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# MAINBRACE

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## INSIDE THIS ISSUE

- 1** A Note from the Vice-Chair, and Co-Chair of the Maritime Industry Team
- 2** Daebo International Shipping: Reaffirmation of Chapter 15 Power and Policy
- 3** Jeanne M. Grasso Named 2015 Top Ten Shipping Lawyer by *Lloyd's List*
- 4** Blank Rome's James B. Ellis II Receives Pro Bono Distinguished Service Award by ISCGA Alumni Association
- 5** Congress "Almost" Takes Action on the "Coast Guard Authorization Act of 2015"
- 9** Partner Shawn M. Wright and Associate Kate B. Belmont were named as 2015 Trailblazers by *The National Law Journal*
- 12** Consider "Privileges" When Conducting Investigations
- 14** Blank Rome's Maritime Practice Ranked Top-Tier in *U.S. News – Best Lawyers*® 2016 "Best Law Firms"
- 15** Gulf Coast Legal Update
- 17** Blank Rome Represents Flame S.A. against Freight Bulk Ltd. and Vista Shipping
- 18** Major Shipping Associations Issue Cybersecurity Guidelines for Shipowners and Operators
- 18** Risk-Management Tool for Maritime Companies
- 19** Maritime Emergency Response Team

BY JEANNE M. GRASSO

## A Note from the Vice-Chair, and Co-Chair of the Maritime Industry Team



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JEANNE M. GRASSO

PARTNER

**First, I want to take** the opportunity to wish everyone a very Happy New Year and an exciting and prosperous 2016! Second, I want to give a special shout-out to our maritime

partner, [Tom Belknap](#), who has kept *Mainbrace* going for more than a decade now, since Blank Rome's combination with Healy & Baillie back in 2006. Because of Tom's hard work, *Mainbrace* keeps getting better and, because of your support, our readership continues to grow.

2015 was an interesting year for the shipping industry. The dry bulk market had a very challenging 2015, with the Baltic Dry Index hitting new all-time lows. Based on various reports, the outlook for 2016 is not very positive, either. Yet, the tanker market had a very strong year—the best since 2008—largely because of the drop in oil prices. On the other hand, the low oil prices had a negative effect on the offshore sector, causing charter rates to fall and many vessels to go into layup. These trends are likely to continue into 2016.

There have also been significant legislative and regulatory developments: the crude export ban was lifted; Cuba sanctions were eased, thus creating new opportunities for travel and transport; the .01% sulfur requirements went into effect in the North American and Caribbean Emissions Control Areas; and ballast water challenges continue. The ballast water conundrum will become even more of a conundrum when IMO's Ballast Water Management Convention goes into effect, very likely in late 2016.

And, sadly, criminal prosecutions for MARPOL violations continue apace, with more than a dozen investigations, indictments, and convictions last year. That said, some voluntary disclosures to the U.S. Coast Guard have helped ship owners and operators avoid criminal prosecution—in large part based on the strength of the environmental compliance systems that they have in place. To assist our clients, we've developed a [Maritime Compliance Audit Program](#) to help owners and operators manage their environmental and safety risks, which is tailored to an owner and operator's

particular needs. (Read more about our Compliance Audit Program on page 18 of this newsletter.)

2015 was also a good year for Blank Rome's maritime group, having been selected as the winner of the [Lloyd's List 2015 North American Award](#) for "Maritime Services – Legal"; ranked number one nationally for litigation and regulatory matters by [Chambers USA](#), with seven of our attorneys also ranked and recognized as leaders in their field; ranked top-tier in [Chambers Global](#) for shipping litigation, with John Kimball being recognized as a leading shipping attorney; and ranked top-tier both nationally and regionally by [U.S. News & World Report – Best Lawyers®](#) for admiralty and maritime law. For additional 2015 maritime recognitions and rankings, please click [here](#).

So, looking into my crystal ball, I think 2016 will be another exciting and interesting year for our maritime industry, and we at Blank Rome look forward to working with you and helping you navigate the inevitable challenges that a new year brings. □



## Daebo International Shipping: Reaffirmation of Chapter 15 Power and Policy

BY MICHAEL B. SCHAEDEL, THOMAS H. BELKNAP, JR., ALAN M. ROOT, AND GREGORY F. VIZZA<sup>1</sup>



On December 15, 2015, in *In re Daebo International Shipping Co., Ltd.*, Bankr. Case No. 15-10616 (MEW), the United States Bankruptcy Court for the Southern District of New York (the “New York Bankruptcy Court”) issued a memorandum opinion vacating a set of Rule B attachments on a bond (proxy collateral for M/V DAEBO TRADER, a Panamax dry bulk container ship leased to Daebo International Shipping Co. Ltd. from Shinhan Capital Co.).

### Daebo’s Korean Rehabilitation Case Recognized

Earlier in 2015, the New York Bankruptcy Court had recognized Daebo’s rehabilitation proceeding under Korea’s Debtor Rehabilitation and Bankruptcy Act (“DRBA”), a collective remedy similar to chapter 11 of the U.S. Bankruptcy Code, as a “foreign main proceeding,” and that Daebo’s representative in the chapter 15, Mr. Chang-Jung Kim, the company’s custodian and chief executive officer, was a duly authorized “foreign representative.”

Recognition in this context enables a foreign representative to exercise bankruptcy power under chapter 15 to support the foreign bankruptcy and to appear in U.S. courts to do so. Chapter 15 is not itself a substantive bankruptcy law, but it integrates both foreign law and parts of the U.S. Bankruptcy Code to enable international bankruptcy and reorganizations. The idea is that there is a universal interest in seeing fair collective remedies implemented across borders.

So if a foreign debtor or insolvent has assets or key interests in the United States, upon recognition, among other things, the automatic stay under U.S. Bankruptcy Code section 362 protects the foreign debtor’s assets and the foreign representative can sell assets free and clear of interests and claims under U.S. Bankruptcy Code section 363. Moreover, under U.S. Bankruptcy Code sections 1507 and 1521, a foreign representative can seek relief to assist it and the foreign court in implementing a collective remedy or to provide additional relief for the same purposes—all in aid of “comity” between the U.S. bankruptcy system and the foreign bankruptcy system.

### Attachment of DAEBO TRADER

In the *Daebo* case, the DAEBO TRADER was attached in the United States District Court of the Eastern District of Louisiana after Daebo had filed its rehabilitation and after its assets were protected by a stay under Korean law. The Rule B actions were commenced by general trade creditors of Daebo; none of the plaintiffs had provided necessities to the vessel itself. Since the registered owner of DAEBO TRADER was Shinhan and not Daebo, in order to have a colorable Rule B action each plaintiff pled not just against

So if a foreign debtor or insolvent has assets or key interests in the United States, upon recognition, among other things, the automatic stay under U.S. Bankruptcy Code section 362 protects the foreign debtor’s assets and the foreign representative can sell assets free and clear of interests and claims under U.S. Bankruptcy Code section 363.

