Maritime third-party liability insurance

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CURRENT SITUATION AND RESEARCH FOCUS

The judgment handed down by the Supreme Court in the "Prestige" criminal case on February 14, 2016, serves as context for the matter analyzed in this research article [1]. The Court ordered the English insurer The London P&I Club to pay USD 1 billion, although this figure was below the amount needed to cover all losses and damages incurred. The judgment by the Spanish court evidences two important points:

1. The question of whether the circulation and recognition of court judgments within the European Union operates as foreseen or whether it should be revised, in light of the English insurer's most likely opposition to enforcement of the judgment. In particular, this relates to recognition without exequatur between judgments of Member States implemented under EU Regulation 1215/2012. A priori, the Brexit will not release the British courts from applying the EU law prevailing in Great Britain prior to the exit.

2. The "Prestige" judgment is an opportunity to ascertain the efficiency of the mutual association of P&I clubs and the agreements within the International Group of P&I Clubs, of which the club ordered to pay the aforementioned compensation forms part. Most likely, the P&I club does not have a sufficient risk pool to cover payment of the indemnification (as indicated in its annual reports). However, it does hold contractual receivables from: a) its members, through extraordinary calls; b) other P&I clubs in the International Group, in the form of claim-sharing; c) the Group's captive reinsurer; and d) multiple reinsurers, through what is the largest collective reinsurance contract in the world. Fulfilment of the "Prestige" judgment, should it be enforced, will shed light on whether the insurance and reinsurance structure characterizing the current maritime risks market is effectively able to address major catastrophes. The judgment will also serve to verify whether the agreements reached within the International Group of P&I Clubs are of public interest, as the European Commission has indicated, given that they make it possible to offer more extensive coverage than what a single insurer could offer on its own.

The marine third-party risks insurance market may cover both maritime operators and land operators. This research piece, however, focuses exclusively on insurance held by ship owners, ship operators or charterers of the vessel or ship in question. Special attention is placed on mandatory marine third-party insurance. Accordingly, coverage of risks assumed by land operators in the maritime environment, such as port terminals and ship repairers, falls beyond the scope of this study, as there is a separate market for these risks.

MARKET FOR THE INTERNATIONAL GROUP OF P&I CLUBS AND THE ALTERNATIVE MARKET

The third-party liability insurance market for maritime operators is specialized, as is the maritime sector itself. A key feature of this market is the limited number of participating insurers. It is not a closed market as defined in the anti-trust law (the European Commission has recognized as much with respect to the International Group of P&I Clubs); however, there is a high degree of specialization based on customary insurance and reinsurance practices. The insurers are familiar with one another, as well as with each other's practices and solvency and with how the market works. The different members reinsure each other's risks.

Participation in this market does not automatically equate to insuring all types of vessels and ships against third-party liability. The risks for an insurer are clearly different in scope between an oil tanker and a fishing vessel or recreational craft, even with a policy of the same legal nature. Accordingly, within this reinsurance market, there is a certain degree of sub-specialization depending on the type of ship in question. The P&I clubs forming part of the International Group of P&I Clubs dominate the market of merchant vessels, especially oil tankers, that sail internationally. However, this is not the case for merchant vessels operating under cabotage arrangements or for fishing vessel or recreational craft (which many clubs will not insure unless they are of a certain size).

Beyond the International Group of P&I Clubs, there is an alternative market for certain (but not all) vessels. This market comprises P&I clubs that do not form part of the Group, commercial insurers operating regionally and worldwide and local insurers. For example, certain Spanish insurers primarily focus on providing third-party liability insurance for fishing vessels, recreational craft and other smaller vessels.

