IN THE HIGH COURT
of the
REPUBLIC OF THE MARSHALL ISLANDS

BRANKO DRASKOVIC, **plaintiff,** **v.** **ONE SHIP LTD, WESTERN RIVER LTD, and SEAQUEST SHIPMANAGEMENT LTD., *in personam*,** **defendants.**	**CASE NO. 2024-00520** **HCT/CIV/MAJ** **FINAL JUDGMENT GRANTING MOTIONS TO DISMISS**

Counsel:

John E. Masek for plaintiff Draskovic
Dennis J. Reeder and Nenad Krek for defendants One Ship Ltd., Western River Ltd., and proposed defendant SeaQuest Shipmanagement Ltd.

I. INTRODUCTION

In this case, Plaintiff Branko Draskovic ("Plaintiff" or "Draskovic") seeks damages against defendants One Ship Limited ("One Ship") and Western River Limited ("Western River") (together sometimes "Defendants") for the injuries he incurred aboard the *MV St Pinot* ("Vessel"), which was owned by One Ship and crewed by Western River.

On February 21, 2025, this matter came before the Court for a hearing on following pleadings and motions:

1. Plaintiff Branko Draskovic's *First Amended Complaint*, filed on August 2, 2024 ("FAC");

2. Defendant One Ship's *Motion to Dismiss the First Amended Complaint Against Defendant One Ship Limited* on grounds of *forum non conveniens*, filed on August 19, 2024 ("MTD-FNC");

3. Defendant Western River's *Motion to Dismiss First Amended Complaint Against Defendant Western River Limited* for lack of personal jurisdiction, filed on October 24, 2024 ("MTD-Jur");

4. Defendant Western River's *Conditional Joinder in the Motion to Dismiss on the Grounds of Forum Non Conveniens*, filed on October 24, 2024 ("Conditional Joinder"); and

5. Plaintiff Draskovic's *Motion to Amend the Complaint to Change the Name of 'Defendant Doe 1' to 'Sea Quest Ship Management Ltd.,'* filed on October 25, 2024 ("MTN to add SeaQuest HK").

At the end of the February 21 hearing, the Court ordered counsel to file supplemental submissions regarding facts, case law, and arguments. The parties submitted the following:

6. *Plaintiff's Separate Statement of Facts*, filed on March 11, 2025 ("PSOF");

7. *Defendants' Statement of the Facts*, filed on March 11, 2025 ("DSOF");

8. Plaintiff's *Summary of Law Supporting Exercise of Personal Jurisdiction over Ship Manager/Seafarer Employer*, filed on March 14, 2025 ("Pltf's Supp re Per Jur");

9. *Plaintiff's Statement on Forum Non Conveniens*, filed on March 14, 2025 ("Pltf's Supp re FNC");

10. *Defendants' Statement of Case Law Regarding Personal Jurisdiction Based on the Flag of the Vessel, Declaration of Nenad Krek* ("Krek Dec."), Exhibits "A" and "B," filed on March 14, 2025 (together "Dfts' Supp re Per Jur"); and

11. *Defendants' Statement of Position on the Pending Motions* ("Dfts' Supp re Mtns"), *Supplemental Declaration of Davide Catania* ("Catania Dec."), Exhibit "A," *Declaration of Nenad Krek* ("Krek Dec."), and *Supplemental Declaration of Aleksandra Bujkovic* ("Bujkovic Dec."), filed on March 14, 2025 (together "Dfts' Supp re Mtns").

Having considered the parties' submissions and arguments, the Court, for the reasons set forth below, DENIES the Plaintiff's *Motion to Amend the Complaint to Change the Name of*

'Defendant Doe 1' to 'Sea Quest Ship Management Ltd.'. Further, the Court GRANTS the following motions: (i) One Ship's *Motion to Dismiss the First Amended Complaint Against Defendant One Ship Limited* on grounds of *forum non conveniens*; (ii) Defendant Western River Ltd's *Motion to Dismiss First Amended Complaint Against Defendant Western River Limited*; and (iii) Defendant Western River Ltd.'s *Conditional Joinder in the Motion to Dismiss on the Grounds of Forum Non Conveniens*.

II. FACTS, ALLEGATIONS, AND REQUESTS FOR DAMAGES

With respect to the pending motions, the relevant facts and allegations are set forth below.

A. The Parties

1. Plaintiff Branko Draskovic

Plaintiff Branko Draskovic ("Plaintiff" or "Draskovic") is a citizen and resident of Montenegro. FAC at ¶ 2; PSOF at ¶ 1 and DSOF at ¶ 1. The Plaintiff was employed by Defendant Western River as the third engineer on board the *MV St Pinot*. FAC at ¶ 7; DSOF at ¶¶ 4, 10-12. The Vessel is an RMI-flagged vessel with its Port of Registry in Majuro, Marshall Islands. FAC at ¶¶ 5, 6; DSOF at ¶ 2. On or about July 7, 2022, the Plaintiff was injured in an engine room accident while acting in the course of his employment on board the Vessel. FAC at ¶ 9; DSOF at ¶ 5. The accident occurred while the Vessel was on high seas outside the territorial limits and waters of the Republic of the Marshall Islands ("Republic" or "RMI"). FAC at ¶ 14; DSOF at ¶ 13.

2. Defendant One Ship Limited

Defendant One Ship is a non-resident corporation registered in the RMI. FAC at ¶ 3; PSOF at ¶ 2; DSOF at ¶ 14. Its principal place of business in Monte Carlo, Monaco. DSOF at ¶ 15. It has no office or employees in the RMI, and conducts no business in the RMI. *Id.*

One Ship is the owner of the Vessel. FAC at ¶ 5; DSOF at ¶ 3.

One Ship has consented the jurisdiction in Montenegro over the Plaintiff's claims. DSOF at ¶ 22.

3. Defendant Western River Limited

Defendant Western River is a Hong Kong entity with its principal place of business in Hong Kong. FAC at ¶ 4; PSOF at ¶ 3; DSOF at ¶¶ 4, 16. It is a 100%-owned subsidiary of Shilling Sarl ("Shilling"), a Luxembourg corporation based in Luxembourg. DSOF at ¶ 18. Western River has no office or employees in the RMI, does not transact and has never transacted any business in the RMI, does not operate any vessel within the territorial waters of the RMI, has not entered into any contract with a resident of the RMI to be performed within the RMI, and has not acted within the RMI in any capacity or for any purpose. DSOF at ¶ 17.

Western River operated the Vessel. FAC at ¶ 6. Western River employed the Plaintiff on the Vessel as the 3rd Engineer under a contract ("Employment Contract") signed by the parties in Bar, Montenegro. FAC at ¶ 7; DSOF at ¶¶ 4, 10-12.

Western River has consented the jurisdiction in Montenegro over the Plaintiff's claims. DSOF at ¶ 22.

