



# Welcome

A panoramic view of the Singapore skyline at sunset. The Marina Bay Sands hotel is on the left, and the Singapore Flyer is on the right. The city's skyscrapers are reflected in the water in the foreground. The sky is a mix of orange, yellow, and blue.

## Singapore 2023



# Welcome to Singapore 2023



# Welcome to Singapore 2023

- 
- Shipping rates from Asia plunge
  - Huge no. of new container ships under construction
  - Unstable world economies
  - Lower consumer demand
  - High interest rates



***“An unprecedented flood of new container ships is about to enter service. The pace of deliveries will be even higher throughout 2024 and stay strong in 2025”***

# Orders for New Ships...

- Tough years ahead
- Covid profits used
- Over-supply hits rates

**OR**

- New ships – New fuels
- Older ships scrapped
- Chartered ships released
- Lower future running costs



**The International  
Supply Chain:  
U.S. Efforts To  
Address Disruptions**



**EU Oil Price Cap:  
The Effects on  
International Shipping  
and Marine Insurance**



# Indian Courts Approach to Abandoned Vessels

***Sell off 2 abandoned ships to recover crew dues***

**The Plight of Ship Crews  
Stranded at Sea**

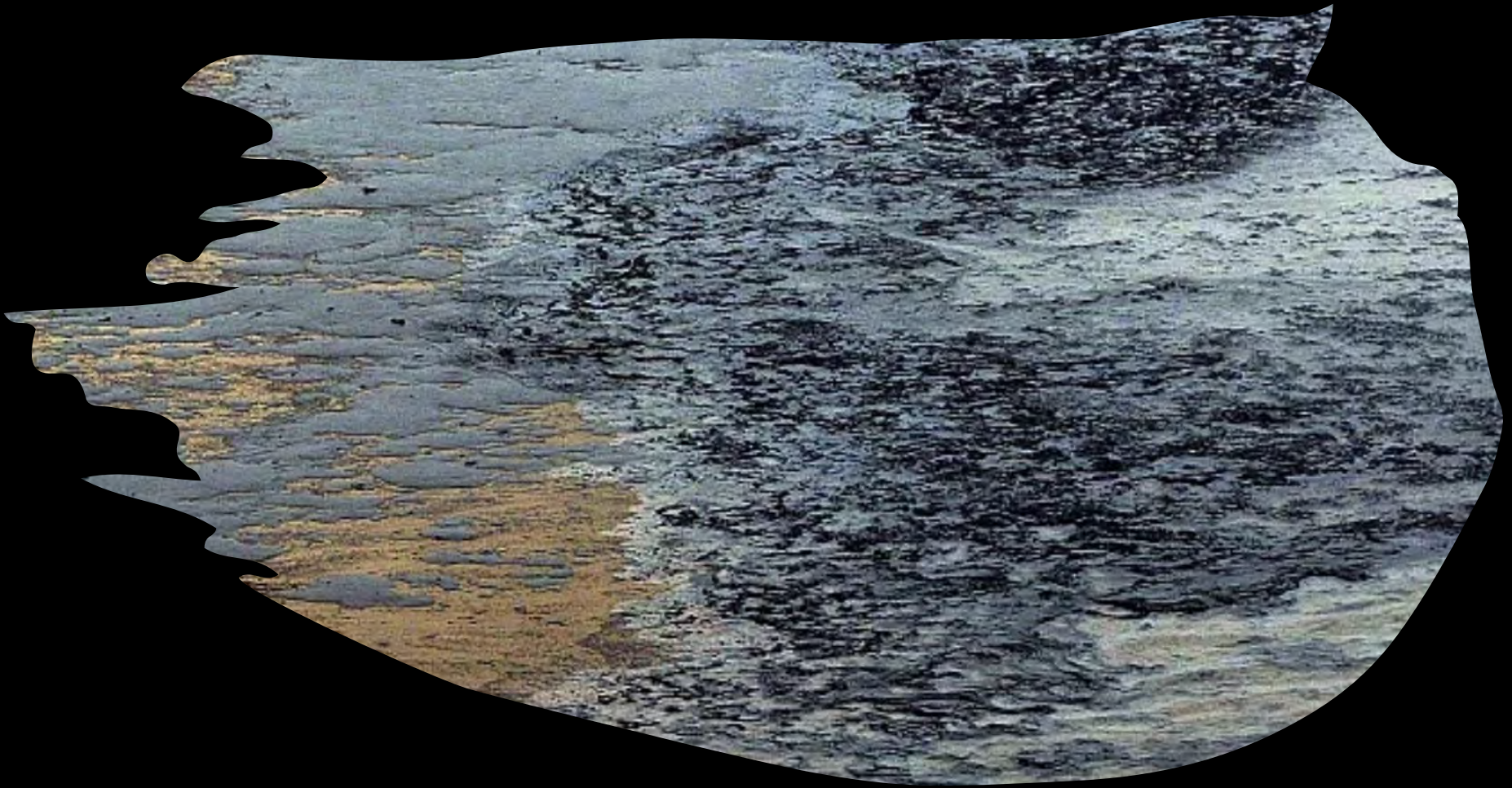


**India: Ban on Vessels Over Certain Age Profiles**



**Panamanian  
Limitation  
Schemes**

**New Maximum Draft for Neopanamax  
Locks & Other Sanctions**



**Spain's Biggest Environmental Disaster:  
*The Prestige* Oil Spill 20 Years On.**

# **LEGAL AFFAIRS**

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**Knock For Knock: Poland**

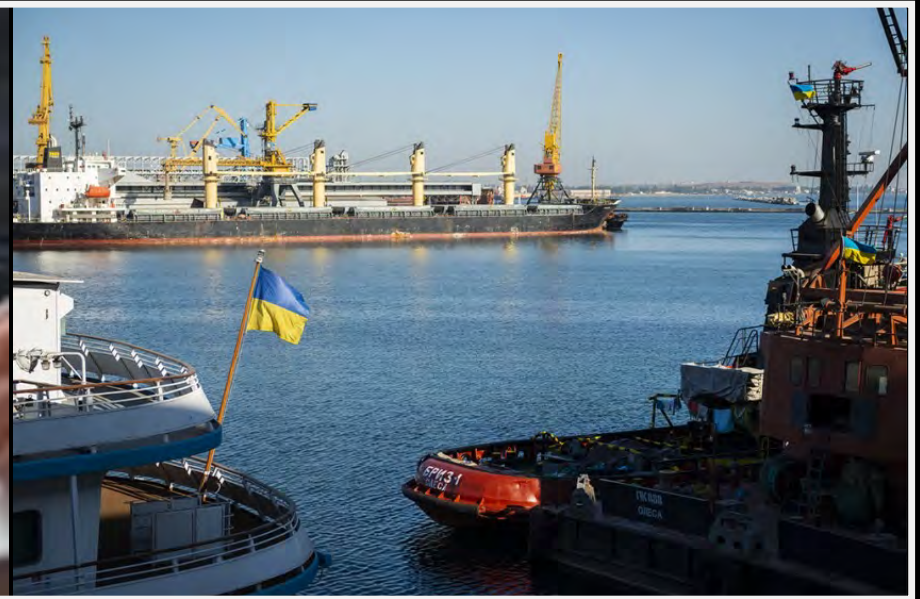
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**Marine War Risk: Nordic**

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**Constitutional Remedy Incorrect: Chile**

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# The Dangers of Vessel Scrapping

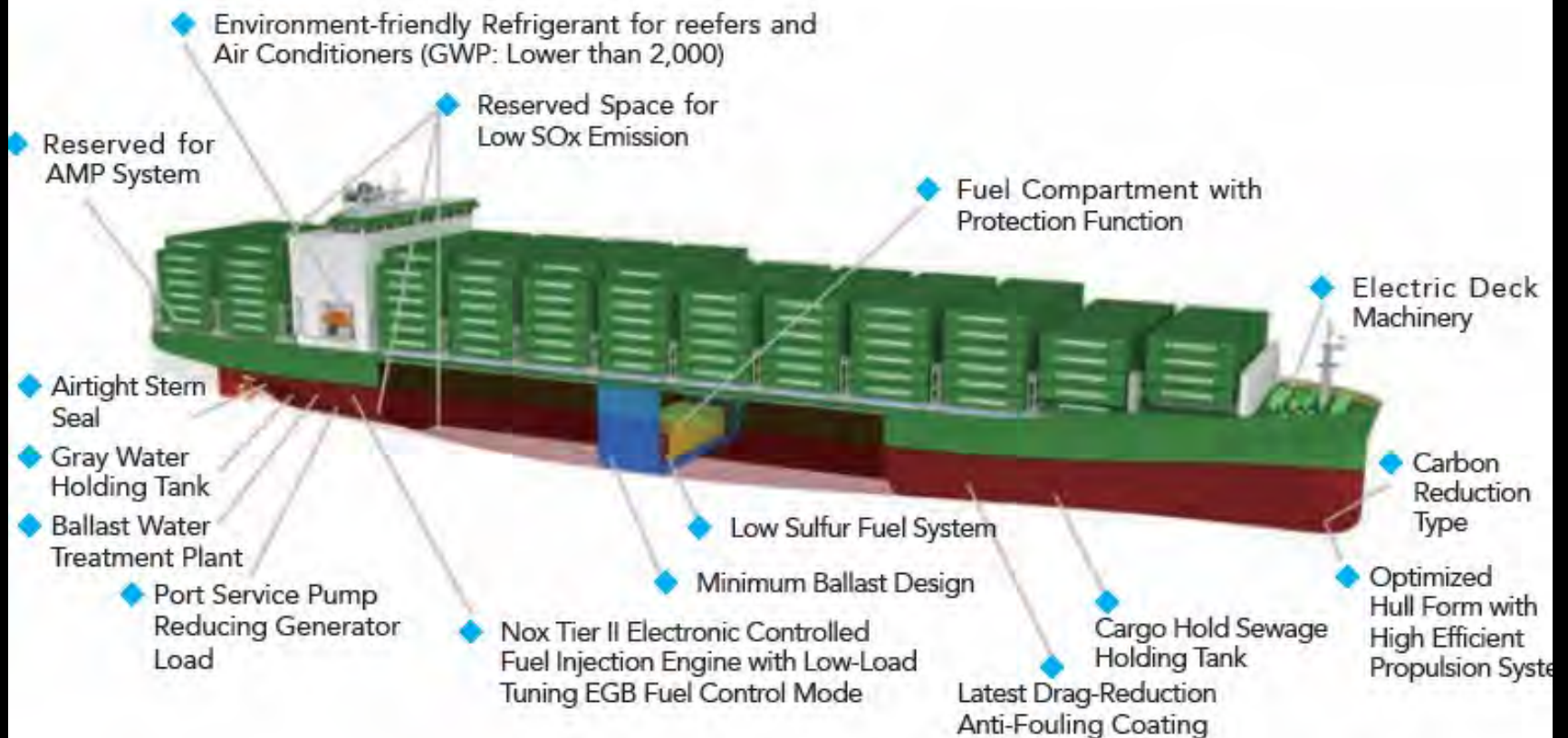
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# Environmental Actions



# Plans for Greener Container Ships





**Greener Fuels:** LNG, LPG, Methanol, Biofuel & Hydrogen

**Other Initiatives:** Battery Systems, Fuel Cells & Wind-assisted Propulsion, Slow Steaming, Just-in-time Arrivals, Voyage Optimisation by Improving Drag Reduction, Enhanced Weather Routing, Hull Cleaning and Propeller Polishing



## Our sponsors



# IMLS Singapore 2023



# IMLS Singapore 2023



# Agenda

**12:00** Registration &  
Buffet Style Lunch  
**13:00** First session  
**14:20** Break  
**14:50** Panel discussion  
**16:10** Break  
**16:40** Final session  
**18:00** Cocktail reception at Empress  
**20:00** Close



First Session Moderator

**Oliver Goossens**

Gard  
Singapore





# First Session Speakers

- **Francisco Linares, Morgan & Morgan, Panama:**  
*Panamanian limitation schemes*
- **Rafal Czyzyk, CMW Legal, Poland:**  
*Knock for knock - standard rule in the offshore industry*  
*- A Polish perspective*
- **Lynn Krieger, CWL, USA:**  
*Recent Developments in U.S. Efforts to Address*  
*Disruptions in the International Supply Chain*
- **Diego de San Simon, San Simon & Duch, Spain:**  
*The Prestige: 20 years later*

***Panamanian Limitation Schemes***  
***An Overview of Panama's Law on Limitation of***  
***Liability for Maritime Claims***

*by*

**Francisco J. Linares F., BA,JD**

**Partner / Morgan & Morgan**

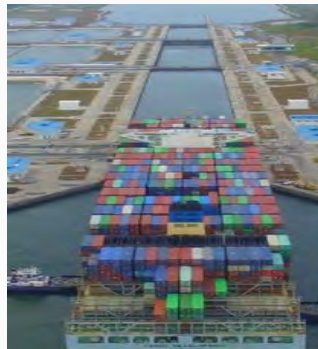
**President (2017-19) / Panama Maritime Law  
Association (APADEMAR)**

**International Maritime Law Seminar**  
**Asian Civilisations Museum - Singapore**  
**25 May 2023**



# I. THE ISSUE OF LIABILITY.

- Panama – Continental legal system.
- There is no “*judge made law*” – all legal rules are based on statutes. Jurisprudence, however, can be quite relevant.
- Basic rule → **UNLIMITED LIABILITY.**
- Articles 986, 990, 991, 992 and 1653 of the Civil Code .
- *Exceptio est strictissimae interpretationis.*



## II. PANAMA'S PRESPECTIVE ON LIMITATION: GENERAL REMARKS

- Altogether, three main archetypal schemes: (a.) *lex fori* (b.) law of registry (c.) *lex locci delicti* .



- It is important to distinguish the scope of the right to limit sought to be invoked: (a) whether the right to limit is particular to a specific claim or (b) whether the right to limit is general and pertains to multitude of claims/potential claims (*i.e.* – an *erga omnes* right to limit).
- In Panama, the *lex fori* does not necessarily govern limitation of liability.



- In fact... Panama law on limitation often does not govern.
- Always start with a conflict of laws' analysis.
- Pursuant to our conflict of laws rules – article 566 (15) of the CMP – *“with respect to the existence and determination of limitation of liability of the shipowner, the laws of the vessel’s country of registry and, with respect to the existence and determination of limitation of liability of the cargo owner, the laws of the Republic of Panama”*.

