

LEGAL COMMITTEE
99th session
Agenda item 4

LEG 99/4/7
9 March 2012
Original: ENGLISH

**CONSIDERATION OF A PROPOSAL TO AMEND THE LIMITS OF LIABILITY
OF THE PROTOCOL OF 1996 TO THE CONVENTION ON LIMITATION
OF LIABILITY FOR MARITIME CLAIMS, 1976 (LLMC 96),
IN ACCORDANCE WITH ARTICLE 8 OF LLMC 96**

**Submitted by the International Chamber of Shipping (ICS) and the
International Group of P&I Associations (P&I Clubs)**

SUMMARY

Executive summary: This document comments on the papers already submitted by the Japanese Government and the P&I Clubs, and provides additional information to facilitate the discussions on any increases to LLMC 96 limits

Strategic direction: 2

High-level action: 2.0.1

Planned output: 2.0.1.17

Action to be taken: Paragraph 9

Related documents: LEG 94/11/1; LEG 96/12/1, LEG 96/6/2; LEG 97/8/3, LEG 97/8/5; LEG 98/7; LEG 99/4, LEG 99/4/1, LEG 99/4/2, LEG 99/4/3, LEG 99/4/4, LEG 99/4/5 and LEG 99/4/6

Introduction

1 The co-sponsors of this document believe that it is important to adhere to the preconditions in article 8(5) of LLMC 96 when considering a proposal for amending the limits, both to ensure that any increases are set at a justifiable level that will be insurable at reasonable cost and to avoid setting a precedent for arbitrary increases in the future. Article 8(5) refers to changes in monetary values, the experience of incidents and the effect on the cost of insurance.

Comments on the changes in monetary values and historical claims data

2 There is no express guidance in article 8(5) of the Protocol on how to assess changes in monetary values. The co-sponsors of this document have conducted their own research and analysis of indicative indicators of changes in monetary values and had intended to submit their findings to the Legal Committee for its information when considering this factor. However, the same exercise has been undertaken by Japan

(see document LEG 99/4/1) and with the same results. In order to avoid duplication of information, the co-sponsors refer to the data and analysis provided by Japan in document LEG 99/4/1. Accordingly, the co-sponsors note that the data and analysis provided by Japan show that the changes in monetary values between 1996 and 2010 have been no more than 45 per cent, which would support the conclusion that any increases in the limitation of liability amounts should be no more than 45 per cent.

3 The claims data provided by the P&I Clubs in document LEG 99/4/6 covers the experience of past incidents that is to be taken into account when considering any increases and highlights that only a very small number of incidents have exceeded the Protocol limits within the parameters of the data requests received by the P&I Clubs.

4 At the same time, the co-sponsors note and support the previous comments made by the Comité Maritime International in paragraphs 5 and 6 of document LEG 97/8/4, that a potential consequence of applying the concept of limitation is that on rare occasions the total cost of claims subject to limitation will exceed the limits, and that the small number and percentage of claims that have exceeded the Protocol limits is, statistically, an outcome which suggests that limitation is actually operating as intended. As was noted at the ninety-eighth session of the Legal Committee meeting, "a limit which is too high could effectively void the concept of limitation of liability" (see document LEG 98/14, paragraph 7.7).

Effect of the proposed amendment on the cost of insurance

5 The P&I Clubs have previously informed the Legal Committee (see document LEG 98/14, paragraph 7.7) that:

"...it would not be possible to quantify the effect on the cost of insurance from an increase in LLMC 96 limits since insurance rates were influenced by a wide variety of variables, e.g., severity and frequency of claims in any one year, types of claims, cost and capacity of market re-insurance, which will often depend on non-marine factors, such as hurricanes, floods and earthquakes. Moreover, the premium paid by a shipowner member of a P&I Club for liability insurance covers a variety of different risks relating to the use and operation of a vessel, and a premium is not specifically allocated to a particular covered risk".

While it is not possible to quantify any immediate increase in the cost of insurance in the event of higher limits, it is almost inevitable that if a major incident occurred that is subject to higher limits, then this would be reflected in increased premiums soon afterwards.

Other considerations previously raised within the Committee

6 In previous discussions in the Legal Committee, other views have also been presented to justify the maximum possible increase permitted under article 8 of the Protocol, including that:

- .1 by the time the new limits come into effect, 19 years will have passed since the limits in the Protocol were adopted and in light of that fact that the maximum permitted increase might not be excessive or unrealistic (document LEG 98/14, paragraph 7.7); and

- .2 a comparison of the increases in the limits between the 1957 LLMC Convention, LLMC 76 and LLMC 96, seeking to show that the high level of increases proposed was not novel when compared against increases between the various conventions (see document LEG 98/7).

These considerations are outside of the prescribed factors in article 8(5) that are to be taken into account when considering any increases, and are not therefore of primary relevance.

7 Concerns have also been expressed by some States (see document LEG 98/14, paragraph 7.7), that any dramatic changes to the Convention and limits of liability should be avoided where they are not justified, to avoid the Convention becoming unattractive for those States which are contemplating ratifying it soon or which may already be in the process of ratifying. The objective of developing and adopting rules and regulations at the international level through IMO is to create harmonization and uniformity, and to create certainty for all interested parties. There remain, however, more States Parties to LLMC 76 than LLMC 96. There are 52 States Parties to LLMC 76 and 45 States Parties to LLMC 96. It is important therefore that States are not discouraged from ratifying the Protocol and that obstacles to the widespread ratification/accession on an international basis are avoided.

Conclusion

8 Based on the information that has been provided in respect of the three factors prescribed in article 8(5) of LLMC 96, a maximum increase in the limits of 6 per cent per year, calculated on a compound basis, with effect from 1 October 1996, would appear to be unjustified. If the Legal Committee decides that there is a need, and justification, for an increase in the limits then the co-sponsors believe that the conclusions reached by Japan in document LEG 99/4/1 should inform the Committee's deliberations as to the appropriate extent of any increases.

Action requested of the Legal Committee

9 The Legal Committee is invited to take note of the information provided in this document.
