



HRVATSKO DRUŠTVO ZA POMORSKO PRAVO **CROATIAN MARITIME LAW ASSOCIATION**

Member of Comité Maritime International
Studentska 2, 51000 Rijeka, Republic of Croatia

CMI QUESTIONNAIRE ON RIGHTS OF DIRECT ACTION AGAINST INSURERS **- RESPONSE OF CROATIAN MARITIME LAW ASSOCIATION**

Note: References to “national laws” in this Questionnaire include any statutory law of whatever level in each nation and, for common law jurisdictions, any caselaw precedent establishing a right of direct action.

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?

Yes, Croatian Maritime Code (CMC) contains provisions regulating rights of direct action against insurers in the context of marine insurance of liability. Under CMC, marine insurance of liability includes shipowner’s liability insurance (P&I and similar) and ship repairer’s liability insurance. CMC art. 743/2 provides that when it is specially prescribed by law, as well as in case of liability for death, personal injury and health impairment of a crew member, the injured party may claim damages directly against the insurer if such damage arose from an event for which the insured is liable, but for not more than the insurer’s obligation under the insurance contract. The indemnity shall not exceed the limit of insurance.

Furthermore, CMC implements the provisions on compulsory insurance and direct action from the Bunkers Convention 2001 (CMC art. 823.f), WRC 2007 (CMC, art. 840.r), CLC 1969/1992 (CMC, art. 821-823) and the Convention on the Liability of Operators of Nuclear Ships (CLONS) 1962 (CMC art. 835).

In Croatia, Regulation EC 392/2009 and PAL 2002 apply, thus direct action against insurers is allowed for passenger claims accordingly.

Direct action is allowed also under general insurance law. Croatian Civil Obligations Act (CCOA) regulates all contracts of insurance, except contracts of marine insurance, other insurance contracts to which the rules of marine insurance apply, air transport insurance, credit insurance and reinsurance contracts (CCOA art. 923/1). The provisions of CCOA on insurance contracts do not apply to compulsory motor liability insurance and other compulsory insurance regulated under the Compulsory Traffic Insurance Act (CTIA).

CCOA provisions of general insurance law apply, inter alia, to contracts of insurance covering various liabilities in the transport industry, including in particular port operator’s liability, airport operator’s liability, road carrier’s liability, freightforwarder’s liability, shipping agent’s liability and similar. CCOA art. 965 prescribes a general right of direct action against insurer for all third party claimants.

It is hereby relevant to mention that CTIA provides for compulsory liability insurance of the owners of motor boats and yachts owners. It prescribes minimum insurance limits, defines the scope of compulsory insurance coverage and regulates the right of direct action while limiting the insurer’s right to raise defences against such third party claim.

If so,

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

No.

If not

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

Yes.

As indicated above under 1.1, in the context of marine insurance law the right of direct action is limited to crew claims and to claims covered by compulsory marine insurance (Bunker, WRC, CLC, PAL, CLONS and compulsory motor boat/yacht owner's liability insurance under CTIA).

In the case of compulsory insurance under CTIA, the scope of coverage includes only claims for death, personal injury and health impairment of the persons outside the insured vessel (swimmers, surfers, kayakers, persons on shore...). Therefore, only that group of potential claimants have the right of direct action against the insurer of the boat/yacht owner's third party liability.

In the context of general insurance law, there is an unlimited right of direct action against the wrongdoer's liability insurer (CCOA, art. 965).

2. Jurisdiction

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

This issue is regulated under art. 10-13 of the Regulation (EU) No 1215/2012 (Bruxelles I bis).

However, there is a special provision of the CMC, art. 988.a prescribing exclusive jurisdiction of Croatian courts for claims arising from death, health impairment or personal injury of a crewmember suffered at work or in relation to the work on a ship, provided that the crewmember is domiciled in Croatia. It follows that this provision applies also to a direct claim of a crewmember against the shipowner's liability insurer (P&I).

