

**Questionnaire for National MLA’s on Classification Societies**

**RESPONSES OF THE ARGENTINE MARITIME LAW ASSOCIATION**

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

Rule 6 a) of the Modifications and Additions to the international annex for the Safety of Life at Sea Convention -SOLAS 1974- modified by the Protocol of 1988 (ratified by Argentina by Act N° 24.213), as rule 5.2. of the International Convention to prevent oil pollution of 1973/78 MARPOL (ratified by Argentina by Act N° 24.089) allow States to delegate in entities such as the Classification Societies the inspections and visits in order to issue the pertinent certificates requested by those conventions. Resolution A 739 of 29 November 1993 of the International Maritime Organization provides directives to Flag States that delegate its duties to Classification Societies stating that they should be technically and administratively reliable and with the necessary research resources to conduct the delegations tasks. In Argentina, the Coastguard issued the Maritime Ordinance N° 3/1993 of 16th December 1993 by which the Coastguard authorized the Classification Societies recognized to carry out inspections of the security conditions and pollution prevention of vessels registered under Argentine Flag. The same Ordinance rules the recognition of said Classification Societies.

**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 Civil and Commercial National Proceedings Code sets up rules on jurisdiction that apply to the question posed. The main rules are the following. In case a lawsuit is filed by a third party in tort against a Classification Society, the Courts of the place in which the facts occurred will have jurisdiction together with the Courts of the domicile of the Classification Society (art. 5.4 of our Civil and Commercial Proceedings National Code/ *locus delicti rule)* and with the Courts of the domicile of the insurance company that covers the liability of the Classification Society, if any, always at election of the claimant.

In case the claim relates to contractual duties not performed or performed irregularly by the Classification Society, Argentine Courts will retain jurisdiction if said duties should be performed in Argentina (art. 5.3 of our Civil and Commercial National Proceedings Code provides jurisdiction to the Courts of the place in which the obligations expressly or implicitly should be performed). The claimant will have the choice to file a lawsuit at the Courts of the domicile of the Classification Society that will also have jurisdictions to intervene (art. 5.3) or at the Courts of the domicile of the insurance company that covers the liability of the Classification Society, if any.

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

There have been no cases concerning the liability of Classification Societies in Argentina.

**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?**

See answer to question 3.

**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?**

See answer to question 3.

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

See answer to question 3.

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

A certificate of a classification society should be considered in principle as an evidence that the vessel was in seaworthy condition at the moment in which it was issued. But, by itself said certificate wouldn´t be enough proof of the condition of the vessel and further evidence should be produced.

But if the Coastguard issues a certificate based on the inspection carried out by a Classification Society, said Coastguard´s certificate will be a certificate of seaworthiness. The reasoning supporting this is that according to article 80 of our Navigation Act, the certificates filed by the maritime authority, namely the Coastguard prove the content except proof to the contrary.

**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?**

See answer to question 3.

**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)?**

It is difficult to the determine which would be the outcome of the defenses that a Classification Society might file. The following could be some of the defenses available to a Classification Society:

It has been said that the Classification Society should not be considered liable taking into account that its contact with the vessel is short.

The Classification Society might also claim that they have deployed the surveys with the normal technical means available according to the state of the art and that the defect was a hidden vice that couldn´t be discovered by regular means and with the normal diligence and care.

Making them liable and providing an action against them would make the Classification Societies as an absolute insurer of every vessel under inspection.

An additional defense might be that the incident was caused by a voluntary exposition of the claimant -if any- to the danger that interrupted causation.

**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.**

A Classification Society will not be entitled to invoke against third-party claimants any limitation of liability inserted in their rules. This is so because said limitation is included in the Classification Society rules or certificate and therefore it should be considered unilateral and not accepted by a third-party claimant and it would be considered an abusive clause (article 1743 of our Civil and Commercial Code). As regards a shipowner that has a contractual relation with the Classification Society, the limitation of liability might be successfully invoked in case said limitation had been expressly or implicitly accepted by the shipowner as a contractual party.

**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**

There are no specific rules regarding liability of the Classification Societies in Argentine law. Therefore, the general civil liability principles apply as follows.

In case the duty of not damaging others (claim in tort) or fulfilling a contractual obligation is breached (claim in contract), the damage therein should be repaired (article 1716 of our Civil and Commercial Code), being the damage a personal injury or death or economic loss. In all cases, the damage should have an adequate causation with the conduct of the Classification Society. Our liability rules consider that the compensation should include the material damage itself and the loss of earnings that might be obtained.

In case of death the compensation should include: a) the necessary assistance expenses and the funeral costs; b) the necessary alimony of the wife or husband or concubine and those of the underage children (less than 21 years) or children with disability, taking into account the life expectation and its personal conditions and c) the loss of chance in case the claim is filed by parents claiming the loss of a child (article 1745 of our Civil and Commercial Code). In case of personal injury causing permanent total or partial disability the compensation should be assessed considering the principal whose rent covers the victim´s loss of earnings.

Besides, the compensation should include the medical, pharmaceutical and transport expenses that are assumed as a reasonable consequence of the disability. In case of permanent disability, the damage should be compensated even if the victim still carries out a compensated activity (art. 1746).

In both cases, personal injury/death or economic loss, the compensation should be in full (article 1740 of our Civil and Commercial Code) and placing the damaged person as it was before the incident, being the compensation in money or in kind at the victim´s choice, except in case the latter is not possible, or too expensive or abusive.

In case of death or personal injury, the victim might claim no patrimonial damages.

**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.**

There are no specific rules regarding proceedings rules concerning Classification Societies and therefore the general proceedings rules apply. In case of damages including those allegedly caused by a Classification Society, article 519 of our Navigation Act states that any interested person can request at Court the appointment of an expert witness in order to inform the extension of the damages suffered by vessels, piers, or naval devices or persons or cargo on board. The future defendant party should receive notice of the procedure in order to guarantee the right of defence. In addition, the Coastguard might file investigation proceedings.

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

Yes, a third party claim against a Classification Society is subject to a time bar limitation in Argentina. There is no specific rule for time bar regarding Classification Society, but as a third party claim would be a civil liability claim, the term of three (3) years related to all civil liability claims whether in contract or in tort of article 2561, second paragraph, of our Civil and Commercial Code will apply.

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