

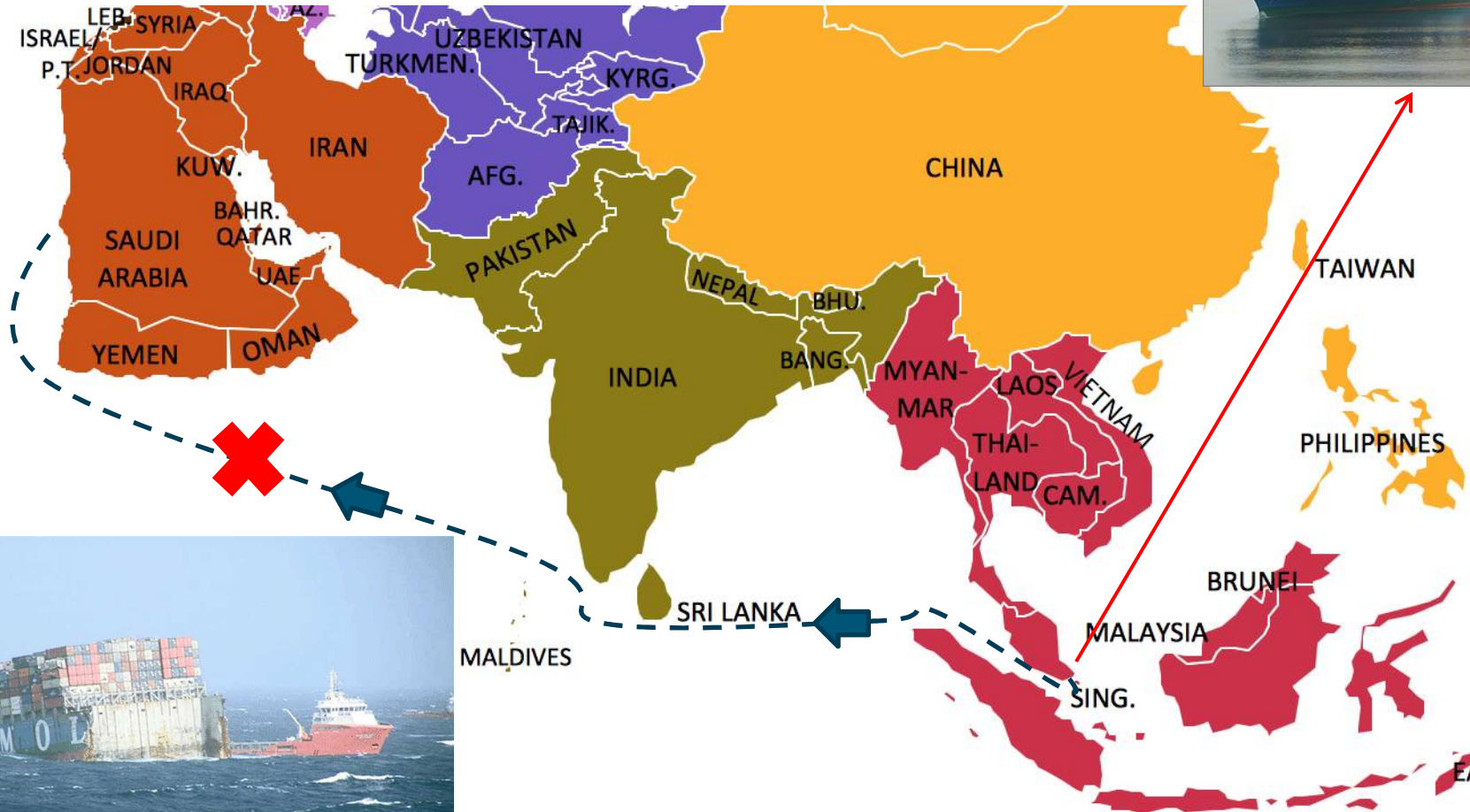
THE MOL COMFORT INCIDENT

International Maritime Law Seminar – 27 October 2016

The Agenda

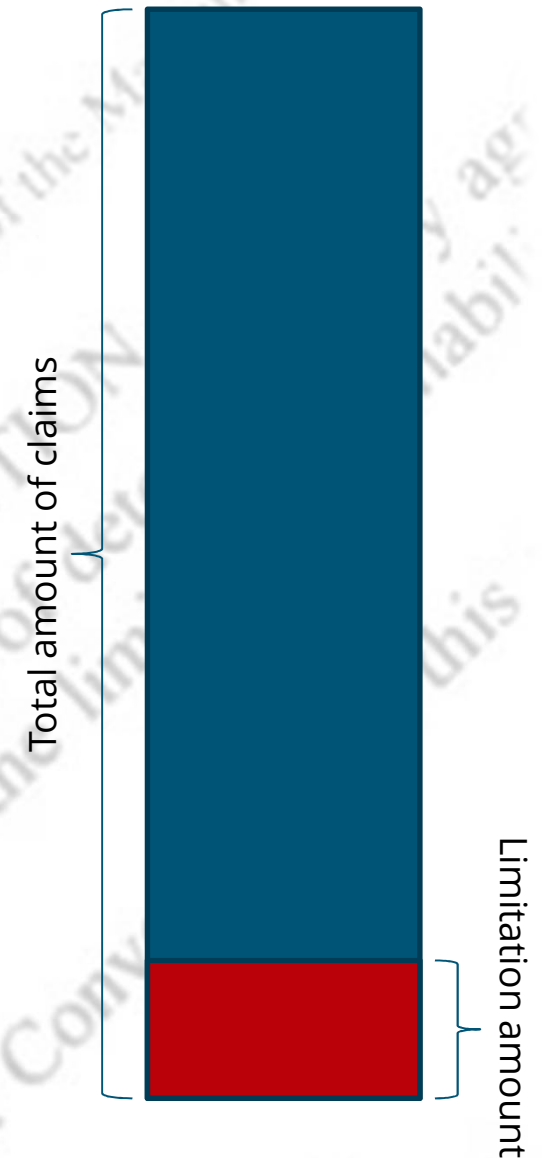
- The facts and the parties involved
 - The procedural steps in Japan and Denmark
 - The main legal issues in Denmark
 - The Maritime and Commercial Court's Judgment
 - The Enforcement Court's and the Eastern High Court's Judgment
 - The consequences
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THE FACTS



