

Supreme Court of Tonga

PRESS RELEASE

IN THE MATTER OF A CLAIM BY THE OWNER OF A SHIP WHICH IS ALLEGED TO HAVE DAMAGED TELECOMMUNICATION CABLES IN JANUARY 2019

24 March 2020

1. On 20 January 2019, as the 'Duzgit Venture', a tanker vessel of 2,166 tons which delivers oil and gasoline to Tonga Vessel, approached the Port of Nuku'alofa, the starboard anchor and chain were prematurely released from their housing. As a result, two undersea communications cables owned by Tonga Cable Limited were damaged, which interrupted Tonga's telecommunications and internet capabilities for a number of weeks.
2. On 20 December 2019, the owner of the vessel commenced proceedings in the Supreme Court: *DS Venture Limited v Tonga Cable Limited*, proceeding number CV 68 of 2019. In those proceedings, the shipowner claims, among other things, that its liability for the incident, if any, is limited pursuant to s.2 of the *Shipping (Limitation of Liability) Act 1980* ("SLLA").
3. Tonga Cable Limited, the named defendant in the proceeding, has claimed damages in the sum of US\$1,237,890.06. No other claims are yet known.
4. Under the SLLA, any limitation of liability is to be calculated pursuant to a Schedule formula based on a number of factors including the ship's tonnage. Here, if the limitation of liability applies, the parties agreed that the maximum liability would be TOP\$859,403.82. The SLLA also provides to the effect that that sum represents the total amount payable in respect of all claims arising from the incident.
5. During the course of the proceedings so far, an issue arose as to whether a different convention governing any limitation of liability, as provided for by s.8 of the SLLA, applies.
6. Section 3 of the *Shipping Act* (2016 revised edition) provides that one of the International Maritime conventions which have been approved and have the force of law in Tonga is the Convention on Limitation of Liability for Maritime Claims 1976 and Protocol of 1996 as amended from time to time ("LLMC"). The parties agreed, that if the shipowner's liability here is limited, then under the LLMC, the maximum liability for all claims will be TOP\$3,348,496.

7. However, s.3(4) of the *Shipping Act* also provides that the LLMC does not become law until the Minister gives notice to that effect in the Gazette. The LLMC was added to the *Shipping Act* in 2001.
8. In a ruling dated 21 February 2020, Lord Chief Justice Whitten noted that both parties to the proceeding agreed that there have been no Gazette notices which give effect to the LLMC, nor is there any Order of Cabinet substituting the LLMC.
9. As a result, if the court grants the shipowner's claim for a decree of limitation of liability, then any maximum liability will be calculated according to the SLLA and not the LLMC.
10. However, the Chief Justice considered that as this issue was a rare occurrence in Tonga and of some national importance, he reserved liberty to the Attorney General to be heard on the issue.
11. On 19 March 2020, the Attorney General filed a memorandum in the proceeding in which she concurred with the parties to the proceeding that, by reason of there being no record since 2001 of the LLMC being gazetted in the Kingdom, the LLMC is not a part of Tongan law and that therefore the issue of any limitation of liability is governed by the SLLA.
12. A limitation fund has been established by the filing in court of a letter on behalf of the shipowner's insurer, The Britannia Steam Ship Insurance Association Ltd, undertaking to pay the aggregate of all claims arising from the incident up to the limit of liability, which will now be calculated in accordance with the SLLA.
13. The case is proceeding. If the Court grants the shipowner's claim for a limitation of liability decree, directions will be given for advertising of notification to any other potential claimants to bring forward their claims. The court will then administer and distribute the limitation fund in respect of all proved claims on a rateable or pro rata basis. Until then, any claims, including that of Tonga Cable Limited, are stayed.



Michael Whitten QC
Lord Chief Justice of the Kingdom of Tonga

24 March 2020

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