



LEGAL COMMITTEE
97th session
Agenda item 8

LEG 97/8/5
8 October 2010
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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

<i>Executive summary:</i>	This document provides additional information and claims data further to the data provided by the P&I Clubs to the ninety-sixth session of the Legal Committee
<i>Strategic direction:</i>	2
<i>High-level action:</i>	2.0.1
<i>Planned output:</i>	2.0.1.23
<i>Action to be taken:</i>	Paragraph 9
<i>Related documents:</i>	LEG 94/11/1; LEG 96/6/2, LEG 96/12/1; LEG 97/8, LEG 97/8/1, LEG 97/8/2, LEG 97/8/3 and LEG 97/8/4

1 This document is submitted in accordance with the provisions of paragraph 4.5.5 of the Guidelines on work methods and organization of work of the Legal Committee and contains some observations on document LEG 97/8/2, submitted by Australia.

Background

2 In response to a request from the Legal Committee, the P&I Clubs submitted claims data to the ninety-sixth session 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 refers). The data provided by the P&I Clubs indicated that the total cost of such claims exceeded the limits of liability contained in LLMC 96 in only eight out of 595 reported incidents between 2000 and August 2009, whether or not the Protocol was in force in the State in whose waters the incident occurred.

3 At the request of the Australian Government, and in response to document LEG 97/8/3 submitted by Australia, this document provides background information on those cases, as well as additional claims data collated by the P&I Clubs on 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).

Spills from ships' bunker oil – claims data

4 As noted, the P&I Clubs reported eight 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 1 above, whether or not it was in force in the State in whose waters the incident occurred. This figure has now been reduced to seven, since one of these incidents should now be discounted, as the pollution damage claims have been revised downwards to a level below the applicable limit of liability calculated in accordance with LLMC 96. The background data on these seven cases is as follows:

- (i) 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 (nor to the 1976 Convention) and LLMC 96 limits were therefore not applicable in this incident;

- (ii) 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 LLMC 96 limits were therefore not applicable in this case;

- (iii) 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;

- (iv) 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 LLMC 96 at the time of the incident. Greece acceded to it on 6 July 2009;

- (v) 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: LLMC 96 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);

- (vi) 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: LLMC 96 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; and

- (vii) 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: LLMC 96 was not in force in Japan at the time of the incident. It entered into force in Japan on 1 August 2006.

5 As explained at the ninety-sixth session of the Legal Committee, the information provided on the above cases does not include the total cost of all claims arising from these incidents, but only claims paid for pollution damage arising from a spill, or the threat of a spill, from the ship's bunker oil alone. This was the original request from the Committee.

Claims data – other

6 At the ninety-sixth session of the Legal Committee, "several delegations, while supporting the proposal, expressed the view that more information would be needed on such matters as the type and number of claims not involving bunker oil pollution damage which had exceeded the limits under LLMC 96; and on incidents where other claims covered by LLMC 96 (e.g., cargo, collision and personal injury) may have exceeded the limits under that Protocol" (paragraph 12(a).6 of document LEG 96/12/1 refers). Subsequently, the P&I Clubs received a request from the Australian Government for claims data on 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 since that data has already been provided.

7 As a result, the P&I Clubs have collated the following additional claims data on incidents that fall within the scope of the Australian Government's request:

- (i) 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
Limitation under LLMC 96: US\$3.4 million
Damage: damage to electrical cable;
- (ii) 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)
Limitation under LLMC 96: £14.7million (pounds sterling)
Damage: cargo damage, economic loss; and
- (iii) 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
Limitation under LLMC 96: £15,270,138 (pounds sterling)
Damage: damage to pipeline

8 This claims data collection did not cover 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.

Action requested of the Legal Committee

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