

RISK WATCH

JULY 2020

NEW LOSS PREVENTION STRATEGY A NEW VISION

BSAFE LAUNCH NEW PROACTIVE SAFETY CAMPAIGN

LONE WATCHKEEPING LATEST BSAFE POSTER

BRIDGE RESOURCE MANAGEMENT AVOIDING HUMAN ERROR

COMPETENCE MANAGEMENT SYSTEMS HOW THEY WORK

CLAIMS AND LEGAL IMPORTANT CASES DISCUSSED

A MESSAGE FROM THE EDITOR

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



In these exceptional times of COVID-19, with many of us working in unfamiliar ways, (both on shore and at sea) we are very pleased to be able to introduce a new vision of how the Club will approach loss prevention in the future. The Britannia Loss Prevention team have conducted a fundamental review of all their activities and on page 4 you will find out more about how this will help us to provide the highest levels of service that our Members expect and deserve. There is a focus on navigation in this edition, with articles on Bridge Resource Management and passage planning, together with a case study analysing a grounding incident.

We are also very pleased to announce that our Exclusive Correspondent in the USA, B Americas P&I LLC, opened for business (remotely!) on 30 March 2020. It is headed by Michael Unger, a leading maritime lawyer with extensive litigation and arbitration experience, who has been known to the Club for many years. B Americas will boost Britannia's global footprint, enhancing the Club's ability to provide a round-the-clock claims service to all its Members, while also focusing on the needs of Britannia's North American Members. Mike kicks off our Claims and Legal section with an article on safe port/berth warranties under US law on page 13.

Also in this edition of *Risk Watch*, we launch the **BSafe** campaign, which is aimed specifically at seafarers on board our Members' ships. The Loss Prevention department, supported by the People Risks team, will be providing a variety of materials aimed specifically at seafarers, including case studies and posters. Seafarers will be supported by our team of experienced maritime professionals, with the aim of preventing onboard injuries and losses. Our latest **BSafe** poster focuses on lone watchkeeping and is included with the hard copy of this magazine. If you would like any additional copies, please let us know and we will send them to you.

As always, we welcome your feedback on our new initiatives and on any of the other topics covered in this latest edition of *Risk Watch*.

A handwritten signature in white ink, appearing to read 'Claire Myatt', positioned above the printed name and title.

CLAIRE MYATT
Editor

LOSS PREVENTION –

A NEW VISION

OUR LOSS PREVENTION DEPARTMENT HAS RECENTLY COMPLETED A COMPREHENSIVE STRATEGIC REVIEW IN ORDER TO OPTIMISE THE USE OF ITS RESOURCES AND ENHANCE THE SERVICE PROVIDED TO MEMBERS.



As part of Britannia's ongoing commitment to provide the highest level of service to our Members, our Loss Prevention department has undertaken a fundamental review of its activities. This has resulted in a redefined strategic direction for the department, with clear vision and mission statements expressing our aspirations and general overall purpose for this key business function to be recognised as a centre of excellence.

Central to this strategy is the adoption of a more risk-based approach, which is intended to help identify areas of risk that would benefit from

more focussed loss prevention interventions. This is supported by the development of a more analytical and systematic methodology to enhance the efficiency and effectiveness of the department's activities.

Going forward, this will also include a greater prioritisation of research-based activities, such as causal analyses and initiatives, thereby aligning with two of the department's key aspirations of being:

INNOVATIVE, BY EMBRACING THE LATEST DEVELOPMENTS AND TECHNOLOGIES TO SUPPORT THE SERVICES PROVIDED; AND

PROACTIVE, BY CONTINUALLY LOOKING TO IDENTIFY ISSUES, TRENDS AND DEVELOPMENTS TO HELP PREVENT LOSSES.

The ultimate aim is to provide a greater degree of useful loss prevention information and to deliver enhanced value to Members in order to help prevent claims and losses.

Traditional loss prevention activities, such as the Management Reviews carried out when new Members enter the Association and condition surveys are conducted to assess the physical condition of Members' ships remain a key part of the department's activities, albeit with a more focussed and systematic approach. Likewise, our programme of loss prevention seminars, supplemented recently by our first ever webinar, will continue, with the aim of raising safety awareness amongst our Members and their seafarers by drawing on the Association's own claims and loss prevention experience, as well as the expertise of recognised professionals within the industry.

One key element of our mission is to provide informative and credible information to our Members. In the coming months we will be continuing to develop our range of loss prevention publications using our enhanced Knowledge Base area on the Britannia website (<https://britanniapandi.com/knowledge/>). We are also excited to be launching our new **BSafe** initiative, as detailed on page 3 of this edition, further reflecting one of the aims of the revised strategy to increase our sharing of knowledge.

OUR VISION

RECOGNISED AS A CENTRE OF EXCELLENCE, TRUSTED AS THE INDUSTRY'S PREFERRED PROVIDER OF P&I LOSS PREVENTION SERVICES.

OUR MISSION

TO PROVIDE INFORMATIVE AND CREDIBLE ADVICE TO OUR MEMBERS AND STAKEHOLDERS, DELIVERED IN THE MOST EFFICIENT MANNER TO HELP PREVENT LOSSES, WHILE SUPPORTING SAFE AND EFFECTIVE OPERATIONS.

One key change as part of the implementation of the strategy has been to refocus our Loss Prevention department into two divisions in order to consolidate our activities:



LOSS PREVENTION (OPERATIONS) – RESPONSIBLE FOR MANAGING THE CONDITION SURVEY PROGRAMME, AS WELL AS LEADING ON MANAGEMENT REVIEWS, LOSS PREVENTION SEMINARS AND ENHANCING AND OPTIMISING THE LOSS PREVENTION DEPARTMENT’S ENGAGEMENT WITH MEMBERS.

This division is headed by **NEALE RODRIGUES**, DIVISIONAL DIRECTOR, a Master Mariner with experience on container, RoRo, bulk, tanker, reefer and multipurpose ships, as well as shoreside roles spanning marine surveying, quality assurance and ship management.

Supporting the work of the department is LOSS PREVENTION MANAGER **SHAJED KHAN**, a Master Mariner with experience on product and chemical tankers, general cargo and bulk carriers, as well as working as a surveyor undertaking cargo, damage, warranty, heavy lift, quality and safety surveys.

LOSS PREVENTION ADMINISTRATOR **ASHLEY BOYCE** completes the team and is responsible for managing the condition survey programme. Ashley holds a BA (Hons) in Business Administration and has previously worked as a claims administrator in Britannia’s Claims and People Risk departments.



LOSS PREVENTION (RISK INSIGHTS & ANALYTICS) – RESPONSIBLE FOR LEADING AND MANAGING THE ANALYTICAL AND RESEARCH-BASED ACTIVITIES SUPPORTING THE RISK-BASED APPROACH. THIS INCLUDES LEADING ON THE PREPARATION OF PUBLICATIONS TO SHARE THE DEPARTMENT’S KNOWLEDGE AND INSIGHTS.

This division is led by **GRAHAM WILSON**, DIVISIONAL DIRECTOR, a Chartered Naval Architect and former UK Flag State Accident Investigator and Maritime Risk and Investigations Director for a major passenger ship operator, as well as a Senior Lecturer in marine accident investigation.

