



ICLG

The International Comparative Legal Guide to:

Shipping Law 2014

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General Chapter:

1	Limitation of Liability: Recent Developments Under English Law – Ed Mills-Webb & Mark Tilley, Clyde & Co LLP	1
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Country Question and Answer Chapters:

2	Argentina	Chami - Di Menna & Associates: Diego Esteban Chami	6
3	Australia	Holman Fenwick Willan: Hazel Brewer & Nic van der Reyden	12
4	Belgium	Kegels & Co: Andre Kegels	18
5	Cameroon	Muluh & Partners Law Firm: Jude Muluh, Esq. & Fambove Rosaline	25
6	Canada	Bull, Houser & Tupper LLP: John W. Bromley	29
7	China	Shanghai Kai-Rong Law Firm: Yu-Lai Jin	34
8	Croatia	VUKIĆ & PARTNERS: Prof.dr.sc. Gordan Stanković	40
9	Cyprus	Oxford Maritime Ltd: Janet Zenonos Kuts	45
10	Denmark	Bech-Bruun: Johannes Grove Nielsen & Camilla Søgaard Madsen	50
11	Dominican Republic	Q.E.D INTERLEX CONSULTING, SRL: Luis Lucas Rodriguez	56
12	England	Clyde & Co LLP: Ed Mills-Webb	61
13	France	LEWIS & CO AARPE: Leïla Esnard & Guillaume de Bascher	66
14	Germany	LEBUHN & PUCHTA: Dr. Constantin Breitzke & Dr. Klaus Ramming	72
15	India	Mulla & Mulla & Craigie Blunt & Caroe: Shardul Thacker	78
16	Indonesia	Ali Budiardjo, Nugroho, Reksodiputro: Sahat A.M. Siahaan & Adithya Lesmana	84
17	Ireland	Campbell Johnston Clark: Helen Noble & Damien Magee	89
18	Italy	Studio Legale Turci: Pierangelo Celle & Marco Turci	95
19	Japan	L&J LAW OFFICE, LPC: Hiroshi Kimura & Hirokazu Abe	100
20	Malaysia	Messrs. SATIVALE MATHEW ARUN: Raj Sativale & Mathew Kurien	107
21	Malta	Dingli & Dingli: Dr. Tonio Grech & Dr. Fleur Delia	113
22	Netherlands	Van Steenderen Mainport Lawyers: Arnold J van Steenderen & Charlotte J van Steenderen	117
23	New Zealand	Izard Weston: John Burton & Robert Cahn	123
24	Nigeria	Bloomfield Advocates & Solicitors: Olabode Adegoke	128
25	Norway	Advokatfirma Ræder DA: Jon Andersen & Mona Lynne Eitzen	132
26	Panama	Patton, Moreno & Asvat: Khatiya Asvat Patel & Margareth J. Mosquera T.	137
27	Poland	Marek Czernis & Co. Law Office: Marek Czernis & Pawel Mickiewicz	144
28	Portugal	Armando Henriques, Ana Cristina Pimentel & Associados, Sociedade de Advogados, RL: Ana Cristina Pimentel	153
29	Puerto Rico	Jiménez, Graffam & Lausell Law Firm: William A. Graffam & Jorge F. Blasini	158
30	Singapore	Selvam LLC: Raghunath Peter Doraisamy & Andrew Lee	165
31	South Africa	ENSafrica: Michael Tucker & Tony Norton	171
32	Spain	SAN SIMÓN & DUCH: Mercedes Duch & Luis de San Simón	176
33	Sweden	MAQS Law Firm: Kawin Mårtensson & Annica Börjesson	182
34	Taiwan	Lee and Li, Attorneys-at-Law: Daniel T.H. Tsai & James Chang	187
35	Tunisia	Achour Law Firm: Abdelmonem Achour	192
36	Turkey	NSN LAW FIRM: Nazlı Selek & Ece Melike Yüce	198
37	UAE	Stephenson Harwood Middle East LLP: Rovine Chandrasekera & James Willn	204
38	USA	Bland & Partners P.L.L.C.: Matthew C. Guy & David S. Bland	210
39	Venezuela	Sabatino Pizzolante Abogados Maritimos & Comerciales: José Alfredo Sabatino Pizzolante & Iván Darío Sabatino Pizzolante	216

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Puerto Rico



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1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law/ conventions in force in relation to:

i) Collision

Puerto Rico participates in the Safety of Life at Sea Convention (SOLAS) and the International Regulations for Preventing Collisions at Sea (COLREGS), as the U.S. is signatory to both of these treaties. Furthermore, the U.S. has adopted the Uniform Inland Navigational Rules to govern internal waters. These Rules were recently revised and brought into harmony with the COLREGS, creating a great deal of uniformity between them.

