



Was the Discharge Port Unsafe Due to the Incompetence of the Pilot?

AUTHOR / KEY CONTACT



Elisabetta Scanferla
Solicitor

✉ elisabetta.scanferla@LA-law.com
☎ 01202 786179

The Tribunal considered whether the discharge port was unsafe due to the incompetence of the pilot or tug masters and whether the vessel was unseaworthy for inadequate passage planning.

The vessel was chartered on an amended NYPE 1981 form, with rider clauses, for a “one-time charter trip of one laden leg, via Indonesia to China trading always via safe port(s), safe berth(s), safe anchorage(s), always afloat, always within IWL, with harmless coal bulk...”

The vessel entered the channel to Chaozhou harbour under pilotage and with tag assistance. The master relied on the pilot and was not involved in the pilotage. The pilot failed to perform the correct turn into the harbour basin to remain in the deep channel and subsequently failed to correct the wrong manoeuvre. The vessel grounded.

The Owners claimed that, in breach of the Charterparty, the port was unsafe due to the incompetence of the pilot and/or tug masters. They claimed the cost of repairing the vessel.

The Charterers argued that the alleged loss and damage arose because of the negligent navigation and/or unseaworthiness of the vessel.

On the evidence of the case, the vessel departed with paper navigational charts and electronic charts. However, neither of these charts indicated the limits of the approach channel to Chaozhou Harbour. The master did not obtain the harbour chart, which showed the limits of the channel and the positioning of the buoys. Therefore the vessel did not have adequate charts on board to create a passage plan.

Apparently, the master stated that, in the absence of a suitable chart of the port, he “relied on the pilot”. The master was not aware that the vessel was in danger in her final approach to Chaozhou harbour. As a consequence, he failed to query the pilot’s actions. In failing to monitor the pilot’s conduct of the vessel, the master was negligent.

Regarding the act of pilotage, the pilot would have been aware of the limits of the deep-water channel. The Tribunal found that the pilot was negligent in failing to manoeuvre the vessel in a way that she remained in the

deep-water channel at all times. However, the Tribunal found that the pilot's one-off error in navigation did not amount to incompetence so as to render the port unsafe.

Cause of the grounding

The Tribunal found that the cause of the grounding was the negligent navigation of the vessel during her inbound passage to her discharge berth. The pilot failed to manoeuvre the vessel such that she remained within safe water.

Unsafe port

The test for unsafety is the one that was provided by Sellers LJ in *Leeds Shipping Co Ltd v Societe Francaise Bunge (The Eastern City)* [1958] 2 Lloyd's Rep 127. "A port will not be safe unless, in the relevant period of time, the ship could reach, use and return from the port without, in the absence of some abnormal occurrence, being exposed to danger that could not be avoided by good navigation and seamanship".

The Tribunal held that the deep-water channel was safe for the vessel at the material time. The limits of the channel were marked on the appropriate navigational charts and were known to the pilot.

On the basis of the evidence of the case, it would appear that the pilot was an experienced pilot and that he routinely worked with bulk carriers. There was no evidence that he had been involved in any other incident either prior to the vessel's grounding or subsequently. The Tribunal found that, in this case, the pilot was negligent in misjudging the turn into the port and failing to take appropriate action to correct his error.

The grounding was caused by the vessel's negligent navigation in that the pilot failed to correctly execute the required turn to starboard to enter the port of Chaozhou. His error was not detected by the vessel's master.

A one-off mistake by a competent pilot was not a defect in the set-up of the port: *Kodros Shipping Corporation v Empresa Cubana de Fletes (The Evia) (No 2)* [1982] 1 Lloyd's

The grounding did not result from the vessel being exposed to dangers that could not be avoided by good navigation and seamanship. Nor was the grounding the result of an abnormal occurrence, either in the context of the safe port test in *the Eastern City* or in the context of the definition in the *Gard Marine & Energy Ltd v China National Chartering Co Ltd (The Ocean Victory)* [2017] 1 Lloyd's Rep 521.

Unseaworthiness

The Tribunal found that the vessel was unseaworthy at the beginning of the voyage because she lacked the appropriate chart to prepare the passage plan. The master could have rectified the defect if he required the harbour chart before the vessel commenced her inbound passage to Chaozhou. However, the master did not

request the harbour chart and commenced the inbound passage without any knowledge of the limits of the deep-water channel.

Conclusion

The pilot was negligent, but a one-off error of the pilot did not make the port unsafe. The master was also negligent because he failed to supervise the pilot. Furthermore, the master did not request the harbour chart that would have been necessary for passage planning, and for this reason, the Tribunal found that the vessel was unseaworthy.

The Owners' claim for loss and damage suffered as a result of the grounding failed.

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