

# RISKWATCH

JUNE 2024



AUTONOMOUS SHIPPING  
LOSS PREVENTION  
CYBER RESILIENCE  
DECK CARGOES  
MALARIA AT SEA  
FINGER INJURIES  
LEGAL CASES



**BRITANNIA**  
P&I CLUB / TRUSTED SINCE 1855

# IN THIS



In this issue, we explore **the revolutionary maritime autonomous surface ships**, which have the potential to revolutionise the maritime industry, with the possibility of safer, more efficient and environmentally friendly maritime transportation. The advancements in digitalisation also highlight the critical need for maritime cyber resilience, as cyberattacks continue to pose significant risks to both vessels and their supporting shore-based systems.

Our health feature highlights Dr Jane Olivier, a Medical Consultant for ETIC SAS and Africa P&I. Drawing from her extensive experience in malaria treatment, Olivier addresses **the crucial issue of malaria in maritime settings** and emphasises the importance of proactive measures in combating this life-threatening disease.

We delve into the complexities of **deck cargoes and the significant risk of water entrapment** they present. From compliance with contractual clauses to assessing cargo suitability for deck carriage, addressing deck cargo liability involves multiple layers of responsibility.

This issue also features an introduction to **Britannia Loss Prevention**. Our team consists of nine marine specialists. Learn more about their **extensive shipping expertise** and how they proactively mitigate risks across all technical aspects of the shipping industry.

Our **legal articles** cover significant developments, including the **Supreme Court decision in the Polar case**, which provided clear guidance on war risk clauses. Additionally, we discuss a recent **English High Court ruling** that permits shipowners to rely on the negligent navigation defence under Article IV(2) of the Hague Rules.

**We hope you enjoy the new Risk Watch** and find the insights valuable for navigating the evolving maritime landscape.

# ISSUE



**WELCOME TO THE REVAMPED RISK WATCH. WE ARE EXCITED TO INTRODUCE A FRESH DESIGN AND A DIVERSE RANGE OF CONTENT TAILORED SPECIFICALLY FOR SHIPOWNERS, OPERATORS AND SHORE-BASED MARITIME PERSONNEL.**

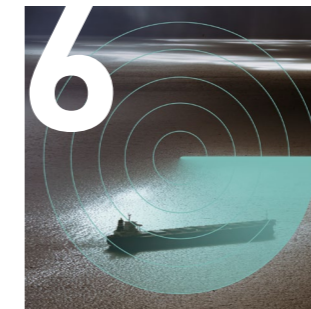
**JESSIE DUNN**  
Editor

## LOSS PREVENTION



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## SECURITY



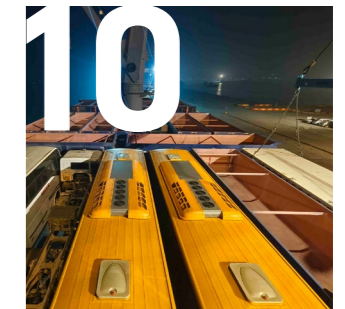
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# LOSS PREVENTION

THE BRITANNIA LOSS PREVENTION TEAM IS MADE UP OF NINE MARINE SPECIALISTS. THEIR SHIPPING EXPERTISE PROVIDES OUR MEMBERS WITH THE HELP TO IDENTIFY AND PROACTIVELY MITIGATE RISKS ACROSS ALL TECHNICAL ASPECTS OF THE SHIPPING INDUSTRY. BASED IN LONDON AND SINGAPORE, WE OPERATE ACROSS MULTIPLE TIME ZONES, ENSURING A PROMPT AND HIGH-LEVEL SERVICE FOR OUR MEMBERS.

In an increasingly complex and everchanging shipping world, Britannia's loss prevention team acts as an additional resource providing a tailored service to our Members, assisting them in mitigating risks and achieving safe operations".

JACOB DAMGAARD HEAD OF LOSS PREVENTION

## SUPPORTED BY DATA AND FOCUSED ON RISKS

By analysing claims data, we identify areas of concern and tailor our support to address them effectively. To achieve this, we offer a range of services, from management reviews for new Members to individual loss prevention claims analysis.

However, while we embrace innovation and data, we remain committed to our traditional core services. Everyday assistance, webinars, publications, and training materials are essential pillars of our strategy, ensuring we remain a trusted resource to our Members.

### LOSS PREVENTION SERVICES

#### WEBINARS

Given their popularity and the many challenges our Members face, we will increase the number of webinars in 2024 from quarterly to at least bi-monthly.

#### IN-PERSON SEMINARS & PROGRAMMES

Seminars in India and Manila are scheduled for October and December 2024.

#### PUBLICATIONS

We share topical publications and materials, including our insight reports, developed in collaboration with industry experts. Our portfolio also includes technically focused white papers designed to help our Members gain a deeper understanding of emerging risks as the shipping industry becomes increasingly complex.

#### NEW LOSS PREVENTION MICROSITE

This has been created to improve accessibility to our loss prevention publications and materials and enhance the user experience on our website.

#### SAFETY VIDEOS

Our safety videos cover issues facing seafarers. The first safety video on the topic of 'working at height' was published in January 2024.

