

THE LIMITATION CONVENTION (LLMC) 1976

- *History of the Convention*
- *General principles - Rules of Interpretation*
- *Bar to other actions (Art. 13)>*
- *Claims excepted from limitation (Art. 3(e))*
- *Claims subject to limitation (Art. 2.1(a))*
- *Conduct barring limitation (Art. 4)*
- *Conflict of Conventions*
- *Constitution of the fund (Art. 11.1)*
- *Definition of seagoing ship (Art. 1.2)*
- *Definition of shipowner (Art. 1.2)*
- *Distribution of the fund (Art. 12)*
- *Limits of liability (Art. 6)*
- *Loss of the right to limit (Art. 4)*
- *Persons entitled to limit (Art. 1)*
- *Reservations (Art. 18)*
- *Scope of application (Art. 1)*
- *Scope of application (Art. 15.1)*
- *Scope of application (Art. 15(2) (a))*
- *Scope of application (notion of "ship")*

History of the Convention

England

The Owners of the Ship "Herceg Novi" and the Owners of the Ship "Ming Galaxy"
(Court of Appeal 16 July 1998, 16 July 1998, [1998] 2 Lloyd's Rep. 454)

In the decision reported below under the heading "Conflict of Conventions" Sir Christopher Staughton summarized as follows the history of the Convention (at p. 457):

(1) The 1976 Convention was thus a package deal, whereby the limits were raised considerably but in return the shipowner received the benefit of a limit which was thought to be virtually unbreakable. It was largely the work of the Comité Maritime International, a non-governmental body representing the interests of all those involved in sea transport. The draft was finalized by the CMI at its 1974 Conference in Hamburg (SELVIG, Limitation of Shipowners' Liability, p. 9) – which one of us attended. As commonly happens, the work was then taken over by governments, in the shape of the IMCO (now the

International Maritime Organisation and an organ of the United Nations). We mention these details because it is an important part of the case for the "Herceg" owners that the 1976 Convention is commenced by IMO.

General principles - Rules of Interpretation

Australia

Supreme Court of New South Wales, Equity Division, Admiralty List, *Newcastle Port Authority v. Pevitt & Ors* [2003] NSWSC 888 (1 October 2003, Palmer J)

The plaintiff sought to limit its liability to pay the costs of the defendant in related proceedings, in which the plaintiff was defendant to a substantial claim for damages for negligence arising out of a collision at sea, to a limitation fund constituted pursuant to the London Convention on Liability for Maritime Claims 1976. The question arose whether or not legal costs fell within the meaning of Article 2.1 of the Convention and thus, whether a limitation fund was inclusive or exclusive of the legal costs of parties that may claim against it. That question had not previously been decided.

Held by the Supreme Court of New South Wales, that:

(1) An Australian Court should be careful to resist the inclination to construe the Convention against a background of its own domestic law and procedure (at [37]).

Bar to other actions (Art. 13)

Canada

Federal Court of Canada (Order) 7 March 2000 (No. T-1887-99), *Canadian Pacific Railway Company v. The Owners and all Others Interested in the Ship "Sheena M", The Owners and all Interested in the ship "Rivtow 901", Bayside Towing Ltd., Rivtow Marine Ltd., Eugene Beckstrom and William Frizell* *

As a result of the collision between the barge *Rivtow 901* in tow of the *Sheena M* and a railway bridge two actions were commenced, one by the owners of the *Sheena M* for limitation and the other by Canadian Pacific Railway for damages caused by the collision.

Held, by the Federal Court of Canada, that:

(1) Article 13 of the 1976 LLMC Convention does not bar liability proceedings going forward at the same time as limitation proceedings, but there may be situations in which a stay should be granted.

* Reported by Christopher J. Giaschi, partner of the law firm Giaschi & Margolis, Vancouver, B.C.

England

ICL Shipping Ltd. and Steamship Mutual Underwriting Association (Bermuda) Ltd. v. Chin Tai Steel Enterprises Co. Ltd. and Others - The "ICL Vikraman", Queen's Bench Division (Commercial Court), [2004] 1 Lloyd's L.R. 21

On 26 September 1997 the *ICL Vikraman*, owned by ICL Shipping Ltd., collided with another vessel in the Malacca Strait and sank with the loss of 26 lives and all cargo on board.

The owners of a cargo of 10,078 tonnes of casting billets, Chin Tai Steel Enterprises Co. Ltd., arrested a sister ship, the *ICL Raja Mahendra* under proceedings commenced in Singapore. The vessel was released against delivery of a letter of undertaking of the P&I Club, the final wording of which, as decided by the High Court of Singapore, was to the effect that payment would be effected of any sum found due by the High Court of Singapore or by arbitration in London. The letter of undertaking contained no restriction by reference to tonnage limitation.

The claim of Chin Tai was referred to arbitration in London together with claims under other bills of lading and on 9 April 2003 an interim final award concluded that the claim of Chin Tai succeeded. Prior to the publication of the award, on 18 March 2003 ICL commenced limitation proceedings in London and established a limitation fund under CPR 61.11(18) and article 11 of the LLMC Convention 1976 by making a payment into Court of £ 6,265,288.77, Chin Tai's share thereunder being 1,687,593.

On the following day ICL applied to the Admiralty Court in London for an order pursuant to article 3.2 of the LLMC Convention for the release of the letter of undertaking or, alternatively, an injunction restraining Chin Tai in the Singapore action from presenting the letter of undertaking to the club. On 21 March 2003 the Admiralty Court made an order for an injunction against Chin Tai and for permission to serve the limitation form on Chin Tai in Taiwan.

Chin Tai applied to set aside service upon it of the limitation claim form and/or the injunction.

Held, by the Queen's Bench Division (Commercial Court), that:

(1) The release of a ship or other property, whether mandatory or non-mandatory, under article 13.2 can only be effected by the Court of that State Party which is seized of the arrest or attachment and, therefore, there is no basis for the operation of article 13.2 where the arrest or attachment has been made in a State that is not a State Party.