4. Defendant SeaQuest Shipmanagement Ltd.

Defendant SeaQuest Shipmanagement Ltd., a Hong Kong corporation based in Hong Kong (the "SeaQuest HK"). DSOF at ¶ 21. SeaQuest HK is a wholly owned subsidiary of SeaQuest Shipmanagement SA, a Swiss corporation based in Geneva, Switzerland ("SeaQuest Switzerland"). *Id.* SeaQuest HK has no office or employees in the RMI, does not transact and has never transacted any business in the RMI, does not operate any vessels within the territorial waters of the RMI, has not entered into any contract with a resident of the RMI to be performed within the RMI, and has not acted within the RMI in any capacity or for any purpose. DSOF at ¶ 27. SeaQuest HK was not involved with crewing or operation of the Vessel. DSOF at ¶ 28.

B. Witnesses, including Members of the Vessel's Crew

At all times relevant, the members of the *Vessel's* crew and their citizenship were, and are, as follows.

Chief Engineer Srdan Vucetic, Second Engineer Rajko Ivanovic, and Third Officer Rade Spaic are citizens of Montenegro. DSOF at ¶ 24.

Chief Officer Miljenko Zec is a citizen of Croatia. PSOF at 2; DSOF at ¶ 25.

Master Igor Purchyk is a citizen of the Ukraine. PSOF at 2; DSOF at ¶ 26.

Second Officer Joseph Gurrea is the citizen of Philippines. *Id.*

Unnamed cook/messmate is a citizen of the Philippines. PSOF at 2.

The doctors who treated the Plaintiff are located in Oman and Montenegro (PSOF at 4-5).

No witnesses relevant to this action are located in the RMI. DSOF ¶ 23.

C. The Accident

According to the parties, on or about July 7, 2022, the Plaintiff was serving aboard the Vessel under a contract with Western River as the third engineer. While acting in the course of his employment on board the Vessel, the Plaintiff was injured in an engine room accident. At the time of the injury, the Vessel was en route from Lianyurigang, China, to Iskenderun, Turkey. The Vessel was in the Gulf of Aden High Risk Area approaching to IRTC point B.

When the Plaintiff opened the dipstick cap on the Vessel's sounding pipe to check the level of fluid in the waste oil settling tank hot oil erupted out of the tank. The Plaintiff was scalded by the hot oil and immediately suffered extensive burns over his entire body including his face, scalp, neck, full back, arms, and legs. Approximately 50% of his body was burnt with 30% being deep burns and 20% being second degree burns. He suffered immediate and horrifying pain and was alone on the deck without first aid treatment for approximately 30 minutes.

The Plaintiff remained on board the Vessel for three days receiving only oral paracetamol (Tylenol) for this pain until he was evacuated to a medical facility. On July 11, 2022, the Plaintiff was airlifted to Sultan Quboos Hospital in the Sultanate of Oman, where the Plaintiff was treated for his burn injuries, including surgery for skin grafts on August 8, 2022.

On August 22, 2022, the Plaintiff was admitted to the Badr Al Samaa Hospital in the Sultanate of Oman to have his burns dressed. He was discharged on September 14, 2022. Since then, the Plaintiff has continued to receive regular treatment for his injuries in his home country. His injuries include but are not limited to burns, scarring, and PTSD.

See FAC ¶¶ 14-20; PSOF at 3-5 (the Plaintiff's more detailed description of his injuries, pain, and treatment); DSOF ¶¶ 5-9. No evidence relevant to this action is located in the RMI. DSOF ¶ 23.

D. Causes of Action and Relief Requested

The Plaintiff alleges that One Ship, as the Vessel's owner, and Western River, as the employer, were negligent (FAC at ¶¶ 22-29), that Vessel was unseaworthy (*id.*, at ¶¶ 30-33), and that One Ship and Western River failed to arrange for the Plaintiff's prompt medical care (*id.*, at ¶¶ 35-45).

The Plaintiff seeks a judgment for money damages against One Ship and Western River. *Id.*, Prayer for Relief ¶¶ 1-5.

III. MOTION TO AMEND THE COMPLAINT TO ADD SEAQUEST HK AS A DEFENDANT

In his MTN to add SeaQuest HK as a defendant, the Plaintiff seeks to amend the FAC to change the name of "Defendant Doe 1" to "Sea Quest Ship Management, Ltd.," under MIRCP 15(c)(1)(C)(ii).

A. Legal Standard for Adding a Named-Defendant in Place of a Doe-Defendant

(1) MIRCP 15(c)(1)(C)(ii)

MIRCP 15(c)(1)(C)(ii) reads as follows:

> (c) Relation Back of Amendments.
>
> (1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:
>
> . . .
>
> (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

As the MIRCP 15(c) mirrors the respective United States Federal Rules of Civil Procedure ("FRCP") counterpart, RMI courts look to United States ("U.S.") cases for interpretation of the rule. *See Kabua v. M/V Mell Springwood, et al.*, H. Ct. Civ. No. 2015-200, Order (Jun. 20, 2016) ("*Springwood* Order"), at 12.

The legal standard for granting a motion to substitute a "Doe" defendant for a named defendant under FRCP 15(c), and so MIRC 15(c), involves the following:

1. Relation Back of Amendments: An amendment to a pleading that changes the party or the naming of the party against whom a claim is asserted relates back to the date of the original pleading if:

   a. The amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out in the original pleading. MIRC 15(c)(1)(B).

   b. Within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment received such notice of the action that it will not be prejudiced in defending on the merits. MIRC 15(c)(1)(C); *Scanlon v. Lawson*, No. CV 16-4465 (RMB-JS), 2020 WL 605041, at *10 (D.N.J. Feb. 6, 2020), aff'd, No. 20-3212, 2022 WL 1940420 (3d Cir. May 17, 2022).

c. The party knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity. MIRC 15(c)(1)(C)(ii).

2. Mistake Concerning Identity: The mistake concerning the identity of the proper party can include circumstances where the complaint names a "John Doe" defendant due to the plaintiff's lack of knowledge of the proper defendant, provided the filing of the "John Doe" complaint is not part of a deliberate strategy to achieve an advantage and the plaintiff's lack of knowledge is not due to dilatory conduct. *Muto ex rel. Muto v. Scott*, 224 W. Va. 350, 357, 686 S.E.2d 1, 8 (2008).

3. Notice and Prejudice: The focus is on whether the newly named defendant had notice of the action and whether the defendant knew or should have known that the action would have been brought against it but for the plaintiff's mistake. *DaCosta v. City of New York*, 296 F.Supp.3d 569, 592 (2017). Notice to the newly named defendant may be imputed by sharing an attorney with an original defendant or by an identity of interest with an originally named defendant. *Scanlon*, at 7.

4. Timeliness: The amendment must be timely, and the court should freely give leave to amend when justice so requires. MIRCP 15(a)(2); *Rojas by and through Rojas v. Sea World Parks & Entertainment, Inc.*, 538 F.Supp.3d 1008, 1014 (2021).

