ΕΛΛΗΝΙΚΗ ΕΝΩΣΗ ΝΑΥΤΙΚΟΥ ΔΙΚΑΙΟΥ

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CMI International Working Group on Unified Interpretation for Standard to Break Limitation under IMO Conventions

I. PRELIMINARY QUESTIONS

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

a. International Convention on Civil Liability for Oil Pollution Damage 1969 (`CLC 1969')

Yes, by way of Law 314/1976.

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

Yes, by way of Presidential Decree 197/1995.

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

Yes, by way of Law 1923/1991.

d . 1996 Protocol to the LLMC 1976 ('LLMC 1996')

Yes, by way of Law 3743/2009.

(references to 'LLMC' shall be understood as references to either LLMC 1976 or, where applicable, to LLMC 1976 as amended by LLMC 1996)

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')

No (Greece is a signatory to but has not ratified HNS 2010).

(references to 'HNS' shall be understood as references to either HNS 1996 or, where applicable, to HNS 1996 as amended by HNS 2010)

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

Yes, by way of Law 3393/2005.

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

No.

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

Under art. 28(1) of the Greek Constitution, international treaties have to be ratified by domestic legislation before they become part of national law. The domestic legislation ratifying the Conventions in No 1 above, include both the English original and the Greek translation. There is case law to the effect that, where this is the case, Greek courts will interpret the Greek text in light of the English original (LLMC 1976 - Piraeus Court of Appeal 149/2005, Supreme Court 2263/2013). In fact, the legislation ratifying LLMC 1976 and LLMC 1996 expressly refer to the English text as "original", whereas the legislation ratifying CLC 1969, CLC 1992, and the Bunkers Convention refer to the Greek text as "translation", thereby implying that the English text is to be regarded as the original.

3. 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?

-There are some differences, that do not appear to change the meaning of the original provisions.

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

Provision	Original text	Greek verbatim translation
V(2) CLC 1969	If the incident occurred as a result of the actual fault or privity of the owner, he shall not be entitled to avail himself of the limitation provided in paragraph 1 of this Article.	If the incident occurred as a result of the own fault of the Owner, he shall be not entitled to limit his liability as provided in paragraph 1 of this article.
V(2) CLC 1992	The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission,	The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause

	committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.	such damage or recklessly and with knowledge that such damage could probably result.
4 LLMC	A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.	A person liable shall not be entitled to limit its liability if it is proved that the loss resulted from its personal act or omission, committed with intent to cause that loss or showed indifference and with knowledge that such loss would probably result.
6 Bunkers Convention	Nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.	[Verbatim translation is identical to the original]

4. 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')?

To the extent not covered by the Conventions, Greek maritime law provides for a general right of limitation liability of ship owners or operators, based on the following requirements:

1. The claim must be predicated on one of the following causes of action:
   (i) a contractual or other transaction performed by the Master in the course of carrying out the duties assigned to him;
   (ii) a tort committed by the Master, crew, or pilot while those persons were carrying out the duties assigned to them;
   (iii) a tort committed due to negligence of the shipowner while acting as Master of the ship;
   (iv) a ship being wrecked in territorial waters, outer harbours, ports, or bays;
   (v) damages to port installations;
   (vi) wreck removal expenses.

2. The shipowner or operator must either:

(i) relinquish to the creditors the vessel and the gross freight (but not the insurance indemnity, unless there are claims for personal injury); or

(ii) tender an amount equal to 3/10ths of the value of the vessel at the commencement of the voyage, and the gross freight, for claims other than for personal injury; and

(iii) tender an additional amount equal to 3/10ths of the value of the vessel at the commencement of the voyage for claims due to personal injury. If this amount does not suffice, these claims share in the amount under (ii) above.

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?

The shipowner or operator's general right to limit is broken if the tort is caused by their own wilful act while acting as master of the vessel.

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)?

Greek law prohibits the abusive exercise of a right, both under the Constitution and article 281 of the Greek Civil Code. It was held in judgment no. 3424/1997 of the Piraeus Uni-member Court of First Instance that the mere difference between the level of the claim and the amount payable upon exercise of the right to limit is not sufficient to trigger art. 281 of the Greek Civil Code, thus indicating that art. 281 applies in principle. A right is exercised abusively when it manifestly exceeds the limits set by good faith, morality or the social or financial purpose of such right.