Netherlands

Supreme Court 29 September 2006, *B&N Nordsjöfrakt AB and Northsea Shipping AB v. Westereems B.V.*

Following a collision in the North Sea between the MV *Seawheel Rhine*, of Swedish flag, owned by Northsea Shipping AB (Northsea) and bareboat chartered to B&N Nordsjöfrakt (B&N) and the M/V *Assi Eurolink*, of Dutch flag, owned by Westereems B.V. and the sinking of the *Assi Eurolink*, Westereems brought proceedings in the District Court of Gröningen against Northsea and B&N claiming damages for the loss of the ship. Northsea in turn instituted arbitration proceedings in Sweden against B&N requesting a declaratory award to the effect that B&N should be found liable to indemnify Northsea in respect of any amount Northsea would be bound to pay to Westereems. Subsequently B&N commenced limitation proceedings in the Court of Stockholm, and the petition for limitation was granted, whereupon the limitation fund was constituted in the amount of SEK 20,791,629 (€ 2.255,218.62). The order of the Court was *ex parte*, a prior hearing to which claimants ought to be summoned not being required under Swedish law. Westereems then arrested the *Seawheel Rhine* in Rotterdam (the vessel was subsequently released against the provision of guarantees in respect of the loss of the *Assi Eurolink* and the removal of the wreck) and appealed against the decision of the Swedish Court by which limitation had been granted, such appeal being dismissed by the SVEA Court in Stockholm. Westereems then filed a claim in the limitation proceedings, without prejudice of its denial of the jurisdiction of the Swedish Court.

At about the same time Northsea and B&N brought proceedings in the District Court of Rotterdam against Westereems, the State of the Netherlands and the Ministry of Transport requesting the release of the two guarantees. The claims were dismissed by the District Court by judgment dated 24 April 2003 and the subsequent appeal of the claimants to the Court of Appeal of the Hague was also dismissed. Northsea and B&N then appealed to the Supreme Court.

Held, by the Supreme Court of the Netherlands, that:

[1] The legal consequences including those set out in art.13 of the 1976 LLMC Convention of the decision of a Swedish Court whereby the constitution of the limitation fund is allowed must be determined by Swedish law and, therefore the arrest of a vessel owned by the petitioner after the constitution of the limitation fund was in breach of art.13 of the LLMC Convention.

* Reported by Mr. Frank Smeele (Smeele@VanTraa.nl) through Mr. Gregory Timagenis (secretariat@timagenislaw.com).

Claims excepted from limitation (Art. 3(e))

Hong Kong Special Administration Region

Fong Yau Hei v. Gammon Construction Ltd. And Others, Court of Final Appeal 18 April 2008*

In July 2000 Fong Yau Hei (Fong), employed by the charterers of a tug, Tung Shun Transportation and Engineering Ltd. acting under a contract with Gammon Construction Ltd., while working on board the tug was injured by the rope used for the towage of a barge that had broken.

After hearing the evidence, the Recorder found that the injuries were caused by the negligence of Gammon for not having removed from the barge a large steel tank which protruded over the bow of the barge and fouled the tow rope, and by the master of the tug in failing to require that the tank be removed and in not adequately controlling the tug. For Tung Shun and the master, it was contended that they were entitled to rely on the limitation of liability provided for in Part III of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance, Cap. 434 ("the Shipowners Limitation Ordinance"). Section 12 of that Ordinance made the Convention on Limitation of Liability for Maritime Claims 1976 ("LLMC") part of the law of Hong Kong. The Recorder held that the limitation of liability generally available to shipowners and employees was excluded in this case by s.7(1) of the Control of Exemption Clauses Ordinance, Cap. 71 ("the CECO"), an exclusion contemplated by art.3(e) of the Convention. Section 7(1) states:

A person cannot by reference to any contract term or to a notice given to persons generally or to particular persons exclude or restrict his liability for death or personal injury resulting from negligence.

On appeal to the Court of Appeal, all three members of the court upheld the view of the Recorder that s.7(1) of the CECO excluded the limitation of liability.

By order dated 28 May 2007, leave was granted by the Court of Appeal for the appellants to appeal to the Court of Final Appeal.

Held, by the Court of Final Appeal, that

[1] For the purpose of the operation of article 3(e) of the LLMC Convention 1976 a specific exclusion of the application of the Convention in respect of claims by servants of the shipowner is not required and a general provision, such as that in section 7.1 of the Control of Exemption Clauses Ordinance, suffices.

* By the courtesy of Patrick Lim (part@asia.com)

Claims subject to limitation (Art. 2.1(a))

Australia

Newcastle Port Corporation v. Pevitt and Others, New South Wales Supreme Court 1 October 2003, [2004] 2 *Lloyd's Rep.* 47

On 28 July 2000 the pilot vessel *Robert Whitmore* collided with a dinghy in Newcastle Harbour. Three men in the dinghy were seriously injured and later one died of his injuries. By summons filed in the New South Wales Supreme Court the

owner of the pilot vessel, Newcastle Port Corporation, claimed that it was entitled to limit any liability which it may have to the widow of the deceased and the two other persons that suffered injuries in accordance with the provisions of the 1976 LLMC, which was given the force of law in Australia by the Limitation Act. There was no issue between the parties that the plaintiff was entitled to limit its liability under the LLMC Convention and as to how the limit should be calculated. The sole issue that was debated consisted in whether the costs incurred by the defendants should be paid out of the limitation fund or in addition to it.

Held, by the New South Wales Supreme Court, that:

[1] A limitation fund established under art. 11 of the 1976 LLMC is exclusive of any legal costs which may be incurred in establishing a claim against the fund.

Japan

Tokyo Kô tô Saibansho (Court of Appeals of Tokyo) 25 February 2000, *Tokyo Higashi Shin'yo Kinko v. S.K.B. Marine Co. Ltd.* (Kaijijou Kenkyûkaishi no. 156, p. 25)*

Following a claim by the consignee of a cargo for the wrong delivery of such cargo the owners of the carrying vessel commenced an action seeking limitation of liability under the Act on Limitation of Liability by which Japan gave effect to the LLMC Convention.

Held, by the Court of Appeals of Tokyo, that:

(1) Damages arising out of wrongful delivery of goods by the carrier do not qualify as "loss of or damage to property occurring on board or in direct connection with the operation of the ship" and, therefore, claims in respect of such damages are not subject to limitation under Article 3(1)(1) of the Act on Limitation of Liability.

* Judgment reported by Souichirou Kozuka, Associate professor, Sophia University, Tokyo

Conduct barring limitation (Art. 4)

Canada

Bayside Towing Ltd., Eugene Beckstrom and William Frizell v. Canadian Pacific Railway B.C. Tel and Rivtow Marine Ltd. Federal Court of Canada (Order) 2 February 2000 *

This was a limitation action by the owner of the tug *Sheena M* in relation to a collision between the barge *Rivtow 101* in tow of the *Sheena M* and a railway bridge

owned by the Defendant. The Defendant challenged the right of the Plaintiff to limit liability pursuant to the LLMC Convention. The Plaintiff brought this application to strike out portions of the Statement of Defence.

