

# Signals

NEWSLETTER

**NORTH**   
SERVICE, STRENGTH, QUALITY

## Welcome...

to the July 2016 edition of *Signals* which provides information relating to loss prevention and other topics of interest to those engaged in the business of operating ships both at sea and on shore. Our interactive cover page allows you to quickly navigate throughout the publication by selecting an active article.

## IN THIS ISSUE

### Ships

**Vessel Experience Factor** – In this article we consider how a tanker's vessel experience factor is derived and used.

**Oil Record Books** – A recent decision in the US highlights that it is ultimately the Master's responsibility to ensure that the oil record book is correctly maintained. We consider the potential implications for Masters and engineers.

### Security

**Cyber Risks** – Have been much in the news lately. A loss prevention briefing has been published that explains the Clubs position in relation to cover and briefly explains the industry's approach to these risks.

**CSO Alliance** – The Company Security Officer Alliance (CSOA) is an online forum whose aim is to assist CSOs in their important work of keeping ships and crews safe and secure. North has secured a very attractive membership deal for our Members' CSOs.

### People

**Stowaway Search Contracts** – Some search contracts contain clauses that are unfavourable to owners should the search company fail in its obligations. This article looks at options available.

**EHIC** – A reminder of the cost savings that can be achieved by ensuring that mariners who are entitled to an European Health Insurance Card apply for one and bring it with them when joining a ship.

**Philippines** – An anti-ambulance chasing law has been introduced aimed at protecting seafarers from unscrupulous lawyers. This article explains how the law is intended to work.

### Cargo

**China** – Claims often arise when vessels carry agricultural products to China often through no fault of the vessel. In this edition we look at two potentially problematic cargoes distillers dried grains with solubles and soya beans.

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**LP Briefings** – On cyber risks and soya beans have been published.

### Legal

**Tropical Waters** – A recent decision has clarified the meaning of tropical waters in a charter party.

**Trip Time Charters: Don't Trip Up** – Following a recent decision it is clear that if entering into a trip time charter the terms of the charter are made very clear.

**Indonesian Contracts** – If contracting in Indonesia or with an Indonesian entity there is a requirement to contract in the Bahasa language.

### Regulation

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### Loss Prevention

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**Issue 104: July 2016** LOSS PREVENTION NEWSLETTER FOR NORTH'S MEMBERS

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# VESSEL EXPERIENCE FACTOR

In this article we look at how vessel experience factor (VEF) is derived and applied.

The VEF is the historical difference in the ship and shore figures for a ship over a period of time. A VEF is used to assess the validity of quantities delivered to the ship that are derived from shore measurements.

Vessel capacity tables are often calculated from the vessel's building plans, rather than based on accurate physical tank calibration measurements. This means that there are usually differences between the quantity of a cargo measured in a calibrated shore tank or by a custody transfer meter, and the quantity determined by vessel tank measurements.

For any given vessel a simple ratio can be found between the quantity of liquid measured on board the vessel and the corresponding measurement by a load or discharge facility. A historical compilation of this ratio, typically over 10 voyages, is known as the vessel experience factor (VEF).

In simple situations the application of a VEF is the principle way a Chief Officer is able to assess if the bill of lading quantity is reliable. But in more complicated situations; such as in cases where shore based measurements are not available, or are known to be inadequate for custody transfer and subject to agreement of interested parties, bill of lading or out-turn quantities may be determined based on vessel received or delivered quantities adjusted by the VEF.

There are at least three approved methods for calculating VEF as published by both the American Petroleum Institute (API) and the Institute of Petroleum (IP). More detailed examples of these calculations can be found in our loss prevention guide on *Shipboard Petroleum Surveys*.

A minimum of 5 qualifying voyages are needed to calculate a VEF – however, a larger number is desirable. A qualifying voyage is a voyage in which the loaded quantity is within the range of +/- 0.0030 (or 0.3%) of the average ratio of all voyages – for example if the average of all voyages is 0.9961, all voyages with a ratio within the range from 0.99911 through 0.99314 would qualify, for example:

CARGO	VOY	VESSEL LOADED	BILLS OF LADING	DIFF	V.L.R.	Qualify Y/N
	20	529,157	531,735	-2,578	0.99515	Y
	19	708,060	710,405	-2,345	0.99670	Y
	18	709,513	711,867	-2,354	0.99669	Y
	17	550,914	553,238	-2,324	0.99580	Y
	16	550,219	531,439	-1,220	0.99770	Y
	15	538,550	541,377	-2,827	0.99478	Y
	14	703,559	705,881	-2,322	0.99671	Y
	13	495,083	496,729	-1,647	0.99668	Y
	12	546,601	550,613	-4,012	0.99271	N
	11	496,414	498,419	-2,005	0.99598	Y
	10	656,369	658,865	-2,496	0.99621	Y
	9	499,110	501,416	-2,306	0.99540	Y
	8	499,599	500,678	-1,079	0.99785	Y
	7	514,137	515,919	-1,783	0.99654	Y
	6	548,893	551,486	-2,593	0.99530	Y
	5	548,754	551,549	-2,795	0.99493	Y
	4	527,473	529,540	-2,067	0.99610	Y
	3	600,710	603,057	-2,347	0.99611	Y
	2	624,217	627,357	-3,140	0.99500	Y
	1	628,952	629,271	-319	0.99949	N
<b>TOTALS</b>		<b>11,456,285</b>	<b>11,500,842</b>			
<b>ACCEPTABLE</b>		<b>10,280,732</b>	<b>10,320,958</b>			

<b>Initial VEF =</b>	$\frac{\text{Total Ship's figure}}{\text{Total B/L figure}} =$	$\frac{11,456,285}{11,500,842}$	<b>= 0.99613</b>
<b>0.003 of Initial VEF =</b>	<b>0.003 x 0.99613</b>		<b>= 0.00299</b>
<b>Upper Limit =</b>	<b>Initial VEF + 0.00299</b>		<b>= 0.99911</b>
<b>Lower Limit =</b>	<b>Initial VEF - 0.00299</b>		<b>= 0.99314</b>
	<b>FINAL VEF =</b>	<b>0.9961</b>	



It is however worth bearing in mind the following voyages are not admissible as qualifying voyages:

- First voyages after dry dock,
- All voyages involving STS lightering operations,
- Voyages where bills of lading are based only on shipboard measurement,
- Voyages prior to any modification which have affected the ships carrying capacity,
- Voyages where vessel has loaded several parcels or voyages where vessel only part loaded to less than 75% capacity.

Once calculated, a VEF can then be applied to the ships figures which can then be compared to the shore figures as a measure of accuracy and confidence.

As an example, if a vessel gauges her tanks and the resulting calculations give a total quantity on board as 538,550 bbls but the shore figure presented is 541,377 bbls. The difference between the two figures is 2,827 bbls or 0.52% – a figure which would most likely prompt further investigation and protest.