Liability of collisions is based upon a finding of fault that caused or contributed to the damage incurred. Therefore, if the collision is the result of an inevitable accident, and none of the parties involved were at fault, there is no liability, and each party is responsible for his own damages. The standard of care against which fault is determined is derived from: (1) general concepts of prudent seamanship and reasonable care; (2) statutory and regulatory rules governing the movement and management of vessels and other maritime structures; and (3) recognised customs and usages. Even in the absence of a statutory violation, liability may be imposed upon a finding of negligence.

U.S. collision law recognises various types of presumptions that may affect the litigation and outcome of a collision case. Although the claimant usually has the burden of proving that negligence or unseaworthiness is the proximate cause of his damages, the Pennsylvania Rule shifts the burden of proof, including the burden of persuasion, of the causation issue to the defendant when there is: (1) proof by a preponderance of evidence of violation of a statute or regulation that imposes a mandatory duty; (2) the statute or regulation involves marine safety or navigation; and (3) the injury suffered is of a nature that the statute or regulation intended to prevent. Moreover, the Oregon Rule holds that when a vessel under its own power collides with an anchored vessel or a navigational structure, the burden of proving absence of fault or inevitable accident rests with the moving vessel. Furthermore, the Louisiana Rule states that when an unmoored, drifting vessel hits an anchored vessel or structure, the moving vessel is presumably at fault. Finally, regarding apportionment of liability between responsible parties, the U.S. Supreme Court held in *United States v. Reliable Transfer Co.*, 421 U.S. 397 (1975) that liability should be allocated among the parties proportionately to the comparative degree of their

fault, and that liability for such damages was to be allocated equally only when the parties were equally at fault or when it was not possible to fairly measure the comparative degree of their fault.

ii) Pollution

The Federal Water Pollution Control Act (Clean Water Act) is the primary federal law in the United States governing water pollution. Specifically, Section 312 of the Clean Water Act prohibits the dumping of untreated or inadequately treated sewage from vessels into the navigable waters of the United States. Also, the Marine Protection, Research and Sanctuaries Act (MPRSA), also known as the Ocean Dumping Act, prohibits the dumping of material into the ocean that would unreasonably degrade or endanger human health or the marine environment. The MPRSA requires that vessels obtain an E.P.A. permit in order to dispose of garbage materials in the ocean. Beyond U.S. jurisdiction, no permit is required to discharge solid waste. In addition, the United States implemented the International Convention for the Prevention of Pollution from Ships (MARPOL) through the adoption of the Act to Prevent Pollution from Ships (APPS). APPS imposes civil and criminal penalties for any violations of MARPOL, and any ship operating of these regulations is liable *in rem* for any fine imposed or civil penalty assessed. Moreover, the Ports and Waterways Safety Act (PWSA) authorises the United States Coast Guard (USCG) to establish vessel traffic services, including any port or place under U.S. jurisdiction or in any area covered by an international agreement. The PWSA applies to commercial ships, other than fishing vessels, weighing 300 gross tonnes or more.