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?

Under Greek case law on LLMC, if the party entitled to limit is an individual, then any degree of fault must be attributed to such individual personally (Supreme Court 1470/2017).

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?

If that party is an entity, then any degree of fault must be attributed to the persons comprising the managing bodies of such entity, and those persons to whom the articles of association, the deed forming the entity, or the internal corporate regulations for the operation of the said entity authorise to transact with third parties (Piraeus Multi-member Court of First Instance 1291/2018, Piraeus Single-member Court of Appeal 228/2016).

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)?

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.

8.a/8.b The prevalent position appears to be that the fault of the Master or the crew is not sufficient to break the shipowner's right to limit liability (Piraeus Court of Appeal 149/2005, Piraeus Court of Appeal 766/2010).

8.c: No case law identified.

8.d: Judgment no. 1470/2017 of the Greek Supreme Court held that knowledge on the part of the lawful representative of a tug owning company and of the company managing the tug, who was also on board the vessel at the material time, that a bollard pull test could not be safely carried out, should deprive both companies (as well as the individual concerned) of the right to limit liability for the resulting damage to a quay.

8.e: No case law identified.

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?

An older first instance judgment (Piraeus Single-member Court of First Instance 3505/2003) had interpreted "intent" as encompassing the following three cases:

a. Intention to achieve the result (first-grade *dolus directus*);
b. Prediction that the result will necessarily occur and acceptance of the fact that the result will occur (second-grade *dolus directus*);
c. Prediction that the result is likely to occur and acceptance of the fact that it may occur (*dolus eventualis*).

This approach appears to be supported by a recent Supreme Court judgment (1470/2017).

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?

By way of preliminary observation, the Greek translation of the LLMC translates "*recklessness*" as "*indifference*".

The term "*indifference*" has been defined to include actions that seriously deviate from the actions of the average prudent and diligent person belonging to the same professional or business circle as the person entitled to limit, and showing disregard towards the assets of other persons that are put at risk because of the person entitled to limitation (SC 2263/2013).

The concept of "*indifference*" ("*recklessness*") is not known to Greek law and the courts have approached it in various ways:

- In judgment no. 1291/2018 of the Piraeus Single-member Court of First Instance, the Court interpreted "indifference" as a *sui generis* type of fault *"somewhere between dolus eventualis and gross (conscious) negligence"*.
- In SC 1470/2017, it was held that "indifference" is equivalent to gross conscious negligence;
- In SC 2263/2013, "recklessness" was held to cover *dolus eventualis* and gross conscious negligence (*luxuria*, i.e. prediction that the result is likely to occur but hope that this will ultimately be avoided). However, from the reasoning in SC 2263/2013, it appears that it also includes second-grade *dolus directus*.
- In judgment no. 766/2010 of the Piraeus Court of Appeal, the court held that "recklessness" is a *sui generis* type of fault that is similar to either *dolus* (without specifying what type) and gross conscious negligence, or only *dolus eventualis* but not conscious negligence.

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/a rt. 4 LLMC/arts. 7(5) and 9(2) HNS?

Covered under Question 10 above (actions that seriously deviate from the actions of the average prudent and diligent person belonging to the same professional or business circle as the person entitled to limit, and showing disregard towards the assets of other persons that are put at risk because of the person entitled to limitation). In fact, the person showing indifference is a person who does not care about the (certain or potential) damaging effects of its acts or omissions, whether it predicts such results or not.

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

The conduct of the average prudent and diligent person belonging to the same professional or business circle as the person entitled to limitation.

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

No available jurisprudence. However, the following points may be made: The concept of "actual fault" plays a more important role when the party seeking to limit liability is a legal entity, in which case the fault must be a fault of the persons themselves, who are responsible for the management and representation of the legal entity (in some way the "*alter ego*" of the legal entity). This concept in effect excludes vicarious liability of the legal entity as a ground to break the right to limit liability.

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

No available jurisprudence. However, again as in the previous question, it may be noted that the concept of "privity" is material for legal entities. In this case, the management of the legal entity is not at fault itself but has knowledge of the fault of servants and/or the circumstances which may result in such fault.

