The Importance of Class in Marine Insurance, Claims, and Legal Liabilities

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CHRISTIAN OTT
VICE PRESIDENT HEAD OF CLAIMS
SKULD SINGAPORE BRANCH
The Importance of Class to a Vessel’s ...

- Marine Insurance Cover
- Ability to Trade
- Claims
- Legal Liabilities to 3rd Parties
Class and a Vessel’s Marine Insurance
Class and P&I Cover

Being “in Class” is essential to P&I Cover

P&I Cover is essential to a vessel’s ability to trade

• 28.4 Classification & certification

It shall be a condition precedent of the insurance cover,

28.4.1 that the entered vessel remains fully classed with a classification society approved by the Association,

28.4.2 that the vessel's classification society is not changed without the Association's prior consent,
Class and Hull Insurance Cover

• ITC Hull 1/10/83 - Clause 4

This Clause 4 shall prevail notwithstanding any provision whether written typed or printed in this insurance inconsistent therewith.

Unless the Underwriters agree to the contrary in writing, this insurance shall terminate automatically at the time of

4.1 change of the Classification Society of the Vessel, or change, suspension, discontinuance, withdrawal or expiry of her Class therein, provided that if the vessel is at sea such automatic termination shall be deferred until arrival at her next port. However where such change, suspension, discontinuance or withdrawal of her Class has resulted from loss or damage covered by Clause 6 of this insurance or which would be covered by an insurance of the Vessel subject to current Institute War and Strikes Clauses Hulls-Time such automatic termination shall only operate should the Vessel sail from her next port without the prior approval of the Classification Society,
Class and Hull Insurance Cover

- International Hull Clauses 01/11/03 – Clause 13

Clause 13 Classification and ISM

13.1 At the inception of and throughout the period of this insurance and any extension thereof

13.1.1 the vessel shall be classed with a Classification Society agreed by the Underwriters

13.1.2 there shall be no change, suspension, discontinuance, withdrawal or expiry of the vessel’s class with the Classification Society

13.1.3 any recommendations, requirements or restrictions imposed by the vessel’s Classification Society which relate to the vessel’s seaworthiness or to her maintenance in a seaworthy condition shall be complied with by the dates required by that Society

13.2 [further applicable terms]
P&I ...
Class and the Vessel’s liberty to trade – Charterparties

• Typically in popular charter forms, a requirement of Class is expressly mentioned, including:

**NYPE 1946:**

• “with hull, machinery and equipment in a thoroughly efficient state, and classed … “ (Line 5)

• and “That the Owners shall … maintain her class … for and during service.” (Clause 1)

**Shelltime 4:**

• “At the date of delivery of the vessel under this charter and throughout the charter period: (a) she shall be classed by a Classification Society which is a member of the International Association of Classification Societies;” (Clause 1 (a))

• and “her … classification society … shall not be changed,” (Clause 1 (b))
Class and the Vessel’s liberty to trade – Port Requirements

When conducting routine checks, Port State Control (PSC) may ask for Class certificates to be shown.

Following an incident, like a collision, and before coming in to a Port, authorities like PSC in Singapore (under the auspices of the MPA) are very likely to check whether or not Class has made any recommendations.

As part of a consideration as to whether a vessel involved in an accident will be allowed to come in to Singapore, a demand may be made for P&I security, and P&I cover would of course also depend on Class.
Class and the Sale of a Vessel

When buying a ship, the prospective purchaser will want to know about the vessel’s Class and its Class Record history.

It needs to be kept in mind, however, that Class attends for the specific purpose of a Class – and this may not include checking other matters which a Purchaser is interested in.

Financiers of vessels will also usually specify that a vessel must be classed as part of continuing warranties contained in the loan agreement.
Class and Claims
What happens after an accident?

- P&I or Hull do not call Class to the scene

- Neither Insurer has a contractual relationship or influence over Class

- If Class attends to a vessel after an accident, however, it can lead to significant insurance implications

Attendance on location can be challenging!
Impact of a Class decision following an accident

If Class recommends temporary repairs
- they must be done, or vessel risks sailing “out of class” and thus “out of cover”

If Class asks for repairs by a certain time
- they must be done by that time, or vessel risks sailing “out of class” and thus “out of cover”

If Class is suspended or withdrawn
- vessel will not be within insurance cover
Class and Liability

Source: ITOPF
Can Class be held liable by 3rd parties?

