THE INSURANCE DISPUTES LAW REVIEW

SECOND EDITION

Editor
Joanna Page

THE LAWREVIEWS

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PREFACE

This is now the second edition of *The Insurance Disputes Law Review*. I am delighted to be the editor of this excellent and succinct overview of recent developments in insurance disputes across 16 important insurance jurisdictions, including now the United States.

The first edition was very well received and demonstrated both the need and the very active interest, evident across the globe, in the legal frameworks for insurance and, in particular, in the insight that the developing disputes arena provides into this fascinating area.

Insurance is a vital part of the world's economy and critical to risk management in both the commercial and the private worlds. The law that has developed to govern the rights and obligations of those using this essential product can often be complex and challenging, with the legal system of each jurisdiction seeking to strike the right balance between the interests of insurer and insured and also the regulator who seeks to police the market. Perhaps more than any other area of law, insurance law can represent a fusion of traditional concepts that are almost unique to this area of law with entrepreneurial development, as insurers strive to create new products to adapt to our changing world. This makes for a fast-developing area, with many traps for the unwary. Further, as this indispensable book shows, even where the concepts are similar in most jurisdictions, they can be implemented and interpreted with very important differences in different jurisdictions.

To be as user-friendly as possible, each chapter follows the same format – first providing an overview of the key framework for dealing with disputes, and then giving an update of recent developments in disputes.

As editor, I have been impressed by the erudition of each author and the enthusiasm shown for this fascinating area. It has also been particularly interesting to note the trends that are developing in each jurisdiction. An evolving theme in almost every jurisdiction is the increase in protections for policyholders. Much of the special nature of insurance law has developed from an imbalance in knowledge between the policyholder (who had historically been blessed with much greater knowledge of the risk to be insured) and the insurer (who knew less and therefore had to rely on the duties of disclosure of the policyholder). With the increasing use of artificial intelligence to assess data and more detailed scope for analysis across risk portfolios, the balance of knowledge has shifted; it will often now be the insurer who is better placed to assess the risk. This shift has manifested itself in tighter rules requiring insurers to be specific in the questions to be answered by policyholders when they place insurance, and in remedies more targeted at the insurer if full information is not provided. Coupled with these trends, however, is the increasing desire by some jurisdictions to set limits on the questions that can be asked so that, for example in relation to healthcare insurance, policyholders are not denied insurance for historical matters. We can expect that this tussle

between the commercial imperative for insurers to price risk realistically and the need to balance consumer protection, government policy and privacy will increasingly be at the heart of insurance disputes.

It is also fascinating to see how global concerns around climate change and cyber risk are working their way through the legal systems, with jurisdictions, particularly the United States, leading the way in assessing how existing insurance products might respond to these risks.

No matter how carefully formulated, no legal system functions without effective mechanisms to hear and resolve disputes. Each chapter therefore also usefully considers the mechanisms for dispute resolution in each jurisdiction. Courts appear to remain the principal mechanism but arbitration and less formal mechanisms (such as the Financial Ombudsman in the United Kingdom) can be a significant force for efficiency and change when functioning properly. The increasing development of class action mechanisms, particularly among consumer bodies (e.g., in France and Germany) is likely to be an important factor.

I would like to express my gratitude to all the contributing practitioners represented in *The Insurance Disputes Law Review*. Their biographies are to be found in the first appendix and highlight the wealth of experience and learning that the contributors bring to this volume. I must also thank Russell Butland, who is a senior associate with my firm and a highly talented lawyer. He has done much of the hard work in this project, together with Frances Beddow, who has helped enormously in the research.

Finally, I would also like to thank the whole team at Law Business Research, who have excelled at bringing the project to fruition and in adding a professional look and more coherent finish to the contributions.

