

# Spain begins appeal over \$1bn Prestige claim

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AN appellate court in the US was yesterday scheduled to hear arguments in Spain's appeal against a district court ruling that dismissed its \$1bn *Prestige* lawsuit against the ABS.

Spain's appeal has come back on the legal agenda as the US government, at the appellate court's request, filed an amicus curiae brief in the matter, stating its opinion that the district court "erred" in reaching the verdict.

A decision handed down in January last year by Judge Laura Taylor Swain of the US District Court for the Southern District of New York ruled that Spain's pursuit of the case in the US is precluded by the International Convention on Civil Liability for Oil Pollution, to which the country and flag state Baha-

mas are signatories. Actions seeking compensation for pollution damage in the territorial sea of a party state must be brought in the courts of a state that is party to the CLC treaty, Judge Swain ruled, stating that her own court did not have jurisdiction to adjudicate Spain's claims.

In a letter sent on behalf of the United States, the US Attorney's office in New York stated that Spain did have a right to bring its action in the US court system.

The letter said: "Because the US is not a party to the CLC, the CLC is not US law. Accordingly, the treaty cannot deprive a district court of its statutorily conferred jurisdiction."

However, the letter went on to admit that a US district court might consider the CLC in determining whether to dismiss a case under discretionary doctrines such as forum non conveniens or international comity. In this context, the

US government has refused to take sides.

"The US does not take a position on the applicability of the forum selection clause in the CLC, which concerns the claims of a party state against the citizen of a non-party state based on services performed for a ship registered in a party state," the letter noted.

"The US is not a party to the CLC, nor is the US familiar with the subsequent application of the treaty among states party to the CLC."

Spain brought the \$1bn action against ABS for its alleged negligence in certifying the tanker *Prestige* as fit. The tanker sank off the Spanish coast in November 2002, causing environmental damage for which compensation was sought.

Judge Swain ruled on ABS' motion filed two years earlier for summary judgment under the CLC, based on ABS' stance that as the deemed agent of

the *Prestige* owner, ABS enjoys immunity from all damages arising out of Spain's lawsuit and should be allowed to avail itself of the CLC limits just as a shipowner would.

Spain has argued that such immunity is restricted to servants or agents of the shipowner including crew; pilots; charterers; salvors; or persons taking preventive measures.

ABS is an independent contractor and not a servant or agent, and hence is undeserving of the exemption, Spain says.

Spain has used Rina's conviction in France in the case involving the 1999 *Erika* casualty as case law in its appeal. The government of France, a CLC contracting state, and other injured parties brought criminal and civil actions against Rina alleging negligence. Like ABS, Rina invoked exemption from liability under the above clause, but did not succeed.