



Tonnage Limitation & Res Judicata: the Right to Limit is a Cause of Action; and Declarations Mean What They Say

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06 February 2025

Summary

The precise juridical nature of a shipowner's right to limit its liability under the 1976 (and earlier) Limitation Conventions has hitherto been obscure. Whilst that right has been held to be procedural in nature for the purposes of choice of law questions, dicta suggested that it may also amount to a cause of action. In ***Réseau de Transport d'Électricité v. Costain Limited & Others*** [2025] EWHC 73 (Admty), Cockerill J has clarified the law by ruling that the right to limit is a substantive one for the purposes of cause of action estoppel.

The Judge also reaffirmed the rule that, quite separately from the doctrines of cause of action estoppel, issue estoppel and res judicata, a party cannot go behind the natural and unambiguous meaning of a declaration granted against it by reference to the arguments advanced or not advanced in the hearing leading up to that declaration.

Factual and Procedural Background

On 20 November 2016, the anchor of the dumb barge "STEMA BARGE II" dragged across and severed a high voltage undersea power cable in the English Channel belonging to the French power network company, Réseau de Transport d'Électricité (RTE).

In 2020, three companies involved in the ownership, management and/or use of the barge brought limitation proceedings against RTE in England. RTE agreed that two of them could limit in their capacity as owner and charterer of the barge respectively. The third entity, Stema UK, argued that it was entitled to limit its liability as the "operator" of the barge within the meaning of Article 1(4) of the 1976 Limitation Convention. At first instance, Teare J held that it could, but that ruling was reversed by the Court of Appeal (see [2021] 2 Lloyd's Rep. 307 & [2022] 1 Lloyd's Rep. 170 (CA) and [a case note on the Court of Appeal's decision](#)).

In the present set of consolidated actions on the merits, Stema UK pleaded that it was entitled to limit under Article 1(4) of the 1976 Convention as a person "for whose act, neglect or default the shipowner is responsible", an argument which it had briefly raised in the Court of Appeal, but then abandoned during oral argument. Following the hearing, the Court of Appeal issued a declaration stating that, "Stema UK is not entitled to limit its liability (if any) pursuant to section 185 of the Merchant Shipping Act 1976 and is not entitled to a general limitation decree in the from ADM19 or at all."

Despite that history, Stema UK now argued that it was entitled to claim a right to limit under Article 1(4), because the Court of Appeal had not ruled against it on that basis and, in any event, its right to limit on that ground had not accrued at the time of the earlier limitation action. RTE and two other parties applied to strike out that plea and/or obtain summary judgment on it.

The Court's Decision

In a carefully reasoned and detailed judgment, Cockerill J held that Stema UK was debarred from arguing that it was entitled to limit under Article 1(4). The judge reached that conclusion on three bases.

First, the relief sought by Stema UK was inconsistent with the natural and unambiguous wording of the Court of Appeal's declaration that, "Stema UK is not entitled to limit its liability". It was not open to the Court to go behind the wording of the declaration, regardless of what had or had not been argued in the Court of Appeal: "where an order is unambiguous, there is no room for construction; and this is a case where an order is not remotely ambiguous".



This is a useful reminder of the principles set out in **Gordon v Gonda** [1955] 1 WLR 885 (CA) and **Winston Gibson v Public Services Commission** [2011] UKPC 24, as endorsed in **Sans Souci Ltd v VRL Services Ltd** [2012] UKPC 6.

Second, Stema UK was prevented from relying on Article 1(4) by cause of action estoppel. In so ruling, Cockerill J made two significant clarifications of the law: (i) limitation under the Limitation Convention was a cause of action for the purposes of the doctrine of *res judicata*, notwithstanding comments in cases such as **Caltex Singapore Pte and others v B.P. Shipping Ltd** [1996] 1 Lloyd's Rep 286 that it was only a procedural right for the purposes of determining the applicable proper law; and (ii) as a limitation decree is binding against the world, a party need not have been a named party to the limitation proceedings to benefit from a *res judicata* in such proceedings.

Third, had it been necessary to decide the case on this basis, arguing Article 1(4) now was abusive on **Henderson v Henderson** grounds. Article 1(4) could and should have been argued in the original limitation proceedings.

Chirag Karia KC and Jakob Reckhenrich, instructed by Alex Kemp and Jenny Salmon of HFW LLP, acted for the successful applicant, RTE; John Kimbell KC, instructed by Clyde & Co LLP, acted for the additional defendants; and John Passmore KC and Rob Ward, instructed by Campbell Johnston Clark Limited, acted for Stema UK.



Chirag Karia KC

"Organised, methodical, robust when needed, Chirag is commercially highly astute and legally very impressive." (Legal 500, 2025)

Chirag Karia KC is a leading commercial silk with a broad commercial, international arbitration, energy, insurance, shipping and international trade practice. He appears in the Commercial Court, the Court of Appeal, the UK Supreme Court and international arbitrations. He is listed as a 'Leading Silk' for Shipping and Commodities disputes by Chambers UK, Chambers Global, The Legal 500 UK, The Legal 500 Asia Pacific and Who's Who Legal and for Commercial disputes by Legal 500 EMEA.

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Jakob practises across the whole range of Chambers' core areas, with many of his matters having an international element. Jakob is regularly instructed at all stages of proceedings, providing advice, settling pleadings and appearing at interlocutory hearings and trials, both led and as sole counsel. Jakob is ranked as a "Rising Star" in Commodities by Legal 500.

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