Held, by the Federal Court of Canada, that:

(1) It cannot be excluded that the elements of knowledge and recklessness, required by article 4 of the LLMC 1976 Convention for the loss of the right to limit liability may exist in case of an allision attributable to negligent navigation.

(2) The concept of willfulness may be close to the test under Art. 4 of the 1976 LLMC Convention.

* Reported by Christopher J. Giaschi, partner of Giaschi & Margolis, Vancouver, B.C.

England

Loic Ludovic Margolle & Another v. Delta Maritime Company Ltd. & Two Others – The “*Saint Jacques II*” (Admiralty Court) 11 November 2002 ([2003]1 Lloyd's Rep. 203).

At about 04.30 on 23 April 2001 the motor fishing vessel *Saint Jacques II* collided with the motor tanker *Gudermes* in the English Channel about 13 miles North-East of Dover. *The Saint Jacques II* had sailed from Boulogne-sur-Mer and was making good a course of 012°, on passage to the Falls Bank fishing grounds and its course involved her crossing the South West Traffic Lane on a heading against the flow of traffic, thereby contravening Rule 10 of the Convention on the International Regulations for Preventing Collisions at Sea 1972 as amended. The *Gudermes* was proceeding in the South West Traffic Lane and was, at the material time, steering a course of 230°.

On 26 April 2001 the owner of the *Saint Jacques II* commenced a Limitation Claim, seeking a decree limiting any liability he might have for damages arising out of the collision under the Merchant Shipping Act 1995 and on 8 June 2001 constituted a Limitation Fund.

By an Application Notice dated 2 January 2002 the owner of the *Saint Jacques II* applied summarily for judgment and a limitation decree seeking an order that the Defence of the owners of the *Gudermes* be struck out or summary judgment on the ground that the owners of the *Gudermes* had no real prospect of challenging the right to limitation. By judgment of 26 February 2002 the Admiralty Registrar dismissed the application and the owner of the *Saint Jacques II* appealed to the Admiralty Court from that decision.

Held, by the Admiralty Court, that:

(1) *On the facts of the appalling navigational practice conducted under the personal direction of the owner, coupled with the obviousness of the risk of collision, it would be permissible and open to the court at trial to infer that the owner had, at the relevant time, the actual knowledge that a collision would probably result.*

France

Cour d'Appel of Montpellier 7 December 1999, *Jumbo Navigation N.V. v. Mague Equipamentos de Movimentação and Others* ([2000] DMF 813)

On 1st July 1998, during the discharge of a heavy crane built by Mague Equipamentos de Movimentação from the m/v *Stella Prima*, owned by Jumbo Navigation N.V., the upper portion of the crane pivoted, thereby causing the crane to fall on the port installations.

Jumbo Navigation commenced limitation proceedings seeking permission to pay into Court the limitation fund. The Tribunal de Commerce of Sète after having first granted such permission, subsequently withdrew it on the ground that the owners had apparently committed a *faute inexcusable*, entailing the loss of the right to limit. Jumbo Navigation appealed to the Cour d'Appel of Montpellier.

Held, by the Cour d'Appel, that:

(1) *The Court who has authorized the constitution of the limitation fund may retract its order if it considers that a conduct barring limitation may have occurred. A conduct barring limitation is likely to have occurred when the owner has not made proper arrangements for the testing of a crane prior to the discharge from his ship of a heavy piece of machinery.*

(2) *The discharge of a heavy crane without ensuring that the upper revolving part be safely blocked entails the presumption that the carrier has acted recklessly and with knowledge that a damage would probably occur.*

Affirmed by Cour de Cassation 3 April 2002 (2002 DMF 460).

Cour d'Appel of Aix-en-Provence 8 June 2000, *Ferme Marine du Cap d'Antibes v. Statecraft Ltd. – The “Moldavia”* (2002 DMF 132).

The night of 31 July 1994 the m/y *Moldavia*, of Gibraltar registry, anchored outside Juan-les-Pins, due to the strong wind dragged its anchor and, having failed to reverse the engines, shifted towards a fishing farm situated nearby causing damage to that farm. The owners of the fishing farm, Ferme Marine du Cap d'Antibes, brought proceedings in the Tribunal de Commerce of Antibes against the owners of the *Moldavia*, Statecraft Ltd. and its insurers who applied for leave to constitute the limitation fund as provided by article 11 of the LLMC Convention of 1976. By judgment of 28 June 1996 the Tribunal de Commerce of Antibes found the owners of

the *Moldavia* liable for the damage caused to the fishing farm and ordered payment of the limitation fund to the claimants.

The claimants appealed on the ground, inter alia, that the owners of the *Moldavia* were not entitled to the benefit of limitation, the damage having been caused by their reckless action committed with knowledge that damage would probably occur.

Held, by the Cour d'Appel of Aix-en-Provence, that:

(1) Failing satisfactory evidence of the precise place of anchorage of the vessel who, due to the dragging of its anchor, damaged a nearby fishing farm, the claimant have not met the burden of proving that the master had acted recklessly and with knowledge that damage to the fishing farm would probably occur.

(2) Evidence of mechanical trouble does not constitute proof of the unseaworthiness of the vessel at the time of the accident.

Conflict of Conventions

England

The "Herceg Novi" and "Ming Galaxy" Court of Appeal 17, 18 June; 16 July 1998 [1998] 2 Lloyd's Rep. 454.

On 18 August 1996 there was a collision between *Herceg Novi* and *Ming Galaxy* within a traffic separation scheme in the straits of Singapore and the *Herceg Novi* sank as a result of the collision. Both masters pleaded guilty. On 20 August the owners of the *Ming Galaxy*, Yangming Marine Transport Corp. of Taiwan, began Admiralty actions *in rem* and *in personam* against the owners of the *Herceg Novi*, South Cross Shipping Ltd. of Malta, and their vessel in the High Court of Singapore. In a separate action in the High Court of Singapore the owners of the *Ming Galaxy* sought to limit their liability against the *Herceg Novi*.

On 28 August the owners of the *Herceg Novi* issued a writ in an Admiralty action *in rem* in the Queen's Bench Division against the *Ming Galaxy*. The writ was served on a sister ship, the *Ming South*. On 7 November 1996 the owners of the *Ming Galaxy* gave notice of motion to stay the English action on the grounds that (1) England was not the appropriate forum and (2) there were proceedings pending in Singapore.

