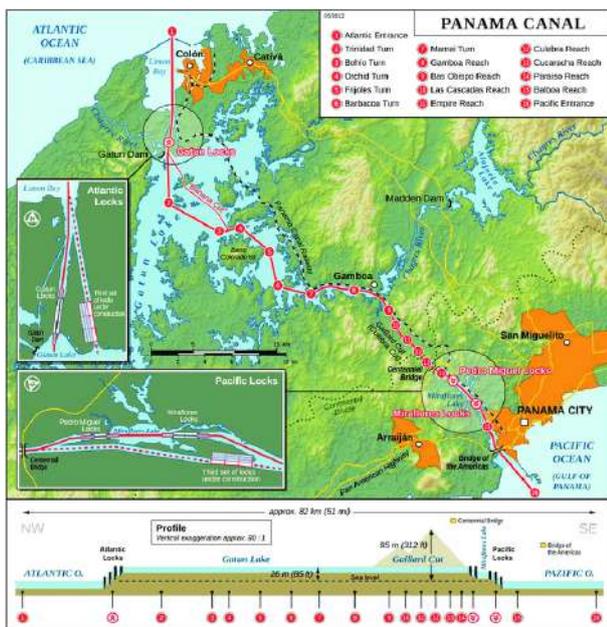


REMEMBERING THE CASE OF FEDMAR (M/V CARIBBEAN NAVIGATOR) V M/V LPG AHKATUN OF 1993: A COLLISION THAT COULD HINDER TRAFFIC IN THE PANAMA CANAL

BY PUBLIO CORTÉS



In the early hours of the morning of January 22nd, 1989, a dangerous collision took place at the entrance of the Atlantic (Caribbean Sea) of the Panama Canal, starring the M/V LPG AHKATUN, a tanker of approximately 215 meters in length, owned by Petroleos Mexicanos (PEMEX), which

transported Liquid Petroleum Gas (LPG) collided at a 90-degree angle with the M/V CARIBBEAN NAVIGATOR, owned by FEDMAR INTERNACIONAL, S.A., a smaller tanker, which transported gasoline and whose tank No. 4, product of the damage of the accident, spilled into the waters of Limon Bay, in Colón, Panama, just over 200 cubic tons of gasoline. There was no explosion. Thankfully. In the event of an explosion, the accident would most likely have obstructed traffic through the Panama Canal, it is not possible to know for how long, because it would depend on the type of damage.

In this Bulletin we review the facts and the final decision on the case, issued by the Civil Chamber of the Supreme Court of Justice in 1993, whose draft judgment I had to write, in my capacity as Law Clerk working for the Justice-

Rapporteur.^[1]

Location data and operational logistics in the accident area:

The Panama Canal is not a level canal like the Suez in Egypt or the natural Bosphorus canal in Istanbul. The Panama Canal has locks to raise ships in steps to the level of a central lake which is navigated and then lowered back to ocean level.

Before the Expanded Canal, the system only had 2 locks on the Pacific side and one on the Atlantic side. Now with the Expanded Canal, the previous system remains 100% operational for Panamax-size vessels and another set of two locks was added for post-Panamax-size vessels. It's like driving two sets of highways at the same time: one for small trucks and one for large trucks. Both highways share some sections of the route.

Unlike the Kiel Canal in Germany, which also has locks, the Panama Canal system is much more complicated due to the geographical setting, the number of locks and because it handles ships with a much higher tonnage. That was the case before the Expanded Canal and now even more so.

In the Panama Canal, navigation within the canal area is in the hands of the Canal Pilot, who takes full control of the



Master's navigational function from a certain point at the entrance to a certain point at the exit of the canal.