Daebo, but against Shinhan as well, asserting that the 2007 financing arrangement between Daebo and Shinhan was fraudulent as to Daebo creditors and that Shinhan was an alter ego of Daebo.

The practical effect of the attachment was to trap the DAEBO TRADER and a very valuable cargo in New Orleans for several months. Daebo had limited liquidity and was unable to post a bond on its own credit. Daebo (and Shinhan), therefore, faced substantial cargo, insurance and

(continued to page 3)

**Daebo International Shipping: Reaffirmation of Chapter 15 Power and Policy (continued from page 2)**

regulatory risks—risks that would negatively impact Daebo’s rehabilitation—if the attachment was not addressed. And if the attachments were honored, each plaintiff would wind up doing substantially better than other general Daebo creditors.

Shinhan and other vessel interests sought to vacate the Rule B attachment in the New Orleans District Court. The district court refused so to do because it found that the plaintiffs in New Orleans had asserted a colorable cause of action under a U.S. legal doctrine known as “recharacterization.” Recharacterization is applied in certain contexts where statutory or statutorily based law requires legal outcomes to reflect the economic substance of a transaction between parties. Here, the district court reviewed allegations relating to the Shinhan lease of DAEBO TRADER to Daebo and determined that the plaintiffs had pled enough to suggest that the vessel was in point of economic fact owned by Daebo—notwithstanding the formal registration of DAEBO TRADER in Shinhan’s name—requiring the preservation of the attachments under possibly applicable law.

**Attachment Vacated under Chapter 15**

At the same time that Shinhan and others were seeking to vacate the attachments in New Orleans under non-bankruptcy law, the foreign representative invoked U.S. Bankruptcy Code sections 1507, 1519-21, and long-standing

case law under chapter 15 and its predecessor provision under the U.S. Bankruptcy Code, section 304, which permits a bankruptcy court to entrust U.S. assets to a foreign representative for administration in the United States, free and clear of Rule B attachments that captured the foreign debtor’s property *after* a stay had been commenced in the foreign proceeding (so long as the attaching party is afforded an opportunity to participate ratably in the foreign proceeding with other general creditors). In New York, the plaintiffs invoked the registered ownership of the TRADER as a basis for defeating the foreign representative’s 1507/1521 claims, arguing that their fraudulent transfer/alter ego claims against Shinhan were independent maritime claims against Shinhan. These defenses, of course, conflicted with the arguments they had just made to the New Orleans District Court; to wit, that the TRADER belonged to Daebo as a matter of economic substance.

In order to resolve the business crisis facing Daebo and Shinhan by virtue of the attachment, pursuant to provisional relief ordered by the New York Bankruptcy Court, Shinhan posted a bond to secure the DAEBO TRADER’s release on condition that the vacatur action in New York would go forward and, if granted, that the attachments would be released in Louisiana.

The matter was briefed in detail, and upon careful consideration of the record yielded from a day-long evidentiary

**Jeanne M. Grasso Named 2015 Top Ten Shipping Lawyer by *Lloyd’s List***



JEANNE M. GRASSO

PARTNER

Blank Rome Partner **Jeanne M. Grasso**, who serves as vice-chair of the Firm’s maritime group and co-chair of the maritime industry team, has been named by *Lloyd’s List* as one of the top ten lawyers for shipping law in 2015. Ms. Grasso’s honor is highlighted in the *Lloyd’s List* “One Hundred” (Edition Six, December 2015), which promotes the most influential people in the shipping industry, from the top one hundred influential industry leaders to the top ten ports & logistics operators, insurance personalities, lawyers, offshore experts, regulators, classification societies, brokers, and finance executives.

Regarding Ms. Grasso, *Lloyd’s List* states: “Known for her work in the regulatory sphere, Ms. Grasso’s name is synonymous with coast guard and environmental matters. She is known for having great operational prowess with her clients, helping them to meet or exceed regulatory requirements.”

To view the full list of top ten shipping lawyers and *Lloyd’s List* “One Hundred,” please visit [www.lloydslist.com](http://www.lloydslist.com).

hearing, the New York Bankruptcy Court vacated the attachments, finding that the plaintiffs' claims amounted to nothing more than a case that the DAEBO TRADER actually was owned by Daebo as opposed to Shinhan. The court also found that if the plaintiffs were to succeed on the merits in New Orleans, the Rule B attachments would have to be vacated in the chapter 15 in New York because they each were taken after the Korean stay was imposed to protect all Daebo assets, including the DAEBO TRADER.

The New York Bankruptcy Court additionally dismissed the plaintiffs' alter ego claims as unsupported under applicable non-bankruptcy law (there was no evidence that Daebo and Shinhan had anything but a lessor/lessee, debtor/creditor relationship) and suggested that the fraudulent transfer claims would be time barred under any applicable law (the lease was entered into more than seven years ago in 2007 at a time when the TRADER was valued at approximately \$60M and Daebo had 85 ships in its fleet). The court rejected attempts by the plaintiffs to suggest that there was some independent tort that could cause Shinhan, as lessor,

to be deemed an involuntary guarantor of Daebo's trade creditors, since no law exists to support such a claim.

### Important Win for Daebo and for the Chapter 15 Process and Law

This is an important decision. Because of the court's orders, Daebo avoided cargo damage and loss, risk on its insurances, and has been able to monetize the DAEBO TRADER in order to reduce its exposure to Shinhan and certain other lenders in its recently approved Korean rehabilitation plan. The decision upholds the independence of vessel lenders and lessors from their borrowers' and lessees' general obligations to their trade creditors and non-collateral/lease specific obligations, while reaffirming the power of chapter 15 to protect foreign collective remedies from opportunistic individual creditor action in the United States. ■ –©BLANK ROME LLP

1. The authors were counsel to Mr. Chang-Jung Kim, the foreign representative of Daebo International Shipping Co., Ltd. in Daebo's chapter 15 case, and in the contest described in this article before the United States Bankruptcy Court for the Southern District of New York, Bankr. Case No. 15-10616(MEW).

## Blank Rome's James B. Ellis II Receives Pro Bono Distinguished Service Award by ISCGA Alumni Association

November 2015

Blank Rome Of Counsel **James B. Ellis II** received a "Distinguished Service" award by the U.S. Coast Guard Academy ("USCGA") Alumni Association for his pro bono legal work and service on the Association's Board of Directors.

The USCGA Alumni Association provides services to and promotes fellowship among its members, raising funds to provide "margin of excellence" support to the Corps of Cadets and to preserve traditions and enhance the reputation of the Academy. For more information, please click [here](#).

