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Third Party Ship Management Companies and their
Legal Relationship with their Principals

by

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Abstract

The last decades, Third Party Ship Management Companies have started to play an important role in the shipping industry. Specially, right after the economic downturn and the decline of the freight rates, ship owners are trying to reduce their costs and run their vessels more efficiently. As a result more and more ship owners turn to the solution of a Third Party Ship Management Company running their vessels.

However, the relationship between the ship manager and the ship owner is not always ideal. Disputes between them may arise, regarding claims from third parties, standards and the quality of the vessel, bad performance of the vessel, delayed payments, etc.

The aim of this thesis is to define the duties and obligations of each of the two parties involved, what are the risks that are undertaken and how can they be covered reducing the risk of future disputes or claims.

In order to come up with some useful outcomes, the contracts that are used by the parties for ship management agreements are investigated, additional to previous cases of disputes that have ended up in the courts of law.

At the end of the research, an effort for meaningful suggestions and proposals regarding the legal relationship that should be bonding the parties involved in a ship management agreement is made.

Keywords: Third Party Ship Management Company, Manager, Ship Owner, Principal, Liability, Obligations.

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List of Abbreviations

BEDI	Baltic Exchange Dry Indices
BIMCO	Baltic and International Maritime Council
CMC	Crew Management Company
COA	Contract of Affreightment
ETA	Estimated Time of Arrival
H&M	Hull and Machinery
IMO	International Maritime Organization
ISM	International Safety Management
ISMA	International Ship Managers' Association
IT	Information Technology
ITF	International Transport Workers Federation
ITIC	International Transport Intermediaries Club
LLMC	Limitation of Liability for Maritime Claims
LNG	Liquefied Natural Gas
MARPOL	Marine Pollution Act
MOA	Memorandum Of Agreement
P&I	Protection and Indemnity
S&P	Sales and Purchase
S&Q	Safety and Quality
SMC	Ship Management Company
SMS	Safety Management System
SOLAS	Safety Of Life At Sea
STCW 95	Standards of Training Certification and Watchkeeping 95

Chapter 1 Introduction

1.1 Topic Background

The main goal of a ship owner is to generate the highest level of profit out of the vessel while at the same time maintaining a satisfactory level of quality and seaworthiness. However, each ship owner's strategy and objective might be different, depending on various determinants like the experience, the economic status of his company, his character, etc. The highest level of profit, beside the income that the vessel earns, is also strongly dependant on the running costs that the vessel has.

Usually, the small-sized ship owners in order to reduce their costs turn to third party Ship Management Companies that are in turn able to achieve economies of scale through the big number of vessels they undertake, and through better networks and connections they have as they can manage to run their client's vessels in a more cost efficient way than each ship owner would do on his own.

Although, the role of the Third Party SMC seems to be pretty clear and well defined, depending on the services they provide to their customers, many problems on this relationship may arise.

The operating budget, quality of the crew, safety and quality of the vessel, certifications of the vessel, compliance with the international rules and regulations, proper communication between the parties involved and accurate commercial decisions regarding the vessel, are only some of the many issues that may arise between the owner and the SMC during a management agreement.

1.2 Research Objective

This paper's objective is to highlight the main aspects of the relationship between the Third Party SMCs and their clients and how they are defined. What are the risks the SMC faces? What are the liabilities that arise? How can the parties protect themselves and how can they be mutually helped in order to overcome difficulties for their own good? Do "strong" legal contracts help the parties to avoid disputes and unnecessary costs? These are some of the main questions my research will try to give an answer to, in order to clarify a quite complicated field and come up with some useful outcomes.

1.3 Methodology

The research methodology followed for this paper consists of:

- *Literature Research:* It involved thorough review of books, articles, papers, journals, presentations and reports from professionals, academics and people who have vast experience in the shipping industry.
- *Interviews:* It involved interviews with people that have many years experience in the shipping industry, like maritime lawyers, directors at SMCs

departments and others, that helped my research to be applied on practical matters of the industry and not only on a theoretical level.

- *Actual Ship Management Contracts and Case Studies:* In order to come up with useful results that are applied to reality and understand what are the actual difficulties faced, during the research two actually used Ship Management contracts were reviewed additional to previous cases that were brought to the courts.

1.4 Limitations

The topic of this research demands a practical and theoretical approach together with consideration of the potential difficulties faced between the Third Party SMCs and their clients. The main limitation of this research is the unpredictability that exists on some aspects of the Ship Manager-Client relationship and the unforeseen dangers that may arise and cannot be covered in full by this research. An effort has been made to cover as fully as possible all the potential scenarios but due to high volatility this cannot be applied in total. Additionally, many of the disputes that are made are solved under the table, in order to avoid going to the court of law. At that extent, there is not sufficient background of law cases related to that topic, and the research is based on representative law cases that the outcome has been published.

1.5 Outline

The introductory chapter of this research consists of the description of the underlying incentive for this topic, as long as the scope of this study and the methodology that was followed in order to reach some sufficient results. Additionally, there is reference to the limitations that were faced in the process, and a short summary of the framework.

Chapter two aims to provide the reader with a fundamental understanding on the field of the Third Party Ship Management business, mentioning some its key elements.

Chapter three analyses in detail the main services that SMCs provide to their principals, their field of expertise along with the problems they face and mechanisms that they have in order to overcome them.

Chapter four comprises of the core chapter of this research, analyzing the relationship that governs the manager and the owner. In this chapter, it is stated, the main tool that is used in order to succeed in a smooth server-client relationship along with the difficulties the manager is facing, the responsibilities and the duties that he has to fulfill, what are the profits that he gets and finally what are the risks that he undertakes.

Chapter five involves assessment of previous cases that have ended up in the courts of law and close interpretation of the arbitration awards, providing the outcomes of this thesis regarding ways the SMC can be protected from the liabilities that can arise and claims that can lead to financial loses.

Finally, Chapter six concludes this research by summarizing the most important findings of this process and pointing out some hopefully useful suggestions and remarks on a vast field like that of the Third Party SMCs.

Hereunder follows a table picturing briefly in what extent do the thesis objectives and the report structure match, according to the author's point of view.

Table 1: Relationship between Thesis Objectives and Report Structure

Relationship between Thesis Objectives and Report Structure						
Thesis objectives	Chapter 1	Chapter 2	Chapter 3	Chapter 4	Chapter 5	Chapter 6
Legal Relationship between the parties	○	○	○	●	●	●
Exposure and Coverage	○	○	○	●	●	●
Familiarization with the SMC	●	●	●	○	○	○

●= strong relationship; ○= weaker relationship

Chapter 2 Prologue of the Third Party Ship Management Industry

Third Party Ship Management Companies are companies that have no vessels under their ownership and offer ship management services to third parties like ship owners, charterers and banks. They employ experienced and professional personnel, which consists of technical directors, chief accountants, business managers, fleet personnel coordinators, safety and quality managers, naval architects, superintendents, and others. A general structure of the company can be shown at the graph below.

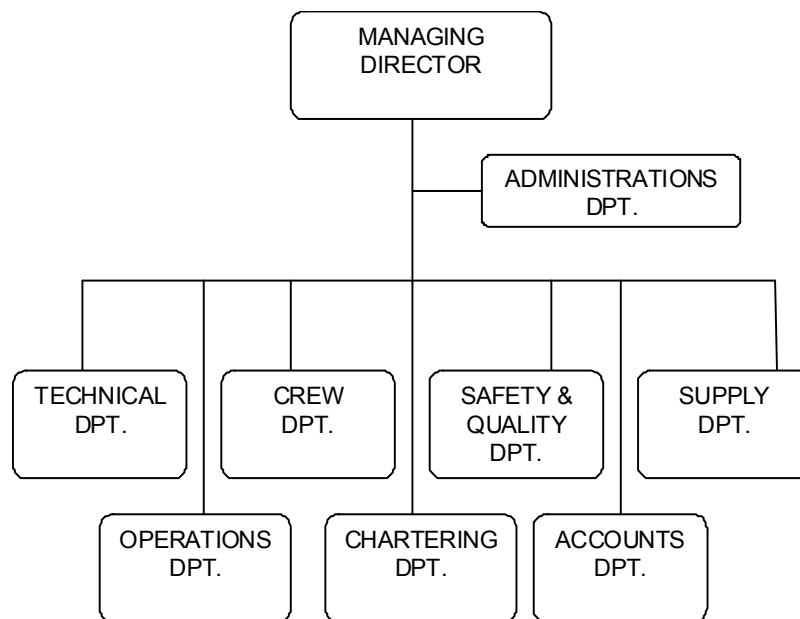


Figure 1: Structure of third party SMC. Source: The Author

At the end of the 1940's, third party ship management companies made their appearance, and during the 1960's they started to grow and develop, mainly because organizations not closely related to shipping, like oil majors, banks, and others, became owners and were in need of those professional services. Additionally, the tempting low cost for the establishment and the running of such companies, combined with the intention of head-owners to run their vessels with less expenses and liability, helped to that direction.

The liabilities and the responsibilities between the two parties of the agreement are usually defined by the contract issued by BIMCO, the SHIPMAN 98 Standard Ship Management Agreement. The main task of the contract is to provide a plain provision of the rights and obligations of the owners and the managers, balanced in such a way that can simplify the procedure and thus to reduce the risk of disputes due to wrong interpretation of the terms.

The reasons why clients of such companies turn to such type of management may vary. Some do not have the experience or do not wish to handle ship operation, whereas others just want to run their business at lower cost. These companies provide either full ship management services or partial, which means that they have

the flexibility to offer technical management, crewing, provisions, accounts, and other services separately, according to the needs of their clients. This is a great advantage for the clients, given that they may not want to maintain a department in their company as it is very costly and alternatively they can turn to third party ship management companies.

The environment in this industry has changed dramatically through the years. The last decade, many non ship owners, with vast experience in ship management saw the demand for provision of services for the owners to increase and seized the chance to enter the business, as the capital needed was small compared to the chances of profit that appeared. However, the implementation of new safety codes and regulations increased the demand for better quality services and the oversupply of companies that had entered the business made the companies change their marketing strategies and try to diversify the products served to the customer. As such, companies that had the budget and the knowledge to expand, managed to invest in IT systems for better control of the undertaken fleet, new offices around the world were established in order to be close to the client whenever they were asked to.

Following this strategy many companies achieved substantial growth and established a brand name; attracting more clients and increasing the size of the fleet they manage. On the one hand, this was significantly favorable for the company's balance-sheet and profit opportunities; on the other hand, the direct personal contact with the client was lost. Many ship owners were not thrilled with this situation, as a matter of fact, it became a concern that their assets were not being given the right attention and that their vessels were just among many undertaken without receiving the proper diligence. Many ship owning companies are family run even today, and the lack of communication with a person for the regular update of the vessel does not seem appealing to them. Also by the extreme increase of the fleet, the personalized services are fading away and are replaced by standardized services for each type of vessel. Obviously, it would be impossible for every vessel, even of the same type, to have the same needs and demands. Last but not least; having many clients, may give rise to conflicts of interest. There is no chance that all the clients will be served the same way, and especially when commercial management is taking place, most probably the smaller client's vessel will be set aside in favour of the major client. Although, it may seem logical or an ordinary practice, in the case that the owner realizes that his vessel is not given the same level of attention as the rest of the undertaken fleet, he can rightfully sue the manager for any losses and damages.

In general, the Third Party Ship Management industry is a field that offers for gaining profit and save their clients money from the economies of scale achieved, but is also a field that can hide unforeseen risks and big chances of losses.

Chapter 3 Sections of the Third Party Ship Management Companies and Services Provided

The services provided by a Third Party SMC may vary depending on their specialty and on their marketing strategy. The main purpose of Ship Management Companies is to make profit and increase their growth and their market share by satisfying their customer's needs at the same time. Initially Third Party SMCs provided only technical management and manning services to their clients. Through the years and as a result from the increasing demands of the market and their customers; they changed their strategy and diversified the services that were provided to operational, provisions, chartering, accounting and insurance services. Further below is stated an analysis of the aforementioned functions and services of SMC firms.

3.1 Technical Management

Technical management involves mainly the mechanical support of the vessel and its maintenance. This is of great importance, because the expenses for maintenance and repair are enormous compared to the rest of the functions of the vessel. In some cases technical management also involves full planning, design, tendering, construction and supervision of new buildings.

The opportunity for the ship owner to achieve better prices for the performance and the maintenance of his vessel through the experience, the offering of stronger purchasing power and specialist skills and contacts (Willingale, 1998) of the SMC, makes the decision for outsourcing easier. Additionally, with the increase of international regulations regarding safety and quality of the vessel and the measures against oil pollution and CO₂ emissions of the vessel, technical management services have become extremely important for the ship owner.

The technical manager is usually a former chief engineer with a great experience on board. He is responsible for the planned maintenance of the vessel, the dry dockings, the special surveys, scheduled or unscheduled repairs, arranging the supply of spare parts and other stores like lubricant oils, etc. In other words the technical manager is responsible for the good condition and performance of all the mechanical and technical parts of the vessel.

In order for these standards to be achieved and the obligations to be fulfilled, the technical manager has under his supervision technical assistants and superintendents, who have worked as engineers onboard and have long working experience and knowledge of the vessels that they have undertaken. The chief engineer not only makes suggestions and gives guidance to his subordinates but also takes the decisions for all the crucial matters that are under his responsibility. His assistants mainly focus on specific parts of the vessel. According to their specialization some are in charge of the fuel engine, some of the electronic devices, like radars, GPS, some of the cranes, etc. If there are different types of vessels under the same fleet the staff of the technical management may also be divided according to the type of vessel they are specialized in, e.g. some for the LNGs, some for the tankers, some for the bulk carriers, some for the containers and so on. Collaboration, communication and mutual understanding between the chief engineer

onboard and the technical manager with his assistants is essential, in order to solve any problems that may arise within early stages and avoid major crises.

As a result, the technical manager is constantly up to date about the condition of the vessel and capable of preparing exact reports, regarding the elements and the machinery performance, while the chief engineer is supplied with the spare parts and the stores needed for the good order of the ship without delay. It must be pointed out that the technical manager is not obligated to follow and cover all the demands of the engineers and the captain. He ought to comply with the financial and quality standards the administration has set.

