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# Identification of Parties and Third Party Entry into Maritime Dispute Arbitration

Maryam Sarrami[1], Alireza Salehifar[2]

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## Abstract

**Background and Theoretical Basis:** In today's world, due to the relatively complex procedures of judicial proceedings in national and international courts, the use of arbitration for the resolution of disputes is expanding. International maritime arbitration has a special place because more than 90 percent of goods and maritime trade is carried out by sea and ships, and this type of arbitration has been identified as a special category of arbitration in the guidelines of the International Bar Association (IBA). Relatively few law firms specialize in maritime arbitration, and there is a need to pay attention to the resolution of disputes between shipping companies at the national and international levels, given the high volume of international trade.

**Methodology:** In this research, using a descriptive-analytical method, the identification of the parties and the entry of a third party into the arbitration of maritime disputes were studied and analyzed. The purpose of this article is to analyze and discuss the approaches adopted by arbitral tribunals and courts regarding the legal status of non-signatory parties in the context of the two main centers of maritime arbitration: London and New York.

**Findings and Conclusion:** As a matter of principle, only parties who have executed an arbitration agreement will be bound by it. However, there are exceptions where parties may be allowed to refer to or be forced to arbitrate even though they have not signed an arbitration agreement. In the maritime industry, the issue of determining whether an arbitration clause is binding on third parties is critical. The structure of this section is susceptible to disputes involving non-signatories. Usually, maritime contracts are

[1] Ph.D. Candidate of Law, Department of Law, Faculty of Law and Political Science, Kharazmi University, Tehran, Iran
[2]Assistant Professor of Law, Department of Law, Faculty of Law and Political Science, Kharazmi University, Tehran, Iran, (Corresponding Author) Email: salehyfar@gmail.com

concluded by third parties in the framework of agency relationships, and contracts are assigned. Also, whether bills of lading can bind the holder to the charter party's arbitration clause is often disputed. The complexity of today's maritime trade has resulted in operators such as ship-owners, charterers, and cargo owners often operating in a corporate group structure where affiliates in specific business areas are interrelated and sometimes operate as an organization. "Front" for other companies.

***Keywords***: Parties to Contracts, Third Party, Arbitration, Maritime Dispute

## 1. Introduction

Arbitration is a procedure in which the parties to a contractual agreement appoint a third party to resolve their disputes. The emergence of arbitration in the field of maritime trade is due to the ability of its proponents to promote cost-effective, timely and above all, fair and just decisions for the many disputes that arise as a result of maritime trade (UNCITRAL Arbitration Rules, 1976:).

Maritime arbitrations are a subset of the larger field of commercial arbitrations and as such share many of the same basic characteristics. What differentiates them are the parties involved.

The "actors" in maritime arbitration are likely to be from different countries and are likely to be involved in fairly complex business relationships that have customs or exotic conventions beyond the experience of the general public. In the event of a dispute, it will be easier for the parties to reach a resolution that is consistent with the world of maritime commerce as they know and understand it. This is especially true for people in developing countries. They need to be able to participate in a dispute resolution process with which they have some familiarity and control. With the imposition of foreign systems of government in the colonial era, there is a clear reluctance to submit to a foreign legal system. The participation of United Nations members in the drafting of UNCITRAL arbitration rules and the adoption of these rules by the General Assembly by consensus is proof of the acceptability of arbitration in the

field of international dispute settlement in general, and maritime disputes in particular.

Maritime arbitration refers to an arbitration that is related to a ship, whether it is the transportation of goods or passengers by sea, the sale of a second-hand ship, the construction of a new ship, the rental of a pleasure or marine boat and support ships (Naqvi, Zainab,2022 ).

The essential elements for arbitration are: (a). There is a dispute between the parties. (b) That the dispute can be handled according to the governing laws. c) That the parties voluntarily submit to arbitration. (d) that the agreement to arbitrate is a binding contractual obligation on the parties; (e) that settlement must be by a third party; (f) Formal Referral of Disputes to Arbitration. (g) That the arbitration shall be decided following law and (h) that the decision is final and binding for the parties (Parris, 1982: p7).

