

THE ARREST

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The Brave New World of Autonomous Shipping by K. Murali Pany, Joseph Tan Jude Benny LLP (Singapore)

The size of the global Maritime Autonomous Surface Ships (MASS) market is projected by Allied Market Research to reach \$165 billion by 2030 with the Asia Pacific region expected to drive much of that growth.

Earlier this year, The Nippon Foundation, Mitsubishi Shipbuilding, and Shin Nihonkai Ferry successfully deployed *Soleil*, a large, vehicle-carrying ferry, on an autonomous 240-kilometer return voyage from the port of Shinmoji in Kitakyūshū, Fukuoka, to the Iyonada sea off the eastern coast of nearby Ōita Prefecture. It was the first time for a vessel over 200 meters in length to attempt an autonomous voyage at speeds of up to 48 kilometers an hour that involved auto-berthing.

Just last month, SoftBank Ventures Asia, the venture arm of SoftBank Group, led a \$5.8 million round in South Korean autonomous navigation startup Seadronix, bringing its total funding to date to \$8.3 million.

The benefits of autonomous shipping are plenty including a reduction in the potential of skills shortages in the future. Having technology replace labour can also provide massive cost savings.

But regulatory frameworks are still lacking and the timing and type of regulatory intervention can accelerate, slow or prevent the adoption of autonomous technology.

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Indeed, there is a myriad of legal considerations and implications tethered to the brave new world of MASS.

Definition of autonomy – Autonomy is defined in different ways for different levels and it is intrinsically linked to the level of human involvement. The International Maritime Organisation (IMO) considered four degrees of autonomy including manned ships with automated processes and decision support; remotely controlled ships with seafarers on board; remotely controlled ships without seafarers on board; and fully autonomous ships. When it comes to MASS, while there is still human involvement in its operation, the manner, time and location of interaction are very different, which brings up legal and practical challenges.

Cybersecurity – Cybersecurity issues should be top-of-mind right at the design stages of MASS and its systems. From a legal and liability standpoint, this is crucial as measures implemented to prevent cyber attacks would be examined when cyber events occur. The development of a technology equipped with the ability to respond to every possible scenario is challenging, to say the least, and that will create issues for setting boundaries for legal liabilities including establishing reasonable criteria and parameters between shipowner, manufacturer and insurance providers.

Safe manning conventions – One of the key legal issues MASS face is the safe manning requirements that are applicable to commercial vessels. Many conventions and charterparties require vessels to be properly manned, which fundamentally contradicts MASS operations. While parties are free to amend contractual wordings, convention rules on manning are imposed by flag states. However, reports have found that existing crew sizes tend to exceed safe manning requirements. Under current legislation, fully unmanned operation is unlikely though the rules do allow for major reductions in crew sizes for most ships.

Autonomous ports – A key aspect is how ports will need to adapt to welcome autonomous ships. In order for autonomous ships to operate successfully, ports must also have autonomous berthing capabilities. Ensuring

safe maneuvering through densely traversed ports will be paramount for the IMO and regulators globally.

Collision Avoidance Regulations (COLREGS) – Currently, collision avoidance at sea is conducted by onboard crew, who keep a proper lookout, use navigation aids and tools to communicate with other approaching vessels. Under autonomous ship operations, COLREGs will need to be interpreted by both humans and systems during these ship encounters, making decisions in a mixed environment. As we move into the future of both manned and MASS at sea, ship navigators will need to communicate with both onboard and remote operators, and with autonomous navigation systems. That presents a challenging risk as operators need quickly know the type of vessels they are interacting with. The IMO needs to consider legal frameworks for when autonomous ships co-exist with traditional vessels, whether there is separation in exclusive zones from traditional vessels, and how COLREGS are to be applied equally to both kinds of vessels so onboard crew are able to predict course of action when a collision occurs.



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ParrisWhittaker Plays Key Role in Billion Dollar Crystal Cruises Litigation by Kenra Parriswhittaker, Parriswhittaker (Bahamas)

The collapse of Crystal Cruises in February 2022 made headlines across the globe. And attention wasn't confined to the finance pages or specialist maritime publications. The collapse of the billion-dollar business impacted small suppliers and consumers too. Reports that the company was holding \$100 million in customer money meant this was a story that interested everyone.

It's a story, too, in which we here at ParrisWhittaker are playing a crucial role. We were instructed by the Florida-based corporation responsible for liquidating all of Crystal's assets. Florida's Circuit Court approved our firm to protect Crystal Cruise assets in the Bahamas. The corporation has recognized our efforts, and we were given the authority to collect funds as liquidators and the authority to appoint counsel in the Bahamian proceedings.

It's notable that our expertise in maritime and shipping litigation led us to be chosen to act in this highly significant case ahead of more internationally recognised firms that may to some have appeared the natural choice for such a large-scale case.

