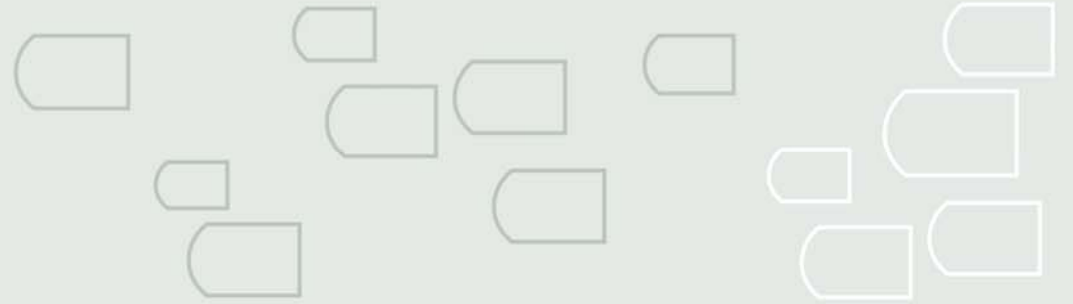


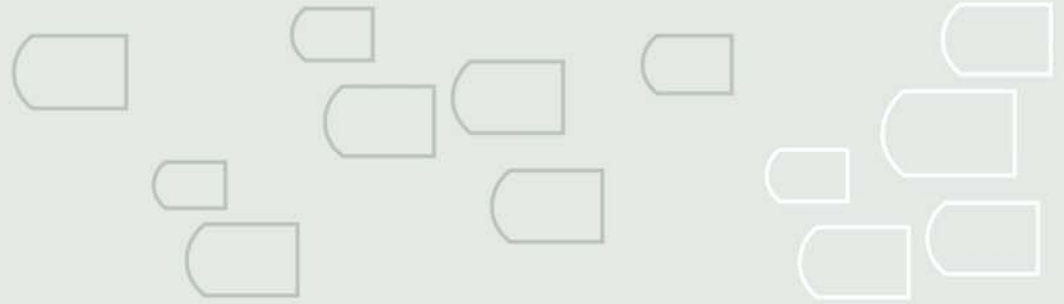
Forum shopping and limitation of Maritime Claims

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Different regimes for limitation of liability for maritime claims

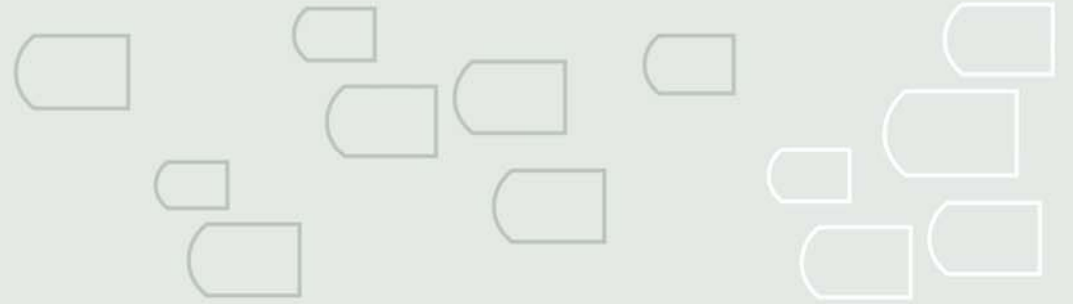
1. Convention of 10 October 1957 relating to the limitation of the liability of owners of seagoing ships
2. London Convention on Limitation of Liability for Maritime claims (“LLMC 1976-Convention”)
2. Protocol to amend the Convention on Limitation of Liability of Maritime Claims (“LLMC 1996-Protocol”)



Main differences between the limitation conventions (1)

