

**Forum Shopping in Marine Casualty Cases**  
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# Limitation of liability conventions

- 1957 Brussels Limitation Convention
- 1976 London Convention on the Limitation of Liability for Maritime Claims (LLMC)
- 1996 Protocol to the 1976 Limitation Convention

# 1957 Limitation Convention

- 34 states
- 66.67 SDRs per ton (based on net tonnage plus engine room space)
- Actual fault or privity of the owner to break limitation
- Burden of proof on the owner
- Easy to break limitation

# 1976 Limitation Convention

- 51 states (most popular regime)
- Limitation for claims other than personal:
  - Up to 500 tons – 167,000 SDRs
  - Each ton from 501 to 30,000 – 167 SDRs
  - Each ton from 30,001 to 70,000 – 125 SDRs
  - Each ton in excess of 70,000 – 83 SDRs

# 1976 Limitation Convention - continued

- Limitation for personal claims twice higher
- Limitation calculated on gross tonnage
- Owner's personal act or omission
- With intent to cause loss or recklessly
- Burden of proof on the claimant

# 1996 Protocol

- 48 states (7 of which are yet to ratify or accept)
- Limitation for claims other than personal:
  - Up to 2,000 tons – 1,000,000 SDRs
  - Each ton from 2,001 to 30,000 – 400 SDRs
  - Each ton from 30,001 to 70,000 – 300 SDRs
  - Each ton in excess of 70,000 – 200 SDRs

# 1996 Protocol - continued

- Limitation for personal claims twice higher
- Tacit acceptance procedure
- 1.51 times higher limits from 8 June 2015!



# Limitation fund – example 1

5,000 gross tons vessel (3,000 net tons and e/r) –  
claims other than personal

- 1957 Convention – €229,221
- 1976 Convention - €1,052,647
- 1996 Protocol - €2,521,310
- Amended 1996 Protocol - €3,807,178

(SDR rates on 13 June 2013)

## Limitation fund – example 2

100,000 gross tons vessel (75,000 net tons and e/r)  
– claims other than personal

- 1957 Convention – €5,730,536
- 1976 Convention - €14,421,320
- 1996 Protocol - €34,610,710
- Amended 1996 Protocol - €52,262,172

(SDR rates on 13 June 2013)

# Circumvention of limitation rules by arresting a vessel

*ICL Shipping Ltd v Chin Tai Steel Enterprise Co Ltd, The ICL Vikraman* [2003] EWHC 2320 (Comm)

- *Vikraman* sank following collision and resulting in loss of 26 lives and all cargo
- Defendant BoL holders arrested *Vikraman's* sister-ship and commenced proceedings in Singapore
- *Vikraman's* P&I Club gave LoU in Singapore for \$4.5m to release vessel
- Cargo claim referred to arbitration in London

## *ICL Vikraman* - continued

- Between end of arbitration and publication of award, *Vikraman's* interests established limitation fund in England under 1976 Convention
- Defendants' share of limitation fund was much lower than its arbitration award
- Claimants applied to Admiralty Court in London for order for release of LoU under art 13(2) of 1976 Convention
- Court held:
  - Singapore court had control over LoU, so unless parties agreed that it is released, it could only be released by order of Singapore court
  - As Singapore was not a party to 1976 Convention, there was no basis for operation of art 13(2)

# Commencing proceedings in competing jurisdictions and *forum non conveniens*

*Atlasnavios Navegacao Lda v The Ship "Xin Tai Hai" (No 2)*  
[2012] FCA 1497

- *Xin Tai Hai* and *B Oceania* collided in the Straits of Malacca in July 2011, sinking *B Oceania*
- Owners of *B Oceania* (Atlas) arrested *Xin Tai Hai* and started *in rem* proceedings in Australia
- Owners of *Xin Tai Hai* (China Earth) applied to establish limitation fund and filed a claim in China
- China Earth applied for stay of Australian proceeding in favour of those in China, on basis that Australia was 'clearly inappropriate forum'
- *Forum non conveniens* (England) vs. clearly inappropriate forum (Australia)

# *Forum non conveniens* - continued

Held:

- Neither China nor Australia was a 'natural' forum
- Limitation amounts significantly higher in Australia than in China
- Atlas could not obtain secured creditor status in China
- Atlas seeking advantages of Australian jurisdiction (see above) was legitimate
- Australia was not a clearly inappropriate forum
- Australian proceedings not stayed

# The effect of the Brussels Regulation...

- Council Regulation (EC) 44/2001 (the Brussels Regulation)
- *Lis alibi pendens* (proceedings pending elsewhere)
- Art 27 (art 21 of Brussels Convention (BC)) – in proceedings involving same cause of action and b/w same parties, any court other than that first seised shall stay its proceedings
- Art 28 (art 22 BC) – in related proceedings, any court other than that first seised may stay its proceedings
- *Maciej Rataj, The Tatry (cargo owners) v Maciej Rataj*: C-406/92
  - Cargo owners alleged contamination of their cargo
  - Shipowners started proceedings in Netherlands against some cargo owners for declaration of non-liability for alleged contamination

## Tatry - continued

- Some cargo owners began an action *in rem* in Admiralty Court in London (Action A)
- Another cargo owner (not party to Netherlands proceedings) also began an action *in rem* in Admiralty Court in London (Action B)
- Shipowners contended that English court should decline jurisdiction in both actions in favour of Netherlands under arts 21 BC (Action A) and 22 BC (Action B)
- Court rejected shipowners' objection of *lis pendens* and declined to stay proceedings in either action
- Shipowners appealed and Court of Appeal referred a number of questions to the ECJ



# Tatry - continued

ECJ held:

- When some but not all parties to different proceedings with same cause of action are identical, under art 21 BC court must stay its proceeding only in relation to parties present in both proceedings; it can, however, stay proceedings in relation to other parties under art 22 BC
- Action by shipowners for declaration of non-liability and action by cargo owners alleging shipowners' liability had the same cause of action
- Distinction in some jurisdictions between actions *in rem* and *in personam* was irrelevant – cause of action was same for purposes of art 21 BC
- 'Related actions' in art 22 BC to cover all cases with risk of conflicting decisions, even if judgments could be separately enforced and their legal consequences are not mutually exclusive.

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