



CMI International Working Group on Classification Societies
Questionnaire to National Maritime Law Associations
Venezuela Submission

Question 1:

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

Reply: No.

Question 2:

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

- . domicile of the defendant,
- . Locus delicti,
- . Rules of the Society
- . others?

Reply: Venezuelan courts could have jurisdiction in respect to a third-party claim against a foreign entity, such as a Classification Society, through several ways as if the occurrence of the facts takes place in Venezuela (locus delicti) or if a personal summons of the Classification Society's legal representative is executed in Venezuela or if there is a tacit submission to Venezuelan jurisdiction on the part of the Classification Society as if same is sued in Venezuela and does not oppose the lack of jurisdiction in the trial. In the case that the Classification Society would be domiciled in Venezuela, local courts would also have jurisdiction (Venezuelan Private International Law, article 40 and 39).



Question 3:

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

Reply: We are not aware of any judicial action in Venezuela regarding liability of Classification Societies to third parties.

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?

Reply: We are not aware of any judicial action in Venezuela regarding this matter.

Question 5:

What is the legal basis used or considered in the decision 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?

Reply: The legal basis of a judicial action of this sort would be tort pursuant to article 1185 of the Venezuelan Civil Code which provides: "One who has intentionally or negligently or recklessly caused harm to

another is obliged to repair it ...”. *It would be needed to show the fault of the Classification Society, the causal relationship between such a fault and the damage produced and the damage as such.*

Question 6:

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

Reply: We are not aware of any judicial action in Venezuela regarding this matter.

Question 7:

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

If so, what is the reasoning?

Reply: Presumably, in a judicial action, a certificate of classification as such would not be considered a certificate of seaworthiness, in view that it would be needed its ratification in court by corresponding surveyor. In the Association’s view, if the inspection was done correctly it could be considered, in principle, that the certificate would be able to show prima facie seaworthiness which may be rebuttable by counterproof.

Question 8:

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

Reply: We are not aware of any judicial action in Venezuela dealing with this issue.



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)?

Reply: There might be several defenses as lack of jurisdiction; lack of fault on the part of the classification society; lack of relationship between the alleged classification society fault and the damage; lack of proof regarding damage; time bar.

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 defense against a tort action of a third party? If so please expand.

Reply: In Venezuela the general principle is that a debtor is obliged to fully pay all legal damages (Civil Code articles 1863 and 1864). In the Association's view as derogation of this principle, should be expressly established and considering that in the Venezuelan legal liability limitation regime, classification societies are not contemplated, the limitation of liability defense could not be invoked by a classification society against a tort action of a third party claim on the basis that same has been inserted in their rules or classification certificates.

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.

Reply: In Venezuela, both matters operate under the same principle. The general principle is that damages due comprises, suffered losses (Damnum Emergens) and incomes that have been deprived (Lucrum Cessans) (article 1273 of the Civil Code).

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 of the role of:

- . private or court experts;
- . witnesses.

Reply: In cases of Classification Societies liability, an eventual investigation on this matter in court would be made through experts. Each party has the unilateral right to bring to court an expert report which must be ratified in court by the correspondent expert for being subject to cross-examination. During trial, parties have also the right to request to court the appointment of experts and usually three experts are designated. Judge has also the right to appoint experts ex officio. In any case, judge has discretion to follow or not expert's opinion (Maritime Procedure Law, article 19; Civil Procedural Law, article 451; Civil Code, article 1427).

Question 13:

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

Reply: The general time bar applicable for personal actions would be the one applicable to this matter, which is 10 years (Civil Code, article 1977).