

THIRD PARTY CLAIMS: AN APPRAISSAL OF THE NIMASA ACT, 2007

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1. Introduction

Nigerian Maritime Administration and Safety Agency (“**NIMASA**”) created by the Nigerian Maritime Administration and Safety Agency Act, 2007 (“the Act”) is the regulatory Agency for all matters relating maritime safety and security, marine environment, shipping and maritime labour. The jurisdiction of the Agency covers ships, small ships and crafts both Nigerian and foreign flagged operating in Nigerian waters which encompasses the exclusive economic zone, territorial, inland seas, inland waterways and ports within Nigeria¹. The Act expressly excludes warships and military patrol ships from the jurisdiction of NIMASA. The functions of the Agency stated very broadly are to:²

- promote the development of indigenous commercial shipping;
- guarantee maritime safety and security;
- undertake management of marine environment;
- oversee maritime labour matters;
- ensure enforcement of the cabotage regime under Cabotage Act 2003;
- and
- ensure implementation of international conventions on maritime safety and security.

This Paper aims at two major targets; the first is to determine whether the NIMASA Act provides for third party claims. Within this remit, we will highlight the thin line between the potential liability of a shipowner for injury or loss of life caused by unseaworthy vessel and a third party’s negligence act which results in

¹ Section 2 (1) NIMASA Act, 2007.

² Section 22 (1) & (2) NIMASA ACT

injury or loss of life. The second target is to determine whether a third party claim can be made against NIMASA, and if so, defences available to NIMASA.

2. Third Party Claims

Generally, a third party claim arises where, in the course of one's employment and services, a person sustains injuries where his employer is not primarily responsible for the injury sustained. The scenario here involves three different parties; the injured worker as the first party, the employer as the second party and the third party which could be anyone else in the world where that third party is the cause of the injury sustained by the worker. The common practice, is for an employee who has sustained injury in the course of performing his job to sue his employer for such injury even where a third party is the primary cause of the injury sustained by the employee. However, where the injured worker decides to sue the third party, such claims for damages is what is referred to as a third party claim.

The English case of *Davie v. New Merton Board Mills Ltd*³ provides a good illustration of a third party claim. The claimant claimed damages against his employer on the ground that it had supplied him with a defective tool, and against the manufacturers on the ground that they were under a duty to those who they contemplated might use the tool. The claimant, a maintenance fitter, was working on a machine and had occasion to separate certain parts which were fitted together too tightly for separation by hand. The appropriate tool for this purpose was a drift, which may be described as a tapered bar or strip of metal approximately 12 inches long. The claimant took a drift provided by the first defendant and manufactured by the second defendant, and began to strike it with a hammer. At the second strike the drift broke and a piece flew off, pierced and destroyed the sight of the claimant's left eye. The drift was defective in that the

³ (1959) AC 604, HL

steel from which it was made was excessively hard and consequently liable to fracture when subjected to blows of the force to which a drift in ordinary use would be subjected. This was a defect which ought to have been discovered by a manufacturer using reasonable skill and care in the making of drifts. The House of Lords gave judgment against the defendants and ordered that the second defendant (the manufacturers) should wholly indemnify the employer with regard to damages.⁴ A number of persons with a good cause of action in third party case are ignorant of the fact that they could make a successful claim against the third party though it must be said that not all employee related injury could ground a third party claim.

2.1 Third Party Claims in Admiralty Matters

Admiralty matters fall with the concept of maritime claims which is itself divided into general and proprietary maritime claims (see the Court of Appeal case of *C.S. Inc. v. M/T "Cindy Gaia"*).⁵ The law on maritime claims are very clear as codified in our Admiralty Jurisdiction Act⁶ (AJA). As a reminder, we reproduce Section 2 of the AJA *in extenso* below:

- (1) A reference in this Act to a maritime claim is a reference to a proprietary maritime claim or a general maritime claim.
- (2) A reference in this Act to a proprietary maritime claim is a reference to-
 - a) a claim relating to-
 - i. the possession of a ship; or
 - ii. title to or ownership of a ship or of a share in a ship; or

