



Neutral Citation Number: [2026] EWHC 7 (Admlty)

Case No: AD-2024-000018

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
ADMIRALTY COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 12 January 2026

Before:

ADMIRALTY REGISTRAR DAVISON

Between:

UNITY SHIP GROUP S.A.

Claimant

- and -

EUROINS INSURANCE JSC

Defendant

THE "HAPPY ARAS"

Mr Emile Yusupoff (instructed by **Preston Turnbull LLP**) for the **Claimant**
Ms Lara Hicks (instructed by **Scornik Gerstein LLP**) for the **Defendant**

Hearing dates: 1 – 4 December 2025

Approved Judgment

This judgment was handed down remotely at 2pm on 12 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Admiralty Registrar Davison:

Introduction

1. The “HAPPY ARAS” is a bulk carrier, built in 1990 and, at the time of the events with which this claim is concerned, registered in Belize. Its length overall is 94.34m and its depth 7.8m. Its gross tonnage is 2,659. Because its tonnage is below 3,000, there was no requirement for it to be equipped with a voyage data recorder (“VDR”) and it was not so equipped. On 20 March 2023 the vessel was on the eighth day of a voyage charter from Reni, Ukraine to Mersin, Turkey with a cargo of soya beans. At 20.58 it grounded on the north shore of the Datca peninsula in southern Turkey. (The Datca peninsula lies south east of the island of Kos in the Mediterranean Sea.) The vessel was seriously damaged. A salvage, lightering and transhipment operation followed, which was not completed until 13 June 2023. The claimant owners declared General Average. Blue Seas Adjusters Ltd were appointed and their adjustment was finalised on 3 November 2023. The defendant is the insurer of the cargo owners, Diatold Trade Pte Ltd (who were the voyage charterers). The defendant entered into an Average Guarantee dated 30 March 2023 which covered such contributions from cargo interests to general average as were ascertained to be “reasonably, properly and legally due”. The adjustment provided for a GA contribution from cargo interests of US\$1,271,095.89. The defendant has refused to pay on the ground that the vessel was unseaworthy in two respects:
 - (i) it was not manned with a competent crew, more specifically a competent Master; and
 - (ii) there was no proper system in place for passage planning and/or there was a failure to exercise due diligence in passage planning, in contravention of IMO Resolution A.893(21) (Guidelines for Voyage Planning).
2. The recap to the voyage charterparty provided for General Average to be adjusted and settled in London in accordance with the York/Antwerp Rules 1994. The cargo was shipped under a single "CONGENBILL 1994" bill of lading dated 13 March 2023, which incorporated the terms of the Charterparty and in any case provided for General Average to be adjusted and settled in London in accordance with the York/Antwerp Rules. The Average Guarantee was governed by English law and contained a jurisdiction clause in favour of the High Court in London.
3. The claim was commenced in the Admiralty Court on 28 March 2024.

The evidence at trial

4. The evidence had a twin focus: (a) the Passage Plan, which was signed by the Master and the Chief Engineer and (b) the conduct of the Master, who was the Officer of the Watch (“OOW”) from 20.00 on the evening of the grounding. Remarkably, the claimant called no evidence from the crew, including the Master. The evidence as to the standards of passage planning and navigation came from the experts called by each party, Captain Ivanov for the claimant and Captain Simpson for the defendant. For an account or reconstruction of what had happened, the experts were in turn reliant on the records contained in (A) the Deck Log, Engine Log and GPS Log, (B) a copy of the working chart for the relevant section of the voyage and (C) the very brief

statements given by the crew in proceedings before the Turkish Commercial Court. Additionally, they were able to refer to publicly available AIS data. As to the sequence of events and the causes of the grounding, there was little, if any, dispute between them.

The grounding

5. The figure below (Figure 2 from the report of Captain Simpson) sets out the vessel's Passage Plan course, which is the yellow line, between Way Points 51 and 55 and the approximate route actually taken, which is the red line.



