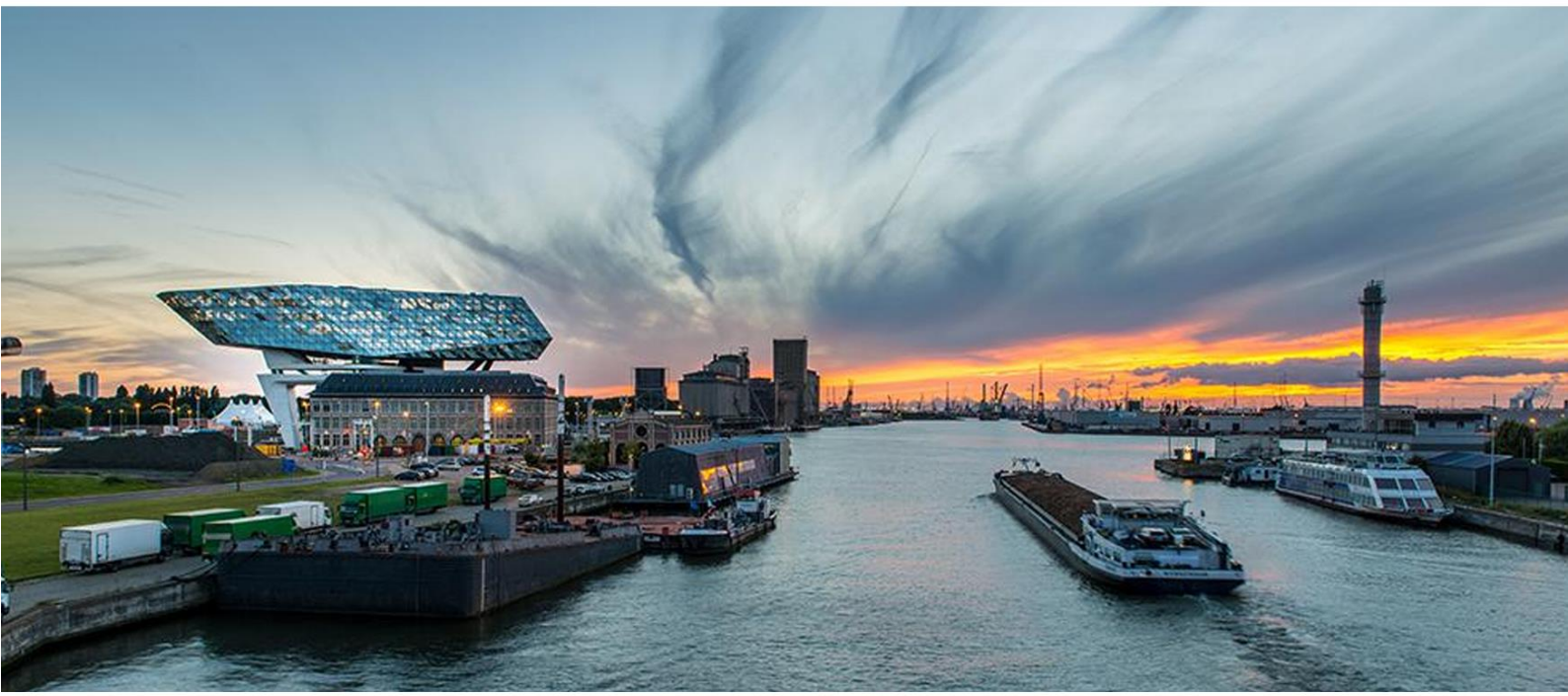

# YOUNG MARITIME LAWYERS ASSOCIATION

## ANTWERP

*Seminar*

*15-16 June 2018*

The Belgian YMLA would like to thank her sponsors for their generous contributions to this year's event. Thank you for making our seminar a success.

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# WELCOME

Dear participant,

The Organising Committee of the 2018 YMLA Seminar welcomes you to Antwerp.

After having enjoyed the hospitality of our neighbouring countries during the previous editions, it is now our turn to try and make this 13th edition of the Seminar an unforgettable experience for everyone attending (and if we'd fail we could always blame the unlucky number 13).

Continuing the traditions of the seminars, we start on Friday with a case study, providing a forum for debate on a wide array of issues in maritime law as applied in the jurisdictions of our speakers.
On Saturday we are following in the footsteps of our Rotterdam colleagues, and, as successfully introduced last year, we have invited two speakers of each participating country to each present a recent landmark court decision, with the possibility of a quick Q&A afterwards.

