

Critical record of a shipmaster's duties

[Economics](#), [Insurance](#)



Introduction

As per the scenario, I am the master of a 30, 000 tonne general cargo ship under the voyage charter sailing from UK, bound for Korea after loading a cargo of steel pipes of high grade. After a visual inspection found that some of the steel pipes appeared rusty, also no shore side surveyors were appointed by the parties concerned.

During the voyage my vessel collides with a fully loaded container ship which is under a time charter bound for Antwerp. The container ship suffered minor hull damage forward part and consequently several containers were lost overboard. Also the container ship had to jettison some of the containers in order to maintain stability after water ingress.

Due to collision own vessel suffered severe damage to no. 1 port hold which resulted partial flooding. After the collision for emergency dry dock repairs both the vessels were towed to the port of refuge. The container ship organises a daily hire agreement and the own vessel was towed under Lloyds open form due to the fact that vessel taking in water. Own vessel had sailed with a faulty radar equipment and this was found out in a later investigation carried out by hull and machinery surveyors. The records shows that the container ship was seaworthy and a day before the collision the second officer was medically evacuated due to a severe injury and other deck officers were working shorthanded.

The master has the responsibility to do whatever is necessary to preserve his vessel and cargo from any loss or damage. In order to consider a vessel seaworthy the vessel must have all statutory certificates valid, cargo should

<https://assignbuster.com/critical-record-of-a-shipmasters-duties/>

be properly stowed and secured, Radio and navigational equipment in good working order. There should be sufficient fuel and stores on board.

Appropriate number of officers and crew as per manning certificate with properly qualified officers and crew. Ensuring that fully corrected and latest edition of navigation charts and publication available onboard at all time.

Vessels sailing in a seaworthy condition will only be covered by the insurance. It is always the duty of the owner of the vessel to ensure the seaworthiness of ship and if ships sail in a seaworthy condition she will be under insurance cover.

“ The obligation of the owner to exercise due diligence to ensure that the ship is seaworthy before the commencement of voyage.(ie taking all precaution to ensure that the vessel is fit for the voyage)”

As per the hague-visby rule the liability and the responsibility of the carrier will be bound at the beginning of the voyage and also prior beginning of the voyage to exercise due diligence to prepare the vessel seaworthy and properly manned and equipped and supply the ship. To make the cargo spaces and other parts of the ship where goods are carried fit for the reception and carriage of cargo and preservation.

“ Article IV of rules states that neither the carrier nor the ship is liable for any loss or damage which arise or result from un-seaworthiness unless caused by want of due diligence on the part of the carrier to make the vessel seaworthy in all respect mentioned above conforming with the conditions given in the article three of the rule”

“ If any damage or loss resulted due to the un-seaworthiness of the vessel the responsibility of proving the exercise of due diligence will be on the carrier or other person claiming under this article”

As per the scenario the carrier has failed to make the vessel seaworthy and failed in carrier's responsibility and liability and hence there was a breach contractual terms and therefore the vessel will be responsible for the damage of cargo under the Hague-Visby rule.

In the scenario the master accepts a letter of indemnity and signed a clean bill of lading. The BOL without any endorsement made by the ship master is called a clean BOL which describes the goods and states cargo quantity and their condition. The issuing and accepting a clean BOL states that the cargo has been loaded in correct quantity and in good condition. The vessel cargo was found rusty and the ship sailed in an unseaworthy condition. Also there were no surveyors appointed and also the master accepted a letter of indemnity and signed a BOL without any remarks on it. The letter of indemnity which is offered by the shipper in an inducement towards signing a clean BOL, which officially can absolve from blame or relieve the master from the obligation of liability for signing the BOL and the master should not have accepted a letter of indemnity without consultation or clear instruction from the owners and should have made his own bill and presented it to the shipper. Now with the clean BOL the shipper can pursue a claim against the ship owner for the cargo damage as the shipper has the BOL as evidence that the cargo was stowed and loaded in good condition. The master should have immediately informed the owners about the cargo condition and his negligence

will result restrictions to the owners in protesting against the claims. The master should also have requested the owners for appointing an independent surveyor and surveyed the vessel and this would have saved the owners from any legal claims and any delays caused. The master should also have mentioned the surveyors finding in the BOL as the steel cargo was rusted and for evidence he should have taken some photographs/video etc. And it is also very important of collecting/keeping all evidences such as long book entries and witness statements which will help the owners to claim protection the carriage of good act.

The vessel sailed from UK with a defective radar equipment and this was very well known to the master and the ship owner. This is the violation as per the rules HRV, the owner is liable to provide his ship in a seaworthy condition prior sailing from the port and this could result the shipper to argue that the ship was unseaworthy at the commencement of the voyage. The decision of the owners and the master to sail without a working radar may have resulted in collision with the container ship. The unseaworthy ship prevents the owner of the general average contribution from the cargo owners. And the expenses incurred during salvage operation will also be settled by the owners as they cannot claim for salvage coverage due to unseaworthy ship.

