

SHIPPING | MAY 2022

## COLLISION IN THE SINGAPORE STRAIT: A PRECAUTIONARY TALE!

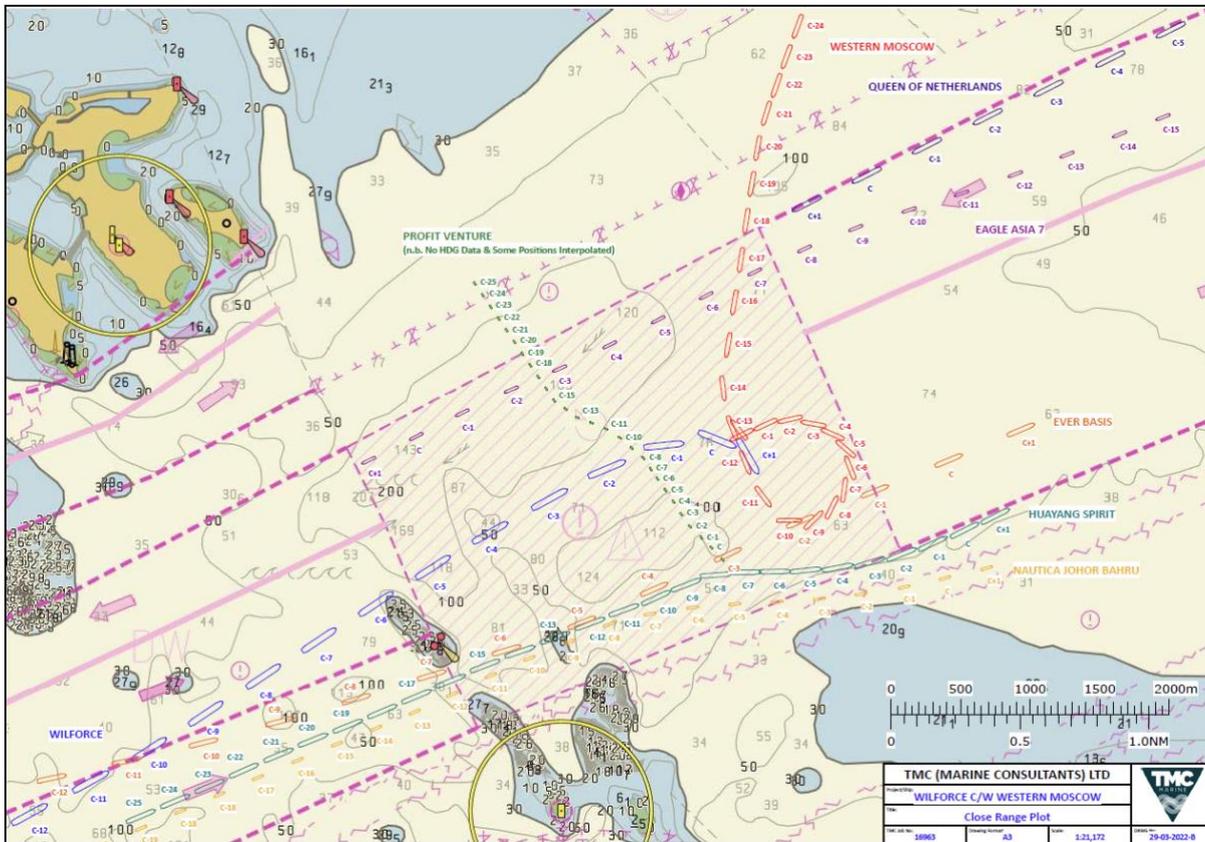
The English High Court has handed down a judgment in relation to liability for a collision between the LNG Carrier WILFORCE and the bulk carrier WESTERN MOSCOW that occurred on 31 May 2019 in the Singapore Strait. The trial was held between 29 to 31 March 2022 before Teare J, with Rear Admiral David Snelson and Captain Stephen Gobbi, Elder Brethen of Trinity House, sitting as Nautical Assessors.

The collision occurred in the early hours of the morning within a Precautionary Area adjoining the Traffic Separation Scheme of the Singapore Strait, an area where vessels are required to navigate with particular caution due to the presence of vessels crossing. This is the first time the English Admiralty Court has had to consider responsibility for a collision in a Precautionary Area.

WESTERN MOSCOW (the vessel's movements are shown at one minute intervals by the orange ship shape in the chart below) had just weighed anchor and was intending to proceed westbound along the traffic separation scheme. However, as the vessel entered the Precautionary Area she encountered a southbound tug and tow (the tug is shown in green) which prevented her from altering to starboard to line up with the westbound traffic lane. To avoid a close quarters situation with the tug and tow, the Master of WESTERN MOSCOW altered course to port. This brought the vessel onto a southerly heading, crossing from north to south on the east side of the Precautionary Area.

