Ship Arrest – Insurers View

HOW, WHERE, WHY

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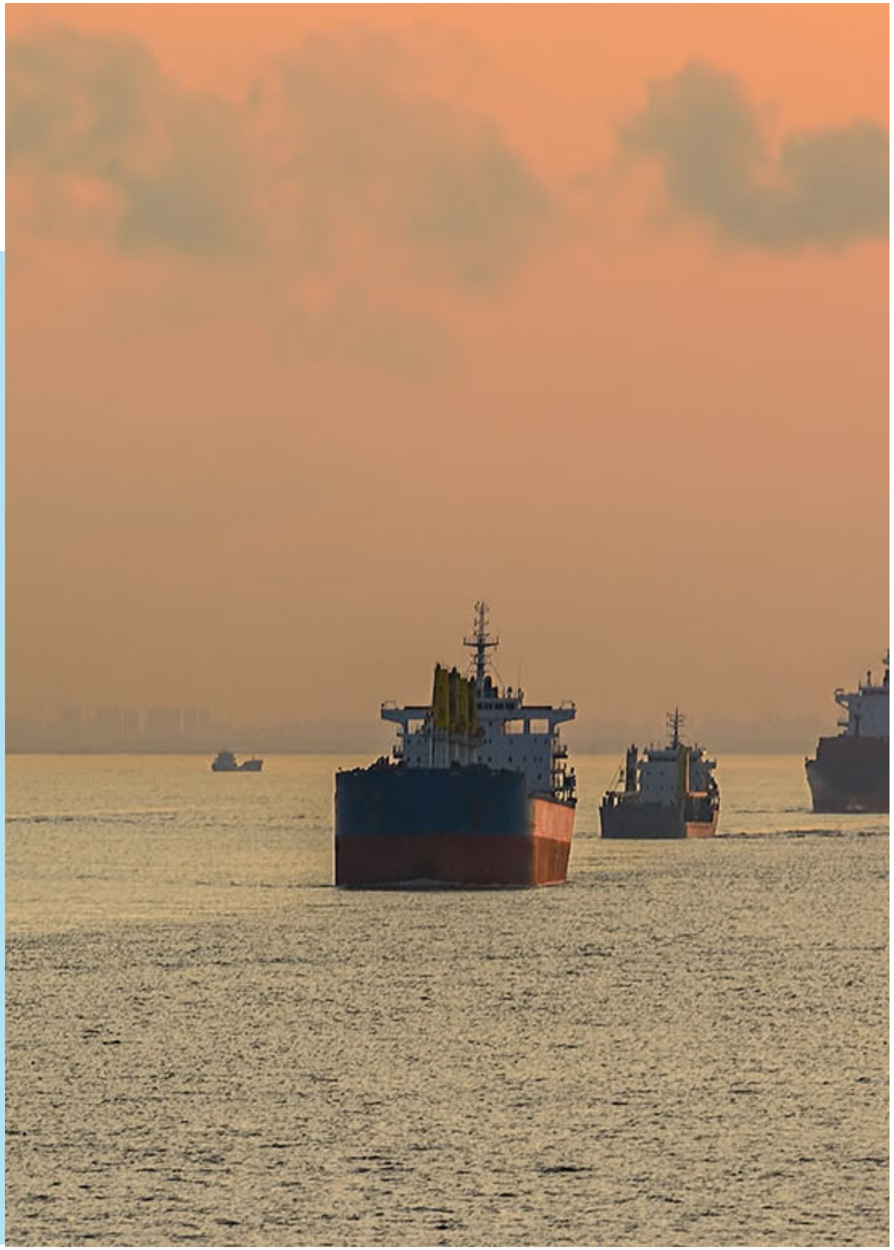


Insurance

For when things go wrong

Show me the money!

Typical Arrest Lawyer

A Friday afternoon

Whose Claim is it Anyway?

