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NIGERIA'S MARITIME SECTOR AND CASELAW REVIEW

Volume 2, 2026 Review of Sector Developments, Regulatory Updates and Case Law

PART A: SECTOR & REGULATORY DEVELOPMENTS (Q2 2026 REVIEW)

1. Nigerian Shippers' Council Suspends Shipping Line Tariff Increases

In the Second Quarter of 2026 saw the Nigerian Shippers' Council (NSC) directed all shipping companies and liner agencies to suspend recently introduced tariff hikes and revert to previous rates. The directive followed protests by freight forwarders in Lagos against shipping companies that proposed rate increases between 150% and 200%. The Council intervened to review the pricing structure, capping any eventual adjustments at 30% pending formal consultations. This action highlights the Council's role as the economic regulator of the port sector prior to the enactment of the Nigerian Ports Economic Regulatory Agency Act, and its focus on preventing uncoordinated cost increases on port users. Consequently, freight operators must engage the NSC and complete statutory stakeholder consultations before implementing new local charges, while importers and exporters receive temporary relief from unapproved administrative surcharges while the tariff review is finalized.

2.NIMASA Launches Digital Seafarer Discharge Book Portal

In June 2026, the Nigerian Maritime Administration and Safety Agency (NIMASA) launched its digital **Seafarer Discharge Book Management Portal**. The system digitizes the application, verification, and renewal of Seafarers' Discharge Books (SDB) and Certificates of Competency (CoC), replacing paper-based processing. The portal supports NIMASA's enforcement of Cabotage manning rules by establishing a database to verify sea-service records, eliminate forged credentials, and track local seafarer placement under the Nigerian Seafarers Development Programme (NSDP). Under this system, vessel operators and manning agencies must verify crew documents through the digital portal during Flag State and Port State inspections, enabling real-time credential checks that help prevent vessel clearance delays during coastal trade audits.

3.NLNG Management Unit Domesticates International Maritime Certifications

NLNG Ship Management Limited (NSML) announced in June 2026 that its Maritime Centre of Excellence (MCoE) in Bonny, Rivers State, secured international accreditation to deliver globally recognized maritime training locally. The facility is licensed by the UK Maritime and Coastguard Agency (MCA) and UK nautical institutions to offer Dynamic Positioning (DP) and specialized competency courses. By offering UK-accredited certifications domestically, the facility reduces the need for local seafarers to travel abroad for mandatory training. This development lowers training expenses for operators, helps preserve foreign exchange, and strengthens the pool of qualified local seafarers required for coastal and offshore vessel operations.

4. Nigeria and the Netherlands Sign Bilateral Customs Agreement

On June 26, 2026, the Nigeria Customs Service (NCS) signed a joint declaration with the Customs Administration of the Kingdom of the Netherlands to strengthen bilateral trade and border security. The agreement establishes a framework for direct intelligence sharing, joint measures against illicit maritime trade, and streamlined customs clearance procedures for bilateral cargo flows. The alliance aims to support trade facilitation between Nigerian ports and European markets by improving data exchange, modernizing risk management protocols, and reducing administrative processing delays for legitimate trade.

5. Nigerian Navy Expands Fleet Past 100 Vessels and Commissions New Ships

Marking seven decades of operation, the Nigerian Navy expanded its fleet to over 100 active warships and craft. During an International Fleet Review at Eko Atlantic Waterfront in Lagos, President Bola Tinubu commissioned three newly acquired vessels into active service: NNS Oloibiri, NNS Mambila, and NNS Gurara. This fleet expansion strengthens Nigeria's capability to secure territorial waters, protect offshore energy infrastructure, and combat crude oil theft and sea robbery. The increased naval presence provides enhanced security for commercial shipping routes in the Gulf of Guinea, lowering maritime security risks for offshore operators and vessel owners.

6. NIMASA and Malta Ship Registry Hold Technical Talks

During the Posidonia 2026 maritime exhibition held in early June 2026 in Athens, Greece, NIMASA leadership held discussions with representatives of the Malta Ship Registry with the aim of gaining insights into the digital registry systems, and administrative practices used by Malta, being one of the world's largest merchant ship registries. NIMASA is using these engagements to support its ongoing effort to fully automate the Nigerian Ship Registry and update vessel flagging procedures. These developments point toward future revisions in Nigeria's ship registration steps, vessel safety audits, and flag state compliance rules, while aiming to improve confidence among international vessel financiers and insurers dealing with Nigerian-flagged ships.

7. IMO Adopts Safety Code for Autonomous Ships (MASS Code)

At its 111th session in London (May 13–22, 2026), the International Maritime Organization's (IMO) Maritime Safety Committee adopted the **International Code of Safety for Maritime Autonomous Surface Ships (MASS Code)**. The goal-based code covers safety, system redundancy, cybersecurity, and remote operations for semi-autonomous and remotely controlled commercial vessels. The MASS Code takes effect on a non-mandatory basis on July 1, 2026, ahead of planned mandatory adoption under the SOLAS Convention by 2030, confirming that the ship master retains legal responsibility for the vessel whether operating onboard or from a remote control center. This framework requires shipowners, underwriters, and legal counsel to review hull, machinery, and liability policies for vessels incorporating remote or automated navigation systems, while providing a baseline for NIMASA and offshore operators to monitor global standards for remote vessel operation and seafarer training requirements.

