



Signals

NEWSLETTER



Welcome...

to the Autumn 2015 edition of *Signals* which provides information relating to loss prevention, claims, legal matters and other topics of interest to ship operators and seafarers and examines their implications and consequences.

In the people section we look at ways to control medical costs in Spain and the importance of the human touch when crew experience injury or illness.

Vessels continue to experience problems in relation to MARPOL violations, no more so than in the USA. Problems with whistle-blowers, magic pipes and oil record book entries continue to lead to detentions, fines, environmental compliance programmes and criminal prosecutions. In this issue we revisit the main issues.

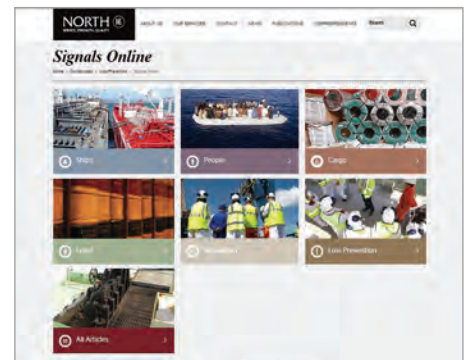
The cargo section contains articles on nickel ore, changes to imported coal quality regulations in China, theft from containers, the disposal of slops in Spanish ports and a decision in relation to electronic cargo release systems used in liner trades.

The back page features a case study in relation to a grounding instead of our usual collision scenario. It is the intention to alternate these case studies going forward.

Accompanying this issue is the latest in our *Hot-Spots* series of publications which focuses on the risks associated with routine galley work.

Signals Online

As mentioned in *Signals* issue 100, we shall be publishing topical articles on our website on a regular basis and these will be collated into our usual quarterly publication for distribution to members and entered vessels. This provides an additional service to readers who will now be able to view articles individually online. Please visit our website at www.nepia.com/signals-online



IN THIS ISSUE

The regulatory burden on ship operators continues to increase. It would appear that the next raft of regulation may be in relation to the cyber risks vessels pose when visiting ports. The United States Coast Guard (USCG) recently published its cyber strategy in response to what it perceives is one of the most serious threats to US economic and national security interests and this may serve as catalyst in this area. The USCG cyber strategy is examined in this issue. Also in the legal section we consider the recent Sea Mirror decision, which has important implications for those engaged in bagged cargo trades, and look at some of the myths and facts that surround RightShip.

Issue 101: October 2015

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FOR NORTH'S MEMBERS

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MAGIC PIPES – DON'T BE NEXT

Pollution fines relating to the illegal discharge of oil contaminated bilge water continue to occur in the United States. Compliance programmes are commonplace and fines can be severe, often reaching several million dollars. In this article we look at the circumstances surrounding such claims, measures that may be taken to minimise the risk of them occurring and the potential implications for P&I cover.

Illegal Discharges

The US Act to Prevent Pollution from Ships (APPS) makes it a crime for any person to knowingly violate MARPOL. Violation can lead to the imposition of large financial penalties on shipowners, an Environmental Compliance Programme and crew members can face prison if found guilty of illegal actions.

The accumulation of bilge water in the machinery spaces of ships in service is inevitable. However, there is no excuse whatsoever to justify the illegal discharge of bilge water unless for the purpose of securing the safety of a ship or saving life at sea.

Unfortunately, illegal discharges at sea do still occur and the US continues its robust position on prosecuting offenders.

Two repeated factors emerge when considering the details of recent pollution convictions as published by the US Department of Justice:

- The vessel's bilge water processing equipment, such as the oily water separator (OWS), was bypassed leading to the illegal discharge of untreated bilge water
- Records, such as the Oil Record Book were found to be falsified.

Bypassing the OWS

The most common means of illegally bypassing the OWS is by the use of the 'magic pipe'.

Magic pipes are usually temporary and flexible lengths of pipe/hose and are designed to be easily and quickly removed. The magic pipe may be a direct means of discharging the bilge holding tank (or even sludge tank) by bypassing the OWS, or there may be a direct discharge overboard from the bilge wells using a bilge pump. The more creative offenders may tap into other discharge systems such as the ballast pumps or sewage effluent/greywater lines.

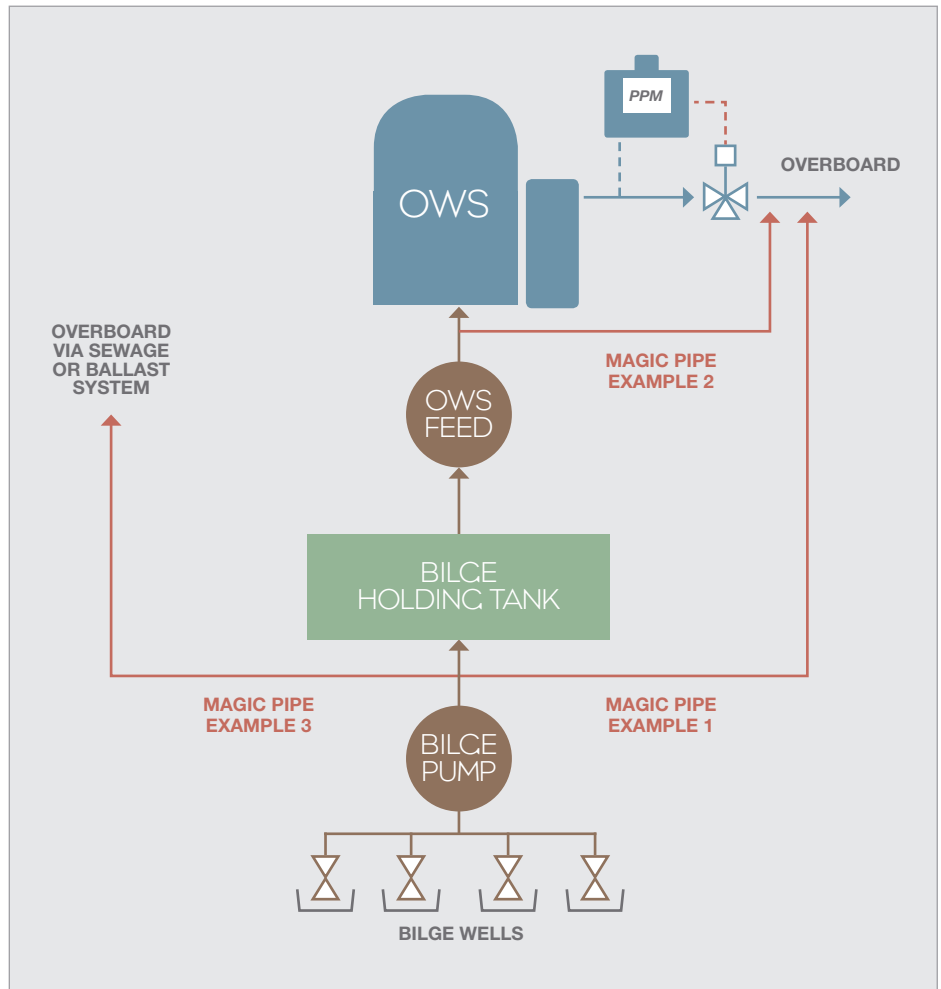


Figure: Examples of magic pipes

Looking for the Magic Pipe

The use or presence of a magic pipe may not be readily apparent. A vigilant inspector may detect them but bypass lines can be very difficult to identify as they may be positioned well away from the OWS and out of sight under the engine room floor-plates.