Joanna Page
Allen & Overy LLP
London
October 2019

Chapter 13

SPAIN

Julio Iglesias Rodríguez and Francisco Caamaño Rodríguez[1]

I OVERVIEW

In recent years, Spanish insurance law has undergone a progressive process of renovation and adaptation to European Union law. Following the transposition of the Solvency II Directive,[2] Spain has still to enact a law regulating the activity of insurance intermediaries and distributors in accordance with the EU Insurance Distribution Directive (IDD).[3]

In terms of litigation, insurer–insured disputes continue unabated. This has led to the consolidation of important judicial interpretations and doctrine on significant issues that had arisen in the market, such as the scope of a directors and officers (D&O) policy or the question of which party is liable for material damage in a traffic accident when it is impossible to determine the person responsible for the collision.

II THE LEGAL FRAMEWORK

i Sources of insurance law and regulation

In the Spanish legal system, insurance matters are regulated in a variety of laws and regulations, a detailed analysis of which would far exceed the scope of this chapter. For this reason, only the main pieces of legislation are addressed here.

Rules governing access to the market and insurance activities

The conditions for access to the insurance market and the performance of insurance companies' activities are mostly regulated by Law 20/2015 of 14 July on the management, supervision and solvency of insurers and reinsurers, and Royal Decree 1060/2015 of 20 November on the management, supervision and solvency of insurers and reinsurers, which develops Law 20/2015. These regulations are the result of the transposition by the Spanish legislator of the provisions set out in the Solvency II Directive.

Rules governing the mediation and distribution of insurance

The Spanish regulation of insurance mediation and distribution activities can be found in Law 26/2006 of 17 July on private insurance and reinsurance mediation. At the time of

1 Julio Iglesias Rodríguez is a counsel and Francisco Caamaño Rodríguez is an associate at Uría Menéndez.

2 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

3 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on the distribution of insurance.

writing, a new law replacing Law 26/2006 and incorporating the provisions laid down in the IDD is still pending. The enactment of this new law began last year. However, because of the change of government in Spain and the subsequent dissolution of Parliament, the legislative process has been interrupted.

Furthermore, Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and the conduct rules applicable to the distribution of insurance-based investment products is directly enforceable in Spain, as it is in all other European Union Member States.

Finally, we would highlight the recent entry into force of Law 5/2019 of 15 March, which regulates real estate credit contracts. Law 5/2019 generally prohibits 'loan-linked' insurance sales practices (i.e., those practices in which an insurance product is offered with a loan as an inseparable pack). However, it continues to allow 'combined' or 'grouped' sales practices (i.e., those in which loan and insurance products are offered together but can be contracted separately) but establishes the information and transparency requirements that distributors must comply with in these cases.

Rules governing insurance contracts, in their various forms

In this field, the predominant role of Law 50/1980, of 8 October, on insurance contracts (LCS) should be highlighted. The LCS contains both the general principles that apply to all insurance contracts and the specific provisions governing the main types of insurance contract that exist in Spain (e.g., damage, civil liability, fire, life and sickness). Most insurance litigation in Spain is based on the provisions of the LCS.

In Spain there are also other laws and regulations that apply to specific types of insurance contract. This is the case, for example, for civil liability insurance in respect of the use of motor vehicles (motor insurance), which is regulated in Royal Legislative Decree 8/2004 of 29 October approving the restated text of the Law on Civil Liability and Insurance for the Circulation of Motor Vehicles (LCLICMV), and Royal Decree 1507/2008 of 12 September, which approves the Regulation on mandatory civil liability insurance regarding the circulation of motor vehicles. There are also specific provisions in other regulations for ship or aircraft insurance contracts, civil liability insurance for nuclear damage, civil liability insurance for oil pollution, and export credit insurance.

ii Insurable risk

Although Spanish law does not offer an express definition of insurable risk, as a general rule, a risk is insurable as long as it:

a has an element of chance or uncertainty;

b refers to a future event, meaning that at the time of entering into the contract the damage or loss has not yet occurred or that the risk still exists. Under Spanish law, according to the general rule on civil liability for damage, the loss occurs at the moment that the action or incident that causes the damage takes place (even though the claim and, therefore, the evidence of it can take place much later in time). Thus, the contract is only valid if it refers to losses arising from actions subsequent to its signing. However,

