APPENDIX

APPENDIX TABLE OF CONTENTS

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 22-1765, 22-2774, 22-2871, 22-2883

IN THE MATTER OF ENERGETIC TANK, INC.

ENERGETIC TANK, INC., *as Owner of the M/V ALNIC MC, for Exoneration from or Limitation of Liability*,

Plaintiff–Counter-Defendant–Appellant–Cross-Appellee,

v.

UNITED STATES OF AMERICA,

Claimant–Counter-Claimant–Counter-Defendant–Appellee,

UNKNOWN DEFENDANT,

Defendant–Counter-Defendant–Appellee,

NAVIN RAMDHUN,

Defendant–Counter-Claimant–Appellee,

MARK JOSEPH LIGON, MALACHI SHANNON,

Claimants–Counter-Claimants–Counter-Defendants–Appellees,

ANDY ACERET, MICHAEL WUEST, JOSHUA PATAT, ASHANTI MOLTON, DONNOVAN LAMARCUS JONES, AYAKA JOSEPH, XIOMARO CUEVAS SOTO, DEVIN MASK, PATRICK JOSEPH, HARUKA RAMDHUN, CHEYSSERR LUANGCO, CARMELO CASTRO, PHILIP TORIO, PHILLIP

FIELDS, JAMES ANDY WOODS, JOHN B. RAY, RODRIGO OWEN TIONQUIAO, JERRELL DEAN, CLEMBER MIRANDA, MICHAEL COLLINS, DEDRICK WALKER, MILTON O. LOVELACE, DAVION REESE, JUAN ROMERO, AKIMWALLE WINTER, VARES BELONY, TRACEY LOVELACE, DELANDO BECKFORD, VICTOR GRANADOS, BYRON JAMAL JOHNSON,

Counter-Claimants–Claimants–Appellees–Cross-Appellants,

GILLEON GILLIS, JOHN HOAGLAND, KAREN DOYON, RICHARD LOPEZ, TAYLOR TROY, KAREN BUSHELL, RACHEL ECKELS, THERESA PALMER, DARRYL SMITH, AMY WINTERS, JACQUELINE INGRAM, GAO YONG, DONNEL ROBINSON, MR. DOYLE A EBARB, JOSHUA BRUCE HOOK, JASON LUANGCO, FRANCESCO SANFILIPPO, ALEXIS SANFILIPPO, NESTOR CUEVAS SOTO, JOSEPH K ROBBINS,

Counter-Claimants–Claimants–Appellees,

KERRINGTON HARVEY, JASON BALDWIN, BRANDON YORK,

Claimants–Appellees–Cross-Appellants,

MATTHEW MONTGOMERY, JENNIFER SIMON, KAREN TOLLEY, *as personal representative of the Estate of Brandon Tolley*,

Claimants–Appellees,

BRANDON TOLLEY,

Claimant.[*]

———

[*] The Clerk of Court is respectfully directed to amend the official caption in this case to conform with the caption above.

AUGUST TERM 2023

ARGUED: JANUARY 18, 2024
DECIDED: JULY 26, 2024

Appeal from the United States District Court
for the Southern District of New York

Before: WALKER, CARNEY, and PARK, *Circuit Judges*.

Before dawn on August 21, 2017 in the Singapore Strait, the M/V ALNIC ("ALNIC"), a Liberian-flagged oil-and-chemical tanker, collided with the U.S.S. JOHN S. MCCAIN ("MCCAIN"), a Navy destroyer. Ten Navy sailors died and dozens more were injured. Both vessels, and especially MCCAIN, sustained significant damage.

ALNIC's owner, Energetic Tank, Inc. ("Energetic"), petitioned for exoneration from or limitation of liability for the collision. Forty-one Navy sailors or their representatives ("the Sailor-Claimants") filed claims for damages against Energetic. So did the United States, against which Energetic filed a counterclaim. Subsequently, Energetic and the United States agreed upon the monetary value of the damages to ALNIC and to MCCAIN as $442,445 and $185 million, respectively.

First, the district court (Crotty, *J.*) concluded that Singapore law would govern both the determination of liability and the calculation of the Sailor-Claimants' damages. Then, after a Phase 1 bench trial concerning only liability, the district court denied Energetic's petition for exoneration from or limitation of liability. It allocated fault for the collision: 80% to the United States and 20% to Energetic. Based on the 20% of damages apportioned to Energetic, the claim of the United States against Energetic is $36,646,044, plus

interest. The district court then indicated that it would proceed to a Phase 2 trial, to determine damages to the Sailor-Claimants. Energetic appealed.

While the appeal was pending, the district court dismissed Energetic's claims for contribution or indemnity against the United States for any damages that might be awarded to the Sailor-Claimants during the Phase 2 trial as barred by sovereign immunity. Energetic also appealed this order.

Following its decision on sovereign immunity, the district court retroactively certified that its earlier opinion on the apportionment of liability was a final judgment as to the United States. Subsequently, several Sailor-Claimants cross-appealed, challenging the district court's earlier decision applying Singapore law to the calculation of damages. We consolidated the various appeals.

We find no error in either the district court's apportionment of liability under Singapore law or its sovereign immunity ruling. We therefore AFFIRM the district court's judgment and order on Energetic's appeals. The district court's choice-of-law ruling, however, is a non-appealable collateral order. We accordingly DISMISS the Sailor-Claimants' cross-appeals for lack of jurisdiction.

DAVID J. WEINER, Arnold & Porter Kaye Scholer LLP, Washington, DC (Stephen K. Wirth, Arnold & Porter Kaye Scholer LLP, Washington, DC; Thomas H. Belknap, Jr., Alan M. Weigel, Blank Rome LLP, New York, NY, *on the brief*), *for Plaintiff–Counter-Defendant–Appellant–Cross–Appellee Energetic Tank, Inc.*

ANNE MURPHY, U.S. Department of Justice, Washington, DC (Brian M. Boynton, Charles W. Scarborough, Stephen Flynn, Jessica Sullivan, Kyle Fralick, Thomas M. Brown, *on the brief*), *for Claimant–Counter–Claimant–Counter-Defendant–Appellee United States of America.*

PAUL T. HOFMANN, Hofmann & Schweitzer, New York, NY (Dario A. Chinigo, *on the brief*), *for Counter-Claimants–Claimants–Appellees–Cross-Appellants Andy Aceret, et al. and Claimants–Appellees–Cross-Appellants Kerrington Harvey, et al.*

Jacob Shisha, Tabak Mellusi & Shisha LLP, New York, NY, *for Counter-Claimants–Claimants–Appellees* Joshua Bruce Hook, et al.

Roy C. Dripps, Michael T. Blotevogel, Armbruster Dripps Blotevogel, LLC, Maryville, IL, *for Counter–Claimants–Claimants–Appellees* Francesco & Alexis Sanfilippo

———

JOHN M. WALKER, JR., *Circuit Judge*:

Before dawn on August 21, 2017 in the Singapore Strait, the M/V ALNIC ("ALNIC"), a Liberian-flagged oil-and-chemical tanker, collided with the U.S.S. JOHN S. MCCAIN ("MCCAIN"), a Navy destroyer. Ten Navy sailors died and dozens more were injured. Both vessels, and especially MCCAIN, sustained significant damage.

ALNIC's owner, Energetic Tank, Inc. ("Energetic"), petitioned for exoneration from or limitation of liability for the collision. Forty-one Navy sailors or their representatives ("the Sailor-Claimants") filed claims for damages against Energetic. So did the United States, against which Energetic filed a counterclaim. Subsequently, Energetic and the United States agreed

upon the monetary value of the damages to ALNIC and to MCCAIN as $442,445 and $185 million, respectively.

First, the district court (Crotty, *J.*) concluded that Singapore law would govern both the determination of liability and the calculation of the Sailor-Claimants' damages. Then, after a Phase 1 bench trial concerning only liability, the district court denied Energetic's petition for exoneration from or limitation of liability. It allocated fault for the collision: 80% to the United States and 20% to Energetic. Based on the 20% of damages apportioned to Energetic, the claim of the United States against Energetic is $36,646,044, plus interest. The district court then indicated that it would proceed to a Phase 2 trial, to determine damages to the Sailor-Claimants. Energetic appealed.

While the appeal was pending, the district court dismissed Energetic's claims for contribution or indemnity against the United States for any damages that might be awarded to the Sailor-Claimants during the Phase 2 trial as barred by sovereign immunity. Energetic also appealed this order.

Following its decision on sovereign immunity, the district court retroactively certified that its earlier opinion on the apportionment of liability was a final judgment as to the United States. Subsequently, several Sailor-Claimants cross-appealed, challenging the district court's earlier decision applying Singapore law to the calculation of damages. We consolidated the various appeals.

We find no error in either the district court's apportionment of liability under Singapore law or its sovereign immunity ruling. We therefore AFFIRM the district court's judgment and order on Energetic's appeals. The district court's choice-of-law ruling, however,

is a non-appealable collateral order. We accordingly DISMISS the Sailor-Claimants' cross-appeals for lack of jurisdiction.

BACKGROUND[1]

I. ALNIC's and MCCAIN's Underlying Staffing and Steering Problems.

The Singapore Strait is a relatively confined space in one of the world's busiest shipping corridors. Both ALNIC's and MCCAIN's crews knew that navigating the Strait required special precautions. Yet neither vessel was well prepared. These failures, some of which were months in the making, created conditions ripe for disaster. We consider conduct aboard ALNIC and MCCAIN in turn.

a. ALNIC's Staffing and Steering Problems.

ALNIC was by far the larger of the two vessels involved. She is about 600 feet long. Loaded with fuel oil at the time of the collision, ALNIC weighed about 39,000 metric tons. When ALNIC was at full speed ahead, coming to a full stop required 7 minutes and 1.35 nautical miles.

Some of ALNIC's problems pertained to staffing. ALNIC's manager, Stealth Maritime Corporation S.A. ("Stealth"), placed the vessel under internal regulations called the Safety Management System, or SMS. The SMS required ships in the Singapore Strait to be at their greatest possible readiness, what Stealth called "Bridge Manning Level III." Bridge Manning Level III called for five mariners staffing ALNIC's bridge (her

[1] We draw our discussion from the trial record and the district court's post-trial opinion. Except as noted otherwise, these facts are undisputed on appeal.

command center), including a fully dedicated anti-collision officer and a fully dedicated lookout.

ALNIC's crew did not heed these requirements. On the morning of the collision on August 21, ALNIC was designated only at Bridge Manning Level II. But in fact, with one crew member off duty and another working in the walled-off chart room when the collision occurred, the vessel was effectively at Bridge Manning Level I. That meant there were only three people staffing the bridge, including ALNIC's captain, Ritchie Nolasco. There was no anti-collision officer present and the lookout was serving simultaneously as the helmsman.

Other problems related to steering or, more precisely, the lack of steering. The SMS required ALNIC to be under manual steering while in the Singapore Strait. Instead, on August 21 and until after the collision, the ship remained on autopilot. This issue was intertwined with the staffing shortfall: had ALNIC been properly off autopilot she would have been steered by the helmsman. But that same seaman was also acting that morning as a lookout.

ALNIC's issues were no secret and no surprise. During a routine audit in May 2017, Stealth's Marine Superintendent witnessed ALNIC improperly transit the Singapore Strait at Bridge Manning Level I. The Superintendent testified that he instructed ALNIC's crew on proper conduct in the Strait, although Captain Nolasco and another ALNIC officer denied they received such instruction.

The Superintendent also stated more generally that, of the seventy vessels he had audited for Stealth, ALNIC's performance was among the two worst. The Superintendent conveyed his concerns to Stealth, but the company took no action.

b. MCCAIN's Staffing and Steering Problems.

MCCAIN is smaller and more agile than ALNIC. She is 505 feet long and weighs about 9,000 metric tons, as compared to ALNIC's 600 feet and 39,000 metric tons. MCCAIN can stop "very quickly" compared to commercial vessels, but "not instantaneous[ly]." *Matter of Energetic Tank, Inc.*, 607 F. Supp. 3d 328, 336, 363 (S.D.N.Y. 2022) ("*Energetic Tank*").

MCCAIN's problems related primarily to the crew's use of a new steering system. Roughly one year before the collision, the Navy had installed on MCCAIN an Integrated Bridge and Navigation System, or "IBNS." The IBNS "look[ed] nothing like a traditional steering console." *Id.* at 336 (internal quotation marks omitted). Rather, the IBNS encompassed several steering stations on the bridge and elsewhere, each of which included both a touchscreen and physical buttons. Two manual steering wheels remained: one between the helm and lee helm stations on the bridge and the other at the aft steering station near the vessel's stern.

The IBNS allowed those in charge of the controls to transfer steering from one station to another. Ordinarily, both the station controlling steering and the station receiving steering would need to consent to this transfer. But when the IBNS was in "backup manual" mode, with some of its computer features disabled, one station could unilaterally seize steering control from another. One physical component of each IBNS station was the "Emergency Override to Manual" button, commonly known as the "Big Red Button." Pressing the Big Red Button at one station would unilaterally take control of steering away from any other station on MCCAIN.

MCCAIN's crew—including the ship's captain, Commander Alfredo Sanchez—lacked "basic . . . knowledge" of the IBNS. *Id.* at 340 (internal quotation marks omitted). This ignorance extended to the Big Red Button. Commander Sanchez and others mistakenly believed that pressing the Button would *send* steering control to the aft steering station. Moreover, the crew did not understand that the Big Red Button operated unilaterally.

MCCAIN's IBNS was also unreliable in ways compounded by the crew's unfamiliarity with the system. The computer-driven IBNS had crashed several times, leading Commander Sanchez to complain to offboard Navy technicians. In fact, one technician was due in Singapore to repair the IBNS upon MCCAIN's arrival. In the meantime, Commander Sanchez's preferred "workaround" for IBNS glitches was to switch the destroyer to backup manual mode—"a system setting which affected steering control in ways that neither he nor his crew understood." *Id.* MCCAIN was in backup manual mode when the collision occurred.

MCCAIN, like ALNIC, also suffered staffing shortfalls. MCCAIN's officers had recommended an extensive "Sea and Anchor Detail" while navigating the Singapore Strait. Instead, Commander Sanchez opted for a more limited "Modified Navigation Detail." That still meant MCCAIN had fifteen crewmembers on her bridge at the time of the collision, but the sailors controlling thrust and steering were both fewer in number and less experienced than the Sea and Anchor Detail would have required.

II. MCCAIN's Loss of Steering Control and ALNIC's Initial Response.

In the early hours of August 21, 2017, ALNIC and MCCAIN were heading west in the busy Singapore Strait, both bound for Singapore. Under the Strait's Traffic Separation Scheme—essentially a maritime highway—each ship was in the same "lane." So, too, were several other vessels. ALNIC was ahead and to port (*i.e.*, left) of MCCAIN. Although the seas were calm and the weather clear, the pre-dawn sky was dark and moonless. MCCAIN was moving quickly by Strait standards, 20 knots, and was in the process of overtaking ALNIC.

Trouble began around 5:20:30 AM local time, which was 3 minutes, 28 seconds before the collision ("bc"). That was when Commander Sanchez ordered that MCCAIN's thrust control be transferred from one IBNS station (the helm) to another adjacent station (the lee helm). Unbeknownst to all involved, however, the thrusts were "un-ganged," which meant the vessel's two propellers operated independently instead of in unison. Consequently, when MCCAIN's crew carried out Commander Sanchez's order, only control of the port thrust shifted to the lee helm, while control of the starboard (*i.e.*, right) thrust remained with the helm.

Soon after, at 5:20:39 (3:19 bc), MCCAIN's helmsman reported that he had lost the ability to steer using the manual wheel between the helm and the lee helm. A Navy investigation found that the crew had inadvertently transferred steering control from the helm to the lee helm when transferring the thrust to the lee helm. *See* App'x at 4999–5000. Before steering control was transferred, the helmsman had been steering slightly to starboard to maintain a steady course. But when steering control was transferred, the rudders

reset to a neutral position. MCCAIN then began turning to port—toward ALNIC. Within one minute, around 5:21:00 (2:58 bc), MCCAIN's crew announced loss of steering to the destroyer's bridge.

Crewmembers at the IBNS stations both on the bridge and at the aft steering position responded by pressing the Big Red Button, mistakenly thinking it would send control to aft steering. Instead, because pushing the button *acquired* steering, "control of steering ping-ponged around the ship, with none of the crew understanding where it was at any given time, or how to get it back." *Energetic Tank*, 607 F. Supp. 3d at 348.

Twenty-three seconds later, at 5:21:23 (2:35 bc), an announcement sounded on MCCAIN's internal and external speakers: "Loss of steering in the pilot house, loss of steering in the pilot house. Man aft steering." *Id.* Microphones on ALNIC's bridge wings picked up this announcement across the water.

At 5:21:25 (2:33 bc), at Commander Sanchez's order, MCCAIN's crew activated "red-over-red" lights on the ship's masthead. This configuration indicates to other vessels that a vessel is "not under command" and, hence, at risk of collision. Energetic denies that MCCAIN signaled red-over-red properly in all respects. We further address this issue below.

By 5:21:52 (2:06 bc), MCCAIN's veering to port was visible on ALNIC's X-band radar. Seconds later, Captain Nolasco prompted ALNIC's S-band radar to calculate whether ALNIC and MCCAIN were on a collision course. The calculation would take fifty seconds. During this time, ALNIC took no other action to avoid colliding with MCCAIN.

At 5:22:06 (1:52 bc), Commander Sanchez ordered MCCAIN's crew to reduce the vessel's speed from 20

knots to 10. MCCAIN's lee helmsman complied, not knowing that because the thrust remained un-ganged, he was reducing only the port thrust, causing MCCAIN to veer even more to port, toward ALNIC's path.

The district court found that at 5:22:31 (1:27 bc), "reasonable mariners could [still] have disagreed [as to] whether MCCAIN would collide with ALNIC," given MCCAIN's apparent trajectory. *Id.* at 356.

III. ALNIC's Collision Alarm.

At 5:22:43 (1:15 bc), ALNIC's S-band radar completed its collision calculation and triggered a collision alarm on the bridge. Energetic argues that this alarm signaled only that MCCAIN was on course to be 0.27 nautical miles away from ALNIC. The district court, however, found that the alarm signified "an imminent actual collision, not just a close call." *Id.* at 351 n.12.

Two seconds after ALNIC's alarm began to blare, at 5:22:45 (1:13 bc), Commander Sanchez ordered MCCAIN's crew to reduce the destroyer's speed once more—now from 10 knots to 5. Still, unbeknownst to all, the thrust remained un-ganged. Trying to carry out Commander Sanchez's order, the lee helmsman again reduced only the port thrust, turning the vessel even more sharply.

At 5:22:58 (1:00 bc), ALNIC's crew silenced the collision alarm. ALNIC's autopilot course and speed remained unchanged.

IV. The Collision.

ALNIC's crew continued to passively observe MCCAIN as the destroyer drew near. At 5:23:02 (0:56 bc), someone on ALNIC's bridge observed that MCCAIN appeared to be trying to pass between ALNIC and another vessel. At first, the observer "guess[ed]" the maneuver would

work.[2] *Id.* at 352. Then, at 5:23:17 (0:41 bc), the same crewmember determined that MCCAIN was doing a "wrong maneuver." *Id.* The district court found that by 5:23:20 (0:38 bc), MCCAIN's veering was "glaringly apparent" on ALNIC's X-band radar. *Id.* Still, ALNIC kept her course and speed. Neither vessel signaled danger by sounding its horn or attempted to contact the other by radio.

At 5:23:27 (0:31 bc), MCCAIN's crew at aft steering—the IBNS station near the destroyer's stern—secured control of MCCAIN's steering. That station, however, had retained an earlier "hard left" order that took effect when aft steering gained rudder control. Thus, for several seconds, MCCAIN turned still more to port, placing her almost directly in front of ALNIC.

At 5:23:44 (0:14 bc), MCCAIN finally began correcting course by turning to starboard. Commander Sanchez testified that he recognized that a collision was imminent. Yet he hoped that turning would at least avoid a "T-bone" impact and reduce the damage to MCCAIN.

That same moment, Captain Nolasco reduced ALNIC's engine from full ahead to half ahead—the vessel's first and only pre-collision adjustment. Although this slowed the engine from 92 RPM to 73 RPM, it did not appreciably reduce ALNIC's speed before collision.

At 5:23:58, ALNIC and MCCAIN collided. ALNIC's bow struck MCCAIN's port side at an angle of around 48.5 degrees, piercing the destroyer's hull and entering several crew compartments. For 66 seconds, the vessels remained entangled.

---

[2] Audio on ALNIC's bridge was recorded by the tanker's black box. The parties stipulated to the accuracy of the transcript cited in litigation and of any translations into English.

ALNIC's engine continued running at 73 RPM. Only 42 seconds after impact did Captain Nolasco order "all stop." And for another 20 seconds after that, ALNIC remained on autopilot.

ALNIC's continued propulsion and automatic navigation exacerbated the collision. While the vessels were entangled, ALNIC's computerized navigation system detected that ALNIC had veered to port and tried to redirect her. However, the combination of the vessels' momentum and ALNIC's automated maneuver caused ALNIC's bow to sweep over 45 degrees to starboard, tearing through more of MCCAIN's hull.

The damage was terrible. MCCAIN's Berthing 5, which was located below the waterline, flooded completely, drowning ten sailors. Three of MCCAIN's decks were struck. Still more destruction—and potential death—was averted only through the swift and decisive action of MCCAIN's crew.

V. False Statements by ALNIC's Crewmembers.

Several post-collision revelations warrant special mention here.

Discovery in this litigation revealed—as Energetic acknowledges—that ALNIC's crewmembers falsified entries in the vessel's logs, obscuring what happened just before the collision. These lies included:

1. "[T]hat there was a fifth member of ALNIC's crew serving as the lookout when, in fact, there was not";
2. "[T]hat ALNIC was at Bridge Manning Level II before the collision, when it was really at Bridge Manning Level I because of the missing crewmembers";

3. "[T]hat the crew had stopped the engine . . . at 05:22," before the collision at 05:23:58, "when in fact it was only put to half ahead at 05:23:44 and was not stopped until about 05:24:30"; and

4. "[T]hat steering was switched from autopilot to manual steering several hours before the collision, at 03:00, when it actually remained on autopilot until after the collision."

Id. at 357.

The district court also found that two of ALNIC's crewmembers made other false statements not in the logs. *First*, one ALNIC seaman told investigators that he saw MCCAIN display regular lights, rather than red-over-red lights. That same seaman had falsified a log entry stating he was on ALNIC's bridge on the morning of the collision. This led to a further lie that he had been well-positioned to see MCCAIN's lights. *Second*, Captain Nolasco testified in his deposition for this case that he had not seen MCCAIN display her red-over-red signal, but only red *sidelights*. Yet Captain Nolasco had earlier confirmed to Singapore authorities that he *had* seen and understood MCCAIN's red-over-red signal. He failed to explain this discrepancy.

Given these inconsistencies, the district court found that testimony by ALNIC's crewmembers that they never observed red-over-red lights on MCCAIN was not credible.

PROCEDURAL HISTORY

On February 15, 2018, Energetic initiated this action under the Limitation of Liability Act of 1851, 46

U.S.C. §§ 30501–02, 30521–30.[3] That statute permits the owner of a vessel to limit its liability for any "injury by collision," including personal injury, to "the value of [that] vessel and pending freight." *Id.* at § 30523(a)-(b); *see The 84-H*, 296 F. 427, 430 (2d Cir. 1923). "The animating premise of the [Act] is that the owner of a vessel is generally an absentee who entrusts the vessel to the command of a captain whom the owner has limited ability to supervise or control once the vessel is on the sea." *Bensch v. Est. of Umar*, 2 F.4th 70, 73 (2d Cir. 2021). "The Act thus protects the owner of a vessel from unlimited vicarious liability for damages caused by the negligence of his captain or crew." *Tandon v. Captain's Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 244 (2d Cir. 2014).

To benefit from this limitation, the collision must have occurred "without the privity or knowledge of the owner." 46 U.S.C. § 30523(b). "The phrase 'privity or knowledge' is a 'term of art meaning complicity in the fault that caused the accident.'" *In re Complaint of Messina*, 574 F.3d 119, 126 (2d Cir. 2009) (quoting *Blackler v. F. Jacobus Transp. Co.*, 243 F.2d 733, 735 (2d Cir. 1957) (per curiam)). Thus, if Energetic could establish that it was not complicit in ALNIC's collision with MCCAIN, Energetic's liability would be limited to the value of ALNIC and her freight.

Since the goal of the limitation action is to cap the owner's liability, the Act also channels claims. A liability cap is valuable only when potential liabilities would otherwise exceed the cap. So when claims exceed the value of the ship and her freight, the Act provides that "all claimants shall be paid in proportion

---

[3] Sections 30521–30 correspond to what the district court, relying upon an earlier version of the Act, cited as §§ 30503–12.

to their respective losses." 46 U.S.C. § 30525(1). To calculate the proportion to which each claimant is entitled and to ensure an equitable distribution, all claims against a shipowner arising from the collision must be brought within the limitation action; any preexisting actions are enjoined. *See id.* at § 30529(c); Rule F(3) of the Supplemental Rules for Admiralty or Maritime Claims of the Federal Rules of Civil Procedure. Following Energetic's petition for limitation or exoneration, forty-two parties filed claims against Energetic. Of these, forty-one were Navy sailors or their representatives, who filed claims for death or injury; the other was the United States, which filed a claim for MCCAIN's damages. Energetic also counterclaimed for contribution or indemnity from the United States, invoking the Suits in Admiralty Act, 46 U.S.C. § 30903, and the Public Vessels Act, 46 U.S.C. § 31102.

The district court bifurcated proceedings. In Phase 1, the court would determine apportionment of fault between ALNIC and MCCAIN. In Phase 2, the court would adjudicate the wrongful death and personal injury claims.

On January 10, 2020, the district court granted Energetic's motion to apply Singapore law both to determine liability and to calculate damages. Three groups of Sailor-Claimants—the "Sanfilippo Claimants," the "Hofmann & Schweitzer Claimants," and the "Tabak Claimants"—sought reconsideration of this decision. The district court denied reconsideration.

Before trial, the United States and Energetic stipulated that, excluding interest, MCCAIN's damages were $185,000,000 and ALNIC's were $442,445.

In November 2021, the district court conducted a five-day, Phase 1 bench trial to apportion liability. On

June 15, 2022, the district court issued a post-trial opinion and order allocating 80% of fault for the collision to MCCAIN and 20% to ALNIC. The district court, finding privity or knowledge on the part of Energetic, declined to limit Energetic's liability. This resulted in Energetic's responsibility for around $37 million in vessel damages, plus interest—20% of MCCAIN's damages less 80% of ALNIC's damages.

In brief, the district court concluded that ALNIC's negligence proximately caused the collision and resulting damage in three respects. *First*, her bridge was "understaff[ed]" "in the heavily trafficked Singapore Strait." *Energetic Tank*, 607 F. Supp. 3d at 363. *Second*, ALNIC failed to turn or significantly slow down starting at 5:23:17 (0:41 bc), at which time "it should have been clear to everyone that MCCAIN could no longer avoid the collision by her actions alone." *Id.* at 367. And *third*, ALNIC "left her engines running for 42 seconds after the collision and left her autopilot on for over a minute," which exacerbated the damage to MCCAIN. *Id.* at 368. The district court also determined that ALNIC's fault was compounded by her crew's false statements after the collision. *See id.* at 368–69.

Energetic and the United States both filed interlocutory appeals.[4] On October 5, 2022, we remanded the case at the district court's request so that, among other things, the district court could certify its post-trial order as a final judgment. The next day, the district court ordered that its June 15 order "was intended to be a final judgment regarding the United States" under Fed. R. Civ. P. 54(b), and that there was "no just

[4] The United States withdrew its cross-appeal with prejudice before briefing was complete.

reason for delay" in issuing that judgment. Special App'x at 73.

