

# Multiple collision: who has to pay?

Regular columnist Simon Tatham looks at the complexities of blameworthiness after a harbour assist operation collision – and adds a cowboy lawyer to the heady mix



**Happily, if that is the right expression, most collision incidents are relatively straightforward, in the sense that two vessels are manoeuvring and come into contact. AIS or VTS records will often provide speeds and courses and so allow the developing incident to be plotted.**

The acts and omissions of either ship can then be dissected by reference to the Colregs, cause and blameworthiness considered and liability apportioned according to relative fault. This is often done with an eye to previous decisions of the courts, if one can be found, or at least with features comparable with the case in question.

Introduce, however, a tug and its tow into the mix, and a yet more complicated mix it certainly will be. In the September/October 2016 issue of *IT&O* I looked at possibly the simplest situation: where a dumb barge, or similar tow not able to manoeuvre of its own accord, is damaged in collision with a third vessel and we worked through the likely outcomes both in relation to blame as between the convoy and that vessel as well as how the claims between tugowner and hirer would then be settled according to the terms of the industry standard contracts.

This was simple in the sense that the tow, assuming in no way to blame because of deficient lights or marks, cannot be negligent: the tug being the navigating unit and responsible for the speed and direction of the tow.

Consider, however, a harbour towage operation where, say, one tug while assisting a vessel with its tow wire attached forward, manoeuvres astern into the path of a passing vessel, striking it, but not before that vessel, rather than seeking to slow or stop, turns sharply and seconds later runs into a berthed vessel on the side of the waterway. That vessel is hit in way of open hatch no.2 and the hold starts flooding while the impact meanwhile causes it to surge a few metres

forward, enough to break its aft springs and partially topple the shoreside crane which is discharging it.

The crane driver escapes with cuts and bruises but as he is sitting in the hospital accident and emergency department he picks up a leaflet left by personal injury lawyers offering a fee-free claims service.

He then takes three weeks off work on account of shock during which he takes advice and asserts a large claim against his employer, the berthed ship which is still undergoing repairs, the colliding ship, likewise repairing locally, and the tug. He might have threatened the assisted ship as well but it has sailed.

*“Harbour towage terms of engagement historically have been tug favourable – the UK Standard Conditions of Towage, which model has been adopted in other jurisdictions, being a good example”*

All of a sudden we have four vessels involved, a cargo receiver nursing a shortage and facing a GA claim, a port operator whose crane is beyond repair and a stevedore with a cowboy lawyer.

As to what happened, the wind might have been up with a very strong gust making the assisted manoeuvre tricky and requiring a lot of power and perhaps the tug, concentrating on the task, then applied more power than requested by the pilot who failed to warn that a vessel was approaching.

The starting point as between a ship and a tug in attributing blame in these cases is to consider who was in control. Typically the assisted vessel will be manoeuvring, capable of using its main engines and thrusters, assisted by the tug which is following the pilot's orders.

At its simplest it's a master and servant situation, the blame lying with the assisted vessel and its bridge team – who are in command of the situation and directing the tug, which cannot always be expected to maintain an adequate lookout: the tug may be entitled to assume that if asked to push or pull, the pilot deems it safe to do so. Only if the over-enthusiastic use of the tug's engines is blameworthy might some contribution attach to the tug. Both the tug and assisted vessel argue that blame for the first collision should be apportioned to take into account the contributory negligence of the passing vessel. Let's assume that ultimately the court agrees and finds the assisted vessel 80 per cent to blame with the tug and passing vessel each 10 per cent to blame.

Unless there are contracts agreed which say otherwise, the port operator and cargo receiver cannot pursue the berthed vessel because it was innocent of any negligence. They decide simply to go after the passing vessel. The passing vessel owner sensibly takes it on the chin, pays for the collision damage to berthed vessel and crane and pays off the personal injury claimant who threatens otherwise to create a hornets' nest of proceedings. He then seeks an indemnity from the assisted vessel and tug, accepting that he must absorb 10 per cent of his own loss (and liabilities) and pay 10 per cent of the tug's damage.

As between the tug and assisted vessel, harbour towage terms of engagement historically have been tug favourable – the UK Standard Conditions of Towage, which model has been adopted in other jurisdictions, being a good example. These reflect the fact that the assisted vessel is the one in control, vicariously liable for the actions of the tug, and allow the tug to claim an indemnity in respect of both damage to the tug itself and third party claims.

If these applied in our case above, arguably they could also be invoked in aid of the defence of the tug to the claim of the passing vessel, the argument being that the tug was merely the servant of the tow which should take the blame in full.

Unfortunately, I regret to say, things do not always go quite so smoothly.

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## Fire hampers bid to refloat ship

**Seattle-based salvage company Foss Maritime has been called in by owners of *Pacific Paradise* to remove the fishing vessel, which has grounded off Waikiki, Hawaii, after repeated earlier attempts to free it failed.**

*Pacific Paradise* ran aground in shallow water less than 400 yards off Waikiki. During one earlier attempt to dislodge the vessel, gasoline used to fuel a dewatering

pump splashed on hot surfaces causing it to ignite and force the salvage team to abandon ship.

Foss Maritime is working under a plan approved by the US Coast Guard and state authorities to move the derelict vessel away from the reef to prevent further environmental damage.

The operation was continuing as *IT&O* went to press.