

Classification Societies –
What are they and how are they treated under US Law

Most commercial vessels and large private yachts are classified, meaning that the vessel meets or exceeds a set of standards and rules for design, construction and maintenance that are promulgated by the classifying society. Marine engineers, naval architects and other marine professionals employed by the societies are responsible for formulating and implementing the rules and standards and determining whether a vessel is “in” or “out” of class. The overriding objective is to produce a vessel that is safe and seaworthy, although issuance of a classification certificate “does not imply, and should not be construed as, a warranty of safety, fitness for purpose or seaworthiness of the ship.” See Classification Societies--What, Why and How?, a document (describing the work and purpose of classification societies) posted at the Web site of The International Association of Classification Societies (IACS) (<http://www.iacs.org.uk>). “The purpose of a Classification Society is to provide classification and statutory services and assistance to the maritime industry and regulatory bodies as regards maritime safety and pollution prevention, based on the accumulation of maritime knowledge and technology. The objective of ship classification is to verify the structural strength and integrity of essential parts of the ship’s hull and its appendages, and the reliability and function of the propulsion and steering systems, power generation and those other features and auxiliary systems which have been built into the ship in order to maintain essential services on board. Classification Societies aim to achieve this objective through the development and application of their own Rules and by verifying compliance with international and/or national statutory regulations on behalf of flag Administrations.” Id.

That purpose necessarily means that the impact of classification societies on the marine community is pervasive and touches all cycles of the vessel’s life from birth through death. Accordingly, a classification society is hired to ensure and evaluate compliance with the society’s rules and standards from the first drawings and design through construction and delivery of the vessel and during its tenure on the water. A society is typically hired and paid for by the owner, although governmental agencies will also hire societies to ensure compliance with their own registration requirements. While it is clear that ship owners, builders and ship registries rely upon the expertise of classification societies, it is also true that third parties who do not have a direct contractual relationship with the societies also depend upon them for their expertise. The most obvious example is the insurer who requires classification as a condition of coverage. Most commercial vessels and certain large yachts cannot be insured unless they are classified. Other third parties, including purchasers of vessels, charter companies and cargo owners are also within the orbit of the societies’ influence and rely upon certificates of classification issued by the societies to make decisions to buy or make commercial use of a particular vessel. In short classification is a stamp of approval that fosters fluidity in the vessel market and vessel commerce.

The earliest classification society emerged from a committee formed in 1760 at Lloyd’s coffee house in London to determine a system that would independently assess the risk of vessels presented to insurance companies for coverage. The first society, which subsequently became Lloyd’s Register, published an annual register of ships that used a lettering system consisting of vowels and consonants to classify the condition of (i) each hull (A, E, I, O or U) and (ii) the vessel’s machinery and equipment (G for good, M for middling and B for bad). The ratings for machinery and equipment were ultimately replaced by the numbers 1, 2 and 3 and the term “A1” (first or highest class) forever linked together a letter and number in a universal expression that is part of our everyday lexicon.

The major classification societies are members of The International Association of Classification Societies (IACS) formed in 1968 to promote collaboration between the societies and public confidence by providing minimum standards applicable to the societies.

The members are:

ABS	American Bureau of Shipping	KR	Korean Register of Shipping
BV	Bureau Veritas	LR	Lloyd's Register
CCS	China Classification Society	NK	Nippon Kaiji Kyokai (ClassNK)
CRS	Croatian Register of Shipping	PRS	Polish Register of Shipping
DNV	Det Norske Veritas		RINA RINA
GL	Germanischer Lloyd	IRS	Indian Register of Shipping
RS	Russian Maritime Register of Shipping		

