



NORTON ROSE FULBRIGHT

# Shipping in Africa

Norton Rose Fulbright South Africa Inc - 2019



# Our shipping practice

Our South African admiralty, shipping and marine practice is widely regarded as a leader in domestic and cross-border shipping legal services. We are one of the few global practices able to provide all the services needed by today's sophisticated shipping companies.

Our experience is particularly wide-ranging and aided by our master mariner, we are recognised as specialists in South African shipping law with the ability to provide commercially focussed advice supported by our international network across more than 50 countries.

We advise on all aspects of risk in relation to shipping and logistics and provide guidance on good corporate governance in mitigating such risks. We have played a leading role in almost every major marine casualty off the coast of South Africa for the past 25 years.

Our Customs team service a wide range of commodity, retail and freight forwarding clients in managing their interaction with the South African Revenue Service. We have extensive experience in disputes with SARS regarding tariffs, duty and excise and regularly pursue appeals against penalties raised by SARS

Our clients include a varied range of local and international owners and operators, banks, trading houses, lessors, charterers, commodity traders, hull, cargo and liability insurers and brokers, oil majors, LNG operators, ship builders, container shippers, cruise ship operators, warehousemen and stevedores, ship's agents and clearing and forwarding agents.

## Main practice areas

admiralty matters

collateral management agreements

customs and excise issues

domestic and foreign dispute resolution

drafting charter parties, contracts of carriage

international trade and commodities

marine insurance disputes and subrogated claims recovery

maritime casualty response

ports infrastructure

ports regulatory work

recovery actions

terminal, warehouse and stevedoring advice

commercial litigation





## Experience:

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### Big Storm

Represented the port authority, Transnet National Port Authority (TNPA), a division of the national logistics operator, Transnet Limited and its liability insurers, Santam Limited and its re-insurers in the London market after an unprecedented violent storm swept through the Durban harbour in South Africa causing vessels to break their moorings (including the 100 000mt containership, mv MSC Ines) and collide with other vessels, ground on sandbanks and at the entrance to the harbour. Various claims amounted to approximately USD45 million. The application of the exemption provisions in the National Ports Act will have an impact on at least 50 other significant pieces of legislation.

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### mv APL Austria

Represented cargo insurers in obtaining urgent access to the mv APL Austria which suffered a catastrophic fire which affected several hundred containers. The owners declared general average and the cargo was discharged at Port Elizabeth in South Africa for onwards carriage to final destination by various lines. We assisted the clients' fire expert to determine the cause of the fire and the merits of any recovery action, and securing all claims for general average. We have identified the owners of the cargo that started the fire and are advising on proceedings against them in Brazil and China.

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### JLT Group

Drafted a bespoke set of marine insurance clauses dealing with the provision stipulatio alteri (being a contract for the benefit of a third party) for brokers representing logistics and other freight operators. The product produced for the client is unique in marine insurance industry in South Africa and is the only product of its kind.

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### Mv Rena

Advised the owners and insurers of this containership following her grounding on Astrolabe Reef, the largest ever marine environmental incident in New Zealand. The matter involved handling the initial response to the casualty, evidence gathering, and the enquiry, defending officers who faced criminal charges, wreck removal and the subsequent management of claims brought by a number of different parties.

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### Members of Parakou Shipping Group

Responded to a claim for charter hire following the collapse of shipping markets in 2008. This resulted in the arrest of three of our client's ships in South Africa, the arrest of one of the claimant's clients in South Africa, two London arbitration awards, liquidation proceedings in Singapore and a Mareva injunction in Hong Kong.

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### MSC Napoli (multi insurer casualty) Marine Cargo Insurers

Represented the majority of the local cargo insurance market advising on cargo salvage, cargo losses, recovery actions against various contractual carriers and owners and limitation of liability by owners and carriers. Attended London mediation to settle claims with owners, charterers and P&I Clubs.

