Consorcio de Compensación de Seguros (CCS). Deposit on appeal.

Commentary on the judgment of the Supreme Court of 5 September 2011

The judgment of Chamber One of the Supreme Court dated 5 September 2011 settles the controversy that previously persisted concerning whether or not the *Consorcio de Compensación de Seguros* was required to post deposits on appeal pursuant to Article 449.3 of the Code of Civil Procedure [Ley de Enjuiciamiento Civil (LEC)], which lays down the requirement to deposit the amount of any award plus all interests, costs, and surcharges accruing at the time of the appeal as a condition for admissibility of the appeal. In the judgment considered the Supreme Court rules that Article 12 of the State and Public Institution Legal Assistance Act [Ley 52/1997, Reguladora del Régimen de Asistencia Jurídica del Estado e Instituciones Públicas (LAJEIP)] exempts the *Consorcio de Compensación de Seguros* from having to comply with the requirement to post deposits on appeal.

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1. Summary of the facts

The facts that led to the judgment under discussion here originated in a complaint lodged by parties injured in a traffic accident, in which they claimed damages sustained in the said accident against the driver of a van involved in the accident, against his insurance company, which was in liquidation and was represented in the proceedings by the Insurance Entity Liquidation Bureau (CLEA), and against the *Consorcio de Compensación de Seguros* (CCS).

The van in question was insured by Mades, which was undergoing winding-up procedures when the complaint was instituted, and hence the CLEA and the CCS were joined to the complaint proceedings, the latter in its capacity as the guaranty fund for cases like the one that gave rise to this case pursuant to Article 11 of the Motor Vehicle Traffic Civil Liability and Insurance Act [Ley sobre Responsabilidad Civil y Seguro en la Circulación de Vehículos a Motor (LRCSCVM)].

2. Decisions at the first instance and on appeal (second instance)

The first instance judgment accepted the complaint in part and ordered the driver of the van and his insurance company in liquidation to jointly pay indemnities together with CCS in its capacity as the guaranty fund under the Compulsory Automobile Insurance Scheme. The judgment held that the insurance company in liquidation was liable, not the CLEA, without prejudice to the CLEA's paying from the liquidation balance or from its own resources, as the case may be. In addition, the court imposed moratory interest in conformity with Article 20 of the Insurance Contract Act [Ley de Contrato de Seguro (LCS)], to be paid by the insurance company in liquidation and the CCS.

All the defendant parties appealed the adverse first-instance judgment. The CCS appealed only with respect to the payment of interest, on grounds that it should not be liable for interest in that it had only intervened in the proceedings in its capacity as a guaranty fund. It did not post a deposit on appeal but subsequently did deposit the amount of the principal the court had ordered paid, by way of payment to be offered to complainants, who accepted it as partial payment of the amount awarded.

Representing Mades in liquidation, the CLEA also appealed the first-instance judgment because it disagreed with the trial court's assessment of the injuries suffered by one of the parties and the indemnity awarded to another of the parties, and it also asserted that imposition of moratory interest was not in order. It did not post any deposit on appeal, arguing that it was not bound to effect any deposit because its mandate was to conclude liquidation proceedings and that depositing the amount of the award was an act of disposition or administration that it was prohibited from performing.

Lastly, the defendant appealed against the part of the judgment referring to his participation in the accident. He did not post the deposit on appeal, arguing that he lacked the necessary resources and submitting certifications from two banks that had refused him a surety bond for the deposit. He argued that his situation was comparable to that of a person who was released from the deposit requirement in recognition of his entitlement to free legal aid.

By a writ dated 6 November 2003 the court of first instance admitted the appeals of the three parties who had been found at fault. The writ held that there was no problem concerning the appeal as filed by Counsel for the CCS, in that the amount of the award assessed against the CCS had been transferred to the court's account and hence that there was compliance with the provisions of Article 449.3 of the Code of Civil Procedure [Ley de Enjuiciamiento Civil (LEC)].

