

CSL AUSTRALIA PTY LTD v FORMOSA: JURISDICTION AND DUTY OF CARE

Ian Maitland*

The case of *Formosa v CSL Australia Pty Ltd and Anor* was commenced in the New South Wales District Court and was heard by Delaney DCJ of that Court. CSL appealed and the matter was heard by the New South Wales Court of Appeal comprising Allsop P, Bastin JA and Handley AJA.

The case raises, inter alia, the following issues:

- 1 What jurisdiction is exercised by the Court for personal injuries which occur on a vessel?
- 2 The duty of care to be exercised by employers/occupiers when the workplace is a vessel?

Facts

The facts of this case are succinctly set out in the Court of Appeal's Judgment and I therefore quote those facts:

The Respondent (Formosa) was an experienced stevedore who was employed by Port Kembla Coal Terminal Ltd ('PKCTL'). Formosa was working as 'Foreman Supervisor' at the relevant time. Formosa was working on the ship *MV Iron Chieftain* ('the ship') which was owned by the First Appellant CSL Australia Pty Ltd ('CSL') and operated by Incoships Pty Ltd ('Inco'). Formosa was responsible for directing and supervising the loading of the ship with coal at the Bluescope Steel Coat Berth at Port Kembla. Formosa suffered a not insignificant injury to his knee upon slipping on iron ore slurry which was composed of fine iron ore dust and water, when walking on the deck of the ship to check the loading of coal in one of the ship's hatches. The presence of the iron ore dust was a result of the iron ore fines that had been loaded from the ship at a berth at Port Kembla prior to its arrival at the coal berth.

Claim

Formosa brought a claim against CSL and Inco in their respective capacities as owner and operator of the ship and also against PKCTL as his employer. The claim against CSL and Inco was brought in negligence, ie the claim was against CSL and Inco as occupiers of the ship. The claim against PKCTL was based upon the concept that an employer has a non-delegable duty to provide a safe system of work and a safe place of work for its employees.

Judgments

The primary Judge apportioned liability 60% against CSL and Inco but reduced that by 15% for contribution by Formosa. In addition he found 40% contribution from PKCTL. I am not familiar with the New South Wales legislation and the reason why there was an award of 60% which was then reduced by 15%. However, I assume that the net result is that the finding is 45% CSL/Incoships, 40% PKCTL and 15% Formosa.

The Court of Appeal heard the matter and did not alter the apportionment set out above. However, the Court of Appeal did deal with the two issues which I have referred to above, namely jurisdiction and duty of care.

Jurisdiction

As a starting point I quote from paragraph 22 of the judgment of the Court of Appeal:

* Partner, Wallmans Lawyers, Adelaide. This is an edited version of my address to the 39th Maritime Law Association of Australia and New Zealand Annual Conference held in Brisbane in September 2012.

The written submissions of the parties filed before the hearing of the appeal, like the arguments at the trial and the Primary Judge's Reasons, paid no attention to a fundamental question necessary to be considered in every case: the identification of the character of the jurisdiction being exercised by the Court — whether State or Federal. The importance of this early enquiry in every case is that the answer to it may affect the law applicable to the controversy.

This comment arises because the issue of jurisdiction was not raised during the primary hearing and, as I understand it, was only raised when the Court of Appeal requested that the respective counsel deal with it on appeal.

The Court of Appeal found that the Court was exercising Federal jurisdiction for two reasons:

- The facts as pleaded made the claim a general maritime claim under Section 4(3)(c) or (d) of the *Admiralty Act 1988* (Cth); and
- Relevant to the ascertainment of the rights and responsibilities of the parties to the controversy was the meaning and effect of Section 9 of Part 32 of *Marine Orders 1997* (Cth) dealing with cargo handling equipment promulgated by the Commonwealth under Section 425 of the *Navigation Act 1912* (Cth).

Their Honours also make reference in the judgment as to the effect of this finding, ie that the Court is exercising Federal jurisdiction, on the applicability of State Acts — in this particular case the *Civil Liability Act* and the *Worker's Compensation Act* of New South Wales. The view of the Court was that whether they operated or not depended upon Sections 79 and 80 of the *Judiciary Act*.

