Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Viking Inshore Fishing (Pty) Ltd v Mutual and Federal Insurance Co Ltd

The SCA today upheld an appeal by the owners of the fishing vessel *Lindsay* against Mutual and Federal Insurance Ltd for payment of R3.99 million under a marine insurance hull policy. The claim arose from the sinking of the *Lindsay* at about 12.45am on 8 May 2005 after a collision with the *Ouro de Brasil* a large juice carrier sailing from Singapore to Santos in Brazil. Mutual and Federal repudiated liability for the claim on the grounds that the owners of the *Lindsay* breached a warranty that they would at all times comply with the provisions of the Merchant Shipping Act, 1951 and regulations under that Act relating to the safety and seaworthiness of the vessel.

The Court held that the operation of the warranty would have had the effect of nullifying the insurer's liability in terms of two clauses in the policy, known as Inchmaree clauses, that provided cover against loss of the *Lindsay* due to negligence on the part of any person, including the master and crew of the *Lindsay*. The warranty expressly said that it would not be construed in a way that nullified the insurer's liability under these

two clauses. Accordingly the High Court's rejection of the claim on the grounds of the warranty was incorrect.

As to an alternative defence by the insurer that the loss of the *Lindsay* was due to a want of due diligence on the part of the vessel's owners the Court held that there was no evidence that this was the cause of her sinking. It accordingly upheld the appeal and altered the order of the High Court to one of judgment in favour of Viking Inshore Fishing, together with interest and costs.