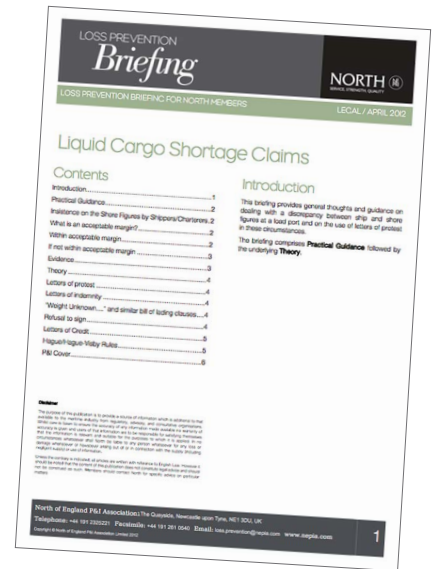
If the vessel in question had a VEF of 0.9961 this, once applied to the vessels figures, would result in a ship figure of 540,658.6 bbls or a difference of 718.4 bbls which represents a difference of 0.14% – a figure which may be considered within acceptable industry standard margins. It is important to realise that an acceptable margin will vary from case to case. The accepted maximum 0.3% margin typically attributable to VEF is not necessarily a safe figure, but it is a good starting point.

It is also worth remembering that a VEF can change over time due to a number of factors such as:

- Change of trade (different grades and load ports)
- Accumulation of sediment and scale
- Dry docking preparation (de-scaling)
- Structural alteration in cargo spaces.

Further details on calculating and applying VEF can be read in our loss prevention guide on *Shipboard Petroleum Surveys* which may be downloaded from our Members section of our website.

General thoughts and guidance in dealing with discrepancies between ship and shore figures can be found in our loss prevention briefing on *Liquid Cargo Shortage Claims* which can be downloaded here: [www.nepia.com/media/72724/LP-Briefing-Liquid-Cargo-Shortage-Claims.pdf](http://www.nepia.com/media/72724/LP-Briefing-Liquid-Cargo-Shortage-Claims.pdf)



## OIL RECORD BOOKS: WHO CARRIES THE CAN IN THE USA?

If a vessel is caught illegally discharging oily bilge water in the USA huge financial penalties and onerous compliance plans may be imposed on the vessel owners. Crew members have been imprisoned as a result of these violations. A recent decision in the US courts highlighted that the Master, as the person having charge of the ship, is responsible for correctly maintaining the oil record book.

### The Case

In *United States of America v Fafalios, 2016*, the conviction of a chief engineer for failing to maintain an oil record book – a violation of 33 USC § 1908(a) and 33 CFR 151.25 – was vacated. This meant the verdict was set aside as if the first trial and conviction never happened.

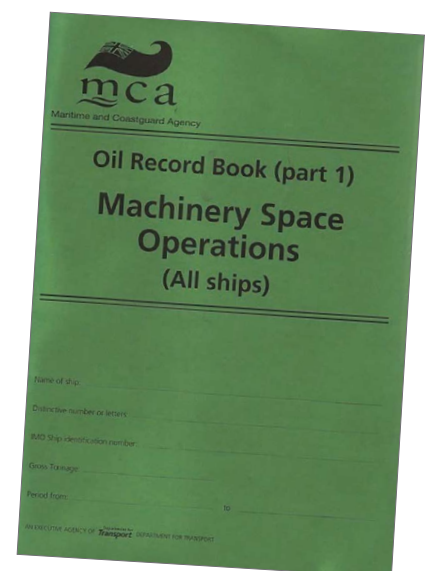
The court of appeal held that the chief engineer could not be prosecuted for failing to maintain an oil record book because under US legislation – 33 CFR 151.25(h) and (j) – this was the responsibility of the “master or other person having charge of the ship”.

### Masters Beware

According to maritime lawyers in the United States, this decision will not greatly impact the shipowner. However, the risk of conviction for ships’ Masters has greatly increased, despite the difficulties that are expected in proving that the master ‘knowingly’ maintained a false oil record book.

It is therefore increasingly important that ships’ Masters are aware of what is going on in the machinery spaces with regard to bilge water and waste oil. They should know what they are signing for when they review the oil record book.

This does not mean engineers now have a ‘get out of jail free’ card. It should be noted that the chief engineer did not appeal his conviction of two other charges. He remains convicted of obstruction of justice under 18 USC § 1505 and witness tampering under 18 USC § 1512(b)(3). Engineers should be aware that they could also face conviction for aiding and abetting or conspiring to maintain a false oil record book.





# CYBER RISKS – NEW LOSS PREVENTION BRIEFING PUBLISHED

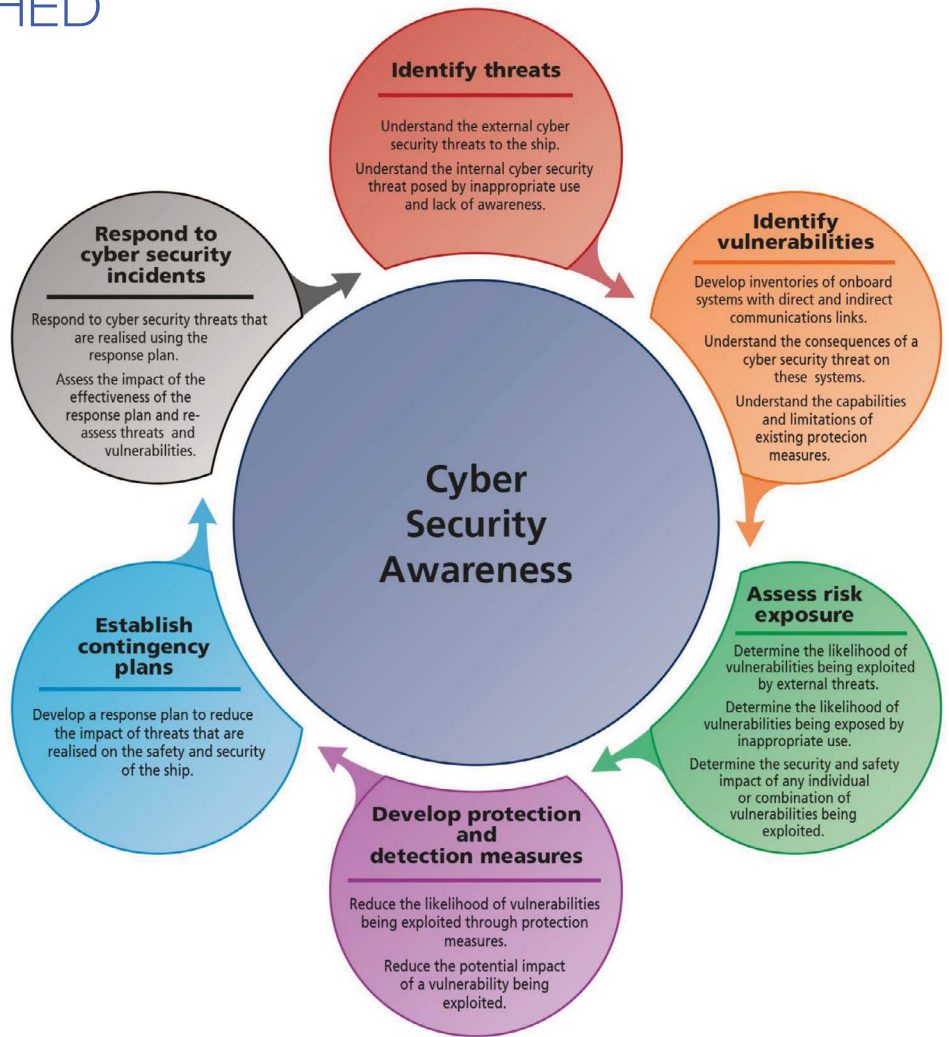
Cyber risks and how they relate to shipping have been in the spotlight lately.