Crystal Cruises: Background To Collapse Of A Cruise Giant

Miami-based Crystal Cruises was established back in 1988 and the brand had become synonymous with the high-end luxury cruise market. Purchased by a Hong Kong based group in 2015, there were signs of instability even ahead of its collapse in February 2022. In August 2020 for example, in the midst of the Covid pandemic, all cruises were cancelled and payments to creditors suspended. When the end did come however it was spectacularly sudden. The Hong Kong owners filed liquidation proceedings in Bermuda in February 2022. In an instant, it seemed the group, once valued at \$1billion was reduced to nothing but a mountain of debt to travelers, travel agents, crew, employees and suppliers.

What Legal Process Is In Place To Deal With The Collapse?

Legal proceedings to recover Crystal Cruises debt and salvage what remains of the business began in Florida where the company was headquartered. The Florida court elected to use the 'assignment for the benefit of creditors' process ('ABC'). Similar in some ways to bankruptcy proceedings, ABC is common in Florida and some other US States like California. The process involves :

The legal transfer or 'assignment' of all the assignor's (in this case Crystal Cruises) assets to a court-appointed assignee. Liquidation by the assignee of these assets in accordance with Florida's assignment laws.

The ABC process is widely used in Florida because it enables a cost-effective and practical liquidation of assets. It can reduce the possibility of multiple actions by individual creditors trying to acquire or freeze specific assets of the assignor.

The Bahamas Connection And Involvement Of ParrisWhittaker

When Crystal Cruises collapsed, two of its ships – the Crystal Symphony and the Crystal Serenity – were anchored off the Bahamas. Both vessels were under arrest because of the failure of the parent company to settle fuel bills.

ParrisWhittaker was chosen by the Florida appointed assignee to perform necessary legal services in connection with the Bahamian arrest proceedings of the vessels. This included assisting with the preservation and assignment of various assets and cash owned by Crystal Cruises located on board the arrested vessels.

In what was an extremely complex and high profile case our partner A. Kenra Parris-Whittaker worked closely with the assignee resulting in the ultimate sale of the two arrested ships for \$128 million.



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The Saga of “Grumant” by Christopher Cappelen, Oslo Ship Service (Norway)

The saga of “Grumant” started with unpaid bills accrued in 2016, 2017 and 2018. The vessel was unreachable by the claimants starting in 2018 and only appeared outside Russia in December 2020. MSCO owed Oslo Ship Service AS, a marine products and services company, Eur77.000 in unpaid bills plus interest.

MSCO refused to pay and hid their ships in Russian ports, except for a few which were either sold or kept in ports (Spain and Poland) for years.

It was difficult – and highly risky – to pursue those candidates for arrest.

Whenever MSCO sent ships outside Russia they switched off the AIS so that it was not possible to determine their ship’s position, nor if any of their ships would become accessible for Oslo Ship Service to take legal steps to secure their interests.

Eventually, MSCO’s vessel “Grumant” was found in Longyearbyen, Svalbard where she was to load a cargo of coal in Barentsburg bound for Amsterdam.

Of course, Barentsburg is Russian territory, however ships must sail via Longyearbyen since Norway is the “manager” of Svalbard.

The ship was arrested before she left the Norwegian jurisdiction, and this movement was challenged by MSCO in Norwegian courts. MSCO’s strategy was to deem the arrest unlawful so that security for claims would not have to be posted.

Ultimately, the Norwegian Courts of Appeal upheld that Oslo Ship Service could arrest the ship – and that is a first under Norwegian law. Quite remarkable and exciting to make legal history.

Legal costs were awarded to Oslo Ship Service, and MSCO had to post a cash deposit in a Norwegian bank for the arrest to be lifted.

MSCO declined to pay the awarded costs. The ship was monitored and found again in Amsterdam – where

the same ship was arrested again (!) and she lay detained by Oslo Ship Service for 5 months. Not only on Oslo Ship Service demand, but other claimants also had her arrested.

It was only the sanctions against Russia that compelled MSCO to settle the various claims. Oslo Ship Service was the last to receive settlement and so was the last to lift the arrest. The ship was free to sail in May 2022. The sanctions played an important role, for MSCO was frightened that their ship might be frozen or liquidated by the EU. Under normal circumstances, the vessel would have remained in Amsterdam.

So, in summary, although MSCO exercised every acrobatic known in legal textbooks, they lost a historical ruling in Norway, and they got the same ship arrested twice only because of their flagrant breach of what decent people would consider Good Conduct of Business.

My advantage over other creditors that face MSCO’s conduct is that as the sole owner of Oslo Ship Service, I do not have to justify a steep uphill legal battle to anyone, and I was holding out where others would have abandoned their rightful claims.

ShipArrested.com member, Patrick Battersby, represented Oslo Ship Service (Marine products and services) against the Russian shipowner, Murmansk Shipping Company (aka MSCO).

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