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In this issue of *The Arrest News:*

Potential Liability of MV EVER GIVEN for Damages Arising out of the Suez Blockage Under Panamanian Law, Law of the Flag by Francisco Carreira Pitti, Carreira Pitti Attorneys

On March 23, 2021 at approximately 07:40 Egypt time (05:40 UTC) the 400 meter long Panamanian registered vessel, EVER GIVEN, IMO 9811000, was knocked off course by a sandstorm and reported 40 knot winds plus reported technical and human errors resulting in a grounding blocking the waterway, keeping dozens of vessels at both sides of the canal generating millions of dollars in losses.

Regardless of the results of the investigations, there are potential liabilities and defenses under the laws of Panama, law of the flag.

The main defense available to the owners, operators and P&I Club is the Limitation of Liability. Panama has not adopted any of the Limitations of Liability Conventions but adopted via statute the wording of the 1976 Convention with several changes. Under Panama Law, in principle, MV EVER GIVEN could be entitled to a limitation based on her GRT of 219,079 the amount of the limitation fund is about US$32,215,982.08. Under Panama Law whether limitation of liability is admitted is a question of fact. Whether there is liability or not is subject to 1) timely filing of the petition within six (6) months of receiving the first claim; 2) whether the loss resulted from personal acts or omission of the person seeking the limitation; 3) whether there is compliance with legal duties imposed by Panama Law, such as Article 1645 of the Panama Civil Code as to Servant's liability.

As to the liability of the vessel in rem and owners, operators and P&I Clubs, the following is to be noted:

1. Liability in Rem; in principle any Panama registered vessel is potentially liable in Rem if there is a maritime lien against her (which there seems to be for damages caused by fault of negligence) and if physically present in Panama (unlikely with MV EVER GIVEN). To enforce a maritime lien in Panama the vessel must be present in our jurisdiction. Another possibility of application of Panama Law is if the MV EVER GIVEN is arrested in a foreign forum applying the law of the flag.
2. Liability in Personam; in principle the registered owners, the vessel operator and P&I Club are potentially liable in Personam for claims arising out of the blockage and delays based on contractual liability or liability in tort. The gist of the potential liability in Personam is that the Panama Court could decree a "Flag Arrest", an injunction keeping the vessel's registry as it is, no changes, deletion, name or owner change are possible, nor the registration of any mortgage. The flag arrest could also be available against sister-ship vessels.

The "Flag Arrest", if filed against the owners, operators and P&I Club, requires the filing of prima facie evidence of the underlying claim. To get the Flag Arrest order, petitioners must deposit a counter security bond (usually from US$10,000 to US$50,000 depending on the prima facie evidence filed and the amount in controversy of the claim. This bond is also fully returnable if the case is proven). A very important item in Panama is the direct action against the P&I Club which permits seeking security for the underlying claim whilst filing an in Personam action against owners/ operators.

Francisco Carreira Pitti
Carreira Pitti P.C. Attorneys, Panama
w: www.carreirapitti.com
e: paco@carreirapitti.com
t: +1 516 714 4300

Guidance From the Singpore High Court on the Interaction Between Insolvency and Admiralty Law and Resolution of Tensions Between the Two

by Kelly Yap, Oon & Bazul (Singapore)

Introduction

1. In The "Ocean Winner" [2021] SGHC 8, a decision delivered on 15 January 2021, the Singapore High Court analysed the interaction between insolvency law and admiralty law and addressed the tension between the statutory moratorium afforded by the insolvency regime and the ability of maritime claimants to protect their interests by way of admiralty actions such as filing of protective writs and ship arrests.

Background

2. On 17 April 2020, Ocean Tankers (Pte) Ltd ("OTPL") filed an application for moratorium relief pursuant to section 211B of the Companies Act ("CA"). OTPL was granted an automatic moratorium that lasted for 30 days or until the date when the application was heard, whichever was earlier. On 22 April 2020, PetroChina International (Singapore) Pte Ltd ("PetroChina") filed admiralty in rem writs (the "Writs") against four ships (the "Vessels"), which OTPL had bareboat chartered, in respect of claims for misdelivery of cargo.