However, just like all preceding years, we mainly hope that this edition will give you the opportunity to meet new colleagues and strengthen the ties with existing contacts from all over Europe.
To that end, we are delighted to offer you a reception and a casual tour of our beautiful Red Star Line Museum, where you can find unique stories of Europeans who were courageous (or desperate) enough to leave their old life behind and look for a brighter future in the New World. Perhaps you might even bump into one of your own emigrated ancestors. Afterwards we offer you a dinner and a party at "Zaal Barcelona", located at Hangar 26, a unique location and protected heritage site, with a magnificent view of the Scheldt River.

We would like to thank the Belgian Maritime Law Association for their structural support and our sponsors for their financial support. Without them, this Seminar could not have happened.
Furthermore, a big thank you to our brave speakers for investing their (doubtlessly precious) time in preparing the case study and the landmark cases and for letting us pick their brains regarding the legal issues presented to them.
Last but not least we want to thank Prof. Dr. Ralph De Wit, for moderating the panel sessions. As our speakers are about to find out, Ralph is not only an authority on Belgian maritime law, but also one of the most amiable professors of the country. Therefore we are very honoured to present him as moderator of the Seminar.

**The 2018 Organising Committee**
Véronique Beeckx & Wim Drofmans – Presidents Belgian YMLA
Stefan Loos, Daphné Sprengers, Emma Tamsin, Dorien Van Even, Ive Van Rillaer, Chanel Vanstaen, Dorien Verplancke

# INTRODUCTIONS

***Warm welcome to all participants by Saskia Evenepoel, Partner at METIS advocaten and Vice-President of the Belgian Maritime Law Association***

The Belgian Maritime Law Association is a non-profit organisation which studies all aspects of maritime and transport law and which aim is to improve and unify the existing national and international provisions in that respect. To that end, the Association closely cooperates with international organisations, such as the Comité Maritime International and with national public-law bodies which are active in the field.

---

***Our seminar will be kicked off by an introduction from Capt. Jeroen WEYN, Court Surveyor and member of the Nautical Commission to the Court of Commerce Antwerp***

***.***

The Nautical Commission is a commission of former shipmasters acting as Court Surveyors for Belgian Courts. The Nautical Commission is active in a broad range of fields, including maritime shipping, barging, the fishing industry, recreational boating, port-related activities as well as associated activities in other industries.

Its primary asset is its complete independence from the parties concerned, as the Commission can only be instructed by the Courts. This also means that the Commission is always at liberty to accept any given mission, without facing problems of objection to the expert by one of the parties involved. The Nautical Commission members cannot act on behalf of one party only, they can however be appointed by amicable agreement between multiple parties, or by arbitral boards.

All commission members have held command. They can draw on their extensive experience of all kinds of vessels as well as being fluent in several languages (Dutch, English, French and German).
Based in Antwerp, the Nautical Commission is available all around the clock, every day of the year and can conduct investigations and inquiries all over the world.

When a court orders an investigation, this always concerns the technical causes and circumstances of an incident and excludes any opinions on legal aspects of the case.

# INTRODUCTIONS

The appointed commission member acts as an independent, neutral and objective investigator, who conducts an open inquiry in which all parties are involved and heard, but his mission is always limited to the questions set out by the court.

---

***Moderator for our Friday case study will be Prof. Dr. Ralph DE WIT.***

Ralph obtained his PhD in 1993 with a thesis on "Multimodal Transport: Carrier Liability and Documentation", which was commercially published with Lloyd's of London Press in 1995.

He was called to the Antwerp Bar in 1996 and has since combined private practice and academic positions. As a practitioner he focuses on international contract law, international transport, maritime law, and competition law.

Ralph has also been active in negotiations on new international conventions and national legislation in the transport sector, inter alia as representative for FIATA at the negotiations on the UNCITRAL Convention on the Carriage of Goods Wholly or Partly by Sea (2002-2007), aka the "Rotterdam Rules", as member of an expert panel on multimodal transport for the European Commission (1999), and as expert and subsequently member of the Royal Commission for the reform of Belgian maritime law (2006-2009).

Ralph is professor at the Universities of Brussels and Antwerp, at the Antwerp Maritime Academy, and he teaches at Portilog and Logos (the professional training institutes of the Port of Antwerp).

