Denmark

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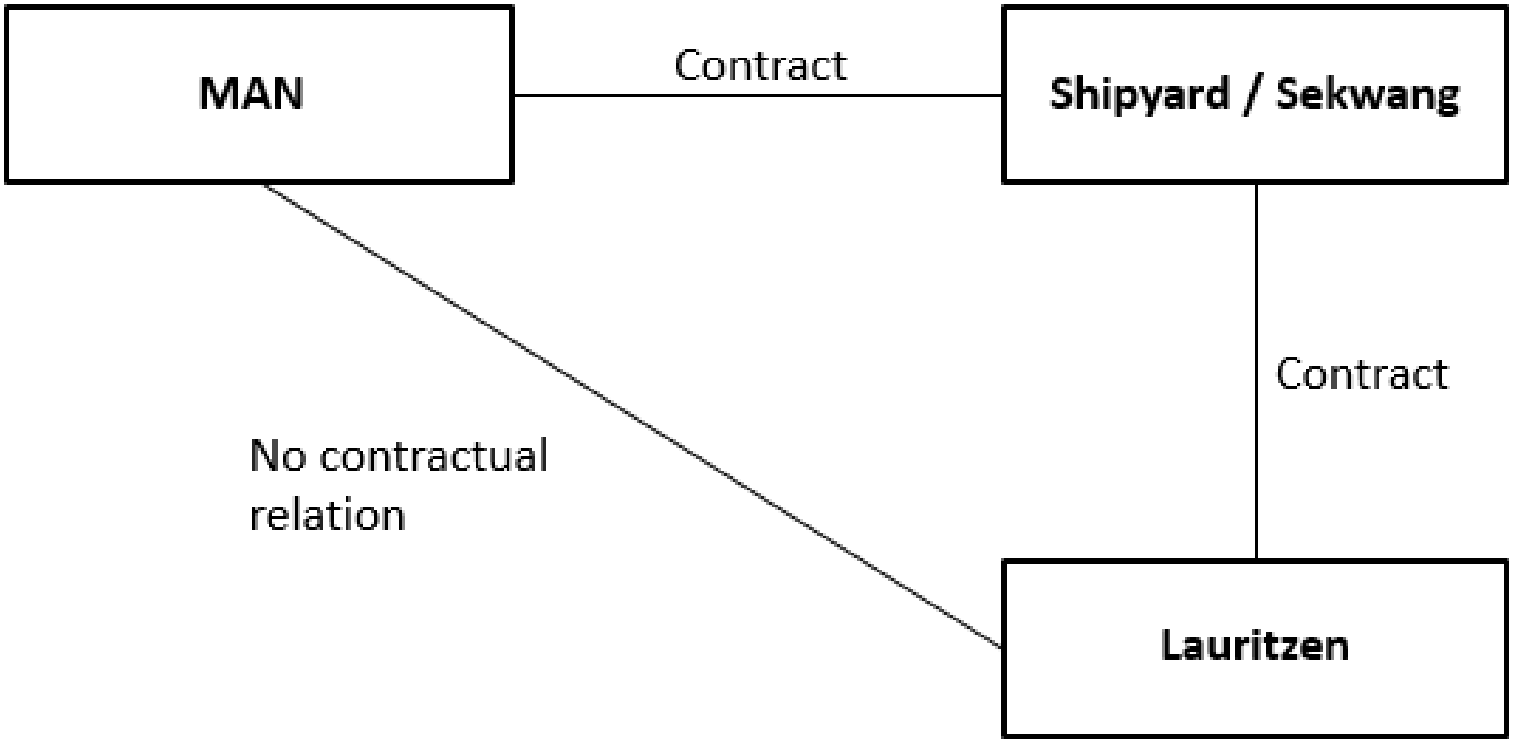
Lauritzen-case

Supreme Court Judgment of 13 September, 2017 in case No. 199/2016 (UfR 2008.98H - Weekly Law Review 2008.98H).


MAN
Contract
Shipyard / Sekwang
Contract
No contractual relation
Lauritzen

Lauritzen case - FACTS

- MAN Diesel & Turbo – branch office of MAN Diesel & Turbo SE, Germany **(MAN)**
    - *Produces marine engines and sub-components to the engines.*
- J. Lauritzen A/S and J. Lauritzen Singapore Pte. Ltd. **(Shipping Companies)**
- MAN had sold marine engines through a contract with the Korean shipyard, Sekwang.
- Sekwang produced, sold and, in the period 2007-2009, delivered 10 gas carriers to Lauritzen.
- The contract between Sekwang and Lauritzen contained, among other things, regulation of a guarantee period and an exclusion of liability for consistency losses.
- The contract between MAN and Sekwang on the sales of main engines with the electronic Alpha Lube lubricating system (higher acquisition price, but cheaper to run).

Lauritzen case - FACTS

- In January 2010, Lauritzen detected that seven ships had an unusual and extraordinarily wear and tear on the piston rings, etc., which required a renewal of the worn parts. This renewal caused a loss of USD 4.5 million to Lauritzen
- Undisputed that Lauritzen (as a result of the fact that the regulation of the contract between Sekwang and Lauritzen– expiry of the guarantee period and furthermore as a result of the time limit to declaim objection regarding to the defects) did not raise claims against Sekwang.
- Undisputed that Lauritzen did not get a transport from Sekwang in relation to MAN.
- Undisputed that Lauritzen did not have a contractual relationship with MAN.
- Undisputed that Lauritzen – apart from this case - had had a long-running and good co-operation with MAN and had bought several engines from MAN.
- Subject matter approx. USD 4.5 million.

Judgment by the Maritime and Commercial Court, August 15, 2016 (1st instance)

- The main cause in relationship to the comprehensive wear and tear was the Alpha Lube system: the Alpha Lube system was defective.
- The Alpha Lube system constitutes a component.
- The Maritime and Commercial Court: The Alpha Lube system is a separate product (in relation to the engine and the ship itself) – under the given circumstances, where the system was introduced on the market as a separately sold product by MAN in relation to Lauritzen. The separate product caused damage to the engine (therefore not an instance of self-harm).
- Therefore, the Alpha Lube system caused damages according to the regulation of product liability (outside of the Product Liability Directive (1985)).

Supreme Court reasoning

- No contractual relationship exists between Lauritzen and MAN.
- The claims made by Lauritzen are based on the rules of product liability developed by Danish courts (outside the scope of the Product Liability Directive (1985))
- The question for the Supreme Court is, whether the damage, which it was claimed was caused by the Alpha Lube system, can be considered to be caused by a defective product or as a damage to the product itself.

In the Masnedø case (UfR 2010.1360 H), the Supreme Court already examined whether a producer of a defective sub-component, which has been incorporated as a part of the sampled product which a future distributive trader has sold to a buyer, is liable for damage towards the buyer pursuant to the regulation of product liability.

Product Liability or Damage to the product itself?

- **UfR 1998B299 by John Peter Andersen, ”Part and Entirety – Ingredients and Component Damages in Products Liability Law”**
- **The Maritime and Commercial Court, H-57-04 (Not published) ”Opel case”**
- **UfR 2010.1360 H ”Masnedø case”**