LEGAL DEVELOPMENTS 2026

ERIC MACHUM, METCALF & COMPANY

EMOND V. TRILLIUM MUTUAL INSURANCE CO., 2026 SCC 3 – POLICY INTERPRETATION

Background

- **Loss & Regulations:** 2019 flood destroyed the Emonds' 1968 Ottawa River home; rebuilding required costly conservation authority upgrades.
- **Base Policy:** Comprehensive form ($585,092 limit) excluded increased costs due to compliance with construction and zoning laws, subject to a $10,000 compliance sub-limit.
- **GRC Endorsement:** Covered replacement *'using current building techniques*' beyond the dollar cap, but left other policy terms unchanged.
- **Outcome:** Majority (7-2) confirmed *Ledcor* analysis applied to Endorsements. 'Upgrade' recovery costs limited to the $10,000 sub-limit.

Take Aways

- **Endorsement Hierarchy:** Endorsements are built on the base policy rather than standing alone; unambiguous base policy exclusions still apply.
- **'Current Building Techniques':** Refers to modern construction methods (e.g., air-nailing), not mandatory statutory or regulatory upgrades.
- **No Temporal Cut-Off:** Compliance exclusions covering 'any law' apply to all regulations in force at loss, regardless of enactment date.
- **Nullification Of Coverage Threshold:** Reducing recovery does not nullify coverage where the endorsement still removes the base policy's dollar limit.

TWO "BATTLE OF THE FORMS" CASES

QSL Canada Inc v Cliffs Mining Company and U.S. Steel Corp., 2025 FC 1653

- **Facts:** Stevedore QSL co-mingled Cliffs and USS cargo after nearly 20 years of working with USS under unsigned annual agreements incorporating QSL's standard terms. USS later issued Purchase Orders (POs) with conflicting terms.
- **Outcome:** The Court enforced QSL's limitation of liability clause. USS's silence and continued vessel deliveries constituted acquiescence by conduct. The POs only served an "administrative function".

Atlantic Merlin Shipping v Aegir-Marine, 2025 FC 1373

- **Facts:** Vessel owners sued Aegir-Marine over negligent bow thruster repairs. Aegir sought a stay citing a Virginia forum clause in service terms emailed to the Chief Engineer with a quote and subsequently in an 'Order Confirmation'.
- **Outcome: The** Court denied the stay and enforced New Brunswick jurisdiction under Vessel owner's terms accepted by contractor during vendor pre-qualification years earlier.

BATTLE OF FORMS – TAKE AWAYS

- **Conduct vs Last-Shot Paperwork:** Courts examine the entire commercial relationship. Long-term commercial conduct and pre-existing framework agreements outweigh conflicting boilerplate terms on late-stage purchase orders or repair quotes.
- **Execution Formalities Matter:** In *Aegir*, missing signatures or uninitialed pages on a counterparty's standard form served as strong judicial evidence that the terms were never adopted.
- **Shipboard Crew Authority Limits:** Terms emailed directly to operational crew (e.g., Chief Engineer) will not likely override corporate-level contracting frameworks without express mutual consent.

RIVARD V. HUMPHREY ET AL, 2026 ONSC 5134 – SCOPE OF PRODUCTION

Background

- Following a July 7, 2018 boat collision, Christian Rivard sued for personal injuries alongside related property damage claims between the Rivard and Humphrey parties.
- Prior to examinations for discovery, Humphrey Defendants moved for a further and better Affidavit of Documents seeking expert files, private investigator files, boat service records, underwriting files, pre-collision medical records, employment records, and special damages proof.
- **Outcome:** Partially grated. Court ordered the Rivard Parties to produce Christian Rivard's clinical notes, treatment records, and Manitoba Health Summary for the two years preceding the crash, and dismissed all other requests.

Take Aways

- **Medical History is Relevant:** A personal injury plaintiff's pre-accident health is automatically at issue to assess pre-existing conditions, entitling defendants to inspect the records rather than rely on the plaintiff's view of relevance.
- **No Speculation:** A party seeking further disclosure must prove on a balance of probabilities that omitted documents actually exist; mere speculation about missing expert, investigator, maintenance, or damages records is insufficient.
- **Control & Specificity:** Parties need not produce underwriting files outside their possession or control, nor overly broad employment records better addressed at discovery.