3. On 8 May 2020, OTPL entered appearances in these four actions and thereafter applied to set aside or strike out the Writs on the basis that there was a subsisting moratorium under section 211B of the CA and that PetroChina had not obtained leave of court to file the Writs. In particular, sectionss 211B(8)(c) and (d) of the CA (which have been repealed and re-enacted as sections 64(8)(c) and (d) of the Insolvency, Restructuring and Dissolution Act) ("IRDA")) prohibit the commencement of any proceedings against the company, or any execution, distress, or other legal processes against the property of the company during the automatic moratorium period, without leave of court.

4. The relevant extracts from sectionss 211B(8)(c) and (d) of the CA are reproduced below:

Power of Court to restrain proceedings, etc., against company

…

(8) Subject to subsection (9), during the automatic moratorium period for an application under subsection (1) by a company —

…

(c) no proceedings (other than proceedings under this section or section 210, 211D, 211G, 211H or 212) may be commenced or continued against the company, except with the leave of the Court and subject to such terms as the Court imposes;

(d) no execution, distress or other legal process may be commenced, continued or levied against any property of the company, except with the leave of the Court and subject to such terms as the Court imposes;

Decision

5. OTPL's application failed. The Court held that sections 211B(8)(c) and (d) of the CA did not prevent the filing of the Writs without leave of court. First, the filing of the Writs did not constitute the commencement of "proceedings" against "the company" within the meaning of section 211B(8)(c) of the CA. Second, while a bareboat charter interest fell within the meaning of "property" under section 211B(8)(d) of the CA, the filing of the Writ did not constitute an "execution, distress or other legal process" under section 211B(8)(d).

6. On the first issue, the Court took the view that the purpose of the moratorium under section 211B of the CA is to postpone the enforcement of legal rights so that the company has breathing space to come up with a scheme of arrangement. It is not intended to deny the creation of substantive legal rights. In this connection, the filing of an admiralty writ only creates a security interest in the ship by way of a statutory lien in favour of the claimant, without which he has no right of action. This is to be contrasted with typical civil actions, where the filing of the writ of summons constitutes the commencement of proceedings to pursue the claimant's pre-existing legal rights. Therefore, the filing of the Writs cannot be said to be the commencement of "proceedings" within the meaning of section 211B(8)(c) of the CA.

7. Even if the filing of the Writs constitutes commencement of "proceedings" under section 211B(8)(c) of the CA, such "proceedings" must have been commenced against "the company", which is OTPL. The Court analysed past Singapore decisions and observed that an action in rem is an action against the ship and not against the shipowner or bareboat charterer. The action only transforms into a mixed action in rem and in personam after the shipowner or bareboat charterer enters an appearance in the action. It is only after the entry of appearance that any judgment can be enforced against the shipowner or bareboat charterer personally. The question is whether OTPL would have been personally liable for the actions in rem commenced by the Writs at the time when they were issued. Since OTPL did not enter an appearance at the time when the Writs were issued, the actions remained actions against the Vessels and OTPL would not have been personally liable at that point in time. Therefore, the filing of the Writs does not constitute the commencement of proceedings against "the company" (i.e. OTPL) under section 211B(8)(c) of the CA.

8. The Court noted that it is only now when OTPL has entered an appearance that the actions in rem then transform into mixed actions in rem and in personam and that OTPL can be personally liable. Given that there is a subsisting moratorium by virtue of the fact that OTPL is now under judicial management (this is to be contrasted with the automatic moratorium under section 211B of the CA as discussed above), PetroChina must obtain leave of court if it wishes to proceed with the claim, including service of the Writs on the Vessels and arrest of the Vessels.