6. The Master took over as OOW at 20.00. In the preceding 2 hours, the Passage Plan provided for the vessel's position to be fixed (i.e. plotted and recorded in the Deck Log) at least every 10 minutes between Way Points 51 and 52 and at least every 30 minutes between Way Points 52 and 53. No such fixes are recorded. The only position that is recorded is the vessel's position at the time that the watch was handed

over. And this was marked only on the working chart. It was not entered in the Deck Log.

7. When the Master took over, the vessel was nearing Way Point 53, where there was to be a course alteration to 198 degrees. What in fact happened was an early alteration of course on to a southerly heading, the effect of which was to “cut the corner”. This was a deviation from the Passage Plan which ought to have been, but was not, recorded in the Deck Log. Apart from a small further course alteration at around 20.16, which added a few degrees to the southerly heading, the vessel remained on the same course until the grounding. Its speed was about 9kn and Way Point 54 would have been reached at around 20.35.
8. Nautical twilight, when the horizon is still visible in clear weather, ended at 20.18. At that point, astronomical twilight commenced. A lookout was rostered on the bridge. At some point between the Master taking over the watch and the vessel reaching Way Point 54, the Master sent the lookout below to make tea. He (the Master) was then alone on the bridge. According to the Passage Plan, after Way Point 53 he should have been fixing the vessel’s position every 10 minutes and after Way Point 54 every 30 minutes. No such fixes are recorded in the Deck Log or on the working chart.
9. The Master should have made a course alteration at Way Point 54 to bring the vessel’s heading round to 231 degrees. But no such alteration was made. The vessel continued on its southerly course. The Datca Peninsula is surrounded by deep water to within a distance of less than ½ NM. The claimant’s expert, Captain Ivanov, took the following details of the timing of the grounding from the AIS data and the relevant chart. At 20.57.30 the vessel had just entered within the shallow waters on the north side of the peninsula at a speed over ground of 9.4kn. At 20.57.47 its speed was 6.5kn. At 20.58.03 it was aground. His analysis of the data led him to the opinion that it ran aground at its sailing speed without making any attempt to alter course or reduce that speed¹. Captain Simpson shared this opinion.
10. There are entries in the Deck Log and the Engine Log which are inconsistent with the AIS data. An entry timed at 20.05 states: “20.05 A/C (T) 213 degrees (T) was made”. No such alteration in course was in fact made. The Deck Log also records the time of the grounding as 20.45 – some 12 or 13 minutes before the actual time that it occurred.
11. The Engine Log contains these entries:

“20.35	STOP M/E
20.36	FULL ASTERN
20.45	STOP M/E”
12. The entries suggest that the vessel took avoiding action some 23 minutes before the grounding. But this is inconsistent with the AIS data and inconsistent with the opinions of the experts, including the claimant’s expert.
13. When the Master gave evidence to the Turkish Commercial Court, which was on 22 March 2023, he stated as follows, (I have reproduced the English translation as it appears in the trial bundle, despite some obvious infelicities of language):

“I clocked in my shift on 20.03.2023 at 20.00. I returned to route 213 at 20.05. I sent Fuat Erdogan, who was my spotter during the cruise, downstairs to brew tea. I missed the route that I was supposed to steer at 20.35. I saw the island in front of me, at that moment I urgently stopped the machine and gave it a reverse position after 1 minute. However, I ran aground because the ship had speed.”

14. This testimony, like the records in the Deck Log and the Engine Log, is inconsistent with the AIS data and inconsistent with the opinions of the experts.