(2) MIRCP 15(a)

Defendants One Ship and Western River in their *Memorandum in Opposition to Plaintiff Motion to Amend the Complaint to Change the Name of "Defendant Doe 1" to "Sea Quest Ship*

Management, Ltd" and supporting documents, filed on October 29, 2024 ("Opp. to SeaQuest HK Mtn") oppose the MTN to add SeaQuest HK citing MIRC 15(a). MIRC 15(a) reads as follows:

> (a) Amendments Before Trial.
>
> (1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course:
>
> (A) before serving or within 21 days after serving the pleading, or
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> (B) if the pleading is one to which a responsive pleading is required, within 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
>
> (2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Under FRCP 15(a), upon which MIRCP 15(a) is patterned, courts should freely give leave to amend when justice so requires. However, courts may deny a motion to amend if there is undue delay, bad faith, dilatory motive, undue prejudice to the opposing party, or if the amendment would be futile. *Frederick v. Avantix Laboratories, Inc.*, 773 F.Supp.2d 446, 449 (2011); *Ponce v. Billington*, 652 F.Supp.2d 71, 73 (2009).

A *dilatory motive* is a legitimate basis for denying a motion to amend. If it appears that leave to amend is sought in anticipation of an adverse ruling on the original claims, the court may deny the motion. *In re Enron Corp.*, 367 B.R. 373, 379 (2007). Additionally, tactical decisions and dilatory motives may lead to a finding of undue delay in filing a motion to amend the complaint, warranting denial of the motion. *Synthes, Inc. v. Marotta*, 281 F.R.D. 217, 225 (2012).

An amendment is considered *futile* if it fails to state a claim for which relief can be granted. *Frederick*, 449; *In re Mortgage Lenders Network, USA, Inc.*, 395 B.R. 871, 876 (2008). Courts do not engage in an extensive analysis of the merits of the proposed amendments when

futility is asserted; instead, they decide whether the proposed amendment is facially meritless and frivolous. *Simons v. U.S.*, 75 Fed.Cl. 506, 508-509 (2007).

B. Application of Facts to Law re Adding SeqQuest HK in Substitution a Doe-Defendant

Applying the above legal standards to the Plaintiff's motion to add SeaQuest HK as a new defendant, the Plaintiff must demonstrate the following under MIRCP 15(c): (i) that its claim arose out of an occurrence set out in the FAC; (ii) that within the period provided for service under MIRCP 4(m), SeaQuest HK received notice of the action and will not be prejudiced on the merits by the delay; and (iii) SeaQuest HK knew or should have known that the action would have been brought against it but for the Plaintiff's mistake as to its identity.

The Plaintiff has met the first requirement. His claims against SeaQuest HK arise out of the accident described in the FAC. *See* MTN to add SeaQuest HK at 1.

Also, the Plaintiff has met the second requirement. SeaQuest HK received notice of the action within period provided for service under MIRCP 4(m), i.e., 90 days and any extensions thereto, and will not be prejudiced on the merits by the delay. That is, on October 15, 2024, process server Law Pui Hung ("Hung") reportedly served a copy of the FAC on a "SQ Marine Limited." *See* Hung's *Affidavit of Service on SQ Marine Limited in Hong Kong, SAR, China*, ("Hung's Aff of Service"), signed on October 17, 2024, and filed on October 18, 2024. Hung's Aff of Service indicates that service was on a "SQ Marine Limited" by mail and by delivery to a security officer at offices of SeaQuest Marine Limited. The address for SQ Marine Limited also is listed in Hong Kong Companies Registry as the address for Western River and SeaQuest HK.

See Affidavit of John E. Masek Re: Completion of Service on Defendant One Ship Limited, filed on October 18, 2024 ("Masek's Aff. re Service"), Exs A and C.

Hence, it can be said that Hung served the FAC on a "SQ Marine Limited" at the address for SeaQuest HK and Western River within the enlargement of time the Court granted Plaintiff for service on Western River — i.e., by October 18, 2024.[1] SeaQuest HK received notice of the action within the time provided for service of process under MIRCP 4(m) and extensions. Additionally, SeaQuest HK has shown no prejudice in defending on the merits by the delay. That is, SeaQuest HK can join with One Ship in its MTD-FNC and with Western River in its MTD-Jur. For these reasons, the Court concludes that the Plaintiff has met the second requirement.

However, regarding the third requirement, i.e., that SeaQuest HK knew or should have known that the action would have been brought against it but for the Plaintiff's mistake as to identity, the answer is no.

The Plaintiff cites Ex. B to Masek's Aff. re Service to establish that SeaQuest HK employed Western River. However, Ex. B does not establish that SeaQuest HK is the "SeaQuest" entity that employs Western River. In this regard, *Defendants' Memorandum in Opposition to Plaintiff's Motion to Amend the Complaint to Change the Name of "Defendant Doe 1" to "Sea Quest Ship Management, Ltd.,"* filed on October 29, 2024, at 3, states as follows:

> Fourth, Plaintiffs assertion in his instant motion that SeaQuest HK "should know that it is likely to be served in this matter" is utterly baseless and borders with frivolous. In his

[1] *See* the Court's Order Enlarge Time for Service of Process issued August 23, 2024, enlarging the time to serve the FAC to October 18, 2024, to file an affidavit of service to October 23, 2024; *see also* the Aff of Service on SQ.

> Declaration filed on August 19, 2024, Goran Zivkovic, Managing Director of Sea Quest Ship Management doo, Rijeka, attested *inter alia* as follows:
>
> > 3. Sea Quest is a vessel management company established in Luxembourg with a branch office in Geneva, Switzerland and a subsidiary in Rijeka, Croatia.
> > 4. At all times in 2022, Sea Quest, through its office in Rijeka, Croatia, was the ship manager and Document of Compliance holder of the MN ST. PINOT (the "Vessel").
>
> *See* Declaration of Nenad Krek, Exhibit "B."
>
> Plaintiff therefore knew more than two months ago that the relevant Sea Quest entities which were involved with the Vessel were a Luxembourg corporation with its office in Geneva, Switzerland, and its subsidiary in Rijeka, Croatia.

Hence, at the time SQ Marine Limited received service of the FAC at the address for SeaQuest HK and Western River on October 17, 2024, it cannot be said that the SeaQuest HK, or its attorneys, had reason to believe it would be made a defendant in this case under MIRCP 15(c) as the owner or *alter ego*[2] of Western River, which the Defendants' submission show it is not. *See* DSOF at ¶¶ 20, 21, 27-33; *see also Supplemental Declaration of Davide Catania* including Exhibit A, which shows that Western River is owned by Shilling Sarl ("Shilling") and that SeaQuest Shipmanagement doo Rijeka (""SeaQuest Croatia") managed the Vessel.

Similarly, for purposes of an amendment under MIRCP 15(a), adding SeaQuest HK as a defendant would be futile. As noted above, the facts do not indicate that SeaQuest HK is the owner or *alter ego* of Western River or the manager of the Vessel. Instead Shilling is the owner

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[2]To state a claim for piercing the corporate veil under the "alter ego" theory, a party must show: (1) that the corporation and its principals sought to be held liable operated as a single economic entity, and (2) that an overall element of injustice or unfairness is present. *See, e.g., Trevino v. Merscorp, Inc.*, 583 F.Supp.2d 521, 528 (D. Del. 2008) (applying Delaware law). The fraud or injustice that must be demonstrated in order to pierce the corporate veil must be found in the principal's use of the corporate form. *See, e.g., Mobil Oil Corp. v. Linear Films, Inc.*, 718 F. Supp. 260, 267 (1989); *Blair v. Infineon Technologies AG*, 720 F. Supp. 2d 462, 473 (D. Del. 200). *See also* 52 MIRC § 13 (adopting non-statutory corporate law of Delaware).

of Western River, and SeaQuest Croatia is the manager the Vessel. Catania Dec., Exh. A. The Plaintiff is trying to add the wrong "SeaQuest" entity, though the Defendants had provided the Plaintiff with the names of the owner of Western River and the manager of the Vessel.

