

# IRISH MARITIME LAW ASSOCIATION

AUTUMN 2016



## EDITOR'S COMMENT

Welcome to the Autumn/Winter 2016 edition of the IMLA's newsletter. The newsletter's purpose is to keep members updated on recent legal developments in international maritime and shipping law, and to report on the association's news and upcoming events.

The publication of this issue of the newsletter coincides with the Autumn Lecture to be delivered by Robert Merkin Q.C. on Recent Developments in Marine Insurance. The IMLA would like to express its gratitude to University College Cork for supporting this event.

If you have any feedback or queries regarding the newsletter, please do not hesitate to contact me at [hugh.mcdowell@lawlibrary.ie](mailto:hugh.mcdowell@lawlibrary.ie).

## DR. PATRICK GRIGGS ADDRESSES IMLA IN SUMMER LECTURE

The Association was honoured to receive a lecture for Dr. Patrick Griggs on 26th May, 2016. The lecture was entitled "Maritime and aeronautical disasters of the 1980's – lessons learned, laws made and continuing problems" and reviewed a series of aeronautical, maritime and transport disasters during the 1980s. The lecture was kindly chaired by the Honourable Mr Justice Brian McGovern.

Mr Griggs provided a fascinating review of a series of incidents ranging through maritime casualties such as the "Herald of Free Enterprise", the incident on the "Piper Alpha" Rig, the "Marchioness" casualty in London, to other incidents involving trains and aeroplanes (British Air tours incident, Manchester 1985, Chinook helicopter crash 1986, Pan Am crash 1988, British Midland landing on M1 as well as incidents at Kings Cross Clapham Junction etc). Mr Grigg's gave an insider's view as to how the representation of the victims and the insurers of the parties was conducted, speaking about the phenomenon known as the "mid-atlantic settlement" as well as explaining the technological and safety advances achieved by reason of these tragedies.

### INSIDE THIS ISSUE:

- Dr. Patrick Griggs delivers the IMLA's Summer Lecture
- The implications of 'Brexit' for maritime law
- Recent developments on fraudulent claims
- The South China Sea arbitration

## THE UNITED KINGDOM SUPREME COURT CLARIFIES LAW IN RELATION TO FRAUDULENT CLAIMS

*Versloot Dredging BV & Anor v. HDI Gerling Industrie Versicherung AG & Ors*

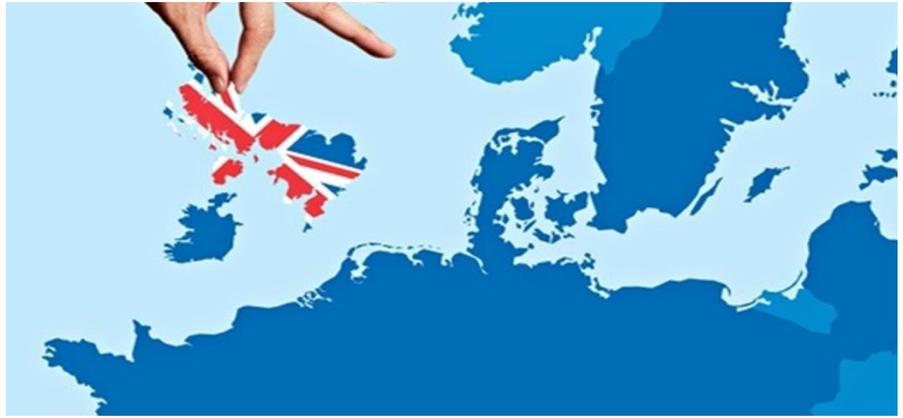
In this case, the engine of the *DC MERWESTONE* was irreparably damaged in 2010 by a water ingress in the engine room shortly after leaving Lithuania.

The owners filed a €3.2m insurance claim. However, a vessel manager lied to the claim handlers about the crew's activities on the day of the water ingress, saying that rough seas prevented them from investigating the problems.

