

SWEDEN

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DEVELOPMENTS IN THE SWEDISH MARITIME LAW 1999–2000

Abbreviations: AD (Labour Court Reports, Stockholm), JT Juridisk Tidskrift vid Stockholms Universitet (Law Journal at Stockholm University, Stockholm), ND Nordiske Domme i Sjöfartsanliggender (Scandinavian Judgements in Maritime Cases, Oslo), NJA Nytt Juridiskt Arkiv (Swedish Supreme Court Cases, Stockholm), PX På Kryss (Journal of the Swedish Cruising Club, Stockholm), Prop. Proposition (Government Bill), ParlCom Parliamentary Committee Reports, RfH Rättsfall från Hovrätterna (Cases on Appeal, Stockholm), SvJT Svensk Juristtidning (Swedish Law Journal, Stockholm). District Court is abbreviated DC, Appeal Court AC and the Supreme Court of Sweden SC.

The terminology of this presentation follows that of *Swedish Law*, first ed, Juristförlaget Stockholm 1994, and explanatory notes in the Swedish Maritime Code (Sjö och transporträtt no 16, Stockholm 1995). Cases not reported in recognised journals are cited by Court name and case number, and reported cases are referred to by recognised report name. “Fines“ indicates so-called day fines adjusted to a convicted person’s income; “fine“ in the singular indicates a monetary fine.

I. Legislation

1. Environment

Act (2000:913) amending Act (1982:923) on Carriage of Dangerous Goods (implementing Dir. 99/36/EC 29 Apr 99 Celex 399L0036)

Section 11 prescribes for instructions to be given and conveyed concerning dangerous cargo. Sections 19 and 21 provide for supervisory and controlling authorities.

Act (2000:847) amending Act (1980:424) on measures against pollution from vessels (Gvt Bill 1999/00:133)

The Act implements the so-called Baltic Policy under the Helsinki Convention. Ch 2:2–3 forbids the discharge of any oil Swedish and Baltic waters. Ch. 3:1 provides for reception facilities for waste from vessels according to the “no special fee” system (fee included in harbour dues). Ch. 6:2 prescribes inspections.

2. Various

Under Act (1994:458) amending Penal Code Ch. 1 sect. 2 negligence is punishable only if specifically provided. A long line of provisions now specifies or modifies conditions for imposing punishment. Thus from 1999: Ordinance (no. 345) on Competence of conductors of larger pleasure vessels, Ordinance (no. 346) admitting foreign vessels in domestic trade, Ordinance (no. 347) on Pilotage etc, Ordinance (no. 348) on traffic on the Göta Canal, Register Ordinance (no. 362), Identification Ordinance (no. 362). From 2000: according to Gvt Bill 1999/200:119 amendment (no. 349) of Seamen’s Act concerning young persons’ employment on vessels, (no. 848) of Vessel Safety Act concerning master’s duties in this connection and (no. 852) amending Seamen’s Act’s sanctions; according to Gvt Bill 1999/2000:116 (no. 850) amending Act prohibiting certain sales to foreigners, (no. 851) amending Act concerning carriage on Swedish vessels and (no. 854) amending Act on measures for protecting Swedish shipping.

II. Judicial Decisions

1. Vessels in general

1.1. Characteristics of vessel

Gothenburg DC (Maritime Court) 16 May 2000 matter B 1401-99, appeal denied by West Sweden AC, 28 Aug. 2000 matter B 2964-00, and again by SC 31 Oct. 2001 matter Ö 3533-00 (and a number of similar pending indictments)

The Water Scooter Ordinance (1993:1053) prohibits free use of “motor propelled water craft which in general parlance cannot be described as a boat, is designed to plane and is conducted by one who stands, sits or lies upon the vehicle”. F, indicted for infringement of the Ordinance, alleged that as the craft he conducted fulfilled the MC’s requisites for a vessel, it was a boat and not a water scooter. The Court noted that the vehicle would normally travel at plane speed, the driver sits on a motorcycle-like saddle, the craft has a railing and a foot space depression in the hull. In general parlance the vehicle was a water scooter and not a boat, and its appearance did not fit the description of a boat. Being designed to be conducted at plane speed by a person sitting upon it, and not being a boat, the craft fell under the prohibition.

Average Adjuster 27 August 1999 (Para Bravo & Nestor)

Barge without steering appliance, see below under 9.1. Hull insurance.

1.2. Registry

Svea AC V 13 June 2000, matter Ö657-00 (Dredge RM 1)

S and R had bought a dredge of ship dimensions from one A acting for R Marine Co. and had caused mortgage deeds to be issued in respect of the vessel. Sjömaskiner HB appealed against both decisions alleging to be true owner since 1994, R Marine Co. being bankrupt at the time of S&R’s purchase, which was therefore invalid.

AC held that the entry of S&R in the register was invalid and must be retried. But the mortgages had been issued in respect of an actual entry in the register and were valid. – SC denied leave to appeal (matter Ö 2856-00).

Svea AC 3/11 2000 matter Ö 4638/00 (Baltico)

On the strength of a certification by registered owner G, JT was entered into the ship register as 1/2 owner of a pleasure ship. G appealed against the inscription on the ground that under a contract of later date than the certification, JT had bought the whole vessel through a conditional sale but had not shown fulfilment of the condition. The case was remanded to the Register.

1.3. Vessel safety

1.3.1. Seaworthiness, detention

Stockholm DC (Maritime Court) 19 May 2000, ND 2000, 28 (Jarl)

Claes S had been taking his tug Jarl around Stockholm/Vaxholm though she was under a detention order for unseaworthiness. He was indicted for breach of the Vessel Safety Act but pleaded he had not used the vessel commercially but only gone out with friends to watch fireworks.

The DC found that Claes S had broken the detention order and remarked that it was not for the Court to consider the propriety of that order. The preparatory works indicate, *e contrario*, that as long as a ship is not laid up or out of commission, any use on water is such “sea traffic” as is covered by the order. – Sentenced to moderate fines.

1.3.2. Competence and sea areas

Gothenburg DC (Maritime Court) 9 June 1999, matter B 3642-99, West Sweden AC 13 Dec. 2000 matter B 4099-99 (Castra)

Fisherman O Strand was indicted for bringing a merchant vessel outside the sheltered waters for which his Skipper examination qualified him. He owned a tour boat for less than 12 passengers with which he would offer fishing trips in the archipelago. One quiet day when the

fish would not bite, he brought his boat with five passengers to a spot about two miles off the coast, where the Coastguards apprehended him.

A Maritime Administration regulation from 1983 (no. 12) provided in Annex A for vessels under 20 tons that Skipper examination is required for Sheltered trade and Skipper A certificate for Extended coasting trade, all according to definitions from 1978, which delimited the two areas as the line between the outer islets and rocks. In the 1988 Vessel Safety Ordinance Sheltered trade was extended to one mile from shelter, while the Coastal area was divided into Coasting Trade and Extended Coasting trade, of which the latter was more than 15 miles from shelter. Strand pointed out, *inter alia*, that there was thus no qualification provided for conducting a boat in the Coasting Trade. He also said that his boat was a fishing vessel and not a merchant vessel.