For these reasons, the Court denies the Plaintiff's *Motion to Amend the Complaint to Change the Name of 'Defendant Doe 1' to 'Sea Quest Ship Management Ltd.'* However, the Court will consider SeaQuest HK in its analysis of the MTD-Jur and the MTD-FNC, as if SeaQuest HK were a party.

IV. MOTION TO DISMISS THE FAC AS TO WESTERN RIVER FOR THE LACK OF PERSONAL JURISDICTION

With respect to personal jurisdiction over the defendant Western River, the Plaintiff makes the following assertions in his FAC. "Jurisdiction is also vested in the High Court under 27MIRC Ch.2 §251(o)." FAC ¶ 1. Western River "operated, conducted and engaged in a business in the Republic of the Marshall Islands." FAC ¶ 10. Western River purposefully established minimum contacts with the Republic in that it operated the Vessel, a Marshall islands-flagged vessel with its Port of Registry in Majuro, Marshall Islands. FAC ¶ 11.

In response, defendant Western River alleges in its MTD-Jur that "27 MIRC Sec. 251(1)(o) does not apply to Western River, and Plaintiff's allegations set forth in the FAC ¶¶ 10-11 and elsewhere in the FAC do not satisfy the requirements of 27 MIRC § 251(1)." MTD-Jur at 3.

In the *Plaintiff's Opposition to Defendant Western River Limited's Motion to Dismiss for Lack of Personal Jurisdiction* ("Opp to MTD-Jur"), the Plaintiff expanded significantly his rationale for personal jurisdiction over Western River. The Plaintiff asserted that this Court has

personal jurisdiction over Western River as the operator of the Vessel, an RMI-flagged ship. Opp to MTD-Jur at 2-3. Additionally, this Court has personal jurisdiction over Western River under Section 251(1)(a), (c), and (d), as well as under and 251(1)(o), and also under the Merchant Seafarers Act, 47 MIRC Chp. 8. *Id.* at 3-8.

In Western River's *Reply in Support of Motion to Dismiss the First Amended Complaint Against Defendant Western River Limited, Declaration of Nenad Krek*, and Exhibit "A" (together "Reply re MTD-Jur"), Western River responded to the Plaintiff's Opp to MTD-Jur with the following arguments. First, "[t]he Documentation and Identification of Vessels Act ('DIVA'), 47 MIRC §239, does not purport to address personal jurisdiction at all, and it does not purport to deal with or confer any jurisdiction over persons or entities doing business or contracting with vessel owners, as opposed to 2 MIRC Sec. 251(1)." Reply re MTD-Jur at 1-3. Second, Sec. 251(1)(o) does not apply to Western River as One Ship's agent. *Id.* at 3-5. Third, Sections 251(1)(a), (c), and (d) do not apply to Western River as neither case sited by the Defendant, the "law of the flag," nor the Merchant Seafarers Act address personal jurisdiction over defendants in civil cases. *Id.* at 5-9.

A. "Law of the Flag" Jurisdiction Does Not Provide a Basis for the Court Exercising Personal Jurisdiction over Western River

As the Plaintiff asserts in his Opp to MTD-Jur, the RMI claims jurisdiction and control over all RMI-flagged ship under Section 239 of DIVA, which reads as follows:

> From the time of issuance of a Certificate of Registry under this Chapter and until its expiration, termination, revocation or cancellation, whichever first occurs, the vessel shall be granted and shall enjoy the right to fly the Flag of the Republic exclusively, unless its Certificate of Registry is specifically endorsed so as to withdraw that right. *At all times during the period that a vessel has*

> *the right to fly the Flag of the Republic, the vessel shall be subject to the exclusive jurisdiction and control of the Republic as the Flag State, in accordance with the applicable international conventions and agreements and with the provisions of this Act and any Regulations or Rules made thereunder.*

(emphasis added).

In this regarding, the Plaintiff maintains: "This type of jurisdiction is a long recognized legal doctrine commonly referred to as the 'law of the flag'. In fact, it has been said that 'a ship is like land, in that it falls within the jurisdiction of the nation whose flag it flies'. *United States v. Prado*, 933 F.3d 121, 141 fn. 10 (2d Cir. 2019), citing *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 130, 133 S. Ct. 1659, 1672, 185 L. Ed. 2d 671 (2013)." *Id.* at 5.

However, Western River rejects this description of "law of the flag" jurisdiction equating a ship to land within a country's boarders. In its reply, Western River points out that "*Kiobel* dealt with question of extraterritorial application of the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, which says that "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States," to foreign corporations which were sued for allegedly committing atrocities in Nigeria. 569 U.S. at 113-115. It had nothing to do with personal jurisdiction.'" Reply re MTD-Jur at 6-7.

Seeking more definitive legal authority regarding the nature and scope of "law of the flag" jurisdiction, the Court, at the end of the February 21 hearing, ordered the parties to submit case law for or against the contention by "law of the flag" jurisdiction confers personal jurisdiction.

In response, the Plaintiff cites two cases in Pltf's Supp re Per Jur: *M-1 Drilling Fluids UK Ltd. v. Dynamic Air Lida.*, 890 F.3d 995, (Fed. Cir. 2018), and *Torres de Maqueta v. Yacu Runa-*

Naviera, S.A., 107 F, Supp. 2d 770 (S.D. Tex. 2000). The Court reviewed both cases and found them to be distinguishable. In the cases, the presiding court found personal jurisdiction over the defendant not because the vessel in question was flagged in the U.S., but because the defendant purposefully directed its activities at residents of the United States and the alleged injuries resulted from those activities. *See M-I Drilling Fluids UK Ltd.*, *supra* at 1001; *Torres de Maqueta, supra* at 774-775. In the present case, the Plaintiff has not established that Western River's alleged actions were directed at a resident of the RMI or that any injury occurred in the RMI. The cases cited by Plaintiff are not persuasive.

