Neutral citation no. [2020] EWHC 393 (Admlty)

IN THE HIGH COURT OF JUSTICE **Claim No. AD-2019-000106**

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

ADMIRALTY COURT (QBD)

Before Mr Registrar Kay QC, Admiralty Registrar

Admiralty claim in rem against:

The Ship "POSEIDON"

B E T W E E N:

TECOIL SHIPPING LTD

Claimant

- and -

THE OWNERS OF THE SHIP "POSEIDON"

Defendant

Hearing date 14th January 2020

Appearances:

For the Claimant -Mr Tom Bird instructed by Stephenson Harwood

The Defendant was not represented

JUDGMENT
(handed down 24th February 2020)

Introduction

1. The Claimant has made an application for judgment in default of an acknowledgment of service in a collision claim. The Claimant is the registered owner of the "TECOIL POLARIS", a 2,821 DWT oil tanker.

2. On 18th July 2018 the TECOIL POLARIS was at berth at Albert Dock in Hull. The vessel was stationary, without power and without a crew. At about 2205 a vessel named the "POSEIDON" was underway in the Albert Dock when she collided with the starboard side plating of the TECOIL POLARIS, causing considerable damage. The POSEIDON was apparently manoeuvring towards her berth at the time.

3. The Claimant issued an in rem claim against the owners of the POSEIDON on 28th June 2019, seeking damages, interest and costs. The claim form was served on the Defendant on 1st July and deemed served on 3rd July 2019. However, the Defendant has not filed an acknowledgement of service within the time permitted or at all. Accordingly, the Claimant has applied for judgment in default of an acknowledgement of service with the damages to be assessed.

4. In support of the application the Claimant has provided a First Witness Statement made by Irina Yakovleva, the Claimant's General Director, dated 18th December 2019 and three witness statements made by Mr. Simon Domin of the Claimant's solicitors, Stephenson Harwood LLP, dated 18th December 2019, 31st December 2019 and 7th January 2020. The Court was also shown a CCTV recording the POSEIDON manoeuvring at the relevant time made by the port authorities in Hull.

The background

5. The Claimant acquired the TECOIL POLARIS in October 2016 and appointed a third party, Kompannya NT, to manage the care of technical and crewing matters. Before the collision, the vessel had been used to transport products for an oil-refining company, STR Tecoil Oy, pursuant to a contract of affreightment dated 30th June 2017. On 21st May 2018 the TECOIL POLARIS sailed from Hamina, Finland to Immingham, where she was to load a cargo of used lubricant oil. After loading the cargo, the vessel was detained by the Maritime and Coastguard Agency on 6th June for failing to comply with statutory requirements relating to documentation, equipment and the crew. The cargo which had been loaded on board the TECOIL POLARIS was discharged and loaded onto other vessels. The vessel then shifted across the Humber to Hull under her own steam on 12th June where she was allocated a lay-up berth at Albert Dock. On 21st June 2018 the vessel was no longer in class and had lost her H&M cover and it appears that the Master has subsequently been prosecuted for various breaches of the Merchant Shipping

(International Safety Management (ISM) Code) Regulations 2014/1512. However it is asserted that by 18th July, the majority of the deficiencies had been rectified and arrangements were being made to tow the vessel to St Petersburg so that a class inspection by the Russian Maritime Register could take place.

6. The collision in question occurred at about 2205 on 18th July 2018. The TECOIL POLARIS was lying portside to the quay. She was unmanned and without power. The incident was captured by a CCTV recording. The recording was shown at the hearing and it is clear that the POSEIDON was manoeuvring at the time of the impact. It can be seen that the collision took place between the port side of the POSEIDON and the starboard side of the TECOIL POLARIS. From the CCTV recording it appears that, during the collision, the port side of the TECOIL POLARIS was pushed bodily and apparently heavily against the quay side.

7. On 20th July 2018 Stephenson Harwood wrote to Ropner Insurance Services Limited whom it was understood were the insurers of the POSEIDON. Later the same day, Messrs Lodestar Marine ("Lodestar") confirmed that they were the P&I insurers of the POSEIDON. Messrs Brookes Bell surveyed the TECOIL POLARIS on behalf of the Claimant on 21st and 24th July 2018. A joint inspection took place on 25th July 2018 attended by Brookes Bell, for the Claimant, and Crawford & Company, the surveyors instructed by Lodestar. The damage to the TECOIL POLARIS is set out in detail in the Brookes Bell report.