9. On the second issue, the Court made it clear that the filing of the Writs is neither an "execution" nor a "distress" within the meaning of section 211B(8)(d) of the CA. On whether the filing of the Writs falls within the meaning of "other legal process" under section 211B(8)

(d), the Court took the view that it must mean enforcement processes similar in nature to "execution" and "distress" proceedings. In other words, it must refer to processes to seize money or property of the company. The Court reiterated that the filing of an admiralty writs only creates a statutory lien and there is no element of enforcement by taking such a step. Therefore, the filing of the Writs does not fall within the meaning of "other legal process" under section 211B(8)(d) of the CA.

10. The Court then considered whether the Vessels can be said to be OTPL's "property" under section 211B(8)(d) of the CA. The Court was of the view that the purpose of section 211B(8)(d) is to expand the scope of the moratorium and cover the types of property interests which were not previously covered under section 210(10) of the CA. Since a leasehold interest is intended to be covered under the expanded scope of section 211B(8)(d), a bareboat charter interest should similarly be covered. The Court went on to say that, even if a bareboat charter interest falls within the meaning of "property" under section 211B(8)(d), the filing of the Writs is not an "execution, distress or other legal process" under section 211(8)(d). Therefore, section 211B(8)(d) is not satisfied.

11. In sum, the Court concluded that the filing of the Writs does not fall within the ambit of sections 211B(8)(c) and (d) of the CA. Accordingly, no leave of court was required in order for PetroChina to file the Writs and there was no basis for OTPL to set aside or strike out the Writs.

12. For completeness, although OTPL did not rely on it, the Court also considered the applicability of section 211B(8)(e) of the CA, which reads as follows:

> *"[N]o step may be taken to enforce any security over any property of the company, or to repossess any goods under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes …"*

13. The Court stated that the filing of the Writs is not a step taken to enforce the statutory lien. As such, it does not fall within section 211B(8)(e) of the CA.

Comments

14. This very recent decision in Singapore is instructive for maritime claimants looking to protect their interests by commencing admiralty actions against companies which are restructuring or facing insolvency proceedings. Importantly, it is now clear that the statutory moratorium under the previous section 211B of the CA (and the new section 64 of the IRDA) does not bar the filing of admiralty writs. A claimant can therefore preserve its statutory lien against the ship, protect its in rem claim from any transfer of ownership and prevent its claim from being time-barred by filing the admiralty writ notwithstanding the statutory moratorium. However, if the claimant wishes to proceed with service of the writ or arrest of the ship, leave of court would still be required.

Kelly Yap
Oon & Bazul, Singapore
w: www.oonbazul.com
e: kellyyap@oonbazul.com
t: +65 6223 3893

The Co-Insurance Quandary

by Murali Pany & Samuel Lee, JTJB Lawyers

The economics of insurance have been reliant on the doctrine of subrogation which allows the insurer to sue the "guilty" party on behalf of the insured. Two recent English cases highlighted situations where such rights of subrogation may be lost based on the terms of the contract between the insured and the "guilty party".

"The Ocean Victory"

[Gard Marine and Energy Ltd v China National Chartering Co Ltd and another; China National Chartering Co Ltd v Gard Marine and Energy Ltd and another; Daiichi Chuo Kisen Kaisha v Gard Marine and Energy Ltd and another [2017] UKSC 35]

The first case in 2017 involved the Ocean Victory, which was owned by Ocean Victory Maritime Co. and demise-chartered to a related company, Ocean Line Holdings Ltd. The demise charterer then sub chartered the vessel. Each charterparty in the chain contained a safe port warranty.

The demise charterparty contained a co-insurance clause that required the demise charterers to keep the vessel insured against, *inter alia*, marine risk in the joint names of the demise charters and shipowners. Further, the shipowners were to approve such insurance.

The vessel subsequently became a total loss due to grounding. The hull insurers paid out to the shipowners and issued proceedings against the sub charterers (in the name of the demise charters) for breach of the safe port warranty.

