Mexican Supreme Court hands down a surprising ruling in limitation action

The Mexican Supreme Court recently issued the surprising ruling that an offshore supply vessel which collided with a rig in Mexican waters could not limit liability pursuant to the limitation provisions in the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 76), because the rig, i.e. the object sustaining damage, was not a type of vessel to which the LLMC76 would apply.1

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The judgment of the Supreme Court was limited to the procedural aspects of the matter and an interpretation of the wording of the LLMC 76 given that the appeal concerned the application of an International Convention in Mexican territorial waters. Some aspects that may have a bearing on the reasoning of the Court have not (yet) been made public, e.g.:

• The factual course of events leading up to the collision;
• Whether the offshore supply vessel was fully to blame for the collision;
• Whether the conduct on the part of the owners of the offshore supply vessel prejudiced any right to limit liability that would otherwise have been available; and
• Whether there was a contract agreed between the rig and the offshore supply vessel that might influence the issues of liability for collision damage and/or the right to limit liability.

What seems clear is that the Mexican Courts had previously upheld the right of the owner of the offshore supply vessel to establish a limitation fund in accordance with the provisions of the LLMC 76 as incorporated into Mexican law. It appears that the injured party, i.e. the rig interests, submitted a claim for an unspecified amount after the time bar determined by the Courts for submissions of claims against the fund had expired. The rig interests appealed to the Mexican Supreme Court and argued that the LLMC 76 excludes rigs from the scope of the convention, and that this should also apply when the rig is the injured object and the rig owners are the claiming party. The Supreme Court accepted jurisdiction over this issue given that it was a purely legal issue that concerned interpretation of provisions in an international maritime convention as incorporated into Mexican law.

The Supreme Court held that the lower instance courts were wrong in their decision to allow the owners of the supply vessel to constitute a limitation fund. Firstly, the Supreme Court discussed their competence to rule on the appeal raised. Secondly, the Supreme Court found that the LLMC76 would not apply because of the exclusion of oil platforms from the scope of the Convention in Article 15 section 5b, reading:

5. This Convention shall not apply to: *(a) air-cushion vehicles;* **(b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.**

International jurisprudence and Travaux Préparatoires of the convention were not brought up in the judgment.

The Supreme Court judgment was given with three against two votes. The three judge majority held that it was unfair and imbalanced if the offshore supply vessel could limit liability when the rig could not, and applied the legal principle of reciprocity to hold that the supply vessel could not limit its liability. Dissenting judges held that reciprocity and fairness were not relevant in the current matter. A motion for reconsideration in a plenary session (*en banc)* has been lodged.

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Mexican laws and jurisprudence do not easily provide for binding precedents, even as far as Supreme Court judgements are concerned. In order for this judgement to become a formally binding precedent, 5 consecutive and consistent decisions about the same issue would be needed, which is considered rather a remote possibility. Should the judgement become binding, however, it could have serious repercussions for the fleet operating in the offshore sector in Mexican waters. Owners' risk exposure would rise and they could find themselves exposed to unlimited risks in a field of operation where even minor incidents can lead to substantial losses and costs. The maritime risk for a vessel owner in operating seagoing vessels is of course precisely the rationale behind the international regime providing for an owner's right to limit liability.

As far as Gard is aware, the argument that Article 15, Section 5.b of LLMC 76 relates to, or is intended to relate to, the object suffering the loss or damage, as opposed to the object causing such loss or damage, is a novel one. In our experience, such an argument has not previously been advanced, perhaps because it has been almost universally understood and accepted that Article 15, Section 5(b) applies only to the object causing the loss or damage, i.e. in circumstances where the rig may have caused damage, it would not be entitled to limit liability. 2 However, this does not affect a shipowner's right to limit liability, as enshrined in Article 1, in accordance with the Convention. Curiously, it would appear that the Mexican Supreme Court has failed to interpret the LLMC in a manner consistent with the Travaux Préparatoires, academic texts such as Marsden on Collisions and indeed reported cases such as the *Western Regent (2005)* .

Questions or comments concerning this Gard Insight article can be e-mailed to the Gard Editorial Team .

1 First Chamber of Mexican Supreme Court of Justice – Amparo Directo 62/2012.

2 It should be noted that Article 15(5) does not have the force of law in the United Kingdom.

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