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Impact of Passage Planning on Seaworthiness and Carriage of Goods

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WHAT IS PASSAGE PLANNING?

- Navigation Tool for safe and efficient transit
- 4 Steps of Passage Planning (Appraising/ Planning/ Execution/ Monitoring)
- SOLAS Chapter V Regulation 34
- Guideline for Voyage Planning [IMO Resolution 893 (21)]
- STCW A VIII/2 part 3 -1
- Aim of a Passage Plan
- Role of the Navigation Officer

THE NEED FOR PASSAGE PLANNING



Aids critical decision making



Promotes safety and efficiency
in navigation



Cuts language and cultural barriers



Faster turnaround



Cleaner seas and air



Productivity Factor



Reduces carbon footprint
of carriage

ASPECT OF SEAWORTHINESS

- 'Prudent Owner' Test
 - Origin - Carver, A Treatise on the Law relating to the Carriage of Goods by Sea 3rd Edition 1900 – Section 18
 - McFadden vs Blue Star Line (1905)
- Exercise of Due Diligence
 - River stone Meat Co. vs Lancashire Shipping (1961)
 - The Muncaster Castle

THE HAGUE – HAGUE VISBY RULES

- International Convention for the unification of certain rules of law relating to Bills of Lading, Brussels (August 25, 1924)
- The Hague Rules
- The Hague Rules as amended by the Brussels Protocol 1968
- Background of Articles to B/L
- Article III – Rule 1
- Article IV – Rule 2a

GENERAL AVERAGE – YORK ANTWERP RULES 1994/2004

- The Comité Maritime International (CMI)
- The Lettered York Antwerp Rules
- The Numbered York Antwerp Rules
- Understanding General Average
- What is Rule D Defence

CASE STUDY – CMA CGM LIBRA



RELATED INFORMATION - PART I

- IMO No. 9399193
- Flag Malta
- Call Sign 9HA2021
- MMSI 249819000
- Gross tonnage 131332 (since 01/12/2009)
- DWT 131292
- Type of ship Container Ship (since 01/12/2009)
- Year of build 2009
- Capacity 11,356 TEU Vessel
- Laden 5983 Containers
- Passage Xiamen to Hong Kong
- BA Chart 3449
- Notice to Mariners (6274(P)/10) by UKHO in December 2010

CASE STUDY – CMA CGM LIBRA

RELATED INFORMATION – PART II

- The Incident Stranding/Grounding
- Date 17/18 May 2011
- Where Departure Port of Xiamen, China between Buoy No.14-1 and Buoy No.14
- Salvage Expenditure incurred US\$9 Million
- GA declared US\$13 Million
- GA Contribution By 92% of cargo interests paid GA proportion ranging from 98.5 to 100%
- Dispute Balance 8% approx. US\$800,000 from Cargo Interests



THE NAVIGATIONAL CHART BA 3449

ADMIRALTY COURT OF FIRST INSTANCE

- Ship Owners Assertion
- Admiralty Judge ruling
- Error of Navigation
- Absence of Adequate Passage Plan
- Causative to Grounding
- Breach to exercise due diligence prior to and at the time of commencement of voyage
- To make Vessel Seaworthy
- Cargo interests not liable to contribute

COURT OF APPEAL

- Bench of 3 Judges
- Two Questions of Law
 - Did the defective Passage Plan render the vessel unseaworthy for the purposes of Article III Rule 1 of the Hague Rules?
 - Did the failure of the Master and Second Officer to exercise reasonable skill and care when preparing the passage plan constitute want of Due Diligence on the part of the carrier for the purposes of Article III of the Hague Rules?
- Appeal failed and was dismissed
- Unanimous Judgement

SUPREME COURT

- Bench of 5 SC Judges
- Upholds Judgement of the Admiralty Judge at First Instance and the Court of Appeals
- Question 1 – Vessel likely to be unseaworthy if she begins her voyage with a defective Passage Plan
- Article IV Rule 2 (a) exception – Error in Navigation not a defence
- Question 2 – A Carrier cannot escape its Article III Rule 1 obligations by delegating them to its servants or agents
- Carrier Responsible for Causative Failure by Crew to exercise due diligence

SUMMING UP

- Legal Principles of due diligence and seaworthiness applied to Passage Planning
- Error in Passage Planning prior to the commencement cannot be characterized as an error in Navigation
- Importance to Application of temporary and preliminary Notices to Mariners
- Cargo interests to give careful consideration to GA contribution
- US\$116 Million claims related to Passage Planning as per IG of P & I Clubs since Admiralty Court decision to March of 2022
- Stepping up of Evidence Collection during a Casualty Investigation and GA declaration is the way ahead

ACKNOWLEDGEMENT / REFERENCES

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