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Limitation of Liability – Cutting Cables and Breaking Limitation

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- ▣ Convention on the Limitation of Liability for Maritime Claims 1976(The “London Convention”)
- ▣ “virtually unbreakable” – IMO
- ▣ The Realice case; Société Telus Communications and Ors –v- Peracomo Inc. and Ors 2011 FC 494

Limitation Amounts – Loss of Life and Personal Injuries

- Ships not exceeding 2,000 gross tonnage is 3.02 million SDR (up from 2 million SDR).
- For each ton from 2,001 to 30,000 tons, 1,208 SDR (up from 800 SDR)
- For each ton from 30,001 to 70,000 tons, 906 SDR (up from 600 SDR)
- For each ton in excess of 70,000, 604 SDR (up from 400 SDR).

Limitation Amounts – Property Claims

- ▣ Ships not exceeding 2,000 gross tonnage is 1.51 million SDR (up from 1 million SDR).

- ▣ For larger ships, the following additional amounts are used in calculating the limitation amount:
 - For each ton from 2,001 to 30,000 tons, 604 SDR (up from 400 SDR)
 - For each ton from 30,001 to 70,000 tons, 453 SDR (up from 300 SDR)
 - For each ton in excess of 70,000 tons, 302 SDR (up from 200 SDR).

The Realice – the Claim

- ▣ Claim amount - \$980,433.54 plus interest
- ▣ Uncontested amount - \$892,395.32
- ▣ Limit under the Convention - \$500,000



The Players:-

- ▣ Sunoque 1
- ▣ Société Telus (“Telus”)
- ▣ Peracomo Inc.
- ▣ Mr. Réal Vallée

The Realice Facts

- ▣ 2005 – Anchor caught for the first time
- ▣ 6 June 2006 – Anchor caught again, cable cut and anchor freed
- ▣ Mid June 2006 - Anchor caught again and cut again
- ▣ July 2006 - Investigation into the damage begins

Limitation Frameworks

- ▣ The London Convention
- ▣ The Athens Convention
- ▣ The Hague-Visby Rules
- ▣ The Hamburg Rules
- ▣ The Warsaw Convention

Article 4 of the London Convention provides that:-

“ A person shall not be entitled to limit his liability if it is proved that the loss resulted from his **personal** (emphasis added) act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

The Athens Convention

In the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended the carrier is not entitled to limit liability:-

“if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result”.

The Hague-Visby Rules

The Hague-Visby rules, which limit liability with respect to cargo carried by sea under a bill of lading state that limitation of liability is lost:-

“ if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result”.

The Hamburg Rules

The Hamburg Rules state that limitation is lost:-

“if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result”.

The Warsaw Convention

The Warsaw Convention dealing with carriage by air states that the limitation of liability shall not apply:-

“if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage, or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.”

- ▣ Loss
- ▣ Persons entitled to limitation – shipowners and salvors
- ▣ Burden of proof
- ▣ Personal act or omission
- ▣ Intent to cause such loss
- ▣ Recklessly and with knowledge such loss would probably occur

Loss (Art 2)

- ▣ Loss of life
- ▣ Personal injury
- ▣ Damage to property
- ▣ Occurring on board or in direct connection with the operation of the ship or with salvage operations and consequential loss resulting therefrom

- ❑ Shipowner- “Owner, charterer, manager and operator of seagoing ship”
- ❑ Irish legislation removes “seagoing”
- ❑ Owner – Peracomo
- ❑ Mr. Vallée – Article 1(4) – person for who’s actions the shipowner may be found liable

Personal Act or Omission

- ▣ Directing mind / Alter Ego
- ▣ Mr. Vallée deliberately cut cable
- ▣ Peracomo responsible for Mr. Vallée's actions “not only vicariously, but also personally”
- ▣ Lennard's Carrying Co Limited –v- Asiatic Petroleum Co. Limited [1915] AC 705

Intent to cause such loss

- ▣ Court found intent present
- ▣ Loss = Diminution in value of cable not the cost of its repair
- ▣ Limitation of liability refused

Recklessly and with Knowledge

- ▣ Both elements must be present
- ▣ Recklessness – “mental attitude or indifference to the existence of risk”
- ▣ The Leerort [2001]
- ▣ The Saint Jacques II and Gudermes [2003]

- ❑ Collision between The Leerort and Zim Piraeus due to excessive speed
- ❑ Must establish reckless conduct **and** knowledge loss would probably occur
- ❑ Must show knowledge that vessel was likely to collide

The Saint Jacques II and Gudermes

- ▣ Saint Jacques II deliberately navigating across channel
- ▣ Collision occurred with Gudermes
- ▣ Saint Jacques II applied summarily for limitation
- ▣ Sent for full hearing as there was a “real prospect” of defeating the right to limit

Conclusion

Protection still strong

Facts important in each case

Favours larger shipowners?

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