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Cover Story

Ship owner bound by the court's findings in in rem proceedings which it had not participated

Introduction

In the recent English case *Tecoil Shipping Ltd v Neptune EHF & Ors* [2021] EWHC 1582 (Admlty), the English Admiralty Court (the "**Court**") considered whether it should set aside a judgment in default in an *in rem* claim. An *in rem* claim is an action against a piece of property itself instead of the owner of the piece of property, whereas an *in personam* claim is an action against the owner of the property.

Background

In July 2018, two ships, namely the POSEIDON ("**Poseidon**") and the TECOIL POLARIS ("**Tecoil**") collided. It was clear that Tecoil was at berth at the time the Poseidon crashed into her. As such, the owner of the Poseidon (the "**Defendant**"), which is now in liquidation, has never disputed its liability for the collision. Subsequent to the collision, the underlying insurer of the Poseidon (the "**Insurer**") issued a letter of undertaking (the "**Letter of Undertaking**") pursuant to which the Insurer agreed to pay to the owner of Tecoil (the "**Claimant**") the sum due by the Defendant, provided that the totally liability did not exceed US$200,000.

In rem proceedings

In June 2019, the Claimant commenced *in rem* proceedings against the Defendant to seek damages and the Defendant failed to acknowledge service. The Claimant therefore applied for and obtained judgment in default with an award of around US$525,000. After the *in rem* proceedings, the Insurer stated that it would not make payment under the Letter of

Undertaking on the basis that the Letter of Undertaking would not respond to an *in rem* judgment.

In personam proceedings

Given the Insurer's reluctance to make payment, the Claimant brought an *in personam* claim against the Defendant in July 2020. The Claimant also served the claim form to the Insurers as parties and made a claim against the Insurers for the sum due under the Letter of Undertaking. Again, the Defendant failed to acknowledge service and the Claimant obtained a judgment in default against the Defendant. The Claimant demanded the Insurer to make payment pursuant to the Letter of Undertaking, which was rejected by the Insurer. The Insurer sought to set aside the default judgment obtained by the Claimant against the Defendant.

Arguments and ruling

In the application to set aside the default judgment, the Insurers made the following arguments:

1. The default judgment was wrongly entered and should be set aside as a matter of right under Rule 13.2 of the English Civil Procedure Rules (the "**CPR**") on the premise that pursuant to Rule 61.9(2) of the CPR, in a case concerning collision of ships, default judgment should not be granted unless the claimant has filed a collision statement, or obtained an order to dispense with such requirement; and
2. The default judgment should be set aside as a matter of discretion under Rule 13.3 of the CPR given that there was a reasonable prospect of success in defending the claim.

Whether a collision statement is required

In respect of the first argument, the Court ruled that a collision statement is only required upon the filing of an acknowledgement of service by the Defendant. Since no acknowledgement of service was filed in the present case, Rule 61.9(2) of the CPR is not applicable and a collision statement is not required. Instead, Rule 61.9(3)(b) of the CPR applies, which provides that an application for default judgment is to be made in accordance with Part 12 with necessary modifications. The Court further stated that it is trite law that judgment in default of acknowledgement of service is available in cases concerning collision.

Whether the *in rem* judgment constituted conclusive evidence

In respect of the second argument, the Court ruled that a party is allowed to bring a subsequent *in personam* claim in respect of the same claim even if judgment has already been obtained in an *in rem* claim. The Insurers argued that the Defendant could, in the *in personam* proceedings, re-litigate its liability and/or the quantum under the *in rem* judgment, as the previous proceedings did not determine the status of the Poseidon. The Insurers were of the view that the previous judgment involved *in rem* decisions which did not provide

conclusive evidence of the issues therein. This argument was rejected by the Court, which held that the *in rem* judgment provided conclusive evidence of the matters therein and the Defendant was bound by such conclusive evidence in the present proceedings.

In any event, the Court suggested that it would not exercise its discretion to set aside the default judgment as the Insurers could have taken part in the *in rem* proceedings previously if they intended to contest the quantum of the claim. However, the Insurers refused to do so and it is not appropriate for them to argue otherwise in the *in personam* proceedings.

The decision

In light of the above legal analysis, the Court rejected the Insurers' application for setting aside the default judgment and suggested that it would be an abuse of process if the application was allowed.

Takeaways

This case reiterates that the matters decided in an *in rem* judgment concerning collision of ships can be used as conclusive evidence against the party at fault in subsequent *in personam* proceedings. The same principle applies even where the ship owners at fault or their insurers did not take part in the original *in rem* proceedings. Thus, this case serves as a reminder to ship owners and insurers that they would be bound by the results in an *in rem* claims in a subsequent action *in personam*.

Wah Kwong signs to Hong Kong tech startup Carbonbase to tackle GHG emission reduction measures

On 16 June 2021, the International Maritime Organization ("**IMO**") adopted two carbon emission reduction measures whereby all ships will be required to calculate their Energy Efficiency Existing Ship Index (EEXI) and report their carbon emissions from ongoing operations. The two measures shall come into force in January 2023.

In light of the IMO's carbon emission reduction measures, Hong Kong's Wah Kwong Maritime Transport Holdings Limited ("**Wah Kwong**") has entered into an agreement with a local tech startup, Carbonbase to help the company meet obligations arising out of the newly adopted IMO emission reduction measures. Under the agreement, Carbonbase will provide a technological solution to tracking and monitoring Wah Kwong's carbon emissions across its entire fleet.

