The Prestige Disaster and the Role of Classification

Societies

International Tribunal for the Law of the Sea, 4 March 2006

Luis Figaredo
Different nationalities involved

Crown Resources (Charterers)

Universe Maritime (Managers)

Mare Shipping (Owners)

Hitachi Shipbuilding & Engineering Co. (Ship Builder)

Flat State

ABS (Class Society)

P & I

Spanish Authorities

Smit Salvage (Salvors)

Cosco Shipyard (Repairs)
ELEMENTS OF NEGLIGENCE

NEGLIGENCE: The failure to exercise the standard of care that a prudent person would have exercised in a similar situation

ELEMENTS OF NEGLIGENT MISREPRESENTATION

1. DUTY OF CARE BASED "SPECIAL RELATIONSHIP" BETWEEN REPRESENTOR AND REPRESENTEE

2. REPRESENTATION MUST BE UNTRUE, INACCURATE OR MISLEADING

3. REPRESENTOR MUST HAVE ACT NEGLIGENTLY

4. REPRESENTEE MUST HAVE RELIED (IN A REASONABLE MANNER) ON THE NEGLIGENT REPRESENTATION

5. THE RELIANCE MUST HAVE BEEN DETRIMENTAL TO THE REPRESENTEE AND DAMAGES SHALL RESULT

ELEMENTS OF NEGLIGENCE

1. DUTY OF CARE EXISTENCE BETWEEN THE PARTIES

2. BREACH OF THE DUTY OF CARE

3. DAMAGES RESULTING FROM THAT DUTY
A certification provides an information to the market, as a proof or evidence that the data contained therein are accurate.

"The purpose of the ship classification is to assure that the vessel is safe and fit for its intended use."

Does the market (i.e. third parties) rely on this information?
Erika Packages

EXISTING MEASURES

- International Marpol Convention for the Prevention of Pollution from Ships adopted in 1973
- Directive 95/21/EC on Port State control
- Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues
- International Marpol Convention for the Prevention of Pollution from Ships
- Directive 2001/105/EC on stricter supervision of the activities of classification societies by the Commission
- Regulation No 417/2002 on the accelerated phasing-in of double hull (or equivalent) for single oil tankers

ERIKA I

- Communication of 21 March 2000 on the safety of the seaborne oil trade
- Directive 2001/105/EC on stricter supervision of the activities of classification societies by the Commission
- Regulation No 417/2002 on the accelerated phasing-in of double hull (or equivalent) for single oil tankers

ERIKA II

- Communication of 6 December 2000 on a 2nd set of Community measures on maritime safety
- Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system and the problem of places of refuge
- Regulation No 1406/2002 establishing a European Maritime Safety Agency
- Proposal for a regulation on the establishment of a fund for the compensation of oil pollution damage in European waters

ERIKA III

- Communication of 23 November 2005 on a 3rd set of Community measures on maritime safety
- Proposal of Directive amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system and the problem of places of refuge

ADDITIONAL MEASURES

- Directive 2001/25/EC on training seafarers
- Directive 2002/59/EC also combats discharges of oil waste and flushing of ballast tanks
PRESTIGE MEASURES

Communication of 3 December 2002 on the strengthening of the maritime security after the casualty of the vessel Prestige

- Implementation of the Erika Packages
  - Stricter timetable for the phasing out of single-hull vessels and the prohibition of the carriage of heavy fuel oil in single-hull vessels

- Monitoring of seafarer’s level of training

- Introducing criminal penalties at community level for marine pollution caused by ships

- Monitoring of seafarer’s level of training

- Early setting up of the European Maritime Safety Agency

- Speeding up of preparation of plans for the reception of vessels in places of refuge

- Proposal for a Directive on ship-source pollution and on the introduction of sanctions for pollution offences (5 March 2003)

- Directive 2003/103/EC makes English the language of communication of the crew

- Administrative proceedings against the ship owner and the owners of the cargo/charters for the extraction of the oil from the shipwreck

- Spanish Proposal of a decision for start administrative proceedings revoking the authorization given to ABS as an EU recognized Classification Society

- Spanish Proposal that the Galician coast to be declared internationally as Particularly Sensitive Sea Area

- Administrative proceedings to investigate the competence and license of the Master of the M/T Prestige


- New concrete initiatives
  - Regulation Nº 2099/2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships

- Wish of the UE to increase its influence within the IMO

- Proposal for a Directive on ship-source pollution and on the introduction of sanctions for pollution offences (5 March 2003)

- Administrative proceedings against the ship owner and the owners of the cargo/charters for the extraction of the oil from the shipwreck

- SPANISH MEASURES

- Publication of black list of ships on 3 December 2002 by the IMO

- Increase of the IOPC (International Oil Pollution Compensation)