

CHAPTER 11

Limitation of Liability

SECTIONS

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Editor's note: The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

§ 1101. Regulations for the limitation of liability for maritime claims.

The Secretary may promulgate regulations to implement this chapter, taking into account the provisions of the Limitation of Liability Convention and the Tonnage Convention.

Source: PL 10-76 § 209.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 1102. Liability and division of loss.

- (1) Where two or more vessels cause property damage or loss, liability shall be proportional to the degree of fault, PROVIDED that, if it is not possible to establish degrees of fault, liability shall be apportioned equally.
- (2) Where two or more vessels cause loss of life or personal injury to any person, liability shall be joint and several.
- (3) Nothing in this section shall affect the right of any person to limit his or her liability in a manner provided

by law.

Source: PL 10-76 § 210.

§ 1103. No presumption of fault.

In case of collision, a vessel shall not be deemed at fault solely because the master or person in charge has infringed any provision of the Collisions Convention.

Source: PL 10-76 § 211.

§ 1104. Maritime claims subject to limitation of liability.

(1) Subject to sections 1105, 1106, 1107 and 1108 of this chapter, the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

(a) claims for loss of life or personal injury or loss of or damage to property (including damage to harborworks, basins and waterways and marine aids to navigation), occurring on board or in direct connection with the operation of the vessel or with salvage operations, and consequential loss resulting therefrom;

(b) claims for loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;

(c) claims for loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the vessel or salvage operations;

(d) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his or her liability in accordance with the Limitation of Liability Convention, and further loss caused by such measures.

(2) Maritime claims set forth in subsection (1) of this section shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise; **PROVIDED**, however, that claims set forth under subsection (1)(d) of this section shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Source: PL 10-76 § 212, modified.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

§ 1105. Maritime claims exempted from limitation of liability.

This chapter shall not apply to:

- (1) claims for salvage or contribution to general average;
- (2) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated November 29, 1969, or of any amendment or protocol thereto which is in force;
- (3) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (4) claims against the owner of a nuclear vessel for nuclear damage;
- (5) claims by officers, employees, and agents of the owner or salvor whose duties are directly connected with the operation of the vessel or the salvage operations;
- (6) claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel; and
- (7) claims in respect of the removal, destruction or the rendering harmless of the cargo of the vessel.

Source: PL 10-76 § 213.

§ 1106. Conduct barring limitation of liability for maritime claims.

A person liable for a maritime claim shall not be entitled to limitation of liability under this chapter if it is proved that the loss resulted from the person's personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Source: PL 10-76 § 214.

§ 1107. The right of limitation of liability.

- (1) A person may procure the release of a vessel or other property or may limit his or her liability for certain maritime claims as set forth in this chapter, provided that the person:
 - (a) makes timely application to the Supreme Court to establish the limit of liability, under the procedures set forth in regulations promulgated by the Secretary; and
 - (b) constitutes a Limitation of Liability Fund.
- (2) The act of invoking limitation of liability under this chapter shall not constitute an admission of liability.
- (3) An insurer of liability for claims subject to limitation under this chapter shall be entitled to the benefits of this chapter with respect to limitation of liability to the same extent as the assured.
- (4) Liability of a person shall include liability in an action brought against the vessel.

Source: PL 10-76 § 215.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 1108. Constitution of the Limitation of Liability Fund.

(1) Any person alleged to be liable for a maritime claim who seeks to limit liability for maritime claims may constitute a Limitation of Liability Fund with the Trial Division of the Supreme Court.

(2) The fund shall be constituted in the sum of such amounts set out in regulations as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund.

(3) Any fund constituted under this chapter shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

(4) A fund may be constituted either by depositing the sum with the Supreme Court, or by lodging with the court an irrevocable letter of credit or other form of security acceptable to the Court.

(5) The Court shall have the power to order the creation, administration and distribution of a Limitation of Liability Fund.

(6) If the Court is satisfied that the fund is properly constituted, freely transferable, and in the sum set out in regulations, it may release the vessel from arrest.

(7) If the Court is satisfied that the fund has been properly constituted, is freely transferable and in the sum set out in regulations, any person having made a claim against the fund shall be barred from exercising any right against any other assets of the person constituting the fund.

Source: PL 10-76 § 216.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

The constitutional provision on the jurisdiction of the Trial Division of the FSM Supreme Court is found in Art. XI, § 6 of the Constitution. The provisions of the Constitution are found in Part I of this code.

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