Since November last year, Wah Kwong signed a Memorandum of Understanding ("**MOU**") with CLP Innovation Enterprises Limited ("**CLP**") to promote carbon off setting and raise awareness of decarbonization in the shipping industry. Pursuant to the MOU, Wak Kwong would purchase carbon credits from CLP to offset the carbon emissions of its business and the fuel it purchases for its fleet. In addition, the MOU would enable the two parties to develop new service offerings using CLP's carbon credits to meet the potential needs of other shipping companies to offset emissions and lower their carbon footprint.

Change in piracy threat prompts High Risk Area reassessment

In view of the fall in incidence of Somali privacy, leading shipping organisation including the Baltic and International Maritime Council (BIMCO), International Chamber of Shipping (ICS), the International Association of Dry Cargo Shipowners (INTERCARGO), the International Association of Independent Tanker Owners (INTERTANKO), and Oil Companies International Marine Forum (OCIMF) agreed to reduce the geographic boundaries of the 'High Risk Area' ("**HRA**") for piracy in the Indian Ocean. Starting from 1 September 2021, the HRA boundaries would be reduced to the Yemeni and Somali Territorial Seas and Exclusive Economic Zones in its eastern and southern reaches.

The HRA was created at the height of the Somali piracy threat in 2010 to show shipowners, operators, and seafarers where pirates operated and where extra vigilance was required to avoid attacks.

Subsequent updates to the HRA have reflected the changing nature of threats in the region, including the successful suppression of Somali pirate action. In particular, Somali pirate groups have not attacked any merchant vessel since 2017, whist new asymmetric threats from local conflicts and insurgents and West Africa privacy have emerged, thereby necessitating a change on industrial risk assessment.

The ICS Secretary General contended that the security landscape is constantly evolving, and as new security threats have emerged or intensified outside the Indian Ocean it has become clear that the HRA is outdated and misleading. Previously, at the height of the crisis the HRA was essential in raising awareness of the Somali Pirate threat and the need to apply mitigation measures for the purpose of protecting crews and vessels in the region. At this stage, the attention must be shifted in light of other maritime security threats around the globe.

COSCO Shipping Ports profit attributable to shareholders up 85.2%

Recently, COSCO Shipping Ports (CSP) announced an 85.2% increase in its profit attributable to shareholders for the first half of the year, at US$416.6 million. This is exclusive of the gains from the disposal of its Yangzhou Yuanyang terminal, Zhangjiagang terminal, and Jiangsu Petrochemical.

CSP's revenue was up to US$564.9 million, representing 24.8% increase. Further, its gross profit elevated by 49.6% to US$148.3 million. CSP contended that the growth of gross profit was fuelled by the positive impact from its lean operations strategy and enhancement of sales and marketing, and thus, the revenue growth outpaced the cost of sales growth.

Moving forward, CSP targets to optimize the global terminal network, provide support, and pivot for the container fleet of its parent company in the global routes network, to further leverage the synergy from its parent company and the OCEAN Alliance, strengthen the ship calls from other shipping alliances, promote the introduction of new routes, and strive for more routes to call at its terminals so as to achieve the increase of the container volume. It will continue to improve the corporation information-based management capabilities and actively built 5G smart port.

Major shipping delays tie up millions in our cashflow, say Hong Kong beneficial cargo owners

Recent shipping delays in Hong Kong are tying up millions of dollars in cashflow, thereby troubling operations of local manufacturers. Statistically speaking, shippers are waiting up to ten weeks for vessel space, with freight rates reaching US$15,000 to send a 40ft container to the US. In particular, for dangerous goods the freight rate takes up to US$25,000. Furthermore, it was very costly to store cargo at factories while waiting for shipping in terms of security, insurance and high inventory levels.

In the meantime, port congestion in Hong Kong is deteriorating. Pursuant to an update from FIBS Logistics Limited, outbound shipments are currently delayed by three-to-five days, and carriers are skipping calls at the port. Major carriers had announced blank sailings and cannot release space ex-Hong Kong. For intra-Asia shipments, carries had implemented US$100 port congestion surcharges for all inbound and outbound containers, excluding transhipment cargo. As for US and Canada services, space is overbooked until the end of August save as to premium services.

Alpha Marine Corp v Minmetals Logistics Zhejiang Co Ltd

[2021] EWHC 1157 (Comm)

Alpha Marine Corp ("**Owner**") chartered the Vessel to Minmetals Logistics Zhejiang Co. Ltd. ("**Charterer**") for a time charter trip on an amended NYPE form. The Charterer sub-chartered the Vessel to General Nice Resources (Hong Kong) Ltd. ("**GNR**") pursuant to a voyage charter. After the Vessel departed a port in South Africa, the Vessel was stranded. Previously, the Owner issued 2 bills of lading provided that freight was payable "as per charter party". It was agreed that the charter party was a reference to the voyage charterer. After the loss of the Vessel, the Charterer issued a freight invoice to GNR which represented the freight payable under the voyage charter on the basis that the cargo has been discharged at Zhoushan. The Owner then issued invoices to cargo interests for freight due under the bills of lading and revoked the Charterer's authority to receive the freight from GNR and directed that it be paid to the Owner's P&I Club which the Charterer did not agree. The Owner then referred the dispute with the Charterer to arbitration.

The Owner claimed that the loss of the Vessel was caused by the Charterer's failure to comply with the safe port warranty in the Charterparty and therefore it is entitled to exercise lien over the voyage charter freight. However, the Tribunal found that in fact it was the master who had been negligent in his handling of the Vessel which caused the grounding, and held that the only sum the Owner is entitled to recover from the Charterer was the value of the bunkers consumed in the performance of the time charterparty. The Tribunal also held that the Owner had acted in breach of an implied term under the time charterparty that it would not revoke the Charterer's authority to collect from GNR the freight payable under the bills of lading unless hire and/or sums were due to the Owner under the charterparty, and therefore the Charterer was entitled to recover from the Owner the value of freight that had not been paid by GNR.

