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GLOBAL LIMITATION OF MARITIME CLAIMS AND THE BRUSSELS I REGULATION

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1. The Different Regimes for Limitation of Liability for Maritime Claims

1.1 Limitation of liability for maritime claims is a concept deeply founded in the maritime industry granting the owner or operator of a vessel (the 'owner') access to limit its liability for maritime claims up to a maximum amount regardless of the actual amount of all claims raised against the owner. Over the years, this right has been adopted in a number of conventions, the most important ones being the Convention of 10 October 1957 on Limitation of the Liability of Owners of Seagoing Ships ('1957 Convention'), the London Convention on Limitation of Liability for Maritime Claims ('LLMC 1976 Convention') and the Convention on Limitation of Liability of Maritime Claims ('LLMC 1996 Protocol').

2. Issues to be Addressed Before Commencing Limitation Actions

2.1 Under the LLMC 1976 Convention and the LLMC 1996 Protocol, as a general rule, an owner may establish a limitation fund once proceedings have been initiated, arrest have been applied for or other enforcement measures have been effected against the owner. However, prior to determining at which forum to commence limitation action with respect to a casualty, there are a number of important factors to be taken into consideration.

2.2 Differences between Limitation Amounts

2.2.1 Depending on the circumstances surrounding the casualty in question, the owner seeking to limit his liability may have several choices in respect of which limitation conventions the owner is entitled to invoke. Realising that the various conventions contain substantial differences in the limitation amount to be applied in case of a casualty, one of the first issues to address before deciding on where to exercise this right is to determine whether more than one regime may be applicable. In the event

that this is the case, obviously, the owner should seek to invoke the regime with the lowest limitation amounts by way of establishing a fund in this jurisdiction. The respective limitation amounts of the three conventions are set forth in the table below.

The vessel's tonnage	**1957 Convention (Poincaré franc)**	**LLMC 1976 Convention (SDR)**	**LLMC 1996 Protocol (SDR)**
300	300,000 (DKK 150,000)	167,000	1 million
1,000	1 million (DKK 500,000)	250,000	1 million
6,000	6 million (DKK 3 million)	1,085,000	2.6 million
30,000	30 million (DKK 15 million)	5,093,500	12.2 million

1 Poincaré franc = 0.502 DKK

2.3 The Risk of Breaking Limitation

2.3.1 Another issue worth considering is whether a given casualty may give rise to discussion with respect to a claimant's chances of barring the owner from invoking his right of limitation. The possibilities in this respect vary depending on which global limitation regime the owner applies when establishing a limitation fund. As a general rule, it is, for instance, much more difficult for a claimant to break the limitation under the LLMC 1976 Convention than it is under the 1957 Convention. Under the 1957 Convention it is hence sufficient for a claimant to break the upper limit of liability to establish that the casualty was caused by 'actual fault or privity' on the part of the owner as opposed to the LLMC 1996 Protocol. According to the latter, the owner will lose the right of limitation only if a claimant is able to prove that the loss resulted from the owner's personal act or omission committed with the intent to cause such loss or recklessly and with the knowledge that such loss would be incurred.[1] This makes the limitation under the LLMC 1996 Protocol virtually unbreakable.

2.4 Which Claims are Subject to Limitation

2.4.1 As is well-known, the legal starting point for the right to limit liability is that it is a right which is completely independent of the basis on which the claim raised is founded.

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[1] See Section 174 of the Danish Merchant Shipping Act. The rules regulating limitation of the owner's liability for maritime claims contained in part 9 of the Danish Merchant Shipping Act are based on the LLMC 1976 Convention, as amended by the LLMC 1996 Protocol. Denmark, Finland, Sweden and Norway have each acceeded to the LLMC 1996 Protocol, which has been implemented in the Nordic Shipping Codes.

This means that both a fault-based liability and a statutory based strict liability can be limited if it falls under one of categories mentioned above.

2.4.2 The Danish Merchant Shipping Act (*søloven*) has a list of six general areas of liability where claims can be limited.[2] This list is supplemented by the provisions set forth in part 10[3] regarding liability for pollution damage and the limitation thereof.