Regarding oil pollution, the Oil Pollution Act of 1990 (OPA) constitutes the centrepiece of federal ship pollution statutes. OPA holds the “responsible party” for the vessel or facility from which oil is discharged or threatened to be discharged strictly liable for removal costs and damages. The Act provides three defences, specifically when the discharge of oil is caused solely by (1) an act of God, (2) act of war, or (3) an act or mission of a third party. Furthermore, OPA provides a limitation of liability for the damages and removal costs. Notwithstanding, the liability limits do not apply when there is gross negligence, wilful misconduct, or a violation of an applicable federal safety, construction or operating regulation. Finally, it is worth mentioning that the liability limits are applicable only to OPA damages, while any damages under Puerto Rican law are not limited.

iii) Salvage / general average

The general maritime law of the United States applies in Puerto Rico regarding property salvage. Under general maritime law, the elements of a salvage claim are: (1) a marine peril placing the property at risk of loss, destruction, or deterioration; (2) salvage service must be voluntarily rendered and not required by an existing

duty or by special contract; and (3) the salvage efforts must be successful, in whole or in part. In order to properly calculate the salvage award, it is important to distinguish between contract and pure salvage. Under contract salvage, the salvor is entitled to the agreed amount in exchange for using the “best endeavours” to save the maritime property. Courts will only interfere with the agreed salvage award if the contract is entered into while the vessel was in an *in extremis* situation and the compensation is grossly exorbitant or if the salvor took unfair advantage or was guilty of fraud. On the other hand, a pure or voluntary salvage requires that the court determines a just and proper award. To that effect, the court must determine the value of the property saved and the burden of proof of this value rests upon the person claiming the award. To aid their decision, the court will take into account the criteria established in Article 13 of the 1989 International Convention on Salvage, ratified by the United States in 1991.

Regarding treasure salvage, the Supreme Court of Puerto Rico has determined that a local law dealing with salvage and finds, and dating back to Book III of the 1886 Commerce Code, was controlling in determining whether the Commonwealth of Puerto Rico had title to several artifacts found in a sunken ship in the island’s local waters. The Court concluded that Article V of the Law of Ports, which was extended to the island in 1886 by Spanish Royal Decree, was still in force and, by virtue of its provisions, the Commonwealth of Puerto Rico had title to the artifacts in their territorial waters, which extend up to three marine leagues from shore. Thus, the 1886 Law of Ports superseded the federal maritime law of salvage and finds.

General average is governed by the York-Antwerp Rules which provide general average when extraordinary sacrifice or expenditure is intentionally or reasonably made to preserve from peril the property involved in a common maritime adventure. This is limited to those damages and expenses that are the direct consequence of the general average act in accordance with the general maritime law.

iv) Wreck removal

The Wreck Act imposes upon the owner of a wrecked or sunk vessel a strict duty to mark the vessel as soon as possible with adequate day and nighttime warnings. Moreover, the owner has the duty to commence the immediate removal of the vessel from navigable waters if it represents a hazard to navigation. If not removed, the owner may be liable for criminal and civil penalties for violations to Section 409 of the Wreck Act. Moreover, an owner who is guilty of failing to remove or mark the wrecked vessel will be liable for any damages caused by collisions with the vessel. This liability is based on fault and general principles of maritime tort, although any violation of the Wreck Act will bring into play the Pennsylvania Rule presumption.

v) Limitation of liability

Limitation of liability in Puerto Rico is governed by the U.S. Limitation of Shipowners’ Liability Act (Limitation Act) which provides for limitation by the owner of any American or foreign vessel. The Limitation Act provides that a shipowner may limit liability by showing that the fault causing the loss occurred without his “privity or knowledge”. This involves a two-step process to determine (1) what acts of negligence or seaworthiness caused the casualty, and (2) whether the shipowner had knowledge or privity of these acts. Limitation extends both *in personam* to the shipowner as well as *in rem*. This procedure is controlled by the Limitation Act itself and Supplemental Rule F for Admiralty or Maritime Claims.

A limitation action may be brought as a defence to an action seeking damages or as an independent complaint under Admiralty

Jurisdiction. The complaint must be filed within six months after the owner has received written notice of a claim. It must be emphasised that the six-month notice requirement is strictly construed. Furthermore, the shipowner must post security in the amount or value of his interest in the vessel and pending freight. In the complaint, the shipowner may plead for exoneration or limitation as an alternative. Finally, once the shipowner submits to the jurisdiction of the court by filing a limitation complaint, it will not be allowed later to obtain a voluntary dismissal of the petition.

