

SHIP ARREST VS REGISTRY OWNERSHIP RESTRICTION

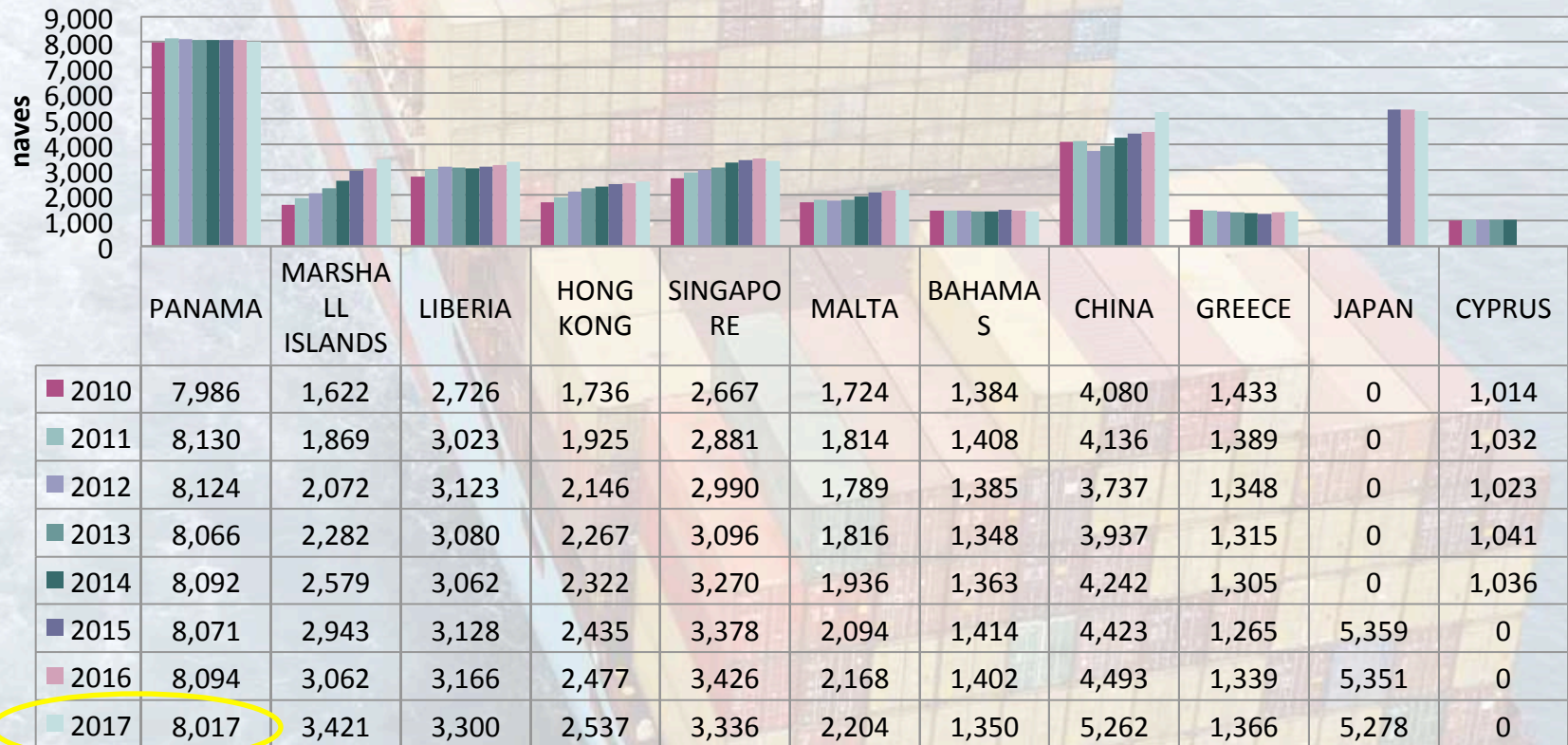
FORCING A DEAL?