The basic position is that Class only has a contractual relationship with the Ship-owner for Class Survey work (Class’ private function) or Flag / State Maritime Authorities for work as a “ Recognised Organisation” (Class’ public function).

Without a contractual relationship (be it to a 3rd party buyer, Insurer, Financier, Claimant) you need to seek to establish a “tortious” liability (civil liability).

Questions of Tort / Civil Liability Law are a matter for the respective jurisdiction in which a case is being (or may be) heard.
Tortious Liability under English Law

Key criteria for liability are:

- Do you owe a duty of care
- What is the standard of care you have to exercise
- Has someone suffered a loss
- Did a failure to exercise the right standard – cause – the loss
- Is the loss proximate or too remote
- Public Policy Considerations

If you pass these hurdles you may have a claim in tort

BUT: there is usually no recovery for “pure economic loss” in tort
Can Class be held liable by 3rd Parties?

- *The Morning Watch (1990) 1 Lloyd’s Rep. 547*

The Court considered whether a Classification Society in conducting a survey owes a duty of care not to cause (pecuniary) loss to persons other than the Owners.

In this case a Yacht was being readied for sale and a special survey was carried out. The sale terms confirmed she passed her survey with “no difficulty” – Subsequently, it was discovered that the Yacht had extensive corrosion in her steelwork and the Buyer sought to take action against the Classification Society on the basis that they had relied on the special survey result.

The Court held that:

1. The Class Surveyor was negligent and it was foreseeable that 3rd parties would rely on the report.
2. The primary purpose of Class was to enhance safety at sea rather than to protect economic interests.
3. The relationship between Class and Buyer was not close enough to give rise to a Duty of Care.
The Nicholas H


The ship had suffered an accident and became a total loss, including all cargo laden on board. Class had initially recommended that before she continued with her journey, permanent repairs should be carried out to cracks in the Hull. After the Owner carried out temporary repairs, Class re-attended and recommended final repairs at an upcoming Port of Call.

The House of Lords

- The Shipowner is primarily responsible for making the vessel seaworthy
- The Cargo Claimants had not put any reliance on the Class Report (which was a mid-voyage inspection)
- Class would not be able to rely on defences and limits as Owners could
- The primary function of Class was to promote safety at sea and not to protect 3rd parties against losses
- If Class did not exist then Governments would have to step in and perform this function
The Court in Genoa considered that a Classification Society could be held liable by a Charterer

The vessel had been classed, but was detained by German PSC leading to the vessel’s detention – as a consequence the cargo had to be transshipped at significant expense to the Charterers. The Charterers pursued Class for their loss, as the vessel was sold to a 3rd party and the claim against the previous Owners was unsecured.

The Court held that the vessel had been in a very poor condition and should not have been afforded the Class rating she carried at the material time, with a further finding that the Class Inspector had been negligent.

It was considered by the Court that the central role played by Class in Shipping meant that 3rd parties would rely on Class certificates when making commercial decisions on whether to employ a given vessel.

The decision is subject to an appeal presently still under way.

Under Italian Law 314/1998, it is the case that a Class certificate not only applies to the relationship between Class and Owner, but also “becomes a characteristic of the vessel” which “confirms to third parties” that the vessel is reliable.
The Erika

Source: French Navy / Associated Press
The Erika

Legal action against Class as well as Owners and Charterers

The French Courts found that Class was liable in this case

The findings concluded that the vessel was in a poor condition and should not have been permitted to sail

It was held that Class had a power of control over the vessel by deciding whether or not to deliver the class certificate for a concerned vessel

The Court of First Instance and the Court of Appeal found that on several occasion that Class failed to take “appropriate measures”, specifically refusing to deliver the class certificate or suspending the certificates, which would have prevented the vessel from sailing and thereby avoiding the pollution incident
The Erika

Class had sought to defend itself on the basis that:

- Class enjoyed immunity of jurisdiction (as they acted as a delegate of the flag state of Malta, in execution of the State's public power) - the courts did not recognize this immunity, stating that Class had implicitly renounced this immunity.

- The action against Class would have the effect of diverting the operation of limitation of liability under the CLC/Fund Convention - the courts denied this defence by stating that the service rendered by the classification company was not a service to the vessel as per the terms of the convention.

