

## Dutch bow thruster liability ruling

NETHERLANDS law firm AKD Prinsen Van Wijmen says a recent decision of the Court of Appeal in The Hague in relation to limitation of liability on inland waterways will be of interest in maritime jurisdictions throughout Europe, where there is a dearth of case law on the point at issue – namely whether a thruster's power should be taken into account when deciding liability limitation.

The events leading to the dispute had their origins in a collision in April 2001 between an inland barge and three luxury yachts at the quay of a Netherlands yard. The yard, which had built the yachts, sought recompense from the barge and its hull and machinery underwriters for damage sustained as a result of the collision, and its claim was duly settled in the sum of approximately euros200,000.

However, almost two years later, the yard submitted a further claim in the sum of approximately euros1.5m for, among other things, alleged loss of charter income, and alleged loss of income on the yachts, the market value of which had fallen by the time they were repaired. The yard also claimed a large sum of alleged accumulated interest.

The limitation of liability procedure came before the court in Rotterdam, which ruled that, under the Convention on Limitation of Liability of Owners of Inland Navigation Vessels (CLNI), the liability of the barge was limited to about euros266,000 based on the CLNI formula of 200 Special Drawing Rights (SDRs) for each displacement ton of the vessel, and 700 SDRs for each kilowatt of propulsive power produced by its main engines. But the yard maintained that approximately 240 kilowatts of power produced by the vessel's bow-thruster had also to be factored into the CLNI calculation, with the result that the amount of the limitation fund should be euros347,500.

In April 2009 the case came before the Court of Appeal in The Hague, which upheld the ruling of the Rotterdam court, holding that CLNI makes no specific mention of bow-thrusters in relation to the formula to be used for calculating liability. The Appeal Court also ruled that common parlance militates against factoring in the bow-thruster, noting the absence of any mention of the inclusion of bow-thrusters in such calculations in either national or international forums. It was also noted that the master of the inland barge had stated that he never used the bow-thruster for speed, only for manoeuvring.

Gjalt Elenbaas, an Associate at AKD Prinsen Van Wijmen, which represented the barge operator and its insurers, says, “This is believed to be the first time that this specific issue has been argued in the Dutch courts, and there is no known relevant case law from other European jurisdictions. It remains to be seen whether the dispute will now proceed to the Dutch Supreme Court.”

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