The Owner then appealed the Tribunal's decision and the issue was whether the charterparty contains an implied obligation that the Owner would not revoke the Charterer's authority to collect from GNR the freight payable under the bills of lading unless hire and/or sums were due to the

Owner under the charterparty.

The English High Court held that the Tribunal was wrong to consider that there was an implied term that prevented the Owner from intervening and withdrawing the Charterer's authority to collect the freight as the charterparty works satisfactorily without the implied term. Even without the implied term, the Owner has to account to the Charterer for excess freight received from the charterparty. While the Charterer attempted to suggest 3 possibilities for the implied term, the Court accepted none of them as necessary nor obvious.

Therefore, the Court set aside the Tribunal's award regarding the damages due to breach of the implied term and remitted the Charterer's counterclaim for freight on a tortious basis to the Tribunal for reconsideration.

Galtrade Ltd v BP Oil International Ltd

[2021] EWHC 1796 (Comm)

BP Oil International Ltd ("**BP Oil**") entered into a contract with Galtrade Ltd ("**Galtrade**") for the sale and purchase of low sulphur straight run fuel oil ("**SRFO**"). Both parties agreed that the 3rd parcel of SFRO did not comply with the contractual specification of the cargo. Accordingly, Galtrade rejected and returned the cargo to BP Oil and claimed damages for wasted expenditure from BP Oil in respect of costs incurred. BP Oil argued that Galtrade had no right to reject the 3rd parcel but a right to claim damages for diminution in value caused by the breach of contractual specification. Both parties also claimed their costs of dealing with the rejected cargo as damages consequent on the other party's breach.

The issue was whether BP's obligation to comply with the contractual specification amounted to a condition or an intermediate term of the contract. If the failure to comply with the contractual specification was a breach of a condition, Galtrade could reject the cargo and claim damages. If the failure to comply with the contractual specification was only a breach of an intermediate term, Galtrade could only reject the cargo if the breach was sufficiently serious.

The English High Court held that the specification terms in the contract were only intermediate terms rather than conditions. Whether a specification would be considered as a condition or an intermediate term depends on the interpretation of the particular contract by reference to its terms and factual matrix. These were the factors considered by the English High Court:

- The contract did not provide that the specifications are conditions of the contract nor an automatic right was given to the purchaser to reject the cargo in situations where the specifications were not met. The absence of clear indication was a factor against a construction of the obligations as conditions. Case laws authorities also leaned in favour of intermediate terms rather than conditions in case of quality deficiencies.
- The 14 specifications provided in the contract are regular/standard quality specifications for the description of SRFO.

- Both parties agreed that the off-specification SRFO remained marketable at a lower price. In the market of oil trading, deviations from specification were viewed as having remediable economic consequences.
- Expert evidence demonstrated that non-compliance would not give rise to a right to reject the SRFO.

Therefore, the English High Court did not accept that the breach by BP Oil is sufficiently serious to deprive Galtrade substantially of the whole benefit of the contract. As Galtrade had no right to terminate for BP Oil's breach of an intermediate term, its rejection was a repudiatory breach of the contract which had been accepted by BP Oil. The loss was caused by Galtrade's repudiatory breach and Galtrade was only entitled to nominal damages. BP Oil's wasted expenditure (including costs of hedging) was held to be recoverable by reason of Galtrade's wrongful rejection, but since BP Oil failed to demonstrate their loss suffered from the wrongful rejection, they were only awarded with nominal damages.

Eastern Pacific Chartering Inc v Pola Maritime Ltd

[2021] EWHC 1707 (Comm)

Eastern Pacific Chartering Inc ("**Eastern**") as owners and Pola Maritime Ltd ("**Pola**") as time charterers entered into a time charterparty for the "DIVINEGATE" dated 18 September 2019 ("**Charterparty**"). The Charterparty contains an exclusive jurisdiction clause which provides that the Charterparty is to be governed by English law and any dispute arising out of or in connection with the Charterparty should be submitted to the exclusive jurisdiction of the high court of justice in England and Wales ("**Clause**"). Subsequently, a dispute emerged as to whether Pola was liable for the balance of the hire as Pola asserted that it has the right to set off various costs and expenses it claimed to have incurred during the course of the Charterparty. Eastern commenced proceedings in the English Court for the unpaid hire.

To secure its claims, Eastern arrested another vessel, "POLA DEVORA", in Gibraltar on 2 July 2020 on the basis that Pola is the beneficial owner of "POLA DEVORA". Pola claimed that it was merely the time charterer of "POLA DEVORA" and Eastern released the vessel on 6 July 2020 without conceding to Pola's position that it is not the beneficial owner or that the arrest was wrongful. Pola thereafter counterclaimed against Eastern in the English Court for damages under breach of the Torts (Interference with Goods) Act 1977, tortious interference with use of "POLA DEVORA", conversion of "POLA DEVORA" and tortious inducement of breach of contract in relation to the time charter of "POLA DEVORA".

The issue before the English Court concerns the jurisdiction over Pola's tort-based counterclaims. Eastern submitted that they should be dismissed and struck out, and that the English Courts should decline jurisdiction in favour of the Supreme Court of Gibraltar. In deciding this issue, the Court first looked into, inter alia, Article 4 of the 1952 International Convention Relating to the Arrest of Sea-Going Ships ("**Arrest Convention**"), which provides that "*A ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the Contracting State in which the arrest is made*". Further, Article 6 provides that "*All question whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by*

the law of the Contracting State in whose jurisdiction the arrest was made or applied for." Accordingly, obtaining security by way of ship arrest can only be done by applying to the Court where the ship sought to be arrested is located, in this case, Gibraltar. However, it does not follow that the Gibraltar Court also has exclusive jurisdiction as regards whether Eastern is liable in tort for the allegedly wrongful arrest of "POLA DEVORA" in Gibraltar. The English Court found that the Arrest Convention was silent on this point.