In the field of maritime trade, disputes arise from misunderstanding of contractual agreements and liability for damages resulting from an act, accident and Collision. The parties to these disputes cannot agree on the extent of one party's obligations to the other, and therefore must refer to another source for determination. What distinguishes arbitration from litigation in court is that in arbitration, the parties volunteer to submit the decision to a third party of their mutual choice, and in the case of maritime arbitration to a third party. A party that is experienced both in maritime affairs and in the settlement of certain types of disputes (Schmitthoff, 1983:292).

Today, worldwide, the UK Maritime Arbitration Association (LMAA) is preferred over other arbitral tribunals (such as the ICC) to resolve disputes. The LMAA is recognized as the most widely used maritime arbitration association with its ad hoc and indirect arbitration process; this association consists of many arbitrators who specialize in solving maritime transport disputes and has presented its arbitration rules in three sets. Examining the rules and conditions shows that LMAA can be considered a formal dispute resolution method in the field of international trade law, especially in the field of legal issues and disputes related to the maritime transport and shipping industry. In general, the results of this research show

the potential role of arbitration and LMAA rules as an important forum in the quick resolution of disputes in maritime transport (in the field of international trade) (Ghaffari, Mohammad Reza; Parviz Savarai, 2022, p. 25).

The arbitration process is characterized by several features that have evolved from the requirements of dispute resolution between commercial enterprises. Their biggest concern is usually money. Parties go to arbitration because it is the most cost-effective means of resolving their dispute, or at least they believe it is. As a result, commercial arbitration has developed the following characteristics: (a) parties voluntarily agree to arbitrate as part of their obligations to each other (arbitration clauses in commercial contracts) or as a separate post-dispute agreement; has arisen (b) the parties control the processing to ensure convenience, efficiency, and privacy; To this end, they choose "who, how, where and when" and rely on external parties or the government only when they cannot agree. c) The parties accept the decision as the end of the dispute and agree to adhere to it (Lew, 1976: 16).

The Federal Arbitration Act (FAA) applies to maritime transactions and interstate commerce and has been used to compel arbitration even when all parties involved have not agreed to it. The authors assert that these binding decisions of non-parties, non-signatories to arbitration agreements, which they did not agree to and were not aware of, are illegal extensions of law, including the FAA. Moreover, the presumption that arbitration will ultimately save costs, judicial resources, and time, or result in awards that are fairer or more just than court awards, even if true, is an inappropriate basis for compelling third parties to arbitrate. Obviously, in cases where the parties have consented to arbitration, the arbitration award must be issued. However forcing a party that has not consented to arbitration deprives that party of important legal and legal rights and may lead to a gross violation of justice (Michael H. Bagot, Jr. Dana A. Henderson, 2021:425).

Previously, there was no right to arbitrate at common law, and before the FAA, federal courts refused to enforce arbitration clauses. Public policy

at the time favored open access to the federal courts. Limiting access to the courts in the arbitration agreement was against public policy. Beginning with the passage of the FAA in 1922, Congress created what became a strong federal and judicial policy for enforcing arbitration agreements (ibid, 426).

## 2. Third party entry into maritime arbitration

It seems obvious that for the parties to be bound by an arbitration agreement, there must be an agreement to it. Arbitration is contractual - "a party cannot be required to submit to arbitration any dispute to which it has not agreed". "Claims and parties that were not intended in the original contract." The express purpose of the FAA, as interpreted by the United States Supreme Court, was to "move the parties to an arbitration dispute out of court and to arbitration as quickly and conveniently as possible." In this respect, US federal law is consistent with the laws of many maritime nations. However, there are exceptions. Parties who were not signatories or parties to the original contract containing the arbitration agreement may be bound to arbitrate if those parties fall within the exceptions to the party's signature or agreement requirements discussed below (Moses H., 1983:22).

Proponents of arbitration claim that this method of dispute resolution brings cases to settlement or finalization in a quick, efficient, and cost-effective manner for the parties. Conserving scarce judicial resources is a similar motivation. The rewards of our journey—the judicial economy and the promotion of arbitration—are the rewards of the risks. Arbitration often provides the parties with a choice of venue, law, and procedure, and the dispute may be determined by "businessmen" who specialize in maritime law or the maritime industry. In addition, many parties claim that international disputes are weightier to arbitrate than to litigate. Some arbitral awards are also not supported by written opinions, and some are less widely published than litigation files. Hence, parties may favor arbitration to keep their differences or positions out of the public eye. However, arbitration is a procedural device that has significant effects on the rights of the parties because, under the contract, it "deprives a party of a jury trial and the right to appeal, fundamental rights which shall not be denied unless to voluntarily and knowingly ignore them.

