



MORGAN & MORGAN  
ABOGADOS - ATTORNEYS AT LAW

# INJUNCTIVE RELIEF UNDER PANAMANIAN ADMIRALTY LAW

*Francisco J. Linares F., B.A., J.D.*

# NATURE OF A MARITIME INJUNCTION

- A COURT ORDER THAT DIRECTS A PARTY OR A THIRD PERSON TO PERFORM OR REFRAIN FROM PERFORMING A PARTICULAR ACTION.
- ARTICLE 206 OF THE CODE OF MARITIME PROCEDURE (CMP):

*Article 206. In addition to the regulated cases, any person with a justified motive to fear that during the time prior to the judicial recognition of his rights, these will suffer immediate and irreparable risk, may petition the Judge for such conservative or protective measures which are most appropriate to provisionally secure, according to the circumstances, the effectiveness of a decision on the merits. The petitioner will file his petition attaching summary evidence and, in addition to this, the corresponding counter-security for damages, which in no event will be less than US\$1,000.00 nor more than US\$50,000.00. In the cases of prohibitions to sale and encumber vessels or other assets, counter-security will be no less than US\$10,000.00.*

*The petition will be processed and decided, as it pertains, according to the rules of this chapter.*

# NATURE OF A MARITIME INJUNCTION



- PRECAUTIONARY MEASURE
- PROHIBITIVE OR MANDATORY
- *EX PARTE*
- AGAINST A PARTY OR A THIRD PARTY

# REQUIREMENTS

- *FUMUS BONI IURIS*
- *PERICULUM IN MORA*
- COUNTER-SECURITY



MORGAN & MORGAN GROUP

# AVAILABILITY



- ONLY IN MARITIME CAUSES OF ACTION
- *IN PERSONAM* FUNDAMENTALLY, BUT ALSO *IN REM*

# CURRENT USES

- PREVENT SALE, DELETION AND/OR ENCUMBERING OF VESSELS
- NEED TO FILE *PRIMA FACIE* EVIDENCE
- *PERICULUM IN MORA* ELEMENT: THE MOST DIFFICULT TO SHOW
- THE “*ONE-SHIP-OWNING-COMPANY*” PRESUMPTION
- EVIDENCE GATHERING: ANTON PILLER ORDER



MORGAN & MORGAN GROUP

# REMEDIES AGAINST AN INJUNCTION



- APPEAL
- NULLITY MOTION
- CONSTITUTIONAL CHALLENGE

# ABUSES

- CORPORATE VEIL PIERCING
- SISTER SHIP ATTACK

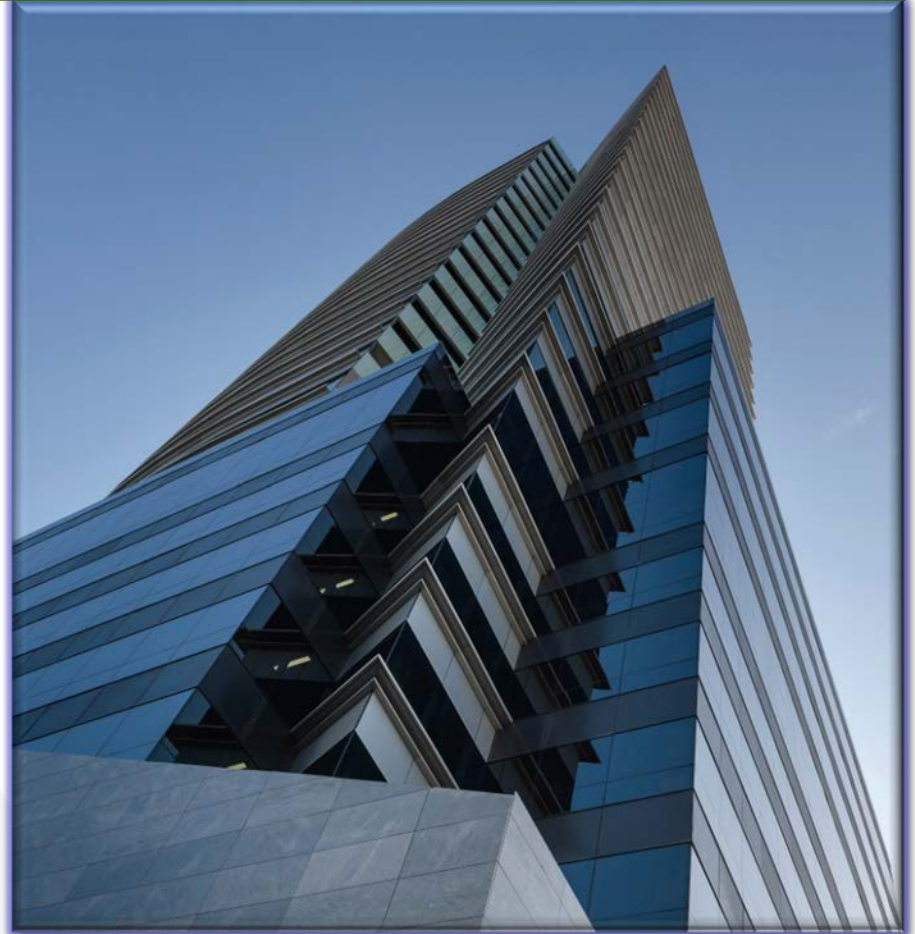


MORGAN & MORGAN GROUP



# POTENTIAL FUTURE DEVELOPMENTS

- INJUNCTION TO FORCE THE POSTING OF SECURITY
- ANTI-SUIT INJUNCTION



# CONTEMPT



- IMPRISONMENT
- MONETARY SANCTIONS
- DAMAGES

# CONCLUSION

*A powerful tool to safeguard a party's litigation position, an Admiralty injunction can be used in Panama either to secure an eventual recovery after a decision on the merits or to collect crucial evidence indispensable to a party's case. Yet, Panamanian Maritime Judges have not really exploited to the fullest the possibilities afforded by their injunctive powers, provided by article 206 of the CMP. It is to be expected that such injunctive powers will expand to provide new forms of remedies to maritime claimants.*

# THANK YOU....



## MORGAN & MORGAN

ABOGADOS - ATTORNEYS AT LAW

MORGAN & MORGAN GROUP