PART B: CASE LAW

GENERAL HYDROCARBONS LTD v. FIRST BANK OF NIGERIA LTD & ORS (2025) SC/CV/1025/2025

Subject-Matter Jurisdiction – Admiralty Jurisdiction – Action for breach of Domiciliation Agreement – Characterization of Claim – Validity of Arrest and Sale Orders

Introduction

This appeal concerns the invocation of Federal High Court's admiralty jurisdiction with respect to general commercial claims. The Supreme Court addressed the question of whether a claim arising from a borrower's breach of a contractual undertaking to domicile crude oil sale proceeds into a financier's designated account, amounts to a maritime claim which falls within the Federal High Court's exclusive admiralty jurisdiction which justifies the arrest and sale of crude oil cargo stored on a Floating Production Storage and Offloading (FPSO) vessel.

Factual Background

The Appellant, General Hydrocarbons Ltd (GHL), entered into financing agreements and a Memorandum of Understanding (MoU) with the 1st Respondent, First Bank of Nigeria Ltd (FirstBank), regarding oil production operations in Oil Mining Lease (OML) 120. Under the financing terms, which included a 50:50 profit-sharing arrangement and debt-resolution obligations linked to an exposure of approximately $718 Million, GHL undertook to domicile all proceeds from the sale and offtake of produced crude oil into a designated collection account maintained with FirstBank.

Alleging that GHL breached this domiciliation of proceeds clause by diverting sales proceeds, FirstBank instituted **Suit No. FHC/PH/CS/02/2025** at the Federal High Court (FHC), Port Harcourt Judicial Division, invoking the court's admiralty jurisdiction and obtained an *ex parte* order for the arrest of the crude oil cargo stored on board the FPSO *Tamara Tokoni*. GHL challenged jurisdiction on the basis that it was an abuse of court process amongst other grounds.

The Federal High Court upheld GHL's challenge and dismissed FirstBank's suit, holding that the suit was an abuse and lacking in merit. Consequently, the Court vacated the arrest order.

Aggrieved, FirstBank appealed to the Court of Appeal, Port Harcourt Division (**Appeal No. CA/PH/292/2025**). On September 11, 2025, the Court of Appeal allowed FirstBank's appeal, set aside the decision of the trial court, and invoked Section 15 of the Court of Appeal Act 2004 to order the arrest and sale of the crude oil cargo on board FPSO *Tamara Tokoni*, directing that the proceeds be lodged in an escrow account under the control of the Chief Registrar.

GHL appealed to the Supreme Court. During the proceedings, the apex court considered the question of whether the trial court could exercise admiralty jurisdiction over FirstBank's suit for the breach of the domiciliation agreement.

Decision

The Supreme Court unanimously allowed the appeal, and set aside the judgment of the Court of Appeal on the basis that contractual obligation of the Appellant to pay the proceeds of sale of the crude oil from the OML 120 did not give rise to a maritime claim hence the 1st Respondent had no right to arrest the cargo through an admiralty action *in rem*.

In essence, the suit was at its core a simple debt-recovery and contractual action stemming from a breach of an undertaking to domicile proceeds of oil sale into a designated account. Their Lordships emphasized that neither the underlying MoU nor the financing agreements created a legal or equitable mortgage, fixed charge, security interest, or assignment of title over the physical crude oil cargo itself.

More importantly, the admiralty jurisdiction of the Federal High Court is strictly circumscribed by **section 251(1)(g) of the 1999 Constitution (as amended)** and **sections 1, 2, and 3 of the Admiralty Jurisdiction Act 1991**. Under these provisions, admiralty jurisdiction may be exercised only in respect of claims expressly recognized as either *proprietary* or *general* maritime claims:

- **Proprietary Maritime Claims** are restricted to disputes directly concerning the ownership, possession, title, or mortgage of a ship or its freight, or disputes between co-owners.
- **General Maritime Claims** are confined to claims for loss of or damage to goods carried by a ship, or claims arising out of agreements for the carriage of goods or persons, or the use or hire of a ship.

Because FirstBank's claim was merely one for the diversion of proceeds under a credit facility, it could not fit into either of the above categories. The Supreme Court rejected the notion that the location of the cargo–stored on an

FPSO at sea–or the offshore nature of the underlying oil production could transform an ordinary commercial dispute into a maritime claim.

The Supreme Court held that the Federal High Court lacked subject-matter jurisdiction, thereby rending the entire proceedings void. Declining to consider any secondary issues in light of this fatal jurisdictional defect, the apex court ordered the Chief Registrar and the Admiralty Marshal to release and hand over the crude oil cargo aboard the FPSO *Tamara Tokoni* to GHL, and awarded costs of ₦5,000,000 against FirstBank

Comments

The Supreme Court's decision provides an authoritative exposition on the limits of subject-matter jurisdiction in commercial litigation, re-iterating clear principles regarding the characterization of claims, as between general commercial claims and maritime claims.

A critical distinction exists between general commercial claims which are within the jurisdiction of the State High Court and maritime claims as defined by the Admiralty Jurisdiction Act, which may form the basis for bringing an admiralty action *in rem* at the Federal High Court against a ship or other maritime property.

The apex court explained that subject-matter jurisdiction is determined by the legal substance of the claim as disclosed in the statement of claim, rather than the physical location of the underlying asset or the sector within which a transaction occurs.

The strategy of framing a contractual dispute as an admiralty matter with a view to obtaining the benefit of the arrest of a ship or other maritime property may not be countenanced by the court.

The legal issues which arose in the case also underscore the need to consider the practical dimensions of enforcement when drafting commercial agreements.

To establish an enforceable interest directly against a physical cargo or freight that a creditor can attach in the event of default, financing documentation must go beyond bare undertakings or MoUs. Solicitors are reminded of the importance of including clauses which expressly grant them a security interest in the assets being financed, e.g. a fixed charge over such assets, or an express assignment of title in the cargo until payment is received.

