

# RISK WATCH

MAY 2019

SINGAPORE MEET THE BRITANNIA TEAM

B SAFE NEW POSTER CAMPAIGN LAUNCHED

CYBER SECURITY BRITANNIA WEBCAM COVERS

FATIGUE A FACTOR IN MANY ACCIDENTS

LEGAL UPDATE RECENT DECISIONS EXPLAINED



BRITANNIA P&I  
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## A MESSAGE FROM THE EDITOR

BRITANNIA'S MISSION IS TO BE **THE FINEST P&I CLUB IN THE WORLD.**

We are very pleased to announce that Britannia has been granted licences in both Hong Kong and Singapore to underwrite business from those offices. The Hong Kong licence was obtained at the end of last year and the Singapore licence came at the end of January. This continues our strategy of 'think local, act global' and further strengthens our position in these two very important centres.

On the opposite page we introduce our office in Singapore, headed by chief executive John O'Flaherty and later in the year it will be the turn of the Hong Kong office's chief executive, Tim Fuller to showcase his team.

The Loss Prevention team, together with the People Risks and Marketing departments, have been working hard on a new poster campaign with the theme of B SAFE. Over the coming months we will be publishing a series of safety-related posters and the first one is included with this magazine. It is a warning to be aware of cyber security issues and, in particular, the advice is to cover your computer's webcam when not in use. As well as the poster, we have produced a Britannia webcam cover, also included with this magazine.

If you have not received the poster and the webcam cover, or you would like extra copies, please contact the publications team and we will send them out to you.

In this edition we are including a section on recent legal cases. The head of our FD&D legal department, Dale Hammond, has been liaising with FD&D teams from our various regional hubs to write reports on some recent cases that highlight a number of important legal and practical issues. As with all our articles, please feel free to contact the individual author for further details and advice about the issues raised.

We are looking forward to hosting more than 40 delegates at our annual P&I Training Week, which this year, takes place in early June after more than 20 years of holding the event in September. There will be a full report in our next edition.



CLAIRE MYATT  
Editor

FPT | BW

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We hope you've enjoyed this copy of Risk Watch. We will be looking for ways to maintain and increase the usefulness, relevance and general interest of the articles. If you have any ideas or comments please send them to: [publications@triley.co.uk](mailto:publications@triley.co.uk)

# MEET THE SINGAPORE TEAM

IN JANUARY THE SINGAPORE OFFICE RECEIVED ITS LICENCE TO UNDERWRITE BUSINESS. THE TEAM IS MANAGED BY TINDALL RILEY (BRITANNIA) SINGAPORE (TR(B)S) AND HEADED BY CHIEF EXECUTIVE JOHN O'FLAHERTY. AS WELL AS UNDERWRITING, THE TEAM DEAL WITH ALL ASPECTS OF P&I AND FD&D FOR BRITANNIA'S ASIAN, INDIAN AND AUSTRALASIAN MEMBERS. THEY ALSO HELP ANY MEMBERS TRADING IN THAT REGION, LIAISING CLOSELY WITH OUR LOCAL PORT CORRESPONDENTS.



**JOHN O'FLAHERTY – Director, Singapore**

John joined TR in July 2018 with the objective of starting and managing our Singapore office. Before joining TR, John spent nearly 20 years in the Middle East working as a broker. John has also worked at a P&I Club in Scandinavia, worked for a major shipowner in Asia and also served in the Royal Navy.



**DEREK BIRCH – Fleet Manager**

Derek is an English solicitor and recently joined Britannia from a London law firm where he acted for shipowners, charterers and P&I Clubs on charterparty disputes and shipping casualties. Derek previously worked for another IG P&I Club for several years and for a broker in the Netherlands as a claims specialist.



**SALLY YANG – Finance and Administration Manager**

Sally handles the accounting and also admin, HR and IT. She liaises with the external auditors and government authorities on audit, tax, business statistics and other statutory reporting and compliance issues. She has diplomas in accountancy and computer science and is studying for further accountancy qualifications. Sally was responsible for setting up and opening the Singapore office.



**Capt. AJIT KARANDE – Chief Correspondent**

Ajit is a Master Mariner and sailed for 11 years on tankers. He then spent 8 years as a pilot for the Singapore Port Authority, with particular expertise on the Straits of Singapore and Malacca. He regularly visits East and West Malaysia, Indonesia and Vietnam to liaise with various authorities, surveyors, lawyers and P&I correspondents.



