

SELECT DEVELOPMENTS IN
MARINE INSURANCE AND
MARITIME LAW

01/2014 – 11/2015

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Welcome to AdmiraltyLaw.com. This site is about Canadian maritime law, shipping law, marine law, fisheries law, the law of marine insurance and the law of the sea, ships and shipping. There are over 1,000 cases in our database which we have summarized and categorized. In addition, we have commentaries and papers on various topics of maritime and fisheries law and links to relevant statutes and regulations.

This site is maintained by Christopher Giaschi of [Giaschi & Margolis](#). The Fisheries Pages are maintained by [Brad Caldwell](#) of Caldwell & Co. Please contact us with your comments or suggestions.

Readers are urged to consult [CanLii](#) for updates to the cases digested on this site.

Updates

Canada-European Union: Comprehensive Economic and Trade Agreement (CETA)

The Canada-European Union: Comprehensive Economic and Trade Agreement (CETA) is of interest to Canadian marine industries as it will mean some important changes to coasting trade rules. Specifically, CETA will allow non-Canadian vessels to engage in commercial dredging operations and container feeder traffic within Canada. The text of the Agreement can be found [here](#). (See Articles 16, 21 and Annex X-06)

Updated: 2015-07-16 16:28:20

TC Discussion Paper - Wreck Removal

Transport Canada has released a new discussion paper relating to wreck removal and is seeking input from interested persons as to the proposed Canadian adoption of the Nairobi Wreck Removal Convention and the development of special Canadian rules to augment the convention. The discussion paper can be found [here](#).

Updated: 2015-07-13 17:17:41

Paper 01/2014-05/2015 Cases

The annual paper containing case summaries has now been added to the "Papers" section. This paper was presented at the Professor William Tetley Memorial Symposium held in Montreal on 19 June 2015. The paper can be downloaded [here](#).

Updated: 2015-06-20 10:36:02

New Limitation Amounts as of 8 June 2015

Haryett v. Lloyd's Canada, 2015 ONSC 853

- Facts:
 - Pleasure craft collision with dock killing insured and injuring passenger
 - Insured had blood alcohol 3x the legal limit
 - Insurer denied coverage
 - Estate of insured brought application for declaration that there was coverage and insurer had a duty to defend and indemnify

Haryett v. Lloyd's Canada, 2015 ONSC 853

- Policy contained 2 relevant clauses:

“We will pay up to our limit of liability for any one occurrence. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. Our duty to settle or defend ends when the limit of liability is exhausted.”

“We will not be liable if your vessel is ... *operated illegally* or used for any illicit or prohibited trade or transportation.”

- Decision: Application dismissed.

Haryett v. Lloyd's Canada, 2015 ONSC 853

□ Held:

- A duty to defend is a creation of the contract
- A liability insurer has no duty to defend where the policy has no such contractual obligation
- The clause in issue does not create a duty to defend but merely a requirement to act reasonably in exercising its discretion
- “operated illegally” is broad but “no insured would reasonably believe that insurance coverage would be available in a case of drunk driving and there is no public policy reason to suggest otherwise”

Langlois v. GAIC, 2015 QCCS 791

□ *Facts:*

- Plaintiff's vessel damaged by fire
- GAIC was both liability insurer of ship yard and insurer of the plaintiff
- Parties could not agree on damages and repairs
- Plaintiff sued both the ship yard and GAIC

□ *Issues:*

- Does plaintiff have direct cause of action vs GAIC? (is the applicable law Quebec or Canadian maritime law?)
- What are the damages?

Langlois v. GAIC, 2015 QCCS 791

- Held:
 - ▣ the claim against the insurer GAIC is subject to Canadian maritime law based on *Triglav v Terrasses Jewellers*
 - ▣ the claim against the ship yard is subject to provincial law because repairs were done on land
 - ▣ The Civil Code gives a direct cause of action against GAIC as liability insurer of ship yard
- Comment: the holding that the claim against the yard is not subject to maritime law is questionable

C.H. Robinson v. Northbridge, 2015 ONSC 232

□ Facts:

- Plaintiff forwarder retained KLM to transport cargo
- Contract included clauses that made KLM liable for the value of the cargo tendered and required KLM to have insurance
- KLM obtained coverage from Northbridge
- The insurance application asked if there were any contracts with higher limits of liability than contained in KLM's b/l and this was answered in the negative Cargo destroyed in accident

