

Signals

NEWSLETTER

NORTH 
SERVICE, STRENGTH, QUALITY

Welcome...

to the October 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.

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Ships

Sometimes ship's engineers are faced with a dilemma – they have to use bunkers without having first received the laboratory test results. On board tests that are relatively cheap and simple to use have been developed that can help address the dilemma.

Security

Company Security Officer Alliance – a reminder to CSOs that North members can join the CSO Alliance at a reduced rate.

People

The Right Crew – a new series of briefings suggesting ideas for employing the right crew for your company have been produced.

Monitoring Stevedores – the vessel's role in monitoring the work of stevedores.

Mate to Master – the biggest step of all for a deck officer is when they are given command. This article looks at ideas to help ensure the officers are ready.

Cargo

Loading Fertilizer in China – in this article we explain how loading practices in some Chinese ports can give rise to claims.

Hold Flooding – a reminder about the costly consequences of hold flooding and the care that should be exercised aboard to help prevent it.

VGM – the latest on VGM from a P&I perspective.

Legal

Do Contracts Mean What They Say? – A recent decision has addressed the legal position on anti-oral variation clauses. The potential effects of this decision are considered.

Underperformance – the UK High Court has decided that an owner may be liable for vessel underperformance even where hull fouling has been caused after following charterers orders. We look at the action owners might take to limit their exposure.

Control of Search and Rescue Operations – the role of the authorities in search and rescue is explained.

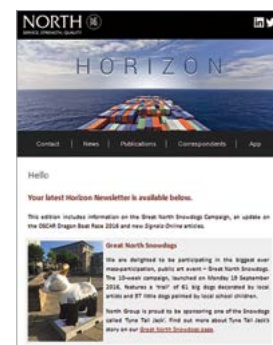
Early Intervention – can produce good results during disputes. A recent example is explained.

Regulation

The 2015 amendments to the IMSBC Code come into force on 1st January 2017.

Loss Prevention

Horizon – in July 2016 we launched our new email subscription service *Horizon*.



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TESTING TIME FOR BUNKERS



Sludge build-up in purifier. Image courtesy of Braemar Salvage Association

Ship engineers are sometimes faced with a dilemma when it comes to using new bunkers. Fuel is delivered on board and samples are dispatched without delay to a laboratory for testing, but the crew might not know the results for several days. What happens if circumstances dictate that the new fuel has to be used before its characteristics and quality are known?

It is widely accepted that the best practice is to make sure the vessel is not placed in such a situation. Ideally, there should be sufficient reserves of old fuel on board to allow time for lab testing of the new fuel. But in reality there may be instances where the crew have to start using the new fuel before knowing the lab results. In these situations the engineers must make best efforts to satisfy themselves that the fuel is suitable for use.

The impact and consequences of using poor quality bunkers is well documented. The damage to the main and auxiliary engines can lead to costly and lengthy repairs. These in turn lead to costly and lengthy delays and disputes. There is also the question of liability when the bunkers have been arranged and purchased by the charterer.

Marine fuels must meet certain criteria to ensure it is of sufficient quality to be used on board. The international standard ISO 8217 is stipulated in bunker purchasing contracts and charter parties to ensure these minimum standards are met. When a bunker sample is sent to an independent laboratory, it is to test the fuel against the criteria in ISO 8217.

Quite clearly this testing involves specialist equipment and complex testing techniques that can only be carried out in a lab. But there are some quick and simple tests that can be carried out on board by the ship's engineers prior to using the fuel.

Some of these tests are well established and have been used by ships' staff during bunkering operations for decades:

- Water content.
- Kinematic viscosity.
- Density.
- Compatibility.

However, it is the compatibility test that is often neglected and a number of incidents could have been prevented if this simple test had been carried out. It checks that a residual fuel is stable and if it is compatible with other fuels. If a fuel is unstable or incompatible with other fuels then it has the propensity to form sludge when mixed. Not only will the diesel engines be unable to burn the fuel, increasing the risk of loss of propulsion and electrical blackout, the sludge formation can lead to a build-up in tanks, blocked filters and choked purifiers. The clean-up operation could be time consuming, labour intensive and expensive.

