Rob Shearer: The CMA CGM LIBRA — Court of appeal update

On 4 March 2020 the Court of Appeal of England and Wales handed down its decision in Alize 1954 v Allianz Elementar Versicherungs AG(The CMA CGM LIBRA)[1]. Following on from our analysis of the first decision, we have provided an update on the latest developments.

What is the headline?

There is now a binding English Law precedent that passage planning can affect a vessel's seaworthiness. It creates more certainty about what exactly can render a vessel unseaworthy and the decision also reaffirms the non-delegable nature of the duty of seaworthiness at the commencement of a voyage.

Does this change our advice?

Our advice to Members remains to observe the McFadden Test[2]: would a prudent owner have required the relevant defect, had they known of it, to be made good before sending their ship to sea? In other words, would you allow a ship to sail if you knew it had a defective passage plan?

What was the dispute about?

On 17 May 2011, the CMA CGM LIBRA grounded whilst leaving the port of Xiamen in China. The vessel had left a buoyed fairway and ran aground on an uncharted shallow area. After an investigation, it was revealed that the vessel's charts and passage plan had not been updated to reflect recent notices to mariners that had warned that many of the depths noted on charts were much shallower than recorded.

What did the court decide at first instance?

At the first instance, Mr Justice Teare found that there had been an actionable fault on the part of the owners the CMA CGM LIBRA, which provided cargo interests with a complete defence to any claim from them for

general average contributions. By failing to update their navigational charts and passage planning, Teare J held that the vessel was unseaworthy at the commencement of the voyage.

What was the appeal about?

On appeal the owners argued that:

- defective passage planning could not render a vessel unseaworthy because it was merely the recording of a navigational decision and therefore an error in navigation; and
- that even if the ship was unseaworthy, there was no relevant failure to exercise due diligence, as the task had been delegated to the master and crew in their capacity as navigators (not carriers).

What did the Court of Appeal say?

The Court of Appeal unanimously dismissed the appeal; stating Teare J had correctly applied long established principles of English law. Lord Justice Males summarised the position about passage planning as follows:

"a properly prepared passage plan is an essential document which the vessel must carry at the beginning of any voyage. There is no reason why the absence of such a document should not render a vessel unseaworthy, just as in the case of any other essential document."

With respect of the delegation of due diligence, the Court of Appeal found the carrier/navigator distinction to be misconceived; Lord Justice Males stating if "*the vessel is not seaworthy, for whatever reason, there is a danger that the cargo will not be carried safely to its destination*". The true distinction is the division of risk *before and at the commencement of the voyage* (where the risk is with the owners) and then *during the voyage* (where the risk is generally with the charterers). The duty cannot be delegated before and at the commencement of the voyage.

[1] *Alize 1954 v Allianz Elementar Versicherungs AG (The CMA CGM LIBRA) [2020] EWCA Civ 293*

[2] *McFadden v Blue Star Line [1905] 1 K.B. 697*