The DC noted that the 1983 Regulation referred to older definitions but that the intention cannot have been to relax the previous requirements. Moreover, since a fishing vessel is one used for professional fishing, Strand's boat was not a fishing vessel. "Merchant vessel" is somewhat unclear but must apply to vessels used commercially. Strand's vessel is thus a merchant vessel. Strand's breach was intentional and rendered him liable to fines.

AC denied leave to appeal.

Comments: It is hard to see how at the time of the offence the 1978 Regulation – which expressly refers to the areas then recognised – could be supplemented by different definitions in later legislation. According to the legality principle it should not be permissible to base a sentence on the legislator's presumed intentions, as the DC has done. Nor would an acquittal of Strand have been an unsettling precedent, since the Ship Safety Ordinance has recently amended the sea areas with completely new denominations according to an EC Directive, see [2000] LMCLQ 421.

2. Sale of vessels

2.1. Good faith acquisition

Stockholm DC 31/5 1999 matter B 8088/98, SveaAC V 4/2 00, matter T 5536-99 and similarly *Handen DC 8/5 2000 matter B 1380-99, Svea AC V 23/10 00 matter T 2555-00*

At a boat dealer's, prospective customer C was approached by one L, who said he had a boat for 180.000 crowns. After being shown the boat, C tried it out with a friend and agreed to buy it for 170,000 SEK. Having gathered the money and signed insurance, C took delivery of the boat from a trailer upon cash payment and signature of a written contract, whereupon he brought the boat to a friend's land outside Stockholm. The boat was later found to have been stolen from one Johan H, and C was indicted for receiving stolen goods with actual or constructive knowledge; H joined suit claiming damages for extra costs of a replacement boat, and H's insurer Atlantica with a repossession claim.

DC: The boat bore no signs of being stolen, an engine number forgery was not discernible to a normal buyer, and C had borrowed the purchase sum. The transaction thus did not seem spurious, and the prosecutor had not shown C to have been aware of the theft or even negligent. C was therefore acquitted and H's damage claim dismissed. But by not checking the identity of the unknown seller and whether the boat was insured, C had omitted the active control that the Good Faith Purchase of Chattels Act requires for such theft-exposed goods, and Atlantica's repossession claim was therefore allowed. – C withdrew a submitted appeal.

Comment: The dismissal of H's damage claim upon acquittal depends on H's case being pursued by the prosecutor, who will base the civil claim on his indictment. If H had entered a separate tort claim, the court might have found otherwise due to the different burden of proof in a civil action. This brings out the distinction between a criminal charge, with the full burden of proof on the prosecutor, a damage claim, which normally requires a preponderance of evidence, and the repossession claim, which follows the Good Faith Purchase Act.

Handen DC 8/5 2000 matter B 1380-99, Svea AC V 23/10 00 mattres T 2555-00
Similar to the above

3. Vessel Owners

3.1. Limitation of liability

Malmö DC (Maritime Court) 32/3 2000 matter Å 227-88 (Vinca Gorton)

A limitation fund was established in 1988 in respect of this sunken ship based on a guarantee provided by the Swedish Club. The declared term of ten years had now passed, and the Swedish Club, having acquired all claims raised against the fund, applies to have the fund dissolved and the money repaid. – The application was granted

4. Personnel

4.1. Medical benefits

Trollhättan DC 28 Jan. 1999 matter FT 58-97, ND 1999, 14 (Margot)

During *Margot's* call at Karlshamn, X suffered injuries in a brawl which needed attention at the local hospital. After operation he remained at the hospital about two weeks and was signed off the vessel. Later he was charged 80 crowns (about 10 pounds) which he did not pay and which were covered by the vessel owner after debit of a 140 crowns collection charge. The hospital sued the seaman for the payment. The DC held that the party to be sued was the shipowner, since under section 38 of the Seamen's Act the employer must pay all costs for a sick or injured seaman. – Unappealable.

5. Employment of vessels

5.1. Carriage of goods

5.1.1. Contract of carriage

AC W Sweden 29 April 1999, ND 1999, 1 (Elena Lux)

Gas oil was loaded into *Elena Lux* for carriage to Denmark under a quantity contract between her Danish timechartered owner Herning and Swedish shipper Preem. Some cargo became contaminated on loading and was immediately discharged, while the remainder was covered, in accordance with the parties' practice, by a Preem Tanker Waybill containing a Gothenburg DC prorogation clause. According to the DC the parties intended that the terms of this document should apply to the whole transport. The master apparently found it inappropriate to make out a document in respect of cargo that would not be delivered at destination but had no intention to change the terms that would otherwise apply. – Under the Lugano Convention art. 2, suit shall in general be brought in the defendant's Convention home State, though under art. 17 (a) the parties may agree otherwise in writing or by agreement confirmed in writing. Here the parties had agreed on the waybill's prorogation clause, and this had been confirmed by the waybill, the absence of which for some of the goods could not make a difference. – Affirmed by AC. – Appeal to SC denied 29 July 1999.

Gothenburg DC (Maritime Ct) 14 Febr. 2000, ND 2000, 5 (Tor Anglia)

Scansped agreed with Haldex to organise carriage of a cog-milling machine from Landskrona to Sutton Coldfield, England, for repair, and back. Under a long-term freight agreement, Scansped shipped the goods with Tor Line's vessels. During loading on *Tor Anglia* for the return, the machine fell off its trailer. Cargo insurer Wasa covered machine and trailer damage and was indemnified by Scansped's insurer If (Skandia), which in turn sued Tor Line. Tor Line demanded dismissal invoking an arbitration clause in the freight agreement. DC found the clause did not apply to the carriage and in any case was unclear.

The long-term agreement provided, *inter alia* and beside the arbitration clause, that cargo will be sent under seawaybill unless a b/l is required and that Tor Line's liability follows the North Sea Standard Conditions of Carriage and the MC, unless otherwise agreed on shipment. The said Standard Conditions purport to apply "whether it appears from the transport document or not" and contain a prorogation to the Gothenburg DC.

DC: It appears from the freight agreement that a seawaybill – a document unknown to the applicable older MC – would normally be used for individual carriage and would refer to the North Sea Conditions, under which the DC would be competent. The DC does not regard the Freight Agreement as a transport contract binding the parties to individual shipments but as a co-operation agreement between Tor Line and Scansped. As cargo owner Haldex can claim against the performing carrier, and the arbitration clause is clearly not applicable to that relation, even if exercised by Haldex' insurer. Nor is the arbitration clause applicable to trailer damage. The Court is thus competent for the dispute. – Appeal pending.

West Sweden AC 28 Dec. 2000, matter Ö 1096-97, ND 2000, 58 (Espe)

see below 10.1.3. Lugano jurisdiction

5.1.2. Cargo damage, responsible carrier

Gothenburg DC (Maritime Ct) 14th June 1999, ND 1999, 19 (Götaland)

Sandvik AB sold steel billets to Pennsylvania Extruded Tube (Penn) "free carrier Sandviken", habitually contracting P&O Europe (POE) for the carriage, which POE would confirm on their own stationary. The goods would be loaded without documents on a local vessel at Gävle, all statements concerning the shipment being computer stored and straight bs/l being made out on transshipment on P&O Ltd (P&O) ocean vessel at Bremerhaven; these described POE as agents for P&O. On behalf of Penn, Sandvik insured the shipments with Atlantica.

