

Brown water claims handling

Presentation by Kimberly Tracey,
(Aspen Insurance, U.K.)
and Olivier Böhmer
(Van Traa Advocaten N.V. (Rotterdam))

Topics of the day

1. General overview of Mississippi River and impact of river closure/delays
2. General overview of European rivers
3. Revised convention for Rhine Navigation (1868), Mannheim Act
4. Forum Shopping & Limitation of Liability in view of U.S. brown water claims
5. Brown water cargo claims in Europe and limitation of liability of the ship owner for maritime claims

General overview of Mississippi River and impact of river closure/delays



Top 15 US ports ranked by tonnage

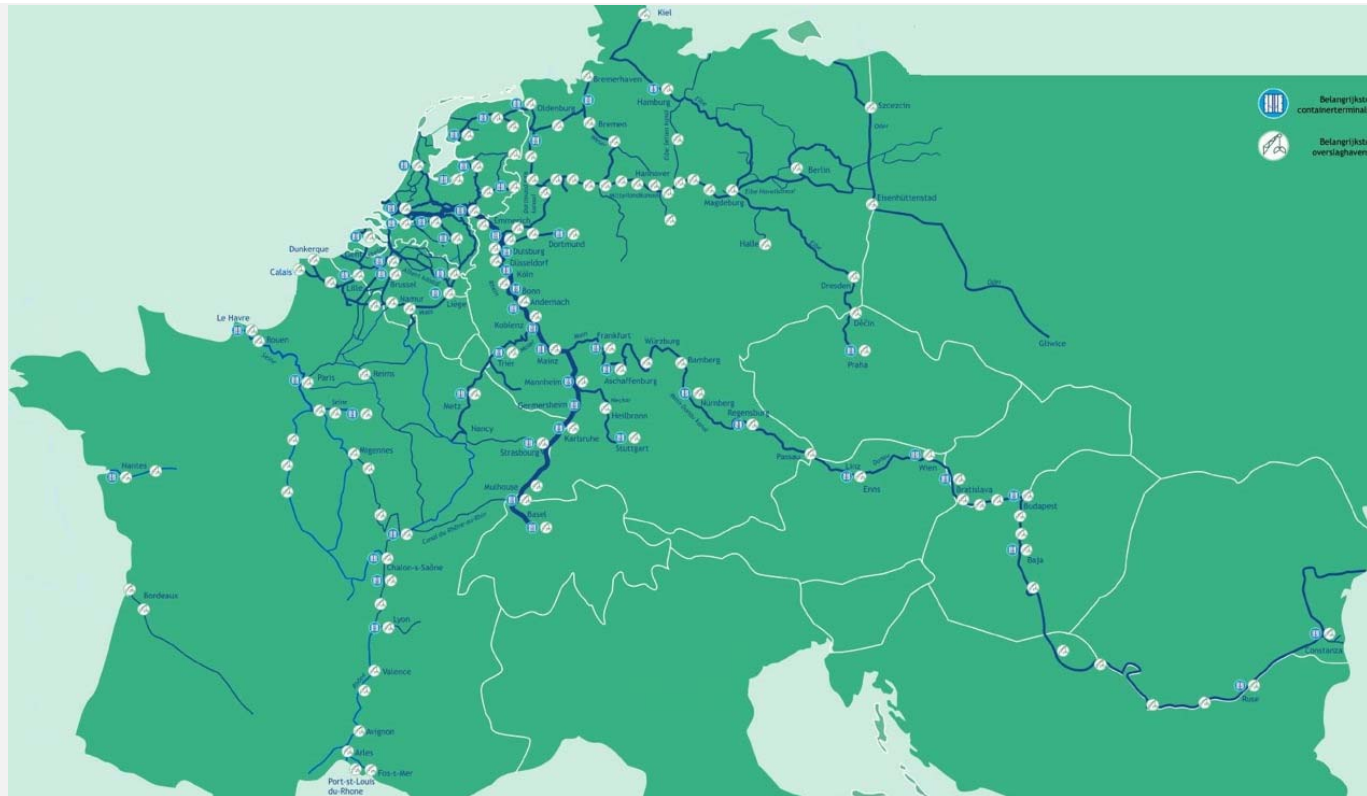
- Four of the five deep-water ports on the Mississippi River below Baton Rouge are tops in the nation in tonnage transfer.

