HIRST MARINE CONSULTANCY

The *X-PRESS MAHANADA / BURGAN* collision

JURISDICTION AND POLICY ISSUES

On 26 March, 2025 the English Court gave judgment in the case of the collision between the *X-Press Mahanada* ("XPM") and the *Burgan*;[1] and when apportioning liability for this collision it found a third vessel, the *Shakti Sanchar* ("SS"), also to blame and notwithstanding her owners were not involved in these English court proceedings.

In our earlier paper on this case[2] we discussed the first of three issues we have with this finding, namely, whether the Court could reasonably have found the SS liable for this collision on the facts as it found them (the liability issue). In this paper we discuss the other two issues we have with this finding: whether the Court could properly apportion some liability for this collision to the SS when her owners were not involved in these legal proceedings (the jurisdiction issue); and if so, whether as a matter of practice the Court should have done so in these circumstances (the policy issue).

THE JURISDICTION ISSUE

Background

This collision between the *Burgan* and the XPM occurred at the Gupta Crossing in the Karnaphuli River in the approaches to the port of Chittagong. This section of the river was a narrow channel where Rule 9 applied. At the time of the collision the *Burgan* was proceeding downriver and the XPM and SS were proceeding upriver. The *Burgan* first became aware of the SS about 5 minutes before the collision. The *Burgan* was then navigating on the north (her port and wrong) side of the channel; the XPM was navigating on the north (her starboard and correct) side of the channel; and the SS was navigating about the middle of the channel and making her way over onto the north (her starboard and correct) side of the channel. The *Burgan* submitted that at this time *"she found herself essentially caught between a rock and a hard place, in that the emergence of the SS made it unsafe for her to go further to starboard and equally unsafe to go to port"*;[3] and that in these circumstances the SS should have to bear some (most) of the liability for the

[1] [2025] EWHC 721 (Admiralty) The judgment is available for downloading at www.judiciary.uk
[2] Available on request from harry@hirstmarine.com.au
[3] Judgment - paragraph 39

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collision.[4] The Court accepted this submission[5] and went on to apportion 35% of the liability for the collision to the SS.[6] In doing so the Court relied upon[7] section 187(1) of the Merchant Shipping Act ("MSA"), 1995; the House of Lords decision in *The Miraflores & The Abadesa;*[8] and the decision of Teare J in *The Nordlake.*[9]

Section 187(1)
Section 187(1) of the MSA 1995 provides:

"Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault…"

In this case the Court accepted the submission that the SS was at fault and that her fault was also causative of the damage done in the collision, and in light of the wording of this section considered the SS therefore, had to bear some of the liability for making good this damage.

The Miraflores & The Abadesa case
The Court relied upon the House of Lord's decision in *The Miraflores & The Abadesa* when deciding the approach it should adopt for apportioning liability to each of the three vessels in this case: that it was necessary to weigh the fault of each negligent vessel separately against the faults of each of the other two negligent vessels. The Court adopted this approach and apportioned liability accordingly, finding the SS was 35% to blame for the collision. In *The Miraflores & The Abadesa* the owners of all three vessels were involved in the English court proceedings.

The Nordlake case
The Court relied upon the decision of Teare J in *The Nordlake* as authority for adopting the same approach in cases like this where the owners of one or more of the vessels at fault were not party to the English court proceedings. It noted that:

"It was decided by Teare J that the same approach to the task of apportionment is applicable where one or more of the vessels at fault is not before the Court: The Nordlake…"[10]

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[4] *ibid* - paragraph 127
[5] ibid - paragraph 147
[6] *ibid* - paragraph 150
[7] *ibid* - paragraphs 133-138
[8] [1967] A.C.826
[9] [2016] 1 Lloyd's Rep.656
[10] Judgment - paragraph 138

It is not clear from the judgment whether, and if so to what extent the Court considered the reasons which Teare J gave for his decision in *The Nordlake*.[11] The absence of any further commentary and analysis in the judgment however, suggests the Court accepted this decision at face value; but it was not obliged to do so.[12]

