

RISK WATCH

FEBRUARY 2021

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A MESSAGE FROM THE EDITOR



It is hard not to resort to cliché when talking about the events of the past year. The COVID-19 pandemic has affected all areas of life, with restrictions being put in place around the world to try to control and reduce the spread of the virus. Words and phrases such as: 'unchartered territory', 'unprecedented times' and the 'new normal' have become part of everyday speech. But should we have been prepared for the possibility of a global pandemic? In a fascinating article looking at future and emerging risks, we consider the meaning of risk and ask whether the maritime industry in particular should have anticipated this particular risk.

Although it is hard not to focus on the pandemic, the world goes on and trade continues. Safety must always be the top priority in all operations, and we use this opportunity to look at the ISM Code. More than 20 years after it was made mandatory, our Loss Prevention team looks at how you can ensure that a set of written documents and procedures can become a practical way of improving safety.

Practical examples and guidance are always useful when studying maritime issues and we set out a variety of case studies and guides, from a collision case study to a helpful and practical reminder of the issues to consider when carrying a cargo of coal. We also point to resources in our knowledge base on the Britannia website with guidance on ship lay-ups and important points to remember when trying to prevent drugs being smuggled on board. We finish off this edition with our FD&D colleagues explaining the implications of some recent legal cases.

Our Claims and Loss Prevention teams may have been working from home for much of the year but the levels of service and the support that we can offer to our Members remains at its normal high standard. We are always pleased to hear from you on the magazine or any suggestions or ideas for future articles.


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EMERGING MARITIME RISKS

INTRODUCTION

IT IS CERTAIN THAT 2020 WILL GO DOWN IN HISTORY AS A YEAR THAT WILL NOT BE EASILY FORGOTTEN. WHEN REPORTS FIRST BEGAN TO ARISE EARLY IN THE YEAR OF AN EMERGING NEW INFLUENZA-TYPE VIRUS, IT IS DIFFICULT TO BELIEVE THAT MANY WOULD HAVE ANTICIPATED THE GLOBAL IMPACT THAT THE COVID-19 RESPIRATORY DISEASE WOULD GO ON TO HAVE. FEW, IF ANY, AREAS OF LIFE HAVE BEEN UNAFFECTED BY THE CONSEQUENCES OF THE VIRUS AND THE VARIOUS RESTRICTIONS THAT HAVE BEEN IMPOSED TO TRY TO CURB ITS SPREAD. THE SHIPPING INDUSTRY HAS FACED UNPRECEDENTED CHALLENGES DUE TO THE IMPACT ON OPERATIONS AND TRADE, IN PARTICULAR, THE EFFECT OF TRAVEL AND ENTRY RESTRICTIONS ON CREW CHANGES, WHICH CONTINUE TO AFFECT SEAFARERS.

THE QUESTION IS – DID THE MARITIME SECTOR ANTICIPATE THIS RISK?

THE UNKNOWN THREAT OF A PANDEMIC?

The latest edition of Allianz Global Corporate and Specialty's (AGCS) annual Safety and Shipping Review¹ issued in July 2020 provided its usual useful overview of maritime trends and areas of risk. As would be expected, the topic of coronavirus featured heavily, with an entire section devoted to a summary of the key issues that have disrupted normal industry practices.

However, the same review a year earlier contained no mention of the possible risks associated with a global pandemic. The 2019 report² identified the top 5 perceived risks to the industry based on the inputs of global risk management experts as part of the wider Allianz Risk Barometer review³. This list contained the more obvious perceived threats to shipping, such as natural catastrophes, cyber incidents and general business interruption; however, it did not identify the possibility of widespread disruption due to a global pandemic.

Highlighting this oversight is not intended as a criticism of AGCS. The threat of a pandemic had also been omitted in other maritime risk reviews, such as the 2019 Global Maritime Issues Monitor⁴ issued by the Global Maritime Forum. Based on a survey of international senior maritime stakeholders and other leaders and experts, this review included the top 18 global issues considered likely to affect the maritime industry in the coming decade; once again, the risk of a pandemic was notably absent. Fast forward to the 2020 report⁵ and the list of global issues was expanded to 19, with the inclusion of pandemic at number 3 based on impact, with only global economic crisis and the decarbonisation of shipping ranking higher. Perhaps unsurprisingly, pandemic was also identified as the issue which the shipping industry considered itself least prepared for.

So, should and could the prospect of a global pandemic have been anticipated as a foreseeable risk by the maritime sector?

THE KNOWN THREAT OF A PANDEMIC

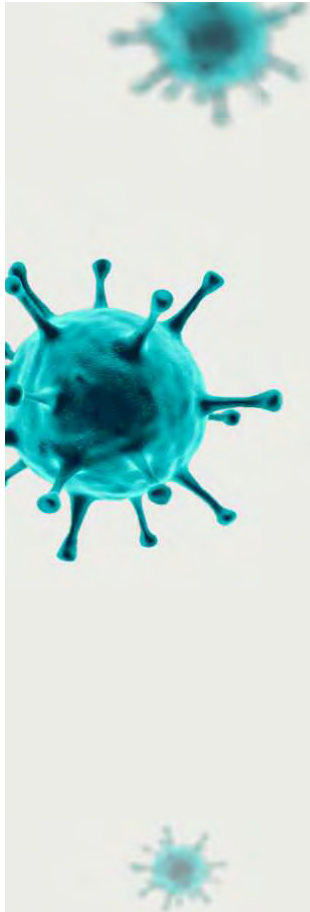
In addition to considering specific sectors such as shipping, the annual Allianz Risk Barometer provides a consolidated picture of global business risk, based on surveys conducted across a range of industries and corporate settings. The threat of a pandemic was in fact included as 16th in the cross-industry list of risks in the 2019³ Risk Barometer report. Intriguingly, it fell to number 17 in the 2020 report⁶, although tellingly, the survey for the 2020 review was conducted in late 2019, just before the emergence of COVID-19. Unsurprisingly, the threat of a pandemic had jumped to second in the global corporate risk list in the recently published 2021 review⁷. Furthermore, it now featured as the highest risk to Marine and Shipping.

Reference to other major global risk reviews provides an even clearer indication that the threat of a pandemic had been recognised in certain sectors. Both AXA & EURASIA Group's Future Risks Report 2019⁸ and the World Economic Forum (WEF)'s Global Risks Report 2020⁹, the latter published on 15 January 2020, featured infectious disease and pandemic in the top 10 of global emerging risks. Somewhat ominously, the 2020 WEF review also referred to an assessment published in October 2019¹⁰ which had identified that no country was fully prepared to handle a pandemic. Further research also confirms that the possibility of a global pandemic had indeed been predicted by some scientists^{11,12}.

So, it was evident that the possible emergence of a global pandemic was known and had been reported, albeit not widely, and not, it would seem, within the maritime industry.

WHAT IS RISK?

Given that this article features in an edition of Risk Watch, it seems appropriate to consider the meaning of risk. The term has many definitions, which tend to depend on the context and setting. The Institute of Risk Management (IRM) defines





PANDEMIC

risk as 'the combination of the probability of an event and its consequences' and notes that the consequences can be both positive and negative¹³. This is a definition that is familiar within shipping, particularly in the context of safety risk assessments.