For one shipment of five container flats of steel billets loaded at Gävle on Teamline's *Götaland*, it was found on transshipment in Bremerhaven that some cargo had been lost overboard during the pre-carriage and some had been damaged. Atlantica covered Sandvik for the loss and brought a subrogation claim against POE on the following grounds: POE had undertaken the carriage; it was therefore liable for not following an instruction to load the cargo under deck, for not lashing the cargo properly; and for letting the ship set out in spite of gale warning. POE alleged they were in fact agents for P&O and that this had been clear to both parties and appeared on all previous bs/l; that deck-cargo was in accordance with practice and that no instruction for under-deck loading had been given for the present shipment; that it was Sandvik that had insufficiently lashed the goods to the flats; that the vessel was seaworthy and that if departure in the prevailing weather was negligent, that was a navigational fault for which carriers are not liable.

DC found that although POE might in fact be agents for P&O, this had not been clarified to Sandvik. The Bremerhaven straight bs/l were no presentation documents and thus no real bs/l that Sandvik had had cause to examine. The carriage agreement must be elicited from the booking confirmation, which indicated POE as principal. No under-deck agreement had been shown, and deck loading was not contrary to MC 13:13 and 13:34. There was no proof that insufficient lashing of bars to flats had caused the loss. It was not indefensible for *Götaland* to depart in the forecast weather and even less so in that actually encountered. POE was still liable in absence of exculpatory evidence. – Appeal pending.

Comments: As the goods were shipped "free carrier Sandviken", the risk of damage had passed to Penn when the loss occurred. Though Sandvik may have booked the carriage and insured the cargo on behalf of Penn, it is Penn's risk that Atlantica covered, i.e. the risk of one normally receiving cargo documents stating P&O as carrier. But the parties seem to have agreed that Sandvik undertook the entire transport arrangements, as under a c.i.f. contract, and that the risk and cost division was a matter of transfer under the sale contract. – The court's remark that Sandvik lacked interest in the straight bs/l because they were not presentation documents seems misleading. Whether a straight b/l is a presentation document depends on its form, and most such bills carry a presentation clause making them similar in effect to Swedish "recta" bs/l, see Tiberg, *Legal Qualities of Transport Documents*, [1998] *Tulane Maritime Law Journal* pp. 1, 23–36, *idem*, *Cargo Liability in Future Maritime Carriage*, Stockholm 1998, pp. 185–188. The significant matter is that they were not intended for Sandvik and therefore were not apt to colour Sandvik's impression of who was the carrier.

5.1.3. Cargo damage, unseaworthiness

Stockholm DC 9 December 1998 matter T 4-1988-95, Svea AC 1 March 2000 matter T 291-99 (Maritime Hibiscus), see further 10.3.1. Interruption of limitation period

5.1.4. Delivery duty

Gothenburg DC (Maritime Court) 16 May 2000, ND 2000, 20 (water tanks)

Acting for Waha Oil Libya, Mediterranean Oil Services (Medoil) bought water tanks f.o.b. from Canadian Petro Techna, who were instructed to observe US trade rules and obtain a Canadian certificate of origin, which they did. The goods were shipped on ACL's vessel for delivery via Germany. US Customs discovered that the goods were made in USA and issued a stoppage order threatening sanctions against ACL's US traffic. ACL stored the goods in Bremerhaven. Medoil sued ACL in Sweden for injunction to deliver the cargo to them. The bs/l contained clauses (3) incorporating relevant Hague/Hague-Visby legislation, (8) obliging Merchant to comply with applicable laws and hold Carrier harmless for breach of this, (11) making Carrier's liability cease on delivery or other disposition of goods according to orders of governments or authorities, (12) granting liberty to deviate etc., and (17) providing Swedish jurisdiction/law.

DC: the choice of law clause was not superseded by the reference to relevant Hague legislation under clause 3; the goods were of US origin, and the threatened sanctions were in accordance with US legislation; they were serious enough to justify ACL's refusal. Though the carrier cannot by b/l exceptions compromise his mandatory duty under MC 13:3 and 13:52 to deliver to the authorised consignee, though cl. 11 allowing the carrier to comply with orders of authorities must be construed restrictively and cannot justify refusal to deliver, and though the US prohibition did not have legal effect in Germany, DC was free to consider the economical impact for the carrier of the threatened sanctions (citing authorities). Considering also the exemptions of the Hague legislation for "arrest or restraint of princes, rulers or people", the DC found that on evaluation of the interests of the two parties, ACL's interest prevailed and entitled ACL to refuse delivery. – Appeal pending.

Comment: It may be questioned why the decision should have required a weighing of the interests of the parties as it seems clear that the shipper had provided incorrect statements of origin and had failed in his duty under clause 8 to comply with applicable laws.

Gothenburg 24 August 2000, ND 2000, 36 (Hyundai Baron)

Schlüter in Hamburg bought an offset printing machine – then in Malaysia – from Swedish Maxigraf for resale to Mariniko Press in Athens. Schlüter contracted SPT Scanway Transport (SPT) for carriage from Penang to Piræus/Athens, and delivery to Mariniko on arrival 7 November 1997. SPT's b/l named Schlüter as shipper, Mariniko as notify address and its bank as consignee. As performing carrier SPT used Hyundai, who contrary to SPT's instructions issued bs/l to Maxigraf as consignees and never made these available to SPT. On *Hyundai Baron's* arrival at Piræus 7 November 1997 the goods were received by Hyundai's agent Medtrans who refused to deliver without presentation of original Hyundai bs/l. The machine was not delivered until 8th December, and Schlüter sued SPT for legal expenses incurred for final release of the goods on 7th December. SPT objected that Schlüter was not authorised consignee under a b/l and therefore had no claim. DC said that the issuing of the bs/l did not cut Schlüter off from general contractual remedies for the carrier's breach of contract (citing authorities). It was proper and justified to use lawyers' services to clarify the situation, and those expenses were proximately caused by SPT's failure to obtain functioning bs/l. – Unappealable.

Comment: Issuing double documents requires perception. If contracting carrier SPT uses a sub-carrier for the transport, it must ascertain that the sub-carrier will regard SPT as entitled and deliver to it, whereupon SPT can deliver to the final consignee under its own house b/l. In the present case, Hyundai had issued a separate b/l, made out to its own Piræus agent and not destined to SPT at all, leaving SPT without control of the situation.

