

FEATURE

Deviation to Save Life – Obligations and Recovery of Costs

We often report on casualties where commercial vessels have diverted to assist vessels in distress. Today is no exception (see *Alaska Juris* - page 2). In diverting, owners and charterers of these vessels can face lengthy delays and incur significant costs. Is there an obligation to divert and what, if any, are the mechanisms under which owners and or charterers can recover losses resulting from such diversion?

The ongoing migrant crisis in the Mediterranean has focussed more attention on this topic. A Master is obliged to render assistance to those in distress at sea without regard to their nationality, status or circumstances. This is a longstanding maritime tradition and a humanitarian responsibility. It is also enshrined in international law with the obligation to divert to save life being formalised by a number of conventions, including the Safety of Life at Sea Convention 1974 (SOLAS), the United Nations Convention on the Law of the Sea 1982 (UNCLOS), the Merchant Shipping (Safety of Navigation) Regulations 2002 and the International Convention on Maritime Search and Rescue 1979 (SAR). By way of example SOLAS obliges the 'master of a ship at sea which is in a position to be able to provide assistance, on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so...' The shipowner must not to prevent the Master from rendering assistance. English law provides for criminal sanctions against a Master who fails to act to assist those in peril at sea. However this obligation, under English law and the above conventions is subject to the safety of the ship and crew of the diverting vessel being preserved.

Although the obligation to assist is clear, where the costs for the diversion should fall as between a shipowner or a charterer, and/or their respective insurers is not always as clear-cut. If the vessel is under charter,

reference should be made to the charterparty. However whilst some charterparties specifically allow for such deviation, and stipulate where costs fall, many don't. By way of example the BP Time 3 is more beneficial to owners since it provides that a ship remains on-hire during any deviation to save life. As such the charterer would be obliged to pay for all bunkers consumed whilst the ship is on-hire as well as all port, pilotage and similar expenses with the owner only having to cover the costs of provisions and stores. The Shelltime form makes express provision for costs to be borne equally between owners and charterers. The Baltimore form does not include any provisions relating to deviation to save life. Under this form the charterer is to provide and pay for all fuel, port costs, pilotage and other expenses and there are no provisions where owners are required to pay these costs. It is therefore likely the charterer will have to bear the deviation costs. Note in absence of an express liberty to divert it is thought a court/tribunal would be likely to imply such a liberty. Owners and charterers should have due regard for diversion costs when drafting charterparties to ensure the wording and understanding

as to their respective liabilities is clear and precise.

Where diversion costs have been incurred, these would generally be recoverable from the vessel's P&I Club providing the diversion is justified and reasonably undertaken. Expenses relating to the vessel's maintenance, depreciation and off-hire would not generally be recoverable although some Clubs provide separate cover for loss of revenue while the vessel isn't able to trade. It should also be noted that only costs which cannot be compensated by another party will be recoverable. If a vessel was instructed by a coastal state or authority to divert, before seeking reimbursement from underwriters owners or charterers should explore the possibility of reimbursement from whoever instructed them to divert or alternatively look to the distressed vessel's flag state to reimburse them.

Finally there may be circumstances where a separate salvage claim could be advanced if the distressed vessel is brought to a place of safety. The usual practice is for the property salvage award, payable by property underwriters, to be enhanced in recognition of the life salvage aspect.



NEW CASUALTIES

LCT Maro Indah

Landing craft, IMO 8682347, Built 2013, 231 gt

Date of Casualty 19 July 2016 - Late Notification

Voyage No details

Cargo 46 passengers, 4 trucks, graders and excavators

Type of Casualty Ran aground on the river Mumugu estuary, Indonesian Papua, Arafura sea. The vessel began listing and passengers jumped in the sea. One passenger is missing.

Type of Claim Possible hull damage, salvage and loss of life claims



Emine Anne

General cargo vessel, IMO 9145360, Built 1996, 925 dwt

Date of Casualty 20 July 2016

Voyage Constantza, Romania for Ancona, Italy

Cargo 1,330 m/t of profile iron

Type of Casualty Suffered a technical failure and grounded on a breakwater north of Bozcaada Island.