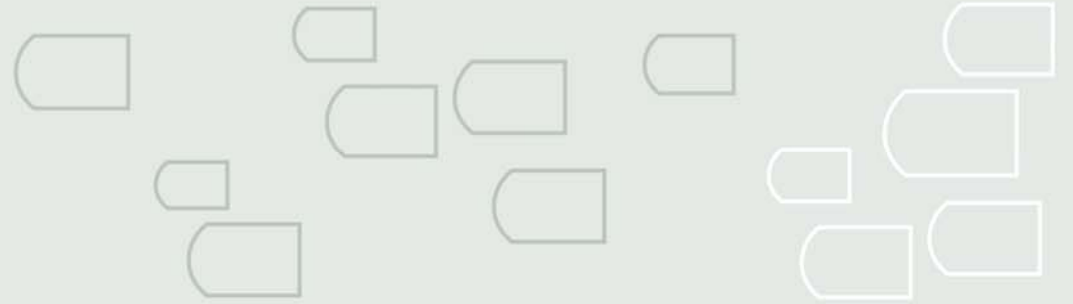
- Limitation amounts

The vessel's tonnage	1976 LLMC Convention (SDR)	1996 LLMC Protocol (SDR)
300	167,000	1 million
1,000	250,000	1 million
6,000	1,085,000	2,600,000
30,000	5,093,500	12,200,000



Main differences between the limitation conventions (2)

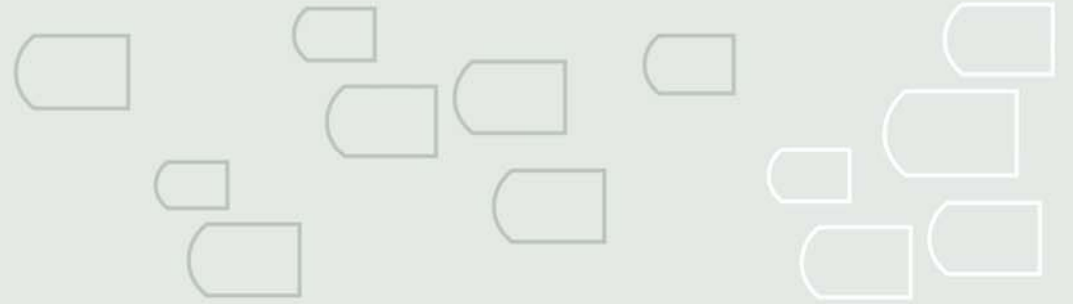
- Rules on loss of right to limit liability in case of negligence on the part of the ship-owner
- The limits of liability in the 1957 Convention include liability for oil pollution damage



Legal effect of the constitution of a limitation fund according to the Danish Merchant Shipping Act, Section 178

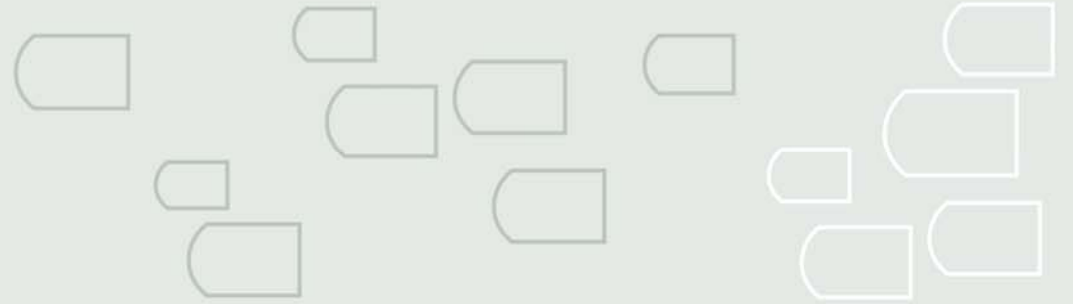
1. Establishment of limitation fund in Denmark (or in any other Nordic country)
 - Arrest or enforcement proceedings cannot be carried out in respect of vessels or other property belonging to a person on whose behalf the fund is constituted and who is entitled to limit liability.

2. Establishment of limitation fund in another LLMC 1996 Protocol country – the same legal effect, provided that the fund has been constituted in
 1. the port where the event giving grounds for liability occurred, or, if it did not occur in a port, in the vessels first port of call after the event,
 2. the port of disembarkment, in so far as the claim relates to personal injury
 3. the port of discharge , in so far as the claim relates to damage to the vessel's cargo.



