P O L L U T I O N

LIABILITY & INSURANCE IN THE U.K.

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INTRODUCTION

In this paper pollution has been looked at with insurance in mind. It does not therefore deal with such matters as noise caused by individual motorists or generally non-insurable pollution, whether it be the dropping of a cigarette packet in the street or the appearance of colliery spoil heaps. It is worth noting however that these matters are not ignored in the U.K. and the cigarette packet could attract a fine of £100 and that in 1970 there were 204 convictions of motorists for causing excessive noise.

In the U.K. the principal agency for the control of pollution is the Department of the Environment (which was the first of its kind in the world) although various ministries and authorities also have powers and responsibilities for environmental protection. Vigorous efforts have been made to control and where possible, diminish man-made pollution of all kinds. Tighter controls have been placed on smoke fumes and vibration from motor vehicles. More contaminating processes have been brought under the control of the Clean Air and Alkali Inspectorate. Legislation has been introduced to prevent indiscriminate tipping of toxic wastes and vast resources expanded on cleaning up rivers.

Monitoring of the air, the rivers and coastal waters has been stepped up in order to detect new pollution hazards and there is now a Central Unit on Environmental Pollution as well as an independent Standing Royal Commission on Environmental Pollution.

The U.K. has a long history of measures to combat pollution. The first laws on water quality were passed in 1388 and it is on record that in the 14th Century for burning coal in London and making excessive smoke - a man was executed. In 1863 Parliament passed the first Alkali Works Act to try to remove Blakes "England's dark, satanic mills" and, as the number of birds to be found in London will witness, the Clean Air Acts 1956 to 1968 have finally appeared to control the situation.

LEGAL POSITION

This paper, although dealing with the position in the United Kingdom, refers exclusively to the situation under English Law. The general effect of Scots Law is similar to English Law.

The law relating to pollution comes, as does most English Law, from two sources - Common Law and Statute Law. The Common Law which is developed by the courts through judicial precedent has both criminal offences for punishment and also has recognised individual rights by enforcement on their behalf. It is under this letterhead that recovery for loss and damage by pollution is effected. The second source is Statute Law with innumerable Regulations and Orders made under Statutory Powers. Legislation is now the principal way in which pollution is controlled but in broad terms has hardly effected recovery rights. In this respect Common Law is still the major force. As a simple generalisation, individual recovery rights come from Common Law whilst Statute Law seeks to contain and control pollution.

All of the non-statutory rights come within the Law of Torts, and as the Law has evolved there is no specific branch dealing with pollution. It is arguable whether recovery should be attempted as trespass, negligence, nuisance or under the rule in Rylands v Fletcher.

Whereas negligence appears at first to offer the best remedy it is necessary to fit within certain basic rules which can be summarised as

a) establishing a basic duty to take care

b) showing a breach of that duty

c) establishing that the duty was owed to the injured party

d) showing that damage has been caused.

The law was generally stated in Donoghue v Stevenson (1932) A.C. 562 by Lord Atkin

"In English law there must be, and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are instances. The liability for negligence, whether you style it such or treat it as in other systems as a species of 'culpa', is no doubt based upon a general public sentiment of moral wrong-doing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, 'Who is my neighbour?' receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

An easier and probably better method of recovery and thought by many to be the real law applicable to pollution is what is known as the rule in Rylands and Fletcher. This was established by the House of Lords in Rylands v Fletcher (1868) L.R. 3H.L.330.

"The true role of the law is that the person who for his own purpose brings on his land and collects and keeps there anything likely to do mischief if it escapes must keep it in his peril and if he does not do so he is prima facie answerable for all the damage which is the natural consequence of its escape". (Blackburn J.)

Following this principle it is not difficult for injured parties to sustain a claim for it is not necessary to prove that the damage has resulte from the fault of any person. Effectively the burden of proof is shifted to the polluter making a rebuttable presumption of fault.

There are however problems, for as the law has developed it became necessary for there to be a 'non-natural' use of the land and the meaning of 'non-natural' is uncertain. In Rickards v Lothian (1913) A.C.263 it was held to be 'some special use bringing with it increased dangers to others, and not merely the ordinary use of land or such use as is proper for the general benefit of the community'. In Rouse v Gravelworks (1940) IK.B489 mining was found to be 'natural' and in Read v Lyons (1947) A.C.156 it was doubted whether a munitions factory was 'non-natural' in time of war.