The Passage Plan

15. The Passage Plan was prepared on 12 March 2023 by the Second Officer and signed by both the Master and the chief engineer. A standard form was used. It was a berth to berth Passage Plan from Reni, Ukraine to Mersin, Turkey. It consisted of a series of courses and Way Points. It specified the minimum available depth for each section of the voyage, the under keel clearances, the fixing method (which was GPS throughout) and the fix intervals. As noted by Teare J in *The CMA CGM Libra* [2019] 1 Lloyd’s Law Rep 595 [2019] EWHC 481 (Admlty) passage planning is the subject of guidelines published by the International Maritime Organization; see the Resolution A.893(21) adopted in November 1999. These guidelines were reflected in the vessel’s own Safety Management System (“SMS”) embodied in its Safety Management Manual.
16. The experts evaluated the Passage Plan against the yardstick of the IMO guidelines and the vessel’s own SMS. They had many criticisms. I will not enumerate them. It is sufficient to note that the Passage Plan was “of a basic type” (Captain Simpson’s description) and incomplete because it did not contain Way Points for the passages through the Sulina canal transit and the transits through the Bosphorus and the Dardanelles straits. Captain Simpson’s opinion was that it should have (1) provided for no-go areas around the Datca Peninsula, and (2) contained cross track limits indicating the maximum permitted excursion from the planned track. The latter (as well as proximity alarms) should also have been entered into the radar. Captain Ivanov’s opinion was that because the Datca Peninsula shelved so steeply the no-go areas were effectively the land itself. Hence there was little scope for, or point in, marking them on the Passage Plan. As to cross track limits, he agreed that these and also proximity alarms were desirable. But they were not required by the Guidelines to feature in the Passage Plan. It would have been sufficient if they had been entered into the radar system – as to which his stance was that there was no direct evidence one way or the other.
17. The experts agreed that, with all its defects, if the Passage Plan had been followed, the grounding would not have occurred.

The law

18. Rule D of the York-Antwerp Rules provides as follows:

“Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure; but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.”

19. As to “fault”:

“A shipowner is not entitled to recover general average contributions from the owners of the cargo where the loss or expenditure was caused by its ‘actionable fault’ which includes any causative breach of the terms of the relevant contract of carriage”; judgment of Lord Hamblen in *The CMA CGM Libra* [2021] 2 Lloyd’s Law Rep 613, [2021] UKSC 51 at paragraph 21.

20. The actionable fault relied upon in this case is a breach of the carrier’s duty of seaworthiness. The contract of carriage incorporated the Hague Rules. Article III r.1 of the Hague Rules provides as follows:

"The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to –

(a) make the ship seaworthy

21. Article IV rules 1 & 2(a) provide as follows:

"1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy...in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this Article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(a) Act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship.”

22. The test of unseaworthiness is whether a prudent owner would have required the relevant defect, had he known of it, to be made good before sending his ship to sea; see *The Cape Bonny* [2018] 1 Lloyd's Reports 356 at paragraph 118 and *Scrutton on Charterparties and Bills of Lading* 23rd Ed. at paragraph 7-025.

23. It has now been conclusively established by the Supreme Court that a defective passage plan can render a ship unseaworthy for the purposes of article III rule 1 of the Hague Rules’ see *The CMA CGM Libra* above.

24. Another aspect of seaworthiness is the carrier’s duty to provide a competent crew. The following passage from paragraph 129 of the judgment of Cresswell J in *The Eurasian Dream* [2002] 1 Lloyd’s Law Rep 719, [2002] EWHC 118 (Comm) sets out the parameters of this duty:

“(1) Incompetence or inefficiency may consist of a ‘disabling want of skill’ or a ‘disabling want of knowledge’:

‘It is not disputed, I think, that a ship may be rendered unseaworthy by the inefficiency of the Master who commands her. Does not that principle apply where the Master’s inefficiency consists, whatever his general efficiency may be, in his ignorance as to how his ship may, owing to the peculiarities of her structure, behave in circumstances likely to be met with on an ordinary ocean voyage? There cannot be any difference in principle, I think, between disabling want of skill and disabling want of knowledge. Each equally renders the Master unfit and unqualified to command, and therefore makes the ship he commands unseaworthy. And the owner who withholds from the Master the necessary information should, in all reason, be as responsible for the result of the Master’s ignorance as if he deprived the latter of the general skill and efficiency he presumably possessed.’ (*Standard Oil v. The Clan Line Steamers* [1924] AC 100 per Lord Atkinson at 120-121).