## 3. Third parties bound to arbitrate

In modern maritime practice, the ubiquitous presence of arbitration clauses hidden in the text of contracts across the commercial spectrum raises issues of fraud and unconscionability in maritime contracts. Finally, the resistance is not related to the arbitration itself, but the lack of satisfaction of the parties who were unaware of closing the doors of the court in the event of a dispute (P. Spence, 2018: 56). Therefore, arbitration is now seen as an enemy to litigation. This negative view of arbitration is reinforced by the fact that the process is shrouded in secrecy. Compared to our litigation system and our legal culture of transparency, an inherently opaque system is under attack, especially when the rights of weaker parties are pitted against the power of a large corporation or other powerful entity (Bland & Dani Zylberberg, 2017: 40).

Various lawsuits of the parties have been identified in government courts with the possibility of filing a third-party lawsuit, regardless of the agreement of the relevant parties, but in arbitration, due to the rule of the principle of freedom of will of the parties on the arbitration process, the entry of third parties even if their interests are at stake in the arbitration. without the consent of the parties, arbitration was not possible, because the privacy and confidentiality of arbitration were mentioned as distinguishing features from civil lawsuits, and a person other than the parties to the arbitration, not only could not participate in the litigation as a party whose interests According to the parties or independently, he was involved, but he could not even appear in the hearing of the lawsuit as a neutral person. This procedure was changed with the adoption of the UNCITRAL rules on transparency in treaty-based arbitrations between the government and the investor, and the third party was allowed not only in the hearings but also as one of the parties to the lawsuit, this change had major effects on the characteristics of the arbitration (Ali Pasand, 2019, 237).

Although the FAA and the New York Convention both require a written agreement to arbitrate, courts have increasingly been willing to enforce exceptions to such requirements that allow non-signatories, and

indeed non-parties, to an agreement that contains an arbitration clause be bound by the principles of general contract or agency. As noted above, signatures are not required to bind the parties to arbitration. Generally, courts rely on principles of contract and agency law to determine which non-signatories can bind the signatory parties to an arbitration agreement. Conversely, exceptions also apply to determine which non-parties may be referred to arbitration.

Traditionally, five theories of contract and agency law constitute exceptions to the signature requirement. Exceptions are the common law principles of agency and contract and are specifically: (1) subrogation, staple (3) real original/breach of the veil, (4) merger with authority, and (5) presumption. Exceptions may arise when a signatory to an arbitration agreement seeks to bind a non-signatory or when a court prevents the signatory from avoiding arbitration with the non-signatory when the issues the non-signatory seeks to resolve in arbitration are an agreement is interwoven. The suspended party has signed. Whether a non-party's claims are sufficiently related to the agreement to justify mandatory arbitration requires consideration of the relationship of the entities involved as well as the relationship of the alleged wrongs to the non-signatory's obligations and duties. According to the agreement in question. This test often focuses on whether the non-signatory was contractually related to the signatory, had a prior business relationship with the signatory parties, or whether claims arising out of the agreement contain an arbitration clause. Where there are related matters between the cause of action and an already pending arbitration, the claims may be arbitrable if they are "closely situated and interwoven with the subject matter of the arbitration." A business relationship analysis may mean that in non-contractual claims, without an established business relationship, the non-contracting parties may not have to arbitrate the business relationship entirely independently. Specific exceptions to signature and party requirements are discussed below:

### 1.3. Agency

As a rule, the claimant is the person who is the original of the legal relationship, and the representative cannot be called the claimant under any circumstances (Aftakhari Harami, 2021, 107). But traditional

principles of agency law may bind the non-signatory to an arbitration agreement." Since agency relationships are created by the mutual consent of the principal and the agent, where both parties agree that the agent acts as an agent and on his behalf will act, the agent is under the control of the principal. An agent enters into a contract with actual or apparent authority on behalf of the principal and third parties may rely on that actual or apparent authority in such contracts Contracts on whose behalf the agent has negotiated and/or executed agreed, and the agency is a valid exception to the requirement that the parties agree to arbitration.

