

The Seagull Collision and its Aftermath

Stephen V. Rible, Chairman
The Association of Average Adjusters
of the United States and Canada
The Chairman's Address
2014 Annual Meeting

WELCOME

Ladies and Gentleman, good morning and welcome to the 2014 Annual Meeting of the Association of Average Adjusters of the United States and Canada.

As is customary, I would also like to extend a warm welcome to our distinguished guests from here and abroad.

As the Association's Chairman for the 2013-2014 year, I am indebted to the Board of Directors, and its Chairman, Mr. Jonathan Spencer, as well as the Secretary of the Association, Ms. Eileen Fellin, for their invaluable assistance. I also need to thank Mr. George Boothby and Ms. Liz Arnold for their efforts in arranging for the Association's Spring Lunch and the Annual Dinner.

Congratulations to Mr. John Crotty and Jonathan Spencer for the resounding success of the one-day seminar co-sponsored by the Association entitled "Mega Container Ship Casualties". They recruited speakers and participated in a panel discussion where recognized experts examined the logistical, commercial, operational and environmental difficulties surrounding large container ships casualties

In October of 2013, I was honored to attend the General Assembly & Forum of the Association Mondiale de Dispatcheurs/International Association of Average Adjusters (AMD) in Montreal, Canada, as a guest of the Association. The President of the Association, Mr. Tony Brain, chaired a comprehensive and educational two day conference for the members of the AMD.

In May of 2014, I was, once again, honored to attend the Annual Meeting and Dinner of the Association of Average Adjusters in London, as a guest of the Association. The Chairman, Mr. Keith Jones, delivered a well-reasoned address entitled "Feeling frustrated and abandoned? Consider the York-Antwerp Rules".

I would like to take this opportunity to thank Mr. Tony Brain and the AMD, as well as Mr. Keith Jones and The Association of Average Adjusters for their generous hospitality extended during my visits.

And, now on with my Chairman's Address concerning "*The Seagull Collision and its Aftermath*".

THE SEAGULL COLLISION

A “seagull collision” is **not** a collision between a moving object and a seagull.



Nor, is it a collision between a vessel named "SEAGULL" and another moving vessel.

MAKO-SEAGULL COLLISION.

The Mako-Seagull nautical inquiry was resumed at the Magistrate's Courthouse to-day, Mr. E. C. Cutten, S.M., presiding.

Wm. Marshall, first mate of the Mako, gave evidence all the morning. He said the vessel on leaving Auckland on July 12, went down the harbour a little more to the port side of the harbour than usual. The wind was about south-west about three or four knots, and the atmosphere was not clear. Witness was keeping a look-out on the fore-castle head. He saw the Sandspit light and Bean Rock light. There was a steamer on the starboard side on the wharf side of Orakei. He could see her masthead light. Getting down towards Victoria wharf he reported to the skipper they were inside the red light. He got no reply from the bridge, and the ship's head went to port and she lost weigh. Witness cried out "Throw your head to starboard!" Just before the ship's head went to port the scow loomed up. He heard voices on the scow. The latter's light was burning. At the time of the collision the ships were just about the outer end of Victoria wharf, right off the eastern corner. Afterwards Jensen said he was sorry for Fletcher, as he turned his helm the wrong way.

Rather, it is a pattern which results when two vessels approach each other in a crossing situation governed by Rules 15, 16 and 17 of the International Rules for Preventing Collisions at Sea (COLREGS) and violate the Rules.



Rules 15, 16 and 17 provide as follows:

Rule 15 - Crossing Situation

When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.

* * *

Rule 16 - Action by Give-way Vessel

Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.

Rule 17- Action by Stand-on Vessel

(a) (i) Where one of two vessels is to keep out of the way, the other shall keep her course and speed.

