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**PHÂN TÍCH TRANH CHẤP PHÁP LÝ TRONG BẢO HIỂM TRÁCH NHIỆM  
DÂN SỰ CHỦ TÀU (P&I INSURANCE ): TRƯỜNG HỢP VỤ EVER GIVEN VÀ  
COSTA CONCORDIA**

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**Tóm tắt**

Bảo hiểm trách nhiệm dân sự chủ tàu (Protection and Indemnity - P&I) giữ vai trò trung tâm trong hệ thống quản trị rủi ro hàng hải quốc tế, đặc biệt trong bối cảnh các sự cố hàng hải quy mô lớn ngày càng gia tăng về mức độ phức tạp và giá trị thiệt hại. Nghiên cứu này phân tích các tranh chấp pháp lý phát sinh từ hai sự kiện hàng hải điển hình: vụ mắc cạn tàu Ever Given tại Kênh đào Suez năm 2021 và thảm họa tàu du lịch Costa Concordia năm 2012. Thông qua phương pháp nghiên cứu tình huống và phân tích so sánh, bài viết làm rõ các vấn đề pháp lý cốt lõi trong bảo hiểm P&I, bao gồm: xác định trách nhiệm pháp lý, giới hạn trách nhiệm

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theo các công ước quốc tế (LLMC 1976 và Athens Convention), yêu cầu bồi thường thiệt hại kinh tế thuần túy, thiệt hại danh tiếng, cũng như mở rộng phạm vi bồi thường đối với tổn thất tâm lý. Kết quả nghiên cứu cho thấy hệ thống bảo hiểm P&I với cơ chế tương hỗ và tái bảo hiểm toàn cầu đã chứng minh tính hiệu quả trong việc hấp thụ rủi ro thảm họa; tuy nhiên, các vụ việc cũng đặt ra yêu cầu hoàn thiện khung pháp lý, tăng cường minh bạch hợp đồng và nâng cao năng lực quản trị rủi ro của chủ tàu. Nghiên cứu góp phần làm rõ mối quan hệ giữa cơ chế bảo hiểm tương hỗ và hệ thống pháp luật hàng hải quốc tế trong việc xử lý các tranh chấp quy mô lớn, đồng thời đưa ra hàm ý chính sách nhằm tăng cường tính bền vững của thị trường bảo hiểm hàng hải toàn cầu.

**Từ khóa:** bảo hiểm P&I, tranh chấp hàng hải, giới hạn trách nhiệm, thiệt hại kinh tế thuần túy, trách nhiệm chủ tàu

## **ANALYSIS OF LEGAL DISPUTES IN PROTECTION AND INDEMNITY (P&I) INSURANCE: CASE STUDY OF THE EVER GIVEN AND COSTA CONCORDIA**

### **Abstract**

Protection and Indemnity (P&I) insurance constitutes a fundamental component of the international maritime risk management framework, particularly in the context of increasingly complex and high-value maritime casualties. This study examines the legal disputes arising from two landmark maritime incidents: the grounding of the Ever Given in the Suez Canal in 2021 and the Costa Concordia cruise ship disaster in 2012. Using a case-study and comparative analytical approach, the research identifies key legal issues within the P&I framework, including attribution of liability, limitation of liability under international conventions (LLMC 1976 and the Athens Convention), claims for pure economic loss and reputational damage, as well as the judicial recognition of psychological injury as compensable loss. The findings indicate that the mutual structure of P&I Clubs and the International Group pooling mechanism effectively absorbed catastrophic liabilities; however, both cases reveal structural challenges in liability limitation regimes and contractual interpretation under fragmented jurisdictions. The study contributes to a deeper understanding of the interaction between mutual marine insurance mechanisms and international maritime law in resolving large-scale disputes, and proposes policy implications aimed at strengthening the legal coherence and sustainability of the global marine insurance system.

**Keywords:** P&I insurance, maritime disputes, limitation of liability, pure economic loss, shipowner liability

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## **1. Introduction**

The insurance industry functions as a foundational pillar of global commerce, enabling the allocation and transfer of risk in environments characterized by uncertainty and high financial exposure. Within the maritime sector, Protection and Indemnity (P&I) insurance occupies a specialized and indispensable role by covering third-party liabilities that arise from vessel operations, including collision damage, environmental harm, cargo claims, and personal injury. As maritime trade expands in scale and complexity, the legal disputes surrounding P&I insurance claims have correspondingly intensified, reflecting the challenges of interpreting insurance contracts under extreme operational and financial pressure.

Disputes in P&I insurance frequently stem from contested liability, policy interpretation, jurisdictional conflicts, and the allocation of extraordinary losses following catastrophic events. These disputes do not merely represent contractual disagreements; they test the resilience of international maritime legal frameworks and the effectiveness of insurance mechanisms designed to stabilize global trade. Understanding how such conflicts are managed is therefore essential for insurers, shipowners, regulators, and legal practitioners, particularly in an era where a single maritime incident can trigger multi-billion-dollar consequences across jurisdictions.

This report examines the legal dimensions of P&I insurance disputes through a comparative analysis of two landmark incidents: the 2021 Ever Given blockage of the Suez Canal and the 2012 Costa Concordia disaster. Both events generated unprecedented operational disruption, large-scale salvage operations, and complex claims involving multiple stakeholders. By analyzing these cases, the study explores how liability was determined, how insurance structures responded, and how legal disputes were negotiated and resolved within the framework of international maritime law and insurance practice.

The objective of this analysis is not only to evaluate the outcomes of these disputes but also to identify systemic weaknesses and emerging trends in P&I insurance governance. Through case-based examination, the report highlights the interaction between contractual provisions, legal doctrine, and commercial realities, offering insights into how catastrophic maritime incidents reshape risk management strategies and dispute resolution practices. In doing so, it contributes to a deeper understanding of how insurance law adapts to the evolving demands of global shipping and the increasing scale of maritime risk.