C.H. Robinson v. Northbridge, 2015 ONSC 232

- Facts (cont'd):
 - ▣ Cargo damaged in an accident
 - ▣ Plaintiff brought action against KLM and notified Northbridge
 - ▣ Default judgment was obtained for \$220,000
 - ▣ Plaintiff then brought this direct action against Northbridge for payment of the damages under s. 132 of the Ontario Insurance Act

C.H. Robinson v. Northbridge, 2015 ONSC 232

□ Held:

- In a s. 132 action the insurer is entitled to rely on any defences against the plaintiff that it would have had against its insured
- KLM would have been entitled to the statutory limit of liability of \$4.41 per kilo
- It's statement that it had no contracts with higher limits was therefore a misrepresentation of a material fact that voided the policy

Coastal Float Camps v. Jardine, 2014 FC 906

- Facts:
 - Vessel capsized and sank
 - Insurer denied coverage for non-disclosure and misrepresentation
 - Plaintiff added the broker to the action claiming negligence and breach of contract on the part of the broker
 - The broker brought this application challenging the jurisdiction of the Federal Court to hear the claim against it

Coastal Float Camps v. Jardine, 2014 FC 906

- Decision: Application dismissed.
- Held:
 - ▣ Although a 1978 decision held the Federal Court had no jurisdiction in a claim against a broker, the law has evolved since then. It is no longer “plain and obvious” the Federal Court has no jurisdiction in a claim against a marine broker.

Verreault Navigation v. Continental, 2014 QCCS 2879

□ Facts:

- Plaintiff, a ship repairer, did work on a passenger ferry
- Plaintiff subcontracted the HVAC work
- The HVAC work was done improperly and had to be corrected by the plaintiff
- Plaintiff sought coverage from its primary and excess underwriters for the costs of correcting the deficiencies
- Underwriters denied coverage on two grounds:
 - Faulty design
 - Loss not reported within one year of delivery

Verreault Navigation v. Continental, 2014 QCCS 2879

□ Held:

- The law applicable to the claim is Canadian maritime law and not the law of Quebec
- The “faulty design” exception applies since the HVAC equipment installed was inadequate and defective in that it did not comply with state-of-the-art standards
- In addition, notice was not given as required within one year of re-delivery of the vessel. This was a violation of the insured’s duty of good faith under s.20 of the MIA.

Peracomo Inc. v. Telus Communications, 2014 SCC 29

□ Facts:

- The owner/operator of a fishing boat snagged a submarine cable while fishing and cut it with a saw
- A few days later he did the same thing
- The owner of the cable sued for the costs of repairing the cable, about \$1 million
- The boat owner was denied insurance coverage by his liability underwriters on the grounds of wilful misconduct

Peracomo Inc. v. Telus Communications, 2014 SCC 29

- The issues were:
 1. Is the boat owner entitled to limit liability?
 2. Is the insurance void by reason of wilful misconduct?
- At trial it was found as a fact that the owner believed the cable to abandoned but he was nevertheless held to have lost his right to limit liability and voided his insurance coverage
- This was confirmed on appeal to the Federal Court of Appeal

Peracomo Inc. v. Telus Communications, 2014 SCC 29

- On further appeal to the SCC it was held:
 - The owner was entitled to limit liability as he did not intend to cause damage
 - The insurance policy was, however, held to be void for misconduct
 - Wilful misconduct means not only intentional wrongdoing but also conduct exhibiting reckless indifference in the face of a duty to know
 - The owner had a duty to know of the cable and was indifferent to the risk

Personal Injury

- *Cormack v. Chalmers*, 2015 ONSC 5564
 - Plaintiff injured while swimming and sued both the boat operator and the owner of the cottage
 - Plaintiff settled with boat owner who was entitled to limit liability
 - Cottage owner said the settlement changed his liability from joint and several to several only
 - The Court held otherwise

Personal Injury

- *Ranjbar v. Islamic Republic of Iran Shipping Lines*, 2014 BCSC 1983
 - A crew member was injured on an automatic gangway. The terminal was found liable for not properly warning users of the dangers inherent in such an automatic gangway. The plaintiff, however, failed to mitigate damages.

Personal Injury

- *Atkinson (Guardian ad litem of) v. Gypsea Rose (Ship)*, 2014 BCSC 1017
 - a small vessel collision case, liability was apportioned 80% to the moving vessel whose operator was impaired and 20% to the stationary/drifted vessel.
 - The case is notable for holding that the owner of the moving vessel was not liable even though there were some maintenance issues with that boat that contributed to the accident. (It had the wrong propeller so would not plane.) The owner had a strict rule against driving the boat after drinking alcohol. The operator did not have her express or implied consent to use the boat at the time.