TRANS TRADE RK SA V SEBAT SHIPPING AND TRADING CO [2026] EWHC 950 (COMM)

Commercial Court, Queen's Bench Division (High Court of England and Wales)

Decision Delivered: 28 April 2026

Arbitration Appeal – Section 69 Arbitration Act 1996 – Notice of Readiness (NOR) – Commencement of laytime in the absence of valid NOR

Introduction

The matter came before the English Commercial Court on an appeal under Section 69 of the Arbitration Act 1996 concerning an arbitral award arising out of a voyage charterparty dispute. The High Court considered the question whether starting cargo operations would trigger the commencement of laytime and automatically cure a defective Notice of Readiness (N.O.R) where the ship in question had not become an "arrived ship", and in the absence of an agreement, waiver or estoppel. The Court also resolved the issue of whether English maritime law recognizes a doctrine of "deemed waiver" which operates in circumstances where a notice of readiness is valid in form but was served prematurely and the vessel thereafter proceeded to berth to commence loading or discharge. It was argued by the shipowner that this operates on a lower evidentiary threshold than actual waiver by election.

Background

The dispute arose under a voyage charterparty dated 15 June 2022 on an amended Synacomex 2000 form between the Owners of the *M/V Sebat* and the Charterers for the carriage of a full cargo of bulk barley from Constanta, Romania, to Brake, Germany.

Upon the vessel's arrival at the discharge port of Brake, the Master tendered a Notice of Readiness (NOR) via email. However, at the time of tender, the vessel had not yet reached its contractual destination within the port and was not ready to discharge, making the N.O.R premature and legally invalid. No subsequent or fresh N.O.R was ever served by the Master. Upon eventual berthing at Brake, the vessel's hatch seals were unsealed in preparation for discharge. However, before bulk cargo operations could commence, local port authorities discovered gas and fumigant issues within the holds, leading to safety concerns. The authorities ordered the vessel to vacate the berth and return to the anchorage for ventilation and safety checks. As a result, actual cargo discharge was significantly delayed.

Soon after, a major commercial conflict emerged: the Owners claimed substantial discharge port demurrage amounting to over US$840,000 for the time spent waiting and ventilating, alongside load port demurrage and port expenses, relying in the alternative on an indemnity under Clause 11 of the charterparty regarding fumigation risks. The Charterers denied all liability for discharge port demurrage, maintaining that because the NOR was invalid when tendered and no subsequent N.O.R was given, laytime never commenced at all.

Arbitration Proceedings

At the arbitration stage, the dispute centered on whether the invalidity of the NOR precluded the run ning of laytime.

Regarding the NOR and commencement of laytime, the Owners argued that the invalidity of the NOR was cured or rendered irrelevant once the vessel berthed and opened its hatches for cargo operations. The owners contended that laytime ran from that moment. The Charterers countered that an invalid NOR is a nullity under English maritime law; without a valid NOR or a proven agreement/waiver, laytime could not commence.

On the alternative claim under charterparty's fumigation clause, the Owners submitted that any loss of time or expenses resulting from the fumigation exercise at the discharge port were to be fully indemnified by the Charterers. The Charterers responded that Clause 11 was designed to cover direct fumigation costs and damages, not to serve as a back-door mechanism to convert unearned laytime or demurrage into a breach of contract claim when no valid NOR was served.

In their Arbitral Award (and the subsequent Section 57 clarification), the Tribunal held that the Owners were entitled to discharge port demurrage of US$840,017.19, load port demurrage, and port expenses. On the NOR issue, the Tribunal asserted it was "trite law" that laytime automatically begins upon the commencement of cargo operations—which they found occurred when hatch seals were broken—irrespective of whether the original NOR was invalid. The Tribunal did not conduct any analysis of the legal doctrine of waiver, nor did it make factual findings regarding the parties' knowledge or intention. Consequently, having awarded full discharge port demurrage, the Tribunal dismissed the Owners' alternative indemnity claim under Clause 11 on the basis that the delay had already been fully compensated.

High Court Appeal Proceedings

The Charterers appealed to the Commercial Court under Section 69 of the Arbitration Act 1996, arguing that the Tribunal committed a clear error of law. They submitted that going by the Court of Appeal authorities in *The Mexico I* and *The Happy Day*, an invalid NOR cannot trigger laytime simply because cargo operations had commenced. On the waiver issue, the Charterers pointed out that the Owners had never pleaded or argued waiver during the arbitration, and that waiver requires proof of an unequivocal representation made with actual knowledge of the facts and legal rights–elements entirely absent from the Tribunal's findings. On the remedy, they urged the Court to vary the Award to dismiss the discharge port demurrage claim.

The Owners countered by relying on the *Zermalt Holdings* principle, arguing that the Court must read arbitral awards commercially and reasonably with the presumption that the conclusions reached therein are correct unless there is a clear basis to find otherwise. They contended that the Tribunal's decision was a conclusion of mixed fact and law that fell within the principles established in *The Happy Day*. Where a tribunal has reached a conclusion of mixed fact and law, the Court cannot interfere with the conclusion just because it would not have reached the same conclusion itself.

The Owners further argued that under *The Happy Day*, there is a doctrine of "deemed waiver" where the commencement of discharge operations automatically waives reliance on NOR defects without requiring strict proof of subjective legal knowledge. Alternatively, the Owners submitted that if the Tribunal erred or failed to make sufficient findings on waiver, the Court should remit the Award back to the Tribunal under Section 69 rather than varying it, allowing the Tribunal to make findings on waiver and to re-examine the Owners' alternative claim under Clause 11.