The English Court then examined whether the tort claims fall under the scope of the Clause. Looking at the language of "*in connection with*", it was of the view that a tort claim may be said to arise "*in connection with*" the Charterparty where it is, in a meaningful sense, causatively connected with the relationship created by the Charterparty and the rights and obligations arising therefrom. In the present case, Eastern arrested "POLA DEVORA" in express reliance on its rights under the Charterparty and no arrest would have taken place but for the relationship created by the Charterparty. Hence, taking a broad view of the Clause, the English Court found that an issue between the parties as to whether damages are recoverable for an allegedly wrongful arrest made in seeking security for claims under the charter is a claim "*in connection with*" the Charterparty, and therefore the English Courts have jurisdiction. Accordingly, the English Court dismissed Eastern's application.

The update to the EU's Green Deal – How does adding the maritime sector to the bloc's carbon market affect international voyages?

Introduction

On 14 July 2021, the European Union Commission (the "**EU Commission**") published its update to the Green Deal known as the "Fit for 55" (i.e. the goal of reducing the net greenhouse gas emission by 55% by 2030), and for the very first time propose to bring the maritime sector within the ambit of the carbon market with the objective of tightening the existing EU Emissions Trading System (the "**EU ETS**") in view of decelerating the world's CO2 emission (the "**Proposal**"). Under the Proposal, the maritime sector would be added to the EU ETS gradually starting from 2023 phased in over a three-year period.

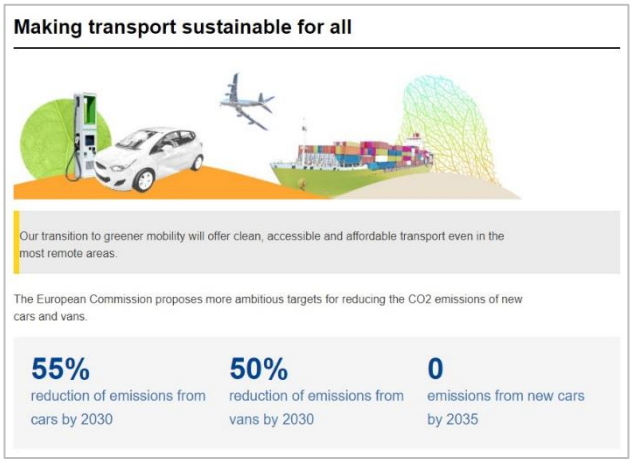

Photo source: European Commission website

What is the EU Emissions Trading System (ETS)?

ETS is a tool which sets a quantity limit and a price on the emission of certain greenhouse gases, and the EU ETS is the world's first major carbon market and emissions trading system which currently covers numerous sectors including power generation and aviation. It operates on a principle of cap and trade by setting an absolute limit (i.e. a "cap") on the total amount of emissions that can be emitted each year by the entities covered by the system.

Established in 2005, the EU ETS regulate entities of multi-nations and multi-disciplines' trading of emissions allowances. There is a fixed maximum amount of allowances present under the EU ETS which are allocated to the regulated entities either for free or via auctions. At the end of each year, the regulated entities must be able to yield enough allowances to cover their emissions. As such, if the allowances one entity is allocated with is inadequate to cover its amount of emissions, then such entity would either have to cut down its greenhouse gas emissions or to purchase further allowances from other entities in the same carbon market to meet its needs. In other words, regulated entities can sell and purchase their allowances in the "carbon market" with one another. The currency is measured in terms of emission units and each unit is like a voucher allowing the holder to emit one tonne of greenhouse gas. In the event that an entity is able to reduce its emission, the "unused" allowances could be saved for future usage or

be sold to another entity which is falling short of allowances.

What are the suggested amendments and reforms under the Proposal in relation to the maritime sector?

The EU Commission proposes a steeper emission reduction to 61% by 2030 (compared with the 2005 levels) by extending the current EU ETS sectors to cover the maritime sector which has not previously been included. Under the Proposal, the EU ETS would cover around two thirds of the maritime transport emissions and in particular, over 50% of the CO2 emissions from international voyages (i.e. around 90 million tonnes of CO2).

To extend carbon pricing to the maritime sector by including the emissions of the transport of vessels into the EU ETS, the EU Commission proposed, amongst others, that shipping companies would have to purchase and surrender ETS emission allowances which are like permits for each tonne of reported emissions of certain greenhouse gases for ships. A verified emissions report for each ship performing maritime transport activities is required to be submitted by shipping companies as the responsible parties. For administrative purpose, shipping companies will be attributed to an administering authority of a EU Member State which ensures compliance of the scheme. Where the responsible shipping company has failed to surrender the necessary allowances for two or more consecutive reporting years, their ships could be denied entry to EU ports and be issued with an expulsion order.

A reporting and review clause is also included to monitor the implementation of the rules applicable to the maritime sector and to take account of the relevant developments at the level of the International Maritime Organization (IMO).

What will be the applicability of the Proposal in relation to the maritime sector?

Under the Proposal, the above-discussed scheme will apply to ships of over 5,000 gross tonnage during voyages to, from and between a port under the jurisdiction of a EU Member State to load or unload cargo or passengers. The

Proposal applies regardless of the flag state or the jurisdiction of which the owner of the ship is incorporated in, and any ship visiting the EU port whether she is coming from another EU port or from a port outside the EU as long as the ship call at a EU port. As such, non-EU shipping companies could also be caught under the EU ETS if the Proposal is passed, meaning that a significant proportion of international voyages would need to be bound by the EU ETS.

