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Legal challenges

CONTAINERSHIP owners will have to tread with extreme care if they move ahead with consolidation proposals.

Germany's Erck Rickmers has invited other players to talks about combining forces and creating a more powerful tramp containership owner.

But lines that charter ships from these tonnage providers will be on full alert about the implications of this idea. So too will the European Commission, which continues to keep a close eye on the container trades. Only a few months ago, Brussels conducted a

series of dawn raids on the European offices of a dozen global container lines after suspicions that they had co-ordinated their capacity withdrawals during the slump of 2009.

The tramp operators will not be immune from the commission's attention. When German owners proposed their Baltic Max Feeder scheme in 2009 that aimed to remove as many as 500 smaller boxships from the market until acceptable charter rates could be obtained, Brussels quickly put a stop to it. After an antitrust probe was launched to investigate whether the proposed collective lay-up plan would increase charter rates, the whole idea was soon dropped.

Within hours of Mr Rickmers' idea going public, operators and brokers were already starting to express concern about the proposed scheme. Of course, there is nothing wrong with consolidation.

On the liner side, there has been plenty of rationalisation over the years, with probably more to come as some players struggle with today's depressed markets. So if owners also want to amalgamate, that in itself is not a problem.

But a merger would have to be constructed in such a manner as to be exactly that, and not an

arrangement whereby capacity was restricted in some way, to be followed by the scheme being disbanded if and when market conditions recovered.

Lines will almost certainly be calling their lawyers and telling them to keep a close watch as events unfold in Germany. If this is the start of some smaller players finally withdrawing from the market and allowing a smaller number of more financially sound owners to dominate, then that is all well and good. But any perceived attempt to manipulate the market will sound alarm bells in Brussels.

Tanker bloodbath

AT a time of eye-wateringly dismal daily earnings stuck in negative territory, one wonders why any owner of very large crude carriers would increase its exposure to the market by adding to the bloated global fleet with a couple of newbuildings.

Maersk Tankers was clearly thinking along those lines when it said it was increasing its VLCC fleet with fuel efficient new vessels but without ordering

newbuildings — a strategy that other owners would do well to adopt to avoid what has been termed a tanker bloodbath as new ships are drip fed into the global fleet.

The company's decision to add two VLCC newbuildings to its fleet by taking them on a long-term bareboat charter from the South Korean owner means Maersk takes on all the trappings of ownership, such as providing crew and benefiting from rises in rates, but cleverly avoids the risks associated with ownership of a \$90m ship at a time when asset values are falling.

Crucially, it also offers a valuable boost to the company's reputation, in that it is seen to be acting responsibly by not swelling the global fleet of around 570 VLCCs when there are already 144 on order.

Maersk likes to come across as a market leader, and while it is still by no means as influential as certain other larger players in the tanker sector, this desire to show leadership is no bad thing in such a horrendous tanker market where there do not seem to be many companies taking a stance to address market imbalance. ■

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Industry Viewpoint



JOHN AC CARTNER

The Rena oil spill off New Zealand has highlighted where blame will be apportioned

Seafarer criminalisation rears its ugly head



Kangaroo court: the Hebei Spirit collision in 2007 caused a major oil spill in South Korea.

Bloomberg

THE sickening odour of the criminalisation of yet another master is wafting in New Zealand's vernal breezes. The scenario, depressingly clear, is well writ in the past. The master of *Rena* will be hanged. It is as summer following spring or, as in these cases, as injustice is piled on injustice in a sort of inverted compurgation.

First, there is a navigational difficulty, usually followed by collision (*Marmara Princess* and *Beau Rivage*) or a grounding (*Erika*). Then comes the pollution of black oil of some species (*Exxon Valdez*).

During the pollution, the festivities of detention, drumhead trial and public hanging of the obviously guilty by the lynch mobs and the environmental vigilantes occurs. They have already decided as to the fault-worthy. Shouts of a sort of inchoate revanchism fill the air and ether. But there is no Zola with a handy "J'accuse!" in this Dreyfusian analogue.

Arrest follows by the local constabulary (*Full City*) who round up the usual suspect — the master — and detain on either an improperly applied law or, if the state is lucky, a nice obsolete one (*Zim Mexico III*) specially dusted off for the occasion.

A kangaroo hearing before a magistrate who knows not the difference between a navigational consequence and spilling his tea then occurs (*Hebei Spirit*) with an outrageous bail set by the same. The master is then detained (*Prestige*) for fear he will flee until the bail is met.

Rationally and evidentially founded or not, the prosecutor plays the tune well to a supposedly neutral magistrate — who puts the clearly subhuman and irretrievably sinful pile of flesh of a master behind bars. This is accompanied with some kind of tacky hyperbole for the press to consume then trumpet (*Exxon Valdez*).

Earlier in our history there were three kinds of trials. There were trials meting the King's justice which had some kind of predictable order.

There were Trials by Combat where one rider with a well-sharp'd lance and pointy tried to impale the other before meeting the same fate. God punished the guilty by bringing him to His expansive bosom as the consolation verdict. The innocent who lived was set free by lesser beings who concluded the more fortunate mortal had been saved by an opposite and equal application of divine grace.

Then there was Trial by Ordeal. Even the

name gives one pause. Dunking stools; tossing the accused into a lake, hands tied behind, before a jeering crowd observing the miracle of learning to swim immediately; walking through fire to demonstrate that overnight God could grow one an asbestos integument, and other similar social phenomena made trial by ordeal a singularly creative judicial enterprise offering great public entertainment. If the accused died, innocent or guilty he was going on to a better place than this vale of tears. If he lived it was clear-cut: he was innocent because God was with him as surely as with Shadrach, et al. (see, Daniel, 1-3) in the furnace. Until recently, the King's justice eventually out-competed the others and prevailed.