IV. KNOWLEDGE OF THE LIKELIHOOD OF THE HARMFUL RESULT

14. How is the requirement for knowledge in art. V(2) CLC 1992/a rt. 4 LLMC/arts. 7(5) and 9(2) HNS interpreted in your jurisdiction?

The person entitled to limitation must predict that there is a chance that the damage will occur (Supreme Court 2263/2013).

15. Does imputed or background knowledge suffice for the purposes of art. V(2) CLC1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?

Imputed knowledge: It appears that imputed knowledge will not suffice (Supreme Court 1470/2017, Piraeus Single-member Court of Appeal 228/2016)'.

Background knowledge: Although there is no specific judicial ruling on this particular issue under the Conventions, Greek cases tend to base their interpretation on knowledge on the part of the specific defendant, rather than of a theoretical archetype, as to the harmful result (Supreme Court 2263/2013; Supreme Court 1470/2017). Nevertheless, the Greek law concept of gross conscious negligence that Greek courts refer to when interpreting LLMC is objectively considered on the background of what an average prudent member of the defendant's professional and business circle would have predicted. That said, SC 2263/2013 held that LLMC must be interpreted in a manner that is autonomous to domestic law and there have been courts which held that the fault threshold in art. 4 LLMC is a *sui generis* type of fault (see Question 10 above).

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

The Greek law concept of gross conscious negligence that Greek courts refer to when interpreting LLMC is objectively considered on the background of what an average prudent member of the defendant's professional and business circle would have predicted.

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?

Arguably yes on the Greek law concept of negligence, if the person entitled to limit knew (or could predict) that the lack of the necessary information could cause the damage; but this issue has not been specifically considered by Greek courts in the context of the Conventions.

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

If an objective approach to knowledge is followed, then the threshold would be set at the type of information which the average, prudent member of the defendant's professional and social circle would have procured.

On the contrary, if a subjective approach is taken and the person entitled to limitation seeks to defend such right by arguing lack of information caused by its own intentional failure to procure such information, then this could be prohibited under Greek law as a form of abusive exercise of the right to limit. That said, there is no specific judicial precedent on this point in the context of the Conventions.

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?

Greek courts consider that the right to limit under LLMC is only broken if the claimant can show that the defendant expected the specific loss that is the subject matter of the proceedings (Piraeus Single-member Court of Appeal 228/2016 - reversed on other grounds but approved as to this point by SC 1470/2017; Piraeus Court of Appeal 766/2010).

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 person challenging the right to limit (SC 2263/2013, Piraeus Single-member Court of First Instance 3505/2003).

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?

There is no precedent or statutory procedural provision allowing the reversal of the burden of proof. However, under the Greek Code of Civil Procedure (GCCP), if a party in proceedings has admitted grounds for breaking the right to limit, it may

revoke its admission if it proves that such admission was erroneous and does not reflect the truth (Art. 354 GCCP). This results in shifting the burden of proof to the person seeking to limit liability, who now has the burden to prove that the (admitted) ground of breaking limitation does not reflect the truth.

VII. INDICATIVE REFERENCE TO OTHER CONVENTIONS

20. What is the wording used to implement art. 10(2) WRC and art. 6 of the Bunkers Convention in your jurisdiction?

WRC: Greece is not a party.

Bunkers Convention: the Greek wording for art. 6 is identical to the English text.

21. How have art. 10(2) WRC and art. 6 of the Bunkers Convention been interpreted in your jurisdiction in the context of breaking the right to limitation?

Greece has not ratified WRC. There is no reported jurisprudence on art. 6 of the Bunkers Convention.

VIII. EQUIVALENT PROVISIONS

22. The same language for the test for breaking the l iability limits is used in art IV (5)(e) of the Hague Rules as amended by the Visby Protocol:

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

Greece has ratified the Hague-Visby Rules by Law 2107/1992.

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?

There is a scarcity of jurisprudence on art. IV(5)(e). The Greek text reads slightly different to the original:

Original text	Verbatim translation of the Greek text
Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.	Neither the carrier nor the ship shall be entitled to avail themselves of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage or by gross negligence and with knowledge that damage would probably occur.

Piraeus Multi-member Court of First Instance 5229/2000 held that, in order for negligent conduct to qualify under art. IV(5)(e) of the Hague-Visby Rules, there must be quasi-wilful misconduct, in the form of *dolus eventualis* or conscious gross negligence. No other reported judgments were otherwise identified.

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