



COMITÉ MARITIME INTERNATIONAL

PRESIDENT

19 February 2020

Presidents of NMLAs
Titulary Members
Consultative Members

Re: Unified Interpretation Questionnaire

Dear Presidents, Titulary Members and Consultative Members,

I have been asked by Dieter Schwampe and John Markianos-Daniolos, the Co-Chairs of the recently formed International Working Group on Unified Interpretation for Standard to Break Limitation Under IMO Conventions, to circulate the attached Questionnaire which has been prepared by the Committee as part of their current task to assist IMO with this project which will be on the Agenda for the IMO Legal Committee's meeting in London on 16-20 March 2020, and will be part of the work programme for the CMI's 2020 Conference in Tokyo (20-24 October 2020).

The Questionnaire is addressed to National Maritime Law Associations and responses are requested by 31 May 2020 to d.schwampe@asd-law.com and j.markianos@daniolos.gr, with a copy to admin-antwerp@comitemaritime.org.

On behalf of the Executive Council, thank you for your continued participation in the work of the CMI.

Yours faithfully,

Christopher O. Davis

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Note: All replies to be based national legislation on court precedents in your jurisdiction, references for which should be provided.

REPLIES WOULD BE APPRECIATED BY END OF MAY 2020

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**')
 - b. 1992 Protocol to the CLC 1969 ('**CLC 1992**')
 - c. Convention on Limitation of Liability for Maritime Claims 1976 ('**LLMC 1976**')
 - 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)
 - e. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 ('**HNS 1996**')
 - f. 2010 Protocol to the HNS 1996 ('**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)
 - g. International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 ('**Bunkers Convention**')
 - h. Nairobi International Convention on the Removal of Wrecks 2007 ('**WRC**')
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.
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?
 - 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 recognise a right of limitation of liability for claims that would otherwise fall under the Conventions (the '**Equivalent Claims**')?
 - 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?
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)?

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?
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?
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.

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?
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?
 - 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?
11. What is the standard for recklessness under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?
12. How is "actual fault" in art. V(2) CLC 1969 interpreted in your jurisdiction?
13. How is "privity" in art. V(2) CLC 1969 interpreted in your jurisdiction?

IV. KNOWLEDGE OF THE LIKELIHOOD OF THE HARMFUL RESULT

14. 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?
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?
- 15a. If the answer to the previous question is in the affirmative, what are the relevant requirements?
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?
- 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?

VI. BURDEN OF PROOF

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

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?
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?

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