Our loss prevention presence in Asia is provided by LOSS PREVENTION MANAGER, **JACOB DAMGAARD** who has been based in Britannia’s Singapore Regional Hub since August 2019. Jacob is an experienced dual-qualified Deck and Engineering Officer, with shoreside experience as Designated Person and Company Security officer for a fleet of container ships and pure car and truck carriers, as well as a Flag and Port State Inspector.

An additional LOSS PREVENTION MANAGER, **SLAV OSTROWICKI**, joined the Loss Prevention (Risk Insights & Analytics) team in February 2020. Slav is a Master Mariner, with experience on bulk carriers, container and general cargo vessels, as well as in a number of shoreside vetting and auditing roles.

In March 2020, we also welcomed the arrival of **NICHA KANDASAMY** in the new position of LOSS PREVENTION ANALYST within Loss Prevention (Risk Insights & Analytics) to help develop our data analysis and visualisation capability. Nicha has worked in a number of analytical roles evaluating business data using various analytical software packages, and is currently studying for an MSc in Business Intelligence and Analytics.

The combined Loss Prevention department is well placed to support our Members and internal stakeholders on a wide range of matters. The team offers experience and expertise covering the broad range of major ship types and operations, as well as the nautical, engineering and naval architecture professions. We are also growing our analytical capability, aspiring to meet our stakeholders’ needs more fully by exploiting the use of data.

In a time of global uncertainty and unprecedented challenges, we are confident that our new risk-based and proactive approach to loss prevention positions us perfectly to provide the highest level of service to our Members, both now and in the future.

For more details please contact the Britannia Loss Prevention team:

lossprevention@tindallriley.com



A NEW BRITANNIA INITIATIVE FOR SEAFARERS

SEAFARERS ARE A KEY ELEMENT OF A SUCCESSFUL SHIPPING INDUSTRY. AT BRITANNIA WE RECOGNISE THE DEMANDS AND PRESSURES ON THE MEN AND WOMEN WHO WORK AROUND THE CLOCK AT SEA.

In the fast-changing modern world, with a seemingly constant stream of new emerging risks and rapid advances in technology, the need to share information about best practices has never been greater.

At Britannia, we understand this. Which is why we are excited and proud to be launching our new **BSafe** campaign soon..

PROACTIVE

BSafe is a proactive safety campaign targeted at seafarers on board our Members' ships. Developed by our Loss Prevention team, with the support of our People Risks department, the aim is to help influence behaviours and prevent onboard injuries and losses.

The intention, from the outset, was to keep the campaign dynamic and alive. We will be launching new material and initiatives as **BSafe** develops, with the clear aim of supporting seafarers.

INFORMATIVE

By sharing relevant information and developing initiatives to support various aspects of onboard operations, our mission is to help our Members' crew **BSafe**. Our aim is not only to provide a home for all our crew-related content and material, but to become recognised as one of the 'go-to' sites for all such information, with relevant, useful and practical content.

SUPPORTIVE

Being safe in its broadest sense is not just about onboard safety. It's also about being healthy and secure, elements which are both fundamental to people's wellbeing and efficiency. So rather than just focus on pure safety, we have identified three main subjects to be covered under the **BSafe** umbrella: **Onboard Safety; Seafarer Health; Onboard Security.**

REFLECTIVE

Reflecting and learning from previous events is widely acknowledged as an effective way of positively influencing behaviours. It's about considering why something happened and then relating the identified learning points to your own personal situation.

In addition to providing a variety of reflective-based content as the campaign evolves, each month we will produce a new **BSafe** Incident Case Study (BICS) available on our **BSafe** webpages. This will be based on a real accident or claim, with the key lessons identified as a starting point.

You can read more about our first navigational-based **BSafe** case study on page 4, where the Loss Prevention department analyses a grounding incident. For each case study, we will also be developing presentation material and reflective learning aids which can be used in any way Members or their crew see fit. For example, these could be used to support onboard safety meetings or crew seminars, or just for individual reflection on the issues raised.

EFFECTIVE

With our experience in loss prevention and maritime safety, we are confident that **BSafe** will grow and be a success. However, as with any campaign, the true success will be measured by the interaction and feedback that we receive – from our Members and, most importantly, their seafarers. We have lots of ideas, but we are also open to suggestions and comments, so please contact the Britannia Loss Prevention team via: lossprevention@tindallriley.com to engage with us.

WE ARE TRULY EXCITED ABOUT BSAFE. OUR AIM IS SIMPLE - TO HELP OUR MEMBERS' SEAFARERS TO BE HEALTHY; TO BE SECURE; TO BSAFE.

#1 GROUNDING

BRITANNIA BELIEVES IN THE IMPORTANCE OF ANALYSING PAST INCIDENTS, LOOKING AT WHAT LESSONS CAN BE LEARNED IN ORDER TO TRY AND PREVENT SUCH INCIDENTS HAPPENING AGAIN. THERE ARE MANY WAYS THAT THESE LESSONS CAN BE SHARED WITH OUR MEMBERS AND CASE STUDIES ARE ALWAYS AN EFFECTIVE WAY OF REFLECTING ON INCIDENTS, HIGHLIGHTING THE ISSUES AND THEN WORKING THROUGH THE PRACTICAL LESSONS THAT CAN BE LEARNED. AS PART OF OUR NEW BSAFE CAMPAIGN THE LOSS PREVENTION DEPARTMENT WILL BE ISSUING A NEW CASE STUDY BASED ON AN ACTUAL INCIDENT. THIS WILL INCLUDE REFLECTIVE LEARNING MATERIAL THAT CAN BE USED AS AN EDUCATIONAL TOOL ON BOARD AND CAN ALSO POSSIBLY BE INCORPORATED INTO A MEMBER'S OWN SAFETY TRAINING PROGRAMME AS APPROPRIATE.



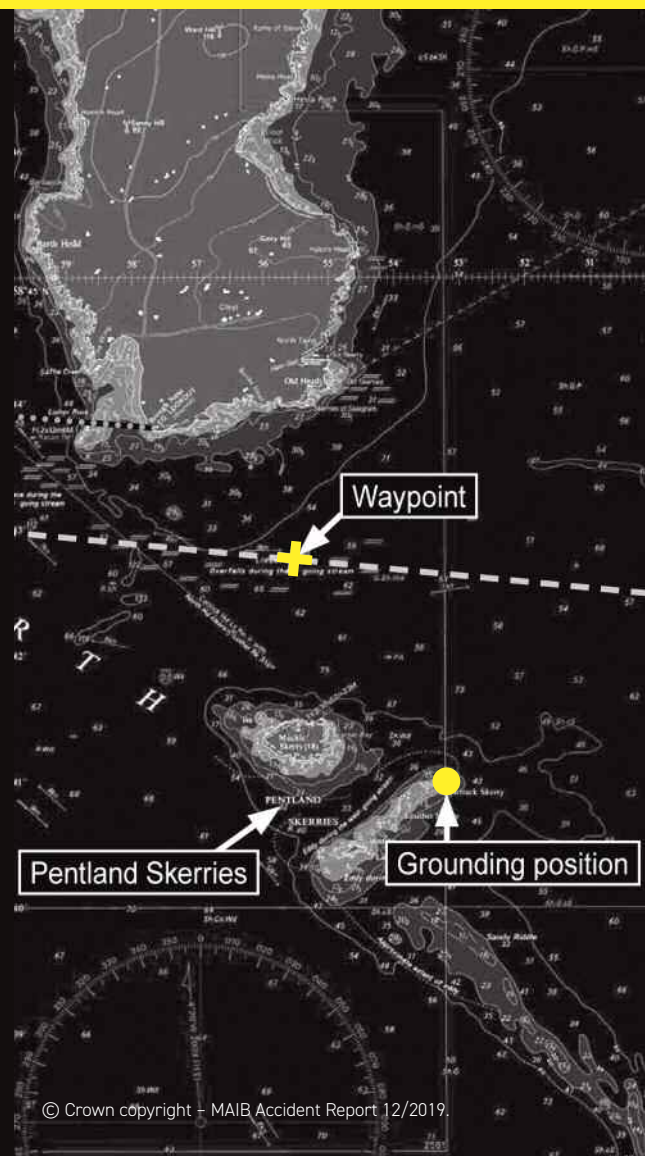
The first case study is based on a UK Marine Accident Investigation Branch (MAIB) investigation of an accident involving the general cargo vessel *PRISCILLA*. The vessel grounded at the Pentland Skerries off the Orkney Islands Scotland at night while going from Klaipeda, Lithuania to Silloth, England. At the time of the grounding, there was only one person on the bridge of the *PRISCILLA*. During the watch, this sole officer had been distracted by other non-navigational activities and did not notice that the ship was drifting to the south of its planned track and was heading straight towards the shallow waters of Pentland Skerries. It was only when a VHF warning was received from the local VTS that the officer realised the danger ahead. However, because he was not fully aware of the situation, he took the wrong decision and the ship ran aground.

