

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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D'AMICO DRY D.A.C.	:	
	:	
Plaintiff,	:	
	:	
- against -	:	
	:	20-cv _____
MCINNIS CEMENT INC.	:	
	:	
Defendant.	:	
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**VERIFIED COMPLAINT**

Plaintiff, D'AMICO DRY D.A.C. ("Plaintiff" or "d'Amico Dry"), by and through its attorneys, Tisdale Law Offices, LLC, as and for its Verified Complaint against the Defendant, MCINNIS CEMENT INC. ("Defendant" or "McInnis Cement"), alleges, upon information and belief, as follows:

**JURISDICTION AND VENUE**

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1333 since the claim for which security is sought arises out of a Charter Party dated 10 February 2017, the breach of which gives rise to a maritime claim.

2. As will be discussed more fully herein, Plaintiff commenced expedited arbitration against Defendant in accordance with the Charter Party, the Federal Arbitration Act 9 U.S.C. § 1 *et seq.* and the rules of the Society of Maritime Arbitrators, of New York ("SMA") by appointing an arbitrator and demanding that Defendant do the same. Defendant has now appointed its arbitrator but has declined the request for expedited arbitration.

3. A true copy of the Charter Party is attached hereto as **Exhibit 1** and will be specifically identified *infra*.

4. Venue is proper in this district because there is or will be during the pendency of this action property due and owing to the Defendant within this district and in the hands of a non-party garnishee, namely National Bank of Canada New York Branch located in New York, which has an office and place of business within this Judicial District.

5. It is believed that non-party Garnishee National Bank of Canada New York Branch may be holding property subject to this maritime attachment since Defendant banks with National Bank of Canada New York Branch located in New York and has used this account in the near past in transactions with Plaintiff.

### **PARTIES**

6. Plaintiff d'Amico Dry is a foreign corporation organized and existing under the law of Ireland with an office and principal place of business in Ireland. At all material times, d'Amico Dry has had an agent d'Amico Shipping USA Ltd ("d'Amico USA") located in Stamford, Connecticut.

7. Upon information and belief, Defendant McInnis Cement is a Canadian business entity with a principal place of business in Montreal, Quebec. At all material times, McInnis Cement has had an agent McInnis USA Inc, which is a Delaware corporation with its principal place of business in Stamford, Connecticut. McInnis USA is believed to lease premises located at 50 Oak Point Ave, The Bronx, New York.

### **DEFENDANT'S BREACH OF THE CHARTER PARTY**

8. On or about 10 February 2017, Plaintiff entered a charter party with Defendant for the charter of the CIELO DI GASPEISIE ("Vessel"), for the carriage of between 31,500 and 34,000

metric tons cement on consecutive voyages between Port Daniel, Quebec, Canada and Providence, Rhode Island and/or The Bronx, New York commencing on February 15, 2018 up to and including December 31, 2021. See **Exhibit 1**. Each voyage was estimated to take approximately 15 days, all going well.

9. The Charter Party was negotiated between representatives of d'Amico USA and McInnis USA through brokers, BRS USA, in Stamford, CT. The Charter Party was signed by Luciano Bonaso, the Chief Executive Officer of d'Amico Dry from Monte Carlo, Monaco and Mark Newhart, identified as the Vice President of McInnis Cement.

10. With the exception of some communications with McInnis personnel located in New York when the Plaintiff's Vessel was preparing to call in New York to discharge cargo, all communications concerning this Charter Party were with McInnis USA in Stamford, CT or with McInnis Cement in Quebec, Canada.

11. The vast majority of communications with Defendant concerning this Charter Party were conducted with McInnis Cement personnel in Quebec.

12. Although the Defendant had agreed to load between 31,500 and 34,000 metric tons of cement on board the Vessel for each voyage, Defendant loaded an average of approximately 28,000 metric tons of cargo, resulting in significant "deadfreight" charges to the Defendant throughout the charter period. In addition, although Defendant agreed to load cargo at the rate of 20,000 metric tons per weather working day and discharge the cargo at 10,000 metric tons per weather working day (in order to make the anticipated 15 day roundtrip voyage), an average 13 additional days were spent at the load or discharge ports per voyage to load and discharge the short loaded quantity of cement resulting in substantial demurrage charges to the Defendant throughout this Charter. Instead of the guaranteed minimum of 47 and maximum of 66 voyages which should

have taken place between February 15, 2018 and May 1, 2020, only 26 voyages have been performed. Because of Defendant's inability to perform as agreed in the Charter Party, upon information and belief, Defendant has chartered other vessels which it believes are better suited to load and discharge at its terminals, despite being obligated to perform its agreed obligations until December 31, 2021 in accordance with its charter with Plaintiff.

13. On April 17, 2020, Defendant McInnis Cement notified Plaintiff D'Amico of its declaration of *force majeure* pursuant to Clause 34 of the Charter due to what Defendant alleged are the extraordinary and unprecedented impacts of COVID-19 on McInnis Cement's operations and cement shipments in the Northeastern United States. Defendant contends that the force majeure event may preclude its employment of the Vessel until the conclusion of the Charter, December 31, 2021. **Exhibit 2.**

14. Defendant's declaration of *force majeure* under Clause 34 due to the current Covid-19 pandemic was unwarranted and simply another tactic to continue to justify its cancellation of the Charter because of its inability to perform its obligations thereunder.

15. The declaration of the *force majeure* under Clause 34 does not afford the Defendant the right to suspend the contract under these circumstances.

16. Further, Defendant has failed to demonstrate, and cannot demonstrate, that their business has been frustrated in such a way as to be afforded relief under the *force majeure* provisions of this Charter.

17. Defendant's alleged inability to perform is unrelated to COVID-19, and has existed throughout its attempted performance under the Charter.

18. Defendant has offered no explanation for its continued failure to perform its obligations under the Charter Party.

19. As a result, Defendant has breached the Charter Party dated 10 February 2017 and Plaintiff has commenced arbitration in accordance with same. **Exhibit 3.** Plaintiff has requested expedited arbitration, a recognized feature of maritime arbitration when the parties so agree, to address the Defendant’s declaration of *force majeure*, but the Defendant has declined that request. **Exhibit 4.** Instead, Defendant proposes that the parties delay arbitration until McInnis Cement’s declares the *force majeure* event concluded. **Exhibit 4.**

20. The Charter Party provides for arbitration in New York and the application of U.S. maritime law.

21. The Society of Maritime Arbitrators (“SMA”) routinely awards attorneys’ fees and arbitrator’s fees to prevailing parties.

**RULE B MARITIME ATTACHMENT**

22. Given the factual background set out above, Defendant is liable in damages to pay the following sums to Plaintiff:

A.	Cleaning from Cement to prepare the holds for the carriage of the next cargo	\$ 272,500
B.	Differential of cost between marine gasoil and low sulfur fuel oil as the vessel was supposed to trade ECA area for the next 18 months	\$ 15,000
C.	Estimated loss of charter hire/freight from May 15, 2020 until December 31, 2021	\$3,705,000
D.	Interest at 6%	\$ 239,550
E.	Legal fees	\$ 500,000
F.	Arbitrators fees	\$ 250,000
<b>TOTAL</b>		<b>\$4,982,050</b>

23. Plaintiff sent its invoices for sums owed under the Charter Party to McInnis Cement care of its agent McInnis USA. Invoices have traditionally been paid on behalf of McInnis Cement from the account of McInnis USA at National Bank of Canada's New York branch.

24. Upon information and belief, non-party Garnishee National Bank of Canada has offices and places of business this Judicial District. Based on this information, it is believed that Defendant holds assets at National Bank of Canada New York Branch.

25. Upon information and belief, Defendant holds bank accounts or other assets or property at National Bank of Canada in this District. See **Exhibit 5**, Redacted National Bank of Canada instructions.

26. As evidenced by the Redacted National Bank of Canada payment advices, Defendant maintains one or more bank accounts at National Bank of Canada New York branch.

27. Since Defendant has used National Bank of Canada New York branch to perform banking transactions with Plaintiff in the past, Plaintiff believes that National Bank of Canada may be holding funds, accounts, credits, or other property of Defendant in New York.

28. Upon information and belief, Garnishee National Bank of Canada New York branch holds property belonging to Defendant in this District.

29. Plaintiff seeks security for its already commenced New York arbitration proceedings.

30. Although Defendant is believed to lease property within New York, it cannot be found within the district within the meaning of Supplemental Admiralty Rule B. Plaintiff has filed herewith a Memorandum of Law which addresses this issue.

31. As stated on its website, Defendant's affiliated entity McInnis USA Inc. maintains its headquarters in Stamford, Connecticut. Defendant does not appear to have a physical presence

in the Southern District of New York other than leased premises located at 50 Oak Point Ave, Bronx, New York.

32. As demonstrated by the attached declaration, Plaintiff has attempted to search for the Defendant in this Judicial District, but has been unable to locate an agent for service of process or evidence that Defendant is subject to general personal jurisdiction in NY that would subject Defendant to being “found” within the District within the meaning of Rule B.

33. The Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of a garnishee within the District including but not limited to National Bank of Canada New York branch.

34. The Plaintiff seeks an order from this Court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching, *inter alia*, any property of the Defendant held by National Bank of Canada New York branch. or any other garnishees within the District for the purpose of obtaining security for the soon to be commenced arbitration proceedings.

**WHEREFORE**, Plaintiff prays:

A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Verified Complaint, failing which default judgment be entered against it in the sum of US **\$4,982,050**;

B. That since the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order






**ATTORNEY'S VERIFICATION**

Thomas L. Tisdale, an attorney duly authorized to practice before this Honorable Court, under the penalty of perjury of the laws of the United States, declares as follows:

1. My name is Thomas L. Tisdale.
2. I am over 18 years of age, of sound mind, capable of making this Verification, and fully competent to testify to all matters stated herein.
3. I am an attorney at Tisdale Law Offices, LLC, attorneys for the Plaintiff.
4. I have read the foregoing Verified Complaint and know the contents thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.
5. The reason why this Verification is being made by the deponent and not by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now within this District.
6. The source of my knowledge and the grounds for my belief are the statements made, and the documents and information received from, the Plaintiff and agents and/or representatives of the Plaintiff.
7. I am authorized to make this Verification on behalf of the Plaintiff.
8. The foregoing is true and correct under penalty of perjury of the laws of the United

States of America.

