



## The River Countess: Admiralty Court confirms pure economic loss is recoverable under Italian law

Monday, 18th October 2021

### [River Countess & Ors v MSC Cruise Management \[2021\] EWHC 2652 \(Admlty\)](#)

On 2 June 2019, the ocean-going cruise liner MSC Opera, operated by the defendant demise charterer, MSC, ran into the much smaller inland river cruise ship River Countess, which was berthed at the San Basilio Pier in the Giudecca Canal in Venice. The incident attracted global media attention and fuelled an existing controversy over the use of Venetian waters by large ocean-going cruise ships.

Mercifully, though 28 of the River Countess' passengers were still on board or in the process of disembarking, River Countess having just completed a six day river cruise, there were only a few personal injuries. River Countess suffered substantial damage. She was removed to Trieste for repairs that it is said took three months and cost over €3 million, returning to service in early September 2019 after a loss of 14 scheduled river cruises.

The claimants' (the owners and operators of the River Countess) brought a claim before the English Admiralty Court for damages for its physical loss (costs of repair) and non-physical loss suffered by the third claimant tour operator, Uniworld, comprising lost net-revenue on 14 cancelled voyages and wasted costs, quantified at around €5.5 million and unquantified damage to its brand/goodwill/lost future anticipated net revenue.

It was agreed that the claimants' claims were governed by Italian law pursuant to Article 4 of the Rome II Regulation (Regulation (EC) No 864/2007), because Italy was the place of direct damage.

MSC accepted 100% responsibility for the collision, but challenged (i) the quantum of the claim for repair costs and (ii) Uniworld's title to sue for its non-physical losses as a matter of Italian law and the quantum of those losses.

Uniworld charter-hired the vessel from the second claimant, the demise charterer, and therefore was functionally in a similar position to a time charterer. That being the case, as a matter of English law, Uniworld would not have had title to sue MSC in tort: *The Mineral Transporter* [1986] AC 1.

The question was whether Italian law did or did not provide a broader basis of recovery of economic losses by time charterers (or their equivalent) who had lost the use of the chartered vessel by reason of a collision. The Admiralty judge, Mr Justice Andrew Baker, directed the question of whether Uniworld's claims for non-physical loss were in principle recoverable under Italian law should be determined at a preliminary issue hearing, which took place on 20 and 21 July 2021.

The Court found for the Claimants on the main issue, accepting the Claimants' expert evidence that, as a matter of Italian law, Uniworld did have title to sue for its non-physical losses. In particular the Court held that:

1. Uniworld's claim for net loss of revenue in respect of the cruises cancelled because the "River Countess" was out of service due to the collision was recoverable in principle from MSC, provided Uniworld proved at trial that such loss was caused as a direct and immediate consequence of the casualty and demonstrated that the services of the River Countess could not be replaced by the services of some other ship.
2. Uniworld's claim that the collision caused it to suffer a loss of anticipated revenue comprising a loss of revenue on River Countess cruises undertaken following repairs and/or a loss of revenue on cruises scheduled for and in fact undertaken by other ships, unaffected by the collision, was for loss that was not recoverable in principle.
3. Uniworld's claim for brand damage/loss of goodwill was for loss that is recoverable in principle, provided Uniworld proved at a trial that a loss of that kind was caused as a direct and immediate consequence of the casualty, without prejudice to (2) above and subject to proof of brand damage or loss of goodwill on the facts.

This decision will be of interest to English practitioners advising in relation to claims for non-physical loss where Italian law governs the claims.

Tim Jenns (and Simon Rainey QC) were instructed by Devonshires Solicitors LLP and acted for the Claimants.

Stephen Kenny QC (and Paolo Busco) were instructed by Mills & Co Solicitors Ltd and acted for the Defendant.

**A copy of the judgment may be found [here](#).**

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**[Mr Stephen Kenny Q.C.](#)**

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