Decision of the High Court

The High Court allowed the Charterers' appeal, holding that the Tribunal had made an unequivocal error of law in holding that laytime began to run automatically by virtue of the commencement of cargo operations despite an invalid NOR.

- **Error of Law on NOR Validity:** The Court distinguished the decision the *Happy Day* from the present case and held that an invalid NOR is incapable of starting laytime on its own. The mere opening of hatches or commencement of cargo handling does not automatically cure a defective NOR (*The Mexico I* applied). In *The Happy Day*, the court held that the doctrine of inchoate notice was unavailable to the shipowner to start laytime running as soon as the vessel becomes ready to unload even if the charterers were aware that the vessel was in fact ready. Time will begin to run only when a valid NOR is given, except there is an agreement to dispense with such a notice, or a waiver or estoppel which binds the charterer regarding the necessity for a subsequent valid notice.
- **Rejection of the notion of "Deemed Waiver":** The Court held that English law does not recognize a standalone doctrine of "deemed waiver" operating on a lower evidentiary standard than actual waiver by election. For waiver to apply under *The Happy Day*, the charterer must have actual knowledge of the underlying facts and legal rights giving rise to the invalidity, coupled with unequivocal conduct. Furthermore, the Tribunal did not refer to the principle of waiver in the award either in the context of the parties' arguments or in the application of the legal principles to the facts. The issue of waiver first arose in the Section 57 application for the correction of the award.
- **Refusal to Remit on Waiver:** The Court refused the Owners' request to remit the waiver issue back to the Tribunal for reconsideration. Because the Owners had failed to plead or run a case on waiver during the arbitration, remission could not be used as a vehicle to run new legal arguments or gather fresh evidence (*Alegrow v Yayla* applied).
- **Variation of the Award:** The Court varied the Award under Section 69(7)(b), striking out the discharge port demurrage award in its entirety and reducing the Owners' recovery strictly to the load port demurrage (US$4,114.06) and port expenses (€21,616.40).
- **Remission of Costs and Clause 11:** The Court determined that the ultimate allocation of arbitration costs should be remitted to the Tribunal to re-assess in light of the outcome. Regarding the Owners' alternative claim under Clause 11, the Court acknowledged that claims dismissed below as a consequence of an overturned finding are generally eligible for remission, but deferred its final decision to a consequential hearing to consider procedural points regarding the absence of a Respondent's Notice

Comments

A ship is only regarded as an "arrived ship" that is capable of tendering a valid NOR when such a vessel has arrived the designated port, dock or berth, and it is properly equipped for loading or discharge with all relevant documentation in order. Accordingly, a defect which occasions significant delay in the loading/discharge operations cannot be cured by asserting waiver merely because cargo operations had initially commen ced without protest.

This decision provides clarity on the interpretation of *The Happy Day* [2002] EWCA Civ 1068, which for two decades was occasionally misconstrued by arbitral tribunals and commentators as establishing a rule of automatic or "deemed" waiver upon the mere start of cargo handling where an invalid NOR has been tendered. Waiver requires full knowledge and an unequivocal abandonment of rights.

From a practical standpoint, the judgment underscores the need on shipmasters and owners to re-tender an NOR "without prejudice" whenever there is any doubt regarding the validity of the initial NOR, for instance, when such an NOR has been prematurely tendered before reaching berth or before the vessel is in the position to commence cargo operations.

Other takeaways include:

1. **Strict Conditions for NOR Cure:** An invalid NOR remains an invalid NOR. Unless a fresh valid NOR is tendered, laytime does not start unless the owner proves an express contractual variation, an estoppel, or an actual legal waiver.

2. **"Deemed Waiver" Does Not Lower the Evidentiary Bar:** Deemed waiver as applied in *The Happy Day* will only avail a party where the facts of a case support it. It does not dispense with the requirement of waiver by election–namely, that the charterer must possess actual knowledge of both the underlying facts and their legal right to reject/reserve position.

3. **Parties will be bound by their pleading:** If a party fails to plead and argue waiver before the arbitral tribunal, they cannot use a Section 69 appeal to seek a remission order to "fill the factual gaps." Courts will vary the award rather than allowing a party to run a new case on remission (*Alegrow v Yayla*).

4. **Treatment of Subordinate/Alternative Claims:** Where an alternative claim (such as Clause 11 indemnity) is dismissed by arbitrators solely because the primary claim (demurrage) succeeded, the court will generally favour remitting that alternative claim back to the tribunal once the primary claim is overturned, provided procedural rules (e.g., Respondent's Notice) are satisfied.

MR DAM VAN MINH v. DA GUANG TANKERS (PRIVATE) LTD & ANOR RE: "OCEAN UNICORN" [2026] EWHC 793

Admiralty Court, Queen's Bench Division (High Court of England and Wales)

Admiralty Registrar Davison

Decision Delivered: 2 April 2026

Wasted Costs – Breach of Warranty of Authority – Solicitor's Personal Liability – P&I Club Subrogation

Introduction

This was a decision on an application against a firm of solicitors, before the English Admiralty Court for a wasted costs order and damages for breach of warranty of their authority. The High Court considered whether solicitors who prematurely or erroneously assert that they represent both a vessel owner and its hull and machinery (H&M) underwriters are liable for the adverse party's wasted legal expenses if it turns out that the suit commenced without the insurer's actual authority—even if the solicitors held valid instructions from the vessel owner directly.

