

ANSWERS ON BEHALF OF THE  
CANADIAN MARITIME LAW ASSOCIATION  
TO THE COMITE MARITIME INTERNATIONAL QUESTIONNAIRE

THE IMPLEMENTATION IN NATIONAL LAW OF  
MANDATORY INSURANCE PROVISIONS IN INTERNATIONAL CONVENTIONS

March 2012

The starting point for Canada is that we need only address two of the five conventions: the CLC 1992 and the Bunkers Convention. Unless noted otherwise, the following applies only to insurance provisions of those two Conventions.

**1. Licensing**

**Does an insurer wanting to insure the risks under the Convention referred to above need a license?**

No. Whether the insurer needs a license depends on their other insurance business activities in Canada.

P&I Clubs provide the vast majority of the Certificates required by the Bunker Convention and CLC and are accepted by Canadian authorities. Other than one Club, which has a Canadian office, the International Group P&I Clubs are not required be licensed or otherwise authorized to handle this type of business in Canada.

**If so,**

- 1.1 must it be a national license, or do your respective authorities accept licenses issued by foreign bodies? N/A**
- 1.2 What are the consequences if an insurer issues a policy without the respective license? N/A**
- 1.3 Is there an obligation of a licensed insurer to conclude insurance contracts? N/A**

**2. Certification**

**2.1 Will a certificate issued by a convention state**

**2.1.1 be recognized in your state without any preconditions?**

Canadian authorities are entitled to investigate the adequacy of the security represented by the certificate. However, we are not aware of any actions that the Canadian authorities have taken to validate the required certificates or their issuer.

We do not know of any circumstances under which the Canadian authorities have been provided with certificates not issued by Canadian licensed insurers OR by P&I Clubs that are members of the International Group.

**2.1.2 be subject to investigation whether insurance satisfying the convention requirements actually exist?**

The Minister of Transport has the discretion pursuant to s. 74(5) of the Canadian Marine Liability Act to revoke a Bunker Convention certificate if the Minister believes that the guarantor providing the insurance or other security can no longer meet its obligations or that the insurance or other security no longer satisfies the requirements of the relevant convention.

**2.1.3 be rejected if there is evidence that there no valid insurance at all or that the insurance is not satisfying the convention requirements?**

The Minister of Transport has the discretion pursuant to s. 74(4) of the Canadian **Marine Liability Act** to refuse to issue a Bunker Convention certificate if the Minister believes that the guarantor providing the insurance or other security will be unable to meet its obligations or that the insurance or other security will not satisfy the requirements of the relevant convention.

**2.2 Does the authority in your state in charge of issuing the certificate**

**2.2.1 require a license of your state or is it sufficient that the insurer is licensed in another state? See the answer to 1.**

**2.2.2 investigate the insurance conditions before issuing a certificate?**

Under Canadian administrative practice, a financial responsibility certificate will not be issued unless the insurer undertakes that it will comply with the provisions of the Convention.

**2.2.3 investigate the financial standing of the insurer?**

The administrative practice of the Department of Transport in applications for financial responsibility certificates is to review the financial background of proposed insurers.

**2.2.4 investigate the license of the insurer?**

Not that we are aware of.

**3. Statutory Law**

**3.1 Does your national law contain any provisions specifically designed to transform the above mentioned provisions in international conventions into your national law?**

As noted, Canada is not a state party to, and has not enacted domestic law analogous to the HNS Convention, the Nairobi Wreck Removal Convention, or the Athens Protocol of 2002

As for the CLC Convention of 1992 and the Bunkers Convention, yes

**If so, could you**

**3.1.1 summarize the main characteristics of those provisions?**

Articles I to XI, XII bis and XV of the CLC Convention of 1992 have the force of law in Canada – pursuant to section 48 of the Marine Liability Act, S. C. 2001, c. 6 as amended.

Articles 1 to 10 of the Bunkers Convention have the force of law in Canada pursuant to section 69 of the aforementioned Marine Liability Act.

