

# SHIP MANAGEMENT

INTERNATIONAL

Issue No 74 July/August 2018



**Value vs *THREAT***

Balancing the 'smart' risk

# Notebook

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## Managers face diverse nature of exposures to liability

**Stuart Munro**, CEO of Transport Intermediaries Club (ITIC), explains why ship managers need to be prepared for the unexpected



**C**laims for negligence or errors or omissions can be devastating for ship managers and, if they are unprepared, can ultimately affect them in more than a financial sense. They can damage reputations and jeopardise existing customer relationships as well as future business prospects. A look at three claims recently handled by ITIC serves to demonstrate the diverse nature of the exposure to liability which managers can face.

ITIC recently defended a ship

manager against allegations of negligence made by a ship owner following the loss of a lifeboat overboard. The lifeboat was subsequently located drifting at sea but, in view of the cost of deviating the ship to effect a recovery, it was decided to abandon it. The owner alleged that the loss of the lifeboat had been caused by the manager's gross negligence and mismanagement. It subsequently withheld \$90,000 against fees and disbursements owed to the manager, even though it had no right to do so

under the terms of the SHIPMAN 2009 management contract governing the relationship between the parties, and absent any evidence to support its claim.

Although it had not been possible to physically examine the release mechanism of the lifeboat before arrangements were made for its disposal, the lifeboat had successfully undergone its annual service and inspection six months previously and had been wire-lashed on board the vessel for added security. ITIC advised the owner that,

if the sum owed to the manager was not paid, interest would be applied, and the ship would be arrested. The owner thereafter remitted the funds due, and nothing further was heard about the lost lifeboat.

In another incident, a pool manager fixed a ship on the basis that it could transit the newly enlarged Panama Canal. To the best knowledge of the pool manager, the ships in the fleet were all equipped appropriately for Panama Canal transit. It subsequently emerged, however, that the nominated ship's bollards were not sufficiently strong to comply with Panama Canal specifications, and the canal authorities would not let the ship transit.

It was therefore necessary to carry out urgent onboard rectification work which would normally have cost about \$70,000 as part of scheduled maintenance but which in this case ended up costing \$200,000. The owner claimed the additional costs from the

pool manager and ITIC reimbursed the claim.

Not all claims against ship managers are limited to physical damage. In a recent incident, a yacht manager was instructed by an owner to terminate the employment of two crew members, both of whom were French nationals employed by the owner. The manager gave the crew members a month's notice, as required by their contracts which were said to be subject to UK law. (Technically speaking, there is no such thing as 'UK law', since England and Wales, and Scotland and Northern Ireland have separate legal systems).

Lawyers representing the former crew members subsequently alleged that the owner had terminated the employment contracts without due consideration for the procedures that had to be followed under French law. Litigation was initiated against both the owner and the manager, while the yacht, which was in French waters at the time,

was arrested as security for the claim.

The owner argued that the manager had not obtained any advice or guidance as to the procedural requirements under French employment law, and that such alleged negligence had left the owner exposed to a claim under France's strict employment laws. French lawyers advised that, should the matter go to litigation, the former crew member's claims stood a good chance of succeeding. Despite the contract's provisions, French law would apply, because the two individuals had been in France at the time of their employment.

The claims totalled €194,680 and included damages for loss of earnings and compensation pursuant to French mandatory employment law. The owner ultimately settled for approximately €75,000. The manager, meanwhile, denied responsibility for obtaining employment advice, but ultimately agreed to contribute a third of the settlement. ●



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