vi) The limitation fund

Under Supplemental Rule F, once the shipowner files the limitation claim and posts appropriate security, the Court will issue an injunction to stay the proceedings against the owner and allow a period during which all claimants may file their respective claims in the limitation action. If the shipowner is not exonerated but found liable, claimants will be paid on a *pro rata* basis out of the limitation fund, which is equal to the value of the vessel at the conclusion of the voyage, after the collision or casualty, and the freight pending, meaning the total earnings of the vessel for the voyage. If the casualty involves personal injury or death claimants, the shipowner must constitute an additional limitation fund of up to \$420 per gross ton of the vessel if the initial fund is inadequate to pay personal injury losses. The *pro rata* distribution of the fund may be modified by the Court, taking into account two guiding principles: maritime lien priorities and equitable subordination. Generally speaking, accepted forms of security includes P&I LOU, bank guarantees, cash money, surety bond from a court approved Surety Company, or any other security agreed upon by the parties and approved by the court.

1.2 What are the authorities’ powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

The USCG has the statutory authority to administer and enforce laws and regulations protecting safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States. Marine casualties must be reported within five days to the USCG which will proceed to conduct an investigation that could result in administrative fines, civil penalties, and/or criminal charges. Nonetheless, major marine casualties are referred to the National Transportation Safety Board (NTSB) for a formal investigation of the facts, circumstances, and probable cause of the casualty. To qualify as a major marine casualty, the casualty must involve (1) the loss of six or more lives, (2) the loss of a vessel weighing 100 or more gross tonnes, (3) property damage of at least \$500,000, or (4) a serious threat to lives, property, or the environment by hazardous materials. Other agencies, such as the U.S. Chemical Safety Board, may be called to investigate a marine casualty.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

The United States incorporated the Hague Rules into domestic law with the enactment of the Carriage of Goods by Sea Act (COGSA). COGSA applies to all contracts for the carriage of goods, as evidenced by a bill of lading, by sea to or from ports of the United States in foreign trade. Notwithstanding, COGSA can also apply to transport between the ports of the United States when the bill of lading expressly provides for such coverage. If not, any shipment

between ports of the United States will be governed by the Harter Act. Moreover, COGSA is limited to the period when the goods are loaded on to the time when they are discharged from the ship, unless its application is extended by contract. If not extended, any period before loading or after discharge is governed by the Harter Act.

Regardless of whether COGSA or the Harter Act applies in a specific scenario, these two statutes are virtually identical, except in three respects. First, under the Harter Act, a carrier is automatically liable for failure to exercise due diligence to provide a seaworthy ship regardless if this is the cause of the loss while COGSA requires that the alleged unseaworthiness must be the cause of the loss. Second, COGSA has a statute of limitations of one (1) year to bring the cargo action while the Harter Act has none and is governed by the doctrine of laches. Finally, the Harter Act does not provide a limit of liability for damage or loss of cargo. On the other hand, COGSA provides a liability limit of five hundred dollars (\$500.00) per package unless an agreement incorporated into the bill of lading provides for a greater amount.

2.2 What are the key principles applicable to cargo claims brought against the carrier?

A shipper can establish a carrier's liability for loss or damage to cargo by proving that (1) the cargo was delivered to the carrier in good condition, and (2) it was discharged by the carrier in a damaged condition. Thus, a plaintiff need not prove that a defendant was at fault, or explain the direct cause of the damage. Regarding the first element, a clean bill of lading constitutes *prima facie* evidence of the receipt by the carrier of the goods in good condition or as described. If the damage is not externally observable by the carrier because the goods are in packages, the shipper's *prima facie* case relates only to the external condition of the cargo. Regarding the second element, the shipper must introduce proof that the cargo was in a damaged condition on delivery or discharge. If it appears just as likely as not that the damage occurred after discharge as before, the carrier prevails. Moreover, this second element can be affected by COGSA provisions that require the consignee to give written notice of any loss or damage to the carrier upon receipt of the goods.