## **2. Theoretical Framework**

### ***2.1. Concept of Insurance***

Insurance is a risk management mechanism through which the financial consequences of uncertain events or risks are transferred from an individual or organization to an insurer in exchange for a premium. Risk is the possibility of loss or an undesirable outcome due to uncertainty.

Rejda (2008) defines insurance as a contractual arrangement in which the insurer agrees to compensate the insured for specified losses arising from covered risks during a defined period. This definition highlights the contractual nature of insurance and its role in loss compensation.

From an economic perspective, insurance functions by pooling a large number of similar risk exposures, allowing losses to be predicted more accurately and shared among many participants. Harrington and Niehaus (2004) explain that through risk pooling and the application of the law of large numbers, insurance transforms uncertainty into a manageable and predictable cost. Overall, insurance does not eliminate risk but redistributes it, ensuring financial stability and continuity when losses occur. Therefore, insurance plays an important role not only in compensating financial losses and stabilizing income at the individual level, but also in supporting economic stability, facilitating trade, and promoting investment at the broader economic level.

## ***2.2. Overview of Marine Insurance***

Marine insurance is one of the earliest forms of insurance and developed alongside international maritime trade. It provides financial protection against losses or liabilities arising from the operation of ships and the transportation of goods by sea. According to Rejda (2008), marine insurance plays a crucial role in facilitating global trade by reducing the financial uncertainty associated with maritime risks.

Marine insurance commonly includes hull insurance, cargo insurance, and protection and indemnity (P&I) insurance. Hull insurance covers physical damage to vessels, cargo insurance protects goods in transit, while P&I insurance addresses third-party liabilities related to ship operations (Hudson & Madge, 2005). Together, these forms of insurance provide comprehensive risk coverage for maritime stakeholders.

### ***2.2.1. Definition of P&I Insurance***

Protection and Indemnity (P&I) insurance is a specialized type of marine insurance that covers shipowners and operators against third-party liabilities not normally included in hull insurance. Hudson and Madge (2005) define P&I insurance as mutual insurance provided by P&I clubs, offering protection against liabilities arising from the operation of ships. Furthermore, in practice, many maritime liability disputes arise from incidents including cargo damage, collision, or environmental pollution. In these situations, P&I insurance plays a crucial role by providing financial compensation and legal support to shipowners in resolving third-party claims and disputes.

Unlike commercial insurance, P&I insurance is based on the principle of mutuality, where members collectively share risks and losses. This structure enables P&I clubs to provide flexible and wide-ranging liability coverage (Harrington & Niehaus, 2004).

### *2.2.2. Legal and Operational Characteristics of P&I Insurance*

Protection and Indemnity insurance has several unique legal and operational features that make it different from traditional marine insurance. These features are closely connected to the way P&I Clubs operate and the wide range of liabilities they cover.

- Legal Nature of the Contract

One of the most important legal characteristics of P&I insurance is its mutual and non-profit nature. P&I Clubs are not commercial insurance companies aiming to generate profit. Instead, they operate as mutual associations where shipowners are both members and contributors to a common fund. Members pay advance calls at the beginning of the policy year, and these contributions may be adjusted depending on the club's overall claims experience (Hudson and Madge, 2005). This system reflects the principle of shared responsibility and collective risk management among shipowners.

In addition, P&I insurance plays a significant legal role in international shipping. Many international maritime conventions, particularly those related to pollution liability and the protection of crew members, require shipowners to maintain valid P&I coverage. Without such insurance, vessels may not be allowed to operate or enter certain ports (Hoàng Văn Châu, 2009).

- Operational Principle

From an operational perspective, P&I insurance follows the “pay to be paid” principle. Under this principle, the shipowner must first settle the claim with the third party and then seek reimbursement from the P&I Club (Gupta, 2009). This highlights the indemnity nature of P&I insurance, as the club compensates the member only after the actual liability has been paid. It also ensures that the club supports genuine losses rather than hypothetical claims. This principle is particularly relevant in the context of maritime liability disputes. When a dispute arises, for example between a shipowner and a cargo owner or port authority, the shipowner must first address the claim through negotiation, settlement, or legal proceedings. Once the liability has been established and the compensation has been paid, the P&I Club reimburses the member according to the terms of the cover.

- Scope of Coverage

According to Hudson and Madge (2005), Protection and Indemnity insurance is a specialized form of marine liability insurance that provides coverage for third-party liabilities arising from the operation of a vessel. Given the complex and high-risk nature of maritime activities, P&I insurance plays a crucial role in ensuring the financial security and legal compliance of shipowners.

- Crew and Personal Injury Liabilities

One of the core areas of P&I coverage is liability for loss of life, personal injury, or illness of crew members, passengers, and other individuals on board or affected by the vessel's operations. This includes medical expenses, repatriation costs, compensation for death or disability, and related legal costs. Such coverage is particularly important since maritime law imposes strict obligations on shipowners regarding the safety and welfare of crew members.

- Cargo Liabilities

P&I insurance also covers liabilities arising from loss of or damage to cargo carried on board the vessel. If cargo is damaged due to improper handling, stowage, or other operational negligence, the shipowner may be held legally responsible. P&I Clubs provide compensation for such claims, helping shipowners manage the financial consequences of cargo-related disputes (Gupta, 2009).

- Collision and Property Damage Liabilities

While hull insurance may cover damage to the insured vessel itself, P&I insurance often covers liabilities for damage caused to other ships, docks, piers, or fixed and floating objects, particularly when such liabilities exceed the coverage provided under hull policies. This ensures that shipowners are protected against substantial third-party property damage claims resulting from maritime accidents.

- Pollution and Environmental Liabilities

Environmental protection has become a central concern in international shipping. P&I insurance provides coverage for liabilities arising from oil spills and other forms of marine pollution. This includes cleanup costs, environmental damage compensation, and fines imposed under international conventions. Many maritime regulations require shipowners to maintain adequate P&I cover for pollution risks as a condition for operating vessels (Hoàng Văn Châu, 2009).