THE PRESTIGE (NO. 2), [2026] UKSC 36 – CONDITIONAL BENEFITS PRINCIPLE - PAY TO BE PAID AND ARBITRATION

Background

- After the 2002 Prestige oil spill, Spain and France bypassed the P&I Club Rules' London arbitration *and* "pay to be paid" clauses, suing the Club directly in Spain for up to US$1B which the insured had not paid to victims. State immunity barred anti-suit injunctions against Spain and France.
- **Outcome:** The UK Supreme Court held:
  - A third party claiming a right derived from an insurance contract assumes corresponding obligations in this case, contractual obligation to arbitrate.
  - Spain and France must indemnify the Club for past defense and enforcement expenses, pay "**equal-and-opposite indemnities**" to neutralize any future foreign enforcement orders up to the policy limit, and reimburse any sums collected under the Spanish judgment.

Take Aways

- Spain cannot enforce its €2.355 billion (capped at US$1B) Spanish judgment in England against the Club.. Any attempt to do so is immediately defeated by the English arbitration awards and UKSC judgment.
- Offensive Enforceability (Collecting Defense Costs): Challenging – and beyond the scope of this presentation!
- **Protects "Pay to Be Paid" & Policy Defences:** Reinforces that foreign direct-action statutes generally enforce the *insurance contract itself*, preserving English/Canadian law defences rather than creating independent strict-liability rights.
- Subrogated insurers pursuing recovery may be bound at common law by underlying charterparty or bill of lading arbitration clauses - exposing insurers to damages if they sue in the wrong forum.
- Risk for non-CLC and Bunkers Convention claims by SOPF against P&I Clubs.