If the magic pipe has been removed prior to an inspection, then an inspector or surveyor may be alerted by disturbed paint coatings on flanges. Or conversely, if a fresh coat of paint is noticed on a flange this may be seen as an attempt to hide the evidence. Blanked flanges and T-pieces on the discharge pipes may also lead authorities to investigate deeper.

Preventing the use of the Magic Pipe

It should first be stressed that a vessel's bilge system must not be changed or modified without class and/or administration approval and must be fully documented.

There are a number of preventative measures that can be considered to help stop the illegal use of magic pipes. These include the welding of beads on the pipe flanges or by drilling the flanges and fitting security seals through them.

The removal of suspicious looking T-piece connections or blanked flanges in the bilge system should deter any suspicions from inspecting authorities. This is particularly pertinent when looking at OWS discharge pipe-work; if portable hoses are found with mating connections that are compatible with the OWS discharge line connections then this could further arouse suspicions.



Figure: Sealed flanges



Falsification of Records

As well as being a violation of MARPOL Annex I, and therefore a felony under US APPS, the falsification of the Oil Record Book stands as a serious offence in itself and could fall under the *destruction, alteration or falsification of records in Federal investigations* as per US Code 18 USC § 1519 and *statements or entries generally* as per 18 USC § 1001.

The United States Coast Guard (USCG) will scrutinise the vessel's Oil Record Book following a pollution incident or an allegation of illegal activity. They may also regularly inspect the Oil Record Book during port State inspections to determine compliance and to ensure that the vessel is not an environmental threat to US waters.

The veracity and reliability of the Oil Record Book can be assessed by checking for continuity in recorded bilge and sludge tank levels and comparing the relevant tank level changes against the times the OWS was in use. All changes in tank quantities should be accounted for and include processes where levels fall such as the boiling-off or the steaming of sludge tanks through heating.

Engine room alarm records may be checked for bilge high level alarms and the Oil Record Book then reviewed for a correlating entry related to the pumping operation. A further check that can be made by a reviewing party is to cross reference the present tank levels as recorded in the Oil Record Book with the actual levels at time of inspection.

It is easy to fall foul when maintaining the Oil Record Book, and port State authorities may interpret genuine mistakes as something more sinister. As such, the importance of this document cannot be overstated.

IMO Circular MEPC.1/Circ.736/Rev.2 Guidance for the Recording of Operations in the Oil Record Book Part I was issued in October 2011 and gives strict guidance on how the Oil Record Book should be completed.

Environmental Compliance Programs

As part of the plea bargain and terms of probation, an Environmental Compliance Plan (ECP) or Enhanced Environmental Compliance Plan (EECP) is regularly enforced on the shipowner by the United States authorities and is usually in addition to any financial penalties levied.

The ECP applies company-wide to both the vessels' crews and the shore staff. Failure to comply with the ECP or allow access under the terms of the ECP can result in the modifying of the terms of probation or even lead to a company's vessels being banned from calling at US ports.

A key purpose of the ECP is to introduce an Environmental Management System (EMS) which must be approved by the US authorities. This will include, *inter alia*, company environmental policy, objectives and targets, structure and responsibilities, operational controls, documentary controls, emergency procedures and training.

Additional measures with regard to shipboard systems and equipment that are above and beyond international legislation are often imposed. This could include the implementation of a tag system on flanges and valves, tamperproof controls on the oil content meter of the OWS or the removal of blank flanges on pipes that could present an opportunity to connect magic pipes.

Environmental Compliance Plans incur extra costs as well as increasing the administrative burdens and scope of maintenance programs for ship managers and crew. A high level of auditing is required under the ECP which requires the appointment of an external audit group and a separate third party auditor. It is usual for the shipowner to designate a Corporate Compliance Manager (CCM) and an Operational Compliance Officer (OCO) to manage the requirements of the ECP and to report to the US authorities.

Environmental Management

A number of methods can be employed to prevent illegal discharges and many of them will concern barriers and safeguards to physically prevent such activities from being carried out.

Likewise, regular checking and auditing of the Oil Record Book should identify errors in record-keeping.

These are of course vitally important, but another key aspect is the relationship between ship and shore staff. A culture of compliance must be developed and maintained whereupon the crew must not feel pressured into carrying out illicit acts for whatever reason.

The ship's crew must believe that shore management is 'on their side' and all communications are unambiguous. The overriding culture at all levels of the organisation must be that environmental legislation must not be violated.

The last few years has seen the advent of the "whistle-blower" due to the high level of rewards on offer, which in the United States can be up to 50% of the imposed penalty.

A culture and formal mechanism should exist whereupon a concerned crew member can directly report to a senior member of shore management any concerns regarding potential pollution without fear of retribution.

INTERTANKO's guidelines on whistle-blowing policies are a useful source of further information.

Quite simply, the easiest way to help prevent illegal discharges is to simply take away the need to do so.

Further information on this subject can be found in North's Loss Prevention briefing on Bilge Water Management & Pollution which can be downloaded at www.nepia.com/media/72676/LP-Briefing-Bilge-Water-Management.PDF

The Impact on P&I Cover

As detailed in North's Circular of 2005 "*International Convention for the Prevention of Pollution from Ships 73/78*", P&I Clubs in the International Group do not condone breaches of the MARPOL regulations. The Circular can be viewed on the Club's website: www.nepia.com/media/63896/CC-2005-INTERNATIONAL-CONVENTION-FOR-THE-PREVENTION-OF-POLLUTION-FROM-SHIPS-7378.PDF

Other than in cases of purely accidental discharge, P&I cover for fines resulting from breaches of MARPOL regulations is only available on a discretionary basis and the Member would be required to satisfy the Directors that they took reasonable steps to avoid or prevent the offence.

In the event of an allegation arising in the US, a criminal investigation may be based on a violation of US national pollution laws, falsified records, false statements made to the USCG, obstruction of justice (destruction of evidence) and conspiracy. Whilst these violations may lead to criminal or civil charges and fines under the relevant US Codes they do not provide the authorities with a right to obtain financial security for fines or penalties.

As a result, the US authorities have turned to enforcing APPS in order to gain security. Under APPS, the USCG has broad authority and discretion to impose both financial and non-financial conditions for the release of a detained vessel suspected to have violated MARPOL. Although APPS provides that the US authorities may refer the matter to the flag state concerned or deal with it themselves, if they choose the latter then the levels of fines, and therefore requested security, can be considerable.

So far as P&I cover is concerned, whilst proceedings are under way, North is unable to provide security (except in exchange for counter security in the form of cash or by bank guarantee) for any such alleged offences and if the Club is asked to assist with the funding of costs incurred in defending criminal or civil proceedings, additional security will be required.

Continued overleaf...