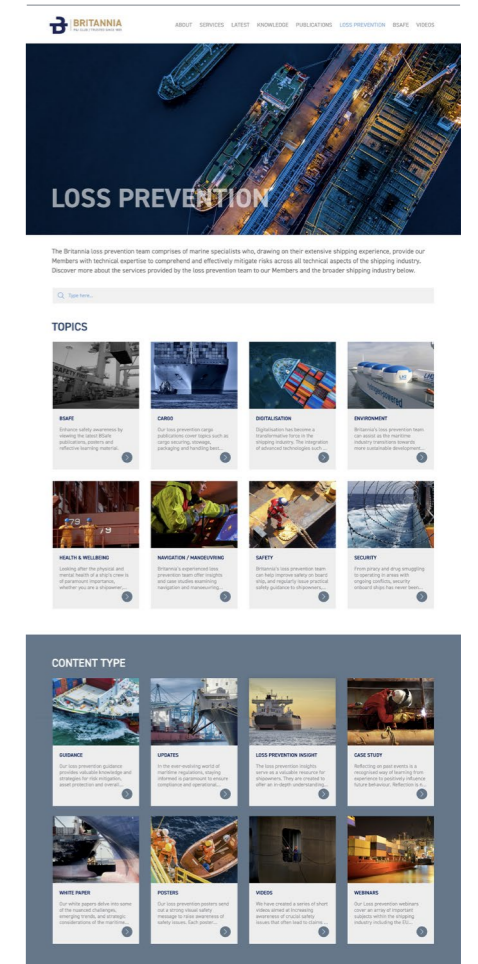
#### SECURITY UPDATES

We teamed up with Africa Risk Compliance Limited and VPS, one of the world's leading bunker testing companies, to provide Members with more frequent updates on these topics.

### SUSTAINABILITY

The Britannia Group advises and supports our Members' journeys towards sustainable shipping, including decarbonisation and green shipping. It is an integral part of our loss prevention strategy and service, to provide Members with sustainable alternatives that align with their needs.

In an ever more complex and uncertain shipping world, loss prevention remains a reliable partner for our Members. With our expertise and dedication, we support all our Members every step of the way.



LOSS PREVENTION MICROSITE



## MARITIME AUTONOMOUS SURFACE SHIPS

# M A S S

A MARITIME AUTONOMOUS SURFACE SHIP (MASS) REFERS TO **A SHIP THAT CAN OPERATE INDEPENDENTLY OF HUMAN INTERACTION**. THEY HAVE THE POTENTIAL TO REVOLUTIONISE THE MARITIME INDUSTRY, MAKING SAFER, MORE EFFICIENT, AND ENVIRONMENTALLY FRIENDLY MARITIME TRANSPORTATION POSSIBLE.

There are many successful MASS models. However, trials of new technology or upscaling of trials are still required. Trials often involve complex, unfamiliar, and untested technology, with an operational scope that can extend beyond coastal waters. To test the capabilities of these technologies under real operational conditions, trials must strive to be as realistic as possible.

Planning for MASS trials should commence well in advance and we recommend early consultation with the flag state, classification society and other stakeholders.



JOBIN MATHEW LOSS PREVENTION OFFICER, BRITANNIA P&I



## 1 REGULATORY CHALLENGES

### APPLICATION OF EXISTING IMO INSTRUMENTS TO MASS

Current regulations for ship operations fail to fully address the safety and environmental concerns posed by autonomous ships operating at various degrees of autonomy. To address and bridge these gaps, the International Maritime Organization (IMO) is developing a goal-based MASS code. A non-mandatory MASS code is planned to be adopted by May 2025, with the intention for a mandatory code to come into force on 1 January 2032. Additionally, the IMO has issued 'MSC.1/Circ.1604 - Interim Guidelines for MASS Trials'. These guidelines assign responsibility to ensure that MASS comply with the requirements of existing IMO instruments or provide an equivalent or alternative standard adopted for safety and environmental protection. These must achieve acceptance by the flag state of the ship, and from the coastal and port states where trials are being conducted. Flag states should approve and document equivalent or alternative designs as per IMO guidelines 'MSC.1/Circ.1455 - Guidelines for the approval of alternatives and equivalents as provided for in various IMO instruments'.

## 2 OPERATIONAL CHALLENGES

### AREA OF TRIAL OPERATIONS

The area of MASS trials should be determined, marked and communicated to all relevant parties. The area of trial operations involves the coordination and cooperation of coastal states, flag states, and port states.

### MASS TRIALS AND HUMAN ELEMENT

Adequate training and understanding of automation systems is essential for personnel involved in MASS trials. Personnel need to be able to effectively interact with autonomous technology, monitor system performance, and intervene when necessary. MASS trials should always maintain human control during the tests/trials. Chains of command and lines of communication regarding responsibility and authority concerning the safety of the MASS should be clearly established.

## 3 TECHNICAL CHALLENGES

### NOVELTY OF THE SYSTEM

Due to the novelty of the technology used and the absence of established testing and commissioning standards, a comprehensive MASS trials risk assessment is essential. This assessment should identify all anticipated risks and necessitate cooperation among the flag state, classification society, and original equipment manufacturer (OEM) for approval. Additionally, it is necessary to conduct both simulation tests and sea trials of the system under real-world conditions.

### SAME DEGREE OF OPERATION CAPABILITY AS CONVENTIONAL SHIPS

A MASS aims to achieve all-weather situational awareness by using technologies such as Light Detection and Ranging (LiDAR), infrared cameras, and feeds from other bridge equipment such as radar, ARPA, echo sounder, DGPS, AIS, etc. It acts on data received from these systems to plot courses, detect and avoid obstacles, and make real-time decisions about route adjustments and collision avoidance. MASS technology utilises machine learning algorithms for predictive maintenance and management of machinery, optimising performance and reducing the risk of malfunctions. Criteria should be established for when a trial must be aborted or if equipment necessary to maintain operational capability becomes unavailable or unreliable.

### MASS AND COMMUNICATION

Continuous and reliable communication between the ship and the remote-control station is crucial.