***The Nordlake* case**

The collision in *The Nordlake* occurred in a dredged channel in the approaches to the Port of Mumbai, India, and this dredged channel was also a narrow channel where Rule 9 applied. At the time of the collision the *Nordlake* was outbound and the *Seaeagle* and several Indian warships were inbound, the Indian warships proceeding roughly in line astern of one another. The *Nordlake* and the lead warship agreed that the *Nordlake* would pass the lead and all the other following warships starboard to starboard;[13] and the lead warship said she would inform all the other warships accordingly. Shortly before the collision the *Nordlake* and the *Seaeagle* agreed that they too, would pass starboard to starboard. The *Nordlake* passed the first three warships in this way but as she approached the fourth and fifth Indian warships in the line, the *Godavari* and the *Vindhyagiri,* they failed to facilitate this agreed method of passing, keeping to their starboard sides of the channel. Meanwhile the *Seaeagle* was now overtaking the *Vindhyagiri.* As a result, the *Nordlake* was obliged to pass the *Godavari* port to port and in doing so narrowly avoided collision with the *Seaeagle* and then collided with the *Vindhyagiri.*

The *Vindhyagiri* commenced legal proceedings against the *Nordlake* in India. The *Nordlake* commenced legal proceedings against the *Seaeagle* in England alleging the *Seaeagle* was also partly to blame for the collision. In the English court proceedings the owners of the *Nordlake* and the owners of the *Seaeagle* both argued that the collision was caused not only by the fault of the other, but also by the faults of the lead warship (unidentified) and the *Godavari* and the *Vindhyagiri.* These three warships were all owned by the Union of India which was not a party to the English court proceedings.

The Issue

Teare J explained the issue as follows:

"*This court is required to decide whether any of the allegations of navigational fault made by the owners of Nordlake and Seaeagle have been substantiated and, if there was fault by two or more vessels, apportion liability in proportion to the degree in which each vessel was*

[11] Only a reference to the relevant paragraphs of *The Nordlake* judgment in which Teare J addressed this issue.

[12] The decision in *The Nordlake,* whilst persuasive, was not binding on the Court in this case.

[13] Contrary to Rule 9.

at fault; see section 187 of the Merchant Shipping Act 1995. The Union of India is not party to the proceedings in this court and so the court has received no evidence from those on board the three Indian warships. Any findings of fault and any apportionment of liability will be based on the evidence adduced by the owners of Nordlake and Seaeagle and will not be binding on the Union of India. In The Bovenkerk [1973] 1 Lloyd's Rep 63 leading counsel agreed … that if three vessels were at fault and only two were party to the action liability had to be apportioned between the three vessels pursuant to section 1 of the Maritime Conventions Act 1911, the predecessor of section 187 of the Merchant Shipping Act 1995. The trial judge, Brandon J (as he then was), held that the non-party vessel was not at fault and said … that if it had been necessary for him to decide the point he would have wished to have heard further argument as to whether liability had to be apportioned between all three vessels even though one was not before the court. In his extra-judicial article "Apportionment of Liability in British Courts under the Maritime Conventions Act 1911" (1977) 51 Tulane Law Review 1025 at pages 1035 to 1036 Sir Henry Brandon described the question as an "open question of some difficulty". In the present case leading counsel are also agreed that if a collision is caused by two or more vessels the court is required by section 187 to apportion liability in proportion to the degree in which each vessel was in fault. I shall first consider the question of fault and, if necessary, consider the question left open by Brandon J in The Bovenkerk….."[14]

Fault

In so far as the three warships were concerned, Teare J found the faults of the lead warship were *"not an effective cause"* of the collision[15] but that the faults of the *Vindhyagiri* and *Godavari* were causative. He considered therefore, that pursuant to section 187(1) of the MSA,1995 he also had to take into account the degree to which these two warships were at fault when apportioning liability for the collision as otherwise the *Nordlake* and the *Seaeagle* would be found to have a disproportionately higher liability for the damage.[16]

The Bovenkerk case

As result it was necessary for Teare J to consider the question left open by Brandon J in *The Bovenkerk*.[17] He started by noting that Brandon J's *"understanding of section 8*[18] *of the Maritime Conventions Act and his knowledge of how liability for damage in collision cases was in practice assessed was unsurpassed"*[19] and he confessed to being *"somewhat*

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[14] *The Nordlake* - paragraph 4

[15] *ibid* - paragraph 143

[16] *ibid* - paragraph 146

[17] [1973] 1 Lloyd's Rep.63

[18] We believe this is a mistake and should be read as a reference to section 1 which was the section he referred to when describing the issue (in the main text above) and which Brandon J had to consider in *The Bovenkerk*

[19] *The Nordlake* - paragraph 147

concerned" that the open question which he now had to answer had been described by Brandon J as being of *"some difficulty"*.[20] Neither he nor the two senior counsel before him[21] however, were able to identify the particular reason why Brandon J found this issue to be difficult. Accordingly and notwithstanding his concerns Teare J *"reached a clear view on the matter"* :

"that pursuant to section 187[22] *the court must take into account the causative fault not only of those vessels which are party to the action before the court but also the causative fault of any other vessel, even if that vessel is not party to the action before the court."*[23]

He went on to apportion liability accordingly and in doing so found the *Vindhyagiri* was 20% to blame and the *Godavari* was 10% to blame for the collision.