The test in its simplest form is easy to do, although special on board testing equipment is available which speeds up the process. A droplet of fuel (or a droplet of mixed fuel) is applied onto a piece of blotting or filter paper and left to dry. If it is homogenous when dried – i.e. no distinct dark and light areas – then there can be a reasonable degree of confidence it is stable and/or compatible.



Cat Fine Testing Kit. Image courtesy of Parker Kittiwake



Broken piston rings caused by cat fines. Image courtesy of Braemar Salvage Association

Another cause of fuel-related engine damage which results in a significant number of costly claims and disputes is the presence of excessive cat fines. These fines, a by-product of the refinery process, acts as an abrasive on engine components. They are present in most marine residual fuels to some degree. The concentration of cat fines is limited by ISO 8217.

A typical situation might be that the bunkers have a cat fine content well in excess of the limits stipulated in the applicable edition of ISO 8217. The laboratory test identifies the problem, but the vessel had already used the fuel resulting in engine damage.

In the past, ship's crews were unable to test for cat fines on board. However, new testing equipment has been developed that can allow a rough estimate to be made. These work on the principle of centrifuging a fuel sample that has been treated with reagent. After centrifuging, the cat fines are then held in suspension in clear fluid and a visual comparison can be made against a chart. Although accuracy is limited, it can provide a very effective warning at the time of bunkering or before a fuel is used.

On board testing will not substitute laboratory analysis. But the technology is available to provide an early warning and as well as a level of confidence on those occasions where a fuel has to be used before the lab results are available. On board testing kits can be sourced directly from the manufacturers, but they can often be provided by the major oil suppliers and fuel testing companies if engaged in a service contract.

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.

It is now approaching 6 months since the partnership was announced and North members continue to join CSOA.

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



CSO ALLIANCE MARITIME





THE RIGHT CREW – LOSS PREVENTION BRIEFINGS

The 1896 edition of North's loss prevention publication 'Suggestions' reported on the launch of a new ship. The local dignitary attending made a speech in which he said a new ship is not a good ship unless it has the right crew. Those wise words are true today just as they were 120 years ago.

Getting the right crew is still crucial to running 'good' ships but – against the background of a widely predicted officer shortage over the next 10 years – the competition for the right crew will be fierce. Where demand exceeds supply more or less all STCW certificated officers can expect to find employment as ship operators are under increasing pressure to crew their ships.

But do you just want any STCW certificate or do you want the 'right' crew? Every crew member will have an STCW certificate but the challenge is to continue to attract competent crew with the personality, attitude, and experience to do a job properly and consistently.

Based on North's claims reviews, a survey of members crewing, and crew seminar feedback – the latest collection of loss prevention suggestions aimed at helping ship operators to attract, recruit, and retain the right crew have been published as a series of three loss prevention briefings.

As far as ships and equipment are concerned technology has meant massive changes since 1896. But the one thing that certainly has not changed is the need for the right crew. We would like to know what you think. If you have any suggestions or comments please let us know by email to loss.prevention@nepia.com

The LP briefings are live on the website and suggestions and comments will be incorporated where possible by posting an updated version.

www.nepia.com/lp-briefings

MONITORING STEVEDORES

In order to ensure efficient movement of cargoes both on board vessels and ashore in ports and terminals, the services of local stevedoring companies will usually be utilised.

The stevedores may be involved in moving cargo by either ship's equipment or by hand. They may also be involved in directing cargo operations or in lashing and securing cargoes. This work can be physically demanding and hazardous, particularly whilst the stevedores are working on board unfamiliar vessels.

Most ports will require stevedores to undergo a selection and training programme. These programmes should ensure that stevedores have at least the basic skills necessary to work safely within the port or terminal. However, the programmes may not provide suitable training on working safely on board.

Regardless of the level of training given to the stevedores, proper monitoring and supervision will be required whilst stevedores are on board. This will ensure that the stevedores are where they are supposed to be, are working safely and are operating equipment correctly. It does not mean telling stevedores how to do their job but ensures that potentially unsafe acts can be stopped prior to damage or an incident occurring. Therefore maintaining the obligation to care for people, the cargo and ship.

When working in an unfamiliar environment or with unfamiliar equipment the stevedores can pose not only a hazard to themselves but also to the ship and crew.