Held, by the Court of Appeal, that:

(1) The 1976 Convention has not received universal acceptance, or anything like it. It is not "an internationally sanctioned and objective view of where substantial justice is now viewed as lying". It is simply the view of some 30 States.

(2) The International Maritime Organisation is not a legislature. It may commend the 1976 Convention to the international community. But if by doing

so it were found to have enacted an international consensus, that would be to deprive sovereign states to a large extent of their right to stay with some other regime. We say that because jurisdiction could often be obtained by arresting a ship in a 1976 country, and if that action were allowed to proceed despite there being a more appropriate forum where 1957 prevailed, the 1957 country would be left with no effective use for its own law.

(3) The preference for the 1976 Convention has no greater justification than for the 1957 regime. The 1976 Convention provides a greater degree of certainty, which they will perhaps welcome. But in terms of abstract justice, neither Convention is objectively more just than the other.

Constitution of the fund (Art. 11.1)

England

Metvale Ltd. and Another v. Monsanto International SARL and Others – The “MSC Napoli”, QBD-Admiralty Court 5 November, 9 December 2008 ([2009] 1 Lloyd’s Rep. 246).

(For the summary of facts see the section “Definition of shipowner”)

Held, by the Queen’s Bench Division (Commercial Court) that:

[1] Pursuant to article 11(3) of the LLMC Convention a fund constituted by one of the persons mentioned in article 9 shall be deemed constituted by all the persons mentioned in article 9 and, therefore, since slot charterers are within the definition of ship owner in article 1(2), where the fund is constituted by the owner of the ship it must be deemed constituted also by them.

ICL Shipping Ltd. and Steamship Mutual Underwriting Association (Bermuda) Ltd. v. Chin Tai Steel Enterprises Co. Ltd. and Others - The “ICL Vikraman”, Queen’s Bench Division (Commercial Court), [2004] 1 Lloyd’s L.R. 21

(For the summary of facts see the section “Bar to other actions”)

Held, by the Queen’s Bench Division (Commercial Court), that:

(1) The institution of “legal proceedings” under article 11(1) of the LLMC Convention 1976 includes the commencement of arbitration.

European Union

European Court of Justice 14 October 2004, Case C-30/02, *Maersk Olie & Gas v. Firma M. de Haan en W. ded Boer*.

In May 1985 Mærsk laid oil and gas pipelines in the North Sea. In the course of June 1985 a trawler belonging to (the Shipowners) was fishing in the area in

which those pipelines had been laid. Mærsk established that the pipelines had been damaged.

By letter of

3 July 1985 Mærsk informed the Shipowners that it held them responsible for that damage, for a total amount of USD 1.700.019 and GBP 51.961.58.

On 23 April 1987 the Shipowners lodged with the Arrondissementsrechtbank (District Court) Groningen (Netherlands), the place in which their vessel was registered, an application for limitation of their liability. That court made an order on 27 May 1987 provisionally fixing that limitation at NLG 52 417.40 and enjoining the Shipowners to lodge that sum together with NLG 10.000 to cover the legal costs. The Shipowners' legal representatives informed Mærsk of that decision by telex of 5 June 1987.

On 20 June 1987 Mærsk brought an action for damages against the Shipowners before the Vestre Landsret (Western Regional Court) (Denmark).

On 24 June 1987 Mærsk appealed to the Gerechtshof (Court of Appeal) Leeuwarden (Netherlands) against the decision of the Arrondissementsrechtbank Groningen on the ground that the latter court did not have jurisdiction. On 6 January 1988 the Gerechtshof upheld the decision delivered at first instance, referring to, inter alia, articles 2 and 6a of the Brussels Convention. Mærsk did not lodge an appeal to have the decision of the Gerechtshof quashed.

By registered letter of 1 February 1988 the administrator notified Mærsk's lawyer of the order of the Arrondissementsrechtbank establishing the limitation fund and by letter of 25 April 1988 requested Mærsk to submit its claim.

Mærsk did not accede to that request, choosing instead to pursue its action before the Danish court. In the absence of any claims submitted by injured parties, the sum lodged with the Arrondissementsrechtbank in the Netherlands was returned to the Shipowners in December 1988.

By decision of 27 April 1988 the Vestre Landsret held that the rulings of the Netherlands courts of 27 May 1987 and of 6 January 1988 had to be treated as being judgments within the terms of Article 25 of the Brussels Convention in view of the fact that Mærsk had had the opportunity to defend its position during the corresponding proceedings.

As it took the view that the proceedings brought in the Netherlands and in Denmark were between the same parties, had the same subject-matter and related to the same cause of action, and that this finding could not be invalidated by the fact that Mærsk had not defended its interests in the proceedings relating to the limitation of liability, the Vestre Landsret ruled that the conditions governing a finding of *lis pendens* pursuant to Article 21 of the Brussels Convention had been satisfied.

In view of the fact that proceedings had been brought earlier in the Netherlands (23 April 1987) than in Denmark, and in view of the finding of the Arrondissementsrechtbank Groningen, upheld on appeal, that it had jurisdiction to deliver its decision, the Vestre Landsret, acting pursuant to the second paragraph of Article 21 of the Brussels Convention, declined jurisdiction in favour of the

Netherlands court.

Mærsk appealed against that decision to the Højesteret (Danish Supreme Court).

As it took the view that the case raised questions on the interpretation of Articles 21, 25 and 27 of the Brussels Convention, the Højesteret decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

1. Does a procedure to establish a liability limitation fund pursuant to an application by a shipowner under the Brussels Convention of 10 October 1957 constitute proceedings within the meaning of Article 21 of the 1968 Brussels Convention where it is evident from the application, where the relevant names are stated, who might be affected thereby as a potential injured party?

2. Is an order to establish a liability limitation fund under the Netherlands procedural rules in force in 1986 a judgment within the meaning of Article 25 of the 1968 Brussels Convention?

3. Can a limitation fund which was established on 27 May 1987 by a Netherlands court pursuant to Netherlands procedural rules then in force without prior service on an affected claimant now be denied recognition in another Member State in relation to the claimant concerned pursuant to Article 27(2) of the 1968 Brussels Convention?

4. If Question 3 is answered in the affirmative, is the claimant concerned deprived of its right to rely on Article 27(2) by virtue of the fact that in the Member State which established the limitation fund it raised the matter of jurisdiction before a higher court without having previously objected to default of service?

Held, by the EC Court of Justice, that:

[1] An application to a court of a Contracting State by a shipowner for the establishment of a liability limitation fund, in which the potential victim of the damage is indicated, and an action for damages brought before a court of another Contracting State by that victim against the shipowner do not create a situation of lis pendens within the terms of Article 21 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland.