Background

On June 22, 2019, a collision allegedly occurred in the South China Sea off the coast of Vietnam between the Claimant's fishing vessel, *CM-99596-TS*, and the Defendants' oil tanker, *OCEAN UNICORN*. The Defendants– respectively the registered owners and demise charterers of the *OCEAN UNICORN*–denied all knowledge of the alleged incident.

In July 2019, Clyde & Co issued a claim on behalf of the Claimant fishing vessel owner, Mr. Dam Van Minh. Clyde& Co was purportedly instructed via a Singaporean claims agency (CL Claims). Upon inquiry from the Defendants' solicitors (Campbell Johnston Clark) and their P&I Club (the UK P&I Club), Clyde & Co expressly and repeatedly warranted in writing that they were instructed by both the vessel's owner and its H&M underwriters, PetroVietnam Insurance JSC (PVI). Relying on these assurances that an insurer was backing the action, the UK P&I Club agreed to English jurisdiction and provided security by way of a Letter of Undertaking (LOU) initially set at USD803,079 (later increased to USD1,303,079) to avoid the arrest of the ship.

Proceedings were issued in June 2021. In April 2022, the Admiralty Court ordered the Claimant to provide US$250,000 as security for costs, on the premise that PVI backed the claim and would satisfy the order. When the security was not honoured and the action stayed, direct inquiries to PVI revealed that PVI had never authorized Clyde & Co to bring proceedings before the English High Court. Clyde & Co subsequently conceded that their representation regarding PVI was an error resulting from a misapprehension of their instructions.

Concurrently, parallel proceedings brought by the Claimant against PVI in Vietnam revealed statements indicating the Claimant himself had never authorized foreign litigation. The English suit was eventually struck out on July 14, 2025, due to non-compliance with the security order and failure to actively prosecute. The Defendants subsequently applied for a wasted costs order pursuant to Section 51(6) of the Senior Courts Act 1981 and CPR r. 46.8, or alternatively damages for breach of warranty of authority against Clyde & Co directly.

Decision

The Admiralty Registrar held Clyde & Co personally liable for the payment of the sum of **£127,577** to compensate for the wasted costs incurred by the defendants and their P&I Club.

The Court evaluated the grounds of the application on the following bases:

1. **Authority from the Claimant:** The Court inspected the relevant retention documentation and held that Clyde & Co were validly instructed by the individual claimant via agents CL Claims. Therefore, no order could be made for breach of warranty or wasted costs on the ground of a complete lack of client instructions.

2. **Warranty of Underwriter Instruction & Causation:** The Court held that Clyde & Co breached their strict warranty of authority regarding PVI. Under English law, solicitors who initiate or maintain proceedings warrant strictly that they possess the authority they claim to hold.

Addressing Clyde & Co's defence that the admitted breach caused no loss because the litigation would have proceeded in any event, the Court accepted the factual evidence of the P&I Club. In maritime casualty practice–particularly in uncorroborated collision claims with small vessels–a P&I Club adopts a passive "wait and see" posture in pursuing litigation, unless an insurer stands behind the claim. The express representation t hat PVI backed the suit induced the Club to submit to English jurisdiction, instruct international solicitors, and issue a substantial Letter of Undertaking.

The Court held that the burden rested on the solicitors to establish any counterfactual scenario wherein identical costs would have been expended but for the breach. Clyde & Co failed to demonstrate that alternative funding or enforcement mechanisms (such as vessel arrest) would have been pursued by a private claimant unsupported by a P&I Club or other security provider.

Finally, the Court rejected Clyde & Co's procedural objection that the liquidating defendants had not personally paid the legal costs under the insurance "pay to be paid" principle because this principle is usually not applied in practice by P&I Clubs to the cost of legal representation borne by its members. The Court confirmed that the P&I Club possessed clear rights of subrogation (and direct rights) to maintain the action in the defendants' name to recover wasted legal expenses.

To reflect the possibility that the Club might have incurred preliminary investigative expenses in Vietnam even without the misrepresentation, the Court applied a modest 10% discount to the total assessed costs of £141,752.45, and ordered Clyde & Co to pay £127,577.

Comments

This judgment provides guidance for maritime practitioners, litigation funders, and international law firms on the procedural boundaries of legal representation and the consequences of breaching the strict warranty regarding client representation.

1. Strict Nature of the Warranty of Authority

English law imposes strict liability upon legal practitioners regarding the existence of authority to act on behalf of a party. Proof of good faith, inadvertence, or reliance on intermediary claims agencies may not mitigate or excuse a breach. Solicitors must independently verify the chain of authority from every named party–especially insurers– before confirming instructions to opposing counsel or the court.

2.Relevance of Insurance Backing in Maritime Claims

Defendant shipowners and their P&I Clubs often differentiate significantly between claims pursued by self- represented local vessel owners and those backed by established H&M underwriters. Where an underwriter is represented as standing behind a claim, it signals financial backing, preliminary surveyor vetting, and the capacity to arrest vessels. Inducing an opposing party to submit to jurisdiction or post security in lieu of arrest, based on an unverified assertion of underwriter backing directly satisfies the causation requirement for wasted costs.

3.Preserving Subrogation Rights in Wasted Costs Applications

The judgment confirms that corporate insolvency and the "pay to be paid" rule may not insulate defa ulting solicitors from subrogated cost claims. A P&I Club that funds a member's defence costs retains the right under standard Club rules and general subrogation principles to pursue a wasted costs recovery in the name of the insured defendant, ensuring that such legal representatives remain accountable for wasted expenditure.

