Achieving the best outcome in shipping disputes
“It is our extensive knowledge of the shipping industry, the way it operates, its contractual practices and economic dynamics which has proved crucial in the successful resolution of complex maritime disputes.”

Moore Stephens is the world’s leading financial advisor to the shipping industry. Since our first involvement with shipping in the 1930s we have built a team of partners and professional staff with in-depth knowledge and practical experience of the shipping industry. Many firms have forensic accountancy capability but Moore Stephens’ extensive knowledge of the industry, the way it operates, its contractual practices and economic dynamics has proved crucial in the successful resolution of numerous complex maritime disputes.

In addition to our practical experience of the shipping industry, our forensic maritime accounting team has considerable experience of the judicial process and working with legal teams in preparing written expert witness reports and giving oral evidence in arbitrations and trials both in England and overseas. We focus on providing clear, concise, jargon free evidence and recognise the need to respond immediately to urgent requests for assistance and are able to prepare an expert witness report in a matter of a few days or even hours if required.

**Expert advice**

**Time charter damages**

Following the important ‘Kildare’ case the calculation of damages requires that credit be given for accelerated receipt of the income arising from a prematurely terminated time charter. This involves first calculating the net hire receipts after taking into account the ‘available market’ rate, and then discounting this net income using discounted cash flow techniques.

These disputes are hotly contested cases and, in the absence of prescriptive case law, there is significant scope for disagreements. In the event that no ‘available market’ rate can be agreed, the damages calculation turns on an assessment of the vessel’s trading profits.

Our extensive knowledge of shipowning operations and our OpCost reports have been key to providing robust evidence. We have acted as expert witnesses in many charterparty disputes and have given seminars on the subject to the legal profession.

**Salvage**

Since our involvement in the landmark ‘Nagasaki Spirit’ case we have amassed considerable experience in providing expert accountancy evidence in marine salvage cases. Initially, our involvement was the assessment of ‘fair rate’ under Article 14 of the 1989 Salvage Convention, and we have dealt with a dozen such cases since. The introduction of the SCOPIC clause into Lloyd’s Standard Form has meant that Article 14 is largely a thing of the past, but our experience has resulted in us assisting in assessing the appropriate revisions to the SCOPIC rates.

The very nature of shipping means disputes are often challenging and complex. Such disputes need to be resolved quickly and achieve the best outcome available – which requires experts that fully understand the industry.
We have assisted with several major salvage cases where brokers had been unable to determine the value of the vessel. Our deep knowledge of shipping operations and discounted cash flow valuation techniques combined with our OpCost data has provided unique authority to our expert evidence.

Our long standing involvement in the salvage industry was key to our appointment to audit the wreck removal costs of Costa Concordia, which were in excess of US$ 1 billion involving several hundred thousand transactions.

**Forward freight agreements**
First traded in the early 1990s, trading on forward freight agreements (FFAs) has grown substantially since. Frequently used by shipowners, Moore Stephens routinely assesses the value of FFAs in our clients’ balance sheets.

The extreme volatility in the shipping market in 2008 had a consequentially dramatic effect on the FFA market. Inevitably, disputes have arisen and we have been called upon to give expert evidence on the value of substantial portfolios of FFAs.

**Valuations of shipping businesses**
Valuations usually arise through the acquisition or disposal of a business or in a shareholders dispute. Whilst vessel valuations are usually provided by shipbrokers, valuing a shipping business is more complex. For example, financing structures can be complicated and will impact on both profitability and solvency, and consequently its inherent risk. Other common issues include the treatment of finance leases and operating leases.

In valuation work, a sound understanding of the relevant accounting standards needs to be blended with an appreciation of the issues in a shipping context. The Moore Stephens Corporate Finance team regularly carries out pre-lending reviews and due diligence investigations, and are frequently called upon to carry out rapid security for costs reviews at an early stage in proceedings.

**Misrepresentation**
Misrepresentation claims in maritime disputes usually come about in the acquisition of a business where the purchasers believed they were misled about future financial performance. Moore Stephens can carry out a valuation of the shipping business at the time the acquisition took place. On one occasion our Corporate Finance team was able to carry out a limited review of a five vessel group within 48 hours of instruction.

**Insolvency**
Our Restructuring & Insolvency team has worked on a significant number of major maritime recovery cases. We were appointed by the English High Court as receivers over assets of a major bunker supplier based in the UAE, where realisation of the assets, which exceeded US$77 million, required knowledge of oil trading, trade finance and cross border issues. Following Navigator Gas Transport PLC’s default on US$300m of high yield debt, we prepared financial projections and scenario analysis in a successful application before the US Bankruptcy Court in New York.

