

The use of court appointed experts in Maritime litigation in the UAE: A second court

by Omar N. Omar - o.omar@tamimi.com - Dubai International Financial Centre

October 2013

Maritime law is a peculiar science which requires not only a knowledge of maritime law, but also a solid knowledge of many other related laws such as insurance, crime and corporate laws. A good practical knowledge of the shipping industry is also needed.

The same level of experience should apply to all parties involved with maritime work and industry, including the courts which often must decide on the complex disputes that can arise. The courts generally appoint maritime experts to assist them when deciding such cases, and this article examines whether the UAE courts are too reliant on such experts.

The UAE courts, and the Dubai courts in particular, have reached a high level of proficiency in handling maritime claims. However, with (a) the large number of cases referred to individual experts or expert panels by courts, and (b) the wide scope of tasks given to the experts by the court, experts are given a level of responsibility which far exceeds the normal scope of work for experts in other jurisdictions. They are often empowered to consider evidence, determine liability and apportion compensation between the parties. This means that parties effectively have to plead their case twice: first to the expert, and then to the court.

This is an additional burden imposed on the parties. It also requires them to rely on not only the expert's technical expertise, but also the expert's legal reasoning (which may be limited). Although the expert's report will be reviewed by the court, the problem is that the expert will usually tell the court that he has reached the "legal" conclusion about who is liable based on his technical expertise and background, which is a matter that the court will have to trust the expert on, since they depend on the expert on technical matters.

The experts appointed by the court are chosen from a list and are described as either a 'maritime expert' or as a 'maritime engineer'. There are no subcategories to reflect the various specialized aspects relating to maritime affairs. This is unsatisfactory given how exceptionally complicated and technologically advanced vessels and everything surrounding a vessel can be. In the author's view the list should be replaced with a specialized maritime list of experts, which should contain a detailed and regularly updated background for each expert. The list should also include international parties which the court can rely on for additional advice if the expert list does not include the required expertise needed by the court. Finally, in light of how onerous a maritime case can be, the expert should submit a detailed plan for the work to the court and the parties before starting. This report will demonstrate to the court and the parties that the expert actually has the required knowledge, background and experience to handle the technical task entrusted to him.

The UAE is rapidly becoming a regional icon and the preferred destination for many major businesses worldwide. Jebel Ali port as one of the largest ports in the world, and there are many other ports on the way. There is therefore a real need for specialized and internationally recognized court maritime experts. This will make the courts more effective when resolving maritime disputes, and therefore give the local and international maritime community more confidence in the UAE. This is a natural development stemming out of the continuous development and specialisation of the courts and the increasing demands of the growing maritime sector. The courts should also consider creating admiralty courts, night courts and courts available during the weekends and

public holidays, to further support the sector's growth and enable the UAE to remain competitive.