[2] A decision ordering the establishment of a liability limitation fund, such as that in the main proceedings in the present case, is a judgment within the terms of Article 25 of that Convention.

[3] A decision to establish a liability limitation fund, in the absence of prior service on the claimant concerned, and even where the latter has appealed against that decision in order to challenge the jurisdiction of the court which delivered it, cannot be refused recognition in another Contracting State pursuant to Article 27(2) of that Convention, on condition that it was duly served on or notified to the defendant in good time.

France

Cour d'Appel of Rouen 26 July 2000, *Master of the "Darfur" and Others v. Master of the "Happy Fellow" and Others* (2001 DMF 109)

On 20 November 1995 the vessels *Darfur* and *Happy Fellow* were in collision on the river Seine. On 21 November the owners of *Happy Fellow* obtained an order from the Tribunal de Commerce of Rouen for court surveyors to investigate the cause of the collision and on 28 November arrested *Darfur* at Le Havre. On 22 December the owners of *Happy Fellow* and other claimants commenced proceedings against the owners of *Darfur* in the Tribunal de Commerce of Le Havre.

On 13 March 1996 the time charterers of *Darfur* issued a writ in the London Admiralty Court against the owners of *Darfur* claiming damages for breach of the charter party and other relief in respect of the collision and the owners of *Darfur* purported to constitute a limitation fund in England. Two of the claimants in the proceedings in the Tribunal de Commerce of Le Havre acknowledged issue of writ in the London limitation proceedings and applied to set aside or stay these proceedings under art. 21 or art. 22 of the amended 1968 Brussels Convention. In a judgment dated 3 December 1996 Mr. Justice Longmore ([1997] 1 Lloyd's Rep. 130) decided that although the matter fell outside the provisions of art. 21, the French collision proceedings and the English limitation proceedings were "related actions" within the meaning of art. 22 and stayed the latter. The appeal against the judgment of the Admiralty Court was dismissed by the Court of Appeal ([1998] 1 Lloyd's Rep. 13). In the French proceedings the Tribunal de Commerce of Le Havre with judgment of 17 March 2000 accepted jurisdiction. The owners of *Darfur* appealed.

Held, by the Cour d'Appel of Rouen, that:

(1) The Court before which proceedings on the merits have first been commenced is competent to decide on the issue of limitation of liability on the ground that the two actions were related

Cour de Cassation 20 February 2001, *Groupe des Assurances Nationales – GAN and Others v. Nautiloc and Others – The "Moheli"* (2002 DMF 144).

The yacht *Moheli* moored alongside the yacht *Virus*, during the low tide damaged the *Virus*. The hull insurers of the *Virus*, Groupe des Assurances Nationales – GAN, after having paid to the owner of the *Virus* the damage suffered by the yacht, commenced proceedings against the lessee of the *Moheli*, Nautiloc, and its hull insurers, Commercial Union and Axa. By judgment of 3 June 1998 the Cour d'Appel of Rennes held that Nautiloc was liable for the damages suffered by the *Virus* and that the limit of liability was 657,145 Francs. GAN and the owner of the *Virus* appealed to the Cour de Cassation on the ground that the limitation proceedings

were conditional to the constitution of the limitation fund and that Nautiloc could not invoke the benefit of limitation having acted recklessly and with knowledge that a loss would probably occur.

Held, by the Cour the Cassation that:

(1) The benefit of the limitation of liability under article 58-69 bis of law 3 January 1967 as amended by law 84-1151 of 21 December 1984 is not conditional to the constitution of the limitation fund.*

* Law 84-1151 was enacted when the LLMC 1976 entered into force in France.

Netherlands

Supreme Court 29 September 2006, *B&N Nordsjöfrakt AB and Northsea Shipping AB v. Westereems B.V.*

(The summary of facts may be found in the section “Bar to other actions”)

Held, by the Supreme Court of the Netherlands, that:

[1] The decision of the Swedish Court whereby the constitution of the limitation fund was allowed albeit issued in ex parte proceedings, must be deemed to be a decision reference to which is made in art.32 of Brussels I Regulation and its recognition and enforcement cannot be refused even if the claimant appealed against such decision service of which had been timely made.

Definition of seagoing ship (art. 1.2)

New Zealand

Yachting New Zealand Inc. v Birkenfeld [2005] NZAR 727

On 8 August 2002 in the Saronikos Gulf, one and a half miles off the coast of Greece, just before an international windsurfing regatta, there was a collision between a rigid inflatable boat owned by Yachting New Zealand Inc. (YNZ), and driven by Mr. Bruce Kendall, and a windsurfing board, ridden by Ms. Kimberly Birkenfeld, an American athlete about to take part in the regatta, and in training for the Olympics. Ms. Kimberly was severely injured and as a consequence of such injuries was confined to a wheelchair. She then brought an action in Wellington in which she sought from Mr. Kendall, YNZ and the International Sailing Federation Ltd. \$15m damages. YNZ, in separate but related proceedings, brought in Auckland, applied under the Maritime Transportation Act 1994 for a decree limiting its liability to a figure less than \$400,000. The Maritime Transportation Act has given effect to the LLMC Convention, to which New Zealand has acceded.

Held, by the High Court Auckland, that:

[1] *A rigid inflatable boat is a ship as defined by s. 84 of the Maritime Transportation Act**

*The definition of ship in s.84 of the Maritime Transportation Act is the following:

"Ship means every description of vessel (including barges, lighters, and like vessels) used or intended to be used in navigation, however propelled; and includes any structure (whether completed or not) launched and intended for use as a ship or part of a ship; and also includes any ship used by or set aside for the New Zealand Defence Force.

On appeal by Ms. Kimberly, held by the Court of Appeal of New Zealand, that:

[1] *Pursuant to its article 15(2) the LLMC Convention applies to ships of less than 300 tonnes unless provision is made otherwise by Contracting States.*

Definition of shipowner (Art. 1.2)

England

Metvale Ltd. and Another v. Monsanto International SARL and Others – The “MSC Napoli”, QBD-Admiralty Court 5 November, 9 December 2008 ([2009] 1 Lloyd’s Rep. 246).

In January 2007 the *MSC Napoli*, a large container vessel owned by Mediterranean Shipping Co. (MSC), suffered damage in heavy weather and was beached on the south coast of England. That casualty has given rise to considerable claims against the owners of *MSC Napoli* in excess of £100m. On 27 February 2007 MSC constituted a limitation fund under the 1976 Limitation Convention in the sum of £14,710,000. On 31 July the court made a General Limitation Decree.