(2) Incompetence or inefficiency is a question of fact, which may be proved from one incident and need not be demonstrated by reference to a series of acts: *The Star Sea* [1997] 1 Lloyd’s Rep. 360 at 373-374 (per Leggatt LJ). However, one mistake or even more than one mistake does not necessarily render a crew-member incompetent: *The Star Sea* [ibid] at 374:

‘It is true that in *The Makedonia* Mr Justice Hewson found at p. 336 – “... a shocking history of sheer inefficiency, a succession of negligent acts ... amounting to a state of inefficiency far beyond casual negligence ...” but we can find nothing to support the proposition that a series of acts must always be necessary in order to establish incompetence or inefficiency. Indeed, at an earlier stage of the judgment, Mr Justice Hewson quoted the well-known passage from Lord Atkinson’s speech in *Standard Oil Co. of New York v. Clan Line Steamers Ltd.* [1924] AC 100 referring to Lord Atkinson’s view that “disabling want of skill and disabling lack of knowledge” equally renders the Master unfit and unqualified to command. It seems to us that it must be possible, in certain circumstances, to draw the inference from one incident that someone had a “disabling lack of knowledge”. ...

We do entirely accept (as the Judge in his judgment recognized) that one mistake or even more than one mistake does not necessarily render a crew member incompetent. Anyone can make a mistake without the conclusion being drawn that he has either “a disabling want of skill” or a “disabling lack of knowledge”.’

(3) Incompetence is to be distinguished from negligence and may derive from:-

(a) an inherent lack of ability.

(b) a lack of adequate training or instruction: e.g. lack of adequate fire-fighting training (*The Star Sea* [ibid]).

(c) a lack of knowledge about a particular vessel and/or its systems: *Standard Oil* (ibid); *The Farrandoc* [1967] 2 Lloyd’s Rep. 276; *The Star Sea* [ibid] (operation of the CO² fire-fighting system).

(d) a disinclination to perform the job properly:

‘In considering efficiency, the matters to be considered, in my view, are not limited to a disabling want of skill and a disabling want of knowledge. A man may be well qualified and hold the highest grade in certificates of competency and yet have a disabling lack of will and inclination to use his skill and knowledge so that they are well-nigh useless to him. Such a man may be unable efficiently to use the skill and knowledge which he has through drunken habits or through ill-health. Mr MacCrimmon has submitted that a lack of application in the use of skill and knowledge is not within the ambit of “competence”, though in certain cases he would be prepared to concede that drunkenness and physical unfitness might be.

This is a matter to which I have given considerable thought and I can see no real difference between those two, that is, drunkenness or physical unfitness on the one hand and a disabling lack of will to use the skill and knowledge on the other. The reason why I can see no distinction is that the result is the same, or may be.’ (*The Makedonia* [1962] 1 Lloyd’s Rep. 316 at 335 per Hewson J).

(e) physical or mental disability or incapacity (e.g. drunkenness, illness):
Moore v. Lunn (1923) 15 Ll.L.Rep. 155; *Rio Tinto v. Seed Shipping* (1926) 24 Ll.L.Rep. 316.

(4) 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? (per Salmon J in *Hong Kong Fir Shipping v. Kawasaki* [1962] 2 QB 26 at 34.)

