Admiralty and Maritime Law Committee

A REMINDER: USE OF STAFFING AGENCIES TO PROVIDE TEMPORARY LABOR WILL NOT PROTECT VESSEL OWNERS FROM JONES ACT LIABILITY

By: David N. Ventker

Given the sophisticated way many seaman conduct their affairs in the modern world and the extent of unionization in maritime industries, it is often easy for employers to forget that courts take their stewardship of seamen seriously:

They are emphatically the wards of the admiralty; and though not technically incapable of entering into a valid contract, they are treated in the same manner, as courts of equity are accustomed to treat young heirs, dealing with their expectancies, wards with their guardians, and cestuis que trust with their trustees.2

Continued on page 20

1 Dave Ventker, of the Norfolk, Virginia firm Ventker Warman Henderson, PLLC, practices admiralty and maritime law (among other things) in Virginia and North Carolina. He is currently a member of the Board of Directors of the Maritime Law Association of the United States, and he attended Ohio State University for both undergraduate and law school. He can be contacted at dventker@ventkerlaw.com.

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Dear AMLC Committee Members:

I have been a member of the ABA since my first year of law school at Gonzaga University in Spokane, Washington (Go Zags!). After graduation I worked at the Washington Attorney General’s Office with a heavy trial practice. By pure happenstance I found my way to the admiralty practice when I moved to New York City to be with my husband. That was an exciting point in my career as I was able to learn from some of the best in the admiralty field working on large casualties, marine insurance and personal injury matters. I continued to be involved with the ABA during this time – particularly the Young Lawyers Division and then TIPS due to a young lawyer fellowship opportunity. It was only later, after I moved back to the West Coast (or, as my former NYC colleagues would say it, “the left coast”) at a TIPS Insurance Coverage seminar that I learned there was an Admiralty Committee in the ABA when former Chair Mike Daly took the stage to give a presentation on insurance coverage issues arising from piracy. After encouragement from Mike and others I was soon involved in the AMLC and taking advantage of not only the educational opportunities, but also networking opportunities both of which have led to dramatic increase in my business development efforts.

My experiences in the AMLC are not unique. Many members have similar stories regarding the benefits of their involvement. Because of this, the Committee has made member outreach an important focus in the many regional events that have been held this year in New Orleans, Miami and Houston. Our next event will be at the inaugural TIPS Section Conference in Philadelphia. Our Committee meets on Wednesday, April 29, 2015 at 1pm with a Committee dinner scheduled that evening. In addition to the Committee Business Meeting, the Conference itself boasts an incredible amount of presenters from companies as diverse as Georgia-Pacific LLC, Lockheed Martin Corp. and numerous insurance companies. We hope to see you there.

Best,

Pamela Palmer
Chair, Admiralty and Maritime Law

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Editorial Policy: This Newsletter publishes information of interest to members of the Admiralty and Maritime Law Committee of the Tort Trial & Insurance Practice Section of the American Bar Association — including reports, personal opinions, practice news, developing law and practice tips by the membership, as well as contributions of interest by nonmembers. Neither the ABA, the Section, the Committee, nor the Editors endorse the content or accuracy of any specific legal, personal, or other opinion, proposal or authority.

Copies may be requested by contacting the ABA at the address and telephone number listed above.

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Save the Date!

The TIPS Section Conference
Join your colleagues for the premier CLE conference for insurance defense, corporate, and plaintiffs attorneys.

April 29—May 1, 2015
The Ritz-Carlton
Philadelphia, PA

This inaugural event will feature:
• Over 24 hours of top-notch CLE programming, including three hours of ethics credit, to meet all of your educational needs
• Practice area-specific CLE tracks featuring premier speakers, including judges and in-house counsel
• Numerous opportunities to network with insurance defense, corporate, and plaintiffs attorneys; judges; and local lawyers at events that include the Leadership in Action Luncheon and Gala Dinner at the Constitution Center
• Substantive committee meetings and social events
• Specialized practical CLE for all attorneys, including young lawyers and judges
• Philadelphia! Where American law began

For more information visit americanbar.org/tips.
For our fourteenth “Trade Talk” piece, we are pleased to spotlight Elizabeth Breton, Ocean Marine Claims Manager for Gen Re. Gen Re delivers reinsurance solutions to the Life/Health and Property/Casualty insurance industries. It works closely with its clients to understand their strategic and operational goals, offering a wide range of products, tools and resources that aim to promote our clients’ ongoing growth and success. As a direct reinsurer, Gen Re is in the risk assessment business and for a view of emerging marine risks in 2015, see Gen Re’s recent posting here: http://www.genre.com/knowledge/blog/5-emerging-marine-trends-in-2015.html

Below are excerpts from our interview with Beth which address her views on the maritime industry, issues concerning the hiring of outside counsel, and the excitement that is UCONN basketball.

Q. Beth, tell us what prompted you to become a Claims Executive at Gen Re?

R. I’d worked for several primary companies and as a claims consultant before joining Gen Re in 1991. Moving to a reinsurer was a natural progression in my career. Gen Re was looking for someone with Ocean Marine claims experience, so the fit was perfect! The move allowed me to concentrate on complex, high exposure losses, helping my clients in a consultative capacity with their claims.

Q. Can you describe your experience of managing claims for marine incidents of all shapes and sizes at Gen Re?

R. I love the diversity of clients and claims that I work with: Jones Act, Hull & Machinery on Yachts up to VLCC’s, P&I losses from International Group members, and more. Each claim has its unique challenges for my clients and me. You can never “know it all” when it comes to Ocean Marine losses, so you are constantly building on your knowledge base. My job allows me to highlight concerns that particular clients may not have experienced before. It really is a sharing of ideas to bring about the best result for all concerned.

Q. What are your views on hiring outside counsel?

R. My clients, the insurers of the risk, hire the attorneys they prefer to represent the insured. However, clients may ask my opinion on who to hire if they are in a jurisdiction that is unfamiliar to them. I like to provide them with a list of attorneys that I have seen in action, but it is up to the client to sort out who will work best for their insured. Occasionally, Gen Re will hire monitoring counsel to help our clients and their attorneys navigate particularly difficult claims.

Q. What legal issues are coming across your desk with some frequency these days?

R. Contract interpretations for losses involving “additional insureds”; duties to defend and/or indemnify another party; analyzing “other insurance” clauses to determine which underwriters are on the hook, and in what respect; breaches of the warranty of seaworthiness of the vessel; generally how to manage the strategy for complex, multi-party litigation.
Opportunities To Become Involved

- Publication in the AMLC Newsletter or TIPS Law Journal
- Networking Opportunities
- CLE and Webinar Opportunities
- Leadership Positions
- Mentoring Relationships
- Young Lawyers and Law Student Writing Competition

Additional Information

For more information regarding the benefits that membership in the AMLC can provide to you, check out our webpage at http://ambar.org/tipsadmiralty and join our group on LinkedIn. The Committee is open to all, including non-lawyer maritime professionals, law students and lawyers in every practice area who want to keep abreast of developments in the field.
ABA TIPS Regional Event Recap: Miami - Vessel Arrest Maritime Symposium 2015

The American Bar Association Tort, Trial and Insurance Section Admiralty Committee hosted its first half-day event earlier this year. The Vessel Arrest Maritime Symposium 2015 was held at the University of Miami on January 21, 2015. The symposium was the joint effort of the ABA TIPS Admiralty and Maritime Law Committee and the Florida Bar Admiralty Law Committee. The symposium was preceded by the Florida Bar Admiralty Law Committee Winter Meeting for 2015. At the committee meeting, we had 40 committee members sign-in, as well as a number of members attend by conference call. This was the first time that the Florida Bar Admiralty Law Committee had its annual meeting away from the Florida Bar’s Orlando meeting and resulted in a dramatic increase in attendance by committee members. Michael McLeod introduced Lindsey Brock, the new chair of the Florida Bar Admiralty Law Committee for 2015 and Allan Kelley provided an update on the Florida Bar Admiralty and Maritime Law Board Certification.

Immediately following the meeting, the vessel arrest maritime symposium commenced at 1PM. This seminar was held at the University of Miami through the efforts of the University of Miami Law Society, including Brett Rogers and Alex Cook, both UM Law students. The CLE seminar was approved by the Florida Bar for 4.5 hours of CLE/Certification Credit, including 1 hour of ethics. The seminar was co-chaired by Robert L. Gardana, Vice-Chair of the ABA TIPS Admiralty and Maritime Law Committee and Lindsey Brock, Esq, Chair of the Florida Bar Admiralty Law Committee. There were 76 prior registrants for the seminar, which included maritime practitioners, professors and law students. It is estimated that attendance was approximately 80, with a number of others attending by conference call.

The seminar featured speakers Glen Wilner USMS of the US Marshal’s Service on the practical aspects of vessel arrest, Bob Toney of National Maritime Services on the role of the substitute custodian, Michelle Otero Valdez, on the ethics of vessel arrest, Robert L. Gardana, on a case law update of the Supplemental Rules, Michael McLeod and Lindsey Brock on Post-Lozman Cases, and Captain Alan Richard on a Florida statutory maritime update. The seminar was free and will be available on the ABA/TIPS YouTube website shortly and the Florida Bar CLE credit will be available through July 21, 2015.

Following the seminar, a reception was held by Fowler, White and Burnett and National Maritime Liquidators/National Maritime Services, on the balcony of the new UM Student Activities Center overlooking Lake Osceola. Photos of the Symposium and reception are included with this piece.

A Vessel Arrest Infographic developed by Robert Gardana and Brett Rogers specifically for the symposium has been reproduced in this newsletter for the committee’s benefit.
ABA TIPS Regional Event Recap:
Miami - Vessel Arrest Maritime Symposium 2015

Vessel Arrests

**General Overview of Steps Involved With Arresting a Vessel**

**START**

- **FILE A VERIFIED COMPLAINT**
  - in compliance with Fed. R. Civ. P. 9(h), Supp. R. C(2)(a), and the local admiralty rules of the district

- **CHECK SUPP. R. C(2) PRE-SEIZURE REQUIREMENTS**
  - File a Motion for Iss. of Warrant (Supp R. C(3))
    - Prop. Order Directing Iss. of Warrant
    - Prop. Warrant of Arrest in rem (Form SDF 2)

- **CHECK SUPP. R. C(2) PRE-SEIZURE REQUIREMENTS**
  - Create a Consent and Indemnification Agreement

- **FILE A WRITTEN CERTIFICATION OF EXIGENT CIRCUMSTANCES**
  - in compliance with L.A.R. C(2)(b) [Southern District]. If not in S.D, check the local admiralty rules of the district

- **CHECK SUPP. R. C(2) PRE-SEIZURE REQUIREMENTS**
  - File a Mot. and Order for App. of Sub. Custodian
    - Affidavit of Substitute Custodian
    - Prop. Order Appointing Substitute Custodian

- **RECEIVE ORDER DIRECTING ISSUANCE OF WARRANT OF ARREST IN REM**
  - through ex parte motion to the court

- **RECEIVE ORDER APPOINTING SUBSTITUTE CUSTODIAN**
  - through ex parte motion to the court

- **RECEIVE WARRANT OF ARREST IN REM**
  - issued by the Clerk of a U.S. District Court

- **PREPARED BY ROBERT L. GARDANA AND BRETT ROGERS, ADMIRAL OF THE UM MARITIME LAW SOCIETY**

- **THE VESSEL IS ARRESTED**
  - by the U.S. Marshal Service and turned over to custody of Substitute Custodian

- **CLAIMANT OF PROPERTY FILES**
  - verified claim of owner/statement of interest in compliance with L.A.R. C(6)(a) [Southern District]. They must file claim within 14 days after process has been executed.

- **CLAIMANT OF PROPERTY SERVES**
  - Answer and Affirmative Defenses in compliance with L.A.R. C(6)(b) [Southern District]. They must serve an answer within 21 days after filing statement of interest.

- **COINCIDENT WITH FILING CLAIM**
  - Supp. R. E(4)(f) and L.A.R. C(6)(a) [Southern District]. Motion and Proposed Order directing Plaintiff to show cause why arrest should not be vacated

- **UPON AGREEMENT, FILE A JOINT MOTION & STIPULATION**
  - for Release of the Vessel in accordance with Supp. R. E(5)(c) or, as defense counsel, file a motion for Release of the Vessel where the court will set bond.

- **FILE VESSEL RELEASE BOND AND RECEIVE ORDER RELEASING VESSEL**

**Robert L. Gardana**

**Brett Rogers**
ABA TIPS Regional Event Recap:
Miami - Vessel Arrest Maritime Symposium 2015

Attilio Costabell, Ane Haugland, Ivan izquierdo,
Lindsey Brock, Nicia Mejia

Reception Sponsored by National Maritime Services
& Fowler, White Burnett

All photos are copyright by Bob Greenberg Photography
ABA TIPS Regional Event Recap: Miami - Vessel Arrest Maritime Symposium 2015

Glen Wilner, Assistant Chief, U.S. Marshals Service and Robert L. Gardana

Michelle Otero Valdez

Allan Kelley and Robert McIntosh

G. Robert Toney, Chairman National Maritime Services

Captain Alan Richard

Michael McLeod and Stephen Moon

All photos are copyright by Bob Greenberg Photography
AN OPEN FORUM
McBride v. Estis Well Service, L.L.C.
Availability of Punitive Damages
In Unseaworthiness Injury, Death
and Zone of Danger Cases.