5.1.5. Freight claim

Gothenburg DC (Maritime Court) 2 Nov. 2000, ND 2000, 44 (State of Manipur)

SCI Shipping offered Electrotec carriage of 2,956 powerline poles on vessel *State of Manipur* from Uddevalla to Calcutta with on-trucking to Duncre and Udipur, at USD 112.50 W/M (weight/volume option) for the sea transport. “Freight prepaid not returnable” bs/l were issued with shipper’s measurements, and Electrotec were invoiced freight on that basis. The bs/l were assigned to consignees Nepal Indosuez Bank for Nepal Electric Authority. On delivery the carrier found the measuring to have been low and claimed additional freight from Electrotec. Electrotec pleaded (1) the “prepaid” clause cut off any further claim; (2) the b/l is prima facie evidence of loaded quantity; (3) after assignment of a negotiable b/l the statements in the latter become conclusive; (4) SCI’s debit of the smaller quantity amounts to a concession of freight based on that; (5) the carrier’s measurement method was neither agreed nor customary.

DC: (1) “Freight prepaid not returnable” creates an estoppel against the b/l holding consignee but not against the shipper, and b/l clause 22 expressly permits SCI to require additional freight in case of shipper’s misstatement; (2) while the b/l is strong – against the good faith b/l holder conclusive – evidence of loaded quantity, it does not cut the carrier off from claiming additional freight from the contracting shipper; (3) this applies equally after negotiation of the b/l; (4) SCI did not, by early notice after the ship’s arrival, concede the lower quantity. (5) However, SCI could not conclusively show that the cargo was actually in excess of that stated in the bills, and the claim for extra freight as well as extra harbour dues during the measuring was therefore rejected. – Appeal pending.

5.1.6. Cargo lien

West Sweden AC 5 May 1999 ND 1999 p. 5, SC 10 Nov. 1999 (CGM)

Nilsson bought shoes f.o.b. Hongkong, entrusting SM Forwarders with the carriage. For this, SM in their own name contracted with CGM. The b/l, in which SM were consignees, provided “freight collect” and gave Carrier a general lien “against the current holder of goods and cargo documents”. SM being declared bankrupt, CGM withheld the cargo for unrelated claims against SM. The buyer sued the carrier for delivery of the cargo, later replaced by a 1 mill. SEK bank deposit.

DC noted that SM had admittedly made the carriage agreement in their own name. The b/l indicated the freight as unpaid and gave the carrier a lien on the goods for “all sums payable to the Carrier under this contract ...” and “against the current Holder of the Goods and any documents relating thereto for all sums due from him to the Carrier under any other contract.” These terms applied against the buyer as b/l holder irrespective of who owned the goods, and the buyer’s claim must therefore be denied.

AC emphasised that while the b/l lien extended to claims not connected with the present carriage the then applicable MC section 113 (present MC 13:20) limited the lien to claims for the present carriage. As SM had no authority for such an extension, the buyer is entitled to the deposit amount.

– Judge Zelano: The legal lien is limited to claims connected with the carriage. As a rule of property this is mandatory in favour of third parties. The direct parties, on the other hand, may extend the lien by a b/l clause, subject to such general prerequisites as the goods belonging to the shipper or the carrier being in good faith about this or the shipper being authorised to charge the goods. For the similar situation of the general lien in the Nordic Forwarding Conditions, there is a difference of opinion whether they are sufficiently notorious to create a general authority (citing authorities). For the present relation between a forwarding agent and his sub-carrier, one who delivers his goods to a forwarding agent cannot be presumed to authorise the forwarding agent or any other person in the transport chain to charge the goods with a lien for unconnected charges. In a b/l, this clause could have the effect of binding an acceptor of the b/l to a lien upon his cargo for the carrier’s various claims against himself as b/l holder, but it does not bind the third party cargo owner.

SC: Leave to appeal denied.

5.2. Carriage of passengers

5.2.1. Damages in tort in maritime matter

Stockholm 22 Febr. 2000, Svea AC 10 Jan. 2001 no. DT 1-01, matter T 2280/00 (interim) (Estonia)

In the Estonia dispute, most victims accepted an agreed standard compensation for their losses disregarding the carrier's limitation of liability. A small number of victims did not join the agreement but sued the owners and operators of the Estonia and the board members of some of these companies in tort for gross negligence rather than under the MC. Both DC and AC denied the claims, since the maritime passenger rules have exclusive application. – Appealed to SC.

6. Navigable waters

6.1. Water pollution

6.1.1. Water Pollution Charge

N.B. Under chapter 8 section 1 of the Water Pollution Act (1981:424) a water pollution charge is debited a vessel's owner for an oil discharge in violation of the Act, unless the discharge is inconsiderable. The same applies to accidental oilspill if it has not been confined as far as possible. According to chapter 8 section 4 the charge may be set down or omitted if it would be unconscionable.

Svea AC 7 Oct 1999 and SC 9 Nov. 1999, [1999]LMCLQ 426 (Tella)

Now reported in ND 1999, 60.

Stockholm DC (Maritime Court) 7 January 2000 matter B 4-9195-98 (Saga Rose)

Saga Rose passed outward across the Kanholm Channel in the Stockholm Archipelago with *Maxim Gorkij* some 3 miles behind. *Maxim Gorkij's* pilot reported to *Saga Rose* that he saw an oil belt in the latter's wake, and looking back the pilot on this vessel saw a hue in the water behind, though the master professed to see nothing. *Saga Rose* was in good condition, and a port state control at the destination Helsinki revealed no defects. Next day some 3,000 litres of partly heavy oil were collected on the island of Runmarö on the southern side of the channel, but an analysis showed no identity between this oil and that on board the *Saga Rose*.

The DC confirmed that *Saga Rose* was a modern ship well equipped against oilspills and that the technical evidence showed neither that she had discharged the oil nor that she had not. A report from the Maritime Administration showed no other vessel over 300 tons to have passed at the relevant time. The evidence of both pilots and a Coastguard report half an hour later convinced the DC that there must have been a spill of light oil estimated at 1,000 litres from *Saga Rose*, though there may have been another spill from some unknown vessel during the night. *Saga Rose's* owners were sentenced to a water pollution charge of 72,800 SEK for an oil spill of at least 1,000 litres. – Unappealable.

Stockholm DC (Maritime Court) 29 September 2000 matter B 1664-99 M/T (Amarant)

A vessel had been loading transformer oil in Nynäshamn Oil Harbour. Probably an air pocket in the loading flow had caused a sudden pressure increase which in turn resulted in some oil escaping overboard – the State said 100–150 litres and the ship 10 litres, of which the court accepted the latter. The port had routines and equipment to collect leaking oil, and none got out of the port. Coastguards imposed an oil pollution charge.

In DC, the ship alleged that the spill was an accident whose effect had been confined as far as possible; that the spill of ten litres was so inconsiderable that no charge should be made; and that in any case the charge must be set down or omitted because the basin was a private oil harbour in an industrial area where both the ship and the harbour had efficient routines to collect any oil spilled into the water– as was in fact done – and that the oil in question was not classed as noxious and had no long-term effects.

The court found that according to the preparatory works (SOU 1998:158 pp 177 and 187) an exculpatory accident was one to the vessel or its equipment and would not include the

formation of an air pocket in loading, which is said to be a fairly common occurrence. As to the spill being inconsiderable this is determined mainly by the quantity and also the noxious character of the oil (Govt. Bill 1982/83:87 pp 36, 73 and 166). As the amount was only ten litres and it had not been shown that the oil was particularly noxious, the Court found the spill to be inconsiderable. The charge must be repaid. – Unappealable.