Type of Claim Hull damage and salvage claim

P&I Lodestar Marine



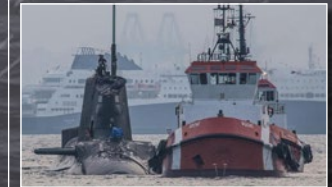
Sorrento Jet

Ferry, IMO 8906729, Built 1990, 38 dwt

Date of Casualty 20 July 2016

Type of Casualty Guttled by fire whilst docked in Vieste, Italy.

Type of Claim Fire damage claim
P&I Shipowners Club



HMS Ambush/Andreas

HMS Ambush - Nuclear submarine, Built 2011

Andreas - Combined chemical and oil tanker, IMO 9192741, Built 1999, 35,966 dwt

Date of Casualty 20 July 2016

Voyage n/a / Tuapse, Russia to Rotterdam, Netherlands

Cargo n/a / Fuel oil

Type of Casualty Collided with the bunkering tanker as the submarine was surfacing.

Type of Claim Collision damage claim

P&I No details / Steamship Mutual



Lady Anna

Fishing vessel, No other details

Date of Casualty 21 July 2017

Type of Casualty Suffered an engine room fire south of Honolulu, Oahu. The crew were rescued and the *Lady Anna* was towed Oahu.

Type of Claim Fire damage and possible salvage claim

Melo

Bulk carrier, IMO 9392119, Built 2009,

Further casualties overleaf

Roose + Partners

NEW CASUALTIES - Continued - edition 174

33,355 dwt

Date of Casualty 21 July 2016
Voyage Las Palmas, Canary Islands to Conception, Uruguay

Cargo In ballast
Type of Casualty Ran aground on the river Uruguay. The vessel remains aground.

Type of Claim Possible hull damage and salvage claim

P&I North of England



Xin Fei Zhou ▣

Fully cellular containership, IMO 9337937, Built 2008, 102,379 dwt

Date of Casualty 21 July 2016
Voyage Qianwan, China to New York, USA
Cargo General containerised cargo

Type of Casualty Allided with the stone wall of the new dock on the Atlantic side of the expanded Panama Canal at Agua Clara.

Type of Claim Allision damage claim
P&I North of England

Thomas Dann ▣

Tug, IMO 7621786, Built 1975, 186 dwt
Date of Casualty 22 July 2016

Type of Casualty Caught fire off Florida. The tug was towing a barge at the time.



The crew were unable to control the fire and abandoned the tug into a life-raft.

Type of Claim Fire damage and salvage claim

Volgo-Don 225

General cargo vessel, IMO 8954958, Built 1979, 4,074 dwt

Date of Casualty 22 July 2016

Voyage No details

Cargo 5,225 m/t of metal

Type of Casualty Ran aground while anchoring on the River Sheksna.

Type of Claim Possible hull damage and salvage claim

Amazigh S1

General cargo vessel, IMO 8815293, Built 1988, 3,376 dwt

Date of Casualty 22 July 2016

Voyage Bartin to Sousse, Tunisia

Cargo Loaded, no details

Type of Casualty Suffered engine failure at Rumelikavagi point in the Istanbul Strait. Coastal safety tugs and technical teams attended and the vessel was towed to Buyukdere anchorage.

Type of Claim Salvage claim/fine



Nicoline - HG 75 ▣

Fishing vessel, Built 2002, 24.9 gt

Date of Casualty 24 July 2016

Type of Casualty Suffered a large fire 12 miles from Hirtshals. The vessel was towed into Skagen.

Type of Claim Fire damage and possible salvage claim

Ambition

Fishing vessel, No other details

Date of Casualty 24 July 2016

Type of Casualty Suffered water ingress in the Bering sea, Alaska. The crew abandoned the vessel.

Type of Claim Possible total loss or salvage claim



Horizon ▣

Passenger cruise ship, IMO 8807088, Built 1990, 5,632 dwt

Date of Casualty 25 July 2016

Type of Casualty Ran aground on a sand bank near the Skanse Quay in Stavanger, Norway. The vessel was refloated with tug assistance.

