THE ARREST news

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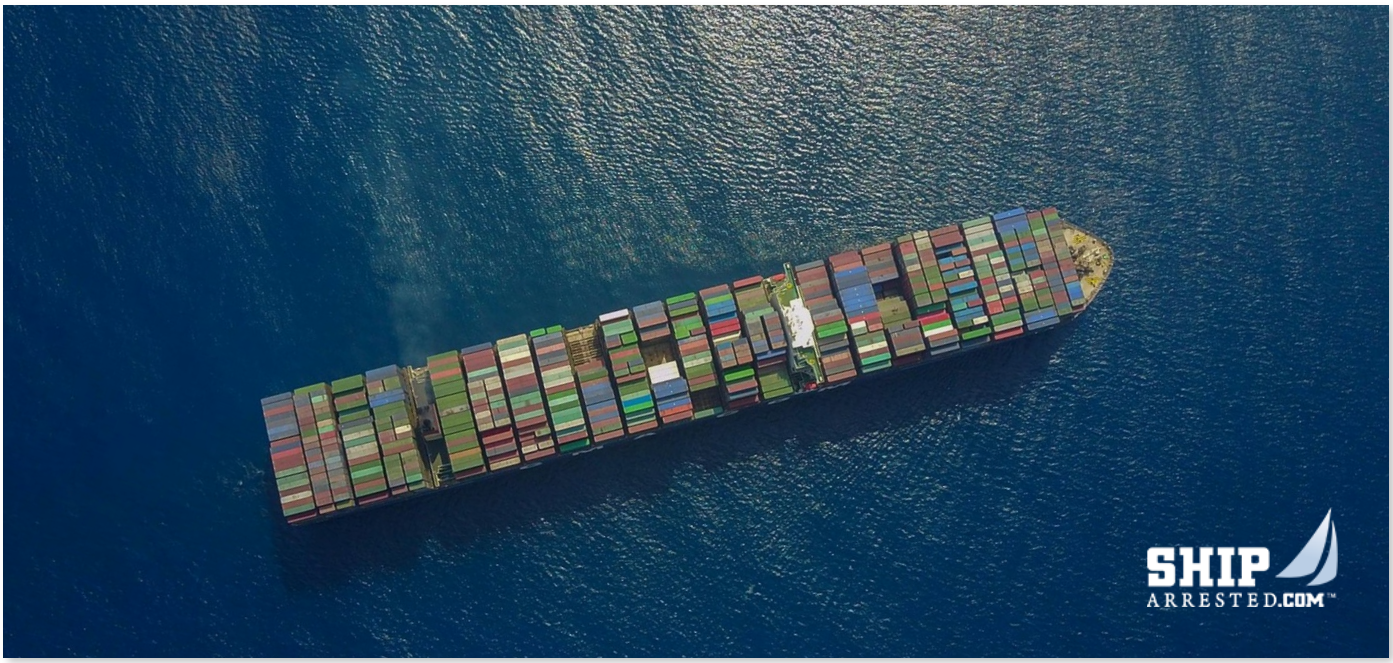

In this issue of *The Arrest News,* we discuss some of the repercussions of fire on board a ship, Panama Canal updates from 2020, the procedure for registration of ships in India, a cross-border arrest made possible by the Brussels I-bis Regulation, and a guest author brings us a case of unconventional bridge design causing a collision due to relative motion illusion.

Fire on Board a Ship: Repercussions in Maritime Law and Marine Insurance Law

by Marc De Man, De Man Pillet (Canada)

To delve into the present topic, it is relevant to present a concrete example, a situation where major principles of maritime law and marine insurance law were put into operation facing a burning ship.

The Facts

On January 3, 2019, the Ship YANTIAN EXPRESS, owned by Hapag Lloyd, a German company domiciled in Hamburg, caught fire during her voyage from Colombo, Sri Lanka destined for the Port of Halifax, Nova Scotia, Canada. It is of interest to point out that Hapag Lloyd owns in excess of two hundred ships, all of which are exclusively owned by Hapag Lloyd. This company does not believe in one ship companies registered in flags of convenience jurisdictions such as Vanuatu or Marshall Islands or Liberia.

When the vessel caught fire during her voyage, immediately salvage vessels came to her rescue and particularly the rescue of her crew. It is one of the most terrifying experiences to be a crew member when a ship catches fire. Just think about it. Where can the crew member find a safe place to avoid the fire? In the explosion and fire which occurred on the MSC FLAMINIA in July, 2012, three crew members died instantly.

In any event, the crew on the M.V. YANTIAN EXPRESS (8 officers and 13 crew) was evacuated entirely on January 7 by the tug SMIT NICOBAR with no injuries. The fire was eventually controlled by SMIT with the assistance of 5 crew members who reintegrated the vessel.

