

TLLC

Cross-Border Questionnaire

4th edition, 2025

Casualties, Investigations and Liabilities

Dear TLLC Members,

After the successful earlier editions of the questionnaire, with over 20 jurisdictions covering the topics of “Arrest of Vessels”, “Liabilities in Contracts of Carriage” and “Maritime Arbitration”, we are happy to launch the 4th edition of the TLLC Cross-Border Questionnaire.

This Questionnaire aims to bring a comparative analysis from different jurisdictions with diverse legal backgrounds on topics that are relevant for the global transportation industry.

After an online poll among the TLLC members, the topic selected by majority of votes for this edition of the questionnaire is “Casualties, Investigations and Liabilities”.

We are happy to hear about multiple jurisdictions and encourage you to share your contributions to the questionnaire by **December 15, 2025**. We expect to publish the questionnaire in early 2026 and subsequently organize our traditional webinar on the topic.

Responses to the Questionnaire, as well as suggestions of topics and improvements for future editions may be sent to [the editors below](#).

Cheers!

Editors of the TLLC Cross-Border Questionnaire



Frederico Mendes Vianna F. Cardoso
Kincaid – Brazil

Frederico.Cardoso@Kincaid.com.br



Camilla Queiroz Werneck
Castro Barros Advogados – Brazil

Camilla.Werneck@castrobarros.com.br



Nick Vangeneugden
Ponet & LVP Advocaten – Belgium

Nick.Vangeneugden@ponet-law.be



Evan Spencer
Blank Rome LLP – U.S.A.

Evan.Spencer@blankrome.com

TLLC Cross-border Questionnaire

4th edition – 2025

CASUALTIES, INVESTIGATIONS AND LIABILITIES

Name of the contributor: Julia Brennecke

Firm of the contributor: DWF Germany

Country: Germany

1. What's the first thing you do when the shipowner/Club calls in case of a marine casualty?

In addition to the immediate operational response, German practice requires that counsel quickly establish a legally defensible “information governance” and confidentiality / seizure-protection strategy (to the extent available under German procedural law). In particular, it is advisable to separate factual collection from legal assessment from the outset, to structure internal reporting lines, and to clearly identify which communications are intended as legal advice. This supports organisation but does not by itself create protection. Where criminal or administrative enforcement risk is foreseeable, early decisions should be taken on how to manage interviews and written statements, including whether statements should be taken in a form that preserves later defence options (and avoids uncontrolled dissemination to third parties). Just as importantly, counsel should immediately address preservation of electronically stored information in a manner that is forensically sound and litigation-ready, including chain-of-custody documentation and a defined protocol for handling the VDR/AIS/ECDIS datasets, email, messaging apps, and shore-based fleet management systems. Finally, German casualty cases often turn on the early alignment between the shipowner/manager and insurers on the consistent, evidence-based and truthful factual account”: inconsistent notifications, incident descriptions and causation hypotheses can later create avoidable credibility issues in court and in dealings with authorities.

2. What are the immediate concerns and how do you protect your clients' interests?

Beyond safety and pollution control, a key German-law concern is the *parallelism* of proceedings: a single event may trigger safety investigation, administrative enforcement, criminal investigation, and civil litigation almost simultaneously. The protection of the client's interests therefore hinges on synchronising the response across those tracks while preventing “cross-contamination” of information that could prejudice the defence. In practice, the most sensitive interface is between statements made to police/prosecutors on the one hand and later civil allocation of fault on the other; counsel must manage timing, form and scope of cooperation and ensure that the crew is properly advised on procedural rights and the practical consequences of early interviews. A further German peculiarity is that authorities may act under hazard-prevention concepts, ordering immediate measures with cost consequences irrespective of ultimate civil liability; it is therefore vital to document proportionality, necessity, and the availability of less intrusive alternatives, because those issues often become central in subsequent cost-recovery disputes. Finally, where foreign crew is involved, counsel should also anticipate immigration and employment-law implications (availability of witnesses, repatriation, medical care, wage continuation and substitution arrangements), because these can materially affect the ability to defend the case and to secure evidence.

3. Which parties may be involved, i.e., private entities and public authorities?

On the private side, these typically include the shipowners, manager or operator, charterers, carriers, cargo owners, hull and cargo insurers, P&I clubs, experts, surveyors, salvage companies and any third parties suffering damage. Public authorities may include the Bundesstelle für Seeunfalluntersuchung des Bundes (Federal Bureau of Maritime Casualty Investigation), the Wasserschutzpolizei (Waterway Police), the Wasser- und Schifffahrtsverwaltung (Federal Waterways and Shipping Administration), other maritime and port authorities, sea pilots. Private or quasi-public actors often involved include classification societies and pilotage organisations.

