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To: Transport Industry Operators

Double Collisions

The Hong Kong High Court issued a Judgment on 2/6/2017 dealing with the liability apportionment among 3 vessels in 2 almost simultaneous collisions that happened near Hong Kong on 14/5/2011. [HCAJ158/2012 and HCAJ49/2013 and HCAJ48/2011]

Introduction

This was the trial of liability in respect of two almost simultaneous collisions near the termination of the East Lamma Channel Traffic Separation Scheme ("Lamma Scheme"), Hong Kong, at around 3:37am ("1st Collision") and 3:40am ("2nd Collision") on 14 May 2011 among three container vessels viz Xin Nan Tai 77 ("Xin Nan Tai"), MCC Jakarta ("Jakarta") and TS Singapore ("Singapore"). The 1st Collision was between Xin Nan Tai and Jakarta. This was followed by the 2nd Collision between Jakarta and Singapore. All three vessels suffered hull damage to various extent. While Xin Nan Tai and Singapore did not come into physical contact, it was Singapore's allegation that Xin Nan Tai's negligent navigation was causative of the 2nd Collision.

In accordance with the long-established practice in collision actions, trial of liability comes first before the Admiralty Judge, to be followed, if so required, by a reference to the Admiralty Registrar for assessment of damages.

Shortly prior to the commencement of the trial, Singapore settled liability with each of Jakarta and Xin Nan Tai on inter alia the following terms:

- (1) Singapore was 5% to blame for the 2nd Collision;
- (2) Jakarta and Xin Nan Tai were between them 95% to blame for the 2nd Collision;
- (3) Jakarta's and Xin Nan Tai's individual liability (out of the 95%) was to be determined at the trial, unless agreed; and
- (4) Singapore was not to blame for and bore no liability in respect of the 1st Collision.

As a result of the settlement, the core issues of the trial were the respective fault, if any, of Jakarta and Xin Nan Tai for the 1st and 2nd Collisions and, if both were at fault, the apportionment of their liabilities.

Background / Common Ground

Xin Nan Tai was a container vessel of 114.3 metres in length and 16 metres in breadth. Her gross tonnage was 4,394 tonnes. The vessel was fitted with, inter alia, 2 radars, both with automatic radar plotting aid ("ARPA"). Her maximum speed was 8.5 knots.

Jakarta was a container vessel of 207.4 metres in length and 29.87 metres in breadth. Her tonnages were 25,407 gross and 12,733 net. Her main engine gave a rated speed of 14 knots when new. There were 2 radars both fitted with ARPA.

Singapore was a container vessel of 208.90 metres in length and 29.80 metres in breadth. Her

tonnages were 26,358 gross and 12,990 net. She was fitted with an engine producing a maximum speed of 22 knots. The vessel was fitted with 2 radars, both with ARPA.

The collisions took place in the early morning of 14 May 2011. The weather was generally fine. Prior to the collisions, both Jakarta and Singapore were outbound from Hong Kong, navigating in the outbound traffic lane of the Lamma Scheme on a south-easterly course. Captain Mlikota (Jakarta's master) first spotted Singapore at or shortly after 3:00am. At that time, Singapore was proceeding ahead of Jakarta. At around 3:20am, Captain Mlikota decided to overtake Singapore as the latter was slowing down. Jakarta began passing Singapore at about 3:33am. At that time, Singapore was navigating on Jakarta's port side. Xin Nan Tai, on the other hand, was navigating along the Dangan Shuidao Traffic Separation Scheme ("Dangan Scheme"), steering a westerly course.

It was common ground between Jakarta and Xin Nan Tai that at some point of time prior to the 1st Collision, they were in a crossing situation, with Xin Nan Tai being the give-way and Jakarta being the stand-on vessel. When vessels are in a crossing situation, the appropriate actions that each should take and the responsibilities of each vessel are defined, in general terms, in the International Regulations for Preventing Collisions at Sea 1972 as amended by Resolution A464(XII) of the Inter-governmental Maritime Consultative Organization and Resolutions A626(15), A678(16) and A736(18) of the International Maritime Organization ("COLREGS"). COLREGS are incorporated into Hong Kong law and set out in the Schedule to the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations, Cap 369N.

Three rules are directly relevant to a crossing situation:

"RULE 15

Crossing situation

When 2 power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.

RULE 16

Action by give-way vessel

Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.

RULE 17

Action by stand-on vessel

(a) (i) Where one of 2 vessels is to keep out of the way the other shall keep her course and speed.

(ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.

(b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.

(c) A power-driven vessel which takes action in a crossing situation in accordance with paragraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.

(d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way."

The vital importance of complying with the crossing rules has been stressed again and again and the disregard of those rules can only be regarded as a very serious fault of navigation.

In accordance with rr 15 and 16, Xin Nan Tai, as the give-way vessel, was obliged to take early and

substantial action to keep well clear of Jakarta while Jakarta should keep her course and speed in accordance with r 17.

Captain Hung (Xin Nan Tai's master) accepted that Xin Nan Tai and Singapore were also in a crossing situation by 3:31am in which case Xin Nan Tai should also have given way to Singapore instead of trying to cross ahead of her.

The Witnesses and Other Available Evidence

Each of Xin Nan Tai and Jakarta called one witness to testify at the trial viz Captain Hung and Captain Mlikota respectively. Further, the witness statement of Singapore's master was agreed to be adduced as hearsay statement.

Apart from the oral and hearsay evidence of the three masters, the parties adduced in evidence several items of real time evidence.

First, the Hong Kong Marine Department's Vessel Traffic Services system recording of the collisions between 3:28am and 3:42am on 14 May 2011 ("VTS recording"). The VTS recording contained radar records of the position, speed and course of each of the three vessels, together with audio records of VHF radio transmissions. Hard-copy screenshots of the radar records (at minute interval) from 3:28am to 3:42am were also adduced in evidence. The VTS recording provided very good evidence of the actions of the vessels in the minutes before the collisions.

Second, the Hong Kong Marine Department Data Printout from 3:28am to 3:46am on 14 May 2011 ("Track Data"). This was a computer printout of information specifying the position, course and speed of each of the vessels at 3-second intervals contained in the VTS recording.

Third, the audio track of Jakarta's VDR (Voyage Data Recorder) recording between 3:28am and 3:42am on 14 May 2011 ("Jakarta audio track"). The track recorded discussions between the Master and crew members on the bridge of Jakarta and VHF radio communications with others.

Fourth, the screenshots of radar from Jakarta's VDR recording between 3:30am and 3:36am ("Jakarta Radar Screenshots"). They showed the relative positions and plots of the three vessels and others in the vicinity during that period. They also recorded the heading, speed and course of Jakarta at the times in question.

Last, a minute-interval collision reconstruction plot of the three vessels in question from 3:16am to 3:40am prepared by Jakarta ("Plot").

Navigation of Jakarta

Prior to the collisions, Jakarta was navigating in the outbound traffic lane of the Lamma Scheme on a south-easterly course. The final leg of the Lamma Scheme runs south-eastwards between LCS No 2 buoy and LCS No 1 buoy, before reaching the No 2 precautionary zone. Singapore was navigating in the same direction ahead of Jakarta. At about 3:10am, Captain Mlikota noticed that Singapore had started to reduce her speed. Captain Mlikota decided to pass Singapore to starboard (so that Singapore would pass down Jakarta's port side). At around 3:20am, Jakarta started her action to overtake Singapore by altering course slightly to starboard. At about 3:29am, Jakarta slightly altered her course back to port. At about 3:33am, Jakarta began passing Singapore. At that time, Jakarta's speed was around 12.5 knots, which was full ahead manoeuvring speed, while Singapore's was around 4.5-5 knots. At around 3:34am, Jakarta entered the No 2 precautionary zone. Her speed remained at around 12.5 knots.

At about 3:34:39am, Captain Mlikota ordered the helm to be put to port 10. The Track Data showed that between 3:35:12am to 3:35:33am, Jakarta altered her course from 144 degrees to 133 degrees. At

about 3:35:54am, Captain Mlikota ordered the helm to be put hard to port. The Track Data showed that between 3:36am and 3:37am ie 1st Collision, Jakarta significantly altered her course from 124 degrees to around 70 degrees.

The 1st Collision took place at about 3:37am when the port bow of Xin Nan Tai collided with Jakarta's starboard bow. At that time, Singapore was on Jakarta's port side at a distance of about 0.3 nautical mile.

After the 1st Collision, Jakarta did not stop immediately but continued to "swing" to her port side and collided with Singapore at about 3:40am. The Track Data showed that between 3:37:12am and 3:40:03am, Jakarta's course moved from 70 degrees to 0 degrees while her speed dropped from 9 knots to around 5 knots.