The largest Spanish merchant vessels generally secure insurance from P&I clubs (both forming part of and outside the International Group) and from commercial insurers. Due to the lack of capacity and/or interest among Spanish insurers, this insurance is sought from non-Spanish insurers. The advantage held by commercial insurers over the P&I clubs is that they operate with a fixed premium; that is, the insured pays a premium for the coverage. In contrast, many P&I clubs are mutual insurance associations. Although they may also offer fixed premium insurance, coverage for ship owners is usually through mutual insurance arrangements. Under such arrangements, the insured ship owner pays an initial call and any additional supplementary calls made based on the P&I club's needs. In the case of major claims, as with the Costa Concordia disaster, ship owners insured by clubs other than the club that insured the vessel may be required to pay further calls to assist the club that suffered the loss. This is an effect of the claim-sharing system between clubs in the International Group of P&I Clubs.

CUSTOMARY THIRD-PARTY LIABILITY INSURANCE PRACTICE

The key product in the insurance market for third-party liability risks derived from operation of a vessel is protection and indemnity insurance, or P&I insurance. There is no international treaty or any national laws establishing the particular coverages and exclusions under P&I insurance. Legal stability for the market and for the insurers and insureds is instead established by virtue of common insuring practices in this area. Based on this practice, primarily created by the clubs forming part of the International Group of P&I Clubs (according to the European Commission, a public-interest association), there is a standard ship owner P&I insurance. However, coverage may differ depending on the club or the commercial insurer in question, as the insurance is never 100% the same (although the P&I clubs in the International Group must secure the approval of the majority of their co-member clubs in order to change their coverage). In any event, if a club or commercial insurer offers a very different P&I insurance, it could find it impossible to reinsure all or the majority of the risk (i.e, fronting) in the reinsurance market.

Ship owners' P&I insurance is an adaptable insurance. Its flexibility has allowed it to absorb, with a single insurance product, the mandatory third-party liability insurances (oil tankers, fuel, passengers, removal of vessels, etc.) and the third-party liability risks and other unforeseen expenses for which the ship owner voluntarily requires insurance.

Among other items, standard ship owner P&I insurance excludes third-party liability in the event of war or acts of terrorism (i.e., for the ship owner's failure to act diligently in preventing damage from war or terrorism). Standard P&I insurance has not changed to absorb this risk. Common practice weighs heavily here, as do the contracts in place between clubs in the International Group and the fear of terrorist attacks on large cruise ships. Accordingly, the market is very different for war and terrorism risks, in which operators are even more specialized.

Clubs may also offer other insurance, such as charterer P&I insurance, which offers more limited coverage and which falls below mandatory insurance requirements. The majority of clubs also offer legal defense for claims not covered under the standard P&I insurance (FD&D insurance). Some clubs even offer third-party liability coverage on maritime platforms.

The practice followed in Spain for mandatory third-party liability coverage for recreational craft is different. It is not necessary to contract P&I insurance, but rather a specific insurance policy with multi-risk coverage complying with Royal Decree 607/1999, extendable to other voluntary risks. This insurance is known as "recreational craft insurance" or "nautical insurance," or by the commercial names used by Spanish insurers.

DIRECT ACTION BY INJURED PARTIES AGAINST THE INSURER

The P&I insurance offered by a P&I club is a reimbursement-based third-party liability insurance. That is, the insured ship owner must first pay any compensation to the third party and then attempt to recover the amount from its club. This is the "pay to be paid" clause set out in the P&L insurance rules. The P&I insurance contract, in and of itself, does not recognize the injured third party's rights to indemnification nor foresees any direct action by that party, except where the club voluntarily permits such action (commonly, when a guarantee letter is issued to release the embargo of a registered vessel) or where imposed under certain international rules.

Other defensive measures include those foreseen in applicable legislation and those relating to the relevant court or arbitration tribunal having jurisdiction over any claims derived from the insurance. Insurers are able to pre-select those laws and courts in their home jurisdiction or where they are afforded the most favorable treatment under the law. For example, under English law, direct action is not foreseen against the P&I club, as the aforementioned "pay to be paid" rule is effective as to third parties (House of Lords judgment in the 1990 "The Fanti" and "The Padre Island" cases).