The International Organisation for Standardisation's (ISO) Guide 73¹⁴ provides an even simpler definition of risk as the 'effect of uncertainty on objectives'. The ISO guide explains that an effect can be a positive and/or negative deviation from the expected. Objectives can include a variety of elements, such as financial, health or safety goals, and can be focussed at different levels, such as a strategic or project level. Given the events of 2020, it is clear that the COVID-19 pandemic resulted in extreme uncertainty affecting objectives on almost every level.

EMERGING MARITIME RISKS

WE KNOW WE CANNOT PREDICT THE FUTURE. BUT WE CAN TRY TO PREPARE FOR CHANGES THAT ARE CLEARLY 'ON THE CARDS'. NOT PREPARING CAN BE RISKIER AND MORE EXPENSIVE THAN THE 'SAFE' OPTION OF DOING NOTHING. MARTIN STOPFORD¹⁵



EMERGING RISKS

Much is written about the need to be able to predict new areas of risk that may affect business activities. There are many different definitions for what constitutes emerging risks, again depending on the context. The Organisation for Economic Co-operation and Development (OECD) suggests that emerging risks are the result of new or future threats, where there is low level of knowledge (or no knowledge at all) about the potential losses and the probability of occurrence¹⁶. The International Risk Governance Council (IRGC) defines them as risks that are either new or that are familiar but with new or unfamiliar conditions¹⁷. This introduces the idea that some 'known' risks can be considered to be emerging risks, such as cyber security, where the nature of the threat and the attacks continue to evolve¹⁸. Similarly, although the threat of a global pandemic had been identified, it had evidently not been widely recognised and prepared for. In this sense, it can also be considered an emerging risk, particularly given that the severity of the COVID-19 outbreak may not have been fully anticipated.

Future or emerging risks can be associated with a variety of factors. These can include:

- developing or future trends, for example, as a new shipping trade or pattern starts to become associated with an increase in incidents and claims;
- future innovations or new technology that may be in the pipeline or have not yet been considered; or
- events that are either yet to unfold or have not yet completely evolved.

The degree of uncertainty for a risk area will generally increase with the timeframe being considered. The probability of a risk may also depend on the nature and complexity of the specific sector. For example, the risks associated with the decarbonisation of shipping involve a range of different and complex fuel and technological solutions.

The prediction of emerging business critical risks is generally considered challenging and unlikely to get any easier in the immediate future, given the interconnected dynamics of geopolitics, technological advances, social instability and climate change¹⁸. However, various systematic approaches can be adopted to assist with the identification of possible future risks. These can range from an analysis of lagging and leading data, for example the use of incident or claims data, to identify emerging trends or the use of risk 'early warning systems'.

Another method adopted by research institutions is to conduct simulation modelling of different scenarios based on agreed inputs to determine the possible outcomes. This latter approach was adopted as the basis of a detailed review conducted by Lloyd's Register, QinetiQ and Strathclyde University¹⁹ to identify possible future global marine trends based on three broad scenarios.

A further popular method is to evaluate the opinions of relevant stakeholders and experts, for example, as part of an internal cross-functional risk committee tasked to consider emerging risks. This can often be augmented with external expertise in order to challenge an organisation's traditional views. This is not dissimilar to the approach typically used by key holders to identify hazards as part of a safety risk assessment.

All of these approaches can be supported by keeping up to date with a wide range of sources of information to help identify and understand



emerging risks. As a minimum, this should involve monitoring relevant trade and industry publications and social media channels, as well as the developments of relevant research, industry and regulatory bodies, such as the International Maritime Organisation (IMO). However, as noted by Marsh and the Risk and Insurance Management Society, Inc in their Emerging Risks review⁸, relying only on industry-specific publications will tend to limit the chances of linking organisational strategy to emerging global risks and trends. In general, greater risk insights can be obtained by broadening the scope of the literature reviewed, particularly into other industry sectors, such as the WEF's Global Risks report series, which provide a holistic view of global risk trends. The outbreak of a global pandemic is the perfect example of this. Although the risk of a COVID-19-type virus spreading around the world had been identified before 2020, it does not appear to have recently been on the radar of the shipping industry; had it been, the maritime sector, like many other industries, could arguably have been better prepared to deal with the consequences.

LOSS PREVENTION PERSPECTIVE

As part of its role in supporting the Club and its Members, the Britannia Loss Prevention (Risk Insights & Analytics) department continues to monitor the latest developments in the shipping industry in order to attempt to identify future emerging trends and risks, which can then be mitigated against. This is typically based on the Loss Prevention department's involvement in various relevant industry committees; by commissioning research in areas of risk; and by an ongoing review of relevant studies and publications. Based on a review of the various recognised risk studies referred to in this article, the following 'short list' of 12 suggested future or emerging risks has been identified, which are considered to have the potential to impact on the maritime industry. These have been selected based on ranking and frequency of inclusion in various risk reviews, and are not intended as a definitive list of emerging maritime risks, but rather as a useful list of prioritised areas to consider. Given the varying nature of the studies considered, no specific timeframe has been attached to the risks identified in the list. We will not consider each of these areas in more detail. However, further details of the risks, and their associated issues, can be obtained from the references^{1-9,19} in the PDF version of Risk Watch.

1	Pandemic infectious diseases
2	Geopolitical instability/tension/conflict
3	Changes in legislation/regulation, eg. environmental, trade wars, sanctions, etc.
4	Cyber security risks
5	Disruptive technology, eg. Autonomous, Artificial Intelligence (AI), Digitalisation, etc.
6	Global economic crisis
7	Climate change impacts – effects, including natural catastrophes and failure of mitigations
8	Market development/volatility and changing trade patterns
9	Business interruption, eg. supply chain failure, workforce/skill shortage
10	Piracy
11	Major safety incident, eg. resulting in pollution, trade choke points blocked
12	Fuel price fluctuations

CONCLUSIONS

It is evident that predicting the future in terms of possible emerging risks is not a simple or easy exercise. Employing a structured and methodical approach will assist in the identification of possible future business threats, supported by a careful review of relevant industry publications summarising the latest and future developments. However, it is important to broaden the scope of the risk literature reviewed, particularly by considering wider industry studies, such as WEF's Global Risks report series, in order to consider the bigger picture, and how this may impact on a given industry sector, such as shipping.

Further information on this article and the work of the Loss Prevention (Risk Insights & Analytics) department can be obtained by contacting: lossprevention@tindallriley.com

For further information on the references used within this article please refer to the PDF version of Risk Watch. It can be downloaded online here: ow.ly/L6SF30rwF2Q

ROLE OF PROCEDURES IN AN EFFECTIVE SAFETY MANAGEMENT SYSTEM

WITH THE IMPLEMENTATION OF THE INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE IN THE MID-1990S, IT BECAME MANDATORY FOR OWNERS TO HAVE A SAFETY MANAGEMENT SYSTEM (SMS) IN PLACE. THE SMS CONTAINS THE NECESSARY PROCEDURES TO SUPPORT AN OWNER'S SAFETY AND ENVIRONMENTAL PROTECTION POLICIES. SINCE THEN, PROCEDURES AND SMS HAVE BEEN WIDELY DISCUSSED AND A COMMON QUESTION IS:

HOW DO YOU ENSURE THAT PROCEDURES BECOME A PRACTICAL MEANS OF IMPROVING SAFETY?