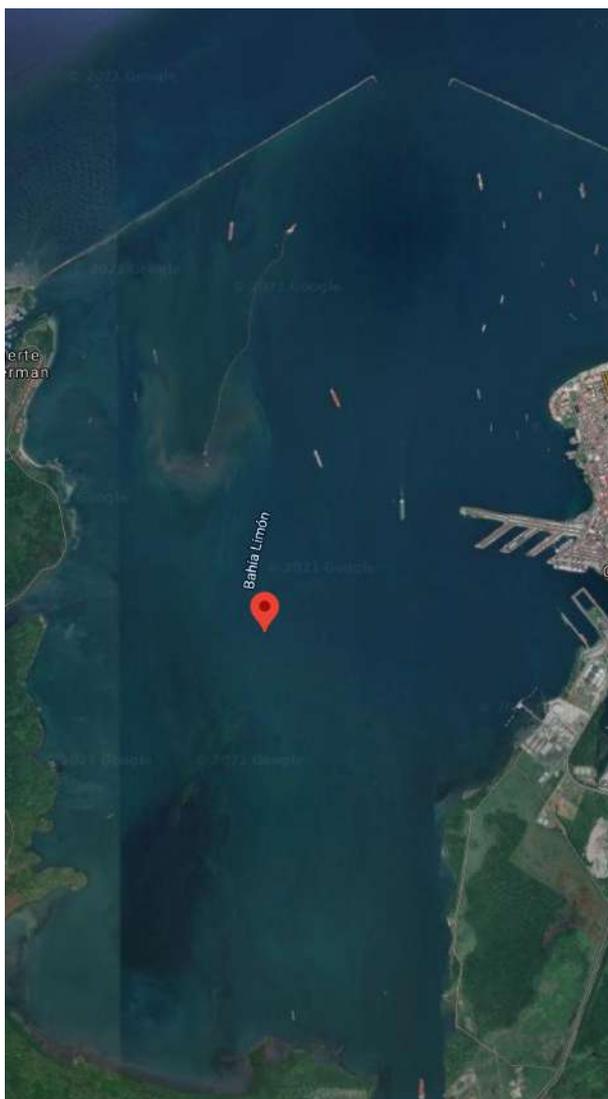
The Panama Canal Pilot not only gives advice to the Master: he becomes the vessel Master on the journey. To exercise his role, he relies on a huge teamwork that involves from the line handler, the tugboat masters, the team from the Maritime Traffic Control Center and others. Panamanians almost entirely, who fulfill a first world public function.

The case analyzed in this Bulletin occurred in 1989, when the Expanded Canal did not exist.

[1] Appeal filed by Fedmar Internacional, SA and M/V AHKATUN against the judgment of July 8th, 1992 issued by the Panama Maritime Court within the special maritime lien procedure that Fedmar Internacional, SA follows M/V AHKATUN. Speaker Justice: Carlos Lucas López T. Panama, June fourth (4), nineteen hundred and ninety-three (1993).

The scene of the incident was at the entrance to the canal from the Atlantic Ocean (Caribbean Sea). This entrance has the characteristic that ships entering or leaving the canal must cross through a space that exists between two breakwaters that separate the Caribbean Sea from Limón Bay.

The Limón Bay in the Province of Colón, Panama, is a great sea inlet that is a prelude to the concrete entrance to the Panama Canal. The breakwaters facilitate navigation within the bay, not only for the vessels entering or leaving



Satellite View of Bay of Limón

the canal, but also in relation to navigation to and from the important ports of the province of Colón, which are between the leading cargo transshipment ports in Latin America.

The accident occurred approximately at a point within Limón Bay, shortly after crossing the breakwater line, that is, the entrance that is used directly for the Panama Canal.

At that point, both ships had their Masters under their command. Neither of them had Panama Canal Pilots on board, since, in the case of the M/V CARIBBEAN NAVIGATOR, it had already completed its northbound transit towards the Atlantic Ocean and the Pilot had already disembarked. For its part: in the case of the M/V LPG AHKATUN, which was sailing south towards the Pacific Ocean, it had not yet reached the point where the Canal Pilot boarded the ship.

Applicable Legal Framework:

To determine the applicable Substantive Law, firstly, the Conflict of Law standard contained in what was then numeral 9, literal b, of article 557 of the Code of Maritime Procedure (today article 566 of the same Code) was used, according to which, in the event of a collision, if the accident occurs in the territorial waters of a country, the Law of the place of the accident applies. This conflict of Law standard was also included in Article 1462 of the Panama Commercial Code. The Law of the Republic of Panama was then applied, because the Bay of Limón

is part of the territorial sea of Panama.