(5) As to causation, unseaworthiness must be ‘a cause or, if it is preferred, a real or effective or actual cause’ and ‘In truth, unseaworthiness ... can never be the sole cause of the loss. ... It must, I think, always be only one of several co-operating causes. ... I can draw no distinction between cases where the negligent conduct of the Master is a cause and cases in which any other cause, such as perils of the seas, or fire, is a co-operating cause. A negligent act is as much a co-operating cause, if it is a cause at all, as an act which is not negligent. The question is the same in either case, it is, would the disaster not have happened if the ship had fulfilled the obligation of seaworthiness, even though the disaster could not have happened if there had not also been the specific peril or action.’ (per Lord Wright in *Smith, Hogg & Co v. Black Sea and Baltic* [1940] AC 997 at 1005).”

25. In paragraph 132 Creswell J went on to explain the due diligence burden resting on the carrier under Article IV(1):

“132. If the vessel is found to have been unseaworthy due to the incompetence or inefficiency of the Master or crew, it is for the carrier to show that it has exercised proper care in relation to the following:

(1) the appointment of a generally competent Master/crew: *The Makedonia* [1962] 1 Lloyd's Rep. 316 (at 337-338 per Hewson J). That is to say, the owners / managers must have taken care to see that the Master / crew were 'suitable men for the post' (*Moore v. Lunn* (1922) 11 Ll.L.Rep. 86 at 93 (per Bailhache J). The owners / managers must take reasonable steps to satisfy themselves of this. They must satisfy themselves by inspection of the seaman's documents, interviews and inquiries from previous employers that he is reasonably fit to occupy the post to which he is appointed: *The Makedonia* [ibid]; *Scrutton on Charterparties* (20th ed.), p. 430.

(2) the specific competence of the Master in relation to the vessel and voyage in question. It will not necessarily be enough to rely on certificates of competence held by the seaman: *The Farrandoc* [ibid] (Can.Ex.Ct) (*Scrutton on Charterparties* (20th ed.), p. 430). The owners/managers must provide the Master / crew with reasonably necessary specific instruction and supervision, on an ongoing basis, in relation to the vessel and voyage(s).

'To my mind, a person taking reasonable care for his own ship or cargo or seeking to discharge this obligation even when told that the person to be employed in a position involving responsibility held a qualifying certificate would scarcely fail to make further inquiries as to his ability and experience. Even after making such inquiries he would, in my opinion, inquire how far the man's experience fitted him for service in the particular ship and take steps to see that the man was adequately instructed with respect to any features of the particular ship with which it was necessary for him to be familiar to properly discharge the duties of his position and to avoid damage to the ship and her cargo.' (at 282)

(See also: *Standard Oil* (ibid); *The Makedonia* [ibid] at 338) Some forms of supervision by the carrier were considered by Lord Brandon in *The Marion* [1984] 1 AC 563 at 575:

'The forms of supervision used vary considerably, depending no doubt on the size of the companies concerned, the number and types of ships which they operate, and the trades in which such ships are employed. The forms of supervision used, however, include, first, regular or random checks by marine superintendents or other qualified managerial staff when ships are visited by such persons in port; secondly, the complete overhaul, in the form of inspection and checking of chart rooms and their contents, at regular or irregular intervals; and, thirdly, the complete landing of the contents of chart rooms for inspection and checking, again at regular or irregular intervals.'

The submissions of the parties

26. The submissions of the parties ranged rather wider than has proved necessary for me to resolve the case. The case, so far as liability is concerned, has come to focus on the

competence of the Master. On that topic, their submissions will be apparent from the discussion below.

27. The parties' submissions on passage planning concentrated on whether it was necessary to show that any defects in passage planning were causative – a short point with an even shorter answer.
28. As to quantum, (a) it does not arise and (b) even if it did arise, because of the way that quantum has been capped under the York/Antwerp rules, it requires little in the way of discussion or debate. Hence, I have not set out the submissions (which were lengthy).