Although there do not appear to be any statistics on the matter, pollution cases seem rarely to come before the courts. As the legal principles involved are the same as would be used for any other category of civil liability case it is necessary to refer to general cases coming before the courts.

It should be remembered that failure to recover under Rylands v Fletche does not mean that an action in negligence would not succeed.

Whereas various statutes affect the law relating to pollution the most important is undoubtedly the Control of Pollution Act 1974. This Act is not yet fully implemented. A recent report has stated "Implementation of parts of the Control of Pollution Act 1974 that would require substantial expenditure have been deferred due to the current economic climate. Provisions in the Act which introduce only discretionary powers or which do not involve significant public expenditure have however been implemented and came into force on 1st January 1976 in England and Wales. This includes some sections of Part 1 (Waste on Land) and Part II (Pollution of Water) and the whole of Parts III (Noise), IV (Pollution of the Atmosphere), V (Supplementary Provisions) and VI (Miscellaneous and General)".

Indicative of the Act is Section 88 (1) "where any damage is caused by poisonous, noxious or polluting waste which has been deposited on land, any person who deposited or caused or permitted it to be deposited in either case so as to commit an offence under Section 3(3) or by virtue of Section 18(2) of this Act is liable for the damage except where the damage : a) was due wholly to the fault of the person who suffered it or b) was suffered by a person who voluntarily accepted the risk therefor."

Many other statutes have an effect on Pollution control, some examples of which are:-

Health & Safety at Work etc. Act 1974

Clean Air Acts 1956 to 1968

Alkali etc. Works Regulations Act 1906

Civil Aviation Act 1949

Crown Proceedings Act 1947 (enabling actions to be brought against the State)

Limitations Acts 1939 and 1975.

In addition, there are numerous Regulations and Orders which are applicable to the subject and many which prohibit or restrict the use of toxic or dangerous materials.

No legislation is currently under consideration which would change the present rules with respect to liability. At present the report of the Pearson Commission on Civil Liability is awaited and it is hoped that this will be published in time for comment to be made in Madrid in 1978.

As liability for pollution is governed by the normal rules of civil liability it is not thought that the compliance with government regulations would automatically provide a good defence, see the case of Goodman v Mayor of Saltash (1882) 7 App.Cas.663 which decided the Crown could not grant a licence which would derogate the rights of citizens of the Realm. Nevertheless, if the action were brought under the head of negligence compliance with recognised standards is a method of rebutting charges of failing to exercise the duty to take care.

INSURANCE

In the United Kingdom there is no standard wording for liability policies, each insurer being free to devise his own wording. The insurance market is split into two: domestic and international, and insurers frequently participate in both. The demarcation line is the location of the risk - at home or overseas.

There is no uniform approach to the pollution problem, although considerable research is taking place, but in the domestic market there has been little call for pollution policies. Insurers often settle pollution claims under their conventional Third Party (Public Liability) policies.

The results of a survey carried out of 17 insurance companies in the U.K. by the Mercantile and General Reinsurance Company indicate the low key approach in the domestic market:

		Yes	No
a)	Does your policy define pollution (Definition taken from Oxford English Dictionary)	1	16
b)	Do you exclude pollution in one form or another from your P.L. policy?	6	11
c)	Do you charge specific or additional rates	Nil	17
d)	Have you had any loss experience in this field?	2*	15 **
e)	Do you usually write P.L. risks which could include a considerable and obvious pollution hazard?	6	11
f)	Is the term 'accident' restricted specifically to pollution?	Nil	17

* Minor claims only. ** Probably many claims are settled without them having been properly classified as pollution claims.

Notwithstanding the above it would appear that at the present time the four areas actually generating a number of claims are:

Fall out from chimneys damaging private cars

Drift from crop spray causing damage to other crops

Seepage of chromic oxide from platers

Water pollution killing fish

Whereas there is no standard wording in the U.K., policies do in general purport to indemnify the insured against legal liability to pay damages (including costs and expenses) in respect of accidental

a) death of or bodily injury to any person (other than employees)

and/
or b) loss of or damage to material property happening in connection with a Business and occurring during any period of insurance.

Although there are a number of statutes which require compulsory insurance in the U.K. there are none of direct relevance to this paper.