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

Section 4(6) of COGSA imposes strict liability against the shipper when the carrier had no actual or constructive knowledge that the goods were "of an inflammable, explosive or dangerous nature". To prevail on a dangerous cargo claim, the carrier must prove that the cargo posed a danger and that the carrier could not reasonably be expected to know, and that the shipper had a duty to warn and is liable for any breach of that duty. Furthermore, to establish proof of causation, the carrier must prove that (1) the dangerous character of the cargo caused harm, and (2) that the warning, if given, would have somehow prevented the harm. Moreover, under Section 4(6) the shipper is liable for any direct or indirect damages caused by dangerous goods, and the carrier is authorised to land or destroy the goods without liability except to general average, if any.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

Passenger claims are generally governed by U.S. general maritime law which requires the exercise of reasonable care by the shipowner. To establish a maritime negligence cause of action, the plaintiff must prove: (1) the existence of a duty owed by the shipowner or operator; (2) breach of the duty; (3) proximate causation; and (4) injury and damages. The plaintiff may establish a duty of care derived from three basic sources: (1) duly enacted laws, regulations, and rules; (2) custom; and (3) the dictates of reasonableness and prudence. Furthermore, proof of negligence ordinarily requires proof that the ship operator had actual or constructive notice of the condition causing the injury. There is a duty to warn passengers only of dangers that are not apparent and obvious. Moreover, the doctrine of vicarious liability, comparative fault and contributory negligence are fully applicable to passenger claims. Although maritime tort actions are generally subject to a three-year statute of limitation, 46 U.S.C.A. Section 30508(b) provides that, in the case of the carriage of passengers, shipowners may limit the period for filing suit to one year from the date of the personal injury or death.

Choice of law for passenger wrongful death claims will primarily depend on where the fatal injury occurred, regardless of the place of death. The Death on the High Seas Act (DOHSA) provides the exclusive remedy for the death of any person "caused by the wrongful act, neglect or default occurring on the high seas beyond three (3) nautical miles from the shore of the United States". On the other hand, if the fatal injury occurred within three nautical miles of the shore of the United States or in state territorial waters, a general maritime wrongful death cause of action, also known as a Moragne action, is available "for deaths caused by violation of maritime duties". The statute of limitations for both actions is three years. The main difference between these two causes of action relate to their preemptive effect and recoverable damages. While DOHSA preempts any other cause of action, a Moragne action can be supplemented by state law remedies. In Puerto Rico, wrongful death and survival actions are governed by the general tort action established in Article 1802 of the Puerto Rico Civil Code. This state action has a one-year statute of limitations.

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

A person who seeks to vindicate a maritime claim may, depending on the circumstances, have several options. If the claim is based on the personal liability of the person, the plaintiff may file an *in personam* action against that person. Alternatively, the plaintiff may bring an *in rem* action directly against the vessel in federal court. *In rem* actions commence with the arrest of the vessel, which is only authorised to enforce a maritime lien on the property or as otherwise permitted by statute.

Most maritime liens arise by strict operation of the general maritime law and courts will very rarely recognise or create new forms of liens. Certain statutes, such as the Commercial Instruments and the

Maritime Liens Act, also provide maritime liens. The characteristic maritime lien as recognised under U.S. law are the following: wages of the ship's master and crew; salvage operations; general average claims; claims for breach of charter party; preferred ship mortgages; claims under maritime contracts for "necessaries" and such; claims for maritime torts; claims or damage or loss of cargo; claims by the carrier of cargo for unpaid freight and demurrage; and pollution claims. A significant exception is a claim arising under the Jones Act for seamen damages, which may be brought only *in personam*.

The procedure to obtain security under an *in personam* action is governed by Supplemental Rule B. Conversely, *in rem* actions follow the procedure established in Rule C and E of the Supplemental Rules.

4.2 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

Supplemental Rule B provides for commencing an *in personam* maritime action in federal court by authorising the attachment or garnishment of the defendant's property. Rule B is available only where the plaintiff has asserted a maritime or admiralty claim. The property that the plaintiff seeks to attach or garnish must be within the geographic boundaries of the federal judicial district wherein the action is brought. Attachment and garnishment are permissible under the rule only "if the defendant shall not be found within the district". The plaintiff must submit an affidavit to the effect that the defendant cannot be found within the district where the suit is brought. Usually the plaintiff will set forth the steps taken supporting the allegation that the defendant is not present within the district.

