

**FEDERAL COURT  
OF AUSTRALIA**[Main Menu](#)

Original Word Document (71.9 KB)

**FEDERAL COURT OF AUSTRALIA****Yakushiji v Daiichi Chuo Kisen Kaisha [2015] FCA 1170**

Citation: Yakushiji v Daiichi Chuo Kisen Kaisha [2015] FCA 1170

Parties: **MASAKAZU YAKUSHIJI IN HIS CAPACITY AS  
FOREIGN REPRESENTATIVE OF DAIICHI CHUO  
KISEN KAISHA v DAIICHI CHUO KISEN KAISHA  
KOJI FUJITA IN HIS CAPACITY AS FOREIGN  
REPRESENTATIVE OF STAR BULK CARRIER CO SA  
v STAR BULK CARRIER CO SA**

File number(s): NSD 1197 of 2015  
NSD 1198 of 2015

Judge: **ALLSOP CJ**

Date of judgment: 2 November 2015

Catchwords: **BANKRUPTCY AND INSOLVENCY – Admiralty – Cross-  
border insolvency – Recognition of foreign proceeding under  
Art 17(1) of the Model Law on Cross-Border Insolvency of  
the United Nations Commission on International Trade Law –  
Recognition of foreign main proceeding pursuant to Art 17(2)  
– Recognition of foreign representative under Art 2(d) –  
Identification of debtors’ centre of main interests – Protection  
under Model Law does not necessarily defeat proper maritime  
lien or “quasi lien” claims**

Legislation: *Admiralty Act 1988 (Cth)*  
*Cross-Border Insolvency Act 2008 (Cth)*  
*Federal Court (Corporations) Rules 2000*  
*Civil Rehabilitation Act of Japan* (Minji saisei hô, Law no.  
225/1999)  
*United Nations Commission on International Trade Law  
Model Law on Cross Border Insolvency (1997)*

Cases cited: *Comandate Marine Corp v Pan Australian Shipping Pty Ltd*  
[2006] FCAFC 192; 157 FCR 45  
*In re Aro Co Ltd* [1980] Ch 196  
*Kim v Daebo International Shipping Co Ltd* [2015] FCA 684  
*Reiter Petroleum Inc v Ship “Sam Hawk”* [2015] FCA 1005  
*Republic of India v India Steamship Co Ltd (No 2) (The  
‘Indian Grace’)* [1998] AC 878

*Tisand (Pty) Ltd and Others v Owners of the Ship MV "Cape Moreton" (Ex "Freya")* [2005] FCAFC 68; 219 ALR 48  
*Yu v STX Pan Ocean Co (South Korea) in the matter of Yu STX Pan Ocean Co Ltd (Receivers appointed in South Korea)* [2013] FCA 680; 223 FCR 189

Date of hearing: 28 October 2015

Place: Sydney

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 26

Counsel for the Plaintiffs: M L Rose

Solicitor for the Plaintiffs: Norton Rose Fulbright

**IN THE FEDERAL COURT OF AUSTRALIA**  
**NEW SOUTH WALES DISTRICT REGISTRY**

**GENERAL DIVISION**

**NSD 1197 of 2015**

**BETWEEN:** **MASAKAZU YAKUSHIJI IN HIS CAPACITY AS FOREIGN REPRESENTATIVE OF DAIICHI CHUO KISEN KAISHA**  
**Plaintiff**

**AND:** **DAIICHI CHUO KISEN KAISHA**  
**Defendant**

**JUDGE:** **ALLSOP CJ**

**DATE OF ORDER:** **28 OCTOBER 2015**

**WHERE MADE:** **SYDNEY**

**THE COURT ORDERS THAT (AND SUBJECT TO ORDER 8):**

1. Pursuant to s 6 of the *Cross-Border Insolvency Act 2008* (Cth) (the **Act**) and clause 1 of Article 17 of the Model Law on Cross Border Insolvency of the United Nations Commission on International Trade Law, set out in the Annex to United Nations General Assembly Resolution A/RES/52/158 (1997) and in Schedule 1 to the Act (the **Model Law**) the proceeding in the Civil Division No. 20 of the Tokyo District Court (the **Japanese Proceeding**) be and is hereby recognised as a foreign proceeding within the meaning of Article 2(a) of the Model Law.