Article 73 LCS allows for contracts with 'claims-made' clauses that have retrospective effects. In these cases, the claim, as opposed to the actual damaging act that causes the claim, constitutes the 'incident';[4]

c is lawful;

d is possible, meaning that the covered risk may potentially materialise;

e is fortuitous, meaning it is independent of the will of the parties or beneficiaries of the insurance contract. Two clarifications must be made in relation to this criterion:

- Spanish law does consider the insured party's suicide as an insurable incident, even though it is clearly the consequence of a conscious and voluntary action of the insured party. The only restriction imposed in the LCS to avoid fraudulent conduct is a time limit. Article 93 of the LCS holds that 'unless otherwise agreed, the risk of the insured person's suicide will be covered as of one year from the moment of the conclusion of the contract'; and
- even though civil liability derived from wilful misconduct of the insured party cannot be insured under Spanish law, the insurer must provide compensation for the damage caused by such misconduct to bona fide third parties (i.e., those who are not involved in a fraudulent scheme with the insured party). In fact, pursuant to Article 76 LCS, these third parties may bring their claims for compensation directly against the insurer (direct claim); and

f is tangible, has an economic value and can be appraised based on actuarial and experience criteria. Only in this case can the insurance premium, which constitutes an essential element of the insurance contract, be calculated.

Spanish law establishes that a person can enter into an insurance contract on his or her own behalf and interest or on behalf of and for the benefit of third parties (Article 7 LCS), but, as stated in Article 25 LCS (damage insurance) and Article 83 LCS (life insurance), the validity of the insurance contract is subject to the insured party having a legitimate interest in the insurance.

iii Fora and dispute resolution mechanisms

Spanish insurance law is characterised by the protection of the rights of insured persons. For this reason, it has special provisions that, in some cases, oblige the parties to initiate out-of-court proceedings before bringing a claim to court.

For example, where the disagreement between the insurer and the insured is limited to the extent of the damage to be compensated (but there is no dispute as to the coverage of the incident or risk), Article 38 LCS provides that the insurer and the insured must resolve their dispute by means of a compulsory out-of-court procedure[5] in which each of the parties appoints an expert and the appointed experts try to reach common ground.

If the experts reach an agreement, the procedure concludes with them issuing a report on, among other things, the amount of compensation due. If no agreement is reached, a third

4 In relation to claims-made clauses, Supreme Court judgment 252/2018 of 26 April clarified that Article 73 LCS regulates two different 'rights-restriction' clauses (one for future coverage and another for retrospective coverage) and that retrospective coverage is not required for the validity of future coverage, and vice versa. This doctrine was upheld by the Spanish Supreme Court in its more recent judgment 170/2019 of 20 March.

5 Supreme Court Judgment No. 747/2009 of 11 November.

expert is appointed by the parties (or, if they fail to agree, by the court) so that within 30 days (or the term agreed upon) the three experts issue a final report (unanimously or by a majority vote) that is binding on the parties unless challenged in court.

If any of the parties disagree with this report, it can be challenged in court within the corresponding time limit.[6]

Another example of these special provisions can be found in the area of civil liability regarding the circulation of motor vehicles. Specifically, Article 7 of Royal Decree 8/2004 states that the injured party must file a claim with the insurer requesting compensation and providing information about the incident. The insurer must respond within three months with an offer of reasonable compensation or a response explaining why it believes that compensation is not warranted.

Apart from these special provisions, Spanish law grants freedom to the parties to use the conflict resolution mechanism they deem most appropriate. Although empirical evidence shows that insurance disputes are usually brought before the courts, parties are free, once the extrajudicial proceedings described been completed, to resolve the disagreement using alternative conflict resolution mechanisms (e.g., conciliation, mediation or arbitration). In any case, it should be noted that for a dispute to be validly resolved by arbitration under Spanish law, both parties must consent.[7]

III RECENT CASES

Some of the most important and recurring issues in judicial practice relating to insurance rights litigation are analysed in this section, with a particular focus on decisions rendered in the past 12 months.

i Judicial developments in motor insurance

Because of the volume of contracts taken out, motor insurance continues to represent a large part of the judicial proceedings concerning insurance matters. In recent months, several decisions of interest have been issued.

