

ABS not responsible for the Prestige disaster

On November 13, 2002, the tanker *Prestige* sank a few miles from the Galician coast, causing an unprecedented environmental disaster. From the Spanish legal standpoint, liability for damage caused in the oil pollution, including international jurisdiction, is governed by the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1969, subsequently amended. As regards the demand for accountability, the CLC follows the principle of strict liability, placing it on the owner of the ship (or his insurer or guarantor). As for jurisdiction, according to Art. IX of the CLC "Where an incident has caused pollution damage in the territory, including the territorial sea or an area referred to in Article II, of one or more Contracting States or preventive measures have been taken to prevent or minimize pollution damage in such territory including the territorial sea or area, actions for compensation may only be brought in the Courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant". Obviously, the scheme is applicable only by courts of States Parties.

The pollution caused by the sinking of the *Prestige* have led to a series of legal proceedings before different courts, including those of States not affected by the accident. In particular, following the French strategy in the Amoco Cadiz case, the Spanish government brought in New York an action worth one billion dollars against the classification society of the Prestige, the American Bureau of Shipping, based in Houston. Spain claimed that the company had been negligent in the inspection of the vessel, giving a positive score only six months before the disaster. The case before these courts and against this defendant has been possible because USA is not part of the CLC, and accordingly applies its own legal regime.

However, things have not gone as expected by the Spanish government. To start with, the demand had to overcome an initial hurdle, that of the declaration of incompetence of the NY court ; this happened in 2008 thanks to the decision of the New York Court of Appeals, which accepted the arguments of the State Bar against a court in the Southern District of New York. Now (on August 4, 2010) the Southern District Court Judge Laura Taylor Swain has ruled in favour of ABS,

excluding its responsibility for the wreck. In a 20-page decision, the judge admits the desirability of identifying those responsible for oil spills that cause “major economic and environmental damage.” Nevertheless, she says that under U.S. law classification societies cannot be allocated these responsibilities. In her opinion, liability lies with the owner of the vessel, who “is ultimately in charge of the activities on board the ship”; her decision is consistent with these principles.

Attorney Brian Stare, representative of Spanish interests, said he is dissatisfied with the ruling because it means giving “carte blanche” to classification societies.

So far we don’t know whether or not there would be an appeal against Judge Laura Taylor’s ruling.