2. Pursuant to s 6 of the Act and clause 2(a) of Article 17 of the Model Law, the Japanese Proceeding be and is hereby recognised as a foreign main proceeding within the meaning of Article 2(b) of the Model Law.

3. The plaintiff, Mr Masakazu Yakushiji, be and is hereby recognised as a foreign representative within the meaning of Article 2(d) of the Model Law.

4. Pursuant to Article 21 of the Model Law, the administration or realisation of all the defendant's assets in Australia be entrusted to the plaintiff.

5. Pursuant to Rule 15A.7(1)(b), (c) and (d) of the *Federal Court (Corporations) Rules 2000* (the **Rules**), the plaintiff be ordered:

(a) within 48 hours of the date of this order, to serve a copy of this order on the defendant by sending it by email at the following address: n\_kuwagata@jurist.co.jp;

(b) within 7 days of the date of this order, to send a notice of the making of orders 1 to 4, 7 and 8 in accordance with Form 21 to the persons listed in the schedule to the Interlocutory Process filed 6 October 2015 by the method of service noted in that Interlocutory Process, and also to the persons listed in Annexure A to the affidavit of Kirk William Warwick sworn 28 October 2015 at the addresses listed in that annexure; and

(c) within 14 days of the making of this order, to cause to be published a notice of the making of orders 1 to 4, 7 and 8, in accordance with Form 21 (and in the form appearing annexed and marked A), in:

(i) The Australian newspaper; and

(ii) Lloyd's List, being the international edition of such publication,

and such notices may be combined with the notices required to be published by Koji Fujita as foreign representative of Star Bulk Carrier Co., S.A. in proceeding NSD1198/2015.

6. The steps required to be taken in order 5(a), (b) and (c) be sufficient compliance with Rule 15A.7, and all other requirements for publication and notice be dispensed with.

7. Any application for issue of a warrant for the arrest in Australia of any vessel owned or chartered by the defendant, brought by a person claiming to hold a security interest, be made to a Judge of this Court with the reasons for judgment for the orders made today and those in *Yu v STX Pan Ocean Co Ltd (South Korea)* (2013) 223 FCR 189 drawn to the attention of the Court at the time any such application is made.

8. Any person who claims to hold a security interest in any property or vessel owned or chartered by the defendant, or who claims to be a creditor of the defendant, has liberty to apply to

a Judge of the Federal Court of Australia, on the giving of three days' written notice to the plaintiff, to vary or rescind any of these orders.

## ANNEXURE A

### Form 21 Notice of making of order under the *Cross-Border Insolvency Act 2008*

(rule 15A.7)

No. NSD1197 and NSD1198 of 2015

Federal Court of Australia

District Registry: New South Wales

Division: General

**IN THE MATTER OF DAIICHI CHUO KISEN KAISHA**

**IN THE MATTER OF STAR BULK CARRIER CO., S.A.**

TO all the creditors of Daiichi Chuo Kisen Kaisha and Star Bulk Carrier Co., S.A.

TAKE NOTICE that:

(1) On 28 October 2015, the Federal Court of Australia in Proceeding Nos:

(a) NSD1197 of 2015, commenced by the plaintiff, Masakazu Yakushiji (**DCKK Proceeding**) as foreign representative of Daiichi Chuo Kisen Kaisha (**DCKK**); and

(b) NSD1198 of 2015, commenced by Koji Fujita (**Star Bulk Proceeding**), as foreign representative of Star Bulk Carrier Co., S.A. (**Star Bulk**),

made the following orders under the *Cross Border Insolvency Act 2008* (Cth) in relation to each of DCKK and Star Bulk, subject to Order 8 below:

1. Pursuant to s 6 of the *Cross-Border Insolvency Act 2008* (Cth) (the **Act**) and clause 1 of Article 17 of the Model Law on Cross Border Insolvency of the United Nations Commission on International Trade Law, set out in the Annex to United Nations General Assembly Resolution A/RES/52/158 (1997) and in Schedule 1 to the Act (the **Model Law**) the proceedings in the Civil Division No. 20 of the Tokyo District Court (the **Japanese Proceedings**) be and are hereby recognised as foreign proceedings within the meaning of Article 2(a) of the Model Law.