- Wreck Removal and Salvage Obligations

In certain circumstances, P&I insurance covers the costs associated with wreck removal when a vessel sinks or becomes a hazard to navigation. Shipowners may be legally required to remove the wreck to ensure maritime safety and environmental protection. These operations can be extremely costly, therefore, P&I coverage helps mitigate the financial burden (Rejda, 2008).

- Legal Costs and Associated Expenses

P&I insurance also includes coverage for legal defense costs, fines, and other expenses related to handling claims. Given the complex legal framework governing maritime operations, disputes and litigation are not uncommon. By covering legal and procedural expenses, P&I insurance supports shipowners in managing both financial and reputational risks (Rejda, 2008).

In summary, the scope of P&I insurance is broad and comprehensive, focusing primarily on third-party liabilities rather than physical damage to the vessel. Through its extensive coverage, P&I insurance serves as a vital risk management tool, ensuring the sustainability and legal compliance of maritime operations worldwide.

### *2.2.3 Role of P&I Insurance in Maritime Liability Disputes*

Maritime operations frequently give rise to liability disputes between shipowners and various third parties, including cargo owners, passengers, port authorities, and coastal states. Such disputes may arise from incidents such as cargo damage, personal injury, collisions, or environmental pollution during the operation of a vessel. Due to the international nature of shipping and the complexity of maritime law, these disputes can involve significant legal and financial consequences for shipowners.

In this context, Protection and Indemnity insurance plays an important role in assisting shipowners in managing and resolving liability claims. Beyond providing financial compensation for covered losses, P&I Clubs actively support their members throughout the claims handling and dispute resolution process. This support may include investigating incidents, collecting evidence, coordinating with correspondents in different jurisdictions, and appointing maritime lawyers to provide legal defence when disputes escalate to arbitration or court proceedings.

In addition, P&I Clubs may issue Letters of Undertaking (LOU), which serve as a financial guarantee to prevent the arrest of vessels when disputes arise. This mechanism allows shipowners to continue their operations while the dispute is being negotiated or settled. Through these practical and legal support mechanisms, P&I insurance helps shipowners manage both legal risks and financial exposure, thereby playing a crucial role in the resolution of maritime liability disputes (Hudson & Madge, 2005).

## **3. Analysis of Case Study 1: The Ever Given Incident**

### *3.1. Overview of the Dispute Situation*

The grounding of the Ever Given on March 23, 2021, quickly turned from a simple navigation accident into a global commercial crisis with serious legal consequences. While sailing through the narrow southern part of the Suez Canal in strong winds and a sandstorm, the 20,000 TEU container ship lost control and became stuck diagonally across the canal. This blockage cut off one of the world's most important shipping routes, through which a large share of global trade normally passes. As a result, all traffic was stopped for six days, interrupting around USD 9.6 billion of trade each day and leaving hundreds of ships stranded. Many operators were forced to reroute vessels around the Cape of Good Hope, leading to much higher fuel costs and delays of several weeks, severely affecting the "just-in-time" global supply chain (Lee and Wong, 2021).

This massive economic disruption strengthened the legal claims that followed after the ship was refloated on March 29. The Suez Canal Authority (SCA) detained the vessel in the Great Bitter Lake and initially demanded close to USD 1 billion in compensation, covering salvage expenses, lost canal revenue, and alleged reputational damage. This extremely large claim turned the incident into a lengthy legal dispute between the Japanese shipowner, Shoen Kisen Kaisha, and the Egyptian authorities. To reduce the financial pressure, the shipowner declared General Average, a maritime rule that requires all parties involved in the voyage, including cargo owners, to share the exceptional rescue costs. As a result, cargo owners faced a double impact: they suffered major financial losses due to long delays while also being legally required to pay significant contributions in order to recover their cargo from the carrier's lien (Stevens, 2025).

### ***3.2. P&I Claims Involved***

#### *3.2.1. Security provision and vessel release*

In the complex legal aftermath of the Ever Given incident, the UK P&I Club played a central role that went well beyond mere compensation payment. As a main liability insurer of the shipowner and its legal representative, the Club was responsible for handling the immediate financial crisis created by the vessel's arrest in the Great Bitter Lake. One of the most important Club actions was the provision of financial security to Egyptian courts, usually by the LOU or similar guarantee in support. This allowed the shipowner, Shoen Kisen Kaisha, to obtain the ship's release without having to sell assets immediately to meet the SCA's initial claim, which was close to USD 1 billion (Lee and Wong, 2021).

#### *3.2.2. Cargo liability exposure*

The P&I Club was also responsible for major liabilities related to the cargo on board. Although the ship itself suffered little physical damage, the six-day blockage and the following three-month detention exposed the carrier to large cargo claims. For perishable and seasonal goods, the long delay caused a complete loss of commercial value, leading cargo owners to seek compensation. These claims had to be handled and defended by the P&I Club. While the Club often relies on the Hague-Visby Rules to deny liability for delay, it still covers legal defense costs and any proven liability for cargo damage caused by the carrier's negligence (Cha et al., 2021).

#### *3.2.3. Third-party economic claims*

At the same time, the P&I Club faced claims linked to third-party economic losses. Around 369 to 400 other ships were delayed at the canal's anchorages, suffering financial losses due to schedule disruptions and higher fuel costs. Although claims for pure economic loss are difficult to recover under many maritime legal systems, defending against these large claims for business interruption and delay falls within P&I coverage. Such cases usually

involve complex legal debates over whether the delay caused physical damage to goods or resulted only in financial loss (Lee and Wong, 2021).

#### *3.2.4. Environmental and salvage compensation*

In addition, the P&I Club had specific financial responsibilities related to environmental protection during the salvage operations. While normal salvage rewards based on the value of the saved property are usually covered by Hull and Machinery (H&M) insurance, P&I insurance covers “Special Compensation” under Article 14 of the 1989 Salvage Convention or under the SCOPIC clause. This ensures salvors are paid for actions taken to prevent environmental damage, even if the salvage is unsuccessful or the ship’s value is too low, thereby protecting the shipowner from possible environmental penalties (Stevens, 2025).