On October 12, 2022, the district court issued an opinion and order addressing the United States's defense of sovereign immunity. The district court concluded that, although the United States had waived its sovereign immunity against Energetic's counterclaim for *vessel damages*, it had not done so against Energetic's counterclaims for contribution for or indemnification against potential *personal damages*. The district court therefore dismissed Energetic's contribution and indemnification claims. In the same opinion, the district court declined to stay the case pending appeal.

On October 13, 2022, we reinstated the appeal without a new notice of appeal under *United States v. Jacobson*, 15 F.3d 19, 22 (2d Cir. 1994).

On November 4, 2022, the Hofmann & Schweitzer and the Tabak Claimants (together, the "Cross-Appellants") filed cross-appeals to contest the district court's decision to calculate damages using Singapore law.[5]

DISCUSSION

I. Jurisdiction.

We begin, as we must, by "assur[ing] ourselves" of our appellate jurisdiction. *Maye v. City of New Haven*, 89 F.4th 403, 406 (2d Cir. 2023) (per curiam) (internal quotation marks omitted). We conclude that we have jurisdiction to consider Energetic's appeals of the district court's Phase 1 order and of the district court's order dismissing Energetic's contribution and

[5] The Sanfilippo Claimants also filed a cross-appeal, which they, too, withdrew with prejudice while this appeal was pending.

indemnification claims. By contrast, we lack jurisdiction over the cross-appeals challenging the district court's choice-of-law decision. We therefore dismiss the cross-appeals.

A. General Principles of Appellate Jurisdiction.

"The jurisdiction of the federal courts of appeals to entertain appeals from decisions of the district court[s] is circumscribed by statute." *Petrello v. White*, 533 F.3d 110, 113 (2d Cir. 2008). In this case, we look primarily to two provisions of the federal Judicial Code, § 1291 and § 1292, and to the judicial rules and doctrines implementing those sections.

Section 1291 establishes the baseline rule. That provision permits us to hear appeals from "final decisions of the district courts." 28 U.S.C. § 1291.[6] Final decisions are "embodied" in final judgments. *Transp. Workers Union of Am., Loc. 100 v. N.Y.C. Transit Auth.*, 505 F.3d 226, 230 (2d Cir. 2007). Ordinarily, such judgments "conclusively determine[] all pending claims of all the parties to the litigation, leaving nothing for the court to do but execute its decision." *Petrello*, 533 F.3d at 113. Both the Federal Rules of Civil Procedure and our precedent, however, embrace a "practical construction" of § 1291, permitting appeals from a limited class of other orders we consider "final," *Will v. Hallock*, 546 U.S. 345, 349 (2006), even though they do not "resolve

[6] Section 1291 provides, in relevant part: "The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court." 28 U.S.C. § 1291.

all claims of all parties," *Scottsdale Ins. Co. v. McGrath*, 88 F.4th 369, 376 (2d Cir. 2023).

Federal Rule of Civil Procedure 54(b) authorizes appeals from certain "*partial* final judgment[s]" addressing "fewer than all parties" or resolving fewer than "all claims."[7] *Scottsdale*, 88 F.4th at 376. Such judgments must be expressly designated for appeal by the district court, as we discuss below. This procedure was "designed to permit acceleration of appeals in multiple-claim cases," *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 416 (2015), while leaving "unimpaired the statutory concept of finality prescribed by [§] 1291," *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 434 (1956).

Another rule, the "collateral order doctrine," permits appeals from a "small class" of rulings that do not resolve the merits of any claim. *Will*, 546 U.S. at 349 (internal quotation marks omitted). Like Rule 54(b), the collateral-order doctrine is not "an exception to" § 1291's "final decision rule," but an application of it. *Id.* (internal quotation marks omitted). This doctrine has a "modest scope": it permits appeals only of those rare decisions "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole

---

[7] Rule 54(b) provides: "When an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-party claim--or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(b).

case is adjudicated." *Id.* (internal quotation marks and citation omitted).

Finally for our purposes, 28 U.S.C. § 1292 gives us jurisdiction over appeals from some interlocutory—that is, non-final—orders, including those pertaining to injunctions, the appointment of receivers, and other limited matters. Relevant here is 28 U.S.C. § 1292(a)(3), which establishes our jurisdiction over some "[i]nterlocutory decrees . . . determining the rights and liabilities of the parties to admiralty cases."[8] That such appeals are available in admiralty, but not in other areas, reflects "the once common admiralty practice of referring the determination of damages to a master or commissioner after resolving the issue of liability." *Chem One, Ltd. v. M/V RICKMERS GENOA*, 660 F.3d 626, 638 (2d Cir. 2011) (internal quotation marks and citation omitted).

For us to decide the various appeals now before us, we must have jurisdiction either under § 1291 (as implemented by Rule 54(b) or the collateral-order doctrine) or under § 1292(a)(3).

B. The District Court's Phase 1 Order Was Appealable under 28 U.S.C. § 1291 and Rule 54(b) as a Partial Final Judgment Pertaining to Damage to the Vessels and Apportionment of Liability.

We first consider whether the district court's Phase 1 order was an appealable "final decision[]" under 28 U.S.C. § 1291. The Phase 1 order did not "resolve all

---

[8] Section 1292(a)(3) provides, in relevant part: "[T]he courts of appeals shall have jurisdiction of appeals from . . . (3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed." 28 U.S.C. § 1292(a)(3).

claims of all parties." *Scottsdale*, 88 F.4th at 376. Rather, it left for a Phase 2 trial the Sailor-Claimants' claims for personal damages. Nonetheless, the parties invoke our jurisdiction over appeals from partial final judgments under Rule 54(b).[9]

Rule 54(b) does not automatically permit appeal of every partial final judgment. Rather, the district court must exercise its discretion to invoke the Rule and certify the appeal. *See Harriscom Svenska AB v. Harris Corp.*, 947 F.2d 627, 629 (2d Cir. 1991). Certification is appropriate only to serve the "interests of sound judicial administration" or to avoid "some danger of hardship or injustice through delay which would be alleviated by immediate appeal." *Id.* (internal quotation marks and citation omitted and alteration incorporated). Consistent with this requirement, the district court must (1) "expressly determine[] that there is no just reason for delay," Fed. R. Civ. P. 54(b), and (2) provide "a brief, reasoned explanation" for that determination, *Scottsdale*, 88 F.4th at 378 (internal quotation marks omitted). This explanation must ordinarily offer "well-reasoned conclusions" rather than "mere boiler-plate approval." *Novick v. AXA Network, LLC*, 642 F.3d 304, 310 (2d Cir. 2011) (internal quotation marks and citation omitted). However, we may "excuse[] a failure to state reasons '[w]here the reasons . . . are obvious . . . and a remand to the district court would result only in unnecessary delay in the appeal process.'" *Brown v. Eli Lilly & Co.*, 654 F.3d 347, 355 (2d Cir. 2011) (quoting *Fletcher v. Marino*, 882 F.2d 605, 609 (2d Cir. 1989)).

---

[9] The district court observed in a letter to this court that we would likely have jurisdiction over this appeal under 28 U.S.C. § 1292(a)(3), even absent a Rule 54(b) certification. Because we conclude that our jurisdiction is secure under § 1291, we need not address that theory.

Rule 54(b)'s application is limited in two-phase proceedings such as this one. An order "limited to the issue of liability, which reserves the issue of damages and other relief is not final within the meaning of 28 U.S.C. § 1291." *Linde v. Arab Bank, PLC*, 882 F.3d 314, 323 (2d Cir. 2018) (internal quotation marks and citation omitted). Such an order is therefore "not certifiable pursuant to Rule 54(b)." *Id.* (internal quotation marks and citation omitted). That said, Rule 54(b) does authorize certification where the district court has both determined liability and "fixed the damages." *Id.* (internal quotation marks and citation omitted).

The district court did not abuse its discretion by certifying its June 15, 2022 Phase 1 order as a partial final judgment. The Phase 1 opinion and order resolved the United States's liability in its claim for damages against Energetic. Moreover, here, as in *Linde*, the damages were "fixed": the parties had agreed upon the monetary damages to MCCAIN and to ALNIC. Finally, the district court concluded that "the Phase I Opinion presents one judgment, neatly bundled" for appellate review; that certification would avoid "unnecessary delay in the appeal process;" and that there was little risk of "piecemeal appeals." Special App'x 74. The district court provided little justification for these conclusions. Nonetheless, and especially in view of our previous remand for the purpose of certification, the district court's explanation was adequate. *See Brown*, 654 F.3d at 355. We therefore have jurisdiction under § 1291 to review the Phase 1 opinion.

C. The District Court's Order Dismissing Energetic's Contribution and Indemnity Claims Was Appealable as an Interlocutory Admiralty Order under 28 U.S.C. § 1292(a)(3).

The district court's October 12, 2022 order concerning sovereign immunity implicates a different provision: § 1292(a)(3).

Contrary to Energetic's suggestion, § 1291 is inapplicable to the sovereign-immunity order. In general, orders that "allow the litigation to continue are not final for purposes of § 1291 and therefore are not immediately appealable." *Ashmore v. CGI Grp., Inc.*, 860 F.3d 80, 84 (2d Cir. 2017) (per curiam) (internal quotation marks and citation omitted and alteration incorporated). That includes orders that dismiss some but not all claims. Here, the district court dismissed Energetic's contribution and indemnity claims against the United States as barred by sovereign immunity but left other issues for later resolution. And unlike its earlier Phase 1 order, the district court did not certify its dismissal order under Rule 54(b). No other exception relevant to § 1291 applies. Thus, the dismissal order was not a "final" order under § 1291 and is not appealable under that statute.

Even so, we may review certain interlocutory orders in admiralty cases under a different provision. Federal courts of appeals generally "have jurisdiction of appeals from: . . . (3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed." 28 U.S.C. § 1292(a)(3). This rule broadens our interlocutory appellate jurisdiction beyond its ordinary bounds. *See generally* 16 Charles Alan Wright, Arthur R. Miller

& Edward H. Cooper, Federal Practice & Procedure § 3927 (3d ed. 2023).

Section 1292(a)(3) establishes our jurisdiction here. Because the order dismissing Energetic's contribution and indemnification claims was not final, it was "[i]nterlocutory." 28 U.S.C. § 1292(a)(3); *see Wingerter v. Chester Quarry Co.*, 185 F.3d 657, 668 (7th Cir. 1998). Nor is there any question that this "case . . . includes an admiralty or maritime claim," Fed. R. Civ. P. 9(h)(2), such that it is an "admiralty case[]," 28 U.S.C. § 1292(a)(3); *see Energetic Tank*, 607 F. Supp. 3d at 335 n.1. That leaves the "crucial inquiry" of "whether the district court's judgment . . . determined the rights and liabilities of the parties"—that is, whether it "decid[ed] the merits" of the parties' "controversies." *Chem One*, 660 F.3d at 638 (internal quotation marks and citation omitted and alterations incorporated). It did. We have previously held that an order dismissing a cause of action in an admiralty case on sovereign-immunity grounds is appealable under § 1292(a)(3). *See Isbrandtsen Tankers, Inc. v. Pres. of India*, 446 F.2d 1198, 1199 n.1 (2d Cir. 1971). This case is similar. We therefore have jurisdiction to review the district court's October 12, 2022 order.

D. The District Court's Order on Choice of Law Was Not Appealable as a Collateral Order.

The same cannot be said of the district court's January 10, 2020 order that Singapore law would apply to the calculation of damages. Cross-Appellants offer two theories supporting our jurisdiction. Neither succeeds.

First, Cross-Appellants argue that the district court's Rule 54(b) certification rendered appealable its earlier choice-of-law ruling. This argument implicitly invokes our usual rule that "prior interlocutory orders merge

with the final judgment in a case, and the interlocutory orders (to the extent that they affect the final judgment) may be reviewed on appeal from the final order." *Selletti v. Carey*, 173 F.3d 104, 109 n.5 (2d Cir. 1999) (internal quotation marks omitted).

The merger rule does not support Cross-Appellants' position. In considering an appeal of a *partial* final judgment, we must construe strictly the requirement that an interlocutory order "affect the final judgment," lest we nullify Rule 54(b)'s limitations. *Id.*; *see also Black Ass'n of New Orleans Fire Fighters (BANOFF) v. City of New Orleans*, 911 F.2d 1063, 1065–66 (5th Cir. 1990). In this case, the district court stated that its Phase 1 order "was intended to be a final judgment regarding the United States" and its "liability and damages for the collision." Special App'x at 73. Thus, only earlier orders that affect the United States's liability merge on appeal into the Phase 1 order. The district court's choice of law for calculating Sailor-Claimants' personal damages did no such thing. Accordingly, Rule 54(b) does not give us jurisdiction over the cross-appeals.

Second, the Hofmann & Schweitzer Claimants suggest that the district court's choice-of-law ruling is an appealable collateral order. Non-final orders are reviewable under the "collateral order doctrine" only when they "(1) are 'conclusive'; (2) 'resolve important questions separate from the merits'; and (3) 'are effectively unreviewable on appeal from the final judgment in the underlying action.'" *Belya v. Kapral*, 45 F.4th 621, 629 (2d Cir. 2022) (quoting *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 42 (1995)).

The collateral-order doctrine does not apply here. We have warned that this exceptional doctrine should "'never be allowed to swallow the general rule that a

party is entitled to a single appeal' *after* 'final judgment has been entered.'" *Id.* (emphasis added) (quoting *Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994)). Here, we see no reason why the district court's choice-of-law order would be "effectively unreviewable on appeal from the final judgment." *Id.* (internal quotation marks omitted). Rather, we believe permitting Cross-Appellants' "piecemeal, prejudgment appeals" would "undermine[] 'efficient judicial administration.'" *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (quoting *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981)). Thus, the choice-of-law ruling on damages, as distinct from the apportionment of liability, is not yet appealable.

Cross-Appellants have identified no basis for our jurisdiction over their appeals.[10] We therefore must dismiss the cross-appeals.

II. Applicable Substantive Law.

The district court applied Singapore law in determining the United States' and Energetic's liability for the collision. No party contests that decision. Although we retain discretion to reach this "purely legal issue," we decline to do so here.[11] *Booking v. Gen. Star Mgmt.*

---

[10] The Hofmann & Schweitzer Claimants also invoke in passing 28 U.S.C. § 1292(a)(3) as an alternative basis for our jurisdiction. That "perfunctor[y]" reference failed to preserve any argument as to that provision's application to the cross-appeals. *Meyer v. Seidel*, 89 F.4th 117, 129 (2d Cir. 2023). In any event, the district court's choice-of-law ruling did not "determin[e] the rights and liabilities of the parties," as § 1292(a)(3) requires.

[11] Unlike the district court's choice of law for calculating damages, its choice of law for determining liability "affect[ed]" the appealable partial final judgment. *Selletti*, 173 F.3d at 109 n.5. To that extent, we have jurisdiction to review the January 10, 2020 order. Because we decline to undertake that review, we need not—

Co., 254 F.3d 414, 419 (2d Cir. 2001). Instead, we join the district court in applying Singapore law.

In this case, the standards for determining liability for the collision are clear. That is because "[t]he elements of negligence under Singapore law are substantially the same as those under United States admiralty law: 'Typically, claimants have to establish breach of duty (that a vessel owes a duty of care to other vessels is well-established) that caused or contributed to the collision and damage.'" *Energetic Tank*, 607 F. Supp. 3d at 358–59 (quoting *The Dream Star* [2018] 4 SLR 473 at [47]).[12] The relevant duty is "the exercise of 'good seamanship'"—that is, "the exercise of reasonable skill or care expected of a competent/prudent seaman to prevent the vessel from doing injury." *Id.* (citation omitted).

In evaluating negligence under this standard, we follow Singapore courts in treating decisions of "common law courts around the world"—and especially of English courts—as persuasive authority. App'x at 1366; *see, e.g.*, *The Dream Star* at [89]–[93]; *The Mount Apo and Hanjin Ras Laffan* [2019] 4 SLR 909 at [95]; *see also* App'x at 2781. As expert testimony indicated, this reflects that "Singapore's legal system is built on a two hundred years of the English common law tradition" and "Singapore law on maritime collisions [remains]

---

and do not—decide whether we have pendent jurisdiction over the cross-appeal, as the Tabak Claimants argue in their reply brief. Tabak Reply Br. at 9–11.

[12] When citing foreign cases, we follow the conventions of the Singapore Academy of Law's Style Guide for the Singapore Law Reports. "SLR" refers to the Singapore Law Reports. Pinpoint citations in brackets refer to paragraph numbers. Each of the Singapore cases we cite was decided by the High Court of the Republic of Singapore.

closely similar to English law" in relevant respects. App'x at 1359; *see id.* at 2781.

Consistent with Singapore law, we also look to the universally accepted International Regulations for Preventing Collisions at Sea, or "COLREGs." The COLREGs "provide a 'universal system of sea traffic rules' applicable to vessels in international waters." *Crowley Marine Servs., Inc. v. Maritrans, Inc.*, 530 F.3d 1169, 1172 (9th Cir. 2008) (quoting William Tetley, International Maritime and Admiralty Law 237 (2002)). Singapore has incorporated the COLREGs into its domestic law and its courts consider them when evaluating maritime negligence.[13] *See The Dream Star* at [2], [47]–[50]. Accordingly, the COLREGs are central to our analysis.

III. Standards of Review.

Although we look to Singapore law for the relevant substantive negligence rules, federal law supplies the applicable standards of appellate review. *See Otal Invs. Ltd. v. M.V. Clary*, 494 F.3d 40, 50 (2d Cir. 2007) ("*Otal II*"); *Alkmeon Naviera, S.A. v. M/V Marina L*, 633 F.2d 789, 796 n.11 (9th Cir. 1980). These standards generally track those applicable in other areas of federal law. *See Tandon*, 752 F.3d at 240 n.1.

In reviewing a judgment entered after a bench trial, we review the district court's factual findings only for clear error. *See Vasquez v. GMD Shipyard Corp.*, 582 F.3d 293, 297 (2d Cir. 2009). The causes of a maritime collision are factual findings, *see Otal II*, 494 F.3d at 59, as is a district court's apportionment of liability for

---

[13] The same is true for the United States and "every [other] shipping nation in the world." *Crowley Marine Servs.*, 530 F.3d at 1172 (internal quotation marks omitted).

such a collision, *see Otal Invs. Ltd. v. M/V CLARY*, 673 F.3d 108, 113 (2d Cir. 2012) ("*Otal IV*") (per curiam). Thus, we must set aside the district court's conclusions on these issues only if, upon reviewing the entire record, we are "left with the definite and firm conviction that a mistake has been committed." *Siemens Energy, Inc. v. Petróleos de Venezuela, S.A.*, 82 F.4th 144, 153 (2d Cir. 2023) (internal quotation marks and citation omitted).

Questions of law are different. In this context, as elsewhere, "[w]e review conclusions of law, and the application of the law to the facts, *de novo*." *Vasquez*, 582 F.3d at 297. "[A] court's determination of foreign law 'must be treated as a ruling on a question of law'" subject to *de novo* review. *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33, 42 (2018) (quoting Fed. R. Civ. P. 44.1). This principle extends to a court's interpretation of the COLREGs.[14] *See, e.g.*, *Otal II*, 494 F.3d at 53. We are therefore unconstrained by the district court's interpretations either of Singapore law in general or of the COLREGs in particular.

---

[14] Contrary to the Government's suggestion, we do not read *Ching Sheng Fishery Co. v. United States*, 124 F.3d 152 (2d Cir. 1997), as mandating that we treat "[a] district court's determination that a ship violated the COLREGs" as "a finding of fact." U.S. Br. at 24. In *Ching Sheng*, the COLREGs questions were predominantly factual, not legal. For example, we observed that "[t]he question of what constitutes a 'safe speed' is relative to the situation confronting the vessel at any given moment" and accordingly analyzed the "situation" of the vessel involved. *Ching Sheng*, 124 F.3d. at 159 (quoting COLREG 6). Thus, *Ching Sheng* indicates only that, in some cases, a district court's finding concerning COLREGs violations may effectively be subject to clear-error review because the interpretation of the COLREGs is not at issue. It does not support the Government's proposed broader rule that such findings are always subject to clear-error review.

Review of a district court's determination of negligence is more complicated. "[T]he rule in this circuit has long been to consider [rulings on negligence] *de novo*." *In re M/V MSC Flaminia*, 72 F.4th 430, 446 (2d Cir. 2023). We adhere to that rule here. We acknowledge that we are alone among our sister circuits in embracing this standard and that some on our court have thoughtfully suggested in *dicta* that we should embrace the majority rule. *See, e.g.*, *Payne v. United States*, 359 F.3d 132, 135–137 & n.2 (2d Cir. 2004). At any rate, "in practice," our rule is "'not so different' from the other circuits' more deferential standard of review." *M/V MSC Flaminia*, 72 F.4th at 446 (quoting *In re City of New York*, 522 F.3d 279, 282 (2d Cir. 2008)). In most cases, negligence determinations turn upon factual findings subject to clear-error review. *See id.* Thus, when a district court makes no error interpreting applicable law and no clear error in finding material facts, we ordinarily will sustain that court's negligence determination.

IV. Fault.

We now turn to the merits. Energetic claims that 100% of the fault rests with MCCAIN and that, in attributing 20% of the fault to ALNIC, the district court erred. Energetic advances two principal arguments in support of its position: (1) the district court erred in concluding that ALNIC was "free to maneuver" when MCCAIN activated her red-over-red lights; and (2) the district court erred in finding that ALNIC negligently failed to mitigate the damage to MCCAIN either before or after the moment of the collision. Energetic also contends that the district court improperly considered the dishonesty of ALNIC's crewmembers following the collision when allocating fault.

Energetic leaves unchallenged one of the district court's central conclusions: that ALNIC was negligent in her failure to properly staff her bridge and to assess the risk of collision in the "heavily trafficked Singapore Strait." *Energetic Tank*, 607 F. Supp. 3d at 363–64. COLREGs Rule 5 requires vessels to "maintain a proper look-out" "at all times."[15] Rule 7(a) requires vessels to "use all available means appropriate" to determine the risk of collision. ALNIC violated both rules. Her short-staffed crew relied inappropriately on autopilot and missed crucial signs of collision risk, including MCCAIN's audio announcement of "loss of steering." *Id.* at 364. The district court concluded that these COLREGs violations by ALNIC were proximate causes of the collision, which enhanced the tanker's overall fault. The district court did not err in doing so.

We will briefly set forth the key provisions of the COLREGs governing the arguments Energetic does raise. We then consider—and reject—each argument in turn, ultimately concluding that the district court did not err in concluding that ALNIC was negligent under Singapore law. We also hold that the district court did not clearly err in allocating 20% of the fault for the collision to ALNIC and 80% to MCCAIN.

a. Rule 17's Three-Tier Framework for the Obligations of Stand-On Vessels.

Among much else, the COLREGs establish a "three-tier framework" governing when vessels may not, may, or must take affirmative action to avoid collision. *Id.* at 366.

---

[15] In discussing the parties' fault, we cite provisions of the COLREGs simply as "Rule [Number]."

1. Rule 17(a)(i) requires that a stand-on vessel—that is, a vessel being overtaken—generally "shall keep her course and speed."

2. Rule 17(a)(ii) provides that a stand-on vessel "may . . . take action to avoid collision by her maneuver alone, as soon as it becomes apparent to her that the [give-way] vessel"—that is, a vessel overtaking another—"is not taking appropriate action in compliance with these Rules."

3. Rule 17(b) mandates that "[w]hen, from any cause, the [stand-on] vessel . . . finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision."

Because the COLREGs will inform our negligence analysis, we must examine which Rule applied to stand-on vessel ALNIC at each relevant period on August 21, 2017. *See The Dream Star* at [47].

b. The District Court's Finding that ALNIC Was "Free to Maneuver" after MCCAIN Activated Her Red-Over-Red Lights Was Not Material to the Allocation of Fault.

Energetic first challenges the district court's analysis of when Rule 17(a)(i) ceased to apply and Rule 17(a)(ii) became operative.

The district court concluded that Rule 17(a)(ii) took effect once MCCAIN energized her red-over-red lights at 5:21:25 (2:33 bc). ALNIC was therefore "free to maneuver" to reduce the risk of collision. *Energetic Tank*, 607 F. Supp. 3d at 366. The district court

determined that Rule 17(b) took effect 112 seconds later, at 5:23:17 (0:41 bc). That was when an ALNIC crewmember concluded that MCCAIN was doing a "wrong maneuver" and when "it should have been clear to everyone that MCCAIN could no longer avoid the collision by her actions alone." *Id.* at 367. At that point, ALNIC was "*required*" to act. *Id.*

Energetic disagrees. It argues that Rule 17(a)(ii) *never* controlled. Rather, Rule 17(a)(i) prohibited ALNIC from changing her course or speed until 5:23:17 (0:41 bc). Energetic primarily adverts to (1) MCCAIN's putative failure to de-activate her masthead lights upon activating her red-over-red lights; and (2) the difficulty of determining what action was appropriate for ALNIC given the available information. Energetic does not challenge the district court's conclusion concerning Rule 17(b)—that once MCCAIN was plainly making the "wrong maneuver," ALNIC was obligated to "take such action as [would] best aid to avoid collision." Rule 17(b).

Energetic's argument is misdirected. Under Singapore law, liability in maritime-collision cases must be apportioned "to the degree in which each ship was in fault." Maritime Conventions Act 1911 § 1(1); *accord The Mount Apo* at [94]–[96]; *The Dream Star* at [124]–[127]. The Brussels Collision Liability Convention of 1910, which Singapore has ratified, imposes a similar framework. *See* Thomas J. Schoenbaum, 2 Admiralty & Mar. Law § 14:5 (6th ed. 2023). Singapore courts have made clear that "the determinative factor for apportionment is . . . the comparative appreciation of the degree in which the respective faults of the vessels have contributed to the result of the collision." *The Dream Star* at [125]. Although allocation of liability requires considering "the nature and quality of a ship's

faults," *id.* at [126] (citation omitted), "[i]t is not a question of distributing moral blame," *id.* at [125]. Thus, only legal fault—here, negligence—is relevant.

The district court nowhere concluded that ALNIC's failure to act between 5:21:25 and 5:23:17 (when Rule 17(a)(ii) authorized ALNIC to maneuver to avoid collision) was negligent. Rather, as relevant here, the district court concluded only that "Rule 17(b) required ALNIC to act by 5:23:17." *Energetic Tank*, 607 F. Supp. 3d at 367 (emphasis omitted). Later, it elaborated that after ALNIC's crew observed MCCAIN's "wrong maneuver," "ALNIC dallied in autopilot and failed to take any action at all; *that choice* was negligent." *Id.* (emphasis added). To be sure, the district court criticized ALNIC for "forfeit[ing] valuable time and sea space" after Rule 17(a)(ii) took effect. *Id.* (internal quotation marks omitted). But the district court also recognized that Rule 17(a)(ii) created a "grey area" that might deceptively seem clear in "hindsight." *Id.* (internal quotation marks omitted). We do not read the district court's Rule 17(a)(ii) analysis as encompassing a negligence determination.

Nor did the district court rely on that analysis to allocate fault. The district court correctly stated Singapore law governing apportionment of liability: "Under the Brussels Convention, courts consider both 'the relative culpability of each vessel and the relative extent to which the culpability of each caused the collision.'" *Id.* at 359–60 (quoting *Otal II*, 494 F.3d at 63). True, the district court may have "distribut[ed]" some "moral blame." *The Dream Star* at [125]. But what matters is whether those moral judgments improperly influenced the court's legal conclusions. We perceive no such influence here.

