CLNI JUDGEMENTS

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CLNI JUDGMENTS

COURT	LOCATION	ARTICLE CLNI	SUBSTANCE
Berufungskammer ZKR Strassburg 23.04.1992	**250 Z – 2/**	**Art. 4**	**Limitation of liability**

The now outdated notion of acting with malice aforethought is apparently intended to describe conduct by the debtor, in respect of which a generally approved limitation of liability on his behalf is unacceptable to the creditor. However this would imply not only the intent, but also deliberate negligence (almost exactly as in Art 4. of the Strasbourg Convention of 1988 on the Limitation of Liability in Inland Navigation - CLNI – according to which "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". Cf also the identical regulation in Art. 4a of the German law on inland navigation law, introduced into this law by the Second Maritime Change Law of 25.07.1986, according to para. 1.4 of which, the limitation of liability for the shipowner for claims relating to loss involving the death or injury of passengers ceases to apply if the aforementioned conduct on his part is established.)

RB Rotterdam 11.06.1993	**ECLI:NL:RBROT:1993:2894 S&S 1994,103**	**Art. 17**	**Applicability of CLNI**

There is no possibility to anticipate the CLNI and entertain a claim relating to damage sustained in a collision that occurred before the CLNI Convention was ratified by the Netherlands (1988).

RB Rotterdam 07.10.1994	**ECLI:NL:RBROT:1994:3008 S&S 1997,84**	**Art. 17**	**Applicability of CLNI**

There is no possibility to anticipate the CLNI and entertain a claim relating to damage sustained in a collision that occurred before the CLNI Convention was ratified by the Netherlands (1988).

Berufungskammer ZKR Strassburg 08.12.1994	**317 Z – 15/94**	**Applicability of CLNI prior to ratification**

As far as the Appeals Chamber is aware, this Convention will be ratified by the Federal Republic of Germany and its content incorporated into the German law on inland navigation, in particular since the Unification Treaty concluded between the Federal Republic of Germany and the former German Democratic

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republic on 31.08.1990, as a result of by then already modernised liability law for inland navigation in the latter State stipulates that "the pan-German legislature intends to introduce limitations of liability relating to amount for commercial inland navigation ahead of the entry into force of the Strasbourg Convention (CLNI)" (Annex 1, Chapter 3, Subject area D, Section III, No. 4 of the Treaty). In the light of this it cannot be a matter for the courts to partly pre-empt the ratification of this Convention, or its incorporation into the law on inland navigation by the legislature, by already treating certain regulations contained in the Convention as legally binding or, by means of a legal analogy, referring to an equivalent regulation in maritime law, particularly as it is not simply a question of "whether" a limitation of liability applies, but also of "how", as well as of the distribution of the amount of liability among multiple creditors and the procedures this entails.

RB Rotterdam 24.10.1996	**ECLI:NL:RBROT:1996:2984 S&S 1997,41**	**Art. 2**	**Liability for costs and measures to prevent water pollution**

To limit liability for preventive costs related to environmental contamination, it is not sufficient to constitute a property fund; rather the specific water pollution fund should be constituted.

Hof Den Haag 26.10.1999	**ECLI:NL:GHSGR:1999:4181 Appeal re: ECLI:NL:RBROT:1996:2984, S&S 1997,41), S&S 200, 132**	**Art. 2**	**Liability for costs and measures to prevent water pollution**

To limit liability for preventive costs related to environmental contamination, it is not sufficient to constitute a property fund; rather the specific water pollution fund should be constituted.