#### *3.2.5. SCA liability claims*

The largest financial risk, however, came from the Suez Canal Authority’s wide-ranging claim. This included expenses for dredging, damage to fixed and floating objects such as canal banks, lost canal revenue during the blockage, and a disputed claim for “loss of reputation.” Liability for damage to fixed and floating objects and related commercial losses clearly falls under P&I insurance. The scale of the claim exceeded the International Group of P&I Clubs’ USD 100 million retention limit, which triggered reinsurance arrangements designed for extreme losses (Stevens, 2025).

#### *3.2.6. Mitigation and defence costs*

Finally, the P&I Club carried a heavy administrative and legal burden in the form of mitigation and defence costs under P&I cover. These are expenses incurred to reduce or prevent insured losses, including the costs of hiring international lawyers, technical surveyors, and expert advisers to defend the shipowner in Egyptian courts. These teams played a crucial role in negotiations that ultimately reduced the SCA’s claim from nearly USD 1 billion to a confidential settlement estimated between USD 450 million and USD 550 million, significantly lowering the insurers’ final payout (Lee and Wong, 2021).

### ***3.3. Analysis of legal dispute in P&I Insurance***

#### *3.3.1. Liability: Navigational Error vs. Force Majeure*

The SCA argued that the reason for the grounding was human error. From the Voyage Data Recorder evidence, the Chairman of the SCA, Osama Rabie, stated that the Ever Given was moving at 25km/h when the appropriate speed was 8-9km/h. In addition, the ship’s rudder was not in the right position, and the ship could have decided not to go into the canal. Where the ship’s pilots are concerned, the SCA explained that they are advisory when they are on board, but the final decision lies with the master of the vessel, including the speed (Reuters, 2021).

On the other hand, the P&I Club, following the Panama Maritime Authority (PMA) report, in defense of the Master, stated external circumstances. From the evidence, it was established that the sailing instruction to increase the speed originated from the Suez Canal Pilots. In addition to this, the insurers accused the SCA of systemic failure and questioned the rationale for allowing the vessel to pass through the severe sandstorm without the mandatory tugboat. (UK P&I Club, 2021) (Reuters, 2021).

### *3.3.2. Limitation of Liability*

Although the ship owner was held liable for the accident that occurred, it was also established that the owner had the right, according to the LLMC Convention of 1976 and the Protocol of 1996, to limit the amount of money that it was liable to pay in compensatory costs. Under this agreement, the amount that the company was liable for was worked out according to the Gross Tonnage of the ship. Taking a ship of this size as the Ever Given, it was estimated that this amount was around 115 million dollars. It was for this reason that the 916 million dollars claimed by the Suez Canal Authority was deemed far too high, as it was above international limits. (International Maritime Organization, n.d.) (UK P&I Club, 2021)

To enforce this protocol, it must be shown that the accident was not caused on purpose or by reckless actions. P&I Club argued that the grounding was caused by severe weather conditions and the challenges of the sea. Conversely, the SCA tried to prove that the vessel was sailed with extreme risk in order to exclude the right of the owner to limit liability. In practice, it is very hard to prove these high degrees of negligence in court, which put the insurers in a strong position throughout the case (UK P&I Club, 2021) (Naval Review, 2021).

### *3.3.3. Claims for Pure Economic Loss & Reputation*

A huge portion of the lawsuit was compensation that the Suez Canal Authority sought beyond physical damage. The SCA asked for compensation in the form of pure economic loss, or the loss of transit fees while the canal was blocked. This raised a complex legal issue because traditional marine insurance, including P&I cover, is primarily intended to compensate for physical loss or damage and third-party liabilities, rather than purely economic or consequential financial losses arising from operational disruptions. The SCA reasoned that from the blockage, hundreds of ships were not able to pass through the waterway during the six-day crisis; therefore, there was a massive loss of national revenue (BBC News, 2021).

Besides financial damages, the SCA also claimed damages to reputation. This was on the basis that this accident had a negative impact on the international reputation of the Suez Canal. They alleged that due to international news and press concerning this accident, many people might doubt the efficiency of this route. Many might even opt to use another route instead of passing through the Suez Canal, such as the Cape of Good Hope. Determining the exact financial damages to reputation is almost impossible, which explains why such claims are rarely recognized in maritime insurance disputes, particularly under P&I coverage, which traditionally prioritizes tangible third-party losses. (BBC News, 2021).

The P&I Club and shipowner typically objected to such claims, citing that insurance is usually limited for this type of intangible loss. It was asserted that compensation should be restricted to the actual cost of the salvage operation and physical repairs to the canal banks. Irrespective of these objections, these particular claims for economic and reputational loss were utilized by the SCA to form a starting high demand of 916 million dollars. (UK P&I Club, 2021)

#### *3.3.4. Vessel Release*

In July 2021, the owner and the SCA came to an agreement, ending the case. In order to avoid a protracted and uncertain litigation, both parties compromised with a settlement after more than 100 days in custody. The settlement for the SCA meant immediate compensation for the cost of the salvage and the loss of revenues, without risking the court awarding a lower level of compensation in line with international conventions. To the shipowner and P&I Club, settlement represented the sole possibility of releasing the vessel and cargo (BBC News, 2021) (UK P&I Club, 2021).

For the purpose of negotiations, the SCA publicly reduced its initial claim from \$ 916 million to a reduced offer of \$ 550 million. Because the exact amount of money agreed upon in the signed contract was held secret for the protection of both parties, the SCA did indeed confirm that a deal sufficient enough to pay for the salvage operation and canal damages was in place. After an exchange of a Letter of Undertaking, the vessel Ever Given was officially released to continue her voyage. The case demonstrates that commercial settlement will often provide a pragmatic and efficient mechanism for resolving complex maritime disputes, particularly where global trade interests are involved (BBC News, 2021) (UK P&I Club, 2021).

