



## SHIPPING | MARCH 2024

# OLDSTONE CARGO LTD V HMAG FOR GIBRALTAR

The Supreme Court of Gibraltar has applied the Court of Appeal decision in *The Atlantik Confidence* [2014] EWCA Civ 217, confirming that a letter of undertaking (LOU) from QBE Europe SA/NV trading as British Marine was "acceptable" and "adequate" security for the purposes of Article 11(2) of the International Convention on Limitation of Liability for Maritime Claims 1976 (as amended) (the Convention) .

Oldstone Cargo Limited were the owners of the "OS 35" (Owners). The vessel grounded and sank following a collision with "ADAM LNG" in Gibraltar's western anchorage on 29 August 2022. The Owners and their third party liability underwriters – QBE Europe SA/NV - removed the wreck and commenced limitation proceedings in Gibraltar seeking to limit claims pursuant to the Convention and to constitute a limitation fund by way of an LOU from QBE Europe SA/NV.

Three of the four defendants, the Gibraltar Port Authority (GPA), Captain of the Port of Gibraltar and HM Attorney General for Gibraltar, challenged Owners' right to constitute a limitation fund by way of an LOU. QBE Europe SA/NV therefore set up a limitation fund by depositing cash (approximately GBP 14.2 million) with the Gibraltar courts but without prejudice to their position that the LOU tendered was acceptable and adequate as envisaged by the Convention.

At a hearing before the Puisne Judge, John Restano, the Gibraltar defendants argued, amongst other things, that the LOU tendered by QBE Europe SA/NV on the standard form Admiralty Solicitors Group ASG 12 wording was neither "acceptable" nor "adequate", and that the GPA had in place a blanket prohibition on accepting LOUs.

The Judge held that the LOU being tendered was lawful as a matter of Gibraltar law; it complied with regulatory requirements and the Judge deemed it "acceptable". As to "adequacy", the Judge held that QBE Europe SA/NV satisfied the three conditions set out by Gloster LJ in *The Atlantik Confidence*, namely (1) QBE Europe SA/NV was of sufficient financial standing as a guarantor; (2) there were no real practical enforcement issues; and (3) the terms of the LOU based on ASG 12 were appropriate subject to a little light tuning – but avoiding the lawyers' urge to "gild the lily".

The Judge also held that the GPA's blanket refusal to accept an LOU was "ultra vires" and put both Gibraltar and the UK in breach of their obligations under international law. The Judge therefore permitted Owners to establish a limitation fund by way of a QBE Europe SA/NV LOU, and for the cash paid into court to be returned to them.

HFW's Jim Cashman and Jon Goulding were instructed by the Owners, along with counsel Francis Hornyold-Strickland of Monckton Chambers. Triay Lawyers were Owners' local counsel in Gibraltar.

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