2. Pursuant to s 6 of the Act and clause 2(a) of Article 17 of the Model Law, the Japanese Proceedings be and are hereby recognised as foreign main proceedings within the meaning of Article 2(b) of the Model Law.

3. The plaintiffs, Mr Masakazu Yakushiji (as to DCKK) and Mr Koji Fujita (as to Star Bulk), be and are hereby recognised as foreign representatives within the meaning of Article 2(d) of the Model Law.

4. Pursuant to Article 21 of the Model Law, the administration or realisation of all the each defendant's assets in Australia be entrusted to the relevant plaintiff.

(Orders 5 and 6 not required to be reproduced)

7. Any application for issue of a warrant for the arrest in Australia of any vessel owned or chartered by either defendant, brought by a person claiming to hold a security interest, be made to a Judge of the Federal Court of Australia with the reasons for judgment for the orders made today and those in *Yu v STX Pan Ocean Co Ltd (South Korea)* (2013) 223 FCR 189 drawn to the attention of the Court at the time any such application is made.

8. Any person who claims to hold a security interest in any property or vessel owned or chartered by either defendant, or who claims to be a creditor of either defendant, has liberty to apply to a Judge of the Federal Court of Australia, on the giving of three days' written notice to the relevant plaintiff, to vary or rescind any of these orders.

(2) Each plaintiffs' address for service is c/- Dr. David B. Goldman, Norton Rose Fulbright Australia, Level 18, Grosvenor Place, 225 George Street, Sydney, NSW 2000; Email: david.goldman@nortonrosefulbright.com.

(3) The name and address of the foreign representative for the DCKK Proceeding is Masakazu Yakushiji, 6-46, Yuigahama 3-chome, Kamakura-shi, Kanagawa-ken, Japan.

(4) The name and address of the foreign representative for the Star Bulk Proceeding is Koji Fujita, 15-1, Someino 3-chome, Sakura-shi, Chiba-ken, Japan.

Date:

Name of plaintiff or plaintiff's legal practitioner: Dr. David B. Goldman

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**IN THE FEDERAL COURT OF AUSTRALIA**

**NEW SOUTH WALES DISTRICT REGISTRY**

**GENERAL DIVISION**

**NSD 1198 of 2015**

**BETWEEN: KOJI FUJITA IN HIS CAPACITY AS FOREIGN  
REPRESENTATIVE OF STAR BULK CARRIER CO SA  
Plaintiff**

**AND: STAR BULK CARRIER CO SA  
Defendant**

**JUDGE: ALLSOP CJ**

**DATE OF ORDER: 28 OCTOBER 2015**

**WHERE MADE: SYDNEY**

**THE COURT ORDERS THAT (AND SUBJECT TO ORDER 8):**

1. Pursuant to s 6 of the *Cross-Border Insolvency Act 2008* (Cth) (the **Act**) and clause 1 of Article 17 of the Model Law on Cross Border Insolvency of the United Nations Commission on International Trade Law, set out in the Annex to United Nations General Assembly Resolution A/RES/52/158 (1997) and in Schedule 1 to the Act (the **Model Law**) the proceeding in the Civil Division No. 20 of the Tokyo District Court (the **Japanese Proceeding**) be and is hereby recognised as a foreign proceeding within the meaning of Article 2(a) of the Model Law.

2. Pursuant to s 6 of the Act and clause 2(a) of Article 17 of the Model Law, the Japanese Proceeding be and is hereby recognised as a foreign main proceeding within the meaning of Article 2(b) of the Model Law.