On the other hand, in response to the Court's request, defendant Western River asserts in Dfts' Supp re Per Jur that in civil actions U.S. case law does not base personal jurisdiction on the flag of a vessel. *See* Dfts' Supp re Per Jur at 2-3 (citing *Scharrenberg v. Dollar S.S. Co.*, 245 U.S. 122, 127 (1917) (rejecting the contention that a ship of American registry engaged in foreign commerce is a part of the territory of the United States in such a sense that seamen employed on it can be said to be laboring "in the United States" or "performing labor in this country" for the purpose of the U.S. immigration laws); *United States ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929) (rejecting the contention that an American vessel in a foreign port or on the high seas is within the United States); *Cruz v. Chesapeake Shipping, Inc.*, 932 F.2d 218 (3rd Cir. 1991) (rejecting the contention that the Federal Labor Standards Act applied to foreign seamen employed on a U.S. flag vessel on high seas outside the United States); *Schermerhorn v. Israel*, 876 F.3d 351 (D.C.Cir. 2017), (rejecting the contention that an Israeli attack on a U.S.-flagged vessel near Gaza constituted "personal injury or death, or damage to or loss of property, occurring in the United States); *MDG Int'l, Inc. v. Australian Gold, Inc.*, 606 F.Supp.2d 926,938

(S.D.Ind. 2009) (rejecting the argument that sales made on vessels flying the flag of Panama and Bahamas were made in the territory of Panama and Bahamas).

Additionally, the Court found that regarding the nature and scope of "law of the flag" jurisdiction, U.S. courts have held as follows:

> [T]he "law of the flag" doctrine, [] states generally that "a merchant ship is a part of the territory of the country whose flag she flies." *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 123, 43 S.Ct. 504, 67 L.Ed. 894 (1923). This doctrine, however, "*is a figure of speech, a metaphor*," and the jurisdiction it describes "partakes more of the characteristics of personal rather than territorial sovereignty." *Id.* In other words, the law-of-the-flag doctrine does not literally mean that a ship constitutes an extension of its flag State's territorial sovereignty, but rather it serves as a tiebreaker of sorts for areas of the world (e.g., the high seas) where there is no territorial sovereign. *Id.* ("[The law-of-the-flag doctrine] is chiefly applicable on the high seas, where there is no territorial sovereign; and as respects ships in foreign territorial waters it has little application beyond what is affirmatively or tacitly permitted by the local sovereign.").

United States v. Sanford Ltd., 880 F. Supp. 2d 9, 16 (D.D.C. 2012).

Based upon the above, the Court concludes that in civil actions "law of the flag" jurisdiction is not by itself sufficient to confirm extraterritorial personal jurisdiction aboard ships. If the Nitijela had wanted to confer such jurisdiction on the courts of the RMI in civil actions, it could have enacted legislation to do so, as it has done with respect to criminal jurisdiction. Regarding criminal jurisdiction, the Nitijela enacted Section 247 of the Judiciary Act, which expressly provides for the extended extraterritorial criminal jurisdiction of the RMI to all persons on board a RMI vessel or aircraft. *See* 27 MIRC Sec. 247 ("Except where the contrary intention appears in any such law, the criminal laws of the Republic apply outside the territorial limits of

the Republic to all persons on board a Marshall Islands vessel or aircraft."). However, the Nitijela has not enacted similar language with respect to civil jurisdiction.

B. The Court Have Personal Jurisdiction over Western River under Section 251(1)(a), (c), (d), and (o)

MIRCP 251(1)(a), (c), (d), and (o) read as follows:

> (1) Any person, corporation or legal entity who, in person or through an agent or servant:
>
> (a) transacts business within the territorial limits of the Republic;
>
> . . .
>
> (c) operates a vessel or aircraft within the territorial waters or airspace of the Republic;
>
> (d) commits a tortious act within the territorial limits of the Republic;
>
> . . .
>
> (o) is a non-resident domestic corporation, limited liability company, limited partnership, or partnership of the Republic. . . .

In this connection, Section 254, Limits of jurisdiction, reads as follows:

> Only causes of action referred to in Section 251 of this Chapter may be asserted against a person in proceedings in which jurisdiction against him is based on this Division.

1. Personal Jurisdiction under Section 251(1)(o)

In his Opp to MTD-Jur, the Plaintiff first argues that personal jurisdiction is proper over Western River under Section 251(1)(o), which grants personal jurisdiction over "a non-resident domestic corporation . . . of the Republic." Opp to MTD-Jur at 4-5. Although Western River is *not* a non-resident domestic corporation of the Republic, the Plaintiff argues that because Western River, as the employer for the Vessel, is an agent of the Vessel owner, One Ship, itself a

non-resident domestic corporation of the Republic, then personal jurisdiction is proper over Western River under Section 251(1)(o).

As One Ship's agent, Western River may be liable for the Plaintiff's injuries aboard the Vessel under tort law. However, the Plaintiff has not cited, and the Court has not found, any case law to support the Plaintiff's claims that the exercise of personal jurisdiction over Western River (a Hong Kong corporation) is proper under Section 251(1)(o) because Western River is an agent of One Ship, an RMI non-resident corporation. *See* Reply re MTD-Jur at 2-5. Additionally, the Plaintiff has not established that Western River is the *alter ego* of One Ship, a non-resident corporation, and, therefore, steps into One Ship's shoe for purposes of personal jurisdiction in the RMI. *Id.*

2. Personal Jurisdiction under Sections 251(1)(a), (c), or (d)

Next, in his Opp to MTD-Jur, the Plaintiff argues that personal jurisdiction over Western River is proper under Sections 251(1)(a), (c), and (d), "which respectively refer to transacting business within the territorial limits of the RMI, operating a vessel or aircraft with the territorial waters or airspace of the RMI or committing a tortious act within the territorial limits of the RMI." Opp to MTD-Jur at 5-7.

However, as noted above, the claim that under "law of the flag" jurisdiction "a ship is like land" is merely a metaphor and does not literally mean that a ship constitutes an extension of its flag State's territorial sovereignty. Accordingly, for purposes of personal jurisdiction under Section 251(1)(a), operating the Vessel on the high seas cannot be said to be "transact[ing] business within the territorial limits of the Republic." Similarly, for purposes of personal

jurisdiction under Section 251(1)(d), operating the Vessel on the high seas cannot be said to be "commit[ting] a tortious act within the territorial limits of the Republic."

Furthermore, the "territorial waters of the Republic," within the meaning of Section 251(1)(c), do not include the high seas of the Arabian Sea where the Plaintiff's injuries were incurred. As Western Rivers noted in its Reply re MTD-Jur:

> [T]he Maritime Zones Declaration Act 206 defines the RMI territorial sea as seas within 12 nautical miles from the baselines, including archipelagic baselines. *See* 33 MIRC §1106 & 1107. A chart showing territorial seas and maritime boundaries of the RMI consistent with 33 MIRC §1106 & 1107 is attached as Exhibit "A" to the attached Declaration of Nenad Krek. Moreover, 33 MIRC 114 provides:
>
> > The sovereignty of the Republic of the Marshall Islands extends to its land areas, internal waters, local government waters, territorial sea and archipelagic waters, and to the airspace over them and the seabed and subsoil under them, and the resources contained in them.

See Reply re MTD-Jur at 7-8 (footnote omitted). Hence, for purposes of Section 251(1)(c), Western Rivers' alleged tort and the Plaintiff's injuries cannot be said to have occurred within "the territorial waters of the Republic" for purposes of 251(1)(c) just because they occurred on the Vessel.

