requirements with the least amount of delay and cost. **4271.07**

Where bunker Supplier demonstrated the existence of four separate bunker supply contracts, and proved that Owner had breached those contracts by failing to pay for the deliveries in full, including accrued interest, and where Supplier had fully performed its obligations by making timely delivery, Supplier was entitled to damages in the claimed amount, together with interest, reasonable attorneys' fees and the costs of the arbitration. **4275.01**

E. Subsequent

Where the vessel had been redelivered and was scheduled to begin her next employment but was still within her laydays, it is self-evident that, absent the delay caused by the late arrival of the Supplier's LSMGO barge, the vessel could have been delivered under its next charter and begun earning hire that much sooner. Therefore, Owner was not required to show proof of back-to-back charters to show it suffered a loss due to the late arrival of the bunker barge. **4271.06**

F. Mitigation

Purchaser/receiver of contaminated ammonia who could have used ammonia contaminated on respondent Owner's vessel in making phosphate-based products instead of in nitric acid production, was found to have acted reasonably in not shifting its production because consumption of ammonia in the phosphate unit was much lower than in the nitric acid unit, requiring an extremely long time to consume all of the ammonia out of the storage tanks in the phosphate plant, and, due to an inability to purchase enough nitric acid from outside the company, would have resulted in contract defaults and a loss of nitric acid customers. **4175.24**

Under maritime law, a party that sought to mitigate its damages need only prove that it acted reasonably and so as not to unduly enhance the damages caused by the breach. **4175.25**

A party injured by a contractual breach is required only to use good faith and reasonable diligence in attempting to mitigate its damages. The party is not required to use the best judgment possible or adopt the wisest course that hindsight might indicate. **4175.26**

Although Charterer established that contamination of a parcel of premium gasoline by regular gasoline occurred on the vessel, placing liability for same on Owner, the Panel found that Charterer failed to take all reasonable steps to market the downgraded parcel as mid-grade and to establish that it acted reasonably under the circumstances to mitigate damages. Panel awarded damages to Charterer but, given the mitigation issues, the Panel did not award Charterer the full amount of damages it sought to recover. **4181.04**

Seller acted reasonably in mitigating its damages when Buyer failed to perform. Seller was not obliged to continue to deal with Buyer, given Buyer's conduct, and rejections of Buyer's settlement proposals did not constitute a breach of Seller's obligation to mitigate damages. **4194.05**

Panel found that Buyer breached the first MOA and treated Seller's acceptance of a second MOA for the same vessel at a lesser price as a prudent mitigation of its damages in a falling market. **4198.02**

Owner's decision to repair the vessel at Santos was a prudent and reasonable attempt to mitigate its damages, and Charterer was held responsible for the cost of sailing the vessel to Santos and for repairing it there. **4206.06**

Panel accepted the argument of Claimant, a COA Shipper, that the Class-required repairs to pre-existing rudder damage at Port Hueneme so delayed the vessel's departure that her new arrival date in Japan coincided with that of another banana ship and that the near-simultaneous arrival of both ships would saturate the market and drive down the sale value of both cargoes. Claimant properly minimized its damages by selling a part of the Tokyo-bound bananas to China at a substantial discount and would ordinarily be entitled to recover the difference between the Japan market prices and the mitigation sale to China. However, prior to the vessel's delayed sailing, Claimant sold the cargo on C.I.F. terms to its related company. The Respondent Disponent Owner argued and the Panel agreed that Claimant lacked standing to bring the claim and declined to award damages. **4208.02**

Despite their mounting differences, Bareboat Charterer urged Salvor to continue working and then arbitrate their resulting claims and counterclaims. However, Salvor opted to remove its men and equipment from the site, thereby leaving Bareboat Charterer to secure replacement men, divers and equipment to locate and recover certain missing equipment that had separated

from the barge. Panel Majority concluded that, if Salvor had continued working, much if not all of the duplicative mobilization/demobilization costs of the substitute contractors would have been avoided. Although the substitute contractors may not have had the same experience, skills and equipment of a professional salvor, they were available and ready to carry-on with the required recovery effort that Salvor chose to discontinue. Although obligated to mitigate damages, Bareboat Charterer was not required to act in a fashion that in hindsight might have produced a lower cost and a correspondingly lower claim. On the contrary, Bareboat Charterer was only required to act reasonably, which the Panel Majority considered it had done. **4210.11**

Efforts to mitigate damages should not be viewed with the benefit of hindsight. **4217.13**

The party resisting a breach of contract claim has the burden of showing that the claiming party's mitigation efforts were palpably unreasonable. **4217.15**

Mitigation is meant to lessen the damages caused by a contractual breach and not further compound them. **4217.16**

The Respondent must show not only that the Claimant could have acted in a way that would lessen his losses, but also that he should have done so, as a reasonable person in the ordinary course of business, given that the Claimant had been put in the position in which he finds himself by the Respondent's breach. **4217.17**

Where Charterer failed to provide a cargo, Owner's mitigation efforts in arranging a substitute charter were found to have been reasonable. **4218.02**

In case of a contractual breach, the injured party has a duty to reduce its losses through mitigation. However, where no specific vessel is named as a performing vessel under a Contract of Affreightment and no full time usage of a named vessel is provided, the principle of mitigation does not apply. The Panel ruled that where the injured party, Owner under the COA, had the ability to perform several contracts at once and could charter in vessels to perform, the wrongful termination or non-performance of the COA exposed Owner to a loss that could not be avoided by performing another contract since Owner had the ability to perform both contracts at the same time. If the injured party were legally free to enter into similar contract with others, the fact that, subsequent to the breach, the injured party could have or actually did make similar contracts in no way reduces the damages to which it is entitled. **4221.02**

