Lloyd's List Intelligence

Maritime law in 2024: a review of developments in case law

By Dr Johanna Hjalmarsson and Dr Meixian Song

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Introduction

There were several distinctive highlights or milestones in Supreme Court case law this year, and it would be difficult to pick out the most important: *Herculito*, *FIMBank*, *Sharp v Viterra*, *RTI v MUR*, *Argentum*. The year also saw the beginnings of interpretation of the Insurance Act 2015, which changes the approach to insurance contract terms. *Quadra Commodities*[1] would have been another important case from 2024, had it not settled without judgment leaving *Feasey*[2] unchallenged as the most recent comprehensive guidance on insurable interest.

Shipping contracts

Under this header, we consider cases relating to the various idiosyncratic contracts characteristic to the shipping of goods and passengers. Charterparties in their various forms are examined, as well as bills of lading, sale of goods and contracts for the carriage of passengers. Under the header General Average, we find the case *Herculito Maritime Ltd and Others v Gunvor International BV and Others (The Polar)*,[3] wherein the Supreme Court had before it a problem involving most of the shipping contracts humanity has seen fit to devise.

Charterparties

The charterparty cases from 2024 provide an excellent snapshot of the state of the shipping industry: they consider issues of sanctions and financing, as well as more ordinary questions of recap contract formation and interpretation.

Bareboat charterparties

The general purpose of a financing bareboat charterparty is that the charterer should become the owner at the end of its duration. What happens if there is some event of default, but the bareboat charterer declines to return the vessels? Is the registered owner entitled to specific performance? What is the effect of the various contracts embedding the vessel in the bareboat charterer's operations?

1 *Quadra Commodities SA v XL Insurance Company SE and Others* [2023] EWCA Civ 432; [2023] Lloyd's Rep IR 455.
2 *Feasey v Sun Life Assurance Corporation of Canada* [2003] EWCA Civ 885; [2003] Lloyd's Rep IR 637.
3 [2024] UKSC 2; [2024] 1 Lloyd's Rep 85.

This was the broad situation in *SY Roro 1 Pte Ltd and Another v Onorato Armatori Srl and Others*.[4] The two claimants were Singaporean companies and respectively the owners of the ro-ro vessels *Alf Pollak* and *Maria Grazia Onorato*. The vessels had been built at a shipyard in Germany owned by the same group of companies. On 13 December 2017 the claimants entered into multipartite agreements (MPAs) for the construction and subsequent chartering of the vessels, subject to English law and jurisdiction, with the group of companies to which the four defendants belonged. The judge described the defendants' group of companies as "a closely bound group of family companies".[5] The four defendants were respectively the guarantor of the charterparties, the charterer under the head charterparty, its sub-charterer and the sub-sub-charterer. All charterparties were by demise and subject to arbitration and were mostly back-to-back on Barecon 2001 terms, except that only the head charters contained a purchase option.

> The charterparty cases from 2024 provide an excellent snapshot of the state of the shipping industry: they consider issues of sanctions and financing, as well as more ordinary questions of recap contract formation and interpretation

Under the head charters an agreed list of "termination events" gave the owners certain remedies including the right to terminate the charters. Among the termination events was "change of control". It was not in dispute that there had been a relevant change of control when the sub-charterer had been part-sold on either 10 or 14 July 2023. As soon as the owners became aware, they gave notice under the head charters, repeatedly requesting immediate redelivery. They went on to serve notices also on the guarantor and the sub and sub-sub-charterers.

Having taken initial steps in LMAA arbitration pursuant to the head charter, the owners on 9 October 2023 sought injunctive relief from the court for the redelivery of the vessels under section 44(3) of the Arbitration Act 1996. This was declined due to a lack of urgency. An arbitration award dated 22 December 2023 ordered the redelivery of the vessels and their de-registration from the Italian bareboat charter registry. Only the head charterparties contained arbitration clauses, so owners commenced proceedings under several other agreements in the transactions which contained English law and jurisdiction clauses.

The owners' arguments were that the sub-charters had been automatically brought to an end or that they were entitled to ask for the redelivery of the vessels and had done so. The defendants argued that the right to terminate had been lost to effluxion of time or election and that the sub-charterparties and sub-sub-charterparties continued and were binding on the owners; the sub-charterers and sub-sub-charterers were not obliged to redeliver the vessels; and the owners could not terminate the chartering arrangements.

Sir William Blair ordered the redelivery of the vessels in accordance with owners' instructions and their de-registration from the Italian bareboat registry.

A major owner of the first defendant had given evidence in the LMAA arbitration. The argument advanced before the court could be said in part to contradict that evidence. The claimants contended that it was abusive or vexatious of the sub-charterers to put forward arguments said to be contrary to evidence in the arbitration. The judge dismissed this argument, observing that the present litigation was the sub-charterers' only opportunity to put those arguments forward as they were not parties to the head charterparty.

The charterers had relied on sub-bailment, pointing out that a relationship of sub-bailment could spring up between a bailor and a sub-bailee, capable of outlasting the head bailment. While the judge agreed with the principle of this, he stated that it was a question of contractual terms. The commercial purpose of the MPAs and their requirement that the bareboat charters be on back-to-back terms was to allow the owners to enforce and recover the vessels, so that they were not disadvantaged by the defendants' need to put in place a chain of intra-group back-to-back charters. In that particular context, there was no room for a relationship of bailment to arise directly between the original bailor and the sub-bailee or sub-sub-bailee.

[4] [2024] EWHC 611 (Comm); [2024] 2 Lloyd's Rep 446.
[5] At para 108.

Further, there were clauses in the head charterparty entitling the owners to possession and recovery of the vessels "free of any sub-charter". In such circumstances there was no room for a relationship of bailment to arise directly between the original bailor and the sub-bailee or sub-sub-bailee. The judge concluded that when the head charters were terminated, the rest of the charter chain should be treated as coming to an end also, because the foundation on which the possessory rights created by the further charters was built had gone. The judge carefully limited this conclusion to the circumstances of the case: sub-bailment in another demise chartering context on different terms remains possible.

On that conclusion, the charterers were no longer entitled to possession of the vessels. In addition, owners had argued that charterers were in any event obliged to redeliver the vessels under the MPAs. The judge agreed that they were entitled to request redelivery from sub-charterers and sub-sub-charterers. However, the owners' various notices had been addressed to the head charterers and did not specify what action was required of the sub-charterers. More specific notices would have been required.

> Case law demonstrates that relief from forfeiture is rarely granted in bespoke contracts negotiated between experienced commercial counterparties

All things considered, it was in the judge's view "unrealistic" of the charterers to submit that the owners had lost the right to terminate either by effluxion of time or election in circumstances, where the sub-charterers had been repeatedly told the vessels had to be redelivered. Acceptance of hire did not alter that conclusion.

The charterers had sought relief against forfeiture. To this, the judge observed that regardless of the true position as to the applicability of lessor–lessee cases, the commercial context was different with charterparties. The interposition by the court of a new charter between owners and sub-charterers raised difficult questions and was unlikely to be ordered whatever view were to be taken as to the grant of relief. However, the judge proceeded on an assumption that there was jurisdiction to grant relief, as in any case he declined to exercise discretion to grant relief. While the effects of the change of control event were disproportionate, those were the terms agreed between commercial parties. Considerations of commercial certainty were important and case law demonstrated that relief from forfeiture was rarely granted in bespoke contracts negotiated between experienced commercial counterparties.

It may be observed that most of the judge's conclusions were specific to the contractual situation with an overarching multipartite agreement and a string of bareboat charterparties, where the head bareboat charterparty appears to have been a financing charterparty followed by a series of operating charterparties. The registered owner was related to the shipyard where the vessels were constructed, and the head charterparty contained a purchase option. The further charterparties contained no such option and were said to have been entered into because the third defendant was prevented by accounting or financial reasons from entering into a bareboat charter of the extended duration required by the owners' financiers. While any bareboat charterparty would normally give rise to possession so that sub-bailment could arise, the sub-charters here were held to be subject to the wider contractual context.

No details are known about the contracts in the next case, but at least one of the agreements appears to be a bareboat charter with sub-bailment at issue, so it is a natural segue to *SY Roro 1 v Onorato Armatori*.

In *Euronav Shipping NV v Black Swan Petroleum DMCC*[6] Euronav applied for an anti-anti-arbitration injunction against BSP. Euronav had, in March 2023, entered into a storage agreement with SS for its vessel *Oceania*. The agreement contained a sanctions clause, and was accompanied by two addenda, the second of which was in dispute. Addendum 2 contained an English law and LMAA London arbitration clause.

Also in March 2023 SS entered into a storage agreement with BSP, also containing a sanctions clause according to which BSP would not seek to store sanctioned cargo on board. That agreement showed SS as head charterer and did not name the owner. There were however other indications that could have caused BSP to conclude that Euronav was the registered owner. A cargo of oil was transferred onto *Oceania*.

[6] [2024] EWHC 896 (Comm); [2024] Lloyd's Rep Plus 31.

Euronav's position was that this caused the cargo to come into its possession creating a sub-bailment on the terms of Euronav's storage agreement with SS.

The oil appeared to be Iranian rather than from Iraq as declared. This meant that storage was a breach of US sanctions, and so Euronav surrendered the cargo to the US Department of Justice. BSP obtained an arrest warrant for the vessel from the Malaysia High Court. Euronav commenced arbitration proceedings in London against BSP alleging that its inability to deliver the cargo was caused by BSP's breach of the terms of the sub-bailment. BSP sought damages from the Malaysian court and contested the arbitration tribunal's jurisdiction. Euronav sought a stay or striking out of the Malaysia proceedings, but this was rejected at first instance. The judge's reasoning was that Euronav by its application had taken a step in the proceedings. An appeal was pending before the Malaysia Court of Appeal. Based on the judge's decision, BSP sought an anti-arbitration injunction and sought a stay in the London arbitration, which was rejected.

In February 2024 Euronav applied to the English High Court to stop BSP from pursuing or continuing with its Malaysian anti-arbitration injunction application and to stop Euronav pursuing its claims against BSP otherwise than in the London arbitration. Shortly after, the High Court of Malaysia ordered that Euronav should not continue the London arbitration until after final disposal of the appeal to the Malaysia Court of Appeal.

Euronav contended that BSP's pursuit of an order against arbitration contravened an arbitration agreement between the parties; or else that if there was no binding arbitration agreement the anti-arbitration injunction application was "vexatious and oppressive".

The judge adjourned Euronav's application for an anti-anti-arbitration injunction pending the outcome of the appeal to the Malaysia High Court of the issue of Euronav's submission.

The judge stated that Euronav had to prove to "a high degree of probability" that there was an arbitration agreement that would govern the dispute. If this was proved then the court would usually exercise its discretion to stop the pursuit of proceedings brought in breach of an arbitration agreement, unless the defendant could offer compelling reasons to refuse the relief sought.

On the evidence, it appeared to the judge that there was a high probability that Euronav would prove its case both in relation to Addendum 2 being of contractual effect, and that the sub-bailment of the cargo to Euronav was a sub-bailment on the terms of the agreement as amended by Addendum 2; and accordingly that in relation to its claim in bailment against Euronav it was bound by the arbitration agreement contained in Addendum 2.

In addition, it was decided that the order should not be made at this stage of proceedings: (1) for reasons of comity; (2) to avoid duplicate proceedings (Euronav had, pending an appeal, submitted to the jurisdiction of the Malaysian courts); (3) because BSP could not be required to defend the arbitral proceedings; and (4) because Euronav could have applied for the injunction earlier.

A registered owner bareboat chartering its vessel loses day-to-day control of the valuable commercial entity that the vessel constitutes. This opens the door to legal trouble such as accusations of breaches of sanctions. It seems desirable for shipowners to have some form of extended, enforceable control so that the vessel cannot be sub-chartered for illicit purposes without consequences. Although this litigation is so far inconclusive, it is a good illustration of how circumstances may take over and cause significant issues – compounded by the fact that a sub-charterer that has lost its entire cargo (perhaps from its perspective for quite unjustified reasons) has every incentive to keep litigating in every forum available.

For the position of a bareboat charterer in the context of a judicial sale of the vessel, see *Meck Petroleum DMCC v Owner and/or Demise Charterer of the Vessel Victor 1 and Another*,[7] noted under the Admiralty section below.

Time charters

Of the three time charterparty cases in the year, one concerned whether a charterparty had been agreed in the first place, and another concerned interpretation of certain terms in the charterparty which were said to amount to a guarantee by owners. A third considered an interesting question of damages.

In *Southeaster Maritime Ltd v Trafigura Maritime Logistics Pte Ltd (The MV Aquafreedom)*,[8] the question was whether a time charterparty had been concluded at all. Southeaster was the owner of *Aquafreedom*, a Suezmax oil tanker.

[7] [2024] SGHC 165; [2025] Lloyd's Rep Plus 2.
[8] [2024] EWHC 255 (Comm); [2024] 2 Lloyd's Rep 556.

Trafigura alleged that a time charterparty had been created following negotiations in January and February 2023, which had taken place via a brokering firm acting for both parties, by email and WhatsApp messaging. Separate brokers dealt with each client. The negotiations consisted of four phases: a recap phase, further communications resulting in two proposals from Trafigura, a four-day hiatus wherein Trafigura chased a response from owners, and communications on 6 February.

Following initial WhatsApp exchanges, the owners emailed a firm offer setting out terms for discussion and subjects, which was followed by a recap circulated by Trafigura's broker. The recap stated that terms were "sub review both sides" and that the sub-charterers' management approval (CMA) was "latest 2 working day after all terms agreed". It was common ground that these terms and subs were linked. There followed discussion of specific clauses leading up to an email from the owners on 1 February referred to as "Owners' Last". After a few further communications from Trafigura, there followed a hiatus. On 6 February an arranged Teams meeting was cancelled by owners who also conveyed that they "don't want to have a disagreement on technicalities but we don't agree the terms and aren't there to do the business", whereupon Trafigura emailed to accept Owners' Last and went on to lift the remaining sub.

The owners successfully applied to the court for a declaration that no binding charterparty had been concluded, and for summary judgment to that effect.

Jacobs J observed that the parties had agreed upon a sequence of events: a review of the previous terms by both sides, followed by agreement on "all terms" which would be the trigger for the start of two working days for Trafigura to lift the CMA subject. However, in the judge's view, things had never reached that point, and the parties had not reached an agreement following Owners' Last. Trafigura's further communications were not just inquiries but were counteroffers concerning some of the clauses, and so Owner's Last could no longer be accepted.

On the matter of the "subjects" the judge observed that it was well established that in charterparty negotiations, "subjects" were conditions precedent that negated contractual intent. The parties had accordingly not reached agreement on all terms. The recap's "review" and "management approval" provisions were not conditions subsequent. The effect of the recap was that agreement on all terms was a precondition to the existence of a binding contract, and both parties could withdraw until the subject was "lifted".

Finally, the effect of the WhatsApp message "we don't agree the terms and aren't there to do the business" sent by owners on 6 February, prior to Trafigura lifting the CMA subject, was to make it clear that owners were not prepared to contract. There was thereafter no offer for Trafigura to accept by lifting its subject. There was no argument to be made based on the unofficial nature of a WhatsApp message.

The second time charterparty case is also about cold feet: but here the parties had agreed the charterparty, after which the charterers wished to extract themselves from the bargain.

In *SFL Ace 2 Co Inc v DCW Management Ltd (formerly Allseas Global Management Ltd)*[9] SFL as owners and AGPL, a subsidiary of the defendant AGML, had negotiated a time charterparty for the containership *Green Ace*. Before the vessel was delivered into the charter, changes in market rates meant that the agreement became uneconomical and the charterers declined delivery. The owners accepted this as repudiation and sought damages from the defendant as guarantor. Although no formal guarantee had been drafted or executed, the owners relied on the final two email recaps following the lifting of subs where the charterer was identified as "CHARTERER: [AGPL]... to be guaranteed by [AGML] ...".

The judge held that owners were entitled to recover damages of about US$27 million under the guarantee. There was a binding agreement evidenced in the terms of the recaps, which was that AGML would guarantee the obligations of charterers. The exchange of emails, which was in writing and signed by an authorised representative of AGML, was sufficient to amount to an agreement in writing for the purposes of the Statute of Frauds section 4. The charterers' email stating that they were unable to accept the vessel on current charter terms had clearly been repudiatory. It conveyed to a reasonable person the fact that charterers were unable to perform the charter according to its terms and would not do so.

A potentially interesting case on damages was decided at first instance in *Hapag-Lloyd AG v Skyros Maritime Corporation and Another (The Skyros and The Agios Minas)*.[10] The defendant time charterers had redelivered the two vessels *Skyros* and *Agios Minas* late under their respective time charterparties, by two days and seven days respectively. Hire continued to be paid for the

[9] [2024] EWHC 1877 (Comm).
[10] [2024] EWHC 3139 (Comm).

overrun period as provided in the charterparties. In that period, market rates were substantially higher than the charter rate. The claimant owners were not in any event going to place the vessels under new charterparties, because they had already agreed to sell them to Maersk and had committed to delivering them to the new owners immediately upon redelivery.

The owners sought the difference between the market rate and the charter rate. The charterers contended that the owners would not in any case have chartered the vessels and had made no loss. The owners retorted that the sale of the vessels must be disregarded. In arbitration, all of the owners' arguments had been accepted.

Upon appeal by charterers on a question of law, the judge held that the owners were entitled only to nominal damages. The owners' entitlement was to damages compensating them for the loss of the opportunity to take advantage of the market rate during the period of the overrun. The owner had not lost any such opportunity, because of a commitment to deliver to a buyer. The compensatory principle applied, notwithstanding Lord Hoffmann's dicta on res inter alios acta in *The Achilleas*.[11] Those dicta were not an implicit reference to the line of cases starting with *Rodocanachi v Milburn*[12] regarding replacement goods. Ships were not interchangeable commodities for contractual purposes and it was wholly unrealistic that he thereby intended a departure from the compensatory principle through recovery of damages for a claimant who had suffered no loss at all. The owners could never have benefitted from the market price.

As may be expected given the question of application of *The Achilleas* and the differences between arbitrators and the judge, the case is on appeal. It is scheduled for a hearing in December 2025.[13]

Voyage charters and contracts of affreightment

In one of the key cases of the year, *RTI Ltd v MUR Shipping BV*,[14] the Supreme Court dealt with sanctions, the surrender of valuable contractual rights and "reasonable endeavours".

On 9 June 2016 the parties had entered into a contract of affreightment (COA) on an amended Gencon form for the carriage of bauxite from Conakry in Guinea to Dneprobugsky in Ukraine. The total volume of approximately 280,000 mt was to be carried in consignments over 24 months. Under this COA MUR, a Netherlands company, was the shipowner and RTI, a Jersey company, was the charterer. RTI was to pay freight in US dollars.

On 6 April 2018 US authorities applied sanctions to RTI's parent company. On 10 April 2018 MUR invoked a force majeure clause in the COA by sending a notice saying that it would be a breach of sanctions if the COA was continued, and that the sanctions prevented payment in US dollars. In response the charterers rejected the notice, disputing that there was a force majeure situation, and offered to pay in euros and bear the costs of conversion. They procured the tonnage elsewhere until nominations could be resumed under a licence, and brought an arbitration claim for the difference between the rates for the alternative tonnage and the COA rates.

The owners' case on force majeure succeeded in arbitration, except that the tribunal considered that where the force majeure clause provided for the exercise of reasonable endeavours, the owners were required to accept payment in euros.

At first instance[15] Jacobs J allowed the owners' appeal on this issue under section 69 of the Arbitration Act 1996. Where the COA specified payment in US dollars, the charterers could not insist on making payments in euros, or tender their choice of currency.

The majority in the Court of Appeal allowed RTI's appeal.[16] The "reasonable endeavours" language referred directly to overcoming the force majeure event or state of affairs and it was not a question of whether the affected party had acted reasonably in general.

[11] *Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas)* [2008] UKHL 48; [2008] 2 Lloyd's Rep 275.
[12] (1886) 18 QBD 67
[13] Source: casetracker.justice.gov.uk accessed on 24 March 2025.
[14] [2024] UKSC 18; [2024] 1 Lloyd's Rep 621.
[15] [2022] EWHC 467 (Comm); [2022] 2 Lloyd's Rep 297, noted in the 2022 edition of this work.
[16] Arnold LJ dissenting; [2022] EWCA Civ 1406; [2023] 1 Lloyd's Rep 463.

> The contract literalism prevailing in commercial contract interpretation requires close attention to the wording chosen by the parties. An important principle is that of the relationship between the contract and valuable existing rights eg to property, remedy or suit. Giving up such rights requires clear contractual language

MUR appealed to the Supreme Court, which allowed the appeal. The judgment emphasised the contractual bargain as the framework for interpreting reasonable endeavours. The court considered that there were good reasons of principle supporting MUR's case that "reasonable endeavours" to overcome a force majeure event did not include accepting an offer of non-contractual performance, absent clear wording to that effect.

The Supreme Court considered the nature of force majeure clauses. Such a clause would generally be interpreted as applicable only if the party invoking it could demonstrate that the event or state of affairs was beyond its reasonable control and could not be avoided by taking reasonable steps. To be able to rely on the clause, the party affected must therefore establish that the failure to perform could not have been avoided by the exercise of reasonable endeavours. The question boiled down to whether reasonable endeavours could have led to the continuation or resumption of contractual performance. The essence of the force majeure clause was not one of enabling non-contractual performance and a party should not be required to accept an offer of non-contractual performance unless the contract made clear that the party had given up its contractual right. Here, the exercise of reasonable endeavours by MUR would not have enabled the payment of US dollars to be made without delay.

The contract literalism prevailing in commercial contract interpretation requires close attention to the wording chosen by the parties. An important principle in contract interpretation is that of the relationship between the contract and valuable existing rights eg to property, remedy or suit. Giving up such rights is said to require clear contractual language. The Supreme Court emphasised that it did not matter whether the applicable principle was that set out in *Gilbert-Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd*[17] for giving up valuable common law rights, or an analogous principle applicable to valuable contractual rights.Clear words would be necessary.

In the Court of Appeal, only Arnold LJ had considered that attention should be paid to *Gilbert-Ash* and the principle of clear words and valuable rights. The Supreme Court not only endorsed the principle, but also contemplated an analogous principle applicable to contractual rights. Considering the various moving parts of the contract, their lordships observed that while "reasonable efforts" imported some degree of uncertainty, the concept could not be allowed to ride rough-shod over the required contractual performance. That would be to introduce unwarranted uncertainty, undermining the expectations of reasonable business people. MUR was entitled to insist on contractual performance and this was not unmeritorious or unjust.

The Court of Appeal's decision had attracted some criticism.[18] The Supreme Court's emphasis on contractual performance and rights established by law or by contract is arguably entirely consistent.

The Court of Appeal handed down a decision that on appeal proved to be largely procedural – could the disponent owner bring a new argument on appeal? The Court of Appeal held that it could not

In *Rhine Shipping DMCC v Vitol SA*,[19] Rhine was the disponent owner and Vitol the charterer under a voyage charter for the crude tanker *Dijilah*. The charterparty contained a warranty to the effect that "the vessel, owners, managers and disponent owners" were free of legal issues affecting the performance of the charter. Clause 13 provided for indemnification by the owner "for any damages, penalties, costs and consequences" in the event of arrest. Before arriving at Djeno, the loadport in Congo, the vessel was detained in Ghana as a result of the arrest by a Ghanaian court of cargo on board. That arrest was by way of security for a claim subject to London arbitration in a dispute between Ghanaian parties and the corporate entity A.

A demurrage claim between Rhine and Vitol had been agreed, and the dispute concerned Vitol's counterclaim for breach of the charter for delay in arriving at Djeno. This

[17] (1976) 1 BLR 73.
[18] Eg Jim Leighton, "When uncertainty is not enough", *Lloyd's Shipping & Trade Law*, (2022) 22 LSTL 10 4.
[19] [2024] EWCA Civ 580.

delay arose out of the arrest, which Vitol argued was Rhine's responsibility under the warranty and clause 13. The loss claimed was the increased price of the cargo loaded at the loadport. Rhine denied liability and also argued that although the portfolios used for hedging were both internal to Vitol, the effect was the same as if the hedging had been external because two divisions within a company could be treated as separate entities for these purposes, notwithstanding their lack of separate legal personality. The judge held that Rhine was liable under clause 13 and the warranty.

Rhine was granted permission to appeal on the basis that there would be no challenges to findings of fact. Its sole ground of appeal was that the judge had erred in deciding that Vitol's internal "hedging" or transactions matching did not fall to be taken into account in reducing damages. The damages should consider the avoided cost of a "book hedge" on Vitol's net book risk which would, absent breach, have been required to hedge the risks which were in fact met by the oppositional rolling of the swaps. The judge's analysis was, Rhine argued, in error because it considered only the effect of the internal swaps themselves and not also the net effect of the rolling on Vitol's hedging policy and overall net hedging needs.

