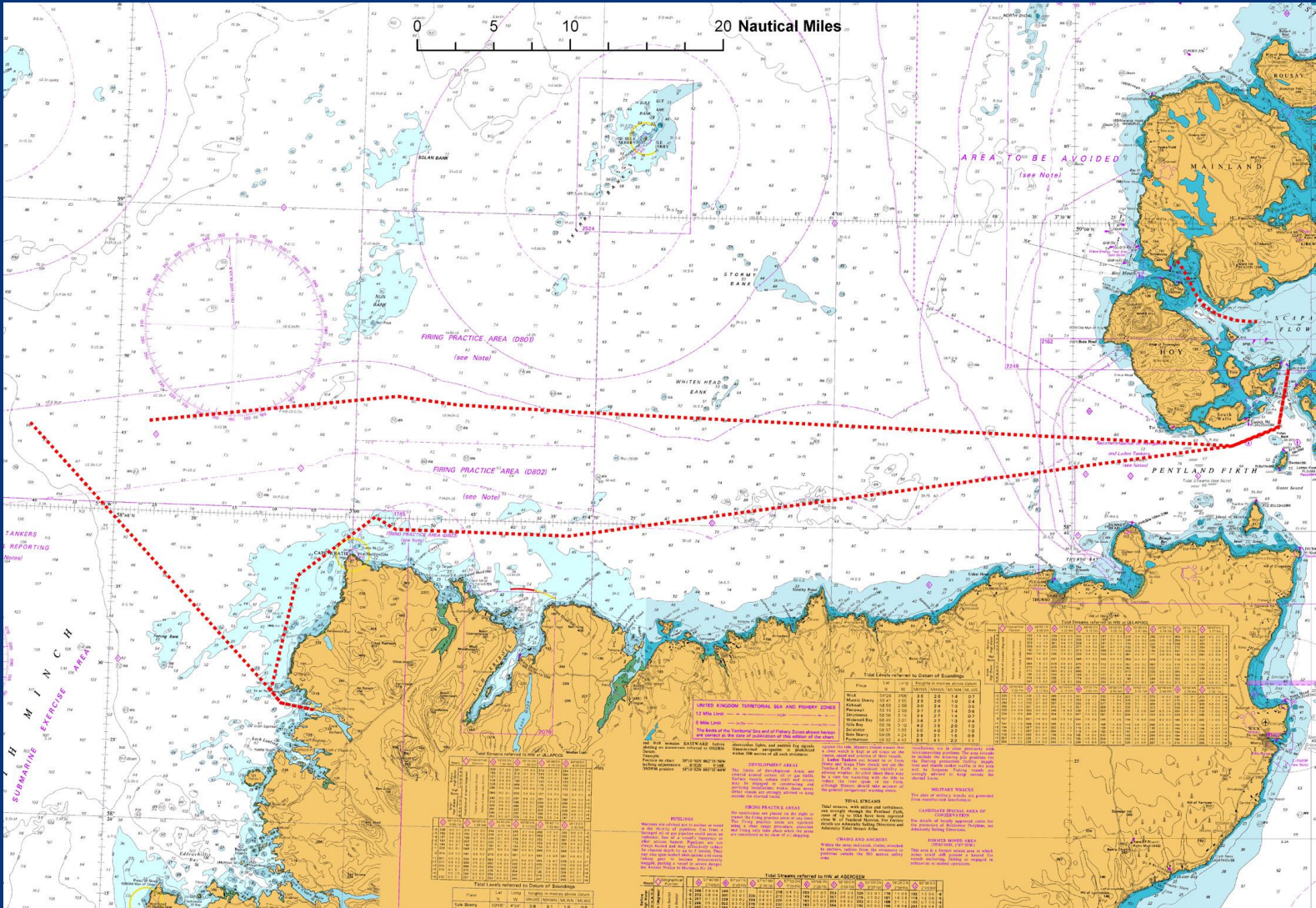




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Sunk below the water-line or salvageable?

Richard Pugh and Kevin Henry,
Advocates





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Key Facts

- MV Jean Elaine chartered from 11-18 August 2012
- Lex Warner died 14 August 2012
- Debbie Warner raises action against Scapa Flow Charters as an individual and as the guardian of Vincent Warner, born November 2011
- Summons signetted 14 May 2015
- In July 2016 the Outer House holds that the claims are time barred under the Athens Convention

Why does the Athens Convention apply?

- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974
- Section 183 of the Merchant Shipping Act 1995
- Application of the Athens Convention extended to contracts for domestic carriage by sea by The Carriage of Passengers and their Luggage by Sea (domestic carriage) Order 1987 (SI 1987/660)

Article 16 of the Athens Convention

- 1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.
- 2. The limitation period shall be calculated as follows:
 - (a) in the case of personal injury, from the date of disembarkation of the passenger;



- (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;
- (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later



- 3. The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later

Too late?

- In response to the plea of timebar, the pursuers argued:
 - i. Debbie Warner's time limit was suspended until the publication of the MAIB report into the cause of the accident; and
 - ii. Vincent Warner's time limit was suspended due to his age.

Too late?

- In the Outer House (2016 SLT 918), both pursuers failed. Held that both claims were timebarred and that suspension did not operate.
- In the Inner House (2017 SC 361), the pursuers had partial success - DW's claim was timebarred, but VW's claim was not. Timebar suspended by nonage.
- From there, appeal to UKSC re: VW. No Cross-appeal re: DW.

What was the point?

- The central argument for the appellant was that “suspension” operates only if the limitation period had begun to run.
- Two planks:
 - i. Court of Appeal in *Higham v Stena Sealink* [1996] 1 *WLR* 1107
 - ii. Suspension has a technical meaning in civil law systems.

What was the point?

- Minority could not suspend – because it is a state that must exist at the time of the accident.
- What s.18 of the Prescription and Limitation (Scotland) Act 1973 does is “postpone” the start date for minors. That is not allowed in terms of the Convention.



Pursuer's Response



Le Code Civil

- . Quick Quiz...

Le Code Civil

- The answer is (unsurprisingly) “Yes”.

- There was an absence of a clear answer, either in the travaux préparatoires or elsewhere. Therefore, forced back on the principles of interpretation of international conventions.
- "Suspension" in its natural meaning can readily cover a postponement of the start of a period.
- No uniformity in the use of "suspension", even within civil law systems. No international consensus for a technical meaning.

UKSC

- The meaning sought would lead to serious anomalies – compare minors born before or after an accident.
- “Suspension” apt to include a deferment.
- *Higham* correctly decided on s.33 of the Limitation Act 1980, but not on other aspects.
- S.18 provides the domestic law’s rules on “suspension and interruption”.

Practice Points

- Beware of the circumstances in which the Convention applies and calculate timebar accordingly. Work to two years, if possible.
- If not possible, then Art 16 provides an escape in certain situations – but they are limited. It will not salvage where relying on lack of knowledge of facts (i.e. s.18(2)(b)). Will not salvage when relying on discretion to extend (i.e. s.19A).
- Could create a distinction between class of pursuer.



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