3.2 Crew Management

This subcategory of ship management deals with the recruiting, training and retaining the best quality crew, e.g. seafarers, senior officers, captains, etc, as well as with all the onboard crew affairs, from the arranging of the shipmen books and the health certificates to the arranging of the transportation for the repatriation of the crew.

Depending on the flag and the registry of the vessel, the nationality, the number and the quality of the crew is determined. For example, many ship owning and professional ship management companies, in order to lessen the budget of the vessels, adopted flags of convenience which had no strict regulations about the crew and manned their vessels with South Far East, and other low cost nationality seafarers. The running costs were significantly low, but the overall quality level was affected.

The main concern of the crew manager is the balance between cost and quality. In order for such balance to be achieved the manager has to take into consideration many things such as labor union relations of the crew, development of training seminars and safety-instruction courses that can maintain high quality members and avoid accidents and claims. Moreover, long term strategic planning is needed in order to retain the same team, which is trained and has obtained the mentality and the demands of the company regardless the degree and the nationality of the crew member. Furthermore, the crew manager and generally his assistants shall "have patience, flexibility, be direct, honest, strict and fair" (Goulielmos 2004) against the crew and handle each crew member's affairs separately with the same concern. In such way, the crew feels special and is strongly motivated to keep up its work on a high level.

Professional ship management companies often offer crew management as a separate service, whereas some others offer only this service. In both cases a contract is signed by the two parties, the ship owner and the ship management company, in order for the legal accountability to be determined and claims to be avoided. There are two types of standard contracts, CREWMAN A and CREWMAN B, both issued by BIMCO. "In CREWMAN A, the crew managers act as agents for and behalf of the owners" (BIMCO, 1993), while in "CREWMAN B, the crew managers employ the crew and act in their own name" (BIMCO, 1993).

Due to the sudden increase of the tonnage, a shortage of experienced and qualified seafarers is noticed. Additionally, the economical growth of countries which

traditionally have been supplying seafarers, has led people in such countries to prefer shore based jobs rather than to embark. Large ship management companies in order to face this problem, have organized training and recruiting centers in developing countries, aiming to have supply of seafarers and low cost solutions. It can be concluded, by all things stated above, that crew management, which has as main occupation the crew affairs of all interest, is not unlike the human resources department of many financial and multinational companies.

3.3 Operations

Operational management is not only the link between the shore based company and the vessel but is also the department that gives all operational orders to the fleet. The Operations manager and his subordinates are the channel of communication between the vessel and the agents at the arrival port, the tug boats and also arrange all the remaining operation during its approach to the berth. Additionally, they are responsible for the supply of bunkers of the vessel. It is a procedure of vital importance because planning and calculation must be done, in order to decide which bunkering station is more profitable. They have to take into consideration whether a deviation for supplying bunkers is worthy or not, according to the route of the vessel, the worldwide fuel and diesel oil prices, and other parameters.

Generally, the operations manager is in charge of the functional management of the vessel or of the fleet that he has undertaken. He is the person that is being informed of all the course of actions taken by the master and the crew and who also has a close cooperation and communication with all the other departments, especially with the Technical, the Safety and Quality and the Chartering department. The personnel that constitutes the Operations department is usually former captains, engineers and surveyors, which means that they are people who have knowledge and experience in terms of what a vessel needs on an everyday basis.

Regarding professional ship management companies, operation duties combined with those of chartering are under the general term of commercial management. Commercial management cannot be clearly defined and may vary depending on the field the company specializes and the type of services it offers.

3.4 Provisions

The main occupation of this department is the supply of the fleet that has been undertaken with materials (stores) and food. With the term materials it is meant everything that is regarded as part of the vessel and the equipment of the crew. The supply of the vessel shall take place on a determined time schedule in order to depart on time from the port, with all the necessary food and stores for the good order of the crew and the ship. In that way, further delay, which could cause problems to the charter of the vessel, is avoided.

The person in charge for the provisions is called an operator. He sends an order with the materials needed to several suppliers, which usually are local competitors. Then, by evaluating the offers of the suppliers, he decides which offer to accept, by choosing the one which combines low prices and quality. However, in many cases the ship owner or the ship manager has signed a contract of exclusive cooperation

with specific suppliers who may not provide high quality products and services, but offer a discount or priority of service.

The Provisions department structure differs from company to company. In some cases the personnel may be distributed by ship or by group of ships, while on other according to the type of supply, e.g. spare parts, white goods, cleaning good, etc. In all cases, there is a person in charge that directs the personnel, arranges sending the supplies and has constant communication with the captain. Such a department has close collaboration with the Technical and Operations department. This happens because Technical department has huge requirements in spare parts for delivery in specific date and place, while the Operations department helps with the special features of the vessel and its exact location.

In order to avoid extra expenses, small ship owning companies let the provision to professional companies. Contrary to small companies, professional ship management companies have a pool of worldwide suppliers, combined with the fact that the orders they make is for a large number of vessels can achieve very cost effective solutions.

3.5 Chartering

The chartering procedure is vital for the economic growth and welfare of the vessel and by extension of the ship owner. The three main types of charter are voyage charter, time charter (time charter trip and time charter period) and bareboat charter. The first one is more risky but also more profitable compared to the other two. Time charter and bareboat charter are less profitable but offer the owner a standard income for a specific period, which offers confidence and stability.

Large ship owning companies maintain an in-house chartering department, which is a very expensive method. However, the head owner has the privilege to control better the actions that the department takes and may have more trust on the house brokers. Contrary, small shipping companies let chartering to third parties, like independent shipbroking offices or Third Party SMCs that undertake the commercial management of the vessel. They have the advantage of being competitive offices and as a result have better knowledge of the market, cooperating with charterers, other competitive brokers and ship owners. Additionally, competitive brokers use to work with commission on freight, in contrast to in-house brokers who have a standard salary, and this gives them the motivation to search and make more efforts to fix a vessel.

All the aforementioned forms of chartering companies, in spite of the differences in the main services they offer, are the same. Their main concern is to search for orders for cargo or tonnage and try to make a fixture with the best possible terms and profit for their client. This is a very demanding procedure. In order for the shipbroker to achieve this, he has to be informed every day about the level of the freight market and the freight levels of other fixtures worldwide. A very helpful source for such kind of information is the BEDI report, which is issued daily. The broker ought also to contact other brokers, to stay up-to-date and create a network of communication and cooperation with shipping companies, agents and others. Moreover, the broker has to plan future trips according to the present position of the

vessel, to choose safe ports of destination according to international regulations and conditions and to do his utmost to keep the vessel constantly on business.

Furthermore, before a fixture takes place there is a great deal of negotiations, where offers and counter offers take place between the two sides, with the broker making voyage estimation and checking the D/As (Disbursement Accounts) pro-forma for the loading and the discharging port, in order to have a very good view of the economical profit of that offer. The ending of the negotiations is the check of the recapitulation of the main terms agreed and the preparation for the signing of the charter party. Though, the responsibility of the broker and generally of the chartering department does not end with the fixture. A great deal of post-fixing activities arises, which involve laytime calculation, freight, dispatch, demurrage invoices, off-hire calculations, sending E.T.A. (Estimated Time of Arrival), E.T.S. (Estimated Time of Sailing), E.T.D. (Estimated Time of Departure) to the other parties interested and generally post fixing communication between the parties engaged in the charter party.

The Chartering department has close cooperation with the Operations and the Accounts department, since by the first one is supplied all functional data of the vessel needed and by the second one all the transaction information and financial data.

In many cases Third Party SMCs except of the chartering department often maintain a Sales & Purchase department. The S&P brokers search the market to sell or acquire vessels depending on the demands of their clients. Like in chartering, the S&P department shall have a worldwide network of communication, in order to achieve good terms on the MOA (MOA is the contract signed for the sale or purchase of the vessel. What is the charter party for chartering is the MOA for S&P) and keep up being competitive. As far as professional ship management companies are concerned, they usually do not take part at the negotiations but have a supervising role over the whole S&P procedure.

3.6 Accounting

Third Party SMCs offer this service, so that their clients have the ability of checking the management that takes place on their vessel or vessels. This is achieved by introducing business software specialized on generating financial and accounting reports. In such a way, the ship manager is assisted to provide all the necessary economical facts to his clients and the clients to have a clear view of the condition of their investment in order to plan their next steps.

The Accounting department in an SMC is a very complicated and tough department. The employees must be very skilful and have a close collaboration with the Chartering, the Operations, the Supply, and the Crew department on matters regarding freight, demurrage invoices, crew wages, spare parts invoices and other. It is very difficult to program the expenses and the incomes because there are unexpected factors, like the price of bunkers, unexpected damages or the month-to-month freight level. For that reason the department shall consist of experienced personnel on shipping accounting, in order to be capable of making an as accurate as possible administration and estimation of the budget.

3.7 Insurance

This service is very important and demanding because the ship manager undertakes the responsibility and the risk to insure the vessel. By the term insurance it is meant the H&M cover of the vessel, which includes losses and damages from perils of the sea, fire, explosions, negligence of crew and collision with other vessels, and the P&I cover of the vessel, which includes coverage to liabilities due to injury of people onboard, cargo loss and damage, oil pollution, dock damage and war risk coverage. As it can be obviously seen, the amount of money needed, in case something happens to the vessel or due to the vessel, is enormous. For that reason there must be a very close communication between the manager and the ship owner or the principal, in order to be clearly stated the needs and demands for insurance coverage. It must be primarily defined the insured value of the vessel and then any extra insurance needed, according to its age, its deadweight and gross registered tonnage, its seaworthiness, the type of vessel and the type of trade it is involved. Also the terms of any existing mortgage on the vessel should be checked, during the issue of an insurance by the ship manager, because it could be a potential cause of claim by the bank, if the vessel is insured for a value less than its mortgage level (an example of this is the *Glafki Shipping Co. S.A. v Pinios Shipping Co. No.1*) [1986])

In the SMC, the Insurance department in many cases deals with the insurance claims in close collaboration with the legal department or independent legal offices of their own or of their principal.

Chapter 4 Legal Relationship between SMC and Principals

4.1 Overview

The tasks undertaken by the Third Party SMC are of great importance for the company itself but also for the ship owner who is the client. As it can be easily understood, major responsibilities are created for both parties involved in this collaboration and in order to safeguard this commercial agreement a strong legal bond shall be applied. The legal relationship between the two parties is settled with the contract agreed and signed mutually. The most widely used contracts are those introduced by BIMCO in 1988 regarding ship management (SHIPMAN 98, it was revised in 1998) and in 1993 regarding crew management (CREWMAN A and B).

Although, each contract is adjusted depending on the circumstances of the agreement, the general pro forma defines the duties, the rights, the obligations, the liabilities, the financial obligations (i.e. management fees) and also reasons that cause termination of the contract. Such a template was highly appreciated by the shipping industry, as it was an effort for “clear contractual provisions striking a fair balance between the right and obligations of the owners and the managers, reducing the risk of disputes on interpretation to the extent possible” (BIMCO 1994).

Further below follows an analysis of the two contracts and their clauses, highlighting the problems that are faced in the industry and the practical application that they have in the manager-owner relationship.

4.2 BIMCO SHIPMAN 98 Contract

According to the layout of this contract it is stated the full details of the parties that are taking place in this agreement, the date of commencement of the agreement, the services which will be provided (i.e. some of the services that are written in the contract might be agreed by the parties not to be provided) and the terms and conditions of the agreement.

4.2.1 Duties and Obligations

The duties and obligations of the manager but also of the owner are clearly defined in the clauses of Part II of the SHIPMAN 98 contract.

Clause 2 – Appointment of Managers

Under this clause which is very straightforward it is stated that it is mutually agreed that the manager is appointed to act as the manager of the vessel. By this clause all the rest clauses regarding the management agreement are in validity.

Sub-clauses 3.1 – 3.8 – Services provided by the Manager

Under these sub-clauses of Clause 3, which will be analyzed further below, it is defined the kind of services the manager will provide to its principal depending on what it is agreed in Part I of the contract. In the general form of the contract these services include crew management, technical management, commercial management, insurance arrangements, accounting services, S&P of the vessel, supply of provisions, and provision of bunkers. The main tasks that arise for the manager from these services are:

- i. Choose and engage the appropriate crew for the vessel, complying fully with the flag of the vessel regulations in terms of nationality, qualifications and documentation and dealing with all the crew affairs as it is required by the ship owner.
- ii. Arrange and provide maintenance, repairs, dry dockings, supply of spare parts and generally make sure that the vessel complies with the class of the ship, the ISM code and other safety and quality regulations.
- iii. Provide chartering services, “fixing” the vessel, prepare voyage estimations, arrange the commercial operations of the vessel and hand over to the owners the revenue generated by the ship’s operations.
- iv. Arrange vessel’s insurance depending on owner’s instructions.
- v. Maintain and provide the owner with all the data regarding costs and expenses, and furnish him with accounting reports in order to keep him updated regarding the financial conditions of his asset.
- vi. Supervision of the S&P procedure, if any takes place during the management agreement.
- vii. Supply of provisions for the vessel and the crew and purchase of bunker fuels needed.

Clause 4 – Managers’ Obligations

Clause 4.1 points out the duties that the manager undertakes towards the owner. The manager has to “use their best endeavours... in accordance with sound ship management practice...”. This phrase is of high importance as it bonds the manager to do his utmost to provide to the client the services that he has agreed to, at the quality it was agreed and operate the vessel as if it was his own. However, the efforts of the manager should be at that extent that comply with the generally accepted ship management practices and not exceed or violate any of the terms agreed in this contract. Furthermore, under this clause it is stated that in case the manager has undertaken the management of other vessels, it should be in his own judgment to decide the allocation of personnel and services according to the needs of each vessel and the standards its principals have set.

Clause 4.2 refers to the provision of technical management and the obligation of the manager to keep the vessel at the standards that the class and the flag require. Additionally, the moment that the manager accepts the technical management of the ship, he is considered the “Company” in order to conform to the ISM Code and he shall meet with the obligations that come out of this.