### MASS TRIALS AND REDUNDANCY

MASS trials should ensure redundancy in critical systems such as power, steering, propulsion, and communication to maintain operational safety and integrity. Redundant systems serve as backup mechanisms in case of failures, thereby reducing the risk of accidents and ensuring uninterrupted operation.

## 4 CYBER SECURITY CHALLENGES

Autonomous ships rely on digital systems and connectivity. This dependency means they are vulnerable to cyber attacks, necessitating robust cyber security measures and a cyber risk management plan. These safeguards should protect against security breaches, data theft, and system manipulation.

### INSURANCE CONSIDERATIONS

MASS trials will require similar insurance coverage as conventional ships. These trials present challenges to the Club in understanding the associated risks, but also offer a learning opportunity to be part of the future of maritime operations. Members wishing to conduct MASS trials are requested to submit a detailed plan to the Club's underwriting team in advance.

### FOR FURTHER INFORMATION

Please do not hesitate to contact the Loss Prevention Team at: [lossprevention@tindallriley.com](mailto:lossprevention@tindallriley.com)



# MARITIME CYBER

The cost of cyber attacks worldwide is startling, with global costs from cyber crime predicted to exceed USD 10 trillion by 2025. Although shipping remains a small part of this total, cyber attacks in the maritime industry are becoming increasingly costly. Recent data shows that a cyber attack now costs the targeted organisation an average of USD 550,000.

This is not a new threat, the International Maritime Organization (IMO) recognised this and in January 2021 mandated the integration of cyber risk management into a company's Safety Management System (SMS). This need for cyber risk management was further clarified by 'Guidelines on Maritime Cyber Risk Management', with the latest version published by the IMO in June 2022.

Technological advances are progressing rapidly. Achieving the potential gains in efficiency, operations, and safety requires a high degree of connectivity between ships and external services. The challenge lies in protecting ships, without restricting the benefits a connected ship brings.

## INFORMATION TECHNOLOGY AND OPERATIONAL TECHNOLOGY

The use of computerised systems on board a ship can effectively be split into two separate functions, Information Technology (IT) and Operational Technology (OT).

IT can be considered the typical office functions that take place on board ships; this may include the email communication and data reporting/sharing that companies use. As this technology has a longer history and experience of being connected to external sources and transmitting data, cyber security safeguards are better understood, and personnel are more alert to the associated hazards.

OT, on the other hand, is what controls many of the ships systems, such as the main engine control, or dynamic positioning. This equipment was traditionally considered safer due to the lack of external connectivity; however, this is rapidly changing and can provide an entry point for malicious activity. As the threat has become clearer and the potential for safety, environmental, and economic damage better understood, the demand for clear defensive actions have grown. As the cyber threat frequently innovates and adapts, there are no prescriptive procedures that will provide sufficient security. Therefore, it is necessary for those involved in shipping to develop cyber resilience.

**THE THREAT OF MALICIOUS CYBER ATTACKS  
POSES AN ONGOING AND INCREASING RISK  
TO SHIPS AND THE SHORE-BASED SYSTEMS  
THAT SUPPORT THEM.**

## INTERNATIONAL ASSOCIATION OF CLASSIFICATION SOCIETIES UNIFIED REQUIREMENTS (IACS)

The IACS has produced two Unified Requirements (UR) that will be implemented on all ships contracted for construction on or after 1 July 2024. While mandatory for new ships, the content of these UR's provides useful information and guidance for protecting ships currently in service.

UR E26 Rev1 provides requirements for a ship to be considered cyber resilient. Along with more information, it details the functional aspects that must be addressed for adequate cyber security. The five functional elements, and some considerations include:

### IDENTIFY

This involves identifying the vulnerabilities in the ship's systems. It means having detailed inventories of all computer equipment, operating systems, software, etc. Clear plans should show the location of all equipment, including any interconnections between systems. A robust management of change procedure should be established to keep systems up to date, whilst preventing any disruption.

### PROTECT

Establish fixed boundaries between critical networks to allow zero or minimal permitted traffic between these individual 'zones'. Access to networks must be limited to authorised personnel only. User accounts should be established using the 'least privilege' principle and should be deactivated once they are no longer required. Where possible, protective software should be installed to monitor and prevent unwanted interaction. Remote access must be capable of being controlled from the ship, with any failed attempts to remotely access the ships networks automatically logged.

# RESILIENCE

**ANTHONY GARDNER LOSS PREVENTION MANAGER, BRITANNIA P&I**

### DETECT

Continuous monitoring should take place for suspicious activity, such as excessive data traffic or attempted connections to networks. An alarm should be generated upon detecting suspicious activity, noting that the alarm should not result in any disruption to essential functions.

### RESPOND

A response plan should be prepared, detailing the actions required to minimise the impact of any incident and limit the damage caused. The plan should be available in hard copy and should specify the information required by on board staff, such as reporting, response options and the major consequences from loss of system functions. Systems should automatically revert to a safe condition if a cyber incident is detected.

### RECOVER

A recovery plan should be available, with clear instructions on how to return the affected systems to their full operational state, whilst minimising disruption. The plan should list the personnel responsible for certain actions, including how to request specialised external support. Systems should have a facility to revert to an earlier, uncorrupted state, following a controlled shutdown.

For all the above, any inventories, procedures, drawings, and plans should be kept up to date for the entire life of the ship. UR E27 Rev1 provides the minimum technical capabilities that systems and equipment must have to be considered cyber resilient. This provides third party equipment suppliers with clarity on the standards required to meet the approved level. Although primarily for equipment makers, it also provides certainty to shipowners when purchasing systems and equipment for their ships.