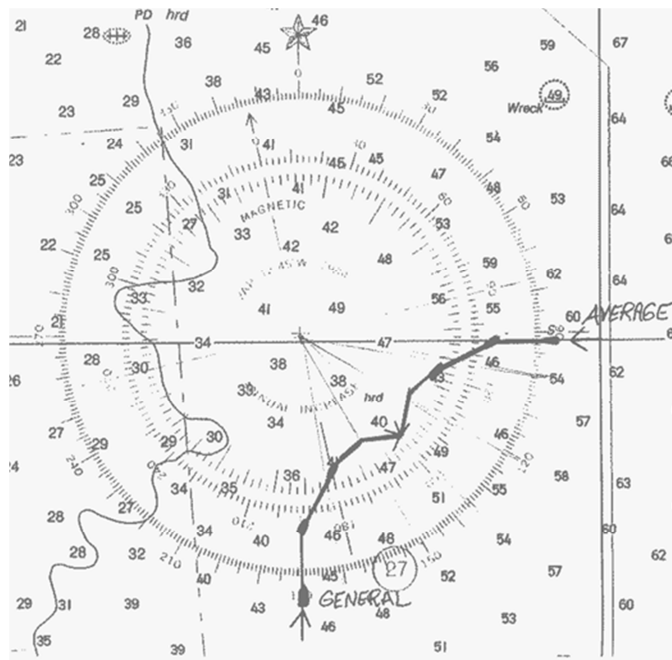
(ii) The latter vessel may however take action to avoid collision by her maneuver alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.

(b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.

(c) A power-driven vessel which takes action in a crossing situation in accordance with subparagraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.

(d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

For example, when the vessel GENERAL is heading due North and the vessel AVERAGE is heading due West, so that the GENERAL has the AVERAGE on her starboard side, the GENERAL is the “give-way” vessel and must keep out of the way of the AVERAGE. The GENERAL will usually turn to starboard to pass astern of the AVERAGE. In this situation, the AVERAGE is the “stand-on” vessel and should maintain her course and speed. If, however, the GENERAL does not take early and substantial action to stay clear; the AVERAGE may find that the approach is too close so that collision is imminent and therefore take action to avoid collision. Rule 17 clearly states that the “stand-on vessel” should not alter her course to port. In the case of a “seagull collision” the GENERAL gradually alters course to starboard and the AVERAGE gradually alters course to port.



The vessels' tracks of the resulting collision form the graceful wings of a seagull in flight.



A famous “seagull collision” is the collision between the ANDREA DORIA and the STOCKHOLM on July 17, 1956, off the coast of Massachusetts. The two vessels approached each other head on; the ANDREA DORIA gradually steered to port and the STOCKHOLM turned to starboard.

COVERAGE UNDER THE RUNNING DOWN CLAUSE OF A TRADITIONAL HULL POLICY

Excerpts from: Robert T. Lemon II, Esq.

Lemon, Allocation of Marine Risks: An Overview of the Marine Insurance Package, 81 Tul. L. Rev. 1467 (2007).



The Running Down Clause (RDC) of the traditional hull policy provides insurance coverage against the assured's legal liability for collision damage to another vessel caused by collision with the insured vessel. The hull policy's RDC provides supplementary and independent coverage to the basic property coverages contained in the hull policy. Coverage under the RDC requires (1) a collision between "vessels" - coverage requires that the insured vessel come into actual collision with another "vessel," and (2) that the assured become legally liable for the resulting collision damage to the other vessel.

The amount of coverage under the RDC is limited to the agreed value of the vessel stipulated in the hull policy. Excess collision liability underwriters and/or bumpershoot underwriters respond when the hull policy has been exhausted.

The RDC covers the assured's collision liability for the damages to the other vessel suffered as a result of collision with the insured vessel, but the RDC does not cover the shipowner for the physical damage or loss to the insured vessel; that is covered under the hull policy's perils clause.

Similarly, the shipowner's liability for the "detention damages" of the other vessel is covered under the RDC, but the shipowner's own detention losses are not covered. The RDC also provides insurance coverage for legal costs, including attorney's fees, where collision liability is contested.

The RDC excludes from coverage, however, certain collision damages resulting from the collision: (1) personal injury or death, (2) wreck removal, (3) pollution, (4) injury to real or personal property, and (5) damage to cargo onboard the insured vessel.

COMPLEXITIES INVOLVING SINGLE LIABILITY, CROSS LIABILITIES AND LIMITATION OF LIABILITY

Excerpts from: Leslie J. Buglass

Buglass, Limitation of Liability from a Marine Insurance Viewpoint, 53 Tul. L. Rev. 1364 (1979).