8. Lodestar provided security by a letter of undertaking dated 3rd August 2018 in the amount of US$200,000 with liberty to seek additional security "*if and to the extent that the security sum…is reasonably deemed to be insufficient…but always subject to an overall total sum…of US$500,000*". On 22nd November 2018, and relying on a provisional calculation of the losses suffered by the Claimant, Stephenson Harwood wrote to Lodestar to: "*…invite your client to…admit liability…provide additional security…and…make an interim payment of £250,000.00…*". On 10th December 2018, Stephenson Harwood again wrote to Lodestar to *"…seek the provision of security up to the maximum of USD500,000 within 7 days of this email…*". Lodestar replied the same day saying that they were "*…not in a position to provide further security for [the Claimant's] claim…*".

9. The TECOIL POLARIS remains at Albert Dock, because the Claimant has so far been unable to finance the necessary repairs. The collision has caused the Claimant substantial losses. The POSEIDON also remains at Hull.

10. On 21st June 2019 Clyde & Co LLP wrote to Stephenson Harwood to confirm that they were *"…instructed to act by the P&I insurers of [the POSEIDON]…*" but *"…not instructed to act by the Owners of [the POSEIDON]…*". Clyde & Co commented that *"…[i]t would…be premature for your client to commence proceedings…[and that they would]…provide our substantive response in due course…*". Stephenson Harwood responded on 25th June 2019 explaining that they could not "*…understand how it can be that you are not instructed on…*[the behalf of the Owners of the POSEIDON]*…in relation to this claim…*". There was no response from Clyde & Co (No further message was ever sent by Clyde & Co, let alone a "substantive response", as indicated in their email of 21st June2019). The only correspondence sent by Clyde & Co after their email on 21st June was on 20th December 2019 and 9th January 2020, as appears below.

11. On 28th June 2019 the Claimant issued in rem proceedings against the Defendant, the owners of the POSEIDON. The Claim form was served by fixing a copy of it to the POSEIDON at Hull on 1st July 2019 in accordance with the provisions of CPR PD61 para. 3.6(a) of PD61. The Defendant has not filed an acknowledgment of service.

12. On 18th December 2019 the Claimant applied for judgment in default of an acknowledgment of service. The Claimant also sought the Court's permission to amend the name of the Defendant to correct a misnomer pursuant to CPR Part 17. The claim form describe the Defendant as the "the Owners of the M/T POSEIDON". The POSEIDON is in fact a research vessel, not a motor tanker. The prefix "M/T" was included in error. Mr Bird submitted that the proposed amendment could not have caused any confusion to the Defendant and that the amendment should be allowed because:

    (a) The only error was to include the letters M/T in the claim form. The port of registry was correctly described and there is no motor tanker registered in that port.

    (b) The claim form was served by fixing a copy on the outside of the POSEIDON.

(c) The brief details of claim set out in the claim form would leave the recipient in no doubt as to the identity of the intended defendant given the description of the collision with the TECOIL POLARIS.

(d) In the circumstances, it would accord with the overriding objective to permit this small proposed amendment and to dispense with the requirement to serve the amended claim form on the Defendant.