Cyber security will continue to demand vigilance from all stakeholders. This will require continuing investment in both the training of personnel and in the selection of equipment and systems used in shipping.

### FOR FURTHER INFORMATION

Please do not hesitate to contact the Loss Prevention Team at: [lossprevention@tindalriley.com](mailto:lossprevention@tindalriley.com)

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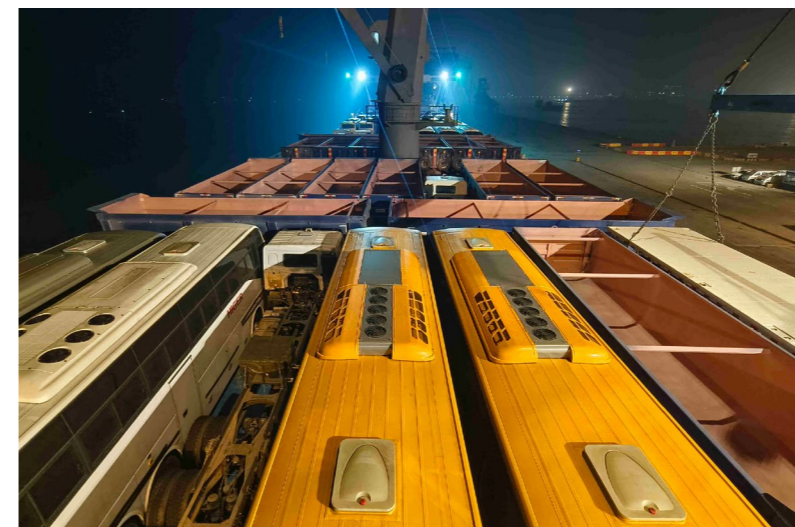
BRITANNIA P&amp;I

# DECK CARGOES

## AND THE RISK OF WATER ENTRAPMENT

DECK CARGOES PRESENT A SIGNIFICANT RISK OF WATER ENTRAPMENT, HIGHLIGHTING THE COMPLEXITIES OF MARITIME LOGISTICS. ENSURING PROPER HANDLING AND STOWAGE OF DECK CARGO IS PARAMOUNT TO MITIGATE POTENTIAL HAZARDS. FROM COMPLIANCE WITH CONTRACTUAL CLAUSES, TO ASSESSING CARGO SUITABILITY FOR DECK CARRIAGE, THERE ARE MULTIPLE LAYERS OF RESPONSIBILITY INVOLVED AND IT IS ESSENTIAL TO ADDRESS THE ISSUE OF DECK CARGO LIABILITY.

THE CARGO IS CARRIED ON DECK UPON THE SHIPPER'S INSTRUCTIONS AND AT THE SHIPPER'S SOLE RISK.



As Members will be aware, there shall be no recovery (from the Club) where the Member has become liable in consequence of the carriage of deck cargo unless the cargo is suitable for carriage as loaded on deck and either:

1. Special cover has been agreed
2. The bill of lading is suitably claused
3. The bill of lading contains an appropriate liberty clause
4. Where the contract of carriage is compulsorily subject to the Hamburg Rules by law the Member has complied with paragraphs 1 and 2 of article 9 (of the Hamburg Rules).

Members are kindly directed to Rule 19.17.8.9 of the Clubs Rule Book for full details.

On ships that are not specifically designed to carry cargoes on deck, the bills of lading should be claused to say, "the cargo is carried on deck upon the shipper's instructions and at the shipper's sole risk. The carrier shall in no case be responsible for loss of or damage to deck cargo whatsoever and howsoever caused, even if caused by the negligence of the carrier or his servants or agents", or words to that effect.

Despite the above clause, it may be a breach of contract to stow deck cargo in an unsuitable place on deck. Similarly, even where the bill of lading is claused for deck carriage, and all parties are aware of this fact, stowing cargo that is unsuitable for deck carriage on the deck may still be considered a breach of contract. Goods may be considered unsuitable for deck carriage if exposure to sea water would cause damage to the cargo.

Additionally, the shifting of deck cargo can be a safety risk to the crew and ship. This means that the master and crew still have an interest in checking that the deck cargo is adequately stowed, even in cases where the master is not directly responsible for stowage.

### CASE STUDY

On a recent loading in China, a large number of open trailers were placed on deck on the final day of loading. This was questioned because the trailers showed the potential for accumulation of rain or sea water. Trailers typically feature small drain holes designed to handle regular rainfall. However, they would be inadequate for draining large volumes of water that could quickly accumulate in certain sea and weather conditions.

Water entrapment could quickly increase the weight or load of each trailer, having the following effects:

- a) The securing adequacy of individual trailers may no longer be sufficient, resulting in broken lashings and cargo shift
- b) The ship's stability would change due to the adding of weight with a high centre of gravity, potentially lowering the reserve stability
- c) The weight of the deck cargo may increase to a level above hatch cover limits
- d) A difficult situation could arise at the discharge port, including the need to safely remove water from the trailers and lift them under such conditions.

Fortunately, on this occasion it was possible to prop open the tailgates of the trailers and avoid substantial water accumulation. However, this meant the crew had to regularly check the trailers and confirm that the condition remained acceptable.

The risk is worth being aware of, as the facility for ensuring safe drainage capacity may not always exist. Shipowners should take note and be vigilant for early identification of any deck cargo that has the potential to accumulate water. If a cargo is being presented for deck carriage that could accumulate significant quantities of water, appropriate conversations should take place with the shipper to examine mitigating measures.

