

ARIZON ABOGADOS SLP



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COLLISION AGAINST A SHORE CRANE WITH PILOT ON BOARD AND ASSISTED BY TWO TUGS

Almeria Court of Appeal confirms non liability of shipowners (and P&I) in the collision at Carboneras terminal.

The Court of Appeal has confirmed the Commercial Court Judgment on [Carboneras' collision](#) at the cement terminal. The once upon a time cited as the shipping casualty of the 2008-year at Chambers and Partners has been settled by the Spanish Courts with an indemnity been paid by the arrestors to the shipowners and their Club, both represented by Arizon Abogados SLP.

The Court of Appeal in a judgment of 15 pages has endorsed in full the the 50 page [judgment](#) given by the Commercial Court Magistrate of Almeria, the same Magistrate of Spanish action in [The Wadi Sudr](#). In view of the Court of Appeal the Magistrate's analysis of the collision at Carboneras was correct, and therefore the action of the terminal to sue the owners, tugs, and pilot, must fail.

The judicial leg of this important case started by the arrest application of the terminal against the vessel for what was estimated to be a mere initial claim of about one and a half million Euros. The Terminal's application was followed by the Commercial Court's arrest order against the ship for approximately half of the requested amount. The subsequent terminal's claim on the merits was, again, pursued for a much more reduced amount of damages. Furthermore, Arizon successfully appealed the arrest order on some of its grounds.

Key to the resolution of this case was the application for "early evidence" orchestrated and applied for by Arizon on behalf of the shipowners before the local Commercial Courts of Almería. The result of this application was that it provided the Court with fresh evidence as to what in fact had occurred at Carboneras. The early cross examinations of the Master and the Pilot became paramount.

On appeal, all the expert evidence available and examined during the two days trial, have been reconsidered by the

Court of Appeal to confirm that the Master of the colliding ship had not intervention in the chain of causation leading to the collision. Furthermore, the Court of Appeal has also confirmed that the accident causation, where the tugs were involved, was broken by the negligence of the terminal to keep an old abandoned crane near the berthing area against which the vessel collided.

The shipowners counter-claimed damages against the terminal for its alleged failure to mitigate its losses and damages from the day after the accident took place until the date the ship was arrested. The Court of Appeal has endorsed the Commercial Court Magistrate's view that considered that the terminal acted in bad faith and failed to mitigate its losses vis a vis the shipowners. However, the Court of Appeal has endorsed as well the Commercial Court's view that held that the chain of causation between the wrongful act of the terminal and the damages suffered by the shipowners was broken by the anyhow vessel's need to comply with Class and the Harbour Master before leaving Carboneras's port.

Whist the Court of Appeal has dismissed this disputed head of claim, however damages the doors for the wrongful arrest damages were opened. Indeed a settlement agreement was reached between shipowners, P&I, and terminal for the damages suffered by the shipowners out of the time the ship was arrested.

The ship agent group attending the vessel both as initially charterer's agent, and then owners' protecting agents has been found by the Court under a clear conflict of interest that should have made them refused to attend the P&I Club instructions.

SPANISH PORT STATE CONTROL DEFEATED, again, for improper sanctioning procedure.

By Mid 2010 Arizon Abogados SLP was pleased to report the outcome of a cassation appeal before the Spanish Supreme Court against the fine imposed by the Port State Control in Las Palmas in 2003. In that case it took about seven years for

the matter to reach and be decided by the Supreme Court. The result of that appeal was that the fine imposed by the PSC had to be reduced by about 45%.

The merits for the successful appeal were based on the lack of proper application of the proportionality principle to the administrative and Court proceedings, ie the Spanish Administration and lower Courts had not taken proper account of the facts of the case in order to assess the amount of the fine.

Following a similar trend a very recent appeal has declared null a fine imposed by the Port State Control in Barcelona back in 2002. This new judgment has been issued by five judges of the Superior Court of Madrid; they have considered that the Spanish Administration had breached several principles and sections of sanctioning administrative law, including the legality, proper identification, and proportionality principle. Accordingly they have declared the fine to be null so that no sanction remains against the managers and shipowners.