The legal framework in force at that time contemplated article 1464, numeral 2, of the Commercial Code^[2], which included the principle of proportionality of the responsibility of the collisions in which there is a common fault.

In 1989 Panama was still in transition from United States control of the Canal to Panamanian control that was completed in 2000. The faculty of administering justice in the area had already been in the hands of Panama for years. However, at that time, Article III, numeral 2, literal c, of the 1977 Canal Treaty, was still applicable, according to which the United States had the power to promulgate navigation regulations within the Panama Canal, was effective until December 31, 1999. As a result of the foregoing, Part 111 of the Code of Federal Regulations of the United States of America was also applicable to the case, regarding the navigation standard in the canal's operating area.

As the aforementioned United States regulation for canal navigation was applicable in the "canal operating area", said area had to be defined, for which the Court relied on the Canal Treaty and on Section 111.1 of said regulation, according to which it was applicable *"between a line that connects the light of the east breakwater and the light of the west breakwater at the Atlantic entrance of the Canal in Limón Bay, and a line that*



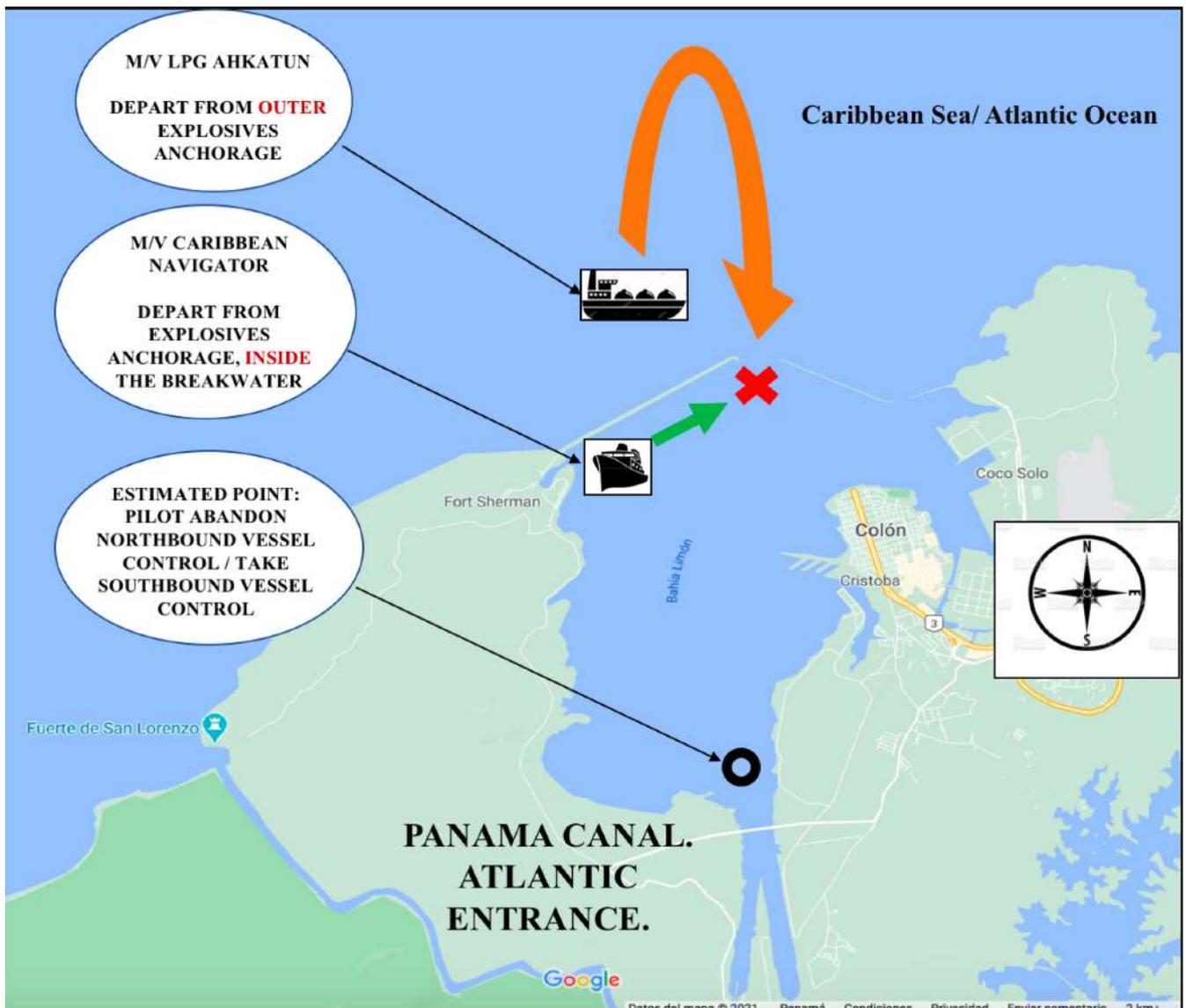
passes through the buoys 1 and 2 of the Canal, extended on the border line of the Canal at the Pacific entrance, Panama Bay".

