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In this issue of *The Arrest News:*

Ship Arrest and Decarbonization: Is the 1952 Brussels Convention Still Actual?

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The issue of shipowners breaching decarbonization clauses in charterparties, resulting in ship arrest, is becoming an increasingly significant concern within the maritime industry. This is due to rising environmental regulations aimed at reducing the sector's carbon emissions and the growing emphasis on sustainability within the global shipping industry. Below is an expanded exploration of the subject, focusing on the legal, practical, and commercial implications of breaches of decarbonization clauses and how ship arrest might come into play.

1. Decarbonization Clauses in Charterparties

In recent years, as part of global efforts to mitigate climate change, more **decarbonization clauses** have been incorporated into charterparties (particularly time charter parties). These clauses typically establish specific environmental performance standards that shipowners must adhere to during the duration of the charter. Such clauses are part of a wider shift toward **greener shipping practices** and aim to ensure that vessels operate in line with national and international climate goals.

The key elements that might be included in a decarbonization clause are:

- **Compliance with International Regulations**: Most decarbonization clauses require shipowners to ensure their vessel complies with the latest international emission standards, such as those set by the **International Maritime Organization (IMO)**. For example, the IMO's 2020 sulphur cap mandates ships to use fuels with a sulphur content of no more than 0.5%, and its long-term targets include reducing greenhouse gas (GHG) emissions by 50% by 2050 compared to 2008 levels. A breach could occur if the shipowner uses fuel that exceeds these sulphur limits or fails to meet the reduction targets.

- **Use of Cleaner Fuels or Emission-Reducing Technologies**: As part of the decarbonization efforts, clauses might require the shipowner to utilize low-emission fuels like LNG, biofuels, or ammonia, or adopt technologies like **exhaust gas cleaning systems (scrubbers)** or **carbon capture and storage (CCS)** technologies. These measures help to reduce the vessel's carbon footprint. If a shipowner fails to implement or maintain such technologies, they may be in breach of the charterparty.

- **Carbon Offsetting and Credits**: Some charterparties may also contain provisions that require shipowners to participate in carbon offset programs or purchase **carbon credits** to offset the emissions of their vessels. If a shipowner fails to meet these obligations, it could be considered a breach of contract.

- **Operational Requirements**: Certain decarbonization clauses may impose operational changes on shipowners, such as requiring the use of cleaner fuels during specific voyages or encouraging energy efficiency measures, like slow steaming (operating a vessel at reduced speeds to save fuel). A failure to meet these operational requirements would also likely result in a breach of the charterparty.

Given that the shipping industry is under immense pressure to meet these standards, charterers are increasingly using decarbonization clauses to ensure compliance with environmental regulations, especially when signing long-term charters.

2. Breach of Decarbonization Clauses

A **breach of decarbonization clauses** occurs when the shipowner fails to meet the environmental standards specified in the charterparty. These breaches can arise from various failures:

- **Failure to Use the Required Fuels or Technologies**: If the shipowner does not use the fuel specified in the charterparty or fails to install and maintain the required technologies, such as scrubbers or carbon capture systems, this would constitute a breach. For example, if a shipowner opts for higher-sulphur fuel to reduce costs, despite a clause requiring compliance with the IMO 2020 sulphur cap, this would be a breach of the decarbonization clause.

- **Non-Compliance with Carbon Credit or Offsetting Obligations**: If the shipowner does not buy or retire the necessary carbon credits to offset emissions, they could be found in breach of the charterparty. The specific carbon offset requirements are often negotiated at the outset of the charter, and failure to meet these obligations may be seen as a violation of contract terms.

- **Operational Failures**: Operational shortcomings, such as a failure to implement fuel efficiency measures or disregarding operational restrictions on emissions, would also be a breach. This could include operating at higher speeds than allowed or failing to reduce fuel consumption through energy-saving measures.

When breaches occur, the charterer can potentially seek damages or terminate the charterparty altogether, depending on the severity of the breach and the contract's terms.

3. Ship Arrest as a Remedy

When a shipowner breaches the decarbonization clauses in a charterparty, the **charterer** or **creditor**

may pursue legal remedies to enforce compliance. One such remedy is the **arrest of the vessel**.

While the **1952 Brussels Convention on the Arrest of Ships** and **breach of decarbonization clauses** are distinct legal concepts, they may intersect in cases where:

- **Environmental disputes**: If a party involved in a charterparty breach of decarbonization clauses, such as a shipowner failing to comply with environmental obligations, faces a claim for environmental damages (e.g., fines for exceeding emissions limits), the aggrieved party could attempt to **arrest the vessel** under the 1952 Brussels Convention to secure payment or compensation.
- **Ship arrests** related to **contractual disputes**: In cases where decarbonization failures lead to breach of contract disputes, such as the shipowner failing to meet performance or emission standards agreed upon in a charterparty, the affected party may seek to arrest the ship to secure the claim for damages, performance, or penalties.

For breach of decarbonization clauses, a ship arrest could be initiated under the following circumstances:

- **Non-Performance of Critical Contractual Terms**: If the breach of decarbonization clauses is deemed serious—such as the shipowner's failure to implement carbon-reducing technologies or use low-sulphur fuels—the charterer may view this as a material breach of the charterparty. Ship arrest can be sought to compel compliance or secure damages for the failure to meet environmental obligations.
- **Unpaid Penalties or Damages**: If the breach results in penalties for the shipowner, such as a fine from an environmental authority or a compensation demand from the charterer, the charterer may seek to arrest the vessel to secure payment of the penalties or damages. If the shipowner does not comply with the contractual obligations to pay these sums, ship arrest becomes an option for the charterer to ensure they are paid.
- **Security for Potential Claims**: In certain cases, even if the breach has not resulted in an immediate financial loss, the charterer may arrest the vessel as security for future claims. This could be a proactive measure to prevent the shipowner from avoiding payment or to ensure that they are held accountable for any future breaches of the decarbonization clauses.

