

# LEGAL UPDATE – COLLISIONS: THE PROBLEM WITH AN ARRAY OF DEFINITIONS



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The recent decision in the *Western Neptune v St Louis Express* ([2010] 1 Lloyd's Rep. 158) highlights the importance of considering which liability regime should be pursued in collision cases. Difficulties arise from the fact that there is no uniform definition of what constitutes a 'collision' with towed objects.

## FACTS OF THE CASE

In September 2007, the *Western Neptune* was undertaking a survey in the Gulf of Mexico. She was towing a spread of 10 streamers and six gun arrays (the array). Each streamer extended for 4.34 miles astern of the vessel with a total width of 1,080m and depth of 12m.

*Western Neptune* was supported by three other vessels. Two were also towing gun arrays and were positioned off the port side of *Western Neptune*. A third vessel, *Furore* was positioned ahead of *Western Neptune*; its main function was to prevent interference from other vessels by contacting them on VHF.

In addition to normal navigation lights, *Western Neptune* exhibited three (restricted manoeuvrability) lights, the highest and lowest being red, and the middle white. So far as the array was concerned, there were buoys at the aft end of every streamer and at the forward end of the outer six streamers. Each buoy was fitted with a blue strobe light and a radar reflector. That apart, there were no lights between the stern of *Western Neptune* and the end of the streamers more than 4 miles astern.

During the early hours of 24 September 2007, the *St Louis Express* collided with the array when she crossed approximately 4 miles astern of *Western Neptune*, causing damage in the region of \$25m.

Prior to the collision, *Western Neptune* was on a course of 225 degrees making 4 to 5 knots. *Furore* made VHF contact with *St Louis Express* stating that *Western Neptune*'s seismic convoy was ahead and requesting a 'safety box' of 3 miles ahead, 3 miles on each side and 6 miles astern.

Shortly thereafter, *St Louis Express* altered course to starboard in order to avoid another vessel, *Eagle Subaru*. At 02:42, *St Louis Express* began a slow alteration to port. By 02:50, she had entered the 'safety' zone around the convoy, heading 315 degrees. She continued her swing and steadied on a heading of 290 degrees at 02:53. She remained on that heading until collision.



## 'COLLISION' FOR THE PURPOSE OF INSURANCE POLICIES

In *Bennett Steamship Company v. Hull Mutual Steamship Protecting Society* [1913] 3 KB 57, the Court construed the meaning of 'collision' in the context of damage to fishing nets under the terms of the usual form of Lloyd's policy and concluded:

"whenever any part of the tackle of a vessel is being used in connection with the vessel, although it may be outside the ambit of the hull, as the anchor or a boat towing astern or working ahead to warp the vessel, it may just as well be said to be a part of the vessel when there is a collision with it as if it were still on board the vessel itself...nets, however, are not a part of the ship in that sense, nor are they things which it is necessary for her to have and without which she could not prudently put to sea...[I]t would be straining the language to say that the collision in this case with the nets was a collision with the ship."

This case examined whether there was a collision for the purposes of recovery under the terms of the insurance policy and found that the towed nets were not part of the vessel for the purposes of determining whether there was a collision. The established practice following this case is for the owner to separately insure fishing nets or have the nets included in the schedule of the policy.

## 'COLLISION' FOR THE PURPOSE OF THE COLLISION REGULATIONS

In construing Rule 3(g) of the Collision Regulations as to whether the *Western Neptune* was "engaged in a towing operation which severely restricts the towing vessel (and the tow) in its ability to deviate from its course", the Court was asked to decide whether the array formed part of the vessel from the perspective of the Regulations. The court adopted the view of the Elder Brethren that:

"From a practical point of view the tow always has to be treated as part of the towing vessel for the purposes of collision avoidance since it has no life or being outside of the towing vessel and is unable to take any form of unilateral action. *Western Neptune*'s array was a tow, part of which was on the surface, must therefore be considered an integral part of *Western Neptune* herself."

## CONCLUSION

Whether there is a collision depends upon what basis a claimant seeks to found liability for the damage suffered. While the towed array is treated the same as a towed vessel under the collision regulations, it may not be treated in the same way under a Lloyd's Policy. The *Western Neptune* decision highlights the importance of giving careful consideration to the coverage in place and the basis on which any subsequent liability is founded.