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The story of the m/v MORAZ:
Moraz Shipping LLC-MA v. Israel Ports Development and Assets Company Ltd

18th Annual ShipArrested.com Members' Conference

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EXECUTIVE SUMMARY

- On March 4, 2018 an oil spillage occurred originating from the M/V Moraz in Haifa, resulting in cleaning costs in the sum of NIS 3.1M (about USD 900K).
- The Moraz's owners sought to limit their liability under the 1957 Brussels Convention, which – if accepted – would limit their liability to the cleaning costs to a sum of NIS 1.1M (USD 323K).
- Although Israel enacted the 1957 Brussels Convention as a law in 1965, before the Moraz the courts never issued a material judgment on the matter.
- The main issue to be determined is whether the Law enacting the limitation Convention in Israel allowed to limit the Owners' liability for oil spillage forcing the authorities to initiate clean-up operations, and if there was "*actual fault or privity*" on behalf of the Owners denying them form the limitation.

Factual Background

- On March 4, 2018, the vessel Moraz docked at Kishon Port in Haifa.
- During preparation for bunkering, bunkers were transferred and pumped from one of the ship's tanks to another tank.
- The valves in the receiving tank were not shut on time and more than 10 tons of heavy fuel was spilled, thus contaminating the seawater in the port's docking area.
- The Israel Ports Development and Properties Company Ltd, (the landlord of the port's premises – the "Port Authority") had to clean up the contamination, thereby incurring cleaning expenses and costs allegedly amounting to approx.: USD 900,000.- (by contracting with a cleaning sub-contractor).

Criminal Proceedings

- The Ministry of Environmental Protection filed before the Haifa Magistrate's Court an indictment against the owners, vessel's master and the third engineer.
- The master and the third engineer, who are foreign nationals, did not appear at the hearings and the proceedings against them were stayed.
- A plea bargain was agreed upon in which the indictment was amended and the owners were convicted of oil spillage and fined with approx. USD 220,000.

Application for the Establishment of a Limitation Fund

- The Owners, a company registered in the Marshall Islands, submitted to the Haifa Admiralty Court application for the establishment of a limitation fund pursuant to the Shipping Law (Limiting the Liability of Vessel Owners).
- This was the first case in Israel in which the Admiralty Court ruled on an application for the establishment of a limitation fund under the Limitation Law.
- The Limitation Law adopted the provisions of the International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships, held in Brussels on October 10, 1957.
- The owners submitted that according to the Convention's provisions, they were entitled to limit the total amount that they may be required to pay for the cleaning expenses to USD 323,856.
- This amount has been calculated according to the net tonnage of the vessel (3,520 tons) combined with and the value of the Special Drawing Rights (SDR) as defined in the Convention, the value of which was at the time equal USD 1,038per SDR.

The 1976 London Convention

- In 1976 the International Maritime Organization (IMO) adopted a new convention designed to replace the Brussels Convention.
- This convention, known as the 1976 Convention, was not adopted by the Israeli legislature.
- Over the years, a few memoranda of law were prepared to amend the Limitation Law and adapt it to the 1976 Convention, but these memoranda of law did not amount to legislation and to this day, the Brussels Convention of 1957 remains in effect in Israel).

The Port Authority's Reply

The Port Authority objected to the application arguing that:

- The liability for polluting seawater cannot be limited, as it contradicts the provisions of the Prohibition of Polluting Seawater with Oil, which imposes on those convicted to bear the cleanup costs.
- The proper interpretation of the provisions of the Brussels Convention should not limit the liability of vessel owners for damages due to marine pollution.
- Approving a limitation for compensation due to seawater pollution contradicts the principle that the "polluter must pay".

The limitation Regime according to the Limitation Law (and the Convention)

The limitation of liability will apply to a limited list of causes of action. Article 1(1) clarifies which claims can be limited:

- The owner of a seafaring ship may limit his liability in accordance with Article 3of this Convention in regard to claims arising from one of the following incidents, unless the incident giving rise to the claim arises from the actual fault or participation of the ship owner:
- (a) Loss of life or physical injury to a person, who is transported on the ship, and loss or damage to property contained in the ship;
- (b) Loss of life or physical injury to any other person, whether on land or in water, loss or damage to any other property or violation of any right, caused by the act, negligence or omission of a person on the ship for whose act, negligence or omission the owner of the ship is liable, or of a person not on the ship for whose act, negligence or omission the owner of the ship is liable; however, in relation to the act, negligence or omission of this latter type of person, the owner will not be entitled to limit his liability except when the act of negligence or omission applies during the navigation or management of the ship or during the loading, transportation or unloading of cargo or during the boarding, travel or disembarking of its passengers;
- (c) Any charge or liability imposed by a law of dealing with the removal of wrecks and arising from the raising, evacuation or destruction of a ship that has sunk, ran aground or become derelict (including anything on such a ship), and any charge or liability that originates from or is related to damage caused to port facilities, to the basins and waterways in which ships travel.