13. The evidence also indicates that not only was the Claimant's application and the supporting evidence served on the Defendant by fixing it to the POSEIDON, but it has also been served on Clyde & Co, who are instructed by Lodestar, the Defendants' P&I insurers. However it is apparent that the latter have taken little if any interest in the proceedings and despite a number of requests for clarification by Stephenson Harwood since 20th December 2019 as to whether or not Clyde & Co are instructed by the Defendant and whether they will appear at the hearing no material response to the requests has been forthcoming. The only correspondence from Clyde & Co after the making of this application was an email dated 20th December in which they asked for "*...electronic versions...*[of the application]…". Stephenson Harwood provided copies the same day. Despite having received no response from Clyde & Co, Stephenson Harwood provided as a matter of professional courtesy copies of Mr Domin's secomd witness statement and its exhibit to Clyde & Co on 3rd January 2020, emphasising that they would expect them to "*...reciprocate the courtesy by confirming that you do not act for the Defendant...*". There has been no response from Clyde & Co to this email except that on 9th January 2020, Clyde & Co emailed Stephenson Harwood, indicating that they were not instructed to act on behalf of the Defendant. The email continued: *"Accordingly, we are not instructed to appear either at the hearing that has been listed for 14 January 2020 specifically, nor in these proceedings generally. That said and, as we understand it, the above hearing not being in private, we intend to send a representative from this firm, strictly on behalf of RSA and not on behalf of the owners of the vessel, or the owners of any other vessel thereof, or any other person, to observe and record what takes place at the hearing. As we have intimated above, however, we will not be participating or formally appearing in the hearing in any way. You will no doubt be fully aware that in those circumstances any judgment that your clients may obtain in these proceedings can and will only be a judgment against the "POSEIDON" itself as a res, and cannot and*

will not take effect as an in personam judgment against any legal or natural person, in particular, the owners of the "POSEIDON". Given your heightened duties to the Court in the absence of any other person being represented, we trust that you will ensure that this principle is drawn fully and frankly to the Court's attention at this and any subsequent hearing; and also that this principle is reflected in, and / or not derogated from by, the terms of any judgment or order that is drawn up on your application. Please also confirm that you will provide a copy of this message to the Court at the hearing and further that any judgment or order made on your application will be drawn up and sealed promptly and a copy provided to us for our client's information, as soon as made."

14. At the hearing on the 14th January 2020 the Court considered the application to amend the claim form mentioned in paragraph 12 above. The Court considered that the use of the letters "M/T" was a straightforward error which could not possibly have caused any confusion as to the identity of the vessel against which claims were being brought and agreed with Mr Bird. An Order of the same date was made allowing the amendment.

The outstanding issues

15. The remaining issues for consideration are:

    (a) Does the Court have jurisdiction to grant judgment in default of an acknowledgment of service in an in rem collision claim?

    (b) If so, should the Court grant default judgment in this case in the sum of US$200,000 or some other sum?

The Court's power to grant default judgment

16. Mr Bird has informed the Court that although CPR Part 61 sets forth the procedure for default judgment applicable to certain admiralty claims it does not make explicit provision for collision claims where the claimant wishes to apply for judgment in default of an acknowledgment of service.

17. Further, as Mr Bird informed the Court, the rule might operate so as to prevent the Claimant from succeeding in its application for a judgment in default of acknowledgement of service. That view appears to be supported by the editors of *Marsden and Gault on Collisions at Sea*, 14th Edn 2016, who express the view at §20-54 that in an in rem collision claim judgment in default "*may only be obtained by a party who has filed a collision statement within the time specified within CPR 61.4(5), and only if the party against whom judgment is sought has not filed a collision statement and the time for doing so has expired. In such a case, judgment in default may be obtained if certain conditions are met*." If taken literally that indicates that the only circumstances in which a claimant in a collision claim *in rem* can obtain judgment in default is where the claim form has been served, the claimant has filed a collision statement of case and the defendant has failed to file a collision statement of case. Mr Bird has pointed out that the contents of *The Law and Practice of Admiralty Matters*, 2nd Edn 2016, appears to be of similar effect as at paragraph 6.26 the following appears: "*Judgment in default is only available in collision claims for failure to file a statement of case*". However Mr Bird has pointed out that the editors of *Admiralty Jurisdiction and Practice*, 5th Edn 2017, only appear to address the position where there has been a failure to file a collision statement of case in an in rem claim, but not the situation where there has been a failure to file an acknowledgment of service: see para. 7.73.

18. The question is therefore whether CPR 61 is intended to operate so to restrict the circumstances in which a claimant may obtain a judgment in default or whether, as Mr Bird has submitted, the provisions of CPR Part 12 apply so as to provide a procedure whereby a Claimant may obtain a default judgment where the Defendant has failed to acknowledge service.

