BHPB Freight Pty Ltd v COSCO Oceania Chartering Pty Ltd and Braemar SeaScope Pty Ltd (formerly known as Seawise Pty Ltd and Southern Chartering Pty Ltd.

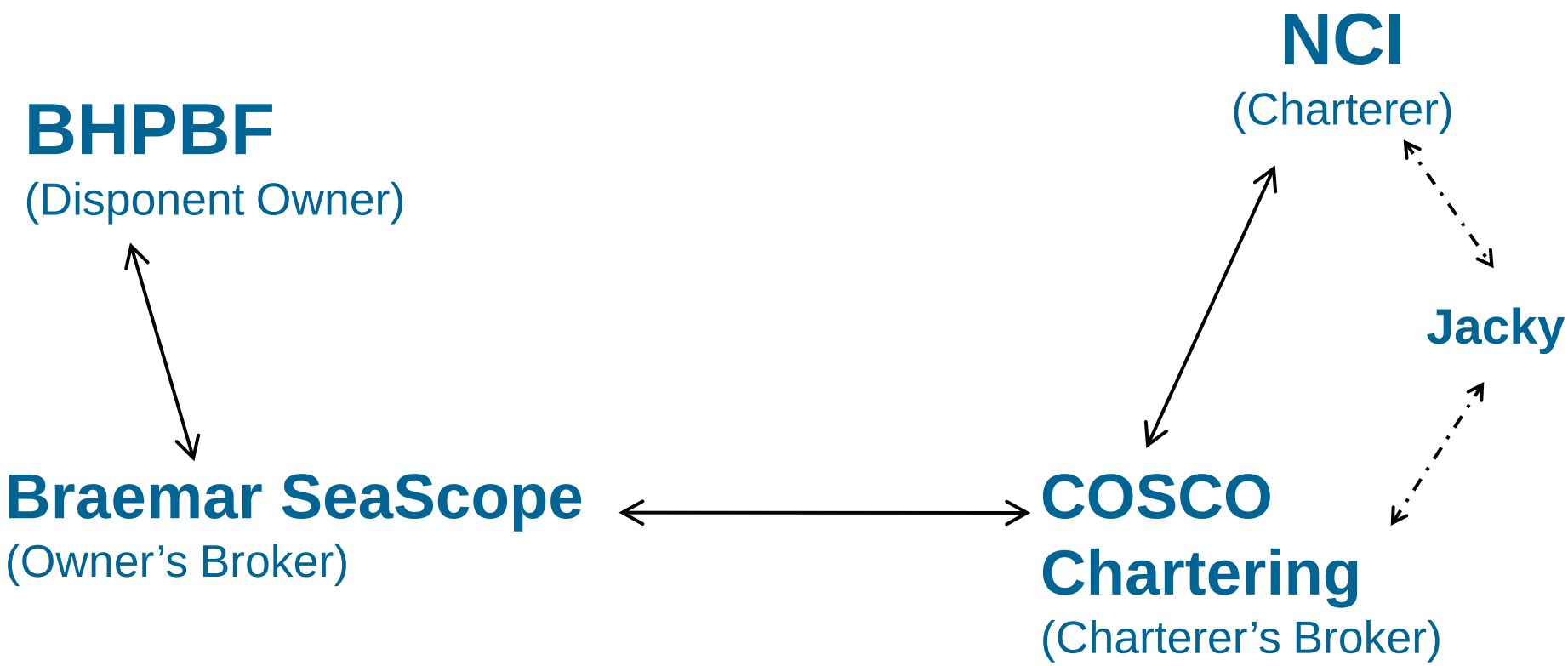
The “Global Hawk”