Discussion and conclusions

Competence of the Master

29. I find that the Master was incompetent.
30. The experts, including Captain Simpson, the defendant's expert, readily agreed that any professional could make a mistake, or, indeed, a series of mistakes and that anyone could have a "bad day". Captain Ivanov illustrated that proposition from an experience which he himself had had at sea, when a New York pilot with 20 years of experience had ordered hard to starboard before the vessel of which Captain Ivanov was the Master had come to the end of the fairway. Disaster was only averted by the prompt action of the crew, who immediately recognised the error. Mr Yusupoff emphasised that there was a distinction between negligence and incompetence. He drew my attention to a passage in *The Makedonia* in which Hewson J noted the distinction and stated that there was a "wide gulf" between the two. The essential thrust of Mr Yusupoff's submission was that that "wide gulf" had not been crossed because the Master's errors in this case were isolated, casual errors.
31. I do not think that the Master's errors can be so characterized.
32. When the Master came on to the bridge at 20.00 on 20 March 2023 the OOW whom he was relieving had failed to plot and record the vessel's position over the preceding watch in accordance with the Passage Plan, the vessel's SMS and the practice stipulated by IMO guidelines. He also failed to record the vessel's position in the Deck Log at the end of his watch. These failures appear to have elicited no comment or criticism from the Master because over the course of the next hour he similarly failed. The Passage Plan required him to fix the vessel's position every 10 minutes between Way Points 53 and 54 and every 30 minutes between Way Points 54 and 55. But he did not do so.
33. The Master's first action on taking over as OOW was to "cut the corner", i.e. to make an early turn to a southerly heading thereby saving some minutes of steaming time. This departure from the Passage Plan should have been recorded in the Deck Log, but it was not.
34. At a point which cannot be identified with certainty, but which Mr Yusupoff accepted was probably before Way Point 54 had been reached, the Master sent the lookout below to make tea. This was a clear breach of the vessel's SMS which provided for a sole lookout only in daylight. (Although, having heard no evidence from the crew, I

am not in a position to make findings about it, the length of time that the lookout was absent from the bridge calls into question whether he was actually making tea. But whatever the reason may have been, his presence was required and the Master should not have allowed him off the bridge for any prolonged period.)

35. When the approximate position of Way Point 54 was reached, the Master failed to alter course to 231 degrees.
36. Not only did he miss the Way Point but the Master cannot have been keeping a proper, or indeed any, lookout. Nautical twilight ended at 20.18. At this point he “should have been able to see the prominent land of the Datca Peninsula with its nearly 280m elevation above sea level”; (Captain Ivanov’s report at 5.1.7). Additionally, the peninsula would have been clearly visible on the ship’s radar. But the Master cannot have been monitoring the radar. Additionally, it appears that he had not inputted either cross-track limits or proximity warnings. Had he done so, either step would have generated an automatic warning from the radar.
37. Lastly, the vessel was equipped with BNWAS (Bridge Navigational Watch Alarm System). BNWAS would have required a response from personnel on the bridge at intervals of between 3 and 12 minutes. In the absence of a response, the system would have sounded alarms at an escalating level, which would have alerted the crew to the fact that there was no response from the bridge. (The system operates in a similar way to the well-known “dead man’s handle” on railway trains.) It appears that the system was operational at the time. However, Captain Ivanov has opined that the Master had perhaps “become so accustomed to the system alerts that he was acknowledging them automatically”. In the absence of evidence from the Master, the reason that he took no meaningful action in response to the BNWAS alerts is conjecture. Wherever the explanation lies, the fact is that the Master effectively ignored BNWAS.
38. After the grounding the Master made, or caused to be made, exculpatory entries in the Deck Log and the Engine Log. The Deck Log contains an entry purporting to record a change of course to 213 degrees at 20.05. Had that change of course been made at that time, then Captain Simpson has calculated that the grounding would not have occurred. But the AIS data demonstrates that there was no such change of course. It seems likely, and I find, that this entry in the Deck Log (which suspiciously overwrites and obscures a previous entry) was (a) retrospective and (b) false. Similarly, the Engine Log records main engine movements which are contradicted by the AIS data. The main engine could not have been stopped for one minute and then run astern for 9 minutes at the times given. I find that these entries too are false. In his oral evidence, and taking what appears to me to have been a maximally charitable view, Captain Ivanov said that the entries were possibly explicable by the vessel having begun to ground – or touched bottom in an outlying area of shallower water – at 20.45 but not fully grounded until 20.58. This evidence was at variance with the very clear statements in his report which I have set out at paragraph 9 above. The vessel grounded and came to rest on the steeply shelving and rocky bottom off the peninsula in under a minute. A simpler and much more plausible explanation for the entries in the Engine Log is that they are false and were intended to deflect blame.
39. The grounding was not the product of an isolated error. The errors were numerous and egregious and can be characterized as a complete dereliction of duty. The experts