Dated: May 13, 2020  
New York, NY

  
Thomas L. Tisdale

**EXHIBIT 1**



CODE NAME: Gencon

**RECOMMENDED**Adopted by the Documentary Committee of the  
Chamber of Shipping of the United KingdomIssued to come into force for fixtures on and after 15<sup>th</sup> September 1922

The Documentary Council of the Baltic and White Sea Conference  
(The Baltic and International Maritime Conference)

**UNIFORM GENERAL CHARTER**  
**AS REVISED 1922**

(only to be used for trades for which no approved form is in force)

...*Stamford, CT, February 10, 2017*

<b>Owners</b>	1. IT IS THIS DAY MUTUALLY AGREED between ..... <i>D'Amico Dry D.A.C.</i>	1
	... <i>Dublin</i> ...	2
	Owners of the steamer or motor-vessel ... " <i>D'AMICO TBN</i> " (See Clause 43)	3
<b>Position</b>	of ..... tons gross/net Register and carrying about ..... tons of deadweight cargo,	4
<b>Charterers</b>	now <i>trading</i> .....	5
	expected ready to load under this Charter about .....	6
	and Messrs. .... <i>McInnis Cement Inc., 1350 René-Lévesque Blvd West, Suite 205</i>	7
	<i>Montreal (Quebec) H3G 2W2, Canada</i>	
	.....	
<b>Where to</b>	as Charterers,	8
<b>Load</b>	That said vessel shall proceed to <i>one (1) good safe berth Port Daniel where there is 40.0 ft</i>	9
	<i>salt water arrival draft. Owners to satisfy themselves of port restrictions at load ports.</i>	
	..... or so near thereto as she may safely get and lie	10
<b>Cargo</b>	always afloat, and there load <i>upto</i> a full and complete cargo (if shipment of deck cargo	11
	Agreed same to be at Charterers' risk) of <i>One/Two grades of Bulk Cement to be loaded for</i>	12
	<i>each lifting. In case of two grades, cargo split to be arranged in order to ensure maximum</i>	13
	<i>cargo intake.</i>	
	<i>Period:</i>	14
	<i>Firm period consisting of consecutive voyages starting from February 15th, 2018 up to and</i>	15
	<i>including December 31st, 2021. (See Clause 20)</i>	
	<del>(Charterers to provide all mats and/or wood for dunnage and any separations required,</del>	16
	<del>the Owners allowing the use of any dunnage wood on board if required)</del> which the	17
	Charterers bind themselves to ship, and being so loaded the vessel shall proceed to <i>one (1)</i>	18
<b>Destination</b>	<i>safe berth New Oak Point, McInnis Cement Berth, New York where there is 34.5 ft.</i>	19
	<i>brackish water arrival draft. Or in Charterers' option, one (1) safe berth Providence, where</i>	20
	<i>there is 40.0 ft. brackish water arrival draft. Owners to satisfy themselves of port restrictions</i>	21
	<i>at discharge ports. (Also see Clause 20)</i>	22
	as ordered on signing Bills of Lading or so near thereto as she may safely get and	23
	lie always afloat and there deliver the cargo on <i>having been</i> being paid freight – <del>on</del>	24
	<del>delivered/intaken</del>	
	quantity as follows (See Clause 17)	25
<b>Rate of</b>	...	26
<b>Freight</b>	.....	27
	.....	28
	2. Owners are to be responsible for loss of or damage to the goods or for	29
<b>Owners'</b>	delay in delivery of the goods only in case the loss, damage or delay has been caused	30
<b>Responsibility</b>	by the improper or negligent stowage of the goods (unless stowage	31
<b>Clause</b>	performed by shippers or their stevedores or servants) or by personal want of due diligence on	32
	the	
	part of the Owners or their Manager to make the vessel in all respects seaworthy	33

and to secure that she is properly manned, equipped and supplied or by the personal act or default of the Owners or their Manger. **Stowage to be under Master's supervision.**

And the Owners are responsible for no loss or damage or delay arising from any other cause whatsoever, even from the neglect or default of the Captain or crew or some other person employed by the owners on board or ashore for whose acts they would, but for this clause, be responsible, or from unseaworthiness of the vessel on loading or commencement of the voyage or at any time whatsoever.

Damage caused by contact with or leakage, smell or evaporation from other goods or by the inflammable or explosive nature or insufficient package of other goods not to be considered as caused by improper or negligent stowage, even if in fact so caused.

**Deviation Clause**  
3. The vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist vessels in all situations, and also to deviate for the purpose of saving life and/or property.

**Payment of Freight**  
4. The freight to be paid **as per Clause 17** in cash without discount on delivery of the cargo at mean rate of exchange ruling on day of payment, the receivers of the cargo being bound to pay freight on receipt during delivery, if required by Captain or Owners:-

Each for vessel's ordinary disbursements at port of loading to be advanced by Charterers if required at highest current rate of exchange, subject to two per cent to cover insurance and other expenses:-

**Loading**  
5. Cargo to be **loaded as per Clause 20** brought alongside in such a manner as to enable vessel

to take the goods with her own tackle and to load the full cargo in ..... running working days. Charterers to procure and pay the necessary men on shore or board the lighters to do the work there, vessel only bearing the cargo on board. If the loading takes place by elevator cargo to be put free in vessel's holds, Owners only paying trimming expenses:-

Any pieces and/or packages of cargo over two tons weight shall be loaded stowed and discharged by Charterers at their risk and expense:-

Time to commence at 1 p.m. if notice of readiness to load is given before noon and at 6 a.m. next working day if notice given during office hours after noon. The notice to be given to the Shippers, Messrs (as per Clause 18)

.....  
Time lost in waiting for berth to count as loading time.

**Discharging**  
6. Cargo to be **discharged as per Clause 20**, received by Merchants at their risk and expense alongside

the vessel not beyond the reach of her tackle and to be discharged in ..... running working days. Time to commence at 1 p.m. if notice of readiness to discharge is given before noon, and at 6 a.m. next working day if notice given during office hours after noon:-

**Demurrage**  
7. Ten running days on demurrage at the rate of (See Clause 21) per day or pro rata for any part of a day payable day by day to be allowed Merchants altogether at ports of loading and discharging:-

8. Owners shall have a lien on the cargo for freight, dead-freight, demurrage and damages for detention. Charterers shall remain responsible for dead-freight and Lien Clause, demurrage (including damages for detention), incurred at port of loading.

Charterers shall also remain responsible for freight and demurrage (including damages for detention) incurred at port of discharge, but only to such extent as the Owners have been unable to obtain payment thereof by exercising the lien on the cargo.

**Bills of Lading**  
9. The Captain to sign Bills of Lading at such rate of freight as presented without prejudice to this Charterparty, but should the freight by Bills of Lading amount to less than the total chartered freight the difference to be paid to the Captain in cash on signing Bills of Lading

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Strike-, War- and Ice-Clauses Cancelling Clause

10. Strike-Clause, War-Clause and Ice-Clause as below.

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~~11. Should the vessel not be ready to load (whether in berth or not) on or before ..... Charterers have the option of cancelling this contract, such option to be declared, if demanded, at least 48 hours before vessel's expected arrival at port of loading. Should the vessel be delayed on account of average or otherwise, Charterers to be informed as soon as possible, and if the vessel is delayed for more than 10 days after the day she is stated to be expected ready to load, Charterers have the option of cancelling this contract, unless a cancelling date has been agreed upon.~~

General

12. General average to be settled according to York-Antwerp Rules, **1994 or any amendments thereto**, Pro-

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Average

prietors of cargo to pay the cargos share in the general expenses even if same have been necessitated through neglect or default of the Owners' servants (see Clause 2).

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Indemnity

13. Indemnity for non-performance of this Charterparty, proved damages, not exceeding estimated amount of freight

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Agency

14. In every case the Owner shall appoint his own Broker or Agent both at the port of loading and the port of discharge.

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Brokerage

15. 2.5% brokerage on the freight, deadfreight and demurrage earned is due to **BRS USA**.

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~~.....  
In case of non execution at least 1/3 of the brokerage on the estimated amount of freight and dead freight to be paid by the Owners to the Brokers as indemnity for the latter's expenses and work. In case of more voyages, the amount of indemnity to be mutually agreed.~~

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**GENERAL STRIKE CLAUSE**

Neither Charterers nor Owners shall be responsible for the consequences of any strikes or lock-outs preventing or delaying the fulfilment of any obligations under this contract.

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If there is a strike or lock-out affecting the loading of the cargo, or any part of it, when vessel is ready to proceed from her last port or at any time during the voyage to the port or ports

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of loading or after her arrival there. Captain or Owners may ask Charterers to declare, that they to reckon the Laydays as if there were no strike or lock-out. Unless Charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, Owners shall have the option of

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cancelling this contract. If part cargo has already been loaded, Owners must proceed with same,

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(freight payable on loaded quantity only) having liberty to complete with other cargo on the way for their own account.