#### *3.4. Evaluation*

The Ever Given case constitutes a significant stress test for the contemporary maritime liability regime. From a legal perspective, the situation is no longer a simple navigation accident but a complex clash of national economic interests and standardized limitation principles.

First, the case reflects the widening gap between traditional fault-based liability principles and emerging systemic maritime risks. Although the accident resulted in minor physical damage, it resulted in enormous claims for economic losses. The SCA's claims for loss of fees and reputational damages reflect a shift towards a broader definition of recoverable losses beyond physical damage. However, this response reflects the traditional judicial reluctance to recognize pure economic loss in the absence of physical damage.

Second, the dispute confirmed the viability of the LLMC Convention of 1976, as well as its 1996 Protocol. The right to limit liability by gross tonnage was a powerful legal protection for the shipowner. The estimated fund available to the shipowner, which was around USD 115

million, was in stark contrast to the SCA's claim of USD 916 million. Moreover, because limitation can only be broken upon proof of intentional or reckless conduct with knowledge of probable loss, the evidential threshold was exceptionally high, thereby strengthening the shipowner's negotiating position.

Third, the dispute confirmed the structural integrity of the International Group of P&I Clubs. The extent of the claim meant that the reinsurance of the International Group of P&I Clubs was activated, which pools the global risks of the members of the club. The fact that a Letter of Undertaking was given, as opposed to a cash deposit, illustrates the functional role of P&I security instruments in balancing claimant protection with the preservation of the shipowner's liquidity.

Finally, when comparing the Ever Given case to other passenger-related casualties such as the Costa Concordia, it appears that the exposure of P&I varies depending on the type of claims, as the Ever Given case was more focused on the issue of interruption, whereas the Costa Concordia was more focused on the issue of personal injury and moral damage.

Overall, the case confirms the effectiveness of the limitation and mutual insurance regime, while simultaneously raising a normative question as to whether existing liability thresholds adequately reflect the systemic economic impact generated by modern globalized trade.

## **4. Analysis of Case Study 2: The Costa Concordia Disaster**

### ***4.1. Overview of the Dispute Situation***

13/01/2012, the passenger cruise ship Costa Concordia, owned and operated by Costa Crociere S.p.A. (a subsidiary of Carnival Corporation), departed from Civitavecchia, Italy. The vessel was covered under a Hull & Machinery insurance policy valued at approximately USD 570,000,000 and Protection and Indemnity (P&I) coverage provided by The Standard Club, with excess exposure shared under the International Group pooling and reinsurance arrangements

On the same night, the Costa Concordia deviated from its planned route and struck a submerged rock formation off the coast of Isola del Giglio, Tuscany. The impact caused a massive hull breach, leading to the vessel capping and partially sinking. Costa Crociere immediately activated its emergency response plan and subsequently declared the vessel a Constructive Total Loss (CTL).

27/01/2012, following the initial search and rescue operations, Costa Crociere, in conjunction with its insurers and the consumer association Astoi, announced a compensation package for the uninjured survivors. The company offered a lump sum of €11,000 (approx. USD 14,500) per passenger to cover indemnification for loss of baggage and psychological distress, plus reimbursement of the full cruise fare and travel expenses. Acceptance of this offer required passengers to waive their rights to any future legal action against the company.

However, a significant number of passengers and consumer groups (such as Codacons) rejected this settlement, arguing that the amount was insufficient to cover the severe Post-Traumatic Stress Disorder (PTSD), loss of property, and the gross negligence demonstrated by the ship's command. Consequently, multiple civil lawsuits were filed against Costa Crociere in the Court of Grosseto (Italy), as well as in the United States and France.

In the court, the Plaintiffs (represented by consumer associations and private lawyers) demanded significantly higher compensation, arguing that Costa Crociere bore direct liability for the systemic failures in crew training and emergency procedures, not just the Captain's errors. They sought damages ranging from €100,000 to €1,000,000 per person depending on the severity of the trauma and loss.

Costa Crociere maintained its position that the primary responsibility for the accident lay with Captain Francesco Schettino due to his unauthorized maneuvers. While the company agreed to a plea bargain with the Italian state, paying a fine of €1,000,000 under Italian Legislative Decree 231/2001 plus additional compensation funds to settle administrative criminal liability, it sought to limit civil indemnities to the standards set by international maritime conventions (such as the Athens Convention) or the initially proposed settlement amounts. Ultimately, the Court of Grosseto and subsequent appeals ruled in favor of many plaintiffs, awarding compensations exceeding the insurer's initial offer for psychological damages, significantly .

#### ***4.2. P&I Claims Involved***

The Insured Costa Crociere S.p.A. (a subsidiary of Carnival Corporation & plc). The company operated the vessel and held various policies to cover the ship's value and liabilities. The vessel's hull was insured for approximately \$570,000,000, representing its agreed market value at the time.

##### **The Insurer**

- Hull & Machinery (H&M): A consortium of insurers with major participation from Generali (Italy), RSA (UK) and XL Group (Bermuda). They provided coverage for the \$570 million hull value.
- Protection and Indemnity (P&I): Liability coverage (passenger claims, environmental damage, and wreck removal) was provided by The Standard Club..

##### **Parties with Related Rights and Obligations**

- The International Group of P&I Clubs: Responsible for covering major third-party liabilities arising from the accident, including passenger compensation, environmental damage, and wreck removal costs, in accordance with the P&I pooling and reinsurance system. According to OECD and Allianz reports, the wreck removal operation

(“Parbuckling Project”) alone cost over \$1.2 billion, making it one of the most expensive salvage operations in maritime history.