The district court allocated no fault to ALNIC for her actions in the 112 seconds after MCCAIN signaled red-over-red. We find neither clear error in this apportionment nor error in the district court's underlying legal analysis.

c. The District Court Did Not Err in Concluding that ALNIC Negligently Failed to Mitigate the Collision Damage Both Before and After Striking MCCAIN.

Energetic next contests the district court's analysis of ALNIC's duty to mitigate collision damage under Rule 17(b). The district court concluded that ALNIC was negligent both in the 41 seconds preceding the collision (after ascertaining MCCAIN's "wrong maneuver") and in the 42 seconds following the moment of impact. Energetic challenges both conclusions. We consider them in sequence.

1. The District Court Did Not Err in Concluding that ALNIC Negligently Failed to Mitigate the Collision Damage Before Striking MCCAIN.

The district court identified two maneuvers available to ALNIC in the 41 seconds before the collision, starting at 5:23:17. First, by slowing down, ALNIC would have "reduc[ed] the force of impact." *Energetic Tank*, 607 F. Supp. 3d at 367. Second, by turning hard to port—the same direction in which MCCAIN was veering—ALNIC would have struck MCCAIN with a "glancing blow" rather than a "T-bone." *Id.* at 367 & n.22. Expert testimony confirmed that together, these maneuvers would have "meaningfully mitigated the collision." *Id.* at 367; *see id.* at 356. The district court accordingly concluded that ALNIC's choice not "to take

any action at all" during this period was negligent. *Id.* at 367.

Energetic asserts that "no evidence" supported the district court's finding that a hard turn to port would have reduced the collision damage. Energetic Br. at 56. "On this record," Energetic insists, "it is just as probable that a glancing blow would have opened more of MCCAIN's compartments and caused more flooding, or flooded MCCAIN's engine room, or ruptured ALNIC's tanks containing explosive pyrolysis fuel oil." *Id.* at 58.

We find Energetic's assertion unpersuasive. *First*, Energetic effectively ignores ALNIC's failure to slow down. ALNIC's duty to reduce her speed was clear. *Cf.* Rule 8(e). When it is "impracticable" for a vessel "to avoid collision," it may well be "imperative for her to reverse full speed astern." *The Etruria*, 147 F. 216, 217 (2d Cir. 1906); *cf. The Umbria*, 166 U.S. 404, 414 (1897); *The Persian*, 224 F. 441, 443 (2d Cir. 1915). That principle of prudent seamanship applied here.

ALNIC's imprudent conduct almost certainly caused greater collision damage. In the ordinary course, a collision at higher speed will be more destructive than one at lower speed. No expert testimony was needed to establish this common-sense precept. *Cf. Wills v. Amerada Hess Corp.*, 379 F.3d 32, 46 (2d Cir. 2004) Thus, the district court did not clearly err in finding that ALNIC's failure to slow down before the collision had "causative potency." *The Mount Apo* at [95] (internal quotation marks, citation, and emphasis omitted). Nor did the district court err in concluding that ALNIC's actions in this regard amounted to negligence.

Second, Energetic does not seriously contest the district court's finding that ALNIC should have turned to port. Here again, ALNIC's duty was apparent. We

determine the demands of good seamanship by looking to the conduct of a prudent mariner under the circumstances. *See The Iran Torab* [1988] 2 Lloyd's Rep. 38, 43 RHC.[16] From this perspective, good seamanship required doing what would *likely* reduce collision damage. *See* Rules 2(a), 6, 7. That every option involved some risk did not change ALNIC's obligation to act reasonably. In this case, witness testimony sufficiently supported the district court's conclusion that reducing ALNIC's angle of collision was a reasonable option. *See* App'x at 1562–63; 1755–56.

Energetic's contentions concerning causation are merely speculative. Evidence showed that because ALNIC struck MCCAIN at 48.5 degrees and not some smaller angle, she pierced MCCAIN's hull and the two vessels became entangled. *See* App'x at 2026–27. Energetic has not established that the district court's finding to this effect was clearly erroneous. *See Vasquez*, 582 F.3d at 297. Accordingly, the district court did not err in finding that ALNIC's failure to turn was a "causative fault" amounting to negligence. *The Mount Apo* at [95].

2. The District Court Did Not Err in Concluding that ALNIC Negligently Failed to Mitigate the Collision Damage After Striking MCCAIN.

The district court also faulted ALNIC for "le[aving] her engines running for 42 seconds after the collision and le[aving] her autopilot on for over a minute." *Energetic Tank*, 607 F. Supp. 3d at 368. Because "[t]hese two oversights substantially worsened the collision," the

[16] Consistent with the conventions of the Singapore Academy of Law, "LHC" and "RHC" refer to the left-hand and right-hand columns of pages in Lloyd's Law Reports.

district court concluded that they increased ALNIC's liability. *Id.* Indeed, the district court deemed ALNIC's failure to mitigate the damage after the collision "ALNIC's most inexcusable fault." *Id.*

Energetic claims once more that the district court's causation finding was clearly erroneous, arguing that "nothing in the record support[ed] the [district] court's finding that . . . ALNIC's crew could have done anything to stop the sweep, halt the massive tanker's forward momentum, or otherwise mitigate the damage to MCCAIN" after the collision. Energetic Br. 59.

We disagree. To start, ALNIC's crew was obliged to exercise the "reasonable skill or care expected of a competent/prudent seaman to prevent the vessel from doing injury." *The Mount Apo* at [97] (citation omitted). This obligation applied when ALNIC entered the Singapore Strait without taking the steering off autopilot, as required by ALNIC's manager's own internal regulations, and without operating at Bridge Manning Level III, which required a dedicated anti-collision officer and a dedicated lookout. The obligation continued when ALNIC failed first to slow down after she recognized MCCAIN's "wrong maneuver," and then to turn to port to reduce the angle of impact.

After the vessels collided, ALNIC's duty to exercise the "skill or care expected of a competent/prudent seaman" continued. *Id.* At that point, no reasonable mariner would have kept ALNIC's engine running or her autopilot engaged. To the contrary, mariners "cannot make a greater mistake" than to suppose that automatic steering alone will extricate them from danger. *The Fogo* [1967] 2 Lloyd's Rep. 208, 221 RHC. For ALNIC to "dall[y] in autopilot" after the collision was a breach of her duty. *Energetic Tank*, 607 F. Supp. 3d at 367.

These faults, too, were causative. Energetic observes that the United States's expert did not opine upon what might have happened if ALNIC's post-collision conduct had been different. But as the district court noted, that same expert testified that (1) ALNIC's rotation after the collision was caused in part by her autopilot and her running engine; and (2) that rotation exacerbated the gash in MCCAIN's hull. On this basis, the district court's finding that ALNIC's inaction exacerbated the collision damage was plainly "permissible." *Vasquez*, 582 F.3d at 297 (internal quotation marks omitted). Consequently, we find no error in the district court's conclusion that ALNIC's conduct shortly before and immediately after impact was negligent.

d. When Allocating Fault, the District Court Properly Considered ALNIC's Crewmembers' False Statements.

Finally, the district court considered the false log entries and other misrepresentations by ALNIC's crew when allocating liability. As noted above, ALNIC's log misrepresented her staffing, engine speed, and steering mode, and her crewmembers misrepresented that they had not seen MCCAIN's red-over-red lights. The district court concluded that although these lies were not "causative," they "underscore[d] the culpability of [ALNIC's] crew." *Energetic Tank*, 607 F. Supp. 3d at 369.

Energetic resists this conclusion. It claims that the district court erroneously drew upon the false statements of ALNIC's crewmembers to define the proper standard of care, rather than merely to support factual findings.

We see no such error. Under Singapore law, "only causative fault is relevant" to the apportionment of liability. *The Mount Apo* at [95]. But we must consider

both "blameworthiness and causative potency." *Id.* (internal quotation marks, citation, and emphasis omitted). Thus, once we have determined that a fault is "causative," we must consider that fault's "nature and quality." *Id.* (internal quotation marks and emphasis omitted). We may presume that logs falsified by a vessel's crew place her "in the best possible light." *The Lok Vivek* [1995] 2 Lloyd's Rep. 230, 236 LHC; *see also id.* at 239–40; *cf. Otal II*, 494 F.3d at 59. This presumption, in turn, can inform our assessment of the "nature and quality" of the vessel's faults. *The Mount Apo* at [95]. The false statements of ALNIC's crewmembers bore upon the same faults that the district court found causative. That ALNIC's crew thought those faults were important to hide underscores their gravity. The district court properly considered this concealment.

* * *

We find no clear error in the district court's factual findings and no error in its legal conclusions. We therefore must affirm the district court's judgment rejecting Energetic's counterclaim against the United States for vessel damages. In so doing, we also must affirm the district court's apportionment of fault: 20% to ALNIC and 80% to MCCAIN.

V. Sovereign Immunity.

Energetic also sought contribution and indemnification from the United States for damages that Energetic might later be found to owe the Sailor-Claimants.

To proceed, Energetic's claims must first overcome the United States's sovereign immunity. "[T]he United States, as sovereign, is generally immune from suits seeking money damages." *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 48 (2024). Such suits therefore may not proceed without the United

States's "consent." *United States v. Mitchell*, 463 U.S. 206, 212 (1983). Indeed, "the existence of consent is a prerequisite for jurisdiction." *Id.* "Congress may choose to waive" the United States's immunity, but it must do so "unmistakably." *Kirtz*, 601 U.S. at 48 (internal quotation marks omitted and alterations incorporated). And the Supreme Court has held that to waive sovereign immunity against suits by members of the armed forces for damages relating to their service, Congress must speak even more clearly. Thus, for example, the broad-brush immunity waiver in the Federal Tort Claims Act ("FTCA") does not apply to such service-related suits.[17] *See Feres v. United States*, 340 U.S. 135, 146 (1950); *United States v. Johnson*, 481 U.S. 681, 692 (1987). The same is true when a party seeks indemnification from the United States based on such claims. *See Stencel Aero Eng'g Corp. v. United States*, 431 U.S. 666, 673–74 (1977); *Lockheed Aircraft Corp. v. United States*, 460 U.S. 190, 197 n.8 (1983). This principle primarily reflects Congress's interests in preventing "civilian court[s]" from "second-guess[ing] military decisions" and in preserving "essential military discipline." *United States v. Shearer*, 473 U.S. 52, 57 (1985).

The district court concluded that *Feres* and its successors barred Energetic's contribution and indemnification claims. Energetic challenges that conclusion.

Energetic does not contest that the Sailor-Claimants are members of the armed forces (or their representatives) bringing suits for damages relating to their service. Still, Energetic notes that this case, unlike

[17] The FTCA provides: "The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances . . . ." 28 U.S.C. § 2674.

Feres and *Stencel*, arises under not the FTCA but the Suits in Admiralty Act ("SIAA") and the Public Vessels Act ("PVA").[18] Energetic further observes that its claims concern not direct damages but contribution or indemnification following the United States's own invocation of federal jurisdiction. These procedural differences matter, Energetic insists, because the Government has already produced evidence of its own fault in the Phase 1 trial, thereby disclaiming any further interest in military discipline. Finally, Energetic notes some potential unfairness: to the extent that joint-and-several liability is available here, Energetic may have to pay the full value of the Sailor-Claimants' damages claims, even though ALNIC was only 20% at fault for the collision.

We agree with the district court that the United States' sovereign immunity bars Energetic's contribution and indemnification claims. We have held that the "*Feres* doctrine" bars direct claims against the United States under the PVA and the SIAA, despite those statutes' immunity waivers. *Cusanelli v. Klaver*, 698 F.2d 82, 85 (2d Cir. 1983); *cf. Dobson v. United States*, 27 F.2d 807, 809 (2d Cir. 1928).[19] The alternative would

---

[18] The SIAA provides: "In a civil action in admiralty brought by the United States . . . an admiralty claim in personam may be filed or a setoff claimed against the United States." 46 U.S.C. § 30903(a).

The PVA states: "If the United States brings a civil action in admiralty for damages caused by a privately owned vessel, the owner of the vessel, or the successor in interest, may file a counterclaim in personam, or claim a setoff, against the United States for damages arising out of the same subject matter." 46 U.S.C. § 31102(b).

[19] It appears that each of our sister circuits to have considered the question has agreed. *See Blakey v. U.S.S. Iowa*, 991 F.2d 148, 151–52 (4th Cir. 1993) (collecting cases).

create an "artificial distinction . . . between accidents to servicemen on land and at sea." *Hillier v. S. Towing Co.*, 714 F.2d 714, 724 (7th Cir. 1983). Thus, the statutory differences between *Feres* and this case referenced by Energetic do not support Energetic's position.

Neither are the procedural differences significant. The Supreme Court has instructed that the reasons for barring "third-party indemnity action[s]" by service-members are "essentially the same" as those for barring "direct action[s]." *Stencel*, 431 U.S. at 673; *see also Vulcan Materials Co. v. Massiah*, 645 F.3d 249, 267 (4th Cir. 2011). We believe the same is true for contribution claims. *See In re McAllister Towing & Transp. Co.*, 432 F.3d 216, 224 (3d Cir. 2005). And as a general matter, "jurisdictional limitations based on sovereign immunity apply equally to counterclaims against the Government," where the United States has invoked federal jurisdiction for other purposes. *United States v. Forma*, 42 F.3d 759, 764 (2d Cir. 1994) (internal quotation marks and citation omitted).[20] In this case, we need do little more than combine these principles to hold that sovereign immunity bars Energetic's contribution and indemnification claims. Not to do so would create an aberrant exception to *Feres*'s ordinary sweep.

---

[20] Our precedents recognize a "recoupment-counterclaim" exception to this rule, under which a party sued by the United States may subtract the amount it is owed by the United States from any damages it must pay. *See Forma*, 42 F.3d at 764–65. The PVA and SIAA also allow parties to claim a "setoff" that accomplishes largely the same thing. 46 U.S.C. §§ 31102(b), 30903(a). While these options might have been available to Energetic at the outset of this action, it failed to timely raise them in the district court. Accordingly, we decline its request to remand for the district court to consider them now.

We reject as well Energetic's suggestion that the *Feres* doctrine does not apply because the Government participated in the Phase 1 trial. It is true that *Feres* reflects the judiciary's reluctance to "second-guess[] military orders" or to "require members of the Armed Services to testify in court as to each other's decisions and actions," and that these scenarios have already materialized here. *Stencel*, 431 U.S. at 673. But we do not "inquire into 'the extent to which particular'" proceedings, such as the Phase 2 trial, "would call into question military discipline and decisionmaking." *Doe v. Hagenbeck*, 870 F.3d 36, 45 (2d Cir. 2017) (internal quotation marks omitted) (quoting *United States v. Stanley*, 483 U.S. 669, 682 (1987)). *Feres* reflects our reading of Congress's enactments. *See* 340 U.S. at 140, 146. Nothing in either the SIAA or the PVA permits case-by-case consideration of military needs.

We recognize that MCCAIN, not ALNIC, was overwhelmingly responsible for the collision. We recognize, too, that several jurists—including some on this court—have criticized the *Feres* doctrine. *See, e.g.*, *Taber v. Maine*, 67 F.3d 1029, 1038–42 (2d Cir. 1995). Even so, what Energetic would call that doctrine's extension, we view as only its ordinary application to new facts. It is not for us to say that the United States's assertion of immunity here goes too far.

CONCLUSION

We DISMISS the Sailor-Claimants' cross-appeals (Nos. 22-2871 and 22-2883). We AFFIRM the judgments of the district court (1) apportioning liability and (2) dismissing Energetic's contribution and indemnification claims in both Energetic's appeals (Nos. 22-1765 and 22-2774).

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 18-cv-1359 (PAC) (RWL)

In the Matter of the Complaint of ENERGETIC TANK, INC., as Owner of the M/V ALNIC MC, for Exoneration from or Limitation of Liability

---

OPINION & ORDER

This case concerns a collision that occurred on August 21, 2017, in the Singapore Strait between a United States Navy warship and an oil tanker. Petitioner Energetic Tank, Inc. filed this action seeking either exoneration or limitation of its liability. The United States and dozens of injured or deceased sailors (collectively the "Sailor-Claimants") then brought claims against Petitioner, seeking damages sounding in tort. The Court divided proceedings into two discrete phases: liability for the collision ("Phase I"), and damages resulting from the collision ("Phase II"). This Opinion resolves the Petitioner's outstanding contribution claim from Phase I and begins to lay the groundwork for Phase II.

The Court assumes familiarity with the record as set forth in its previous Opinion and therefore only briefly summarizes it here. *See generally Matter of Energetic Tank, Inc.,* No. 18CV1359, 2022 WL 2159786 (S.D.N.Y. June 15, 2022) (the "Phase I Opinion"). In Phase I, following a bench trial, the Court determined Petitioner was 20% at fault for the collision, while the United

States was 80% at fault. Accordingly, the Court concluded the Petitioner was liable to the United States for damages in the amount of $37,000,000 (20% of the United States' stipulated damages to its vessel, the U.S.S. JOHN S. MCCAIN), minus $353,956 (80% of the Petitioner's stipulated damages to its vessel, the M/V ALNIC), plus interest.

The Petitioner and the United States have both filed interlocutory appeals of the Phase I Opinion.[1] *See* ECF Nos. 409, 412. The United States' appeal also challenges the Court's determination that Singapore law applies to substantive matters of liability and damages in this case.

Before issuing the final Judgment from Phase I, the Court solicited additional briefing on whether the Petitioner could claim contribution from the United States in Phase II—where the Court will resolve claims by the individual Sailor-Claimants against the Petitioner alone.[2] Having heard from the parties on this issue, the Court determines that (1) the Court need not stay this case pending the interlocutory appeals; and (2) Petitioner cannot claim contribution from the United States.

---

[1] The Second Circuit remanded the case to this Court for the limited purpose of permitting the Court to correct the Phase I Opinion damage calculation and certify the opinion as a final judgement regarding the United States' claim for damages to the MCCAIN. *See* ECF No. 416. The Court complied with that order, *see* ECF. Nos. 417, 418, after which jurisdiction automatically restored to the Second Circuit. *See United States v. Jacobson, 15* F.3d 19, 22 (2d Cir. 1994).

[2] The Court continues to reserve decision on which Sailor-Claimants, if any, have a right to a jury trial in Phase II.

I. NO STAY OF PROCEEDINGS IS WARRANTED

The Court will press forward with the Phase II litigation notwithstanding the pending appeals from Phase I. A party may take an interlocutory appeal from a decision that "determin[es] the rights and liabilities of the parties to admiralty cases" as the Phase I Opinion did by apportioning liability between the Petitioner and the United States. 28 U.S.C. § 1292(a)(3); *see also Chem One, Ltd. v. MN RICKMERS GENOA,* 660 F.3d 626, 640 (2d Cir. 2011) (permitting interlocutory appeal where some, but not all, admiralty parties had their rights and liabilities determined).

Unlike an appeal from a final decree, district courts typically do not stay proceedings pending an interlocutory appeal. *See* 16 Wright & Miller, *Federal Practice and Procedure* § 3921.2; *Fitzgerald v. Compania Naviera La Molinera,* 394 F. Supp. 402, 412 (RD. La. 1974). Here, the Court divided proceedings into two phases: liability for the collision, and individual damage claims resulting from the collision. While the cross-appeals divest this Court of jurisdiction to modify the liability issue, they do not divest jurisdiction over the unaddressed damages issue. *See In re Delphinus Maritima, S.A.,* No. 79 Civ. 2496, 1981 WL 6769661 (S.D.N.Y. Apr. 24, 1981) (in a bifurcated collision case, district court had "jurisdiction over the damages portion of the trial notwithstanding the appeals from its decision as to liability").

Nor, on balance, would a stay be in the interest of justice. To be sure, the Phase II proceedings would be disrupted if the Second Circuit reverses the underlying decisions from Phase I that adopted Singapore law and apportioned liability. Nevertheless, no party has sought a stay, and the risks from a possible years-long delay pending appeal—risks including stale

evidence and testimony, and of deferred resolution of personal injury and wrongful death claims that are unquestionably significant to the Sailor-Claimants—weigh heavily in favor of proceeding as planned. *See Delphinus Maritima,* 1981 WL 6769661; *Coumou v. United States,* No. CIV. A. 93-1465, 1995 WL 144581, at *2 (E.D. La. Mar, 30, 1995).

II. PETITIONER'S CONTRIBUTION CLAIM IS BARRED

The Petitioner has claimed a right to contribution from the United States in the event that the

Petitioner pays damages to the Sailor-Claimants in Phase EL *See* Pet'r's Verified Counterclaim ¶ 37, ECF No. 40. The Court concludes that United States sovereign immunity bars this contribution claim.[3]

A. United States Law Applies to Determine the United States' Sovereign Immunity.

The Sailor-Claimants have all sued the Petitioner, but none have sued the United States. In admiralty, however, a joint tortfeasor who pays more than its apportioned share of an injured party's damages may generally seek contribution from the other tortfeasors. *See* Singapore Maritime Conventions Act 1911, § 3{1) (Cap. 1A3, 2004 Rev. Ed.); 2 Schoenbaum, *Admiralty*

[3] The Petitioner's counterclaim also sought indemnity, where any loss to the Sailor-Claimants would shift entirely to the United States. Given that Petitioner was found liable in tort for the collision and that its liability to the Sailor-Claimants is not limited, Petitioner would likely not prevail on the merits of an indemnity claim. *See Hillier v. Southern Towing Co.,* 714 F.2d 714, 717-22 (7th Cir. 1983). In any event, an indemnity claim would be subject to the same sovereign immunity bar as a contribution claim, *id.* at 22, so the Court's contribution discussion applies to Petitioner's indemnity claim as well.

and Maritime Law § 5:16 (6th Ed.) (same result under American law). Since the Petitioner was only 20% at fault for the collision, Petitioner could seek contribution from the United States—were the United States a private party—as joint tortfeasor for 80% of any damages it pays to the Sailor-Claimants in Phase II. The sovereign status of the United States, however, complicates that picture.

Before the Phase I trial, the Court issued a choice-of-law decision, holding that Singapore law applies in this case to substantive issues of liability and damages. To do so, the Court analyzed the choice-of-law factors from *Lauritzen v. Larsen,* 345 U.S. 571 (1954), and concluded that on balance, Singapore law was better suited than American law to litigate liability and damages from a collision that occurred in Singapore territorial waters. *See Matter of Energetic Tank, Inc.,* No. 118CV1359PACRWL, 2020 WL 114517, at *7 (S.D.N.Y. Jan. 10, 2020) ("Choice of Law Opinion"), *reconsideration denied,* No. 118CV1359PACRWL, 2020 WL 978257 (S.D.N.Y. Feb. 28, 2020). The parties now dispute whether Singapore law would *incorporate* American sovereign immunity law to bar Petitioner's contribution claim.

The Court disagrees, however, with the underlying assumption that Singapore law provides the correct analytical framework. The Court can instead substitute that complicated two-step analysis with a straightforward analysis under purely American law. That is, as a United States federal court, the Court must apply federal sovereign immunity law as a jurisdictional matter, even though foreign law still applies to substantive issues in the case.

Subject-matter jurisdiction is a quintessentially threshold issue—one that does not implicate the

Court's previous *Lauritzen* choice-of-law analysis. "A federal court's authority to hear cases in admiralty flows initially from the Constitution, which 'extend[s]' federal judicial power 'to all Cases of admiralty and maritime Jurisdiction.'" *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.,* 513 U.S. 527, 531 (1995) (quoting U.S. Const., Art. III, § 2). The analytical inquiry into subject-matter jurisdiction "decides only whether Congress intended to confer judicial power, and whether it is authorized to do so by Article III. The choice of law inquiry is a much broader one, primarily concerned with fairness; consequently, it looks to wholly different considerations." *Filartiga v. Pena-Irala,* 630 F,2d 876, 889 (2d Cir. 1980) (citations omitted). Indeed, Courts of Appeals that have addressed the issue have concluded the *Lauritzen* analysis only applies to a choice-of-law analysis, not a subject-matter jurisdiction analysis. *See Neely v. Club Med Mgmt. Servs., Inc.,* 63 F.3d 166, 177-78 (3d Cir. 1995) (en Banc); *Flame S.A. v. Freight Bulk Pte. Ltd.,* 807 F.3d 572, 580 (4th Cir. 2015); *Warn v. M/Y Maridome,* 169 F.3d 625, 627-28 (9th Cir. 1999), *as amended* (May 3, 1999). Thus, determining subject-matter jurisdiction over the Petitioner's contribution claim does not disturb this Court's previous *Lauritzen* analysis about choice-of-law.

The United States' sovereign immunity, in turn, goes to the Court's Article III jurisdiction. "It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction." *United States v. Mitchell,* 463 U.S. 206, 212 (1983). "Indeed, the terms of the United States' consent to be sued in any court define that court's jurisdiction to entertain the suit." *F.D.I.C. v. Meyer,* 510 U.S. 471, 475 (1994) (internal quotations and alterations omitted).

One such jurisdictional bar is the *Feres-Stencel* doctrine, which maintains the United States' sovereign immunity against certain claims by military servicemembers—and by extension, claims by third parties who seek indemnity or contribution for those servicemembers' claims. *See generally Feres v. United States,* 340 U.S. 135 (1950); *Stencel Aero Eng'g Corp. v. United States,* 431 U.S. 666 (1977). Since the *Feres-Stencel* doctrine defines the contours of federal sovereign immunity, it likewise defines the contours of the Court's jurisdiction over Petitioner's counterclaim. *See In re Agent Orange Prod. Liab. Litig.,* 818 F.2d 204, 208 (2d Cir. 1987) *("Feres* . . has been held in some cases to go to the very jurisdiction of the court. It precludes [servicemember-laintiffs] from recovering the contribution they seek." (citations omitted)); *Matthew v. United States,* 311 F. App'x 409, 411 (2d Cir. 2009) (noting the application of the *Feres* doctrine precluded servicemember-plaintiffs "from carrying their jurisdictional burden").

Indeed, the *Feres-Stencel* doctrine is designed, in part, to avoid thorny choice-of-law problems in the first place. One of the doctrine's key rationales is the desire for uniform application of federal sovereign immunity law—regardless of the place of injury. The *Feres* Court observed "the scope, nature, legal incidents and consequence of the relation between persons in service and the Government are fundamentally derived from federal sources and governed by federal authority." 340 U.S. at 143-44 (quoting *United States v. Standard Oil Co.,* 332 U.S. 301, 305-06 (1947)).

Acknowledging the military's activities in all 50 states, the *Stencel* Court concluded "it would make little sense to have the Government's liability to members of the Armed Services dependent on the

fortuity of where the soldier happened to be stationed at the time of the injury." 431 U.S. at 671; *see also Standard Oil Co.,* 332 U.S. at 305 (holding that federal, not state, law must determine "the creation or negation" of the United States' right to indemnity for a soldier's injury by third persons (citing *Clearfield Tr. Co. v. United States,* 318 U.S. 363 (1943)). Problems with a disunified state law approach to federal sovereign immunity would also apply—perhaps even more so—to the international sphere, given the breadth of the United States military's global footprint.[4] Accordingly, this Court must apply the law of its own sovereign—the United States—to determine the immunity of that sovereign.

B. Under United States Law, the *Feres-Stencel* Doctrine Bars the Petitioner's Contribution Claim.

The United States generally maintains its sovereign immunity except where Congress expressly promulgates a waiver by statute. *See Liffiton v. Keuker,* 850 F.2d 73, 77 (2d Cir. 1988). The Petitioner has the burden of proving, by a preponderance of the evidence, that jurisdiction exists over its claim against the United States. *See Garcia v. Akwesasne Hous. Auth.,* 268 F.3d 76, 84 (2d Cir. 2001).

