

Ref : DMA/AIFI/98/C 1038
Date: 31/07/2019

Dear Captain
Good Day,

=====
=====
Below please find the court ruling of a case of grounding and failure of ship owners to win the case in declaring General Average due to lack of proper “Passage Planning”.

On 18 May 2011, whilst leaving the port of Xiamen in China, the container vessel, CMA CGM Libra, grounded.

The owners sued the cargo interests for a contribution in general average. The owners claimed that the cause of the casualty was “an uncharted shoal outside the fairway on which the vessel grounded.”

The cargo interests refused to contribute in general average on the basis that the cause of the casualty was the vessel’s unseaworthiness due to her passage plan being defective. The cargo interests further alleged that the casualty was caused by “owners’ actionable fault”, thus also a breach of article III, rule 1 of the Hague Rules.

Judgment

The Court held that the owners’ claim failed. The cargo interests had established causative unseaworthiness and were therefore not liable to contribute in general average. Further, the court found that:

1. The master’s decision to deviate was negligent. There had been notices to mariners which warned that it was unsafe to rely upon charted depths and which required corrections to be made to the chart. A prudent mariner would conclude that it was not safe to navigate outside the fairway where no information was given as to the least depth and where there were numerous depths less than those charted.
2. The vessel’s passage plan was defective. IMO guidelines state that a passage plan should include all areas of danger. Therefore, the presence of numerous depths less than the charted depths in the approaches to Xiamen constituted a source of danger.
3. Passage planning was an aspect of seaworthiness. Seaworthiness extended to having on board the appropriate documentation, including the appropriate chart.

4. The negligence in the preparation of the passage plan amounted to a failure to exercise due diligence to make the vessel seaworthy in accordance with article III, rule 1 of the Hague Rules. The owner's duty to exercise due diligence was non-delegable.

Comments

This case is a noteworthy reminder from the courts that a vessel's passage planning is an aspect of seaworthiness. It highlights the need for ship-owners to ensure that careful, accurate passage planning is carried out, including updating charts to be used during the voyage and consulting relevant notices to mariners, particularly when an intended voyage includes navigating in confined and difficult waters.

=====

=====

Based on above, it shall once again be reminded that proper and accurate preparation of "Passage Plan" taking into account all relevant facts and data is absolutely essential and our esteemed Masters shall ensure that "Passage Plan" is properly prepared well in advance of beginning of the passage and all relevant officers are thoroughly familiar with it.

You are requested to confirm receipt, discuss the contents in the next consolidated meeting on board & keep a copy in the file DA-11 .

Best Regards,
Capt. A. Amini
Accident Investigation / Fleet Inspection Expert
Department of Maritime Affairs
ROD Ship Management Co.
Dept. Tel No. : +98-21-26100357
Dept. Fax No.: +98-21-26100356
Direct Tel No.: +98-21-23843207

Please reply to dma@sealeaders.com

(Note: This e-mail has been sent as BCC <blind carbon copy to : All R.O.D.-SMC Vessels, to eliminate the lengthy list that would result if this e-mail is printed)