Navigation of Xin Nan Tai

In the morning of 14 May 2011, Xin Nan Tai was on a voyage from Taicang, Jiangsu Province bound for Guangzhou, Guangdong Province. Prior to the 1st Collision, Xin Nan Tai was sailing in a westerly direction in the westbound lane of the Dangan Scheme. The Dangan Scheme is to the south of the Lamma Scheme. At around 3:08am, Captain Hung ordered Xin Nan Tai's course to be altered to starboard to steer a course of 269 degrees. Captain Hung acquired both Singapore and Jakarta by radar from 3:15am (Singapore) and from 3:17am (Jakarta) and observed them both on radar (with their speed and course indicated) and visually.

Captain Hung accepted that Xin Nan Tai and Singapore were in a crossing situation by 3:31am. In that case, Xin Nan Tai should also have given way to Singapore instead of trying to cross ahead of her. She did not.

As far as Jakarta was concerned, Captain Hung acquired her on the port radar at a range of around 4 nautical miles. According to the Plot, the two vessels were at a range of 4 nautical miles only at 3:25am. He continued to monitor Jakarta. When Jakarta was at a distance of around 2 nautical miles, Captain Hung still maintained the course and speed of Xin Nan Tai. According to the Plot, when the two vessels were at a distance of around 2 nautical miles, the time should be between 3:31am and 3:32am.

At around 3:33am/3:34am, Xin Nan Tai altered course 10 degrees to starboard – Captain Hung said this was in order for her to pass astern of Jakarta. Subsequently, Captain Hung observed Jakarta was turning to port. He ordered Xin Nan Tai to go hard to starboard at around 3:35am. While Jakarta continued to turn to port, Xin Nan Tai continued to turn to starboard and both vessels reduced speed. At around 3:37am, the two vessels collided.

Fault of Xin Nan Tai re 1st Collision

Jakarta's Owners submitted that there were two principal causes of the 1st Collision.

First, Xin Nan Tai, as the give-way vessel, failed to take early and substantial action to give way to Jakarta (as well as Singapore), from around 3:22am when she had entered the precautionary zone to around 3:30am at the latest. Instead, Captain Hung decided to maintain his course and speed and to cross ahead of Singapore which Xin Nan Tai did, albeit barely so. By deciding to cross ahead of Singapore, Xin Nan Tai was in breach of the clear terms of COLREGS r 15.

According to the Plot, at 3:22am, Xin Nan Tai and Jakarta were 4.9 nautical miles apart, while at 3:30am, they were still 2.5 nautical miles apart. What Xin Nan Tai should have done was to make a large alteration of course to starboard when there was still the opportunity to avoid the 1st Collision. This failure, Jakarta's Owners submitted, also involved failure on the part of Xin Nan Tai to keep a

proper lookout in breach of COLREGS r 5, failure to properly evaluate the risk of collision in breach of COLREGS r 7 and failure to take avoiding action in breach of COLREGS r 8.

Jakarta's Owners invited the court to take into consideration what another vessel, the so-called "Model Vessel", had done. She was navigating in the same direction as Xin Nan Tai, approaching the Jakarta and the Singapore in the same crossing situation. At around 3:30am/3:31am, the Model Vessel made an early and substantial alteration of course to starboard and uneventfully passed clear and astern of both Singapore and Jakarta.

Captain Hung considered the minimum distance to take give-way action was between 2 to 3 nautical miles. According to the Plot, the two vessels were at a distance of 3.1 nautical miles at around 3:28am, and at a distance of 2.1 nautical miles at around 3:31am. In other words, even on Captain Hung's own testimony, 3:28am was the point of time when Xin Nan Tai should have taken action to give way to Jakarta while 3:31am was the latest point of time when she should have done so.

Second, Xin Nan Tai maintained her course and speed until around 3:33am/3:34am when she altered course of 10 degrees to starboard. Jakarta's Owners submitted that at that time, Xin Nan Tai was left with 2 poor choices – kept going forward to try and cross ahead of Jakarta or swung hard to starboard and try to navigate through the gap between Jakarta and Singapore. Captain Hung chose the latter and shortly afterwards, at around 3:35am, made a hard alteration to starboard which ended up in the 1st Collision. Jakarta's Owners submitted that such a manoeuvre was completely unexpected. By then, Jakarta had already taken action ie turning to port in response to Xin Nan Tai's earlier breaches of the crossing rule. The responsive action taken by Jakarta was premised on Xin Nan Tai having demonstrated an intention to pass ahead of Jakarta. Jakarta's Owners submitted that Xin Nan Tai should have maintained course and speed – a hard turn to starboard at that late stage only increased the risk of collision.