# PROGRAMME

***See pages 6 – 7 for venue locations***

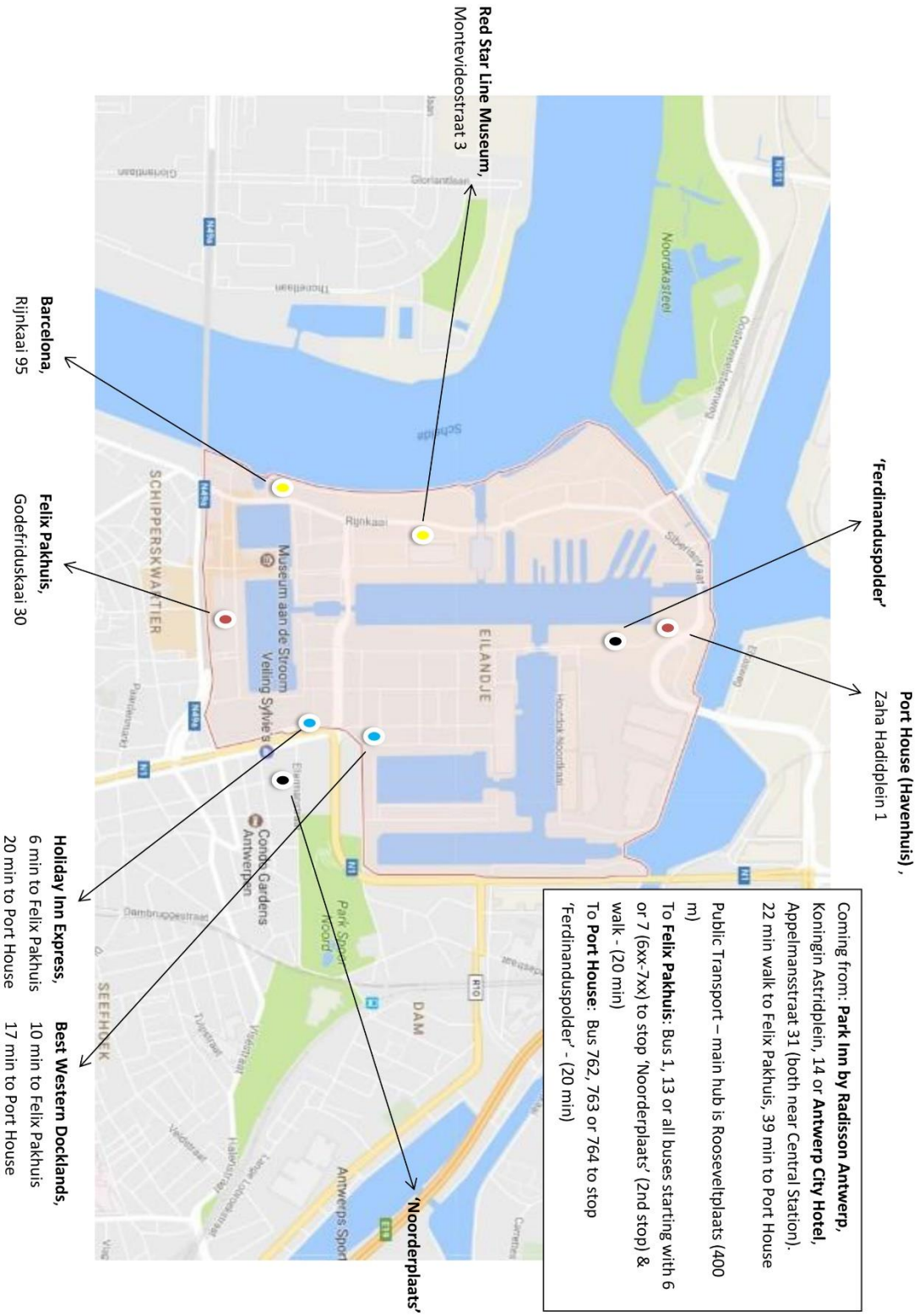
## Day 1 - Friday 15 June

| | |
|---|---|
| 12.30 – 13.30 : | Seminar registration and lunch **@ Felix Pakhuis** |
| 13.30 – 14.00: | Welcome by Saskia EVENEPOEL, Partner at METIS advocaten and Vice-President of the Belgian Maritime Law Association and introduction by Capt. Jeroen WEYN from the Antwerp Nautical Commission |
| 14.00 – 15.30: | Case Study – Part 1 |
| 15.30 – 15.50: | Refreshment break |
| 15.50 – 17.20: | Case study – Part 2 |
| 17.20 – 17.30: | Day one closing speech |
| 17.30 – 20.00: | Reception **@ Red Star line Museum** |
| 20.00 – 02.00: | Dinner & afterparty **@ Zaal Barcelona** |