The question became whether this new argument was available to Rhine on appeal. This was just as well, as Popplewell LJ began by saying that he would have dismissed an appeal based on the points before the judge. The Court of Appeal went on to hold that the new argument was not available to Rhine, dismissing the appeal. The argument was entirely new in three respects, namely conceptually; in relation to the factual and expert issues it raised; and in relation to the legal issues it raised. The court should be cautious to permit a new point upon appeal. Here, the appeal required new evidence and further factual findings. The outcome from the first instance therefore stands.[20]

A lien on cargo in respect of unpaid freight was the issue in *Lord Marine Co SA v Vimeksim Srb DOO*.[21] The applicant shipowner Lord Marine applied for an order under section 44 of the Arbitration Act 1996 for the sale of cargo over which it held a contractual lien to secure payment of freight. The lien was in bills of lading marked freight prepaid, but as freight had not in fact been paid, the bills of lading remained in the possession of the carrier. The cargo of Ukrainian corn had been discharged at Iskenderun in Turkey and placed in a warehouse owned by the receiver under the bill of lading, but at the expense of the carrier. According to surveys, it was deteriorating rapidly.

Lord Marine commenced LMAA arbitration in respect of the unpaid freight and appointed an arbitrator. The respondent charterers did not appoint an arbitrator and did not engage with proceedings in the tribunal or before the court. The receivers did not appear either, but the judge was satisfied that both charterers and receivers had had sufficient notice of the hearing and had chosen not to attend.

> Although the cargo was in a warehouse belonging to receivers, receivers were for this purpose an agent of the owners so that the owners retained possession of the cargo and remained in a position to exercise the lien

The judge ordered the sale against an undertaking from the shipowner. Dealing first with a procedural issue, the judge held that it was irrelevant that the shipowner was not the owner of the cargo, but it was important that the lien was being exercised in support of the arbitral claim, as this gave the court the powers under section 44(1) that it had in legal proceedings. CPR 25.1 empowered the court to make an order in respect of perishable property which needed to be sold quickly.

The judge next considered hypothetical objections. With the bills of lading still with the shipowner, there was no lawful holder of bills of lading who could have objected to exercising the lien. If there had been, the holder would have been bound by the lien clause in the incorporated charterparty. All relevant parties, whether parties to the arbitration or not, had adequate notice of the application for a sale.

The issue of possession was easily resolved. Although the cargo was in a warehouse belonging to receivers, receivers were for this purpose an agent of the owners so that the owners retained possession of the cargo and remained in a position to exercise the lien.

[20] Reported in the 2023 edition of this work.
[21] [2024] EWHC 3305 (Comm).

Bills of lading

A good number of bill of lading decisions on a variety of issues were handed down during the year, not least important of which is the Supreme Court's decision that the Hague Rules apply to claims for misdelivery following discharge in *FIMBank plc v KCH Shipping Co Ltd (The Giant Ace)*.[22] No less important is an early decision about the relationship between the (relatively) recently added verified gross mass requirements and the Hague Rules in *Stournaras Stylianos Monoprosopi EPE v Maersk A/S*.[23]

The headliner of the year was *FIMBank plc v KCH Shipping Co Ltd (The Giant Ace)*.[24] The claimant/appellant was a trade finance bank and the defendant/respondent was the demise charterer and contractual carrier of goods under bills of lading held by the bank. The bills of lading were on the Congenbill 1994 form and subject to the Hague-Visby Rules by way of incorporation from the voyage charterparty. The cargo of coal was discharged from *Giant Ace* into stockpiles, against letters of indemnity, whereafter it disappeared.

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In arbitration, the bank brought a misdelivery claim against the carrier. The carrier successfully argued that the claim was time-barred by the Hague-Visby Rules article III rule 6, because the arbitration had been commenced more than one year after discharge. The claimant obtained permission to appeal the award on this point of law, arguing that the time bar did not apply to a claim for misdelivery following discharge and that clause 2(c) of the Congenbill terms disapplied the Hague-Visby Rules to the period following discharge. Clause 2(c) provided in essence that the carrier was not to be responsible for loss or damage prior to loading and after discharge.

The judge dismissed the appeal.[25] The Court of Appeal also dismissed the bank's appeal.[26] The bank was granted leave to appeal to the Supreme Court. The agreed issues were as follows. (1) Did article III rule 6 of the Hague-Visby Rules apply to claims for misdelivery of cargo occurring after discharge has been completed? (2) If so, did clause 2(c) of the 1994 Congenbill form of bill of lading have the effect of disapplying the provisions of the Hague-Visby Rules (including the time bar in article III rule 6) to events occurring after discharge was completed? and (3) If not, did the article III rule 6 Hague-Visby Rules time bar nevertheless apply contractually under the bills of lading to claims for misdelivery of cargo occurring after discharge?

It will be noted that the questions for appeal concerned the Hague-Visby Rules, not the Hague Rules. However, the Court of Appeal's discussion of both sets of Rules had provided in essence that the Hague Rules did not apply after discharge, but that the amendments in wording of the Visby Protocol meant that the Hague-Visby Rules did. The Supreme Court dedicated less effort to discussing the latter conclusion, which it appears to have considered uncontroversial, than to interpreting the Hague Rules, with the following result.

The Supreme Court concluded that not only the Hague-Visby Rules but also the Hague Rules article III rule 6 applied to claims for misdelivery after discharge. The language "In any event", "all liability", "in respect of" and "discharged" all indicated a wide scope of application.

The court also considered the subject matter of article III rule 6 as a whole, which they concluded was delivery rather than discharge, and what was to be done after discharge. This supported an interpretation of the time limit in para 3 by which it could apply to events up to and including delivery.

Affirming, if needed, that the period of responsibility was from commencement of loading to completion of discharge, their Lordships also concluded that parts of the Hague Rules were not concerned solely with that period. They found nothing in the travaux, the English authorities, the international case law or the textbooks that called for a contrary conclusion. While there was a defined period of responsibility under the Rules during which there were minimum liabilities and responsibilities and minimum rights and immunities for the carrier, that did not mean that all the rules concerned or operated only during that period.

[22] [2024] UKSC 38.
[23] [2024] EWHC 2494 (Comm).
[24] [2024] UKSC 38.
[25] [2022] EWHC 2400 (Comm); [2023] 1 Lloyd's Rep 381, noted in the 2022 edition of this work.
[26] [2023] EWCA Civ 569; [2023] 2 Lloyd's Rep 457, noted in the 2023 edition of this work.

On this interpretation of the narrower-in-scope Hague Rules, it must also be the case that, as the Court of Appeal had held, the Hague-Visby Rules time bar also applied to misdelivery occurring after discharge.

The Supreme Court also briefly considered clause 2(c) of the Congenbill, noting that the clause did not refer to the Hague or Hague-Visby Rules and was clearly designed to protect the carrier and relieve it from liability for loss or damage. It would be counter-intuitive if it were to prevent the carrier from relying on the time bar.

That this issue should come before the Supreme Court after over 100 years from the adoption of the Hague Rules demonstrates that no normative text can be free of ambiguity or divergence in interpretation.[27] The Supreme Court's resolution is favourable to carriers whose access to the time-bar is now known to extend to the post-discharge period, meaning that claims for misdelivery must be brought with due haste.

The requirement to declare the verified gross mass (VGM) of containers was introduced by the International Maritime Organization (IMO) in 2016, under the Convention on the Safety of Life at Sea 1974 ("SOLAS"). It has not insofar as known appeared in any judicial decision since.[28] In *Stournaras Stylianos Monoprosopi EPE v Maersk A/S*[29] the question arose of the carrier's entitlement to rely on figures supplied by the shipper. Should the bills of lading have been claused where there was a significant discrepancy between declared and actual gross mass?

The claimant SSM had purchased three consignments of copper from a seller who had subsequently vanished. The consignments upon arrival turned out to be concrete blocks. The seller had organised shipment with the defendant Maersk and payment was to be against shipping documents including bills of lading.

The VGM of each container was only 30 or 40 per cent of the shipper's declared weights. Maersk had later in 2020 introduced a system for comparing VGM to declared weights, but this did not exist at shipment in 2019.

SSM claimed against Maersk on the basis that the weight of the containers ought to have caused it to clause the bills of lading. It claimed that there was a breach of the Hague Rules article III rule 3(c); alternatively in tort for negligent misstatement; alternatively on the basis of a carrier's implied contractual or tortious duty of care not to issue a clean bill of lading based on shipper's particulars that a reasonably competent carrier would on reasonable grounds suspect to be fraudulent.

Maersk counterclaimed for an indemnity in respect of the shipper's breach of warranty.

The requirement to declare the verified gross mass of containers was introduced by the IMO in 2016, under the Convention on the Safety of Life at Sea 1974 (SOLAS). It has not insofar as known appeared in any judicial decision since

In the King's Bench Division, Commercial Court, Lionel Persey KC dismissed the claims and allowed the counterclaim. The judge considered that while Maersk could have organised the data available to it differently in 2019, there was no evidence that it had any reason to consider that the shippers would provide fraudulent data to them and that they should therefore have checked the shippers' weights against the VGM data.

He went on to note that the authorities provided that a statement in a bill of lading as to the good order and condition of the cargo referred to its external condition as would be apparent from a reasonable examination.[30] The weight of a container would not be apparent from an inspection of the external condition of the container.

The bills of lading contained all of the information conveyed in the shipping instructions and were compliant with those instructions. Maersk had provided a full description in the bills of lading in accordance with the shippers' request and were entitled to rely upon clause 14.2 of the bill of lading ("no representation made"). Maersk was not in breach of article III rule 3(c) of the Hague Rules.

The issue having been concluded in favour of the carrier, it was unnecessary to decide whether the claimant was

[27] The Convention was signed on 25 August 1924.
[28] Readers may wish to correct us on this point.
[29] [2024] EWHC 2494 (Comm).
[30] The judge selected *The Peter de Grosse* (1875) 1 PD 414, *The Tromp* (1921) 8 Ll L Rep 28 and *Noble Chartering Inc v Priminds Shipping Hong Kong Co Ltd (The Tai Prize)* [2021] EWCA Civ 87; [2021] 2 Lloyd's Rep 36.

entitled to enforce rights in respect of the cargo pursuant to section 2(1)(b) of COGSA 1992.

As for the claims in tort, the judge considered that the statements on the face of the bills of lading as well as clause 14.2 quite clearly provided that Maersk had made no representations as to the weight of cargo shipped and had no responsibility in respect thereof. Maersk had not made any negligent misstatements in the bills of lading.

Nor was there any breach of a duty of care where there was no evidence that Maersk had any reason to consider in 2019 that the shippers would provide fraudulent data to them and that they should therefore have checked the shippers' weights against the VGM data. Maersk was not under a duty to compare the shipper-declared weights with the VGM-verified weights.

Maersk's counterclaim found more favour with the judge. The claimant as merchant was liable to indemnify the carrier for invoices, cargo destruction costs and container demurrage.

A decision in the more traditional genre was handed down by the Court of Appeal in *AMS Ameropa Marketing and Sales AG and Another v Ocean Unity Navigation Inc (The Doric Valour)*.[31] On appeal, the main issue was title to sue. The claimant cargo interest based its suit on an assignment of the bill of lading holder's rights it had taken in return for indemnifying that party. What part did the indemnity play in such circumstances?

A cargo of 50,000 mt of yellow soybeans carried from Louisiana to Egypt on board the defendant Ocean Unity's vessel *Doric Valour* in August 2020 had been loaded in apparent good order, but was on discharge found to be part damaged. The cargo was shipped under Congenbill form bills of lading, issued by Ocean Unity as the registered owner of the vessel. When the damage was discovered, manual segregation took place of about 16 mt of cargo, after which 3,600 mt was segregated by mechanical discharge. Following discharge, 3,600 mt of the cargo was set aside and sold in a salvage sale.

The claimant Ameropa was the seller of the beans under a CIF sale, and sought damages under the bills of lading. The claimed sum was for loss of value, or in the alternative a smaller sum representing the difference between the sound CIF value and actual value as evidenced by the salvage sale; plus expenses in both cases. Ameropa sued as assignee of O, the receiver of the cargo and lawful holder of the bills of lading at discharge.

Ocean Unity admitted breach of the duty to take reasonable care of the cargo, but disputed the claim on the grounds of lack of title to sue and on causation and quantum of the loss. When the assignment from O to Ameropa took place, O had already been made whole. While Ameropa sought damages in respect of 3,600 mt of the cargo, Ocean Unity maintained that the damage from its breach affected only between 15 and 88 mt.

In a decision from the end of 2023[32] Deputy Judge Ms Clare Ambrose had notably found that although 70 to 80 mt of the cargo had suffered physical heat damage, about 3,600 mt of cargo discharged from hold 4 represented an admixture of sound and damaged cargo which had been sold reasonably. She allowed Ameropa's claim as assignee of O.

The carrier appealed arguing that O had effectively been made whole by a payment by Ameropa for which Ameropa must give credit as it could not as a result of the assignment be in a better position than O.

The Court of Appeal dismissed the appeal. Males LJ, giving the leading speech, directed himself that in shipping law, a clear and well established principle provided that when cargo was damaged by a shipowner in the course of a voyage, a bill of lading holder with title to sue was entitled to recover damages based on the difference between the sound arrived value and the actual value of the damaged cargo, without giving credit for a payment received pursuant to a contract of sale to which the bill of lading holder was a party. Such a payment was to be regarded as arising independently of the circumstances giving rise to the loss. The effective cause of the payment was the relationship of the parties to the sale contract, not the shipowner's breach.

As a result, the judge was correct to hold that the payment by Ameropa to O was directly linked to rights under the existing sale contract, and was not to be treated as a benefit obtained in the course of mitigation for which O, and Ameropa as its assignee, would have had to give credit to the shipowner.

In *Carmichael Rail Network Pty Ltd v BBC Chartering Carriers GmbH & Co KG (The BBC Nile)*,[33] the question

[31] [2024] EWCA Civ 1312.

[32] [2023] EWHC 3264 (Comm); [2024] Lloyd's Rep Plus 64; noted in the 2023 edition of this work.

[33] [2024] HCA 4.

was whether the Australian court should defer to London arbitration. The plaintiff Carmichael was the buyer of a cargo of steel rails from Whyalla in South Australia to Mackay, Queensland on board the vessel BBC Nile, under a bill of lading containing in clause 3 a clause paramount and in clause 4 an English law and London arbitration clause. The defendant BBC was the carrier.

Notice of arrival was issued at Mackay on 24 December 2020. The next day, the crew observed a stow collapse in hold 1 as a result of which the rails in that hold were damaged and unusable. The rails were sold as scrap. The parties agreed extensions to the time bar until ultimately 24 September 2022.

On 2 August 2022 BBC informed Carmichael that it had commenced arbitration in London. On 12 August 2022 Carmichael applied to the court seeking to restrain the commencement or maintenance of any proceedings brought in connection with BBC's carriage of the goods otherwise than in Australian courts, asserting a statutory right to an anti-suit injunction under the Carriage of Goods by Sea Act 1991 (Cth) (COGSA). BBC in turn sought a stay in favour of London arbitration.

Issues arose as to the effect of the combination of the English law and paramount clauses, including whether section 10(1)(b)(ii) of COGSA invalidated the choice of law or jurisdiction clauses. Carmichael pointed to the lower limitation amounts and the mandatory application of the Australian Hague Rules. The first defendant undertook not to take any time-bar defence not otherwise available to it as of 12 August 2022 in the London arbitration; and to admit in the London arbitration that the Australian amended Hague Rules applied to the bill of lading and the plaintiff's claims thereunder. The Federal Court of Australia ordered that the application for an anti-suit injunction be dismissed and the claim stayed in favour of London arbitration, and declared that the amended Hague Rules applied to the bill of lading.[34]

Carmichael appealed to the High Court of Australia. It argued on appeal that the arbitration clause ought to have been considered void under article 3(8) of the Australian Hague Rules, essentially on the basis that there was a risk that London arbitration under English law would result in a less favourable outcome. The court dismissed the appeal.[35] Directing itself as to the standard of proof, the court noted that for the purpose of deciding BBC's stay application and Carmichael's application to restrain the continuation of the arbitration, article 3(8) of the Australian Hague Rules, on its proper construction, operated on the ordinary civil standard of the balance of probabilities. For a clause to be held void for diminishing the carrier's liability it was not sufficient to show that, if enforced, there was a mere possibility, a real risk, a reasonably arguable case, or a prima facie case that it would lessen the carrier's liability.

The court went on to hold that article 3(8) of the Australian Hague Rules was to be applied in the circumstances at the time the court decided their application, which in this case included BBC's undertakings not to take the time bar defence and the declaration made by the Full Court.

In the result, Carmichael had not proved on the balance of probabilities that cl 4 of the bill of lading relieved BBC from liability or lessened such liability within the meaning of article 3(8) of the Australian Hague Rules. The court noted obiter that Carmichael would also have failed on any of the lesser standards of proof posited. Only if article 3(8) were to be engaged by mere speculation that a carrier's liability might be lessened could Carmichael have succeeded, but such mere speculation was impermissible.

The Jeil Crystal (No 2)[36] concerned switch bills of lading and the position of the bank. The plaintiff was a trade finance bank and the defendant was the owner of *Jeil Crystal*. On 13 June 2020 the owner had issued a set of bills of lading in respect of a cargo of lube oil to GPG. GPG was the buyer of the oil, the charterer of the vessel and the bank's customer for trade finance. GPG issued instructions to switch the bills on 16 June, and the new set showed a different bank as consignee. Drafts of the switch bills were prepared and circulated. On 19 June the bank received the original set of bills of lading from the seller's bank, and on 25 June the bank endorsed the original set of bills of lading to the order of GPG and forwarded them to GPG. On 29 June the shipowner received the bills of lading and switched them. The cargo was discharged to the new consignee bank against a letter of indemnity.

The bank arrested *Jeil Crystal* for misdelivery on the basis that it was the lawful holder of the first set of bills of lading, but later amended its plea to wrongful switch of the bills of lading without its knowledge or consent, conceding that it did not possess the bills of lading. The arrest warrant was later set aside by the Court of Appeal.[37]

[34] [2022] FCAFC 171; [2024] 1 Lloyd's Rep 267.
[35] [2024] HCA 4.
[36] [2024] SGHC 74.
[37] [2022] SGCA 66; [2023] 2 Lloyd's Rep 190.

It may be observed that switch bills in all fairness do present a challenge, making it more difficult to keep track of the documents

The bank's contention was that the circumstances in which the shipowner switched the bills of lading were such as to amount to a breach of contract or a tortious breach of duty of care owed to the bank. The shipowner disputed this and counterclaimed for the wrongful arrest of its vessel. The main question became: at what point in time did the rights of suit under the contract of carriage vest in the plaintiff? Further questions considered were: had the defendant breached any contractual obligation owed to the plaintiff; had the defendant breached any tortious duty of care owed to the plaintiff; had the defendant breached any duty to the plaintiff as bailee of the cargo; and was the plaintiff liable for wrongful arrest of the vessel and, if so, what were its recoverable damages.

S Mohan J, who kept busy in the year with no less than six (for the purposes of this work) notable judgments, dismissed the bank's claim and allowed the shipowner's counterclaim in part, in a judgment focused on the rights of a holder of bills of lading. Observing that the plaintiff was not a party to the contract of carriage in the first set of bills of lading, and that the parties were the carrier and either the shipper or the charterer, he held that rights of suit under the bills of lading were only vested in the plaintiff as if it were a party to the contract of carriage from 19 to 25 June 2020, while it was the holder of the bills of lading. The bank had divested itself of any rights or interests in the cargo pursuant to section 2(5) of the Bill of Lading Act 1992 by endorsing the bills of lading and delivering them to GPG. The fact that it had had possession at some point in time did not result in standing to sue under the contract of carriage in the bills of lading.

The question remained as to rights of a some time bill of lading holder in the face of a party switching bills. The judge considered, obiter, that the series of steps taken towards and the issuing of the switch bills of lading were not a breach by the defendant of any contractual obligation. The preparation and circulation of draft switch bills and copies of switch bills were not the same as issuing a switch bill. The switch took place on 29 June 2020 and before that date it was not a foregone conclusion that any switch bills would be issued. The process could not be characterised as irreversible.

On the evidence, it was in the judge's view clear that the plaintiff had not looked to the cargo or the bills of lading as security to be invoked in the event the transaction went awry. In such circumstances it did not lie in the mouth of the plaintiff to belatedly contend that there was a breach of contract by the defendant. The judge further concluded that the switch itself was not in breach of any contractual obligation because as of the date of the switch, the parties to the bills of lading or the cargo had consented to the change reflected in the switch bills of lading. The bank by that date had surrendered the bills of lading to GPG and no longer had any rights. The fact that the plaintiff was the named consignee in the original set was immaterial.

As for the substantive claims, there was a clear overlap between the plaintiff's pleaded claims in contract and in tort and strong reasons militating against the imposition of any duty of care. If a duty of care did exist, it would only require the defendant to exercise reasonable care not to interfere with or prejudice the rights and interests of those entitled to the cargo. Any such duty would only have arisen at the point the switch bills of lading were being issued and released.

Further, there was no legal basis for the plaintiff's claim in bailment. The duties of a bailee arose out of the voluntary assumption of possession of another's goods. Upon the plaintiff's endorsement and delivery of the first set of bills of lading to GPG on 25 June 2020, any duty owed by the defendant as bailee to the plaintiff evaporated.

The shipowner counterclaimed for wrongful arrest. The judge observed that the applicable test was whether the action was so unwarrantably brought that it implied malice on the part of the plaintiff, or equivalent gross negligence. That threshold had been crossed and damages for wrongful arrest should be awarded. The plaintiff had not applied its mind to the threshold question of whether it in fact had the bills of lading and could legitimately arrest the vessel, prior to doing so. Its perfunctory checks could not result in an honest belief that the first set of bills of lading were in its possession.

It may be observed that switch bills in all fairness do present a challenge, making it more difficult to keep track of the documents. It nevertheless appears from this judgment and that of the Court of Appeal[38] that no one on the plaintiff's side had in fact completed the checks for the bills of lading.

[38] [2022] SGCA 66; [2023] 2 Lloyd's Rep 190.

Judgments from the Court of Justice of the European Union (CJEU) on bills of lading are not a common occurrence. In *Maersk A/S v Allianz Seguros y Reaseguros SA (Cases C-345/22 and C-347/22); Mapfre España Compañía de Seguros y Reaseguros SA v Macs Maritime Carrier Shipping GmbH & Co (Case C-346/22)*[39] the parties were respectively carriers and insurers of cargo carried under bills of lading. Each of the three disputes concerned cargo discharged in a damaged condition, but arose from separate bills of lading with different parties. The cargo receivers' subrogated insurers commenced litigation before Spanish courts. The carriers objected to the courts' jurisdiction based on English law and jurisdiction clauses in the bills of lading. The outcomes before the judges were different, and all three decisions were appealed.

This was three requests to the CJEU for a preliminary ruling, made upon appeal by the Audiencia Provincial de Pontevedra (Provincial Court, Pontevedra, Spain). The Audiencia Provincial referred questions to the CJEU as to whether the Spanish Ley de Navegación Marítima (LNM) or article 25 of Regulation (EU) No 1215/2012 applied to the issue of jurisdiction. All proceedings were commenced during the transition period in the UK's Withdrawal Agreement.

Article 251 of the LNM, read in conjunction with article 468, essentially provided that jurisdiction clauses in bills of lading required the individual and separate consent of the acquirer of the bill of lading, failing which they were void and deemed not to exist.

The court ruled that as the proceedings had been commenced before the expiry of the Withdrawal Agreement, EU law including Regulation (EU) No 1215/2012 applied. It went on to determine that under article 25(1) of Regulation (EU) No 1215/2012, the enforceability of a jurisdiction clause in a bill of lading against a third-party holder was not governed by the law of the member state of the courts designated by the jurisdiction clause. The clause was enforceable against the third party if, on acquiring the bill of lading, it became subrogated to all of the rights and obligations of one of the original parties to the contract. This must be assessed in accordance with national substantive law as established by applying the rules of private international law of the member state of the court seised of the dispute.

Interpreting article 25(1) of Regulation No 1215/2012, the court held that the article precluded national legislation requiring individual and separate negotiation of a jurisdiction clause incorporated in a bill of lading as a precondition to a third party becoming subrogated to the shipper's rights and obligations under the jurisdiction clause.

