



International Maritime  
Law Seminar 2018

SAN SIMÓN & DUCH

# LIMITATION OF LIABILITY FOR MARITIME CLAIMS:

## WHAT HAPPENS WITH PRIVATE YACHTS?



International Maritime  
Law Seminar 2018

## LLMC CONVENTION

Spain is party to the 1976 London Convention on Limitation of Liability for Maritime Claims and has also ratified the 1996 Protocol which entered into force in Spain on 10 April 2005 and the Amendments to 1996 Protocol adopted on 19 April 2012 in force since 8 June 2015 (“the 1976 LLMC Convention”).



## SPANISH NAVIGATION ACT

The Spanish Navigation Act of 24 July 2014 rules limitation of liability under Title VII, articles 392 - 405

Article 392 of the Spanish Navigation Act reads:

*“The right to limit liability in claims arising from a same accident shall be governed by the terms set forth in the Protocol of 1996 that amends the Convention on Limitation of Liability for Maritime Claims, done at London on 19th November 1976, with the reservations made by Spain in the Instrument of Adhesion, and in this Title”.*

However, right to limit liability assisting to recreational boats' owners has been under discussion by the Spanish Courts.

**OLYMPIA CASE**



The **OLYMPIA CASE**

While it was berthed in the Port of Botafoch on December 2005, the OLYMPIA caught fire due to an electrical failure. The fire spread to the adjacent yachts and caused the total loss of five neighbouring yachts.

## OLYMPIA CASE

The owners of the damaged yachts and their insurance companies filed claims against the owner and insurance company of the OLYMPIA in which the fire originated, and against the Marina in which the boat was berthed.



**JUDGMENT → APPELLATE COURT OF PALMA DE MALLORCA  
2 November 2012**

Owner was not entitled to limit his liability under the 1976 LLMC regime.

Owner was liable for the total amount claimed (approx. € 8 mill).

Ex tort action is not a “maritime claim” as per article 2 of the 1976 LLMC.

Claim was not connected with the “operation of the ship”.



**XTC OF LONDON  
CASE**

The **XTC OF LONDON** case.

The XTC of London caught fire in January 2008 while it was berthed at Port Vell in Barcelona.



**XTC OF LONDON  
CASE**



Owners and underwriters of the XTC of London were involved in legal proceedings before the Courts of Barcelona.

**JUDGMENT** → **APPELLATE COURT OF BARCELONA**  
**11 March 2015**

Denied the owner the right to avail of the indemnification limits set out in the 1976 LLMC Convention.

Only in case of “commercial use”, owners of the Yacht would be entitled to limit their liability.

**JUDGMENT → APPELLATE COURT OF PALMA DE MALLORCA**  
**2 November 2012**

**JUDGMENT → APPELLATE COURT OF BARCELONA**  
**11 March 2015**

- ❑ The only legal reason assisting owners to limit their liability would be that the vessel is used for a business activity.
- ❑ This implies that recreational boats shall be out of the scope of application of the 1976 LLMC Convention.



## SUPREME COURT JUDGMENT 6 MAY 2015

Is the owner entitled to rely on the limitation regime set out by the 1976 LLMC Convention ?

The Supreme Court held that the owner was not entitled to limit his liability under the 1976 LLMC Convention' regime and ruled that the owner was liable for the total amount claimed.

The Supreme Court confirmed the decision issued by the Court of Appeal of Palma de Mallorca which established that the main action exercised by the plaintiffs was a non-contractual/ ex-tort action (ruled by Article 1902 of the Spanish Civil Code) and an action based on Article 43 of the Spanish Insurance Act, being not a “maritime claim” covered by article 2 of the 1976 LLMC Convention, but rather a civil liability claim.



Said Court reasoned that the claims filed were not those contemplated by article 2.a) of 1976 LLMC Convention. This article, according to the Supreme Court, had been reproduced by Article 396.1 of the Spanish Navigation Act which has kept the expression “operation of the vessel” as used in the Spanish version of the London Convention, which requires that the vessel is operated in the course of a business activity and this is discrepant and inconsistent with the use of the boat as a recreational craft.

According to the Supreme Court' findings, **the reason for the limitation of liability shall be placed within a business activity.**

Limitation of liability implies an exception and a privilege with respect to the general rule in damages which requires that damages are fully compensated.

Such exception to the general rule would not be reasonable or justified when damages are caused by a ship that is being used for recreational purposes.







**SUPREME COURT  
DECISION (“AUTO”)  
28 JUNE 2017**

Is the owner entitled to limit its liability ?

**DECISION (“AUTO”) ISSUED BY THE SPANISH SUPREME COURT  
DATED 28 JUNE 2017.**

In this recent decision, Spanish Supreme Court has confirmed previous findings and arguments contained in the Judgment dated 6 May 2015.

Again, the Supreme Court has rejected the right to limit liability for the damages arising in connection with a fire occurred in a yacht while it was berthed.

Applying same arguments, Supreme Court has declared that **ships not used for business activity could not invoke the limitation of liability** pursuant to the 1976 LLMC Convention and would not be authorised to constitute the limitation fund.

Article 2 (a) 1976 LLMC Convention: Claims subject to limitation..... in direct connexion with the operation of the ship.

Supreme Court decided that limitation of liability is conditioned to the “operation of the ship”. Operation shall be understood as “business activity”.

- ❑ Owners of yachts would not be entitled to rely on the limitation regime as set out by the 1976 LLMC Convention.
- ❑ Owners of yachts which are connected with a business activity ...would be entitled to rely on the limitation regime as set out by the 1976 LLMC Convention ?

Thank you

*Mercedes Duch*

[mduch@lsansimon.com](mailto:mduch@lsansimon.com)



**follow us!**



@SSD\_global (ENGLISH)



@SanSimonDuch



San Simón & Duch



San Simón & Duch



blog.lsansimon.com

[www.Lsansimon.com](http://www.Lsansimon.com)

