

LOSS OF THE RIGHT TO LIMIT UNDER ARGENTINE MARITIME LAW

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A) INTRODUCTION

The aim of this paper is to explain a particular cause for which ship-owners and carriers may lose their right to limit liability under Argentine law.

My approach to the subject will be purely theoretical, taking into account that Argentine courts have not considered the issue².

As it is provided in international conventions, loss of limitation requires the claimant to prove that the damage resulted from an act or omission done with intent to cause (such) damage/loss, or recklessly and with knowledge that (such) damage/ loss would probably result.

In this sense, I must point out that Argentina is part of the Hague Rules, but not of the Visby Rules, which make reference to the topic at hand. Nevertheless, as you will see, the provisions of the Hague Visby Rules were incorporated to the shipping act of 1973.

Furthermore, Argentina is not part of the Convention on Limitation of liability for maritime claims (London 1,976), but accepted the CLC/FUND protocols of 1,992.

On the other hand, Lawmakers and judges have been reluctant to recognize degrees of fault.

In this context, the sanction of loss of the right to limit is provided in three areas:

- Ship-owners' liability
- Carriers' liability (cargo/passengers)
- Liability for oil spills.

Appealing to brevity I will only refer to the first two subjects.

B) SHIPOWNERS LIABILITY

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² An explanation may come from the fact that gold parameters in the limitation system in force make limits too high – often beyond the value of the damages involved-. On the other hand, air carriers/operators liability rules are not of direct application in maritime cases as stated inter alia in “Antartida Compañía de Seguros c/The PAOLA C” Court of Appeals in Federal Civil and Commercial matters, Buenos Aires, 13/09/1988,

Regarding ship-owners' liability³, the system is similar to the outcome of the US Sirovich Act of 1936: a mixed of abandonment and gross tonnage limitation in case of personal injuries or death.

According to art. 175 of the shipping act, the owner cannot limit liability when there is personal fault from his part⁴.

But on the other hand, seafarers cannot limit when the damage was intentional or if they acted being aware that their acts would cause damage, as states art. 181 2nd paragraph.

C) CARRIERS LIABILITY

With regard to carriers' liability, I must point out that according to the applicable local rules, both to Bill of Ladings and voyage charter parties.

In this sense, the act is clear and provides in art. 278 that the carrier shall not be entitled to limitation if the damage resulted from an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result (dolus eventualis).

In the same cases, servants or agents cannot invoke the provisions regarding the benefit of limitation, according to article 290⁵.

As you see, the Argentine regime accepts in this respect the provisions of article 4 point 5 e) of the Hague Visby Rules.

D) TO CONCLUDE.

By way of conclusion with this brief review, I would like to make a final comment and to pose a question.

It deserves clarification that while Argentina is not part of neither the Hague Visby rules nor to the 1976 Convention on Limitation of liability, this fact does not imply that the parties involved in a particular claim, at time to solve it privately, would not take into account the legal extent of the benefit of limitation, which parties know may be

³ The shipping act of 1973 was modelled following the Italian Code of 1942.

⁴ Note that Argentine is not part of 1957 Convention on limitation (Nor to the 1924 Convention).

⁵ Art. 340 of the shipping act -related to liability of carriers of passengers – refers to an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result. Same formula as the Athens convention 1974, art. 13 (accepted by Argentina).

invoked if the case is presented before courts. Then, at some point, the risk of loss of the right to limit determines the way the conflicts are actually settled.

Moreover, a question may arise minding any insertion of paramount clauses, is fully permitted under argentine law. All of the sudden, we need to answer:

Up to what extent Argentine judges should apply, in international cases governed by the Hague rules, the sanction of loss of limitation, as an application of the international public policy from internal/local source?.

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