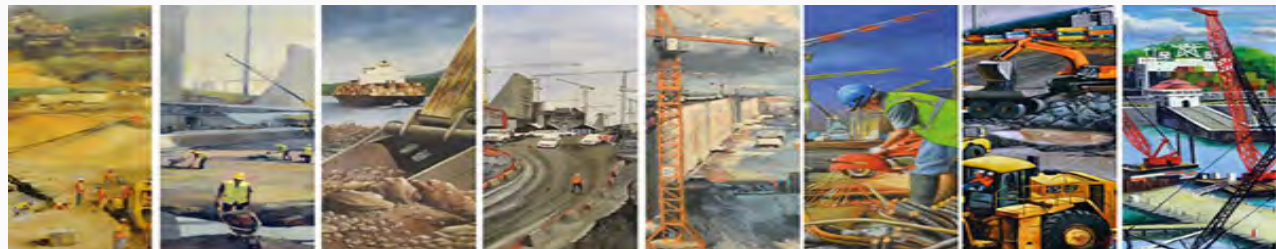


- Thus, a casualty occurring within Panama involving a foreign vessel (seeking to limit) *will never* be governed by Panamanian substantive law, whereas a casualty occurring outside of Panama involving a Panamanian vessel (seeking to limit) *will always* be governed by Panamanian law.



### III. HOUSE LIMITATION RULES.

- Panama has adopted the Convention on Civil Liability for Oil Pollution Damage 1969 (Law No.17 23.02.1975) and the 1992 Protocol (Law No.96 15.12.1999).
- Panama has adopted the Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Law No.7 14.01.2009).
- Panama has adopted the Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 Protocol (Law No. 96 07.11.2013).
- Panama *has not* adopted the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996.



- **Panama *has not* adopted the Convention on Limitation of Liability for Maritime Claims 1976, nor the 1996 Protocol.**
- **Panama *has not* adopted any of the international frameworks on carriage of goods (HVR, Hamburg, etc.).**
- **Instead, domestic rules govern the subjects covered by LLMC 1976/96, HNS 1996, and HVR/Hamburg → these are contained in the CMP and Law No.55 06.08.2008.**



## IV. EXERCISING THE RIGHT TO LIMIT LIABILITY IN PANAMA.

### IV. A.) *Procedural aspects*

- If you are seeking to limit liability *erga omnes* → must file a limitation action (arts. 517-529 of the CMP). This entails setting up a limitation fund in the Panamanian Maritime Court (N.B. – P&I Club LOUs are not allowed).
- You *cannot* invoke *erga omnes* limitation of liability as a defense ...even if the governing substantive law allows this (see *NYK v.- ER Hamburg Schiffahrtsgesellschaft* [S.Ct./1C/14.06.2001]).

- You can invoke a particular right to limit as a defense in the context of a specific claim → *e.g.*, package/kilo limitation in a cargo claim. Governing law is determined as per art. 566 (10) of the CMP → place of shipment or as stipulated in the contract. (The law of registry may apply in tort claims → art. 566 [6] of the CMP).
- A limitation action must be filed no later than 6 months counting from the first written claim submitted against the party seeking to limit. An extrajudicial claim *will* start the clock running (see *Pana Development Inc. et al v.-HDS Viscaya KS* [S.Ct./1C/04.06.2008.]).

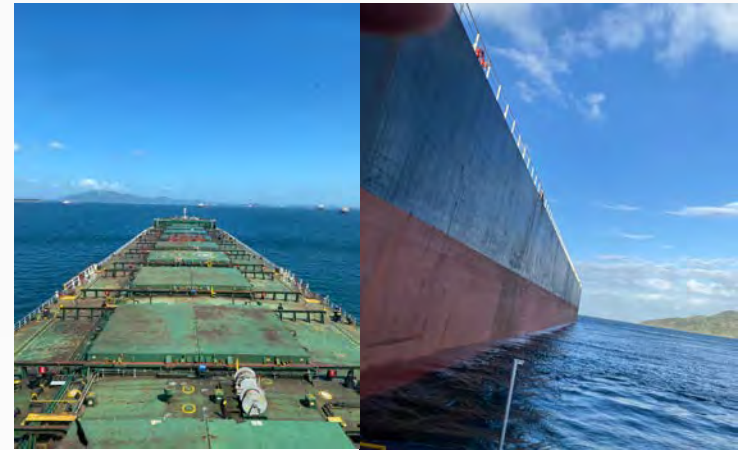
- Once a fund is constituted and the limitation proceedings admitted, all pending proceedings in other jurisdictions – including administrative (see the *Karen Koby*) – are consolidated into the limitation proceedings, and other arrests may be lifted (see the *Don Francesco* [S.Ct./1C/04.03.2011], the *Caribe Tuna* [S.Ct./1C/21.03.2013], the *Chiapes* [MAT/02.03.2018], the *New Diamond* [MAT/24.10.2022])
- Creditors claiming on the fund have 10 days to challenge the right to limit and 60 days to submit evidence in support of their claim.
- Anti-suit injunction? No → the *New Diamond* [MAT/27.04.2022]

## **IV.B.) *Substantive aspects.***

- **Carriage of goods by sea legislation (Law No. 55 06.08.2008) allows package and kilo limitation as per HVR (666.67SDRs per package/2SDRs per Kilo).**
- **Oil spills → CLC & Bunker CLC.**
- **Other pollutants → CPM (arts. 608-616); limitation as per old article V (1) CLC 69 (i.e., 2000 francs per ton, up to 210 francs).**
- **Limitation rules are contained in the CMP (adopted in 1982).**



- ***Erga Omnes* limitation rules follows LLMC 1976 → limits are calculated using the same parameters as articles 6 and 7 of LLMC 1976.**
- **Same as LLMC 1976, except there is no equivalent to articles 10, 14 and 15; and – significantly – our rules differ from article 2 (1) (a), regarding claims subject to limitation.**
- **Damage against the Panama Canal or harbour works *are excluded* – you cannot invoke the right to limit liability (see the *Modalwan 20123* [MAT / 11.05.2016]).**



- **Can owners of a non-Panamanian vessel limit liability *vis a vis* the Panama Canal?**
- **It would be a case of first impression...but will come out at some point...not an “if” but a “when”.**
- **Answer: likely not → articles 63, 122 & 134 Law No. 19 11.06.1997. *Exceptio est strictissimae interpretationis!!!***
- **New article 5 ACP Regulations (published on March 2021).**



## V. CONCLUSION.

- **When it comes to limitation of liability, Panama follows a two-pronged scheme, where the issue may be resolved according to either the law of registry or the *lex fori*, depending on the case. Substantively, Panama follows closely most internationally applicable rules on limitation of liability, with significant local exceptions – most notably, regarding the Panama Canal.**

# ***THANK YOU!***



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#### *Disclaimer*

*The information in this presentation is general information and not, nor intended to be legal advice. You should consult an attorney for advice regarding your individual situation.*

# "KNOCK FOR KNOCK"


STANDARD RULE IN THE OFFSHORE INDUSTRY –  
A POLISH PERSPECTIVE



Source: Super Fight League / Economic Times

## DEVELOPMENT OF THE “KNOCK-FOR-KNOCK” CONCEPT:

- ▶ Originated and developed in the common law jurisdictions where it well established.
- ▶ Widely used in contracts related to offshore services (gas, oils, drilling, wind farms on open seas), towage, salvage (SUPPLYTIME, TOWCON, TOWHIRE, WRECKHIRE, WRECKFIXED) usually governed by English law and jurisdiction.
- ▶ Allocation of liabilities and indemnities between the parties-contractors (and its groups) regardless of each party's own negligence (gross) or misconduct (willful).

A map of Europe with Poland highlighted in red. Other countries labeled include Norway, Sweden, Finland, Estonia, Latvia, Lithuania, Belarus, Ukraine, Germany, Czech Republic, Slovakia, Austria, Hungary, Romania, Bulgaria, Serbia, Croatia, Slovenia, Italy, France, Spain, and Portugal.

**IN CONTRARY TO THE COMMON  
LAW  
JURISDICTIONS,  
WHERE THE “KNOCK-FOR-KNOCK”  
CONCEPT  
IS WELL ESTABLISHED,**

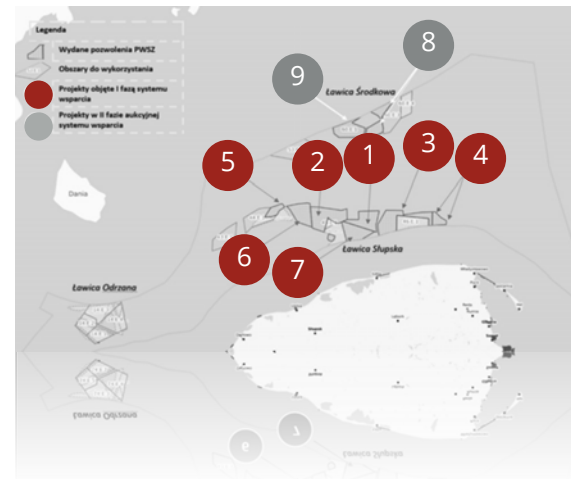
**THE SITUATION MIGHT BE QUITE DIFFERENT  
UNDER A CIVIL LAW JURISDICTION**

**– FOR EXAMPLE POLISH**



## „KNOCK-FOR-KNOCK” - POLISH PERSPECTIVE

This is a particularly important issue and risk factor as in the Polish Exclusive Economic Zone (EEZ) on the Baltic Sea a vast off-shore wind energy projects (currently 9) are being developed with the expenditure of USD 35 billion and 10GW of green energy production capacity until 2033 followed by 14GW until 2050 !





## CONT.: „KNOCK-FOR-KNOCK” - POLISH PERSPECTIVE

- ▶ Polish law, in general, recognizes the contractual choice of foreign (English) law and jurisdiction, especially in international contracts.
- ▶ Polish law has no similar framework to the “knock-for-knock” concept. Thus, there is no established guidance regarding the effects of its application and enforcement to date.
- ▶ The general principles applying to all contractual relationships under the Polish law will apply to the “knock-for-knock” regime.



## CONT.: „KNOCK-FOR-KNOCK” - POLISH PERSPECTIVE

- ▶ Main points to consider when applying the “knock-for-knock” concept under Polish law:

Interpretation



Willful misconduct



Risk based liability regime



## INTERPRETATION

### ► Art. 65 of the Polish Civil Code (PCC):

§ 1. A declaration of will shall be construed in such a manner as required by principles of community coexistence and established customs, taking into account the circumstances in which it was made.

§ 2. When contracts are concerned, the concurrent declarations of will of the parties and the purpose of the contract shall rather be examined than its literal wording.



## WILLFUL MISCONDUCT

### ► Art. 473 § 2 PCC:

An exclusion, that the debtor will not be liable for damage, that he may inflict intentionally on the creditor - shall be invalid.



Source: biznesalert.pl

## RISK BASED LIABILITY REGIME

### ► Art. 435 § 1 PCC:

A person who on his own account runs an enterprise or an establishment powered by the forces of nature (steam, gas, electricity, liquid fuels etc.) shall be liable for an injury to a person or for damage to the property, inflicted to any party by the operation of the enterprise or establishment, unless the injury or damage came into being owing to force majeure or only due to the injured party's fault or the fault of the third party that the he is not liable for.



Source: automatykab2b.pl

## PITFALLS FOR THE PARTIES

Pitfalls for the parties when they agree in a standard contract (BIMCO), which will be commenced in Poland or in the Polish EEZ, based on:

- ▶ Foreign law and jurisdiction ?
- ▶ Polish law and jurisdictions ?



## FOREIGN LAW AND JURISDICTION

- ▶ The risk of the effectiveness of the choice of foreign law –

**MAYBE...**



- ▶ “Interpretation” risk (art. 65 PCC) –

**NO!**



- ▶ “Willful misconduct” risk (art. 473 § 2 PCC) –

**NO, BUT...?**



- ▶ “Risk based liability regime” risk (art. 435 § 1 PCC) –

**VERY MUCH  
YES !!!**





Source: lexlaw.co.uk

## THE RISK OF THE EFFECTIVENESS OF THE CHOICE OF FOREIGN LAW

- ▶ Art. 14.2 of the Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11th July, 2007:

Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.



## „WILLFUL MISCONDUCT” RISK (ART. 473 § 2 PCC)

“Against public policy” - when enforcing in Poland a foreign judgment or arbitral award.

- ▶ Art. 1146 § 1 point 7 of the Polish Civil Procedure Code:

**A ruling is not recognized if:**

7) recognition of the ruling would be contrary to the basic principles of the legal order of the Republic of Poland (the public order clause).

- ▶ Art. V.2b of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards:

**A ruling is not recognized if:**

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.



## "RISK BASED LIABILITY REGIME" RISK (ART. 435 § 1 PCC)

### ► Art. 437 PCC:

The liability specified in the two preceding articles may not be excluded or limited in advance.



Source: wyborcza.pl

## EXAMPLES OF POLISH COURTS JUDGEMENTS OF OBLIGATORY RISK BASED LIABILITY REGIME:

- ▶ Decision of the Court of Appeal in Szczecin; ref. I ACa 1117/15, „The Shipyard”:

It is necessary to agree with the Plaintiff that merely from such defined business objects it follows that without using specialised equipment set in motion by means of natural forces, the company would not be able to run its business. (...) So, in the case at hand it is to be seen as demonstrated that [the Shipyard], to run a business, such as, by way of example, the production of steel elements for lighting towers and other work, must have used electricity. So, the running of the business by the Defendant was undoubtedly dependent on the use of natural forces, without using them the Defendant would not have achieved the purpose for which it had been set up. (...) the relationship between the operation and damage occurs whenever such damage occurred as a result of an incident that is functionally linked to the enterprise's operation, even if there were no direct dependence between the use of forces of nature forces and the damage.



Source: 24kurier.pl

## CONT.: EXAMPLES

- ▶ Decision of the Court of Appeal in Łódź; ref. I Aca 454/17, “Shopping Mall”:

The first instance Court assumed correctly Art. 435 § of the Civil Code as the legal basis of the liability of the company (...) and thus, of its insurers. (...). (...) definition is fulfilled by the enterprise of the sued company (...), which is a very large commercial object, for the operation of which it is necessary to harness the forces of nature. This applies not only to lighting devices, heating, air conditioning, transport (trolleys, band conveyors), monitoring, cash registers, etc., but also to the opening and closing of the doors. Without these devices the functioning of modern commercial facilities would be impossible (...).



Source: [serwisy.gazetaprawna.pl](http://serwisy.gazetaprawna.pl)



**INVESTORS IN THE POLISH EXCLUSIVE  
ECONOMIC ZONE.**

**ARE THE LARGEST, STATE OWNED  
OR CONTROLLED, POLISH ENERGY  
COMPANIES.**



Source: portalmorski.pl

## HOWEVER

### ► Art. 356 PMC provides:

where the proper law depends on the place of the event, the place of the event which occurred on board a seagoing vessel outside the territory of the coastal state [Polish EEC] shall be deemed to be the vessels flag state.

