeding which is pending against AllStar Bunker Netherlands in Rotterdam fall under the scope of the EU Regulation 2015/848 of 20 May 2015 on insolvency proceedings?

This should be part of the legal argumentation of the Moot teams.

48. In what sense is the relevance of the insolvency proceedings to be construed (merely as a question of jurisdiction or also as a question of the applicable law?)

This question and its relevance for the legal argumentation are unclear.

49. What does it mean that ASB NL is not intending to be present or represented in these proceedings?

This should be the subject of the legal argumentation of the Moot teams.

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50. Does AllStar Bunker Netherlands possess an establishment as understood under Art. 2(10) EU Regulation 2015/848 of 20 May 2015 on insolvency proceedings?
Presumably the facts of the case reflect the state of the law in case of commencement of insolvency proceedings in the Netherlands.

Questions regarding the oil:

51. Is LZFO a type of clean oil?
CFuel bunkered the ms Gracious Advancer with MGO instead of LSFO. MGO has a higher Sulphur content than LSFO, which FGS intended to order. LZFO is not an existing abbreviation and seems to be a typo.
52. Is the LZFO existing fuel for vessels, or is there just a typo in the sale contract?
See answer to question 51.
53. What kind of oil did CFuel use in the end, as LZFO does not exist, but FGS asked for it? (Did CFuel use LSFO or a different kind of oil?)
See answer to question 51.
54. Did ASB NL, other than requesting “MGO, LZFO”, specify elsewhere in its contract with CFuel that the oil needed to be green?
This question’s relevance for the legal argumentation is unclear.
55. Did the contract between FGS and ASB Americas refer to ‘MGO’?
This question’s relevance for the legal argumentation is unclear.
56. What type of oil has the sales department of CFuel understood to deliver, LZFO (green) or LSFO?
This question’s relevance for the legal argumentation is unclear.
57. Did the contract between FGS and ASB America include the MGO as an environmentally friendly LZFO?
This question’s relevance for the legal argumentation is unclear.
58. Where was the fuel allegedly mixed with water? In Lagos, Nigeria?
This should be the subject of the legal argumentation of the Moot teams, as the facts state that “the matter of the quality of the fuel that was used remains disputed between the parties”.
59. Has FGS suffered any damage as a result of the oil not being LSFO, irrespective of the damage caused by the contamination?
This should be the subject of the legal argumentation of the Moot teams.
60. Was the oil marketed in Belgium and Greece?
The relevance of this question for the legal argumentation is unclear.

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Questions regarding the contractual relationship between the parties:

61. On what basis is CFuel mounting its claim in the Commercial Court of Antwerp as against FGS for the payment of US\$666,434?
This should be a part of the legal argumentation of the Moot teams.
62. Were there any other contracts between CFuel and FGS before the dispute?
There was no contract ever concluded between CFuel and FGS.
63. Did FGS freely assume any obligations in relation to CFuel or did they exclusively contract with ABS Americas?
The facts of the case clearly indicate between which parties there were contractual legal relationships. There was a communication between FGS and CFuel in connection with the practical issues surrounding actual fueling of the ship at the port in Antwerp, but no contract was concluded between them.
64. Was there any direct communication between FGS and CFuel at any point in time?
See answer to question 63.
65. Did CFUEL know about the intention of FGS wanting clean oil given that in the contract was written 'LZFO' fuel?
See answer to question 51.
66. Which is the contractual (or non-contractual) position of the ASB Group in the relations with FGS and CFuel?
ASB NL and ASB Americas are sister companies having a common mother company ASB DK which is headquartered in Copenhagen, Denmark. They have different management and carry out their business activities independently of each other. Accordingly, their independent operations can be presumed
67. The case reports that on 27 March 2022 CFuel sent its invoice to ASB NL for US\$ 666 434. Two days later, ASB Americas sent the invoice to FGS. Was the invoice sent by CFuel to ASB NL and then sent by ASB NL to FGS the same? If so, was CFuel's name on the invoice? Or its IBAN?
ASB NL sent the invoice to ASB Americas. The latter instructed FGS to pay directly to ASB NL. CFuel's name was indicated on the invoice.
68. When was concluded the contract between CFuel and ASB NL?
This question's relevance for the legal argumentation is unclear.
69. What specific service does CFuel as a "bunker company" provide for ASB NL regarding the oil?
The case is sufficiently clear and does not require further clarification.
70. Does CFuel believe that they properly fulfilled their contractual obligations, regarding the contract with ASB NL?

