



CBP Shipping News

15 August 2011

CBP activities

Federal Court

The Federal Court of Australia has ordered the valuation and sale of the *"Beluga Notification"*, which was arrested in Townsville on the application of the German mortgagee in April 2011. It is anticipated that the sale will be completed in August.

Southampton University Institute of Maritime Law short course hosted in Singapore from 15-27 May 2011

Katherine Jones, a recently appointed Senior Associate at CBP, attended this short course which is a condensed version of the three week course conducted by the Institute in the UK, and has been run by them for the past 38 years. It is widely acknowledged in the maritime legal field as being without parallel.

The lecturers from the Institute included Filippo Lorenzon, the Institute's director, Professor Charles Debattista, Professor Rob Merkin and Professor Mikis Tsimplis. The course was broken up into two main areas of Maritime Law. The first week focused on issues which are encountered on land, with the second week addressing issues which affect ships at sea.

In addressing 'land' maritime issues, the sessions focused on the international rules affecting contracts between parties, reviewing contracts (such as charter party agreements and bills of lading), commercial sales of ships, cargo documents and claims in relation to cargo and breaches of the shipping contracts.

The second week, which focussed on issues at sea, included sessions on towage, collisions at sea, salvage, wreck, insurance contracts, losses in marine insurance, marine perils and causation, pollution, passenger liability for cruise liner passengers, P&I Clubs, hull insurance, and legal procedures such as anti-suit injunctions, freezing orders and maritime liens. These areas are ones which in practice arise urgently and require swift, informed attention.

As Singapore is presently trying to market itself as the arbitration hub for maritime matters there were also some sessions regarding the arbitration process and Singapore's arbitration facilities.

The course's attendees were from a wide spectrum of experience and backgrounds. There was a mix of lawyers and industry which provided for interesting and sometimes heated discussions as to what happens in practice, as opposed to what is supposed to happen in theory.

The attendees included maritime lawyers from Singapore, Kuala Lumpur, Philippines and Hong Kong as well as representatives from the Singapore Port Authority, shipowners and P&I Clubs.

Australian Government legal developments

The Federal government plans to proceed with its reforms of Australian coastal shipping by the end of this year. These reforms are intended to boost Australia's carriage of its own exports but seem at the same time destined to make coastal shipping more expensive and restrictive. In a paper delivered to the HR Nicholls XXXIst Conference in April 2011, Grace Collier opined that the changes to the permit system, which have been foreshadowed in the Government's Discussion Paper:

"will make it difficult and commercially untenable for international ships to gain permits to perform cabotage functions. A result of these changes will be a dramatic increase in costs for consumers and the loss of jobs as industry moves to import substitution or use roads and rail as alternatives."

The author also criticised the Government's application of the *Fair Work Act* to carriers involved in coastal shipping, as being inimical to the interests of the Australian taxpayer.

New South Wales Government developments

On 15 July a major restructure of the public service in the transport area was announced by the Minister for Transport, Gladys Berejiklian and the Minister for Roads and Ports, Duncan Gay. The former Roads and Traffic Authority and NSW Maritime will cease to exist. Transport for NSW will now coordinate all transport services in NSW. An important division of Transport for NSW will be Freight and Regional Development, which is to be responsible for ensuring that freight services and facilities meet the needs of the State economy, with particular focus on regional NSW.

There will also be a new NSW Roads and Maritime Services body which will, in part, oversee harbours and waterways. No changes have been announced at this stage to the management of the principal ports: Newcastle, Port Kembla/Wollongong and Sydney. Some, in the industry, are speculating whether any changes to those organisations might be announced in the budget, due to be announced by the new Government in September.

International developments

Rotterdam Rules

Meanwhile, the Rotterdam Rules seem to have languished and sit in the too hard basket in Canberra. Attempts by maritime lawyers in Australia to galvanise the bureaucracy into action have fallen on deaf ears. At the end of last year there was an expectation amongst maritime lawyers in New York, who were assisting the State Department to progress ratification of the Rotterdam Rules, that the process would have been well underway by the second quarter of this year. We understand that the process is continuing and the Rules have widespread support but it is taking longer than anticipated. Perhaps now that the US President and Congress have resolved their budgetary difficulties they will turn their attention to more mundane matters. We can only hope that the second half of the year will see this much needed reform come to gain wider acceptance than the single ratification (but 24 signatories) that have been garnered to date.

Review of Salvage Convention

The Comite Maritime International (**CMI**) continues to carry out a review of the Salvage Convention 1989 and will be discussing whether any changes need to be made to it at its Beijing Conference scheduled for October 2012. Stuart Hetherington (a Vice President of CMI) is chairing this Review which was requested by the International Salvage Union. The International Chamber of Shipping and the International Group of P&I Clubs are highly critical of the need to reform the Convention, although the London insurance

market is supportive of the salvors. There will be further discussion of this topic at the combined meetings of the United States, Canadian and Australian and New Zealand Maritime Law Associations in Hawaii in December this year, timed to coincide with the 70th anniversary of Pearl Harbour. Stuart will be presenting a paper at that conference.

Cases

Global Process Systems Inc v Syarikat Takaful Malaysia Berhad (the "Cendor MOPU") 2011 UKSC 5.

Justice Allsop, the President of the New South Wales Court of Appeal, gave an insightful paper at a recent AILA Seminar in Sydney in which he discussed this recent decision from the UK Supreme Court (the former House of Lords). The decision involved a claim on a marine cargo policy of an oil rig which was being carried on a barge with its three legs extended some 300 feet in the air, all of which broke off during the voyage. The insurers had argued that they were excused from liability on the grounds of inherent vice. The Supreme Court rejected that defence and in so doing, as Allsop P said, "brought simplicity and clarity to the operation of inherent vice and removed the confusion between inherent vice and cargo worthiness". He did not think, as a New Zealand lawyer has claimed, that this decision has "kneecapped the inherent vice defence" available to insurers but his paper supports the legal reasoning behind the decision. Inherent vice is also, of course, a defence to a carrier under the Hague Rules (and associated liability regimes) so this decision has widespread relevance.

Court appointments

Mr A.J. Meagher SC has been appointed to the Court of Appeal in the New South Wales Supreme Court, bringing to three the number of Judges in that Court who had extensive maritime practices while at the Bar, the other two being the President of the Court, James Allsop P and Robert Macfarlan JA.

Conference

Asian Maritime Law Conference May 2011

Stuart spoke at this conference which attracted lawyers from the South East Asian region, including India, Malaysia and Indonesia. Topics debated included liner shipping, ship building contracts and the enforcement of international arbitration awards.

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