

THE RIO DE LA PLATA DRAINAGE AREA AND THE NAUTICAL FAULT

The Rio de la Plata drainage area refers mainly to an ample geography including the Parana River, the Paraguay River, the Uruguay River, and, of course, the Rio de la Plata River.

All of these rivers have an extensive shipping transit, which is both national and international, and in this last case local –between Paraguay and Argentina- or transoceanic.

Most of transoceanic cargo demands a previous transshipping, which is generally operated in the San Lorenzo Ports, in the Province of Santa Fe, Argentina, when these cargo come from the north.

These San Lorenzo Ports had a very important private improvement in the last years, on behalf of the cereal, soy, cattle and natural raw material exports, which producers do not actually need to send to the Buenos Aires port.

Notwithstanding Buenos Aires is still the main port of Argentina, but San Lorenzo terminals are resting transit to the capital port, attracting cargo from cereal and soy surrounding areas and from the north of the country.

The products from Paraguay came through the Paraguay River and then the Parana River, and continue with the same transshipping process as the Argentine products.

Products through the Paraguay and the Parana Rivers are generally transported using barges aligned in convoys of several barges, conducted or pushed by a tug ship, up to the river local port where the cargo is going to be delivered or transshipped.

These rivers present particular conditions for its navigation due to the geography of the zone.

Accidents and collisions, mostly all of them in Argentine Jurisdiction, are rather usual and so are the claims for damages and losses consequence of these accidents.

Although it is not proper to say that a collision against a bridge pillar takes place everyday, it is a fact that it occurs due to seasonal swellings, floods and heavy waters running from an affluent river.

The Argentine Law, which substantially follows the Hague Rules principles, is generally applied to these cases.

In this kind of accidents, the defence institution of the Nautical Fault arise frequently.

Shipowners and Clubs usually argue that a collision in the river, against other ship or a bridge pillar, is due to master's fault, and in this way they try to avoid their own liability.

But the Argentine Doctrine, considered at the Argentine Courts, is of the opinion that in the case of a convoy pushed by a tug ship through the Parana River the nautical fault cannot be alleged (case # 7419 "Fluvialco Navegacion S.A. v Transportes Fluviales Argenrio S.A. ", National Federal Court in Buenos Aires #II) due to the nature of this kind of transportation, in which the essence of the contract

between the barge owner and the tug owner is receiving and providing the traction or pulling power to move forward the barges through the river.

“It is absurd (in this case) to free the tug owner from damages generated as a consequence of the nautical fault of its subordinates”, said the Judges in the named case. “To consider it as a liability exempting is of doubtful equity”, they added.