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To: Transport Industry Operators

Forum shopping

The Hong Kong High Court issued a Decision on 11 May 2021 staying a South Korea container terminal's legal action in Hong Kong with respect to its allision claims of more than US$90,000,000 against the owners of a container ship. [HCAJ 31/2020] [2021 HKCFI 1283]

Background

The Plaintiff was the Korean operator of a commercial maritime terminal at the port of Busan ("Terminal") offering berths for loading and unloading container vessels with large movable gantry cranes.

The Defendants were the joint owners of the vessel "Milano Bridge" ("Vessel"), owned as to 90% by Doun Kisen, a company incorporated in Japan, and 10% by Mi-das Lines, a company incorporated in Panama. The Vessel flew the Panamanian flag. The shipowners were both managed from Japan. The Vessel was sub-chartered to Ocean Network Express ("ONE"), which was incorporated in Singapore with operations worldwide, including Busan, South Korea.

The terminal operator operated on, *inter alia*, (i) its Standard Terms and Conditions 2019 ("STC") and (ii) specially negotiated agreements, such as the Terminal Services Agreement dated 1 April 2014 ("TSA") between the terminal operator and various liner operators comprising a consortium called The Alliance.

The shipowners were not party to the TSA. However, both the charterer and ONE were contracting parties to the TSA. The terminal operator had made a claim against ONE under the TSA in South Korea.

The shipowners were not party to any STC either. The terminal operator said that the STC were relevant only to liner operators (not vessel owners) who had executed the requisite agreement.

However, the shipowners sought to refer to the STC which provided at clauses 18.2 and 19.3 for a contractual limitation of liability of US$15m for both parties. The TSA similarly provided at clauses 18.2 and 19.3 a contractual limitation of liability of US$20m for both sides.

The legal action in question concerned an Allision between the Vessel and Berth 8 at Pier 2 at the Terminal which took place at 14:49 on 6 April 2020, involving contact between the Vessel and some of the terminal operator's cranes and another vessel. At the time of the Allision, the Vessel was under compulsory pilotage of a Korean pilot and was assisted by Korean tugs, one at the bow and one at the stern. Also, there were maritime works in progress by Korean contractors to remove Todo Islet, a small island at the approach to the berth.

The shipowners said that Todo Islet presented a hazard to ships arriving at the Terminal, which explained the need for its removal.

The terminal operator said that Cranes 81, 83 and 84 were partially damaged. Crane 85 had collapsed onto the deck of the Vessel and was very significantly damaged. The terminal operator asserted that the Allision was caused by the negligence of the shipowners, their servants or agents in the navigation and management of the Vessel and that it had suffered loss and damage in terms of (i) physical damage to the cranes with resulting monetary loss in terms of repair and replacement cost; and (ii) business interruption. The alleged "Material Damage" amounted to US$30,116,930.01, and the alleged "Business Interruption" loss had been quantified at US$60,851,879.83.

All relevant events which gave rise to liability occurred in South Korea, all physical damage was incurred on land in South Korea and all economic loss was suffered in the same country.

The legal action in question was commenced when a sister ship of the Vessel, "CMA CGM Musca", called at Hong Kong on 24 June 2020 and was arrested. Except for the fact that the sister ship called at Hong Kong, the dispute in question had nothing to do with Hong Kong.

The shipowners filed an application by Summons on 5 November 2020 for the Hong Kong legal action be stayed in favour of the courts of South Korea on the grounds of *forum non conveniens* ("FNC") and/or *lis alibi pendens* ("LAP").

Other proceedings

The terminal operator had initiated a claim against ONE under the TSA.

In addition, the Allison had given rise to various sets of proceedings in the courts of South Korea as follows :

(1) Action by the shipowners against the Korean Government in respect of pilot liability, Todo Islet works and Vessel Traffic Service Centre liability;
(2) Action by the shipowners against the terminal operator which was essentially a 'mirror image' action to the proceedings in question;
(3) Action by the shipowners against the Pilot for negligence;
(4) Action by the shipowners against the Tug Owners for negligence;
(5) Action by the shipowners against Daelim Industrial, the Todo Islet contractors, for negligence;
(6) The shipowners' Limitation Action;

In respect of the Limitation Action (Action (6)), the terminal operator had filed a claim against the Limitation Fund on a without prejudice basis.

In addition to these civil actions, there were criminal proceedings pending against the Master of the Vessel in South Korea.