4. Jurisdictional and Legal Considerations

While ship arrest is a powerful legal remedy, it is subject to **jurisdictional rules**. The process and grounds for ship arrest vary from one legal system to another. Some of the important legal considerations include:

- International conventions, such as the **International Convention on Arrest of Ships (1952 & 1999)**, govern the arrest of ships for specific claims. While breaches of environmental standards or decarbonization clauses are not always considered maritime claims under international law, and therefore, the specific grounds for arrest may not always be applicable in every jurisdiction, the 1952 Arrest Convention offers the "dispute arising out of a breach of a charterparty" as a specific maritime claim allowing arrest of the ship.
- **Maritime Claims**: In some countries, ship arrest is only allowed for specific maritime claims, such as unpaid freight, crew wages, or collision damage. Breach of decarbonization clauses might not always be viewed as a "maritime claim" under national laws. Therefore, the specific legal systems and the terms of the charterparty will determine whether the breach qualifies for arrest.
- **Enforcement Across Jurisdictions**: If the ship arrest occurs in one jurisdiction, enforcing the arrest in other jurisdictions might be complicated, particularly if the shipowner disputes the breach or challenges the arrest in court. The complexity of

international law, combined with differing national standards, can affect how swiftly a ship arrest may be executed.

5. Practical Implications for the Shipping Industry

The shipping industry is under growing pressure to decarbonize, and environmental regulations are tightening. As a result, **decarbonization clauses** are increasingly being included in charterparties to enforce compliance. For shipowners, this means that the financial and operational risks associated with failing to comply with these clauses have increased, with ship arrest becoming a potential consequence of non-compliance.

- **Financial Impact**: The financial impact of a ship arrest can be substantial. Aside from the direct costs related to legal proceedings and the loss of revenue from being unable to operate, a shipowner's reputation may be damaged, leading to potential future losses. Furthermore, penalties for non-compliance with environmental standards can add significant costs to operations.
- **Legal and Commercial Risks**: Breaching decarbonization clauses not only exposes shipowners to legal action, including ship arrest, but also increases their commercial risks. Charterers may become less willing to engage with shipowners who fail to meet environmental standards, leading to difficulties in securing future contracts. In some cases, a breach may result in the termination of the charterparty, further damaging the shipowner's financial position.

Conclusion

As the global maritime industry works toward reducing its environmental impact, the implementation of **decarbonization clauses** in charterparties is becoming an essential tool for ensuring compliance with international regulations. A breach of these clauses can lead to serious legal consequences, including **ship arrest**, especially when non-compliance results in significant financial penalties or reputational harm. Both shipowners and charterers must be aware of their obligations and the potential legal remedies available, including the possibility of ship arrest, when negotiating and enforcing decarbonization clauses. Legal practitioners in the maritime industry will need to stay informed about evolving regulations and the enforcement mechanisms that may come into play, as environmental compliance becomes a growing focus within the industry.

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The Nature of Statutory Liens: A Look at Natixis, Singapore Branch V Seshadri Rajagopalan And Others and other matters [2024] SGHC 113 by Sonia Rajendra, JTJB (Singapore)

I. INTRODUCTION

When a party wishes to arrest a vessel, the first step is to file an *in rem* writ (now known as Originating Claim) against the vessel. Upon the issuance of the writ, what rights does the holder of the *in rem* writ have?

In the recent case of *Natixis, Singapore Branch v Seshadri Rajagopalan and others and other matters* [2024] SGHC 113, the Singapore High Court was presented with the opportunity to consider several novel points of law, including the question of the nature of the interest that an *in rem* writ holder has in the vessel. While this issue was decided within the

context of s 100(2)(a) of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**"), this case provided a clear analysis of, and clarified the rights of *in rem* writ claimants generally.

II. BRIEF FACTS

The case concerned the applications of 3 plaintiff banks (the "**Plaintiffs**") which had commenced various admiralty actions *in rem* against the vessel "CHANG BAI SAN" (the "**Vessel**") in respect of claims for misdelivery and/or loss of cargo carried onboard the Vessel. The third defendant, Nan Chiau Maritime (Pte) Ltd (in liquidation) ("**Nan Chiau**"), was the registered owner of the Vessel and the first and second defendants were the joint and several judicial managers of Nan Chiau (the "**JMs**"). While the defendant was under judicial management, the Vessel was sailed to Gibraltar, where she was arrested by the mortgagee of the Vessel and eventually sold by the Gibraltar court.

In the case, the Plaintiffs contended that, amongst other things, by virtue of filing the *in rem* writs against the Vessel, the Vessel was a property of Nan Chiau that was "subject to a security" within the meaning of s 100(2)(a) IRDA, such that the JMs were not permitted to dispose of the Vessel without authorisation of the court.

The issue that arose for determination before the Court, and that has not previously been considered before the Singapore courts, was the nature of an *in rem* writ and whether the issuance of an *in rem* writ causes a vessel to be "subject to a security" under s 100(2)(a) IRDA.

