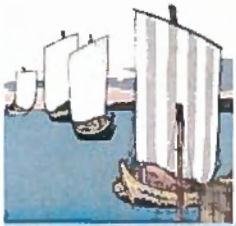


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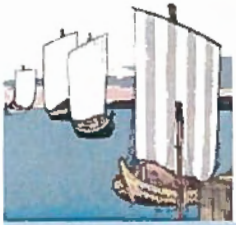
# **5<sup>th</sup> International Cargo Recovery Conference**

***Shuji Yamaguchi***  
**OKABE & YAMAGUCHI**



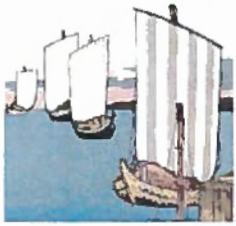
## ***COUGER ACE (1)***

- Tokyo District Court Judgment held on November 30, 2012.
- The Carrier's liability based on the personal unseaworthiness.



## **COUGER ACE (2)**

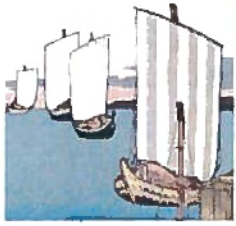
- COUGER ACE is a car carrier of 55,328 DWT. Singapore flag.
- Built in Japan during 1993.
- Loaded 4,703 brand new Mazda cars.
- The water from the starboard ballast tanks was drained without being refilled simultaneously with fresh seawater.
- The top-heavy ship keeled over almost instantly and onto its port side.
- Listed to 90 degrees.



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# ***COUGER ACE***

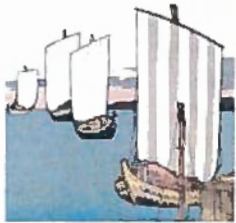




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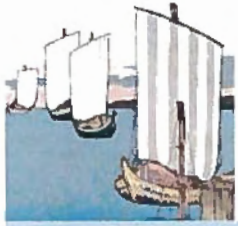
# ***COUGER ACE***





# ***COUGER ACE***





## ***COUGER ACE - Proceedings***

Mazda USA

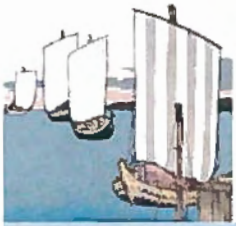
Mitsui OSK



Mazda Canada

The owner

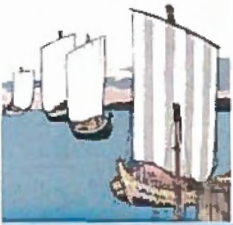
B/L jurisdiction Tokyo District Court



## ***COUGER ACE - Argument***

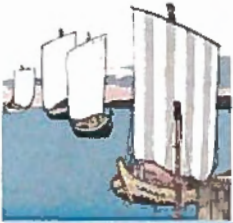
- **Plaintiff**  
The chief officer did not have sufficient knowledge about ballasting.  
It consists the personal unseaworthiness.
- **Defendant**  
The crew's negligence should be "Act, neglect or default in navigation or in management of the ship".





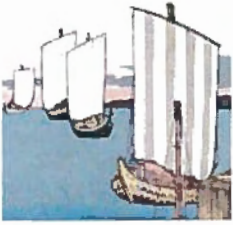
## ***COUGER ACE - Judgment***

- The Tokyo District court ordered Mitsui OSK to pay about USD 23 million to the cargo interests.
- The court held that the chief officer without sufficient knowledge about the safety of the vessel especially ballasting consists the personal unseaworthiness of the vessel.
- US Local Clause  
USD 500 per customary freight unit was more than Hague Visby limitation.



## ***NYK ARGUS***

- At 11:55pm on Oct 19, fire alarm in No.3 hold rang and the temperature in the hold rose. CO2 gas was injected to No.3 hold and sea water was showered to the hold. About 11am on Oct 20, no smoke was noticed and the temperature was going down. The cause of fire was identified the dangerous cargo NA-125 and PSR 80 listed UN dangerous cargo list.
- They were warmed by the oil heating as they were unluckily stowed next to No.3 Oil tank.