Conclusion

The Proposal will have to be formally adopted before the current EU ETS is to be amended. As the revised EU ETS may be implemented as

soon as 2023, considerations should be given when drafting and negotiation charterparties since the Proposal may affect future fuel levies, carbon taxes, as well as global emissions allowance trading schemes. Parties should expressly indicate in the relevant contracts as to who is responsible for obtaining allowances under the EU ETS, and this is especially the case for ships which have frequent voyages to and from EU ports.

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本期專題

即使船東沒有參與對物訴訟，但仍受法院的裁決約束

簡介

最近在英國的 *Tecoil Shipping Ltd v Neptune EHF & Ors* [2021] EWHC 1582 (Admlty) 一案中，英國海事法庭（「**法院**」）考慮是否應撤銷在一項對物申索中的無應訴裁決。對物申索是針對財產提出的訴訟，而對人申索是針對財產主人提出的訴訟。

背景

2018 年 7 月，「POSEIDON」號（「**Poseidon 號**」）及「TECOIL POLARIS」號（「**Tecoil 號**」）相撞。Poseidon 號撞向 Tecoil 號時，Tecoil 號明顯在停泊處。因此，Poseidon 號的船東（「**被告人**」，現正清盤）從未就撞船責任提出異議。撞船事件發生後，Poseidon 號的相關保險公司（「**保險公司**」）發出了一封承諾書（「**承諾書**」），同意向 Tecoil 號的船東（「**索償人**」）支付被告人應付的金額，但以 20 萬美元為限。

對物訴訟

2019 年 6 月，索償人對被告人提出對物訴訟，以追討損害賠償，但被告人沒有認收法律文件。因此，索償人申請無應訴裁決，並獲判給約 525,000 美元的賠償。在對物訴訟後，保險公司表示不會支付承諾書所述款項，理由是承諾書的範圍並不包括對物訴訟的裁決。

對人訴訟

由於保險公司拒絕付款，索償人於 2020 年 7 月再向被告人提出對人申索。索償人亦向保險公司送達了索償文件，向保險公司追討承諾書所述金額。被告人同樣沒有認收法律文件，索償人取得無應訴裁決。索償人要求保險公司根據承諾書付款，但保險公司拒絕。保險公司請求法院撤銷索償人對被告人取得的無應訴裁決。

論點及裁定

在請求撤銷無應訴裁決的申請中，保險公司提出以下論點：

1. 無應訴裁決是錯誤地作出的，根據《英國民事程序規則》(《民事規則》) 第 13.2 條下的權利，應予撤銷，因為根據《民事規則》第 61.9(2) 條，在涉及撞船的案件中，除非索償人已提交撞船陳述書，或已取得免除此項規定的命令，否則不應作出無應訴裁決；及
2. 無應訴裁決應根據《民事規則》第 13.3 條下的酌情權予以撤銷，因為被告人有合理機會就申索成功抗辯。

是否須提交撞船陳述書

就第一個論點而言，法院指出，撞船陳述書僅在被告人提交送達認收書時才須提交。在本案中，

由於被告人沒有提交送達認收書，因此《民事規則》第 61.9(2) 條不適用，被告人無須提交撞船陳述書。適用的反而是《民事規則》第 61.9(3)(b) 條，該條訂明無應訴裁決的申請須按第 12 部 (經所需變更) 提出。法院進一步指出，眾所周知，涉及撞船的案件是可以在被告人沒有提交送達認收書的情況下作出無應訴裁決的。

對物裁決是否構成確證

就第二個論點而言，法院裁定，訴訟方即使已就對物訴訟取得裁決，但其後仍可就同一項申索提出對人訴訟。保險公司認為，被告人在對人訴訟中可就其於對物裁決下的法律責任及 / 或賠償金額重新作訴，因為先前的訴訟並未就 Poseidon 號的狀況作出裁決。保險公司認為，先前的裁決涉及對物的決定，但並未對當中的爭論點提供確證。法院不接納此論點，並裁定對物裁決已就當中事宜提供確證，被告人在對人訴訟中受該等確證約束。

無論如何，法院認為不應行使酌情權撤銷無應訴裁決，因為保險公司如希望就索償金額提出異議，大可以參與先前的對物訴訟，但保險公司當時拒絕參與，如今在對人訴訟中才提出爭議並不恰當。

裁決

基於上述法律分析，法院駁回保險公司要求撤銷無應訴裁決的申請，並認為假如批准上述申請，將會濫用程序。

要點

本案重申，在涉及撞船的對物裁決中所裁定的事宜，在其後針對犯過方的對人訴訟中可被用作確證，即使船東或其保險公司沒有參與原本的對物訴訟，上述原則仍然適用。本案提醒了船東及保險公司，對物訴訟的結果在其後的對人訴訟中對他們具有約束力。

華光與香港科技初創公司簽約應對溫室氣體減排措施

於 2021 年 6 月 16 日，國際海事組織採納兩項碳減排措施，據此，所有船隻將須計算其「現有船隻能源效益指數」(Energy Efficiency Existing Ship Index，EEXI)，並報告其持續營運的碳排放。兩項措施將於 2023 年 1 月生效。

因應國際海事組織的減排措施，香港的華光海運控股有限公司 (「**華光**」) 與本地科技初創公司 Carbonbase 簽訂協議，協助公司履行在國際海事組織採納的新減排措施下的責任。根據協議，Carbonbase 將提供技術解決方案，以追蹤及監察華光整個船隊的碳排放。