Alternatively, to commence an *in rem* action, a plaintiff must file a complaint that describes the property subject to the action and states that such property is in or will be in the court's judicial district during the pendency of the action. If the property is not within the district where the action is commenced and there is no immediate prospect of it entering the district, the complaint will be dismissed. The complaint and supporting documentation must be reviewed by a court, and, if the conditions for an action *in rem* appear to exist, the court shall issue an order authorising a warrant for the arrest of the property. Additional procedural rules pertaining to actions *in rem* are contained in Supplemental Rule E, including requirements that the plaintiff post security for costs and expenses, and the vessel owner's right to a prompt judicial hearing and the right to post a bond to secure the release of the property.

Supplemental Rule B attachment differs from Supplemental Rule C arrest in several respects. First, Rule C arrest may be used even when the defendant can be found within the district. Second, to invoke Rule C, the property arrested must be related to the plaintiff's maritime claim, while Rule B attachment applies to any property of the defendant that is present within the district, even if it is totally unrelated to the events giving rise to the claim and even if it has no maritime character. Third, Rule C proceedings are predicated on the liability of the property itself while Rule B attachment is predicated on the personal liability of the defendant. Finally, the judicial sale of property to satisfy a judgment *in rem* scrapes all liens from the vessel.

4.3 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

The nature and amount of security required to release property that has been seized or to stay execution of process prior to seizure may be

fixed by agreement of the parties. Where the parties fail to agree, the court will fix the security at an amount sufficient to cover "the plaintiff's claim fairly stated with accrued interest and costs". This amount of security may not exceed twice the amount of the plaintiff's claim or the value of the property as determined by appraisal.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the reservation of physical evidence, examination of witnesses or pre-action disclosure?

Regardless of whether a maritime claim is brought in Federal Court or in Puerto Rico Commonwealth Court, evidence can be obtained through the discovery procedure established in the Federal Rules of Civil Procedure or in the very similar Puerto Rico Rules of Civil Procedure. Before any action is filed, both set of rules permits any potential party to file a petition asking the court for an order to authorise the deposition of any person in order to perpetuate their testimony. Under certain circumstances, the court may authorise the deposition if convinced that it will prevent a delay or failure of justice. The deposition will be admissible in any later filed action in federal court or state court concerning the same subject matter. To facilitate fact-finding and recompilation of evidence, it is advisable to assist in making the required and appropriate notification to the USCG, and participate in procuring the Master's Note of Protest regarding the cause of the casualty. Moreover, surveyors should be appointed to evaluate damages, and begin the process of all evidence, including logs, vessel records, and statements of witnesses.

5.2 What are the general disclosure obligations in court proceedings?

Federal and Puerto Rico courts allow for discovery regarding any non-privileged matter that is relevant to any party's claim or defense. Moreover, discovery not only includes potentially relevant information, but also comprises any information that could potentially lead to the discovery of relevant information. Under Federal Rules, without any need for specific discovery requests, parties must provide initial disclosures of certain information in their possession, including a list and contact information of any person with potential information, copy or description of documents that may be used to support claims or defenses, computation of each category of damages claimed and any applicable insurance agreement.

Parties may also engage in discovery requests, including depositions, interrogatories to parties, request for production of documents, request to enter and inspect land or other property, physical and mental examinations, and requests for admissions. It is important to emphasise that any expert witness a party intends to present at trial is subject to deposition and expert reports for trial are subject to the production of documents. Parties may also present a motion to the court requesting an order to compel disclosure or discovery if any party resists production of any document or witness. On the other hand, parties may move for a protective order and the court may, for good cause, issue an order to protect any party from annoyance, embarrassment, oppression, or undue burden or expense. Protective orders may also be requested to preserve evidence when the movant believes that evidence is being destroyed.