Clause 12 – Documentation

The accurate and timely briefing of the owners regarding the compliance of the vessel with the ISM Code, the SMS and STCW 95 is one of the core duties that the manager has when he undertakes the technical and the crew management of a vessel. This is achieved by keeping archive and recording all the actions taken by the manager in regard to the regulations mentioned above, so that the principal to be able to have a clear view of what is the condition of his asset whenever it is requested.

This clause is very similar to Clause 14 which refers to the right of the owner to have access to all the documents that are related to the actions that the manager has taken during the period of the management agreement. The key idea of these clauses is to make clear that although the manager may run the vessel by taking into account what is the best for her depending on his experience and judgment, the owner should be able to be informed for the condition and the right performance of his asset whenever it is requested, by having all the official evidence proving the manager's actions.

Clause 15 – Inspection of Vessel

It is the ship owner's right (and at the same time the manager's obligation to follow) to ask for an inspection of his vessel whenever he thinks that an inspection is needed, so that the condition of the ship to be evaluated and to be ensured that the terms of the agreement are followed in practice, after he has given a prior notice. It is reasonable for such a clause to exist, as it is logical the owner to has access to his property whenever he thinks that this should happen. However, the ship management agreement also protects the manager with Clause 16 that refers to the compliance with laws and regulations. The manager has the right to deny actions that cause non compliance with the vessel's flag regulations and might result in manager's liability.

In a ship management agreement it is obvious that the manager who is the company that provides the services, will have the most obligations. Nonetheless, the owner has also duties and obligations.

Clause 5 – Owners' Obligations

Clause 5.1 points out that the owner's main obligation is to show punctuality on the payment of the sums due to the manager as it is agreed in this contract. That way disputes which may cause claims or even termination of the agreement can be avoided, and also help the proper management of the vessel.

Clause 5.2 refers to the obligation of the owner in case the manager provides technical management services but the crew is not employed by the SMC. Under these circumstances the owner is bound to provide the appropriate crew that is designated by the flag of the vessel and the other regulations and also instruct them to follow the orders that the managers will give to them regarding the SMS. Respectively, clause 5.3 describes the owner's duty to conform to the ISM code's regulations in the case of keeping the technical management on their own. At such a state, the owner will be considered "the Company" for the purpose of the ISM code

and therefore being responsible of all the obligations that arise from that. Consequently, the manager will be released from such duties and responsibilities. This clause is directly related to clause 4.2 mentioned above and depending on the provision of technical management or not under this contract, the obligation for compliance with the ISM Code will be either the owner's or the manager's.

All the above mentioned duties and obligations of the parties involved should take place as described; otherwise they might be a reason for termination of the contract. As per Clause 18, if the owner fails to deliver his obligations on a proper way or he involves the vessel at an illegal trade, and despite the warning from the manager, keeps being incoherent, then the manager has the right to terminate the contract. Accordingly, if the manager fails to deliver the services he has agreed to, at the quality that it is also agreed, and despite the warning from the principal, does not fulfill his obligations as expected, then the owner has the right to terminate the contract.

4.2.2 Return on Risk

By undertaking the provision of services to their clients, the Third Party SMCs also assume huge obligations and responsibilities. Their payment for these services that they provide is the "Management Fee". While the previous years the way the management fees were paid used to vary and depend on the agreement the two parties of the contract had, after the establishment of SHIPMAN 98 as the standardized ship management contract, the payment of the fees under Clause 8.1 will be an annual amount, which will be paid in "equal monthly installments in advance, with the first installment being payable on the commencement of this agreement" (BIMCO SHIPMAN, 1998).

The level of the management fee varies according to the services that the SMC provides, the age, the size and the type of the vessel, the number of vessels that are being managed for the ship owner and any other reason the manager considers that should charge the owner with. Depending on the factors mentioned above, Malcolm Willingale determines the level of the management fees as follows:

- Bulk Carrier → 75,000 – 100,000 USD/year
- Tanker → 90,000 - 150,000 USD/year
- Cruise Vessels → approximately 400,000 USD/year

Even though the expenses for the SMCs have increased around 10% the last years, due to the demand for investment on IT and S&Q systems, the weakening of the dollar and the rising service delivery costs, the management fees have stayed at the same levels as in the past or even declined. This can be attributed to the fact that the Third Party Ship Management industry is a highly competitive market, with an oversupply of services observed. Hence, in case of an increase of the management fees, the owner will turn to another SMC that can provide him with the services that he needs at a lower price. If this phenomenon persists, then many ship management companies will be forced to close or merge in order to reduce costs and gain more market share. Characteristic example is the merge of Barber Ship Management with Wilhelmsen Ship Management, which now is one of the world's largest providers of third-party ship management services.

After the management fee is agreed and if the agreement is for more than one year, then under Clause 8.1 the annual fee should be revised on the anniversary date of the agreement and the proposed one should be included in the annual budget. Per Clause 9.1 of the contract, the managers have the duty to show to the owners an annual budget for the next twelve months, and the budget should be submitted in the form the owners wish and not in less than three months before the anniversary date of the agreement. The initial annual budget and the following ones are of great importance for the owner, as he can see what are the expenses that his vessel has, what are the cost savings achieved by the SMC compared to his own management and last but not least the budget that he really needs in order to run adequately his vessel. The initial budget is based on assumptions of the manager based on the age the size and the type of the client's vessel. If the owner is willing to go on with the agreement, then the manager has an inspection of the vessel to see the actual condition and to check the spare parts and the provisions that are on board. At that point, the annual budget is formed, and the owner through the year is provided with quarterly reports showing the positive or negative deviation from the initial budget. The general form of an annual operating budget of a vessel is as it is shown in Table 2.

Table 2: Annual Operating Budget Format

<i>Vessel</i>	<i>Built</i>	<i>Type</i>	<i>DWT: 34,900</i>		
All Figures in \$ USD	QI	QII	QIII	QIV	TOTAL
Total Crew Wages	85,100	85,100	85,100	85,100	340,400
War Bonus	0	0	0	0	0
Crew Travel	33,500	33,500	33,500	33,500	134,000
Victualling	12800	12800	12800	12800	51,200
<u>Total Crew Costs</u>	<u>131,400</u>	<u>131,400</u>	<u>131,400</u>	<u>131,400</u>	<u>525,600</u>
Deck Stores	9,925	9,925	9,925	9,925	39,700
Engine Stores	8,050	8,050	8,050	8,050	32,200
General Stores	6,300	6,300	6,300	6,300	25,200
Cabin Stores	2,000	2,000	2,000	2,000	8,000
Rentals	0	0	0	0	0
New Equipment	0	0	0	0	0
Fresh Water	500	500	500	500	2,000
<u>Total Purchasing</u>	<u>26,775</u>	<u>26,775</u>	<u>26,775</u>	<u>26,775</u>	<u>107,100</u>
<u>Total Lubricants</u>	<u>13,800</u>	<u>13,800</u>	<u>13,800</u>	<u>13,800</u>	<u>55,200</u>
Drydock	0	0	0	0	0
D/D Reserve	0	0	0	0	0
Survey Exp	4,500	4,500	4,500	4,500	18,000
R&M	17,750	17,750	17,750	17,750	71,000
Spares	23,500	23,500	23,500	23,500	94,000
<u>Total R&M</u>	<u>45,750</u>	<u>45,750</u>	<u>45,750</u>	<u>45,750</u>	<u>183,000</u>
Registration Exp.	0	0	0	0	0
Management Fees	25,500	25,500	25,500	25,500	102,000
General Exp.	4,000	4,000	4,000	4,000	16,000
<u>Total Adm. Costs</u>	<u>29,500</u>	<u>29,500</u>	<u>29,500</u>	<u>29,500</u>	<u>118,000</u>
<u>Grand Total</u>	<u>247,225</u>	<u>247,225</u>	<u>247,225</u>	<u>247,225</u>	<u>988,900</u>

Source: Willingale 1998

Yet, the financial conditions of a ship management agreement are not a plain issue as it involves vast amount of money and it can lead to disputes. SHIPMAN 98 provides clear explanations on what are the financial duties of each party involved in this contract. Therefore, under Clause 7 any money received by the manager originating from the managing of the vessel, other than duties from the owner to the manager, should be deposited to the owner's separate bank account. Clause 8.6 indicates that any discounts or commissions that derive from the vessel during the management period should be credited to the owner. Additionally, the manager should not charge the owner for expenses related to the SMC (e.g. office accommodation) but only for that expenses of the SMC that occur due to the provision of the services to the client (e.g. traveling expenses) (Clause 8.3). Also, under Clause 9.3 the manager, beside the annual budget should also prepare a monthly capital expenses estimate of the vessel. Providing this to the client, the manager shall ask for the monthly amount in order to cover the expenditures that occur from the services provided to the vessel. Furthermore, if the contract is terminated without the manager's default, or the ship is lost or sold, then the owner

has the obligation to pay the management fee to the manager for an additional period of three calendar months from the day of the termination. In the case of the provision of crew management also by the manager, the owner has the duty to keep paying the “Crew Support Costs” for that additional period of three months. (Clause 8.4)

Last but not least, Clause 9.5 mentions a very important aspect of the manager – principal relationship. That is, that the manager “shall in no circumstances be required to use or commit their own funds to finance the provision of the Management Services”. This phrase is vital and safeguards the manager in case of claims by third parties or unreasonable requests by the owner.

4.2.3 Liabilities and Exposure of the Company to the Principals and Third Parties

The Ship Management Company by undertaking the provision of services to their clients’ vessels, undertake vast responsibilities and run the risk of being liable not only towards their principals but also towards third parties. Many liabilities that could arise from these services are discouraged by Clause 3 of SHIPMAN 98 which clarifies that the manager “shall carry out Management Services in respect of the vessel as agents for and on behalf of the Owners”. With this line the manager is protected at a large extent from the liabilities and claims based on the reasoning that as an agent they are acting on behalf of the owner and they are covered by the insurance of their client. However, the same clause does not restrict the manager to take all the necessary actions or decisions acting on his own will, complying always with the sound ship management practice.

Clause 6 – Insurance Policies

This clause is one of the most important clauses of the ship management contract. It defines the type of insurance the manager shall have correlating to the insurance coverage the owner should provide to him. Compared to the previous form of this contract, this clause has been revised, due to the many claims that had arisen from non coverage of the parties involved in this agreement. The vessel is an asset that may be exposed to many liabilities, and for that reason it is insured by the H&M and against the P&I Club. However, also the manager that operates this vessel runs the same risk to find himself exposed to such liabilities, that eventually may lead to financial catastrophic claims for his company. SMCs usually have a professional insurance provided to them by the ITIC. However, this insurance only covers the manager against claims from third parties when the insurance of the owner is inoperative and also covers legal costs for pursuing or defending claims (Mandaraka, 2007). As it can be seen, such type of insurance cannot cover the manager sufficiently in cases of major claims. For that reason, additional coverage by the indemnity of the owner is imperative. In order for this to be achieved the manager shall be co-assured in the owner’s insurance policies, otherwise the expenses to keep on his own such insurance exceeds the annual management fees by a big amount and becomes economically inefficient. Additionally, by undertaking most of the vessel’s operational tasks, the manager also undertakes similar responsibilities and exposes himself to similar liabilities as the owner.

The main issue here underlies to the fact that the definition of being co-assured in the principal's insurer is interpreted differently by each insurance provider. Generally there are two types of co-assurance: the full co-assurance or joint co-assurance and the limited co-assurance. In the first type, the co-assured is fully covered against potential arising claims against him but he also runs the risk of paying premiums to the insurance companies in case the ship owner fails to respond to his obligations towards them. For that reason it is stated in sub clause 6.1 the mandatory insurances that the owner shall have for the vessel and in sub-clause 6.2 the obligation that he has towards his insurers to pay all premiums on time. Furthermore, under sub-clause 6.3 the manager or any other third party should not be liable to premiums or calls for the owner's insurances. Although, this clause exists in the contract it is not always accepted by the principals, as the P&I clubs are opposed to that and they wish the manager to be also responsible for calls of the owner as he is also co-assured in the same insurance.

In such cases, and usually when the manager provides only limited services to the owner, he might choose to go for the second category of co-assurance; the limited one. Although by providing limited services means that he runs smaller chances of finding himself liable for a claim, he runs the risk in case of a claim to be exposed at a big extent. This can happen, when the owner manages to limit his liability, but the manager without having full coverage from the insurers, to be exposed for the rest of the amount pending by the owner. If the claim involves vast amount of money, then the compensation that he will be obliged to pay will be disastrous for the company. In the event of a big sized SMC the effect might be harmful but not irreversible, compared to a middle sized SMC that might be driven to bankruptcy.

The difference between the two types of co-assurance and the exposure for the SMC are shown in the table below.

Table 3: Comparison of Co-assurance Coverage

Full co-assurance	Limited co-assurance
The ship manager has his own cover independently from that of the owner's.	The ship manager does not have independent cover.
The ship manager will be covered even if the owner goes into liquidation, provided that he will pay for any outstanding calls.	The ship manager will not be covered if the owner goes into liquidation.
The ship manager will be covered even if the owner can limit his liability to an amount lower than that of the manager.	The ship manager can only recover from the club to the extent that the owner himself would have been able to recover. If the owner can limit his liability and the manager cannot, the manager might find himself uninsured for the amount of the claim above the owner's limit.
The ship manager will be covered even if the owner has a good defense to the claim which the ship manager does not.	The ship manager will not be covered if the owner has a good defense to the claim.

Source: Willingale 1998

Whereas P&I Clubs, despite the complexities, accept the agents and the managers as full co-assured, H&M insurers oppose strongly to that extension of the insurance of the owner, as they prefer to see the manager as a candidate for claim instead of insuring him. Claims regarding H&M can reach levels of compensation that exceed the SMC's assets by far.

Even though the provision of the ship management contract helps the manager to protect himself at some point, the involvement of different parties in the procedure of the insurance coverage, makes it more difficult for the owner to safeguard from the risk of exposure to liabilities and demands high negotiating skills and good knowledge of the shipping practice in order to achieve his goal.

