INITIAL COMMENTS

The comments herein focus on the substantive aspects of U.S. federal maritime law and the procedures applicable in the U.S. federal courts (as opposed to the laws and procedures of one of the states within the U.S.) While there may also be procedures applicable under the laws of the individual states that might result in the restraint of a vessel, these restraint procedures do not involve vessel "arrests", which, as explained below, require the existence of an in rem claim against the vessel. Such claims and the arrest to enforce them can only be pursued in a U.S. federal court. Consequently, the comments herein pertain to U.S. federal maritime law and U.S. federal court procedures.

Further, U.S. law distinguishes between an "arrest" of a vessel and an "attachment" of a vessel (as discussed herein), but because both types of procedures involve a restraint of a vessel, we discuss both here, even though the questions refer to "arrest."

I. INTERNATIONAL CONVENTIONS:

(a) Please advise which, if any, of the following Conventions your jurisdiction is a party to and has given effect to in its legislation:

(i) Arrest Convention 1952
The U.S. is not a contracting state.

(ii) Arrest Convention 1999
The U.S. is not a contracting state.

(iii) Maritime Liens and Mortgages Convention 1926
The U.S. is not a contracting state.

(iv) Maritime Liens and Mortgages Convention 1993
The U.S. is not a contracting state.

(b) If none of the above is made part of your national law, or in any event, what are the grounds on which a vessel can be arrested in your country?

Insofar as ***arrest*** is concerned, U.S. law requires the claimant to have a maritime lien (also known as an in rem right) against the vessel, that is, a right against the vessel itself as opposed to merely a claim against the vessel's owner. The arrest procedure is governed by Supplemental Admiralty Rule C to the Federal Rules of Civil Procedure. A Rule C proceeding is filed against the vessel itself and requires the existence of a claim in rem.

> A maritime lien and a proceeding in rem are correlative; 'where one exists, the other can be taken, and not otherwise.' Accordingly, any action in rem pursuant to Supplemental Rule C to enforce a maritime lien on a vessel [or other property] must be premised on the existence of a valid maritime lien at the time that the action was filed.

Petroleos Mexicanos Refinacion v. M/T KING A, 554 F.3d 99, 2009 AMC 67 (3d Cir. 2009); *see also Belcher Co. of Alabama, Inc. v. M/V MARATHA MARINER*, 724 F.2d 1161, 1984 AMC 1679 (5th Cir. 1984).

A maritime lien against a vessel is a special property right that arises in favor of a creditor by operation of law and grants the creditor the right to arrest the vessel, have it sold, and to be repaid from the proceeds. *Equilease Corp. v. M/V SAMPSON*, 793 F.2d 598, 602, 1986 AMC 1826 (5th Cir. 1986) (en banc). Most maritime liens arise by operation of the general maritime law (which is federal common law), but some are created by statute such as the Commercial Instruments and Maritime Liens Act in the case of ship mortgages and the U.S. lien for "necessaries." *See*, *e.g.*, 46 U.S.C. §§ 31321-31330 (mortgages) and §§ 31341-43 (lien for necessaries). Notably, U.S. law is considered as providing a more extensive array of maritime liens than those recognized under the laws of other nations. Common maritime liens recognized under U.S. law (in no particular order) include the following:

(1) Wages of the ship's master and crew;
(2) Salvage operations;
(3) General Average claims;
(4) Claims for breach of a charter party;
(5) Preferred ship mortgages;
(6) Contracts for "necessaries";
(7) Claims for maritime torts and personal injury in death and collision claims
(8) Claims for damages or loss of cargo; and
(9) Pollution claims.

In contrast to an arrest of a vessel, an ***attachment*** of a vessel requires the claimant to have a maritime claim against the vessel's owner personally (as opposed to in rem against the vessel). The procedure for attaching a vessel under U.S. law is governed by Supplemental Admiralty Rule B to the Federal Rules of Civil Procedure. To arrest a vessel pursuant to Rule B, a claimant must satisfy four pre-requisites: (1) The plaintiff must have a prima facie valid in personam claim (as contrasted with an in rem claim addressed in Rule C) against the defendant that is cognizable in admiralty; (2) The defendant cannot be found in the district in which the action is commenced; (3) Property belonging to the defendant is present or will soon be present in the district; and (4) There is no statutory or other general maritime law prohibition against attachment. *Aqua Stoli Shipping, Ltd. v. Gardner Smith Pty, Ltd.,* 460 F.3d 434 (2d Cir. 2006). [Note, the arrest and attachment procedures are not mutually exclusive, and the same claim might give rise to a situation in which a vessel can be arrested and attached simultaneously.]