List of Pollution Violations 2011-2015 (adapted from US DOJ information)

Vessel	Violation	Fines	Action Against Crew	Environmental Compliance Program (ECP)
9,000 GT Reefer Vessel	Illegal dumping of hydraulic oil and failing to maintain an accurate Oil Record Book	Fined \$0.75m	C/O sentenced 3 months imprisonment	3 year ECP enforced
40,000 GT Car Carrier	Illegal direct discharge of oily bilge water in 2015 using a portable pump and falsification of Oil Record Book	Fined \$0.8m	C/E sentenced 5 months home confinement and 5 years' probation	ECP enforced
24,000 GT Container Ship	Illegal direct discharge of oily bilge water in 2015 and falsification of Oil Record Book	Fined \$0.75m	Not specified	ECP enforced
13,000 GT Gas Carrier	Pleaded guilty in 2014 to three violations including discharge via a magic pipe through the boiler blow down valve and falsifying Oil Record Book	Fined \$2.75m	C/E and 2/E sentenced (details not known)	No details
14,000 GT Drill Ship & MODU	Pleaded guilty in 2014 for multiple violations of APPS. Included unauthorised modifications to OWS systems, illegal direct discharges and falsifying records	Fined \$12.2m	Not specified	4 year ECP enforced
60,000 GT Car Carrier	In 2014 various instances of using magic pipe and falsifying Oil Record Book	Fined \$1.8m	C/E sentenced 8 months imprisonment	3 year ECP enforced
27,000 GT Chemical Tanker	Illegal discharges of oily waste via sewage system and falsifying Oil Record Book	None	C/E sentenced two years' probation and fined \$15,000	None
39,000 GT Bulk Carrier	Illegal use of magic pipe and falsifying Oil Record Book in 2013	Fined \$0.8m	C/E sentenced (details not known)	ECP enforced
26,000 GT Chemical Carrier	Illegal use of magic pipe and falsifying Oil Record Book in 2012	Fined \$0.9m	C/E sentenced 3 months in prison	ECP enforced
40,000 GT Bulk Carrier	Illegal discharges and falsifying records in 2012	Fined \$1.1m	C/E and 2/E sentenced 1 year probation	3.5 year ECP enforced
6,000 GT Livestock Carrier	Modified system pipework to allow illegal discharge between 2011 and 2013. Falsified records	Fined \$0.5m	Not specified	Company vessels banned from US for 2 years
26,000 GT Chemical Tanker, 85,000 GT Oil Tanker, 36,000 GT Container Ship & 42,000 GT Chemical Tanker	Company pleaded guilty in 2013 for various violations involving four of their managed – included intentionally bypassing the OWS and falsifying Oil Record Books	Fined \$10.4m	Not specified	4 year ECP enforced
51,000 GT Bulk Carrier	Use of magic pipe in 2012 and falsifying Oil Record Book	Fined \$1.3m	C/E imprisoned for 1 month	ECP enforced
37,000 GT Bulk Carrier	Sentenced in March 2012 for discharging oily bilge water directly overboard, bypassing the Oil Water Separator (OWS) and falsifying Oil Record Book	Fined \$2m	Master and C/E sentenced (details not known)	ECP enforced
28,000 GT Container Ship	Sentenced in Feb 2012 for the tricking of the OWS oil content monitor and falsifying Oil Record Book	Fined \$1.5m	Not specified	ECP enforced
33,000 GT Bulk Carrier	Sentenced in January 2012 for bypassing OWS, dumping of oily rags and falsifying Oil Record Book	Fined \$1.2m	C/E 3 months in prison	ECP enforced
13,000 GT Container Ship	OWS not functioning for several months in 2012 and falsified Oil Record Book	Fined \$2.2m	2/E on probation for 36 months and deported	3 year ECP enforced
4,000 GT Chemical Tanker	Sentenced in January 2012 for bypassing OWS using magic pipe and falsifying Oil Record Book	Fined \$1.15m	C/E and 1/E sentenced 3 years' probation	ECP enforced
26,000 GT Bulk Carrier	Sentenced Nov 2011 for the tricking of the OWS oil content monitor and falsifying Oil Record Book	Fined \$0.75m	No action against crew	ECP enforced
35,000 GT Bulk Carrier	Sentenced July 2011 for pumping sludge directly into sea, bypassing OWS and falsifying Oil Record Book	Fined \$1m	Not specified	Company vessels banned from US for 5 years
40,000 GT Bulk Carrier	Sentenced June 2011 for bypassing OWS using magic pipe and falsifying Oil Record Book	Fined \$2.4m	C/E 6 months in prison	3 year ECP enforced
22,000 GT Bulk Carrier	Sentenced Nov 2011 for bypassing OWS, using magic pipe and discharging through boiler blow down line and falsifying Oil Record Book	Fined \$0.65m	C/E 3 months community service	ECP enforced
40,000 GT Bulk Carrier	Illegal discharges in 2011 through magic pipe from bilge system to ballast system and falsified records	Fined \$1.2m	Not specified	ECP enforced
29,000 GT Bulk Carrier	In 2010 discharged oily waste through fire pump and falsified Oil Record Book	Fined \$0.75m	Not specified	Company vessels banned from US for 5 years
TOTAL: \$48.85m				



CREW MEDICAL COSTS IN SPAIN

The Club has recently experienced a number of crew claims that required hospital treatment in Spanish ports. Medical agents operate in many of these ports and Members may find that should a medical agent be used costs may be higher than would otherwise be the case. In one recent case involving a medical agency a crew member was admitted to a local private hospital for treatment, despite the fact that as an EU national he was entitled to free treatment at the nearby state hospital, which had good medical facilities.

We would strongly advise Members to contact the Club or our local correspondents where a crew member requires medical treatment in Spanish ports to ensure that they are directed to the most appropriate and cost effective medical facility.

Whilst non-EU nationals will be charged for medical treatment in state hospitals, the charges are fixed and the quality of treatment is high in many of the major ports of Spain.

It is recommended that all EU seafarers carry a European Health Insurance Card (EHIC). EHIC cards are issued free of charge and allow anyone who is insured by, or covered by, a statutory social security scheme of the European Economic Area countries to receive medical treatment in another member state for free or at a reduced cost, if that treatment becomes necessary during their visit.

For further details, please read the Club's detailed article on crew medical expenses in Spain in *Signals* 96 (July 2014), page 5: www.nepia.com/media/75722/Signals-96.PDF

CREW ILLNESS – THE HUMAN TOUCH MATTERS

A British Master suffered a heart attack in Egypt and was promptly transported to a local hospital along with his wife who was travelling with him. Upon examination it quickly became apparent that his condition was serious and that surgery would be required.

Due to the serious nature of the illness, the Club instructed their own local English speaking doctor, who arrived on the scene the next day, in order to assess the Master's condition, review the treatment plan and discuss the management of the Master's condition with the local doctor. The doctor was also able to act as a translator for the Master and his wife in order to explain to them the seriousness of the condition as well as the reason for the recommended surgery.

The Master's wife was understandably anxious and became emotional over the course of the next 24 hours or so.

Fortunately, North's appointed doctor was also able to provide significant emotional support to the wife.