C. The Court Does Not Have Personal Jurisdiction over Western River under the Merchant Seafarers Act

The Plaintiff is correct when he asserts that under the Merchant Seafarers Act, 47 MIRC Chp. 8 ("MSA"): "The rights and obligations of every person employed on any vessel registered under this Title [47], and any person employing such person shall, with respect to terms and

conditions of employment and other matters relating to employment and the internal order of such vessel, be governed by this [Act]." *See* Opp to MTD-Jur at 7-8.

These "rights and obligations" include the rights and duties of seafarers under the MSA including required documents for seafarers (*see* 77 MIRC 825), payment of wages (*see* 47 MIRC 827), wages and maintenance and cure for sick and injured seafarers (*see* 47 MIRC 836) and contracts for seafaring labor (*see* 47 MIRC 853). With respect to contracts for seafarers on RMI-flagged ships 47 MIRC §853 states that:

> (1) The following clause shall appear, or be by force of law included, in all contracts for seafaring labor on board vessel[s] of the Republic:
>
> "The parties to this contract hereby stipulate that the terms and conditions laid down herein shall be subject to the applicable provisions of the Maritime Law and Regulations of the Republic of the Marshall Islands. Any dispute as to terms and conditions of this contract shall be resolved in accordance with the Maritime Law and Regulations of the Republic of the Marshall Islands".

Accordingly, under RMI law, the Plaintiff's contract with Western River is "governed in interpretation and application by the Laws of the Republic, including this Chapter and any Regulations thereunder." *See* 47 MIRC 853(2).

However, though the Plaintiff's employment contract with Western River may be governed by the MSA and regulations promulgated under it, the MSA does not confer on this Court personal jurisdiction over Western River under the RMI long-arm statute, Section 251(1) of the Judiciary Act, consistent with due process. The same is true with respect to "law of the flag" jurisdiction under DIVA. "Law of the flag" jurisdiction does not confer personal jurisdiction under Section 251(1).

D. Conclusion re Personal Jurisdiction over Western River

For the above reasons, the Court concludes that it does not have personal jurisdiction over Western River under the laws and the Constitution of the Republic, including under DIVA and "law of the flag" jurisdiction, Section 251(1) of the Judiciary Act, the MSA, or the due process. For the same reasons, the Court concludes that it does not have personal jurisdiction over SeaQuest HK, even if it were to be made a party defendant. Accordingly, the Court dismisses this case as to both Western River and SeaQuest HK.

V. MOTION TO DISMISS THE FAC AS TO ONE SHIP AND WESTERN RIVER UNDER *FORUM NON CONVENIENS*

A. The Parties' Arguments

The Defendants in their MTD-FNC seek dismissal of this action on grounds of *forum non conveniens*, asserting that the RMI is an inconvenient forum for adjudication of this action and has no connection with it except the flag of the Vessel and the registration of One Ship as a RMI non-resident domestic corporation. *See* MTD-FNC at 1-2. Moreover, an adequate forum is available in Montenegro: (i) the Plaintiff and the key witnesses, including the Second Engineer and the Chief Engineer, are all citizens of Montenegro; (ii) the Plaintiff is currently undergoing intensive medical treatment in Montenegro; (iii) the Third Officer is also a citizen of Montenegro while the Chief Officer is a citizen of the neighboring Croatia; and (iv) Montenegro and Croatia share a common language. Additionally, the Defendants assert that the courts of Montenegro are capable of providing adequate relief to Plaintiff for his claims, without the formidable logistical difficulties associated with discovery and trial of this case in Majuro, and the Defendants consent to the jurisdiction of the courts of Montenegro over this action and waives all objections based on

the lack of personal jurisdiction or venue in Montenegro or any statute of limitations that did not expire before the filing of this action. *See id.* at 2.

In his *Opposition to Defendant's Motion to Dismiss Plaintiff's First Amended Complaint Against Defendant One Ship Limited*, filed on September 9, 2024 ("Opp to MTD-FNC"), the Plaintiff asserts that "[i]n this case Montenegro is not an adequate alternative forum, the private interest factors do not weigh in favor of Montenegro and the public interest factors also do not weigh in favor of Montenegro," *Id.* at 2.

In the Defendants' *Reply in Support of Motion to Dismiss the First Amended Complaint Against Defendant One Ship Limited*, filed on September 16, 2024 ("Reply re MTD-FNC"), the Defendants respond to arguments set forth in the Plaintiff's opposition.

B. Legal Standard for a Motion to Dismiss on Grounds of *Forum Non Conveniens*

Regarding dismissal under the doctrine of *forum non conveniens*, the RMI Supreme Court set forth the legal standard in *Symphony Shipholding S.A. v. Sea Justice Ltd.*, SCT 2022-01292 (RMI August 2, 2023) (slip opinion):

> The doctrine of *forum non conveniens* permits a court to "dismiss an action in favor of an alternative forum when 'the chosen forum would establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiffs convenience, or when the chosen forum [is] inappropriate because of considerations affecting the court's own administration and legal problems."' *Compania Naviera Joanna SA v. Koninklijke Boskalis Westminster NV (In re Joanna SA)*, 569 F.3d 189,200 (4th Cir. 2009) (alteration and omissions in original) (quoting *Am. Dredging Co. v. Miller*, 510 U.S. 443, 447-48 (1994)). To determine whether a case should be dismissed on this basis, courts in the RMI apply the test laid out by the U.S. Supreme Court in *Piper Aircraft Co. v. Reyno*. This test holds that dismissal for FNC is warranted where (1) there is an available and adequate alternative forum, (2) the private interest

> factors weigh in favor of the alternative forum, and (3) the public interest factors weigh in favor of the alternative forum. 454 U.S. at 241; *see Chee v. Zhang*, No. 2016-254, slip op. at 20 (High Ct. Oct. 16, 2017). The defendant bears the burden of persuasion on each of these points.

Id. at 6; *see* MTD-FNC at 7-8; Opp to MTD-FNC at 2-3.

Additionally, a presumption is ordinarily applied to the plaintiff's choice of forum. *DTEX, LLC v. BBVA Bancomer, S.A.*, 508 F3d 785, 795 (5th Cir. 2007). However, as in this case, a plaintiff's choice of forum is entitled to less deference when the plaintiff does not choose its own home forum. *See Symphony* at 3. The Plaintiff is not a citizen or resident of the RMI.

C. Application of the Three Factors to Dismiss on Grounds of *Forum Non Conveniens*

1. Montenegro is an Adequate and Available Alternative Forum

Regarding the first *forum non conveniens* factor, the adequacy and availability of an alternative forum, the RMI Supreme Court held as follows:

> Generally, an alternative forum will be adequate if the defendant is amenable to process there and the forum provides a remedy for the plaintiffs injury. *Piper*, 454 U.S. at 254 n.22. Courts frequently reject arguments that a forum is inadequate because a plaintiff's expected recovery is lower there. *E.g., id.* at 254-55 (finding Scottish court adequate despite offering lesser remedy); *Hefferan v. Ethicon Endo-Surgery Inc.*, 828 F.3d 488, 495 (6th Cir. 2016) (holding German court was adequate and noting a forum is not "inadequate simply because of the likelihood of lesser damages"); *Gonzales v. Chrysler Corp.*, 301 F.3d 377, 383 (5th Cir. 2002) (rejecting argument that Mexico was an inadequate forum because it capped damages for the tortious death of a child at $2,500 USD).

