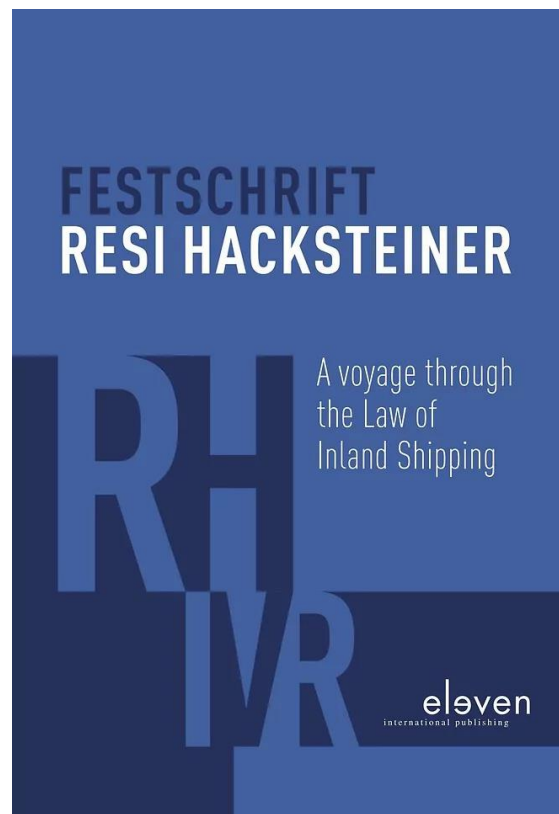


# Global limitation of liability in inland shipping – CLNI: l’histoire se répète?

Vivian van der Kuil – ESL/DECK Advocaten

# Agenda

- CLNI – LLMC – the same but different;
- Conduct barring limitation;
- From autonomous interpretation to unified interpretation...;
- Recommendations.



*Erasmus*

# CLNI 2012



- CLNI 1988



- LLMC 1976 and Protocol 1996

(Brussel Limitation Conventions 1924/1957)



*Erasmus*

# CLNI 2012

CLNI and LLMC exact copies? No!

- Fund calculation
- Scope of application
- Art. 18 Reservation
- Art. 11 LLMC vs Art. 12 CLNI

# CLNI 2012

Fund calculation:

art 6 CLNI – art 6 LLMC and art 3 Protocol

*Tonnage versus displacement (non cargo)/  
deadweight (cargo) and power of propulsion  
or value*



Gerechtshof Den Haag, 15 May 2018, S&S 2018/107 SEA CAMEL  
ECLI:NL:GHDHA:2018:114

*Erasmus*

# CLNI 2012

## Scope of application: art. 15 LLMC

### 1. *Court of State Party*

*A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are*

*(a) According to the law of that State, ships intended for navigation on inland waterways;*

*(b) Ships of less than 300 tons.*

# CLNI 2012

## Scope of application: art. 15 CLNI 2012

*This Convention shall apply to the limitation of liability of the vessel owner or a salvor at the time of the incident giving rise to the claims where:*

*(a) the vessel was being operated on a waterway located on the territory of a State Party,*

*Vessel* = inland navigation vessel used for commercial navigational purposes

# CLNI 2012

Art. 18:

1. *Any State may, at the time of signature, ratification, acceptance, approval or accession and at any subsequent time, reserve the right to exclude the application of the rules of this Convention in their entirety or in part in respect of:*

*(a) claims for damage due to a change in the physical, chemical or biological quality of the water;*

Rb Rotterdam 25 September 2013, S&S 2014/32 Ceeblender-Transito  
ECLI:NL:RBROT:2013:7253

The logo for Erasmus University, featuring the word "Erasmus" in a stylized, cursive script.



# CLNI 2012

## Art. 11 LLMC vs Art. 12 CLNI

Any person alleged to be liable may constitute one or more funds with the competent court or other competent authority in any State Party in which legal proceedings are instituted in respect of a claim 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.



BALTIC ACE

Await initiative of  
claimant(s)!



SEAWHEEL RHINE

Nationality vessel/Owner/Place Incident/Charterer/Other parties

# CLNI 2012

## Article 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.

# Conduct barring limitation

Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996.