However, in its judgment of 28 March 2005, the Provincial Appellate Court of Cantabria did not share this interpretation, in that the said Article 449.3 LEC, like Additional Provision 1.4 of Organic Act No. 3/1989, stipulated that in proceedings claiming indemnification for damages ensuing from motor vehicle traffic, appeals for review were not to be admitted unless proof that the party adjudicated to be at fault had deposited the amount of the award plus all interest and surcharges payable had been submitted together with the appeal. In consequence, there were two requirements: proving that the deposit had been effected in due time to be able to consider the appeal to have been properly instituted and depositing an amount encompassing the amount of the award plus any moratory

interest. The judgment at the first instance had ordered the CCS to pay the amount of 31,180.51 euros with an annual interest of 20 % from the date of the accident until payment in full.

Given that the CCS had not paid the deposit in a timely manner and also had not paid the full amount for which it had been found liable, its appeal was dismissed.

The CLEA's appeal met the same fate. In its appeal the CLEA had contended that "this public body acts, like the CCS, in conformity with its enabling act, and its very existence is the victim's guarantee, standing in the place of insolvent entities", and as a consequence its appeal was not subject to any deposit. The appellate court dismissed its appeal, holding that both Article 449.3 LEC and Additional Provision 1.4 of Act No. 3/89, in force at the time of the events, stipulated the party found liable for payment without making any distinction between natural or legal, public or private, persons.

The defendant's appeal was likewise held to be inadmissible, on grounds that it was not exempt from deposit in accordance with the aforesaid provisions of law.

By reason of the foregoing, the appellate court accepted the exception claiming inadmissibility raised by Counsel for complainants and thereby dismissed the appeals that had been lodged by Counsel for the CCS, the CLEA as the representative defending *Mades Fondo Asegurador*, and the defendant driver against the judgment of 1 September 2003 issued by Court of First Instance No. 4 in Santander, and the judgment was affirmed.

3. Grounds put forward in the extraordinary appeal claiming breach of procedure

Both the CCS and the driver took exception to the judgment issued by the Provincial Appellate Court of Cantabria, and they each brought an extraordinary appeal claiming breach of procedure, which were admitted.

The appeal lodged by the CCS claimed that the judgment of 28 March 2005 issued by the Provincial Appellate Court of Cantabria infringed Article 12 of the State and Public Institution Legal Assistance Act, Act No. 52/1997 of 27 November 1997 (LAJEIP), which had been expressly declared to be in force by the sole repeal provision of the LEC currently in effect. It was basically alleged that the CCS is a state-owned enterprise that is exempted from the requirement to post the deposit on appeal laid down in Article 449.3 LEC pursuant to application of Article 12 LAJEIP.

Accordingly, the CCS's extraordinary appeal claiming breach of procedure was founded mainly on an analysis of Article 12 LAJEIP as it relates to the obligation to post a deposit on appeal laid down in Article 449.3 LEC. The said Article 12 LAJEIP stipulates that "The State and its Independent Agencies, as well as state-owned enterprises, public bodies governed by their own specific enabling acts that are subsidiary to both, and constitutional bodies shall be exempt from the obligation to post deposits, guarantees, bonds, or any other type of surety provided for by law. The General Budgets of the State and other public institutions shall set aside budgetary appropriations to ensure prompt compliance, where applicable, with obligations not guaranteed by the exemption."

Pursuant to this Article the CCS claimed that it was expressly exempted from the obligation to post deposits, because the Article made explicit reference to state-owned enterprises and the CCS was such an entity under its enabling statute approved by Article 4 of Act No. 21/1990 of 19 December 1990, applicable to the proceedings by reason of their date, as well as by the legislation currently in force, Royal Legislative Decree No. 7/2004 of 29 October 2004.

By contrast, the defending party contended that the CCS was not exempt from posting the deposit on appeal because no legal precept expressly released it from that obligation, inasmuch as Article 12 LAJEIP was simply a generic reference that did not have the status of a specific provision of law.
In the statement of grounds of the appeal and the arguments opposing the appeal, both the appellant and the defending parties relied on case law handed down by the Provincial Appellate Courts that attested to the existence of conflicting criteria when it came to deciding whether the CCS was required to post a deposit on appeal[1].