Our new loss prevention briefing focuses on raising awareness of the cyber threats of unauthorised access and malicious attack to systems. It includes a summary of the industry *Guidelines on Cyber Security Onboard Ships* published in February this year, which recommend a six-step cyber-security process:

- 1) Identify threats.
- 2) Identify vulnerabilities.
- 3) Assess risk exposure.
- 4) Develop protection and detection measures.
- 5) Establish contingency plans.
- 6) Respond to cyber security incidents.

The loss prevention briefing *Cyber Risks in Shipping* can be viewed at: [www.nepia.com/lp-briefings](http://www.nepia.com/lp-briefings)

The guidelines on cyber security onboard ships can be accessed at: [www.ics-shipping.org/docs/default-source/resources/safety-security-and-operations/guidelines-on-cyber-security-onboard-ships.pdf?sfvrsn=12](http://www.ics-shipping.org/docs/default-source/resources/safety-security-and-operations/guidelines-on-cyber-security-onboard-ships.pdf?sfvrsn=12)



## Cyber security awareness – Closing the loop

From *Guidelines on Cyber Security Onboard Ships* Published by BIMCO

## CSO ALLIANCE

North P&I Club has partnered with CSO Alliance – a fast-growing online community of maritime company security officers (CSOs) – to encourage its Members to join and take part in security related information sharing. In a first for the P&I sector, all CSOs in North’s 131 million GT owned fleet will receive a 20% reduction in membership fees for the first year and North will subsidise a further 40%.

Founded in the UK in 2012, the CSO Alliance already has over 380 members responsible for security on more than 6,000 ships worldwide. Members have access to a comprehensive and authoritative real-time incident and attack database and can share information, opinions and best practice. The management team is in regular contact with key naval commands and maritime crime reporting centres, evolving a rapid, co-ordinated response capability.

North supports the concept of information sharing on security-related risks, both physical and cyber.

As such we believe membership of the CSO Alliance will offer real benefits to CSOs employed by our members, so we have negotiated a subsidised rate for their first year of membership.

We believe that membership of the CSO Alliance can assist individual CSOs in the prevention of criminal attacks against their ships, including from piracy, stowaways and fraud.

If you are a company CSO and are interested in joining CSO Alliance please contact [loss.prevention@nepia.com](mailto:loss.prevention@nepia.com)



# CSO ALLIANCE MARITIME



# STOWAWAY SEARCH CONTRACTS

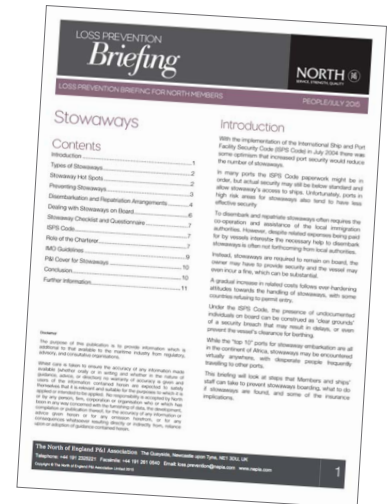
Stowaways are increasingly becoming more adventurous, not only with their method of boarding a vessel, but also with their place of hiding if they manage to board the vessel undetected.

This means that detecting and disembarking stowaways for repatriation is increasingly difficult. In order to assist crews with this aspect of their work, stowaway search companies are sometimes employed. However, even professional search companies using dogs do not always detect stowaways. Obviously this gives rise to problems for the vessel.

North is aware that the terms and conditions of some stowaway search companies exclude the right to an indemnity in respect of any losses or liabilities which arise where the search company has failed to detect stowaways. As such we would strongly recommend that before a stowaway search company is appointed, their terms and conditions are fully reviewed. This is to ensure that the shipowner has a right of recovery in the event of stowaways being discovered, and the search company having failed to detect them.

Even when a specialist stowaway search company is appointed, as an extra precaution the crew should carry out a final thorough stowaway search before the vessel sails.

Further information regarding stowaways can be found in our loss prevention briefing.



# THE EUROPEAN HEALTH INSURANCE CARD (EHIC)

The European Health Insurance Card (EHIC) allows any seafarer who is resident in a country of the European Economic Area or Switzerland to receive medical treatment in another Member State free of charge or at a reduced rate. The card will cover the cost of health care normally covered by a statutory health care system in the country where the treatment is obtained. There are medical treatment cost benefits to be gained by shipowners in requiring seafarers who are eligible to carry a card to have the card on board during their period of employment.

Some ship owners have gone further and made it a term within the crew member's contract of employment that a seafarer who is entitled to a European Health Insurance Card is obliged under his contract to carry such a card with him. A sample clause which is recommended to be inserted into crew member's contracts of employment and/or collective bargaining agreements is as follows:

*"All EU and EEA resident seafarers are required to carry a European Health Insurance Card."*

It is recommended that this clause or similar is drafted into crew contracts of employment in the section which deals with, for example, pre-employment medicals, vaccination certificates and certificates of competence.



# ANTI-AMBULANCE CHASING LAW

The ANGKLA Seafarer's Protection Act [Republic Act No.10706], also known as the Anti-Ambulance Chasing Act, became effective from 16 December 2015. The implementing rules and regulations (IRR) which define the details of the law are expected to be published in the next few months. The Seafarers Protection Act does not have retrospective effect.

The Act is intended to limit any legal fees to 10% of the compensation or benefit awarded to the seafarer. It is also hoped that one effect of the Act will be to stop claimant lawyers from engaging in ambulance chasing or soliciting from seafarers in pursuit of any claim against an employer for compensation.

Ambulance chasing has been deemed to contain the following elements:

- a) That a person or his agent solicits from seafarers or his heirs, the pursuit of any claim against the employer of the seafarer.
- b) That such claim is for the purpose of recovery of any monetary award or benefits arising from accident, illness or death including legal interest.
- c) That the pursuit of the claim is in exchange of an amount or fee which shall be retained or deducted from the monetary award or benefit granted to or awarded to the seafarers or their heirs.

