

# PASSAGE PLANNING: MEETING THE STANDARD!

John Southam and David Berkeley provide the legal perspective in the case of CMA CGM Libra in SeaSense column, our special column in association with the North P&I Club.



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Early in the morning of the 18 May 2011, the container vessel CMA CGM Libra departed Xiamen with a draft of just over 15m. The passage plan had been prepared by the 2/O and approved by the Master. At this time the vessel's primary means of navigation was paper charts.

Initially the vessel was in the fairway proceeding outbound, however at approximately 02:25 the vessel altered to the south and departed the fairway. The Master said he was concerned his ship was heading into shallow

water within the fairway but had "plenty of water" to leave and then re-join the fairway later. This allowed the trial judge to conclude that the Master took a deliberate decision to navigate outside the fairway. At 02:35, whilst outside the buoyed fairway, CMA CGM Libra was confirmed as aground in chartered depths of between 27 and 30 metres.

## If it was deep enough, why did it happen?

At the time of the grounding a temporary and preliminary notice (T&P) was in force. This stated that charted depths outside of the fairway were unreliable. However, the T&P was not marked on the chart, so there were no warnings or no-go zones for this.

## When should this have been noted?

The standard for passage planning has been around for many years, the process remains unchanged even though technological changes have brought the use of ECDIS to the industry. The process remains:

- **Appraisal:** This is where the officer conducting the plan gathers together all information that is relevant to the upcoming passage.
- **Planning:** The officer then uses this information as the foundation to start planning the passage.
- **Execution:** After the plan is approved by the Master and reviewed by the bridge team, the plan is executed.
- **Monitoring:** The bridge team monitor the intended passage by all appropriate means.

As can be seen in the case of the CMA CGM Libra, there were apparent failings in the appraisal and planning phases. The T&P notice should have been noted in the appraisal, and the officer preparing the passage plan should have made a mark on the chart in the form of a no-go zone and in the narrative section of the passage plan.

### What happened in the courts?

The vessel owners commenced legal proceedings to recover unpaid General Average (“GA”) contributions from some of the cargo interests after they refused to pay their GA contributions, arguing that errors within the passage plan had rendered the vessel unseaworthy.

Cargo interests said that the critical error was the failure to record “all areas of danger” in accordance with the IMO guidelines. In particular, the passage plan did not reflect the T&P notice advising that depths were less than charted.

The case went before the English Admiralty Court, who held that:

1. The Master’s decision to deviate from the fairway was negligent because a prudent mariner would have concluded it was not safe to navigate outside of the fairway where a T&P notice warned of unreliable depths.
2. The passage plan was defective as it should include all areas of danger. The passage plan and working charts should have been marked with a warning on them.
3. Passage planning was an aspect of seaworthiness, and that a prudent owner would require an adequate passage plan to be put in place before the beginning of the voyage. So therefore, the vessel was

deemed to be unseaworthy at the beginning of the voyage by reason of a defective passage plan.

4. The defective passage plan was causative of the master’s negligent decision to leave and navigate outside of the buoyed fairway.
5. The negligence in the preparation of the passage plan amounted to a failure to exercise due diligence to make the vessel seaworthy as required by article III, rule 1 of the Hague Rules.
6. The owner’s duty to exercise due diligence was non-delegable.
7. The cargo interests had established causative unseaworthiness, and the owners had failed to establish the exercise of due diligence to make the vessel seaworthy.

The Owners appealed to the Court of Appeal on two questions of law, but the Court of Appeal found that the Admiralty Judge at first instance had correctly applied the law and dismissed the appeal. The Owners subsequently appealed to the Supreme Court on the same two questions of law.

The Supreme Court agreed that the vessel was unseaworthy because she commenced her voyage with a defective passage plan and confirmed that Owners were unable to rely on a defence that they had exercised due diligence to make the vessel seaworthy because the crew’s negligence in preparing the defective passage plan was attributable to the carrier. The Supreme Court dismissed the appeal.

### What does this mean to the crews and operators?

So, do we need a new standard for passage planning? The reason that the process of passage planning has

stood the test of time is simply that if followed, it works! This incident was a result of the crew missing out certain steps in that process. To prevent such incidents in the future it is important that crews follow this tried-and-tested process when passage planning. Operators need to ensure that crew are following the process fully.

Some things that may help ensuring this are:

- A clear and understandable SMS procedure. Procedures need to be written for the to follow and understand.
- Reference IMO Res. A.893, make sure your crew understand it.
- Ensure that publications such as the ICS bridge procedures guide are available on board and that crew are familiar with its contents.
- When crews sit their bridge team management courses, ensure adequate time is spent on the importance of passage planning and the process. Make sure your provider is giving the correct standard of training to your crew.
- Hold seminars and in-house training using case studies such as the CMA CGM Libra to highlight the importance of proper passage planning.
- Consider a safety campaign, keep the importance of correct standards in passage planning at the forefront of your message.
- Navigation audits: remember that these can be done either in person or remotely using VDR data. Auditing performance allows operators to identify focus areas for improvement.

This isn’t about setting new standards; it is all about ensuring existing standards are fully met.



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