The different positions mentioned here can be reduced to three.

1. The position that maintains that the CCS is not obligated to post deposits on appeal because it is so provided under Article 12 LAJEIP. Briefly stated, the underlying reason is that there is no need to require guarantees from the National Government and Public Institutions, because they must ineluctably comply with court judgments as ordered.
2. The position that the CCS is not obligated to post deposits on appeal when acting as a guaranty fund, because in that case it is acting as an entity under public law, but it is obligated to post deposit on appeal when acting as an insurer, just like any other private insurance company. This position holds that a joint interpretation of the applicable law leads to the conclusion that in all aspects relating to insurance activity the said body is subject to private law, without prejudice to its being subject to public law in those aspects relating to its internal administration and operations[2].

[1] This is reflected by REGLERO CAMPOS, F. (Dir.), BADILLO ARIAS, J.A. (Coord.), *Accidentes de Circulación: Responsabilidad Civil y Seguro [Traffic Accidents, Civil Liability, and Insurance]*, 3rd edition, Cizur Menor, 2013, p. 1167, who point out that "doubts have been raised as to whether the CCS too is required to post a deposit. This same uncertainty arises from the fact that Act No. 52/1997 of 27 November 1997 (LAJEIP) provides that the National Government and its independent agencies (and state-owned enterprises) are relieved from the obligation to post deposits, guarantees, bonds, or any other type of surety provided for by law (Article 12). As will later be seen, the issue is unclear, because, while on the basis of that provision the CCS is in principle not obligated to post deposits, certain appellate courts have espoused the directly opposing view based on the private nature of the CCS's involvement in matters of traffic accidents. This view is, however, contradicted by the judgment of the Supreme Court of 5 September 2011 (RJ 2011 [Aranzadi Law Reports 2011], 6292)".

[2] This was the criterion followed by the judgment of 17 April 2009 by the Provincial Appellate Court of Seville (JUR [Aranzadi Law Reporter] 2009\313802) in holding that: "Application of this provision by the courts is not uniform, and there are clearly opposing positions, but the one most broadly accepted makes a distinction based on the specific activity carried out by the *Consorcio de Compensación de Seguros*, namely, that of an insurer and that of a guaranty fund. When acting in this latter capacity, the one considered in these proceedings, the aforesaid provision stipulating it to be exempt has been applied nearly universally. The reason for this is plain: it is a clearly social and hence public function taken on by the Government so that injured parties will not be left unprotected when an accident has been caused by an unidentified vehicle, one that has no insurance coverage, or one that had been stolen. In such cases it is obvious that not only is the said entity a public body, it is also acting in a clearly public capacity".

3. The position holding that the CCS has the obligation to post deposits on appeal. This notion is based on the following reasoning: a) combined interpretation of the applicable provisions of law leads to the conclusion that in all aspects relating to the conduct of insurance activity, the said body is subject to private law, without prejudice to the fact that it is subject to public law in those aspects relating to its internal administration and operation; b) when the CCS acts as an insurer - be it directly or in a complementary or subsidiary manner - it has the same rights and obligations as private insurers, and its liability - as a direct insurer or as a guaranty fund - is a direct liability like that of an insurance company; c) exemption of the Government and public government bodies from court charges requires a legal precept that expressly prescribes such relief, and this is not regarded as being fulfilled by a generic reference to the Government and its related bodies under Article 12 LAJEIP, in that it is a general law, the same as Article 8.2 of the Royal Decree of 21 January 1925; d) the lawmakers' intent in providing for deposits on appeal is to ensure immediate enforcement of a final judgment without having to resort to collection proceedings and to preclude delaying tactics. Some decisions that have applied this criterion have been founded on the doctrine of the Constitutional Court set forth in that Court's judgments of 12 April 1998 and 5 June 1989, requiring a provision of law to expressly contemplate exemption from a burden.

