

## ***Crewing & Unseaworthiness***

Following *The Happy Aras* [2026], when does crew incompetence cross the line into unseaworthiness — and how is this impacting jurisdictional strategy in disputes?

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**Unity Ship Group S.A. and Euroins Insurance JSC [2026] EWHC 7  
(Admlty) (the “Happy Aras”)**

**BACKGROUND FACTS**

- HAPPY ARAS - BULK CARRIER BUILT 1990 AND REGISTERED BELIZE.
- GROSS TONNAGE 2,659 – NO REQUIREMENT FOR VDR AS UNDER 3,000.
- VOYAGE RENI, UKRAINE TO MERSIN, TURKEY CARRYING CARGO OF SOYA BEANS.
- 20:58 ON 20 MARCH 2023 GROUNDED OFF DATCA PENINSULA.
- SERIOUSLY DAMAGED.
- CLAIMANT OWNERS DECLARED GA.



- CARGO OWNERS / VOYAGE CHARTERERS, DIATOLD TRADE PTE LTD.
- CLAIM AGAINST BULGARIAN INSURERS, EUROINS - AVERAGE GUARANTEE FOR CONTRIBUTIONS TO GA:

REASONABLY, PROPERLY AND LEGALLY DUE.

- BRIEFED EUROINS DEFENDING GA CLAIM OF US\$1,271,095.89.
- BASIS: VESSEL UNSEAWORTHY:
  - (I) NOT MANNED COMPETENT CREW, PARTICULARLY A COMPETENT MASTER &
  - (II) NO PROPER SYSTEM IN PLACE FOR PASSAGE PLANNING AND/OR FAILURE TO EXERCISE DUE DILIGENCE IN PASSAGE PLANNING.



- THE C/P RECAP & CONGENBILL 1994 FORM B/L, INCORPORATED THE C/P, PROVIDED FOR GA TO BE SETTLED IN LONDON PURSUANT TO YORK/ANTWERP RULES 1994.
- THE AVERAGE GUARANTEE GOVERNED ENGLISH LAW & CONTAINED JURISIDICION CLAUSE IN FAVOUR OF HIGH COURT, LONDON.
- OWNERS COMMENCED GA CLAIM IN ADMIRALTY COURT.



# EVIDENCE AT TRIAL

- FOCUS: CONDUCT MASTER & PASSAGE PLAN.
- MASTER - OFFICER OF THE WATCH / OOW FROM 20:00 ON 20.03.2023.
- CLAIMANT CALLED NO EVIDENCE - CREW, INCL. MASTER:  
  
    “*REMARKABLE*” - ADMIRALTY REGISTRAR DAVISON.
- EXPERTS: CAPTAIN SIMPSON - INSURERS & CAPTAIN IVANOV - OWNERS -  
    EVIDENCE ON PASSAGE PLANNING STANDARDS & NAVIGATION  
  
[NAVIGATIONAL ERROR?].
- NO VDR - RELIANCE ON DECK, ENGINE AND GPS LOGS, WORKING CHART & CREW  
    STATEMENTS - PROCEEDINGS: TURKISH COMMERCIAL COURT.
- PUBLICLY AVAILABLE AIS DATA REVIEWED - APPROXIMATE ROUTE PLOTTED:



# PASSAGE PLAN COURSE [YELLOW]

# ROUTE TAKEN [RED]



- MASTER'S ACTIONS:

- FIXINGS

- VESSEL'S COURSE

- SPEED

- SOLE LOOKOUT

- ENTRIES IN LOGS.

- EXPERTS' CRITICISMS OF PP BUT NOT CAUSATIVE.