**Capt. NASIR SUBAHRIE – Claims Manager**

Nasir has a Degree in Management and Law, a Masters in Maritime Studies and a qualification in Maritime Casualty Investigation from the IMO. He is a Master Mariner with 12 years' sea-going experience mostly on oil, chemical and LPG tankers and also worked as a marine surveyor for 19 years. He was also a Flag State Inspector for the Bahamas Maritime Authority and has worked for Pandisea/Britannia for 5 years.



**VICTORIA MCFARLANE – Assistant Claims Manager**

Victoria previously worked as a paralegal for several years dealing with various matters including personal injury cases. She now assists Members with personal injury cases focusing on the Singapore compensation regulations. She has a qualification relating to workplace health and safety and personal injury claim reduction. Victoria has worked with Britannia/Pandisea for 9 years.

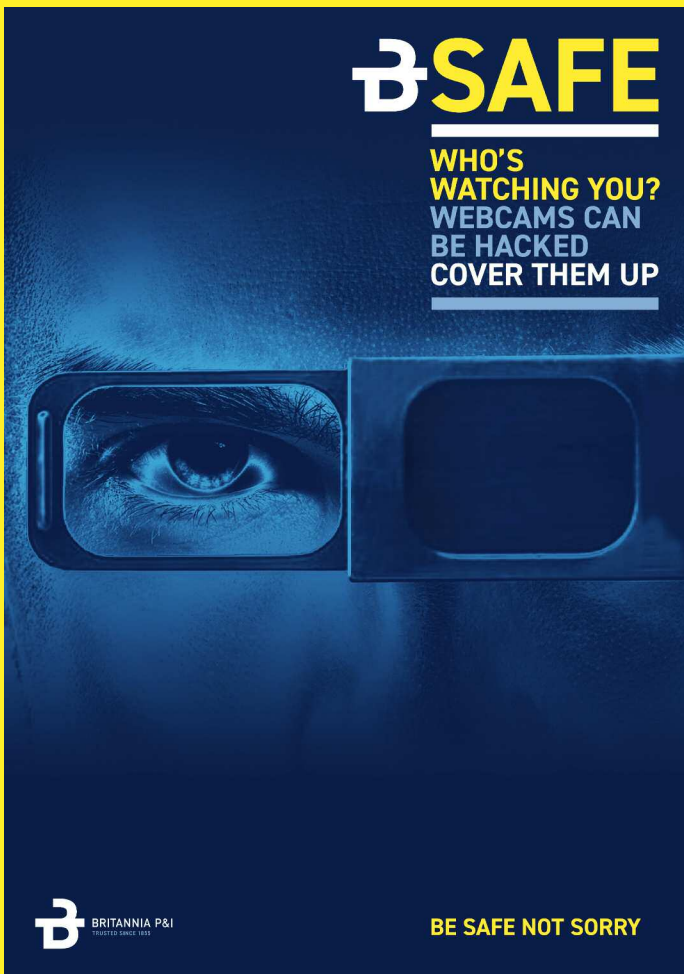


**SIVAKAMI MOORTHY RAMAN – Assistant Claims Manager**

Siva has experience in insurance and claims having previously worked for CAG and CAAS where she oversaw their insurance portfolios. She also worked for a major insurance broker and handled policy renewal, insurance coverage issues and different types of claims. She also developed various standard operating procedures to aid better reporting of incidents. Siva is studying for a diploma in insurance broking and has been with Britannia/Pandisea for 8.5 years.

# B SAFE

WE ARE VERY PLEASED TO LAUNCH OUR LATEST SAFETY POSTER CAMPAIGN: B SAFE. OUR FIRST POSTER IN THE SERIES IS A REMINDER OF CYBER SECURITY ISSUES AND URGES US TO COVER COMPUTER WEBCAMS WHEN NOT IN USE.



This issue is not new but was highlighted recently when the head of the FBI in the US said that he shielded his computer webcam and advised everyone to do the same. The CEO of Facebook, Mark Zuckerberg, has also been seen in photographs with a piece of tape covering his webcam. Hackers can obtain webcam images in a number of ways which they can then use in an attempt to blackmail and gain control over users. The hackers can claim to have obtained intimate personal images and threaten to expose the victim if they don't pay. The hackers can also use webcams to spy on individuals and households and listen in to business and personal conversations.