This was the ruling made in the judgment of 13 July 2001 by Chamber Six of the Provincial Appellate Court of Cadiz (AC [Aranzadi Civil Law Reporter] 2001, 2444) finding the CCS not to be released from the obligation to post a deposit. The judgment held that "Considering a provision of law to be general or specific depends not on its presence in a legal text but rather on its contemplating a more specific case in fact that requires a legal response, and in the present instance, that is, the case of civil liability ensuing from road traffic and insurance of such traffic, along with specific, individual regulation of the *Consorcio de Compensación de Seguros* through its enabling statute, the establishment of equivalence to private insurance entities is clear, such that a general provision of law making reference to all government bodies and the like may not prevail over the former, and hence for the said entity to be deemed to be released from the obligation to post deposits on appeal requires a law that expressly stipulates this in specific reference to the entity, which would give rise to an exception from its regulation under private law in this respect, as provided in its own statute. In this connection it should also not be overlooked that the lawmakers' intent in these cases is none other than to ensure the immediate effect of a final judgment without need to have recourse to collection proceedings (with the resulting expense and delay) and also to preclude the use of appeals as a means of delaying the enforcement of judgments, and as the Constitutional Court held in its judgment of 28 May 1992 [*sic*] 'its aim is the right of the injured party to quick and effective protection, guaranteeing both future collection of the indemnity he has been awarded and protection against reckless or dilatory appeals that might keep the right to be indemnified pending indefinitely even after being recognized by a judgment finding liability'. It is precisely this constitutional right of the victim to protection that has caused lawmakers to prescribe this difference in procedural treatment and underlies their requirement for this precautionary measure to be proportional to the constitutional effect sought".

4. Doctrine of the Supreme Court

The Supreme Court has put an end to the controversy surrounding this issue in the case-law issued by the lower courts, in which, as just discussed above, opinion as to the obligation of the CCS to post deposits on appeal had been divided.

The Supreme Court has held Article 12 LAJEIP to be a provision of law that exempts the *Consorcio de Compensación de Seguros* from the requirement to post deposits on appeal on the basis of a series of arguments reviewed below.

4.1. Purpose of the deposit on appeal

In contrast to certain provincial appellate courts that had held the opposite, the Supreme Court has construed the deposit stipulated in Article 449.3 LEC not to be prior payment of an indemnity, as is inferable from the wording of that provision, but in point of fact the deposit is consistent with being able to provisionally enforce a judgment. Deposit on appeal is viewed as being an onus in order to exercise a procedural act, having the purpose of being a guarantee to provide the opportunity for immediate enforcement of a final judgment and ensure the serious intent of the appeal.

It can thus be said that the intent of Article 449.3 LEC in providing for deposit on appeal is to protect the right of the injured party to legal protection by means of a measure that guarantees that the said party will be compensated and also that the party held liable will not employ delaying tactics by lodging unwarranted appeals merely to prolong the proceedings after the injured party's right to indemnification has been recognized by a judgment adjudicating liability[3].

In this same sense attention can also be drawn to decree no. 150/2011 of 8 July 2011 by Chamber Five of the Provincial Appellate Court of Seville (EDJ [El Derecho Editores Case-Law Reports] 2011/250724), which held that "... The need for expediting stems from current international trends for protection of victims which, like Declaration No. 40/34 of 29 November 1985 by the General Assembly of the United Nations and European Convention No. 116 on the Compensation of Victims of Violent Crimes, urge Signatory States to take steps aimed at providing rapid compensation for victims and avoiding unnecessary delays in the disposition of cases and the execution of orders or decrees granting awards to victims ...."

[3] This is made plain in the judgment of 17 April 2009 by the Provincial Appellate Court of Seville (JUR 2009\313802), which held that "The purpose of the deposit on appeal is to safeguard the right of the aggrieved party to quick and effective protection, embodied both by the requirement to guarantee, by means of the deposit, prompt collection of the indemnity and by protection of the aggrieved party from abusive or dilatory appeals by the party having civil liability, which could indefinitely postpone the victim's right to receive compensation after that right has been recognized by a judgment adjudicating liability. It is precisely this constitutional right of the victim to protection that has caused lawmakers to prescribe this difference in procedural treatment and underlies their requirement for this precautionary measure to be proportional to the constitutional effect sought".