The next case, *COSCO Shipping Specialized Carriers Co Ltd v PT OKI Pulp & Paper Mills and Others*,[40] was decided in two instances of the courts of Singapore in March and November 2024. The issue was the scope of an arbitration clause incorporated into bills of lading. Was it capable of applying to a claim in tort following an allision?

The claimant – and later appellant – CSSC was the disponent owner of the vessel *Le Li*, which was chartered under a contract of affreightment to its related company COSCO Europe. OKI was an Indonesian paper pulp manufacturer, whose facilities included a jetty connected to the mainland by a trestle bridge.

In May 2022 a cargo of pulp was loaded on board *Le Li* under the contract of affreightment. Nine bills of lading were issued on the Congenbill 94 form, purporting to incorporate a charterparty. On departure, *Le Li* made contact with the trestle bridge causing some 220 m to collapse. CSSC commenced an action against COSCO Europe before the Singapore court, seeking to limit its liability, and applying for a limitation decree. OKI filed a notice of intention to contest on 11 October 2022. On 26 October 2022 OKI commenced proceedings against CSSC in an Indonesian court, claiming damages in respect of the allision. OKI unsuccessfully challenged the jurisdiction of the Singapore court, and following dismissal of its application withdrew its notice of intention to contest. It was therefore no longer a party to these proceedings.

In August 2023 CSSC applied for an anti-suit injunction against OKI in respect of the Indonesian proceedings, which was served on OKI before it withdrew. On 5 October 2023 the limitation decree was granted, and the application for an anti-suit injunction was dismissed in December 2023.

This was the consideration of further arguments submitted by CSSC in support of an anti-suit injunction. CSSC argued by way of further grounds that there was an arbitration agreement between CSSC and OKI; that there was an exclusive jurisdiction agreement in favour of Singapore courts; that the Indonesian proceedings were vexatious and oppressive; and that the Indonesian proceedings threatened the integrity of the Singapore courts.

[39] Joined Cases C-345/22 to C-347/22; [2025] Lloyd's Rep Plus 8.

[40] [2024] SGHC 92; [2025] Lloyd's Rep Plus 9.

At first instance S Mohan J dismissed the application. He acknowledged that the bills of lading incorporated the head contract of affreightment including the arbitration clause, which encompassed "any dispute arising out of or in connection with this contract".

He went on to observe that OKI's claim in the Indonesian proceedings was to be characterised as one in tort, whether one considered the question under Singaporean, Indonesian or English law. While there was no doubt about the "one-stop shop" presumption, the question arose as to what test to apply to a stand-alone claim in tort. The causative connection test[41] was preferable to the "parallel claims" test[42] or the "closely knitted" test.[43] OKI's claim could not be recast as a claim in contract and was not causatively connected in any meaningful sense to the bills of lading.

In the judge's view, it did not follow from the contractual nature of a defence or cross-claim that it was a matter within the ambit of the arbitration agreement. The question was whether the parties objectively intended for such a matter to be settled by arbitration, having regard to the surrounding facts and contractual terms considered in the round. All things considered, the language of the contractual defences raised by CSSC did not support the inference that OKI's claim was one that, on an objective analysis, the parties contemplated and intended to settle pursuant to the arbitration agreement. Collateral claims by CSSC relating to the safe port warranty were not weighty enough to displace that conclusion.

The judge held that a non-contractual anti-suit injunction would not be issued where Indonesia was the place of the incident and the applicable Singapore statutes[44] were not forum mandatory. In any case the dispute was not before the Singapore courts, so Indonesia was the natural forum for the tort claim.

The conclusions so far were subject to the appeal noted below. The following conclusions were not subject to the appeal. In response to the assertion that there was an exclusive jurisdiction agreement, the judge held that there was not, where the letter of undertaking offer had been made "subject to our clients' final approval": that was at best an invitation to treat.

The judge's final conclusion was that the Indonesian proceedings were not vexatious or oppressive, as they did not constitute an illegitimate attempt at frustrating or subverting CSSC's chosen limitation forum. Even if the Indonesian courts were to refuse recognition of the Singapore limitation decree, this would not constitute vexation and oppression.

CSSC appealed. The appeal related solely to the question of whether the Indonesian proceedings had been commenced in breach of an arbitration agreement.

The Court of Appeal prefaced its judgment with a series of guiding statements. It characterised the issue as being the scope of the extended limits of the phrase "arising out of and in connection with this contract". While it was clear that this phrase extended the scope of the arbitration clause beyond the contract, the question was how to define the limits of that extension. The court dismissed all three tests considered by the judge as "simply labels", devised for the factual situation in which they arose. There was no one-stop shop presumption, and "forum fragmentation is a fact of life". The courts "should not steer away from that outcome".[45]

The court nevertheless went on to allow the appeal from the judge's judgment. The Indonesian proceedings had been commenced in breach of the arbitration agreement and the anti-suit injunction was granted. The court first endorsed the two-stage test adopted by the judge, noting that it was in line with existing case law and with the test applicable to a stay under section 6 of the International Arbitration Act.[46] These should, the court noted, be "essentially the same" as they were both predicated upon a breach of the arbitration agreement. The court should accordingly first determine what were the matter(s) or dispute(s) which the parties had raised or foreseeably would raise in the foreign court proceedings. At the second stage, the court must ascertain whether such matter(s) or dispute(s) fell within the scope of the arbitration clause. These were referred to as the "Identification Issue" and the "Scope Issue" respectively.

In identifying the matter, or substance, of the proceedings, the court must have regard not only to the claimant's pleaded issues but also to defences – including reasonably foreseeable defences – pleaded by the defendant. The court's role was to uphold the bargain between the parties. The merits of raised or foreseeable defences or cross-claims were irrelevant in that regard. A key consideration

[41] Derived from *Eastern Pacific Chartering Inc v Pola Maritime Ltd (The Pola Devora)* [2021] EWHC 1707 (Comm); [2022] Lloyd's Rep Plus 14.
[42] Derived from *Sea Master Special Maritime Enterprise v Arab Bank (Switzerland) Ltd* [2022] EWHC 1953 (Comm); [2022] Lloyd's Rep Plus 94.
[43] Derived from *Aggeliki Charis Compania Maritima SA v Pagnan SpA (The Angelic Grace)* [1995] 1 Lloyd's Rep 87, citing *Empresa Exportadora de Azucar v Industria Azucarera Nacional SA (The Playa Larga and Marble Islands)* [1983] 2 Lloyd's Rep 171.
[44] Merchant Shipping Act 1995 (2020 Rev Ed) and Carriage of Goods by Sea Act 1972 (2020 Rev Ed).
[45] At paras 1 to 5.
[46] International Arbitration Act 1994 (2020 Rev Ed).

was that the tortious claim, the contractual defence of negligent navigation and the cross-claim for breach of the Safe Port Warranty all shared a common connection: the question of the cause of the allision. The authorities, including those from which the judge had identified the three available tests, led to the conclusion that it was "unnecessary to examine whether the claims or defences were connected to the *legal relationship* constituted under the contract".[47]

The court concluded: "It was clear to us that the parties must have similarly contemplated that a pure tort claim for damage to the Trestle Bridge, caused during the performance of the contracts of carriage between the parties and where the foreseeable lines of defence included recourse to the provisions of those contracts, should be subject to the Arbitration Agreement."[48]

The next case does not strictly speaking concern bills of lading, but the misfortunes that may arise when letters of indemnity (LOI) replace the bill of lading. To have the desired effect the LOIs must be issued by a solvent party who must ultimately accept liability under them. In the event of insolvency, could some argument be made as to the liability of other, related parties?

In *Yangtze Navigation (Asia) Co Ltd and Another v TPT Shipping Ltd and Others*,[49] the claimant disponent owners had been the subject of misdelivery claims under bills of lading and sought indemnity under three LOIs issued by the first defendant. The claimant argued that the LOIs had been issued by the first defendant as agent for the second to fifth defendants. The first defendant was now in insolvent liquidation. The defendants challenged the jurisdiction of the court asserting that there was no good arguable case that they were principals in respect of the LOIs.

Christopher Hancock KC, sitting as a Judge of the High Court, first considered the threshold issue of service. The LOIs included English law and jurisdiction clauses. If there were contracts between the owners and the various defendants, those contracts would be subject to English jurisdiction and owners would be entitled to serve outside the jurisdiction under CPR 6.33. However, the charterparties were only relevant as background. The further defendants were not undisclosed principals thereunder. The LOIs were issued by the first defendant but not as agent of the

To have the desired effect letters of indemnity must be issued by a solvent party who must ultimately accept liability under them. In the event of insolvency, could some argument be made as to the liability of other, related parties?

further defendants as undisclosed principals. An appeal is currently before the Court of Appeal.[50]

Maersk Guinéa-Bissau Sarl and Another v Almar-Hum Bubacar Baldé Sarl[51] Maersk Guinea Bissau and Maersk A/S were the claimants and Almar-Hum was the defendant in a dispute concerning contracts of carriage between Almar-Hum as shipper and Maersk A/S as carrier to ship 150 containers of madeira wood from Guinea-Bissau to Huangpu. The contracts were made in December 2018, by means of the Maersk A/S online booking system which implied a sequence of exchanges of documents and approvals by means of box ticking. The standard terms contained a Himalaya clause and an exclusive jurisdiction clause designating the English courts. The cargo was shipped on board, but no bills of lading were issued due to incomplete information from Almar-Hum, until the Judicial Police attended Maersk's local offices and demanded the bills of lading. Eleven bills of lading were then issued to them in spite of the incomplete booking process. There was a competing demand for the bills of lading under an order issued by the local Civil Court and two further bills of lading were issued accordingly. Maersk GB, the local branch of Maersk, was a defendant in those court proceedings but had objected to jurisdiction. The cargo was eventually delivered in China.

Maersk A/S submitted that it was entitled to enforce both the exclusive jurisdiction clause and the Himalaya clause, asserting that although the proceedings in Guinea-Bissau were not brought against Maersk A/S, both clauses had been breached by virtue of the proceedings there against Maersk GB, and that Maersk A/S was entitled to enforce those breaches. They also submitted that the

[47] At para 101.
[48] At para 102.
[49] [2024] EWHC 2371 (Comm); [2025] Lloyd's Rep Plus 10.
[50] Per casetracker.justice.gov.uk as of 31 December 2024.
[51] [2024] EWHC 993 (Comm).

question of whether loss has been suffered by Maersk A/S in consequence of such breaches was a matter for a subsequent quantum trial, but that Almar-Hum's liability to Maersk A/S had been established. Almar-Hum did not defend the proceedings, but had at an earlier stage submitted arguments for its defence.

Jacobs J held that Almar-Hum was liable for damages or an indemnity for breach of the Himalaya and exclusive jurisdiction clauses in the relevant contracts of carriage.

Determining the contents of the contracts, the judge noted that Maersk had given plentiful notice of its standard bill of lading terms which Almar-Hum had accepted by ticking boxes during the booking process. The draft bills of lading had been supplied in advance, containing the same terms, so that the bills of lading were on the Maersk standard terms. Under those terms, Maersk A/S was the carrier in contracts for carriage between it and Almar-Hum. An argument that Maersk's standard terms were onerous or unusual in their entirety, requiring specific attention, was unsustainable.

At common law, enforcement of the Himalaya clause was not confined to its use as a defence. There was no logical reason why a party entitled to rely upon such a clause should not be able to use it in support of a claim for damages where there had been a breach taking the form of a claim precluded by the clause against a sub-contractor

In the judge's view, the Himalaya and exclusive jurisdiction clauses were not unusual or onerous to a shipper in the business of international trade. Nor were any of the other clauses. The judge found a breach of the exclusive jurisdiction clause: Almar-Hum's commencement and prosecution of proceedings in Guinea-Bissau was clearly in breach thereof so that Maersk A/S was entitled to damages.

The judge further found that Maersk A/S had a claim for damages for breach of the Himalaya clause arising from the commencement and prosecution of the proceedings in Guinea-Bissau. Clause 4.2(b)(i) of the bill of lading contained an undertaking by "the Merchant" that no claim or allegation would be made against any subcontractor of Maersk A/S. The definition of subcontractor included Maersk GB, so that there was an obligation on the part of Almar-Hum to indemnify Maersk A/S.

At common law, enforcement of the Himalaya clause was not confined to its use as a defence. There was no logical reason why a party entitled to rely upon such a clause should not be able to use it in support of a claim for damages where there had been a breach taking the form of a claim precluded by the clause against a sub-contractor.

Existing authorities on Himalaya clauses were to be distinguished as the clauses there were much narrower in scope.[52] The Himalaya clause at issue here expressly referred to the exclusive jurisdiction clause, clause 26. The Himalaya clause analysis was a contractual analysis, which led to the conclusion that there was a separate or collateral contract with the third party, Maersk GB, so that there was no difficulty in principle in holding that the exclusive jurisdiction clause could be enforced also by means of a claim for damages based upon breach of the clause.

The court was bound not to recognise the Guinea-Bissau Civil Court judgment relied upon by Almar-Hum, because each of the conditions in the Civil Jurisdiction and Judgments Act 1982 section 32 were fulfilled. It could accordingly not be relied upon by Almar-Hum as making the matter res judicata. Maersk could therefore advance its claims for three reasons: (i) the absence of jurisdiction on the part of the Civil Court, due to the exclusive jurisdiction clause; (ii) as a matter of Guinea-Bissau law the judgment was not final; and (iii) Maersk GB had been denied natural justice in relation to the conduct of the Guinea-Bissau proceedings.

[52] *The Mahkutai* [1996] 2 Lloyd's Rep 1.

General average

There was only one judgment concerning general average in the course of 2024, and an excellent case could be made that it ought to be considered under any of the Marine insurance, Bill of lading or Charterparty sections of this work.

In *Herculito Maritime Ltd and Others v Gunvor International BV and Others (The Polar)*,[53] *Polar* had been seized and held by pirates in the Gulf of Aden from October 2010 to August 2011. General average was declared upon arrival in Singapore. Based on the adjustment, the shipowners claimed under the general average bond from cargo owners and the guarantee from cargo underwriters. The cargo interests argued that the shipowners could not recover the ransom from them, because under the charterparty the shipowner must take out kidnap and ransom (K&R) insurance and war risks insurance, the premium for which was to be paid by charterers up to a capped amount, and those charterparty provisions had been incorporated into the cargo interests' bills of lading.

The arbitral tribunal concluded that the cargo owners were not liable to pay general average contributions in respect of the ransom payment. This was reversed at first instance, Sir Nigel Teare holding that the shipowner's bargain with charterers on K&R and war risks insurance did not entail a commitment by the shipowner not to seek contribution in general average from bill of lading holders.[54] The cargo interests' appeal was dismissed.[55] The cargo interests appealed to the Supreme Court, and this appeal was also dismissed.

In a judgment that arguably somewhat reduces the impact of *The Ocean Victory*,[56] the Supreme Court determined that there was no insurance code or fund agreed in the voyage charter. There was no principle exempting charterers from liability for breaches of contract or in general average merely on the ground that they had directly or indirectly provided the funds whereby owners insured themselves against such damage. The construction of each charterparty must turn on consideration of its own detailed terms. Here, the charterers obtained the benefit that shipowners could not refuse Gulf of Aden passage, and the situation was distinguishable from that in *The Evia (No 2)*,[57] which should be followed with caution. If there was an insurance code or fund, the charterparty clauses would have been incorporated into the bills of lading as they were germane or directly related to the carriage, but there was no justification for manipulating them where this would result in uncertainty for bill of lading holders as to the insurance premium.

Sale of goods

There were only two sale of goods decisions in the course of 2024, one from the Supreme Court and one from the London Circuit Commercial Court. Both arose out of GAFTA arbitrations.

In *Sharp Corp Ltd v Viterra BV*,[58] Viterra had sold to Sharp a cargo of lentils and peas on c&f free out (C&FFO) Mundra terms. The contracts incorporated GAFTA Form 24 including the default clause at clause 25. The cargo was loaded in Vancouver for shipment to India. Sharp exercised its option for a cash against documents payment which required payment before the arrival at Mundra.

Sharp did not pay, and the goods were discharged and warehoused to Viterra's order. Agreements and addenda were signed reversing part of the sale, allowing Sharp to pay for the rest of the goods in instalments, which it did not. Viterra sought the release of the goods, but before it could obtain the goods an import tariff was imposed on them. As a result, by the time release was obtained, the – already customs cleared – goods had increased in market value, giving rise to an issue on how damages were to be calculated. It was not in dispute that the damage calculation was to be based on the GAFTA default clause para (c) namely "the actual or estimated value of the goods, on the date of default". But was the effective date the date of Viterra's declaration of default, or the later date on which it obtained access to the goods?

A GAFTA Appeal Board chose the latter date, valuing the goods based on a constructed theoretical cost of buying equivalent goods fob Vancouver, Canada on the default date and shipping those goods to arrive in Mundra a month after that default date, instead of valuing them on the available market in Mundra on that date.

53 [2024] UKSC 2; [2024] 1 Lloyd's Rep 85.
54 [2020] EWHC 3318 (Comm); [2021] 1 Lloyd's Rep 150.
55 [2021] EWCA Civ 1828; [2022] 1 Lloyd's Rep 375.
56 *Gard Marine & Energy Ltd v China National Chartering Co Ltd (The Ocean Victory)* [2017] UKSC 35; [2017] 1 Lloyd's Rep 521.
57 *Kodros Shipping Corporation v Empresa Cubana de Fletes (The Evia) (No 2)* [1982] 2 Lloyd's Rep 307.
58 *Sharp Corp Ltd v Viterra BV (previously known as Glencore Agriculture BV)* [2024] UKSC 14; [2024] 1 Lloyd's Rep 568.

Sharp appealed. The parties differed on the calculation of damages. Was the appropriate calculation the market value at the discharge port; or the theoretical cost on the date of default of buying those goods fob at the original port of shipment, plus the market freight rate for transporting the goods from that port to the discharge port free out? At first instance, the judge dismissed the appeal.[59] Upon Sharp's appeal, the Court of Appeal remitted the awards to the Appeal Board.[60]

Viterra appealed to the Supreme Court, arguing that the Court of Appeal had erred in: (i) amending the question of law for which permission to appeal had been given; (ii) deciding a question of law which the GAFTA Appeal Board was not asked to determine and on which it did not make a decision; and (iii) in making findings of fact on matters on which the Appeal Board had made no finding. Sharp cross-appealed on the measure of damages. The Supreme Court allowed both the appeal and the cross-appeal.

The Supreme Court first provided guidance on the procedural matters concerned, concluding that the Court of Appeal had not erred in amending the question of law for which permission had been given. The facts to be considered included not only those mentioned in the question of law for which permission to appeal had been granted. That question was being asked based on the findings of fact in the Appeal Award.

However, the correct approach to the Arbitration Act 1996 section 69(3)(b) was that the point had to have been fairly and squarely before the arbitration tribunal for determination. The Court of Appeal's conclusion that the contracts had been varied was not permissible, where the issue of contract variation had not been before the Appeal Board. The court's jurisdiction was limited under section 69 to appeals on questions of law, and did not extend to errors of fact or any power to make its own findings of fact. The determination that discharge had been made against the original bills of lading was a finding of fact which the Court of Appeal had not been entitled to make.

Having considered the procedural issues, the Supreme Court went on to answer the question of law in the cross-appeal on damages. Where as here the seller's substitute transaction was not at arm's length, then under the GAFTA default clause 32(c) the damages were to be assessed on the basis of "the actual or estimated value of the goods, on the date of default". In line with sections 50(3) and 51(3) of the Sale of Goods Act 1979 and the common law, this was to be by reference to the price of a substitute sale or purchase in that market. Where as here there was no evidence of an available market for a substitute transaction on C&FFO Mundra terms, the proper approach was to be guided by the principle of mitigation and to consider the market in which it would be reasonable for the sellers to sell the goods. The obvious and clearly reasonable market for Mundra customs-cleared goods was the ex warehouse Mundra market.

The Supreme Court noted that the approach of the Appeal Board had not involved a substitute sale of goods but the notional purchase of a further consignment of goods in a different market in a different continent (fob Vancouver) resulting in the arrival of the goods at Mundra weeks after the date of default. This reflected neither the principle of mitigation nor the commercial realities of a seller left with contract goods following a buyer's default.

It was, in their Lordships' view, reasonable to assume that the sellers' associated company had taken advantage of the market uplift in value for the goods in Mundra. That benefit should be brought into account on the assessment of damages in accordance with the compensatory principle. In the absence of an available market for an exact substitute, a flexible approach was permissible both at common law and under the GAFTA default clause. such as through making reasonable adjustments so as to arrive at a like-for-like value.

The Appeal Board had erred in law in its assessment of damages. The value of the goods under para (c) of the Default Clause fell to be measured by reference to a notional sale of the goods in bulk ex warehouse Mundra on 2 February 2018.

Ayhan Sezer Yag ve Gida Endustrisi Ticaret Ltd Sirket v Agroinvest SA[61] concerned a buyer wanting to withdraw from a sale and its rights, if any, to receive a refund of the advance payment made.

Agroinvest had sold rape meal and soybean meal to Ayhan under a contract concluded on 2 April 2018. The contract incorporated the Grain and Feed Trade Association contract 100 (GAFTA 100) including the default clause 23, and provided for an advance payment upon signing the contract, which Ayhan had paid on 23 March 2018. There was as of this date incomplete agreement as to terms. Debate followed as to whether the meal would be treated as non-GMO (genetically modified) in Turkey.

[59] [2022] EWHC 354 (Comm); [2022] 2 Lloyd's Rep 43.
[60] [2023] EWCA Civ 7; [2024] 1 Lloyd's Rep 553.
[61] [2024] EWHC 479 (Comm).

From 4 April to 7 May, the claimant repeatedly requested repayment of the advance payment, and the defendant repeatedly sought to show that the meal would be acceptable as non-GMO in Turkey, insisting also that the advance payment was non-refundable. The claimant notably emailed on 27 April to say that no vessel should be chartered. On 7 May, the defendant set out its points a final time, concluding: "Otherwise, we might wash out our contract for a fee to be agreed".

> *Bunge v Nidera* was not authority for the proposition that where a contract had been discharged by the acceptance of an anticipatory repudiatory breach, the date of default was to be determined by the date on which performance of the contract should have taken place, but for that repudiatory breach and its acceptance

A GAFTA Board of Appeal found that the claimant had repudiated the contract by the email dated 27 April 2018 and that the repudiation had been accepted by the defendant on 7 May 2018. It further found that the advance payment was non-refundable. The Board determined that the defendant was entitled to damages calculated by reference to the date of default as found by the Board; but that this claim was extinguished by the advance payment/guarantee.

On appeal under section 69 of the Arbitration Act, the claimant accepted that it was in breach of contract through its repudiation or renunciation and it was common ground that the repudiation was anticipatory. The claimant's case was that the date of default in the case of an anticipatory repudiatory breach of contract was the date of the repudiation, not the date of the acceptance of the repudiation.

The questions upon appeal were: (a) what was the "date of default" for the purpose of clause 23(c) of GAFTA 100? and (b) on the true construction of the contract between the parties, was the advance payment non-refundable in the event of breach on the part of the claimant?

HHJ Pearce allowed the appeal in part. Agreeing with the claimant, he determined that the true date of default under the contract was the date when the Board found the claimant to be in repudiatory breach, namely 27 April 2018, and not the date of the acceptance of that breach.

The judge noted that in looking for the true meaning of the words "date of default", it was necessary to have in mind the fulfilment obligations in the contract. He went on to observe, with reference to *Chitty*,[62] that where an anticipatory breach had been accepted, contractual obligations were discharged by that acceptance. The true meaning of "date of default" could not be later than the date of acceptance of a repudiatory breach.

In the case of an actual breach by non-performance of an extant obligation to perform the contract, that was the clearest case of default, but even where the breach was anticipatory, the date of default in a GAFTA default clause was the date of the breach. The Board had erred in law on that issue.

The judge distinguished *Bunge SA v Nidera BV*.[63] The case was not authority, whether binding or persuasive, for the proposition that where a contract had been discharged by the acceptance of an anticipatory repudiatory breach, the date of default was to be determined by the date on which performance of the contract should have taken place, but for that repudiatory breach and its acceptance. Nor could that conclusion be reached based on the terms of the GAFTA default clause itself or the surrounding circumstances of the contract.

The Board had further erred in concluding that the advance payment was non-refundable. Had the parties intended that, they would have used express language of security or called it a deposit.

