



Holyhead v Farrer: Court of Appeal Confirms Marinas can Limit their Liability

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On the evening of 1st and 2nd March 2018, Storm Emma hit the marina in Holyhead Harbour causing substantial damage both to the marina itself and to 89 craft that were moored there at the time. The marina owners sought a declaration limiting their liability under section 191 of the Merchant Shipping Act 1995 (the “MSA 1995”), which operates to limit the liability of the owners of any dock or canal.

The question arose as to whether a marina can be considered a “dock” for this purpose. The damage to the craft was estimated at around £5 million, but if the marina owners were successful in arguing that a marina should come within the meaning of the word “dock”, their liability would be limited to £550,000.

In the first instance, Mr Justice Teare found in favour of the marina owners. Permission to appeal was granted on the basis that it was of sufficient importance to the marine leisure sector and the related insurance market.

The appeal took place on 26th October 2021 before Sir Geoffrey Vos, Master of the Rolls, Lord Justice Males and Lord Justice Stuart-Smith. Judgment was handed down in *Holyhead Marina v Farrer* [2021] EWCA Civ 1585 within the space of two weeks, unanimously upholding the first instance decision and maintaining the marina owners’ right to limit their liability.

Docks, landing places and jetties...

The marina was described as “*an arrangement of floating pontoons for the mooring of small leisure craft which are linked to the land by a bridge. The pontoons (made of concrete and polystyrene) form the shape of a square (with one side open for access) together with smaller pontoons projecting inside the square. They are moored to the seabed using a system of chains and nylon rope connected to concrete weights placed on the seabed.*”

Under section 191 of the MSA 1995, a dock is defined as including “*wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing places and jetties*”.

Teare J concluded at first instance that although a marina was not a dock within the ordinary meaning of that

word, the pontoons which make up the marina were landing places, jetties and stages, which was sufficient to bring the marina within the definition of a dock.

The owners of the damaged craft claimed, on appeal, that Teare J had stretched the definition of a dock too far and that it was only when the structure of the marina was broken down that the judge was able to apply the definition, by concluding that the individual pontoons were landing places. However, the Court of Appeal concluded that terms as general as “landing place”, “stage” or “jetty” should not be construed so narrowly as to exclude either a collection of pontoons joined together to form a marina.

The Court of Appeal also rejected as “absurd” an argument advanced by the yacht owners that Teare J’s conclusion meant that Holyhead’s liability could only be limited for each pontoon: they held that the structure that is relevant for this purpose is the marina as a whole. The MSA 1995 makes it clear that the limitation of liability “relates to the whole of any losses and damages which may arise on any one distinct occasion”.

The yacht owners also contended that as the ability to limit liability was introduced to facilitate trade, it should not apply to structures used by leisure craft. The Court of Appeal also rejected this argument. The types of structure listed in section 191 are not all purely commercial or passenger structures and there were no words in the MSA 1995 to restrict the right of limitation in this way. As Teare J had commented, dock owners had historically secured a right to limit under the MSA 1995 “in very wide terms in their own interests, not in the interests of shipowners or of international trade”.

It was also suggested that the current market understanding is that marinas cannot limit, as demonstrated by the marina’s liability insurance of £10 million. However, that was not considered to have any bearing on the correctness of the right to limit.

The marina operators were therefore entitled to limit their liability as Holyhead Marina was found to come within the definition of dock contained in section 191(9) of the MSA 1995.

What next?

Although some marinas may be constructed differently and every case will turn on its facts, based on the broad interpretation applied by the courts in this case, it seems likely that the ability to limit liability will also be available to many other marinas. The figures involved in the Holyhead case demonstrate that this judgment may significantly impact the quantum of claims such as this.

As was pointed out by the yacht owners in support of their argument, pleasure craft insurance premiums will likely rise if marinas can limit their liability. This argument did not persuade the Court of Appeal to alter their decision but it is suggested that the market may indeed correct itself in light of this judgment.

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