## COMBATING



# MALARIA AT SEA

**DR JANE OLIVIER** MEDICAL CONSULTANT FOR ETIC SAS / AFRICA P&I

Dr. Jane Olivier brings her expertise to address the crucial issue of malaria in maritime settings. With extensive experience in treatment of malaria, Dr. Olivier emphasises the importance of proactive measures in combatting this life-threatening disease.

The maritime industry has been grappling with the impacts of malaria, as evidenced by the concerning trend highlighted by Britannia P&I. The Club's claims department reported a rise in malaria claims and an upward trend in costs incurred over the past five years, driven by an increase in deaths due to malaria. This concerning pattern highlights the urgent need for heightened awareness and proactive measures to confront malaria effectively.

## PREVENTION IS KEY

Preventing malaria requires a multi-faceted approach, including taking anti-malarial medications and further precautions to avoid being infected by mosquitoes. Common measures to prevent malaria include:

- Using Environmental Protection Agency-registered insect repellent
- Wearing long sleeves and trousers
- Applying a permethrin spray on clothes
- Using a mosquito net when sleeping
- Always clearing stagnant water.

While prophylactic medications available in the form of tablets exist, they come with their own set of challenges. These include side effects such as nausea, sun sensitivity, diarrhoea, vomiting and sleep disturbances which subsequently can impact a seafarer's mental health while on board. Larium (mefloquine) is also strongly discouraged due to the mental health side effects it has including anxiety, depression, paranoia and hallucinations. The costs for prophylactic medication are also high.

It's worth noting that a malaria vaccine is now available, though not yet widely accessible. The disadvantage for seafarers is that it requires three vaccinations over a one-year period, followed by another dose one year later. For this reason, it may be difficult to administer all doses of the vaccinations to crew who are at sea.

## RECOGNISING THE SYMPTOMS

Early detection of malaria symptoms is critical for timely intervention. The early symptoms can include a cold, headache and a high temperature. However, some individuals, especially those who have previously been infected with malaria, may only experience minor symptoms.

Other symptoms can include:

- Flu-like symptoms such as fevers, muscle and joint aches
- Fatigue
- Nausea, vomiting, diarrhoea and abdominal pains
- Dark or blood coloured urine
- Confusion
- Seizures and loss of consciousness
- Coughing and difficulty breathing
- Jaundice.

Severe malaria can cause complications within hours to days from the initiation of symptoms such as:

- Cerebral malaria
- Severe anaemia
- Decreased blood sugar levels
- Acute renal failure
- Pulmonary edema.

Given the overlap of symptoms with other illnesses such as COVID-19 and the flu, diagnostic testing becomes imperative, with rapid diagnostic tests being the most practical option for ships at sea. Any flu-like illness should be assumed as malaria until proven otherwise. Therefore, testing every crew member presenting flu-like symptoms is obligatory, with or without a fever.

**MALARIA REMAINS A SIGNIFICANT CONCERN FOR CREW AND SHIPOWNERS, WITH ITS POTENTIAL TO CAUSE FATALITIES AND INCUR SUBSTANTIAL COSTS. THEREFORE, IT IS KEY THAT SHIPOWNERS HAVE THE RELEVANT KNOWLEDGE AND TAKE PROACTIVE MEASURES TO MITIGATE ITS IMPACT.**

**MALARIA, CAUSED BY THE PLASMODIUM PARASITE TRANSMITTED THROUGH THE BITE OF INFECTED FEMALE ANOPHELES' MOSQUITOES, IS A LIFE-THREATENING DISEASE. ACCORDING TO THE WORLD HEALTH ORGANIZATION (WHO), IN 2022 THERE WERE AN ESTIMATED 249 MILLION MALARIA CASES AND 608,000 MALARIA DEATHS IN 85 COUNTRIES.**

## TREATMENT PROCEDURES

The good news is that malaria is 100% treatable if diagnosed and treated promptly. Early diagnosis of malaria is crucial for effective treatment and preventing complications. Rapid Diagnostic Tests (RDTs) are quick, easy to use and essential for shipboard testing. These finger-prick blood tests can detect the presence of malaria parasites within 15-20 minutes. While microscopic examination and serological tests are more accurate, they require a laboratory setting and are not practical for use on board vessels.

WHO provides clear guidelines for the treatment of malaria, emphasising the use of artemisinin-based combination therapies (ACT) for uncomplicated cases. In situations where severe malaria is suspected, pre-referral treatment with intramuscular injections becomes necessary. Ensuring access to oral and injectable treatments on board vessels can be lifesaving. For optimal care, ships should stock both oral ACTs and injectable artesunate for the initial treatment of malaria.

While ACTs target the malaria parasites themselves, other medications can help manage the symptoms of the disease. Paracetamol can be used to relieve fever and pain. However, medications such as ibuprofen or aspirin should be avoided due to the potential for increased bleeding risk with malaria. Metoclopramide can help with nausea and vomiting. Oral rehydration solutions and clear fluids are essential to prevent dehydration, a common complication of malaria, especially when vomiting and diarrhoea are present. Loperamide (imodium) or smecta can be used for diarrhoea, but only if there is no blood or mucus in the stool.

## WHEN TO SEEK MEDICAL ATTENTION

All cases of malaria require follow-up by a doctor to monitor for potential complications. If flu-like symptoms persist despite a negative initial RDT test, it's important to repeat the test, especially if the person has been in an area where malaria is prevalent. In cases of doubt and worsening symptoms, starting malaria treatment despite negative tests is often the safest course of action. The risk of delaying treatment due to a false negative test can be fatal, while the side effects of ACTs are relatively minor.