In the Cambridge English Dictionary 'procedure' is defined as: 'a set of actions that is the official or accepted way of doing something'. When procedure becomes part of a SMS, this can also become accepted as the safe way of carrying out a task, where it is assumed that safety is created simply by following the procedure.

This assumption can lead to incidents where non-compliance with procedure is identified as the main contributing factor. In other words, the incident investigation concludes that if the procedure had been followed then the incident would not have happened.

However, an important part of an incident investigation is to try and understand why the procedure was not followed. Was it due to pure negligence, or was it perhaps because the procedure was too complex, or was not clearly set out? This could mean that the person carrying out the task did not understand the procedure and so did not follow it correctly.

To try and avoid this confusion, it is important that all procedures are properly thought through and carefully structured. Developing a procedure that combines all the necessary safety precautions, while at the same time being 'user friendly', is not always easy and may require considerable effort and input from several stakeholders.

These five keywords may be helpful when developing new, or amending existing procedures to maximise their effect and improve the overall efficiency of the SMS:

1 LIMITATIONS – the fact that a procedure is put in place does not, in itself, remove the risk. A procedure provides a work sequence and instructions which, if followed correctly, can act as a 'safety barrier' and help to manage and mitigate any risks associated with the task. However, there are limitations to this and if a faulty procedure is followed, the task might, in fact, be less safe than if no procedure was followed. Therefore, each task must be assessed to see if a procedure can reduce the risk or whether there are other, more suitable, methods to reduce the risk, such as a design modification.

2 RELEVANT – the content of some procedures is regulated by statutory requirements and these must always be complied with. However, not all risks are governed by statute and owners should carry out a risk assessment to ensure that their SMS contains all the relevant procedures for their particular operation. They should regularly review their procedures to ensure that they remain relevant and that any new risks are properly assessed, and the SMS amended accordingly. It is also very important that any obsolete procedures are removed from the SMS so that the effectiveness of the SMS is not hindered by outdated or contradictory content and becomes too long and confusing for the user.



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3 FOCUSED – a procedure should focus on how to mitigate an identified risk and must clearly set out the precautions and resources needed to ensure that the procedure is carried out safely. The content should be specific to the operation and, if appropriate, to the ship and should clearly communicate its purpose to the crew members. If procedures are too long and complicated there is a risk that the procedure may not be read or properly understood. This can lead to the procedure becoming an obstacle, rather than a useful tool to safely carry out the task.

4 DYNAMIC – it is important that a procedure is never regarded as finalised but is seen as a dynamic document, meaning that it is continuously updated to include all new lessons learned. Owners should review past incidents and near miss situations and incorporate the lessons learned into their procedures. In incidents where non-compliance with applicable procedures has been identified as a possible cause, the incident investigation should identify any underlying causes which may provide an understanding of why the correct procedures were not followed in order to try and prevent similar incidents in the future. In addition, the concept of learning from positive outcomes, also referred to as Safety II, can provide owners with ways to learn from the experience of others and update procedures, rather than waiting for an actual incident to take place.

To help with this process, there should be an open reporting culture on board where crew members are encouraged to provide constructive feedback on any procedure which can then be amended if necessary.

5 OWNERSHIP – in the shipping industry, there is often a disconnect between the originator of a procedure, usually based at the owner's office (sometimes with the assistance of an external consultant), and the end user – the crew member. This means that the originator may be detached from the working environment for which the procedure is intended and may not fully understand the situation on board the ship. The crew may then feel that the procedure is not useful or practical and can lead them to ignore or change the procedure. This is a dangerous situation as it increases the likelihood of an accident and also compromises the efficiency of the entire SMS.

A way to increase the sense of ownership among the crew is to involve them in the whole process. If the initial drafting process for a procedure is moved from the office to the ship, this allows the crew to have an input based on the specific operational procedures of their ship. This draft can then be submitted to the office for statutory and company policy compliance review and approval. This collaborative process can lead to clear procedures drafted by the actual user and provides an increased sense of ownership and also a higher probability that the procedure will be correctly followed.

CONCLUSION
! It is important to understand that, when it comes to the SMS and procedures, there is no simple solution. While a procedure might be seen as a quick and cost-effective way to increase safety, a procedure also has its limitations and may not suit all situations and types of risk. A comprehensive risk assessment by owners is essential in order to identify the right safety measures to be implemented as part of their SMS, and to decide where and when a procedure might be an appropriate choice.

When developing a procedure, all situations should be considered, and all stakeholders should be involved to ensure that the procedure is effective in reducing risks. It must also be useful, easy to follow and practical to make sure that it is properly followed by the user. When there is an incident, this should always trigger a critical review of the applicable procedure to determine its suitability. Failure to acknowledge this may not just compromise safety, but also the crew's commitment to and belief in an owner's safety culture.

If you have any questions or would like further advice on ways to improve your safety culture, please contact the Britannia Loss Prevention team at: lossprevention@tindallriley.com

The Danish Maritime Accident Investigation Board's (DMAIB) report [ow.ly/QPuQ30rww9n](https://www.dmaib.dk/ow.ly/QPuQ30rww9n) 'Proceduralizing Marine Safety – Procedures in Accident Causation' provides further reading on this topic, including some of the issues that can occur with the use of procedures to formalise safety.



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COLLISION CASE STUDY

HIGHLIGHTING THE DISTRACTING USE OF VHF COMMUNICATION AND THE DANGERS OF RELYING TOO MUCH ON AIS DATA WHEN DETERMINING THE RISK OF COLLISION

AT 0636 ON 4 AUGUST 2018, IN THICK FOG, THE CONTAINER SHIP *ANL WYONG* (39,906GT) AND GAS CARRIER *KING ARTHUR* (4,761GT) COLLIDED FOUR NAUTICAL MILES SOUTH-EAST OF EUROPA POINT, GIBRALTAR. BOTH SHIPS WERE INTENDED FOR *ANL WYONG* WAS STOPPED AT THE TIME, WAITING FOR INSTRUCTIONS TO ENTER PORT. BOTH SHIPS SUSTAINED SIGNIFICANT HULL DAMAGE BUT THERE WAS NO WATER INGRESS AND NO INJURIES.

The following description is based on the findings of the Marine Accident Investigation Branch's (MAIB) investigation [ow.ly/m3ci30rtALo](https://www.maib.gov.uk/ow.ly/m3ci30rtALo). It is a collision that has familiar roots in the distracting use of VHF communication during collision avoidance and also highlights the dangers of overreliance on AIS data (over ARPA data) in determining the risk of collision.