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### Ilanga Scientific (Pty) Ltd

Drafted discrete voyage charter party terms for the carriage of salt in bulk from Namibia to Nigeria, Cameroon, Europe and North America.

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### Wilmar Oils and Fats Africa (Pty) Ltd

Acted on behalf of commodity trader following cancellation of a number of forward contracts during the market collapse in 2008 relating to numerous shipments of vegetable oil into Mozambique. Obtained FOSFA arbitration awards and proceedings have been commenced in Mozambique to enforce the awards against the purchaser.

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### Terminal development in Mozambique

Advised on all aspects arising out of concessions to operate most of the bulk and container terminals in Maputo Port, Mozambique.

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### Mv Macuti

Acted for the owners and insurers of the dredger that was run aground on a sandbank in Beira to prevent her sinking after a collision with another vessel. Provided limitation and liability of each colliding vessel, access to each vessel and we are pursuing recovery for the loss of approximately USD 20 million.

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### Mv Smart

Acted for insurers of a cargo of 80 000 tonnes of coal lost when this Capesize ran aground and broke up off Richards Bay. We obtained an access order to crew and evidence and have instituted proceedings to recover loss of USD 15 million from the port authority by way of litigation in South Africa.

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### Durban Container Terminals (DCT)

Advised DCT on their options regarding the mitigation of its loss and the possible options for securing both its own and insurers' rights of recovery against the mv Julian, its owners and the port authority due to damages caused when the ship collided with DCT's bulk loading appliance casing.

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### Otto Marine and owner of the osv GO REGULUS

The offshore supply vessel GO REGULUS was damaged whilst undergoing repairs. Advised on three arrests on the vessel, the prospect of the vessel having claims against the operator of the Cape Town dry-dock, various hull and machinery insurance issues and claims by the port authorities for outstanding port dues. Further, advised both the client and the mortgagee bank on various issues arising out of the potential sale of the vessel.

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### Tug owners and demise charters

Advised owners and demise charterers of a salvage tug and their P&I Club on their liabilities following a stranding during a violent storm. The litigation involved numerous legal regimes, including questions of private international law, choice of law, limitation of liability and pure economic loss relevant to the laws of at least four regimes. Central to the claim was an industry issue – being the applicability of the TOWCON contract and its “knock-for-knock” liability and “warranty of authority” provisions.

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### Mv Mainport Ash

Advised the owners and underwriters of the mv Mainport Ash which suffered a catastrophic engine failure after undergoing drydocking at Durban. The matter deals with conflicting contractual terms and issues relating to causation. The matter is complicated in that it involves the co-ordination of technical experts and overseas factual witnesses and negotiating with the lawyers for the drydock.

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### Recovery agents

Instructed by London based recovery agents, on behalf of London based underwriters, to pursue a subrogated recovery for the loss of copper in the amount of approximately USD 600,000 against a warehouse operator based in Johannesburg, South Africa.

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### Mv Stellar Daisy

Interviewed the surviving crew members of the mv Stellar Daisy following her sinking off Brazil; obtaining access to her sistership, the mv Stellar Unicorn; negotiating the preservation of documents from both vessels and her owners. We had to establish, from witness testimony, documentary evidence and expert evidence, whether the cargo had undergone liquefaction - the process by which fine particles are abruptly transformed from a solid dry state to an almost fluid state which may have caused the mv Stellar Daisy to lose stability, split in two and capsized.

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### Coal terminal

Investigated an alleged incident at one of the world's largest coal terminals which involved the loading of a cargo of hot coal which caused an explosion on board the vessel and required the cargo of coal to be discharged. This matter required our technical skills and knowledge of the port regulatory environment, the sale of coal, and our expertise on port liability insurance.

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### Durban dig-out port

Provided advice to South Africa's only petroleum related products refinery on possible expropriation of land and relocation of refinery and SBM at a cost of US\$600 million due to new Durban port.

