What's your limit? Limitation of liability in shipping

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Like the drunken sailor, a good mariner must know his limits. And the same is true at law. Ordinarily in Australian law, parties are free to agree their own limits in their contracts, and liability outside of contracts can be as great as the damage suffered. However, in maritime law, the position changes thanks to Australia's adoption of international treaties and conventions. Some of the best known limits are in the Amended Hague Rules (scheduled in the Australian *Carriage of Goods by Sea Act 1991*), but there are also limits for oil pollution, nuclear damage and, as discussed in this article, general maritime claims.

The Limitation of Liability for Maritime Claims Convention was introduced into Australian law in 1989 in the Limitation of Liability for Maritime Claims Act. It provides an overall limit on the total liability arising from a single, distinct, occasion. These limits exist primarily to protect shipowners, but the Convention's protections also extend to charterers, managers, masters and crew.

The Convention was intended to create "a virtually unbreakable system of limiting liability". It does so by setting limits for, effectively, any claim arising from a ship – whether it is damage to persons or property, cargo or other ships. In each case, liability is capped based on the tonnage of the ship. The limits are high, but sufficient to protect shipowners in extreme cases. After all, the original intention of the Convention (and its predecessor treaties) was to protect shipowners from expensive insurance costs for black swan events, as well as to save them from risks of masters and crew who the shipowners had no control or supervision over, across the world (although this second concern has largely fallen away with modern technology).

The limits themselves depend on the type of damage, as well as the tonnage of the ship involved. They have changed over time, especially in Australia,- to recognise that we are not generally a ship-owning nation, and so see little benefit from allowing shipowners to cap their liability. In 2015, the limits under the Convention were increased significantly in response to the 2009 *Pacific Adventurer* spill, where 30 containers of ammonium nitrate were lost in Cyclone *Hamish*, causing a $34 million cleanup. The Owners' liability was then limited by the Convention to $17.5 million. Today, the same event would be subject to a limit of $34.3 million.

For a claim for loss of life or personal injury, the limits (based on an exchange rate of one special drawing right to AU$1.95, which is close to its recent average) are:

- For a ship up to 2,000 tons, $5,906,243.29
- For each additional ton from 2,001 to 30,000, $2,362.50
- For each additional ton from 30,001 to 70,000, $1,771.87
- For each ton after 70,000, $1,181.25.

For any other claim (such as property damage or cleanup costs), at the same exchange rate, the limits are:

- For a ship up to 2,000 tons, $2,953,121.64
- For each additional ton from 2,001 to 30,000, $1,181.25
- For each additional ton from 30,001 to 70,000, $586.71
- For each ton after 70,000, $391.14

These limits are in aggregate for each occasion. If there are many potential claims from different injured people or damaged property, as may often be the case, the liable person can establish a fund with the Court for the entire limited amount, which will be held and eventually distributed to each claimant, based on their proportionate share of their claim.

There are a few key exceptions worth mentioning, where maritime claims are outside the application of the Convention. The first is where other laws expressly deal with maritime claim limits, such as for oil pollution and nuclear damage. The second is claims for breach of contract, so parties cannot rely on the Convention to limit, for example, charterparty claims. The third is claims for salvage and general average. The fourth is if the damage was caused by the intentional or reckless acts of the person responsible – however, the reckless acts of a master or crew will not mean that a shipowner is still prevented from limiting their liability.

These exemptions are generally, of course, not actually carve-outs from limiting liability, but rather an exercise in passing the buck to the next source of limitation. While watching one limit, it is important to also keep an eye on the next one.

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