

## Shipping & Transport - Denmark

### Gearbox manufacturer and shipyard liable for collision between vessels

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#### Background

While the trawler the Libas was moored at quay in the port of Thyboron in Denmark, it was hit by the fishing vessel Lykke Hametner. The collision occurred when the gearbox installed in the Lykke Hametner failed and the vessel lost its manoeuvring capabilities. The gearbox failure occurred because a hydraulic pipe had come loose and a cutting ring fitting, which should keep the pipe attached to the gearbox, had fallen off. The Libas was significantly damaged due to the collision. The new gearbox had been installed at a shipyard 21 operational days before the collision. The gearbox was delivered to the shipyard by a Danish gearbox manufacturer. The gearbox manufacturer denied that the hydraulic pipe had come loose due to a manufacturing defect. Instead, it submitted that the hydraulic pipe had been disconnected from the gearbox and then reconnected during the shipyard's installation of the gearbox, and that during this process, the Libas had been subject to an impact which had damaged the hydraulic pipe. A court-appointed expert assessed that the pipe came off because the cutting ring fitting had been placed close to the end of the pipe – there was one millimetre of steel material between the fitting and the end of the pipe, which did not provide sufficient holding strength.

The owners and the hull underwriters of the Libas brought proceedings against the shipyard and the gearbox manufacturer and claimed compensation for the losses pursuant to general law on product liability. The owners and insurers submitted that the shipyard was responsible for the manufacturing defects caused by the gearbox manufacturer due to errors or omissions. The gearbox manufacturer, on the other hand, submitted that it had not been established that it had manufactured a defective product.

#### Decision

The court found that the cutting ring fitting had been placed too close to the end of the pipe and that this had caused the pipe to come loose and the Lykke Hametner to lose its manoeuvring capabilities. The court found that no errors or omissions had been made by the shipyard in connection with the installation of the gearbox which could have resulted in the hydraulic pipe falling off. The court decided that the shipyard and the gearbox manufacturer were jointly and severally liable for the damages to the Libas. The court stated:

*"It has not been proven that any of V [the shipyard]'s employees have acted negligently in connection with the installation of the gearbox, however, the court finds that V, as a professional distributor of the gearbox, is responsible vis-à-vis the claimants for the manufacturing defects for which P [the gearbox manufacturer] is liable."<sup>(1)</sup>*

#### Comment

A defect to a product delivered to and installed in a vessel may result in the manufacturer and distributor of the defective product incurring product liability if the defective product leads to the vessel causing damage to other property, including a collision with another vessel. In order to claim that the manufacturer and the distributor incur product liability, it is a prerequisite to prove that the manufacturer of the maritime equipment has acted negligently and that the product may be deemed to be defective. If this is established, the distributor of the product (which has not acted negligently itself) may be held liable under Danish product liability rules for the manufacturer's actions.

For further information on this topic please contact [Jesper Windahl](#) at Birch Windahl by telephone (+45 35 25 38 00) or email ([jew@birchwindahl.dk](mailto:jew@birchwindahl.dk)). The Birch Windahl website can be accessed at [www.birchwindahl.dk](http://www.birchwindahl.dk).

#### Endnote

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(1) City Court of Holstebro, March 4 2015 (Case BS 6-700/2013)

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