去年 11 月，華光與 CLP Innovation Enterprises (「**中電**」) 簽訂了諒解備忘錄 (「**備忘錄**」)，以推動碳抵銷及提高航運業的減碳意識。根據備忘錄，華光將向中電購買碳信用，以抵銷其業務的碳排放及其為船隊購買的燃料。此外，雙方將根據備忘錄採用中電的碳信用開拓新的服務，以滿足其他航運公司抵消排放和減少碳足跡的潛在需求。

海盜活動變化　高危地區需重新評估

隨著索馬里海盜活動減少，波羅的海國際航運公會 (BIMCO)、國際航運公會 (ICS)、國際乾貨船東協會 (INTERCARGO)、國際獨立油輪船東協會 (INTERTANKO) 及石油公司國際海事論壇 (OCIMF) 等多個大型航運組織同意，縮減印度洋海盜「高危地區」的地理邊界。由 2021 年 9 月 1 日起，「高危地區」的邊界將縮減至也門及索馬里領海，及其東部和南部的專屬經濟區。

「高危地區」是於 2010 年索馬里海盜活動高峰期訂立的，以提醒船東、營運商及海員注意海盜出沒地區，需要額外警惕以避免受攻擊。

其後，「高危地區」亦曾因應區內威脅不斷變化的性質而更新，包括當局成功遏制索馬里海盜的行動。自 2017 年以來，索馬里海盜更從未攻擊任何商船。另一方面，當地衝突、反對派和西非海盜則帶來新的非對稱威脅。因此航運業界的風險評估需要變更。

國際航運公會祕書長認為，安全形勢不斷演變，而且由於印度洋以外有新的安全威脅出現或加劇，「高危地區」顯然已經過時及誤導。在海盜活動高峰期，「高危地區」的訂立對於提高防範索馬里海盜及採取緩解措施以保護區內船員和船舶的意識固然起了重要作用，但現時隨著全球出現其他海事安全威脅，「高危地區」的重點也必須轉移。

中遠海運港口股東應佔利潤上升 85.2%

最近中遠海運港口公布，上半年股東應佔利潤上升 85.2% 至 4.166 億美元。這尚未計算出售揚州遠揚碼頭、張家港碼頭及江蘇石化的收益。

中遠海運港口的收入達到 5.649 億美元，上升 24.8%。此外，其毛利上升 49.6% 至 1.483 億美元。公司表示，毛利增長主要受到公司的精簡運營策略以及加強銷售和營銷的正面影響，因此收入增長超過了銷售成本增長。

展望未來，公司目標優化全球碼頭網絡，為母公司的貨櫃船隊在全球航線網絡提供支持和支點，進一步發揮母公司與 OCEAN Alliance 的協同效應，加強其他航運聯盟的船隻停靠，推動新航線，爭取更多航線停靠旗下碼頭，以實現貨櫃吞吐量的增長。公司會繼續提升企業資訊化管理實力，並積極建設 5G 智能港口。

新加坡為防止變種新冠病毒在本地爆發，已對船員換班實施限制。英國目前禁止來自印度的人士入境，但據知將繼續根據其關鍵工人豁免允許船員換班。

香港貨主指大量航運延誤導致數百萬計的現金流停滯

香港近期的航運延誤導致數以百萬計的現金流停滯，令本地廠商營運困難。目前，付運人平均要等候長達 10 星期才等到貨運艙位，一個 40 呎貨櫃運往美國的運費高達 15,000 美元，而危險品的運費更高達 25,000 美元。此外，在等候艙位期間將貨物存放於廠房的保安、保險和儲存成本亦非常昂貴。

同時，香港的港口擠塞情況亦正在加劇。根據菲庇斯國際物流有限公司的最新資料，香港出境貨物目前的延誤時間為 3 至 5 日，許多承運商都選擇不停靠香港。大型承運商宣布取消航線，無法提供從香港出發的艙位。亞洲區內貨運方面，承運商就所有入境及出境貨櫃 (轉運除外) 徵收 100 美元的港口擠塞附加費；至於美國及加拿大的服務，除高級服務外，艙位已超額預訂至 8 月底。

Alpha Marine Corp v Minmetals Logistics Zhejiang Co Ltd

[2021] EWHC 1157 (Comm)

Alpha Marine Corp (「**船東**」) 根據一份經修訂 NYPE 格式租船合同，將其船隻 (「**該船隻**」) 出租予五礦物流浙江有限公司 (「**租船人**」) 作期租航程。租船人再根據一份航次租船合同，將該船隻轉租予俊安資源 (香港) 有限公司 (「**俊安**」)。該船隻在離開南非一個港口後擱淺。事發前，船東曾發出兩張提單，訂明運費「按租船合同」支付。各方同意，租船合同是指航次租船合同。該船隻損失後，租船人向俊安發出運費發票，按貨物已在舟山卸貨的基礎收取航次租船合同下的應付運費。其後，船東向貨主開出發票收取提單下的未付運費，並撤銷了租船人從俊安收取運費的權力，以及指示將運費支付給船東的保賠協會，但租船人不同意。船東於是將其與租船人的爭議提交仲裁。

船東認為，船隻損失是由於租船人未有遵守租船合同中的安全港口保證而造成，因此船東有權對航次租船合同的運費行使留置權。然而，仲裁庭發現事實上是船長在操作船隻時疏忽而導致船隻擱淺，故裁定船東唯一可向租船人追討履行期租合同時消耗的燃料的價值。仲裁庭亦認為，船東違反了期租合同中的隱含條款，即：除非租船人在租船合同下尚欠船東租金及 / 或款項，否則船東不得撤銷租船人根據提單向俊安收取應付運費的權力；因此，租船人有權向船東追討俊安尚未支付的運費價值。