Carriage of passengers

There was only one passenger-related decision in the year, although as ever further decisions from the lower courts probably go unreported and unnoted. In *Sherman and Another v Reader Offers Ltd*,[64] the claimants had bought a

[62] Paragraph 28-071.
[63] [2015] UKSC 43; [2015] 2 Lloyd's Rep 469.
[64] [2024] EWCA Civ 412; [2024] Lloyd's Rep Plus 30.

cruise from the defendant travel company, not by booking online with reference to a travel brochure in the usual manner, but via phone after having heard of the planned Northwest Passage cruise from friends. The cruise was a disappointment due to ice conditions in the Northwest Passage as a result of which the itinerary changed.

The claimants sought damages for breach of contract and compensation under the Package Travel Regulations.[65] The parties disagreed on whether the contract had been concluded before or after the supply of a detailed travel itinerary, which the claimants said formed part of the contract. The Recorder and the judge at first instance had both identified an earlier date as the conclusion date, but differed on the meaning of the terms agreed over the phone. The Recorder favoured the defendant's interpretation, while the judge favoured the claimants' interpretation. The travel company appealed.

The Court of Appeal dismissed the appeal and remitted the case to the County Court for assessment of quantum. Males LJ, giving the leading speech, first observed that in the case of a cruise, the itinerary would be an essential term for the purposes of regulation 12 of the Package Travel Regulations. In line with the consumer protection objective of the Regulations, when regulation 12 was applicable, the holiday organiser was required to notify the consumer of the change and inform them of their rights to either withdraw and receive a full refund or proceed with the holiday, allowing the consumer to make an informed choice.

While the Package Travel Regulations formed part of the background to the formation of the contract, they did not themselves dictate when a contract was made. This was a matter of conventional principles of contract formation. Here, the detailed itinerary formed part of the contract, and there had been a major change or significant alteration of that itinerary with inadequate information given to the claimants, including no information on rights to cancel or a refund. It was right that the travel company should bear the risk of a change to the itinerary after describing the trip in glowing terms.

Ship transactions

Under this header, we review a number of cases concerned with transactions relating to ships: building, selling, mortgaging and repairing.

Ship building

In *Seatrium New Energy Ltd (formerly known as Keppel FELS Ltd) v HJ Shipbuilding & Construction Co Ltd (formerly known as Hanjin Heavy Industries and Construction Co Ltd)*[66] the question concerned faulty repairs by a shipbuilder's sub-contractor.

The plaintiff (Keppel) was a Singapore incorporated company in the business of designing and building mobile offshore rigs and vessels. The defendant sub-contractor (Hanjin) was a Korean incorporated company in the business of manufacturing various types of vessels and providing ship repair and logistical services.

On 17 August 2012 Keppel had agreed to design, build and deliver a semi-submersible accommodation unit, *Floatel Endurance*, to its customer F on 16 April 2015. DNV was to supervise according to its rules and standards. Keppel appointed Hanjin as a sub-contractor in a contract dated 17 January 2013, amended by a "side letter" on 27 December 2013, according to which Hanjin was to build the pontoons and lower columns. The vessel was delivered on 16 April 2015. The following year, F notified Keppel of welding defects in the pontoons and Keppel notified Hanjin, attributing the defects to Hanjin. Keppel undertook the repairs in a Singapore shipyard.

Keppel sought damages on the grounds that Hanjin's work was defective in breach of the contract, and that Hanjin had owed a duty of care in tort that could be imposed in addition to the contractual duty. Hanjin argued that the works were compliant with the contract, rejecting the claim that the works were defective. Hanjin further asserted that the contract had been varied by the side letter to limit Keppel's right to claim to specified warranty obligations, and denied any duty in tort.

At first instance[67] the judge dismissed Keppel's claim, in spite of making a finding that the defects were indeed

[65] Package Travel, Package Holidays and Package Tours Regulations 1992 (SI 1992 No 3288).

[66] [2024] SGHC(A) 26; [2025] Lloyd's Rep Plus 11.
[67] [2023] SGHC 264; [2024] Lloyd's Rep Plus 7.

attributable to Hanjin's workmanship. The judge held that the claim was contractually precluded by the plain, negotiated words of the side letter.

Keppel's appeal to the Appellate Division was dismissed. The court stated that the warranty period had expired by the time the defects were discovered, and that any duty of care in tort was also contractually precluded.

Ship sale

The Court of Appeal's judgment in *King Crude Carriers SA and Others v Ridgebury November LLC and Others*[68] not only reversed the first instance judgment from 2023,[69] but it did so with some careful and valuable reasoning on deposits, conditions precedent to payment of an accrued debt and the "principle in *Mackay v Dick*".[70]

The parties had entered into contracts for the sale of four second-hand oil tankers. The contracts were separate but materially identical and based on the Norwegian Sale Form 2012. The memoranda of agreement contained a clause providing for the transfer of management of the vessels. The buyer under each contract was to lodge a deposit under clause 2 which set out the steps to be taken to place the deposits in escrow. The sellers gave notice of readiness but the buyers failed to lodge the deposits in accordance with the contract. The sellers terminated the contracts and commenced arbitrations seeking to recover the deposits as debt or damages. Following separate arbitrations for each contract, the sellers appealed one award and the buyers appealed the other three.

At first instance[71] Dias J allowed both appeals. She concluded that the majority had erred in law in considering that the doctrine of deemed fulfilment formed part of English law. The buyers' admitted breach did not entitle the sellers to recover the deposits as debts, even though an express condition precedent to the accrual of those debts had not been met.

As a matter of general principle, she held that *Mackay v Dick* was authority only for the proposition that a contract may be construed as containing an implied term of cooperation wherever justified on grounds of obviousness, necessity and business efficacy in accordance with normal principles. Breach sounded in damages.

Only the sellers appealed this decision. They did so arguing for a principle that where the accrual of a party's obligation to pay a debt was subject to a condition, and the putative debtor wrongfully prevented that condition from being fulfilled, the condition was treated as dispensed with or fulfilled, with the result that the debt accrued. The buyers insisted that the appellant's remedy lay in damages and denied liability in debt on the basis that there was no such principle as argued for by the appellant.

The Court of Appeal allowed the appeal, Popplewell LJ giving the leading speech which it is impossible to do adequate justice with a brief summary. First, the court settled the issue of whether the claim lay in debt or damages. There was binding authority to the effect that had the deposits become due in accordance with clause 2, they would constitute debts owed by buyers to sellers notwithstanding that they were to be paid to a third-party stakeholder. The debts would remain due and payable after termination pursuant to clause 13.[72] This immediately dispensed with authorities on damages which were to be distinguished as not relevant to the present claim in debt.

The court noted that principles on debt accrued or payable in future were "uncontroversial".[73] The issue was with debt conditionally accrued, where the putative debtor wrongfully prevented that condition from being fulfilled, which required consideration of *Mackay v Dick* and how to interpret or apply the dicta of Lords Watson and Blackburn therein.

Popplewell LJ considered that although that was a Scottish Appeal and Lord Watson's reasoning was based on Scottish law with civil law origins, it was reflective of English common law at the time. Indeed, there was a consistent line of binding authority[74] that the principle expressed by Lord Watson in *Mackay v Dick* was a principle of English law applicable to conditions precedent to the accrual of debts, not merely conditions precedent to the payment of accrued debts. Accordingly, non-fulfilment of the condition precedent formed no defence to the claim in debt. The authorities provided a consistent body of case-law for that principle.

[68] [2024] EWCA Civ 719; [2024] 2 Lloyd's Rep 140.
[69] [2023] EWHC 3220 (Comm); [2024] 2 Lloyd's Rep 115.
[70] *Mackay v Dick* (1881) 6 App Cas 251.
[71] [2023] EWHC 3220 (Comm); [2024] 2 Lloyd's Rep 115.
[72] Referring to Griffon Shipping LLC v Firodi Shipping Ltd (The Griffon) [2013] EWCA Civ 1567; [2014] 1 Lloyd's Rep 471.
[73] [2024] EWCA Civ 719; [2024] 2 Lloyd's Rep 140 at para 27.
[74] At para 63. See *Panamena Europea Navigacion (Compania Limitada) v Frederick Leyland & Co Ltd* (CA) (1943) 76 Ll L Rep 113; (HL) (1946) 80 Ll L Rep 205; and *William Cory & Son Ltd v London Residuary Body & Western Riverside Waste Authority*, 5 November 1990, unreported.

Popplewell LJ considered the legal basis of the rule to be that it represented the presumed contractual intention of the parties. Its application required an agreement that the obligor would not do the thing preventing a condition precedent from being fulfilled so as to prevent the debt accruing and/or becoming payable, in either implied or, as here, express terms.

In the result, an obligor was:

> "not permitted to rely upon the non-fulfilment of a condition precedent to its debt obligation where it had caused such non-fulfilment by its own breach of contract, at least where such condition was not the performance of a principal obligation by the obligee, nor one which it was necessary for the obligee to plead and prove as an ingredient of its cause of action, and save insofar as a contrary intention was sufficiently clearly expressed, or was implicit because the nature of the condition or the circumstances of the case made it inappropriate."[75]

Concluding on the substance, Popplewell LJ determined that the effect of the buyers' breach of contract was to avoid a liability to pay US$4.94 million in circumstances where it was contractually agreed to be payable as a forfeitable deposit, irrespective of any damages claim or loss quantified by reference to market movement. To require such payment was holding the buyers to their bargain by requiring them to provide the contractual benefit they had agreed to provide, of which they had sought to deprive the sellers by their wrongful breach of contract. The bargain was for non-compensatory debt in the form of a liquidated forfeitable sum, and a remedy in non-compensatory debt, rather than compensatory damages, reflected the loss of bargain.

A sale ending badly was the background to *Orion Shipping and Trading Ltd v Great Asia Maritime Ltd (The Lila Lisbon)*.[76] The claimant seller had sold to the defendant buyer the Capesize bulk carrier *Lila Lisbon* pursuant to a memorandum of agreement (MOA) dated 4 June 2021 and based on an amended Norwegian Saleform 2012. The planned delivery date was originally 2 August 2021 and the MOA's cancelling date was 20 August 2021, extended to 15 October 2021. The sellers failed to deliver and on 18 October 2021 the buyers had the vessel arrested at Zhanjiang and sought security for a claim for damages for the difference between the contract price and market price of the vessel.

The Sellers' Default clause, clause 14 of the MOA, provided that should sellers fail to give notice of readiness, buyers were to have the option of cancelling the agreement with the immediate return of their deposit. By the same clause, buyers were to have "due compensation" in the event sellers failed to give notice of readiness by the cancelling date, for the buyers' "loss and for all expenses together with interest if their failure is due to proven negligence".

An arbitration tribunal awarded damages to buyers as a result of the "proven negligence" of the sellers in having failed to give notice of readiness by the agreed cancelling date. The damages reflected the usual measure of damages in sale of goods cases for non-delivery under section 51 of the Sale of Goods Act 1979, being the difference between the market price of the vessel and the contract price as at the date of termination of the contract.

> There was no positive obligation on sellers, capable of giving rise to a breach of contract, to tender notice of readiness or to be ready to deliver by the cancelling date. There was simply a right for the buyers to cancel the contract if notice of readiness was not given by the cancelling date

On the sellers' appeal, the issue for decision was whether the buyers were entitled to claim market damages under clause 14 as awarded by the tribunal or whether, as argued by the sellers, such damages were only recoverable in respect of a repudiatory breach or breach of condition. The buyers' alternative case was that time of delivery was of the essence and that their cancellation under clause 14 was in substance a termination for breach of condition, entitling them to damages on the basis awarded in any event.

On a careful reading of the contract and identification of the obligations arising thereunder, Dias J allowed the appeal and set aside the award in so far as it awarded market damages under clause 14 of the MOA. She observed that crucially, there was no positive obligation on sellers, capable of giving rise to a breach of contract, to

[75] At para 85.
[76] [2024] EWHC 2075 (Comm); [2025] 1 Lloyd's Rep 101.

tender notice of readiness or to be ready to deliver by the cancelling date. There was simply a contractual right for the buyers to cancel the contract if, for whatever reason, notice of readiness was not tendered by the cancelling date, to which clause 14 attached certain specific consequences.

The judge went on to determine, obiter, that even if there was a positive obligation on sellers to tender notice of readiness by the cancelling date, it was not a condition. In the absence of such a condition, the parties must be taken to have agreed that the right to cancel in itself did not confer any entitlement to loss of bargain damages, absent a repudiatory breach. Buyers' unilateral decision to terminate pursuant to a cancellation right could not transform the case as a matter of law from one of failure to tender notice of readiness into one of non-delivery. That precluded recovery of the normal market measure of damages stipulated in section 51(3) of the Sale of Goods Act.

Upon the judge's textual reading of the MOA, the only obligation upon the sellers was to tender notice of readiness, failing which the buyers had the right to reconsider the purchase, but not the right to recoup its losses from the seller. A breach of contract would have given rise to a right to damages, but where there was no obligation to give notice of readiness, there could be no breach of that duty.

The decision of Dias J is on appeal and listed to be floated for a hearing on 9 or 10 July 2025.

Ship finance

Ship mortgages continue to give rise to case law as secured creditors enforce their security.

Eurobank SA v Momentum Maritime SA and Others[77] concerned the duties of a creditor secured in the vessel. The claimant bank had issued a loan facility of about US$12 million, secured by mortgages over the vessels, to the first to third defendants, and the fourth to sixth defendants provided personal guarantees. The borrowers had failed to make some repayments and their insurance policies had expired following non-payment of premiums – these were events of default permitting the bank to accelerate repayments, which it did on 18 October 2019. The bank also made demands under some of the guarantees. The vessels were already under arrest in Djibouti when the bank arrested them in February 2020. At some point they were sold by the Djibouti Port Authority in a private sale.

The defendants argued that the bank had an equitable duty to act reasonably in the realisation of any mortgage property, and to obtain a true market price for the vessels. The bank asserted that it was under no such duty since it was unaware of the sale, did not bear any responsibility for it, and did not receive any of the proceeds. The bank applied for summary judgment.

HHJ Pelling KC awarded summary judgment to the bank. The judge considered it as fanciful on the factual material available that the claimant was responsible for the sale. Where all that a marine mortgagee did was to exercise a power of arrest, its sole duty was to do so in good faith for the purpose of obtaining repayment under the loan agreement secured by the mortgage. If a mortgagee took possession, it would assume a duty to take reasonable care of the property. However, the evidence did not show that the claimant had taken any form of possession of the vessels. Arresting a vessel was not taking possession of it.

There was also no evidence that the private sale by the Port Authority had been made by or behalf of the claimant, and there was therefore no breach of any duty to obtain the market price at the date of the sale. Nor was the bank under any duty to collect, or attempt to collect, some or all of the proceeds of sale apparently received by the Port Authority.

The scope of the security of the mortgaging bank was the issue in *KfW IPEX-Bank GmbH v Owner of the Vessel*

[77] [2024] EWHC 210 (Comm); [2025] Lloyd's Rep Plus 12.

"World Dream"[78] – did the security include gaming equipment on board?

KfW was a bank incorporated in Germany with limited liability. WDL was a company incorporated in Bermuda and the registered owner of *World Dream*, a large cruise ship built to carry more than 3,000 passengers. The entertainment facilities on board included gaming equipment spread across several locations on board. The construction and acquisition of the vessel was financed by a syndicated term loan from several financial institutions, including KfW. Under an agreement dated 28 May 2014 but subsequently amended twice, the lenders had granted WDL a term loan facility for the US dollar equivalent of €606,842,214.

In January 2022 WDL's ultimate parent company GHK commenced voluntary winding-up proceedings in the Supreme Court of Bermuda, and winding-up orders were made on 7 October 2022. These were events of default under the agreement, which entitled KfW to accelerate the loan. Notice was given to WDL demanding immediate repayment of all outstanding sums. On 2 March 2022 KfW arrested *World Dream* as security for its claims against WDL under the agreement. Default judgment was entered against WDL, and the vessel and its bunkers were sold in February 2023.

WDL now sought a declaration that any gaming equipment on board the vessel did not fall within the scope of a ship mortgage it had granted in favour of the claimant. The question arose whether the mortgage included or extended to the "gaming equipment" on board the vessel. S Mohan J considered that it was not enough to assume in the abstract that there was "gaming equipment" belonging to WDL on board the vessel at the time the vessel was arrested or sold, as the case may be. There must be some degree of specificity as to what those objects were in order to satisfy the court that the declaration would not be in vain. WDLs application was dismissed on this basis.

The judge then considered more substantive arguments. As a matter of law, the reference to the "ship" in the mortgage was capable of including "gaming equipment" where the vessel functioned as a floating resort, designed to offer passengers a multi-faceted entertainment and leisure experience during the voyage. The evidence did not support the proposition that gaming was only a minor aspect of the experience available to the passengers – it was clearly essential entertainment and therefore necessary for the prosecution and accomplishment of the vessel's adventure. The "gaming equipment" was therefore a part of the "ship" subject to the mortgage.

The judge observed that the authorities did not lay down a precise test for determining if an object qualified as an "appurtenance" of a vessel, but did indicate that an object may be regarded as an "appurtenance" if (a) it "appertained" or "belonged" to the ship; and (b) it was carried "for the object of the voyage and adventure on which she is engaged". In this case there was no evidence to show that the "gaming equipment" on board the vessel had ever been, or was ever intended to be, used on other vessels: the equipment belonged to the vessel, and thus qualified as "appurtenances".

In another Singapore decision handed down by S Mohan J, *Da Hui Shipping (Pte) Ltd (In Creditors' Voluntary Liquidation) v An Rong Shipping Pte Ltd (In Liquidation); (Société Générale, Singapore Branch and Another, Non-Parties)*,[79] the claimant DH and defendant AR were co-borrowers, and jointly and severally liable under a lending agreement with BofA. DH and AR were companies in the same group. The loan was secured by mortgages against DH's ship *Sea Equatorial* and AR's ships *Ocean Goby* and *Ocean Jack* and was set up in three tranches, one for the refinancing of each vessel.

Following the financial troubles in April 2020 of HLT, a related company, DH entered into creditors' voluntary liquidation on 19 November 2021 and AR entered into compulsory liquidation on 4 July 2022. By then, *Sea Equatorial* had already been sold by its owners and the proceeds had been used to pay the bank towards all three tranches. The other two vessels were later also arrested and sold by the bank.

DH considered that it had overpaid on the loans and sought permission to commence and continue suit against AR, a declaration that AR was indebted in contribution to DH in the sum of US$13,021,856.67, and a declaration that DH was entitled to be subrogated to any extinguished securities held by the bank pursuant to the loan agreement.

The judge gave permission to commence and continue DH's suit against AR, but dismissed the rest of the application. It was settled law that a co-debtor or co-surety who discharged more than their fair share of a debt could

[78] [2024] SGHC 56.

[79] [2024] SGHC 166.

seek contribution for the excess from other co-debtors or co-sureties. The presumption of equality was displaced in this case by the understanding between the parties that the debt burden was to be divided proportionately, not equally. The burden of repaying the debt could be equitably apportioned in the manner contended for by DH, giving DH a valid claim in contribution.

Proceeding on the hypothesis of the availability of partial subrogation as an equitable remedy, subrogation was not precluded simply because DH had only contributed towards the partial discharge of the joint and several liability to the bank. However, the ship mortgages had been fully enforced and spent through the arrest and sale of *Ocean Goby* and *Ocean Jack* by the bank, so that DH could not be subrogated to the securities. Nor could DH succeed to the bank's priority status as mortgagee, where that would amount to an ex post enlargement of the amount secured by the mortgages, the bank already having been paid out of the sale sum.

Ship repairs

A ship repairer sued in tort or bailment had no liability to the registered owner of the vessel in *Golden Pacific Shipping & Holdings Pte Ltd v Arc Marine Engineering Pte Ltd*.[80] The plaintiff owner of the vessel *Bravely Loyalty* had bareboat-chartered its vessel to Bravely International. The bareboat charterer's manager, MSI, had the main engine repaired by the defendant ship engine repairer Arc Marine.

The plaintiff took the view that the repair works were deficient and brought an action against the repairer in tort and bailment. The plaintiff claimed that the defendant owed the plaintiff a duty of care in negligence to exercise all reasonable skill and care in carrying out the repair works on the vessel and main engine; alternatively, that it had bailed the vessel to Bravely which had sub-bailed it to the defendant and that the sub-bailee owed a duty of bailment to the plaintiff to take reasonable care of the vessel during the time of physical possession.

The defendant disputed that it owed a duty of care to the plaintiff in tort or bailment and that the plaintiff had suffered any loss, and asserted in the alternative that the plaintiff had failed to mitigate its losses.

Lee Seiu Kin J dismissed the claim. There were no contractual constraints on the plaintiff's right to claim. The bareboat charterparty required the charterer to maintain the vessel, but unlike in the authorities there was no closer detail as to subcontractors or the means to performing that obligation. None of the clauses went so far as to commit the plaintiff to look to the charterer for redress.

> *Golden Pacific v Arc Marine* does not shut down the option of suit by a registered owner against a ship repairer that is a sub-contractor of the bareboat charterer. It does make such suit subject to precise conditions

However, although the bareboat charterer was a bailee under the charterparty, the defendant was not a sub-bailee. On the facts, it had not had exclusive possession of the vessel or the main engine. Further, on the engineering and other evidence, the defendant had not breached its duty of care.

The decision does not shut down the option of suit by a registered owner against a ship repairer that is a sub-contractor of the bareboat charterer. It does make such suit subject to precise conditions. The sub-bailee must have been in exclusive possession of the vessel – perhaps in the manner of a dry dock – to qualify as a bailee. Some breach of a duty of care is also necessary for a successful case.

[80] [2024] SGHC 15.

Seafarers

With seafarers, the issue of jurisdiction remains contentious. They must be as entitled to have employment disputes settled judicially as any other group of employees, but in a post-employment situation the former employer may not be inclined to simply accept the jurisdiction of the seafarer's choice of court. In *Yacht Management Co Ltd v Gordon*,[81] the appellant YMCL was a super-yacht fleet manager based in Guernsey with no place of business or business activities in UK. The respondent G had been an employee of YMCL, working on a superyacht from March 2019 until October 2021, when her contract of employment, which provided for English law and exclusive jurisdiction, ended with redundancy. Following the redundancy, G brought claims under the Employment Rights Act 1996 and the Equality Act 2010.

YMCL challenged jurisdiction on the basis that the yacht had never entered UK waters and that G's employment therefore was not subject to the 1996 or 2010 Acts. An agreed statement of facts stated that the claimant's "tours of duty" on the yacht all began and ended outside Great Britain.

The judge at first instance held that the tribunal had jurisdiction to hear the claims. "Tours of duty" and "duties under the contract" were not synonymous. G's base during the employment was Aberdeen which was sufficient to found territorial jurisdiction.

YMCL appealed referring to the agreed fact that the tours of duty were outside Great Britain and that therefore the claimant's duties did not begin or end in the UK and that it had not been open to the judge to conclude that G's base had been in Great Britain.

The Employment Appeal Tribunal dismissed the appeal. Lord Fairley observed that it appeared that the Employment Judge had conflated international jurisdiction and territorial jurisdiction. It appeared to be accepted that international jurisdiction was at hand, while territorial jurisdiction was in dispute.

Lord Fairley noted the general rule that the place of employment was decisive, but that exceptions could be made where the connection between Great Britain and the employment relationship was sufficiently strong to enable it to be presumed that Parliament must have intended the right to claim unfair dismissal under the ERA should apply to the employee in question.[82]

He went on to observe that determination of the implied limits on territorial jurisdiction required an analysis of the entire factual matrix, including how the contract was being operated in practice and as a whole, rather than looking at the place of work specified in the contract of employment. Resolution of the issue of territorial jurisdiction depended upon a careful analysis of the facts of each case and should not be confined to deciding whether a given employee fit within categories created by previous case law. For peripatetic seafarers,[83] the employee's "base" could be where their duties began and ended.[84]

Despite the consideration in *Windstar Management Services Ltd v Harris*,[85] the expression "tours of duty" in the agreed facts was not a term of art and must be construed objectively. On the facts, it was a narrower concept than "duties under the contract". Those duties began and ended in Great Britain.

A rule that an employee's base must be an office or a headquarters or equivalent place would risk falling into the error of assessing the location of a "base" not from the perspective of the employee but from the perspective of the employer.[86]

[81] [2024] EAT 33.

[82] At para 32, referring to *Ravat v Halliburton Manufacturing and Services Ltd* [2012] UKSC 1.

[83] See *Lawson v Serco* [2006] UKHL 3.

[84] As in *Diggins v Condor Marine Crewing Services Ltd* [2009] EWCA Civ 1133, noted by Liz Williams, "Employment of seafarers", (2009) 9 LSTL 3 5.

[85] [2016] UKEAT 0001_16_1105; [2016] 2 Lloyd's Rep 109.