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# ***NYK ARGUS***





S.NO.3155/56/57/58/67/68/69 6,200 TEU POST-PANAMAX CONTAINER SHIP

ROUGH ARRANGEMENT

PRINCIPAL DIMENSIONS

Length o.a.	approx. 292.90 m
Length b.p.	283.80 m
Breadth mid.	40.00 m
Depth mid.	23.90 m
Designated draught mid.	13.00 m
Scantling draught mid.	14.00 m

CONTAINERS

	20'	40' (2x20')	TOTAL (TEU)
(-1) DECK	18	1,366	2,732
HOLD	320	1,421	3,102
TOTAL	(ON DECK (-1) 6,286 TEU	(-1) 5,914	

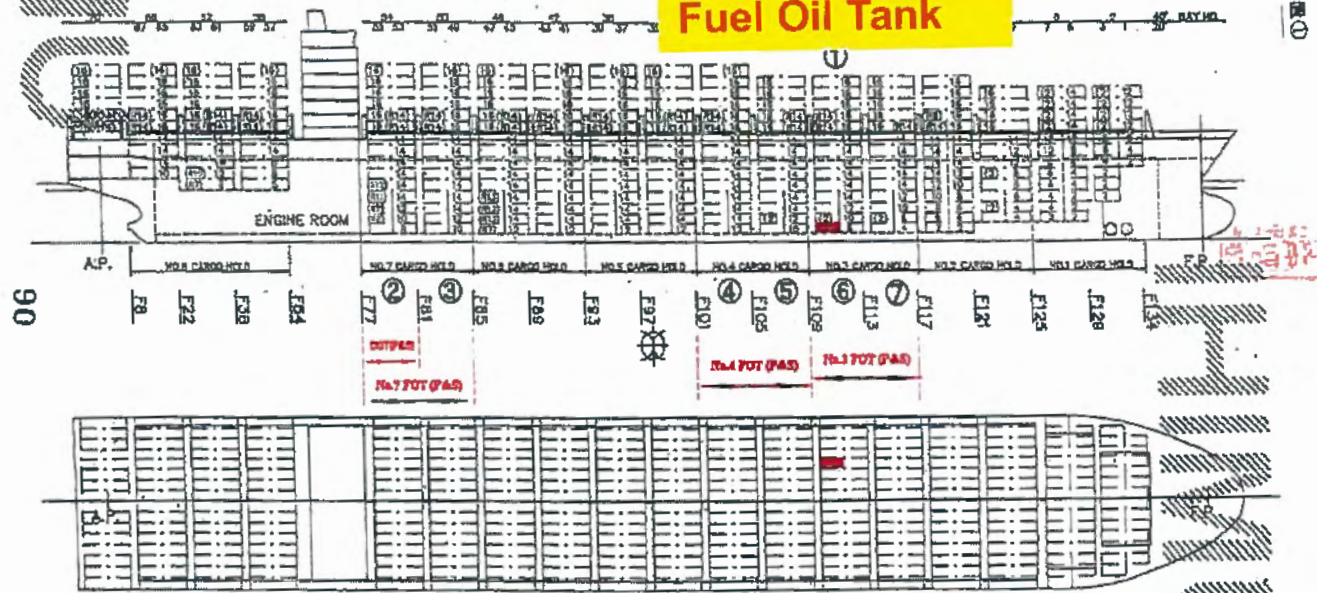
REEFER CONTAINERS

	40'
DECK	400
HOLD	100
TOTAL	500

NYK ARGUS号の燃料タンク配置図

(添付図①~⑦)