⁴ The liability of the manufacturer herein would not be different from the position of the manufacturer of a defective hull or machinery

⁵ (2007) 4 NWLR (PT. 1024) 248

⁶ Cap A5 Laws of the Federation of Nigeria 2004

- iii. a mortgage of a ship or of a share in a ship; or
 - iv. a mortgage of a ship's freight;
- b) a claim between co-owners of a ship relating to the possession, ownership, operation or earning of a ship;
- c) a claim for the satisfaction or enforcement of a judgment given by the Court or any court (including a court of a foreign country) against a ship or other property in an admiralty proceeding in rem
- d) a claim for interest in respect of a claim referred to in paragraphs (a), (b) or (c) of this subsection.
- (3) A reference in this Act to a general maritime claim is a reference to-
- a) a claim for damage done by a ship, whether by collision or otherwise;
 - b) a claim for damage received by a ship;
 - c) a claim for loss of life or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship;
 - d) subject to subsection (4) of this section, a claim, including a claim for loss of life or personal injury, arising out of an act or omission of-
 - i. the owner or charterer of a ship;
 - ii. a person in possession or control of a ship;
 - iii. a person for whose wrongful act or omission the owner, charterer or person in possession or control of the ship is liable;
(emphasis mine)
 - e) a claim for loss of or damage to goods carried by a ship;

- f) a claim out of an agreement relating to the carriage of goods or persons by a ship or to the use or hire of a ship, whether by charter-party or otherwise;
- g) a claim relating to salvage (including life salvage of cargo or wreck found on land);
- h) a claim in respect of general average;
- i) a claim in respect of pilotage of a ship;
- j) a claim in respect of towage of a ship or an aircraft when it is waterborne;
- k) a claim in respect of goods, materials or services (including stevedoring and lighterage service) supplied or to be supplied to a ship for its operation or maintenance;
- l) a claim in respect of the construction of a ship (including such a claim relating to a vessel before it was launched);
- m) a claim in respect of the alteration, repair or equipping of a ship or dock charges or dues;
- n) a claim in respect of a liability for port, harbour, canal or light tolls, charges or dues, or tolls, charges or dues of any kind, in relation to a ship;
- o) a claim arising out of bottomry;
- p) a claim by a master, shipper, charter or agent in respect of disbursements on account of a ship;
- q) a claim for an insurance premium, or for a mutual insurance call, in relation to a ship, or goods or cargoes carried by a ship;

- r) a claim by a master, or a member of the crew, of a ship for-
 - i. wages; or
 - ii. an amount that a person, as employer, is under an obligation to pay to a person as employee, whether the obligation arose out of the contract of employment or by operation of law, including by operation of the law of a foreign country;
- s) a claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried in a ship, or for the restoration of a ship or any such goods after seizure;
- t) a claim for the enforcement of or a claim arising out of an arbitral award (including a foreign award within the meaning of the Arbitration and Conciliation Act made in respect of a proprietary maritime claim or a claim referred to in any of the preceding paragraphs;
- u) a claim for interest in respect of a claim referred to in any of the paragraphs (a) to (t) of this subsection.⁷

From the foregoing, it is clear that claims for damages for personal injury or loss of life fall into the category of general maritime claims and specifically under Section 2(3)(c) and (d) of the AJA. To further illustrate, third party claims in the context of admiralty matters refer to claims that involve injuries that may occur aboard ships or in a harbor, offshore oil rig, offshore crane, drilling rigs, fishing vessel injuries etc. It is apposite to mention that the category of persons who could one way or the other be exposed to injury and consequently be entitled to

⁷ See also *The M.V. "Med Queen" v. Erinfolami*⁷, per *Dongban-Mensem*, JCA (2008) 3 NWLR (PT. 1074), page 314 at page 326

institute third party claims in admiralty matters include seafarers⁸, harbour pilots, oil workers on offshore rigs, technicians, helicopter pilots, crew on tugboats, casino boats, barges, ships, supply boats, semi-submersible drilling rigs, jack-up drilling rigs, lighters, floating platforms, restaurants or other floating vessels etc.