For ease of reference, s 100(2)(a) IRDA is reproduced below:

"Power to deal with charged property…

(2) Where, on application by the judicial manager of a company, the Court is satisfied that the disposal (with or without other assets or property) –

(a) of any property of the company subject to a security to which this subsection applies; or…

would likely to promote one or more of the purposes of judicial management under section 89(1), the Court may by order authorise the judicial manager to dispose of the property, as if the property were not subject to the security…"

III. DISCUSSION

The Court held that the Vessel was not a property subject to "a security" within the meaning of s 100(2)(a) of the IRDA simply by virtue of the Plaintiffs issuing *in rem* writs against the Vessel. The reasons for this conclusion may be summarised as follows:

a. There is no authority which conclusively states that the holder of an *in rem* writ which has only been issued holds or has security over the vessel.

b. The accrual of a statutory lien, which arises upon the issuance of an *in rem* writ, has the effect of giving the claimant the means to obtain security by arresting the vessel. It does not create security.

c. The nature of the interest that an admiralty *in rem* claimant with an accrued statutory lien has in the vessel is unlike that of a mortgagee and/or chargee for the following reasons:

d. **Creation:** The filing of an *in rem* writ creates the means to obtain security whereas the mortgage or charge creates security over the vessel itself upon its creation.

e. **Enforcement:** The *in rem* writ holder will need to arrest the vessel and enforce the security whereas the mortgagee or chargee can simply enforce the security they already have in or over the vessel.

f. **Proprietary interest:** The *in rem* writ claimant's right to obtain security is not

defeated by any subsequent change(s) in ownership or the winding up and/or dissolution of the shipowner. A mortgagee or charge holds security over the vessel.

g. **Territorial enforceability:** An *in rem* writ holder (assuming a writ has only been filed in Singapore) can only arrest the vessel to obtain security in Singapore and not anywhere else in the world. A mortgagee or chargee can enforce its security in the vessel anywhere in the world.

h. The Court's view is consistent with the intention of Parliament and the meaning of the words "subject to a security" or "subject to security" in the context of s100(2) IRDA, which appears to indicate that s100(2) IRDA was not meant to cater to admiralty *in rem* claimants in the position of the Plaintiffs.

In coming to the conclusion above, the Court had also made reference to *The "Ocean Winner" and other matters* [2021] 4 SLR 526 ("***The Ocean Winner***") and contextualised the comments made therein on the effect of filing an admiralty *in rem* writ. In particular, the Court clarified that the holding "*by filing the admiralty in rem writ, the plaintiff is also seeking to create its security interest in the ship, ie, a statutory lien*" did not mean that the claimant held security over the vessel simply by virtue of filing an *in rem* writ. Rather, the use of the phrase "security interest" must be read and understood in its proper context. In *The Ocean Winner*, the context was that the claimant's right to procure a statutory lien is potentially at risk of being destroyed by the shipowners if the claimant does not file its admiralty *in rem* writ in time (ie if the shipowner sells the vessel or, in the case of a demise charter, the shipowner terminates the bareboat charter). In this context, by filing the admiralty *in rem* writ, the claimant is seeking to secure its interest in the ship by creating a statutory lien (ie, "security interest") that entitles the claimant to arrest and detain the ship as actual security for its *in rem* claim.

The Court had also contextualised the case of *In Re Aro Co Ltd* [1980] Ch 196 ("***Re Aro***"). In *Re Aro*, the question was whether the applicant should be given leave to continue with its action *in rem* in England against a vessel whose shipowner was under compulsory liquidation. In the course of deciding whether to grant leave to the applicant, the court held that it was prepared to treat the applicant as a "secured creditor" for the purposes of deciding whether to grant leave for the action *in rem* to be continued. The Court confined this finding to its specific purpose in *Re Aro* and took the view that this proposition cannot be extrapolated to support the Plaintiffs' argument that the mere issuance of the *in rem* writ means that the vessel in question is "subject to a security".

In the Court's view, the status of an *in rem* claimant being equated to a "security creditor" or "proprietary" is more correctly attributable to the fact that the moment the *in rem* writ is issued, the claim and right to obtain security through the arrest of the vessel is not defeated by any subsequent change in ownership or the winding up and/or dissolution of the shipowner.

CONCLUSION

Therefore, although the issuance of an *in rem* writ creates certain rights for its holders, such as the right to arrest the vessel, it cannot be said that statutory lien holders have security over the vessel. This is presumably still the case even if the *in rem* writ was served on the vessel, as security over the vessel is only crystallised when the vessel is arrested.

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Recent updates to the UAE Maritime Law: Ship Arrest by Saif Almobideen and Mahmoud El Sayed, Stephenson Harwood LLP (UAE)

This briefing note provides an overview of the key changes introduced by the New Maritime Law, with a specific focus on the provisions governing ship arrests, a critical aspect of maritime law that affects both local and international stakeholders, including creditors, shipowners, charterers and ports.

Expanded definition of "maritime debt"

To initiate a precautionary arrest of a vessel, it is crucial to establish that the debt qualifies as a "maritime debt". The Old Maritime Law defined certain debts as maritime debts. While the New Maritime Law follows a similar approach, it expands the list of qualifying debts. Below are the newly recognised types of debts that now qualify as maritime debts under the New Maritime Law, in addition to those previously listed in Article 115 of the Old Maritime Law:

1. Loss or damage caused by the vessel's operation.

2. The damage that the ship may cause to the environment, the coastal strip or the interests connected therewith, as well as the resulting expenses and costs in relation to avoiding, reducing or removing the damage.

3. The costs for raising a sunken, wrecked, stranded or abandoned ship and the expenses for transporting and restoring the same, stopping its harmful effects or destroying it.

4. Goods, provisions, bunkers and services provided for the vessel's operation or maintenance.

5. Fees for ports, canals, basins, harbours and other waterways.

6. The insurance premiums for the ship and its Takaful insurance contributions that are obligated to be paid by the shipowner or charterer of the bareboat or their representative.

7. Any commissions, brokerage or agency expenses payable by the shipowner, its charterer or their representative.

8. Any dispute arising from the ship sale contract.

These additions reflect the UAE's commitment to adjusting its maritime law framework by broadening the scope of liabilities that may result in a ship arrest, in accordance with the international standards and legal principles, thereby clearing any ambiguities and enhancing creditor protections.

