ANDREW LIU & CO LTD

Address: Suit 501, Bank of America Tower
12 Harcourt Road, Central
Hong Kong
Tel: +852 2521 0373
Fax: +852 2521 2715
Email: marketing@andrewliu.com.hk
Website: http://www.andrewliu.com.hk
And at Shanghai: +86 21 6323 0825

Circular Ref: 2012/0010
Date: 1, March 2012

Consequences of Negligent and criminal failure to report in the US

USCG under the Ports and Waterways Safety Act require any vessel to notify any 'hazardous condition on board'. There is additional responsibility to send a written report to USCG.

A hazardous condition includes any condition that may adversely affect the safety of the vessel or the environment, port, waterway, harbor, and a casualty such as a collision or grounding is not necessary for a hazardous condition to exist on board.

A negligent failure to report a hazardous condition may be subject to a civil prosecution. A willful or knowing failure to report a hazardous condition may be subject to a criminal prosecution and will include criminal charges against the owner and the crew.

In the case of US v Canal Barge Co (2011), a barge had a crack in her hull and temporary repairs were carried out. This incident and the temporarily repaired crack was not reported to the USCG. The USCG found out about the circumstances of the crack when the temporary repairs to the crack subsequently failed and benzene cargo leaked out of the vessel.

Charges were brought against the owner, the manager, the master on the grounds of willful failure to report a hazardous condition (Criminal charge) or a negligent failure to report (Civil charge), and conspiracy to violate the US laws (criminal charge).

It was held all the defendants were criminally liable as they knowingly and willfully failed to report the crack. In coming to this conclusion, it was taken into account there was a breach of the company's vessel response plan which required the reporting of such an incident and spill, and there was a failure by the master to mention the crack, repairs and spill in the vessel's logs.

It is important the vessel's crew is trained to understand US reporting requirements and the consequences of such failures or breaches.

Andrew Liu & Co. Ltd