In the early hours of 4 August, *ANL WYONG* was transiting the eastbound lane of the Strait of Gibraltar traffic separation scheme while on passage from Douala, Cameroon to Algeciras, Spain with an ETA at the Pilot Station of 0600. As the visibility was poor due to patchy fog, the navigation lights were on and sound signals were being made. At 0424, the third officer contacted Algeciras Pilots by VHF and was informed that the scheduled berth would not be ready until after 0700. The vessel was asked to standby at least 3nm outside of the bay to await further instructions.

Soon after, the master arrived on the bridge and amended the passage plan, then took the con for the passage to the waiting position, about 3nm east of the entrance to Gibraltar Bay. There was some traffic in the area which could be seen by radar, but not by sight, due to the dense fog.

Once the ship arrived at the waiting position, the engine was stopped (but on immediate notice) and the upper deck lighting switched on. The master assessed the traffic situation as moderate, with three or four westbound ships passing well clear to the south. At 0548 the master left the bridge, leaving the third officer, deck cadet and AB on watch.

Meanwhile, *KING ARTHUR* was on passage from Kulevi, Georgia to Rotterdam, Netherlands. It was scheduled to stop briefly inside Gibraltar Bay to embark crew by boat transfer at 0700. At 0600, the chief officer, who was the OOW, called the master to give him 1-hour notice. The master came to the bridge and, after a brief handover, took the con for the approach to the transfer position. The chief officer remained on the bridge to support the master.

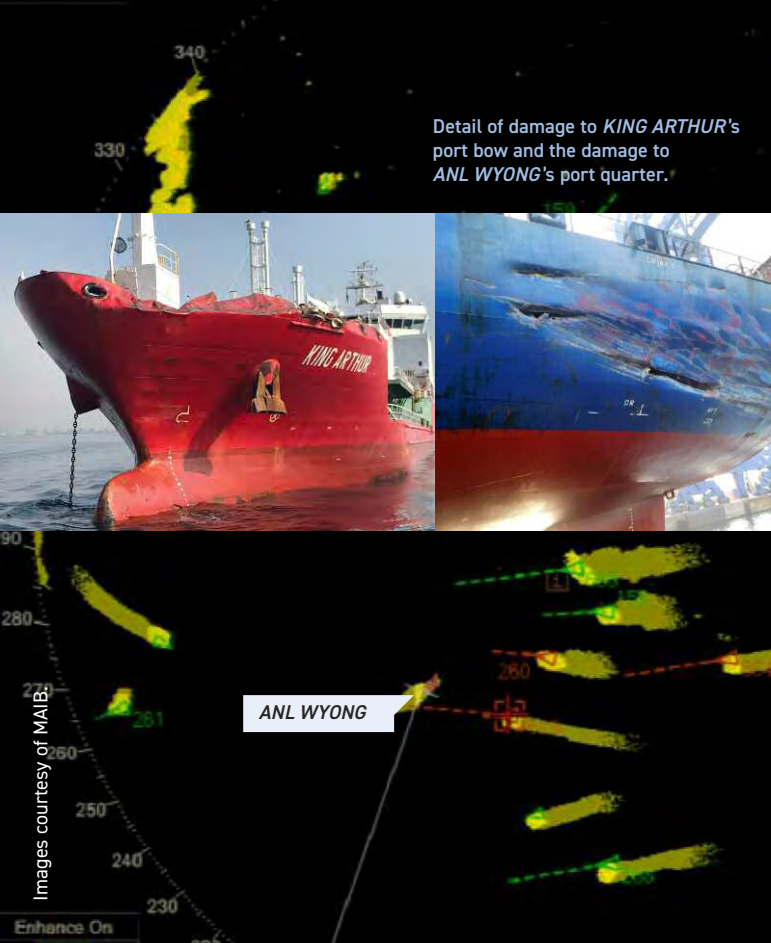
At 0621 *KING ARTHUR* received a call on VHF radio from an approaching ship and agreed to keep clear whilst the other ship held her course and speed. The master altered course to port from 290° to 275° and once steady on the new course, he observed a radar target about 2.4nm ahead; this was identified as *ANL WYONG*, with a navigational status of 'underway using engine' from AIS data. Based on the orientation of the AIS symbol, the master assessed that *ANL WYONG* was heading in a south-westerly direction. The chief officer, who was using a separate ECDIS and radar display to monitor the position, noted that *ANL WYONG*'s predicted CPA was 0.3nm on their starboard side.

At 0632 *ANL WYONG* was drifting in the north-easterly current on a heading of 197° with a course and speed over the ground of 060° at 2.2 knots, contrary to the master on *KING ARTHUR*'s perception. At the same time, nine contacts were approaching from the east and were visible on *ANL WYONG*'s radar; three of the contacts, including *KING ARTHUR*, had CPAs below the alarm value of 0.4nm. The OOW did not call the master but sent the deck cadet to keep lookout on the port bridge wing.

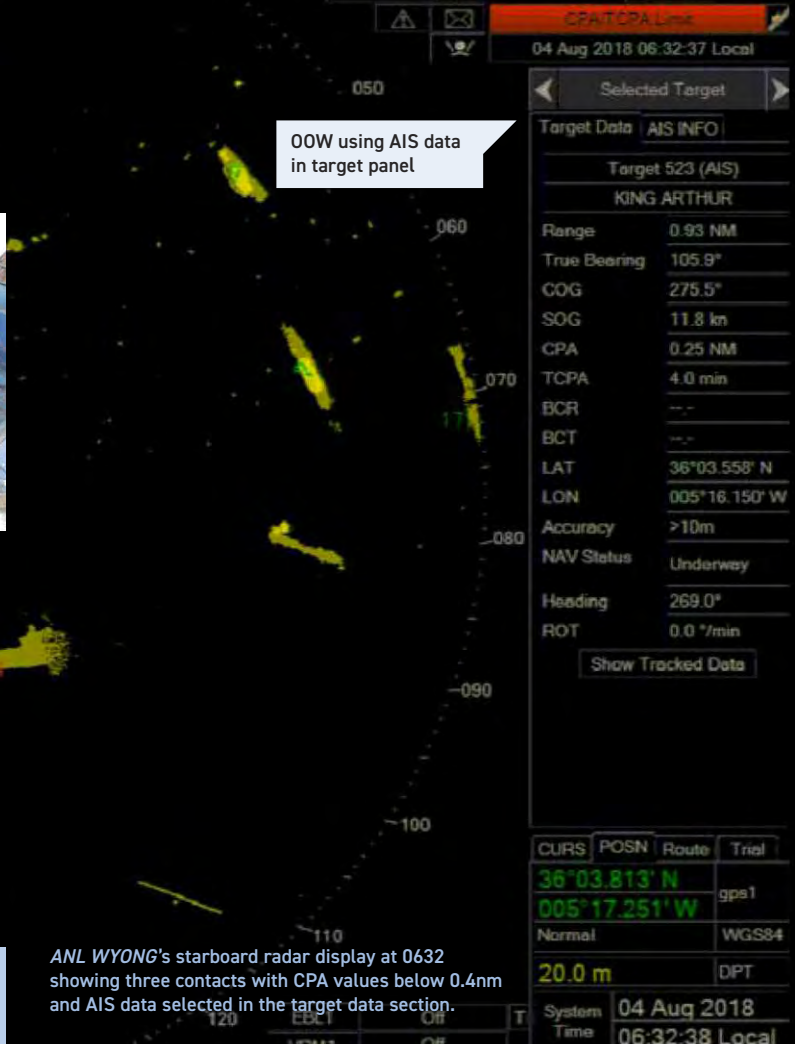
At 0633 *KING ARTHUR*'s chief officer took a further VHF call lasting two minutes, this time from *SPREAD EAGLE*, which was approaching on the port side. The chief officer agreed to alter course to starboard to increase the CPA (of 0.6nm), and *KING ARTHUR*'s master altered to 300°, intending to increase the CPA with *SPREAD EAGLE* and pass astern of *ANL WYONG*. However, this decision was based on his assessment that *ANL WYONG* was underway and heading in a south-westerly direction.

