



LIMITATION OF LIABILITY: *HEIDBERG*, THE END OF A 24 YEAR STORY

On 22 September 2015, the Cour de cassation delivered an important decision in what is probably the most chronicled case on limitation of liability in France.

On 9 March 1991 the *HEIDBERG*, when leaving the port of Bordeaux with a full cargo of grain, failed to negotiate a bend in the river estuary as a result of a navigational error and destroyed an oil jetty belonging to an oil major company. It appeared that during the manoeuvre preceding the collision, the Master had left the bridge to look after ballast operations leaving the pilot at the helm of the vessel and, for an unexplained reason, the pilot had not taken any measure to prevent the collision. The investigation carried out after the event revealed that the ballast operation could have been done from the bridge or delayed without difficulty.

The owners of the *HEIDBERG* claimed that they were entitled to limit their liability under the 1976 London Convention. The oil major company, which had suffered a loss 25 times greater than the amount of the limitation fund, claimed that the owners had committed a fault, depriving them from their right to limit.

Over 24 years, the oil major company raised all possible arguments. They argued that the collision resulted from *inter alia*:

- Undermanning of the *HEIDBERG*.
- The Master being improperly qualified.
- Failure of the shipowner to ensure confidence and cohesion between the crew members.
- An overload of work.
- Insufficient rest of the Master and the Chief Officer in the weeks prior.

From 1993 to date, a long series of decisions were rendered – five decisions of the Cour de cassation and six decisions of the Court of Appeal of Bordeaux.

The recent decision of the Cour de cassation has finally put an end to this long running story and held that the owners of the *HEIDBERG* were entitled to limit their liability under the 1976 Convention. This decision is remarkable as:



- It confirms that the fault of a Master or a crew member does not deprive a shipowner from its right to limit its liability.
- It adopts a strict application of the terms of the 1976 Convention and a subjective approach to the fault alleged to deprive a shipowner its right to limit its liability.

The court did not assess the alleged fault of the shipowner on the basis of objective criteria, but rather on the basis of the individual facts of the case.

The Cour de cassation held that the decision of the Master to leave the bridge whilst the vessel was sailing in a particularly dangerous area did not result from a policy of profitability imposed by the owners and that no fault could be attributed to the owners.

The owners of the *HEIDBERG* were represented by Timothy Clemens-Jones and Stanislas Lequette.

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