Rank	Port	Total short tons (In millions)
1	South Louisiana	252.07
2	Houston	238.19
3	New York and New Jersey	132.04
4	New Orleans	79.34
5	Beaumont, Texas	78.52
6	Long Beach, California	77.39
7	Hampton Roads, Virginia	76.73
8	Corpus Christi, Texas	69.00
9	Port of Los Angeles	61.82
10	Baton Rouge	59.99
11	Plaquemines Parish	58.28
12	Texas City, Texas	56.72
13	Mobile, Alabama	54.89
14	Lake Charles	54.38
15	Huntington-Tristate, West Virginia	52.91

Source: American Association of Port Authorities

General overview of European rivers

**VAN
TRAA**



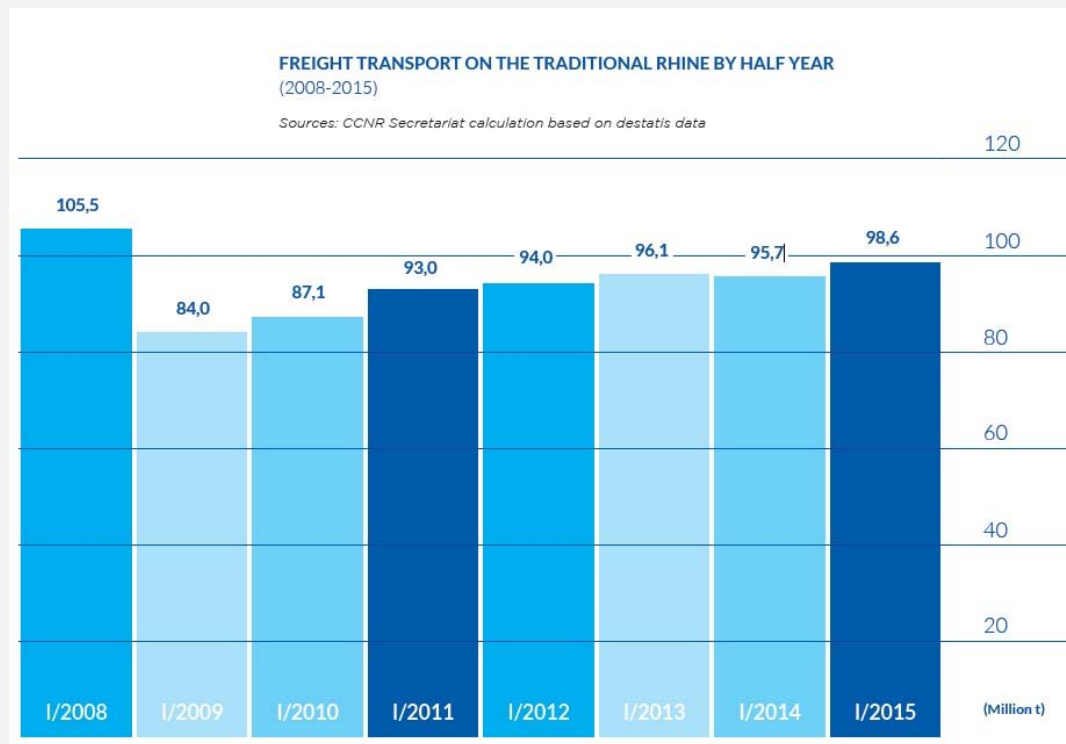


Revised convention for Rhine Navigation (1868), Mannheim Act



**VAN
TRAA**

Freight transport on the tradition Rhine by half year (2008-2015)



Total Western European Fleet (March 2016)

	Belgium	France	Germany ¹	Luxembourg	Netherlands	Switzerland	Total
Dry Cargo	1.345	1.347	1.665	10	4.411	19	8.797
Tank Cargo	287	77	502	32	1.237	52	2.187
Push/Tug	195	142	413	10	1.227	8	1.995
Passenger	85	423 ²	1.009	4	1.303	147	2.971
Other	370	6		7	2.039	13	2.435
Total	2.282	1.995	3.589	63	10.217	239	18.385

1 Source France

2 Source ZBBB 31.12.2014

IVR is not responsible for errors and/or inadequacies

m.v. "Waldhof"

VAN
TRAA



Forum Shopping & Limitation of Liability in view of U.S. brown water claims



After the Bright Field, a 735-foot freighter, slammed into the Riverwalk mall Saturday afternoon, destroying shops and causing injuries and panic among holiday shoppers, tugboats secured the vessel against the devastated structure in hopes of preventing further collapse. The upper Poydras Street wharf, sections of the Hilton Hotel and some condos in One River Place also were damaged, officials said.

