

FEATURE

Ports on the River Paraná – Are they Safe?

Recently in the Casualty Newsletter we have reported on a number of grounding incidents involving vessels navigating the River Paraná which is South America's second longest river, covering a distance of nearly 2,500 miles through Argentina, Brazil and Paraguay. Much of its length is navigable for oceangoing vessels via dredged channels and it is an important waterway in the export of both soft and hard commodities with 100 million tons of cargo being shipped along the waterway each year. Groundings can restrict or block the waterway and, as well as resulting in potential damage to the affected vessel, they can also have a serious impact, both economic and operationally, on the ports and on other vessels transiting the waterway. The River requires continuous dredging in order to maintain its navigability and climate can affect the waterway at various times of the year. Many of the groundings which have occurred in recent months, have been blamed on an ongoing drought in Brazil with water levels in the River reported as being two feet below the May average. This reduction in water levels is neither rare or unusual and it certainly raises questions as to whether these ports are 'safe' ports.

If vessels are under a time or voyage charter, the obligation is usually for the charterers to warrant that they will only order vessels to proceed to ports that are

safe. If not expressly stated in the charterparty the courts will usually imply such a warranty into a time charter; similarly with a voyage charter but only if the charter is to/from a range of unnamed ports within a geographical range. Simply stated, a port needs to be prospectively safe, when the order to go there is given, for the ship to reach it, use it and leave it. Charterers are responsible for determining at a particular time if a port is safe and should not make an assumption that it is safe based on their previous experience of a particular port.

From an English law perspective what constitutes a 'safe' port was determined in *The Eastern City* [1958] 2 Lloyd's Rep. 127. In this seminal case the judge stated that '...a port will not be safe unless, in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship...'. It begs the question that at a time when water levels on a particular river, which ordinarily is safe to navigate, are reported to be low and there is a history of groundings, is the port unsafe and are charterers exposing themselves to a liability for breach of the safe port warranty for losses (e.g. hull damage, salvage, delay) arising following a grounding?

In a judgement handed down in January 2015 in

The Ocean Victory [2015] EWCA 16, the English Court of Appeal restated the principles laid down in the *Eastern City* but also provided direction as to what constitutes an 'abnormal occurrence' as 'realistically and having regard to whether the event had occurred sufficiently frequently so as to become a characteristic of the port'. In October 2006, the part-laden Capesize bulk carrier *Ocean Victory* was driven aground whilst attempting to leave Kashima port in Japan during a severe gale, the Master having decided that it was safer to put to sea in the stormy conditions rather than remain at the berth. The resulting losses were some USD138 million and subrogated hull underwriters sought to recover these against the charterers on the basis that they had breached the safe port obligations in the charterparty. There were two features of the port, the exposure of the berth to long wave swells and the vulnerability of the Kashima Fairway to northerly gales. Hull underwriters claimed these in combination rendered the port unsafe. The court at first instance determined that the storm that affected Kashima port at the time was not an 'abnormal occurrence' and found that although it was rare for the two (features) to occur at the at the same time, it was not inconceivable, making the port unsafe. The Court of Appeal has since rejected this and concluded that the conditions which affected Kashima were an 'abnormal

occurrence', the 'critical combination' of northerly gales and long wave swell being neither regular or occasional.

Although ultimately charterers in the *Ocean Victory* succeeded on appeal, the case serves as a valuable lesson as to the very considerable liabilities charterers and trading companies (with vessels on voyage charters) could potentially incur if they breach the unsafe ports warranty. In the case of river transits there is a sharp focus on the Master's ability to ensure safe passage. The commercial reality is that vessels are trading regularly to major trading hubs along the Paraná and the general responsibility for navigation along these routes sits squarely with the shipowner. The route to get to a port will only be 'unsafe' if its dangers cannot be avoided by good seamanship. It is nevertheless a fact that a once safe port can become an unsafe port very quickly. It is therefore essential when considering the safety of a particular port that charterers look at past evidence of features, combinations of those features and evaluate as far as they can the likelihood of them occurring again. With an increasing history of reduced water levels resulting from drought and a requirement to continuously dredge, there may be a good argument that ports on the River Paraná are unsafe at particular times for some vessels and charterers should have regard to this when ordering vessels to these ports at certain times.