Exclusion of Article 1(1)(c)

- Section 2 of the Limitation Law stipulates that the provisions of Article 1(1)(c) of the Convention shall have no effect in Israel.
- This matter is of great importance to our case as among the causes of action that are excluded from Israeli law are also claims for "a charge or liability originating from or related to damage caused to port facilities, basins and waterways in which ships travel".
- Eventually, the Port claimed that its claim falls under the definition of Article 1(1)(c) of the Convention, as the claim is for "debt or liability arising from or related to damage caused to port facilities, basins and waterways in which ships travel".

Court's Discussion

- The court reviewed various international conventions that were made to promote cooperation in the protection against sea pollution (see, for example, International Convention for the Prevention of Pollution from ships (MARPOL) (1973); International Convention on Oil Pollution Preparedness, Purpose and Co-Operation (OPRC) (1990); International Convention on Civil Liability for Oil Pollution (1969) (Damage (CLC) (1969)).
- The Court also made reference to Israeli legislature which was aware of the importance of protection against marine pollution, and adopted the Polluter Pays principle in a number of laws that were enacted with the aim of protecting against marine pollution (The Prevention of Pollution of Seawater with Oil Ordinance; Prevention of Sea Pollution (Dumping of Waste) Law,; Prevention of Sea Pollution from Land Sources.

The Court rejected the Owners' application to limit liability

This conclusion is supported on several grounds:

- "Legislative Harmony": The Court took the view that when interpreting the law, the changing of the times, the changes in world conventions and changes in perceptions cannot be ignored and therefore its interpretation should be dynamic.

- Exclusion of Article 1(1)(c) of the Convention: the cleaning works for which the demand for payment was submitted are works to clean up "[...] damage caused to port facilities, basins and waterways in which ships travel", as stated in Article 1(1)(c) of the Convention (excluded under the Limitation Law).

- Section 1(1)(b) concerns a general cause of action for damage to property, without distinguishing between the different types of property. Article 1(1)(c) is specific for damage caused to port facilities and shipping lanes and as specific provision overcomes the general provision.

The Court rejected the Owners' application to limit liability

- The 1976 London Convention as potential reference:

The court mentioned that although the 1976 London Convention was not adopted into Israeli law, it can be referred to for interpretation in view of changes of times and circumstances which should not be overlooked. In the 1976 Convention, Article 3 established a list of claims that cannot be limited, and among other things, it was determined that "a claim for oil pollution damage as defined in the International Convention on Civil Liability for Oil Damage, November 29, 1964, or any of its regulations or minutes that are in force" cannot be limited (CLC Convention).

- The Polluter Must Pay principle:

The court made reference to legislature which adopted the Polluter Pays principle in a number of l egal provisions which requires the law to be interpreted in a way that reduces the right of the owner of a vessel that caused seawater pollution to limit his liability. Acknowledging the possibility of limiting liability for sea pollution contradicts the principle, and whenever the law recognizes the principle, unless otherwise expressly stated, this recognition must be given priority. Recognizing the possibility of limiting the liability for compensation of cleaning expenses as it would be in conflict with a legal provision that obligates the vessel owner to pay the cleaning expenses.

ALWAYS KEEP YOUR EYES ON THE BALL!

- The Port Authority did not arrest the Vessel at any time and did not submit any claim for its damages.
- The failure of the limitation application does not grant the Port Authority any relief, thus the latter must submit (and succeed) a formal claim against the Owners and/or Vessel for a refund of the cleaning costs.
- It seems that the Port Authority was pre-occupied with the limitation application that they failed to initiate the material procedure.
- The Vessel's owners are an SPV, thus having no other assets apart of the Vessel.
- During the proceedings (which took about 3 years) the Vessel ran aground in a Turkish port.
- It seems that in spite of the failure of the owners application to limit their liability, materially speaking the Port Authority has significant challenge in enforcing any potential judgment.

"Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning."

Winston Churchill

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QUESTIONS?

THANK YOU FOR LISTENING

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