The facts leading to this new judgment against the PSC were the following; after a MOU Paris inspection by the PSC at the port of Barcelona a tanker vessel was detained and fined for alleged lack of proper nautical charts, alleged breach of the minimum crew on board, and other alleged breaches of international maritime safety law, denounced by the shipowners.

The arguments run on different appeals have included; the Administration's breach of the legality, proper identification, and proportionality principles.

Whist the State Attorney strongly refused the grounds of the appeal, the Superior Court of Madrid has turned down the State Attorney's arguments, accepted those of the shipowners holding that the administrative fine proceedings had been conducted in clear breach of the principles and sections denounced by the shipowners.



The Court has held that the Administration did not identify properly the conducts which grounded the decision of the Barcelona PSC to fine the owners and managers of the vessel; the references to the MOU Inspection documents were considered by the Court insufficient to properly identify and assess the conducts leading to imposing the fine; during the administrative procedure the deficiencies of the vessel were not properly identified nor the breached Statutes, and, even more importantly, the Court has held that the Administrative proceedings imposing the amount of the fine did not identify which amount of the fine corresponded to each breach but an overall amount was fixed without any explanation. As a consequence of the latter, the Court has also held that the administrative proceedings have also breached the proportionality principle as they did not permit the fined parties to assess any concurring facts so as to attribute them any weight in respect to the assessment of the surrounding circumstances of the case.

ALLEGED SALVAGE; PROHIBITION OF SALE AGAINST THE SALVED SHIP

Court Order of the Central Maritime Court; Few people know that even today in Spain there are military courts that hear mercantile cases, in particular those cases about maritime salvages in Spain. The Central Maritime Court composed by a Vice Admiral, a Captain of a Vessel, two Auditor Colonels and a Representative of the Merchant Shipping, has given judgment in favor of our client when dismissing the appeal brought against a court ruling of the Permanent Maritime Judge of Cadiz. The Central Maritime Court has dismissed the appeal of the claimants who intended to impose a prohibition of sale on the alleged salvaged vessel when the defendant had given, in his opinion, enough guarantee to respond to the protective measure requested.

Arizon acted for the defendant.

OVER 50 SPANISH PORTS READY TO HELP COLLECTING UNPAID P&I PREMIUMS

The entry into force in Spain last 14 of September 2011 of the 1999 Geneva Arrest Convention following Albania's signature has become good news for P&I Clubs and other insurers. The initial scenario whereby only State Flag vessels could be arrested have improved considerably as the former Spanish Administration has passed a new law, the 12/2011 Royal Decree aimed to provide certainty in respect to the law of arrest of ships in Spain. The 12/2011 Royal Decree introduces a new section into the Spanish Procedural Law Act, which in practice emptied the reservation made by Spain when the 1999 Convention was signed.

The Royal Decree states, inter alia; all the arrest of ships in Spain will be dealt with by the Courts of Justice under the terms of the 1999 Geneva Convention irrespectively of whether the ship flies a Convention State's flag; The mere allegation of a maritime claim will be sufficient to arrest a ship in Spain; The Court will request the arrestor countersecurity to cover damages and costs; The arrest might only be contested on the basis the infringement of the 1999 Convention.

As a result certainty has been gained as to the applicability of the 1999 Convention in Spain, which at some point became controversial. Moreover, one of the most attractive features of the 1999 Convention is the possibility to arrest ships in Spain for a wider scope of maritime claims than its predecessor, the 1952 Convention. For instance, P&I Clubs, which had pursued their claims under the 1952 Arrest Convention with different outcomes in Spain and abroad, have now a permanent allied territory in the many Spanish ports to secure their claims against those members failing to pay their debts. Suppliers of containers will be also the beneficiaries of the new regime. For further information on how to arrest a ship in [Spain clic here](#)

COMMON BAD PRACTICE TO RELEASE SHIPS IN SPAIN FOR PSC DETENTIONS.