2.4.3 The categories and thereby the liabilities that can be limited are claims in respect of

(i) personal injury or damage to property occurring on board or in direct connection with the operation of the ship or with salvage operations,[4]
(ii) loss resulting from delay in the carriage by sea of cargo, passengers or their luggage,[5]
(iii) loss resulting from infringement of rights other than contractual rights occurring in direct connection with the operation of the ship or salvage operations,[6]
(iv) raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship,[7]
(v) removal, destruction or the rendering harmless of the cargo of the ship,[8] and
(vi) measures taken to avert or mitigate loss which is or would be subject to limitation of liability as well as loss caused by such measures.

Both direct claims, recourse claims and claims for consequential damages can be limited.

2.4.4 In addition, liability to dispose of a shipwreck and similar liabilities can also be limited,[9] as can claims from the public arising out of expenses to neutralise cargo containing of dangerous chemicals.[10] Expenses arising out of measures taken to mitigate the loss can also be limited, e.g. measures taken to prevent chemicals from leaking into the ocean or, if the chemicals have already started to leak, measures taken to prevent them from spreading.[11]

[2] See Section 172(1)(1)-(6) of the Danish Merchant Shipping Act.
[3] See Section 191-208 of the Danish Merchant Shipping Act.
[4] See Section 172(1)(1) of the Danish Merchant Shipping Act.
[5] See Section 172(1)(2) of the Danish Merchant Shipping Act.
[6] See Section 172(1)(3) of the Danish Merchant Shipping Act.
[7] See Section 172(1)(4) of the Danish Merchant Shipping Act.
[8] See Section 172(1)(5) of the Danish Merchant Shipping Act.
[9] See Section 172(1)(4) of the Danish Merchant Shipping Act.
[10] See Section 172(1)(5) of the Danish Merchant Shipping Act.
[11] See Section 172(1)(6) of the Danish Merchant Shipping Act.

2.5 Can an Owner Limit His Own Expenses?

2.5.1 The answer to this question depends on whether the owner's vessel is subject to part 9 of the Danish Merchant Shipping Act regarding limitation of liability or part 10 regarding liability and compensation for oil pollution damage.

2.5.2 If an owner carries out preventive arrangements, for example, by preventing oil from the vessel from polluting the environment, subject to part 9, he does not have a right to file a claim for compensation of his own expenses with the fund.

2.5.3 On the other hand, if the owner is subject to part 10, the expenses reasonably incurred for any preventive measures or sacrifices reasonable made to prevent or minimize pollution damage rank equally with other claims filed with the limitation fund. In other words when dealing with oil pollution in this situation, the owner is entitled to file a claim covering his expenses to the fund.[12]

2.5.4 The extent to which an owner of a vessel can file a claim with the limitation fund varies depending on whether the vessel is construed or adapted to carry oil in bulk and/or other cargoes subject to part 10 of the Danish Merchant Shipping Act (as opposed to part 9 which concerns other vessels not covered by the provisions in part 10).

2.5.5 With respect to the owner's access to limit liability for certain claims regarding to the prevention/reduction of oil pollution or similar loss resulting from a given casualty, the above mentioned legal position hence gives rise to yet another issue to be addressed before deciding on whether the owner should seek to mitigate such oil pollution and defray all expenses and/or indemnify public authorities from such loss prior to establishing a fund.

2.5.6 If a casualty has given rise to a considerable risk of oil pollution, government officials would normally order the owner to take appropriate steps to avert such risks and defray all costs incurred in this respect. If, by way of example, the Swedish Coast Guard for instance raises a claim against the owner of a vessel registered under the Danish flag for loss or damage caused outside the vessel by oil contamination as a result of the vessel's capsizing within Swedish territory during a voyage from Sweden to Denmark the owner would then be faced with two options: (1) to indemnify the Coast Guard for the loss incurred in this respect, or (2) to refuse to cover the costs with reference to the fact that the claim is subject to limitation.

2.5.7 If the owner's vessel is comprised by part 9 of the Danish Merchant Shipping Act and the owner chooses to comply with the Coast Guard's orders the owner would not be able to claim compensation for the expenses incurred with the fund once established. On the other hand, if the owner chooses to ignore the authorities' order and

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[12] See Section 195(3) of the Danish Merchant Shipping Act and Innføring i Sjørett, 6th ed. 2004, p. 182.

establishes a fund in Denmark once proceedings have been initiated, the authorities would be compelled to file a claim with the fund effectively limiting the owner's liability.

