ARE YOUR CREW TRAINED FOR THEIR JOBS?

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In a recent report in the Loss Prevention newsletter "Signals" produced by the North of England P & I Club, the dangers of using crew in unfamiliar roles was highlighted. It noted that there was an increase in the number of cases where members of both the "catering and engineering departments", working on deck suffered serious accidents. The newsletter notes that if crew members from other departments on the vessel are called upon to carry out tasks normally performed by the deck crew, they should only be allowed to discharge these tasks, if they are properly qualified and have received the appropriate training. Crew are increasingly being required to discharge tasks for which they were not trained. Extra work generated by regulations such as the ISPS Code, which requires crew to carry out increased security patrolling and gangway watches, can place pressure on crew and give rise to accidents. Below deck crew are often called to work with mooring lines and fishing gear. These tasks require properly equipped and well trained crew and accidents from untrained crew are increasing.

Two recent cases immediately came to mind, which give content to the club's warnings.

The first case is that of the German flag ship '*Heidberg'* which came before the Bordeaux Court of Appeal. This case caught my attention as it has considerable relevance for small vessel owners in New Zealand. The majority of vessels, which operate in, and around, New Zealand, are smaller vessels whose crew are often called upon to discharge a variety of tasks both below deck and above deck. In this case, the German flag ship *Heidberg* – manned by two officers and five Kiribati Seaman – collided with a jetty belonging to Shell in the Gironde River. At the time of the collision the Master had been absent from the Bridge for about six minutes during which time the vessel was in command of a Pilot. The Master had gone below deck to turn off a ballast pump. The Pilot had been able to switch the vessel from automatic to manual control in order to alter course, with the collision with the jetty occurring result seconds after the Master returned to the Bridge from the engine room.

What the Court found was that whilst the Master was certainly at fault, the lack of training and cohesion between the officers and the crew was known to the owner. The owner was well aware that the Kiribati crew were unable to close off the pumps or take control of the vessel. By accepting this state of affairs the owner had acted recklessly and had lost his rights to limit its liability.

In its simplest terms, the right to limit can be described as the vessel owner's right to limit his liability to an amount based on a calculation based on the tonnage of his vessel. The owner's right to limit is lost if it is proved that the loss resulted from the personal act or omission of the owner, committed with the intent to cause loss, or *recklessly* and with the knowledge that such loss would probably result. The

Heidberg decision places the emphasis on owners not only to comply with statutory manning levels, but also having a suitably trained and cohesive crew for operations within the particular trade that the vessel is engaged upon.

On small fishing vessels, ferries and other coastal craft in New Zealand, crew are often required to discharge a variety of tasks that may not have been trained for. Section 85 of the NZ Maritime Transport Act 1994, allows the owner of the vessel, to limit its liability in respect of claims for loss or injury or damage resulting from that persons act or omission, where the act or omission was emitted or omitted with intent to cause loss or injury or damage, or recklessly and with knowledge that such loss or injury or damage would probably result. The New Zealand provision therefore, echoes the provision that was argued before the Bordeaux Court of Appeal, and I would suspect that a New Zealand Court looking at the same facts would come to the same conclusion as the French Court.

Where a Master lacks confidence in his fellow seaman and where there is a lack of cohesion amongst the officers and crew and this state of affairs is known, and this leads to loss, the result would be that the owner would lose his right to limit his liability for any loss that may result.

The second case that came to mind is a recent New Zealand case that received much publicity as it involved a fatality on a fishing vessel. In the *Maritime Safety Authority* v *Sealord Group Limited*, Sealord was charged with two offences under the Health and Safety in Employment Act 1992. Sealord pleaded guilty to the charges, took responsibility for its actions and installed safety equipment on the machinery and implemented comprehensive safety procedures. The two offences, with which *Sealord* was charged, were that firstly it failed to take all practicable steps to ensure the safety of employees at work and secondly it failed to provide adequate supervision and training in the use of and operation of the plant.

This case is similar to the *Heidberg* case, as it was found that Sealord was aware that there had been several previous incidents involving injuries to employees on similar machinery and recommendations arising out of those incidents were not implemented.

Had the defence in Section 85 of the Maritime Transport Act (the right to limit liability) been available to Sealord, on the facts of the case, I suspect that they would have lost their right to limit this liability as the owner was aware of the deficiencies in its systems, and may well have been found to have acted recklessly and with the knowledge that loss would possibly result. .

The Sentencing Act 2002 allows the Court to reward reparations to victims that suffered emotional harm, loss or damage consequential upon emotional physical harm. Since 2002, the trend in sentencing appears to be to award substantial reparations to victims, and if the *Sealord* case is used as a measure, the level of reparations is certainly increasing.

In the face of this disturbing trend and the potential downstream liability for reparations the right to limit liability assumes a greater significance. Vessel owners need to pause and note that the fact of holding a correct manning certificate for a vessel will not be an adequate answer to a claim and will certainly be insufficient to allow them to limit their liability against loss. If they are aware of the incompetence or (to use the French Courts term) “lack of cohesion” amongst the crew they may well fall foul of a *Heidberg* type of result. It is important that crew be properly trained for

the tasks that they are instructed to do, that the crew act as a ‘cohesive’ whole and that below deck crew not be requested to do tasks that are beyond their skill.

The Club’s warning is particularly opposite for small vessels’ whose crew multi task, especially in light of the trend towards increased reparations being awarded in New Zealand.

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