



# CLNI – Constitution of a Limitation Fund in Germany

# 7<sup>th</sup> IVR Colloquium

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### **CLNI** – Constitution of a Fund in Germany

- 1. Introduction: CLNI in Germany
- 2. Rules for limitation funds in German Law
- 3. How CLNI limitation and establishing of a fund works in practice
- 4. Cases and Examples



#### **Introduction - the current status:**

- signature of CLNI The Strasbourg Convention 1988
- ratified by Germany in 1999 and already implemented in German Law since 1998 as §§ 4 to 5 m Binnenschifffahrtsgesetz
- "global" limitation of liability (similar to maritime system LLMC 1976/96)
  - for owners, operators, charterers, salvors, masters and crew
  - generally for all type of claims
  - against all claimants

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#### **Introduction - the current status:**

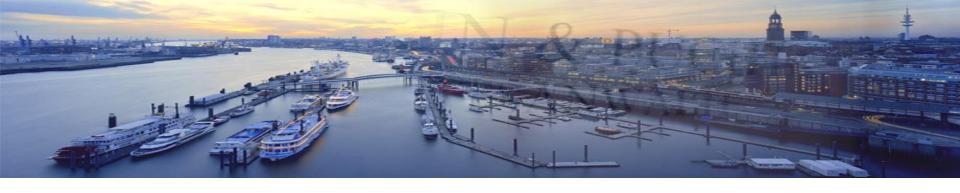
- based on limitation amounts calculated as per
  - size of the vessel (displacement and kw of main engine)
  - type of damage (property damage or personal injury)
  - type of claim (ordinary, caused by dangerous goods or for wreck removal)
- in 15 years in Germany a number of three (3) cases involved a CLNI limitation fund
- in every case limitation was questioned / contested



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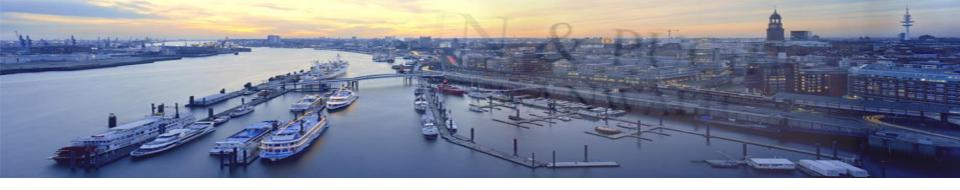
- limitation amounts:
  - "caused by dangerous goods"  $\rightarrow$  5 million SDR
  - "for property" = min. 100,000 SDR, typically  $\rightarrow$  300,000 to 1 million SDR
  - for "wreck removal costs", another separate fund as above
  - "for personal injury", doubled amounts as above
- unlimited claims in Germany:
  - damages to water environment "pollution" / fire brigades protecting "water"
  - salvage remuneration
  - pleasure crafts / yachts

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#### **Introduction - the future status:**

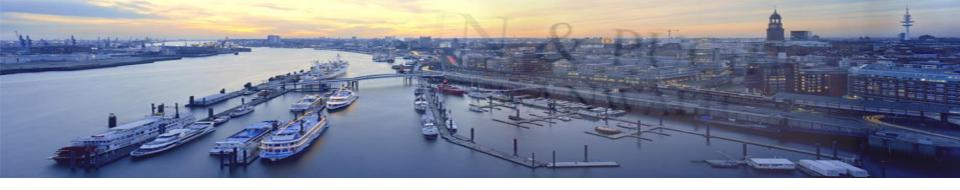
- signature of CLNI 2012 not yet done by Germany, but expected soon
- advantages of CLNI 2012 from a practical lawyers' view:
  - more precise wording (predictability)
  - wider geographical application (harmonization)
  - improved protection for the owners of vessels
- increase (doubling) of limitation amounts: political / economical issue



#### **Rules for limitation funds in German Law**

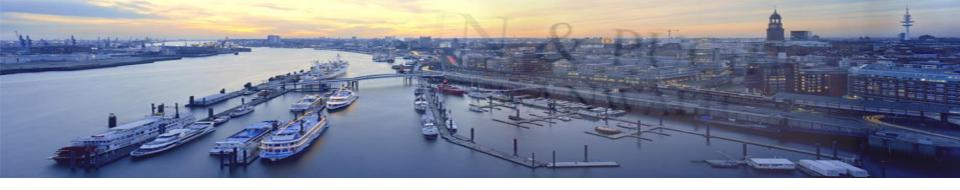
- according to § 5 d BinSchG limitation can be effected by
  - establishing a limitation fund (in Germany or in a CLNI contracting state) or
  - relying on limitation by way of a defence against one claimant
- details are laid down in a specific law: "Schifffahrtsrechtliche Verteilungsordnung SchVertO"
  - established in the 70ies for maritime limitation funds
  - applicable for inland limitation as well with some modifications as per §§ 34 ff.
     SchVertO

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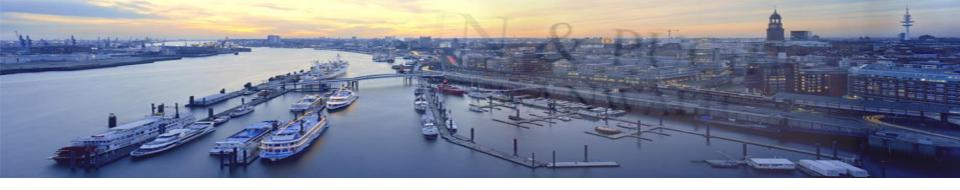
#### Rules for limitation funds in German Law

