

DABELSTEIN & PASSEHL

Hamburg  Leer



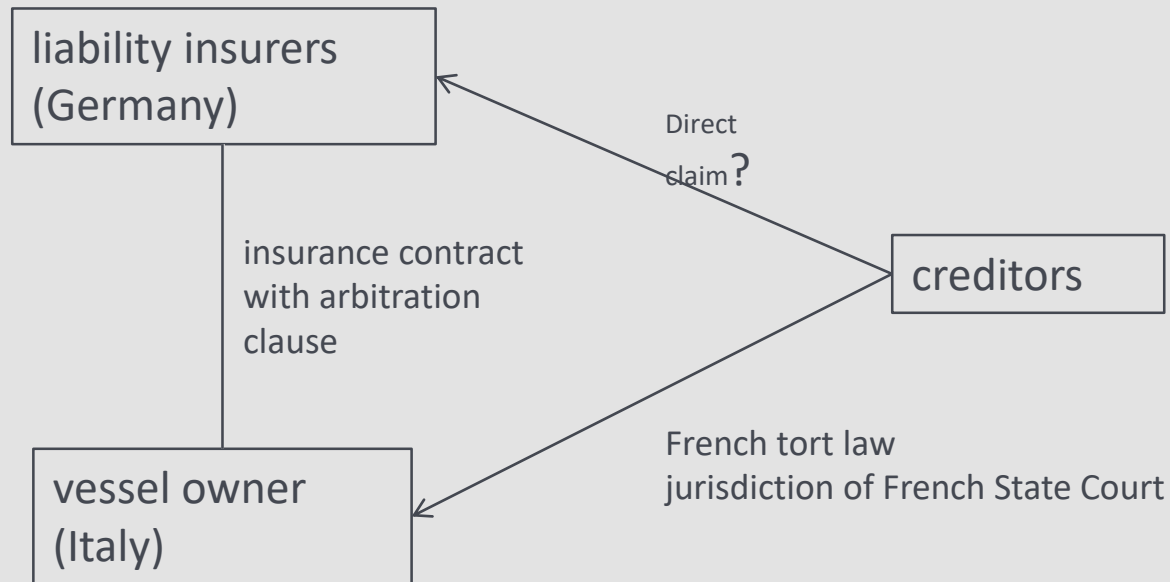
Jurisdiction and Arbitration Agreements

12th London International Maritime Law Seminar

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I. Introduction



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II. How to agree validly

III. Bills of Lading

IV. Direct Actions against P&I-Clubs

II. How to agree validly

1. Jurisdiction Agreements:

Art. 25 Brussels Regulation No.1215/2012 of
12 December 2012 („BR“)

- a) substantive validity
- b) form requirements

II. How to agree validly

1. Jurisdiction Agreements:

a) Art. 25 BR on substantive validity:

Para 1: If the parties (...) have agreed that a court or the courts of a Member State are to have jurisdiction ... that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. (...)

Para 5: An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.

II. How to agree validly

1. Jurisdiction Agreements:

b) Art. 25 BR on form requirements:

Para 1: (...) The agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing;

(b) in a form which accords with practices which the parties have established between themselves; or