The Korean Maritime Safety Tribunal ("KMST") was conducting an investigation to determine the cause of the maritime incident, any administrative sanctions against Korean officeholders and appropriate corrective measures to avoid similar situations in the future. The terminal operator was participating in the investigation.

In addition to these proceedings, the terminal operator had commenced materially identical proceedings against the shipowners in Japan. Thus, the shipowners said that they were being vexed twice by the terminal operator in respect of the Incident.

The terminal operator's position was that it wished to have the dispute determined in Hong Kong, 'failing which' Japan.

Insurance

The terminal operator was insured by Samsung Fire & Marine Insurance Co Ltd ("SFMI"), which

was located in South Korea. SFMI had appointed loss adjusters in South Korea, McLarens Korea.

Shipowners' limitation of liability

There is a different shipowners' liability limitation regime in Hong Kong (and Japan) on one hand and South Korea on the other. The terminal operator's evidence suggested that from the outset the terminal operator and its advisers had targeted Hong Kong as a forum for the dispute in question, by way of sister ship arrest, because of the limitation regime in Hong Kong.

South Korea is not party to any international convention on shipowners' limitation of liability. However, it has enacted a domestic limitation regime within the Korean Private International Law Act based on the Convention on Limitation of Liability for Maritime Claims 1976 ("LLMC 76"). Unlike Hong Kong, under the Korean Act, questions of whether a shipowner is entitled to limit, and if so in what amount, are determined under the law of the flag of the vessel concerned. In the case in question, it was the law of Panama.

On 24 April 2020, the shipowners commenced a limitation action in respect of the Incident in the Changwon District Court (Action (6) above). On 11 May 2020, the Changwon District Court ordered the shipowners to deposit in court SDR 16,792,098 plus interest at 6% from the date of Incident to date of deposit, an amount calculated in accordance with the Korean Act and Panamanian Law. On 18 May 2020, the shipowners deposited in court KDW28,293,827,486 (about US$24m), inclusive of interest, to constitute the Limitation Fund. On 8 October 2020, the terminal operator lodged a claim against the Limitation Fund on a without prejudice basis.

Under Hong Kong law, by virtue of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance, Cap 434, limitation is governed by LLMC 76 as amended by the 1996 Protocol (effective in Hong Kong on 3 May 2015), including the June 2015 limit increases (effective in Hong Kong on 4 December 2017).

On 26 June 2020, in order to secure the release of the sister ship from arrest in Hong Kong, the shipowners put up security in the form of a letter of undertaking from the Japan P&I Club responding to any judgment of the Hong Kong High Court in the maximum amount of US$82.6m. Such amount was calculated broadly in accordance with the Hong Kong limit. Hence, the difference between the Korean and Hong Kong limits was US$58.6m (US$82.6m - US$24m).

Applicable principles

The applicable test for FNC was set out in *SPH v SA* (2014) 17 HKCFAR 364, adopting the seminal principles enunciated by the House of Lords in *The Spiliada* [1987] 1 AC 460 :

(1) The single question is whether there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial, ie, in which the action may be tried more suitably for the interests of all the parties and the ends of justice;
(2) To answer this, the defendant must establish, firstly, Hong Kong is not the natural or appropriate forum. 'Appropriate' in this context means the forum that has the most 'real and substantial' connection with the action. Secondly, there is another available forum 'clearly or distinctly' more appropriate than Hong Kong. Failure to establish these two matters at this stage is fatal. This is commonly known as the Stage 1 consideration;
(3) If the defendant establishes both matters, then the plaintiff may show that if the action is tried in a forum other than Hong Kong he will be deprived of a legitimate personal or juridical advantage available to him in Hong Kong (Stage 2);
(4) If the plaintiff can establish that, the court balances the advantages of trial in the alternative forum with the disadvantage(s) the plaintiff will suffer. Deprivation of such advantage(s) will not necessarily be fatal to the defendant if he can establish to the court's satisfaction that 'substantial justice will be done' in the available appropriate forum (Stage 3).

Stage 1(a) – natural or appropriate forum

Under the most 'real and substantial connection' requirement, the court looks for connecting factors and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction and the places where the parties respectively reside or carry on business (*The Spiliada*, 478A-B).