OPENING OF A LIMITATION FUND

- A Limitation Fund was opened with Tokyo District Court in Japan by the owners and operators of MOL COMFORT in accordance with the 1976 Convention on Limitation of Liability as amended by the 1996 Protocol
- The effects of the limitation fund according to Danish law
 - The persons governed by the Convention is afforded a right to a global limitation of liability
 - Once a fund is established claims must be made against the fund and actions against the persons governed by the fund cannot be commenced in the state where the fund has been established
 - If a claim has been made against the fund, arrest is barred, and arrests already made must be released
 - If a claim has not been made against the fund, a request for arrest or enforcement of a claim **may be** rejected by the court



THE PARTIES relevant for the Danish action

Owner: Ural Container Carriers S.A.
 Operator: Mitsui OSK Lines Ltd.

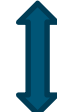


Contracting carrier

Bill of Lading	
No. of B/L:	Date of Issue:
Vessel Name:	Port of Origin:
Vessel No.:	Port of Destination:
Date of Receipt:	Date of Delivery:
Total amount (USD):	Total amount (EUR):
<input type="checkbox"/> Clean on board	<input type="checkbox"/> Clean and tally
<input type="checkbox"/> Tallyed	<input type="checkbox"/> Tallyed



Cargo owner



Cargo insurer



1. PROCEDURAL STEP IN DENMARK: Proceedings in the Maritime and Commercial Court in Copenhagen

Cargo insurer



Maritime and Commercial Court



Loss of cargo

Contracting carrier



- A cargo insurer of a Danish cargo owner initiates proceedings against a Danish contracting carrier in the Maritime and Commercial Court in Copenhagen
- Claiming damages for loss of cargo
- Neither the cargo owner nor the cargo insurer claims against the limitation fund

LEGAL ISSUES

- Procedurally: Are proceedings against the contracting carrier barred due to the Limitation Fund?
 - ♦ Does the Contracting Carrier have a right to limit liability?
 - ♦ Is the Insurer's claim governed by the Limitation Fund?
 - ♦ Enforcement against the Contracting Carrier is barred

 - Substance: Are the Contracting Carrier liable?
 - ♦ Presumption of liability
 - ♦ No fault on the part of the Contracting Carrier
 - ♦ The Owners, Operators etc. had no knowledge and should not have had knowledge of the structural weakness
 - ♦ MOL COMFORT was not overloaded
 - ♦ MOL COMFORT was seaworthy at the beginning at the voyage
 - ♦ Obtaining evidence was difficult
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THE MARITIME AND COMMERCIAL COURT'S JUDGMENT

- Are proceedings against the contracting carrier barred due to the Limitation Fund? - **NO**
 - ♦ Does the Contracting Carrier have a right to limit liability? – No answer
 - ♦ Is the Insurer's claim governed by the Limitation Fund? – No answer
 - ♦ Enforcement against the Contracting Carrier is barred? – No answer
- Are the Contracting Carrier liable? - **YES**
 - ♦ Carrier is liable unless the Carrier proves that neither he nor anyone which he is responsible for has caused the damage by fault or neglect
 - ♦ The Court found that the cause of damage as well as the potential faults on the performing carrier was uncertain
 - ♦ The Court concluded that the burden of proof had not been lifted
- Consequence
 - ♦ A Contracting Carrier may be held liable for damages with "uncertain" causes or damages for which the Contracting Carrier is not in a position to provide evidence, as such evidence is with the Performing Carrier only

2. PROCEDURAL STEP IN DENMARK

Enforcement proceedings

- Recall: *"If a claim has not been made against the fund, a request for arrest or enforcement of a claim may be rejected by the court"*
- Contracting Carrier did not pay and Cargo Insurer initiated enforcement proceedings
- Legal Issues
 - ♦ Does the Contracting Carrier have a right to limit liability?
 - ♦ Is the Insurer's claim governed by the Limitation Fund?
 - ♦ Is Enforcement against the Contracting Carrier barred?
- Our arguments
 - ♦ The Contracting Carrier does have a right to limit as this is supported by the travaux preparatoires and the right to limit is the counter balance to the presumption of liability
 - ♦ Enforcement is barred: Unfair treatment if Contracting Carrier pays full damages but is only granted a dividend from the Fund



The Enforcement Court's and the High Court's judgments

- The Enforcement Court:
 - ◆ The judgment is enforceable
 - ◆ The Limitation Fund does not prevent enforcement in Denmark
- The High Court:
 - ◆ No grounds for assuming that the Contracting Carrier is governed by the Limitation Fund in Japan
 - ◆ Burden of proof was on the Contracting Carrier
- Consequences
 - ◆ No assumption that the Contracting Carrier is governed by a Limitation Fund
 - ◆ The Contracting Carrier must prove that it is governed by a Limitation Fund in a foreign country
 - ◆ If unable to prove, then full liability and only limited recovery from the Fund



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