MS "SOLONG" SCHIFFAHRTSGESELLSCHAFT MBH & CO KG v. SAMSKIP MULTIMODAL BV (THE "SOLONG")

RE: "SOLONG" AND "STENA IMMACULATE" [2026] EWHC 1211 (Admiralty)

Decision Delivered: 22 May 2026

Limitation of Liability – 1976 Limitation Convention (LLMC) Article 4 – Interpretation of "such loss" – Unbreakability of ability to limit liability – IMO Unified Interpretation Resolution A.1164(32)

– Directing Mind and Will of a ship owning corporation – Status of Designated Person Ashore (DPA)

Introduction

This was a decision by the English Admiralty Court on an application by the Owners and Demise Charterers of the container vessel *m.v.*
Solong to strike out the Defence to a Limitation Claim filed by the owners and demise charterers of the motor tanker *m.t. Stena Immaculate* (*Stena Interests*), under Article 4 of the Limitation of Liability Convention 1976 (LLMC) following the *m.v. Solong*'s collision with the m.t. *Stena Immaculate.* The application was filed on the ground that there is no basis for asserting that the collision resulted from acts or omissions of the owner of the m.v Solong committed recklessly and with the knowledge that "such loss" would probably occur.

The High Court considered two critical questions under Article 4 LLMC. First, whether the phrase "such loss" requires proof of knowledge that the *very specific loss* would probably result (e.g., colliding with *Stena Immaculate* specifically) or merely knowledge that *that type of loss* would probably result (e.g., colliding with another ship generally); and second, whether a Designated Person Ashore (DPA) under the ISM Code automatically constitutes the "directing mind and will" of a corporate shipowner for the purposes of attributing fault under Article 4.

Background

On 10 March 2025 at approximately 09:46 UTC, the small container ship *m.v. Solong* (820 TEU) collided at full sea speed (16 knots) into the port side of the laden tanker *m.t. Stena Immaculate*, which was lying quietly at anchor off the Humber coast carrying over 220,000 barrels of jet fuel. *Solong* had been on a direct collision course with *Stena Immaculate* for over 35 minutes after the tanker first appeared on *Solong's* radar at a distance of c. 9.5 nautical miles.

The Master of *Solong*, Capt. Vladimir Motin, was on duty as the sole officer of the watch. An able seaman (AB Pernia) was on standby duty but was sent to the forward deck under a spray deck cover to grease gear, rendering him unable to observe the horizon. Capt. Motin neither altered course, nor reduced speed, nor sounded an alarm prior to impact. The resulting collision caused an explosion, a massive fireball, and extensive structural damage, rendering *Stena Immaculate* a constructive total loss and causing the death of AB Pernia (for which Capt. Motin was subsequently convicted of gross negligence manslaughter at the Central Criminal Court).

The Owners and Demise Charterers of *Solong* instituted a Limitation suit under the LLMC 1976 (enacted via Section 185 and Schedule 7 of the Merchant Shipping Act 1995) to limit their financial liability. The *Stena Interests* disputed the Owners' right to limit, invoking Article 4 of the 1976 Convention, which provides that a shipowner will forfeit its ability to limit liability if it is proved that the loss resulted from their personal act or omission, committed with intent to cause such loss, or recklessly and with knowledge that "such loss" would probably result.

The Owners of the *Solong* applied to strike out the *Stena Interests'* Article 4 Defence on the basis that the defence had no prospect of success.

High Court Proceedings

This judgment considers two main issues: the meaning of "such loss" under Article 4 of the LLMC and the unbreakability of the ability to limit liability under the LLMC.

The Court noted that the intention of the drafters of the LLMC was to make an Article 4 defence is difficult to establish, and the right to limit liability unbreakable. Indeed, the authoritative view is that Article 4 of the LLMC is to be interpreted in a way that makes the right to limit liability unbreakable. Notably, an Article 4 defence has only ever succeeded once and this was a case in which the shipowners deliberately scuttled the vessel. Also, there were only two reported instances in which the defence escaped summary dismissal.

Regarding the statutory interpretation of Article 4, the Owners of the *Solong* contended that "such loss" refers strictly to the *specific loss* which actually resulted and forms the subject matter of the claim. They argued that *Stena Interests* were required to prove that senior management had actual knowledge that a collision with *Stena Immaculate* specifically would probably result from their alleged omissions. On the merits of the pleading, the Owners submitted that *Stena Interests'* defence was speculative because it assumes that a Designated Person Ashore (DPA) is automatically a corporate directing mind.

In response, *Stena Interests* argued that "such loss" means "that type of loss" in the broad sense. They argued that foresight of a probable collision with *another vessel generally* was legally sufficient. *Stena Interests* asserted that *Solong* was unseaworthy due to dangerous watchkeeping practices permitted by Capt. Motin, and that fault for this can be attributed to the owner of the *Solong* on the basis that these practices must have been reported or known to shore management or the DPA, and that management acted recklessly in failing to rectify them, thus creating a "collision waiting to happen."

Also linked to the ability to limit liability is the availability of insurance cover. It was observed that the loss of entitlement to limit liability should begin where the level of culpability is such that insurance cover will be unavailable.