Furthermore, since Croatia is a party to the Bunkers Convention, WRC, CLC 69/92 and PAL 2002, the provisions on court jurisdiction envisaged therein are relevant and apply respectively.

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?

No.

Under Croatian law, the right of direct action is considered as the injured third party's own right that exists *ex lege* and is a matter of substantial law, rather than procedural law. Thus, an arbitration clause stipulated into the contract of insurance cannot be binding upon a third party claimant. It may only bind the policyholder, the insured and the beneficiary.

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?

Yes, but only in respect of marine insurance contracts.

Pursuant to CMC, art. 982 the existence of the right of direct action shall be established according to the law applicable to the underlying claim (claim in tort or in contract brought by the injured third party) or according to the law applicable to the insurance contract.

There are no special conflict of law provisions of national law on the applicable law governing the right of direct action against insurers in respect of the insurance contracts governed by general insurance law (CCOA).

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?

CCOA art. 965/1 states that In the case of liability insurance, the injured party may claim indemnity directly from the insurer for damage suffered due to the event for which the insured is liable, but maximum to the amount of the insurer's obligation. CCOA art. 965/2 states that the injured party shall have his own right to claim indemnity against the liability insurer, as of the date of occurrence of the insured event, and any other subsequent modification to rights of the insured towards the insurer shall be without prejudice to the right of the injured party to indemnity. It follows that both the proper law governing the insurance contract and the proper law applicable to the underlying claim are relevant for the relationship between the third party claimant and the insurer. Therefore, the existence of the right of direct action can be established under any of those two applicable laws.

4. Procedure

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

Yes.

4.2. Can the third party sue directly the insurer only?

Yes.

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?

No.

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

No.

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.

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

N/A

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?

Yes.

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.

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, but only some of them.

Pursuant to CMC art. 743 and CCOA art. 965, if sued directly the insurer can be held liable maximum to the amount of his obligation under the insurance contract.

Pursuant to CCOA art. 965/2 when sued directly by the injured party the insurer may only raise those defences based on terms of the insurance contract stipulated with the liable party that he availed himself of against the insured prior to the date of occurrence of the insured event. Any other subsequent modification to rights of the insured towards the insurer shall be without prejudice to the right of the injured party to indemnity. This applies to voluntary insurance of liability under general law of insurance contracts. The courts apply this rule by analogy to the crewmember's claims against P&I insurers (CMC, art. 743/2).

Special rules regarding the insurer's defences against a direct claim under the Bunker Convention, WRC, CLC and PAL 2002 apply respectively.

In the case of direct actions regulated under CTIA (including third party claims for death, personal injury and health impairment against motor boat/yacht owner's liability insurer), the insurer may not avail himself of any defences that he would otherwise have against the insured on the basis of law or the insurance contract (CTIA, art. 11).

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?

Yes.

If so,

5.4.1. does this also apply to judgements in default?

Yes.

5.4.2. does this also apply to foreign judgements?

Yes if such foreign judgement is recognised by Croatian court in accordance with the relevant legal provisions on recognition of foreign judgements.

6. Time limits

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

Yes.

Pursuant to CCOA, art. 234/5 and CMC art. 724/3 the prescription period for the direct claim of the third injured party against the insurer lapses at the same time as the prescription period for the claim of the injured party against the insured person liable.

Special provisions on time limits for direct actions under the Bunkers Convention, WRC, CLC and PAL 2002 are implemented in the CMC and apply respectively.

If so,

6.1.1. How can they be protected?

Prescription shall be interrupted by filing of a suit or any other action by the injured party against the person liable or the insurer before a court or other competent body for the purpose of ascertaining, securing or enforcing the claim (CCOA art. 241).

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?

Yes, but the court shall refuse such claim if the time limit applicable to the underlying claim against the insured liable party expired before the filing of the claim against the insurer in court and the insurer actually raised that defence in litigation.

9 March 2020

Prepared by:

Adriana V. Padovan, Ph.D. (avpadovan@hazu.hr)

Vice-President, Croatian Maritime Law Association