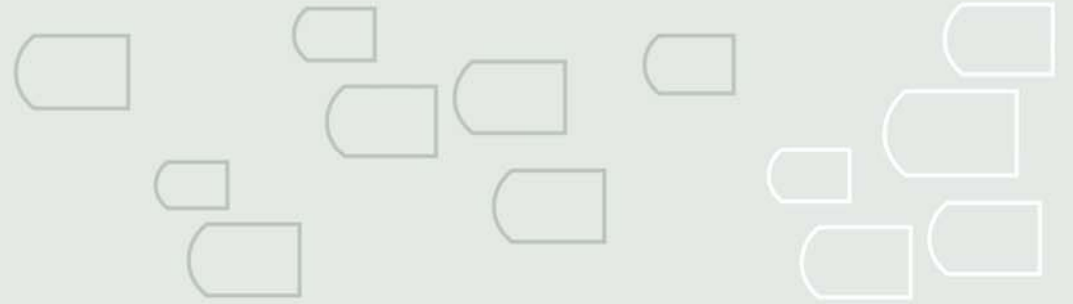
Where can a limitation fund be established

- Under the 1976 LLMC Convention and the 1996 LLMC Protocol, a limitation fund can only be established where a claimant has commenced proceedings or applied for arrest or other enforcement measures
- The 1957 convention allows the ship-owner to choose where to establish the fund
- The Supreme Court of the Netherlands judgment of 29 September 2006



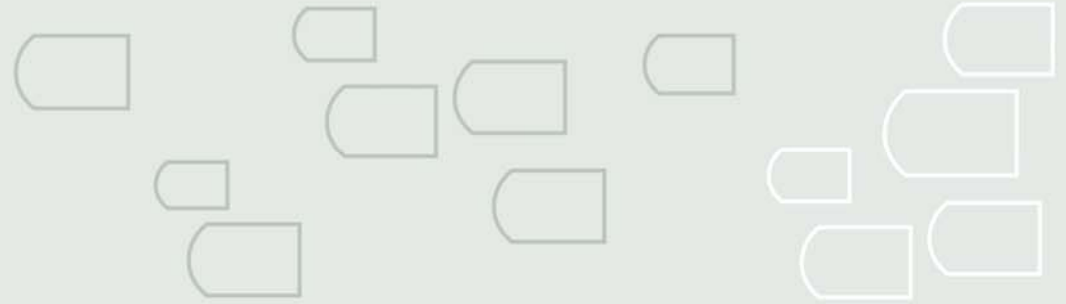
The Supreme Court of the Netherlands judgment of 29 September 2006

- Collision in January 2003 between the vessels "Assi Eurolink" and "Seawheel Rhine".
- The vessel "Assi Eurolink" sank as a consequence of the collision.
- The owners of "Assi Eurolink" brought proceedings in the Netherlands against the owners and bareboat charterers of "Seawheel Rhine".
- Subsequently, the owners of the "Seawheel Rhine" commenced arbitration proceedings against the bareboat charterers of the vessel in Sweden.
- On the basis of the Swedish proceedings the bareboat charterers applied in February 2003 a Swedish court for constitution of a limitation fund.
- The Swedish court issued an order which formed basis for the constitution of the fund.
- The Owners of "Assi Eurolink" sought to obtain security in the Netherlands by arresting the "Seawheel Rhine" in Rotterdam.
- The "Seawheel Rhine" was released against security.
- Proceedings were brought by the owners and bareboat charterers of the "Seawheel Rhine" to have the guarantee returned.



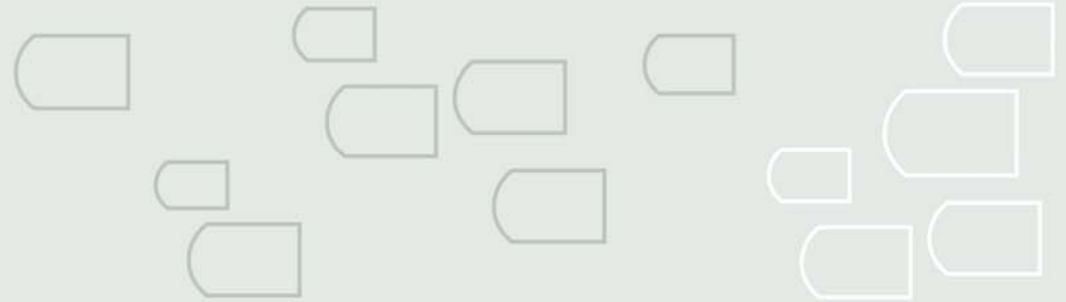
Legal effect of the constitution of a limitation fund - Problems

