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COMMODITIES IN FOCUS WEEKLY - ISSUE 156

THE “HAPPY ARAS” [2026] EWHC 7 (ADMLTY)

BACKGROUND

On 20 March 2023 the HAPPY ARAS, a 2,659 GT bulker built in 1990 *en route* from Reni, Ukraine, to Mersin, Turkey, grounded on the north shore of the Turkish Datça Peninsula, near the Greek island of Kos.

The Vessel was seriously damaged and Owners declared General Average. The adjustment required cargo interests to contribute USD 1,271,095.89.

Cargo interests refused to contribute anything on the basis that the Vessel was unseaworthy in two respects: (i) the Master was incompetent; and (ii) the passage plan was defective.

The voyage charter, the terms of which were incorporated into the bills of lading, provided for disputes to be referred to the English High Court and Owners duly brought a claim against cargo interests for their contribution.

EVIDENCE AT TRIAL

The Master took control of the Vessel as officer of the watch (“OOW”) at 20:00 on 20 March 2023.

The Vessel, which had just passed the island of Kos on an easterly bearing was, according to the passage plan, supposed to have arced gently around that island, ending up on a south-westerly bearing in order to sail on in the general direction of Rhodes.

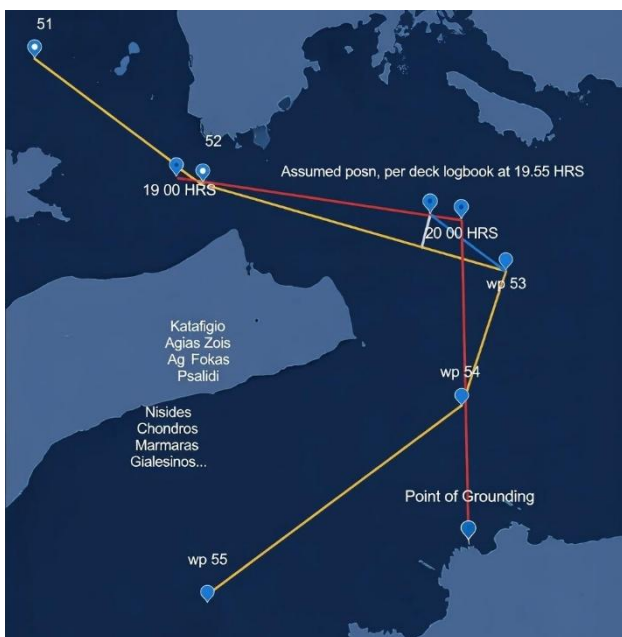
What happened in fact however was very different: (i) as soon as the Master took over as OOW he directed the Vessel on a southerly bearing, “cutting the corner” with respect to the passage plan; (ii) one further minor alteration was made thereafter at 20:16, adding a few degrees to the southerly direction; (iii) the Master then ordered the lookout to leave the bridge to brew some tea, leaving the Master alone on the bridge; (iv) there should have been warning alarms from the radar on the bridge which would have alerted him to the looming Datça Peninsula with its nearly 280 m elevation above sea level; (v) proper use also should have been made of the BNWAS (Bridge Navigational Watch Alarm System) which would have ensured that the watchkeeper was present and awake; and (vi) ultimately the Master must have ignored the sight of the Peninsula with his own eyes as it should still have been visible to the naked eye when he made his course alteration.



The Vessel grounded at 20:58.

After the Master had effectively steered the Vessel into the Peninsula, he took it upon himself to falsify the deck and engine logs so that they recorded untruthfully that steps had been taken to follow the planned track and kill the speed of the engines prior to grounding. These entries however conflicted with the AIS data and it was obvious that they were false and no position fixes were recorded on the Master's watch.

Here is an illustration of the course the Vessel actually took compared with the passage plan:



INCOMPETENCE OF THE MASTER

In order for cargo interests' defence that the Master was incompetent to succeed, there were two main hurdles to overcome: (i) the Master must be shown to be fully incompetent rather than just negligent; and (ii) since the Hague Rules were incorporated into the bills of lading, if Owners were able to show that they had exercised due diligence in the appointment of the Master, they would not be liable for any loss or damage resulting from any incompetence¹.

The Judge in this case found that the Master was incompetent: *"The grounding was not the product of an isolated error. The errors were numerous and egregious and can be characterized as a complete dereliction of duty."*

The Judge having found the Master to be incompetent, it was incumbent on Owners to show that they had exercised due diligence in appointing him.

Unfortunately for Owners, it appears they provided very little in the way of evidence, submitting only the Master's certificate of competency. Surprisingly, neither the Master himself nor any of the crew were called to give evidence, no performance evaluations for the Master were provided (although they were referred to in a witness statement provided by the beneficial owner of Owners and so were admitted at best as hearsay evidence) and no positive employment references from third parties were provided (except as hearsay).

The Judge accordingly found that the burden of proving due diligence, which fell on Owners, had not been discharged and Owners' claim failed.

DEFECTIVE PASSAGE PLANNING

Cargo interests' alternative defence that the passage plan was defective however did not succeed.

In the first place, the Judge found that while the passage plan was "basic" (not having any "no go" areas marked on the plan nor any cross track limits²) this did not in itself make it defective; rather this placed a greater onus on the Master to exercise competence.

Secondly, it was admitted by both parties' experts that if the (albeit basic) passage plan had been followed, the grounding would not have happened.

The fact is that the Master ignored the passage plan completely and so the passage plan (whether defective or not) was not causative of the grounding.

¹ Hague Rules, Article IV rules 1 & 2(a).

² "Cross track limits" refer to predefined boundaries which are drawn either side of a planned route outside of which vessels should not stray.



TAEKAWAYS

Owners' claim failed finally because they were unable to evidence due diligence in the appointment of the Master. Prudent owners will want to take care therefore to ensure that they keep careful and accurate records of performance appraisals and positive employment references for all their crew, especially the Master. Certificates of competency cannot be relied on in isolation.

Whilst there has been an increase since the Supreme Court's decision in the CMA CGM LIBRA case in unseaworthiness claims based on poor passage planning, very few succeed. In this case, even if the passage plan had been found to have contributed to the grounding (which it did not) the Court said that it would not have resulted in a finding of unseaworthiness itself but would rather have increased the onus on the Master to be competent.

As an aside, prudent owners may also want to make sure that their vessels all have tea making facilities on the bridge so that a proper lookout can be maintained at all times!

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