Decision of the High Court

Mr Justice Andrew Baker allowed the Owners' application, striking out the Article 4 Defence in its entirety and granting a general limitation decree in favour of the Owners for the following reasons:

- **Meaning of "Such Loss" Under Article 4:** The Court rejected the Owners' narrow interpretation ("the very loss") and held that "such loss" means "that type of loss" i.e., damage of a general nature. Applying the *travaux préparatoires* to the LLMC, the Judge held that requiring foresight of the specific individual victim or vessel would create arbitrary distinctions inconsistent with the Convention's objective of aligning limitation forfeiture with the sort of wilful misconduct that should justify exclusion of the right to limit liability.
- **Status of the IMO Unified Interpretation Resolution:** The Court affirmed that **IMO Resolution A.1164(32) (2021)** is authoritative under Article 31.3(a) of the Vienna Convention as a subsequent agreement between state parties. The Resolution confirms that the right to limit under Article 4 is **"virtually unbreakable in nature"** and sets a culpability threshold higher than gross negligence, beginning only where insurance cover ends.
- **Legal Status of a Designated Person Ashore (DPA):** The Court held that it is **not arguable as a matter of law** that a DPA under the ISM Code is automatically a "directing mind and will" of a corporate shipowner. The DPA's role under Section 4 of the ISM Code is to act as a monitoring link with direct access to senior management, not to function as a member of senior management itself (unless the individual independently holds a board or executive management role within a small corporate structure). Examining the corporate leadership structure of the owners of the mv Solong, the Court found that it was entirely speculative to suppose – and Stena Interests do not in fact plead – that anyone below the CEO and COO would qualify as a directing mind and will of Owners for the purpose of Article 4.
- **Strike Out of Speculative Pleadings:** The Court found the *Stena Interests'* Article 4 Defence to be a "lawyers' construct" and an exercise in speculation. Applying *the Leerort*, the Court ruled that a claimant cannot plead bare inferences of management knowledge without a factual foundation simply to embark on a fishing expedition through pre-trial disclosure.

Comments

Judicial Interpretation of "Such Loss": Type of Loss vs. Specific Loss

This decision settles a crucial question in English maritime law regarding the interpretation of "such loss" in Article 4 of the 1976 Convention. Distinguishing *obiter* remarks by Lord Phillips MR in *The Leerort* [2001] EWCA Civ 1055 and Gross J in *The Saint Jacques II* [2002] EWHC 2452 (Admlty), the Admiralty Court held that the term "such loss" conveys "that type of loss" in a general sense rather than "the specific loss suffered" or damage to the specific vessel in question. A shipowner who recklessly permits a dangerous state of affairs knowing that a collision with *a vessel* is probable cannot escape Article 4 simply because they did not foresee a collision with the *particular vessel* that was eventually struck.

Role of the DPA and attribution limits

The judgment clarifies the appropriate approach to corporate attribution under the ISM Code. The Court explained that the ISM Code positions the DPA as an administrative and safety conduit to executive decision-makers, and that the DPA is not necessarily regarded as an executive decision-maker so as to impute his dereliction or fault to the company. To break limitation based on shore-side fault, the alleged reckless act or omission must be traced directly to individuals holding actual board-level or corporate management authority (the company's true directing mind and will).

Evidential threshold for an Article 4 Defence

The ruling reiterates that the position that the 1976 Convention limit remains "virtually unbreakable." Claimants facing a limitation claim cannot circumvent summary dismissal by pleading bare assertions of management knowledge and requesting disclosure to see "if something turns up", re-affirming the principle in *The Leerort*. Unless a claimant possesses concrete pre-existing evidence demonstrating personal, subjective appreciation of probable loss by senior corporate management, an Article 4 defence will be struck out prior to trial.

BATAVIA EXIMP & CONTRACTING (S) PTE. LTD. v. PEDREGAL MARITIME S.A. RE: "THE TAIKOO BRILLIANCE" [2025] EWHC 1878 (Comm)

High Court of Justice of England and Wales, King's Bench Division (Commercial Court)

Mr. Justice Robin Knowles CBE

Decision Delivered: 22 July 2025

Carriage of Goods by Sea – Hague-Visby Rules – Section 69 Arbitration Appeal – Meaning of "Suit" under Article III, Rule 6 – On- Deck Cargo Exception under Article I(c)

Introduction

This decision emanated from an appeal on points of law under Section 69 of the English Arbitration Act 1996 following an arbitration award dated 16 February 2023. The High Court was requested to determine two questions regarding the Hague-Visby Rules:

1. **Whether court proceedings commenced strictly to obtain security** (such as sister-ship arrest proceedings) should be considered a "suit" within the contemplation of Article III Rule 6, so as to prevent the carrier from relying on the one-year statutory time limit for instituting an action.

2. **What degree of specificity is required by a bill of lading statement** under Article I(c) to bring cargo within the "on-deck" exclusion from the Hague-Visby Rules' definition of "goods" (specifically when stating quantities of homogenous cargo rather than identifying specific parcels/package numbers).

Background

The Defendant ("the Owners") owned the vessel *Taikoo Brilliance* and carried a bulk cargo of New Zealand Pine Logs (36,934 JAS CBM) from New Zealand to Kandla, India. The Claimant ("the Holders") held four bills of lading for the shipment. Two bills contained express notations that portions of the cargo were carried on deck (Bill 190502 noted 22,994 pieces; Bill 190504 noted 11,092 pieces).

In September 2019, the cargo was discharged at Kandla without production of the original bills of lading against a Letter of Indemnity (LOI) provided by the charterer. Alleging mis-delivery, the Holders did not initially commence arbitration as mandated by the bill of lading arbitration clause. Instead, on 18 August 2020 (within the one-year time bar period), the Holders issued a writ in Singapore to arrest a sister ship (*Navios Koyo*) solely to obtain security. Security was posted, and the sister ship was released.

The Owners successfully applied to stay the Singaporean court proceedings in favour of London arbitration. However, the Holders did not formally commence arbitration until 22 or 24 December 2020—more than one year after delivery.