This incident highlights several key issues about navigational safety and provides some interesting and practical lessons that can be used to understand the risks associated with lone watchkeeping. The case study also looks at how navigational equipment should be used to help make decisions in such circumstances and how it can help to maintain situational awareness.

The full Case Study will be available in the new **BSafe** area of the Britannia website: <https://britanniapandi.com/>

If you have any questions or would like further advice on the safe conduct of navigation, then please feel free to contact the Britannia Loss Prevention team:

lossprevention@tindallriley.com



LONE WATCHKEEPER

WHAT TO LOOK OUT FOR

DESPITE THE AVAILABILITY OF INCREASINGLY SOPHISTICATED BRIDGE SYSTEMS, NAVIGATIONAL INCIDENTS CONTINUE TO REMAIN AN AREA OF CONCERN AND, IN MANY CASES, THE CAUSES ARE RELATED TO WATCHKEEPING ISSUES. AS THE CASE STUDY IN THIS EDITION OF RISK WATCH HIGHLIGHTS, SUCH INCIDENTS ARE ALSO REGULARLY ATTRIBUTED TO THE PRESENCE OF A SINGLE WATCHKEEPER ON THE BRIDGE

BSAFE

LONE
WATCHKEEPING?
A NIGHTMARE
AHEAD?
CONSIDER
ANOTHER PAIR
OF EYES

The latest in our series of **BSafe** posters accompanying this edition focuses on the dangers of being alone on the bridge.

This is only allowed in very limited circumstances, for example, in clear daylight conditions, and with an appropriate risk assessment in place. It is evident that lone watchkeeping increases the risk of an incident occurring, by removing a second pair of eyes and by leaving the bridge unattended if the watchkeeper becomes incapacitated.

WHAT IS A 'PROPER' LOOKOUT?

The main regulations covering the need for a lookout on a ship are The International Regulations for Preventing Collisions at Sea (COLREGS) and The International Convention and Code on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

RULE 5 OF THE COLREGS STATES THAT:

"Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision."

Chapter VIII of the STCW Code sets out the standards for watchkeeping and the need for a proper lookout as per the COLREGS. The lookout should maintain a continuous state of vigilance in order to fully appraise the situation and the risk of dangers to safe navigation.

WHEN CAN YOU HAVE A LONE WATCHKEEPER?

The composition of the navigation watch will vary according to a number of factors, details of which are included in the STCW Code and

guidance on these should always be included in the ship's Safety Management System (SMS) and in the master's standing orders.

The STCW Code does allow for the officer of the watch (OOW) to be the sole lookout during daylight under certain circumstances, but only if there has been an assessment that it is safe to do so. Factors to take into consideration include:

- STATE OF WEATHER
- VISIBILITY
- TRAFFIC DENSITY
- PROXIMITY OF DANGERS TO NAVIGATION
- WHEN NAVIGATING IN OR NEAR TRAFFIC SEPARATION SCHEMES
- FATIGUE AND REST PERIODS

However, the decision to reduce staffing levels to just a lone watchkeeper needs to be taken with care, and all the associated risks must be properly assessed and documented.

THE ROLE OF BRIDGE ALARMS

As required by Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), bridge navigation watch alarm systems (BNWAS) are intended to monitor the awareness of the OOW and provide regular alarms to alert a distracted lone OOW or to alert the master or another qualified OOW automatically if the OOW becomes incapacitated. IMO Resolution MSC.128(75) sets the performance standards for BNWAS. IMO Circular MSC.1/Circ.1474 in 2014 provides further guidance relating to the automatic function of some systems, which the IMO agreed should no longer be used on SOLAS ships.

A BNWAS provides a key safety barrier and it is essential that the system is working efficiently and effectively to help prevent navigation accidents when a watchkeeper is alone on the bridge.

BUT IT IS IMPORTANT TO REMEMBER THAT A BRIDGE ALARM IS NO SUBSTITUTE FOR AN EFFECTIVE LOOKOUT.



For more advice watch our video: Bridge Operations – A Human Approach. Available on the Britannia website.

For further information and advice, please contact the Loss Prevention department. lossprevention@tindallriley.com



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For more advice watch our video: Bridge Operations – A Human Approach. Available on the Britannia website.



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SAFE PASSAGE PLANNING: DETAILED GUIDANCE

IN THE MAY 2019 EDITION OF RISK WATCH, BRITANNIA DESCRIBED THE LEGAL CONSEQUENCES OF THE ADMIRALTY COURT'S DECISION IN THE CASE OF THE *CMA CGM LIBRA* GROUNDING. THE COURT DECIDED THAT THE PASSAGE PLAN WAS DEFECTIVE AND THIS CAUSED THE GROUNDING. FURTHERMORE, IT DECIDED THAT A DEFECTIVE PASSAGE PLAN RENDERS THE SHIP UNSEAWORTHY, WHICH CONSEQUENTLY PREVENTS MEMBERS FROM RELYING ON THE NEGLIGENT NAVIGATION DEFENCE IN THE HAGUE/HAGUE-VISBY RULES. THIS JUDGEMENT WAS SUBSEQUENTLY UPHELD BY THE COURT OF APPEAL IN MARCH 2020.

◆ A comprehensive passage plan has always been an essential part of safe navigation, but the court judgement relating to the *CMA CGM LIBRA* grounding really emphasises the importance of the passage plan and the consequences it may have for Members if the plan is defective or not followed. Preparing a passage plan that covers all aspects of safe navigation for the forthcoming voyage is a substantial task, which requires a systematic approach to ensure that all relevant information is assessed and included. In order to assist our Members, the Loss Prevention Department has prepared guidance on passage planning which sets out the best practices and provides advice on:

- SOLAS requirements for passage planning
- Providing sufficient onboard nautical charts and publications
- How to keep nautical charts and publications updated
- Actual passage planning and minimum information to be gathered
- Audit and training

The guidance is intended to be used on board to assist the bridge team and it can also be used to help ensure that Members' own passage planning procedures are appropriate and robust.