Under certain circumstances, an agent for a principal may be bound by the terms of an arbitration agreement, but generally “an agent for a disclosed principal is not a party to the contract and is not personally bound by a contract that he signs on behalf of the disclosed principal. - The principle that has been consistently applied in the field of arbitration.

In the case of Arhontisa Maritime Ltd. v. Twinbrook Corp, the agent involved represented the ship owner in a contract to sell a ship. According to the contract, the buyer had to deposit the purchase amount to the representative's personal bank account. The parties did not dispute that the nonparty's agent was a condition of the arbitration, although the agent was an "advocate" who negotiated the bill of sale and received the wire funds into his account.161 when problems arose with the ship. , the buyer sought to join the agent as a party to the arbitration based on a theory of fraudulent concealment. The court rejected this approach and instead found that the party's representative did not contain the arbitration clause and could not be personally bound by it.

Guarantors of contracts, particularly charter parties, generally cannot be compelled to arbitrate under an arbitration clause in the charter because the guarantors are not parties to the charter.

### 2.3. Assumption

A non-signatory party may also be bound to arbitrate if its conduct indicates that it is bound to arbitrate. Therefore, the condition of "satisfaction" is inferred from the behavior of the party. If a party voluntarily and actively participates in the proceeding and its conduct indicates that it intends to arbitrate the dispute relied upon by the other party, it will be bound by it and may be barred from later challenging the jurisdiction of the arbitrators. The intention to be bound by the arbitration agreement, although subject to inference, must be unambiguous. However, there is variation in the analysis of how a non-signatory can be bound by an arbitration agreement, and it depends largely on the facts at issue. Therefore, the shipping parties should be careful about their behavior before, during, and after the dispute, if they do not want to commit to an agreement for arbitration (André Pereira da Fonseca, 2004:16). The doctrine of presumption may overlap with other contractual or equitable principles such as estoppel. Some courts and commentators prefer to include both in a broader definition of estoppel, which we will analyze below.

### 3.3. Estoppel

Estoppel is a well-established, yet little-understood exception to the agreement's requirement for binding arbitration. The basic concept in the estoppel doctrine is fairness. Just as a party may waive a number of other rights, the right to object to arbitration may likewise be waived. Ordinarily, estoppel arises in situations where (1) a party by participating in an arbitration or litigation contrary to its dispute in that proceeding fails to timely invoke its right to arbitration or object to arbitration; or (2) The party is treated as a third party beneficiary. The authors submit that only the first of these estoppel theories is equitable and consistent with the requirement that the parties agree to waive their litigation rights in favor of arbitration. The third party beneficiary theory is very broad and not consistently applied. A situation under this theory may subject a party to arbitration and a mandatory waiver of litigation rights when the party did not participate in, know about, or negotiate the terms of the contract.

Third party beneficiaries can acquire such status by accepting. An entity that seeks to enforce the provisions of an arbitration agreement in a contract to which it was not a party may assert third-party beneficiary status by suing the contract and specifically asserting itself as a third-party beneficiary is a contractual right or is supposed to receive a direct benefit from the performance of the contract containing the arbitration award. in Grigson v. Creative Artists Agency, L.L.C., the Fifth Circuit held that a non-signatory to an arbitration clause may be permitted to compel arbitration under a theory of equitable estoppel when the cause of action is "intertwined with and dependent on" the contract containing the arbitration agreement. . Affiliate adopted the "intertwining claims test" as set forth by the United States Court of Appeals for the Eleventh Circuit in MS Dealer Serv. Corp. v. Franklin.

Although Grigson may be invoked to allow non-signatories to arbitrate their claims against the parties to the arbitration agreement as third-party beneficiaries, Grigson, in contrast, requires non-signatories to arbitrate claims they do not want under agreements to arbitrate. They judge to judge. Not confidential, not yet established by the Fifth Circuit. As such, Grigson does not end the inquiry. Requiring a signatory to an arbitration agreement to defend against non-signatories claims is an entirely different matter than requiring a party that has not entered into an arbitration agreement to waive its proceedings and appeals. "It is one thing to allow a signer to waive his right to a jury trial, but quite another to compel him to do so."

