



Wake-up call over watchkeeping

Owners of St Louis Express and Western Neptune taken to task over poor lookout practices following September 2007 collision

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THE owners of the containership *St Louis Express* were given a wake-up call in respect of watchkeeping on June 25, 2009.

Mr Justice Steel of the London Admiralty Court gave judgment against them, apportioning liability one-third/two-thirds in favour of the WesternGeco seismic survey vessel *Western Neptune* whose streamers and other seismic equipment were severely damaged by *St Louis Express* in a collision in September 2007 in the Gulf of Mexico.

In the first reported decision concerning a collision with towed seismic equipment, Mr Justice Steel also criticised the owners of *Western Neptune* in respect of their look-out and warning systems.

Although ultimately poor practices on *St Louis Express* resulted in a finding that the preponderance of blame was on its owners, the judgment also suggests that there may be issues for the marine seismic industry to address.

The collision occurred in the early hours of September 24, 2007 about 150 miles south of New Orleans. *Western Neptune* was towing a seismic streamer array comprising 10 streamers that ran to over 8,000 m aft of its stern at a depth of 12 m.

It was supported by up to three 'gun' vessels (responsible for shooting sound waves against the ocean floor the reflection of which are picked up by receivers on the streamers) and up to two guard vessels (responsible for warning and chasing vessels which approached the safety zone around the array). At the material time only one guard boat, *Furore*, was on station chasing ahead of *Western Neptune*; the other was in port.

St Louis Express was on a liner service between Europe and the US, a route it had navigated many times previously. *Furore* informed *St Louis Express* by VHF radio

about the required safety zone of three miles ahead, three miles on either side and six miles astern of *Western Neptune*. *St Louis Express* agreed to observe this and altered course to port to pass ahead.

St Louis Express subsequently altered course to starboard to pass astern of *Eagle Subaru*, an unrelated vessel in the area, which was the stand on vessel. However, after clearing *Eagle Subaru*, *St Louis Express* resumed its original course too early and cut across the array, causing severe damage totalling about \$25m.

At the time of the collision, the *St Louis Express*' navigation officer had held a third mate's ticket for about two years but had only joined *St Louis Express* a few days before. The court thought it "somewhat unusual" for a third officer (particularly a fairly inexperienced one) to take the 0000hrs to 0400 hrs watch. The third officer's method for staying alert on the early watch namely, "playing loud music on the bridge" was also not appreciated by the court and its Nautical Assessors who described it as an "unsatisfactory practice".

St Louis Express showed fault in several respects that created a situation of danger and admitted it bore the preponderance of blame: it failed to not enter the exclusion zone of *Western Neptune*; it made an improper alteration of course to port so as to cross the array; and it failed to see or appreciate the significance of high intensity strobe lights on the tail buoys attached to the array.

The principal issue was the extent to which *Western Neptune* was also to blame.

Western Neptune was a vessel restricted in its ability to manoeuvre. The court noted that *Western Neptune* and its tow was akin to a vessel four-miles long and a mile wide. The court thought that the unusual nature of the tow called for "appropriate warnings to shipping" and referred to the requirement to take "all possible measures" to indicate the pres-

ence of the tow. In this regard, *Western Neptune* and its support vessels were found lacking.

The court thought it unfortunate that the VHF message from *Furore* to *St Louis Express* did not describe the nature of the flotilla, including lighting. It also suggested that *Western Neptune* could have made regular VHF broadcasts of this information, its position and speed.

The court described evidence of the practice that *Western Neptune* had previously allowed some vessels to "cut the aft corner" of the safety zone so long as their course would lead to clearance as an "unsatisfactory relaxation of the requirements of safety".

It was held that the flotilla did not do enough to monitor the track and change of speed of *St Louis Express*, finding that it ought to have reminded *St Louis Express* of the exclusion zone and should have required acknowledgment. An "undue reliance" on the guard vessel *Furore* was also referred to by the court.

The court also found that VHF, flares or searchlights should have been used to warn *St Louis Express* once it was realised it was going to enter the safety zone.