2.5.8 In spite of the considerable pressure which owners are made subject to by the press and government officials in case of an oil spill, it should thus be given considerable thought whether owners should comply with such orders or take steps to mitigate the oil spill on his own initiative as such costs may have to be paid in addition to the limitation amount depending on whether the vessel is subject to part 9 or 10 of the Danish Merchant Shipping Act.

2.6 Single Forum Litigation?

2.6.1 One of the most difficult problems facing owners and operators of a vessel seeking to establish a limitation fund is deciding where to establish the fund.

2.6.2 As opposed to certain national regimes, the LLMC 1976 Convention, as amended by the LLMC 1996 Protocol grants both the owner, the charterers, managers and their agents the right to limit liability in respect of maritime casualties. A right to limit liability is, however, not the only prerogative right granted to the owner. In addition, the regime to some extent provides a way for the owner to effectively force all claims relating to a casualty to be litigated in a single forum at his choice.

2.6.3 As mentioned above, a precondition for establishing a limitation fund is that arrest has been applied for or legal proceedings have been instituted against the owner with respect to claims subject to limitation[13].

2.6.4 If a fund is established on this basis, for instance in Denmark[14], Norway, Finland, Sweden or any other state having adopted the LLMC 1976 Convention and the LLMC 1996 Protocol, the initiation of said limitation action implies that separate actions on claims that are subject to the limitation of liability may not be conducted. Subsequently, the establishment of the fund determines the jurisdiction for all substantive claims as these will all have to be proved against the fund.

2.6.5 The above mentioned legal position does not, however, determine the legal effect of a judgment delivered by a court in an EU or an EFTA state in cases where a limitation fund has not yet been established. In this situation the question arises whether such "foreign" judgment rendered is enforceable against any of the owner's assets located in another EU or EFTA state if the owner subsequently chooses to constitute a fund in such EU/EFTA state. The question is whether the owner, if enforcement of the judgment is sought, would be entitled to constitute a limitation fund in the country of enforcement.

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[13] See Section 177(1) of the Danish Merchant Shipping Act.

[14] See Section 177(3) of the Danish Merchant Shipping Act.

2.6.6 To answer this question, one has to first of all look at the legal impact of the constitution of a limitation fund depending on whether the fund is established in a 1957 Convention state, a LLMC 1976 Convention state or a LLMC 1996 Protocol state.

2.7 The Legal Effect of the Constitution of a Limitation Fund pursuant to the LLMC 1996 Protocol

2.7.1 The constitution of a fund in a state having ratified the LLMC 1996 Protocol implies that arrest or attachment proceedings may, subject to the court's decision, not 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.

2.7.2 To the extent that the fund has been constituted in an LLMC 1996 Protocol state in which is situated either (i) the port where the event giving grounds for liability occurred, or, if it did not occur in a port, in the vessel's first port of call after the event, (ii) the port of disembarkation, in so far as the claim relates to personal injury, or (iii) the port of discharge, in so far as the claim relates to damage to the vessel's cargo, the above implies that arrest or attachment proceedings cannot be carried out.

2.8 The Legal Effect of the Establishment of a Limitation Fund pursuant to the Danish Merchant Shipping Act, Section 178

2.8.1 Establishment of a limitation fund in Denmark (or in any other Nordic country) implies that 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 established and who is entitled to limit liability.

2.8.2 The legal effect of establishing a limitation fund in another LLMC 1996 Protocol country is hence the same, provided that the fund has been constituted in the state in which is situated either (i) the port where the event giving grounds for liability occurred, or, if it did not occur in a port, in the vessel's first port of call after the event, (ii) the port of disembarkation, in so far as the claim relates to personal injury, or (iii) the port of discharge, in so far as the claim relates to damage to the vessel's cargo.

2.9 Judgment Rendered in a EU/EFTA State and Establishment of a Limitation Fund in the Nordic Countries

2.9.1 The Brussels I Regulation on Recognition of Judgments[15] replaced the Brussels Convention and lays down uniform rules for the settlement of conflicts of jurisdiction and facilitates the mutual recognition and enforcement of judgments, court settlements and authentic instruments within the EU in civil and commercial matters. The Brussels

[15] See Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

I Regulation applies to all member states of the European Union[16] with the exception of Denmark. Denmark has concluded a separate agreement[17] with the European Community, the effect of which is to extend the Regulation's rules to Denmark.