RECENT PARANÁ GROUNDINGS

Idship Bulker ▣

19 April 2015



United Fortune

10 May 2015

Bulk Guatemala

13 May 2015

Nord Hydra ▣

18 May 2015



Smew

22 May 2015

Dubai Energy

26 May 2015



▣ Ships loading at the San Lorenzo terminal, the last deepwater port on the Paraná.

▣ A crowded waterway: Bulk carrier *Octobreeze Island* T-boned by the tanker *Ghetty Bottiglieri*, December 2014.



▣ The river was blocked in March 2014 when the *MV Paraskevi* remained grounded for several days despite the efforts of three heavy tugs. A queue of 80 vessels formed behind her illustrating the vulnerability of the Paraná to closure.

▣ Delays on the River - the cost of delays following the grounding of the *Nord Hydra* was estimated to be USD960,000 per day.





Seahawk 68 ▢

Fishing vessel, No other details
Date of Casualty 22 May 2015 – Late Notification
Type of Casualty Grounded on a reef off American Samoa. Salvage operations are underway
Type of Claim Salvage type claim



DBL165-1 ▢

Tank barge, Built 2011, 800 dwt
Date of Casualty 3 June 2015
Voyage No details
Cargo 50,000 gallons of jet fuel
Type of Casualty Grounding on the Kongiganak River near Bethel.
Type of Claim Possible hull damage and salvage type claim

Kapa

Fishing vessel, IMO 8878300, Built 1981, 30 dwt
Date of Casualty 3 June 2015
Type of Casualty Disabled in the Bering Sea. Russian tug *Atriya* located the vessel off Kildin Island and towed her to Murmansk.
Type of Claim Possible salvage type claim

Sea Crystal

Combined chemical and oil tanker, IMO 9512135, Built 2010, 17,602 dwt
Date of Casualty 4 June 2015
Voyage Adabiya, Egypt to King Fahd Port, Yanbu, Saudi Arabia
Cargo No details

Type of Casualty Collision with an unnamed tug at the port of Yanbu.
Type of Claim Collision damage claim
P&I Japan Shipowners Club



Hai Kou Jiu Hao

Passenger ship, Built 2015
Date of Casualty 5 June 2015
Type of Casualty Grounding during a storm off Hainan Island, China.
Type of Claim Possible hull damage and salvage claim

Go Skar

Bulk carrier, IMO 9071416, Built 1994, 43,656 dwt

Date of Casualty 7 June 2015

Voyage Bandar Abbas, Iran to Aqaba, Jordan

Cargo No details

Type of Casualty Adrift in the Gulf of Aden 165 miles southeast of Salalah.

Type of Claim Possible salvage type claim
P&I Swedish Club



Date of Casualty 5 June 2015

Voyage Kobe, Japan to Shanghai, China / No details / Kobe to Kitakyushu, Japan

Cargo General containerised cargo / ditto / No details

Type of Casualty Three-way collision in Kobe port during berthing/un-berthing operations.

Type of Claim Collision damage claim
P&I West of England for *Venus C*



Acta Orion/Reiger ▢

Acta Orion - Windfarm support vessel, IMO 9750268, Built 2015, 3,999 gt

Reiger - Pilot boat, No other details

Date of Casualty 8 June 2015

Type of Casualty Collision in the port of Harlingen. The windfarm vessel was being brought to a mooring by four tugs when she was pushed into the pilot boat which suffered considerable damage.

