

# RR & CO

LONDON MARITIME AND ENERGY SOLICITORS

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## Case Report:

### **Kamal v. Ariela**

[The Owners and/or demise Charterers of the ship Kamal XXVI and barge Kamal XXIV  
v. The Owners of the ship Ariela]

### **Ariela v. Kamal 24 EWHC 177 (Comm) 10 February 2009**

#### **Admiralty Court - Quantum**

We acted on behalf of the Ariela a substantial dry bulker that brushed passed the Kamal vessels when entering the port of Mormugoa. The Ariela had previously been found 100% liable for the collision in the Liability trial [see Ariela v. Kamal 24 EWHC 2434 (Comm) 23 October 2007].

The recovery action was pursued by Ince & Co against our clients by those subrogated London Underwriters on behalf of the hull damage to the dredger and the **Kewalramani** family-controlled **Jaisu Shipping Co Private Ltd** of Adipur, Gujarat, India on behalf of the hull damage to the hopper barge and the loss of hire of the dredger. I shall refer to the Claimants hereinafter as **Jaisu and their concerned underwriters**.

**Jaisu and their concerned underwriters** pursued a claim for US\$1,296,583.00 the trial which lasted for eight days during which much technical evidence was interrogated. **Jaisu and their concerned underwriters** needed to rely upon the technical evidence of Mr. Brian Boorman of Brookes Bell Marine, Scientific and Technical Consultants and Surveyors, indeed Mr. Justice Burton described this as such:

*“It was on Mr Boorman that the Claimants' hopes rested. Mr Boorman, ... is a very experienced consulting marine engineer, who has carried out many investigations as surveyor and consultant, has prepared reports on technical issues on many occasions, and has given expert witness evidence in court and at maritime arbitrations. He must have known that this time he was on a sticky wicket in seeking to support a case that, as a result of what was described as a "gentle" collision ... can be established to have led to nearly US\$ 1.5m of damage to a heavily used working barge and a working dredger which it is now common ground were both in very poor condition ... Added to this was the unhelpful absence of any maintenance records, and the fact that the dredger (and barge) continued dredging in the Mormugoa Channel until 28 May before setting off for its overdue dry docking and class survey.”*

The cross-examination of Mr. Brian Boorman can best be described by a further excerpt from the judgment of Mr. Justice Burton:

*“Mr Boorman acted honourably in the course of his cross-examination and made no continuing attempt to delay the inevitable, but made concessions throughout the careful and detailed cross-examination by Mr Hill, as, one after the other, the ninepins fell, and each of the Claimants' claims (save, in the event, for those very few which I am left to adjudicate) were conceded by him to be unsupportable, in the light of the factual evidence, and the contrary opinion of Mr Sinclair, with which, time after time, he was compelled to agree. But he should never have reached that stage. In his reports he had sought to put forward propositions which supported all those subsequently abandoned claims. Then in the light of Mr Sinclair's responses and/or the experts' meeting, and even where he had to resile from and disown (but only after temporising in his second supplementary report, as referred to above) the entire report of SaS, he sought to come up with alternative propositions until they too ran into the sand when he was cross-examined, and in particular he had to accept that his second theory, the one that the dredger might have moved aft, could not be supported on the facts. The clear picture I gained was of the general of a besieged city first realising, immediately upon being put in command, that he had to abandon his outer fortifications as unsupportable, then erecting a constant series of ever-diminishing inner fortifications, all of which were indefensible, until finally ending up holding the flagstaff on the top of the turret of the last battlement. He accepted in cross-examination, when it was put to him, that he was in breach of a number of the required duties of an expert witness, whether in respect of qualifying his initial opinions, or notifying the parties of a change of mind or abandonment of an earlier opinion at the earliest possible stage. In the event he has given some evidence relating to the four surviving items as a very small part of the mass of evidence which he gave in relation to claims which could not be supported. I am left with the position that there is little I can safely accept from his evidence, except where Mr Sinclair agrees with it.”*

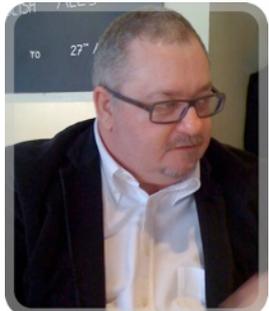
**Mr Justice Burton held:** that the claim was almost entirely unfounded and substantially exaggerated.



[Our Counsel: Timothy Hill - Stone Chambers](#)



[Our Consulting Marine Engineer: Mr. Alex Sinclair](#)



[Our Casualty Investigator: Capt. Terry Ogg](#)

## FULL REPORT

After the quantum trial, wherein the Claimants recovered nothing in respect of the barge and only US\$6,245 in respect of the dredger (i.e. less than 0.5% of the sum claimed). **The Claimants were ordered to pay the Defendants costs of the quantum reference to be assessed on the indemnity basis the Claimants to pay interest on such costs at the rate of 6% above the prevailing United States base rate. The US dollar figure to be paid was ordered to be at the same rate of conversion into US dollars as the rate the Defendants bank charged the Defendants upon payment of the relevant cost invoices. The Defendants had incurred legal costs in excess of US \$700,000.00 in defending this hopeless and exaggerated claim and an immediate payment of US\$325,000.00 was ordered with full costs to be taxed if not agreed.**

As a result of this finding a further action was commenced to recover the Liability Costs from the Claimants on the basis that the Claim was fraudulent.