

Jurisdiction in respect of applications to globally limit liability for maritime claims

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The District Court of Rotterdam, as court of the shipowners'/bareboat charterers' place of business, has accepted jurisdiction to deal with applications to globally limit liability on the basis of the LLMC in respect of a collision between two vessels in Indonesian waters. Jurisdiction was accepted even though legal proceedings regarding the shipowners'/bareboat charterers' liability for the incident and damage thereby caused, had already been made pending in Norway. The Rotterdam Court has not stayed the Dutch legal proceedings until the Norwegian proceedings will have come to an end.

[*The Stolt Commitment*; Decisions of the District Court of Rotterdam, 15 February 2017, ECLI: NL:RBROT:10357/ECLI: NL:RBROT:10349 and 7 June 2017, ECLI:NL:RBROT:2017:4411/ ECLI: NL:RBROT:4412]

Background

The factual background of the recently published decisions concerns the collision which occurred between the seagoing vessels 'Stolt Commitment' and 'Thorco Cloud' in the vicinity of Singapore in Indonesian waters on 6 December 2015. As a result of this collision, the latter ship was lost with its cargo and degenerated to a wreck. Various parties brought claims against the parties interested in the 'Stolt Commitment' for damage suffered as a result of the incident. Some of these claimants initiated legal proceedings in Norway.

On 6 December 2016, the bareboat charterers of the 'Stolt Commitment' submitted an application to the District Court of Rotterdam to limit their liability on the basis of the Convention concluded on 19 November 1976 in London on the Limitation of Liability for Maritime Claims as amended by the Protocol concluded in London on 2 May 1996 ('LLMC'). The court was also asked to *inter alia* determine the amounts of the limited liability.

A day later, Gard as the vessel's P&I underwriters filed a petition with the Rotterdam Court as well with the request that the Court hold that Gard could also make use of the protection of the limitation fund that was to be put up by the bareboat charterers of the 'Stolt Commitment'. In view of the fact that article 1(6) LLMC provides that the insurer shall be entitled to benefit of the Convention to the same extent as the assured itself, Gard's request to benefit from the fund's protection was not extraordinary. It was made, however, at a moment that no limitation fund had been put up yet. On 17 February 2017, shipowners submitted an application to the Rotterdam Court to limit their liability in accordance with the limitation fund put up by bareboat charterers. At the time of submission of the limitation requests to the Rotterdam Court, legal proceedings regarding the ship interested parties' liability for the collision were already pending in Norway. For these reasons, the limitation requests were contested by claimants first of all on the basis that the Dutch Court did not have jurisdiction to deal with the limitation requests in view of the Norwegian proceedings.

Jurisdiction

The first question that had to be answered was whether the Dutch Court had international jurisdiction to deal with the limitation requests. To this end, the District Court of Rotterdam determined the relevant framework. It considered that the matter in principle falls within the scope of the Brussels I Regulation (Recast) respectively the Lugano Convention 2007. Both regimes allow

explicit jurisdiction provisions of conventions to prevail, provided that several conditions have been met (article 71 Brussels I Regulation (Recast)/article 67 Lugano Convention 2007). Pursuant to the Rotterdam Court, the LLMC does not contain a comprehensive provision in respect of jurisdiction, but merely directs the person who wishes to limit his liability, to the court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation (article 11(1) LLMC). The Court concludes that because article 11 LLMC does not create jurisdiction itself, the Brussels I Regulation (Recast) respectively the Lugano Convention 2007 should not be set aside.

The Court subsequently determines that neither the Brussels I Regulation (Recast) nor the Lugano Convention 2007 contains a comprehensive provision in respect of jurisdiction with regard to a request for global limitation of liability or the constitution of a limitation fund. Article 9 Brussels I Regulation (Recast) and article 7 Lugano Convention 2007 merely provide that if a court has jurisdiction on the merits relating to the liability from the use or operation of a vessel, it is also entitled to deal with claims for limitation of such liability. In the subject matter the Rotterdam Court could not derive jurisdiction from these provisions, because no legal proceedings to establish liability had been brought before a Dutch Court; such proceedings were pending in Norway. With reference to the authoritative Schlosser-report on the European jurisdiction rules, the Rotterdam Court has decided that article 9 Brussels I Regulation (Recast) and article 7 Lugano Convention 2007 did not have the intention to limit the possibility for a court to accept jurisdiction in legal systems in which a limitation fund is constituted, rather than in cases in which the limitation request is invoked against particular claimants. The Court continued that since a claim for damages or compensation can always be brought before the court of the shipowner's (or the bareboat charterer's) place of business, it is expedient for the shipowner to limit liability and to constitute a limitation fund before the court of his place of business. Consequently, a shipowner or bareboat charter with registered office in the Netherlands can initiate legal proceedings to limit liability before the Dutch Court.

Lis pendens

The next question is whether the Rotterdam Court has to reject jurisdiction after all or whether it should stay the Dutch proceedings in view of the pending Norwegian proceedings. Although the parties in both sets of proceedings are the same, the matters – in the Court's opinion – do not concern the same subject. The Norwegian proceedings concern the question of the ship interested parties' liability, but not the limitation of that liability, if any. In the Court's opinion, there is therefore no *lis pendens* ex article 29 Brussels I Regulation (Recast) and article 27 Lugano Convention 2007 and thus no reason to stay the Dutch limitation proceedings.

Gard's request for protection

Gard's request for protection, however, did not succeed immediately. On the basis of the wording of article 11(3) *cf.* 1 LLMC, the Court concludes in its decision of 15 February 2017 (ECLI: NL:RBROT:10349) that Gard can only request to make use of the fund's protection after the same has been put up. At the time of Gard's request that was not yet the case. It follows that the request was prematurely made and hence dismissed.

Clearly Gard was disappointed by the Court's decision. It did not only file an appeal against it with the Court of Appeal of The Hague, but on 17 February 2017 it also filed another request with the Rotterdam Court. That second request was granted by the Court in its decision of 7 June 2017

(ECLI: NL:RBROT:4412). The appeal proceedings against the District Court's first decision were not considered to prevent the validity of the second request.

Conclusion

The decisions confirm that Dutch courts duly consider whether they can accept jurisdiction (also) in limitation of liability proceedings, and that they do not seem inclined to easily consider hurdles too high to prevent them from dealing with ship interested parties' applications to globally limit liability.