Photo Courtesy: Associated Press

The American Bar Association TIPS Admiralty & Maritime Law Committee, Florida Bar Admiralty Law Committee and St. Thomas University School of Law, Maritime Law Society, present:
• Pending Writ of Certiorari and discussion by Rod Sullivan regarding the Brief of the Maritime Law Professors in support of the Petition of Writ of Certiorari in McBride v. Estes (Case No.: 14-671).

• An open forum on whether seamen may recover punitive damages for their employer’s willful and wanton breach of the general maritime law duty to provide a seaworthy vessel, as held by the Ninth and Eleventh Circuits, or are punitive damages categorically unavailable in an action for unseaworthiness, as held by the First, Fifth, and Sixth Circuits and the Texas Supreme Court.

April 10, 2015 10:30 AM - 1:30 PM
St. Thomas University Law School
Maritime Law Society
16401 NW 37th Ave, Miami Gardens, FL 33054

3.0 HOURS CLE/CERT PENDING FL BAR
Please AUTO-REGISTER by email to: MaritimeLaw2015@gmail.com
KNOW THE ROPES WHEN FLAGGING YOUR VESSEL: A COMPARISON OF THREE OF THE WORLD’S DU JOUR VESSEL REGISTRIES

By: Heather C. Devine and Stephanie S. Penninger

I. Introduction: Choosing a Flag – More Than a Matter of Convenience

Advising a client of the appropriate flag state for his or her vessel is a challenging retainer requiring consideration of almost every commercial issue: vessel ownership, labor and manning issues, to the reputation of the flag state. The only certainty is that a vessel must sail under a flag: United Nations Convention on the Law of the Sea (“UNCLOS”) Article 91 provides:

Ships have the nationality of the State whose flag they are entitled to fly. … [Moreover] ships shall sail under the flag of one State only and … shall be subject to its exclusive jurisdiction on the high seas.

When considering which flag state to choose, one encounters several different registration regimes: traditional, open, and a hybrid of the two. While traditional registries usually require the vessel’s owner or operator and a certain percentage of the crew to be citizens of the registration state, open registries typically impose more lenient registration requirements by not requiring the vessel owners, operators, and crew to have the same nationality as the country where the ship is registered or the disclosure of ownership information.

Today, “flag of convenience” refers to vessel registration in a country with an “open registry” for predominantly economic reasons, including: few to no local taxes on vessel income, acceptance of foreign owners and crew, increases in vessel market value, easy currency conversion, allowing vessel repairs abroad, lower operating costs due to lower wages (due to the ability to hire non-union employees), more lenient labor and safety standards, obtaining facile vessel tonnage, and avoiding Coast Guard regulations.

With the increased popularity in open registries for vessel registration, it is important to understand the advantages and disadvantages of the different available registries and the factors to consider when selecting a particular registry. Choosing where a vessel should be “flagged” is a complex process that requires consideration of a multitude of factors. This article considers some of the key factors in the context of the three of the most popular flag states: the Republic of Marshall Islands (“RMI”), Mongolia and Panama.

A. Taking the Right Tack – Flying the Marshall Islands Flag

The RMI Registry, governed by the RMI Maritime Act of 1990 (“RMI Maritime Act”), is the third largest vessel registry in the world, reaching 100 million gross tons in February 2014. Headquartered in Reston, Va., the International Registries, Inc. and its affiliates (“IRI”) is the world’s oldest and one of the most experienced privately administered Maritime and Corporate Registry provider; it operates 26 full-service offices in major shipping and financial centers around the world, and provides worldwide, around-the-clock duty officer system and real time support to vessels flying its flag.

Continued on page 22
THE GREEK VIEW: ON LIABILITIES OF CLASSIFICATION SOCIETIES TO SHIPOWNERS – Victoria Navigation S.A. v Germanischer Lloyd (The Hanna D), The Piraeus Court of Appeal, Final and Irrevocable Decision No 89/2011

By: John A. Economides

Classification societies are presumed to establish and maintain technical standards for the construction and operation of ships and offshore structures. They also validate that construction is according to these standards and carry out regular surveys in service to ensure compliance with the standards. Notwithstanding that classification societies undertake no explicit responsibility for the safety, fitness for purpose or seaworthiness of the vessels they certify, they are sometimes sued by injured parties in cases of damages, losses and casualties.

According to international jurisprudence, main conditions for establishing such claims against classification societies, have been prescribed as (a) A duty to conform to a standard of conduct; (b) a breach of that duty; (c) causation; (d) foreseeability; and (e) damages (economic loss). The standard of proof for establishing these conditions is usually high for third parties such as charterers, cargo interests, passengers and insurers. Apparently this is due to the less direct relation which such third parties have with classification societies.

In the case of the Hanna D in Greece (2011) which recently became irrevocable – the shipowners were successful against classification society Germanischer Lloyd (GL). In this case the Piraeus Court of Appeal (PCA Dec. 89/2011), on matters of (civil) procedure, accepted that in tort actions, competent jurisdiction and applicable law are those of the place of the damaging act (place of survey) or of the damaging effect (place of ship owner’s business) as prescribed by the Brussels Convention 1968, therefore Greek law. On points of law, the Court accepted that the provision of classification survey and certification services failing statutory provisions and legal responsibilities in the rendering of such services, is a tortious act.

On points of fact the Court found that the damage was due to poor condition (extensive wear and corrosion) of lower bulkhead plating which the class should have surveyed and mandated immediate repair according to the classification Rules, IACS Unified Requirements (standards), Greek law principles of good faith and technical practice as well as relevant duties of care and diligence. On damages, the Court accepted the claim of the plaintiffs against the classification society for wrongdoing in tort and awarded to the shipowners compensation for actual and prospective damages (loss of profit).

With reference to international jurisprudence and legal practice the case of Hanna D therefore demonstrates that on proof, the standard of proof for establishing the aforesaid main conditions and substantiating claims (in tort) against classification societies, is less high for the shipowners than is usually for third parties, due to the more direct relations which shipowners have with classification societies and with the certifications of their ships which they provide.

On limitations, that while the contractual liabilities of classification societies to shipowners can be contained and usually are by limitations, indemnities and exclusions provided in their rules, the legal liabilities especially those for failure of statutory provisions and legal responsibilities like the classification rules, IACS Unified Requirements (standards), legal principles of good faith and technical practice as well as relevant duties of care and diligence in the provision of such services, cannot be contained by such limitations, indemnities and exclusions with equal effect.

On shipowner’s right of recourse to the classification society and on awarding damages, that the class’ duty for proper and diligent survey and certification is legal and independent of the shipowner’s own responsibility

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1 John A. Economides is attorney at law in Greece – partner in the firm Aristides Economides & Co in Athens. In the case Victoria Navigation S.A. v Germanischer Lloyd – “The Hanna D” he acted for the plaintiffs. He can be reached at: john.economides@economidesco.gr
to maintain his vessel safe and seaworthy. As for loss of profit damages (from charter earnings lost due to immobilization), that the class society contribution to the vessels effective technical safety extends also to her economic (commercial) operation.

Finally, on liability of classification societies towards the shipowners on performance and on restitution for damages both technical and economic, that marine and shipping rules and regulations are set and enforced for the paramount purpose of the safe and functional operation of the ships and the effective and efficient provision of the maritime and shipping services.

This is significant decision because classification societies are essentially immune from tort liability under English law and there is a high bar for liability under the general maritime law of the United States. Time will tell if the Greek jurisprudence will be recognized or influence other legal systems. It is also significant because the ruling was thoroughly vetted in the Greek Court system. In particular, the Piraeus First Instance Court (Dec. No 828/2006) accepted as competent jurisdiction and applicable law those of the place of the damaging act (place of survey) or of the damaging effect (place of shipowner’s business) therefore Greek law. The First Instance Court also accepted the main points of law of the claim but rejected the technical points of fact against which the defendants argued specifically, that causality of damage was due to overpressure of the vessel’s hold during loading rather than poor condition (extensive wear and corrosion) of the lower bulkhead plating as the plaintiffs maintained, which the class should have surveyed and mandated its immediate repair.

The Piraeus Court of Appeal (Dec. No 976/2007) ordered technical expertise which found that the damage was due to poor condition (extensive wear and corrosion) of the lower bulkhead plating which the class should have surveyed and mandated immediate repair and thus agreed with the plaintiffs. After adjudication and with the benefit of that technical expertise the Piraeus Court of Appeal (Dec. No 89/2011) reversed the findings of the First Instance Court on the technical aspects (causality) and upheld claim of the plaintiffs and so after confirming the first instance reasoning on Greek competent jurisdiction and applicable law and the main points of law (wrongdoing in tort) awarded to the shipowners compensation for actual and prospective damages (loss of profit) by the classification society.

The Supreme Court (Dec. Nos 1802/2013 & 1804/2013) rejected bilateral appeals of the parties against the Appeal Court decision on points of law and so rendered the decision irrevocable.

A full English translation of the Hanna D is provided with this article, and follows on the next page.

2 Cases of note as to classification society liability include:

- **Action by insurers** Great American Insurance Company v. Bureau Veritas ("The Tradeways II") 478 F. 2d 235 (S.D.N.Y.)
- **Action by ship’s purchaser** Mariola Marine Corporation v Lloyds Register of Shipping ("The Morning Watch") [1990] 1 Lloyds Rep. 547 (Q.B. (Comm)
- **Action by cargo interests** Marc Rich & Co Ltd (and class NK) ("The Nicholas H") [1992] 2 Lloyds 229 (H.L.)
- **Action by crew relatives** Ioannides et al. v Marika Maritime Corp. et al. ("The Marika") 928 F. Supp 374 (S.D.N.Y.)
- **Action by charterers** Carbotrade Spa v Bureau Veritas ("The Star of Alexandria") 901 F. Supp 737 (S.D.N.Y.)
- **Action by time charterers** Soc. Argos Shipping Agency C. v Lloyd’s Register of Shipping ("The Redwood") - Tribunale di Genova 24/02/2010 and the Genoa Court of Appeal (12/11/2014)
- **Action by shipowners** Sundance Cruises v. American Bureau of Shipping ("The Sundance") 799 F. Supp. 363 (S.D.N.Y.)
Convened in public audience on 15th March 2010 to adjudicate the case between:

APPELLANT: The company Victoria Navigation S.A., which is seated in Marshall Islands and has its principal place of business in Greece, where it is legally represented by Dynasty Shipping Co Ltd, which is also established in Greece according to the provisions of Law 89/1967 for ship management companies and which was legally represented by its attorney at law John Economides.

RESPONDENTS: 1) Germanischer Lloyd Aktiengesellschaft, which is seated in Hamburg Germany as legally represented, 2) Germanischer Lloyd Hellas Inspection Ltd, which is seated in Piraeus as legally represented, 3) Sotirios Perousakis (ships’ surveyor) and resident of Piraeus, all of whom were legally represented by their attorney at law Maria Rodiri.

The plaintiff and now appellant filed the legal action (lawsuit) dated 26-10-2004 with ref. no 8401/2004 before the Multi Member First Instance Court of Piraeus, on which Decision No 828/2006 of the aforementioned Court was issued, which rejected the said legal action.

Against this decision the plaintiff and now appellant filed the appeal dated 10-7-2006 with ref. no 720/2006 on which Interlocutory Decision No 976/2007 of this Court was issued, which ordered what is recited in it.

Now already with summons of the appellant dated 22-9-2009 and with ref. no 87/2009 this case is reintroduced for hearing in the Court date reference of which is made hereinabove.

The case was heard at the order of the relevant docket and was discussed.

The attorneys at law of the parties as invited by the Presiding Judge referred to the points of claim and defence and to the pleadings they submitted.

STUDIED THE FILE AND CONSIDERED THE CASE ACCORDING TO THE LAW

The appeal under adjudication which is against final decision no. 828/2006 of the Piraeus Multi Member First Instance Court issued in the regular process, is reintroduced acceptably for hearing in this Court, after the issuance of interlocutory judgment no 976/2007 of the present Court with which (the appeal) was typically accepted but its adjudication was deferred pending (a) the investigation by technical expert of the cause of the damage of the plaintiff’s vessel and the manner of exercise of its survey sub judice by the third defendant and (b) the drawing up of the technical expertise ordered. Therefore, the action must be examined as to its legal acceptance and the merits of its reasoning (art. 533§1 Code of Civil Procedure, Supreme Court (Quorum) Dec. 1285/1982 Law Reports 31.219), in the same as aforesaid process.

With its action dated 26 October 2004, the plaintiff claims that in the capacity of the shipowning company of the Panama flagged (bulk carrier vessel Hanna D, from January 2001 to June 2002, sustained actual damages and loss of profit of Euro €2,102,544 on the grounds delineated therein and in addition, that it also sustained moral damage by way of loss of credibility and reputation due to the occurrence on the 16th March 2001 of a crack alongside the main deck of the ship while she was sailing laden in the open sea off Malta, having departed on the 12th March 2001 from the port of Elefsis (in Greece), destined for the port of Hull in England. As exclusive cause of the crack and of its derivative damage the plaintiff claims its negligent annual survey, which the first defendant in the class of which was registered that vessel since 1988, conducted through the second and the third defendant.