As there is no standard policy wording there are no standard exclusion clauses. Nevertheless, the following are not uncommon wordings where there is a recognised pollution risk : "This insurance does not cover any liability for injury, disease, loss or damage caused through pollution unless proved to have been caused by immediate discharge consequent upon an accident", or,

"The Company shall not be liable in respect of Damage caused by seepage or pollution unless due to a sudden unintended and unexpected occurrence".

It will be seen that these two clauses could have entirely different effects. To take a simple example, where waste products are pumped into the public sewers but are diluted with, say, 5,000 gallons of water per hour. If there should be a fire which causes the water supply to fail and untreated waste is discharged the first exclusion clause would mean there would be no cover should there be a pollution claim, whereas the claim would not be excluded by the second clause.

There are however various "standard" exclusion clauses in the Lloyd's Market (that is, clauses approved by the Lloyd's Underwriters' Non-Marine Association, each of which have an N.M.A. number). Two important examples are :

a) N.M.A. 1685

This insurance does not cover any liability for :

(1) Personal injury or Bodily injury or loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination, provided always that this Paragraph

(i) shall not apply to liability for Personal injury or Bodily injury or loss of or physical damage to or destruction of tangible property, or loss of use of such property damaged or destroyed, where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the period of this insurance.

(2) The cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the period of this insurance.

(3) Fines, penalties, punitive or exemplary damages.

This clause shall not extend this insurance to cover any liability which would not have been covered under this insurance had this clause not been attached.

b) N.M.A. 1686.

This insurance does not cover any liability for :

(1) Personal injury or Bodily injury or loss of, damage to or loss of use of property directly or indirectly caused by seepage, pollution or contamination.

(2) The cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances.

(3) Fines, penalties, punitive or exemplary damages.

There are no statutes which require potential polluters to participate in a State Fund for payment of future damages.

There is no lack of capacity in the U.K. market for liability cover which includes incidental pollution risks. Furthermore, there is no evidence of a lack of capacity for pollution risks per se. It is worth noting that pollution risks would normally be written in conjunction with general liability cover.

In the light of changing public opinion and the catastrophic potential of pollution hazards it is probable that insurers will seek to safeguard themselves against claims, the scope of which may be unpredictable and difficult to limit. There is a growing awareness of the breadth of cover which has been traditionally granted and this is being reflected in underwriting.

Although only in the embryonic stage, there is a new market developing for "Environmental Impairment Liability". An integral part of this new approach is a technical and advisory service with full inspection facilities. This involves considerable expense for insurers. Before it is possible to quote for a risk a full report is required following an inspection and the potential insured is required to pay for its preparation.

MARINE AND INTERNATIONAL TREATIES

The major international organisations in the field of Pollution control measures with which the United Kingdom is involved The European Economic Communities (EEC), The Organisation for Economic Co-Operation and Development (OECD), The United Nations Environment Programme (UNEP), NATO Committee on the Challenge of Modern Society and the United Nations Economic Commission for Europe.

Following the signature of the treaty whereby the United Kingdom acceded to the European Communities, the European Communities Act 1972 has made it possible for legislation passed by the EEC to have a direct influence

on English law, which is of course not the case in respect of the proposals made by any of the other international bodies mentioned in the previous paragraph. The Council of Ministers in 1973 approved a Programme of Action of the European Communities on the Environment, as a consequence of which three meetings of Councils of Environment Ministers have been held to date in November, 1974, in October and December, 1975 and a number of proposals have been adopted including the acceptance by the Community of the "Polluter Pays" principle, a resolution on energy and the environment and decisions enabling the members of the Community to sign the Paris Convention on the Prevention of Marine Pollution from Land-Based Sources. Also, a dozen or so directives, recommendations and decisions have been made on such subjects as the Approximation of the Laws of Member States concerning detergents, cost allocation and action by public authorities or environmental matters, the quality of drinking water, the disposal of waste oils and the sulphur content of liquid fuels. The necessary legislation has to be enacted in the United Kingdom to implement any of the measures that have resulted from the EEC's programme and so, therefore, for the moment, they are not part of English law but may in the future have a considerable effect.

The United Kingdom being surrounded by water; it would seem that the most likely circumstances in which international aspects of pollution would arise is in the field of marine pollution and many conventions have been entered into by various countries in this field. Among the conventions which have been ratified by the United Kingdom are the following:-

1954 International Convention for the Prevention of Pollution of the Sea by Oil.

1958 Geneva Convention on the High Seas.

1958 Geneva Convention on the Continental Shelf.

1969 International Convention relating to intervention on the High Seas and Cases of Oil Pollution Casualties.

1969 International Convention on Civil Liabilities for Oil Pollution Damage.

1971 International Convention on The Establishment of an International Fund for Compensation for Oil Pollution Damage.

1972 Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft.

