

International **Tug & OSV**

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ITS 2012 Preview

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It is time to prepare for a new legal regime

Will the Rotterdam Rules have any effect on the tug and towage sector? Yes, they could, says Miquel Roca, managing partner of the law firm Blas de Lezo. He explains his line of thought for IT&O readers.

“On 23rd September 2009, the United Nations opened for signature the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, known as the Rotterdam Rules. These rules aim to bring the Hague-Visby Rules regime – which is almost 100 years old – into the reality of today’s maritime and transport sector.

The Rules have until now been considered not to have any effect at all on the tug and tow sector, but when reading them closely, this might well not be the case.

One of the main features of the Rotterdam Rules is that the so-called ‘period of responsibility’ of ship owners is enlarged so as to include not only the sea transport, but also the period between the moment in which the carrier takes the goods (maybe at an inland place) until the place where the goods are delivered, which can also be an inland place. This means that the activities performed by a tug company in either the port of loading or the port of discharge might be caught by the Convention.

This is so because the Rotterdam Rules literally say that a “maritime performing party means a performing party to the extent that it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship”.

If our activity is defined and caught in this new Convention, which practical consequences can it have on our day-to-day services to the ships carrying those goods?

The Convention states that if something happens to the goods during that period, the carrier is responsible. In the light of such responsibility, the Rotterdam Rules offer the claimant the possibility to choose between certain places in which to commence legal action, but also, in certain circumstances, it allows the claimant to choose between suing the carrier or suing the ‘maritime performing party’.

“Effectively, the Rotterdam Rules say that if a claimant so wants to, it can sue a ‘maritime performing party’ (like a tug company) in its place of business or at the port where it performed its services.”

Let us put all the above into a potential real, practical case: the owner of a cargo enters into a contract of carriage with a ship owner to carry some containers from A to B. The Rotterdam Rules are applicable. When the tug company at the port of destination is assisting the ship to moor safely, something goes wrong at the tow which makes the vessel collide with

the berth and the cargo suffers damage.

In the above case, until now, the cargo owner, without any contractual relationship with the tug company, had to sue the carrier and only then did the carrier deal with the tug company to recover whichever amount

it had to pay to the cargo interests. With the Rotterdam Rules in place, however, the cargo interest will have a direct course of action against the tug company.

Effectively, the Rotterdam Rules say that if a claimant so wants to, it can sue a ‘maritime performing party’ (like a tug company) in its place of business or at the port where it performed its services. It is then easy to see that in our sector, a claimant might be more interested in suing the tug company rather than the carrier. A carrier might have its principal place of business far from where the claimant is located, but the tug company is just next door and, more importantly, it has visual and tangible assets in the same jurisdiction as that of the claimant... so it is all good news for the claimant when suing a tug company.

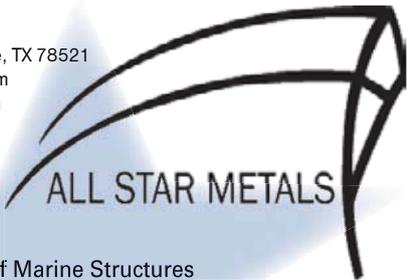
What can we expect when the Rotterdam Rules come into force? The reality is that we are still quite a long way from this new Convention entering into force. Only one country has ratified it, and 19 more are needed. However, 24 countries have signed it, giving a clear sign that they will be sooner or later ratifying the Convention. Being very optimistic, we can expect the Rules to be in force in maybe three or four years. But this time should be not be spent sitting back and relaxing, but rather companies in the tug and tow sector should prepare their businesses for this new legal regime, to better protect their interests... and if possible, their assets!”

Author’s notes

Miquel Roca (pictured right) is the managing partner of the law firm Blas de Lezo of Barcelona. He was appointed Plenipotentiary of the Spanish Crown before the United Nations, on behalf of the Kingdom of Spain, to sign the Rotterdam Rules. Blas de Lezo has won the Spanish Shipping and Maritime Law Firm of the Year award, and Roca has been included in the list of The Best 50 Lawyers in Spain. He can be contacted at: mroca@bdlezo.com, and see: www.bdlezo.com



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