Based on the above and after the acceptable restriction of the award demand from claim liquidation to claim recognition under art. 223, in conjunction with arts 294 and 295§1 of the Code of Civil Procedure, the plaintiff demands to be acknowledged the obligation of the defendants to pay, each in full, the aforesaid monetary sum for its actual damages and loss of profit, as well as €300,000 in pecuniary satisfaction of the moral damage it sustained by the prejudice of its reputation and credibility, caused by the tortious behaviour of the defendants.

Continued on page 28
In early 2013 James Clapper, Director of National Intelligence, warned: “[Cyber] Threats are more diverse, interconnected and viral than at any time in American history. Attacks which might involve cyber weapons can be deniable and attributable; destruction can be invisible, latent and progressive.”1 Almost exactly two years later, in testifying before the Senate Armed Services Committee meeting in Washington, DC, last month, Mr. Clapper reiterated the warnings: “Attacks against [the United States] are increasing in frequency, scale, sophistication and severity of impact. We’ve been living with a constant and expanding barrage of cyber attacks for some time. This insidious trend will, I believe, continue.”2

In the cyber world the more things change the more they seem to worsen. While the possibility of a cyber Armageddon remains unlikely, cyber threat actors use increasingly sophisticated tools and methodologies to breach commercial networks, steal money and confidential information (e.g. intellectual property, personal information, financial data, etc.), and, as the recent Sony hack demonstrated,3 maliciously destroy data with the intent to damage personal and corporate reputations.

As executives at Target and Sony have discovered, cyber threats are now existential in nature to both themselves and the companies they lead. While cyber attacks against financial, healthcare and retail institutions capture headlines, their outcomes are not kinetic in nature. Cyber risk in the maritime domain is potentially worse, for while it includes all the same concerns around intellectual, financial and personal data, it also includes operational systems such as Industrial Control Systems (ICS), Supervisory Control and Data Acquisition (SCADA) systems, along with a plethora of key technologies and platforms that include, but are not limited to, Container Management Systems, RFID, Radar, GPS, VTS, etc. To be sure, maritime cyber risks impact the global supply chain, oil/gas infrastructure, chemical facilities, and the list goes on and on.

**Background and Context**

In the aftermath of September 11, 2001, the overarching emphasis was placed on physical security. Vulnerabilities at that the time were relatively obvious affairs whereby tangible solutions mitigated traditional perimeter gaps – fences, access control and surveillance systems, to name a few, were immediately funded, implemented and sustained. Maritime infrastructures were hardened – one could literally see and touch the solutions and, by doing so, an innate comfort was realized that now seems almost quaint.

Gone are the days when the physical security guidelines described in the Maritime Transportation Security Act of 2002 (MTSA) and the International Ship & Port Security (ISPS) Code provided vessel and port terminal owners operators with guidance for

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1 Cynthia Hudson is CEO and founder of *HudsonAnalytix*, a global maritime risk management consultancy, and Max Bobys is Vice President of Global Initiatives for *HudsonAnalytix* and is leading the company’s cyber security solutions.


adequate protection needed to ensure the safe maritime operations. With today’s sophisticated automation and communications capabilities introduced to address a wide range of regulatory and commercial requirements, cyber risks now represent the highest form of risk to maritime stakeholders.

Unfortunately for maritime executives functioning in today’s Internet-of-Things (IoT) world, MTSA or ISPS Code compliance does not equate to security. The IoT’s hyper-interconnectedness impacts every individual and business relying on digital networks, networked-systems and applications, cloud-based technologies, and mobile devices. In this context of technological inter-dependence, confidential company and personal information residing on a network is at risk every time an email is sent or received, a file is downloaded, or Internet browser is opened.

Overall, the global maritime industry is especially vulnerable as companies are increasingly the targets of malicious cyber-attacks that include malware and denial of service attacks, email spear-phishing, and network penetration/disruption activities. Threat actors, regardless of their political, ideological or religious motivations, no longer require physical access to a company in order to commit harm or to gather information for criminal purposes. With Mandiant’s 2014 M-Trends report pegging the median number of days an attacker was present on a network before discovery at 229, it’s more likely than not that cyber threats can go undetected by port authorities, terminal operators and vessel owners and operators for a year.

The Problem of Cyber Risk

The problem with cyber risk is that for most people it challenges the very concepts of space, time, context, and attribution – Who’s attacking me? From where are they attacking? When and why did the attack occur? Increasingly well-funded and growing more sophisticated in their capabilities and tactics, cyber attackers are integrating operational research and organizational business strategies to affect outcomes from anywhere in the world. As Amit Yoran, President of RSA Security recently reemphasized, “cyber crime today is more lucrative in the US than the global drug trade.”

Increasingly, maritime companies are adopting and integrating a broad range of operational technologies and systems, both wired and wireless, which facilitate faster, more efficient and streamlined operations. The more network-enabled devices are deployed and used, however, the more dependent the maritime industry overall will become and, thus, it will become more vulnerable to cyber threats. While networks need to provide high-availability, we must also demand high integrity – they will need to be safe. To this end, unlike a standard database or router, a hacked container management system could result in a massive number of misdirected assignments or a compromised GPS system could incrementally misdirect vessels outside of channels and into dangerous areas before a compromise is discovered, let alone corrected. Such scenarios could result in costly business disruption, property loss, or environmental damage.

Like Stuxnet demonstrated in 2010 with the successful attack on Iran’s nuclear enrichment capabilities and Shamoon’s disruption of Qatar’s RasGas and Saudi Aramco’s computer systems, the expanded utilization and connectivity of highly integrated, networked SCADA and ICS equipment have outpaced the cyber security controls needed to secure such critical systems from cyber-attack. Unfortunately, automated maritime systems are typically not managed to standard IT best practices. Instead, they are relegated to the traditional physical security practices stipulated by the ISPS and ISM regulations and have yet to be updated to address emergent cyber threats. Since cyber risks span the entirety of an organization – from C-suite executives susceptible to targeted social engineering attacks, to unsuspecting employees falling prey to a spear-phishing attack and third party contractors accessing your company’s network – addressing the challenge demands a top-down enterprise approach.

What’s At Risk?

While maritime trade connotes the streamlined movement and management of cargoes and mariners across oceans, cyber risks, such as malware, Distributed

7 http://en.wikipedia.org/wiki/Stuxnet
8 http://en.wikipedia.org/wiki/Shamoon
Denial of Service (DDoS) attacks, and botnets can be easily and unknowingly introduced at any point in the ecosystem. As a result, maritime companies are acutely vulnerable to cyber risk. Organizational and network vulnerabilities can be easily exploited by hackers intent on disrupting shipboard systems such as navigational and operational systems, Global Positioning Satellites (GPS), marine Automatic Identification System (AIS), and the Electronic Chart Display and Information System (ECDIS).

The Security Association for the Maritime Industry (SAMI) is constantly monitoring potential security threats and, along with Reuters\(^9\), reported that of the world’s top 20 container carriers, 16 were found to have serious cybersecurity gaps. Moreover, cybersecurity capability ‘maturity’ on vessels and at ports is 10 to 20 years behind typical office-based network environments. Lloyd’s Register (LR) further highlighted in a presentation by Bernard Twomey, Head of Electrotechnical Systems, Maritime Technical Policy, that cyber threats extend beyond software, impacting non-related operational issues, such as misuse of systems that contain software critical to vessel safety.\(^10\)

While there is little in the way of direct regulatory-related cyber risk to maritime entities, there is significant cyber risk across other fronts, from corporate confidentiality and employee privacy concerns to port terminal, vessel control, fleet management and offshore energy operations.

Common vulnerabilities reside in the mundane, day-to-day exchanges of emails and utilization of software applications and management information systems, which are network-enabled and, thus, connect to the IoT. Specifically, confidential Personally Identifiable Information (PII) of transportation workers and seafarers, patients, office employees, vendors, strategic partners, and trustees. Proprietary organizational data, client information, intellectual property, financial and payment data are increasingly at risk of data theft and fraud as a result of the escalating cyber threats. Poorly protected networked endpoints become virtual gateways, exposing SCADA devices and maritime networks to probing cyber threats.

Unlike office network environments, compromised SCADA devices, Industrial Control System or an ECDIS system can result in environmental damage, first and third party property losses, physical injury, or, in the worst cases, death. Negative impacts to policy, compliance and finances may also trigger fines and class action lawsuits. Specifically, networked navigational and loading management systems, which represent vulnerable, high impact points of compromise, are prime targets for terrorists.

Vessels, representing the most expensive asset in most maritime companies, are particularly vulnerable to cyber threats since operators regularly access the vessel’s network and related management information systems from remote sites. While such access introduces cyber risk to the vessel, it also represents real operational risk to the business – that is, the entire business enterprise.

Crews and cargos are also increasingly at risk of piracy and theft because of the escalating and expanding nature of cyber threats. Poorly protected access endpoints, including human input devices (e.g. cell phones, tablets, laptops), become virtual gateways, exposing SCADA devices and maritime networks to probing cyber threats.

Fair or not, CEOs and Board Members are at risk and are increasingly being held accountable for their organization’s cybersecurity capability, or cyber resilience. Cybersecurity is evolving into a business initiative that CEOs must now understand, own, and champion internally rather than treating it as one of many “IT” challenges.

**Achieving Cyber Resiliency in the Paradigm of 21st Century Cyberized Risk**

Surprisingly, many maritime organizations continue to ignore or downplay cybersecurity risk (suffering from the ‘it won’t happen to me’ syndrome), and by doing so they imperil every one of their partners, vendors and customers. Maritime executives, however, are beginning to awaken to the existential nature of cyber threats. For more and more of them, the answer to what keeps them up at night is cyber insecurity.

A wise man once counseled his protégé that before he goes off to save the world he must first save himself. The advice is analogous to maritime domain, and maritime executives in particular since no maritime

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organization – be they a vessel, a terminal operator or an oil/gas company – can exist in today’s hyper-connected global economy without functioning in the cyber domain. Although cyber defense technologies continue to evolve and adapt to evolving cyber threats, no ‘magic bullet’ exists (nor will it) for achieving a 100% cyber secure environment.

In order to operate in a ‘Cyberized,’ hyper-connected 21st century global economy, maritime organizations must seek to achieve and sustain a cyber resilient posture. Rather than hope for the magic bullet solution that will never come, executives must accept the fact that their organization is more than likely already functioning in a cyber compromised state and there will remain an ongoing degree of cyber risk “unknowability” – the answers to the who, what, where, when, why, and how may never be fully answered at any one time.

Having accepted the 21st century paradigm of Cyberized risk, Maritime executives must champion, fund, implement, and sustain a long-term holistic cybersecurity strategy. Of course, this is not easy.

The following are a range of suggested approaches for maritime organizations to begin moving in the direction of cyber resiliency:

• **Accept the “new normal” – assume you’re already compromised.** Like an addict seeking salvation, admit the problem. C-Suite executives must presume, regardless of what their CIO or IT Department claims, they are operating in an environment whereby a breach has already occurred and their systems are already compromised.

• **Look in the mirror – baseline your organization’s current cyber state.** The first step to achieving cyber resiliency is achieving awareness of the current state. Engage a neutral third party to perform a cyber risk assessment or seek assistance in performing a self-assessment. The Cybersecurity Capability Maturity Model, initially promulgated by the US Department of Energy for the Electricity Sub-sector, offers an excellent starting point for organizations seeking a first step.11 Variations on this are also available for facilitating minimal levels of organizational cyber maturity

• **Get serious – perform a cyber risk/threat assessment.** Understand what assets are at risk and how they might be at risk. Understand the threats against your organization. Once you understand where and what the vulnerabilities and threats are, then you will have a technical starting point. If possible, perform a Red Team analysis, which can be as simple as a baseline penetration test or as complex as a coordinated physical-cyber level of effort to test the effectiveness of your organizational cyber posture (this is also known as ‘converged adversarial analysis’).

• **Consider transferring part of your risk - consider cyber insurance.** Technology alone cannot be relied on you to protect your enterprise. Insurance firms are releasing new products to help companies manage a wide range of cyber risks, from privacy breach response to catastrophic events. Because actuarial data related to cyber risk is limited, insurers are increasingly demanding that customers adhere to cybersecurity standards and best practices.

• **Cover your [Bleep].** Case law in the realm of cybersecurity is evolving. Do you have outside counsel with expertise in cyber breach cases? Do they have an international capability? If you’re organization manages assets in more than one country, identify counsel with transnational capabilities.

• **Invest.** Develop a sustainable cyber risk management budget and accept that this will now be part of your ongoing budget.

• **Train. Train. Train.** Employees are your greatest assets, but they are also your greatest vulnerability. At a very minimum, implement an ongoing training program that delivers cybersecurity awareness to all employees. Consider mobility-enabled platforms and dedicated courses for nontechnical executives. Insurance companies are beginning to look at this and will eventually seek out this data to inform their cyber liability policies.

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• **Get Hygienic.** Implement a scalable cybersecurity management program that facilitates and tracks the company’s day-to-day cyber hygiene activities. Dashboard tools and reports can be used to inform cyber insurance policies. Some are better than others, so do your due diligence. Seek out solutions bridging cybersecurity expertise with maritime domain knowledge and experience.

• **Lead.** You must do two things as an executive. First, you must accept the fact that you are a primary, high-value target for hackers, hacktivists, foreign intelligence services, and organized criminal actors seeking to penetrate your organization. You as an individual are vulnerable. Cyber threat actors will target and compromise you, gaining insights into the most important dealings of your organization and, through you, gain access to your network. Secondly, lead by example. Use your position to set the tone and to champion the organization’s cybersecurity risk management program. Doing so will set the paradigm for functioning within the 21st century cyber world and position your organizational for long-term cyber resiliency.