**3.1.2 provide the IWG with an English translation of those provisions?**

See <http://laws-lois.justice.gc.ca/eng/acts/M-0.7/>

**3.2 If your national law does not contain any provisions specifically designed to transform the above mentioned provisions in international conventions into your national law, does your national law then contain general provisions on mandatory insurance, which also apply to the mentioned provisions in the international conventions?**

Not applicable

**If so, could you**

**3.2.1 summarize the main characteristics of those provisions?**

**3.2.2 provide the IWG with an English translation of those provisions?**

**3.3 What does your private international law provide for as the applicable law,**

**3.3.1 if the claimants are national persons or companies, but if the insurer is a foreign company?**

See comments at 3.3.3

**3.3.2 if the claimants are foreign persons and companies, but if the insurer is a national company?**

See comments on 3.3.3.

**3.3.3 if the claimants and the insurer are foreign companies?**

Generally, any choice of law provision in the applicable insurance policy will be given effect. In the absence of a choice of law provision in the applicable policy, under general principles of conflicts of laws respecting contractual obligations, the law of the place having the closest and most real connection to the policy will be applied. In the absence of an explicit choice of law clause in the policy, where there is a range of jurisdictions whose law might be applicable to the policy, and some of these jurisdictions are state parties to relevant conventions giving rights of direct action in respect of marine pollution, a Canadian court would be inclined to apply the law of a relevant convention state party jurisdiction in order to give commercial efficacy to the parties' intentions.

Because of the administrative practice of Transport Canada not to issue Financial responsibility certificates unless the insurer undertakes that it will comply with the Conventions, the applicable choice of law in the policy is unlikely to affect the obligation of the insurer to comply with the direct action provisions of the Conventions.

**4.1 Does your national law contain provisions on jurisdiction of courts for direct claims against Insurers?**

The right of direct action found in the two Conventions is regarded for Canadian constitutional purposes either as a matter of navigation and shipping or more specifically as a matter of marine insurance. In either case, the Federal Court or the superior courts of the provinces have plenary jurisdiction to determine such issues unless jurisdiction is specifically reserved to a particular court. It is not reserved to any specific court with respect to direct actions, except to the extent to which a direct action may relate to the constitution and distribution of a limitation fund, which is within the exclusive jurisdiction of the Federal Court (s. 52 Marine Liability Act)

**If so, does your national law**

**4.1.1 allow foreign claimants to directly sue national insurers in your national courts?**

Yes, subject to choice of venue or arbitration clauses in the policy

**4.1.2 allow foreign and national claimants to directly sue foreign insurers in your national courts?**

Yes, subject to choice of venue or arbitration clauses in the policy.

**4.2 Does your national law allow that the direct claims against an insurer are subject to an arbitration clause?**

Yes, under the Commercial Arbitration Act (Canada), incorporating provisions of the UNCITRAL Model Law on Commercial Arbitration 1985.

However, that generality is subject to the exclusive jurisdiction given to the courts of the states where the pollution damage was caused or preventive measures were taken, pursuant to Article IX para. 1 of CLC and Article 9 para. 1 of the Bunkers Convention

**4.3 Does a judgement against the liable party bind the courts of your country in a direct action against an insurer as regards the merits and quantum?**

Not explicitly, although the courts would be reluctant to permit an insurer to re-litigate the liability of the insured (unless there appeared to be collusion between the claimant and the shipowner).

The Conventions also provide that the insurer may invoke the defence that the pollution damage resulted from the wilful misconduct of the shipowner. This provision would permit an insurer to raise this as a new defence even if judgment was taken against the liable party.

**If so,**

**4.3.1 does this also apply to judgements in default?**

This would depend upon the procedural requirements of the court in which the default judgment was obtained. In some provincial superior courts, it is sufficient only to prove quantum of the claim after noting the ship owner in default. Under the Federal Courts Rules, an applicant for a default judgment is required to still prove both liability and quantum. The more extensive the requirements for obtaining the underlying default judgment, the less a court would be inclined to permit the insurer to re-litigate issues.

As well, if there appeared to be collusion between the claimant and liable party an insurer may be permitted to dispute the liability of the shipowner.

The Conventions also provide that the insurer may invoke the defence that the pollution damage resulted from the wilful misconduct of the shipowner. This provision would permit an insurer to raise this as a new defence even if judgment was taken against the liable party.