2.9.2 According to of the Brussels I Regulation any judgment rendered in a member state is to be recognised in the other member states without any special procedure being required. In case the outcome of proceedings in a member state court depends on the determination of an incidental question of recognition, it follows from the Regulation that the said court will have jurisdiction over that question.[18]

2.9.3 In relation to the global limitation of maritime claims one could assume that the Brussels I Regulation's provisions conflict with the general rules on limitation provisions regarding non-enforceability as a result of a judgment not being recognised. The question of the compatibility between the two regimes has been subject to examination in Danish case law.[19] The question in this case was whether the owner of a vessel registered in Denmark had the right to limit his liability for loss incurred as a result of a collision between the Danish vessel and a German registered barge. Prior to the owner's initiation of limitation proceedings in Denmark, a German court had imposed liability on the Danish owner for the incident in question based on German rules on limitation of liability. The German judgment was enforceable in Denmark and the Danish owner applied for the constitution of a limitation fund in Denmark, which was granted. In the case pending with the Maritime and Commercial Court in Copenhagen, the owner of the barge questioned whether:

(i) the fund was rightfully established,
(ii) the Danish owner had the right to limit liability pursuant to the LLMC 1976-Convention; and
(iii) the barge owner was entitled to file his full claim with the fund despite having waived a part thereof under the German proceedings.

2.9.4 The Danish Maritime and Commercial Court in Copenhagen ruled that the German Court's judgment was sufficient basis for the constitution of a limitation fund; that the rendering of an enforceable judgment by another EU member state did not preclude limitation of liability by the constitution of a limitation fund in Denmark; and that the barge owner – in spite of his waiver during the German proceedings - was not precluded from filing his full claim with the fund.

[16] But not to certain territoriums, see Article 68 of the Regulation.

[17] Agreement reached between European Community and Denmark on 19 October 2005, OJ L299 (16 November 2005) approved by Council Decision on 27 April 2006, OJ L94 (4 April 2006) entered into force on 1 July 2007, OJ L94 (4 April 2007).

[18] See Article 33 of the Regulation.

[19] Danish Maritime and Commercial Court in Copenhagen's decision of 1 May 2005 (Danish Weekly Law Report 2005.2550).

2.9.5 Hence, according to the Danish court's decision the unenforceability principle following the limitation rules does not conflict with the Regulation's rules on recognition in the sense that the judgment is not recognised. The principle indeed recognises a judgment rendered by a foreign court in another member state, but only to the extent that it must be fulfilled in accordance with national law, in the specific case Danish law on equal treatment of creditors, i.e. satisfaction through distribution of dividends.

2.10 The Legal Effect of National Law – Section 180 of the Danish Merchant Shipping Act?

2.10.1 Under Danish law[20] the above implies that an owner who is liable may invoke limitation of liability notwithstanding the fact that a limitation fund has not been established. Then, the court must only consider the claims which are pleaded under the case. If the owner being liable so claims, the judgment must, however, include a reservation that other claims which are subject to limitation of liability must be included in the calculation of the limitation of liability. A judgment rendered in accordance with these rules may then be enforced pursuant to the ordinary provisions thereon of the Administration of Justice Act (*retsplejeloven*). If a reservation as mentioned above is included in the judgment, and if a limitation fund has been established prior to the expiry of the period in which it is not possible to enforce the judgment, section 178 of the Danish Merchant Shipping Act mentioned above will, however, apply[21].

2.11 The "Mærsk Olie & Gas Case", the ECJ Judgment of 13 July 2004

2.11.1 The ECJ judgment of 13 July 2004 and the Danish Supreme Court's judgment of 17 October 2005

The question in this case was whether the legal step which the owners of "Cornelius Simon" had initiated in the Netherlands had to be recognized in Denmark.

The trawler "Cornelis Simon" was fishing in an area in which Mærsk Olie & Gas A/S ('Mærsk') had laid down oil and gas pipelines to the oilfields "Gorm" and "Rolf" on the Danish continental shelf. Later on, it was detected that the pipelines had been damaged. Mærsk commenced legal proceedings against the owners of the trawler, which was registered in the Netherlands. Two years later, in April 1987, the owners submitted an application to the city court in Groningen (Netherlands) for the constitution of a 1957 limitation fund. The limitation fund was constituted on 27 May 1987.