However, after much discussion between the Master, his wife and the treating doctors and with the assistance of North's doctor acting as interpreter, it was agreed that the Master could return to the UK to undergo surgery with our doctor acting as a medical escort. Over the next day or so, arrangements were made to fly the Master to the UK and for him to be immediately admitted to his local hospital for surgery.

Following arrival in the UK, North arranged for a medical escort to accompany the Master on the journey to his local hospital in order to facilitate the handover to the receiving medical team.

Some weeks later, North's appointed doctor received an email from the Master's wife providing a brief update in regards to her husband's progress and also to thank the team for the care and assistance which they had received throughout what was a very stressful week for them both.

The incident serves to remind us that when dealing with seriously ill or injured crew members, we should be aware that there are likely to be other concerned family members at home. It can assist greatly if shipowners keep the family fully advised as to the condition of the crew member via the most appropriate channels, either directly or through manning agents. Demonstrating care to seafarers and their families can have great benefits such as increased crew loyalty, better retention rates, faster return to work and more amicable claims settlements where liability is an issue.

HOT SPOTS – GALLEY SAFETY

The latest in North's *Hot-Spots* series, entitled 'Galley Safety' has been published. Its focus is on routine tasks undertaken on a regular basis by ship's catering staff and it is intended to be displayed in a suitable location within the ship's galley. These jobs, however routine they may seem, have inherent risks which the *Hot-Spots* poster highlights.

Further Information

Hot-Spots – Galley Safety can be viewed or downloaded from the Club's website: www.nepia.com/HotSpots/

A copy of *Hot-Spots Galley Safety* is also enclosed with this issue of *Signals* for all appropriate entered vessels.



LOSS PREVENTION BRIEFING – FATIGUE

Fatigue is a significant contributory factor in many shipping accidents and incidents. Statistics show that ships manned by only two bridge watch-keeping officers, one of whom is also the Master, are particularly vulnerable. North has produced a Loss Prevention briefing on Fatigue which we trust will assist Members and crews.

The briefing:

- Looks at the 2010 Manila amendments to STCW and MLC 2006; the international legislation which governs seafarers' hours of work and rest.
- Reviews enforcement of that legislation via port state control concentrated inspection campaigns.

- Discusses the results of the port State control campaigns, which found that there was wide-spread non-compliance with the regulations, particularly watch-keepers not having sufficient rest and hours of rest not being recorded properly.
- Examines the findings of some of the research studies into seafarer fatigue that have been conducted by academic institutions and regulatory bodies.
- Offers advice on employing strategies to minimise the risks of fatigue, from both a regulatory compliance and practical viewpoint.

The full briefing can be accessed here: www.nepia.com/lp-briefings



NICKEL ORE LIQUEFACTION – A REMINDER

The Club is aware of several incidents in the last few months where liquefaction of nickel ore cargo loaded in the Philippines, and in particular Surigao, has resulted in vessels experiencing problems at sea or during loading. The ban on the export of unprocessed nickel ore from Indonesia is still in place.

The carriage of lateritic ores such as nickel ore is problematic. Nickel ore is a cargo which may liquefy if the moisture content of the material exceeds its Transportable Moisture Limit (TML). Cargo liquefaction may lead to a loss of stability, to the extent that the ship may capsize.

It is typical in these incidents that the TML and moisture content of the cargo declared by the shippers is incorrect.

Vigilance

It is only through the vigilance of the ships' Master and officers, and any surveyor appointed to assist them, that unsafe cargo can be prevented from being loaded on board.

Regular and frequent can tests are a 'must do' with nickel ore cargoes but it should be remembered that these tests cannot indicate whether a cargo is safe. They are just one of the Master's or surveyor's tools for assessing the risk posed by the cargo.

Another important part of the toolkit is close observation and tracking of cargo operations. In a recent incident a vessel's Master was concerned about the amount of splattering observed in the hold from a cargo of nickel ore being loaded.



Liquefied cargo on a ship

As a result more frequent can tests were ordered and subsequent barges of cargo were rejected. The rejection of barges continued to a point where the vessel refused to accept any more cargo until more detailed tests were carried out on the cargo.

Testing of the rejected cargo revealed that not only was the TML of the cargo substantially lower than that declared, but the moisture content was actually well in excess of both the TML and Flow Moisture Point (FMP) of the cargo. As such the cargo was unsafe to load.

Sun Drying

One factor has been common to several incidents where barges have been rejected. The cargo, whilst still in the barge, has then undergone a process known in the trade as 'sun drying'. This process can only dry the surface of the cargo, it is simply not possible to dry the entirety of the cargo out in a matter of a few hours or days whilst it is still in the barge.

A dry crust forms which may allow can tests of surface material to be passed but the majority of the cargo remains wet below the surface. This practice is dangerous – rejected barges should have the cargo replaced and the new cargo should be checked to ensure that is suitable for carriage.

More Information

It is important that the vessel's crew remain vigilant and be guided by the advice contained within the IMSBC code and our loss prevention publications. Members may find the following publications useful when dealing with nickel ore cargo.

LP Briefing

www.nepia.com/media/250051/LP-Briefing-Carriage-of-Nickel-Ore-April-2015.PDF

Hot-Spots

www.nepia.com/media/72814/Hot-Spots-Liquefaction.PDF

Posters

www.nepia.com/media/73274/Posters-Cargo-Wise-Liquefaction.pdf

Members are also reminded of our Circulars in relation to loading nickel ore and the requirement to notify the Club when planning to load nickel ore from the Philippines or Indonesia.

Circular Ref: 2012/023 – Dangers of Carrying Nickel Ore from Indonesia and the Philippines – Mandatory Notification Requirements.

Circular Ref: 2011/009 – Indonesia and the Philippines – Safe Carriage of Nickel Ore Cargoes.

www.nepia.com/circulars

CARGO THEFT FROM CONTAINERS

The theft of cargo from containers has been a persistent problem for many years and North has seen a number of occasions where high value cargo has been targeted and attacked.

The perpetrators of such crimes may range from the opportunistic thief to the organised professional criminal network. The theft can occur before the container leaves the shipper's premises or it could be vulnerable to attack at any point during the shipment, such as road haulage, waiting in the container terminal or on board the carrying vessel. In any event, the supply chain from supplier to consignee must remain secure.

North has published a loss prevention briefing on *Container Theft* and it examines the links in the secure supply chain. The briefing includes points for consideration at each link of the supply chain and provides loss prevention guidance on how to prevent theft which may be adopted by the different parties involved in the carriage. The various methods employed by thieves when attacking a container are discussed, including how to detect and prevent such actions. The briefing finishes by clarifying North's position on the carriage of Rare & Valuable Cargo.

The loss prevention briefing on *Container Theft* can be downloaded from our website www.nepia.com/lp-briefings



ENHANCED QUALITY CONTROL OF IMPORTED COAL IN CHINA

A recent change to the regulations in relation to the quality of imported coal has resulted in Members experiencing difficulties such as delays to the vessel or rejection of cargo.

Measures to Reduce Air Pollution

In January 2015, a number of ministerial departments, headed by the Chinese National Development and Revolution Committee, brought in measures that are intended to reduce air pollution in China by ensuring that imported bulk coal cargoes, and coal intended to be transported over 600km internally, meet minimum standards for quality and that limits are applied to certain elements of coal deemed to be particularly harmful.