The full Guidance on Safe Passage Planning will be available on the Britannia website in the next few weeks and in the meantime if you have any questions or would like further advice on safe passage planning, then please feel free to contact the Britannia Loss Prevention team: lossprevention@tindallriley.com

MARITIME RESOURCE MANAGEMENT (MRM) IS A MARITIME INDUSTRY TRAINING PROGRAMME, AIMED AT PREVENTING INCIDENTS CAUSED BY HUMAN FACTORS. THE OBJECTIVE IS TO MOTIVATE THE TEAM TO CHANGE ITS BEHAVIOUR TO GOOD RESOURCE MANAGEMENT PRACTICES DURING EVERYDAY OPERATIONS. MRM IS HUMAN FACTORS TRAINING, FOCUSING ON NON-TECHNICAL SKILLS – ALSO CALLED SOFT SKILLS.



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BRIDGE RESOURCE MANAGEMENT (BRM)

The genesis for this type of training was in the aviation sector, when it became clear that despite technological improvements, human errors in the cockpit were the leading cause of some of the deadliest air accidents. These accidents were attributed to a failure to detect and stop a developing error chain, or a loss of situational awareness.

Since then, a number of industries have adopted similar programmes. The maritime version called Bridge Resource Management (BRM) was launched in 1993. The programme evolved through the years, to match industry challenges such as the ever-increasing cultural diversity of seafarers and the complexity of team interactions. In 2003 the programme was renamed Maritime Resource Management (MRM) to encourage participation of all target groups including masters, deck officers, engineers, maritime pilots and shore-based personnel. Alongside BRM, Engine Room Resource Management (ERM) is the twin programme focused on the engine room team.

The 2010 Manila Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), fully implemented from 1 January 2017, introduced specific requirements for officer training in bridge/engine resource management, leadership, teamwork and managerial skills.



BRIDGE RESOURCE MANAGEMENT (BRM)

In order to meet these requirements, individuals must demonstrate their knowledge by having had approved BRM or ERM training, approved in-service experience, or approved simulator training. Many national administrations will only accept an approved course for this purpose.

'TO ERR IS HUMAN, BUT TO PERSIST IN ERROR IS DIABOLICAL'

THIS LATIN SAYING SUMMARIZES THE SPIRIT OF WHAT BRIDGE RESOURCE MANAGEMENT IS INTENDED TO PREVENT. AS HUMANS, WE ALL ARE PRONE TO MAKE MISTAKES, WHICH UNFORTUNATELY ON OCCASION CAN LEAD TO INCIDENTS UNLESS CAUGHT AND CORRECTED IN TIME.

BRM AIMS TO REDUCE THIS RISK BY HELPING THE BRIDGE TEAM TO FORESEE AND CORRECTLY RESPOND TO THEIR SHIP'S CHANGING SITUATION AND THEREFORE PREVENT A NAVIGATIONAL INCIDENT FROM ARISING.

Table A-II/1 of the STCW Code lists the following key principles of BRM:

- Allocation, assignment, and prioritization of resources
- Effective communication
- Assertiveness and leadership
- Obtaining and maintaining situational awareness
- Consideration of team experience



Let us have a closer look at the critical elements of BRM.

ALLOCATION OF RESOURCES

The key part of BRM is the ability to use all available resources effectively to make the best possible decisions. As an example, human resources available on the bridge include lookouts, additional officers, marine pilots and even vessel traffic system (VTS) officers. Technical/information resources include the passage plan, charts, navigation equipment and radio etc.

To enable optimal decision-making, the resources need to be available in good time and used to their full potential. This can be achieved through foresight and planning, for example by including the appropriate manning level and operational task responsibilities in the passage plan.

The passage plan and bridge procedures may not provide a solution for every possible scenario in a changing environment. Good BRM skills achieved through training and experience are also required for the optimal assignment and prioritization of resources, in particular in dynamic situations of increased complexity. For example, tasks should be continually delegated between team members so that all relevant information is understood and communicated.

COMMUNICATION AND TEAMWORK

An essential component of good BRM requires the team to be able to work together and communicate effectively. Information should be understood, acknowledged and clarified if needed. The principles of BRM can and should extend beyond the bridge, where the information flow is critical for correct decision-making – for example, communication with tugs and mooring stations.

Closed-loop communication helps eliminate errors and mistakes. When repeating orders to acknowledge them, good practice is to assess an order to make sure that it makes sense. It is the duty of all officers and crew members to cross-check and cross-question.





Effective BRM requires assertiveness. PACE is one of the models that can be used to escalate levels of intervention as part of the effective implementation of BRM:

PROBE:

“Do you know that...?”

ALERT:

“Can we re-assess the situation...?”

CHALLENGE:

“Please stop what you are doing while...”

EMERGENCY:

“STOP what you are doing!”

It is also important to maintain the common onboard working language and standard marine phrases in team communications, for example by using the IMO Standard Marine Communication Phrases (SMCP). This is particularly important when communications are required with external parties, such as marine pilots and tugs.

DECISION MAKING

Good team interactions and communication leads to good decision making: it is essential to gather relevant and valid information before making a deliberate and purposeful decision.

It should always be clear who in the bridge team has the overall responsibility for the decision making. However, it is equally important that all members of the team stay alert and actively follow the progress of the ship. If a team member identifies a potential error or a deviation from the agreed plan, he/she should not hesitate to challenge in a timely manner and confirm that the responsible officer is aware. BRM practices should include a means of verification to detect a slip or memory error, e.g. cross-checking or callouts.

SITUATIONAL AWARENESS

On the bridge, situational awareness is critical for safe navigation and collision avoidance. Situational awareness can be succinctly and simply defined as “knowing what is going on around us” (Flin et al, 2008). However, many casualty investigation reports cite loss of situational awareness as one of the contributory factors.

Ideally, every team member should have good situational awareness. On a busy bridge, it may be necessary for the officer in charge to delegate tasks to team members to focus solely on navigation, lookout, communication etc. In such cases, team members need to communicate effectively to share the “mental image” of the situation. All relevant resources, including navigation equipment and external information such as VTS, should receive appropriate attention from the team to achieve situational awareness.

CHALLENGE AND RESPONSE

An appropriate “Challenge and Response” technique is at the core of good BRM. A meaningful challenge to any action or non-action should be respected and considered, regardless of who is challenging whom.

Another significant aspect influencing the effectiveness of BRM is the “power distance”, which in the context of BRM can be described as a measure of how often subordinates are afraid to raise concerns or express disagreement. “Power distance” is strongly influenced by cultural background and it needs to be correctly managed in order to ensure that bridge communication is effective.

SUMMARY

Although shipping is considered as one of the safest modes of transportation, casualties continue to occur due to human error and poor leadership. Procedures do not replace soft skills. Good BRM is not a one time training requirement but a team skill, which should be continually practised and rehearsed and, of course, implemented.

REFERENCES:

- STCW Convention and Code including 2010 Manila Amendments (International Convention on Standards of Training, Certification and Watchkeeping for Seafarers)
- The Nautical Institute: The Navigator Feb/20 ‘Situational Awareness’
- Maritime and Coastguard Agency ‘The Human Element - A Guide to Human Behaviour in the Shipping Industry’
- AMSA Marine Notice 11/2016 ‘Bridge Resource Management (BRM) and Expected Actions of Bridge Teams in Australian Pilotage Waters’
- AMSA Marine Notice 14/2017 ‘Fitness for Duty’
- IMO Standard Marine Communication Phrases (SMCP) website: ow.ly/oUqj30qFmMg
- International Chamber of Shipping ‘Implementing an Effective Safety Culture’
- Flin R, O’Connor P, Crichton M. (2008), *Safety at the Sharp End: A Guide to Non-Technical Skills*. Boca Raton, FL: CRC Press.

