The 1926 Convention on Maritime Liens and Mortgages

Maritime lien for supplies and services (Art. 2.5)

South Africa

Bridge Oil Limited v. *The Fund constituting the proceeds of the sale of the m/v "Megas"*, High Court of South Africa 12 June 2000 (not yet reported).

In April 2000 Bridge Oil obtained from the Tribunal of Tuzla a pledge right on the m/v *Aksu*, of Turkish flag as security for a claim for supply of bunker. Later that year the mortgagees of the vessel, Hamburgische Landesbank Girozentrale, arrested and sold the vessel in Denmark. The vessel was purchased by Barrington Enterprises S.A. who in turn sold it to Mega Navigation Ltd., a Maltese company, who registered the vessel in Malta without obtaining its prior deregistration from the Turkish register.
In the year 2002 the vessel was arrested at Cape Town by Hamburgische Landesbank Girozentrale and sold. A dispute arose between Hamburgische Landesbank and Bridge Oil on the ranking of their respective claims, the latter maintaining that its claim had priority over the mortgage since it was secured by a maritime lien under Turkish law.

Held, by the Supreme Court of Court of South Africa, that:

> *[1] Under the 1926 Brussels Convention on Maritime Liens and Mortgages, implemented by Turkey, the claim for the supply of bunker is secured by a maritime lien only if the supply has been ordered by the master of the vessel.*

United States

Loginter S.A., Parque Industrial Agua Profunda S.A. UTE et al. v. M/V Nobility, in rem, United States District Court, District of Maryland 10 September 2001 (177 F. Supp. 2d 411)

Loginter S.A., Parque Industrial Agua Profunda S.A. UTE and other companies, based in different countries, brought an in rem action against the M/V *Nobility*, of Maltese flag, for services provided in various ports on the ground that their claims were secured by a maritime lien. One of the plaintiffs, Poseidon & Frachtcontor Junge Ltd., served as husbanding agent for the *Nobility* during its call at the port of Szezecin, in Poland and provided and arranged for services for the vessel which were not paid. There was agreement that the law of Poland applied but there was disagreement as to whether the Polish Maritime Code gave Poseidon a maritime lien against the *Nobility*. It was accepted that the 1926 Brussels Convention on Maritime Liens and Mortgages did not apply, since Malta was not a Contracting State, and that consequently the relevant provision was article 68.5 of the Polish Maritime Code which so provides (the provision is practically identical to article 2.5 of the Convention):
"The following claims are privileged:

... (5) [claims arising out of] contracts entered into or other legal acts done, by the master [acting] within the scope of his statutory authority while the vessel is away from her home port, [where such contracts or acts are] actually necessary for the preservation of the vessel or the continuation of [her] voyage, whether the master is [or is not] at the same time operator or owner of the vessel, and whether the claim is his own or (that) of shipchandlers, persons repairing the vessel, lenders, or other contracting parties."
The services were provided by Poseidon on request of the charterers, rather than of the

master, and included supervision, equipment, labor for loading of cargo, garbage removal, emergency tug boat services in port, tonnage fees, inspection of ship's bunkers, technology and assistance in arriving and departing the port.

Held, by the United States District Court, District of Maryland, that:

> *(1) Since the Polish Maritime Code was enacted in 1961, prior to modern advances in communication technology, there is now persuasive reason not to limit the claims secured by a maritime lien under article 68.5 of the Polish Maritime Code to contracts entered into by the master himself, particularly in light of the modern widespread practice of distant charterers directly ordering services for their ships.*

Scope of application (art. 14)

Italy

Tribunal of Trieste 14 August 2008, *Cobantur Turizm Ticaret ve Naklyat Ltd.* v. *UN RO-RO Isletmeleri A.S.* – m/v *"Und Adriyatik"* (unreported)

On 6 February 2008 a serious fire developed on board the m/v "Und Adriyatik", of Turkish flag, owned by UN RO-RO Isletmeleri A.S., during the voyage from Turkey to Trieste. The vessel, whose cargo of vehicles was almost wholly destroyed by the fire, was towed to Trieste where it was arrested on application of the owners of certain vehicles. The Owners applied for the release of the vessel from arrest on the ground that the vessel, who should be considered a wreck, had been sold to third parties and the claimants claims were non secured by a maritime lien since the 1926 Brussels Convention was not applicable

Held, by the Tribunal of Trieste, that

> *[1] A vessel severely damaged that must be deemed to be a wreck even if capable of being towed, cannot be treated as a vessel for the purposes of the 1924 Brussels Convention on bills of lading.*
> *[2] The 1926 Convention on Maritime Liens and Mortgages does not apply when both the claimant and the owner of the vessel are nationals of the same contracting State.*

Tribunal of Trieste 14 August 2008, *Ramazan Gunduz* v. *UN RO-RO Isletmeleri A. S.* and *Cemsan Gemi Söküm Demir Çelik San. Ve Ticaret Ltd.* – m/v *"Und Adriyatik"* (unreported)

On 6 February 2008 a serious fire developed on board the m/v "Und Adriyatik", of Turkish flag, owned by UN RO-RO Isletmeleri A.S., during the voyage from Turkey to Trieste. The driver of one of the vehicles carried on board was severely injured when the fire developed and on arrival of the vessel to Trieste, where she was towed by the salvors, applied to the Tribunal of Trieste for the arrest of the vessel that had meanwhile been sold by her owners to another Turkish company, Cemsan Gemi Söküm Demir Çelik San. Ve Ticaret Ltd. The previous Owners and the Buyers applied for the release of the vessel from arrest on the ground that the vessel should be considered a wreck and that no maritime lien could be enforced on a wreck since the 1926 Convention on Maritime Liens and Mortgages was not applicable on wrecks and for a declaration that Italian Courts had no jurisdiction on the merits of the claim since art. 7 of the 1952 Arrest Convention was not applicable to vessels flying the flag of a non contracting State parties and the claimant's claims was not secured by a maritime lien since the 1926 Brussels Convention was not applicable.

Held, by the Tribunal of Trieste, that:

[1] The 1926 Convention on Maritime Liens and Mortgages is not applicable to a vessel that, owing to the extensive damages caused by fire, must be deemed to be a wreck.