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EDITORIAL

This current issue, apart from being rather late in publication, is a special issue regarding specific areas of interest in the maritime sector.

Despite its title, the first article deserves its place in this special issue because of the significant cases it discusses in relation to corporate manslaughter in the maritime context. The author rightly observes that, since about 1912, in the wake of the Titanic Disaster, there has been increasing concern for corporate manslaughter to be not just redressed by compensation in civil proceedings but also prosecuted. According to the author, that call became compelling after, *inter alia*, the failure of the prosecution of the ship in *The Herald of Enterprise* case. The article then goes on to examine the present law of manslaughter from the position of the company director.

The second article considers the contract of employment for a Ship's Master. This is based on the author's research for his PhD and addresses the trend towards the criminalisation of the Ship's Master under case law. The author considers various ways of identifying the key factors which must be addressed to incorporate risk protection for both parties in the Master's contract of employment as the agent for the ship-owner.

The author concludes that if a party to the contract fails to perform an obligation agreed in the contract, then that must necessarily amount to a breach as under normal contract law. The author claims that the key factor is whether the party failed to perform because they had failed to meet the standard of duty promised; in other words 'was it their fault'? The Master must perform his duties of management of the risks, not only for the safe navigation of the vessel and the maintenance of order and discipline, but also in relation to the Owner's commercial risk with third parties.

The third article could be considered a follow-on from the consideration of the Master's contract of employment as it addresses the issue of corporate manslaughter in the maritime context, and the inter-relationship with the Ship's Master. The author considers the failure of the common law to deliver convictions for corporate manslaughter in the cases of *The Herald of Free Enterprise* and *The Marchioness*. These disasters

eventually led to the Corporate Manslaughter Act 2007. The article examines the evolution of the Act; its dependence upon the concept of criminal negligence, and the relationship with the concept of justice. In his conclusions the author speculates how the Act will affect the maritime sector under the case of Lion Steel.

In the fourth article the author updates his previous article two by analysing the Lion Steel case which had been decided in the interim between writing the second article and publication. However, the author claims that after the Lion Steel case we are still left in rather a quandary regarding the criminalisation of the Ship's Master.

The fifth article is one which should be of great interest to all in the shipping industry, in particular those who specialise in insurance. Since the liberalisation of commercial and regulatory regimes in the shipping sector and the exponential expansion of open registers, this has promoted a less restrictive approach to the question of nationality in terms of ownership and a 'genuine link' to the nation whose flag the vessel bears. The author considers such problematic issues as enforcement of international standards, open registers and flags of convenience, in addition to the problems of obscurity of the identity of beneficial owners.

The author concludes that open registers now account for more than half of the world's merchant fleet. This produces a more relaxed regulatory regime in relation to ownership, manning and taxation, which is irresistible to ship-owners, whilst any desire or even ability on the part of the Flag States to recognise and effectively regulate international standards is in direct opposition to their *raison d'être*. Any attempts at formal revision to this system through the UN Convention or EU Directives on registration have proved to be stillborn and only the ecological disasters of the sinking of the Erika and Prestige have brought about any improvement in substandard shipping.

Professor Patricia Park

Editor