The UK Supreme Court, in a narrow 3:2 majority, adopted the position that the "guilty" co-insured's liability to pay damages was excluded by the terms of the co-insurance clause in the contract and that parties had agreed to look to the insurance funds as the sole recourse for any breach of the safe port warranty. As such, the demise charterers, not being liable to the shipowners, had no claim to pass on to the sub charterers. It followed that the hull insurers were not subrogated to any claim.

While much turned on the interpretation of the wording of the co-insurance clause, Lord Mance (speaking for the majority) highlighted that the insurance was to be taken out in a fixed amount (US$70 million). At the date of her total loss, the vessel was said to have been worth some US$15 million more than that amount. Lord Mance opined that it was implausible to suggest that having developed a comprehensive insurance scheme (and having paid for it), the demise charterers would accept being potentially exposed to paying additional damages.

"The Polar"

[Herculito Maritime Limited and others v Gunvor International BV and others [2020] EWHC 3318]

The second case in 2020 involved a time chartered vessel which was seized by pirates in the Gulf of Aden and released after a ransom of US$7,700,000 was paid. General average ("**GA**") was declared and a claim was made by the shipowners (the insurers through a subrogated claim) against the cargo owners.

The time charterparty included clauses that required specific insurance concerning piracy risk whilst transiting the Gulf of Aden be paid for by the charterers.

The cargo owners argued that the shipowners agreed to look solely to their insurance cover and not to their counterparties for general average.

The Judge held that since the cargo owners have not paid the insurance premium, there was no agreement between the shipowners and the cargo interests for the shipowners to look only to the insurance policy. As such, the cargo owners were liable to pay for their portion of the GA.

However, the Judge went on to observe that as between the shipowners and the charterers (who paid for the insurance), the shipowners' insurers would *prima facie* have no right of subrogation against the charterers. However, the charterers were not involved as the claim was against cargo owners for GA. *[We understand that permission to appeal this decision to the English Court of Appeal had been granted]*

Comment

The outcome of *The Ocean Victory* and the position taken by the cargo owners in *The Polar* (although rejected by the English High Court) are departures from the general norm that insurance recoveries are ignored in the assessment of damages arising from a breach of duty.

That said, it appears that the impact of *The Ocean Victory* and *The Polar* may be quite limited.

The holding in *The Polar* was that the B/L holders could not take advantage of the insurance or the insurance clause in the charterparty as they did not pay the premiums. As such, the insurers (of the shipowners) could still claim against the B/L holders.

Whilst the outcome of *The Ocean Victory* was not beneficial to the insurers, both the minority and the majority, took pains to highlight that there were other

possible claims (such as bailment and/or the principle of transferred loss) on which a demise charter might be able to claim damages from a sub charterer. These other claims were not considered on appeal as the insurers did not argue these alternative claims in the Courts below.

Implicitly, the UK Supreme Court recognised that the sub-charterers should not be allowed to get off "scot-free". Whilst these other heads of claim will need to be elucidated in due course, it shows that the Court is cognizant of the need to preserve the right of insurers to claim against the party causing the loss.

Nonetheless, parties should be aware of the potential impact of co-insurance clauses and consider carefully what exactly they intend when agreeing to such clauses.

K. Murali Pany, Managing Partner
e: murali@jtjb.com

Joseph Tan Jude Benny Law Offices
Singapore
w: www.jtjb.com
t: +65 6220 9388

Samuel Lee, Associate
e: samuellee@jtjb.com

Arrest Of Ships In Ukraine Due To Unpaid Crew Wages By Yuriy Sergeyev, Karina Romanishyna & Iryna Radkovska, Sergeyevs' Law Office (Ukraine)

The Covid-19 pandemic has had a range of detrimental effects, one of them being the increased amount of abandoned seafarers left on board ships without sufficient amount of water or food and without their wages. However, to be fair, it should be known that non-payment of wages to seafarers has been taking place long before the Covid-19 pandemic, and there is particular judicial practice in this field.