Principle of Single Liability

As between the owners of the colliding vessels, where both vessels are to blame, there are not two liabilities each to the other, but only one single liability: that is, the obligation of the owner suffering the lesser damages to make payment to the other of the difference between his proportion of the damages of the other vessel and the latter's proportion of the damages of his. In other words, the owner of the vessel that has the greater financial liability pays the other the difference between their respective liabilities, but as a single liability, the liability of the one vessel to the other. This has been referred to as “striking the balance.”

If this principle of single liability were adopted in adjusting claims under marine insurance policies, the result would be that the owner of the vessel who had received that single payment on balance from the other vessel would have had no claim under the collision clause of his own hull policy for any portion of the amount deducted from his recovery for damage done to the other vessel, because he will not actually have paid anything to the owner of that vessel.

Cross Liabilities Clause

It was to correct this shortcoming in the law and in coverage that the cross liabilities provision was added to the collision clause in the hull policy. This paragraph provides that when both vessels are to blame, then unless the liability of the owners of one or both vessels becomes limited by law, claims under the collision clause shall be settled on the principle of cross liabilities as though each vessel had been compelled to pay to the other vessel such proportion of that vessel's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of the collision.

The result benefits the assured by enabling him to collect part of his demurrage claim from the other vessel (to the extent that that vessel was liable for the collision) and also to collect under the collision clause his liability for that vessel's damages. The concession of claiming from underwriters on the basis of cross liabilities is only available to the assured in cases where neither vessel has effectively limited liability.

This principle of cross liabilities is merely an agreed device for settlement of claims under the collision clause of the policy. By agreement, it is assumed (fictitiously, if you will, but by express policy provision) that there are dual liabilities and dual payments although at law there is but a single liability. Similar cross liabilities provisions are included in Protection & Indemnity policies.



Meaning of "Limited by Law"

Because this concession of adjusting claims under the collision clause of the hull policy on a cross liabilities basis is not applicable if the liabilities of one or both colliding vessels become limited by law, it is important to understand exactly what is meant by this provision.

It frequently happens that in the case of a serious collision the potential liability of each vessel exceeds the amount to which the vessel owner may be entitled to limit his liability under the limitation statutes and, in such cases, both vessels often institute proceedings for limitation of liability. Nevertheless, after the case is concluded by litigation or settlement, it may well be that the total actual liabilities of each vessel fall below the amount to which each vessel's owner is entitled to limit its liability.

Furthermore, it is the single liability balance payable by the debtor vessel which is the criterion which determines whether the debtor vessel's liability has been limited by law within the meaning of the collision clause. That a shipowner has been granted the right to limit does not in itself mean that his liability has been limited by law. Only if the final settlement on a single liability basis between the colliding vessels is reduced or cancelled by reason of the insufficient limitation fund of the debtor vessel to meet the single liability settlement can it be said that that vessel's liability has been limited by law.

In short, if the debtor vessel has a limitation fund sufficient to discharge its single liability to the other vessel, a cross liabilities settlement under the collision clause would be permissible. Thus, the principle to be applied in adjusting the claims between the two vessels might, under their hull policies, differ radically from the single liability principle which would be applied by the court in the collision case itself.

Cargo's Rights in a Both to Blame Collision

In arriving at the balance between the claims of the two vessels (that is, the single liability), it must be remembered that under United States law (unlike the law of those countries who are signators to the Brussels Collision Convention - 1910) cargo claimants can recover in full from the non-carrying vessel. The non-carrying vessel then adds its payment to cargo claimants to its own hull damage and any other damages it has sustained before the final balance is struck. Effectively, it shifts to the carrier a portion of its debt to the cargo owner. A similar state of affairs exists insofar as loss of life and personal injury claimants are concerned: any such payment made by either vessel is included in that vessel's damages prior to arriving at the single liability settlement.

As to cargo claimants under United States law, a both-to-blame collision clause in the contract of affreightment (if valid) would achieve a different result. Such a clause brings American practice into line with the provisions of the Brussels Convention - 1910 by relieving the carrying vessel shipowner of liability for any part of the loss sustained by the cargo in the collision. The clause does not come into operation unless the cargo has enforced its claim against the non-carrying vessel for one hundred percent of its damages,

and that vessel has in turn effected a recovery from the carrying vessel. The effect of the clause is to indemnify the carrying vessel for the amount it has been obliged to pay in respect of its own cargo damages.

