

More than Licenses

By Alan M. Weigel, Esq., Blank Rome LLP

It is a rare situation when the investigation into a maritime casualty, or the litigation that often ensues, does not focus on some aspect of the training and qualifications of some member of the vessel's crew. The first question a Coast Guard investigator will ask a crew member involved in a casualty is to produce his licenses. The first questions the crew member will be asked when he is on the witness stand will be about his training and experience.

These inevitable questions are asked because of several considerations. First, most accidents generally involve some error on the part of a crew member which casts doubt about his competence. Some errors may be so extreme as to raise a presumption that the offending crew member was not adequately trained. There also is a well established principle of maritime law that a vessel owner has a non-delegable duty to man his vessel with a competent master and crew. What this means is that the vessel owner has an absolute obligation to ensure that the crew that it hires have the training, qualifications, and experience to safely operate its vessel in the conditions expected to be encountered on the vessel's intended voyage.

In fulfilling this obligation, the vessel owner is expected to exercise "due diligence." In other words, in selecting a competent crew, the vessel owner must use due and proper care and cannot "close his eyes" to what prudent inspection would disclose. An owner must therefore avail himself of whatever means of knowledge are reasonably necessary to prevent conditions that are likely to cause accidents or losses. Anything less than a competent crew will expose the vessel owner to the charge that his vessel was unseaworthy, and could make him fully liable for any losses that result from a casualty to the vessel or its cargo.

Unseaworthiness may also result from improper operation or maintenance of equipment or other related failures which make the vessel ill-suited for its duties at sea. These concepts are related to crew competence, however, because negligent operation of a vessel often results from improper training of the

crew.

An obvious area of inquiry into potential crew members' competency is their training and qualifications. Detailed standards for qualification and training are part of the STCW Convention and most flag-state license and training regulations. All too often, however, vessel owners end their inquiry after satisfying themselves that a candidate has the statutory minimum required certificates and his licenses are current. If a casualty occurs, the failure to make any further inquiries into competence beyond certificates and licenses can result in a vessel owner being found not to have manned its vessel with a competent crew.

An important area of inquiry that is often ignored during the candidate vetting process is whether the potential crew member's experience is adequate for the conditions the vessel is expected to encounter during its voyage. Casualties have often resulted from otherwise qualified crew facing unfamiliar conditions for the first time. In one case, for example, a tug crew with a great deal of experience sailing southern waters was found incompetent to crew a similar tug during a winter time trip on an icy river.

It also is important to evaluate how a potential candidate performed during those prior experiences. Most often this is accomplished by making inquiries into the evaluations the candidate received from his former employer or by requiring the candidate to provide recommendations as to his experience and competency. The essential element in this area of inquiry is to obtain adequate proof of a candidate's experience and reputation for competence and to ensure that experience is adequate for the vessel and its planned voyage.

The final step in the vetting process should be a check of the candidate's knowledge through a comprehensive technical interview in which the technical ability of the candidate is assessed by a qualified mariner with the relevant command-level experience, either a master or chief engineer. This interview gives the vessel owner its last opportunity to satisfy its due diligence duty to ensure the potential

About the Author



Alan M. Weigel concentrates his practice in the area of commercial and insurance litigation and arbitration, with a particular emphasis on the maritime industry. Mr. Weigel represents clients in a wide variety of both domestic and international maritime, commercial, and insurance matters. Email: AWeigel@BlankRome.com

crew member is competent. The technical interview also gives the vessel owner the opportunity to assess the additional training the new crew member will need in the future to maintain his competency.

Too often, crew competency is considered a static characteristic. But crew members who are competent when they are hired may not retain that competency for the entire term of their contract. Equipment is often upgraded and the vessel's crew may not be familiar with the changes. A vessel's trading routes may change, taking its crew into unfamiliar waters. The STCW Convention recognizes that familiarization training is necessary when a new crew member reports to a vessel. Consideration should be given to using the same type of familiarization training for assigned crew members when the vessel's equipment and operations change.

A mariner's skills are perishable. Skills that are not used on a regular basis because they are not required by the vessel's routine operations can atrophy. When called upon to use those skills in an emergency, the mariner may not perform up to the expected standards. Lifeboat operations is an example where accidents and injuries occur all too frequently because the skills needed to safely launch and retrieve lifeboats are not exercised routinely. Consideration must therefore be given to providing crew members with more than the training necessary to maintain their certificates and licenses current. Training also should be geared to improving watch standers performance of critical tasks and maintaining critical

Crew Competency Requires Continuous Training and Performance Monitoring

skills. To accomplish this, vessel owners should consider using training courses to the greatest extent possible, even those that are not required by STCW mandate. On-board training should also be considered as a means to maintain critical skills at the required levels of competency.

While it is possible to estimate the competency of a vessel's crew by examining their experience and licenses, perhaps the best measurement of crew competency is their performance as crew members. On board performance monitoring is necessary to verify training is effective. Most ship owners employ a system to have crew members observed and evaluated by senior officers to monitor the need for further training requirements. That system is necessary, but usually only assesses individual performance. Adequately evaluating performance requires a vessel owner to evaluate watch standers' performance as part of a team. Senior officers are usually part of those teams and cannot reasonably be expected to critically self-evaluate. Thus, effective performance monitoring realistically requires evaluation by independent observers.

The ISM Code requires verification of compliance with safety procedures. The Code's required audits provide one means of satisfying an owner's due diligence duty to ensure that its crew performs competently. Internal auditors can and should be trained to recognize more than just deficiencies complying with documentary procedures. For example, several major ship owners routinely conduct underway navigation proficiency evaluations. The maritime industry should consider a more widespread adoption of this practice using internal auditors and extend it to all areas of vessel operations.

The detailed procedures that a vessel owner uses to ensure that candidates hold the necessary certificates and licenses, have the requisite experience, and possess the skills for serving aboard ship must be set forth as part of the vessel owner's safety management system. The records documenting the accomplishment of those procedures, as well as the accomplishment of training and performance monitoring

should be maintained as part of the SMS as well. Nothing can be more frustrating for a vessel owner and his counsel than to have followed all the best practices in selecting a competent crew, but be unable to prove that it did so after a casualty occurs. Nothing can ensure the safe and successful completion of a vessel's voyage better than a competent crew.

As vessels and their operations become more complex, owners need to consider new and innovative ways to provide crew that are well training and experienced. Nothing less is required by the vessel owner's duty of due diligence.