To help protect your privacy we are pleased to be sending you our Britannia webcam covers which can be stuck easily over the webcam on your PC or laptop. They can slide across to cover the webcam when not in use. If you have not received your webcam cover or would like extra supplies, please contact us: [publications@tindalriley.com](mailto:publications@tindalriley.com)

## HERE IS A REMINDER OF SOME OF THE OTHER WAYS IN WHICH YOU CAN IMPROVE YOUR ONLINE SECURITY:

**NEVER CLICK ON SUSPICIOUS ATTACHMENTS**, even if they seem to come from friends or family, as these are a prime source of malware. Be particularly aware of suspicious sites offering free music, TV or video downloads.

**ALWAYS USE A FIREWALL** which should be provided with your computer but make sure that it is turned on and regularly updated.

**USE STRONG ANTI-VIRUS SOFTWARE** which protects against malware and spyware and make sure that this is regularly updated.

**SECURE YOUR WIRELESS CONNECTION** and use a unique password – don't rely on the default password provided with the router.

**BE CAUTIOUS** about talking to strangers online and about accepting tech help which you have not asked for. This may enable hackers to access your computer, to install their own programmes and rig the webcam so they can use it to spy on you.

# BRITANNIA'S LATEST LOSS PREVENTION VIDEO FOCUSES ON SHIP TO SHORE COMMUNICATION

THE LOSS PREVENTION DEPARTMENT HAS PRODUCED A NEW VIDEO WHICH HIGHLIGHTS THE IMPORTANCE OF CLEAR COMMUNICATIONS BETWEEN THE SHIP AND SHORE, FOCUSING PARTICULARLY ON A MASTER'S INTERACTION WITH AN OPERATIONS MANAGER ASHORE. BASED LOOSELY ON AN ACTUAL GROUNDING INCIDENT OF A BULK CARRIER OFF THE COAST OF GIBRALTAR, THE VIDEO FEATURES MEMBERS OF BRITANNIA'S LOSS PREVENTION TEAM PLAYING THE KEY ROLES.



The video begins with a discussion between the ship and the operations manager ashore about whether to carry out engine repairs at an open anchorage off the port of Gibraltar or whether to carry out the repairs in more sheltered waters. It was decided to carry out the repairs at the open anchorage and it was made clear that this decision was made mainly due to financial considerations – it being cheaper to carry out the repairs at the open anchorage.

The master was told by his chief engineer that the repairs would take about 12 hours of work. The master understood this to mean 12 hours in total and so, on that basis, he ordered the chief engineer to carry out the work as weather conditions were favourable.

However, what the chief engineer meant was that the task would take 12 working hours – effectively a much longer period of time in total.

During the night the weather conditions deteriorated and, as the repairs were not completed, the ship was unable to depart.

The master wanted to arrange for a locally-based tug to assist but this request was turned down by the operations manager who decided that the tug should be supplied from an approved company based in another country. By the time this tug arrived, the weather conditions had deteriorated considerably and the ship subsequently grounded.

The lesson to be learned from this video is that communications between ship and shore staff need to be clear and unambiguous. Also, the video shows how the master's authority was severely compromised by the operations manager, contributing to the ship running aground.

There should be a clear statement in the company's safety management system (SMS) which emphasises the master's authority as laid out in the ISM Code, Chapter 5.2.

The video is now available on the Britannia website: [britanniapandi.com/videos](http://britanniapandi.com/videos)



# SHIP TO SHIP TRANSFER OF PERSONNEL – HOW TO DO IT SAFELY



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THE LOSS PREVENTION TEAM HAVE RECEIVED SEVERAL ENQUIRIES FROM MEMBERS ABOUT THE BEST WAY TO TRANSFER PERSONNEL FROM ONE SHIP TO ANOTHER. THERE ARE DIFFERENT WAYS OF CARRYING OUT SUCH TRANSFERS, BUT THE MOST IMPORTANT THING WITH EVERY TRANSFER IS SAFETY. IN THIS ARTICLE WE SET OUT THE ISSUES TO CONSIDER AND THE DANGERS TO LOOK OUT FOR.

No two operations are the same and each type has a variety of risk factors, but here we will set out several important points to consider:

## APPROVAL

Check in advance with the flag state, classification society and port state to see if they have specific requirements for transfer of personnel in their territorial waters.