The terminal operator accepted that the first question of natural or appropriate forum was answered in favour of South Korea. The concession was plainly right given the almost exclusive connection with that country in respect of nearly all the relevant factors. The following factors had been rightly identified by the shipowners :

(1) All elements of the alleged tort occurred in South Korea, either in Korean territorial waters in port environs, or in the case of the physical loss, on Korean soil. The conduct complained of occurred in Korea, by the Korean pilot, the Korean tugs or the Master of the Vessel;
(2) The terminal operator conducted business solely in South Korea, under Korean law. Any economic loss from the physical damage, including any disruption of business, was suffered in Korea;
(3) The terminal operator's business records would largely be in Korean;
(4) Repair works were carried out in South Korea, save that the gantry cranes were repaired in Mainland China;
(5) The terminal operator was insured by a Korean insurer, which appointed Korean loss adjusters and a Korean based surveyor;
(6) The terminal operator and the other parties against which the shipowners sought recourse, namely, the pilot, the tug owners, the Todo Islet contractors and the South Korean Government were all in Korea;
(7) The Korean authority, KMST, was investigating the Incident;
(8) The shipowners operated from Japan but were in the shipping business conducting it worldwide, including in South Korea;
(9) The sub-charterer against which the terminal operator had made a claim under the TSA, dealt with the terminal operator by its Korean subsidiary.

The highest that could be said about Hong Kong as a forum for these matters was that jurisdiction had been founded in Hong Kong by service on a sister ship making a call at Hong Kong, and that the Hong Kong court was available.

Stage 1(b) – more appropriate forum

In determining whether there is another forum that is 'clearly or distinctly' more appropriate than Hong Kong for the trial of the action, the court is entitled to examine a broad range of connecting factors, but this process is not a mechanical exercise of simply totting-up the number of factors connecting the claim with a particular jurisdiction and those against. The court is required to focus on the appropriateness of a forum from the point of view of the trial of the action: *Rambas Marketing Co LLC v Chow Kam Fai David* [2001] 3 HKC 250, at 255B. There was no dispute that the burden of proof on this issue was on the shipowners (*The Spiliada*, 476D-F).

Issues in the trial

The exercise should begin with an identification of the issues to be tried.

The principal liability issues to be tried were whether: (a) the Vessel caused the Allision; (b) the shipowners were liable; and (c) the terminal operator was itself responsible to any degree. In addition, there would be issues as to loss and quantum.

Witnesses and Evidence

Liability

The witnesses on liability were likely to be the Master and other crew, the pilot and the tug crews. The Master and other key members of the crew were Indian. They would have to travel to either South Korea or Hong Kong to give evidence. The pilot and the crew of the tugs were Korean.

There were independent contemporaneous records of the Incident, including video footage of the Allision from four angles, all the information automatically recorded in the VDR, and the investigation report by the KMST.

There was no suggestion that the South Korean courts were unable to conduct maritime litigation concerning events in Korean ports competently or fairly. Given that South Korea is a major maritime, engineering and trading economy, it must be assumed that its courts are equally capable in dealing with the disputes in question.

The Judge was inclined to agree with the terminal operator that in light of the independent contemporaneous evidence, the dispute on liability might not be extensive. On the other hand, there appeared to be issue(s) of third party liability, eg, that of the pilot. Hence, it should not be assumed that the trial of these matters would be a straightforward exercise.

The third parties were all based in South Korea. Their witnesses were likely to be in Korea and documents were likely to be in Korean. These must be factors in favour of having these matters tried in South Korea. Indeed, it was not easy to see why these parties should be dragged into the court of Hong Kong in a litigation over the Incident.

Whilst the Judge agreed with the terminal operator that with the availability of modern technology, location of witnesses did not normally present any serious obstacle for having a trial in Hong Kong, especially when the incident had been investigated by the local authorities with the benefit of contemporaneous records. The real point was not whether the Hong Kong court was capable of trying these matters despite the location of witnesses overseas but whether, when compared with the South Korean court, the latter was clearly or distinctly the more appropriate forum.

Most of the documentary documents were likely to be in Korean. Whilst they might be translated for use in Hong Kong, the translation cost could be saved with a trial in South Korea. More importantly, there was much to be said that important documents should be read in their original text, so that they could be accurately understood. In short, the South Korean court certainly would be more suited to dealing with a trial where most of the documents were in Korean.

Quantum

Turning to the evidence on quantum, the main witness would be Mr Kim, the terminal operator's CEO, who was Korean and based in Busan. Whilst Mr Kim could give evidence in English, it could not be doubted that it was more convenient, economical and appropriate for him to give evidence in the place where the Incident took place and in his mother tongue.

