



CLNI – Constitution of a Limitation Fund in Germany

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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**

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CLNI in Germany – Part 1

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 Binnenschiffahrtsgesetz**
- **“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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CLNI in Germany – Part 1

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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CLNI in Germany – Part 1

Introduction - the current status:

- **limitation amounts:**
 - “caused by dangerous goods“ → 5 million SDR
 - “for property” = min. 100,000 SDR, **typically → 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



CLNI in Germany – Part 1

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**

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CLNI in Germany – Part 2

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: “Schiffahrtsrechtliche 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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CLNI in Germany- Part 2

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**

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CLNI in Germany- Part 3

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**

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CLNI in Germany - Part 3

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



CLNI in Germany – Part 3

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)



CLNI in Germany – Part 3

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



CLNI in Germany – Part 4

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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CLNI in Germany – Part 4

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 23rd 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



CLNI in Germany – Part 4

Cases and Examples:

The “EXCELSIOR”

**Incident at Cologne
- Rodenkirchen
March 25th 2007**

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

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CLNI in Germany – Part 4

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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CLNI in Germany – Part 4

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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