Broadening the scope of vessel arrest

It is important to note that the New Maritime Law not only introduces new types of debts but also broadens the scope of certain debts that were previously listed under the Old Maritime Law. For instance, Article 115 of the Old Maritime Law specified that damage caused by the vessel, whether due to a collision or otherwise, would classify the resulting debt as maritime debt. However, the New Maritime Law expands the scope of this classification by including any loss or damage resulting from the vessel's operation, which shall include collisions, allisions and any other marine incidents.

This expansion signifies a comprehensive review and adjustment of the legal framework, extending the circumstances under which a creditor may exercise the right to arrest a vessel.

Furthermore, under the New Maritime Law, a creditor is empowered to arrest a sister vessel if, at the time of submitting the arrest application, said vessel is owned by the same debtor entity. This marks a departure from the Old Maritime Law, which only granted creditors the ability to arrest a sister vessel to the extent it was owned by the same debtor entity at the time the debt was originated.

Accordingly, the pool of assets (i.e. vessels) available to creditors for securing their maritime debt claims, in addition to the types of those debts, has been expanded.

Express introduction of counter-security requirements

A further change introduced by the New Maritime Law is to clarify and address the previously inconsistent practice regarding the requirement for counter-security in ship arrest applications by the various courts across the UAE. Now, the arresting party must submit counter-security when applying for a precautionary arrest, to ensure fulfilment of the necessary needs for the safety and security of the ship and its crew during the period of arrest. Any amounts utilised or spent from this counter-security shall be considered as part of the judicial expenses when distributing the proceeds of enforcement on the ship.

Use of letters of undertaking (LOUs)

A significant improvement under the New Maritime Law is the recognition of Letters of Undertaking (LOUs) issued by Protection & Indemnity (P&I) Clubs or financial institutions. Once accepted by the Court, an LOU can be used to release a vessel from arrest. While the conditions for accepting LOUs and the suggested wording will be detailed in forthcoming executive regulations, this change aligns the UAE's practices with international standards, making the arrest and release process more efficient.

Technological advancements in arrest procedures

Another modernisation introduced by the New Maritime Law is the use of technology to expedite the ship arrest process. Arrest orders can now be delivered electronically to the vessel's agent or master, provided the communication is clearly understood. In addition, when a foreign vessel is arrested, the Ministry of Energy and Infrastructure is required to notify the vessel's flag state, ensuring the arrest is duly recorded in its registry.

Timeframes for filing substantive claims and appeals

The New Maritime Law introduces strict timelines for filing substantive claims following the issuance of a precautionary arrest of a vessel . Creditors must file the substantive case within five days of the arrest to maintain it. Otherwise, the arrest will be nullified. The court is then required to schedule a hearing within 15 days of issuing the arrest minutes, ensuring timely progression of the case. The law also clarifies that appeals must be filed within 15 days, resolving previous ambiguities where courts applied either a 30-day or 15-day appeal window.

Conclusion

The New Maritime Law represents a significant effort in shifting the UAE's maritime legal landscape. The broadening of what qualifies as a maritime debt, the introduction of more strict timelines, and the recognition of LOUs, that all signal the UAE's commitment to expediting maritime case resolutions while adhering to international standards. These changes not only provide greater clarity and protection for creditors but also enhance the efficiency and predictability of ship arrest and ship release procedures in the UAE.

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Marine Salvage in Malta: Legal Framework, International Conventions, and Key Judgments

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Introduction

Marine salvage serves as a critical mechanism within maritime law, offering rewards to salvors who recover ships, cargo, and other properties at sea. It also protects the marine environment from the consequences of accidents. Given the inherent risks of maritime activities, ranging from severe weather conditions to technical malfunctions, marine salvage is not uncommon.

Malta's unique geographic position at the centre of the Mediterranean makes it an essential player in global salvage operations. This academic article explores the legal, and operational dimensions of marine salvage in Malta, focusing on the interplay between international conventions, Maltese law, and practical challenges. The analysis includes a detailed review of Malta's adherence to global maritime conventions, the role of national authorities, and case law relating to salvage in Malta.

Definition of Salvage

Marine Salvage has been defined by Kennedy's Civil Salvage as *"A service which saves or helps to save a recognized subject of salvage when in danger, if the rendering of such service is voluntary in the sense of being solely attributable, neither to a pre-existing contractual or official duty owed to the owner of the salved property nor to the interest of self-preservation."*[1]

From this definition one gathers that for there to be a right of salvage, the service must be given to a recognized subject of salvage, the subject must be in danger, the service must be voluntary and that the salvage operation is successful. Salvage is an operation which happens impromptu, in the sense that the assistance that the salvor is giving needs to be a service that he is not contractually bound to give and is given completely voluntarily. For example, crew members on board the vessel have an obligation to assist and therefore, do not qualify as salvors.

Another definition of salvage is found in Article 1 of the International Convention on Salvage 1989 which outlines that a *"Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever."*[2]

The Elements of Salvage

The traditional elements of salvage have been established through various court judgements given by the British Admiralty Court such as the case of "*The Cythera*".[3] In this judgement, the Court described how a salvage operation as a service which confers a benefit by helping a recognized subject of salvage wherein the said subject finds itself in a dangerous situation from which it cannot escape without the help of third parties. The rendering of such a service must be given voluntarily and it cannot be attributable to a previous pre-existing agreement between the parties. Lastly, the salvage operation must be successful. Therefore, the four main elements of a salvage operation are the following:

a. A Recognised Subject of Salvage

Firstly, there must be a recognized subject of salvage. Salvage will only arise if the service is given to a subject which the law recognizes as liable to contribute to the payment of the salvage award. The most common recognized subject of salvage is a ship or a vessel. However, the cargo onboard the vessel is also a recognized subject of salvage because the salvor is not just giving a service to the ship but also

