



ASOCIACIÓN MEXICANA DE DERECHO MARÍTIMO A.C.

Mexico City, June 29th, 2020.

**Comité Maritime International
IWG on Classification Societies**

Attn.- Luc Grellet

Dear Luc,

Reference is made to the CMI President letter dated June 18th with the Classification Societies IWG questionnaire. Following please find the reply from the Mexican Maritime Law Association:

Questionnaire

Question 1:

Is there any legislation (or regulation) specifically dealing with the classification activities of Classification Societies in your country?

In Mexico, there is no legislation or regulation specifically dealing with the classification activities of the Classification Societies. There are two or three isolated articles in our legislation that mention the Classification Societies, but nothing specific.

Question 2:

On what basis does your court retain jurisdiction in respect of a third-party claim against a Classification Society:

. domicile of the defendant, . Locus delicti, . joinder with other defendants.

. Rules of the Society . others?

Our Courts may take jurisdiction by the domicile of the defendant or by the *Locus Delicti*.

Question 3:

How many cases – if any – concerning the liability of Classification Societies to third parties, have been decided in your country?

As far as we are aware, none. But there have been cases where Mexican Flagged vessels have been sued in foreign Courts jointly and severally with Classification Societies. The most recent one was the sinking of M/V Tuxpan on the North Atlantic on 1991. The case was trialed at the New York Circuit Court and Germanisher Lloyd and Owners were found guilty of willful misconduct.



Question 4:

On which of the following subject matters were these decisions rendered: . sinking or damage to a ship including pollution damage?

- . action by cargo owners or their insurers or by charterers?**
- . sale of a secondhand ship?**
- . others?**

Above mentioned case, which as stated was trialed in New York District Courts, rendered its decision on the sinking on the vessel Tuxpan.

Question 5:

What is the legal basis used or considered in the decisions rendered, in your country, in cases of third-party claims against Classification Societies:

- . tort . duty of care, . negligent misrepresentation, reliance on the classification certificate,**
- . others?**

Our Courts will consider the liability under tort.

Question 6:

Has a court of your country imposed liability on a Classification Society on the basis of insufficiency or incompleteness of their Rules?

There are no decisions on our Courts on above. However Classification Society are subject to the general provisions on liability in force in Mexico in the Federal Civil Code and the Maritime Navigation and Commerce Act.

Question 7:

Is a certificate of classification considered in your country as a certificate of seaworthiness?

No, it is not considered as a certificate of seaworthiness, however it is consider a presumption *juris tantum* that the vessel is in seaworthiness condition.

Question 8:

What is the importance given, by your courts, in their reasoning on the liability of classification societies towards third parties, to the rules and regulations of the Society?



As mentioned, there are no decisions in our Courts in this sense; however the doctrine in Mexico imposes liability to the Classification Societies when on their conduct exists tort.

Question 9:

What are the defenses available to a Classification Society sued in tort by a third party (assuming that the facts of the matter are not disputed)?

The available defenses may be fortuitous case and Force Majeure, as well as when victim conduct induces to the error of the Classification Society.

Question 10:

Have Classification Societies the possibility to invoke, in your country, the limitation of liability inserted in their rules or in the classification certificates as a defense against a tort action of a third party? If so please expand.

No, they can not invoke the limitation of liability in their rules against claims of third parties in tort. It is the opinion of this MLA that Classification Societies should be included in the persons that may invoke the limitation of liability under the LLMC.

Question 11:

Is, on one hand personal injury or death allegedly caused by negligence of a Classification Society and, on the other hand, economic loss, treated by your courts according to the same principles of law or different ones?

In such a case please explain the differences.

Tort Liability in Mexico includes both, personal injury or death and economic loss.

Question 12:

Please explain briefly the rules of procedure applied and of investigations carried out in your country in such matters concerning Classification Societies liability with particular emphasis on the role of:

- . private or court experts;
- . witnesses.

The tort trial will be followed on the Federal District Court ruled by the Ordinary Federal Civil Procedure. The key evidence in this type of procedures is the expert witnesses testimonies. Each party has the right to appoint one expert witness and the Court appoints a third one if the conclusions of the other two experts does not coincide.



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The expert witnesses must follow the IMO resolution MSC255(84) Adoption of the code of the international standards and recommended practices for a safety investigation into a marine casualty or marine incident (Casualty Investigation Code).

From the results of the experts opinions filed, they are not binding to the Court, but normally it follows these results.

Question 13:

Would a third-party claim against a Classification Society be subject time limitation or time bar in your country?

Time bar in Mexico for a third party claim in tort against a Classification Society is of two years.

Trust that above replies are of assistance and look forward to see you at the Tokyo Conference.

Yours Sincerely,

Dr. Ignacio L. Melo Ruiz
President

cc: CMI President - Christopher O. Davis