On 13 March 2008 the Admiralty Registrar ordered the trial of two preliminary issues:

- i) Whether Hapag-Lloyd AG ("HPL") and Stinnes Linien GmbH ("Stinnes") are shipowners for the purposes of Article 1 of the Convention on Limitation of Liability for Maritime Claims 1976 and are entitled to limit their liability under the Convention and under the Merchant Shipping Act 1995.
- ii) Whether, if the answer to (i) is yes, the limitation fund constituted in this action is deemed to be constituted by HPL under and for the purpose of the Convention and under the Merchant Shipping Act 1995.

HPL were slot charterers of the vessel from MSC under a slot charter agreement dated 29 August 2006. HPL issued its own bills of lading or seaway bills in respect of 172 laden containers. The bills provided for German law and jurisdiction. Stinnes

were also slot charterers of the vessel from MSC pursuant to a slot charter agreement dated 15 October 2006. Stinnes issued 24 bills of lading which also provided for German law and jurisdiction

Claims have been notified against HPL and Stinnes by the holders of the bills issued by HPL and Stinnes. HPL and Stinnes have lodged claims against the fund in respect of their claims for an indemnity in respect of cargo claims brought against them, the loss and damage of their own containers, general average and salvage claims and certain transshipment claims.

Held, by the Queen's Bench Division (Commercial Court) that:

[1] *In accordance with the ordinary meaning of the word charterer and in the light of the evident object and purpose of the convention, a slot charterer is within the definition of shipowner and therefore entitled to limit his liability.*

Distribution of the fund (Art. 12)

Australia

Supreme Court of New South Wales, Equity Division, Admiralty List, *Newcastle Port Authority v. Pevitt & Ors* [2003] NSWSC 888 (1 October 2003, Palmer J)

(The summary of facts may be found in the section "General principles-Rules of interpretation")

Held by the Supreme Court of New South Wales, that:

(1) A domestic court should deal with the question of legal costs of a claim against a limitation fund constituted pursuant to the Convention in accordance with its own domestic law and procedure (at [42]).

Italy

Court of Appeal of Trieste 28 March 2007, *Mediterranea di Navigazione v. ENI - The "Fra Diavolo"* (not yet published)

On 30th March 1992 the MV "*Fra Diavolo*" severely damaged a pier in the port of Augusta in Sicily and the owner of the vessel, *Mediterranea di Navigazione*, commenced limitation proceedings in the Tribunal of Trieste and paid into court the limitation amount. The only claimant in the proceedings was the owner of the pier, ENI S.p.A. who filed a claim in excess of the limitation amount after having brought a claim against the owners in the Tribunal of Catania. After having obtained a judgment in its favour, which under Italian law was immediately enforceable even though subject to appeal, ENI claimed payment of the limitation fund in its favour. *Mediterranea di Navigazione*, after having appealed against the judgment of the

Tribunal of Catania, applied to the Tribunal of Trieste for a stay of the limitation proceedings until after delivery of the appeal judgment on the ground that such judgment could reverse the decision of the Tribunal and find that Mediterranea was not liable for the damage caused to the pier. The Tribunal of Trieste rejected the application and Mediterranea appealed to the Court of Appeal of Trieste.

Held, by the Court of Appeal of Trieste, that:

[1] *The owner who by commencing limitation proceedings obtains both the benefit of limiting its debt to the limitation amount and the suspension of the enforcement of any claim against its ship, may not also request the stay of the limitation proceedings until the claim of the only claimant against the fund already allowed by an enforceable judgment, is finally upheld by a judgment not subject to further appeal.**

[2] *A claim may be enforced against the limitation fund when the claimant has obtained an enforceable judgment in its favour, even though the judgment is still subject to appeal.*

*Although Italy is not a party to the LLMC Convention and the Italian limitation system differs from that of the LLMC Convention, the issue decided by the Court of Appeal of Trieste may arise in a similar manner under the Convention, article 12 (1) of which provides that the fund shall be distributed among the claimants in proportion of their “established” claims.

Limits of liability (Art. 6)

Canada

Bayside Towing, Ltd. et Al. v. Canadian Pacific Railway Company, et Al. (Canada Federal Court, Trial Division, 28 November 2001), 2002 AMC 243

On June 2, 1999 the starboard side of the barge *Rivtow 901*, towed by the tug boat *Sheena M*, down the Fraser River hit the upstream side of the protection pier of the Mission Railway Bridge and then the swing-span itself, dislodging it from its pivot and pushing it in a down-river direction. On September 23, 1999 the owners of the *Sheena M*, Bayside Towing Ltd., filed a statement of claim seeking, inter alia, a declaration that they were entitled to limit their liability to \$ 500,000 plus interest pursuant to section 577(1)(b) of the Canada Shipping Act and an order constituting the limitation fund. On October 28, 1999 Canadian Pacific Railway Company commenced an action in the Canada Federal Court against the owners of the *Sheena M* and of the barge *Rivtow 901* and all others interested in the tug and in the barge claiming general and special damages estimated to be in excess of five million dollars arising out of the navigation, management or operation of the *Sheena M* and of the *Rivtow 901*. Canadian Pacific stated that the limitation fund should be based on the combined tonnage of the *Sheena M* and of the *Rivtow 901* since the “flotilla

principle” adopted by the Supreme Court of Canada in *The Rhône* (1993 AMC 1697) is no longer applicable as a consequence of the wider definition of “shipowner” adopted in section 576 of Chapter 6 of the Statutes of Canada, when the 1976 Convention on Limitation of Liability for Maritime Claims was adopted by Canada.

Held, by the Federal Court, Trial Division, that:

(1) The principle whereby in a tug and tow situation only in circumstances of common ownership of the vessels as well as common causation the calculation of the limit of liability must be based on the global tonnage of the tug and tow has not been altered by the broad definition of “shipowner” in section 576 of Chapter 6 of the Statutes of Canada as amended in 1998, pursuant to which “shipowner” means an owner, charterer, manager or operator of a ship, whether seagoing or not, and includes any other person having an interest in or possession of a ship from and including the launching of it” and, therefore, the limit of liability must be calculated only with reference to the tonnage of the tug where the tow is not owned by the owner of the tug.

