

# Green backing in 'Prestige' appeal

Environmental groups have joined Spain in calling for a trial on the merits.

Bob Rust

Stamford

Environmental groups are taking sides with the Spanish government and against the American Bureau of Shipping (ABS) in seeking to keep alive Spain's billion-dollar lawsuit over the *Prestige* oil spill.

In January, New York federal judge Laura Taylor Swain dismissed on jurisdictional grounds the lawsuit seeking to hold ABS responsible for the November 2002 sinking and oil spill of the 81,000-dwt tanker *Prestige* (built 1976). ABS declared the matter dead but Spain has appealed the dismissal to the US Second Circuit court of appeals.

This week, international environmental lobbying group Oceana along with US-based National Resources Defense Council (NRDC) joined Spain in calling for a trial



**THE 'PRESTIGE':** The bow floats above water moments before sinking off the coast of north-west Spain in 2002

Photo: Scanpix

on the merits. In an amicus curiae, or "friend of the court" brief, the green groups warn that class will yield to economic pressures to lower its standards as "gatekeeper to the world's oceans" if shielded from responsibility.

Without direct accountability for negligence, the groups urge, class will be at the mercy of owners and shipyards who "class-hop" or shop around for the most lenient standards of enforcement available.

ABS had successfully argued that under the International Convention on Civil Liability for Oil Pollution Damage (CLC), to which Spain but not the US is a signatory, Spain cannot sue it in the US.

The lower court also agreed that classification societies have the same status under the CLC as "the pilot or any other person who without being a member of the crew performs services for the ship". Unless such service-

providers are reckless in their actions, the CLC imputes or "channels" their potential oil-spill liability to the shipowner, at the same time as it limits the shipowner's liability.

The environmental groups argue that this is a mistake because class, rather than being a servant of the owner who pays the bill, also serves all interested parties in marine commerce including flag states, port states, insurance underwriters, charterers, cargo interests and the public.

"To treat classification societies as just another entity serving the shipowner during the voyage is to ignore the vital role that classification societies perform for the world at large," the groups urged in a 32-page brief.

They cite with approval the example of a Paris court's decision, also in January, to hold Italian class society Rina criminally and civilly liable in the 1999 oil spill of the 37,000-dwt products tanker *Erika* (built 1975).

Spain has submitted an appeal brief but responses and counter-responses will continue into the summer and no action on the question of the dismissal is likely before autumn.