



KMLA Document No. 6-5

To: CMI

Attn: Mr. Giorgio Berlingieri, Chairman of IWG

April 6, 2016

Re: Questionnaire Study relating to Liability for Wrongful Arrest

Dear Mr. Berlingieri,

We, Korea Maritime Law Association, are very pleased to submit the answer to your questionnaire on the position of the Republic of Korea (hereinafter "ROK") in relation to wrongful arrest of the vessel.

- I. (a) The ROK has not ratified any international conventions which you listed in the letter. Therefore, it can be said that none of any arrest conventions or maritime liens and mortgage conventions is part of Korean law.
- (b) A claimant is entitled to arrest a vessel in accordance with the Civil Enforcement Act of Korea.
- II. 1. A claimant is required to provide security amounting about 10 % of the claim amount for arresting a vessel based on a prejudgment attachment. This security may be provided in the form of performance guarantee insurance policy.
2. The arrestor would be held liable in damages if there was his awareness that his claim has no foundation or his negligence in bringing such an arrest application. Accordingly, the arrestor would be liable if the aggrieved party prove either 2(b) (i), (ii) or (iii).
3. (a) / (b) If there is no court judgment deciding on the merits of the claim, the arrestor would be liable only if the arrestor's awareness or negligence is proved by the other party.
4. (a) Yes.
(b) No proof is required since the arrestor's negligence is presumed.
5. (a) The arrestor may be held liable for (i), (ii), and (iii), depending on the circumstances of the case. However, there is no court precedent or statutory provisions in this regard in the ROK.
(b) Proof of negligence would be sufficient.
6. (a) No.
(b) Irrelevant.
7. If an arrestor misrepresented something at a court (i.e. the location of a ship as a requisite of the jurisdiction of the presiding court) to obtain the arrest order from the court, the arrestor can be held liable in damages for the arrest of a ship.
8. No.

9. The Korean Court would apply the substantive law applicable pursuant to the International Private Law of the ROK.

Sincerely, yours

Korea Maritime Law Association

President J. H. Choi