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If there is a strike or lock-out affecting the discharge of the cargo on or after vessel's arrival at or off port of discharge and same has not been settled within 48 hours, Receivers shall

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have the option of keeping vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharging, or of ordering the vessel to

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a safe port where she can safely discharge without risk of being detained by strike or lock-out. such orders to be given within 48 hours after Captain or Owners have given notice to Charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at such port, all conditions

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of this Charterparty and of the Bill of Lading shall apply and vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceed 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

**GENERAL WAR CLAUSE**

~~If the nation under whose flag the vessel sails should be engaged in war and the safe navigation of the vessel should thereby be endangered either party to have the option of cancelling this contract, and if so cancelled, cargo already shipped shall be discharged either at the port of loading or, if the vessel has commenced the voyage, at the nearest safe place at the risk and expense of the Charterers or Cargo Owners. If owing to outbreak of hostilities the goods loaded or to be loaded under this contract or part of them become contraband of war whether absolute or conditional or liable to confiscation or detention according to international law or the proclamation of any of the belligerent powers each party to have the option of cancelling this contract as far as such goods are concerned, and ~~either~~ ~~band~~ goods already loaded to be then discharged either at the port of loadings or if the voyage has already commenced, at the nearest safe place at the expense of the Cargo Owners. Owners to have the right to fill up with other goods instead of the contraband. Should any port where the vessel has to load under this Charter be blockaded the contract to be null and void with regard to the goods to be shipped at such port. No Bills of Lading to be signed for any blockaded port, and if the port of destination be declared blockaded after Bills of Lading have been signed, Owners shall discharge the cargo either at the port of loading, against payment of the expenses of discharge, if the ship has not sailed there, or, if sailed at any safe port on the way as ordered by Shippers or if no order is given at the nearest safe place against payment of full freight.~~

**GENERAL ICE CLAUSE (See Clause 38)  
PORT OF LOADING**

~~a) In the event of the loading port being inaccessible by reason of ice when vessel is ready to proceed from her last port or at any time during the voyage or on vessel's arrival or in case frost sets in after vessel's arrival, the Captain for fear of being frozen in is at liberty to leave without cargo, and this Charter shall be null and void.~~  
~~b) If during loading the Captain, for fear of vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for Owners' benefit for any port or ports including port of discharge. Any part cargo thus loaded under this Charter to be forwarded to destination at vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Receivers, freight being paid on quantity delivered (in proportion if lumpsum), all other conditions as per Charter.~~  
~~c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Captain or Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under section b or to declare the Charter null and void unless Charterers agree to load full cargo at the open port.~~  
~~d) This Ice Clause not to apply in the Spring.~~



**PORT OF DISCHARGE**

- 169 a) Should ice (except in the Spring) prevent vessel from reaching port of discharge Receivers  
170 shall  
171 have the option of keeping vessel waiting until the re-opening of navigation and paying  
172 demurrage, or of ordering the vessel to a safe and immediately accessible port where she can  
173 safely discharge without risk of detention by ice. Such orders to be given within 48 hours  
174 after Captain or Owners have given notice to Charterers of the impossibility of reaching port of  
destination:  
176 b) If during discharging the Captain, for fear of vessel being frozen in deems it advisable to  
leave,  
177 he has liberty to do so with what cargo he has on board and to proceed to the nearest ac-  
178 cessible port where she can safely discharge.  
179 c) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and  
180 vessel shall receive the same freight as if she had discharged at the original port of destination,  
181 except that if the distance of the substituted port exceeds 100 nautical miles, the freight  
182 on the cargo delivered at the substituted port to be increased in proportion.

*Clauses 17 through 47, both inclusive, and P & I Bunker Deviation Clause, 1948, War Risk Clause, Water Pollution Clause, New Jason Clause, Both-To-Blame Collision Clause, General Clause Paramount (1982), U.S. Customs Advance Notification/AMS Clause for Voyage Charter Parties, as attached hereto, have been mutually agreed upon and are deemed to be fully incorporated into this Charter Party and form an integral part of same.*

**OWNERS:**

**CHARTERERS:**



ADDITIONAL CLAUSES TO THE MV "D'AMICO TBN"  
DATED DECEMBER 6, 2016

17.

Freight: to be used in conjunction with the BAF Clause as stated below

**New York**

<b>2018 (Feb-Dec)</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
USD 11.35 pmt	USD 11.75 pmt	USD 11.85 pmt	USD 11.85 pmt

**Providence**

<b>2018 (Feb-Dec)</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
USD 11.20 pmt	USD 11.50 pmt	USD 11.85 pmt	USD 11.90 pmt

**Bunker Price Adjustment Clause:**

The freight rates as agreed in this charter party are based on an average fuel price of USD 600 New York Platts Bunkerwire delivered mean price for low Sulphur marine gas oil with Sulphur content 0.1 percent table reference AAWYB00.

For each price increase of USD 1.00 per metric ton above the base price of USD 600 per metric ton of LSMGO with Sulphur content 0.1 percent, the freight will be adjusted as follows:

The freight rates are to be increased by USD 0.005 per metric ton of cargo loaded. For clarity there is no maximum price applicable.

For each price decrease of USD 1.00 per metric ton below the base price of USD 600 per metric ton of LSMGO with Sulphur content 0.1 percent, the freight rates are to be decreased by the same increments as agreed above. For clarity there is no minimum price applicable.

The bunker price to be used for calculation purposes, is to be established by the date of the bill of lading the PLATTS OILGRAM BUNKERWIRE REPORT or the closest published report if one is not available on the bill of lading date.

It is clearly understood that the requirement to use Low Sulphur MGO from January 01, 2015 within the ECA Zone in the US is covered by existing clauses of the contract and the BAF is always subject to any further and unforeseen fuel emission regulation arising within the contract period.

95% (ninety five percent) freight payable latest 3 (three) banking days after vessel's sailing loading port and signing/releasing original bill(s) of lading marked 'freight payable as per C/P'. Freight always to be paid prior to breaking bulk.

Balance of freight together with demurrage/despatch if any payable to be settled after completion of discharge and receipt and agreement of owners lay time calculations and supporting documents, otherwise as per C/P. Freight discountless and non-returnable, ship and/or cargo lost or not lost, and freight deemed earned upon loading.





ADDITIONAL CLAUSES TO THE MV "D'AMICO TBN"  
DATED DECEMBER 6, 2016

Charterers' option to issue 'freight pre-paid' bill(s) of lading, then same to be released only after 100% freight received in Owner's bank account.

If original bill(s) of lading do not arrive disport in time for vessel's arrival, Owners agree to release cargo without presentation of original bill(s) of lading against Charterers issuing owners' standard P & I club L.O.I, same to be signed by Charterers.

Charterers have option to place one original bill of lading onboard at load port for delivery to Charterers/receivers or their representative, on vessel's arrival at discharge port against which cargo is to be released, provided the appropriate P & I recommended wording is included in the bill(s) of lading this to be subject to Owner's/master's approval.

All bill(s) of lading to report following wording:

"One original bill of lading retained on board against which bill delivery of cargo may properly be made on instructions received from Shippers/Charterers"

18.

Due to environmental protection and regulations, loading is performed via cement holes in hatches and owners to nominate performing vessels fitted with a minimum of three - 600mm feed/trim openings on each hatch to be loaded.

Openings should ideally, but without guarantee set diagonally, with one at the center and one each to forward left or right and aft left or right. The actual size and location to be confirmed by charterer's latest September 01, 2017.

In the case the vessel nominated for loading is fitted with permanent cement holes, the shipper shall review and consider their compatibility for loading well in advance.

Once the dimensions of the cement holes are provided by Charterers, Owners will arrange for specifications to be met under Class supervision. This is in case the pre-existing cement holes do not meet Charterers requirement. Any time lost in cutting/welding/rewelding which to be done as per vessels class instructions of said holes and waiting for class survey of the vessel (if required) shall not count as laytime or time on demurrage. Class survey fees and all expenses for above shall be for ship-owner's account.

Owners to submit loading plan to Charterers before commencement of loading.

Any trimming or leveling of the cargo required by each vessel shall be for the Owners account and time so used shall not count as laytime or time on demurrage.

At discharging ports, the cost of first opening and last closing of vessel's hatches shall be for Owners' account, and time so used shall not count as laytime or time on demurrage. Provided cargo documents are presented on board within 2 hours of completion of final draft survey, time shall cease to count on completion of final draft survey.



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**19.**

**Loading Terms:**

Vessel's notice of readiness ("N.O.R.") to load shall be tendered by cable, fax or e-mail at the office of the shipper or their agents any time day, night, Sundays, Holidays included on all days, Sundays, holidays included (but excluding super holidays).

Only if loading berth is occupied, master may warrant that the vessel is in all respects ready to load and may tender the N.O.R. to load from any usual waiting place, whether in port or not (WIPON), whether in berth or not (WIBON), whether in free pratique or not (WIFPON), whether in custom clearance or not (WICCON).

Load rate: 20,000 metric tons per weather working day, both basis (24 consecutive hours), Sundays, Holidays included load (except for super 'holidays' which not to count unless used in which case actual time used to count).

At load port, laytime to commence 12 hours after tendering valid nor unless soonest commenced which case APTUTC (actual prior time used to count).

**Discharging terms:**

Vessel's notice of readiness ("N.O.R.") to discharge shall be tendered by cable, fax or e-mail at the office of the shipper or their agents any time day, night, Sundays, Holidays included on all days, Sundays, holidays included (but excluding super holidays).

Only if the discharging berth is occupied, master may warrant that the vessel is in all respects ready to discharge and may tender the N.O.R. To discharge from any usual waiting place, whether in port or not (WIPON), whether in berth or not (WIBON), whether in free pratique or not (WIFPON), whether in custom clearance or not (WICCON).

Discharge: 10,000 metric tons per weather working day, both basis (24 consecutive hours), Sundays, Holidays included discharge using Van Aalst or other pneumatic/suction based cement discharge equipment (except for super 'holidays' which not to count unless used in which case actual time used to count).

Vessel to be left in a shovel/pneumatic clean condition on completion of discharge.

At discharge port, laytime to commence 12 hours after tendering valid nor unless soonest commenced which case APTUTC (actual prior time used to count).

Laytime non-reversible, super holidays excepted.

If free pratique is rescinded once the vessel is alongside due to Owner's negligence or crew sickness/illness, then laytime to cease until the matter is rectified.

If by reasons of nature (bad weather, hurricanes, swell, etc.) the vessel cannot enter and/or leave the port and/or has to wait in order to proceed her voyage, than all such time lost to count as half time unless vessel is already on demurrage in which case full time to count.



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Intermediate draft surveys shall not be performed unless specifically requested and time used therefore shall be for the account of the requesting party.

After the first voyage vessel is to present Notice of Readiness with shovel/pneumatic clean, dry holds and free of any foreign material suitable for the carriage of the designated cargo accompanied by certificate issued by Charterer's independent surveyor certifying same. Cost of certificate and surveyor's fee to be evenly split between Owners and Charterers.

At Discharge port Receivers will shovel/pneumatic clean vessel's tanktops, bulkheads and sides, which can be reached by hand or by manlift. Any sweep clean conditions will be the sole responsibility of the ship's crew. For clarification purposes charterers can advise that receivers will perform the shovel cleaning and thereafter the sweeping shall be performed by vessel's crew provided local regulations permit. Owner's option to employ shore personnel at their time and expense.

