

Crew Negligence? Or Incompetence?

There is a steady increase in the number of claims that have arisen purely from the negligence of the crew. But if the claim occurred due to an action of the crew by doing or not doing something, should it be always considered as a crew negligence?

Before going into the subject, it should be underlined why the determination of the cause of damage is important for the insurers. This is so important for the insurer because they need to determine whether it has occurred suddenly and unexpectedly or due to an operational defect or an unseaworthiness of the vessel. This is specially very important when it comes to the damage occurred due to the crew's effect. Because while crew negligence is covered under the policy, damages attributable to operational fault are not.



At this point, it is necessary to look at the definition of crew negligence. Crew negligence is when a crew member falls below the standard of care required by that particular crew member.

Standards of care on ships relate to the role occupied on board by the particular crew member. A seafarer's standard of care should be evaluated in line with the knowledge, skills, and experience that a reasonable seafarer of that rank should have. Therefore, the standard of care expected from a Master is not the same as that expected from a Cadet.

For example, while safety loading and unloading operations, and cargo planning are the responsibility of the chief officer, it is not expected to be performed by a cadet. On the other hand, daily valve handling operations are expected to be performed by the entire crew.

So, can it be considered as crew negligence if the chief engineer (fully certified and qualified) makes a mistake that causes damage to the main engine? Is it a crew negligence if the administrative fine is imposed due to the pollution which occurred leakage from the valves which was not controlled by the crew even though it is known that the valves must be closed and fixed/sealed before entrance of the harbour reach? Or can we say that there is negligence of the crew, if crew causes an environmental pollution by discharging dirty ballast water without checking the ballast tanks during the loading operation?



Att. Çıdam YILDIRIM

Claims,

Senior Executive

+90 850 420 81 36 (Ext.245)

cidam.yildirim@turkpandi.com

Çıdam Yıldırım graduated from Beykent University Faculty of Law in 2017. During her studies, she did summer internship in Karadeniz Holding and also worked at Bilgen Law Firm and Kuzey Insurance & Reinsurance Brokers as an intern. After her graduation, she completed her legal internship at Ersoy Bilgehan Law Firm. After obtained her attorney's license, she joined Kuzey Insurance & Reinsurance Brokers as a claims executive. She continued her position in Kuzey Insurance & Reinsurance Brokers for 4 years. In January 2023, She joined Türk P&I Team as a Claims Senior Executive. Yıldırım, takes an active role in Istanbul Young Shipping Professional (YSP) and WISTA Turkey.



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Here is another issue that we need to consider, crew incompetence.

In order to distinguish the concepts of negligence and incompetence, the circumstances for the inadequacy are listed by the English Courts are as follows.

- (a) an inherent lack of ability;
- (b) a lack of adequate training or instruction: e.g. lack of adequate fire-fighting training;
- (c) a lack of knowledge about a particular vessel and/or its systems;
- (d) a disinclination to perform the job properly;
- (e) physical or mental disability or incapacity (e.g. drunkenness, illness).

The test as to whether the incompetence or inefficiency of the master and crew has rendered the vessel unseaworthy is as follows: Would a reasonably prudent owner, knowing the relevant facts, have allowed this vessel to put to sea with this master and crew, with their state of knowledge, training, and instruction?

Although it is not as easy as it seems to distinguish the two concepts, in my opinion, after the ballast operation was planned - considering that the planning was done by the Chief Officer- and the dirty ballast water was discharged as the tanks did not being controlled by the crew cannot be considered as crew negligence, except if the discharging of ballast water is required for very sudden and unexpected reasons. There must be either a lack of instruction or a disinclination to perform the job properly. However, it can be considered as crew incompetence and thus may cause the ship to be considered as an unseaworthy. Accordingly, fault can be attributed to the shipowner/operator who is responsible for equipping the ship with the appropriate crew, and as a result, the shipowner/operator may be deprived of exercising some of his/her rights against another party (e.g., insurance).

Conclusion and Recommendations.

- For the reasons explained above, not every crew-related accident/incident can be considered as Crew negligence. The causes of the event should be examined in detail.
- The crew incompetence may lead to the assessment of unseaworthiness of the vessel and fault can be attributed to the shipowner/operator.
- In the event of an accident/incident in which incompetence is detected, the insured may be deprived of some of their rights.

For these reasons we recommend our assureds to carry out all necessary due diligence such as certification checks, asking for a reference from the latest employer of the crewmember if any. It is also so important to well-train the newcomer crew onboard regarding the ship and its systems and organize regular training programs to keep the crew up to date. Lastly, we believe that it is also important to give brief knowledge/information regarding the local regulation of the ports that the vessel frequently call.