

Questionnaire on Classification Societies

Preamble

A new mandate was given to this IWG on Classification Societies in London at the end of 2018. The mandate concerns two completely different areas:

1/ The liability of Classification Societies towards third parties in the framework of their classification activities

Considering the different treatments given to Classification Societies – whose activities are similar worldwide – by courts in common law and civil law jurisdictions, we have thought that it would be of great interest -- because the aim of the CMI is uniformity -- to conduct a brainstorming exercise on the reasons behind these different approaches and, eventually, on how to bridge the gap.

For the time being, the Statutory activities of Classification Societies by delegation of Flag States are not included in our works.

2/ Possible Amendments to the LLMC and CLC

Existing International conventions do not include Classification Societies among those who are entitled to limit their liability for Maritime claims. As a result Classification Societies are often unfairly exposed to third party claims arising from major maritime casualties as representing “a deep pocket”.

Even though it is known that amendments to the LLMC and CLC are not currently on the foreseeable agendas of any international organizations, it has been considered that further work on this issue might be useful.

For a number of reasons, the work on these two topics has been delayed and it has been decided to start with the third-party liability and to deal with possible amendments to the limitation conventions at a later stage.

We will set off by sending a questionnaire which is the method of work commonly used by the CMI. You will therefore find hereinafter the questionnaire that has been prepared by the IWG.

Those interested in Classification Societies have certainly observed that the number of court decisions on the liability of Classification Societies is limited worldwide, even more so considering that a number of these deal not with liability as such but with jurisdiction and/or applicable law issues.

There are therefore, in fact, very few decisions actually dealing with the liability of Classification Societies in the framework of their classification activities and

moreover they have been rendered in a few countries only. Hence the case law on which we will work is not very extensive but of course essential.

We would be grateful if NMLAs could respond to the questionnaire before the end of August.

Questionnaire

Question 1:

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

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?

Question 3:

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

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?

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?

Question 6:

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

Question 7:

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

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?

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)?

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.

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.

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.

Question 13:

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

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