ITHACA PROSPECT LLC & ANOR V LLOYD'S INSURANCE COMPANY SA & ORS, [2026] EWHC 2700 – SUE AND LABOUR EXPENSES ET AL

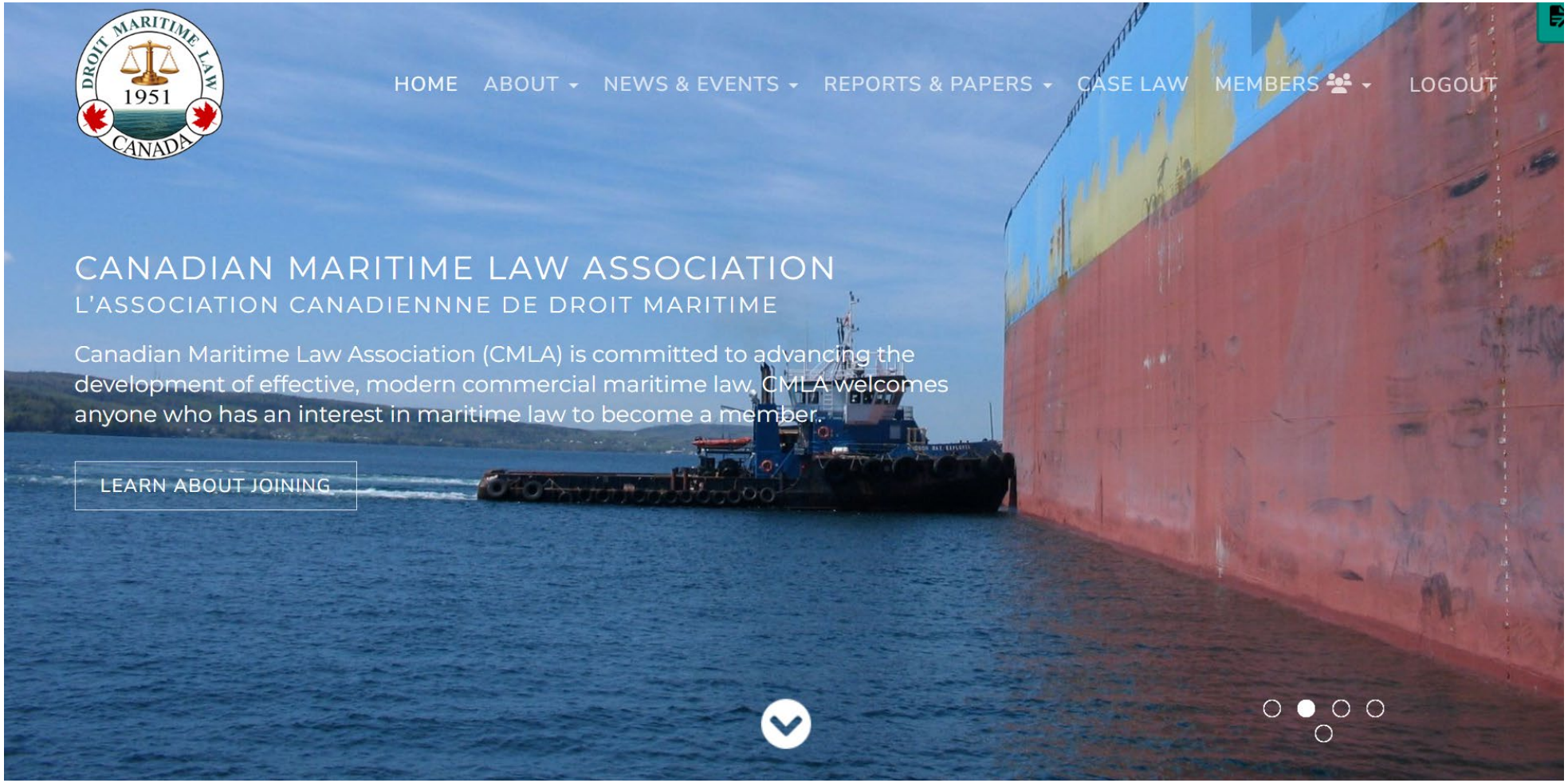
Background

- Bulk carrier *Ithaca Prospect* was trapped in Mykolaiv, Ukraine, following Russia's invasion in February 2022.
- While seeking opportunity to leave, the owners kept vessel operational, replaced crew, consumed bunkers and obtained replacement war risks insurance. They claimed US$1.18M in "sue and labour" expenses and US$2.28M in replacement insurance premiums after insurers cancelled.
- **Outcome:**
- Allowed: US$550,134 for crew expenses, and US$192,000 for bunkers, and legal fees directly tied to getting the vessel out.
- Refused: Port fees paid after the vessel had become a CTL,
- Refused: Legal expenses relating to separate cargo proceedings.
- Refused: Replacement Insurance because insurers did not accept abandonment, pre-settlement insurance costs did not pass to them as a "liability of ownership."

Take Aways

- **Hope Justifies Mitigation:** Maintaining readiness to escape a war zone qualifies as "sue and labour" despite bleak prospects.
- **Assess costs individually:** Crew, fuel, legal and port expenses may be treatment differently depending on their purpose.
- **Document the link:** Evidence should establish how costs were intended to avert or minimise an insured loss.
- **Timing Matters:** Post-CTL costs may not qualify as sue and labour.
- **Directing a Sale ≠ Abandonment:** Facilitating a sale and takin the proceeds under a settlement agreement does not mean acceptance of abandonment or retrospective ownership liabilities.
- **Clarify abandonment arrangements:** Settlements should clearly address the parties' respective rights and obligations concerning a vessel's sale and abandonment.

CMLA CASELAW DATABASE



Case Law

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Decision Date: September 16 2026

Rivard v. Humphrey et al, 2026 ONSC 5134

Précis: The Ontario Superior Court of Justice ordered the Plaintiff to produce two years of pre-collision medical records while dismissing the Defendants' remaining document production requests.

Marine Insurance Evidence

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Decision Date: January 30 2026

Emond v. Trillium Mutual Insurance Co., 2026 SCC 3

Précis: Supreme Court of Canada restated the framework for interpreting insurance policies and exclusions: the insured must first establish an initial grant of coverage, the insurer must prove an exclusion applies, and the

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QUESTIONS?

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