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OF COUNSEL

## Congress “Almost” Takes Action on the “Coast Guard Authorization Act of 2015”

BY JONATHAN K. WALDRON AND JOAN M. BONDAREFF



In the waning hours of the first session of the 114th Congress, the Senate passed H.R. 4188, an “Act to authorize appropriations for the Coast Guard for fiscal years 2016 and 2017, and for other purposes,” but the House of Representatives had already recessed for the year so final passage has been stalled until 2016. We anticipate that the House will take up the bill within the first two months of 2016, pass it without further amendment, and send it off to the President for his signature. Therefore, we have summarized the Senate enrolled bill, below, with our fondest hopes that the House decides not to tinker with the bill any further...

In summary, the bill, entitled the “Coast Guard Authorization Act of 2015,” authorizes the essential programs of the Coast Guard for two years (title I); addresses acquisition reform and other Coast Guard programs (title II); establishes several new shipping and navigation requirements (title III); reauthorizes the Federal Maritime Commission (title IV); conveys excess Coast Guard property (title V); and has a number of miscellaneous provisions (title VI). Following is a summary of the key provisions that we anticipate will be finally enacted in 2016. Unless otherwise indicated, Secretary means the Secretary of the Department of Homeland Security (“DHS”), the department in which the Coast Guard is located.

### Title I – Coast Guard Authorizations and Reports to Congress

This title authorizes the basic Coast Guard programs for fiscal years 2016 and 2017 at the following levels: 1) \$6.9B for operation and maintenance; 2) \$1.945B for acquisition and construction; 3) \$140M for the Coast Guard reserve program; 4) \$16.7M for environmental compliance; and 5) \$19.89M for research and development.

The Coast Guard is authorized an end-of-year strength for active duty personnel of 43,000. On the date the President submits his budget for fiscal year 2017, and every four years thereafter, the Commandant must submit to Congress a manpower requirements plan.

Title I also authorizes funding for icebreakers as follows. For icebreaking on the Great Lakes, the Commandant may use available funds for the selection of a design for and the construction of an icebreaker that is capable of buoy tending on the Great Lakes. The Senate also authorized \$4M for FY2016 and \$10M for FY2017 for pre-acquisition activities for a new polar icebreaker. As part of the Consolidated Appropriations Act, 2016 (P.L. 114-113), which included funding for DHS, Congress plussed up the amount for polar icebreaker design work for FY2016 to \$6M.

### Title II – Coast Guard Programs

This title contains administrative reforms for the Coast Guard, including the following key provisions.

**Sec. 201-202. Vice Admiral.** Authorizes the President to designate five positions within the Coast Guard of sufficient importance and responsibility to have the grade of

We anticipate that the House will take up the bill within the first two months of 2016, pass it without further amendment, and send it off to the President for his signature.

vice admiral, including the position of the Chief of Staff of the Coast Guard; and elevates the rank of the Vice Commandant from vice admiral to admiral.

**Sec. 204. Acquisition reform.** This section establishes new requirements for the Coast Guard to report to Congress on acquisition of its major capital assets, including estimates of life-cycle costs for any new capital asset, and its anticipated delivery date; and a long-term major acquisition plan for each upcoming fiscal year for the next 20 fiscal years with the numbers and types of cutters and aircraft to be decommissioned and the numbers of cutters and aircraft to be acquired, with an estimate for funding required for same. The plan must also be updated on a quarterly basis specifying risks associated with all current major acquisition programs.

**Sec. 205. Auxiliary jurisdiction.** The Auxiliary is authorized to conduct patrols on waterways only if the Commandant has determined that such waterway is navigable for purposes of Coast Guard jurisdiction.

**Sec. 207. Polar icebreakers.** This section authorizes the Commandant to enter into a contract or contracts for the acquisition of polar icebreakers and associated equipment using “Incremental Funding.” Incremental Funding means the partial funding of a contract or an exercised option, with additional funds anticipated to be provided at a later time according to the Defense Federal Acquisition Regulations. The section also authorizes the Coast Guard to conduct a material condition assessment of the *Polar Sea*, and determine whether it is cost-effective to reactivate the *Polar Sea*. The assessment is to be submitted within one year after the date of enactment to the respective House and Senate authorizing committees.



**Sec. 208. Air facility closures.** This section establishes specific criteria under which the Commandant may close Coast Guard air facilities. Initially, the Coast Guard may not close a Coast Guard air facility that was in operation on November 30, 2014, but this ban sunsets on the later of January 1, 2018, or the date on which the Secretary of Homeland Security (“Secretary”) submits rotary wing strategic plans to Congress. Starting on January 1, 2018, the Secretary may not close a Coast Guard air facility unless the Secretary determines that remaining search and rescue capabilities maintain the safety of the maritime public in the area of the air facility and Coast Guard search and rescue standards and times are met. Prior to closing an air facility, the Secretary must give notice to the public and to each member of Congress who represents a district or state in which the facility is located.

No later than one year from the date of enactment, the Secretary must develop and submit to Congress a rotary wing contingency plan to address the planned losses of rotary wing airframes; and, in two years, shall submit a capital investment plan for the acquisition of new rotary wing airframes to replace the Coast Guard’s legacy helicopters.

**Sec. 210. Discontinuance of an aid to navigation.** No later than 180 days after the date of enactment, the Secretary must establish a process for the discontinuance of a Coast Guard aid to navigation, including procedures to notify the public.

**Sec. 212. Communications.** The Secretary shall conduct a pilot program across three DHS components to assess the effectiveness of their communications systems with respect to their interoperability and with respect to the Coast Guard response capabilities

**Sec. 213. Coast Guard graduate maritime operations education.** No later than one year after enactment, the Secretary shall establish an education program for members and employees of the Coast Guard that offers a master’s degree in maritime operations, that provides resident and distant learning options, and, to the greatest extent practicable, is conducted at an accredited public academic institution that is located near a significant number of Coast Guard and other DHS law enforcement personnel.

**Sec. 214. Professional development.** No later than one year after the date of enactment, the Commandant shall develop and implement a plan to conduct every two years a “Multirater” assessment for each Coast Guard flag officer, each officer nominated for flag rank, and each member

(continued on page 7)

**Congress “Almost” Takes Action on the “Coast Guard Authorization Act of 2015” (continued from page 6)**

of the Coast Guard’s Senior Executive Service (“SES”). A Multirater assessment seeks opinions from members senior to the reviewee as well as the peers and subordinates of the reviewee.

The Commandant must also submit to Congress, no later than 180 days from enactment, a report on Coast Guard leadership development.

**Sec. 216. Coast Guard member pay.** The Commandant must conduct an annual audit of member pay and allowances and, in 180 days after enactment, report to Congress on alternative methods for notifying members of their monthly earnings.

**Sec. 217. Transfer of funds necessary to provide medical care.** This section authorizes the Secretary to transfer to the Secretary of Defense funds that represent the value of treatment or care that the Department of Defense provides to current and former members of the Coast Guard.