Strict penalties, including fines and imprisonment, can be applied to those who violate the law.

The rules also confirm that fees over 10% of the total compensation awarded shall be considered excessive and violation of this shall be subject to the Civil Code of the Philippines and other related laws and regulations.

It is important that seafarers are aware of the Act which was introduced to protect seafarers and their families.



# DDGS TO CHINA

A number of claims and disputes have arisen where cargoes of distillers dried grains with solubles (DDGS) originating from the United States have been rejected by Chinese receivers.

The cargoes were rejected on the basis of colour. If the colour of the DDGS is dark, the receiver may look to reject it. Incidents of this type were first reported in October 2015 but they continue to occur and it is apparent that a number of DDGS shipments have been affected.

## The DDGS Trade

DDGS is used as animal feed and is a by-product of ethanol production. Predominantly maize (corn) crops – although other grains are used – undergo a process where they are fermented and the starch is converted to ethanol which is then distilled. The ethanol is usually blended with petroleum products for use as a fuel. The residues are then dried to create the nutrient-rich by-product.

The United States has been a major exporter of DDGS, much of it shipped to Asia Pacific. The summer of 2015 saw record amounts exported to China. However, the trade was affected in the autumn when receivers became concerned that these imports would be the subject of an inquiry by the Chinese authorities.

Domestic bio-ethanol companies in China are understood to have approached the government with their concerns on cheap imported DDGS and that the government are investigating the matter with an ‘anti-dumping’ probe.

The timing of this inquiry has coincided with the increasing number of rejected shipments to China. Typically, the cargo is rejected on the grounds of being too dark in colour and therefore failing quality criteria.

## Quality & Colour

The international market places high importance on colour, with different colours being desirable in different geographic areas. There appears to be a preference for ‘golden’ coloured DDGS in China and other parts of Asia as buyers perceive it to be higher quality than the darker examples.

Due to the importance of colour the DDGS market developed a 5-colour scoring card. This allowed for specific colour grades to be stipulated in sales contracts. An example of this grading system is shown in the below chart from the US Grains Council guide on DDGS.

Although it is understood that this colour scoring card is still used by some in the industry, many traders have stopped using it due to its subjective nature. Sales contracts now often contain a guarantee for an agreed measure of colour, using colourimeters (colour component measurement devices) such as Hunter or Minolta. This allows the product to be graded by three standard colour parameters: its lightness, redness and yellowness. However, it appears that many sales contracts tend to be concerned with lightness only.

It should be noted that colour is not an absolute indicator of quality, but there is justification for its use in some circumstances. For example, dark coloured DDGS may be a sign of heat damage. Heat damage can impact the nutritional content of DDGS which may result in poorer animal growth performance when used as animal feed.

DDGS may be dark in colour not only due to heating but also due to other factors such as the nature of the drying process. The natural colour of the feedstock can also affect the colour of the DDGS. Blends of corn-sorghum DDGS are generally darker than corn derived DDGS.

A further influencing factor in colour is the amount of ‘condensed distiller’s solubles’ added to the coarse grain residues during the DDGS making process. Increased amounts of solubles may darken the colour as well as affecting the nutrient composition.

## DDGS Quality Guidance

Unlike grain products, there are no formal international quality standards or grading system for DDGS. In the United States, guidance is given by the US Grains Council (USGC). They advise that quality should be determined by parameters that relate to the nutrient composition and animal digestibility such as the moisture, fibre, fat, protein and amino acid content of the DDGS.

The USGC guide can be found here: [www.grains.org/buyingselling/ddgs/ddgs-user-handbook](http://www.grains.org/buyingselling/ddgs/ddgs-user-handbook)

## Potential Liabilities

Whether or not the dark colour of DDGS is an indication of the quality of the cargo, it is apparent that the claims we have seen recently are pre-shipment issues. As such, the carrying vessel should not be found liable for the rejection of cargo on the basis of colour only. It should remain solely a dispute under the sales contract between the seller and buyer.

But even where the carrying vessel is not liable, delays may be experienced and costs incurred if any segregation and sampling of the cargoes is deemed necessary. Security may be demanded for a significant sum. If security is not provided then there may be attempts to arrest the vessel.

## Heat Damaged Cargo – Loss Prevention

When loading heat damaged DDGS, it may be recognised by a burnt or smoky smell.



Example DDGS colour chart issued by United States Grains Council



# LIQUEFACTION KILLS

This is in contrast with the sweet fermented smell of undamaged DDGS. If you are loading a cargo of DDGS and it smells burnt or smoky then seek further advice via owners or local correspondents immediately.

It is advised that cargo temperatures should be measured when safe and appropriate to do so, for example during gaps in loading or if the barges alongside are accessible. The vessel should maintain records of cargo temperatures and any adjacent fuel tank temperatures, which will act as vital evidence if defending an allegation of discolouration through heat damage.

Vessels are further advised to ventilate the cargo holds appropriately using recommended ventilation procedures and that full records are kept.

## Dark Colour Cargo – Loss Prevention

In practice it is probably not possible for a ship's crew to assess if the colour of the cargo loaded will present problems at discharge unless it is clearly heat damaged. The difference in the colour between an accepted cargo and a rejected cargo has been found to be quite subtle in some instances. It is made even more difficult by the fact that DDGS shipments are rarely homogeneous and therefore darker cargo may be mixed or layered within light coloured cargo.

The ship's crew are advised to make best efforts to monitor the condition of the cargo during loading, paying particular attention to the colour. In a number of cases, ships' Masters have been pressured by shippers and agents not to complain if a colour difference is perceived during loading. However, if there are concerns about the colour, it is recommended that vessels consider seeking advice from a surveyor experienced in this commodity.

A series of digital photographs taken of the cargo as it is loaded may also assist in defending any unjustified claim. Even if the dust is obscuring the view of the cargo, it is still helpful to take photographs in order to demonstrate the poor visibility.

*We thank Tim Moss of Brookes Bell, Hong Kong for his assistance with this article.*

The latest Intercargo *Bulk Carrier Casualty Report*, which covers the years 2005 – 2015, attributes the loss of 102 seafarers' lives and 11 vessels to liquefaction incidents over the period. Liquefaction incidents accounted for 40% of the lives lost in the 71 incidents reported. This suggests that when vessels are lost to liquefaction the capsizing occurs quickly and results in heavy loss of life.

Not surprisingly safety issues surrounding liquefaction continue to be a major concern at IMO and with various industry bodies such as Intercargo and the International Group of P&I Clubs. Ultimately the IMSBC Code places responsibility for providing safe cargo with shippers, but seafarers should take steps to help ensure their safety when cargo that may liquefy is loaded.

