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Steering vessels safely into Durban port

Who's liable in a marine crash?

LAST weekend's cold front with strong winds and high swells led to a brief closure of Durban's port to incoming vessels.

Tsunami-like waves also battered the Durban beachfront in mid-March, leading to the closure of beaches, after a similar spell of bad weather.

After the inclement weather of March, a video circulated on social media which attracted many views, showing Durban marine pilot Rainer Rauntenberg, steering a Ro-Ro vessel (roll on, roll off ships designed to carry wheeled cargo such as vehicles) at times rocking severely from side to side, safely into port during the rough seas of mid-March.

Rauntenberg was praised for his skill and calmness under pressure and led Durban's harbour master to say this "proves the port of Durban is always ready to service its customers and will not let adverse weather conditions delay vessel turnaround time, while adhering to maritime safety precautions".

The fact that the port closed for incoming vessels a week ago is an indication of just how severe the conditions were.

Earlier this month, a Durban marine pilot was aboard the MV Julian when the vessel overshot its berth and crashed at the bulk terminal, seriously damaging a bulk ship loader, near the port's entrance on the Bluff.

News reports speculated that the damage to the bulk ship loader was around R100million. This does not take into account the subsequent loss of business.

The heroics of Rauntenberg and the collision of MV Julian have cast the spotlight on the role of marine pilots, especially in Durban, and, more importantly, who will be liable in the event of damage caused by the negligence of marine pilots.

A marine pilot is someone, usually a local expert in navigation (such as an ex-ship's master) and the marine characteristics of the port, who



Fully laden, a container ship ploughs behind a tug into Durban Harbour, in this picture taken by Len Konings, when high winds grounded the helicopter usually used to take the harbour pilot out to the ships.

is employed by the local port authority and, in that capacity, renders a service, known as "pilotage" to a vessel owner, which entails the pilot assuming brief control of the navigation of the vessel, usually in waters that require familiarity with the area and local conditions, such as currents, tides and shifting sandbanks, in return for a fee payable to the port authority.

This is in contrast to the master of the vessel, whose navigation experience and knowledge of the subject vessel equip the master to navigate the vessel on the open seas.

The pilot assumes control of the vessel from the time of arriving on the bridge, usually just before entering port, until handing control back to the master after docking.

Ship Shape

Berning Robertson



In the South African context, a pilot's services are compulsory and must be accepted by foreign vessels as a condition for navigating the vessel within port precincts such as Durban.

A pilot must navigate every vessel entering, leaving or moving in any of our ports.

The compulsory pilot's functions are statutorily determined, and the incidence and extent of the pilot's and a relevant authority's liability for actionable wrongs are statutorily regulated.

The National Ports Authority is responsible for providing or procuring pilotage services, licensing pilots and regulating the safe provision of pilotage service by licensed pilots.

With regard to the question of liability, the National Ports Act provides that:

- Neither the authority nor the pilot is liable for loss or damage caused by anything done or omitted by the pilot in good faith while performing his or her functions in terms of the Act.

- Notwithstanding any other provision of this Act, the pilot is deemed to be the servant of the owner or master of the vessel under pilotage and such owner or master is liable for the acts or

omissions of the pilot.

In light of Clause 1, in the event of damage caused to or by a vessel while under the control of a pilot, the pilot's liability, and the National Ports Authority's vicarious liability (liability for its employee's actions), is limited to situations where the causal action or omission was committed in bad faith.

This exclusion from liability, however, only applies where the pilot's acts or omission were made in good faith and are the sole proximate cause of the damage.

If the authority is itself (or another employee is) negligent or contributes to the damage, then the exclusion should not apply.

In such a scenario, the National Ports Authority will be tempted to hold the pilot solely responsible for any damage caused, to take advantage of the exclusion.

As long as the pilot acts in good faith, albeit negligently, the National Ports Authority and the pilot would be able to escape liability.

Having said that, there are some decided municipality cases with similar limitations of liability on the municipality where the courts have found that an act or omission which is carried out negligently is not one which could have been carried out in good faith.

This has never been tested in the context of the National Ports Act, but will be one of the arguments used by the owners of

the MV Smart, a vessel which ran aground while exiting Richards Bay, against the National Ports Authority.

The effects of Clause 2 above are even more intriguing. In terms thereof, the compulsory pilot is deemed the employee of the vessel owner, notwithstanding that the preceding clause indicates that the pilot is to be employed by the National Ports Authority.

This means that the owners of the vessel are vicariously liable for the pilot's negligent actions, notwithstanding that the owners were compelled to employ the pilot.

On the positive side, this leaves a third party, such as the owners of another ship, whose ship was damaged by the one under pilotage, with a remedy should the exclusion referred to be applicable.

In the event that the exclusion does not apply, a situation may arise where the authority and the owners of the vessel under pilotage are jointly liable.

More bizarrely, Clause 2 opens an avenue for the authority to recover damages from the owner of the vessel under compulsory pilotage for damage to the authority's property caused by the acts or omissions of the compulsory pilot the authority licensed, compelled the owner to take on board and for whose services it has charged a fee.

For example, in the MV Julian incident, over-shooting its berth, the ship damaged not only the bulk terminal ship loader, but also caused some damage to the quay wall. Theoretically the port authority now has a claim against the ship if it is shown that the port authority's pilot was negligent. Try to figure that one out.

• Robertson is a senior associate at Bowman's Durban.