Fuel Oil Tank



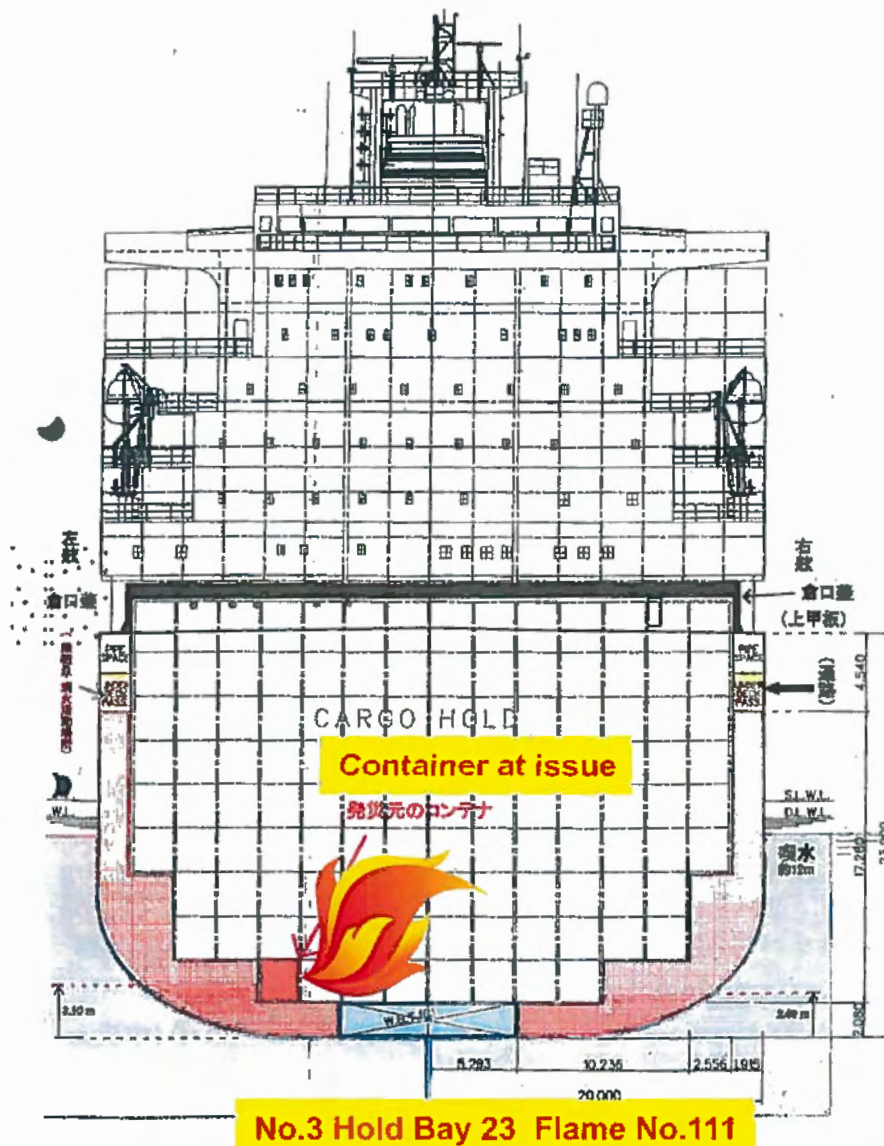
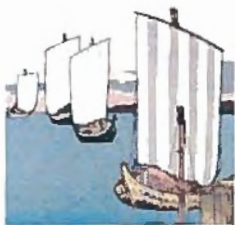
別紙本件コンテナ積載位置図①

20フィートコンテナの側板(底板を含む)の3面が燃料タンクと隣接する積載場所は18箇所であり、20フィートコンテナ換算の全積載量(6,492個)に対する比率は0.277%である