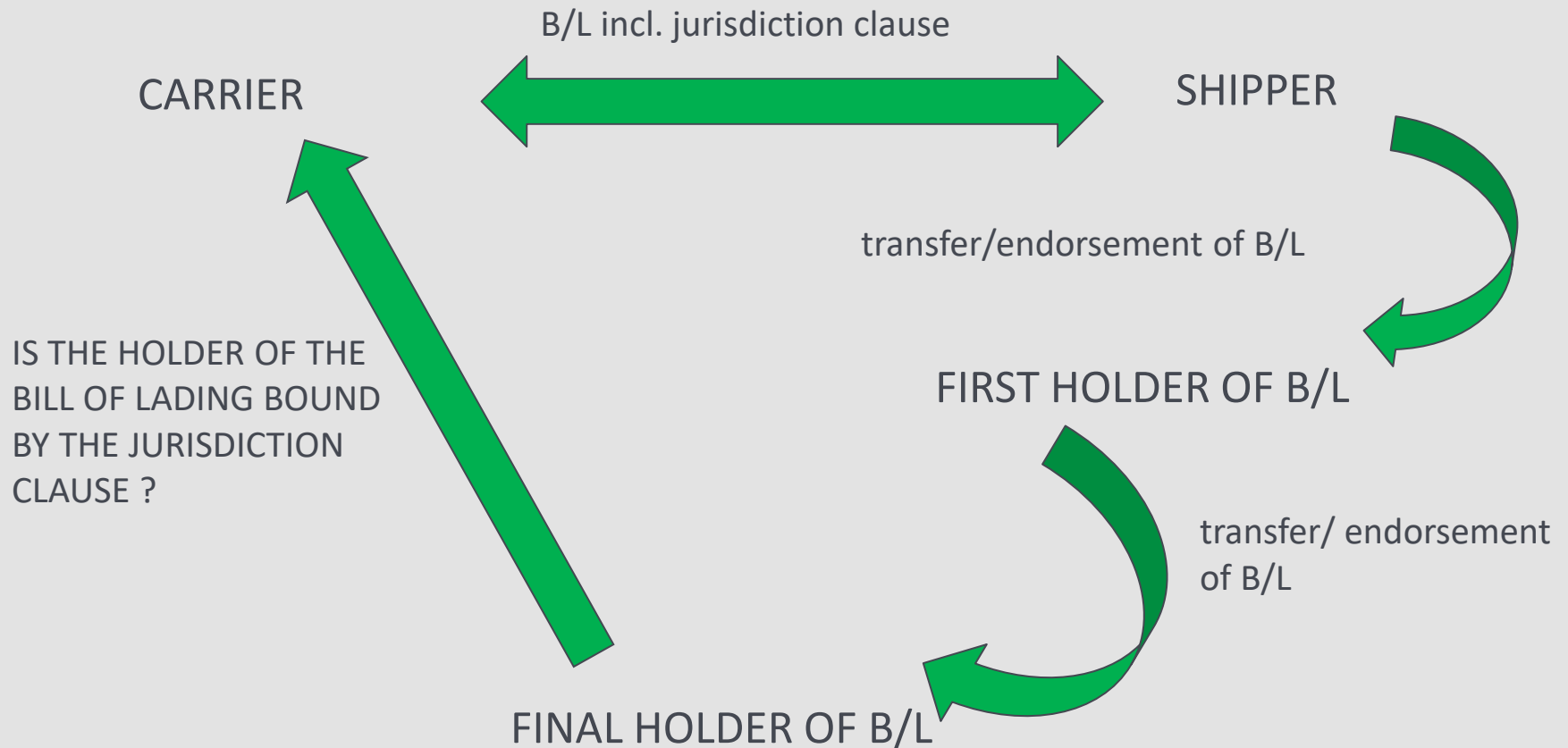
(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

Para 2: Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

II. How to agree validly

2. Arbitration Agreements: art. II NY Convention, and in Germany section 1031 ZPO (CPC):
 - (1) ... either in a document signed by the parties, or in letters, telefax copies, telegrams, or other forms of transmitting messages as exchanged by the parties, and that ensure proof of the agreement by supporting documents.
 - (2) ... also in those cases in which the arbitration agreement is contained in a document transmitted by one party to the other, or by a third party to both parties, if the content of the document is, under customary standards, presumed to be agreed in the event an opposition is lodged too late.
 - (3) Where an agreement [*as described above*] makes reference to a document containing an arbitration clause ... such that this clause is included as a part of the agreement.

III. Bills of Lading



III. Bills of Lading

1. Jurisdiction Agreements under art. 25 BR:

ECJ judgment of 9.11.2000,
Coreck Maritime (C-387/98):

„[A] jurisdiction clause ... is enforceable against a third party ... if he succeeded to the rights and obligations (...) under the applicable national law ...

If ... not, it must be ascertained whether he accepted that clause ...“

III. Bills of Lading

2. Arbitration Agreements (from a German law perspective):

former section 1031 para 4 ZPO:

„An arbitration clause is also agreed by a bill of lading if this bill of lading expressly refers to an arbitration clause contained in a charter party.“