船東就仲裁庭的決定提出上訴，爭論點是租船合同是否載有隱含責任，除非租船人在租船合同下尚欠船東租金及 / 或款項，否則船東不得撤銷租船人根據提單收取應付運費的權力。

英國高等法院認為，仲裁庭錯誤地認為租船合同含有禁止船東干預及撤回租船人收取運費權力的隱含條款，因為即使沒有隱含條款，租船合同仍可妥善地運作。即使沒有隱含條款，船東仍須向租船人交出就租船合同收到的額外運費。雖然租船人嘗試就隱含條款提出三個可能的條文，但法院認為它們均並非必要或明顯的。

因此，法院撤銷關於違反隱含條款造成損失的仲裁裁決，並將租船人基於侵權提出的運費反申索發還仲裁庭重審。

Galtrade Ltd v BP Oil International Ltd

[2021] EWHC 1796 (Comm)

BP Oil International Ltd (「**賣方**」) 與 Galtrade Ltd (「**買方**」) 就買賣低硫直餾燃油 (「**燃油**」) 訂立合約。雙方同意第三批燃油並不符合貨物的合約規格。因此，買方拒絕收貨，將貨物退還予賣方，並就虛耗的開支向賣方追討損害賠償。賣方認為，買方無權拒收第三批燃油，但有權就違反合約規格所造成的價值減損索償。雙方均認為是對方違約，並向對方追討處理被拒收貨物的成本。

案件的爭論點是：賣方遵守合約規格的責任是合約的條件還是中間條款？如果賣方未能遵守合約規格是違反了合約條件，則買方可拒絕收貨並要求賠償；但如果賣方未能遵守合約規格只是違反了中間條款，則只有在賣方的違約程度充分嚴重的情況下，買方才可拒絕收貨。

英國高等法院裁定，合約的規格條款僅為中間條款而非條件。規格條款應被視為條件還是中間條款，取決於對具體合約的條款及整體事實背景的詮釋。英國高等法院考慮的因素如下：

- 合約並無訂明貨物規格為合約條件，亦沒有賦予買方在貨物不符規格的情況下自動拒絕收貨的權利。合約沒有清晰訂明該責任為條件，所以不應將該責任解釋為合約條件的一項因素。以往案例也傾向將品質缺陷條款視為中間條款而非合約條件。
- 合約中規定的 14 項規格是燃油描述的常規 / 標準品質規格。
- 雙方同意，不合規格的燃油仍可以較低的價格出售。在石油貿易市場，偏離規格被視為可彌補的經濟損失。
- 專家證據顯示，即使燃油不合規格，亦不會賦予買方拒絕收貨的權利。

因此，英國高等法院不同意賣方的違約行為嚴重至剝奪了買方在合約下的絕大部分利益。由於買方無權因賣方違反中間條款而終止合約，買方拒絕收貨屬於毀約性違約，並獲賣方接受。有關損失是由於買方的毀約性違約所造成，故買方只可獲得象徵式賠償。賣方虛耗的支出 (包括對沖成本) 被裁定為由於買方的不當拒絕收貨而可予追討；然而，由於賣方未能證明其蒙受的損失是源於買方的不當拒絕收貨，因此賣方亦只獲得象徵式賠償。

Eastern Pacific Chartering Inc v Pola Maritime Ltd

[2021] EWHC 1707 (Comm)

Eastern Pacific Chartering Inc (「**船東**」) 與 Pola Maritime Ltd (「**租船人**」) 於 2019 年 9 月 18 日就「DIVINEGATE」號船隻訂立了期租合同 (「**租船合同**」)。租船合同載有專屬司法管轄權條款，訂明租船合同受英國法律管限，任何因租船合同而起或與租船合同有關的爭議，僅可提交英格蘭及威爾斯最高法院審理 (「**該條款**」)。其後，由於租船人認為其有權抵銷其聲稱於租船合同期間招致的多項成本及開支，雙方就租船人是否須支付船租餘額發生爭議。船東就尚欠的船租向英國法院提起訴訟。

船東為了保障其債權，以租船人為「POLA DEVORA」號 (「**該船隻**」) 的實益擁有人為理由，於 2020 年 7 月 2 日在直布羅陀扣押了該船隻，但租船人表示只是該船隻的期租合同租船人。船東於 2020 年 7 月 6 日釋放該船隻，但未有承認租船人並非實益擁有人，亦無承認錯誤扣押該船隻。其後，租船人在英國法院控告船東違反《1977 年侵權 (干預貨品) 法》、作出干預該船隻使用的侵權行為、侵佔該船隻及作出誘使違反期租合同的侵權行為，並就此向船東追討損害賠償。

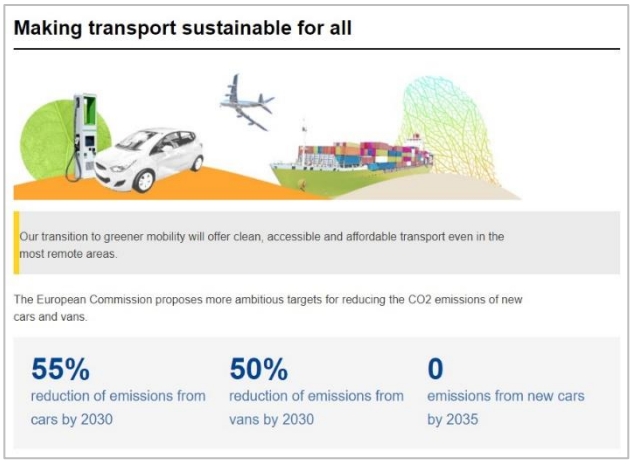
英國法院需審理關於租船人基於侵權提出的反申索的司法管轄權問題。船東認為，該等反申索應予駁回及剔除，英國法院不應確認對該等反申索具有司法管轄權，而應確認直布羅陀最高法院的司法管轄權。在判斷此問題時，法院首先審視 (其中包括)《1952 年海輪扣押國際公約》(**《扣押公約》**) 第 4 條，其規定「船舶只能由執行扣押的締約國的法院或有關的司法當局扣押」。此外，第 6 條規定「關於索償人在任何情況下是否須承擔船隻扣押的損害賠償、或為釋放或防止船隻被扣押提供保釋或其他保證金的費用，應根據作出或申請扣押的所在司法管轄區的締約國法律裁定。」因此，如要以扣押船隻的方式取得保證，僅可向有關船隻所在地的法院申請，在本案中，即直布羅陀法院。然而，這不等於直布羅陀法院對於船東是否須因被指不當扣押該船隻而承擔侵權責任的問題具有專屬司法管轄權。英國法院指出，《扣押公約》在這個問題上並沒有規定。

