

CLNI 2012

Recent Case Law

17th Mannheim Conference on Inland Navigation Law

9 October 2025

I- CLNI 2012 PRESENTED

Purpose

Historical background

Global limitation of liability

- ▶ convention for the Unification of Private Law in Inland Navigation
- ▶ equivalent of the **LLMC** for IWT
- ▶ global limitation of liability
- ▶ “basic” level of harmonization : nothing on liability regime and insurance obligation

Limited v unlimited liability

- ▶ protection for the owner
- ▶ protection for the victims
- ▶ insurance
- ▶ limits should almost never come into play

Before CLNI 2012

- ▶ Statute of 15 June 1895: abandonment / peril of the sea
- ▶ CLN (UNECE) 1973

CLNI 1988

- ▶ Applicable on the Rhine and the Mosel, with possible extension
- ▶ 6 signatory states
- ▶ Entered in force on 1 sept 1997
- ▶ 4 state parties

CLNI 2012

Entry in force on 1 July 2019

- ▶ Adopted on 17 September 2012 (13 States participated)
- ▶ 7 State parties
- ▶ Amounts of limitation updated on 1 June 2024, w. entry in force on 1 MARCH 25

Compared with CLNI 1988

- ▶ Applicable on all waterways
- ▶ Limitation amounts reassessed, with 4 separate funds
 - ▶ General fund for bodily injury: x2
 - ▶ General fund for property damage: x2
 - ▶ Passenger fund: from 60,000 to 100,000/112600 x capacity of the vessel (LLMC: 175,000)
 - ▶ dangerous goods fund (new): general fund x2

	CASE	INCIDENT	COURT DECISION
NL	ROEL (NL)	09-10/02/2020 in NL	D Ct Rotterdam 09/02/2023
NL	ZIP BERNINA (NL)	6/12/2022 in NL	D Ct Rotterdam 15/07/2024
NL	TRIVOR	30/12/2022 in B	D Ct Rotterdam 03/04/2023
NL	PERFICIO	29/06/23 in B	D Ct Rotterdam 15/07/2024 Hoge Rad 05/09/2025
NL	TREKPONT	23/02/2023	D Ct Rotterdam 11/12/2024
B	MELMAR	17/11/ 2021 in D	D Ct Antwerp 04/01/22 Appeal 26/01/22
D	BELLRIVA	17/04/2012	BGH Karlsruhe 26/07/2016

II- WHERE TO CONSTITUTE A FUND?

CLNI Art. 12(1)

Any person alleged to be liable may constitute one or more funds with the competent court or other competent authority in any State Party

in which legal proceedings **are instituted** in respect of a claim subject to limitation, or,

if no legal proceedings are instituted (...) in which legal proceedings **may be instituted** for a claim subject to limitation.

LLMC, Ar. 11: Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party **in which legal proceedings are instituted** in respect of claims subject to limitation.

How to claim limitation?

Without constitution of a fund (art. 11)

- ▶ As a defence to a claim litigated before court
- ▶ No automatic release of vessel (art. 14(2))

With constitution of a fund or guarantee

- ▶ Procedure in 3 steps
- ▶ Can be requested **before** any proceedings is instigated

court or

Choice of jurisdiction

No rules in the CLNI

R 1215/2012 (Bxl bis) + national rules on jurisdiction

- ▶ Domicile of defendant (art. 4)
- ▶ Place of performance of contract obligation
- ▶ Place where harmful event occurred
- ▶ Court seized for criminal proceedings (art. 7)

Art. 14: channeling of all claims on the fund

Choice of forum when no proceedings

The MELMAR case (B, on the basis of B law/extension LLMC)

- ▶ 17 December 2021 MS Melmar causes damage to oil pipeline bridge in Gelsenkirchen (D)
- ▶ Owner, established in B, applies for the constitution of a fund in ANTWERP
- ▶ Victim (BP Europa, owner of pipeline) objects

Antwerp court confirms choice of forum when no proceedings

Advantage under CLNI 2012:

- Owner chooses
- Claimants must claim against the fund (art. 14(1))

Choice of forum when proceedings initiated

The TRIVOR case (NL on the basis of CLNI 2012)

- ▶ 29 June 2023, Trivor damages a bridge in B
- ▶ The main victim is the state of B
- ▶ Two victims launch proceedings in NL
- ▶ Owner, established in NL, applies for the constitution of a fund in ROTTERDAM
- ▶ No objection

Fund of 1.545.189 SDR constituted in Rotterdam

Even when the claimant is a public entity from another country

The *PERFICIO* Case

- ▶ 29 June 2023, Perficio causes damage to bridge in B
- ▶ vessel owner, established in NL, applies for constitution of fund in NL (6 July)
- ▶ Proceedings already initiated in B (5 July)
- ▶ Proceedings initiated in NL thereafter (7 Sept)
- ▶ Ct of Rotterdam 20/10/2023, Appeal 03/09/2024, cassation 05/09/2025

Rotterdam Court confirmed by Hoge Rad: fund can be constituted in NL

Under Dutch procedural law, jurisdiction assessed at the time of the Court's judgement, not at the time of submission of the request

III- WHO CAN CONSTITUTE OR JOIN A FUND?