Whether collision claims are adjusted for insurance purposes on a cross liabilities basis (when there has been no effective limitation) or on a single liability basis (because liability has been limited by law) can make a great difference to the respective liability underwriters, both hull and Protection & Indemnity. This was demonstrated in the case of *Diesel Tanker A.C. Dodge Inc. v. Stewart*, 262 F. Supp. 6 (S.D.N.Y. 1966), aff'd per curiam, 376 F.2d 850 (2d Cir. 1967).



Protection and Indemnity Underwriters and Limitation of Liability - Collision Liabilities

Protection & Indemnity underwriters respond for their assureds' liability arising out of collisions with other vessels that are not recoverable under the collision clause in the hull policy--namely, removal of wrecks, property damage (except damage to other vessels and property thereon), loss of and damage to the cargo being carried, and loss of life and personal injury claims. In other words, Protection & Indemnity underwriters cover collision liability for the items **excluded** by the proviso paragraph in the collision clause.

In both-to-blame collision cases, if cargo claimants pursue and recover one hundred percent of their loss from the non-carrying vessel, that vessel will include the payment in its own damages, thereby obtaining a contribution from the carrying vessel for damage to its own cargo. **In the United States such contributions retain their identity as cargo claims. The result is that they are not claimable under the collision clause in the carrying vessel's hull policy but are recoverable under its Protection & Indemnity policy.**

"THE CAUTIOUS SELDOM ERR."

Confucius.

The Analects, ca. 500 B.C.E.



In light of these complexities, it is not surprising that an average adjuster appointed by one of the vessel owners to prepare an Statement of Claim for insurance purposes in a situation involving a both-to blame collision cautiously awaits the outcome of a final judicial decision on issues involving allocation of liability, striking the balance, and limitation of liability. Maritime lawyers, on the other hand, rush in to investigate, calculate, litigate and appeal these hotly disputed issues.

And, the process is often unpredictable, unsavory and protracted. Two cases aptly illustrate this arduous process.



Collision: “Eurybates and Dahlgren”

In Re Ta Chi Navigation (Panama)Corp., S.A., 513 F. Supp. 148 (ED La. 1981); af’d 728 F. 2d 699 (5th Cir. 1984). Related case: Travelers v. Calvert Fire, 798 F.2d 826 (5th Cir. 1986), on rehearing 836 F.2d 850 (5th Cir. 1988)

Collision – August 7, 1975

A Trial Court Opinion – March 30, 1981

First Court of Appeals Opinion – March 23, 1984

Second Court of Appeals Opinion – August 29, 1986

Third Court of Appeals Opinion – January 19, 1988

Total Length of Dispute – Over 12 years

Trial Court Finds the EURYBATES Solely at Fault and the DAHLGREN Free from Fault – Trouble Ensues

A group of consolidated cases arose out of a collision at sea on August 7, 1975, between the SS EURYBATES, a Panamanian registered freighter, owned by TA CHI Navigation (Panama) Corporation, S.A., and the USS DAHLGREN, a United States Navy destroyer. The trial court found that the collision was caused solely by the EURYBATES without fault on the part of the DAHLGREN and that the EURYBATES is liable in full for the recoverable damages.

The Collision

The International Rules are applicable to the case. When the vessels first came into each other's view, a crossing situation was presented. With the EURYBATES heading generally in a northerly direction, and the DAHLGREN heading southwest, the EURYBATES had the DAHLGREN to her starboard. Therefore, under Rule 19 the EURYBATES was the burdened vessel and had a duty to keep out of the DAHLGREN's way. Further, under Rule 22, the EURYBATES was obliged to "take positive early action" and to "avoid crossing ahead of" the DAHLGREN.

The EURYBATES' negligence began with the failure to keep a proper lookout. This was a clear night, with visibility at 6 or 7 miles. There is simply no reason, except for the failure to watch,

which explains why the master of the EURYBATES failed to recognize the crossing situation sooner.