At all times and at Charterer's / Receiver's request. Owners are responsible for providing, free of charge, qualified crane operators to operate vessel's safe cranes at rated capacities, in order to assist lifting payloaders on/off vessel provided local regulations permit otherwise same to be carried out by shippers/receiver's stevedores.

Ship crew will prepare for immediate ballasting conditions upon arrival to allow for optimum and expeditious discharging conditions.

Ship's crew must inform Receivers prior to any ship discharging about any tanktop obstructions or protrusions that would damage ship unloading equipment.

**20. Quantity/Cargo Lots**

One/Two grades of Bulk Cement to be loaded for each lifting. In case of two grades, cargo split to be arranged in order to ensure maximum cargo intake.

Firm period consisting of consecutive voyages starting from February 15th, 2018 up to and including December 31st, 2021.

Year 1

=====

Feb 15th, 2018 up to and including December 31st, 2018

- Owners will proceed each voyage with utmost dispatch. Cargoes are moved on a consecutive round voyage basis with an estimated total voyages during this contract period of minimum 20 and maximum 26 voyages, all going well and subject to unforeseen circumstances beyond the control of Owners

- Shipment size 31,500 metric tons up to max 34,000 metric tons cement in Owners' option.



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Year 2

=====

Jan 01st, 2019 up to and including December 31st, 2019

- Owners will proceed each voyage with utmost dispatch. Cargoes are moved on a consecutive round voyage basis with an estimated total voyages during this contract period of minimum 20 and maximum 30 voyages, all going well and subject to unforeseen circumstances beyond the control of Owners
- Shipment size 31,500 metric tons up to max 34,000 metric tons cement in Owners' option.

Year 3

=====

Jan 01st, 2020 up to and including December 31st, 2020

- Owners will proceed each voyage with utmost dispatch. Cargoes are moved on a consecutive round voyage basis with an estimated total voyages during this contract period of minimum 20 and maximum 30 voyages, all going well and subject to unforeseen circumstances beyond the control of Owners
- Shipment size 31,500 metric tons up to max 34,000 metric tons cement in Owners' option.

Year 4

=====

Jan 01st, 2021 up to and including December 31st, 2021

- Owners will proceed each voyage with utmost dispatch. Cargoes are moved on a consecutive round voyage basis with an estimated total voyages during this contract period of minimum 20 and maximum 30 voyages, all going well and subject to unforeseen circumstances beyond the control of Owners
- Shipment size 31,500 metric tons up to max 34,000 metric tons cement in Owners' option.

Shifting time from anchorage to load berth not to count as laytime or turntime or time on demurrage.

Twelve (12) hours turn time both ends, unless sooner commenced in which case prior time used to count.

**Load:**

One (1) safe berth SB Port Daniel, 40.0 ft. saltwater arrival draft  
20,000 metric tons per weather working days Sundays and holidays included.  
D/A's are capped at maximum USD 30,000

**Discharge:**

One (1) safe berth New Oak Point, McInnis Cement Berth, New York, 34.5 ft. brackish water arrival draft  
10,000 metric tons per weather working day Sundays and holidays included.  
Inbound voyage via East River and Outbound voyage via Long island sound.  
D/A's are capped at maximum USD 55,000.



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Charterer's option

One (1) safe berth Providence, 40.0 ft. brackish water arrival draft  
10,000 metric tons per weather working day Sundays and holidays included.  
D/A's are capped at maximum USD 67,500.

Shifting time from anchorage to load/discharge berth not to count as laytime or turn time or time on demurrage bends.

Stevedores/Charterers to operate pneumatic barge mounted gantry to unload.

At New York, gantry will be moored and shift behind the main mooring facility of vessel.

At Providence, gantry will be breasted between the vessel and the dock, requiring the vessel to loosen her lines to shift the unloading barge. The crew will provide line handling when warping alongside the barge mounted gantry provided local port regulations permit. Charterers are to provide adequate fenders between the vessel and barge mounted gantry.

Unloading will be handled by a barge mounted pneumatic unloader which utilizes an articulated suction arm designed to unload dry bulk cement. The arm has the ability to move into and out of the ship's hold as the barge is repositioned from hold to hold. The unloader connects to a single transport pipe on the shore side of the ship's mooring facility. The unloader is self-powered and will be operated by Charterer's crew. Cement then is transported to the shore side storage facility.

Owners to satisfy themselves of port restrictions at load/discharge ports.

Super holidays in all ports mentioned always to be excluded unless used, in which case time actually used to count.

During the winter months (Jan to March), Charterers have the option to request the vessel to perform the voyages with eco speed. This is always subject to the vessels ability to comply with their request.

21.

Charterers are to pay demurrage at the rate of:

2018: USD 11,500 per day pro rata both ends/half dispatch laytime saved both ends.

2019: USD 11,750 per day pro rata both ends/half dispatch laytime saved both ends.

2020: USD 12,000 per day pro rata both ends/half dispatch laytime saved both ends.

2021: USD 12,250 per day pro rata both ends/half dispatch laytime saved both ends.

Laytime is nonreversible between the load and discharge ports.

Time lost in shifting from waiting place to berth shall not count as laytime or time on demurrage bends.





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Time used for opening and closing of vessel's hatches shall not count as laytime bends. If loading operation is suspended due to vessel's ballasting or de-ballasting or for reasons of trimming or listing, such time not to count as laytime or time on demurrage bends.

In case the vessel is asked to call additional ports where grab discharge is necessary, the following clause to apply:

Any time lost due to vessel's crane breakdown which suspends discharging shall not count as laytime or time on demurrage. Time will count pro-rata to the number of vessels holds affected.

Any time for warping shall be for owners account. This will not be done by vessels crew due to union regulations. Any stoppages requested in writing by the vessel shall not count as loading time or time on demurrage. Owners will endeavor to limit the number of warpings in Providence.

**22.**

Vessel is to supply free the use of lights as on board which shall be sufficient to carry on night work at all hatches, if required.

At loading and discharging ports, vessel is to give free the use of all vessel's cargo handling gear and sufficient power to operate all the gear simultaneously as required.

If vessels cargo gear, ha covers, mooring winches, etc. are found not to be in good working condition at either load or discharging port, Owners to be responsible for any directly related expenses and delays incurred, including stevedore standby time up to maximum 1 shift, due to failure of same. In the event of gears breakdown for more than 24 consecutive working hours Charterers shall have the option to hire shore crane(s) at Owners expense, if available provided shore regulations permit.

Gear to be operated by the crew of the vessel or shore crew in Charterers' option. Shore crew to be paid and hired by shippers/receivers.

**23.**

Overtime is subject to the following conditions:

A) if ordered by the Owners, all overtime for stevedore labor, crane operators and shore personnel necessary for the operation of loading and/or discharging and placing and/or taking away cargo from alongside the vessel shall be for Owners' account.

B) If ordered by the Charterers, all overtime outlined in paragraph (A) above shall be for Charterers' account.

C) All Officers and crew overtime is to be for Owners' account regardless of who orders the overtime.

D) If owners elect to work overtime, Charterers shall have the option to refuse if the shore labor or stevedores decline to work for any reason beyond the control of the Charterers.

E) If ordered by the port or terminal authorities or other competent authority, all overtime expenses shall be for the Charterers' account.



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**24.**

It is understood owners are responsible to pay for usual/ customary port charges/expenses/vessel's disbursements, as well as ship's husbandry matters. Any extra expenses incurred above the agreed Capped D/A rates to be for Charterers account. Husbandry matters/owner expenses always to be for Owners account.

**25.**

The Master and/or Owners shall give daily notice of E.T.A. at loading/discharge port to the port agents/brokers who will then pass same on to Charterer's and also advise of any changes in E.T.A.

Immediately on sailing from the loading port, the Master and/or Owners shall cable/telex the port Agents at the discharging port each vessel's sailing date/sailing time/quantity of cargo loaded/vessel's E.T.A. at the discharging port.

The Master and/or Owners shall also give the above parties 48/36/24/12 (forty-eight/thirty-six/twenty-four/twelve) hours' notice of E.T.A. at the discharging port and also advise of any change in E.T.A.

Charterers agents at load/discharge – Owners have right to appoint protective agents.

Agents at loadport – MCA

Agents at discharge port - reverting

**26.**

Owners are to arrange payments of estimated disbursements at loading and discharging ports in advance.

**27. Vessel Nomination**

Performing vessel: D'AMICO TBN

A single vessel will be used to perform the contract on a consecutive voyage basis. Upon completion of discharge and cargo knockdown of each voyage, the vessel will ballast directly to the load port and the next voyage will commence in direct continuation. The master will advise/provide daily ETA's to the load port of Port Daniel as it is customary. Charterers will provide Owners with a schedule advising the discharge port schedule for a minimum of 3 voyages. Owners will have the option to replace the dedicated vessel with another vessel at any time under the contract. Owners will also be allowed to take time out of the schedule to clean the vessel in mutual agreement with the Charterers. Charterers prefer this to be carried out during the winter months. This will be done at Owners' time and expense. There is a chance owners will want to clean 1 or 2 more times during the year as well. Owners to give a 60 day notice to the Charterers prior to carrying out the cleaning operations.



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The owners to endeavor to complete the necessary knockdown of holds after discharge with utmost dispatch as the situation allows, weather permitting in order to provide a fast turnaround time at their time and expense.

Charterers to provide Owners with the following notices for the intended start date of this contract. 180 / 90 approximate notice with an intended 15 day laycan. Charterers to confirm a definite 15 day window latest 70 days prior to the commencement of laycan. Preliminary planned laycan is 15 February 2018 / 01 March 2018.

Owners to nominate the performing vessel latest 15 days before the first lay day along with the cargo intake quantity and pre stow plan.

Same subject to shippers/ Charterers /receivers approvals latest within 24 hours Saturday, Sundays and holidays exempted after receiving same within office hours (09:00-18:00) SATSHEX in Stamford and Montreal, same not to be unreasonably withheld.