Ash and sulphur content are now heavily restricted. The general restriction specifies that brown or lignite coal should have an ash content that does not exceed 30% and a sulphur content that does not exceed 1.5%.

For all other coal the limits are raised to 40% and 3% respectively.

In addition to the above, mercury levels must not exceed 0.6µg/g, arsenic 80µg/g, fluorine 200µg/g, phosphorus 0.15% and chlorine 0.3%.

Further restrictions apply to coal transported over 600km internally in that the ash and sulphur content of brown or lignite coal must not exceed 20% and 1% respectively and the coal must have a minimum calorific value of 16.5MJ/kg. For other coals these limits are increased to 30% and 2% respectively for ash and sulphur content with a minimum calorific value of 18MJ/kg.

Where bulk coal cargoes are delivered within the areas surrounding Beijing, Tianjin, Hebei province, Yangtze Delta area or the Zhujiang Delta area further restrictions apply limiting ash and sulphur content to 16% and 1% respectively.



As a result of these measures cargoes originating from Australia, South Africa, Vietnam and Indonesia have already been rejected.

In order to ensure that Members shipping coal into China do not face delays or the risk of their cargoes being rejected, charterers and/or shippers should be requested to provide an appropriate analysis report prior to the commencement of loading confirming that the cargo meets the Chinese authorities' requirements.

Consideration should also be given to adding a suitable clause to all charter parties requiring the charterers to guarantee that all cargoes shall be lawful merchandise and an undertaking to provide a similar confirmation from shippers.

CARGO SLOPS/WASH WATER RESIDUES – SPAIN

The disposal and landing of cargo slops/wash water residues has long been a concern to ship owners and coastal states. Under Royal Decree 1381/2002 all vessels must discharge waste generated by the vessel before leaving a Spanish port. An exception can be granted if the Harbour Master expressly authorises it. A decision to exempt the vessel will be based on the information provided by the vessel in the mandatory pre-arrival notification or after an on board inspection by the Harbour Master. If the declared information and/or the inspection confirm that the vessel has sufficient storage space for the slops on board and for those that are likely to be generated during the voyage to the next port of call, the vessel can be issued an exemption.

An exemption will not be granted if:

- There are reasonable grounds to believe the next port of call does not have sufficient facilities for the discharge of slops; or
- the next port of call is unknown and there are grounds to suspect the vessel might discharge slops at sea; or
- prior notification of the slops on board has not been provided; or
- the Harbour Master views the storage conditions for slops on board as inadequate or could reach capacity during the intended voyage.

Members have raised concerns over the regulations and the way in which they are being used by the Harbour Master's in Tarragona and Cartagena. Here the Harbour Masters are allegedly only allowing the vessel to depart with cargo slops/waters when the following circumstances are complied with:

- The vessel has less than 40m³ of slops on board.
- When the vessel is going to another Spanish port with an authorised MARPOL Waste Management Company and that the Master undertakes to discharge the slops there and then send the MARPOL Discharge Certificate to the Harbour Master upon completion of discharge.

When cargo slops/wash water residues are required to be discharged at a waste management facility, it can result in a significant additional cost being borne by the owners. If the vessel was to berth at a terminal that can accept fluids into their shore slop tanking arrangement, then costs would be in the region of approximately €9 - €15 per m³ plus survey costs. Use of an authorised residue treatment company commonly requires slops/wash water to be transferred to a barge and subsequently to lorry and then to the final waste treatment plant. This has resulted reported costs of €116 - €148 per m³ depending on the specific flashpoint of the residue.

For engine room bilges/sludge and garbage, the regulations state that if the vessel has 5m³ or more on board, it is obligatory to discharge this prior to departure. The cost of this is covered in the residues duty which is paid by all vessels to the Port Authority and is a fixed cost based on the vessel's GT.

When planning a vessel's itinerary, Members should liaise with the nominated terminals to assert if they can receive the slops and if not consider whether cargo slops/wash residues can be discharged more cost effectively at earlier ports or establish that the next port of call has sufficient capacity to take the slops/residue.

Failure to comply with regulations may result in the Harbour Master not allowing the vessel to depart.

This article has been produced in conjunction with correspondents Hispania P&I, Barcelona.





ELECTRONIC RELEASE SYSTEMS – KEEP YOUR PIN CODES SAFE

Liner operators using Electronic Release Systems (ERS) should be aware that even when the original bill of lading has been presented, they still have a duty to ensure cargo is delivered to the correct receivers.

A recent English High Court case looked at circumstances where a 'To Order' bill was issued which contained the following term:

"If this is a negotiable (to order/of) bill of lading, one original bill of lading, duly endorsed must be surrendered by the merchant to the carrier ... in exchange for the goods or a delivery order".

The receiver's agents had the original bill and presented it to the carrier.

However, rather than issuing a delivery order, the cargo delivery was handled under an ERS whereby the receiver was provided with a computer generated set of electronic numbers (Import Pin Codes) which in turn were to be presented to the Terminal for delivery of the goods.

Unfortunately some of the cargo was released to unauthorised personnel who, it appears, had gained access to the Import Pin Codes. The carrier argued that they had discharged their duty regarding delivery of the cargo and were therefore not liable for the loss. However, this argument was rejected by the judge who concluded that the Import Pin Codes were not delivery orders as referred to in the bill of lading and there was no implied term in the bill suggesting that they acted as such.

The use of Delivery Orders is an established procedure and practice, but the decision of the Judge reinforces a carrier's obligation to deliver goods shipped under the bill of lading in line with the terms contained in the contract of carriage and to ensure that a person presenting an Import Pin Code has obtained it legitimately.

Those Members using ERS may wish to review their release processes in light of this decision.

Glencore International AG v Mediterranean Shipping Company SA [2015] EWHC 1989 (Comm).



RISK AND RESPONSIBILITY FOR POOR LOADING AND DISCHARGE OF BAGGED CARGO

The "SEA MIRROR" [2015] EWHC 1747 (Comm) decision

A recent judgment has been handed down by the UK High Court concerning a dispute between cargo interests and the carrier over responsibility for cargo damage under a Synacomex 90 charter party.

Background

The vessel "Sea Mirror" ("the Vessel") carried 453,089 bags of rice from Karachi, Pakistan, to Abidjan, Ivory Coast, pursuant to two bills of lading.

The bills of lading incorporated the terms of a booking note which in turn incorporated the terms of a voyage charter party on the Synacomex 90 Form.

Cargo claims arose in respect of moisture damage during the voyage, loss through bags becoming torn and in respect of short delivery. The issue between the parties was whether the carrier was responsible for loss and damage to the cargo caused by inadequate or improper loading, stowage and/or discharge.

In the absence of an express agreement in a charter party, the carrier is responsible for loading, stowage and discharge but responsibility for those functions can be transferred by the use of clear words.

Clause 5 of the standard Synacomex 90 Form provides that "Cargo shall be loaded, trimmed and/or stowed at the expenses and risk of Shippers/Charterers.....Cargo shall be discharged at the expense and risk of Receivers/Charterer.....Stowage shall be under Master's direction and responsibility."

