

LEGAL COMMITTEE  
99th session  
Agenda item 4

LEG 99/4/6  
2 March 2012  
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**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**

**Experience of incidents and the amount of damage resulting**

**Submitted by the International Group of P&I Associations (P&I Clubs)**

**SUMMARY**

*Executive summary:* This document provides additional information and claims data further to the data provided by the P&I Clubs to the ninety-sixth and ninety-seventh sessions of the Legal Committee

*Strategic direction:* 2

*High-level action:* 2.0.1

*Planned output:* 2.0.1.17

*Action to be taken:* Paragraph 14

*Related documents:* LEG 94/11/1; LEG 96/12/1, LEG 96/6/2; LEG 97/8/3 and LEG 97/8/5

1 This document is submitted in accordance with the provisions of the Guidelines on the organization and method of work of the Legal Committee.

**Background**

2 In response to previous requests from the Legal Committee, the P&I Clubs submitted claims data to:

- the ninety-sixth session of the Legal Committee in October 2009 on pollution damage claims arising from a spill, or the threat of a spill, from a ship's bunker oil (document LEG 96/6/2); and
- to the ninety-seventh session of the Legal Committee in October 2010 on cases where limitation was applied in accordance with LLMC 96 and where the total cost of claims (that were subject to limitation) exceeded the limits (save for incidents involving pollution damage arising from bunker oil spills).

- 3 The data provided by the P&I Clubs indicated that:
- between 2000 and August 2009, the total cost of pollution damage claims from a spill, or the threat of a spill, exceeded the limits of liability contained in LLMC 96 in only seven out of 595 reported incidents, whether or not the Protocol was in force in the State in whose waters the incident occurred; and
  - since the entry into force of LLMC 96 on 13 May 2004, the total cost of claims that were subject to limitation exceeded the limits, save for incidents involving pollution damage arising from bunker oil spills, in three cases.

4 This claims data collection only covered cases where the vessels involved were entered for P&I cover with a member P&I Association of the International Group of P&I Associations. The claims data collection did not cover all cases where there were out-of-court commercial settlements reached with claimants and where no fund had been established, but which were settled on the basis of, or taking close account of, limitation, which could include a significant number of cases.

5 Since that data did not cover the claims history up to the present day, the P&I Clubs offered, at the ninety-eighth session of the Legal Committee, to provide updated claims data for consideration at the ninety-ninth session. This document contains the updated claims data.

#### **Spills from ships' bunker oil – claims data**

6 As noted, the P&I Clubs reported seven cases to the ninety-sixth session of the Legal Committee where the total cost of claims for pollution damage arising from a spill from the ship's bunker oil exceeded LLMC 96 limits in the time period noted in paragraph 2 above, whether or not the Protocol was in force in the State in whose waters the incident occurred. The background data on these seven cases is contained in the annex to the document. This figure has now been increased to 10 cases, with three further cases identified since August 2009, as follows:

Name of vessel: **Bohai Challenge**

GT: 8,708

Date of incident: 31.01.2011

Total claim amount and subject to limitation: US\$8,574,612.18

Limitation under LLMC 96: approximately US\$5,660,000

Name of vessel: **Full City**

GT: 15,873

Date of incident: 31.07.2009

Total claim amount and subject to limitation: US\$46,410,451.59

Limitation under LLMC 96: US\$ 10,014,067

Limitation under Norwegian Law: approximately US\$35,071,101

Name of vessel: **Pacific Adventurer**

GT: 18,391

Date of incident: 11.03.2009

Total claim amount and subject to limitation: excess of the limit so far but the case is ongoing and the true value of those claims has not yet been established

Limitation under LLMC 96: approximately US\$18,900,000

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**Claims data – other**

7 As noted, the P&I Clubs reported to the ninety-seventh session of the Legal Committee three cases where limitation was applied in accordance with LLMC 96, where in force, since its entry into force date (13 May 2004), and where the total cost of claims (that were subject to limitation) exceeded the limits, save for incidents involving pollution damage arising from bunker oil spills. The background data on these three cases submitted to the ninety-seventh session of the Legal Committee is contained in the annex to the document. This figure has now been increased to seven cases, with four further cases identified since, as follows:

Name of vessel: **Crane Gaia**  
GT: 5,707  
Date of incident: 23.06.2011  
Total claim amount and subject to limitation: US\$5,480,880  
Limitation under LLMC 96: US\$3,786,270  
Damage: Property damage

Name of vessel: **Ioannis NK**  
GT: 14,498  
Date of incident: 23.07.2009  
Total claim amount and subject to limitation: US\$12,571,920  
Limitation under LLMC 96: US\$9,206,804.73  
Damage: Loss of cargo

Name of vessel: **Lisco Gloria**  
GT: 20,140  
Date of incident: 08.10.2010  
Total claim amount and subject to limitation: estimated at slightly in excess of the limit but the case is ongoing and the true value of those claims has not yet been established  
Limitation under LLMC 96: US\$12,793,914.77  
Damage: Damage to cargo

Name of vessel: **Shen Neng 1**  
GT: 36,575  
Date of incident: 03.04.2010  
Total claim amount and subject to limitation: estimated to be in excess of the limitation figure in this case  
Limitation under LLMC 96: approximately US\$22 million  
Damage: Grounding and damage to property

8 The claims data that has been collated to provide the updated statistics in paragraph 7 of this paper has covered all relevant claims where limitation may have been applicable.