4. How are Investigations conducted in your jurisdiction? How can the parties/lawyers handle investigations?

In addition to the typical stakeholders, port State control authorities and environmental regulators may also play a significant role—even where the incident occurred outside a port—because a vessel’s subsequent port call can trigger compliance inspections, detention measures, or “rectify-before-departure” requirements. On the private side, commercial pressure often arises not only from cargo interests but also from operational counterparties such as terminal operators, towage providers, pilotage organisations, and canal or traffic authorities. Their contractual terms and invoicing practices can quickly escalate into urgent security or operational demands. In German practice, it is therefore essential for counsel to identify these operational “influencers” at an early stage, as they can impose de facto constraints and shape the course of events long before any formal decision on the merits is taken.

5. Could such an event lead to administrative penalties, civil liability, and/or criminal liability? If so, what kind of sanctions or penalties may be imposed and under what timeframe?

The supplementary point from a German perspective is that exposure is not limited to classic navigation offences. In serious cases, prosecutors may scrutinise organisational decisions ashore (manning, training, fatigue management, maintenance regimes), because German liability concepts allow attribution not only through the acts of the crew but also through failures of corporate organisation where causally relevant. Administrative enforcement, likewise, may extend to orders compelling preventive measures, operational restrictions, or corrective actions as a condition for continued operation, and such orders can carry immediate cost and delay implications regardless of later fault allocation. With respect to timing, counsel should be aware that early procedural steps—such as seizures, interviews, and inspections—often occur before the client has a complete internal picture; therefore, a defensible “initial theory of the case” should be developed quickly, even if provisional, to avoid reactive and inconsistent positions that later harden into record evidence.

6. Can the state or local authority order wreck removal?

A further German-law nuance is that wreck removal and obstruction clearance are frequently treated as public hazard prevention rather than as a mere private-law dispute. This means that the competent authority’s focus is typically on navigational safety and environmental risk, and it may therefore proceed swiftly, sometimes by ordering measures first and arguing about costs later. For the client, the crucial protective step is to ensure contemporaneous documentation of decision-making, including the availability of alternative measures and the proportionality of the chosen solution, because these are often the decisive parameters in later cost-recovery challenges. In addition, German administrative practice tends to bundle wreck removal with ancillary measures (marking, monitoring, exclusion zones, pollution response), and each component can have distinct cost and liability consequences that should be tracked separately from the outset.

7. What are the basic liabilities and nature of the potential judicial claims that could arise?

Beyond the standard heads of loss, German litigation often features technically complex causation and proof disputes, and this has two practical consequences. First, claimants frequently plead multiple bases in parallel—contractual, delictual, and statutory—so that defendants must be prepared to address overlapping regimes and to challenge the internal consistency of the claimant’s causation narrative. Second, German courts commonly rely on court-appointed experts in technically disputed maritime matters; counsel should therefore shape the technical issues early in a way that is suitable for expert determination (clear questions, defined assumptions, complete datasets), because once a court-expert inquiry is framed, it may set the trajectory of the case. Finally, where pollution is involved, the boundary between private compensation and public remediation costs becomes strategically important; public-law cost claims can be pursued in a manner that is procedurally and evidentially different from private damages claims, and both tracks may run concurrently.

8. Is there a risk of civil public actions for pollution or for damages to fishing or tourism industries?

The additional German-law point here is procedural: “public actions” in the German sense often manifest less as private collective litigation and more as a combination of individual claims plus administrative and regulatory enforcement, including remediation obligations. Consequently, defendants should anticipate that the most pressing financial exposure may arise through official measures and cost recovery, rather than through a single large civil claim. For fisheries, the practical battleground is typically proof of a concrete and substantial impairment and the quantification methodology, which must distinguish general market effects from incident-specific impact. For tourism-related stakeholders, claims may be reframed through contractual and business-interruption structures (for example, via supply chain and event cancellation disputes) even where direct proprietary rights are absent; this means that the “tourism impact” question sometimes returns indirectly through different legal wrappers, and it is prudent to monitor it early.

9. Is there a risk of arrest of the vessel, security or other injunctions against the parties involved?

From a German perspective, the key practical risk is not only formal ship arrest but also the use of security dynamics to obtain commercial leverage. Claimants may aim to secure a position before the ship sails, and ports/terminals may exert pressure through operational constraints. Consequently, defence strategy often benefits from preparing a security package early—aligned with insurer/P&I practice—that can be deployed quickly in negotiations to prevent escalation. Another supplementary point is that a vessel’s subsequent port calls can create jurisdictional and enforcement opportunities for claimants, so route planning and port selection may become part of the legal risk management. Where interim measures are sought, German courts will scrutinise urgency and the prima facie showing; a well-documented factual record assembled in the first days can therefore be decisive in resisting or narrowing interim relief.