Ukraine is one of the main suppliers of seafarers for international merchant fleets. Aiming to protect the interests of its citizens, the Ukrainian Parliament acceded to the International Convention relating to the arrest of seagoing ships of 1952 (hereinafter – the Convention) and provided particular provisions regarding the arrest of ships within national legislation. According to the Convention, arrest means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment. One of the grounds for a maritime claim is unpaid wages of Masters, Officers, or crew.

It shall also be noted that clause 4 of article 3 of the Convention states: when in the case of a demise charter of a ship, the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship. The claimant may arrest said ship or any other ship in the ownership of the demise charterer subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims.

In accordance with the Convention, the rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in Article 4 of the Convention, and to all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest was made or applied for. Such rules and procedures are provided, in particular, by the Merchant Shipping Code of Ukraine (MSCU) and by the Civil Procedural Code of Ukraine (CPCU).

First of all, two important points are noteworthy regarding provisions of the MSCU. Firstly, the list of grounds for a maritime claim is quite different than in the Convention. The latter contains 17 grounds for a maritime claim, whereas the MSCU lists 23. At the same time, the contents of the grounds are also different. For example, the "wages ground" according

to the Convention means wages of Masters, Officers, or crew, whilst the MSCU includes wages *or other sums* due to Masters, Officers, or crew *connected with performance of service duties on board the ships, including repatriation costs, as well as social insurance contributions*, paid on their behalf. Secondly, according to article 14 of the MSCU, rules of the current Code regarding the arrest of a ship ***may apply only to ships registered in Ukraine*.**

The current CPCU contains provisions which state that the arrest of a ship with the aim to secure a maritime claim is one of the security measures kind of claims. Clause 4 of article 151 of the CPCU provides specific requirements for the content of the application on the security of a claim by the arrest of a ship, namely: 1) full title of a Court, to which the application is filed; 2) full title (for a legal person) or surname, name and patronymic (when applicable) (for a private entrepreneur), responsible for a maritime claim; 3) the amount and essence of a maritime claim, which is a ground for the arrest of the ship; 4) the title of the ship, regarding which the application is filed, other ship's details, when known by an applicant.

According to clause 2 of article 152 of the CPCU, an application on the arrest of a ship shall be filed to the court at the location of the ship's registry or the location of the seaport where the ship is situated or to the location where said ship is going. Regardless of where, such Court has a jurisdiction to consider the case regarding the maritime claim, which is grounds for the arrest.

There is also one important issue, provided by clause 3 of article 150 of the CPCU, which states that claim security measures, *except the arrest of a ship*, shall be commensurate with claims filed by a plaintiff. The mentioned exception gives the opportunity to secure small amount claims within a civil proceeding, which was impossible previously due to disparity between the cost of claims and the value of a ship.

According to clause 3 of article 157 of the CPCU, the ruling of the arrest of the ship is a ground for the detention of the ship or limitation of its movement within the port at which the ship is situated or to the port said ship is going, up to the moment of cancelation of claim security measures by the arrest of the ship. After receipt of the copy of the ruling on the arrest of the ship, a master of the seaport where the ship is situated, a branch of the Ukrainian Sea Port Authority at the seaport where the ship is situated, respective authorities of the State Border Guard Service of Ukraine, as well as tax and revenues authorities, shall take measures to prevent departure of the arrested ship from the port.

Sergeyevs' Law Office has had successful cases regarding arrests of ships due to unpaid crew wages claims. Let's consider some of them.

On 11 September 2020 the claim on the recovery of unpaid crew wages in the total amount of USD 250,678.42 was filed on behalf of 28 crew members of the ship "GINGER" (IMO No. 6521915, the flag of the United Republic of Tanzania) against the shipowner and charterer. At the same date, an application on the arrest of the mentioned ship (situated in that moment in the territory of "Black Sea Shipyard" JSC) was filed. On the basis of the Certificate of Ship Registry and the Time-charter agreement, the Court determined that the mentioned ship was owned by the Defendants. On the basis of the Certificate issued by the master of Mykolaiv seaport, the Court established that the ship was indeed situated on the territory of "Black Sea Shipyard" JSC, which is under the jurisdiction of the mentioned Court, and, being guided by the mentioned provisions of legislative acts, has ruled to arrest the ship. Based on the results of the consideration of the case, the Court ruled to satisfy the claims and ordered the Defendants to pay the debt jointly and severally. Currently the case is at the stage of execution of the Court decision.