#### **4.3.2 can the insurer invoke that the court having decided on the claim against the party liable has not had jurisdiction?**

While the Conventions provide that the insurer can avail itself of defences which the shipowner itself would have been entitled to invoke, it is highly unlikely the court hearing the claim against the insurer would permit the insurer to re-litigate an issue of jurisdiction of the original court if this jurisdictional issue had been raised before or decided by the original court

#### **4.3.3 can the insurer invoke that the party liable has not been properly served with proceedings and no opportunity to defend itself?**

The Conventions provide that the insurer can avail itself of defences which the shipowner itself would have been entitled to invoke. If there is an issue whether the shipowner was properly served, Canadian courts would apply the test whether the shipowner had reasonable notice of the proceedings brought against it.

#### **4.3.4 can the party liable invoke that the party liable has not defended itself properly?**

No, because the Conventions provide that the insurer cannot invoke defences available to the insurer if it had been sued by the shipowner, such as improvident conduct of a defence by the shipowner.

#### **4.5 Can the claimant under your national law sue the person liable and the insurer in the same proceedings?**

The claimant can seek to do so.

However, under Canadian Maritime Law, courts may give effect to any insurance policy provision that no action for indemnity under a marine insurance policy can be brought until there is first a determination of the insured's liability. For constitutional reasons, it is unlikely that certain provincial statutory provisions nullifying such contractual terms would be applicable to contracts of marine insurance. Under general principles of insurance law, it may be permissible to seek a declaration that an insurer is liable to indemnify before there is a judgment against the insured. However, courts retain a procedural discretion to control the joinder of insurers as co-defendants in actions against tortfeasors.

**If so,**

#### **4.5.1 are there any requirements as to the domicile of the party liable or the insurer?**

While the Federal Court has putative jurisdiction over any maritime obligation regardless of its location, Canadian superior courts generally require some connection between Canada and the cause of action before accepting jurisdiction. The fact that damages are suffered in Canada will generally be sufficient to permit a court to exercise jurisdiction. Therefore, Canadian courts will not force an insured to seek indemnity in a foreign insurer's domicile unless there was a clear foreign choice of forum or venue clause or a foreign arbitration clause in the policy. The utility of having all defendant parties which may be affected by

determinations of fact or law before the same court is taken into account in deciding whether a court will stay an action on the basis of *forum non conveniens* or other reasons. However, Canadian superior courts will generally give greater weight to contractual choice of venue clauses than the convenience of having all possibly relevant parties before one court.

**4.5.2 Does your national law contain provisions on what has to happen if the insurer requires that the party liable is joined as a further defendant?**

The provisions of CLC 1992 (Article VII para. 8) and the Bunkers Convention (Article 7 para. 10) permit this.

There are no specific procedures set out to implement the provisions of the Conventions permitting this so resort would likely be taken to the court's own procedural rules with respect to adding parties.

**5. Particulars of direct action**

**5.1 Does your national law contain provisions according to which a direct claimant has to fulfil requirements for commencing a direct action against an insurer?**

The direct claimant would need to follow the general jurisdictional and procedural requirements of the Canadian court (provincial court or federal court) in which it chose to commence such action. Marine insurance in the common law provinces does not otherwise permit rights of direct action against insurers so there are no procedures in place.

**5.2 Does your national law contain provisions on burden and measure of proof which distinguish between a claim against the party liable under the respective convention and a direct claim against the insurer of such party?**

Canadian courts would apply general principles of evidence, except to the extent these are modified by the provisions of the Conventions. The same burden and measure of proof would be applied against both the liable party and the insurer.

**5.3 What defences does your national law allow an insurer against a direct claim?**

The Conventions provisions restricting which defences are available to the insurer have the force of law in Canada.

**5.4 Can the insurer take over the defence of the party liable, and has the insurer a statutory power of attorney to act for the party liable?**

This would depend upon the policy terms and applicable law of the policy. If the policy is governed by Canadian Maritime Law, Canadian courts would take Canadian marine insurance practice into account. Canadian marine liability policies generally give the insurer the right to conduct the insured's defence, subject to the general good faith obligation not to prejudice any uninsured interest. There is no statutory provision as such under Canadian Maritime Law which constitutes an insurer an attorney-in-fact for its insured in respect of the defence of a claim.

