

The Prestige and the Aegean Sea - will history repeat itself?

The Prestige incident occurred just as the Aegean Sea incident was finally being resolved. In this article, shipping lawyer Philip Carney explains how the criminal and civil proceedings arising from the latter have dragged on for over ten years.

In the wake of the Prestige incident, a pressure group has been formed that bears the name Nunca Mais. Nunca Mais is Galician for "never again", and reflects the fact that the Prestige is the latest in a series of incidents that have caused pollution damage to the Galician coastline, beginning with the Urquiola incident on 12th May 1976 and continuing with the Aegean Sea incident on 3rd December 1992.

Ironically, the Prestige incident occurred just as it appeared that an end to the Aegean Sea saga was in sight. On 4th October 2002, approximately six weeks before the Prestige incident, Royal Decree 6/2002 was promulgated. This Decree authorised the Spanish Ministry of Finance to enter into an out of court agreement with the 1971 International Oil Pollution Compensation Fund ("the 1971 Fund") and those who has suffered loss as a result of the incident, and further authorised that an extraordinary credit facility, in the sum of approximately 36m Euros, be extended to the latter. On 12th December 2002, the 1971 Fund issued a press release announcing that it had reached a global settlement of the Aegean Sea claims. Those with a professional interest and the general public might wonder both how the Aegean Sea incident could have dragged on for so long, and whether the same will happen with the Prestige.

The Aegean Sea was a Greek-flagged, 56,801 grt OBO, that ran aground while approaching La Coruña harbour. She was carrying a cargo of 80,000 tonnes of crude. Some of this was burnt up by the fire that broke out after the grounding and some was removed by salvors, but the rest contaminated the sea and several stretches of coastline.

The Master and the pilot were both charged with criminal negligence. Under Spanish law, a person that claims to have suffered loss as a result of a criminal offence may appear in the criminal proceedings and either elect for the question of the accused's civil liabilities to be dealt with in the criminal proceedings or may reserve the right to bring a separate civil action. If the latter course of action is chosen, then any civil proceedings will be stayed until such time as the criminal case is resolved, as it is a principle of Spanish law that criminal proceedings take priority over civil proceedings. Alternatively, the claimant may immediately commence civil proceedings, but these will be stayed until the criminal case is resolved.

The Aegean Sea incident gave rise to claims totalling approximately £172m. Of these, claims totalling approximately £83m were presented in the criminal proceedings against the Master and the pilot, while claims totalling approximately £89m were presented in civil actions.

Liability

Judgment in the criminal proceedings was handed down by the Criminal Court Number 2 of La Coruña on 30th April 1996. It found the Master and the pilot liable for criminal negligence and fined them 300.000 (approximately 1,800 Euros) pesetas each. It declared that they were jointly and severally liable for the losses suffered by third parties as a result of the incident, and further declared the subsidiary liability of, respectively, the Owner of the Aegean Sea and the Spanish state, in the inevitable event that they could not satisfy these liabilities. It also declared that the UK P&I Club and the 1971 Fund were directly and jointly liable up to the limits provided for by the 1969 CLC and the 1971 Fund Convention. Various parties appealed this judgment. On 18th June 1997, the Third Section of the Court of Appeal of La Coruña

handed down its judgment in the appeal proceedings, which broadly confirmed the Criminal Court's judgment.

The apportionment of liabilities made by the Criminal Court, and confirmed by the Court of Appeal, has met with some criticism, on the grounds that the declaration that the Captain, and in turn, the Owner were civilly liable to third parties contravened article III.4 of the 1969 CLC Convention, which provides as follows:

"No claim for compensation for pollution damage shall be made against the owner otherwise than in accordance with this Convention. No claim for pollution damage under this Convention or otherwise may be made against the servants or agents of the owner."

Of the claims that had been advanced in the criminal proceedings, the Court found that only claims for a sum of approximately £3m had been substantiated. As for the balance of the claims, they would have to be substantiated in execution proceedings. However, after the Court of Appeal handed down its judgment, the 1971 Fund successfully applied for the execution of that judgment to be suspended, on the grounds that the documentation supporting the claims was incomplete. In February 2000, five groups of claimants submitted further documentation and the suspension was lifted.

Just prior to the Court of Appeal's judgment, on 30th May 1997, the Spanish Council of Ministers opened up lines of credit to both fisherman and industries engaged in aquaculture that had claims against the 1971 Fund. Under the terms of these lines of credit, the claimants had to cede their claims against the 1971 Fund to the Spanish state. Further lines of credit were opened in September 1998. This would subsequently make a global settlement easier to achieve, as the 1971 Fund could negotiate directly with the Spanish state rather than with a large number of individual claimants.

There were, however, a number of points at issue between the Spanish state and the 1971 Fund. One of these concerned the amount of the claims. A provisional agreement on the amount of the claims was reached in October 2000. Two questions of law remained, the first concerned the interpretation of the judgment of the Court of Appeal regarding the distribution of liabilities as between the 1971 Fund and the UK Club on the one hand, and the Spanish state on the other. The second was as to whether certain claims were time-barred (namely, those claims in which the claimants had not brought a claim against the 1971 Fund within three years of the date of the damage but had merely appeared in the criminal proceedings and reserved their right to bring a civil claim once the criminal proceedings were resolved). Both sides, recognising the uncertainty of submitting these points to the Courts, and wishing to resolve a long-outstanding matter, subsequently reached the out of court agreement referred to above.

The exorbitant security that the Spanish Courts required for the release of the Master is one example of how the authorities do not wish the Prestige incident to suffer from the same obstacles encountered in the Aegean Sea. Whether or not the figure of 3m Euros can be said to have any legal justification, it likely to have the effect of ensuring that the Master of the Prestige, unlike the Master of the Aegean Sea appears at trial.

However, whether the matter may be resolved more quickly than the Aegean Sea is another question. On the one hand, the experience of the "Aegean Sea" may lead to more substantiated claims being put forward, and the previous judgments, although the subject of some criticism, may prove to be a useful guide to the Courts in apportioning liabilities and determining which claims are admissible and which claims are not. On the other hand, the scale of the alleged damage, and the continuing controversy as to who was responsible, may result in the Prestige being an even longer-running saga.

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