Here, the Petitioner bases its contribution claim on two federal statutes: the Public Vessels Act ("PVA"), 46

---

[4] Consider the Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et seq.,* which contains a categorical exception to its sovereign immunity waiver for "[a]ny claim arising in a foreign country," *id.* at § 2680(k), evidencing Congress's "unwilling[ness] to subject the United States to liabilities depending upon the laws of a foreign power." *Sosa v. Alvarez-Machain,* 542 U.S. 692, 707 (2004) (quoting *United States v. Spelar,* 338 U.S. 217, 221 (1949)).

U.S.C. §§ 31101 *et seq.,* and the Suits in Admiralty Act ("SIAA"), 46 U.S.C. §§ 30901 *et seq. See* Pet'r's Verified Counterclaim ¶ 2. Through the PVA, Congress waives the United States' sovereign immunity for "damages caused by a public vessel," including a Navy vessel like MCCAIN. 46 U.S.C. § 31102. Similarly, the SIAA waives sovereign immunity when an equivalent civil action in admiralty could have been brought against a private owner or operator of the United States' vessel. *See* 46 U.S.C § 30903(a). These waivers allowed the Petitioner to assert a claim against the United States, in Phase I, for the collision damages to ALNIC caused by MCCAIN.[5]

However, both the PVA and SIAA incorporate a key exception to their immunity waivers: the *Feres-Stencel* doctrine. In *Feres,* the Supreme Court held that under the Federal Tort Claims Act ("FTCA"), the United States is immune to claims regarding injuries to military servicemembers "where the injuries arise out of or are in the course of activity incident to service." 340 U.S. at 146. Subsequently, in *Stencel,* the Supreme Court extended *Feres* to bar third parties' claims against the United States for contribution or indemnity when those third parties are sued by

[5] The United States could selectively submit to Petitioner's counterclaim regarding vessel damages without necessarily submitting to a counterclaim for contribution. Courts assess federal sovereign immunity on a claim-by-claim basis. *See Brownback v. King,* 141 S. Ct. 740, 746-77 (2021). And by filing a claim against Petitioner, the United States did "not thereby consent to be sued on a counterclaim based upon a cause of action as to which it had not otherwise given its consent to be sued." *United States v. Forma,* 42 F.3d 759, 764 (2d Cir. 1994) (internal quotation omitted).

servicemembers seeking to recover for injuries arising from their service. *See* 431 U.S. at 673-74.

The Second Circuit has held that the *Feres* bar, although originating in the FTCA, also applies to suits brought under the PVA or SIAA. *See Cusanelli v. Klaver,* 698 F.2d 82, 85 (2d Cir. 1983). Thus, no matter which statute applies, *Feres* would bar any direct claims by the Sailor-Claimants' against the United States. And critically, *Stencel* extends that sovereign immunity to bar Petitioner's third-party claim against the United States for contribution arising out of those Sailor-Claimants' claims.

The *Feres-Stencel* doctrine applies squarely to the facts of this case. The Sailor-Claimants' claims undisputedly arise out of their military service: they were serving aboard the U.S.S. JOHN S. MCCAIN, in the middle of a six-month deployment, when their warship collided with the MN ALNIC in the Singapore Strait. Those Sailor-Claimants have sued the Petitioner, who in turn has asserted a contribution claim against the United States for its role in the collision. The United States has not waived its sovereign immunity for this contribution claim, and the Petitioner has not proven otherwise.

Moreover, the "three broad rationales underlying the *Feres* decision" all apply here. *United States v. Johnson,* 481 U.S. 681, 688 (1987). First, the *Feres-Stencel* doctrine protects the uniquely federal nature of the sovereign-soldier relationship. As discussed in the jurisdictional analysis above, that rationale is strongly present here because "[p]erformance of the military function" aboard a guided-missile destroyer "in diverse parts of the country and the world entails a `[s]ignificant risk of accidents and injuries.'" *Id.* at 689 (quoting *Stencel,* 431 U.S. at 672). Second, the

United States has implemented a statutory no-fault compensation scheme for the Sailor-Claimants through the Veterans' Benefits Act.[6] That "compensation scheme provides an upper limit of liability for the Government as to service-connected injuries. To permit [P]etitioner's claim would circumvent this limitation, thereby frustrating one of the essential features of the Veterans' Benefits Act." *Stencel,* 431 U.S. at 673. Third and finally, allowing the Sailor-Claimants to sue the United States for the collision would have serious effects on military discipline. It would "involve second-guessing military orders, and would often require members of the Armed Services to testify in court as to each other's decisions and actions," perhaps in the hopes of a large recovery. *Id.*

The Petitioner argues this third "military discipline" justification is absent because the Court already second-guessed Navy decisions when MCCAIN' s negligence was litigated in the Phase I trial. *See* Pet'r's Br. at 8, ECF No. 395. On this point, *Vulcan Materials Co. v. Massiah,* 645 F.3d 249 (4th Cir. 2011) is persuasive. In that collision case involving a United States vessel, the Fourth Circuit rejected the argument that already-litigated liability would moot concerns about military discipline. Multiple Navy witnesses had already testified in depositions and at trial, yet the *Vulcan*

---

[6] The United States represents (Br. at 16 n.12, ECF No. 392) that it has paid the Sailor-Claimants under the following statutes: 10 U.S.C. §§ 1475 *et seq.* (military death gratuity); 10 U.S.C. § 1074 (military medical and dental care); 38 U.S.C. § 1131 (basic veterans' benefit entitlement for disability suffered in the line of duty); 38 U.S.C. §§ 1310 *et seq.* (VA dependency and indemnity compensation for survivors of servicemembers who die in the line of duty); 38 U.S.C. § 1710 (continuing medical care for veterans' service connected disability); and 38 U.S.C. §§ 2301 *et seq.* (VA burial benefits).

Court held that the *Feres-Stencel* doctrine still applied after trial. *See id.* at 266.

Put another way, nothing in the *Feres-Stencel* doctrine suggests the United States suddenly waives its sovereign immunity against its servicemembers' claims once those servicemembers have finished testifying about military decisions. Rather, "a suit based upon service-related activity" will "necessarily implicate[] the military judgments and decisions that are inextricably intertwined with the conduct of the military mission[,]" even if "military negligence is not specifically alleged." *Johnson,* 481 U.S. at 691. And, as a general matter, a broader interpretation is appropriate because "[s]uits brought by service members against the Government for service-related injuries could undermine the commitment essential to effective service and thus have the potential to disrupt military discipline in the broadest sense of the word." *Id.*

Given that *Feres* and *Stencel* are directly on point, the Petitioner ultimately asks this Court to overrule these cases as wrongly decided because a party bearing far less responsibility for the collision cannot seek any reimbursement from the more responsible tortfeasor for the Sailor-Claimants' multimillion-dollar claims. *Feres-Stencel,* however, was "specifically intended" to bar government contribution from massive, service-related torts, including those at issue here. *In re Agent Orange Prod. Liab. Litig.,* 818 F.2d at 206. The Supreme Court has repeatedly reaffirmed both *Feres* and *Stencel* over the course of seventy years, *see, e.g., Johnson,* 481 U.S. at 692, and this Court must follow directly applicable Supreme Court precedent, *see United States v. Donziger,* 38 F.4th 290, 303-04 (2d Cir. 2022). The Court lacks jurisdiction over Petitioner's contribution claim, and that claim is therefore dismissed.

Dated: New York, New York
October 12, 2022

SO ORDERED

/s/ Paul A. Crotty
HONORABLE PAUL A. CROTTY
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 18-cv-1359 (PAC) (RWL)

In the Matter of the Complaint of ENERGETIC TANK, INC., as Owner of the M/V ALNIC MC, for Exoneration from or Limitation of Liability

---

OPINION & ORDER

Before dawn on August 21, 2017, two large ships collided in the west-bound lane of the traffic separation scheme of the Singapore Strait. The U.S.S. JOHN S. MCCAIN, a 9,000-ton Navy guided-missile destroyer, had been cruising alongside the M/V ALNIC, a 39,000-ton oil tanker. In a matter of minutes, MCCAIN overtook the ALNIC and turned suddenly to her left—directly in front of the lumbering tanker. ALNIC's bow pierced the broadside of the destroyer, flooding compartments with seawater and fuel within seconds. Ten Navy sailors were killed and dozens more were injured. Both vessels also sustained significant damage.

This admiralty case resolves the civil liability resulting from that collision.[1] The owner of ALNIC,

---

[1] As a collision action concerning two vessels, this case arises under the Court's civil admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333. Venue is proper in this District under Rule F(9) of the Supplemental Rules for Admiralty or Maritime Claims of the Federal Rules of Civil Procedure. Rule F(9) permits venue in "any district" if, at the time of filing, the vessel at issue had not been attached or arrested in any district,

Energetic Tank, Inc. ("Petitioner"), contends MCCAIN was 100% at fault for the collision. The United States concedes MCCAIN bears some fault but argues ALNIC played a role in the collision as well.

The Petitioner began this case by filing a complaint seeking exoneration from—or alternatively, limitation of—liability for the collision. *See* ECF No. 1. The Court then ordered any claimants to file claims arising from the collision. *See* ECF No. 4. Forty-two claims were filed against the Petitioner. All but one of the Claimants are Navy sailors or their representatives (the "Sailor-Claimants"). Ten Sailor-Claimants filed wrongful death claims; the other thirty-one filed personal injury claims. *See* ECF No. 85-1 (schedule of claims). The final Claimant is the United States, which seeks to recover for damage to MCCAIN. *See* ECF No. 34. The Petitioner has counterclaimed against the United States,[2] alleging damage to ALNIC and

---

the vessel was not within any district, and no suit against the vessel's owner had been commenced in any district.

[2] The United States has waived its sovereign immunity against Petitioner's counterclaim. Two federal admiralty statutes waive sovereign immunity in certain collision cases: The Suits in Admiralty Act, 46 U.S.C. § 30901 *et seq.*, and the Public Vessels Act, 46 U.S.C. § 31101 *et seq*. The two statutes overlap significantly, but where their terms conflict, the Public Vessels Act controls. *See United States v. United Continental Tuna Corp.*, 425 U.S. 164, 181 (1976). The Public Vessels Act waives the United States' immunity for "damages caused by a public vessel," including a Navy vessel like MCCAIN. 46 U.S.C. § 31102. Thus, a private party sued by the United States for damages caused by that party's vessel may file a counterclaim or claim a setoff against the United States for damages arising out of the same collision. *See id.* The same liability rules that apply to private parties also govern claims against the United States. *See id.* § 30907(a).

seeking contribution and indemnity for any claims brought by the Sailor-Claimants. *See* ECF No. 40.

The Court split this case into two trial phases. *See* ECF No. 240. In Phase I, the Court apportions liability for the collision between the Petitioner and the United States and calculates the two parties' respective damages. Assuming, in Phase I, that the Petitioner is found at least partially liable for the crash, in Phase II the Court will then adjudicate the personal injury and wrongful death claims by the Sailor-Claimants against the Petitioner.

Phase I was tried as a bench trial over five days in November 2021. This Opinion provides the Court's findings of fact and conclusions of law from that Phase I trial. In sum, both vessels were responsible for the collision: the Court apportions 80% of fault to MCCAIN and 20% of fault to ALNIC, and declines to limit the Petitioner's liability.

FINDINGS OF FACT[3]

I. The U.S.S. JOHN S. MCCAIN

A. MCCAIN's Background

1. The U.S.S. JOHN S. MCCAIN is a U.S. Navy Arleigh Burke class missile destroyer commissioned in 1994. She is 505 feet long and carries a gross tonnage of approximately 9,000 tons. Around 300 sailors serve aboard MCCAIN. *See* Ex. 438 (the "Navy Report") at US0033414.

2. At all relevant times, MCCAIN served as part of the Navy's 7th Fleet, with a home port in Japan. At the

[3] The Court's findings of fact are governed by the preponderance of the evidence standard. *See Mahramas v. Am. Exp. Isbrandtsen Lines, Inc.*, 475 F.2d 165, 168 (2d Cir. 1973).

time of the collision, MCCAIN was in the middle of a six-month deployment in the Western Pacific. *See* Navy Report at US0033414, US0033416.

3. As a Navy destroyer, MCCAIN has heightened speed and maneuverability compared to non-military vessels. She is powered by four gas turbine engines which drive two controllable-pitch (and reversable-pitch) propellers. The Commander of MCCAIN at the time of the collision, Alfredo Sanchez, testified at trial that these features allow the destroyer to turn or stop very quickly. MCCAIN's maneuverability was especially superlative when compared to ALNIC's; analogizing to automobiles on a highway, Commander Sanchez likened his destroyer to a "Lexus" car and ALNIC to a "semi" truck. *See* Trial Tr. (Sanchez) at 209:20-210:24.

B. MCCAIN's Control System

4. MCCAIN's steering and thrust were controlled through her Integrated Bridge and Navigation System ("IBNS"). At the time of the collision, the IBNS was a new feature for MCCAIN, having been installed about one year prior. *See* Trial Tr. (Sanchez) at 153:5-17; Ex. 4034 (Becker 30(b)(6) Dep. Tr.) at 13:16-21. MCCAIN's Chief Engineer explained that the IBNS console, "at first glance, looks nothing like a traditional steering console," with a touchscreen containing "extensive functions, drop down menus, and hosts of configurations." Ex. 299 at US0033030. In short, the IBNS "changed the entire concept of the steering system" away from the traditional steering wheel. *Id.*

5. The IBNS relied on a touchscreen to monitor and control, among other things, the thrust (i.e., speed or acceleration of the ship) and steering (i.e., direction of the ship). Both thrust and steering factored into the collision.

6. As to *thrust*: on the right side of the IBNS touchscreen, the operator could control the thrust or transfer control for each propeller to another station on the destroyer. *See* Ex. 86 (image of IBNS touchscreen); Ex. 4034 (Becker 30(b)(6) Dep. Tr.) at 54:2-14; Ex. 4036 (Irvin Dep. Tr.) at 62:11-63:1; *see also generally* Ex. 91 (procedures for transferring thrust control).

7. The IBNS had a button to "gang" the propellers together (i.e., changes to one propeller's speed would automatically apply to the other propeller too). Conversely, the operator could "un-gang" the propellers, mismatch the thrust, and thereby turn MCCAIN quickly. *See* Trial Tr. (Sanchez) at 208:9-20; *id.* (Hight) at 496:11-23.

8. Having transitioned to the new IBNS touchscreen, MCCAIN lacked a physical thrust lever. That meant an operator needed to look at the IBNS touchscreen to see whether thrust was ganged or un-ganged. *See* Trial Tr. (Sanchez) at 214:2-215:4.

9. The IBNS had another button called "All Stop," which would stop the engines and propeller thrust immediately—regardless of whether thrust was ganged or un-ganged. *See* Ex. 4034 (Becker 30(b)(6) Dep. Tr.) at 59:20-25, 63:19-64:15.

10. As to *steering*: using an IBNS touchscreen, an operator would digitally move the position of the rudders to steer the destroyer. There was also a manual steering wheel located between the helm and lee helm stations, as well as one located at aft steering—a separate station near the stern of the vessel. *See* Ex. 84 at US0006969, US0006975.

11. An operator could also transfer steering control to another station. MCCAIN could be steered from multiple stations on the bridge, including the helm

and lee helm. But steering could also be controlled from a location not on the bridge: aft steering, located in the stern of the destroyer. *See* Trial Tr. (Sanchez) at 153:22-154:4, 154:25-155:2; Ex. 84 at US0006966, US0006973. Ordinarily, the station with control of steering would need to grant consent on the IBNS touchscreen to send control to another station. However, when the ship was in "backup manual" mode, another station could unilaterally seize control of steering without consent. *See* Trial Tr. (Sanchez) at 191:7-21, 192:8-193:6.

12. The IBNS touchscreen displayed a considerable amount of steering information. For example, on the left side of the screen, the operator could see which station had control of steering and which mode of steering the ship was in. In the middle of the touchscreen, the operator could see the angles at which the rudders were positioned. *See* Trial Tr. (Sanchez) at 207:20-208:8; Ex. 86; Ex. 4034 (Becker 30(b)(6) Dep. Tr.) at 46:5-23.

13. Like the All Stop button for thrust, MCCAIN had an emergency button for steering. Pressing this "Emergency Override to Manual" button, commonly known as the "Big Red Button," would immediately take control of steering from any other station on MCCAIN. *See* Trial Tr. (Mitchell) at 682:17-683:10; Ex. 82 at US0017941; Ex. 84 at US0007043. Unlike the All Stop button for thrust, the Big Red Button for steering was not located on the IBNS touchscreen; rather, it was physically located on a station itself. There was a Big Red Button between the helm and lee helm stations, where an operator at either station could press it, as well as one on the aft steering station. *See*

Trial Tr. (Sanchez) at 186:1-15; Ex. 84 at US0006969, US0006975.[4]

14. In the event of a loss of steering, the crew had written instructions within arm's reach, printed in a small red binder hanging on the station, next to the Big Red Button. Crewmembers were trained to memorize the basic instructions from the red binder. *See* Trial Tr. (Sanchez) at 184:22-185:12, 187:6-18; *id.* (Irvin) at 677:22-678:4; *id.* (Mitchell) at 695:18-696:2.

15. Per those instructions, should MCCAIN lose steering, the operator at the helm or lee helm station was supposed to press the Big Red Button immediately—right after reporting the loss of steering to officers on the bridge, and without awaiting any additional command in response. *See* Trial Tr. (Sanchez) at 185:19-186:3; *id.* (Irvin) at 678:5-9; Ex. 88 at 3.

C. MCCAIN's Collision-Avoidance Equipment

16. For safety vis-à-vis other ships, MCCAIN had an Automatic Identification System ("AIS"), which could exchange certain information with surrounding ships. AIS information could include a vessel's name, position, course, speed, and navigational status. *See* Ex. 3043 (Hanna Dep. Tr.) at 97:6-98:11.

17. Commercial vessels are required to constantly transmit AIS data, but a military vessel like MCCAIN could configure her AIS to receive data from other vessels while declining to transmit her own data. *See* Trial Tr. (Sanchez) at 165:24-166:1; *id.* (Putty) at 415:18-25. Nevertheless, under Navy guidelines,

[4] These types of redundancies—where multiple stations on the destroyer could carry out the same orders—were especially intended for combat situations where a casualty in one area of the warship would not necessarily render her inoperable.

MCCAIN had the "prerogative and responsibility to use active AIS as a tool for safety of ship." Ex. 447 at US0064860; *see also* Trial Tr. (Sanchez) at 166:2-22; Ex. 4025 (United States' admissions) at ¶ 61.

18. On the morning of the collision, Commander Sanchez had the AIS set to receive-only mode, meaning MCCAIN was not transmitting any navigational data to nearby commercial vessels like ALNIC. *See* Trial Tr. (Sanchez) at 166:6-168:25.

19. Another collision-avoidance feature on MCCAIN was her lighting system. Displaying different configurations of external lights and colors allows a vessel to signal its status to nearby ships. For example, vessels may find themselves "not under command," meaning they are unable to maneuver normally and are at risk of crashing into other vessels. A vessel that is not under command is supposed to energize "red-over-red" lights on her masthead while turning off other lights. Those red-over-red lights let nearby observers know the vessel is not under command. *See* Trial Tr. (Sanchez) at 217:16-218:2 ("[R]ed-over-red, the captain is dead. That's what the little pneumonic is to learn it. Because it includes the captain is dead with the idea that, hey, the vessel is not under command."). To energize MCCAIN's red-over-red lights, a crewmember had to turn a switch on the bridge, while also being sure to turn off the normal white masthead lights. *See* Trial Tr. (Fields) at 111:17-112:1; *id.* (Hanna) at 667:2-4; *id.* (Woolson) at 710:12-20; Ex. 120 (photo of light control panel); Ex. 277 (photo of switch for red-over-red lights).

D. The COLREGS

20. This obligation to energize "red-over-red" when not under command is one of many duties imposed upon both MCCAIN and ALNIC under the universal

maritime "rules of the road" known as the COLREGS. Also called the International Regulations for Preventing Collisions at Sea, the COLREGS provided core statutory duties applicable to both ships in this case.

21. For example, as relevant to this case, the COLREGS govern (1) how ships must act when overtaking (or being overtaken by) another ship; (2) when, and how, ships are allowed and/or required to react as the risk of collision with another ship increases; (3) general staffing guidelines for ships, including the need for a dedicated lookout; etc. The COLREGS are discussed in detail later in this Opinion.

E. MCCAIN's Recorded Data

22. MCCAIN's computers continuously recorded electronic data including steering and thrust orders and responses, vessel track information, and video of the IBNS touchscreen in aft steering. *See generally* Ex. 93 (steering control log); Ex. 94 (thrust control log); Ex. 97 (video from aft steering).

F. MCCAIN's Crew and Their Training

23. MCCAIN had "watch bills" that assigned crew depending on the destroyer's needs. On the morning of the collision, MCCAIN was staffed on a "Modified Navigation Detail," used when the destroyer was "in proximity of water too shallow to safely navigate as occurs when entering ports." Navy Report at US0033416. Under this watch bill, MCCAIN's bridge would have a larger—and more experienced—crew than under a typical watch bill. *See* Trial Tr. (Fields) at 118:16-119:6; *id.* (Sanchez) at 170:23-25, 171:15-172:16.

24. An even higher watch bill existed for the most complicated situations, such as entering a narrow channel into port, called "Sea and Anchor Detail." This

watch bill called for additional specialized personnel to help navigate the destroyer. For example, when Sea and Anchor Detail was ordered, the Helmsman would be replaced by a more experienced Master Helmsman, and the Helm Safety Officer and Lee Helmsman positions—both unstaffed for lower details—would be staffed to assist with steering and thrust. *See* Trial Tr. (Sanchez) at 181:16-22; Ex. 44 (watch bill for typical conditions); Ex. 102 (watch bill for Sea and Anchor Detail).

25. Although she was navigating a crowded separation scheme, MCCAIN had not set the Sea and Anchor Detail before the collision. This was a deliberate choice. Commander Sanchez explained at trial he decided not to schedule the transition to Sea and Anchor Detail when MCCAIN entered the Singapore Strait—despite his officers' recommendation to do so—because he believed the shift in personnel could disrupt operations. Because Commander Sanchez believed that navigating the initial entrance to the Singapore Strait was more precarious than transiting in the Strait afterwards, he reasoned it was worth delaying personnel changeover until after the destroyer had cleared the Strait's entrance. Accordingly, he scheduled Sea and Anchor Detail for 6:00, after MCCAIN would have entered the Strait, but before she was expected to arrive in Singapore. *See* Trial Tr. (Sanchez) at 172:17-174:1; Ex. 136 (Sanchez Court-Martial Stipulation) at ¶ 11.

26. In layperson's terms, then, MCCAIN's watch bill was set to an intermediate readiness when the collision occurred. The bridge was at a heightened state of readiness, but it could have been more fully staffed with more experienced crewmembers—and indeed was scheduled to be so staffed less than an hour later.

27. At the time of the collision, MCCAIN had fifteen crewmembers on the bridge. *See* Ex. 77 (diagram of positions on bridge). Commander Sanchez had overall command that morning.[5] Yet despite the large staff, MCCAIN's bridge crew "lacked a basic level of knowledge on the steering control system, in particular the transfer of steering and thrust control between stations." Navy Report at US0033430.

28. Seaman Dakota Bordeaux was at the helm. The Helmsman was responsible for implementing steering commands by using the IBNS touchscreen or the steering wheel. *See* Ex. 3034 (Bordeaux Dep. Tr.) at 50:5-11, 84:24-85:7.

29. Standing next to the Helmsman was the Lee Helmsman: Boatswain's Mate of the Watch Dontrius Mitchell. The Lee Helmsman was responsible for implementing thrust commands on the IBNS touchscreen. Normally, the Helmsman would control both steering and thrust, but responsibility for thrust could be delegated to the Lee Helmsman so that each person could focus on one task at a time. *See* Ex. 58 at US0015695; Ex. 3046 (Mitchell Dep. Tr.) at 80:25-81:19. The morning of the collision was the first time that Lee Helmsman Mitchell had ever stood watch at that position. *See* Trial Tr. (Mitchell) at 682:8-14.

30. Other crewmembers on the bridge were expected to have familiarity with possible problems at the helm

---

[5] Sanchez's rank of "Commander" thus overlapped with his descriptive role as "captain" or "master" or MCCAIN that morning. Under Navy regulations, Sanchez was "charged with the absolute responsibility for the safety, well-being, and efficiency of the ship and crew." Ex. 442; *see* Ex. 128-E ("In all situations, commanding officers retain the responsibility of safe navigation of their vessel.").

and lee helm. For example, a third person, the Officer on Deck, was expected to know how to respond to a loss of steering or thrust control. *See* Ex. 56 at US0006839, US0006853, US0006862. However, Navy procedures did not require a Helmsman or Lee Helmsman to demonstrate they knew how to transfer steering or thrust control between certain stations. *See* Ex. 73 at 265–87. In fact, Lee Helmsman Mitchell testified that the morning of the collision was his "first experience actually being on the steering control console when the thrust control was transferred from helm to lee helm." Trial Tr. (Mitchell) at 690:19-23.

31. Furthermore, MCCAIN's crew had no specific training for the new IBNS touchscreen. *See* Ex. 4035 (Butler Dep. Tr.) at 78:2-14. And any on-the-job IBNS training that crewmembers did receive was scant. The destroyer's Chief Engineer explained that, given its many differences from a traditional steering console, learning the new IBNS touchscreen through on-duty experience alone would be "un-realistic." Ex. 299 at US0033030; *see also* Ex. 377 at US0026058–59 (characterizing the IBNS touchscreen as "not as intuitive as prior steering and thrust control systems").

32. The IBNS was itself imperfect. At the time of the collision, MCCAIN had unaddressed casualty reports concerning major IBNS crashes—some of them still outstanding since the system's installation a year earlier. *See* Trial Tr. (Sanchez) at 155:11-160:10; Exs. 383–84, 443–44, 446, 464–65. The crew had apparently lost confidence in the IBNS. Just weeks before the collision, Commander Sanchez sent an email to Navy technicians back in the United States, expressing frustration that the IBNS was "unstable, albeit safe to navigate, and the multiple cascading node crashes are a distraction to the safe operation of the Ship." Ex. 385

at US0056598. A technician was due in Singapore to help repair the IBNS as soon as the destroyer arrived. *See* Trial Tr. (Sanchez) at 159:5-12.

33. Commander Sanchez's preferred "work around" for IBNS glitches was to switch the destroyer over to backup manual mode—a system setting which affected steering control in ways that neither he nor his crew understood. In backup manual mode, the Helmsman would steer the rudders using only the wheel, without any assistance by the IBNS. *See* Ex. 4034 (Becker 30(b)(6) Dep. Tr.) at 39:11-16. MCCAIN was in backup manual mode on the morning of the collision. *See* Trial Tr. (Sanchez) at 191:7-192:4, 194:21-195:12.

34. MCCAIN's crew also did not understand how to use the Big Red Button for steering. Several crewmembers had never used the Big Red Button, even in controlled situations. *See* Trial Tr. (Gillian) at 644:17-645:3; *id.* (Mitchell) at 684:1-5, 685:1-3. Crucially, there was a "common misconception" among MCCAIN's crew—including Commander Sanchez himself— that the Big Red Button would *send* steering control to aft steering. *See* Trial Tr. (Sanchez) at 193:9-24; *id.* (Irvin) at 676:11-23; *id.* (Mitchell) at 683:2-14. The Big Red Button actually did the exact opposite: the crewmember pressing the Button would *take* control of steering.

35. All told, unfamiliarity about MCCAIN's steering and thrust procedures meant that the destroyer was at risk of making serious navigational mistakes due to human error on the bridge.

