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| **ΕΛΛΗΝΙΚΗ ΕΝΩΣΗ ΝΑΥΤΙΚΟΥ ΔΙΚΑΙΟΥ** | | |
| **ASSOCIATION HELLENIQUE DE DROIT MARITIME** | C:\Users\mpv.TIMAGENISLAW\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\CKL0FRRC\LOGO ENOSHS.jpg | **HELLENIC**  **MARITIME LAW ASSOCIATION** |
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**Questionnaire on Classification Societies**

**Question 1 : Is there any legislation (or regulation) specifically dealing with the classification activities of Classification Societies in your country ?**

There exists regulatory legislation regarding the performance of statutory activities (such as EU Regulation 391/2009, Decision 4113.297/01/2012 of the Minister of Mercantile Marine), but there is no legislation dealing with the classification activities.

**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 who are subject to Greek jurisdiction.

**Question 3 : How many cases – if any- concerning the liability of Classification Societies to third parties, have been decided in your country ?**

In the last 30 years there have been about 15 cases.

**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 second hand ship**

The cases regarded loss or damage to a ship resulting to personal injury or death of crew members and/or damage/loss of property (not pollution) and claims resulting from the sale of second hand ships.

**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 ?**

This depends on the specific arguments brought forward by the claimants, but the cases we know (and the judgments issued thereon) regarded **tort liability** (which covers the concept of “*duty of care”* and “*negligent representation”*), as well as liability resulting from consumer protection legislation. Specifically, it is being held that non state owned classification societies that provide independent classification services falls under the scope of application of consumer protection legislation which, in effect, shifts the burden of proof of negligence, i.e. the person that suffered a damage must only prove the damage and the causal connection with an omission or action of the classification society and the latter must prove that it has no fault (negligence or willful misconduct, e.g. Piraeus Appeal Court 647/2019, Supreme Court 1295/2019).

**Question 6 : Has a court of your country imposed liability on a Classification Society on the basis of insufficiency or incompleteness of their Rules ?**

To the best of our knowledge no such judgement exists.

**Question 7: Is a certificate of classification considered in your country as a certificate of seaworthiness ? If so what is the reasoning ?**

It has been ruled (e.g. Piraeus Appeal Court 647/2019) that the certificate of classification does not contain any confirmation about the condition of a ship, but merely provides classification information, i.e. it shows that a particular ship is entered in a specific class of a classification society which proves that the construction of a the ship, at the time of survey, complied with certain minimum construction and engineering standards (as provided in the Society’s rules) that are necessary for inclusion in the Society’s classes. However, according to the above judgment, the precise condition of a ship cannot be derived from the classification certificate.

**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 ?**

In examining tort liability of a Classification Society towards third parties Greek courts search for breach of obligations imposed on Classification Societies (and their surveyors) directly by legislation and/or the society’s rules and regulations (e.g. if a particular survey was conducted in the proper manner, such as a “close up inspection within an arm’s length”), but they do not examine the adequacy or completeness of the society’s rules and regulations as such.

**Question 9 : What are the defences available to a Classification Society sued in tort by a third party (assuming the facts of the matter are not disputed) ?**

If the facts (supporting negligence in the performance of class/statutory surveys) cannot be disputed, then legal defences are very limited, such as contributory negligence in the case of a third party that purchased a ship without a pre-purchase survey which is customary in such cases. In the cases that reached Greek Courts the defence of classification societies focused on disputing the facts on the merits in order to prove that the reason of the damage was not fault in the performance of the services of the Classification Society but other technical reasons (such as poor maintenance between the times of class surveys, age of the ship that led to accelerated corrosion etc).

**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 defence against a tort action ? Is so please expand.**

Under article 332 of the Greek Civil Code, any agreement limiting liability for damages caused with *dolus malus* or gross negligence is null and void. In all other cases of negligence, a clause limiting liability is null and void:

* if the liability occurred in a business operating pursuant to a permission of the State, or
* if the particular clause was not the object of specific negotiations, or
* if the clause limits liability for damages to rights emanating from the right to personality (such as life, health, freedom and honour).

To the best of our knowledge such limitation of liability clauses found in the certificates of classification and/or in the general terms contained in invoices issued by a Classification Society are dismissed particularly when the plaintiff is contractually related to the defendant Classification Society (e.g. Piraeus Multi Membered Court of First Instance 628/2014).

In third party tort claims, there is no legal mechanism for the defendant Classification Society to invoke any limitation of liability provided in its general terms since the third party plaintiff is not contractually related to the classification society.

**Question 11: Is, on the 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.**

They are both treated under the same principles of law regarding tort liability.

**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**

Under the applicable civil procedure rules, as amended, each litigant party may submit up to 3 sworn affidavits as documentary evidence, plus up to 2 additional sworn affidavits to support supplementary pleadings in order to rebut the opponent’s allegations.

Witnesses (factual or expert) do not depose verbally before Court unless the Court decides (*ex officio* or upon application of any of the litigant parties) that the verbal deposition of witnesses is absolutely necessary in order for a judgment to be reached. In such case the Court may hear one witness from each litigant party pursuant to a decision of the Court setting the date/time for the deposition.

Similarly, the Court may appoint (*ex officio* or upon application of any of the litigant parties) an expert to provide an expert opinion/report if it considers that the subject matter of the case requires the advice of a specialist on matters of science or art. This expert is considered to be a “Court Expert” and must provide within a prescribed period of time his expertise on the matters ordered by the Court. Each of the litigant parties may appoint their own technical advisers who co-operate with the Court Expert and issue their own reports with comments on the procedure and the report of the Court Expert.

All above means of evidence (sworn affidavits, witnesses, court expert expertise) are considered and evaluated by the Court freely, in the sense that the Court is not bound by them, but the respective depositions/expertise have an advisory value, meaning that the court may decide otherwise, always assuming the judgment is adequately reasoned.

**Question 13: Would a third party claim against a Classification Society be subject to any time limitation or time bar in your country ?**

Third party claims against Classification Societies may be filed only under the tort provisions for which the Civil Code sets a time bar of 5 years from the date the plaintiff became aware of the damage and of the responsible party (unless the particular action/omission constitutes a criminal offence with a longer time bar), but in any case, not later than 20 years from the date of the action or omission that caused the damage.

Piraeus 3 May 2022