Type of Claim Collision damage claim

Thalamus II

Yacht, No other details

Date of Casualty 9 June 2015

Type of Casualty Grounding on a beach between Mimizan and Biscarosse. The owner of the yacht, which had been heading from France to Ireland, is missing.

Type of Claim Damage and loss of life

Xin Hong 328

Containership, No other details

Date of Casualty 10 June 2015

Voyage Hong Kong to Nansha, China

Cargo General containerised cargo

Type of Casualty Sinking near Guangzhou port. The ship was carrying 72 containers.

Type of Claim Total loss claim and possible wreck removal operation

Orkim Victory ▢

Product tanker, IMO 9420095, Built 2009, 7,119 dwt

Date of Casualty 4 June 2015

Voyage Sungai Udang to Kuantan, Malaysia
Cargo Petroleum

Type of Casualty Pirates boarded as the vessel was off Pulau Aur, Malaysia. The vessel was taken to a rendezvous point where its cargo was transferred to a waiting tanker.

Type of Claim Cargo theft
P&I Shipowners Club



Volgo-Don 5068 ▢

General cargo vessel, IMO 8952936, Built 1977, 5,150 dwt

Date of Casualty 6 June 2015

Voyage St Petersburg to Moscow, Russia
Cargo Towing a barge

Type of Casualty Grounding on the Volgo river whilst towing a barge carrying 5,050 m³ of rubble. Tugs were required to refloat both vessels.

Type of Claim Possible salvage type claim

Venus C/Koyo/Maya

Venus C - Fully cellular containership, IMO 8813609, Built 1989, 14,867 dwt

Koyo - Fully cellular containership, IMO 9099236, Built 2014, 1,438 dwt

Maya - General cargo vessel, IMO 8742680, Built 2008, 1,680 dwt



King Saron ▢

Ferry, IMO 8717374, Built 1989, 54 dwt

Date of Casualty 4 June 2015

Type of Casualty Allision with the pier at Rhodes.

Type of Claim Allision damage claim. No passengers were injured.

P&I Lodestar Marine

Wahana Ocean 4 ▢

Ferry, No other details

Date of Casualty 5 June 2015

Type of Casualty Explosion shortly after leaving the port of Senggigi, Lombok, Indonesia. 19 passengers were injured suffering burns and broken bones.

Type of Claim Hull damage, fire and passenger claims

CASUALTY FOLLOW-UP



John I – editions 52 & 53 – the Transportation Safety Board of Canada has released its report into the grounding of the *John I* which in summary has found that the incidents was caused by a lack of experience operating in ice-covered waters and an uncoordinated emergency response. To access the report click [here](#).

Summer Wind – editions 53 & 55 – federal investigators have released a synopsis of their report into the collision between the *Summer Wind* and the *Miss Susan* which led to the largest oil spill in Galveston Bay seen for 20 years. They have determined the probable cause was the attempt of the tug to cross the Houston Ship Channel ahead of the *Summer Wind* impeding the passage of the bulk carrier.

Maersk Karachi – edition 112 & 113 – Shipowners have declared General Average following the fire and Richards Hogg Lindley have been appointed as GA Adjusters with their office in Singapore responsible for collecting GA security. Click [here](#). Meanwhile the Bremerhaven port authorities have ordered testing of the extinguishing water which accumulated in the vessel's holds during the fire-fighting operations. The contaminated water will then be pumped into barges following approval and will take between 4 and 5 days.

Dong Fang Zhi Xing (Eastern Star) ▢ – edition 114 – the hull of the ferry, which overturned last week, has been hoisted above water in an operation which took a little under three hours. No more survivors were found and the death toll is 442.

Purple Beach ▢ – editions 113 & 114 – Inspections of the fire damaged vessel continue and discussions are underway as to how to dispose of the extinguishing water and damaged cargo.

Courage ▢ – edition 114 – some 100 vehicles, a mix of commercial and US military vehicles, out of 600 on the vessel, are expected to have suffered damage arising from the fire.