The Judge was inclined to agree with the shipowners that in a claim of this magnitude with the attendant complexity it might well transpire closer to trial that other internal terminal operator witnesses who reported to Mr Kim would also need to give evidence to justify the components of the claim. It was unlikely for all such witnesses to be able to give evidence in English.

The terminal operator's primary loss adjusters were McLarens Korea, based in South Korea, and the terminal operator's primary surveyor was also based there. Moreover, the vast majority of the terminal operator's business records would be in Korean.

Expert witnesses

The re-insurer of the terminal operator had appointed the following expert advisors whom the terminal operator intended to call as witnesses:

(1) Mr Armour, an English-speaking Singapore based consultant maritime civil engineer, who would give evidence, technical and financial, on the extent of the damage to the cranes and necessary remedial measures. Mr Armour had relied on the service of a Korea based surveyor Mr Searle;
(2) Mr Browne, an English-speaking Hong Kong based navigation expert, who would give evidence on liability;
(3) Mr Kwan, an English-speaking Hong Kong based business loss accounting expert.

The engagement of these non-Korean based experts was the subject matter of criticisms by the shipowners. Firstly, it had not been explained in the terminal operator's evidence why they were engaged in a case which had everything to do with South Korea, and thus it was self-evidently inconvenient to instruct such experts. Secondly, South Korean is an advanced nation with a large maritime economy and a large population. A wide choice of appropriate witnesses of all 3 disciplines was likely available in Korea, including witnesses who could communicate effectively both in English, for the purpose of liaising with the international insurers, and in Korean, when giving evidence.

The terminal operator should not be allowed to pull itself up by its own bootstraps by attempting to generate a factor in favour of proceedings in Hong Kong, said the shipowners.

The Judge could see some substance in the criticisms. The court should no doubt be alive and vigilant to such tactics. On the other hand, in the sphere of maritime disputes, it is not unusual to see Hong Kong and Singapore based maritime experts being instructed. However, one might not be able to say the same for a Hong Kong based accounting expert.

Governing law

There was no dispute that the governing law of the terminal operator's tortious cause of action was Korean law.

In *VTB Capital*, *supra*, it was held that the governing law is in general terms a positive factor in favour of trial in the place where that law is applied, because it is generally preferable, other things being equal, that a case be tried in the country whose law applies. Further, this factor takes on particular force if issues of law are likely to be important and there is evidence of relevant differences in the legal principles or rules applicable to such issues in the countries proposed as the appropriate forum (*per* Lord Mance JSC at §46).

In rem cases (service as of right)

The terminal operator had placed emphasis on the fact that the legal proceedings in question were brought as of right. However, the Judge did not believe that the FNC principles were applied differently to in rem cases, especially a case like the one in question where the jurisdiction of the admiralty court was invoked based only on the arrest of a sister ship and Hong Kong had no connection to the events giving rise to the Incident.

In *The Spiliada*, Lord Goff held (477E) that the burden rests on the defendant to show that the alternative forum is 'clearly or distinctly' more appropriate than England, and "in this way, proper regard is paid to the fact that jurisdiction has been founded in England as of right".

Lord Goff went on to hold at 477F-G: "if … the connection of the defendant with the English forum is a fragile one (for example, if he is served with proceedings during a short visit to this country), it should be all the easier for him to prove that there is another clearly more appropriate forum for the

trial overseas".

Further, in *New Link Consultants Ltd v Air China* [2005] 2 HKC 260 §§65-66, DHCJ Poon referred to the above *dicta* of Lord Goff and held that "while proper regard must be paid to the fact that jurisdiction is founded as of right, it is the connecting factors that determine whether the Hong Kong court or the other forum is clearly more appropriate. Thus, if the connecting factors clearly point to the latter as the more appropriate forum for the trial, the 'as of right' point, however weighty that may be, will not tilt the balance back in favour of the Hong Kong court."

In *The Kappa Sea*, [2017] 1 Lloyd's Rep Plus 102, §35, Ng J held that :

> "… the fact that the vessel is Hong Kong-registered is irrelevant. It has no relation to the claim, it is not a material fact and does not have any bearing on the question where this action can most appropriately be tried. Also irrelevant is the fact that the plaintiffs elected to institute and serve proceedings in Hong Kong. To hold otherwise would be an official endorsement of the practice of forum-shopping since a plaintiff can without undue difficulty institute and serve proceedings in a forum of its choice and use that fact to boost the preferred forum's connection with the action. At the risk of stating the obvious, the whole point of this application is to determine whether the plaintiff's choice of forum, ie Hong Kong, is inappropriate and whether there exists another forum which is more suitable for the trial of the action in the interest of all parties and the ends of justice …"

Forum shopping

The Judge was troubled by the evidence of the terminal operator which suggested that the significantly higher tonnage limitation applicable to Hong Kong was the main driver of the decision to institute proceedings in Hong Kong. Although the Judge could understand that commercial entities were naturally driven by such consideration, the court had always disapproved of forum shopping for good reasons.

