

## **Deviation to save lives: rules, risks, no rewards**

Salvage has long been a lucrative industry and understandably so. Salvors often face significant risks and incur great expense in coming to the aid of other vessels and it is only right that generous remuneration be made available to reward them for their efforts. Moreover, in a world where philanthropy is not everyone's first concern, the promise of such compensation frequently serves as the necessary catalyst for an emergency response.

However, while this rings true for the salvage of property, the salvage or rescue of lives has never been such a profitable pursuit under international law. The International Convention on Salvage 1989 ("ICS") declares that no remuneration is due from persons whose lives are saved (although the treaty clearly defers on this point to national law that stipulates otherwise).

Further, salvors of lives will only be entitled to a reward if their efforts are connected with the salvage of property or the prevention of damage to the environment. In such cases the life salvor will be entitled to a fair share of any salvage award granted. In situations of pure life salvage the salvor, at least to the extent that international law provides, must search for his reward in the satisfaction that his good deed brings.

Failing that, those who have come to the aid of their fellow seaman may at least take solace in the fact that they cannot be held criminally liable for failing to discharge their duties.

Under the ICS every master is obliged, so far as he can do so without seriously endangering his vessel and the persons thereon, to render assistance to any person in danger of being lost at sea. Furthermore state parties to the ICS are required to adopt measures necessary to enforce this duty.

The terms of the ICS are incorporated into English law through The Merchant Shipping Act 1995 ("MSA") which makes a master's failure to render such assistance a criminal offence, punishable by a fine and/or imprisonment up to a maximum of two years. Given the potentially disastrous consequences of failing to render such assistance it is no surprise that some view such penalties as being too lenient.

The ICS makes it clear that these obligations fall solely on the master and owners shall not incur any liability for a master breaching them. The 1974 International Convention for the Safety of Life at Sea (as amended - "SOLAS") underlines the master's complete authority in these situations, providing that he has absolute

discretion to take decisions regarding the safety of life at sea and that no one shall prevent or restrict this discretion.

The conferral of this absolute discretion on the master means that owners may find themselves compelled to come to the rescue of others against their will. Rendering assistance will invariably interrupt the vessel's passage and result in a deviation from the contractual or customary route.

Deviation for the purpose of saving lives has long been held to be a justifiable deviation at common law and so owners need not be concerned that such a deviation will attract the potentially devastating consequences of committing a repudiatory breach of contract.

Moreover many contracts of carriage, by virtue of their incorporation of the Hague or Hague-Visby rules, explicitly provide that such a deviation shall not be an infringement of the contract of carriage and that the carrier shall not be liable for any loss or damage resulting from it. It is notable that under these regimes such protection is also extended to deviation for the purpose of saving property, something that is not recognised at common law as a justifiable deviation.

Significant expenses are likely to be incurred through undertaking such deviations and one will have to look to the terms of the charterparty to determine exactly how these expenses will be apportioned between owners and charterers.

**SHELLTIME 4** for example sets out that all loss of time and all expenses (excluding any damage to or loss of the vessel or tortious liabilities to third parties) incurred in saving or attempting to save lives are to be borne equally by owners and charterers. However, this is made subject to the charterparty's off-hire provisions which, although they do not classify the vessel as off-hire when deviating to save lives, do classify landing sick or injured persons as an off-hire event.

Curiously then, under the terms of SHELLTIME 4 it would appear that, if in the likely situation those rescued are sick or injured, owners may have to shoulder the costs of landing these persons by themselves, with only the costs expended in actually saving their new passengers from the perils of the sea being shared with charterers.

**NYPE 1946** does not address the issue so directly, leaving one to conclude that the freedom to deviate in order to save lives granted therein, together with the omission of such a deviation from its list of off-hire events, means that charterers will continue to be responsible for hire and bunkers throughout such an adventure. However, the standard form also provides that charges incurred in putting into port for causes for which owners are responsible should be borne by owners. Therefore, arguably, owners would have to pay for any port-related costs for landing those rescued.

What is clear from these charterparties is that the apportionment of costs between owners and charterers when deviating to save lives could be clearer. In any event, owners are likely to be able to recover any costs incurred for bunkers and also for

port charges and associated costs under their P & I policies, at least to the extent that they would not have been incurred but for the rescue effort. However, they are unlikely to be able to recover under these policies for loss of earnings (hire or freight) or any indirect losses.

In summary, although deviation for the purpose of saving lives will not constitute a repudiatory breach of the charterparty or contract of carriage, owners are likely to suffer some financial consequence due to their master's humanity and compliance with the law.

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