

A conference presented by the IBA Maritime and Transport Law Committee

# IBA Maritime and Transport Law Committee Conference

12 –14 June 2024, Le Méridien, Hamburg, Germany



the global voice of  
the legal profession\*



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## Hot topics in shipping, transport and logistics



Sarah Gahlen  
Lebuhn &  
Puchta



Diego de San  
Simón  
San Simón & Duch



Amitava (Raja)  
Majumdar  
Bose & Mitra & Co



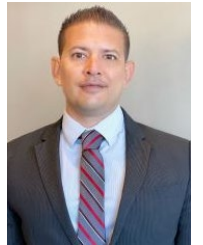
Ricardo Maldonado  
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Claire Messer  
Hill Dickinson



Juan Ilich Pérez García  
Samsung

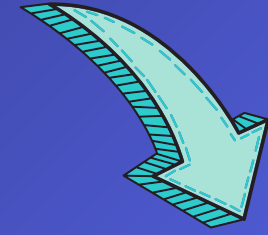
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**SAMSUNG SDS**

# Hot Topics – Shipping, Transport, Logistics

JUAN ILICH PEREZ GARCIA

# USMCA



1. Taxes – Bill of Lading
2. Different Value Added Taxes
  - a) Mexican Border
  - b) Mexico
  - c) C) US
3. Insurance Policies
4. Cargo coverage
5. Illegal migration – Border issues



## FREE TRADE BETWEEN CANADA, US AND MEXICO

1. Enhanced security – CTPAT
2. Secure... Sustainable trade
3. Supply Chain Assessment
4. Labor Rights Violations – Outsourcing prohibition



“Promote safe and fair trade between the three countries... Over 90% of Mexico exports to US/CAN”





# **VENEZUELA. USA / EU SANCTIONS AND CURRENT MARITIME TRADE LANDSCAPE**

**Ricardo Maldonado**

# The Sanctions. General Landscape

- **Executive Order 13.850.**
- **Special Designated Nationals. Individuals and the Venezuelan Public Administration**
- **Forbidden Activities. Oil, Gas, Gold.**
- **OFAC General and Particular Licenses.**



# Maritime Insurance and International Sanctions

- HULL AND MACHINERY PERSPECTIVE
- P&I PERSPECTIVE
- Challenge to cover risks in and from Venezuela
- The “Jack Sparrow” syndrome and ships arrested and / or detained in Venezuela.
- John Doe cases.



# Enforcement of awards in Venezuela

- **ARBITRATION AND FOREIGN AWARDS**
- **International Law and execution of awards**
- **International Sanctions**
- **Venezuela. Member State of the New York Convention.**



# THE PETROSAUDI CASE.

**PARTIES:** THE PETROSAUDI OIL SERVICES LTD. V. PDVSA SERVICIOS SA.  
**ARBITRAL COURT:** ICC PARIS UNDER THE RULES OF UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL).

**SUMMARY:** IN 2009, PDVSA AND PETROSAUDI, A COMPANY OF EXPLORATION AND PRODUCTION OF OIL, SIGNED A CONTRACT OF SERVICES FOR THE GRAN MARISCAL SUCRE PROJECT. THE CONTRACT PROVIDED THAT IN CASE OF DISPUTE, PDVSA MUST PAY THE OWNED AMOUNT BEFORE INITIATING THE ARBITRATION PROCESS.

**DECISIÓN:** ON JULY 17 2020 IT WAS ORDERED TO PDVSA SERVICIOS S.A. TO PAY PETROSAUDI OIL SERVICES (VENEZUELA) LTD LA AN AMOUNT OF US\$379,843,732.60 PLUS INTERESTS..





# THE CRISTALLEX CASE

**PARTES:** CRISTALLEX V. PDVSA.

**SUMMARY:** CRISTALLEX SEEKS TO SATISFY ITS CREDITS AGAINST VENEZUELA FOR USD \$1.400 MILLIONS THROUGH THE ASSETS OF THE STATE-OWNED COMPANY PDVSA. CRISTALLEX ALLEGES THAT VENEZUELA USES THE PROPERTY OF PDVSA AS ITS OWN (ALTER EGO THEORY)

**ALTER EGO THEORY:** THE THEORY ALLEGED IN THE CASE AND DEFENDED BY CRISTALLEX PROVIDES THAT “ THE CORPORATE ENTITY (PDVSA) IS CONTROLLED BY ITS OWNER (THE VENEZUELAN STATE) THAT A PRINCIPAL-AGENT RELATION IS CREATED. IF CRISTALLEX CAN PROOVE THAT THE RELATION BETWEEN PDVSA AND VENEZUELA MEETS THAT REQUIREMENT, THE COURT WOULD DECIDE THAT PDVSA IS THE ALTER EGO OF VENEZUELA AND WOULD MAKE THAT THE ASSETS OF PDVSA, SPECIFICALLY IT’S INTEREST IN PDV HOLDINGS, MAY BE SUBJECT TO SEIZE TO SAFISTY THE DECISIÓN OF CRISTALLEX AGAINST THE REPUBLIC”



# CASE STUDY. CRISTALLEX CASE

DECISION: AFTER CRISTALLEX OBTAINED THE AWARD ON ITS FAVOR, THE COURT OF APPEALS OF THE THIRD CIRCUIT OF PHILADELPHIA ALLOWED THE SEIZE OF CITGO ASSETS (PDVSA SUBSIDIARY) BASED ON THE ALTER EGO THEORY.