At this point *ANL WYONG*'s third officer noticed that the CPA was not decreasing and attempted to make contact with *KING ARTHUR* by VHF while the latter's master also noticed that the CPA had not increased as expected. Moments later, the master and the chief officer saw *ANL WYONG*'s superstructure emerging from the fog, illuminated by her deck lights. The master put the rudder hard to starboard, but the port bow collided with *ANL WYONG*'s port quarter. The master immediately put the rudder hard to port, in order to keep the stern away from *ANL WYONG*.

ANL WYONG's master felt the collision in his cabin. Once on the bridge, he assessed the situation and reported the incident to Tarifa Traffic VTS. Both ships were instructed to proceed to Algeciras and were detained during the Port State Control inspections subject to completion of repairs.



Detail of damage to *KING ARTHUR*'s port bow and the damage to *ANL WYONG*'s port quarter.



OOW using AIS data in target panel

Images courtesy of MAIB

ANL WYONG

ANL WYONG's starboard radar display at 0632 showing three contacts with CPA values below 0.4nm and AIS data selected in the target data section.

LESSONS LEARNED

ALTHOUGH THE MAIB INVESTIGATION DID NOT FIND ANYTHING EXPLICITLY LACKING IN EITHER SHIP'S SAFETY MANAGEMENT SYSTEMS OR BRIDGE PROCEDURES, IT DID IDENTIFY A NUMBER OF CONTRIBUTORY FACTORS THAT SERVE AS USEFUL LESSONS TO BE LEARNED FROM THIS INCIDENT.

Use of AIS in collision avoidance – Although AIS data can enhance a bridge team's situational awareness, particularly when integrated into other navigational systems, this incident is a reminder that such data can be misleading and incorrect. In this case, *ANL WYONG*'s navigational status on AIS wrongly indicated that the ship was underway using engines, while the AIS symbol on the radar showed a short pecked line representing the COG and SOG which was potentially misleading, as this represented the movement over the ground. It is worth noting that the COLREGs do not include any provision for the use of AIS data and that collision avoidance decisions should be based on systematic visual or radar observations in preference to the received AIS track.

Use of VHF – When faced with a relatively busy traffic situation, VHF was collectively used by the officers in ways which could be described as contributory to the incident. Had *KING ARTHUR*'s master and chief officer not been distracted by VHF, they might have appreciated the developing risk of collision earlier and may have been able to take more effective avoiding action. Due to the risk of confusion and error, the use of VHF radio for collision avoidance is strongly discouraged.

Safe speed – The MAIB concluded that neither ship was proceeding at a safe speed for the circumstances and conditions. Despite the dense fog and heavy traffic, *KING ARTHUR* was making about 13kts – a significant reduction in speed would have allowed the bridge team more time to assess the situation and avoid the collision. Although *ANL WYONG* was drifting, given the conditions it would arguably have been safer if it had been making way to enable avoiding action to be taken.

Bridge team management – A more effective use of resources could probably have helped prevent the collision. Although the chief officer on *KING ARTHUR* had noted the reduced CPA prior to the collision, he did not relay this to the master, who was on the con and fully engaged in collision avoidance manoeuvring. Had the chief officer, who was also occupied with constant VHF conversations, passed on the critical information and challenged the master's actions, this would have helped prevent the collision. On *ANL WYONG*, the OOW was keeping an effective lookout and was aware of the developing situation with numerous approaching ships, but he did not act to avoid collision by calling the master, as required by the latter's night orders; furthermore the engine remained stopped.

The MAIB report also looked at the actions (or lack of actions) from the local VTS, which did not intervene as the risk of collision developed. A recommendation was made to the Spanish Ministry of Development to conduct a review of vessel traffic services in the area. This included giving consideration to the establishment of a traffic organisation service for the approaches to Algeciras and a dedicated holding area for ships waiting to enter the port.

GUIDANCE ON SHIP LAY-UP



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THE COVID-19 CRISIS HAS FORCED SOME SHIPPING MARKETS INTO RECESSION AND MEMBERS MAY HAVE TO REVIEW THE UTILISATION OF THEIR TONNAGE IN ORDER TO SUIT THE DEMAND WITHIN THEIR SEGMENT. THIS HAS RESULTED IN AN INCREASED NUMBER OF SHIP LAY-UPS. LAY-UP IS OFTEN SEEN AS A FLEXIBLE AND PROFITABLE OPTION, BUT IT MAY INVOLVE CONSIDERABLE RISKS, AND THESE MUST BE PROPERLY CONSIDERED BEFORE GOING AHEAD.

This guidance has been developed by the Club to provide Members with useful general advice on some of the many considerations that need to be taken into account before deciding on the details of a lay-up. This includes:

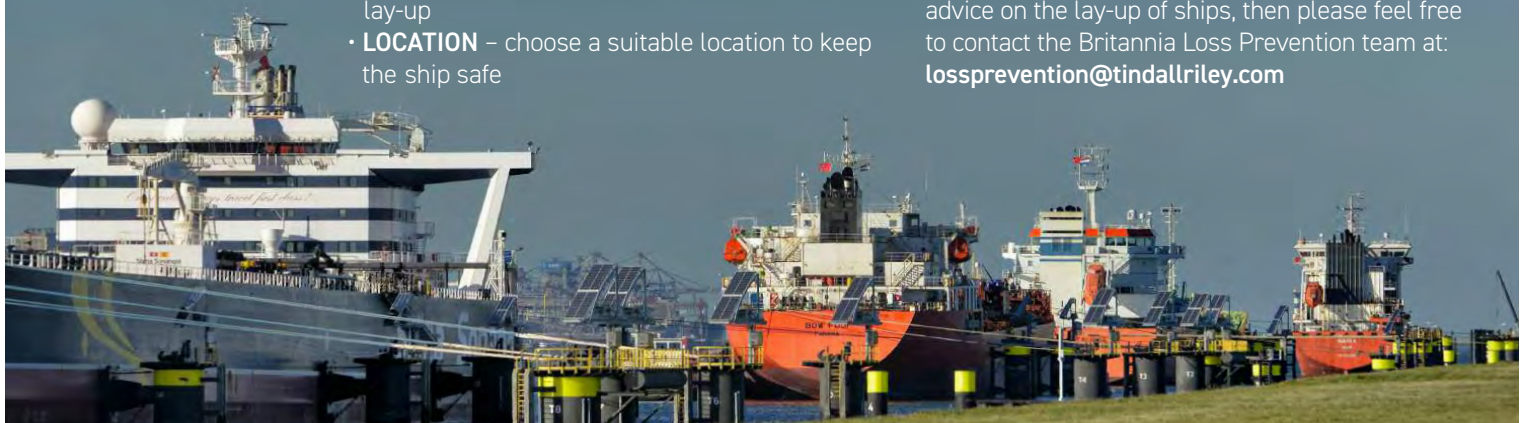
- **LAY-UP CONDITION** – decide on a cold or hot lay-up
- **LOCATION** – choose a suitable location to keep the ship safe