Our concerns

We have several concerns with this finding by Teare J and the Court's acceptance of it in this case.

The Bovenkerk case

Counsel for the *Bovenkerk* argued that a third vessel, a dredger, was also at fault for the collision between the *Bovenkerk* and the *Antonio Carlos*; that the dredger's fault was causative; and that pursuant to section 1 of the Maritime Conventions Act ("MCA"), 1911 liability for the collision had to be apportioned between all three vessels.[24] Counsel for the *Antonio Carlos* agreed but only if the dredger's fault was found to be causative of the collision as a matter of law; and on this issue he argued strongly that it was not, that *"the presence of the dredger was well-known to the pilots of both ships, and constituted a normal navigation hazard for which they could, and should, have allowed."*[25]

Brandon J considered there was *"great force"* in this argument;[26] that *"the pilots were used to piloting vessels … where there are many obstacles, hazards and difficulties of navigation…*[and where] *it must frequently have been their task to navigate past a dredger working normally in the fairway, at times when, and in circumstances where, it could not be suggested that the dredger was negligent in being where she was."*[27] In these

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[20] *ibid*
[21] One of whom was also the counsel for the XPM in this case.
[22] i.e section 187(1) of the MSA,1995.
[23] *The Nordlake* - paragraph 147
[24] *The Bovenkerk* - page 70 (second column, third paragraph)
[25] *ibid* - page 71(first column, bottom paragraph)
[26] *ibid*
[27] *ibid* (continuing into top paragraph, second column)

circumstances it seemed to him that *"while the presence of the dredger no doubt created the occasion for the collision, it was not, in law, a contributory cause of it."*[28]

Brandon J found on the facts that the dredger was not at fault and that it was not necessary therefore, for him to *"express any opinion on what would have been the result in law of a different view."*[29] He went on to say however, that if it had been necessary for him to do so he *"should, despite the agreement of Counsel about it, have wished to have heard further argument on it"*.[30]

It appears to us that Brandon J had two particular concerns about apportioning liability to the dredger: firstly, assuming she had been at fault as alleged, whether as a matter of law her fault could be found causative of the collision so that she should have to bear some of the liability for it (the liability concern); and secondly, if it could whether section 1 of the MCA, 1911 applied to her in circumstances where her owners were not parties to the action (the applicability concern). In light of these concerns and Brandon J's acknowledged expertise in handling collision cases (see above) we are surprised that Teare J did not discuss the issues as he saw them and explain why he was able to reach a clear view on this matter. By not doing so his judgment in *The Nordlake* gives the impression that the issue was one of construction rather than applicability; that is, could section 187(1) of the MSA, 1995 be construed to include non-party vessels, and not whether it should apply to the owners of such a vessel. We are also surprised that the Court in this case did not do so.

The liability concern

We do not believe the English court can fairly apportion liability for a collision on the owner of a vessel who is not a party to the action(s) before it without hearing that vessel's evidence. Apportioning liability requires consideration of the culpability of a vessel's faults as well as their causative potency. Admittedly today, it is often possible to reconstruct the track of another, non-party vessel without hearing her evidence;[31] and from this track, to identify her likely faults and those which were also likely causative of the collision. Without hearing her evidence however, it is impossible to know how culpable these faults were. For example, where one vessel turns suddenly - sheers - into the path of another vessel causing collision the causative potency of the sheer is obvious but that vessel's culpability for her sheer will depend upon the reasons for it.