4.2. Legal character of the *Consorcio de Compensación de Seguros*

In the view of Chamber One of the Supreme Court, Article 12 LAJEIP relieves the entities to which it refers - expressly mentioning state-owned enterprises, the status accorded to the CCS - from having to deposit guarantees. In this sense it ruled this provision to be specific and sufficient for entities of this type to be entitled to the exemption prescribed in the provision without any need to enumerate them individually.

This is laid down in Article 1 of its enabling statute approved by Royal Legislative Decree No. 7/2004 of 29 October 2004, which provides that the *Consorcio de Compensación de Seguros* has been set up as a state-owned enterprise of the kind laid down in Article 43.1.b) of the Act Regulating the Organization and Operation of the General Government Administration, Act No. 6/1997 of 14 April 1997 [Ley 6/1997, de 14 de abril, de Organización y Funcionamiento de la Administración General del Estado] having its own legal personality and full entitlement to act in the pursuit of its purposes and being endowed with non-Government assets such that its activities come under the scope of private law.

In respect of its legal regime, Article 2.1 of the said statute provides that the Fund shall be governed by the provisions of its enabling statute and, in all respects not at variance with that statute, by the provisions expressly dealing with state-owned enterprises laid down in Chapter III, Title III, of the Act Regulating the Organization and Operation of the General Government Administration, Act No. 6/1997 of 14 April 1997, and all other provisions laid down for entities of this kind in the legislation currently in force.

Therefore, in the view of the Supreme Court, the CCS is unquestionably a state-owned enterprise of the kind referred to in Article 12 LAJEIP, as previously discussed[4].

Indeed, the fact that Article 2.1 of the Fund's enabling statute provides that its activity shall comply with private law has been the argument wielded by certain provincial appellate courts to find that the CCS was obligated to post deposits. For this reason, the judgment discussed in the preceding paragraph added "in cases in which it acts in its capacity as an insurer, be it as a direct or secondary insurer, it shall have the same rights and obligations as required of private insurance companies, and the nature of its liability, whether acting as a direct insurer or in its capacity as a guaranty fund, is direct, just as it is for private insurance entities. Accordingly, where lawmakers have intended to

[4] Nevertheless, the judgment of 28 February 2007 by the Provincial Appellate Court of Las Palmas de Gran Canaria (JUR 2007\151196) did not apply this criterion, ruling: "As provided in Royal Decree No. 7/2004 of 29 October 2004 approving the consolidated text of its enabling statute, as amended by Act No. 12/2006 of 16 May 2006, the *Consorcio de Compensación de Seguros* has been set up as a state-owned enterprise of the kind laid down in Article 43.1.b) of Act No. 6/1997 of 14 April 1997, having its own legal personality and full entitlement to act in the pursuit of its purposes and being endowed with non-Government assets such that its activities come under the scope of private law, and the said provisions of law do not prescribe any exemption on appealing in cases like the case at hand in these proceedings. It therefore follows that in respect of the insurance activity that it carries out, the Fund's activities in this field are subject to the provisions of private law, which does not mean that its activities shall not fall within the scope of public law insofar as they relate to its internal administration and operation".

establish an exception to the equal standing just described, they have expressly made provision to this effect".

This argument, used by certain provincial appellate courts, was dismissed by the Supreme Court at the end of Finding of Law Three, where it ruled that "the fact that the *Consorcio de Compensación de Seguros* is subject to the provisions of private law when it is acting as an insurer does not mean that the specific provisions governing action by the Government in proceedings of all kinds shall not apply in the procedural realm".

4.3. Scope of the State and Public Institution Legal Assistance Act (LAJEIP)

One of the issues raised by the Supreme Court in arguing that the CCS is exempt from the requirement for deposit on appeal is the scope it attaches to the LAJEIP. As has already been seen, until the judgment under discussion here, the debate concerned whether or not the exemption laid down in Article 12 LAJEIP applied to the CCS when it operated in the insurance sector, given the private nature of its activity.