The fire occurred on deck at the bow section of the ship and subsequent investigation showed that the cause of the fire was spontaneous combustion of a cargo of coconut pellets in one container which spread throughout the bow section of the vessel.

The vessel was towed to Freeport, Bahamas as port of refuge on February 4, 2019. On January 25, Hapag Lloyd declared General Average and Richards Hogg Lindley was appointed as the Average Adjuster.

General Average Loss

This leads us to the first maritime law and marine insurance law principles.

General Average was practiced many centuries ago by the Phoenicians who understood what it meant to apportion the risk in a maritime adventure. General Average contribution by jettison was referred to in the Digest of Justinian of the sixth century A. D. citing the Law of Rhodes or Rhodian Law which stated:

> *"The Rhodian law decrees that, in order to lighten a ship, merchandise has been thrown overboard, that which has been given for all should be replaced by the contribution of all."*

Now, the potential liabilities of both shipowners and cargo owners to contribute to general average losses have themselves become insurable risk in marine insurance law.

It is not possible for me at this stage to delve in detail into the law of General Average, but suffice it to state that it deals with an ocean marine loss, composed of the voluntary sacrifice to save the cargo, the vessel and life, and is subjected to extraordinary expenses which may include towing, extinguishing a fire or the jettison of the cargo.

Practically speaking, all the cargo is seized. The amount of General Average loss is determined and all parties contribute to the loss based on their cargo's value whether their shipment was damaged or not.

The adjustment of the General Average is based on the York Antwerp Rules.

So, once the Average Adjuster Richards Hogg Lindley was appointed, all the cargo interests had to either pay a cash deposit for uninsured cargo or, through their cargo underwriters, had to provide a general average security and a salvage security.

In Freeport, it was determined that close to 200 containers were a total loss and in excess of 460 containers were suspected as damaged. The M.V. YANTIAN EXPRESS carried close to 4,000 containers.

The Average Adjuster determined that the General Average Security was to cover 28% of the value of the cargo and the Salvage Security was to cover 32.5% of the value of the cargo.

In cash, the total amount of the deposit was 60.5% for the uninsured cargo. Thus, a cargo owner who may have had a cargo valued at $100,000.00 was obliged to pay $60, 500.00 to obtain delivery of his cargo.

Three forms were required to be provided by the Average Adjuster, Richards Hogg Lindley:

1. Salvage Security (32.5% cash deposit for Insurer's guarantee);
2. Average Bond form (promise to pay future adjustments);
3. A copy of the cargo Invoice.

Note the relevant forms exhibited herein.

This then is the first part of the application of maritime law and marine insurance law. No release of cargo was possible unless Underwriters provide Salvage and General Average Guarantees or cash.

The General Average claims will take several years to resolve.

P&I Club Letter of Undertaking

The second stage of the involvement of maritime law and marine insurance deals with the voyage to the port of Halifax.

After the M.V. YANTIAN EXPRESS arrived in Freeport, Bahamas, it took more than four (4) months for her to finally complete her voyage and discharge at the Port of Halifax. She arrived in Halifax on May 21, 2019 and was faced with the task of discharging 3,200 containers. When she arrived in Halifax, 1/3 of the

containers that survived the fire did not put up security or pay cash as per the Average Adjusters determination.

As of today there are less than 10 containers that remain unclaimed at the Port of Halifax.

This is the stage at which the P & I Club and the cargo interests clash swords.

As soon as the vessel arrived at the Port of Halifax, we, as cargo lawyers representing more than 1,000 containers, threatened to arrest the M.V. YANTIAN EXPRESS.

Although it is not customary in our practice to threaten arrest or, in fact, arrest in rem a liner vessel (we usually only arrest tramp vessels), in this particular case, due to the magnitude of the claim, we were prepared to arrest the vessel.

The lawyers for Hapag Lloyd and its P&I Club appeared, and we settled with obtaining of Letter of Undertaking based on the value of the ship, in excess of US$11.5 Million.

We were contemplating the eventual arrest of other Hapag Lloyd vessels that would sail into Canadian waters, but we were faced with the 2014 Canadian Federal Court decision of Westshore Terminals Limited Partnerships v. Leo Ocean, S.A, 2014 FCA 231, which held that one can arrest the defaulting ship or a sister ship, but not both. Thus, even though many Hapag Lloyd vessels berth in Canada, we could only arrest one Hapag Lloyd vessel, and in this case, the defaulting ship, namely the M.V. YANTIAN EXPRESS.

