

**Questionnaire for National MLA's on Rights of Direct Action Against Insurers.**

**RESPONSES OF THE ARGENTINE MARITIME LAW ASSOCIATION**

In order to give an accurate answer to this questionnaire, preliminarily it should be noted that pursuant to Section 408 of the Navigation Act (No. 20094), the maritime insurance are ruled by the general principles as established in the General Insurance Act (No 17.418) in so far they are not modified by the concerned section of the Navigation Act regarding maritime insurance contracts.

As the Navigation Act does not deal with third parties claims proceedings, we should refer the matter to the General Insurance Act (N° 17.418).

**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? If so,**

**1.2 Does such right of direct action apply to any claim, either in tort or in contract? If not,**

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

**1.1** Even though the General Insurance Act does not provide for a right of direct action against liability insurers by a contractual or a third party claimant, the insurers may be brought to Court “in guarantee” of their insured´s eventual liability in an action called “notice in guarantee”.

Where they are brought in guarantee either by the insured or by a contractual or a third party claimant, insurers will cover the consequences of any adverse judgement against their insured but only up to the terms and conditions of the insurance contract.

**1.2** The right to execute the judgment against an insurer brought “in guarantee” applies to any claim either contractual or in tort.

**1.3** Please refer to the above points 1.1 and 1.2

We should add that the above principles would also apply to the compulsory, pre-judicial mediation proceeding.

be entitled to enter into settlement discussions with claimants without it being necessary for them to wait for the final judgment.

**2. Jurisdiction**

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

According to section 118 of the Argentina Insurance Act, if the claimant files an action against both the insured and the underwriter, he can do so in the jurisdiction of (i) the address of the underwriter or (ii) the place where the incident occurred.

**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?**

Section 57 of our Insurance Act states that arbitration clauses incorporated within the general terms and conditions of an insurance contract are null and void.

However, pursuant to Section 621 of the Navigation Act, after an incident leading to a legal dispute the insured, his insurers and  the contractual or third party claimant (if any) may agree to submit the dispute to a foreign arbitration or court proceeding.

**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?**

Section 609 of our Navigation Act –referring to maritime insurance contracts- states that (i) the contract is governed by the law of the domicile of the underwriter or (b) if the contract was entered with a branch or agency of the underwriter, the contract will be governed by the domicile of such branch or agency.

**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?**

Please refer to 3.1.

**4. Procedure**

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

Yes, please refer to 1.1.

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

No. Please refer to 1.1.

**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, please refer to 1.1.

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

Yes. In fact, the insured must be brought to the proceedings. Please refer to 1.1.

**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?**

Although there is no specific regulation on this issue neither in the Navigation Act N° 20.094 nor in the Insurance Act No.17.418, it may be possible that the Court allows the insurer to seek 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 by way of procedure law.

**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 rules will be same of the principal action since the request must be made within such judicial action.

**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?**

Notwithstanding there is no direct action, once the insurer is brought to the proceeding he is indeed entitled to raise any defence which may be available to the insured. As there is no direct action, the insured must be brought to the proceedings as defendant

**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?**

Since the insurer’s obligation is to hold the insured harmless and the later is the only entitled to limit liability, the underwriter would benefit with the limitation only if the insured is entitled to rely on such defense.

It must be noted that local H&M wordings entitle the underwriter to instruct the insured to commence limitation of liability proceedings.

**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. However it must be pointed out that according to section 118 of the Insurance Act the insurer is not entitled to raise any defence post-event based on the insurance contract (e.g., late notification of the event to the insurer, which cannot be raised against the third party-notwithstanding recourse actions between parties). On the other hand, deductible or exclusions indeed can be raised.

**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. Claimants must file the legal action against both the insured and the insurer within the same legal proceedings.

**If so, 5.4.1 does this also apply to judgements in default? 5.4.2 does this also apply to foreign judgements?**

Not applicable.

**6. Time limits**

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

**If so, 6.1.1 how can they be protected?**

**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.**

Subject to the reply provided in 1.1, the time limit is the same as applies to the action inchoate by the claimant against the assured.

It must be pointed out, in this sense, that according to our law the insurer holds the insured harmless so the party responsible for the damage is the insured and the insurer limits his intervention to follow insured’s fortune.

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