The carrier accepted that the reference to stowage being under the Master's responsibility meant that it would be liable for any damage caused by bad stowage. The question was whether the words "at the expense and risk of" transferred responsibility for cargo loss or damage occurring during loading and discharge from the carrier to the charterers or cargo interests.

The cargo claimants argued that "risk" in Clause 5 referred to the fortuitous risk of loss or that, alternatively, that the words "at the expense and risk of" were concerned with allocating the risk of delay in cargo operations. If cargo claimant's construction was right loss or damage occurring during loading, discharge and stowage would remain with the carrier.

The Court's Decision

The court held that the words, "at the expense and risk of" were sufficiently clear to transfer responsibility for loading and discharge to charterers and cargo interests.

Flaux J concluded that "risk" in this context was to be equated with "responsibility" and whereas stowage was the responsibility of the carriers, loading and discharge were the responsibility of the charterers/cargo interests. It followed that to the extent that damage to or loss of the bags of rice was caused by bad loading and/or discharge (as opposed to bad stowage), it was the responsibility of the cargo interests who could not recover in respect of such damage or loss from the carrier.

The Impact

This is an important decision in relation to cargo claims in some parts of the world where stevedoring practices are questionable. The case is also of significance in confirming the allocation of risk and responsibility under Clause 5 of the Synacomex 90 Form and provides clarification on what may constitute "clear words" for the purpose of transferring responsibility.

Members using Synacomex 90 to carry bagged cargo and who can provide strong evidence (such as photos or video of bagged cargo being damaged during loading and/or discharge) should benefit from this decision. North's loss prevention guide, *The Mariner's Role in Collecting Evidence Handbook*, can assist Master's in ensuring there is sufficient evidence to protect Member's position.

CYBER RISK MANAGEMENT IN THE USA – A NEW OPA '90?

In this article Joe Walsh, Senior Partner – Clyde & Co, outlines the latest thinking of the US authorities in relation to cyber risks and shipping.

The United States Coast Guard (USCG) recently published its Cyber Strategy in response to what it perceives is one of the most serious threats to US economic and national security interests. Certainly, the USCG is not alone in this cause. Acting on calls from various maritime sectors, the International Maritime Organization has also recognized the threat to global maritime safety and commerce and is expected to review industry recommended guidelines at MSC 96 in May 2016.

The USCG Cyber Strategy may, however, be a major catalyst in forging a new standard of care. Relying heavily on its core operating concept of “Prevention and Response,” the USCG Cyber Strategy emanates from, and perhaps plugs holes in, the Maritime Transportation Security Act of 2002 (MTSA) enacted following 9/11. MTSA grants the USCG broad jurisdiction and authority over any “incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.” The USCG’s position is that MTSA provides it with the authority to develop and implement a Cyber Strategy – in effect directing the formulation of best practices or a new standard of care for an organisation in managing cyber risks.

Together with MTSA, the USCG’s Cyber Strategy looks and feels similar to the “Prevention and Response” functions associated with the Oil Pollution Act of 1990 (OPA ‘90). For example, the Strategy obligates the USCG to collaborate with industry on cyber issues using Area Maritime Security Committees to provide recommendations for Area Maritime Security Plans (AMSP) and the National Maritime Transportation Plan (MTSP). OPA ‘90 established Harbor Safety Committees to help develop Area Contingency Plans and the National Contingency Plan. USCG officials charged with implementing the Strategy propose an organisation undertaking a “risk based assessment” in tandem with “performance standards” – terms all too familiar to those who recall OPA ‘90 rulemakings. USCG implementers also suggest that “exercises” might serve as a means to identify procedures necessary to respond to a cyber event for inclusion into an existing security, natural disaster, or environmental response plan.

They suggest that organizations designate responsible individuals and a team of specialists to assess cyber vulnerabilities, and if necessary to respond to an incident. OPA ‘90 also involves requirements for drills and exercises, the implementation of Vessel (and Facility) Response Plans, and the designation of Qualified Individuals (which led to the invention of Spill Management Teams (SMTs) and Oil Spill Response Organizations (OSROs)).

While similarities to OPA ‘90 may exist, there are, at least for now, significant differences. First, the Cyber Strategy is just that, a strategy. It does not have the force of law – yet. The USCG, however, may soon formulate a Navigation and Vessel Inspection Circular (NVIC) offering “guidance” as to how cyber risk management fits into MTSA. Non-compliance with a NVIC is not a violation of law itself, but is often viewed as conduct below the accepted or expected standard of care. The Third Circuit recently opined that the lack of firewalls and other cyber security measures may be an unfair business practice by a hotel chain in violation of the Federal Trade Commission Act (FTCA) siding with the Federal Trade Commission even though the FTCA does not specifically require such measures. The Court acknowledged the agency’s interpretation of its authority under that statute. Thus, while MTSA itself is rather generic and does not specifically address cyber threats, non-compliance with a cyber-focused NVIC, could serve as a basis for imposing civil or perhaps even criminal penalties, in addition to the liabilities or losses incurred from the underlying event.

At this juncture, it is clear that the USCG views cyber risk “prevention” and “response” as operational responsibilities of a shipping company’s Management; not responsibility of its IT Department. Shipping companies will be expected to establish a reasonably viable cyber risk management program; one that includes continuous assessment, coordinated planning, investment, benchmarking, training, and possibly risk transference (e.g. cyber insurance). Just as OPA ‘90 received focused attention on “prevention” and “response,” commercial maritime interests would now be best served to: (1) assess and mitigate their potential cyber vulnerabilities related to network access and data protection (prevention); and (2) consider and plan how to respond to a cyber event which might precipitate or run concurrent with a safety, security or environmental incident (response).

Whilst at present there is no requirement to adopt the suggested approach it is likely that the US authorities will, in the foreseeable future, require cyber risks and security to be managed on ships trading to the US. Given the interconnected nature of modern technology this means that shipping company systems that interface with a vessel will need to be secure.

The proposed strategy at least has the virtue of following the structure of OPA 90, which is well understood by ship owners. It may also be of use to those Members who are concerned about cyber risks by providing them with a ready-made framework for managing these risks.

Many thanks to Joe Walsh for his assistance in providing this article. www.clydeco.com/people/profile/joe-walsh



MYTH AND FACT – RIGHTSHIP

In this article we seek to clear up some common misconceptions surrounding RightShip, the third party ship vetting service.

RightShip, established by two global commodity companies, BHP Billiton and Rio Tinto, is now an integral part of the global shipping industry with some 230 customers from all industry sectors across the globe. When Cargill became an equal equity partner in 2006, RightShip was no longer the vetting tool of the hard commodity players but cemented its position as one of the primary risk management tools of the grain and soft commodity industry.

This article will not address the factors that provide both a vessel's RightShip star rating and its EVDI as these algorithms are available on the RightShip website (www.rightship.com), but instead seeks to address some common myths.

MYTH 1 – RightShip is only used by the dry bulk industry.

