



COURT RULINGS REGARDING THE INTERPRETATION OF THE MARINE ENVIRONMENTAL ACT.

The Danish Maritime and Commercial Court have in two separate cases ruled in favour of the Danish Admiral Fleet and Defence Command Denmark to collect compensation for contingency measures taken in order to avoid marine pollution.

The two cases were distinguished by the fact that one dealt with “danger of pollution” while the other and later case considered an actual oil spill.

For obvious reasons the case in which the concept “danger of pollution” is addressed is of much more interest than the case covering an actual pollution.

For the background and comments on the legal foundation for collecting compensation please see articles previously issued.

On the 24th of June 2005 the Maritime and Commercial Court in Copenhagen, Denmark ruled in favour of the Defence Command Denmark (DCD) in a dispute regarding compensation for contingency measures charged by DCD, in connection with the grounding of a Norwegian flagged product tanker.

The ruling of the 24th of June is the first of its kind in Denmark and is dealing with some principal issues in relation to the concept “of danger of pollution as laid down in the Marine Environmental Act”, the statement of damages and basis of calculation of the damages.

It is yet to be seen what the actual result of the ruling will be. On the one hand the ruling unquestionable carries some degree of legal force; on the other hand several of the questions addressed are of a specific character. It must also be taken into consideration that the ruling is not a Supreme Court ruling. Even though the ruling was not appealed it is not unlikely that the Supreme Court could have come to another result had it had the chance to do so.

The factual background of the claim was as follows; the Norwegian flagged double bottom tanker was en route in the Belt of Samsø when she ran aground in the afternoon of the 29th May 2003.

The vessel was, in addition to bunkers and lubrication oil, laden with 16000 metric tonnes of gas oil (light oil type). At the time of the grounding the draft was 9,5 aft and 7,1 fore. The vessel grounded just East of the channel of Hatter Barn, at 7,1 metres water depth.

The Admiral Danish Fleet (Søværnets Operative Kommando (SOK)) was notified of the incident at 12:20 the same day. The SOK was informed that no oil escaped the vessel at the time of the grounding. In spite of the notification that no oil escaped the vessel SOK

decided to dispatch the environmental protection vessel ”Mette Miljø” as well as the Navy Cutter “Thurø”.

The “Thurø” arrived on scene a few hours before the “Mette Miljø” and both vessels had arrived in the early evening. At 18:30 the same evening no signs of escaping oil had been noticed. Later the same evening at about 19:30 the “Mette Miljø” left the scene for “Sejrø” to spend the night. The wind was SE 17 – 20 m/s. During the night the grounded vessel was subject to a diving investigation. The following day the divers reported that the vessel was hard aground from amidships to the very aft of the hull. The diving investigation did not reveal any fractures of the steel.

The “Mette Miljø” departed from Sejrø at app. 11:00 on the 30th May bound for the position of the grounded vessel. App 1500 hrs the grounded vessel advised that the lightering vessel had ETA at midnight and the tugs had ETA 0800 hrs in the following morning. The “Mette Miljø” departed the scene at 1535 hrs

The 31st May the “Mette Miljø” departed “Sejerø” at 0800 hrs. At the time of her arrival the “Mette Miljø” permitted the salvage operation to commence. At 1700 hrs the grounded vessel was afloat and went for safe anchorage. At 2100 hrs the “Mette Miljø” was released.

The total cost for the “assistance” of the Defence Command Denmark was made up to be:

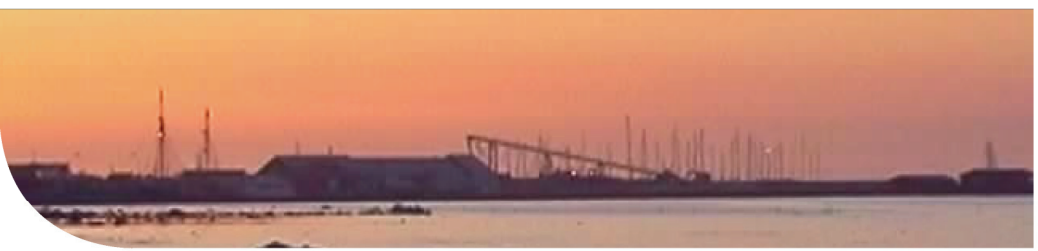
DDK 101.422,08 total

The claim was made up of the following items

DDK 92.201,89 for the actual “assistance” (The Navy’s presence)

DDK 9.220,19 for administration

The Defence Command Denmark claimed that the grounding constituted a “grave and imminent danger” of pollution. The DCD claimed that the weather conditions and traffic density of the area should be taken into consideration in the evaluation of the danger for pollution, as well as the risk for steel fracture when the disabled vessel was “dragged” over the seabed. Further the DCD referred to the consequence of a worst case scenario where 16000 metric tonnes of oil would escape the vessel in an area which was located close to “sensitive areas” (EU – habitat areas).