Some of the hazards that the stevedores and crew may face can be as a result of factors such as:

- Improper use of ship's equipment.
- Use of specialist equipment which would not usually be used for cargo operations.
- Poor working practices.
- Failure to use personal protective equipment (PPE).
- Unauthorised entry in to restricted areas or enclosed spaces.

These hazards can be reduced by measures such as:

- Working closely with the stevedore foreman both prior to commencing and throughout cargo operations.
- Brief stevedores prior to commencing work to ensure they understand the operation of relevant ships equipment.
- Follow proper procedures relating to working practices such as working aloft.
- Ensuring all stevedores and crew are familiar with PPE requirements including any additional equipment relating to a particular cargo.
- Controlling access to restricted areas.
- Ensuring that all enclosed spaces are suitably identified and that the procedures for entering spaces is fully understood and the officer responsible has been identified.



There are already significant demands on crews during port calls. However, by applying these basic measures the vessel is more likely to complete the port call without serious incident.



MATE TO MASTER – MAKE SURE YOUR OFFICERS ARE READY

Can it be done? Yes. How? There needs to be a structured approach to training and mentoring so that you avoid the situation where the only difference between Chief Officer and Master is two months leave.

You might be a good athlete but if you go to the Olympics with no preparation you will not win a medal! You can achieve a 'medal winning' promotion from Mate to Master if you have prepared for it. Once a Chief Officer is named for promotion there should be a programme in place of training and coaching to prepare for command. In this article we mention the obvious basics, such as STCW, but we focus on mentoring, pastoral care and the Master's SOLAS safety 'trump card'.

Checklist

Put a programme together that can be made into a simple checklist so that there is proof of the key skills being assessed. This will help you later if you should need to demonstrate due diligence. The Master copy of the checklist should be retained by the Chief Officer, with copies sent to the Master and to the office.

Our suggestion would be to use something like your own or the ship manager's 'job description' for the Master. This might include:

- The relevant section from your or ship manager's SMS.
- Relevant 'Guides for Ship Master' from various organisations.
- Something like STCW Part A and Part B Chapter VIII.

From this type of document you can construct your own checklist which will cover all the key skills.



Mentoring

The Master must understand how to be a good mentor, not only as a way of improving job competence by passing on valuable experience but also a way of improving pastoral care on board.

The Chief Officer about to be promoted will have been part of a mentoring system on board. Without a mentoring system a promotion can be very daunting for most people, they go home a Chief Officer and return as Master!

Just like pastoral care training there should be training in how to be a good mentor. Unless the Master understands the need for this function then it is difficult to assess and develop competency.

Pastoral Care

Good leadership and pastoral care is essential to ensure the crew are happy and enjoy their work and as a result, they will perform better.

A Master should have training or briefing to assist in promoting and championing good pastoral care on board. Part of that training should link to on board mentoring of all chief officers in general and specifically for chief officers named for promotion – as per the programme mentioned above.

Pastoral care is not rocket science. It might sound cheesy but it's as simple as being a strong 'on board family'. With internet access becoming a must have rather than a luxury, crew family problems are instant. Crew must feel that despite being isolated from their families at home they have the bond and close support of their 'on board family'. For example, if the motorman is acting strangely someone must notice and ask why. The Master as the head of the 'on board family' must be told, or hopefully if he is a good leader he will have noticed himself.

The Master must also be striving for better and safer crew performance. For example, he should see control of hours of work and rest as a key factor for a happy crew that will enjoy their work a lot more. Such rules are there for a purpose. In marine accident reports, fatigue is usually identified as a factor. All Masters should be briefed on how to manage fatigue on board through robust control of hours of work and rest.



SOLAS Responsibility of the Master

All current Masters and all newly promoted Masters must fully understand their SOLAS duty for the safety of the crew and the environment. If the Master takes a safety decision that overrides all other issues or influences then he must understand that to do so requires a significant reason. He must be able to show how and why he took that decision. He needs to accumulate good evidence at the time and make it known at the time. It does not look good when you put together evidence after the event!

Master's professional judgement: SOLAS V Regulation 34-1 states that the owner, the charterer, the company operating the ship, or any other person SHALL not prevent or restrict the Master of the ship from taking or executing any decision which, in the Master's professional judgement, is necessary for the safety of life at sea and protection of the marine environment.

