ABSTRACT

The owner of the ship may as a result of its use sustain substantial losses by incurring liability to third parties. Various sources of maritime law impose an obligation on the shipowner or other person operating the ship to have sufficient insurance covering his liability for damage caused by the ship to other persons and property. Moreover, these sources of law impose obligations on the State in whose port the ship enters as well as on the State in whose register the ship is entered to verify the existence of liability insurance cover and to take appropriate measures in respect of ships not covered by such insurance. These sources of law are international agreements to which Croatia is a party, EU regulations and directives as well as Croatian internal laws. All these sources are identified and studied in this paper. Special attention is given to a number of important and recent amendments to Croatian maritime legislation dealing with this subject-matter. Main objectives to be achieved by prescribing compulsory liability insurance are better protection for victims, property and shipowners as well as the elimination of substandard ships. Generally, compulsory liability insurance may be a useful tool to improve the quality of merchant shipping. However, there are some problems related to the implementation of these rules. They are elaborated in the paper.

KEY WORDS

maritime law, marine insurance, compulsory liability insurance of shipowners, direct action, Protection & Indemnity (P&I) Clubs

1. INTRODUCTION

Contract of marine insurance is a contract whereby the insurer, against the payment of an insurance premium by the insured, undertakes to indemnify the insured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.1

There are three basic types of marine insurance: hull insurance (on the ship and machinery), cargo insurance (on cargo) and liability insurance. Moreover, income

from the operation of the ship including freight, charter hire and passenger's fare, expected profit on cargo as well as crew's wages and other remuneration may be subject-matter of marine insurance. One could say that each property which may sustain loss from a maritime peril as well as the liability and expenses arising there from could be subject-matter of marine insurance.

It is desirable for the shipowner, ship operator, carrier or other person using the ship to arrange and maintain appropriate insurance covering their possible liability arising from such use. This insurance cover shall significantly reduce various risks related to the carrying of business. If such professional liability of the person using the ship arises, the insurer shall, directly or indirectly, bear the financial burden and pay damages sustained by third party. Without such insurance cover and in cases of substantial amount of damages, shipowner or other liable person probably should not be able to pay these damages. That may lead to the bankruptcy of the shipowner. Therefore, the third party probably could not be compensated to the amount of damages really suffered or at least not to the amount of damages that could have been compensated if the liability insurance previously has been arranged.

Possible risks and liabilities arising from the use of the ship may be huge. Such liability is therefore in practice not insurable at the standard insurance market. For that reason marine liability insurance for shipowners and other persons exploiting ships is in most cases provided by the Protection and Indemnity Clubs (P&I Clubs), mutual associations of shipowners who, by means of contributions known as calls, provide mutual protection against liabilities related to the exploiting of ships. Shipowners and other persons who contribute to a P&I club are members of that club. Such ships are said to be entered with the club. A certificate of entry shall be issued in respect of such ship. It may serve as evidence that a ship is covered by the club’s insurance. Moreover, even some other formal certificates of insurance (like so called Blue Cards) may be issued by the club pursuant to provisions of relevant international maritime conventions. One could notice that pursuant to relevant international agreements dealing with maritime law (maritime conventions and protocols), EU regulations and directives as well as under domestic laws in a significant number of states, shipowner or other person using the ship is required to arrange and maintain his liability insurance cover. Without the proof of such insurance cover, a ship may not be entered in the register of ships. Such ship may not operate in ports of a state which law prescribes such compulsory insurance. Moreover, if compulsory insurance cover is missing in respect of a particular ship, competent authorities of the port state may detain such ship. Finally, a fine may be imposed against the shipowner or/and other person responsible for the lack of compulsory insurance cover.

Main reason for introducing compulsory liability insurance is, as it has been mentioned, the concern that claimants will not obtain the compensation due to them because of insolvency of the liable party. Closely associated with this reason is the concern for accessibility: the claimant must be helped to overcome the problems of pursuing a claim against a “paper shipping company” in a remote jurisdiction. The third reason for compulsory insurance is that it is believed that third party providers of insurance cover will contribute to higher standards of ships. If a ship is not seaworthy, it would not get insurance and a compulsory insurance requirement will prevent it from sailing.


Various types of compulsory liability insurance are required under provisions of Croatian maritime law. Such provisions may be found in international maritime conventions ratified by Croatia as well as in EU legislation and Croatian domestic laws. All these types of compulsory marine liability insurance under Croatian law shall be elaborated in following chapters.