Status as a third-party beneficiary may prevent a non-party to the arbitration agreement from avoiding arbitration. This issue was particularly emphasized in USTA v. Tenkara Shipbuilding, SPA. In Tenkara, the court held that under general maritime law, direct third-party beneficiaries of a contract containing an arbitration agreement can be bound to arbitrate. , ship owners contracted with a shipbuilder to build a yacht shipbuilders applied to a class agreement with the US

Bureau of Shipping (ABS), a copy of which was sent to owners before delivery. It included an arbitration clause. Owners secured insurance coverage and registration and/or approval of the vessel for use in French waters based on having a valid ABS classification. The classification includes cheaper insurance, and many countries, including France, do not allow ships to sail under their flag without such classification. ABS sought to enforce the arbitration agreement against the non-party ship-owners.

The Second Circuit, which sat as admiralty to all parties, rejected the owners' argument that they were not bound to arbitrate because they failed to comply with the ABS principles, noting that the owner "is prohibited from repudiating its obligation to arbitrate if it receives has been A direct benefit from a contract that contains an arbitration clause. The court's analysis focused on the fact that without a temporary classification certificate, it was almost impossible to register a vessel in France and that owners received significantly lower insurance rates on yachts as a result of the certificate. Indeed, the Tenkara court also found that an owner-substitute insurer is similarly bound to arbitrate and that a claim to compel arbitration against a third-party owner-insured is equally valid for underwriters.

Determining whether a party is a direct or incidental beneficiary can be decisive in the question of whether that party is bound to arbitrate. Some courts have held "strangers" to the contract to enforce the contract only when the terms of the breached contract were incorporated into the contract for the direct benefit of the plaintiff. "An incidental beneficiary acquires no rights against the promisor or promisee merely by the contractual obligation".Considerations of the rights of direct beneficiaries should be concerned with whether the terms of the contract are broad enough to treat the third party as a party to the contract. To include a floor or not of a named beneficiary, whether the third party was apparently intended by the terms of the contract, or whether the promisor had a "substantial and articulable interest in the welfare" of the third party.

The fifth circular has pointed out that "the intention of the contract or the granting of a direct benefit to a third party must be clearly and fully expressed or its performance by the third party is denied." However, ``the fact that a person is directly affected by the conduct of the parties, or that ``he may have a substantial interest in the performance of the contract, does not make him a third-party beneficiary." According to this analysis, in order for a party to be a third-party beneficiary, the parties' intent to make that foreign party a beneficiary must be clearly written or evidenced in the contract, and indicative factors may include mention or mention of the intended third-party beneficiaries be in the contract itself. . Proving third-party beneficiary status requires that it "be established with particular clarity that the contracting parties intended to confer" the interest on that particular non-party. Distinguishing between intended third-party beneficiaries versus incidental beneficiaries is an approach that is at least somewhat fairer and more equitable than granting third-party beneficiary status to those who may benefit from the performance or performance of the contract.

**4.3. Alter Ego/Piercing**

The parties may be required to arbitrate due to their status as other signatories to the agreement. Whether a party is a party to the contract or not is not necessarily for the arbitrator. A federal court will not be required to determine its own modification status by an arbitrator, as the defendant is entitled to a judicial determination of that issue. As a general matter, corporate relationships alone are not sufficient to justify binding non-signatories to arbitration agreements.

Additionally, individuals should not be personally bound by the terms of the contract when they sign the contract on their principal's behalf. In some circumstances, non-parties to arbitration agreements may be required to arbitrate a matter under arbitration agreements entered into by other persons or entities with which the non-party is "affiliated". A plaintiff seeks to "leave the corporate veil" to compel

parent or controlling entities to arbitration in order to compel a legal entity to pay the judgment. In doing so, the court does not need to investigate whether the party to the arbitration agreement is in fact insolvent or not. Rather, an analysis of the parties' relationship with the claimant should be considered to determine whether there is a contractual obligation to arbitrate.