**5.5 Are there any time limits in your national law for a direct action against an insurer?**

Under Canadian Maritime Law, an insurer may stipulate for a contractual time limits for commencing proceedings shorter than the general three year limitation period under section 140 of the Marine Liability Act. In the absence of any contractual stipulation, section 140 of the Marine Liability Act would apply. If the applicable foreign law of the policy includes prescription periods having the legal effect of extinguishing the right of action, as distinct from barring the procedural right of commencing an action, such foreign legal prescriptions would be regarded as substantive law under general Canadian conflict of laws principles, and therefore would be applied.

**If so,**

**5.5.1 what protects such a time limit (e.g court proceedings; demand letters)?**

Under Canadian Maritime Law, only an agreement to extend a time limit or the issuance and timely service of court proceedings would protect domestic time limits.

**5.5.2 can the time limit be extended by agreement?**

Yes

**If so, is the agreement with the insurer sufficient or does the party liable have to agree to the extension as well?**

Only the Convention direct action claimant and the insurer would have to agree insofar as action against the insurer only is concerned.

**5.6 Under your national law, are the party liable and the insurer jointly liable?**

No. The obligation of the party liable is governed by the applicable Convention. The obligation of the insurer is governed by the terms of the applicable policy as modified by the restrictions provided by the Convention in respect of policy defences available to the insurer as against Convention direct action claimants.

**If so,**

**5.6.1 what legal consequences does your national law provide for such joint liability?**

Not applicable

**5.6.2 can the insurer file a cross action against his insured in the same proceedings?**

See comments on 4.5.2.

**5.6.3 do your courts in such a situation give effect to a jurisdiction or arbitration clause in the insurance policy?**

Yes, under Commercial Arbitration Act (Canada), incorporating provisions of the UNCITRAL Model Law 1985. While there is no Canadian authority on point, the use of the word 'claim' in the direct action provision wording of the Conventions, instead of the word 'legal proceeding', probably would be interpreted as permitting the insurer to require compliance by the insured with any policy term not in conflict with the direct action rights conferred by the Conventions.

## **5.7 Does your national law allow that the claimant assigns his direct claims to a third party?**

There is a legal issue whether the assignment of direct rights under the Conventions is the equivalent of the assignment of a marine insurance policy as permitted by s. 52 of the Marine Insurance Act (Canada). This issue has not been decided in Canada. In situations covered by subsection 52(2) of the Marine Insurance Act (Canada) not applying such right to an assignment after a loss, or in the absence of any explicit statutory recognition of possible rights by assignees of direct action under the Conventions, Canadian courts would apply general commercial law concepts, such as the obligation of the assignee to demonstrate a commercial interest in the assignment and the procedural necessity, in certain cases of having to join the assignor as well as the assignee in the legal proceeding.

**If so,**

### **5.7.1 are there any requirements for the validity of the assignment?**

A marine insurer may contractually preclude any right of assignment otherwise permitted under the Marine Insurance Act (Canada). If the assignment is not precluded by contract and was made before the loss, the assignee may sue in its own name. If the Marine Insurance Act (Canada) does not apply to Conventions' direct action rights, it is constitutionally uncertain whether Convention direct action claimants (within federal jurisdiction) would be able to take advantage of certain statutory rights under general commercial law (within provincial jurisdiction) to permit an assignee to sue in its own name without having to join the assignor as a party. Unless the Marine Insurance Act (Canada) applies, under general principles of Canadian maritime law, both the assignor and the assignee would have to be joined as parties in any legal proceeding against the insurer.

## **5.8 What qualifies under your national law as a wilful misconduct?**

The conduct has to be more serious than negligence. In civil matters, the Supreme Court of Canada has adopted the criterion of "if there is not conscious wrongdoing, there is a very marked departure from the standards by which responsible and competent people ... habitually govern themselves". ( McCulloch v. Murray [ 1942] SCR 141)

## **5.9 Does the insurer acquire rights against his own insured (the party liable) if he has to indemnify the direct claimant in circumstances, under which he would have avoided cover if he had been sued by the party liable and not by the direct claimant?**

There is no explicit statutory right of recourse against the insured under Canadian Maritime Law in these circumstances. In the absence of fraud by the insured, it is difficult to envisage such right of action by insurers against their own insured would be recognized under general principles of Canadian Maritime Law.

## **5.10 How is limitation of liability affected under your national law in cases of direct actions?**

Because the applicable Convention provisions have the force of law in Canada, the insurer can rely upon the Convention provisions to limit its liability even if the shipowner cannot.

