Collisions between Vessels: Liability and Coverage

The Latin American Association of Maritime Underwriters (ALSUM) brought together marine insurance experts in an interesting online colloquium on the **impact and vicissitudes** arising from a claim affecting two or more vessels.

The Alsum forum entitled *Collisions between Vessels: Determination of Liability and Coverage* served as a meeting point for professionals in Chile and Spain. In addition to the speakers' different experiences that highlight the synergies between the shipping and insurance industries, it was especially revealing to become familiar with the regulations that apply in each region and how they are applied in shared waters.

Definition of "collision" in Chile

The first presentation of the day was given by Andrew Cave, CEO of Cave Group, a Chilean business group with more than fifty years of experience in the insurance industry for the maritime and port sector. He told us the exact definition of **collision** under the Chilean Commercial Code, described in the official institution as "collision" (literally "approach"), which states that the concept corresponds to a **collision "between two or more vessels" or when their displacement causes damage** to these vessels or to third parties, as well as to the cargo and persons on board – even if in this second case the collision does not happen. These standards, in addition to in the sea, also apply to river waters, lakes or waterways.

The expert explained the **fundamental classification of the common consequences of a collision** that affect its risk management and that would include:

- Human injury or death to crew and passengers.
- Material damage to hulls and cargo.
- Major damage due to the vessels involved in the collision.
- Contamination – leading to cleaning costs, environmental monitoring and even fines.
- Damage and claims to third parties.
- Fines issued by the maritime authority or the State.

All these responsibilities are observed and accepted by different institutions, such as the Chilean Commercial Code or the Chilean Maritime Authority and governed by the International Regulations for Preventing Collisions at Sea (COLREGS). According to these regulations, which is the law of transit at sea, it is considered a regulation to which countries adhere **by sectoral commitment.**

Once the impact of the collision was determined, Cave identified **the subjects who are responsible for said consequences.** For example, in the case of damage caused by force majeure or unforeseeable circumstances — without error, fault or attributable liability — "each one is responsible for the damage it has suffered." In the case of fault or willful misconduct of the

captain or crew of one of the ships, the ship owner is responsible.

For its part, the **Chilean Maritime Authority has the responsibility to analyze the sequence of events** that led to the collision, with an investigation that can be appealed by those alluded to in the summary, even if the facts determined to be true entail civil liability. Since there are no maritime courts in Chile, civil courts "try to ensure that the maritime authority shows the percentages of liability of those involved." In terms of limitation of liability, there is, according to the expert, **a right of defense for ship owners** that allows them to not compensate for all the damage caused and in Chile it is considered a right that is enjoyed by default.

Finally, the Cave Group highlights **three coverages applicable to the collision:**

1. **Transportation Insurance.** Losses and property damage in transit, major damage contributions and coverage.
2. **Hull and Machine Insurance.** Material damage in this regard, together with its contribution to the major damage.
3. **P&I insurance.** Damage to another vessel for which it is responsible, damage to cargo, pollution, third-party claims, granting of guarantees and constitution of Liability Limitation Fund, as well as legal and technical assistance.

Concluding his presentation, Andrew Cave recalled that collisions are a navigational risk that can have serious — and expensive — consequences, with financial and business costs that can have a major impact on industry professionals, but with the right insurance — and the right advisors — you can manage that risk with remarkable success.

Collisions under Spanish regulations

After this first presentation, Julia Rubiales, an active lawyer since 2007 and senior associate of the firm **MAIO LEGAL S.L.P,** within the department of maritime law, transportation and insurance, took the floor. Collisions in Spain are studied under the umbrella of Maritime Navigation Law 14/2014, which "encompasses each and every one of the applicable regulations" in the country and is considered a legislative milestone since it fills in the existing gaps in the field of navigation safety, environmental protection, the fight against pollution, fishermen's interests and other aspects, coordinating international law and its suitability for current practice.