SchifffahrtsOG Köln 31.10.2006	**3 U 138/05 BSch –, juris**	**Art. 18, para. 1 c; Art. 2, paras. 1 d, e and f**	**Limitation of liability according to Art. 5 f German law on inland navigation BinSchG**

On this precise point, the legislature has not included any relevant provisions corresponding to Art. 5j of the **German law on inland navigation BinSchG**. This also became particularly apparent through the fact that in this respect the preamble (cf BT-Drucks. 13/8446 S.30) refers to CLNI Art. 18, para. 1c, which in turn refers to CNLI Art. 2, paras. 1d and e. In contrast, there is specifically no reference to CNLI Art. 2, para. 1f, which addresses claims of the nature under discussion

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here regarding reimbursement for safety measures. A correction to what the Senate considers a clear interpretation, consisting of removing at the outset the entitlement to the reimbursement of costs for safety measures from the scope of application of the limitation of liability in accordance with Arts. 4 to 5m of the **German law on inland navigation BinSchG**, would overstep the boundaries of acceptable interpretation. Given the clear statements in the preamble regarding claims for reimbursement of expenses there is no ascertainable loophole which would allow the use of an analogy.

RB Rotterdam 27.07.2007	**ECLI:NL:RBROT:2007:1405 S&S 2009,68**	**Art. 6**	**The term 'means of propulsion'**

The capacity of a bow thruster intended solely to manoeuvre the vessel is not included in the calculation of the sum of limited liability. This type of bow thruster is not classed as a means of propulsion (Ger: "Antriebsmaschinen" ; French: " machines de propulsion") as referred to in CLNI Art. 6.

SchiffahrtsOG Karlsruhe 1.10.2007	**Az.: 22 W 1/07 BSch ZfB 2008, Nr. 8, Seite 1987 ff**	**Art. 1 para 2 c.) and 18, para 1. b.) CLNI §§ 5 h and 5 f BinSchG**	**Damage caused by dangerous goods versus material damage and jurisdiction for distribution procedure**

If a tanker carrying a cargo of dangerous goods as construed by article 5h of the Inland Navigation Act (BinSchG) causes material damage when loading and unloading, the maximum liability amount under articles 4 et seq BinSchG shall be calculated not in accordance with article 5h BinSchG but with article 5f BinSchG if the material damage is caused not by the dangerous cargo itself by by the vessel's hull, which has mechanically caused the damage that is the subject of the dispute. Damage caused during loading and unloading operations is caused directly in relation with the operation of the vessel as construed by article 4 I BinSchG; it is not necessary for the vessel to be moving.If the vessel's home port and the applicant's place of business are not in Germany, then the navigation court of justice responsible for conducting the navigation distribution procedure is the one with technical and local responsibility for the average.

VG Darmstadt 31.07.2008	**3 E 1329/07 (4)**	**Art. 2, para. 1a; 6, para. 1b**	**No limitation of liability for the costs of a fire service intervention related to a shipping accident; water pollution**
Hessischer Verwaltungsgerichtshof 25.11.2010	**8 A 3077 08**	**(Appeal re VG Darmstadt 31.07.2008)**	
BVerwG 23.11.2011	**6 C 6/11**	**(Appeal re Hessischer Verwaltungsgerichtshof 25.11.2010)**	
	ZfB 2012, Nr. 2/3, page 2168 ff		

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The costs claimed are not covered by the facts of the situation that initiated the limitation of liability. Fire service costs are not considered claims for loss in the sense of Para. 4 of the **German law on inland navigation BinSchG** in conjunction with CLNI Art. 2 para. 1 a.

Hof Den Haag	**ECLI:NL:GHSGR:2009:3293**	**Art. 6**	**The term 'means of propulsion'**
28.04.2009	**S&S 2009, 31 (Appeal re ECLI:NL:RBROT:2007:1405 S&S 2009,68)**		

The capacity of a bow thruster intended solely to manoeuvre the vessel is not included in the calculation of the sum of limited liability. This type of bow thruster is not classed as a means propulsion (Ger: "Antriebsmaschinen"; French: " machines de propulsion") as referred to in CLNI Art. 6.

OLG Karlsruhe	**22 U 4/09 RhSch**	**Art. 6, para. 2**	**Liability privilege under Art. 5f, para. 2 of the German law**
29.09.2009	**ZfB 2/2010, Sammlung 2067 ff**		**on inland navigation BinSchG**

In accordance with Art. 5f, para. 2 of the German law on inland navigation, claims in respect of damage to harbour works and basins (and similar) have priority with regard to settlement from the maximum liability limit. In Art. 5f, para. 2 of the German law on inland navigation – which corresponds to the regulation for maritime shipping contained in Art. 487 b of the German Commercial Code - the German legislature has made use of the opportunity set out in CNLI Art. 6, para 2, to accord priority to claims for damage to certain, usually public installations over claims relating to other property damage. In consequence, such damage is considered first when distributing the amount of liability in accordance with the distribution procedure set out in Art. 46, para. 1 of the Maritime Distribution Statute.