Clause 10 incorporates motives that may generate liability against the manager. It mentions plainly that the manager has no right to subcontract the services that he provides to his principals, without previous written approval of the principals. This is mentioned in order to protect the clients of the SMC of low quality services that may occur from that subcontract without their approval. Even if the manager grants the approval from the owner, he is still liable regarding the services that he provides towards his client and in case of a claim due to the subcontractor's failure, the manager will be due for the right performance of his obligations and will have to compensate his principal.

Clause 11 – Responsibilities

The responsibilities of both parties taking place in this contract are numerous but the scope of the contract is to try and find a balance, based on each party's obligations. Sub-clause 11.1 makes reference to "Force Majeure", in order to exclude both parties from liabilities in cases of extraordinary incidents that may take place and result in failure of fulfilling their contractual obligations. These incidents usually are beyond their reasonable control and that is the reasoning for the existence of this sub-clause.

Regarding the liability to the owners, Sub-clause 11.2 (i) tries to limit the liability of the manager to that extent, so that he can be covered in events that he is found responsible for non-performance of the services he is supposed to deliver. Consequently, under this sub-clause the manager has no liability towards the owners, unless it is evident that the loss or damage has occurred due to the negligence or willful default of the manager or his agents or his subcontractors. In that case, the manager should be held liable, but if a claim rises against him, the level of it should not exceed the total of ten times of the annual management fee agreed in the contract. That way the manager is protected at some point in order not to be economically exhausted by the potential claims that he may be faced with. However, in cases that it is proved that the manager has acted on purpose to cause damage, then his liability is unlimited, whereas his subcontractors or agents are still limited to the ten times the management fees limitation of liability. Contrary to 11.1 (i), sub-clause 11.1 (ii) that refers to the crew management service provided by the manager, states that even in the event that the crew appointed by the SMC is proved to have acted negligently, the manager should not be held liable for that. He should be held liable only if it is proved that there was violation of the terms stated in

the contract for the appointment of the crew, which indirectly associates him with the failure of the crew to carry out its duties.

Sub-clauses 11.3 and 11.4 aim at the same direction, which is the protection of the manager and his employees and agents. The first one points out the obligation of the owners to indemnify the manager along with his agents or subcontractors that may be involved during this agreement, and protect them from claims that are related to the vessel but did not occur from them. Additionally, the second sub-clause excludes the manager's employees (including subcontractors or agents) from liabilities of the owner himself and provides them with the same protection against claims as the one the manager is provided with by the client.

Another responsibility that the manager is faced with during this agreement is the settlement of claims that may arise during the management period by always informing properly the principal. In some cases, drastic decisions have to be taken for the best possible outcome for the owner, and for that reason Clause 13 gives the manager this opportunity to act on his own will when it is needed and the chance to be refunded by the client for the expenses occurred during this procedure.

4.3 BIMCO CREWMAN Contract

Apart from the general services that are provided as a whole by the SMC, there are services that are provided individually, such as crew management. This type of service is essential and for that reason there is a separate contract, beside SHIPMAN 98, that refers solely to it. This contract is issued by BIMCO and is the CREWMAN. As mentioned before, there are two types of this contract, CREWMAN A & B. It is issued in that way in order to cover both possibilities; the manager to act as an agent for the ship owner or the manager to act as a principal for the crew. The initial idea was a sole contract to be established that would be able to serve both the above mentioned situations. However, this ambitious idea failed to be applied in practice, due to the numerous variances the two cases had, that would result in a complex and hard to use contract.

The general formation of the contract follows that of SHIPMAN 98, and includes in Part I the general information of the parties involved along with some specific information regarding the agreement. The two crew management contracts show a number of differences on their lay out, as the liabilities and the responsibilities of the manager acting as an agent and acting as a principal diverge. Therefore, on the CREWMAN B Part I layout, beside the general information and the amount of the management fee (which is on a lump sum basis) there are included information about the trading areas, the crew overtime expenses and the crew transportation costs. On Part II on both contracts it is stated the main terms of the agreement which can be changed according to the negotiations of the two parties involved.

4.3.1 Obligations, Liabilities and Exposure of the Crew Management Company

The similarity in the outline between the ship management and crew management contract is evident but the context is dissimilar, since the services that are provided and obligations that result from them differ significantly.

Clause 2 – Appointment of Crew Managers

This clause follows the structure of the ship management contract and it states that under the terms of this agreement the manager should execute the crew management services that he is bonded to provide. In this clause there is a very significant difference between the two contracts. In CREWMAN A the crew manager is appointed by the owner and he acts as the crew manager of the vessel, whereas in CREWMAN B the crew manager is the employer of the crew and the services that he provides regarding crew is under his own name. This means that the manager in this situation is acting as principal regarding the crewing matters of the vessel.

Sub-clause 3.1 – Services provided by the Crew Manager

In this sub-clause it is described thoroughly the tasks that the crew manager has undertaken to provide to his client under the STCW 95 requirements, which are the same for both contracts and comprise of the following:

- i. Selection and appointment of the crew, along with the settlement of all the affairs that are related to it, such as pension administration and social security contribution.
- ii. Fulfillment of the requisites that the flag of the vessel commands in terms of number of seafarers, ranking, qualification and certification and full compliance with the international regulations.
- iii. Arrangement of medical exams for the crew members following all the approved procedures from the owners and the flag of the vessel, in order valid medical certificates related to the crew's suitability to be issued.
- iv. Guarantee that the crew can safely perform its duties by having adequate English language communication level.
- v. Make sure that the crew except of the manager also follows all the "reasonable" orders of the owners of the vessel, in terms of pollution prevention, safety and navigation. In this sub-clause the term Company is also contained, in order to cover the case of an operator running the vessel, in which case he is the company for the ISM Code needs.
- vi. Ensure that all the crew that goes on board of the vessel is approved by the owners and arrange for their transportation and repatriation.
- vii. Arrange the affairs related to the labor unions without creating any problems for the smooth operation of the vessel, together with the supervision of the crew, in regard to the compliance to the drug and alcohol policy of the owners.
- viii. Regular training and evaluation of the crew, in order to keep up with the standards set by the client (i.e. owner).
- ix. In CREWMAN B the crew manager has the obligation to arrange supply of provisions, related to the crew at their own expense. Contrary, in CREWMAN A under sub-clause 6.6 this obligation is on the owner's account and expenses, and as a result it is not included in the services that have to be provided by the manager.

Sub-clause 3.2 – Accounting Services (CREWMAN A)

This sub-clause applies only for CREWMAN A and it demands the manager to set up an accounting system that will provide the owner with reports of all his costs and expenses needed for the provision of the crewing services, in order to settle the financial obligations of the owner towards him.

Sub-clause 3.2 – Crew Insurance Arrangements (CREWMAN B)

This sub-clause in CREWMAN B is an optional one and in case that is agreed to be provided this is done by the manager, whereas in CREWMAN A it is an obligatory one (Clause 4) and it is provided by the owner. This difference derives from the different role that the manager has on each of the two contracts. No matter which party will provide these insurance arrangements, they are the same for both contracts and they consist of the following:

- i. The crew shall be insured for all the potential incidents deriving from their involvement on the vessel, covering them from injury and death to shipwreck unemployment indemnity and repatriation.
- ii. The premium or calls related to the crew insurance should be paid on their due dates and depending on which party is providing the insurance, it should also always include the other party as co-assured.

Clause 5 – Crew Managers' Obligations (CREWMAN A)

Both CREWMAN A & B make use of this clause (Clause 4 CREWMAN B) and it refers to the way the manager should provide his services. Under this clause the crew managers are obliged "to use their best endeavours" so that they fulfill their commitment to their principal, following all the national and international regulations and safeguarding their clients' benefits. Furthermore, the crew manager retains the right to handle his employees and his resources in such a manner that his needs and his judgment command, following, however, at the same time fair and rational decisions for his clients' properties. This option is given to the crew manager in order to protect him in cases that he has to serve many clients, and take him out of the difficult position of having to serve them at the same time. If this extra coverage did not exist, the manager might find himself facing disputes with his principals or clients and even go to court for that. The performance of the crew manager in the provision of the services in cases of disputes is not viewed regarding what the manager thinks adequate service is, but what are the general standards of these services in the business.

Along with the crew manager's obligations, it is also the documentation that is referred in clause 13 and 11 of CREWMAN A & B respectively. The manager has the commitment to supply the owner with the right documents that show the compliance of the crew with the orders of the international regulations, together with their training and evaluation results, medical history, and other. Thus, the owner has the ease to be aware of the condition of and the suitability of the crew that is provided to him and avoid unpleasant situations regarding his asset.

Clause 6 - Owners' Obligations (CREWMAN A)

Similarly to the previous clause, also the owners' obligation clause towards the crew managers is used by both contracts (Clause 5 CREWMAN B). It comprises of several sub-clauses which are as follows:

6.1 It points out the obligation of the owner to pay their financial dues to the managers within the time frames that are set in this agreement. The main reason of the existence of such a sub-clause is to make more specific the regularity of payments; as such kind of disagreements usually end up in claims but leave the freedom to the parties involved to decide which will be the time frames and the way the payments will take place.

6.2 It ensures that the vessel complies with the ISM Code and the flag State regulations, and the crew manager is constantly aware of who is considered as the "Company".

6.3 It covers a special situation, which is likely to happen and for that reason is integrated in the owner's obligation. It involves the extra expenses that result from the owner's decision to trade the vessel in an area that is not included in the war risk trading limits and for that reason the crew has to get extra insurance, extra payment and/or be repatriated and replaced. Consequently, additional expenses related to that are being generated, and under this sub-clause is defined that such expenses will be solely for the owner's account.

6.4 It refers to the possibility of the owner's to change the flag of the vessel, while the contract is on. This part of the agreement gives the flexibility to the owner, to adjust the flag of his asset according to his needs and his satisfaction. However, by this procedure additional expenses are generated (different qualifications, demands regulations between different flag States), among them crew related ones, which have to be paid to the crew manager by the owner.

6.5 It secures that the owner will provide to the crew that will be on board, all the essential accommodation and facilities that are needed in order to work and live under decent conditions, without the crew manager having to contribute to these expenses that will be generated.

6.6 This sub-clause is mentioned only in CREWMAN A as it deals with the possibility when the crew manager acts as an agent only, and does not undertake the supply of the provisions for the crew, then it is the owner's obligation to cover this issue. In the case that the manager is acting as a principal, then it is one of his core duties to supply his crew with the provisions and not the owner's.

6.7 It involves the commitment that the owner has to compensate the crew manager in case of provisions consumed by others than the crew or in cases of loss of provisions due to mechanical malfunction of the vessel (e.g. food going bad due to refrigerator problems).

6.8 It is one of the most important sub-clauses, as it refers to the obligation of the owner towards the crew manager in terms of insurance policies and the agreements that they should be both covered with. Thereby, the owner faces the responsibility to have, during the whole period of this agreement, full insurance coverage with first class insurers (H&M, P&I clubs) for the actual value of the vessel and in any case not less than that value. The coverage shall include: (i) protection from H&M risks, together with crew negligence and excess liabilities protection, (ii) war risks along with protection and indemnity risks.

At this point it has to be highlighted the connection of this sub-clause with sub-clause 4.1 of CREWMAN A and sub-clause 3.2 of CREWMAN B. In both cases, in

the P&I coverage it is included the pollution risks and diversion expenses, which are specifically mentioned as it is the owner's accountability to insure on such issues. If he does not do so, and the crew manager neglects to insure both parties or to mention it to the owner, then both parties might find themselves uncovered and liable for huge amounts of money. In CREWMAN A it is also included as the owner's responsibility to cover the manager for "on board crew risks" (i.e. death, repatriation, etc.) unless the manager is already covered for such purposes by his own insurance. However, in CREWMAN B the "on board crew risks" as it was seen on sub-clause 3.2(i) are for the crew manager's account and for that reason they are excluded by the provision of the insurance of the owner.

Again, the owner, similarly to the crew manager, has the commitment to pay his calls and premiums for the insurances on time and on their due date, without leaving the manager uncovered.

As it has already been mentioned before in this thesis, the owner is facing once more the responsibility of naming the crew manager as co-assured in his underwriter's agreement. This usually should not be a problem for the owner as it has no impact on his insurance; however it is an issue for the insurance companies and the P&I Clubs of the vessel. The main issue raised, is that the P&I Clubs want the jointly assured parties, which benefit from the owner's insurance, to also be responsible for the calls and premiums that have to be paid in case the owner fails to meet his financial obligations. Otherwise, if they are not ready to accept such a responsibility they should be insured at some extent, but not fully covered against all liabilities that may occur during the period of the agreement. Taking into account this situation, the contract is adjusted to cover all these potential occasions: (i) the manager to also be liable for the premiums and calls, (ii) the manager and any other third party not to be liable for premiums and calls, and (iii) there is a possibility that something else is agreed between the two parties that is not included in the previous two cases, and it might take place under this agreement.

One significant aspect of this agreement is also the trading limits that may be applied regarding the employment of the crew. It should be clearly defined and agreed before the commencement of the agreement the restrictions that the crew is facing in terms of duties on board, employment contracts, etc. This would protect both parties from future disputes, and unnecessary expenses involving replacement of crew and claims.

From the above mentioned analysis of the obligations and the duties that the crew manager is facing through an agreement for provision of manning services, it can be pointed out that numerous liabilities can be faced. Facing a liability is not a pleasant situation for the crew management company, yet if it is covered by an insurance then the side effects and the economic dues are much lower than they would be in other cases. As it can be seen the main reason for an exposure of the crew manager is the issue of the insurance company and the terms that he agreed on that with the owner. Both CREWMAN A & B are following the same mentality as SHIPMAN 98, in regard to the responsibilities and liabilities that the manager has towards the owner. There is an effort to make a fair agreement for both parties involved, protecting at the same time the crew manager from situations that are beyond his power to control, such as omissions of the crew that are irrelevant to the manager's quality of service. No matter how sufficiently the contract is covering the

manager, if the owner does not cover him for liabilities deriving from the crew management of the vessel, then the exposure of the manager is vast and the risk of facing a claim involving a big amount is very likely to happen.