Today Panama has its own regulations. Outside that canal territory, towards the high seas, then and now the international navigation regulations approved by an international convention of all countries, of which Panama is a party, apply.

Facts of the Case:

The judicial truth tells that at 1:30 in the morning of January 22, 1989, the M/V CARIBBEAN NAVIGATOR had already completed the crossing of the canal, heading north. The Canal Pilot had already disembarked and Master

[2] The substantive rules on collisions contained in articles 1462 et seq., of the Panama Commercial Code that were applied to the aforementioned case, were later repealed by Law 55 of 2008, "On Maritime Commerce", whose article 288 on collisions provides: *"For the purposes of this Chapter, the norms of the Convention on International Regulations for Preventing Collisions at Sea, signed in London in 1972 and ratified by the Republic of Panama on March 14, 1979 shall apply."*



TRIVIZAS had taken full control of his ship. As it needed fuel to resume ocean navigation through the Caribbean Sea, the ship needed to stop to receive the supply.

As it was a gasoline tanker, it could not be "parked" at any point, because the security rules of the Panama Canal are very strict and require that such ships can only anchor at an anchorage called "Explosives Anchorage".

At the Atlantic entrance of the canal there is an Explosives Anchorage within the area shielded by the breakwaters and there is also another Explosives

Anchorage outside the perimeter protected by the breakwater system. Master TRIVIZAS took his vessel to the internal Explosives Anchorage, which is located in the area near the western breakwater of Limón Bay. At that point he lowered anchor and the maneuver to refuel the ship was carried out, which concluded at 5:55 in the morning.

The ship's next plan was to sail from the Inner Explosives Anchorage parallel to the west breakwater until it reached the exit between the two breakwaters to sail into the Caribbean Sea. The M/V CARIBBEAN NAVIGATOR was warned by the Signal Station at the Port of

Cristobal that at approximately 8:00 a.m. a panamax vessel would be entering the channel through the breakwaters.

According to Captain TRIVIZAS' watch, at 7:13 a.m. he radioed that he had departed from the inner Explosives Anchorage for the Atlantic breakwater entrance heading for the open sea.

The M/V CARIBBEAN NAVIGATOR followed a route parallel to the west breakwater at a prudent speed of 6 knots on a northeasterly course. If it had indeed departed at 7:13 a.m. from the anchorage, the fuel tanker would probably have had no problem in finding the breakwater exit clear and sailing into the Caribbean Sea, before 8:00 a.m. The problem was that the judicial truth indicates that the watch used by Master TRIVIZAS was 22 minutes late and he had actually departed at 7:35 a.m.

Meanwhile, the M/V LPG AHKATUN was anchored at the outer Explosives Anchorage, outside the breakwater, on the west side, awaiting her turn to enter the canal axis heading south towards the Pacific Ocean.

At 7:28 a.m. the M/V LPG AHKATUN got underway on a northeasterly course and then made a turn and headed southbound directly towards the entrance to the breakwater to follow the axis of the canal. It was going at a prudent speed of 7.8 knots.

