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Captain's Orders

By Marilyn Raia

I have been lucky in my career to have represented vessel owner clients whose masters have acted in a non-negligent manner when commanding their vessels. Other lawyers have not been so lucky, as thousands of cases demonstrate. It may seem logical that when a vessel's master is negligent and causes damages or injuries, the vessel owner should be liable. Sometimes a vessel owner is liable for the negligence of the master but not always. This column explains some circumstances under which a vessel owner is not liable for damages or injuries resulting from the master's mistake.

Master's Decision When to Perform Maintenance

A vessel master makes decisions on when certain vessel maintenance tasks should be done. Often the master does not consult with the vessel owner before making those decisions. If the master's decision results in a personal injury, the vessel owner may be able to avoid liability. *Schexnayder v. REC Marine Logistics, LLC 2016 AMC 1770 (E.D.La 2016)* illustrates the point.

Schexnayder was the master of one of REC's vessels. While the vessel was tied up at REC's dock, *Schexnayder* decided to prime and paint an area of the deck below a grate as part of the vessel's maintenance, which task was within his job duties. He had not been instructed by the vessel owner to do maintenance work at that time and he did not inform the vessel owner of his intent to do the work. Plaintiff was alone on the vessel when he attempted to lift the grate under which he was going to paint. The grate weighed 75 lbs. *Schexnayder* hurt his back and then sued the vessel owner. He alleged that requiring him to perform the maintenance work without assistance rendered the vessel unseaworthy. He argued he was forced to work in a small and cramped location that created an awkward position for him in which to lift the grate. He also argued that even though he did not believe the grate was too heavy for him to lift, REC did not warn him of the risks associated with lifting it.

The district court entered summary judgment in favor of the vessel owner. It reasoned *Schexnayder* was the master of the vessel and had discretion to determine when and how to maintain the vessel. The court noted *Schexnayder* was not lifting the grate as the result of an emergency. Rather, it held he made the discretionary decision to lift the grate when no one was present to assist him and without the vessel owner's knowledge. Accordingly, the vessel owner was not liable for the master's injury.

Lights and Cell Phone

When a vessel casualty occurs due to the negligence of the vessel's master, sometimes the vessel owner can limit its liability to the value of the vessel after the casualty. [See *Pacific Maritime Magazine*, January 2016, *El Faro* – Can the vessel owner limit its liability?"] The determinative factor is whether the negligent act was within the knowledge and privity of the vessel owner. In *Re Omega Protein, Inc.* 2007 WL 803934 (W.D. La 2007) is on point.

During a voyage to fishing grounds, the chief engineer of the *F/V Gulf Shore* informed the vessel's captain that a necessary component of the vessel's refrigeration system was malfunctioning. The captain turned on the wheelhouse light to inspect the malfunctioning part. He placed a cellphone call to the vessel owner's plant from which the vessel had departed to request an air drop of a replacement component. He placed a second cellphone call to another of the vessel owner's plants and while he was on that call, the vessel allided with an oil platform.



Omega, the vessel owner, filed an action to limit its liability for the damage to the platform and for personal injuries suffered by three of the **Gulf Shore's** crewmembers. The platform owner argued Omega was presumptively at fault because its vessel struck a visible stationary object. However, the owner of a vessel that strikes a visible stationary object may rebut the presumption of fault. Omega argued the platform owner was at fault because the platform did not have functioning lights in violation of a federal regulation. The court agreed. Accordingly, Omega successfully rebutted the presumption of fault.

The platform owner and the injured crewmembers then had to affirmatively prove Omega or the vessel's master was negligent. The court held the master was negligent by turning on the wheelhouse light to inspect the malfunctioning part because by doing so he created a mirror effect on the wheelhouse windows and diminished his night vision. Further, the court held the master was not able to maintain the required proper lookout when using his cellphone.

The court next considered whether Omega could limit its liability for damages caused by what it characterized as the master's "mistake of navigation." It first recognized a vessel owner has a non-delegable duty to man the vessel with a qualified master and crew. It then considered whether Omega fulfilled its duty by exercising reasonable care in hiring the master. The court found the master had no hearing or vision problems, held the proper license to operate the **Gulf Shore**, and had worked aboard similar vessels in the area for more than 20 years without mishap. Because the master was properly qualified and Omega had exercised reasonable care in hiring him, the court held Omega had neither privity nor knowledge of the master's "mistake of navigation" which resulted in the vessel hitting the platform. Therefore, Omega could limit its liability.

Failure to Correct Course

As a general rule, federal law found in the US Carriage of Goods by Sea Act [COGSA] enacted in 1936, governs contracts for the carriage of cargo to or from the United States in foreign trade. Under COGSA, a carrier has certain obligations with respect to the cargo it carries. A carrier also has certain defenses available to it when the cargo is lost or damaged. One of the available defenses is "error in navigation and management of the vessel." The rationale behind the defense is that what occurs during the voyage is usually beyond the control of the carrier. Therefore, the carrier should not be held liable for an occurrence beyond its control.

In *California and Hawaiian Sugar Company v. Columbia Steamship Company, Inc.* 510 F.2d 542 (5th Cir. 1975), the **S/S Columbia Brewer** grounded on a shoal southwest of Old Providence Island off the coast of Nicaragua while carrying sugar in bulk. Most of the sugar was saved but some had to be jettisoned to refloat the vessel.

After the vessel completed transit through the Panama Canal en route to New Orleans, the master set a course to pass three miles to the southwest of Old Providence Island and over the 100 fathom curve off the southwest corner of the island. He set this course so he could determine an exact point of departure, which he believed to be crucial to navigating the rest of the voyage. Allegedly due to the set of the current, the captain navigated the vessel so close to the island as to place it in danger. Once facing danger, the master failed to sufficiently change course to remove the vessel from the danger, and the vessel stranded on a shoal.

Among other things, the cargo interest argued the vessel was unseaworthy because sailing directions for the area near Old Providence Island were not readily available in the chart room



for the master to consult. Those sailing directions noted shoaling up to two miles off Old Providence Island. Although the sailing directions were aboard the vessel and were regularly updated, they were not on the chart room shelves where they should have been. Instead, they had been removed from the shelves and placed in a locker when the chart room was painted, and were not returned to the shelves after the painting had been completed.

The district court held the stranding of the vessel was due to the failure of the master to make proper use of the information available to him and to make appropriate course changes when he discovered the vessel was off course. The court also held the unavailability of the sailing directions on the shelves in the chart room was a fault in the management of the vessel, not unseaworthiness. Accordingly, the district court held the error in navigation and management of the vessel defense under COGSA applied, and the vessel owner was relieved from liability to the cargo owner.

When a vessel's master makes a mistake, the vessel owner is not necessarily liable for the consequences of that mistake. Under certain circumstances, a vessel owner can avoid liability if the master acted without the knowledge and privity of the vessel owner. Similarly, if the master erred in the navigation or management of a seaworthy vessel, the vessel owner may be able to avoid liability to the owners of cargo that was lost or damaged as a result of the mistake.