2. COMPULSORY LIABILITY INSURANCE REQUIRED BY VARIOUS SOURCES OF CROATIAN MARITIME LAW

2.1. Civil Liability Convention 1992

Croatia is a State Party to the International Convention on Civil Liability for Oil Pollution Damage 1992 (CLC 1992). CLC 1992 provides a uniform set of international rules for determining liability and provide compensation to those who have suffered damage caused by the escape or discharge oil of from ships. CLC 1992 applies to damage caused in the territory and waters of a State Party as well as in exclusive economic zone or, alternatively when such zone is not declared, an area beyond and adjacent to the territorial sea of that state, but not more than 200 nautical miles from the baselines from which the territorial sea is measured. Generally, only oil carried on board is covered by CLC 1992. Bunker oil is covered only if it is carried as a cargo or if it escapes from a convention vessel as defined in Article 1 of the CLC 1992. Liability for damage is strict with some possible exemptions available. Liability is limited and channelled only to the registered shipowner. Therefore, he is the person required to take out the necessary compulsory liability insurance cover required by CLC 1992. More precisely, owner of the ship carrying more than 2,000 tons of oil in bulk as cargo, must maintain liability insurance or other financial security up to the limits required in CLC 1992 for such ship. A formal certificate confirming the existence of such liability cover must be obtained by the shipowner from the maritime authorities of the state of registry and must be kept on board. Liability cover is usually provided by the P&I club. Provisions very similar to described provisions of CLC 1992 may be found in Article 62 paragraph 1 and Article 820 of the CMC.

2.2. Bunker Convention 2001

International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention) has been adopted by the International Maritime Organization at London on March 23, 2001. It is in force from November 21, 2008. Croatia is a State Party to the Bunker Convention. Bunker Convention is modelled on the CLC 1992 system. Liability for pollution from bunkers is channelled to the shipowner, which term, unlike the CLC 1992, includes not only the registered owner but also bareboat charterer, operator or manager of the polluting vessel. The scope of application covers only pollution damage in the territory, territorial sea or exclusive

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5 The shipowner may be exempted from liability if he proves that damage either a) resulted from an act of war, hostilities, civil war or insurrection; b) resulted from a natural phenomenon of an exceptional, inevitable or irresistible character; c) was wholly caused by an act or omission done with intent to cause damage by a third party; d) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

6 This protects other service providers (ship managers, charterers, officers and crew members, pilots etc.) from being charged as liable.
economic zone of states that have accepted the convention. Liability of shipowner is strict with exemptions similar to CLC 1992 exemptions. His liability is limited but, unlike the CLC 1992, there are no separate provisions on liability figures. Instead, claims under Bunker Convention will fall to be limited under any applicable national or international general limitation of liability regimes, such as the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1996) and respective 1996 Protocol. Croatia is a State Party to both mentioned international instruments. For ships over 1,000 gross tons, the registered owner, but not the other persons falling within the definition of “owner”, must maintain insurance equal to the amounts of liability under the applicable national or international limitation regime applicable in the flag state, but not exceeding the limits in the LLMC 1976, as amended. Obligations regarding formal certificate confirming the existence of insurance cover are similar to those prescribed by CLC 1992.

CMC in Article 62 paragraph 3 and 4 as well as in Articles 823.a-823.f contains provisions similar to described provisions of Bunker Convention.


Since 1996, the Legal Committee of IMO has discussed proposals to further amend the 1974 Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea (Athens Convention). As a result of these efforts, the new 2002 Protocol to the Athens Convention has been adopted. This Protocol together with articles of 1974 Athens Convention which are not amended should be read together and referred to as the 2002 Athens Convention.


The 2002 Athens Protocol establishes a two tier liability system in cases where death of or personal injury to a passenger is caused by a shipping incident. The carrier is liable for the death of or personal injury to the passenger up to the limit of SDR 250,000 per passenger on any individual occasion, unless the carrier proves that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and unavoidable character; or was wholly caused by an act or omission performed by a third party with the intent of causing the incident. Therefore, the 2002 Protocol introduces strict liability of the carrier (and performing carrier) for the death of or personal injury to a passenger up to the abovementioned limit (the first tier of liability).

If the loss caused by the shipping incident exceeds the limit of SDR 250,000 per passenger on any distinct occasion, the carrier is further liable - up to a limit of 400,000 SDR per passenger on each distinct occasion - unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier (the second tier of liability).