**A REMINDER: USE OF...**

Consistent with this time-honored philosophy is a recent decision from the U.S. District Court for the Middle District of Louisiana, which provides a cautionary reminder to vessel owners that they cannot avoid Jones Act liability by using temporary staffing agencies to supply vessel labor: *In re: Weeks Marine, Inc. as owner and operator of the BT 229 for Exoneration from or Limitation of Liability.*

Weeks Marine, Inc. contracted with Aerotek, Inc. for temporary labor. Aerotek provided Randall Harrold to work as a crane operator on the Weeks BT 229, a derrick crane barge. Harrold was injured while performing maintenance on the crane and he made the typical Jones Act/Unseaworthiness/Maintenance and Cure claims. Aerotek, presumably to avoid the potential for punitive damages now available under the Supreme Court’s decision in *Atlantic Sounding v. Townsend,* began paying maintenance and cure to Harrold. Weeks Marine filed a limitation of liability action. Aerotek filed a claim in the limitation action seeking reimbursement of Harrold’s maintenance and cure payments from Weeks. Aerotek also moved for summary judgment on the grounds that Harrold was a borrowed servant of Weeks, and therefore Weeks was the proper Jones Act employer.

Weeks argued that because it had no employment contract with Harrold, he was the employee of Aerotek. Notwithstanding the technical niceties of staffing agency contracts, the court easily found that Harrold was Weeks’ borrowed servant and Weeks was his Jones Act employer. The court considered the following factors in its analysis:

1. Weeks exercised control over Harrold’s day-to-day work on the barge;
2. The work being performed by Harrold was for Weeks’ benefit, not Aerotek’s;
3. Despite the actual language in the contract between Aerotek and Weeks providing Aerotek was an independent contractor with payroll responsibilities for Harrold, the written contract was trumped by “realities of the workplace” showing Harrold believed he was working for Weeks;
4. Harrold’s work in assisting with crane repairs was plainly being done for Weeks’ benefit, not Aerotek’s;

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4 [557 U.S. 404 (2009)].
5. Weeks furnished the tools, equipment, and place of employment for Harrold;
6. Harrold himself had no employment contract with Aerotek;
7. The only factor not working in Aerotek’s favor was that Harrold’s employment with Weeks was only for 17 days prior to the injury, and not otherwise for a considerable length of time;
8. Though the contract gave both Weeks and Aerotek the right to terminate Harrold, Weeks could do so at any time while Aerotek was required to provide Weeks with 30 days’ notice; and
9. Though Aerotek was required to cover Harrold’s payroll, Weeks was required to reimburse Aerotek for Harrold’s services.

This decision comes as no surprise. The borrowed servant doctrine is well entrenched in maritime law, as is the concept that a Jones Act seaman can hold only one employer liable for his or her claims. Though the district court in *Weeks* considered nine separate factors in determining Weeks Marine was the Jones Act employer, there are really two factors that most courts appear to weigh heaviest: 1) whose work was being done; and 2) who was supervising the work. Seaman, who are presumed to be incapable of looking out for their own best interests, are highly unlikely to be bound by the contract terms between a staffing agency and a vessel owner, of which the seaman is entirely unaware, let alone can understand. Laborers only know where to go to work, what the job is, and who is in charge; they likely have no knowledge or understanding of a contract between the staffing agency and the vessel owner for whom they are actually working.

This does not, of course, mean a vessel owner has no way around this problem. Shifting liability to the staffing agency by means of indemnity and hold harmless agreements is generally recognized as an acceptable practice by admiralty courts. Requirements for “additional assured” clauses, whereby the vessel owner is named as an additional assured on the staffing agency’s insurance policy, combined with the insurer’s agreement to waive its right to subrogate against the vessel owner, so-called “name and waive” clauses, are another well-known and legally enforceable method of shifting the vessel owner’s liability to the staffing agency. Whether vessel owners hiring temporary labor to avoid the cost, expense, and administrative burden of bringing on full-time employees will consider adding such provisions to staffing agreements is a different question, as is whether staffing agencies will accept such obligations.

As *Weeks* reminds us, while vessel owners and staffing agencies can contractually shift liability between themselves, they cannot bind the seaman to their agreements. Seaman will not be required to understand such contractual technicalities, and the admiralty courts will continue to protect them. The cautionary tale provided by *Weeks* is not new; it is simply a reminder of what the law has been for some time: using staffing agency labor will likely provide vessel owners with absolutely no direct protection from Jones Act liability. If laborers are doing the vessel’s work under the supervision of the crew or owners on what essentially amounts to a full-time basis, courts will likely view them as borrowed servants, and, therefore, members of the crew.

1. International Treatment

The RMI maintains a permanent representative and active delegation at the IMO. It is included on the White Lists of both the Paris and Tokyo Memorandums of Understanding (“MoUs”), and has also maintained Qualship 21 status with the U.S. Coast Guard for an unprecedented 10 consecutive years. Qualship 21 is an initiative that was implemented by the Coast Guard to identify high-quality ships, and provide incentives to encourage quality operations. Only approximately 10 percent of the foreign-flagged vessels that call in the U.S. qualify for this initiative and certification, which focuses predominantly on the vessel’s Port State Control (“PSC”) records and history ensuring the vessel is manned and operated in compliance with applicable international law.

2. Qualifications for Registry

Business entity formation within the RMI is straightforward and efficient, and there are tax incentives associated with vessel registration with the RMI Registry. The RMI does not restrict the nationality of seafarers serving on RMI flagged vessels, and offers competitive registration fees and tonnage taxes. Additionally, RMI’s legislation permits vessels to register with the RMI Registry although the vessel is still subject to a recorded mortgage in its present country of registry. The foreign mortgage lien accompanies the vessel into the RMI Registry.

Seagoing vessels of any tonnage engaged in foreign trade and those under construction are eligible for registration in the RMI. At the time of registration, vessels should not be more than 20 years of age; however, vessels that are older than 20 years may be granted a waiver for registration depending on condition and classification. An owner may check availability of vessel names and reserve that name for six months for an existing vessel and two years for a newly constructed vessel.

Ownership of vessels registered with the RMI must be through an RMI corporation, limited liability company, limited or general partnership, and associations of individuals or a qualified Foreign Maritime Entity (“FME” or “FMEs”). The RMI has mandatory classification and statutory survey and certification requirements. The country provides a list of approved societies for an owner’s convenience.

3. Registration Fees

Registration fees as well as the first year’s RMI tonnage taxes and annual fees are payable upon registration. There are two fee option schedules available. Schedule A is where the standard fees are payable for the registration in the RMI and Schedule B provides a sliding scale for various tonnage categories and a fleet discount structure. Discounts are available for certain registrations, e.g., a fleet or newly constructed vessels.

7 As part of its commitment to supporting maritime safety security, environmental protection and social responsibility, the RMI is a signatory to and enforces major maritime conventions, including: (1) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (“STCW Convention”), which provides qualification standards for masters, officers and watch personnel on seagoing merchant ships; (2) the International Convention for the Safety of Life at Sea (“SOLAS”), which sets forth the minimum safety standards concerning vessel construction, equipment and operation; (3) the International Convention for the Prevention of Pollution From Ships (“MARPOL”), which details the minimum standards governing pollution of the seas, including those governing oil dumping and exhaust pollution; and (4) the Maritime Labour Convention (“MLC”), which provides: (a) the minimum requirements for seafarers to work on board ships; (b) conditions of employment, including pay, rest hours, leaves of absence, training and manning of ships; (c) accommodation; (d) health protection and care; and (e) compliance and enforcement mechanisms and measures.


10 Id.


12 Id.; Annual tonnage taxes are due in full by January 1 of a given year for all vessels registered with the RMI. See Marine Notice 1-005-1 for the most current fee schedule, available at: www.register-iri.com.

13 Id.

14 Id.

15 Marshall and Vessel Registration and Mortgage Recording Procedures at § 2.

16 Id.

17 Id.

18 Marshall Islands Vessel Registration and Mortgage Recording Procedures.

19 Id.

20 Id.

21 Id.

22 Marshall Islands Vessel Registration and Mortgage Recording Procedures; see Marine Notice 1-005-1, available at www.register-iri.com, for most current fee schedule, including non-registration fees, e.g., Radio and Seafarer’s documentation.
4. Mortgaging Vessels & Maritime Liens

The RMI Maritime Act incorporates provisions for recordation of security-related instruments and documents of title.\(^{23}\) Recordation provides notice to creditors, purchasers, suppliers and other parties with interest, and furnishes an internationally enforceable structure for the protection of legal rights recorded.\(^{24}\) The RMI does not require a particular form of vessel mortgage. However, for a mortgage to be recorded with the Administrator, the mortgage must be duly executed and acknowledged as required by the RMI Maritime Regulations (MI-108) Section 3.30, or with proof of due execution as required in RMI Maritime Regulation 1.04.2a.\(^{25}\)

All documents recorded under the Maritime Act (MI-107) must be in the English language, except notices of foreign language ship mortgages or financing charters recorded under the bareboat registry provisions of the Maritime Act, Section 264, which require only cover and execution pages to be translated into English.\(^{26}\) Preferred status gives priority to a lender’s mortgage lien over those with certain other claimants.\(^{27}\) An RMI ship mortgage must contain the: (1) vessel name; (2) hull number for a vessel under construction; (3) names and identities of the parties to the mortgage; (4) interest in the vessel affected; and (5) amount(s) of the direct or contingent obligations that are or may become secured under its terms.\(^{28}\)

A preferred mortgage may secure sale and lease transactions, contingent and future obligations, advances and repayments, and guarantees. Owners also have an option to “tack on” a previously recorded mortgage.\(^{29}\) Owners may submit the recorded foreign mortgage and a simple signed mortgage instrument that is recorded when a vessel is registered with the RMI.\(^{30}\) Marshall Island laws will govern the mortgage instrument.\(^{31}\) In addition to the RMI legal system, international legal and financial professionals recognize the RMI mortgage recordation procedures and administrative controls.\(^{32}\)

5. Manning & Safety Requirements

There are no nationality restrictions for vessel crewmembers.\(^{33}\) However, RMI officers are required to hold a CoC/Certificate of Endorsement (CoE) issued by the Administrator, and all persons serving aboard RMI flagged commercial vessels are required to hold an RMI Seafarer’s Identity and Record Book, which serves as a record of sea service and contains the Special Qualification Certificates (SQCs), specifying the rating in which the holder is qualified to serve and any special qualification(s) held by the seafarer.\(^{34}\)

6. Taxation

Pursuant to RMI Business Corporations Act Section 12, RMI business entities and FMEs are exempt from annual filings and corporate tax, net income tax, withholding tax on entity revenues, asset tax, tax reporting requirement on entity revenues, stamp duty, exchange controls or other fees or taxes, provided that they do not engage in business within the RMI.\(^{35}\)

7. Labor and Operating Costs

On September 25, 2007, the RMI ratified the Maritime Labour Convention of 2006 (“MLC 2006”), which provides: the minimum requirements for seafarers to work on board ships; conditions of employment, including pay, rest hours, leaves of absence; training and manning of ships, accommodation, health protection and care and compliance; and enforcement mechanisms and measures. The RMI also adheres to certain minimum standards of social security, under the Social Security (Minimum Standards) Convention of 1952 (“SSC

\(^{23}\) Id.
\(^{24}\) Id.
\(^{25}\) Id.
\(^{26}\) Id.
\(^{27}\) Id.
\(^{28}\) Id.; see also Maritime Act §§ 302(2), 305.
\(^{29}\) Id.
\(^{30}\) Id.
\(^{31}\) Id.
\(^{32}\) Richard Coles and Edward Watt, Ship Registration: Law and Practice, 20.18 at p. 238.
\(^{33}\) Id.
\(^{34}\) Id.
1952”), concerning: medical care, sickness benefits, unemployment benefits, employment injury benefits, and survivors’ benefits.36

B. Full Steam Ahead: Flying the Mongolian Flag

1. International Treatment

Port State Control authorities, under the Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MOU), detained 26.76 percent of all Mongolian-flagged ships in 2013; the second highest detention percentage.37 (Ships are detained when the condition of the ship or its crew does not correspond substantially with the applicable conventions.)38 Based on the number of inspections and detentions from 2011-2013, Mongolia sits at the 6th position on the Tokyo MOU, 2013 “black list.” A “black list” categorization is one of several factors considered when assigning a ship risk profile which can have the effect of increasing or decreasing the number of Port State Control inspections a particular vessel is subjected to.39

2. Qualifications for Registry

To register a vessel under Mongolia’s ship registry, a registrant submits a Bill of Sale, existing registry and statutory certificates, as well as a certificate of competency for all officers on board the vessel.40 There are no restrictions on the ownership of the vessel, meaning that the owner’s nationality, or registration as a corporate body or entity, is not taken into consideration for registration as long as the applicant is capable of owning a vessel under the law of its national country.41 Moreover, the Mongolia ship registry offers to complete the entire registration process online in as few as 24 hours.