On nomination, charterers to provide:

- full description
- hatch sizes and number of same and holds
- hatch type
- class/P&I club
- number of hatches and holds:
- last three cargoes
- last three port calls
- intended cargo intake and stow plan
- present position and eta loading port
- vessel's declared cargo intake
- location of cement holes and diagram/drawing of same on vessels hatches
- owners to advise full ownership chain of performing vessel on nomination
- all trading certificates for the vessel

Performing vessel to be/have:

- max 183 m loa
- max 30 m beam
- max 20 yrs.
- geared with minimum 4 x 30 mt cranes, same to service all holds where cargo is stowed, each crane serving all hatches simultaneously and independently. Owners warrant that vsls SWL can maintain this lifting capacity.
- classed highest Lloyds or equivalent by a member of the IACS for entirety of voyage.
- fully ism and P&I covered for the duration of the voyage.
- P&I club intl group members only.
- no centerline beam/bulkheads/fittings/obstructions in holds.
- suitable in all respects for all load and discharge ports.
- suitable for pneumatic/siwertell discharge in Providence and NY. If needed, the vessel will also be capable of using shore grabs attached to vessels cranes for discharge at additional ports if needed. Same not to be unreasonably withheld and will be computed on a round voyage basis.
- no twin hatches.
- vessel has Macgregor type or similar folding fore and aft hatch covers.





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-vessel to be fully ITF or equivalent.

- owners confirm that the vessel is not entered on the USCG list dues to vessel, flag, ownership, classification, vessels boarding history, outstanding items noted during previous USCG inspections or due to any cause whatsoever arising from the terms/conditions of U.S. homeland security rules/regulations/legislation. In case the is detained by any competent us authority due to the Aforementioned causes or any new incidents involving competent U.S authorities, owners are to be responsible for any/all expenses involved, and if the vessel is prevented from carrying out Loading/Discharging operations or from entering/leaving port(s) then time not to count.

- BIMCO ISPS clause to apply and deemed incorporated in the c/p.
- The vs1 to have in possession all necessary certificates for hull, machinery, equipment, class and all necessary trading certificates for the duration of this voyage.
- Owners will endeavor to nominate a box shaped vessel.
- Owners confirm vessels ballasting/deballasting speeds are sufficient to maintain load/discharge rates as agreed below.

In loading and discharging ports Owners shall, without cost to Charterers, ensure that vessel provides lights as onboard for night work.

Owners shall ensure that due caution is exercised to protect the cargo from rain and /or snow during loading and discharging.

28.  
Deleted

29.  
Any extra insurance on cargo due to vessel's age and/or flag and/or class and/or Ownership is to be for Owners' account; such insurance shall be covered by Charterers for Owners' account and shall be deducted from the freight. However Charterers confirm no extra insurance on this cargo for vessels under 20 years of age.

30.  
Claims for any stevedore damage under this Charter Party are to be settled directly between the Owners and the Stevedores. The Master to notify the parties who caused the damage in writing as soon as possible after the occurrence but not later than 24 hours after time of vessel's sailing from the port where the alleged damage occurred but Charterers shall not be liable for any stevedore damage claim between Owners and stevedores.

Charterers to assist Owners, if possible, to settle claims between Owners and Stevedores.



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**31.**

The Both-to-Blame Collision Clause, Chamber of Shipping War Risk Clauses Nos. 1 and 2, P&I Bunkering Clause, New Jason Clause and the Water Pollution Clause, as attached hereto, are to be considered as part of this Charter Party.

**32.**

With respect to the shipment, carriage and discharge of the cargo, whether or not a Bill of Lading or similar document of title is issued or regulates the relations between the carrier and holder of same, this Charter Party shall have the effect subject to the provisions of any legislation incorporating the Rules contained in the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading dated Brussels, August 24th, 1924 (The Hague Rules) or those Rules as amended by the Protocol signed at Brussels, February 23rd, 1968 (the Hague Visby Rules) and which is compulsorily applicable to the contract of carriage contained therein. If no such legislation is compulsorily applicable, The Hague Rules or, if applicable, The Hague Visby Rules as enacted in the country of the port of loading shall apply. When no such enactment is in force in the country of the port of loading, the corresponding legislation of the country of the port of discharge shall apply and in the absence of any such legislation, the terms of the 1924 Convention, as amended by the 1968 Protocol shall apply.

**33.**

All Bills of Lading issued in pursuance of this Charter Party shall contain the following clause:  
"Subject to all terms, provisions, exceptions, including the arbitration clause of the Charter Party dated November 8th, 2012 and the General Clause Paramount (1982) attached thereto."

**34. Force Majeure Clause**

Neither the vessel, her Master or Owners, nor the Charterers or Receivers shall be responsible for loss of or damage or delay to or failure to supply, load, discharge or deliver the cargo arising or resulting from: Acts of God, Act of War, Act of public enemies, pirates or assaulting thieves, arrest or restraint of princes, rulers or people; seizure under legal process, provided bond is promptly furnished to release the vessel or cargo; floods; fires; blockages; riots; insurrections; Civil Commotions; earthquakes; explosions; preferences granted to or at the request of any government or agency thereof; failure of supply; curtailments/power supply due to a blackout at discharge or any other contingencies whatsoever beyond their control.

**35. Arbitration Clause**

All disputes arising out of this contract or under the Bill of Lading issued shall be arbitrated at New York in the following manner; and be subjected to New York Law; one arbitrator is to be appointed by each of the parties hereto and a third by the two so chosen. Their decision or that of any two of them shall be final and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The arbitrators shall be commercial shipping men. Such arbitration is to be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.



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For disputes where the total amount claimed by either party does not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000) U.S. Currency, or amount as mutually agreed, the arbitration may be conducted in accordance with the Simplified Arbitration Procedure of the Society of Maritime Arbitrators. Inc. if so desired by both parties.

**36.**

Full tonnage is entered and will remain entered during the currency of the Charter Party with a recognized P&I Club with respect to full P&I coverage.

**37. Trim Clause**

Vessel will not be accepted at the loading port if the vessel's trim exceeds her Trim Correction Table. Upon berthing at the loading port all full ballast tanks are to be stripped, unless otherwise agreed elsewhere in this Charter Party. The vessel is not to fill, empty or transfer to tank or any other compartments, any fresh water, ballast or bunkers while surveyors are taking draft readings and/or tank soundings.

Vessel will present a certified calibration scale for all tanks, including fore and aft peak tanks, double-bottom tanks, deep tanks and wing tanks. Plimsoll marks, draft marks forward, aft and amidships on both sides of the vessel are to be clearly cut and marked on shell plating. Each vessel is to furnish a Capacity Plan and Displacement Scale and same are to be certified by the Master as to their accuracy at the time of loading.

Any extra costs incurred and/or time lost by the vessel's failure to comply with this clause shall be for the Owners' account.

The Master or his authorized representative is to present to the dockmaster and the Charterers' Agents at the loading port a loading plan by compartment and on completion of loading a calculation of the vessel's salt water arrival draft at the next discharging port based on estimated bunker and water consumption and anticipated ballast changes for trim purposes.

**38. Winter Navigation Clause**

Owners are aware that this contract involves the breach of INL and from time to time in winter conditions. The performing vessel is required to follow standard operating procedures for cold weather and ice navigation.

Vessel shall not force ice but shall follow icebreakers/ice tugs through broken ice only. Owners to provide the vessel the services of an ice advisor if required by the master. The ship will receive on board in due time ice and weather charts and forecasts according to the ships' itineraries and before ship enters waters where ice can be a problem.

Owners to ensure that the vessel is prepared for trading in cold weather - hydraulics/ fire lines/ballast water etc. including sufficient clothing for the crew.

The Master and Owners must consider all available information and expertise, including that of the ice advisor or competent local authority and McInnis operations' staff when considering if it is dangerous for the vessel to remain or access the loading port. Master to retain final discretion regarding the safety of the vessel, crew and cargo. If after Owners have done their due



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diligence, it is determined that the vessel in question is unable to access/continue loading at Port Daniel, due to danger of the Vessel being frozen in, and provided that the Master or Owners immediately notify the Charterers thereof, the Vessel may leave with cargo loaded on board or in fully loaded/ballast condition and proceed to the nearest safe and ice free place at sea/port and wait for the loading port to be ice free.

Any delay or deviation caused by or resulting from the port not being accessible for the account of ice shall be for the Charterers' account and time to count.

Any additional H&M insurance premium for transiting in ice to be for the Owners account.

**39.**

Charterers have the right to conduct a hose test or ultrasonic test to check the integrity of the vessel's hatches prior to commencement of loading the cargo for the first voyage. Charterers have the right to conduct a hose test or ultrasonic test during the consecutive voyages if there is evidence that the integrity of the hatch covers have been compromised and water ingress is taking place in a hold or holds. Owners are to ensure that proper maintenance is being conducted to ensure the hatch covers remain weather tight. Owners have the option to apply, Ramneck tape to a specific hatch or all of the hatches if necessary at their expense.

**40. BIMCO ISPS Clause for Voyage Charter Parties**

(a) (i) From the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) in relation to the Vessel, the Owners shall procure that both the Vessel and "the Company" (as defined by the ISPS Code) shall comply with the requirements of the ISPS Code relating to the Vessel and "the Company". Upon request the Owners shall provide a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) to the Charterers. The Owners shall provide the Charterers with the full style contact details of the Company Security Officer (CSO).

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense or delay, excluding consequential loss, caused by failure on the part of the Owners or "the Company" to comply with the requirements of the ISPS Code or this Clause shall be for the Owners' account.

(b) (i) The Charterers shall provide the CSO and the Ship Security Officer (SSO)/Master with their full style contact details and any other information the Owners require to comply with the ISPS Code.

(ii) Except as otherwise provided in this Charter Party, loss, damage, expense, excluding consequential loss, caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account and any delay caused by such failure shall be compensated at the demurrage rate.

(c) Provided that the delay is not caused by the Owners' failure to comply with their obligations under the ISPS Code, the following shall apply:

(i) Notwithstanding anything to the contrary provided in this Charter Party, the Vessel shall be entitled to tender Notice of Readiness even if not cleared due to applicable security regulations





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or measures imposed by a port facility or any relevant authority under the ISPS Code.

(ii) Any delay resulting from measures imposed by a port facility or by any relevant authority under the ISPS Code shall count as laytime or time on demurrage if the Vessel is on laytime or demurrage. If the delay occurs before laytime has started or after laytime or time on demurrage has ceased to count, it shall be compensated by the Charterers at the demurrage rate.