As it was approaching the breakwater entrance the M/V LPG AHKATUN saw

the M/V CARIBBEAN NAVIGATOR sailing inside the west breakwater, parallel to the breakwater towards the breakwater entrance. At that time Master OLIVARES of the M/V LPG AHKATUN radioed the Signal Station at the Port of Cristobal and there he was confirmed that the M/V CARIBBEAN NAVIGATOR was aware that a panamax vessel would be entering the breakwater at 8:00 am. Despite this, Master OLIVARES continued observing the situation with special care because he perceived potential danger and tried unsuccessfully to communicate with the M/V CARIBBEAN NAVIGATOR.

As this was happening, the M/V CARIBBEAN NAVIGATOR continued its course and speed towards the entrance of the breakwater without stopping and being already close to the exit, but inside Limón Bay, it observed for the first time the M/V LPG AHKATUN coming a mile and a half away along the axis of the channel. At that moment, and after his call went unanswered, the Master of the M/V LPG AHKATUN slowed its speed by half, then brought the engines to zero and subsequently ordered to reverse full speed.

The M/V CARIBBEAN NAVIGATOR attempted to cross ahead of the M/V LPG AHKATUN and then depart into the Caribbean Sea, however, the reality is that the M/V LPG AHKATUN, despite the fact that it was already in reverse gear, due to the inertia of its southbound speed and the fact that the other vessel maintained its course and speed, it collided with the M/V CARIBBEAN NAVIGATOR at a 90-degree angle, at a

point immediately beyond the dividing line connecting the east and west breakwaters, inside Limon Bay, at 7:52 a.m.

The time of the incident indicates that the departing vessel, M/V CARIBBEAN NAVIGATOR, was late, because Master TREVIZAS' watch was 22 minutes late, but also that the inbound vessel, M/V LPG AHKATUN, arrived at the point approximately 8 minutes ahead of schedule.

The impact occurred in such a way that the bow of M/V LPG AHKATUN embedded itself in M/V CARIBBEAN NAVIGATOR, broke her tank No. 4 and spilled a little more than 200 tons of fuel. Since the impact stopped the M/V LPG AHKATUN and its engines were in full reverse gear, after the impact, M/V LPG AHKATUN started to move backwards completely and the metals of both ships were rubbing against each other. There was no explosion by a miracle.

Judicial Debate and Court Ruling:

First Instance

According to Panama's Maritime Procedure, the owner of the M/V CARIBBEAN NAVIGATOR, the legal person FEDMAR INTERNACIONAL, S.A., filed a lawsuit and initiated a maritime lien proceeding in the Maritime Court of Panama against M/V LPG AHKATUN, attributing to it all responsibility for the accident. In turn, the defendant M/V LPG AHKATUN filed a counterclaim.

The process followed all the stages of

Preliminary Hearing and Ordinary Hearing, where all the means of evidence were used, highlighting the expert evidence on navigation.



LPG tanker

Shipyard: Boelwerf S.A.

Place of construction: Temse, Belgium

Hull no. 1.501	Classification society: DNV	
Registration:	Call Letters: XCKT	IMO: 7723869
Crew: 40	Passengers: 0	
TRG: 35.129	TRN: 24.180	DWT: 47.232
DV: 15.530	Length: 215.70	Beam: 32.29
Depth: 19.00	Draft: 12.02	

Deck equipment (Quantity per tons):

Tanks:	Tank Capacity: 57.001 m3
Fuel capacity: m3	Daily consumption:
One Sulzer 6RND90 diesel engine; 2T;	
6 cylinders (900 x 1.550); S.A. Cockerill-Ougree- Providence, Serai	
20.100 bHP	Propellers: 1 Speed: 17 knots.

- 1979.** March 09. Launched on slipway
- 1980.** April 19. Launched for Boelwerf NV/Bocimar NV. Christened PETROGAS III (Belgium).
- 1980.** Sold to PEMEX, Petróleos Mexicanos S.A Coatzacoalcos. Renamed AHKATUN (Mexico).
- 1980.** 17 October ready for commissioning.
- 1985.** June 15. Breakdown due to explosion of tug Pemex 383 at Pajaritos.
- 1999.** Sold to General Gas Carrier Pte. Ltd. Renamed HUGO N. (Panama)
- 2001.** August 01. Same owner. - HUGO N. (Singapore)
- 2001.** December 01. Same owner. - HUGO N. (Norway)
- 2003.** September 01. Same owner. - HUGO N. (Panama)
- 2009.** July 01. Sold to Hermes Maritime Services PVT, Mumbai. Renamed UGO. (Tuvalu)
- 2009.** July 23rd. Scrapped at Gadani Beach, Pakistan.