Symphony, at 6.

In this connection, the Defendants in the MTD-FNC argue that Montenegro is an adequate alternative forum for the following reasons:

(i) One Ship and Western River have consented the jurisdiction in Montenegro over the Plaintiff's claims. DSOF at ¶ 22. More specially, One Ship has stated that it "consents to the jurisdiction of the courts of Montenegro over this action and waives all objections based on the lack of personal jurisdiction or venue in Montenegro or any statute of limitations that did not expire before the filing of this action." MTD-FNC at 2.

(ii) Montenegro courts are competent to provide meaningful remedy for Plaintiff's injury. Montenegro courts have a statute governing international conflicts of law, generally enforcing the parties' contractual choice of law, and will also apply the law of the flag of the vessel to obligations to pay damages that arose on a vessel on high seas. *See* MTD-FNC at 5-6 citing the *Declaration of Aleksandra Bujkovic* ("Bujkovic Dec.") filed with the MTD-FNC, at ¶¶ 5-11.

(iii) Under the law of Montenegro, there is a rebuttable presumption of the vessel owner's or operator's liability for a crewman's personal injury, subject also to the defense of the crewman's comparative negligence. *Id.*, ¶ 12. This is more favorable for the Plaintiff than the RMI law of unseaworthiness, which does not presume unseaworthiness. *See Boudreaux v. United States*, 280 F .3d 461, 468 (5th Cir. 2002) (citation and additional punctuation omitted); Section 113 of DIVA, 47 MIRC 113, adopting American maritime law.

(iv) Likewise, assuming *arguendo* that, as Plaintiff contends, the RMI would also give him a cause of action for negligence under the general maritime law, it is elementary that a cause of action for negligence does not presume defendant's liability. *See, e.g., Canal Barge Co. v. Torco Oil Co.*, 220 F.3d 370, 376 (5th Cir. 2000) ("To establish maritime negligence, a plaintiff must demonstrate that there was a duty owed by the defendant to the plaintiff, breach of that duty, injury sustained by [the] plaintiff, and a causal connection between the defendant's conduct and the plaintiffs injury.") (citation and additional punctuation omitted). *See* 47 MIRC § 113.

(v) As to damages, the Defendants assert that there is no difference between the laws of the RMI and Montenegro as to recovery of pecuniary damages. *See* MTD-FNC at 7 citing Bujkovic Dec., ¶¶ l3-14. On the other hand, Montenegro non-binding court practice has limited non-pecuniary damages to an amount between EUR 3,000 and EUR 20,000 (USD 3,270 to USD $21,800 per current exchange rate). *Id.*, citing Bujkovic Dec., ¶¶ 15-16.

(vi) As to punitive damages, the law of Montenegro and the RMI, under American general maritime law, are the same. Both do not allow punitive damages. *Id.*, citing Bujkovic Dec., ¶¶ 17.

(vii) Finally limitation on the recoverable damages would not make Montenegro an inadequate forum. *Id.* citing cases for the proposition that a forum is not inadequate because it offers lesser remedy. *Id.*, citing *Symphony* at 7.

In his opposition, the Plaintiff, argues that "Montenegro is not an adequate alternative forum, the private interest factors do not weigh in favor of Montenegro and the public interest factors also do not weigh in favor of Montenegro." Opp to MTD-FNC at 3. More specially, the Plaintiff argues that although One Ship has agreed to submit to the jurisdiction of Montenegro courts, Western River has not. *Id.* at 5. However, as noted above, subsequent to Plaintiff filing his Opp to MTD-FNC, both One Ship and Western River have confirmed their agreement to submit to the jurisdiction of Montenegro courts. *See* DSOF at ¶ 22.

Next, the Plaintiff argues the practice of Montenegro courts to limit non-pecuniary "damages to amounts between EUR 3,000 to EUR 20,000" renders "the remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all, the unfavorable change in law may be given substantial weight; the district court may conclude that dismissal would not be in the interests of justice." Opp to MTD-FNC at 6 citing *Piper*, at 254.

However, with respect to tort damages and punitive damages in the RMI, the Court notes as follows. First, regarding damages in tort, the RMI does not have any statutory or case law replacing the common law defense of contributory negligence with comparative negligence. Second, regarding punitive damages (even if they are available in maritime cases), the RMI Supreme Court has held as follows: "Since the purpose of punitive damages is not compensation of the plaintiff but punishment of the defendant and deterrence, those damages can be awarded only for conduct involving some element of outrage similar to that usually found in crime." *Guaschino v. Reimers and Reimers*, 2 MILR 49, 56-57 (1995) (citing Restatement (Second) of

Torts § 908 cmt b (1964). In *Guaschino* the RMI held that "Appellant's conduct, while egregious, fell short of being outrageous." *Id.* 57. Hence, the Plaintiff may recover less under RMI law than under the law of Montenegro.

Accordingly, having considered the parties' arguments, the evidence, and the applicable law, the Court finds and concludes that Montenegro courts are an available and adequate forum purposes of the doctrine of *forum non conveniens* for the following reasons. First, the Defendants have consented to the jurisdiction of the courts of Montenegro over this action and have waived all objections based on the lack of personal jurisdiction or venue in Montenegro or any statute of limitations that did not expire before the filing of this action. Second, the Montenegro courts are competent to resolve conflict of law questions and to apply the RMI law. Third, even considering the practice of Montenegro courts to limit non-pecuniary damages, the remedy available in the Montenegro courts is not so clearly inadequate or unsatisfactory that it is no remedy at all, when compared to recovery for tort damages and punitive damages under the common law and case law of the RMI, including the American general maritime law.

2. The Private Interests Weighs in favor of Montenegro Court as the Forum for this Case

(a) The Legal Standard

Regarding the legal standard for weighing "private interests," both the Defendants (MTD-FNC at 8) and the Plaintiff (Opp to MTD-FNC at 7) cite *Piper*.

> The factors pertaining to the private interests of the litigants included the "relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Gilbert* [*Oil Corp. v Gilbert*, 330 U.S. 501], at 508, 67

> S.Ct. [843], at 843. The public factors bearing on the question included the administrative difficulties flowing from court congestion; the "local interest in having localized controversies decided at home"; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty. *Id.*, at 509, 67 S.Ct., at 843.

Piper at 241 n 6. This Court has also addressed private interest factors in *Chee*.

> As to private interests, the most important factors when determining whether to grant a *forum non conveniens* fall into three categories: (i) relative ease of access to sources of proof; (ii) availability of witnesses; and (iii) all other practical factors favoring an expeditious and inexpensive trial. *Lockman Foundation v. Evangelical Alliance Mission*, 930 F.2d 764, 769-70 (9th Cir. 1991); *Creative* [*Technology, Ltd., v. Aztech Syst. PTE Ltd.*], 61 [F.3d 696,] at 703.
>
> In this case, there are no sources of proof in the Marshall Islands, no witnesses in the Marshall Islands, and no factors favoring an expeditious and inexpensive trial in the Marshall Islands. . . . The Marshall Islands is a remarkably inconvenient forum for this case and all parties compared to China and/or Canada.