1972 London Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter.

A further Convention is the 1973 International Convention for the Prevention of Pollution from Ships and this may supersede much of the treaty law contained in the aforementioned Conventions. This Convention deals with the prevention of pollution from ships by oil and also by dangerous chemicals, sewage and garbage but although this Convention has been signed by the United Kingdom, it has not been ratified and is not yet in force and before this could take place it would be necessary for amending legislation to be passed.

The Prevention of Oil Pollution Act 1971 and the Dumping at Sea Act 1974 create criminal sanctions whereas the Merchant Shipping (Oil Pollution) Act 1971 was enacted in order to allow the United Kingdom to ratify the 1969 Convention on Civil Liability for Oil Pollution Damage and Part 1 of the Merchant Shipping Act 1974 implements the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage and Part 2 of that Act implements the 1971 amendment to the 1954 International Convention for the Prevention of Pollution of the Sea by Oil in connection with the arrangement and size of tanks and tankers. As the Prevention of Oil Pollution Act 1971 and the Dumping at Sea Act 1974 are both solely concerned with public law matters and criminal sanctions, it is not necessary for them to be considered further here, whereas, the provisions of the other two statutes have important implications in the field of insurance.

As mentioned before, the Merchant Shipping (Oil Pollution) Act 1971 was enacted in order to allow the United Kingdom to ratify the 1969 Convention on Civil Liability for Oil Pollution Damage (the Civil Liability Convention) which Convention was the direct result of the Torrey Canyon disaster and the difficulty that arose thereafter concerning the incidence of civil liability for the cleaning up operation, the measure of damages applicable and the question of jurisdiction. The Act provides that whereas as a result of any occurrence taking place while a ship, not being a warship or other ship being used by the Government of any State for other than commercial purposes, is carrying a cargo of persistent oil in bulk, (which is defined in the Oil Pollution (Compulsory Insurance) Regulations 1975 s.1 no. 869) any persistent oil carried by the ship is discharged or escapes from it the owner (meaning in relation to a registered ship, the person registered as such or in relation to a ship owned by a state which is operated by a person registered as the ship's owner, the person) is liable except as mentioned below, for any damage caused in the area of the United Kingdom by contamination resulting from the discharge or escape. The Owner is also liable for the cost of any measures, reasonably taken after the discharge or escape for the purpose of preventing or reducing any such damage and any person who incurs a liability in the U.K. as set out above is also liable in the U.K. courts for any damage caused or costs incurred in the area of any other convention country but otherwise a court in the United Kingdom will not entertain an action to enforce a claim under this Act occurring in the area of another convention country where there has been no damage or cost incurred in the area of the United Kingdom. There are also provisions to deal with the situation where the discharge or escape occurs from two or more ships and the owner of each of them incurs a liability. Where the damage suffered or cost incurred is partly due to the fault of a claimant the provisions of the Law Reform (Contributory Negligence) Act 1945 concerning contributory negligence apply with the addition that if the person who is

liable under the Merchant Shipping (Oil Pollution) Act was not at fault the Law Reform (Contributory Negligence) Act 1945 is applied as if he had been at fault. The Foreign Judgment (Reciprocal Enforcement) Act 1933, Part 1 applies to any judgment given by a court in a Convention country in respect of a claim under a provision corresponding to this Act and for the purpose of proceedings brought in a court in the United Kingdom to enforce a claim in respect of liability incurred under this Act, every state which is a party to the Convention is deemed to have submitted to the jurisdiction of the United Kingdom courts.

The owner is not liable in cases of acts of war, those acts of God which are exceptional, inevitable and irresistible natural phenomenon or if the discharge or escape was due wholly to anything done or left undone by any other person with intent to do damage or to the negligence or wrongful act of government or other authority in exercising its responsibilities of maintaining lights or other navigational aids. Other sections of the Act provide that where persistent oil is discharged or escapes in the circumstances mentioned before then whether or not the owner actually incurs any liability under the provisions of this Act he is not liable otherwise for any damage or costs incurred and furthermore, that no servant or agent of his or any person performing salvage operations with his agreement is liable. The Act also deals with the situation where there is a discharge or an escape of persistent oil in circumstances where there is no liability under section 1 of the Act which would, for instance, be the case where the ship is not carrying cargo of persistent oil but fuel oil is discharged or escapes from its bunkers. In this circumstance a person who takes preventive measures to prevent or reduce the damage whether to protect his own interest or in the performance of a duty may recover the cost of doing so from the tortfeasor.