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RB Rotterdam 30.09.2009	**ECLI:NL:RBROT:2009:….. S&S 2011,31**	**Arts. 6; 9**	**Limitation of coupling relationship between pusher and barges**

Accident involving a pusher coupled to a pushed barge. Although the CLNI (nor the London Convention on Limitation of Liability for Maritime Claims, from which the CLNI is largely derived) contains no express regulation, it can be understood from CLNI Arts. 6 and 9 that the owner of a pusher that at the time of the accident was coupled to a barge, cannot limit his liability by constituting a fund solely for the pusher.

OLG Stuttgart 20.8.2010	**File ref.: 3 U 60/10 ZfB 2010, No. 10, page 2099 et seq**	**Article 5 c I (1) BinSchG = Art.1 Abs. lit. a CLNI**	**Concept of charterer, recklessness and procedural law**

A charterer as construed by article 5 c I (1) BinSchG = Article 1 para. 2 lit. a is someone who carries on transport operations with a vessel together with its crew, even if the shipowner has control over the vessel, but has undertaken to perform transport movements for the time charterer. Time charterers of a vessel can be - as with hiring - two legal entities simultaneously.

Someone who crassly ignores the contract partners' safety interests and has neglected basic safeguards is acting with deliberate recklessness as construed by article 5 b para 1 BinSchG/Article 4 CMNI. This must include the subjective requirement for the awareness of a probable occurrence of loss, but which need not exceed a 50% probability. Reckless misconduct alone on the part of the vessel's command shall not constitute sufficient grounds for unlimited personal liability on the charterer's part. This requires qualified culpability in the charterer's own right.
The opening of the distribution procedure under the Shipping Distribution Statute shall not suspend litigation that is already sub judice, it shall have no effect on the admissibility of the action. The injured party may pursue a claim for unlimited personal liability, for example on the part of the charterer, arguing that the charterer has caused damage as a result of deliberate recklessness. Should the global limitation of liability under article 4 et seq. BinSchG ultimately apply, the lawsuit is to be dismissed, with the consequence that the injured party will only be able to pursue his claim in the distribution procedure.

RB Rotterdam 15.09.2010	**ECLI:NL:RBROT:2010:…… S&S 2010,32**	**Arts. 1; 11**	**Term 'charterer' in relation to pusher and barge**

The mere fact that a pusher is employed to move a barge chartered for the purpose of transporting containers, does not render the charterer of the barge also the charterer of the pusher. A charterer may only impose a limitation on the fund constituted for the barge where he is also the charterer of the barge.

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Hof Den Haag 30.08.2011	**ECLI:NL:GHSGR:2011:1135 (Appeal re ECLI:NL:RBROT:2010:……, S&S 2010,32), S&S 2012,61**	**Arts. 1; 11**	**Term 'charterer' in relation to pusher and barge**

For an explanation of the term ´charterer´ in the sense of CLNI Art. 1, para. 2, it is necessary to consider Art. 1 para. 2 of the London Convention on Limitation of Liability for Maritime Claims, from which the CLNI is largely derived. In contrast to Dutch law, where time and voyage chartering is linked to carriage on board a vessel (and thus the voyage or time chartering of a barge alone is not possible), under CLNI Art. 1, the bareboat, voyage and time charterer is included among those entitled to limit liability with regard to the whole vessel (push boat and barge). There are no grounds to distinguish between principal and sub-charterer. The barge and pusher are furnished as a pushed entity, so that the charterers can also limit liability through the fund constituted for the pusher.