Western Neptune had promulgated details of its operations in the US Coast-guard local notice to mariners. The court found this unsatisfactory because the safety zone, the make up of the survey spread and the vessels involved were not mentioned in detail.

The court regarded the omission of a reference in the notice to the tail buoys and lights as of some significance, although it did accept that *St Louis Express* heard and acknowledged the message about the scale of the exclusion zone from *Furore*.

The court proposed including a "short safety related message" in the automatic identification system details of *Western Neptune* with details of the exclusion zone, although it acknowledged that space was limited to 161 characters.

The court added that a second guard boat, positioned astern, would have been an effective collision avoidance measure, and mentioned this issue three times in the judgment. Given the relatively light traffic in the vicinity, on the basis of this

judgment it is difficult to imagine future circumstances in which the court would regard less than two guard boats as adequate for a configuration of this type.

The collision regulations required the tow to be marked by white lights: on each of the centre buoys at the forward and aft end of the tow; on the outside buoys; and at no more than 100 m along the centreline of the array. Lighting provided on the array was the high intensity strobe lights on the front and rear buoys (chosen by WesternGeco to differentiate them from the white lights displayed on oil rigs in the area), which was accepted by the court as a proper and seamanlike substitute.

WesternGeco submitted that it was impractical to exhibit lights along the centre of the array because of data recovery and line control problems. The court reluctantly accepted this, holding that the vast unlit space of the tow presented a considerable hazard that required a high standard of care to indicate the presence of the array by other means.

The court suggested radar transponders should be used to mark the tail-buoys but acknowledged International Maritime Organization and Maritime and Coast-guard Agency recommendations limiting the use of these. It found that WesternGeco should have made a request to the US administration to use radar transponders although no evidence of their use on other surveys elsewhere in the world was presented.

As a final measure, the court found that the array should have been dived to a deeper depth for *St Louis Express* to sail over. The court did not attribute causative potency to the lack of diving, but observed that damage might not have been as extensive.

On balance, the court was convinced that the situation of danger was created by *St Louis Express* and it should bear the preponderance of blame. However, failures in *Western Neptune's* warning and look-out procedures also attracted a measure of blame.

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News in Brief

Scopic clause use to rise

GREATER use is expected to be made in Lloyd's Open Form contracts of the Special Compensation P&I Club clause, according to the American Club newsletter Currents, writes Sandra Speares.

Writing in the newsletter Tony Goldsmith, who heads Hill Dickinson's Singapore office, said market conditions mean that the Scopic clause is more likely to be used, although this will increase the financial liability of P&I Clubs.

The club said Mr Goldsmith's analysis is "especially pertinent at a time when salvors have expressed concern at the preference of some underwriters to negotiate deals that avoid using LOF because of the perceived high level of salvage awards".

Mr Goldsmith said: "Given current market lows for the values of many vessels and cargoes, it is now significantly more likely that Scopic would be invoked in cases where salvage is performed on the basis of LOF. On the whole, market conditions in both the shipping and commodities markets are not predicted to rise substantially for a number of years to come."

In a volatile market, ship and cargo values at the time of starting a salvage operation could be much higher than when the ship arrives in a place of safety when the value of the salvaged fund is assessed.

SFO issues new guidelines

THE UK's Serious Fraud Office has issued guidelines for self-reporting for businesses coming forward on overseas bribery and corruption issues, writes Sandra Speares.

According to law firm DLA Piper, the guidelines "confirm that the SFO is moving more towards a US-style system where businesses can self-report in order to negotiate a settlement. Although self-reporting has become commonplace in the US, with well-established practice and procedures, this is new territory for the SFO."

DLA Piper said that as part of the incentive for self reporting the SFO will use civil penalties, instead of criminal sanctions "wherever possible".

Time called on work accidents

PERSONAL injury lawyer Thompsons is calling on the UK government to legally force company directors to take responsibility for workplace accidents, writes Sandra Speares.

The law firm says that directors are only governed by voluntary guidelines.

A report by MPs forming part of the Work and Pensions Select Committee found that board-level commitment to prioritising health and safety was weak.