For the general average claims there will be an intentional/sacrificial act and the loss and damage of goods will be claimed from the cargo insurers. The loss or damage of cargo due to collision will be covered under particular average and not in General average. The hull damage caused due to collision

between vessel will be under the H&M cover and it is not an intentional act and so will come under particular average.

The master of the vessel should ensure safety of his ship and take all precautions necessary which will surely mitigate the losses caused to any ship owners.

The Masters duty to send a distress signal – if the vessel or person is in imminent danger Master sends distress signal requesting immediate assistance. This distress signal will be revoked as soon as the master is satisfied that assistance is no longer required.

On receipt of distress signal, the masters need to proceed with full speed for the assistance of the vessel in distress. On failure to comply with this will attract penalties. Due to the collision between two ships, it will be the duty of the masters of each ship without endangering to his own ship and crew to render assistance to the other ships master and crew to save them from the danger caused by the collision. Also need to stay by the other ship until they need no further assistance. The master gives to the other ship, the name of his own ship and also the names of last port and next port. If master fails without reasonable excuse to comply with will result penalties.

2)

Salvage

“ The Salvage operation means that any act or activities undertaken in order to assist a vessel or any other property in danger in navigable waters or in any other waters thus entitling a reward to the provide”

The master of the ship has authority and power to accept the salvage offered consulting with the owner. There are two basis on which the salver agrees on the terms and conditions to save the ship or property according to circumstances. 1) daily or time contract – fixed hire rate. 2) Lloyd's Open Form/LOF – no cure no pay basis” and the settlement will be done on the basis of the value of property saved.

“ The advantage of having LOF is that, it is a no cure – no pay agreement and not likely disputed & if any disputes which will be referred to arbitration of English law will apply to claims. There is no need to have a copy onboard and the agreement will be done over radio or other telecom methods and the form does not require signature until the salvage operations have been successfully completed. The salver will get an interim award and any excessive claims by salvors are avoided and the disadvantages of LOF is costly”

General Average

“ There is a general average act when and only when any extra ordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure”

Number of maritime countries laid down York Antwerp rules in order to get an uniform approach towards the settlement of general average claims. These rules are internationally recognised and are not incorporated into the national law. In the given scenario the damage caused to hull will come under particular average and which will be covered by the Hull & Machinery

insurance. The container ship had sailed in a seaworthy condition and later the second officer was medically evacuated and hence the vessel became unseaworthy. Now the container ship does not comply with SLOAS requirement and the other deck officers were short handed and the collision may have occurred due to fatigue caused. If the own ship has exercised due diligence then the payment for the loss will be borne by the shippers cargo insurers. The container ship had jettisoned some of the containers for safety reasons or to prevent water ingress and this sacrifice was to protect the property hence eligible for general average.

For general average act, the shipowner appoints an average adjuster and usually declares general average

H&M Insurance & P&I Insurance

There are three types of marine insurance ie Hull and Machinery, Cargo & Liability – P&I

“ H&M Insurance covers hull and machinery of the insured ship against certain perils which includes peril of the sea, fire and explosion, jettison of cargo, piracy, contact with land conveyance/dock or harbour equip, accident during loading loading/discharging/shifting fuel or cargo, Earthquake, boiler bursting, breakage of drive shaft, defects of machinery & barratry of master, officer and crew Etc”

“ P & I club are those clubs which is a joint venture between shipping companies. It offers the ship owners the coverage against the risks which are not covered by hull and machinery insurance Hull insurance is actually the

protection against the loss and damage to the vessel arising out of marine peril together with protection against the attendant liabilities of 3/4RDC, salvage and general average”

“ Protection and indemnity insurance is insurance protection against third party, death, injury and property claims caused by the ship together with the ? collision liability not covered in the RDC clause in the hull policy”

Own ship was towed to port of refuge under LOF and it is the right decision which would have saved time and money. If the salvage operation has delayed further then the condition would have worsened as the vessel is taking in water and eventually the vessel will sink resulting loss of life, property and damage to the marine environment and in situations like this there would not be time for negotiations.

In the case of container ship, she suffered only minor hull damage and was not in imminent danger and thereby she will have time for negotiation among them before deciding any agreement and decision of having a daily hire agreement was good, which is cheaper and beneficial too. The owner can choose cheaper salvage operations but cases involving loss of cargo, loss of life and risk of sinking there would not much time for negotiation between various parties offering salvage operations. So the decision has to be taken at the right time.

Now both vessels have been towed to port of refuge, essential formalities for an unscheduled arrival clearance should be followed. Which includes an appointment of an agent and advise him of ships ETA and requirement on

arrival, request for free pratigue, inform P&I club, keep all required documentations ready and the agent will do the other required formalities for inward clearance. Also all the evidence collected should be kept ready and make the vessel ready for PSC and classification society inspection.

After the repairs have been completed, need to arrange class and other surveys and after the survey an interim certificate will be issued.

Bibliography:

- 1) College Notes
- 2) Business and law for the shipmasters (F. N. Hopkins)
- 3) Shipping Law (Chlorey & Giles)