



The Polar Mist saga continues:
Meaning of personal acts of the owner
and other developments

International Maritime Law Seminar

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Agenda

- Recalling few basic concepts of the Chilean system for Tonnage Limitation

(background; tonnage limitation figures; claims subject to limitation; people entitled to limit; breaking limitation; Procedure for establishing limitation)

- Case Study

Introduction



In the context of a salvage and towage operation performed by a Chilean tugboat in an area close to the Strait of Magellan, a limitation fund was constituted in Chile by the Owners of the tugboat aimed to respond for the eventual damages suffered by different parties in connection with the subsequent sinking of the towed vessel.

The Owners based its request on their capacity of owners and proprietors of the tugboat.

Introduction (cont.)



Plaintiffs opposed to the Fund constitution arguing that:

- There were “*personal acts*” of the Owners of the tug, which are exempted from the right to limit liability.
- The facts were not encompassed within the claims subject to limitation, particularly the loss of or damage to other goods or property.
- The Owners acted as an assistant or salvor, and this capacity does not enjoy the benefit for limiting liability.
- The loss or damages were caused by the Owners’ staff own acts or omissions either with intent or recklessly or with knowledge that damages may occur.

I. Recalling few basic limitation concepts

- **Background**



The Chilean regulations that refer to tonnage limitation matters (ie, articles 889 to 904 of the Commercial Code) are inspired by both the international conventions signed in Brussels in 1957 (the 1957 Convention) and in London in 1976 (the 1976 Convention).

- **Tonnage limitation figures**

The Chilean Commercial Code follows the lines of the 1976 Convention.

I. Recalling few basic limitation concepts

- **Claims subject to limitation**

CLAIMS



i) death or personal injury and damage to property on board;

ii) death or personal injuries caused by any person for whom the owner is responsible, whether onboard or ashore (in the latter case, his or her acts must be related to the ship operation or to the loading, discharging or carriage of the relevant goods);

iii) loss of or damage to other goods, including the cargo, caused by the same person or people, grounds, places and circumstances given in (ii) above; and

iv) resulting liability related to the damage caused by a vessel to harbour works, dry docks, basins and waterways.

I. Recalling few basic limitation concepts



- **People entitled to limit**

i) the shipowner as defined by Chilean regulations, i.e. the “*person or corporation, whether or not the proprietor of the vessel, who trades or dispatches it under his name*”;

ii) the shipowner’s staff;

iii) liability insurers;

iv) the operator, carrier, charterer and ship’s proprietor, if a different person or entity than (i) above; and

v) individual employees of (iv) above, including the master and members of the crew, if sued.

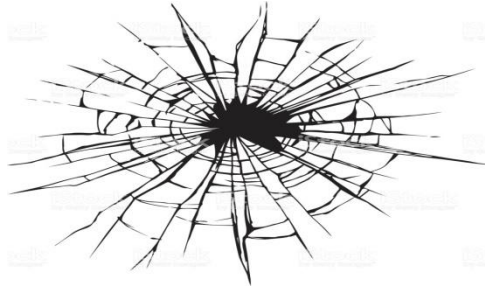
I. Recalling few basic limitation concepts

- Procedure for establishing limitation

The procedure for establishing a limitation fund in connection to general civil liability is regulated by Article 1,210 *et seq* of the Commercial Code and is mainly based on Articles 11 to 13 of Chapter III of the 1976 convention.



I. Recalling few basic limitation concepts



- **Breaking Limitation**

No single express test for breaking limitation, such as that contained in article 4 of the 1976 Convention; the alternatives have to be concluded from different provisions contained in the Chilean Commercial Code.

- 1) the liability of the owner for his / her personal acts is subject to the general liability rules contained in the Chilean Civil Code (article 885 CCom).
- 2) the limitation of liability of the shipowner may be petitioned by his / her staff in such cases and for the causes contemplated by law, unless it is proved that the loss resulted from their act or omission, [1] committed with the intent to cause such loss, or [2] recklessly and with knowledge that such loss would probably result (article 891 CCom).

I. Recalling few basic limitation concepts

- **Breaking Limitation (cont.)**

3) When actions are brought against the master or against members of the crew such persons may limit their liability even if the occurrence which gives rise to the claims resulted from their own fault, unless it is proved that the loss resulted from their act or omission,

[1] committed with the intent to cause such loss, or

[2] recklessly and with knowledge that such loss would probably result.

If, however, the master or member of the crew is at the same time the proprietor, co-proprietor, carrier, owner or operator of the ship, the limitation shall only apply to him or her where his or her fault is committed in his or her capacity as master or as member of the crew of the ship (article 903 CCom, based on article 6.3 of the 1957 Convention)

II. Case Study



II. Case Study



Decision

A. Personal acts of the Owners

Article 885 of the Chilean Commercial Code provides that: *“the liability of the ship-owner for his acts or personal acts, or resulting from acts of his dependents, or that take place on land, shall not be subject to the rules of [the Code of Commerce] and will be governed by ordinary rules of law”*

II. Case Study

Decision

A. Personal acts of the Owners (cont.)

Held that when the defendant is a legal person, the owner's personal acts must be performed through its corporate bodies, ie, the natural persons that are, acting individually or jointly, authorized by law or the bylaws to make decisions.

Opposition rejected due to lack of evidence.



II. Case Study



Decision

B. Loss of or damage to any other goods or property

Plaintiffs alleged that the facts were not comprised by article 889 No. 3 of the Chilean Commercial Code, which states that the Owner can limit liability:

3°.- For losses, harms or damages to other goods, including the cargo, caused by the same type of persons, reasons, locations and circumstances as those indicated under No. 2 [i.e., death or personal injuries caused by any person for whom the owner is responsible] ”.

If the person that caused the action is not on board, his or her acts must necessarily be associated [i] with the operation or exploitation of the vessel, or [ii] with the loading, transportation or unloading of the carried goods (Art. 889 No. 2)

II. Case Study



Decision

B. Loss of or damage to any other goods or property (cont.)

Facts: Only two crewmembers of the Tugboat went on board the POLAR MIST, upon performing the first inspection and subsequent mooring, and that during the towing maneuvers there was no one on patrol aboard the aforementioned fishing vessel.

Held:

- (i) It was undeniable that the circumstance required under article 889 No. 2, ie, that the person causing the incident is not on board his/her vessel, was not met.
- (ii) Accordingly, it does not correspond to demand from Owners that the losses experienced by the fishing vessel were related to the operation or cargo transported by the Tugboat.



II. Case Study

Decision

B. Loss of or damage to any other goods or property (cont.)

According to the First Instance Court, it was an undisputed fact that the Tugboat towed the POLAR MIST and that, while she was performing this maneuver, the latter sank. Then, the damages caused by the sinking of the POLAR MIST, with respect to the Tugboat and the procedure being performed by this vessel, correspond to “*other goods*”.

Held: When applying for limitation of liability, Owners properly framed the harmful consequences suffered by the POLAR MIST and her cargo

Plaintiffs’ opposition ground rejected.



II. Case Study

Final Comment

The judgment of the 2nd Civil Court of Valparaiso is one of the most relevant substantive decisions confirmed by the Chilean Supreme Court and should provide certainty in futures cases relating to the meaning of personal acts of the Owners and loss of or damage to other goods





Many Thanks!
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