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## The Approach of the Italian Courts to Damages in Crew Death and Personal Injury Claims

Members with Italian crews are advised that, over the last few years, the Italian courts have expanded the categories of damages and restricted the circumstances in which owners are able to rely on their exemption from civil liability.

### Exemption for Owners from Civil Liability

In Italy, state social insurers IPSEMA offer compulsory 'no-fault' cover for Italian seamen who are employed either on Italian flagged ships or through Italian manning agents on non-Italian flagged ships. As a general rule, under this cover, owners are exempted from civil liability up to the amount paid out under the policy.

But the exemption ceases where criminal liability is established on the part of the owner or any of its employees and IPSEMA may recover from the owner any amount already paid out under the policy. In addition, the owners are exposed to claims brought by the injured seaman and/or their next of kin for civil damages.

### Limiting Owners' Civil Exemption

In 1991, the Constitutional Court held that the IPSEMA insurance scheme, and its exemption of owners from civil liability, did not apply to biological damages. Consequently, injured crewmembers were able to recover such damages on the basis of a finding of civil fault or negligence, despite the absence of criminal liability on the part of the owner or its employees.

However, by Law Decree no. 38/2000, the concept of biological damages has been introduced into the state scheme insurance. In view of this recent development, notwithstanding the judgment of the Constitutional Court, the civil liability exemption also applies to biological damages up to the amount paid out by IPSEMA. However, the exemption does not apply to biological damages exceeding those paid out by IPSEMA. This will frequently be the case, because biological damages are almost always higher than the amounts indemnified by IPSEMA.

### Categories of Damage Compensation

Compensation for civil damages is awarded by the Italian courts under four different categories of loss:

**Biological damages** relate to the injured party's physical injuries or psychological condition, regardless of any loss of income. The court calculates damages using annually adjusted tables that base compensation levels on the claimant's age and the extent of their permanent disability. Though biological damages were, historically, normally excluded in cases of death, in limited circumstances they can now be awarded to the claimant's next of kin (in cases of a lapse of time between injury and death), or to close relatives (in cases of psychological injuries).

**Damages for loss of earnings** are awarded where the claimant and/or their next of kin has suffered a loss of income. A capitalisation factor is applied in calculating damages, with the end result proportionally reduced in cases of partial disability.

In the event of death, the basis for calculation is not the total wages, but rather the portion of the wages that would be devoted to the economic maintenance of dependants.

**Moral damages** compensate a claimant for pain and suffering on an equitable basis. The amount of compensation varies according to the circumstances of the accident, the type of injury and the extent of disability. Generally, moral damages will be calculated to be between 1/4 and 1/2 of the value of biological damages.

In the event of death, the amount awarded for moral damages will depend upon the deceased's family size, whether the family lived together and the degree of the family's dependency on the deceased's income.

**Existential damages** compensate the claimant for the loss of a full quality of life. This compensation can take place regardless of the loss of income and without necessarily involving permanent physical injury. In the event of death, existential damages can be payable to the next of kin. Though the awarding of existential damages has recently been upheld by the Italian courts, the concept is new and the criterion for calculating damages has not yet been fully established.

### Extension of Conditions for Compensation

According to Article 2059 of the Italian Civil Code, moral damages are due only where criminal liability has been established. However, three judgments of the Court of Cassation in 2003 acknowledged that moral damages are also due when the liability for the accident is presumed by law and such liability amounts, in the abstract, to a crime. This means that crewmembers may now recover moral damages, in certain circumstances, despite the absence of a finding of criminal liability on the part of the owners.

### Conclusion

The trend of the Italian courts in cases of personal injury and death claims of crewmembers is to widen the types of damages recoverable from owners, to restrict the operational limits of owners' exemption from civil liability and to expand the conditions for compensation.