The ingredients of third party claims explained under paragraph 2 above applies equally to third party claims in admiralty matters. The accident which caused the injury must be as a result of the negligence of a third party. Though, an employer is said to be responsible for the negligent acts of his employees committed while in the course and scope of their employment, the burden is on the plaintiff to establish by a preponderance of the evidence in the case that the negligence of one or more employees, or other agent of the defendant (other than the plaintiff himself) played a part, even the slightest, in causing any injury and consequent damages sustained by him.⁹ The Court, in considering the liability of such employee, may have to consider the fact that other companies performed the work in question in a certain way as evidence for whatever weight to be attributed to the particular case. It remains for the Court to determine from all of the evidence, whether the method used was in fact reasonably safe.

It is therefore advisable to conduct a thorough examination of the injury and/or the claims thereto which would determine whether or not a third party claim exists. It is however, prudent and good strategy for an employee to lay claims against a third party rather than having to depend on his employer for all his injury related claims.¹⁰ This is because a claim which one's employer would be

⁸ This category also include dockworkers as specified in Section 64 of NIMASA Act, 2007

⁹ Benedict on Admiralty (7th Edition) Revised, Gelpi Sullivan Carrol & Gibbens, New Orleans, L.A, Volume 1B, (Seaman's Action).

¹⁰ *ibid*

liable to pay is ordinarily dependent on the contract of employment, and may not be enough to take care of the extent of the injury sustained.

Another instance of a third party claim in admiralty could be in the event of a shipwreck resulting in injuries to the crew and is traceable to the negligence of a shipbuilding company e.g. defective hull. The crew would traditionally blame the shipowner rather than the shipbuilding company whose negligence caused the accident. However, in this kind of situation, a third party claim would properly lie against the shipbuilding company¹¹. In situations such as this, an injured seafarer who fails to file a third party claim will only be limited to workers accident compensation which is usually inadequate to accommodate losses arising from the injuries. In a third party claim regime, an employee will be entitled to the following benefits: medical expenses, loss of earnings, disability, pain and suffering and loss of enjoyment of life.

In *Prekookeanska Plovidba v Felstar Shipping Corporation & Setramar Srl and STC Scantrade A.B (Third Party) {The "Carnival"}¹²*, the Plaintiffs/respondents, a Yugoslav Company and owners of the vessel Danilovgrad. By a voyage charter dated November 27, 1986 the Plaintiffs let the vessel to the 2nd Defendants for a voyage from her loading port to one safe berth Ravenna. The first defendants were the owners of the vessel Carnival. On the morning of January 28, 1987, Danilovgrad had just arrived at the Setramar berth on the east side of the Canale Candiano on the approaches to Ravenna and was preparing to moor. Shortly after Danilovgrad was alongside her berth and before she was securely moored, Danilovgrad was subjected to the forces of interaction which were created by Carnival as that vessel passed Danilovgrad in the Canal. These forces caused Danilovgrad to surge and tumble, and during this movement, the hull of

¹¹ This does not foreclose the chances of the seafarer filing for compensation from the shipowning company.

¹² (1994) Vol. 2 Lloyd Rep. 14 at 31

Danilovgrad on her port side aft came in contact with the edge of the quay, and her hull plating pressed against a fender which penetrated the hull below the waterline, causing a hole; in consequence water flood into one of the holds unit it was level with the water in the canal, causing severe damage to part of her cargo of bulk diammonium phosphate, which led to a substantial claim in Italy by a cargo insurers.