6.2. Accessory equipment

6.2.1. Jetty

Nacka DC 22 May 2000 matter T 912-99

Before the new Land Code of 1970, it was possible to create unregistered oral easements on a registered land unit in favour of another. Unregistered rights could also arise by immemorial prescription. Under promulgation provisions in the new Code, rights so acquired would continue under the new Code.

Two neighbours had parcels of land separated from the shore by a strip of land belonging to a third land owner. On the shore strip there was a jetty built in 1904, when the three lots were still an undivided property. In 1907 the property owner sold the two parcels, which have since passed to various new owners. The parcel owners have continued to use the jetty, a right to which was reserved in sale contracts for the parcels from 1927 onwards, and they have kept it in repair with the permission of the shore owner. In 1998 they renewed the wooden fundament of the jetty and were thereafter told by the present shore owner, S, to remove the new structure. Upon suit by S, the parcel owners objected that in the original sale of the two parcels in 1907, the right of using the jetty must have been reserved as an easement and that even if no such agreement could be proved, the shore owners' continued permission of their using the jetty supported such agreement. In any case the undisturbed use created an easement by prescription.

DC: No original agreement has been proved, nor any conditions which might have attached to such agreement. Nor does the continued permission to use and maintain the structure create an easement. Oral evidence shows only that the parcel owners have been suffered to use the jetty from the 1930ies. An undisturbed use of for some 60 years cannot suffice to create immemorial prescription. The parcel owners must comply and remove the new structure.

7. Maritime Traffic

7.1. Traffic prohibition

Gothenburg DC 16/5 2000 matter B 1401-99, appeal denied W Sweden AC III, 28 Aug. 2000 matter B 2964-00, and again SC 31/10 2000 matter Ö 3533-00

See above under 1.1. Characteristics of vessels

7.2. Negligence in Sea Traffic

7.2.1. Grounding and colliding

Malmö DC (MC) 1/7 1999 matter B 7469-98 (Bleking)

See below under 5.3.1. Gross marine intoxication

Malmö DC (Maritime Court) 11/2 1999 matter B 8390-98 (Lintin)

At 2 o'clock at night a bulk carrier in ballast hit the outer pier of Helsingborg harbour as the ship's mate missed a programmed starboard turn. Waking up, the master brought the ship into deep water in the Sound, allegedly to check damages. Having found two rifts in the ship's side, he informed an approaching pilot boat that he intended to take the ship for repair at Falkenberg 32 miles north. The mate was there alcohol tested and found to have 1.18 ‰ blood alcohol but alleged having drunk after the accident; he has since left the country. The ship was detained by order of the Maritime Administration. – The master was indicted for (1) taking a leaky and insufficiently manned vessel to sea instead making straight for Helsingborg harbour (MC 20:1) and (2) leaving the site of an accident (MC 20:8). – A majority court held that (1) though the master's action might be criticised, it was a nautical decision by an

experienced ship officer which turned out not to involve danger to the ship and crew, and (2) the master's tardiness in contacting land and other vessels had been plausibly explained and was not proved to have been an attempt to avoid reporting. – Acquitted. – Unappealable.

Malmö DC (Maritime Court) 30/11 2000 matter B 1462-00 (Hyphestos)

In its western part, Malmö Oil Port is a square southward indentation in the West-East shoreline, with westerly berths 1001/2 at right angles to the shore and berths 1003/4 angling east parallel to the shore. Tanker *Hyphestos* bound for berths 1001/2 was approaching from the northwest, tug *Bohus* pulling ahead and tug *Dunker* following aft to check the ship's headway. In the basin, the ship was turned 120° starboard facing berth 1001, her port side to berths 1003/4; *Bohus* now pulled starboard and *Dunker* was aft on the ship's port side. At this stage, the tanker about stationary, pilot A in agreement with the master ordered a forward engine "kick" to approach berths 1001/2, intended to be followed by a reversal, whereupon the ship would be pushed into position at the berth. But the reversing was delayed, and the ship went into the pier at one or two knots, damaging cranes valued at some 20 mill. SEK. A was indicted for negligent navigation.

DC sentenced A to fines for negligent navigation. A should have been aware of the slow reaction with orders given through the master to the engine room and should have used the tugs to continue turning the vessel. – Appeal pending.

Comment: In an older Pilotage Ordinance, the pilot's duty was limited to such directions for navigation and manoeuvring as were needed on account of waterway characteristics for the safe conduct of the vessel (Tiberg in SvJT 1967 pp.529–538). In section 7 of the present Ordinance (1982:569 as amended 1986:301), the reference to waterway characteristics has been removed, so the duty now includes manoeuvring in the full sense, with regard also to other vessels. The case illustrates the fullness of the pilot's responsibility.

Stockholm DC (Maritime Court) 28/4 2000 Matter B 6803/99 (Stella Polaris)

Stella Polaris was on her way in the archipelago from Trosa to Nyköping with 146 passengers, B acting as skipper with the ship's owner N as assistant. Some seven passengers had been allowed on the bridge. B was using small-scale boating charts, which show a rather small area and must be turned frequently. The weather was good with clear visibility, and B was following a route he had drawn into the charts, steering with the joystick. – Having passed two red markers on the vessel's starboard side, B turned the chart. At that spot there was a third red marker, which B never saw in the sun glare. *Stella Polaris* came to pass this marker on her port side. There was a thud in the ship, and some passengers panicked. The ship suffered a leak but could continue to a nearby landing stage where the passengers were disembarked. The ship had to have some bottom plates replaced at a cost of 100,000 SEK. B was indicted for negligent navigation.

DC: B failed to see the red marker, whose existence must have been known to him from planning the trip. Moreover, the ship was proceeding on a course north of that which B had drawn into the chart. Even though he had had to turn the chart at that moment, it was bad seamanship not to keep track of this marker. B was sentenced to fines. – Unappealable.

7.2.2. Sailing vessels

Gothenburg DC 1 March 2000, ND 2000, 16 (Britta)

Sail Training Ship *Britta* with a crew of youths grounded while motoring in moonlight. The ship's radar was not in use. M, the master, missed a green marker that should have been on the ship's starboard side but was on her port side. Just afterwards the ship grounded at less than 5 knots and must be towed off, leaking slightly. M was indicted. – He explained that he had not used the radar because the screen was about 1.5 meters down the hatch, and watching it could break his concentration forward.

DC. Admittedly the radar was not on. It is shown that M missed the marker and likely that he would have noted it if the radar had been on and checked continuously. There had thus been breach of good seamanship. Under MC 20:2 such breach is punishable unless

inconsiderable. The vessel was owned by a foundation that offered sailing at cost price. M was working without pay for a good purpose. Visibility was good and conditions otherwise ideal. M was using all other available means than the radar. Considering all circumstances, M's negligence was inconsiderable. – Acquitted. – Unappealable.

