



# Legal Circular

## 法律资讯

January 2005

### □ **China's System for Personal Injury Limitations of Liability Under Siege**

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Dear Sir / Madam,

A number of Clients recently approached this law firm to inform about the consequences that the Spring Trader case will have for China's current regime on limitation of liability for maritime claims involving personal injuries. The court's verdict in the case, if followed by other courts, indeed may have a profound impact – a detailed analysis of the case and related legal arguments will show why this is so.

#### **Case Analysis**

On the morning of 29 March 1999, two Chinese pilots from the Ningbo Port Pilot Station tried to board the M/V Spring Trader owned by Goodhill Navigation S.A. Panama, to navigate the vessel safely into harbour. When climbing the pilot ladder to board the ship from the pilot vessel, the ladder broke off and one of the pilots fell back onto the deck of the pilot boat, immediately losing consciousness. The badly-injured pilot was brought to the hospital for emergency medical treatment; the vessel eventually set sail after providing security in amount of USD 1.06 million.

After negotiations on settling the dispute failed, the pilot brought a claim against the vessel's owners on 22 October 1999 at the Ningbo Maritime Court, for damages resulting from its negligence in maintaining the vessel's pilot ladder in safe condition. The claim amounted to RMB 6.8 million (USD 820,000) and was later increased to RMB 7.59 million (USD 915,000), and made reference to current and future medical and other expenses, emotional damages, loss of future earnings and so forth.

On 20 June 2000, the Ningbo Maritime Court heard arguments, first from the plaintiff:

- (1) The cause of the accident was entirely attributable to the failure of the vessel to properly hang up the pilot ladder and maintain it in safe condition, in violation of the International Convention for the Safety of Life at Sea, 1974 (hereinafter referred to as the "SOLAS Convention");

- (2) According to international conventions, piloting is made upon the request of the vessel. Therefore the ship-owner is under the obligation to ensure the safety of the pilots embarking the vessel by way of ladder.

The ship-owners rejected the claim with the following arguments:

- (1) The ladder had been positioned appropriately and was of sufficient quality to enable the pilots to access the vessel;
- (2) The fundamental cause of the accident was that the ladder broke after it was pressed in between the vessel and the pilot boat. The pilot boat was therefore at fault, and its owner, the Ningbo Harbor Master, should be a co-defendant;
- (3) Several of the items in the claim were not properly evidenced; and
- (4) The claim exceeded by far the limitations for liability set by the Supreme Court in its *Specific Provisions on Compensation for Loss of Life and Personal Injury at Sea Involving Foreign Interests* on 1 July 1992 (hereinafter the "Specific Provisions"). According to Article 7, the limitation for personal injury shall be RMB 800,000 (USD 97,000) per claimant.

After no less than three hearings, the Ningbo Maritime Court passed judgment on 17 March 2001 in favour of the plaintiff, citing that the ship-owners had failed to fulfil their obligations of properly maintaining the pilot ladder in a safe condition for the pilot's embarkation, in violation of stipulations of the SOLAS Convention. At the same time, the Court declined the Defendant's argument that the Ningbo Harbour Master should be admitted as co-Defendant, both on legal and factual grounds.

Citing the seriousness of the injuries, and the fact that the pilot became paraplegic as a result, the court went on to award damages of RMB 3,685,581.53 (USD 445,000) to the plaintiff. The court thereby negated the prevailing limitations of liability per claimant set by the Supreme Court in its Special Regulations. The court argued that the Special Regulations should not be strictly applied, as they did not take into account the risen price index. Furthermore, the *Maritime Code of the People's Republic of China* (1993) was published *after* the Special Provisions, and contains provisions on maximum compensation for marine casualties based on tonnage of the ship instead of a fixed sum per claimant. As the losses suffered by the plaintiff were far beyond the set RMB 800,000, it would have been unreasonable in this case to set so low a limit.

In response, the Defendant lodged an appeal with the Higher People's Court of Zhejiang Province in the Huangzhou. The court confirmed the judgment of first instance, arguing that the established limitations of the Special Provisions conflict with the principles of fairness and equity under the *General Principles of Civil Law* (1987) and the limitations of liability under the Maritime Code, and are therefore null and void.

## **Legal Arguments**

Due to the particulars of the marine industry, most countries have enacted laws to limit the liabilities for ship-owners. But the limitations of the Maritime Code, primarily derived from the provisions of the *Convention for the Limitation of Liability for Maritime Claims*, 1976, were designed to prevent bankruptcy of a liable party following enormous claims arising from a single accident; it does not make reference to a limitation of damages that can be awarded to a particular claimant, but bases any such limitations upon the liable party's characteristics. In this case, we calculate that the provisions of the Maritime Code would limit liabilities at some RMB 30 million (USD 3.6 million). At least in approach, this seems to conflict with the clauses of the Special Provisions.

Furthermore, pursuant to the *Legislative Law of the People's Republic of China*, the Supreme Court is a judiciary body rather than a legislative one. Its role is to make judicial interpretations on the application of laws and regulations, and such interpretations shall not conflict with law. At its most basic level, the limitations set in the Specific Provisions seem to contradict Chapter VI of the Civil Law, which determines that compensation for damages shall comply with the principle of complete compensation unless as otherwise provided by law. It can therefore be argued that limitations restrict unfairly the rights of claim of the suffering party. And another basic legislative principle in many countries is that in case of a personal injury, the weaker party should be protected fully. In this respect too, especially in light of the rise of the price index over the past fifteen years, the application of an RMB 800,000 liability limitation seems unreasonable.

However, the Specific Provisions are a judiciary interpretation, a formal guidance issued to lower courts by the China's highest level judiciary the Supreme Court, on specific issues encountered in the application of law. While as far as legal effectiveness is concerned a judiciary interpretation is inferior to laws and regulations, and may not contradict such legislation, a lower court's authority to negate an interpretation of the Supreme Court in favour of its own interpretation is highly controversial. Only by express formal notice from the Supreme Court can one of its opinions be nullified, and until then such an opinion shall be regarded effectively as the opinion of all of China's judiciary. If an interpretation is no longer practical in application, it is up to the Supreme Court, and not individual lower courts, to make amends. The Supreme Court's *general* notice, on 17 November 1992, that previous opinions contradicting provisions of the Maritime Code will be regarded as void, seems hardly sufficient to give lower courts a free reign.

Unfortunately, the Supreme Court has not been given the chance, in this case at least, to confirm or withdraw its previous opinions on the matter; an application for retrial was withdrawn after the plaintiff and defendant reached a final settlement. Thus it is as yet uncertain whether courts under Chinese law will follow the example set by the Ningbo Maritime Court, or will stick to earlier opinions of the Supreme Court.

## **Conclusions**

The future will tell how deep an impact the Spring Trader case, as it has become known in the press,

will have. In a broader context, this case may have consequences on the way China's legal system works, and the interaction between the Supreme Court, lower courts, and existing legislation.

More specifically, the previous limitations of liability under the Supreme Court's Special Provisions are now in doubt, and players in marine circles will be wise to take note. Until the Supreme Court comes with a new judiciary opinion, courts' stance towards the limitation of liability will remain unconfirmed. We shall certainly keep our readers up to date of developments in this respect!

For comments or queries on the topic discussed in this Circular, please do not hesitate to contact the undersigned or your usual contact at Wang Jing & Co.

Yours faithfully,

Wang Jing  
Managing Partner

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