The Plaintiffs claimed against the two defendants, against Carnival as it was foreseeable that the Danilovgrad would suffer damage if Carnival passed her before she was securely moored and claimed against the 2nd defendant on the safe berth warranty in the charter party which, as is well settled, amounted to a promise that the berth or berths nominated will be prospectively safe for the vessel. Lord Justice Hirst held in favour of the Plaintiffs and awarded damages against the two defendants.

Third party claims could also arise because of a negligent third party such as an employee of an independent contractor aboard a vessel. These accidents can involve the various types of manual labour that occur on ships/boats and in offshore work environments, or where a seafarer is injured in a ship collision or while loading or unloading. Also it might involve injury sustained in accidents on ships, boats, drilling rigs, offshore oil/gas rigs and offshore crane accidents. In a collision between two ships, the owner of the ship at fault could be held responsible for the claims suffered by seafarers in the other ship. The owner of the ship at fault in this instance could be regarded as a third party against whom a third party claim would lie.

2.2 Third Party Claims under the NIMASA Act

Third party claims has been well illustrated above. Simply put, it arises where, in the cause of one's employment and services, the worker sustains injuries on the job where his employer is not primarily responsible for the injury sustained and

the injury sustained was due to the fault of a third party. The third party could be a shipowner or even NIMASA where the maritime peril is traceable to dereliction of the statutory duties by the Agency, in this case NIMASA's duties under Section 22 of the Act.¹³ In such a scenario, the two original parties, i.e. the seafarer party and the shipowner party are exonerated from the accident.¹⁴

Shipowner: The extent of a shipowner's liability in the context of third party claims under the NIMASA Act has to do with its duty “to take all reasonable steps to secure that the ship is operated in a safe manner”.¹⁵ Its responsibilities in the context of third party claims therefore are limited to its obligation to provide a seaworthy ship.

Unseaworthiness is a condition whereby a vessel or its equipment is not reasonably fit for its intended use, and if that condition of unfitness exists at the time of the accident, and as such a crew member or longshoreman is injured, the shipowner is liable no matter how the condition was brought about or who brought it about. Indeed, if a third party, or even an injured’s fellow employee suffers injury, the ship owner would still be liable.¹⁶ The ship-owner must ensure that the vessel is seaworthy for the purpose it is chartered for throughout the voyage. Any accident or mishap caused by unseaworthiness of the vessel exposes the shipowner to liability for any loss or injury suffered. Neither the granting of classification nor the issuance of certificates by itself establishes seaworthiness. On the other hand, if a vessel’s structure, fittings, or stowage do not comply with

¹³ See *Oceangas (Gibraltar) Ltd v Port of London Authority (The “Cavendish”)* (Q.B. (Adm. Ct.) (1983) 2 Lloyd’s Rep. 292

¹⁴ This does not mean claims could still not be maintained against the employer in term of worker benefit compensation.

¹⁵ Section 42 (1), NIMASA Act.

¹⁶ *Benedict on Admiralty* (7th Edition) Revised, Gelpi Sullivan Carrol & Gibbens, New Orleans, L.A, Volume1A, Chapter V, Section 92, 5-7

the measure of proper conditions provided by the rules of classification societies or of other recognized organizations, the vessel is unseaworthy¹⁷.

It is only upon a satisfactory determination of the court that the shipowner has done all that is reasonably expected of him to make the ship seaworthy, that the question of a third party's negligence would arise. It is not surprising therefore that as earlier discussed, many seafarers would normally blame the shipowner for any injury sustained in navigation, whereas the negligence for the accident might not be the shipowner but that of a third party. Sections 42 and 43 of the Act specifies the shipowner's¹⁸ liability for failure to operate a safe ship. Failure to fulfill this statutory duty renders the shipowner liable for the negligence of his captain and/or other seafarers on board and therefore may be held responsible for any loss or injuries suffered by seafarers during and in the cause of navigation of an unsafe ship.