## The Seafarer's Role When Loading Cargo That May Liquefy

One way to describe the seafarer's role is Knowledge + Vigilance = Safety (see diagram below).

**Knowledge** might consist of knowing what the IMSBC code schedule says about the cargo, knowing what the IMSBC Code says in general about cargoes that may liquefy, knowing about similar incidents, knowing what advice is contained in industry safety briefings and club circulars and using your experience of similar cargo.

**Vigilance** is exercising your knowledge before, during and after loading. It might include close inspection of shipper's documentation, assessing the cargo in the stockpiles, using can tests, checking for splattering during loading, ensuring the cargo remains consistent throughout loading, ensuring that rejected cargo is not loaded, checking for signs of liquefaction and so on.

North has published lots of material to assist you in gaining knowledge and in keeping vigilant. You can access the material via our website at:

**LP Briefing Carriage of Nickel Ore:** [www.nepia.com/media/289764/LP-Briefing-Carriage-of-Nickel-Ore-April-2015.PDF](http://www.nepia.com/media/289764/LP-Briefing-Carriage-of-Nickel-Ore-April-2015.PDF)

**LP Briefing Carriage of Iron Ore Fines:** [www.nepia.com/media/72661/LP-Briefing-Iron-Ore-Fines.PDF](http://www.nepia.com/media/72661/LP-Briefing-Iron-Ore-Fines.PDF)

**LP Briefing Bulk Cargo Liquefaction:** [www.nepia.com/media/72643/LP-Briefing-Bulk-Cargo-Liquefaction.PDF](http://www.nepia.com/media/72643/LP-Briefing-Bulk-Cargo-Liquefaction.PDF)

**Poster – Liquefaction:** [www.nepia.com/media/73274/Posters-Cargo-Wise-Liquefaction.pdf](http://www.nepia.com/media/73274/Posters-Cargo-Wise-Liquefaction.pdf)

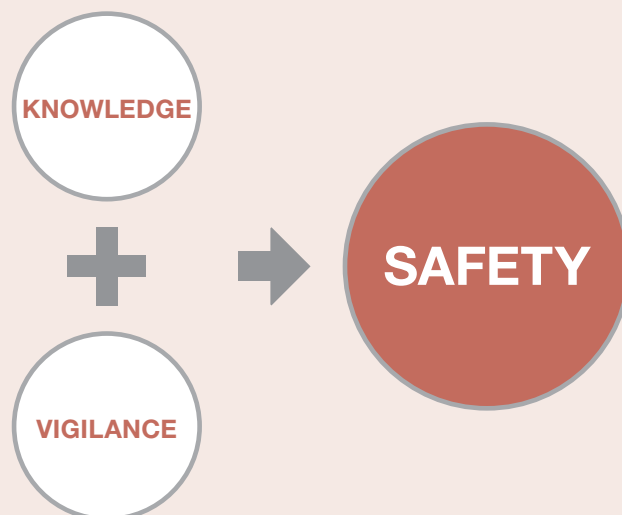
**Poster – Ore Cargo:** [www.nepia.com/media/73277/Posters-Cargo-Wise-Ore-Cargo-Types.PDF](http://www.nepia.com/media/73277/Posters-Cargo-Wise-Ore-Cargo-Types.PDF)

**Hot Spots – Liquefaction:** [www.nepia.com/media/72814/Hot-Spots-Liquefaction.PDF](http://www.nepia.com/media/72814/Hot-Spots-Liquefaction.PDF)

**Circular – Dangers of Nickel Ore – Mandatory Notification:** [www.nepia.com/news/circulars/dangers-of-carrying-nickel-ore-from-indonesia-and-the-philippines-mandatory-notification-requirements](http://www.nepia.com/news/circulars/dangers-of-carrying-nickel-ore-from-indonesia-and-the-philippines-mandatory-notification-requirements)

**Circular – Safe Carriage of Nickel Ore:** [www.nepia.com/news/circulars/indonesia-and-the-philippines-safe-carriage-of-nickel-ore-cargoes/](http://www.nepia.com/news/circulars/indonesia-and-the-philippines-safe-carriage-of-nickel-ore-cargoes/)

**Circular – Safe Shipment of Iron Ore Fines from India:** [www.nepia.com/news/circulars/india-safe-shipment-of-iron-ore-fines-from-indian-ports/](http://www.nepia.com/news/circulars/india-safe-shipment-of-iron-ore-fines-from-indian-ports/)





# SOYA BEAN CLAIMS IN CHINA PRACTICAL ADVICE

North has experienced a number of high value claims in China associated with damage to soya beans exported from South America. These claims tend to recur on an annual basis associated with the harvest cycle of soya beans. Similar claims can also occur with other grain cargoes.

The purpose of this article is to draw attention to these claims, how they occur and what steps may be taken to protect your interests in the event of a dispute.

## The Problem

Grain cargoes in general and soya beans in particular, have a risk of going mouldy on board the ship during the voyage. Most cargoes are loaded in apparent good order and condition but there is an inherent vice – the soya beans have a tendency to deteriorate from self-heating unless cargo loading temperatures are low and average moisture content is low.

There are known limits for temperature and moisture content. Cargoes below these limits are described as **stable** – they can be stored for a long time without self-heating. Cargoes above these limits are **unstable** – they are at risk of damage from self-heating.

## The 'Damage' Process

Soya beans are stable below 11.5% moisture and 25°C. Soya bean cargo damage claims are frequent because most cargoes are shipped above 11.5% and are loaded at temperatures of 30°C or higher. Recent Brazilian cargoes have a reported average moisture content of 12.6% and are loaded in ambient temperatures over 30°C – this means the risk of self-heating is high.

The table below shows how the risk of self-heating increases with average moisture content and cargo temperature.

Most cargoes out-turn in apparent good order and condition and are accepted without claim. But many cargoes will self-heat before arrival at the discharge port and there will be cargo damage. If the voyage is delayed this risk increases.

### Certificate of Quality

Under the contract of sale, the sellers will usually have taken representative cargo samples on loading. These will be tested for average moisture content and the results are recorded in the load-port **certificate of quality**. Prior to loading, the Master should request a copy of this certificate or get the shippers to state in writing the average moisture content of the cargo.



**Cargo temperature** on loading should not change much during the voyage. An increase in cargo temperature is an indication of self-heating.



**Caking** from self-heating.



**Discolouration** from self-heating.



**Visible mould** from self-heating.

### Loss Prevention at the Load Port

At the load port it might be prudent to take **cargo samples** under survey with the charterer/shipper/seller's/receiver's representatives. Taking samples during loading might be difficult. Cargo samples from the surface of the cargo on completion of loading might not be representative, but:

- The average moisture content of the sample can be useful to compare with the certified average.
- Further tests can be carried out on the samples in the event of a claim.
- The samples may show that the cargo has not discoloured significantly from loading to discharging.
- North's loss prevention briefing recommends having a local surveyor to obtain samples on loading and to keep a continuous (photographic) record of the loading.