This is a duty so powerful that it needs to be given keynote status in any programme for training and coaching to prepare for command.

Do you leave all this to the Master? No! Running ships is a joint task between the on board management team and the ship operations team ashore. Both teams need to contribute to training and coaching for command. The more this becomes part of the safety culture of the company the better prepared you can be to make the step up from Mate to Master.



FERTILIZERS FROM CHINA

Loading urea in China can have complications and claims arise regularly. In this article we look briefly at some of the main problems.

Urea in China is normally loaded in bulk or bagged form. Bagged loading is quite straightforward while for loading of urea in bulk, two methods are employed. The first method entails the use of large steel meshed screens (mesh openings 2cms x 2cms) placed over the hatch squares. Stevedores standing on top of these screens cut open individual urea bags and the urea drops into the hold through the mesh. Caked cargo is usually broken down manually using shovels, mallets, etc.

In the second method, bags are cut open on steel screens placed on top a conveyor belt. The conveyor belt transports the urea to the storage area after passing it through a grinder unit. Grabs are then used to load this cargo on board.

A number of claims and disputes have arisen as a result of these methods including cargo shortage, and claims relating to caking, impurities, such as plastic from the bags, and wet damage.

Caking issues have resulted in forced change of discharge ports and the cancellation of cargo sale contracts has given rise to large claims in the past. Large claims have also arisen where plastic debris from bags has damaged agricultural equipment.

Quantity Disputes

For bulk loading, the bill of lading quantity is ascertained by draught surveys arranged by the shipper. It is normal for the shipper's draught surveyors to protect shipper's interests. The bill of lading quantity therefore may not reflect the actual loaded quantity. Disagreements over sea water density, draught readings, ballast water soundings, ballast water density and calculated constants are commonplace. In cases where such disagreements arise, it is usual to shift the vessel to anchorage during negotiations.

Owners should try to reach an agreement with charterers beforehand that the quantity reflected on the mate's receipts or bills of lading should be ascertained by a joint draught survey amongst owners, charterers and shippers. Preparations for draft surveys should be thorough. Please refer to North's loss prevention guide on the subject.

Stevedores should not place screens on the hatches until the draft survey is completed and figures agreed.

After the final draught survey and in case of short loading, shippers should be requested to load the balance cargo. If shippers agree to load, the Master must then ensure he is satisfied with the loaded quantity either by a bag tally or monitoring drafts. If a shipper refuses to load, the Master must note protest with all parties immediately.

Cargo Caking and Impurities

Fertilizer is frequently caked when it arrives at the vessel. It is not always easy for stevedores to get this cargo to crumble. As a result and due to the size of the mesh, it is common to find caked cargo smaller than 2cms in the cargo holds. Larger pieces can also enter through gaps in the hatch cover and mesh. It is also common for plastic strips (usually from bags) and sometimes entire bags to find their way into the cargo. Stevedores will usually remove these larger pieces and impurities on a regular basis – however, collecting all plastic debris is very difficult.

Loss Prevention

Since both caking and impurities are perceived to be unavoidable problems due to the loading method employed, owners should try to reach an agreement with the charterers beforehand so that the mate's receipts and bills of lading can be clausured accordingly. This is the most effective way of protecting ship's interests.

Crew members should be vigilant and monitor the loading at each hold. Any cargo that cannot easily be broken up should be rejected and plastic strips or bags should be pointed out to stevedores for removal. Regular checks should also be carried out on the condition of the cargo inside the hold. Regular photographs of the condition of the cargo are likely to be useful in the event of a dispute.

In relation to wet damage the large steel screens placed on the top of hatch openings take a long time to deploy and remove. In case of the sudden onset of rain, the hatch covers may not be closed in a timely manner. As such weather forecasts should be carefully monitored to allow hatches to be closed in time before the onset of rain. Radars can sometimes be effective in detecting the presence of rain. Non-essential hatch covers covering holds with cargo inside should be kept closed.



Caked urea



Urea bags opened on screens



Impurities from plastic bags



Urea being loaded onto conveyor

HOLD FLOODING

In *Signals 100*, wet damage to containers in vessel was discussed and we are now experiencing similar problems on bulk carriers. This article considers hold flooding from a bulk carrier perspective.