LAP and Cambridgeshire factor

It is well established that LAP is not a separate doctrine but one of the relevant factors that the court may take into account in addressing the Stage 1 question of whether an applicant for a stay has demonstrated that another jurisdiction is clearly or distinctly more appropriate than Hong Kong (*Bright Shipping Ltd v Changhong Group (HK) Ltd* [2020] HKCFA 24, §10, *per* Fok PJ). The existence of parallel proceedings is not by itself a decisive factor in favour of staying an action on the ground of FNC. However, it is part of the Stage 1 consideration for the court to evaluate the adverse impact and hardship which the parallel proceedings may have on the defendant, eg, the expenses and the risk of inconsistent findings (*Bright Shipping Ltd v Changhong Group (HK) Ltd (No 2)*, CA, [2019] 5 HKLRD 30, §§52-57).

Amongst the existing legal proceedings in South Korea, 2 of them involved the terminal operator. Neither of the 2 actions (Actions (2) and (6)) had progressed very far.

In respect of the Korean Limitation Action (Action (6)), the terminal operator had filed a protective conditional claim on 8 October 2020 when the deadline for filing claims under that action was due to expire solely to ensure that it would not be time-barred in the event that the shipowners succeeded in the application in question. Further, the terminal operator had made clear that it would only proceed in the Korean Limitation Action if it was shut out in both Hong Kong and Japan.

As to the shipowners' action against the terminal operator (Action (2)), the terminal operator had suggested that it should be stayed in favour of the Limitation Action to avoid multiple proceedings within Korea and to tie those proceedings together. Action (2) had not advanced beyond initial stages and had been adjourned pending the determination of the KMST. The shipowners' claims in Action 2 were: (a) the gantry cranes were in the wrong position; and (b) the terminal operator should have advised the Vessel of the work taking place at Todo Islet. It was common ground that

these were in the nature of counterclaims aimed at reducing liability. There was no reason why these could not be brought as a counterclaim in the legal proceedings in question in the event of refusal of the shipowners' application.

The shipowners prayed in aid the *Cambridgeshire* factor. That principle applies where there is 'very heavy litigation' in a case involving, eg, difficult scientific questions and the parties involved had already participated in a substantial part of the trial of a similar action. Thus, the legal teams and experts would have gained much learning and experience in dealing with the same or similar issues. Such advantage may be taking into account in the 'objective interest of justice' (see *The Spiliada*, 485F-486B and *Bright Shipping*, CA, §52).

The Judge agreed with the terminal operator that the *Cambridgeshire* factor had no application to this case. It was not a case of huge technical complexity, nor was it the case that any of the Korean legal proceedings was in an advanced stage.

Conclusion on Stage 1(b)
It was plain from the factors identified above that the court of South Korea was clearly or distinctly the more appropriate forum. As analysed, all the relevant considerations, eg, the location of evidence (both witnesses and documents) and applicable law, pointed to the place of alleged commission of the tort as the distinctly more appropriate forum.

The lack of connection to Hong Kong served to highlight the ersatz nature of the terminal operator's suggestion that the case in question could just as easily be tried in Hong Kong. One could accept that with the advancement of technology, a trial of these matters could be conducted in any modern city anywhere in the world. But why should the Korean witnesses and documents be dealt with by the Hong Kong court rather than the South Korea court? It was not a matter of mere convenience when, with the exception of the experts and the crew of the Vessel, all the witnesses were in Korean and the documents were largely in Korean.

As to the experts, it must be part of their job to travel to where they are needed.

The Judge was unable to accept the terminal operator's submission that the trial would likely involve little, if any, live evidence. The Judge had pointed out the involvement of third party liability. In addition, the Business Interruption claim by itself ran to US$60.85m, US$46.90m of which was made up of "Increase in Cost of Working". The Judge agreed with the shipowners that it was quite unlikely that such a claim would be resolved without proof from witnesses who would be cross-examined in detail.