RB Rotterdam 22.09.2010	**ECLI:NL:RBROT:2011:….. S&S 2011,33 , ZfB 2011, Nr. 1, p 2114 (2014) ff**	**Art. 1**	**Slot charterer is entitled to limit liability**

For interpretation of the CLNI, it is essential to consult the London Convention on Limitation of Liability, from which the CLNI is largely derived. A slot charterer (that is to say, a charterer who concludes a charter contract for part of the hold for a number of containers) is entitled to limit liability in the sense of CLNI Art. 1 para.2. Here it is important to note that the concept of those entitled to limit liability is applied increasingly widely and that the carriage of containers has increased, so that the use of slot charter contracts has also grown significantly, as has the close link between vessel and slot charterer for the use of a given number of container places on a particular vessel. In the case of slot chartering, the control over the chartered hold space and the commercial risk is comparable with that of the user or charterer who has control over the entire cargo capacity of the vessel.

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Hof Den Haag 28.04.2011	**ECLI:NL:GHSGH:2011, 3019 (Appeal re ECLI:NL:RBROT:2011:… S&S 2011,33), S&S 2014,53 ZfB 2011, Nr. 8, page 2139 ff**	**Art. 1**	**Slot charterer is entitled to limit liability**

For interpretation of the CLNI, it is essential to consult the London Convention on Limitation of Liability, from which the CLNI is largely derived. There are no grounds to distinguish between principal and sub-charterer: the importance of being able to invoke limitation applies to both principal and sub-charterer. Given the aim and the scope of the CLNI, there is no reason to deny the slot charterer the right to limitation.

RB Rotterdam 25.09.2013	**ECLI:NL:RBRO:2013:7253 S&S 2014,32**	**Arts. 2; 18**	**Reservation under CLNI Art. 18 for water pollution**

The reservation expressed in CLNI Art. 18, para. 1a applies only to damage due to a change in the quality of the water itself, and not to damage to property caused by oil that has leaked into the water. Claims for damage due to a change to the quality of the water include the costs for reasonable preventive measures implemented to counter the threat of damage due to a change in the quality of the water (cleaning costs). Under Dutch law, for all these claims (including those presented as recourse claims), a water pollution fund should be constituted; it is not sufficient to constitute a property fund.

RB Rotterdam 09.10.2013	**ECLI:NL:RBROT:2013, 8135 S&S 2014,77**	**Arts. 2; 15; 18**	**Reservation in respect of vessels not used for commercial shipping. No anticipation of CLNI 2012**

In the light of the declaration made upon accession to the CLNI as set out in Art. 15, para.2, the CLNI applies to all waterways in the Netherlands. As the Netherlands has emitted no reservations with regard to vessels not intended for commercial shipping (Art. 18, para. 1d), the owner of a houseboat may invoke limitation of liability.

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OLG Hamburg 05.12.2013	**6 U 194/10 - , juris**		**Interruption or suspension of a dispute in the Netherlands**

A dispute regarding the legal liability of a principal carrier in respect of an average in the Netherlands is not interrupted in the sense of Arts. 52; 42; 8 para. 3 of the German law on the procedure regarding the constitution and distribution of a fund to limit liability in maritime and inland navigation, if the German dispute tribunal reaches the conclusion that the principal carrier is not entitled to limit liability under Arts. 4 to 5m of the German law on inland navigation BinSchG (thus also the CLNI). This also applies where the claimant has registered his claims in respect of the distribution procedure in the Netherlands. In the light of these facts, the dispute procedure cannot either be suspended under Art. 148 of the Code of Civil Procedure or paused under Art. 251 of the Code of Civil Procedure.

RheinschifffahrtsOG Karlsruhe 27.04.2015	**22 U 1/14 RhSch ZfB 2015, Nr. 6, page 2359 ff**		**Limitation of liability and pilot liability**

In the same way as is set out in Art. 21, para. 3 of the law on maritime pilots, a pilot is only liable for intent and gross negligence. However, under Arts. 5b, para. 1; 5 c, para. 1.3 of the German law on inland navigation BinSchG, limitation of pilot liability is excluded where the damage is due to the pilot acting with the intent of causing damage, or recklessly and in the knowledge that such damage would be likely to occur. The description of the action as 'reckless' refers to a particularly severe objective degree of dereliction of duty, going beyond gross negligence (not legally binding).

