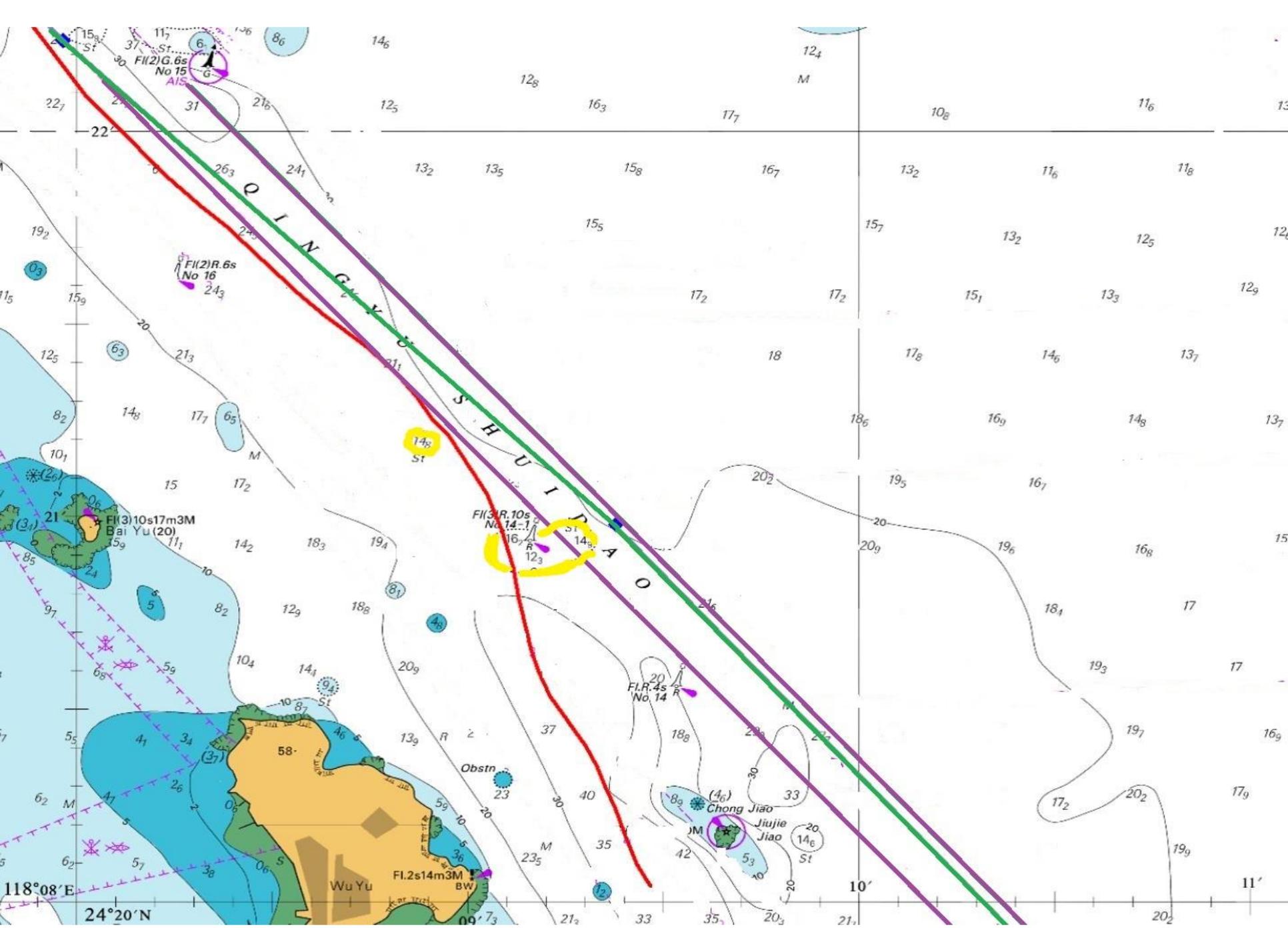


The “CMA CGM LIBRA”

Passage planning and unseaworthiness

John Russell QC





The dredged fairway has at least a depth of 14 metres

But- outside the dredged fairway:

“Numerous depths less than the charted exist within, and in the approaches to Xiamen Gang”

Inadequate and wrong

Wrong courses

No proper UKC calculations

No “NO-GO” areas

No warning about uncharted shallows in the typed plan or marked on the chart

“The usual 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”

“It must be shown that those servants or agents relied upon by the owner to make the ship seaworthy before and at the beginning of the voyage have exercised due diligence. That is because the duty is non-delegable.”