There are also provisions in the Act which may enable the owner of a ship who incurs a liability by reason of a discharge or escape to apply to the court to limit his liability to an amount not exceeding 2,000 Gold Francs for each ton of the ship's tonnage or where the tonnage would result in a greater amount 210 million Gold Francs. The owner is only enabled to apply to the court to limit his liability if the discharge or escape occurred without his, in the words of the Act, 'actual fault or privity'.

Of particular interest in the field of insurance is the provision in the Act for compulsory insurance against liability for pollution which provides that a ship may not enter or leave a port in the United Kingdom, a terminal in the territorial sea of the United Kingdom or in the case of a British ship a foreign port or terminal unless there is in force an insurance certificate complying with the requirements of the Convention. There is also a provision in the Act enabling a third party to have direct rights of action against the insurer. In such a case the insurer may limit his liability in respect of claims made against him in the same manner and to the same extent as the owner, but in addition the insurer may do so whether or not the discharge of escape occurred without the owners actual fault or privity. The insurer may also plead defences available to the owner under the Act but may not plead defences available only in his capacity as an Insurer, e.g. misrepresentation except for the defence that the damage was caused by the wilful misconduct of the owner himself.

When the Merchant Shipping (Oil Pollution) Act 1971 enacting in English law the Civil Liability Convention does not apply, recompense may be obtained in some cases through a voluntary scheme known as the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP). TOVALOP came into force in October 1969 and provides that when through negligence of a tanker owner oil is discharged from a tanker and pollutes or threatens to pollute coastlines the owner must take reasonable steps to prevent and clean up such pollution. The owner is also required to reimburse governments concerned (including local authorities) for the cost of any clean up operations up to a maximum of $100 per gross registered ton of the tanker concerned of $10 million whichever is the less. This plan was established by the main oil tanker owners and gives cover to governments as well as its own subscribers which can be obtained through one of the P & I Clubs or the club attached to the TOVALOP plan called International Tankers Indemnity Association.

A further voluntary scheme was established in 1971 which supplements both TOVALOP and the Civil Liability Convention and provides compensation for situations where there is ship owners exemption or the compensation is insufficient. This scheme is known as the Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution (CRISTAL). The maximum compensation available per incident is $30 million. The Merchant Shipping Act 1974 was passed in part to enable the United Kingdom to adopt and ratify the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971. This Convention is not yet in force but once it comes into force, it will replace the voluntary CRISTAL scheme. The provisions of the Merchant Shipping Act 1974 will be discussed later.

As regards pollution from offshore operations, the British Off Shore Oil industry has devised a voluntary Off Shore Pollution Liability agreement as an interim measure (OPAL). This came into force on 1st May, 1975 and provides up to $25 million per incident to compensate for oil pollution damage caused by the operations of members of the agreement other than the movement of tankers. The scheme is similar in concept and effect to TOVALOP and CRISTAL and has since been extended to any operators from Denmark, The Federal Republic of Germany, France, Ireland, The Netherlands and Norway who may wish to join. In December, 1976 a Convention was adopted by the countries bordering the North Sea under which the liability aspect of oil pollution damage from off-shore operations would be limited to a maximum of $35 million rising over a period of 5 years to $45 million, but as yet this Convention has not been ratified by the United Kingdom.

The Merchant Shipping Act, 1974, as mentioned before, contains provisions in Parts 1 and 2 about Oil Pollution from ships and has enabled the United Kingdom to ratify the International Compensation Fund Convention. However, no regulations have yet been made bringing into operation the various sections of the Act. The principle of the Act and the Convention is to establish a Fund financed by levies imposed on persons who import or receive oil in contracting states. The Merchant Shipping Act 1974 provides for the payment of contributions to the fund by all persons who import or receive oil in excess of 150,000 metric tons per year to the United Kingdom. The Act provides that the fund is liable to compensate a person for oil pollution