As WESTERN MOSCOW continued south, she advised the Vessel Traffic Information System (VTIS) that she intended to continue her turn to port in order to join the westbound lane. At about C-10 (ten minutes prior to the collision), WESTERN MOSCOW turned to port with the intention to pass behind the stern of the tug and tow and shape a course towards the westbound traffic lane.

At the same time, WILFORCE (shown in blue), was proceeding at a speed that was found to be unsafe (with her engines not in a maximum state of readiness) towards the Precautionary Area. The movement of the respective vessels brought about a risk of collision from C-7, with WESTERN MOSCOW as the putative stand-on vessel if the crossing rules applied. At about C-3 the vessels agreed to a port-to-port passing, but contrary to that agreement, both vessels failed to take appropriate action to avoid the collision.



**Above:** The collision took place within a Precautionary Area of the Singapore Strait.<sup>1</sup>

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Following sharply on the heels of last year's Supreme Court decision in *The Alexandra 1* [2021] UKSC 6,<sup>1</sup> it again fell to the Court to determine whether the crossing rules (COLREGs 15 – 17) applied to govern the responsibility between the vessels, or whether the requirements of good seamanship took precedence in this situation.

Counsel for WILFORCE pointed to a number of authorities in support of the proposition that a vessel is “not entitled” to claim the status of the stand-on vessel when it has created the crossing situation by its own fault (see paragraphs 134 – 135 of the judgment). WILFORCE further argued that WESTERN MOSCOW's conduct was so egregious that WILFORCE was left in an impossible position and should, accordingly, be exonerated from any liability whatsoever.

In response counsel for WESTERN MOSCOW submitted that the approach adopted in those cases could not survive the reasoning of the Supreme Court in *The Alexandra 1* and, in any event, there was Court of Appeal authority for the proposition that the crossing rule applies irrespective of the fault of the other vessel; see *The Century Dawn* [1996] 1 *Lloyd's Law Reports* 125 at p. 132 per Hirst LJ. The Supreme Court in *The Alexandra 1* emphasised that the crossing rules “should not lightly be treated as inapplicable” and “should be applied unless there is some necessity to do otherwise”.<sup>2</sup> Accordingly, WESTERN MOSCOW interests asserted that the crossing rules applied.

The Court found the question of whether the crossing rules applied difficult to resolve. At paragraph 140 of the judgment, Teare J states that on the “one hand two experienced Admiralty Judges have held that though the circumstances are such that the crossing rules “theoretically” apply, the putative stand-on vessel is “not entitled” to claim the status of the stand-on vessel when it has created the crossing situation by its own fault.” However, Teare J went on to comment that the reasoning of the Supreme Court in *The Alexandra 1* alternatively suggests “...that the court should only allow a departure from the crossing rule to avoid immediate danger.” Ultimately, the Court left the question unanswered on the basis that the Nautical Assessors' advice rendered the point moot, as the action

<sup>1</sup> *Evergreen Marine (UK) Ltd v Nautical Challenge Ltd* [2021] UKSC 6 (19 February 2021)

<sup>2</sup> Paragraph 68.

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required by WILFORCE would have been the same regardless of whether it was governed by the crossing rules or the requirements of good seamanship.

Further, the Court was unpersuaded by WILFORCE's pleas of innocence (i.e. that liability should be apportioned 100:0 in favour of WILFORCE), noting that the vessel proceeded at excessive speed contrary to the local regulations and her own passage plan. WILFORCE was also criticised for not taking more decisive action to reduce speed prior to the collision. Nevertheless, the judge did agree that it was the actions of WESTERN MOSCOW that created the situation of danger and found the vessel to be three times more to blame for the collision when considering the causative faults of each vessel. Accordingly, liability was apportioned 75:25 against WESTERN MOSCOW.

This case highlights the difficulties that can be encountered when attempting to reconcile the previous case law with the Supreme Court's decision in *The Alexandra 1*, in particular, whether the crossing rules apply where the stand-on vessel creates the crossing situation by its own fault. Whilst legal practitioners must wait for another case to come before the court in the hope that it will provide further clarity as to the nuanced application of the crossing rules, mariners are best advised to navigate with diligence and take early and substantial action to avoid collision. In our view, drawing subtle distinctions as to when the crossing rules apply is unhelpful and does not assist mariners with the practical application of the collision regulations when navigating at sea.

HFW acted for the Owners of the WESTERN MOSCOW. The judgment can be read in full [here](#).

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