Some examples of the types of claims in which Rule B might be available to attach a vessel include claims for breach of charter party, for damage to cargo carried onboard a vessel, for personal injuries onboard ocean-going vessels, for claims under multimodal bills of lading involving ocean carriage and U.S. inland carriage. *See*, *e.g.*, *Norfolk Southern Railway Co. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 23 (2004) (multimodal bills of lading). Somewhat oddly, claims under contracts for the sale or construction of a vessel are not maritime, but claims under contracts for the repair of a vessel are maritime. *See THE ADA*, 250 F. 194 (2d Cir. 1918); *Herman Family Recoverable Trust v. TEDDY BEAR*, 254 F.3d 802, 804 (9th Cir. 2001); *Casco Marina*

Dev. v. M/V FORESTALL, 384 F. Supp. 2d 154, 160 (D.D.C. 2005). *But see Kalafrana Shipping, Ltd. v. Sea Gull Shipping Co.*, 591 F. Supp. 2d 505, 2008 AMC 2409 (S.D.N.Y. 2008) (finding that the bright-line rule of vessel sale contracts not being maritime has been undermined and no longer should apply).

II. QUESTIONS RELATING TO WRONGFUL ARREST

1. To what extent is a claimant required under your national law to provide security in order to obtain an order for arrest or, subsequently, to maintain an arrest?

Under U.S. law, a claimant is not required to provide security at the outset to obtain an order for arrest or attachment of a vessel (except perhaps "security for costs", as discussed below). A claimant does generally have to provide a deposit to the U.S. Marshal for the district in which the vessel will be restrained, as the rules require that an order of arrest or attachment of a vessel must be served by the U.S. Marshal. The amount of this deposit varies depending on the district in which the case is filed and can range from $5,000 to $10,000. The claimant is entitled to a return of any amount of the deposit that is not utilized to pay the Marshal's expenses.

A claimant may also have to provide "security for costs" at the outset or at a later date, as provided in Supplemental Admiralty Rule E(2)(b). Rule E(2)(b) provides that the court may, on the filing of the complaint or on the appearance of any party, require any party to give security "in such sum as the court shall direct to pay all costs and expenses that shall be awarded against the party by any interlocutory order or by the final judgment, or on appeal by any appellate court." *See* Rule E(2)(b). This security is not for any damages that might result from the arrest, and significantly, the term "costs" in this context does not include attorneys' fees. *Result Shipping Co. v. Ferruzzi Trading USA*, 56 F.3d 394, 401 (2d Cir. 1995). This form of security covers only those "costs" that might be taxed by the federal court at the conclusion of the case in favor of the prevailing party and against the losing party. *Id.*; *Ocean Line Holdings Ltd. v. China National Chartering Corp.*, 578 F. Supp. 2d 621, 628-29 (S.D.N.Y. 2008); *Greger Leasing Corp. v. Barge PT Potrero,* 2006 AMC 949, 953 (M.D. Calif. 2006) ("Claimants overlook the fact that the Court is limited by Supplemental Admiralty Rule E(2)(b) to awarding security for costs that will be awarded by this Court or upon appeal.") These costs consist of a "very limited range of costs" and may include the premium on bonds posted to obtain a release of the vessel, as well as the costs that can be taxed under 28 U.S.C. §1920 (*e.g.*, docket fees, certain copy fees, witness fees, etc.).

After the arrest/attachment order is issued and the vessel actually restrained, an arresting party may be required to provide countersecurity to a defendant, if the defendant asserts a counterclaim against the plaintiff arising out of the same transaction or occurrence as the main claim. *See* Rule E(7). Such security is not required at the outset; but if the defendant has "given security" to the claimant and alleges a counterclaim against the plaintiff, the court may order the posting of countersecurity for that claim. *Incas & Monterey Printing & Packaging Ltd. v. M/V Sang Jin*, 747 F.2d 958, 964-65 (5th Cir. 1984); *Voyager Shipholding Corp. v. Hanjin Shipping Co.,* 539 F. Supp. 2d 688, 691 (S.D.N.Y. 2008); *Sea-Terminals, Inc. v. Independent Container Lines, Ltd.,* 1990 U.S. Dist. Lexis 11561 at *5, (S.D.N.Y. Sept. 4, 1990) (since claim for wrongful

attachment is not a compulsory counterclaim under Rule 13(a), countersecurity under Rule E(7) not appropriate).