### ► Art. 22 of the Act of March 21, 1991 on maritime areas of the Republic of Poland and maritime administration states:

1. Poland shall have the exclusive right to erect, permit the erection and use in the exclusive economic zone of artificial islands, all kinds of structures and devices intended for scientific research, exploration or exploitation of resources, as well as with respect to other projects in the field of economic research and exploitation of the exclusive economic zone, in particular the use of water, sea currents and wind for energy purposes.

2. Artificial islands, structures and devices referred to in par. 1 are subject to Polish law.



# THANK YOU FOR YOUR ATTENTION

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International Maritime Law  
Seminar  
Singapore May 25, 2023

# Recent Developments in U.S. Efforts to Address Disruptions in the International Supply Chain

- ▶ Lynn L. Krieger
- ▶ (415)699-4546
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COX WOOTTON LERNER  
GRIFFIN & HANSEN LLP

## Current Status of Supply Chain Congestion

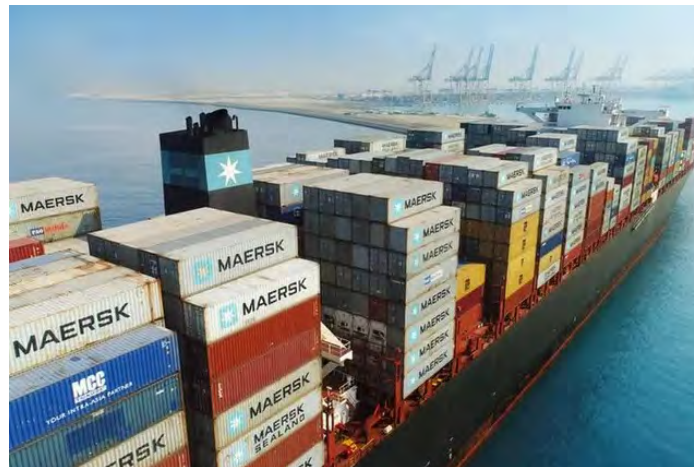


**Then...**



# Current Status of Supply Chain Congestion

**Now...?**



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- Less congestion than at the peak of COVID
- Still have issues with efficiency
- What was implemented to address the congestion?
- Is it working?

# Brief Recap of Responses to Supply Chain Disruptions

## Federal Maritime Commission

In the United States, “the Federal Maritime Commission (FMC) is the independent federal agency responsible for regulating the U.S. international ocean transportation system for the benefit of U.S. exporters, importers, and the U.S. consumer.”

**The FMC's Mission Statement is:**  
**“Ensure a competitive and reliable  
international ocean transportation supply  
system that supports the U.S. economy and  
protects the public from unfair and deceptive  
practices.”**

*May 31, 2022:*

**Fact Finding 29:** “Effects of the COVID-19  
Pandemic on the U.S. international Ocean  
Supply Chain: Stakeholder Engagement and  
**Possible Violations of 46 U.S.C. § 41102(c)”**

## Fact Finding 29

- Made a series of recommendations with the goal of eliminating obstacles to a smooth and efficiently operating international ocean supply chain.

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- Made a series of recommendations with the goal of eliminating obstacles to a smooth and efficiently operating international ocean supply chain.
- Significant focus on Demurrage & Detention Billing

## 46 U.S. Code § 41102 - General prohibitions

### (c) PRACTICES IN HANDLING PROPERTY.

A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

*June 16, 2022:*

## **Ocean Shipping Reform Act 2022 (OSRA):**

This act revises requirements governing ocean shipping to **increase the authority of the Federal Maritime Commission (FMC)** to promote the growth and development of U.S. exports through an ocean transportation system that is competitive, efficient, and economical. For example, the bill requires the FMC to (1) **investigate complaints about detention and demurrage charges** (i.e., late fees) charged by common ocean carriers, (2) **determine whether those charges are reasonable**, and (3) **order refunds for unreasonable charges**. It also **prohibits** common ocean carriers, marine terminal operators, or ocean transportation intermediaries from **unreasonably refusing cargo space when available** or resorting to other unfair or unjustly discriminatory methods.

<https://www.congress.gov/bill/117th-congress/senate-bill/3580>

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- Unreasonable preference to any commodity group or shipment, or disadvantaging any group or shipment.

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- Define what is an **“unreasonable” refusal of cargo space** when available
- Define **“unreasonable” refusal to negotiate for vessel space accommodations**
- Define **“any other essential terms”** for inclusion in Service Contracts

*October 14, 2022:*

**FMC Notice of Proposed Rule Making -  
Demurrage and Detention billing Requirements:**

“The Federal Maritime Commission is proposing a new rule that seeks to bring more clarity, structure, and punctuality to the demurrage and detention billing practices of vessel operating common carriers (VOCCs), non-vessel-operating common carriers (NVOCCs), and marine terminal operators (MTOs).”

## The Rule Proposes:

- Adopting the list of **minimum information** that common carriers must **include in demurrage or detention invoices** as mandated in OSRA and codified at 46 U.S.C. 41104(d)(2).

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- Adding **additional information** that must be included in or with a demurrage or detention invoice.
- Further **defining prohibited practices** by clarifying which parties may be billed for demurrage or detention charges.
- Establishing **billing practices** that billing parties must follow **when invoicing for demurrage or detention charges**.

**Deadline to issue final rule: June 16,  
2023.**

# Repercussions of USRA in the Shipping Industry Over the Past Year

# Process: Charge Complaints



*December 1, 2022:* FMC implemented a streamlined process for recipients of D&D invoices to petition the FMC for waivers or refunds by filing a “Charge Complaint.”

- A Charge Complaint that is “perfected” with sufficient information and details is “promptly investigated” by the FMC.

- FMC will contact the carrier; the carrier must respond and justify the charge or fee being investigated.
- If the investigation finds the carrier's charge is not in compliance, the Office of Enforcement will recommend that the FMC issue an "Order to Show Cause" to the carrier to formally adjudicate the Charge Complaint.

- The carrier must show why it should not be ordered to refund fees/charges or waive the fees in question.
- The FMC will issue a decision and for charges not in compliance, will order refund or waiver.
- The FMC may then also initiate a separate civil penalty proceeding for penalties under 46 USC 41107 and 41109.

## Statistics

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- **\$1,045,953 in charges have been waived or refunded** in the last 10 months since OSRA became law.

## Examples of Significant Decisions & Settlements

*TCW Inc. v. Evergreen Shipping Agency (Am.) Corp. & Evergreen Line Joint Service Agreement* (Docket No. 1996(I)): Truckers complained that they were charged per diem for days the port was closed.

Result: Commission held that the charging of per-diem when a port was closed and equipment could not be returned was unjust and unreasonable. Evergreen ordered to pay reparations of \$521.62 to TCW (\$510.00 + \$11.62 interest) (Order Affirmed, December 29, 2022)

## Examples of Significant Decisions & Settlements

*TCW Inc. v. Evergreen Shipping Agency (Am.) Corp. & Evergreen Line Joint Service Agreement* (Docket No. 1996(I)), continued. . .

Dissent by Commissioner Bentzel: “[I]ncentive principle” does not replace “reasonableness.” Here, the container and chassis had already exceeded the limits of free time and they were already in the period when per diem was being applied. In addition, they were aware of the Port’s business hours. So the application or avoidance of detention was within the motor carrier’s control.

## Examples of Significant Decisions & Settlements

*Intermodal Motor Carriers Conference, American Trucking Associations, Inc. (IMCC) v. Ocean Carrier Equipment Management Association, et al.* (Docket No. 20-14): IMCC alleged OCEMA is denying trucking companies a choice when leasing chassis, and forcing unjust and unreasonable prices upon trucking companies, which harms the prompt handling of cargo.

Result: IMCC's motion for summary decision partially granted. Ocean carriers cannot require motor carriers to utilize specific chassis providers, where the motor carrier is responsible for arranging and paying for the shipment. (February 6, 2023)

## Examples of Significant Decisions & Settlements

*One Banana North America Corp., v. Hapag-Lloyd AG* (Docket No. 22-03): Hapag Lloyd had a practice of requiring trucks to pick up loaded containers at the same time they dropped off an empty (a dual transaction requirement). Hapag Lloyd would also inform truckers that the return locations were available, when in fact they could not make an appointment with the terminal reservation system. Hapag Lloyd would still charge demurrage/detention, even if the trucks could not drop off the equipment (due to lack of reservation and/or inability to haul a full container). Accused of unfairly profiting from delays caused by its own refusal to accept empty containers.

## Examples of Significant Decisions & Settlements

*One Banana North America Corp., v. Hapag-Lloyd AG* (Docket No. 22-03), continued. . .

Result: Settlement (November 16, 2022)

# Examples of Significant Decisions & Settlements

*Announced by FMC May 18, 2023*

*Ocean Network Express Ptd. Ltd. (ONE)* (Docket No. 21-17):  
Order of investigation and hearing for alleged violations of 46 U.S.C. 41102(c) by attempting to apply the bill of lading terms to the NVOCC which was listed only as the notify party and was not in contractual privity with the carrier.

Result: Opened enforcement action, then settled \$1.7 million  
(November 16, 2022)

# Examples of Significant Decisions & Settlements

*Announced by FMC May 18, 2023*

*Wan Hai Lines, Ltd. and Wan Hai Lines (USA) Ltd.* (Docket No. 21-16): Investigation opened into the practice of charging per diem for days the shipper or trucker could not return the carrier's equipment due to port congestion.

Result: Settlement and payment of \$950,000 in civil penalties (November 16, 2022). In addition, refunded the affected shipper, all detention charges already collected.

## Policy Questions

- Do the new rules really alleviate port congestion?

## Policy Questions

- Do the new rules really alleviate port congestion?

*The FMC takes some credit for imposing new rules and focus on detention and demurrage.*

*Ocean carriers disagree, pointing to aging infrastructure in some ports, market forces, labor challenges, compounded by the effect of COVID on demand for products and labor shortages.*

## Policy Questions

- Are the ocean carriers really in control of the container and equipment movement?

## Policy Questions

- Are the ocean carriers really in control of the container and equipment movement?

*Ocean carriers would say “no,” and that imposing detention and demurrage is an incentive to move containers efficiently.*

## Policy Questions

- Why is per diem unreasonable if calculated based on the total time equipment is held?

## Policy Questions

- Why is detention unreasonable if calculated based on the total time equipment is held?

*Ocean carriers argue it is reasonable to charge detention for the total time the equipment is held (contrary to the decision in TCW v. Evergreen). If you rent a car, you wouldn't argue that external forces (like a locked garage) should excuse you from paying rent for the amount of time you couldn't use your rental car.*

## Policy Questions

- Are the new rules really a *disincentive* to timely circulation of cargo?



SAN SIMON & DUCH

# The “Prestige” 20 years later



2023 IMLS Singapore  
Thursday, May 25th, 2023



# SAN SIMÓN & DUCH



## SHIP PARTICULARS:

- Name of ship: **PRESTIGE**
- Flag: **Liberia**
- Year built: **1976. Japan**
- Type of ship: **Single-hulled oil tanker**
- Category: **Aframax**
- Deadweight tonnage: **81,000 tons**
- Registered owner: **Mare Shipping**
- Classification Society: **American Bureau of Shipping**
- P&I Club: **The London P&I Club**



## ➤ 13th. November 2002

- Carrying 77,000 tonnes of heavy fuel oil.
- Loud bang from the starboard side. Engines shut down.
- Spanish, French and Portuguese governments refusing to allow the ship to dock.
- 6 days of sailing and towing.

## ➤ 19th. November 2002

- Split in half
- Sank only about 250kms (160 mi) from the Spanish coast.
- Releasing over 60,000 tonnes of oil into the sea

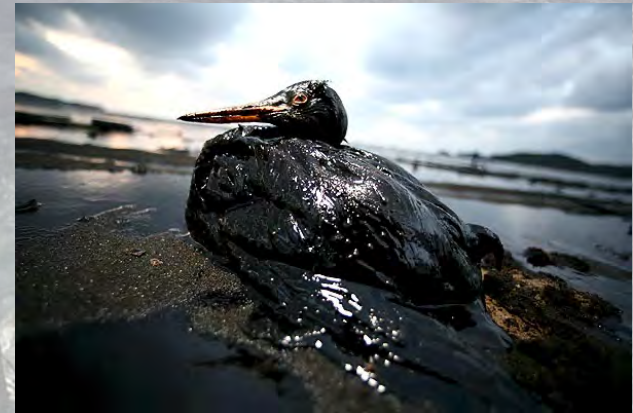


# SAN SIMÓN & DUCH

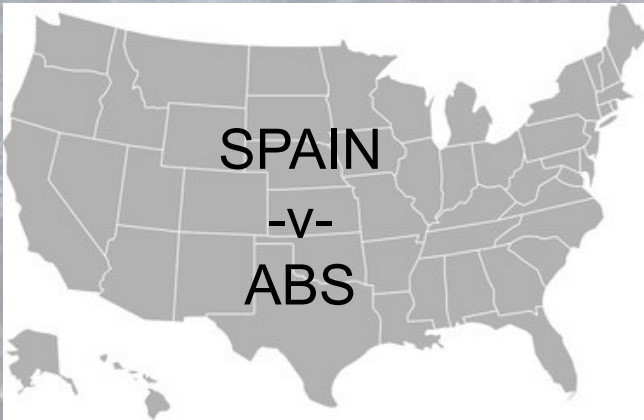


- Pollution of 2300 kilometers (1429 miles) of coastline and more than one thousand beaches on the Spanish, French and Portuguese coast.
- Great harm to the local fishing industry.
- The largest environmental disaster in the history of both Spain and Portugal.

- More oil spilled than the Exxon Valdez.
- The third costliest accident in history.
- USD 12 billion of damages and expenses according to some sources.
- In legal proceedings, more than 4 billion euros have been at stake.