II. The M/V ALNIC

A. ALNIC's Background

36. The M/V ALNIC is a Liberian-flagged oil and chemical tanker. *See* Ex. 4007. ALNIC is about 600 feet

long and was loaded with pyrolysis fuel oil at the time of the collision, giving her a total displacement of about 39,000 metric tons. *See* Ex. 4004 at Energetic 001069. ALNIC had 24 crewmembers aboard on the morning of the collision. *See* Ex. 4002 (crew list).

37. ALNIC was owned by the Petitioner, Energetic Tank, and managed by Stealth Maritime Corporation S.A. ("Stealth"), a company based in Greece. *See* Ex. 4007. Stealth took over management of the tanker in April 2017, about four months before the collision. *See* Ex. 3045 (Zisimos Dep. Tr.) at 12:18-13:3.

38. As a loaded oil tanker, ALNIC was not nearly as maneuverable as a destroyer like MCCAIN. She relied on a single diesel engine, a single fixed-pitch propeller, and a single rudder mounted behind the propeller. *See* Ex. 865 (ALNIC sea trial data) at Energetic 014770–71; Ex. 4008 at Energetic 015129 (diagram of components).

39. Stopping ALNIC took significant time. Sea Trial data demonstrated ALNIC took around 7 minutes—and 1.35 nautical miles—to go from full speed ahead to full stop. It would also take about that much time to slow by "crash astern" (full reverse) rather than by crash stop. *See* Ex. 865 at Energetic 014779–82; Ex. 4046 (annotated crash stop graph).

B. ALNIC's Control System

40. ALNIC's control system was far less complicated than MCCAIN's. The tanker was steered from a helm console—located in the center of the bridge—with a physical steering wheel. *See* Ex. 3031 (Ambrocio Dep. Tr.) at 44:16-45:6.

41. ALNIC had two steering modes: (1) manual (also called "hand") steering using the wheel, or

(2) autopilot. When the tanker was on autopilot, it would maintain a set course until the course was physically adjusted. To switch between manual and autopilot, the operator simply flipped a switch on the helm console. *See* Trial Tr. (Ambrocio) at 638:8-11; Ex. 345 (photo of ALNIC's helm, with switch circled in red).

42. ALNIC's propeller speed was just as simple to handle: a crewmember could control it from the bridge using a single lever. *See* Ex. 4005 (photo of thrust lever).

C. ALNIC's Collision-Avoidance Equipment

43. ALNIC had two radars: an X-band and S-band radar. Either radar allowed an operator to designate another vessel, like MCCAIN, as a target to receive AIS data and to track over time. *See* Ex. 3047 (Nolasco Dep. Tr.) at 166:12-17. The antenna on ALNIC's radars rotated every 2.5 seconds, generating red-colored trails of surrounding vessels after each sweep. Those radar trails provided a visual picture of other vessels' course and speed, which were indicated by the direction and length of the trail. The longer the red trail, the faster a nearby vessel was traveling. *See* Trial Tr. (Putty) at 358:8-359:19, 396:9-397:17; *id.* (Hight) at 487:5-10.

44. Both radars also had automatic radar plotting aids ("ARPA"). ARPA supplements radar by electronically plotting possible collisions, a task that mariners have traditionally done by hand. *See* Trial Tr. (Hight) at 479:19-480:25. Ultimately, ARPA helps a crew to predict how much time and distance it will take until two vessels collide—or come dangerously close to one another. *See* Ex. 3047 (Nolasco Dep. Tr.) at 166:18-167:12.

45. Despite its advantages, ARPA still took 50 seconds to complete a calculation. This is because ARPA continually gathers historical data to update its

calculations and project a dynamic vector for future course and speed. Consequently, ARPA is less accurate with respect to "unsteady targets," i.e., ships not following a steady course. *See* Trial Tr. (Hight) at 481:1-17.

46. One final feature on ALNIC was her Electronic Chart Display and Information System ("ECDIS"). The ECDIS gathered data from radar and ARPA, as well as satellite GPS inputs. It then cross-referenced those inputs with electronic charts to help the crew navigate. It also displayed possible collision paths with other ships. The ECDIS could be accessed from a display unit between the radar consoles and a second display unit on the chart table. *See* Ex. 3049 (Torculas Dep. Tr.) at 51:2-52:6, 141:25-142:12, 170:14-20.

47. To summarize the collision-avoidance equipment on ALNIC: the crew used radar to track other vessels in real-time, ARPA to calculate possible collisions over 50 seconds, and ECDIS to navigate the ship and display ARPA calculations.

D. ALNIC's Recorded Data

48. Adding to the barrage of acronyms, ALNIC used a Voyage Data Recorder ("VDR" or "black box"). The parties analogized the VDR to the so-called black box on an airplane: it logged data from the ship's instruments, as well as audio from the bridge, for later review. The parties do not dispute the accuracy of the black box recordings, or the stipulations thereof. *See* Trial Tr. (Putty) at 320:16-18.

49. Of the various ALNIC equipment in this case, the black box recorded images from the X-band radar; logs of speed, rudder angles, and engine RPMs; and the use of autopilot or manual steering. It also recorded audio from ALNIC's bridge. The only data the black box did *not* record was from the S-band radar. *See* Trial

Tr. (Putty) at 352:19-353:14; Ex. 3038 (Chelios Dep. Tr.) at 58:14-59:20, 59:24-60:24; Ex. 4021 (stipulated transcript of ALNIC bridge audio).

50. The black box recorded snapshots from the X-band radar every 15 seconds, capturing the same radar images that the tanker's crew would on the morning of the collision. *See* Ex. 4019 (ALNIC radar replay with overlay of bridge audio); *see also* Trial Tr. (Putty) at 324:24-325:3; *id.* (Hight) at 486:21-24, 487:11-18; Ex. 3038 (Chelios Dep. Tr.) at 61:14-25. The black box data played a major role in reconstructing the collision.

E. ALNIC's Crew and Training

51. Stealth policy required ALNIC's crew to comply with the company's Safety Management System,[6] which comprised a set of rules and procedures to ensure vessel safety. *See* Ex. 3012 at Response No. 63; Ex. 3047 (Nolasco Dep. Tr.) at 33:19-34:2. For instance, the Safety Management System instructed ALNIC to be in manual steering mode—rather than autopilot—while in the Singapore Strait. *See* Ex. 9B at Energetic 004174.

52. The Safety Management System also set forth standardized watch bills, called "Bridge Manning Levels," for Stealth ships like ALNIC. These were analogous to MCCAIN's tiered staffing levels. ALNIC had three Bridge Manning Levels. When the tanker was transiting in certain dangerous or high-traffic locations, including the Singapore Strait, she was required to be at Bridge Manning Level III. *See* Ex. 9B

[6] Stealth called their Safety Management System the "General Management System;" the two terms, and their respective acronyms "SMS" and "GMS," were used interchangeably at trial.

(excerpts of Safety Management System manual) at Energetic 004174.

53. Bridge Manning Level III was ALNIC's highest level of readiness. The bridge would be staffed with five people: three licensed officers and two unlicensed crewmembers. *See* Ex. 9B at Energetic 004174. One of the officers was required to be a dedicated "anti-collision" officer, whose only responsibility was to operate the radar and ARPA. *See id.* at Energetic 004176. And one of the unlicensed crewmembers was required to be a dedicated lookout with no steering duties. *See id.* at Energetic 004167; Ex. 28 (ALNIC master's standing orders).

54. ALNIC departed for Singapore from Taiwan two days before the collision. Prior to departing Taiwan, the crew created a voyage plan. Despite the requirements of the Safety Management System, the voyage plan revealed the crew did not intend to be at Bridge Manning Level III while in the Singapore Strait. Instead, the Bridge Manning Level was pre-set at Level II, meaning the bridge would not have as large a crew as Stealth required. *See* Ex. 11 (voyage plan). The Captain of ALNIC approved this voyage plan days before entering the Singapore Strait. *See* Ex. 3047 (Nolasco Dep. Tr.) at 112:14-113:2, 114:5-23, 308:13-25.

55. There were only four people on ALNIC's bridge at the time of the collision: the Captain, Chief Officer, Second Officer, and an unlicensed Able-Bodied Seaman, or "AB." *See* Ex. 3031 (Ambrocio Dep. Tr.) at 20:19-22:11; Ex. 3038 (Chelios Dep. Tr.) at 49:8-14; Ex. 3049 (Torculas Dep. Tr.) at 188:14-23. A fifth, unlicensed crewmember—an Ordinary Seaman, or "OS"—was supposed to be on the bridge too, but had gone off duty earlier that morning.

56. The Captain (also called the Master) of ALNIC was Ritchie Nolasco. He had commanded the tanker since April 2017, when Stealth had assumed management of the vessel. *See* Ex. 3003 at Response No. 9. Captain Nolasco had command of all aspects of ALNIC's operation, including ordering the course and speed, supervising the safe navigation of the vessel, and ensuring compliance with safety rules. *See* Ex. 9A at Energetic 004154–55 (navigational responsibilities generally), *id.* at Energetic 004174–77 (responsibilities under specific watch conditions); Ex. 4024 at Energetic 003704–16 (outlining the captain's broad authority).

57. The Chief Officer (also called the Chief Mate) was Lemuel De Gracia. At the time of the collision, he served as Officer of the Watch and was responsible for navigation and collision avoidance. *See* Ex. 9A at Energetic 004155, 004175, 004181; Ex. 4024 at Energetic 003683–86 (Chief Officer's responsibilities). However, because he never testified in this case, the specific actions that Chief Officer De Gracia took during the collision remain largely unknown.

58. The Second Officer on ALNIC was Philip Torculas. Many of the Second Officer's duties pertained to navigation, including maintaining charts and navigational records, laying track lines to chart the vessel's course, devising a passage plan, and operating navigational equipment such as AIS. *See* Trial Tr. (Torculas) at 60:24-61:8; Ex. 3049 (Torculas Dep. Tr.) at 70:15-17, 126:11-14, 165:16-19; Ex. 4024 at Energetic 003689–90 (Second Officer's responsibilities).

59. Although Second Officer Torculas was technically on the bridge during the collision,[7] he was not assisting

[7] Second Officer Torculas's rest log recorded him as having gone off duty earlier that morning. *See* Ex. 3049 (Torculas Dep. Tr.) at

the crew. Instead, he was in the chart room—a curtained-off, illuminated part of the bridge—checking paper charts to ensure they were accurate before ALNIC entered Singapore. *See* Trial Tr. (Torculas) at 60:6-18. Accordingly, he would be unable to help avoid a collision (for example, by operating anti-collision equipment or serving as a lookout) unless he was called out of the chart room. In fact, he testified that he stepped out of the chart room just moments before the collision occurred. *See* Ex. 3049 (Torculas Dep. Tr.) at 192:3-17.

60. The AB on ALNIC was Mark Anthony Jandayan Ambrocio. As relevant here, an AB could serve in two roles. He could serve as a helmsman and steer the tanker. He could also serve as a lookout and watch for potential hazards by looking through the bridge windows and walking out on the external bridge wings. During the collision, AB Ambrocio supposedly performed both roles at once. *See* Trial Tr. (Ambrocio) at 621:1-10, 622:14-21, 627:23-628:4, 641:19-642:18; Ex. 9A at Energetic 004177 (responsibilities of helmsman and lookout).

61. Staffed in this manner—with only three people functionally on watch—ALNIC was two crewmembers short of Bridge Manning Level III on the morning of the collision. Those two missing crewmembers were the dedicated anti-collision officer and the unlicensed lookout.

F. ALNIC's Pre-Collision Audit by Stealth

62. In May 2017, one month after it took over management of the vessel, Stealth began a routine

---

62:10-65:19. However, he subsequently testified that he remained on duty during the collision. *See* Trial Tr. (Torculas) at 59:12-22.

audit of ALNIC. The Stealth Marine Superintendent sent to complete the audit was Captain Dretakis Zisimos, who had flown from Greece to meet the vessel in Singapore. *See* Ex. 549 (email re: Zisimos). A primary goal of his audit was to appraise the ALNIC crew's training. *See* Ex. 3045 (Zisimos Dep. Tr.) at 18:16-24, 145:20-146:4.

63. As it happened, the Stealth Marine Superintendent arrived on ALNIC while it was traveling in the same part of the Singapore Strait where the collision later occurred. *See* Ex. 3045 (Zisimos Dep. Tr.) at 37:18-23. At that time, ALNIC was staffed at Bridge Manning Level I, the watch level with the fewest crewmembers. *See* Ex. 10B (bridge log excerpts from May 2017).

64. In his videotaped deposition, played at trial, the Stealth Marine Superintendent claimed to have addressed the Bridge Manning Level problem "immediately with Captain Nolasco," and instructed ALNIC's crew to use Bridge Manning Level III while in the Singapore Strait, per the Safety Management System instructions. Ex. 3045 (Zisimos Dep. Tr.) at 74:8-76:22, 159:9-19. But ALNIC's crew denied ever receiving instruction on the correct use of Bridge Manning Level III, insisting they would have followed such procedures if they had been so instructed. *See* Trial Tr. (Torculas) at 75:24-76:25, 77:23-78:4; Ex. 3047 (Nolasco Dep. Tr.) at 340:16-341:9.

65. Regardless, it is undisputed that ALNIC's crew continued to understaff the bridge while the tanker came back through the Singapore Strait on her return trip, even though the Stealth Marine Superintendent was still onboard. *See* Trial Tr. (Putty) at 344:8-345:1-6. That voyage—with Stealth's representative on hand to witness the crew use the wrong Bridge Manning

Level—was ALNIC's final transit of the Singapore Strait before the collision. *See id.* at 345:15-24.

66. Beyond his real-time observations of ALNIC's safety noncompliance, the Stealth Marine Superintendent also reviewed logs and voyage plans, provided by Captain Nolasco, showing three previous Singapore Strait transits at the wrong Bridge Manning Level (set as II, rather than III). *See* Ex. 3010 at Response Nos. 49–50; Ex. 3045 (Zisimos Dep. Tr.) at 107:5-11; Ex. 3047 (Nolasco Dep. Tr.) at 73:17-19, 195:24-196:3.

67. Even the tanker's permanent navigational charts for the Singapore Strait had the wrong Bridge Manning Level (again set at II, rather than III). *See* Ex. 6 (British Admiralty Chart 2403); Ex. 7 (British Admiralty Chart 3831); Ex. 327 (photo of Chart 3831); Ex. 3010 at Response No. 48. The Stealth Marine Superintendent would have reviewed those charts as part of his audit. *See* Ex. 3038 (Chelios Dep Tr.) at 128:8-15.

68. Back in Greece, the Marine Superintendent informed Stealth executives about the audit. He told the Safety Manager and Crewing Manager that ALNIC was using the wrong Bridge Manning Level in the Singapore Strait. *See* Ex. 3045 (Zisimos Dep. Tr.) at 104:2-20. He recommended Stealth send someone to provide ALNIC's crew with remedial training on staffing the bridge properly. *See id.* at 49:21-50:2. Although this meeting happened over two months before the collision, Stealth did not implement the recommended training. *See* Ex. 3003 at Response No. 1.

69. Despite his own apparent concerns, the Stealth Marine Superintendent completed an ISM[8] audit

[8] Also known as the International Safety Management Code, part of the International Convention for the Safety of Life at Sea.

checklist, where he falsely confirmed he had "ensure[d] adequacy of bridge manning levels against actual navigational conditions." Ex. 19 (audit checklist). He later testified he had falsified this audit report because he did not want to flag any problems for third parties, such as external auditors or regulators, who could view the report. *See* Ex. 3045 (Zisimos Dep. Tr.) at 94:10-12, 99:3-7, 100:17-102:24.

70. Beyond the bridge staffing issue, the Stealth Marine Superintendent had more general concerns about safety aboard ALNIC. *See* Ex. 3045 (Zisimos Dep. Tr.) at 182:18-23. He testified that of the 70 or more Stealth vessels he had ever audited, ALNIC had performed either worst or second worst. *Id.* at 178:23-180:3. He graded the officers who were subsequently on the bridge during the collision (Captain Nolasco, Chief Mate De Gracia, and Second Mate Torculas) poorly, awarding each a score of 2 out of 5 when it came to implementing the Safety Management System. *See* Ex. 552 (ALNIC crew appraisal report). He further noted that Stealth should consider Second Mate Torculas "as a danger at some times" because of his lack of navigational skills. *Id.* at Energetic 012890.

71. The Marine Superintendent likewise reported these more general concerns to Stealth. *See* Ex. 24 (ALNIC audit report). Upon his return to Greece, the Marine Superintendent told Stealth's Safety Manager and Crewing Manager that ALNIC's officers needed additional training on the Safety Management System. Ex. 3045 (Zisimos Dep. Tr.) at 45:11-46:3; 46:7- 47:12. Additional training did not occur before the collision.

The ISM Code provides rules for safe vessel management and operation.

III. The Collision

72. The rich trove of data from both vessels played an important role at trial. It helped to reassemble, second-by-second, exactly how the collision happened. For example, the Court heard audio from ALNIC's bridge (recorded by the black box), reviewed engine and deck logs, and observed videos of the radar and other navigational displays. Consequently, the Court describes the collision in granular detail, while nevertheless bearing in mind these events took place over the span of just a few hectic minutes.

A. The Morning of the Collision

73. Early in the morning on August 21, 2017, MCCAIN and ALNIC were each bound for Singapore. Both vessels were heading west in the Singapore Strait's Traffic Separation Scheme—essentially a navigational "highway" with lanes for ships traveling in different directions. *See* Trial Tr. (Sanchez) at 202:19-203:3. The Singapore Strait is part of one of the busiest shipping lanes in the entire world. *See* Navy Report at US0033416.

74. The seas were calm and the weather was clear, but there was no visible moon in the pre-dawn sky. Sunrise would not occur for several more hours, at 6:58 local time. *See* Trial Tr. (Putty) at 362:22-363:6; *id.* (Hight) at 485:23-486:6; *id.* (Hanna) at 665:6-14; Navy Report at US0033416; Ex. 4044 (Woods Dep. Tr.) at 81:13-16.

75. MCCAIN was moving quickly relative to nearby vessels. *See* Ex. 94 (thrust control log) at 3. She had increased her speed to 20 knots because of concerns about falling behind her intended schedule. *See* Trial Tr. (Piscitelli) at 700:3-8; Ex. 115 (MCCAIN deck log)

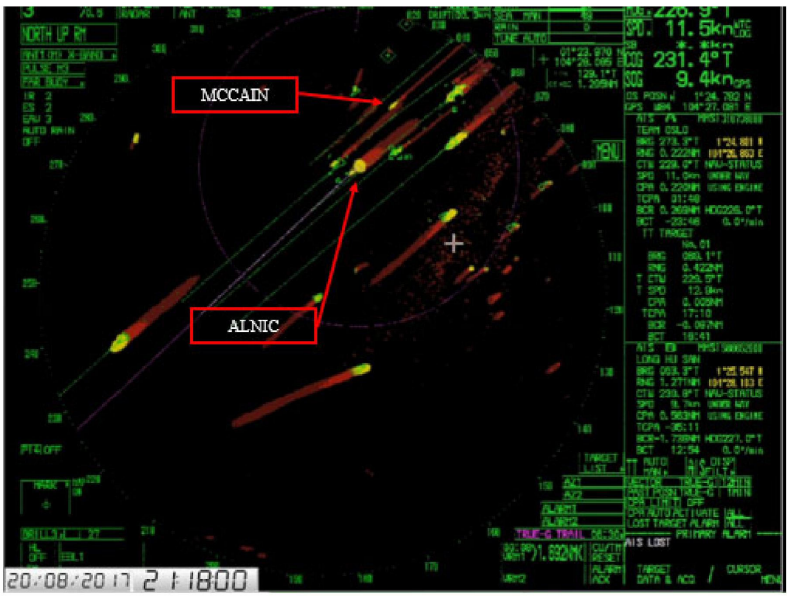
at US0017556; Ex. 3043 (Hanna Dep. Tr.) at 185:6-186:7, 251:5-20.

76. ALNIC, at 9.6 knots, was making about half of MCCAIN's speed. *See* Trial Tr. (Putty) at 358:25-359:10; Ex. 4029 (ALNIC ECDIS video).

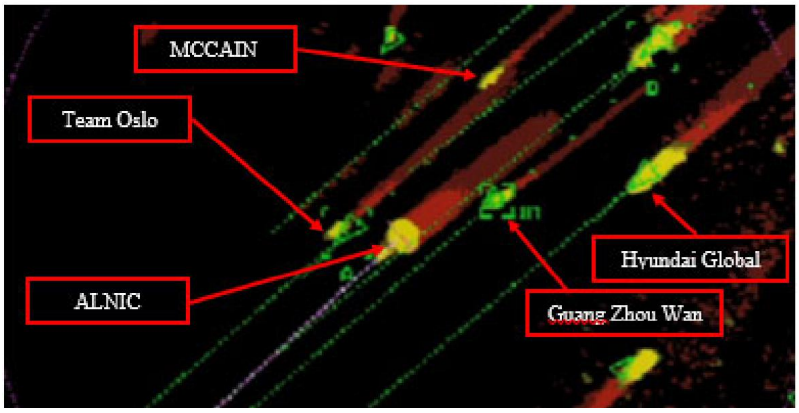
77. ALNIC was surrounded by vessels heading in the same direction as her. There were three fellow large commercial vessels, all moving slightly faster than ALNIC. The Team Oslo had just passed in front of ALNIC on the starboard side. The Guang Zhou Wan and Hyundai Global were behind ALNIC on the port side. MCCAIN was initially far behind this cluster of vessels but was approaching quickly on ALNIC's starboard side—as evidenced by her long red radar trail. *See* Trial Tr. (Putty) at 359:2-10, 429:13-23.

78. At 5:18:00 that morning, ALNIC's X-band radar displayed the following image,[9] with ALNIC represented by the large yellow circle at the center of the faint purple circle:

[9] These screenshots are taken from Exhibit 4019, ALNIC's black box recording, which captured images of the X-band radar approximately every 15 seconds. The Court has added red boxes identifying MCCAIN, ALNIC, and certain other ships.



The same radar image zoomed in:



B. MCCAIN Lost Steering and Began to Veer Towards ALNIC

79. At approximately 5:20:30 (3 minutes, 28 seconds until collision), Commander Sanchez ordered MCCAIN's thrust control to be transferred from the helm to the lee helm. *See* Ex. 94 (thrust control log) at 4; Navy

Report at US0033435. Commander Sanchez explained that he wanted to delegate thrust control so that the Helmsman, who was "reaching . . . task saturation," could focus on steering, particularly given MCCAIN's proximity to nearby vessels. *See* Trial Tr. (Sanchez) at 202:3-203:15.

80. Critically, however, the thrusts were un-ganged, so only the *port* thrust was transferred to the Lee Helmsman. The *starboard* thrust would not be transferred until minutes later. *See* Trial Tr. (Gillian) at 660:25-662:17 (testifying that he only transferred control for one propeller shaft); Ex. 94 (thrust control log) at 4. No one realized the thrusts were un-ganged.

81. Almost simultaneously with the thrust transfer, MCCAIN lost control of steering. At 5:20:39 (3 minutes, 19 seconds until collision), from an apparently unknown cause, MCCAIN's Helmsman reported that he had lost the ability to manually steer the destroyer using the wheel. The IBNS touchscreen showed that the rudders were amidships (pointed straight ahead). Nevertheless, because the Helmsman had been steering slightly to right rudder to maintain a straight course, MCCAIN began to drift to port—towards ALNIC. *See* Navy Report at US0033418.

82. At approximately 5:21:00 (2 minutes, 58 seconds until collision), the Helmsman announced a "loss of steering" to the bridge. *See* Ex. 115 (MCCAIN deck log) at US0017556; Ex. 3034 (Bordeaux Dep. Tr.) at 95:8-24. Over the next several minutes, MCCAIN's crew did not know which station, if any, had control of steering. At least one person—the Lee Helmsman—did not even check to see if his station had steering control, because in his own words, "no one knew the lee helm could steer." Trial Tr. (Mitchell) at 691:3-10.

83. In reality, operators at different stations (including the helm and aft Steering) were repeatedly pressing the Big Red Button—thereby snatching steering control *away* from other stations—under the mistaken belief that the Button would *send* control to aft steering. *See* Trial Tr. (Irvin) at 675:21-676:14; Ex. 439 at US0033445; Ex. 4025 at ¶ 76. As a result, control of steering ping-ponged around the ship, with none of the crew understanding where it was at any given time, or how to get it back. This misunderstanding about steering created "confusion" on the bridge that persisted until mere moments before the collision. *See* Trial Tr. (Sanchez) at 142:11-143:4; *id.* (Gillian) at 664:3-6.

84. Meanwhile on ALNIC, Captain Nolasco entered the bridge from the starboard wing at 5:21:07 (2 minutes, 51 seconds until collision) after observing MCCAIN nearby with his own eyes. *See* Trial Tr. (Putty) at 320:16-25. ALNIC's AB also observed MCCAIN through his binoculars several moments later, at 5:21:19, and is heard on the black box exclaiming: "Warship, I see a warship." *See* Trial Tr. (Ambrocio) at 642:2-4; Ex. 4021 (ALNIC black box transcript).

C. MCCAIN Energized Red-Over-Red Lights, but ALNIC Did Not Slow or Turn

85. At 5:21:23 (2 minutes, 35 seconds until collision), MCCAIN announced over her internal and external microphones: "Loss of steering in the pilot house, loss of steering in the pilot house. Man aft steering." Trial Tr. (Gillian) at 662:18-24; Ex. 4021 (ALNIC black box transcript). That announcement was picked up across the water on ALNIC's bridge-wing microphones, but it is unclear whether the tanker's crew heard the announcement from inside the bridge.

86. Commander Sanchez also ordered the "not under command" lights to be energized, calling out: "Quartermaster, red-over-red." Trial Tr. (Sanchez) at 135:4-9. At approximately 5:21:25 (2 minutes, 33 seconds until collision), the Court finds that order was carried out properly, and MCCAIN's red-over-red lights began to warn nearby vessels that she was not under command. Multiple sailors on MCCAIN verified the red-over-red lights by going out on the bridge wings and looking up themselves. *See* Trial Tr. (Fields) at 112:17-113:8; *id.* (Coley) at 443:21-24; Ex. 3030 (Ahsanov Dep Tr.) at 216:6-13. One officer specifically recalled the incident because he tripped on the doorframe as he stepped onto the bridge wing. *See* Trial Tr. (Hanna) at 434:6-10. And although MCCAIN's deck log only noted "red over red lighted" at 05:34 (after the collision),[10] the sailor who logged that entry testified credibly that he did so to record an announcement that the red-over-red lights were already energized. *See id.* (Coley) at 446:12-447:1.

