

船舶所有人限制責任制度：船長不適用

Master is not entitled to invoke shipowner's limitation of liability

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中文摘要

海商法第 76 條係通稱之「喜馬拉雅條款」，明文規定，運送人因貨物滅失、毀損或遲到對託運人或其他第三人求償，所得主張之抗辯及責任限制之規定，運送人之受僱人或代理人亦得主張。惟同法第 21 條亦規定船舶所有人限制責任制度。若船舶所有人主張限制責任，船舶所有人之受僱人或代理人是否也可主張援用？

詳言之，依據民法第 188 條，受僱人因執行職務而侵權，僱用人負連帶賠償責任，假使船舶所有人（即僱用人）援用海商法第 21 條，主張免責或限責時，船長及海員等受僱人是否得同受其惠？

就此議題，本文擬以美國理論及實務見解，釐明喜馬拉雅條款是否適用於船舶所有人限制責任制度。

關鍵字：喜馬拉雅條款、合一審理、船舶所有人限制責任、僱用人連帶責任、履行輔助人

Abstract

The article 76 of Maritime Law of the Republic of China is commonly called Himalaya Clause. It stipulates, if the defences and limitation of liability provided for in this law shall apply in any action against the carrier in respect of loss, damage or delay to goods, such an action is brought against a servant or agent of the carrier, such servant or agent shall be entitled to avail himself of the defences and limitation of liability which the carrier is entitled to invoke under this law.

The article 21 of Maritime Law also stipulates the shipowner's limitation of liability. Is the servant or agent of the shipowner entitled to avail himself of the limitation of liability which the shipowner is entitled to invoke under article 21?

In detail, according to article 188 of Civil Law of the Republic of China, the employer shall be jointly liable to make compensation for any tort activity which the employee has wrongfully caused to the rights of another in the performance of his duties. If the shipowner (actually employer) proceeds for exoneration from or limitation of liability pursuant to Article 21 of Maritime Law, so does his employee, like master, crew?

Based on American maritime theory and practical judgment, this article will clarify whether the Himalaya Clause applies to shipowner's limitation of liability.

Keywords: Himalaya Clause, concursus, shipowner's limitation of liability, employer's joint liability, independent contractor