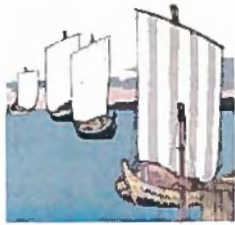
■ : 発災コンテナ

Container at

issue



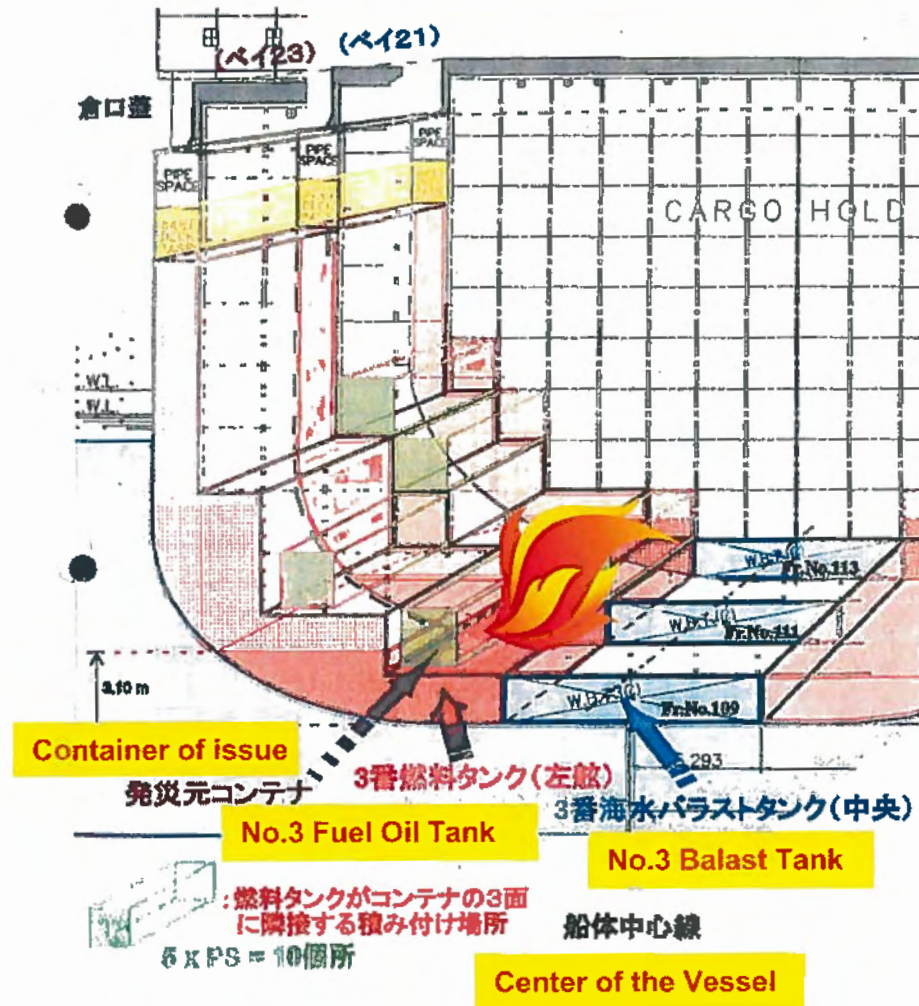
第3船倉内・ベイ番号23・フレーム番号111付近の断面図  
 ③燃料タンク油面高さ(左舷:3.10m、右舷:2.48m)は、機関長の供述書(甲ハ29)55項の記述を採用した。



第3船倉後部(ベイ21-23)左舷側燃料タンク配置略図

(船尾側から船首方向を俯瞰した図)

No.3 Hold (Bay 21-23) Port Side Oil Tank





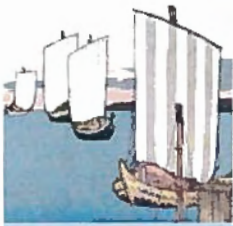
## ***NYK ARGUS - Proceedings***

The shipowner  
The cargo interest



The shipper of the  
dangerous cargo

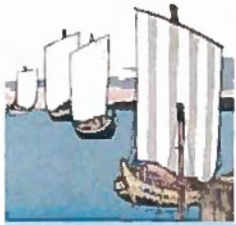
In tort Claim at Tokyo District Court



## ***NYK ARGUS - Argument***

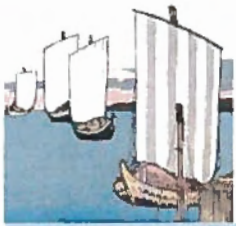
- The cargo interest and the shipowner commence proceedings against the shipper based on the shipper's failure to declare the dangerous cargo.
- The shipper argued that they were not negligent because they did not know the cargoes were the dangerous cargoes listed in UN list as the maker did not mentioned about the UN list.