### Loss Prevention on the Voyage

Ventilation records must always be kept to avoid suggestions that ventilation is responsible for cargo damage.

For all agricultural cargoes, the three degree rule should be used. It should be noted that ventilation can take place at any time – night or day – when the outside temperature is at least three degrees below the **cargo temperature on loading**.

Always be careful if venting at night to ensure that weather conditions will not lead to water ingress.

It is important to note that:

- Self-heating is completely unaffected by ventilation
- Ventilation can, at best, minimise the extent of ship's sweat/condensation in the top few centimetres of cargo. It will not cause nor prevent self-heating below the surface layer.

For more information see North's loss prevention guide *Cargo Ventilation*.

## Problem at the Discharge Port

If caking, discoloration, and/or visible mould are found at the discharge port China Inspection and Quarantine (CIQ) will take samples for testing. The results are not given to the ship operator.

Chinese lawyers usually seek to settle by negotiation. Requests for large security amounts against threats to arrest and detain the ship are common. Without evidence from the load port and on the voyage the ship's negotiation position is weak – good evidence will strengthen this position.

*Thanks to Brookes Bell Group for providing assistance with this article.*

Cargo temperature on loading	Average moisture content	Risk	Probable shelf life	Voyage days Brazil to China
25°C or less	11.5% or less	Low risk – <b>stable</b>	Long – over 40 days	40 days
Between 25°C and 35°C	11.0% or less	Low risk – <b>stable</b>	Long – over 40 days	40 days
Between 25°C and 35°C	11.5% to 14%	High risk – probably <b>unstable</b>	About 70 days to 20 days	40 days
Between 25°C and 35°C	14% or higher	High risk – <b>unstable</b>	Probably 20 days or less	40 days





# MEANING OF 'TROPICAL WATERS' IN BOTTOM FOULING CLAUSES

Many time charters contain clauses dealing with bottom fouling/cleaning required when the vessel has been in port for more than a specified period. Many such clauses refer to the length of the vessel's stay in "tropical waters". A London Arbitration Tribunal was recently asked to consider the meaning of "tropical waters" in such a clause.

The vessel in question called at Santos and both parties agreed that the vessel had stayed there for more than the 30 consecutive days period provided for in the clause. The dispute centred around whether or not the port of Santos fell within "tropical waters".

Charterers argued that Santos was not within tropical waters as it did not fall within the Tropics of Cancer and Capricorn, and that the Load Line Regulations were not relevant to the issue of bottom fouling.

Owners argued that the port did fall within tropical waters. They referred to the *Merchant Shipping Load Line Regulations 1998* as amended which specifically included Santos as falling on the southern boundary of the Tropical Zone for load line purposes.

Owners also referred to *BIMCO Special Circular No. 3* dated 24 June 2013 which provided guidance in relation to the interpretation of hull fouling clauses. That circular states that areas that are located on the border of a Tropical Zone or Seasonal Tropical Zone, such as Santos, should be considered as included in that Zone for the purposes of the BIMCO Bottom Fouling Clause. Owners argued that the Load Line Tropical Zone expression could be equally applied to tropical waters.

The Tribunal accepted that a strict interpretation of the term would limit the reference to tropical waters to waters located between the Tropics of Cancer and Capricorn. However, after considering expert evidence the Tribunal ultimately rejected the strict interpretation and decided that waters which were technically outside the Tropics of Cancer and Capricorn could still be considered tropical waters for the purposes of a hull fouling clause.

It held that "tropical waters" was consistent with warm waters where marine bottom fouling would be prevalent. They were further reinforced by the Oxford English Dictionary definition which indicated that "tropical" meant typical of the tropics. The Tribunal held that the expression tropical waters included warm waters where marine growth was rife. It therefore held that even though Santos was outside the Tropics of Cancer and Capricorn, it was nonetheless within the definition of tropical waters contemplated by the charterparty clause.

On that basis, the Tribunal held that charterers were responsible for the time and costs involved in bottom cleaning.

The decision is useful to bear in mind where bottom fouling clauses do not refer merely to the length of time of a vessel's stay in port but require the vessel to be in tropical or warm waters. Based upon the above decision, time and costs for performing an underwater survey and any consequent bottom cleaning will be for the charterers' account.

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## TRIP TIME CHARTERS: DON'T TRIP UP...

When can "one time charter trip" be more than a single cargo carrying voyage between two or more ports? This is a question recently considered by the English High Court in a case called the *"WEHR TRAVE"* [2016]. In brief, the factual background was as follows:

Pursuant to a charterparty on the New York Produce Exchange Form, owners chartered their vessel for "one time charter trip via good and safe ports and/or berths via East Mediterranean / Black Sea to Red Sea / Persian Gulf / India / Far East always via Gulf of Aden". The vessel was to be redelivered at one safe port in charterers' option Colombo / Busan. The charterparty duration was expressed to be 40 days "without guarantee" within the trading limits described.

On delivery, and pursuant to charterers' voyage orders, the vessel proceeded to the Black Sea, where she loaded cargoes at Sevastopol / Avitla, Novorossiysk and Constantza / Agigea.

She then proceeded on her route, discharging at one port in the Red Sea (Jeddah), one port in the Gulf of Oman (Sohar), and three ports in the Persian Gulf (Hamriyah, Jebel Ali and Dammam). The vessel finally berthed at Dammam to discharge her last parcel of cargo.

However, following the vessel completing cargo operations at Dammam, rather than ordering the vessel to proceed to a re-delivery port in the agreed Colombo / Busan range, the charterers ordered her to proceed to Sohar (Oman), to load a project cargo for delivery at New Mangalore or Cochin (West Coast of India). The question before the Court was whether or not this was a legitimate voyage order. The Court held that it was.

The Court noted that whilst the agreed charterparty specified a delivery port/range and a redelivery port/range, it did not restrict charterers to loading the vessel at a single port.

The Court said that pursuant to a trip charter a charterer was – upon paying hire – entitled to call upon the vessel to load and discharge at any port or ports within the trading limits and on the contractual route, subject of course to the parties agreeing something to the contrary.

Accordingly, as charterers' "extra voyage" from Sohar (Oman) with a project cargo for delivery at New Mangalore or Cochin was not inconsistent with the contractual route (which was a voyage from Algeciras (where she delivered) to the Colombo / Busan range (for re-delivery), via East Mediterranean and/or Black Sea and/or the Red Sea and/or the Persian Gulf and/or India and/or the Far East always via the Gulf of Aden and always ending in the Colombo / Busan range), their orders to the vessel were legitimate orders that the vessel had to comply with.

In light of this decision, Members who wish to restrict a trip charter to a single cargo carrying voyage would be best advised to expressly say so in the agreed fixture recap.