First, the Spanish Supreme Court has created consolidated case law on who should compensate, and to what extent, non-personal damage arising from a traffic accident in which the party responsible for the incident is not known.[8]

Article 1 LCLICMV establishes that the driver of a motor vehicle is liable, by virtue of the risk posed by driving the vehicle, for damage caused to persons or goods in connection

6 The limits are 30 days for the insurer and 180 days for the insured, with both terms running from the date of notification of the third expert's report (Article 38 LCS). If the third expert is appointed by the court, the terms run from the date the court notifies the parties (Spanish Supreme Court judgment 73/2019 of 22 January).

7 Vide Spanish Constitutional Court judgment 1/2018 of 11 January, which declared Article 76(e) LCS unconstitutional (and therefore null and void) since it allowed the insured to impose on the insurer the submission to arbitration of any dispute that might arise between them in relation to legal expenses insurance.

8 In relation to personal damages, the Spanish Supreme Court had already held repeatedly that (1) if the degree of responsibility of each vehicle is known, compensation must be proportional to this percentage or degree of participation; and (2) if this cannot be determined, both parties are liable for the total personal injury caused to the occupants of the other vehicle (vide Spanish Supreme Court judgments 536/2012 of 10 September, 40/2013 of 4 February, 627/2014 of 29 October and 312/2017 of 18 May).

with the vehicle's role in traffic. With respect to damage to goods, it establishes that the driver is liable to third parties when he or she is civilly liable as established in Article 1902 and following of the Civil Code, Article 109 and following of the Criminal Code, and the provisions of the LCLICMV itself.

After analysis of all these provisions and rules, Supreme Court judgment 249/2019 of 27 May established as a jurisprudential criterion that, in cases where the vehicle responsible for the collision is not known, each of the drivers must compensate 50 per cent of the damage caused to the other vehicle.

Second, the Court of Justice of the European Union (CJEU) issued a preliminary ruling in response to questions raised by the Spanish Supreme Court as to whether compulsory civil liability insurance coverage includes damage resulting from a spontaneous fire in a vehicle that had been parked in a private garage and unused for more than 24 hours. The Supreme Court considered that this type of fire, which had no link to the circulation of the vehicle, which was parked, would fall outside the scope of Article 1 LCLICMV (which refers to traffic events). However, the Court doubted whether these facts could fall within the concept of 'civil liability in respect of the use of vehicles' contained in Article 3 of Directive 2009/103/EC of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles.

In its judgment of 20 June 2019, and similarly to how it ruled on questions raised by courts of other Member States,[9] the CJEU interpreted the concept of 'use of vehicles' broadly to conclude (1) that a vehicle is used in accordance with its function as a means of transport when it is in motion, but also when parked between two journeys; (2) that the duration of this parking is irrelevant for the purposes of the previous conclusion; and (3) that Article 3 of Directive 2009/103/EC should therefore be interpreted as including in the concept of 'use of vehicles' damage resulting from this type of accident.

Finally, in its judgment 33/2019 of 17 January, the Supreme Court held that the right of recourse of the Spanish Insurance Consortium[10] is restricted solely and exclusively to the insurance company (and does not extend to the insured) if, after payment of the compensation, it is concluded that there actually was an insurance policy in force.

ii 'Risk-restriction' and 'rights-restriction' clauses: D&O insurance

Under Spanish law, risk-restriction clauses are those that specify the risk insured in the policy (i.e., they configure and describe the object of the insurance contract), as opposed to rights-restriction clauses, which restrict or modify the rights of the insured party to seek compensation once the accident has occurred.