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PANAMA REGISTRY

PANAMA REGISTRY vs COMPETITORS
TOTAL AMOUNT OF VESSELS REGISTERED (2010 - 2017).



Do you ever consider vessel flag for the purpose of filing a claim?

Jurisdiction Panama Maritime Courts

- Case occurring within Panama territory.
- Case occurring outside Panama territory but the action is filed against the vessel (in rem) or its owner (in personam) and the vessel or assets are seized in Panama territory.
- **When the vessel involved is registered under Panama flag.**
- Execution of foreign judgment against a vessel located in Panama.
- Defendant is personally served in Panama.
- Applicable law to the claim is Panama Law either by contract or by virtue of Panama Law.

(Article 19 Law 8)



IN REM

- Action directed at the vessel. Physical presence of vessel in Panama waters.
- Bonds and related expenses are higher and monthly costs for the purpose of conserving the vessel and crew apply. Bonds calculated between 20% and 30% of the total claim.
- Due to the costs it is not recommended for low amount claims.
- Terms and deadlines.

IN PERSONAM

- Action directed to owner and either vessel or any other asset owned by the defendant
- Bonds for damages are limited between \$10,000.00 and \$50,000.00.
- You can file a process for lower amount claims.
- The process might last between one - two years.

OWNERSHIP RESTRICTION

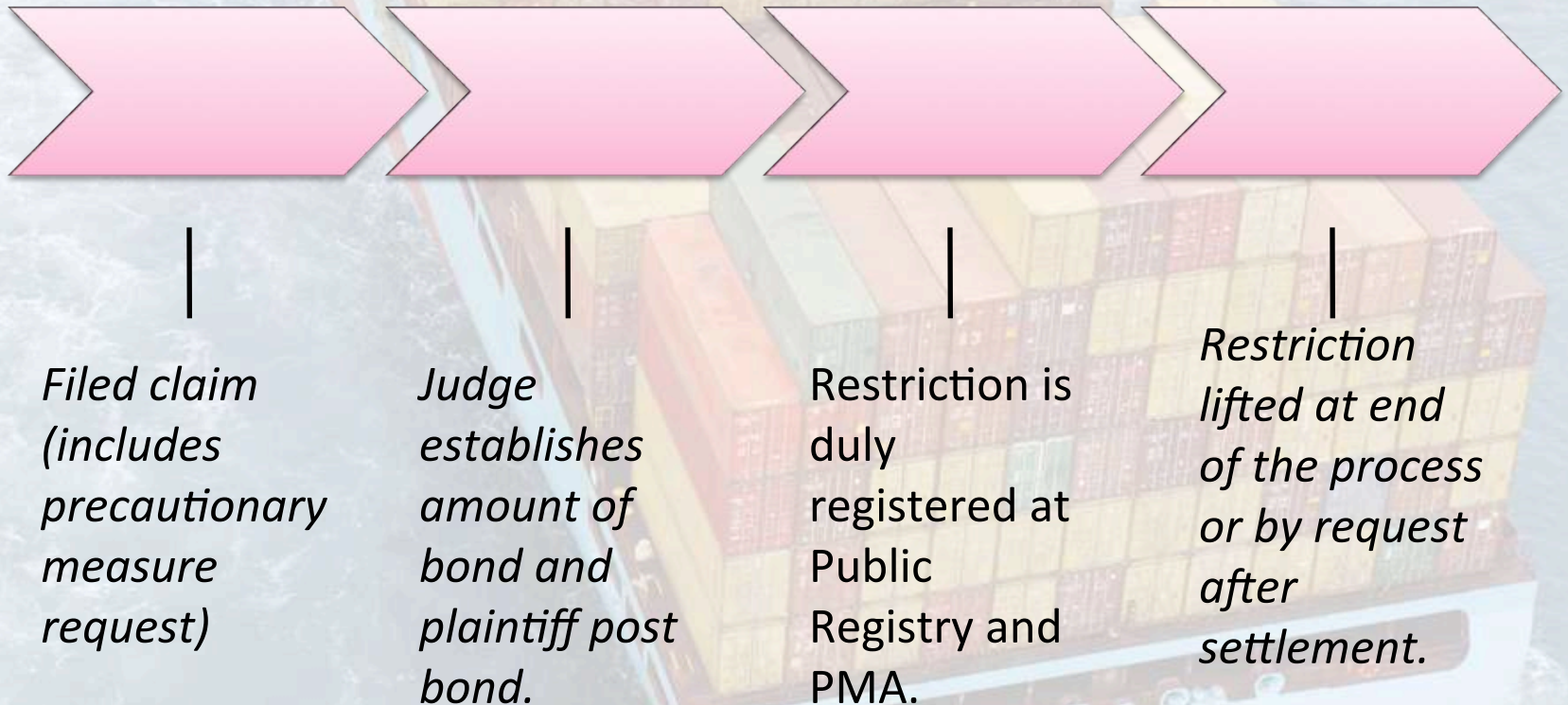
- In personam claim filed at Panama Maritime Court vs owner of the vessel.
- Filing precautionary/conservative measure based on article 206 of the Law 8 of 1982 which consist of a restriction to transfer, sell, cancel the vessel from Panama Registry, as well as prohibiting registration of new mortgages/ammendments/discharges or other liens.
- Notification / Service of Process Abroad. Notification through an attorney admitted to practice in the country where defendant is domiciled.
- Maritime Court available 24 hours for presentation of urgent requests (precautionary measures applies).
- Bonds for damages are limited between \$10,000.00 and \$50,000.00
- In case of urgency Attorneys may act ex officio to represent the parties.