It follows therefore that a shipowner whose ship is seaworthy for its intended purpose would not be liable for the injury or loss occasioned by the negligent act of some other person. The negligent third party would be responsible in this instance. This submission has been well stated and approved in a long line of admiralty cases.¹⁹ Often times, the issue to be determined is whether an accident is occasioned either as a result of unseaworthiness²⁰ of the vessel or due to the negligence act of a third party.²¹

Further ground for the regime of a third a party claim in the NIMASA Act can be found in Section 41 which states that:

¹⁷ Benedict on Admiralty (7th Edition) Revised, Gelpi Sullivan Carrol & Gibbens, New Orleans, L.A, Volume 2A, Chapter VII, Section 62.

¹⁸ The Act in Section 64 defines a ship-owner to include any part-owner, charterer, consignee or mortgagee in possession of the vessel.

¹⁹ Benedict On Admiralty, Vol 1B

²⁰ Here, only the ship-owner becomes liable for the maritime claims

²¹ The negligent party becomes liable for the maritime claims

(1) “Where a person uses or causes or permits to be used in navigation any lighter, barge or like vessel, because of:

- a) the defective condition of its hull or equipment;
- b) overloading or improper loading; or
- c) under manning

it is now unsafe that human life is endangered, he shall be guilty of an offence and be liable on conviction to a fine not exceeding one million naira,

(2) *This section does not affect the liability of the owners of any lighter, barge or like vessel in respect of loss of life or personal injury caused to any person carried in the vessel.” (emphasis mine)*

This Section 41 implies that there could be someone else (a third party) who could be held liable for the claims caused by an injury or loss arising the negligence, action/inaction of such a third party. A ship-building company would no doubt be liable for a defect in the hull construction which resulted in an accident.

Flowing from the foregoing therefore, it is safe to opine that NIMASA Act contains provisions under which a claimant could proceed against a negligent third party for his maritime claims.

3. Liability of NIMASA for Third Party Maritime Claims

As aforementioned early in this paper, NIMASA's regulatory oversight functions cover ships of every size whether foreign of Nigerian flagged operating within Nigerian waters and includes maritime labour.²² NIMASA has certain specific functions relating to commercial shipping activities, administration of maritime safety and security, maritime labour, prevention of marine pollution and shipping

²² Section 2 (3), NIMASA Act.

registration. NIMASA is required to conduct inspection of ships, register ships, detain sub-standard ships, conduct examination of and certification of seafarers with the ultimate aim of eliminating or reducing marine incidents caused by sub-standard ships and incompetent crew. The question then arises as to NIMASA's culpability where a seafarer sustains injury caused by a sub-standard Nigerian flagged vessel which NIMASA ought to have identified and detained or injury caused by the negligence of a NIMASA certified seaman who is in fact not competent to be at sea or pilot a ship.

The English case of *Oceangas (Gibraltar) Ltd v Port of London Authority (The "Cavendish")*²³ provides an interesting reference in this respect. The defendant, Port of London Authority ("PLA") provided pilotage services within the meaning of the Pilotage Act, 1987). On February 13, 1990, the Plaintiffs requested the PLA for the services of a pilot to pilot Cavendish from the seaward limit of their pilotage jurisdiction. The defendants duly provided the services of their Captain Clarke to pilot the vessel. He boarded the vessel in the vicinity of the Sunk Light Vessel at about 21:50 hrs on February 13, 1990 and on gaining the bridge took over the conduct of the vessel. At about 22:10 Cavendish struck the Sunk Head Tower and/or buoy as a result of which she suffered collision and the plaintiffs suffered loss and expense. The Plaintiff among other things contended that the PLA was vicariously liable for the negligence of the pilot in that by the Pilotage Act, 1987, they owed a particular duty to provide pilotage services to the plaintiff.

The Court held PLA not to be vicariously liable in tort only because the Plaintiffs had not proven that the PLA was in breach by providing a pilot who was not properly qualified or authorised to act as such. As a matter of fact, the court held "Further I can see no reason in principle why a 3rd party should not assume the

²³ (Q.B. (Adm. Ct.) (1983) 2 Lloyd's Rep. 292

responsibility of piloting a shipowner's ship and why if the pilot he employed to do so was negligent he should not be vicariously responsible for that negligence".