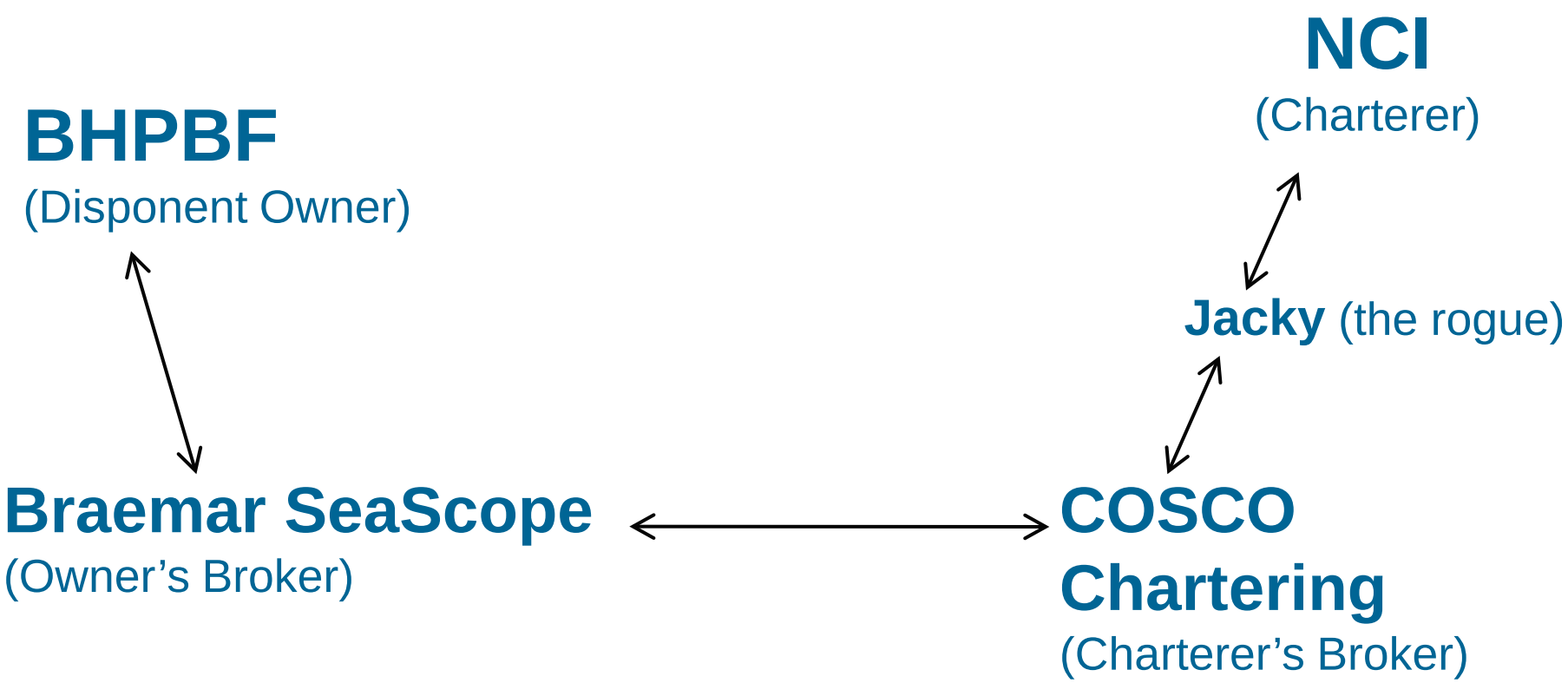
NORTON WHITE

A straight forward case of breach of warranty of authority...

The facts...

- BHPBF – disponent owners of the “Global Hawk”
- Cargo – approx 40,000mt bituminous coal
- Single trip T/C of approx 16 days
- Loading at Chinese ports
- T/C hire to be paid in full on delivery
- Proposed charterer – New Century International Leasing Corp


NCI
(Charterer)
BHPBF
(Disponent Owner)
Jacky
Braemar SeaScope
(Owner's Broker)
COSCO
Chartering
(Charterer's Broker)


NCI
(Charterer)
BHPBF
(Disponent Owner)
Jacky (the rogue)
Braemar SeaScope
(Owner's Broker)
COSCO Chartering
(Charterer's Broker)

BHPB claims that COSCO:

1. breached s52 of the TPA (by engaging in misleading or deceptive conduct.