The court asked the Nautical Assessor inter alia the following questions with regard to Xin Nan Tai's fault regarding the 1st Collision. His views were these:

"2. Given that Xin Nan Tai was the give-way vessel in a "crossing situation" with the Jakarta, what action should Xin Nan Tai have taken to avoid the 1st Collision with Jakarta and when such action should have been taken?"

Answer to Question 2

During the cross examination the Xin Nan Tai Master stated he considered the minimum distance to give way was 2 or 3nm, this is a distance I would agree with considering the available sea room. Yet he allowed a situation to arise where he would be created a close quarters situation which resulted in a collision with Jakarta.

The Xin Nan Tai Master should have altered his course to starboard at around 03:30 (latest) to pass around the stern of the Jakarta. Such an alteration of her course to starboard should be a minimum of 30° so as to be readily apparent to Jakarta either visually or by radar.

3. Whether there were reasons to consider Xin Nan Tai was in breach of any of COLREGS in altering course of 10 degree to starboard at around 03:34?"

Answer to Question 3

At 03:33:20 to 03:34:30 the Xin Nan Tai Master altered course to starboard by 10° (271°T to 281°T), by 03:34:30 Jakarta was only 0.88nm from Xin Nan Tai. I am of the view that the Xin Nan Tai Master believed the 10° alteration of course was enough to pass around the stern of the Jakarta, an assumption based on data received from his ARPA radar only. Such a small alteration of course would not have been readily apparent visually or by radar aboard the Jakarta and therefore the Xin Nan Tai Master was in breach of Rule 8 (Action to avoid collision) (a) to (f) (i) and (ii), Rule 15 (Crossing Situation) and Rule 16 (Action by give way vessel)."

The court fully agreed with the views of the Nautical Assessor.

Given Captain Hung himself also accepted Xin Nan Tai was the give-way vessel, there was really no excuse for him not to take early and substantial action to keep well clear of Jakarta. In this regard, there were two possible scenarios.

If Captain Hung had kept a proper lookout and acquired on radar and/or observed Jakarta well before 3:30am but did nothing until around 3:33am/3:34am, then Xin Nan Tai would have failed to take action to avoid collision in general under r 8 of COLREGS and, in particular, failed to act as a give-way vessel under rr 15 and 16 of COLREGS.

If, on the other hand, the reason why Captain Hung did not take any action until around 3:33am/3:34am was because (i) he failed to acquire on radar or observe Jakarta much earlier or (ii) if Jakarta had been acquired on radar much earlier, he failed to pay attention to her and, consequently, failed to properly assess the risk of collision with Jakarta, then Xin Nan Tai would have failed to keep a proper lookout in breach of r 5 of COLREGS and/or failed to determine if risk of collision existed in breach of r 7 of COLREGS. In this regard, the view of the Nautical Assessor, which the court accepted, was instructive.

“1. Whether there were reasons to consider Xin Nan Tai was not maintaining a proper lookout, specifically in failing to acquire or observe Jakarta in good time prior to the 1st Collision?”

Answer to Question 1

I would have expected the Master to have been plotting targets within the south bound East Lamma Channel as early as possible. According to the Xin Nan Tai Master’s statement, paragraph 23, he first observed the Jakarta on the port radar at a distance of 4nm. At the time he thought this was around 03:17. In fact, according to the distance table within the plot the actual time was 03:25. He then claimed that he acquired the target on the starboard radar. I already know from paragraph 21 of his statement that this was on the 3nm range, therefore if you refer to the distance table within the plot, the earliest time he could have commenced plotting was around 03:28.

To commence plotting of Jakarta at 03:28 was far too late and therefore the Master was not maintaining a proper lookout.”

Either way, Xin Nan Tai was at fault.

Further, Xin Nan Tai’s 10-degree alteration of course to starboard at around 3:33am/3:34am could only be described as “too little too late”. “Too little” because such a small alteration of course would not have been apparent to Jakarta – she should have made a bold alteration of course to starboard so as to shut out her starboard green side light and allowed her port red side light to be seen. “Too late” was self-explanatory.

For ease of reference, the terms of rr 5, 7 and 8 of COLREGS were set out:

“RULE 5

Look-out

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

RULE 7

Risk of Collision

- (a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
- (b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.
- (c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.

- (d) In determining if risk of collision exists the following considerations shall be among those taken into account:
- (i) such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change;
 - (ii) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.