- Does the constitution of a limitation fund outside Denmark bar the claimant from bringing legal proceedings against a ship owner on the merits in Denmark ?
- If not, what is the legal impact of the establishment of a fund outside Denmark with regard to the claimants legal position and possibilities to recover his losses ?
- Is a “foreign” judgment enforceable in assets owned by a defendant in Denmark if the defendant establishes a fund in Denmark after the judgment has been rendered ?



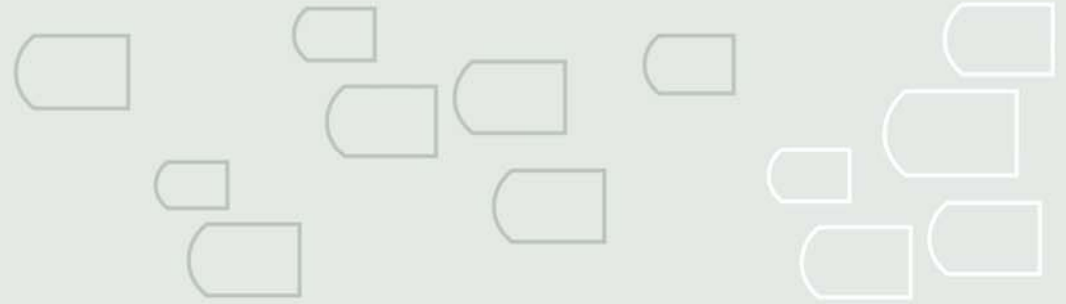
The possible impact of the EC Council Regulation (EC) 44/2001 on the possibilities to limit liability

- Are the LLMC 1996 and LLMC 1996 Protocol conventions on particular matters and which govern jurisdiction or the recognition or enforcement of judgments, cf. Article 71 of EC 44/2001 ?
- Why is this question of relevance ?
 - In the affirmative, it may be possible to claim that a court decision, which forms basis for the establishment of a limitation fund, shall not be recognized pursuant to the Brussels Convention
 - Also, it may be possible to claim that a judgment deciding an issue relating to limitation of liability in accordance with a limitation convention shall not be recognized as far as that issue on limitation is concerned.
- The Danish High Court (Western Divisions) order of 23 February 2005 (Case no. V.L. B-2171-04)
- The Maritime and Commercial Court's judgment of 11 May 2005 (Case no. S-10-04)
- The Danish Supreme Court's judgments of 17 October 2005 (UfR 2006.195)



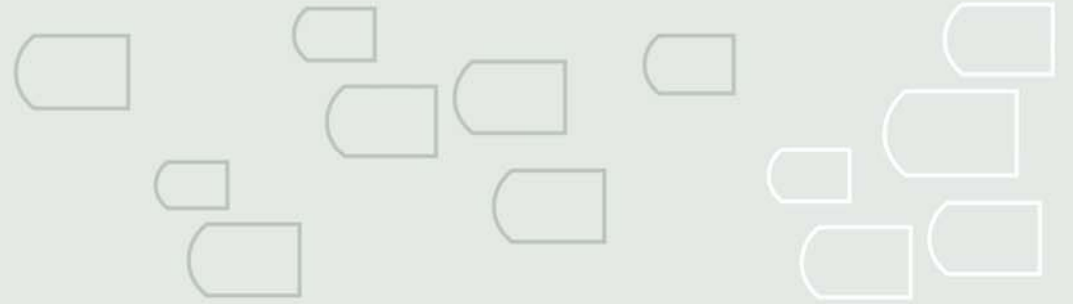
Marks Oil and Gas A/S – Firma de Haan en W. de Boer – Danish Supreme Court’s judgment of 17 October 2005