4.3.2 Return on Risk

The crew manager by providing these manning services to his clients and accepting the obligations and the responsibilities that derive from this, he is expecting a revenue in return. This revenue comes from the Crew Management Fee that is payable by the owner to the manager. There are two different ways of paying the management fee and that is also one of the reason that two crew management contracts exist. One way is the “Cost Plus Fee” basis (CREWMAN A) and the other one is the “Lump Sum” basis (CREWMAN B).

Cost Plus Fee – CREWMAN A

This form of payment is very similar to the one that is used in SHIPMAN 98, which has been described before. The crew manager is acting as an agent for the principal, and as a result the expenses regarding the crew are for the owners account. The manager is being paid a fee for the services that he provides, which is payable each month in advance and it can be renegotiated each year before the end of three months from the anniversary date of the initial agreement. The procedure is the same as in SHIPMAN 98, with the owner having the obligation to reply whether he accepts or not the revised proposal of the management fees, within one month from the day that the proposal has been introduced to him, otherwise the manager continues the agreement with the revised fees in force.

One very important element of this agreement is mentioned in sub-clause 7.4 of the contract and refers to the event of a lay up or extensive repairs to the vessel. When the days that the vessel is not being worked for one of the aforementioned reasons reach the number that has been initially agreed, then under this sub-clause it should be mutually decided the reduction of the crew that is on board, together with the decrease of the amount being paid for the crew services till one month before the vessel is being operated again. The extra costs that are generated from the reduction of the crew, along with the transportation costs and the costs to take the crew on board again, are on the owner's account. In various cases the two parties might not agree on the new settlement of the amount being paid, which is one of the reasons that can cause termination of the contract.

As far as the costs that are generated for the owner are concerned, the crew manager has the duty to make an annual budget for the principal stating clearly all the estimates about the expenses regarding the upcoming year. Together with that, the manager should also make a monthly revised crew expenses estimate, and keep the client up to date about the differences in the initial estimated budget and the revised one that was created based on the actual expenses that occurred the previous month and the forecast for the demands of the following month. He should also supply the owner with a monthly comparison between the budgeted and the actual expenses for the crew, in order the principal to have a clear idea and program for the actual funds needed.

It should also be mentioned at this point, that the owner should be the beneficiary of any discounts or commissions obtained by the crew manager during this agreement

and in regard of the vessel and also that the crew manager should at no means be needed to finance by his own capital the crew management services for the owner.

Lump Sum – CREWMAN B

In this form of agreement the crew manager is acting as a principal for the crew, and for that reason the management fee that he is being paid is on a lump sum basis and it includes every cost that the manager is responsible to pay in regard to the crew that is on board of the owner's vessel. More extensively, this lump sum amount comprises of the following:

- i. Payments of the crew according to their employment contracts.
- ii. Costs that are generated by the issue of insurance coverage related to the crew that is employed on board of the client's vessel.
- iii. Expenditure related to the issue of all the documentation needed for the crew employed on the vessel, like visa related costs, medical certificates costs, seaman's books costs, and other.
- iv. Traveling and accommodation expenses related to transportation of the crew to and from the vessel, including the initial transfer of the crew from the country of domicile to on board the vessel.
- v. Several other expenses generated to the manager in connection to the supply of the crew management services, such as provisions of the crew (i.e. food, clothing, etc.), communication of the crew from the vessel, and port calling fees related to the crew.

The contract also covers some extraordinary situations, regarding payments. It covers the situation of excess overtime than the one agreed already, and also invoices that may occur during the provision of the crew management services and they are not included in the above mentioned expenses covered by the lump sum fee. The two parties have the duty to be on time with their financial obligations and any financial pendency should be settled at the next monthly lump sum payment or before the disembarkation of the crew (in case of earlier termination of the contract).

The renewal and renegotiation of the fees for the upcoming year follow the same procedure as CREWMAN A and SHIPMAN 98, as this is the typical business practice and the one that BIMCO follows.

Chapter 5 Court of Law Cases and Meaningful Outcomes

5.1 Analysis of Cases and their Interpretation

Contracts are made in order to set out and define the rights and obligations of each party involved in an agreement. It is a legal way to bind the other party and safeguard your interests. Usually the contracts are structured in such a way so that they cover all potential hazards that may come up during the agreement, and ensure a smooth outcome. Nevertheless, there are always unforeseen events and situations that may occur and cannot be predicted during the course of the agreements. Especially in shipping which is a volatile and unpredictable business, such issues are commonly faced, but still the parties involved cannot protect themselves, either because they did not pay the attention needed in the formation of the contract or just because the situation that they are facing was beyond the powers to be seen.

In the event that something goes wrong while the contract is still in validity, usually it ends up in a dispute among the parties involved. As a result, a claim or several claims may arise by the other party or even by third parties that are involved with another contract related to their business. The claims that take place are most of the times associated to the vessel and the personnel involved with it, as it is the only asset that links all the parties.

In our case, when management contracts are involved, usually the claim is related to the negligence of the manager related to the vessel (crew negligence, bad maintenance, etc) and it might be raised either by the principal against the manager or by a third party against both the principal (owner) and the manager. In some cases, however, the claim derives from the SMC or the CMC due to failure of the owner to fulfill the obligations that he has undertaken, and it is related to delay of payment of the management fees and other financial irregularities. Although, several claims involve big amount of money or they are driven by serious causes (i.e. death, total loss of vessel, etc), a lot of them are minor and the parties prefer to settle the dispute without arbitration or trial.

Hereunder follow some characteristic law cases with their outcomes, regarding disputes on management contracts.

Ferryways NV v Associated British Ports (English High Court: Queen's Bench Division: Teare J.: [2008] EWHC 225 (Comm): 14 February 2008)

This case refers to the claim that was raised by Ferryways NV (claimant), a Belgian ship owning/operating company, against Associated British Ports (ABP) an English port owner/operator (defendant). On October 2005, the chief officer of the vessel Humber Way (under Ferryways NV ownership) was killed by an accident that took place at the port of Immingham (operated by ABP). The officer was supervising the cargo operations when he was hit and killed by a tugmaster vehicle, which was driven by an employee of a subcontractor of ABP. The P&I Club of Ferryways paid for the costs that resulted from the death, and had to do with death benefit and repatriation of the body, as the deceased was considered an employee of Ferryways.

The dispute arose when the claimant asked recovery of the amount that the P&I had paid, in terms of negligence of the driver of the tugmaster, and ABP contested the claim on two main terms. The one that is of our interest is that the deceased was not an employee of the claimant but of the CMC that provided the service, Ambra Shipmanagement Ltd of Cyprus and consequently he suffered no losses. Ferryways had signed a contract with Ambra for the provision of crew management services, and in particular the BIMCO crew management agreement "CREWMAN A". Under Clause 3 of this contract the manager acts "as agent for and on behalf of the Owner".

The judge based his decision on that provision of the contract and the implication that is made that the owner is the employer of the crew. In the employment contract between Ambra and the deceased, Ambra was described as "the Employer" and the deceased as "the Employee". The claimant submitted that Ambra entered into the contract of employment as agent for the claimant, and that the claimant was the undisclosed principal of Ambra. Although the deceased's contract of employment was a personal contract, it was not within that class of personal contracts where the obligations of the employer could not be performed vicariously. It would not have been a breach of the terms of the contract of employment for the claimant to intervene as employer. From all the above it is inferred that the contract of employment did not exclude the claimant from being an undisclosed principal.

The general principles that govern an undisclosed principal are the following:

- i. Where an agent enters into a contract, oral or written, in his own name, evidence is admissible to show who is the real principal, in order to change him or entitle him to sue on the contract.
- ii. An undisclosed principal may sue or be sued on any contract made on his behalf, or in respect of money paid or received on his behalf by his agent acting within the scope of his actual authority.
- iii. An undisclosed principal may also be sued on any contract made on his behalf by his agent, acting within the authority usually confided to an agent of that character, notwithstanding limitations put upon that authority as between the principal and the agent.
- iv. Subject to the intervention of the principal, the agent can sue on a contract made with a third party when the principal is undisclosed; he is personally liable and entitled to the benefit of it, provided he can prove his loss. (Mandaraka-Sheppard, 2007)

As a result, Ferryways faced losses deriving from this accident based on the fact that they had liability to pay the death benefit and repatriation costs. The final judgement was in favour of Ferryways, but this would have never been achieved if there was not the provision of the manager to act as an agent. Additionally, the manager might have faced losses without being able to get compensation from the P&I club if he had acted as principal or if he was not covered by the owner's insurance.

The Marion [1984] 2 Lloyd's Rep. 1

This case is representative of the dangers of exposure that the SMC is facing from third parties other than the one that has a contract with.

The owners of the vessel Marion had hired Fairfield Maxwell Management Services in order to undertake the management of their asset. During a trip of the vessel, in the processes of anchoring outside the port of Tees Bay, the anchor hit and damaged an oil pipeline at the bottom of the sea. The owners of the pipeline raised a claim of 25 million USD against the owners and the managers of the vessel for repairs and consequential losses.

As it was stated in the House of Lords, the master was accused of the accident despite the fact that he had provided with updated charts showing the exact position of the pipeline, he was navigating with an out of date chart that did not include the pipeline. However, before the accident, there was a safety inspection of the ship that had shown that the ship was lacking updated maps, and one of the recommendations was the acquisition of up to date charts and navigational maps, along with the demolition of the old ones. Although, a copy of that report was supplied to the SMC, due to absence of the managing director, his assistant instructed the master of the vessel about the above mentioned actions. The master was furnished with the new charts but he was never asked to confirm that he followed all the instructions, and he did not do so as it was proved.

The question that arose by the House of Lords was whether the owner or the SMC should be liable for that damage. From the facts stated during the trial, the House of Lords found the managing director responsible for the proper supervision of the master and for the guarantee that he is informed about all the matters related to the vessel undertaken. For that reason, the court decided that it was the ship management company's fault and the ship owner had nothing to do with that.

Deriving from that decision, the owner was unable to limit his liability, which under the 1957 LLMC would be around 1 million USD. The ship manager would have been obliged to pay for the whole amount of the claim, if he had not been fully co-assured in the owner's P&I insurance. The insurance coverage protected him from the claim of the owners of the pipeline and from a claim in subrogation from the P&I Club. As it can be seen, in case that the manager was not covered by the insurance of his principal or he was not fully covered, then he would have been called to compensate the claimant for the whole amount, a situation that most probably would lead the SMC to bankruptcy.

Manager's Negligence Leads to the Loss of Coverage by the Owner's Insurance (Willingale, 1998)

This case is used in order to show, how wrong handling of the situation by the manager can raise disputes with his client.

During the loading operations of a tanker in Europe with destination Canada, the master of the ship noticed corrosion and damage to structural members of the vessel's number 3 starboard ballast tank and ran a small inspection. He immediately contacted the manager stating what he found out, receiving a reply mentioning that he would be reverted soon about repair instructions. The manager failed to contact the master with further guidance on the matter and he also neglected to inform the classification society of the vessel about the event. The vessel loaded the cargo and

departed for the final destination. Throughout the trip, bad weather conditions were faced, resulting in water entering the vessel from the faulty ballast tank that was pointed out by the master. The ship had to stop at the Azores, transship the cargo to another vessel and return to Europe for repairs.

After such an event the P&I Club of the owner was involved in order to make a survey and investigate the conditions under which the incident took place. The insurers of the owner concluded that there was a breach of the Club Rules, due to the fact that the classification society was not informed of the pre-existing damages of the vessel. For that reason, the Club did not cover the owner or the manager for the claims that aroused. Also the H&M insurance could only cover the owner for the repairs and not for the general average compensation, as it was not an insured peril.

The outcome of this case was a total loss and costs deriving from the incident of 16 million USD. The amount that corresponded to the manager's negligence was approximately 7 million USD, which was eventually settled at 4million USD. As it seen through the course of the events of this case, the managers in order not to delay the vessel following the typical procedures and by underestimating the severity of the situation, they decided to take no actions about the vessel's problem. Unfortunately, this is a typical business practice in cases where the vessel might have to stay at the port and maybe generate minor costs due to delays. The managers do not see the upcoming dangers and problems that may be created, and they decide to risk lives, the asset and eventually also money.

Bernhard Schulte Shipmanagement (Bermuda) Ltd v BP Shipping Ltd , Court of Appeal – Commercial Court, 29 Jan 2009 [2009]

The claimant, who in this case is Bernhard Schulte Shipmanagement Ltd, claimed from the defendant, BP Shipping Ltd, compensation money deriving from the termination of a crew management agreement between the two aforementioned parties. The dispute was based on the question whether the claimant was entitled to half of the annual fee as compensation or half of the monthly instalment of the annual fee.

The two parties had had cooperation for several years, as the claimant had successfully managed the defendant's vessels. In 1994 the parties signed a lump sum basis crew management agreement for 17 vessels of the defendant's fleet. Under the terms of the agreement:

- There should be paid a fixed annual fee at the claimant.
- In case of termination there should be a 6 months' notice by the defendant.
- The compensation amount was set at an amount equal to one half of the applicable monthly lump sum payment.

In 2000 the way of payment changed from lump sum to cost plus fee basis. The main terms remained the same as the previous contract and only the way of payment changed. In 2003, by signing a side letter, the two parties defined more specifically the structure of the fee and the amount was set at a rate of 1,500,000 USD and 1,000,000 Pounds per year. In 2006 again the way of payment changed with another side letter. The main terms were the same as the initial contract;

however the contract turned into lump sum basis again. Paragraphs 4 and 5 of the side letter defined the payment and the termination compensation as follows:

- § 4.1 The fee was set at the amount of 1,500,000 USD and 1,067,000 Pounds per year.
- §5.9(c) The compensation of the manager in case of termination of the contract “shall be deemed to be a reference to the fees in paragraph 4.1 hereof”.

