SEMAPHORE

Newsletter of the Maritime Law Association of Australia and New Zealand

# Dali – the Baltimore Bridge Incident and the Robins Dry Dock Rule

## *Background*

Containership Dali's allision with the Francis Scott Key Bridge, which caused its collapse on 26 March 2024, will amount to one of the largest losses in maritime history according to Lloyd's of London chief executive John Neal.

The initial response and clean up alone have cost over US$100 million, while in-water construction of the replacement bridge – recently greenlit by the United States Army Corps of Engineers – has been allocated a budget of approximately US$2 billion.

Accordingly, the Singaporean owners and operators of the Dali, Grace Ocean Private Ltd and Synergy Marine Pte Ltd (Petitioners), last year sought to limit their potential liability pursuant to the Limitation of Liability Act of 1851 46 USC §§ 30521-30530 (Limitation Act). The mechanics of that process were explored in an earlier *Semaphore* article "Limiting Liability Arising from the Baltimore Bridge Incident" (June 2024).

Anna Elizabeth

Thomas Monnox

In short, the Limitation Act provides that the liability of a vessel owner shall not exceed the value of the vessel and pending freight in respect of any claim, debt or liability "arising from any embezzlement, loss or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage or injury by collision, or any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred, *without the privity or knowledge of the owner*".

On 1 April 2024, the Petitioners filed a petition for exoneration from or limitation of liability on the above basis with the United States District Court for the District of Maryland (Limitation Proceeding). On the same day, the Court accepted the Petitioners' security deposit of US$43,671,000 and issued an order staying the commencement or further prosecution of any claims or causes of action against the Petitioners and/or the Dali arising out of the incident on 26 March.

The time for filing claims has now closed, discovery has commenced and a trial on the question of entitlement to exoneration from or limitation of liability has been set down for June 2026. If that petition is unsuccessful, the next phase of the proceedings will commence, with claimants seeking to recover their losses against the Petitioners.

Copyright 2009-2024 Maritime Law Association of Australia and New Zealand

### *Robins Dry Dock*

An issue now emerging in the Limitation Proceeding is the extent to which claimants can recover purely economic losses in the absence of any damage to property they have a proprietary interest in. Take Baltimore City, for example, which – in addition to losses it suffered from damage to a submerged water main that it owned – has filed against the Petitioners for economic losses as a result of disruptions to commercial activities and infrastructure operations, including costs associated with:

- the general obstruction to the Patapsco River;
- the interruption of transportation through the City of Baltimore;
- increased road maintenance and traffic management, to account for the increased traffic through the City of Baltimore;
- the need to repair and/or replace vital infrastructure as a result of additional stress caused to that infrastructure by increased traffic;
- increased and substantial expenditures relating to the protection of public welfare, such as increased expenditures on police, fire, and other public employees' overtime;
- the loss of taxes and fees levied on business, including the import and export of trade goods, the loading and unloading of cargo from vessels, and in general, the operation of trade at the Port of Baltimore;
- the loss of property and income tax revenue due to the substantial and foreseeable economic interruption caused by the allision; and
- the costs associated with the public nuisance suffered by citizens of the City of Baltimore.

Typically, in America, purely economic losses are not recoverable in maritime tort claims because of the longstanding "Robins Dry Dock Doctrine", named after the decision in *Robins Dry Dock & Repair Co v Flint*, 275 US 303 (1927). That case set a long-standing precedent limiting claims for pure economic loss in maritime matters to parties with a proprietary interest in the subject of the claim (for example, damage to a railway over a bridge not owned by a claimant could not extend to pure economic loss). This rule recognises the public policy need to restrict the scope of recoverable damages in marine damage and casualty cases which could otherwise be potentially limitless:

> A disaster such as an oil spill, *the ramming of a bridge or a collision blocking a channel* may have extremely broad economic repercussions, causing delays, inconvenience, and other harm to a wide variety of interests and persons. Reasonable limits on a tortfeasor's responsibility are necessary both to facilitate the judicial administration of compensation for claims and to avoid stretching the third-party system of liability insurance to the breaking point.[1]

The Robins Dry Dock Doctrine has been reaffirmed by the United States Court of Appeals for the Fourth Circuit, which encompasses the District of Maryland. For example, in *Marine Navigation Sulphur Carriers v Lone Star Industries Inc*, 638 F.2d 700 (4th Cir, 1981), the Fourth Circuit denied various claims for business interruption and lost revenue after the SS Marine Floridian struck the Benjamin Harrison Memorial Bridge in Hopewell, Virginia. This was despite the allision causing the closure of the river to marine traffic for several months, which impeded the operations of many local and regional companies.

While the Robins Dry Dock Doctrine is clearly well-established, exceptions to the rule do exist. For example, in *Re Exxon Valdez*, 229 F.3d 790 (9th Cir, 2000) (Exxon Valdez), commercial fishermen were awarded compensatory damages after the Exxon Valdez ran aground on Bligh Reef off the coast of Alaska, spilling thousands of tonnes of crude oil into Prince William Sound. This was despite the commercial fishermen having suffered purely economic losses, arising from a loss of the use of natural resources. *Applying Union Oil v Oppen*, 501 F.2d 588 (9th Cir, 1974), the Court held that commercial

[1] MLC, Regulation 2.4

Copyright 2009-2024 Maritime Law Association of Australia and New Zealand

fishermen have a unique and direct relationship with, and are dependent on the health of, the marine environment, and may therefore circumnavigate the Robins Dry Dock Doctrine. However, the basis upon which the exception arose is somewhat uncertain – whether because the fishermen had a quasi-proprietary interest in the marine environment or because of the commercial interest they had in the fish as part of their businesses which they had invested in over time.

