



# **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**

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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**



## **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 1<sup>st</sup> 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



## **CLNI in Germany – Part 4**

### **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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## CLNI in Germany – Part 4

### Cases and Examples:

### The “EXCELSIOR”

**RhSchOG Cologne 10<sup>th</sup> 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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