The key admission:

“The master accepted, when cross-examined, that if the area west of buoy 14-1 had been marked as a "no go" area he would not have attempted the manoeuvre that he did.”

The application of well established principles in a (relatively) new factual context.

Timing.
The wording
of III(1)



Nature of activity.
Navigational fault
is not
unseaworthiness

“Article III rule 1 of the Hague Rules draws a clear temporal line”

(Per Haddon-Cave LJ)

“This reflects the balance struck at the inception of the Hague Rules in 1924. The signatories to the Convention agreed to divide the allocation of risk for maritime cargo adventures into two separate regimes.”

“The first regime imposes a nondelegable duty on carriers to exercise due diligence to make the ship seaworthy “before and at the beginning of the voyage” (Article III rule 1)”

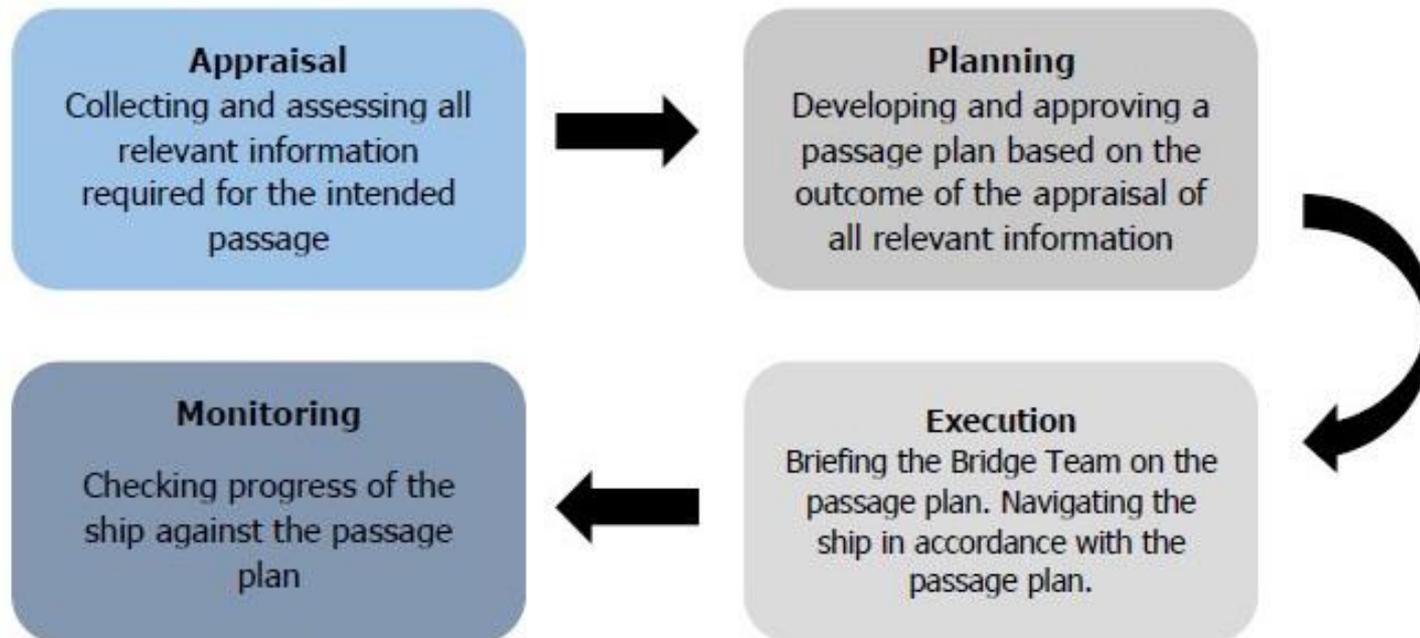
“The second regime excuses carriers from liability for loss or damage caused by errors of crew or servants “in the navigation or in the management of the ship” thereafter, i.e. during the voyage (Article IV rule 2(a)).”

The Owners' submission that, "because the preparation of a passage plan can be said to be an act of navigation involving an exercise of judgment and seamanship, it falls within the exception in Article IV rule 2(a) and a defect in the plan cannot constitute unseaworthiness"

was....

"a fallacy"

(Per Flaux LJ)



What has to be planned before the commencement of the voyage?

One-off failure or systemic failure?

Causation?

“Attributes”

What is the relevant voyage when the vessel is on a liner service?



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