Application of Spanish law is limited vis-à-vis these clauses of applicable law and relevant jurisdiction. Spanish law is not selected to govern contracts, except in the case of local insurers that cover recreational craft, fishing vessels and other smaller vessels. Accordingly, during the lifetime of the now-repealed 1885 Code of Commerce rules, Spanish ship owners continued to contract P&I insurance, irrespective of a Code, that did not foresee P&I insurance or marine third-party liability insurance. Moreover, EU law confirms that marine insurance is for major risks and that respect for contractual terms is paramount.

Although the 2014 Spanish Maritime Navigation Law governed, for the first time, marine insurance, this regulation was exceptionally prudent in order to comply with EU law and to avoid interfering in the international insurance market. At most, the law contains a few articles establishing the following:

1. The will of the parties prevails.
2. Priority is given to international rules (oil tankers, passenger ships) and national regulations (recreational craft and sport boats that require mandatory insurance foreseen in the Maritime Navigation Law.
3. As its main unique feature, the Law recognizes direct action by the injured third party against the insurer and does not allow contracts to contain any agreements to the contrary. Nevertheless, direct action afforded by this Spanish law is not likely to apply when a major risks insurance policy is governed by foreign law. In conclusion, at present, P&I clubs only allow direct action in certain sector-based cases and where such action is imposed under international law (oil spills, injury to passengers and, as from 2017, injury to sailors).

Given this legal framework, it is very difficult for an injured third party that is not explicitly entitled to direct action to successfully file a direct action claim against a P&I club. The club may admit the legal action, after examining the legislation applicable to the merits of the case, but it also has legal and contractual means to avoid doing so. The best example of this is the Supreme Court's 2003 "Seabank" judgment, which considers that the P&I insurance's clause regarding arbitration in London is also effective with respect to the insurer of goods that subrogated the position of the loading company. In contrast, the 2016 "Prestige" judgment handed down by the Supreme Court's Criminal Division is noteworthy, in that it offers new arguments (added to case-law arguments) for recognizing the full liability of the P&I club vis-à-vis the injured third party. Nevertheless, it has yet to be seen whether the judgment will extend to cases of third-party liability in which there is no additional criminal liability.

We believe that the mandatory third-party liability insurance for recreational craft and sport boats should be excluded from this system that restricts the use of direct action. Although it clearly is marine insurance, it should not be treated as a major risks insurance policy nor be subject to the same legal regime as such a policy. The legal nature of third-party liability insurance is more akin to that of a consumer act (although it is not clear if this is the case where it is contracted by a charter company for its fleet). The Maritime Navigation Law confirms the provisions of Royal Decree 607/1999: this mandatory insurance must be governed by the Insurance Contract Law.

MANDATORY MARINE THIRD-PARTY LIABILITY INSURANCE: GENERIC COVERAGE AND SECTOR COVERAGE

The International Maritime Organization (IMO) plays a key role in coordinating among its members states and between these states and the maritime and insurance sectors. The International Group of P&I Clubs is represented in the IMO. The IMO devised the standard mandatory insurance and direct action clause included in several prevailing and impending international treaties. The basic content is as follows:

1. The imposition of mandatory third-party liability insurance or of an alternative financial guarantee to cover a given risk.
2. The issue by the insurer or guarantor of a document certifying the insurance or the guarantee.
3. State certification from the vessel's flag state attesting that the insurance or guarantee is in force.
4. The parties subject to the law and the type of vessels for which third-party liability must be insured.
5. The quantitative coverage limits.
6. Direct action by the injured party against the insurer or guarantor and the limitation of oppositions the latter may raise.

Mandatory insurance and direct action are gradually being identified over time, in tandem with the coverage already offered under standard P&I insurance.

1. Mandatory insurance and direct action were approved for victims of maritime oil spills by oil tankers (1969 CLC and 1992 CLC).
2. Attempts were made to allow victims of maritime pollution due to substances other than oil to access this regime; however, such conventions have not yet entered into force (1996 HNS Convention).
3. Upon noting that oil pollution often stems from fuel of vessels other than oil tankers, mandatory insurance and direct action were also approved for these cases (2001 Bunker Convention).
4. Several ferry disasters and the fear of terrorist attacks on cruise ships have spurred the approval of mandatory insurance and direct action in the event of death or personal injury to passengers (2002 Athens Convention, with 2006 IMO Guidelines).
5. To safeguard the reimbursement rights of national authorities that must cover the cost of removing ship wrecks due to insolvency or disappearance of ship owners, another mandatory insurance with direct action was approved (2007 Nairobi Convention).