- That the action under the French Penal Code provisions were incompatible with MARPOL – this was again rejected by the Courts.
The Prestige

Source: Associated Press
The Prestige

Following on from the loss of the vessel and the Oil Spill, the Government of Spain sought to take legal action against the Class of the vessel, before a U.S. Court.

It was held at the District Court level that under U.S. law, a classification society owes no duty to refrain from reckless behavior to all coastal states that could foreseeably be harmed by the failures of classified ships.

The District Court noted that shipowners have the ultimate responsibility for certified ships, and a non-delegable duty to ensure the seaworthiness of their ships; imposing liability on a classification society for alleged reckless certification-related conduct would be inconsistent with this duty.

Absent a pre-existing relationship between Spain and Class, there could be no duty giving rise to tortious liability.

Class counter-sued on various points, but Spain enjoyed sovereign immunity.
The Prestige

In affirming the District Court's decision on appeal, the Second Circuit did not resolve the question of whether a classification society could be held liable in tort to a third party for reckless conduct in connection with the classification of vessels.

Instead, the Court assumed, for purposes of the appeal that ABS did owe the duty to Spain, and concluded that Spain had failed to present sufficient evidence to create a genuine issue as to whether ABS recklessly breached that duty.

The Court first conducted its own choice of law analysis and confirmed that the maritime law of the United States should govern the action.

The Court then concluded that Spain had not adduced sufficient evidence to allow a reasonable jury to conclude that ABS should be liable to Spain in this particular case.

Again, the Second Circuit expressed no opinion on whether a classification society, in the proper circumstances, could be liable to a coastal nation for reckless conduct.
EU Legal Developments

EU Directive 94/57/EC relating to “common rules and standards of ship inspection and survey organisations and relevant activities of maritime administrations”

Following the MT ERIKA, EU Directive 2001/105/EC was issued to amend the 94 Directive

The Directive now provides that maritime administrations can claim compensation from classification societies in the event of wilful acts or gross negligence which cause a liability to be incurred by the maritime administration (Article 6 (b) (i))

It is worth remembering that this only applies to the EU and only to claims by maritime administrations against Class

This is not an open door for 3rd party claims against Class, but it may have started the process of opening that door
Class should not be held liable by 3rd parties, because …

<table>
<thead>
<tr>
<th>Owner is primarily liable and responsible to ensure a given vessel is seaworthy and compliant with national (Flag) and international (SOLAS, etc.) standards</th>
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<tbody>
<tr>
<td>Owners should not be able to offload their responsibility, even in a case where Class may shoulder some fault</td>
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<tr>
<td>Class does not act as a guarantor of the vessel’s condition</td>
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<td>Class may be “not for profit” - indeed may be a registered Charity - and fees charged do not compare to possible liabilities</td>
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<td>Class does not have the ability to limit liability like an Owner can under LLMC 76 or Hague-Visby Rules or other limitation regimes</td>
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<td>If Class were to be held liable, they would need insurance and thus drive up costs and lead to double insurance for the same liabilities</td>
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<td>Liability would mean Class may restrict their services in the future and change the nature of the relationship with Owners : which is meant to be open and non-competitive</td>
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<td>Class is regulated informally (Insurers asking for IACS Class) and formally by way of EMSA assessment</td>
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Class should be held liable by 3rd parties, because …

- Classification Societies, even if “not for profit”, can be very profitable enterprises and are paid by the people whose vessels they inspect and “class”
- Liability for errors and omissions can be insured against
- Holding someone accountable compels them to raise their standards: that is more effective than self regulation
- Sub-standard Organisations would go out of business, leading to a longer term improvement of the Safety of Life at Sea
- 3rd parties do rely on representations as to Class for a vessel
- The Owner’s responsibility of making sure the vessel is seaworthy is quite separate from Class’ responsibility to not be negligent in its surveys
- The consequence of an unseaworthy vessel having a casualty can be catastrophic
## Future Considerations

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<th>Question</th>
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<td>Will Governments and other Claimants drive towards greater liability for Class?</td>
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<td>Would Class need to obtain Insurance against such liability?</td>
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<td>How high would the limits have to be?</td>
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<td>Is such insurance obtainable?</td>
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<tr>
<td>What would it cost?</td>
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<td>How would this cost feed back in to the Industry?</td>
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<tr>
<td>Would other service providers to ships face similar demands for liability?</td>
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<tr>
<td>Are we prepared, as a global economy, to shoulder increased shipping costs?</td>
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