3. Registration Fees

When applying to register a vessel, financial considerations hold considerable weight. Mongolia’s ship registry boasts as having “low initial registration and annual tonnage taxes” as well as no cost to the ship owner(s) for setting up an “owning company”.42

4. Mortgaging Vessels & Maritime Liens

The Regulations for Registration of Ships in the Ship Registry of Mongolia allow a Mongolian vessel to be used as security for “a loan or other valuable consideration.”43 However, a mortgagee or creditor is prevented from acting on its security interests by detaining a vessel’s Certificate of Registry.44

5. Manning & Safety Requirements

All seafarers are required to have a valid Mongolian Certificate of Endorsement (“COE”) to work on board a Mongolian vessel.45 Annex 2 to the Regulations for Registration of Ships in the Ship Registry of Mongolia provides that a duly licensed Master must be on board every registered Mongolian vessel.46 Moreover, vessels with a propeller thrust of 300KW or more must have a licensed Chief Engineer on board.47 Pursuant to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (“STCW Code”) manning standards, every officer and crewman on a Mongolian vessel must have the requisite training and certification to perform their job duties.48

With respect to safety requirements, a registered Mongolian vessel must be manned by the appropriate number of officers and crewmen necessary for the vessel’s safe navigation and operation.49 In the case of a registered Mongolian passenger vessel, a certified survival craft crewman must be assigned to each survival craft (i.e. lifeboat) on board the vessel.50

6. Taxation

There is little taxation information provided to potential registry applicants. However, the Mongolian

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37 Tokyo MOU, 2013 Figure 4: Detentions Per Flag, p. 17.
43 Regulations for Registration of Ships in the Ship Registry of Mongolia § 2.25.
44 Regulations for Registration of Ships in the Ship Registry of Mongolia § 3.25.
50 Id. at Section 4.
Ship Registry does entice applicants by purporting to have low initial registration and annual tonnage taxes as well as no taxes on profits or capital gains.\(^{51}\)

7. Labor and Operating Costs

At present, Mongolia has not ratified the MLC 2006, although a draft bill was submitted to Parliament last year in support of Mongolia’s proposed ratification of the MLC 2006.\(^{52}\) Ratifying the MLC 2006 would mean that Mongolia has accepted the responsibility of ensuring the safety and wellbeing of seafarers, namely meeting requirements for minimum age, hours of work, wage payments and medical care.\(^{53}\) However, Mongolia has not ratified the SSC 1952 either.

Mongolia’s status remaining as a non-ratifying flag state means that Mongolian flagged ships calling at ports of ratifying states will be subject to Port State Control inspections, the purpose of which is to enforce the Labour Conventions’ minimum standards for work and living conditions upon vessels.\(^{54}\)

C. Plain Sailing under the Panamanian Flag

Panama’s registry is the world’s largest vessel registry.\(^{55}\) Indeed, the Panama flag is flown by over 6,000 vessels currently trading in the world’s oceans, most of which are not owned by Panamanians.\(^{56}\) Panama is one of the oldest and most widely chosen jurisdictions for ship registration because of the ease of registration, low registration fees, low- tax offshore jurisdiction and regulatory protections.\(^{57}\) Panama’s Maritime Court is available 24 hours a day, 365 days a year.\(^{58}\) Currently, Panama, which trades in U.S. dollars, has over 1,000 inspectors in over 300 ports ensuring compliance, worldwide.\(^{59}\)

1. International Treatment

Panama is a signatory of the four “pillars” of international maritime law: the STCW Convention, SOLAS, MARPOL and the MLC 2006. Panama was notably listed in the first edition of the IMO’s “White List,” released on December 6, 2000, identifying the flag states assessed to be properly implementing the revised STCW 95 Convention.\(^{60}\)

2. Qualifications for Registry

Panamanian law provides that “[a]ny individual or corporate entity, irrespective of nationality or country of incorporation, may register a vessel under Panamanian flag.”\(^{61}\) Accordingly, corporations are not required to have a place of business or business agent in Panama and incorporations, and officers and directors are not required to be residents of Panama to register vessels in Panama.\(^{62}\) Further, vessel crewmembers need not be Panamanian nationals.\(^{63}\)

There is no minimum tonnage requirement, and almost any category of ships can be registered, from passenger ships to dredges and floating docks.\(^{64}\) Although there are no age restrictions, vessels that are 20 years old require a special inspection.\(^{65}\)

Panama provides a provisional patent for a six-month period.\(^{66}\) After the preliminary information about the vessel and vessel owner is provided by way of the registry application,\(^{67}\) the vessel owner must notarize and

\(^{53}\) Id.
\(^{56}\) Top 25 Flag of Registry, available at http://www.marad.dot.gov/library_landing_page/data_and_statistics/Data_and_Statistics.htm (last viewed January 31, 2013); Lexology, A guide to ship registration in Panama (last viewed November 30, 2012); Marcopoulos, supra note 1 at *290.
\(^{58}\) Id.
\(^{59}\) Id.
\(^{60}\) Id.
\(^{62}\) Id.
\(^{63}\) Coles, supra note 2.
\(^{64}\) Id.
\(^{65}\) Id.
\(^{66}\) Id.
\(^{67}\) Id. (application may be obtained at: http://www.nyconsul.com/new_page_6.htm).
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file a number of required documents with the Consulate at the time of registration.68

Another benefit of registering in Panama is the ability for dual registry. A foreign vessel bareboat chartered (where a vessel owner leases a ship, without its crew or provisions, to the charterer, which becomes responsible for the vessel’s operation), already registered in one state may be registered in Panama for the same period, up to two years (dual registration is renewable).69 This allows a charterer, leasing a ship registered in a country without an open registry, to take advantage of the Panamanian registry benefits.

A vessel owner can also maintain the vessel’s original registration, which is suspended during the dual registration and regains its effectiveness upon termination of the charter.70 A certificate of consent from the country where the vessel is originally registered is required and dual registry can only apply if the vessel’s home country allows it.71

3. Registration Fees

The cost to register a ship under Panama’s registry is lower than many of the other registries.72 The initial registration fee is approximately $0.25 per registered ton plus an additional $0.10 per net ton in annual tonnage tax.73 Owners can receive fee and tonnage tax discounts when registering a fleet of vessels.74

4. Mortgaging Vessels & Maritime Liens

Preliminary registration of a title or mortgage is accepted by the United States, Far Eastern, European, and worldwide banks as providing satisfactory security.75 A vessel mortgage may be executed in Panama or any other country, but must be registered at the Public Registry of Panama.76 The mortgage will not become effective against third parties until it is registered.77 It may be written or executed in any language or form, but must include: name; address of mortgagor and mortgagee; fixed or maximum mortgaged principal; schedules for payment of principal and interest, interest rate or manner for determining it; name of mortgaged vessel; patent number; and tonnage and dimensions.78 Fleet mortgages require the recording of paperwork including the encumbrance of each vessel.79 Additionally, special naval mortgage provisions are required for ships under construction.80

5. Manning & Safety Requirements

To be registered with the Panama Registry, all vessels must pass an annual inspection to ensure that they meet international safety regulations, carry up to date certificates and are properly manned and equipped for their intended trade.81

To prevent the enrollment of potentially hazardous ships, vessels built over 20 years ago are required to be inspected before a permanent patent can be issued. All vessels are subject to surveys by an approved classification society that will issue tonnage and other technical certificates.82

6. Taxation

Corporations can be created in Panama to register vessels providing protection for owner’s assets.83 Panama does not collect income tax on profits resulting from the business made from merchant shipping outside of Panama; further if services are not provided while

68 1) title of ownership (two copies), comprised of the bill of sale or a builder’s certificate for a new vessel; 2) power of attorney in favor of the persons registering the vessel and acting on behalf of the vessel before the Panamanian authorities (a practicing Panamanian lawyer must be appointed as legal representative of the vessel); 3) a deletion or cancellation certificate, issued by the authority of the former country of registration and demonstrating that the vessel is no longer registered under the previous registry and that it is free from mortgages or encumbrances (not required for new vessels); 4) corporate resolution – if a corporation submits the registration application, its representative’s authority must be established; 5) acceptance of sale – the buyer must state his approval of the sale transaction; 6) international tonnage certificate or certificate of admeasurement certified by the surveying company (does not need to be notarized); and 7) acceptance of sale – the buyer must state his approval of the sale transaction.
69 Consulate Gen. of Pan., supra note 53.
70 Id.
71 Lexology, A guide to ship registration in Panama.
72 Id.
73 Consulate Gen. of Pan., supra note 53.
74 Id.
75 Id.
77 Id.
78 Id.
79 Id.
80 Id.
81 Id.
82 Id.
the vessel is on coastal trade or performing work in the navigable waters of Panama, shipping companies are not required to withhold income taxes from employees’ salaries.84

7. Labor and Operating Costs

On February 6, 2009, Panama ratified the MLC of 2006. The government has also ratified the SSC 1952, accepting obligations under the Convention concerning the following branches of social security: old-age benefits, invalidity benefits, and survivors’ benefits.85

II. When the Ship Comes In: Final Thoughts and Conclusion

It is clear that while the only certainty for a commercial vessel is that it must be flagged, every other issue will be affected by the needs and requirements of one’s client. This paper canvasses the key considerations for a client, in order to provide insight into the differences and similarities amongst the three most popular flag states. For example, the convenience of quick registration under the flag of Mongolia can be balanced against the cost and labor requirements of the flags of Panama or the Marshall Islands. These in turn may be balanced against the simplicity and efficiency of mortgage and lien registrations. In each case, the international reputation of the flag state, any port conveniences offered to a vessel flying certain flags, and labor requirements (or lack thereof), are balanced by the nationality of the purchaser (or not), and, perhaps, the age of the vessel.  


84 Lexology, A guide to ship registration in Panama; Comment: Vessel Registration in Selected Open Registries, supra note 2 (citing B. Boczek, at 58 N. 117 (citing Fiscal Code of Panama, art. 708(e)).

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In addition, the plaintiff asked that the obligation of the defendants be acknowledged to pay as compensation for actual damages and loss of profit the same aforesaid monetary sums, in accordance to the provisions of article 8§1 of law 2251/1994 referring to “the protection of consumers”.

The defendants acceptably submitted at first instance the objection as to the lack of competence of the Greek Courts, invoking their agreement with the plaintiffs for the submission of any dispute to the exclusive jurisdiction of the Court of Hamburg in Germany and claiming that (in the same premises) the applicable law in the relevant case, is not the Greek but the German law.

The appealed judgment was issued on this lawsuit, with which the First Instance Court, after accepting jurisdiction rejected the demand of the defendants for security on costs and applying thereafter the Greek law, rejected the lawsuit on its main grounds as essentially unsubstantiated, save for the referred therein sums which it held and rejected as vague. The judgment also rejected the additional grounds (of the law “for the protection of consumers”) as not legal.

The plaintiff complains against this decision of the First Instance Court, with the pending appeal for incorrect interpretation and application of the law and incorrect interpretation and evaluation of the evidence and asks for the revocation (of the appealed decision), so that its lawsuit is accepted in full.

The respondents, with their pleadings before this Court, oppose the appeal and propose alternatively, i.e. in case of acceptance as essentially substantive of one of its reasons and re-examination in sequence of the lawsuit by the Court, and acceptably the objections which they invoked at first instance, and among them the lack of jurisdiction of the domestic courts and the applicability in the present case of German law. The latter of those objections however they invoked as supplementary have to be examined in priority, since the essential adjudication of the dispute presupposes the admission of jurisdiction and determination of the specific law which needs to be applied to this effect.

According to the provisions of art. 5§3 of the Brussels International Convention of 1968 “On the International Jurisdiction and the Enforcement of Judgments in Civil and Commercial Cases”, as amended in 1978 (with the accession of Denmark, Ireland and the United Kingdom) and in 1982 (with the accession of the Hellenic Republic), which was ratified with Law 1814/1988 (and amended by Law 2004/1992), any entity domiciled in a Contracting State may, be sued in another Contracting State, in matters relating to tort, delict or quasi-delict, in the courts of the place where the harmful event occurred.

It follows from this that art. 5§3 provides and enacts a special ground of international jurisdiction in the cases of extra-contractual liability. It becomes accepted therefore that in the field of application of the aforesaid provision, fall all extra contractual liabilities, therefore, both the liabilities in tort and the liabilities by quasi tort as opposed to the “contractual liabilities”, which are regulated independently by §1 of Art. 5 (see Kerameas – Kremlis – Tagaras “The Brussels Convention on International Jurisdiction and for the Enforcement of Judgments as it applies in Greece”, Interpretation per art., ed. 1989, p. 67 et al). The definition of “tort or quasi tort”, always according to the International Convention, is provided by self-existing and autonomous, therefore by E.C., criteria. The European Court of Justice (ECJ) with decision “Kallelis vs Schroder” 189/1987 (27-9-1988) decided that this expression must be interpreted as independent, meaning that it includes every action which aims at the activation of the civil liability of the defendant that is not associated with the “contractual disputes” of art. 5§1.