The implementation of these international rules was possible given that the standard P&I insurance already covers these risks (except for in the case of war and terrorism, which is an excluded risk and for which passenger ship owners must contract an additional insurance policy). Spain is party to all these conventions (except for the Nairobi Convention). Not all conventions have the same degree of international acceptance among countries.

More recently, as an outcome of the cooperation between the IMO and the International Labour Office, the 2014 amendment to the 2006 Maritime Labour Convention imposes mandatory insurance for owners of vessels other than fishing vessels and direct action by seafarers in the event of injury or death on the job, as well as for repatriation costs and pending salaries in the event the crew is abandoned. This is also a basic coverage under standard P&I insurance (except for the salary coverage). In fact, it is the most costly item for insurers, due to the plethora of vessels sailing with flags of convenience and the lack of social security systems for many seafarers.

In line with the IMO Assembly's position, the European Union approved Directive/20/EC to ensure that each Member State shall require that owners of ships flying that country's flag have insurance or guarantees covering maritime claims subject to limitation under the 1996 Protocol to the 1976 Convention on Limitation of Liability for Maritime Claims (1976/1996 LLMC Convention), with the insured amounts foreseen in that convention. This Directive was transposed into Spanish legislation through Royal Decree 1616/2011. These rules converted P&I insurance for merchant vessels into a mandatory insurance, as a type of "generic" third-person liability insurance covering a multitude of maritime law claims. Nevertheless, this mandatory insurance does not foresee direct action by injured parties (the International Group publically opposed such a provision in a proposed Directive that did foresee direct action). Direct action by injured parties continues to be vetoed by the P&I clubs in their contracts and in legislation covering major risks insurance.

In conclusion, the purpose of the IMO's mandatory insurance regulations is to guarantee indemnification for parties injured in the operation of an insured vessel in the case of certain – but not all – risks. This, in turn, creates two classes of injured parties:

1. Those where the responsible party is always backed by an insurer or a guarantor of indemnification, to which a claim can be directly made; and
2. Those to which this right is not available. This generalization is not yet admitted by the P&I clubs insurance market.

The situation is different where the insurance contract is subject to Spanish law. The Maritime Navigation Law and the Insurance Contract Law foresee the possibility of direct action. This is the case in Spain with insurance contracts for recreational craft and sports boats (Royal Decree 607/1999) and inshore fishing vessels in Galicia (Law 11/2008). Contracts entered into with local insurers, mutual associations and insurance corporations usually subject the P&I insurance or the recreational craft insurance to Spanish law.

PARTY RESPONSIBLE FOR CONTRACTING THE INSURANCE

Each regulation that requires a specific insurance identifies the party responsible for ensuring its third-party liability derived from sailing a vessel. Several parties may bear third-party liability in connection with the operation of a vessel; however, a priori, only one party is required to contract insurance. The most common example is the owner of a merchant vessel, which is required to secure mandatory third-party liability insurance, while the charterer may choose to voluntarily cover its own liability.