9 Given the very large number of cases, it has not been possible to indicate with absolute authority the total number of incidents that have occurred since LLMC 96 entered into force, since claims data on those incidents where the total cost of claims is of a relatively low value (i.e. significantly below the minimum limit of liability under the Protocol) is not recorded by the P&I Clubs and cannot be provided by the Clubs.

10 Such low value claims would, however, still be relevant for providing a total figure from which the 10 cases noted in paragraph 7 have been drawn.

11 It is possible to say with some certainty though that there have been a considerable number of incidents that have occurred since the Protocol entered into force where claims have arisen within the scope of article 2 of LLMC 76, as amended by the Protocol, whether the Protocol has been in force or not.

12 It remains the case with the updated claims data collection that it has not covered all cases where there have been out of court commercial settlements reached with claimants and where no fund has been established, but which were settled on the basis of, or taking close account of, limitation, which could include a significant number of such cases.

13 Incidents that have occurred in the United States involving vessels entered in one of the P&I Associations that are members of the International Group have been excluded from the claims data collection exercises, since it is considered highly unlikely that the United States will become a State Party to LLMC 96.

#### **Action requested of the Legal Committee**

14 The Legal Committee is requested to consider the information provided in this document and to comment and decide as appropriate.

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**ANNEX**

**Spills from ships' bunker oil – claims data provided to the  
ninety-sixth session of the Legal Committee**

1. Vessel Name: **Maersk Holyhead**  
GT: 17,980  
Incident Date: 06.11.2005  
Location: Lake Maracaibo, Venezuela  
Costs incurred and estimated to date (pollution damage from ship's bunker oil):  
approximately US\$32,500,000  
LLMC 96 limit (not in force in the country, but if it had been): US\$11,235,840  
  
Note: Venezuela is not a Party to LLMC 96 (or the 1976 Convention) and the Protocol limits were therefore not applicable in this incident.
2. Vessel Name: **Vicuna**  
GT: 11,636  
Incident Date: 15.11.2004  
Location: Paranagua, Brazil  
Costs incurred and estimated to date (pollution damage from ship's bunker oil):  
approximately US\$31,500,000  
LLMC 96 limit (not in force in the country, but if it had been): US\$7,378,688  
  
Note: Brazil is not a Party to LLMC 96 (or the 1976 Convention) and the Protocol limits were therefore not applicable in this case.
3. Vessel Name: **Don Pedro**  
GT: 10,957  
Incident Date: 11.07.2007  
Location: Ibiza, Spain  
Costs incurred and estimated to date (pollution damage from ship's bunker oil):  
approximately US\$16,500,000  
LLMC 96 limit: US\$6,903,107.65  
  
Note: While Spain is a State Party to LLMC 96, and was at the time of the incident, no limitation fund has been established because there is no clear mechanism in Spanish law to do so.
4. Vessel Name: **Sea Diamond**  
GT: 22,412  
Incident Date: 05.04.2007  
Location: Santorini, Greece  
Costs incurred and estimated to date (pollution damage from ship's bunker oil):  
US\$ 37,313,239.71  
LLMC 96 limit: US\$13,921,331  
  
Note: Greece was not a State Party to the Protocol at the time of the incident. Greece acceded to the Protocol on 6 July 2009.

5. Vessel Name: **Gold Leader**  
GT: 1,466  
Incident Date: 05.03.2008  
Location: Kobe, Japan  
Costs incurred (pollution damage from ship's bunker oil): approximately US\$50-60 million above the relevant 1996 limit  
LLMC 96 limit: US\$1,642,516.27

Note: The Protocol was in force in Japan at the time of the incident. The costs incurred are quoted as an estimate since the case remains open and it is not possible to provide anything other than an initial estimate of the total expected costs of third party claims (for pollution damage)

6. Vessel Name: **Server**  
GT: 19, 864  
Incident Date: 12.01.2007  
Location: Fedje Island, Norway  
Costs incurred and estimated to date (pollution damage from ship's bunker oil): US\$ 35,309,997  
LLMC 96 limit: US\$12,333,351  
Limit under Norwegian law: US\$37,710,235

Note: The Protocol was in force in Norway at the time of the incident. Norway applies higher domestic limits however in respect of the removal of bunkers from a stranded or wrecked vessel.

7. Vessel Name: **Ku San**  
GT: 1, 972  
Incident Date: 15.07.2006  
Location: Osaka, Japan  
Costs incurred and estimated to date (pollution damage from ship's bunker oil): US\$2,790,680  
LLMC 96 limit: US\$1,553,610

Note: The Protocol was not in force in Japan at the time of the incident. It entered into force in Japan on 1 August 2006.

#### **Claims data – Other – provided to the ninety-seventh session of the Legal Committee**

Name of vessel: **Baltic Claire**  
GT: 5,245  
Date of incident: 23.12.2005  
Total claim amount and subject to limitation: approximately US\$7 million  
LLMC 96 limit: US\$3.4 million  
Damage: Damage to electrical cable

Name of vessel: **MSC Napoli**  
GT: 53,409  
Date of incident: 18.01.2007  
Total claim amount and subject to limitation: approximately £47million (pounds sterling) (after taking account of package limitation)  
LLMC 96 limit: £14.7million  
Damage: Cargo damage, economic loss

Name of vessel: **Young Lady**

GT: 56,204

Date of incident: 29.04.2006

Total claim amount and subject to limitation: excess of the limit so far but the case is ongoing and the true value of those claims has not yet been established

LLMC 96 limit: £15,270,138 (pounds sterling)

Damage: Damage to pipeline

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