## EQUIPMENT

Choosing the right equipment for the transfer is very important and it must also be properly maintained in accordance with the manufacturers' instructions and as part of the ship's planned maintenance system (PMS).

**Crane:** If using a ship's hose-handling or provision crane, it must be upgraded before transferring personnel. The classification society will be able to give exact details which could include installing the following:

- Secondary braking system in case of brake failure
- Manual override in case of power failure
- Safety locking latch on the crane hook

**Basket:** The platform used for transferring is often referred to as a basket due to its shape and there are many different types of transfer baskets available. They all must be approved and certified for carrying personnel and should not be used for other purposes on board e.g. as work platforms. The type of basket will depend on how many people and how much equipment needs to be carried, taking into consideration the design of each ship. The weight must be evenly distributed so that the basket does not tip and tag lines are normally attached to each side to control the basket. The tag lines must not be too long or they may become wrapped around the basket or get caught in other equipment, compromising the stability of the basket.

## TRANSFER PLAN

A plan for the transfer of personnel should be prepared in advance and form part of the ship's safety management system (SMS). The plan must include a thorough risk assessment of the entire operation and must be approved by the masters of both ships involved and communicated to all personnel involved. The plan should identify all risks and include pre-testing of equipment, clear lines of communication and a contingency plan in case of emergency. The risk assessment should consider:

- Anticipated weather
- Movement of both ships
- Correct use of personal protection equipment for all involved
- Height of lift, clearance of pick up and definition of landing area

All personnel involved must understand the transfer plan and should feel comfortable with all aspects of the operation. It can be intimidating to transfer from one ship to another and nobody should be forced to do this unless they are satisfied.

## TRAINING

All personnel involved must be aware of their duties and responsibilities and receive proper training in all aspects of the operation. The crane driver in particular must be experienced and fully familiar with the correct use and abilities of the crane and lifting equipment. Those using the basket must be familiar with each specific type of basket, how to get on and off and how to secure all loose parts. They must also know what to do in case of an emergency.

## CONCLUSION

There will always be risks when transferring personnel between two ships at sea. However, as with all operations, you must use properly certified and well-maintained equipment and have a comprehensive plan combined with a thorough risk assessment.

# FEELING TIRED?



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## THE EFFECT OF FATIGUE ON SEAFARERS

IN A NUMBER OF ACCIDENT REPORTS FATIGUE IS MENTIONED AS A MAJOR CONTRIBUTORY FACTOR. THE IMO MARITIME SAFETY COMMITTEE HAS ISSUED A NEW SET OF GUIDELINES (MSC.1/CIRC.1598) TO HELP EVERYONE UNDERSTAND THEIR ROLES AND RESPONSIBILITIES WHEN MANAGING THE ISSUE OF FATIGUE.

The IMO uses the following definition of fatigue:

**'A STATE OF PHYSICAL AND/OR MENTAL IMPAIRMENT RESULTING FROM FACTORS SUCH AS INADEQUATE SLEEP, EXTENDED WAKEFULNESS, WORK/REST REQUIREMENTS OUT OF SYNC WITH CIRCADIAN RHYTHMS AND PHYSICAL, MENTAL OR EMOTIONAL EXERTION THAT CAN IMPAIR ALERTNESS AND THE ABILITY TO SAFELY OPERATE A SHIP OR PERFORM SAFETY-RELATED DUTIES.'**

Fatigue has been directly linked to accidents involving personal injury, groundings and other 'near miss' incidents. Investigation reports from the MAIB have noted the following examples:

- Whilst on passage, the officer on watch fell asleep shortly after taking over the watch at midnight. The ship continued on for more than 3 hours and then grounded.
- In another grounding investigation, the chief officer who was on watch fell asleep, having worked solidly for 17 hours in the previous port. The entries in the log recording hours of work and rest had been falsified.

People are often reluctant to admit that they feel so tired that it starts to affect their ability to carry out tasks and especially to carry out their watch keeping duties.

The IMO guidelines are available to read in full here:  
<http://ow.ly/F3fY30oGyvc>

As with all recommendations, the guidelines need to be adapted for the individual circumstances on board each ship, looking at trading routes, crew numbers and work requirements.