- The trawler “Cornelis Simon” was fishing from 10 – 16 June 1985 in the area in which Maersk had laid down oil and gas pipelines to the oilfields “Gorm” and “Rolf” on the Danish continental shelf
- It was detected that the pipelines had been damaged
- The “Owners” of the vessel “Cornelis Simon” submitted on 23 April 1987 an application for the constitution of a 1957 Limitation fund to the city court in Groningen in the Netherlands
- The limitation fund was constituted on 27 May 1987
- Maersk initiated on 20 June 1987 court proceedings against the owners of the vessel “Cornelis Simon” before the Danish High Court (Western Division)
- Maersk appealed the city court in Groningen’s order to constitute the limitation fund to the Court of Appeal in Leeuwarden.
- The Court of Appeal confirmed on 6 January 1998 the decision of the city court of Groningen
- Maersk did not notify any claim to the fund and, consequently, the fund was in December 1988 repaid to the Owners to the effect that all further claims were precluded according to Dutch law.



Marks Oil and Gas A/S – Firma de Haan en W. de Boer – Danish Supreme Court’s judgment of 17 October 2005

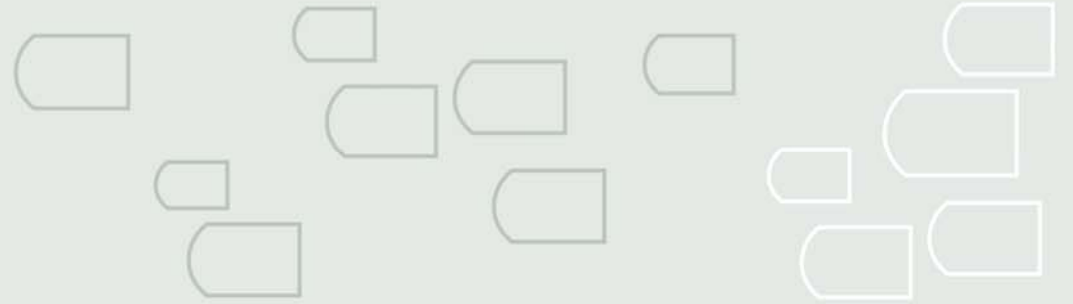
- The Danish High Court rejected to hear the case and stated in its reasoning that the Dutch Court order had a pendente lite effect on the Danish proceedings pursuant to the Brussels Convention Article 21.
- The case was appealed by Maersk to the Danish Supreme Court
- The Danish Supreme Court referred questions to the European Court of Justice.
- The European Court of Justice ruled
 - that a court order which forms basis for constitution of a limitation fund is a “judgment” within the meaning of Article 32
 - That a decision ordering the constitution of a limitation fund does not have a pendente lite effect on legal proceedings on the question of liability pursuant to Article 27.
- The Danish Supreme Court ruled that any liability of the Owners of the trawler “Cornelis Simon” had been precluded.



Marks Oil and Gas A/S – Firma De Haan en W. De Boer – Danish Supreme Court's judgment of 17 October 2005

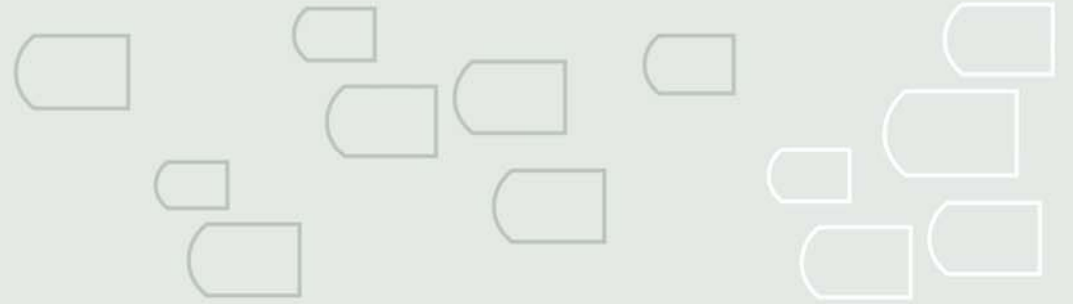
"The Danish and Dutch respective memberships of the 1976 and 1957 conventions did not form a basis by virtue of Art. 57 of the EU Convention for deviating from the rules of the convention"

