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To: Transport Industry Operators

**Collision time bar 2 years**

In his Judgment of 4/8/2006, Judge W. Waung of the Hong Kong High Court explained the suit time limit of two years in respect of ship collision claims.

As a result of a collision on 22/3/2002 between the ship "CSAV TOKYO" and the ship "KMTC HONG KONG", serious damage was done to the "CSAV TOKYO". The "KMTC HONG KONG"'s owner admitted liability for such collision damage on 15/4/2002. Security for the claim of the "CSAV TOKYO"'s owner was given on 10/5/2002 and on 30/5/2002, the two ship owners agreed that the claim of the "CSAV TOKYO"'s owner for such collision damage should be subject to Hong Kong law and Hong Kong jurisdiction. On or about 30/8/2002, there was joint survey on board the "CSAV TOKYO".

The claim of the "CSAV TOKYO"'s owner against the "KMTC HONG KONG"'s owner became time-barred under the two-year time limit provided by section 7 of the Merchant Shipping (Collision Damage, Liability and Salvage) Ordinance ("Ordinance") on 21/3/2004. Some 6 months after the expiry of the limitation time, the "CSAV TOKYO"'s owner became aware that its claim against the "KMTC HONG KONG"'s owner was time-barred. A writ *in rem* was issued by the "CSAV TOKYO"'s owner on 21/9/2004. By summons dated 18/10/2004, the "CSAV TOKYO"'s owner sought from the court an order that time for commencement of the action be extended. The application was made pursuant to section 7(3) of the Ordinance.

Section 7 of the Ordinance provides:

"(1) Subject to subsection (3), no action shall be maintainable to enforce any claim or lien against a ship or its owners in respect of any damage or loss to another vessel... caused by the fault of the former vessel, whether such vessel is wholly or partly in fault... unless proceedings in the action are commenced within 2 years from the date when the damage... was caused..."

(3) Any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of the court, extend period within which proceedings in the action must be commenced, to such extent and on such conditions as it thinks fit..."

The two-year time limit for collision claim is derived from the English Maritime Conventions Act of 1911 which in turn was the result of an international convention. The much shorter time limit for collision claim (compared to for example ordinary tort claims) is well known in the shipping community.

At the hearing it was not disputed that the court could only extend time upon "good reason" being shown by the "CSAV TOKYO"'s owner. The dispute was whether, on the facts of the case, "good reason" had been shown.

From the time of the accident on 22/3/2002 to the time when the writ was issued on 21/9/2004, there was a period of two and half years. The admission of liability took place on 15/4/2002 and by the end of May 2002, guarantee for the claim and agreement of the parties that Hong Kong law and jurisdiction was to govern the claim had been agreed. What then could be the reason or excuse for not issuing the writ in time?

The joint survey took place on board the ship at the repair yard in Hong Kong on or about 30/8/2002. There was a follow-up joint attendance, the date of which was not known but which could not be very long time afterwards. At the joint survey, there might have been and probably was agreement on what particular damage was caused to what particular part of the ship and that such particular damage was attributable to the collision. There was however no agreement on the quantum of any individual item of damage.

The lack of any agreement on the quantum of any individual item of damage was important because there was more than the possibility that the disagreement over quantum would have to be resolved by the court. There is in fact the necessity for the plaintiffs (like all cases) to bring the claim in time when there is no agreement on liability and quantum. Admission of liability in nautical cases does not render the case any different from say road accident personal injury cases where liability was admitted from the beginning. There can be no basis for the plaintiffs or those acting for the plaintiffs to believe that any quantum of any particular item of damage claimed by the plaintiffs would be agreed by the defendants.

The "CSAV TOKYO"'s owner had admitted that it did not appreciate that a time limit would apply to the claim but that ignorance of "CSAV TOKYO"'s owner would not excuse the non issue of the writ or could provide a good reason for extension. Nor indeed could any oversight or carelessness (if any) on the part of any one acting for the "CSAV TOKYO"'s owner in the matter.

Of course the court, in considering all the circumstances, would take into account the fact that there was an admission of liability. In the case *The Zirje* [1989] 1 Lloyd's Rep 493, Sheen J said at page 497 that admission of liability "goes some way towards eliminating the justification for a period of limitation as stringent as two years...". The Judge did not understand Sheen J to be saying there that the two-year limit did not apply to collision claim in a case where only quantum was in dispute nor did the Judge understand Sheen J to be saying in *The Zirje* that where there was admission of liability that by itself was good reason to extend time. If that was what Sheen J was saying then the Judge had to respectfully disagree. In the Judge's view, admission of liability did not in any way relieve the duty of the claimants (in collision cases) to issue the writ in time as admission of liability did not impose a longer time limit or provided a "good reason for extension".

In the Judge's judgment, the sole cause of the failure on the part of the "CSAV TOKYO"'s owner to issue the writ in time was the ignorance of "CSAV TOKYO"'s owner that a two-year time limit applied and that ignorance was not induced in any way by conduct on the part of the "KMTC HONG KONG"'s owner. There was no "crossing of the line" in the conduct of the "CSAV TOKYO"'s owner which led or caused the "KMTC HONG KONG"'s owner not to issue the writ in time.

As Rose LJ said at page 343 of *The Al Tabith* the defendants are *prima facie* entitled to the limitation defence which has accrued to them and ought not to be deprived of it merely because of the ignorance of those representing or acting for the plaintiffs.

In all the circumstances of the case, which the Judge had considered very carefully, there was no good reason shown by the "CSAV TOKYO"'s owner for an extension of time. It followed therefore that there was no room for the exercise of any discretion to grant the time extension sought. The summons of the "CSAV TOKYO"'s owner and the action of the "CSAV TOKYO"'s owner had to be dismissed with costs.

Please feel free to contact us if you have any questions or you would like to have a copy of the Judgment.

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