## Day 2 - Saturday 16 June

| | |
|---|---|
| 09.10 – 09.30: | Welcome & breakfast **@ Port House** |
| 09.30 – 10.45: | Landmark cases – Part 1 |
| 10.45 – 11.00: | Refreshment break |
| 11.00 – 12.15: | Landmark cases – Part 2 |
| 12.15 – 13.00: | Lunch and official closure |

# MAP, VENUES AND USEFUL INFORMATION




Should you need any assistance during the seminar, please feel free to call the following committee members:

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# MAP, VENUES AND USEFUL INFORMATION

**Friday seminar location:**

**Felix Pakhuis**
Godefriduskaai 30
2000 Antwerp

**Friday reception:**

**Red Star Line Museum**
Montevideostraat 3
2000 Antwerpen


**Friday dinner:**

**Zaal Barcelona**
Rijnkaai 95
2000 Antwerpen


**Saturday seminar location:**

**Port House**
Zaha Hadidplein 1
2030 Antwerp

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# FRIDAY – CASE STUDY

*"greasy business"*

**STATEMENT OF FACTS**

PALM FATTY LTD are the buyers of a cargo of 4,000 mt of palm oil (intended for the human food chain), carried on board the Vessel TWILIGHT TRADER under 4 Bills of Lading issued on 25 October 2017 at Pasir Gudang, Malaysia.

TWILIGHT CARRIERS are the disponent owners of the Vessel and the contractual carriers under the Bills of Lading. TWILIGHT CARRIERS sub chartered the Vessel to BEATLES OILS & FATS LTD by way of a Charter Party dated 12 September 2017.

The Bills of Lading were all signed by Agents for and on behalf of the Master. The cargo was shipped from Malaysia and all the Bills of Lading provided for discharge in Liverpool, Merseyside.

The cargo carried under the Bills of Lading was sold to PALM FATTY by BEATLES on CIF Liverpool terms.

The contracts of carriage contained in or evidenced by the Bills of Lading incorporated the Hague-Visby Rules. The Bills of Lading are on the Congen Form and provide that all terms and conditions, liberties and exceptions of the Charter Party dated 12 September 2017 are herewith incorporated.

The Charter Party contains the following liberty clause: *"The Owner may, when practicable, have the Vessel call and discharge the cargo at another or substitute port declared or requested by the Charterer. When the cargo is discharged from the Vessel, as herein provided, it shall be at its own risk and expense; such discharge shall constitute complete delivery and performance under this contract and the Owner shall be freed from any further responsibility."*

While the Vessel was en route to Merseyside it was held off Somalia by Somali pirates between 15 November 2017 and 13 February 2018. By reason of the piracy, the sound and fair merchantable quality of the palm oil could no longer be guaranteed, meaning that it could not be used in the human food chain anymore. As a result, the market value of the palm oil was worth considerably less than before the piracy takeover.

BEATLES presented the shipping documents for the cargo to PALM FATTY in or about mid January 2018. The shipping documents appeared to be in compliance with the contractual requirements and so the purchase price was paid to BEATLES and the Bills of Lading were endorsed to PALM FATTY.

After receiving BEATLES' insurance policy, on 6 March 2018, PALM FATTY claimed that BEATLES were in repudiatory breach of the sale contract by failing to insure the cargo under the agreed terms. On receipt of confirmation that BEATLES would repay the purchase price PALM FATTY intended to arrange for the Bills of Lading to be returned to BEATLES.

# FRIDAY – CASE STUDY

Following a series of messages it became apparent that BEATLES were not going to repay the purchase price. PALM FATTY always remained in possession of the Bills of Lading.

BEATLES wrongly claimed that PALM FATTY had abandoned the cargo.

On 19 March 2018 BEATLES issued a Letter of Indemnity to TWILIGHT CARRIERS asking them to deliver the cargo to them at the port of Antwerp without production of the Bills of Lading.