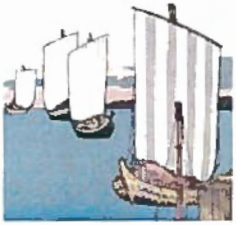
## ***NYK ARGUS - Judgment***

- Tokyo High Court February 25, 2013.
- The shipper was liable for the fire because they were in the position to check if the cargoes were the dangerous cargoes which should be declared to the carrier by UN Rules. The shipper could have noticed the danger of the cargoes if they requested the laboratory to check them.

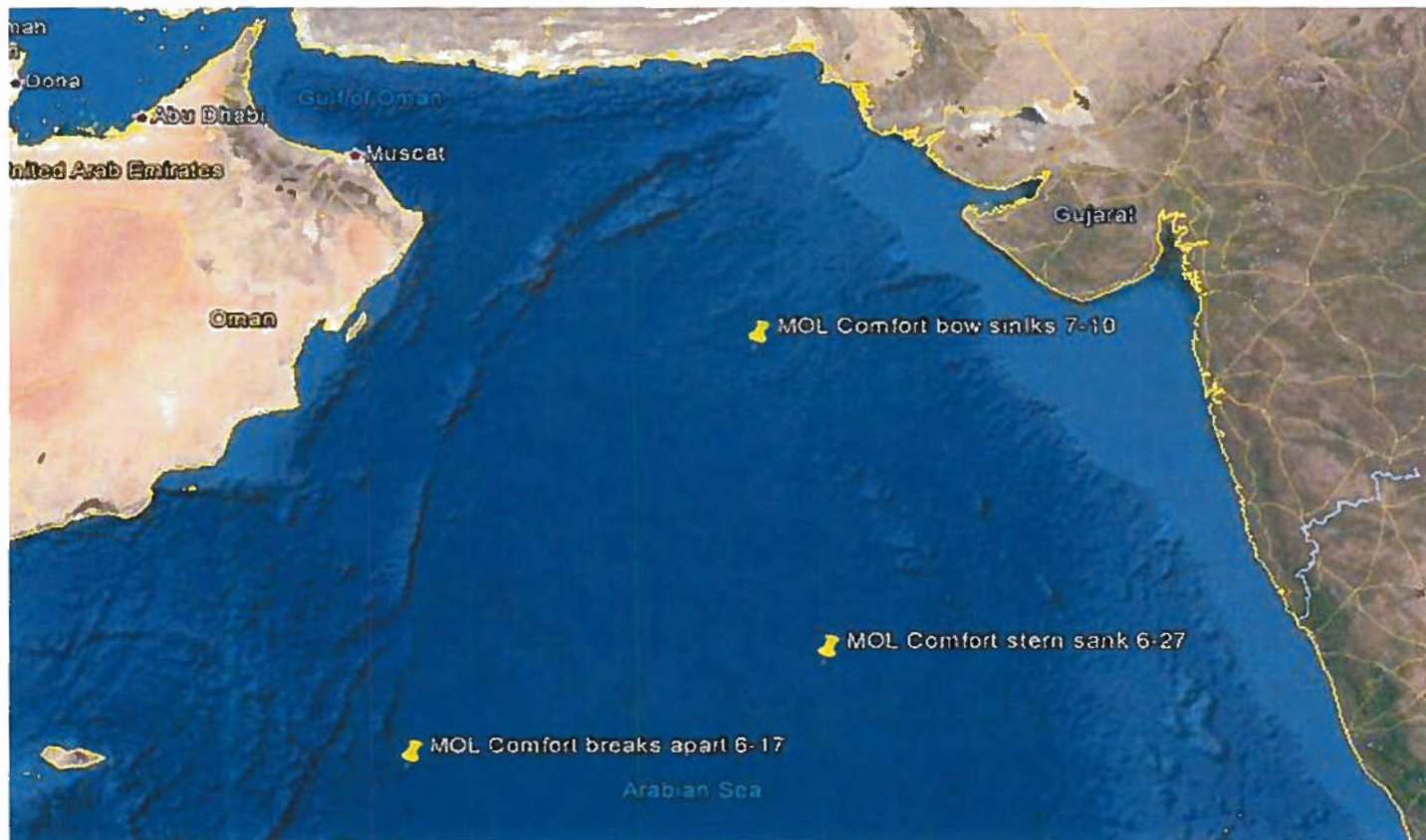


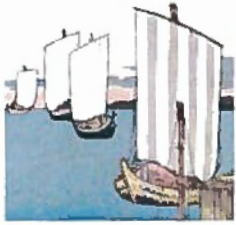
## ***MOL COMFORT***

On June 17, 2013, MOL COMFORT (Flag Bahamma Nassau) encountered rough weather (Beaufort Scale 9 Wave 6m high) and was broken into 2 parts during the voyage from Singapore to Saudi Arabia in Indian Sea at 12.30N 60E. On June 27, the aft part sank at 14.26N 66.26E and on July 11 the fore part sank at 19.56N 65.25E. The containers 4,382 on board were lost. The total loss amount would be yen 40 to 50 billion yen.



# ***MOL COMFORT***

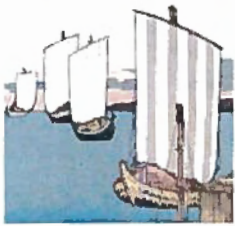




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# ***MOL COMFORT***

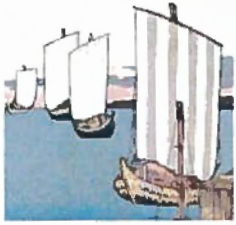




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# ***MOL COMFORT***

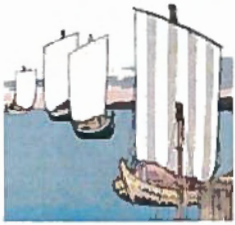




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# ***MOL COMFORT***