### CASE STUDY

AT ONE OF OUR RECENT LOSS PREVENTION SEMINARS WE WERE DISCUSSING THE ISSUE OF FATIGUE AND A MASTER IN THE AUDIENCE TOLD US ABOUT HOW HE HAD FOLLOWED HIS COMPANY'S SMS PROCEDURE FOR FATIGUE MANAGEMENT AND BELIEVED HE HAD SUFFERED BECAUSE OF THIS.

The ship had been in port for most of the day and all staff on board had been working very hard. Everyone was tired when the ship finally left the berth and so the master anchored for 3 hours in a safe anchorage so that the watchkeepers could rest before proceeding. This was in accordance with the SMS guidelines.

The ship arrived at the next port on time and within the laycan and the manager did not mention the 3 hours at anchor. However, when the master came to the end of his contract he was not offered another position (despite having worked for the company for many years without incident) and he believed this was linked to his decision to allow the rest period.

### CONCLUSION

The responsibility for effective fatigue management must be a shared one. Crew must take responsibility to assess their own levels of fatigue and keep accurate sleep records. In turn, the senior officers and management ashore must make sure that there is an effective system in place that takes into account the effects of fatigue on all ship staff and operations.

# CLAIMS AND LEGAL

## VOLCAFE V CSAV



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THE ENGLISH SUPREME COURT HAS HANDED DOWN THE FIRST AUTHORITATIVE JUDGMENT IN ENGLISH LAW ADDRESSING THE QUESTION OF WHETHER IT IS THE CARRIER OR CARGO INTERESTS WHO BEAR THE BURDEN OF PROOF UNDER THE HAGUE AND HAGUE-VISBY RULES.

This landmark case involved a low value claim for condensation damage to coffee beans. The first instance trial judge had ruled in favour of the cargo owners, deciding that, where goods shipped in apparent good order and condition show loss or damage on discharge, there is an evidential inference that the loss or damage is caused by the fault of the carrier. The carrier then has the burden of showing that it has not breached any of its obligations.

The Court of Appeal overturned that decision, finding instead that, once the carrier had made out a defence (in this case inherent vice), the burden of proof then shifted to the cargo owners to prove that the carrier had not employed a sound method for carrying the cargo.

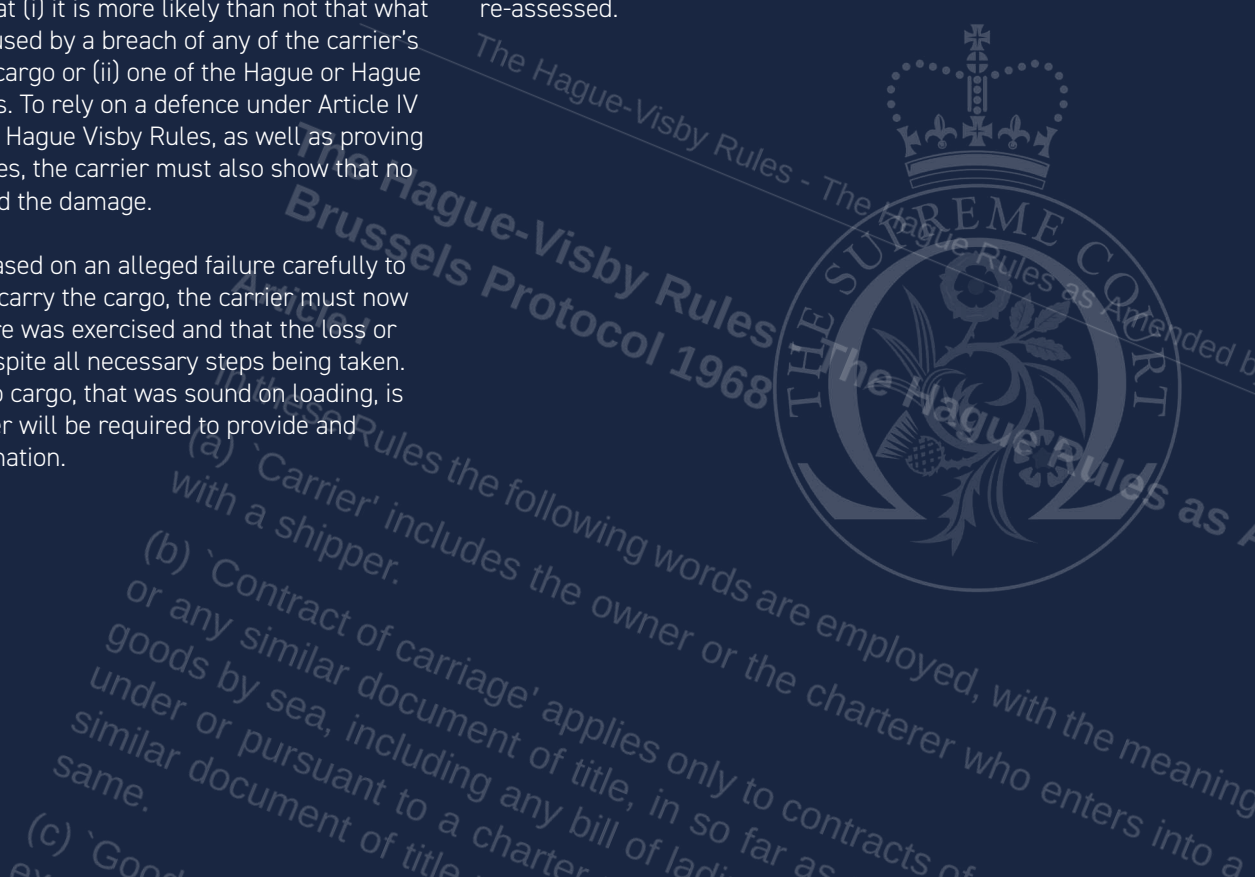
The Supreme Court upheld cargo interests' appeal and restored the findings made by the judge at first instance. The Court held that a contract for the carriage of goods by sea is one of bailment. As bailee, a carrier is liable under Article III rule 2 of the Hague or Hague Visby Rules for loss or damage to goods in its possession during the course of the voyage unless it can prove that (i) it is more likely than not that what happened was not caused by a breach of any of the carrier's duties to care for the cargo or (ii) one of the Hague or Hague Visby defences applies. To rely on a defence under Article IV rule 2 of the Hague or Hague Visby Rules, as well as proving that the defence applies, the carrier must also show that no fault on its part caused the damage.