# "NINE AM" – TIME TO GET AN INDONESIAN LANGUAGE VERSION OF YOUR CHARTER PARTIES

For several years, Indonesian law (Article 31, Law Number 24 of 2009) has required that memoranda of understanding (MOU), contracts or agreements with any Indonesian entity or person shall be in Bahasa Indonesia, i.e. the Indonesian language ("Bahasa").

Any MOU, contract or agreement involving foreign parties may also be written in the national language of the foreign party and/or English and it is common to see contracts with Indonesian entities written in both English and Bahasa. In the event of any conflict between the wordings, however, the Bahasa shall prevail. The key point is that under Indonesian law, when entering into a contract with an Indonesian entity or person, there must be a Bahasa version.

This obviously has potentially very serious consequences for foreign entities who have entered into contracts with Indonesian entities and which do not have a Bahasa version.

The recent decision of the Indonesian Supreme Court in the case of PT Bangun Karya Pratama Lestari v Nine AM Ltd<sup>[1]</sup>, highlights the potential risk faced by parties who have contracts with Indonesian entities, which are not also written in Bahasa.

In 2013, the District Court of West Jakarta ruled that a loan agreement between an Indonesian limited liability corporation (PT) and a Texas-based lender was void because there was no Bahasa version of it. As a consequence, the agreement was declared null and void, and was treated as if it had never existed. The Court ordered the parties to reinstate each other to the same position they would have been in had the agreement not been entered into.

Although the West Jakarta District Court's reasoning<sup>[2]</sup> in that decision is open to criticism, it was recently affirmed by both the Jakarta High Court<sup>[3]</sup> and the Indonesian Supreme Court<sup>[4]</sup>.

It should be remembered that Indonesia is a civil law jurisdiction and the courts are not bound by previous case law. So whilst these judgments will be used as a source of reference and may influence judges who have to decide similar cases, it is entirely possible that another District Court may come to a different decision when faced with the same facts.

However, on the back of the Supreme Court's decision, it is strongly recommended that parties contracting with Indonesian entities ensure that a Bahasa version of the contract is available at the time of signing. It is common for contracts to be written with the English text on one side of the page and the Bahasa translation on the other.

This Bahasa language requirement will no doubt cause concern amongst the shipping industry. Charter parties and contracts of carriage which are evidenced by bills of lading, for example, are usually agreed on an industry standard printed form such as an NYPE form or a CONGENBILL. In our experience, standard form charter parties and bills of lading are very rarely, if ever, translated into Bahasa.

The vast majority of contracts for the international carriage of goods between foreign and Indonesian entities will not be subject to Indonesian law and jurisdiction, in which case the Bahasa-language requirement will not apply. However, the language requirement cannot be ignored if contracting with an Indonesian counterparty. If a dispute were to arise under such a contract and it were to be arbitrated, for example in London and subject to English Law, it may be necessary in due course to enforce that award in Indonesia against the Indonesian entity. The Bahasa-language requirement would be a relevant issue at the enforcement stage.

We would also recommend that ship owners who know that cargo is destined for Indonesian ports are mindful of the situation. We recommend that ship owners check that their bills of lading include a binding law and arbitration clause. In a situation, for example, where a non-Indonesian ship owner was obliged to defend a claim which was brought in the Indonesian Courts, if the bill of lading was silent on law and jurisdiction we would expect the Indonesian Courts to accept jurisdiction and apply Indonesian law. In such a scenario it would then be open to either party to argue that an un-translated bill of lading contract was void. If the Court declared the contract to be void, the Court could order the parties to be restored to their pre-contractual positions. However, the Indonesian receiver may, in theory, still have a claim under the Indonesian version of tort ("unlawful act") but the ship owner/carrier would not be able to rely on any of the defences contained in the clause paramount.

Out of caution, we would also recommend that if a Master believes that it is necessary to clause a bill of lading for a cargo which is destined for discharge in Indonesia with protective wording, (e.g. the condition of the cargo on loading) the wording is written in English and Bahasa if possible. By doing so the ship owner may increase the prospect of being able to successfully rely on the protective wording before an Indonesian Court. The Court could, however, still find that a contract which is only partially translated falls foul of Law 24/2009.

It is also necessary to bear in mind the transferable nature of bills of lading. It is entirely possible for a "TO ORDER" bill of lading, which initially has no Indonesian involvement when issued to be endorsed to an Indonesian entity. A carrier under a bill of lading could therefore end up in a contractual relationship with an Indonesian consignee and whilst it would be relatively unusual for the carrier to have a claim against the consignee, it could happen if, for example, the consignee refused to take delivery of the cargo.

In summary, we recommend that for all contracts of carriage for goods destined for discharge in Indonesia, carriers check that they have a valid law and jurisdiction clause. It is strongly recommended that when entering into a contract which is subject to Indonesian law or which involves an Indonesian entity that the contract incorporates a Bahasa translation. Failure to do so may allow the Indonesian counterparty the opportunity to resile from the contract and it will afford a potential defence to any enforcement proceedings brought against them in the Indonesian courts.

[1] Judgment No. 451/Pdt.G/2012/PN.Jkt.Bar dated 20 June 2013 juncto Judgment No. 48/Pdt/2014/PT.DKI dated 7 May 2014 juncto Judgment No. 601 K/Pdt/2015 dated 31 August 2015.

[2] Judgment No. 451/Pdt.G/2012/PN.Jkt.Bar dated 20 June 2013.

[3] Judgment No. 48/Pdt/2014/PT.DKI dated 7 May 2014.

[4] Judgment No. 601 K/Pdt/2015 dated 31 August 2015.



# PORT STATE CONTROL RESOURCES

Time and again the same deficiencies are reported in MOU and classification society Port State Control (PSC) annual reports on the findings of inspections. The reports provide a detailed breakdown of inspection results including detention rates per ship type, most frequent detainable deficiencies and a breakdown of deficiencies by main category. The reports, which are publicly available, should be regularly reviewed by ship operators who can use them to ensure that their ships do not fall foul of these common deficiencies. Adopting this approach can reduce the risk of detention.

In order to assist vessels in preparing for PSC inspections, North has produced a hot-spot poster and a checklist on *Port State Control*. These can be found at: [www.nepia.com/media/72829/Hot-Spots-Port-State.PDF](http://www.nepia.com/media/72829/Hot-Spots-Port-State.PDF) and [www.nepia.com/media/68526/Port\\_State\\_Control.pdf](http://www.nepia.com/media/68526/Port_State_Control.pdf)

A number of the classification societies also produce publications aimed at assisting vessels in preparing for inspection details which can be found on their websites.

## Strict Down Under?

Australian Maritime Safety Authority (AMSA) inspections are rigorous and it is therefore sensible to ensure that the vessel is well prepared for inspection prior to arrival at an Australian port.

