



Rijkswaterstaat  
*Ministry of Infrastructure and the  
Environment*

# Claim management Baltic Ace

Collision between Batic Ace  
and Corvus J



## Structure presentation

- Collision Baltic – Corvus J
- Claim management
- Effects on claim management if Wreck removal convention is in force



## Involved vessels



Baltic Ace (roro-ship)  
1417 cars  
Flag: Bahama's  
Zeebrugge – Kotka



Corvus J (containership)  
Flag: Cyprus  
Grangemouth - Antwerp



# Collision



CVL\_Aanvaring\_balticAce\_CorvusJ.mpeg



last contact BA coastguard.wav



## Collision

- 5 December 2012 19:15 (Sinterklaas evening)
- 14 crew members drowned, still 3 missing
- Baltic Ace sunk within 15 minutes
- Bahama's investigates collision
- Dutch investigation board received draft version in 2013, still waiting for final report
- Possible cause collision: miscommunication combined with close crossing agreement



# Claim management

- Legal basis for wreck removal
- Financial security
- Limitation of liability (International LMCC)
- Forum shopping



## Legal basis for wreck removal

- Removal is necessary because the ship/cars lies in a precautionary area and contains oil, lead and persistent organic pollutants (e.g flame retardants and plasticizers)
- Risk assessment done by an independent institute for applied research in the field of water and subsurface
- **Intervention Convention:** *not applicable*, no grave and imminent danger to Dutch coastline
- **London convention on dumping waste:** *not applicable*, no intent to sink ship (act of God)
- **Dutch water management act:** applicable but enforcement of national administrative law is not possible without a treaty
- **Dutch civil case law (zuidpool/Gaasterdijk):** applicable



## Financial security

- Baltic Ace; no financial security. As from day one owners/representatives BA claimed right to limit liability
- Corvus J: arrested in Wester-scheldt. Dutch water management act prevents the vessel from continuing its journey when a water management structure or body is damaged and no financial security is given.



## Different regimes for limitation of liability for maritime claims

- Convention of 10 October 1957 relating to the limitation of the liability of owners of seagoing ships (Portugal, Iceland).
- London Convention on Limitation of Liability for Maritime claims ("LLMC 1976-Convention")
- Protocol to amend the Convention on Limitation of Liability of Maritime Claims ("LLMC 1996-Protocol")
- art. 18 LLMC, a contracting state may upon ratification reserve the right to exclude claims for wreck and cargo removal costs
- Belgium and Netherlands have a separate wreck removal fund
- UK and France no limitation for wreck removal



## Limits in SDR for different limitation conventions

Convention	Baltic Ace: 23.498 BT	Corvus J: 6.370 BT
Limitation Convention 1957 (amendment 1979)	1.566.612 SDR	424.688 SDR
LLMC (1976)	8.742.167 SDR	2.705.543 SDR
<b>LP (1996)</b>	<b>9.599.200 SDR</b>	<b>2.748.000 SDR</b>
LP (2015)	14.494.792 SDR	4.149.480 SDR



## Limits Baltic Ace and Corvus J

- Corvus J
  - Property fund in Holland (€ 3,159,000)
  - Wreck removal fund in Holland (€ 3,159,000)
- Baltic Ace
  - Property fund on the Isle of Man approx. € 10,800,000)
- Advantage limitation on Isle of Man: no separate wreck removal fund
- Dutch government settled with Baltic Ace and Corvus J and received approx. € 16 million



## Forumshopping

- Where can a limitation fund be established?
  - Under the 1976 LLMC Convention and the 1996 LLMC Protocol, a limitation fund can only be established where a claimant has commenced legal proceedings or applied for arrest or other enforcement measures.
- There is no general jurisdiction provision in the Convention stating where the right of limitation must be invoked. It therefore appears to me that in principle the Convention permits a party to seek to limit its liability in any Contracting State which has personal jurisdiction over the defendant.
- Forum-shopping: limitation in a country with a favorable limitation is possible



## Forumshopping case law

- Seawheel Rhine/Assi eurolink case
  - collision between merchant vessels Assi Eurolink and Seawheel.
  - claims in the Netherlands
  - arbitration in Sweden by charterer against owner
  - constitution of limitation fund by owner in Sweden
  - Netherlands require separate wreck removal fund, Sweden does not
  - Swedish limitation fund challenged by claimants in NL: “fake” arbitration to allow owners to constitute fund in Sweden
  - Dutch supreme court: Swedish judge, by approving the fund, has (implicitly) held that owner was allowed to constitute the fund under Art. 11 LLMC. Dutch Courts must accept that decision



## Forum shopping case law

- Baltic Ace – Corvus J. Manx court:
  - rejected the attempt to stay at the Manx limitation action on the grounds that other limitation and liability proceedings were on foot in the Netherlands.
  - reaffirmed that the domicile of the registered owner (BA is registered on the Isle of Man) is a more than sufficient jurisdictional link for a limitation claim
- Baltic Ace can limit liability for all claims, including wreck removal, by setting up a single (Manx) limitation fund.
- The Dutch state has engaged contractors to remove the wreck and will have a recourse claim against the Baltic Ace but this will be capped at the vessel's limitation fund, considerably lower than the wreck-removal costs.



## Consequences of forum shopping

- Knowledge of different limitation regimes available around the world is key to offering ship-owners and insurers the best means of limiting exposure
- ship owner's choice of limitation forum will become still more significant in light of increase to tonnage limits under the 1996 LLMC Protocol in June 2015.
- Contracting states who reserve the right to exclude claims for wreck and cargo removal costs can not prevent the ship owners right to limit their liability in country with the best means of limiting exposure.



## What can you do about forumshopping?

- Rueffer arrest by EU High court in Luxemburg
  - Eex only recognise civil law claim
  - Consequence: claim based on administrative law can not automatically be recognised by another Eex-country
- Disadvantage: execution of administrative law can not be enforced with out a treaty



## Advantages claim management Wreck removal convention

- Direct access to the insurer (no pay to be paid rule)
- Insurance is compulsory for sea going vessels bigger then 300 BT
- Owner wreck has obligation for wreck removal if danger is justified by coastal state.
- Limits based on existing limitation conventions. Forum shopping still possible if wreck removal convention is in force.