## RELEVANT LAW

- **RULE D OF THE YORK-ANTWERP RULES:** RIGHTS TO GA CONTRIBUTIONS NOT AFFECTED, THOUGH EVENT WHICH GAVE RISE TO THE SACRIFICE OR EXPENDITURE, MAY BE DUE TO FAULT OF ONE OF THE PARTIES, BUT NO PREJUDICE TO ANY DEFENCE OPEN TO A PARTY RE SUCH FAULT.
- RE FAULT: LORD HAMBLEN *THE CMA CGM LIBRA* [2021] UKSC 51 STATED A SHIPOWNER WAS NOT ENTITLED TO RECOVER GA CONTRIBUTIONS FROM CARGO OWNERS WHERE THE GA EXPENDITURE OR LOSS WAS CAUSED BY OWNERS “ACTIONABLE FAULT”, INCLUDES ANY CAUSATIVE BREACH OF TERMS OF CONTRACT OF CARRIAGE [PARA.21].
- “ACTIONABLE FAULT” IN SUBJECT CASE: BREACH OF THE CARRIER’S DUTY OF SEAWORTHINESS.



# THE HAGUE RULES

- *ARTICLE III RULE 1 PROVIDES:*

*THE CARRIER SHALL BE BOUND BEFORE AND AT THE BEGINNING OF THE VOYAGE TO EXERCISE DUE DILIGENCE TO –*

*(A) MAKE THE SHIP SEAWORTHY.*

...

- *ARTICLE IV PROVIDES: [RIGHTS AND IMMUNITIES OF THE CARRIER]*

*1. NEITHER THE CARRIER NOR THE SHIP SHALL BE LIABLE FOR LOSS OR DAMAGE ARISING OR RESULTING FROM UNSEAWORTHINESS UNLESS CAUSED BY WANT OF DUE DILIGENCE ON THE PART OF THE CARRIER TO MAKE THE SHIP SEAWORTHY.....*

*WHENEVER LOSS OR DAMAGE HAS RESULTED FROM UNSEAWORTHINESS, THE BURDEN OF PROVING THE EXERCISE OF DUE DILIGENCE SHALL BE ON THE CARRIER OR OTHER PERSON CLAIMING EXEMPTION UNDER THIS ARTICLE.*



*2. NEITHER THE CARRIER NOR SHIP SHALL BE RESPONSIBLE FOR LOSS OR DAMAGE ARISING OR RESULTING FROM:*

*(a) ACT, NEGLIGENCE, OR DEFAULT OF THE MASTER.....IN THE NAVIGATION OR MANAGEMENT OF THE SHIP.*

[NAUTICAL FAULT IMMUNITY OF CARRIER]

- TEST OF SEAWORTHINESS [USUAL OR CONVENTIONAL]: WHETHER A PRUDENT OWNER WOULD HAVE REQUIRED THE RELEVANT DEFECT, HAD HE KNOWN OF IT, TO BE MADE GOOD BEFORE SENDING HIS SHIP TO SEA.

*[SCRUTTON 23 ED. AT PARA 7-025; THE CAPE BONNY [2018] 1 LLOYD'S REPORTS 356 AT PARAGRAPH 118].*

- DEFECTIVE PP COULD RENDER SHIP UNSEAWORTHY PURSUANT TO ARTICLE III RULE 1: *THE CMA CGM LIBRA [2021] 2 LLOYD'S REPORTS 613, [2021] UKSC 51.*



# ASPECT OF SEAWORTHINESS – COMPETENT CREW

- CRESSWELL J IN *THE EURASIAN DREAM* [2002] EWHC 118 (COMM)

- PARAMETERS OF DUTY:

(I) INCOMPETENCE OR INEFFICIENCY: DISABLING WANT OF SKILL OR KNOWLEDGE;

(II) QUESTION OF FACT;

(III) INCOMPETENCE DISTINGUISHED NEGLIGENCE;

(IV) UNSEAWORTHINESS CAUSE OF LOSS;

(V) VESSEL FOUND TO BE UNSEAWORTHY - INCOMPETENCE OR INEFFICIENCY OF MASTER

...CARRIER SHOW EXERCISED PROPER CARE RE:

(A) APPOINTMENT PROCESS;

(B) SPECIFIC COMPETENCE OF THE MASTER RE VESSEL AND VOYAGE.