The same actions were taken in 2019 in our cases of unpaid wages to crew members of ships "Leonid Khotkin" (IMO No. 8949434, the flag of the Union of the Comoros) and "Boris Pevkin" (IMO No. 8971188, the flag of the Union of the Comoros) which led to the

successful protection of the rights of our clients and full payment of due wages.

Summarizing, we can conclude that Ukraine has successful judicial practice regarding arrests of ships due to unpaid crew wages claims, subject to strict compliance with the rule of law.



Yuriy Sergeyev, Managing Partner
Karina Romanishyna, Senior Lawyer
Iryna Radkovska, Lawyer
Sergeyevs' Law Office, Odesa, Ukraine
t: +38 048 737 8228
e: office@srgv.com

The Marine Industry in Cyprus and the COVID-19 Vaccine by Andria Kouloumi, Michael Kyprianou - Advocates & Legal Consultants

As COVID-19 vaccines become more and more available there are feelings of excitement and trepidation in equal measures. With people starting to receive the COVID-19 vaccines in Cyprus, many questions are being raised by employers and employees alike, particularly whether employers can force employees to be immunized. Likewise, similar issues arise from a marine perspective with many shipowners asking if they can compel the seafarers to get vaccinated, and what they can do if seafarers refuse. Another highly disputable issue is that of liability, more specifically as to who would bear liability if a seafarer finally takes the Covid-19 vaccine or not.

The legal side: Can a shipowner compel seafarers to take the COVID-19 vaccine?

For the purposes of our review, the provisions of the Law of 2012 - Maritime Labour Convention, 2006 (Ratification) and for Matters Connected Therewith (the "Law") have been taken into consideration. The Law has ratified the Maritime Labour Convention of 2006 as amended (the "MLC"), which provides for minimum safety standards and the rights of seafarers. The Law, amongst others, provides for the minimum obligations on shipowners and seafarers in relation to seafarers' medical certificates and also for medical care on board ships and ashore. Nonetheless, no expressed provision for seafarers' vaccination is included.

Looking into other pieces of national legislation, the Safety and Health at Work Laws ("the Safety at Work Law") requires employers to take reasonable steps to reduce workplace risks. Under the Safety at Work Law, employees also have a duty to cooperate with their employer to reduce workplace risks. It would be a reasonable step, for the purpose of reducing the risk of COVID-19 in the workplace, for the employer to require employees to take the vaccine, as immunization of employees would likely allow for a return to 'normal' in the workplace. If an employer carried out a risk assessment and concluded that having a vaccine is the most reasonably practicable way of controlling the risk of COVID-19 then, in theory, he could order the vaccination as a health and safety requirement. Nevertheless, at this point in time, no authority is granted to the shipowners as employers, under the Safety at Work Law to compel a seafarer to be vaccinated.

Further, the Quarantine Law (Cap. 260) gives the government powers to impose measures through regulations and decrees to prevent, control or mitigate the spread of COVID-19 as a dangerous infectious disease. Nonetheless, no regulation or decree has made the vaccination mandatory until now. Most importantly, in accordance with the patient's protection rights as provided through European legislation, a patient has the right to refuse or to halt any sort of medical intervention, whilst the obligation would rest on the medical practitioner to explain any repercussions to the patient of refusing or halting such intervention.

It follows from the above that no legislation is currently in force, compelling seafarers to get vaccinated.