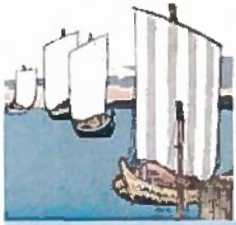




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# ***MOL COMFORT***

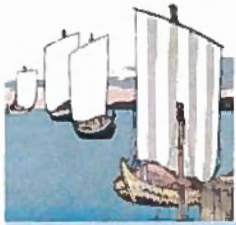




## ***MOL COMFORT - Limitation Proceedings***

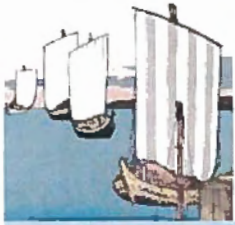
- The shipping company, MITSUI OSK Lines Limited filed the tonnage limitation proceedings at Tokyo District Court and accepted on July 16, 2013.
- The limitation Amount was Yen 4,097,444,566.  
MOL COMFORT was 86,692 ton.  
Japan is a signatory of 1996 Convention on Limitation of Liability of Maritime Claim (LLMC)





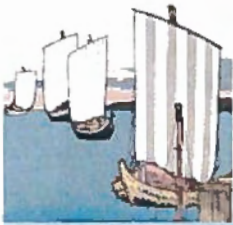
## ***MOL COMFORT - Beneficiaries***

- The beneficiaries of the proceedings shall be the shipowners, the bareboat charterers, the charterers and their employees. (Shipowners' Limitation Act Art.2 (2))
- The beneficiaries in this case were APL, NYK, OOCL, Hyundai Hapag Lloyd (Slot charterers) and the manager of the ship and the master.
- The freight forwarders were not decided to be the beneficiaries.



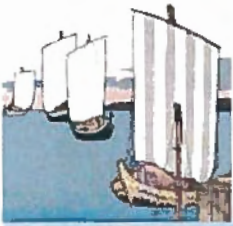
## ***MOL COMFORT - Proceedings***

- Mitsui commence proceeding against MHI.
- The cargo interests commenced proceedings against MHI based on the product liability.
- The proceedings may continue for at least 3 years.