# SAN SIMÓN & DUCH



THE LONDON P&I CLUB  
-v-  
SPAIN



JUDGMENT OF THE SUPERIOR COURT OF LA CORUÑA (13 NOVEMBER 2013)

*"the causes of what happened are unclear"*

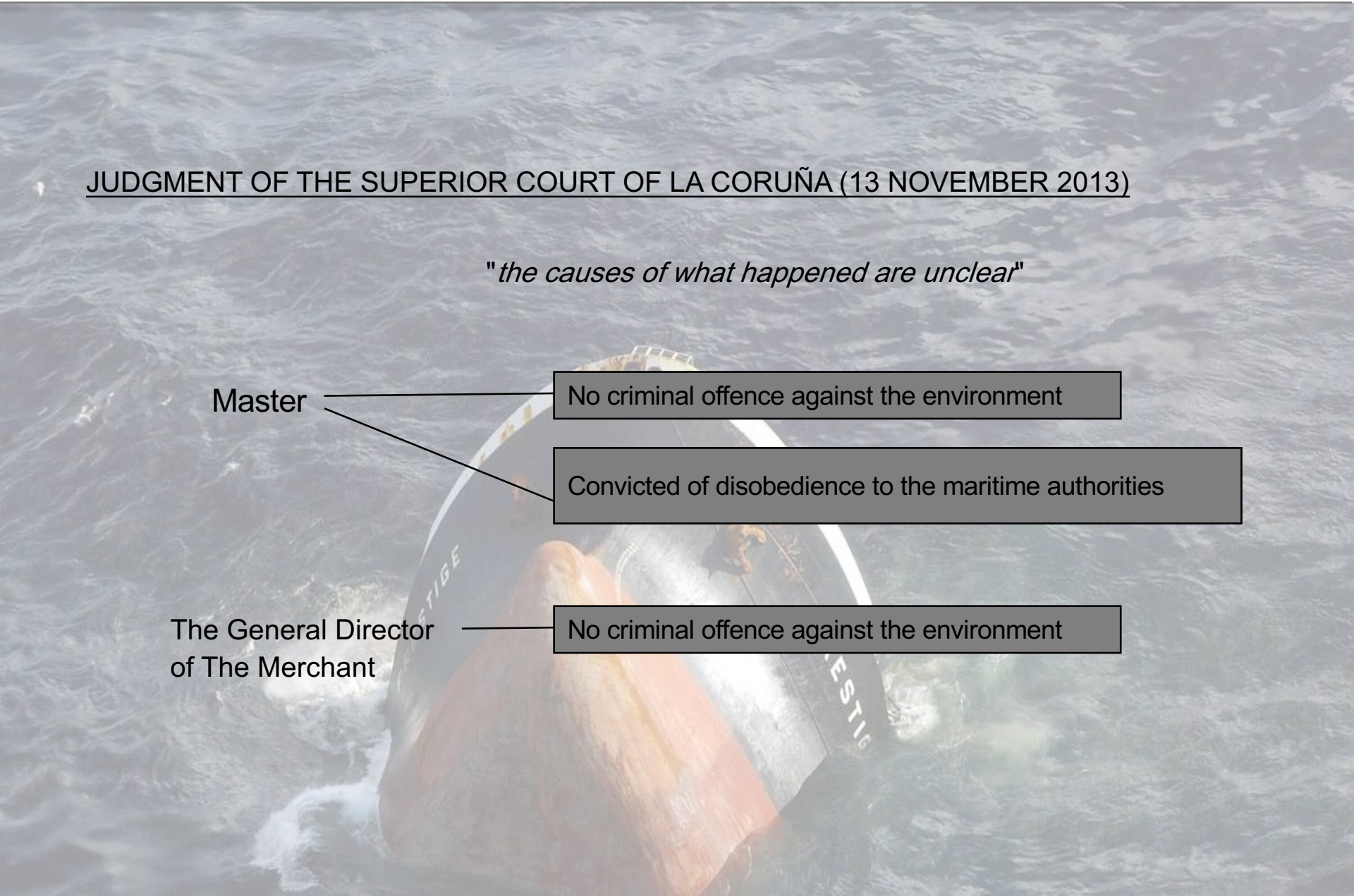
Master

No criminal offence against the environment

Convicted of disobedience to the maritime authorities

The General Director  
of The Merchant

No criminal offence against the environment



## JUDGMENT OF THE SPANISH SUPREME COURT

First Judgement → Reverses part of the decision of the Superior Court of La Coruña.

Second Judgement → **On the criminal liability**

- ▶ Master: Liable of a criminal offence against the environment resulting in catastrophic environmental damage.
  - Generated a greater risk sailing on the Prestige.
  - Unable to keep the vessel safely under control in critical moments.
  - Reluctance to follow the orders from the authorities.

- ▶ Confirms the acquittal of the Director of The Merchant Navy

↓  
2 years' imprisonment.

## JUDGMENT OF THE SPANISH SUPREME COURT

### On the civil liability

- ▶ Master:
  - Liable to pay damages resulting from the oil spill and holds.
  - Break of the CLC limitation (acted recklessly and with knowledge that such loss would probably result). Article 5.2 CLC Convention.
- ▶ Owners of the Prestige:
  - Vicariously liable for the damages.
  - Same exception is applied vis a vis to the shipowner

## JUDGMENT OF THE SPANISH SUPREME COURT

### On the civil liability

- ▶ P&I Club:
  - Directly liable up to the limit of cover on the policy (USD 1.000 million).
  - Admits that the London P&I Club constituted the fund.
  - Holds that the limit of liability is not applicable.
  - Rationale:
    1. The master committed a recklessly criminal act there is a right of direct action against the Club with no defences being available.
    2. The P&I Club chose not to defend itself during the proceedings. It is for the P&I Club to bear the consequences of their lack of procedural diligence.
- ▶ IOPC:
  - Fund liable up to the limits of the Fund Convention

## LEGAL PROCEEDINGS IN THE UK

### THE LONDON P&I CLUB -v- THE KINGDOM OF SPAIN

Arbitration proceedings: Under the arbitration agreement included in the P&I policy.

2 judgments resulting:

1. H. Court of justice, Commercial Court. Enforcement of the award brought by the P&I Club.
2. Court of Appeal. From the appeal brought by Spain (together with France).
  - Spain was bound by the arbitration agreement.
  - Spain initiated the direct claim against the P&I Club before the Spanish Courts.
  - Spain waived its State immunity in the arbitration proceedings.
  - The “*pay to be paid*” rule binds Spain.

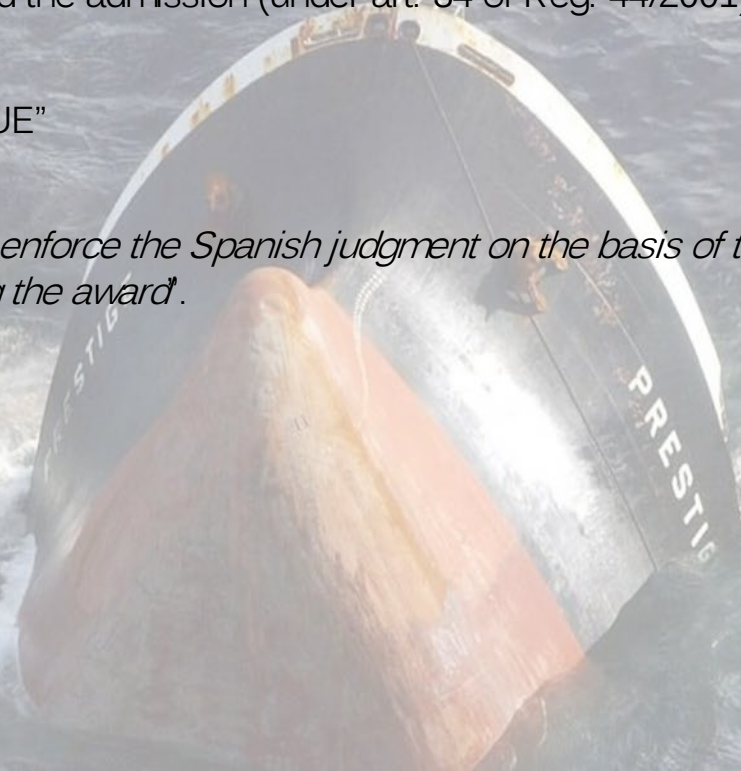
## ENFORCEMENT OF THE SPANISH JUDGEMENT IN THE UK

- Application initially admitted by the High Court.
- The Club appealed the admission (under art. 34 of Reg. 44/2001)

Questions to the “CJUE”

Dictum:

*“UK cannot refuse to enforce the Spanish judgment on the basis of the two English judgments which were issued following the award”.*





# Break



## Singapore 2023



Panel Discussion **Moderator**

**Jesper Martens**

HWL Ebsworth  
Australia





# Panel Discussion Speakers

- **Marco Remiorz & Jan Dreyer, Arnecke Sibeth Dabelstein, Germany**
- **Timothy Semenoro, Montgomery McCracken Walker & Rhoads LLP, USA**
- **Giorgio Cosulich, Studio Legale Mordiglia, Italy**
- **Charlotte van Steenderen, MainportLawyers, The Netherlands**
- **Jean-Phillipe Maslin, Richemont Delviso, France**



# SANCTIONS



Giorgio Cosulich



Jan Dreyer



Jean-Philippe Maslin



Marco Remiorz

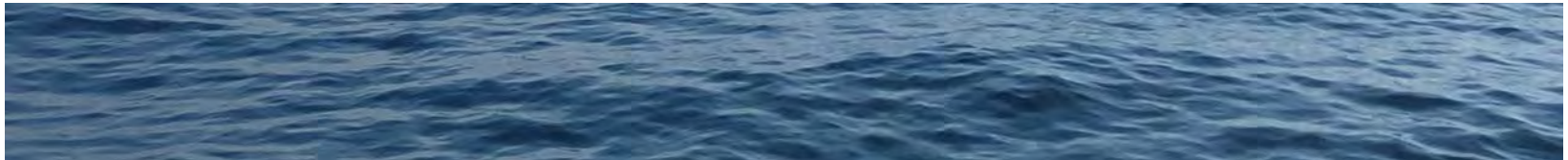


Timothy Semenoro

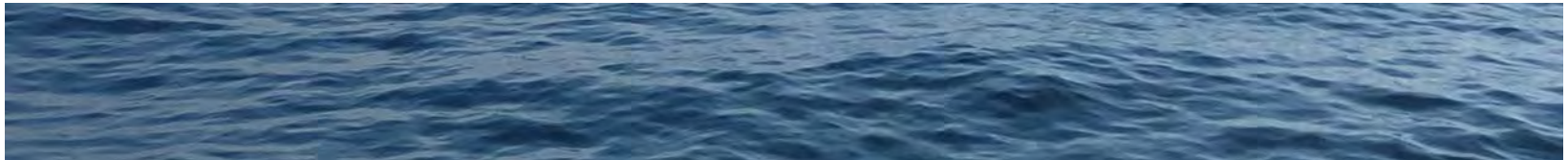


Charlotte van Steenderen

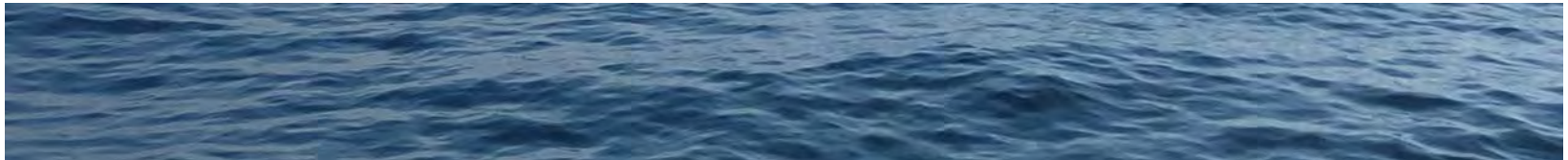
How are sanctions possible and how do they apply?



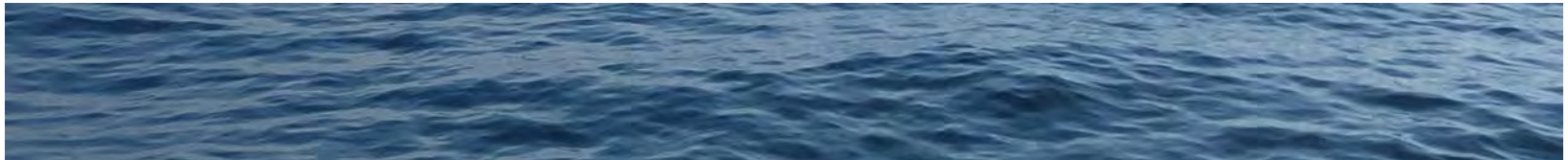
## Sanctions in the marine space



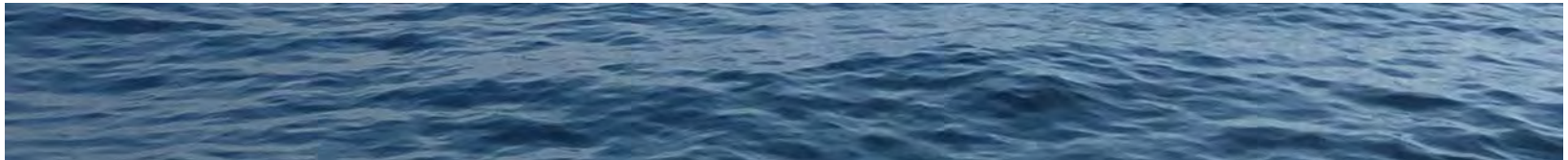
## Licensing and exceptions



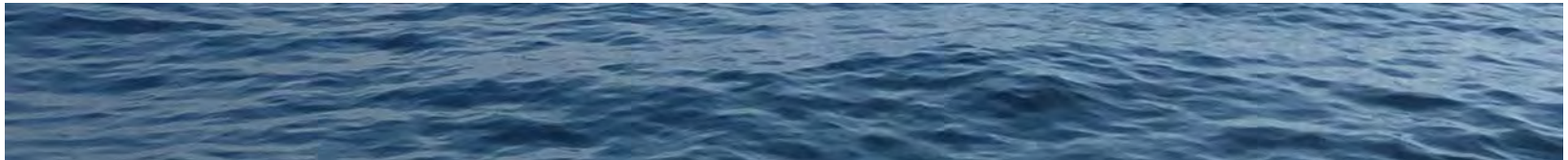
## Penalties and impact



## Industry concerns



# Proactive risk management





# Break



## Singapore 2023



Final Session Moderator

**Madhavi Arya**

The Shipowner's Club  
Singapore





# Final Session Speakers

- **Ricardo Rozas, JJR Abogados, Chile:**  
*Constitutional remedy incorrect legal tool for challenging vessel arrests in Chile*
- **Henrik Hagberg, Thommessen, Norway:**  
*Marine war risk insurance put to the test - the Nordic Marine Insurance Plan*
- **Johannes Grove Nielsen, Bech-Bruun, Denmark:**  
*Green Shipping - CII*
- **Amitava Majumdar (“Raja”), Bose & Mitra & Co, India:**  
*Approach of Indian courts towards abandoned vessels post arrest - Devising finer scape for P&I Clubs and Crew*

# IMLS SINGAPORE 2023

## *Constitutional remedy incorrect legal tool for challenging vessel arrests in Chile*

25 May 2023

Ricardo Rozas-JJR, Santiago, Chile



# I. Overview of the Chilean Arrest Provisions

- Chile has not ratified any international conventions regarding the arrest of ships. However, the fundamental regulations applicable to ship arrest that are found in the Code of Commerce (loosely based on the principles set forth under the International Convention Relating to the Arrest of Sea-Going Ships 1952 - Brussels Convention).
- Under Chilean law, a vessel may be arrested if the requesting party has a credit that entitles it to do so. These credits may be of two types:
  - a) privileged credits as set forth by **Articles 844, 845 and 846** of the Chilean Code of Commerce; and
  - b) credits other than those mentioned in point (a).
- No statutory definition for privileged credits.