**Sec. 218. Participation of the Coast Guard Academy in federal, state, or other educational research grants.** Authorizes the Commandant to enter into agreements with “qualified organizations” for the purpose of education and research where a “Qualified Organization” means a 501(c)(3) tax-exempt organization and is established by the Coast Guard Academy Alumni Association for the purpose of supporting academic research.

**Sec. 220. Investigations.** In conducting an investigation into an allegation of misconduct by a flag officer or member of the SES serving the Coast Guard, the Inspector General of DHS must conduct the investigation consistent with Department of Defense policies for such an investigation.

**Sec. 221. Clarification of eligibility of members of the Coast Guard for combat-related special compensation.** No later than 90 days after enactment, the Secretary shall issue procedures and criteria to use in determining whether the disability of a member of the Coast Guard is a combat-related disability for purposes of receiving combat-related special compensation.

**Sec. 222. Leave policies for the Coast Guard.** No later than one year after the Secretary of the Navy promulgates a new policy with respect to the birth or adoption of a child, the Secretary shall promulgate a similar rule or policy for the Coast Guard.

### Title III – Shipping and Navigation

**Sec. 301. Survival craft.** The Secretary shall require that a passenger vessel be equipped with survival craft that ensures that no part of an individual is immersed in water if such vessel is built or undergoes a major conversion after January 1, 2016, and operates in cold waters. The Secretary may allow a passenger vessel to be equipped with a life-saving appliance or arrangement of an innovative design that ensures no part of an individual is immersed in water, and provides an equal or higher standard of safety than is provided by requirements in effect before the date of enactment.

No later than December 31, 2016, the Secretary shall submit a report to Congress on casualties, risks to certain individuals, children, and the elderly, and the effect that carriage of survival craft has on passenger vessel safety. The review must be updated every five years. No later than five years from the date of enactment, the Comptroller General of the United States shall also report to Congress on any positive changes in public safety as a result of the amendments in the Act.

**Sec. 302. Vessel replacement.** This section contains a series of amendments to the federal fishing vessel loan guarantee program, administered by the Secretary of Commerce with respect to fishing vessels. Of the direct loan obligations issued by the Secretary of Commerce, the Secretary shall make a minimum of \$59M available each fiscal year for “Historic Uses.” Historic Uses include repairing a fishing vessel without materially increasing harvesting capacity; purchasing a used fishing vessel; purchasing or reconditioning a fishery facility; refinancing existing debt; reducing fishing capacity; and making certain upgrades to a fishing vessel. The Secretary of Commerce may also issue direct loans to finance a fishing vessel in a fishery managed under a limited access system, or financing the purchase of harvesting rights in such fishery. Finally, this legislation restricts the use of a fishing vessel in a fishery managed by the North Pacific Fishery Management Council and that is replaced by a vessel constructed or rebuilt with a federal loan or loan guarantee from the use of that vessel to harvest fish in any other region.



**Sec. 304. Merchant mariner credential expiration harmonization.** No later than one year after the date of enactment, the Secretary shall establish a process to harmonize the expiration dates of merchant mariner credentials, medical certificates, and radar observer endorsements for individuals applying for a new credential or for renewal of same. This process does not apply to individuals holding a credential with an active Standards of Training, Certification, and Watchkeeping endorsement.

**Sec. 307. Recommendations for improvements of marine casualty reporting.** No later than 180 days after the date of enactment, the Commandant shall notify the House and Senate the actions the Commandant will take to implement recommendations on improvements to the Coast Guard's marine casualty reporting requirements and procedures.

**Sec. 309. Merchant mariner medical certification reform.** Notwithstanding any other law, a "Trusted Agent" may issue a medical certificate to an individual who must hold such certificate to qualify for a merchant marine license or document. A Trusted Agent means a medical practitioner certified by the Secretary to perform physical examinations for such individuals.

**Sec. 310. Atlantic coast port access route study.** No later than April 1, 2016, the Commandant shall conclude the Atlantic Coast Port Access Route Study and submit the results to the House and Senate.

**Sec. 311. Certificates of documentation for recreational vessels.** No later than one year after the date of enactment, the Secretary shall issue regulations that make certificates of documentation for recreational vessels effective for five years.

**Sec. 312. Program guidelines.** No later than 180 days after the date of enactment, the Secretary of Transportation shall develop guidelines to ensure the future availability of credentialed U.S.-licensed and unlicensed seafarers, including

incentives to encourage partnerships with operators of foreign-flag vessels that carry liquefied natural gas to provide training billets for U.S. merchant mariners.

**Sec. 314. Maritime drug law enforcement.** This section establishes new fines and criminal penalties for individuals who knowingly or intentionally manufacture or distribute a controlled substance or conceal more than \$100,000 in currency aboard certain vessels.

**Sec. 315. Examinations for merchant mariner credentials.** The Secretary is required to develop a sample merchant mariner credential examination and outline of examination topics on an annual basis, but is not required to disclose to the public any question or answer to a question from any examination for a merchant mariner credential.



**Sec. 317. Recognition of port security assessments conducted by other entities.** This provision authorizes the Secretary to provide equal treatment to a port security assessment conducted by a foreign government, including an entity operating under the auspices of the European Union, or international organization recognized by the Secretary.

*(continued on page 11)*



## December 2015

Blank Rome LLP Partner **Shawn Wright**, who serves as vice-chair of the Firm's white collar defense and investigations group, and Associate **Kate Belmont** were named **2015 Trailblazers** by *The National Law Journal* in the categories of "White Collar Crime" and "Cybersecurity & Data Privacy," respectively.

Each industry category is comprised of the top 50 legal professionals who have made significant strides and achieved success in their fields. To read the full listings of *The National Law Journal's* 2015 Trailblazers, please click [here](#).

## Shawn M. Wright, White Collar Crime Trailblazer

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SHAWN M. WRIGHT

PARTNER

**PIONEER SPIRIT:** Early in her career, **Shawn M. Wright** was fortunate to work alongside leading White Collar Defense lawyers who focused their practices on White Collar defense work, specifically, FCPA and accounting and corporate fraud. She was quickly drawn to these areas of concentration and continues to love her practice, as it provides her with the opportunity to apply her problem solving abilities to the benefits of her clients. Ms. Wright is viewed as a trusted legal advisor to corporations, boards of directors, and corporate executives. She helps clients defend and manage risk across several regulatory and legal areas, such as white collar criminal matters and litigation; international anti-bribery and anti-corruption laws like the Foreign Corrupt Practices Act (FCPA), International Traffic In Arms (ITAR) and the Department of Treasury Office of Foreign Assets and Control (OFAC); and defending high profile clients against charges involving violations of corporate and accounting fraud, securities, healthcare and procurement fraud, public corruption, and other matters involving criminal exposure.