In this type of process, the purpose is to determine in what percentage each vessel was responsible for the accident. In addition, the amount of each vessel's damages is also sought to be determined. In this way, each party must pay the percentage of fault attributed to it, applied to the number of damages suffered by the other party. For example: if a vessel is responsible for 25% of the accident, then it must pay 25% of the damages suffered by the other party.

The Panama Maritime Court, after analyzing the facts of the case, compared with the applicable navigation rules, determined that the M/V CARIBBEAN NAVIGATOR was 90% responsible and 10% corresponded to the M/V LPG AHKATUN.

Factors taken into account were that neither vessel was speeding, neither vessel had a watchman, the Master of the M/V LPG AHKATUN made great efforts to avoid the accident, while the other vessel did not, it was mentioned that the crew on duty on the bridge of the M/V CARIBBEAN NAVIGATOR did not comply with the number required by the regulations, that the M/V LPG AHKATUN did not blow the whistle required by the regulations and other factors such as these.

Appeal to the Court

The respondent-reclaimant M/V LPG AHKATUN accepted the apportionment of liabilities established in the Maritime Court's judgment, did not dispute that it was liable for 10% of the damages sustained by the M/V CARIBBEAN

NAVIGATOR, however, asks the Court to disregard from the total list of damages suffered by M/V CARIBBEAN NAVIGATOR some invoices that it did not cover, because they were paid directly by its insurers affiliated to LLOYD'S OF LONDON.

The appellant stated that there was no proof of such insurance and neither did such third parties become part of the process, when they could have done so. In particular, it questioned the fact that the Maritime Court had recognized FEDMAR INTERNACIONAL, S.A. as the agent acting on behalf of the insurers and that, therefore, FEDMAR could only claim for the damages directly suffered and borne by itself.

The Court agreed with the respondent appellant and based its decision on two arguments: one on Procedural Law and the other on Commercial Law.



In terms of Procedural Law, it considered that the Maritime Court had rendered a judgment contrary to the principle of coherence of the judgment, insofar as the judgment must be in accordance with the petitions formulated. The plaintiff FEDMAR asked to be compensated for the damages suffered by it. However, the a quo had issued an "extra petita" judgment by awarding FEDMAR compensation for damages suffered by third parties who did not appear in the process.

In substantive matters, the Court rejected the concept of "obvious mandate" used by the contested judgment, to justify that FEDMAR acted as a sort of agent on behalf of the insurers. The support was that at that time the Code of Commerce, in its article 57, paragraph 7, required that the commercial mandate had to be registered in the Public Registry. Nowadays, article 580A of the Commercial Code does not make registration mandatory, but that was the rule at that time.



The plaintiff FEDMAR also appealed the decision. Its approach involved a total questioning of the entire evidentiary assessment made by the Maritime Court in the first instance on the facts of the case. The plaintiff sought to have the Court re-examine the evidence in order to establish other facts that would allow for a total reversal of the decision of the a quo.

By means of an extensive reasoning where several procedural rules of the Code of Maritime Procedure were analyzed in an agreed manner, the Civil Chamber exposed in a structured manner and for the first time, its jurisprudence related to the handling of the second instance of the Maritime Proceeding, according to which the debates can only be matters of law and that - therefore - the appellants' charges should be related to concrete legal infringements and not based on generic assertions.

The Court developed, mainly, the rule contained in article 483 of the Code of Maritime Procedure, which at that time said: *"Only matters of law may be discussed in the appeal. The facts may not be discussed in the second instance"*. Likewise, it applied the concept contained in said Code, according to which the practice of evidence in the second instance does not proceed.

In the reasoning of the Civil Chamber, fundamental importance was given to the value of immediacy and orality, which is given during the hearings with evidence that take place in this special procedure, where the first instance

judge has the privilege of immediacy over the evidence that the second instance judge does not have.

Based on this procedural support, the Court dismissed the arguments of the plaintiff FEDMAR, since the appeal did not raise specific and reasoned questions of law on the evidentiary issue or on the issue of liability in the collision.

