**Answers to the questionnaire on unified Interpretation for breaking the shipowner’s right to limit liability.**

1. **PRELIMINARY QUESTIONS**
2. Has your jurisdiction ratified the following conventions (the **‘Conventions’**):
   * + - 1. International Convention on Civil Liability for Oil Pollution Damage 1969 (**‘CLC 1969’**)

**Yes**

* + - * 1. 1992 Protocol to the CLC 1969 (**‘CLC 1992’**)

**YES**

* + - * 1. Convention on Limitation of Liability for Maritime Claims 1976 (**‘LLMC  1976’**)

**Yes**

* + - * 1. 1996 Protocol to the LLMC 1976(**‘LLMC1996’**)

**Yes**

* + - * 1. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (**‘HNS 1996’**)

**No**

* + - * 1. 2010 Protocol to the HNS 1996 (**‘HNS 2010’**)

**No**

* + - * 1. International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (**‘Bunkers Convention’**)

**Yes**

* + - * 1. Nairobi International Convention on the Removal of Wrecks 2007 (**‘WRC’**)

**Yes**

1. Please indicate whether the a.m. Conventions apply directly in your jurisdiction or whether the stipulations have been translated and incorporated into domestic legislation.

**After their ratification, the text of each of the a.m. Conventions has been approved by a specific Statute Law and published by Decree. They are directly applicable by our courts.**

1. Is the wording of domestic provisions incorporating art. V (2) CLC 1969/art. V (2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS/art. 6 Bunkers Convention/art. 10(2) WRC into domestic legislation different to the original text of the Conventions?

**The wording of article L.5121-3 of the code of Transport is the same as that of Article 4 of the LLMC.**

**article L.5122-27 of the code of transport provides that the conditions permitting the shipowner to limit its liability are these of article V (2) of the CLC 1969 and 1992.**

**There is no specific legislation in France in respect of the carriage of hazardous and noxious substances by sea.**

**The bunkers convention, approved by a law of 2 July 2010 and published by a Decree of 20 April 2011, has no equivalent in our domestic legislation.**

1. If your jurisdiction has not ratified the Conventions, does your jurisdiction recognise a right of limitation of liability for claims that would otherwise fall under the Conventions ( the **’Equivalent Claims’**)

N/A

1. Are there any general principle of law in your jurisdiction that may serve to break the right to limitation otherwise than through the specific provisions contained in the Conventions (e.g abuse of rights)?

**There are specific provisions in our transportation and maritime domestic law concerning the limitation of liability but, as mentioned at point 3 above, the wording of the provisions barring the owner from limitation now is the same as that of the a.m. conventions.**

1. **‘’ Personal act or omission’’—Attribution to the person liable**
2. How is the requirement for a “personal act or omission” in art. V (2) CLC 1992, art. 4 LLMC, and arts. 7(5) and 9(2) HNS interpreted in your jurisdiction?

**The decisions of our courts do not specifically refer to the above wording and rather rely on the rest of the text of the article which, as we will explain it hereinafter in our responses to the questions of paragraph III, is qualified as ‘’faute inexcusable’’ (willfull misconduct).**

**One decision, however, rendered by the Cour de cassation on 20 May 1997 in the ‘’Johanna- Hendrika’’held that the personal and intentional or inexcusable fault, barring limitation, must be that of the owner of the ship as exclusively stated bythe LLMCand not that of the master.**

**Another more recent decision rendered by the court of appeal of Bordeaux on 1 March 2013 in the ‘’Heidberg’’, held, in the framework of the LLMC, that ‘’ the person requesting the limitation to be broken, must establish the existence of a fact or of an omission of the owner and not of the master…’’**

1. Where the party entitled to limitation is an entity, what are the requirements for attributing an act or omission to the party entitled to limitation?

**We are not sure what is meant by ‘’entity’’! But the question to know who is the owner in the sense of the a.m conventions (a company, a private individual or an entity) who claims limitation, is left at the court’ s discretion.**

1. Are there court decisions or legal texts in your jurisdiction where the right to limitation under the Conventions or equivalent domestic legislation has been broken (or where it has been submitted that such right should be broken), respectively confirmed (or where it has been submitted that such right should be confirmed), for acts/omissions of:
   1. The Master?
   2. Crew members?
   3. The Designated Person Ashore/Company Security Officer?
   4. Other individuals within the entity entitled to limitation?
   5. Third-party contractors (e.g. agents of the vessel)?

