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MAJOR ISSUE OF THE MONTH

Europe : ECJ rules that cargo owner potentially liable for spill pollution damages

The European Court of Justice (ECJ) ruled with C-188/07 ([Commune de Mesquer v. Total France SA](#)) that if the cost of disposing of waste from an oil spill from a tanker is not or cannot fully be borne by the ship owner and/or the International Fund for Compensation for Oil Pollution Damage, the national law of a Member State of the European Union may provide for that cost to be borne by the producer of the product from which the waste came. In accordance with the 'polluter pays' principle, however, such a producer cannot be liable to bear that cost unless it has contributed by its conduct to the risk that the pollution caused by the marine casualty will occur.

In the case, a French coastal municipality where oil from the sunken tanker ERIKA washed ashore brought suit against the oil company group that owned the cargo oil and chartered the tanker. The local court requested an advisory opinion from the ECJ on two issues:

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- (1) whether the cargo oil accidentally spilled at sea following the sinking should be classified as waste for purposes of the EU Waste Directive; and
- (2) whether, in the event of a sinking of the oil tanker, the producer of the cargo oil spilled at sea and/or the seller of that oil and the charterer of the ship may be required to bear the cost of disposing of the waste produced, even though the substance spilled at sea was being transported by a third party, in this case a maritime carrier.

The ECJ answered both questions affirmatively.

It noted that the national court may consider that the seller of the cargo oil and charterer of the ship carrying the cargo oil have produced waste within the meaning of the Waste Directive if the court finds that the seller-charterer contributed to the risk that the pollution caused by the sinking would occur, in particular if they failed to take measures to prevent such an occurrence, such as measures concerning the choice of ship (i.e., vetting).

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IMO CONTACT POINTS UPDATE

IMO - MSC-MEPC.6/Circ. 4 (ANNEX 2 for SOPEP/SMPEP)

IMO has issued the latest ([SOPEP Contact points updated as of 30/6/2008](#)) List Of National Operational Contact Points Responsible For The Receipt, Transmission And Processing Of Urgent Reports On Incidents Involving Harmful Substances, Including Oil From Ships To Coastal States. This information enables compliance with Regulation 37 of MARPOL Annex 1 and Regulation 17 of MARPOL Annex II which, inter alia, require that the shipboard marine pollution emergency plans for oil (SOPEP) and/or noxious liquid substances (SMEP) shall contain a list of authorities or persons to be contacted in the event of a pollution incident involving such substances.

IMO - MSC-MEPC.6/Circ.4 Annex 1 (National Authorities and PSC Contact Points)

IMO has issued the latest ([NATIONAL Authorities Contact points updated as of 1/2008](#)) Amalgamated list of national inspection services - head offices (originally MSC/Circ.630), national inspection services - local offices (originally MSC/Circ.630), inspection services acting as representatives of flag States for port State control matters and responsible authorities in charge of casualty investigation (originally MSC/Circ.542), as well as the Secretariats of Memoranda of Understanding on Port State Control. Effective 29 February 2008, Member States will directly update their respective information in the Global Integrated Shipping Information System (GISIS), using the reporting facilities of the Contact Points module.

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IMO NEWS

IMO – focus on climate change

The IMO issued a [news release](#) stating that the theme for World Maritime Day 2009 will be climate change.

IMO – STCW competent persons

The IMO issued a circular ([MSC.1/Circ.797/Rev.16](#)) containing the updated list of competent persons for each of the parties to the International Convention on Standards of Training, Certification and Watchkeeping (STCW).

IMO – STCW training list

The IMO issued a circular ([MSC.1/Circ.1164/Rev.4](#)) containing the updated list of parties to the International Convention on Standards of Training, Certification and Watchkeeping (STCW) shown to have given full and complete effect to relevant training provisions of the Convention.

IMO – STCW White List

The IMO issued a circular ([MSC.1/Circ.1163/Rev.3](#)) containing the updated list of parties to the International Convention on Standards of Training, Certification and Watchkeeping (STCW) shown to have given full and complete effect to relevant provisions of the Convention.