7 Amendments to further increase the limits of liability in the 1996 Protocol to the LLMC 1976 were adopted by the Legal Committee of the International Maritime Organization (IMO), when the Committee met for its 99th session in London. The new limits are expected to enter into force 36 months from the date of adoption, on April 19, 2015, under the tacit acceptance procedure.
8 Supra, Chapter 2.1.
9 By 2013 Amendments to CMC subject-matter of bunker oil pollution liability is systematically and precisely regulated.
10 At that time 1974 Athens Convention has already been amended by 1976 (SDR) Protocol and 1990 Protocol. The later has never entered into force.
12 „Carrier“ means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier. „Performing carrier“ means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage.
For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier is liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect lies with the claimant. The carrier liability cannot exceed SDR 400,000.

The limits contained in the 2002 Athens Protocol set a maximum limit, empowering - but not obliging - national courts to compensate for death, injury or damage up to these limits. The 2002 Athens Protocol also includes an "opt-out" clause, enabling State Parties to retain or introduce higher limits of liability (or unlimited liability) in the case of carriers who are subject to the jurisdiction of their courts. A State Party, which makes use of this option, is obliged to inform the IMO Secretary General of the limit of liability adopted or of the fact that there is none.

The 2002 Athens Protocol requires performing carriers to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the limits for strict liability under the 2002 Athens Protocol regarding the death of and personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than 250,000 SDR per passenger on each distinct occasion. A certificate attesting that insurance or other financial security is in force always has to be on board a ship. A model certificate is attached to the 2002 Athens Protocol.

For the first time in an IMO international agreement, a regional economic integration organization (for example the European Union) may sign the 2002 Athens Protocol. The objective of the 2002 Protocol is to enhance passenger remedy protection. Together, compulsory insurance and significantly increased liability limits could lead to very significant liability on the part of the insurer. The Protection and Indemnity Clubs (P&I Clubs) were strongly opposed to the amounts of liability prescribed in the 2002 Athens Protocol. They particularly pointed out that the prescribed limits are too high, taking into consideration the situation on the insurance market and the danger of catastrophic incidents caused by acts of terrorism or other "acts of war". The problem arises from the fact that 2002 Athens Protocol does not contain explicit provisions reducing carriers' (as well as insurers') liability in cases where death of or personal injury to a passenger is caused by terrorism. Finally, P&I Clubs expressed their unwillingness to cover carriers' liability as set out in the 2002 Athens Protocol.

In order to solve the problem, new and lengthy discussions took place under the auspices of IMO, resulting in a new instrument - IMO Reservation and Guidelines for Implementation of the Athens Convention (hereafter - IMO Guidelines) adopted in October, 2006. This document is considered as a non-mandatory lex specialis in relation to the 2002 Athens Protocol. IMO Guidelines recommend that States which ratify or accede to the 2002 Athens Protocol should include a reservation concerning a limitation of liability for carriers and a limitation for compulsory insurance for acts of terrorism, taking into account the current state of the insurance market. IMO Guidelines set out new provisions in respect to limits for carrier's liability in respect to the death of or personal injury to a passenger caused by any war risks.

13 The European Union acceded to the 2002 Protocol and urged its Member States to do the same. At the same time, the European Union made a reservation in accordance with IMO Guidelines.

14 War risks include war, civil war, revolution, rebellion, insurrection or civil strife arising there from, or any hostile act by or against a belligerent power, capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat, derelict mines, torpedoes, bombs or other derelict weapons of war, acts of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk, confiscation and expropriation. Under IMO Guidelines, both war and non-war insurance may be excluded subject to the Institute Radioactive Contamination, Chemical, Biological, Bio-chemical
Under these provisions, carrier’s liability for the death of or personal injury to a passenger caused by war risks (terrorism included) cannot exceed lower of the following amounts:

- 250,000 SDR in respect of each passenger on each distinct occasion; or
- 340 million SDR overall per ship on each distinct occasion.

Under the IMO Guidelines, separate insurance cover is required covering liability for the death of or personal injury to a passengers caused by war risks limited to the abovementioned figures. Additional insurance is required for covering carriers' liability for the death of or personal injury to passengers caused by non-war risks. This insurance cover must be provided in accordance with the 2002 Athens Protocol.

Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (hereafter - Regulation 392/2009) incorporates in EU law and Electromagnetic Weapons Exclusion Clause as well as to the Institute Cyber Attack Exclusion Clause. Furthermore, insurance cover is subject to automatic termination upon the outbreak of war between any of the “Five Power States” (UK, USA, France, the Russian Federation, and the People's Republic of China).

15 OJ L 131, 28 May 2009, p. 24. The Regulation apply from 31 December 31, 2012 to any international carriage and to carriage by sea within a single Member State on board ships covered by Class A and B in accordance with Article 4 of Directive 98/18/EC, if the ship is flying the flag of or is registered in a Member State, or the contract of carriage has been made in a Member State, or the place of departure or destination, according to the contract of carriage, is in a Member State. In respect of carriage by sea within a single Member State on board ships of Class A, Member States may choose to defer application of this Regulation until four years after the date of its application. In respect of carriage by sea within a single Member State on board ships of Class B, Member States may choose to defer application of the Regulation until December 31, 2018. Some Member States already made such choice like United Kingdom, Italy, Belgium, and Latvia. Regulation applies to ships Class A and B from December 31, 2012 in Croatia, Poland and France. Regulation applies to domestic carriage and Class A, B, C and D vessels from December 31, 2018. Some Member States already made such choice like United Kingdom, Italy, Belgium, and Latvia. Regulation applies to ships Class A and B from December 31, 2012 to any international carriage as well as foreign passenger ship entering/leaving a Croatian port is required to maintain passenger liability insurance which meets the requirements of the Regulation 392/2009. According to Article 615.a of the CMC, each carrier who actually performs international carriage partly or wholly by a

Furthermore, under the Regulation 392/2009 the carrier who actually performed the carriage when the shipping incident occurred shall make an advance payment sufficient to cover the immediate economic requirements proportional to the damage suffered, within 15 days from the identification of the person entitled to damages. In the event of death, this payment shall not be less than EUR 21,000. The provision in respect of advance payment shall apply if the incident occurred within the territory of a Member State, or occurred on board a ship flying the flag of a Member State or is registered in a Member State. It will also apply if the carrier is established within the EU. Pursuant to Article 62 paragraph 5 of the CMC, domestic passenger ship in international carriage as well as foreign passenger ship entering/leaving a Croatian port is required to maintain passenger liability insurance which meets the requirements of the Regulation 392/2009. According to Article 615.a of the CMC, each carrier who actually performs international carriage partly or wholly by a

2012 in Netherlands, Finland and Denmark. Source: http://www.gard.no/ikbViewer/Content/20663771/Mem ber%20Circular%202008%202012%20Entry%20into %20force%20of%20the%20Regulation%20EC%20N o%20392%202009.pdf, February 10, 2013.


ship entered into Croatian register of ships and who is licensed to carry more than 12 passengers must maintain insurance pursuant to Regulation 392/2009. At the request of the abovementioned performing carrier, a formal certificate shall be issued by the competent harbour master office confirming that such insurance is in force in respect of a particular ship.\(^\text{18}\)


Under Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the Insurance of Shipowners for maritime claims (the Insurance Directive),\(^\text{19}\) owners of ships flying the flag of an EU/EEA State (including non-EU ships), of 300 gross tonnage and above, are required to maintain insurance or other financial security to cover the majority of third party maritime claims of the type described by the 1976 LLMC, as amended by the 1996 Protocol. All EU Member States were obliged to bring into force laws necessary to comply with the Insurance Directive before January 1, 2012.

The Insurance Directive is transposed into Croatian law by 2013 CMC Amendments introducing Articles 62 paragraph 8 and Articles 747.a–747.d. Owners of ships are required to maintain appropriate insurance pursuant to the Insurance Directive. This obligation is imposed to owners of ships flying Croatian flag as well as to owners of foreign ships entering a Croatian port or an off shore objects located in Croatian territorial waters or continental shelf. It is also imposed to owners of foreign ships operating in Croatian internal waters, territorial waters or continental shelf. The existence of the insurance must be proved by one or more certificates issued by its provider and carried on board the ship. Insurance certificate must provide information as prescribed in the Insurance Directive and CMC. Insurance cover provided by members of the International Group of P&I Clubs shall be acceptable as well as other effective forms of insurance (including self insurance) and financial security offering similar conditions of cover. Insurance may be with or without deductibles. If the insurance certificate is not carried on board, a ship shall be detained in Croatian port and an expulsion order shall be issued. This order shall be notified to the Commission, the other EU Member States and the flag State concerned.