On 20 March 2018 PALM FATTY wrote to TWILIGHT CARRIERS claiming that they were the lawful holders of the Bills of Lading. Notwithstanding that notification TWILIGHT CARRIERS discharged the cargo on 22 March 2018 to BEATLES.

**QUESTIONS**

***Preliminary remark*: in order to answer the below questions, each speaker may assume jurisdiction of their own courts and applicability of their own domestic law**.

1. Would a claim from PALM FATTY against TWILIGHT CARRIERS be admissible? Does PALM FATTY have a right of suit in contract and/or a right of suit in tort ?

2. Could PALM FATTY claim damages from TWILIGHT CARRIERS for breach of the following duties under the contacts of carriage / Bills of Lading ? :

   (a) TWILIGHT CARRIERS failed to properly and/or carefully load, handle, stow, carry, keep, care for and discharge the goods carried, in that they allowed the Vessel to be taken over by pirates and during the period the Vessel was hijacked no cargo measures were taken;

   (b) TWILIGHT CARRIERS delivered the cargo at the port of Antwerp and not Liverpool;

   (c) TWILIGHT CARRIERS delivered the cargo other than as against presentation of the Bills of Lading;

   (d) TWILIGHT CARRIERS delivered the cargo to BEATLES and not to PALM FATTY who claimed to be the lawful holders of the Bills of Lading and the persons immediately entitled to possession thereof;

   (e) Are there any other grounds on which PALM FATTY could claim damages from TWILIGHT CARRIERS?

3. Would TWILIGHT CARRIERS have any recourse claim? Against which party and on what grounds? Could TWILIGHT CARRIERS call upon the LOI as issued by BEATLES?

4. Assume the Vessel arrives in a port within your jurisdiction, what measures could be taken in order to secure PALM FATTY's claim? Could PALM FATTY arrest the vessel/other assets in order to receive a security? Which kind of security would be sufficient?

**MODERATOR**

Prof. Dr. Ralph De Wit

**SPEAKERS**

From Belgium:

Seb COUVREUR – Fransen Luyten

Ruud DE HOUWER - Astrea

From the UK:

Angharad PARRY – 20 Essex Street

Ian WOODS – Clyde & Co

From France:

Kevin BRIGANT – RBM2L

Alexis LEMARIÉ – Ince & Co

From Germany:

Dr. Eva Maria HARM - Ahlers & Vogel

Tammo SCHWERDT - Ahlers & Vogel

From The Netherlands:

Jennifer HOOVERS - Van Steenderen Mainport Lawyers

# SATURDAY – LANDMARK CASES

## FROM BELGIUM

## Hof van Cassatie,13 January 2017

*Speaker:* *Jan DELEN – Kegels & Co*

*- FLINTERSTAR -*

On October 6th 2015 the mv Flinterstar ran aground before the coast of Zeebrugge, upon which the Federal State, the Flemish Regional Authorities and the local Provincial Authorities initiated interim injunction proceedings before the Bruges Court of Commerce, claiming the immediate removal of the vessel. In the meantime, owners of the mv Flinterstar had obtained permission of the President of the Antwerp Court of Commerce to set up a "wreck limitation fund" as per article 18 Belgian Act of April 11th 1989.

Both the Bruges Court of Commerce and the Ghent Court of Appeal ordered the owners to raise the wreck of the mv Flinterstar, notwithstanding the established limitation fund for wreck removal costs. By decision of January 13th 2017, the Belgian Supreme Court annulled the judgement of the Ghent Court of Appeal and decided that if the owners of a sunken/stranded vessel have limited their liability as per article 18 of the Belgian Act of April 11th 1989, they cannot be forced by the government to raise the wreck.

With this landmark decision, the Belgian Supreme Court seems to have made a u-turn in existing Belgian case law on the balance between the obligation of a shipowner to lift the vessel at the request of the competent authority (article 13 Belgian Act of April 11th 1989) and his right of limitation for claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned (article 18 Belgian Act of April 11th 1989).

# SATURDAY – LANDMARK CASES

## FROM BELGIUM

### Hof van Beroep Antwerpen, 18 januari 2016
### Arbitrage, 14 November 2017
### Hof van Beroep Antwerpen, 19 maart 2018

*Speaker:* *Veronique BISCOP – Marcon & Rubens*

The Cargo Insurance Policy of Antwerp offers the possibility to insure cargo on 'All Risks' terms. Although such 'All Risks' terms provide for an extensive cover, recent case law shows that there are limits to 'All Risks'.