When the defendants terminated the contract prior to the agreed date, based on the agreement that existed, mentioned that the amount of the compensation should be one half of the monthly lump sum payment. That would equal to an amount of 62,500 USD and 46,147.75 Pounds. Such an amount was way lower than the one that it was agreed and the claimant was entitled to. The judge based on the provisions of paragraphs 4 and 5 of the side letter and on the fact that the claimant would never agree for a reduction of that extent, he ruled in favour of the claimant.

In this case the manager succeeded in his claim; however it shows that he is never covered from disputes. Although, there was a cooperation of more than 20 years between the claimant and the defendant, eventually in an attempt of the ship owner to save money and do not pay the compensation to the manager, he decided to go to litigation. In this case the management company had the prudence to cover itself towards an event like this, by clearly defining the amount of money that was entitled. However, there are many cases that due to inadequate terms agreed and complex contracts, the SMC is exposed to such disputes and ends up losing money that it is entitled to.

5.2 Outcomes and Solutions

As it is seen by the above analyzed court cases it has become very difficult for the ship or the Third Party SMC or the CMC to protect themselves against the potential claims that may arise. The ship management services business have become more and more demanding the last decades, due to the implementation of new regulations (ISM Code, SOLAS, MARPOL, STCW 95, etc) that aim the better quality and safer navigation of the vessels. The revised contracts issued by BIMCO have helped the managers a lot to safeguard themselves, but this is not enough. Action also has to be taken by the managers in order to protect themselves.

In a period that due to the economic crisis the ship owners are trying to reduce their costs as much as possible, it is obvious that many disputes between the managers and their clients will be faced, in terms of financial obligations. The previous years that the freight rates were high sky, many inexperienced owners entered the market, seizing the opportunity of profit that appeared the previous years. Although, such an event increases the business and the profit for the Third Party SMC, it is very difficult to cooperate with them, as they lack experience on shipping practices and communication and mutual understanding is not taking place. The ship manager should be selective regarding his clients, and investigate their background and their reputation on the market. Additionally, the Third Party SMC should not put up with any customer who is short funding the vessel or is late paying the fees and the expenses. It is better to know that your clients are trustworthy and will be punctual with their financial obligations instead of having several clients that the majority of them will do anything to save some extra money from the services that the manager

is providing. Such practices inevitably, sooner or later lead to disputes, with unwanted outcomes for both parties.

The quality of the tonnage is improving, resulting from the numerous new building orders that occurred the previous years. However, there are still many overaged vessels in the market, and many new built ones that are constructed in low quality shipyards in the Far East, creating problems to the SMCs that are operating them. Before undertaking the management of a ship, either full service or only crew provision, there should be a detailed inspection of the asset. In case a problem may arise, the manager should consider seriously whether he should undertake that vessel or not. The management fee is not the only parameter that counts. The smooth operation of the vessel is also important, and the quality of the vessel under management is a critical factor for that.

The ship management contract negotiations are of great importance. The contracts that are used by the majority of the industry are designed in that way to help the procedure, but still the managers have to really be careful on each term that they agree, considering each case separately. The rising costs of maintaining and operating a vessel have to be taken into account, in order for the manager to try to achieve a favourable price for his company, and a competitive price for his client. In his effort to avoid future disputes, the manager has the obligation to settle and agree in detail with his principal about the budget, the payment plans and the level of the fee payment. Of course he cannot predict the future and the client might not be able to fulfill his obligations on time, but as long as there is a clear agreement on the financial obligations of each party, then the SMC has safeguarded itself as good as possible. During the course of the negotiations, the manager should also not accept or try to enter into the agreement services that he cannot provide to the owner, only because he wants the deal with the client. In that case, he would find himself being exposed to his principal for unfulfilled obligations, or he would have to subcontract the service to a third party. This cannot always be done as the former approval of the owner is needed.

The provision of crew management services the last years has become increasingly difficult. The sudden increase in demand for skilled seafarers and the unwillingness of the employees of traditional seafaring countries to go on board, has made it very demanding. The flag state requirements, along with the rest of the regulations that have been implied, has resulted in the search for quality officers and crew. The ship and the crew managers shall not under no circumstances, neglect that part of their obligation, as one of the main reasons for the marine accidents is the human error. Although, the company is covered against claims coming from crew negligence, in the case that is proved that they didn't show that act due diligence and the adequate care, the exposure for the company will be definite.

As it can be understood by the above mentioned, the Third Party SMC or the CMC should always do their best in order to be covered and avoid complexities and litigations. Litigations are very costly and often complicated. The establishment of the ISM Code and the SMS, have increased the volume of documents that have to be analyzed and the volume of regulations that have to be taken into account through the procedure of a dispute. As a result the outcome of the litigation it is not always clear, and usually it takes too long for the arbitration awards or the judgment of the court to be determined. Usually the arbitrations are being paid in Sterling or

Euro, as in most contracts it is the English Law that is applied and Arbitration is defined to take place in London. If the manager is paid in USD (which is usually the case), then he loses a vast amount of money from these procedures.

In some cases, the confrontation with a claim, either coming from the manager or aiming against the manager is inevitable. In these cases the SMCs must have done their utmost to cover themselves and limit their liabilities to the biggest extent as possible. That is achieved initially by not accepting to change their limitation of liabilities at any time under the contract that they have signed with their principals. That way and by entering the owner's P&I Club insurance, as fully co-assured, he manages to cover himself by potential claims and exposures to third parties. However, being fully co-assured under the owner's insurer is not always doable as it has already been mentioned. In those cases, the SMC should also have a separate insurance protecting them from the rest of the potential exposures. Such exposures may be:

- allegation of secret commissions from suppliers
- bunker stems (quality and quantity)
- incorrect description of loading/discharging equipment

Such insurances are also provided to CMCs having the same aim. To protect them from liabilities that are not covered by their contract with their client. The advantage of such insurances is that the manager is covered without the entry of the vessel being requirement. This event also makes such kind of insurances more appealing to the management companies because the amounts for calls and premiums are much less than those needed for full P&I coverage. The benefits involve also benefits like:

- better negotiation possibilities regarding contracts
- claims and legal expertise
- local correspondent network
- loss prevention exercises, along with assistance to administrative and reports procedure

The major disadvantage of such insurances is that they cover the manager up to an extent and usually for not high level claims. A characteristic example is that of ITIC, the biggest insurance club for SMCs, and the fact that the highest claim related to ship management that they had to pay, was for an amount of 4.5 million USD.

The perils that are faced by Third Party SMCs and CMCs along with the exposures on claims they are confronted with, make it essential for such companies to establish a way to protect themselves against such situations. The best solution and business practice, is to really try and make strong and binding contracts, insuring themselves against potential liabilities that may arise, and also follow all the right procedures providing the services that they are expected to. At the extent these provisions are achieved the companies are minimizing these perils to the minimum possible, avoiding unnecessary confrontations.

Chapter 6 Conclusion

Running and operating a vessel has always been demanding and difficult, especially for people that are not familiar with the shipping industry. There has always been the need for experienced personnel that would be able to perform this activity efficiently and inexpensively. The new regulations regarding environmental pollution and safety and quality that were set into force, established a stricter environment for the ship owners. That was the initiative for people with vast experience on the market, to set companies providing services that would help the owners with the shipping business practices. The Third Party SMCs were the answer to the provision of such services to the owners, and their immediate success was a sign that those services were more than essential for the business.

However, like in all commercial relationships, the ship manager – owner relationship could not always be ideal. The management of a vessel creates numerous obligations, responsibilities and liabilities. The SMC undertakes an important number of these responsibilities along with the owner. Consequently many disputes may arise during the course of their cooperation in terms of unpaid dues, poor service provision or even attempt to commit fraud against the other party. As a result, both parties are trying to come up with the best way to cover themselves against potential exposure to risks or unwanted liabilities. For the owner it is quite easy and straightforward to cover himself. The mandatory H&M and P&I insurance that the vessel needs to have, protect the owner and his asset in the case of a claim or an arbitration. The manager, on the other hand, due to the fact that he is not the owner of the vessel and because having such an insurance for all the vessels that he undertakes is not economically feasible, he runs a high risk to find himself exposed to liabilities that might financially exhaust him. Additionally, the lack of legislation dealing with the ship management contracts makes it more difficult for the manager to protect. Only the Swedish Contracts Act covers a few general contractual issues, but does not govern the internal relationship between the ship manager and the ship owner.

In order to get protection from such situations, the best practice for the ship manager would be to try to be insured, so that even in the event of a claim the insurance company to cover his expenses and the obligations towards third parties. The personal insurance that the SMC usually has, covers the company at a significant extent, but mainly for claims that do not involve big amounts of money. For such events, being co-assured in the ship owner's P&I insurance is the only way that the SMC can cover against liabilities for payments. The risk that the manager is willing to take, depends on the fact whether he will be fully co-assured or not. If he is not fully co-assured, then he runs the risk of having to pay for the whole amount that he is found to be liable for, without the insurance being able to cover him.

Third Party SMCs cover a part of the shipping industry that is rather new compared to others. Their legal environment is quite complex and the data related to the SMCs are not easily released. Further research could be conducted related to the manager's responsibility, concerning the result, and the relationship with the management fee and the budget that he obtains. The financial aspect related to the services provided by the Third Party Ship Management Company is a field that has not been intensively exploited yet and outcomes deriving from such research would be of great importance for the improvement of this sector and its business practices.

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Appendix I: BIMCO SHIPMAN 98 Amended According to an Actual Case

MANAGEMENT AGREEMENT

This Management Agreement is made and entered into on this 29th day of February in the year 2008 between [REDACTED], a company registered and operating under the laws of the [REDACTED] having its registered address at [REDACTED] (hereinafter called "the Owner"), on the one hand, and [REDACTED], a company registered and operating under the laws [REDACTED], which has established an office at [REDACTED] under the provisions of [REDACTED] as amended, (hereinafter called "the Managers"), on the other hand.

W I T N E S S E T H

WHEREAS, a Memorandum of Agreement has been signed on 29th February 2008 between the Owner as Buyers and [REDACTED] as Sellers for the sale and purchase of the vessel [REDACTED] to be named [REDACTED] (hereinafter called "the Vessel").

WHEREAS, the Owners upon delivery of the Vessel will register same under the flag of [REDACTED]

WHEREAS, the Owners wish to entrust the management of the Vessel to the Managers upon the terms hereinafter set forth.

WHEREAS, the Managers main business is the operation of seagoing vessels and have the skills, know how and experience for the managing, operating and manning of seagoing vessels and agree to act as the Managers of the Vessel.

NOW THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, it is hereby agreed as follows:

1. The Owner hereby appoints the Managers and the Managers hereby agree to act as the Managers of the Vessel.

2. The Managers undertake, on behalf of the Owner, to use their best endeavours and skills to provide the Services listed hereunder, in accordance with sound ship's management practice, and to protect and promote the interests of the Owner in all matters relating to the provision of the services described hereunder.
3. Subject to terms and conditions herein provided, during the period of this agreement the Managers will exercise their best endeavours to protect and promote the interests of the Owner and shall carry out in an economical and efficient manner, as Agents, for and on behalf of the Owner, the duties described hereunder, will provide to the Owner the services described hereunder, and will have authority to take such actions as the Managers may from time to time in their absolute discretion consider to be necessary to enable them to perform this Agreement in accordance with sound ship management practice.
4. It is expressly agreed however, that the Managers in the performance of their duties and responsibilities under this Agreement shall be entitled to have regard to their overall responsibility in relation to all vessels as may from time to time be entrusted to their management and in particular, but without prejudice to the generality of the foregoing, the Managers shall be entitled to allocate available supplies, manpower and services in such manner as in the prevailing circumstances the Managers, in their absolute discretion, consider to be fair and reasonable.
5. Nothing in this Agreement shall be construed so as to grant the Managers any interest in the Vessel, or in the profits resulting from her operation or to create between the Owner and the Managers any relationship other than that of "Principal" and "Agent".
6. **Insurances**

The Managers shall arrange through competent brokers such Hull and Machinery, Protection and Indemnity, War Risks and other insurance covers as the Owner shall have instructed or agreed, in particular as regards insured values, deductibles and franchises.

All insurances shall be in the joint names of the Owner and the Managers if the Managers so wish; however, unless otherwise agreed no liability to pay premiums

or P and I calls shall be imposed on the Managers, notwithstanding P and I cover restrictions which would thereby result.

The Managers shall also be responsible for following up and maintaining in force and at all times valid all insurance policies and entries of the Vessel with P and I Associations and shall also advise, if necessary, of the need to take out additional insurance and entries in order that the Vessel is fully covered against risks which might occur from any voyage in a high risk area or from the carriage of dangerous or hazardous goods.

7. **Manning**

The Managers shall directly or in co-operation with manning agents appointed by the Owner, select, provide and recruit adequate, competent and qualified crew for the Vessel, as required by the Owner. These manning services include but are not limited to the following:-

- a) Employment of Master, Officers and Crew of the Vessel;
- b) Arranging for transportation of the Crew including repatriation;
- c) Training of the Crew;
- d) Supervision of the efficiency of the Crew and administration of all other Crew matters, such as relief planning for the manning of the Vessel;
- e) Payroll arrangements (payment of crew earnings and other lawful earnings of the crew);
- f) Arrangement and administration of pensions and Crew insurance;
- g) Discipline and union negotiations, labour relations and labour welfare;
- h) Enforcement of appropriate standing orders;
- i) Victualling;

- j) Ship's cash control;

It is expressly agreed that the seamen to be recruited will always be the employees of the Owners and that the Managers will not be responsible for "any damages" whatsoever, (direct or indirect, physical, financial or consequential,) affecting the Vessel and caused by any negligence, default or wilful misconduct of the crew members.

8. **Chartering**

The Managers shall, in accordance with the Owner's instructions, provide directly or through other independent brokers, chartering services which include but are not limited to seeking and negotiating employment for the Vessel and the conclusion, (including the execution thereof), of Charterparties or other contracts relating to the employment of the Vessel.