**No**

If your answer is in the affirmative in any of the above questions, please briefly describe (a) the relevant facts; and (b) the rationale for the attribution of the relevant act or omission to the party entitled to limitation.

1. “**WITH** **THE INTENT”/ “RECKLESSLY” – Degree of fault**
2. How is “intent” in art. V (2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS or relevant implementing domestic legislation interpreted in your jurisdiction?

**No decision of our court expressly relies on the ‘’intent’’ to cause a loss for the reason explained hereinafter in our response to questions 10 and 11.**

1. How is recklessness under art. V (2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS or relevant implementing domestic legislation interpreted in your jurisdiction? Does negligence qualify as recklessness (**‘Qualifying Negligence’**) under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS in your jurisdiction?

**For years, our courts have used to assess the degree of fault necessary to prevent an owner to limit liability, the concept of ‘’faute inexcusable’’ (willful misconduct) irrespective of (and disregarding) the more complex wording of the a.m. conventions.**

**This concept comes from labour law and has had over many years and depending on the field in which it was used, different definitions and interpretations. This methodology has allowed our courts to satisfy victims, absent any analysis based on the criteria of the conventions.**

**However, the Cour de cassation has, since 2002, regularly cancelled decisions of courts of appeal which had not based their reasoning on the wording of the a.m. conventions.**

**In the ‘’Ethnos’’ (14 May 2002 – DMF 2002 no. 628 p.620), it cancelled, for lack of legal basis, a decision of a court of appeal which had held the willful misconduct of a sea carrier because the reasons given were insufficient to establish that the sea carrier had acted recklessly and with knowledge that a loss would probably result.**

**The Cour de cassation used the same wording to cancel decisions of courts of appeal, in the ‘’Multitank Arcadia’’ (8 October 2003 - DMF 2003, no. 643 p.1057), ‘’Laura ( 4 Octobre 2005 – DMF 2006, no. 667 p.118), ‘’Touggourt’’ (7 February 2006- DMF 2006, no. 671, P.516), ‘’Rosa Delmas ( 19 October 2010, DMF 2010, no.72,p.155), ‘’ Caliente and Malika ( 29 April 2014 no. 12-25.901).**

**It follows that the Cour de Cassation now invites the lower courts to characterize the reckless act committed with knowledge that damages would probably result.**

**Courts of appeal have followed the evolution of the doctrine of the Cour de Cassation:**

**. On 14 January 20013, the court of appeal of Bordeaux held that, since the proof that an owner’s act or omission had been committed with intent to cause a damage or recklessly and with knowledge that a damage would probably result, had not been brought, it was entitled to benefit of the limitation provided under the LLMC. (‘’Heidberg’’ DMF 2013, no.745).**

**It is worth adding that, in this decision, the court of appeal of Bordeaux held that, ‘’in maritime matters, if the conditions provided for by the convention are fulfilled, the principle governing the liability of shipowners is the limitation of liability, in fact that of the compensation, the exception being their full and entire liability, hence the repair of the damages in full.’’**

**The Cour de cassation rejected the appeal against this decision on 22 September 2015.**

**. On 1 November 2013, although the court of Appeal of Rouen still used the concept of faute inexcusable, it defined it by reference to the wording of the a.m. conventions as ‘’a reckless act committed without valid reasons notwithstanding the conscience that a damage would probably result.’’ (‘’Antares and Audrey Marie’’, DMF 2013 no. 752).**

**In response to the second part of the question, our courts now favor a strict interpretation of the wording of the a.m. conventions and requires the lower courts to characterize the degree of fault preventing an owner to limit its liability.**

**Although we are not sure what ‘’qualifying negligence’’ exactly means, the answer is that negligence, whatever its degree, does not meet the requirements of the a.m. conventions.**

* 1. If the answer to the previous question is in the affirmative, what are the elements of Qualifying Negligence under art. V (2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?

