

Shipowners' ability to limit liability in Mexico is tested

The Shipowners' Club has recently been involved in litigation where the right to limit liability under the 1976 Limitation Convention was tested before the Mexican Supreme Court of Justice.

In February 2010, our Member's offshore supply and support vessel was delivering goods to a platform offshore, in Mexican waters, when the vessel came into contact with the platform causing damage to it. Repairs were estimated to cost in the region of US\$1.9 million. Mexico is a signatory to the LLMC 1976 Convention. Therefore, with the support of the Club, our Member commenced limitation proceedings in Mexico in order to limit their liability pursuant to the 1976 Convention to a sum approximately equivalent to US\$ 200,000.

Our Member's right to limit was contested by the owners of the platform and the matter has been litigated and appealed to the highest level of the Mexican Supreme Court of Justice (MSCJ). Of such importance was the matter to vessel owners in general, we obtained the written support of the International Group of P&I Clubs to protect our Member's position.

Despite the evidence before it, the MSCJ has ultimately found that a vessel owner may not limit for damage done to a floating platform. The reasoning of the MSCJ centred on the following exclusion contained in Article 15 (5) (b) of the LLMC 1976, which reads as follows:

"5. This Convention shall not apply to:

- air-cushion vehicles;*
- floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof."*

The decision of the MSCJ was a surprise to the Club, as it will be to many others. Our argument before the MSCJ made clear our view, shared by the Group and that of legal experts, which is that what determines the right to limit is whether the vessel seeking to limit its liability can be considered a ship. The exclusion contained in Article 15 (5) (b) relates to the same question of what object/party is entitled to limit and clarifies which objects/parties may not limit.

Whereas our Member's vessel caused damage to a platform, there could be no question that the Member's vessel was a ship and not a floating platform. The exclusion in Article 15 (5) (b) was therefore irrelevant to limitation in our view. Further, our Member's position was bolstered as there have been cases previously where vessels have been allowed to limit liability in circumstances where they have collided with structures which would not themselves be entitled to limit.

Whilst the decision of the MSCJ in this particular matter may not be appealed any further, we

understand that it has not set a precedent in Mexico and it remains open for owners to seek to limit on other matters. In the meantime, we remain committed with our Members to protecting the rights of all vessel owners to limit liability in all countries which are signatories to a relevant Limitation Convention.