



Guest Column

Mrs. Sandhya Pillai

- Shipping Professional & Marine Lawyer



HOW IS THE COMPLEX LEGAL RELATIONSHIP BETWEEN THE SHIPMANAGER AND THE SHIPOWNER SECURED?

Vessel owners unlike in the past, now more often than not rely upon the ship manager for operating his vessels efficiently and for benchmarking costs. Owners try to utilize the vessel in the best economic manner. Particular attention is given to registration of the vessel, competitiveness of the crew, cargo availability, compliances and taxes applicable. Therefore the owner prefers appointing experts who will make this task easier and provide his services. The manager is also chosen on the basis of his impartiality in dealing with vessels of all owners or that of affiliated companies.

Ship managers may typically be classified into three types, namely, technical, crew and commercial. Technical management involves services related to the actual running of the ship, maintenance, repair, compliance with flag state requirements, risk management and administrative support besides others. Crew management covers the selection, training, administration and travel of the crew. Commercial management involves seeking and negotiating employment for the vessel. Ship management companies are mostly independent private limited companies and that manages ships of other companies for a remuneration called the management fee. The remuneration could be in the form of a fee plus expenses wherein the owner agrees to reimburse the manager for all expenses incurred in his services to the vessel. In the alternative it could be in the form of a lump sum from which the manager pays all costs and derives his management fee.

The complex relationship between the owner and the manager is primarily governed by the agreement drawn up between them. This agreement will specify the roles and responsibilities of each party and sets the framework for their relationship. A management agreement is a part of other agreements which the owner signs and which may include charter party, pool agreements or finance documents. As there are various legal issues that may arise in the services that a manager provides and wherein the services of third parties are used it is prudent for a manager to be aware of all the other agreements and documents. Choice of law and the dispute resolution procedure should be ideally aligned with similar provisions in the other documents. The management agreement may be prepared by the ship management company or in the alternative a standard format could be used. The most commonly used is the BIMCO's SHIPMAN 2009. In 1988, the Documentary Council of the Baltic and International Maritime Council (BIMCO) started publishing ship-management forms known as SHIPMAN, the most recent standardized amended version being the SHIPMAN 2009. This document can be used without any changes or used as a standard with suitable amendments as agreed between the parties. The document sheds clarity on the roles and

responsibilities of the owner and the manager as well as their rights and obligations. SHIPMAN 2009 also provides for a minimum contractual term wherein the agreement cannot be cancelled except in extraordinary circumstances. The document also provides the manager with protection by isolating him from all liability to the owners for loss, damage etc. unless the owner proves negligence, gross negligence or willful misconduct. The manager's liability is limited to 10 times the annual fee unless the act that caused the damage is personal and reckless and with intent to cause the same and with the knowledge that such loss would result. The document also specifies the capacity in which the managers act in carrying out its duties to the owner. The managers have full indemnity protection from the owners in its performance of services for the owner other than what he would be liable for under the contract. The managers do not act on their own but for and on behalf of the owners, that is, in short as an agent to the owners.

Therefore the main contractual relationship that governs a ship manager is based on the law of agency. The manager is an intermediary as against third parties and handles the daily operation of the vessel. The law of agency is clear in that the duties and rights of the principal and the agent, whether express or implied depends upon the terms of the contract existing between them. Under English law the performance of the contract is required to be exact and precise. But in ship management contracts the duty is believed to be performed if reasonable care and due diligence has been exercised. Here, performance needs to be construed and analysed on whether the duty performed correspond to that promised. Ship management agreements include termination as the solution to non-performance. It is difficult to enforce specific performance unless the aggrieved party has a special interest in performance which cannot be satisfied by damages. The manager may have personal right of action against the ship owner for unpaid fee and expenses and may exercise lien over the property of the owner in his possession to secure his payment.

Although the main relationship between the parties is the agreement, the rights and obligations arising out of it may be enforced in the Courts. Enforcement may be through an action for damages for breach of contract or where appropriate the court may compel performance by the party in default.

The manager may find themselves involved in claims related to third parties as a consequence of their joint and several liability with their principal. This liability may arise due to local law or statutory liabilities. These claims are to be handled by the principal or their Protection and Indemnity Clubs.