87. By contrast, the testimony by ALNIC's crew that they never observed red-over-red lights on MCCAIN is not credible. One crewmember from the tanker—OS Secang—told investigators he saw regular light config-

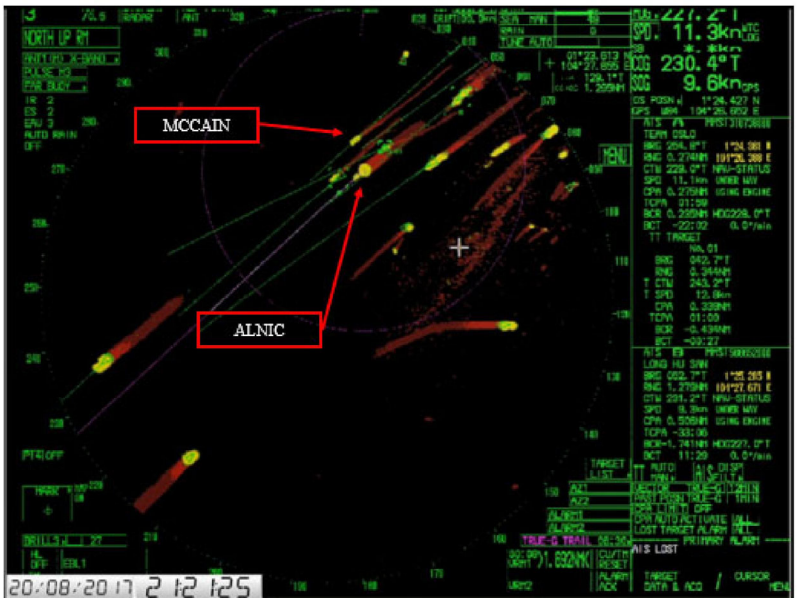
---

[10] Unlike ALNIC's logs, *see* discussion *infra* ¶¶ 122–124, there is no suggestion that MCCAIN's logs were altered after the collision. To the contrary, Chief Petty Officer Fields credibly testified that, as quartermaster, he locked the deck log in a filing cabinet as soon as the sheet was "finished." Trial Tr. (Fields) at 115:16-116:11. He refused a superior officer's request to review the logs after the destroyer arrived in Singapore the morning of the crash, explaining that "everything" had become evidence at that point. *Id.* at 116:12-117:4. Chief Petty Officer Fields and Lieutenant Hanna provided the original, unaltered logs to investigators in a signed, sealed, and timestamped envelope. *See id.* at 117:9-118:1.

urations, rather than the red-over-red lights, which would have suggested that MCCAIN was operating normally. But that would be impossible, because OS Secang was lying about being on ALNIC's bridge in the first place. *See* discussion *infra* ¶ 122. And Captain Nolasco confirmed to Singapore authorities that he had seen the red-over-red lights, which he knew meant MCCAIN was not under command. *See* Ex. 3047 (Nolasco Dep. Tr.) at 264:4-265:7. It was only at his deposition that he backtracked, instead claiming he had seen red *sidelights* on MCCAIN, but failing to explain why the Singapore authorities would have misrepresented his prior statements. *See id.* at 266:20-268-21. The Petitioner's own expert testified he had "no reason to doubt" ALNIC's crew saw the red-over-red lights. Trial Tr. (Hight) at 547:20-548:1. He remarked it was "basically understood that they saw the lights. I mean, the lights were lit; they were watching MCCAIN; there is commentary on the [black box], not a lot, but I don't think [Captain Nolasco] was the type who talked a lot. So the fact that [ALNIC's crewmembers] weren't screaming 'red-over-red' is irrelevant" *Id.*

88. MCCAIN's red-over-red lights would have been clearly visible to an observer on ALNIC from the moment they were energized. By that point, the two vessels were less than half of a nautical mile away from one another. Although two out of the six task bulbs may have failed to illuminate that morning, *see* Ex. 365 at US0056491, later tests found the visibility of four bulbs versus six bulbs would be largely indistinguishable to an onlooker a half nautical mile away. *See* Trial Tr. (Murphy) at 294:22-297:18 (confirming visibility of four bulbs up to and beyond three nautical miles).

89. By the time MCCAIN's red-over-red lights were energized, she had pulled even with ALNIC's starboard beam. ALNIC's X-band radar displayed the following:



90. About 30 seconds later, at 5:21:52 (2 minutes, 6 seconds until collision), MCCAIN's veering had become visible on ALNIC's X-band radar. *See* Trial Tr. (Putty) at 324:16-19; *id.* (Hight) at 528:3-8; Ex. 3038 (Chelios Dep. Tr.) at 91:18-93:11. It is not clear who—if anyone—was monitoring ALNIC's X-band radar that morning. But around the same time, at 5:21:54 (2 minutes, 4 seconds until collision), Captain Nolasco began a 50-second ARPA calculation on the other S-band radar to estimate a possible collision with the veering MCCAIN. *See* Trial Tr. (Putty) at 328:20-329:17, 391:13-17; *id.* (Hight) at 527:18-21; Ex. 3047 (Nolasco) at 164:11-14; 256:25-257:9.

91. It was also around this time, at 5:22:00 (1 minute, 58 seconds before the collision), that ALNIC's crew logged they had stopped the engines. That entry was

false. *See infra* ¶¶ 122– 124. Despite Captain Nolasco's identification of MCCAIN as a possible collision target, he did not order ALNIC to slow until just 12 seconds before the collision. *See infra* ¶ 101. At no point prior to the collision did he order ALNIC to stop its engines or switch to manual steering.

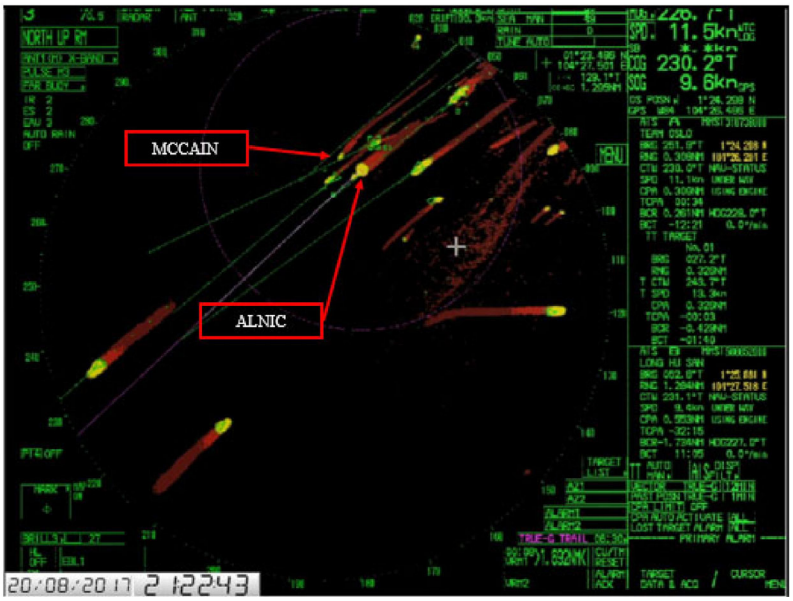
92. At approximately 5:22:06 (1 minute, 52 seconds until collision),[11] Commander Sanchez gave an order to reduce MCCAIN's speed to roughly 10 knots to buy time to assess the steering confusion. *See* Trial Tr. (Sanchez) at 140:25-141:13. The Lee Helmsman began to slow the thrust on the IBNS touchscreen (the only way to do so, as the helm/lee helm lacked physical thrust controls). *See id.* at 214:2-215:24. However, because he did not realize the thrust was unganged on the touchscreen, the Lee Helmsman—believing he was reducing both thrusts—reduced only the *port* thrust. *See id.* at 211:3-22. Because of the unwittingly mismatched thrust, MCCAIN began to veer harder to port. *See* Navy Report at US0033418. The destroyer's logs recorded that her heading rotated about 25 degrees into ALNIC's path over the next minute. *See* Ex. 4013 at 3 (in "Heading Column," beginning at

[11] Pointing to MCCAIN's thrust control log, the Petitioner contends this slowing happened 13 seconds later, at 5:22:20—which would imply MCCAIN's turn to port was even more sudden. *See* ECF No. 381 (Proposed Findings of Fact) at ¶ 245 (citing Ex. 94). But the log that the Petitioner relies on only recorded RPM entries every 15 seconds, and 5:22:20 was the final second before a new RPM entry began—meaning that choosing the last second within that timeframe was arbitrary. Instead, the Court credits the aft steering video of the IBNS touchscreen, which, although grainy, depicts how the port thrust changed precisely at 5:22:06. *See* Ex. 97.

5:22:09, logging a change in MCCAIN's heading from 215.0 degrees to 189.6 degrees).

93. At 5:22:43 (1 minute, 15 seconds until collision), the tanker completed its 50-second ARPA calculation to project a possible collision with the destroyer. *See* Trial Tr. (Putty) at 334:21-335:1. A collision alarm[12] began to blare on the bridge—but was silenced by the crew fifteen seconds later. *See* Ex. 4019 at T-21:22:43 (ALNIC bridge audio). At the time the collision alarm began, ALNIC's X-band radar displayed the following:

[12] The parties disputed whether this alarm indicated a collision would in fact occur, or merely that the ships would come dangerously close to one another. The Petitioner argued the alarm originated from the ECDIS, which had showed the closest point of approach of 0.27 nautical miles—close, but not an imminent collision. *See* Trial Tr. (Putty) at 375:9-17; Ex. 4030. After all, the ECDIS displayed a "dangerous target" visual at the same time the alarm sounded. But the Claimants' shipboard operations expert persuasively explained, based on his long experience with the ECDIS technology, that this alarm derived from radar itself—indicating an imminent actual collision, not just a close call. *See id.* at 394:3-21, 411:3-15.



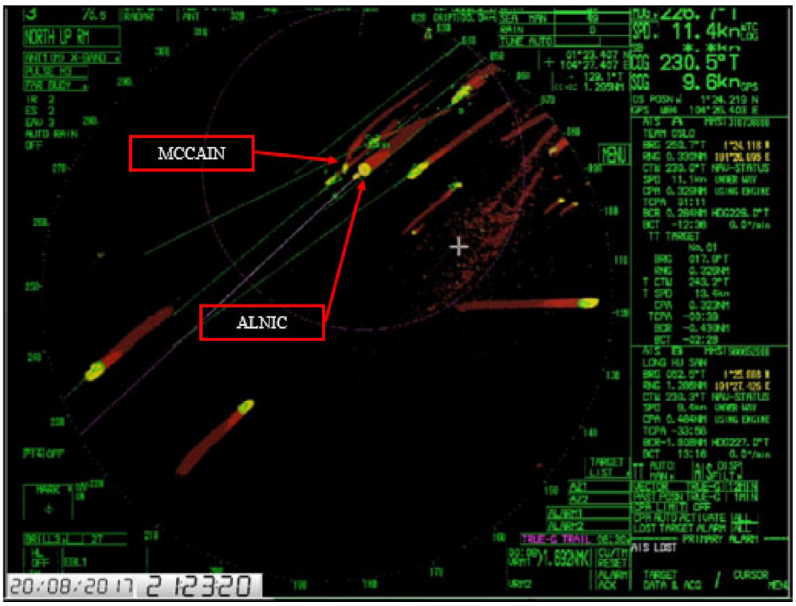
94. On MCCAIN, the situation was getting worse. At 5:22:45 (1 minute, 13 seconds until collision), Commander Sanchez ordered MCCAIN to slow again, to 5 knots. But because nobody had noticed the thrust was *still* un-ganged, the Lee Helmsman merely reduced the port thrust again, leading to an even greater thrust mismatch and causing MCCAIN to veer *even more sharply* towards ALNIC. *See* Trial Tr. (Sanchez) at 142:11-143:12; Navy Report at US0033436.

95. Back on ALNIC, a few seconds after deactivating her collision alarm, at 5:23:02 (55 seconds until collision), someone on ALNIC's bridge observed that MCCAIN appeared to be trying to pass between ALNIC and Team Oslo, remarking, "he [MCCAIN] pass so good in the middle? I guess he can pass that one." Ex. 4021 (ALNIC black box transcript) (punctuation

altered).[13] Upon reflection, 9 seconds later, the same unidentified observer stated he thought the maneuver was "OK." *Id.*

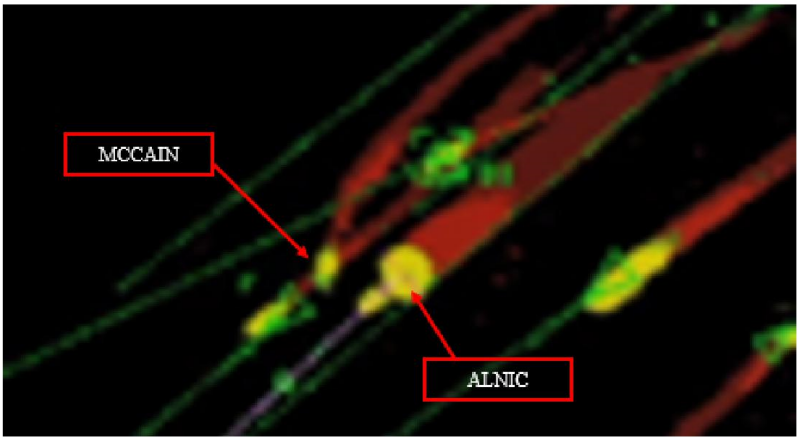
96. However, after 4 more seconds at 5:23:17, he then changed his mind and said MCCAIN was doing a "wrong maneuver." Ex. 4021 (ALNIC black box transcript). At this critical moment, ALNIC still did not change her course or speed.

97. By 5:23:20 (38 seconds until collision), the change in MCCAIN's course was glaringly apparent from her red radar trail. *See* Trial Tr. (Putty) at 360:2-13, 413:8-14.



[13] Some of the dialogue from the Exhibit 4021 transcript was not spoken in English. This remark about "pass so good in the middle," for instance, is translated from Tagalog. The parties have stipulated to the accuracy of this transcript and all translations. *See* Trial Tr. (Putty) at 419:22-25.

The same radar image zoomed in:



And because the radar sweeps provided a much better real-time visual (updated every 2.5 seconds) than these screenshots (updated every 15 seconds), a user on ALNIC would have observed the arc of MCCAIN's turn more quickly than these screenshots suggest. *See* Trial Tr. (Hight) at 486:21-24, 487:5-18.

D. Moments Before Collision

98. At 5:23:27 (31 seconds until collision), the crew in aft steering finally secured control of MCCAIN's steering. *See* Navy Report at US0033437 (noting "[t]his was the fifth transfer of steering and the second time the aft steering unit had gained control in the previous two minutes"). However, the crew in aft steering did not realize the rudders still had a "hard left" order on the IBNS touchscreen when steering was regained, so for the next several seconds, MCCAIN veered *even harder* towards ALNIC as the rudders reset. *See* Trial Tr. (Sanchez) at 235:6-236:22. By this point, MCCAIN was almost directly in front of ALNIC's bow.

99. At long last, at 5:23:44 (14 seconds until collision), MCCAIN began turning to starboard to try

and straighten her path. Commander Sanchez, apparently recognizing a collision with ALNIC was now inevitable, explained that he wanted to reduce the collision angle between the vessels rather than submit to a "T-bone" collision. Commander Sanchez testified a lesser angle of collision would "distribute that impact point through" MCCAIN's plating. He believed ALNIC would try to do the same. *See* Trial Tr. (Sanchez) at 146:17-147:7.

100. She did not. In fact, ALNIC never altered her course before the collision occurred. AB Ambrocio testified he was standing at the steering wheel awaiting Captain Nolasco's order to switch from autopilot to manual steering, because Ambrocio was not authorized to do so himself. But Captain Nolasco never gave that order until well after the collision. *See* Trial Tr. (Ambrocio) at 631:9-23, 620:14-633:8, 633:14-634:23.

101. At the same moment MCCAIN began turning away, ALNIC made her first and only pre-collision adjustment—slowing her engines from 92 RPM to 73 RPM. Captain Nolasco did so by moving the engine control lever from full ahead to half ahead. *See* Trial Tr. (Hight) at 543:16-544:4; Ex. 3047 (Nolasco Dep. Tr.) at 154:19-155:17. Yet slowing the engine for 13 seconds did not reduce ALNIC's speed by any appreciable measure before the vessels collided. *See* Trial Tr. (Putty) at 317:5-8.

102. At no point did either vessel sound a danger signal (typically five short blasts) or attempt to contact one another via radio. *See* Trial Tr. (Sanchez) at 221:5-11; Navy Report at US0033431; Ex. 3012 at Response No. 64; Ex. 4025 at Response No. 101.

E. The Collision and Subsequent Sweeping of ALNIC's Bow

103. At 5:23:58, the two ships collided. *See* Navy Report at US0033437. ALNIC's V-shaped bulbous bow crashed into the port-side of MCCAIN at a diagonal angle of around 48.5 degrees, piercing the hull of the destroyer and embedding into several crew compartments.

104. The vessels remained entangled for 66 seconds before finally pulling apart. *See* Trial Tr. (Wilske) at 612:5-9.

105. During those 66 seconds, the damage to MCCAIN worsened. ALNIC's engines were still churning forward at 73 RPM, propelling her bow deeper into MCCAIN. ALNIC was also still on autopilot. As a result, her computerized navigation system, perceiving that she had been knocked off her programmed trajectory, attempted to correct her course without realizing the collision with MCCAIN made that course correction impossible—and would instead cause her to steer across MCCAIN's hull. *See* Trial Tr. (Putty) at 341:16-25.

106. These combined actions—the engine's continued propulsion and the autopilot's attempted steering corrections—caused the angle of collision to open from 48.5 degrees to 94.6 degrees before the vessels finally separated. Thus, over the course of those 66 post-collision seconds, ALNIC's bow arced over 45 degrees, from fore to aft, within MCCAIN's hull. *See* Trial Tr. (Wilske) at 612:18-613:19; *see also* Ex. 911 (MCCAIN damage report) at US0240034–36. That sweeping movement aggravated what was originally a smaller gash created by ALNIC's bow. *See* Trial Tr. (Ryan) at 450:2-20; Ex. 921 (photo of hole in MCCAIN's hull).

107. Testimony from sailors aboard MCCAIN supports the finding that ALNIC's sweeping movement was particularly damaging. One officer described how equipment racks were thrown from fore to aft—perpendicular to the direction of the initial impact—suggesting they had been pushed there over time. *See* Trial Tr. (Ling) at 256:19-257:9, 258:6-259:10.

108. ALNIC's bow inflicted damage at a height spanning three of MCCAIN's decks. *See* Navy Report at US0033419, US0033429; Ex. 911 at US0240000. In particular, Berthing Number 3, Berthing Number 5, and a fuel tank below Berthing 5 all suffered major damage. A ruptured fire main and fuel line caused water and fuel to flood into Berthing 3. Berthing 5, which was located below the waterline, flooded completely, drowning ten sailors. *See* Navy Report at US0033422–27; Ex. 911 at US0240000.

109. In the moments after the collision, MCCAIN immediately sounded general quarters and worked to separate herself while ALNIC continued to charge into the side of MCCAIN. The destroyer positioned her rudders to the right in an attempt to free herself from ALNIC's bulbous bow. *See* Trial Tr. (Sanchez) at 237:14-22. The crew coordinated urgent damage control and rescue efforts. *See* Trial Tr. (Ling) at 254:8-255-21. After pulling one sailor to safety, Warrant Officer Patat and Petty Officer Black managed to use a T-wrench to seal the hatch leading down to the rapidly flooding Berthing 5—just seconds before the swirling mixture of seawater and fuel was set to overtake the top of the scuttle and overwhelm the upper platform, potentially on its way up to Berthing

3 and the main deck. *See* Trial Tr. (Patat) at 274:5-15, 278:7-281:22.[14]

110. Over on ALNIC, at 5:24:40 (42 seconds after collision), Captain Nolasco finally gave an "all stop" order. *See* Ex. 15B (bell book addendum) at Energetic 000802; Ex. 13C (log book addendum). In their deposition testimony presented at trial, ALNIC's crew offered no explanation for this delay. *See* Ex. 3047 (Nolasco Dep. Tr.) at 23:14-24:13, 145:12-23, 147:5-10, 152:19-156:13, 162:15-24; *see also* Trial Tr. (Hight) at 543:16-544:4 ("I think that [Captain Nolasco] thought that the engines were stopped. . . . I believe he went to half a head approximately 15 seconds before the collision. I mean, I can't believe that he didn't mean to grab it and go all the way.").

111. After another 20 seconds, at approximately 5:25:00 (1 minute, 2 seconds after collision), ALNIC at last turned off her autopilot and switched to manual steering. *See* Ex. 13C. ALNIC's crew offered no explanation for this delay either. *See* Ex. 3047 (Nolasco Dep. Tr.) at 136:1-140:22, 186:4-19, 188:20-189:4, 228:15-229-16; Ex. 3049 (Torculas Dep. Tr.) at 20:4-21:2, 21:22-22:10; *see also* Trial Tr. (Hight) at 543:2-15 ("I think at that point there were more things on [Captain Nolasco's] mind than the fact that the ship was in autopilot. . . . I think it's oversight.").

IV. Analyzing the Collision

A. The Expert Simulations of ALNIC's Actions

112. Both sides engaged experts to model ALNIC's performance characteristics to model whether, and if so at what time, the tanker could have acted to avoid

---

[14] MCCAIN remained afloat and eventually reached the port in Singapore. *See* Trial Tr. (Sanchez) at 241:7-17.

the collision. *See* Ex. Ex. 3001O (simulation video based on the Claimants' model); Ex. 3001P (video recreation of view from ALNIC's bridge based on the Claimants' model); Ex. 4028 (simulation tool based on Petitioner's model). The experts' models were based primarily on ALNIC's Sea Trial testing data, with adjustments to account for the conditions found at the time of the collision, such as vessel draft, wind, and current. *See, e.g.*, Trial Tr. (Murphy) at 294:3-16, 301:9-308:6; *id.* (Putty) at 316:12-19; *id.* (Wilske) at 567:3-579:13. Relying on these models, the experts gave different opinions on when, and how, ALNIC had her last chance to avoid colliding into MCCAIN.

113. One option for ALNIC was to stop her engines and allow MCCAIN to cross safely in front of the tanker's bow. The experts opined as to the precise moment a stop engine order[15] would have slowed ALNIC enough for that option to work. The Petitioner's experts concluded that ALNIC needed to initiate a crash stop order at least 1 minute and 40 seconds before the actual collision to avoid MCCAIN. *See* Trial Tr. (Hight) at 495:18-22; *see also id.* (Wilske) at 587:5-13; Ex. 4028. The Claimants' expert countered that ALNIC needed 13 fewer seconds to crash stop order to avoid a collision. *See* Trial Tr. (Putty) at 333:15-19. In sum, the experts agreed that a crash stop was possible; they only disagreed about those 13 seconds.

114. A second option for ALNIC was to turn to starboard, toward MCCAIN, and just miss the destroyer's stern. The Petitioner's experts concluded the last

[15] A full reverse order would have been no different than a stop engine order. Because of the length of time required to reverse ALNIC's engines, both orders would result in identical slowing for the first several minutes—by which point the collision had already occurred. *See supra* ¶ 39; Trial Tr. (Putty) at 355:13-356:1.

chance to do so would have around 60 seconds before the collision. *See* Trial Tr. (Hight) at 500:13-21; *id.* (Wilske) at 591:13-18; *cf.* Ex. 4028 (simulation tool showing a miss at 59 seconds). The Claimants' expert, by contrast, said ALNIC had slightly more time to turn to starboard, with her last chance being 52 seconds before the collision. *See* Trial Tr. (Putty) at 338:13-21; Ex. 3001O. So the experts, again, agreed that a starboard turn was viable; they only disagreed about 8 seconds.

115. A third option was to turn to port, away from MCCAIN. The Petitioner's simulation calculated that ALNIC's last chance to avoid collision by turning hard to port would have been 50 seconds before the collision. *See* Ex. 3060 (screenshot of simulation with hard port turn); *see also* Trial Tr. (Wilske) at 614:2-615:11. Further, one of the Petitioner's experts agreed at trial that ALNIC could have potentially avoided penetration by the bulbous bow by turning hard to port 39 seconds before the collision. *See* Trial Tr. (Wilske) at 600:19-23, 610:22-611:8. The Claimants' expert did not opine on ALNIC's last chance to turn to port but agreed the maneuver was viable. *See* Trial Tr. (Putty) at 339:2-8 (declining to provide a precise timeframe because, in his view, a prudent mariner "would have maneuvered long before" the last chance to do so).

116. In essence, the experts agreed much more than they disagreed. They agreed that when MCCAIN energized her red-over-red lights—2 minutes and 33 seconds before the collision—ALNIC still had well over a minute to avoid the destroyer by turning. They also agreed that even within a minute of the collision, ALNIC still had time to mitigate the force of impact by slowing and/or turning to port for a glancing blow, rather than maintaining course and speed.

B. The Court's Findings on ALNIC's Maneuvering Options

117. Looking to the experts' analyses—which are substantially in agreement about the feasibility of each potential maneuver—the Court determines how ALNIC could have tried to avoid or mitigate the collision.

118. Although ALNIC could have avoided the collision by stopping her engines alone, her window of time to do so was undoubtedly short. At 1 minute and 27 seconds before the collision (assuming the Claimants' theory that ALNIC required less time to stop), MCCAIN's course had only shifted about 22 degrees towards ALNIC. *See* Ex. 4013. The destroyer was only slightly forward of ALNIC's beam—essentially driving side-by-side in the neighboring lane on the highway. At that moment, reasonable mariners could have disagreed whether MCCAIN would collide with ALNIC, especially because MCCAIN had not yet started to turn faster and faster on account of additional thrust and rudder problems. *See* Trial Tr. (Putty) at 361:4-9.

119. But ALNIC enjoyed less drastic options than stopping outright. She had enough time after the risk of a crash should have been apparent to avoid—or at least significantly mitigate—the collision through a combination of slowing and turning. Unlike a crash stop (which would have required a minute-and-a-half to slow enough to allow MCCAIN to pass safely in front), the Petitioner's own experts concluded the tanker needed less than a minute to turn to avoid the destroyer. And within a minute of the collision, the danger to ALNIC should have been obvious: the red-over-red lights had been flashing for over a minute, the collision alarm had sounded (and been silenced), and MCCAIN's radar tail was curling more and more by the second.

120. An evasive maneuver was not only possible; it was entirely feasible. Captain Putty, an expert on shipboard operations, explained how ALNIC could have turned safely to avoid MCCAIN before returning to her original course—much like swerving to avoid a dangerous object on a highway. The Petitioner's expert persuasively testified that even heavy-laden shipping vessels like ALNIC commonly make such evasive maneuvers. *See* Trial Tr. (Putty) at 423:8–425:13 (noting there is a lot of flotsam and jetsam "floating in the water these days, whether containers fall over the side of ships, whether buoys break loose and are floating out in open water, whether there is fishing nets . . . . There is a tremendous number of things that you would have to evade. Even whales you would evade, and you would do the same type of maneuver.").

121. Even after it become too late to avoid MCCAIN entirely, ALNIC still could have employed some combination of these actions to mitigate the collision up to the final seconds before impact. The direct T-bone force of the collision unquestionably created far more physical damage than would a glancing blow—especially if ALNIC had begun to slow earlier. Likewise, turning ALNIC to port would have brought her parallel to MCCAIN and reduced the angle of impact. And because ALNIC would have had to switch to hand steering in order to turn, the sweeping damage done by her bulbous bow would have been reduced because the disengaged autopilot would not have attempted to correct her course after the two ships had collided.

V. After the Collision

A. ALNIC's False Logs

122. As post-collision investigations began, ALNIC's crew made false logs or statements to cover up their pre-crash decisions. Those lies included, among others:

- *First*, that there was a fifth member of ALNIC's crew serving as the lookout when, in fact, there was not. That crewmember was supposed to be OS Secang, who was falsely logged as having been scheduled for the 04:00-08:00 watch. Captain Nolasco, Chief Officer De Gracia, and Secang himself all told investigators from multiple countries that Secang had been on the bridge earlier that morning but had retired to his cabin because he was not feeling well—when, in fact, he had never been on the bridge at all. *See* Trial Tr. (Torculas) at 53:12-54:17; Ex. 543 (Secang's written statement); Ex. 3083 (Chelios Dep. Tr.) at 50:24-51:5, 80:20-83:18. Captain Nolasco repeated this falsehood during his deposition for this case. *See* Ex. 3047 (Nolasco Dep. Tr.) at 132:14-16, 134:11-135:13.

- *Second*, that ALNIC was at Bridge Manning Level II before the collision, when it was really at Bridge Manning Level I because of the missing crewmembers. In truth, Second Officer Torculas had been in the curtained-off chart room, while OS Secang had left the bridge entirely. *See* Ex. 3047 (Nolasco Dep. Tr.) at 129:8-17.