were divided on the competence of the Master. Captain Ivanov pointed out that this was the eighth day of a voyage in coastal waters, which had involved the vessel navigating a canal transit and the transit of the Bosphorus strait and the Dardanelles strait. But this does not establish competence in the face of overwhelming evidence to the contrary demonstrated by the events of 20 March 2023. I prefer the expert evidence of Captain Simpson. The following answer from Captain Simpson captures his opinion:

Registrar: So, this went beyond just having a bad day, is that it?

Capt. Simpson: In my belief, yes, judge. As a consultant or as a surveyor, one of the things we always do when you're carrying out a survey on a ship, the sort of rule of thumb test is, would I want to sail on it? Would I be happy sailing on this ship to the next port? And I think that's the test: I really would use every excuse in the book not to, not to cancel my taxi to the airport. And I'm very sad to say that indeed.

40. This answerⁱⁱ can be construed as a reflection in Captain Simpson's language of the "prudent owner" test of unseaworthiness set out in *The Cape Bonny*; (see above). The Master made multiple, serious errors; he made those errors in a context where he had, through his own actions or inactions, removed many of the checks and balances intended to maintain the safety of the vessel and the voyage; he then (I regret to find) made inaccurate and misleading entries in the vessel's records. These were systemic failings, a description applied, albeit with differences of emphasis, by both experts. It seems to me that the test of unseaworthiness is made out. A prudent owner would have required the relevant defect (in this case the competence of the Master), had he known of it, to be made good before sending his ship to sea.
41. It is therefore incumbent on the claimant as carrier to prove "due diligence".
42. Although there was no evidence from the crew, I asked Mr Yusupoff whether there had been any kind of disciplinary investigation into the actions of the Master. The statement from Captain Gokay Mutlu (the beneficial owner and manager of the claimant), which I admitted as a hearsay statement, was silent on this. Only one exchange between Captain Mutlu and the Master is recorded in the statement. This was immediately after and at the scene of the grounding. The Master told Captain Mutlu that he had "missed the turning point". Captain Mutlu comments only: "I think it strange that this captain was distracted". There is no mention of any more formal inquiry. Mr Yusupoff told me that there had not been one but that after this voyage the claimant and the Master had parted company "by mutual agreement".
43. As to due diligence at the commencement of the voyage, the relevant section of Captain Mutlu's statement was as follows:

"The Captain has been working with me for three years and was reassigned for Happy Aras upon positive performance evaluation results. Before being assigned to Happy Aras, he worked on ships of similar tonnage with similar number of personnel. All documentation is available and is at Oceangoing Master level. He had a Bridge Team Management certificate. There was no reason to doubt his

performance. I got a positive reference from Tango Shipping. Tango is a big company with a good reputation in the industry.”