Limitation Periods

- *Malcolm v. Shubenacadie Tidal Bore Rafting Park Limited*, 2014 NSSC 217
 - The Nova Scotia Supreme Court held that the limitation period applicable to a river rafting accident that occurred prior to the 2009 amendments to the *Marine Liability Act*, was the two year limit in the *Athens Convention*.
 - That limitation period cannot be extended even though the plaintiff was an infant.
 - Although the waiver/contract says that the laws of Nova Scotia shall apply, Nova Scotia law includes federal law. The "Waiver" incorporates rather than excludes Canadian maritime law.

Limitation Periods

- *Gaudet v. Navigation Madelaine Inc.*, 2014 QCCS 4106
 - the provisions of the Quebec Civil Code could apply to extend the limitation period in the *Athens Convention* (although the court did not do so in the circumstances)
 - Comment: other cases have suggested otherwise
-

Limitation Periods

- *G.B. v. L.Bo.*, 2014 QCCS 18
 - The Quebec Superior Court held, in respect of an event that occurred before s. 140 of the *Marine Liability Act* was enacted, that the three year limitation period under that section commenced to run on the date s.140 came into force.
 - Comment: Compare this decision with that of the Ontario Court of Appeal in *St. Jean v Cheung*, 2008 ONCA 815, which suggests that the limitation period would have expired 3 years from the date the cause of action arose not three years from the date the new limitation period was enacted.

Carriage of Goods

- *Asia Ocean Services, Inc. v. Belair Fabrication Ltd*, 2015 FC 1141
 - ▣ The shipper was required to pay dead freight pursuant to the terms of a booking note.
- *St. Paul v. Vallée*, 2015 QCCQ 1891
 - ▣ the Court of Quebec held that a contract to deliver a yacht by sailing it to the destination was a services contract and not a contract of carriage

Carriage of Goods

- *Acelormittal v. AK Steel Corporation*, 2014 FCA 287
 - ▣ the purchaser of a cargo of iron ore pellets obtained a judgment for indemnity against the vendor of the pellets on the basis that the pellets delivered had excessive moisture content
- *A & A Trading Ltd. v. DIL'S Trucking Inc.*, 2015 ONSC 1887
 - ▣ A defendant truck carrier cannot limit liability where it is aware of the value of the goods, represented it had sufficient insurance and the bill of lading referred to an invoice containing the value of the goods.

Tug and Tow

- *Snow Valley v. Seaspan Commodore (The)*, 2015 FC 304
 - the sole cause of the sinking of a tug assisting with a fouled anchor was held to be the failure of the defendant to properly secure a safety line

Ship Building & Repair

- *Transport Desgagnes Inc. v. Wartsila Canada Inc.*
 - ▣ The Quebec Superior Court held that the sale of a marine engine was governed by provincial law and that pursuant to such law the vendor's limitation clause could not be relied on.
- *Ehler Marine v. M/V Pacific Yellowfin, 2015 FC 324*
 - ▣ a repair quote was held to be an agreed price when given in response to a request for a "reasonably accurate estimate" and "hard" numbers

Ship Building & Repair

- *Capitaines Prop. v. Laflamme Inc.*, 2014 FCA 78
 - Vessel damaged when being lifted by a crane at the ship yard
 - The exclusion clause in the contract provided “I accept liability for any risk resulting from the towage, docking, wintering and/or launching of this vessel, and I release the Owner of this dry dock and its Operator, _____, from any civil liability resulting from these associated operations or handling“
 - Held: the clause is effective , “any liability” includes negligence

Ship Building & Repair

- Forsey v. Burin, 2015 FCA 216
 - Vessel damaged when it fell from blocks at a ship yard
 - The exclusion clause in the contract provided “I understand and agree that the securing and locking of my boat is my responsibility, and not that of the said Marine Service Centre... Furthermore I agree to indemnify and save harmless the said Marine Service Centre .., from, any claims on my part with respect to the same.”
 - Held: the exclusion clause was not effective as it did not expressly or impliedly exclude negligence
 - Comment: Is “any liability” different from “any claims”?

Ship Building & Repair

- *0871768 B.C. Ltd. v. Aestival*, 2014 FC 1047
 - one of two defendants was found liable for damage caused to an adjacent vessel by grinding dust