Out of the 3,300 containers that were discharged in Canada, a considerable portion of the containers were destined to the United States of America. Although, according to section 46 of the Canadian Marine Liability Act, we had jurisdiction to handle all of these claims, we decided to keep jurisdiction over the containers to be ultimately delivered in Canada and to pass on to our American colleagues the containers that required final delivery in the United States, principally New York.

Our American colleagues were immediately faced with an action in limitation of liability according to an American limitation of liability statute, and the limit was set at approximately US$15 Million based on the tonnage of the vessel. This claim is presently pending in the New York Court.

In Canada, we have ratified the 1976 Limitation Convention, but Hapag Lloyd has not created a limitation fund either in Canada or any other jurisdiction which is a signatory to the 1976 Limitation Convention. This means that for the time being, all the claims being asserted in Canada are not, for now, subject to limitation.

Presently, we are faced with attempting to solve time bar issues and deciding whether to sue the owners of the cargo which caused the fire.

There is one very important issue emanating from this fire which is directly related to marine cargo insurance.

Marine Cargo Policy

In general, the cargo on the M.V. YANTIAN EXPRESS emanated from Southern Asia, including Indonesia, Bangladesh, India and Sri Lanka. This cargo was mainly garment cargo: seasonal fashions for men, women and children, but principally women.

As you are well aware, marine cargo policies do not cover for delay. Thus, in many cases, the marine cargo policies did not cover the losses claimed by consignees of cargo when invoking the delay in delivery. Remember that the delay was as long as four months. A good portion of the garments were destined for the St. Valentine's Day consumer. Special garments are purchased and worn for this feast day which occurs mid-February.

However, a few valued marine cargo policies have within their terms and conditions a Seasonal Unmerchantability Clause.

The valuation clause usually covers FOB value of the goods (or cost) plus 100%.

A classical Seasonal Unmerchantability Clause would read as follows:

> *"In consideration of premiums as charged, this Policy is extended to cover the insured's actual loss in sales caused by a delay in the arrival of*

goods insured under this Policy. It is understood that this coverage applies only if the delay in arrival is directly caused by a peril insured against by this Policy and that the insured peril occurs after the goods have commenced transit as defined under the Warehouse Clauses of the Policy.

It is warranted that no claim shall be payable under this Clause unless the delay is greater than thirty (30) days from the anticipated arrival date of the goods insured. It is further warranted that the assured must report to this Company any delay which may lead to a loss by the clause as soon as the delay is known to the Insured, but no later than fifteen (15) days after the anticipated arrival date of the goods at their final destination. The measure of the loss shall be the value of the goods insured as determined by the Valuation Clause of this Policy, less the salvage value of the goods."

In a particular instance, a consignee of garments (ladies' apparel) had in its Marine Cargo Policy the above valuation clause and Seasonal Unmerchantability Clause. The garments were delivered at the end of May, 2019, when they should have been available in the retail market at the end of January, 2019. This is somewhat similar to the arrival of Christmas trees for sale after December 25.

The consignee claimed the FOB value of the garments plus 100%, less the salvage, as per the terms of the policy. The Insurer wished to establish the actual loss in sales for 17 weeks (the delay incurred) which meant that only 70% of the garments would have been sold, based on the sales of the last two years. Thus, it deducted 30% of the FOB value plus 100% and furthermore deducted the salvage. At the end of the day, the matter was settled on a 50-50 basis of the difference.

This is an example of the problems which arise in cases of fire on board a ship and delays in the delivery of the cargo where there is no direct physical damage to the cargo.

Marc de Man, Barrister & Solicitor
De Man Pillet
Montreal, Canada
w: www.demanpillet.com
e: mdeman@demanpillet.com
t: +514 985-2262

Panama Canal Updates 2020 by Joaquín de Obarrio, Patton, Moreno & Asvat (Panama)

The Panama Canal opened its gates on August 15, 1914 and expanded its capacity as of 2016. Over a century of successful operations, the Panama Canal has maintained a forward-thinking vision. We highlight recent updates and developments for 2020:

Coronavirus alert

All vessels approaching the Panama Canal for transit must disclose previous visits to countries with confirmed coronavirus cases. This protocol extends to vessels engaged in port cargo operations within Panama Canal waters. Vessels having docked in ports of countries with coronavirus cases, within 30 days prior to arrival, and/or having identified any case suspect on board, must report it through the Panama Maritime Authority and the Panama Canal Authority so that appropriate preventive measures can be taken.

The Panama Canal maintains a permanent health protocol aimed at the prevention of contagious diseases. A vessel with any passengers or crew on board with suspicious symptoms, must notify it upon arrival. Before transit, all vessels are subject to sanitary inspection, and if a case is detected it is immediately referred to the national health authorities, which investigate and determine if the vessel can continue its transit. If required, the vessel may be held in quarantine as a precautionary measure.