Stockholm DC (Maritime Court) 24 March 2000, matter B 6791-99, ND 2000, 18, SC 17 Jan. 2001 matter Ö3537-00 (Ellen)

Sail Training Ship *Ellen* was proceeding into the archipelago with some 20 fresh trainees and instructor J on watch. One trainee was at the helm and another navigating under J's surveillance, a third keeping watch in the bows, while lunch was being served for the others. The breeze was light, the speed moderate and the water open, so J left the boys to trim sails some 5 to 10 minutes. Back at the helm he noted that the helmsman had strayed from his course, so J eased the sheets and started the engine to determine his position. Before he had done so, the ship grounded and must be towed off by a tugboat. J was indicted for lack of good seamanship in leaving the helm to an unattended and inexperienced boy.

The court said it belonged to the duties of the person on watch to continually check the vessel's course and that J could obviously not delegate his duties to two schoolboys. J was sentenced to moderate fines. – J appealed, but neither the AC nor the SC gave leave.

Kalmar DC (Maritime Court) 25 Nov. 1999, matter B 1599-99, Göta AC 14 June 2000 matter B3899 (Baltic Beauty)

Captain G owned 40 x 4.90 metres passenger M/S *Baltic Beauty*. He was approaching Hasslö swing-bridge under bare poles, motoring at 5–6 knots for manoeuvrability, while the following wind alone would have given the vessel a speed of 4 knots. The bridge is remote-controlled by personnel without marine qualifications who, when hailed on VHF radio, watch approaching ships on video without ascertaining the exact distance by radar. G hailed the bridge at some 500–600 metres' distance and received the answer that "we shall fix it". Due to sun mist G did not see the bridge signal lights, but some 400 metres from the bridge he realised the bridge would open too late. It was then impossible to turn, and reversing the engine would have beached the vessel, so G continued towards the bridge, grazing it before fully open, the light being still red. G was indicted for negligent navigation in breach of good seamanship.

DC found the opening time for the bridge had not been normal. As G knew his vessel was hard to manoeuvre and that bridge opening might be delayed by land traffic, he should not have relied on the VHF reply as an assurance of immediately access. It was no excuse that the manning and handling of the bridge might not accord with IMO standards. G was sentenced to fines, and the bridge owner's full damage claim was allowed. – Leave to appeal denied.

7.2.3. Speed and lookout

N.B. Planing motorboats in the dark have been denounced by prosecutors because their drivers cannot see objects within stopping distance. Though a consistent application of such reasoning would practically stop all merchant shipping, some lower courts have allowed prosecutions for pleasure boats, and the matter has been an issue in a line of cases. The SC has finally passed on the matter.

SC 30/5 2000 matter B 3852-98, ND 2000, 29.

F, driving his boat with friends across the regular channel from a west coast island to the mainland at 20 knots through a dark but clear night, ran over and sank a small unlit and deeply loaded boat, which had swerved into his course from the port side, severely injuring one of its passengers. F was indicted for negligent navigation and causing injury and was charged with damages. He lost in the DC and AC. He appealed to SC, presenting an expert legal opinion including comments to the Prosecutor General's rejoinder.

SC in substance: Under MC 20:2 lack of good seamanship for the avoidance of accidents is punishable as negligent navigation unless the fault is inconsiderable. The mere occurrence or possibility of an accident does not constitute culpable negligence. The prosecutor has alleged

breach of the lookout and safe speed rules in the International Collision Regulations (Colreg). There is no evidence of bad lookout. Under Colreg Rule 6 proper speed is determined, *inter alia*, by the prevailing visibility, which means clarity of the atmosphere. The prosecutor uses the term in a wider sense referring to the possibility of seeing other vessels and objects in the water. But Colreg rule 23 obliges all vessels to use lights while moving in darkness. F was well familiar with the waters, the weather was clear with a visibility of 10–20 metres, and no speed limit was applicable. The collision occurred in open waters at a time of night when traffic is normally slight, and F had no reason to expect an unlit and deeply loaded boat crossing his bow from port. Considering the circumstances and his boat's 40-knot top speed, F's 20 knots were not excessive. Reversing, the Court dismissed the indictment and damage claim.

Comments: The Prosecutor General had determined "safe speed" by reference to the possibility of seeing unlit objects at night, and the Court's clarification that all vessels must carry lights was a rejoinder to this. But when mentioning a "visibility of 10–20 metres" the Court applies the same terminology. The distance at which unlit objects can be discerned depends on their size and colour, so further specifications are needed to determine "visibility" in this sense.

Svea AC V 17 May 2000, matter B 2466-00

T, conducting his motorboat towards a landing stage in a bay, saw L's smaller boat on his port side moving in such a way that the boats should pass free of each other. But L slowed down to stow his anchor, putting his engine into idling. At about 20 yards L saw T's boat too late to get out of its way. T ran over L's boat without seeing it, injuring L and damaging his boat. – T alone was indicted for having rammed L's slow-moving boat. The court found L to have veered at 1–2 knots into T's course but not so suddenly that T should not have seen it. T was guilty of negligent navigation. As for damages, L was bound under Colreg to keep out of T's way. Both parties had thus failed in lookout, and damages payable by T were set down to 2/3.

Appealed to SC matter Ö 2240-00.

Stockholm DC (Maritime Court) 18 Febr. 2000 matter B5-97

Frisk was indicted for negligent navigation and causing injury, having driven his boat onto a canal bank injuring his girlfriend L. The prosecutor said F. must have vastly exceeded the local 5- knot speed limit and negligently lost control. L could not recall the circumstances, while F said he had left the helm a moment to raise an overturned petrol tank and resuming steering found the boat heading for a bridge, whereupon he tripped on the accelerator lever, which sent the boat shooting onto the bank. The Court, accepting these statements for lack of other evidence noted that F had failed to continuously attend to his course and was thus guilty of negligent navigation and causing L's injury. He was sentenced to moderate fines. – Unappealable.

7.3. Marine intoxication

7.3.1. Gross marine intoxication (obligatory prison sentence)

Malmö DC (Maritime Court) 1 July 1999 matter B 7469-98 (Bleking)

A dry cargo vessel had discharged at Åhus, where the master drank "maximum seven" beers. Leaving Åhus he followed the fairway, intending to go north of a named shoal, but he said the automatic steering failed and put the vessel aground. Tests after the accident showed no such failure. The master was found to have 0.94 mg/litre breath alcohol (corresponding to 1.88 ‰ blood alcohol), and two crew members pronounced him to be unsober. The master, who had other sentences for drunkenness on duty, was sentenced to one month's prison, in addition to an earlier sentence suspending his right to conduct vessels. – Unappealable.

Gothenburg DC 16 Sept. 1999, W Swedem AC 6 June 2000, SC 31 Jan. 2001 matter B 2740-00 (Lady Fontaine)

Skipper P on a passenger vessel, having drunk a good deal of alcohol, was bringing his vessel from Gothenburg to Särö to pick up passengers. Close to Särö he missed his detailed charts

and decided to return to Gothenburg by a longer route. “By mistake, and being somewhat tired”, he ran aground. To the arriving police, he could not show his position on the chart, and a later alcohol test showed 1.74 ‰. The higher courts affirmed DC’s finding that the master was considerably affected by alcohol and that his conducting the vessel involved a manifest danger to marine safety. Sentence: two months’ prison and two years’ suspension of competency. – Affirmed by AC and no leave of appeal to SC.