RULE 8

Action to avoid collision

- (a) Any action to avoid collision shall be taken in accordance with the rules of this Part and, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.
- (b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.
- (c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.
- (d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear..."

To conclude, for the above reasons, the court had no doubt that Xin Nan Tai was at fault for failing to comply with the aforementioned rules of COLREGS and such failure was a significant cause of the 1st Collision.

Fault of Jakarta re 1st Collision

It was Xin Nan Tai's case that the primary cause of the 1st Collision was Jakarta's fault in that:

- (a) Jakarta failed to maintain a proper lookout prior to 3:35am, so that she failed to observe Xin Nan Tai adequately or at all, including Xin Nan Tai's alteration of course to starboard at around 3:33am/3:34am, in contravention of rr 5, 7(a), 7(b) and 10(f) of COLREGS. This was particularly dangerous because Jakarta was approaching the end of a traffic separation scheme at a speed of 12.5 knots.
- (b) Jakarta turned 10 degrees to port at around 3:35am and made a subsequent further turn hard to port, in contravention of rr 7(c), 8(c), 8(d), 17(a)(i)&(ii), 17(c) and 34(d) of COLREGS. It was a clear breach of COLREGS for Jakarta to turn to port when Singapre was on her port side.

Xin Nan Tai's Owners further elaborated on Jakarta's fault:

- (a) It was the obligation of Jakarta to navigate near the termination of the Lamma Scheme with particular caution: r 10(f) of COLREGS. Jakarta breached this obligation by increasing speed to 12.5 knots at 3:30am and maintaining it. By comparison, Singapore had taken a sensible precaution by reducing speed – between 3:28am and 3:36am, Singapore was sailing at a speed of only 4–5 knots.
- (b) Jakarta had failed to keep a proper lookout – she either had not seen Xin Nan Tai at all prior to 3:34am or, even if Jakarta had acquired Xin Nan Tai on her radar, Jakarta was not paying adequate attention to her. As a result of Jakarta's inadequate lookout, Captain Mlikota did not see Xin Nan Tai had altered course 10 degrees to starboard between 3:33:30am and 3:34:30am, onto a course of 281 degrees. Captain Mlikota confirmed he did not see this alteration of course visually or on the radar and it was his impression throughout that Xin Nan Tai's course was steady and intending to cross ahead of Jakarta.
- (c) Between 3:29am and 3:33am, pursuant to a series of helm orders, Jakarta gradually altered course to port. At 3:29am, Jakarta was on a course over the ground of 163 degrees. By 3:33am, Jakarta was on a course over the ground of 144 degrees. Jakarta then remained on this course until 3:34:39am when Captain Mlikota ordered 'port 10', resulting in Jakarta turning further to port from around 3:35am.

Jakarta's gradual alterations of course to port had put her on a collision course with Xin Nan Tai. It would appear that Captain Mlikota had made an improper assumption about Xin Nan Tai's intended course – he had assumed that Xin Nan Tai would not alter course to starboard to go astern of Jakarta when in fact she did at around 3:33am. The proper course for Jakarta to take was to turn starboard at around 3:34am.

- (d) Captain Mlikota ordered 'hard to port' at 3:35:54am while a hard turn to starboard could have been performed quickly, safely and without restriction.

In light of Xin Nan Tai's elaborated complaints of Jakarta's fault, the court invited the Nautical Assessor to express his views.

"4. Whether there were reasons to consider Jakarta was not maintaining a proper lookout, specifically in failing to acquire or observe Xin Nan Tai in good time prior to the 1st Collision?"

Answer to Question 4

Within the Jakarta Master's Supplementary Statement, paragraph 6, he claimed he was passing TS Singapore at around 03:33. In paragraph 19 of his 1st Statement he stated "he was also aware now on radar of a crossing vessel moving westwards through the westbound lane of the Traffic Separation Scheme, although I cannot recall her exact speed and heading as my attention was presently focussed on safely overtaking the TS Singapore at this time". At this time Jakarta was 1.4nm from the Xin Nan Tai.

Within the transcript of the Jakarta VDR recording MARDEP informed the Jakarta at 03:34:16 "the vessel on your port bow, no information, please keep an eye on her". Such a comment must be based on the VTC screen showing a potential collision between the 2 vessels (vectors had gone from white to red). At 03:34:26 the Master states "Ah, I can see her" (XNT), at 03:34:39 the Master orders port 10o. At 03:34:42 he then states "Un-f*****g believable, okay... What they say, no information?" I am therefore of the view it was at this time the Master moved his focus of attention from TS Singapore to Xin Nan Tai. This late assessment of the situation is in breach of Rule 5 (Lookout) and Rule 7 (Risk of collision) (a), (b) and (d) (i).