- **MANNING** – decide how many crew members should be kept on board or whether to appoint a lay-up managing company
- **PRACTICAL PRECAUTIONS** – make sure that the ship remains in a good condition throughout lay-up
- **REINSTATING/REACTIVATING** – avoid any undue delay at the end of lay-up

In addition, the guidance also explains what is meant by a 'lay-up return' and explains the Club's rules on lay-up and which criteria need to be complied with in order for a Member to be entitled to a lay-up return.

The full guidance on ship lay-up is available on the Britannia website: ow.ly/YwAY30rwRfJ

If you have any questions or would like further advice on the lay-up of ships, then please feel free to contact the Britannia Loss Prevention team at: lossprevention@tindallriley.com



GUIDANCE ON DRUG SMUGGLING PREVENTION

The maritime industry is, unfortunately, often the target of smugglers trying to use ships as a way of transporting drugs to markets, typically in the US or Europe. This has resulted in ships being arrested following the discovery of illegal drugs on board and in some cases the master and other crew members were arrested and put in prison. It goes without saying that such situations can put an enormous mental strain on the crew members involved, as well as on their families. It is therefore important that Members take appropriate measures to prevent drugs being brought on board their ships.

Britannia's Loss Prevention department has therefore developed guidance to provide Members with useful information about the methods used to smuggle drugs on board, often without the knowledge of the crew. This includes a number of examples which show the ingenious ways that smugglers will find in order to transport their illicit goods and highlights the

level of awareness that Members and their crew need to maintain. To assist Members to mitigate the risk of smuggling, the guidance provides a list of security precautions which should be implemented.

We also provide advice on how to react if any suspicious packages or items are found on board. Most importantly, any suspicious packages should not be tampered with as this could lead to later accusations that the crew were involved in the illegal activity.

The full Guidance on Drug Smuggling Prevention is available on the Britannia website: ow.ly/2rXf30rwRhI

If you have any questions or would like further advice on how to mitigate the risk of drug smuggling, then please feel free to contact the Britannia Loss Prevention team at: lossprevention@tindallriley.com





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COAL

A GUIDE TO CARRYING THIS POTENTIALLY HAZARDOUS CARGO

THE NAME COAL COVERS A WIDE RANGE OF CARGOES WITH VARYING PROPERTIES AND HAZARDS. IN ORDER TO HELP MITIGATE AGAINST THESE, THE LOSS PREVENTION DEPARTMENT HAS RECENTLY PREPARED A GUIDANCE DOCUMENT OUTLINING SOME OF THE KEY CONSIDERATIONS WHEN CARRYING COAL. THIS IS AVAILABLE IN THE KNOWLEDGE AREA OF THE BRITANNIA WEBSITE AT: [OW.LY/7FUZ30RWSH0](https://ow.ly/7FUZ30RWSH0), AND IN THIS ARTICLE WE PROVIDE A SUMMARY OF THE KEY POINTS.

- DIFFERENT TYPES OF COAL CAN EXHIBIT THE FOLLOWING CHARACTERISTICS, WHICH MAY BE SIGNIFICANT:**
- Emit methane, which in turn may potentially create a flammable or explosive atmosphere
 - Deplete oxygen in cargo holds and adjacent spaces
 - Be prone to self-heating and potentially spontaneous combustion resulting in the release of carbon monoxide – a gas toxic if inhaled
 - Liquefy if carried with excessive moisture content
 - React with water, producing corrosion-inducing acids, as well as hydrogen and toxic gases

Due to these hazards, coal needs to be carried in accordance with the International Maritime Solid Bulk Cargoes (IMSBC) Code which outlines the hazards and the precautions which need to be taken when carrying coal.

CARGO DECLARATION

A shipper's cargo declaration should be provided in accordance with the IMSBC Code and must be examined in detail. The declaration should clearly state whether the cargo of coal is liable to emit methane or self-heat. The shipper should also provide the master with the recommended safe handling procedures for the loading and transport of the coal. It is recommended to treat any coal cargo as potentially hazardous (in particular, that it may be liable to self-heating) until confirmed otherwise, bearing in mind that the cargo declaration may be inaccurate.

IMSBC CLASSIFICATION

By default, coal is classed as IMSBC Group A and B (A: cargo which may liquefy and B: cargo which possesses chemical hazards). Coal can be classed as Group B only after a test by the competent authority in the country of origin, or when the particle size distribution fulfils specific criteria.

Unless the cargo is classed as Group B only, the cargo declaration should be accompanied by certificates of the moisture content (MC) and transportable moisture limit (TML) issued by an entity that is recognised by the competent authority of the port of loading. Full details are set out in the IMSBC Code section 4.

CARGO TEMPERATURE ON LOADING

If coal is declared as liable to self-heating, then the cargo temperature must be measured before and during loading. However, as the cargo declaration might be incorrect, it is recommended that the temperature of coal should be measured before loading in all instances. This may require appointing local surveyors. Coal cargoes with a temperature above 55°C should not be accepted for loading. Self-heating can be localised, therefore it is advisable not to accept average temperature values measured in the cargo.

COAL

CONTINUED – A GUIDE TO CARRYING THIS POTENTIALLY HAZARDOUS CARGO

CARGO MONITORING DURING THE VOYAGE

All coal cargoes require monitoring through regular measurements of temperature, gas concentration and the pH value of hold bilge samples, without the need to enter the cargo spaces. The readings should be taken at least daily and the measurements carefully recorded.

Before loading, the gas and temperature monitoring equipment and sampling ports should be checked by appropriately trained personnel to confirm that they are in good order. The IMSBC Code provides full guidance on sampling and measurement procedures.

Due to the insulating properties of coal, temperature measurements are only an indication of the temperature near the thermometer. Self-heating in localised spots may not be detected this way. However, self-heating of coal results in emission of carbon monoxide (CO) and gas measurements are therefore considered a more effective method of cargo monitoring.

All vessels carrying coal should have appropriate equipment for measuring gas concentrations of methane (CH₄), oxygen (O₂) and carbon monoxide (CO). These measurements provide an indication of the two major hazards associated with the carriage of coal: self-heating (reflected by CO concentration) and explosive atmosphere (reflected by CH₄ levels).