Though the dishonest statement was not relevant to the claim, prior case law nevertheless meant that the insurers were not obliged to pay out.

However, the Supreme Court ruled by a 4-1 majority that 'collateral lies' that are immaterial to the claim do not affect the policyholder's rights to recover money.

The insurance industry has voiced the criticism that the decision will undermine efforts to crack down on fraud, and indicated that its consequences may include a rise in insurance costs for both personal and commercial policy-holders.



## THE IMPLICATIONS OF 'BREXIT' FOR INTERNATIONAL

On 23<sup>rd</sup> June 2016, the United Kingdom voted to leave the European Law, and in doing so, cast considerable doubt on the future direction of dispute resolution in the shipping sector. If, or perhaps when, the United Kingdom begins to extract itself from the various EU legal instruments affecting shipping, novel legal issues may emerge. For example, with the EU state aid rules cast aside, will the UK government be able to assist its indigenous shipping industry?

In the likely event that the UK seeks to remain a member of the EEA, it is probable that the UK will accede to the Lugano Convention, a treaty governing choice of jurisdiction for EEA countries, as well as the Hague Choice of Courts Convention. The Lugano Convention will also replace the Brussels Regulation in respect of the enforcement of judgments internationally.

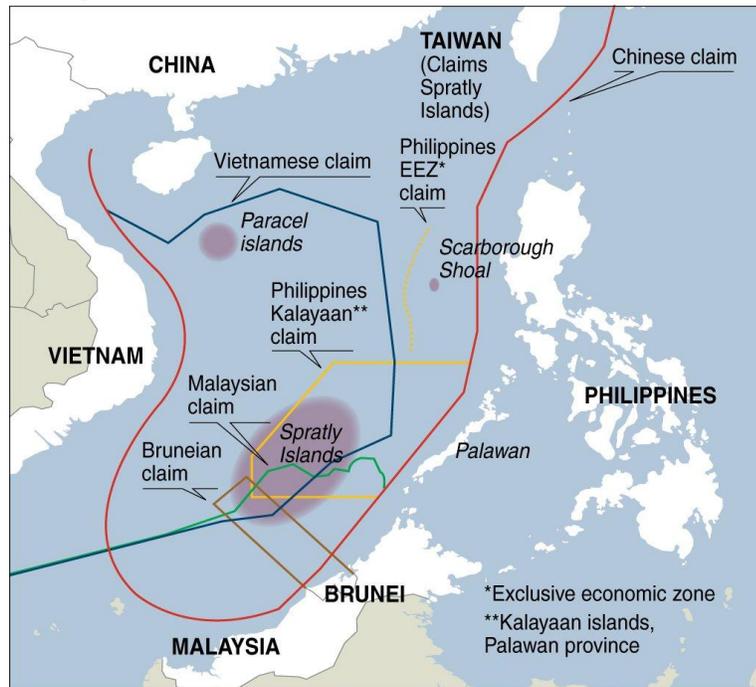
Arbitration is one area that is unlikely to be affected by the UK's decision to leave the EU. The UK is also a

signatory to the New York Convention, independent from its relationship with the EU, and no change is anticipated for the Arbitration Act 1996.

A key change in relation to choice of laws will be the loss of the Rome I and Rome II Regulations (concerning choice of law applicable to contractual and non-contractual matters respectively). The Rome I Regulation is likely to be replaced by its predecessor, the less prescriptive Rome Convention.

Any insurer in the EU is automatically entitled to write insurance business in other member states. This is known as "passporting" and the idea is that the insurer's "home" regulator regulates that insurer's activities. Brexit could undermine this and, unless alternative measures are introduced, may restrict the ability of those buying insurance to shop around and get the best price and terms for their business.

## Disputed claims in the South China Sea



Sources: D.Rosenberg/MiddleburyCollege/HarvardAsiaQuarterly/Phil gov't

AFP



## INDUSTRY IN CRISIS?

Of the 12 largest shipping companies to have published results over the last quarter, 11 announced significant losses. Why is the shipping industry suffering?