5. Whether there were reasons to consider Jakarta had failed to observe Xin Nan Tai's change of course of 10 degree to starboard (from 271° to 281°) between 03:33 and 03:34?"

Answer to Question 5

Jakarta Master did fail to observe Xin Nan Tai 10o alteration of course to starboard, however this was not his fault. Such an alteration was not large enough to be readily apparent to Jakarta observing visually or by radar.

6. Whether there were reasons to consider Jakarta was sailing at an unsafe speed at any time before or after it had left the East Lamma Traffic Separation Scheme and entered the precautionary zone?"

Answer to Question 6

At 03:16, calculated from the plot, Jakarta was steaming at around 11.5 knots. The Master had full control of his engine and therefore could reduce speed according to the prevailing circumstances and conditions. Within Jakarta's Passage plan the speed considered for this part was 8 knots. I have assumed this speed would be dependent on weather conditions, visibility and traffic. The Passage plan is a guidance document which must allow for amendments and contingences etc.

In paragraph 9 of the Master's Supplementary Statement he states that he acquired the Xin Nan Tai on the ARPA at 03:25. However at that time he was focusing on overtaking TS Singapore and not Xin Nan Tai. It was only at 03:33 when the Jakarta Master focused on Xin Nan Tai who was only 1.4nm. At this point the Jakarta Master realised the Xin Nan Tai had failed to alter course to starboard as required by Xin Nan Tai as the "give way" vessel. I am therefore of the view that at 03:33 Jakarta was now steaming at an unsafe speed. The Jakarta Master should have reduced the speed as much as possible whilst still maintaining steerage.

7. Whether there were reasons to consider Jakarta was in breach of any of COLREGS (i) in gradually altering course to port prior to 03:34 (ii) by the 'port 10' order at around 03:34:39; and (iii) by the "hard to port" order at around 03:35:54?"

Answer to Question 7

- (i) According to the transcript the Jakarta Master started to adjust his course to port gradually commencing at 03:28:25 (Co. 155oT) to 03:33:21 Co. 140oT). This gradual alteration would not have been apparent visually or by radar to the Xin Nan Tai. These small alterations of course were navigational and not considered for collision avoidance by the Master. On completion of these course adjustments Xin Nan Tai was around 3nm away. The Jakarta Master at this time was not fully aware

of the developing situation. Therefore, the Master was in breach of Rule 5 (Look-out), Rule 7 (Risk of collision) (a) and (b).

- (ii) By 03:34 the Jakarta was starting to draw past TS Singapore and Xin Nan Tai bearing around 25° to port at a distance of 1.1nm. The Jakarta Master at this time believed Xin Nan Tai had made no alteration of course or speed and therefore at 03:34:39 orders Port 10, instead of going to starboard. This is in breach of Rule 17 (Action by stand-on vessel) (c), Rule 8 (Action to avoid collision) (a) to (e) and Rule 10 (Traffic Separation Schemes) (f). He is also at the same time overtaking TS Singapore and therefore by altering course to port, towards the TS Singapore, he is in breach of Rule 13 (Overtaking) (a) and (d).
- (iii) At 03:35:54 both vessels were only 0.4nm apart. TS Singapore was 0.3nm from Jakarta and 0.5nm from Xin Nan Tai. The Master said under cross examination the collision was inevitable at this time. However, the order Hard to Port was in breach of Rule 17 (Action by stand-on vessel) (c), Rule 8 (Action to avoid collision) (a) to (e) and Rule 10 (Traffic Separation Schemes) (f). The Master was further in breach of Rule 13 (Overtaking) (a) and (d)."

The court largely accepted the views of the Nautical Assessor.

First, the court agreed that by 3:33am at the latest, Jakarta was sailing too fast at 12.5 knots which was full ahead manoeuvre speed. Although r 17(a)(i) of COLREGS mandates the stand-on vessel ie Jakarta to maintain her course and speed, there would come a point of time when it became apparent that the give-way vessel ie Xin Nan Tai was not taking the appropriate action, in which event, the stand-on vessel should take action to avoid collision: rr 17(a)(ii) and 17(b) of COLREGS. One of the actions which Jakarta could easily have taken was of course to reduce her speed. Nevertheless, for a vessel of the size of Jakarta travelling at full ahead manoeuvre speed, it would have taken time for the engine to stop then reverse in order to reduce speed. Hence, even if Jakarta should have reduced speed at 3:33am, this failure would not have been causative of the 1st Collision.