6 Procedure

6.1 Describe the typical procedure and time-scale applicable to maritime claims conducted through:

- i) Federal Courts and Puerto Rico Commonwealth Court
- Maritime claims under U.S. Admiralty jurisdiction are usually the province of the U.S. Federal Courts. Notwithstanding, 28 U.S.C. § 1333 provides what is commonly known as the *Saving to Suitors Clause*, which allows the plaintiff to pursue U.S. maritime law remedies in Puerto Rico Commonwealth Court. Nonetheless, there are some limitations on the remedies available in Puerto Rico Commonwealth Court, such as the *in rem* action which may be only brought in an admiralty action in federal court.
- Proceedings in federal and state court follow the same basic procedure. The action commences with the filing of a complaint in which the plaintiff alleges a claim for relief, including the relevant facts, a plain statement of the claim showing that the pleader is entitled to relief, and a demand for the relief(s) sought. After any counterclaims, cross claims, or third party complaints are filed and answered, the parties will engage in an extensive and broad discovery procedure. Even before answering the complaint, defendants may present a motion to dismiss the claim on certain grounds, such as lack of personal or subject-matter jurisdiction, insufficient process or service of process, or failure to state a claim upon which relief can be granted. Before trial, a party may also present a motion for summary judgment and the court shall if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Trial procedures are mostly governed by the Federal or Puerto Rico Rules of Evidence. There is no right to jury trial in civil actions in Puerto Rico Commonwealth Court. On the other hand, no right to jury trial exists under the admiralty jurisdiction in federal court, unless one of the parties alleges another jurisdictional base that provides for jury trial.
- After the trial judge issues a judgment in the Puerto Rico Federal District Court, the parties may appeal to the First Circuit Court of Appeals in Boston, and can further request review with the U.S. Supreme Court. In the Puerto Rico Commonwealth Court, parties can appeal to the Puerto Rico Appeals Court and further request review from the Puerto Rico Supreme Court. If there are any constitutional or federal question issues, parties may request review from the Puerto Rico Supreme Court's decision directly to the U.S. Supreme Court.
- ii) Arbitration (including specialist arbitral bodies)
- Arbitration is an increasingly favoured way of settling disputes at the federal level. Similarly, the Puerto Rico Supreme Court held that there is a strong public policy in favour of arbitration and that judicial abstention is the best policy when confronted by a reasonable arbitration determination. Maritime arbitration is generally governed by the provisions of the Federal Arbitration Act. Accordingly, when confronted by arbitration clauses, courts will enforce choice of forum and choice of law clauses contractually agreed by the parties dealing at arm's length and in good faith. It is worth noting that Section 1 of the Federal Arbitration Act specifically exempts from arbitration "contracts of employment of seamen...or any other class of workers engaged in foreign or interstate commerce".
- iii) Mediation / Alternative Dispute Resolution
- Federal District Judges may mandate the parties to participate in settlement conferences before a Magistrate Judge. If no settlement is reached, the case remains on the litigation track. The parties' formal discovery, disclosure, and motion practice rights are fully preserved. Moreover, the

Puerto Rico Judicial Branch sponsors a Mediation Conflict Office that can be used by potential parties even before the action is commenced.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

Foreign judgments can be recognised and enforced under the *Exequatur* procedure established in Rule 55 of the Puerto Rico Rules of Civil Procedure. To commence the procedure, a petition signed by all affected persons or a complaint must be presented to the court accompanied by a certified, legible, and complete copy of the foreign judgment and a true and correct Spanish translation of the foreign judgment, if it was not originally issued in Spanish or English. Once all procedural requirements are met and all interested parties are notified, the court will assess whether the foreign judgment:

1. was issued by a court with personal and subject-matter jurisdiction;
2. has been issued by a competent court;
3. the issuing court observed the basic principles of due process;
4. the judicial system under which the judgment was issued is recognised for fairness and the absence of prejudice against foreign persons;
5. it is not contrary to public policy;
6. it is not contrary to the basic principles of justice; and
7. it was not obtained by fraud.

If the court is satisfied as to the above requirements, the foreign judgment will become a local judgment that is enforceable under local law and entitled to full faith and credit in other U.S. courts. Regarding foreign judgments between nationally diverse parties, the Hague Conventions on the Recognition and Enforcement of Foreign Judgments is applicable.

Conversely, federal courts will recognise and enforce a foreign judgment following the guidelines of the Uniform Foreign Money-Judgments and Recognition Act (UFMJRA) which codify the criteria set forth by the U.S. Supreme Court in *Hilton v. Guyot*, 159 U.S. 113 (1895).

