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International Maritime Law Seminar 2015

Recent developments in maritime law: A Multi-Jurisdictional Perspective

Collisions and ‘allisions’ under Dutch law

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Introduction



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Introduction

- *A floating house in a canal in Amsterdam explodes because of a gas leak, injuring people and damaging houses along the canals.*



Introduction

- *A truck is carrying a houseboat. The boat while being on the truck hits a bridge.*

Truck hauling houseboat hits bridge on I-40

WKRN web staff

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NASHVILLE, Tenn. (WKRN) – A truck hauling a houseboat struck a bridge on Interstate 40 Wednesday morning.

It happened near Elm Hill Pike just after 9:30 a.m.

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Dutch law of marine collision

- Common perception/definition of a marine collision is the coming together of two vessels, which involves physical contact.
- Already since 1910 Brussels Collisions Convention a modest expansion: the rules also apply to damage caused by a vessel to persons or property on board of a vessel.
- Damage not on board of a vessel governed by national law.

Dutch law of marine collision

Scope of application of the Dutch law of marine collision:

- Collisions of vessels with fixed objects e.g. a bridge;
- Damage caused by a vessel to other persons/objects, irrespective of their location;
- No physical contact is required: “*damage caused by a vessel*”.

Legal consequences of qualification

- Collision claims are time barred after two years of the event.
- No presumption of fault, unless the vessel collided with a fixed object.
- Ranking: preference over other claims.

Why are claims in connection with vessels treated differently?

- *“Vessels find themselves subject to many different jurisdictions”*
- *“Promoting investment in shipping”*
- *“Perils of the sea”*
- *“A vessel is a highly visible asset, easy to arrest”*

Lord Griffiths and Lord Denning

Lord Griffiths in *The Garden City No.2* [1984] 2 Lloyd's Rep. 37, at p. 44:

[Limitation of liability] "is of long standing and generally accepted by the trading nations of the world. It is a right given to promote general health of trade and in truth is no more than a way of distributing the insurance risk"

Lord Denning in *The Branley Moore* [1963] 2 Lloyd's Rep. 429, at p. 437:

[Limitation of liability] "is a rule of public policy which has its origin in history and its justification in convenience"

Examples provided by Dutch legislator

- A vessel explodes;
- A vessel which causes pollution of a beach;
- A vessel that emitted excessive smoke.
- No limits?

Dutch Supreme Court - “Zwartemeer”

- No circumvention of the two year time limitation.
- No specific nautical error required for an event to qualify as an ‘allision’ under Dutch law.

“ A collision in the sense of Article 8:1002 DCC [allision, SB] should be understood as causing damage by a cause on board of the vessel.”

Dutch Supreme Court – Liander/KWS



Government



Main contractor



Subcontractor (owner of the pontoon)

Electricity company

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Dutch Supreme Court - Liander /KWS

- The two year time limitation had lapsed when the owner of the electricity lines initiated proceedings against the main contractor.
- The electricity company had warned the main contractor about the presence of electricity lines in the area where the works would be performed.
- Subcontractor who used the pontoon (the vessel) had not received this vital information from the main contractor and consequently damaged a line.

Dutch Supreme Court – Liander/KWS

The main contractor asserted:

- The cause of the damage can be found on board of the vessel (the crane).
- Consequently the event qualifies as an allision.
- This cannot be circumvented by using a different legal basis in the Dutch Civil Code.
- Hence, the claim is time barred as the two years had lapsed before proceedings were initiated.

Dutch Supreme Court – Liander/KWS

- The electricity company based their claim solely on the assertion that the main contractor acted negligently :
 - / by completely ignoring specific warnings; and
 - / not taking any precautions on the basis of these warnings.
- / Why would maritime law apply to the above?

Dutch Supreme Court – Liander/KWS

- *“The claim [...] however, is based on reproaches of a different nature than reproaches in connection with the use of vessels (or objects that are regarded as such). In the event [the subcontractor] would not have chosen to use a pontoon, but would have performed the works from ashore, the reproach against [defendant] would not have been different. [...] the presence of the pontoon does not play any role in the cause of the damage which claimants have asserted as the basis of their claim. [...] In conclusion, the claim of [claimants] against [defendant] cannot qualify as a claim for damages, caused by [a collision or allision, SB] ”*
- Position of the owner of the pontoon (subcontractor)?



Thank you for your attention