In the resulting arbitration, the Arbitrator held that:

- The Holders' mis-delivery claim for under-deck cargo was time-barred under Article III, Rule 6 because the Singaporean arrest proceedings did not constitute a "suit" for the purpose of stopping time under the Hague-Visby Rules.
- The time bar did not apply to the on-deck cargo because the bill of lading notations stating the piece count carried on deck satisfied the Article I(c) exclusion, thereby excluding that portion of the cargo from the scope of the Hague-Visby Rules.

The relevant provisions of the Hague-Visby Rules are reproduced below as follows:

Article I(c)

"'Goods' includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which, by the contract of carriage, is stated as being carried on deck and is so carried..."

Article III, Rule 6

"...Subject to paragraph 6bis, the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen..."

Both parties appealed to the High Court under Section 69 of the Arbitration Act 1996.

Arguments

On the first issue concerning Article III Rule 6 of the Hague-Visby Rules, the Holders argued that the arrest proceedings initiated in Singapore qualified as a "suit" within the meaning of the Rule. They contended that initiating an *in rem* action and securing a vessel arrest inherently requires pleading a *prima facie* substantive cause of action, meaning the security arrest proceeding ought to satisfy the requirement to interrupt the statutory time bar. Conversely, the Owners argued that "suit" refers strictly to proceedings brought before a court or tribunal with competent jurisdiction capable of determining the substantive liability of the parties on the merits, rather than ancillary proceedings aimed solely at obtaining security.

On the second issue regarding the Article I(c) on-deck cargo exception, the Owners argued that the provision requires specific, parcel-by-parcel identification of each item stowed on deck. They submitted that a general numerical statement of piece counts across bulk cargo or a homogenous consignment fails to state which exact items are carried on deck, meaning any individual log remains an unidentifiable portion of a bulk shipment rather than an item explicitly stated as being carried on deck. Therefore it will be unclear the portion of goods to which the exception applies. In response, the Holders argued for a practical, commercial interpretation, contending that stating the aggregate piece count for homogenous cargo like timber provides sufficient notice of the volume and risk allocated to deck carriage to bring it within the Article I(c) exclusion.

Decision

1. Meaning of "Suit" under Article III, Rule 6 (Decision for the Owners)

The Court held that **proceedings issued solely to obtain security do not amount to a "suit" under Article III, Rule 6 of the Hague-Visby Rules.**

Applying the international principles of treaty interpretation reaffirmed by the Supreme Court in *FIMBank plc v KCH Shipping ("The Giant Ace")* [2024] UKSC 38, the Court observed that the purpose of the one-year time bar is to achieve commercial finality and enable shipowners to "clear their books."

Although the ordinary meaning of "suit" could broadly encompass validly issued arrest proceedings, its context and commercial purpose under the Hague-Visby Rules require **substantive proceedings capable of determining liability on the merits.** Allowing protective security proceedings to stop time indefinitely without prosecuting the underlying merits would force carriers to leave their books open for an indefinite period, defeating the core objective of Article III, Rule 6. Because arbitration was not commenced within one year of delivery, the under-deck cargo claims were time-barred.

2. Sufficiency of On-Deck Cargo Notations under Article I(c) (Decision for the Holders)

The Court held that **a bill of lading statement that specifies the quantity of homogenous cargo carried on deck (rather than identifying individual parcels or package numbers) is legally sufficient to satisfy the Article I(c) exception.**

Article I(c) excludes from the definition of "goods" (and thus from Hague-Visby Rules application) cargo which *"by the contract of carriage is stated as being carried on deck and is so carried."* The Court rejected the Owner's argument that the clause required the application of an identification test for each precise item (e.g., package numbers) so a holder could identify "quickly and easily" which items were on deck. The Court observed that:

- The requirement of Article I(c) demands a practical and commercial approach that may vary depending on the nature of the cargo (e.g., whether homogenous, like timber logs, or serialized units).
- While best practice might favour greater specificity, stating the numerical piece counts carried on deck provided sufficient certainty to determine the value and extent of on-deck risk.
- Evidential questions regarding commingling or partial damage do not invalidate the statement itself. The Arbitrator made no error of law in concluding that stating piece counts by reference to the bills of lading which specifically referred to the logs carried on deck, satisfied the Article I(c) threshold on the facts.

Comments

This decision resolves an interesting point on a carrier's liability under the Hague Rules, and provides guidance for cargo owners, charterers, and P&I Club claims handlers on the application of the rule.

1. The Imperative for Timely Substantive Proceedings

Cargo claimants cannot rely on security actions in foreign jurisdictions to keep open the one-year time bar in the Hague (Visby) Rules without initiating a substantive action towards determining liability. Where an arbitration clause exists, formal arbitration must be commenced within the one-year window alongside any protective security actions. Failing to initiate substantive proceedings within twelve months of delivery will result in claims being extinguished by the Article III, Rule 6 bar.

2.Alignment with *The Giant Ace* [2024] UKSC 38

By aligning the definition of "suit" with the UK Supreme Court's reasoning in *The Giant Ace*, the English Commercial Court reinforces a strict, certainty-driven interpretation of the Hague-Visby Rules. The ruling underscores that international shipping conventions prioritize certainty.

3.Practical Drafting of On-Deck Notations

For bulk or homogenous cargoes (such as logs, pipes, or steel), indicating total piece counts or volume on deck within the bill of lading may be sufficient to exclude the cargo from the Hague (Visby) Rules regime under Article I(c). Carriers and cargo interests need not detail individual itemized serial numbers on the face of the bill to contract out of the Rules, provided the statement allows a practical commercial calculation of the on-deck risk exposure.

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