

Shipping & Transport - Italy

Liability of classification societies

The Court of Genoa recently addressed the problematic issue of the liability of classification societies, holding Lloyd's Register liable for damages caused to time charterers as a result of the detention of their vessel. The detention was on the basis of deficiencies discovered by the Hamburg Port Authority during a port state inspection.

Facts

Under a contract dated January 14 2003, the plaintiffs time-chartered the Redwood (which was registered under the Maltese flag) for a voyage from Hamburg, Germany to Libya. The vessel was in the highest classification according to Lloyd's Register (LR 100 A1).

On January 21 2003, while loading was taking place at Hamburg, the local port authority inspected the vessel and discovered a number of deficiencies. As a result, the port authority ordered the detention of the vessel.

Lloyd's Register surveyors, together with representatives of the Maltese Maritime Authority, went on board on January 23 2003. The surveyors recommended that a number of repairs be carried out before departure. The Maltese Maritime Authority ordered the vessel to leave the port only once the deficiencies in question had been rectified, and declared the class certificate previously issued by Lloyd's Register to be suspended.

By February 27 2003 some provisional repairs had been carried out. On that date Lloyd's Register, having obtained the Maltese Maritime Authority's consent, issued a class certificate, but only for a ballast voyage from Hamburg to the Bulgarian port of Varna, where the remaining repairs were to take place. The time charterers had to unload the cargo from the Redwood and find a substitute vessel for their cargo.

Claim

The time charterers brought a legal action before the court, but only against Lloyd's Register, not against the vessel's owners. During proceedings the claimants explained that shortly after the events in question had taken place, the vessel had been sold by the owners - any claim against the owners had remained unsecured and was likely to be unenforceable.

A claim was filed for more than €562,000, plus almost \$53,000 in respect of damages suffered by the claimants when the cargo had to be discharged from the Redwood and reloaded onto another vessel for carriage to its destination.

Lloyd's Register claimed that the plaintiffs should have brought proceedings against the vessel's owners, not against the classification society. They also contested the claim on the merits, arguing that the deficiencies discovered at Hamburg were the consequence of negligence on the part of the master and owners, and of their failure to maintain the vessel in a seaworthy condition.

The court appointed two surveyors to advise on technical matters. In particular, the court asked them to verify whether it was technically possible to infer the condition of the vessel at the time of its

previous class inspection in India in November 2001 from the assessment of its condition during the inspection in Hamburg in January 2003.

Decision

On the basis of the second surveyor's conclusions, the court held that the vessel had been in extremely poor condition, both when it was inspected by Lloyd's Register in India in 2001 and at the time of the intermediate class inspections between 2001 and 2003. The vessel should not have been accorded the highest classification; nor should it have been granted a clean class certificate, valid for the purpose of the International Convention for the Safety of Life at Sea (SOLAS) and in accordance with the Rules of Lloyd's Register and Internal Guideline 3 of the International Association of Classification Societies.

Therefore, the behaviour of the inspectors in India in November 2001 amounted to gross negligence. The court upheld the claim and ordered Lloyd's Register to pay over €495,000 and over \$52,000 as damages in respect of discharge, reloading and carriage.

Comment

This is the first time that an Italian court has specifically addressed the issue of liability of classification societies. In so doing, the court considered some significant and difficult legal questions.

Apart from the technical assessment, the fundamental legal basis for the classification society's liability to the time charterers was derived from the fact that classification societies, although not government agencies, play such a significant role and enjoy such a reputation in the shipping industry that operators rely strongly on their certification when concluding contracts and making commercial decisions.

Classification societies are normally party to private contracts with shipowners, but they are also delegated by governments to inspect and monitor vessels.

The role of classification societies has become even more important in light of the SOLAS Convention and EU Directive 94/57/EC. In Italy, Law 314/1998 introduced a rule on classification societies whereby their certificate not only reflects the private interests of the relevant shipowner, but also becomes a characteristic of the vessel, which immediately and universally confirms to third parties that such vessel is reliable.

The judgment contains a wide analysis of liabilities in tort of several certifying companies and, in particular, a comparison of the role and responsibilities of classification societies with those of auditors. It concludes that the time charterers of a vessel are entitled to claim damages against a classification society if there is evidence that the charterers relied on the classification certificate when concluding the charterparty, and that such certificate was wrongly issued as a result of the negligence of the classification society's inspectors.

For further information on this topic please contact [Maurizio Dardani](mailto:maurizio.dardani@genoachambers.it) or [Marco Manzone](mailto:marco.manzone@genoachambers.it) at Genoa Chambers by telephone (+39 010 576 1816), fax (+39 010 595 7705) or email (maurizio.dardani@genoachambers.it or marco.manzone@genoachambers.it).