For completeness, the Judge did not believe that the issue of LAP was a weighty factor in the consideration in question.

Juridical advantage and forum shopping (Stage 2)
The Judge turned to the nub of the dispute in the application in question. It was common ground that the higher tonnage limit in Hong Kong was a juridical advantage in favour of the terminal operator.

First of all, the Judge was unable to accept that the terminal operator's submission that the deprivation of such a juridical advantage would be conclusive such that a stay should be refused.

An advantage of a forum to the plaintiff will often give rise to a corresponding disadvantage to the defendant or deprive him of an equal but opposite advantage in the alternative forum (*The Spiliada*, 482D; *The Kappa Sea*, §45). The Judge certainly agreed with the shipowners that the court no more favoured claimants (be they foreign or local) than it did defendants (be they foreign or local).

The issue of lower damages abroad was addressed in *The Spiliada*, 482E-G (see also *de Dampierre v de Dampierre* [1988] 1 AC 92, 101E-F and 110B-F) :

> "The key to the solution of this problem lies, in my judgment, in the underlying fundamental principle. We have to consider where the case may be tried "suitably for the interests of all the parties and for the ends of justice." Let me consider the application of that principle in relation to advantages which the plaintiff may derive from invoking the English jurisdiction. Typical examples are: damages awarded on a higher scale; a more complete procedure of discovery; a power to award interest; a more generous limitation period. Now, as a general rule, I do not think that the court should be deterred from granting a stay of proceedings, or from exercising its discretion against granting leave under R.S.C. Ord. 11, simply because the plaintiff will be deprived of such an advantage, provided that the court is satisfied that substantial justice will be done in the available appropriate forum. …"

The shipowners put special emphasis on the *dicta* at 483B-C :

> "… Then take the scale on which damages are awarded. Suppose that two parties have been involved in a road accident in a foreign country, where both were resident, and where damages are awarded on a scale substantially lower than those awarded in this country. I do not think that an English court would, in ordinary circumstances, hesitate to stay proceedings brought by one of them against the other in this country merely because he would be deprived of a higher award of damages here."

The Judge was inclined to agree with the shipowners that the above *dicta* applied to the situation in question.

Neither the Incident nor the parties had anything to do with Hong Kong (save for the calling of a sister ship) and Hong Kong was chosen as a forum primarily on the higher tonnage limit. Whilst the Judge had no difficulty accepting the terminal operator's suggestion that the case in question was about economics with the respective insurers behind the parties, this was no licence for forum shopping.

In *The Adhiguna Meranti*, 907I-908B, it can be seen that, in dealing with the Stage 3 consideration, the Court of Appeal took the view that the deprivation of juridical disadvantage would not outweigh a case where proceedings were started in Hong Kong for little more than reason of forum shopping :

> "… If the answer to (II) is yes, a court has to balance the advantages of (I) against the disadvantages of (II), **Abidin Daver** *per* Lord Brandon at p. 419. Deprivation of one or more personal or juridical advantages will not necessarily be fatal to the applicant provided that the court is satisfied that notwithstanding such loss "substantial justice will be done in the available appropriate forum" (p.991H). The court must try to be objective (p. 991F). Proof of this, which can fairly be called the ultimate burden of persuasion, rests upon the applicant for the stay. By these means he establishes that on balance the other forum is more suitable "for the interests of all the parties and the ends of justice". This may be another way of saying that the plaintiffs' choice of forum has been shown to be so inappropriate as to deserve the pejorative description of "forum-shopping" and to be restrained accordingly, cp. Lord Reid in **The Atlantic Star** [1974] AC 436."

Stage 3

At the end of the day, there was little to speak for having the dispute resolved in Hong Kong with the exception of the deprivation of a higher tonnage limitation. There could be no serious suggestion that justice would not be done to the parties in the court of South Korea. The Judge was in no doubt that it was for the interests of all the parties and the ends of justice that the proceedings in question should be stayed notwithstanding the deprivation of juridical advantage to the terminal operator.

For completeness, the Judge agreed with the shipowners that given that the terminal operator was a South Korean entity operating its business there under the applicable legal regime, it lay ill in its mouth to complain that the tonnage limitation there had not kept up with inflation. Quite possibly,

the terminal operator had benefited from the lower Korean limit when it was called upon to pay compensation, and from the lower insurance premium which should apply in light of the Korean limit.

Disposition

In the premise, the Judge ordered that the legal proceedings in question be stayed.

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

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