**N/A**

1. What is the standard for recklessness under art. V (2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?

**The French jurisprudence does not allow us to answer this question.**

**Only one decision, rendered in the Erika by a criminal chamber of the court of ppeal of Paris, relied on the concept of recklessness to refuse the benefit of the CLC limitation to Messrs Savarese (the sole shareholder of Tevere Shipping, the registered owner), Pollara ( the technical manager) and Rina, the classification society. It is worth noting that the registered owner had not been sued before the criminal court. The Criminal Chamber of the Cour de Cassation held in 2012 that the court of appeal of Paris could not be criticized for having refused the benefit of the CLC limitation to the above private individuals and to Rina because their faults, found in the framework of the Public action, characterized a reckless fault.**

**Among the critics that may be made against this decision, it is noteworthy that , unlike the civil courts, the Cour de cassation has not analyzed the faults by reference to the wording of the Article V (2) of the CLC and ignored that, according to the text, recklessness could not be considered on its own but should be associated with knowledge that that damage would probably result.**

1. How is “actual fault” in art. V (2) CLC 1969 interpreted in your jurisdiction?

**The wording ‘’actual fault and privity’’ was that of the 1957 convention on the limitation of liability of owners and that of the CLC 1969. It had been translated in the French text by ‘’faute personnelle’’ of the owner. Breaking the limitation was easy at the time. A mere fault was sufficient providing it was a fault of the owner.**

1. How is “privity” in art. V (2) CLC 1969 interpreted in your jurisdiction?

**It has never been interpreted because it cannot be translated into French and there is no equivalent in French law.**

1. **KNOWLEDGE OF THE LIKELIHOOD OF THE HARMFUL RESULT**
2. How is the requirement for knowledge in art. V (2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS interpreted in your jurisdiction?

**As already said, this requirement has never been considered nor therefore interpreted by our courts on its own. No answer can therefore be given to this question nor to the questions 15 and 16.**

1. Does imputed or background knowledge suffice for the purposes of art. V (2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?
   1. If the answer to the previous question is in the affirmative, what are the relevant requirements?
2. Does failure to obtain the necessary information suffice for the purposes of art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?
   1. If the answer to the previous question is in the affirmative, what are the relevant requirements?
3. **“SUCH DAMAGE”/”SUCH LOSS”**
4. How has the term “such loss”/”such damage” (art. 4 LLMC - art. V(2) CLC 1996/arts. 7(5) and 9(2) HNS 1996, respectively) been interpreted in your jurisdiction?

**It does not seem that these terms have given rise to any difficulty as no reported cases have dealt with them.**

1. **BURDEN OF PROOF**
2. Who bears the burden of proof to show that the requirements for breaking the right to limit are fulfilled?

**In the ‘’Heidberg’’, the court of appeal of Bordeaux recalled in its a. m. decision rendered in 2013, that it belongs to the person asking that the limitation be set aside to prove the existence of a fact or of an omission of the owner. It is in conformity with French law of the proof**.

1. Is it possible under the procedural rules of your jurisdiction that the burden of proof may shift to the person liable under certain conditions?

**No.**

1. **INDICATIVE REFERENCE TO OTHER CONVENTIONS**
2. What is the wording used to implement art. 10(2) WRC and art. 10(2) Bunkers Convention in your jurisdiction?

**None.**

1. How have art. 10(2) WRC and art. 10(2) Bunkers Convention been interpreted in your jurisdiction in the context of breaking the right to limitation?

**Not to our knowledge.**

1. **EQUIVALENT PROVISIONS**
2. The same language for the test for breaking the liability limits is used in art IV (5)(e) of the Hague Rules as amended by the Visby Protocol:
   1. Has your country ratified the Hague-Visby Rules or enacted these rules into their domestic legislation?

**Yes, France has ratified the Hague- Visby Rules.**

* 1. If the answer to the previous question is in the affirmative, how are the relevant criteria as listed above (**II-V**) interpreted in the context of the respective provision incorporating art. IV (5)(e) of the Hague-Visby Rules?

**In the same way. As already indicated in point 10 Above, the ‘’Ethnos’’ concerned a sea carriage and the decision of the Cour de Cassation was rendered in the framework of article of article 4-5 of the Hague-Visby Rules.**