[86] For further consideration of *Yacht Management Co Ltd v Gordon*, see Hannah Stones, "Seafarers' employment: are 'tours of duty' and 'duties under the contract' synonymous in determining the 'base' of the employee?" (2024) 24 LSTL 3 7.

Marine insurance

We report three cases of marine insurance from 2024, two of which involved the application or explanation of the provisions of the Insurance Act 2015.

The first is *Delos Shipholding SA and Others v Allianz Global Corporate and Specialty SE and Others*.[87] In this case, the Indonesian Navy arrested many ships including the insured vessel *Win Win* for anchoring in territorial waters without permission. The ship was detained for almost a year before being formally redelivered to the assured. According to the war and political risks policy, the vessel would be deemed a constructive total loss (CTL) if the assured "has lost the free use and disposal of the Vessel for a continuous period of [six (6)] months ..." The assured made a claim against the insurers for the vessel's CTL. The assured also claimed damages for late payment of the indemnity under section 13A of the Insurance Act 2015. The insurers rejected the claim on the grounds that: (1) the loss was not fortuitous; (2) it fell within a policy exclusion; (3) the assured's unreasonable steps in negotiating the vessel's release broke the chain of causation between its detention and the loss; and (4) the assured had failed to disclose a material fact.

On the first point, Dias J held that the vessel's detention was sudden and unexpected, because neither the captain nor the commercial manager of the shipowner had subjective knowledge that the anchorage at the "Waiting Location" spanning both international, Malaysian and Indonesian territorial waters would result in the vessel's arrest. Secondly, the insurance policy excluded "loss, damage or expense caused by, ... Arrest, restraint or detainment under customs or quarantine regulations and similar arrests, restraints or detainments not arising from actual or impending hostilities ...". The judge interpreted the wordings, holding that there was insufficient similarity between the vessel's arrest for a traffic offence as in this case and an arrest under the Indonesian Customs Law or Quarantine Law to attract the operation of the exclusion.

Regarding the issue of suing and labouring, Dias J found no unreasonable conduct by the assured, given the fact that there was a great deal of uncertainty and confusion in the early days of the arrest. Lastly, the insurers argued that the insured had failed to disclose that the sole nominee director of the shipowner Delos, along with other people, faced criminal charges for drug trafficking. Failing to disclose a material fact under section 4(3) and (8)(c) of the Insurance Act 2015 was discussed judicially for the first time. The judge rejected the argument, holding that the director was not "senior management" for the purposes of section 4(3) of the 2015 Act. In any event, the defendants were held not to have been induced by the alleged non-disclosure.

The claimants' separate claim for damages pursuant to section 13A of the Insurance Act 2015 was dismissed. The Insurance Act 2015 section 13A implies a term into every insurance contract that the insurer is to indemnify the assured within a reasonable period of time. Failing to do that would allow the assured to claim contractual damages caused by the insurers' breach.

Dias J held that on a balance of probabilities, the assured had failed to establish that any particular or similar Eco cape vessel would have been available to purchase in February 2020 or at any time thereafter. Even assuming that damages could be awarded for delay after proceedings had been commenced, it was not easy to determine whether the delay in payment was unreasonable, and the claimants were not able to prove that they had suffered a loss in the form of an opportunity to purchase a replacement vessel.

An appeal is pending before the Court of Appeal, with a tentative trial date of 8 or 9 July 2025.[88]

The next case was *MOK Petro Energy FZC v Argo (No 604) Ltd and Others*.[89] The judge here provided helpful analysis of sections 10 and 11 of the Insurance Act 2015 and examined whether an inherent feature of a blended gasoline cargo could be deemed physical damage for the purposes of a particular average insurance claim under the Institute Cargo Clauses (ICC) (A). The claimant was insured under an all-risks marine cargo open cover policy for petrochemical shipments incorporating the ICC (A). The cover included a cut-through clause that allowed the insured to directly claim from its reinsurers, who provided back-to-back cover.

[87] [2024] EWHC 719 (Comm); [2024] 1 Lloyd's Rep 489.

[88] Per casetracker.justice.gov.uk as of 31 December 2024.

[89] [2024] EWHC 1935 (Comm); [2024] Lloyd's Rep IR 585.

The cargo was a blend of gasoline and methanol, drawn from four separate shore tanks at the OTT terminal at Sohar, and blended on board the vessel. Quality and quantity were determined and certified at the load port using shore tank samples taken before loading. Two quality certificates provided that the cargo met the contractual specification upon departure from Oman. Upon arrival in Yemen the cargo was discovered to be off-specification and unsellable due to an elevated phase separation temperature (PST). The cargo was rejected by the purchasers and attempts to find remedial solutions were unsuccessful, leading to the sale of the gasoline to a salvage buyer.

The insured sought indemnification under its all-risks marine cargo policy for the diminished value of the gasoline shipment, including related costs and expenses. The assured contended that the cargo, originally meeting specifications at the loading port in Oman, became fortuitously contaminated with water during loading. The insurers rejected the claim of contamination, arguing instead that the cargo was already off specification before loading, and such blending events were outside the policy's scope of cover. They further contended that regardless of the contamination issue, the insured was not entitled to any indemnity due to a breach of an express survey warranty requiring the insured to conduct inspections and obtain certifications by a qualified marine surveyor, as stipulated in the policy terms.

> Until this case, there had been no substantial judicial interpretation of the meaning of the provision that "non-compliance with the term could not have increased the risk of the loss which actually occurred"

Regarding the cargo contamination issue, the court found that on the balance of probabilities the samples taken at the time of loading could be relied on, and that the cargo was off specification when loaded. Therefore, no damage had occurred during the voyage that would be covered by the policy. Further, the court did not accept the insured's argument that the actual blending of the off-specification cargo was a fortuity covered by the policy. The insured product did not exist and was not covered until it was fully loaded onto the named vessel in the specified quantity. Any issues arising from the blending were not "damage" to the insured product (which did not yet exist) and would be outside the scope of the cover. In other words, there was no damage during the voyage because the blending happened long before the shipment. In addition, on the facts found by the judge, it was inevitable that the blend produced by the blending of the gasoline and methanol blend stocks in the proportions in which they were loaded would undergo phase separation at relatively warm temperatures and therefore would not be able to pass standard quality tests. Therefore, there was no fortuity.

Regarding the issue of breach of warranty, since the insured's claims had already failed on the contamination issue, the judge's discussion of the breach of warranty was obiter. Until this case, there had been no substantial judicial interpretation of the meaning of the expression "non-compliance with the term could not have increased the risk of the loss which actually occurred".[90]

The judge provided detailed commentary on the breach of the survey warranty, which necessitated two distinct actions: inspection and certification. The judge held that although an inspection had indeed occurred, the delay of nearly six years in issuing the certificate did not meet the industry standard for timely certification, constituting a breach of the warranty. Even though the breach was specific to the certification, the judge ruled that the warranty should be assessed as a whole, meaning both the inspection and certification aspects were crucial in evaluating whether the breach increased the risk of the actual loss occurring, which was water damage to the cargo. Given that a breach in the inspection could increase the likelihood of loss, the overall breach of the survey warranty was significant for assessing whether the insurers would be on risk. In the result, even if the insured had succeeded on its primary arguments of water contamination during loading, the claim would still have failed.

Permission to appeal was refused by the Court of Appeal on 21 October 2024.[91]

In a final marine insurance case worth noting, *MS Amlin Marine NV v King Trader Ltd and Others*,[92] the judge confirmed that in the context of marine insurance, third

[90] Insurance Act 2015, section 11(3).
[91] Per casetracker.justice.gov.uk as of 31 December 2024.
[92] [2024] EWHC 1813 (Comm); [2024] Lloyd's Rep IR 703.

parties were prevented by a "pay-to-be-paid" clause from bringing a claim against insurers under a charterers' liability insurance. After concluding a time charterparty, the charterers took out charterers' liability insurance with MS Amlin. During the cover period, in February 2019, the vessel grounded in the Solomon Islands. On 25 March 2021 the charterers went into insolvent liquidation. In March 2023 an LMAA arbitration tribunal found that the charterers were liable in damages to the owners and their P&I Club in a sum exceeding US$47 million. On 24 April 2024 the charterers were wound up under the Insolvency Act 1986.

The owners and their P&I Club commenced proceedings against the charterers' insurers under the Third Parties (Rights Against Insurers) Act 2010. The policy took the form of a Certificate which incorporated a Booklet containing a "Charterers' Liability: Marine Liability Policy" wording. The Booklet contained a pay-to-be-paid clause, stating: "It is a condition precedent to the Assured's right of recovery under this policy with regard to any claim by the Assured in respect of any loss, expense or liability, that the Assured shall first have discharged any loss, expense or liability".

The effect of such clauses on a third party was confirmed by the House of Lords in *The Fanti and The Padre Island*:[93] the third parties acquired no greater rights under the contracts of insurance than the Club's members had and the "pay-to-be-paid" provision would, therefore, defeat their claim if the member's claim would have failed. That case was litigated under the Third Parties (Rights Against Insurers) Act 1930. The 2010 Act repealed the 1930 Act and does not negate the effect of a "pay-to-be-paid" clause for contracts of marine insurance, except where the liability is for death or personal injury.[94]

The owners and their P&I Club argued that either the "pay-to-be-paid" clause did not form part of the policy, or as a matter of construction it should be interpreted as not applying where they sought to enforce the policy as third parties, or the assured was unable to discharge the liability or was insolvent, or that a term should be implied into the clause to this effect.

It was held by Foxton J that the clause was valid in marine insurance law and barred claims against the insurers. The judge ruled that, despite its subsidiary nature, the "pay-to-be-paid" clause was not inconsistent with the policy's main purpose, was not transformative of the insurance contract and was no different in essence from equivalent provisos in P&I and hull policies. The judge also held that the pay-to-be-paid clause was not "hidden away in the thickets of the Policy" and unenforceable on that basis. The case affirms that under the 2010 Act and case law, "pay-to-be-paid" clauses are a recognised and well-established element of marine insurance.

An appeal from the decision of Foxton J is awaiting a hearing by 22 December 2025.[95]

[93] *Firma C-Trade SA v Newcastle Protection and Indemnity Association (The Fanti and The Padre Island)* [1990] 2 Lloyd's Rep 191.

[94] Third Parties (Rights Against Insurers) Act 2010, section 9(6).

[95] Per casetracker.justice.gov.uk as of 31 December 2024.

Admiralty

In 2024 there was the usual cocktail of Admiralty decisions, but with a few novel twists.

Collision

There were only two collision decisions in the year, one from the Admiralty Court of Ireland and one from the Admiralty Judge of the King's Bench.

The latter was *Denver Maritime Ltd v Belpareil AS (The Kiran Australia and The Belpareil)*,[96] which arose from a drama in utter slow motion – a rare collision case where lookout played no part.[97] On 9 November 2021 *Belpareil* and *Kiran Australia*, two Supramax bulk carriers, collided in the Bay of Bengal. *Kiran Australia* was discharging at anchor when *Belpareil* started dragging its anchor. Once the vessels were close, *Kiran Australia* went astern to attempt to weigh anchor and *Belpareil* made way ahead, steering to starboard to avoid grounding. The combined movements resulted in contact between *Kiran Australia*'s rudder and propeller and *Belpareil*'s port anchor cable, closely followed by hull-to-hull contact. By the end of the trial, the allegations of fault against *Kiran Australia* were limited to C-3 onwards.

Andrew Baker J, sitting with two Elder Brethren of Trinity House as nautical assessors, apportioned liability for the collision by 70 per cent to *Belpareil* and 30 per cent to *Kiran Australia*. The judge started by addressing the burden of proof and the multiple faults of *Belpareil*. He noted that the authorities showed that dragging anchor created a rebuttable presumption of negligence.[98] The dragging vessel must either show that the dragging was not due to negligence, or prove that the dragging was unavoidable even with the application of reasonable skill and care. *Belpareil* was therefore at fault

That fault was not insignificant. With prompt notification of *Belpareil*'s difficulty, *Kiran Australia* would have weighed anchor and kept well clear of *Belpareil*, and the collision would not have occurred. *Belpareil* was also at fault in not calling for tug assistance by c.23.40, as it was at fault in not warning other ships by then of the danger it posed, but the lack of promptness in calling for tugs was not causative of the collision. *Belpareil* was at fault in failing to drop its starboard anchor in response to realising that it could not rely on its main engine to arrest or control its dragging. *Belpareil* was finally at fault in maintaining Full Ahead.

But *Kiran Australia* was also at fault. The vessel had allowed itself to fall astern when, according to the Elder Brethren, a competent master would have tried to weigh anchor without dropping astern; and it had failed to take the one course of action it should have identified as available to it to avoid a collision, namely increase speed ahead.

The overall conclusion was that *Belpareil's* negligence caused the perilous situation, but after C-3 both parties were equally to blame.

In the second case, it was back to routine as lookout was central to the decision. In *MV Hua Sheng Hai v MFV Kirrixki*,[99] the bulk carrier *Hua Sheng Hai* and the fishing vessel *Kirrixki* had collided in international waters south-west of Ireland. Both parties commenced proceedings on liability, alleging that the other was to blame.

Hua Sheng Hai was proceeding on a course with *Kirrixki* on its starboard side when *Kirrixki*, having completed some engine maintenance, executed a turn and proceeded at speed. *Kirrixki*'s case was that this was done to release its nets. Issues arose as to what lights had been displayed and what thereby had been communicated between the vessels, and as to what collision rules applied.

Both parties argued that Rule 15 (crossing situation) was not applicable, *Kirrixki* because it was a trawler to which Rule 18 applied instead, and *Hua Sheng Hai* because of the relative movement of the vessels. *Kirrixki* further argued that while trawling, it was a vessel restricted in its ability to manoeuvre and that *Hua Sheng Hai* was under a duty to keep out of its way under Rule 18. *Kirrixki* asserted that it was the stand-on vessel. *Hua Sheng Hai* argued that *Kirrixki* had not kept its course and speed as a stand-on vessel was obliged to do.

The judge found fault on the part of both vessels. In his reasons, he first established that the Irish law of torts was to be applied, both because the parties agreed that this was so and on the authorities. Procedurally, as before the Civil Procedure Rules in England and Wales, the "preliminary act" had the status of admitted facts and did not need to

[96] [2024] EWHC 362 (Admlty); [2024] 2 Lloyd's Rep 323.
[97] COLREGs, Rule 5.
[98] Citing *The Exeter City v The Sea Serpent* (1922) 12 Ll L Rep 423, *The Brabant* (1938) 60 Ll L Rep 323.
[99] [2024] IEHC 182; [2024] Lloyd's Rep Plus 66.

be put to witnesses of fact, but the court was not bound thereby if it considered that there was more accurate and trustworthy evidence. Here, the terms of the preliminary act did not support the submission made by counsel for *Hua Sheng Hai* and ought to have been put to the witness.

The main fault of *Kirrixki* was that it had – admittedly – not been keeping a lookout in accordance with Rule 5, a major cause of the collision. Radar equipment on board had not been used, inconsistent with Rule 7(b). The judge observed that even if *Kirrixki* was entitled to priority, it was a breach of Rule 17(a) to – following a period of drifting – accelerate sharply and turn to the northwest. This was the fundamental cause of the collision and atrociously bad seamanship.

On the evidence, the speeds recorded for *Kirrixki* before the collision were inconsistent with expert evidence as to safe speeds for trawling and evidence of *Kirrixki*'s earlier trawling operations, showing that it was instead at the time of the collision proceeding to fishing grounds

Considering background context, the judge observed that the mere facts that the collision took place in a fishing zone or that the *Kirrixki* was a trawler were not on their own relevant to the fault of the *Hua Shen Hai*. There was no independent obligation to maintain a minimum closest point of approach. However, the *Hua Shen Hai* crew ought to have been more attentive to the movements of the trawler in circumstances where it erroneously appeared that *Kirrixki* was trawling so that *Hua Shen Hai* was the give-way vessel and ought to have taken earlier evasive action. Even if the *Kirrixki* was trawling and therefore the stand-on vessel, it was plainly not entitled to take a sudden turn into the path of *Hua Shen Hai* without even considering whether it was safe to do so and without keeping any look-out. That action set the vessels on a collision course and was entirely inconsistent with the rationale underlying Rule 17(a)(i) which required the stand-on vessel to maintain its course and speed. This resulted in an apportionment of blame by 85 per cent to *Kirrixki*.

It has become common in the English Admiralty court to apportion blame by considering mathematical multiples – for example: Vessel A is considered three times as much to blame as Vessel B and therefore liability will be apportioned by 75 per cent to vessel A and 25 per cent to vessel B.[100] This approach, referred to as degree of fault, relative degree of responsibility or relative degree of fault, was explained notably by Clarke J in *The Angelic Spirit and Y Mariner*[101] and frequently noted and applied by Teare J, notably in *The Samco Europe and MSC Prestige*[102] and *The Nordlake and The Seaeagle*;[103] and by Andrew Baker J in the three-way collision in *MV Pacific Pearl Co Ltd v NYK Orpheus Corp and Another (The Panamax Alexander, The NYK Orpheus and The NYK Falcon)*.[104] In *Belpareil*, the judge used it as one of two models to direct himself to a final apportionment.[105] The second model was a variant where he divided the faults into time periods before and after C-3, apportioning blame to *Belpareil* for before that period and near-equally thereafter. Both models resulted in the 70:30 split. In *The Kirrixki* the judge noted this approach in an erudite discussion of apportionment but sought a conclusive apportionment to *Kirrixki* which was nevertheless distinctly short of 100 per cent. The failures of *Kirrixki* were in the end simply "many times"[106] more significant.

Salvage

The silver salvor saga came to an end with the Supreme Court's judgment in *Argentum Exploration Ltd v Republic of South Africa*.[107] The judgment was handed down in spite of the parties' settlement a week earlier[108] – a shrewd move on the part of the salvors who otherwise would have had no rights to the silver and would be left with the entire costs of salvage and presumably at least some of the storage costs.

In this litigation, the salvor Argentum sought reward for its services in retrieving 2,634 silver bars from the Indian Ocean. The bars had been on board SS *Tilawa* when it was sunk by torpedoes in 1942. The claim had been served on the silver bars but their owner at the time of sinking was South Africa ("RSA") which claimed immunity from the jurisdiction of the High Court.

The RSA's immunity depended on section 10(4)(a) of the State Immunity Act 1978, namely whether the bars of silver and the vessel carrying them were, at the time the cause of action arose, "in use or intended for use for commercial purposes". This depended on whether the

[100] The explanation is generally attributed to Brandon, "Apportionment of Liability in British Courts under the Maritime Conventions Act 1911" (1977) 51 Tulane Law Review 1025, in particular page 1041.

[101] [1994] 2 Lloyd's Rep 595.
[102] [2011] EWHC 1580 (Admlty); [2011] 2 Lloyd's Rep 579.
[103] [2015] EWHC 3605 (Admlty); [2016] 1 Lloyd's Rep 656.
[104] [2022] EWHC 2828 (Admlty); [2023] 2 Lloyd's Rep 83.
[105] At para 143.
[106] At para 227.
[107] [2024] UKSC 16; [2024] 1 Lloyd's Rep 585.
[108] Judgment at para 119.

status of the silver bars in 2017, when the cause of action arose, was that of having lain on the seabed for 70 years or whether their status was that applicable in 1942 at the time of the sinking. The RSA's retort was that the silver was intended for coinage; a non-commercial purpose.

At first instance,[109] the judge found that in 1942 the silver had been intended for a predominantly sovereign use, which was not challenged upon appeal. It was further held that the RSA was not entitled to immunity as the proceedings fell within the 1978 Act's exception for cargoes that, when the cause of action arose, were "in use or intended for use for commercial purposes". The RSA's appeal was dismissed,[110] and so it appealed to the Supreme Court.

> In *Argentum* it was the use or intended use to which the state had decided to put the property concerned, and not the transactions or activities from which the property originated, that determined whether there was immunity

The Supreme Court allowed the appeal, ruling that the RSA was entitled to immunity. It considered the legislative background to the 1978 Act. In the 1970s there had been near absolute immunity from actions in personam and absolute immunity in Admiralty actions in rem. Immunity was absolute in the sense that it did not distinguish between the sovereign and non-sovereign activities of a state. The State Immunity Act 1978 should be understood in the context of introducing the European Convention on State Immunity 1972 and the Brussels 1926 Convention into domestic law. These represented restrictive immunity, drawing a distinction between acts of a state de jure imperii and acts done de jure gestionis.

The Supreme Court observed that the Brussels Convention made states subject to the same rules of liability in respect of vessels owned or operated by them and cargoes owned by them in articles 1 and 2, and disapplied those rules in respect of certain ships and cargoes in article 3. The court went on to hold that section 10(4)(a) of the State Immunity Act 1978 should be construed, so far as possible, so as to be consistent with article 3(3) of the Brussels Convention. As the judge had found, the silver was being "carried" for the relevant purposes under article 3(3), as it was being carried to South Africa in order to be minted into coinage, and substantially for a governmental and non-commercial purpose.

A curious feature of the set of facts before the courts in this litigation was that the cause of action arose in 2017, upon salvage, but the relevant circumstances dated back to 1942. The question if the "use" of the cargo was arguably different in nature if determined by reference to 1942 or to 2017. The lower courts grappled with this question. The Supreme Court resolved it saying that when interpreting the phrase "at the time when the cause of action arose" in section 10(4)(a) of the 1978 Act, it was appropriate to "have regard to" the status of the vessel and cargo in 1942, although the cause of action arose only with the act of salvage in 2017. On that basis, stating that the silver was "in use" by the government while it was being carried on the vessel did not accord with the ordinary and natural meaning of those words. In section 10(4)(a), it was the use or intended use to which the state had decided to put the property concerned – here, minting coinage – and not the transactions or activities from which the property originated that determined whether there was immunity. Whether something was a cargo was primarily a question of fact.

Seeking an interpretation commensurate with the intention behind article 3(3) of the Brussels Convention, the Supreme Court concluded that a state should be immune from interference with its cargo which was transported on a merchant ship and intended for use for a governmental purpose. The second paragraph of article 3(3) left in place the immunity from in rem proceedings established by the first paragraph, but provided that there should be no immunity for in personam claims.

The Supreme Court concluded that the claim was not founded on any commercial activity or alleged breach of duty on the part of the government. The claim to salvage was not based on any contract of salvage but on the fact that the government was the owner of the cargo which was salved. As a matter of customary international law it was both permissible and necessary to have regard to the use and intended use of the cargo. This approach was also consistent with the Brussels Convention.

[109] *Argentum Exploration Ltd v The Silver, and all Persons Claiming to be Interested In and/or to Have Rights in Respect of, The Silver* [2020] EWHC 3434 (Admlty); [2021] 2 Lloyd's Rep 1.
[110] [2022] EWCA Civ 1318; [2023] 1 Lloyd's Rep 405.

The question of how to determine the "use" of the cargo presented a stark issue on the facts of this case: according to the letter of the law, the "use" was to be determined with reference to the time the cause of action arose.[111] This was in 2017, upon salvage. Determining the "use" of a cargo that had lain on the seabed for 70 years was a somewhat abstract exercise with which the first two instances grappled.[112] The Supreme Court's resolution was to say that in interpreting the phrase "at the time when the cause of action arose", it was appropriate to "have regard to" the status of the vessel and cargo in 1942.

It may be observed that their Lordships gave no substantive reason for this approach, except that the judge was cited with approval as having applied the law "intelligently rather than mechanically". This is clearly a determination on the particular facts with which the courts were presented and it may not be advisable to interpolate from this particular ruling to a different context. While the strictly technical approach of assessing the use of the cargo in 2017 is logically correct, it is also unquestionably the case that a cargo can be of no "use" at all on the seabed – other than perhaps as an artificial reef; in which case it is arguably no longer a cargo.

Considering then the use of the cargo in 1942, the Supreme Court considered that it did not accord with the ordinary and natural meaning of the words "in use" to say that the silver was "in use" by the government while it was being carried on the vessel. In section 10(4)(a), it was the use or intended use to which the state had decided to put the property concerned – here, minting coinage – and not the transactions or activities from which the property originated that determined whether there was immunity. Whether something was a cargo was primarily a question of fact.

On the facts, there were two competing "uses" available: carriage or coinage. The Supreme Court opted for the intended use, observing that this was generally likely to be more apposite for cargo. On this approach, "use" in section 10(4)(a) refers to the vessel and "intended use" to cargo on board. Although the text does not expressly make this distinction, it seems a reasonable approach to the language.