CLNI

Art. 1(1): Vessel owners and salvors may limit their liability

Art 1(2): « vessel owner » = owner, hirer or charterer entrusted with the use of the vessel, operator of a vessel

Art 1(3)/art 10: any person for whose act, neglect or default the vessel owner or salvor is responsible, such person shall be entitled to limitation of liability provided for in this Convention

Art 2(1)(a): claims occurring on board OR in direct connection with the operation of the vessel, are subject to limitation of liability

The *ROEL* Case

FACTS

- ▶ On 9 February 2020, the owner of the ROEL barge contracts the company de Jong, owner of pusher Virgo, to push and moor the barge
- ▶ Barge moored by 2 crew members of Virgo
- ▶ Storm in the night, cables break loose, barge drifts away, causing damage to a weir owned by Rijkswaterstaat
- ▶ Barge owner constitutes a fund in Rotterdam
- ▶ Rijkswaterstaat sues de Jong company
- ▶ The de Jong company and the 2 crew members apply to join the fund
- ▶ Rijkswaterstaat objects
- ▶ Court accepts that they join and benefit from the limitation

The *ROEL* Case

REASONING

- ▶ Art 12(3) CLNI: fund deemed to be established for all persons entitled to limitation
- ▶ Same incident, same claims
- ▶ Hoge Rad, de Toekomst/Casuele jurisprudence: a ship is responsible for damages resulting from an error committed by persons performing work on the ship in the course of their work
- ▶ Owner of ROEL barge is responsible for acts of the 2 crew members when operating on the barge
- ▶ De Jong company is also liable as employer

The *BERNINA* Case

FACTS

- ▶ On 6 December 2022, Bernina mistakenly discharged dangerous goods in wrong tank at land, causing contamination and damage; discharge occurred at Chane terminal in Rotterdam port
- ▶ Owner of Bernina constitutes a fund in Rotterdam
- ▶ Chane seeks to join the fund
- ▶ Owner of Bernina objects
- ▶ Court accepts that Chane joins and benefits from the limitation

The *BERNINA* Case

REASONING

- ▶ Hoge Rad, de Toekomst/Casuele jurisprudence: a ship is responsible for damages resulting from an error committed by persons performing work on the ship in the course of their work
- ▶ Owner of Bernina can be held liable for acts of Chane because Chane acted for the benefit of the ship or cargo
- ▶ Claims ag. Chane would be « in direct connection with the operation of the vessel » (art. 2 CLNI)

Impact of national law

NL: broad coverage

- ▶ « persons for whose act the shipowner is liable » (Art. 1(3) CLNI) include service providers, including land-based service providers

D: more limited coverage

- ▶ ZKR, Appeals Chamber, 4 June 2018 514 Z2/2018: the owner of a barge is not responsible for the damages caused by the pilot of the pusher owned by a third party, because he is not the employer (not involved in the selection or supervision of the pusher's crew).

Only engages the responsibility of the employer => claim compensation against owner of pusher only
2 funds, for 2 persons who could be liable

- ▶ BGH 26 July 2016, River cruise ship collides with a platform on 17/4/2012

Pilot on board is on a service contract, not employed by owner

Owner not liable for negligence of pilot

§ 5i BSchG: specific limitations for pilots

The *trekpont* Case

FACTS

- ▶ On 23 February 2023, non commercial ferry with 18 people capsized
- ▶ Owner applies for constitution of a personal injury fund

RULING

No need to constitute a material fund

Not a passenger ship because no contract

Future cases?

FACTS

- ▶ Several big accidents occurred since entry in force of CLNI 2012
- ▶ May 2019: Hableany disaster in Budapest: 27 dead, one missing 5 M € compensation
- ▶ May 2024: Veroce accident
- ▶ November 2023: Primavera in Iffezheim 2,5 M € damage (CLNI: about 500 000€)
- ▶ December 2024: Regina in Müden 5,7 M° € (CLNI: about 900 000€)

THANK YOU FOR YOUR ATTENTION!