Loss of the right to limit (Art. 4)

England

Schiffahrts Gesellschaft MS “Mercury Sky” m.b.H. & Co K.G. v. MS Leerort Nth Schiffahrts G.m.b.H. & Co. K.G. – The “Leerort” ((C.A.) [2001] 2 Lloyd’s Rep. 291)

On 19 September 1998 the *Zim Piraeus*, when in the course of entering the harbour of Colombo, collided with the port side of the *Leerort*, moored at the Jaya Container Terminal, breaching No. 1 hold. The *Leerort* subsequently flooded and settled on the bottom and her cargo was lost or damaged.

As the *Zim Piraeus* came into the harbour, she was in an automatic remote control mode on her bridge console. When in that mode the engine responded to the telegraph command by means of a computer programme. As the vessel came in at 1209.29, the master gave a half astern order to take the way off the vessel. The engine stopped, but the automatic control system failed to start it in the stern mode. The master order “stop” at 1208.05 and engaged emergency manoeuvring mode at 1208.15 and set half astern five seconds later. The engine started working at 1208.31. However this action failed to avoid the collision.

On 14 March 2000 Mr. Justice Sheen, sitting in the Admiralty Court, made an order in the nature of a decree of limitation under which he held that pursuant to the provisions of the Merchant Shipping Act the owners of the *Zim Piraeus*, Schiffahrts Gesellschaft MS “Mercury Sky” m.b.H. & Co K.G., were entitled to limit their liability. The owners of the *Leerort* and of part of her cargo, Leerort Schiffahrts G.m.b.H. & Co. K.G., challenged the order of the Judge.

Held, by the Court of Appeal, that:

(1) Pursuant to article 4 of the LLMC Convention to defeat the right to limit it is necessary to identify the causative act or omission on the part of the a person that caused the loss and that such act or omission was committed to cause such loss, or recklessly with knowledge that such loss would probably result, thereby requiring foresight of the very loss that actually occurs, and not merely of the type of loss that occurs.

(2) Where the loss in respect of which a claim is made resulted from a collision between ship A and ship B, the owners of ship A, or cargo in ship A, will only defeat the right to limit liability on the owner of ship B if they prove that the owner of ship B intended that it should collide with ship B (or, alternatively, intended that his ship should collide with another ship, or acted recklessly with the knowledge that it was likely to do so).

(3) It is totally absurd to suggest that a 50 second interruption in the operation of the engine, as a consequence of which the collision took place, might be attributable to an act or omission of the owners done with the intention of bringing their ship into a collision, or performed recklessly with knowledge that it was likely to produce this result.

France

Cour de Cassation 20 February 2001, *Groupe des Assurances Nationales – GAN and Others v. Nautiloc and Others – The “Moheli”* (2002 DMF 144).

(For the summary of facts see section "Constitution of the Fund")

Held, by the Cour the Cassation that:

(1) In order to decide on the character "inexcusable" of the action of the master of a vessel the Court must establish if, in his capacity as a professional, the master should have been aware that a damage would probably result from his action.

Cour d'Appel of Caen 2 October 2001, *Captain of the dredger “Johanna Hendrika” and Others v. Pierre Gruel and Others* (2001 DMF 981).

On 9 May 1991 the dredger *Johanna Hendrika* in order to carry out dredging operations in the port of Tréport rested on the bottom securing its position by means of a spud poal. During the low tide the dredger slipped slowly towards the quay and damaged small vessels moored alongside the quay. The owners and the hull insurers of such vessels commenced proceedings against the master of the dredger, the owners and the hull insurers in the Tribunal de Commerce of Eu-Le Tréport. By judgment of 21 December 1993 the Tribunal de Commerce held the master and the owners liable. The judgment was affirmed by the Cour d'Appel of Rouen. The Cour

d'Appel denied the benefit of the limitation of liability. The decision of the Cour d'Appel was subsequently quashed by the Cour de Cassation with judgment of 20 May 1997 (1997 DMF 976) in respect of the issue of the loss of the right to limit, on the ground that the Cour d'Appel had not given sufficient reasons for the inference that the "faute inexcusable" of the master entailed also that of the owners and remitted the case to the Cour d'Appel of Caen.

Held, by the Cour d'Appel of Caen that:

(1) The owner of a dredger has committed a "faute inexcusable" entailing the loss of the right to limit its liability, by having allowed the operation of a dredger whose anchorage system was insufficient in order to prevent the movement of the dredger.*

* The expression "faute inexcusable" is used in France as a synonym of recklessness with knowledge that damage would probably occur.

New Zealand

Tasman Orient Line CV v. Alliance Group Limited, Comalco New Zealand Limited and Others - The "Tasman Pioneer" (The High Court of New Zealand, Auckland Registry - [2003] 2 Lloyd's Rep. 713; [2004] 1 NZLR 650

(see the summary of facts in the section "General Principles" - "Rules of Interpretation")

Held, by the High Court of New Zealand, Auckland Registry, that:

[1] The right to limit of a sub-time charterer of a vessel is not barred under s85(2) of the New Zealand Maritime Transport Act, worded similarly to art. 4 of the LLMC 1989, in case of loss or damage caused by the negligent navigation by the master.

Persons entitled to limit (art. 1)

France

Cour d'Appel de Paris 17 October 2007, *SA Someport Walon and Others v. SNC GE Energy Products and Others* (2008 DMF 250)

By agreement dated 30 July 1999 GE Energy Products entrusted SA Someport Walon, in its capacity as *commissionnaire de transport*, the carriage to Bangladesh of a gas turbine. Someport Walon negotiated the contract of carriage with Poulsen Shipping as agent of Leisure Shipping and signed a booking note. During the loading operations of the turbine on the m.v. *Alemania* from a barge, the

wire of the vessel's crane broke and the turbine was severely damaged. GE Energy Products and its insurers, AIC, brought proceedings in the Tribunal de Commerce of Paris against Someport Walon, Poulsen Shipping and Leisure Shipping claiming payment of the damages. By judgment of 30 May 2005 the Tribunal held that Someport Walon was liable for the damage and that Leisure Shipping was in turn bound to indemnify Someport Walon. Someport Walon and Leisure Shipping appealed to the Court of Appeal of Paris and Someport Walon sought to benefit of the limitation fund that had meanwhile been constituted by Leisure Shipping.

Held, by the Court of Appeal, that:

[1] A commissionaire de transport may not limit its liability under the LLMC Convention since it is not a shipowner, as defined in article 1(1) of the Convention.

New Zealand

Tasman Orient Line CV v. Alliance Group Limited, Comalco New Zealand Limited and Others - The "Tasman Pioneer" (The High Court of New Zealand, Auckland Registry - unreported)

(for the summary of facts see section "Loss of the right to limit")

Held, by the High Court of New Zealand, Auckland Registry, that:

[1] The sub-time charterers of a vessel come under the definition of "owner" in s84 of the New Zealand Maritime Transport Act, 1994 and as such are entitled to limit their liability.