On my reading of the decision, this question is not specifically answered but the Court of Appeal found that the *Maritime Occupational Health and Safety Act* (Cth) ('*MOH&S Act*') applied and much of the judgment deals with the various provisions of that Act. Thus, it seems to me that the Court of Appeal found that, because the Court was exercising Federal jurisdiction, the duties and obligations of the parties were governed by the *MOH&S Act* rather than the State Act of New South Wales.

Section 11 of the *MOH&S Act* sets out the duties of operators in relation to employees. Sections 13 and 14 set out duties of operators in relation to contractors/third parties. Thus Section 11 is relevant to considering the obligations of PKCTL and Sections 13 and 14 in relation to the obligations of CSL and Inco.

Having dealt with the *MOH&S Act* the Court then turned its consideration to *Marine Orders* under the *Navigation Act*.

In paragraph 64 of the judgment the Court stated as follows:

In recognising the nature and content (including the scope) of the duty of care of the Owner and operator of a working commercial ship one needs to recognise that Maritime Law has its own marine (as opposed to terrene) routes. This is not to view Maritime Law as a wholly self-contained and isolated strand of law from the common law, but rather to recognise the realities of maritime activities and commerce as influencing the content of the law as it applies to maritime subjects and the distinctive character of Maritime Law

In paragraph 65 the Court stated:

Here, what is to be recognised is that a working commercial ship such as *Iron Chieftain* is not merely an inanimate structure. As Black CJ, Emmett J and Allsop J said in *ASP Ship Management*, in the context of a discussion of the notion of the operation of a ship, a ship is a chattel, but is not an ordinary chattel. It is a working technical and commercial enterprise which is engaged in activity that has inherent danger to those on board, to the environment and her surroundings. It is comprised of various interconnected bodies of

machinery, operated by different people, some crew and some from on-shore when berthed. Safety, both for those working on board and others (along with the welfare of the environment) is a constant and underlying maritime theme and in consideration epitomised by modern standards such as the International Safety Management ('ISM') Code (annexed to the International Maritime Organisation Assembly Resolution A.741(18) 4 November 1993).

Thus it seems that the Court of Appeal took the view that a ship is somewhat unique and therefore, as a workplace, may be different to other workplaces, particularly workplaces on shore.

The Court then dealt with Part 32 of the *Marine Orders* and in particular Section 9 which deals with the 'person in charge' and Section 10 which deals with loading and unloading. This particular *Marine Order* sets out a structure of the requirements relating to safety in respect of cargo operations.

Having considered the *MOH&S Act* and the *Marine Orders*, the Court of Appeal concluded as follows:

If the general law, informed to any relevant extent by the *MOH&S Act*, imposed on the Shipowner and Operator a duty to exercise reasonable care to provide stevedores a safe workplace upon which to conduct their work on board for the benefit of the Shipowner or Operator, we do not see how delegated legislation imposing conformable and not inconsistent obligations on another person (here one of the stevedores) dissolves or makes otiose that duty of the Shipowner and Operator. It does not lead to incoherence or disconformity that a Shipowner or Operator who has failed to exercise reasonable care in relation to the safety of those who come on board to work should be liable to such person even if there is another person (even as here, the injured person) who has, by delegated legislation, been given responsibilities for safety in the relevant operation and who should have recognised the lack of safety involved in the operation.

I understand this to be a statement indicating that what may have been understood as an exclusive duty imposed upon an employer which is non-delegable is, in fact, not exclusive. In other words, a duty is imposed upon third parties, in this case CSL and Inco, which runs side by side with the employer's non-delegable duty of care.

It is my understanding that CSL's argument was that, because the stevedore company effectively took over control of the ship for the purpose of loading the cargo, this imposed upon PKCTL a non-delegable duty to ensure the safety of its employees and thereby excluded any liability to the shipowner/operator. The Court of Appeal rejected that proposition.

The Court of Appeal concluded that the Primary Judge's conclusion on the breach of duty by the various parties was correct and did not upset the apportionment.

Effect of the Decision

In my view, the first relevant effect of this decision is that, in every case where an individual is injured on board a vessel, no matter its size, the Court hearing the claim will be exercising Federal jurisdiction. This will include fishermen. In this regard I indicate that I was involved in the case of *Victorian WorkCover Authority v J Sarunic & Sons Pty Ltd*¹ which was heard in the Supreme Court in Victoria and this issue of jurisdiction came up during submissions. Rather than set out in the text the relevant submissions on this point, I add as an Appendix to this paper the submissions prepared by counsel, Matthew Harvey, which in my view clearly sets out the position where a fisherman is involved.