There are several ways in which water could enter the cargo hold of a bulk carrier. Ballast tanks can be damaged and water can enter the hold via improperly secured manhole covers, via the bilge system and via damaged sounding or vent pipes and of course through the hatch covers.

Recently, we have seen particular problems with ingress via manhole covers and the bilge system. Obviously water ingress from tanks, or via the bilge system, presents a great risk as the value of damaged cargo can be very high.



Flooded cargo hold

Often these claims occur due to routine procedures being overlooked by ships' crew and it is important that company procedures and planned maintenance in relation to bilge wells, manhole covers and bilge water management is followed.

Bilges

Bilge related claims occur for a number of reasons. Common causes of incidents are outlined below along with some suggestions for risk reduction:

- Heavy rain in port – prudent bilge water management on board a vessel including regular use of oily water separator when applicable and viable. At all times ensure that the bilge water holding tank has enough spare capacity for the anticipated conditions e.g. heavy rain in port or very wet cargo.
- Failure of bilge well alarms – regular physical testing of cargo hold bilge well float alarms will ensure that an alarm will be activated. As long as the alarm is acted on quickly then the water level in the cargo hold should not rise significantly.
- Non-return valve failure – planned maintenance of bilge and emergency ballast system should be strictly implemented. Procedures should be in place to ensure that all tests are carried out effectively, including checking of non-return valves and their correct fitting and function.

- Bilge strainers and valves blocked by debris – a good standard of housekeeping including cleaning of cargo holds to prevent dirt ingress into hold bilge strainers.

Manhole Covers

Manhole cover related claims occur for a number of reasons. Suggestions for risk reduction are outlined below:

- Regular inspection of manhole covers in cargo holds, ensuring that manhole cover nuts are regularly checked for tightness. Gaskets should be checked periodically and replaced as necessary.
- A responsible officer should witness removal and refitting of manhole covers. This helps ensure that the right covers are removed and that the manholes are correctly refitted. Manhole cover locations should always be checked against ships plans to ensure the manhole cover to be removed is correctly identified.

Obviously there are other causes of ingress and proper maintenance and inspection of hatch covers and tank tops is necessary to protect cargo from water ingress. None of the suggestions above are new and the vessel you are sailing on is likely to have procedures in place dealing with these matters. Make sure you are aware of and follow the procedures.

VERIFIED GROSS MASS (VGM)

It seems that down on the quayside or at the terminal the feared chaos has not materialised, but as the new procedure settles in, the debate over liability where third parties weigh boxes on behalf of the shipper is ongoing.

Although SOLAS is clear in stating the shipper has responsibility for providing the VGM, things are less clear when it comes to commercial arrangements whereby ports and carriers weigh boxes and provide the VGM on behalf of the shipper.

MSC.1/Circular 1475 – Guidelines regarding the verified gross mass of a container carrying cargo states:

13 Contingencies for containers received without a verified gross mass.

13.1 Notwithstanding that the shipper is responsible for obtaining and documenting the verified gross mass of a packed container, situations may occur where a packed container is delivered to a port terminal facility without the shipper having provided the required verified gross mass of the container. Such a container should not be loaded onto the ship until its verified gross mass has been obtained. In order to allow the continued efficient onward movement of such containers, the Master or his representative and the terminal representative may obtain the verified gross mass of the packed container on behalf of the shipper. This may be done by weighing the packed container in the terminal or elsewhere. The verified gross mass so obtained should be used in the preparation of the ship loading plan. Whether and how to do this should be agreed between the commercial parties, including the apportionment of the costs involved.

This seems to suggest that the carrier can agree, as a commercial party, to contractually provide the VGM. By providing this commercial service 'what additional responsibility does a ship operator have under that contract?' is the question currently sparking debate. What happens if the paperwork is wrong and a container is not loaded? What happens if the weight is wrong and stow collapses because a tier weight is exceeded? Who is now responsible?

Insurers and container ship operators are engaged in debate on these issues at the moment. Who weighs and who pays? Keep an eye on our *Signals*, *Horizon* email news, and on North's website for updates.

DO CONTRACTS MEAN WHAT THEY SAY?