1 The Cythera, 1965, 2 Lloyd's Rep 454, Supreme Court of New South Wales
2 Article 1 of the International Salvage Convention of 1989
3 The Cythera, 1965, 2 Lloyd's Rep 454 Supreme Court of New South Wales

to the cargo onboard. A case in point is that of **CGM CMA Djakarta** which carried thousands of containers and there was an explosion on board in 1999. Professional salvors were called in to assist in the salvage operation which included the vessel's cargo.[4]

Another recognized subject of salvage is aircraft. In 1983, the **Cargo Ship Alraigo** was crossing the Atlantic when a jet ran into trouble and needed to land quickly. The jet landed onboard the cargo ship which in turn claimed salvage. In its judgement, the Court stated that an aircraft can be a subject of salvage because it was in danger and the dangerous situation was saved by taking the recognized subject to safety.[5]

It can be seen that the preservation of the subject is of fundamental importance when it comes to awarding salvage. Therefore, exposure to danger must be present.

b. Real Danger

Secondly, the subject of salvage must be in a state of danger when the salvage services are rendered. It is not necessary for the subject of salvage to be in imminent danger but at the time at which assistance is rendered, the subject in question has encountered a problem which may expose it to loss or damage if no salvage operation takes place. Therefore, the burden of proof that real danger existed when the subject was salvaged, falls on the salvor who is seeking the salvage award. The state of danger when salvage services are rendered can be seen in the following two cases:

c. Voluntary Service

Thirdly, the salvage operation must be conducted voluntarily by a salvor who is not bound to provide such a service. The assistance or task which the salvor is giving needs to be a service which he is not bound to give because he is employed with the recognized subject, but it is something which is done because on the spur of the moment the salvor has decided that he is going to give a service. There would have been no pre-existing obligation to salvage the subject.

d. Successful Operation

Lastly, the most important element of salvage is that the salvage operation must be a successful one in order for the salvor to be able to claim the salvage reward. The recognized subject must be preserved and the operation must end in success, whether in whole or in part.

Lloyd's Open Form

The most common international salvage agreement which is used for a salvage operation is the Lloyd's Open Form. It provides a regime for determining the amount of remuneration to be awarded to salvors for their servicing in successfully saving the recognized subject and minimizing or preventing damage to the environment. The first form was issued under the auspices of Lloyds in 1970 and was based on the "no cure no pay principle". Therefore, if the salvor was not successful in the salvage operation, he would not have got paid for anything. It was because of this that the Lloyd's Open Form 1980 introduced changes in the agreement of salvage. It included a safety net clause which stated the following:

"the contractor agrees to use his best endeavors to salvage…..and or her cargo bunkers and stores and take them to … or other place to be hereafter agreed or if no place is named or agreed to a place of safety. The contractor further agrees to use his best endeavors to prevent the escape of oil from the vessel while performing the services of salving the subject vessel and/or her cargo bunkers and stores. The services shall be rendered and accepted as salvage services upon the principle of "no cure-no pay" except that where the property being salved is a tanker laden or partly laden with a cargo of oil and without negligence on the part of the contractor and/or his servants or agents; (1) the services are not

4 CMA CGM SA v Classica Shipping Co Ltd https://cmlcmidatabase.org/cma-cgm-sa-v-classica-shipping-co-ltd

5 The Alraigo Incident: When a lost British Harrier landed on a Cargo Ship https://simpleflying.com/alraigo-incident-harrier-cargo-ship-landing-story/

successful or (2) are only partially successful or (3) the contractor is prevented from compelling the services, the contractor shall nevertheless be awarded solely against the owners of the tanker his reasonably incurred expenses and an increment not exceeding 15% of such expenses but only if and to the extent that such expenses together with the increment are greater than any amount otherwise recoverable under this agreement."[6]

The safety net clause served as an exception to the "no cure, no pay" principle where the subject of the salvage is an oil tanker laden or partly laden with cargo of oil. Where the salvor prevented oil pollution during the salvage operation, the salvor would be entitled to the expenses incurred together with an increment of up to 15% as a profit paid by the Shipowner. Moreover, if the salvage operation failed due to the negligence of the salvor, these provisions would not apply.

Nevertheless, these amendments were not sufficient due to the fact that more hazardous and noxious substances started being transported around the world, which the amendments did not cater for. The Comite Maritime International (CMI) produced a draft Salvage Convention in 1981 to include provisions in the agreement relating to the protection and minimization of damage to the environment since there was increasing pressure from environmentalists to introduce further changes. As a result, the Salvage Convention was adopted in 1989.

The most recent Lloyd's Open Form has been issued this year and its main advantage is that when a Shipowner signs a Lloyds Open Form together with a salvor to render salvage assistance, the Shipowner agrees that the service being rendered by the salvor is salvage. Following the salvage operation, the parties will only discuss the cost of the salvage operation.

International Convention on Salvage 1989

The International Convention on Salvage 1989 provided articles to increase the awards given to salvors undertaking the operation of salvage which prevented or minimized environmental damage, even when the salvage operation is not successful. The Convention introduced a "special compensation" to be paid to salvors who have failed to earn a reward in the normal way. The compensation consists of the salvor's expenses, plus up to 30% of these expenses if, thanks to the efforts of the salvor, environmental damage has been minimized or prevented. The salvor's expenses are defined as "out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used". The tribunal or arbitrator assessing the reward may increase the amount of compensation to a maximum of 100% of the salvor's expenses, "if it deems it fair and just to do so". If, on the other hand, the salvor is negligent and has consequently failed to prevent or minimize environmental damage, special compensation may be denied or reduced. Payment of the reward is to be made by the vessel and other property interests in proportion to their respective salved values.[7]

The subsequent Lloyd's open Form 1990 incorporated the provisions of this convention and therefore, a non-contracting state would still abide by the convention even if it is not a party to the convention. Although Malta has not ratified the convention, if a salvage operation occurs in the Maltese territorial waters and the parties sign the Lloyd's Open Form, the provisions of the International Convention on Salvage 1989 will indirectly be applied.