Where Charterer did not perform the required number of voyages under a Contract of Affreightment, Owner, the injured party, is not obliged to accept a mitigating offer from the breaching party. **4221.03**

A Shipowner may be entitled to consider a charter terminated if the Charterer demonstrates by statement or conduct that it will not or cannot perform the contract. In such circumstances, the Owner is permitted to conclude there has been an anticipatory repudiation of the charter. Repudiation by Charterer will not only excuse Owner from performing but may also give rise to a claim for damages. **4249.04**

Owner's decision to perform ten mitigation voyages in the Atlantic instead of the Pacific was not a breach of its obligation to mitigate damages (over a dissent). **4249.08**

A party in breach of contract has the burden to show that its contractual counterpart's mitigation efforts were not reasonable "viewed at the time the events occurred." While arbitrators have the benefit of hindsight, "that is not a privilege the parties had at the time of their dispute." Dissent: Panel Majority's award fails to take into account Owner's unreasonable mitigation efforts, which, according to the dissenting arbitrator, "grossly magnified the damages." **4249.09**

Where short delivery of corn caused cargo receiver at Oran, the first discharge port, to threaten vessel arrest and judicial proceedings, the Master's acceptance of receiver's demand to make good the shortage with cargo bound for Casablanca, the second discharge port, was considered by the Panel Majority to have been the most reasonable and least costly course of action for all concerned, even though unorthodox. **4268.06**

By reason of the Master's protest and several load port draft surveys, Charterer knew there was a discrepancy regarding the amount of cargo actually loaded. Charterer should have anticipated and taken steps to avoid a problem at discharge but failed to do so. As a result, the Panel Majority denied Charterer's claims for cargo shortage, loss of the surety bond triggered by its receiver's drawdown on a required bank deposit and survey expenses but awarded Owner the net demurrage/detention claimed due to the discharge port delay,

interest and an allowance toward its legal fees and costs. **4268.07**

A party seeking to mitigate its damages or avoid a larger loss is required to take reasonable steps to do so but is not required to take extraordinary action to avoid or reduce the loss. It is also not necessary that actions taken to mitigate the loss turn out to be the best available with the benefit of hindsight. **4268.08**

There are cases in which Tribunals have held that the party that breaches a contract in the first instance is relieved of liability for some or all of the consequences of the breach because the party suffering the breach was negligent in failing to avoid the consequences. **4268.09**

Under an ASBATANKVOY form, Panel Majority denied Charterer's claim for mitigation damages when the vessel was unable to load the intended cargo due to its inability to pass inspections. **4274.04**

G. Unrecoverable Penalties

H. Nominal; De Minimis; None

Although Panel Majority denied Claimant's cargo discoloration claim on other grounds, Majority noted that the purpose of awarding damages is to restore the injured party to the same position had no damage occurred. Here, Claimants' damages had to be measured against the plunging market for sound product. Panel Majority observed that, when the market conditions were taken into account, it was apparent that Claimant had sold the "distressed" cargo at or near the then-prevailing market prices for sound cargo. Accordingly, Panel Majority concluded that Claimant's loss did not result from the discoloration but from the deeply depressed market for the product. **4216.03**

FREIGHT

A. Quantum and Rate

Following discharge, Owner invoiced Charterer for pre-agreed lump sum freight, demurrage, and reimbursement for delays and costs associated with the ship's northbound passage through the Turkish Straits, including pilotage through the Dardanelles and Bosporus. Although delayed, Charterer did pay the lump sum freight but not the demurrage or Turkish Straits expenses. Although invited, Charterer did not participate in the arbitration. Panel awarded Owner its claims in full, including interest for the delayed payment of the lump sum freight. **4159.03**

In a dispute over dockage and security fees paid into a joint escrow account, Disponent Owner's inability to show a direct correlation between the freight rates it was charged by the head owners of vessels used to perform a COA and the amount of such fees paid into the escrow account was not necessarily fatal to Disponent Owner's claim for the fees. The Panel recognized the commercial reality that, once the dockage and security fees were known on the market, the head owners would logically have made some allowance for same in the freight rates charged to the Disponent Owner. In fact, Charterer produced the declaration of a broker who took part in many of the re-let voyages, who opined that the rates charged to Disponent Owner included "three days dockage dues." The Panel accepted that evidence as the best measure of the increased freight rates and applied that measure to its allocation of the dockage and security fees in the joint escrow account. **4230.03**

B. When Payable, By Whom, To Whom and in What Manner

Following discharge, Owner invoiced Charterer for pre-agreed lump sum freight, demurrage, and reimbursement for delays and costs associated with the ship's northbound passage through the Turkish Straits, including pilotage through the Dardanelles and Bosporus. Although delayed, Charterer did pay the lump sum freight but not the demurrage or Turkish Straits expenses. Although invited, Charterer did not participate in the arbitration. Panel awarded Owner its claims in full, including interest for the delayed payment of the lump sum freight. **4159.03**

Charterer was permitted and did pay the overdue freight to Owner's Houston rather than its head office but did so using a Charterer-related third party with whom neither Owner nor its Houston office had had any prior contact. Unable to account for the received funds for some months, Owner's Houston office mistakenly returned the freight to the remitting party. Incorrectly believing the returned freight was money due it from other sources, Charterer disbursed the funds and was then financially unable to pay the freight to Owner. Thereafter, both Charterer and the remitting party agreed to repay the freight in installments but,