- Financial Institutions: A group of international banks that financed the vessel's construction held the mortgage on the ship and were named as loss payees under the insurance policies.
- Italian Ministry of Environment: Acted as a claimant regarding potential ecological damage to the Tuscan Archipelago National Park

#### ***4.3. Analysis of legal dispute in P&I Insurance***

The casualty involving the Costa Concordia constitutes a defining case in the evolution of Protection and Indemnity (P&I) insurance, particularly in relation to large-scale passenger liabilities and the expanding scope of shipowners' civil responsibility. While Hull and Machinery insurance covered the physical loss of the vessel, the main legal issues fell within the P&I domain. These included third-party liabilities such as loss of life, bodily injury, psychological harm, evacuation-related damages, and legal costs.

The scale of passenger claims turned the incident into a complex mass liability event. This not only challenged established principles of maritime law but also tested the structural resilience of the P&I mutual insurance system.

##### *4.3.1. Attribution of Liability and the Doctrine of Vicarious Responsibility*

The first and most fundamental legal issue concerned the allocation of fault between the shipowner, Costa Crociere, and the vessel's master, Captain Francesco Schettino. The shipowner advanced the argument that the captain's deviation from the approved navigational route - commonly referred to as the “salute maneuver” - constituted conduct outside the scope of his employment and therefore should not be imputed to the company.

From a legal standpoint, this argument was designed to sever the causal link between the master's negligence and the shipowner's civil liability, thereby reducing the indemnity burden under P&I insurance. However, the courts rejected this contention and reaffirmed the orthodox maritime law principle of vicarious liability, whereby shipowners remain responsible for the acts and omissions of the master and crew undertaken in the course of ship operations. Judicial findings further established that such navigational practices were not entirely exceptional but rather indicative of a tolerated operational culture. Accordingly, liability was anchored at the corporate level rather than confined to the individual master.

##### *4.3.2. Consequences for P&I Insurance Coverage*

The attribution of liability to the shipowner had direct and substantial implications for P&I coverage. Under the Rules of the International Group of P&I Clubs, liabilities arising from

the negligence of the master or crew are recoverable unless the loss results from the willful misconduct of the assured.

In this case, although the courts identified significant deficiencies in safety management systems, crew training, and emergency procedures, these shortcomings did not rise to the level of intentional wrongdoing. Consequently, the P&I Club was not entitled to invoke policy exclusions and remained liable to indemnify a substantial portion of passenger claims. This outcome reaffirmed a fundamental tenet of P&I insurance: severe operational negligence does not, in itself, displace coverage in the absence of willful misconduct by the assured.

#### *4.3.3. Limitation of Liability under the Athens Convention*

A further critical issue concerned the applicability of liability limitations under the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea. Costa Crociere sought to rely on the Convention's financial caps on passenger compensation, which are typically integrated into P&I underwriting assumptions as a mechanism for controlling exposure.

The courts, however, concluded that the conduct giving rise to the casualty met the threshold of "recklessness with knowledge that damage would probably result." This finding was supported by evidence of deliberate close-coast navigation, delayed evacuation procedures, and misleading communications with authorities. As a consequence, the shipowner was precluded from invoking the Convention's limitation regime, allowing claimants to pursue compensation beyond statutory caps. For P&I insurers, this significantly increased the quantum of liability and demonstrated the conditional and fragile nature of limitation defences in cases involving egregious conduct.

#### *4.3.4. Expansion of Compensable Damage: Recognition of Psychological Injury*

The litigation also marked a significant development in the treatment of psychological injury within maritime liability law. In particular, claims for Post-Traumatic Stress Disorder (PTSD) were recognised by the courts as constituting compensable personal injury, even in the absence of physical harm.

Traditionally, P&I Clubs have approached claims for pure psychiatric injury with caution due to evidentiary challenges and the potential for speculative claims. However, in the present case, PTSD was accepted as a medically verifiable condition directly attributable to the traumatic experience of the casualty and evacuation. This broadened the interpretation of "personal injury" within the P&I framework and materially expanded the class of potential claimants, thereby increasing the scale and complexity of insurer liability.

#### *4.3.5. Implications for the P&I Insurance System*

Taken together, the legal disputes arising from the Costa Concordia casualty recalibrated several core dimensions of P&I insurance practice. First, the case reaffirmed the strength of vicarious liability as a foundational principle of maritime law. Second, it demonstrated that liability limitation regimes - while central to underwriting models - may be displaced where conduct is characterised as reckless. Third, it expanded the scope of compensable loss to include psychological injury, thereby increasing the breadth of insured exposure.

From an industry perspective, the case underscored the necessity for enhanced risk assessment of passenger vessels, more robust safety governance by shipowners, and the continued evolution of underwriting, pooling, and reinsurance mechanisms within the global P&I system.

#### **4.4. Evaluation**

The Costa Concordia disaster can be critically evaluated as a failure of corporate risk governance rather than merely an individual navigational error. While Captain Schettino's conduct was undeniably negligent, the attempt to isolate liability at the level of the master overlooks the systemic factors that enabled such conduct. These include organizational tolerance of risky practices, inadequate safety oversight, and insufficient emergency preparedness. The courts' decisions to impose primary civil liability on Costa Crociere therefore reflect a modern approach to corporate accountability consistent with international business and maritime law principles.

In terms of P&I insurance effectiveness, the case illustrates both the strengths and limitations of the system. On the one hand, P&I insurance successfully fulfilled its fundamental purpose by ensuring that victims received compensation despite the catastrophic scale of the losses. Without the mutual pooling structure of the International Group of P&I Clubs, the financial burden of such mass claims could have threatened the solvency of the shipowner and delayed redress for victims. On the other hand, the case exposed structural weaknesses in existing liability regimes, particularly the inadequacy of convention-based limits to address contemporary cruise ship disasters and the underestimation of psychological injury in actuarial and underwriting models.

For students and professionals in international trade, logistics, and maritime risk management, the Costa Concordia case offers important lessons. Legal risk in international business is not confined to contractual disputes but extends deeply into operational decisions and corporate culture. Compliance with minimum legal standards or reliance on insurance coverage cannot substitute for proactive risk management and ethical governance. Moreover, as global tourism and passenger transport continue to expand, companies must anticipate that courts will increasingly prioritize victim protection over strict adherence to liability caps.