damage in the United Kingdom if he has been unable to obtain full compensation under the provisions of the Merchant Shipping (Oil Pollution) Act 1971 which might occur because of exception from liability or because the owner or guarantor cannot meet his liability in full or because the damage exceeds the limits of liability imposed by the Act. No obligation is incurred by the fund if it is proved that the damage resulted from war, oil discharged from a warship or non-commercial government service or if the claimant cannot prove the damage resulted from an occurrence involving a ship identified by him. The fund may be exonerated from its obligations if the pollution damage was caused by the negligence of the person who suffered the damage or by his act or omission with the intent to cause damage and furthermore, the fund's liability is limited to 450 million Francs. Also, in some cases, the ship owner is entitled to an indemnity from the fund in respect of his liability under the Merchant Shipping (Oil Pollution) Act 1971, namely, that the fund will indemnify the owner of the ship and his guarantor for the amount of the liability incurred by a ship registered in a Fund Convention country for that portion of the aggregate amount which is between 1,500 Francs to 2,000 Francs for each ton of the ship's tonnage or 125 million Francs to 210 million Francs whichever is the less. However, no obligation to indemnify is incurred by the fund for pollution damage caused by the wilful misconduct of the owner of the non-compliance of the ship with prescribed requirements. The Act also enables the Secretary of State to make regulations about the design and construction of British oil tankers and about the admission of foreign tankers to British ports. No such regulations have yet been made but British ship owners are voluntarily constructing oil tankers to the standards specified in the 1971 Amendment to the 1954 International Convention for the Prevention of Pollution of the Sea by Oil.

Mention should also be made of the EEC draft directive being a proposal for council directive relating to the approximation of the laws, regulations and administrative provisions of the member states concerning liability for defective products which was presented by the Commission to the Council of 9th September, 1976 and also to the European Convention on Products Liability in regard to personal injuries and death which was adopted by the Committee of Ministers of the Council of Europe, at Strasbourg at the session of 20th to 29th September, 1976. The Strasbourg Convention is only concerned with compensation for death or personal injuries whilst the EEC proposed directive besides covering death or personal injuries also covers damage to or destruction of any item of property but only if it is not the defective article itself and also if the item of property is not of a type not ordinarily acquired for private use or consumption or was acquired or used by the claimant for the purpose of his trade, business or profession. The total liability of the producer under the EEC Draft Directive for all personal injuries caused by identical articles having the same defect is limited to 25 million European Units of account and the liability of the producer in the case of damage to movable property is limited to 15,000 European units of account and in the case of immovable property, 50,000 European units of account.

CONFLICT OF LAWS

The question of jurisdiction and recognition of foreign judgments in respect of proceedings brought under the Merchant Shipping (Oil Pollution) Act 1971 have already been mentioned above and proceedings under that Act may only be brought in accordance with the jurisdiction rules adopted by the English courts. Otherwise, it would not seem that the conflict of laws questions in respect of an action brought in respect of pollution damage will be any different from the usual English rules in respect of tort actions generally.

Basically, the jurisdiction of the English High Court in actions in personam is dependent upon the ability of a writ to be legally served on the defendant. Thus, any person who is in England and served there with the writ is subject to the in personam jurisdiction of the court but the application of this principle differs according to whether the defendant is an individual, a firm or a corporation. An individual who is present in England is liable to be served during that time with a writ in an action in personam. As regards a partnership firm, individual partners present in England can be served and service can also be affected upon the place of business of the partnership if it carries on business within the jurisdiction and as regards a corporation, this is regarded as being "present" in England if it is registered here or carries on a business in England. There are many cases as to what constitutes carrying on business within the jurisdiction.

Besides the above, the English courts will have jurisdiction where the defendant submits to it and also under the extended jurisdiction granted to the court under Order 11 of the Rules of the Supreme Court. In the latter case, unlike the first two, the jurisdiction of the court is discretionary and will only be exercised in a proper case and if the matter falls within one of the sub-heads contained in Order 11. For the purposes of this study the relevant heads seem to be:-

Order 11 (1) (g) If the action begun by the writ is founded on a tort committed within the jurisdiction

Order 11(1) (n) If the action is under the provisions of the Merchant Shipping (Oil Pollution) Act 1971.

The latter provisions have been dealt with fairly fully in Section A. above but as regards the former sub-head difficulties can arise in considering where a tort has been committed and there are not many decided cases on this point. A leading case is that of Munro (George) Limited v American Cyanami de Corporation 1944 KB 432 which suggests that the tort of negligence occurs where the act is done and not where the harm is suffered, although to give an indication of the unclear present position in the later case of Distillers Co. (Bio-Chemicals) Ltd. v Thompson 1971 IAER 694, the Privy Council hearing an appeal from the Court of Appeal of New South Wales held that in that case the negligence was the failure to give warning in New South Wales that the drug could be dangerous and therefore the N.S.W. courts had jurisdiction.

