Press Summary

9 April 2025

MSC Mediterranean Shipping Company SA (Appellant) v Conti 11 Container Schiffahrts-GmbH & Co KG MS "MSC Flaminia" (Respondent)

[2025] UKSC 14

On appeal from [2023] EWCA Civ 1007

Justices: Lord Hodge (Deputy President), Lord Briggs, Lord Hamblen, Lord Leggatt and Lord Burrows

Background to the Appeal

It is an established feature of international maritime law that shipowners and certain others involved in ship operation are entitled to limit their liability for claims arising out of a maritime casualty or incident. In the United Kingdom limitation is governed by the 1976 Convention on Limitation of Liability for Maritime Claims ("the 1976 Convention"). This appeal concerns the interpretation of the 1976 Convention and the circumstances in which a charterer may limit its liability in respect of claims made by the shipowner **[1-3]**.

The appellant ("MSC") is a container line operator which had chartered the 'MSC Flaminia' ("the Vessel") from its respondent owner ("Conti") **[5-6]**.

On 14 July 2012, while the Vessel was in the mid-Atlantic travelling to Antwerp, an explosion occurred caused by auto-polymerisation of the contents of containers laden with divinylbenzene ("DVB"). This led to a fire on board. Three of the Vessel's crew lost their lives, extensive damage was caused to the Vessel and hundreds of containers of cargo were destroyed **[7]**.

Salvors were engaged and the Vessel was towed to Wilhelmshaven where the containers were discharged. The Vessel then proceeded to Romania and Denmark for the discharge of waste and to Romania for repairs. The Vessel was redelivered to MSC under the charter on 23 July 2014 **[8]**.

Conti sought to recover its losses from MSC. The London arbitration tribunal awarded Conti around US$200 million in respect of damages for the shipment of a dangerous cargo and outstanding hire **[23]**. MSC issued limitation proceedings seeking to limit its liability. The claims which MSC sought to limit under the 1976 Convention are:

(1) payments to national authorities for preventative measures taken to guard against pollution from leaking oil in their territorial waters;
(2) the costs of discharging sound and damaged cargo, and of decontaminating the cargo;
(3) the costs of removing firefighting water from the holds; and
(4) the costs of removing waste from the Vessel **[29]**.

The judge held that all the costs claimed were incurred to enable Conti to have the ship repaired or as part of the cost of repairs. In these circumstances, both courts below held that there was no right to limit, but for differing reasons.

Under the 1976 Convention shipowners are entitled to limit their liability (article 1.1) and the "shipowner" means "the owner, charterer, manager and operator of a seagoing ship" (article 1.2). The right to limit is given in respect of specified types of claim (article 2.1) and, in particular, claims for damage to property occurring on board or in direct connexion with the operation of the ship (article 2.1(a)) **[2]**.

As a matter of English law, it is well established that there is no right to limit liability in respect of claims by a shipowner for loss of or damage to the ship itself **[3]**.

The issues on this appeal are (1) whether (as held by the Court of Appeal but not the judge) there is a further and wider principle that there is no right for a charterer to limit its liability in respect of claims by an owner for losses originally suffered by the shipowner (as opposed to recourse claims) and (2) whether the claims for limitation made by MSC fall within article 2.1 of the 1976 Convention and, if so, whether the fact that they result from damage to the Vessel means that there is no right to limit **[89]**.

Judgment

The Supreme Court unanimously allows MSC's appeal on issue 1 and dismisses the appeal on issue 2.

Lord Hamblen gives the judgment of the Court with which the other Justices agree.

Reasons for the Judgment

In order to address some of the arguments raised in relation to the object and purpose of limitation and the nature of limitable claims the court considers the history of limitation and the background to the 1976 Convention.

The judgment also considers three previous English law decisions of particular importance, namely *The Aegean Sea* [1998] 2 Lloyd's Rep 39, *The CMA Djakarta)* [2004] EWCA Civ 114 and *The Ocean Victory* [2017] UKSC 35. The result of these decisions is (i) the charterer's right to limit is not limited to claims made by third parties if it was acting as though it were an owner and (ii) there is no right to limit under article 2.1(a) in respect of a claim for loss of or damage to the vessel or for consequential loss resulting therefrom **[79].**

<u>Issue 1: Whether a charterer can limit its liability for claims by an owner in respect of losses originally suffered by the owner itself</u>

The judgment summarises the proper approach to treaty interpretation in the light of articles 31 and 32 of the Vienna Convention on the Law of Treaties **[56].**

Considering first the meaning of the word "claims" in article 1.1 and article 2.1 of the 1976 Convention, Conti's case drew a distinction between "insiders" (being anyone within the extended definition of "shipowner" in article 1.2) and "outsiders" (being any other person). It contended that, where claims are made by an owner against another "insider", the word

"claims" means claims other than in respect of losses originally suffered by the owner itself ("the original loss qualification") **[90]**. However, "claims" is a defined term under the 1976 Convention. It means claims which are specified in article 2 to be subject to limitation of liability. None of those specified claims differentiates between whether the claims are made by owners or other "insiders", or whether they are made against owners or other "insiders" **[91]**. Secondly, Conti's case involves reading in qualifying words – ie the original loss qualification. This is precisely what the Court of Appeal decided in *The CMA Djakarta* was not permissible **[92-93]**. Thirdly, Conti's case involves the word "claims" having a different meaning in different contexts – an implausible construction. Fourthly, it involves a striking asymmetry between one type of "shipowner", namely "the owner", and all the other types of "shipowner", namely the "charterer, manager and operator". Yet under article 1.2 they are all equally defined as being a "shipowner" without any suggestion of differential treatment **[97].**

In relation to object and purpose, as stated in *The CMA Djakarta*, the general purpose of owners, charterers, managers and operators being able to limit their liability was to encourage the provision of international trade by way of sea-carriage **[100]**. The main object and purpose of the 1976 Convention was to provide for limits which were higher than those previously available in return for making it more difficult to 'break' the limit.