In *The Bovenkerk*, the dredger had finished work and was moored in or near the middle of the fairway creating an obstruction for other vessels navigating up and down the river; and

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[28] *ibid*

[29] *ibid* (second column, second paragraph)

[30] *ibid*

[31] In this case we believe the track of the SS from C-5 until the collision was reconstructed from the screenshots of the *Burgan's* radar which were captured by her VDR.

counsel for the *Bovenkerk* alleged that she was under a duty to move clear of the fairway when not working and was at fault for not doing so. Brandon J considered the court was *"greatly handicapped"*[32] by the lack of evidence on many relevant matters, including (1) what had to be done to move the dredger; (2) how long this would take; and (3) whether crew were available on board for this purpose. These three matters were all relevant for determining her culpability for this alleged fault; and as Brandon J noted, *"It may be … that there were good reasons why, on the whole, and in the circumstances, it was better for the dredger to stay put."*[33] Brandon J therefore, was not prepared to find the dredger negligent; that her failure to clear the channel, whilst factually causative, was not obviously culpable and such that she should be found liable for the collision. Given the limited evidence available, he did not consider the *Bovenkerk* had discharged her burden of proving the dredger was negligent (liable).[34]

In this case the Court found the SS at fault for, amongst other things, *"not moving to starboard earlier and more emphatically"*[35] in breach of Rule 9. As we noted in our earlier paper, we believe this is the only fault of the SS which might arguably have been causative of the collision but we questioned whether it was so on the facts as found by the Court. To use Brandon J's words in *The Bovenkerk* (above) we believe that while the presence of the SS no doubt created the occasion for the collision, it was not, in law, a contributory cause of it. Even if we are wrong about that, as we said in our earlier paper the Court does not appear to have considered what impact the presence of the *Burgan* on the north (her wrong) side of the channel may have had upon the navigation of the SS, and therefore, the culpability of the SS for this fault. Without hearing the evidence of the SS we do not believe the Court could sensibly assess her culpability for this fault; and to sensibly compare the degree of her faults with those of the XPM and *Burgan* so as to reach a fair apportionment of liability. To put this another way, we do not believe the evidence was such that the *Burgan* could satisfactorily discharge the burden she had of proving the SS was partly to blame for the collision, and that the Court therefore, should not have found the SS to have any liability.

The applicability concern

English law and jurisdiction was not the natural law and forum for determining liability for the collisions in any of these cases. The collision in *The Bovenkerk* occurred in the River Elbe in Germany; the collision in *The Nordlake* occurred in the dredged channel in the approaches to the port of Mumbai in India; and the collision in this case occurred in the Karnaphuli River in the approaches to the port of Chittagong in Bangladesh. In all these cases the two parties before the English courts had, we believe, concluded an agreement

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[32] *The Boverkerk* - page 71 (first column, first paragraph)
[33] *ibid*
[34] *ibid*
[35] Judgment - paragraph 129(1)

providing for their claims arising from the collision to be subject to English law and jurisdiction. Absent any such agreements we do not believe there would have been any scope[36] for applying English law in any of these cases.

We believe such agreements would have included a provision similar to paragraph A in the latest version of the Admiralty Solicitors Group ("ASG") collision jurisdiction agreement ("CJA"). That paragraph provides that "*The claim of each owner … shall be determined exclusively by the English Courts in accordance with English law and practice."* The words *"each owner"* refer to the owners of the vessels who have entered into the CJA; in this case, the owners of the XPM and the *Burgan*. In order for a claim to be determined there must be a decision on liability for the collision and a decision on the amount (quantum) of the collision damage; and by entering into such a CJA the parties thereto agreed that these decisions were to be made applying English law.

In this case, the owners of the SS were not a party to any such CJA and had not agreed that their liability for the collision damage should be decided by applying English law. Similarly, the Union of India, as owners of the *Vindhyagiri* and the *Godavari,* in *The Nordlake* were not a party to the CJA in that case and had not agreed that their liability for the collision damage should be decided by applying English law.[37] We believe accordingly, that English law - and in particular section 187(1) of the MSA, 1995 - only applied in this case for the purpose of determining the liabilities of the XPM and the *Burgan* for the collision and not the liability (if any) of the SS. Similarly, in *The Nordlake* we believe English law only applied for the purposes of determining the liabilities of the *Nordlake* and the *Seaeagle* for the collision in that case, and not the liabilities of the Indian warships. That is, we believe the words *"two or more ships"* in section 187(1) of the MSA, 1995 should be construed as a reference only to those vessels whose owners are a party to the actions in the English court as only these owners have agreed that this section (English law) should apply when determining their liabilities for the collision.