The critical distinction between this type of case and the *Formosa* case is the fact that fishing vessels are expressly excluded from the *Navigation Act*. Therefore, as Matthew concludes, neither the *MOH&S Act* nor the *Navigation Act* (or *Marine Orders*) are relevant. However, I think it is clear that in every case involving an injured fisherman, the Court will be exercising Federal jurisdiction.

¹ [2011] VSC 562.

In addition, however, the *Formosa* decision is relevant as to the question of the non-delegable duty of an employer. Does this mean that, if a crew member of a fishing boat is on the wharf loading the catch into a truck and is injured, the legal position is different in those circumstances to a situation where he is injured on board the vessel?

Issues for Discussion

- 1 Is a vessel unique or is this decision relevant to injuries which occur on premises onshore?
- 2 How significant were the facts of the *Formosa* case in determining the liability of CSL and Inco?

Land-Based Premises

In the decision of the Court of Appeal, it is apparent that the Court took the view that, because of the *MOH&S Act*, and because of the fact that 'Maritime Law has its own marine (as opposed to terrene) routes ...', to recognise the realities of maritime activities and commerce as influencing the content of the law as it applies to maritime subjects and the distinctive character of Maritime Law', a ship is different to land-based premises.

In my view this is perhaps a novel concept and seems to lead to the conclusion that as a result of that an employer's non-delegable duty is not absolute or at least is a shared responsibility.

Individual Facts

I pose the following question for consideration. What if Mr Formosa had slipped on a wet deck? In particular, during the course of the loading operation rain was experienced, there was no puddle or any such collection of water apparent, but the deck was just slippery from rain. In that case, it is hard to see how it could be suggested that the shipowner/operator could have removed the wetness, ie the danger. On my reading of the judgment the owner/operator would not be liable because in paragraph 101 of the judgment, the Court of Appeal stated:

Furthermore, it was not the risk of slipping on the slurry that the Respondent needed warning against. Rather, the breach of duty was the failure to take reasonable steps to remove the danger and provide a reasonably safe access to the holds or to advise of a safer way of getting to the forward holds that was known to the Appellants.

Example

I was recently involved in a case involving an injury to a stevedore on board a ship whilst in port. In this case the plaintiff indicated that he fell whilst in the process of fastening containers on a container ship. However, his evidence was very vague as to how he fell. He gave a variety of explanations to both treating and medico-legal doctors and the description in the statement of claim was vague. The matter was settled and therefore the issue of liability was never determined. However, this was a case where the *Formosa* decision might be distinguished. In my view, if my case had gone to trial, the Judge would have been left with no direct evidence as to what caused the fall of the stevedore and definitely no direct evidence that there was anything on the deck which was inherently dangerous.

Thus, apart from that fact, the facts of my case were very similar to that of *Formosa*, although the injured worker was not the foreman, but was merely one of the stevedores working on the vessel. As was the case in *Formosa*, the stevedore company were in control of the process of loading and unloading and therefore quite clearly the employer had a non-delegable duty to provide a safe system of work and a safe place of work for his employee.

If I now add a further issue, namely a suggestion that the lighting at the time was poor, it being the case that the loading was taking place at night. This raises the issue of whose obligation it is to ensure proper lighting? In my

view this is a vexed question. Lighting is provided from both shore and the vessel. If the stevedore was working on the side of the vessel away from the wharf then shore lighting is unlikely to have been effective. Therefore, one must look to the ship to provide lighting. Thus, prima facie, the ship has failed in its duty to provide proper lighting.

However, if we go back to the proposition that an employer has a non-delegable duty towards its employee then arguably it is the obligation of the stevedore company, probably through the foreman, to ensure that proper lighting is provided, whether that be by obtaining lighting from shore or ensuring that the ship provided proper lighting.

The obvious question which is raised by this is, should a shipowner be held liable because lighting is inadequate but in circumstances where it has not been asked to provide any lighting, bearing in mind that the stevedore company has full control of the process on the ship?

Taking the test from *Formosa*, those arguing that the ship was liable would allege that the shipowner did not take reasonable steps to remove the danger, ie to provide adequate lighting. However, is that fair if no member of the crew was present in the location and was therefore unaware that there was inadequate lighting and secondly, no request was made to the crew to provide lighting?

