

Liability for oil spills emanating from ships in Bahamian waters

By: Rodman Deleveaux, McKinney, Bancroft & Hughes

Marine pollution, in its varying forms, adversely affects oceans, coastal zones and marine ecosystems upon which humans significantly depend. Oil pollution is a form of marine pollution that has gained notoriety since the mid-nineteenth century as a result of the increase in the use of oil tankers and the frequency of accidents which result in oil spills.¹ In The Bahamas, the conservation and protection of the marine environment is of paramount importance as the Bahamian economy and heritage are inextricably linked to its marine resources. Along with enhancing The Bahamas' biodiversity and influencing Bahamian culture, the Bahamian marine environment provides economic benefits through the tourism, fishing, and shipping industries.

Therefore, in addition to adopting and enforcing measures to preserve and protect the Bahamian marine environment, it is imperative that The Bahamas adheres to an international civil liability regime for oil pollution damage which imposes liability for loss or damage suffered as a result of oil spills emanating from ships in Bahamian waters.

The International Convention on Civil Liability for Oil Pollution Damage, 1992 (the "CCL")

The Bahamas ratified the CCL by way of the Merchant Shipping (Oil Pollution) Act². Accordingly, the provisions of the CCL carry the force of law in The Bahamas. In the event of an oil spill emanating from the cargo of a ship traversing Bahamian waters, a claim can be made for loss or damage suffered as a result of the pollution damage.

Scope of application

For a claim to fall within the ambit of the CCL, there would need to be oil pollution damage resulting from the spill of a persistent oil from a ship in the territory, territorial sea, the exclusive economic zone (the "EEZ") or the equivalent thereof of a party to the CCL. For the purposes of the CCL pollution damage is defined as "*(a) loss or damage caused outside the ship by*

¹ Md. Shahidul Islam & Masaru Tanaka, "*Impacts of pollution on coastal and marine ecosystems including coastal and marine fisheries and approach for management: a review and synthesis*", Marine Pollution Bulletin 48 (2004) 624–649 at page 628.

² See section 17 of the Merchant Shipping (Oil Pollution) Act.

contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; (b) the costs of preventive measures and further loss or damage caused by preventive measures³”.

It is important to note that the provisions of the CCL do not limit the scope of liability merely to environmental damage and the cost of cleanup operations. Pursuant to the provisions of the CCL, claims can also be made for physical injury and loss of income resulting from the pollution damage.

For the purposes of the CCL, oil is defined as “*any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.*”⁴ Additionally, the term ship is defined as “*any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.*”⁵ Ships which are registered in countries which are not parties to the CCL also fall within the scope of the CCL.

Accordingly, a claim may be commenced under the provisions of the CCL should there be a spill of oil being transported on an oil tanker, irrespective of whether the oil spill emanates from the cargo or the bunker of the ship. Furthermore, any claim for compensation under the CCL may only be commenced before the courts of the party to the CCL in whose territory, territorial sea or EEZ the pollution damage has occurred. Accordingly, the courts of The Bahamas would be the proper forum to hear claims made under the CCL for damage caused by pollution in the territory, territorial sea or EEZ of The Bahamas.

³ See Article I of the CCL.

⁴ See note 3 above.

⁵ See note 3 above.

Strict liability

The CCL imposes strict liability on the owner of a ship at the time of an incident or, where the incident consists of a series of occurrences, at the time of the first such occurrence.⁶ The owner of a ship is defined as “*the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, ‘owner’ shall mean such company*”⁷.

Furthermore, it should be noted that a claim under the CCL cannot be made against a charterer of a ship unless it can be proven that the pollution damage was caused by the charterer’s personal act or omission, committed with intent to cause damage or committed recklessly and with knowledge that such damage would probably result.

Notwithstanding the fact that the CCL imposes strict liability, a ship owner can escape liability if it can be proven that the pollution damage:⁸

- (i) resulted from an act of war or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (ii) was wholly caused by an act or omission done with intent to cause damage by a third party;
- (iii) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or
- (iv) resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person.

Insurance

For ships carrying more than 2,000 tonnes of oil as cargo in bulk, it is incumbent on the ship owner to maintain insurance to cover his liability under the CCL.⁹

⁶ See Article III of the CCL.

⁷ See note 3 above.

⁸ See Article III (2) (a) – (c) and (3) of the CCL.

⁹ See Article VII of the CCL.

Limitation period

Claims under the CCL must be commenced either:

- (i) within 3 years of the date when the damaged occurred; or
- (ii) within 6 years of the date of the incident which caused the damage.¹⁰

Limitation of liability

Save in circumstances where it is proven that the pollution damage resulted from the personal act or omission of the ship owner, committed with the intent to cause such damage or committed recklessly and with knowledge that such damage would probably result, the CCL entitles the ship owner who is subject to a claim under the provisions of the CCL to limit his liability to an amount determined by the size of the ship.¹¹

Liability outside the scope of the CCL

It should be noted that the CCL does not prohibit those who suffer damage or loss as a result of an oil spill from commencing claims which do not fall within the definition of pollution damage as prescribed by the CCL. Oil pollution often results in loss or damage not directly caused by the oil contamination. An example of this would be loss of life or damage to property caused by an explosion. Claims for such loss would be subject to the applicable domestic law.¹²

¹⁰ See Article VIII of the CCL.

¹¹ Article V of the CCL.

¹² Rue, C. and Anderson, C. (1998), *Shipping and the Environment*, 2nd ed., London: Routledge, pp. 106-107.