In conclusion, the Costa Concordia disaster reshaped the legal landscape of P&I insurance by broadening the scope of recoverable damages and reinforcing the principle of shipowner responsibility for systemic failures. It serves as a cautionary example for maritime operators and insurers alike, highlighting the need for continuous adaptation of legal frameworks, insurance practices, and corporate governance to the evolving realities of international maritime commerce.

## **5. Lessons Learned And Recommendations**

### ***5.1. Comparison between two case studies***

A direct comparison between the Ever Given and Costa Concordia incidents emphasize significant differences in legal liability, compensation mechanisms, and the role of Protection and Indemnity (P&I) insurance, while also demonstrating the adaptability of maritime risk management frameworks in distinct operational contexts.

In terms of legal liability, the Ever Given case primarily involved commercial and infrastructural liability arising from navigational negligence that disrupted a critical global trade route. Claims were largely centered on property damage to the Suez Canal, salvage costs, and broader economic losses caused by the blockage. Liability was addressed within the framework of maritime negligence and international limitation regimes. In contrast, the Costa Concordia disaster gave rise to passenger-related civil liability, including wrongful death, bodily injury, and psychological harm. The legal focus extended beyond negligence to issues of recklessness and vicarious liability, as the shipowner was held accountable for the actions of the captain. Notably, the seriousness of misconduct in this case limited the applicability of liability limitation defenses.

With respect to compensation mechanisms, the Ever Given incident was resolved primarily through negotiated settlements supported by insurance instruments. The use of Letters of Undertaking (LOUs) facilitated the release of the vessel, while General Average distributed certain losses among cargo interests. Compensation also incorporated salvage remuneration and third-party claims handled through coordinated insurance processes. By contrast, the Costa Concordia case followed a hybrid compensation model. While the shipowner initially offered standardized settlement packages to passengers, a significant number of claimants pursued litigation across multiple jurisdictions. This resulted in a more complex and prolonged compensation process, including court-awarded damages for both physical and non-physical harm, such as emotional distress.

Regarding the role of P&I insurance, clear functional differences can be observed. In the Ever Given case, P&I insurance acted as a financial stabilizer, claims manager, and legal facilitator, providing security for claims, supporting negotiations, and covering extensive third-party liabilities, including property damage, cargo claims, and environmental risks. Its role was essential in maintaining liquidity and enabling efficient dispute resolution in a high-value

commercial context. In contrast, in the Costa Concordia disaster, P&I insurance served as a primary compensation mechanism, directly funding large-scale personal injury, death, and environmental claims, as well as wreck removal operations. The insurer's exposure was significantly shaped by judicial findings and the expansion of compensable damages, requiring a more prolonged and claimant-focused response.

Overall, the Ever Given case represents a model of systemic economic disruption managed through commercial liability frameworks and coordinated insurance responses, whereas the Costa Concordia case illustrates a mass casualty event characterized by complex personal injury claims and litigation-driven compensation. This comparison underscores how the role of P&I insurance and liability structures varies significantly depending on whether maritime risk is primarily economic or human-centered.

## ***5.2. Lessons Learned from the Dispute***

The Ever Given and Costa Concordia disputes provide a set of legal lessons that extend beyond the facts of the individual incidents and illuminate structural characteristics of the P&I insurance system. Although P&I clubs operate as mutual associations composed of shipowner members, catastrophic claims reveal the legal distinction between operational liability and institutional insurance governance. These cases demonstrate how extreme maritime events test contractual interpretation, liability allocation, and the capacity of mutual insurance institutions to function within fragmented international legal frameworks.

### ***5.2.1. Lessons for Member Shipowners***

For member shipowners, the disputes reinforce that participation in a mutual insurance structure does not shield them from direct legal scrutiny. Liability ultimately arises from navigational conduct, compliance failures, and statutory obligations imposed under international maritime conventions. Both incidents illustrate how courts and authorities prioritize factual responsibility over insurance arrangements when determining accountability. The legal exposure of shipowners therefore remains primary, with insurance functioning as a secondary mechanism of financial response rather than a substitute for legal compliance.

Another important lesson concerns the legal consequences of contractual interpretation. P&I coverage is governed by detailed rules, club agreements, and incorporated international conventions. Disputes arise when extraordinary losses fall into areas of interpretive ambiguity, particularly regarding limitation of liability, environmental obligations, and salvage costs. Shipowners must recognize that insurance protection is mediated through legal language subject to judicial and arbitral interpretation. Effective risk management therefore requires legal awareness and contractual precision, not merely operational competence.

The incidents also demonstrate the procedural importance of timely disclosure and cooperation with insurers. Failure to comply with notification requirements or evidentiary obligations can complicate claims and create secondary disputes. From a legal standpoint,

procedural discipline is integral to preserving indemnity rights within the mutual insurance framework.

### *5.2.2. Lessons for P&I Clubs as Legal Institutions*

For P&I clubs, the disputes highlight their dual character as private contractual associations operating within public regulatory environments. Although structured as mutual organizations, clubs must respond to claims in a manner consistent with international maritime law, domestic legal systems, and principles of procedural fairness. Catastrophic incidents expose the legal tension between internal club rules and external legal authority.

A key lesson is the necessity of contractual clarity and legal predictability. Ambiguous policy wording invites litigation and undermines efficient dispute resolution. Clubs must continuously refine their rules to align with evolving maritime conventions and judicial interpretation. Standardization of coverage terms and claims procedures reduces uncertainty and strengthens enforceability across jurisdictions.

The cases also demonstrate the legal significance of institutional capacity. Large-scale claims require coordinated engagement with courts, arbitration tribunals, governmental authorities, and international bodies. A P&I club's credibility depends on its ability to act as a legally reliable counterparty capable of honoring obligations while managing collective financial exposure. Institutional weakness in this context risks not only financial strain but also erosion of confidence in the mutual insurance system as a whole.