# **SUBMISSIONS & FINDINGS OF THE COURT**

## **A. COMPETENCE OF MASTER**

- INCOMPETENT – OOW MASTER RELIEVED FAILED TO PLOT ANY POSITIONS (PER PP, VESSEL’S SMS AND IMO GUIDELINES) - ILLICITED NO CRITICISM MASTER - REPEATED.
- NO REQUISTE FIXINGS PP.
- MASTER’S FIRST ACTION: CUT THE CORNER & NOT RECORDED IN DECK LOG.
- MASTER SENT LOOKOUT TO MAKE TEA – BREACH VESSEL’S SMS - PROVIDED A SOLE LOOKOUT ONLY IN DAYLIGHT.
- FAILED ALTER COURSE WP 54 – MISSED WP & NO LOOKOUT / SIGHTING PROMINENT LAND OF DATCA PENINSULA [NEARLY 280M ELEVATION ABOVE SEA LEVEL] – CLAIMANT’S EXPERT.

- SHIP'S RADAR NOT MONITORED.
- BRIDGE NAVIGATIONAL WATCH ALARM SYSTEM (BNWAS) OPERATIONAL & IGNORED.
- ENTRIES IN DECK AND ENGINE LOGBOOKS RETROSPECTIVE, FALSE AND INTENDED TO DEFLECT BLAME.
- GROUNDING NOT PRODUCT OF ISOLATED ERROR, ERRORS:

*“NUMEROUS AND EGREGIOUS AND CAN BE CHARACTERIZED AS A COMPLETE DERELICTION OF DUTY” [PARAGRAPH 39].*

- PREFERRED EVIDENCE OF CAPT. SIMPSON - RULE OF THUMB TEST FOR THE PRUDENT OWNER TEST OF SEAWORTHINESS:

BE HAPPY SAILING ON THIS SHIP TO THE NEXT PORT? WITH SADNESS, USE ANY EXCUSE IN THE BOOK NOT TO CANCEL TAXI TO THE AIRPORT.

- UNSEAWORTHINESS ESTABLISHED - INCUMBENT ON CARRIER / CLAIMANT TO PROVE EXERCISE OF “DUE DILIGENCE” TO BENEFIT FROM IMMUNITY UNDER ARTICLE IV RULE 1.
- DESPITE MASTER’S CERTIFICATES OF COMPETENCE PROVIDED IN EVIDENCE, NOT NECESSARILY ENOUGH – CRESSWELL J STATED IN *THE EURASIAN DREAM*.
- WITNESS EVIDENCE OF CAPT. MUTLU FOR OWNERS REGARDING DUE DILIGENCE - LITTLE & COULD NOT BE TESTED XX.



- BURDEN OF PROVING DUE DILIGENCE NOT DISCHARGED OWNERS - CLAIM FAILED.

## **B. PASSAGE PLANNING**

- DEFECTS NOT CAUSATIVE OF GROUNDING TO RENDER THE VESSEL UNSEAWORTHY.

## **QUANTUM**

- IF LIABILITY ESTABLISHED, GA EXPENSES AS CLAIMED, AWARDED IN FULL (CAPPED UNDER Y/A RULES).



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## SUMMARY

- HIGH HURDLE - CREW INCOMPETENCE CROSS LINE INTO UNSEAWORTHINESS.
- NUMEROUS FAILURES OF MASTER - COMPLETE “*DERELICTION OF DUTY*” & MISLEADING AND FALSE ENTRIES IN LOGBOOKS.
- UNSEAWORTHINESS ESTABLISHED, OWNERS COULD HAVE SUCCEEDED HAD THEY APPEARED AND SATISFIED THE BALANCE OF PROBABILITY TEST, SHOWING THEY HAD EXERCISED DUE DILIGENCE IN THE APPOINTMENT PROCESS ETC. – HOWEVER AS STATED BY THE REGISTRAR AT THE OUTSET OF THE FOUR DAY TRIAL:

*“REMARKABLY, THE CLAIMANT CALLED NO EVIDENCE FROM THE CREW, INCLUDING THE MASTER.”* [PARA. 4].

# JUDGMENTS IMPACT ON JURISDICTIONAL STRATEGY?

- LIMITED.
- SUBSTANTIAL AMOUNT REQUIRED: COMPLETE DERELICTION OF DUTY.
- FACT SPECIFIC.
- EVEN HANDED, FAIR APPROACH OF THE ENGLISH COURTS.
- ANY QUESTIONS?

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