When the master of the EURYBATES finally recognized the situation, his reaction was directly contrary to the rules. He turned to port instead of to starboard. This changed a potentially dangerous situation, calling for a further starboard turn by the EURYBATES, into one where collision was unavoidable due to a sharp port turn. It was this failure to react sooner to the crossing situation, and the last-minute incorrect maneuver which were the primary causes of the collision.

The Procedural Posture

After the collision, the owner of the EURYBATES, Ta Chi Navigation filed suit in the United States District Court for the Eastern District of Louisiana pursuant to Supplemental Rule F of the Federal Rules of Civil Procedure seeking limitation of liability. Ta Chi was represented by counsel furnished by Hull Underwriters. The United States government, on behalf of the United States Navy, also filed an action against Ta Chi in the same court for damages to the destroyer resulting from the accident. Hull Underwriters' furnished counsel also represented Ta Chi in that suit.

As required by Supplemental Rule F of the Federal Rules of Civil Procedure, counsel for Hull Underwriters acting on instructions from Hull Underwriters and on behalf of Ta Chi, filed a bond for the value of the EURYBATES to prevent its arrest. Travelers was the surety on this bond. Travelers provided the terms of the counter indemnity agreement between Travelers and Hull Underwriters, which followed the standard London form. In the counter indemnity agreement, the Hull Underwriter promised to pay its portion of the total value of the ship "in accordance with the terms of the policy of insurance." Travelers did not seek any indemnification from the P & I carrier, The London Club, but relied upon Hull Underwriters to indemnify it for the entire amount of the bond.

Concurrent with the filing in Louisiana of the limitation action, four cargo interests brought suit against Ta Chi in the United States District Court for Puerto Rico for damages sustained in the collision. The London Club selected counsel for Ta Chi in the Puerto Rico litigation to defend the cargo claims. The cargo interests and counsel for Ta Chi selected by The London Club jointly consented to transfer the cargo suits to the United States District Court for the Eastern District of Louisiana so that all actions would be consolidated in the limitation trial in Louisiana. Following the transfer and consolidation, The London Club selected counsel did not represent Ta Chi, which continued to be represented by counsel furnished by Hull Underwriters. Prior to the limitation trial, the United States government, assuming it would be found partially at fault, settled with the cargo owners, paying them one hundred percent of the agreed upon cargo damages.

Travelers brought a declaratory judgment action in the United States District Court for the Eastern District of Louisiana against Hull Underwriters and against The London Club seeking to reform the counter indemnity agreement to require Hull Underwriters to pay the entire amount of the bond, and alternatively to make The London Club pay for the cargo damages. In the district court, The London Club asserted that the court lacked personal jurisdiction over it because the

suit did not arise out of activities in Louisiana and The London Club did not have sufficient contacts with Louisiana. The district court found that it had personal jurisdiction over The London Club and rejected its policy defenses. The Court of Appeals, however, reversed the decision of the district court and held that the district court did not have personal jurisdiction over The London Club.

District Court Decisions

The district court, granted full reimbursement to the Navy from the EURYBATES for the amount paid to the cargo claimants, holding that the EURYBATES vessel was 100% at fault for the collision and had no "error in navigation" defense to cargo's claim under the Carriage of Goods by Sea Act, 46 U.S.C. § 1304(2), because the owner's failure to use due diligence to make EURYBATES seaworthy was causally related to the collision. 46 U.S.C. § 1304(1).

Thus, instead of applying the traditional approach in a mutual fault collision of balancing the responsibility for the total damages, including cargo damages, according to the relative degrees of the vessels' faults, the district court gave full reimbursement to the Navy on the basis of subrogation. This was because the Navy, who was later found to have no liability to cargo, paid in good faith an obligation of the carrying vessel.

The district court also found that the owners of the EURYBATES were not entitled to limit liability as it had failed to exercise due diligence to adequately man the vessel with a competent crew.

Hull Underwriters argued that the Hull policy did not provide coverage for damage to cargo on board the carrying vessel – the EURYBATES. As the United States was merely subrogated to the rights of cargo on the EURYBATES, there was no coverage under the Running Down Clause of the Hull policy. The district court, however, reformed the indemnity agreement between Hull Underwriters and Travelers, so that the Hull Underwriters' indemnity agreement would cover the full amount of the Travelers' surety bond without the application of any insurance policy exclusions.

