Marine Environmental Disasters: The Necessary Connection Between Maritime and Insolvency Laws

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Abstract

With growing interest in using the Northwest Passage as a seasonal shipping route, exemplified by Canada's Major Projects Office's increased investment in the Port of Churchill (Canada.ca 2025), it is time to ensure protection of the Arctic ecosystem. Ecological concerns of this increased traffic have already been brought up regarding emissions and pollution (Chircop, 2020) but little has been written about a potential major environmental disaster in the Arctic. Perhaps the most famous environmental disaster, the oil spill of the Exxon Valdez, caused the deaths of thousands of animals, and significant damage to shorelines on the coast of nearby Alaska – a disaster in the uniquely fragile Northwest Passage (Qi et. al. 2024), would be an ecological nightmare. As a member of the Arctic Council, and signatory to the Polar Code (IMO 2017), the issue of marine environmental disasters is of unique concern to Sweden in this new modern context. Existing maritime work has treated liability, terminability and insurance but has not systemically asked what happens when the shipowner, charterer or critical counterparties are insolvent.

This is compounded as insolvency and maritime laws have developed their own sophisticated cross-border mechanisms independently of each other. The Canadian *Redwater* case (Orphan Well Association v Grant Thornton Ltd) demonstrates that owners of companies may declare insolvency to get out of paying environmental claimants (Girgis et al 2024). The project focuses on frameworks that ensure the polluter pays principle, according to which polluters are responsible for the damage they cause, is still respected even when there are not enough assets left to cover it thereby internalising the damage rather than pushing the costs onto taxpayers and society as a whole.

It is organised around four research questions: (1) How do cross-border mechanisms differ between insolvency and maritime laws, and how can differences be reconciled? (2) What priorities are afforded to environmental claimants in Canadian and selected European insolvency systems, with particular focus on Sweden, Malta and the United Kingdom, and how do they differ? (3) How do maritime and insolvency mechanisms deal with environmental claims in practice in marine environmental disasters? (4) How can a global society ensure that adequate funding is available for marine environmental disasters, treating environmental risk as a form of systemic financial risk, including through derivative-based mechanisms?