Second, as far as proper lookout is concerned, the court found, on balance of probabilities, Captain Mlikota only moved his focus of attention from safely overtaking Singapore to the crossing situation with Xin Nan Tai shortly after 3:33:55am. This was the time when the ARPA collision alarm rang. In the court's view, Jakarta's failure to pay sufficient attention to Xin Nan Tai earlier than 3:33am was in breach of rr 5 and 7 of COLREGS. By that time, the two vessels were only 1.4 nautical miles apart and clearly in a crossing situation.

Third, the gradual alterations to port by Jakarta cumulating in the "port 10" order at 3:34:39am and the "hard to port" order at around 3:35:54am. The court agreed with the Nautical Assessor that the "Port 10" and the "Hard to Port" orders were in breach of COLREGS. It was difficult to see what good it would have done for Jakarta to turn to port, whether by 10 degrees or hard to port. Accepting that Jakarta was entitled to take the best action to avoid collision, Jakarta's Owners had not explained how or why turning to port would best avoid collision with Xin Nan Tai. Nor had Jakarta's Owners explained to the court why the circumstances were such that Jakarta could not have turned starboard instead. there was no physical restriction on Jakarta turning starboard at 3:34am. According to r 17(c) of COLREGS, the stand-on vessel shall, if the circumstances of the case admit, not alter course to port. Furthermore, Singapore was on her port side. In turning towards Singapore after overtaking her, Jakarta was also in breach of r 13(a) of COLREGS. For the same reasons, the subsequent hard to port order was also in breach of rr 13(a) and 17(c) of COLREGS. To conclude, the court found that Jakarta was at fault for failing to comply with the aforementioned rules of COLREGS and such failure was also a cause of the 1st Collision.

Apportionment of liability for 1st Collision

Since the court found both vessels were at fault for causing the 1st Collision, it was necessary to apportion their liability for it.

The law can be summarised into the following propositions.

First, the structure of COLREGS is designed to ensure that, whenever possible, ships will not reach a close-quarters situation in which there is risk of collision and in which decisions have to be taken without time for proper thought. Manoeuvres taken to avoid a close-quarters situation should be such as to be readily apparent to the other ship. The errors of navigation which are the most serious are those errors made by an officer who has time to think. At such a time there is no excuse for failure to comply with COLREGS.

Second, one of the most important principles underlying good seamanship and COLREGS is to avoid, so far as possible, close-quarters situations.

Third, there is no higher duty on the give-way vessel to keep out of the way of the stand-on vessel than there is on the part of the stand-on vessel to maintain course and speed. In any particular case, the need for the give-way vessel to take helm or engine action may assume greater or less importance than the need for the stand-on vessel not to embarrass the give-way vessel by altering course or speed.

Fourth, in *The "Samco Europe and MSC Prestige"* [2011] 2 Lloyd's Rep 579, the court summarised the task of apportionment of liability in this way:

"81. Apportionment of responsibility for a collision depends upon an assessment of the blameworthiness and causative potency of both vessels: see *The British Aviator* [1965] 1 Lloyd's Rep 271 at page 277 per Willmer LJ. The assessment is of the relative degree of responsibility of each vessel: see *The Mineral Dampier* [2001] 2 Lloyd's Rep 419 at para 39. For that reason Admiralty judges often consider, where one ship is more to blame than the other, how many more times to blame one vessel is than the other: see, for example, *The Angelic Spirit* [1994] 2 Lloyd's Rep 595 at page 608 per Clarke J and *The Mineral Dampier* at para 52 per Lord Phillips MR."

Fifth, certain broad lines of approach can be used when apportioning liability. As stated by Teare J in *The "Nordlake"* and *The "Seaeagle"* [2016] 1 Lloyd's Rep 656 at [149], they are:

- (i) The number of faults on one side or the other is not decisive. It is the nature and quality of a ship's faults, rather than their number, that matter.
- (ii) Breaches of the obligations imposed on ships in certain defined situations by the Collision Regulations will usually be regarded as seriously culpable...
- (iii) Causative potency has two aspects. The first is the extent to which the fault contributed to the fact that the collision occurred. The second is the extent to which the fault contributed to the damage resulting from the casualty.
- (iv) In most cases though not all it will be right to treat the fault of a ship that creates a situation of difficulty or danger as greater than that of the ship that fails to react properly to such situation after it has been created.
- (v) The fact that a fault consists of a deliberate act or omission may in certain circumstances justify the court in treating it as more culpable than a fault which consists of omission only.