It appears therefore that failure by a statutory Agency like NIMASA to satisfactorily perform their statutory functions would ground a third party claim against it. Injuries which may give rise to maritime claims and third party claims are expected to be prevented by the effective and efficient performance of the duties of NIMASA under Section 22 of the Act. These include measures such as regulating the safety of shipping with respect to the construction of ships and navigation; providing direction and ensuring compliance with vessel safety and security measures and providing direction on qualification, certification, employment and welfare of maritime labour.

To ensure the attainment of these obligations, the Agency is empowered to inspect ships for the purposes of maritime safety, maritime security, maritime labour and prevention of marine pollution, regulate maritime labour; perform other duties for ensuring maritime safety and security or to do all matters incidental thereto; provide consultancy and management services relating to or incidental to any of the matters referred to in this subsection.

Apart from the functions of the Agency in taking measures for the prevention of maritime mishaps as discussed above, where the Agency has reason to believe that any ship, being in any port or place in Nigeria, is an unsafe ship and a security risk, and is by any reason unfit to proceed to sea without serious danger to human life having regard to the nature of the service for which it is intended, the Agency is obligated to detain such ship.²⁴

It follows therefore that if the Agency's action or inaction is the primary cause or responsible for the accident and the Plaintiffs can prove that to the satisfaction of

²⁴ Section 40 (1), NIMASA Act

the Court, the converse fate of the PLA in *Oceangas (Gibraltar) Ltd v Port of London Authority (The “Cavendish”)* may likely befall it.

Framed differently, the poser now is: to what extent are the responsibilities of the Agency in an accident attributable to its non-observance of its statutory duties specified in Section 22 of the Act? It appears that the Agency would be held liable for damages suffered by a seaman due to their actions and inactions. The Nigerian Court of Appeal case of *N.R.C v. J.C. Emeachara & Sons*²⁵ provides some insight. The Appellant body which is in charge of railway transportation in Nigeria was sued by the respondent for the appellant’s negligence in providing adequate precautionary measures for motorists crossing its lines, the Court held:

“It is settled law that in cases founded on negligence, the decision must turn not simply on causation but on responsibility. A party which is primarily liable in negligence for an accident bears the responsibility. In the instant case, the facts and circumstances of this case show plainly that it was the appellant’s negligence that caused the collision as there is no evidence whatsoever on the record upon which responsibility for the collision could be attributed to the respondent.”

A similar situation in relation to NIMASA would be in an event of injury sustained by the crew from collision between two ships caused primarily or to a significant extent by failure of NIMASA to place buoys and other hydrographical and navigational aids in the affected sea lanes.

²⁵ (1994) 2 NWLR (PT. 325) 206 at 218, paragraphs B-C & G-H

The question whether an Agency so sued could raise the defence of statutory authority was however put to rest by the Court of Appeal in *NEPA v Akpata*²⁶ where it was held thus:

“In this case, we are concerned with Statutory Authority exemplified in *National Telephone Company v Baker (supra)*. However, where a Plaintiff can show that he suffered damages from the negligent act of the defendant in spite of the defence of statutory authority it is clear that a plaintiff in such circumstances may be able to succeed in his claim against the defendant.

The obvious conclusion from the case laws mentioned above is that while a defendant acting under a statutory power is *prima facie* protected from an action in negligence in the exercise of a statutory power, he may however be liable to another if it is established by that other, that the defendant was negligent in the manner in which he acted under the statutory power given to him, and that damage was caused to that other as a result.”

It is therefore save to state that the position of the law as interpreted in the Court of Appeal cases which are extensively discussed above and are similar to the English cases of *Buckland v Guildford Gas Light & Coke Company*²⁷ and *Lloyds Bank Ltd v Railway Executive*²⁸ have clearly shown beyond dispute that third party claim could lie against NIMASA where its negligence or that of any of its staff is responsible for the event that occasions injury or loss of life and gives rise to a maritime claim.