Court of Appeals Addresses the Insurance Ramifications

The Court of Appeals affirmed the findings of the district court, with the exception of the rulings involving the P&I Club. The Court specifically addressed the dispute between Hull Underwriters and the surety, Travelers. The Court held that at the time the bond was issued both Hull Underwriters and Travelers believed and intended that Hull Underwriters would be responsible to Travelers for the entire amount of the bond. It was only after the District Court's judgment in the limitation proceeding holding that the Navy was totally without fault, and, therefore, should recover from Ta Chi only as an equitable subrogee having paid Ta Chi's cargo claims, that Hull Underwriters believed -- or realized -- that the hull policy perhaps did not cover the full amount of the bond.

When Hull Underwriters' agents arranged the bond with Travelers, they did not consciously have in mind that Hull Underwriters would be liable for all these damages because the court would probably find that the Navy had some fault such that all damages would be collision damages. Rather, the evidence supports the finding that at the time the bond was purchased from Travelers

and the indemnity agreement executed, Hull Underwriters' agents had already decided, and conveyed to Travelers' agent, that the hull policy would cover the judgment from the limitation proceeding up to the amount of the bond, without there then being any conditional reservation regarding the outcome of the limitation proceedings and the Navy's degree of fault.

At the time the bond was issued and the indemnity agreement executed, both parties believed and intended that Hull Underwriters would be responsible to Travelers for the entire amount of the bond, and therefore, the indemnity agreement was properly reformed to reflect the parties' intent.

On Rehearing, the Court of Appeals Addresses the United States' Direct Claims Against the EURYBATES Hull Underwriters

After the first Court of Appeals decision, the Court recognized that the surety amount posted by Travelers was not sufficient pay for all the damages (including the cargo payments) suffered by the DAHLGREN. The Court therefore had to consider whether the United States was entitled to recover damages directly from the Ta Chi Hull Underwriters. The Court stated that the Louisiana Direct Action statute was not applicable, as the policy was not delivered into the State. It further stated that the Hull policy excluded coverage for damage to cargo on board the EURYBATES. It explained that Ta Chi was bankrupt and that the United States was not able to pursue a claim against the EURYBATES Protection and Indemnity Club (which did provide coverage for damage to cargo on the EURYBATES), due to lack of personal jurisdiction over the P&I Club. The Court further explained that the Hull policy was an indemnity policy, not a liability policy; and that Ta Chi had not paid any amount entitling it to indemnification under the terms of the Hull policy. Consequently, the claim of the United States against the Hull Underwriters was denied. The United States was not entitled to recover under the reformed surety indemnity agreement and was not entitled to a direct recovery against the Hull Underwriters.



Collision – “Kariba”, “Tricolor” and “Clary”

In Re Otal Investments, Ltd., 2006 LEXIS 51 (SDNY 2006) amended 2006 U.S. Dist. LEXIS 5293, rev'd and remanded, 494 F.3d 40 (2d Cir. 2007); on remand, 2008 U.S. Dist. LEXIS 40815 (SDNY 2008); aff'd in part, vacated in part, 673 F.3d 108 (2d Cir. 2012); on remand, 2013 U.S. Dist LEXIS 177733 (SDNY 2013).

Collision – December 14, 2002

First Trial Court Opinion – January 4, 2006, amended January 9, 2006

First Court of Appeals Opinion – July 6, 2007, corrected July 30, amended October 2, 2007

Second Trial Court Opinion on Remand – May 20, 2008

Second Court of Appeals Opinion – March 8, 2012, corrected April 4, 2012

Third Trial Court Opinion on Remand – December 17, 2013

Length of Dispute – 12 years, and counting?

Trial Court Finds the KARIBA Solely Fault and the TRICOLOR AND the CLARY Free from Fault– Trouble Ensues

The Collision

Before dawn on December 14, 2002, three vessels, the M/V Kariba (the "Kariba"), the M/V Tricolor (the "Tricolor") and the M/V Clary (the "Clary") were navigating a Traffic Separation Scheme ("TSS") in international waters north of Dunkerque, France (generally known as the English Channel). At the relevant point of the TSS, two branches intersect at approximately right angles. On the night in question, the fog was thick and visibility was low. The Kariba was proceeding westward at about 16 knots. The Tricolor was also proceeding westward at 17.9 knots, one-half mile to the starboard aft of the Kariba, and in the process of gradually overtaking her. At the same time, the Clary was moving northward, along the intersecting branch of the TSS, at 13 knots, on a collision course with the Kariba.