Malmö DC (Maritime Court) 11 Febr. 1999 matter B 8390-98 (Lintin), see above under 7.3.1. Grounding and colliding.

SveaAC V DB 88, 11 May 2000 Matter B 869/99, appeal denied SC 25 Oct. 2000 B 2288-00 Qvist, having drunk a number of strong beers with a friend at the island of Getfoten off Vaxholm, stumbled into the friend’s boat heading for Stockholm some 3–4 miles away. People on the island saw that both were drunk and called the police after vainly trying to prevent their departure. A police boat stopped them in the busy fairway to Stockholm, and Q was found to have a breath alcohol content corresponding to over 2 ‰. He was indicted for marine intoxication.

The DC noted that the alcohol content in Qvist’s blood was more than twice the present limit for gross marine intoxication, that the boat had been conducted through normally very busy waters, and that the conduct of the boat was therefore dangerous. An unconditional sentence – here one month – was indispensable. – The AC affirmed and SC denied appeal.

8. Collision

Malmö CD (Maritime Court) 12 September 2000 Maritime Declaration matter Å 5542-00

A Maritime Declaration is a procedure intended to secure evidence of a maritime accident and thus does not involve a decision on liability or other legal issues. In the present case a sailboat had been run down by a Danish coaster off Kullen headland in Skåne. The coaster could not be summoned to the proceedings, but the boat owner and Swedish witnesses testified that the vessel had not taken any notice of the sailing boat and had not responded to VHF calls, and that after the accident it had not returned to the place to assist in saving the one-man sailboat crew.

SC 30/5 2000 matter B 3852-98, ND 2000, 29, see 7.2.3. Speed and lookout

Svea AC V 17 May 2000, matter B 2466-00, see under 7.2.3. Speed and lookout

9. Marine Insurance

9.1 Hull Insurance

9.1.1. Direct action for FFG damage

Average Adjuster 27 August 1999 (Para Bravo & Nestor) ND 1999, 38.

Tug *Nestor* was insured with Trygg. under a hull insurance with special liability for damage to fixed/floating objects caused by towed objects other than vessels. Barge *Para Bravo* under towage by *Nestor* hit a mooring-“dolphin” in Copenhagen Harbour. On the tug owner’s bankruptcy, the trustee according to the Insurance Contracts Act sect. 95 assigned the bankrupt’s right of cover to the dolphin owner, who claimed compensation from Trygg. Trygg objected that the tow as a vessel was not covered and that the third-party cover was only intended for timber rafts. – The Adjuster noted that although in the described situation the assignee obtains a separate claim against the insurer, the claim assigned is no better than the assured’s, so any objections which the insurer could have raised against him remain against the assignee. The barge in question, havin no rudder but only a firm fin, was not a vessel in the sense of the MC; nor was there proof of intention to include only timber rafts in the cover. The insurance therefore covered the dolphin owner’s damage claim. – Unappealable.

9.2. Cargo Insurance

9.2.1. Insurance period, Swedish or English Conditions

Average Adjuster 7 Jan 2000, ND 2000, 8 (Ming Glory)

Swedish importer H bought a quantity of sunshades cfr Gothenburg from Malaysian seller E. Payment was credited E under bank credit accepting a house b/l in which the goods were said to be loaded in container on the *Ming Glory* at Port Klang for carriage to Gothenburg. H had insured the shipment with LF “on Swedish *and* English conditions”. The goods never reached Gothenburg and turned out to have been discharged on E’ orders because found uncontractual. LF refused compensation alleging that the insurance had not attached because the carriage had not commenced or else had ended with discharge of the cargo.

Adjuster: The insurance refers to Swedish and English conditions. According to custom, the Swedish conditions are used for import and English conditions for export. The Swedish conditions therefore apply to this transport. – Under the applicable Swedish Normal Conditions clause 9.1. the insurance *attaches*, for purchaser insurance, when the risk passes to the buyer under the sales contract, which for this cfr contract implies on loading on board the export vessel. The insurance had thus attached. – Under clause 9.2. of the Conditions, the insurance *continues* during normal transport and loading, transshipment and discharge connected therewith. The seller’s retaking the cargo is not “normal transport” and is not a risk covered by a transport insurance of goods. The insurance had thus ceased to apply, and compensation is not payable. – Unappealable.

9.3. Average Adjuster

9.3.1. Competence

Svea AC 11 Feb. 1998 SÖ 1/98 matter Ö 5328/97, Supreme Court 3 Jan. 2000, matter Ö 1122/98 (Barbro) SC 3 Jan, LMCLQ 1990, 430, now also in ND 2000 p. 1

ICB, owners of M/T Barbro, sued Bergen’s Skibsassuranceforening, Norway, in Stockholm DC for loss of hire compensation caused by damage to the ship’s helm. Defendants disputed the court’s competence with reference to MC 17:9. Stockholm DC, holding LoH insurance to be marine insurance subject to the Adjuster’s consideration, was reversed by Svea AC with reference to the Lugano Convention. SC upheld the AC decision: Although MC provides for obligatory adjustment of Marine Insurance disputes, this is subject to Sweden’s duties under Lugano. Under that Convention’s art. 8 first paragraph (2), ICB is entitled to claim insurance at the place of its own seat. Under the Convention, such judgement must be enforceable in any other Convention State. But the Adjuster’s decision is enforceable only after further suit in a law court. The Swedish system of obligatory adjustment thus requires a double procedure, which is not compatible with the Lugano Convention. In the present respect the Convention takes precedence of the Swedish law, and the case must be remanded to the Stockholm DC.

Comment: The 1968 Brussels Convention on jurisdiction and enforcement of judgements in civil and commercial matters aims at integrating European Community law by making judgements recognised and enforceable throughout the Community. To extend this unity to the EFTA countries, the practically identical 1988 Lugano Convention on the same subject was created. As the names indicate, the two conventions not only confer enforceability to European decisions but also settle conflicts of jurisdiction and competence between European courts. The Conventions entitle the insured to sue the insurer at the assured’s own personal forum, and this, as the SC decision shows, must be a court of law. As the decision also clarifies, the Average Adjuster is not a court in this sense, as his statements cannot be enforced without confirmation by a court of law. This non-enforceability has not been regarded as a problem in Sweden, because Swedish insurers invariably honour the Adjustment or appeal, but in an international perspective a decision of this kind cannot be equated with a judgement.

10. Courts and Procedure

10.1. Jurisdiction

10.1.1. Prorogation clause

AC W Sweden 29 April 1999, ND 1999, 1 (Elena Lux)

see 5.1.1. Contract of carriage

10.1.2. Arbitration clause

Gothenburg DC (Maritime Court) 14 Febr. 2000, ND 2000, 5 (Tor Anglia)

see 5.1.1. Contract of carriage

10.1.3. Lugano jurisdiction

West Sweden AC 28 Dec. 2000, matter Ö 1096-97, ND 2000, 58 (Espe)

Swedish wood shippers made a booking note with Scotline for a shipment from Varberg to Goole/England. Scotline chartered *Espe*, whose master and mate failed to properly supervise stowage and stability. Bs/l were issued with English jurisdiction/law clause. The ship ran aground off Jutland and was lost with most of the cargo. Swedish insurers subrogated in the cargo's rights sued Scotline in Gothenburg DC. Scotline denied the Court's jurisdiction.