Type of Claim Possible hull damage and salvage claim

P&I UK Club

Aries

Fully cellular containership, IMO 9123518, Built 1996, 5,966 dwt

Date of Casualty 25 July 2016

Voyage Damietta, Egypt to Fos, France

Cargo 5,215 m/t of fertiliser

Type of Casualty Broke down whilst transiting the Mediterranean and became disabled between southwest Crete island and Liviko Pelagos island. Tug *Christos XVI* was dispatched to assist.

Type of Claim Possible salvage claim and/or General Average declaration

Avocet/Idec

Avocet - Yacht, no other details

Idec - Yacht, No other details

Date of Casualty 25 July 2016

Type of Casualty In collision off Conquiel. The *Avocet* lost its mast and was towed into Port Halguen.

Type of Claim Collision damage claim

Hanze Gendt/Dicle Deniz


Hanze Gendt - Bulk carrier, IMO 9605176, Built 2012, 35,000 dwt

Dicle Deniz - Combined chemical and oil tanker, IMO 9464273, Built 2009, 3,531 dwt

Date of Casualty 25 July 2016

Voyage Vila do Conde, Brazil to Barcelona, Spain / Barcelona, Spain to Sfax, Tunisia

Cargo No details

Access all our previous casualty newsletters here 

Type of Casualty The *Hanze Gendt* was moored in the port of Barcelona when she was struck by the tanker.

Type of Claim Collision damage claim
P&I Steamship / London Club

Amadeus

Bulk carrier, IMO 9749855, Built 2016, 81,600 dwt

Date of Casualty 26 July 2016

Voyage Hay Point, Australia to San Nicolas, Argentina

Cargo 39,448 m/t of coal

Type of Casualty Ran aground on the river Parana close to Campana Port. The vessel is obstructing navigation and has requested assistance.

Type of Claim Possible hull damage and salvage claim

P&I UK Club

Kolin 5

Bunkering tanker, IMO 8905622, Built 1990, 4,286 dwt

Date of Casualty 26 July 2016

Type of Casualty Ran aground in Dardanelles off Kepez Limani. The vessel was refloated with tug assistance and docked at Kepez.

Type of Claim Possible salvage claim
P&I RaetsMarine BV

Constancia

Fishing vessel, Built 1988, 115 dwt

Date of Casualty 26 July 2016

Type of Casualty Sank off Bahia Blanca Argentina. The crew were rescued by another fishing vessel.

Type of Claim Total loss claim

Sea Bird

General cargo vessel, IMO 8202941, Built 1984, 7,650 dwt

Date of Casualty 26 July 2016

Voyage Thasos, Greece to Odessa, Ukraine
Cargo In ballast

Type of Casualty Suffered engine failure whilst transiting the Istanbul Strait. Coastal Safety tugs attended.

Type of Claim Salvage fine/claim

CASUALTY FOLLOW-UP



Le Boréal ▣ - editions 152 & 155 - the report into the fire on board the cruise ship in November 2015 has been released. The fire was due to a clogged fuel filter element, which was disassembled under pressure by a crewmember and started leaking fuel causing a fire to break out and spread rapidly. The water-mist fire extinguishing system triggered automatically but was unable to prevent the fire from spreading along bunched cables leaving the vessel without power.

Benita - editions 169, 170, 171 & 172 - was refloated at 1300 hours on 23 July. The vessel is reported to have suffered significant damage whilst aground. She is deemed to be uneconomic to repair and will be towed to breakers in Alang by the Ionian Sea FOS.

Hakata Queen - edition 173 - departed the anchorage off Frederikshavn on 20 July after inspections were completed and resumed her voyage to Gdynia.

Alsvin ▣ - editions 171 & 173 - has been raised and towed to Lelystad for inspection.



Alaska Juris ▣

Fish factory, IMO 8856572, Built 1975, 1,658 gt

Date of Casualty 26 July 2016



Type of Casualty Suffered water ingress and began sinking near Kiska Island, approximately 890 miles west of Dutch Harbour, Alaska. The 46 crew members abandoned the vessel into three life rafts. Four commercial vessels initially diverted to assist although only the *Spar Canis* (IMO 9299290) and *Vienna Express* (IMO 9450416) were directly involved. Both vessels picked up the crew from the three life rafts. All were later transferred to the *Spar Canis* for transport to Adak.

Type of Claim Possible total loss or salvage claim

P&I American Club