The court has discretion on whether to order the posting of countersecurity, and if so, in what amount. The court typically will not delve deeply into the merits of the counterclaim, and generally speaking, unless the arresting party can demonstrate that the counterclaim is patently frivolous, countersecurity will be awarded. If the court orders the posting of countersecurity, and the plaintiff fails to comply, the plaintiff may lose the security (i.e., the arrest/attachment of the vessel) it obtained in the first instance or the court may, in some instances, stay the underlying proceedings on the merits until such countersecurity is posted.

2. Under your national law, if the claim for which a vessel has been arrested has subsequently been rejected by the court hearing the case on its merits, would the arrestor be liable in damages by reason of

   (a) The mere rejection of the claim?
   No

   (b) Or would proof be required about the arrestor's:
      (i) awareness/knowledge that his claim had no foundation, or
      (ii) negligence in bringing such a claim, or
      (iii) bad faith or gross negligence or, otherwise, malicious bringing of such a claim?

Under U.S. law, the fact that a claim is ultimately rejected does not, standing alone, render the arresting party liable in damages for the arrest. Generally speaking, only a party whose vessel has been "wrongfully" seized may be entitled to damages, including an award of attorney fees. The standard for establishing a seizure as wrongful under U.S. law is quite high, requiring a showing of bad faith, malice, or gross negligence. See, e.g., *U.S. Express Lines, LTD. v. Higgins*, 281 F.3d 383, 392 (3d Cir. 2002) (holding that award of attorney's fees and costs for wrongful attachment is appropriate only on a showing of "bad faith"); *Result Shipping Co. v. Ferruzzi Trading USA, Inc.*, 56 F.3d 394, 402 n.5 (2d Cir. 1995); *Incas & Monterey Printing & Packaging, Ltd. v. M/V Sang Jin*, 747 F.2d 958, 964 (5th Cir. 1984)(citing *Frontera Fruit Co. v. Dowling*, 91 F.2d 293, 1937 A.M.C. 1259 (5th Cir.1937)). Such a showing generally requires clear evidence that the challenged actions are entirely without color and were taken for reasons of harassment or delay or other improper purposes. The burden of proof is on the party pressing the claim of wrongful arrest/attachment to allege specific facts showing the required conduct exists and to demonstrate that the seizing party acted with bad faith, malice, or gross negligence. Given this high standard, arrests and attachments are not often found to have been wrongful.

3. Under your national law, if a vessel is arrested pursuant to a decision by a court of first instance, but the arrest is subsequently repealed by an appeal court (without deciding on the merits of the claim):

   (a) Would the arrestor be liable in damages for the consequences of the arrest, and, if Yes, in what circumstances?

An arresting party would not be liable for damages merely because the arrest was subsequently declared invalid by an appellate court. An arresting party may be liable for damages only if the arrest is found to have been "wrongful" as described above in response to no. 2.

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?

See response to no. 2 above.

4. If the arrest claim was not against the owner of the ship and could not be enforced against that ship under the law of the state where the vessel was arrested:

(a) Would, under your national law, the arrestor be liable in damages?

Under U.S. law, an arrest claim is not a claim against the owner of the ship, but is considered a claim against the vessel itself, in rem. 2 Thomas J. Schoenbaum, *Admiralty & Mar. Law* § 21-3 (5th ed. 2014). In other words, the vessel itself is the defendant, as described in response to no. I above. *See also Rainbow Line, Inc. v. M/V Tequila,* 480 F.2d 1024, 1027–28 (2d Cir.1973). Accordingly, the arresting party would not be liable in damages for simply arresting a vessel for a claim that is not against the owner of the vessel.

Regarding an attachment pursuant to Supplemental Rule B, the party seeking to attach the vessel must have an in personam admiralty or maritime claim against the owner. 2 Thomas J. Schoenbaum, *Admiralty & Mar. Law* § 21-2 (5th ed. 2014). If the attaching party "wrongfully" attaches the vessel, it may be liable for damages, as explained above in response to no. II(2); but to be liable for wrongful attachment of a vessel, there must be proof that the attaching party acted with bad faith, gross negligence or malice. *Furness Withy (Chartering), Inc. v. World Energy System Associates, Inc.* 854 F.2d 410 (11th Cir. 1988). Accordingly, the attaching party could have liability to the vessel owner for attaching a vessel where the claim was not against the vessel owner, if the attaching party acted with bad faith, gross negligence or malice in bringing the attachment.

