



ASOCIACIÓN MEXICANA DE DERECHO MARÍTIMO A.C.

Mexico City, February 28th, 2020.

**Comité Maritime International  
IWG on Interpretation for Standard to Break  
Limitation Under IMO Convention**

**Attn.- Dieter Schwampe and  
John Markianos**

Dear Dieter and John,

Reference is made to the CMI President letter dated February 19th with the Interpretation for Standard to Break Limitation Under IMO Convention IWG questionnaire. Following please find the reply from the Mexican Maritime Law Association:

**I. PRELIMINARY QUESTIONS**

1. Has your jurisdiction ratified the following conventions (the 'Conventions'):

a. International Convention on Civil Liability or Oil Pollution Damage 1969 ('CLC 1969')  
YES

b. 1992 Protocol to the CLC 1969 ('CLC 1992')  
YES

c. Convention on Limitation of Liability for Maritime Claims 1976 ('LLMC 1976')  
YES

d. 1996 Protocol to the LLMC 1976 ('LLMC 1996') (references to 'LLMC' shall be understood as references to either LLMC 1976 or, where applicable, to LLMC 1976 as amended by LLMC 1996)  
NO

e. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 ('HNS 1996')  
NO

f. 2010 Protocol to the HNS 1996 ('HNS 2010') (references to 'HNS' shall be understood as references to either FINS 1996 or, where applicable, to HNS 1996 as amended by HNS 2010)  
NO



g. International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 ('Bunkers Convention')

NO

h. Nairobi International Convention on the Removal of Wrecks 2007 ('WRC')

NO

2. Please indicate whether the a.rn. Conventions apply directly in your jurisdiction or whether the stipulations have been translated and incorporated into domestic legislation. Above conventions that have been ratified apply directly in Mexico.

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

3a. If the answer to the previous question is in the affirmative, what are the differences?

4. If your jurisdiction has not ratified the Conventions, does your jurisdiction recognize under the right of limitation of liability for claims that would otherwise fall Conventions (the 'Equivalent Claims')?

For the Conventions ratified, the limitation of liability apply, but for the non-ratified conventions there is no limitation of liability possible.

4a. If the answer to the previous question is in the affirmative, what are the requirements for breaking the right to limitation for Equivalent Claims?

N/A

5. Are there any general principles 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 right)?

The Federal Civil Code establishes abuse of right as, among other effects, grounds to break the right to limitation.

## II. "PERSONAL ACT OR OMISSION" — Attribution to the person liable

6. 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?

Personal Act or Omission exists if according to the law is imputable to that person.

7. 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?



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In our legislation exists *in eligendo* and *in vigilando* imputability in connection with the entity servants but only when in exercise to their functions.

8. 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:

8a. The Master?

8b. Crew members?

8c. The Designated Person Ashore/Company Security Officer?

8d. Other individuals within the entity entitled to limitation?

8e. Third-party contractors (e.g. agents of the vessel)?

There are no court decisions where the right of limitation have been broken for acts or omissions of above persons.

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.

**III. "WITH THE INTENT"/"RECKLESSLY" — Degree of fault**

9. 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?

As a voluntary act to reach a determined end.

10. 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?

Recklessness occurs when the responsible person did not wanted to commit damage, but causes the damage by not fulfilling the duty of due diligence and to act in a dangerous manner. Our legislation follows the Roman system and recklessness is considered as very serious fault.

10a. 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?

In order for liability to exist in case of negligence it is required that duty of care to the victim exists and that a damage is caused without the intent of causing it.



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

The standard for recklessness is the knowledge that certain actions or omissions may result in damages.

12. How is "actual fault" in art. V(2) CLC 1969 interpreted in your jurisdiction?

Actual Fault is considered as an act or omission imputable to a party that causes a damage.

13. How is "privity" in art. V(2) CLC 1969 interpreted in your jurisdiction?

Under our legislation privity is a fact that creates rights and responsibilities to the parties under the law.

#### **IV. KNOWLEDGE OF THE LIKELIHOOD OF THE HARMFUL RESULT**

14. How is the requirement for knowledge in art. V(2) CLC 1992/art. 9 (2) HNS interpreted in your jurisdiction?

Our jurisdiction interprets that a person with an amount of expertise in certain area is imputed to know or to have a basic knowledge of that area.

15. 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?

As long as there is an indication that the person should have the knowledge based on his position or area of expertise, imputed or background knowledge is sufficient.

15a. If the answer to the previous question is in the affirmative, what are the relevant requirements?

To impute knowledge it is based on the activity, position or relevant academic background of the person (i.e. it is imputed that a licensed lawyer has the general knowledge of the law).

16. 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?

Failure to obtain the necessary information does not prevent for the Owner to exercise his right to limit liability.

16a. If the answer to the previous question is in the affirmative, what are the relevant requirements?



## V. "SUCH DAMAGE"/"SUCH LOSS".

17. 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?

"Such Loss" or "Such Damage" will be interpreted as the damage that was or may be caused as a **direct and immediate consequence** of the act or omission or recklessness.

## VI. BURDEN OF PROOF

18. Who bears the burden of proof to show that the requirements for breaking the right to limit are fulfilled?

The burden of proof lies on the party that invokes or affirms the cause to break liability.

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

In general, burden of proof always lies in the party that invokes or affirms the cause to break liability, except when the claim goes uncontested by the liable party, in which case the burden of proof lies in this party.

## VII. INDICATIVE REFERENCE TO OTHER CONVENTIONS

20. What is the wording used to implement art. 10(2) WRC and art. 10(2) Bunkers Convention in your jurisdiction?

Mexico has not ratified WRC nor Bunkers Convention.

21. 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?

Mexico has not ratified WRC nor Bunkers Convention.

## VIII. EQUIVALENT PROVISIONS

22. 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.



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22a. Has your country ratified the Hague-Visby Rules or enacted these rules into their domestic legislation?

Mexico has ratified the Hague-Visby Rules and the 1979 Protocol.

22b. 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?

The same criteria that apply to CLC and LLMC is applicable to the Hague-Visby Rules.

Trust that above replies are of assistance and look forward to see you at the Tokyo Conference.

Yours Sincerely,

Dr. Ignacio L. Melo Ruiz  
President

cc: CMI President - Christopher O. Davis