Appendix 1

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE COMMON LAW DIVISION

BETWEEN:

VICTORIAN WORKCOVER AUTHORITY

Plaintiff

and

J SARUNIC & SONS PTY LTD (ACN 065 400 517)

Defendant

DEFENDANT'S WRITTEN SUBMISSIONS ON JURISDICTION AND MARITIME LAW

Introduction

1 On 26 October 2010 his Honour asked a number of questions arising out of *CSL Australia Pty Ltd v Formosa* (2009) 261 ALR 441 (*CSL case*). Those questions are:

- (a) is the Court exercising federal or state jurisdiction in determining this proceeding;¹
- (b) if the Court is exercising federal jurisdiction, what significance does any federal legislation have in this proceeding;²
- (c) if the Court is exercising federal jurisdiction, what effect does this have on state law;³
- (d) what effect does the *CSL case* have on the duty of care alleged to arise in this proceeding;⁴

¹ T:384:23-25.

² T:387:21-388:3; T:391:3-14.

³ T:396:18-397:8.

- (e) does a shipowner owe a non-delegable duty of care?⁵

The Proceeding

- 2 The claim is essentially for indemnity under the *Accident Compensation Act 1985* (Vic). It arises out of the personal injuries of a Mr Stretton while he was employed by McHugh Investments Pty Ltd on a fishing trawler, the *Christina S* (Vessel). The defendant was the owner of the Vessel at all relevant times.

Federal or State Jurisdiction

- 3 Sections 76 (ii) and (iii) of the *Constitution of the Commonwealth of Australia* provide:

The Parliament may make laws conferring original jurisdiction on the High Court in any matter: ...

- (ii) arising under any laws made by the Parliament;
- (iii) of Admiralty and maritime jurisdiction; ...

- 4 Section 4 of the *Admiralty Act 1988* (Cth) relevantly provides:

- (1) A reference in this Act to a maritime claim is a reference to a proprietary maritime claim or a general maritime claim. ...

- (3) A reference in this Act to a general maritime claim is a reference to: ...

- (c) a claim for loss of life, or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship;

- (d) a claim (including a claim for loss of life or personal injury) arising out of an act or omission of:

- (i) the owner or charterer of a ship;
- (ii) a person in possession or control of a ship; or
- (iii) a person for whose wrongful acts or omissions the owner, charterer or person in possession or control of a ship is liable;

being an act or omission in the navigation or management of the ship, including an act or omission in connection with:

- (iv) the loading of goods on to, or the unloading of goods from, the ship;
- (v) the embarkation of persons on to, or the disembarkation of persons from, the ship;
- (vi) the carriage of goods or persons on the ship; ...

- 5 Section 5(1) of the *Admiralty Act* provides:

Subject to the succeeding provisions of this section, this Act applies in relation to:

- (a) all ships, irrespective of the places of residence or domicile of their owners; and
- (b) all maritime claims, wherever arising.

⁴ T:397:31-398:7.

⁵ T:395:4-10.

6 Section 9(1) then provides under the heading ‘Admiralty jurisdiction in personam’:

Jurisdiction is conferred on the Federal Court, the Federal Magistrates Court and on the courts of the Territories, and the courts of the States are invested with federal jurisdiction, in respect of proceedings commenced as actions in personam:

- (a) on a maritime claim; or
- (b) on a claim for damage done to a ship.

7 Does this proceeding fall within one of the jurisdictional categories of ‘general maritime’ claim? First, ‘ship’ in these categories is widely defined in s 3(1) of the *Admiralty Act* so as to include the Vessel. Secondly, the jurisdictional categories in s 4 of the *Admiralty Act* should not be read narrowly.

8 In *The Owners of Ship Shin Kobe Maru v Empire Shipping Company Inc* (1994) 181 CLR 404 the High Court, in considering s 4(2), which deals with proprietary maritime claims, noted that the *Admiralty Act* substantially mirrors draft legislation contained in the Law Reform Commission’s 1986 report, *Civil Admiralty Jurisdiction*. At 416 the High Court said:

The report, which was made pursuant to a reference which required the Commission to review and report on ‘all aspects of the Admiralty jurisdiction in Australia’, noted that there were then ‘many obscurities and uncertainties about the scope of the jurisdiction’ and that there was broad recognition of the need for reform. It went on to conclude that ‘Australian interests [were] best served by a widening of admiralty jurisdiction ...’.

