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Pakistan Court Rules on the Trickery of Adding Tort Claims to Charterparty Disputes – the Recent "Beluga A" Case

Introduction

The global maritime legal landscape is undergoing a sophisticated recalibration, driven by the emergence of novel technical disputes, geopolitical volatility, and a judicial push towards the harmonisation of commercial remedies. At the heart of this evolution is the traditional action in rem, a procedural mechanism that has historically provided claimants with a unique form of security through ship arrest. However, as maritime commerce becomes increasingly complex, involving intricate layers of charterparties, technical certifications, and liquidated damages provisions, the High Courts of common law jurisdictions are being forced to delineate more precisely the thresholds between breach of contract and tortious negligence.

A recurring theme in common law courts is the effort to maintain the balance between tort and contract law. This is most evident in the application of the "Economic Loss Rule", which seeks to prevent parties from using tort law to recover losses that are essentially the result of a failed commercial agreement.

This article examines the recent jurisprudence from the High Court of Sindh in Pakistan, which illustrates a shifting paradigm where the sanctity of contract is prioritised to prevent the "drowning" of commercial law in a sea of tort.

Issues in Sucres et Denres SA v MV Beluga A

The adjudication in the recent case of *Sucres et Denres SA v MV Beluga A* or "*Beluga A*" (Admiralty Suit No 13 of 2025 before the High Court of Sindh) represents a seminal first impression ruling in the Pakistani context, particularly regarding the interplay between technical certification, waiver, and the thresholds for negligence. The case involved a sugar charterparty for the transport of 25,000 metric tons of sugar from Brazil to Pakistan. The plaintiff sought the arrest of the vessel based on two primary contentions: a breach of an express term regarding gear certification and a breach of a duty of care (negligence) due to crane failures that delayed loading.

The court was presented with a technical conflict: Clause 42 of the charterparty required a gear certificate attesting that the vessel's cranes had been tested within one year prior to the notice of readiness. The vessel provided certificates showing that while the "annual thorough surveys" were valid through 2026, the last "load test" had been conducted in November 2021 – nearly four years prior to the voyage. The plaintiff accepted these documents at the start of the voyage but subsequently sought to rely on the nonconformity as a ground for arrest following loading delays.

The High Court's reasoning focused on the doctrine of waiver. By accepting the non-conforming technical documents and proceeding with the charter, the plaintiff was deemed to have waived their right to later assert a breach of that specific term. This highlights a critical issue: the extent to which a commercial party is bound by its initial acceptance of technical risks. The court signalled that in the absence of fraud, the formal acceptance of certificates – even if they do not strictly meet the contract's requirements – bars subsequent claims for breach of those terms.

The court's analysis of the weather-related delays further underscored the complexity of causation in these disputes. The loading statement of facts (SOF) indicated that approximately 321 hours (over 13 days) were lost solely due to rain and fog, which were categorised as laytime-interrupting events under the charterparty.

The judicial refusal to attribute these weather delays to the defendant's negligence, even when the cranes were simultaneously inoperative, reflects a robust application of the principle that "pure economic loss" resulting from external environmental factors cannot be recovered in tort if it falls within the risk allocation of the contract.

Breach of contract v tort

The distinction between contract and tort in ship-arrest cases is summarised by the "form and substance" of the injury.

- Nature of the breach – In contract, the focus is on the failure to fulfil a specific promise (eg, providing

a gear certificate). In tort, the focus is on the failure to meet a societal standard of care (negligence).
- Damages available – Tort claims allow for "foreseeable" damages at the time of the act, whereas contract damages are limited to what was "reasonably foreseeable" at the time the agreement was signed.
- Remedy caps – As seen in *Beluga A*, contractual relationships often involve pre-negotiated caps (eg, the USD80,000 disbursement account cap). Courts are generally unwilling to allow "pure economic loss" claims in tort to bypass these caps unless the tort is independent of the contract.

The following paragraphs highlight the relevant differences between breach of contract and maritime tort (negligence).

Breach of contract
- Origin of duty: voluntary agreement;
- Primary remedy: expectation damages;
- Proof required: breach of agreed terms;
- Privity requirement: yes (generally); and
- Foreseeability timeline: at contract formation.

Maritime tort (negligence)
- Origin of duty: imposed by law/society;
- Primary remedy: compensatory/punitive;
- Proof required: duty, breach, causation, damage;
- Privity requirement: no; and
- Foreseeability timeline: prior to the wrongful act.

Warranty of seaworthiness and technical waivers
The obligation to provide a seaworthy vessel is a "core" component of any contract for the carriage of goods by sea. Historically, in common law, this duty was absolute: the ship-owner warranted that the vessel was "tight and fit" for the purpose, and ignorance of a defect was no defence.

Due diligence and doctrine of stages
Most modern maritime disputes are governed by statutes like the Carriage of Goods by Sea Act (COGSA), which replaces the absolute warranty with an obligation to "exercise due diligence" to make the ship seaworthy before and at the beginning of the voyage. In the *Beluga A* litigation, the court had to decide if the breakdown of two out of four cranes constituted a breach of this duty. The court's conclusion – that the provision of valid (though non-conforming) certifications, combined with the plaintiff's acceptance of them, discharged any duty of care – suggests that "due diligence" is increasingly measured against the standard of technical documentation accepted by the parties at the outset.

This introduces a significant first impression issue in domestic jurisprudence regarding the Doctrine of Stages. Under common law, a vessel must be seaworthy at the beginning of each distinct stage of the adventure. If a vessel is fit for harbour but not for the open sea, the warranty is satisfied if the vessel is made seaworthy before "breaking ground" for the next stage. However, in the *Beluga A* context, the court held that because the plaintiff chose not to repudiate the contract when the non-conforming gear certificates were presented before loading, they were barred from asserting unseaworthiness after the "loading stage" had commenced. This creates a high threshold for claimants: a failure to object to technical deficiencies at the earliest possible stage may be construed as a permanent waiver of the seaworthiness warranty for that specific defect.

Future outlook: resilience of Admiralty Law
The issues identified in *Beluga A* – particularly the finality of technical waivers and the exclusivity of demurrage – suggest a judicial trend towards protecting the autonomy of commercial parties to define their own risks. Simultaneously, the "cutting edge" challenges of autonomous shipping and geopolitical trade bans will require the courts to develop more "pro-arbitration" and "pro-enforcement" schemes to maintain the efficiency of global trade.

The High Court of Sindh's recent dismissal of the *Beluga A* arrest application provides a definitive roadmap: where a dispute arises from a sophisticated commercial agreement, the court will prioritise the "certainty and clarity" of that agreement over the "indeterminate liability" of tort. This approach ensures that the action in rem remains a powerful but disciplined tool for maritime justice, rather than a mechanism for commercial disruption in an already volatile global environment.