The law firm welcomed the report, saying it showed that the voluntary regime was not working and that directors needed to be "forced to take accountability".

Thompson's is also backing an Employers' Liability Insurance Bureau, a fund of last resort for sufferers of asbestos-related diseases that would aim to ensure access to compensation even if former employers or insurance companies could not be traced.

Asbestos decision anger

PLEURAL plaque sufferers have reacted angrily to the UK Department for Justice announcement that the government will not report back on the issue of compensation for people with the asbestos-related disease until after parliament's summer recess, writes Sandra Speares.

They are hoping to see a reversal of the 2007 House of Lords ruling.

In the Rothwell decision, the law lords ruled that anyone who was exposed to asbestos in the course of their employment and has developed pleural plaques, would not be able to claim compensation in negligence.

Boxship owners must abide by Algerian court verdict

Carel baron van Lynden

THE Rotterdam district court has upheld the right of a court in Algeria to order the arrest of a containership by a Dutch bunker supplier for non-payment of bills.

In so doing it dismissed an application by the owner and former owner of the vessel to lift the arrest on the ground that the claim could not be enforced against the ship because, among other things, proper justice in the case was not achievable in Algeria.

The bunker supplier had arrested the ship in Algeria pursuant to a claim in

respect of various bunkers supplied to the time charterer of the vessel. The time charterer, meanwhile, had been declared bankrupt, and the claim could not be recovered against the estate.

The ship was under Belgian ownership at the time the bunkers were supplied but was subsequently sold to Lithuanian interests, for whom it operated under the Lithuanian flag.

The Algerian court allowed the arrest on behalf of the bunker suppliers, applying the 1952 Arrest Convention and the provisions of local law, on the basis of which a particular ship can be arrested for a maritime claim.

The owners and former owners applied to the Rotterdam court, in whose jurisdiction the bunker supplier was based, to have the arrest lifted.

They alleged that the arrest was wrongful, maintaining that the claim could not be enforced against the ship because it had been directed against the former time

charterer and the ship had been sold to new owners.

The original bunker supply contract was subject to Dutch law, under which, argued the owner and former owner, no recourse against the ship was possible, any more than it was under the law of the vessel's flag state, Lithuania.

They also maintained that the Algerian court had not been informed about the change of ownership, that it was impossible for them to ask for a court order in Algeria and that the Algerian court system was, basically, corrupt.

The Rotterdam court considered that the 1952 Arrest Convention applied and that the claim in respect of which the arrest had been made was a maritime claim in the sense of the convention.

The court found further that, materially speaking, the demand to order the lifting of the arrest in Algeria was tantamount to a demand to lift the arrest altogether. The Rotterdam court said that since Article 5 of

the Arrest Convention channels claims for the lifting of an arrest to the court which allowed the arrest, that court was the one which, in principle, should be addressed in respect of questions concerning the rights and wrongs of the arrest and the lifting thereof.

The only possible exceptions, added the Rotterdam court, might be where the decision of the arrest court could be considered contrary to public policy or based on evident factual or legal inaccuracies.

On the basis of the documents presented, the court said the arrest court had been sufficiently informed of the fact that the claim was directed against the bankrupt time charterer and that the ship, meanwhile, had been sold to new owners. Thus, the arrest court had not been misinformed.

The court said the allegation that no proper justice could be administered in Algeria was not substantiated. There were no reasons to assume the Algerian court would not take into account the question

of whether or not the claim was recoverable against the ship, and which law — Dutch, Algerian or Lithuanian — covered such issues. Breach of public policy had not been established.

The court did make the point that a decision by the Dutch courts might have been justified if it had seemed likely it would be impossible to obtain a summary decision in the arrest jurisdiction within a reasonable time frame.

But the parties had presented contradictory opinions from local lawyers in this respect, and the Rotterdam court could not accept the allegation of the owners and former owners that obtaining a timely summary decision was not possible.

In conclusion, the court found there were no grounds to question the competency of the Algerian court to judge the rights and wrongs of the arrest in this case. Carel baron van Lynden is a partner in the transport, insurance and trade team at Netherlands law firm AKD Prinsen van Wijnen.

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