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IMO – Nigerian Maritime Rescue Coordination Center

The IMO issued a [news release](#) stating that the Nigerian Maritime Coordination Center was commissioned by Secretary-General Efthimios Mitropoulos. The Center provides rescue coordination services for Benin, Cameroon, Congo, the Democratic Republic of Congo, Equatorial Guinea, Gabon, Sao Tome & Principe, and Togo, as well as for Nigeria.

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NATIONAL ADMINISTRATION AND PORT STATE CONTROL NEWS

Australia – AMSA international commendation for bravery

The Australian Maritime Safety Authority (AMSA) issued a [media release](#) stating that the IMO has awarded six helicopter crew members with certificates of commendation for their part in the rescue of 22 crewmen off the PASHA BULKER after it grounded off Nobbys Beach in Newcastle during a fierce winter storm in June 2007.

Europe - ECJ ship-source pollution directive upheld

The European Court of Justice issued rule ([INTERTANKO v. Secretary of State for Transport](#)) resulting to uphold the validity of the European Union's directive on ship-source pollution.

In particular, it ruled that the validity of the regime governing liability for accidental discharges of pollutants cannot be assessed under either the MARPOL Convention or the United Nations Convention on the Law of the Sea (UNCLOS). The court noted that the European Community is not party to the MARPOL Convention.

Europe - EMSA newsletter

The European Maritime Safety Agency (EMSA) issued the May 2008 edition of their [newsletter](#). Among other things, it reports that the EU Long Range Identification and Tracking (LRIT) expert group met in Lisbon to finalize the technical specifications for the EU LRIT system.

Europe - EMSA World Merchant Fleet in 2006

The European Maritime Safety Agency (EMSA) issued a [notice](#) stating that the publication entitled the World Merchant Fleet in 2006 has been released.

New Zealand – Guidance regarding use of electronic charts

Maritime New Zealand issued guidance ([MGN Issue 08-2008](#)) regarding use of electronic charts, ECDIS, and ENCs in New Zealand waters. In addition to providing a concise explanation of the variety of systems in use, the guidance points out that only New Zealand nautical charts authorized by Land Information New Zealand (LINZ) comply with New Zealand electronic charting rules.

New Zealand – Bulletin liferafts and their release mechanisms

Maritime New Zealand issued a bulletin ([Safety Bulletin 16-2008](#)) to the maritime community on the importance of proper configuration of the release mechanisms on liferafts. If not properly configured, the liferaft may not be available when most needed.

Panama Canal – Safe Boarding Week

The Panama Canal Authority issued an advisory ([Advisory No. 15-2008](#)) stating that it will hold its annual Safe Boarding Week from July 7 through July 11. Activities will include inspections of boarding facilities by teams representing groups that normally board vessels.

Panama Canal – summary for May 2008

The Panama Canal Authority issued an advisory ([Advisory 17-2008](#)) summarizing canal operations for the month of May. Among other things, it includes metrics for the second quarter of the fiscal year.

Singapore – MPA extension of port dues concession for container ships

The Singapore Maritime and Port Authority (MPA) issued a circular ([Port Marine Circular No. 9 of 2008](#)) stating that it will extend, through 30 June 2010, the current 20% port dues concession for container ships. The concession does not apply to container ships staying in port more than 10 days.

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Singapore – MPA IMO unique owner and registered owner ID number scheme

The Singapore Maritime and Port Authority (MPA) issued a circular ([Shipping Circular No. 11 of 2008](#)) reminding owners and operators that, effective 1 January 2009, the IMO unique company and registered owner identification (ID) number must be reflected in a number of ship's documents. This includes the Continuous Synopsis Record (CSR), the Document of Compliance, the Safety Management Certificate (SMC), and the International Ship Security Certificate (ISSC), among others.

USA - Alaska Pilots proposal to expand compulsory pilotage

The Alaska Board of Marine Pilots issued a [Supplemental Notice](#) stating that it proposes to adopt regulatory changes that would expand the boundaries of compulsory pilotage waters of Alaska to include portions of the Chukchi Sea and Beaufort Sea more than three nautical miles beyond the baseline from which the territorial sea is measured (outside state waters).