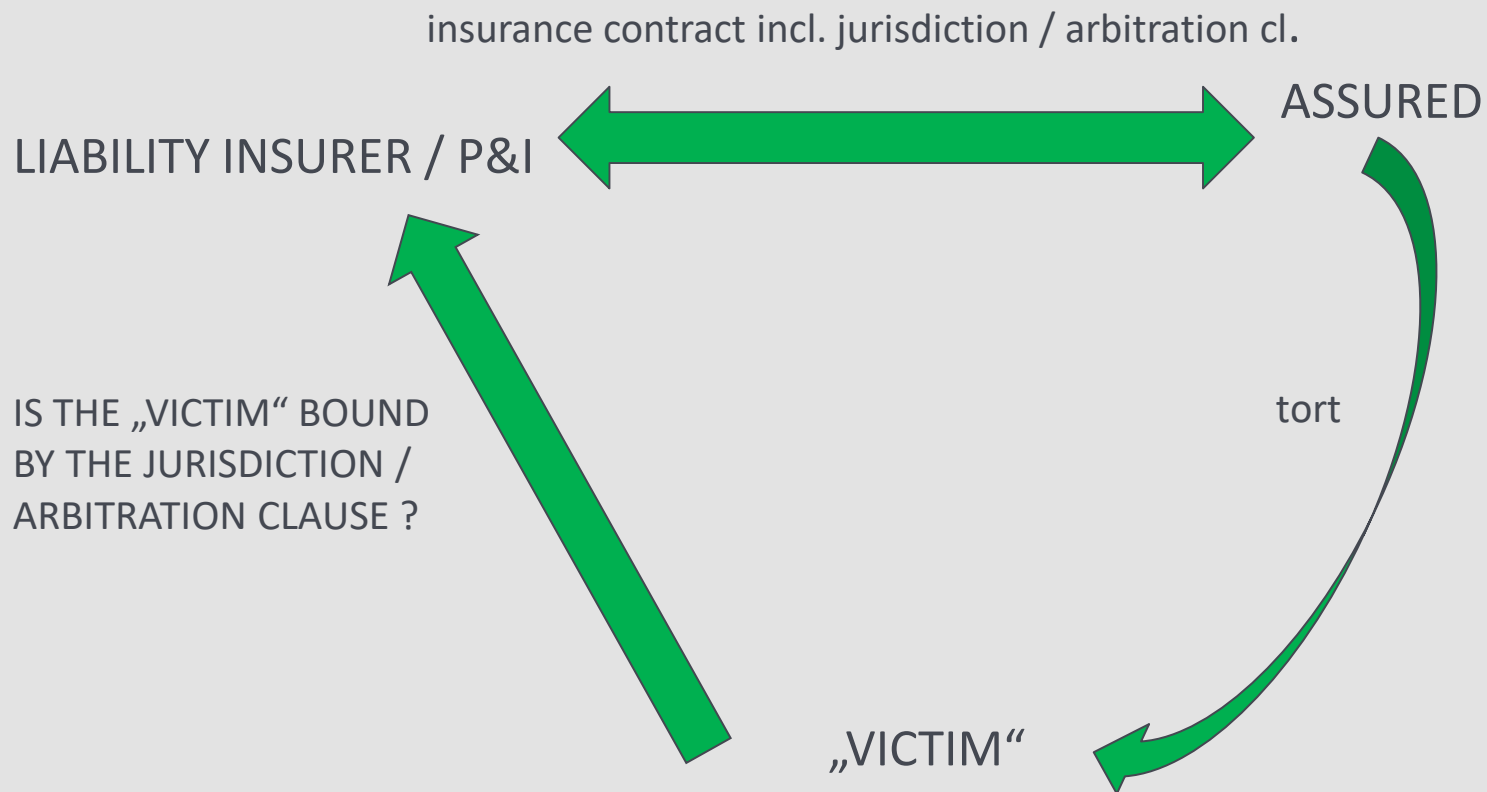
III. Bills of Lading

Since 2013: section 522 para 1 HGB

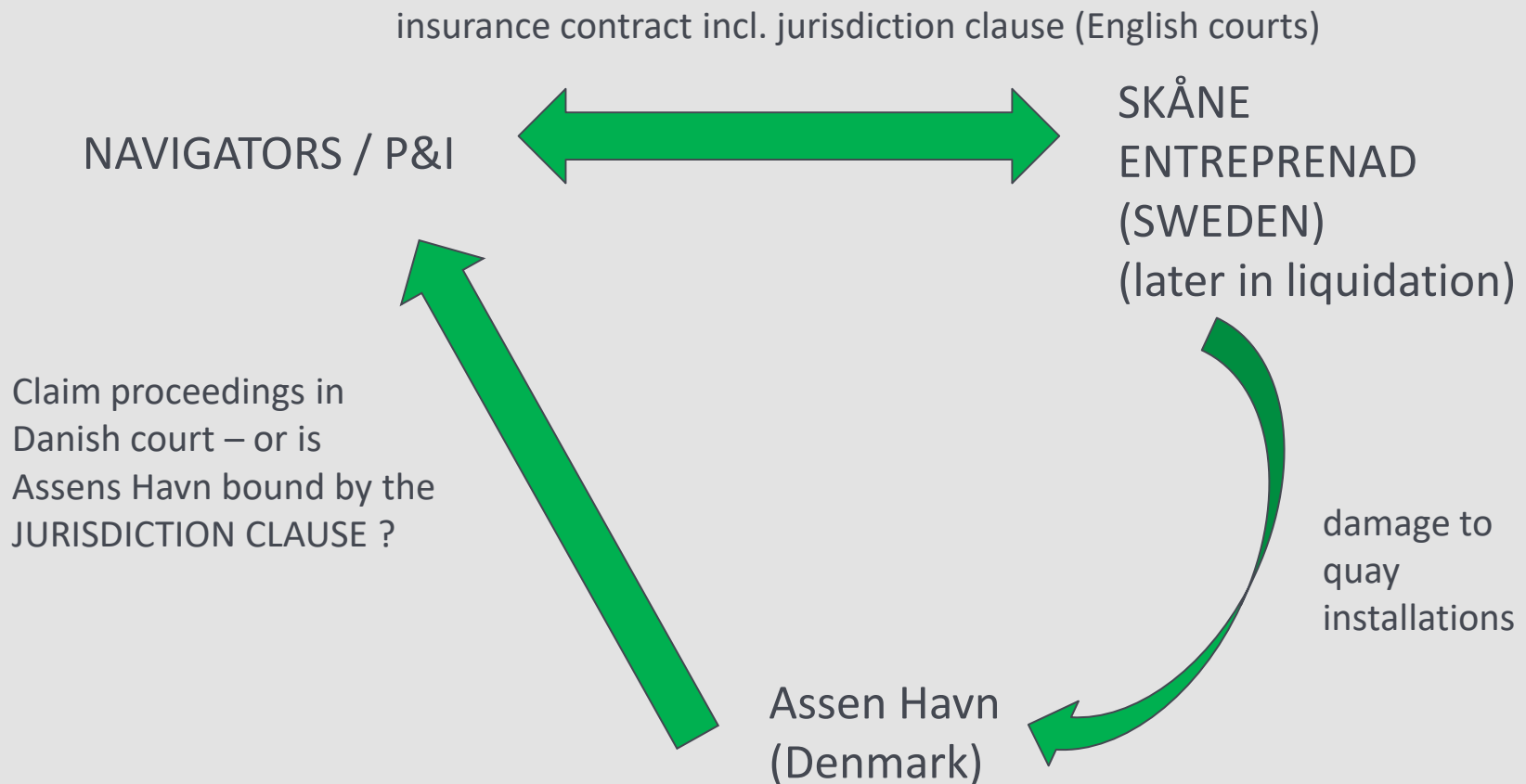
(German Commercial Code):

„(...) An agreement to which the bill of lading merely makes reference is not incorporated into the bill of lading.“

IV. Direct Actions against P&I-Clubs



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1. Jurisdiction Clauses