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?

As discussed above, an attaching party could have liability to the vessel owner for attaching a vessel where the claim was not against the vessel owner, if the attaching party acted with bad faith, gross negligence or malice in bringing the attachment.

5. If the amount of the arrest claim was grossly exaggerated:
(a) Would, under your national law, the arrestor be liable in damages to the owner of the ship for any of the following losses caused by reason of the grossly exaggerated claim:
(i) for the extra cost of the security required,
(ii) for losses incurred by the owner of the ship by reason of the delay caused by the greater time required to procure the security, or

(iii) for losses incurred as a result of the owner being unable to provide the excessive security?

It is possible for an arresting party to be liable in damages if it grossly exaggerates the claim. After a vessel is arrested or attached, Supplemental Rule E governs the process by which the vessel may be released. Supplemental Rule 4(f) entitles any person claiming an interest in the vessel to "a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules." If a claim is a grossly exaggerated, the party claiming an interest in the vessel can raise this with the Court at the post-seizure hearing.

Supplemental Rule E(5) addresses how a vessel may be released from arrest or attachment in exchange for alternate security. Supplemental Rule E has many safeguards to ensure that the amount of security is not grossly exaggerated.

Pursuant to Supplemental Rule E(5)(a), a vessel may be released "on the giving of security, to be approved by the court or clerk, or by stipulation of the parties..." The amount of the security can be stipulated by the parties, or, "in the event of the inability or refusal of the parties" to so stipulate, "the court shall fix the principal sum of the bond or stipulation at an amount sufficient to cover the amount of the plaintiff's claim fairly stated with accrued interest and costs; but the principal sum shall in no event exceed (i) twice the amount of the plaintiff's claim or (ii) the value of the property on due appraisement, whichever is smaller. The bond or stipulation shall be conditioned for the payment of the principal sum and interest thereon at 6 per cent per annum."

Pursuant to Supplemental Rule E(5)(b), a vessel may also be released if the owner of the vessel files "a general bond or stipulation, with sufficient surety, to be approved by the court, conditioned to answer the judgment of such court in all or any actions that may be brought thereafter in such court in which the vessel is attached or arrested. " All processes against the vessel will "be stayed so long as the amount secured by such bond or stipulation is at least double the aggregate amount claimed by plaintiffs in all actions begun and pending in which such vessel has been attached or arrested."

Lastly, pursuant to Supplemental Rule E(5)(c) "[a]ny vessel, cargo, or other property in the custody of the marshal or other person or organization having the warrant may be released forthwith upon the marshal's acceptance and approval of a stipulation, bond, or other security, signed by the party on whose behalf the property is detained or the party's attorney and expressly authorizing such release, if all costs and charges of the court and its officers shall have first been paid."

If at any time it appears that the security obtained is too much for the claim, pursuant to Supplemental Rule E(6), "the court may, on motion and hearing, for good cause shown, reduce the amount of security given…" If a party makes such a motion, "[t]he Court is required to determine whether the amount attached is excessive or reasonably necessary to secure the plaintiff's claim." *Ronda Ship Management Inc. v. Doha Asian Games Organising Committee*, 511 F.Supp.2d 399, 405-406 (S.D.N.Y. 2007) (internal quotations omitted). A plaintiff does need

to "prove its damages with exactitude," but "the court must be satisfied that the plaintiff's claims are not frivolous." *Id.* at 406 (internal quotations and citations omitted).

Some courts have recognized a claim for tortiously demanding an excessive bond to secure the release of a vessel. *Wertman v. Mar Del Sud. Ltd.,* 1995 AMC 1130, 1136 (D. Alaska 1995); *Amstar v. M/V Alexandros T.,* 431 F.Supp. 328 (D. Md.1977); *Techem Chemical Co., Ltd. v. MT Choyo Maru,* 416 F.Supp. 960. (D. Md.1976); *Floras v. M/V VICTORI CASINO*, 2003 A.M.C. 164 (M.D. Fla. 2002) (allowing a counterclaim for tortiously demanding an excessive bond where the parties stipulated to the bond amount); *see also A.P. Moller-Maersk A/S v. Ocean Express Miami*, 648 F.Supp.2d 490, 496 (S.D.N.Y. 2011) (noting that seeking an excessive attachment when a smaller amount of attachment would provide sufficient security could give rise to claim for abuse of process) *vacated in part on other grounds by, A.P. Moller-Maersk A/S v. Comercializadora de Calidad S.A.*, 429 Fed.Appx. 25 (2d Cir. 2011).