9 Vide, for example, the judgment of 15 November 2018 (C-648/2017) in which, in response to a Latvian court, the CJEU considered the damage caused by a vehicle to another vehicle when opening a door in a car park to be damage arising from the circulation of vehicles.

10 The Spanish Insurance Consortium is a public body that, pursuant to Article 11 LCLICMV, is obliged to compensate damage to persons and property when, within the framework of compulsory vehicle insurance, a dispute arises over the validity of the policy.

Article 3 LCS establishes that rights-restriction clauses must be highlighted and specifically agreed to in written form. On the basis of this legal requirement, the Spanish courts have developed a consolidated doctrine that establishes the following as requirements for the validity of rights-restriction clauses:

a they are included among the specific conditions of the insurance contract, and not in the general conditions;

b their wording meets the criteria of transparency, simplicity and clarity, and, additionally, they must be highlighted within the text of the contract; and

c the policyholder expressly accepts them in writing.[11]

The distinction between risk-restriction and rights-restriction clauses, apparently easy in theory, has generated several disputes. Generally speaking, insurance companies claim that a particular clause contained in the general conditions of the contract (which they use to deny cover) is a risk-restriction clause and therefore binding. In response to this, policyholders claim these clauses are rights-restriction clauses, as they restrict the natural scope of the insurance contract in question and therefore their validity is subject to compliance with the requirements of Article 3 LCS.

These were the arguments put forward in the case resolved by Supreme Court judgment 58/2019 of 29 January in relation to D&O insurance. The policy established that the insured risk was the 'losses' derived from the declaration of responsibility of the managers and directors of a company for their acts in the performance of their post. The special conditions did not specify any limitation or exception to this coverage. However, the general conditions indicated that taxes, social security contributions, fines and penalties imposed under the law, among other things, were not included in this concept of losses.

The beneficiaries of the insurance were held liable for certain tax debts of the company. The insurance company denied coverage on the grounds that tax debts were excluded from the concept of losses and, therefore, from the insured risk. The insured claimed before the courts that, as the natural scope of D&O liability insurance was to safeguard their assets against personal claims arising from improper acts in their corporate management, to exclude liability for tax debts would affect that natural scope, limiting the rights of the insured party (in other words, this was a rights-restriction clause that did not comply with the requirements of Article 3 LCS).

Supreme Court judgment 58/2019 of 29 January held that the natural scope of this type of insurance contract is not limited to civil liability that can be judicially declared on the basis of the Spanish Company Law, but extends to any other liability provided for in the administrative regulations and that has its origin in the directors' performance. This would be the case for the subsidiary liability for tax debts established in the Spanish General Tax Law. For this reason, the exclusion of coverage for this type of claim is a restriction of those rights of the insured party that are required for compliance with Article 3 LCS. Therefore, if the clause restricting those rights does not comply with the requirements set out in Article 3 LCS, it shall be deemed null and void.

11 Vide Supreme Court judgment 234/2018 of 23 April.

iii The direct claim of the injured party and the insurer's defences: limits when the amount of the compensation has already been established in a previous administrative procedure

Article 76 LCS provides that, in the field of civil liability insurance (1) the injured party (or his or her heirs) has a direct claim against the insurer to demand compliance with the obligation to compensate; and (2) the insurer may not deny payment by citing the exceptions that may apply against the insured party. Thus, it is a settled jurisprudential doctrine[12] that, in the event of a direct claim made by the injured third party, the insurer:

a may refuse to pay on the grounds that the damage claimed results from a risk that is objectively excluded from the contract (i.e., the risk does not fall within the scope of the contract as specified in the risk-restriction clauses); but

b cannot refuse to pay on the basis of exclusion-of-cover clauses that are based on the seriousness of the insured party's harmful conduct (driving under the influence of alcohol or drugs, existence of wilful misconduct, etc.). These are defences linked to the insured that cannot be raised against the injured party.