Spain has gained a controversial reputation regarding an alleged harshness of PSC fines imposed in the many Spanish ports. It is worth pointing out two pro-

blems our firm is encountering in PSC matters.

First; the funds often bailed before the Spanish Administration by the ship agents on behalf of the shipowners to obtain the ship released are been deposited wrongly. In the standard form available for this type of deposits, one of the boxes is "owners of the funds". The parties filling in these forms are the agents which in no few cases declare themselves or the managers of the ship, as the owners of the funds.

Needless to say that if the party to appear at the box is not really the owner, cases of commercial disputes among these parties or bankruptcies become a problematic situation. Where the funds are to be returned by the Administration the latter will make payment to the party identified in the owners of funds box.

Arizon was recently instructed to prevent payment by the Administration to the managers of a vessel, who read in the bail form as the funds' owners, and they were not. The application to prevent payment failed given the short notice and the prosecutor change of mind as to the competent Court. In this case the shipowners had a pending arbitration against the managers who mistakenly appears before the Spanish Administration as the owners of the deposited cash.

Second, we are increasingly facing very strong delays incurred by the Spanish Administration at the time we seek to get back the bank guarantees given by the Club, or their members, to the Administration after a favorable judgment. In some cases more than one year delay is encountered with no other justification than malpractice bureaucracy.



ARIZON ABOGADOS SLP

Over the last years

Arizon Abogados S.L.P.

has been instructed by the following clients at Las Palmas, Huelva, Almería, Coruña, Tarragona, Ceuta, Sevilla, Málaga, Vigo, Santander, Algeciras, Cádiz....:

Skuld

Skuld Hellas

Danish Defence Club

The Steamship Mutual

The North of England

The West of England

The Standard

The Britannia

Ingos



Supporting Members

The
LMAA
THE LONDON MARITIME
ARBITRATORS ASSOCIATION

Spanish Members

SHIP
ARRESTED.COM

Counsel during 7 years for



The Malaga Ship Agents and Port
Operators Association

The Malaga Customs Bar Association.

ARIZON “ex HARRISON” HISTORY: Arizona, international trade, and shipping, are synonymous in Spanish History. The Arizona family, of British roots (Harrison), left Great Britain following Henry VIII's prosecution against Catholics. Settled in Spain, the Arizona family run, during the XVII and XVIII centuries, the largest shipping and trading house in Spain. From Spain to South America and return, Arizona exported and imported a great variety of commodities such as oils, grains, wines, seeds and silver. They owned and operated a very large fleet, more than thirty ships, together with magnificent warehouses which became major doors for the export of Spanish products overseas, such as grains, wines, oils, and for the import of minerals, cocoa, wines, and other commodities from South America. These warehouses, given the outstanding relationship between King Philip V of Spain and the Arizona family, were for some time warehouses of the Spanish Crown. Some ships were too at the disposal of the Crown, where required.

The Arizona fleet included since 1690, *inter alia*, the following ships; "El Nuevo Loreto; El León Viejo; Santa Teresa; El Conde de Maurepass; El Postillón de Hannover; El Fuerte; La Providencia; Agata Galera; El Enrique; La Fortuna; San Estanislao (burned by Admiral Frenolles at Martinique after being taken by the English), El Salvador (sank at Virginia), Sueco de Arizona (sank at Florida); San Francisco Javier, Santa Rosa (*The Tiger*, armed with 20 cannons and above 45 crew; 7 officers, 32 mariners, and 8 other crew, a surgeon, a barber, a guard, a carpenter, a boatswain, 3 cabin boys..., taken by the English at Lagos, Portugal, when returning from the 1747 trip to Veracruz, Mexico). Some wrecks of the Arizona fleet can still be seen throughout the American and Spanish coasts, eg Sueco de Arizona in Florida (U.S.).

Our logo represents the Arizona Tower; erected in 1721 and still standing, this tower was used to make out the departure and arrival of the ships owned or chartered for trading by the Arizona family.

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