

Shipping & International Trade

Apportionment of Liability for Maritime Collisions

Introduction

In *Owner of the vessel "NAVIGATOR ARIES" v Owner of the vessel "LEO PERDANA"* [2023] SGCA 20, the Singapore Court of Appeal had the task of determining the apportionment of liability in a collision between two vessels. The decision involved an assessment of an intricate set of facts and how the collision aligned with international navigation rules.

Disputes involving ship collisions are often challenging, both for litigants and for courts. In terms of evidence, they require the consolidation of technical evidence, factual accounts and expert reports. This then has to be applied in the context of the relevant legislation, regulations and international conventions.

However, the Singapore courts have demonstrated that they are fully equipped at both the trial and appellate level to decide on collision cases. They have established a body of case law that covers an array of complex issues, including the allocation of collision liability and – as shown in this case - incidents involving manoeuvring in a narrow channel.

In this decision, two vessels collided in the Surabaya Strait. The Court of Appeal ("**Court**") determined that the immediate cause of the collision was port sheer due to the "bow cushion effect" experienced by one of the vessels. Following from this, the Court had to determine the proper apportionment of liability between the two vessels, based on a range of factors, including the vessels' breaches of the International Regulations for Preventing Collisions at Sea 1972 ("**COLREGS**"), their causative impact, the course of events and the vessels' actions prior to the collision. Ultimately, the Court held that liability for the collision should be split 50:50 between both vessels.

This Update provides a summary of the key points of the decision and how the Court reached its determination.

Brief Facts

The appellant's vessel, the *Navigator Aries* ("**NA**"), collided with the respondent's vessel, the *Leo Perdana* ("**LP**"), in the Surabaya Strait while travelling on reciprocal courses. The Surabaya Strait was marked by lateral buoys, and the parties agreed that the buoyed channel represented a narrow channel to which Rule 9 of the COLREGS applied.

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The pilots for both vessels had agreed that their vessels would pass port-to-port. However, the *LP*'s pilot subsequently gave a "midships" rudder order, which entailed taking off her starboard helm, followed by a "steady" order, which left the helmsman to decide how to steer the vessel to maintain the existing heading. The *LP* also started to experience a port sheer, which was a relatively slow, but ultimately uncontrollable, swing to port. The *LP*'s pilot gave various orders to correct this, and those on board the *NA* also took avoidance action by altering hard-to-starboard. However, the manoeuvres failed to prevent the collision.

Holding of the High Court

The High Court judge ("**Judge**") found the collision's proximate cause to be the *LP*'s port sheer, which resulted from a "bow cushion effect" – a hydrodynamic interaction between the *LP* and a bank lying on her starboard side. Further, the *LP* had been travelling at an excessive speed, which contributed to the bow cushion effect.

However, the Judge found that it was the *NA* which created the situation of difficulty or danger by failing to comply with Rule 9 of the COLREGS and forcing the *LP* to a position where she would experience the bow cushion effect. The Judge further found that the *NA* was in breach of Rules 5 and 7 of the COLREGS.

The Judge determined that the *NA*'s faults bore greater causative potency and culpability, and apportioned liability at 70:30 in the *LP*'s favour. The approach of the High Court is understandable as it is consistent with the view that the party which created the dangerous situation should bear most of the blame. In this case, on one view, the *NA* precipitated the chain of events leading to the collision through her breach of Rule 9, which in turn brought about the agreement between the vessels to pass port-to-port, and ultimately led to the port sheer and ensuing collision.

Holding of the Court of Appeal

The Court found that both parties were equally to blame in the collision and revised the apportionment of liability to 50:50.

In reaching its decision, the Court had to wade through a mass of technical and expert evidence to determine the course of events, the cause of the collision, and how the vessels' respective actions contributed to the eventual collision.

General law

The Court highlighted that under section 1(1) of the Maritime Conventions Act 1911, liability is apportioned based on a broad, commonsensical and qualitative assessment of the culpability and causative potency of both vessels. Culpability is concerned with the nature and quality of each vessel's faults, and not the number of faults as such.

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However, only causative fault is relevant. In turn, causative potency is 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.

Assessment of culpability

Based on the expert evidence, the Court held that the immediate cause of the collision was the *LP*'s port sheer, the physical cause of which was the bow cushion effect experienced by the *LP*.

The Court then weighed the causative factors as summarised below:

Causative faults of the <i>LP</i>	Causative faults of the <i>NA</i>
<ul style="list-style-type: none"> The <i>LP</i> pilot's "midships" order substantially contributed to the port sheer and was in breach of Rules 8(a), 8(c) and 8(d) of the COLREGS. The <i>LP</i> breached Rules 6 and 8(e) of the COLREGS by travelling at an excessive speed and failing to slow down sooner, which increased her blameworthiness by contributing to the bow cushion effect. 	<ul style="list-style-type: none"> The <i>NA</i> breached Rule 9(a) of the COLREGS, which carried causative fault as it limited the navigable sea room available to the <i>LP</i> and constrained the ability of both vessels to execute the agreed port-to-port passing safely. The <i>NA</i> was in breach of Rules 5 and 7 of the COLREGS by taking insufficient action despite her radar showing that she would not achieve the agreed passing, and by taking too long to react to the <i>LP</i>'s port sheer. The <i>NA</i> breached Rule 6 of the COLREGS by travelling at an excessive speed.