FACT 1 – Contrary to popular belief, it is not the preserve of the dry bulk industry. Its customer base includes trading houses, charterers, ports and terminals, banks, insurers, ship owners and the oil industry. Also, during the past few years it has expanded its brief to include vetting for environmental performance with the

introduction of its EVDI (Existing Vessel Design Index) and GHG (green house gas) ratings for the world fleet. According to The Shipping Efficiency Organisation (www.shippingefficiency.org) some 22 charterers, who between them represent 23% of non containerised trade, factor energy efficiency into the vessel selection process. RightShip's customer base is spread across all continents, from the Americas, Africa, Europe and Asia to its home in Australasia.

MYTH 2 – RightShip approves vessels for its customers.

FACT 2 – RightShip does not approve ships and there is no such thing as RightShip approval. RightShip themselves state that: "RightShip does not 'approve' a ship but may recommend it as an acceptable risk to its customer based on vessel particulars, historical performance and individually negotiated customer criteria".

RightShip rate a ship by evaluating 50 risk factors, providing a risk rating to a customer. The "approval" relates to the criteria set by individual customers not RightShip, each RightShip customer may well have a different risk appetite, which may vary according to vessel size and trade. Any approval generated by the RightShip system is generated according to a customer's own criteria.

MYTH 3 – RightShip supports 'RightShip clauses'.

FACT 3 – RightShip does not support the use of so called "RightShip Clauses" in charter parties, this is clearly stated on their website. If pushed by a counterparty to include a "RightShip clause" in a charter party, Members should seek guidance from the Club.

MYTH 4 – RightShip only vet dry bulk vessels.

FACT 4 – This is a common misconception, 40% of all vets made on RightShip are of tankers, with RightShip being one of the larger providers of SIRE reports to the OCIMF SIRE database.

There can be little doubt that RightShip is here to stay. It is therefore important to develop an understanding of how RightShip works so that potential problems relating to RightShip, e.g. RightShip clauses, can be avoided and commercial opportunities maximised.

We trust that this article has cleared up some of the more common misconceptions surrounding RightShip.

Many thanks to Captain Jonathan R Stoneley FNI, Director, Hydra Consulting Ltd for his assistance with this article.

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SOLAS CONTAINER WEIGHT VERIFICATION REQUIREMENTS

SOLAS Regulation VI/2 – Cargo Information requires the shipper of containerised cargoes to provide the ship's Master, or his representative, with cargo documentation specifying the gross weight of the container prior to loading it on board.

However, in practice this SOLAS requirement has often been abused, either deliberately by unscrupulous shippers wishing to pack more into a container than it should take, or simply in error as the actual weight of packed containers may be poorly estimated.

Obviously mis-declaration of container weights can cause problems throughout the transport chain. This is particularly the case on board ships where accurate container weights are critical in planning the safe carriage of the cargo and to the safety of the vessel.

Weight Verification Timeline

The World Shipping Council (WSC) and the International Chamber of Shipping (ICS) were asked by the International Maritime Organization in 2007 to develop industry best practice for safe container handling and the resultant document *Safe Transport of Containers by Sea: Guidelines on Best Practice* was presented to the IMO's Maritime Safety Committee (MSC) in December 2008. However, these guidelines are voluntary, and as such many shippers have not adopted the advice.

In light of this in May 2011 the MSC considered proposals on *Measures to Prevent loss of Containers* and possible future amendments to SOLAS making verification of packaged containers mandatory.

The IMO gave this task to an Intersessional Correspondence Group (CG) and draft amendments to SOLAS and IMO guidelines on the verification of container weights was submitted for approval by in September 2013.

The MSC approved the SOLAS amendments and authorised the immediate circulation of MSC.1/Circ. 1475 9 June 2014.

In November 2014 the IMO adopted mandatory amendments to SOLAS Regulation VI/2 – Cargo Information, effective from 1 July 2016, when the global container market should comply with new international regulations that require every packed container to have container weights verified as a condition for loading.

Guidelines

In response to the new requirements the WSC and its members have developed guidelines to explain what the implementation of the SOLAS amendments will require of shippers, carriers, and terminal operators.

Continued overleaf...



The regulations place a requirement on the shipper/freight forwarder of a packed container, regardless of who packed the container, to provide the container's gross verified weight to the vessel and terminal operators sufficiently in advance of vessel loading to be used in the preparation of the stowage plan.

The vessel operator and the terminal operator will be required to use verified container weights in vessel stowage plans and will be prohibited from loading a packed container on board a vessel if the container does not have a verified container weight.

The SOLAS amendments provide that there are two methods shippers may use to determine the container weight once the container packing process has taken place, these are:

1. Weighing the container after it has been packed or;

2. Weighing all the cargo and contents of the container, including dunnage and securing equipment, and adding those weights to the container's tare weight as indicated on the door end of the container.

Under either weighing method, the weighing equipment used must meet national certification and calibration requirements. Further, the party packing the container cannot use the weight somebody else has provided, except when *"Individual, original sealed packages that have the accurate mass of the packages and cargo items (including any other material such as packing material and refrigerants inside the packages) clearly and permanently marked on their surfaces, do not need to be weighed again when they are packed into the container."*

The Role of the Vessel

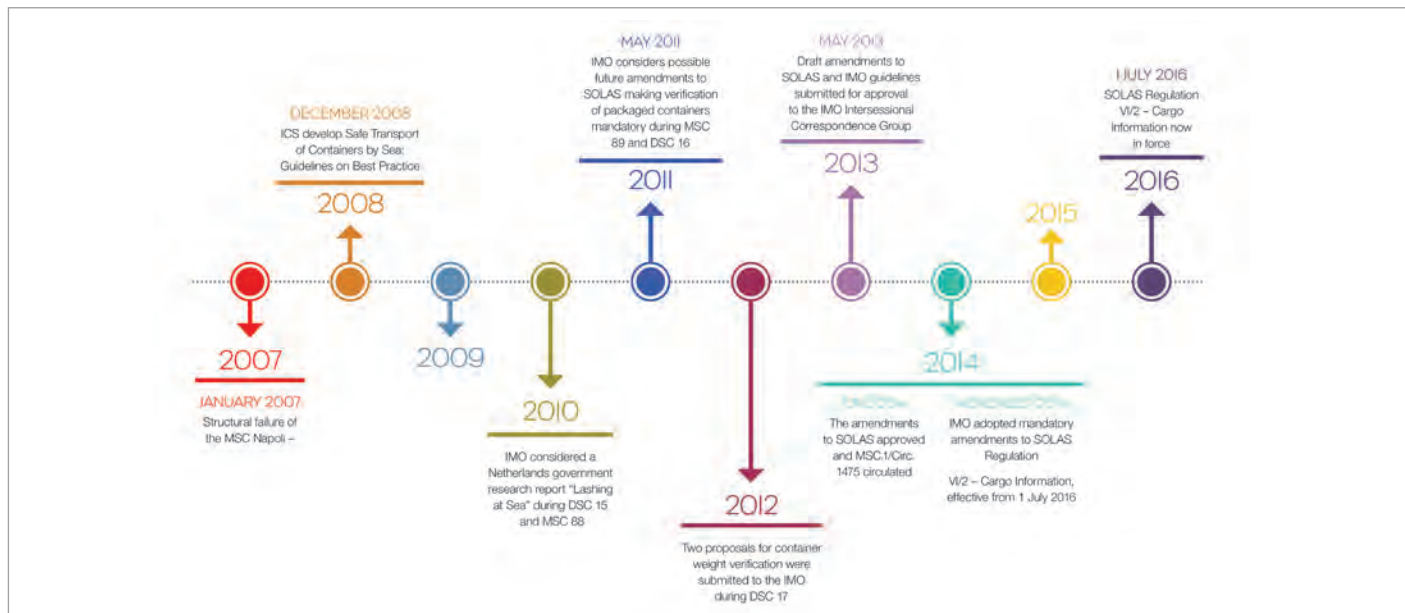
A vessel may rely on a shipper's signed weight verification to be accurate and is not required to be a "verifier" of the shipper's weight verification.