Reservations (art.18)

France

Cour de Cassation (Ch.com.) 11 July 2006, *Agence Judiciaire du Tresor v. Tunisian Sea Transport Company* (2006 DMF 884)

Following the loss by the *Jerba* of 800 logs, her owner, Tunisian Sea Transport Company, invoked the limitation of its liability pursuant to the LLMC Convention and was authorised to constitute a limitation fund. However the Agent Judiciaire du Tresor requested the arrest of the vessel on the ground that France had reserved the right to exclude the application of article 2 paragraphs 1 (d) and (e). The release of the vessel from arrest, that had been refused by the Tribunal de Commerce of Le Havre on the ground that the accident having taken place within French territorial waters, French law of 3 January 1967 applied and pursuant to its art. 59 limitation cannot be invoked in respect of claims of the State, was subsequently granted by the Court d'Appel of Caen. The Court of Appeal found that the LLMC Convention applied also in respect of vessels flying the flag of non-

contracting States and that France the reservation invoked by the Government had not actually been made since France had only reserved the right to avail itself in the future of the art.18 of the Convention.

Held, by the Cour de Cassation, that:

[1] Notwithstanding the ambiguous character in the French language of the words used by France in the instrument of ratification of the LLMC Convention (le République française se réserve le droit d'exclure l'application des alinéas d) et e) du §1 de l'article 2), that statement was not a simple declaration of intent, deprived of any legal value, but a unilateral decision to exclude the application of the above provisions.

Scope of application (art. 1)

France

Tribunal de Commerce of Marseille 19 July 2006, *Mutuelles du Mans Assurances IARD v. SAIPEM/Bouygues Offshore SA* (2006 DMF 798)

The 19th April 1995 the dredger *Jean Maria*, owned by Bouygues Offshore SA, subsequently renamed SAIPEM SA, collided with a wharf in the yacht harbour of Marines de Cogolin and damages the wharf. On application of Bouygues Offshore the Tribunal de Commerce of Marseilles opened the proceedings for the constitution of the limitation fund under the LLMC Convention. The leading insurer of the Marines de Cogolin, Mutuelles du Mans Assurances IARD, appealed against the order of the Tribunal on the ground that the Hean Maria was not a *navire de mer* and that, therefore, the LLMC Convention could not apply.

Held, by the Tribunal de Commerce of Marseilles, that:

[1] A non-self propelled dredger, employed for dredging operations inside harbours, has not the legal nature of a "navire de mer" and, therefore, the LLMC Convention is not applicable.

Scope of application (Art. 15.1)

Greece

Supreme Court (Judgment 869/1999), *Titan Ciment S.A. v. Orinoco Navigation Co. – The "Ikariada"*

In the limitation proceedings commenced by the Owner of the m/v *Ikariada* of Cypriot flag a dispute arose as to whether limitation should be governed by the law of the flag of the vessel, pursuant to Article 77 § 6^a of Greek Law 1892/1990, or by the LLMC Convention, ratified by Greece, pursuant to its Article 15.1. The dispute was brought before the Supreme Court.

Held, by the Supreme Court, that:

(1) Since pursuant to Article 28 § 1 of the Constitution international conventions ratified by Greece and entered into force form an integral part of the Greek legal system and prevail over domestic rules, Article 77 § 6^a of Law 1892/1990, whereby the limitation of liability of the owner is governed by the law of the flag, is no longer in force, Article 15 § 1 of the LLMC Convention 1976 having adopted the rule of the lex fori.

(2) Pursuant to Article 15(1) of the LLMC Convention its provisions apply as lex fori, regardless of the lex causae of the claim subject to limitation and of the fact that the person seeking to limit his liability has his habitual residence or principal place of business in a State Party and of the fact that the vessel flies the flag of a State Party or not. Greece has not availed itself of the right granted to States Parties by Article 15(1) and (3).

Scope of application (Art. 15(2)(a))

New Zealand

Kimberley Birkenfield v. Yachting New Zealand Inc. - Supreme Court of New Zealand, 10 November 2006 ([2006] NZSC 93)

On 8 August 2002 in the Saronikos Gulf, one and a half miles off the coast of Greece, just before an international windsurfing regatta, there was a collision between a rigid inflatable boat owned by Yachting New Zealand Inc. (YNZ), and driven by Mr. Bruce Kendall, and a windsurfing board, ridden by Ms. Kimberly Birkenfeld, an American athlete about to take part in the regatta, and in training for the Olympics. Ms. Kimberly was severely injured and as a consequence of such injuries was confined to a wheelchair. She then brought an action in Wellington in which she sought from Mr. Kendall, YNZ and the International Sailing Federation Ltd. \$15m damages. YNZ, in separate but related proceedings, brought in Auckland, applied under the Maritime Transportation Act 1994 for a decree limiting its liability to a figure less than \$400,000. The Maritime Transportation Act has given effect to the LLMC Convention, to which New Zealand has acceded.

An application to the Supreme Court for leave to appeal was made by Ms. Birkenfeld.

Held, by the Supreme Court of New Zealand, that:

[1] Since s. 84 of the Maritime Transportation Act contains no restriction to the scope of application of the Convention of Limitation of Liability for Maritime Claims, 1976, the Convention applies to all vessels, whether or not intended for navigating inland water ways.

Scope of application (notion of "ship")

France

Tribunal de Commerce of Marseilles 19 July 2006, *Mutuelles du Mans Assurances IARD v. SAIPEM and Others* (2006 DMF 798)

By order dated 11 January 2000 the Tribunal de Commerce of Marseilles on application of Bouygues Offshore declared the opening of the limitation proceedings in respect of the dredger *Jean Maria* following its allision on 10 April 1995 with a dock of the pleasure harbour of Marines de Cogolin. On 8 June 2006 Mutuelles du Mans Assurances, acting also on behalf of its co-insurers and the Port de Plaisance Les Marine de Cogolin brought proceedings in order to obtain the revocation of the order on the ground that the *Jean Maria* is not a seagoing ship and that, therefore, its owners were not entitled to limit their liability.

Held, by the Tribunal de Commerce of Marseilles, that:

[1] Pursuant to article 1 of the LLMC Convention and to article 58 of law of 1 January 1967 a dredger is not a ship and, therefore, its owners are not entitled to limit their liability in respect of loss or damage caused by it.