In its decision of 18 January 2016 the Court of Appeal of Antwerp stated that costs arising out of a seizure of the insured goods as a result of a property dispute, are not covered as an 'All Risks' policy covers only physical damage or loss caused by a transport related risk.

This opinion has been followed in an arbitral decision of 14 November 2017 in an event where a seller acted fraudulently by exchanging the sold goods with other (inferior) goods. The arbitrators decided that this fraudulent act of the seller was not a transport related risk so that no cover could be granted under the 'All Risks' policy.

These limits have once more been confirmed by the Court of Appeal of Antwerp in its decision of 19 March 2018. In this case the insured goods were stolen during storage and this apparently by a representative of the storage holder who seemed to have a personal financial dispute with one of the assured. The Court ruled that there was no coverage under the 'All Risks' policy as this risk is also not transport or in this case storage related. There are, apparently, limits to 'All Risks'.

## FROM THE UK

### Fulton Shipping Inc of Panama v Globalia Business Travel S.A.U (The "New Flamenco") [2017] UKSC 43

*Speakers: Kate Law & Caroline STEWART – Campbell Johnston Clark*

This case considered the quantification of damages arising out of an early redelivery of a vessel under time charterer when there is no available market. The implications of this case are not limited to maritime law and provide helpful guidance on the court's interpretation of the legal principles of mitigation and damages under English law.

In October 2007 the "NEW FLAMENCO" was redelivered by the Charterers approximately 2 years early. There was no available market at the time so Owners decided to sell rather than attempt to re-fix her and entered into an MoA for her at US$23,765,000.

Owners then commenced London arbitration against the Charterers claiming damages at €7,558,375 for the net loss of profit they would have earned during the remaining term of the Charter had the Charterers not redelivered early.

The Tribunal found for Charterers and concluded that the sale operated to reasonably mitigate damages in account of the early re-delivery, with the benefit of such to be credited to Owners in the usual manner. There were subsequent appeals made to the Commercial Court by Owners and thereafter the Court of Appeal by Charterers.

Owners appealed to the Supreme Court who held that Owners were not obligated to give credit for the difference between the sale price for the Vessel directly after Charterers' repudiatory breach and the far lower sale price Owners would have obtained had the charter been maintained to the end of its full term.

# SATURDAY – LANDMARK CASES

## FROM THE UK

## The "Ocean Victory" [2017] UKSC 35

*Speaker:* *Peter GERCANS – MFB*

**PRACTICAL ASPECTS: THE DEPARTURE FROM KASHIMA PORT FOR OPEN WATER IN THE STORM**
**LEGAL SUMMARY: NO DEPARTURE FROM CLASSIC UNDERSTANDING OF SAFE PORT WARRANTIES**

Landmark ruling in relation to the substantial disputes arising from the grounding and eventual total loss of the cape-size vessel, m/v "OCEAN VICTORY" at Kashima, Japan in October 2006.

The "OCEAN VICTORY" was navigating a purpose-built fairway in a modern port when she lost steerage way, went aground and subsequently broke apart resulting in a claim by the hull insurers of over USD 137 million. At first instance in 2013 it was held that there had been a breach of the safe port warranty and that the master's navigational decision to put to sea in extreme conditions (and its execution) was not the cause of the grounding. On appeal by the charterers the Court of Appeal overturned that ruling in 2015.

A fundamental aspect of the claimant hull insurers' subsequent appeal to the Supreme Court required re-analysis of the question whether there had in fact been a breach of the safe port undertaking. In answering that question last year, the Supreme Court provided helpful clarification of the correct means to determine whether a port was unsafe for the purpose of a safe port undertaking, including how to establish whether any given incident should be treated as an "abnormal occurrence" or as a "normal characteristic" of the port.

# SATURDAY – LANDMARK CASES

## FROM FRANCE

## Cour de Cassation, 18 January 2017

*Speaker:* *Déhia DJAHNINE – Cabinet Favarel*

Both Brussels Convention and French law provide that the maritime carrier is responsible of the goods until completion of the discharge.

The French Supreme Court apprehends the concept of delivery through its material aspect, by defining it as "The physical operation by which the carrier delivers the goods to the person entitled to delivery, who can take possession of the goods and check its condition".