In Monumental Life Insurance Co. v. R.A.J. Holdings Inc., the United States District Court for the Eastern District of Louisiana noted that neither the Fifth Circuit nor the United States Supreme Court had yet addressed the issue of whether related non-signatories to an arbitration agreement may be bound to arbitrate, and they have received the legal procedure from the court. The second circuit is instructive. Determining whether an entity is in fact sufficiently related to the signer may require analysis based on state law contract principles. The court should allow discovery of such factual claims and if, through an analysis of the various factors to be considered in piercing the corporate veil, the parties do in fact form a single entity sufficient to support contractual privacy, the non-signatory it will work properly be required to arbitrate.

Piercing the corporate veil is appropriate when necessary to "prevent fraud or other wrongdoing, or where the parent dominates and controls a subsidiary." The decision to "pierce the veil" is a fact-specific decision that "varies with the circumstances of each case." If the conduct of the two entities represents a "virtual abandonment of separation," they lose their separate corporate identity and, thus, the contractual obligations of one party bind the other. Factors may include common office and staff, common officers, commingling of funds, lack of "long" transactions, treatment as a common profit center, and lack of corporate formalities.

In United States v. Clipper Shipping Co., the court considered a request to compel arbitration based on an arbitration clause contained in a subcontract. The sub-charterer, which also issued the bill of lading at issue, was one of four entities named Clipper Interests that were parties to the case. Only one of Clipper's interests signed the

arbitration agreement, and although the court did not engage in an analysis of the terms that bound the signing parties to arbitrate, only one of Clipper's interests was bound to arbitrate. The court noted that arbitration would not resolve all the issues in the case, but a stay of proceedings was necessary to resolve the claims that were the subject of the arbitration.

**4. Merge with reference**

**1.4. Inherently inseparable or interrelated contracts**

When contracts are "inherently inseparable," disputes arising from a contract that does not contain an arbitration agreement are still arbitrated under the arbitration provisions in the other contract. To determine whether the language sufficiently incorporates an arbitration agreement contained in a separate contract, the incorporating language must reflect the parties' desire or intent to either incorporate all of the terms of the other contract, or specify which the terms are included, and specify that the arbitration. Included if a non-arbitration agreement includes "obligations" under an arbitration agreement, a reference to the incorporation of "obligations" does not necessarily extend to the arbitration provision without the incorporation or more specific language reflecting the intent to arbitrate.

Despite the generally accepted approach that parties may bind themselves to arbitration through subsequent agreements they enter into with the same parties in the course of their dealings, there may be some concerns regarding the equity of the contractual relationship, the fairness of the contract in question and other cases to be created. Matters of fact, such as notice. In the situation where the bill of lading includes the terms of the arbitration clause contained in one party of the contract, but the terms of the arbitration award are not specifically mentioned in the bill of lading, the parties to the bill of lading may be forced to arbitration in the case of a notice, if the parties to the bill of

lading complete the bills of lading after the start of the voyage receive and arbitration clauses are included without discussion or opportunity to negotiate or delete such clauses, bills of lading and their attempts to compel arbitration may be supplemental contracts. Actual notice of foreign arbitration provisions must be provided before such provisions become enforceable.

Although some courts have held that it is necessary to incorporate the terms of one contract into another contract, proper incorporation may give rise to constructive notice. Constructive notice is defined as "the rule that ``if you should have known, you will be responsible for what you should have known." This decision may change the complexity of parties and industry practices. Additionally, if one of the contracts is a standard form, such as an internationally recognized and commonly used "Convention Bill" bill of lading, such a standard form further supports claims of notice and complexity.

### 2.4. Inclusion of the terms of a charter party in the bill of lading

Merger with authority often occurs in situations involving charter parties that contain arbitration provisions and bills of lading that often incorporate the charter party's terms, even though the shipper does not necessarily receive, review, or agree to the terms of the arbitration agreement as specified. Within the Charter Party, although many of the arbitration agreements contained in the charter parties are, in fact, standard and expected terms, shippers are often not parties or participants in the terms of the charter parties. Due to the nature of the need to transport goods by sea, shippers are often bound to arbitration, including foreign arbitration, by incorporating charter arbitration clauses into the bill of lading. The inclusion of charter terms in the bill of lading is customary, acceptable, and valid. 269 Claimants should note that by filing a claim under a bill of lading, any resulting claim will likely be subject to the terms of the party's arbitration clause. The touchstone of whether a bill of lading contains an arbitration clause contained in a charter party is whether the bill holder had actual or constructive notice to the charter party. Contract