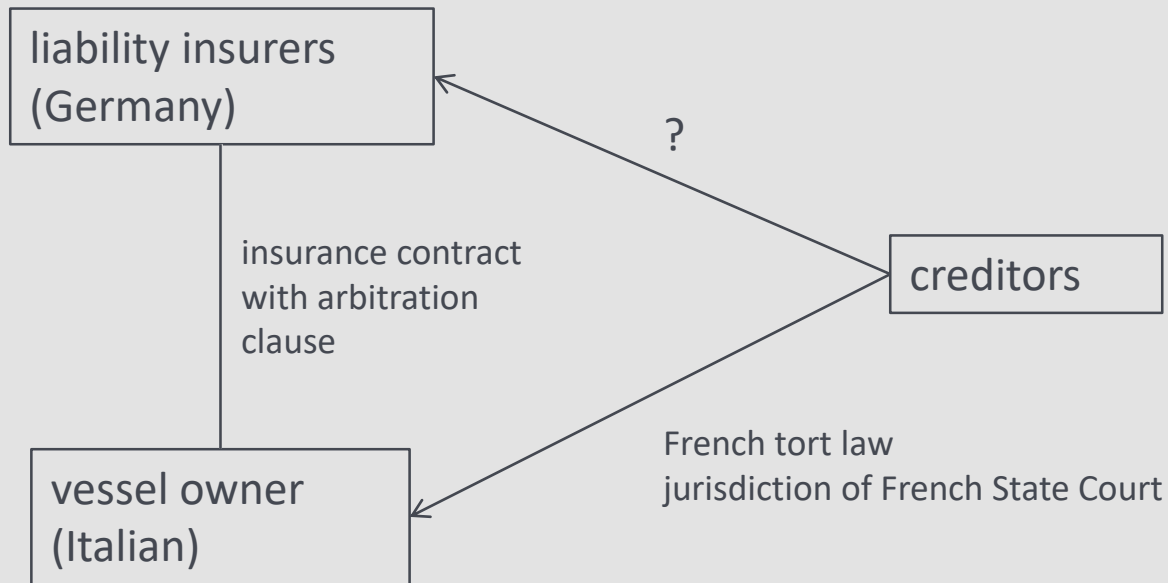
- a) ECJ judgment of 13.07.2017,
Assens Havn (C-368/16):

„[A] victim entitled to bring a direct action against the insurer of the party which caused the harm which he has suffered is not bound by an agreement on jurisdiction concluded between the insurer and that party.“

- b) Critical Review

IV. Direct actions against P&I-Clubs

2. Arbitration Agreements



THANK YOU!