Implementing new policies

In the absence of legislation, a shipowner cannot force an employee to be vaccinated. However, shipowners may choose to follow a legitimate route by implementing policies or contractual provisions through employment agreements for the purposes of addressing this issue. This, for example, could be accomplished by making the COVID-19 vaccination a condition of an employment contract or by amending an existing employment contract. It is the case that many shipowners have made it a provision of an employment relationship for the seafarer to have certain vaccines which are obligatory in countries to which the vessel might sail.

Looking into workplace policies, shipowners could also consider having in place strategies, procedures and policies concerning the Covid-19 vaccine. Notably, any workplace policy, including one that would mandate employees to receive the COVID-19 vaccination, shall be reasonably necessary and rationally connected to the workplace. For example, a mandatory vaccination policy could be deemed reasonably necessary if an employee is employed in the healthcare sector or is required to have frequent close contact with members of the public. In such a case, this requirement would be consistent with the employer's duty of care to provide a safe work environment. However, such a policy may not be considered by everyone reasonably necessary for the shipping sector, especially in cases where seafarers do not have immediate contact with the public and where sufficient safety precautions are in place. Given this, shipowners should not assume that a mandatory vaccination policy is going to be legal. As noted above, before implementing such vaccination policy, shipowners should carefully consider the circumstances of the particular ship, the level of exposure to individuals who are especially vulnerable or at risk. Also, before implementing such policy, shipowners must be mindful of potential human rights implications which could arise, as well as the impact it could have on a seafarer's privacy rights. Shipowners should carefully consider whether such a policy is truly necessary for their particular workplace and, if so, ensure that the policy takes all of these factors into account.

The Contractual route

Turning to contractual provisions, it is the case that, by practice, many seafarers' employment agreements include clauses which set as a condition for seafarers the acceptance of "necessary" vaccines for the countries their ship might enter. As far as the COVID-19 pandemic is concerned, being characterized as a dangerous infectious disease, the possibility of being considered as a "necessary" vaccination by the majority of the countries is high. This means that a seafarer could reasonably be required to get the COVID-19 vaccination where his existing contract includes such provision. The same may apply for new contracts. That is to say that should the Covid-19 vaccine fall within the "necessary vaccination" provision or should the employer reasonably include it specifically as a term of the new employment agreement, then this would mean that the seafarers would reasonably be obliged to be vaccinated. On the contrary, this would not easily be applicable with regard to existing contracts which do not include a 'vaccination provision'. It is possible that any amendments to the employment relationship for this purpose might not be considered valid in cases where seafarers would not wish to be vaccinated, taking into consideration the provisions of the employment law and the applicable regime in Cyprus. Nonetheless, instead of "obliging" the seafarers to get vaccinated through a contractual provision or a mandatory vaccination policy, shipowners should, in any case, appropriately inform the seafarers in relation to the vaccine and encourage them to get vaccinated.

In any case, though, if a mandatory policy is nonetheless necessary, shipowners should consider providing seafarers with a reasonable, non-disciplinary alternative to vaccination, such as allowing non-vaccinated seafarers to go on unpaid leave of absence when the risk of workplace transmission is particularly high. Further, for employees unable to be vaccinated for health reasons, disability, religion, or faith, shipowners might also be needed to provide

appropriate accommodation and to ensure the protection of other crew members. Such measures might include providing for alternative duties, separate accommodation (where it is reasonably possible) and providing appropriate protective equipment. If such accommodation is not possible, or the vessel is unable to operate safely, an option for the shipowner would also be to remove the non-vaccinated individual from the vessel, provided all contractual and other legal obligations to the individual are met.

At present, it is difficult to say what the correct approach should be. Much will depend on the individual shipowners who will now have to consider all the above-mentioned factors in their risk assessment process. In any case, in deciding whether to mandate a COVID-19 vaccination for seafarers, a shipowner must balance the right to refusal to be vaccinated of seafarers against the health benefits associated with the vaccination requirement.

Liability issues: Who would be liable for such vaccinations?