However, the Spanish courts have also clearly established that the rules of Article 76 LCS cannot serve as a means for the insured party to obtain unjust enrichment.[13]

In its recent judgment 321/2019 of 5 June, the Spanish Supreme Court addressed the scope of the injured party's direct claim against the insurer in cases where a previous administrative procedure established the existence of liability and, additionally, the amount of compensation owed by the liable party.

Such a previous administrative procedure may exist in cases where the insured party is a public body (e.g., when a public hospital is liable for the negligence of one of its doctors). Unlike what would happen in the case of a claim between individuals, under Spanish law, the contentious-administrative courts are the only jurisdiction competent to declare a public body liable.

In judgment 321/2019, the Supreme Court acknowledges that a claim under Article 76 LCS is separate from the claim against the responsible party. Therefore, the injured party does not have to seek the prior declaration, through administrative channels, of the public body's responsibility before claiming against the insurer pursuant to Article 76 LCS. The Article 76 LCS claim is heard by the civil courts, which assess, with a merely pre-judicial scope, whether or not the public body was responsible.

However, where there is a prior administrative procedure, it does affect the filing of a possible direct claim against the insurer. To the extent that (1) the insurer cannot be bound beyond the obligation of the insured; and (2) only the contentious-administrative courts can declare a public body liable to pay, the Supreme Court establishes as a judicial doctrine that the compensation awarded in the administrative sphere constitutes the maximum amount for which the insurer may be liable in any direct claim pursuant to Article 76 LCS. Thus,

12 Vide Supreme Court judgment 200/2015 of 17 April.

13 Vide, for example, Supreme Court judgment 87/2015 of 4 March, which states that the insurance company can also raise any defence that results from the direct relationship between the insured and the injured parties (prior payment by the insured, waiver by the injured party in relation to the latter, etc.); also see Supreme Court judgment 52/2018 of 1 February, which warns that Article 76 LCS does not cover claims in which the damage has been caused by the conduct of the injured party who is seeking to be compensated.

Article 76 LCS cannot be used to try to obtain in civil proceedings (against the insurer) greater compensation than that awarded in administrative proceedings (against the party responsible for the damage).

iv Limitation period for claims against the insurance company for amounts paid in advance to purchase a dwelling under Law 57/1968 of 27 July

Article 1 of Law 57/1968 of 27 July on the receipt of advance payments for the construction and sale of dwellings establishes that those who build dwellings (other than social housing) intended to be used as a permanent or seasonal family residence and who receive part payment of the purchase price before or during construction must guarantee the repayment of the sums received, plus a percentage, by means of (1) an insurance contract with a registered and authorised insurer; or (2) a joint and several guarantee provided by an authorised financial institution.

As a result of the global financial crisis, numerous real estate developments were paralysed and buyers were forced to claim back the sums they had paid in advance. This situation has generated a large volume of litigation in recent years.

In judgment 320/2019 of 5 June, the Supreme Court analysed the statute of limitations of these purchasers' actions against insurance companies provided for in (1) Article 23 LCS (two years) versus (2) the general term provided for personal claims in Article 1964 of the Civil Code (five years).

The Supreme Court has established as doctrine that the applicable limitation period is the one provided for in Article 1964 of the Civil Code because Article 1 of Law 57/1968 established insurance or bank guarantees as alternative guarantees.

IV THE INTERNATIONAL ARENA

The jurisdiction of the Spanish courts to hear cases in which a dispute has arisen between parties from different Member States of the European Union is determined in accordance with the rules set out in Articles 10 and following of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

In those cases in which the defendant is not domiciled either in Spain or in another EU country, and there is no bilateral treaty between the defendant's state of residence and Spain, Article 22 *quinquies* of Organic Law 6/1985 of 1 July on the judiciary establishes that the Spanish courts will have jurisdiction to hear disputes arising from insurance issues if:

a the insured party, the policyholder or the beneficiary of the insurance contract is domiciled in Spain;

b the damage was caused in Spain;

c the insured party or the policyholder who is the claimant and all the other parties in conflict agree to submit the dispute to the Spanish courts after the dispute has arisen;

d both contracting parties submitted to the Spanish courts' jurisdiction before the dispute arose, and both parties were domiciled in Spain at the time the contract was signed; or

e both contracting parties submitted to the Spanish courts' jurisdiction before the dispute arose, and the claimant was the insured party or the policyholder.