Referring to the definition of collision presented by Andrew Cave, Rubiales clarified that the regulations are there to **determine the liability for damages arising from the collision,** which "is unrelated to where it is claimed; that is, in a civil or commercial court." However, this regulation "does not apply to relationships between parties linked by other types of contracts, whether charter, ticket, bill of lading, etc." That is, that the liability for damage suffered in the collision may be contractual, but that which is determined by law is non-contractual.

What requirements do you need to prove in order to establish liability?

- The action or omission by one or more vessels.
- The damage created, not only with the expert reports that each of the parties may provide, but also those issued by the Permanent Commission for the Investigation of Maritime Accidents and Incidents, which was constituted by the Ministry of Development and which, without being binding, are always taken into account by the court.
- The causal relationship between the action/omission and the damage. Where this cannot be determined, courts will normally dismiss claims against the potential causer.

Once the responsibility has been determined, MAIO LEGAL distinguishes **three types of collision:**

1. Exclusive fault,
2. Shared fault,
3. And doubtful — with proven fault, but no legal presumption —.
   As for liability to third parties, there is always a joint and several liability for the legal provision of the ship owners caused by common or shared fault, including material and personal damages. If there is a single payer, the payer has the right to claim payment from each of their co-debtors.

What are the limits of liability under the Maritime Navigation Act (LNM) in Spain?

As in Chile, ship owners in a collision situation in which they face third-party claims have the right to limit that liability, established in the London Protocol of May 2, 1996. This right is also included in the LNM and is exercised as long as it is expressly invoked before the competent **Spanish judicial or administrative bodies.** Some aspects such as rescue or salvage operations, damage involving hydrocarbon contamination or nuclear damage are excluded from this limitation.

Risk Management and Coverage

We returned to Chile with the third participant of the day, Juan Guillermo Hincapié, president of the Marine Maritime Insurance group on the Ibero-American Insurance Law Committee and vice president of the Gallagher Re Atlantic Coast. The expert focused on his presentation on the three main collision coverages that Andrew Cave already pointed out at the beginning of the evening: hull and P&I policies.

Standard hull coverage agree that insurers will pay no more than three-quarters of the total liability settled on the occasion of the collision. That's why many vessels cover one hundred percent of their liability for P&I coverage.

How is collision liability coverage conceived?

It refers only to non-contractual liability, it makes no reference to a previously existing relationship as an agreement between two vessels and applies specifically to the delay or loss of use of any

other vessel, to the major damage and to the remuneration for salvage, “and always making clear that it must be a civil liability arising from a collision with another vessel.”

Hull coverage acts independently of other coverage; it is not cumulative, but is required at the same time and is settled — as noted in the previous presentations — according to the **principle of reciprocal responsibilities** to be taken into account by the insurance payer. Applying the principles of limitation of liability, insurers will also not exceed the payment of three-quarters of the insured value of the vessel.

What does public liability coverage for collisions not cover in hull policies?

- Removal or disposal of debris, shipwrecks, cargo or anything else (typical factors in P&I clauses).
- Any property or furniture on the vessel itself.
- Cargo or other property.
- Loss of life, personal injury, or illness.
  Pollution or contamination, except that caused by the other vessel.

These policies also note the possibility that a type of liability is established in the collision that is agreed between the vessels involved, outside of any litigation procedure and with the oversight of **a single arbitrator appointed by mutual agreement** between the insurers and the insured party.

The P&I policies, for their part, do cover personal injury, damage to the environment and the removal of debris, as well as damage to the vessel and cargo. Liabilities, costs and expenses incurred as a result of a collision between an insured vessel and any other vessel are covered. **In this case, 100% of the costs are covered.**

In the case of cargo coverage, the expert warned that **there is no official description,** but rather refers to the general coverage of material loss **except for minor exclusions,** such as that related to the lack of navigability of the vessel (a complex point in subsequent collision negotiations).

Like hull insurance, P&I policies provide **for liability coverage, but related to the collision,** which is essentially under the clause according to which the damaged ship owner is not liable to the cargo carrier or recipient. This implies that, in practice, the owner of the cargo could claim 100% of the liability from the contributing vessel in the collision.