



## Anyone can make a mistake

London arbitrators have found that a one-off error by a pilot did not make the port unsafe for the purposes of the Charterers' safe port warranty. [Helen McCormick](#), Managing Associate, and [Evgenia Kanellopoulou](#), Associate, offer a summary.

London arbitrators have found that a one-off error by a pilot did not make the port unsafe for the purposes of the Charterers' safe port warranty.

This case considers the role of pilots as part of the set-up of the port. The Tribunal rejected the Owners' argument that the pilot's failure amounted to a disabling lack of knowledge, which is the test for competence set out in "The Eurasian Dream" [2002] 1 Lloyds Rep 719. Considering "The Evia" (No 2) [1982] 1 Lloyds Rep 334, the Tribunal held that a one-off mistake by an otherwise competent pilot is not a defect in the set-up of the port. Therefore, the Owners' claim against the Charterers for breach for the unsafe port warranty failed.

### The background

The Vessel was a bulk carrier which was chartered on an amended NYPE 1981 form for "one time charter trip of one laden leg, via Indonesia to China...". The Vessel loaded coal at Muara Satui for discharge at Chaozhou.

Ships entering Chaozhou port are required to proceed along a buoyed approach channel and then make a turn to starboard into the harbour basin. Because of her laden draft, the Vessel had to remain within the dredged deepwater channel which runs long the centre of the buoyed channel.

The port and its approaches were shown on four nautical charts: (1) paper chart: UKHO Chart 1792 ("Chart 1"), (2) paper chart: Chinese Navy Chart 14381 ("Chart 2"), (3) paper chart: Chinese MSA Chart 81102 ("Chart 3"), and (4) ENC: AVCS Cell C1514382 ("Chart 4"). While at the loading port, the Vessel arranged for a copy of Chart 1, to be delivered onboard and during the voyage the Vessel downloaded Chart 4. Unbeknown to the Master, out of these four charts, only Chart 3 showed the actual limits of the 14.5 m channel.

The Vessel entered the port with a compulsory pilot on board and three tugs made fast in order to manoeuvre her into the berth once inside the basin. The Vessel proceeded along the approach channel without difficulty, but failed to make the starboard turn successfully. The pilot realised that the Vessel was not turning quickly enough and attempted to retrieve manoeuvre by giving orders to the tugs. However, the Vessel left the deepwater channel and grounded.

The parties agreed that the grounding was caused by the pilot's negligent navigation of the Vessel.

The Owners claimed the cost of repairs and associated damages (i.e. USD 1,158,559) on the basis the port was unsafe because the pilot was incompetent. Charterers defended the claim on the basis that the Vessel was unseaworthy before and at the beginning of the voyage to Chaozhou. In particular, they said that the Vessel lacked the appropriate charts and had not prepared a proper passage plan. This

meant that the Master and deck team did not know where the deepwater channel was and therefore could not effectively monitor the Vessel's progress and intervene, if necessary.

### **The decision**

During the hearing, it was agreed that the buoys of the channel did not mark its navigable limits but they lay beyond the limits of the channel, in water depths shallower than 14.5 m. Neither paper Chart 1, nor Chart 4 (the two charts which were available onboard the vessel) indicated the presence or limits of the 14.5 m channel. Therefore, by reference to her charts, the Vessel could not establish how to remain within the navigable limits of the channel. The Tribunal found that the Master was negligent in failing to obtain a copy of Chart 3 prior to port entry.

The Tribunal found that the deep-water channel was safe for the Vessel at the material time and that the pilot was competent but negligent in misjudging the turn into the port and failing to take appropriate action to correct his error. The test for the competence of the pilot was *whether the pilot was affected by a disabling lack of skill or knowledge, deriving from inherent lack of ability, lack of adequate training, lack of particular knowledge, or a disinclination to perform the job properly*, in accordance with "*The Eurasian Dream*". They also found that a *one-off mistake such as this by a competent pilot was not a defect in the set-up of the port* for the purposes of the "*The Evia (No 2)*". 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, in accordance with the well-known test set out in "*The Eastern City*".

The Tribunal also agreed with the Charterers that the Vessel was indeed unseaworthy at the commencement of the voyage because she did not have Chart 3, which the Master needed to prepare an IMO compliant berth-to berth passage plan. The Tribunal found that the In-port Passage Plan of the Vessel was defective and there was no evidence that her owners exercised due diligence to ensure that the Vessel had a compliant passage plan before she departed the load port. This meant that the Master was unable to alert the pilot to his errors or attempt any action to avoid the grounding. However, the Tribunal also found that the unseaworthiness was not an effective cause of the grounding.

### **CJC Comment:**

This decision provides some useful guidance on unsafe port cases which involve an error by the pilot. It is common in these cases for Owners to argue that the pilot was incompetent and so the port was, therefore, unsafe.

However, Tribunals consider that findings of professional incompetence should not be made lightly. While a one-off mistake might amount to incompetence, a Tribunal might be more likely to find that the mistake is a one-off error when committed in the course of a task which the pilot habitually performs. However, the reverse is not necessarily the case; if a particular skill is not required at that port, a pilot is not necessarily incompetent if he lacks that skill, even if other pilots might exercise it routinely.

The decision therefore highlights the importance of proper evidence where allegations of incompetence are made. The Tribunal noted that the pilot had worked at the port since 2010, routinely worked on bulk carriers and there was no evidence that he had been involved in any prior incidents. In light of the lack of positive evidence of incompetence rather than a one-off mistake, the Tribunal held the pilot to have been competent.

**For further information, please contact:**



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