In many African ports, handling operations are made by stated-owned companies enjoying a monopoly. The French case law is constant: the delivery of the goods to a monopolistic stevedore releases the maritime carrier from its legal obligations.

In the present case, a container was damaged during discharge operations that were performed by a monopolistic stevedore at the port of Algiers (Algeria). The cause of the incident is an improper removal of the twist locks of the container by the Board.

The French Supreme Court took a close look to the facts here, by ruling that the carrier was liable even if the container has been physically manipulated by the stevedore.

The Court indeed considered that the goods remained under the guard of the carrier until unlocking of the twist locks. In the absence of delivery, and despite the intervention of the stevedore, the carrier remained responsible for the damage.

The position taken by the Supreme Court is noticeable, because the judges took into consideration the constraints of the unloading operations to determine the time of delivery.

# SATURDAY – LANDMARK CASES

## FROM FRANCE

## Cour d'Appel de Rouen, 17 February 2017

*Speaker: Charles DE CORBIÈRE –SCP Villeneau Rohart Simon & Associés*

*- THE ALHANI -*

Can a vessel be arrested for the debt of the former charterer under the 1952 arrest convention?

This long-debated question has recently been thoroughly examined by the Court of appeal of Rouen in the case "Alhani", bringing some interesting clarifications on how should article 3.4 and article 9 be combined and read together when dealing with an arrest of a vessel for the debt of a former charterer.

A lot of conflicting judgments have been rendered over the past few years (since 2011) in different French jurisdictions about this issue:

* Some courts have authorized the arrest of the owners' vessel despite the charter being terminated at the time of the arrest on the sole basis of article 3.4 of the 1952 Arrest Convention, disregarding the limit set out by article 9.

* Some others, including the Court of appeal of Rouen in the "Alhani", have held that a maritime lien on the vessel is required to arrest her for the debt of the former charterer, because article 9 brings a limit to article 3 in civil law countries where the "action in rem" is unknown. Any action can only be brought "in personam" against the charterer and its properties for his debt: the vessel is obviously not the charterer's property, hence the need of a maritime lien to arrest her.

The "Alhani" remains particularly interesting because not only the interpretation of the convention was discussed but also the existence a of a lien, which is rare enough to be underlined.

# SATURDAY – LANDMARK CASES

## FROM GERMANY

### Hanseatisches Oberlandesgericht Hamburg, 13 July 2017

*Speaker:* *Andreas Zink - REMÉ Rechtsanwälte*

The rule of § 519 Handelsgesetzbuch (German Commercial Code) states that only the consignee is entitled to claim for damages against the carrier when a Bill of Lading (B/L) is issued. With judgment of 13 July 2017 the Higher Regional Court of Hamburg (OLG Hamburg, 6 U 149/16) decided that this rule only applies when the parties of the B/L are identical to the parties of the contract of sea carriage.

Facts of the judgment: A manufacturer of tunnel drilling machines (H) and a freight forwarder (G) concluded a contract of carriage concerning the transport of several parts of a tunnel drilling machine from Antwerp/Belgium to San Antonio/Chile. G concluded a sub-contract with a liner shipping company. The B/L was issued by the sub-contracted liner shipping company. Neither S nor G were named as parties to the B/L. The B/L named the company S as consignee. During voyage the cargo was damaged due to severe storm. H filed suit against G and claimed for damages. G stated that H is not entitled to claim because S was consignee under the B/L and not H!

The Court decided that the general rule of § 519 HGB stating that a B/L blocks all claims under the contract of carriage cannot be applied here because the B/L was not issued by G.

Conclusion: In general, only the consignee is entitled to claim for damages when a B/L was issued (e.g. § 519 HGB). Where the carrier under the contract of carriage is not identical to the carrier under the B/L, the B/L does not prevent the shipper under the contract of carriage to claim for damages.

# SATURDAY – LANDMARK CASES

## FROM GERMANY

## Bundesgerichtshof, 6 April 2017

*Speaker:* *Lutz ROHRBECK - Dr. Schackow & Partner*

The German Federal Court of Justice (BGH, order of 6 April 2017 - I ZB 69/16) rendered an order in April 2017 which provides clarification with regard to legal requirements concerning the effectiveness of arbitration clauses in connection with bills of lading. The decision is of great significance to the maritime community since arbitration clauses are commonly used in a variety of contracts and cargo documents.