The different mandatory insurance regulations are not fully consistent when identifying the party responsible for contracting the insurance. However, there is a trend to shift this obligation from "ownership" to "operation" of the vessel, i.e., from the owner to the operator. The first mandatory insurance (oil pollution from oil-carrying ships under the 1969 CLC, now 1992 CLC) channels both liability and the mandatory insurance to the registered vessel owner. Insurance against oil pollution from fuel carried by vessels also falls to the registered owner. However, liability in this case is not channeled only to owners but also to other potential responsible parties. The 2002 Athens Convention directly places the insurance obligation on the carrier (owner or non-owner), which is akin to the ship operator. Royal Decree 1616/2011 requires the owner or the "party responsible for operating the vessel," which also equates to the ship operator under the Maritime Navigation Law, to secure a generic insurance. With respect to recreational craft, Royal Decree 607/1999 requires the owner or the disponent owner to contract mandatory insurance (this decree was approved when Spanish legislation did not yet use the concept of "ship operator"). Most likely, the disponent owner is understood as the maritime navigation business owner that uses a sport boat or recreational craft to generate profits, irrespective of whether or not the business owner is the vessel owner. With respect to inshore fishing in Galicia, Law 11/2008 requires the party performing the professional fishing activity and that could therefore bear third-party liability to contract the insurance, not the vessel owner.

In common insurance practice, a policyholder may contract insurance on its own account or for a third party (for example, the ship manager of a merchant vessel acting on behalf of a ship operator). In any event, upon termination of the contract, the insured party must have an interest in indemnification of the damage: to protect its own assets in the event it bears third-party liability.

A single mandatory insurance policy may cover several different insured parties in addition to the party responsible for contracting the insurance. They may be identified by name in the insurance policy. For example, a ship operator may contract a policy in which the registered owner appears as a co-insured for the purposes of complying with the obligations set out under the 1992 CLC or the 2001 Bunker Convention. Or, less commonly, the ship operator's policy may also insure the charterer. With respect to recreational craft, Royal Decree 607/1999 requires the ship owner or ship operator to contract insurance. However, for the purposes of indemnification of third parties, the owner, disponent owner, captain, sailors or even water skiers driving the boat may all bear responsibility.

TYPES OF VESSELS FOR WHICH LIABILITY MUST BE INSURED

Another common feature of the regulations imposing mandatory insurance is the identification of the vessels whose seafaring or operation could give rise to third-party damage. Thanks to the multi-risk nature of P&I insurance, this single insurance is able to comply with several different regulations, each of which imposes a different mandatory third-party liability insurance. Due to their size (gross tonnage above 300), almost all merchant vessels are required to carry generic third-party insurance to cover claims subject to limitation under the 1976/1996 LLMC Convention, pursuant to Royal Decree 1616/2011. In addition to these risks, standard P&I insurance also covers fuel pollution (mandatory for vessels with tonnage above 1,000). In the case of oil tankers, P&I insurance offers coverage in accordance with the 1976/1996 LLMC Convention as well as the mandatory insurance foreseen by the 1992 CLC, when the vessel is carrying over 2,000 tons of oil. For passenger ships, P&I insurance covers the mandatory insurance called for under the 2002 Athens Convention for damages and injury to passengers as well as the mandatory insurance foreseen under Royal Decree 1616/2011.

Recreational craft and sport boats, whether used for private or commercial purposes, must also be insured in Spain against a number of risks laid out in Royal Decree 607/1999.

There is a gap, however, for fishing vessels, for which third-party liability insurance is voluntary, except for inshore vessels in Galicia. As is the case with other aspects of seafaring, fishing is subject to a different framework.

With respect to the flag state of the insured vessel or ship, the general rule is to require mandatory insurance for vessels visiting the ports or waters of states that are party to international treaties, both for vessels whose flag state is party to the international treaties and those of other states. Requiring insurance from foreign vessels is part of the port state's right of sovereignty and control. If this were not the case, it would be discriminatory for national vessels and would jeopardize the essential purpose of the mandatory insurance: to ensure indemnification of damages suffered by third-parties in connection with the operation of seafaring vessels.

P&I clubs refer to each vessel as "entered" in the club. Each ship owner or charterer can enter one or more vessels. If the vessels entail major risks, such as oil tankers or cruise ships, the same vessel may be entered in several different clubs, with each club covering part of the tonnage and assuming a proportion of the risk.