**TRAILS BLAZED:** While Ms. Wright has experienced many accomplishments throughout her career, she attributes her success to her ability to successfully walk her clients through the investigation process and position them to minimize risks and prevent detrimental impact.

**FUTURE EXPLORATIONS:** Ms. Wright sees the nature of her practice expanding in the future, as corporations and individuals recognize the need to be more proactive in designing and implementing effective compliance programs, and conducting thorough risk assessments to prevent investigations and potential prosecutions.

## Kate B. Belmont, Cybersecurity & Data Privacy Trailblazer

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KATE B. BELMONT

ASSOCIATE

**PIONEER SPIRIT:** **Kate Belmont** focuses on maritime litigation and cybersecurity issues. “It is a new and developing area on the cutting edge.”

**TRAILS BLAZED:** The maritime industry straddles the globe and touches many areas. “What’s special about the maritime industry is what they are responsible for protecting. In addition to data privacy and personally identifiable information, they protect cargo, the environment, human life and national security.” Cyberattacks and data breaches can affect oil rigs, e-navigation on vessels and port operations. “The industry absolutely must focus on cybersecurity.” Since the maritime industry has trailed many other industries on cyber issues, Belmont spends a great deal of time advising and educating clients on cybersecurity issues and best practices. “Over the past two years,

I’ve been advising clients on the threats of cyberattacks in the maritime industry and how best to protect their systems, as well as how to respond if they have been breached.” The maritime industry also does not have cybersecurity regulations. “This time last year, cybersecurity issues in the maritime industry were not widely discussed. But that has changed. There has been tremendous movement in the past year.” In fact, the first-ever congressional hearing to examine cybersecurity at our nation’s ports took place in October.

**FUTURE EXPLORATIONS:** The maritime industry is responding to concerns about cybersecurity, as are governments and international bodies. The Coast Guard has launched a cybersecurity initiative and the International Maritime Organization will likely develop cybersecurity guidelines as well. “The maritime industry is responding, but it is only a matter of time until there is a front-page breach.”

Reprinted from *The National Law Journal*.

Congress “Almost” Takes Action on the “Coast Guard Authorization Act of 2015” (continued from page 8)

**Sec. 318. Fishing vessel and fish tender vessel certification.** This provision authorizes the Coast Guard to establish an alternative safety compliance program for fishing vessels between 50 and 79 feet overall in length, if the vessel is built after the date of enactment of this Act. The alternative safety compliance program must incorporate standards equivalent to those prescribed by a classification society and the vessel must undergo a condition survey at least twice in five years and an out-of-water survey at least once every five years. No later than 10 years after enactment, the Secretary is to report to Congress its analysis of the adequacy of the alternative safety requirements, and if they are not deemed adequate, then the Secretary may establish his own alternative safety compliance program. The Comptroller General is also to report no later than 12 months after the date of enactment on fishing vessel safety.

#### Title IV – Federal Maritime Commission

This title authorizes \$24.7M for each of fiscal years 2016 and 2017 for the activities of the Federal Maritime Commission (“FMC”). The title also prohibits the FMC from making any award that is not related to its mission.

#### Title V – Conveyances of Excess Coast Guard Property

This title contains a series of conveyances of excess Coast Guard property to a number of recipients, including the Coast Guard property in Point Reyes Station, CA, to the County of Marin, California; property in Tok, Alaska, to the Tanana Chiefs’ Conference; property on St. Paul Island, Alaska, to the Alaska native village corporation for St. Paul Island; and property at Point Spencer, Alaska, to the Bering Strait native village corporation

#### Title VI – Miscellaneous

**Sec. 603. GAO audit.** The Comptroller General is required to conduct an audit of funds in the Vessel Operations Revolving Fund attributable to the sale of obsolete vessels in the National Defense Reserve Fleet, and submit the audit to Congress no later than 180 days after the date of enactment.

**Sec. 604. National Academy of Sciences cost assessment.** The Secretary shall enter into an agreement with the National Academy of Sciences to conduct an assessment of the costs incurred by the federal government to carry out

polar icebreaking missions. The assessment shall identify potential design, procurement, leasing, service contracts, and other options that could minimize life-cycle costs and optimize efficiency of Coast Guard polar icebreaker operations in the Arctic and Antarctic.

**Sec. 606. International ice patrol.** No later than 180 days after the date of enactment, the Commandant shall submit to Congress a report on its current operations to perform its International Ice Patrol mission and on alternatives for carrying out the mission.

**Sec. 607. Assessment of oil spill response and cleanup activities in the Great Lakes.** The Commandant, in consultation with the Administrator of the National Oceanic and Atmospheric Administration, shall conduct an assessment of the effectiveness of oil spill response activities on the Great Lakes.

**Sec. 608. Report on status of technology detecting passengers who have fallen overboard.** No later than 18 months after the date of enactment, the Commandant shall submit a report to Congress on the status of technology for immediately detecting passengers who have fallen overboard with a recommendation to cruise lines on the feasibility of implementing such technology.

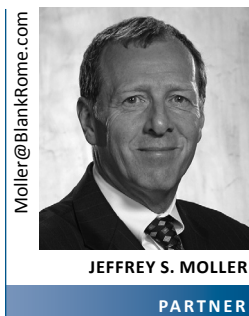
**Sec. 610. Disposition of infrastructure related to E-Loran.** The Secretary may not dismantle or dispose of infrastructure comprising the LORAN-C system until the date the Secretary has submitted to Congress notice of a determination that such infrastructure is not required to provide a positioning, navigation, and timing system to provide redundant capability in the event the Global Positioning System signals are displaced.

#### Conclusions

In conclusion, as of the time that this article was written in January 2016, we expect the House to pass H.R. 4188 early this year, which will then become law when signed by President Obama because the same language was passed by the Senate before it recessed in 2015. Among other things, the Coast Guard will have its hands full meeting new congressional deadlines for reports and regulations. □ –©BLANK ROME LLP

## Consider “Privileges” When Conducting Investigations

BY JEFFREY S. MOLLER



### Whether voluntarily or as required

by the International Safety Management Code, the American Waterways Operators’ (“AWO”) Responsible Carrier Program, or some other rule or regulation, investigations of accidents and near-miss situations are routinely conducted by companies

in the maritime industry. This is due to the widespread recognition that careful examination of the root causes of such incidents can help to prevent future occurrences. Faulty procedures, defective equipment, and inadequate training can all be identified in the investigation exercise. Conducting investigations is now a critical part of the job for vessel officers, shoreside safety managers, and company executives.