2. breached s53B(bb) of the TPA (by falsely representing that a particular person had agreed to acquire services from BHPB).

3. breached s53(d) of the TPA (by representing that it had approval of or affiliation with NCI it did not have.

4. was negligent.

5. wrongly warranted that it had the authority of NCI to conclude a charterparty.

The test of breach of warranty of authority:

"The cases establish that where a person (the first person) falsely represents that he has authority to act on behalf of another person in a particular transaction and the person to whom the representation is made (the second person) is induced to act on the faith of the representation and suffers loss, the second person may recover the amount of the loss from the first person in an action for breach of a collateral contract. It matters not that the first person acted in good faith, believing he had the authority which he purported to have."

“ … COSCO accepted [that it] had represented to Seawise (and therefore to BHPB) that it was acting for NCI.”

At 15:34 on 11 October 2004 COSCO Chartering sent an email to Seawise:

> "If the talk on the biz would be continued today, pls keep contact with PIC of the chtrs as follows,
>
> PIC, Mr Jacky Cao
> Email: Jacky AT nerashpg.com"

At 21:31 on 11 October 2004, 6 hours later

ReplyTo: "Chris Bartlett" <melbourne@seawise.com.au>
From: "Chris Bartlett" <melbourne@seawise.com.au>
To: <melbourne@seawise.com.au>
Subject: GLOBAL HAWK - OPEN NPRC PROMPT
Date: Mon, 11 Oct 2004 20:31:21 +1000

From: Seawise Australia, Melbourne
Tel: +61 3 9867 2177 Fax: +61 3 9867 5962
Internet: melbourne@seawise.com.au
Date: 11/10/04 20:32:05
Ref: CB5738758

WE HAVE DIRECT OWNERS WITH;

++AFTER FIXED AND FAILED REOPEN++

MV "GLOBAL HAWK" Open Lianyungang PROMPT
SDBC BLT 2003
PANAMA FLAG CLASS NK TPC 40.50
ABT 29,734 MT DWAT ON 9.716 M SSW
V/BM 170.70 / 27.0 M
GRT/NRT 17,979/10,748
5H/5H GRAIN/BALE CBM 40,031.40/38,422.40
4 X 30 MT SWL CRANES
SPD/CONS (BSS BFT 4/SS 3)
ABT 13.50/14.00KT L/B ON ABT 24.00MT IFO(380CST/RMH 35)
AND ABT 0.2MT MDO(DMB) PORT CONS
IDLE 1.2 IFO + 0.4 DO
WORKING 8 HRS - 1.6 IFO AND 0.8 DO
(ALL DETAILS ABOUT)