The SOLAS amendments do not require vessels to verify that a shipper providing a verified weight (according to method 2 above) has used a method which has been certified and approved by the competent authority of the jurisdiction in which the packing and sealing of the container was completed.

Can a Container be Loaded Without a Verification Certificate?

The lack of a signed weight verification certificate can be remedied by weighing the packed container at the port. However, in the event that a terminal does not possess the means to verify the weight of the container, alternative means must be found in order to obtain a verified container weight; otherwise, the packed container may not be loaded on to the ship.

The regulations making container weight verification mandatory for all vessels before loading will enter into force on 1 July 2016.



LP BRIEFING – MASTER/PILOT EXCHANGE

Some of the most frequently occurring and costly claims which North deals with are those involving damage to property. These commonly stem from a breakdown in the relationship between the bridge team and Pilot or a failure to appreciate the importance of working together and sharing information.

In order to try and reduce the number and costs associated with this type of claim, North is collaborating with the International Maritime Pilots' Association (IMPA) and the UK Maritime Pilots' Association (UKMPA) to share knowledge and experience with the aim of producing guidance and advice that is aimed at both pilots and mariners alike.

The first in the series of briefings looks at the Master/Pilot information exchange and covers the information which should be conveyed during the initial discussions between the bridge team and the pilot. By sharing critical information relating to the characteristics and equipment of the vessel and the intended manoeuvres, a mutually agreed and understood plan ensuring the safe movement of the vessel can be developed and implemented.

This series of briefings will focus on some of the contributory factors identified during investigations into recent high value admiralty claims, such as the failure to discuss and

understand the proposed voyage plan, and the failure to share critical information relating to the vessel or the intended manoeuvre www.nepia.com/media/289177/LP-Briefing-Master-Pilot-Information-Exchange-September-2015.pdf





SINGAPORE RESIDENTIAL TRAINING COURSE

North's Singapore Residential Training Course in P&I Insurance and Loss Prevention is once again fully subscribed. The course will take place from 16 to 20 November 2015 at the Shangri La's Rasa Sentosa Resort & Spa.

Delegates will benefit from seminars and workshops led by experts from the Club's Asia Pacific offices, including a simulated collision workshop. It will also provide a chance to network with marine professionals from a variety of industry sectors.

Members will soon be able to book places on the next UK course at Lumley Castle and South Shields Marine School in north east England. The 2016 course will take place from 10 to 17 June 2016 and a brochure and course details will be available in early 2016.

Up-to-date information about North's Residential Training Courses is provided on the Club's website: www.nepia.com/RTC



Delegates who attended the 2013 Singapore RTC

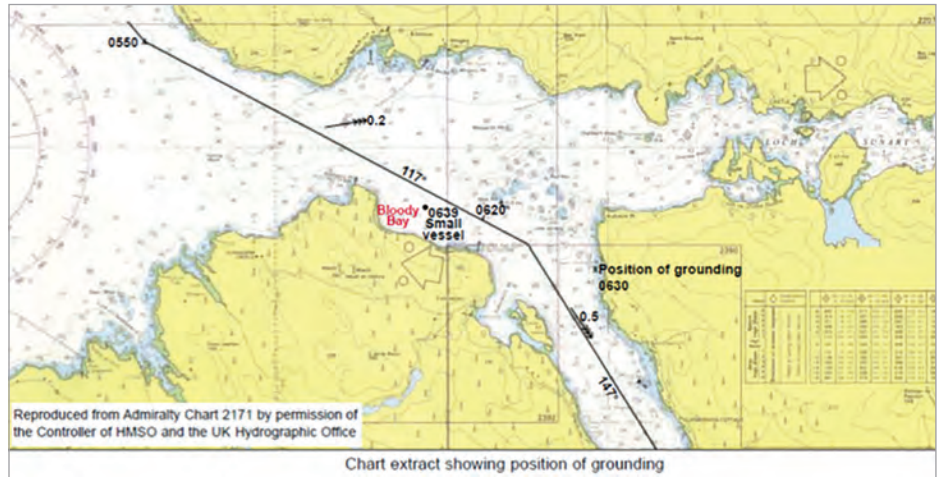
GROUNDING CASE STUDY

Introduction

North's Loss Prevention Guide *Rocks and Hard Places: How to avoid them* includes a series of case studies intended to generate discussion about circumstances surrounding grounding and fixed and floating object damage incidents. Additional case studies will be published in *Signals* from time to time and below is the latest of them. Each case study is set out as simply as possible, with the minimum information necessary to describe a situation. The case studies ask a number of questions but answers are not provided.

Scenario

A small cargo vessel was on a regular route from Sweden to Northern Ireland with the Chief Officer on watch. The intended route, as was normal practice, took the vessel through the inshore traffic route on the west coast of Scotland. At around 0630 the vessel grounded at the position shown on the chart extract opposite.



Questions

1. What factors may have contributed to this grounding incident?
2. What steps could have been taken on board to prevent this incident from occurring?
3. What steps could the company take to prevent similar incidents occurring in the future?

Further Information

Members can obtain electronic versions of North's loss prevention guide *Collisions: How to avoid them* by e-mailing loss.prevention@nepia.com

To obtain hard copies of the Guides, please download the Loss Prevention Order Form from our website www.nepia.com/lp-publications

Your Copy of Signals

Copies of this issue of *Signals* should contain the following enclosure:

- Hot-Spots – Galley Safety



Disclaimer

In this publication all references to the masculine gender are for convenience only and are also intended as a reference to the female gender. Unless the contrary is indicated, all articles are written with reference to English Law. However it should be noted that the content of this publication does not constitute legal advice and should not be construed as such. Members with appropriate cover should contact the North's FD&D department for legal advice on particular matters.

The purpose of this publication is to provide information which is additional to that available to the maritime industry from regulatory, advisory, and consultative organisations. Whilst care is taken to ensure the accuracy of any information made available (whether orally or in writing and whether in the nature of guidance, advice, or direction) no warranty of accuracy is given and users of the information contained herein are expected to satisfy themselves that it is relevant and suitable for the purposes to which it is applied or intended to be applied. No responsibility is accepted by North or by any person, firm, corporation or organisation who or which has been in any way concerned with the furnishing of data, the development, compilation or publication thereof, for the accuracy of any information or advice given herein or for any omission herefrom, or for any consequences whatsoever resulting directly or indirectly from, reliance upon or adoption of guidance contained herein.

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