### Importance of Conducting Investigations

No capable attorney would advise their client to refrain from conducting accident or near-miss incident investigations. For one thing, strict adherence to the requirements of the investigation section of the company’s operations manual, the ISM code, or the RCP may be important in defending future litigation to prove that “due care” was exercised. It may also be important in maintaining qualifications to perform customer work or in adhering to covenants and conditions of insurance policies or charter parties. And the worst mistake that can be made is to fail to secure and preserve evidence or, worse, to fail to prevent the destruction or alteration of evidence relevant to the occurrence of an accident. So called “spoliation” of evidence can lead to dramatic results in litigation, including being stripped of defenses or having a jury instructed to disregard all of your other evidence as being untrustworthy.

### Attorney Work Product Doctrine

Any lawyer who does maritime tort work, such as personal injury, property damage, collision, or oil spill cases, is nevertheless dismayed when presented with a client’s file that contains damaging admissions of fault in an investigation report. “If only you’d have called me when the accident happened”, he or she says to the client, “I could have conducted an investigation that would have been

protected from disclosure to other parties as ‘attorney work-product.’” Some readers may not realize that the protection against having to disclose reports and material created during an investigation conducted in anticipation of litigation was first recognized in a *maritime* case. Samuel Fortenbaugh, of Philadelphia’s gone but not forgotten Clark Ladner, Fortenbaugh and Young, was nearly tossed into jail for contempt of court for having refused to obey a federal judge’s order to turn over his notes of statements he took from the crew of his client’s tugboat. Fortunately, that judge was overturned on appeal, leading the U.S. Supreme Court, in the case of *Hickman v. Taylor*, to give its blessing to Mr. Fortenbaugh’s theory. As a result, the Federal Rules of Civil Procedure were amended to incorporate the attorney work-product doctrine in the discovery rules applicable to all federal cases. The general rule is that materials and information gathered by a company’s representative,

including its attorney, consultant, or agent, if gathered in anticipation of litigation, are not discoverable by the opposition. Even if a compelling need is shown for the discovery of those materials, such as the complete unavailability of certain information by other means, the mental impressions, conclusions, opinions, or legal theories of the attorney or other representative must be protected.

And the worst mistake that can be made is to fail to secure and preserve evidence or, worse, to fail to prevent the destruction or alteration of evidence relevant to the occurrence of an accident.

### Attorney-Client Privilege

Most sophisticated companies in the maritime industry and elsewhere recognize that getting an attorney on the scene to preserve and protect evidence and information is important when an accident is likely to lead to a lawsuit. That is because the well-known but often misunderstood attorney-client privilege might serve as an additional obstacle to the ultimate discovery of harmful statements or evidence.

The attorney-client privilege is different from the above-described work-product doctrine in one or two important ways. First, except in limited circumstances such as the furtherance of fraud or criminal conspiracy, the privilege is absolute. Whether or not litigation was anticipated or whether or not the other side has some type of need for the information, statements made by clients to attorneys in the context of seeking legal advice are confidential and

(continued on page 13)

**Consider “Privileges” When Conducting Investigations (continued from page 12)** cannot be compelled to be revealed. However, this does not mean that by merely telling your lawyer about a fact, you can keep the fact from being discovered by other means. Moreover, if the person talking to the lawyer is not actually the lawyer’s client, the attorney-client privilege does not pertain, either. For example, a statement made to a lawyer by a third-party participant in an accident or a witness, even if that witness is a company client’s employee, may not be protected by the privilege.

### Self-Critical Evaluation Privilege

If an accident investigation was conducted by a vessel officer or company employee without a reasonable anticipation of litigation, such as in a “near-miss” situation, and the investigation report contains damaging admissions, that report might be discoverable in a subsequent similar accident that did result in harm and lead to a lawsuit. Is there any way in which those damaging admissions can be protected from being discoverable or used by the other side to make its case? The answer is probably “no,” but I would enthusiastically recommend attempting to invoke the so-called “self-critical evaluation privilege” to try to protect the documents and materials from being discovered. This form of privilege, recognized in a few states under certain circumstances, is designed to solve the precise societal problem of how to encourage a company to conduct an objective and thorough investigation, thus possibly preventing future accidents, when the risk of creating harmful evidence against them would be a discouragement. The privilege was initially created to protect the hospital peer review system in which physicians consider the conduct or decisions of fellow physicians in order to make improvements to the quality of health care. The privilege has not been widely recognized, unfortunately. Many times, the reason given for failing to recognize the privilege is that an element of government compulsion of the investigation is not present. But not all jurisdictions require that the reports be made under government compulsion in order to be protected.

The federal courts have been reluctant to recognize the self-critical analysis privilege as a creature of the federal law itself. A federal court will, however, enforce a privilege recognized by a state. Most maritime cases are litigated in federal court, of course, and something called the “general maritime law” is deemed to be applicable to those cases at least as to matters of substance, unless modified

by federal statutes passed by Congress. To the author’s knowledge, there is no well-established principle of general maritime law that recognizes the self-critical analysis privilege. Therefore, one’s best bet is to argue for the application of the privilege if it is recognized in the state in which the federal district court is sitting. Federal district judges are comfortable with applying the versions of the attorney-client privilege defined by the law of the state in which they sit and such should be no different with respect to the state definition of the self-critical examination privilege. Therefore, when the case is brought in the state court of a state which recognizes the privilege, such as New Jersey, it should not be difficult to convince the court of the applicability of the privilege so long as the elements of the test are satisfied.

In those states that require government compulsion as part of the test, that aspect of self-critical evaluation privilege may well be present in a maritime case, particularly when one considers that adoption of the ISM code is manda-

The federal courts have been reluctant to recognize the self-critical analysis privilege as a creature of the federal law itself. A federal court will, however, enforce a privilege recognized by a state.

tory by federal statute with respect to certain types of vessels. But where government compulsion does not exist, an argument for recognition of the privilege should be made anyway. After all, the privilege exists in order to encourage good behavior by

companies. Why should government compulsion be a part of that equation? Companies should be encouraged to voluntarily act responsibly.

Finally, even though the general maritime law or the law of a particular state does not yet recognize the privilege, an attempt to create a change in the law should be made. After all, both the general maritime law and state law on privilege are forms of so called “common law,” which should evolve and grow to suit the needs of the society. And unless the issue is raised, a court will never be forced to make a decision. Some courageous judges may recognize the important policy goals behind the privilege and change the law because it is the right thing to do, despite the fact that other judges in his/her jurisdiction have not done so before. And unless you raise the point, you do not have an issue on appeal and the law will never be changed. □ –©BLANK ROME LLP

**This article was first published in the November 2015 edition of *Maritime Reporter*. Reprinted with permission.**

## Blank Rome's Maritime Practice Ranked Top-Tier in *U.S. News – Best Lawyers*<sup>®</sup> 2016 “Best Law Firms”

Blank Rome LLP is pleased to announce that the Firm's maritime practice ranked tier one in the national *U.S. News – Best Lawyers*<sup>®</sup> 2016 “Best Law Firms” rankings, and received numerous regional top-tier rankings throughout the Firm's U.S. offices. To view Blank Rome's full 2016 rankings, please click [here](#).