STAFF PHOTO BY ELIOT KAMENITZ

Jones Act vs. Longshore & Harbor Workers' Compensation Act

- Jones Act
- Boat full of claims: 1) against employer for negligence; 2) against vessel owner for unseaworthiness; 3) against 3rd parties for general maritime law negligence.
- Non-pecuniary damage claims are **NOT** permitted.
- Two prong test for Jones Act determination:
 - Prong 1 → Very broad! Did the claimant do the ship's work?
 - Prong 2 → Deeper analysis. Did the claimant have a sufficient relationship to a vessel in navigation?
- Don't hang your hardhat on the 30% rule. It's a guide **NOT** a hard-line rule.

LHWCA

- No fault workers' compensation scheme for disability and death → medical costs, pre-judgment interest & 2/3 workers' salary included.
- Longshore status is occupational rather than geographic.
- A restrictive theory of negligence can be asserted against a vessel owner to recover damages → 905(b) claim.
- Like Jones Act, non-pecuniary damages are NOT permitted.
- Status and Situs Required
- Status → Is the worker covered?
- Situs → Navigable waters!
- No 30% "rule".
- File the form!

Brown water cargo claims

CMNI deals with:

- Right to dispose of the goods
- Liability of the shipper
- Liability of the carrier

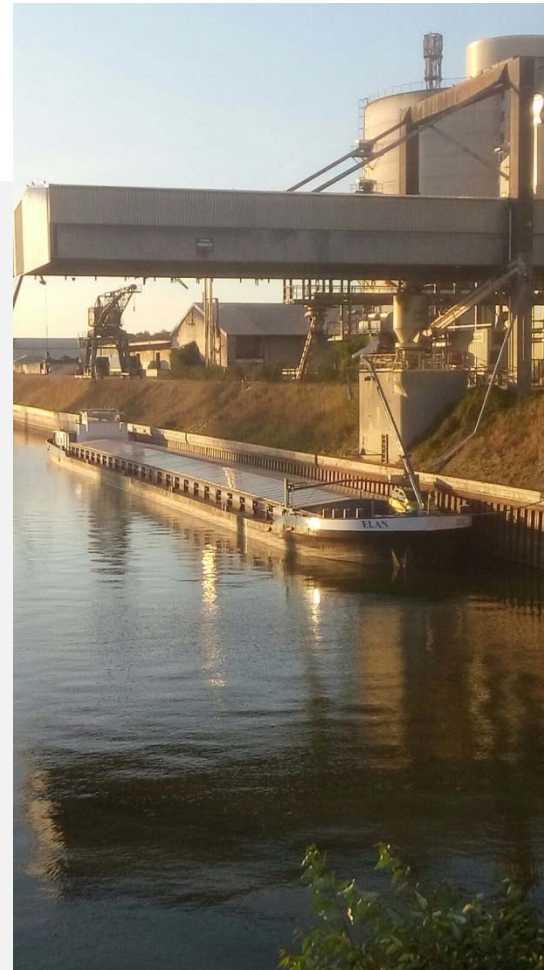
Brown water cargo claims

VAN
TRAA

Period of responsibility art. 3-2 CMNI unless otherwise agreed

Brown water cargo claims - Elan

- Elan case – pilot before The Hague Court of Appeal on shippers' liability



VAN
TRAA

Elan-case

- Shipper: Receiver: AM
 - NO7 Stevedore: SeaBulk
 - (Leeuwarden, NL) Vssl: Elan Dunkirk (B)
-
- ```
graph TD; Shipper["Shipper: (Leeuwarden, NL)"] --- Vssl["Vssl: Elan"]; Vssl --- Stevedore["Stevedore: SeaBulk"]; Stevedore --- Receiver["Receiver: AM"]; Receiver --- Dunkirk["Dunkirk (B)"];
```

# Brown water cargo claims

- Carriers liability; exonerations:
- Not: nautical error
- Fire/explosions

# Brown water claims Limitation of liability

VAN  
TRAA