COMPETENCE MANAGEMENT SYSTEMS (CMS)

WHAT IS COMPETENCE?

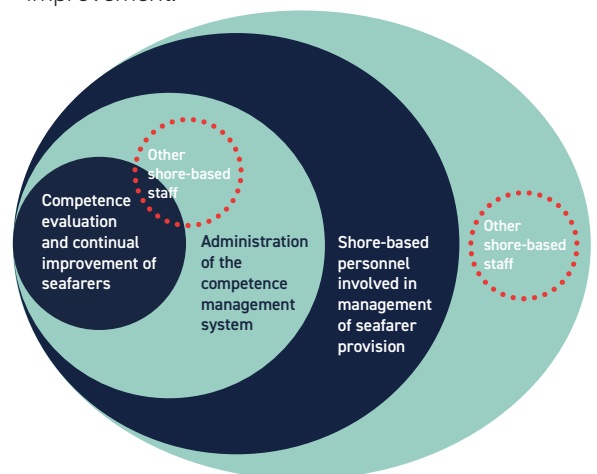
COMPETENCE IS A COMMONLY USED TERM IN THE WORK ENVIRONMENT AND IS 'THE ABILITY TO CARRY OUT A TASK TO AN EFFECTIVE STANDARD'. COMPETENCE IS TYPICALLY ASSOCIATED WITH A COMBINATION OF KNOWLEDGE, SKILL, UNDERSTANDING AND PERHAPS, MOST IMPORTANTLY, ATTITUDE, IN ORDER TO UNDERTAKE A GIVEN ROLE SUCCESSFULLY. A COMBINATION OF EXPERIENCE, TRAINING AND BOTH FORMAL AND INFORMAL LEARNING ARE ALL FUNDAMENTAL TO THE DEVELOPMENT OF OUR LEVEL OF COMPETENCE.

Given the need to ensure the safe and efficient operation of a ship in often demanding conditions, a competent, motivated crew and shoreside support team is essential. In the maritime industry, the concept of competency is enshrined in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended. Along with The 2010 Manila Amendments to the Seafarers' Training, Certification and Watchkeeping (STCW) Code, these define the agreed and well established international training and certification standards for seafarers.

With changing regulations and new requirements, combined with constant commercial pressures and demands, the the need to demonstrate the competence of employees in the maritime industry has never been greater. This includes being able to prove a robust and auditable system is in place, which defines competence requirements for employees and can help ensure compliance with future new requirements.

What is competence management?

One means of achieving this is with the adoption of a Competence Management System (CMS). Competence management is the process of defining, managing and developing employees' job-specific skills or competencies by identifying the key abilities required to improve performance and achieve success. An effective CMS should be able to fill these gaps by implementing a continuous process of skills development and improvement.





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Requirements for competence management

In addition to the specific competency requirements of the STCW Convention and Code, the International Safety Management (ISM) Code effectively requires that shipping companies have a means of managing competence. As well as stipulating the requirement for a structured and documented Safety Management System (SMS), the ISM Code requires companies to ensure that each of their ships is manned with qualified, certificated and medically fit seafarers in accordance with national and international requirements. Furthermore, companies are required to establish and maintain procedures for identifying and providing any training which may be required in support of the SMS.

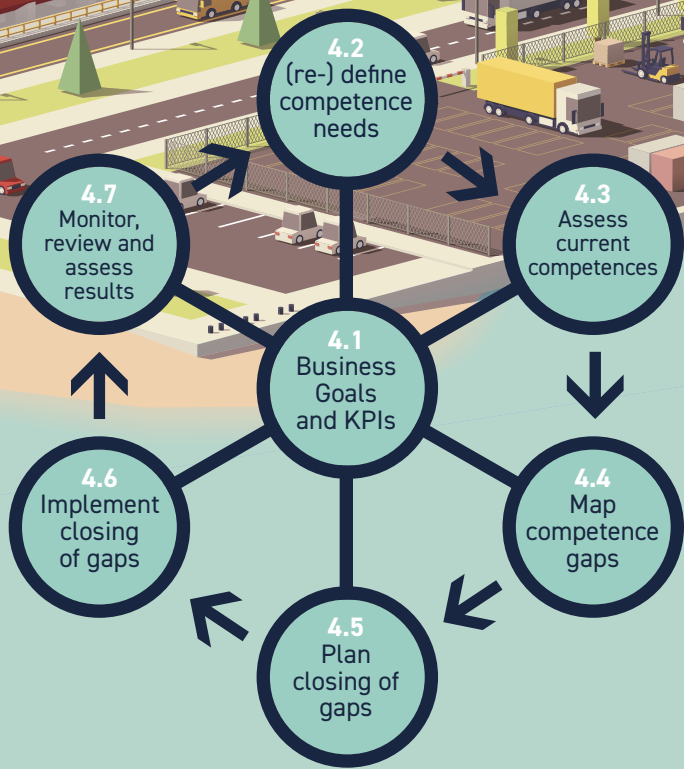
In certain areas of the shipping industry, companies are encouraged to develop and assess their systems for managing competence. For example, the Oil Companies International Marine Forum (OCIMF) Tanker Management Self Assessment 3 (TMSA 3) program promotes a competence management system as a tool for assessing and managing the recruitment, training and retention of both ship and shore-based personnel.

A means of managing competence should be an integral part of shipping companies' established SMS, and most major companies have existing manning and crew management systems to handle crew competence. However, while these may be effective, such systems are typically structured to satisfy the requirements of the ISM Code and STCW.

A dedicated and effective CMS can instead be designed to complement and enhance the core SMS and to focus primarily on crew competencies and associated training requirements. When implemented and practiced effectively across the business, both ashore and on board, CMS can provide ship owners and managers with the necessary tools to gauge the competence of their staff.

Several Classification Societies have developed CMS programmes, including DNV-GL, Rina, ABS and Lloyds Register, some of which are focussed on shipping companies. These programmes can offer the attraction of a voluntary CMS certification scheme beyond the ISM Code and therefore also provide the opportunity to differentiate and position a company to a higher level of compliance and commitment. A number of consultancy companies also work with shipping companies to help them gain the appropriate CMS accreditation.

By benchmarking CMS certification to an accredited quality standard, this provides authenticity and a strong credibility to human resource management. Through a system of annual internal audits by the management and external audits by the certification body, compliance to a high level can be demonstrated.



What are the objectives of CMS?

The ultimate goal of any CMS programme is to support the achievement of safe and efficient operations across a fleet, however large or small. To work towards this goal, a CMS will help to:

- develop and maintain competence on board and ashore
- improve performance in terms of safety, environment and ship operations
- improve competence of individuals

How does a CMS programme work?

The management start by creating stated business goals and then setting out a plan for achieving these goals. The company monitors and evaluates staff performance to make sure that it fits in with their business goals. Inputs from fleet incident reports, near miss and other undesirable event reports, audit reports and management safety meeting reports all provide signals to shore management on competence gaps and areas of concern.