In this sense, in supporting its arguments, the Supreme Court pointed out that the LAJEIP is intended to be global in effect, and its efficacy is not limited solely to the realm of public law. This is explained in the first paragraph in the preamble, section I, which makes reference to legal proceedings to which the various governmental bodies are joined in general terms without drawing any distinctions among jurisdictions.

Furthermore, the judgment holds that Article 12 LAJEIP comes under Chapter III, entitled "Special Procedural Features that Apply to the Government" over a set of provisions laying down specific precepts applying to the procedural realm, for instance: relating to process, notifications, summonses, and other acts of procedural communication with the Government (Article 11 LAJEIP), suspension of civil proceedings to compile background facts (Article 14 LAJEIP), or territorial privileges (Article 15 LAJEIP), with regard to which the law makes reference to "proceedings in all jurisdictions".

The judgment adds that in consequence a literal, systematic, and purposeful construction of the precept leads to the conclusion that the lawmakers' intent was to exclude the entities in question from the procedural onus of deposit on appeal. Its efficacy is not to be restricted to cases in which the CCS is acting as a guaranty fund, inasmuch as there is no basis for such an interpretation in the wording of Article 12 LAJEIP.

4.4. Deposit on appeal in cases of judgment against several codefendants jointly

In his extraordinary appeal claiming breach of procedure, the driver found to be at fault took up a question that holds out interest with regard to posting deposits. Based on the principle of joint liability for indemnification and its consequences, he contended that there was no point in requiring

the driver to duplicate the deposit, when a deposit had already been posted by the insurance entity that had been held jointly liable with him.

Briefly stated, he argued that i) the appellant's appeal was not detrimental to the defending party's rights because the proceedings had already been extended upon institution of the CCS's appeal and ii) the award ordered in the contested judgment was a joint indemnity, and hence since the CLEA and the CCS had already complied with the deposit requirement, that compliance should work to the benefit of the appellant, there being no point in requiring duplicate deposits by all the parties found liable.

While the appellant's arguments might appear to have little merit, given that the CLEA, as the representative of *Mades Fondo Asegurador* involved in a winding up procedure, did not lodge a cassation appeal, and as we have just seen the CCS was exempt from posting a deposit under the provisions of Article 12 LAJEIP, the Supreme Court admitted this ground for the extraordinary appeal claiming breach of procedure, holding that the appellant was entitled to benefit from compliance with the deposit requirement by another party held jointly liable with him, the CCS, which, being exempt from posting a deposit on appeal due to its status as a state-owned enterprise, had to be deemed as having complied with its function as guarantor intrinsic to the deposit.

In any case, concerning the obligation to effect a deposit in the event of being held jointly liable, the Supreme Court pointed out that in its judgment of 3 February 2011 (RJ 2011\1814), Chamber One had already set forth its position on the application of Article 449.3 LEC in proceedings in which the judgment held various defendants to be jointly liable for payment of damages ensuing from motor vehicle traffic. That judgment, after considering the disparities in the criteria applied by the provincial appellate courts, had laid down the following doctrine: "deposit on appeal posted by one of the parties found jointly liable operated to the benefit of the other jointly liable parties having the same interests".

Thus, Finding of Law Four, section C, in that judgment recognized that "Application of this doctrine may give rise to situations in which, after one of the jointly liable parties has posted a deposit on appeal - the said deposit thereby benefiting the other parties held to be jointly liable with the depositor - circumstances that affect the depositor's appeal may arise - such as inadmissibility or discontinuance - entitling that appellant to recover its deposit. In such cases a procedure that prevents Article 449.3 from being circumvented should be instituted, such that the other jointly liable appellants who did not initially post a deposit remedy the supervening absence of a deposit on pain of dismissal of their appeals".

The Supreme Court holds that, barring exceptions, generally speaking in proceedings ensuing from motor vehicle traffic the insurers of the parties involved in the traffic accident put forward the same position in the suit as the respective parties they have insured and share the same interests, even to the point of litigating using the same Counsel and defence. Where applicable, liability for paying the damages is joint between the party at fault and its insurer. Also generally speaking, the onus of effecting the deposit on appeal tends to be assumed by the insurer, because, given its nature, it is better able to comply with this requirement, which represents less of an economic burden for it than

for an insured individual. In such cases, pursuant to the doctrine just described, the deposit on appeal posted by the insurer benefits the insured party who shares the same interests in the proceedings.

