# No Counter-Obligation to Accept "reasonably satisfactory" security under ASG 2 Collision Jurisdiction Agreement

James M. Turner QC

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***Pacific Pearl Co. Ltd. v Osios David Shipping Inc.*** [2021] EWHC 2808 (Comm)

In a judgment handed down this morning, the experienced former Admiralty Judge Sir Nigel Teare dismissed a claim, brought by the Owners of the PANAMAX ALEXANDER ("**PA**") against the Owners of the OSIOS DAVID ("**OD**") for alleged breach of a Collision Jurisdiction Agreement ("**CJA**").

PA and OD had been involved in a collision. In the CJA, they agreed to refer the resulting dispute to the English Court to be resolved under English law, and that each would supply the other with security *"in a form reasonably satisfactory"* to the party receiving it. PA had been en route to Iran at the time of the collision. It offered OD a P&I Club Letter of Undertaking ("**LOU**") containing a sanctions clause – reflecting the Iranian nexus brought about by the destination of its cargo of barley. OD rejected it, having effected an associate ship arrest in South Africa.

PA claimed damages and declaratory relief for what it said was the breach of a reciprocal obligation on the part of the party offered security to accept it if it was *"reasonably satisfactory"*. OD defended the claim on the grounds that the security was not reasonably satisfactory to it and that the CJA imposed no obligation on it to accept security even if it was in a reasonably satisfactory form.The Court rejected the first limb of OD's defence but upheld the second.

In essence, the form of the security was reasonably satisfactory because (a) it was tendered by an International Group ("**IG**") P&I Club, which could be expected to do all it could to honour an LOU, and (b) the potential impact of sanctions, including an excess of caution by any bank involved in effecting payment under the LOU, was unavoidable. The sanctions clause could not therefore be said to transfer any risk to OD, since it was risk that arose as soon as there was an Iranian nexus.

However, there was no obligation on OD to accept the security. In particular, there were no words in the relevant clause which could be construed as imposing an obligation, and the requirements for implying a term were not made out. It could not be said that the contract would lack commercial or practical coherence without it and *"to imply the suggested term would in reality amount to re-writing the parties' agreement."*

The judgment recognises and supports the strength and security of LOUs offered by IG P&I Clubs and provides an important analysis of the widely-used CJA form "ASG 2" published by the Admiralty Solicitors Group.

James M. Turner QC appeared for the Defendant, instructed by Richard Gunn at Reed Smith.



## James M. Turner QC

*"James Turner QC approaches problems with intellectual rigour and an astute grasp of commercial realities. He makes himself readily available for clients, is wonderfully measured and provides assured and very thorough advice."* (Chambers UK, 2021)

*"An outstanding silk who is ... always on the ball"* (Legal 500 Asia Pacific), James specialises in cross-border commercial disputes in international arbitration, energy, shipbuilding, offshore construction, shipping and banking.

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