The existence and validity of the mandatory insurance on each vessel is evidenced through a certificate issued by the insurer, as the regulatory documentation for the vessel. This is known as the blue card of P&I clubs. The blue card is not unified and the same vessel (depending on its type) must carry several different blue cards in order to comply with each applicable mandatory insurance regulation. For example, a passenger ship must carry a blue card to comply with the 2001 Bunkers Convention and another blue card for the 2002 Athens Convention. The blue card is different from the certificate evidencing, for non-official purposes, entry of a vessel in the club.

In addition, international treaties approved under the sponsorship of the IMO require that an IMO member country (the country of the vessel's ensign) issue an administrative certificate evidencing the validity and effectiveness of the mandatory insurance. Normally, the certificate is issued upon presentation of the blue card. Two key aspects are of note here: 1) This state certificate has become a type of "trading permit" between

IMO countries. The vessels of non-IMO countries must secure a certificate from an IMO country, or else be excluded from trading in that country's maritime area. 2) The IMO conventions do not establish liability of the state issuing the certificate in the event the insurer is declared insolvent or cannot be located. The analysis of the working papers for the first mandatory insurance treaty, the 1969 CLC, evidences that there was no intention of ever recognizing this liability. This is evidenced by the fact that the idea of the state-issued certificate was copied from the Brussels Convention on the Liability of Owners of Nuclear Ships, with the precise exception of the clause that imposed responsibility on the issuing state (perhaps this is the reason the Brussels Convention never entered into force). The working papers for the more recent 2002 Athens Convention also reveal that no attempt was made to place liability on the state issuing the certificate in the case of insurer insolvency.

Control over insurers' solvency is even more essential in view of this absence of state liability and the plethora of disponent owners of a single vessel and of flags of convenience among merchant vessels. Mandatory marine insurance regulations do not set any parameters in this regard. We must therefore turn to the general rules of supervision and solvency governing insurers authorized to operate in the marine third-party liability branch. The general rule is to require authorization to operate in Spain, in the European Union and in the European Economic Area. The majority of P&I clubs in the International Group and foreign or local commercial insurers operate in the European Union or have branches there, and are currently adapting to Solvency II requirements.

Special concern arises in the case of risks of war and terrorist attacks against passenger ships, which the P&I clubs in the International Group do not cover. The war risks insurance market is volatile, in that it could contract or even completely disappear in the event of a terrorist attack or a series of attacks. This market has its own operators. For example, certain passenger and cruise ships are currently insured against war-related risks by insurance companies created ad hoc for this purpose.

RISKS AND INSURED SUM TO BE COVERED BY EACH MANDATORY INSURANCE

The rules on mandatory insurance are coherent in respect of the description of the risks that must be covered and the minimum insured sum to be offered by the insurer. If this coverage or these compensation limits are not established, the insurance obligation has not been met and the party responsible for contracting the insurance may be subject to fines, may be refused authorization to operate or may be expelled from the waters of a specific state in which it is a foreign vessel.

Each convention sponsored by the IMO sets out a minimum insured sum, either within the text itself (1992 CLC and 2002 Athens Convention) or through reference to another convention (the 2001 Bunkers Convention references the compensation limits set out in the 1976/1996 LLMC Convention). The insured sum is calculated in units of account (not in dollars, euros or any other national currency) equated to the International Monetary Fund's Special Drawing Rights (SDR), in order to facilitate updates thereof. In October 2016, 1 SDR equaled approximately EUR 0.80.

With respect to oil pollution from oil-carrying and non oil-carrying ships, the insured sum required from the insurer under the 1992 CLC and the 2001 Bunkers Convention has been shown to be insufficient for covering major disasters. Currently, the minimum insured sums are very low and do not guarantee full compensation for injured parties. This is evidenced as follows:

1. Although the 1992 CLC compensation limits were doubled in 2000, they have not been updated again and they continue to be very low: around 90 million SDRs per incident and only for the largest ships. The smaller the polluting vessel, the smaller the limit. In contrast, the 1992 Fund (financed by oil companies and, therefore, by end consumers) assumes a limit of up to 250 million SDRs per incident, irrespective of the vessel tonnage.