On 20 June 1987 Mærsk initiated court proceedings against the owners of the vessel "Cornelis Simon" before the Danish High Court (Western Division) and appealed the city court in Groningen's order to constitute the limitation fund to the Court of Appeal in Leeuwarden. The Court of Appeal, however, upheld the decision of the city court of

[20] See Section 180(1) of the Danish Merchant Shipping Act.

[21] See Section 180(2) of the Danish Merchant Shipping Act.

Groningen. Seeing that Mærsk had not notified any claim to the fund the fund was consequently repaid to the owners to the effect that all further claims were precluded under Dutch law.

The Danish High Court rejected the case and stated in its reasoning that the Dutch Court order had a pendente lite effect on the Danish proceedings pursuant to Article 21 of the Brussels Convention.[22]

Mærsk then appealed the Danish High Court's decision to the Danish Supreme Court, who referred issues to the European Court of Justice.

The European Court of Justice ruled that a court order forming the basis for constitution of a limitation fund is a "judgment" within the meaning of Article 32 of the Brussels I Regulation and 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.

A decision to establish a liability limitation fund in the Netherlands could therefore not be refused recognition in another contracting state on the basis of the Brussels Convention[23] in so far as due service of the order on the client was effected in good time to enable him to safeguard his rights.

On this basis, the Danish Supreme Court found that the Dutch decisions had to be recognized and accorded legal effect in Denmark in accordance with their substance.
The same also applied to the Dutch decision made in December 1998 in respect of finally having wounded up the limitation fund and subsequently concluded the limitation of liability in the Netherlands. According to the Danish Supreme Court, these decisions had to be interpreted in the way in which they were applied to the entire liability arising out of the damage to be attributed to the voyage in question. Mærsk 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 had preclusive effect under Dutch law to the effect that Mærsk therefore had no claim against the owner of the trawler, which in consequence was held not to be liable.

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[22] Article 21 states that where proceedings involving the same cause of action and between the same parties are brought in the courts of different contracting states, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established. Where the jurisdiction of the court first seized is established, any court other than the court first seized shall decline jurisdiction in favour of that court.

[23] Article 27(2) of the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters.

3. The Legal Status After the "Mærsk Olie & Gas-Case"

3.1.1 Pursuant to the ECJ Judgment, it could be argued what the effect of the recognition of the foreign limitation fund should subsequently be.

3.1.2 Based on the reasoning of the ECJ Judgment it must be concluded that the constitution of a limitation fund must be granted identical legal effect in the country where the question of legal effect arises as stipulated by the rules of law of the country in which the fund is established.

3.1.3 A fund established in accordance with the LLMC 1976 Convention (in a LLMC 1976 Convention state) must thus be recognized and given identical legal effect also in the 1996 Protocol and EU/EFTA member states to the effect that judgments rendered within EU/EFTA States are not to be reviewed materially as regards to content or jurisdiction.

3.2 The Supreme Court of the Netherlands Judgment of 29 September 2006

3.2.1 The question in this case was whether a Swedish decision to establish a limitation fund should be recognized in the Netherlands.

A collision in January 2003 caused the owners of "Assi Eurolink" to commence legal proceedings in the Netherlands against the owners and bareboat charterers of the other vessel involved, "Seawheel Rhine". The owners of "Assi Eurolink" then initiated legal proceedings against the bareboat charterers in Sweden, who subsequently applied the Swedish court for the constitution of a limitation fund. Like under Danish law, the establishment of a limitation fund in Sweden comprises both collision damage and wreck removal claims.[24] When a limitation fund is established in the Netherlands, the owner on the other hand has to establish two limitation funds under Dutch law – one comprising collision damage claims and the other wreck removal claims.[25] Needless to say, the above implies that total limitation of liability is lower under Dutch law and the potential liability would subsequently be much higher if the fund is established in the Netherlands than what would have been the case, had the fund been established in one of the Nordic countries. In the present matter it was thus of great importance to the bareboat charterer that the limitation fund established by the said charterer in Sweden was recognized in the proceedings pending in the Netherlands.