44. This part of Captain Mutlu’s statement falls a long way short of demonstrating due diligence. Although the Master’s various certificates have been produced in evidence, as noted by Cresswell J in *The Eurasian Dream*, it “will not necessarily be enough to rely on certificates of competence held by the seaman”. Captain Mutlu has given no details and has not further described the “performance evaluation results” preceding the Master’s appointment to the Happy Aras. I have therefore not been able to scrutinise them or form any judgement about them. The “positive reference” from Tango Shipping has not been disclosed. There is no evidence of or about supervision in any of the forms mentioned in *The Marion*. Lastly, I have obviously not been told the full story of the Master’s departure from the employment of the claimant.
45. Captain Mutlu could not attend the trial. Due to criminal proceedings against him, which were unconnected to this case, he was not permitted to leave Turkey and the Turkish authorities do not permit evidence to be given remotely from Turkey. What little evidence he gave concerning due diligence could therefore not be tested by cross-examination. In the light of this and in the absence of evidence from the Master or any member of the crew I find that the burden of proving due diligence, which lay on the claimant, has not been discharged.
46. For this reason, the claim fails.

Passage planning

47. I have described the failures in passage planning which attracted criticism from both experts. But both experts agreed that, had the Passage Plan been followed, the grounding would not have occurred. The defects were not causative. Ms Hicks argued that it was not necessary for her to prove that they were. She submitted that this was what Lord Hamblen had meant when, at paragraph 145 of *The CMA CGM Libra*, he was describing the carrier’s obligation to provide a seaworthy vessel. She invited me to interpret his remarks about there being no “category-based distinction between a vessel’s quality of seaworthiness or navigability and the crew’s act of navigating” as abrogating the need to demonstrate causation. In my view, it is impossible to read the judgment in that way. It is sufficient to cite the opening sentence of the holding set out in the headnote of the Lloyd’s Law Report of *The CMA CGM Libra*: “The Article IV rule 2(a) exception of act, neglect or default in the navigation or management of the ship could not be relied upon in relation to a *causative breach* of the carrier’s obligation to exercise due diligence to make the ship seaworthy”.
48. I agree with Captain Simpson that the Passage Plan in this case was “basic”. That placed a greater burden on the Master to discharge his duty as Master and as OOW at the time of the grounding with competence. To that extent, this is “part of the picture”, as Captain Simpson described it. But the Passage Plan, taken on its own, did not render the vessel unseaworthy.

Quantum

49. General average expenses under the Adjustment carried out by Blue Seas Adjusters totalled US\$3,140,040.97. Contributory values were as follows: for the ship, US\$855,000; for the cargo, US\$1,230,104 – a total of US\$2,085,104. The difference between the claimed GA expenses and the total contributory values was US\$1,054,936.97. Thus, in order for the defendant to reduce its contribution at all, it would have to “move the dial” (Mr Yusupoff’s expression) by more than US\$1,054,936.97. It would have to do this by showing that the expenses fell to be reduced or the vessel’s contributory values (sound market value less cost of repairs) fell to be increased, or both. I have concluded that the defendant would never be able to discharge this burden. Without going into detail, which would be a disproportionate exercise in these circumstances, I will give three examples. The defendant disputed the sound market value of the vessel and (possibly) the cost of the repairs. But it had no contrary evidence. The defendant disputed the period of allowance. But this would make very little difference to the overall figure as the great majority of the expenses were still incurred within the defendant’s proposed period. The defendant disputed the reasonableness of the hire charges for tug and lightering services. Although there was some force in the criticism, this was a suppliers’ market and any reduction imposed would have to reflect this and would be modest.
50. If I had upheld the case on liability, I would have awarded the GA expenses in the sum claimed.

ⁱ Given the clarity with which Captain Ivanov had expressed his opinion in section 5.13 of his report and given the clarity of the AIS data, I have attached little or no weight to the slightly more reserved answers which he gave in the Joint Statement and in his oral evidence.

ⁱⁱ Mr Yusupoff relied on an answer which Captain Simpson made in cross-examination, which was to the effect that he (Captain Simpson) had not said that the Master was incompetent. But this answer was made in relation to passage planning and plainly did not represent Captain Simpson's overall assessment.