In defending its arguments the Court had recourse to the principle of proportionality applicable to examination of compliance with procedural requirements pursuant to the judgments of the European Court of Human Rights of 21 September 1994 in the matter of Fayed vs. the United Kingdom, 4 December 1995 in the matter of Bellet vs. France, 16 November 2006 in the matter of Hajiyev vs. Azerbaijan, and 13 March 2007 in the matter of Laskowska vs. Poland. On this basis it concluded:

1. In ordinary circumstances the appellant would have benefited from the deposit on appeal effected by the insurance company, as a jointly liable party when lodging its appeal against the lower court's judgment.
2. The fact that in the case at hand, because the insurer is affected by a winding up procedure, its obligation has been assumed by the *Consorcio de Compensación de Seguros*, which is exempt from the obligation to post a deposit, cannot be regarded as a relevant circumstance from the standpoint of the requirement to post a deposit incumbent on the insured party. Otherwise, due to circumstances completely outside his control involving his relationship with the insurer and its circumstances, the appellant would be deprived of a benefit enjoyed by insured parties pursuant to this Court's case-law when deposits on appeal are posted by their insurers.
3. An exceptional factor such as exemption from the requirement to post a deposit enjoyed by the *Consorcio de Compensación de Seguros* as a public body constrained to intervene in certain circumstances to remedy the absence of the insurer who would ordinarily be obligated to post a deposit should not serve to augment the burdens that exercising his right to appeal would entail for the appellant under normal circumstances.
4. The appellant may benefit from fulfilment of the burden to post a deposit on appeal by whomever may have been found jointly liable with him, here the *Consorcio de Compensación de Seguros* - as already seen when considering the extraordinary appeal claiming breach of procedure lodged by the *Consorcio de Compensación de Seguros* - the said Fund, being exempt from posting a deposit on appeal due to its status as a state-owned enterprise, has to be deemed as having complied with its function as guarantor intrinsic to the deposit.

This doctrine has since been affirmed by lower court judgments. For example, the judgment of the Provincial Appellate Court of Palencia dated 15 February 2013 (JUR 2013\126420), which held that "Here there can be hardly any doubt that we find ourselves in this case. On examining the documents on record in the proceedings, it has in fact been found that the said deposit was not posted by the representative for the appellant, the *Club Deportivo Nuestra Señora de Valdesalce*. However, deposits were effected both by *Mapfre Empresas SA* and by *Mapfre Agropecuaria SA*, found by the judgment under appeal to be jointly liable".

Conclusions

The judgment under discussion here raises two interesting issues:

- The first concerns the obligation laid down in Article 449.3 LEC to post deposits on appeal in proceedings involving traffic accidents. The question arose as to whether the exemption laid down in Article 12 of the State and Public Institution Legal Assistance Act, Act No. 52/1997 of 27 November 1997, providing that "The State and its Independent Agencies, as well as state-owned enterprises, public bodies governed by their own specific enabling acts that are subsidiary to both, and constitutional bodies shall be exempt from the obligation to post deposits, guarantees, bonds, or any other type of surety provided for by law" applies to the *Consorcio de Compensación de Seguros*.

  The Supreme Court has settled the controversy that had ensued from the varying criteria that have been applied in the case-law handed down by the lower courts, by finding the CCS to be exempt from the requirement to deposit on appeal because the exemption laid down in the said Article 12 LAJEIP is applicable to the Fund as a state-owned enterprise of the kind expressly referred to in the precept considered, which is not impeded by the fact that the Fund's activities fall within the scope of private law.
- The second question raised was whether a deposit posted by one of the parties found jointly liable releases the other party adjudicated to be at fault. In settling this issue the judgment makes reference to another judgement issued by the Court on 3 February 2011 (RJ 2011\1814), in which it had already ruled on this point, laying down the following doctrine: "deposit on appeal posted by one of the parties jointly liable operates to the benefit of the other jointly liable parties having the same interests".