## Article 844 Credits

- a) Legal costs and other disbursements caused by reason of a suit, in the common interest of the creditors, for the preservation of the vessel or for its forced alienation and distribution of the yield;
- b) the remuneration and other benefits arising from the contracts of embarkation of the vessel's crew, together with the emoluments paid to the pilots at the service of the vessel.
- c) the charges and rates of ports, channels and navigable waters, as well as fiscal charges in respect of signalling and pilotage;
- d) the expenses and remunerations due in respect of assistance rendered at sea and general average contribution; and
- e) the indemnities for damage or loss caused to other vessels, to port works, piers or navigable waters or to cargo or luggage, as a consequence of a collision or other accident during navigation, when the resulting action is not susceptible to being founded upon a contract, and the damage in respect of bodily injury to the passengers and crew of these other vessels.



## Article 845 Credits

■ Mortgage credits on large vessels (i.e., those over 50 gross tonnage (GT)) and secured credits on minor vessels (i.e., vessels up to 50 GT).



## Article 846 Credits

- a) In respect of the sale price, construction, repair and equipping of the vessel;
- b) in respect of the supply of products or materials that are indispensable for the trading or conservation of the vessel;
- c) arising from contracts of passage money, affreightment or carriage of goods, including the indemnities for damages, lack and short deliveries in cargo and luggage, and the credits deriving from damages in respect of contamination or the spilling of hydrocarbons or other contaminating substances;
- d) in respect of disbursements incurred by the master, agents or third parties, for account of the owner, for the purpose of trading the vessel, including agency service; and
- e) in respect of insurance premiums concerning the vessel, be they hull, machinery or third-party liability.



## Preference of Privileged Credits

The privileged credits have preference over and exclude all other general or specific privileges regulated by other legal bodies, when referring to the same goods and rights.

However, the rules regarding priorities and privileges in matters of pollution or for avoiding damage from spills of hazardous substances, which are established in international treaties in force in Chile and in the Chilean Navigation Law, have preference over the provisions of Book III, Title III of the Code of Commerce (About Privileges and Naval Mortgage) in the specific matters to which they refer.



# Procedure for ship arrest



- An arrest order is usually granted quickly if the arrest petitioner supplies the court with sufficient supporting documents to justify the arrest petition.
- Arrest or retention of a vessel is served by the Chilean Maritime Authority when the vessel lies or by official letter or notification to the Director General of the Maritime Territory and the Merchant Marine if the vessel is not in the jurisdiction of the court that decreed the measure. Prior notification to the person against whom the measure is requested is unnecessary.
- In urgent cases, the court may communicate arrest via reliable means (e.g. e-mail). In a preliminary proceeding, the person against whom the arrest is requested must also be notified within 10 days of the resolution that granted the measure. This may be extended by the court for good reason. If an arrest or retention is not served within 10 days, or any extension granted, this causes automatic forfeiture of the decreed arrest, which is communicated directly to the Chilean Maritime Authority by the court.



## Arrests of sister and associated ships

A lien on a ship granted by a privileged credit can be exercised not only against the actual ship to which the privileged credit relates, but also on a ship in the same ownership or a ship in the same administration or operated by the same person.



## Counter-security

If the court considers that the supporting documents provided by the arrest petitioner are not sufficient, or the petitioner states that they are not yet available to him or her, the court may require that counter security be provided for the potential damages that may be result if, subsequently, it is found that the petition lacked basis.

As to the form and amount of damages, there are no specific rules, so it is up to the court.





# Security for lifting an arrest

- The amount of security is usually established by the court based on the petition of the arresting party.
- The amount cannot exceed the value of the arrested vessel and can be reviewed subsequently through incidental proceedings.
- Regarding the form of security, there are no specific rules and it will depend on the court's resolution, but the security most usually requested and granted is a bank guarantee issued by order of the court.
- As soon as the security is provided, the court shall lift the vessel arrest without delay.
- Protection and indemnity (P&I) insurance club letters of undertaking (LOU) – Generally accepted only if agreed by the arrest petitioner. However, recently in an arrest following a pollution incident, the court hearing the arrest accepted a LOU with no prior approval from the arrest petitioner (positive development).



# Conditions for an arrest based on privileged credits

- a) the arresting party must invoke one or more of the privileged credits.
  - Except for the regulations concerning pollution or for avoiding damage from spills of hazardous substances, maritime privileges preclude any other general or special privilege regulated by other laws in connection with the same goods.
  - Maritime privileges also confer on the creditor the right to pursue the vessel in whosoever's possession she t may be;
- b) the arresting party must attach antecedents that constitute presumption of the right being claimed; and
- c) if the court considers that the supporting documents are not sufficient or the petitioner states they are not yet available to him or her, the court may require that **counter security** be provided for the potential damage that may be caused if, subsequently, it is found that the petition lacked basis.



# Arrest decreed as a pre-judicial precautionary

## ■ measure

- A pre-judicial precautionary measure is a measure to secure the outcome of a subsequent substantive action.
- The petitioner is obliged to file its complaint requesting that the decreed arrest remain in force within a period that, in principle, is 10 days but that may be extended for up to a total of 30 days, provided there is a sound basis for doing so.
- The non-fulfilment of this obligation will result in cancellation of the arrest and liability for the damage that may have been caused, on the irrefutable presumption that the grounds for the arrest were fraudulent.
- In addition, if the arrest was wrongful, fraudulent or lacked basis, the defendant may claim damages in separate ordinary proceedings subject to the general rules set forth by the Code of Civil Procedure.



# Bunker arrest

There are no such regulations in Chile. In theory, this could be achieved by means of the general rules set forth by the Code of Procedure regarding pre-judicial and precautionary measures, but it is not an easy exercise because of formalities and timing restrictions.



# Arrest to obtain security

- Chilean procedural regulations are silent on the matter of whether the arresting party is required to pursue the claim on its merits in the jurisdiction of arrest or whether it is possible to effect an arrest only to obtain security.
- However, when an arrest is decreed as a pre-judicial precautionary measure (i.e., a measure to secure the outcome of a subsequent substantive action), it would be possible to arrest to obtain security and then pursue proceedings on the merits elsewhere.
- Compliance with procedural obligations.



## II. Constitutional remedy incorrect legal tool for challenging vessel arrests in Chile - Background

Under Chilean law, anyone can file a prompt and summary proceeding regarding the protection of constitutional guarantees (known as *Recurso de Protección*) where an arbitrary or illegal act or omission of the public authorities or an individual has or may imminently damage, limit, modify or threaten their rights and guarantees as recognised by the Constitution, a treaty or a law, provided that no other legal remedy exists. Depending on the nature of the alleged act or omission, this remedy must be filed within **30 days** from:

- the execution or occurrence of the alleged act or omission; or
- when the affected party learns of such act or omission.



## II. Constitutional remedy incorrect legal tool for challenging vessel arrests in Chile – Case Facts

- A port agent and a bunker supplier arrested a vessel due to unpaid fees arising from agency services and disbursements and the supply of bunkers, respectively. The arrest orders were granted by first-instance courts in Valdivia and Talcahuano. The owners provided no guarantees to lift the arrests and lodged no incidental motions objecting to them in accordance with the applicable procedural regulations.
- The owners subsequently challenged the arrest orders by filing a constitutional remedy of protection, arguing that their issuance violated several fundamental rights of the owners and crew, including their right to property, as the arrest prevented the owners from performing their duties and would lead to the vessel's deterioration. In addition, according to the owners, the arrest endangered the crew and their rights to freedom of movement, life and physical and mental integrity.



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## II. Constitutional remedy incorrect legal tool for challenging vessel arrests in Chile – Case Facts (Cont)

- The arresting parties challenged the remedy on various grounds:
  - There had been no illegal or arbitrary acts since the arrest had been granted by the competent courts. The owners had failed to challenge the arrest properly and on time and an arrest order neither prohibits a diligent owner from maintaining their vessel nor extends to the crew, as it is restricted to the vessel (the vessel had already deteriorated at the time of the arrest).
  - In addition, one of the petitioners argued the lack of legal standing as a defendant given that the act that granted the arrest did not emanate from such party but from a judicial resolution issued by a Chilean court.



## II. Constitutional remedy incorrect legal tool for challenging vessel arrests in Chile – Decision

- The Concepción Court of Appeal rejected the remedy of protection, holding that it requires the accreditation of pre-existing undisputed rights and the verification of the existence of an arbitrary or illegal act or omission (ie, irrational or affecting such rights in a haphazard fashion).
- The alleged arbitrary and illegal act charged to the arrest petitioners was the arrest imposed over the vessel by the competent courts.
- As regard the defence based on lack of standing as defendant, it was held that the acts under stake are arrest orders decreed by courts in use of their legitimate powers and there was no direct intervention of the arrest petitioners. Therefore, the aforementioned defence was accepted.
- The Court of Appeal also ruled that the remedy had been filed in an untimely manner.
- The Supreme Court upheld the Concepción Court of Appeal's decision.



## II. Constitutional remedy incorrect legal tool for challenging vessel arrests in Chile – Comment

- The decision restricts the use of constitutional remedies of protection in the context of vessel arrest proceedings and imposes a high standard for succeed.
- The decision helps to protect the institution and procedure relating to vessel arrests and implies more certainty in terms of the outcome of such proceedings.



Q&A

Team

Business plan

message

locked

teamwork

community

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Last\_name\_  
Age\_  
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Password

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connect

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locked

locked



# Marine war risk insurance put to the test

How does the Nordic Marine Insurance Plan  
war risk cover respond to the closure of  
Ukrainian ports?

25 MAY 2023

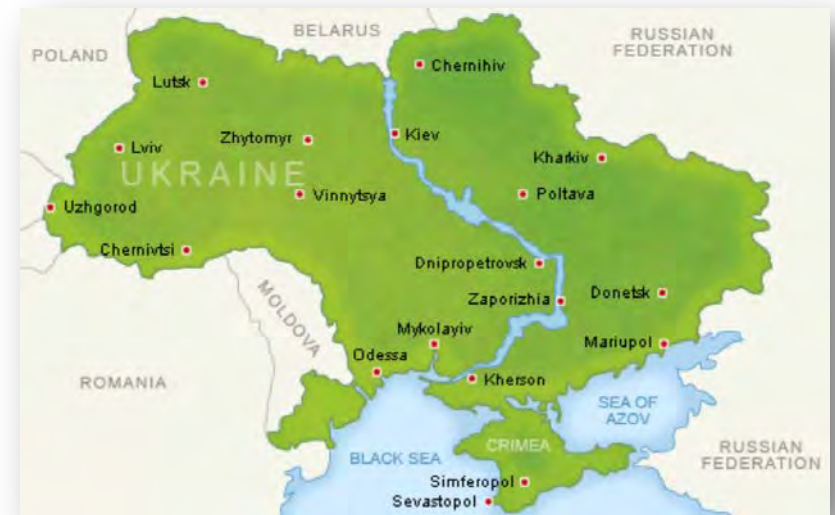
HENRIK HAGBERG



THOMMESSEN

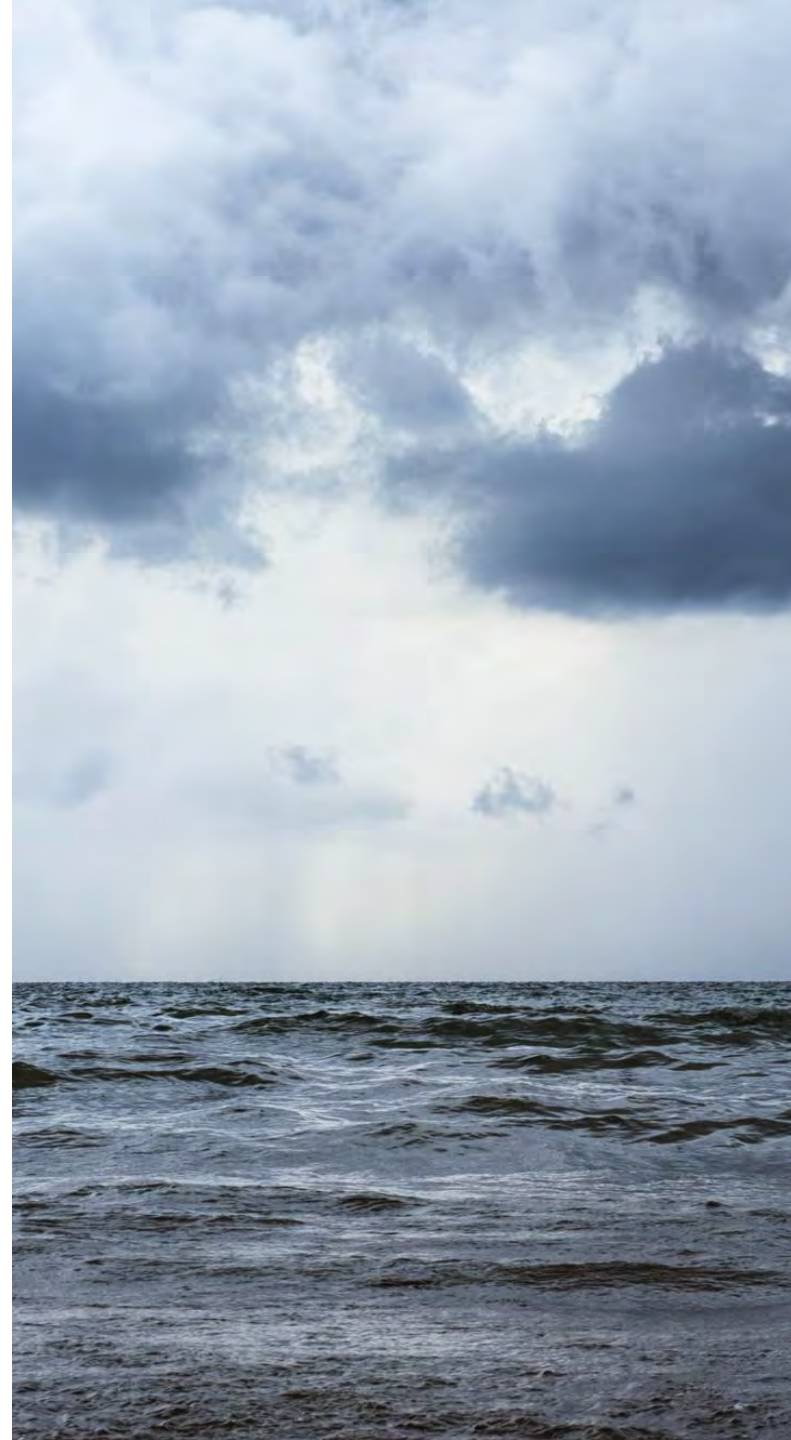
# Russia's invasion of Ukraine

- On 24 February 2022, Russia invaded Ukraine
- The President of Ukraine imposed martial law in Ukraine on the same day
- On 26 February 2022, the Government of Ukraine announced that *"the ports of Ukraine are closed for entry and exit"* for the duration of martial law in Ukraine
- Since February 2022, vessels have *generally* been unable to leave the ports of Ukraine, unless a permission has been obtained



## Nordic Plan Cl. 2-8 and 2-9: Distinction between "marine perils" and "war perils"

- Nordic Plan distinguishes clearly between "marine perils" and "war perils"
- Nordic Plan Cl. 2-8:  
*"An insurance against marine perils covers all perils to which the interest may be exposed, with the exception of ... (a) perils covered by an insurance against war perils in accordance with Cl. 2-9"*
- Under the Nordic Plan both marine risks and war risks are in principle "all risks" insurances for marine perils and war perils, respectively
- Distinction between marine perils and war perils is important, *inter alia*, because both the insurers and the terms of the insurances may be different



## Nordic Plan Cl. 2-9: Perils covered by an insurance against war perils

- Are the vessels stuck in Ukrainian ports struck by a war peril?