DC. The matter falls under the Lugano Convention, whose article 2 gives general jurisdiction at defendant's domicile, while article 5 gives special jurisdiction for matters relating to contract in the State of performance of the obligation. After issuing bs/l the contract is in the bills, which provide for carriage to England. Insurers allege that stowage and securing of goods and providing a seaworthy ship are principal obligations under the contract and that, forming the basis of the legal proceedings, they are decisive for Lugano jurisdiction (*de Bloos* (1976) ECR 1497). But in *Slienavai* (1987) ECR 239 the Court said *obiter* that for a dispute concerning a number of obligations in a contract forming the basis of plaintiff's proceedings, the *principal* obligation determines the jurisdiction. The Insurers' claims are based not only on the carrier's shipment obligations but on the carrier's general duty of care and his prima facie liability, which lasts until delivery. Splitting the obligations that determine jurisdiction would create uncertainty, which runs counter to the purpose of the Lugano Convention. Jurisdiction declined.

AC, after referring to the above cases: While Insurers invoke Scotline's breach of the stowage, securing and ship stability obligations, their claim also includes an allegation that they have suffered loss by non-delivery of the cargo in England. Delivery is the carrier's principal obligation (Hertz, Jurisdiction in Contract and Tort under the Brussels Convention, Copenhagen 1998 p. 216 ff). The decisive question is then where delivery should take place. Both the booking notes and the bs/l show the agreed place of delivery to be Goole in England. Affirmed. – Appeal to SC pending.

Comments: Normally the agreement between the shipper and carrier would be set out in the booking notes, while the bs/l are documents issued by the performing carrier for the consignee and are not to be seen as altering the original parties' relations. Nevertheless, as the AC points out, the booking note has the same effect with regard to the carrier's obligations, so, as analysed by both courts, the result will be the same under both documents.

10.2. Attachment

10.2.1. Attachment of insurance compensation

[1999] LMCLQ 434 (insurance ex Amphion), correction

The decision, whose proper date is 15th February 1999, is now reported in ND 2000, 1. The SC remanded the matter to the DC.

10.3. Other

10.3.1. Interruption of limitation period

Stockholm DC (Maritime Court) 9 December 1998 matter T 4-1988-95, SveaAC V 1/3 2000 matter T 291-99 (Maritime Hibiscus)

Liberian register M/V *Maritime Hibiscus* foundered in 1991 off New Guinea, cargo valued at 1,200,000 USD being totally lost. The ship was P&I insured with the Swedish Club (SC). The

two cargo insurers' claims had been assigned to recovery company Dolphin. In May 1992 Dolphin engaged Mannheimer Swartling Advocates (MS), who negotiated with SC for a prolongation of the limitation period until the turn of 1992/93 but did not pursue the claim within that time. Dolphin sued MS for loss of their action. MS said their mandate was to find out from SC whether an out-of-court settlement was possible, not to negotiate further extension of the time limit. This was reasonable because the loss was due to error in navigation, for which SC was not liable. It appeared that the vessel had been overloaded with water-drenched timber and had left the port heavily loaded and without a pilot, soon hitting a coral reef and sinking.

DC found that the mandate was to contact and negotiate with SC for P&I compensation. It is a prerequisite for such negotiations that the claim is not time-barred, which became acute when SC allowed prolongation until the turn of the year. A fax correspondence with Dolphin must be read as an instruction to protect the claim from limitation. If MSA thought otherwise they should have clarified this. However, at the moment of time-bar, the prospect of a claim against the owners on the basis of unseaworthiness (heavy timber), seemed quite slim, particularly as the owner was then no longer in existence. The Court criticised MSA for not informing Dolphin of the difficulties but not for failure to sue, as a suit would not have been defensible. Claim denied. – Appeal withdrawn.

III Bibliography

1. Official publications

1.1. Government bills, ministry memoranda etc

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Flygbolagens ansvar för passagerarskador – rådets förordning 2027/97 (Ds 2000.55, 48 s). (Air carriers' liability for passenger injuries on account of EC Council Ordinance 2027/97. *Proposed amendments to Air Traffic Act*, *inter alia* abolishing, in anticipation of the 1999 Montreal Convention, the present unbreakable 100,000 SDR limit.

SOU 2000:56 Vindikation av stöldgods (Vindication of stolen goods). The Swedish rule of good faith purchasers becoming owners of the property are proposed to be abolished in respect of stolen but not otherwise misappropriated goods. In Opinion 8th January 2001 the Institute of Maritime Law has opposed the proposal.

Memorandum 17 Nov. 2000 concerning inscription according to the Act (1984:649) on Industrial Hypothec and Shipping Register Matters. Implementation rules concerning the Ship-ping registers' moving to the Maritime Administration).

Government directive 1999:87 on introducing an alcohol measurement limit for maritime intoxication. The Directive, which is inspired by requests from the Parliament, has since resulted in a proposal, *SOU 2001:30*, for an 0.2 ‰ limit, as in automobile traffic, for any boat traffic in canals, locks, public harbours and public fairways.

1.2. Opinions to government inquiries

Stockholm Maritime Law Institute's Opinions www.juridicum.su.se/transport

Opinion 26 July 2000 on Air Carriers' Liability for Accidents and the EC Commission's Policy concerning Protection of Passengers in the EU. The Institute stresses the importance of avoiding increase fragmentation of the air law. Approves: the recommendation that the Member States ratify the Montreal Convention; the modification of Council Ordinance 2027/97 to fit the Montreal rules; the extension of the Montreal rules to domestic transport; such supplementation of the Montreal Convention as the Convention itself recommends, such as proof of insurance. In other respects the Institute would recommend that the Ordinance would only incorporate the Convention. The Institute finds the Policy too extensive.

Opinion 1 May 2000 on Gvt Bill on Accession to the Schengen Agreement. The opinion emphasises the control difficulties arising from Sweden upholding the Schengen outside control in view of the passage of irregular traffic into the Sweden's vast archipelagos, and that the proposal will much curtail present freedoms.

Opinion 14 Dec. 2000 on Air Carriers' liability for Passenger Injuries. The Institute regrets EC Ordinance 2027/97 which obliges Community Air Carriers to undertake unlimited liability and non-returnable advance payments in excess of any normal damages under Swedish law and recommends rejection of the proposed extension of these rules to domestic and irregular carriers.

2. Books

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4. Articles

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Tiberg, H, Vem ägar vrak och gods? (Who owns wrecks and wreckage?) SvJT 2000 pp. 972–981. Ownership remains unless ceded by agreement or inference.
– A Mini Maritime Insurance, Essais en honneur de P Bonassies, to appear shortly 2001 (on yacht insurance with customer participation).
– EG-moms på fartyg Festskrift till Ulf Bernitz, Stockholm 2001 (EC VAT on vessels).