When facing claims based on an alleged failure carefully to load, handle, stow, or carry the cargo, the carrier must now show that suitable care was exercised and that the loss or damage happened despite all necessary steps being taken. If loss of or damage to cargo, that was sound on loading, is established, the carrier will be required to provide and substantiate an explanation.

The practical impact of the judgment is that the pleading of cargo claims is likely to change. Cargo interests may now present their claims differently, proceeding on the basis that they can rely on proof of damage to the cargo as constituting a sustainable cause of action in itself. The legal burden will then be placed on the carrier to disprove negligence. A carrier's defences will need to be presented in a more specific, positive and detailed manner, particularising how the goods were carried and cared for. In some cases it may be that this actually results in quicker settlement, by helping to focus the parties' minds.

This development serves as a clear reminder of the importance of maintaining comprehensive and accurate records to demonstrate compliance with the carrier's obligations at all times. The burden of proof alone is rarely key to judicial decisions on liability, given that persuasive evidence from either party is commonly available. However, it will increasingly need to be foremost in the minds of personnel on board the vessel, at the quayside or ashore, who may see their responsibilities increase.

Gathering and preserving all relevant evidence to show what was done to care for the cargo and when it was done will be more critical than ever. Carriers should also conduct regular reviews of procedures and systems for handling cargo and evidencing the steps taken to care for cargo may need to be re-assessed.





# PASSAGE PLANNING AND UNSEAWORTHINESS – *CMA CGM LIBRA*



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THE ADMIRALTY COURT'S DECISION IN *ALIZE 1954 V ALLIANZ ELEMENTAR VERSICHERUNGS AG (THE CMA CGM LIBRA)* [2019] EWHC 481 (ADM LTY) ILLUSTRATES THE IMPORTANCE OF DILIGENT AND ACCURATE PASSAGE PLANNING BEFORE THE COMMENCEMENT OF A VOYAGE.

On 17 May 2011 *CMA CGM LIBRA* ('the ship'), laden with containerised cargo with a value in excess of USD 500m and with almost 8,000 tons of bunkers on board, grounded whilst leaving the port of Xiamen, China.