Salvage and Maltese Law

Salvage under Maltese law is governed by Article 342-346 of the Merchant Shipping Act, Chapter 234 of the Laws of Malta. Article 342 Sub-Article 1 states:

6 Lloyds Open Form https://www.lloyds.com/resources-and-services/salvage-arbitration-branch/forms-documents

7 International Convention on Salvage <https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-

"Where services are rendered wholly or in part within Maltese waters in saving life from any Maltese or foreign vessel, or elsewhere in saving life from any Maltese vessel, there shall be payable to the salvor by the owner of the vessel, cargo, or apparel saved, a reasonable amount of salvage limited to the amount of the property saved."[8]

From this definition of salvage under Maltese law, one can see that the payment of salvage is awarded to any person rendering salvage services to the vessel in danger, but it is only limited to the amount of the property saved. The Maltese Law is based on the principal of "No Cure, No Pay".

Article 345 of the Merchant Shipping Act, Chapter 234 of the Laws of Malta lays down the criteria that the Courts should use in establishing the amount of salvage to be rewarded to the salvor. These include the measure of success obtained and the efforts of the salvor, the danger run by the vessel saved, by her passengers, crew and cargo, the danger run by the salvor and the salving vessel, the time spent, the expenses incurred, the losses suffered, the risk of liability, and the value of the property saved.[9]

Maltese Judgements on Salvage

Whilst Malta does not have an extensive repository of case law regarding Marine Salvage, there have been a few judgements which address disputes regarding the distribution of salvage amongst multiple parties, environmental considerations during salvage operations and the determination of what constitutes a voluntary service when rendering salvage to a recognized subject. A few judgements given by the Maltese Courts:

a. Pawlu Buttigieg vs Deputy Curators (2010)[10]

The plaintiff instituted legal proceedings against the defendant for compensation for salvage services which he gave to the defendant and his vessel on 17th May 1999. The plaintiff was navigating his luzzu when he came across the defendant's vessel which was in serious difficulties due to strong winds and rough seas. The plaintiff rendered salvage services to the vessel because it was in danger of sinking and in the process, damaged his own vessel. Since the defendant was foreign, deputy curators were appointed by the court to represent his interests.

The Court stated that salvage is defined as the voluntary saving of maritime property from danger at sea. It quoted from the judgement *Marine Services Limited vs Captain Morgan Leasure Ltd. decided by the First Hall Civil Court in 2001,* whereby the Court held that there are four requisites of salvage. Firstly, the service must be rendered to a legally recognized subject of salvage, that is to say, to vessels, their apparel, cargo, and merchandise, bunkers, wreck and so-called freight at risk. In this case, the service was rendered to a vessel. Secondly, the service must be voluntary. In this case, the service was voluntary as the plaintiff did not have any legal obligation to salvage the vessel. Thirdly, the subject of the salvage must be in danger. In this case, the vessel was in danger because of the strong winds and rough seas and the fact that there was no master on board. Lastly, the salvage service must be successful. In this case, the Court was satisfied that the salvage services rendered by the plaintiff resulted in the vessel being salvaged, although it was the Armed Forces that eventually brought the vessel into the port. The Court said that the four requisites of salvage were satisfied and proceeded to award the plaintiff with compensation for the salvage assistance which he provided to the vessel.

b. Charles Grech and Brian Galea vs Paul Azzopardi (2015)[11]

On the 22nd of September 1996, Charles Grech and Brian Galea discovered a boat called Ray Jay underwater in the limits of Mellieħa. They performed

8 Article 342, Merchant Shipping Act, Chapter 234, Laws of Malta
9 Article 345, Merchant Shipping Act, Chapter 234, Laws of Malta
10 Pawlu Buttigieg vs Deputy Curators, Civil Court, First Hall, 08th Jan 2010 Cit. Nru. 2652/1999/1
11 Charles Grech et. vs Paul Azzopardi, Civil Court, First Hall, 07th July 2011 Cit. Nru. 238/1997/1

salvage works to resurface the boat, with the assistance of divers, a cabin cruiser and inflatable buoys and towed it to Għajn Tuffieħa. They also obtained the assistance of third parties against payment. Grech and Galea demanded compensation for the salvage operation from the owner of the boat who refused to pay them. As a result, Grech and Galea proceeded to file legal proceedings before the First Hall Civil Court against the owner, requesting the Court to declare that they were entitled to payment for their services for salvage, to liquidate the compensation due to them and to condemn Azzopardi to pay such sum so liquidated together with legal interests. Paul Azzopardi claimed that Grech and Galea's motives were to appropriate the boat for themselves in his reply. He insisted that they had resurfaced the boat allegedly with the intention of keeping it and it was only by accident that he intervened to recover his boat.

The Court quoted Article 343 and Article 346(2) of the Merchant Shipping Act, Chapter 234 of the Laws of Malta and stated that Grech and Galea's intention was to recover the boat from the bottom of the sea, to rise it and to take it ashore which in itself constituted salvage. The boat was in danger even if it sank because it could be salvaged to prevent it from suffering greater damage. Since there was no agreement between Grech and Galea regarding the compensation for rendering salvage, the Court decided that compensation was due because all elements of salvage existed at the time when the vessel was in distress. It awarded €2,000 compensation to be split equally between Grech and Galea.