- application for establishing a fund at the Court
- court fixes the limitation amount
- court appoints the administrator
- proceedings are very similar to insolvency proceedings
  - administrators procures the interests of all claimants
  - each claimant may contest participation / quantum / rank of other claimants
  - also the applicant may contest participation / quantum / rank of claims



# How CLNI limitation works in practice

- cash payment into court accounts (Hinterlegung) or
- bank guarantee (upon special permission: P & I Club letter) as per the decision of the court
- calculated for the amount as per the SDR exchange rate at the date of the limitation decision by the court



## How CLNI limitation works in practice

consider: calculation of interest rate:

- for the period until establishing the limitation funds:
  - 4 % p.a. are to be added to the limitation amount as from the date of the incident on
- following establishing of limitation funds:
  - 1.2% p.a. paid by the state on cash payment to the fund
  - 1.2 % p.a. to be added on security / bank guarantee



# How CLNI limitation works in practice

**consider:** the costs for the applicant

- reasonable fees for the administrator have to be paid by the applicant upon establishing the fund
- in practice either as per costs for insolvency administrators (Hamburg practice) or per RVG lawyers fees for general case handling (Mainz practice)

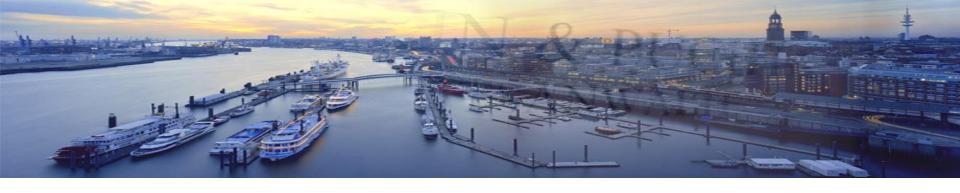
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### **How CLNI limitation works in practice**

consider: every step to limit liability encourages claimants to break or avoid the limitation!

- breaking the limitation as per § 5b BinSchG "own personal act or omission of the barge owner with intent or recklessly and with knowledge that such loss would probably result"
- avoiding the limitation by "modeling" the claims to argue that they fall outside of CLNI / § 5 BinSchG



### **Cases and Examples:**

The "AN.KA"

incident happened: 31.4.2004

application for limitation: 2006

rejection by lower court: 2007

appeal decision confirming limitation: October 2007

meeting for reviewing claims: 2008

preliminary distribution: 2010

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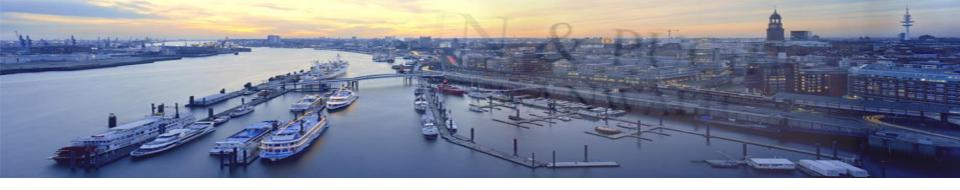


### **Cases and Examples:**

The "AN.KA"

SOG Karlsruhe, Oct 1st 2007: a barge carrying dangerous goods may nevertheless be liable for regular property damage limitation fund only

BVerwG, Nov 23<sup>rd</sup> 2011: preventive costs (for fire brigades) can be "damages" but not to "property" in the sense of CLNI as the "water" is no physical thing in the sense of CLNI



### **Cases and Examples:**

#### The "EXCELSIOR"

Incident at Cologne
- Rodenkirchen
March 25<sup>th</sup> 2007

- lack of stability and stability calculation
- limitation proceedings initiated: Mai 2010
- applicant contests participation of claims

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**Cases and Examples:** 

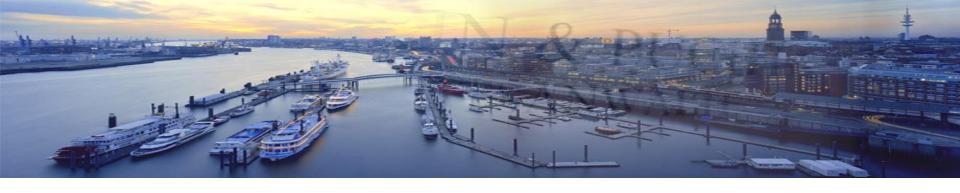
The "EXCELSIOR"

RhSchOG Cologne 10th July 2012:

**Breaking the limitation:** 

"The Owner and Operator of an inland container barge has the duty to himself take care that the stability calculation is applied by the master"

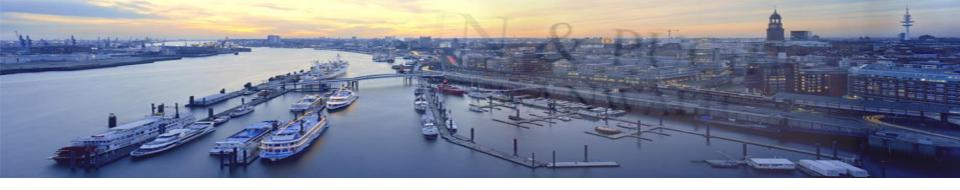
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### **Cases and Examples:**

#### The "SENTA"

- fire and damage to a bridge in 2008
- claims of persons and property "unrelated" to shipping occurred
- attempts to set CLNI limitation for "third parties" aside based on constitutional reasons
  - The Prof. Manssen Report 2010 -
- court evidence proceedings still pending



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