Quite apart from the question of jurisdiction, the English courts will only hear an action in respect of a tort committed abroad if the conduct complained of is actionable as a tort under English Domestic Law and also the act must not have been justifiable by the law of the place where it was done. Under the second head, it is not necessary that the defendant's liability is one in tort but it is sufficient if it is contractual, quasi-contractual, quasi-delictual, proprietary etc. In general the English

courts will apply the law of the lex loci delicti but in exceptional cases it will consider that the proper law of the tort is the more appropriate.

The Admiralty Jurisdiction of the High Court both in personam and in rem may be particularly applicable in cases of pollution and the provisions as regards jurisdiction are contained in the Administration of Justice Act 1956 under which there is jurisdiction in respect of any claim for damages done by a ship. This jurisdiction may be invoked by action in personam when the principles outlined before would apply, or in certain cases in rem as set out in section 3 of the Act. For actions in rem the ship must, of course, be in England at the time when the writ is served and the court has jurisdiction in rem where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer in possession or in control of the ship and is at the time when the action is brought the beneficial owner of the ship. For this purpose in determining whether a person would be liable on a claim in an action in personam it is assumed that he has his habitual residence or place of business within England and Wales. In addition, under s.3(4) of the Act which was passed to implement the Brussels Convention of 1952 on the Arrest of Seagoing Ships in these circumstances an action in rem may also be brought against a sister ship owned at the time when the action is brought by the person who at the time when the cause of action arose, would have been liable on the claim in an action in personam. As regards the sister ship, it need not have been owned at the time when the cause of action arose.

Within the context of the EEC, mention should be made of the 1968 Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments. The United Kingdom is not yet a party to this Convention and negotiations are at present going on between the six signatories to the Convention and the three new members of the Community in connection with the proposed new text. Once this has been agreed, U.K. law will have to be adapted to comply with it and it is likely that this will take place probably by the end of 1979. The general rule is that, subject to the provisions of the Convention, persons domiciled in a contracting state shall, whatever their nationality, be sued in the courts of that state and they may only be sued in the court of another contracting state in accordance with rules set out in the Convention, except that in the case of a defendant who is not domiciled in a contracting state, the jurisdiction of the courts of each contracting state shall be determined by the law of that state. The Convention specifically provides that in matters relating to tort the court of the contracting state in the place where the harmful event occurred also has jurisdiction.

There are special provisions in respect of jurisdiction in matters relating to insurance which are still the subject of negotiation on the part of the United Kingdom. It seems that the present agreed position is that the Convention will provide that an insurer domiciled in a contracting state may be sued in the courts of the state where he is domiciled or in another contracting state in the court of the place where the policyholder is domiciled, or if he is a co-insurer in the court of a contracting state in which proceedings are brought against the leading insurer. Additionally, in respect of liability insurance the insurer may be sued in the court of the place

where the harmful event occurred and also in respect of liability insurance the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured. There are also provisions in the Convention restricting circumstances in which the parties may agree to a court having jurisdiction other than that specified in the Convention, but it is likely that these rules will not apply to MAT business and in any event, the Convention does not apply to arbitrations.

INSURANCE AND STATE FUNDS OVERSEAS

There would not appear to be any state funds in existence in the United Kingdom in respect of liability for pollution and therefore the question of any application outside the country does not arise.

As regards the application of insurance contracts outside the country, this is purely a contractual matter depending upon the scope of the coverage granted in the insurance contract and subject to this there are no reasons why insurance contracts granted by British companies should not be so applicable. In particular, there are no exchange control restrictions upon non-life insurance covering pollution risks and U.K. banks are authorised by the Bank of England to approve all payments in respect of claims due under policies of direct insurance.

WORLD COURTS

The jurisdiction of the International Court would seem to be restricted to disputes between States and the questions regarding the jurisdiction of this court would not seem to be relevant in consideration of the legal framework of the recovery of damages from a polluter and insurance. The Conventions to which the United Kingdom is a party in the field of pollution have been set out in part A above but the United Kingdom would not appear to be a party to any other international or supranational tribunal.