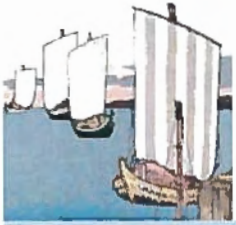
## *Maritime Law*

- Hague Visby Rules
- One year time bar
- Collision case subject to one year time bar
- Collision Convention → Two year time bar
- Recoverable amount → Arrived sound market value  
(CIF Value)
- Disposal costs not recoverable
- Limitation → 666.67 SDR per package or  
2 SDR per kilo whichever higher



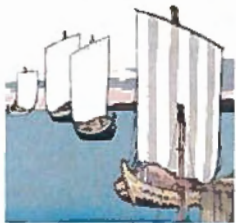
## *Maritime Lien*

- Cargo claimant shall have the maritime lien over the ship.
- Even in case of The charterer's B/L, Maritime lien exists.
- The ship can be arrested without counter security.
- Tokyo is easy forum.
- One year time limit no extension.



## *In Land Claim*

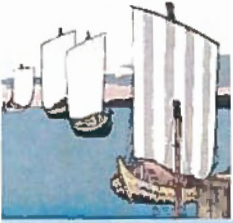
- Claim base on negligence
- Arrival sound market value is recoverable
- Gross negligence → full recovery
- 2 weeks notice is necessary
- One year time bar



## ***Railway Claim Limitation***

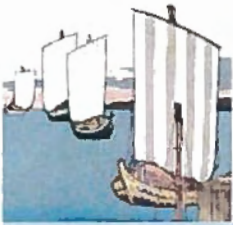
Valuables : Yen 40,000 per kilogram but not more than Yen 4,000,000.

<b>Animals</b>	<b>Limitation (Yen)</b>
Cow or Ox	Yen 250,000 per head
Calf	Yen 100,000 per head
Horse	Yen 150,000 per head
Pig	Yen 25,000 per head
Dog	Yen 30,000 per head
Other beast	Yen 20,000 per head
Other animal	Yen 2,000 per kilogram
	but not more than Yen 200,000



## *Air Claim*

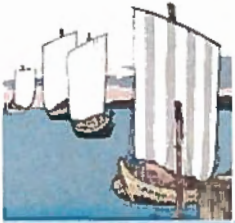
- Montreal Convention
- The strict liability
- 4 Exceptions
  - a) Inherent defect of cargo
  - b) Defective packing
  - c) War
  - d) Act of public authority
- Limitation 19 SDR per kilo
- 14 days notice
- Two year time limit



## *Japanese Jurisdiction (1)*

- Proceedings usually take for 1 year or 2 years subject to the claim
- No Cure no pay 20% - 30% depending on recovery
- Time charge 35,000 yen – 45,000 yen
- The subrogated underwriter has title to sue
- POA and the certificate of the company are necessary
- 5% (in tort) or 6% (contract) interest
- Lawyers' fee in not recovery except in tort claim



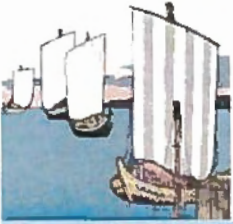


## Japanese Jurisdiction (2)

- The Court Fee  
claim amount less than Yen 100,000 minimum is Yen 1,000.

Claim Amount	Court Charge (Yen)
Yen 1,000,000	Yen 10,000 (¥1,000 per ¥100,000)
Yen 5 million	Yen 30,000 (¥1,000 per ¥200,000)
Yen 10 million	Yen 50,000 (¥1,000 per ¥500,000)
The other cost would be postage about Yen 10,000.	
Yen 100 million	Yen 320,000 (¥3,000 per ¥1m)

- Most cases are settled by the judge's initiative.



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COUNSELLORS AT LAW

***Thank you very much.***

**ご静聴有難うございました。**

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