Once the jurisdiction of the Spanish courts to rule on an 'international' matter has been established, the applicable law to resolve the dispute is determined, generally, by either (1) Article 7 of the Rome I Regulation,[14] or (2) the private international law provisions contained in Articles 107 to 109 LCS.

Consequently, in general terms, the LCS is applicable to those casualty insurance contracts in which the risk is located in Spain and the policyholder (in the case of individuals) has his or her habitual residence or (in the case of legal persons) its registered office or administrative management headquarters there. The LCS is also applicable when the contract has been entered into to fulfil an insurance requirement imposed by a Spanish law.

With regard to life insurance, the LCS is applicable (1) when the policyholder has his or her address or habitual residence in Spain, or is effectively managed from Spain; (2) when so agreed with the insurer despite the policyholder being a Spanish citizen resident abroad; or (3) when the life insurance policy is collective and has been entered into to fulfil a requirement or as a consequence of a job subject to Spanish law.

Finally, in large-risk insurance contracts,[15] the parties are free to choose the applicable law.

V TRENDS AND OUTLOOK

In the near future, litigation in the 'traditional' insurance sectors and branches (i.e., motor vehicles, health, civil liability, etc.) will continue to dominate. These proceedings will continue to deal with matters such as whether a given claim is covered, or the effects of a delay in the payment of compensation by the insurer.

However, both the entry into force of Law 5/2019 of 15 March regulating real estate credit contracts (which has a clear impact on the bancassurance sector) and the possible requirements that may be established by the law transposing EU rules on insurance mediation and distribution activities (currently pending enactment) could generate new disputes that do not relate to the coverage of the claim, but to verification of compliance with the obligations imposed on the insurer (and its intermediaries) in relation to the sale of the insurance.

In addition, society develops new needs every day that the insurance market must cover. In particular, the damage caused by the use of drones, the insurtech sector, cyber risks or the new means of transport being used in cities (e.g., electric scooters) are bound to be a source of new disputes.

14 Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

15 Defined by Article 11 of Law 20/2015 of 14 July, on the organisation, supervision and solvency of insurance and reinsurance companies.

Appendix 1

ABOUT THE AUTHORS

JULIO IGLESIAS RODRÍGUEZ

Uría Menéndez

Julio Iglesias is a counsel in the Madrid office of Uría Menéndez. He is a member of the insurance litigation group. He joined the firm in 2004 and has developed his career in the litigation and arbitration practice area.

Julio regularly advises clients at the pre-litigation stages in matters, and on out-of-court settlements. He is also actively involved in proceedings before the Spanish courts and the main Spanish arbitration courts.

His practice in business law matters encompasses insurance litigation, corporate litigation, consumer law and class actions, and contractual and tort liability. He also has relevant experience in complex claims (pre-litigation) regarding insurance matters.

Julio is a lecturer on civil litigation and tort law on two different Master of Laws (LLM) courses. He frequently participates at seminars and conferences pertaining to his areas of expertise.

FRANCISCO CAAMAÑO RODRÍGUEZ

Uría Menéndez

Francisco Caamaño joined Uría Menendez in 2015. He is a member of the insurance litigation group.

Francisco's primary practice is focused in the fields of civil law and commercial law. In this regard, he advises multinational companies in several industries (finance, real estate, energy, infrastructure and telecommunications) in proceedings before the Spanish courts and the main arbitration courts. He also participates actively advising clients at the pre-litigation stages in matters, and on out-of-court settlements.

Francisco has relevant experience in the insurance law field, where he has participated in different proceedings relating to both corporate and contractual matters. He is also experienced as an adviser in restructuring proceedings for insolvency and pre-insolvency indebtedness, and has participated in the approval process of some of the most recent refinancing agreements entered into in Spain.

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