- Nordic Plan Cl. 2-9 (a):

*"An insurance against war perils covers ... **war or war-like conditions**, including civil war or the use of arms or other implements of war in the course of military exercises in peacetime or in guarding against infringements of neutrality"*

- Closure of the ports of Ukraine will generally be regarded as a measure *"taken by a power at war attributable to the war"*

### Nordic Plan Commentary:

*"Generally, all such measures that are regularly taken by powers at war as well as by neutral powers and which affect shipping, ... will constitute war perils due to the fact that they are attributable to the war"*

# Nordic Plan Chapter 15: War Risk Insurance

- Clause 15-1 – Perils covered: The insurance covers **war perils**, cf. Cl. 2-9
- Clause 15-2 – Interests insured: Includes, inter alia ***"total loss and damage"***, cf. NP Cl. 15-2 (a)
- Nordic Plan Cl. 15-11 to Cl. 15-13 – the three war risks total loss situations:
  - Cl. 15-11: Intervention by foreign State power and piracy
  - Cl. 15-12: Blocking and trapping
  - Cl. 15-13: Restrictions imposed by the insurer



Nordic plan on war risks

## Nordic Plan Cl. 15-11: Intervention by foreign State power

*"If the assured has been **deprived of the vessel** by an **intervention by a foreign State power**, for which the insurer is liable under Cl. 2-9, the assured may claim for a total loss if the vessel has **not been released** within twelve months from the day the intervention took place"*

- A general closure of ports affecting all vessels in these ports will not be regarded as an intervention against one or several particular vessels as the vessels are not *"taken from the assured"*

Nordic Plan Commentary:

*"... the assured is entitled to total loss compensation if the vessel is taken from the assured due to intervention by foreign State power and the assured has not received it back within twelve months"*

## Nordic Plan Cl. 15-12: Blocking and trapping

*"If the vessel is **prevented from leaving port** or a similar limited area due to blocking, the assured may claim for a total loss, if **the relevant obstruction has not ceased** within twelve months after the day it occurred"*

- A vessel prevented from leaving an Ukrainian port from 24/25 February 2022 and still prevented from leaving on 24/25 February 2023, will *generally* be considered as a total loss under Nordic Plan Cl. 15-12
- Some policies have operated with a six months' total loss period, meaning that the decisive point in time was 24 August 2022

### Nordic Plan Commentary:

*"The provision is aimed primarily at cases where the hindrance is of a physical nature ... Regardless of whether the authority in question implements separate physical measures, a detention of this nature will be deemed to be blocking and trapping within the meaning of the provision"*

Nordic plan on war risks

## Nordic Plan Chapter 15: War Risk Insurance

If, after expiry of the total loss period and the assured's declaration of total loss, but before the total loss has been accepted by the insurers or the insurance proceeds have been paid, the vessel is released and free to sail →

*"If the assured has brought a claim for a total loss and the time-limits stipulated have expired, it is irrelevant for the assured's claim that the vessel is released at a later time"*

Nordic Plan Cl. 15-12 (2), cf. Cl. 15-11 (4)

*"In the event of a total loss, the assured shall furnish the insurer with title to the object insured and hand over all documents that are material to it as owner"*

Clause 5-19 – Right of the insurer to take over the object insured

# Thank you!

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Oslo • Bergen • Stavanger • London



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# Green Shipping - CII

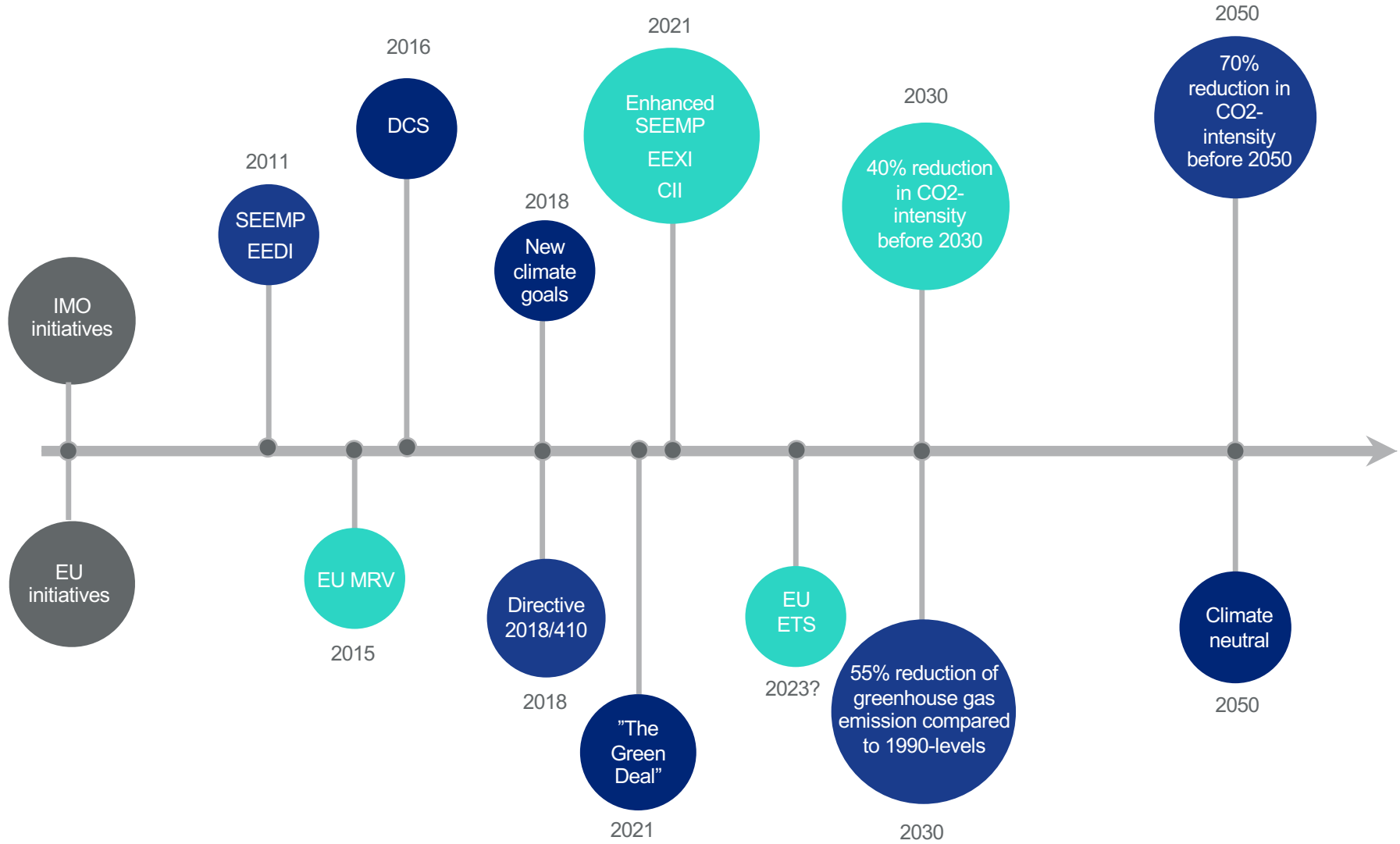


Partner Johannes Grove Nielsen, Bech-Bruun, Copenhagen, Denmark

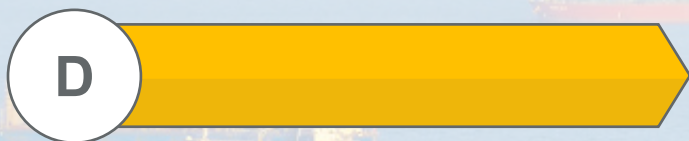
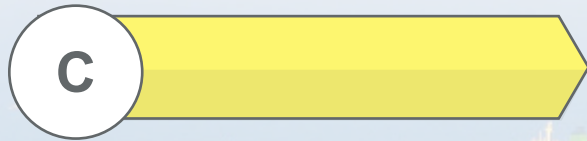
IMLS - International Maritime Law Seminar, Singapore, 25 May 2023



... LAST YEAR



# Carbon Intensity Indicator (CII)



## Improving the rating

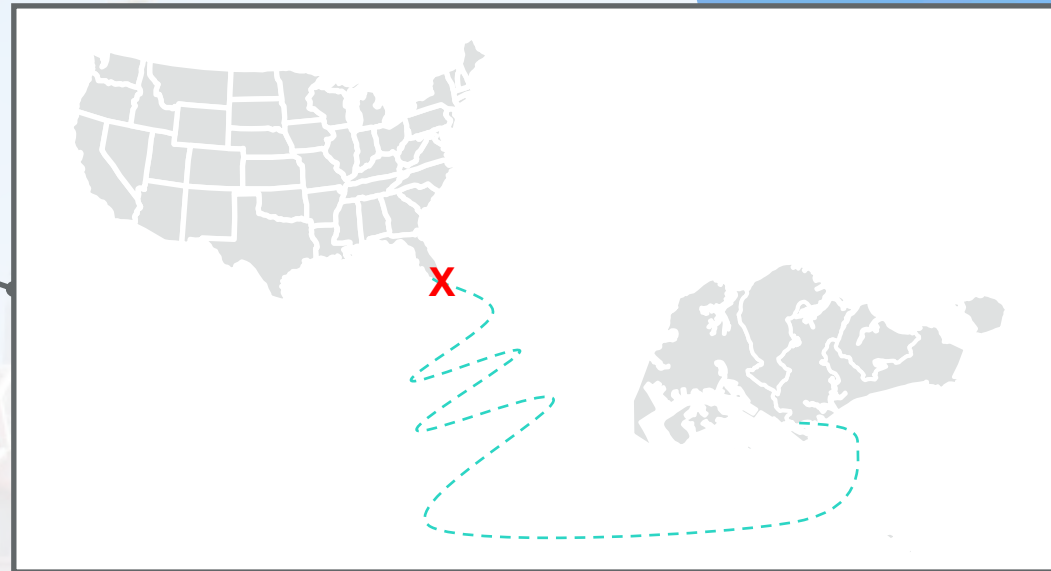
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Deviation



Slow steaming



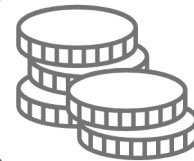
## Consequences of poor rating



**Demand**



**Financing**



**Liquidity**

# BIMCO CII Operations Clause

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**Binding targets**



**Intervening**



**Accountability**

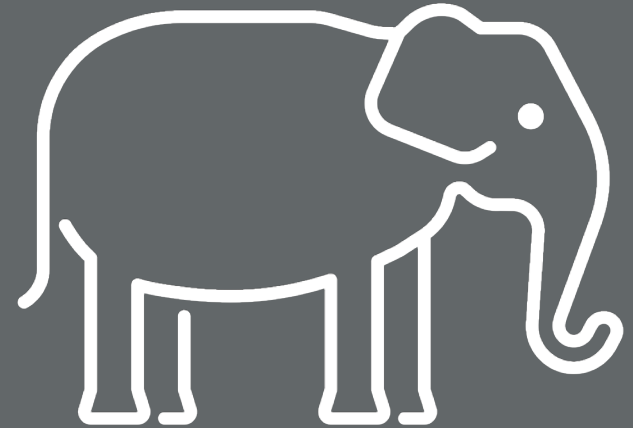
A matter of indemnity as the elephant  
in the room...

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### Clause (j)

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The Owners shall be entitled to claim from the Charterers any losses, damages, liabilities, claims, fines, costs, expenses, actions, proceedings, suits or demands suffered by the Vessel and/or the Owners which have been caused by any breach by the Charterers of their obligations under this Clause.