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

The United States has ratified the provisions of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards and implemented them into the Federal Arbitration Act (Act). The Convention preempts Puerto Rican law in the enforcement of foreign arbitral awards. The initial step in enforcing an arbitration decision is to apply to the court for an order confirming the award under Section 9 of the Federal Arbitration Act. The court can modify or correct the award on the grounds stated in Section 11 of said Act. Furthermore, Section 10 grants the court authority to vacate an arbitration award on very limited grounds. Judicial review of arbitration determinations is very limited and courts will not engage in a review of the merits or a review of the record of the arbitration procedures for errors of fact and law. Finally, upon confirming an arbitration award, the court may enter judgment under Section 13 of the Act. Although the

award is *in personam*, judgment may be entered *in rem* if the claim gives rise to a maritime lien and there is jurisdiction over a vessel.

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

The Treaty of Paris of 1898 ended the Hispano-American War and transferred the territory of Puerto Rico from Spain to the United States (U.S.). Since then, Puerto Rico constitutes a territory of the U.S. subject to the treaties, laws and regulations of the Federal Government of the United States. In 1917, the U.S. Congress approved an Organic Act to govern the relations between the U.S. government and Puerto Rico. The Act transferred to the Puerto Rico Government sovereignty over its territorial waters and conferred upon them the authority to legislate in these areas. These provisions from the Organic Act, as interpreted by the First Circuit Court of Appeals and the Puerto Rico Supreme Court, state that federal maritime law is applicable to maritime jurisdiction disputes in Puerto Rico as long as the Legislature of Puerto Rico has not legislated in that specific area, in which case local law shall prevail, unless the U.S. Congress expressly provides otherwise. Thus, although for the most part federal maritime law governs maritime shipping issues in Puerto Rico, there are certain exceptions, such as treasure salvage and seamen remedies, where Puerto Rico law prevails over U.S. law.

Amongst the various jurisdictions in the United States, Puerto Rico is unique in the treatment afforded to the rights of seamen. Under U.S. general maritime law, seamen injured in the course and scope of their employment are entitled to payment of maintenance and cure. Furthermore, the U.S. has enacted the Marine Merchants Act of 1920, more commonly known as the Jones Act, 46 U.S.C. § 30104, to provide injured seamen with a cause of action for unseaworthiness and allow them to recover damages from the

employer. In the case of longshoremen, the Longshore and Harbor Workers' Compensation Act, 46 U.S.C. §30104 (Longshore Act), provides compensation in lieu of tort damages for this class of workers. Notwithstanding, because of Puerto Rico's unique relation to the U.S., the First Circuit Court of Appeals and the Puerto Rico Supreme Court have determined that the remedies available under the general maritime law, the Jones Act and the Longshore Act have been displaced by the Puerto Rico Workmen's Accident Compensation Act (PRWACA). There are four factors that need to be met for PRWACA employer's immunity to apply:

- (1) it must be determined that the employer is authorised to do business in Puerto Rico;
- (2) the employer must have insured its employees under PRWACA;
- (3) the accident must have occurred within the territorial waters of Puerto Rico; and
- (4) the injured seaman must have been a resident of Puerto Rico at the time of the accident.

The First Circuit Court of Appeals in *Perez de la Cruz v. Crowley Towing & Transp. Co.*, 807 F.2d 1807 (1st Cir. 1986) determined that Puerto Rico's territorial waters extend to three marine leagues or approximately 10.38 miles from the coastline of Puerto Rico. Therefore, if all the above mentioned factors are met, PRWACA constitutes the exclusive remedy available to injured seamen or longshoremen in Puerto Rico.

Also, it is worth noting that the cabotage provisions of the Jones Act are applicable to Puerto Rico. Said provisions require that all goods transported by water between U.S. ports be carried in U.S. flag ships, built in the United States, owned by U.S. citizens, and crewed at least three quarters by U.S. citizens or legal permanent residents.

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The Jiménez, Graffam & Lausell Law Firm was founded in 1968 by Nicolás Jiménez and José Antonio Fusté with a concentration in admiralty and maritime law practice.

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