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Bulletin 754 - 04/11 - Escrow deposit in case of oil pollution - Brazil

The Club has received word from our correspondents in Brazil regarding information from legal advisers concerning the intervention of the Federal Prosecutor in a recent oil pollution claim that may have set a precedent and have substantial consequences in the future handling of pollutions cases in Brazil.

In a pollution case recently the Judge in the first instance, in his decision, fixed the value of the indemnity to be paid and as is foreseen in Brazilian Law the owner presented their defence against the decision. However, before the case was heard at the Court of Appeal the Federal Prosecutor entered with a request of "provisional compliance with the decision", taking into consideration that the recourse does not suspend the effects of the decision.

In fact, the applicable law in these cases establishes that the "Judge" may give suspensive effect to the recourse merely to avoid irreparable damages to the party. This means that the provisional compliance of the decision will depend on the evaluation which the Judge makes in each case. Considering that in the case of a provisional execution, the value of the indemnity will remain under judicial custody until the final judgement of all the appeals, it is quite probable that the Judge is going to consider that in this hypothesis there will not be any irreversible damage.

In any case, this is a new attitude, which will probably become routine as from the next judgments in the first instance.

On the positive side, the escrow deposit in the custody of the court, in Brazilian currency, will accrue interest presently at 12% per annum plus monetary correction of around 5% per annum which means that over a period of 6 years the value of the deposit will double itself. As it is unlikely that the rate of exchange will double in the next six years, it can even be a profitable novelty.

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