9. **Technical Management**

The Managers shall provide technical management, by supervising the maintenance, safety, classification certification and repairs of the Vessel so as to keep the Vessel in a suitable and efficient condition for her trading. This included but is not limited to the following functions:-

- a) Supervision of the maintenance and general efficiency of the Vessel;
- b) Arrangement and supervision of dry-dockings, repairs, alterations and the upkeep of the Vessel to standards required by the Owner, provided that the Managers shall be entitled to incur the necessary expenditure to ensure that the Vessel will comply with all requirements and recommendations of the Classification Society, and with the Laws and Regulations of the Country of Registry of the Vessel and of the places where she trades and with all the appropriate Certificates for the Vessel's trading as required by the International Regulations and that the Vessel's Trading Certificates are effective and valid at all times ;
- c) Appointment of surveyors and technical consultants as the Managers may consider from time to time to be necessary;

- d) Advising the Owner in advance regarding the dates that the Vessel is due for inspection or survey and about any recommendation made by the Vessel's Classification Society during such inspection or survey.

10. **Operation**

The Managers shall provide for the operation of the Vessel, which includes but is not limited to the following functions:-

- a) Issue voyage instructions;
- b) Appointment of Agents and/or sub-agents and/or protecting agents;
- c) Appointment of stevedores;
- d) Arrange cargo handling, loading and discharging of the Vessel;
- e) Arrangement of the surveying of cargoes;
- f) Provision of all other services incidental to the operation of the Vessel including, but not limited to, cargo handling, port activities, pilotage, towage, wharfage, dockage, canal transits, etc.

11. **Freight Collection and Freight Management.**

The Managers shall provide freight management which included but is not limited to the following functions:-

- a) Calculation of hire and/or provision of voyage estimates and/or freight and/or demurrage and/or despatch monies due from or due to the Charterers of the Vessel;
- b) Collection of the Vessel's income and in particular of all hire and/or freight revenues or all other monies of whatsoever kind to which the Owner may be entitled arising out of the employment of or otherwise in connection with the Vessel.

12. **Claims Handling**

The Manager shall handle and settle all claims arising out of the operation of the Vessel and of the management services provided under this Agreement and shall keep the Owner informed regarding any incident of which the Managers become aware, which gives or may give rise to claims or disputes involving third parties. The Managers shall bring or defend actions, suits or proceedings on behalf of the Owner, in connection with matters entrusted to the Managers according to this Agreement.

More particularly, the Managers shall make adjust, apportion, resist, defend settle or abandon any claim by or on behalf of the Vessel or the Owner in respect of the insurance of the Vessel, machinery, apparel, fittings, freight earnings, demurrage, despatch, disbursements or any claim for salvage, towage, damages, average, or any other claim arising under any contract which concerns the Vessel in any way, or any claim which arises out of the operation of the Vessel, and in this respect, to appoint, on behalf of the Owner, lawyers to handle claims, to institute legal proceedings and to collect any such claims or monies on behalf of the Owner. However, in order to settle or abandon any claim advanced by the Owner in excess of US\$ 200,000.-, the prior written consent of the Owner is necessary.

The managers shall also have power to obtain legal or technical or other outside expert advice in relation to the handling and settlement of claims and disputes or all other matters affecting the interest of the Owner in respect of the Vessel. Any costs incurred by the Managers in carrying out their obligations under this clause shall be reimbursed by the Owner.

The Owner shall arrange for the provision of any necessary guarantee, bond or security.

13. **Supplies/Provisions/Stores/Spares**

The Managers shall arrange for the supply of provisions, stores, deck and engine spares, as required for the Vessel's operation, maintenance and technical characteristics.

14. **Bunkering**

The Managers shall arrange for the provision of bunker fuel, lubricants, etc., of the quality specified by the Owner as required for the trade of the Vessel.

15. **Accounting**

The Managers shall establish an accounting system which meets the requirements of the Owner and shall provide regular accounting information, reports and records to the Owner.

The Managers shall also maintain the records of all income received, and costs and expenditures incurred hereunder as well as data necessary or proper for the settlement of accounts between the parties.

In particular the Managers shall provide inter alia the following accounting services:-

a) **Budget, Funding of Vessel's operation**

(I) The Managers shall present to the Owner annually a budget for the following twelve months. The annual budget shall be prepared and submitted to the Owner not less than 2 months before the anniversary date of the commencement of the Agreement. The Owner shall indicate to the Managers their acceptance and approval of the annual budget within one month of presentation and in the absence of any such indication, it is presumed that the Owner approves said budget.

(II) The Managers shall follow as closely as possible the said budget in the running/operation of the Vessel. The Managers shall produce every three months a comparison between budgeted and actual income and expenditure of the Vessel.

(III) It is specifically agreed that the Managers will use the Vessel's income to fund the Vessel's running/operational costs. If the Vessel's income is not sufficient to cover these costs then the Owner shall demand put the Managers in funds for all the Vessel's expenses and the Managers shall in no circumstances be required to

use or commit their own funds to finance the provisions of the management services.

b) **Income collected and Expenses paid on behalf of the Owner**

All monies collected by the Managers on behalf of the Owner under the terms of this Agreement and all interest accrued thereon shall be held to the credit of the Owner.

All expenses incurred and payments made by the Managers under the terms of this Agreement on behalf of the Owner, including the Management fee, shall be debited against the Owner and shall be offset against monies collected as above.

In the event that the payments and expenses exceed the monies collected, the Owner shall immediately put the Managers in funds upon demand to cover all such payments and expenses.

c) **Financial Statements and Reports**

The managers will provide the Owner with a yearly balance sheet and a profit and loss account, according to which any existing profits may be paid to the Owner as per their request.

At the request of the Owner the Managers may provide a six monthly interim/provisional profit and loss account, on the basis of which an interim payment of the profit may be arranged.

d) **Auditing**

The Managers shall at all times maintain and keep true and correct accounts and shall make the same available for inspection and auditing by external auditors, that the Owner may appoint at their expense, at such times as may be mutually agreed.

16. **Management Fee**

In consideration of the obligations undertaken by Managers under this Agreement, Owner shall also pay to the Manager a commission fee equal to one percent (1.0%) calculated on the MOA price for the Vessel being bought or sold for and on behalf of the Owner.

In addition to the commission fees due to Managers under Clauses 16.01 and 16.02 above and for as long as this Agreement is in effect, Owner shall also pay Manager a Management Fee of US\$ [REDACTED] payable monthly in advance (the first payment to be made upon execution of this Agreement), except that for the Vessel operating on bareboat charter, Owner shall pay Managers a management fee of US\$ [REDACTED] per vessel.

The Managers shall at no extra cost to the Owner, provide its own office accommodation, office staff and stationery.

In the event of the appointment of the Managers being terminated by the Owner or the Managers, the management fee payable to the Managers shall continue to be payable for a further period of three calendar months.

17. **Sale of Vessel**

If the Owner sells the Vessel during the currency of the Agreement, the Managers shall, in accordance with the Owner's instructions, supervise the sale of the Vessel, including the performance of the sale agreement, and the negotiation of the same, if so requested by the Owner.

18. **Compliance with Laws and Regulations**

The Managers will not do or permit anything to be done which might cause any breach of infringement of the laws and regulations of the Country of Registry of the Vessel, and of the places where she trades.

19. **Managers' Right to Sub-contract**

The Managers shall be entitled to sub contract part of their obligations hereunder to third parties without the consent of the Owner.

20. **Responsibilities**

a) **Force Majeure**

Neither the Owner nor the Managers shall be under any responsibility/liability for any failure to perform any of their obligations hereunder by reason of any cause whatsoever of any nature or kind beyond their reasonable control.

b) **Liability to Owner**

Without prejudice to sub-clause 17 above, the Managers shall be under no liability whatsoever to the Owner for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect, (including but not limited to loss of profit arising out of or in connection with the detention of or the delay to the Vessel), and howsoever arising in the course of the performance of the management services unless same is proved to have resulted solely from the gross negligence or wilful misconduct of the managers or their employees or agents or sub-contractors employed by them in connection with the Vessel, in which case the Managers' liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a total of ten times the annual management fee payable hereunder.

c) **Indemnity**

The Owner hereby undertakes to keep the Managers and their employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of the Agreement, and against and in respect of all costs, loss, damages, and expenses, which the Managers may suffer or incur, during the course of the performance of this Agreement.

d) **Himalaya**

It is hereby expressly agreed that no employee or agent of the Managers shall in any circumstances whatsoever be under any liability whatsoever to the Owner for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part, while acting in the course of or in connection with his employment and, every exception, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Managers shall also be available and shall extend to protect every such employee or agent of the Managers acting as aforesaid.

21. **Inspection of Vessel**

The Owner shall have the right at any time, after giving reasonable notice to the Managers, to inspect the Vessel for any reason they consider necessary.

22. **Termination of Agreement**

This agreement has effect from today and shall continue until terminated by either party giving to the other notice in writing at the addresses stated above, in which event the Agreement shall terminate upon the expiration of a period of two months from the date upon which such notice was given.

Termination by Default

The Managers shall be entitled to terminate the Agreement forthright if any monies payable by the Owner shall not have been received in the Managers' nominated account within ten days of payment having been requested in writing by the Managers.

This agreement shall furthermore terminate forthwith in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party, (otherwise than for the purpose of reconstruction or amalgamation,) or if a Receiver is appointed, or if it suspends payment, ceases to

carry on business, or makes any special arrangement or composition with its creditors.

The Managers shall also be entitled to terminate the Agreement by notice in writing if after receipt of written notice of objection thereto from the Managers, the Owner proceeds with employment of or continues to employ his Vessel in a trade or in a manner which is, in the opinion of the Managers, likely to be detrimental to their reputation as Managers or, (otherwise done by virtue of ordinary business competition,) by being prejudicial to the commercial interest of the Managers.

This Agreement shall be deemed to be terminated in case of the sale of the Vessel, or if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss or is requisitioned.

For the purpose of the above sub-paragraph, the date upon which the Vessel is to be treated as having been sold or otherwise disposed of shall be the date on which the Owner ceases to be registered as Owner of the Vessel;

The Vessel shall not be deemed to be lost unless either she has become an actual total loss or agreement has been reached with her underwriters in respect of her constructive, compromised or arranged total loss, or if such agreement with her underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred.

The termination of this Agreement shall be without prejudice to all rights accrued due between the parties prior to the date of termination.

23. **Notices**

Any communications may be sent by telefax, registered mail, personal or courier services to the following addresses:

[REDACTED]
Address: [REDACTED]
[REDACTED]
[REDACTED]

Phone : [REDACTED]
Fax : [REDACTED]
Telex : [REDACTED]

21. **Law and Arbitration**

This Agreement is governed by the Laws of England, and any disputes arising therefrom shall be referred to Arbitration in London, one Arbitrator being appointed by each party with the power to appoint an Umpire in accordance with the Arbitration Acts 1950, 1979, 1996 or any statutory modification or re-enactment thereof for the time being in force.

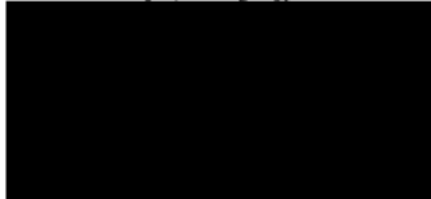
IN WITNESSETH WHEREOF

The parties have caused this Agreement to be executed by the duly authorised officers, the day and year first above written.

For and on behalf of
OWNER



For and on behalf of
MANAGERS



Appendix II: Statistical Information Related to Ship Management Companies

World Fleet

	2007	2008	2009	2010	2011
Deliveries	55.2	67.6	88.5	105.4	99.3
Demolition	3.6	6.7	15.7	30	39.2
Net fleet growth	51.6	60.9	72.8	75.4	60.1
+/- %	+8.6	+9.5	+9.0	+6.6	
World Fleet (end year)	706.8	767.7	840.5	915.9	976

M.GT

Note: Vessels . 5,000 dwt or GRT (according to type)

Source: MSI

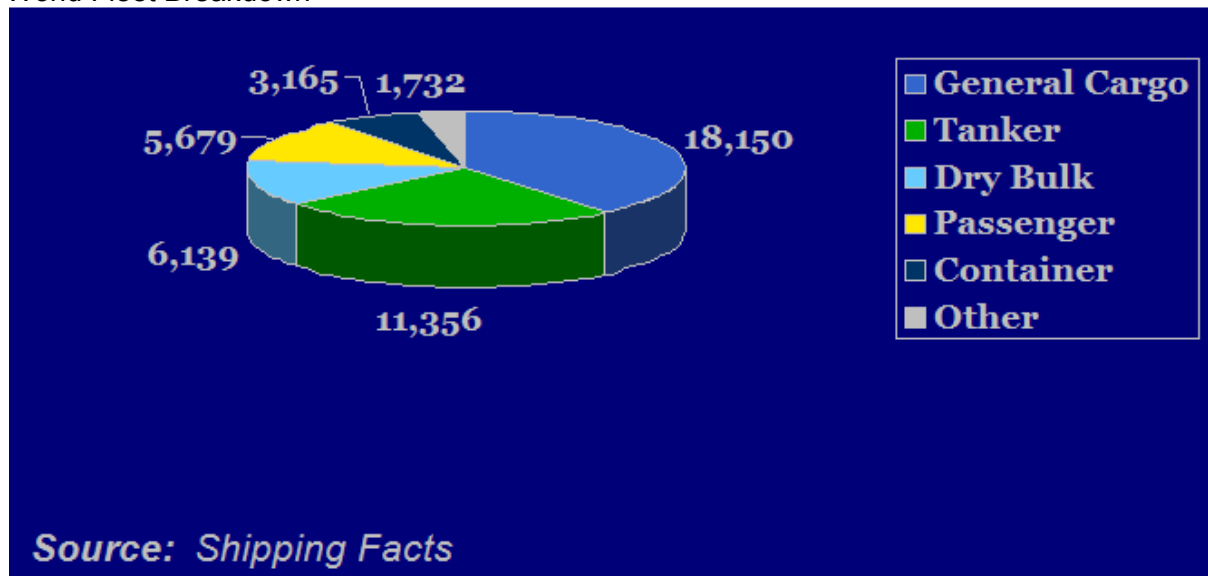
World Crewing

	2007	2008	2009	2010	2011
World Fleet	24,727	26,291	27,591	28,426	28,896
Crew required *	741,810	788,730	827,730	852,780	866,880
Crew hours worked/day**	5.93m.	6.31m.	6.62m.	6.82m.	6.94m.
Office staff required***	61,818	65,728	68,978	71,065	72,240
Office staff hours worked/day****	0.62m.	0.66m.	0.69m.	0.71m.	0.72m.
Total manpower hours/day (WFSR)	6.48m.	6.97m.	7.31m.	7.53m.	7.66m.
Total manpower hours/year (WFSR)*****	2.3b.	2.5b.	2.6b.	2.7b.	2.7b.