The time frame for implementing a CMS will depend on the size of the company and the quality of its existing staff management and training systems but could be between six months and two years. The process starts with a gap analysis followed by recommendations on how to improve existing procedures and the possible adoption of new software-based crew management systems.

The next step is to introduce these recommendations to ships, allowing them to be comfortable with the extended staff evaluations before starting the actual competence development plans. All such processes can be software-based using a centralised database which can be produced as evidence during the certification and future revalidation audits.

The CMS covers the whole process, from recruitment through to onboard performance monitoring, including training both on board and ashore. A variety of methods may be used in the CMS process, but the advantage is that they are all covered by a single robust system. If a ship manager already has an established system, the path to certification might be easier and can be completed in a cost-effective manner with very little practical change in terms of manning and training costs.

What are the advantages of a CMS?

Shipowners who have already implemented a CMS have reported experiencing a higher crew retention rate and found that they had an improved team of competent and loyal staff who were able to carry out their tasks with a higher skill level. This in turn led to lower running costs, as planned maintenance programmes could be more effective and down time was therefore reduced. Most importantly, the companies reported fewer incidents, which in practical terms means less accidents, fewer injuries and reduced claims – a message that everyone likes to hear.

We are grateful to Capt. Jitender K Seth of Maritime Services Corporation (MSC) for his assistance in preparing this article. MSC is a consultancy service based in Toronto, Canada and advises companies on how to adapt and improve their crew management systems to comply with CMS standards and then prepare them for certification.

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CLAIMS AND LEGAL US LAW – THE EFFECT OF A SAFE PORT/BERTH WARRANTY IN A CHARTERPARTY (*THE ATHOS I*)



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THE US SUPREME COURT HAS MADE ITS RULING IN THE LONG RUNNING SAGA OF CITGO ASPHALT REFINING CO. (“CARCO”), ET AL. V. FRESCATI SHIPPING CO., LTD. ET AL. (“FRESCATI”) (*THE ATHOS I*) WHICH AROSE OUT OF A SIGNIFICANT OIL SPILL IN THE DELAWARE RIVER IN 2004. THE MAJORITY (7-2) UPHELD THE THIRD CIRCUIT COURT OF APPEALS DECISION THAT A PLAIN READING OF THE SAFE PORT/BERTH CLAUSE IN THE ASBATANKVOY CHARTER FORM CREATES AN ABSOLUTE WARRANTY OF SAFETY RATHER THAN MERELY A DUTY OF DUE DILIGENCE.

It is important to note that the ship was the subject of two charterparties. The first was a time charter from Frescati, as owner, to Star Tankers, a fleet operating entity, with English law and arbitration to apply and with a due diligence standard for the safe port and berth clause. Star Tankers in turn voyage chartered to CARCO under an amended ASBATANKVOY form which was subject to US law and jurisdiction, and under which CARCO warranted “The vessel shall load and discharge at any safe place or wharf... which shall be designated and procured by the Charterer, provided the vessel can proceed thereto, lie at, and depart therefrom always safely afloat.”

In addition to being the voyage charterer, CARCO was also the owner of the refinery the ship was approaching when its hull was torn open by an anchor lying about 900 feet from the berth that had been lost/abandoned by an unknown vessel at the bottom of a federally-maintained anchorage through which the ship was transiting on the way to the berth. An estimated 265,000 gallons of oil spilled into the river impacting over 280 miles of shoreline. The US Oil Pollution Act of 1990 required Frescati to fund the clean-up costs in the first instance (limited to USD45 million). The US Federal Government’s Oil Spill Liability Trust Fund reimbursed Frescati for an additional USD88 million in clean-up costs. Frescati and the US Government subsequently sued CARCO, alleging breaches of both the contractual safe berth clause in the ASBATANKVOY charter party and of the maritime law duty to properly maintain its berth and approaches. CARCO argued that it should not be responsible for the damages as it had exercised due diligence to confirm the approach to the berth was safe, pointing to the fact that the anchorage was federally maintained and numerous ships had transited through without incident. The case went through two trials, the results of which were appealed each time to the Third Circuit of Appeals before the case was referred to the Supreme Court.

The issue before the Supreme Court was, “*Whether under federal maritime law a safe berth clause in a voyage charter contract is a guarantee of a ship’s safety, as the Third Circuit and the Second Circuit have held, or a duty of due diligence, as the Fifth Circuit has held?*”

In an opinion by Justice Sotomayor, joined by all but two dissenters (Alioto and Thomas, JJ), the Court applied traditional contract analysis principles adopted by the general maritime law and determined that no ambiguity existed in the ASBATANKVOY language as to the agreement or intent of the parties. The Court reasoned that the use in the charterparty of the words “*shall... designate and procure*” a “*safe place or wharf*” and “*always safely afloat*” created a strict contractual warranty obligation upon the charterer as to the ship’s safety. The “*due diligence*” defence asserted by CARCO was rejected on the basis that it is a tort concept that has no place in the analysis as no such language was found anywhere in the charterparty.

The majority also rejected the assertion that unless a “*due diligence*” limitation was read into the charterparty, a charterer would be “*strictly liable*” for damage caused by breach of contract as contract law does not consider notions of “*fault*.” Notably, the Court concluded that the parties could easily have agreed to limit or condition the charterer’s safe berth obligation if they had chosen to do so, pointing to other charterparty forms which explicitly incorporate a due diligence limitation in their safe berth clauses. Charterers remain free to contract around unqualified language that would otherwise establish a warranty of safety, by expressly limiting the extent of their obligations or liability.

A key underpinning of the Supreme Court’s decision was adherence to the ruling of the Third Circuit Court of Appeals that Frescati was a third party beneficiary of the “*safe berth*” warranty in the voyage charter between Star Tankers and CARCO to which it was not a party. This critical finding laid the foundation for the rest of the analysis and appears to run counter to English law which does not permit a ship owner to seek enforcement of a safe port/berth warranty directly against a sub-charterer.

THE NEED TO ENSURE THAT CHARTERPARTY TERMS ARE BACK TO BACK (BILGENT SHIPPING PTE LTD V ADM INTERNATIONAL SARL (*THE ALPHA HARMONY*) QBD [2019] EWHC 2522 (COMM))

THE OWNERS OF THE ALPHA HARMONY LET THE SHIP TO HEAD CHARTERERS ON AN AMENDED NORGRAIN 1973 CHARTERPARTY FORM (THE “HEAD CHARTER”) FOR TWO VOYAGES. HEAD CHARTERERS, IN TURN, VOYAGE CHARTERED THE SHIP TO SUB-CHARTERERS ON A BALTIMORE FORM C BERTH GRAIN CHARTERPARTY (THE “SUB-CHARTER”) FOR A VOYAGE FROM BRAZIL TO CHINA.

The Head Charter, as it related to two voyages, contained two separate laycan periods, the second one of which ended on 31 May 2015. The Sub-Charter concerned only one laycan, which also ended on 31 May 2015. On 2 April 2015, Sub-Charterers narrowed the laycan down to a period between 1 to 10 May 2015 and Head Charterers did the same under the Head Charter.

At 07:04 on 10 May 2015 (which was a Sunday), the ship tendered its NOR by email stating that the ship had arrived at 02:50 that day.

Both charters provided that the NOR was to be tendered between 08:00 and 17:00 from Monday to Friday and 08:00 to 11:00 on a Saturday. No provision was made for tendering the NOR on a Sunday. Under both charters, laytime was to commence the following working day after tendering the NOR at 08:00 provided that a “valid” NOR had been tendered.