2.5. Wreck Removal under 2013 CMC Amendments

CMC Amendments adopted in 2013 introduce a complete new chapter called “Raising and removal of wrecks and sunken objects”\(^\text{20}\). It contains provisions regulating administrative and property issues related to the removal of wrecks and sunken objects. Although Croatia is not a State Party to 2007 Nairobi Wreck Removal Convention,\(^\text{21}\) some CMC provisions are inspired by solutions contained in that Convention. The owner of the wreck/other sunken object is required to remove it.\(^\text{22}\) Owner’s liability for damage caused by the wreck is strict with only few exemptions (Act of God, intentional harmful act done by a third party, harmful act of competent

\(^{18}\) These provisions are introduced in CMC by the 2013 CMC Amendments.

\(^{19}\) OJ L 131, 28.5.2009, p. 128.


\(^{21}\) The Nairobi International Convention on the Removal of Wrecks, 2007, was adopted by a diplomatic conference held in Kenya in 2007. It provides the legal basis for States to remove, or have removed, shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment. The Nairobi Convention has not entered into force yet.

\(^{22}\) If the wreck or other sunken object is not removed for the period of two years from the date of it’s sinking, it shall become property of the Republic of Croatia.
public authorities and contributory negligence of the claimant). In case of compulsory removal of wrecks/sunken objects performed by the State, the owner is liable for the costs of locating, marking and removing the wreck\textsuperscript{23}. His liability is unlimited.

Owners of a ship of over 300 gross tonnage which is registered in a Croatian ship register is required to take out insurance or other financial security to cover these costs. Insurance cover must at least correspond to the “other claims” liability limits prescribed by LLMC 1976 as amended by 1996 Protocol\textsuperscript{24}. A formal document (done in Croatian or English language) confirming existence of such insurance must be carried on board. It must contain information required by the CMC. Insurance cover provided by a member of International Group of P&I Clubs (evidenced by the Certificate of entry) shall be acceptable, as well as other effective forms of insurance and self insurance or other financial security offering similar conditions of cover.

Furthermore, pursuant to Article 62 paragraph 7 of the CMC, owner of a foreign ship of over 300 gross tonnage entering Croatian internal waters or adhering the offshore object in Croatian territorial sea, is required to present evidence on existing insurance coverage for claims related to locating, marking and removal of wrecks. The amount of insurance cover must at least correspond to the “other claims” liability limits prescribed for “other claims” in LLMC 1976 as amended by 1996 Protocol (just the same as in respect of Croatian ships).

2.5. Repatriation of Crew Members

Pursuant to Article 138 of the CMC, if a crew member has been discharged from a ship during his employment on board or after its termination outside his port of boarding, the shipowner must ensure his return to his place of residence (repatriation of a crew member). If the shipowner fails to do so, the return journey to crew member’s place of residence shall be secured by the diplomatic or consular office of the Republic of Croatia at the expense of the shipowner from whose ship the crew member has been discharged. Therefore, the costs of the crew member’s return journey shall be borne by the shipowner. The shipowner shall be entitled to recourse of expenses from the crew member pertaining to his return journey, when such crew member leaves the ship without authorisation, causing termination of employment, or if he leaves the ship as a consequence of self-inflicted injury or illness caused intentionally or by gross negligence. The expense of a return journey of a crew member shall encompass cost of accommodation, board and transportation of said crew member from the time of discharge from the ship to the time of return to a place of residence\textsuperscript{25}.

Under the Article 139.a of CMC, a ship operator is required to maintain insurance or other financial security covering repatriation costs of crew members. Furthermore, a ship operator must ensure that rules on crew members rights regarding repatriation are on board and available. This rules must be drafted in English or other official language used.

These CMC provisions represent implementation of the 2006 Maritime Labour Convention (MLC). Croatia is a State Party to MLC\textsuperscript{26}. This liability insurance is commonly provided by standard P&I Club insurance, just the same as shipowner’s liability for sickness, injury.

\textsuperscript{23} The removal of a wreck or other sunken object is compulsory if such object represents a danger for the safety of navigation or environment.

\textsuperscript{24} „Other claims” are claims different from the claims for the death or personal injury. Therefore, insurer's liability in respect of wreck removal costs is limited.

\textsuperscript{25} The return journey shall also be deemed as provided if a suitable task has been ensured for the crew member on a ship bound for his port of boarding. In such a case, a crew member shall be entitled to payment for the tasks completed on board, see Articles 138-141 of CMC.

or a death of a crew member.