The ship had been navigated outside the buoyed fairway when it ran aground on a shoal in an area with charted depths of over 30 metres. The shoal was not marked on the charts available at the time. However, a Notice to Mariners issued by the United Kingdom Hydrographic Office 5 months before the grounding had confirmed that charted depths within the dredged channel were accurate but warned navigators that there were numerous shoals of less than charted depth in the approaches to Xiamen.

The ship's passage plan had not provided for the ship to leave the buoyed fairway, but also did not refer to any 'no-go' areas (such as depths less than those charted) which might have been missed off the charts.

Salvage operations were successful and the owners declared General Average (GA). The total amount of GA expenses (including salvage compensation of USD 9.5m) exceeded USD 13m.

92% of the cargo interests paid their contribution to GA but 8% refused to do so, on the grounds that the unsafe and negligently prepared passage plan rendered the vessel unseaworthy and caused the casualty, and as such that they

had a defence of actionable fault under Rule D of the York-Antwerp Rules. The owners commenced legal proceedings in the Admiralty Court to recover approximately USD 800,000 from the cargo interests that chose not to pay.

The Court decided that the navigation of the ship had been negligent, that the passage plan was defective and found that the defective passage plan caused the grounding.

The Court held that a ship's seaworthiness extends to having on board the appropriate documentation, including the charts, and that a proper passage plan is a document which is required at the beginning of the voyage. A defective passage plan prepared at the commencement of a voyage renders the ship unseaworthy and consequently prevents the ship from being able to rely on the negligent navigation defence in the Hague/Hague-Visby Rules.

The Court also held that the obligation to ensure the ship's seaworthiness is non-delegable. It must be shown that those servants or agents relied upon by owners to make the ship seaworthy (such as the master and second officer) have done so.

In summary, this is a significant decision which confirms that proper navigational documentation, including a passage plan, is an aspect of seaworthiness and that the duty to exercise due diligence is non-delegable. The decision also highlights the need for owners to ensure that careful and accurate passage planning is performed, particularly in circumstances where the intended voyage entails navigational hazards.



# COLLISION – ISSUES ARISING OUT OF A THREE-WAY COLLISION IN SINGAPORE



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A RECENT DECISION OF THE SINGAPORE COURT (*TIAN E ZUO* [2018]SGHC 93) CONSIDERED THE APPLICATION OF THE 'BUT FOR' TEST IN RELATION TO CAUSATION, THE 'AGONY OF THE MOMENT' DEFENCE IN COLLISION SITUATIONS, AND THE CIRCUMSTANCES IN WHICH A VESSEL IS CONSIDERED AS ANCHORED FOR THE PURPOSES OF THE COLLISION REGULATIONS.

The case concerned two related collisions involving three ships. All three ships were anchored at the Western Petroleum B Anchorage off Singapore when heavy winds caused *TIAN E ZUO* to drag her anchor and to foul the mooring tackle of other nearby ships. The entangled ships dragged downwind as a group and collided before their anchors regained holding and the group became stationary. Meanwhile, *ARCTIC BRIDGE*, which was moored downwind of the dragging group, attempted to take avoiding action but, in the event, made what were held to be a series of errors that led to a collision with *TIAN E ZUO* and then involuntary towage of that ship by *ARCTIC BRIDGE* which subsequently led to another collision with *STENA PROVENCE*.

The owners of *ARCTIC BRIDGE* argued that 'but for' (without) the dragging of the anchor of *TIAN E ZUO*, *ARCTIC BRIDGE* would have never been placed in the position of having to take avoiding action and so would never have suffered a loss. Furthermore, it was argued that the master of *ARCTIC BRIDGE* could not be held at fault for decisions taken in 'the agony of the moment' (i.e. in an emergency that was caused by the fault of another) even if, by a normal subjective analysis, they would be considered negligent.

Lawyers for *TIAN E ZUO* argued that, under the collision regulations, *TIAN E ZUO* was an anchored ship even throughout the period of involuntary towage. The court held as follows:

- 1 It was incorrect to consider the initial dragging as the sole primary cause. Where there are 'multiple faults' that have occurred in a chain of events, with each being capable of being avoided and of independently contributing to a loss, the 'but for' test may not be appropriate.
- 2 On the facts it was held that no 'sudden emergency' existed at the material time that was caused by the actions of another, or could account for decisions made. *TIAN E ZUO* was at anchor at the time *ARCTIC BRIDGE* made contact with her and so she committed no faults during that period. Although events happened quickly, it was found that there was sufficient time available for the bridge team on *ARCTIC BRIDGE* to assess options and reach correct conclusions. Therefore it would seem that for 'agony of the moment' to be an available defence, an emergency must be both caused by the fault of another and so sudden in nature that it leaves the crew with very limited time to consider the situation and take action.
- 3 The court found that during the period of involuntary towage, *TIAN E ZUO* was not held by or under the control of her anchor and so was not an 'anchored ship' for the purposes of the collision regulations, and was instead to be considered a 'ship under way'.