- *Third*, that the crew had stopped the engine before the collision at 05:22, when in fact it was only put to half ahead at 05:23:44 and was not stopped until about 05:24:30. This false entry

was squeezed between two regular lines in the deck log. *See* Ex. 13B; Ex. 3047 (Nolasco Dep. Tr.) at 145:12-23.

- *Fourth*, that steering was switched from autopilot to manual steering several hours before the collision, at 03:00, when it actually remained on autopilot until after the collision. *See* Trial Tr. (Torculas) at 51:16-52:19; Ex. 3049 (Torculas Dep. Tr.) at 20:4-22, 31:2-20.

123. Several of these false entries were repeated in other ALNIC logs. The bell book repeated the false entries regarding Bridge Manning Level II and the use of manual steering. *See* Trial Tr. (Torculas) at 55:24-57:13, 56:18-20; Ex. 15; Ex. 3047 (Nolasco Dep. Tr.) at 187:15-189:15 (describing corrections in addendum to bell book). And the engine logbook repeated the lie about stopping the engine before the collision. *See* Ex. 3083 (Chelios Dep. Tr.) at 41:19-42:21.

124. Eventually, these falsehoods were exposed by examining data from the black box and by deposing Second Officer Torculas. *See* Ex. 3049 (Torculas Dep. Tr.) at 17:2-18:9, 18:18-19:8, 20:4-21:2, 31:2-31:20. By the time of trial, the Petitioner had fully admitted the falsity of the entries made by ALNIC's crew. *See, e.g.*, Ex. 13C (log book addendum); Ex. 15B (bell book addendum); Ex. 3005 at Response Nos. 5, 7.

B. Investigations by Authorities

125. Several governmental bodies investigated the collision, including the U.S. Navy itself. With the caveat that it was "not concerned about the mistakes made by ALNIC," the Navy identified three faults aboard MCCAIN, *see* Navy Report at US0033415:

- "Loss of situational awareness in response to mistakes in the operation of the JOHN S. MCCAIN's steering and propulsion system, while in the presence of a high density of maritime traffic;"
- "Failure to follow the International Nautical Rules of the Road, a system of rules to govern the maneuvering of vessels when risk of collision is present;" and
- "Watchstanders operating the JOHN S. MCCAIN's steering and propulsion systems had insufficient proficiency and knowledge of the systems."

126. The Navy also disciplined twenty members of MCCAIN's crew after the collision. Commander Sanchez was court-martialed and found guilty of dereliction of duty. He has since retired from the Navy. *See* Trial Tr. (Sanchez) at 148:1-11; Ex. 136 (Sanchez court martial stipulation). Other senior-ranking officers were disciplined for failing to ensure proper training of the crew. *See, e.g.*, Ex. 297 (Chief Petty Officer Butler); Ex. 4015 (Executive Officer Jessie Sanchez). Both the Helmsman and Lee Helmsman were found to have been derelict in their duties as well. *See* Ex. 4022 at US0032012–13, US0032020–21, US0032698–700, US0032706–07.

CONCLUSIONS OF LAW

VI. Applicable Law for Apportionment of Liability

A. Singapore Law Applies

127. The Court has determined that Singapore law applies to substantive matters of liability in this case. *See* ECF No. 247; *reconsideration denied*, ECF No. 267. Singapore courts follow the doctrine of stare decisis and consider admiralty precedent from common law

countries like the United Kingdom and United States as persuasive authority. *See* Goh Yihan & Paul Tan, *An Empirical Study on the Development of Singapore Law*, 23 SING. ACAD. OF L. J. 176, 177, 209–10 (2011).

128. Aside from case law, Singapore has enacted legislation that applies to collisions, including the Maritime Conventions Act 1911 (Chapter IA3, 2020 Revised ed.) and the Merchant Shipping (Prevention of Collisions at Sea) Regulations (Chapter 179, Rg. 10, 1990 Revised ed.).

B. The Elements of Negligence

129. The elements of negligence under Singapore law are substantially the same as those under United States admiralty law: "Typically, claimants have to establish breach of duty (that a vessel owes a duty of care to other vessels is well-established) that caused or contributed to the collision and damage." *The Dream Star* [2018] 4 SLR 473 at [47]; *cf.* Schoenbaum, ADMIRALTY & MARITIME LAW § 5:4 (6th ed.) ("Schoenbaum") (prima facie elements of negligence under United States admiralty law are duty, breach, causation, and damages).

130. To gauge a vessel's duty of care, Singapore courts look to "the exercise of 'good seamanship' which is tantamount to the exercise of reasonable skill or care expected of a competent/prudent seaman to prevent the vessel from doing injury." *The Dream Star* at [47]; *The Mount Apo and Hanjin Ras Laffan* [2019] 4 SLR 909 at [97]. This "good seamanship" standard is informed by international safety conventions. *See The Dream Star* at [47]; *The Mount Apo* at [97]. The relevant safety convention here[16] is the COLREGS, a

[16] The Claimants argue ALNIC also violated another safety convention: the ISM Code. The ISM Code requires most non-

series of navigational "rules of the road" designed to help vessels avoid collisions by acting predictability. Schoenbaum at § 14:3; *see generally* Ex. 591 (compilation of the COLREGS). Both Singapore and the United States have codified the COLREGS as law. *See* Merchant Shipping (Prevention of Collisions at Sea) Regulations at § 3; 33 U.S.C. § 1602.

131. The COLREGS "are not mere prudential regulations or guidelines; they are binding enactments that must be adhered to closely." Schoenbaum at § 14:3. Importantly, however, breach of these rules does not create negligence liability per se. Instead, a vessel is only liable for a violation of the COLREGS if that violation *caused* the collision. *See The Dream Star* at [49], [125]; *The Mount Apo* at [95].

---

military vessels to implement a Safety Management System like the one Stealth implemented on ALNIC. Without complying with the ISM Code, ALNIC could not legally embark on an international voyage under the law of its flag state. *See* Liberian Maritime Regulation 2.35. The Petitioner has admitted it was required under the ISM Code to ensure ALNIC adhered to the vessel's own Safety Management System. *See* Ex. 3012 at Response Nos. 60–62; *see also* Ex. 3045 (Zisimos Dep. Tr.) at 24:3-10.

Nonetheless, it is not clear whether the ISM Code imposes independent legal duties or is merely evidence of custom. *See, e.g.*, *Matzkow v. United New York Sandy Hook Pilots Ass'n*, No. 18 Civ. 2200 (RER), 2022 WL 79725, at *8–9 (E.D.N.Y. Jan. 7, 2022); *Holzhauer v. Golden Gate Bridge, Highway & Transportation Dist.*, No. 13 Civ. 02862 (JST), 2015 WL 12976923, at *3 (N.D. Cal. June 11, 2015); *Johnson v. Horizon Lines, LLC*, 520 F. Supp. 2d 524, 533 (S.D.N.Y. 2007). The Court need not answer this question—or discuss the ISM Code at all—because ALNIC's violations of the ISM Code largely repeated its violations of the COLREGS. For instance, failing to post a lookout violated COLREGS Rule 5 while simultaneously violating the Safety Management System under the ISM Code.

C. Apportioning Liability: Comparative Fault

132. Singapore's Maritime Conventions Act 1911 provides that where two vessels in a collision are both at fault, liability is divided in proportion to the degree of those faults. *See* Maritime Conventions Act 1911 § 1(1). The Court apportions liability equally only if "it is not possible to establish different degrees of fault." *Id.*

133. Under Singapore precedent, the Court compares each vessel's faults qualitatively, not quantitatively, by analyzing the degree to which each vessel's mistakes caused the collision (and the resulting damage), as well as the degree to which each vessel was culpable for those mistakes. *See, e.g.*, *The Dream Star* at [49], [127]; *The Mount Apo* at [95]. Singapore has also ratified the Brussels Convention of 1910, which imposes a similar framework. *See* ECF No. 247 at 13. Under the Brussels Convention, courts consider both "the relative culpability of each vessel and the relative extent to which the culpability of each caused the collision." *Otal Invs. Ltd. v. M.V. Clary*, 494 F.3d 40, 63 (2d Cir. 2007) ("*Otal II*").[17]

---

[17] Some of the Sailor-Claimants contend the Court should apply the American liability rule from *The Pennsylvania*, 86 U.S. 125 (1874). The *Pennsylvania* rule imposes a presumption, akin to negligence per se, where a vessel that violated a statutory duty like the COLREGS must prove that violation could not have reasonably contributed to the collision. *See Otal II*, 494 F.3d at 50. "This is an imposing burden" for a vessel to meet. *Id.* at 51.

However, for Singapore and other adopting nations, the Brussels Convention expressly abolished presumptions of fault like the *Pennsylvania* rule. The Second Circuit has held the presumption from the *Pennsylvania*—as a substantive, not procedural, rule—falls away when a court applies the law of a Brussels Convention jurisdiction like Singapore. *See id.* at 50–51.

134. There is no formula for apportioning liability; the Court simply makes a "broad commonsensical assessment." *The Mount Apo* at [207]. Ultimately, "allocation of liability for damages, requiring consideration of matters not readily amenable to precise analysis, does not oblige an admiralty judge to do more than provide ultimate percentages of allocation, accompanied only by sufficient explanation to provide a reviewing court with some general understanding of the basis for the decision." *Otal II*, 494 F.3d at 63. Accordingly, the Court allocates fault between MCCAIN and ALNIC on a percentage basis.

135. The Court finds that MCCAIN is primarily—80%—at fault for creating a scenario where collision between the vessels was either inevitable, or all-but inevitable. However, ALNIC bears significant blame—20%—for its failure to take any meaningful action to minimize the carnage caused by the collision. The Court explains this apportionment next.

VII. MCCAIN's Liability

136. The Court apportions 80% of liability for the collision to MCCAIN.

137. The United States contends ALNIC was 70% at fault for the collision, which would make MCCAIN only 30% at fault. *See* ECF No. 361 (Proposed Findings of Fact) at ¶ 96. But there is no question MCCAIN created the situation of danger in the Singapore Strait. *See The Mount Apo* at [207] ("The fault of a ship that creates a situation of difficulty or danger is generally greater than that of the ship that fails to react properly

---

Although U.S. maritime law is persuasive in this case, the Court will not incorporate a substantive presumption that Singapore has abolished.

to such a situation after it has been created."); *see also The Dream Star* at [126] (similar). No reasonable mariner would have expected MCCAIN to veer sharply off-course in one of the busiest waterways in the world—all because of unforced errors on the bridge.

A. MCCAIN Failed to Adequately Train and Staff Her Crew

138. The longstanding lack of training for MCCAIN's crew sparked the confusion on her bridge and fueled the mistakes leading up to the collision. That even senior officers failed to have (let alone implement) proper understanding of the IBNS, steering, and thrust procedures enhances MCCAIN's culpability and was a proximate cause of the collision. *See The Tian E Zuo* [2019] 4 SLR 475 at [34], [164] (discussing the overlap between general incompetency and negligence in particular circumstances); *Hercules Carriers, Inc. v. Florida*, 768 F.2d 1558, 1573 (11th Cir. 1985) (failure to properly train crewmember was a proximate cause of collision); *In re Bridge Const. Servs. of Fla., Inc.*, 39 F. Supp. 3d 373, 392 (S.D.N.Y. 2014) (incompetent crew could render a vessel unseaworthy). After all, with over a dozen people on MCCAIN's bridge, multiple senior officers were available that morning to intervene and restore steering or thrust even if their subordinates did not. If all else failed, printed step-by-step instructions were in a red binder hanging right off the helm.

139. The IBNS was new, glitchy, and unwieldy, complicating MCCAIN's ability to navigate. For example, without a manual thrust control, the crew was entirely dependent on the subtleties of an intricate touchscreen to understand how the destroyer was functioning. That touchscreen displayed, among other things, the All Stop button, the station currently in control of steering,

and an indicator for whether thrust was ganged—all tools that could have kept MCCAIN from turning into ALNIC's path.

140. Further, persistent IBNS technical snafus (long unaddressed by Navy leadership) forced MCCAIN's crew to repurpose a system setting they did not understand. The lack of understanding about how the Big Red Button worked when in backup manual mode—which sent steering back and forth between stations five times over just two minutes—prolonged MCCAIN's hunt to regain steering control.

141. Commander Sanchez's failure to set "Sea and Anchor" Detail before entering the Singapore Strait also contributed to the crew errors aboard MCCAIN. *See* Navy Report at US0033430 (concluding that "it is unlikely that a collision would have occurred" if Sea and Anchor detail had been set earlier that morning). That heightened detail would have included additional, and more experienced, crewmembers on the bridge. The on-duty Lee Helmsman had never stood watch at that position before, and his colleagues on the bridge were little more seasoned than he was. There is little doubt this lack of experience contributed to the thrust mismatch, the failure to press the All Stop button, and the inability to recover steering or thrust control by attributing to external forces problems that MCCAIN's crew could have easily resolved *at any time* prior to the collision. *See Complaint of Am. Exp. Lines, Inc.*, 620 F. Supp. 490, 499 (S.D.N.Y. 1985) (vessel 60% liable where, "after the loss of steering," the crew had over four minutes to act before the collision, which was "sufficient time to prevent the collision by taking remedial actions"). These crew failures, in turn, led to the violation of multiple COLREGS and created a

situation of danger for ALNIC—and for MCCAIN's own crew.

B. MCCAIN Failed to Navigate Safely

142. The parties agree that MCCAIN was overtaking ALNIC before the collision. As the overtaking (or "give way") vessel under the COLREGS, the destroyer had a duty to keep clear of ALNIC and pass at a safe distance. *See* COLREGS Rules 8, 13(a), 16. By turning directly into the tanker's path without warning, MCCAIN breached that duty.

143. Energizing red-over-red lights did not immunize MCCAIN from liability for her failure to steer safely. While nearby ships must avoid a vessel which is not under command,[18] the converse is also true: a vessel that is not under command still has a duty to keep out of the way of any ships she overtakes under COLREGS Rule 13(a). *See* Allen & Allen, FARWELL'S RULES OF THE NAUTICAL ROAD 332, 418 (9th ed. 2020). The United States does not dispute MCCAIN bore this continued duty to keep out of the way of ALNIC. *See* ECF No. 361 (Proposed Conclusions of Law) at ¶ 5.

144. MCCAIN's crew acted negligently by deciding not to stop outright after they had lost control of steering. Despite his awareness of severe problems on the bridge, Commander Sanchez ordered the destroyer to continue forward at around 10 knots—still faster than many nearby vessels, including ALNIC, that were only fractions of a nautical mile away. In doing so, MCCAIN violated COLREGS Rule 6, which required

---

[18] COLREGS Rule 18, "Responsibilities Between Vessels," provides in relevant part: "*Except where Rules 9, 10 and 13 otherwise require*, a power-driven vessel underway shall keep out of the way of a vessel not under command." *See* Ex. 591 at 24 (cleaned up) (emphasis added).

her to "at all times proceed at a safe speed so that she can take proper and effective action to avoid a collision and be stopped within a distance appropriate to the prevailing circumstances and conditions." Once Commander Sanchez believed he had lost control of MCCAIN for any significant period of time, the reasonable course of action was to stop and allow other ships to maneuver around the destroyer, rather than to continue forward on an unknown course across one of the most heavily-trafficked waterways in the world.[19] *See Complaint of Flota Mercante Grancolombiana, S.A.*, 440 F. Supp. 704, 714 (S.D.N.Y. 1977) ("[M]ost damning of all, [the master] failed to exercise prudent navigation by not signaling stop on the engines as soon as he realized that the vessel was out of command.") (citing *The New York*, 175 U.S. 187, 207 (1899)).

145. MCCAIN's failure to steer properly set her on a collision course with ALNIC. Both vessels were traveling in a straight line before MCCAIN veered suddenly off-course, which violated the rules of the road on a waterway just as it would on a laned highway. *See* COLREGS Rule 8(d) ("Action taken to avoid a collision with another vessel shall be such as to result in passing at a safe distance."); Rule 16 ("Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear."). Proper use

---

[19] Commander Sanchez's explanation for his decision not to stop the engines outright—that he was aware that there were ships approaching MCCAIN from some distance behind, and that he was loathe to exacerbate what he believed to be a rudder failure—are by no means illogical. *See* Trial Tr. (Sanchez) at 219:10-220:3. Nonetheless, the Court finds that a reasonable mariner would have deemed these risks the lesser of two evils and chosen to stop, rather than slow, the ship, and thereby avoid careening across traffic.

of the Big Red Button would have restored steering control and avoided the collision entirely. Indeed, *misuse* of the Big Red Button exacerbated MCCAIN's erratic course—when aft steering finally took control, they neglected to check their steering wheel, which had been turned all the way towards ALNIC. The self-inflicted failure to control MCCAIN's course was the antithesis of "good seamanship" to avoid a collision. COLREGS Rule 8(a).

146. MCCAIN's mismatched thrust made that veering worse. Her crew failed to observe the un-ganged thrust on the IBNS touchscreen. Had they realized the thrust was mismatched, they could have immediately matched the thrust and straightened the destroyer's course. Instead, the crew mismatched the thrust *further*, which only increased her turn rate into ALNIC's path. COLREGS Rule 8(b) provides that "a succession of small alterations of course and/or speed should be avoided" so that nearby vessels are aware of the turn. But the increasing errors on MCCAIN led to an increased turn rate, thereby shortening the window of time for ALNIC to react. *See Maritime & Mercantile Int'l L.L.C. v. United States*, No. 02 Civ. 1446 (KMK), 2007 WL 690094, at *29 (S.D.N.Y. Feb. 28, 2007).

147. Like with steering, MCCAIN could have easily avoided a collision using her thrust. The crew had at least three minutes to press the All Stop button, which was available in plain sight on the IBNS touchscreen. MCCAIN's ability to stop, although not instantaneous, was quite impressive, as she boasted reversible propellers that Commander Sanchez likened to "opening two parachutes" behind the destroyer. Trial Tr. (Sanchez) at 209:20-23. The crew had several minutes to stop the destroyer and assess the loss of steering problem. They failed to do so.

148. The improper use of steering and thrust was entirely preventable, violated the COLREGS, and was the primary cause of the collision. *See Tokio Marine & Fire Ins. Co., Ltd. v. M/V FLORA*, 235 F.3d 963, 970–71 (5th Cir. 2001) (affirming apportionment of 80% of fault to vessel that suddenly turned to port into another's path "at close distance"); *Complaint of Seiriki Kisen Kaisha*, 629 F. Supp. 1374, 1381–82 (S.D.N.Y. 1986) (apportioning majority of fault to give-way vessel that made an "inexplicable last minute course alteration").

149. Moreover, MCCAIN failed to transmit crucial AIS data about her course and speed. That data would have helped ALNIC confirm that MCCAIN had lost control of steering and better predict the destroyer's trajectory. To be sure, the tanker would not normally expect to receive AIS data from a military vessel, *see* Trial Tr. (Putty) at 415:18-25, and the lack of AIS data does not excuse ALNIC's failure to use traditional means of visual observation, *see Evergreen Marine (UK) Ltd. v. Nautical Challenge Ltd.* [2021] UKSC 6, [71]–[73]. Nonetheless, Navy guidelines required the destroyer to broadcast AIS data for safety; MCCAIN's decision not to take this prudent step was reflective of her larger failure to exhaust every option to avoid colliding with ALNIC.

150. Ultimately, the Court agrees with the Navy's own conclusions regarding MCCAIN's shortcomings:

> Many of the decisions made that led to this incident were the result of poor judgment and decision making of the Commanding Officer. That said, no single person bears full responsibility for this incident. The crew was unprepared for the situation in which they found themselves through a lack of preparation, ineffective command and control and

> deficiencies in training and preparations for navigation.

Navy Report at US0033430. MCCAIN's failures causing the collision were systemic, and the Court apportions her the majority of liability.

VIII. ALNIC's Liability

151. The Court apportions the remaining 20% of liability for the collision to ALNIC, who bore significant faults of her own. Although it finds ALNIC significantly less responsible for the collision than MCCAIN, the Court nonetheless devotes significant time and space to its analysis of ALNIC's faults because—unlike the United States—Petitioner has disclaimed any liability for the crash whatsoever.

A. ALNIC Failed to Properly Staff Her Bridge and Assess the Collision Risk

152. ALNIC's initial negligence stemmed from the understaffing of her bridge in the heavily trafficked Singapore Strait. In doing so, she violated COLREGS Rule 5 (failure to post a lookout) and Rule 7 (failure to appraise the risk of collision situation as MCCAIN approached).

153. COLREGS Rule 5 provides: "Every vessel shall at all times maintain a proper lookout by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision."

154. ALNIC's Safety Management System required five crewmembers on the bridge while in the Singapore Strait, including both an anti-collision officer and a dedicated lookout. Neither person was on ALNIC's

bridge the morning of the collision.[20] It is true AB Ambrocio had been given some lookout duties the morning of the collision, and he was heard over the black box stating he had seen MCCAIN from the bridge. But AB Ambrocio also needed to steer at the helm. His split responsibilities meant there was effectively no lookout on the tanker under COLREGS Rule 5. *See Elenson v. SS FORTALEZA*, No. 90 Civ. 0437 (RWS), 1991 WL 254571, at *6 (S.D.N.Y. Nov. 21, 1991) ("It is axiomatic that 'an inefficient lookout is equivalent to none.' . . . [O]ne who is assigned the duties of helmsman is not a proper person to act as a lookout.") (quoting *Interstate Towing Co. v. Stissi*, 717 F.2d 752, 755 (2d Cir. 1983)); *Grancolombiana*, 440 F. Supp. at 714 (lookouts must have no other duties to perform).

155. Instead, if the fifth crewmember, OS Secang, had been on the bridge—as his handwritten statement falsely claimed—he would have served as the lookout. His job would have been to identify dangers from nearby vessels to fill the gaps in observation left by equipment such as radar and ARPA. *See* COLREGS Rule 7(a) ("Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist."); *id.* Rule 7(c) ("Assumptions shall not be made on the basis of scanty information, especially scanty radar

[20] The Petitioner's shipboard operations expert testified that, in his experience, it would be typical to have the captain, the mate on watch, and a lookout (three crewmembers) on the bridge while transiting the Singapore Strait. *See* Trial Tr. (Hight) at 553:2-8. To the extent this custom would set a standard of care despite Stealth's own rules about having five crewmembers, the Court finds this testimony unpersuasive. And given AB Ambrocio's split responsibilities, ALNIC did not even have a dedicated lookout on watch, as the expert's purported custom would require.

information."). With OS Secang nowhere to be found, ALNIC's bridge was ill-equipped to respond to a sudden turn by MCCAIN.

156. Understaffing ALNIC's bridge was a proximate cause of the collision. *See The Dream Star* at [130]. The Petitioner's arguments to the contrary are not persuasive. For example, the Petitioner maintains that even a fully staffed bridge would not have had time to respond to MCCAIN's sudden turn. *See* Trial Tr. (Petitioner's Opening Statement) at 31:13-32:4. After all, Captain Nolasco had selected MCCAIN as a target on ARPA minutes before the collision, and both he and AB Ambrocio were heard discussing the destroyer on the black box. However, it is "self-evident" that more crewmembers on ALNIC's bridge would allow for better real-time observation of MCCAIN, both visually out the window and on radar. *Afran Transp. Co. v. The Bergchief*, 170 F. Supp. 893, 900 (S.D.N.Y. 1959), *aff'd*, 274 F.2d 469 (1960); *see also The Koscierzyna* [1996] 2 Lloyd's Rep. 124, 129 (overtaken vessel was 15% at fault for not continuously watching another vessel that crashed into its stern); *The Iran Torab* [1988] 2 Lloyd's Rep. 38, 43 ("If such a look-out had been kept it would soon have become apparent that the distance between the two ships was being reduced."); *Complaint of G & G Shipping Co., Ltd. of Anguilla*, 767 F. Supp. 398, 408 (D.P.R. 1991) (rejecting argument that "another pair of eyes" on the bridge would not have helped prevent a collision when the dedicated lookout was absent). With better focus on MCCAIN's erratic course, ALNIC could have slowed earlier as the destroyer approached. And the earlier ALNIC managed to slow, the less damage she would cause.

157. Several examples help illustrate the consequences of the missing anti-collision officer and

lookout. For one, if AB Ambrocio had been able to focus solely on manual steering, rather than splitting his attention towards looking out for other vessels, ALNIC's ability to maneuver would have improved. There would have been no need to rely on autopilot, and the tanker could have executed the swerving maneuver that Captain Putty testified was feasible. The risk of ignoring steering was precisely why Bridge Manning Level III required the helmsman and lookout to be separate, dedicated roles. *See* Ex. 9B at 21 (requiring that a "lookout having no other duties must be posted" in the Singapore Strait), *id.* at 28 (requiring "Manual Steering" while at Bridge Manning Level III), *id.* at 31 ("Helmsmen shall have no other duties when assigned to the helm.").

158. Another example: minutes before the collision, MCCAIN announced "loss of steering" over her external microphones. Even if the Petitioner is correct that no one from inside ALNIC's bridge heard that announcement, a proper lookout who was monitoring the wings outside the bridge might have. *See Maritime & Mercantile*, 2007 WL 690094, at *21 ("[W]hile it may be that a lookout might not have *seen* the YUKON in the fogged-in channel any better on the bow than from the wheelhouse, he at least might have *heard* the YUKON's horn better from the bow.") (emphasis in original) (citations omitted). And it would have been especially prudent to post a lookout outside of the bridge given the pre-dawn darkness and the stem-to-stern traffic in the Strait. *See id.*; *see also The Ottawa*, 70 U.S. 268, 273 (1865) (the bridge "in the night time, especially if it is very dark, and the view is obstructed, is not the proper place" for a lookout); *Arabian Am. Oil Co. v. Hellenic Lines, Ltd.*, 633 F. Supp. 659, 668 (S.D.N.Y. 1986) ("In the widely-known hazardous circumstances under which the [cargo ship] was navigating

. . . failure to post a lookout on the bow was imprudent and negligent."). MCCAIN's announcement about loss of steering, made over twoand-a-half minutes before the collision, would have been yet another warning sign for ALNIC to take early action. But with an understaffed bridge, that warning went unheeded.

B. ALNIC Failed to Take Any Action to Avoid the Collision

159. The failure to properly staff the bridge compounded ALNIC's second negligent act: her failure to slow or turn away from MCCAIN. Taking no action to avoid the collision violated COLREGS Rule 17.

160. COLREGS Rule 17 provides three tiers of instructions to avoid a collision for an overtaken (or stand-on) vessel like ALNIC. The rule provides in relevant part:

> (a) (i) Where one of two vessels is to keep out of the way the other shall keep her course and speed.
>
> (ii) The latter vessel may however take action to avoid collision by her maneuver alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.
>
> (b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.

Note the use of the permissive "may" in Rule 17(a)(ii) versus the mandatory "shall" in Rule 17(b).

161. Reading these subrules together, ALNIC had a baseline duty under Rule 17(a)(i) to maintain course and speed as MCCAIN passed by. That way, ALNIC would remain predictable to vessels attempting to maneuver around it. But Rule 17(a)(ii) gave ALNIC latitude to maneuver once it became apparent that MCCAIN was "not taking appropriate action" under the COLREGS—for instance, by heading towards ALNIC at close quarters. And finally, once ALNIC found "herself so close that collision" could not be avoided by MCCAIN alone, Rule 17(b) required ALNIC to "take such action as will best aid to avoid collision."

162. Using this three-tier framework, the Court must determine at what time(s) ALNIC's ability to maneuver became permissive under Rule 17(a)(ii), and then mandatory under Rule 17(b).