Sub-Charterers cancelled the Sub-Charter at 20:47 on Sunday 10 May 2015 and Head Charterers cancelled the Head Charter at 05:55 on Monday 11 May 2015.

The matters were referred to arbitration for it to be decided whether the cancellations were lawful or not. The key issue was whether the NOR had been validly tendered during the hours permitted under the respective charters.

The arbitrators, in both references, decided that the cancellations were not valid. Both Sub-Charterers and Head Charterers appealed to the Commercial Court.

Under the Sub-Charter, the relevant clauses were:

CLAUSE 14

“Notification of the vessel’s readiness to load at the loading port must be delivered by mail/fax at the office of [Sub] Charterers or their agents, between 0800 hours and 1700 hours from Monday to Friday, between 0800 hours and 1100 hours on Saturday, Vessel also having been entered at the Customs House. Laytime is to commence 0800 hours the next working day...”

CLAUSE 16

“Should the Notice of Readiness at loading port not be delivered as per Clause 14 by twelve o’clock noon on the 31st day of May 2015, the [Sub] Charterers or their Agents shall at said hour and at any time thereafter, but not later than the presentation of Notice of Readiness together with the required certificates at said office, have the option of cancelling this Charter Party. [Sub] Charterers to narrow into ‘10’ days spread latest in 40 days advance prior to first layday.”

Sub-Charterers argued that clause 16 gave them an option and, hence, the right to cancel the charter, if the NOR was not delivered “as per Clause 14” i.e. by 11:00 on 9 May 2015. Clause 14 required the NOR to be delivered within certain hours during weekdays and on a Saturday. As the NOR was not delivered within those days and/or hours (it was delivered on Sunday at 07:04), Sub-Charterers argued that they had a right to cancel. Head Charterers, however, argued that only the parts of clause 14 which were not in “*tension*” with clause 16 would apply to the latter so that, despite the wording “as per Clause 14” found in clause 16, the office hours requirements should not be incorporated as these were in “*tension*” with the right to cancel if no NOR had been delivered before 12:00 on Sunday 10 May. The Court preferred sub-Charterers’ view in that the words were to be given their ordinary and natural meaning to promote certainty. The cancellation under the Sub-Charter was, therefore, lawful.



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Neutral Citation Number: [2019] EWHC 2522 (Comm)

Case No: CL-2018-000429/CL-2018-00045

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Rolls Building, 7 Rolls Building
London EC4A 3DF
Date: 07/05/2019

The relevant clauses under the Head Charter were:

CLAUSE 4

"Laytime for loading, if required by [Head] Charterers, not to commence before 0001 on 01st day of April/May 2015. Should the vessel's notice of readiness not be tendered and accepted as per Clause 17 before 2359 on the 30th/31st day of April/May of 2015, the [Head] Charterers or their Agents shall at any time thereafter, but not later than one hour after the notice of readiness is tendered, have the option of cancelling this Charterparty. [Head] Charterers to narrow Laycan into a 10 days spread latest 30 days prior first Layday."

CLAUSE 17

"Notice of readiness...shall be delivered in writing or by cable/telex/email to [Head] Charterers/Receivers (or their Agents). See Also Clause 70."

CLAUSE 70

"...the Notice of readiness to be tendered within office hours 0800-1700 hours Monday to Friday and 0800-1100 hours Saturday. Laytime to commence at 0800 hours the next working day after valid Notice of Readiness being tendered..."

Owners argued that clause 4 included an option to cancel if the NOR was not tendered as per clause 17 before 23:59 on the cancelling date, i.e. 10 May 2015. There was no requirement under clause 17 to tender within office hours and, as such, the right to cancel arose only if no NOR had been tendered before 23:59 on 10 May. As the NOR was tendered at 07:04 on 10 May, there was no right to cancel. Head Charterers, on the other hand, argued that the words "See also Clause 70" in clause 17 had the effect of incorporating the office hours into clause 17 and hence clause 4. This meant that as the NOR was tendered out of office hours, the right to cancel arose at 23:59 on Sunday 10 May 2015. As NOR was tendered at 07:04 on 10 May 2015, there was no right to cancel and the court accepted this argument. The cancellation under the Head Charter was, therefore, unlawful.

CONCLUSION

This is a classic example of how different charters, containing different clauses (or materially different wording), generate different outcomes, leaving an intermediate charterer unable to pass any liability up (or down) the charter chain and, therefore, leaving it fully exposed to liability. It is, therefore, of paramount importance that an intermediate charterer should ensure that the wording of most (if not all) of the charterparty clauses are materially the same in both charters so that, if a dispute arises under one charter, this can be passed along the charterparty chain on a back-to-back basis.



USUAL AND CUSTOMARY ROUTE THE SANTA ISABELLA [2019] EWHC 3152 (COMM)



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DEVIATION FROM THE CONTRACTUAL ROUTE OF A VOYAGE IS A FUNDAMENTAL BREACH OF A CARRIAGE CONTRACT WHICH, IF PROVEN, CAN DEPRIVE A SHIP OF THE DEFENCES AND LIMITATION RIGHTS AFFORDED BY THE HAGUE VISBY RULES.

So when the *SANTA ISABELLA*, a bulk carrier carrying maize from Mexico's Pacific Coast to South Africa, sailed via Cape Horn rather than through the Panama Canal, and arrived with damaged cargo, the ship's charterers asserted that the ship had not taken the contractual route. They argued that the Master should have taken the shortest and most direct route to the discharge port via the Panama Canal.

In their defence the owners argued that sailing via Cape Horn was a usual and contractually permitted route for this voyage.