AMSA has produced a helpful video explaining their approach to PSC which can be accessed via YouTube: [www.youtube.com/watch?v=iiFaH-bip14](http://www.youtube.com/watch?v=iiFaH-bip14)

## ECDIS

In order to ensure that vessels are suitably prepared prior to arrival at Australian ports, the Australian Maritime Safety Authority (AMSA) has produced guidance on their inspection criteria relating to ECDIS installations. This includes the maintenance, setting and operation of equipment and the competence of navigating officers in its use. Vessels arriving in Australia should expect to be inspected for compliance with the notice. A copy of the AMSA notice is available online at: <https://apps.amsa.gov.au/MOREview/MarineNoticeExternal.html>

AMSA has also issued recent guidance in relation to the expected actions of bridge teams in Australian pilotage waters: <https://apps.amsa.gov.au/MOREview/MarineNoticeExternal.html>

PSC inspections are both disruptive and costly. Use the resources available to assist in preparing your vessel for inspection.

# GAS DETECTION INSTRUMENTS – NEW REQUIREMENTS

Do not forget that the new requirements for gas detection instruments come into force on 1 July 2016.

The regulations (SOLAS regulation XI-1/7 - MSC.1/Circ.1477 and MSC.1/Circ.1485) require all ships engaged in international voyages to carry at least one portable gas detection instrument on board.

If a detector is not on board you may be subject to PSC detention.

North has produced a loss prevention briefing on *Enclosed Spaces* entry which can be found on our website at: [www.nepia.com/media/423354/LP-Briefing-Enclosed-Spaces-April-2016.PDF](http://www.nepia.com/media/423354/LP-Briefing-Enclosed-Spaces-April-2016.PDF)



# ISWAN

ISWAN is an international non governmental organisation (NGO) that promotes the welfare of seafarers world-wide. Their website is <http://seafarerswelfare.org/>

ISWAN runs 'SeafarerHelp', [www.seafarerhelp.org/](http://www.seafarerhelp.org/) that provides a 24/7 helpline.

Whether it's a problem with life on the ship; life at home; a worry about health; or simply to be able to talk to someone in confidence about any subject at all; then SeafarerHelp can offer advice. SeafarerHelp is a free service, available to all seafarers and their family members.

ISWAN are also involved in the 'Training on Board' programme, [www.trainingonboard.org/](http://www.trainingonboard.org/) which is designed to persuade seafarers to pursue a healthy lifestyle. This programme is referred to in the second of North's loss prevention briefings on 'Crew Health & Welfare', entitled 'Fitness', [www.nepia.com/media/405633/LP-Briefing-People-Crew-Health-Welfare-2-Fitness-January-2016.PDF](http://www.nepia.com/media/405633/LP-Briefing-People-Crew-Health-Welfare-2-Fitness-January-2016.PDF)

The third briefing in the same series, entitled 'Welfare' [www.nepia.com/media/405636/LP-Briefing-People-Crew-Health-Welfare-3-Care-February-2016.PDF](http://www.nepia.com/media/405636/LP-Briefing-People-Crew-Health-Welfare-3-Care-February-2016.PDF) highlighted ISWAN's report on 'Port Welfare and Sustainable Welfare for Seafarers'. This report lists some of the industry 'best practices' relating to on-board facilities for sea-staff.



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## UK RESIDENTIAL TRAINING COURSE

North's 24th UK Residential Training Course in P&I Insurance and Loss Prevention held during June 2016 was a great success, with nearly 50 delegates from many sectors of the maritime industry enjoying a valuable training and networking experience.

Details of the 2017 course will be released shortly. For more information visit: [www.nepia.com/rtc](http://www.nepia.com/rtc)

## NEW MEMBERS' AREA

North's Members' Area gives Members exclusive access to a range of publications and information resources, including our loss prevention guides (in PDF and eBook format), information sheets and webinar recordings.

To register for this area, please visit: [www.nepia.com/register](http://www.nepia.com/register)

# FIXED AND FLOATING OBJECT DAMAGE 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. Further 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. The case studies are intended to promote wide-ranging discussions on the avoidance of groundings and damage to property.

### Scenario

A cargo vessel was departing from port with a full bridge team present, a pilot on board and a single tug made fast aft. After clearing the berth, the tug was let go and planned to follow the vessel until clear. The vessel was required to make a tight turn to starboard to enter the channel to pass through the breakwaters. The pilot gave instructions for the speed and manoeuvring of the vessel. Shortly after starting the turn, the port bow of the vessel made contact with the corner of the jetty resulting in structural damage.

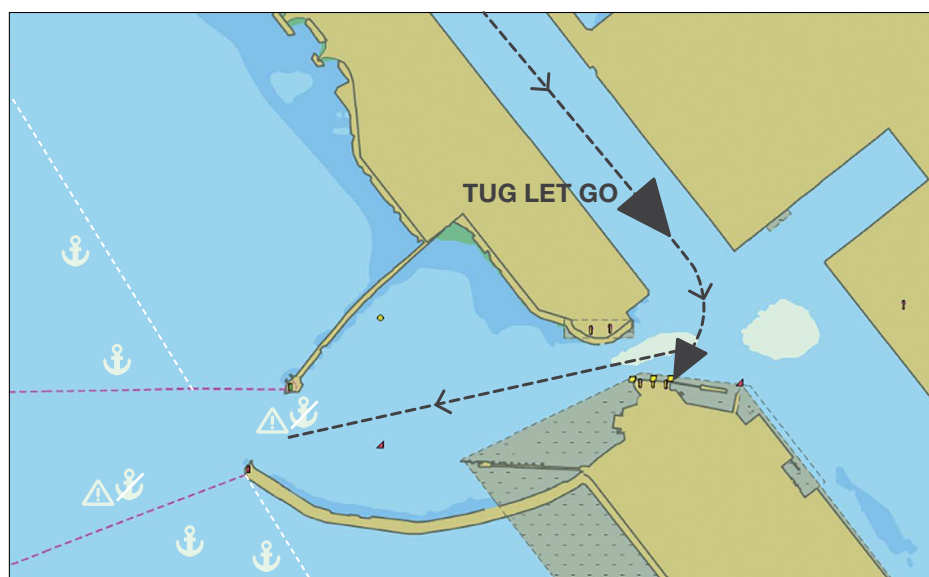
### Questions

1. What factors may have contributed to this 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](mailto:loss.prevention@nepia.com)

To obtain hard copies of North's guides, please download the loss prevention order form from our website: [www.nepia.com/lp-publications](http://www.nepia.com/lp-publications)



## 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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**The North of England P&I Association Limited**

The Quayside  
Newcastle upon Tyne  
NE1 3DU UK  
Telephone: +44 191 2325221  
Facsimile: +44 191 2610540  
E-mail: [loss.prevention@nepia.com](mailto:loss.prevention@nepia.com)

[www.nepia.com](http://www.nepia.com)