Although the owner of the boat decided to appeal the decision of the First Court, the Court of Appeal confirmed the decision of the First Court and stated that Grech and Galea had no obligation to assist the boat but did so voluntarily with the intention of either keeping the boat or to request compensation.

c. Sandy Yacht Marina Limited vs M/Y Leymor (2023)[12]

On 27th April 2018, M/Y Leymor started sinking whilst it was moored in Roland Marina at Ta' Xbiex. Employees of Sandy Yacht Marina immediately began rendering salvage services to the vessel, which services lasted for four hours, and the salvage operation was successful. Following the completion of the salvage operation, the marina manager had informed the owner of the vessel that he would be sending the invoice for the services rendered. However, the salvor was never paid for their services and instituted legal proceedings before the Court of Magistrates to recover compensation for the salvage operation. The vessel contested this and said that it was not a salvage operation because the vessel did not hit the bottom of the seabed and was only partly submerged. The actual operation was to prevent further water ingress into the engine compartment.

The Court said that irrespective of whether the claim is for expenses incurred in the process of salvage, for the service rendered throughout the salvage or as compensation for rendering salvage, in any case the amount requested is in relation to salvage and in accordance with Article 345(1) of the Merchant Shipping Act, Chapter 352 of the Laws of Malta, it is the First Hall, Civil Court which quantifies the compensation for salvage and not the Court of Magistrates. It proceeded to refer the case to the First Hall Civil Court.

Conclusion

Marine salvage remains an essential component of maritime operations, offering a system that incentivizes salvors to preserve vessels, cargo, and protect the environment. The fundamental principles of salvage, including voluntary service, real danger, and successful operation, serve as the cornerstone of this practice, both internationally and within Maltese law.

12 Sandy Yacht Marine Limited vs M/Y Leymor, Court of Magistrates, 06th November 2023 Rik. Nru 57/2020

Despite not formally ratifying the Salvage Convention, Malta's incorporation of its principles through case law and contractual practices ensures alignment with global standards. In fact, Malta's legal framework in relation to marine salvage reflects its maritime heritage and its role as a key player in international shipping.

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Receipt & Release Statement: (ir)revocable signature by ANK Law Firm

In cases connected with the payment of contractual compensation to the seafarers' next of kin, signing of the Receipt & Release Statement by such beneficiaries is a common practice in Ukraine and abroad.

The standard form of R&R is provided by the Maritime Labor Convention, 2006 (MLC, 2006), in Annex B4-I. The essence and nature of R&R have repeatedly been the subject of fierce disputes in Ukrainian courts. However, major cases did not reach the stage of cassation appeal, which did not allow to form sustainable court practice and lead to an increase of abuses of the right to sue by plaintiffs and blatant blackmail of shipowners and P&I clubs.

Has the situation changed now? Let's analyze the latest case from ANK's practice.

Case background

Back in April 2014, a Ukrainian seafarer was hired by a foreign shipowner as a crew member to work on the m/v CARDINAL (IMO: 9274575, the flag of the Republic of the Marshall Islands) as an electric engineer.

Following the usual procedure, before entering into an employment contract, the seafarer provided the shipowner with documents confirming his qualifications, as well as the results of a pre-employment medical examination with a conclusion on his health conditions, namely, that he is fit for duty at sea.

The seafarer joined the crew in a foreign port. However, on the second day of work on board, he was found dead.

The shipowner immediately started an investigation into the mysterious death, since if the seaman was absolutely healthy before the voyage, as evidenced by the seaman's medical certificate issued as a result of the pre-employment medical examination, what could have caused his sudden cardiac and respiratory arrest at the age of 56? This was the cause of death indicated by the autopsy conducted in India.

After completing all the necessary procedures and paperwork, the body of the deceased was embalmed and repatriated to Ukraine for burial.

As per the collective bargaining agreement, which according to the employment contract covered the labour relations between the seafarer and the shipowner, provided the loss of life compensation in the amount of more than USD 95K to his wife, as appointed next of kin. She applied to the shipowner for compensation and additional funeral expense reimbursement.

The shipowner voluntarily agreed to reimburse the family of the deceased for the funeral expenses. At the same time, in order to decide whether or not there were grounds for payment of the loss of life compensation, it was necessary to wait for the results of the investigation, which included a number of requests including to the medical center that issued the medical certificate based on the results of the seaman's pre-employment medical examination.

In response to the shipowner's request, the medical center stated that the deceased seafarer was not

registered in its medical file and database, had not undergone a medical examination, and that the medical certificate provided to confirm his fitness for work at sea had not been issued by the center, i.e., was a forgery.

At the same time, the collective bargaining agreement stipulated that a seafarer's failure to fulfill his obligation to undergo a pre-employment medical examination or providing false information about his health conditions could result in the rejection of the compensation payment, including loss of life compensation.

Taking into account all the circumstances, the shipowner informed the seafarer's wife that her compensation claim was denied.

However, the seafarer's family (wife and son) continued to insist on at least part compensation, arguing the loss of the sole breadwinner and their difficult financial situation.

In view of numerous requests of the family, and recognizing the severity of their loss, the shipowner offered the seafarer's widow a lump sum compensation payment of USD 30K and all documented funeral expenses as a full and final settlement of all claims, which she accepted, and signed a R&R Statement according to the established practice which had been certified by the notary.

The shipowner paid the agreed amount of compensation to the widow as promised.

However, two years after the payment, in 2017, the widow filed a lawsuit against the shipowner to the local court to recover "underpaid" compensation in the amount of more than USD 64K as well as moral damages in the amount of USD 10K.

What were the grounds for the claim?

Ignoring the existence of R&R, the claimant grounded her claim on the argument that the shipowner had not fully fulfilled its obligation to pay contractual loss of life compensation and that the payment of more than USD 31K, the fact of which was not disputed, was only part of the compensation she expected, and therefore she claimed an additional USD 64K and USD 10K for the moral and physical suffering allegedly caused by the shipowner.

Progress of the trial

It is worth noting that the foreign shipowner, headquartered in New York (USA), became aware of the court case only after the issuance in 2021 of the default judgement on the satisfaction of the claim. As it turned out later, the Ukrainian court had sent an order to the competent US authority to serve the summons, which was not executed due to non-compliance with the requirements of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965 and non-payment of a fee of USD 95,00.