The damages an arresting or attaching party may be liable for tortiously demanding an excessive bond would likely include damages to the vessel owner which were proximately caused by the tortious bond demand. Depending upon the facts of the matter, the damages could conceivably include the extra cost of the security required, the losses incurred by the owner of the vessel by reason of the delay caused by the greater time required to procure the security, and losses incurred as a result of the owner being unable to provide the excessive security.

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?

To impose liability for a tortious bond demand, the vessel owner "must prove (1) that the [attaching or arresting] party demanded a grossly excessive bond, (2) that a grossly excessive demand was ordered, and (3) that the establishment of the grossly excessive bond damaged [the shipowner]." *Wertman v. Mar Del Sud. Ltd.,* 1995 AMC 1130, 1136 (D.Alaska 1995); *Amstar v. M/V Alexandros T.,* 431 F.Supp. 328 (D.Md.1977) (limited liability to cases where the demand for security to release the vessel was "grossly improper and excessive").

6. If the person allegedly liable for the arrest claim is largely solvent and it is possible to enforce judgements or arbitration awards against him, e.g. he owns many ships (not under separate corporate veils), which call regularly at ports where enforcement can take place:

(a) Can the arrest be considered wrongful as a result, so as to attribute liability to him under your national law?

In connection with a Supplemental Rule C arrest, the vessel itself is liable for the maritime lien claim. 2 Thomas J. Schoenbaum, *Admiralty & Mar. Law* § 21-3 (5th ed. 2014). While another solvent party may also be liable *in personam* on an alternative theory (i.e. breach of contract), there is no requirement that the party elect that remedy as an alternative to seeking the arrest of a vessel against which it also has a lien claim against for the same damage. Accordingly, assuming the requirements or Supplemental Rule C are met, an arrest would not be considered wrongful where the arrestor also has an *in personam* claim against a largely solvent individual or person which could also satisfy the same damage claims sought in the arrest.

In connection with a Supplemental Rule B attachment, the attaching party is using the attachment of the vessel to assert *in personam* jurisdiction over a vessel owner who cannot be found in the district when a vessel owned by the vessel owner is present in the district. *Great Prize, S.A. v. Mariner Shipping Pty., Ltd.,* 967 F.2d 157, 159 (5th Cir.1992). A Supplemental Rule B attachment can also serve to obtain security for a resulting judgment against the vessel owner. As long as the requirements of Supplemental Rule B are met, there is no liability for pursuing an attachment if the person allegedly liable for the attachment claim is largely solvent and it is possible to enforce judgments or arbitration awards against him. (i.e., he owns many vessels (not under separate corporate veils) which call regularly at ports where enforcement can take place). *See Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434, 444 (2d Cir. 2006) (holding that as long as the requirements of Supplemental Rule B are satisfied, the fact that the vessel owner has substantial assets elsewhere in the world is irrelevant and is not proper grounds to vacate a Rule B attachment); *Mediterranea Di Navigazione Spa v. International Petrochemical Group, S.A.*, 2007 A.M.C. 1748 (S.D.N.Y. 2007) (holding that the vessel owner's "allegation that it has substantial assets located outside this District, which will provide sufficient security for any potential judgment, also provides no basis for vacating the attachment").

Note, however, that a Supplemental Rule B attachment may be vacated if "1) the [vessel owner] is subject to suit in a convenient adjacent jurisdiction; 2) the [attaching party] could obtain *in personam* jurisdiction over the [vessel owner] in the district where the [attaching party] is located; or 3) the [attaching party] has already obtained sufficient security for the potential judgment, by attachment or otherwise." *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434, 445 (2d Cir. 2006).

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?

Not applicable.

7. Are there other circumstances in which, under your national law, an arrestor can be held liable in damages for the arrest of a ship?