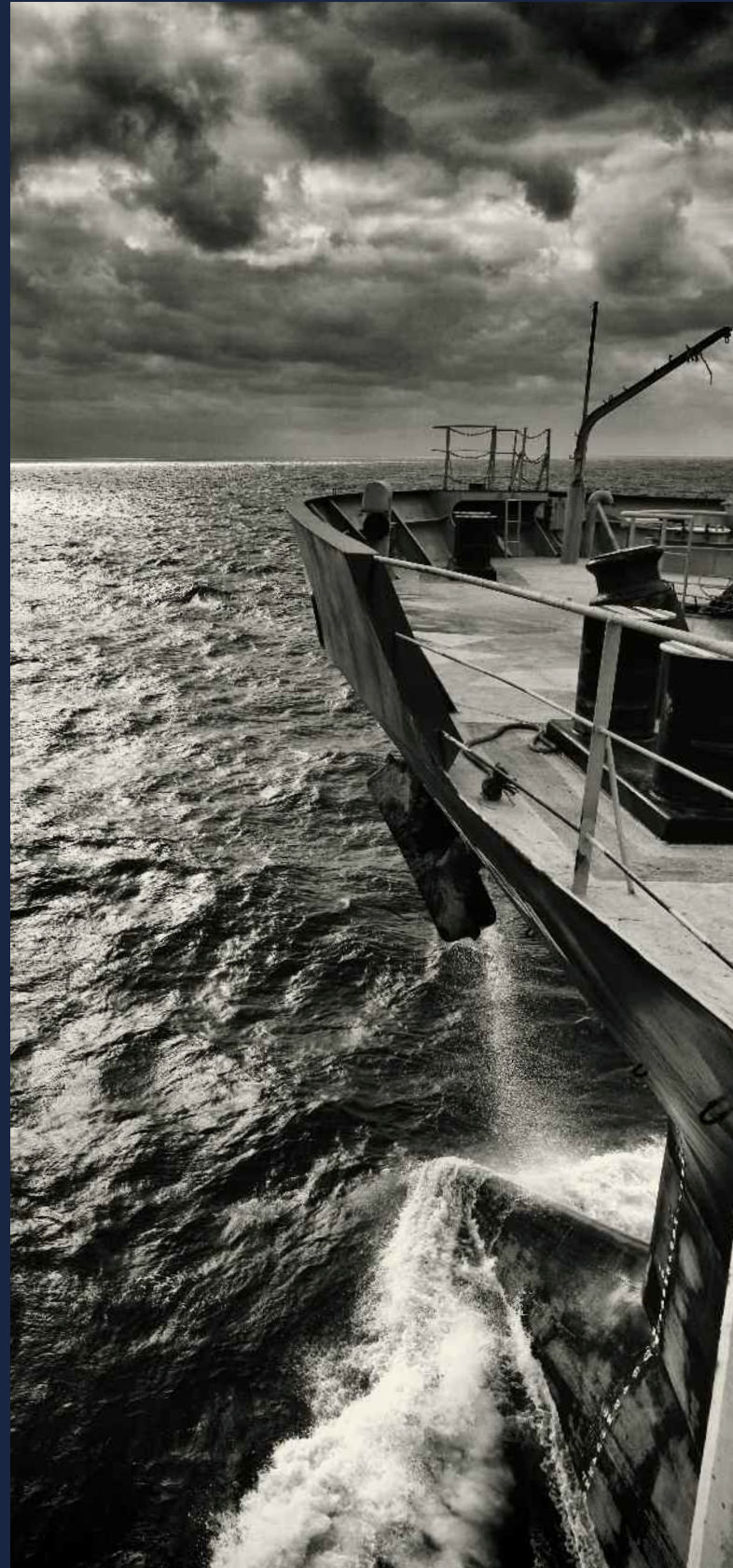
The dispute was heard by the English Commercial Court. Although the court decided the dispute against the owners for other reasons, they held that the route taken by the ship was a contractual one and that owners were not deprived of their defences under the Hague Visby Rules.

The court stated that if a charterparty does not stipulate the route that should be taken, the ship is required to take a route that is both '*usual*' and '*reasonable*'.

The '*usual*' route is presumed to be the direct geographical route. That presumption can, however, be set aside by evidence that the '*usual*' route is not the most direct one and might even be much longer. The '*usual*' route could change over time and there could be more than one '*usual*' route between two ports.

Factors in determining whether a route is '*usual*' include navigational and commercial reasons. It is not necessary to prove that a '*usual*' route is uniform and universal in a particular trade. It may be enough that one shipping line has established that route as '*usual*', and '*usual*' may also be inferred from a charterer's lack of objection to the route.

If the most direct sea track is not taken, the ship has to take a reasonable route. The route has to be reasonable in the interests of all parties concerned in the voyage, including charterers and shippers. A range of factors may be taken into account including the nature of the cargo and commercial considerations. Weather conditions may be relevant but owners do not need to carry out a detailed analysis of the conditions that are likely to be faced in deciding on a particular route.



STATEMENT AS TO CARGO CONDITION IN DRAFT BILL OF LADING (*THE TAI PRIZE*) [2020] EWHC COMM 127



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THE ENGLISH HIGH COURT RECENTLY CONSIDERED WHETHER A STATEMENT AS TO CARGO CONDITION INCLUDED IN A DRAFT BILL OF LADING PRESENTED BY CHARTERERS / SHIPPERS AMOUNTED TO A WARRANTY GIVING RISE TO AN INDEMNITY IF IT WAS INACCURATE.

The *TAI PRIZE* loaded a cargo of soya beans for carriage from Santos to Guangzhou. A bill of lading was signed by agents on behalf of the ship's master which stated that the cargo was loaded 'clean on board' and 'shipped... in apparent good order and condition'. Following cargo discharge the cargo receivers alleged that the cargo had suffered heat and mould damage. The receivers brought a claim in the Chinese court against the ship's owners and obtained judgment for USD 543,282.35. The judgment sum was paid by the owners, who then sought an indemnity from the ship's head charterers, who settled owners' claim for USD 500,000. The head charterers then commenced arbitration proceedings as disponent owners against their sub-charterers seeking to recover the amount that they had paid to the ship's owners.

The arbitration tribunal found that the cargo had been loaded in a damaged condition which would not have been visible to the master on loading, but that it would have been discovered by the shipper upon a reasonable inspection. The tribunal ruled that the cargo was, therefore, not in apparent good order and condition when shipped.

Accordingly, the tribunal decided in favour of the disponent owners on the grounds that the shipper was to be considered the charterers' agent and that the charterers had impliedly warranted the accuracy of any statement as to the condition of the goods in the bill of lading presented to the master for signature. In the tribunal's view, it followed that the charterers had impliedly agreed to indemnify the disponent owners for liabilities arising as a consequence of any inaccuracy of such statement. The tribunal remarked that otherwise the disponent owners would be left without recourse for the "*wrongs of the parties who were on [charterers'] side of the line*".

The charterers appealed to the High Court which allowed the appeal and disagreed with the tribunal's reasoning. The court held that when a charterer (or shipper on its behalf) presents a bill of lading for signature by the master that contains a statement as to the apparent condition of the goods, the charterer or shipper is not itself making any representation, but instead is merely inviting the ship's owner, by its agent the master, to make a representation of fact as to the apparent condition of the goods on shipment.

The court further commented that this legal position was well understood within the shipping trade, i.e. that the master need not sign a clean bill of lading just because one was tendered and that it was the master's task to verify the condition of the goods before he signed. In this way the bill of lading could be relied on by the consignee and all subsequent holders of the bill of lading as reflecting the reasonable judgment of a reasonably competent and observant master.

As the Hague Rules were incorporated into both the bill of lading and the charterparty, the distinctions contained within the Hague Rules regarding cargo description were also considered. Article III, Rule 3 of the Hague Rules states that information regarding the type of cargo and quantity is to be furnished in writing by the shipper. On the other hand, representations as to the apparent condition of cargo upon shipment inserted on the face of the bill of lading (as required under the Hague Rules) do not need to be provided in writing, or at all, by the shipper. The court's view was that the duty of assessing the cargo's condition lay exclusively with the ship's owner via the master. Accordingly, in the court's view, a right to an indemnity exists for incorrect cargo information supplied by the shipper, but not in relation to statements regarding the apparent condition of the cargo: the master must make his own assessment regarding the condition and amend the presented bill of lading as he sees fit.

The court did agree with the tribunal that, on the facts, the master in this case had made a valid assessment of the cargo's condition and that the damage upon loading was not reasonably visible upon inspection. Accordingly, the cargo had been shipped in apparent good order and condition and the bill of lading was accurate as a matter of law. The court commented that the tribunal's concern that disponent owners could be left without recourse for the actions of charterers and shippers was misplaced and that it had been open to the disponent owners to defend the claim brought by the head owners on the same grounds as sub-charterers had done. However, the court did not consider the position of head owners in that situation, where they may be unable to defend proceedings brought in the Chinese Court based on the fact that 'apparent good order and condition' was a correct representation to have entered on to the bill of lading, but would not be able to recover from head charterers, despite the master not being at fault.



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