

## White Collar Crime - Spain

### **Prestige case: €2.2 billion in environmental damages at stake**

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#### **Facts**

On November 19 2002 the vessel Prestige broke in two and sank 138 nautical miles off the Spanish coast, spilling 63,000 tons of fuel oil into the sea. The accident severely polluted 2,980 kilometres of shoreline, 1,137 beaches and 450,000 square metres of cliff areas. An estimated 115,000 to 230,000 sea birds died and 526 tons of fuel oil leaked into the depths of the Spanish continental shelf. The spillage affected all marine ecosystems and a high concentration of aromatic hydrocarbons infiltrated the biota.<sup>(1)</sup>

Six days earlier, at 2:10pm on November 13 2002, while sailing 23.5 nautical miles off the Spanish coast, the Prestige's hull had cracked open, spilling a significant amount of its oil cargo into the sea, which caused the vessel to list dangerously and nearly to capsize. At 2:15pm the crew sent a distress message to the port authorities. The maritime authorities decided that the best course of action would be to sail the Prestige away from the coast. Several helicopters and tugboats were mobilised to the disaster area. However, the rescue and recovery efforts were complicated by the adverse weather conditions.

#### **Parties**

On November 15 2002 the Spanish judicial authorities initiated criminal proceedings to investigate the cause of the catastrophe. Within the criminal proceedings, the captain, the chief engineer and the first officer of the Prestige were charged with criminal offences against the environment. The Spanish director general to the Merchant Navy was also charged with similar criminal offences at a later stage as a consequence of his decision to sail the Prestige as far from shore as possible. No criminal charges were brought against the shipowner (Mare Shipping Inc), the charterparty (ERC Trading, formerly known as Crown Resources AG) or the ship operator (Universe Maritime Ltd). Until December 2010 legal persons could not be held criminally liable in Spain. Further, the prosecution did not bring criminal charges against the directors or managers of the companies responsible for the vessel's maintenance – a decision that was crucial to the outcome of the case.

In accordance with the Criminal Procedural Law, both the public prosecutor and any prejudiced party may appear in criminal proceedings as a private prosecution and bring criminal actions against the defendants. Moreover, in accordance with the law, the public and private prosecutions may bring civil actions within criminal proceedings against the defendants, any legal persons which may have profited from the effects or causes of the criminal offence and their respective insurers.

Indeed, more than 20 private prosecutions appeared as parties to the criminal proceedings, including:

- the Spanish and French governments;
- Spanish and French regions, provinces and municipalities affected by the oil spill;
- non-governmental organisations for the protection of the environment;
- a significant number of small and medium-sized companies, associations and cooperatives related to the fishing industry and the tourism sector; and
- a large amount of individuals claiming damages of varying degrees.

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Subsidiary civil liability was sought from the following entities:

- the Spanish state;
- Mare Shipping Inc (the shipowner);
- Universe Maritime Ltd (the ship operator);
- ERC Trading, formerly known as Crown Resources AG (the freighter);
- the International Oil Pollution Compensation Funds;<sup>(2)</sup> and
- the American Bureau of Shipping.<sup>(3)</sup>

In addition, a direct civil action was brought against the London Steamship Owners Mutual Insurance Association, which had been the Prestige's insurer since 2002.

### **Decision**

On November 13 2013 the Criminal Provincial Court of A Coruna rendered a judgment in the criminal proceedings acquitting all defendants of the criminal offences against the environment. Only the captain of the Prestige was sentenced for contempt of the port authorities due to his initial reluctance to comply with the order to move the vessel away from shore. The judgment was appealed before the Supreme Court.

After considering a dozen expert reports provided at trial, the criminal court reached the following conclusions:

- Even though the Prestige possessed the relevant certificates and documentation in order to sail legally, the direct cause of the accident was that the Prestige was not properly maintained.
- The evidence produced did not prove that the Prestige's captain, chief engineer and first officer were aware of the actual conditions of the vessel. Therefore, they were not considered to have aided its sinking as a result of wilful intent or recklessness.
- The decision taken by the director general of the Merchant Navy to move the Prestige away from shore was reasonable given the circumstances, and there was no proof that berthing the vessel in a small port as suggested by some experts would have been safer and more viable.
- The captain's conviction for contempt did not mean he should be held liable for the damages caused by the spillage.

### **Civil liability under Criminal Code**

The civil liability arising from a criminal offence under the Criminal Code may be direct or subsidiary.

#### ***Direct civil liability***

In accordance with Articles 109 and 116 of the Criminal Code, an individual or company <sup>(4)</sup> convicted for a criminal offence will also have direct civil liability for the damages caused.

Article 117 of the code sets out that insurers will also have direct civil liability when, as a consequence of a criminal offence, an event covered by an insurance policy has occurred. This liability is limited to the amount covered by the corresponding insurance policy.

#### ***Subsidiary civil liability***

Article 120 of the code sets out the subsidiary civil liability of other individuals or legal persons under certain circumstances. Article 120.4 of the code accounts for the civil liability of natural or legal persons working in any kind of industry or commerce for criminal offences perpetrated by their employees, assistants, representatives or managers when carrying out their obligations or rendering their services.

### **Civil consequences of acquittal**

Both direct and subsidiary civil liability can arise only from a previous criminal conviction. In this case, no individuals were convicted for the criminal offences against the environment. Therefore, no civil liability could arise, given that no criminal offence was proven.

In terms of compensation, the public prosecutor claimed €1.974 billion in compensation for the Spanish state, €172.8 million for the affected companies and individuals and €86.36 million for the French state.

However, as no one was held responsible for the catastrophe, the victims of the oil spill and the Spanish and French public administrations, which paid the costs of remedying the environmental damage, have not been compensated.

### **Comment**

The criminal proceedings are still pending on appeal before the Supreme Court. Should the appeal be dismissed and the judgment be confirmed, the victims will still have legal avenues open to them in order to seek compensation for damages. A criminal acquittal does not preclude the affected individuals, companies and public administrations from bringing civil actions in separate civil proceedings against the shipowner, ship operator, freighter or other potentially liable companies. Moreover, the insurers posted bail of €22.7 million at the beginning of the criminal proceedings. Given that the judgment acquitted the defendants, should it become final, the Provincial Court of A Coruna will decide where this money should go. It is possible that the €22.7 million will be returned to the insurers or subject to a precautionary seizure if the civil parties announce their intention to file a new civil claim.

Taking this course of action would involve new judicial proceedings, but would allow the plaintiffs to seek civil compensation. Tort liability under Spanish law is subject to a one-year statute of limitations. Therefore, any civil actions should be filed within one year of the judgment becoming final and binding. The judgment sheds light on the causes of the accident, which would prove useful in redirecting liabilities towards the companies. In fact, in future potential civil proceedings the judges could be bound, to a certain extent, by the facts declared proven in the judgment.

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## Endnotes

- (1) Biota are the total collection of [organisms](#) of a geographic region.
- (2) The International Oil Pollution Compensation Funds are three intergovernmental organisations (the 1971 Fund, the 1992 Fund and the Supplementary Fund) which provide compensation for oil pollution damage resulting from spills of persistent oil from tankers ([www.iopcfunds.org/](http://www.iopcfunds.org/)).
- (3) The American Bureau of Shipping, based in Houston, Texas, is one of the three major ship classification companies, together with UK company Lloyd's Register and Norwegian company Det Norske Veritas.
- (4) Corporate criminal liability is inapplicable in this case due to the date on which the events occurred.

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