Charterers’ Right to Limit as against Owners

In Aegean Sea Traders Corporation v Repsol Petroleo S.A. and Another (the "Aegean Sea") the court was asked to decide various preliminary issues. One of the most interesting was whether the charterers were entitled, by virtue of the provisions of the Convention on Limitation of Liability for Maritime Claims ("the 1976 Convention"), to limit their liability in respect of claims made against them by the owners.

In December 1992 the "Aegean Sea", carrying a cargo of crude oil, grounded off La Coruña, broke up and exploded. The owners sought to recover from the charterers amounts representing the value of claims made against them (including pollution claims and salvage) together with the value of the vessel, its bunkers and freight. The owners’ claim was made on the basis that La Coruña was an unsafe port; alternatively, that the loss was sustained as a consequence of complying with charterers’ orders and that they were entitled to an implied indemnity.

On the issue of the charterers’ right to limit Thomas J held that:

1. The 1976 Convention does not provide an entitlement to charterers to limit where the shipowner brings against the charterers the type of claims with which the case was involved.

2. The limitation amount was intended for claims by cargo interests and other third parties external to the operation of the ship against those responsible for the operation of the ship. To permit claims of the type sought by the owners in respect of the direct losses they suffered to come within the scope of the limitation amount or the fund would diminish what was available to others.

3. There are recourse claims (of which claims by cargo interests to recover from the shipowner amounts paid in salvage and general average are clear examples) which will diminish the limitation amount or the fund. It cannot have been intended that such recourse claims by shippers against charterers would diminish the limitation amount or have to be paid out of the fund.

Determination of other issues in the case has postponed the question as to whether this decision will be appealed. As it stands, the implications of the decision are obviously serious: the most important principle to emerge from the decision is that charterers are not entitled to limit under the 1976 Convention when sued by owners. In these circumstances, the protection of limitation is unavailable to the charterer irrespective of whether the owner is suing in respect of his own losses (such as damage to the vessel, its equipment or bunkers) or for an indemnity in respect of claims brought against him by third parties (such as salvage claims paid by cargo).

* [1998] 2 Lloyd’s Rep 29