Lessons of the Mont Louis.  
Part Two:  
Compensation for Hybrid Accidents

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[ The first part of this article which was published in IJECL, Vol. 1 No. 2, con-
sidered the Mont Louis casualty in 1984 and how to prevent potential “hybrid”
accidents, involving a number of hazardous or noxious substances. This part
deals with issues of compensation in the same context.]

C. Compensation

Once a maritime hybrid accident (however that is defined) has occurred the mix-
ture of such substances could result in:
(a) at least three types of unwanted consequences:
   (i) an explosion;
   (ii) dangerous substances (especially gases and liquids) being created;
   (iii) a chemical combination being created which was more persistent or
damaging (in a polluting sense) than each of the individual substances
would be on its own.¹

(b) at least four types of damage or loss:
   (i) personal injury or death (e.g. of passengers, crew, employees of terminal
operators or bystanders), as a result of: direct physical contact with poi-
sonous substances (e.g. acids); inhaling fumes; explosions;
   (ii) property damage (e.g. to ship, cargo or fixed installations);
   (iii) pollution damage (including physical damage to the environment and
clean-up costs);
   (iv) consequential economic losses (e.g. through ports or terminals being
rendered inoperative, or tourist or fishing industries being disrupted).

It is interesting to note that none of the losses listed in (b), above, are new in any
legal sense, although all economic loss presents problems.

¹ See the 8th Report of the Royal Commission on the Environment, op cit. p. 129, which identified
three categories of hazard, explosive/incendiary hazards; corrosive hazards; toxic (including
radioactive) hazards.

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Having identified some, if not all, of the types of damage which potential claimants could suffer, one must then turn to the potential defendants in any action to recover such damages. The claimants will look primarily to two types of defendant: shipowning (or operating) interests and cargo interests (as owners, shippers, or receivers).² It is apparent that there are a number of different liability regimes relating to particular substances. It will be necessary to consider separately any such special regime before assessing whether the hybrid accident gives rise to any novel legal problems or whether it merely complicates existing ones.

C.1. General maritime liability for hazardous and noxious substances

It is proposed to consider, first, the general liability position which would apply to claims not falling within any special liability regime (such as the CLC). In England and Wales that would be an ordinary common law claim. The action could be brought against the shipowner³ (e.g. for negligently letting dangerous products escape); or against the cargo-owner (e.g. for faulty packaging) or against others (e.g. negligent shipbuilders). The hybrid accident itself could arise in a number of ways with one or more ships being involved. A single ship containing multiple dangerous cargoes may strand or there may be a collision between two or more ships each having single or multiple cargoes of dangerous goods.

C.1. (I) Suit against the shipowner: negligence proved

Traditionally actions against shipowners have depended on proof by the claimant of negligence, usually through faults in the navigation of one or more ships resulting in a collision.⁴ Assuming such negligence of shipowner A, would he be liable for damage caused by dangerous cargo on board ship B? Damage within categories (b)(i) and (ii), above, (i.e. personal and property damage) would normally be recoverable from the negligent shipowner provided that the loss was not considered too remote under ordinary principles. After the Wagon Mound litigation (involving fire damage following a leak of bunker oil)⁵ it will be very difficult for a defendant in a collision action to argue that the consequences are not foreseeable so long as the kind of damages could be foreseen. It is quite clear that if ship A negligently collides with tanker B and a fire results, those who suffer loss by fire will normally be able to recover from A.⁶ Likewise, if there was a collision with an LPG carrier which resulted in an explosion that result would not be unforeseeable. It would also be very difficult to suggest that personal injuries caused by dangerous gases could not be foreseeable particularly when they are suffered by members

² There may be other potential defendants, such as shipbuilders and salvors; see, e.g. B. 6. “Salvage”, above.
³ It will be assumed that the shipowner is not only the actual, but also the contracting, carrier (as opposed to, e.g. a charterer).
⁴ There could, of course, be faults in the operation or management of vessels, e.g. in the methods of loading and discharge.