Marina Operator Contracts and Liability under Dutch Law

Vivian van der Kuil
Advocaat | Partner
AKD Transport & Energy, Rotterdam
23 November 2018
Marina Operator Contracts and Liability

1. What is it all about? The Netherlands;

2. Legal system in the Netherlands;

3. Assessing the legal relationship;

4. Liabilities;

5. Remedies.
1. What is it all about? The Netherlands
1. What is it all about? The Netherlands
1. What is it all about? The Netherlands
1. What is it all about? The Netherlands

Key figures watersports industry Netherlands

- 2,000 companies main activity in marine (4,100 sum total)
- 30% market share super- and megayachts
- 30,000 employees (24,000 fte)
- €2,55 billion revenue pleasure crafts, whereof €1,1 billion export
- 1,100 marinas: 50% commercial
- 10,000 km of inland waterways (100% more than motorways)
- 500,000 boats
- 1.3 million active boaters

Source: https://www.hiswa.nl/english
2. Legal System in the Netherlands:

- **WJP Rule of Law Index 2017 -2018:**
  - no. 1 Civil Justice
  - no. 5 Overall
  - [https://worldjusticeproject.org/](https://worldjusticeproject.org/)

- **Civil law**

- **Procedure:** Burden of proof – no disclosure

- **Contracts:**
  - Reasonableness and fairness - No entire agreement clause - *Haviltex*
3. Assessing the Legal Relationship

- **Marina operator:**
  - Provider of services/ shipbuilder/repair/lessor mooring place/custodian

- **Owner of yacht:**
  - Principal/lessee
3. Assessing the Legal Relationship

- How to determine and qualify the contract?

- *Mixed agreements /Sui Generis*

- Custody vs Rental mooring place

- Why is it important? – Liabilities - Burden of Proof - Remedies
4. Liabilities

- Marina operator:
  - Provider of services/ shipbuilder/repair/lessor mooring place/custodian
  - HISWA General terms and conditions
4. Liabilities

- **Owner of yacht:**

  - Principal/lessee

- Art. 8:544 CC: If a collision is caused by the fault of one vessel the owner of this vessel is liable to pay the damage caused.

- Fault of a vessel: Supreme Court 30 November 2001, *Casuele/De Toekomst*
5. Remedies

Right of retention

vs

Attachment
5. Remedies

- Right of retention =
  - Right to withhold performance under the contract

Obligation to return the vessel  Requires factual possession
5. Remedies

Something to think about.......
5. Remedies

Something to think about....... 

Jurisdiction (attachment)

and

Limitation of Liability
5. Remedies

Something to think about........
Vivian van der Kuil
Advocaat | Partner
AKD Transport & Energy, Rotterdam