LIMITATION OF LIABILITY IN URUGUAY - THE ABANDONMENT OF THE VALUE OF THE VESSEL (ART. 6 OF LAW NO. 19,246).

Florencia Sciarra Marguery

ARTICLE PUBLISHED IN THE MAY 2024 ISSUE OF MG NEWS MAGAZINE

Limitation of liability in Uruguay

The abandonment of the value of the vessel (Art. 6 of Law No. 19,246).

On many occasions, when defending a shipowner against a maritime transport liability claim, we are asked whether it is possible to limit the carrier's liability in Uruguay.

The first answer we usually give is no, taking into consideration that Uruguay has not ratified any of the Conventions on liability in carriage that establish limits per package (Hague Rules, Hague-Visby, etc.). These limits are not foreseen in our domestic law either and it is understood that the shipowner is liable for the whole.

But the truth is that there is a way to limit liability, and it is established in Article 6 of Law No. 19,246, which came into force in 2014.

Until then, the Code of Commerce provided in Article 1050 that the owner's liability ceased upon abandonment of the vessel with all its belongings and the freight earned. The Code of Commerce established the possibility for the shipowner to abandon the vessel by means of a declaration to be made by public instrument. While the decision was communicated by that instrument, the ship had to go to judicial sale to pay the creditors. The problem was not only the latter, but also that the limitation of liability was to the value of the vessel prior to the sale. Therefore, if the ship had had an accident or was at the bottom of the sea, the value could be minimal or almost non-existent. But, in addition, the fourth paragraph of Art. 1050 expressly prohibited the shipowner's creditor from taking any action against the ship's insurer. Therefore, if the ship had insurance, the creditor could not claim it.

Finally, the article enabled only the owner of the vessel to oppose this abandonment because he is the one who has the disposition of the vessel, this not being possible for the non-owner shipowner.

Article 6 of Law No. 19246 amends Article 1050 of the Code of Commerce, establishing a system of limitation of liability through abandonment of the value of the vessel. This does not consist of the abandonment of the good, but of a deposit in guarantee of a sum of money.

This sum of money must be equivalent to:

- the value of the vessel plus all its appurtenances

- the freights and fares received or to be received on the voyage to which the facts of the Master refer, and

- the credits in his favor that have arisen during the voyage.

The article establishes that the abandonment must be made by judicial presentation and in the same act a sum of money equal to the value of the vessel before the accident, plus the credits indicated in the preceding paragraph, must be deposited to the order of the court.

The first thing worth noting here is that we are not limiting the liability of the shipowner based on the value of the vessel at that time, but rather it is limited to the value of the vessel before the accident or casualty. This solves the problem of the devaluation that may occur after a major loss.

Another important modification is that, in the new wording, the benefit granted by the limitation of liability is no longer only for the shipowner. It refers to the "abandonment of the value of the vessel", not the vessel itself. As it is a guarantee that is deposited to the order of the court, it can be perfectly requested by a non-owner shipowner.

What are the claims that are not covered by abandonment?

The third paragraph establishes that the action against the insurer by the owner or shipowner for the indemnity resulting from the vessel or the freight is not included in the abandonment. Dr. Victoria Zorrilla states in her article on Maritime Law Reform, that "with respect to the indemnity of hull and machinery, it has been preferred that such credit be destined to its specific purpose, which is to replace or repair the vessel".

Nor are claims against third parties for the facts that generated the damage or sinking of the vessel included in the abandonment.

Against whom can it be opposed?

In this point the regime of the Commercial Code is maintained, which establishes that it can be opposed against creditors of contracts entered into by the master (loans for repairs and provisioning, assistance and salvage wages, towing services, etc.); creditors imposed by law in relation to the activity of the master and expedition (general average); and creditors for guilty acts committed by the master or crew (collision).

The limitation does not operate for the shipowner's own culpable acts, for acts of the master ratified by the shipowner and for obligations contracted by land agents.

Another important element to be taken into account is that the only exception applicable to the limitation regime for pollution remains in force. The same is established in art. 84 of Law No. 18,996 which states: "article 1050 of the Code of Commerce shall not apply in cases of pollution from ships".

Judicial procedure

Abandonment is requested judicially, by filing a writ. In the same act, a deposit of the value of the vessel plus freight, fares, credits, etc., must be requested to be made to the order of the court.

How is this value determined?

By means of an appraisal of the value of the vessel, prior to the loss, carried out by an expert registered in the Registry of Naval Experts of the Prefectura Nacional Naval (National Naval Prefecture).

A list of the debtors with respect to the outstanding credits, as well as the contracts on which such debts are based, must be submitted together with this same document. Finally, a list of known and/or potential creditors must be submitted.

Section 4 of Article 1050 provides that "If there are already claims against the ship, the petition must be filed in the court where the oldest claim was filed. The competent court shall have jurisdiction over all claims arising out of the voyage and ship in respect of which the abandonment is made".

Therefore, if there are many claims against the same vessel, the court of the oldest claim will have jurisdiction over the others.

It remains to be seen how judges apply this rule, since it is relatively new and there are not many cases where it has been put into practice.

Dr. Florencia Sciarra Marguery