3. The plaintiff, Mr Koji Fujita, be and is hereby recognised as a foreign representative within the meaning of Article 2(d) of the Model Law.

4. Pursuant to Article 21 of the Model Law, the administration or realisation of all the defendant's assets in Australia be entrusted to the plaintiff.

5. Pursuant to Rule 15A.7(1)(b), (c) and (d) of the *Federal Court (Corporations) Rules 2000* (the **Rules**), the plaintiff be ordered:

(a) within 48 hours of the date of this order, to serve a copy of this order on the defendant by sending it by email at the following address: n\_kuwagata@jurist.co.jp;

(b) within 7 days of the date of this order, to send a notice of the making of orders 1 to 4, 7 and 8 in accordance with Form 21 to the persons listed in the schedule to the Interlocutory Process filed 6 October 2015 by the method of service noted in that Interlocutory Process; and

(c) within 14 days of the making of this order, to cause to be published a notice of the making of orders 1 to 4, 7 and 8, in accordance with Form 21 (and in the form appearing annexed and marked A), in:

(i) The Australian newspaper; and

(ii) Lloyd's List, being the international edition of such publication,

and such notices may be combined with the notices required to be published by Masakazu Yakushiji as foreign representative of Daiichi Chuo Kisen Kaisha in proceeding NSD1197/2015.

6. The steps required to be taken in order 5(a), (b) and (c) be sufficient compliance with Rule 15A.7, and all other requirements for publication and notice be dispensed with.

7. Any application for issue of a warrant for the arrest in Australia of any vessel owned or chartered by the defendant, brought by a person claiming to hold a security interest, be made to a Judge of this Court with the reasons for judgment for the orders made today and those in *Yu v STX Pan Ocean Co Ltd (South Korea)* (2013) 223 FCR 189 drawn to the attention of the Court at the time any such application is made.

8. Any person who claims to hold a security interest in any property or vessel owned or chartered by the defendant, or who claims to be a creditor of the defendant, has liberty to apply to a Judge of the Federal Court of Australia, on the giving of three days' written notice to the plaintiff, to vary or rescind any of these orders.

**ANNEXURE A****Form 21 Notice of making of order under the *Cross-Border Insolvency Act 2008***

(rule 15A.7)

No. NSD1197 and NSD1198 of 2015

Federal Court of Australia

District Registry: New South Wales

Division: General

**IN THE MATTER OF DAIICHI CHUO KISEN KAISHA****IN THE MATTER OF STAR BULK CARRIER CO., S.A.**

TO all the creditors of Daiichi Chuo Kisen Kaisha and Star Bulk Carrier Co., S.A.

TAKE NOTICE that:

(1) On 28 October 2015, the Federal Court of Australia in Proceeding Nos:

(a) NSD1197 of 2015, commenced by the plaintiff, Masakazu Yakushiji (**DCKK Proceeding**) as foreign representative of Daiichi Chuo Kisen Kaisha (**DCKK**); and(b) NSD1198 of 2015, commenced by Koji Fujita (**Star Bulk Proceeding**), as foreign representative of Star Bulk Carrier Co., S.A. (**Star Bulk**),made the following orders under the *Cross Border Insolvency Act 2008* (Cth) in relation to each of DCKK and Star Bulk, subject to Order 8 below:

1. Pursuant to s 6 of the *Cross-Border Insolvency Act 2008* (Cth) (**the Act**) and clause 1 of Article 17 of the Model Law on Cross Border Insolvency of the United Nations Commission on International Trade Law, set out in the Annex to United Nations General Assembly Resolution A/RES/52/158 (1997) and in Schedule 1 to the Act (**the Model Law**) the proceedings in the Civil Division No. 20 of the Tokyo District Court (**the Japanese Proceedings**) be and are hereby recognised as foreign proceedings within the meaning of Article 2(a) of the Model Law.