# Contact

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Johannes Grove Nielsen

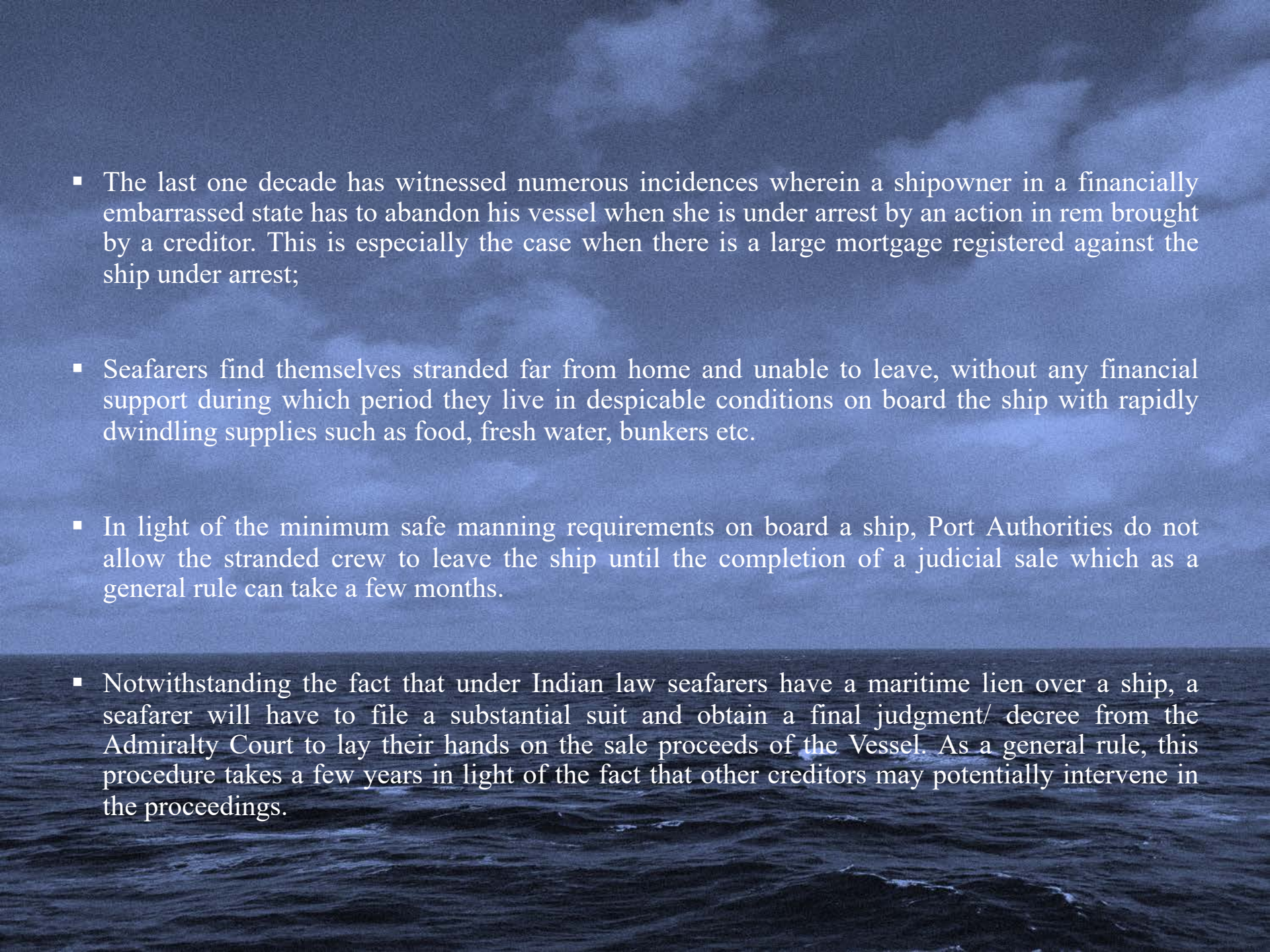
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# The conundrum of relating to maintenance of an abandoned ship under arrest - - Devising finer scape for P&I Clubs and Crew.

AMITAVA MAJUMDAR (RAJA), MANAGING PARTNER  
BOSE & MITRA & Co., Advocates.

- 
- The last one decade has witnessed numerous incidences wherein a shipowner in a financially embarrassed state has to abandon his vessel when she is under arrest by an action in rem brought by a creditor. This is especially the case when there is a large mortgage registered against the ship under arrest;
  - Seafarers find themselves stranded far from home and unable to leave, without any financial support during which period they live in despicable conditions on board the ship with rapidly dwindling supplies such as food, fresh water, bunkers etc.
  - In light of the minimum safe manning requirements on board a ship, Port Authorities do not allow the stranded crew to leave the ship until the completion of a judicial sale which as a general rule can take a few months.
  - Notwithstanding the fact that under Indian law seafarers have a maritime lien over a ship, a seafarer will have to file a substantial suit and obtain a final judgment/ decree from the Admiralty Court to lay their hands on the sale proceeds of the Vessel. As a general rule, this procedure takes a few years in light of the fact that other creditors may potentially intervene in the proceedings.

# The Maritime Labour Convention, 2016

- MLC Regulation 2.5.2 Standard A2.5.2 – Financial Security to cover claims of repatriation of stranded seafarers
- MLC Regulation 4.2 Standard A4.2.1 – Financial Security to cover claims relating to medical treatment and compensation to seafarers
- Obligation of compulsory insurance cast upon shipowners- MLC Compliant insurance certificate
- Right of direct action against insurer to circumvent the pay to be paid rule

# Merchant Shipping (Maritime Labor) Rules, 2016

Rule 12 – Financial Security for repatriation of seafarer in the event of “abandonment”

*“a seafarer shall be deemed to have been abandoned where, in violation of the requirements of the Act or these rules or the terms of the seafarers’ employment agreement, the ship owner-*

- (a) fails to cover the cost of the seafarer’s repatriation; or*
- (b) has left the seafarer without the necessary maintenance and support (including adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care); or*
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.”*

• (14) Financial security system shall be sufficient to cover the following, namely.—

(a) outstanding wages and other entitlements due from the ship owner to the seafarer under the employment agreement, the relevant collective bargaining agreement, limited to four months of any such outstanding wages and **four months** of any such outstanding entitlements;

(b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to subrule

(c) the essential needs of the seafarer including such items, namely, adequate food, clothing where necessary, accommodation, drinking water, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

(15) Cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarers from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effect and any other reasonable costs or charges arising from the abandonment.

# Rule 12 (7)

(1) The Directorate General of Shipping (Indian Maritime Administration), or

(2) Country of Nationality of Seafarer or

(3) Country from where the Seafarer is to be repatriated

can incur expenditure for the repatriation of the seafarer can thereafter claim the same against the Financial Security

# Sheriffs Expenditure/ Custodia Legis

- This refers to expenditure incurred by the Court in preserving vessel after she is under an order of arrest;
- In the pecking order of priorities *Sheriffs Expenditure/ Custodia Legis* ranks higher than even maritime liens;
- Should a claim be categorised as *Sheriffs Expenditure/ Custodia Legis* such expenditure is reimbursed within a month of the sale proceeds being deposited in Court. There would be no need to go through the rigmarole of a full blown trial to obtain a decree/ final judgment which is the standard procedure for making a recovery pursuant by a party having a maritime lien over the vessel which in the Indian context is likely to take a few years. Moreover, should a seafarer file a suit to make a recovery for outstanding wages, other creditors can potentially intervene in the proceedings thereby exacerbating the delays.
- For a claim relating to *Sheriffs Expenditure/ Custodia Legis* a court officer merely examines the Claim and prepares a report pursuant to which the party is paid from the sale proceeds of the liquidated Vessel. It is very difficult for other creditors to formally intervene in such proceedings and oppose such a claim.

# *The Swedish Club v. V8 Pool Inc.* (Commercial Appeal 108/2021)

The Appeal Court of the Bombay High Court had examined the below issues:

- Whether crew wages accrued on board the vessel after her arrest by an Admiralty Court would rank as Sheriff's expenses/ custodia legis?
- Whether a P&I Club which has made payment of Crew Wages under the MLC after the arrest of a ship can recover the same as Sheriff's expenses/ custodia legis?
- Whether a maritime lien can be assigned?

# Findings of the Court of First Instance

- The Court of First Instance rejected Crew Members and P&I Clubs contention that wages accrued after the order of arrest should be treated as Custodia Legis/ Sheriff Expenditure. The Court held that the default modality would be to substantial suit and obtain a decree/ final judgment against the Vessel for a claim for wages accrued after the order of arrest. They cannot short-circuit the default procedure.
- The Court of First Instance came to a finding that the P&I Club was not a volunteer as it made payment under an existing insurance policy. Accordingly, the P&I Club would have to file a substantial lawsuit to recover its claim.
- The practical ramifications of the judgment of the Court of First Instance would be that the Crew Members and P&I Club will have to go through the rigmarole of a full blown trial and would only be able to lay their hand on the sale proceeds of the Vessel after a few years.

# The Appeal Court Judgment

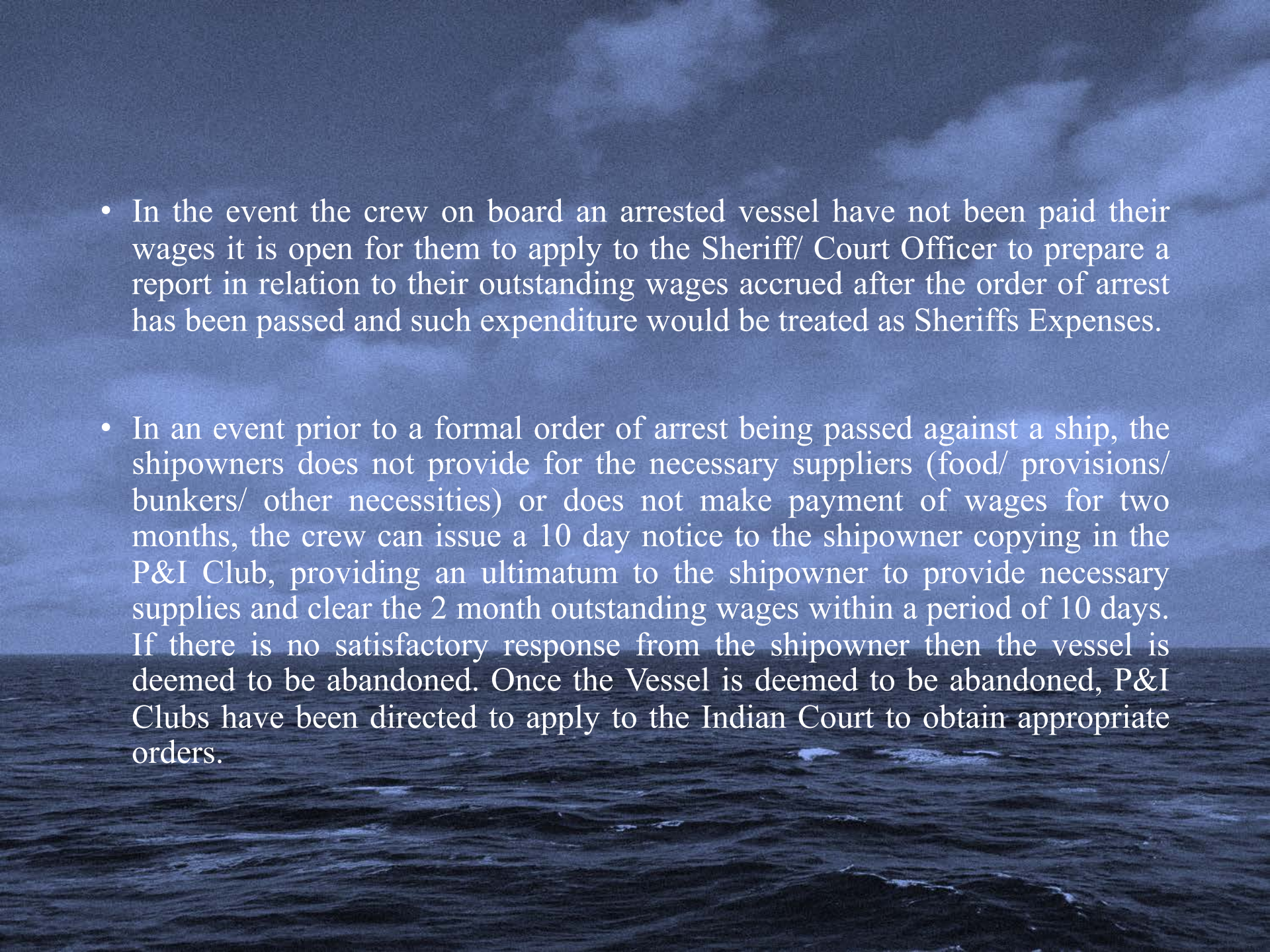
- The Appeals filed by the Crew Members and the P&I Club were allowed and the judgment of the Court of First Instance had been overturned.
- The Appeal Court held that both the claims of the Crew Members as well as the P&I Clubs for wages accrued after the order of arrest has been entered against the Vessel would be treated as Sheriffs Expenditure/ Custodia Legis
- The Appeal Court held that P&I Club the right to stand in the shoes of the crew by subrogation/assignment/other mode of transfer in light of Regulation 12 of A2.5.2 of the MLC
- The Appeal Court observed that a maritime lien can be assigned with the leave of the Court.

# Guidelines framed by the Appellate Court which would be applicable in future cases

Any party (including P&I Clubs) seeking to provide humanitarian assistance to abandoned seafarers would have to do either of the following:

- Approach the Sheriff/ Court Officer to make an application to the Admiralty Court to allow the party seeking to provide humanitarian assistance to deposit funds in the Court Registry and for such expenditure to be treated as Sheriffs Expenditure/ Custodia Legis
- Apply to the Admiralty Court for a similar order

In case of an emergent situation wherein the situation on board is precarious, any party may after giving at least 24 hours prior written notice in writing to the partis to the suit as well as the Sheriff/ Court Officer , the party seeking to provide humanitarian assistance may render supplies/ incur expenditure for a limited period of 7 days. Such party must thereafter at the earliest make an application to the Admiralty Court to declare such payments made as Sheriff's Expenditure and for any further expenses it desires to incur as per the procedure laid out above.

- 
- The background of the slide is a photograph of a dark, turbulent sea with white-capped waves. The sky above is filled with heavy, dark, and dramatic clouds, creating a somber and intense atmosphere.
- In the event the crew on board an arrested vessel have not been paid their wages it is open for them to apply to the Sheriff/ Court Officer to prepare a report in relation to their outstanding wages accrued after the order of arrest has been passed and such expenditure would be treated as Sheriffs Expenses.
  - In an event prior to a formal order of arrest being passed against a ship, the shipowners does not provide for the necessary suppliers (food/ provisions/ bunkers/ other necessities) or does not make payment of wages for two months, the crew can issue a 10 day notice to the shipowner copying in the P&I Club, providing an ultimatum to the shipowner to provide necessary supplies and clear the 2 month outstanding wages within a period of 10 days. If there is no satisfactory response from the shipowner then the vessel is deemed to be abandoned. Once the Vessel is deemed to be abandoned, P&I Clubs have been directed to apply to the Indian Court to obtain appropriate orders.