RB Rotterdam 25.11.2015	**ECLI:NL:RBROT:2015:8534**	**Arts. 2; 18**	**Persons entitled to invoke limitation with regard to the water pollution fund**

The Netherlands has emitted a reservation, as set out in CLNI Art. 18, para. 1a, with regard to the limitation of liability for damage due to water pollution. For this reason, the limitation of liability in respect of claims for damage due to water pollution is based not directly on the CLNI, but on the Dutch procedure for settling such cases. The owner of the vessel liable is not entitled to invoke limitation for costs arising from measures implemented by the owner to contain the water pollution caused by oil leaking from his vessel (CLNI Art. 2, para. 1f). This rule will also be maintained in the new CLNI. Here the limitation system

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for inland waterways deviates from the CLC, where the owner may institute such a claim in the limitation fund. It is not the task of a Dutch judge to abolish differences between maritime and inland waterways shipping law.

Rb Rotterdam 20.7.2016	**ECLI:NL:RBROT:2016:6041 S&S 2016,120 (also S&S 2016, 27)**	**Art. 2, 5, 18 CLNI**	**Water pollution**

The question whether the claim for costs incurred by the state or port service in avoiding/limiting, clearing up (a) water pollution ("primary water pollution") and (b) water pollution of things, such as banks, embankments, vessels and other objects and (c) pollution of surface water that has since been cleaned using the water pollution fund (not an asset fund) can be limited is to be answered by reference to the CLNI system and the ability conferred by its article 18 for excluding application of the Convention for claims arising from damage caused by changes to the physical, chemical or biological quality of the water in conjunction with the Dutch regulations for the separate limitation fund for water pollution (Art. 8: 1065 BW).

The wording of the Dutch regulations ("water pollution costs") is not authoritative in the interpretation of Art. 18 CLNI. The aforementioned claim on account of primary water pollution lends itself to limitation, but not claims for secondary water pollution. The latter can be limited by the asset fund, which was not however set up in regard to the matter currently under consideration. Claims in respect of appropriate preventive measures for avoiding water pollution, and in respect of appropriate costs for determining damage and achieving satisfaction in respect of other costs relating to compensation for water pollution damages (Art. 6:96 lid 2 BW) are also taken into consideration in the limitation.

What is crucial in answering the question whether measures were taken to avoid water pollution or to clean physical things, such as quays, banks and vessels, is what the person taking the action intended by the measures. In the event of doubt, a rule of thumb is that when measures are taken to protect/clean physical things, the associated costs, subject to proof to the contrary, belong in the asset funds. The mirror image arrangement is that the cost of measures relating to water pollution belongs in the water pollution fund, subject to proof to the contrary.

Rb Rotterdam 16.9.2016	**ECLI:NL:RBROT:2016:9879 S&S 2017/2**	**Art. 6 CLNI**	**Pushed convoy collision with bridge separate limitation fund pusher vessel and lighter**

Collision between a pushed convoy comprising a pusher vessel and lighter and a bridge. The fact that the pushed convoy is a fixed structure made up of vessels does not mean that the pusher vessel and lighter rigidly connected with it need be deemed one vessel. Joint and several liability of the two connected parts

with respect to third parties does not mean that they are both jointly and severally liable for setting up a limitation fund. Each of them can limit its (joint and several) liability by setting up a limitation fund as laid down in Art. 6 CLNI.

Rb Rotterdam	**ECLI:NL:RBROT:2016:9878**	**Art. 1, 6 CLNI**	**Pushed convoy collision with bridge**
16.09.2016	**S&S 2017/3** regarding the facts: S&S 2017/2		**separate limitation fund pusher vessel and lighter**

There can be no question of the lighter's owner piggybacking on the fund set up by the pusher vessel. The lighter's owner also has to set up a limitation fund in order to limit liability. The CLNI definition needs to be consulted first in order to answer the question whether the lighter can limit himself according to the criteria of the London Convention on Limitation of Liability (LBV/LLMC). A lighter satisfies the criterion of vessel under Art. 1 CLNI, as it does under the maritime LBV. If neither convention offers any grounds for differentiating between a seagoing and inland navigation vessel then national law needs to be consulted. According to Art. 8.3 para 1 BW, inland waterway vessels are vessels that are registered as such, as well as non-registered vessels, which by virtue of their design are not intended exclusively or mainly for seagoing operation.
As the lighter is admittedly suitable for seagoing operation but was not primarily intended for this purpose when handed over in 1952, the fund shall be required to be set up on the basis of Art. 6 para 1 CLNI.