9 The Court rejected a submission that s 4(2) should be read down, citing two reasons at 420:

The first and more significant is that a statutory definition should be approached on the basis that Parliament said what it meant and meant what it said. The consequence of that is that a definition should be read down only if that is clearly required as, for example, if it is necessary to give effect to the evident purpose of the Act. The second is that s. 4(2)(a) and (b) form part of a jurisdictional definition, in the sense that the definition of ‘proprietary maritime claim’ serves to identify an area of jurisdiction conferred on or vested in the courts referred to in s. 10 of the Act. It is quite inappropriate to read provisions conferring jurisdiction or granting powers to a court by making implications or imposing limitations which are not found in the express words. (Footnotes omitted.)

10 In *Yulianto v The Ship ‘Glory Cape’* (1995) 134 ALR 92 Murray J, in looking at s 4(3), said at 95-96:

as was pointed out by the High Court in ‘*Shin Kobe Maru*’, the *Admiralty Act 1988* (Cth) placed into statutory form the recommendations of the Law Reform Commission in its report *Civil Admiralty Jurisdiction* (1986). It was the view of the Commission that the obscurities and uncertainties about the scope of the jurisdiction should be reformed and that Australian interests were best served by a widening of the Admiralty jurisdiction, at the same time endeavouring to clarify and simplify the law (at CLR 416-17). These being remedial provisions, they should receive a facilitative interpretation. The words of s 4 should be given ‘their natural and ordinary meaning’ (at CLR 418). The provision should not be interpreted in a restrictive way or read down by reference to the earlier expression of admiralty practice and principles. The evident purpose of the Act must be given effect to and the court should proceed by reference to the proposition that ‘a statutory definition should be approached on the basis that parliament said what it meant and meant what it said’ (at CLR 420). The principles thus expressed are, of course, of an ordinary kind in relation to the task of statutory interpretation.

At 99 Murray J added:

As I have already observed, in my opinion, this is legislation which, having regard to its evident remedial purpose, should be construed expansively rather than strictly.

- 11 Having regard to the width of the language in ss 4(3)(c) and (d), the defendant submits that this proceeding falls within either of those jurisdictional categories of general maritime claim. This submission finds support also in Allsop P's judgment in the *CSL* case. There, a stevedore injured himself by slipping on a ship's deck in the course of his employment. The stevedore brought a claim in negligence against both the owner and operator of the ship. Allsop P said at 448 that the facts pleaded made the claim a general maritime claim under s 4(3)(c) or (d) of the *Admiralty Act*.
- 12 The defendant submits that, in hearing and deciding the plaintiff's claim, the Court is exercising federal jurisdiction, expressly conferred upon it by s 9(1) of the *Admiralty Act*.

Commonwealth Legislation

- 13 His Honour has raised the issue whether there is any Commonwealth legislation that had a bearing on this proceeding. Reference was made to:
 - (a) the *Navigation Act 1912*;
 - (b) the *Marine Orders*; and
 - (c) the *Occupational Health and Safety (Maritime Industry) Act 1993 (Maritime OH & S Act)*.

Navigation Act

- 14 The *Navigation Act* does not apply to this proceeding. Section 2 of that Act deals with its application, sub-s (1) relevantly provides:

Except in so far as the application of this section is expressly excluded by a provision of this Act, this Act does not apply in relation to: ...

 - (b) an Australian fishing vessel proceeding on a voyage other than an overseas voyage; ...
- 15 The expression 'overseas voyage' is defined in s 6. There is no evidence that the Vessel was engaged in an overseas voyage.
- 16 While s 2 is expressly excluded by:
 - (a) s 317 with respect to Part VII, Division 3 — Salvage; and
 - (b) s 187AA which deals with the issuing of particulars certificates under Part IV;neither is relevant to this proceeding.

Marine Orders

- 17 The *Marine Orders* are subordinate legislation made by the Australian Maritime Safety Authority (AMSA).⁶ The power to make orders is conferred on AMSA by s 425(1AA) of the *Navigation Act*. The *Marine Orders* may not be inconsistent with the *Navigation Act*.

⁶ AMSA is a body corporate established under s 5 of the *Australia Maritime Safety Authority Act 1990*.