# Irwin Edmund Sequeria v. MV Karnika

- In this case the Court of First Instance of the Bombay High Court had distinguished the judgment of the Appeal Court of *The Swedish Club v. V8 Pool Inc.* Commercial Appeal 108/2021 and held in the particular facts of the case, that in an event a P&I Club makes payment of dues under the MLC, **after the vessel has been liquidated and the sale proceeds are in Court**, such expenses can no longer be treated as Sheriffs Expenses/ Custodia Legis.
- The Court of First Instance expressed the below opinion:

*“Undoubtedly, post arrest, res is considered to be custodia legis. Ordinarily, the expenses are incurred with the prior approval of the Court and, more often than not, under the aegis of Sheriff. However, this does not imply that the Court has no jurisdiction to sanction the expenses which have been incurred as the Sheriff’s expenses without its prior approval. In a given case, having regard to the exigencies of the situation, where the supply of provisions and necessities is imperative to ensure the survival of the vessel and the crew, the court retains the jurisdiction to direct that such expenses, even if incurred without its approval, be treated as Sheriff’s expenses. Of course, the exercise of such jurisdiction is discretionary and conditioned by the overarching principle of balancing equities.”*

**THANK YOU**





# Round up

## Singapore 2023





# **Social Networking/ Cocktail Reception at Empress**

Singapore 2023



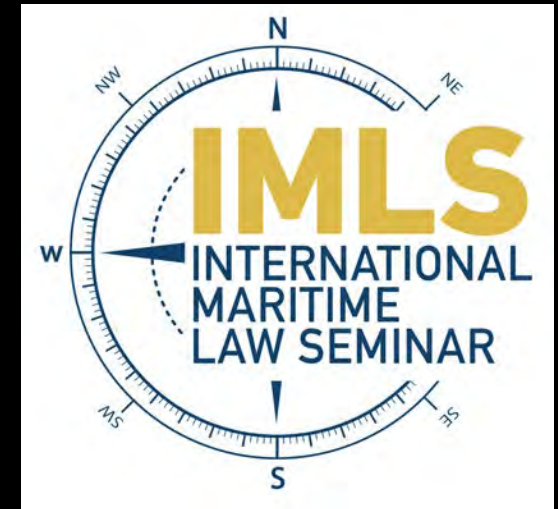


**Thank you for  
attending**  
Singapore 2023





# **Welcome to Singapore 2023**



# Welcome to Singapore 2023

- 
- **Shipping rates from Asia plunge**
  - **Huge no. of new container ships under construction**
  - **Unstable world economies**
  - **Lower consumer demand**
  - **High interest rates**



***“An unprecedented flood of new container ships is about to enter service. The pace of deliveries will be even higher throughout 2024 and stay strong in 2025”***

# Orders for New Ships...

- Tough years ahead
- Covid profits used
- Over-supply hits rates

**OR**

- New ships – New fuels
- Older ships scrapped
- Chartered ships released
- Lower future running costs



**The International  
Supply Chain:  
U.S. Efforts To  
Address Disruptions**



**EU Oil Price Cap:  
The Effects on  
International Shipping  
and Marine Insurance**



# Indian Courts Approach to Abandoned Vessels

***Sell off 2 abandoned ships to recover crew dues***

**The Plight of Ship Crews  
Stranded at Sea**

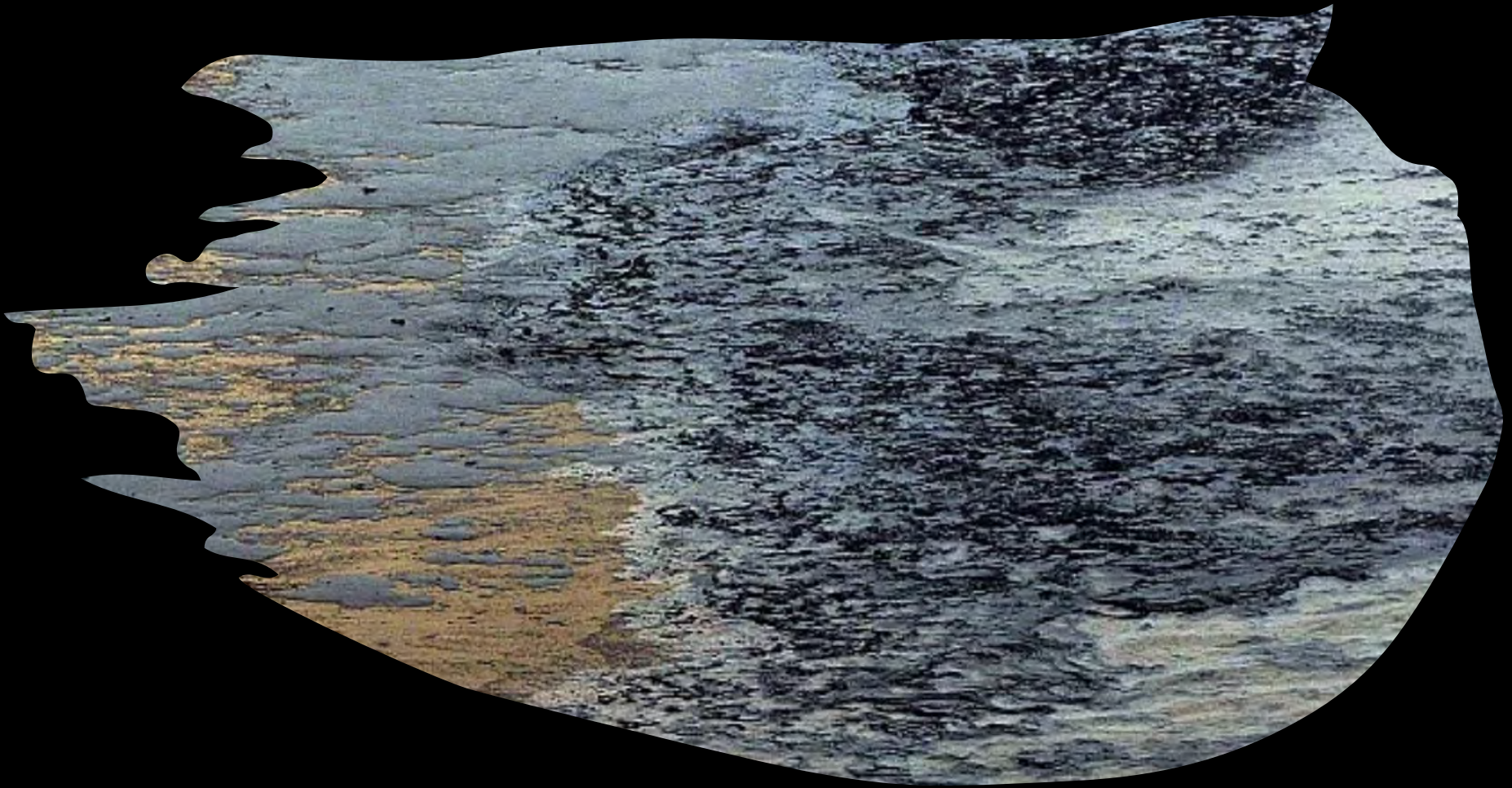


**India: Ban on Vessels Over Certain Age Profiles**



**Panamanian  
Limitation  
Schemes**

**New Maximum Draft for Neopanamax  
Locks & Other Sanctions**



**Spain's Biggest Environmental Disaster:  
*The Prestige* Oil Spill 20 Years On.**

# **LEGAL AFFAIRS**

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**Knock For Knock: Poland**

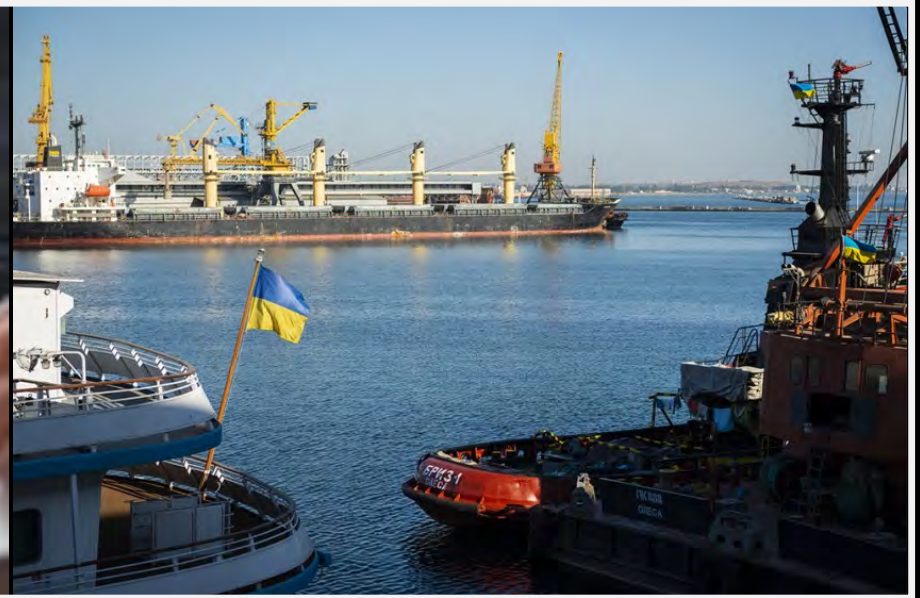
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**Marine War Risk: Nordic**

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**Constitutional Remedy Incorrect: Chile**

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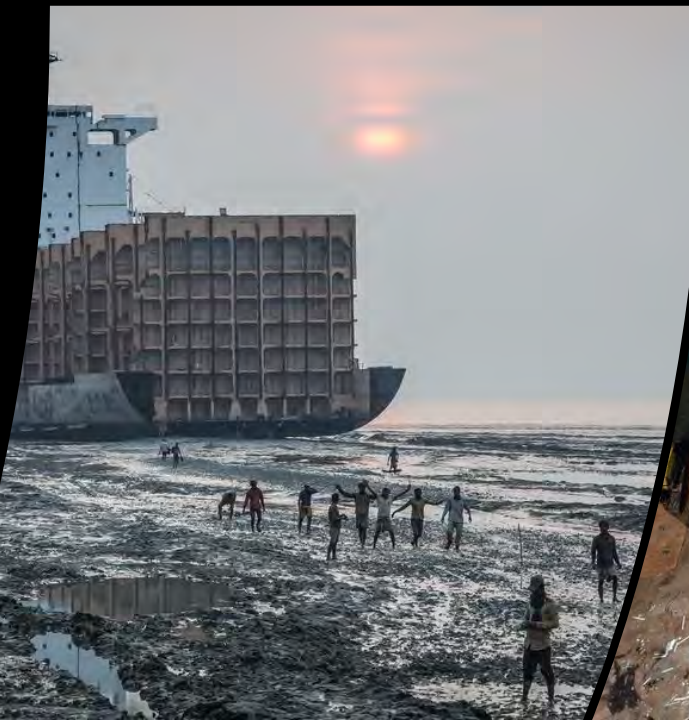








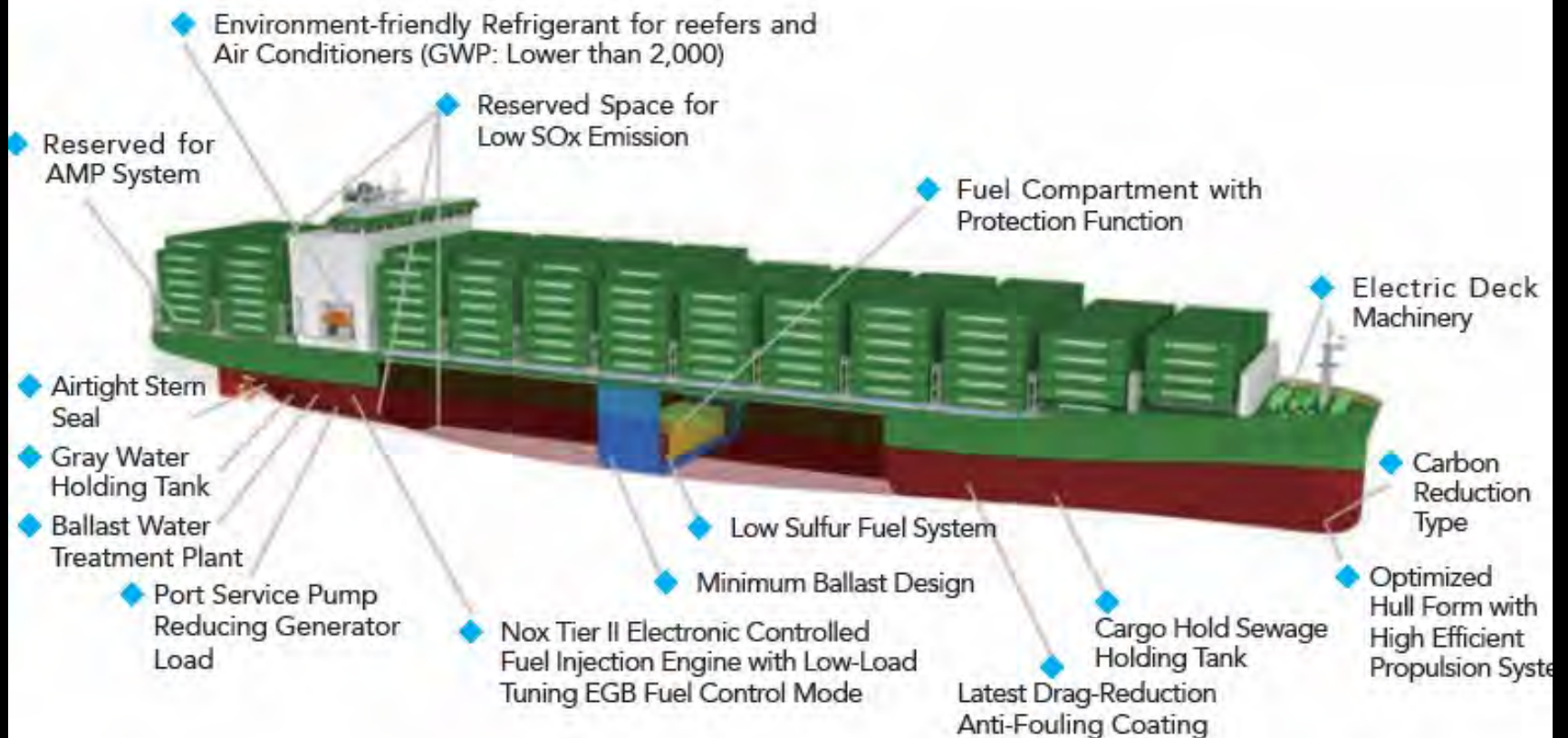
# The Dangers of Vessel Scrapping



# Environmental Actions



# Plans for Greener Container Ships





**Greener Fuels:** LNG, LPG, Methanol, Biofuel & Hydrogen

**Other Initiatives:** Battery Systems, Fuel Cells & Wind-assisted Propulsion, Slow Steaming, Just-in-time Arrivals, Voyage Optimisation by Improving Drag Reduction, Enhanced Weather Routing, Hull Cleaning and Propeller Polishing



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