Important elements of the Claim

- A general terms and conditions agreement that contains liabilities for owner of the vessel:
- **Example:** “All sales made under these terms and conditions are made to the registered owner of the vessel, in addition to any other parties that may be listed as Buyer in the confirmation. Any service/product ordered by an agent, management company, charterer, broker, or any other party are ordered on behalf of the registered owner and the registered owner is liable as a principal for payment of the invoice..”
- Applicable law of terms and conditions could be a country that favors suppliers and not ship owners. Example: US Law and substantive Law could apply in the case.
- Jurisdiction: based on Panama flag vessel.
- Invoices and confirmation for the service provided (Example: bunker delivery note).

Timeline

Restriction of ownership



Challenges



- Arbitration Clauses in Original Service Agreement.



- Possible Prescription of Legal Action possible timebar action depending on applicable Law.



- Applicable Law. Depend on what was established in the service/ supply agreement.



- In some cases plaintiff present claims in different countries seeking the same object. Panama Court may decline competence.

Forcing a negotiation?



In regular practice the process results in the following:

- Owner negotiates a deal with plaintiff in order to settle the dispute which includes lifting restrictions over the vessel.
- Defendant is sentenced to pay the total amount after appearing (or not) before court. Restriction is still registered until amounts are duly paid.
- Defendant appears in Court , defends properly, and wins the claim.

Conclusions

- In personam actions seeking ownership restriction are an alternative to seek payment directly from the vessel/owners.
- If defendant does not appear before the Court the process might end in six to eight months with a judgment ordering payment of the total claim. It becomes a maritime lien enforceable in other jurisdictions.
- In regular practice most cases are settled before the preliminary hearing. The restriction might force a negotiation between the parties.
- Ownership restrictions are granted quickly as long as plaintiff complies with legal requirements and post the bond.
- Costs related to the process are much less compared to ship arrest actions and can be estimated before the process starts.
- The restriction are not lifted until the end of the legal process.
- Vessel suppliers that are not able to locate the vessel or have not been able to settle payment for unpaid invoices, might use this alternative to put pressure on the owner in cases when charterer did not comply with obligations.
- It can have very positive results if there is a good coordination between the lawyers and the Claims Manager of the plaintiff.
- This actions could trigger actions from mortgagees according with mortgage terms.

NEXT TIME ASK YOURSELF WHAT IS THE VESSEL FLAG?

Thank you!

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