2. In 2003, following the "Erika" and "Prestige" disasters, the Supplementary Fund was approved, precisely to increase the compensation owned by the funds in these incidents. The Supplementary Fund covers up to 750 million SDRs per incident. This contrasts with the higher figure mentioned above, payable by vessel owner's insurer, which is still significantly lower than what is assumed in the 1992 Fund and, naturally, the Supplementary Fund.

3. Consequently, the P&I clubs in the International Group undertook to pay a portion of the amount paid in these incidents into the 1992 Fund in order to redistribute the risk between the oil industry and the maritime industry (2006 STOPIA AND TOPIA contracts).

4. In 2012, the compensation limits for material damages as set out in the 1976/1996 LLMC Convention were doubled, because the previous limits did not sufficiently cover several major fuel pollution incidents.

5. In its 2016 judgment on the "Prestige" case, the Spanish Supreme Court, Criminal Division, indicated that the 1992 CLC limits are notably insufficient for covering victims' losses. The Court ordered the P&I club in which the vessel was entered to pay an indemnification that was not in line with the 1992 CLC limits, but rather with the insured sum (USD 1 billion, as the P&I club was part of the International Group).

With respect to passenger ships, in contrast, the insured sum payable by the insurer has increased considerably, from 46,666 SDRs per passenger and claim under the 1974 Athens Convention to 400,000 SDRs per passenger and claim under the 2002 Athens Convention. Although the insurer may limit the insured sum to 250,000 SDRs, its liability may even be higher, in view of a contractual undertaking that extends this coverage. For example, P&I clubs in the International Group generally extend the insured sum to USD 2 billion in passenger damages per vessel and incident, and to USD 3 billion for damages to passengers and sailors. This high insured sum, as with the USD 1 billion for oil pollution, is possible thanks to the claims-sharing between member clubs and the reinsurance that is collectively contracted in the market. There is no insured sum for other types of claims. Although it has not been necessary to date, the clubs could even require catastrophic calls from their members. In any event, P&I clubs hold fast to the ability to enforce the global or sector liability limits from which their insured may benefit (in the "Prestige" case, as we have seen, this did not turn out well for the P&I club ordered to pay the compensation).

For risks related with war and terrorist attacks on passenger ships, the 2006 IMO Guidelines modify the 2002 Athens Convention, limiting the figure to a maximum of 350 million SDRs per vessel and incident. The lower the passenger count, the lower the limit.

Lastly, Royal Decree 604/1999 also sets out minimum insured amounts for personal and material damages caused by insured recreational craft or sport boats. Policies generally always offer the possibility of increasing the minimum insured sum, whereby they cover all or part of the claim excess which would otherwise be assumed by the insured. The experience in Spain evidences that the regulatory insured sum is, a priori, sufficient for covering the bulk of personal and material damages normally caused by incidents involving these vessels. Nevertheless, a Supreme Court judgment from 2015 analyzes a case of a fire on a docked recreational craft that spread to nearby boats, causing material damages that greatly exceeded the regulatory insured sum. The Supreme Court ordered the insurer to pay the voluntarily-increased insured sum. The damages, however, were even greater than the amount assumed by the insurer. With respect to the excess, the Court denied the insurer the right to avail of the indemnification limits set out in the 1976/1996 LLMC Convention, as the case involved a recreational craft to which the Convention, envisaged for commercial usages, did not apply, considering that it established an exception to the principle of full restitution.

In contrast and although other decisions have established otherwise, certain judgments handed down by the French Cassation court (Cour de Cassation) accept such a limitation, deeming that protection for recreational sailing is in the public interest and that the LLMC Convention does not distinguish between merchant vessels and recreational craft.

[1] This text sets out the main conclusions of the author's research in the framework of assistance from Ignacio H. de Larramendi of the Fundación MAPFRE (2014 edition). The complete text of the research is set out in a paper titled "Third-party liability insurance in connection with seafaring vessels" ("El seguro de responsabilidad civil derivada de la navegación de un buque"), also published by Fundación MAPFRE, to which the author is grateful for both assistance and publication.