2.6. Liability of Nuclear Ship Operators

CMC contains provisions on the liability of the operator of a nuclear ship for the nuclear damage (Articles 824-840). He is exclusively liable for the nuclear damage. His liability is strict with some exemptions (if the damage is caused by war, hostility, civil war, rebellion, contributory negligence of the claimant). Liability is limited to the amount of SDR 100 million. However, when a foreign state whose flag the nuclear ship flies provides a higher limit of liability, the operator shall be liable up to said higher limit. Nuclear ship operator is required to maintain insurance, or other financial security covering his liability for nuclear damage. Amount of such insurance must cover prescribed limit of operator’s liability.

2.7. Liability of Boat and Yacht Owners to Third Parties

Liability of boat and yacht owners for the death of or personal injury to a third party is regulated by the CMC (Articles 808-810). Principles of such liability vary depending on the location and the nature of the incident occurred. However, compulsory liability insurance for described damages in respect of boat and yacht owners is prescribed by Articles 41-42 of the Law on Compulsory Traffic Insurance. Pursuant to these provisions, the owner of a boat or a yacht with engine power exceeding 15 kW, which is entered in the appropriate boat or yacht register pursuant to registration regulations, is required to maintain insurance covering his liability to a third party in the event of death, bodily injuries or health hazard due to the use of the yacht/boat. The minimum amount of the insurance cover is HRK 3.5 million (app. 460 000 €) per incident (harmful event). This sum may be raised pursuant to the decision of the Croatian Government made upon the proposal of the Croatian Financial Services Supervisory Agency. This liability insurance is also compulsory in respect of the owners of foreign boats/yachts entering Croatian territorial sea.

3. ENFORCEMENT OF THE COMPULSORY LIABILITY INSURANCE

There are at least three very important elements, "legislative weapons" for the successful enforcement of provisions on compulsory liability insurance. The first one is so called "direct action" - action directa, the right of a third party who has a liability claim against an insured to proceed directly by suit against the insurer. The second one is the effective system of inspections of ships carried out by competent flag state and port state authorities. Finally, the third

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27 Shipowner’s liability for death, injury or sickness of a crew member is regulated by Article 145 of the CMC. There is no provision in CMC requiring compulsory insurance in respect of such liability. However, if such insurance cover is actually in force, the direct action against the liability insurer is allowed (Article 743 paragraph 2 of the CMC).

28 "Nuclear damage" means loss of life or personal injury and loss or damage to property which arises out of or results from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste. "Operator" means the person authorized by the licensing State to operate a nuclear ship, or where a State itself operates a nuclear ship, that State.

29 SDR, Special Drawing Right, is an international value used to provide a regular comparative evaluation by the International Monetary Fund of the currency of member nations. Value of a national currency will rise in SDR as the value of the national currency rises on the world market, see: www.imf.org, page visited on February 10, 2014.

30 Public nuclear ships owned by a State are exempted from such obligation.

31 „Narodne novine“ (Official Gazette) No. 151/2005, 36/2009, 75/2009, 76/2013). Although one could say that this Act is not a source of (only) maritime law, abovementioned insurance is without and doubt marine insurance.

32 The term „third parties“ does not include persons on board the yacht/boat causing the damage. Moreover, this term does not include persons who sustained damage while being on the sailing object other than the yacht/boat which caused the damage.
element is related to fines imposed against shipowners and other persons who have not fulfilled their obligations in respect of maintaining liability insurance. Each of three mentioned elements shall be briefly elaborated in following chapters.

3.1. Direct Action (Actio Directa)

Pursuant to Article 743 paragraph 2 of CMC, a party suffering damage may claim damages directly from the liability insurer if the insured is liable for damages and up to the insured amount. However, this direct action against insurer is allowed only in two types of cases:

a) when such right of direct action is explicitly prescribed; or

b) in respect of liability for death, personal injury or health deterioration of a crew member. Therefore, the right to direct action is not “automatically” allowed for compulsory liability insurance. It should be explicitly prescribed for a specific type of insurance. Under CMC such right is not explicitly prescribed in respect of insurance of shipowners for maritime claims and of insurance for repatriation of crew members. It is worth to mention that direct action is not prescribed under relevant EU and international sources dealing with these types of insurance - Directive 2009/20/EC in respect of shipowner's liability for maritime claims and MLC in respect of liability for the repatriation of crew members. For other types of compulsory liability insurance prescribed in CMC and relevant international maritime conventions direct action is explicitly allowed. In a case of a direct action against insurer, he is entitled to limit his liability (even if insured party has lost such right). He may further avail himself of the defences (other than the bankruptcy or winding up of the assured) which the assured would have been entitled to invoke. Furthermore, the insurer may avail himself of the defence that damage resulted from the wilful misconduct of the assured, but the insurer shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the assured against him.

