

# Forum shopping: collision course



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Any shipowner that has been unfortunate enough to be involved in a ship collision will know that dealing with the incident can be a huge drain on resources. Apart from the damage to the ship and potential loss of life, there may be third-party claims and assistance required from professional salvors.

Although it may not be at the forefront of a shipowner's mind in the days following a collision, this article explores what may be the most significant decision required to limit financial exposure and/or maximise recovery – securing the 'right' jurisdiction.

## Forum shopping

Under the Collision Convention 1952, a collision claim can only be commenced in the court where the defendant has its habitual residence, where the ship (or an associated or sister ship) is arrested or, if in territorial waters, the place where the collision occurred. Commencing proceedings in an alternative forum is likely to result in a forum non conveniens application.

Forum shopping exists because each country has its own rules on inter alia the level of damages that should be awarded, interest, disclosure of documents and recoverability of legal costs. Therefore, within the parameters listed above, a shipowner has a choice of where to commence legal proceedings.

Once proceedings have begun, it is generally up to the defendant to take proactive steps to try and avoid being sued in that form. This can be a time-consuming and costly procedure even if ultimately successful. Therefore a shipowner's lawyers should start considering the most favourable jurisdiction for their client's claim as soon as they receive instructions.

## Limiting any claims

Arguably the most important consideration for the discerning forum shopper is limitation of liability and the bearing that any particular jurisdiction will have on a shipowner's claim.

The principle of limitation allows a shipowner to limit its liability for loss or damage for which it might ordinarily be expected to be responsible.

The main liability conventions are those of 1924, 1957 and 1976, together with a 1996 Protocol to the 1976 Convention. The different limits that these conventions provide is significant as too are the circumstances in which the right to limit can be broken. There are also jurisdictions where there is no convention incorporated and so, at first glance, no right to limit at all. The US also merits particular attention as its limitation regime is based upon the concept of 'abandonment', whereby the limit of liability is the value of the ship plus any outstanding freight.

## Competence and sophistication of the courts

Provided a shipowner is confident that it will be the 'receiving' party, it is likely that it would prefer to have its claim heard in a court with substantial Admiralty Court experience and higher limits. For example, the English legal system contains a separate Admiralty Court, which has jurisdiction over maritime claims.

Alternatively, if a shipowner considers that it is likely to be the 'paying' party, it may be tactically preferable to commence proceedings in a less sophisticated jurisdiction with little maritime experience. A shipowner may also wish to consider where there is any 'home court advantage' in bringing the claim in the courts where its owning company, or managers, are domiciled.

## Key considerations

A decision as to jurisdiction may need to be taken within a matter of hours of a collision. As a matter of best practice, shipowners are recommended to:

- Engage in early discussions with their club and lawyers following a collision
- Make immediate investigations to determine whether they are likely to be the 'receiving' or 'paying' party
- Identify the 'right' jurisdiction to hear their claim

Remember, any counterparty will be doing exactly the same thing with the same objectives, so time is of the essence!