



ASOCIACIÓN MEXICANA DE DERECHO MARÍTIMO A.C.

Mexico City, October 30th, 2020.

**Comité Maritime International
IWG on Marine Insurance**

Dear Sirs,

Reference is made to the CMI IWG on Marine Insurance questionnaire on direct action against insurers. Following please find the reply from the Mexican Maritime Law Association:

Questionnaire

1. Direct action against liability insurer by third party claimants

1.1 Does your national law provide for a right of direct action against liability insurers by third party claimants?

In our legislation there is no direct action against liability insurers unless it was agreed upon in the insurance policy; however, the third party may act indirectly through other legal figures, such as:

- That the insured party calls the insurers to trial; and
- That the third party exercises an "oblique action" (acción oblicua), which may be exercised when the insured unduly delays action against the insurance company.

If so,

1.2 Does such right of direct action apply to any claim, either in tort or in contract?

The answer to 1.1 is applicable both, in tort or in contract.

If not,

1.3 Is there a right of direct action granted to specific categories of claimants?

Mexican Legislation does not specify any categories of claimants.

2. Jurisdiction

2.1 Does your national law contain provisions on the jurisdiction of courts for direct claims against Insurers?



As mentioned before, there are no direct claims allowed against insurers by third parties. Our legislation establishes a conciliatory procedure at the National Commission of Insurance previous to any jurisdictional procedure, but does not establish an specific jurisdiction for direct claims against insurers.

2.2 Does your national law allow that the direct claims against an insurer are subject to an arbitration clause stipulated into the contract of insurance?

Provided that it is agreed in the insurance policy that a third party may present a direct claim to the insurers, an arbitration clause may also be agreed upon in the insurance contract.

3. Applicable law

3.1 Does your national law contain special conflict of laws provisions on the applicable law governing the right of direct action against Insurers?

There are no provisions in our national legislation regarding direct action against insurers.

If not,

3.2 Is the proper law governing such direct action established on the basis of the general conflict of laws rules applicable to the insurance contract stipulated with the liability insurers, or to the claim in tort or in contract brought by the third party claimant, or on the basis of other general rules?

The conflict of laws in insurance contracts follow the general conflict of laws principles in civil and commercial matters, there are no specific provisions.

4. Procedure

4.1 Under your national law, can the claimant sue the person liable and the insurer in the same proceedings?

The third party may not sue the insurers directly unless it was agreed upon in the insurance policy or if the third party is exercising an oblique action, in which case it will be in the same procedure.

4.2 Can the third party sue directly the insurer only?

If the third party exercises an oblique action, it may be against the insurer only or to the insurer and the person liable.



4.3 Can the liable party, as a respondent, ask that the insurer is joined as a further defendant and ask that the decision be issued directly against the insurer?

Yes, the liable party as defendant may call the insurer to trial as a further defendant and the decision in that trial may be issued directly against the insurer.

4.4 Can the insurer, as a respondent, ask that the party liable is joined as a further defendant?

Yes, the insurer as defendant may request for the party liable to be summoned to trial as a further defendant.

4.5 In case the liable party and the insurer are joined as respondents in the same proceedings, can the insurer file in the same proceedings an action seeking recovery from the insured under the terms of the contract of insurance for the indemnity to be paid by the insurers to the third party?

No, the action seeking to recover from the insured needs to be a separate procedure.

4.6 What are the rules for jurisdiction for joining the third party and/or filing action between the respondents in the above cases?

The applicable jurisdiction will be for all parties the one applicable to the main defendant.

5. Defences

5.1 Under your national law, in case the insurer is directly sued by the third party

5.1.1 Can the insurer raise any defence which would be available to the liable party as regards the merits and quantum, whether or not the latter is joined in the proceedings as a defendant?

If an oblique action is exercised, or the insurer is summoned to trial as per previous answers, the insurer may raise any defence available to the liable party.

5.2 Can the insurer benefit of the global limitation of liability – if any – available to the liable party, whether or not the latter is joined in the proceedings as a defendant?



Yes, the insurer may benefit of the global liability available to the liable party.

5.3 Can the insurer raise defences based on the terms of the insurance contract stipulated with the liable party against the action filed by the third party?

Yes, the insurer may raise any defences based on the terms of the insurance contract.

5.4 Does a separate judgement against the liable party bind the courts of your country in a direct action against an insurer as regards the merits and quantum?

No, it is not binding but will be considered by the Court on its merits and quantum when issuing its decision.

If so,

5.4.1 does this also apply to judgements in default?

Yes, it applies to judgements in default.

5.4.2 does this also apply to foreign judgements?

Yes, it applies to foreign judgements, however if a Recognize and Enforcement Procedure is previously followed and the judge rules in favor of plaintiffs, then it will be binding for the Court.

6. Time limits

6.1. Under your national law, are there any time limits for a direct action against an insurer?

Article 200 of the Maritime Navigation and Commerce Act states that all actions arising from a maritime insurance contract will be time bared in two years.

If so,

6.1.1 how can they be protected?

Time bar will only be protected if jurisdictional action is commenced before the time limit or through a *juris vol* action. Any agreement as to extensions or reductions on the time limit will be null and void as per article 83 of the Insurance Contract Act.



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6.2 Is it possible for the third party to sue directly the insurer even if the time limit of the action against the liable party has not been protected?

It is possible, but the action will fail under the time bar, which is considered a matter of public interest in Mexico.

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