## **5.11 Does your national law contain consequences, if the insurance contract contains provisions which are not consistent with the Conventions referred to above?**

The administrative practice of the Department of Transport is to accept applications for Financial responsibility certificates only if insurers at interest undertake that they will comply with their obligations in respect of direct actions under the Conventions

**If so,**

**5.11.1 are such provisions invalid?**

Not applicable

**5.11.2 is the whole contract invalid?**

Not applicable

**5.11.3 does the contract including such conflicting conditions remain valid, so that the insurance does not fulfil the requirements of the Conventions? What effect does that have under your national law?**

See above

**6. State Liability**

**Does your national law provide for liability of the state when the appropriate authority issues a certificate under the Convention, if it turns out**

**6.1 that there is no insurance contract at all?**

Under Canadian administrative practice, the Department of Transport will not issue a financial responsibility certificates unless the insurer provides a certificate that it will comply with the provisions of the Conventions. There have been not been any known instances in Canada of an application for a financial responsibility certificates based upon a non-insurance form of security such as a letter of credit or guarantee.

A claim could not be asserted in Canadian courts against a foreign government for the foreign government's alleged negligent issuance of a financial responsibility certificate because the act of issuing such certificate would be considered a public non-commercial act and therefore be immune from civil suit in Canadian courts under the State Immunity Act.

**6.2 that the insurance contract is not consistent with the provisions of the Conventions?**

Under Canadian administrative practice, a financial responsibility certificate will not be issued unless the insurer undertakes that it will comply with the provisions of the Convention.

**6.3 that the insurer is not financially stable and cannot satisfy all direct claims?**

The administrative practice of the Department of Transport in applications for financial responsibility certificates is to review the financial background of proposed insurers.

The present Canadian law on liability of public authorities for negligent administration of a regulatory regime is very uncertain, because of conflicting decisions of appellate courts. A mere breach of statute does not constitute a tort. A duty of care by a public authority in the operation or administration of a regulatory regime and the proximity of the victim to the negligent acts or omissions has to be demonstrated. The shipowner applicant for a financial responsibility certificate negligently issued would more likely be within the ambit of proximity than would pollution victims who were precluded from recovery on their potential rights of direct action.

Dated: March 2012

## Appendix : CMI Questionnaire

### COMITE MARITIME INTERNATIONAL THE IMPLEMENTATION IN NATIONAL LAW OF MANDATORY INSURANCE PROVISIONS IN INTERNATIONAL CONVENTIONS QUESTIONNAIRE TO MEMBER ASSOCIATIONS

The CMI Executive Council has requested the International Working Group (IWG) on Marine Insurance to consider mandatory insurance provisions in international conventions and given recommendations on whether Guidelines for national governments should be drafted to assist in the formulation and proper implementation of national law giving effect and providing a legal framework for them.

The Questionnaire has been developed to collect information on existing national legislation as a basis for proposals for Guidelines.

We would be grateful if you would provide your responses by October 10, 2010 so they may be collated and analysed in time for reporting and discussions at the Assembling in Buenos Aires on Wednesday, October 27, 2010.

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- I. This questionnaire addresses mandatory insurance provisions of the following international conventions:
  - 1.1 CLC Convention of 1992 (International Convention on Civil Liability for Oil Pollution Damage 1992):

Art. VII para. 1: "The owner of a ship... carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund..."
  - 1.2 HNS (International Convention of 3 May 1996 on Liability and compensation in connection with Carriage of Hazardous and Noxious Substances by Sea (London),

Art. 12 para. 1: "Insurance or other financial security, such as the guarantee of a bank or similar financial Institution".
  - 1.3 Bunkers Convention (International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage),

Art. 7 para. 1: "The registered owner of a ship having a gross tonnage greater than 1000 registered in a State Party shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution".

I.4 Nairobi Wreck Removal Convention of 18 May 2008,

Art. 12 para. 1: “The registered owner of a ship of 300 gross tonnage and above and flying the flag of a State Party shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution”

I.5 Athens Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974,

Art. 4bis para. 1: “Any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution”.