USA - USCG enforcement of NTVRP requirements

The US Coast Guard issued a notice ([73 Fed. Reg. 35405](#)) stating that, with effect from August 22, it will enforce the requirement for the owner and operator of a US or foreign flag nontank vessel operating in US waters to prepare and submit a nontank vessel response plan (NTVRP).

A nontank vessel is defined as a self-propelled vessel of 400 gross tons or greater, which carries oil as fuel for main propulsion and operates on the navigable waters of the United States. The NTVRP should be largely similar to the vessel response plan (VRP) required for a tank vessel.

The Coast Guard has provided more specific [Guidance for NTVRP preparation](#).

UK – DOT seafarer statistics 2007

The UK Department for Transport issued the [Seafarer Statistics 2007](#). This report indicates that, in 2007, approximately 23,500 UK nationals were seafarers working regularly at sea. This is about 9% lower than the numbers for 2002. It is projected that the number of certificated officers will be reduced in the year 2023 by more than 40% from the current level of 12,100.

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VIOLATIONS & PENALTIES

USA – DOJ Sentence includes implementation of remote monitoring system

The US Attorney for the District of New Jersey issued a [news release](#) stating that a ship operator pleaded guilty to making false statements to the US Coast Guard when one of its chief engineers presented a ship's oil record book (ORB) that he knew contained fraudulent entries. The entries did not disclose intentional discharges of oily waste water on the high seas. The company has agreed to pay a criminal fine of \$3.25 million and to make a community service payment of \$1.5 million. It has also agreed to replace the oily water separators on its older vessels and to implement an environmental compliance program. A novel element of the plea agreement involves implementation of a remote monitoring system by means of which company shoreside personnel and the US Coast Guard can keep track of waste levels and use of oil waste processing equipment in real-time using data transmitted via satellite.

USA - DOJ ship operator fined for ORB violation

The US Attorney for the Eastern District of Pennsylvania issued a [news release](#) stating that a ship management company and a chief engineer pleaded guilty to a charge that they falsified the oil record book (ORB) on a commercial vessel. The company was sentenced to pay a \$1 million fine and a \$200,000 community service payment. It will also serve a three year period of probation and institute an environmental compliance program.

UK – MCA fishing boat skipper sentenced for negligent death of crew

The UK Maritime and Coastguard Agency (MCA) issued a [press notice](#) stating that the skipper of a fishing boat was sentenced to twelve months imprisonment for the unlawful killing of his two crewmembers. The deaths occurred when the boat grounded while returning from a fishing trip. The skipper admitted that he had not been maintaining a proper lookout when the grounding occurred.

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INCIDENT INVESTIGATION REPORTS

Australia – ATSB bulk carrier breakaway and grounding

The Australian Transport Safety Bureau (ATSB) released the report of its investigation ([MAIR 232](#)) into the breakaway and grounding of a bulk carrier at Port Hedland, Western Australia on 12 September 2006. The ship broke away from its berth under the influence of a strong ebb tide and grounded in the waterway. Investigation revealed that the effective holding capacity of the ship's mooring winches was reduced by the number of layers of mooring line on the winch drums and the poor condition of the winch brakes.

Australia – ATSB report on engine room fire

The Australian Transport Safety Bureau (ATSB) issued the report of its investigation ([MAIR 236](#)) into the engine room fire on a cargo ship off Newcastle, New South Wales on 9 February 2007. Evidence indicated that the fire started when an inadequately repaired fuel line failed and diesel sprayed onto a generator, which was in operation.