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Litigation  
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The *U.S. News & World Report – Best Lawyers*<sup>®</sup> survey rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer reviews from leading attorneys in their field, and a review of additional information provided by law firms as part of the formal submission process. For more information, please visit <http://bestlawfirms.usnews.com>. □

## Gulf Coast Legal Update

BY DAVID G. MEYER



**As their owners, operators,** and charterers are all too aware, foreign-flagged vessels calling in U.S. ports routinely face the threat of becoming entangled in U.S. civil litigation, such as through arrest and/or attachment actions. This can happen even when the underlying litigation involves matters

completely unrelated to the affected vessel. A recent decision from the U.S. Court of Appeals for the Fifth Circuit, *Licea v. Curacao Drydock*, No. 14-20619, 2015 WL 7445504 (5th Cir., November 23, 2015), highlights this particular aspect of the complex web of risks attendant to U.S. port calls.

### 2008: The Florida Human Trafficking Case against Curacao Drydock

The plaintiffs in *Licea* were seeking to recover a portion of a default judgement they had previously obtained in Florida federal court against Curacao Drydock Company. The earlier Florida case involved sensational and highly disturbing claims: according to court filings, the plaintiffs were “victims of a forced labor scheme through which Curacao Drydock, in concert with and employing the full threat of the totalitarian regime of Fidel Castro, trafficked them to Curacao and extracted their labor...Curacao Drydock, well-aware of the brutal tactics and repressive schemes that the Cuban regime employed to extract forced labor from Cubans, conspired with Cuba to take advantage of that forced labor by hosting an outpost of the Cuban forced labor system in Curacao.”

Curacao Drydock initially appeared and defended itself in the Florida case. However, at some point, Curacao Drydock stopped participating and eventually the Florida court granted default judgment on liability against Curacao Drydock. In October 2008, the Florida court granted an \$80 million judgment for the plaintiffs.

### 2013: *Licea* Plaintiffs Seek to Collect Their Judgment in Texas

Fast forward to 2013. As part of their international efforts to collect the judgment they had obtained, the plaintiffs registered their judgment in the U.S. District Court for the

Southern District of Texas, whose jurisdiction includes the busy ports of Houston, Texas City, and Galveston. The plaintiffs then began filing garnishments against various entities that, while having no involvement at all in the underlying case, the plaintiffs believed were indebted in some manner to Curacao Drydock.

The three entities involved in the *Licea* appeal were from a “related corporate family”: Formosa Brick Marine Corporation (“FBMC”), Formosa Plastics Marine Corporation (“FPMC”), and Formosa Plastics Corporation, America (“FPCA”). FBMC and FPMC were overseas entities with no apparent contacts with Texas, while FPCA operated a large refinery in Texas and had a registered agent for service of process. Garnishee FPMC was the operator of two foreign-flagged cargo ships, the M/V FPMC 30 and the M/V FPMC 19. The vessels were owned by a separate entity that was not a named garnishee in the action, but was apparently part of the same “related corporate family” as the garnishees. FBMC did not have any direct relationship with either vessel.

The *Licea* opinion is a reminder to those involved in international vessel commerce of the critical importance of strictly maintaining corporate/business enterprise formalities at all levels of commercial operations.

Perhaps because the underlying claims against Curacao Drydock did not fall within the categories of maritime tort or breach of contract,<sup>1</sup> the plaintiffs did not invoke the garnishment remedies available under Supplemental Rule of Admiralty B. Instead, they relied on Federal Rules of Civil Procedure 64 and 60, which provide that the law, both

substantive and procedural, of the state where the federal court sits, governs writs of garnishment unless a federal statute provides otherwise, to invoke Texas state law garnishment remedies.

The plaintiffs were able to serve FPCA with a writ of garnishment through its registered agent in Texas.<sup>2</sup> Service of the foreign entities was more problematic. Absent being able to invoke the arrest and attachment remedies of Rules C and B, which allow service to be made on vessels and other property located in the U.S., serving overseas entities can be a difficult, expensive, and time-consuming process. Perhaps in recognition of the foregoing, the plaintiffs attempted to effect service of process of the garnishments



on FPMC and FBMC by having U.S. Marshals deliver the service papers to the masters of the M/V FPMC 30 and M/V FPMC 19 during separate Texas port calls.

### The Texas District Court Awards the *Licea* Plaintiffs \$2,639,000

FPMC and FBMC answered the writs of garnishment in the Houston federal court proceeding and moved to dismiss on the basis that the court lacked personal jurisdiction over them and that service of process was improper. FBMC admitted it owed \$2,639,000 to Curacao Drydock, but FPMC denied any indebtedness. The plaintiffs then demanded that FBMC deposit \$2,639,000 with the court, which FBMC did, subject to the motion to dismiss. The court denied the motion to dismiss, finding that the owner of the FPMC 19, garnishee FBMC, and garnishee FPMC were all “alter egos” of each other, and therefore, service on the master of the FPMC constituted sufficient service of process on FBMC and FPMC.<sup>3</sup> The district court issued a final judgment on September 19, 2014, awarding the \$2,639,000 to the plaintiffs. FPMC and FBMC appealed.

The Fifth Circuit noted that for evidence of alter ego, the district court had relied almost exclusively on two “organizational charts” submitted by the plaintiffs and purportedly obtained from the garnishees’ website. The Fifth Circuit held that the charts were simply not probative on the issue of alter ego, stating as follows:



### The Fifth Circuit Reverses on Appeal Due to Lack of Jurisdiction over the Garnishees

The Fifth Circuit reversed, taking particular issue with the district court’s findings on alter ego. Specifically, the Fifth Circuit noted that for jurisdictional purposes, Texas law uses the alter ego doctrine to determine whether “a corporation is organized and operated as a mere tool or business conduit of another corporation.” Under the doctrine, to “fuse” the parent company and its subsidiary for jurisdictional purposes, a plaintiff must prove the parent controls the internal business operations and affairs of the subsidiary to a degree greater than that normally associated with common ownership and directorship. Specifically, the plaintiff must have evidence that the two entities cease to be separate so that the corporate fiction should be disregarded to prevent fraud or injustice. There must be a “plus factor, something beyond the subsidiary’s mere presence within the bosom of the corporate family.”