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### Motorvia 1993 (Pty) Limited

Successfully appealed against penalty raised by South African Revenue Services (SARS) for removal of numerous motor vehicles that were the subject of a detention order. SARS is on a revenue drive and accordingly raises penalties against companies in the logistics chain even if most of them are not guilty of any contraventions.

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### Bailee and carriers liability policies

Advised underwriters and brokers in regard to Road Carrier Care Custody and Control policy and drafted relevant policies.

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### Mv Amber Lagoon

Assisted cargo underwriters with subrogated recovery actions against the owners of the mv Amber Lagoon following damage to the cargo during heavy weather.

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### The Royal Bank of Scotland - Arrest and sale by way of judicial auction of a vessel subject to a mortgage in favour of the bank.

Objecting to other maritime claimants who sought to assert a preferent ranking over the bank. Recovered balance of proceeds of sale for the bank. The different ranking provisions in different jurisdictions highlighted that banks need to be proactive in enforcing mortgage claims.

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### Deutsche Bank AG, New York Branch

Advised client on how best to resist being joined to an application relating to an arrest of a ship from claims arising out of the collapse of the OW Bunkering group of companies. The matter was important to the banks as they often have arrangements in place to pay bunker suppliers in the event that they have outstanding debts. On paying these debts, the debts were transferred into the ownership of the banks - many of whom had insured these debts in the event that they were unrecoverable. We successfully resisted the joinder of the bank.

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### Stkuld P&I Club via Verein Hanseatischer Transportversicherer e.V.

Defended various claims brought by crew, dependants of crew and the owners of the mv Lindsay against the owner of the mv Ouro do Brasil. The claims arose out of the sinking of the fishing vessel following her collision with the mv Ouro do Brasil.

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### Marine Cargo Insurers

Defended marine cargo underwriter in proceedings instituted by the insured due to the rejection of a substantial claim following a derailment in the DRC.

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### Rennies Ships Agency (Pty) Ltd

Protected the client's position as preservation agent for the mv Silver Star that had been under arrest in Port Elizabeth for over a year. A current lacuna in South African legislation exposed the client to the possibility of not being able to recover from the ship, its owner or the admiralty marshal that had instructed the client.

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### Dormac (Division of SoutheyHoldings)

Acted for a major ship yard and ship repairer in South Africa in the purchase and installation of a floating dock in Durban Harbour. This entailed assisting with drafting the purchase and construction contract with the Ukrainian builder, advising on the risks associated with the construction, payment for and transport of the floating dock and with registration of the floating dock on the South African Ships Registry. The transaction was complicated by the risks associated with purchasing a partly built floating dock whose original buyer might have intervened and by the multi-jurisdictional aspects of the case.

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### Protea Chemicals (Pty) Ltd

Drafted long term supply agreement for supply of bulk methanol to the Angolan offshore oil industry. This included consideration of underlying supply agreements from Europe, charter party arrangements and contracts with offshore floating supply and storage platforms. It also involved the assessment of risk and management of terminal conditions. It incorporated the laws of Holland, Angola, England and South Africa.

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### Eikos Risk Applications (Pty) Limited/JLT

Advised on appropriate policy wording to cover insurance required by Freight Operators and drafted the appropriate policy wording. The resulting policy is unique to the industry.

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### HDI-Gerling Industrie Versicherung AG

Acted on behalf of the underwriters of a consignment of 50 000 tons of bulk Mexican maize, which was found to be wet and mouldy on discharge at Durban. We provided advice on coverage issues, obtained access orders to carry out inspections and testing of hatch covers and to obtain pre-discovery documentation from ship owners. We also secured a claim against ship owners and are in the process of running a recovery action for the loss and damage. Storage space shortage for damaged cargo in Durban and time pressure created by constant testing of parcels meant the claim changed significantly from day to day which affected the security negotiations.