Landmark constitutional decision

The Supreme Court of Panama has recently issued a constitutional ruling paving the way for the Panama Canal Authority to engage in port activities. Plaintiffs

argued against the constitutionality of Article 8 of the *Regulation for the Fixing of Tolls, Fees and Rights of Transit through the Canal, related services and complementary activities* issued by the Board of Directors of the Panama Canal Authority, which states: *"The Authority shall carry out activities complementary to the operation of the Canal, such as dredging, electric power generation, water processing, telecommunications, logistics and ports"*. The claim stated that the Board of Directors of the Panama Canal Authority, was not entitled to regulate complementary activities, under the Constitution and the Panama Canal Organic Law.

The Attorney General for the Administration argued in favor of the constitutionality of the article stating that, from a historical standpoint and in accordance to the National Maritime Strategy, the Canal activities are intimately related to the port activities, being both part of the commercial services provided by the Republic of Panama. The Panama Canal Authority, the Chamber of Commerce and the Panama Business Association also argued in favor of the constitutionality.

When ruling in favor of the constitutionality of the article, the Supreme Court considered that even though the Panama Canal Organic Law does not define which are the activities and services related to the administration, operation, conservation, maintenance and modernization of the Panama Canal, this does not prevent these from being regulated by the Board of Directors, since the regulations issued by the board, which enjoy constitutional legitimacy, complement the general articles contained in the Panama Canal Organic Law.

IMO 2020

Preparing for the entry into effect of the international Sulphur cap for marine fuels (IMO 2020), the Panama Canal Authority issued Advisory to Shipping No. A-39-2019 dated November 6, 2019. The note upholds the mandate initially established in NT No. N-1-2019 “Vessel Requirements” requiring all vessels scheduled to transit the Canal to switch from residual fuel to marine distillate fuel prior to arriving at Panama Canal waters.

Exceptions to the mandate include vessels making only a local port call and not transiting, and vessels anchoring prior to transit which will be permitted to use residual fuel for their auxiliary generator engines, boilers, and other ancillary equipment while at the Pacific and Atlantic Anchorages, only if they are capable of maintaining their main propulsion engines simultaneously on marine distillate fuel. The Panama Canal Authority expressly prohibits the use of open loop scrubbers in order to preserve the quality of its waters, especially freshwater reservoirs.

Water Conservation Strategies

As part of the ongoing water conservation efforts in the Panama Canal watershed, effective February 15, 2020, the Panama Canal Authority has established a Fresh Water Surcharge. This consists of a US$10,000 fixed fee which will be applied to all transiting vessels over 125 feet in LOA. In addition, a variable fee ranging from a minimum of 1% to a maximum of 10% of the vessel’s toll will be applied. The percentage to be applied will depend on Gatun Lake level at the time of transit. The official lake level will be published daily, as well as forecasted for the following 2 months.

A Vessel Visit Creation Fee, has also been established and will be applied to all visits for transit at the time they are created in joint Panama Canal and Maritime Authority system. The processing fee will be US$5,000, for vessels 91 feet in beam and over, and US$1,500 for vessels over 125 feet LOA, but less than 91 feet in beam. These strategies are aimed at the water conservation efforts to combat changing rainfall patterns and historic low water levels in Gatun and Madden Lake.

Arrest of Vessels by Panama Maritime Courts

As per the Panama Canal Authority Navigation Regulations, the transit of vessels in the Panama Canal may not be interrupted in order to enforce attachment measures as ordered by the Maritime Courts. Effective January 1, 2020, the Panama Canal Authority has enacted guidelines to guarantee transit. Under NT Notice to Shipping No. N-8-2020, a vessel under arrest will be considered to be in a "not ready" status until a

release or authorization to move is issued by the Maritime Courts and the ship's local agent notifies Marine Traffic Control of the release.

To guarantee uninterrupted operations, no arrest orders will be served on vessels under way with a pilot on board and proceeding to transit. Court ordered arrests will be executed after the Canal transit has been completed. The Notice to Shipping, requires the Maritime Courts to attempt to notify local agents of vessels scheduled for Canal transits, pending arrest. Agents are responsible for immediately relaying to Marine Traffic Control that the vessels are under arrest. Extraordinary services provided by the Panama Canal Authority due to arrests will be charged to the vessels. Should the vessel not be ready to proceed at the time fixed for transit, the booking fee will be forfeited.