英國法院隨後審視了侵權索償是否屬於該條款的範圍。就「與租船合同有關」一詞而言，法院認為，如果一項侵權申索實質地在因果關連上與租船合同所建立的關係有關，並因此產生權利和責任，則可以說該項侵權申索「與租船合同有關」。在本案中，船東明確倚賴其在租船合同下的權利來扣押該船隻，而且是基於租船合同建立的關係才會作出扣押。從宏觀角度審視該條款後，英國法院裁定，雙方之間就是否可因租船合同項下的申索尋求保證所作出的被指不當扣押追討損害的問題，是一項「與租船合同有關」的申索，所以英國法院具有司法管轄權。因此，英國法院駁回船東的申請。

《歐盟綠色政綱》最新情況——將航運業界納入歐盟碳市場對國際航運有何影響？

簡介

歐盟委員會於 2021 年 7 月 14 日公布了稱為「減碳 55」(Fit for 55) 的綠色政綱 (即於 2030 年前將溫室氣體淨排放量減少 55% 的目標) 的最新情況，並首次建議將航運業界納入碳市場範圍，目標是收緊現時的歐盟排放交易體系，以減慢全球二氧化碳排放減速 (「減排方案」)。根據減排方案，由 2023 年起，航運業界將於三年內分階段加入歐盟排放交易體系。



圖片來源：歐盟委員會網站

歐盟排放交易體系是甚麼？

排放交易體系是為若干溫室氣體排放量設定上限及定價的工具，而歐盟排放交易體系則是全球首個大型碳市場及排放交易系統，目前涵蓋發電及航空等多個領域。此體系是基於上限及交易原則運作，就體系所涵蓋的機構每年獲准的總排放量設定絕對限制 (即「上限」)。

歐盟排放交易體系於 2005 年建立並主要規管跨國及跨領域機構的排放限額交易。在歐盟排放交易體系下，受規管機構可免費獲編配或從拍賣取得排放配額。每年年底，受規管機構必須就其排放量取得足夠配額；如果某機構所取得的配額不足以抵消其碳排放量，則必須減少排放，或向同一碳市場的其他機構購買更多配額以滿足其需求。換言之，受規管機構可以在「碳市場」進行買賣，貨幣為排放單位，每個單位就像代用券一樣，允許持有人排放一噸溫室氣體。若機構能夠減少其排放量，則可儲起未用的限額留待日後使用，或售予另一家配額不足的機構。

減排方案對航運業界有何建議修訂和改革？

歐盟委員會建議，將現行歐盟排放交易體系的適用行業擴大至過去並未涵蓋的航運行業，從而在 2030 年前將排放量大幅削減至 61%(與 2005 年水平相比)。根據減排方案，歐盟排放交易體系將覆蓋約三分之二的航運排放，其中包括 50% 以上的國際航運二氧化碳排放 (即約 9,000 萬噸二氧化碳)。

為了將碳排放的控制擴大至航運業界而將海運碳排放納入歐盟排放交易體系，歐盟委員會建議(其中包括) 航運公司須購買及使用排放交易體系的排放配額，就像為船隻匯報的每噸溫室氣體排放取得許可一樣。航運公司作為負責人，須就每艘進行海上運輸活動的船隻提交經核證的排放報告。為方便行政，每間航運公司將交由指定歐盟成員國的管理機構監督，以確保遵守規定。如果負責的航運公司連續兩個或以上的匯報年度未能遵守購買排放許可的規定，其船隻可被拒絕進入歐盟港口，並被頒布驅逐令。

新增的匯報及覆核條款亦有助監督適用於航

運業界的規則的實施，並考慮在國際海事組織層面的相關發展。

減排方案在航運業界的適用範圍如何？

根據減排方案，上述計劃將適用於總噸位 5,000 噸以上、往來歐盟成員國管轄範圍內的港口裝卸貨物或乘客的船隻。只要是在歐盟港口停靠的船隻，不論船旗國或船東註冊成立所在的司法管轄區是何處，亦不論是來自另一個歐盟港口或歐盟以外的港口，上述減排方案同樣適用。因此，如果減排方案獲得通過，非歐盟的航運公司也會受到歐盟排放交易體系的規管；換言之，很大部分的國際航次均會受到歐盟排放交易體系的約束。

總結

減排方案將須在現行歐盟排放交易體系修訂前獲正式採納。由於經修訂的歐盟排放交易體系最快可能於 2023 年實施，在草擬及磋商租船合同時，應考慮減排方案可能影響未來的燃料徵費、碳稅以及全球排放配額交易計劃。訂約方應在有關合約中明確表示哪一方須負責根據歐盟排放交易體系取得配額，尤其是經常往來歐盟港口的船隻。

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