Based on the above, the Court determined that the appropriate apportionment of liability was for both vessels to bear equal blame. Significantly, although the Court found that the *NA* had breached Rule 9(a) of the COLREGS (which resulted in less sea room for the *LP*), it was of the view that the *NA*'s breach did not present a serious threat to the vessels' ability to achieve a safe passing because both vessels had reached an agreement in advance to pass port-to-port. It was the *LP*'s port sheer which unexpectedly brought the vessels rapidly towards a collision. In this regard, the *LP* had failed to detect and react to the bow cushion effect earlier. Instead, the *LP* deliberately and erroneously removed her starboard helm, which sent the *LP* on an irreversible sheer to port.

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Rule 9(a) of the COLREGS

The Court also took the opportunity to examine the proper interpretation of Rule 9(a) of the COLREGS, which provides that "[a] vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable."

The Court held that Rule 9(a) of the COLREGS represents a departure from its predecessor, Rule 25(a) of the International Regulations for Preventing Collisions at Sea 1960. Under Rule 9(a), it is no longer necessary or sufficient for a vessel in a narrow channel to navigate on the "lane" to her starboard side of the channel. A vessel is now required to keep as near to the outer limit of the narrow channel on her starboard side as is safe and practicable.

Concluding Words

The decision of the Court of Appeal is well-founded, based on the findings that the *LP* ought to have detected and reacted to the bow cushion effect earlier. These were found to be causative as the starboard helm (which had counteracted the bow cushion effect) was subsequently erroneously removed through her pilot's "midships" order, which sent the *LP* on an irreversible sheer to port. Ultimately, this was a difficult situation for both bridge teams involved and it would likely be difficult to blame one side more than the other, resulting in the 50/50 outcome.

As demonstrated in this decision, disputes involving ship collisions require the effective management of a number of moving parts. Technical evidence has to be utilised to construct a factual narrative, conflicting expert evidence must be assessed, and the legal principles must be duly applied. Further, the VHF communications between the vessels must be scrutinised carefully, as they can play a crucial role in the apportionment of liability, as in this case.

The Singapore courts have shown themselves to be adept at managing such issues, combining the necessary technical expertise as well as the procedural framework necessary to air out the dispute. For example, at the trial level of this dispute, the court managed the conflicting expert evidence by hot-tubbing the parties' respective experts, demonstrating the robust tools of determination at its disposal.

For further queries, please feel free to contact our team below.

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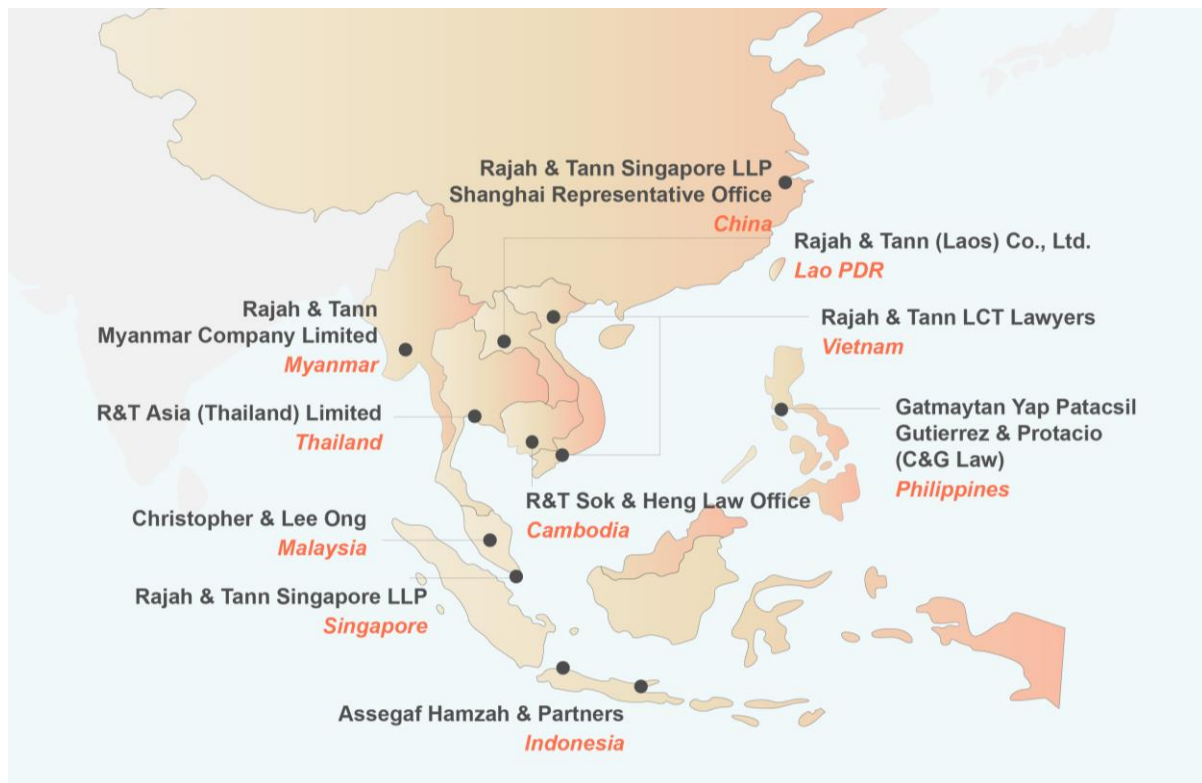
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