Joaquin de Obarrio
Patton, Moreno & Asvat
Panama, Panama
w: www.pmalawyers.com
e: jdeobarrio@pmalawyers.com
t: +(507) 306-9600

Procedure for Registration of Ships in India by Mr. Rohan Janardhanan, Rex Legalis (India)

The registration of any sea going ship or coastal ship is laid down in several international and national conventions such as:

1)United Nations Convention on the Law of the Sea (UNCLOS) 1982 Article 91

2) Merchant Shipping Act 1958 part V section 22

The registration of ships in any country gives the ship the nationality of the state whose flag they are entitled to fly. It makes a genuine link between the state and the ship. A ship entitled to fly the flag of a country needs to be registered in that country.

The object of registration in India is to ensure that persons who are entitled to the privilege and protection of the Indian flag receive the same. The registration affords evidence of title of the ship to those who deal with the property in question. It further gives protection to the members of the crew as well in case of casualties involving injuries and/or loss of life to claim compensation under the provisions of the Indian Acts in Indian courts.

In India, the procedure for Registration of Ships is specified under Part V of the Merchant Shipping Act, 1958 and Registration of Ships Rules, 1960. As per Part V, Section 21 of the Merchant Shipping Act, 1958 Act, a ship shall not be deemed to be an Indian ship unless owned wholly by persons to each of whom [any] of the following descriptions applies:

(a) a citizen of India.

(b) a company or a body established by or under any Central or State Act which has its principal place of business in India.

(c) a co-operative society which is registered or deemed to be registered under the Co-operative Societies Act, 1912 or any other law relating to co-operative societies for the time being in force in any State.

Further, Section 22 of the Merchant Shipping Act, 1958 dictates that every Indian ship, unless it is a ship which does not exceed fifteen tons net and is employed solely in navigation on the coasts of India, shall be registered under this Act.

Section 23 of the Merchant Shipping Act, 1958 lists the ports at which registration of ships shall be made. As per the said section, registration of ships shall be done at the ports of Bombay, Calcutta and Madras and such other ports in India as the Central Government may by notification in the Official Gazette, declare to be ports of registry under this Act. Further, the port at which an Indian ship is registered for the time being under this Act shall be deemed to be her port of registry and the port to which she belongs.

Section 24 of the Merchant Shipping Act, 1958 further dictates that at each of the ports of Bombay, Calcutta and Madras, the principal officer of the Mercantile Marine Department, and at any other port such authority as the Central Government may by notification in the Official Gazette, appoint, shall be the Registrar of Indian ships at that port.

Section 26 of the Merchant Shipping Act, 1958 states the requirement for a Register book. Every registrar shall keep a book to be called the register book and entries in that book shall be made in accordance with the provisions mentioned in detail in Section 26 (a) to (e) of the Merchant Shipping Act, 1958.

Rule 3 of the Registration of Ships Rules, 1960 dictates the documents to accompany an application for Registry. As per Rule 3 of the Registration of Ships Rules, 1960, every application for the registry of a ship under section 26 of the Merchant Shipping Act, 1958 shall be accompanied by the following documents, namely:

(a) The declaration of ownership;

(b) The builder's certificate, that is to say, a certificate signed by the builder of the ship and containing a true account of the proper denomination and of the tonnage of the ship as estimated by him and of the time when and the place where she was built; and

(c) If the ship has been purchased, the instrument of sale under which the property in the ship was transferred to the applicant.

Further, after the registrar has satisfied himself as to the evidence of ownership he shall cause the ship to be surveyed by a surveyor and her tonnage ascertained in accordance with the Merchant Shipping (Tonnage Measurement of Ships) Rules, 1960. Thereafter, the surveyor shall grant a certificate of survey in respect of the ship.

But in cases where the Survey of a ship is necessary, but it is at a port outside India, the Director General may depute a surveyor or request the government of the country where the ship is lying to appoint a qualified surveyor to survey the ship for the issue of a certificate of survey.

Subsequently, the owner or his agent shall give to the registrar at the intended port of registry, a notice of the name proposed for the ship at least fourteen days before the date on which he desires to affect the registry. On receipt of the notice, the registrar shall send it forthwith to the Director General and the name shall not be registered under that name unless it is approved by the Director General.

The registrar, on receipt of the application for registry shall apply to the Director General for allotment of an official number.

Pursuant to the official number being allotted and the name approved by the Director General and the certificate of survey granted by the surveyor, the registrar shall issue to the owners a Carving and Marking Note which shall be returned to the registrar after the carving and marking have been duly carried out and certified by a surveyor.

Every ship shall, before registry, be marked permanently and conspicuously to the satisfaction of the registrar as specified under Rule 10 of the Registration of Ships Rules, 1960.