Taken together, these disputes show that the effectiveness of P&I insurance depends on the interaction between private contractual arrangements and public maritime law. Insurance does not eliminate liability; it redistributes financial consequences within a framework that remains governed by legal doctrine and international regulation. Catastrophic incidents expose the limits of purely contractual solutions when confronted with cross-border enforcement challenges and competing jurisdictional claims.

The central legal lesson is that resilience in the P&I system requires harmonization between operational accountability, contractual clarity, and institutional legal governance. Strengthening dispute resolution mechanisms, clarifying liability regimes, and aligning mutual insurance rules with international legal standards are essential to maintaining stability in maritime insurance. As maritime incidents grow in scale and complexity, the future effectiveness of P&I insurance will depend increasingly on its capacity to function as a legally coherent system rather than merely a financial safety net.

### *5.3. Recommendations*

The disputes arising from the Ever Given and Costa Concordia incidents demonstrate that effective risk mitigation in maritime insurance requires targeted and case-informed measures at both regulatory and operational levels.

From a policy perspective, maritime authorities should establish stricter navigation control frameworks for high-risk waterways such as canals and narrow shipping routes. In the case of the Ever Given, the absence of clearly enforced operational thresholds, particularly regarding vessel speed, weather conditions, and pilot authority - contributed to ambiguity in liability allocation. Therefore, authorities should mandate enforceable limits on vessel speed under adverse weather conditions, require compulsory tug assistance for ultra-large vessels in restricted waterways, and clarify the legal hierarchy between shipmasters and local pilots. Such measures would reduce uncertainty in liability determination and strengthen accountability among stakeholders.

At the firm level, the Costa Concordia disaster highlights the critical importance of internal risk governance and corporate accountability. The failure was not limited to individual negligence but reflected systemic weaknesses in safety culture, training, and emergency preparedness. Shipping companies should therefore institutionalize Enterprise Risk Management (ERM) frameworks that integrate legal compliance, operational risk assessment, and crisis response planning. This includes scenario-based simulations for both navigational accidents (as in Ever Given) and passenger emergencies (as in Costa Concordia), stricter oversight of route deviations, and mandatory safety audits of crew performance and emergency procedures. Embedding risk governance at the organizational level would reduce both the likelihood and severity of large-scale maritime incidents.

From an insurance perspective, there are limitations in how P&I coverage addresses emerging categories of loss. The Ever Given incident exposed the difficulty of handling pure economic loss and supply chain disruption, while Costa Concordia expanded the scope of compensable damage to include psychological injury. In response, P&I Clubs should refine policy wording to explicitly address these evolving risks, including clearer provisions on delay-related losses, reputational claims, and non-physical personal injury. In addition, standardized frameworks for general average contributions and multi-party liability apportionment should be developed to reduce legal disputes in complex incidents involving numerous stakeholders. Strengthening coordination between insurers, reinsurers, and legal teams would further enhance the efficiency of claims handling and dispute resolution.

At the international level, both cases underscore the limitations of existing liability regimes under conventions such as the LLMC and the Athens Convention. While the Ever Given case demonstrated the protective function of limitation of liability, it also revealed a mismatch between traditional tonnage-based limits and the scale of modern economic disruption. Conversely, Costa Concordia showed that limitation regimes may be set aside in cases of reckless conduct, creating uncertainty for insurers and shipowners. Policymakers should therefore consider revising international conventions to better reflect contemporary maritime risks, including clearer thresholds for breaking limitations and more realistic compensation caps. Greater harmonization in the interpretation and enforcement of these conventions across jurisdictions would reduce legal fragmentation and improve predictability in dispute resolution.

Finally, these incidents highlight the importance of infrastructure resilience and coordinated crisis response. The prolonged blockage of the Suez Canal demonstrated the global consequences of delayed emergency intervention, while the Costa Concordia evacuation exposed deficiencies in onboard emergency management. Authorities and industry stakeholders should invest in rapid-response capabilities, including pre-positioned salvage resources, dedicated emergency towing vessels, and integrated crisis coordination protocols between ports, insurers, and ship operators. Regular joint emergency exercises should also be conducted to ensure preparedness for both navigational and passenger-related disasters. Enhancing response capacity would significantly reduce the scale of economic loss, environmental damage, and human impact in future maritime incidents. These measures are not only risk mitigation tools but necessary structural adaptations to the increasing scale and systemic impact of modern maritime operations.

## **6. Conclusion**

The Ever Given and Costa Concordia incidents illustrate that contemporary P&I insurance disputes operate within a legal and commercial landscape far more complex than traditional marine insurance frameworks were originally designed to address. These cases demonstrate how catastrophic maritime events expose structural tensions in liability allocation, contractual interpretation, and cross-border dispute resolution. They reveal that while P&I insurance provides a resilient mutual risk-sharing system, its effectiveness is continuously tested by the scale, interconnectedness, and legal fragmentation of modern global shipping.

A comparative assessment of the two case studies underscores the growing importance of legal clarity, coordinated jurisdictional governance, and proactive claims management in mitigating large-scale disputes. The incidents highlight the necessity for insurers and shipowners to adopt more sophisticated contractual drafting, enhanced risk assessment mechanisms, and stronger international cooperation. In particular, the evolving role of P&I clubs extends beyond indemnification toward crisis management, stakeholder negotiation, and reputational risk containment.

The legal disputes arising from these maritime disasters serve as a catalyst for institutional learning within the insurance sector. They demonstrate that the sustainability of global marine insurance depends not only on financial capacity but also on adaptive legal frameworks capable of responding to extraordinary events. Strengthening dispute resolution mechanisms, harmonizing regulatory standards, and refining liability doctrines are essential steps toward ensuring that P&I insurance remains a stabilizing force in international trade. As maritime operations continue to grow in scale and complexity, the future of insurance law will increasingly hinge on its ability to anticipate, absorb, and equitably resolve the risks of catastrophic loss.

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