Having concluded that the 1978 Act should be interpreted in light of its purpose of implementing the Brussels Convention, the Supreme Court went on to observe that the intention behind article 3(3) of the Brussels Convention was that a state should be immune from interference with its cargo which was transported on a merchant ship and intended for use for a governmental purpose. The second paragraph of article 3(3) left in place the immunity from in rem proceedings established by the first paragraph, but provided that there should be no immunity for in personam claims. As section 10 expressly applies to admiralty proceedings, this seems a reasonable interpretation.

The second salvage case in 2024 was the Court of Appeal's decision in *Smit Salvage BV and Others v Luster Maritime SA and Another (The MV Ever Given)*[113] where it upheld the judge's decision in a decision laconic for the Court of Appeal. The litigation arose out of the grounding of the container vessel *Ever Given* in the Suez Canal on 23 March 2021. By the time the vessel was refloated on 29 March, the maritime salvage company Smit had a salvage team on board and two tugs assisting. The two defendants were the owners of the vessel.

The claimants – Smit and its contractors – now sought salvage under the Salvage Convention 1989 or at common law. The defendants disputed that salvage services had been provided as alleged and further asserted that if salvage services had been rendered, they were performed under a pre-existing contract concluded on 26 March 2021, and not as volunteers.

Once the vessel had been refloated, the parties entered into a written jurisdiction agreement dated 25 June 2021 between the claimants, the defendants and their insurers. This was the preliminary issue of whether an agreement had been concluded. It was the defendants' case that communications had addressed all necessary terms and caused a contract to be concluded on 26 March 2021. The claimants disputed that any contract had come into being and asserted that the parties had still been negotiating.

The judge at first instance[114] had held that no contract such as that alleged by the defendants had been concluded. An intention to be bound could not be found where it was not the only reasonable connotation of the parties' exchanges and conduct, taken as a whole. The owner interests appealed. The Court of Appeal upheld the judge's judgment. The parties' communications did not evidence an intention to be bound.

[111] These comments were first published in *Lloyd's Shipping & Trade Law*: Johanna Hjalmarsson, "Carriage or coinage?" (2024) 24 LSTL 6 6.

[112] Katherine Reece-Thomas comments that the "majority in the Court of Appeal had lost sight of the sovereign purpose for which the Silver was intended to be used", in "State immunity and sunken treasure: finders will not always be keepers" [2024] LMCLQ 539, at page 545.

[113] [2024] EWCA Civ 260; [2024] 2 Lloyd's Rep 86.

[114] [2023] EWHC 697 (Admlty); [2023] 2 Lloyd's Rep 201.

Procedural issues relating to a salvage claim were the issue in *Boluda Towage Rotterdam BV and Others v Elise Tankschiffahrt KG and Another (The VB Rebel)*.[115] The small inland tanker *Stela* had on 14 November 2023 grounded in the port of Scheurhaven and the tug *VB Rebel* had quickly come to her assistance and refloated her, having picked up a warning to *Stela* on radio traffic. Before parting company, the two masters had both signed a Certificate of Safe Delivery provided by Boluda. This was a short document essentially confirming completion of the services and containing a referral of disputes to English law and London jurisdiction. The claimants were the operator (Boluda), owner (Rebel) and crew of the tug. The defendants were the owner and charterer of the tanker. Proceedings had been commenced by the owner and charterer of *Stela* before a Netherlands court in January 2024 against Boluda and Rebel, but not against the crew. The *Stela* parties there sought a declaration that they were not liable for salvage. Before the Admiralty judge, the claimants sought a salvage reward and an anti-suit injunction and the defendants sought the setting aside of the proceedings and a stay of the claims of the second and third claimants against the second defendant.

This was Andrew Baker J's consideration of the application for an interim anti-suit injunction. He granted the injunction only insofar as it concerned claims by the owners of *Stela* against Rebel, the owners of the tug. The reasons against injunctive relief in *Donohue v Armco*[116] did not apply where there were no arguable claims arising between some of the multiple parties. That included any claim against *Stela*'s charterer, for which there was no basis for jurisdiction and no basis for relief by way of anti-suit injunction. The charterer was not arguably bound by the governing law and jurisdiction clause. These proceedings must be set aside. On the same reasoning, there was no basis for jurisdiction for any claim by Boluda. It was not entitled to or bound by the jurisdiction clause. These must also be set aside. However, the claim by Rebel and the crew against the owner of *Stela* should not be stayed. The Dutch court was plainly not the more appropriate forum in view of the jurisdiction clause.

Limitation of liability

Limitation of liability for wreck removal has suddenly become a live issue before the courts in recent years. The latest instalment in the debate comes from the Federal Court of Australia in the form of *CSL Australia Pty Ltd v Tasmanian Ports Corporation Pty Ltd and Others (The Goliath)*.[117]

Following an allision in the port of Devonport in Tasmania, CSL the owners of the bulk carrier *Goliath* sought declarations to limit liability and had set up a limitation fund. The defendant and counterclaimant TasPorts claimed in respect of a damaged wharf, two damaged tugs and their removal, and oil pollution cleanup costs. TasPorts asserted that CSL had no right to limit liability in respect of what it termed wreck removal costs under article 2(1)(d) of the Convention on Limitation of Liability for Maritime Claims 1976, articles 2(1)(a) and (d). TasPorts also relied on its standard terms and conditions which it argued meant that CSL had waived its right to limit liability for wreck removal claims. Clause 26.2 of the STCs read: "To the fullest extent permitted by Law, all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms that are not set out in these Terms and Conditions are expressly excluded".

> While forum shopping is generally frowned upon, the shipowner's right to choose its limitation forum is considered inalienable

Stewart J held that the STCs did not entail a waiver of the right to limit liability. In the absence of an express reference to the well-established right to limit, the clause referred to contractual rights under the law. He went on to hold that TasPorts' claims for wreck removal were subject to limitation. The claims fell within the language of both paras 2(1)(a) and (d) of the Limitation Convention. Not everything that fell within para (d) also fell within other paragraphs, so that (d) had independent work to do. Claims in respect of removing the wreck of the limiting

[115] [2024] EWHC 1329 (Admlty); [2025] Lloyd's Rep Plus 4.
[116] [2001] UKHL 64; [2002] 1 Lloyd's Rep 425.
[117] [2024] FCA 824; [2025] Lloyd's Rep Plus 15.

ship did not fall within (a) or (c). Paragraphs (a) and (c) should not be limited by reference to para (d).

Hong Kong courts recently decided a related issue in *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The Star Centurion and The Antea)*.[118] In that case, a private wreck remover acting under orders enjoyed the right to unlimited claims against the other party to a collision. In retrospect the issue of claims falling under both article 2(1)(a) and (d) of the 1976 Convention could easily have materialised in litigation sooner. Now that it has, a uniform solution is arguably desirable.

While forum shopping is generally frowned upon, the shipowner's right to choose its limitation forum is considered inalienable as shown in *Zurich Insurance Co Ltd (trading as Navigators and General) and Others v Halcyon Yacht Charter LLP and Another (The Big Kahuna)*.[119] In September 2022 a fire broke out aboard the motor cruiser *Big Kahuna* at Gouvia Marina in Corfu. Three other vessels sank as a result of the fire spreading, including the ketch *Halcyon*. The owners and insurers of *Big Kahuna* commenced a limitation claim in the Admiralty Court pursuant to the Limitation Convention. The only named defendant was Halcyon Yacht Charter LLP as owner of *Halcyon*. The claim was also expressed to be against all other persons claiming to have suffered loss and damage by reason of the fire on board the yacht *Big Kahuna*.

On 14 December 2023, the owners of Halcyon issued proceedings against the owners of *Big Kahuna* in the Court of First Instance of Piraeus. They also applied for a stay of the English limitation proceedings on the basis of forum non conveniens in favour of the courts of Greece. The issue of jurisdiction was important because the applicable limit in the English court was that for small craft. Before the Greek courts, a higher limit would apply to this incident.

Admiralty Registrar Davison declined to order the stay. While the natural forum for the underlying claims was Greece, the limitation claim was separate and distinct. Any article 4 defence was speculative and improbable and there was no need to decide the natural forum for such a defence. It was commonplace for the limitation claim and the underlying claim to be tried in separate jurisdictions and a shipowner was at liberty to choose its domiciliary court as the forum for the limitation fund. The claimants could not be accused of forum shopping where the defendant was English and had an English insurer and there was at least one other potential English defendant. The defendant's real complaint was the smaller limitation fund, but that was a legitimate juridical advantage where the limitation claim could be tried in England suitably for the interests of the parties and the ends of justice and where Greece had not been found to be clearly and distinctly the more appropriate forum for the limitation claim.

Rounding off the year, *Sea Consortium Pte Ltd (Trading as X-Press Feeders) v Bengal Tiger Line Pte Ltd*[120] provided guidance on the meaning of terms in limitation of liability. A fire on the container ship *X-Press Pearl* had started on 20 May 2021 and had culminated in the sinking of the ship on 2 June 2021 off Colombo in Sri Lanka, with the total loss of ship and cargo. The claimants were the registered owner, the bareboat charterer, the time charterer and associated entities. They had been granted the right to constitute a limitation fund and to limit liability.

The defendants BTL, MSC and Maersk had concluded contracts for the use of slots on board the vessel. These defendants applied for declarations that they were to be recognised as charterers and therefore shipowners under article 1(2) of the Limitation Convention with consequent rights to limit liability. The applications were unopposed.

The judge directed himself that a party to whom space on a ship was contracted for the performance by it, delegated to the ship, of its contractual obligations as carrier, would generally be an article 1(2) "charterer", given the ordinary connotation of that word and the purpose of the Convention. Based on a close interpretation of the three defendants' agreements, all three of them were to be regarded as slot charterers with a right to limit liability. Where the agreement was materially identical to the slot charters in *The MSC Napoli*,[121] this was a straightforward conclusion. In the agreement least similar to that in *The MSC Napoli*, carriage was to be pursuant to the slot charterer's bill of lading and it was to be regarded as the carrier. All three charterers were therefore slot charterers for the purpose of article 1(2).

[118] [2023] HKCFA 20; [2024] 2 Lloyd's Rep 435, noted in the 2023 edition of this work.
[119] [2024] EWHC 937 (Admlty); [2024] 2 Lloyd's Rep 109.
[120] [2024] EWHC 3174 (Admlty).
[121] *Metvale Ltd v Monsanto International Sarl (The MSC Napoli)* [2008] EWHC 3002 (Admlty); [2009] 1 Lloyd's Rep 246.

Vessel arrest

The question of vessel arrest in support of arbitral proceedings needs resolution by case law or statute in each jurisdiction. *OSV Crest Mercury 1 v Vision Projects Technologies Pvt Ltd*[122] was the appeal of such a decision. By a decision in July 2022 the Single Judge had declined to release from arrest the defendant vessel *OSV Crest Mercury 1*. The registered owner of the vessel was Continental Radiance (CR) which had bareboat-chartered it to Vision Projects (VP) on Barecon 2001 terms in October 2015 for five years. VP sought reimbursement for the costs of a special survey, drydocking, and various repairs among other expenses and had the vessel arrested in June 2021.

CR sought to vacate that order or reduce the security for costs on various grounds, including that the arrest was in reality to secure a claim in arbitration proceedings and that security for an arbitration proceeding in personam could not take the form of an Admiralty action in rem. An arbitration was in progress between CR and VP. CR submitted that arrest of a ship in aid of security for a domestic arbitration was legally impermissible based on the replacement of the personification theory by the procedural theory in *Republic of India and the Government of the Republic of India (Ministry of Defence) v India Steamship Co Ltd (The Indian Grace) (No 2)*.[123]

The court dismissed the appeal, holding that the judge had not erred in concluding that the mere fact that the dispute was amenable to arbitration did not imply that the vessel could not be arrested in an action in rem. The purpose of the plaintiff in invoking the admiralty jurisdiction could not affect the existence of that jurisdiction. The court went on to observe that it was settled law that an action in rem was converted into an action in personam only when the defendant: (a) entered an appearance; (b) submitted to the jurisdiction of the court; and (c) furnished security for release of the vessel. It further noted that in *Stolt Kestrel BV v Sener Petrol Denizcilik Ticaret AS (The Stolt Kestrel and The Niyazi S)*[124] it had been held that the observations in *The Indian Grace* regarding in rem and in personam actions were limited to the interpretation of section 34 of the Civil Jurisdiction and Judgments Act 1982.

In *Gordon v The Vessel "Southern Star"*,[125] the question before Stewart J was how to deal with caveats against release. *Southern Star* was a power catamaran used as a party boat, and had been placed under arrest in Sydney Harbour for a small maritime claim. The owner of *Southern Star* had another vessel, *Ambiance*, which was out of survey and moored elsewhere. Following the arrest, three caveats against arrest had immediately been entered, also for small claims.

The owners applied for urgent permission to trade the vessel while under arrest. The judge granted permission to trade the vessel within the confines of Sydney Harbour. It appeared likely that security for release would be agreed within the next few days. The loss of a fixture scheduled for 18.00 on the date of the decision could potentially lead to a greater loss than the relatively small claims forming the basis of the arrest; as would, in short order, the costs of arrest. The owner had committed to not selling its vessels or removing them from Sydney Harbour so that there was no risk to the security. Conditions for permission to trade included *Southern Star* not leaving Sydney Harbour, *Ambiance* to remain at its mooring, existing hull insurance to be maintained and the Admiralty Marshal to be notified of any charters.

The decision has all the hallmarks of a pragmatic decision on its own facts, where conditions were attached to prevent the loss of security.

Mistakes and misunderstandings among counsel, and difficulty obtaining instructions across time zones, appear to have been the reasons behind the decision in *Iveco SpA and Others v The Ship "Höegh London"*.[126] Time difference may also have played a part, it being more difficult to get instructions and advice through in a time-sensitive litigation.

The defendants' vehicle carrier *Höegh London* was arrested on 8 August 2024 at the Port of Brisbane. The arrest was in respect of damage to vehicles carried on board on the way to Port Elizabeth in South Africa.

The plaintiffs alleged that in about May 2024 they had engaged Höegh Autoliners AS Antwerp to carry vehicles from Antwerp in Belgium and Santander in Spain for carriage to Durban, Fremantle, Melbourne, Port Kembla and Brisbane. Bills of lading showed that Höegh Autoliners AS was the carrier. The vessel had encountered

[122] Commercial Appeal (L) No 30604 of 2022 in Interim Application No 3510 of 2022 in Commercial Admiralty Suit No 47 of 2022, High Court of Judicature at Bombay Admiralty and Vice Admiralty Jurisdiction in its Commercial Division, BP Colabawalla J and Somasekhar Sundaresan J, 7 May 2024; [2025] Lloyd's Rep Plus 18.
[123] [1998] 1 Lloyd's Rep 1.
[124] [2015] EWCA Civ 1035; [2016] 1 Lloyd's Rep 125.
[125] [2024] FCA 674; [2025] Lloyd's Rep Plus 16.
[126] [2024] FCA 901; [2024] 2 Lloyd's Rep 163.

> In *The Höegh London* the judge observed that arresting a ship was a serious matter, and a plaintiff should be ready to defend the basis for arrest at short notice

heavy weather while on her way to Port Elizabeth in South Africa causing structural damage to the vessel and severe damage to the plaintiffs' cargo. South African attorneys for both sides had been negotiating for some time before the vessel arrived at the Port of Brisbane and proceedings had been brought in the KwaZulu-Natal Local Division of the High Court of South Africa in Durban.

In Australia, the solicitor for the defendants offered a letter of undertaking (LOU) from defendants' P&I club on behalf of owners, requesting the release of the vessel. It was also warranted that there had not at any time been a demise charterer for the vessel. When this was conveyed to the plaintiffs' South African attorneys, they demanded that the LOU should cover also the time charterer's liabilities. Counsel for the defendants rejected this.

The vessel was arrested around 14.00 on 8 August 2024 based upon an application that named Höegh Autoliners Shipping AS and Höegh Autoliners AS as defendants. Discharge continued under arrest as the vessel's scheduled departure time was 20.00 the same evening.

The same evening defendants applied for a release from arrest. The application was heard the following day. The plaintiffs' case was that they were entitled to security covering the liabilities of not just the owner but also the contractual carrier. There were no further instructions because of the time difference.

Stewart J held that the vessel would be released from arrest. The judge first noted the formal error in the application. The writ cited corporations as the defendant rather than "a ship or other property" as required by the Admiralty Act, section 14. The claims made were both in personam and in rem in the same proceedings, which was prohibited by rule 18 of the Admiralty Rules. The writ would need to be amended.

Considering the statutory requirements of section 17 of the Admiralty Act, the judge noted that a plaintiff could proceed in rem on the basis of the shipowner's liabilities, and under section 18 on the basis of the demise charterer's liabilities. There was no basis for an action in rem in respect of the in personam liability of a party having some other relationship with the ship, such as being the time charterer.

Adopting a sterner tone, the judge observed that it was a serious matter to arrest a ship and a plaintiff must be prepared to defend the basis for arrest at short notice. The need to obtain instructions on the trite point of security against the contractual carrier was no proper basis to delay the inevitable release of the vessel.

The judge went on to note the likely cause of the unsuccessful application. In South Africa, an action in rem could be brought to attach the bunkers of a vessel as the time charterer's property to found or confirm jurisdiction for a proceeding against the time charterer. An attachment of that nature was not available in Australia.

Wrongful arrest

In *Unicious Energy Pte Ltd v Owners and/or Demise Charterers of the Ship or Vessel "Alpine Mathilde" (No 2)*,[127] the question was one of damages for wrongful arrest. The plaintiff had become subject to US sanctions by being designated on OFAC's Specially Designated Nationals and Blocked Persons List. The cargo at issue then also became blocked property.

The plaintiff terminated its sale contract for the cargo and sought, via a sham transaction using a proxy, to have the cargo delivered to itself. The defendant, a US person, could not deliver the cargo to the plaintiff without becoming subject to sanctions. When this failed, the plaintiff commenced arbitration against the defendant, alleging that it was not a US person and therefore in breach of the voyage charterparty under which the cargo was being carried.

The plaintiff had the defendant's vessel *Alpine Mathilde* arrested. The court had gone on to release the vessel, also granting the defendant permission to discharge and sell the cargo pursuant to a licence the defendant had obtained from OFAC. The court had also declined the plaintiff's application for the cargo to be released to it. The defendant's application for damages for wrongful arrest had been reserved and was now the matter before the court.

[127] High Court of Malaya at Kuala Lumpur, Ong Chee Kwan J, 30 January 2024; [2025] Lloyd's Rep Plus 6.

The plaintiff raised as a preliminary issue whether the court ought to stay the hearing of any submissions on damages for wrongful arrest, as a matter that should be heard by the arbitral tribunal.

The judge ordered the plaintiff to pay damages for wrongful arrest of the defendant's vessel. The plaintiff's point on deference to arbitration was dismissed – the claim for damages for wrongful arrest was not an issue before the arbitral tribunal and the claim would not be stayed on that basis.

The judge considered that the defendant would be entitled to damages for wrongful arrest if the arrest had been brought with so little colour or with so little foundation as to imply malice or gross negligence.[128] Here, the plaintiff had been aware that it did not have a good faith claim for breach of the voyage charterparty that would succeed in arbitration, but had nevertheless proceeded to arrest the vessel. The claims were in reality an attempt by the plaintiff to circumvent US sanctions.

The judge went on to note that an arrest based on section 11(1)(c) of the Arbitration Act 2005 was subject to the discretion of the court. It being a discretionary matter, the plaintiff was under a duty of full and frank disclosure of all material facts. Where a failure to disclose was deliberate, calculated to mislead or if it was caused by gross negligence or recklessness, it could also constitute a ground for awarding damages for wrongful arrest. The plaintiff had been selective with its facts and had proceeded to issue the notice of arbitration to serve as the basis to arrest the vessel as security for the arbitration despite having no valid reasonable cause of action against the defendant with regard to the blocked cargo. Had it presented all the relevant facts, including that there were justifiable or lawful reasons why the blocked cargo could not be discharged by the defendant to the plaintiff, a warrant of arrest would not have been issued.

Wrongful arrest was also the issue in a second case before the Malaysian court. In *China Star Chemical Shipping Ltd v Lingyang Shipping Navigation Ltd (The MT Lingyang)*[129] the plaintiff CSC had voyage chartered MT *Lingyang* from OS as registered owner. Upon notice of readiness at Khor Fakkan, CSC and OS agreed a location for STS transfer but OS declined to proceed without certain cargo origin documentation from CSC. CSC terminated the charterparty and arrested *Lingyang* as security for an arbitration in Singapore. The plaintiff claimed against the defendant instead of OS, asserting that OS had made the charterparty on behalf of the defendant and that the defendant was the registered owner when the cause of action arose. The defendant vessel owner applied to set aside the warrant of arrest and for damages for wrongful arrest or continuation thereof.

The judge granted the order to set aside the writ in rem and warrant of arrest, but not the damages, observing first, that the defendant was not the party liable under the charterparty. It had not contracted with the charterers or authorised OS to contract on its behalf.

The test was that a defendant was entitled to damages for a wrongful arrest where the arrest was brought with so little colour or with so little foundation as to imply malice or gross negligence.[130] The plaintiff had relied on a number of factors for the arrest. Most of those factors had turned out to be either not true or based on wrong suppositions and assumptions or were subsequently satisfactorily explained. However, it could not be said that the plaintiff had acted in bad faith or with gross negligence.

On the plaintiff's avowed fear of sanctions, the judge held that the plaintiff's refusal of a standard wording P&I Club LOU for the stated reason of a fear of sanctions and its request for guarantees in respect of the origin of the cargo were not unreasonable in view of the serious repercussions, were sanctions to be applied.

Judicial sale

Two judgments in the same litigation before Australian courts decided interesting issues on access to the funds resulting from the judicial sale of a vessel.

The first, *Dan-Bunkering (Singapore) Pte Ltd v The Ship Yangtze Fortune (No 3)*,[131] concerned the sale fund's availability for a demise charterer's debts. On 2 December 2022, the vessel *Yangtze Fortune* had been arrested in proceedings commenced by DB. CMET, a bunker supplier, entered a caveat against release. Default judgment was entered for DB and on 11 January 2023, a judicial sale was ordered. Before the vessel was sold, CMET withdrew its caveat. The sale fell through and CMET issued another caveat against release. On 7 March 2023 the second highest bidder executed the conditions of sale and then

[128] This test is derived from *The Evangelismos* (1858) 12 Moo PC 352.
[129] [2024] MLJU 359; [2025] Lloyd's Rep Plus 3.
[130] As noted above, this test is derived from *The Evangelismos* (1858) 12 Moo PC 352.
[131] [2024] FCA 219.

paid the purchase price. On 10 March 2023 the previous registered owners, SH, issued a writ against the vessel for unpaid bareboat charter hire, also giving notice of termination to its bareboat charterer. On 14 March 2023 the bill of sale was executed by the Admiralty Marshal.

The judge issued a notification of applications to determine priorities. In subsequent months, the highest ranking claims were paid but funds remained for distribution. CMET was aware of the deadline but did not file a claim as it appeared that the mortgagee's claim would use up the fund. The mortgagee withdrew its claim in September 2023. CMET learned of this fact in December 2023 and on 31 January 2024 filed an interlocutory application asserting a claim for bunkers supplied to the bareboat charterer in 2022 and seeking to claim against the proceeds of sale.

CMET applied for leave to file and serve a statement of claim against the proceeds of the sale and to be joined as plaintiff in the proceedings. This was a discretionary assessment turning on whether it had reasonable prospects of success and there being an adequate explanation for the failure to commence proceedings at an earlier time.

Stewart J dismissed the application. The demise charterparty had on any view terminated before the fund came into being by the sale on 14 March 2023. CMET's opportunity to bring proceedings in rem against the proceeds of sale under section 24 against the demise charterer under section 18(b) of the Admiralty Act had ceased by that date. Discretion would not be exercised to extend CMET's opportunity to file a claim.

In a novel twist, the registered owner of the vessel submitted a claim for hire. Also entitled *Dan-Bunkering (Singapore) Pte Ltd v The Ship Yangtze Fortune*,[132] the background was again that the ship *Yangtze Fortune* has been sold in a judicial sale with a remainder for distribution. Statements of claim against the fund were invited by 13 April 2023, and SHS and AGE filed claims. AGE's claim was based on an arbitral award in its favour and was not contested by other claimants. SHS was the owner of the vessel before the judicial sale and sought unpaid bareboat charterparty hire. The demise charterparty arrangement between SHS and YF was of a financial character and included the terms of transfer of ownership to YF at the end of the arrangement.

Stewart J ordered judgment for SHS and AGE. In respect of SHS' claim for unpaid charter hire, the judge reasoned that section 18 of the Admiralty Act 1988, providing for the right to proceed in rem on a demise charterer's liabilities, did not exclude claims by the vessel's owner. There was no discretion.