if the parties agree at the time of creating the contract. Although US law allows similar bills of lading to bind a party to the terms of the arbitration clause of the charter parties, a party bound by the arbitration agreement may be able to establish the agreement without an opportunity to examine the bill of lading before shipment. As one of adhesion. Ocean bills of lading may be considered contracts of adhesion and should be construed strictly against the carrier. Indeed, one of the purposes of COGSA was to prevent excessive terms inserted by carriers in bills of lading that unreasonably limited the carrier's liability or the ability of carrier claimants to secure compensation.

Incorporation of the terms of one arbitration agreement into another agreement shall only occur in circumstances where the merger is completed with sufficient particularity to permit the subsequent holder of the instrument or contract in due course to be bound by the terms of the agreement containing the arbitration clause. 275 A warning is meaningful if it gives a party enough information to prevent actions that are detrimental to him. Subject matter refers to the date of the party to the charter, such a reference will generally be sufficient to incorporate all provisions of the charter, including the arbitration clause. Such a failure generally negates the incorporation of the charter party.

Contrast the liberal merger policies of the United States with those of the United Kingdom, where language such as "[a]ll terms and exceptions based on the charter party" presumably does not include arbitration, but only serves to include direct provisions. Relating to the carrying, carrying or delivery of goods or cargo At Pacific Lumber & Shipping Co. v. Star Shipping A/S, 281 shippers did not receive the completed bills of lading until after the vessel had departed, an undisputed "London arbitration clause" was inserted into the bills of lading by the carrier. 282 Consequently, the carrier's application to stay the case pending arbitration in London was denied

because the bills of lading in question were contracts of attachment unilaterally imposed by the carrier and never addressed. Compare this result with Sun Oil of Japan v. M/V Maasdijk, 284. Completion of the bill of lading. 285 The bill of lading included the conditions of the bill of lading by referring to the date of execution of the bill of lading but did not mention the date of the addendum. 286 The addendum was identified as the reference because there was only one side of the charter in question. 287 The language that stated " All the terms of the transport contract/charter party mentioned, including the arbitration clause Apply and It controls the rights of the interested parties in this shipment.

If a warranty refers to a charter agreement that contains an arbitration clause, the warranty may also incorporate all terms of the charter agreement by reference. The language in the final clause, "as if the principal oblige," may be particularly persuasive in conjunction with the reference. All terms of the charter contract relate to the guarantee. 290 Guarantors cannot be compelled to arbitrate solely based on an arbitration clause in one party to the charter, but under Thomson-CSF, a non-signatory guarantor may be compelled to arbitrate under other theories. It is specified here.

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## 3. Conclusion

As the above discussion shows, the clearest conclusion we can draw from the analysis is that the New York maritime jurisdiction has a more "liberal" approach to allowing non-signatories to participate in

the arbitration process compared to London. This is particularly reflected in the manner in which arbitrators in New York often allow non-signatories to appear in arbitration proceedings when there is a close corporate and operational relationship between the parties and the subject matter. This is in stark contrast to London, where both arbitrators and courts have indicated a clear reluctance to bind third parties to arbitration agreements on such grounds. It should also be noted that arbitrators in New York frequently use estoppel to justify binding non-signatories, a theory that is broad in scope and based on the noble but vague concept of "fairness." Again, estoppel has little, if any, resonance in London. Such a conclusion may find partial justification in the stated policy of "interim arbitration" embodied in the FAA and followed by both courts and arbitrators. This strong presumption may play a role in binding a non-signatory to an arbitration agreement. However, given that the UK Arbitration Act 1996 also incorporates a modern, "pro-arbitration" regime, this cannot be the only justification. Courts have often bound third parties to arbitration agreements, even though they had no knowledge of the arbitration provisions and no opportunity to accept or reject the arbitration agreement or the contract containing it. This problem arises from the incorrect assumption by the courts that there is an arbitration agreement between the parties to such an agreement and non-parties. If arbitration is to be a consensual arrangement that requires the waiver of fundamental rights, the preferred approach should require non-parties to arbitrate only when (1) they are informed of the arbitration provisions and (2) before entering into the arbitration to agree to enter into a transaction that implies arbitration or ratify an arbitration agreement thereafter. Because judicial preference for arbitration is exercised by a judge and is not justified by the FAA or any other federal law, this amendment must be implemented through rulings that apply the FAA and other laws as written, without the judicial gloss that has been in place for several years. The past is accumulated, to be done. For decades more, the policies contained in the FAA and other arbitration rules have been applied by federal courts around the world, despite significant state