Applying these principles to the findings of fault on the part of Xin Nan Tai and Jakarta, the court was of the firm view that Xin Nan Tai must bear the majority of the responsibility for the 1st Collision.

To start with, it was Xin Nan Tai which created the danger and difficulty inherent in a close-quarters situation. Had she taken early and substantial action to give way, while Jakarta was maintaining her course and speed, there would not have been the 1st Collision at all. Jakarta, while technically in breach of COLREGS for sailing too fast and for failing to pay adequate attention to Xin Nan Tai, did not create the close-quarters situation. Even if Jakarta had reduced speed at 3:33am, her failure would not have been causative of the 1st Collision.

Captain Mlikota's "port 10" and "hard to port" orders were made in response to the close-quarters situation created by Xin Nan Tai. These orders were made at a time when he had little or no time to think and when he was left with only "bad choices". Xin Nan Tai, on the other hand, had plenty of

time to give way: the two vessels were at a distance of 3.1 nautical miles at around 3:28am, and at a distance of 2.1 nautical miles at around 3:31am. During those few minutes, Xin Nan Tai could easily have made a large alteration of course to starboard to avoid both Singapore and Jakarta, just like the Model Vessel.

It seemed to the court that in terms of their nature and quality, Xin Nan Tai's faults were much more serious and much more causatively potent than Jakarta's. In the court's judgment, a fair apportionment of liability should be 80:20 in favour of Jakarta.

Apportionment of liability for 2nd Collision

Jakarta's Owners submitted nothing could have been done by Jakarta between the 1st and 2nd Collisions so that the appropriate apportionment of liability for the 2nd Collision should reflect and correspond to that for the 1st Collision.

Xin Nan Tai's Owners submitted that Jakarta's alterations to port were in breach of r 13(a) of COLREGS and created a risk of collision with Singapore. Xin Nan Tai's Owners further submitted that Jakarta failed to take the necessary action to stop her engines or go astern after the 1st Collision, in order to avoid the 2nd Collision with Singapore. Such failure to take action was in breach of r 8(e) of COLREGS, requiring Jakarta to slacken her speed or take all way off by stopping or reversing means of propulsion, in order to avoid the 2nd Collision.

As far as Jakarta's failure to further reduce speed after the 1st Collision was concerned, the view of the Nautical Assessor was as follows.

"8. Whether there were actions which could have been taken by Jakarta after the 1st Collision in order to avoid the 2nd Collision?"

Answer to question 8

At the time of the collision between Jakarta and Xin Nan Tai (03:37:12), Jakarta was still moving forward at a speed of 9knots (Mardep print out page 32). The speed was starting to fall away but not fast enough. At the time of the 2nd collision the Jakarta was still moving forward at 3.5knots. Jakarta was also continuing to swing to port, towards the TS Singapore, from 073oT to 006oT, her heading on impact.

According to the transcript the Master stopped the engine and put it to full astern at 03:35:54. Unfortunately it will take some time before the engine is capable of going astern. It would appear that at 03:38:45 the engine finally started to go astern. The Master ordered the helm Hard to Starboard a few seconds later. These actions were too late to avoid the collision with TS Singapore.

In reality there was no further action the Jakarta Master could have done after the 1st collision in order to avoid the 2nd collision."

The court accepted the view of the Nautical Assessor. Given the size of Jakarta and her speed prior to the 1st Collision, it would have taken time for the engine to stop and then reverse in order to reduce speed. On the evidence, the court was not satisfied that anything more could have been done by Jakarta to avoid the 2nd Collision after the 1st Collision. The court therefore agreed that the apportionment of liability for the 2nd Collision should reflect and correspond to that for the 1st Collision ie 80:20 in favour of Jakarta.

Please feel free to contact us if you have any questions or you would like to have a copy of the Judgement.

Simon Chan

Director

E-mail: simonchan@smicsl.com

Richard Chan

Director

E-mail: richardchan@smicsl.com

23/F, Excel Centre, 483A Castle Peak Road, Lai Chi Kok, Kowloon, Hong Kong
香港九龍荔枝角青山道483A卓匯中心23樓 Tel: 2299 5566 Fax: 2866 7096

E-mail: gm@smicsl.com Website: www.sun-mobility.com

A MEMBER OF THE HONG KONG CONFEDERATION OF INSURANCE BROKERS

香港保險顧問聯會會員