Direct action against insurer in respect of liability insurance of boat and yacht owners for the damage caused to third parties is allowed pursuant to Article 11 of the Law on Compulsory Traffic Insurance.

3.2. Compulsory Liability Insurance and Inspections

Pursuant to Articles 165-178 of CMC, inspection of foreign ships in the ports of the Republic of Croatia shall be conducted in compliance with the procedures established by the Paris Memorandum of Understanding on Port State Control. While conducting an inspection of a foreign ship, it shall be established whether the ship is in possession of valid documents with regard to the provisions of inter alia international conventions and EU regulations and directives elaborated in this paper. Therefore, competent Croatian authorities shall check the existence on board of prescribed insurance certificates. These rules apply equally to Croatian ships and other maritime objects. In case that some certificate is missing on board, such a ship

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33 Abovementioned provision is introduced by CMC 2013 Amendments. Before this amendment, under CMC direct action was permissible in respect of any compulsory insurance or (voluntary) liability insurance for crew members.

34 Supra, Chapter 2.4. Moreover, Article 747.d of CMC explicitly prescribes that direct action is not allowed in respect of compulsory insurance of shipowner liability, except in cases when this insurance is prescribed as compulsory by some other CMC provision (for example, compulsory passenger liability insurance).

35 Supra, Chapter 3.5.

36 It should be noted that, under Article 982 of CMC, in the disputes with international elements, the existence of the right to direct shall be judged pursuant to the law applicable to the obligation in question or law applicable to the insurance contract. Such provision is in line with the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), Article 18.
shall be detained. All other measures provided in Paris Memorandum may be taken too. Generally, it could be concluded that such a ship shall be deemed to be unseaworthy.

3.3. Fines

Pursuant to Article 1016.e of CMC, an owner, operator or a company of a ship operating without certificate or other document evidencing existence of compulsory insurance cover in respect of such a ship, shall be charged with the fine of HRK 50,000 to HRK 150,000 (app. 6,600 - 19,800 €). The master of such a ship and the responsible person in shipping company shall be charged with the fine of HRK 5,000 to HRK 15,000 (app. 660 - 2,000 €)37.

4. CONCLUSIONS

Various sources of Croatian maritime law (international conventions, EU legislation and domestic laws) contain provisions on compulsory liability insurance of shipowner and other persons operating the ship. One could notice that a number of types of compulsory liability insurance are significantly increasing. Compulsory liability marine insurance, being a specific type of professional insurance, becomes legislative and practical standard in commercial shipping. The aim of the compulsory liability insurance is to ensure better protection for victims. It should also contribute to the elimination of substandard ships as well as to the establishing more effective competition between ship operators. Three important elements may be (and in most cases they are) included in the concept of compulsory liability insurance: direct action against insurer, inspection of ships by port states and flag states authorities and effective system of fines in cases when rules on compulsory insurance are not respected. The crucial role in respect of providing such insurance is played by the P&I Clubs. Therefore, each future step in this area should be taken only with due coordination between states, international shipping community and P&I Clubs.

CMC and other Croatian domestic laws are in line with applicable international conventions, EU laws and widely accepted legislative standards dealing with this subject-mater.

37 Special provision on fines for shipmaster is prescribed by Article 1001 paragraph 1 in respect of ship carrying more than 2,000 tons of oil which does not possess an insurance certificate or other financial security covering liability for damages caused by oil pollution when it enters or leaves a Croatian port or when it loads or unloads oil. The amount of fine is HRK 5,000-50,000. Generally, system of fines has to be established pursuant to obligations contained in international conventions and EU legislation. For example, see Article 7 of Directive 2009/20/EC.
REFERENCES


7. Skorupan Wolff V., Padovan, A.V., Kritika važećeg i prijedlog novog pravnog uređenja vađenja i uklanjanja podrtina i potonulih stvari, Poredbeno pomorsko pravo, Vol 51, No 166, 2012, pp.11-77