interests in ensuring litigants have a "day in court" in certain types of disputes, including construction, consumer, and insurance disputes. . . While this overarching approach has favored courts to date, the authors hope that with time and scrutiny, this will change and that courts will eventually allow litigation in specific claims created to protect states.

**References**

Safian Saeed with Foreword by Iftikhar Jahormi, (2021). Gooders, Identification of Civil Litigation Parties, Dadgostar Publication.

Ghaffari, Mohammadreza and Savarai, Parviz, (2023). Investigating the role of the British Maritime Arbitration Association in resolving disputes in the shipping industry, the first international conference on law, management, educational sciences, psychology and educational planning management, Tehran,Iran.

Naqvi, Zainab, (2022). How to resolve maritime disputes and maritime transport with an emphasis on arbitration, 6th International Conference on Law and Judicial Sciences, Tehran,Iran.

UNCITRAL Arbitration Rules, (April 29, 1976). approved by the UN General Assembly on December 15, 1976 (Yearbook of Commercial Arbitration 2 [1977]: 161) and reproduced in App. B of this volume.

Davenport, B. (1986). Arbitration: Principles and Practice by John Parris.

Julian Lew, Applicable Law in International Commercial Arbitration (Dobbs Ferry, N.Y.: Oceana Publications, 1976), p. 16.

Clive Schmitthoff, (1983). International Commercial Arbitration (1983) ,Dobbs Ferry, N.Y.: Oceana Publications, for the collected arbitration acts of various jurisdictions.

Clive Schmitthoff, (1983). International Commercial Arbitration (1983) ,Dobbs Ferry, N.Y.: Oceana Publications, for the collected arbitration acts of various jurisdictions.

Cheng, C. J. (Ed.). (2024). Clive M. Schmitthoff's select essays on international trade law. Martinus Nijhoff Publishers.

Bagot Jr, M. H., & Henderson, D. A. (2001). Not Party, Not Bound-Not Necessarily: Binding Third Parties to Maritime Arbitration. Tul. Mar. LJ, 26, 413.

Moses H. Cone Mem'l Hosp. v. Mercury Constr. Co., 460 U.S. 1, 22 (1983).

See generally Sedco, Inc. v. Petroleos Mexicanos Mexican Nat'l Oil Co., 767 F.2d 1140, 1143-47, 1986 AMC 706, 708-716 (5th Cir. 1986).

McGuinness, M. (2019). Moses Cone on the High Seas: The Arbitrability of Jones Act Claims under the New York Convention. *USF Mar. LJ*, *32*, 1.

W.K. Webster & Co. v. Am. Pres. Lines, 32 F.3d 665, 668, 1995 AMC 134, 139 (2d Cir. 1994).

André Pereira da Fonseca, STATUS OF NON-SIGNATORY PARTIES IN MARITIME ARBITRATION LONDON AND NEW YORK COMPARED, (International Congress of Maritime Arbitrators XX

André Pereira da Fonseca, STATUS OF NON-SIGNATORY PARTIES IN MARITIME ARBITRATION LONDON AND NEW YORK COMPARED, (International Congress of Maritime Arbitrators XX

Spence, G. P. (2018). Crossing Troubled Waters: Joining Non-Signatories in Maritime Arbitration-The Co-Optation and Containment of Consent in United States and British Law. Roger Williams UL Rev., 23, 54.

Paul Bland & Dani Zylberberg (2017). In the Dark: A System of Secrecy, TRIAL: FORCED ARBITRATION, Jan.

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*Maryam Sarrami , Alireza Salehifar*