



(Autonomous) interpretation of the CLNI a case law study

9th IVR Colloquium | Belgrade

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Start



- OLG Nürnberg 30 March 2017 – 9 U 243/14 BSch
GMS SENTO

CLNI – Global Limitation of Liability



- LLMC 1976 – protocol 1996

(Brussels Limitation Conventions of 1924 and 1957)

- CLNI 1988 – CLNI 2012

- GOAL: establish uniformity in respect of global limitation (but certain issues unresolved)

CLNI – Global Limitation of Liability



- How does it work? General outline
 - Who – art. 1 CLNI;
 - For what – art. 2 CLNI;
 - When /How – art. 12 CLNI and procedural law of state parties;
 - Effect – art. 14 CLNI and Brussels 1 (bis) Regulation (*Maersk/Cornelis Simon*).

CLNI – Global Limitation of Liability



- LLMC versus CLNI, differences, i.a.:
 - Different funds - reservation;
 - Limits, deadweight (cargo) or displacement (non cargo) and propulsion – art. 6;
 - Art. 11 LLMC vs art. 12 CNLI 2012.



Article 12 CLNI

Any person alleged to be liable may constitute a fund is possible with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation, or if no legal proceedings are instituted, with the competent court or other competent authority in any State Party in which legal proceedings may be instituted for a claim subject to limitation. The fund must be constituted in the sum of such of the amounts set out in article 6 and 7 as are applicable to the claims for which the person constituting the fund may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

Global limitation of liability - GMS SENTO





- OLG Nürnberg 30 March 2017 – 9 U 243/14 BSch
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- Allision vessel crane with bridge
- Dutch owner – Dutch underwriter
- Skipper unaware of actual height of crane



- OLG Nürnberg 30 March 2017 – 9 U 243/14 BSch
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- No entitlement to limitation of liability in accordance with § 5b Abs.2 BinSchG/Art. 4 CLNI.
- *Elementare Sorgfaltspflicht*



Art. 4: Conduct barring limitation

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.



- Party liable and acts committed by the crew;
- LLMC 1976 – *principle of unbreakability*;
- GMS SENTO versus Dutch case law – actual knowledge.





- Autonomous interpretation - uniformity;
- Importance of LLMC – travaux préparatoires LLMC 1976;
- National legislation or direct application;
- Guidelines – database – supranational appeal court;
- Forum selection.



Thank you

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End