PLEASE PROPOSE,

Kindest Regards,

SEAWISE Melbourne

Chris Bartlett
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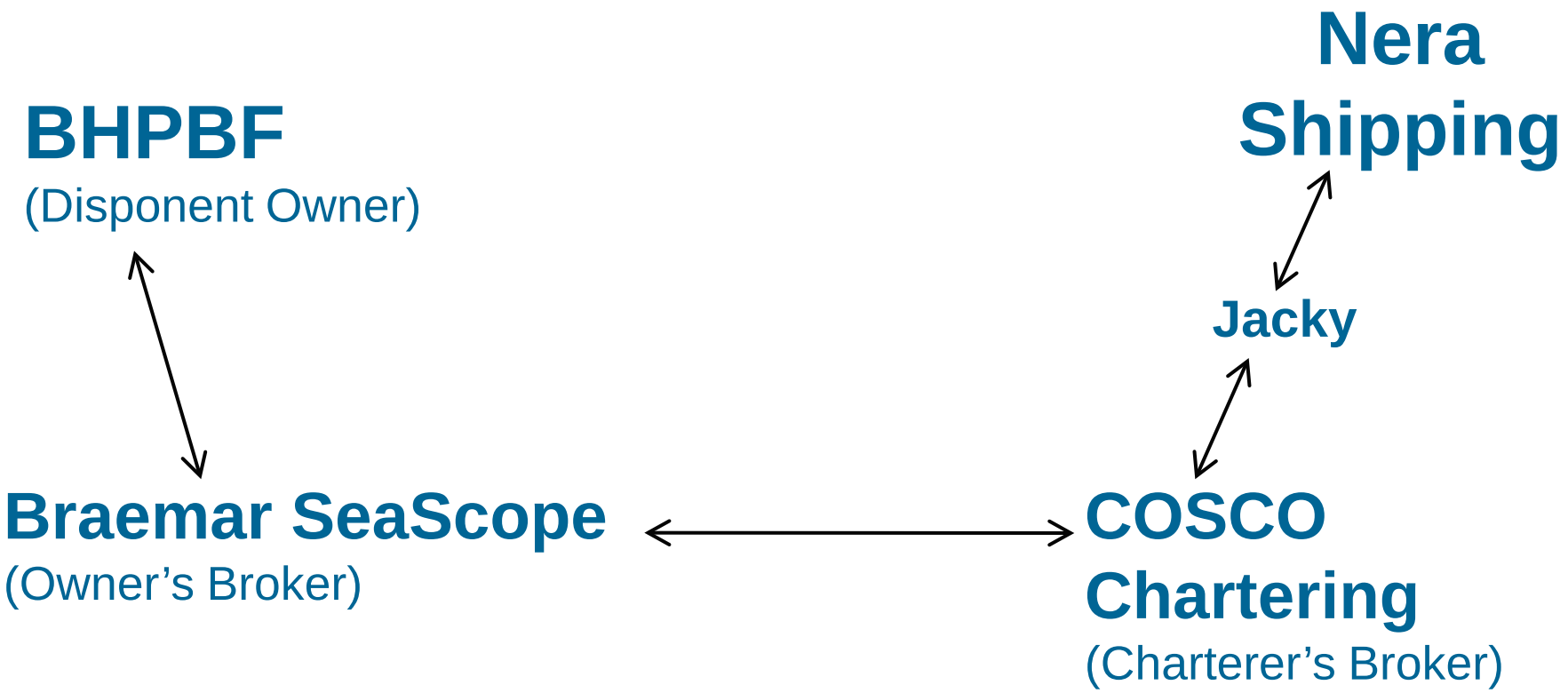
Home: + 61 3 9818 2830
Mobile: + 61 414 442 932

++AFTER FIXED AND FAILED REOPEN++


BHPBF
(Disponent Owner)
Nera Shipping
Jacky
Braemar SeaScope
(Owner's Broker)
COSCO Chartering
(Charterer's Broker)

BHPBF

(Disponent Owner)

Braemar SeaScope  **Jacky/Nera Shipping**

(Owner's Broker)

"...NCI appears to be a reputable organisation. Jacky, on the other hand, is a rogue."

"But the true or effective cause of the problem which has arisen here is COSCO's representation that it was authorised to act for NCI and it was on that basis Seawise concluded the fixture with Jacky."

Representation of authority:

"Our word is our bond"

"As regards causation, if COSCO had actual instructions from NCI to enter into a charterparty Seawise would not have concluded the charterparty with Jacky and the vessel would not have been delivered to Nera. COSCO's failure to hold the authority which it warranted caused the loss that BHPB has suffered."

"...its is not necessary for the plaintiff to enter into a transaction with the supposed principal in order to establish an action for breach of warranty of authority. The cause of action is established even if the plaintiff enters into a transaction with another person: see also *Penn v Bristol & West Building Society* [1977] 1 WLR 1356

Contact

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NORTON WHITE