(d) Notwithstanding anything to the contrary provided in this Charter Party, any additional costs or expenses whatsoever solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be for the Charterers' account, unless such costs or expenses result solely from the Owners' negligence. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

(e) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.

41.  
Any taxes/dues on cargo to be for shippers/receivers/Charterers' account.

Any taxes/dues/wharfage/dockage/on vessel to be for Owners' account, including any war premiums, if applicable.

42.  
This trade, negotiations and fixture to be kept strictly private and confidential.

43.  
Consent and Acknowledgment Agreement as attached to be part of the Charter Party.

44.  
On arrival at load port, for the first voyage only of this consecutive COA, the ship-owner shall warrant that the vessel has all cargo spaces, including undersides of holds and undersides of hatch covers, clean and dry, free from loose rust scale and suitable to receive the cargo. Should the vessel fail the holds inspection performed by an independent surveyor after nor is tendered, then the ship-owner will clean the holds to the satisfaction of the independent surveyor and they will bear the costs/time/expenses related to same.

In the event that the nor is rejected in accordance with the above paragraph, the owner will bear the direct costs of the all subsequent independent surveys and time lost after the discovery thereof until the vessel is again ready to load shall not count as laytime or time on demurrage.

Unless otherwise agreed, nor cannot be tendered before the confirmed laycan. If the nor is tendered before the laycan time will then start to count at 08h00 on the first layday, unless used



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in which case actual time used to count. Laytime shall cease to count when the loading of the cargo has been completed.

**45.** Performing vessel(s) always to be in conformity with applicable United States law, including restrictions imposed by the U.S. Treasury Department, Office of Foreign Assets Control (OFAC) and the U.S. Commerce Department, Bureau of Industry and Security (BIS) and United Nations proclamations prohibiting certain flag/ownership/management from participating in trade covered by this charter. Owners responsible for all cost/consequences if in violation of this warranty. Charterers also confirm that they are in full compliance with this clause.

**46.** In the event the vessel/ cargo is liened or arrested during the currency of this charter party (or after completion of discharge in respect of the cargo) the owners are to take immediate action to release vessel/cargo from any such lien or arrest and to remain fully responsible. Charterers will not be held responsible for any costs associated with the lien / arrest that has been attached to the ship and will be held harmless. If the arrest/lien lasts more than 30 days the owners to promptly replace the vessel with a similar substitute vessel.

**47.** Freight beneficiary of this charter party: if freight beneficiary is different than the owners/disponent owners of the vessel, then "written declaration/no objection letter" from head owners/disponent owners to be asked for charterers paying the freight to the nominated "freight beneficiary" in accordance with OFAC clause which is as incorporated in the charter Party.

**P & I Bunker Deviation Clause, 1948**

The vessel in addition to all other liberties shall have liberty as part of the contract voyage and at any stage thereof to proceed to any ports or port whatsoever whether such ports are on or off the direct and/or customary route or routes to the ports of loading or discharge named in this Charter and there take oil bunkers in any quantity in the discretion of Owners even to the full capacity of fuel tanks, deep tanks, and any other compartment in which oil can be carried whether such amount is or is not required for the Chartered voyage.

**War Risk Clause**

1. No bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the Owner shall discharge the cargo at any other port covered by the Charter Party as ordered by the Charterers (Provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.



ADDITIONAL CLAUSES TO THE MV "D'AMICO TBN"  
DATED DECEMBER 6, 2016

2. The ship shall have liberty to comply with any orders or directions as to departure, arrival routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risk Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions, shall be fulfillment of the contract voyage and the freight shall be payable accordingly.

**Water Pollution Clause**

Notwithstanding any terms or conditions stated elsewhere in this Charter Party, it is warranted that during the currency of this Charter the Owners will comply fully with the United States Oil Pollution Act of 1990, the Federal Water Pollution Control Act and the Comprehensive Environmental Response and Liability Act as amended and any subsequent amendments to these Acts, any rules and/or regulations issued thereunder any federal or state legislation enacted with respect to oil pollution (such expression to include any rules and/or regulations issued thereunder) by any Government Department Agency thereof or other authority, the Australian Protection of the Sea (Prevention of Pollution from Ships) Act 1983 and the amendments thereto, also the International Convention on civil Liability for Oil Pollution Damage 1969 and the amendments thereto. Owners will also comply fully with all other local applicable rules and regulations relating to water pollution as dictated by the voyage. Should any delay to the vessel occur from Owners' failure to comply with the said acts, rules, regulations or oil pollution legislation, laytime will cease for the time lost thereby. The Owners hereby agree to pay all extra expenses and to indemnify the Charterers against all claims and liabilities (including legal costs) they incur under the Bills of Lading arising from the Owners' failure to comply with the said acts, rules, regulations or oil pollution legislation.

If the adjustment of General Average or the liability for any collision in which the vessel is involved while performing the carriage under this Bill of Lading fails to be determined in accordance with the law and practice of the United States of America, the following clauses shall apply:

**New Jason Clause**

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods, shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.



**Both-To-Blame Collision Clause**

"If the Ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of Master, mariner, pilot, or the servants of the Carrier in the navigation or in the management of the ship, the Owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other non-carrying ship or her Owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the Owners of said goods, paid or payable by the other or non-carrying ship or her Owners to the Owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her Owners as part of their claim against the carrying ship or Carrier"

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision to, the colliding ships or objects are at fault in respect to a collision or contract.

**General Clause Paramount (1982)**

With respect to the shipment, carriage and discharge of the cargo, whether or not this Bill of Lading regulates the relations between the carrier and holder of same, this Bill of Lading shall have effect subject to the provisions of any legislation incorporating the rules contained in the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading dated Brussels, 25th August, 1924, (The Hague Rules) or those Rules as amended by the Protocol signed at Brussels, February 23rd, 1968 (The Hague Visby Rules) and which is compulsorily applicable to the contract of carriage contained herein. If no such legislation is compulsorily applicable, The Hague Rules or, if applicable, the Hague Visby Rules as enacted in the country of the port of loading shall apply. When no such enactment is in force in the country of the port of loading, the corresponding legislation of the country of the port of discharge shall apply and in the absence of any such legislation, the terms of the 1924 convention as amended by the 1968 Protocol shall apply.

**U.S. Customs Advance Notification/AMS Clause for Voyage Charter Parties**

- (a) If the Vessel loads or carries cargo destined for the US or passing through US ports in transit, the Owners shall comply with the current US Customs regulations (19 CFR 4.7) or any subsequent amendments thereto and shall undertake the role of carrier for the purposes of such regulations and shall, in their own name, time and expense:
  - i) Have in place a SCAC (Standard Carrier Alpha Code);
  - ii) Have in place an ICB (International Carrier Bond); and
  - iii) Submit a cargo declaration by AMS (Automated Manifest System) to the US Customs.

- (b) The Charterers shall provide all necessary information to the Owners and/or their agents to enable the Owners to submit a timely and accurate cargo declaration.  
The Charterers shall assume liability for and shall indemnify, defend and hold harmless the Owners against any loss and/or damage whatsoever (including consequential loss and/or damage) and/or any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Charterers' failure to comply with any of the provisions of this sub-clause. Should such failure result in any delay then, notwithstanding





ADDITIONAL CLAUSES TO THE MV "D'AMICO TBN"  
DATED DECEMBER 6, 2016

any provision in this Charter Party to the contrary, all time used or lost shall count as laytime or, if the Vessel is already on demurrage, time on demurrage.

(c) The Owners shall assume liability for and shall indemnify, defend and hold harmless the Charterers against any loss and/or damage whatsoever (including consequential loss and/or damage) and any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Owners' failure to comply with any of the provisions of sub-clause (a). Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, all time used or lost shall not count as laytime or, if the Vessel is already on demurrage, time on demurrage.

(d) The assumption of the role of carrier by the Owners pursuant to this Clause and for the purpose of the US Customs Regulations (19 CFR 4.7) shall be without prejudice to the identity of carrier under any bill of lading, other contract, law or regulation.

OWNERS:

CHARTERERS:

**EXHIBIT 2**



17 April 2020

d'Amico Shipping USA Ltd.  
One Atlantic Street  
6<sup>th</sup> Floor  
Stamford, CT 06901

**M/V Cielo di Gaspesie – Notice of *Force Majeure* Event**

Re: Charter Party dated 10 February 2017

Dear AJ,

We refer to the charter party dated 10 February 2017 (the “Charter”) between McInnis Cement Inc. (“Charterers”) and D’Amico Dry D.A.C. (“Owners”). Due to the extraordinary and unprecedented conditions due to the COVID-19 currently existing in the Northeastern United States (and indeed globally), we are compelled to declare the performance of the Charter suspended based on a *force majeure* event. In accordance with Clause 34 of the Charter, Charterers hereby declare the occurrence of an event of *force majeure*, which excuses our performance while the effects of this event are continuing.

As you know, M/V Cielo di Gaspesie (the “Vessel”) is presently at the discharge port nominated under the Charter. Upon completion of cargo operations at the McInnis Bronx Terminal, because of the *force majeure* event, we are constrained from issuing new voyage instructions. Please advise the Master of the Vessel of our decision.

From an operations perspective, please note that this is not the only aspect of our operations impacted by COVID 19. Our Cement Plant at Port Daniels is to set to close and halt production as of May 1, 2020.

Furthermore, given that we are working on the basis of this Charter wherein the intention is to perform consecutive trips between our load port and two specific discharge ports, and given the impact of COVID 19 on our Cement Plant and port operations, we find ourselves in a position where we simply cannot continue to employ the Vessel.

The above being said, we believe that we have acted in good faith to prolong the operation of the Vessel and in doing so, to assist in mitigating the potential impacts associated with this *force majeure*. For example, the current voyage will require about 30 days to complete discharge operations, whereas our average discharge period is about 10 days. While we have tried to keep the Vessel employed under the Charter as long as possible, we have no choice but to suspend operations due to the impact of COVID 19 on our operations.


Our decision to invoke Clause 34 has been carefully considered and has not been made in haste. Rather, significant resources have been dedicated to forecasting demand and supply requirements for the both the immediate and short term. In parallel, we have sought out opportunities to utilize the Vessel in other trades, including deliveries to US East Coast terminals operated by organizations other than McInnis. Unfortunately, said opportunities did not materialize.