Overall, combatting malaria at sea requires a comprehensive and collaborative approach that addresses the unique challenges faced by seafarers. By implementing proactive measures, enhancing medical support systems, and raising awareness, we can effectively reduce the burden of malaria on maritime communities and ensure the health and wellbeing of those working at sea.

**ANY FLU-LIKE ILLNESS**  
should be assumed as  
**MALARIA**  
until proven  
otherwise.



## UNDERSTANDING AND PREVENTING

# FINGER INJURIES

## IN MARITIME OPERATIONS

### SEVERAL FACTORS CONTRIBUTE TO THIS HIGH RATE OF FINGER INJURIES ON BOARD SHIPS.

#### 1 MACHINERY

One of the primary culprits behind finger injuries on ships is the operation of heavy machinery. From winches and cranes to conveyor belts and hydraulic systems, seafarers regularly work with powerful equipment exposing fingers to crushing, jamming, and amputation risks.

#### 2 REPETITIVE STRAIN INJURIES (RSI)

While not as immediately evident as traumatic injuries, RSI can be a concern among seafarers. Tasks that involve continuous and repetitive motions, such as manual labour or prolonged use of hand tools, can lead to conditions like tendonitis or carpal tunnel syndrome. Adequate rest breaks, ergonomic designs for workspaces, and regular health check-ups are essential to address and prevent RSI.

#### 3 SHARP TOOLS AND ROUGH SURFACES

From maintenance tasks to everyday activities, sharp tools and abrasive surfaces can cause cuts and punctures.

#### 4 LINE HANDLING

Handling ropes and lines is an inherent part of maritime operations, but it also poses a significant risk of finger injuries. Sudden tension release, improper coiling, or the mishandling of lines can lead to rope burns, finger entrapment or even traumatic amputations. Training and the use of appropriate Personal Protective Equipment (PPE) can significantly reduce the occurrence of such incidents.

#### 5 FATIGUE AND STRESS

Seafarers work long hours, completing demanding tasks in harsh environments which can lead to fatigue and reduced attentiveness, increasing the likelihood of accidents.

According to data provided by Britannia P&I, finger injuries comprised 19% of all injuries recorded over the past four years, with engineers experiencing the highest number of injuries, followed by able seamen. Additionally, finger-related accidents accounted for approximately 11.6% of the total costs associated with injuries.

These injuries not only cause pain for the seafarer but also incur significant costs for shipowners and operators. Medical treatment can range from basic first aid to complex surgeries, costing companies and medical insurers dearly. Injuries can also mean crew members are unable to work, causing financial losses for the crew and manpower shortages on board. Compensation claims for serious injuries can also be a substantial cost.

### PREVENTIVE MEASURES CAN SIGNIFICANTLY PREVENT AND REDUCE THE RISK OF FINGER INJURIES:

#### COMPREHENSIVE TRAINING

Ensuring the safety of maritime workers begins with comprehensive training courses that cover the proper use of equipment, emergency response procedures and the importance of adhering to safety guidelines. Familiarity with the potential risks and the implementation of preventive measures can significantly reduce the likelihood of finger injuries.

#### PERSONAL PROTECTIVE EQUIPMENT (PPE)

Equipping seafarers with appropriate PPE is a fundamental aspect of injury prevention. Investing in gloves with reinforced materials, designed specifically for maritime activities, can provide an additional layer of protection against injuries. Regular inspection and replacement of worn-out PPE are crucial to maintaining their effectiveness.

#### PROMOTING SAFETY CULTURE

Fostering a safety-conscious culture on board ships is paramount in preventing accidents. Open communication channels, regular safety meetings, and encouraging reporting of near-miss incidents create an environment where seafarers feel empowered to address safety concerns.

By prioritising safety, both individuals and organisations contribute to reducing the risk of finger injuries.

#### MAINTAINING EQUIPMENT

Maintaining equipment on board ships is paramount for preventing finger injuries. By consistently inspecting and up-keeping tools and machinery, the risk of mechanical failures is minimised, ensuring a safer working environment for the maritime crew. Regular assessments identify potential issues, allowing for timely interventions and reducing the likelihood of accidents stemming from equipment-related failures.

In the dynamic and challenging environment of maritime work, finger injuries are an unfortunate but a preventable reality. By addressing the root causes, implementing preventive measures, and fostering a culture of safety, the maritime industry can significantly reduce the occurrence of finger injuries on board ships. Ensuring the wellbeing of seafarers not only benefits individuals but also contributes to the overall efficiency and safety of maritime operations worldwide.

**WORKING AT SEA IS A DEMANDING AND CHALLENGING PROFESSION THAT REQUIRES CONSTANT ATTENTION TO SAFETY. ONE ASPECT OFTEN OVERLOOKED IS THE PREVALENCE OF FINGER INJURIES AMONG SEAFARERS. IN THE CONFINED AND DYNAMIC ENVIRONMENT OF A SHIP, FINGERS ARE SUSCEPTIBLE TO VARIOUS HAZARDS, RANGING FROM HEAVY MACHINERY ACCIDENTS TO REPETITIVE STRAIN INJURIES.**

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# THE POLAR

MICHAELA ARNERI ASSOCIATE DIRECTOR, BRITANNIA P&I

**THE SUPREME COURT PROVIDES GUIDANCE ON WAR RISK CLAUSES.** IN A RECENT DECISION (HERCULITO MARITIME LTD V GUNVOR INTERNATIONAL BV [2024] UKSC 2) THE UK SUPREME COURT HAS CONSIDERED SHIPOWNERS' RIGHTS TO RECOVER GENERAL AVERAGE FOR RANSOM PAYMENTS AND GIVEN GUIDANCE ON THE EFFECT OF WAR RISK CLAUSES.