Some Simple Questions

- Claim against Owner or Charterer

- Nature of Claim

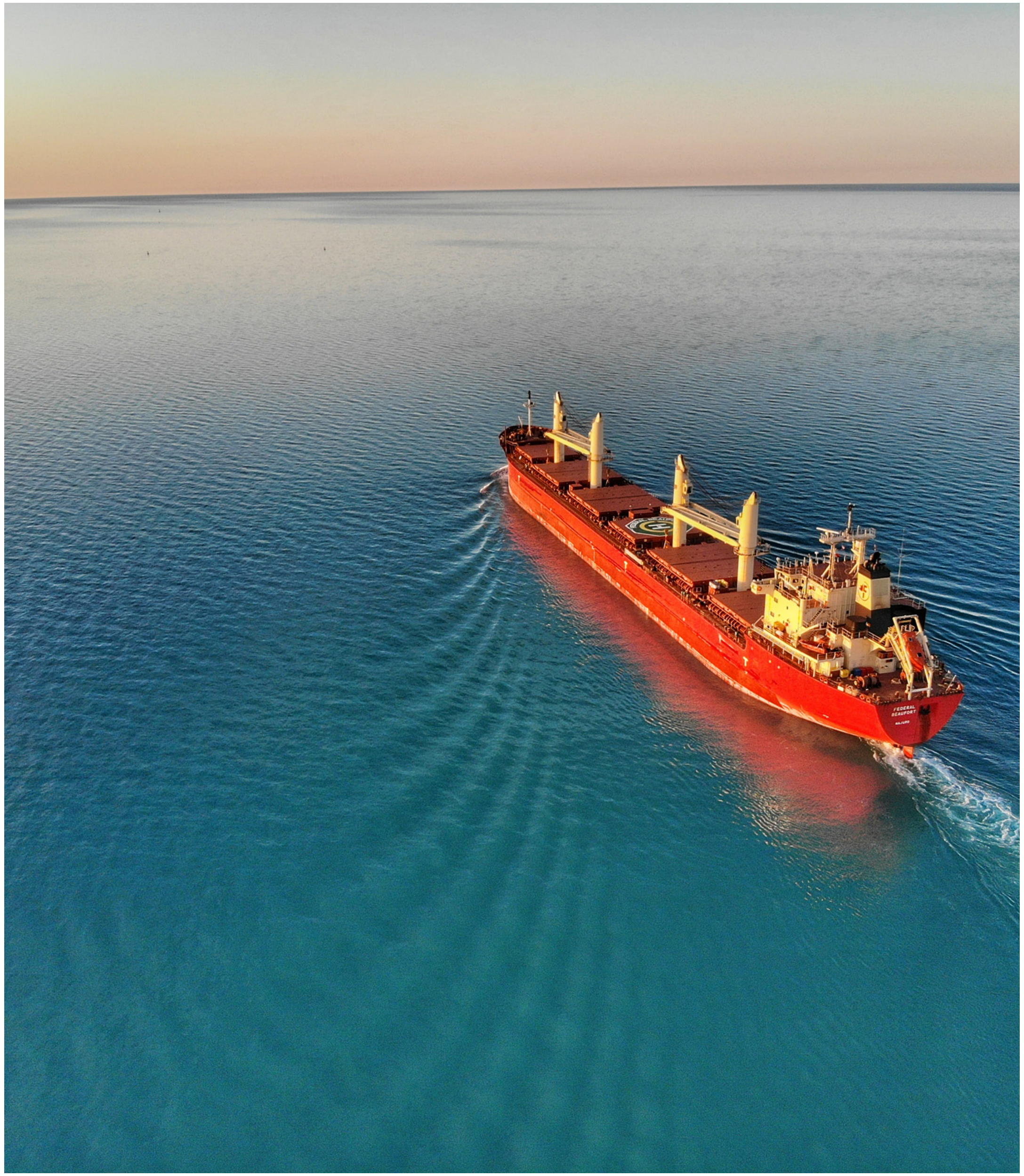
- Is it likely to be insured

- Who is Insurer – check website International Group P&I Clubs

- Where is Vessel
- Arrest Convention 1999*?

- Who do I call

* 1999 Convention will permit MoA disputes and insurance premiums claims



Consequences of a Marine Casualty

SHIPOWNERS INSURANCE COVERS

SPOT ANY GAPS?