In Greece therefore, the civil actions of arts. 914 et al of the Civil Code fall within the premises of art. 5§3, for the application of which it is indifferent if is dispute deriving from a criminal act as prescribed by art. 35 Code of Civil Procedure or from civil tort. Besides, according to the aforementioned provision of art. 5§3 of the I.C., the definition of the location (the place where the harmful event occurred, creates interpretative problems when the generating act of the loss took place in a location different from that where the loss accrued, as well as in the cases where the loss accrued in the jurisdiction of more than one Contracting States. The ECJ with decision Hamdelskweeh ouj 6,j, Bier BV/Mines de potasse cT Alsace 21/76 (3OI 1-1976) as well as decision “Societes Dumaz France κατ Trucoiba /Hessische Landes-bank 220/88 (11-1-1990)” {see Greek Justice Journal 35. 1161} decided that ‘location” according to art 5§3 means both the location in which the damage accrued and the location where the harmful event occurred, which substantiates the tortious responsibility and produces effects directly damaging against the immediate injured party. This solution is in accordance to Greek Law in force (see Kerameus, p. 71,
Conversely, according to the aforesaid provisions of arts. 3§1 and 5§3 of the Brussels Convention 1968 “on the International Jurisdiction for the Enforcement of Judgments in Civil and Commercial Cases” which was ratified with law 1814/1988, the above action was introduced acceptably and competently for adjudication before the domestic courts, taking into consideration that according to the aforementioned in the lawsuit, the claim is about tortious acts (unlawful conduct) committed in Greek territory, in which took place the negligent acts of the third defendant representing the other defendants and was issued the survey report of the first defendant. It is noted further that the jurisdiction and the additional exercised objection for international jurisdiction of the location where the tortious acts under litigation took place must be dismissed since the renewal of the ship’s class by the first defendant does not affect the location where the tortious act took place, which as aforementioned is Greece.

As to the invoked agreement (contract) by the defendants for the application of (foreign) law in the pending dispute it must be noted that this (agreement) refers evidently to the claims pursuant to the contract – not those from tort (unlawful act) like the pending ones. This derives clearly, both from the aforesaid wording of the relevant provision: “the law will govern the execution of the contract...”, as well as the total of the terms of the rules of the defendant classification society (first defendant), since this provision contains exclusively the terms governing the agreements it concludes with its clients (counterparties - shipowners) for the classification and the surveys of their vessels, while no reference is made to any of the provisions referring to its liability in tort against its counteracting clients.

Pursuant therefore to the above, the Greek law is prescribed as applicable law in the present case, since, from its provision of art 26 of the Civil Code, it emerges that the liabilities in tort are governed by the law of the state where the offence i.e. the wrongdoing took place (see interalia, Supreme Court 1475/2006, Data Bank Nomos). This place as already mentioned is Greece (Elefsis is the location of the survey and Piraeus is the location of the issuance of the survey report which certified the seaworthiness of the ship). It must be noted that the defendants do not contest these locations within which the aforesaid actions took place.

According to art. 914 of the Civil Code, whoever causes damage to another in a culpable and unlawful manner, has the obligation to compensate him. According

From the aforesaid provision, therefore in conjunction with that of art. 17§1 of the same International Convention, according to which, if the parties, from which at least one has its residence (to which is simulated the seat of the companies and the legal entities in general according to art. 53 of the Convention) in the jurisdiction of the Contracting State, agreed that one court or courts of the Contracting State will adjudicate disputes that derive or will derive from the precise legal relation, it emanates that the Court or the Courts of that state have the exclusive international jurisdiction and that the claim for tort or quasi tort is not allowed to become subject of agreement of extrapolation of jurisdiction between the parties, which respectively have the allowance for mutual agreement only for (contractual) claims from (specific) agreement.

The defendants, as noted above, claim lack of jurisdiction of the domestic courts for the case sub judice. In support of this objection, they cite the general terms and conditions contained in the Rules and Regulations of the first (defendant), which according to them (defendants) the plaintiff has accepted and according to which 1) the location of performance for all obligations relevant to the respective contract is Hamburg, unless otherwise agreed in the conclusion of the contract; 2) Hamburg is the location for the exclusive jurisdiction for whichever claim against it on the condition that the client is a merchant in the legal sense and 3) German law will govern the implementation of the contract and all the claims which derive from it and relate to it. This agreement however for (effective) extrapolation (of the competent jurisdiction) even if it was admitted as true, (it is noteworthy that the defendant refutes it), according to its aforesaid expression refers only to the claim against the first defendant (from the contract), not to the other defendants whose actions are in tort according to the concise reference of the case hereinabove. Besides, according to the aforesaid contemplation, an agreement for extrapolation of jurisdiction for claims in tort (unlawful acts) cannot be validly agreed (contracted upon).
to the meaning of this provision the human behaviour that constitutes the basic element of tort can comprise also an omission.

However, in order to lead to an obligation for compensation that (omission) has to be unlawful.

This happens when the culpable person/party omits to take positive action which it is obliged to by law, good faith and the prevailing conceptions from previous conduct (and experience) or from the general spirit of the law (Supreme Court 174/2005). Further, culpable harmful event or omission which is breach of contract, can, beyond the claim from the contract, also support claim for compensation from wrongdoing (in tort). Especially if without violation of the contractual obligation, the action or omission would still be unlawful as against the law, pursuant to Civil Code 914 which prescribes the general duty of anyone not to damage another, without prescribing any other condition for this (Supreme Court Quorum 967/1973, Supreme Court 484/2006, Law Reports 2006. 1256).

The classification societies are responsible to exercise after request of shipowners all surveys and evaluations and issue relevant reports, through the specialised personnel they employ as prescribed by international conventions, and certify the vessels entered in their class and suspend the force of these certificates when the condition of the vessel does not meet the conditions of their rules or damages are recorded which affect the capacity of the vessel for safe seafaring or if the vessel has lost its class. The classification society operating through local surveyors, inspect the ship in its premises for the maintenance of class and the validity of its certification. The entering of the ship in class takes place after an application of the shipowner, who undertakes the obligation to comply with the rules and regulations of the class. Conversely, the relation between the owner and the class is a relation founded in good faith and presupposes professional responsibility but also sense of obligation and duty towards human life, society and the environment.

The classification society or the surveyor of the classification society is obliged to demonstrate care and diligence for the safety and protection of persons, as also of the ship and its cargo, in exercising his duties and not to omit the necessary (due) checks, which, anyhow, are specified extensively in the aforementioned international conventions, but also with the internal legislator, as well as the rules of survey of the classification society itself because in the opposite case the violation of its aforementioned obligation constitutes an unlawful act (see L. Athanasiou, Duty and Responsibility of Classification Societies, ed. 1999, p. 9, et al 86 et al). Therefore the pending action with its briefly aforementioned content, is based, as already stated in the provisions of unlawful act (tort) and not to those of service/work contract (art. 681 et al Civil Code) as, the defendants maintain unjustifiably.

Further, art. 270§2 subpara 3 of the code of Civil Procedure provides that at maximum three (3) sworn statements (affidavits) before a magistrate or notary or consul are taken into account for each side and only if they have been sworn after summons to the opponent at least two (2) working days before the attestation. From this provision, which is interpreted in the context of art. 116 of the same Code, which imposes compliance with the rules of good faith in undertaking procedural acts, it follows that the sworn statement, if no other service duty of the magistrate or notary or consul intervenes, the conclusion of which is expecting the summoned party and of which reference should be made in the certified attestation, is provided at the time stated in the summons, with a waiting margin which is considered reasonable if is up to 15’ from the prescribed time of commencement, without the validity of the statement being prejudiced by this delay. Any statement however that was sworn after that time in absentia of the summoned opponent does not constitute legal proof of evidence in the sense of the law and ex officio is not considered admissible by the Court irrespectively if this has prejudiced the non appeared opponent or not {Supreme Court (Quorum) 20/2004 Greek Justice 45.1326, Law Reports ΑρχΝ 2004.568, Dodoni Court of Appeal 10/211}.

In the 3rd plea of the appeal, the appellants complain about the evidence that was submitted in sworn statements No. 1468/21- 11-2005, 1470/25-11-2005 and 1471/25-11-2005 in the deeds of Notary Public of Piraeus Paraskevi Daskalaki (issued under the care of the plaintiff and now appellant) due to non stating therein the time when these statements were sworn in absentia of the counterparties.

In that plea the appellant’s claim regarding the validity of the notary deed, which is also the reasoning for the validity of the claim, is based on a wrong hypothesis, since the lack of validity of such sworn statements as proof of evidence, within the meaning of the law, does not refer to the materiality and validity thereof as notarial deeds and Authority deeds per se, for which there is no question. However as demonstrated in the sense of the relevant provision, its purpose is to procure the capacity
for attendance in the process of the sworn statement of the opponent, by the party under whose care the statement is issued, so that (the opponent) has the opportunity to defend its content during the case hearing. This purpose, however, is practically eliminated, when the sworn statement is not given at the time, during which the opponent of the caring party has been summoned. So when the report on the sworn statement does not mention the time required for its conclusion, the Court is not able to check, whether the opponent, in case he did not attend, was given the opportunity (right) to oppose that for a period longer than a simple case of delay for more than 15’.

Therefore also in accordance with those demonstrated in the extended reasoning above, these sworn statements do not constitute any legal proof of evidence, within the sense of the law, and the Court of First Instance that did not take them into account during the evidentiary process, irrespective of the prejudice of the non attended opponent, did not err, and for this the relevant plea of the said appeal (of the plaintiff – appellant) should be rejected as unfounded.

From the evaluation of the proof of evidence submitted before the Court of First Instance, and especially, from the statements of witnesses examined under oath before a public audience, which are included in the corresponding minutes in the decision, which is appealed against, and from all, without any exception, legal documents including also any legally invoked and produced documents (among which the expert opinion dated 21 November 2005 by the expert ship surveyor N. J. Romanides, which invoke and produce the defendants) that are taken into account, either independently or to draw judicial proof, but not from the sworn statements of third parties contained in deeds no. 1.468/21-11-2005, 1.470/25-11-2005 and 1.471/25-11-2005 of the notary public of Piraeus Paraskevi Daskalaki (issued under the care of the plaintiff and now appellant) and from the deeds no. 3.220/22-11-2005, 3.221/22-11-2005 and 3.229/25-11-2005 of the notary public of Piraeus Maria Mavroude daughter of Demetrios spouse of Iakovos Venieris (drafted under the care of the respondent and now appellant) of which (all) have been received according to the provisions of art. 270§2 sub par. (c) of the Code of Civil Procedure, further to legal and timely (in the prescribed time before attestation) summoning of their defendants, from the service report dated 16th July 2009 of the expert report by Vasilios Dem. Andreopoulos, naval architect and mechanical engineer, legally appointed by the aforesaid no. 976/2007 decision of this Court, which

is taken into account under art. 387 of the Code of Civil Procedure, from the technical report dated 17th March 2010 by Emmanuel Manios, naval architect mechanical engineer, and Polychronis Theodoridis son of Nikolaos, commodore of the merchant navy, legally appointed, as technical consultants by the defendants and also from all, without exception, documents legally invoked and produced before this Court (among which the opinions dated 12 March 2010 by Gregorios Gregoropoulos, ordinary professor in the Faculty of Marine and Seafaring Hydrodynamics in the School of Naval Architects and Mechanical Engineers of the National Metsovion Polytechnic School, the opinion dated 22 March 2010 by Emmanuel S. Samuelides, deputy professor of the Faculty of Marine and Seafaring Hydrodynamics in the School of Naval Architects and Mechanical Engineers of the National Metsovion Polytechnic, which are taken into account, either independently, or to adduce judicial evidence), were proven the following:

The plaintiff is a shipping company, seated in Marshall Islands, with actual seat in Piraeus and was owning company for the period from January 2001 to July 2002 of the bulk carrier under Panama flag, called Hanna D, with GRT 15.923, built in 1976..

The first defendant is a worldwide leading classification society, member of the International Association of Classification Societies (IACS) and operates as private enterprise with subject matter, interalia, to monitor, control and certify the quality of shipbuilding, seaworthiness and safety of commercial ships which bear the flag of Countries that have authorised it (first defendant), among which Greece as well.

The first defendant also maintains an around the globe network of subsidiary companies, among which is the second defendant, having the overall responsibility for carrying out surveys in the wider area of the Eastern Mediterranean, with the third defendant being an surveyor – officer of the second defendant, during the said critical period of time.

The vessel was monitored already since 1988 by the first defendant and this continued also after its acquisition by the plaintiff. More specifically, the relevant vessel was delivered by the previous shipowning company “Hanna Shipping International Co SA” on 15th January 2001, on the basis of the protocol of delivery with same date in good condition according to the terms of MOA dated 17th October 2000, in which according to cl. 18 the ship had to be delivered with its current class in force, with all its periodical survey cycles completed without extensions.
The first defendant had already performed the vessel’s special five year survey in Hong Kong and had renewed its class which commenced on February 2000, classified as 100A5 E, reinforced for heavy ESP cargo, and at the same period the hatch covers had been replaced in holds 4, 5 and 6 and all holds underwent a watertight test without problem (see ref. no 1000054 και 1000055 documents of the first defendant and S29 and S30/20-4-2000 survey reports of its subsidiary company in China).

In addition, the day before the vessel was delivered to the plaintiff, the first defendant pursuant to the annual class survey and ESP and the repairs that were carried out in Rotterdam, for which the S32, S33 and S34 survey reports were issued, issued the certificate dated 15th January 2001, where it states that the class period is in force until February 2005, that the ship can carry cargo in bulk with holds 2, 4 and 6 empty (alternative loading) and that there was no notification of defects, except of those mentioned in the reports and those remedied, with the result that the ship needs to be considered free of recommendations and average level of damage that could affect the hull and engine classification, since such points were not recorded.

It was further proven that the plaintiff, as new owner of the ship, asked the first defendant by the fax message dated 7th March 2001 to make the annual survey of the class, of IOPP and the safe condition of the vessel, which lied in Elefsis. Carrying out the survey was assigned to the second defendant, since the vessel was within the area of its responsibility and it instructed its officer - inspector third defendant to get to the vessel and take all actions required for the annual survey.

