Developments in Marine Insurance under the Spanish Navigation Act

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On September 25 2014, the Maritime Navigation Act (hereinafter, MNA) entered into force. The newly approved Act introduces the concept of marine liability insurance (Articles 463 to 467) into Spanish legislation for the first time. Such coverage is in some ways similar and hence comparable to that offered by P&I Clubs.

Article 76 of the Spanish Insurance Act of 1980, provides for the possibility of injured parties bringing a direct action against civil liability insurers. Nevertheless, neither case law nor writers on the subject have clarified how this rule applies to marine insurance, mainly because marine liability was covered by foreign P&I Clubs, under policies governed by foreign laws.

In its Judgment of 3 July 2003, the Spanish Supreme Court did not consider P&I cover to constitute civil liability insurance but rather indemnity insurance under the "pay to be paid" provision included in the P&I cover.

Legislation has now attempted to shed some light on this matter by expressly referring to P&I Clubs and the cover they provide in the abovementioned articles. Article 465 of the MNA, concerning the obligations of civil liability insurers and direct action reads as follows:

"The insurer's obligation to compensate, in this kind of insurance (civil liability insurance), exists from the moment the assured is held liable and responsible towards an injured party. The latter shall have direct action against the insurer in order to demand compensation. Any clause or agreement modifying the present provision shall be void."

Although no case law has yet been established on Article 465, it seems clear that this Article opens up the possibility of third parties having a right of direct action against the wrongdoer's insurer in cases where Spanish law applies, since P&I Clubs are generally construed as civil liability insurers.

The possible consequences of the application of this Article remain to be seen since it is unclear how the Spanish Courts will apply it and how they will view the possibility of acting directly against P&I Clubs if they continue to observe the Supreme Court decision that did not regard P&I Clubs as civil liability insurers. The Spanish Courts may reject claims filed against the Clubs considering:

- That P&I cover is governed by English law;
- The possibility of P&I Clubs relying on the "Pay to be Paid" rule as a type of indemnity insurance; and

The general contract law principle according to which contracts are governed by the law of the country expressly chosen by the parties (generally included in the Jurisdiction and Arbitration clause in P&I Rules).

However, the Spanish Courts may accept jurisdiction to hear the matter (direct suits against P&I Clubs) in cases where Spanish law is applicable considering that:

- Marine insurance is now governed by the MNA rather than the Spanish Commercial Code;

- The Spanish Insurance Act of 1980 (hereinafter, SIA) remains in force as secondary legislation and Article 76 thereof regulates direct action against civil liability insurers. In particular, the SIA expressly provides for the possibility of the injured party bringing a direct action against the insurer and the wrongdoer simultaneously, and not only in the event of insolvency of the latter;

The MNA provides that mandatory insurance of recreational craft shall be governed by the SIA and not by the MNA.

What is clear is that Article 465 of the MNA opens the door to a new line of interpretation on the liability and obligations of P&I Clubs in Spain and it is likely that this article will encourage many injured parties to bring new claims against P&I Clubs in this country. We must, therefore, wait to see how the Spanish judges will interpret this new legislation.

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