The facts of the case may be briefly summarised as follows: A liner shipping company (Applicants) concluded a contract of affreightment with a timber trading company (Respondents) concerning the shipment of 700 cbm of timber from northern Europe to Algeria. Applicants operate under their general terms and conditions for B/L (GTCs) which were known to Respondents from previous shipments and Applicants had been asked by Respondents to issue a B/L for the above shipment. However, due to circumstances which are in dispute between the parties no cargo was taken on board of the vessel and, as a result, no B/L was issued. Applicants sought to initiate arbitration proceedings in Hamburg, Germany and relied on the arbitration clause included in the GTCs.

In its order the court held that Applicants were not entitled to commence arbitration proceedings in Hamburg. This was due to the fact that an arbitration clause, in order to be valid in accordance with sect. 1031 of German Code of Civil Procedure (ZPO), must, if not expressly agreed otherwise, be set out in a document exchanged between the parties. Under consideration of the above circumstances, the court decided that neither the request of Respondents to issue a B/L nor the fact that Respondents knew Applicants' GTCs were sufficient grounds to meet the above legal requirements. Further, the court explicitly stated that even so it might be common trade practice to rely on an arbitration clause set out in a B/L such mere trade customs alone do not constitute an inclusion of an arbitration clause in a particular contract.

# SATURDAY – LANDMARK CASES

## FROM THE NETHERLANDS

## Hoge Raad, 18 May 2018

ECLI:NL:HR:2018:729

*Speaker:* *Rutger VAN DIJK - AKD*

*- MATHILDA-*

- Inland Navigation
- Carriage of passengers
- Accident
- Personal injury
- Direct action against liability insurer
- Limitation of liability contained in domestic law
- Convention Athens (1974) Carriage of Passengers and their Luggage by Sea (PAL 1974)
- Protocol London (2002) Carriage of Passengers and their Luggage by Sea (PAL Prot. 2002)
- Regulation EC (392/2009) Liability of Carriers of Passengers by Sea
- Convention London (1976) Limitation of liability (LLMC 1976)
- Protocol London (1996) Limitation of Liability (LLMC Prot. 1996)
- Convention Strasbourg (1988) Limitation of Liability in Inland Navigation (CLNI 1988)
- Convention Strasbourg (2012) Limitation of Liability in Inland Navigation (CLNI 2012)
- Whether limitation of liability a violation of the right to property under Protocol 1 to the European Convention for Human Rights (no)
- Whether the limit may be left inapplicable, wholly or partly, in connection with developments to be regarded as special circumstances which were not taken into account in the rule or regulation in question (no)
- Whether the government could altogether refrain from adjusting the 1991 limit in 2008 while awaiting international developments (no)
- Whether the court may itself provide for an adjustment of the limit (yes)
- Objective factors needed for adjustment

# SATURDAY – LANDMARK CASES

## FROM THE NETHERLANDS

## HOGE RAAD, 2 February 2018

ECLI:NL:HR:2018:140

*Speaker:* *Iris REGTIEN - Van Traa Advocaten*

*- RIAD/WISDOM -*

- Collision (2008) on inland waters between the sea-going vessel Wisdom and the inland navigation vessel Riad, as a result of which the Riad sinks
- Removal of wreck and cargo by Dutch state
- Dutch state recovers removal costs from owners of cargo on board the Riad
- Owners of cargo on board the Riad seek indemnity from i.a. owners of the Wisdom (Amasus)
- Limitation of liability
- Convention London (1976) Limitation of liability (LLMC 1976)
- Reservation by the Netherlands to exclude the application of Article 2 paragraph 1(d) and (e) LLMC 1976
- Domestic law provides for limitation for claims described in Article 2 paragraph 1(d) and (e) LLMC 1976 (i.a.) via a separate limitation fund ('wreck fund')
- Amasus constitutes a 'property fund' and a 'wreck fund'
- Whether the indemnity claims of the owners of cargo on board Riad should be regarded as claims described in Article 2 paragraph 1(a) LLMC 1976 (in particular: salvage or general average) and therefore allowed in the 'property fund', or as claims described in Article 2 paragraph 1(d) and (e) LLMC 1976 and therefore allowed in the 'wreck fund'.

# NOTES

Thank you for your attendance.

We hope you had a great time and hope to see you all at the 14th edition of the YMLC in Germany next year!