The owners of the "Eurus" ([1996] 2 LLR 408) chartered her on an amended Ashbantkovoy form to the charterers, who were also oil traders, for a single voyage to load a cargo of crude oil in Nigeria. The charterers purchased the oil for their own account at a price which was fixed by reference to the bill of lading. Under the charterparty, the vessel was not due to arrive and tender notice of readiness until 31 January 1992.

By 23 January, it became apparent that the February price of oil would be significantly lower than the January price and so the charterers wanted loading to be completed in February to allow the bills of lading to be issued with a February date. On 24 January, therefore, the charterers instructed the master that notice of readiness should not be tendered before 11.00 hours on 31 January. These instructions were repeated on the 27th, 29th, and 30th January. However, neither the owners nor the charterers knew that, by reason of the "8 o'clock rule" in Nigeria, any oil shipment which was completed before 08.00 hours on the first day of any month was treated as though it had been completed on the last day of the preceding month.

The vessel berthed at 00.30 hours on 31 January without tendering notice of readiness and commenced loading at 06.36 hours the same day. At 11.00 hours, the vessel tendered notice of readiness as ordered. When the charterers discovered that the vessel had berthed, they asked for loading to be slowed down so it would be completed on 1 February. However, being unaware of the 8 o'clock rule, they did not point out the importance of delaying the completion of loading until after 08.00 hours on 1 February.

Loading was completed at 01.30 hours on 1 February, but the bill of lading was dated 31 January due to the 8 o'clock rule. In consequence, the charterers had to pay U.S.$681,934.05 more for the oil under the sale contract than they would have done if the bills of lading had been dated 1 February. The charterers claimed this sum from owners under clause 36 of the charterparty either as damages for breach of contract or by way of an indemnity. Clause 36 provided that:

"Owners shall be responsible for any time, costs, delays, or loss suffered by Charterers due to failure to comply fully with Charterers' voyage instructions provided such instructions are in accordance with the charter party and custom of trade."

The London arbitrators held that the claim for damages for breach of contract failed because the 8 o'clock rule was unforeseeable and so the loss suffered was too remote to be recoverable. However, a majority of the arbitrators held that clause 36 was an indemnity clause and that, whereas damages for breach of contract were subject to the doctrine of remoteness and thus had to be reasonably foreseeable, the only issue under an indemnity clause was simply one of causation. The majority of the arbitrators found that there was an unbroken chain of causation between the owners' failure to comply with the charterers' instructions and the charterers' obligation to pay the January price for the oil. This chain of causation was not broken by the 8 o'clock rule because this rule had existed when the charterparty was concluded.

Not surprisingly, the owners appealed, and the arbitrators' decision was reversed. The Commercial Court ruled that clause 36 did not create an indemnity in favour of the charterers. As a matter of construction, clause 36 was a standard term which contained no express language of indemnity. It simply is a shorthand way of saying that the owners had to comply fully with the charterers' voyage instructions (provided they were in accordance with the charterparty and trade custom) and that failure to do so would amount to breach of contract and render the owners liable to the charterers. The Court gave a clear indication that it was reluctant to treat clauses which deal with a party's failure to act in accordance with the terms of a contract as creating an indemnity. If damages for breach of contract provide an adequate remedy to the innocent party.

The Court held that the charterers' claim was simply one for damages, arising from the owners' breach of their contractual obligation to comply with the charterers' orders. Damages could be recovered for breach of this obligation, subject to the doctrine of remoteness. In this case, the proximate cause of the loss was the existence and operation of the 8 o'clock rule. Since both parties were ignorant of this rule, the Court found that the loss was unforeseeable and so no damages were recoverable. For the sake of completeness, the Court stated that even if it was wrong and clause 36 did create an indemnity, the same rules of remoteness would apply to prevent a recovery by the charterers.