2. Pursuant to s 6 of the Act and clause 2(a) of Article 17 of the Model Law, the Japanese Proceedings be and are hereby recognised as foreign main proceedings within the meaning of Article 2(b) of the Model Law.

3. The plaintiffs, Mr Masakazu Yakushiji (as to DCKK) and Mr Koji Fujita (as to Star Bulk), be and are hereby recognised as foreign representatives within the meaning of Article 2(d) of the Model Law.

4. Pursuant to Article 21 of the Model Law, the administration or realisation of all the each defendant's assets in Australia be entrusted to the relevant plaintiff.

(Orders 5 and 6 not required to be reproduced)

7. Any application for issue of a warrant for the arrest in Australia of any vessel owned or chartered by either defendant, brought by a person claiming to hold a security interest, be made to a Judge of the Federal Court of Australia with the reasons for judgment for the orders made today and those in *Yu v STX Pan Ocean Co Ltd (South Korea)* (2013) 223 FCR 189 drawn to the attention of the Court at the time any such application is made.

8. Any person who claims to hold a security interest in any property or vessel owned or chartered by either defendant, or who claims to be a creditor of either defendant, has liberty to apply to a Judge of the Federal Court of Australia, on the giving of three days' written notice to the relevant plaintiff, to vary or rescind any of these orders.

(2) Each plaintiffs' address for service is c/- Dr. David B. Goldman, Norton Rose Fulbright Australia, Level 18, Grosvenor Place, 225 George Street, Sydney, NSW 2000; Email: david.goldman@nortonrosefulbright.com.

(3) The name and address of the foreign representative for the DCKK Proceeding is Masakazu Yakushiji, 6-46, Yuighama 3-chome, Kamakura-shi, Kanagawa-ken, Japan.

(4) The name and address of the foreign representative for the Star Bulk Proceeding is Koji Fujita, 15-1, Someino 3-chome, Sakura-shi, Chiba-ken, Japan.

Date:

Name of plaintiff or plaintiff's legal practitioner: Dr. David B. Goldman

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**IN THE FEDERAL COURT OF AUSTRALIA**

**NEW SOUTH WALES DISTRICT REGISTRY**

**GENERAL DIVISION**

**NSD 1197 of 2015**

**BETWEEN:                   MASAKAZU YAKUSHIJI IN HIS CAPACITY AS FOREIGN  
REPRESENTATIVE OF DAIICHI CHUO KISEN KAISHA  
Plaintiff**

**AND:                         DAIICHI CHUO KISEN KAISHA  
Defendant**

**IN THE FEDERAL COURT OF AUSTRALIA**

**NEW SOUTH WALES DISTRICT REGISTRY**

**GENERAL DIVISION**

**NSD 1198 of 2015**

**BETWEEN:                   KOJI FUJITA IN HIS CAPACITY AS FOREIGN  
REPRESENTATIVE OF STAR BULK CARRIER CO SA**



**Plaintiff**

**AND: STAR BULK CARRIER CO SA**  
**Defendant**

**JUDGE: ALLSOP CJ**

**DATE: 2 NOVEMBER 2015**

**PLACE: SYDNEY**

**REASONS FOR JUDGMENT**

1 Last Wednesday, 28 October 2015, I made orders under the *Cross-Border Insolvency Act 2008* (Cth) (**the Act**) in relation to each of Daiichi Chuo Kisen Kaisha (**DCKK**) and Star Bulk Carrier Co SA (**Star Bulk**). The following are the reasons for the making of those orders.

2 On 6 October 2015, two applications were filed seeking relief under the Act by the foreign representatives of two shipping companies, DCKK and a subsidiary of DCKK, Star Bulk. The applications were made by Messrs Masakazu Yakushiji and Koji Fujita, as foreign representatives of DCKK and Star Bulk, respectively.