Another implication that may arise regarding seafarers' vaccination is the matter of responsibility. Would the shipowner be liable for the costs and consequences of vaccinating seafarers, including any side effects? According to PART XVI of the Law (also Article IV of the MLC) and the Merchant Shipping (Minimum Requirements of Medical Treatment on Board Ships) law, seafarers shall at all times have access to medical treatment and should be protected from the financial consequences of sickness, injury or death occurring in connection with their employment. That is to say, if a seafarer is required by a shipowner to be immunized against COVID-19, then the responsibility would lie with the shipowner to ensure that a vaccine was offered and it would also be at no cost to the seafarer. Moreover, according to the provisions of the applicable laws, the shipowner shall also be liable and for any costs arising from illness or adverse reaction that might result from vaccination.

Things may nevertheless be different in terms of the shipowners' liabilities in case the vaccine is taken voluntarily by a seafarer or is mandated by the seafarer's home country. For instance, in cases where the seafarer has voluntarily taken the vaccine as it has been offered, let us say, by his home country authorities, then it is unlikely that the shipowner would be liable for any adverse consequences or any associated costs. This should also be the case in terms of the cost and liability if the COVID-19 vaccine is imposed by the authorities in the seafarer's home country. Nonetheless, what happens if a seafarer gets ill while traveling to/from or on board the ship due to the vaccination quality or a reaction? In such a case, the seafarer should be treated as any other case of medical treatment being required by a serving seafarer, as provided in the law, regardless of the link to the COVID-19 vaccine. This means that in cases of adverse consequences whilst traveling to/from or on board that vessel attributable to the COVID-19 vaccine, the shipowner is obliged to react subject to the seafarer's employment agreement and protect the seafarer's health.

In conclusion, it follows from the above that many issues are uncertain and yet to be decided and assessed by the relevant authorities in order to provide effective guidance to the shipowners as to how they should respond to these challenges following the COVID-19 pandemic.

Andria Kouloumi
Michael Kyprianou Advocates & Legal Consultants Cyrpus
w: www.kyrianou.com
e: andria.kouloumi@kyprianou.com
t: +35 725 363 685

"Who's New" Legal Members

Bangladesh

Doulah & Doulah
Dhaka, **Bangladesh**
w: www.doulah.net
t: +880 1711506015
e: info@doulah.com
Contact: Nasir Ud Doulah

Northern Ireland

Craig Dunford QC
Belfast, **Northern Ireland**
w: www.barofni.com
t: +44 (0)28 9024 1523
e: craig.dunford@barlibrary.com
Contact: Craig Dunford

Vessel Auctions

"OCEAN SPIRIT"

IMO: 8325793

Seismic, Drill/Supply vessel with dynamic/survey capability

Enforcement Officer Risto Sepp sells "OCEAN SPIRIT", located at Bekker Port, Tallinn, and belonging to "IMG ehf" of Iceland at an oral auction. Claim of DAN Bunkering serves as grounds for conducting the auction. The electronic auction **begins on 17.05.2021 at 17:00** (EET) and **ends on 21.05.2021 at 17:00** (EET). Attending registration and information on vessel will be available on site www.oksjonikeskus.ee. Starting bid of auction is 300.000euro. Persons having the right to claims ensuing from maritime claims are to submit such claims no later than on 16.05.2021 with substantial grounds. The Enforcement Officer proposes to all persons having rights in regard to the vessel being sold or rights that would obstruct the conduction of the auction, to achieve a closure or halt of the auction before the day of division of earnings on the basis of an agreement with the claimant or a ruling of the court; Any additional information concerning auction or vessel details or inspection of the vessel sold at the auction is possible on arrangement with the Enforcement Officer. A request must be submitted by e-mail risto.sepp@taitur.net or by phone +372 56 624 194.

"QUEEN HELENA"

IMO: 9341354

15,000dwt Chemical Tanker

Built: 2009 Wadan Yards

The vessel is lying at anchor off Fujairah, and is to be sold via Court auction. Buyers requiring more information or wishing to conduct their own inspection can apply to the exclusive brokers: CW Kellock & Co Ltd