Firstly, a shift in manufacturing has resulted in large firms building factories in local markets, rather than shipping goods across the world. General Electric, for example, now makes engine parts where they are needed rather than shipping them from the United States.

Secondly, a glut of ship purchases in 2011 has resulted in an overcapacity across the industry, which in turn has driven prices and margins downwards.

The size of losses vary across firms, from \$11 per container moved for Danish line Maersk Group to over \$100 per container moved in the case of the recently collapsed Hanjin Shipping.

To arrest the decline, some firms, such as Maersk, are investing in their fleet by retrofitting vessels to allow them to collect more data. These modernisations include tracking sensors and systems to reduce the number of empty containers on board.

## THE SOUTH CHINA SEA ARBITRATION: HAS CHINA VIOLATED INTERNATIONAL LAW?

In a recent arbitration, the Permanent Court of Arbitration in the Hague rejected China's longstanding assertion of sovereignty over much of the South China Sea. In doing so, the Tribunal iterated the central role of the United Nations Convention on the Law of the Sea (UNCLOS) as the basis of states' maritime entitlements. The Tribunal also held that China had engaged in multiple breaches of international law through its interference in the sovereignty of the Philippines, facilitation of illegal fishing; prevention of the exercise of traditional fishing rights; construction activities that caused severe harm to the environment; operation of maritime vessels in a dangerous manner; and aggravation of the dispute.

China's territorial claim was opposed by the Philippines, Vietnam, Malaysia and Brunei, who each claim their own EEZs and maritime features. However, for procedural reasons, China refused to accept the jurisdiction of the Tribunal and the subsequent award.

China's response to the Arbitration highlights the enforcement conundrum at the heart of international law. If China refuses to accept the Tribunal's rejection of its 'historical' claim over parts of the South China Sea, tensions between states in the South China Sea and China may escalate, and China could again find itself before an international court. In turn, that may lead to a Chinese withdrawal from key international institutions and multilateral treaties in favour of bilateral treaties.

## RECENT LEGAL DEVELOPMENTS IN MARITIME AND SHIPPING LAW – WINTER 2017

**Grassland Fertilizers v. Flinter Shipping BV [2016] IESC 81** (Supreme Court, Dunne J, 8 April 2014) – what does it mean for staying a maritime claim to arbitration?

**Island Ferries Teoranta v Galway County Council [2013] IEHC 587**

**O'Sullivan v. The Sea-Fisheries Protection Authority [2016] IEHC 77** (High Court, O'Connor J, 15/01/2016) – “The Penalty Points Regime” – holed beneath the waterline?

The new Container Weighing Obligations and its implications for shippers

**Heanue v. County Council for the County of Mayo [2016] IEHC 324** (High Court, Hanna J, 10 May 2016) – The obligations of local authorities to maintain navigational aids.

The OW Bunkers Saga and its implications for shipowners and fuel suppliers

Ballast Water Convention – what holds the future now it is coming into force?

Brexit and ship registration; will we see a flight from the British Flag and what benefits might this hold for Ireland?

New Book of Quantum: implications for Athens Convention Litigation?

### RECENT LEGISLATION AND STATUTORY INSTRUMENTS

- S.I. No. 22/2016 – Maritime Jurisdiction (Straight Baselines) Order 2016
- S.I. No. 86/2014 - Maritime Jurisdiction (Boundaries of Exclusive Economic Zone) Order 2014
- Harbours Act 2015 – Act No. 61 of 2015
- Merchant Shipping (registration of ships) Act 2014 – Act No.43 of 2014

## NEWS AND FORTHCOMING EVENTS

**Recent Developments in Marine Insurance – 13<sup>th</sup> Oct, 2017**

**Updates in Fisheries Law – November 2016 – date to be confirmed.**

**Christmas Lecture – Early December – venue and topic to be confirmed.**

**Biannual Seminar 2017 – 19<sup>th</sup> May, 2017**