The owners of the disabled vessel as well as their P&I – Club claimed, initially that the DCD had lost their right to make a claim due to passivity and, subsequently, that there was no danger of pollution as the vessel had been grounded on a sand bar and there was no steel fracture of the hull.

The Court ruled that there where indeed “Grave and imminent danger” of pollution. The Court referred to the weather conditions as well as the density of traffic in the area and to the quantity of oil on board the vessel. The Court found that the contingency measures taken by the DCD / SOK in general were to be considered reasonable and that the defendant should pay all expenses claimed.

The ruling shows us that the Court will take “outer” circumstances, like weather conditions and traffic density, into consideration when determining concept of danger. The Court did, however, not only consider these factors in the specific case as the Court also referred to the quantity of oil and the fact that the vessel had been grounded close to sensitive area. Whether the Court considered a worst case scenario or not does not appear from the ruling, as the vessel was grounded on a sand bar a worst case scenario appears to have been highly unlikely. It does not appear from the case whether or not the tugs involved operated on salvage terms or whether or not the SCOPIC were in force.

The case is special with regard to the type of the vessel as the Danish Maritime Code provides foundation for strict responsibility as well as a direct claims (against P&I underwriters) when danger of pollution is constituted by a vessel transporting oil in bulk.

It becomes a matter of thought that the fact that the vessel was a double bottom vessel never was addressed during the trial.

If the Courts maintain the praxis as laid down in this ruling even for other types of vessels and tankers in ballast it will be very difficult to argue in favour of non reimbursement to the Navy for so called contingency measures.

It must, however, be kept in mind that the ruling was mainly of a specific character. It is also yet to be seen how the Courts will react on a case limited to consider the concept of danger as laid down in the “Maritime Environmental Act” when the vessel in dispute is not a laden tanker. Furthermore it will be interesting to see what stand the Courts will take when a salvage operation is carried out with a SCOPIC clause in force and this fact is addressed during the trial.

The other and later case considered, as previously mentioned, an actual oil spill.

The case can be divided into two periods of operation. The first part when the vessel was grounded. And the second part when the actual salvage operation took place.

The grounding must be considered complicated as the bottom of the vessel was torn up and the vessel was about to sink. During the first period of operation the environmental vessel “Marie Miljø” laid out floating barriers in order to stem the escaping oil.

The actual salvage operation did not commence until eight days later. During the eight days the vessel was emptied to the greatest possible extent for any remaining oil by the salvage company.

Obviously the first period of operation regarded the actual oil spill and the following dispute regarded mainly the documentation of the claim. The Court did, however, dismiss any criticism of the alleged lack of documentation. Also the question of ownership of the wreck was addressed during the trial.

At the *second* period of operation, after the disabled vessel had been emptied of oil, the dispute regarded, amongst other subjects, the DCD’s right to compensation for reasonable contingency measures taken to prevent pollution.

The fact that the vessel had been emptied of oil was only briefly mentioned.

Quote

“Prior the salvage operation XXX had emptied the vessel of oil, hence there where no longer risk of oil escaping the disabled vessel, there could, however, still be “pockets” of oil as well as there could be remaining oil in the vessel’s pipes and according to the statements given by the parties it must be concluded that the salvage company did not notify the environmental authorities nor the Navy that the vessel had been emptied of oil. Due to these circumstances the Court finds that also the period of operation performed between the 8th of May to the 10th of May to be a reasonable contingency measure to avoid or limit pollution.”

Unquote

It is a reasonable assumption, according to the text of ruling, that the Court could possibly have ruled differently, with respect to the question of reasonable contingency measures during the second period, had the authorities been explicitly informed about the progress of the salvage operation.