Thanks!



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# Hot topics in shipping, transport and logistics: Australia & Asia Pacific

**Alexander McKinnon**

Barrister-at-law, 16 Quay Central Chambers, Brisbane, Australia

## **Overview**

- 1. Australia – COVID-19 claims against cruise lines**
- 2. Australia – application of Art 3(8) of the Hague rules**
- 3. Singapore – rule 9(a) of the COLREGS arising out of collision between two vessels**

# COVID-19 claims against cruise lines



- **Mr and Mrs Karpik** – representatives in class action against owner and operators of the *Ruby Princess*
- ***Karpik v Carnival plc (The Ruby Princess) (Initial Trial) [2023] FCA 1280*** – breach established (damages award appealed)
- ***Karpik v Carnival plc [2023] HCA 39*** – group members who contracted under the US terms and conditions

# Facts

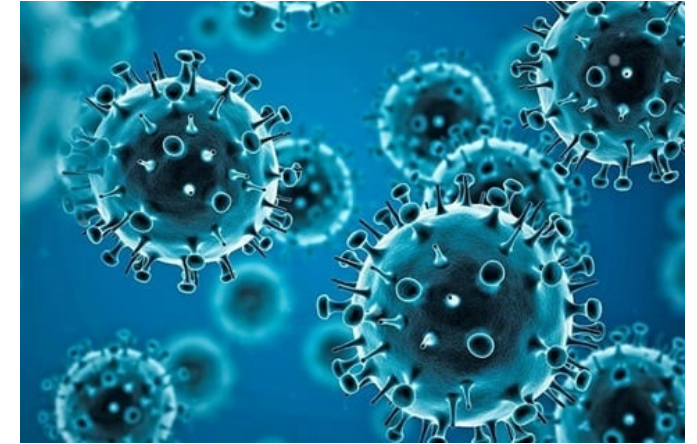
1. *Ruby Princess* - 290m, 113,561mt, launched in 2008, 17 decks and flagged in Bermuda
2. Respondents are the time-charterer, Carnival plc (UK incorporated with business in Australia) and the owner/operator, Princess Cruise Lines Ltd (Bermudan)
3. Mr & Mrs Karpik aged 72 and 69
4. Purchased 13-day cruise to ports in NZ, returning to Sydney
5. Casts off on 8 March 2020 with about 2,671 pax and 1,146 crew
6. Returned due to government orders on 15 March 2020





# Coronavirus as at 8 March 2020...

- Over 100,000 confirmed cases globally; in Australia, 70 cases including 2 deaths
- Cases of coronavirus on board *Diamond Princess* (Japan, February 2020, over 600 people tested positive; 1 became first Australian to die) and *Grand Princess* (US, February 2020, a number of positive tests and social events cancelled on board)
- 11 March 2020 - WHO declares a pandemic
- *Ruby Princess* voyage RU2006 (prior to Karpik's voyage RU2007) - 1,100 of approx. 1,200 crew remain. 8.8% pax on RU2006 report for testing.
- Various guidance available e.g. CDC "Coronavirus Disease 2019 Guidance for Ships" ([2023] FCA 1280 at [83])



# Karpik's claim

## s 61

### Australian Consumer Law

- Guarantee that services provided would be reasonable fit for the intended purposes of a safe, relaxing and pleasurable holiday

## s 18

### Australian Consumer Law

- Misleading or deceptive conduct
- Promotional and marketing material stated "*come back new*"; email reiterated commitment to safety; pax invited to board ship without any accompanying health warning

## s 60 ACL/negligence

- Guarantee that services are rendered with due care and skill
- Duty of care to take reasonable precautions to protect pax from illness and from suffering mental harm on account of partner's illness

# ***Karpik v Carnival plc (The Ruby Princess)* [2023] FCA 1280–**

## **Key issues**

1. Were Mr and Mrs Karpik infected with coronavirus on board the *Ruby Princess*?
2. Did State legislation apply in federal jurisdiction? E.g. s 16 CLA (NSW) limits damages for non-economic loss unless the severity of the non-economic loss is at least 15% of the most extreme case
3. Were the statutory and common law duties breached?
4. Causation
5. Damages

# Health and safety on board

- Stewart J at [470]:



“Something should be said about safety in particular. **There are two aspects to a passenger’s implied purpose in booking a cruise holiday that they have a “safe” cruise, or that they wish for a “safe” result — what can conveniently be referred to as navigational and operational safety and health safety. It is the latter that is relevant to this case.** The fact that the services to be provided included certain health services, at least in respect of health conditions materialising on the cruise, and that the services included those necessary to protect the passengers’ health, shows that health safety is tied up in the services and is not some extraneous matter. **Further, a ship has certain characteristics that make it inevitable that passengers must look to those who operate the ship to be responsible for protecting and maintaining their health.** Passengers and crew are to a significant extent captive on the ship, and their daily needs including those concerning their health and the possible transmission of disease — such as food preparation, cleaning, sanitation and waste disposal — are not within their control. In putting their health safety, like their navigational and operational safety, in the hands of the cruise line — as the cruise line acknowledges in its pre-cruise communications — they impliedly make known that part of their purpose in acquiring the services, and part of the result that they wish to achieve, is that the cruise be safe. I will return to this aspect when discussing the duty of care in relation to the negligence claim, but it has some limited application here too.”

# Australia - Carmichael Rail Network Pty Ltd v BBC Chartering Carriers GmbH & Co KG [2024] HCA 4



# **Australia - *Carmichael Rail Network Pty Ltd v BBC Chartering Carriers GmbH & Co KG* [2024] HCA 4**

[15] The full text of Art 3(8) of the Australian Hague Rules provides that:

Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connexion with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

# **Australia - *Carmichael Rail Network Pty Ltd v BBC Chartering Carriers GmbH & Co KG* [2024] HCA 4**

Australia - Art 3(2): the US approach may be preferable (carrier shall load and shall do it properly and carefully - non-delegable responsibility)

UK - Art 3(2): the carrier “shall do whatever loading [the carrier] does properly and carefully”

# Singapore – *The “Navigator Aries”* [2023] SGCA 20





# Singapore – *The “Navigator Aries”* [2023] SGCA 20

56 Culpability is concerned with the nature and quality of each ship’s faults, and not the number of faults as such. For instance, breaches of obligations under the COLREGS will usually be regarded as seriously culpable (*The Dream Star* at [126], citing Teare J in *The “Nordlake” and The “Seaeagle”* [2016] 1 Lloyd’s Rep 656 (*“The Nordlake”*) at [149]). As a general matter, greater fault would tend to lie with:

- (a) the vessel which had created a situation of difficulty or danger, as opposed to the vessel which had failed to react properly to such a situation (*The Dream Star* at [111], [114] and [126]);
- (b) deliberate acts or omissions, as opposed to faults comprising only omissions (*The Dream Star* at [126]); and
- (c) errors of navigation committed by an officer who has had time to think (*The “Maloja II”* [1993] 1 Lloyd’s Rep 48 at 50–51; *The Owners and/or Demise Charterers of the Ship or Vessel “MCC Jakarta” v The Owners and/or Demise Charterers of the Ship or Vessel “Xin Nan Tai 77”* [2017] HKCFI 981 at [71]).

57 However, only *causative* fault is relevant: the focus is not on moral blame but the “comparative appreciation of the degree in which the respective faults of the vessels have contributed to the result of the collision” (*The Dream Star* at [125]).

58 Causative potency is in turn concerned with two aspects of causation: (a) the fault’s extent of contribution to the collision; and (b) the fault’s extent of contribution to the damage resulting from the casualty (*The Dream Star* at [126]).

# Singapore – *The “Navigator Aries”* [2023] SGCA 20

122 The overarching principles applicable to interpreting the COLREGS were set out by the UK Supreme Court in *Evergreen Marine (UK) Limited v Nautical Challenge Ltd* [2021] UKSC 6 at [39]–[41]:

39. Such general principles [governing the construction of an international convention like the Collision Regulations] include the general rule of interpretation set out in article 31.1 of the Vienna Convention on the Law of Treaties 1969, which provides that:

‘1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.’

40. *The object and purpose of the 1972 Convention is to promote safe navigation and specifically the prevention of collisions at sea. As stated by Sheen J in The Maloja II* [1993] 1 Lloyd’s Rep 48, 50-51:

*‘The structure of the Collision Regulations is designed to ensure that, wherever 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 taken at a time when the responsible officer does not have to make a quick decision or a decision based on inadequate information. Those manoeuvres should be such as to be readily apparent to the other ship.’*

41. The international character of the Collision Regulations and the safety of navigation mean that *they must be capable of being understood and applied by mariners of all nationalities, of all types (professional and amateur), in a wide range of vessels and in worldwide waters. They should accordingly be interpreted in a practical manner so as to provide clear and readily ascertainable navigational rules capable of application by all mariners. They are meant to provide international ‘rules of the road’.*

[emphasis added]

**Alexander McKinnon, Barrister-at-law**



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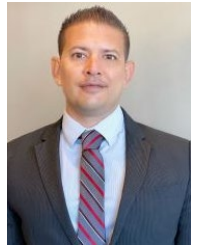
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