Australia – ATSB report re allision of boat with anchored barge

The Australian Transport Safety Bureau (ATSB) issued the report of its investigation ([MAIR 237](#)) into the allision of a recreational vessel with an anchored barge off Carnarvon, Western Australia on the evening of 18 March 2007. The four persons on the recreational vessel died as a result of the allision. The barge had been anchored off the port on the advice of the harbor master. Investigation revealed that the skipper of the recreational vessel may have mistaken the barge's anchor lights for two separate vessels and that the speed of the recreational vessel was inappropriate for the conditions. The harbor master, who advised regarding the anchoring of the barge and was actually located in Perth, was not fully aware of recreational boating activities in the Carnarvon area.

Australia – ATSB report on cargo hold fire

The Australian Transport Safety Bureau (ATSB) issued the report on its investigation ([MAIR 250](#)) into the cargo hold fire on a bulk carrier on 25 January 2008. A portion of the cargo of palm kernel expeller in one hold caught fire while the ship was en route to Australia from Indonesia. Investigation revealed that the cargo fumigant tablets (wrapped in socks) had been buried in the cargo, rather than placed on top. The heat that built up as the fumigants were released could not dissipate and eventually ignited the adjacent cargo. Quick action by the crew in its utilization of the fixed fire extinguishing system prevented the fire from spreading.

UK – MAIB Investigation on who's in charge?

The UK Marine Accident Investigation Branch (MAIB) issued the report of its investigation ([Report No. 10/2008](#)) of the contact between two ferries in Hull. One ferry was berthed at the dock normally used by the other ferry. The other ferry had a new master and a charterer's representative with a pilot exemption certificate, but little actual shiphandling experience. Each assumed that the other was in charge of the berthing. Physical arrangements required that the ferry back into the berth. From the bridge, the officers could not see that the berth was already occupied.

UK – MAIB report on foundering of motor cruiser

The UK Marine Accident Investigation Branch (MAIB) issued the report of its investigation ([Report No. 11/2008](#)) of the foundering of a 7.3 meter motor cruiser at Whitby on 23 November 2007 with the loss of three lives. The owner and two others took the newly-acquired cruiser out in poor weather. The VHF radio was turned off, they carried no charts or other navigational information. The occupants wore foul-weather gear that was acquired with the vessel, but was not appropriate for the conditions encountered. The vessel foundered in heavy weather and the occupants died.

UK – MAIB preliminary exam of problem with evacuation system

The UK Marine Accident Investigation Branch (MAIB) issued a summary of its [preliminary examination](#) of an incident involving deployment of an evacuation system on a ro-ro passenger ferry. The evacuation system was used in place of traditional lifeboats. During a routine test the system become bound up when the doors behind which it was located failed to open properly.

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SECURITY AND PIRACY REPORTING UPDATE

UN Security Council – Resolution re piracy off Somalia

The United Nations Security Council adopted a resolution ([Resolution 1816 \(2008\)](#)) condemning acts of piracy and armed robbery against ships off the coast of Somalia. It further decided that States cooperating with the Transitional Federal Government of Somalia may enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea and use all necessary means to repress such acts.

IMO – Security Council moves re piracy welcomed

The IMO issued a [news release](#) stating that it welcomes the adoption by the United Nations Security Council of a resolution authorizing a series of decisive measures to combat acts of piracy and armed robbery against vessels off the coast of Somalia.

USCG – Port Security Advisory

The US Coast Guard issued an updated advisory ([Port Security Advisory 6-08](#)) regarding its evaluation of the effectiveness of anti-terrorism measures in foreign ports. The change from the previous advisory is that five additional port facilities in Indonesia and one port facility in Liberia have been excepted from the conditions of entry. In addition, the IMO Port Facility Numbers have been provided, where available.

Piracy reporting update

Reporting of incidents

In accordance with IMO and other third parties all ships are advised to maintain anti-piracy watches and report all piratical attacks and suspicious movements of craft to the IMB Piracy Reporting Centre, Kuala Lumpur, Malaysia.

Tel ++ 60 3 2078 5763

Fax ++ 60 3 2078 5769

Telex MA 31880 IMBPCI

24 Hours Anti Piracy HELPLINE Tel: ++ 60 3 2031 0014

E-mail imbkl@icc-ccs.org

To view the latest Weekly Piracy Report please see [IMB website](#).

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