3 On 6 October 2015, the company duty judge before whom the applications were brought (Jagot J) made orders ex parte under Art 19 of Sch 1 to the Act, the UNCITRAL Model Law on Cross-Border Insolvency (1997) (**Model Law**), staying any enforcement or execution against the assets of the two companies, placing the assets of the two companies under the control of the respective foreign representatives, restraining anyone from dealing with the companies and staying proceedings against the companies. The orders also provided for service of proceedings and relevant documents on the companies themselves, and their Australian creditors, and for advertisement of the proceedings in *The Australian* newspaper. The matter was listed before me on 28 October 2015 for a final hearing. No creditors appeared to oppose the application. The evidence by way of affidavits that are set out in the Schedule to these reasons permits the following facts and conclusions to be found and drawn.

**Business of DCKK and Star Bulk**

4 DCKK is a joint stock company incorporated under Japanese law. Its corporate headquarters are in Tokyo where it has its registered office. It has a number of other domestic offices in Japan, as well as offices in New York, Manila, Hong Kong, London, Shanghai, Brisbane, and in Vietnam. DCKK is a well-known marine transportation firm providing overseas shipping and coastal shipping within Japan, and which generally focuses upon the transportation of dry bulk cargo, including grain, iron ore and commodities. Much of the business of DCKK is undertaken in the tramp trade by the use of vessels which are owned, demise chartered or time chartered.

5 Star Bulk is one of its subsidiaries. It is referred to as a “*shikumisen* subsidiary”, being a company incorporated in countries where the tax systems and other laws are advantageous to the carrying on the business of shipping. Star Bulk is incorporated in the Republic of Panama.

6 DCKK, as at 31 March 2015, owned, either itself, or through its subsidiaries, 45 vessels and had chartered another 140 vessels.

7 From the time of the global financial crisis in 2008, and continuing, the business of DCKK has been difficult, by reason of the fluctuations in the markets for shipping, both as to cargo to be carried for remuneration and as to the chartering market for the obtaining of vessels. In particular, there are a number of long-term time charters which DCKK and Star Bulk have entered which were negotiated at a time of, by today's terms, very high rates.

8 In order to avoid the serious financial consequences of their existing commitments in relation to the time charter hire of a large number of vessels, the companies have made applications to the Tokyo District Court under the *Civil Rehabilitation Act of Japan* (Minji saisei hô, Law no. 225/1999). These applications are civil rehabilitation proceedings.

9 The Japanese proceedings, to which I will refer as the DCKK Japan proceeding and Star Bulk Japan proceeding, constitute "foreign proceedings" as contemplated by Art 2(a) of the Model Law, in that they constitute a collective judicial proceeding in a foreign state, pursuant to a law relating to insolvency, in which proceedings the assets and affairs of the debtors are subject to control and supervision by a foreign court, and for the purpose of reorganisation.

10 I am satisfied that the DCKK Japan proceeding is a foreign main proceeding because DCKK has its centre of main interests (COMI) in Japan, as envisaged by Art 2(b) of the Model Law. I have reached this conclusion because of, first, the presumption under Art 16(3) of the Model Law which provides that, in the absence of proof to the contrary, the company's registered office (which is in Tokyo) is presumed to be the centre of DCKK's main interests. In addition, the evidence that has been led in relation to DCKK confirms that its centre of main interests is in Japan.

11 I am also satisfied, on the current evidence, that the Star Bulk Japan proceeding is a foreign main proceeding. This is so notwithstanding the fact that Star Bulk is incorporated in Panama and has its registered office in Panama City. The presumption under the Model Law to which I have referred would have Panama as the COMI. However, the evidence makes it clear that Star Bulk's COMI is in fact Japan, for the following reasons: Star Bulk does not have any assets in Australia or Panama, but rather is a wholly-owned subsidiary of DCKK, which is incorporated in, and subject to, the laws of Japan; Star Bulk's operations in Australia are restricted to the passage of ships or chartered by it through Australian territorial waters, and the calling of those ships owned or chartered into Australian ports; Star Bulk is wholly controlled by persons located in Japan (including its three directors, who are all Japanese citizens and residents), and therefore the location of its directing mind and will is Japan; Star Bulk has no employees of its own and relies upon DCKK employees, most of whom reside in Japan; Star Bulk operates in Japan through DCKK and its administrative functions, including accounting, financial reporting, budgeting, and cash management are all conducted in Japan; most of Star Bulk's creditors are located in Japan.