We appreciate this would mean the vessels whose owners are parties to the CJA and any consequent English court proceedings will have to bear a higher liability for the collision damage than would be the case if the owners of the other, non-party vessel(s) were also a party in these legal proceedings. This was Teare J's concern, and the reason why he considered section 187(1) of the MSA, 1995 should apply to all vessels found to be at fault for the collision whether or not their owners are before the English court (see above). As a matter of policy (practice) however, we do not believe this is a sufficient reason for doing so in light of the concerns we have set out above and those which we now discuss below.

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[36] In saying this we have assumed that none of the vessels involved in the collisions in these cases were trading to ports in England. We believe that was the position in this case, and we think it is likely also, to have been the position in the other cases.

[37] On the contrary, they believed Indian law should apply as they, as owners of the *Vindhyagiri,* commenced legal proceedings against the *Nordlake* in India (see in the main text above).

THE POLICY ISSUE

Judgment *in absentia*

By apportioning some liability to a non-party vessel the English court is effectively giving judgment *in absentia* against the owners of that vessel and this is not usually possible in an admiralty action for damages arising from a collision at sea.

In *The Nordlake,* Teare J recognised the court had no jurisdiction to give judgement against the *Vindhyagiri* and the *Godavari* in circumstances where their owners, the Union of India, were not party to the actions before it :

"*Of course the court cannot give judgment against Vindhyagiri and Godavari to make good the damage in proportion to the degree in which those vessels were at fault because those vessels were not party to either action before the court."*[38]

That however, is effectively what he did by apportioning some of the liability for the collision onto these two vessels. The judgment in a collision liability trial is not a monetary one but it does settle the liability to pay for (make good) the damage caused in the collision: section 187(1) of the MSA, 1995 (see above). Admittedly, Teare J did stress at the start of his judgment (see above) that "*Any findings of fault and any apportionment of liability will be based on the evidence adduced by the owners of Nordlake and Seaeagle and will not be binding on the Union of India."*[39] Whether binding or not however, Teare J did give judgment against the Union of India by apportioning liability to the *Vindhyagiri* and the *Godavari* and in circumstances where he recognised the court did not have power to do so.

In this case, by apportioning 35% of the liability for the collision to the SS we believe the Court was similarly giving judgment against her owners *in absentia* in circumstances where we believe it had no power (jurisdiction) to do so. Furthermore, and unlike in *The Nordlake,* the Court in this case did not qualify the nature of its judgment: whether or not the finding that the SS was 35% to blame was intended to be binding on her owners

Prejudicial to the Parties

This case in particular we believe, highlights the prejudice which apportioning some of the liability to a non-party vessel can cause for one of the parties in the English court proceedings; in this case, for the owners of the XPM.

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[38] *The Nordlake* - paragraph 146
[39] *ibid* - paragraph 4

All of the damage which the XPM suffered as a result of the collision was physically caused by the *Burgan*. The Court found that the XPM was free of any liability so ordinarily the *Burgan* could expect to be found solely (100%) liable for the collision and responsible therefore, to fully compensate the XPM for her collision damage. In this case however, the *Burgan* submitted that a non-party vessel, the SS, was also at fault for the collision; and by accepting this submission and apportioning 35% of the liability to the SS the Court effectively reduced the liability of the *Burgan* to only 65%. As a result, the *Burgan* is only liable now to compensate the XPM for 65% of her collision damage and not for the full amount. In order to be fully compensated the XPM must now look to recover the outstanding 35% of her damages from the SS.

This collision occurred in Bangladesh and Bangladeshi law and jurisdiction was the natural forum for resolving all claims arising from it. Clearly however, the *Burgan* and the XPM both preferred English law and jurisdiction over the natural forum which is why they entered into a CJA. This is what commonly happens in most collision cases. What is less common however, is for one of the parties to the CJA to later allege that a third, non-party vessel was at fault for the collision in circumstances where the owners of that vessel are not also a party to the CJA or any subsequent English court proceedings. The SS was a small vessel[40] likely to be owned by a Bangladeshi company and engaged in trading solely within Bangladeshi waters. To the extent the SS was aware therefore, that she might have any liability for this collision[41] we believe she would have preferred the natural forum where any legal proceedings against her would have to be commenced in any event. Whilst we do not know, we would be surprised if the *Burgan* made any attempt therefore, to convince the SS to be a party to the CJA or to later join the SS in these English court proceedings. We recognise that (to use the words of Brandon J in *The Bovenkerk*) there were, no doubt, procedural and other reasons for not doing so.