Rb Rotterdam	**ECLI:NL:RBROT:2017:4164**	**Art. 1, 11 CLNI**	**Collision vessel against weir and request to determine the amount**
22.03.2017	**ECLI:NL:RBROT:2017:4166**		**of the limit of liability; constitution of the fund with the court of**
	S&S 2017/61		**the state where legal proceedings could be initiated**

Damage to e.g. the weir in Grave caused by an collision. Attachment of the vessel by the state in order to obtain security for the claim against the owner situated in Germany. The owner files a request to determine the amount of the limit of liability and constitution of a property fund. Article 11 CLNI determines that the constitution of a fund is possible with the court in any State Party in which legal proceedings are instituted in respect of claims subject to limitation or in which legal proceedings can be instituted, in this case the Netherlands. The owner may preliminary limit its liability with a property fund to the amount of 726,421.2 SDR.

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OLG Nürnberg 30.03.2017	**9 U 243/14 BSch TranspR 6-2017**	**Art. 4 CLNI § 5b Abs.2 BinSchG**	**No entitlement to limitation of liability in accordance with § 5b Abs.2 BinSchG/Art. 4 CLNI**

No entitlement to limitation of liability in accordance with § 5b Abs.2 BinSchG/Art. 4 CLNI for the owner of a vessel because it was established 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 during leaving a lock and navigating under a bridge whereby the crane on board the vessel caused damage to the bridge. The collision with the bridge caused a fracture of a gas pipe line due to which free flowing gas ignited causing fire and total loss of the bridge as also further consequential damage.

Rb Rotterdam 20.03.2018	**C/10/539616/HA RK 17-1106 S&S 2018/89**	**Art. 15 § 1 and 2**	**No limitation of liability for damage caused in a construction pit, not connected to a waterway**

A state bound by the CLNI convention has pursuant to article 15 paragraph 2 CLNI the possibility to declare the convention also applicable to national waterways, which was done by the Netherlands. A construction pit/artificial pond, which is not part of a waterway and is not connected to it, does not fall within the scope of article 15 paragraph 2 CLNI.

Hof Den Haag 15.05.2018	**ECLI:NL:GHDHA:2018:1114 (Hoger beroep van S&S 2017/3)**	**Art. 1 § 2**	**Definition ship to distinguish sea and inland vessels**

The definition of a ship in art. 1 paragraph 2 does not provide a workable criterion for distinguishing sea-going vessels from inland vessels. There is also no treaty-autonomous interpretation of the term inland vessel by several contracting states. Some use the “use criterion”, others the destination criterion. In the present case, the ship could not be classified as a seagoing vessel on the basis of either of the two criteria or on the basis of a combination of these criteria and is therefore classified as an inland vessel.

Rb Rotterdam 13.06.2018	**C/10/544789/HA RK 18-141 S&S 2018/108**	**Art. 1 § 2b, 6 § 1**	**Definition ship to distinguish sea and inland vessels**

The CLNI convention does not provide a distinguishing criterion for the question whether a ship is an inland vessel or if it falls under the residual category of art. 1 paragraph 2 CLNI. In this case, factual assessment (ship Noah's Ark) leads to classification as a ship within the meaning of the first category under art. 1 paragraph 2 b and the related limitation of liability under art. 6 paragraph 1a (i).