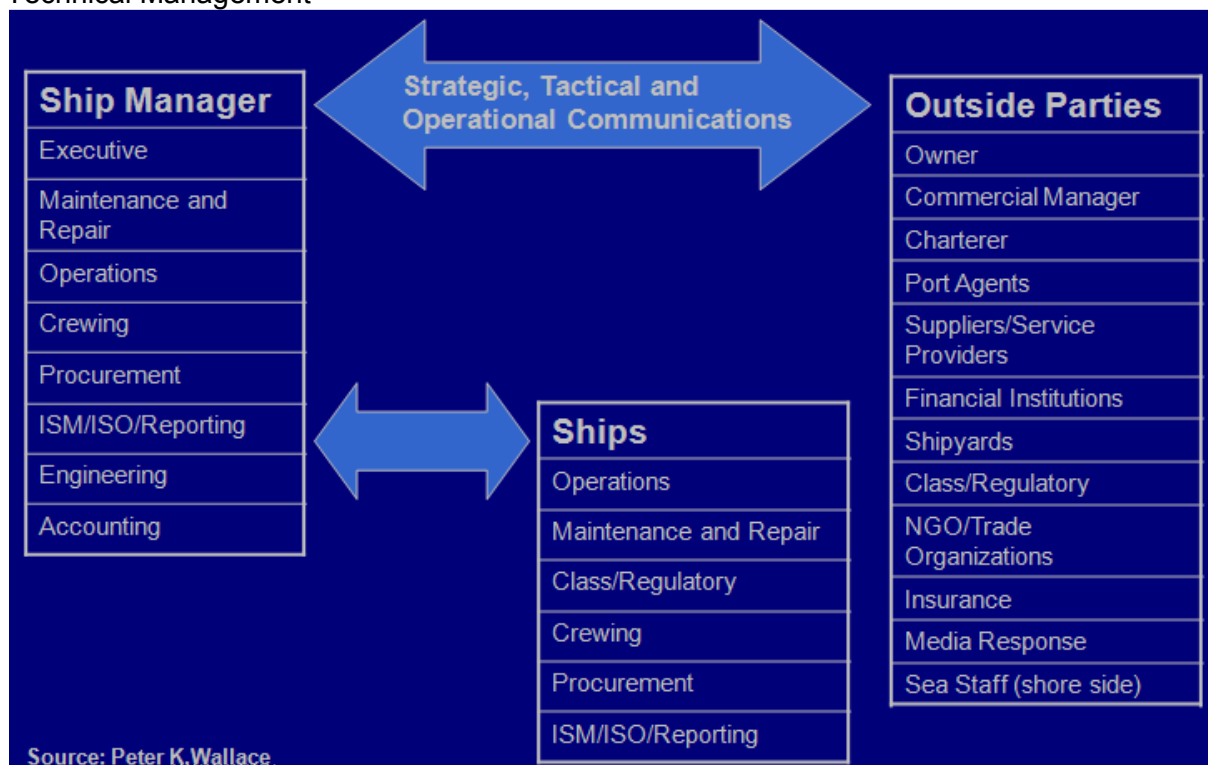
Note: * assuming average crew complement of 20 seafarers and coverage ratio of 1.5.; ** assuming 12 hours/man/day for 20 seafarers 7 days/week; *** assumes 2.5:1 office staffing ratio; **** based on a 10-hour working day; ***** office staff working 230 days/year.

Source: MSI + own estimates

World Fleet Breakdown

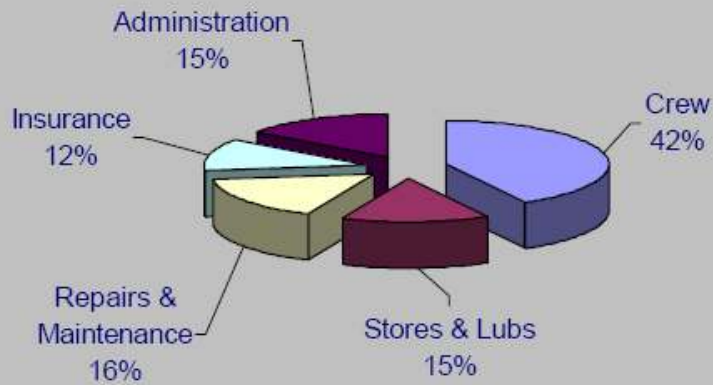


Technical Management

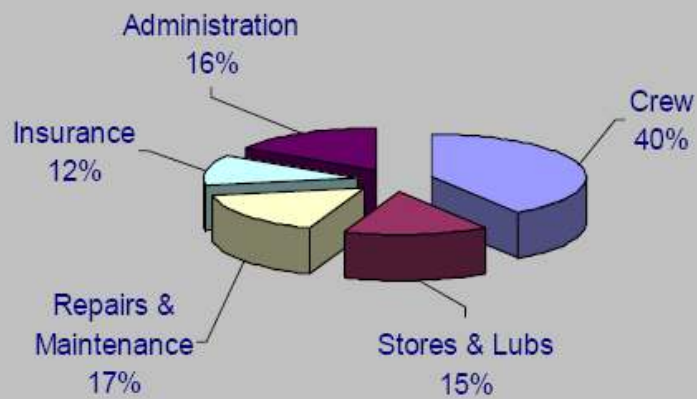


Appendix III: Different Vessel Type Indicative Daily Running Expenses

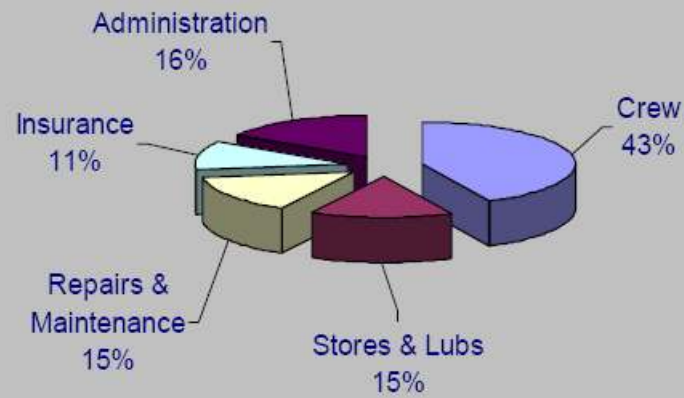
Handysize Bulk Carrier Running Expenses Average per day Cost: 4,300 usd



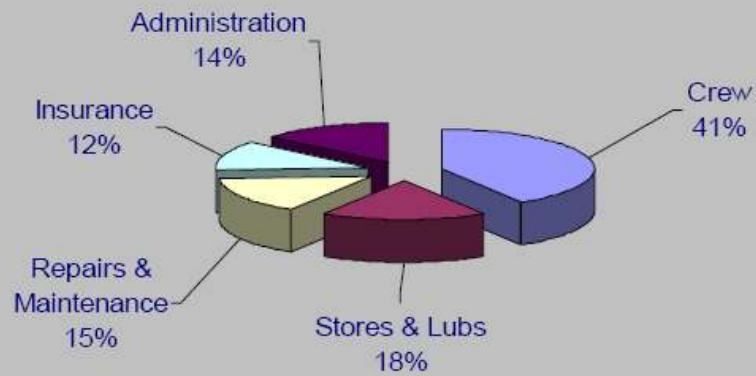
Handymax Bulk Carrier Running Expenses Average per day Cost: 4,900 usd



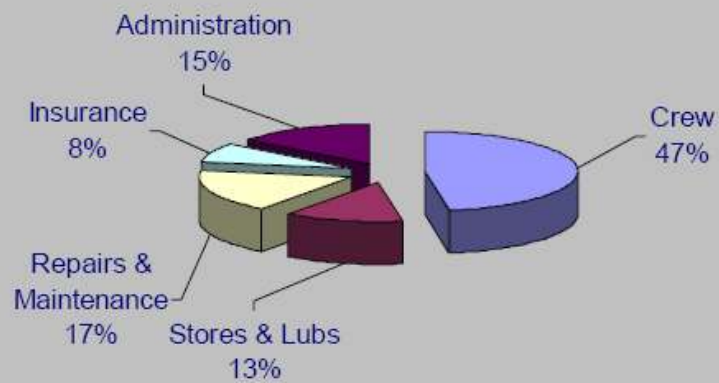
Panamax Bulk Carrier Running Expenses
Average per day Cost: 5,500 usd



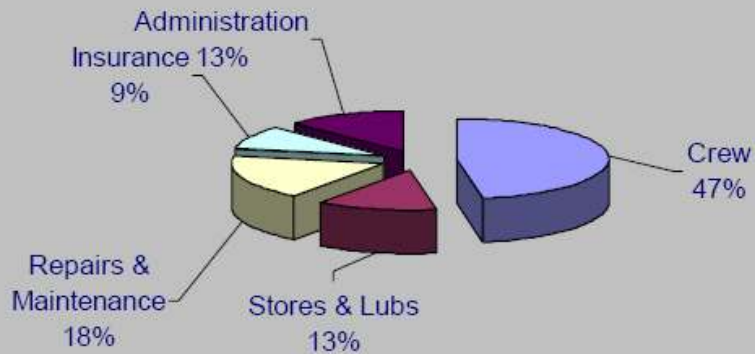
Capesize Bulk Carrier Running Expenses
Average per day Cost: 6,500 usd



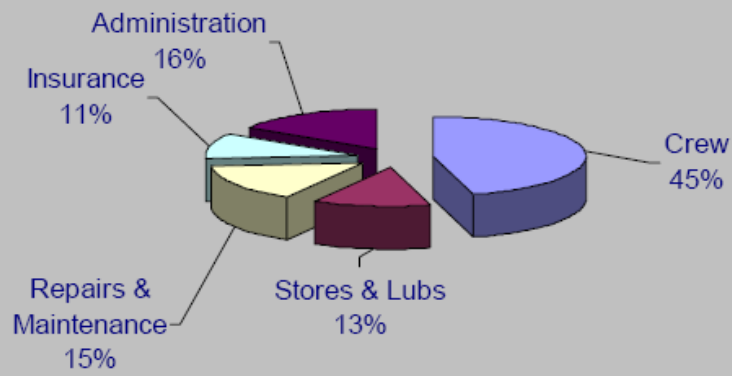
Handysize Product Tanker Running Expenses
Average per day Cost: 6,900 usd



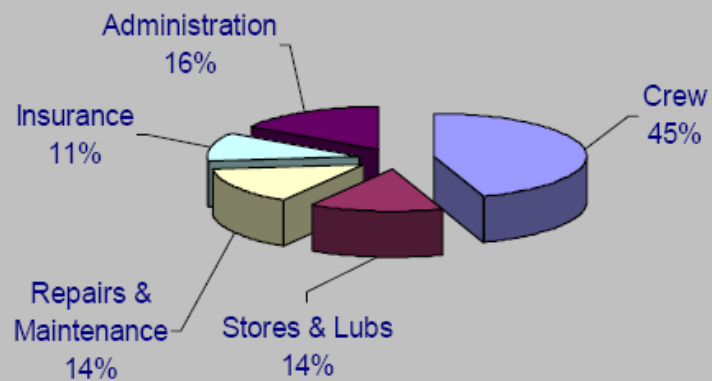
Panamax Tanker Running Expenses
Average per day Cost: 7,800 usd



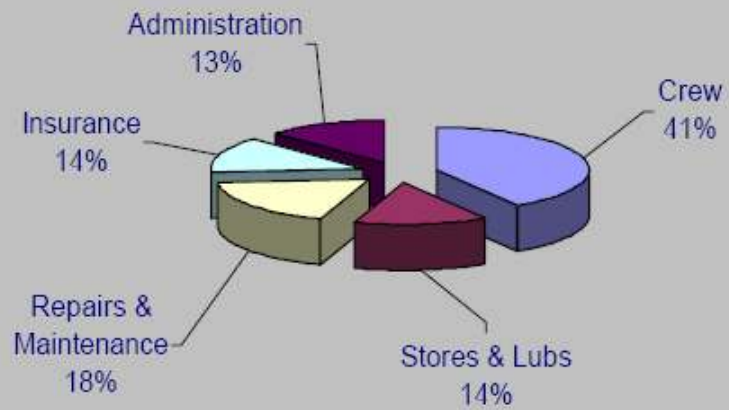
Aframax Tanker Running Expenses
Average per day Cost: 7,200 usd



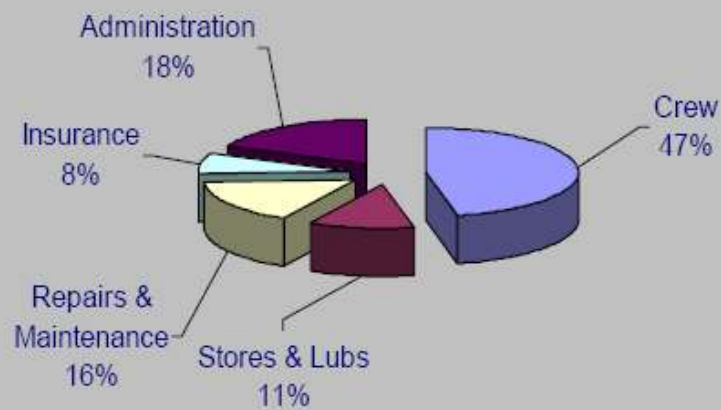
Suezmax Tanker Running Expenses
Average per day Cost: 8,000 usd



VLCC Running Expenses
Average per day Cost: 9,600 usd



Chemical/Product Tanker Running Expenses
Average per day Cost: 6,600 usd



Source: Euronav