

Campbell Johnston Clark

RECORDS AND REPAIRS - are you working in the dark?

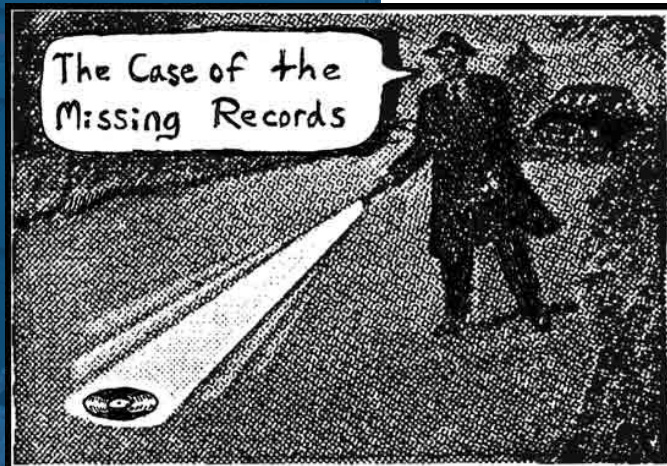
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Lost but not forgotten....

The impact of missing records when trying to do any repair or maintenance work on a ship.

In a nutshell:

- potentially more costly repairs
- hindering on-going maintenance
- problems with evidencing claim (under policy, against third party, GA)
- seaworthiness issues/assumptions
- potential risk to life.



Documents:

- Vouchers, receipts, invoices, records of work done...
- Planned maintenance systems & contemporaneous reports of planned maintenance
- **Non-official records:** note books, scraps of paper, photos...
- **Computerized records:** vessel computers, laptops, cloud...
- **External records** by non-ship staff.



The mv CHARLOTT-ANN

- Latest addition to Gibney Ltd's fleet
- 15 yr old bulker
- 1st voyage under new ownership and also new time charter to Malahide Inc.
- Cargo: nickel ore
- Within 24 hours of leaving loadport, **M/E Breakdown**
- Followed by **Grounding** on reef
- Gibney Ltd: how did this happen?
- GA / SALVAGE



Possible claims for & against Owners/the Assured

1. Owners vs Charterers

- For provision of poor quality bunkers
- Unfit for purpose / SOGA

2. Owners vs Cargo: Cargo vs Owners

- General Average : Salvage Indemnity

3. Owners vs Sellers

- Under MOA

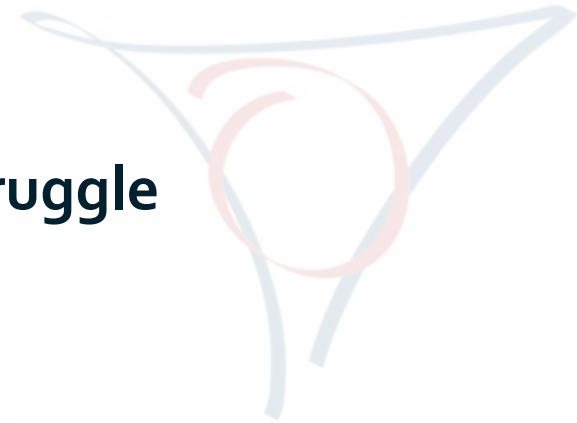


1. Owners/Assured vs Charterers

- Claim resulting from provision of **poor/unfit for purpose bunkers**
- Charterers: “failure to maintain engine / bunkers quality certificate in order”
- Owners cannot disprove allegation of poor maintenance



- **Claim will struggle**



2. Owners/the Assured & Cargo

- Cargo resist request for GA contribution
- Actionable fault
- Vsl unseaworthy & failure to exercise due diligence
- Salvage indemnity

Cause -

bad bunkers resulting in engine failure?

or

Inadequate maintenance



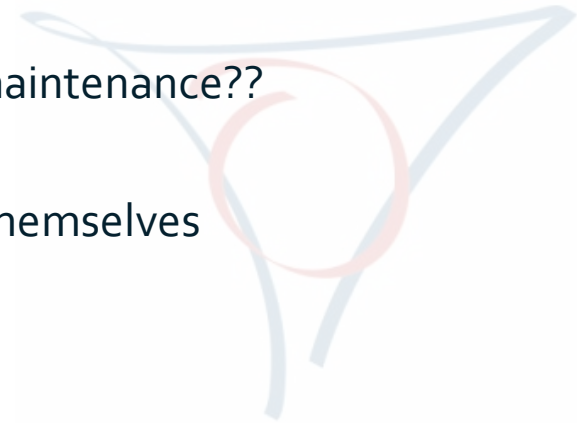
2. Owners /Assured vs Cargo

- Cause: most likely poor bunkers
BUT.... Gibneys Ltd hold very few records to evidence maintenance

Burden on Owners – difficult position

Newly purchased vessel

- Purchase Survey
- BUT
- No records of day to day maintenance??
 - New PMS?
 - Probably have done little themselves



Implications of Unseaworthiness

- Seaworthiness/Hague (Visby) Rules, art. III rule 1(a)
- Exercise of due diligence?
- **ISM Code 2002. ss.9 & 11:** requirement to maintain accurate, up to date records of every procedure, incident or action taken on board.

Performing/ recording maintenance insufficient; must also **preserve it...**



Unseaworthiness – Proving a claim

- Burden of proof?
 - **Hague (Visby) Rules:**
 - Step 1:** charterer/ cargo to adduce *prima facie* evidence of unseaworthiness.
 - Step 2:** owners to prove that
 - (i) due diligence was exercised; or
 - (ii) no contribution of the unseaworthiness to the loss.
 - **ISM Code:** documentary requirements essential in proving seaworthiness.

3. Owners/the Assured vs Sellers

- Recourse if m/e issues
- Documents or else!!
- ***The Union Power* [2012] EWHC 3537 –**
 - Norwegian Saleform 1993;
 - implied term in s.14(2) Sale of Goods Act 1979 of "*satisfactory quality*" applies to vessel sales;
 - "*as is/where is* " will not without more exclude implied warranty of quality.

The Repairs themselves

- Engine & Hull repairs needed
- Class Records & Logs etc available
- COSTS and DURATION of repairs
 - potentially increase
- Quantum





Disclosure obligations

Standard disclosure:

- Documents for or against your case (or in favour of another party's case).
- Within your "control" includes physical possession, right to possession and right to inspection.
- "Document" is *anything in which information is recorded*.

- **Duty of preservation:**

- As soon as proceedings are contemplated.
- Deliberate destruction / mere unavailability of relevant documents may result in adverse inferences.

THIS IS REAL!! PIPER ALPHA

- PIPER ALPHA: oil production platform
- North Sea – approx 120 miles north-east of Aberdeen, Scotland
- 6 July 1988 (30 yrs ago)
- 167 people died
- 61 survived
- TOTAL insured loss – approx £1.7 billion / US\$3.4 billion ...in 1988....



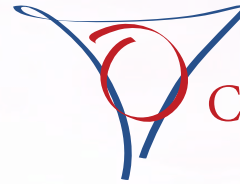
PIPER ALPHA

- Pressure safety valve removed from condensate pump A for routine maintenance.
- Work not completed, so the valve was not re-inserted at the end of the day.
- **Improper handover:** Day shift engineer filed a permit stating Pump A was not to be switched on, **BUT:** Did not inform night shift engineer.
- Informal practices developed whereby permits would be left in the control room or safety office.
- **Permit not seen by night shift!**



Any Questions?





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Thank you

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