The Britannia guidance document [ow.ly/7fuz30rwSh0](https://www.ow.ly/7fuz30rwSh0) provides further details of some of the considerations relating to the ventilation of coal cargoes and stresses that if the CH₄ and CO concentrations reach certain levels then the owners and Association should be advised and expert advice sought urgently.

Other considerations for the carriage of coal:

- Bilges should be clean, dry and covered as appropriate to prevent the cargo from entering into the bilge well

- Gas levels in spaces adjacent to cargo holds should be monitored and, if required, the spaces adequately ventilated prior to entry

- Electrical cables and components within cargo holds and adjacent spaces should be free from defects and either safe for use in an explosive atmosphere or positively isolated

- Coal should not be stowed adjacent to hot areas with a temperature consistently higher than 55°C

- The cargo should be trimmed according to the relevant provisions of IMSBC sections 4 and 5

- Smoking and use of naked flames should not be permitted in cargo areas and adjacent spaces

- Hot work or sources of ignition in the vicinity of cargo and adjacent spaces should only be considered after proper ventilation and satisfactory methane gas measurements

- If pH monitoring of bilge wells indicates the presence of corrosion risk, they should be frequently pumped out to avoid possible accumulation of acids on tank tops and in the bilge system

SUMMARY

Despite the potential hazards, coal is mostly carried without incident. The IMSBC Code provides detailed requirements for its carriage and the master, all officers and involved personnel should adhere to these requirements. Britannia's guidance document [ow.ly/7fuz30rwSh0](https://www.ow.ly/7fuz30rwSh0) summarises some of the key considerations when carrying this cargo and we emphasise that, where there is any risk of an incident, the master should contact the owners and the Club immediately so that expert advice can be obtained if necessary.

FOOTNOTE

The purpose of this document is to provide a general overview of hazards and precautions associated with the carriage of coal. It is not intended to repeat or replace the comprehensive guidance contained in the IMSBC Code and other regulations and practices.

CLAIMS AND LEGAL

SCOPE OF SHIPOWNERS' DUTY TO MAKE THE SHIP SEAWORTHY – THE *CMA CGM LIBRA*



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THE COURT OF APPEAL HAS CONFIRMED THE ENGLISH HIGH COURT'S JUDGMENT THAT A DEFECTIVE PASSAGE PLAN MAKES THE SHIP UNSEAWORTHY AND RE-AFFIRMED THAT A CARRIER HAS A NON-DELEGABLE DUTY TO EXERCISE DUE DILIGENCE TO MAKE THE SHIP SEAWORTHY.

On 18 May 2011 the container ship *CMA CGM LIBRA* ('the Ship') grounded whilst leaving the port of Xiamen on route to Hong Kong. At the time of the grounding the Ship was proceeding about four cables outside the buoyed fairway in an area where there were charted depths of over 30 metres. The Ship's owners stated that the grounding was caused by an uncharted shoal.

General average (GA) was declared in respect of expenses incurred as a consequence of the grounding. However, certain cargo interests refused to contribute to GA, contending that the grounding was caused by the unseaworthiness of the Ship due to a defective passage plan. The passage plan for the voyage to Hong Kong had been prepared by the Ship's second officer and approved by the master but had not noted a warning in the Notice to Mariners 6274(P)/10 that depths shown on the chart outside the fairway on the approach to Xiamen were unreliable and that waters were shallower than recorded on the chart.

The High Court held that the passage plan was defective, that passage planning was an aspect of seaworthiness, and that the defective plan was causative of the master's negligent decision to leave the buoyed fairway. The Court ruled that the negligence of the master and the second officer in preparing the passage plan amounted to a failure by the Ship's owners to exercise due diligence to make the Ship seaworthy. Owners' claim in GA, therefore, failed.

Owners appealed against the High Court's decision on two grounds. Firstly, they argued that a one-off defective passage plan was an error of navigation and did not render the Ship unseaworthy. They contended that the passage plan and working chart were not attributes of the Ship but only a recording of navigational decisions.

The Court of Appeal rejected this argument, holding that errors in navigation or management of the Ship can render a Ship unseaworthy if they occur prior to the commencement of the voyage. The fact that the defect in the passage plan was a one-off occurrence did not prevent it amounting to unseaworthiness – both one-off instances of negligence and

systemic failings could cause unseaworthiness. The Court of Appeal also held it to be implicit that the High Court considered that the working chart had not been appropriately corrected to note the warning in the Notice to Mariners and that constituted a defect in the chart, which was an attribute of the Ship.

Owners' second ground of appeal was that the actions of the master and crew carried out as navigators should not be treated as the carrier's exercise of due diligence to make the Ship seaworthy under Article III rule 1 of the Hague/Hague Visby Rules. On this point the Court of Appeal held that once Owners had assumed responsibility for the cargo as carriers, all the acts of the master and crew in preparing the Ship for the voyage were performed as carrier, even if they were acts of navigation before and at the commencement of the voyage. Owners were responsible for all such acts as a consequence of the non-delegable duty under Article III rule 1.

In the circumstances, owners' appeal was dismissed.

It has been suggested that this decision expands the scope of the carriers' non-delegable duty to exercise due diligence under Article III rule 1, in the sense that the carrier will be held liable for every mistake of its employees, even if navigational, before the commencement of the voyage if that causes loss on the voyage.

For shipowners, the decision illustrates the importance of ensuring that there are fully up-to-date charts on board and that passage planning is undertaken accurately and diligently by the crew.

It should be noted that owners have been given leave to appeal the decision to the Supreme Court.



GUIDANCE ON THE OBLIGATION TO PROVIDE SECURITY IN A CHAIN OF LETTERS OF INDEMNITY

THE MIRACLE HOPE



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IN TWO RECENT RELATED CASES, THE ENGLISH COURT HAS PROVIDED GUIDANCE ON THE REQUIREMENTS IMPOSED BY THE INTERNATIONAL GROUP (IG) OF P&I CLUBS' STANDARD LETTER OF INDEMNITY (LOI) WORDING AND THE OBLIGATIONS OF INTERMEDIATE PARTIES IN AN LOI CHAIN (TRAFIGURA MARITIME LOGISTICS V CLEARLAKE SHIPPING [2020] EWHC 726 (COMM)) AND CLEARLAKE CHARTERING USA V PETRÓLEO BRASILEIRO [2020] EWHC 805.

BACKGROUND

The *MIRACLE HOPE* was time-chartered by its head owners ('Ocean Light') to Trafigura Maritime Logistics Pte Ltd ('Trafigura') who sub-chartered the ship to Clearlake Shipping Pte Ltd ('Clearlake'). In turn, Clearlake sub-sub-chartered the ship to Petróleo Brasileiro SA ('Petrobras') for a voyage carrying crude oil from Brazil to China. Under the terms of each charterparty the owners agreed to discharge the cargo without presentation of the original bills of lading if the charterers invoked the LOI provisions. These provided for the application of the IG's standard LOI under which the charterers agreed to (i) indemnify the owners for any liability arising due to the cargo being delivered without presentation of the original bills of lading; (ii) provide funds to defend any related proceedings; and (iii) provide 'on demand such bail or other security as may be required' to avoid an arrest of the ship or to release it from arrest.