As explained above in response to no. 2, the right to recover damages for wrongful seizure of a vessel is based on a showing of bad faith, malice or gross negligence on the part of the libellant. *Incas & Monterey Printing & Packaging, Ltd. v. M/V Sang Jin*, 747 F.2d 958, 964 (5th Cir. 1984)(citing *Frontera Fruit Co. v. Dowling*, 91 F.2d 293, 1937 A.M.C. 1259 (5th Cir.1937)); *see also Result Shipping Co. v. Ferruzzi Trading USA Inc.*, 56 F.3d 394, 402 at n.5 (2d Cir. 1995)(A plaintiff in a maritime case may be liable in damages for the wrongful attachment of the defendant's property, but only on a showing of bad faith, malice, or gross negligence. *See* 2 Thomas J. Schoenbaum, Admiralty and Maritime Law § 21–5, at 500 (2d ed. 1994)). Negligence will not suffice to maintain an action for wrongful arrest; rather, the detainee must show that the arrest arose from malice, bad faith, or reckless disregard of the other party's legal rights. *Indus. Mar. Carriers, LLC v. Dantzler, Inc.*, 62 F. Supp. 3d 1355 (S.D. Fla. 2014), *aff'd*, No. 14-15130, 2015 WL 3423103 (11th Cir. May 29, 2015). However, "the advice of competent counsel, honestly sought and acted upon in good faith is alone a complete defense to an action for malicious

prosecution." *Indus. Mar. Carriers, LLC v. Dantzler, Inc.*, No. 14-15130, 2015 WL 3423103, at *3 (11th Cir. May 29, 2015) (citing *Furness Withy (Chartering), Inc., Panama v. World Energy Sys. Assocs., Inc.*, 854 F.2d 410, 411 (11th Cir.1988)); *see also Marastro Compania Naviera, S.A. v. Canadian Mar. Carriers, Ltd.*, 959 F.2d 49, 53 (5th Cir.1992). Thus, the plaintiff bears the burden of proving that the attachment was done in bad faith, and if the defendant establishes that it honestly relied on the advice of counsel in attaching the vessel, then there is no liability.

8. Does your national law provide for a penalty or other sanction to be levied upon the arrestor, separate and distinct from any damages, if he is held liable for the arrest?

While not considered a "penalty or other sanction", federal law permits the court to assess and the U.S. Marshal to collect from the arresting party fees for "[t]he keeping of attached property (including boats, vessels, or other property attached or libeled), actual expenses incurred, such as storage, moving, boat hire, or other special transportation, watchmen's or keepers' fees, insurance, and an hourly rate, including overtime, for each deputy marshal required for special services, such as guarding, inventorying, and moving." 28 U.S.C. § 1921(a)(1)(E). *Marastro Compania Naviera, S.A.*, 959 F.2d at 53–54 (Notwithstanding its holding that "Marastro acted in good faith and did not show a wanton disregard for the rights of NAFED or Canadian and that neither NAFED nor Canadian is entitled to damages for wrongful seizure," the Marastro court awarded storage expenses to Canadian for property under seizure pursuant to 28 U.S.C. § 1921(a)(1)(E)). Such an award does not require the arresting party to be held "liable" for the arrest in a wrongful or negligent sense; the mere act of arresting the vessel gives rise to the responsibility for these costs and fees. If a vessel is arrested and later sold to satisfy the claim, the fees and expenses may be paid from those proceeds; but if the vessel is vacated for any reason, the arresting party(ies) will still be responsible for the fees and expenses incurred.

9. Would a court in your country, seized with a claim for damages for the arrest of a ship in another country, apply the law of the country of arrest *(lex forum arresti)* in that regard, or would it apply its own substantive national law *(lex fori),* or would it apply the substantive law applicable pursuant to the general international private law rules of its country?

For a U.S. court to address a claim for wrongful arrest of a vessel in another jurisdiction, the U.S. court will first have to obtain jurisdiction over the defendant in personam or his property to establish quasi in rem jurisdiction. Assuming such jurisdiction exists, a U.S. court can address a claim that a vessel was wrongfully arrested in a foreign jurisdiction. In such cases, some courts have applied U.S. law to the question of whether the arrest was wrongful, without engaging in conflicts of law analysis. *See, e.g., Indus. Mar. Carriers, LLC v. Dantzler, Inc.*, No. 14-15130, 2015 WL 3423103, at *3 (11th Cir. May 29, 2015) (noting that U.S. admiralty law procedures did not apply to the actual arrest as it was made through Brazilian courts following Brazilian law, but applying the U.S. law standards for evaluating whether the arrest was wrongful.) Other courts have indicated that when the arrest occurs in a foreign jurisdiction and involves foreign parties, "it appears fairly certain that United States law" will not apply to the claim and that a conflicts of law analysis (*i.e.*, the general international private law rules) is necessary. *See*, *e.g.*, *OGI Oceangate Transp. Co. v. RP Logistics Pvt. Ltd.*, 2007 U.S. Dist. LEXIS 46841 (S.D.N.Y. June 21, 2007).