19. The textbooks referred to above do not cite any authority in support of the proposition that CPR Part 61 operates so as to restrict the circumstances in which a claimant may obtain a judgment in default as suggested in *Marsden.* The issue is therefore whether this is in fact the effect of the rules.

20. The problem arises because of the wording of CPR Part 61.9 which deals directly with the obtaining a judgment in default in claims *in rem.* CPR r.61.9 provides, in relevant part with emphasis added, as follows:

"*(1) In a claim in rem (other than a collision claim) the claimant may obtain judgment in default of –*

(a) an acknowledgment of service only if – (i) the defendant has not filed an acknowledgment of service; and (ii) the time for doing so set out in rule 61.3(4) has expired; and

(b) defence only if – (i) a defence has not been filed; and (ii) the relevant time limit for doing so has expired.

(2) In a collision claim, a party who has filed a collision statement of case within the time specified by rule 61.4(5) may obtain judgment in default of a collision statement of case only if –

(a) the party against whom judgment is sought has not filed a collision statement of case; and

(b) the time for doing so set out in rule 61.4(5) has expired.

(3) An application for judgment in default –

(a) under paragraph (1) or paragraph (2) in an in rem claim must be made by filing – (i) an application notice as set out in Practice Direction 61; (ii) a certificate proving service of the claim form; and (iii) evidence proving the claim to the satisfaction of the court; and

(b) under paragraph (2) in any other claim must be made in accordance with Part 12 with any necessary modifications."

21. This wording suggests that a judgment for failing to acknowledge service may only be obtained in cases "*other than in a collision claim*", see CPR Part 61.9(1), and that the only provision for obtaining judgment in default in a collision claim is where the defendant has failed to file a collision statement of case. The problem is compounded by CPR Part 61.4 which contains the special provisions relating to collision claims. CPR 61.4 provides (emphasis added):

"*(2) A claim form need not contain or be followed by particulars of claim and rule 7.4 does not apply.*

(3) An acknowledgment of service must be filed.

(5) Every party must – (a) within 2 months after the defendant files the acknowledgment of service; or (b) where the defendant applies under Part 11, within 2 months after the defendant files the further acknowledgment of service, file at the court a completed collision statement of case in the form specified in Practice Direction 61."

22. In the present case, the claim form was served by fixing a copy of the claim form on the outside of the POSEIDON on 1st July 2019 pursuant to §3.6(a) of PD61. The deemed date of service was therefore 3rd July, two business days after the completion of the relevant step: CPR r.7.5(1). The Defendant was obliged to file an acknowledgment of service by 17th July 2019 and failed to do so. However the obligation to file a collision statement of case has not arisen, no acknowledgment of service having been filed.

23. CPR r.61.9(1) only applies to claims in rem other than collision claims. Therefore it does not apply to the present claim. CPR r.61.9(2) applies to collision claims, but only governs the situation where a party who has filed a collision statement of case wishes to apply for judgment in default of a collision statement of case. It does not apply in the situation where (as here) the obligation to file a collision statement of case has not arisen and the claimant in a collision claim wishes to apply for judgment in default of an acknowledgment of service.

24. Mr Bird has submitted that there is a lacuna in the rules and that the Court should have the power to grant judgment in default of an acknowledgment of service in an *in rem* collision claim. He has submitted that the problem arising from the views expressed in *Marsden* and the earlier edition of *The Law and Practice of Admiralty Matters* is that, if it were right that a claimant in an *in rem* collision claim could only apply for judgment in default of a collision statement of case, it would mean that a defendant would be in a better position by failing to file an acknowledgment of service than it would have been if it had filed an acknowledgment and then failed to file a collision statement of case. A defendant could effectively deprive the claimant of the opportunity of applying for judgment in default by refraining from acknowledging the claim form at all. That would be unjust, is unlikely to have been what the drafters of the CPR intended, and is not supported by the language of CPR r.61.9. Mr Bird also points out that the editors of the two textbooks do not cite any authority in support of the view expressed.