On completion of the preliminaries to registry, the registrar shall enter the particulars of the ship in the register book and issue to the owners a certificate of registry.

This is the procedure that is dictated for registration of ships in India under Part V of Merchant Shipping Act, 1958 and the Registration of Ships Rules, 1960. Failure to follow the procedure as dictated herein will result in failure to get the ships registered and those unregistered ships will not be entitled to the receiving reliefs and benefits if any under the Indian Law.

Therefore in order to sum up, Ship registration is an important process as it is the manner by which a ship is documented and regulated and given the nationality of the country to which the ship has been documented. Giving the ship a nationality allows a ship to travel internationally as it is proof of ownership of the vessel.

The country giving a nationality to the ship is known as a Flag State. A ship's flag state exercises regulatory control over the ship and is required to inspect it regularly, certify the ship's equipment and crew, and issue safety and pollution prevention documents. The Ship also gains tax benefits and legal protection of the flag state when the ship sails on the open sea.

Rohan Janardhanan,
Managing Partner**, Rex Legalis**
Mumbai, India
e: rohan@rexlegalis.com
t: +91 222 414 979

Arresting a Ship in Another EU Member State by Celine Goedhart, Conway & Partners (The Netherlands)

Arresting a ship sailing under the Panamanian flag in a Belgian harbour by obtaining leave for arrest at the Court of Rotterdam in The Netherlands? Why not…

Recently, our firm was requested by a client to arrest a ship owned by one of the client's debtors. The two parties had had a longstanding relationship with each other for almost 20 years and our client even assisted the Owner with registering his shipping company in Panama. However, after our client's invoices remained unpaid for almost three years, there was no other option than to take action. The ship in question concerned the "WORLD TUG 1", sailing under the flag of Panama. There was only one problem: WORLD TUG 1 was not in The Netherlands at that time. The ship was berthed in the harbour of the Belgian city of Ostend.

Leave for arrest by a Belgian court?

We first assessed whether it would be possible for our Belgian colleagues to obtain leave for arrest at a Belgian court. This would of course have been the easiest route. Belgium incorporated the Brussels Arrest Convention 1952 into the national legislation, meaning all arrests should pertain to a maritime claim as described in Article 1 of the Brussels Convention. The client's claim however, mostly related to intermediary activities. As such claim did not constitute a maritime claim, obtaining leave for arrest before the Belgian courts was impossible.

Back to the Dutch

As Panama is not a signatory to the Brussels Arrest Convention 1952, it was possible to obtain leave in The Netherlands to arrest WORLD TUG 1 for any claim whatsoever.

> *"The leave for arrest needs to have extraterritorial effect"*

Obtaining leave for arrest in The Netherlands would only be efficient if the arrest could actually be enforced in Belgium: the leave for arrest needed to have extraterritorial effect. We decided to test the tools the new Brussels I-bis Regulation (No. 1215/2012) provides us with.

When applying the Brussels I-bis Regulation, provisional measures can be enforced in another Member State of the European Union if the judge imposing those provisional measures is also competent to rule on the substance of the case (Preamble no. 33, Article 2(a), Article 39 and Article 40 Brussels I-bis). Enforcement in another Member State is then possible, regardless of the nationality of the opposing party. Therefore, in this case, the fact that the debtor was Panamanian, did not impose a hurdle to enforce a Dutch leave for arrest in Belgium.

Competence of the Rotterdam court

The main obstacle that needed to be tackled was the competence of the court on the substance of the case. We filed our arrest petition with the Court of Rotterdam. The court needed to assess its own competence based on Dutch procedural law. The claim was mainly based on services rendered to the debtor by our client. According to Dutch procedural law, the competent judge to assess the case on the merits would be the judge of the place where the services were rendered.

Therefore, we argued that the place where the services were rendered was the office of our client, near Rotterdam. Furthermore, from 2017 onwards, the Court of Rotterdam is exclusively competent to rule on most maritime cases.

The enforcement certificate

In order for the arrest leave to have any value in another Member State, the Court of Rotterdam also needed to issue a certificate as described in Article 42 (1) (b) and 53 Brussels I-bis.

> *"The Court of Rotterdam forgot to issue the enforcement certificate, as they do not receive such requests often"*

When first obtaining the arrest leave, the Court of Rotterdam had actually forgotten to issue this certificate, as they explained they do not get requests to enforce provisional measures in other Member States very often. One phone call was enough to issue the certificate within one hour after all.

Enforcement of the arrest in Belgium

Once the Court of Rotterdam granted leave for arrest, we were of course happy, but not done yet. The next step would be a swift enforcement procedure before the WORLD TUG 1 would sail elsewhere. Our client had informed us the WORLD TUG 1 would remain in Belgium for at least a week, but we thought it was better to be safe than sorry.