## Two principles:

- a. availability of insurance cover for the limits foreseen; and
- b. that the provision should be such that those limits should not easily be 'broken'.

Lord Diplock (UK delegation):

*'the limits should be made as unbreakable as possible'* and that  
*'breakability should begin where insurability ended'*.



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Press Release

## ICS Strongly Criticises 'Prestige' Judgement by Spanish Supreme Court

At a meeting of the International Oil Pollution Compensation Funds (IOPCF) this week, the International Chamber of Shipping (ICS) has strongly criticised the judgement of the Spanish Supreme Court in the 'Prestige' Case.

26 April 2016

This judgement (in January 2016, but discussed by the IOPC Funds this week) overturned that of a lower Spanish Court, in La Coruña in 2013, instead finding the Master criminally liable for damages to the environment and sentencing him to two years' imprisonment (albeit likely to be suspended). It further held that the misconduct deprived the shipowner of the

# Conduct barring limitation?

Protzenweiherbridge,  
Regensburg



MS Sento-  
Dutch vessel



13 March 2008

OLG Nürnberg 30 March 2017  
ECLI:DE:OLGNUMER:2017:0330.9u243.14BSCH.O.A

## MS Sento – Conduct barring limitation?

Shipper unaware of actual height of crane and height of bridge....

OLG Nürnberg: failure to comply with elementary precautionary measures = conduct barring limitation.

No reference to Travaux Préparatoires /Autonomous interpretation.

NL: Rb Rotterdam 17 October 2017 *Gerarda Theodora – unpublished.*

# *Unified Interpretation on the Test for Breaking the Owner's Right to Limit Liability under the IMO Conventions*

Resolutions by all member states to LLMC and CLC during the 32nd session of the IMO General Assembly in December 2021

Drafted in the Legal Committee of the International Maritime Organization (IMO)

Providing an authoritative interpretation of Art. 4 LLMC and Art. V CLC (Convention on Civil Liability for Oil Pollution 1992)



# Content:

- Virtually unbreakable;
- Analogous to willful misconduct;
- Knowledge;
- Conduct of shipowner.

<https://comitemaritime.org/work/unified-interpretation-on-the-test-for-breaking-the-owners-right-to-limit-liability-under-the-imo-conventions/>

HAVING CONSIDERED the recommendations made by the Legal Committee at its 108th session:

1 AFFIRM that the test for breaking the right to limit liability as contained in article 4 of the 1976 LLMC Convention is to be interpreted:

- (a) as virtually unbreakable in nature i.e. breakable only in very limited circumstances and based on the principle of unbreakability;
- (b) to mean a level of culpability analogous to willful misconduct, namely:
  - (i) a level higher than the concept of gross negligence, since that concept was rejected by the 1976 International Conference on Limitation of Liability for Maritime Claims;
  - (ii) a level that would deprive the shipowner of the right to be indemnified under their marine insurance policy; and
  - (iii) a level that provides that the loss of entitlement to limit liability should begin where the level of culpability is such that insurability ends;
- (c) that the term "recklessly" is to be accompanied by "knowledge" that such pollution damage, damage or loss would probably result, and that the two terms establish a level of culpability that must be met in their combined totality and should not be considered in isolation of each other; and
- (d) that the conduct of parties other than the shipowner, for example the master, crew or servants of the shipowner, is irrelevant and should not be taken into account when seeking to establish whether the test has been met.

2 REQUEST the Secretary-General of the International Maritime Organization to circulate copies of the present resolution to all States which have signed, ratified or acceded to the 1996 LLMC Protocol.

3 ALSO REQUEST the Secretary-General of the Organization to circulate copies of the present resolution to all Member States of the Organization.

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# L'histoire se répète....

Considerations new CLNI should maybe refer to travaux préparatoires LLMC and Resolution IMO on Unified Interpretation...

- Uniformity in other areas? Pleasure craft – small craft....what is an inland vessel?
- Lessons learned from case law...
- Willingness to look across the border...CMI – IVR database.
  
- How to limit in the Netherlands:

<https://www.rechtspraak.nl/SiteCollectionDocuments/handleiding-beperkingszaken.pdf>