25. In these circumstances Mr Bird submits that as the language of CPR r.61.9(2) does not place any restrictions on the right of a party to obtain judgment in default of an acknowledgment of service but only imposes conditions on applications for judgment in default of a collision statement of case it follows that it is implicit that the provisions of CPR Part 12 must govern. Moreover, it is inherent in CPR r.61.9(4)(b) that the provisions

of CPR Part 12 must apply to cases where no acknowledgment of service has been filed. CPR r.12.3 provides:

> "*(1) The claimant may obtain judgment in default of an acknowledgment of service only if –*
>
> *(a) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and*
>
> *(b) the relevant time for doing so has expired.*"

Discussion

26. I agree with Mr Bird that it is strange that the provisions of CPR Part 61.9(1) do not appear to allow a claimant in a collision claim to apply for judgment in default of a service of an acknowledgment of service whilst CPR Part 61.9(2) does permit a judgment in default of a collision statement of case to be made where the claimant has, itself, served a collision statement of case. It is noteworthy that CPR Part 61.9(3) provides that on making an application under CPR Part 61.9(1) or (2) it is necessary to provide a certificate proving service of the claim form and evidence proving the claim to the satisfaction of the Court so that the procedure for both collision claims and other claims *in rem* is identical in terms of what the Court requires before a judgment in default is pronounced. In my view there is no sensible reason why a judgment in default of acknowledgment of service may not be allowed in a collision claim. However it is apparent that the different procedures set out in CPR Part 61.9(1)(b) and (2) are necessary to differentiate between 'other' *in rem* claims and collision claims where for the former the judgment is in default of <u>defence</u> but for the latter it needs to be in default of a collision statement of case because no 'defence' is filed in such cases.

27. The existing rules do not prescribe a party from obtaining a judgment in default of acknowledgment of service and therefore, absent an express provision to the effect that a claimant in a collision claim may not obtain a judgment in default, I consider that it is open to the Court to make such an order either: (i) by reason of the Court's inherent jurisdiction to give judgment in circumstances where a defendant to such a claim declines to take any a part in the proceedings, or (ii) assuming that the Court has no such inherent jurisdiction, by reason of the operation of CPR Part 12 as Mr Bird has submitted.

28. CPR 12 itself is generally applicable to all claims, including those being heard in the Commercial Court and the Admiralty Court unless specifically excluded by the operation of another rule, see CPR Parts 2.1, 58.3 and 61.1(3). There is no specific provision excluding the operation of CPR 12 from collision claims where no acknowledgment of service has been filed and, absent such a provision, I consider that it would be contrary to the operation of the overriding objective to hold that CPR 12 did not apply to such cases.

29. In these circumstances I hold that , where there is a default in acknowledging service by a defendant and the relevant time for doing so has expired, the Court may order that the claimant should have judgment subject to the operation of the provisions of CPR 61.9(3). The claim form was served on the 1st July 2019 and time for acknowledging service HAS expired. Accordingly judgment in default should be given in favour of the Claimant.

30. I should add that I consider that the present apparent lacuna has been caused by an unfortunate error in the drafting of CPR Part 61.9. In my view it would be much clearer if the words "*(other than a collision claim)*" were deleted from the opening portion of Part 61(1) and added before the word "*defence*" in Part 61.9(1)(b). That would make it clear that default judgment for a failure to file an acknowledgment of service was available in all *in rem* claims whilst preserving the alternative default procedures necessarily different by reason of the fact that no defence will be filed in a collision claim. However a change in the wording of the rule is a matter for the Rules Committee.

31. Alternatively it appears to me that, even where there has been no acknowledgment of service filed by the defendant, a claimant could itself voluntarily file a collision statement of case despite the wording of Part 61.4(5) so as to bring itself within the precise wording of CPR Part 61.9(2). The Claimant has now filed a collision statement of case as a result of an order of the court dated the 14th January 2020. That was filed on the 15th January 2020.

Proving the claim to the satisfaction of the Court

32. The necessity to prove the claim to the satisfaction of the Court is a procedure which differs from that generally applicable in other claims and is peculiar to Admiralty in rem

proceedings. Thus it is necessary for the Claimant to establish that there has been a collision and, in effect, that the fault for that collision rests upon those navigating the Defendant's vessel. Having considered the Claimant's collision statement of case and had the opportunity to view the CCTV recording of the navigation of the Defendant's vessel leading to the collision I have no doubt that the collision did indeed occur and that the Defendant's vessel is properly to be held solely at fault for it.