Perhaps one should point out the approach of the Courts in third party claims against classification societies which highlights difficulty NIMASA might

²⁶ (1991) 2 NWLR (PT. 175) 536 at 561 C-D

²⁷ (1949) 1 KB, 410 at 424

²⁸ (1952) 1 All ER 1248

encounter should it wish to counterclaim against its recognized organizations. It is important to note the difference between a governmental organization like the Port of London Authority (PLA) in *Oceangas (Gibraltar) Ltd v Port of London Authority (The “Cavendish”)* (supra) or NIMASA and non-governmental organisation like classification societies towards third-parties tort of negligence for maritime claims. Wolfgang Wurmnest of the Max Planck Institute for Comparative and International Private Law²⁹ in his paper, “Third Party Liability of Classification Societies in the Context of Shipping Accidents” argued by citing the 1995 *Nicholas H*-decision³⁰, where the House of Lords ruled and I quote him in *extenso*:

“Classification Society does not owe the cargo owner a duty of care. The case concerned claims of cargo owners who sued the Classification Society for damages after the sinking of the *Nicholas H* in the Atlantic. The total cargo damage amounted to six million USD. Prior to the sinking, the Classification Society had surveyed the ship and approved some temporary repairs carried out by the owner. These works turned out to be ineffective and the ship sank on its voyage to Europe. The cargo owners first sued the shipowners who agreed to indemnify the claimants up to the compensation cap for damages under the Hague Rules which were applicable to their contract –that was 500.000 USD. The cargo owner pursued his claim against the Classification Society for five and a half million USD for the balance of his loss. The House of Lords held against the claimants by a vote of four to one (Lord Lloyd of Berwick dissenting). The majority of the Law

²⁹http://www.observatoriodelitoral.es/subido/_documentos/publicaciones/obras_materias_maritimas/actas_ii_jornadas_internacionales_seguridad_maritima_y_medio_ambiente/Estudios_files/Wurmnest.pdf

³⁰ *Marc Rich & Co. AG and others v. Bishop Rock Marine Co. Ltd. and others –The Nicholas H*, [1995] 3 All ER 307 (HL), with case note by CANE, P., “Classification S societies, Cargo O owners and the Basis of Tort Liability”, *LMCLQ*, 1995, pp. 433-437; cf. also FEEHAN, C., “Liability of Classification S societies from the British Perspective: The Nicholas H”, 22 *Tulane Maritime Law Journal*, 1997, pp. 163-190; FRA NCE, W. N., “Classification S societies. Their Liability A n A American Lawyer’s Point of V view in Light of Recent Judgments”, *The International Journal of Shipping Law*, 1996, pp. 67-77.

Lords were of the opinion that cargo owners' tort claims would destroy the balanced system of the Hague Rules to the benefit of cargo owners and their insurers. Lord Steyn, writing for the majority, emphasized that recognition of liability in the case at hand would have a substantial impact on international trade, as cargo owners would be able to recover in tort against a peripheral party. This peripheral party –the classification society– would bear the majority of the occurred losses even though the shipowner is primarily responsible for the ship".

4. Conclusion

It is the position of this paper that a third party claim can lie against NIMASA despite that fact that it is not expressly so provided in the Act. This view is strengthened by the provisions of the Act and cited judicial authorities already analysed above. A third party claim can successfully be instituted by a person who suffers injury as a result of negligence on the part of the Agency if it fails to perform its function as provided for in the Act provided the pre-conditions in section 53(2) of the Act are satisfied. Whether an amendment of the Act to insert specific liabilities of the Agency for injury caused by dereliction of duty by the Agency, should be recommended, is not a position I would canvass for at this time, not only because of the role yours truly played in drafting the NIMASA Act but also because an amendment is not required as third party actions are adequately provided for in the Act.

Thank you for your attention.

Mfon Ekong Usoro