

MARITIME LAW

Appeals from Federal Court (F.C.) decision (2017 FC 105) dismissing appellant's action against Her Majesty the Queen in Right of Canada (Crown) for damages resulting from M/V *Clipper Adventurer (Clipper)* grounding on submerged, uncharted shoal in Canadian Arctic — F.C. maintaining Crown's action *in personam* and *in rem* against appellant, *Clipper* for costs, expenses it incurred to prevent marine oil pollution damage — Following discovery of shoal by Canadian Coast Guard (CCG) in 2007, Notice to Shipping (NOTSHIP) A102/07 issued — NOTSHIP A102/07 later cancelled when Notice to Mariners (NOTMAR) issued in October 2010 — *Clipper* not requesting NOTSHIPS, not having properly updated nautical chart on board — F.C. concluding that duty to warn *Clipper* discharged by issuance of NOTSHIP A102/07 — *Clipper* negligent in setting course without benefit of NOTSHIPS — As to Crown's claim for reimbursement, F.C. concluding that *Marine Liability Act*, S.C. 2001, c. 6 (MLA), s. 116(1) not applying, awarding Crown simple interest at 5 percent — Appellant arguing, *inter alia*, that duty to warn breached because NOTMAR should have been issued in June 2010 — Issues whether issuance of NOTSHIP A102/07 sufficient to fulfil duty to warn, whether F.C. should have applied MLA, s. 116, awarded lower rate of interest — F.C. not erring in finding no breach for which Crown should be held liable — F.C. entitled to consider other factors, circumstances such as whether actual warning given to mariners through issuance of NOTSHIP A102/07 suitable, reasonable warning — This was not a case where no warning was given of presence of shoal — Mariners having their own duty of care at common law — Must have on board up-to-date charts, nautical publications — Ample evidence in evidentiary record to support F.C.'s conclusion that issuance of NOTSHIP A102/07 fulfilling duty to warn mariners of presence of shoal — F.C. correctly concluding that MLA, s. 116(1) not applicable in present circumstances — Words "a claim under this Part" in s. 116(1) having to be construed by considering them in their entire context, grammatical, ordinary sense harmoniously with object, scheme of MLA, in particular Part 7, intention of Parliament — Part 7, entitled "Ship-source Oil Pollution Fund" (SOPF), establishing Canadian compensation scheme based on "polluter pays" principle — Appellant not putting forward any rationale as to why Parliament would intend to limit rate of interest payable by polluter when no payment by SOPF involved — SOPF acting primarily as debtor rather than creditor — Parliament wanting to regulate rate of interest payable by SOPF, thus recoverable when exercising its right of subrogation — Claims against shipowner or its guarantor referred to in s. 116(1) are claims by SOPF — Right of Crown to claim against appellant herein not a claim under Part 7 — Appeals dismissed.

ADVENTURER OWNER LTD. V. CANADA (A-64-17, A-65-17, 2018 FCA 34, Gauthier J.A., judgment dated February 7, 2018, 18 pp.)