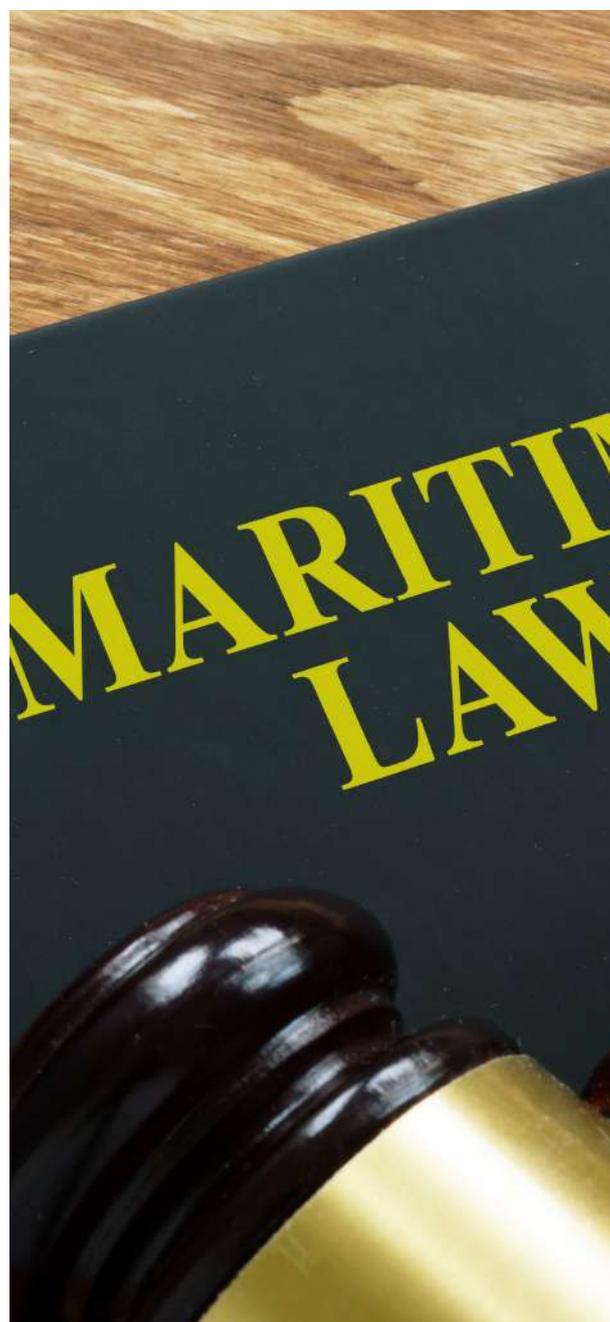
Although it cannot be affirmed that it was constant in the subsequent, we are convinced that this jurisprudence was consolidated in time and is the immediate antecedent of the new version of the procedural rule that regulates the subject in the reformed text of the Code of Maritime Procedure, in force today with the number 488, which is the successor of the former article 483, whose text is as follows:

***“Art. 488.** In the appeal before the Court of Maritime Appeals, only matters of law may be discussed. The facts may not be the subject of discussion in the second instance, except in cases of infringement of substantive rules of law due to error of fact as to the existence of the evidence and error of law as to its appreciation, provided that such errors have substantially influenced the decision.”*

In the current state of the Law, maritime appeals are no longer decided by the Civil Chamber of the Supreme Court. Instead, a Court of Maritime Appeals was created. However, the flavor of the

Civil Chamber of the Supreme Court and the grounds for civil cassation has its categorical imprint in this article 488 of the current Code of Maritime Procedure.

Behind this rule, we are sure, is the historical precedent of the 1993 FEDMAR (M/V CARIBBEAN NAVIGATOR) v M/V LPG AHKATUN case.



Final Comments

The Panama Canal, under Panamanian administration since 2000, has an excellent performance in terms of navigational safety. However, collisions and maritime accidents are always a possibility in such a complex nautical operation.

It is important for the international community to know that Panama not only has a technically efficient canal, but also has a specialized maritime justice system, with many decades of operation, in which conflicts are resolved efficiently and with first class international standards.

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