

# LIMITATION OF LIABILITY UNDER THE CLNI: UNLIMITED POSSIBILITIES?

A case study on the possibilities the CLNI offers in a  
European context.

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# AGENDA

- Introduction; the incident
- Limitation of Liability: general outline
- Limitation of Liability: the Netherlands
- The possibility to “export” limitation decisions
- The incident: limitation



# THE INCIDENT: A COLLISION

<b>Vessel type</b>	Self propelled barge	Cruise vessel
<b>Owner</b>	Dutch company	Swiss company
<b>Technical details</b>	Deadweight: 3015,212 tons Propulsion: 1214 kW Cargo: 2000t gasoil	Displacement: 9910 m3  Propulsion: 1000 kW Passengers: 190

# THE INCIDENT

- The barge sinks;
- A gasoil spill;
- A crew member dies; another is seriously injured;
- The bridge is seriously damaged: interruption of railway services for more than 1 year; repair costs > EUR 10 mio;
- cruise vessel is damaged; 50 passengers suffer serious injuries.



# LIMITATION OF LIABILITY

- Strasbourg Convention of 2012 on the Limitation of Liability in Inland Navigation (CLNI 2012);
- Entered into force on July 2012;
- CLNI 1988 – based on LLMC 1976 and protocol 1996;
- Parties currently: Germany, Belgium, The Netherlands, Serbia, Hungary, Luxembourg.



# LIMITATION OF LIABILITY

- Limitation of Liability for owner, hirer, charterer and operator of vessel and salvor through constitution of a fund (art. 1, 6 and 11)

Vessel = inland navigation vessel used for commercial navigational purposes

- Separate limit for damage arising from carriage of dangerous goods (art. 7)
- Separate limit for passenger claims (art. 8)
- Possibility to exclude application for claims for damage due to a change in the physical, chemical or biological quality of the water and wreck and cargo removal (art. 18) small crafts (<20 metres) (art. 15).

# LIMITATION OF LIABILITY: THE FUND

## Article 6:

The limits of liability for claims other than those mentioned in Articles 7 and 8, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury:

- (i) for a vessel not intended for the carriage of cargo, in particular a passenger vessel, **400 units of account per cubic metre of displacement** at maximum permitted draught, increased for vessels equipped with mechanical means of propulsion by **1 400 units of account per kW** of power of the propulsion machinery;
- (ii) for a vessel intended for the carriage of cargo, **400 units of account per tonne of the vessel's deadweight**, increased for vessels equipped with mechanical means of propulsion by **1 400 units of account per kW** of power of the propulsion machinery;

(b) in respect of all other claims, half of the limit of liability calculated in accordance with paragraph (a);

# LIMITATION OF LIABILITY: THE FUND

## Art. 12

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.





# LIMITATION OF LIABILITY: THE NETHERLANDS

- Material Law: Art. 8:1060 – 1066 Dutch Civil Code;
- Limits: *Besluit ex artikel 1065 van Boek 8*
- Procedure: art. 642a-642z Code of Civil Procedure

Manual limitation proceedings:

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

# LIMITATION OF LIABILITY: THE NETHERLANDS

- Initiate proceedings by filing a request with the Court in Rotterdam;
- Various steps in procedure:
  1. Request
  2. Constitution of the fund
  3. Verification meeting
  4. *Renvoi* proceedings: merits of the claim
  5. Distribution of the fund



# LIMITATION OF LIABILITY: THE NETHERLANDS

- Constitution of the fund through a LoU or paid in cash (stops interest from accruing – art. 642c Rv).
- Place of the incident is not relevant under Dutch law!! Owner of Inland vessel may request to limit liability.
- Jurisdiction if legal proceedings may be instituted against the party requesting to limit in the Netherlands.

# LIMITATION OF LIABILITY: EU RECOGNITION

- Court of Justice EU, 14 October 2004, case C-39/02.  
*Maersk Oil and Gas A/S Firma M. de Haan and W. de Boer (Cornelis Simon)*

Recognition Dutch limitation decision in Danish liability proceedings.

- 1957 Limitation Convention
- Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters

# LIMITATION OF LIABILITY: EU RECOGNITION

- Court of Justice EU, 14 October 2004, case C-39/02.  
*Maersk Oil and Gas A/S Firma M. de Haan and W. de Boer (Cornelis Simon)*
  - No *lis pendens* between limitation proceedings and action for damages for another contracting state article 21 EEX Convention
  - A decision ordering a the establishment of limitation fund is a judgment within the terms of article 25 of that Convention
  - A decision to establish a limitation fund cannot be refused recognition in another contracting state pursuant to article 27(2) of that Convention.

# LIMITATION OF LIABILITY: EU RECOGNITION

*Regulation (EU) 1215/2012 - Brussel I Bis*

Lis Pendens: art. 29

Judgment: art. 2 (a)

Recognition: art. 36

*Courts in EU member states must respect and recognise the legal effects of the establishment of a limitation fund even if this would lead to a different outcome than if the fund had been established in the state requested to recognise the legal effects.*

# LLMC: EXAMPLES

SEAWHEEL RHINE



**Parties:**

B&N Nordsjöfrakt AB, Northsea Shipping AB,  
Westereems BV, Seawheel Rhine, Assi Eurolink

**Citation:**

ECLI:NL:HR:2006:AX3080



BALTIC ACE (unpublished)

**Delfborg**

**Parties:**

Baltic Cable AB, Wagenborg Shipping BV,  
CV ms Delfborg, SM Smith

**Citation:**

ECLI:NL:RBROT:2016:10263

# THE INCIDENT: A COLLISION

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# THE INCIDENT: LIMITATION

- Barge owned by Dutch company: may be sued in the Netherlands
- Limitation funds:
  - Death/personal injury: EUR 2,901,485 SDR
  - Other damage: EUR 1,450,742 SDR
  - Separate water pollution fund = personal injury fund
  - Dangerous goods: twice the regular fund, but min of 10 million SDR
  - Passenger: 190 x 100,000, but min of EUR 2 million

# THE INCIDENT: LIMITATION

- Restrictive approach to conduct barring limitation (art 4);  
*MS SENTO OLG Nürnberg 30 March 2017 ECLI:DE:OLGNUER:2017:0330.9u243.14BSCH.O.A*  
*VS*  
*Rb Rotterdam 17 October 2017 Gerarda Theodora – unpublished.*
- Limitation friendly...
- Possibility to stop interest;
- Possibility to limit when Dutch court has jurisdiction for damage claim.

# ISSUES...

## 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.

*MARIA VALENTINE: ECLI:NL:RBROT:2017:4164*

# ISSUES...

- What is damage arising from the carriage of dangerous goods?
- Is gasoil a dangerous good? (art. 1(2)(d): ADN)
- Will the Dutch fund also be accepted in a non CLNI country?



# LIMITATION OF LIABILITY UNDER THE CLNI: UNLIMITED POSSIBILITIES?

Possibilities are not UNlimited,  
but there are certainly  
more possibilities that yet discovered....

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