Chee at 22.

(b) Weighing the Personal Interest Factors

Regarding personal interest factors, the Defendants in their MTD-FNC argue as follows:

> No witnesses and no evidence are located in the RMI. In contrast, Plaintiff, most of the relevant crew witnesses, and Plaintiffs treating physicians reside in Montenegro and speak the same language as the local court. If this case were to remain before this Court, conducting discovery and trial would be unreasonably expensive and a logistical nightmare.

Id. at 8.

In support of this assertion, the Defendants note that the Vessel's Chief Engineer, the Second Engineer, and the Third Officer are citizens of Montenegro (DSOF ¶ 24), the Chief Officer is a citizen of Croatia (DSOF ¶ 25), and the Montenegrin and the Croatian languages are

fully mutually understandable (DSOF ¶ 29). Furthermore, the Vessel's Master is a citizen of the Ukraine, and Second Officer is the citizen of Philippines (DSOF ¶ 26), as is an unnamed cook/messmate. PSOF at 2. There is no evidence that a member of the Vessel's crew is a citizen or resident of the RMI. Additionally, the doctors who treated the Plaintiff did so in Oman and in Montenegro. (PSOF at 4-5). That is, no witnesses relevant to this action are located in the RMI. DSOF ¶ 23.

In response to the Defendant's claims, the Plaintiff argues that there is no evidence that the witnesses, whether the Vessel's crew or the Plaintiff's physicians, would not be available to testify in the RMI, or that their testimony could not be obtained by deposition or via Zoom with appropriate safeguards. Opp to MTD-FNC at 7-10.

However, regarding the costs of bringing witnesses to the RMI, the Krek Dec., submitted with Dfts' Supp re Mtns, demonstrates that the cost of bringing witnesses to the RMI from Manila is more than the cost of bringing witnesses to Podgorica (Montenegro) from Manila. Also, cost of a one-way eastbound trip from Podgorica to Majuro would cost $1,806, and the cost of a one-way eastbound trip from Majuro to Podgorica would cost $2,135. Accordingly, the cost of bringing witnesses to Majuro is considerably greater than the cost of trying the case in Montenegro, where the Plaintiff and his current physicians reside, where witness crew members are citizens, and which is much closer to the Ukraine where the Vessel's master, another potential witness is a citizen.

Hence, even if witnesses can be brought to the RMI to testify, or their testimony can be received via deposition or Zoom, under the facts presented, the private interest factors surrounding the availability of witnesses for in-person testimony (particularly the Plaintiff and

his physicians), the added cost of bringing witnesses to the RMI, as well as the language of the court, the plaintiff, and the physicians, all weigh in favor of the alternative forum, Montenegro, over the RMI. Just as in *Chee*, there are "no factors favoring an expeditious and inexpensive trial in the Marshall Islands." *Chee* at 22.

3. Public Interest Factors Weight in favor of Montenegro as the Forum for Adjudicating this Case

(a) The Legal Standard

Regarding public interest factors, the Defendants site *Symphony* in their MTD-FNC.

> The public interest factors . . . reflect the burdens placed on the forum, which can include "the · administrative difficulties flowing from court congestion" and the "local interest in having localized controversies decided at home." [*Piper*, 454 U.S. at 241 n.6.] These examples are non-exhaustive, and the entire inquiry is designed to be holistic and flexible.

MTD-FNC at 8-9, citing *Symphony* at 9. The Plaintiff also cites *Piper*:

> [T]he administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty. (internal quotation omitted).

Piper, 454 U.S. at 241.

(b) Weighing the Personal Interest Factors

Several public interest factors favor Montenegro courts as the forum for this case. First, this Court, the RMI High Court, is very small. Presently the High Court is staffed with only two justices. Hopefully, a third justice will be added in June this year. However, even with three justices, it is likely that the High Court justices' workload will remain heavy.

Second, although High Court justices hear maritime cases and non-resident corporate cases that are filed from time-to-time, their main focus is, and should be, on domestic cases that have direct impact on the citizens and residents of the RMI, including personal status cases, serious criminal cases, and customary land disputes. The workload this case places on the High Court is significant.

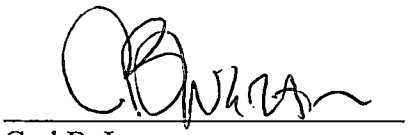
Third, the public interest in having localized controversies decided at home favors the Montenegro courts. As noted above in the factual background, the Plaintiff is a citizen of Montenegro, he currently resides in Montenegro, and is receiving medical care there. Additionally, three potential witnesses are citizens of Montenegro and one is a citizen of Croatia, which share a mutually understandable language. Hence, Montenegro's interests in this litigation dwarfs the RMI's interests in adjudicating a dispute involving a non-resident corporation, One Ship, without other connections to the RMI.

For the above reasons, the Court finds that public interest factors, like the private interest factors, strongly favor the Montenegro courts.

D. Conclusion re Application of Forum Non Conveniens Doctrine

Accordingly, the Court concludes that under the doctrine of *forum non conveniens*, the Montenegro courts are an available and adequate forum for this action, that the private interest factors favor Montenegro as the forum, and that the public interest factors favor Montenegro courts. For these reasons the Court dismisses this matter as to One Ship, Western River, and SeaQuest HK under the doctrine of *forum non conveniens*.

So ordered and entered.



Carl B. Ingram
Chief Justice, High Court
Date: March 31, 2025

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

BRANKO DRASKOVIC,
Plaintiff
v.
One Ship Ltd, Western River Ltd, and Seaquest Shipmanagement,
Defendant

Civil Case No. 2024-00520

CERTIFICATE OF SERVICE

I, Kristen Kaminaga, Asst. Clerk of the Courts, hereby certify that on 03/31/2025 I served the Final Judgment Granting Motions To Dismiss filed 03/31/2025 in the above captioned matter on:

1. John Masek by ☑ Email ☐ Fax ☐ Personal Hand Delivery
2. Dennis Reeder by ☑ Email ☐ Fax ☐ Personal Hand Delivery
3. Nenad Krek by ☑ Email ☐ Fax ☐ Personal Hand Delivery
4. _____ by ☐ Email ☐ Fax ☐ Personal Hand Delivery

Attached is a copy of my ☒ Sent Email / ☐ Fax Confirmation.

Kristen Kaminaga
Asst. Clerk of the Courts
Marshall Islands Judiciary

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2024-00520 HCT/CIV/MAJ

Marshall Islands Judiciary <marshall.islands.judiciary@gmail.com> Mon, Mar 31, 2025 at 4:10 PM
To: John Masek <jemesq@hotmail.com>, Dennis Reeder <dreeder.rmi@gmail.com>, Nenad Krek <nkrek@adamskrek.com>

Iakwe Counsels,

Please find attached ***Final Judgment Granting Motions To Dismiss*** and kindly confirm receipt of this email.

Kommol tata,
Kristen

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