Specifically as regards the annual survey, according to the rules of the first defendant and bearing in mind that this pertains to a bulk carrier over 15 years old, in addition to the visual checks to a satisfactory extent (at least 25% of the frame), a close up survey in a selected hold should have taken place, as well as thickness measurements, wherever considered necessary by the inspector. The third defendant took the actions designated by the rules, as these are specified in the S35/10-3-2001 survey report which he drew up and signed, and is not disputed by the plaintiff.

According to this survey report and as regards the cargo holds, he proceeded to a close up survey of the frames and the bulkheads in the lower parts of holds no 1 and 4 and overall survey of holds no 2,3,5,6 and 7. During the overall survey he found doublers in the lower part of the aft bulkhead of hold no 2 and in the lower part of the bow of hold no 6, and made recommendation, stating that these should be removed and finally repaired until the date of the next dry docking, but not later than the 31st October 2002 (see the ref. no 1000023 document of the second defendant).

As it was further proven, the components referred to as “doublers” were 30 cm high sheets, placed in the lower part of the bulkheads, across their full length, which had been partially welded at the bottom of the hold. Specifically these did not feature openings ensuring the stable attachment with the sheets of the bulkheads and had not been welded amidst the bow bulk head of hold no 6, at the bottom of which there was the vessel’s fuel tank. According to the proven facts, it is concluded that these doublers were placed after the aforementioned special survey that took place on 2nd April 2000, given that no reference is made in the relevant survey reports and that these could not go undetected during the aforesaid detailed survey and that there is no other proof of evidence advising otherwise. Specifically, during the special survey, which is repeated every 5 years and took place in China on 20/4/2000, a class renewal certificate was issued with no remarks valid until 28/2/2005 on the condition that the required annual surveys will take place on the designated dates (report S 30).

It was further proven that the plaintiff chartered the vessel for the carriage of total 24.965 m/t of bulk cement, which were loaded according to the alternative or non uniform method of loading, pursuant to the request of the charterers and according to the construction specifications of the vessel, certified by the first defendant, as mentioned hereinabove, in the no. 1,3,5 and 7 holds of the vessel, therefore leaving holds no. 2,4 and 6 empty, in order to be transported from the port of Piraeus to the port of Hull in England.

On 16th March 2001 and while the ship was sailing under normal weather conditions in the maritime area off of Malta, further to a deafening sound, a problem was detected in the bulkhead between holds 5 and 6. The vessel stopped her course and the technical superintendents “C.N. Zachopoulos & Associates Ltd”, hired by the plaintiff to check the vessel’s condition and seafaring capacity, found that this bulkhead was detached across 2/3 of its width at its bottom end, where it is connected with the plate at the bottom of the hold.

More specifically, the bulkhead seemed to have been pushed from the side of hold no 5 to the side of hold no 6 and had “swelled” from 2/3 of its height downwards to the sheet of the bottom, where the highest divergence
was noted from its original position, amounting to 630 mm, while the plating had expanded more in the centre and less at the edges, changing completely the geometry of the bulkhead (see technical report dated 16th November 2005 of the aforementioned company). Further to the aforesaid findings and following temporary repairs the vessel returned on 30th March 2001 with its cargo to Piraeus.

Throughout the entire period that the vessel remained with its cargo in Piraeus, correspondence was exchanged between the technical consultants of the company “C.N. Zachopoulos & Associates Ltd” and the classification society (first defendant), which had already inspected the ship through the surveyor of the second defendant, third defendant, in order to determine the best way to repair the damages and to transport the cargo to Hull in England, since the owner denied having the cargo transported by another vessel.

In the context of this correspondence, a document dated 12 April 2001 (by fax) was sent to the first defendant according to which it was determined that the valve of the right ventilator of hold no 5 was stuck in closed position and during the detailed survey, the threadings of the shaft opening the valve were found fully blocked by remnants of previous cargo, whereas the valve of the left ventilator of the same hold could open only partially for the same reason and the shape of the bulkhead which suffered the damage, in the part which was not detached from the bottom, had the form of a balloon, which proves that it was over-pressurised. That document concludes that on the basis of the aforesaid and the reports of the crew, the damage was caused due to negligence of the crew, since they failed to maintain both ventilators fully open before the commencement of loading in hold no 5.

The aforesaid assessment was completely revised later on by the company “C.N. Zachopoulos & Associates Ltd” by its technical report dated 16th November 2005, when, in the meantime, it inspected the ship with the cargo unloaded (empty holds) and the thickness measurement that took place determined that the corrosion of the bulkhead sheets in the lower part where it detached, was ranging from 56.7% to 60.9%, with the maximum allowed being 25%, as aforementioned. It is specifically recited in the said technical report that the detachment and dislocation of the bulkhead was exclusively a result of the bulkhead’s lack of endurance especially, in the middle thereof, where the doublers had not been welded on the sheets of the bottom and not under over-pressure conditions of the hold during loading. The initial conclusion of the company “C.N. Zachopoulos & Associates Ltd”, as stated in the aforesaid fax, was the result of simple probability assessment, given the entirely recent survey by a worldwide recognised classification society, such as of the first defendant and its surveyor of recognised value, and of the fact that due to the condition of the bulkhead, the diligent “close-up survey” thereof by descending to the bottom of the empty hold no 6 involved risks of accident. The expert, who was legally appointed, as mentioned above, by decision no. 976/2007 of this Court, concluded to the same findings with the last technical report in his comprehensive and detailed documented report.

The following critical findings are stressed in this report:

1) During the annual survey of March 2001 immediately before the loading of the ship for the freight, during which the relevant damage occurred, the inspector of the classification society (first defendant), third defendant, noted that the bottom of the back bulkhead of no 2 hold as well as at the bottom of the bow and aft bulkhead of hold no 5 was found to be “temporarily repaired by doublers”. The third defendant himself indeed estimated that these doublers had been placed for reinforcement purposes, as temporary repair, to the relevant bulkhead and were not just protective components as the defendants claimed. Besides, according to the aforementioned technical expertise, in naval science the term “doubler” is used exclusively with the meaning of a sheet item welded on top of another sheet for the immediate temporary repair and water-tightness, in case there is excessive wear and tear or crack and never serves as a protective cover.

2) In S36 report of the surveyor of the first defendant, who inspected the vessel on 24/3/2001, as soon as it was forced to return to Piraeus after the relevant incident, excessive corrosion was found at the lower part of the relevant bulkhead, evident by visual examination.

3) During the thickness measurements of this bulkhead, immediately after the cargo was unloaded, that took place at the port of Hull in England, on 21/8/2001, without the presence of the vessel’s classification society but in agreement with the vessel’s insurers and in the presence of their inspectors, by the recognised
company with the name “Consulting Marine Engineers & Ship Surveyors”, excessive local corrosion was detected up to a 60.9%.

4) The surveyors of the first defendant D.I. Fuller made the same assessment with the surveyor C. Boutos in Hull, England on 17/8/2001 (report S 39) and in Bullwinkel on 19/9/2001 (report S 42).

5) The occurrence of overpressure in the relevant hold is not justified because the loading procedure was smooth and took place in stages, and the cargo covered only 80.99% of the hold.

6) The nozzle of the bulk cement loader of the company “Titan” that took over the loading in the port of Elefsis is composed by two same axle folding pipes.

Cement mixed with air flows in liquid form from the inner pipe and this is used for loading the vessel. The outer pipe is connected with a vacuum pump and pumps the air forwarded to the hold by the inner pipe to prevent high pressures from forming within the hold during loading, even when its hatches are sealed.

7) The type of deformation of the relevant bulkhead (curtain-shaped) points to detachment from the double bottom and not to the presence of overpressure which would have led to deformation of the bulkhead from the middle up to the top and maybe only in the upper part while the lower part would remain welded in its position and maybe in the upper part whereas the middle part would remain attached to its position and maybe become slightly deformed.

8) Even in the case, where overpressure conditions would prevail during loading, if according to the defendants’ claims, even one ventilator was in operation at least partially, the occurrence of the damage two days after loading was completed, does nevertheless justify the version of overpressure as cause of damage, since in the meantime air would have escaped even through the partially operating ventilator.

9) At this point it should be noted that, if the deformation of the relevant bulkhead was a result of overpressure conditions and not of wear and tear, the same deformation would have occurred in the bulkhead between holds no 4 and 5.

10) No incident of deformation of hold due to high pressure during loading of bulk cement in similar vessels has been reported in international bibliography and over the internet.

11) In any case the version of non-operation of the hold’s ventilators is fully contrary to the report (S 35) of the inspector of the first defendant, the third defendant, of the annual survey of 10th March 2001, according to which after the repair of some ventilators of the holds, all of them were operating properly, and consequently, in view of the fact that this survey took place right before the last loading (of the relevant voyage), it is not possible to mention any “blocking” the valve of these ventilators due to remnants of previous cargo. The technical opinion of Gregory Gregoropoulos, regular professor in the Faculty of Marine and Seafaring Hydrodynamics of the School of Naval and Mechanical Engineering of the National Metsovion Polytechnic School agrees with the expert report that the plaintiff invoked and produced.

On the contrary, both the technical report dated 17th March 2010 by Emmanuel Monios son of Apostolos, naval mechanical engineer and Polychronis Theodorides son of Nikolaos, commodore of merchant navy, who were legally appointed as technical consultants by the defendants, as well as the technical opinion dated 22nd March 2010 by Emmanuel Samouelides, deputy professor in the Faculty of Marine and Seafaring Hydrodynamics of the School of Naval and Mechanical Engineering of the National Metsovion Polytechnic School, as well as the expert opinion dated 21st November 2005 by N. J. Romanides, technical expert and ship surveyor that the defendants invoked and produced, do not disprove the aforementioned findings.

On the basis of the aforementioned proven events, it is demonstrated that the reinforcing sheets (doublers) that were placed in the holds of the vessel were affixed after the survey of April 2000 in China, as already mentioned, without any approval by or the presence of a classification company during their installation.

The surveyor, third defendant, detects their presence for the first time during the annual survey of March 2001 and records their presence and the need to be removed in the next dry-docking, giving an unusually long deadline
to do so until 31st October 2002, allowing at the same time the vessel to be loaded with an alternative or non uniform loading method, putting the bulkheads under extensive stress, due to the lack of counter support.

The detection of doublers present, and to a greater extent indeed, should have driven the third defendant, an experienced surveyor, to conduct a close - up survey, impose the immediate removal of the doublers and request thickness measurement and immediate repair of the bulkhead, as ordained by the Unified Requirements (clauses 1.3.1.3.2.3, 2.4.2 of section Z 10.2) of the International Association of Classification Societies (IACS), even more so, since, according to years long observations of international organisations, the bottom of the bulkheads, where he detected the doublers, runs the higher risk of extensive corrosion. If he had acted according to a manner mandated by his duties, the excessive corrosion in the sheets of the relevant bulkhead would have been detected during the annual survey and the defect would have been repaired easily and rapidly by replacing the worn – torn sheets prior to the loading of the vessel and carrying out the relevant voyage.

Notwithstanding that according to the aforesaid in the legal proposition, the relation between the shipowner and the classification society is a relation based on good faith and presupposes professional responsibility but also sense of obligation and commitment towards human life, society and the environment, pursuant to which the classification society or the surveyor of the classification society has to demonstrate diligence for the safety and protection of people as well as the vessel and her cargo, and should not while exercising his duties omit the necessary (mandatory) surveys, which are in any case extensively prescribed in the aforesaid international contracts but also by domestic legislation as well as the rules of survey of the classification society itself, by good faith and the prevailing perceptions, by his previous behaviour or by the general sense of the law, the third defendant at his fault did not demonstrate due diligence and failed to take the actions mandated by the legal relation of the parties and dictated by good faith.

Furthermore, the proven facts lead to the conclusion that the harmful event, which is in causal association with the invoked damage as mentioned above, is corrosion and wear of the sheets of the relevant bulkhead.

Therefore both the culpable third defendant as well as his principals, the second defendant of which the third defendant and the first defendant were surveyors and officers, which is the classification society that monitored the vessel and of which the second defendant is the subsidiary that has the overall responsibility for the conducting surveys in the wider area of Eastern Mediterranean, shall be responsible for the reimbursement of the plaintiff.

After consecutive deliberations and negotiations of the representatives of the plaintiff with the representatives of the first two defendants in order to find a way to deal with the damage, in view of the fact that the vessel was laden, provisional repairs for supporting the bulkhead were made, which were completed on 20th June 2001. After these were completed the first defendant issued a certificate, with which it allowed the vessel to travel to Hull in England, in order to unload and this voyage lasted from 3rd July 2001 to 30th July 2001, due to the low sailing speed that the relevant condition required. After unloading that was completed on 13th August 2001 and a new survey that followed, as well as the complementary provisional repairs which were undertaken in Hull, the relevant vessel sailed on 25th August 2001 for Cadiz, Spain, in order to undergo permanent repairs. Due however, to the fact that the dry-docking slot, which had been booked for this vessel, had been assigned to another vessel due to its delay, when that (vessel) arrived in the beginning of September 2001 and the nearest date for commencing repair works was 1st October 2001, the plaintiff preferred to have the vessel return for repairs in Piraeus, where she arrived via Ceuta, Spain, commencing on 1st October 2001 permanent repairs to the bulkhead, which were completed in Avlis on 28th November 2001.