163. The Court concludes ALNIC was free to maneuver under Rule 17(a)(ii) once MCCAIN's red-over-red lights were energized at 5:21:25. That visible signal gave clear warning to a prudent mariner that MCCAIN had lost control and would be unable to avoid ALNIC.[21] And ALNIC had plenty of time—2 minutes and 33 seconds at that point—to slow or turn.

---

[21] The Petitioner argues MCCAIN was never actually "not under command" under COLREGS Rule 3(f) because her crew could have pressed a button to regain control of steering at any time. But even assuming MCCAIN energized her red-over-red lights when she should not have, that would not detract from ALNIC's imprudent response to those lights. *See The Djerada* [1976] 2 Lloyd's Rep. 40, 44 ("[T]he rule is express that the condition of hoisting the [not under command] black shapes is the fact and not the opinion of the fact."); *The "Samco Europe" and "MSC Prestige"* [2011] 2 Lloyd's Rep. 579, 585 (the duty to navigate around a nearby vessel is judged from an objective, not subjective, standpoint). Any reasonable mariner would have

164. At some point in those next 2 minutes and 33 seconds, a prudent mariner on ALNIC would have slowed. Again, slowing under Rule 17(a)(ii) is permissive. But Rule 17(a)(ii) is compounded by Rules 2 and 8. Rule 2(b) allows a vessel to "make a departure from" the COLREGS "as necessary to avoid an immediate danger." Rule 2(b) thus provides "an inherent flexibility to meet particular dangers and special circumstances," even for overtaken vessels which are expected to remain predictable. *Evergreen Marine* at [67]. Likewise, Rule 8(a) requires that actions to avoid collision be "made in ample time and with due regard to the observance of good seamanship." Thus, the Court concludes Rule 17(a)(ii) gave ALNIC more flexibility to begin precautionary maneuvers— always with an eye towards the polestar of good seamanship—than the Petitioner contends. *See id.* at [61]–[62].

165. Furthermore, to buy time when a collision risk is unclear, COLREGS Rule 8(e) requires a vessel like ALNIC to "slacken her speed or take all way off by stopping or reversing her means of propulsion." After all, since navigational rules like the COLREGS "are designed to prevent the risk of collision as well as collision itself, it is not necessary for a collision to be imminent or even probable before the obligation imposed by them accrues." *Ocean Marine Ltd. v. U.S. Lines Co.*, 300 F.2d 496, 499 (2d Cir. 1962) (footnote omitted). With less than half of a nautical mile between the tanker and the destroyer, a risk of collision should have been assumed. *Cf. In re Nat'l Shipping Co. of Saudi Arabia*, 147 F. Supp. 2d 425, 437

---

reacted with extreme caution to a fast-approaching destroyer broadcasting that it was not under command.

(E.D. Va. 2000) (risk of collision existed between two vessels 4.5 miles apart).

166. The Court "recognizes that hindsight is 20/20" and cannot fault ALNIC for refusing to slow the instant that Rule 17(a)(ii) kicked in. *Maritime & Mercantile*, 2007 WL 690094, at *27; *see also The Aracelio Iglesias* [1968] 2 Lloyd's Rep. 7, 13 (similar admonition under British admiralty law). But even affording ALNIC reasonable latitude, it is undisputed she took virtually no action—merely slowing a few RPMs, seconds before impact—during her two-and-a-half-minute window of opportunity. *See Complaint of Potomac Transp. Inc.*, 741 F. Supp. 395, 403 (S.D.N.Y. 1989) (Rule 8(e) required vessel to slacken speed after radar plotting confirmed a collision risk); *aff'd in relevant part*, 909 F.2d 42 (2d Cir. 1990). Instead, by barreling ahead at the same speed, ALNIC "forfeited valuable time and sea space" that she could have used to avoid the collision. *Maritime & Mercantile*, 2007 WL 690094, at *27.

167. Whatever the grey area under Rule 17(a)(ii), the Court concludes Rule 17(b) *required* ALNIC to act by 5:23:17. That was the moment when a member of ALNIC's crew determined MCCAIN was doing the "wrong maneuver." By that point—41 seconds before the collision—it should have been clear to everyone that MCCAIN could no longer avoid the collision by her actions alone. The warning signs had piled up: MCCAIN's red-over-red lights had been visible for almost a minute, her radar trail had continuously curved to the point where the turn into ALNIC's path was obvious, *see* radar image *supra* ¶ 97, the collision alarm had sounded (and been silenced), and ALNIC's crew were themselves aware that something "wrong" was happening. With MCCAIN's broadside seconds

away from being dead ahead, ALNIC needed to take action to avoid the collision. *See, e.g.*, *Crowley Marine Servs., Inc. v. Maritrans, Inc.*, 530 F.3d 1169, 1177 (9th Cir. 2008); *Nat'l Shipping Co. of Saudi Arabia*, 147 F. Supp. 2d at 440.

168. As the Court found above, ALNIC certainly could have done something in those 41 seconds. A combination of slowing and turning the tanker would have meaningfully mitigated the collision by reducing the force of impact and avoiding a T-bone.[22] *See supra* ¶¶ 119–121; *Matter of Hellenic Lines, Ltd.*, No. 81-529-N, 1982 WL 579, at *12 (E.D. Va. Nov. 17, 1982) (turning to port in final minute before collision was reasonable because alternative was to strike "hard at a right angle" and cause greater damage). Instead, ALNIC dallied in autopilot and failed to take any action at all; that choice was negligent. *See The New York*, 175 U.S. at 207.

169. Rule 17(b) still required ALNIC to react even if a collision was inevitable within those 41 seconds. Experts on both sides agreed on a vessel's duty to mitigate damage from a collision. *See* Trial Tr. (Putty) at 339:19-25 ("I think you would probably have to try to make a hard port maneuver and hope that you just

---

[22] One group of Sailor-Claimants argues that ALNIC's failure to slow or turn was especially damaging because it caused her to hit Berthing 5, where sailors were sleeping, as opposed to an area where sailors were not located. *See* ECF No. 364 at 1–2. The Court refuses to speculate about the better—or worse—locations that ALNIC could have hit. From the tanker's perspective, it would not have been clear what areas on the destroyer were deadly to hit and which were not. For example, if ALNIC had hit an area with explosive munitions, it is possible that the damage to both vessels (and the loss of life) would have been even greater. But the Court does agree, as witnesses for both sides testified, that a general glancing blow would have reduced the damage to MCCAIN.

maintain some sort of a glancing blow."); *id.* (Hight) at 500:4-7 ("If you know there is going to be a collision . . . you are bound by the rules to do something, something."). To excuse ALNIC's failure to take any action before the collision would allow overtaken vessels to steam, with absolute impunity, into other vessels. *Cf. Crowley Marine*, 530 F.3d at 1177. The COLREGS cannot be wielded in that way.

C. ALNIC Failed to Take Any Meaningful Action After the Collision

170. ALNIC's most inexcusable fault, though, was her failure to do anything to mitigate the damage after colliding with MCCAIN. Again, COLREGS Rule 17(b) requires vessels to mitigate collisions, not just avoid them. *See* Trial Tr. (Putty) at 339:9-13 ("[Y]ou have to take action to prevent extreme damage to both vessels and potential loss of life."). Yet ALNIC negligently left her engines running for 42 seconds after the collision and left her autopilot on for over a minute.

171. These two oversights substantially worsened the collision. Combined with the engine propulsion, expert testimony demonstrated how the autopilot steering caused ALNIC to sweep her bow over 45 degrees through MCCAIN's Berthing 3 and 5 for over a minute. This additional contact between the vessels increased the damage to MCCAIN and the potential loss of life in the berthing areas as sailors remained trapped in flooding compartments.

172. ALNIC's post-collision failures contrast starkly with the urgent—and in some cases, heroic—efforts made aboard MCCAIN in the immediate aftermath of the crash. While ALNIC was still in autopilot, propelling herself into MCCAIN, the destroyer's crew attempted to separate the two ships, call off-duty sailors to action,

and begin damage control and rescue efforts. From Commander Sanchez's efforts to expediently steward the destroyer to port, to Warrant Officer Patat and Petty Officer Brown's resourceful sealing of the hatch, the MCCAIN crew's post-collision actions almost certainly saved lives and prevented further damage to both ships.

173. The Petitioner did not muster much of an explanation for ALNIC's post-collision inaction. The Petitioner's shipboard operations expert opined that Captain Nolasco left the engine running because he thought he had already stopped it (which would itself be a blunder). *See* Trial Tr. (Hight) at 543:16-544:4. Similarly, the expert considered leaving the autopilot on after the collision an "oversight," and insisted there would be "more important things on [Captain Nolasco's] mind than the fact that the ship was in autopilot." *Id.* at 543:2-15. Whatever those other thoughts on Captain Nolasco's mind, they were not identified at trial, and it is difficult to see how any would be more important than preventing ALNIC from gashing further into, and across, MCCAIN. *See The Mount Apo* at [212] (finding "inexplicable" a captain's failure to stop the engine for almost three minutes until he was reminded to do so by a crewmember).

D. ALNIC's False Logs and Statements Enhanced its Fault

174. To the extent the Court is wary of judging ALNIC too harshly for decisions made *in extremis*,[23]

---

[23] The term *in extremis* describes "a vessel put in sudden peril through no fault of her own," whose crew must confront "a hard choice between competing courses [that must] be immediately made." Schoenbaum at § 14:3 (footnotes omitted). Decisions made by a crew *in extremis* are afforded extra latitude in hindsight. *See,*

the crew's subsequent coverup confirms the apportionment of ALNIC's fault. Those false logs and statements "impede[d] civil and criminal investigations into the cause of the collision" and threatened the integrity of this litigation, especially given admiralty law's heavy reliance on the accuracy of logbooks. *Otal II*, 494 F.3d at 58.

175. To be sure, the creation of false logs had no causative effect on a collision that had already taken place. And the Petitioner has long since admitted the falsities, lessening their poisonous effect on the evidence presented at trial (much of which was undisputed).[24] *See* ECF No. 221 at n.4. But "although the alterations of the logbooks obviously did not 'cause' the collision, the fact of the alterations has relevance to the ultimate allocation of liability for damages." *Otal II*, 494 F.3d at 58 (cleaned up). The Second Circuit has been forceful in sanctioning this type of bad faith:

> Our admiralty jurisprudence is especially sensitive to the unexplained alteration of logbooks. Where a logbook is altered, we "cannot avoid the conclusion that it had been dressed up to excuse the ship's faults." Such alterations should give rise to a presumption the logbook contained entries adverse to the

---

e.g., *The Frosta* [1973] 2 Lloyd's Rep 348, 356; *Cuba Distilling Co v. Grace Line, Inc.*, 143 F.2d 499, 499 (2d Cir. 1944).

[24] The Court has, however, given weight to the false logs when finding that MCCAIN properly energized her red-over-red lights. *See supra* ¶ 87. This was one of the few evidentiary questions that were disputed at trial, because the black box did not record the view from ALNIC's bridge. *See* Trial Tr. (Putty) at 350:7-9. If ALNIC's crew had no qualms about falsifying so many other records, the Court imagines they had no difficulty lying about what lights they saw over on MCCAIN either.

> vessel's contentions at trial. The inference "goes much further than merely to discredit the document itself; it is positive evidence upon the very issue" of liability.

Id. (quoting *The Glasgow Maru*, 102 F.2d 450, 453 (2d Cir. 1939) (Learned Hand, J.)).

176. Thus, the false statements are positive evidence of the ALNIC crew's consciousness of guilt. Those logs underscore the culpability of the crew by suggesting they knew the proper standard of care for navigating the Singapore Strait after all. By claiming they had posted an extra lookout, never relied on autopilot, and slowed the vessel minutes before the collision, ALNIC's crew spotlighted the exact errors they had committed. For example, as Captain Nolasco later confessed, the crew claimed to have stopped the engine two minutes before the collision because they believed stopping could have prevented the collision and would have been consistent with the COLREGS. *See* Ex. 3047 (Nolasco Dep. Tr.) at 155:18-156:25, 162:4-24. These alterations bolster the conclusion that ALNIC's crew "dressed up" the logs to "excuse the ship's faults." *Otal II*, 494 F.3d at 58.

IX. Limitation of Petitioner's Liability

177. Even though the Petitioner faces liability for 20% of the collision, it could still limit that liability. Recall that as the owner of ALNIC, the Petitioner began this case by petitioning to limit or exonerate its liability under the Limitation of Liability Act, 46 U.S.C. § 30501 *et seq*. "The animating premise of the" Limitation of Liability Act "is that the owner of a vessel is generally an absentee who entrusts the vessel to the command of a captain whom the owner has limited ability to supervise or control once the vessel

is on the sea." *Bensch v. Est. of Umar*, 2 F.4th 70, 73 (2d Cir. 2021). Pursuant to the statute, "[i]nstead of being vicariously liable for the full extent of any injuries caused by the negligence of the captain or crew employed to operate the ship, the owner's liability is limited to the value of the ship," and pending freight, "unless the owner himself had 'privity or knowledge' of the negligent acts." *In re City of New York*, 522 F.3d 279, 283 (2d Cir. 2008); 46 U.S.C. § 30505(a). "The Act thus protects the owner of a vessel from unlimited vicarious liability for damages caused by the negligence of his captain or crew." *Tandon v. Captain's Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 244 (2d Cir. 2014). The Court applies this federal law of the forum, rather than Singapore law, for the limitation of liability analysis. *See The Titanic*, 233 U.S. 718, 731–33 (1914).

178. Here, the Petitioner could potentially limit its liability to the value of ALNIC and her freight, which the parties have stipulated is $16,768,480. If liability were limited, the Claimants would only be able to recover *pro rata* from that limitation fund. *See* 46 U.S.C. § 30507. But on the other hand, if the Petitioner had "privity or knowledge," its liability "for the full extent" of any damages will be unlimited. *City of New York*, 522 F.3d at 283; 46 U.S.C. § 30505(b).

A. Limiting Liability: The Two-Step Framework

179. The Court's analysis under the Limitation of Liability Act proceeds in two steps. *See Otal Invs. Ltd. v. M/V CLARY*, 673 F.3d 108, 115 (2d Cir. 2012) ("*Otal IV*").

180. At step one, a claimant must prove negligence by the vessel whose owner seeks to limit liability. "If there was no fault or negligence for the shipowner to be 'privy' to or have 'knowledge' of within the meaning

of the statute, there is no liability to be limited, and the owner would then be entitled to exoneration." *In re Complaint of Messina*, 574 F.3d 119, 126–27 (2d Cir. 2009) (cleaned up). The Claimants have met their burden at step one; as discussed above, the Court has allocated 20% of the liability for the collision to ALNIC. Thus, the Petitioner's attempt to limit its liability hinges on step two.

181. At step two, the burden shifts to the owner to prove it lacked privity or knowledge of the negligence aboard its vessel. Where the owner is a corporation like the Petitioner here, privity or knowledge includes that of a "managing agent, officer, or supervising employee" of the vessel. *Otal IV*, 673 F.3d at 115 (quotation marks and citations omitted); *see also Nat'l Shipping Co. of Saudi Arabia*, 147 F. Supp. 2d at 444 n.8 ("The term 'shipowner,' as used in the statute, has been construed to include a ship management company responsible for the operation of the vessel.") (citing *In re Chesapeake Shipping, Inc.*, 803 F. Supp. 872, 874–75 (S.D.N.Y. 1992)). Thus, because Stealth had been delegated managing responsibility for ALNIC, the Court looks to Stealth's privity or knowledge as a proxy for the Petitioner. *See Cont'l Oil Co. v. Bonanza Corp.*, 706 F.2d 1365, 1376–77 (5th Cir. 1983) (collecting cases where privity or knowledge was imputed from agent to owner, when owner had delegated "so much autonomy in the management of the vessel" to the agent).

182. "Privity or knowledge can be actual or constructive," and is present where "the exercise of reasonable diligence could have prevented the commission of the act." *Otal IV*, 673 F.3d at 115 (quotation marks and citations omitted). Thus, the key question for limiting liability "is not what the corporation's officers and managers actually knew, but what they

objectively ought to have known." *In re Moran Towing Corp.*, 984 F. Supp. 2d 150, 180 (S.D.N.Y. 2013) (quoting *In re Patton-Tully Transp. Co.*, 797 F.2d 206, 211 (5th Cir. 1986)).

183. Courts typically find an owner cannot limit its liability when it fails to implement or monitor established safety procedures. *See* Schoenbaum at § 15:8. "If an injury occurs as a result of a shipowner's failure to use 'due and proper care to provide a competent crew,' that negligence is necessarily 'within the owner's privity.'" *Moran Towing*, 984 F. Supp. 2d at 180 (quoting *Messina*, 574 F.3d at 127). "Where human error . . . is involved, it is exceedingly rare to grant exoneration." Schoenbaum at § 15:8 (citing *Matter of Oil Spill by Amoco Cadiz*, 954 F.2d 1279 (7th Cir. 1992)).

B. The Petitioner Has Not Met Its Burden to Limit its Liability

184. The Petitioner has failed to prove that it (or its managing agent, Stealth) lacked privity or knowledge of ALNIC's negligence. Quite the opposite: the Petitioner's privity or knowledge was established through well-documented concerns about the risky behavior aboard ALNIC.

185. Stealth knew about ALNIC's deficient staffing practices. Both times that Captain Zisimos, the Stealth Marine Superintendent, was aboard the tanker for an inspection in the Singapore Strait, the bridge was understaffed. *See Complaint of Delphinus Maritima, S.A.*, 523 F. Supp. 583, 594 (S.D.N.Y. 1981) (finding "actual notice" where owner's representative observed an understaffing problem but took no action while "on board to protect the owner's interest"). He also reviewed—or should have reviewed—the logs and

charts confirming ALNIC's crew had routinely understaffed the bridge in the past as well. *See Waterman S. S. Corp. v. Gay Cottons*, 414 F.2d 724, 739 (9th Cir. 1969) (shipowner "cannot close its eyes to what prudent inspection would disclose," including with navigational charts). As the auditor responsible for ensuring ALNIC operated safely, the Marine Superintendent's knowledge is imputed to Stealth, and by extension, to the Petitioner. *See Otal IV*, 673 F.3d at 115; *Cont'l Oil*, 706 F.2d at 1376–77.

186. That information was relayed up the corporate chain. After completing his inspection, the Marine Superintendent warned higher-ups at Stealth, including the Safety Manager and Crewing Manager, about understaffing and other issues he had uncovered during his audit, including his more general concerns about the crew's ability to navigate safely. Moreover, the Marine Superintendent falsified a safety audit to avoid scrutiny by third parties. This false audit is further evidence that Stealth knew that ALNIC's carelessness could lead to trouble, or at the very least, that it had delegated responsibility to a feckless superintendent—the "negation of good management." *The Lady Gwendolen*, [1965] P. 294, 346.

187. Based on the wealth of information concerning ALNIC's deficiencies, the Court concludes the Petitioner had actual privity and actual knowledge of the tanker's safety problems. The Petitioner, through Stealth, had two months to implement the Marine Superintendent's recommendation to send someone to conduct remedial training for the tanker's crew. Absent that training, the Petitioner should have foreseen the crew would continue to violate the COLREGS by failing to post a lookout or use hand steering. *See In re Otal Invs. Ltd.*, No. 03 Civ. 4304

(HB), 2013 WL 6645438, at *8 (S.D.N.Y. Dec. 17, 2013) (declining to limit liability where "reasonable measures to discover the improper lookout practice were available but not taken" by the shipowner).

188. The Petitioner nonetheless declined to implement remedial measures prior to the collision voyage. Instead, it allowed ALNIC—one of the worst vessels the Stealth Marine Superintendent had ever audited—to again travel through one of the busiest shipping lanes in the world. On that ground, the Petitioner will not be limited in its liability for ALNIC's negligent acts. *See, e.g.*, *Potomac Transp.*, 909 F.2d at 46 (no limitation of liability where shipowner failed to ensure watch compliance, and therefore failed to "ensure that the vessel was being operated in a manner consistent with statutory rules and reasonable judgment"); *Hercules Carriers*, 768 F.2d at 1576–77 (no limitation of liability where shipowner either (1) made no effort to train crew in safe operation of vessel or (2) authorized the crew to ignore regulations and safety manuals).

189. Privity or knowledge is further bolstered in the context of the Sailor-Claimants' claims. For personal injury or wrongful death claimants, the Limitation of Liability Act broadens exposure by imputing the privity or knowledge of the vessel's captain "at or before the beginning of each voyage" to the owner. 46 U.S.C. § 30506(e).[25] Here, Captain Nolasco clearly

---

[25] This special provision does not apply to "tank vessels," 46 U.S.C. § 30506(a), and as an oil tanker, ALNIC would seem to fall squarely within that definition. However, the Second Circuit has concluded the term "tank vessels" does not include ocean-going vessels like ALNIC. *See Petition of The A. C. Dodge, Inc.*, 282 F.2d 86, 89 (2d Cir. 1960). The Second Circuit looked to the legislative history of the Limitation of Liability Act to conclude that "tank

planned to understaff ALNIC's bridge on the morning of the collision. He adopted the voyage plan submitted by his navigator prior to commencement of the voyage from Taiwan, and that plan called for navigating the Singapore Strait at Bridge Manning Level II rather than III as required. The Captain's voyage plan provides an additional reason why liability will not be limited.

190. Despite the knowledge of these agents and employees, the Petitioner argues that a shipowner can still limit its liability when a collision results from instantaneous problems that the far-away owner had no reason to anticipate. *See Hellenic Lines, Ltd. v. Prudential Lines, Inc.*, 813 F.2d 634, 638–39 (4th Cir. 1987). To the extent the Petitioner rehashes the argument that ALNIC would not have reacted any differently during the collision even if she had been fully staffed, the Court has rejected that argument in the fault analysis, *supra* ¶ 156. And in any event, the Petitioner failed to correct the understaffed bridge for months before the collision, which undermines any suggestion that ALNIC's mistakes were only made *in extremis*. *See Interstate Towing*, 717 F.2d at 755 (if the shipowner, "by prior action or inaction set into motion a chain of circumstances which may be a contributing cause even though not the immediate or proximate cause of a casualty, the right to limitation is properly denied"). The evidence is clear that the Petitioner had privity or knowledge of the problems aboard ALNIC that contributed to the collision. Accordingly, its petition to limit its liability is denied.

---

vessels" only includes harbor or river-type vessels. *Id.*; *see also Matter of Talbott Big Foot, Inc.*, 854 F.2d 758, 761 (5th Cir. 1988); *Petition of Panama Transp. Co.*, 73 F. Supp. 716, 717 (S.D.N.Y. 1947).

X. Damages

191. The Petitioner and the United States have stipulated to the damages their vessels sustained from the collision, excluding interest. *See* ECF No. 310-1. The United States suffered $185,000,000 in damages to MCCAIN, whose repairs took 450 days. The Petitioner suffered $442,445 in damages to ALNIC, whose repair period is unknown.

192. As with liability, the Court has held that Singapore law governs the calculation of damages in this case. *See* ECF No. 247 at 1. Under Singapore law, the Court awards damages in proportion to each party's allocation of liability. *See supra* ¶ 132. Those damages are then offset. *See The Dream Star* at [134]. Accordingly, the United States shall recover 20% of its $185,000,000 in damages and the Petitioner shall recover 80% of its $442,445 in damages, with those damages offset.

193. The Court acknowledges the counterintuitive reality that the United States shall recover the greater amount in damages despite bearing most of the responsibility for the collision. That reality arises out of "the peculiar nature of the vessel struck—a fragile [destroyer] of the United States Navy." *Nat'l Shipping Co. of Saudi Arabia v. United States*, 95 F. Supp. 2d 482, 495–96 (E.D. Va. 2000). But while providing a larger award to the more culpable party might appear "somewhat inequitable," that inequity "is illusory, because the relative fault of the parties has already been taken into consideration" when apportioning liability. *Id.* (quoting *City of Milwaukee v. Cement Division, Nat. Gypsum Co.*, 515 U.S. 189, 198 (1995)).

XI. Pre-Judgment Interest

194. Because pre-judgment interest presents a question of substantive law, the Court again looks to Singapore law. *See Schwimmer v. Allstate Ins. Co.*, 176 F.3d 648, 650 (2d Cir. 1999). Although Singapore courts have discretion in awarding interest, they typically do so at a rate of 5.33% per annum. *See* Chief Justice of Singapore, Practice Dir. No. 1 (2007); ECF No. 323-2 (Kuek Report) ¶¶ 165–68.

195. The parties dispute the proper date(s) to begin calculating pre-judgment interest. Singapore courts generally view the starting date as either the date losses are accrued, or the date proceedings are commenced. *See Friis v. Casetech Trading Pte Ltd* [2000] 2 SLR(R) 511. Between these two starting dates, the Court of Appeal of Singapore has instructed that courts should presumptively look to the date losses are accrued. *See id*. at [48]–[49].

196. For the United States, the Court selects the midpoint of MCCAIN's stipulated 450–day repair period (April 3, 2018) as the date losses were accrued. That midpoint date accounts for the fact that the United States' damages were incurred on a rolling basis. *See* Trial Tr. (Overbaugh) at 458:1-6. Accordingly, the United States' claim for pre-judgment shall run at a rate of 5.33% per annum from April 3, 2018 to the date of this Opinion.

197. The Petitioner's pre-judgment interest began to run on a different date. Unlike the United States, the Petitioner did not put on a case about its own pre-judgment interest, so the Court does not know the length of ALNIC's repair period or when exactly the Petitioner's losses accrued. The Court thus looks to the alternative starting date under Singapore law: the

date when Petitioner commenced these proceedings (February 15, 2018). The Petitioner's claim for pre-judgment interest shall run at a rate of 5.33% per annum from February 15, 2018 to the date of this Opinion. XII. Phase II of Proceedings

198. Having concluded that the Petitioner shall not be exonerated from liability, the wrongful death and personal injury claims by the Sailor-Claimants against the Petitioner shall proceed in Phase II.

199. The Court reserves decision on two issues that were not relevant to the Phase I trial. First, the Court reserves decision on whether the Petitioner may seek contribution and/or indemnity from the United States in Phase II. The Court accordingly retains jurisdiction over the United States as a party until that issue is resolved. Second, the Court reserves decision on whether the Sailor-Claimants have a right to a jury trial in Phase II.

CONCLUSION

200. The Court DENIES Petitioner Energetic Tank's petition for limitation ofliability.

201. The Court DENIES the Petitioner's petition for exoneration and APPORTIONS 80% of fault to the United States (for MCCAIN) and 20% of fault to the Petitioner (for ALNIC). Accordingly, the Court finds the Petitioner liable to the United States in the amount of $37,000,000 (20% of MCCAIN's stipulated damages of $185,000,000), minus $353,956 (80% of ALNIC's stipulated damages amount of $442,445). Net payment on principal damages is to be made by the Petitioner to the United States for $36,646,044.

202. Pre-judgment interest on the United States' principal damages of $37,000,000 from the mid-point

of repair (April 3, 2018) until the date of this Opinion is $8,293,626. Pre-judgment interest on the Petitioner's principal damages of $353,956 from the date of writ (February 15, 2018) until the date of this Opinion is $81,769. Net payment on pre-judgement interest is to be made by the Petitioner to the United States for $7,939,670.

203. Any objections to the Court's calculations of damages and pre-judgment interest shall be made by July 15, 2022. If no objections are filed, the Petitioner shall pay to the United States the sum of the net totals for principal damages and pre-judgment interest, $44,585,714, plus post-judgment interest.

204. Trial shall proceed to the Phase II claims by the personal injury and wrongful death Claimants in accordance with further orders to be issued by the Court.

Dated: New York, New York
June 15, 2022

SO ORDERED

/s/ Paul A. Crotty
HONORABLE PAUL A. CROTTY
United States District Judge