33. The Claimant is therefore entitled to recover the costs of reasonable repairs and other financial losses arising from the collision. I am informed that the repairs have not yet taken place however some expenses have already been incurred and estimates for the damage repairs have been provided. In these circumstances it appears to me that the Court must do its best to assess the damage claim on the information presently available. The main source of evidence for the information on this aspect set out below is to be found in the witness statement of Ms Irina Vladimirovna Yakovleva dated 18th December 2019.

34. *Surveys.* Messrs Brookes Bell have surveyed the Claimant's vessel to assess the damage. The cost of those survey is evidenced by their invoice in the sum of £7,283.06. The cost of gas freeing and opening the ballast tanks for the purposes of those surveys appears in an invoice by Casper dated the 12th September 2018, at £180 and £250 respectively. It also appears that the claimants incurred costs of agents, dock dues and tendering services whilst these surveys were performed of £6,975, £8,640 and £1,155 which are also set out in the Casper invoice of 12th September 2018. As I understand it these were incurred to facilitate the surveys referred to between 12th July and 12th August 2018.

35. *Collision repairs.* Two repair estimates have been provided by Dunston Ship Repairs. The first is dated 1st November 2018 and is in the sum of £70,622. The second is dated 19th March 2019 and is in the sum of £82,385.30. The first envisages that the repairs will be carried out with the ship afloat and alongside but makes no provision for painting. The second includes a sum for painting the vessel and includes the cost of drydocking, otherwise the structural repairs referred to are the same as in the earlier quotation. The Brookes Bell report dated the 7th August 2018 noted that there was some pre-existing damage which was not in need of repair but specifically listed the impact damage attributable to the collision. It referred to a diving survey which indicated that the impact damage was all above the waterline. The report gave estimate for the cost of steel renewal repairs in a sum not exceeding £70,000 and indicated that the repairs could be carried out

afloat taking 6-8 working days. The report does not appear to allow for the cost of painting but acknowledges that it will be necessary. It is to be noted that the second Dunstan quotation appears to differentiate between whether the paint work was done alongside (i.e."wet berth") or in dry dock. But it concludes "*We assume the vessel to be starboard to quayside for repairs*". To this extent the quotation appears to be contradictory.

36. In her witness statement Ms Yakovleva has submitted that the second repair estimate is a more accurate reflection of the costs of damage repair. However it is for the Claimant to satisfy the Court that the costs put forward are a necessary consequence of the collision and reasonable. In the face of the Brookes Bell report I do not accept that it is necessary to drydock the vessel. Further the first quotation more nearly accords with the Brooks Bell estimate. However I accept that painting is necessary. In its second quotation Dunston provide a figure for paint supply of £6,309 but it is probable that this includes hull painting in drydock which I do not consider should be allowed. The other problem is that the second quotation, whilst providing the costs per square metre for certain work does not provide the overall prices for washing the vessel although labour is provided on the basis of a minimum square meterage which would give rise to labour costs of about £1,600 in a wet berth. Doing the best I can with these figures I consider that a sum of £5,000 should be allowed for painting. Added to the figure in the first Dunston quotation that amounts to £75,622.

37. *Loss of freight*. Ms Yakovleva has calculated that the daily operational loss in respect of the vessel was Euros 3,556.08 per day. This was based upon her previous voyage revenue less her operating expenses over a 13 day voyage. This was based upon a single voyage but it was contemporaneous and appears to be a reasonable basis for the calculation made. The result also appears to be reasonable for this type of ship.