Noticing that it was on a collision course, the Clary planned to turn starboard and steer astern of the Kariba. Before the Clary began to turn, however, the Kariba initiated its own evasive maneuver. The Kariba, seeking to avoid a collision with the Clary and perhaps unaware of the proximity of the Tricolor made an abrupt turn to starboard. The Kariba struck the port side of the Tricolor, rending the Tricolor's hull below its bridge. The Tricolor along with its cargo then sank. There were no human casualties.

The Procedural Posture

In June 2003, Otal Investments, Ltd., the owner of the Kariba (hereinafter, Otal and the Kariba together will be called the "Kariba"), filed a complaint in the Southern District of New York "seeking Exoneration from or Limitation of Liability." See 46 U.S.C. App. § 183 et seq., replaced by 46 U.S.C. § 30505, et seq., and Fed. R. Civ. P. Supplemental Admiralty Rule F. In response to this complaint, numerous claimants filed claims against the Kariba, seeking damages for the loss of their cargo, which had sunk along with the Tricolor (hereinafter, the claimants will be called the "cargo owners"). Meanwhile, the Kariba impleaded the Clary and the Tricolor as third-party defendants.

The Applicable Law

All parties agreed the substantive law governing this case derived from treaties ratified by the vessels' flag states. Specifically, the navigational duties are contained in The International Regulations for Preventing Collisions at Sea, Oct. 20, 1972, 28 U.S.T. 3459, codified by Congress at 33 U.S.C. § 1602, et seq. (the "COLREGS"). In addition, the parties stipulated that their claims should be adjudicated "in accordance with" the Brussels Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels, 1910 (the "1910 Collision Convention"). Therefore, cargo on board the Kariba (innocent cargo) would only be entitled to recover from the colliding vessels in proportion to the faults committed by each vessel.

The First Trial Court Decision

The Kariba and the cargo owners settled their disputes before trial, and the Tricolor agreed to resolve its disputes against the Kariba in Belgium. For the district court, this left only the disputes between the Kariba and the cargo owners, on the one side, and the Clary and the Tricolor, on the other. After a bench trial, the court ruled in favor of the Clary and the Tricolor, finding the Kariba to have been the sole cause of the collision.

Allocation of Liability for Damages

The first Court of Appeals decision reversed the district court decision and ruled that all three vessels were at fault and that, at least to some extent, their respective fault caused the collision. The Court explained that the district court must allocate liability for damages among the three vessels. Article 4 of the 1910 Collision Convention, allocates liability in proportion to the degree of the faults respectively committed, and requires an assessment of comparative fault on the basis of both relative culpability and relative causative effect of each party's acts. The district court must consider both culpability and causative effect.

The Court of Appeals remanded the case to the district court for a new calculation that would give greater weight to culpability and recognize that all three ships bore at least some causative fault.

District Court Recalculates the Apportionment of Liability

The district court's decision on remand separately calculated the relative culpability of each vessel and the relative extent to which the culpability of each vessel caused the collision. For the Kariba, the district court held that the proportion of culpability was forty percent and that proportion of causative fault was eighty-six percent. For the Tricolor, the relative culpability was twenty-four percent and the relative causation was ten percent. For the Clary, the respective figures were thirty-six percent and four percent.

Then, the district court simply averaged the two figures for each vessel to determine the final allocation of liability. The Kariba's liability was sixty-three percent, the Tricolor's was seventeen percent and the Clary's was twenty percent.

Trial Court, in Separate Opinion, Rules Against the Owners and Managers of the CLARY

In a later separate opinion, the district court ruled that the manager of the Clary was negligent and was not entitled to seek limitation of liability. With respect to the owner of the Clary, the

court held that it was not entitled to limitation of liability due to the regular understaffing of crew members with respect to the practice of posting a sole lookout on the bridge.

Appeal Filed in Court of Appeals for Second Circuit; Foreign Proceedings?

CONCLUSION

After the dust settles, the justifiably cautious average adjuster may complete his Statement of Claim.