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### Freeport Ferries

Commercial and Contract - The client intends operating the first Ro-Ro freight and passenger services in Southern and East Africa with the support of the governments of South Africa, Mozambique and Madagascar. We have been involved in every commercial aspect of the deal including terminal agreements, charterparties and exclusivity agreements.



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### Starr Adjustment Services Inc

Advised insurers of the cargo regarding the legal and administrative requirements of trans-shipment, a cargo of 10 000mt of Titanium Rutile, an extremely refined product, following the breakdown of the vessel, her arrest and proposed sale of the ship in Durban harbour.

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### Goltens Rotterdam B.V.

Obtained payment of a claim against the Fund established from the sale of the mv Iskandar for services rendered by Goltens Rotterdam B.V. to the Vessel. The contract was subject to Dutch law and involved a complicated contractual arrangement due to the changing scope of the work that Goltens Rotterdam B.V. contracted to undertake.

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### Marine Cargo Insurer- commodity traders

Assisted marine cargo underwriters with subrogated recovery action against a port terminal operator in Tanzania following the theft of cargo. The recovery action was instituted out of the Tanzanian High Court (Commercial Division).

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### Bidfreight Port Operations (Pty) Ltd

Advised Bidfreight Port Operations, as stevedores employed by Kynoch, following the failure of two ship board cranes on the mv "Gail". Assets owned or leased by Bidfreight were severely damaged, including a large excavator, a lifting beam and a specially designed grab used for discharging bulk fertilizer. These claims needed to be investigated and the quantum secured, in a very short space of time.

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### Tide Marine Shipyard

Advised Tide Marine Shipyard on its contract with the National Ports Authority to construct a plough dredger for channel depth maintenance in the Port of Durban. As part of government's Operation Phakisa initiative and its drive to award contracts to previously disadvantaged individuals, Tide Marine which has no history of ship construction, was awarded this contract. We are assisting this nascent industry in procuring a site in Port Elizabeth where the dredger will be constructed, in liaising with finance institutions for guarantees and in managing the project and all of the subcontractors involved.

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### Associated Marine (Division of Santam Limited)

This matter is a dispute arising out of non-compliance with various conditions and warranties, in particular a "Container Warranty" Clause, set out in a marine insurance policy by the insured. The claim arises out of damage to a consignment of project cargo caused by a derailment on route to the project site following discharge from the ship.

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### Associated Marine (Division of Santam Limited)

Represented SASOL (South Africa's largest chemical company) and their insurers in a matter involving the contamination of a cargo of MIBK. What was unique was that the source of the contamination proved to be extremely difficult to establish, and involved experts from South Africa, Rotterdam, the USA and the UK. In addition, the process of mitigating the contaminated cargo also set industry standards in this regard for all matters similar to this going forward.

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### Associated Marine (Division of Santam Limited)

Advised client on whether they were liable to Kalpataru under the policy of insurance and to defend the subsequent litigation instituted by Kalpataru. The claim arises out of damage to a consignment of project cargo caused by a derailment enroute to the project site following discharge from the ship in Tanzania and haulage to Lubumbashi, DRC.

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### Ore & Metal Company Ltd

Advised client on securing payments due by the largest European based steel manufacturer in respect of goods already on the water. Reviewed the sale terms (CFR) and the rights to hold the bills of lading as security for payments due; advised client on status as creditor in subsequent liquidation proceedings in Italy.

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### Holland-Astra Marine

Advised underwriters on freight forwarders' liability policy cover and exposure to an extremely large claim made against insured by South African Revenue Authorities.

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## The Team

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# NORTON ROSE FULBRIGHT

## Norton Rose Fulbright

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Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare. Through our global risk advisory group we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

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**7000+**  
People worldwide

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**4000+**  
Lawyers and other  
legal staff worldwide

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**1100+**  
Partners worldwide  
75% men, 25% women  
(approximately)

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**50+**  
Offices

**Law around the world**  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

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