II. The foregoing referenced Conventions contain the following provisions concerning requirements for coverage

II.1 CLC Convention of 1992:

Art. VII para. 8 “Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner’s liability for pollution damage. In such a case the defendant may, even if the owner is not entitled to limit his liability according to article V paragraph 2, avail himself of the limits of liability prescribed in Article V, paragraph 1. He may further avail himself of the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the owner himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the proceedings.”

II.2 HNS:

Art. 12 para. 8 “Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner’s liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence, which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.”

II.3 Bunkers Convention:

Art. 7 para. 10: “Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner’s liability for pollution damage. In such a case, the defendant may invoke the defences (other than bankruptcy or winding up of the ship owner) which the ship owner would have been entitled to invoke, including limitation pursuant to article 6. Furthermore, even if the ship owner is not entitled to limitation of liability according to article 6, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the pollution damage resulted from the wilful misconduct of the ship owner, but the defendant shall not invoke any other defence, which the defendant might have been entitled to invoke in proceedings brought by the ship owner against the defendant. The defendant shall in any event have the right to require the ship owner to be joined in the proceedings.”

#### II.4 Wreck Removal Convention:

Art. 12 para. 10. “Any claim for costs arising under this Convention may be brought directly against the insurer or other person providing financial security for the registered owner’s liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the registered owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.”

#### II.5 Athens Protocol of 2002:

Art. 4bis para. 10 “Any claim for compensation covered by insurance or other financial security pursuant to this Article may be brought directly against the insurer or other person providing financial security. In such a case, the amount set out in paragraph 1 supplies as the limit of liability of the insurer or other persons providing financial security, even if the carrier is not entitled to limitation of liability. The defendant may further invoke the defences (other than the bankruptcy or winding up) which the carrier referred to in paragraph 1 would have been entitled to invoke in accordance with this Convention. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the assured, but the defendant shall not invoke any other defence, which the defendant might have been entitled to invoke in proceedings brought by the assured against the defendant. The defendant shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings.”

III. The foregoing referenced conventions deal with certification of the compulsory insurance in the following provisions:

III.1 CLC Convention of 1992 (International Convention on Civil Liability for Oil Pollution Damage 1992)

Art. 7 para. 2 A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a Contracting State such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a Contracting State it may be issued or certified by the appropriate authority of any Contracting State. The certificate shall be in the form of the annexed model and shall contain the following particulars:

- (a) name of ship and port of registration;
- (b) name and principal place of business of owner;
- (c) type of security;
- (d) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
- (e) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security.

Art. 7 para. 3 The certificate shall be in the official language or languages of the issuing State. If the language used is neither English nor French, the text shall include a translation into one of these languages.

III.2 HNS

Art. 12 para 2 A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

Art. 12 para. 3 The compulsory insurance certificate shall be in the official language or languages of the issuing State. If the language used is neither English, nor

French nor Spanish, the text shall include a translation into one of these languages.

### III.3 Bunkers Convention:

Art.7 para 2: A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

- (a) name of ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the registered owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
- (f) period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security.

Art. 7 para. 3 (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

- (b) A State Party shall notify the Secretary-General of:
  - (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
  - (ii) the withdrawal of such authority; and
  - (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

- (c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

Art. 7 para 4 The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language of the State may be omitted.

### III.4 Wreck Removal Convention:

Art. 12 para 2 A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship of 300 gross tonnage and above by the appropriate authority of the State of the ship's registry after determining that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in the annex to this Convention, and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) gross tonnage of the ship;
- (c) name and principal place of business of the registered owner;
- (d) IMO ship identification number;
- (e) type and duration of security;
- (f) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
- (g) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

Art. 12 para. 3 (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of:

- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognized by it;
- (ii) the withdrawal of such authority; and
- (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

Art. 12 para. 4 The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages and, where the State so decides, the official language(s) of the State may be omitted.

III.5 Athens Protocol of 2002:

Art. 4bis para 2 A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

- (a) name of ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the carrier who actually performs the whole or a part of the carriage;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person providing financial security and, where appropriate, place of business where the insurance or other financial security is established; and
- (f) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other financial security.

Art. 4bis para 3 (a) A State Party may authorize an institution or an Organization recognised by it to issue the certificate. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued, and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of:

- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
- (ii) the withdrawal of such authority; and
- (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date from which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not complied with. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

Art. 4bis para 4 The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages, and, where the State so decides, the official language of the State may be omitted.

