

SISTER-SHIP ARREST - A SHORT PRIMER

There is a right to sister-ship arrest under section 43(8) of the Federal Courts Act against any ship that, at the time the action is brought, is beneficially owned by the person who is the owner of the ship that is the subject of the action.

Under section 43(8), the fact that the companies' vessels are in the hands of a common trustee in bankruptcy does not make them sister ships. Moreover, the "owner" means only the "registered owner" and does not include a beneficial owner. A common thread of fractional minority ownership is not sufficient to meet the requirement of section 34(8).

The arrest of a sister ship in Canada is different from an arrest of a vessel under the 1952 or 1999 Arrest Conventions which Canada has not ratified. Under Article 3(2) of the 1999 convention, any other ship

owned by a person liable may be arrested if it is so owned when the arrest is effected and the owner was, when the claim arose, owner, demise or voyage charterer of the ship in respect of which the claim arose. Section 43(8) does not embrace demise or voyage charter relationships.

Section 43(8) is also different from the U.K. Supreme Court Act of 1981 (sections 20 and 21), where a sister ship can be arrested when that other ship is beneficially owned as respects all its shares at the time when the action is brought by the party who, when the cause of action arose, was personally liable in the claim and was either (1) the owner or charterer of the offending ship, or (2) the person in possession or control of the offending ship.