The claim of SHS against the fund was good and maintainable. The demise charterparty hire claim was a claim arising out of an agreement related to the carriage of goods or persons by a ship or to the use or hire of a ship, whether by charterparty or otherwise, as required by section 4(3)(f) of the Admiralty Act 1988. Although the demise charterparty was part of a wider sale or financing transaction, it operated as an agreement for the use and hire of the vessel.

The judge noted that at the time SHS commenced in rem proceedings against the vessel, YF remained the demise charterer within the meaning of section 18(b). SHS had not before that date accepted YF's termination and YF had not by then lost possession of the vessel.

It was by the issue of its writ against the vessel on 10 March 2023 that SHS' rights in rem had crystallised, giving it a statutory lien. Those rights had transferred to the fund when the ship was sold. As a result, the claims of DB, SHS and AGE ranked together pari passu in the same class. The arguments presented by each of DB, AGE and SHS were not persuasive that that ranking should be disturbed "by reference to equity, public policy, commercial expediency and justice" or because "the circumstances were exceptional and equity demanded such a course to be taken".

Insolvency compounds all the issues that normally arise in international maritime trade and the HLT insolvency has given rise to significant litigation, an instalment of which in 2024 was *Natixis, Singapore Branch v Rajagopalan and Others*.[133] The plaintiff banks had in June to October 2020 commenced admiralty actions in rem in Singapore against the vessel *Chang Bai San*. The claims were in respect of misdelivery or loss of cargo under bills of lading issued by the demise charterer OTPL which had, the banks said, been pledged to them as security for finance facilities they had granted to HLT, a now defunct company.

OTPL had on 10 May 2021 redelivered the vessel to registered owners NCM, with the effect that claims against

[132] [2024] FCA 1149.

[133] [2024] SGHC 113; [2025] Lloyd's Rep Plus 19.

OTPL could not thereafter be brought in rem. The third defendant, NCM, was the registered owner of *Chang Bai San* and the first two defendants were court-appointed judicial managers of NCM. While the third defendant was under judicial management, *Chang Bai San* had sailed to Gibraltar and been arrested and sold on the application of the mortgagee. There was documentary support in the form of a Memorandum of Agreement between the judicial managers on behalf of NCM and the eventual buyer in the judicial sale, GM, that the vessel would be sailed to a suitable jurisdiction and arrested by the mortgagee to effect a sale of the vessel free of encumbrances to GM.

Before the Singapore court the plaintiff banks contended that by virtue of the in rem writ, the vessel was "property subject to a security" within the meaning of the Insolvency, Restructuring and Dissolution Act 2018 (IRDA), so that disposal by the judicial managers was subject to the authorisation of the court. They also maintained that by virtue of filing the in rem writs, they became "creditors" within the meaning of section 115 of the IRDA, and that the first and second defendants had acted in a manner that was unfairly prejudicial to the interests of the plaintiffs as creditors by procuring the arrest and judicial sale of the vessel in Gibraltar. They sought various declarations on the basis of these propositions.

S Mohan J dismissed the plaintiffs' applications. The judicial managers were not required to seek the court's authorisation to dispose of the vessel in Gibraltar simply because the plaintiffs had issued in rem writs against the vessel in Singapore. The issuance of an in rem writ gave rise to a statutory right of action in rem or statutory lien, in turn giving the claimant the right to arrest and detain the ship. The statutory lien holder only obtained security in the true sense of the word once it arrested the vessel.

The judge added obiter that while the MOA was an instrumental part of the process of sale, the operative act of disposal was the judicial sale by the Gibraltar court to GM, which was not executed or performed by the judicial managers. Their conduct had not "unfairly prejudiced" the creditors and members of NCM. As concerned the in rem writ claimants, the judicial managers were in an adversarial position and were merely acting strategically to prevent the plaintiffs from taking steps to enforce their statutory liens against the vessel.

Admiralty jurisdiction and anti-suit injunctions

The *Sea Justice* litigation arose from the collision between *Sea Justice* and *A Symphony* and was heard in two instances by the courts of Singapore in 2024. The issue was broadly one of jurisdiction where there were already proceedings pending in Qingdao. The Court of Appeal provided valuable guidance on the application of the test from *The Spiliada*[134] by Singapore courts.

The vessels *Sea Justice* and *A Symphony* had been in a collision off Qingdao in PRC territorial waters, resulting in oil pollution. There were multiple actions or attempts at action. A limitation fund had been constituted in the Qingdao court. The parties had both commenced collision liability claims and the actions had been consolidated. There was a further limitation fund for oil pollution compensation, set up by the P&I club. The plaintiff's proceedings against the defendant in personam in the Marshall Islands had been stayed. The Qingdao Court had declined to issue the equivalent of an anti-suit injunction. When *Sea Justice* arrived in Singapore, the vessel was arrested on the application of the plaintiff owner of *A Symphony*.

At first instance[135] the Assistant Registrar determined that Qingdao was clearly and distinctly the more appropriate forum. For the plaintiff to lose the higher security obtained through the arrest in Singapore was a disadvantage, but not an injustice. Both parties appealed. The plaintiff appealed to retain its security and against part of the costs order, but not the forum non conveniens decision. The defendant applied to set aside the arrest on the grounds of non-disclosure.

Kristy Tan JC dismissed both appeals, reasoning inter alia that it would be unjust to allow the plaintiff's appeal, where it would effectively undermine the defendant's right to claim limitation in the forum of its choice, while doubly securing the plaintiff. The judge directed herself that the cases *The ICL Raja Mahendra*[136] and *The Eurohope*[137] provided authority for the proposition that in an admiralty action in rem, the Singapore court should not order the arrest of a vessel, retention of that arrested vessel, or

[134] *Spiliada Maritime Corporation v Cansulex Ltd (The Spiliada)* [1987] 1 Lloyd's Rep 1.
[135] [2023] SGHCR 24; [2024] 2 Lloyd's Rep 383. The Assistant Registrar's decision was reported in the 2023 edition of this work.
[136] [1998] 2 SLR(R) 922.
[137] *DSA Consultancy (FZC) v Owner and/or Demise Charterer of the Vessel "Eurohope"* [2017] SGHC 218; [2017] 2 Lloyd's Rep 415.

retention of security furnished for the release of that vessel, for the purpose of securing a foreign judgment or award, which was essentially what the plaintiff was seeking to do.

The judge went on to observe that international comity prevented Singapore courts from treating the Singapore limitation regime as superior to the Chinese limitation regime by reason of the higher limit of liability available under the former.

The plaintiff's application was also incongruent with the forum non conveniens stay that had been granted. It would be unjust to allow the plaintiff's appeal, where it would effectively undermine the defendant's right to claim limitation in a forum of its choice, while doubly securing the plaintiff.

On appeal to the Court of Appeal, the appellant submitted only that the court should grant a conditional stay with the security to be retained. The Court of Appeal dismissed the appeal.[138] The court characterised the appellant's submission for the forum non conveniens stay to be made conditional upon the retention of security as in effect a request to review the application of the second stage of the *Spiliada* test.

The court observed that the Singapore security was not a "legitimate juridical advantage". There was already a limitation fund available for the appellant's claims and the appellant had lodged a claim against that fund.

It was not in the court's view a material factor that the PRC was not a signatory to the Limitation Convention. The appellant's attempt to retain the security obtained through the arrest in Singapore was little more than an attempt to circumvent the shipowner's choice of the PRC as the limitation forum, contravening the overriding principle of the shipowner's right to choose the limitation forum

Finally, the Court of Appeal observed that it was trite law that the existence of different limitation regimes did not constitute a legitimate juridical advantage under the second stage of the *Spiliada* test. The (greater) Singapore security was therefore not a legitimate juridical advantage, and there was no valid ground to make the stay order conditional upon its retention under the second stage of the *Spiliada* test.

In *Burrows v The Ship "Merlion"*[139] TB was the registered owner of the yacht *Merlion* and intended to trade her in for a vessel to be built by PMY. PMY went into liquidation and its sole director BT purported to transfer ownership of *Merlion* to GT. TB commenced a number of procedural measures to attempt to recover the yacht. He had the vessel arrested by the Admiralty Marshal and applied for a declaration that he was the sole beneficial owner, and also applied for an injunction requiring GT to give possession of or transfer title to *Merlion*.

GT challenged the nature of TB's claims and contended that, not being proprietary maritime claims, they should be struck out as not falling within the Admiralty jurisdiction of the court. GT further sought an order for summary dismissal of the proceedings pursuant to section 31A(2) of the FCA Act, and that the arrest of *Merlion* be set aside. GT also sought an order that TB's pleading be struck out, on the basis that it impermissibly merged an in rem and an in personam action, contrary to rule 18 of the Admiralty Rules.

Sarah C Derrington J struck the claim out in part. The claim under the Australian Consumer Law essentially concerned PMY's contractual duty to deliver the new vessel. TB had claimed that as they could not have done so, their duty was to return *Merlion* to him. This was not a proprietary maritime claim for a ship falling under section 4(2)(a) of the Admiralty Act. It would be struck out.

However, the claim that *Merlion* was held on trust and the consequential claim for knowing receipt were proprietary maritime claims. The claims arising from the alleged sham and conversion and detinue were within the in rem jurisdiction.

The judge went on to hold that on a proper construction of the agreement in particular in relation to the deposit, there was a reasonable prospect that TB would be able to establish that *Merlion* was held on trust by either PMY or BT. In the absence of a defined deposit in the agreement, it might be construed to mean that *Merlion* was to be the deposit. The claim that *Merlion* was held on a constructive trust was neither improbable nor implausible, but it would depend on the evidence whether there had been a breach of the terms of the trust and whether knowing receipt of *Merlion* by GT could be established.

[138] [2024] SGCA 32; [2024] 2 Lloyd's Rep 429.

[139] [2024] FCA 220.

There was a reasonable prospect of establishing liability in conversion or detinue. TB had reasonable grounds to argue that GT was not a bona fide purchaser and in any case those were torts of strict liability which did not require a mental element of knowing that a wrong was being committed.

The claim that the Admiralty Marshal should "provide the Plaintiff with possession of MERLION within fourteen (14) days" was misconceived. *Merlion* was not in the possession of but in the custody of the Marshal. Possession remained with whomever was lawfully entitled to possession. TB had by arresting *Merlion* caused her to be in the custody of the Marshal and could obtain her release. This part of the claim would be struck out.

The dispute between *Ceto Shipping Corporation* and *Savory Shipping Inc* has by now produced more than its share of judgments. In an earlier decision in the High Court of England and Wales,[140] the judge had decided that title to the ship *Victor 1* had not passed from Savory, the registered owner, to Ceto, the bareboat charterer under a bareboat charterparty and memorandum of agreement on the Saleform 2012 containing English exclusive jurisdiction clauses. *Victor 1* had subsequently been arrested and sold by the Singapore court. Ceto was pursuing a claim against the proceeds of sale. It also commenced these further proceedings before the High Court. Savory applied for an anti-suit injunction.

On 15 March 2024 Andrew Baker J granted the anti-suit injunction.[141] The only reasonable inference was that Ceto intended to pursue its Singapore claim to judgment, even though that was a breach of the English exclusive jurisdiction agreement. Where the same issues were already being litigated in England, this was plainly vexatious and oppressive conduct. While Ceto was entitled to proceed in rem in Singapore, once Savory had entered its notice to contest the only proper course of action would have been to request a stay.

Three months thereafter on 28 June 2024, it was the turn of the Singapore court in *Meck Petroleum DMCC v Owner and/or Demise Charterer of the Vessel "Victor 1" and Another*.[142] The litigation was an action in rem by the claimant Meck against the remainder of the sale proceeds from the vessel *Victor 1* following payment of claims. The "owner and/or demise charterer" were named as defendants. The first defendant Ceto was the demise charterer and the second defendant Savoy the registered owner of the vessel when it was arrested on 25 March 2022 and judicially sold on 16 January 2024. The charterparty was for 36 months and terminated according to its terms on 1 April 2022. On 12 April 2023 Ceto filed a notice of intention to contest. Meck and Ceto reached a settlement leading to a consent judgment on 8 June 2023. Savory obtained Assistant Registrar orders striking out both Meck's claim against the demise charterer and Ceto's notice of intention to contest. The consent judgment was set aside. Meck and Ceto both appealed.

S Mohan J noted that a claimant must, under the High Court (Admiralty Jurisdiction) Act 1961 (2020 Rev Ed), section 4(4), and according to step 5 of the test in *The Bunga Melati 5*,[143] prove on the balance of probabilities that the relevant person was, at the time when the action was brought, the beneficial owner of the ship as respects all the shares in it; or the charterer of that ship under a demise charter. However, Ceto's charterparty had expired upon completion of the vessel's judicial sale on 16 January 2023 at the very latest. The legal fiction that rights to or interests in the vessel subsisting prior to its arrest "followed" the vessel into the sale proceeds after the judicial sale was completed had no bearing on whether contractual claims underpinning a prospective statutory lien could survive the judicial sale of the relevant vessel. The charterparty had come to an end when possession of the vessel was irretrievably lost, at the very latest when the judicial sale was completed.

There was no authority for the proposition that admiralty claims against a demise charterer may be pursued via an action in rem commenced even after the vessel had been judicially sold. The judge saw no compelling reason to accept the doctrine of "constructive redelivery" as part of Singapore law. In any event, on a plain reading of the terms of the charterparty, it had come to an end on 1 April 2022.

For the purpose of admiralty proceedings, Ceto had not become the beneficial owner of the vessel and entitled to defend a claim in personam where the full purchase price had been paid but other terms were unfulfilled, including the fact that there were other sums outstanding

[140] *Ceto Shipping Corporation v Savory Shipping Inc (The Victor 1)* [2022] EWHC 2636 (Comm); [2023] 2 Lloyd's Rep 1.
[141] [2024] EWHC 663 (Comm); [2025] Lloyd's Rep Plus 22.
[142] [2024] SGHC 165, [2025] Lloyd's Rep Plus 2.
[143] *The Bunga Melati 5* [2012] SGCA 46; [2012] 4 SLR 546.

the payment of which was a precondition to the transfer of ownership under clause 39.1 of the charterparty.

The demise charter had ended and Meck's claim made against the demise charterer would be struck out as only a registered owner could appear as in personam defendant.

SY Roro 1 Pte Ltd and Another v Onorato Armatori Srl and Others[144] was the procedural sequel to the decision noted above under Bareboat charterparties.[145] The dispute between the parties concerned the rights to certain ferries and judgment ordering redelivery had been handed down by Sir William Blair. The claimants then arrested the vessel *Maria Grazia Onorato* by application to a French court. In May 2024 news articles appeared in the press according to which the defendants intended to launch legal actions against the claimants' group of companies and intended to "protect itself in all appropriate forums". The contracts at issue in the dispute were two multipartite agreements (MPA) and bareboat charterparties and also sub-charterparties within the defendants' group of companies. The bareboat charterparties contained LMAA arbitration clauses and the MPAs contained English law and jurisdiction clauses.

The claimants now sought anti-suit injunctions under the head bareboat charters and by reference to the English jurisdiction clause in the MPAs. They further sought an order in respect of Sir William Blair's order for redelivery, the effect of which would be to prevent the defendants from contesting or disputing the arrest order made by the French court in relation to *Maria Grazia Onorato* or otherwise seeking to have the *Maria Grazia Onorato* arrest order set aside.

Foxton J granted the anti-suit injunction but declined the order sought in respect of the French proceedings. Amendment of the claim form would be permitted so as to enable relief in respect of the arbitration agreement in the head charterparty, which had not been the subject of the original claim.

There was a real risk of proceedings being commenced otherwise than in accordance with the bareboat charterparty arbitration clause and the exclusive jurisdiction clause in the MPA and it was appropriate to grant interim relief. The content of the newspaper articles had not been explained or denied and no undertakings had been offered. One set of Italian proceedings had already been commenced. The anti-suit injunction would be granted.

The orders sought by the claimants in respect of the French proceedings would involve serious issues of comity and would be refused.

In *ING Bank NV v Industrial and Commercial Bank of China Ltd*,[146] a case before the HKSAR Court of First Instance, the claimant ING was a Netherlands bank and the collecting bank for the seller, T, in relation to no less than 30 international sales contracts for copper cathodes. The defendant ICBC was a Mainland Chinese bank listed on the Hong Kong stock exchange which carried on business in Hong Kong. At the material time, it maintained branches in Xi'an. ING transmitted the documents to the Xi'an branch of ICBC for collection from the buyer, M. The collection instructions were subject to ICC Uniform Rules for Collections 522.

ING's case was that ICBC had acted against the collection instructions and had released the documents to M without collecting the purchase price. ICBC maintained that the documents release had taken place on the basis of instructions from the seller or relied upon a course of dealing. It raised various defences including that the claimant lacked proper standing; and that it was not the right defendant. ICBC sought an order for a stay in favour of Xi'an Intermediate People's Court on the ground of forum non conveniens.

The judge declined to stay the action. Hong Kong was the appropriate forum with the closest, most real and substantial connection with the action. Alternatively, if the minds of ordinary reasonable businessmen had been directed to the question, they would have been likely to agree that Hong Kong law was to apply to the transactions. The need for expertise on Mainland law and the location of witnesses did not in this case make the Xi'an court a clearly or distinctly more appropriate forum.

[144] [2024] EWHC 1283 (Comm); [2024] 2 Lloyd's Rep 446.
[145] *SY Roro 1 Pte Ltd and Another v Onorato Armatori Srl and Others* [2024] EWHC 611 (Comm); [2024] 2 Lloyd's Rep 446.
[146] [2024] HKCFI 222; [2025] Lloyd's Rep Plus 20.

Ports and harbours

The fate of the unfortunate *Win Win*[147] was considered under the Marine insurance header above. The case also contained dicta of interest on anchorage and territorial waters. The factual background was that the vessel had been instructed to proceed to Singapore, find safe anchorage and drop anchor to await instructions. This instruction also contained coordinates within Indonesian territorial waters. The master preferred a different location further from the Traffic Separation Scheme which in the event was occupied and settled on a third location which again was within Indonesian territorial waters. Using anchorage locations within Indonesian waters had never before given rise to issues, but in February 2019 the Indonesian Navy suddenly began detaining vessels, including *Win Win*, for entering Indonesian waters illegally.

The right of innocent passage under the United Nations Convention on the Law of the Sea, 1982, article 18, includes the right to pass through, but not to stop or linger. Passage must be "continuous and expeditious". Stopping and anchoring must be "incidental to ordinary navigation" or arise from distress or similar circumstances. The detention, though unexpected, was therefore lawful as the vessel was subject to Indonesian law while in its territorial waters.

The judge accepted the master's evidence that he had not appreciated that he was anchoring in Indonesian waters. She considered it plausible that he was more concerned with the safety and practicality of anchorage, than legality. Passage planning was, she concluded, primarily concerned with physical and navigational safety. That said:

> "I cannot accept that the legality of the planned passage can be wholly ignored. On the contrary, it seems to me that good seamanship requires it to be taken into account – and this applies as much to a short passage to an anchorage as it does to a much longer passage."[148]

In her view, "the master should have reviewed the passage plan with the legality of the proposed anchorage in mind".[149] Had he done so, he would no doubt have selected another location – however "the master had no reason to suppose that the vessel would be detained as a result of anchoring in territorial waters without permission".[150]

The change of policy in Indonesian territorial waters in February 2019 has given rise to two decisions so far, the other being *Mercuria Energy Trading Pte v Raphael Cotoner Investments Ltd (The M/T Afra Oak)*.[151] Sir Nigel Teare concluded that where, in breach of an order of its charterers, a vessel proceeded into territorial waters to wait at anchor in breach of local law this may or may not provide a defence under article IV(2)(a) of the Hague Rules, depending upon the facts of the particular case. Suffice it to say that attention to the legal character of anchorage must now be at the forefront in the passage plan and in the minds of masters, alongside physical safety and practicality.

And finally, two decisions on the rights and duties of ports and harbourmasters which on appeal were dominated by issues of the cost of litigation and of whether summary judgment was appropriate.

> Attention to the legal character of anchorage must now be at the forefront in the passage plan and in the minds of masters, alongside physical safety and practicality

In *Trotman v The Environment Agency*,[152] Mr T was the owner of two houseboats, *Rhythm of River* and *KUBE*, moored near Molesey Lock on the Thames. The Environment Agency (EA) owned and operated the lock and was the navigation agency for the relevant part of the river. The lock was closed for repairs from October 2018 to March 2019. On 28 February 2019 T was notified that he was in breach of a byelaw preventing vessels from remaining in a lock, cut or channel longer than necessary for the passage thereof. He was instructed to move the vessels within 24 hours of the reopening of the lock. The reopening took place on 1 March 2019. On 6 March the

147 *Delos Shipholding SA and Others v Allianz Global Corporate and Specialty SE and Others* [2024] EWHC 719 (Comm); [2024] 1 Lloyd's Rep 489.
148 At para 64.
149 At para 66.
150 At para 67.
151 [2023] EWHC 2978 (Comm); [2024] 2 Lloyd's Rep 609 https://www.i-law.com/ilaw/doc/view.htm?id=446194, noted in the 2023 edition of this work.
152 [2024] EWHC 825 (Admin); [2024] Lloyd's Rep Plus 26.

harbourmaster issued two notices requiring T to move his vessels by midday on 7 March 2019. T did not move his vessels and as a result the EA towed the vessels upstream by tug. The EA went on to bring charges against T for offences against byelaw 49(a) of the Thames Navigation Licensing and General Byelaws 1993, made under section 233 of the Thames Conservancy Act 1932, in respect of both vessels pertaining to the period 1 March to 8 March 2019. It also charged T with failing to comply with the harbourmaster's directions.

T denied the charges but following proceedings before the magistrates' court he was found guilty and issued with four fines of altogether £800. Costs amounted to as much as £20,591.40. T appealed to the Administrative Court of the King's Bench Division on a number of points.

The judge upheld T's complaint on the issue of costs only, rejecting his appeal on the other issues, reasoning as follows.

The EA was entitled to prosecute without first issuing a fixed penalty: (a) in circumstances of a breach of byelaw 49(a) prohibiting a vessel from remaining in a lock channel or cut leading to or from the same longer than necessary for the convenient passage thereof; and (b) for failing to comply with directions given by a harbourmaster.

It followed from a plain reading of the byelaws that charges in respect of a breach of byelaw 49 were not invalid if they encompassed a six-day period instead of daily fines.

The charges were not invalid for failing to specify whether the vessels were in a lock, channel or cut. The language of the charges reflected the wording in the relevant byelaw 49, which was written in the disjunctive.

Section 83 of the 1932 Act permitted the harbourmaster to compel someone to unmoor or move their boat notwithstanding their unwillingness to do so. The reference to "compelling" involved a specific direction as to what a vessel owner must do. The reference to "regulating" involved the setting of rules more generally, but could also include a specific direction by rule as to what a vessel owner must do; akin to compelling.

The judge had been right to find that the harbourmaster's directions were not ultra vires despite: (a) the directions lasting indefinitely; (b) the directions requiring T to seek permission from the riparian owner before mooring; and (c) the directions permitting T to moor without permission only up to 24 hours during the course of pleasure navigation.

The judge had not erred in allowing the EA to claim prosecution costs pursuant to section 18 of the Prosecution of Offences Act 1985. The 1932 Act merely afforded the EA the right to prosecute offenders. The rules applicable to the EA as "prosecutor" were in part to be found outside of the 1932 Act, including the Prosecution of Offences Act 1985, enabling the magistrates' court to order "costs to be paid by the accused to the prosecutor as it considers just and reasonable".

The authorities showed that the amount of costs and the size of the fine payable may be relevant to the proportionality analysis, especially where there was a stark difference between the two, and where the defendant's ability to pay costs was limited. This factor had not been taken into account in the judge's costs assessment. An appropriate proportion in all the circumstances of the case was a multiple of 15 of the fines issued. The EA's costs would be reduced accordingly.

In *Djurberg v Thames Properties (Hampton) Ltd and Others*,[153] Mr D asserted rights to a parcel of land called St Albans Garden Riverside and had permitted a houseboat to moor there. The first respondent had removed the houseboat, apparently upon request from its owners. D applied for an interim injunction compelling the return of the houseboat. D asserted that he had a maritime lien over the houseboat due to unpaid mooring charges and that the respondents were liable in damages for tortious interference with goods. At first instance, D's claim was struck out. Permission to appeal had been granted on the sole ground of a possibly arguable case to the effect that the defendants had committed the tort of interference with goods.