The fluid nature of measures taken to curb COVID 19 unfortunately prevents McInnis from providing a definitive timeline as to when the Vessel could return to the McInnis trade. This being said, our current analysis indicates that the period of *force majeure* suspension of the Charter could continue at least until September of this year. Consequently, we would ask both parties to maintain regular communications about the employment of the Vessel.

We will provide updates regarding this situation as we become aware of material changes to the situation and appreciate Owners undertaking its own due diligence efforts to mitigate any losses or damages, including seeking alternate business, that may occur as a result of this declaration of *force majeure*.

I am available to discuss at your earliest convenience.

Best regards,



Jared Gardner  
Director, Transport & Logistics,  
McInnis Cement



**EXHIBIT 3**

200 PARK AVENUE, SUITE 1700  
NEW YORK, NY 10166  
212-354-0025  
FAX: 212-869-0067

TL@TISDALE-LAW.COM

# TISDALE LAW OFFICES, LLC

*New York, N.Y. - Southport, CT*

10 SPRUCE STREET  
SOUTHPORT, CT 06890  
203-254-8474  
FAX: 203-254-1641

WWW.TISDALE-LAW.COM

April 29, 2020

Vincent Foley, Esq.  
Holland & Knight  
31 West 52<sup>nd</sup> Street  
New York, NY 10019

**Re: M/V CIELO DI GASPESIE  
C/P dated 10 February 2017– Notice of *Force Majeure*  
TLO File No.: 2864**

Dear Mr. Foley:

We acknowledge, with thanks, your letter of April 24, 2020 on behalf of McInnis Cement Inc. (“McInnis” or “Charterers”) with respect to the above cited charter party with d’Amico Dry d.a.c. (“d’Amico” or “Owners”). This letter serves as a reiteration of d’Amico’s rejection of Charterers’ *force majeure* declaration. It also serves as Owners’ demand for expedited arbitration of this dispute with McInnis. Finally, let it serve as a request for documents which are relevant to Charterers’ declaration as well as a request to physically inspect McInnis’ facilities.

Whatever problems are proximately causing Charterers’ inability to perform their obligations under this COA, they are unrelated to the present COVID-19 pandemic. The charter party provides that between February 15 and December 31, 2018, Charterers were to provide between 31,500 and 34,000 metric tons of cement to be carried on a minimum of 20 and a maximum of 26 voyages, each roundtrip voyage taking 15 days. From January 1, 2019 through to the end of the charter on December 31, 2021, Charterers were to provide between 31,500 to 34,000 metric tons of cement for a minimum of 20 voyages and a maximum of 30 voyages per year for each year. In the first two years of this nearly four year contract, Charterers have never met their performance obligations. Despite the fact that a minimum of 43 voyages should have been performed by now, only 26 voyages have taken place. Of those 26 voyages, only five have been performed without substantial deadfreight being owed. Eighteen of the 26 voyages took 25 days or more to complete. Although 2020 has seen only 3 voyages, these voyages have taken less than the average of 29 days to complete and have involved less deadfreight than the prior years. Corona Virus has caused no change in the Charterers’ employment of the CIELO DI GASPESIE.



Instead of having the CIELO DI GASPESIE loading and discharging at the regular intervals contemplated in the d'Amico charter, McInnis has recently chartered in extra tonnage to perform additional voyages, thereby creating the over-supply conditions on which Charterers base their *force majeure* declaration. For instance, we understand that Charterers have been employing the 20,300 dwt pneumatic vessel GLORY RIVER which has been trading to Providence. We also understand that Charterers are employing the 23,800 dwt pneumatic vessel, NACC NEW YORKER, commencing in mid-June for a period in excess of one-year to perform voyages from Port Daniels to, among other ports, the Bronx and Providence. And, although the d'Amico charter provides for discharge in Providence, we understand that Charterers have already removed the resting barge RESOLUTE from the Providence terminal which is necessary for the discharge of the CIELO DI GASPESIE, but which is not needed to discharge the NACC NEW YORKER. We fail to understand how McInnis can declare a *force majeure* event as they have with regard to the CIELO DI GASPESIE yet not made a similar declaration with regard to the NACC NEW YORKER.

We do not believe that the *force majeure* clause affords Charterers the right to suspend the contract under these circumstances. Moreover, even if Charterers can establish that their business has been frustrated because of the lack of demand for cement caused by COVID-19, we do not believe that this lack of demand is a cause within the *force majeure* provisions in this charter party.

Without prejudice to Owners' rejection of Charterers' *force majeure* declaration, Owners will accept Charterers' instructions not to proceed to Port Daniels or to tender NOR there, as Charterers' acknowledgement that the vessel is ready and able to perform under the COA. As Charterers have requested, Owners will explore the possibility of employing the vessel either on the spot or short-term time charter basis in an effort to mitigate their damages. Owners will keep Charterers apprised of their replacement employment opportunities as well as the extra expenses which will be incurred in order to prepare the vessel for that next employment. These potential expenses include the loss of time and costs which will be incurred to clean the vessel of cement to carry clean cargos such as grain. Other operational issues also exist such as the consumption and later replacement of the gasoil which she burns under the COA with Charterers. Charterers will be provided with this information so that they can be heard if they dispute Owners' mitigation efforts. Owners intend to seek all of the damages which are the foreseeable consequence of Charterers' wrongful declaration of *force majeure*.

Based upon the foregoing and in accordance with the charter party clause 35, Owners hereby appoint Mr. Robert Shaw as Owners' designated arbitrator. Mr. Shaw's contact details are as follows:

Robert Shaw  
130 East End Ave., Apt.12A  
New York NY 10028  
Tel: (917) 415-3603  
[rgshaw1565@gmail.com](mailto:rgshaw1565@gmail.com)

Demand is hereby made that Charterers nominate their appointed arbitrator on an expedited basis. It is in the best interest of both parties and in furtherance of both parties' obligations to mitigate their damages that this arbitration proceed expeditiously so that these issues can be heard and resolved promptly. Please confirm your agreement to proceed on this basis.

It is undisputed that Charterers, as the party relying upon the *force majeure* provisions of the contract, bear the burden of proof to establish that the proximate cause of their inability to perform falls squarely within the clause. In order to expedite the arbitration and fully understand the issues, we ask that you promptly produce the following documents and information:

Port Daniels

1. Documents evidencing the cement production output from 2018 through today;
2. Evidence concerning any maintenance to be performed at the facility during the anticipated shutdown; and
3. Evidence concerning the planning for the shutdown under consideration including evidence establishing when the shutdown was conceived.

Providence and Bronx Discharge Ports

1. Evidence relating to the available water at berth;
2. Evidence about the discharge capabilities at each facility;
3. Evidence concerning the storage capabilities at each facility;
4. Evidence establishing the quantities discharged by ocean going vessels at each facility between 2018 and 2020;
5. Evidence establishing quantities of cement delivered to customers between 2018 to 2020;
6. Contracts by McInnis for the sale of cement between 2018 to 2020;
7. Contracts evidencing the sale of cement for delivery in 2020; and
8. Any evidence of cancellation or declaration of *force majeure* under any of McInnis' sales contracts.

Charter Parties

1. Evidence of the negotiation and fixture of the charter of any other vessels by McInnis other than the CIELO DI GASPEISIE for the carriage of McInnis' cement;
2. Evidence of cancellations or declarations of *force majeure* in any of these other charter parties; and
3. Any charter parties with performance between the present and December 31, 2020.

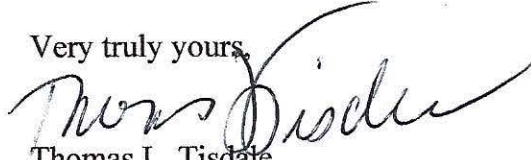


Finally, we would like to arrange to have our expert consultant visit the Bronx and Providence facilities to investigate the matter. Please let us know who should be contacted to arrange these visits.

We look forward to your response to the foregoing. If you have any questions or which to discuss any facet of the foregoing, please don't hesitate to contact the undersigned on his mobile phone at 203-257-3766.

We look forward to hearing from you soon. Stay well.

Very truly yours,



Thomas L. Tisdale

mt

[rgshaw1565@gmail.com](mailto:rgshaw1565@gmail.com)

cc: Robert Shaw

**EXHIBIT 4**

# Holland & Knight

31 West 52nd Street | New York, NY 10019 | T 212.513.3200 | F 212.385.9010  
Holland & Knight LLP | [www.hklaw.com](http://www.hklaw.com)

Vincent J. Foley  
Partner  
(212) 513-3357  
[Vincent.foley@hklaw.com](mailto:Vincent.foley@hklaw.com)

May 6, 2020

## **Via E-Mail**

d'Amico Dry d.a.c.  
c/o Tisdale Law Offices, LLC  
10 Spruce Street  
Southport, CT 06890

Attention: Thomas L. Tisdale, Esq.

Re: M/V Cielo di Gaspesie, Charter Party dated 10 February 2017 (the "Charter")  
Our File: 133871-00008

Dear Mr. Tisdale:

We write in response to your letter dated April 29, 2020. This letter addresses Charterers' appointment of arbitrator, d'Amico's rejection of the *force majeure* declaration, and its request for expedited arbitration with production of documents and inspection of McInnis's terminals in the Bronx and Providence.

### 1. **Appointment of Arbitrator**

In accordance with Clause 35 of the Charter, Charterers hereby appoint Mr. Louis P. Sheinbaum as arbitrator. His contact details are as follows:

Louis P. Sheinbaum, Esq.  
1173 W. Laurelton Parkway  
Teaneck, New Jersey 07666  
Telephone: (201) 836-3763  
Telefax: (201) 836-1009  
Email: [lps@lousheinbaum.com](mailto:lps@lousheinbaum.com)

d'Amico Dry d.a.c.  
c/o Tisdale Law Offices, LLC  
May 6, 2020  
Page - 2 -

2. **D'Amico's Rejection Of Charterer's Force Majeure Declaration.**

McInnis and d'Amico certainly disagree on application of the *force majeure* clause. As stated in our previous letter, the impacts of COVID-19 on McInnis' operations have been severe and pervasive and have required McInnis to declare a *force majeure* under the Charter. While we acknowledge that d'Amico disagrees with that decision, d'Amico has a duty to mitigate damages during the period of *force majeure* by employing the Vessel in alternative trades. McInnis has informed d'Amico that it does not believe the Vessel will be returned to service under the Charter until at earliest September 2020. This means d'Amico will have to mitigate damages until the *force majeure* conditions abate. We suggest that during this period both parties should work together to minimize the impacts of the *force majeure* event and seek to resolve as many issues as possible leaving only those that cannot be resolved for submission to the arbitral tribunal, at the appropriate time and with supporting documents and evidence.

