



## **Comment and Law Review on Judgment 241/2015 of the Spanish Supreme Court of 6th of May 2015.**

The Spanish Supreme Court, in its recent decision of 6th of May 2015, has construed the London Convention of 1976 relating to limitation of Maritime Claims (LLMC76) to the effect that the Owners of a Yacht cannot limit liability under Article 2 of the LLMC76.

The facts of the Judgment relate to the damages caused to six yachts whilst being moored at Puerto Deportivo Botafoch, Ibiza, resulting from a fire on board the Yacht “Olympia, back in December, 16th 2005.

The Judgments of first Instance and High Court condemned the owner of the yacht and the underwriters to the full compensation of the damages, without limitation, and absolving the Port of Botafoch. The High Court ratified the First Instance resolution and simply dismissed the existence of the limitation fund, without taking it into consideration.

The Supreme Court, amongst many other arguments, sets the non-application of the LLMC to the owner and/or underwriters of the Yacht, stating that the subject claims did not fall under the scope of application of the LLMC.

The reasoning of the Judgment is based on one main fact: that the claims (maritime claims derived from the use of a yacht) cannot be included within the context of Art.2 a) of the LLMC when it refers to “*operation/exploitation of the ship*”.

The Supreme Court thus argued that the Convention required a commercial, mercantile, profitable or entrepreneurial activity, all fully incompatible with the character and use of the pleasure yacht causing the fire and the damages and, therefore, outside the scope of the Convention.

The Resolution declares that limitation can be only justified in cases of commercial use, as a privilege, concluding that such privilege is not justified when the “vessel” causing the damages is a Yacht of private use.

The Judgment reveals one very important aspect: It does not exclude limitation of liability to yachts generally, but makes express reference to its use or, indirectly, to the maritime “nature” of the claim. And this may be a crucial argument and justification for its open debate.

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