38. The question is to what period the above figure should be applied. I have read the letter from Stephenson Harwood making further submissions on the relevant period to take into account but it must be borne in mind that in the present case the Claimant's vessel was already detained by the maritime authorities. It is therefore uncertain as to what period of loss of use is properly attributable to the collision and what is due to other causes which do not flow from the collision. A further vexing issue is the extent to which the loss of use has been caused by the impecuniosity of the Claimant or more directly by

the collision. In the present case Mr Bird submitted that it would be reasonable to allow a period of 3-5 weeks to, at least, cover a reasonable period for undertaking the repairs. The Brookes Bell report mentioned a shorter period of time but it does not allow for painting however I consider that the vessel would not be repaired immediately but some time is allowable for consideration of the repairs to be undertaken. Loss of the ability to earn during this period is I consider reasonably attributable to the collision. Doing the best I can with the information and evidence provided by the Claimant, in my judgment the figure of 5 weeks is a reasonable basis for assessing the damages for the loss of use suffered by the damage to the Claimant's vessel arising from the collision. Euros 3,556.08 per day multiplied by 35 gives rise to a figure of Euros 124,462.80.

39. *Additional costs to be incurred during repairs.* Ms Yakovleva has submitted that there would be additional costs of agency, dock dues and tendering services during the period of repair. She has submitted that these would have amounted to £18,928.35 over a 5 week period calculated on the basis of £225, £278.71 and £37.10 per day respectively.

Conclusion with respect to the quantum of damages

40. For the reasons set out above I consider that the Claimants have provided evidence which is satisfactory in the following sums:

    (a) *Surveys.* Messrs Brookes Bell invoice £7,283.06.

    (b) *Gas freeing*, opening the ballast tanks for the purposes of those surveys appears in an invoice by Casper dated the 12th September 2018. £180 and £250, total £430.

    (c) *Cost of agents*, dock dues and tendering services whilst these surveys were performed of £6,975, £8,640 and £1,155, total £16,770.

    (d) *Collision repairs.* As found above - £75,622.

    (e) *Additional costs to be incurred during repairs.* - As found above - £18,928.35.

    (f) *Loss of freight.* As found above - Euros 124,462.80.

41. The Claimant is therefore entitled to judgment in the following sums: £119,033.41 and Euros 124,462.80.

42. *Interest.* Mr Bird informed me that the base rate is 0.75% and invited me to make an order for interest of 4%. In my view and having considered the submissions contained in the letter from Stephenson Harwood dated 21st January 2020 I find that the proper rate of interest to be 4% from the date of the collision.

43. *Costs.* I have considered the statement of costs dated 21st January 2020. Although my initial impression that the costs put forward were high I have taken account of the matters set out and the accompanying letter on costs from Stephenson Harwood also dated 21st January 2020. Bearing those matters in mind I consider that the costs put forward in this claim, which cover both the claim itself and the application, are reasonable and should be allowed in full in the amount of £105,584.50.

44. *Part 36 offer.* Having come to the conclusions as to the recoverable damages set out above I turned to the questions of costs and interest and found that Stephenson Harwood had sent a further letter of the 21st January 2020 and that they seek a costs order pursuant to CPR 36.17 on the basis that a Part 36 offer was made to settle this matter by letter to Lodestar dated the 10th December 2018. In my view there are two problems with this application. The first problem is that it is made to Lodestar which was, I understand, the P&I insurer of the Defendant owners but is not itself a party to the proceedings. In my view it is implicit to CPR Part 36.5 that the offer must be made to the Defendant or his legal advisers instructed as such. If the provisions of CPR Part 36.5 are not followed then the offer will not have the consequences specified in Part 36, see CPR Part 36.2. The second problem is that the offer is split into a sterling component and a euro component. The offer made in the sterling figure was £105,111.97 and therefore is less than the sterling sum I have awarded above. However the euro offer amounted to Euros 157,307.81 which is greater than the sum I have awarded in Euros. Whilst I do not consider that the fact that a split offer has been made is fatal to the offer nonetheless I consider that for the special provisions of CPR Part 36.17 to apply it is necessary for the overall offer to better the result of the judgment. I have therefore compared the sums at present exchange rates and conclude that in sterling the present award amounts to £222,997.19 and the Part 36 offer amounts to £236,511.18. In these circumstances I do not consider that the judgment obtained is, in fact, more advantageous than the Part 36

offer or even that the judgment against the Defendant is at least as advantageous to the Claimants as the proposals contained in the Part 36 offer. For these reasons I consider that the costs provisions contained in CPR Part 36.17 do not apply to this case.

Dated this 24th day of February 2020.