Neither the *Burgan* nor the XPM wanted to have their claims determined in the natural forum. By accepting the *Burgan's* submission and apportioning 35% of the liability to the SS however, the Court has left the XPM now, with no other option should she wish to recover the outstanding balance (35%) of her claim. The XPM will have to commence legal proceedings now in Bangladesh against the SS if she is to recover this balance, and when the time limit for doing so under Bangladeshi law may have already expired.[42] The XPM was an innocent party in this case. As a matter of policy, it must surely be more equitable that this option and all the risks that it involves, should rest with the guilty party; in this case, with the *Burgan.* This would have been the position if the Court had rejected the Burgan's

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[40] A tank landing craft of 65.7 metres in overall length with a beam of 12 metres (Judgment - paragraph 8).

[41] The *Burgan* did implicate the SS during the investigation of the collision carried out by the Chittagong Port Authority (Judgment - paragraph 110).

[42] The collision in this case occurred on 14 June, 2019.

submission and apportioned all of the liability for the collision between the XPM and the *Burgan,* the two parties before the Court. In so doing the Court would have found the *Burgan* solely (100%) to blame and she would then be left with this option and not the XPM. The *Burgan* would now have to commence legal proceedings against the SS in Bangladesh in order to recover any of her perceived over payment following her settlement of the claim of the XPM.

In our opinion, this policy issue outweighs the perceived injustice which the *Burgan* would have suffered by reason of being found more liable than she would otherwise have been (which was Teare J's concern and the the reason for his decision in *The Nordlake* - *see* above). We say that because in this case:

(1) only the *Burgan* considered the SS should have bear some liability for this collision;[43]
(2) the option of commencing proceedings against the SS in Bangladesh has been available to the *Burgan* from the date of the collision; and
(3) the *Burgan* had the option too, of commencing proceedings against the XPM in Bangladesh immediately after the collision, but for procedural and other reasons preferred for her claim against the XPM to be determined in accordance with English law and practice.

Collision cases are part of the law of negligence. In other cases of negligence it is frequently the case under English law that a defendant who considers a third party to be also liable must either join or commence a separate action against that third party if he wants to avoid being found solely liable for the damage to the plaintiff. In such cases the liability is joint and several unless the third party is effectively made a party to the court proceedings, when the liability will be apportioned between the defendant and the third party (and also the plaintiff if there was contributory negligence). This would be the position also in collision cases if section 187(1) of the MSA, 1995 was applied in this way; that is, only to those vessels whose owners are a party in the court proceedings.

The standard ASG CJA wording provides for the claims of the parties to be *"determined".* In most collision cases there are only two vessels involved and all (100%) of the liability is apportioned between these two vessels. After quantum issues are settled, the claims of the parties can then be fully satisfied (determined). Each party is able to recover the full amount to which they are entitled as a matter of English law.[44] The effect of the Court's decision to apportion 35% of the liability to the SS however, means that is not the position in this case

[43] For reasons we do not understand the XPM in this case was prepared to accept the SS was also at fault but the XPM's primary position was that any fault of the SS was not causative of the collision; that is, the SS should have no liability for the collision (Judgment - paragraph 128).

[44]The standard ASG CJA wording also provides that each party will provide security for the other's claim (paragraph C)

as 35% of the parties claims remain unsatisfied and so undetermined. The recovery of these outstanding balances requires further legal action in another forum, Bangladesh, which is not the forum the parties chose for determining their claims. To this extent the Court's decision could be considered unfairly prejudicial for both parties; that is, for the *Burgan* as well as for the XPM.

CONCLUSION

We do not believe the Court in this case had the power (jurisdiction) to apportion any of the liability for the collision to the SS; but if we are wrong about that, then for reasons of fairness and practice (policy) we believe the Court should not have done so.

We do not believe the *"open question of some difficulty"* identified by Brandon J in *The Bovenkerk* was properly answered and closed off by Teare J in *The Nordlake*; and we are disappointed that the Court in this case accepted Teare J's decision at face value without further considering this question. Hopefully, when the liability of a non-party vessel for a collision arises again in a future case the English courts will take that opportunity to re-consider this question. Hopefully too, they will consider and explain the wider issues of jurisdiction and policy arising from it when deciding how it should be answered.

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