On 20 September 2010, the *POLAR*, a tanker owned by Herculito Maritime Ltd, was chartered to Clearlake Shipping Ltd on an amended BPVOY4 form, for a voyage carrying fuel oil from St Petersburg to Singapore. Gunvor International BV were the lawful holders of the six bills of lading that were issued and were the receivers of the cargo.

The direct geographical route for the contractual voyage was via the Suez Canal and the Gulf of Aden and the charterparty included a clause stating that the voyage would be via the Suez Canal. The charterparty incorporated "War Risks" and "Gulf of Aden" clauses giving owners the right to cancel or vary the charterparty if the ship would be exposed to war risks. At the time the charter was agreed, the Gulf of Aden was deemed a "High Risk Area" for piracy in the marine insurance market and, before entering the Gulf of Aden, the owners bought kidnap and ransom (K&R) insurance, which was paid for by the charterers. The bills of lading that were issued incorporated the charterparty terms and provided that general average (GA) would be settled in accordance with the York-Antwerp Rules.

On 30 October 2010, while transiting the Gulf of Aden, the vessel was seized by Somali pirates and held captive for ten months before being released following a ransom payment of USD7.7 million made on behalf of the owners. The owners declared GA and the subsequent adjustment determined that under the bills of lading cargo interests owed the owners about USD5.9 million in GA, largely comprising the ransom. Cargo interests disputed liability, arguing that the owners could only recover the ransom under the K&R policy.

Owners commenced arbitration to recover the GA and the tribunal ruled in favour of the cargo interests. However, subsequent decisions on appeal by the High Court and the Court of Appeal held that cargo interests were liable to contribute to general average. The cargo interests then appealed to the Supreme Court.

## OWNERS' RIGHT TO RECOVER THE CARGO INTERESTS' PROPORTION OF GA ARISING FROM WAR RISKS FOR WHICH ADDITIONAL INSURANCE WAS OBTAINED.

The Supreme Court considered whether the charterparty terms could be construed to provide an insurance code or fund such that the owners were precluded from claiming against the charterers for any losses arising from the risks for which the K&R insurance was obtained. The Court also considered the extent to which the charterparty terms pertaining to such a fund were incorporated in the bills of lading.

As a matter of contractual construction, the Supreme Court concluded that the charterparty did not include an insurance code or fund, and, therefore, such a fund was not incorporated in the bills of lading. Clear contractual wording would be needed to imply the existence of such a fund, which was not the case.

## OWNERS' RIGHT TO DEVIATE ON THREAT OF WAR RISKS ARISING

Of relevance to the recent attacks on merchant shipping in the Red Sea, the Supreme Court also held that in charterparties where there is an agreement for the ship to proceed through the Suez Canal and necessarily the Gulf of Aden/Red Sea, the shipowner can only exercise general liberties to deviate and sail around the Cape of Good Hope to avoid war risks if there has been a qualitative change in circumstances from those existing at the beginning of the charter.

# HIGH RISK AREAS

On the specific facts of the case, the Supreme Court held that the owners did not have an unqualified right to refuse to transit the Gulf of Aden because the charterparty contained an obligation to proceed through Suez and, therefore, necessarily transit the Gulf of Aden, and the known piracy risks in the region could not be considered war risks within the "War Risks" clause.

Given that many charterparties were in operation before the start of hostilities in the Red Sea, shipowners may potentially have the right to deviate to avoid a possible attack on the grounds that the nature of the risk has changed since the charterparty was made. However, each charterparty must be assessed on its own terms and specific wording.



# THE AFRA OAK

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**IN A RECENT DECISION OF THE ENGLISH HIGH COURT, IT WAS HELD THAT SHIPOWNERS WERE PERMITTED TO RELY ON THE NEGLIGENT NAVIGATION DEFENCE UNDER ARTICLE IV(2) OF THE HAGUE RULES.**

THIS WAS IN A CASE WHERE, IN BREACH OF CHARTERERS' EMPLOYMENT ORDERS, **A MASTER ANCHORED HIS SHIP IN TERRITORIAL WATERS WITHOUT PERMISSION**, IN BREACH OF LOCAL LAW, ALL WHILE FAILING TO DEMONSTRATE GOOD NAVIGATION AND SEAMANSHIP (MERCURIA ENERGY TRADING PTE V RAPHAEL COTONER INVESTMENTS LTD (THE "AFRA OAK") 2023).

**BREACH OF  
CHARTERERS'  
EMPLOYMENT  
ORDERS  
AND NEGLIGENT  
NAVIGATION  
DEFENCE**

## THE FACTS

In February 2019, charterers instructed the ship to perform a voyage from Malaysia and to "proceed to Spore EOPL for further orders. Discharging plan still not known yet". The ship proceeded to Singapore EOPL (Eastern Outer Port Limit), but the master anchored the ship within Indonesian territorial waters, six nautical miles away from Indonesian land. Three days after anchoring, the ship was detained by the Indonesian navy and the master was arrested. The ship remained under detention for eight months and was only released after the master had been found guilty of anchoring illegally in Indonesian waters and had paid a modest fine.

## ARBITRATION

Amongst various issues that were in dispute, charterers claimed damages for the losses they alleged they had suffered because of the detention, contending that the master's decision to anchor in Indonesian territorial waters was in breach of their employment orders. Owners defended the claim by relying on the negligent navigation exception in Article IV(2)(a) of the Hague Rules which had been incorporated in the charterparty. The tribunal decided in favour of the owners, ruling that owners were permitted to rely on the negligent navigation exception even if the master had acted in breach of charterers' orders.