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See answer to question 51. Other than that, it should be part of the legal argumentation of the Moot teams as we believe the case is sufficiently clear and does not require further clarifications.

71. In the case, the following sentences have been stated: “CFuel rereads its contract with ASB NL. It referred to ‘MGO, LZFO’, which the sales department had not read to mean LSFO.” According to these statements, has CFuel been told that the fuel needed to be clean oil?

See answer to question 70.

72. Does ASB NL acts on its own behalf or on behalf of FGS in contracting with CFuel?

This should be a part of the legal argumentation of the Moot teams.

73. The contract signed between ASB NL and CFuel contains any mention or reference to the contract signed between ASB Americas and FGS?

This should be a part of the legal argumentation of the Moot teams.

74. When is the agreed date of the performance of the contract between FGS and ASB Americas?

This question’s relevance for the legal argumentation is unclear given that the contract has been performed.

75. Did the Bunkering contract concluded by FGS and ASB Americas include the possibility of subcontracting the performance? If so, did the Bunkering contract include the name of CFuel as future subcontractor?

This should be a part of the legal argumentation of the Moot teams.

76. Did the FGS and ABS Americas contract provide the possibility of assignment of the claim of payment to any third party?

This should be a part of the legal argumentation of the Moot teams.

77. Did the FGS and ABS Americas contract provide any other obligation of FGS against third parties (contracted with ABS Americas)?

This should be a part of the legal argumentation of the Moot teams.

78. Did FGS pay the contract price to ASB NL within the agreed period by the Parties in the contract?

This question’s relevance for the legal argumentation is unclear given that the contract has been performed.

79. Was the fact that FGS had to pay to ASB NL in the contract FGS-ASB Americas?

This question’s relevance for the legal argumentation is unclear given that the contract has been performed.

80. Should we interpret that the extra crew members were covered by the original contract, or are otherwise part of a new contractual relationship?

This question’s relevance for the legal argumentation is unclear given that the contract has been performed.

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81. If any, what is the subject of the contractual relationship between ASB Americas and ASB NL?

There is no contractual relationship between ASB Americas and ASB NL.

82. Could you clarify the legal (i.e., contractual, or non-contractual) nature of ASB Americas' request towards ASB NL?

See answer to question 81.

83. Was there any contractual relationship between ASB NL and ASB Americas in relation to the payment that ASB NL had received?

See answer to question 81.

84. Are ASB NL and FGS jointly and severally liable for the payment of the invoice to CFuel?

According to the contract with ASB Americas, FGS was to pay to its contracting party. However, ASB Americas instructed FGS to pay directly to ASB NL.

85. Was FGS in any way bound to CFuel for the payment of the invoice and in what way?

See answer to question 84.

86. Is ASB NL acting as a representative of ASB Americas and as so, with whom does CFuel contracts?

See answer to question 66. ASB Americas did request its sister company ASB NL to contract for the supply of the fuel and provided instructions in that respect. ASB NL contracted with CFuel.

87. Whether FGS was aware of the contractual relationship between ASB NL and CFuel or in any way could have been aware of it?

This should be a part of the legal argumentation of the Moot teams.

Questions regarding the legal relationship between the parties:

88. Regarding the relationship between ASB DK and ASB NL, is their bond strong enough to consider them as a single entity? Is the second a simple establishment of the first or does it enjoy full and substantial autonomy in relation to economic and financial choices?

The case is sufficiently clear and does not require further clarification.

89. Could you please clarify the relationship between ASB NL and ASB Americas and their position regarding ASB Global (as stated in paragraph 1 of the facts)? Additionally, what framework agreement exists between ASB Global and its separate legal entities or/and between ASB NL and ASB Americas?

See answer to question 86.