3. **Owners' Demand For Expedited Arbitration Of This Dispute With McInnis.**

You have proposed that it is in the best interests of both parties, and in furtherance of their obligations to mitigate damages, that the arbitration proceed expeditiously. We respectfully disagree. McInnis does not consider it necessary to proceed immediately to arbitration hearings before the *force majeure* event has resolved, and conditions have abated to a situation where the parties know the extent, if any, of d'Amico's damages. McInnis will preserve documents relating to its declaration of *force majeure*, and such can be exchanged under a mutually agreeable schedule once the issues have more fully developed, and the parties have determined the issues that need to be submitted to the panel of arbitrators. We are available to discuss this with you, and to agree upon a reasonable schedule consistent with the foregoing precepts and taking into consideration the document collection and production issues imposed by COVID-19 restrictions on McInnis' operations.

4. **Owners' Request For Documents And Inspection Of The Bronx And Providence Terminals.**

We do not agree that expedited production of documents under the current COVID-19 conditions is necessary for the parties to mitigate their damages. We suggest it makes more sense for the parties to continue to mitigate by d'Amico employing the Vessel in alternative trades during this period of *force majeure*. The parties can address document disputes, inspection of premises, and mitigation of damages from the declaration of *force majeure* after the issues have matured, and the parties can determine the issues that require submission to the arbitration panel. We suggest that counsel meet and confer concerning these issues in an attempt to reach agreement.

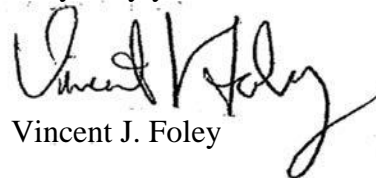
d'Amico Dry d.a.c.  
c/o Tisdale Law Offices, LLC  
May 6, 2020  
Page - 3 -

Your letter includes requests for documents relating to cement production output at Port Daniel, planning for the Cement Plant shutdown, and maintenance scheduled during the relevant shutdown period. You also requested documents and evidence relating to McInnis's terminal operations at the Bronx and at Providence, and an inspection of those terminals by your expert consultant. As a result of the impact to McInnis' operations, it has been obliged to reduced its workforce to the minimum amount necessary to keep its facilities open both in the United States and Canada. McInnis employees are under stay at home "shelter in place" orders, which makes it more difficult to do their normal jobs supporting operations at McInnis. In order to identify many of the requested documents, McInnis will need physical access to files not presently available from their remote locations at home. As such, while document preservation steps have been taken to keep and maintain information relevant to the *force majeure* declaration for use in the arbitration, the collection, review and production of documents demanded in your April 29 letter cannot be completed on an expedited basis, and will require additional time.

As for the Bronx and Providence terminals, you requested to have an expert consultant visit the terminals to "investigate the matter." We do not see any reason, and none have been provided in your letter, as to why your maritime consultant would need to visit the Bronx and Providence terminals, especially given the current COVID-19 limitations on third parties at the terminals. As such, McInnis respectfully declines to permit the visits at this time subject to lifting of COVID-19 restrictions, and some reasonable explanation as to the purpose and scope of the requested visits.

If you have any questions or if you would like to discuss any of the foregoing, I can be reached at (917) 656-1721.

Very truly yours,



Vincent J. Foley

cc: (via email)  
Robert Shaw ([rgshaw1565@gmail.com](mailto:rgshaw1565@gmail.com))  
Louis P. Sheinbaum ([lps@lousheinbaum.com](mailto:lps@lousheinbaum.com))



**EXHIBIT 5**

**From:**  
**Sent:**  
**To:**  
**Cc:**  
**Subject:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Usd 1,000 ricevuti 1/5/20**

20 Transaction Reference Number : [REDACTED]  
21 Related Reference :  
23B Bank Operation Code : CRED  
32A Date Currency Amount : 200501 USD 1000,  
33B Orig Ordered Currency Amount : USD / 1000,  
50K Ordering Customer : [REDACTED]  
MCINNIS USA INC OPERATING ACCOUNT 2000 MANSFIELD, SUITE 300  
MONTREAL QUEBEC H3A 2Y9 CANADA  
52A Ordering Institution :  
BNDCUS33 EXP: NATIONAL BANK OF CANADA NEW YORK BR  
NEW YORK,NY

53B Senders Correspondent :  
[REDACTED]  
59 Beneficiary :  
[REDACTED] D AMICO DRY D A C

70 Details of Payment :  
[REDACTED]  
71A Details of Charges : SHA  
71F Senders Charges : USD/0,00  
72 Sender to Receiver Information : /  
[REDACTED]

TRAILER INFORMATION :  
CHK [REDACTED]  
SRN EXPANSION :  
JPMORGAN CHASE BANK, N.A. NEW YORK,NY

**Usd 336.756,10 3/4/2020**

20 Transaction Reference Number : [REDACTED]

[REDACTED] Reference :

23B Bank Operation Code : CRED

32A Date Currency Amount : 200501 USD 1000,

33B Orig Ordered Currency Amount : USD / 1000,

50K Ordering Customer : [REDACTED]

MCINNIS USA INC OPERATING ACCOUNT 2000 MANSFIELD, SUITE 300

MONTREAL QUEBEC H3A 2Y9 CANADA

52A Ordering Institution :

[REDACTED] EXP: NATIONAL BANK OF CANADA NEW YORK BR  
NEW YORK,NY

53B Senders Correspondent :

[REDACTED]

59 Beneficiary :

[REDACTED] D AMICO DRY D A C

17 19 SIR JOHN ROGERSONS S QUAY DUBLIN 2 IRELAND

70 Details of Payment :

[REDACTED]

71A Details of Charges : SHA

71F Senders Charges : USD/0,00

72 Sender to Receiver Information : /

[REDACTED]

TRAILER INFORMATION :

CHK: [REDACTED]

SRN EXPANSION :

JPMORGAN CHASE BANK, N.A. NEW YORK,NY

**USd 436,429.38 ricevuti 20/3/2020**

20 Transaction Reference Number : [REDACTED]

21 Related Reference :

23B Bank Operation Code : CRED

32A Date Currency Amount : 200320 USD 436429,38

33B Orig Ordered Currency Amount : USD / 436429,38

50K Ordering Customer : [REDACTED]

MCINNIS USA INC OPERATING ACCOUNT 2000 MANSFIELS SUITE 300

MONTREAL QUEBEC H3A Y92 CANADA

52A Ordering Institution :

BNDCUS33 EXP: NATIONAL BANK OF CANADA NEW YORK BR  
NEW YORK,NY

53B Senders Correspondent :

[REDACTED]

59 Beneficiary :

[REDACTED] D AMICO DRY D A C

17 19 SIR JOHN ROGERSONS S QUAY DUBLIN 2 IRELAND

70 Details of Payment :

[REDACTED]

71A Details of Charges : SHA

71F Senders Charges : USD/0,00

72 Sender to Receiver Information : /

[REDACTED]

TRAILER INFORMATION :

CHK: [REDACTED]

SRN EXPANSION :

JPMORGAN CHASE BANK, N.A. NEW YORK, NY

Usd 361.556,61 ricevuti 5/3/2020

----- Message Text -----

20 Transaction Reference Number : [REDACTED]  
21 Related Reference :  
23B Bank Operation Code : CRED  
32A Date Currency Amount : 200305 USD 361556,61  
33B Orig Ordered Currency Amount : USD / 361556,61  
50K Ordering Customer : [REDACTED]  
MCINNIS USA INC OPERATING ACCOUNT 2000 MANSFIELD SUITE 300  
MONTREAL QC H3A 2Y9 CANADA  
52A Ordering Institution :

[REDACTED] EXP: NATIONAL BANK OF CANADA NEW YORK BR  
NEW YORK, NY

53B Senders Correspondent :  
[REDACTED]  
59 Beneficiary :  
[REDACTED] D AMICO DRY D A C  
17 19 SIR JOHN ROGERSONS S QUAY DUBLIN 2 IRELAND

70 Details of Payment :  
[REDACTED]  
71A Details of Charges : SHA  
71F Senders Charges : USD/0,00  
72 Sender to Receiver Information : /

[REDACTED]

TRAILER INFORMATION :  
CHK: [REDACTED]  
SRN EXPANSION :  
JPMORGAN CHASE BANK, N.A. NEW YORK, NY

Usd 315.045,28 ricevuti 14/01/2020

20 Transaction Reference Number : [REDACTED]  
21 Related Reference :  
23B Bank Operation Code : CRED  
32A Date Currency Amount : 200114 USD 315045,28  
33B Orig Ordered Currency Amount : USD / 315045,28  
50K Ordering Customer : [REDACTED]  
MCINNIS USA INC OPERATING ACCOUNT 1350 BOUL RENE LEVESQUE OUEST  
MONTREAL QUEBEC H3G 2W2 CANADA  
52A Ordering Institution :

[REDACTED] EXP: NATIONAL BANK OF CANADA NEW YORK BR  
NEW YORK, NY

[REDACTED] Senders Correspondent :  
[REDACTED]  
[REDACTED] D AMICO DRY D A C  
17 19 SIR JOHN ROGERSONS S QUAY DUBLIN 2 IRELAND

70 Details of Payment :  
[REDACTED]  
71A Details of Charges : SHA  
71F Senders Charges : USD/0,00  
72 Sender to Receiver Information : /

[REDACTED]  
TRAILER INFORMATION :

CHK: [REDACTED]

SRN EXPANSION :

JPMORGAN CHASE BANK, N.A. NEW YORK,NY

We inform you that we process your personal data in compliance with the General Data Protection Regulation no. 679/2016 (GDPR). For more information please click [here](#). Thank you