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9th Shiparrested.com conference in New York City

Arbitration v. Litigation

Shiparrested.com continues to grow, as this 9th Conference here in New York shoes, and continues to develop – as I hope that this session will show.

In Greece last year we trialled a practical session on Arbitration and today in this session we are looking at the question of "Arbitration v Litigation".

As with last year we should not forget that while we are all interested in the arrest of a ship, and how that arrest can be achieved in the many and varied jurisdictions around the world, it remains important to consider the "why" behind all this?

If we in this room can better understand the "why" behind the need to arrest a vessel we will have a better understanding of why clients came to us in the first place.

A "request to arrest" can come from many areas – it is suggested that an understanding of the problems that generate the "request to arrest" are worth considering by everyone here.

A short example, taken from *Ship2Shore issue No. 23 7 June 2010* [with some slight corrections to the English]

"Deiulemar [an Italian operator] makes an arrest on Efnav's ship

A dispute outcoming into arbitration in London at the origin of the measure

The Torre del Greco (Naples)-based shipping company Deiulemar di Navigazione claimed arbitration against Greek owner Efnav Co. Ltd., run by Phillipos Efstathiou and owning 6 bulk carriers. Deiulemar had chartered-in 52,370 dwt Captain George II (built in 1994) from a company controlled by Efnav and sub-chartered her to Land, Air & Sea Transport, belonging to the BM Shipping group, to transport of coils from China to Mumbai.

However, for unknown reasons, the ship's captain refused to load the shipment in Rizhao and, consequently, the sub-charterer sued Deiulemar.

In turn, Deiulemar took Efnav to arbitratiion lodging a guarantee of 800,000 dollars but refused to comment in order not to influence the proceedings.
In any case, as the Greek defendant did not lodge any guarantee for the ongoing arbitration, the judge authorised the arrest of the 75,300 dwt Anastasia (built in 2006) in Bridgeport (Connecticut). Because of this her cargo of coal was transhipped to another vessel.

An everyday tale of shipping – but it gives some idea of what is going on in the background of any request. Similar reasons can be found in trading everywhere.

To consider what is going on behind the "request to arrest" would be to add value and it is suggested that if you can "add value" you will have a happy client which must be good for both his and your bottom line.

The following comments are based on being the arrestor, not the arrestee.

1 "Why?" [That is - why do clients want to arrest a vessel?]

1. Because somewhere and in someplace a dispute has arisen.
2. Because a client wants recover a loss.
3. Because having suffered a loss a client will look to you to
    - **a.** Found jurisdiction for a claim and/or
    - **b.** Maritime Liens
    - **c.** Security for a claim
    - **d.** Security against an Arbitration Award in your favour.

2 The obvious

1 The principal reason for an arrest is invariably to obtain security for a marine claim.

2 An arrest is a physical fact. When a ship is arrested it has an immediate impact on a Shipowner's bottom line – his source of income is hindered.

3 Arrest [on a source of income] does as my law Professor stated so clearly "*concentrates the mind wonderfully"* often leading to a swift so called "amicable settlement"

4. When no quick settlement can be found the arrestor party will look to obtain security before releasing the ship. [We shall assume that the form of security is acceptable and, because we are all members of "Shiparrested.com" due care and attention has been given over the form/wording and amount of the security provided].

   The value of security needs to be agreed and acceptable to the arresting party.

It **must** take account not only of the sum claimed but also interest on that sum for the likely duration of the litigation and the legal costs likely to be incurred.

The wording of the guarantee given **must** specify the basis upon which the guarantor will release funds to the claimant [usually upon confirmation of settlement being reached on the presentation of a court judgment or arbitration award}.

The purpose of this Session

A further part of stating the obvious is that we must accept that not all arrests lead will lead to the fabled "quick settlement".

It is not unknown for parties to become entrenched in their views and become fixed on their ideas of the claim that they have.

Clients may then be holding security for their claim and it is here that the BIG QUESTION arises.

Progress needs to be made but in what direction?

Should you push your clients towards Arbitration or rely on Litigation to bring this matter to an end.

We now have 2 speakers who will put forward their views and we will then open up the debate to the floor.

Valentine will hopefully allow me to sum up before ordering us back to our seats for the next part of the conference.

The first speaker will be decided by the toss of a coin.

Team "A" consists of VK Rhamabadrann of India and John Harris of Israel who will speak for "Litigation is preferable to Arbitration"

Team "B" is our host George Chalos, clearly of New York, and Brian Taylor of England who will speak for "Arbitration over Litigation"

Let the battle begin.