This prompted Congress to pass the Oil Pollution Act of 1990 (33 USC), which permits economic loss recovery for fishermen and other professionals reliant on natural resources, though the precent provides some guidance for the position of others when considering exceptions to the Robins Dry Dock Doctrine. The Exxon Valdez case suggests there is a potential that a similar exception could be recognised by the Court in the present case, allowing claims for pure economic loss for persons with special interests (being an extension to or a gloss upon the Robins Dry Dock Doctrine). This might extend to fishing or marine activities in the Baltimore Bay area as it did in the Exxon Valdez case.

## *The Position in Australia*

As set out in the previous article on this subject matter, Australia introduced The Limitation of Liability for Maritime Claims Convention (LLMC) via the Limitation of Liability for Maritime Claims Act 1989 (Cth) (Limitation of Liability Act): See section 6. The Limitation of Liability Act limits the total liability arising from a single, distinct, event and allows shipowners to limit their liability to compensation for general ship-sourced damage.

The LLMC applies to claims for loss of life and personal injury, as well as loss of or damage to property. Claims which may be limited include negligence claims. With respect to pure economic losses arising from negligence claims, the Australian position is not as clear cut as in the United States as there is no equivalent Robins Dry Dock Rule. We can, however, consider the general position at common law – a person does not owe another a general duty of care not to expose them to purely economic losses, except in certain circumstances. Those circumstances were canvassed in the decision of *Mallonland Pty Ltd v Advanta Seeds Pty Ltd* [2024] HCA 25. There, the High Court confirmed that reasonable foreseeability alone is insufficient to establish a duty of care; something more is required. In addressing what that something more might be, the High Court held that a duty of care to avoid causing purely economic loss arises where a person has assumed responsibility for another's economic interests, unless effectively disclaimed, or where nature and scope of the relationship, evaluated by its "salient features", justify imposing the duty. While these features necessarily turn on the facts of each case, they often include knowledge and control of the risk of economic loss, vulnerability of the party who suffered the loss, and whether the duty would create legal inconsistencies.

It should be noted, however, that each member of the High Court in this case expressed some reluctance towards the salient features approach. Edelman J, who provided a separate, concurring judgement to the majority, was particularly critical of the approach and has cautioned against its expansion given the "highly unsatisfactory state of the present law".

## *Motions for Partial Lifting of Stay*

A further issue that has risen for consideration is whether some claimants are entitled to pursue their claims alongside the current petition for exoneration from or limitation of liability in a forum of their choosing. The State of Maryland (State) and Ace American Insurance Company (Ace), for example, recently filed motions requesting a partial lifting of the Court's stay to allow them to pursue claims allegedly outside the scope of the Limitation Act. The State argued that at least two of its claims are not subject to limitation:

(1) contractual claims arising from a breach of the Maryland Port Administration's tariff at Seagirt Marine Terminal; and

(2) environmental claims related to the unauthorised discharge of pollutants under federal and state environmental laws.

Copyright 2009-2024 Maritime Law Association of Australia and New Zealand

Meanwhile, Ace, as the State's insurer, asserts that it is subrogated to the State's contractual claims and should therefore be permitted to litigate those claims separately from the Limitation Proceeding.

The Court considered these motions on 7 February 2025. While the Petitioners did not contest that the claims fell outside the scope of the Limitation Act, the Court emphasised that this alone would not necessitate the lifting of the stay, nor would it necessarily be advisable to do so. The Court went on to identify three reasons why the motions for partial lifting of the stay should be denied:

- firstly, lifting the stay would undermine the fundamental objective of the Limitation Act, which is to consolidate all claims in a single proceeding to ensure efficiency and equity in resolving complex maritime disputes. Allowing parallel litigation would effectively negate this objective
- secondly, the Court observed that adjudicating the State's and Ace's claims in a separate forum could entail factual and legal findings about the Petitioners' liability, which would undermine the exclusive jurisdiction of the United States District Court in overseeing limitation proceedings pursuant to the Limitation Act. Such findings would also prejudice the Petitioners' rights to seek liability protection, and to reserve the adjudication of relevant claims in a federal forum, under the Limitation Act
- thirdly, the State and Ace have failed to demonstrate that delaying their claims until after the limitation trial would result in undue prejudice. In the absence of such prejudice, the Court held that it would be procedurally unfair to set some claimants free to permit parallel litigation while others remain bound by the stay

Anna Elizabeth
Barrister
5 Wentworth Chambers
Sydney, NSW 2000
anna.elizabeth@5wentworth.com

Thomas Monnox
Lawyer
Mills Oakley
Sydney, NSW 2000
tmonnox@millsoakley.com.au

March 2025

Copyright 2009-2024 Maritime Law Association of Australia and New Zealand