Brussels I-bis poses another condition for a foreign provisional measure to be enforced in another Member State: the provisional measure needs to be served to the defendant prior to enforcement. A great advantage to ship arrests is of course the element of surprise. This element of surprise could be lost if the defendant gets a warning beforehand by serving the leave for arrest to him. If warned, the ship can quickly sail away, making the leave for arrest worthless. In order to avoid this and maintain the element of surprise, the serving of the leave for arrest and the actual ship arrest need to be almost exactly at the same time.

> *"To maintain the element of surprise, the serving of the leave for arrest and the actual arrest need to be almost at the same time"*

To arrange this, we maintained close contact with the Dutch and Belgian bailiff. We concluded it would be possible to serve the leave for arrest to the captain of WORLD TUG 1, as representative of the Owner. While already on board of the WORLD TUG 1, the bailiff could immediately effectuate the arrest afterwards. In order to be 100% sure that the leave for arrest was served correctly prior to the arrest, this leave was also served to the actual offices of the Panamanian Owner, located in The Netherlands. Dutch procedural law makes it possible to serve at the address of the actual office.

While arranging this entire process, we kept a close eye on Marine Traffic to assess the exact location of the WORLD TUG 1 for the Belgian bailiff. Just when we received the leave for arrest, WORLD TUG 1 started sailing and was quickly leaving the harbour of Ostend, despite the messages from our client to the contrary. Within minutes, the ship had already reached open waters in the North Sea. After quickly calling the bailiff, the harbour police of Ostend has been able to stop the WORLD TUG 1, which was ordered to return to the harbour of Ostend.

> *"Within minutes, the ship had reached open waters in the North Sea"*

At that time, the Owner of WORLD TUG 1 of course knew that something was wrong. The Owner kept calling our client to see what was going on, apparently already under the impression that the arrest had been performed. Once back in Ostend, the Dutch bailiff served the leave for arrest at the actual office address of the Owner in The Netherlands. Immediately afterwards, the Belgian bailiff served the leave for arrest to the captain of the WORLD TUG 1 and arrested the ship.

Just in time

After the arrest in Belgium, the ship Owner immediately paid all its debts, plus 30% of the claim amount. We requested this additional 30% from the Court of

Rotterdam, in order for our client to compensate its procedural costs. Once the arrest was lifted, the WORLD TUG 1 actually sailed towards Dutch waters. As soon as the WORLD TUG 1 arrived in Ijmuiden, the ship was unlucky once more: the Dutch Justice Department arrested the WORLD TUG 1 for involvement in an environmental offence. We had been just in time when arresting the WORLD TUG 1 in Belgium, making it possible for our client to receive all its money.

> *"The ship was unlucky again and arrested by Dutch Justice for an environmental offence"*

This example shows that the Brussels I-bis Regulation provides us with a lot of cross-border opportunities, making even more options available within the European Union to arrest ships. Although this cross-border tool is not used too often in The Netherlands yet, the process is effective and quick and can therefore definitely be taken into consideration more often.

Céline Goedhart
Associate, **Conway & Partners**
The Netherlands
w: www.conway-partners.com
e: goedhart@conway-partners.com
t: +31 10 204 22 00

Unconventional Bridge Design - Collision due to Relative Motion Illusion by Capt. Francis Lansakara, Singapore Nautical Insititue

Background of the case

The Car Carrier "City of Rotterdam" and the Ro-Ro "Primula Seaways" collided in River Humber, in the UK, on the night of 3rd December 2015. The marine pilot under Associated British Ports boarded the Car Carrier at Immingham Dock and was due to navigate her along the River Humber to the mouth of the river, where full control was then to be handed over to the Captain, who would take the vessel out to sea.

Humber Vessel Tracking Service (VTS) monitored the vessel's track which showed that she was straying into the north side of the shipping channel and into nearby Anchorage. Her passage also brought her into the track of vessels traveling west along the river, including another ship (Primula Seaways) which was traveling inbound along the channel. Despite alerts from VTS and the captain of the Primula Seaways , the City of Rotterdam continued its passage along the wrong side of the shipping lane and the two vessel collided head-on - causing heavy structural damages to both vessels.

The UK Marine Accident Investigation Branch (MAIB) team determined that the City of Rotterdam's pilot failed to apprehend the developing risk of collision because he had experienced "relative motion illusion" – that is, he was mistaken about the vessel's direction of travel. The prosecutor brought Criminal proceedings against the Master and the Pilot. The Master was charged with conduct endangering ships structures or individuals in violation of Section 58 (2) and (5) of the UK Merchant Shipping Act 1995. The Pilot was charged with misconduct by Pilot endangering ship, contrary to section 21 of the UK Pilotage Act 1987, although the accident was related to COLREG Rule 9: Navigation in a Narrow Channel - a vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.

