TOURIST INDUSTRY CLAIMS FOR OIL POLLUTION FROM SHIPS

The paper focuses on tourist industry claims for economic loss caused by oil pollution from oil-carrying ships. It analyses the liability regime under the International Convention for Oil Pollution Damage (CLC) and the International Convention on the Establishment of an International Fund for Oil Pollution (FUND). The claims of hotels, restaurants, shops, retailers, operators of beach facilities, travel agents, operator of a ferry, suppliers of goods, wholesale suppliers, public bodies as well as claims concerning the cost of promotional campaigns are considered. The author points out the International Oil Pollution Funds (IOPC) criteria applied with a reasonable degree of proximity between the contamination and the loss or damage sustained by the claimant, with the account being taken of geographic proximity and a degree to which a claimant is economically dependent, bearing in mind the decisive issue whether a sufficient link of causation was shown.

Key words: tourist industry claims, oil pollution, liability, economic loss

INTRODUCTION

The paper deals with financial losses such as reduction of profits or earning sustained by owners of hotels, restaurants, shops, and other tourist industry establishments as a result of a marine casualty involving the oil-carrying ships based on liability under international conventions. Most claims for compensation for oil pollution from ships are dealt with under the legislation which imposes strict liability on the owner of the ship, but which
does not specify in detail as to what particular types are recoverable for economic loss. Prior to late 1990s there had been no recorded case of a court of law considering the issue as to what extend claims for economic loss fell within the term pollution damage as defined in the International Convention on Civil Liability for Oil Pollution (CLC), 1969 and the International Convention on the establishment of an International Fund for Oil Compensation (Fund), 1971.

1. THE CIVIL LIABILITY AND FUND CONVENTION

The International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969. was adopted to ensure that adequate compensation is available to persons who suffer from oil pollution damage as a result of maritime casualties involving oil-carrying ships and it applies to all seagoing vessels carrying oil in bulk cargo, while only the ships carrying more than 2000 tons of oil are required to maintain insurance in respect of pollution damage. The Convention covers pollution damage resulting from spills of persistent oil on the territory of a State Party. The 1984 Protocol sets increased limits of liability, although it gradually became clear that the Protocol would never secure the acceptance required for entry in force and it was superseded by 1992 Protocol which modified the entry into force requirements and stressed the compensation limits for a ship not exceeding 5000 gross tonnage to 3 million SDR, and for a ship 5000 do 140000 gross tonnage to 3 million SDR plus 420 SDR for each additional unit of tonnage and for ship over 140000 gross tonnage the liability is limited to 59,7 millions¹.

The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1971 has as main objective providing the compensation for pollution damage to the extent that that protection afforded by the CLC 1969 is inadequate and for that purpose the Fund has an obligation to pay the States and persons who suffer pollution damage, if such person is unable to obtain compensation from the owner of the ship from which the oil escaped or if the compensation due from such owner is not sufficient to cover the damage suffered. According to the Fund Convention, victims of oil pollution damage may be compensated beyond the level of shipowners liability. The Funds obligations under the 1992 Protocol are limited to the maximum amount of compensation payable from the Fund for a single incident of 135 million SDR. However, if three States

contributing to the Fund receive more than 600 million tonnes of oil per annum, the maximum amount is raised to 200 million SDR\(^2\).

The purpose of CLC Convention was to ensure adequate compensation to be paid to victims and the liability was placed on the shipowner while the idea of Fund is that if an accident at sea results in pollution damage which exceeds the compensation available under CLC, the Fund will be available to pay an additional amount, while the burden of compensation will be spread more evenly between the shipowner and cargo interest\(^3\). The balance which has been struck between the need on the one hand for a degree of certainty as to the scope of recoverable claims, as well as, on the other hand, the need for sufficient flexibility to deal with each case on its merit.