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Rb Rotterdam 13.07.2018	ECLI:NL:RBROT:2018:11092 S&S 2019/19	Art. 1 § 2a, 9 § 1a, 11 § 3	Entitlement to limitation

Van der Vis (owner “Sea Camel”) has limited its liability by forming a business fund for the “Sea Camel”. Schotgroep requests to be allowed to join the limitation fund set by Van der Vis. Schotgroep was the lessee of the pontoon 'SEA CAMEL' at the time of the incident on April 21, 2015. Schotgroep was held liable by various parties for the damage as a result of the collision. Schotgroep is, based on the autonomously interpretable art. 1 paragraph 2 under a jo. art. 1 paragraph 1 CLNI, entitled to invoke the limitation of its liability. Pursuant to art. 9 paragraph 1 under a and 11 paragraph 3 CLNI, the business fund set by Van der Vis must be regarded as having also been provided by Schotgroep.

Rb Rotterdam 06.11.2018	ECLI:NL:RBROT:2018:11101 S&S 2019/18	Art. 1 § 2a, 9 § 1a, 11 § 3	Entitlement to limitation

Schotgroep can limit its possible liability not only on the basis of the business fund of the 'Sea Camel', but also on that of the pusher tug 'Valk'. Schotgroep can be regarded as charterer of the push boat because the push boat 'Valk' with the pontoon 'Sea Camel' as a unit was actually available to Schotgroep. Schotgroep is, based on the autonomously interpretable art. 1 paragraph 2 under a jo. art. 1 paragraph 1 CLNI, entitled to invoke the limitation of its liability. Pursuant to art. 9 paragraph 1 under a and 11 paragraph 3 CLNI, the business fund set by Valkenburg must be regarded as having also been provided by Schotgroep.

Rb Rotterdam 06.11.2018	ECLI:NL:RBROT:2018:11090 S&S 2019/20	Art. 1 § 2a, 9 § 1a, 11 § 3	Entitlement to limitation

Schotgroep had ordered the applicant Touwslager to push the 'Sea Camel' to Zierikzee, while Touwslager had given the order to Valkenburg. Along the way, other activities also had to be performed, which show that Touwslager was operating the push boat. Touwslager has been held liable by various interested parties for the damage as a result of the collision. Touwslager is, based on the autonomously interpretable art. 1 paragraph 2 under a jo. art. 1 paragraph 1 CLNI, entitled to invoke the limitation of its liability. Pursuant to art. 9 paragraph 1 under a and 11 paragraph 3 CLNI, the business fund set by Valkenburg must be regarded as having also been made by Touwslager.

Rb Rotterdam	ECLI:NL:RBROT:2020:5300 S&S 2021/15	Art. 5 CLNI	Settlement of claims

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BigShip, owner of the inland barge 'Ark van Noach'', invokes limitation of liability and establishes a business fund. In counterclaim, BigShip is claiming compensation from the municipality for the damage it has suffered. In the alternative, BigShip invokes settlement (art. 5 CLNI 1988). It follows from Article 5 of the CLNI 1988 that BigShip may bring a counterclaim against the municipality in these claim validation proceedings.

Hof Den Haag 12.01.2021	**ECLI:NL:GHDA:2021:977 S&S 2021/40**	**Art. 1 §2**	**Definition ship to distinguish sea- and inland vessels**

The CLNI Convention itself does not provide a workable distinguishing criterion for answering the question whether a (fast) motorboat such as the present one should be regarded as an inland vessel or as a seagoing vessel. The applicable Dutch law will determine whether the fast motor boat must be regarded as an inland vessel or as a seagoing vessel pursuant to art. 8:3 Dutch Civil Code. Although the CLNI 1988 Convention has since been superseded by the CLNI 2012 Convention, the CLNI 2012 Convention was not yet in force at the time of the collision. Therefore, the CLNI 1988 Convention is applicable. Owner requests to limit its liability by forming a fund under the CLNI-1988 treaty. The Court of Appeal of The Hague has confirmed the decision of the Rotterdam District Court of 26 February 2020 in which it ruled that the motorboat is not an inland waterway vessel as referred to in Section 8:3 of the Dutch Civil Code. Therefore, limitation under the CLNI 1988 is not possible. The use that the owner of the motorboat makes of it, is not decisive. The decisive question is whether, according to its construction, the motorboat is mainly intended for floating at sea.