



SEMAPHORE

Newsletter of the Maritime Law
Association of Australia and New Zealand



CJEU Determines Prestige Insurer Must Pay

In the recent determination of the Court of Justice of the European Union (CJEU) in *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* (Case C-700/20), it was held that US\$1 billion compensation must be paid.

The award, which is to be paid to the Spanish State by The London Steam-Ship Owners' Mutual Insurance Association Ltd (London P&I Club), is as a consequence of the significant oil spill damage caused by the November 2002 sinking of the tanker Prestige.

"By its judgment delivered today, the Court holds that Regulation No 44/2001 must be interpreted as meaning that a judgment entered by a court of a Member State in the terms of an arbitral award cannot prevent, in that Member State, the recognition of a judgment given in another Member State where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of the first Member State without infringing the provisions and the fundamental objectives of that regulation, in particular as regards the relative effect of an arbitration clause included in the insurance contract in question and the rules on *lis pendens*," stated a CJEU media release on June 18.

"In doing so, the Court ensures, in essence, that those provisions and fundamental objectives cannot be circumvented by means of arbitration proceedings followed by judicial proceedings seeking to have the terms of the arbitral award entered in a judicial decision."

The case followed the 2002 incident, whereby the 244-metre and 42,820-GT Prestige split in two and sunk off the coast of Galicia (Spain) as the consequence of a "violent storm". The Mare Shipping Inc-owned tanker's cargo of 70,000 tonnes of fuel oil spilled, causing "significant damage to beaches, towns and villages along the north coast of Spain and the west coast of France".

The Spanish State, amongst other victims of the damage, brought a civil action before the Spanish courts. This resulted in the London P&I Club being ordered to pay compensation for the damage caused, subject to the limit of US\$1 billion.

However, the Prestige's insurer initiated arbitration proceedings in London on the basis of a clause in the insurance contract.

"Those proceedings resulted in an arbitral award according to which the claims for damages brought by Spain before the Spanish courts should have been made in those arbitration proceedings," stated the CJEU.

"In addition, the arbitral award concluded that, in accordance with another clause in the insurance contract – the 'pay to be paid' clause – the London P&I Club could not be liable to Spain in the absence of the prior payment of the damages, by the owners of the vessel, to Spain."

"As provided for by the Arbitration Act 1996, the London P&I Club applied for and obtained a judgment of the High Court of Justice (England & Wales), Queens Bench Division (Commercial Court) in the terms of the arbitration award. That judgment was confirmed in appeal proceedings brought by Spain."

However, the Spanish State also applied to the courts in the United Kingdom for the recognition of the Spanish order enforcing the judicial ruling finding the London P&I Club liable to pay compensation for the damage caused. The High Court granted that application in May 2019.

"The London P&I Club brought an appeal against that recognition, and the High Court decided to refer questions to the Court of Justice concerning the interpretation of Regulation No 44/2001.

"It asked the Court, in essence, whether that recognition could be refused on the basis of the existence, in the United Kingdom, of a judgment entered in the terms of an arbitral award and the effects of which are irreconcilable with those of the above-mentioned judicial ruling."

The full text of the judgment is published on the CURIA [website](#).

An historical overview of the Prestige can be found via [Wikipedia](#).

September 2022