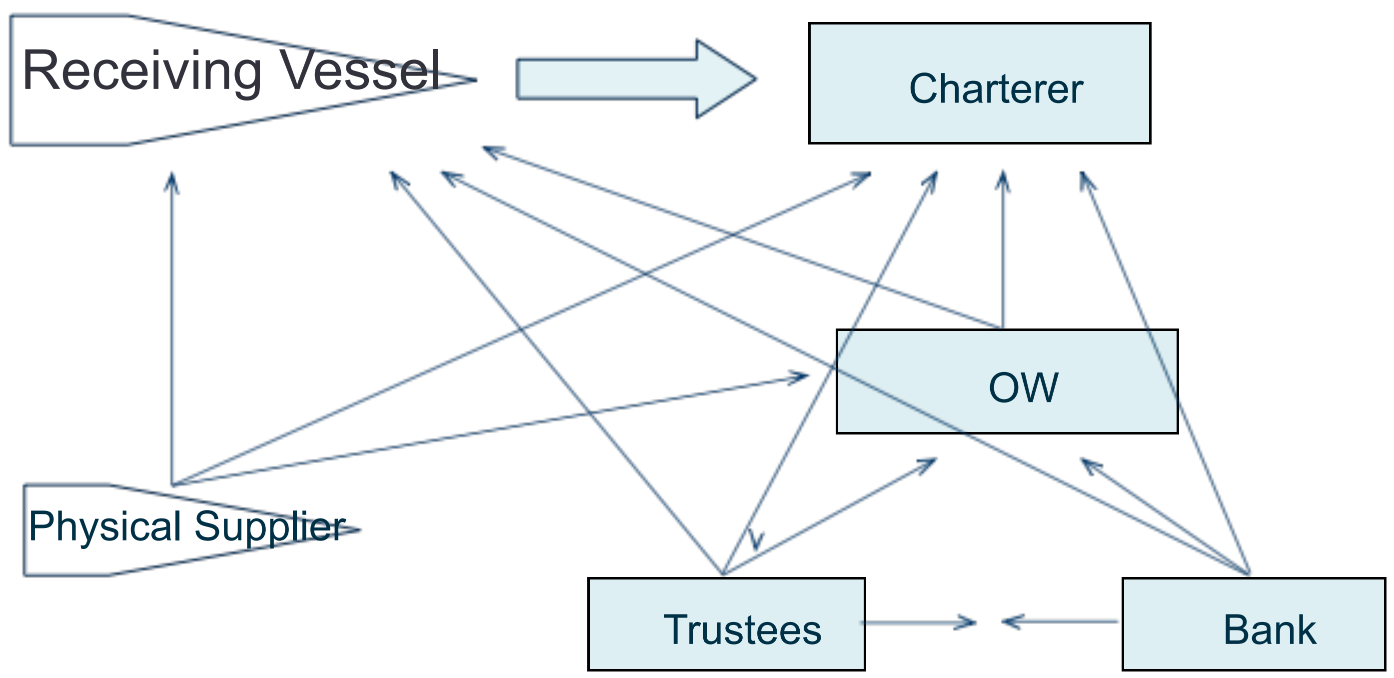
Covered Claims?

Some Simple Answers

- Claim against Owner or Charterer **arising from operation of ship**
- Double Insurance - Owned cargo is *excluded*
- Defence – covers legal costs, *not the actual claim*
- Judicial detentions – *excluded* from H&M
- Shipowners' insolvency - *excluded*
- Below or outside deductible – *Owners own risk*

Bunker Supplier Collapse

Simple Version



Collisions

Forum Shopping and Limitation Considerations

Collisions

Some Issues

- Contact damage in international waters – no contract, no agreed law and forum
- Time limits
- Maritime lien follows the ship

- Venue - law of flag, registered address of owner, port of refuge

- Does claim exceed vessel limitation
- Which limitation convention applies

- Admiralty Solicitors Group (ASG) forms 1 & 2 – select England (*drafted by English lawyers*)

- Physical damage - H&M
- Collision Liability – H&M or P&I; or………….. 3/4th H&M: 1/4th P&I
- Loss of Earnings – LOH, or uninsured

COLLISION OR STRIKING
RULES 36 AND 37 IN GARD RULES FOR SHIPS

- P&I cover striking claims to the extent they are not covered by H&M
- Includes **excess** liability over H&M Insured Value

- Wash damage – no contact, so P&I not H&M
- From CTL to wreck?

Asymetric Jurisdiction Clauses

Challenging concepts – where to sue?

- Found in
  - Loan Agreements
  - Insurance Policies
  - Container Bills of Lading

- Dominant party can sue worldwide
- Weaker party has only one venue

- English law - permissible
- France - Banque de Rothschild case referral ECJ

1. What law governs the validity of the jurisdiction clause – EU law or that of the national court considering the issue?;
2. If EU law, is an asymmetric clause valid?; and
3. If national law, how should a court decide which member state's law should apply?

Admiralty Actions In Rem

Shipping v Insolvency

Admiralty jurisdiction

Closed list in rem creditors

Insolvency or Administration

Priority creditors against Estate

Admiralty Claims

Priorities

The ranking of order of payment:

(1) The charges and expenses of the Admiralty Marshal
(2) The arresting party’s expenses.
(3) **Maritime Liens.**
(4) Mortgages or Charges.
(5) **Maritime Claims - Rights in rem**.
(6) **Unsecured claims**.
(7) Residue of funds (if any) for the owner.

Insolvency Claims

Priorities

- The Estate's costs (capped).
- Taxes and duties.
- **Secured creditors** (includes in rem rights, floating charges)
- **Unsecured creditors**: **assets are disbursed on a parity basis**.
- Subordinated claims.
- **Shareholders**

Admiralty claims

Automatic Stay due to Insolvency?

- In rem action is against the Ship

- In personam is against the Owner

- If Owners accepts service of In Rem writ the process merges – *Indian Grace*

- Issuing in rem proceeding does not always impact insolvency stay – Ocean Tankers Singapore insolvency

The "Ocean Winner" and other matters' [2021] SGHC 8

- Service of admiralty proceeding on vessel is NOT a claim against the company
- Arrest ensures maritime lien claim has priority status – *Setia Budi* 2023 Malaysia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