In other cases we have been appointed receivers of cargoes of wheat and rice bound for Iraq, flour bound for Libya and a yacht in Turkey. We have also been appointed by the court in the compulsory liquidation of a UK chartering company.

**Liner operations**
Assessing liner operations, particularly in relation to the container trade, represents perhaps the greatest challenge to the forensic maritime accountant. An understanding of the shipowner’s operating costs is just one element of the complex costs to be evaluated in any assessment of the quantum of lost profits. The expert requires a clear understanding of vessel sharing agreements, slot charters and the cost associated with intermodal freight transport.

**OpCost**
OpCost is Moore Stephens’ unique benchmarking tool for vessels’ operating costs, currently covering 26 vessel types. Originally designed as a pure benchmarking tool, OpCost has been invaluable when working on cases where a vessel’s operating costs are unknown or are in dispute. It has been particularly helpful in valuations under Lloyd’s Form ‘Strand Value’ and in time charter damages cases where ongoing profitability has to be calculated.

“A thorough understanding of discounted cash flow techniques is therefore essential.”
A thorough understanding of container shipping was at the heart of the headline case Yeheshkel Arkin v Borchard Lines Limited and others where we were called upon to provide expert evidence for the successful defence team relating to allegations of dominant position and predatory pricing.

**Taxation**

We have an in-depth knowledge of all aspects of UK and international shipping tax including tonnage tax, VAT, employment and corporate tax issues. We also deal with the personal taxation of non-UK domiciled individuals, PAYE and NIC issues as well as financial planning.

In the Arkin v Borchard case we were called upon to give expert evidence regarding the UK taxation position of a container line operation.

**Shipping pools**

Where a number of shipowners enter their vessels into a pool operated by a separate manager, disputes usually relate to complaints about the manager’s charges or where a pool member wants to withdraw some or all of its vessels. Pooling arrangements often have ‘capital’ hire payments with underlying calculations, which apply discounted cash flow techniques. A thorough understanding of these complex interest-based techniques is essential.

**Agents**

Disputes involving agents for tramp operators usually concern dubious or bogus charges alleged by the owner. Such cases are usually minor and can be resolved without involving a forensic accountant. Of much greater significance is where liner agents are handling both the income and the expenses of an owner’s vessels. In one particular dispute we were asked to review a multi-port passenger ferry operation to determine whether the agent’s charges and payments of income receipts were appropriate.

**Scuttling**

At first glance it may not be obvious what assistance an accountant can provide when a ship owner has allegedly scuttled one of its ships. Although technical and scientific evidence will be required to establish causation, Moore Stephens is often called to investigate whether there was financial motive behind the scuttling. As with much of our forensic maritime cases, this work requires an understanding of the whole of the owner’s shipping operations and quite possibly the insolvency regulations in the jurisdiction in which the vessel operated. Whilst scuttling cases are rare, we have to date been instructed on nine cases, including the famous Akran Reefer case.

**Oil spill clean-up operations**

The cost of cleaning up an oil spill is always significant. In one case we were asked to assist a P&I Club which was incurring costs of over US$1 million each day. Our instructions were to review the internal control procedures to ascertain whether the clean-up cost payment process was appropriate and robust in both design and practice. In another major spill we were instructed by the International Oil Pollution Compensation Funds to consider the salvors’ charges for a major incident in the Far East.

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**Key global shipping and transport contacts**
About Moore Stephens

Moore Stephens is a top ten accounting and advisory network, with offices throughout the UK and member firms across the globe.

Our clients range from individuals and entrepreneurs, to large organisations and complex international businesses. We partner with them, support their aspirations and contribute to their success. In-depth understanding of our clients allows us to deliver focused accounting and advisory solutions, both locally and globally.

Clients have access to bespoke services and solutions, including audit and assurance, business support and outsourcing, payroll and employers’ support, business and personal tax, governance and risk, corporate finance, forensic accounting, wealth management, IT consultancy, and restructuring and insolvency.

Our success stems from our industry focus, which enables us to provide an innovative and personal service to our clients in a range of sectors.

Moore Stephens globally

Moore Stephens International is a top ten global accountancy and consulting network, headquartered in London. With fees of over US$2.66 billion and offices in 106 countries, clients have access to the resources and capabilities to meet their global needs.

By combining local expertise and experience with the breadth of our UK and worldwide networks, clients can be confident that, whatever their requirement, Moore Stephens provides the right solution to their local, national and international needs.

Contact information

If you would like further information on any item within this brochure, or information on our services please contact:

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