The Dutch city court and the court of appeal refused to recognize the establishment of the fund. The Dutch Supreme Court, however, reversed this decision with reference to the fact that the establishment of the fund was to be regarded as a decision under the Bruxelles I Regulation to the effect that the Swedish limitation fund was to be

[24] Pursuant to the LLMC 1976 Convention.

[25] The Netherlands has adopted an article 18 reservation under the LLMC 1976 Convention.

recognised in the Netherlands. As a consequence, the constitution of the fund was therefore consistent with the principles applied in the ECJ Judgment the "Mærsk Olie & Gas case" to be recognised in the Netherlands without prior review of the content of the decision or of the jurisdiction of the Swedish court.

3.2.2 In conclusion, the decision in respect of the establishment of a limitation fund is regarded a decision as referred to in Article 32 of the Brussels I Regulation and should thus be recognized and enforced in the Netherlands in accordance with Article 33 of the Regulation. The fact that the decision in this specific case was made ex parte does not detract from this, cf. ECJ 14 October 2004, case C-39/02. *"[…] The legal consequences in this country of the decision of the Swedish fund court is thus determined by Swedish law. This includes Art. 13 of the Convention, in which provision "immunity" of arrests is laid down. The recognition of that decision in the Netherlands entails that this immunity also applies in this country."*

4. How Can an Owner or Operator Take Advantage of the Legal Effects of the ECJ Judgment in the "Mærsk Olie & Gas-Case"?

4.1.1 The general principle pursuant to the ECJ Judgment is that limitation is determined by the law where the limitation fund has been established. As there are still several possible international limitation regimes applicable there will hence always be the possibility of forum shopping.

4.2 Where Can a Limitation Fund be Established?

4.2.1 Under the LLMC 1976 Convention and the LLMC 1996 Protocol, a limitation fund can only be established where a claimant has commenced proceedings or applied for arrest or other enforcement measures.

4.2.2 Svea Hovrätts Decision of 20 October 2005

In this case, damage was caused by the tug "*Forest*" and the barge "*Mercur*" to sub-sea cables between Sjælland and Bornholm. The cable owners in Norway initiated legal proceedings against the owners of "Forest" and "Merkur" and the owner's management company. The management company subsequently brought proceedings in Sweden against the owners and on this basis the owners constituted a limitation fund in Sweden. It was claimed by the cable owners that the legal proceedings in Sweden were not brought by "*an independent creditor*". However this argument was not given any effect by the court.

4.2.3 In conclusion, as was the case in the Dutch Supreme Court's judgment of 29 September 2006 mentioned above, it is critical that all factors of importance are properly analysed and taken into consideration when shopping for the proper forum for a given casualty, even to the extent that the owner seeks to take the necessary steps

to ensure that ‘friendly’ third party claimants – such as in the Dutch case – initiate proceedings against owners with a view to ensure that the basis for initiation of limitation proceedings is established enabling the owner to chose the most convenient venue available.

5. The “Mærsk Olie & Gas” Decision and Rules on Lis Pendence

5.1.1 In the “Mærsk Olie & Gas”-case the ECJ concluded that the action on the constitution of a limitation fund in the Netherlands did not have any pendente lite effect on the subsequent action for damages in Denmark.

5.1.2 Nevertheless, the question still remains what the legal position would have been, had the action for damages initiated in Denmark also concerned the issue of whether liability for the pipeline damage could be limited under the LLMC 1976 Convention. In such a situation, it could be argued that the actions were to be regarded as having identical causes with respect to the issue of whether the claim could be limited as regards liability. Alternatively, the cases could also be regarded as having the same subject-matter, i.e. the rules on limitation. The cases would also have the same parties if the defendant to the liability actions filed an application/claim with the fund leaving room for judicial implication as to the extent of this decision as regards the rules on lis pendence.

6. In Summary

6.1.1 As will appear from the above, there are many aspects to be taken into consideration before initiating the appropriate steps with respect to limit a liability when dealing with major casualties in foreign jurisdictions.

6.1.2 This paper is not exhaustive with respect to which important issues to address prior to invoking the right to limit liability. It only contains examples of a few of the issues, which need to be addressed before deciding on a venue in order to limit the loss suffered as a result of the casualty to the widest extent possible. Besides the issues mentioned above, there are a number of additional factors which could lead to considerable discounts as regards the total liability facing the owners as a result of a casualty provided that the owner chooses the right forum under the circumstances.

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