However, upon discovering the case, the foreign shipowner initiated a review of the default judgment by filing a relevant application, which was satisfied by the court, and the default judgment was accordingly cancelled with the case being set for a new trial, where the shipowner was allowed to bring to the attention of the court all the circumstances relevant to the correct resolution of the case.

Shipowner's legal position

The shipowner, of course, did not recognise the claims in full, arguing that:

- **Firstly**, shipowner has no obligation to pay contractual compensation due to disclosing of false information by the seafarer about his health condition at the moment of employment, particularly submission of a forged medical certificate, which is an independent ground for refusing to pay compensation under the terms of the collective agreement;
- **Secondly**, the shipowner voluntarily paid the claimant more than USD 31K as an exception and

on the basis of the R&R Statement signed by her and certified by the notary, in which she confirmed the waiver of any claims and demands against the shipowner, and waived to initiate any legal proceedings against him in any jurisdiction;

- **Thirdly**, R&R is a unilateral legal deed (ukr. "pravochyn"), which, nevertheless, is binding on both parties. Therefore, having received the agreed amount, the claimant is not entitled to additional payments;

- **Finally**, there is a contradictory behaviour of the claimant, which is out of line with her previous behaviour and the signed statement, and therefore the doctrine of venire contra factum proprium (prohibition of contradictory behaviour) should be applied, based on the Roman maxim – non concedit venire contra factum proprium (no one can act contrary to his previous behaviour).

The shipowner provided the court with all the necessary evidence, including the original R&R signed by the claimant, a notarised witness statement, evidence of compensation payment in accordance with the R&R, etc.

Is it possible to withdraw a signature from R&R?

It is noteworthy that after submitting the original R&R to the court, the claimant provided a copy of the statement of withdrawal of the release with a request to consider it null and void, arguing the impact of grave circumstances at the time of its signing. In the claimant's view, the release is simply a statement that can be revoked in any notary office.

War impact on the trial

Taking into account that the case was pending before the Kherson City Court of the Kherson Region, the examination of the case after the start of the full-scale invasion and occupation of Kherson was not possible.

Notwithstanding, the Supreme Court's order assigning the territorial jurisdiction of the court cases to the Malynovskyi District Court of Odesa and then to the Bilozerskyi District Court of Kherson Region, the resumption of the court proceedings on the basis of the materials of the case available in the digital form at the shipowner's motion was delayed and the prospects for resumption of the proceedings were unpredictable.

However, after the liberation of Kherson in November 2022, it turned out that the materials of the court case had surprisingly survived despite the fact that the court building had been shelled many times.

After the court resumed its work, the case was appointed for examination on the merits in May 2024.

What did the court rule?

Following a new trial, the court dismissed the claim of the seafarer's widow in full. The relevant decision was issued by the court in July 2024.

The court found that the shipowner's decision to refuse to pay contractual loss of life compensation was sufficiently justified and complied with the provisions of the employment contract and the collective agreement.

At the same time, the court concluded that despite the fact that the withdrawal from a unilateral act is provided for by Article 214 of the Civil Code of Ukraine and had to be made in the same form as the act, which was formally done by the claimant, the latter did not return the compensation she received on the basis of the R&R, and therefore the withdrawal from the transaction did not actually take place. Therefore, the R&R is valid and has legal consequences for the claimant.

In such circumstances, the court found no legal grounds to pay any additional amounts in her favour and sided with the shipowner, making an important decision for the practice of litigation on recovery of compensation under seafarers' employment contracts.

Court practice

The court practice in this category of disputes began to form only in December 2019, when the Supreme Court issued a resolution in a similar case No. 501/3065/16-ц (m/v CROWN TOPAZ).

In this resolution, the Supreme Court concluded that a signed and notarised R&R is a unilateral legal deed (ukr. “pravochyn”) that is binding on both parties, despite the fact that only one party signs it, as it creates obligations not only for the claimant. Moreover, as the Supreme Court noted, in English law, one of the ways to resolve disputes before trial is to conclude a document, and therefore R&R is equivalent to a contract.

The Supreme Court also concluded that since the claimant did not invalidate the R&R in court, the consequences of the invalidity of the act in the form of bilateral restitution did not apply, i.e. the claimant did not return the money, and no evidence was provided that she had entered into the statement under the influence of difficult circumstances, there were no grounds to consider the statement invalid.

The Supreme Court also examined another similar case No. 522/3586/20 (m/v MILITOS). The resolution under this case was issued recently, in June 2024.

In this case, the Supreme Court underlined that by receiving compensation for moral damage, which, according to the receipt, could be caused by the employer or any other persons, regardless of the content of the legal relationship, but on the basis of actions related to service on board and/or illness and subsequent death, the claimant committed a legally significant act that deprives her of the right to re-submit claims for moral damage.

Furthermore, the Supreme Court also concluded that filing a claim for moral damage after receiving the relevant compensation in the amount of USD 96K demonstrates the claimant’s violation of the principle of prohibition of contradictory behaviour and Article 3 of the Civil Code of Ukraine, and therefore the courts of previous instances reasonably dismissed the claim

Instead of an epilogue

Thus, the important conclusions on the application of the law in such legal relations set out in the above resolutions of the Supreme Court comply with the conclusions of the Kherson City Court of Kherson Region in the case of m/v CARDINAL, which demonstrates a tendency of Ukrainian courts to define R&R as a unilateral legal deed binding for both parties, which is in line with international practice and experience of applying R&R and is certainly a positive signal.

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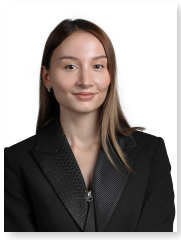

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