

ADMIRALTY LAW

Expert Analysis

Requiem for an Oligarch's Yacht

*I'm back in the U.S.S.R.,
You don't know how lucky
you are, boy,
Back in the U.S.,
Back in the U.S.S.R.*

—The Beatles (1968)

It used to be cool to be a Russian Oligarch. But not anymore. Used to be an oligarch could sail confidently into any port in the world with a multi-million-dollar super yacht and be King of the World. But not anymore. And, as The Beatles predicted, “you don’t know how lucky you are boy” (if an Oligarch) to be “back in the U.S.S.R.”

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to be seized and confiscated no matter where they are in the world ... except of course Russia.

I have been asked many times “What is it about Admiralty Law that allows a Russian oligarch’s yacht to be seized”? To which I reply “Nothing really.”

There is nothing in Admiralty or Maritime Law in and of itself that allows the arrest, detention, and stripping of ownership of someone’s asset for no reason other than country affiliation, association with its president and obtaining such asset with monies arguably skimmed from the government or by other allegedly corrupt means. This is not to be confused with the age-old remedy



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in U.S. Maritime Law and the Federal Rules of Procedure of “arresting” a vessel in rem to enforce a maritime lien. Rule C, *In Rem Actions*; Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. In the United States, a vessel may be arrested and either held as leverage to obtain security for

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a claim, or to obtain federal jurisdiction over the vessel and vessel owner before the vessel flees the jurisdiction. Such proceedings are typically for a maritime tort such as personal injury, wrongful

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death, collision, allision, or for breach of a maritime contract. See Supplemental Rule E and Rule G pertaining to *Forfeiture Actions in Rem* arising from a federal statute. See also Mercante, J., “A Ship Arrest Is No Pleasure Cruise,” *New York Law Journal* (Feb. 25, 2022).

The oligarch sanctions and yacht seizures are far different, far reaching and now nearly universal in its application such that there is no safe haven. The Department of Justice, Treasury Department even has a not-so-secret code name for the sanctions: Task Force *KleptoCapture*. Launched in March 2022, the idea was to enforce sanctions imposed on Russia, one of which was to seize the ill-gotten assets of Russian oligarchs loyal to Russia’s President. The sanction was designed to put pressure on Russia to end the war in the Ukraine and to use the monetary value of the asset (or the asset itself) to assist Ukraine. When the federal government seizes a yacht, or participates in same, the yacht falls under the control of the U.S. Marshals Service. The Marshals then have to keep the asset viable.

One notable example of a nation’s commitment to this international mutual assistance, was the June 2022 seizure in Fiji of the \$325 million superyacht AMADEA, linked to a Russian oligarch. After the invasion, the superyacht had shut off its transponder and hightailed it through the Panama Canal to Mexico and then to Fiji to evade detection by the United States. The 348-foot yacht, longer than a football field, is equipped with a helipad, swimming pool, and live lobster tank. Fiji’s Supreme Court weighed in and allowed the yacht’s seizure. Within a couple of hours of the ruling, the U.S. crewed and sailed off with the vessel under a new flag.

A court in Barcelona seized the 279-foot MERIDIAN A linked to a Russian state aerospace and defense oligarch. Spain has seized several additional yachts including the \$600 million superyacht CRESCENT, and the LADY ANASTASIA. As part of the wave of U.S. and European sanctions in the aftermath of Russia’s invasion, was the seizure in Germany of the superyacht DILBAR,

tied to a Russian billionaire. Another yacht AXIOMA was seized and sold at auction for \$37.5 million in Gibraltar. Gaspard Sebag and Stephanie Baker, “Superyacht Seized in Spain as Sanctioned Owner Stops Fees,” *Bloomberg* (Nov. 5, 2022).

In Italy, officials seized the 132-foot yacht LENA, worth an estimated \$8 million. Also seized in Trieste, Italy, was the Sailing Yacht “A”. At 469-feet long, it is one of the world’s largest superyachts valued at over \$440 million. The “A” has eight decks, elevators, an underwater observation area and the world’s tallest masts.

Still, there is much debate about the legal authority, precedent and international law that permits seizure of oligarch assets. Some point to the 1977 International Emergency Economic Powers Act (IEEPA), 50 U.S.C.A. §1702, which governs how sanctions are applied. This law was deemed watertight in a national emergency when Iranian assets were seized in response to American personnel taken hostage at the American Embassy in Tehran, Iran

1979. *Dames & Moore v. Regan*, 453 U.S. 654 (1981).

Similarly, the annual U.S. defense legislation included terms this year permitting the confiscation of assets in the United States that belong to certain Russian individuals and use the proceeds to support the Ukrainian people. H.R. 7900.

Then there is the U.S. Constitution, which grants power to Congress to issue Letters of Marque and Reprisal and make rules concerning “Captures on Land and Water.” Article I, §8, Clause 11. A government-issued letter of marque empowers even a private individual to legally seize a foreign vessel. This was long ago known as ‘privateering’ which was a factor in the Revolutionary War wherein Britain lost hundreds of ships to American privateers. Philip Bump, “Could Congress Let You Seize this Russian Oligarch’s Yacht?”, Washington Post (March 1, 2022). Letters of marque were a hot topic to target pirates off the Coast of Somalia, in keeping with the remedy’s history of combating piracy. *Id.* So, say

a marine salvor (or anyone) is lucky enough to score a letter of marque, you too could be on the lookout for an oligarch’s yacht. H.R. 6869 was introduced to Congress on Feb. 28, 2022 “to authorize the President to issue letters of marque and reprisal for the purpose of seizing the assets of certain Russian citizens.”

While these yachts carry substantial marine insurance, yacht policies typically and expressly exclude coverage for any losses incurred as a result of “capture, seizure, arrest, restraint or detainment.” American Institute Hull Clauses, 1977. Indeed, since the invasion, some insurers have added a specific “Russia-Ukraine Conflict Exclusion” to yacht policies, leaving no stone unturned. Thus, the capture and seizure of a yacht is not a viable claim for which that vessel owner will get a lifeline from its marine insurer.

The billionaire oligarchs that sailed into Russian waters before the invasion now know “how lucky they are,” to paraphrase The Beatles. On the other hand, most if not all oligarch challenges to yacht seizures

around the world have failed, signaling a “requiem” for the heavyweight billionaires. (Full disclosure: I know the word ‘requiem’ from a 1960’s movie *Requiem for a Heavyweight*, produced by David Susskind, starring Anthony Quinn, Jackie Gleason, Mickey Rooney and Cassius Clay (later Muhammad Ali), where the young challenger (Cassius Clay) surprisingly knocked out the heavily favored champion played by Anthony Quinn. I know this trivia only because my father was the technical director and boxing referee in the movie, Hall of Fame referee Arthur Mercante.)