- 18 Since the *Navigation Act* does not apply in this proceeding, it follows that the *Marine Orders* do not apply. Consistent with this submission is the fact that Part 51 of the *Marine Orders*, which deals with fishing vessels, expressly applies only to an Australian fishing vessel on an overseas voyage.

Maritime OH & S Act

- 19 The *Maritime OH & S Act* does not apply in this proceeding. Section 6 deals with the application of that Act. Sub-s (1) provides:

This Act applies in relation to a prescribed ship or prescribed unit that is engaged in trade or commerce:

- (a) between Australia and places outside Australia; or
 - (aa) between 2 places outside Australia; or
 - (b) between the States; or
 - (c) within a Territory, between a State and a Territory or between 2 Territories.
- 20 The evidence at trial was that the Vessel departed Portland to engage in fishing and returned to that port. Thus, the conditions in sub-subsections (a) to (c) are not satisfied.
- 21 In s 4 ‘prescribed ship’ is defined as:

... a ship to which Part II of the *Navigation Act 1912* applies but does not include:

- (a) a ship or off-shore industry mobile unit to which the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* applies; or
 - (b) a Government ship.
- 22 Part II of the *Navigation Act* deals with masters and seamen. While s 10 deals with the application of that Part, it does not exclude s 2; therefore, Part II of the *Navigation Act* does not apply to a fishing vessel proceeding on a voyage, other than an overseas voyage. Accordingly, the *Maritime OH & S Act* does not apply to the Vessel. It is also worth noting that s 7 of the *Maritime OH & S Act* provides that it does not affect the operation of the *Navigation Act*.

State Legislation and the Common Law

- 23 Although the Court is exercising federal jurisdiction in this proceeding, this does not necessarily exclude the operation of State legislation. Section 79(1) of the *Judiciary Act 1903* (Cth) provides:

The laws of each State or Territory, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution of the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases to which they are applicable.

- 24 Thus, the laws of Victoria, including the *Accident Compensation Act*, are binding upon the Court. By operation s 80 of the *Judiciary Act*, the common law governs courts exercising federal jurisdiction.

The CSL Case and the Duty of Care

- 25 In the *CSL* case, the Court held that the vessel, a bulk carrier, was subject to the *Maritime OH & S Act* (see [46]). The Court then carefully considered some of the provisions of that Act. It concluded that such

provisions ‘while not founding a separate statutory cause of action ... may nevertheless be relevant to assessing the breach of any relevant common law duty of care’ (see [61]). The Court added that these provisions were ‘not irrelevant to the consideration of the imposition of and the determination of the content of a duty of care at common law’ (see [61]). As submitted above, the *Maritime OH & S Act* does not apply in this proceeding.

- 26 At [64] to [74] the Court considered the common law position as to exercising care in respect of the safety of stevedores coming on board a vessel to undertake their tasks in respect of loading. This consideration, apart from general observations about the operation of ships, is confined to the duty owed to stevedores and not to crew.
- 27 At [75] to [81] the Court considered the provisions of the *Marine Orders*. Again, as submitted above, the *Marine Orders* do not apply in this proceeding. At [82] to [90] the Court then considered the duty of care in the light of the *Marine Orders*, the *Maritime OH & S Act* and ILO instruments. The defendant submits this analysis is largely irrelevant to determining the alleged duty of care in this case, which is said to exist between shipowner and crew.
- 28 The ‘real issue’ in that case of whether the State legislation was picked up by s 79 of the *Judiciary Act* in the light of the *Maritime OH & S Act* (see [101]) is not an issue in this proceeding.
- 29 It is submitted that the *CSL* case’s analysis of the duty of care owed to stevedores in the light of the *Navigation Act*, the *Maritime OH & S Act* and the *Marine Orders* is of marginal assistance with respect to the claim in this case.

A Non-Delegable Duty?

- 30 In the *CSL* case the Court did not decide that a shipowner has a non-delegable duty of care to a stevedore. It did, however, acknowledge at [69] that the earlier cases are ‘less than critical’ in the light of the High Court’s decision in *Australian Safeway Stores Pty Ltd v Zaluzna* (1987) 162 CLR 479. It was the earlier cases’ recognition of a duty of care owed by a shipowner to a stevedore that the Court in the *CSL* case relied upon.

DATED: 7 December 2010

M. N. C. HARVEY

WALLMANS
Solicitors for the defendant