



## SVENSKA SJÖRÄTTSFÖRENINGEN

The Swedish Maritime Law Association

### CMI QUESTIONNAIRE ON DIRECT ACTIONS AGAINST INSURERS

#### Reply from the Swedish MLA

1.1 Yes, in case of mandatory liability insurance or the insured has gone bankrupt alternatively been dissolved-

1.2 Yes, but only in the above situations.

1.3 No, there is no distinction between the categories of claimants.

2.1 No.

2.2 No specific rule but Swedish courts will probably not consider any arbitration clause in the insurance contract.

3.1 No

3.2 In the absence of a specific provision may Swedish courts decide the matter on the basis of rule applicable to the claim for damages i.e. the claim in tort or contract brought by the third-party claimant.

4.1 There is no specific provision. There will probably be two independent tests as to jurisdiction; one pertaining to the claim against the insurer and one pertaining to the claim the insured.

4.2 Yes, on the basis of the rules pertaining to direct action (see 1.1)

4.3 There is no specific provision. The said course of action however seems to go against the procedure for direct action, meaning there is reason to believe a Swedish court may not admit such an action.

4.4 There is no specific provision but probably not.

4.5. There is no specific provision but probably not.

4.6 There is no specific provision but probably not.

5.1.1 yes

5.2 yes

5.3 In case of ordinary liability insurance, this has been confirmed by the Supreme Court. In case of mandatory insurance, the Supreme Court explicitly held that other interests may be relevant and thus the answer may be no.

5.4 Courts are only bound by judgment of higher courts, but a judgment will likely have very high value as proof and not likely be departed from by another court. It could be discussed whether such a claim against the insurer would be considered *res judicata*.

5.4.1 Cf above

5.4.2 Cf above

6. Not specifically to direct action, the standard statutory limits apply which is 10 years

6.1.1 file suit

6.2 yes but the claim will probably be dismissed since there is no cause of action. It has been confirmed by the Supreme Court that even in the case of contractual time bar, the claimant has no cause of action in a direct claim against the insurer where the insurance is a non-mandatory liability insurance.