12 Each of the plaintiffs has the necessary standing to apply for relief by reason of Art 15(1) of the Model Law, because each is a foreign representative as contemplated by Art 2(d) of the Model Law. Each is a member of the board of directors of the relevant debtor. Their role as representatives of the relevant debtors and their authorisation in the Japan proceedings has been recognised by the Tokyo court. It should be added that, pursuant to orders of the Tokyo court, each company has a supervisor, being an independent person appointed by the court, who has supervision of any activity by the debtor arising out of the ordinary course of business.

13 The plaintiffs have sought recognition and similar relief in the United States of America, the United Kingdom and Canada. The United States proceedings are not yet finalised. In the Canadian proceedings, orders have been made recognising the position of the foreign representatives, as has

occurred in the United Kingdom. All relevant formalities have been complied with in relation to the application.

14 The current proposal in relation to the rehabilitation of the companies is focused upon reordering the arrangements under a number of long-term time charters. It is anticipated, and it is the current position, that trade creditors will be paid in the ordinary course of business. Some long-term time charters with very high levels of charter hire have been re-negotiated. Others have not, and there has been an unwillingness amongst some owners and disponent owners to re-negotiate rates. This will be the focus of the rehabilitation proceedings.

15 The rehabilitation proceedings exclude secured creditors.

16 One of the features of the application is that there has been compliance with the Corporations Practice Note of this Court relating to Cross-Border Insolvency (Practice Note Corp 2), by the Court being referred to its own decision in *Yu v STX Pan Ocean Co (South Korea) in the matter of Yu STX Pan Ocean Co Ltd (Receivers appointed in South Korea)* [2013] FCA 680; 223 FCR 189.

17 The intersection between international insolvency law, and, in particular, the Act and the law of the enforcement of maritime claims, is not without its difficulty. This has been recognised in the above case and is the reason for para 6.1 of Practice Note Corp 2. The international mechanisms for the enforcement of maritime claims vary to a degree around the world. Some countries, such as Australia, Hong Kong, Singapore, England, South Africa, New Zealand, and many other countries, have a proceeding by way of an *in rem* claim against the ship. I leave to one side the additional complexities of the nature of the *in rem* claim that might be seen in the debate caused by the *Republic of India v India Steamship Co Ltd (No 2) (The 'Indian Grace')* [1998] AC 878 as discussed in *Comandate Marine Corp v Pan Australian Shipping Pty Ltd* [2006] FCAFC 192; 157 FCR 45 at [99]-[132]. Civilian countries do not have, generally speaking, *in rem* actions, but seek enforcement of maritime claims through maritime attachment. The differences in the two systems are mediated through two conventions: the 1952 *Arrest Convention* and the 1999 *Arrest Convention*, variously adopted by different countries. The United States has both *in rem* claims and maritime attachment.

18 There is also a variety of recognition of maritime liens. Maritime liens are a particular feature of maritime law. They do not found themselves on possession. They found themselves on particular types of events or activity in relation to a ship – collision, payment of seafarers' wages, and other matters. Some countries (for example, the United States) have a wide variety of maritime liens; other countries have a narrower focus.

19 The point of this discussion is that there is a real jurisprudential question as to the nature of the maritime lien and its place as a security interest or privilege in the hull of the ship: see the recent decision of McKerracher J in this Court *Reiter Petroleum Inc v Ship "Sam Hawk"* [2015] FCA 1005. The importance of a maritime lien is that it runs with the ship irrespective of sale. The only mechanisms for the removal of a lien from the hull of a ship are either by payment of the claim or by sale of the ship by an Admiralty Court pursuant to a maritime process.