2. THE TOURIST INDUSTRY CLAIMS

In the Sea Empress case payments were made to a large number of claimants mostly small businesses offering bed-and-breakfast or self-catering accommodation.\(^4\) In Tanio case a claim by a municipal campsite for loss of income was not accepted in full on the grounds that it had introduced a price increase that season, and that this might have led to a decrease in number of bookings in comparison with previous year. Claims by owners if hotels, restaurants and campsites at seaside resort were accepted in principle by the 1971 Fund in the Tanio case.\(^5\) In Haven incident claims were submitted by the owners of some 700 hotels and by numerous restaurants and shops located in various towns and villages along the Italian coast between Genoa and French border. The Executive Committee of the Fund considered whether the distinction should be drawn between villages and towns on the coastline where beaches had been polluted and those whose beaches had not been contaminated. However, the view was taken that it would be appropriate to give equal treatment in principle to all claims for loss of income submitted in respect of establishment along such coast, regardless of a location of a town or village. The Committee accepted that, if contamination of beaches resulted in a reduction in tourist activity in a given town or village, it would probably affect all establishments of the same kind in the locality\(^6\). Furthermore, there is an issue as to what extent the claims are admissible by owners of hotels and other establishments which are situated

\(^2\) Ibid, pp.390-406 
\(^4\) IOPC Funds Annual Report 1997, p.62 
\(^5\) IOPC Funds Annual Report 1988, p.27 
inland, rather than on the coast, or which are situated at coastal locations outside the contaminated area. The Fund has generally taken the same approach to claims by retailers at seaside resorts as for those by hotels, restaurants and other tourist establishments. It would not be reasonable to assess the admissibility of claims by reference to the types of goods sold, except for shops selling goods which were not normally bought by tourists (such as furniture and cars). Loss of income suffered by the operators of beach facilities should be considered as damage caused by oil pollution from a ship to the extent to which such reduction was caused by the incident. Fund considered a claim by a travel agent and tourist accommodation bureau, which consisted of a number of elements including the contamination loss on contracts with hotels and in respect of holiday's flats, and loss on certain guaranteed contracts. The Executive Committee took a view that these losses were not different in character from those suffered by hoteliers in the same area, and so were accepted in principle, subject to the amounts being sustained.

In the Aegean Sea incident the Executive Committee of the Fund accepted the claim by the operator of a passenger ferry for loss of income resulting from a suspension of service caused by closure of the port after the oil spill. By contrast, in Braer case the Committee did not accept a claim by an operator of ferry service considering that there was insufficient proximity between the claimant's activity and the contamination, and that the claimant's business was not an integral part of the economic activity. A claim by doctors operating a medical centre alleged that they had sustained a loss of income due to a reduced number of temporary resident was given in Sea Empress claim. The Committee did rejected a claim on a basis that this category accounted a limited percentage and that there is no sufficient degree of proximity between the contamination and the alleged loss.

In a claim submitted by suppliers of goods and services to businesses in the tourist industry the Committee considered that it is necessary to distinguish between, on the one hand, claimants who sold their goods or services directly to tourists and whose businesses were directly affected by a reduction of visitors, and, on the other hand, claimants who did not provide goods and services directly to tourist, but only to other businesses which in turn served tourist. In latter cases is in general not a reasonable degree of proximity between the contamination and the loss, so that such types of claims should not normally be admissible. The Fund rejected claims by the wholesale suppliers; despite accepting that they were located in the area affected by the oil spill and formed an integral part of the economic activity of the area. Similar were reasons for rejecting claims by a company, which supplied frozen foods to hotels, guesthouses, restaurants, and also a company that provided linen.
supplies and laundry services. The standpoint rejected claims if the claimant’s activities had developed in such way that they were vulnerable to a reduction of tourism, but the goods and services concerned were not by their nature specifically targeted at the tourist industry rather than the resident market. The same approach is valid even where the goods were by their nature directed at tourism, if the claimant did not retail his product directly to tourist but instead sold it to other retail outlets.