"Against the background stated above, the Supreme Court finds that the Dutch decisions must be recognized and accorded legal force in Denmark in accordance with their substance. This also applies to the Dutch decision that in December 1998 finally wound up the limitation fund and thereby concluded the limitation of liability in Holland. The decisions must be interpreted thus, that they apply to the whole liability arising in respect of all the damage that can be attributed to the voyage in question. Mærsk Olie & Gas A/S failed, in spite of encouragement to do so, to register its claim for damages against the limitation fund within the deadline for registration. According to the information submitted, this has preclusive effect under Dutch law. Mærsk Olie & Gas A/S, therefore has no claim against Firma De Haan en W. De Boer, which in consequence is found free of liability".



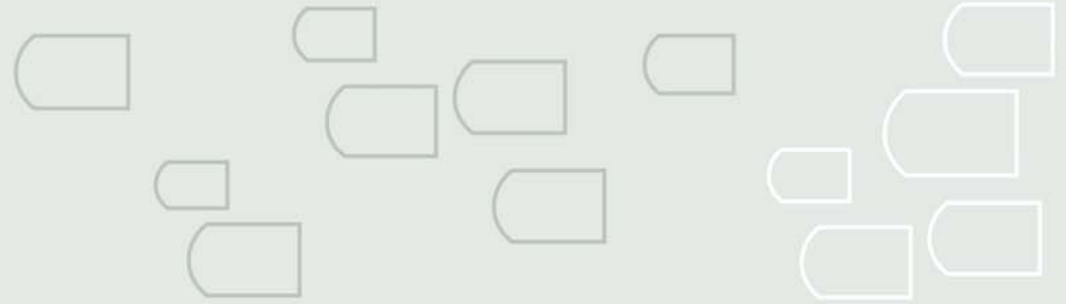
The Owners of the vessel “Uno” – Wasser und Schifffahrtsdirektion Nord – Danish High Court (Western divisions) order of 23 February 2005

- On 11 July 2002 “Uno” collided with the barge “Dettmer Tank 46/166” in the Kiel Canal.
- “Uno” sank
- WSN incurred wreck removal costs in the amount of EUR 746,528. WSN initiated legal proceedings in Germany against the Danish owners of “Uno”.
- On 29 April Landgericht Itzehoe rendered a judgment which ordered the owners of “Uno” to pay compensation with SDR 406,979 (corresponding to the limitation amount applicable in Germany. An establishment of a fund in Denmark would lead to a limitation figure of SDR 334,00 (approx 80 %).
- On 6 February 2004 the bailiff’s court in Fredericia confirmed that the German judgment could form basis for levying of execution in Denmark and WSN on this basis applied for enforcement of the judgment (for the entire amount) against owners of “Uno”
-



The Owners of the vessel “Uno” – Wasser und Schifffahrtsdirektion Nord – Danish High Court (Western divisions) order of 23 February 2005 (2)

- On 29 March 2004 Owners of “Uni” applied to the Maritime and Commercial Court for establishment of a limitation fund subject to the Danish implementation of the LLMC 1976 Convention
- On 13 September 2004 the bailiff’s court rendered a decision that the German judgment was enforceable regardless that a limitation fund had been established
- On 23 February 2005 the decision was confirmed by the Danish High Court (Western Division)
- The case was brought before the Maritime and Commercial Court which decided liability could be limited in accordance with the LLMC 1976 Convention.



Important main points

- Possibility to circumvent the limits of liability laid down in the LLMC 1996 Protocol
- An application to a court on the establishment of a limitation fund does not have a lis pendens effect on an action for damages between the same parties and vice versa
- The establishments of a fund serves a general purpose, i.e. to work as a tool for calling in of potential creditors, trying of claims, distribution of the fund etc.
- Legal proceedings on the substance including whether liability for a particular claim may be limited in accordance with any applicable limitation convention is likely to be recognized by another court which received a subsequent application for establishment of a limitation fund
- The LLMC 1996 and LLMC 1996 Protocol are not conventions on particular matters comprised by Article 71 of EC 44/2001.
- A “foreign” judgment determining whether liability can be limited is likely to be recognized and given legal effect in Denmark despite subsequent establishment of a Danish limitation fund.