Now Trial by Ordeal is returning in indirect form — it is called Trial by Press. It too offers great public entertainment. The baccalaureate story-of-the-day journalists come along in these cases to fan the flames using prosecution press releases and dead aves counts until the next titillating le scandale of sex, money and corruption in self-described high places arrives — with more and better news-selling titillations.

The wretch in jail is forgot. Masters are rarely titillating. Justice has played out its game for now. There is no hope. The master, merely homo sapiens, has been convicted and awaits the public hanging.

The next phase is Fate by Finance. The master has been found guilty in the press for his clear and obvious moral defects. The press and people have had their public expressions of television-flamed outrage over the dead birds as heard for a day. Now real courts come along. Justice is a function of who hires the better set of lawyers.

The state has the full faith, credit and weight of the government to support it with unlimited budget for a nice juicy case everyman can understand. Here, pollution is best. Try a good pollution case and one can get a real job outside the prosecutor's office when it is over.

The master? He has the policy-limited coverage, if any, of the P&I. The owner might grudgingly chip in a little. Now the master is in the full clutches of finance. It shakes him as a hound does a fox. The owner does not care because his money is not endangered — the laws are quite conveniently tilted so no liability attaches to him if he uses only half his brain. The crewing agency or union does not care. They are not responsible. The master is

now a press-created embarrassment. The banker, the shipper, the buyer of the cargo, the seller of the cargo do not care — they are covered. The prosecutor sees an opportunity to further career aspirations. Who cares now? The now utterly powerless.

Those who have been stripped of career, money and good reputation then discarded to a footnote in a history or law book or blessed anonymity. Persons such as Capts Schroeder, Hazelwood, Madouras and the like care. These are the only people on the planet who know what is really happening.

They understand from experience: masters make good press, are expendable, and certainly not worth remonstrating for to the company who has sided with the state. They have been described in at least one eponymous doctoral dissertation thus: "masters: Pawns of the Financial System."

The trials are show trials. The conclusions are foregone. No matter how much the defence tries to believe in the man being tried, it understands full well this is Trial by Ordeal in another guise.

Prosecutors nowadays use the full arsenal: threats, lies, snitches, prevarication, bad laboratory work, coached witnesses. Sexism even has a place if well done.

In *Zim Mexico III*, Capt Schroeder was prosecuted by a female apparent man-hater before an apparently man-hating female judge. Each had gone to the Historical Redress School of Sexual Justice it seems.

Conviction is all. Justice, if served, is a nice by-product but not necessary. The Trial by Ordeal was abandoned in the middle ages and replaced by Trial by Compurgation.

Trial by Compurgation required the accused to swear on a stack of Bibles his innocence then to have others, good men and true (usually 12) swear the same. This somehow seems better than the unholy alliance of press, money and prosecutorial and judicial indiscretion which hangs masters.

Perhaps we should bring it back for balance in the dismal state of justice for any master. Parents: do not let your children grow up to be masters. ■

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Maritime Blogspot

Apologies to New Zealand

NIGEL LOWRY — ATHENS

HOW strange that possibly the two most written-about ships in the world last week were the containership *Rena* and the new protest vessel *Rainbow Warrior*. The connection between them: New Zealand.

Let's take *Rena* first. Images from Astrolabe Reef close to the port of Tauranga are reminiscent of *MSC Napoli* a few years ago and a reminder of how difficult container vessels can be to salvage if they run aground.

While little good ever follows serious marine accidents, which promote grief and greed in equal measure, at least there have been elements deserving of praise in this one.

One can start with New Zealand Prime Minister John Key, who rightly has demanded answers to why the accident happened, but has generally been level-headed in his comments about *Rena*.

Under-fire politicians normally pander to the baser political impulses in such circumstances.

Then there is the sterling work of Maritime New Zealand in co-ordinating the response and informing the public. There is now a force of more than 5,000 volunteers who have enlisted for the response operation.

The shipowner lost little time in expressing its sorrow to the Kiwis once it became clear a significant amount of fuel oil had escaped from the ship. It's the political thing to do, of course. But it was one of the faster and cleaner apologies of its type in memory and those familiar with the shipping company Costamare will have no doubt that it is backed with the owner's genuine sympathy for the environment and all those affected.

Turning to *Rainbow Warrior*, it was launched last Friday in Germany and is the third Greenpeace vessel to bear that name.

The original *Rainbow Warrior* was the victim of a 1985 bombing in Auckland harbour that then New Zealand Prime Minister David Lange dubbed a terrorist act. The ship was blown up by French intelligence agents to prevent it hampering French nuclear tests in the south Pacific.

An unintended but hardly surprising consequence of the two explosions that sank the protest ship was the death of Greenpeace photographer Fernando Pereira.

When he eventually found out his government was responsible, French Prime Minister Laurent Fabius said sorry. But any apology was undermined by French efforts to strong-arm New Zealand — not least through a threatened European boycott of its products — into freeing two French agents who were caught and convicted for the sinking, which was almost unbelievably codenamed *Opération Satanique*.

Eventually a deal was brokered that allowed the agents in fairly short order to be whisked back to a hero's welcome in France. That event left a stain that may never go away. Nonetheless, the arrival of the latest, and first purpose-built, *Rainbow Warrior* is an event that speaks of the power of renewal. ■

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