As a result of the damage in the relevant bulkhead and the repair thereof in order to secure the vessel’s seaworthiness, the plaintiff was forced to make the following expenses:

1) For agency costs and in general expenses during the vessel’s stay in the port of Piraeus for provisional repairs, during the period from March to June 2001 (pilot rights for the call and re-anchorage at Kynosoura, custom costs, tug fees, launch and crane, port dues, telephone and telegraph dues, agency fees and rights of the Piraeus Port Authority) €30,827.07.

2) For fees and costs of the workshop of the company «S. Iliou LTD” for the necessary cleaning of the ship’s fuel tanks for provisional repairs €27,430.23.

3) For the fees and expenses of the workshop of the
company “Hydrogeios LTD” for plating work for provisional reinforcement of the bulkhead €46,641.53.

4) For the fees and expenses for the performance of extraordinary surveys of the ship on 24th March 2001, 30th May 2001 and 21st June 2001 to determine the extent of damage and specify the required repairs €2,415.

5) For fuel consumed during the return voyage to Piraeus, in order to make the temporary repairs to the bulkhead €79,128.37.

6) For agency costs and in general expenses during the ship’s stay in the port of Hull for additional repairs (pilot rights for the call and berthing tug and stevedore fees, remuneration of plaintiff’s technical consultant, Michael Chourdakis, who was brought from Greece, agency, travel and lodging costs in Hull and fees and expenses of the workshop of the company “P. S. Kalogeropoulos S.A.” for undertaking additional provisional repairs GBP £21,082.76, which, according to the rate at the critical time of this expense (Supreme Court 14/1997 Greek Justice 1997.1036) of 24th August 2001, corresponded to €33,374.64.

7) To remunerate the first defendant for the extraordinary survey in Hull €3,162.50.

8) For fuel consumed during the vessel’s stay at the port of Hull for the time of carrying out the additional repairs USD $7,166.25, which, according to the rate at the critical time of this expense (2nd March 2001), corresponded to €7,653.80.

9) For transporting the aforesaid workshop that conducted the additional repairs to Hull, €4,538.82.

10) For fuel consumed for the vessel to travel to and stay at Avlis Shipyards USD $34,774.27 which, according to the rate at the critical time of this expense, corresponded to €37,971.47.

11) To remunerate the first defendant for the extraordinary survey in Ceuta, Spain, on 6th September 2001 €2,009.

12) For agency costs and in general expenses for the vessel’s stay in Piraeus for the period September – October 2001 (Custom dues, Port Authorities expenses, launch and crane fees, telephone and telegraph dues, agency fees and consul expenses in the consulate of the flag registry of the ship in Piraeus €5,311.52.

13) To remunerate the first defendant for the extraordinary survey in Piraeus, in September 2001 €6,688.98.

14) For agency costs and in general expenses during the ship’s stay in the port of Avlis for permanent repairs under the supervision of the first defendant (pilot rights, anchorage and berthing, custom costs, tug fees, port dues, telephone and telegraph dues, agency fees €6,807.10.

15) For fees and expenses of the shipyard for dry-docking and permanent repairs in Avlis USD $240,000, which, according to the rate at the critical time of this expense, corresponded to €269,636.48.

16) For fuel consumed for the vessel to travel to and stay at Avlis Shipyards USD $34,774.27 which, according to the rate at the critical time of this expense, corresponded to €37,971.47.

17) To remunerate the first defendant for the extraordinary survey in Avlis after the permanent repairs €11,023.75.

At the same time, the relevant vessel of the plaintiff was immobilised for a lengthy period for the same reason. More specifically, from 16th March 2001, when, according to the aforementioned, the damage occurred in the relevant bulkhead of the vessel, until 28th November 2001, when permanent repairs where completed in Avlis, the vessel of the plaintiff was able to perform only the charter of the bulk cement, from Piraeus to Hull, England. Should we deduct, from that period of 257 days, 22 days that the vessel would need in the normal course of events according to the vessel’s technical specifications and the usual speed to complete the carriage of bulk cement from Elefsis to Hull, but also 10 days that in the normal course of events the timely repair of the relevant bulkhead would last by replacing the worn sheets, before loading of the vessel at Elefsis, there are 225 day remaining, during which the ship remained inactive and unexploited, precisely due to the deformation of the relevant bulkhead, for which, according to the aforesaid, the defendants are responsible.
The objection of contributory fault that the latter put forward, arguing for the culpability of the plaintiff in the delay of the vessel’s permanent repairs, is unfounded and in essence should be rejected. Specifically, the delay that was caused due to discussions and negotiations, after the damage occurred and until the temporary repairs commenced in Piraeus, was unavoidable in order to find the optimal technical and cost-effective solution, in view of the fact that the solution of unloading initially proposed by the first defendant, would have as consequence the cancellation of the agreed charter with damage in excess of what was caused by non exploiting the vessel during the days of delay, while it was not demonstrated nor evidenced by the defendants the number of days during which the vessel was detained by the Port Authorities in Hull after unloading and provisional repairs thereto due to omissions irrelevant to the damage of the bulkhead, as the defendants claim. In any case, should there have been such a detention period, it was not proven to exceed 2 – 3 days and did not contribute neither to the loss of the vessel’s dry dock booking in Cadiz, nor, in general, to the extension of the time required for the vessel’s permanent repairs.

For the remaining period of 225 days, during which the ship would be available, it was proven that in the normal course of events, it would have been chartered with probability according to her destination with the average daily charter hire of similar vessels, (as is not disputed especially by the defendants), which according to the data of the accredited international broker houses Clarksons and Galbraith, in April 2001, reached the amount of USD $7,450. Therefore after deducting that amount of daily running expenses, which were proven to be USD $3,800 per day and multiplying the difference times the remaining period of 225 days, the result is that the net profit, that the plaintiff would gain, according to the usual course of events, from the exploitation of the aforesaid vessel, should the relevant damage had not occurred, would amount to USD $821,250, which, according to the rate at the critical time of loss, corresponded to €920,683.86.

As a criterion to calculate the vessel’s the daily hire, we cannot use the charter concluded immediately after the repair of the damage, leading to calculation of a higher amount since no safe judgment cannot be exacted from such individual charter regarding the fact that the defendant would find in the relevant period, in the usual course of events, a charter with such special terms.

However the remaining claims for compensation of the pending action, are vague and should be rejected for this reason; in particular:,

1) Additional crew wages for urgent repairs amounting to €5,182.21, for cleaning works and other additional works in June 2001, amounting to €5,542.45, for cleaning works and other additional works during the vessel’s stay in Hull, England, amounting to €4,125.41 and for works provided while the ship was dry – docked for repairs from 26th September to 23rd November 2001, amounting to €2,503.41, given that the urgent cleaning works and other additional works are not detailed, neither the number of members of the crew engaged in order to verify the necessity and the relevance with the harmful event and the extent of these additional works.

2) Costs of spare parts and materials used by the vessel’s materials store amounting to €2,684.82, since the spare parts and the materials used and their costs are not specified.

3) Any additional fees and costs of the then managing company of the ship for dealing with the damage and for handling the entire matter amounting to €18,907.56, since the additional managing acts are not detailed, neither is distinction provided between additional fees and costs.

In addition the amount for the vessel’s operational expense, while this remained inactive and out of commercial exploitation at the fault of the defendants, amounting to €974,707.54, must be rejected in essence, given that these expenses are necessary requirement for the exploitation of the vessel so that this can provide to the plaintiff - shipowner the profits which hereinabove was judged it would gain from its exploitation, if the relevant damage had not occurred.

Pursuant to all this the total damage which the defendant sustained due to the tortious behavior of the defendants rose in total to €1,566,288,59 (€30,827,07 + €27,430,23 +€46,641,53 + €2,415 + €79,128,37 + €3,162,50 + €7,653,80 + €4,538,82 + €31,872,83 + €2,009 + €5,311,52 + €6,688,98 + €6,807,10 + €269,636,48 + €37,971,47 + €11,023,75 + €920,683,86).

From this amount as the plaintiff invokes in its action, the amount it collected from the insurance
Admiralty and Maritime Law Committee Newsletter        Spring 2015

...indemnity should be deducted, amounting to the total sum of €564,764.42, (analyzed to USD $146,869.17 which, according to the rate at the critical time of the collection - 20th October 2002- amounted to €150,867.14, which were collected for the general average from the insurance organisation “The American Club”, USD $155,834.77 which, according to the rate at the critical time of the collection - 25th September 2002- amounted to €159,487,02 which were collected for the particular average from the insurance company “Filhet - Allard Maritime S.E.”, and USD $233,752,15, which according to the rate at the critical time of the collection – 24 May 2002- amounted to €254,410,26, received as particular average from the insurance company “Hellenic Hull Mutual Association Ltd”. From this latter amount before its deduction the sum of USD $2,450 must be deducted, which according to the rate of the critical time of the expense (25th June 2001), amounted to €2,601,68, which the plaintiff paid to the insurance company “Louhdin Patrick Insurance Brokers Limited”, for the submission of the risk event and the consequential damages in average and for the insurance indemnity and which (amount) is included in the positive damage of the action; however this reasoning of the calculation of the remaining damage sum is more theoretically correct according to the judgment of the Court.

Accordingly, the amount of damage which has to be reimbursed is restricted to €1,004,125.85. In addition to the unlawful damage the plaintiff sustained also moral damage due to the serious shock it suffered as a result of the relevant damage of its vessel, the professional reputation and its credibility as shipowning company in the international charter market, for the restoration of which must be paid monetary compensation to the amount of €50,000, which in the judgment of this Court is considered reasonable.

The objection of the six-month time bar of the relevant claim which put forward the defendants, invoking the provision of art. 693 cl. 2 of the Civil Code, is not legal, because it is based on the false assumption that the relevant claim (for moral damage) has not as base the provisions of the service contract, but those of the tort, according to which, (art. 937 of the Civil Code), until the exercise of the relevant action, had not been completed the necessary time for its corresponding two year time bar.

Therefore, according to all the above, the relevant present action has to be accepted as partially substantiated in essence, and according to its basic foundation, for the total amount of €1,054,125,85 (€1,004,125,85 + €50,000).

Conversely the First Instance Court which rejected the action with the appealed decision in its entirety, erred and for this the appealed decision, should, in acceptance of the appeal, according to the relevant reasoning as essentially substantiated, disappear and, after the case has been retained by this Court and has been examined in essence, the action has to be accepted for its one part as essentially substantiated, and to be recognized that the defendants, each in full, owe to pay to the plaintiff the aforesaid amount with the legal interest from the next day after the filing of the action.

The defeated parties in the first instance trial defendants (respondents) have to be ordered, according to the extent of the victory and the defeat of each party, to pay part of the judicial expenses for both levels of adjudication, as is specified in the in the order section (arts. 183, 178§1, 189 and 191 §2 of the Code of Civil Procedure).

FOR ALL THESE REASONS

Judging between the contentious parties;
Accepts the appeal at it formal and essential part;
Deletes the appealed Final Decision no 828/2006 of the Multi Member Piraeus First Instance Court;
Retains and judges the case in its essence;
Accepts the action at the one part;
Acknowledges that the defendants each in full are liable to pay to the plaintiff the amount of Euro one million fifty four thousand one hundred twenty five and eighty five cents (€1,054,125.85) with the legal interest accrued since the next day after the filing of the action;
Orders the defendants to pay to the plaintiff part of the legal costs of the plaintiff corresponding to the extent of the victory and defeat of each amounting for the two levels of jurisdiction to Euro seventy five thousand (€75,000).

Judged and decided in Piraeus on the 15th September 2010.

The President    The Secretary

Published in the public session of this Court with different composition on 28th February 2011, composed of the Judges, Aspasia Mayiakos - Presiding Judge of the Court of Appeal, Areti Papadia and Constantinos
Stamadianos - Judges of the Court of Appeal and Kalliopi Dermati – Secretary due to promotion and reposition of Judge of the Court of Appeal Andonios Plakidas, without the presence of parties and their attorneys at law.

True Translation from Greek to English
On Behalf the company “E. Tsertsidis & CO”:

Athens, 13__/2__/2015

S/S E. Tsertsidis

Ei. M. Tsertsidis

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Translation true and in conformity with the original Greek text hereto attached (article 53 of the Lawyers’ Code)

Athens _13 Feb 2015__________

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[Copy of Certification Page Available Upon Request to Author]
### 2015-2016 TIPS CALENDAR

#### April 2015

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<td>Toxic Torts Midyear Meeting</td>
<td>Arizona Biltmore</td>
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<td>18-20</td>
<td>U.S. Supreme Court Admissions Weekend</td>
<td>Sofitel Hotel</td>
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<td>Janet Hummons – 312/988-5656</td>
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<td>29-5/3</td>
<td>TIPS Section Spring CLE Conference</td>
<td>Ritz-Carlton, Philadelphia</td>
<td>Philadelphia, PA</td>
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<td>Property Insurance Spring CLE Meeting</td>
<td>JW Marriott Hill Country</td>
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<td>2015 Aviation Litigation National Program</td>
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<td>Fidelity &amp; Surety Committee Midwinter Meeting</td>
<td>Waldorf Astoria</td>
<td>Hotel, New York, NY</td>
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<td>Felisha A. Stewart – 312/988-5672</td>
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