The court declined to give summary judgment. There was no authority for the claimant's assertion that English law recognised a lien – maritime, statutory or possessory – in respect of unpaid mooring charges. Interpreting the Harbour Docks and Piers Clauses Act 1847, the court decided that section 45 did not permit D to repossess the vessel as he claimed to have done in 2021. The section referred to goods falling under sections 37 and 39, not mooring charges, and the Act applied to designated authorised harbours.

[153] [2024] EWCA Civ 549; [2025] Lloyd's Rep Plus 17.

Nevertheless, the judge had been wrong to strike out the claim summarily. First, it may be open to D's trustee in bankruptcy to claim the benefit of any monetary claim D might otherwise have to the underlying debt. Secondly, D would have to amend his Particulars of Claim to plead: (a) the contract under which the houseboat was moored, including its date, the parties to it and the relevant clauses; (b) how the alleged unpaid mooring fees arose and who owed them; and (c) what interest in or rights over St Albans Garden Riverside D claimed to have and how those rights had been created. Thirdly, on the basis that the action survived, the defendants may be able to make a proper application for summary judgment, fulfilling the requirements of the CPR, in which event D would have to provide some evidential basis for his claim.

The litigation appears to have a substantial contentious background judging by articles in the local press. On its turn in the Court of Appeal, their lordships had the opportunity to consider some fringe issues on maritime liens. The trustee in bankruptcy may or may not have welcomed the opportunity to litigate this somewhat unusual claim for the tort of conversion.

Conclusion

Compared to the standards of the 2024 bumper crop, the outlook for 2025 is decidedly more modest but not without its highlights. *The MSC Flaminia*[154] is awaiting judgment, having been heard in early February 2025. The case concerns a charterer's right to limit liability to an owner where the loss was suffered by the owner itself; as well as the scope of article 2(1)(a) and (f) of the Convention on Limitation of Liability for Maritime Claims 1976. This may be an opportunity for the Supreme Court to make known its views on the scope of (a) and (f) compared to (d) on wreck as highlighted in *The Goliath*.[155] A hearing in early February may in the ordinary course of things result in judgment in mid-May or late July.

The decision of Dias J in *Orion Shipping and Trading Ltd v Great Asia Maritime Ltd (M/V Lila Lisbon)*[156] is on appeal and to be floated for a hearing on 9 or 10 July 2025.[157] The appeal of the decision in *Yangtze Navigation (Asia) Co Ltd and Another v TPT Shipping Ltd and Others*[158] is scheduled to be heard by the Court of Appeal in June.[159] In *Delos Shipholding SA and Others v Allianz Global Corporate and Speciality SE*[160] an appeal is pending before the Court of Appeal, with a tentative trial date of 8 or 9 July 2025.[161] Finally, in *MS Amlin Marine NV v King Trader Ltd and Others*,[162] an appeal from the decision of Foxton J is awaiting a hearing by 22 December 2025.[163]

[154] *MSC Mediterranean Shipping Co SA v Stolt Tank Containers BV (The MSC Flaminia) (No 2)* (CA) [2023] EWCA Civ 1007; [2024] 1 Lloyd's Rep 535, noted in the 2023 edition of this work.
[155] *CSL Australia Pty Ltd v Tasmanian Ports Corporation Pty Ltd and Others (The Goliath)* (FCA) [2024] FCA 824; [2025] Lloyd's Rep Plus 15, noted above.
[156] [2024] EWHC 2075 (Comm); [2025] 1 Lloyd's Rep 101.
[157] Per casetracker.justice.gov.uk web site as of 31 December 2024.
[158] [2024] EWHC 2371 (Comm); [2025] Lloyd's Rep Plus 10.
[159] Per casetracker.justice.gov.uk as of 31 December 2024.
[160] [2024] EWHC 719 (Comm); [2024] 1 Lloyd's Rep 489.
[161] Casetracker 31 December 2024.
[162] [2024] EWHC 1813 (Comm); [2024] Lloyd's Rep IR 703.
[163] Casetracker 31 December 2024.

Appendix: judgments analysed and considered in this review

2024 judgments analysed

AMS Ameropa Marketing and Sales AG and Another v Ocean Unity Navigation Inc (The Doric Valour) (KBD (Comm Ct)) [2023] EWHC 3264 (Comm); [2024] Lloyd's Rep Plus 64

Argentum Exploration Ltd v Republic of South Africa (SC) [2024] UKSC 16; [2024] 1 Lloyd's Rep 585

Ayhan Sezer Yag ve Gida Endustrisi Ticaret Ltd Sirket v Agroinvest SA (KBD (Comm Ct)) [2024] EWHC 479 (Comm)

Boluda Towage Rotterdam BV and Others v Elise Tankschiffahrt KG and Another (The VB Rebel) (KBD (Admlty Ct)) [2024] EWHC 1329 (Admlty); [2025] Lloyd's Rep Plus 4

Burrows v The Ship "Merlion" (FCA) [2024] FCA 220

Carmichael Rail Network Pty Ltd v BBC Chartering Carriers GmbH & Co KG (The BBC Nile) (HCA) [2024] HCA 4

Ceto Shipping Corporation v Savory Shipping Inc (The Victor 1) (KBD (Comm Ct)) [2024] EWHC 663 (Comm); [2025] Lloyd's Rep Plus 22

China Star Chemical Shipping Ltd v Lingyang Shipping Navigation Ltd (The MT Lingyang) [2024] MLJU 359; [2025] Lloyd's Rep Plus 3

COSCO Shipping Specialized Carriers Co Ltd v PT OKI Pulp & Paper Mills and Others (SGHC) [2024] SGHC 92; [2025] Lloyd's Rep Plus 9

CSL Australia Pty Ltd v Tasmanian Ports Corporation Pty Ltd and Others (The Goliath) (FCA) [2024] FCA 824; [2025] Lloyd's Rep Plus 15

Da Hui Shipping (Pte) Ltd (In Creditors' Voluntary Liquidation) v An Rong Shipping Pte Ltd (In Liquidation); (Société Générale, Singapore Branch and Another, Non-Parties) (SGHC) [2024] SGHC 166

Dan-Bunkering (Singapore) Pte Ltd v The Ship Yangtze Fortune (FCA) [2024] FCA 1149

Dan-Bunkering (Singapore) Pte Ltd v The Ship Yangtze Fortune (No 3) (FCA) [2024] FCA 219

Delos Shipholding SA and Others v Allianz Global Corporate and Specialty SE and Others (KBD (Comm Ct)) [2024] EWHC 719 (Comm); [2024] 1 Lloyd's Rep 489

Denver Maritime Ltd v Belpareil AS (The Kiran Australia and The Belpareil) (KBD (Admlty Ct)) [2024] EWHC 362 (Admlty); [2024] 2 Lloyd's Rep 323

Djurberg v Thames Properties (Hampton) Ltd and Others (CA) [2024] EWCA Civ 549; [2025] Lloyd's Rep Plus 17

Eurobank SA v Momentum Maritime SA and Others (KBD (Comm Ct)) [2024] EWHC 210 (Comm); [2025] Lloyd's Rep Plus 12

Euronav Shipping NV v Black Swan Petroleum DMCC (KBD (Comm Ct)) [2024] EWHC 896 (Comm); [2024] Lloyd's Rep Plus 31

FIMBank plc v KCH Shipping Co Ltd (The Giant Ace) (SC) [2024] UKSC 38

Golden Pacific Shipping & Holdings Pte Ltd v Arc Marine Engineering Pte Ltd (SGHC) [2024] SGHC 15

Gordon v The Vessel "Southern Star" (FCA) [2024] FCA 674; [2025] Lloyd's Rep Plus 16

Hapag-Lloyd AG v Skyros Maritime Corporation and Another (The Skyros and The Agios Minas) (KBD (Comm Ct)) [2024] EWHC 3139 (Comm)

Herculito Maritime Ltd and Others v Gunvor International BV and Others (The Polar) (SC) [2024] UKSC 2; [2024] 1 Lloyd's Rep 85

ING Bank NV v Industrial and Commercial Bank of China Ltd (HKCFI) [2024] HKCFI 222; [2025] Lloyd's Rep Plus 20

Iveco SpA and Others v The Ship "Höegh London" (FCA) [2024] FCA 901; [2024] 2 Lloyd's Rep 163

Jeil Crystal (No 2), The (SGHC) [2024] SGHC 74

KfW IPEX-Bank GmbH v Owner of the Vessel "World Dream" (SGHC) [2024] SGHC 56

King Crude Carriers SA and Others v Ridgebury November LLC and Others (CA) [2024] EWCA Civ 719; [2024] 2 Lloyd's Rep 140

Lord Marine Co SA v Vimeksim Srb DOO (KBD (Comm Ct)) [2024] EWHC 3305 (Comm)

Maersk A/S v Allianz Seguros y Reaseguros SA; Mapfre España Compañía de Seguros y Reaseguros SA v Macs Maritime Carrier Shipping GmbH & Co (CJEU) Joined Cases C-345/22 to C-347/22; [2025] Lloyd's Rep Plus 8

Maersk Guinéa-Bissau Sarl and Another v Almar-Hum Bubacar Baldé Sarl (KBD (Comm Ct)) [2024] EWHC 993 (Comm)

Meck Petroleum DMCC v Owner and/or Demise Charterer of the Vessel "Victor 1" and Another (SGHC) [2024] SGHC 165, [2025] Lloyd's Rep Plus 2

Mercuria Energy Trading Pte v Raphael Cotoner Investments Ltd (The M/T Afra Oak) (KBD (Comm Ct)) [2023] EWHC 2978 (Comm); [2024] 2 Lloyd's Rep 609

MOK Petro Energy FZC v Argo (No 604) Ltd and Others (KBD (Comm Ct)) [2024] EWHC 1935 (Comm); [2024] Lloyd's Rep IR 585

MS Amlin Marine NV v King Trader Ltd and Others (KBD (Comm Ct)) [2024] EWHC 1813 (Comm); [2024] Lloyd's Rep IR 703

MV Hua Sheng Hai v MFV Kirrixki (IEHC) [2024] IEHC 182; [2024] Lloyd's Rep Plus 66

Natixis, Singapore Branch v Rajagopalan and Others (SGHC) [2024] SGHC 113; [2025] Lloyd's Rep Plus 19

Orion Shipping and Trading Ltd v Great Asia Maritime Ltd (M/V Lila Lisbon) (KBD (Comm Ct)) [2024] EWHC 2075 (Comm); [2025] 1 Lloyd's Rep 101

OSV Crest Mercury 1 v Vision Projects Technologies Pvt Ltd Commercial Appeal (L) No 30604 of 2022 in Interim Application No 3510 of 2022 in Commercial Admiralty Suit No 47 of 2022, High Court of Judicature at Bombay Admiralty and Vice Admiralty Jurisdiction in its Commercial Division, BP Colabawalla J and Somasekhar Sundaresan J, 7 May 2024; [2025] Lloyd's Rep Plus 18

Owner and/or Demise Charterer of the Vessel "A Symphony" v Owner and/or Demise Charterer of the Vessel "Sea Justice" (The Sea Justice) (SGHC) [2024] SGHC 27; [2024] 2 Lloyd's Rep 404; (CA) [2024] SGCA 32; [2024] 2 Lloyd's Rep 429

Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The Star Centurion and The Antea) (HKCFA) [2023] HKCFA 20; [2024] 2 Lloyd's Rep 435

Rhine Shipping DMCC v Vitol SA (CA) [2024] EWCA Civ 580

RTI Ltd v MUR Shipping BV (SC) [2024] UKSC 18; [2024] 1 Lloyd's Rep 621

Sea Consortium Pte Ltd (Trading as X-Press Feeders) v Bengal Tiger Line Pte Ltd (KBD (Comm Ct)) [2024] EWHC 3174 (Admlty)

Seatrium New Energy Ltd (formerly known as Keppel FELS Ltd) v HJ Shipbuilding & Construction Co Ltd (formerly known as Hanjin Heavy Industries and Construction Co Ltd) (SGHC) [2024] SGHC(A) 26; [2025] Lloyd's Rep Plus 11

SFL Ace 2 Co Inc v DCW Management Ltd (formerly Allseas Global Management Ltd) (KBD (Comm Ct)) [2024] EWHC 1877 (Comm)

Sharp Corp Ltd v Viterra BV (previously known as Glencore Agriculture BV) (SC) [2024] UKSC 14; [2024] 1 Lloyd's Rep 568

Sherman and Another v Reader Offers Ltd (CA) [2024] EWCA Civ 412; [2024] Lloyd's Rep Plus 30

Smit Salvage BV and Others v Luster Maritime SA and Another (The MV Ever Given) (CA) [2024] EWCA Civ 260; [2024] 2 Lloyd's Rep 86

Southeaster Maritime Ltd v Trafigura Maritime Logistics Pte Ltd (The MV Aquafreedom) (KBD (Comm Ct)) [2024] EWHC 255 (Comm); [2024] 2 Lloyd's Rep 556

Stournaras Stylianos Monoprosopi EPE v Maersk A/S (KBD (Comm Ct)) [2024] EWHC 2494 (Comm)

SY Roro 1 Pte Ltd and Another v Onorato Armatori Srl and Others (KBD (Comm Ct)) [2024] EWHC 611 (Comm); [2024] 2 Lloyd's Rep 446

SY Roro 1 Pte Ltd and Another v Onorato Armatori Srl and Others (KBD (Comm Ct)) [2024] EWHC 1283 (Comm); [2024] 2 Lloyd's Rep 446

Trotman v The Environment Agency (KBD (Admin Ct)) [2024] EWHC 825 (Admin); [2024] Lloyd's Rep Plus 26

Unicious Energy Pte Ltd v Owners and/or Demise Charterers of the Ship or Vessel "Alpine Mathilde" (No 2) High Court of Malaya at Kuala Lumpur, Ong Chee Kwan J, 30 January 2024; [2025] Lloyd's Rep Plus 6

Yacht Management Co Ltd v Gordon (EAT) [2024] EAT 33

Yangtze Navigation (Asia) Co Ltd and Another v TPT Shipping Ltd and Others (KBD (Comm Ct)) [2024] EWHC 2371 (Comm); [2025] Lloyd's Rep Plus 10

Zurich Insurance Co Ltd (trading as Navigators and General) and Others v Halcyon Yacht Charter LLP and Another (The Big Kahuna) (KBD (Comm Ct)) [2024] EWHC 937 (Admlty); [2024] 2 Lloyd's Rep 109

Judgments considered

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AMS Ameropa Marketing and Sales AG and Another v Ocean Unity Navigation Inc (The Doric Valour) (KBD (Comm Ct)) [2023] EWHC 3264 (Comm); [2024] Lloyd's Rep Plus 64

Angelic Spirit and Y Mariner, The (QBD (Admlty Ct)) [1994] 2 Lloyd's Rep 595

Argentum Exploration Ltd v The Silver, and all Persons Claiming to be Interested In and/or to Have Rights in Respect of, The Silver (QBD (Admlty Ct)) [2020] EWHC 3434 (Admlty); [2021] 2 Lloyd's Rep 1; (CA) [2022] EWCA Civ 1318; [2023] 1 Lloyd's Rep 405

Brabant, The (Adm Div) (1938) 60 Ll L Rep 323

Bunga Melati 5, The (SGCA) [2012] SGCA 46; [2012] 4 SLR 546

Bunge SA v Nidera BV (SC) [2015] UKSC 43; [2015] 2 Lloyd's Rep 469

Carmichael Rail Network Pty Ltd v BBC Chartering Carriers GmbH & Co KG (The BBC Nile) (FCAFC) [2022] FCAFC 171; [2024] 1 Lloyd's Rep 267

Ceto Shipping Corporation v Savory Shipping Inc (The Victor 1) (KBD (Comm Ct)) [2022] EWHC 2636 (Comm); [2023] 2 Lloyd's Rep 1

Diggins v Condor Marine Crewing Services Ltd (CA) [2009] EWCA Civ 1133

Donohue v Armco (HL) [2001] UKHL 64; [2002] 1 Lloyd's Rep 425

DSA Consultancy (FZC) v Owner and/or Demise Charterer of the Vessel "Eurohope" (SGHC) [2017] SGHC 218; [2017] 2 Lloyd's Rep 415

Eastern Pacific Chartering Inc v Pola Maritime Ltd (The Pola Devora) (QBD (Comm Ct)) [2021] EWHC 1707 (Comm); [2022] Lloyd's Rep Plus 14

Empresa Exportadora de Azucar v Industria Azucarera Nacional SA)(The Playa Larga and Marble Islands) (CA) [1983] 2 Lloyd's Rep 171

Evangelismos, The (1858) 12 Moo PC 352

Exeter City v The Sea Serpent, The (Adm Div) (1922) 12 Ll L Rep 423

Feasey v Sun Life Assurance Corporation of Canada (CA) [2003] EWCA Civ 885; [2003] Lloyd's Rep IR 637

FIMBank plc v KCH Shipping Co Ltd (The Giant Ace) (KBD (Comm Ct)) [2022] EWHC 2400 (Comm); [2023] 1 Lloyd's Rep 381; (CA) [2023] EWCA Civ 569; [2023] 2 Lloyd's Rep 457

Firma C-Trade SA v Newcastle Protection and Indemnity Association (The Fanti and The Padre Island) (HL) [1990] 2 Lloyd's Rep 191

Gard Marine & Energy Ltd v China National Chartering Co Ltd (The Ocean Victory) (SC) [2017] UKSC 35; [2017] 1 Lloyd's Rep 521

Gilbert-Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd (HL) (1976) 1 BLR 73

Griffon Shipping LLC v Firodi Shipping Ltd (The Griffon) (CA) [2013] EWCA Civ 1567; [2014] 1 Lloyd's Rep 471

Herculito Maritime Ltd and Others v Gunvor International BV and Others (The Polar) (QBD (Comm Ct)) [2020] EWHC 3318 (Comm); [2021] 1 Lloyd's Rep 150; (CA) [2021] EWCA Civ 1828; [2022] 1 Lloyd's Rep 375

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Lawson v Serco Ltd (HL) [2006] UKHL 3

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MSC Mediterranean Shipping Co SA v Stolt Tank Containers BV (The MSC Flaminia) (No 2) (CA) [2023] EWCA Civ 1007; [2024] 1 Lloyd's Rep 535

MUR Shipping BV v RTI Ltd (QBD (Comm Ct)) [2022] EWHC 467 (Comm); [2022] 2 Lloyd's Rep 297; (CA) [2022] EWCA Civ 1406; [2023] 1 Lloyd's Rep 463

MV Pacific Pearl Co Ltd v NYK Orpheus Corp and Another (The Panamax Alexander, The NYK Orpheus and The NYK Falcon) (KBD (Admlty Ct)) [2022] EWHC 2828 (Admlty); [2023] 2 Lloyd's Rep 83

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Peter de Grosse, The (1875) 1 PD 414

Quadra Commodities SA v XL Insurance Company SE and Others (CA) [2023] EWCA Civ 432; [2023] Lloyd's Rep IR 455

Ravat v Halliburton Manufacturing and Services Ltd (SC) [2012] UKSC 1

Republic of India and the Government of the Republic of India (Ministry of Defence) v India Steamship Co Ltd (The Indian Grace) (No 2) (HL) [1998] 1 Lloyd's Rep 1

Rodocanachi v Milburn (CA) (1886) 18 QBD 67

Samco Europe and MSC Prestige, The (QBD (Admlty Ct)) [2011] EWHC 1580 (Admlty); [2011] 2 Lloyd's Rep 579

Sea Master Special Maritime Enterprise v Arab Bank (Switzerland) Ltd (QBD (Comm Ct)) [2022] EWHC 1953 (Comm); [2022] Lloyd's Rep Plus 94

Seatrium New Energy Ltd (formerly known as Keppel FELS Ltd) v HJ Shipbuilding & Construction Co Ltd (formerly known as Hanjin Heavy Industries and Construction Co Ltd) (SGHC) [2023] SGHC 264; [2024] Lloyd's Rep Plus 7

Sharp Corp Ltd v Viterra BV (previously known as Glencore Agriculture BV) (QBD (Comm Ct)) [2022] EWHC 354 (Comm); [2022] 2 Lloyd's Rep 43; (CA) [2023] EWCA Civ 7; [2024] 1 Lloyd's Rep 553

Sherman and Another v Reader Offers Ltd (KBD) [2023] EWHC 524 (KB)

Smit Salvage BV and Others v Luster Maritime SA and Another (The MV Ever Given) (KBD (Admlty Ct)) [2023] EWHC 697 (Admlty); [2023] 2 Lloyd's Rep 201

Spiliada Maritime Corporation v Cansulex Ltd (The Spiliada) (HL) [1987] 1 Lloyd's Rep 1

Stolt Kestrel BV v Sener Petrol Denizcilik Ticaret AS (The Stolt Kestrel and The Niyazi S) (CA) [2015] EWCA Civ 1035; [2016] 1 Lloyd's Rep 125

Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas) (HL) [2008] UKHL 48; [2008] 2 Lloyd's Rep 275

Tromp, The (Adm Div) (1921) 8 Ll L Rep 28

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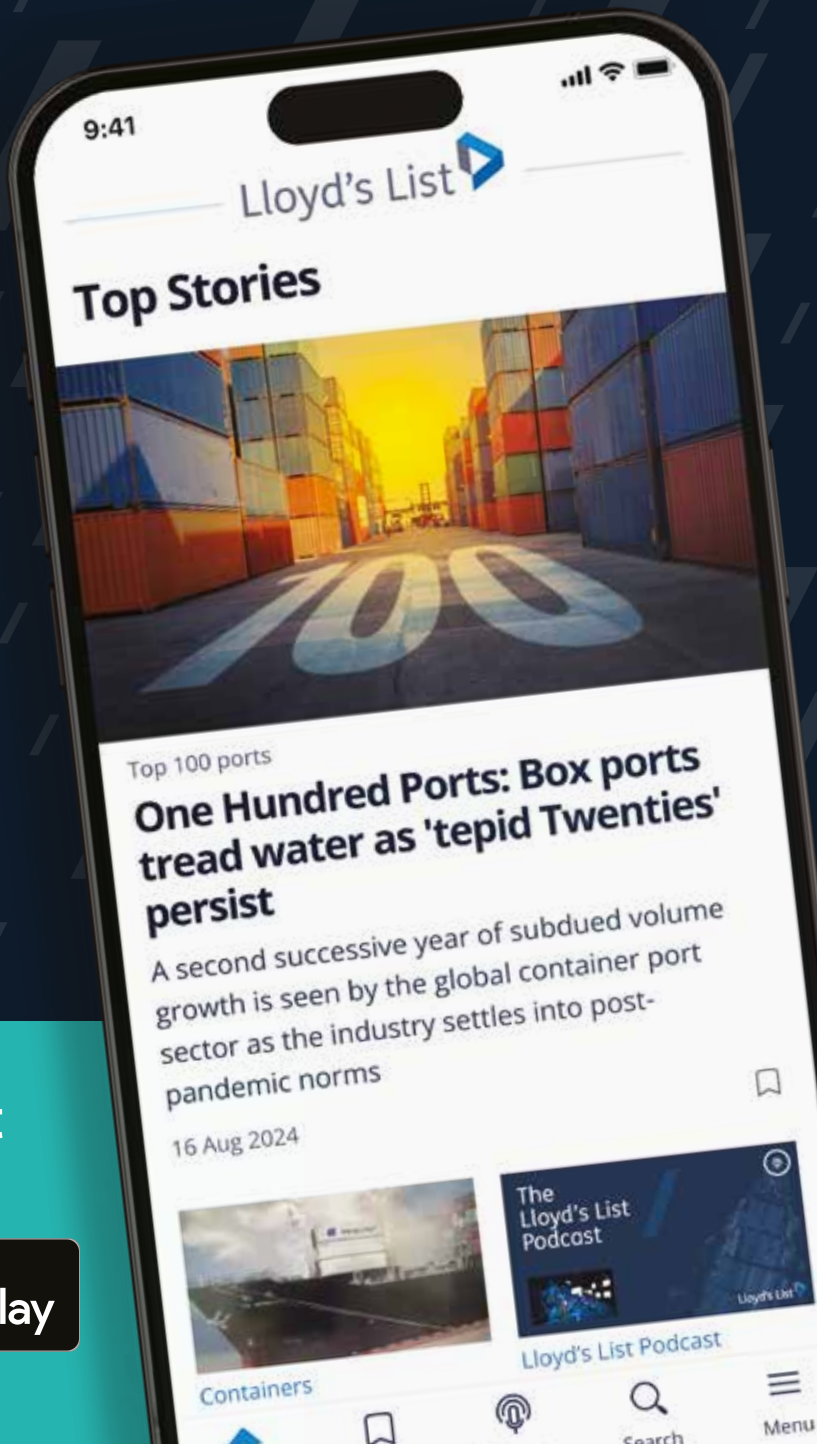

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