20 There is also the question under Australian law as to the status (whether secured or not) of non-lien claims made pursuant to the *Admiralty Act 1988* (Cth) as an *in rem* action that have been filed. For reasons set out in *Tisand (Pty) Ltd and Others v Owners of the Ship MV "Cape Moreton" (Ex "Freya")* [2005] FCAFC 68; 219 ALR 48 per Ryan and Allsop JJ, such claims may, once reflected in a filing in this Court, be seen to create a form or species of qualified or quasi security. See generally *Kim v Daebo International Shipping Co Ltd* [2015] FCA 684 per Rares J (referring to *In re Aro Co Ltd* [1980] Ch 196). Whether or not such claims amount to secured claims is a live issue.

21 The point of the above discussion is that the protection given by the orders to a shipping company should not be seen as necessarily defeating proper maritime claims that are lien claims, and the question of the status of any claims that are lien claims (as well as the status of any claims that are “quasi lien claims”, to which I have referred), would need to be resolved in any litigation unless the matter were agreed. It would be wrong to make orders now that would forestall any vindication by such claimants against the interests of the rehabilitation. Likewise, it would be wrong to prevent the rehabilitation being supported by the Act on the mere possibility of the existence of these claims.

22 Therefore the orders contemplate that there be an ability for creditors to deal with and vary these orders should a particular proceeding, such as by way of enforcement of maritime lien claim, be appropriate.

23 As I indicated to Mr Rose of counsel, who, with his solicitor, gave the Court helpful assistance, it may be that in any particular circumstance, a foreign representative would want this, or any other maritime court, to have charge of the sale of a ship. If that ship were to be sold, its highest price may well be obtained by a maritime court because it would be only through the sale by that maritime court that the ship could have its hull “cleaned” of all other maritime liens. Thus, it may well be that the maritime court in its sale process would obtain the highest price possible for that asset (the ship) if it were to be sold. However, as is plain, with a large shipping line such as DCKK, and its subsidiary Star Bulk, the rehabilitation, if the group or company is in financial difficulty, should be supported by the ordered process of the rehabilitation scheme in Tokyo, with such support being the statutory purpose of the Act.

24 It should be noted that the company’s judge ordered, pursuant to the *Federal Court (Corporations) Rules 2000* (Cth), that there be advertising of the application in *The Australian*. All the known Australian creditors have been contacted. The difficulty in a maritime case in which the debtor company carries on business worldwide is that *The Australian* is unlikely to be a newspaper read, for these purposes, by the international ship owners who own the ships participating in the tramp trade. This is why in the orders I made I ordered that the advertisement take place not only in *The Australian* but also in the international edition of *Lloyd’s List*.

25 In future, any foreign representative of a shipping line or shipping company who wishes to take advantage of the Act should bring to the Court’s attention the appropriateness of advertising not only in *The Australian* but also in the *Lloyd’s List* international edition.

26 It was for these reasons that I was prepared to make the orders on 28 October that appear at the front of these reasons.

I certify that the preceding twenty-six (26) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Chief Justice Allsop.

Associate:

Dated: 2 November 2015

## SCHEDULE 1

Affidavits filed and relied upon during the hearing:

**DCKK Proceeding**

1. Affidavit of Masakazu Yakushiji affirmed 4 October 2015
2. Affidavit Naokuni Kuwagata affirmed 6 October 2015
3. Affidavit of Kirk William Warwick sworn 27 October 2015
4. Affidavit of Kirk William Warwick sworn 28 October 2015
5. Affidavit of David Benjamin Goldman sworn 28 October 2015
6. Affidavit of Joshua William Adam Strutt affirmed 27 October 2015

**Star Bulk Proceeding**

1. Affidavit Koji Fujita affirmed 4 October 2015
2. Affidavit Naokuni Kuwagata affirmed 6 October 2015
3. Affidavit of Kirk William Warwick sworn 27 October 2015
4. Affidavit of David Benjamin Goldman sworn 28 October 2015
5. Affidavit of Joshua William Adam Strutt affirmed 27 October 2015