

# Making Waves

THE NEWSLETTER FOR THE CLIENTS AND CONTACTS OF  
SWINNERTON MOORE



## Making a splash in St. Petersburg

**Swinerton Moore is pleased to announce its association with Remedy Law Firm of St. Petersburg and Moscow.**

Remedy was established in St. Petersburg in 1996 by Andrey Suprunenko and Maxim Puslis. Andrey graduated from the State University of St. Petersburg and worked with the Murmansk Shipping Company from 1985 until 1994 when he joined the Baltic Shipping Company where he stayed until 1996. Maxim graduated from the Admiral Makarov Academy with a degree in transport organisation and marine transport management. He worked with the Baltic Shipping Company before setting up Remedy. The firm lives by its name and seeks to provide an answer to any maritime question. The firm now boasts six lawyers with offices in Moscow and St. Petersburg.

Each year the firm hosts a seminar in St. Petersburg, anyone who would be interested in attending should please contact [Sweta@remedy.spb.ru](mailto:Sweta@remedy.spb.ru).

### The Russian International Shipping Register

This article is based on a talk given by Andrey Shashorin of Remedy at the 2005 "Defence of Shipowners' Interest" Seminar held by Remedy in St. Petersburg.

A draft federal law for the introduction of a Russian International Shipping Register was submitted to the State Duma in April 2005.

- The legislation will require careful thought

to avoid any conflicts with the Russian Civil Code on the registration of immovable property and rights of immovable property are avoided;

- The object of the legislation is to encourage the repatriation to the Russian flag of tonnage which has been exported. This will be achieved by reducing taxes. In order to achieve this end the legislation will have to permit foreign ownership of Russian International flag vessels;
- At present only Russian crew will be permitted on the ships registered in the International Shipping Register;
- Cabotage will not be permitted for the vessels under the International Register;
- The legislation will have to provide a simplified method of taking security;
- At present only Russian insurance companies can cover risks on Russian entities and people. This will also be a limiting factor.

### Comments

Whilst the Register will be attractive, legislation in Russia proceeds slowly and there are a number of issues to be ironed out in order to make this an attractive register for international shipping.

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### Why make waves?

We adopted the motto "*why make waves?*" to represent our approach to our clients and their work. The motto is intentionally ambiguous. It is designed to make our clients think and to show that we think. We see it as meaning:

- do you need to make waves?
- if there is no need to make waves, don't;
- but where the need arises – *full ahead!*

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Over recent months there have been a number of developments in both the property and shipping worlds that you may find of interest.

## Property Matters

### Stamp Duty Land Tax

SDLT forms have been a bane for solicitors and their clients. On average each form costs about £75 in chargeable time. The forms were scanned by the Revenue and the proportion of rejections was very high. This led to the Stamp Office's helpline being overloaded. Revenue and Customs have admitted that at least 15% of rejections were due to its hardware. Improvements have now been made to the system. It is hoped that the SDLT form will prove less of a problem in the future, but completing these forms does take time and does, unfortunately, increase the costs of conveyancing.

### Home Information Packs

These are set to become compulsory in June 2007 to help reduce the costs of conveyancing and make conveyancing easier. Concerns, however, are already being expressed in relation to the inspectors who would be authorised to prepare the Home Condition Reports. This is a major feature of the system and no arrangements, as yet, have been made, for the certification and regulation of the inspectors. There are also doubts whether Buyers will accept the Sellers' Report or will, in any event, still commission their own reports.

### Self-invested Personal Pensions (SIPPs)

The new Rules to allow property investments using pensions after April 2006 have been amended substantially. Originally it was intended that UK and overseas properties could form part of a SIPP. It now appears that homes will be excluded. In addition, pension fund administrators have not finalised how the administration of overseas properties will be arranged.

It had been thought that introduction of SIPP's would assist regenerate the property market. It remains to be seen...

## Shipping Matters

### Not secured!

TTMI v ASM considered some basic issues arising on freezing order applications. These include:

- the balance of convenience,
- the underlying right of a party to pay its debts in the ordinary course of business, and
- the payment of costs where a party is subject to a freezing order.

TTMI applied for a freezing order against ASM over the balance of the sums due under a freight award and to set aside or vary an order giving ASM permission to enforce the arbitration award. The court held that it was inappropriate to grant a freezing order. ASM should be entitled to use the freight which should have been paid when it fell due regardless of any cross claims. Further, ASM should be able to pay future or past legal expenses with the proceeds of the freight award.

In a separate decision the court has also held that where there is an appearance of bias an arbitrator should withdraw. However, in this case the objecting party had collected the award and had waived the objection.

### I am flagging

Viking Lines dispute with the ITF and the Finnish Seamen's Union is now destined for the European Court.

Viking's ferry operated between Finland and Estonia flying the Finnish flag. Viking wished to re-flag the vessel to the Estonian flag and employ Estonian crew at lower rates. Viking obtained an injunction restraining the ITF and the Union from taking industrial action to prevent the re-flagging.

The case raises profound issues of EC law and the Court of Appeal has referred it the European Court of Justice.

### In your own term

Documents often contain inconsistent terms which tend to confuse the issue. A CIF seller claimed damages against the buyer for repudiation of a contract for sale of a cargo of butane. The contract contained a force majeure clause and rather unusually a "laycan" provision. The Buyer cancelled the contract alleging the Seller had failed to

ship within the agreed period.

The court held in favour of the Buyer. Although the laycan provision did not fit easily into a CIF contract, a shipment period would be implied and the Sellers were obliged to give ETAs honestly and on reasonable grounds.

The estimate of the time of the vessel's arrival at the discharge port was not based on reasonable grounds. Accordingly the Sellers were in breach of condition and the buyer was entitled to terminate.

### That's service!

Parties who receive a claims form should beware. It may have been served, meaning that time is running as the owners of HANJIN PENNSYLVANIA have now learned.

The cargo owners claimed in respect of lost and damaged cargo. The owners' solicitors asked the cargo claimants for confirmation that proceedings had been issued. The claimants' solicitors replied by fax and attached a copy of the claim form which had been issued.

The court held that the dispatch of the fax did constitute service of the claim form even though the fax did not say the claim form was being served.

### Hold that bill

Following the loss of the YTHAN in 2004 as a result of explosive cargo having been shipped the purchaser of the cargo (who had sub-sold) paid for the bills and sent them to its underwriters with a claim for loss. The court held it had not become the lawful holder or a person against whom the Owners could claim.

### Quis custodiet ipsos custodes?

The answer is the court!

The claimant succeeded with a claim for breach of duty in contract and tort. The defendant inspectors had assumed responsibility to the claimant and should have had in contemplation that the claimant was likely to be affected by an error in their quality certificate.