- First, the charts do not actually depict corporate structure. There is no indication of ownership; they do not indicate which entity owns what, which entities are parents, or subsidiaries, or brother/sister. Nor is it even clear that the “entities” on the chart are formal entities, because they have no corporate form designations. Normal organizational charts make distinctions for, e.g., corporations, LLCs, disregarded entities, or foreign entities. Further, garnishees FPCA and FBMC are not even represented on the charts.
- Second, the charts do not show the functional relationship among the entities. The organizational charts show only the structure, but not the relationships between the Formosa entities. They do not indicate any “plus factor” that entails “something beyond the subsidiary’s mere presence within the bosom of the corporate family.” At best, they demonstrate mere affiliation, which is insufficient to pierce the veil, or common names, which are irrelevant to jurisdictional veil piercing. They do not

(continued on page 17)

**Gulf Coast Legal Update (continued from page 16)**

even appear to show that the entities share common functions; the “Group Administration” boxes report to the Executive Board, but there is no indication that these functions are performed for the entities listed on the chart. In no way do these descriptions suggest control “greater than that normally associated with common ownership and directorship” or that the “entities cease to be separate so that the corporate fiction should be disregarded to prevent fraud or injustice.”

Based on the foregoing, the Fifth Circuit reversed the district court’s decision and remanded the case to the district court with instructions to dismiss it. The Fifth Circuit also ordered the return of \$2,639,000 to FBMC.

**Conclusion**

The *Licea* opinion is a reminder to those involved in international vessel commerce of the critical importance of strictly maintaining corporate/business enterprise formalities at all levels of commercial operations. Even though

the garnishees ultimately prevailed, the time and costs involved in achieving the victory were likely substantial,<sup>4</sup> and had the Fifth Circuit not ruled for the garnishees, the costs could have grown exponentially.<sup>5</sup> While U.S. port calls always involve the risk of arrest, attachment, and other civil litigation actions, paying attention to such details can undoubtedly play a significant role in mitigating these risks. □ –©BLANK ROME LLP

1. The plaintiffs recovered against Curacao Drydock on claims under the Alien Tort Statute, 28 U.S.C. § 1350, and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 (“RICO”).
2. FPCA filed a verified answer that denied any indebtedness to Curacao or that it knew any person who was so indebted. The plaintiffs did not file a controverting response or affidavit, and FPCA moved for dismissal, which the district court denied. The Fifth Circuit reversed, holding that FPCA should have been dismissed due to the plaintiffs’ failure to offer any controverting evidence.
3. The district court held that service on the master was proper service on the vessel’s owner. The Fifth Circuit did not address this issue on appeal.
4. Nor is the case necessarily over, as plaintiffs could seek a rehearing of the decision with the Court of Appeals and/or attempt to take the case to the U.S. Supreme Court.
5. For example, if plaintiffs had been able to keep the \$2,639,000.00, FBMC might have found itself required, despite the district court’s order extinguishing its debt to Curacao Drydock, to pay that same amount to Curacao Drydock due to legal and/or commercial considerations.

## Blank Rome Represents Flame S.A. against Freight Bulk Ltd. and Vista Shipping

**January 2016**

**Blank Rome LLP successfully represented [Flame S.A.](#)** in an ongoing maritime litigation case against Freight Bulk Ltd. and Vista Shipping.

Industrial Carriers, Inc., a shipping company based in Ukraine, became insolvent in October 2008 and defaulted on four forward freight agreements (“FFAs”) with Flame. Flame secured a judgment of approximately \$19 million in England. In 2010, Flame had its English judgment recognized in the Southern District of New York. In 2013, the vessel M/V CAPE VIEWER arrived in Norfolk, Virginia.

Blank Rome’s maritime litigation team filed a writ of attachment against the vessel and a complaint alleging that its owner and operator, Freight Bulk and Vista, were alter egos of Industrial Carriers. After lengthy pre-trial proceedings, a bench trial began in August 2014 wherein Blank Rome established that Industrial Carriers fraudulently transferred hundreds of millions of dollars of assets to Vista. The court awarded judgment in excess of \$8M (the value of the CAPE VIEWER) to Flame. Freight Bulk appealed and the Fourth Circuit unanimously affirmed the judgment of the district court. Last week, a request for an en banc review was denied. In addition to this successful outcome, Flame was able to seize additional bank accounts overseas in an effort to collect the rest of its judgment.



## Major Shipping Associations Issue Cybersecurity Guidelines for Shipowners and Operators

BY KATE B. BELMONT



KATE B. BELMONT

ASSOCIATE

**BIMCO and its international** shipping association partners CLIA, ICS, Intercargo, and Intertanko, recently released the first set of cybersecurity guidelines targeted to shipowners and operators, “The Guidelines on Cyber Security Onboard Ships.” Recognizing the maritime industry’s over-reliance

on information technology (“IT”) and operational technology (“OT”), and the risks associated with unauthorized access or malicious attacks to ships’ systems and networks, BIMCO and its partners created these guidelines specifically for the maritime industry. The guidelines provide direction, awareness, and “guidance to shipowners and operators on how to assess their operations and put in place the necessary procedures and actions to maintain the security of cyber systems onboard their ships.”

The first set of cybersecurity guidelines focuses on understanding cyber threats, assessing the risks, reducing the risks, and developing contingency plans and responding to

cyber incidents. Focusing on the unique set of issues that face the shipping industry onboard ships, these guidelines provide measures on how to lower cybersecurity risks, including:

- raising awareness of the safety, security, and commercial risks for shipping companies if no cybersecurity measures are in place;
- protecting shipboard OT and IT infrastructure and connected equipment;
- managing users, ensuring appropriate access to necessary information;
- protecting data used onboard ships, according to its level of sensitivity;
- authorizing administrator privileges for users, including during maintenance and support on board or via remote link; and,
- protecting data being communicated between the ship and the shore side.

These guidelines will be submitted to the International Maritime Organization for their information and consideration in developing international regulations on cybersecurity. □ —©BLANK ROME LLP

The guidelines may be reviewed and downloaded here: [www.intertanko.com//upload/104956/Cyber-Security-guidelines.pdf](http://www.intertanko.com//upload/104956/Cyber-Security-guidelines.pdf)

### Risk-Management Tool for Maritime Companies

**Blank Rome Maritime has developed** a flexible, fixed-fee Compliance Audit Program to help maritime companies mitigate the escalating risks in the maritime regulatory environment. The program provides concrete, practical guidance tailored to your operations to strengthen your regulatory compliance systems and minimize the risk of your company becoming an enforcement statistic.

To learn how the Compliance Audit Program can help your company, please visit [www.blankrome.com/complianceauditprogram](http://www.blankrome.com/complianceauditprogram).



# Maritime Emergency Response Team

We are on call 24 / 7 / 365



An incident may occur at any time. Blank Rome's **Maritime Emergency Response Team ("MERT")** will be there wherever and whenever you need us. In the event of an incident, please contact any member of our team.

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Blank Rome Maritime is ranked top-tier in Shipping for Litigation and Regulatory in *Chambers USA*, and recognized as a leading maritime law firm in *Who's Who Legal*. In 2013, Blank Rome was ranked "Law Firm of the Year" in Admiralty and Maritime Law by *U.S. News & World Report*. In 2015, Blank Rome won the *Lloyd's List* 2015 North American Maritime Award for "Maritime Services – Legal."