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90. How independent are the ASB subsidiaries from the mother company (e.g., ability to determine own commercial policies/directions)?

See answer to question 89.

91. How is the corporate structure of ASB organized?

See answer to question 89.

92. Could you clarify the nature of ASB Americas and ASB NL's usual relationships in terms of governance, control, and management?

See answer to question 89. There is no contractual relationship between them. They are 100% subsidiaries of ASB Global and are incorporated under NL and US (Delaware) law, with seats in Rotterdam (NL) and Rhode Island (US), respectively.

93. How connected is ASB NL to ASB DK in terms of management and administration of its interests and are the insolvency proceedings in any way dependent on each other?

There is nothing in the case to suggest that ASB NL was acting on instructions of ASB DK, as far as the provision of bunker oil to the vessel Gracious Advancer in Antwerp is concerned. The case clearly states that ASB NL contracted with CFuel. The facts also provide no reason to take into consideration insolvency proceedings in Denmark.

94. What is the relationship/structure between the mother company (ASB DK) and the subsidiaries (ASB NL and ASB Americas)? For example, economically dependent on one another, whether they operate jointly (...).

See answer to question 86.

95. In what way does the insolvency of ASB Denmark influence the financial situation of the other entities of ASB Global? Meaning, in which way are the entities financially connected regarding the insolvency situation?

The case provides no reason to take into consideration insolvency proceedings in Denmark.

Other questions:

96. For the purposes of the Moot Competition, are we to take Belgium to have ratified or is a party to The Hague Evidence Convention 1970?

The list of contracting states to the Hague Evidence Convention 1970 is available on the HCCH website.

97. Should UNCITRAL Model Law be applied with preference to ANY European Regulation?

The case is sufficiently clear and does not require further clarifications.

98. When the case says that Belgium has adopted the UNCITRAL Model Law, how should we interpret the incorporation of these dispositions to be?

The case is sufficiently clear and does not require further clarifications.

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99. Does the misprint (LZFO in place of LSFO) mean that CFuel performed its obligation properly under substantive laws of Nigeria?
Issues pertaining to substantive law are not a part of the legal argumentation of the Moot teams.
100. The facts state that FGS “contests the jurisdiction of the Commercial Court of Antwerp”. What has FGS done as of yet to effect its contestation as to the Court’s jurisdiction (e.g. accepting service of the claim, procuring representation or made written submission to the Court as to its objections)?
Presumably the wording ‘contests the jurisdiction’ means that a party has raised an objection of lack of international jurisdiction timely and in an appropriate manner.
101. We would like to request a list of all establishments that CFuel may have in Antwerp or any other member States and how CFuel supplied fuel to the vessel.
Nothing in the facts of the case implies that there is an establishment of CFuel in Belgium or in any other EU Member State.
102. Do FGS or CFuel have any objections against conducting expertise in Spain?
This should be a part of the legal argumentation of the Moot teams as to the powers of the court in Antwerp. The interests of FGS or CFuel are rather vague as to the outcome of such an expertise as it would concern both the bunker oil and the vessel’s engine.
103. Will the expert, referred to in question 3, come from the member state of the international competent court or from Spain itself?
The case refers to “sending a court-appointed expert”. Whereas unclear if “comes from”, under this question, refers to the nationality or domicile of the expert, those elements appear to be of no relevance for the legal argumentation.
104. Regarding question number 3, do we have to include the form requesting a court appointed expert into the memorials?
The court wants to know how the parties see the appropriateness and the practicalities of the expert determination to be ordered.
105. Who is the issuer of the invoice sent to FGS on 29 March 2022?
See answer to question 67.
106. Which company filled the vessel of FGS in the port of Antwerp?
The case is sufficiently clear to argue and does not require further clarification.
107. Is the ms. Gracious ship registered in Panama?
This question’s relevance for the legal argumentation is unclear.
108. How restricted is access to vessels docked at the Port of Algeciras, if at all?
This question’s relevance for the legal argumentation is unclear.
109. Did members of the crew of the ms Gracious Advancer bring an action against FGS?
There is nothing in the facts to suggest this.