10. What are some basic defences available to carriers involved in a maritime casualty in your jurisdiction?

In addition to the substantive defences on negligence and causation, German cases often turn on (i) the proper framing of the standard of care, (ii) the allocation of fault between multiple contributing causes, and (iii) the credibility of the technical record. A particularly effective defence approach is to build an evidence-based “alternative causation” narrative that is technically plausible and consistent with the data, because German courts will often engage closely with competing technical explanations. Where organisational allegations are raised, defendants should be prepared to demonstrate the functioning of their safety management systems, training, maintenance and auditing practices—not as abstract compliance claims but as concrete operational realities.

11. How are penalties and/or indemnities quantified and assessed?

The supplementary point is that German quantification is strongly evidence-driven and often expert-led, and courts may take a structured approach to separating repair cost, consequential losses, and

delay-related items. For indemnities, the assessment frequently turns on the “but for” scenario and the reasonableness of mitigation steps; therefore, operational decisions taken in the first hours and days (choice of yard, temporary repairs, towage routes, salvage decisions) may later be scrutinised in detail. On the public-law side, cost recovery may be framed as reimbursement for necessary measures, which makes proportionality and necessity central. It is therefore prudent to treat cost documentation with the same discipline as damage documentation, including contemporaneous records of scope, alternatives considered, and decision rationales.

12. Are there any limitation regimes available in your country?

Beyond acknowledging the applicable regimes, the additional German-law relevance lies in the procedural and strategic use of limitation. Counsel should consider early whether and where to constitute a limitation fund, how to coordinate that with security discussions, and how to manage multi-jurisdictional exposure if parallel proceedings are expected.

13. Which international conventions are in force in your jurisdiction that could be applicable? (Salvage, Wreck Removal, SOLAS, Limitation, etc.?)

The key supplementary observation is that, in German practice, the decisive questions are often not whether an instrument exists, but how it interfaces with German implementing law, German procedural rules, and the competencies of different authorities. For counsel, this means that early issue-spotting should include not only the substantive convention regime but also the forum’s procedural toolkit: which court or authority is competent, which interim measures are realistically available, and which evidentiary mechanisms will likely control the case. It is also important to anticipate that regulatory compliance frameworks (SO-LAS/MARPOL/ISM) may reappear in civil and criminal contexts as benchmarks for the standard of care, even where they do not apply as direct causes of action.

14. Any relevant domestic laws that could apply when it comes to mitigating the damages; measures to be adopted and claims for the losses suffered?

In addition to the general mitigation concept, German disputes often focus on whether the mitigation steps were reasonable in view of time pressure, incomplete information, and safety constraints. This makes contemporaneous decision documentation particularly valuable: not only “what was done”, but “why it was done” and “what alternatives were considered”. Another domestic-law angle is the interplay between mitigation and contributory responsibility: if claimants or other parties had operational control or the ability to reduce losses (for example, cargo interests or terminal operators), defendants should examine whether failures on that side affect recoverability. Finally, where limitation or strict-liability pollution regimes apply, mitigation evidence can still be highly relevant, both for quantum and for rebutting allegations of reckless organisational conduct.

15. Any other relevant information, news, a practical case or decision regarding the topic you would like to share?

A practical “German lesson learned” is that casualty handling is frequently won or lost in the first week, not on the hearing day. The early preservation of data, the disciplined management of interviews, and the alignment of operational and legal narratives often determine later outcomes on fault apportionment, limitation disputes, and settlement leverage. In Germany, this is reinforced by the court’s preference for technically robust records and structured expert engagement. It is therefore advisable to treat the first phase as the foundation of the case file: if evidence is clean, complete, and forensically sound, later proceedings—whether civil, administrative, or criminal—become significantly more predictable and manageable.

NEWS ABOUT THE COMMISSION

Although guided by a dedicated team of Officers, the TLLC encourages the participation of all members in planning the activities of our commission.

If you have any suggestion, ideas or do not know exactly how you can contribute but definitely want to be engaged, feel free to get in touch with any of the commission officers or the TLLC Communication Team at tlcnews.aija@gmail.com

TLLC LINKEDIN GROUP

Stay tuned for the activities of the TLLC Commission group on [LinkedIn](#), where you will be able to receive information and posts that are not exactly newsletter material, in addition to exchanging information with other members, following the commission's plans, initiatives, events and speaking opportunities.

Want to contribute?

Our members are always welcome to send contributions and suggestions to the activities performed by the Commission. If you have ideas or questions you would like to share, please feel free to reach any of the Officers or the Communication Team through the email below:

tlcnews.aija@gmail.com