Experiencing relative motion illusion is a novel concept affecting lookout which may occur in ships with a hemispherical bridge design.

Key takeaways

Understanding unconventional bridge designs and the approval process: City of Rotterdam's hemispherical bow was designed to reduce wind resistance and carbon emissions and to provide better fuel economy. Only the front window on the centreline was perpendicular to the vessel's fore and aft axis. Due to the hemispherical design, the bridge windows did not meet the SOLAS Convention's requirement (SOLAS V/22.1.9.1) that all top windows shall be

inclined from the vertical plane, top out, to an angle between 10 and 25 degrees. Where the bridge design does not meet the required criteria, it will be known as "unconventional bridge design". Exemption to unconventional bridge design may be granted under SOLAS V/22. provided that it is demonstrate that the bridge windows in the unconventional design were able to achieve, as close as practical, the visibility requirements detailed in the SOLAS convention. The City of Rotterdam was granted such an exemption certificate issued by its flag state. The process leading to granting such approval was unclear.

Circumstances for criminal charges and relative motion illusion as a defense:

Apportionment of liability based on degree of fault is common under admiralty law. However, a rare decision was made regarding this case, in November 2017, whereby criminal charges were brought against the Master and the Pilot of City of Rotterdam at Hull Crown Court UK but there were no criminal charges brought against the master of the other ship. The master of City of Rotterdam was charged with conduct endangering ships, structures or individuals, in violation of section 58(2) and (5) of the UK Merchant Shipping Act 1995. The Master had failed to intervene in the Pilot's action until it was too late. The Pilot was charged with misconduct by pilot endangering the ship, contrary to section 21 of the UK Pilotage Act 1987. The prosecution initially alleged a variety of failures by the Pilot but, in his defence the court was persuaded that he was subject to 'Relative Motion Illusion' caused by the non-SOLAS-compliant design of the ship's bridge and bridge windows. The pilot's error amounted simply to not taking sufficient steps to break himself out of the effects of that illusion. Following the accident both men had retired from the profession however, they were given four months in prison, but suspended their jail term for 18 months. Master was ordered to pay £750 in court costs due to the extremely low income he receives from his state pension. The pilot was ordered to pay £45,000 in court costs, which will be paid by his former employer. The judge had acknowledged in the sentencing that the ship's design had played a part in the accident.

Comments:

- Although the flag state had exempted the vessel from compliance of the SOLAS bridge design requirements, it is unclear how the relative motion illusion was addressed during the approval process. The negligence of the flag state or its surveyors were not mentioned in the court proceedings nor were any of the flag state's faults taken into account in the sentencing.
- Bearing in mind that there are many ships existing in the industry with hemispherical or unconventional bridge designs, the court's decision on this case could well be a precedent for similar accidents in future.
- With respect to civil liabilities, the parties may have settled their civil liability issues by an out-of-court settlement. However, as a general rule, although the vessel Primula Seaways was navigating on the right side of the narrow channel, she still bears a degree of fault for the collision (about 20%). Her responsibility arises from COLREG Rule 17: stand on vessel may take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these rules.

Capt. Francis Lansakara
Council Member,
Singapore Nautical Institute
e: francislansakara@gmail.com

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Shiparrested.com 'Who's New' Legal Members

Angola

VdA
Luanda, **Angola**
t: +351 213 113 400
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www.vda.pt
Contact: José Miguel Oliviera

Cyprus

E&G Economides LLC
Limassol, **Cyprus**
t: +357 25 866 480
e: george.economides@economideslegal.com
www.economideslegal.com
Contact: George Economides

Malaysia

Messrs Joseph & Partners
Kuala Lumpur, **Malaysia**
t: +60123955594
e: jeremy@jnplaw.my
www.jnplaw.my
Contact: Jeremy Joseph

Mozambique

VdA
Maputo, **Mozambique**
t: +258 21798770
e: mozambique@vdalegalpartners.com
www.guilhermedaniel.com
Contact: Guilherme Daniel

Panama

Edwin A. Mendoza Florez
Panama, **Panama**
t: +507 6677 4949
e: edwinmf@maritimelegalconsulting.com
www.maritimelegalconsulting.com
Contact: Edwin Mendoza

Portugal

VdA
Lisboa, **Portugal**
t: +351 213 113 400
e: jmo@vda.pt
www.vda.pt
Contact: José Miguel Oliviera

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