Conti contended that there are further aspects of object and purpose to take into account and in particular that the main purpose of limitation is the protection of shipowners, that limitation has never been available in relation to claims made by shipowners, that this was clearly the case under the 1957 Limitation Convention and that there was no intention to change that in the 1976 Convention. For reasons set out in the judgment, the court doubted or qualified each of the matters relied upon and concluded that going beyond the object and purpose identified in *The CMA Djarkarta* did not assist Conti's case, still less did it justify glossing or qualifying the word "claims" **[102-116].**

Finally, the court rejected Conti's submission that it would be absurd or manifestly unreasonable to allow its claims to be limitable, as it would result in paying its claims from the limitation fund it had itself established. First, most owner's claims will be for damage to the ship which is not limitable following the decision in *CMA Djakarta*. Further, even on Conti's case there will be circumstances in which the person who puts up a fund has to claim against the fund as for example, where the bills of lading are charterers' bills and it is the charterer who puts up the fund. Secondly, in so far as the owners have claims for cargo or other property loss or damage then those are claims which are appropriately to be made against the fund. They are in the same position as all other property owners who share equally in the fund. **[120-124].** There are, moreover, unreasonable consequences which result if Conti's case were correct, such as the resulting asymmetry, and there are also definitional difficulties

For all these reasons, a charterer can limit its liability for claims by an owner in respect of losses originally suffered by the owner itself **[127].**

<u>Issue 2: Whether any of Conti's claims fall within article 2.1 of the 1976 Convention and, if so, whether the fact that they result from damage to the Vessel means that there is no right to limit.</u>

The court rejected MSC's case that article 2 should be given as wide an application as possible. In principle, there is no reason why it should be applied either narrowly or widely. Although the Convention recognises that limitation is desirable, the circumstances in which there was to be a right to limit under article 2 was a matter of discussion and negotiation between the participating state representatives. The resulting agreement is set out in the Convention which should be applied according to its terms **[130].**

Article 2.1(a) provides that a claim in respect of "…loss of or damage to property … occurring on board or in direct connexion with the operation of the ship … and consequential loss resulting therefrom" is limitable. MSC argued that Conti's claims in this case were all consequential losses arising from the initial loss of and damage to the cargo of DVB which caused the explosion and fire and so are limitable as consequential loss resulting from cargo damage. This, however, introduces a causation issue which is not relevant to the application of article 2.1(a), which is concerned with the nature and characterisation of the claim being made, not the underlying cause or causes of that claim **[136-137].**

The claim being made is for damage to the ship, not damage to the cargo. It is for the consequential loss suffered by the shipowner, not that of any cargo owner. If the claim is for consequential losses resulting from damage to the Vessel then it falls outside article 2.1(a). The fact that those losses might also be said to be consequential losses resulting from damage to the cargo does not change that **[138-143].**

Article 2.1(f) provides that claims for "…measures taken in order to avert or minimize loss for which the person liable may limit his liability…" are limitable. It concerns mitigation costs – ie costs incurred to avert or minimise a limitable loss. MSC argued that (i) the payments to national authorities and (ii) costs for removing firefighting water fell under this article. As to (i), on the judge's findings this was a necessary expense for the repair of the Vessel and is part of the cost of such repairs. It was not incurred to avert or minimise loss or damage which might otherwise occur, but rather to remedy loss or damage which had already occurred **[147]**. As to (ii), MSC argued that this was part of the salvage operation directed at saving both the Vessel and her cargo. The action was taken equally to mitigate limitable loss to cargo and non-limitable loss to the Vessel and as such should be limitable. However, this is not a claim for salvage expenses; it is a claim for the removal of firefighting water from the Vessel after the salvage operation had been completed **[148].** The firefighting water was not removed in order to avert or minimise loss of damage to the Vessel or the cargo. On the judge's findings it was removed in order to enable the Vessel to be repaired. That is not a mitigation cost under article 2.1(f); it is a repair cost **[149].**

Article 2.1(e) allows limitation for claims for "the removal, destruction or the rendering harmless of the cargo of the ship". As the Court of Appeal held, the claim for the costs of discharging sound and damaged cargo, and of decontaminating the cargo fell this within article. The key issue is what is the position if the costs in question are incurred in order to repair the vessel and, as in this case, are part of the costs of the repair of the vessel. Does the fact that the claim is one for damage to the vessel mean not only that article 2.1(a) has no application but also that none of the other paragraphs of article 2 apply, even if the costs claimed fall within their wording? **[154].** The court concluded that article 2.1(a) does not have this effect. It is not a general but unstated exception to the whole of article 2.1. Further, if a claim which is consequential on damage to the ship is never limitable then that would exclude many claims which would otherwise fall within the terms of article 2.1 given that limitation generally arises after a marine casualty, where many costs and expenses must result from damage to the ship. **[155-157].**

In conclusion, MSC is entitled to limit under article 2.1(e) of the 1976 Convention in respect of the claim for the costs of discharging sound and damaged cargo, and of decontaminating the cargo at Wilhelmshaven, but not otherwise.

References in square brackets are to paragraphs in the judgment.

document. Judgments are public documents and are available at: Decided cases - The Supreme Court