For claims by public bodies for loss of tax revenue allegedly resulting from reduction in the earnings of local business caused by the downturn of tourism after an incident the Fund rejected such claims on grounds that it was not satisfied that the loss of revenue was shown to have occurred as a direct result of the pollution. Concerning claims for the cost of promotional or marketing campaigns designated to mitigate the adverse effect on tourism of publicity surrounding an oil spill, claims may be regarded as relating costs of preventive measures undertaken to prevent or minimize pure economic loss. After a Haven incident a claim was submitted by the region of Liguria for the cost of a tourism promotion campaign and the Committee rejected this item on the grounds that only claimant who suffered a quantifiable economic loss is entitled to compensation. However, after the Sea Empress incident claimed by the Welsh Tourist Board the criteria for admissibility were regarded as being fulfilled in respect of various costs in respect of short-term employment of a specialist crisis management agency, as well as sponsorship of special supplements that were published and a radio campaign directed to target market areas.

3. CRITERIA APPLIED BY THE INTERNATIONAL OIL POLLUTION FUNDS

The International Oil Pollution Compensation (IOPC) Funds is faced with the problem of claims for consequential economic loss, i.e. those resulting from damage to the claimants property. It was noted that the system of compensation established by the Convention applied to the loss or damage caused by contamination, and that accordingly the decisive issue was whether a sufficient link of causation was shown. The Committee considered that this required considerable degree of proximity to be shown between the contamination and the loss, and that this would need to be assessed in respect of each individual claim.

Serious oil spills in areas frequented by tourists have normally been highly publicised events, and in the tourist sector, as is sometimes

9 International Oil Pollution Compensation Funds, http://www.iopcfund.org/intro.htm
in fishing industry, media coverage has played a part in the economic consequences of pollution. Sometimes it may have aggravated losses by contributing to a public perception of contamination on a wider scale than it actually occurred.

There have been claims that have made necessary to consider the interpretation of the term and its application to various types of claims for economic loss caused by the oil pollution from ships. There are two categories of claims: first, those by owners of hotels, restaurants, shops and other business that depend directly on tourism, and secondly, claims by other parties who in general do not deal directly with tourists and whose losses are more indirect result of pollution. In maritime casualties involving oil-carrying ships the claims are related to losses incurred by hotels, restaurants and other businesses affected by the reduction of turnover in tourism. Only exceptionally have such claimants suffered damage to property, such as private beach. Consequently their claims for loss of profits or earnings are normally a pure economic loss.

4. CONCLUSION

Should oil arrive in the tourist industry area, there may be direct effects on tourism in the manner that a guest may curtail or cancel reservation. But there is a little evidence for a longer-term impact once the beach was clean. Where hoteliers, restaurants and other small businesses claim for long term losses, evidence will be required, for example by a comparison with the results of previous years. Given the complexity of the tourist trade, it cannot be considered reasonable to accept claims for future loss based on speculation or abstract quantification. One should note that tourism in general is influenced by external factors, and that there is often a considerable variation from year to year in the number of tourists visiting a given area for reasons that are normally difficult or impossible to establish. Namely, the fact that a reduction in tourism is noted after an oil pollution incident does not necessary establishes that the contamination caused economic loss to any particular extent.

The CLC and Fund Convention provide for compensation to be paid for the cost of preventive measures and since the establishment the IOPE Funds have accepted claims for the cost for operation to prevent or minimize the physical pollution damage.

Although it seems unlikely that the Conventions were drafted with the idea of measures to prevent pure economic loss, the Funds have taken the view that in principle they may be considered as preventive measures, provided that the costs of the proposed measures were reasonable and not disproportionate to the further damage or loss which they mitigate, the measures were appropriate
and offered a reasonable prospect of being successful and in case of a marketing campaign, the measures related to the actual targeted markets.

The author's opinion is in order to guarantee legal certainty that the main criterion must be that a reasonable degree of proximity should be shown between the contamination and the loss or damage sustained by the claimant, with the account of the geographic proximity between the claimants activity and contamination, the degree to which a claimant was economically dependent on an affected resource, the extent to which the claimant had alternative sources of supply and the extent to which a claimant's business formed an integral part of the economic activity within the area affected by the spill.

REFERENCES

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