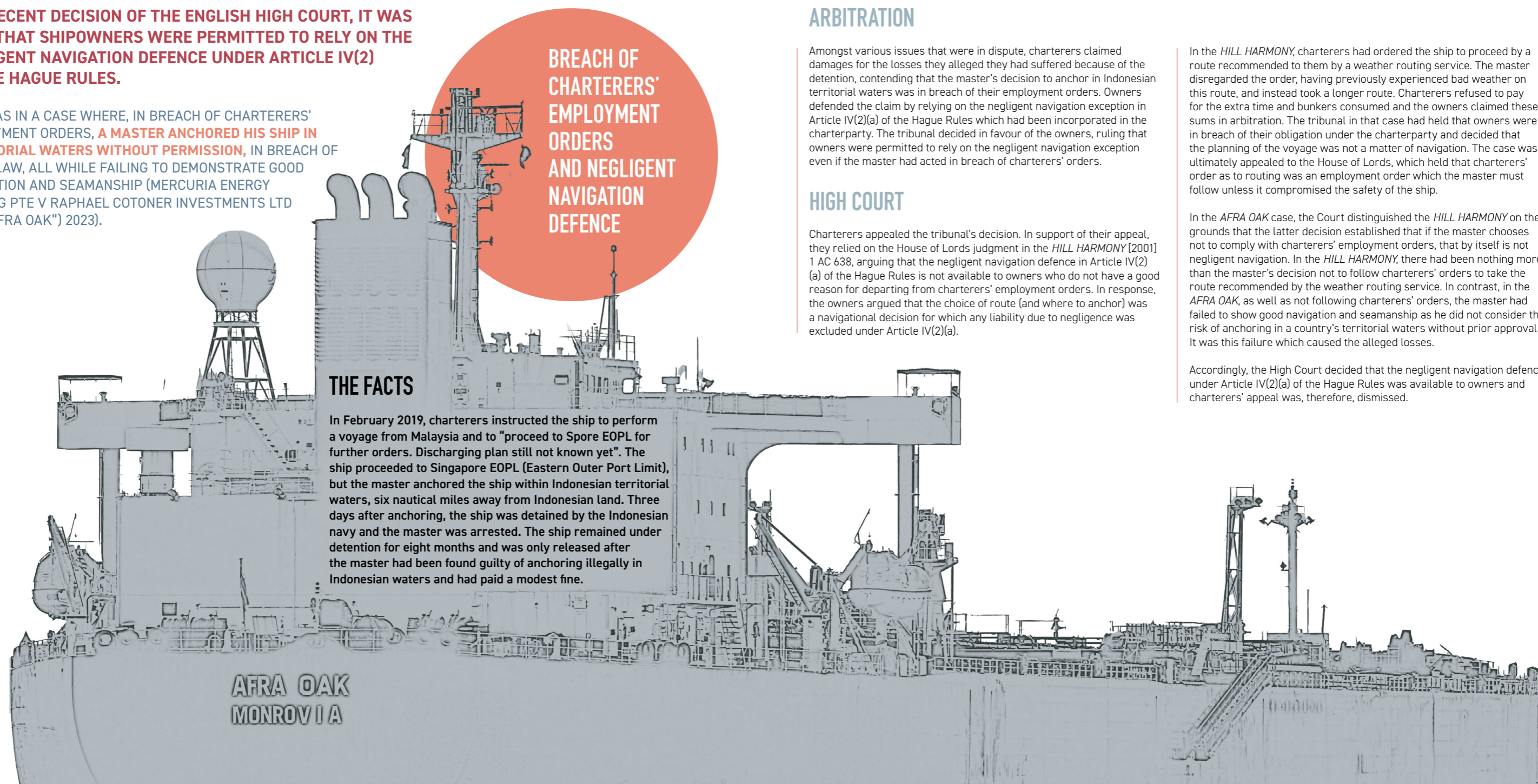
## HIGH COURT

Charterers appealed the tribunal's decision. In support of their appeal, they relied on the House of Lords judgment in the *HILL HARMONY* [2001] 1 AC 638, arguing that the negligent navigation defence in Article IV(2)(a) of the Hague Rules is not available to owners who do not have a good reason for departing from charterers' employment orders. In response, the owners argued that the choice of route (and where to anchor) was a navigational decision for which any liability due to negligence was excluded under Article IV(2)(a).

In the *HILL HARMONY*, charterers had ordered the ship to proceed by a route recommended to them by a weather routing service. The master disregarded the order, having previously experienced bad weather on this route, and instead took a longer route. Charterers refused to pay for the extra time and bunkers consumed and the owners claimed these sums in arbitration. The tribunal in that case had held that owners were in breach of their obligation under the charterparty and decided that the planning of the voyage was not a matter of navigation. The case was ultimately appealed to the House of Lords, which held that charterers' order as to routing was an employment order which the master must follow unless it compromised the safety of the ship.

In the *AFRA OAK* case, the Court distinguished the *HILL HARMONY* on the grounds that the latter decision established that if the master chooses not to comply with charterers' employment orders, that by itself is not negligent navigation. In the *HILL HARMONY*, there had been nothing more than the master's decision not to follow charterers' orders to take the route recommended by the weather routing service. In contrast, in the *AFRA OAK*, as well as not following charterers' orders, the master had failed to show good navigation and seamanship as he did not consider the risk of anchoring in a country's territorial waters without prior approval. It was this failure which caused the alleged losses.

Accordingly, the High Court decided that the negligent navigation defence under Article IV(2)(a) of the Hague Rules was available to owners and charterers' appeal was, therefore, dismissed.



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