Given the fact that losses to vessels and life do occur on vessels that are classified, how do United States courts assess liability against classification societies that have given their stamp of approval? For the most part classification societies have done quite well and there are only a few reported cases where a litigant has been successful in overcoming the steep hurdle to finding society liability. The earliest case imposing liability on a society permitted a purchaser to recover from ABS. American Bureau of Shipping v. Allied Oil Co. 64 F.2d 509 (6th Cir. 1933). The purchaser had a contract with ABS to perform a survey on a ship it was planning to buy and claimed repair damages for defects that ABS negligently failed to uncover and report in its survey. The court permitted recovery based upon a straight forward application of negligent inspection. Classification societies enjoyed relatively smooth sailing for a span of over 40 years until they increasingly became the target of marine insurers (by virtue of subrogation) and ship owners searching for deep pockets. In the most significant of the cases, Great American Insurance Company v. Bureau Veritas 338 F. Supp. 999 (S.D.N.Y. 1972), *aff'd* 478 F.2d 235 (2d Cir. 1973) and Sundance Cruises Corp. V. American Bureau of Shipping 7 F.3d 1077 (2d Cir. 1993), the Second Circuit slammed the door on a subrogated marine insurer and a shipowner who brought suits against classification societies in the wake of vessels that sank. In Sundance the Court answered the question of "whether a classification society that issues a classification certificate is liable to the person who hires it for all of the consequences of defects not found by the certifier." The Court answered the question in the negative with the following two observations: "[First] ... a shipowner is not entitled to rely on a classification certificate as a guarantee to the owner that the vessel is soundly constructed. First, the great disparity between the fee charged (\$85,000) by ABS for its services and the damages sought by Sundance (\$264,000,000) is strong evidence that such a result was not intended by the parties. We can only conclude that the small fees charged could not have been intended to cover the risk of such liability; the ship classification industry could not continue to exist under such terms. [and] Second, and probably most significantly, the shipowner, not ABS, is ultimately responsible for and in control of the activities aboard ship. In the case of the SUNDANCER, for example, Sundance had full responsibility for the conversion, repairs, and maintenance of the vessel. This ongoing responsibility for the vessel is supplemented by the maritime-law requirement that the shipowner has a nondelegable duty to furnish a seaworthy vessel. *Citation Omitted*. ABS can not be said to have taken over Sundance's obligations in this regard by agreeing to inspect and issue a classification certificate to Sundance."

Sundance Cruises Corp. at 1084. The Sundance Cruises Corp. Court essentially rejects tort based claims (as well as contract claims) against classification societies. The court primarily discusses the tort claims and only mentions the contract claims in passing. By contract, classification societies are able to limit liability to owners through contract provisions and choice of law clauses that should be enforced by the chosen jurisdiction.

The Fifth Circuit, noting that the Second Circuit had left the door open to suits by injured third parties who relied on classification certificates, resurrected classification society liability from its watery Second Circuit grave. Otto Candies, L.L.C. v. Nippon Kaiji Kyokai Corp., 346 F. 3d 530(5th Cir. 2003). In Otto Candies the purchaser conditioned its purchase contract on classification of the vessel. The purchaser then incurred repair costs required by ABS when it sought to transfer class from NKK to ABS. The district court permitted the purchaser to recover repair costs from NKK under a negligent misrepresentation theory and the appeals court affirmed. While recovery was permitted, the court pronounced an exacting standard, recognizing sound policy reasons to protect the societies from unlimited liability. The Court aptly noted: “The societies’ surveys and certificate system are essential to maintaining the safety of maritime commerce, yet their activities should not derogate from shipowners’ and charterers’ nondelegable duty to maintain seaworthy vessels. Imposition of undue liability on classification societies could be harmful in several ways. The societies could be deterred by the prospect of liability from performing work on old or damaged vessels that most need their advice. The spreading of liability could diminish owners’ sense of responsibility for vessel safety even as it complicates liability determinations. Ultimately, broader imposition of liability upon classification societies would increase their risk management costs and rebound in higher fees charged to the societies’ clients throughout the maritime industry.” Otto Candies, L.L.C. at 535. In light of that policy the Court announced that a claim for negligent misrepresentation in connection with the work product of a classification society must be “strictly and carefully limited.” *Id.* In order to prevail upon a theory of negligent misrepresentation the purchaser, Otto Candies, had to prove five elements that will elude many third parties seeking to ride the coat tails of Otto Candies. “Otto Candies had to establish that (1) NKK, in the course of its profession, supplied false information for Otto Candies’ guidance in a business transaction; (2) NKK failed to exercise reasonable care in gathering the information; (3) Otto Candies justifiably relied on the false information in a transaction that NKK intended to influence; and (4) Otto Candies thereby suffered pecuniary loss. Additionally, a plaintiff claiming negligent misrepresentation must be a “person, or a member of a ‘limited group’ of persons, for whose benefit and guidance the defendant either intends to supply the information or knows that the recipient intends to supply it.” *Citation Omitted*. Thus, Otto Candies must establish that NKK provided the class certificate to Diamond [the seller of the vessel] and knew that Diamond intended it for Otto Candies’ guidance and benefit.” *Id.* At 535.

The law concerning classification society liability is murky and still developing.

This article is a basic introduction to classification societies and their treatment under US law. It is not intended to be comprehensive. It does not cover the reasons or benefits for choosing a particular society or the difference in requirements, rules and standards of each of the societies. It also does not deal with what law applies to a particular suit against a classification society or how the laws of different countries view a classification society’s liability.

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