Petrobras asked Clearlake to discharge the cargo without production of the original bills of lading against the standard LOI wording. Clearlake passed the request up the chain to Trafigura who passed it on to Ocean Light and the cargo was delivered without the original bills of lading having been presented.

The ship was subsequently arrested in Singapore by the cargo receivers' bank, Natixis, who claimed damages from Ocean Light for mis-delivery of the cargo and demanded security of \$76m. Each disponent owner in the charterparty chain then asked its charterer to honour the LOI that they had given. However, as security was not provided and the ship remained under arrest, Trafigura obtained an order against Clearlake from the English court that security should be provided 'forthwith'. Clearlake subsequently obtained a similar order against Petrobras.

THE ISSUES

In spite of the Court's Orders, neither Clearlake nor Petrobras provided security and the ship remained under arrest. The matter was, therefore, referred back to the English Court. Both Clearlake and Petrobras argued that they were prepared

to issue bank guarantees as security but had been prevented from doing so by the alleged unreasonable security demands that had been made by Natixis. They also said that they had intervened in the Singapore proceedings so as to obtain that Court's ruling but this had been delayed due to Covid-19 restrictions.

The English Court accepted that Clearlake and Petrobras had tried to put up security by way of a bank guarantee but said that they should have paid cash into court as security instead as soon as it became clear that the terms of the bank guarantee could not be agreed and that the Singapore Court was unable to provide a prompt ruling. The Court, therefore, ordered Clearlake and Petrobras to make a cash payment of \$76m into the Singapore Court. At a further subsequent hearing, Clearlake argued that it should only become obliged to pay the cash into court at the same time that Petrobras made their payment. The Court rejected this argument on the basis that the obligations Clearlake owed to Trafigura were independent of those that Petrobras owed to Clearlake. Clearlake was obliged to provide the security regardless of whether or not Petrobras provided it.

POINTS ARISING FROM THE ENGLISH COURT'S FINDINGS

The standard IG LOI wording states that such 'security as may be required' must be put up. The judge said that this meant that such security, as is required by the court of the jurisdiction in which the arrest is made, should be issued but that there is no obligation to agree to unreasonable demands made by the arresting party. Trafigura's argument that Clearlake and Petrobras should put up whatever form of security was demanded by Natixis was, therefore, rejected.

The requirement under the standard IG LOI wording to provide security 'on demand' does not mean that a party must put up security immediately or within a particular time frame. However, the Judge held that security must be provided in the shortest practicable time, subject to the particular circumstances of the case. In order to meet such a requirement, the indemnifying party should consider making a cash payment into Court, if guarantee wording cannot be agreed promptly, or by asking the arresting court to determine what is sufficient security.

An intermediate charterer in an LOI chain is obliged to provide security to the owner up the chain even though its own charterer down the chain has failed to provide security.

SHIP OPERATORS, MANAGERS AND LIMITATION OF LIABILITY



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ARTICLE 1 OF THE 1976 LIMITATION CONVENTION ENABLES AN 'OWNER, CHARTERER, MANAGER OR OPERATOR OF A SEAGOING SHIP' TO LIMIT THEIR LIABILITY FOR CLAIMS IN RESPECT OF LOSS OF LIFE, PERSONAL INJURY OR DAMAGE TO PROPERTY OCCURRING ON BOARD OR IN DIRECT CONNECTION WITH THE OPERATION OF THE SHIP.

In a recent judgment (the *STEMA BARGE II* [2020] EWHC 1294) the English Court confirmed that 'operator' under Article 1 of the Limitation Convention may include the manager of the ship, as well as any entity which, with permission of the owner, directs its employees to board the ship and operate the ship in the ordinary course of the ship's business.

The case involved an unmanned barge, the *STEMA BARGE II*, which, when laden with a cargo of quarried rock, dragged its anchor during a storm off Dover in November 2016 and was alleged to have damaged an undersea cable.

The cable owner brought a claim of €55m for damage to the cable against the barge's registered owner and charterer. The owners and charterers, together with a third entity called Stema Shipping UK Limited ('Stema UK'), issued proceedings in the English Court seeking to limit their liability to approximately £5.5m calculated by reference to the barge's tonnage.

The cable owner acknowledged that the owners and charterers could limit their liability under the 1976 Limitation Convention. However, the cable owner argued that Stema UK was neither an operator or manager of the barge within the meaning of Article 1 of the Convention and, therefore, was not entitled to limit its liability.

The Court found on the facts that the charterers and owners had arranged the loading of the cargo in Norway and for the towage of the barge to Dover. They also found that Stema UK had not performed any practical role in the performance of the voyage from Norway to Dover. However, once the barge had arrived off Dover and had separated from the tug, Stema UK had provided personnel to operate the barge on behalf of the barge owners in order to carry out transshipment and delivery of the cargo. For this purpose, Stema UK had selected the anchoring location and personnel, employed by Stema UK, had gone on board the barge to drop the anchor, as well as attending to various matters such as ballasting of the barge during cargo discharge; maintaining the generators; operating the navigation lights and monitoring the barge's position.

The charterers had also maintained a limited operational role after arrival at Dover by continuing to monitor weather

forecasts and arranging a hull and machinery inspection, but they had no personnel available to operate the barge while it was at Dover. The operation of the barge was carried out by Stema UK alone, sending its personnel on board to do what was necessary and Stema UK personnel were instrumental in the decision to keep the barge at anchor during the storm.

In light of the facts, the Court had to decide whether Stema UK could be deemed to be a manager or an operator, or possibly both of these, as the roles may overlap.

The Court said that the manager of a ship is typically a party entrusted by the owner with the duty of devising and maintaining a safety management system to ensure the safe operation of the ship, the prevention of pollution, crewing the ship with appropriately qualified and trained personnel, maintaining the ship, finding employment for the ship and preparing the ship for trading.

In the case of a conventionally manned merchant ship it was difficult to distinguish management from operation and the two concepts were interchangeable. However, the Court suggested that management is concerned with standards, procedures and monitoring systems to ensure the safe operation of the ship; whereas operation is more concerned with the actual working of the ship on a day to day basis.

In the case of an unmanned barge, there were far fewer operational requirements but, nevertheless, being an 'operator' still entailed a notion of management and control over the operation of the ship. The Court said that the ordinary meaning of 'the operator of a ship' embraces not only the manager, but also the entity which, with the permission of the owner, directs its employees to board the ship and operate her in the ordinary course of the ship's business.

Taking the evidence as a whole, the Court decided that Stema UK was the operator of the barge for the period of time that it was off Dover, and, therefore, could limit its potential liability in respect of the claim by the cable owner.

Identifying which party is a manager and which is an operator is primarily a factual exercise. However, the Court has provided useful guidance that a 'manager' is the entity which is mainly responsible for standards, procedures and monitoring systems to ensure the safe operation of the ship; and that it is possible that an entity may be deemed to be the 'operator' of a ship only for a limited stage of the voyage, depending upon the extent of physical and decision making control exercised over the ship by that entity at the time of the incident.



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