Although the findings of the court were based on a specific set of facts, the decision contains some indications as to the Singapore court's likely approach if a similar situation arises in the future.



# COLLISION – NARROW CHANNEL AND COLLISION REGULATIONS (COLREGS) RULES 9 AND 15



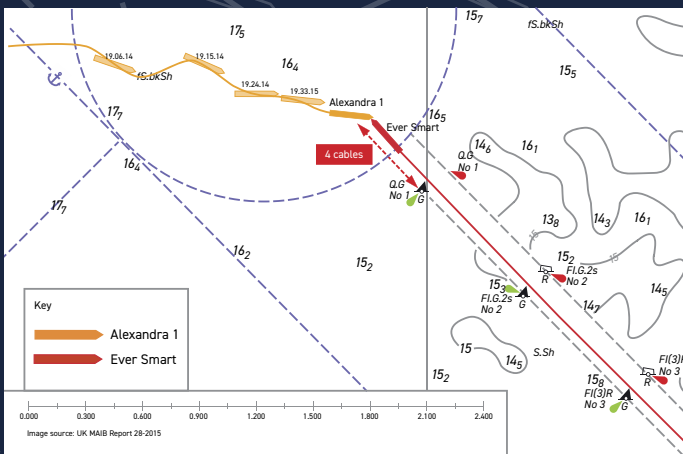
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THE ENGLISH COURT OF APPEAL HAS RECENTLY ISSUED A DECISION (NAUTICAL CHALLENGE LTD V EVERGREEN (UK) LTD 'ALEXANDRA 1' AND 'EVER SMART' [2018] EWCA CIV 2173) ON THE APPLICABILITY OF THE CROSSING RULES OF THE COLREGS TO A SHIP NAVIGATING IN A NARROW CHANNEL WITH ITS OUTER END IN A PILOT BOARDING AREA (NOT THE OPEN SEA).

The case arose from a collision in February 2015 which was just outside the dredged channel for the port of Jebel Ali. Although the collision was at night, there were clear skies and visibility of 10-12 miles. She collided with a laden VLCC was waiting in the designated area to embark her pilot. She was proceeding at 2.4 knots with a heading of 101 degrees. A laden container ship which had just left the channel outbound having disembarked her pilot in the channel. She was, however, still within the pilot boarding area and her speed was 12.4 knots.

The Court at first instance (the High Court) had held that Rule 15 (the collision rule) of the COLREGS did not apply and that when the VLCC approached the channel she was not under a duty to give way to the container ship. Instead, the navigation of the two ships was governed by:

- RULE 9 (the narrow channel rule) for the outbound ship and
- RULE 2 (requirement of good seamanship) for the inbound one.



The outbound ship appealed, arguing that Rule 15 (the crossing rule) had been triggered at a distance of 6 miles separation and had remained engaged throughout. The Court of Appeal, however, upheld the High Court's ruling. They held that:

- 1 Where a ship is preparing to enter a narrow channel, the narrow channel rule applies in place of the crossing rule. The crossing rule did not apply to the VLCC as she approached the channel. Her duty was to navigate in such a manner that, when she reached the channel, she would be on its starboard side in accordance with Rule 9.
- 2 The outbound containership had been in breach of Rule 9 in not navigating on the starboard side of the channel, and this was irrespective of the fact that the VLCC was not yet in the narrow channel.

The findings in this case are only applicable to other cases with identical, or materially similar, circumstances. Application of the crossing rule may still arise where the intentions of the ships in the vicinity of the narrow channel are not readily apparent, and to a ship crossing with another ship that is navigating in a narrow channel.

A summary of the facts of this case were published in Risk Watch in June 2018: [britanniapandi.com/publication/risk-watch-june-2018](http://britanniapandi.com/publication/risk-watch-june-2018)



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