Globe Motors Inc v TRW Lucas Varity Electric Steering Ltd [2016] EWCA Civ 396

The UK Court of Appeal has addressed the legal position on anti-oral variation clauses (contractual clauses which aim to prevent any variation to a contract, other than in writing). In the case of *Globe Motors Inc v TRW Lucas*, the Court said that an anti-oral variation clause in one contract would not (in principle) prevent a new contract being made, either by oral agreement or by conduct. In other words, the parties to the contract can choose to vary an anti-oral variation clause in the same way that they can choose to vary any other clause in the contract.

The *Globe Motors* dispute concerned a long term exclusive supply agreement under which TRW Lucas ("TRW") agreed to purchase from Globe Motors Inc ("Globe") components for steering systems. In the High Court, the judge held that TRW was in breach of the agreement by purchasing motors from another manufacturer, which they had been bound to purchase exclusively from Globe.

The contract contained an anti-oral variation clause requiring any subsequent variation to be made in writing:

"6.3 Entire Agreement; Amendment: This Agreement, which includes the Appendices hereto, is the only agreement between the Parties relating to the subject matter hereof. It can only be amended by a written document which (i) specifically refers to the provision of this Agreement to be amended and (ii) is signed by both Parties."

In the High Court, the judge held that TRW was in breach of the supply agreement by purchasing motors from another manufacturer. It was also held by the High Court that it was possible to subsequently vary the agreement orally, despite such a clause. TRW brought an appeal. One of the issues raised on appeal was whether the parties had varied the supply agreement by conduct to make an unnamed party, Globe Motors Portugal (a subsidiary company of Globe which in practice supplied the motors to TRW), also a party to it despite the anti-technicality clause.

There was no written document adding Globe Motors Portugal as a party to the supply agreement; however, the conduct of the parties over a prolonged period demonstrated that that was the parties' intention.

Court of Appeal Decision

The Court of Appeal disagreed with the High Court that TRW was in breach of the supply agreement. Whilst this meant that the Court of Appeal did not need to consider the anti-oral variation clause, it did address the conflicting case law on the topic and commented that, in principle, a contract containing a clause that any variation of it be made in writing can in fact be varied by oral agreement or by conduct. This approach has subsequently been confirmed in another Court of Appeal case, *MWB Business Exchange Centres Ltd v Rock Advertising Ltd [2016] EWCA Civ 553*.

The case is a warning that discussions regarding the variation of a contract need to be handled with care. If Members do not intend to be bound by a contractual variation under discussion until that variation is agreed in writing and signed by both parties, Members need to make their position clear in their negotiations.

UNDERPERFORMANCE: OWNERS STILL LIABLE WHERE FOULING CAUSED FOLLOWING CHARTERERS' ORDERS

Imperator I Maritime Company v Bunge SA [2016] EWHC 1506 (Comm)

The UK High Court has held that an owner is still liable for a vessel's underperformance, even where that underperformance has been caused by fouling as a result of following charterers' orders.

The case involved a vessel which had a prolonged stay in tropical waters which resulted in fouling of the vessel's hull and propeller by marine growth. The fouling meant that the vessel underperformed as it could not maintain the warranted speed.

The relevant head and sub-charterparties contained the following clause:

"Clause 29...

(a) Speed Clause

Throughout the currency of this Charter, Owners warrant that the vessel shall be capable of maintaining and shall maintain on all sea passages, from sea buoy to sea buoy, an average speed and consumption as stipulated in Clause 29(a) above, under fair weather condition not exceeding Beaufort force four and Douglas sea state three and not against adverse current..."

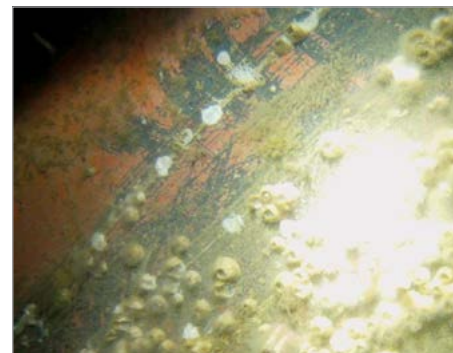
The Court held that the speed warranty in Clause 29(b) was expressed in wide and unqualified terms. It related to the vessel's continuing performance and there was no express restriction on the extent of the performance warranty (so it was not limited to passages under fair weather conditions).

Owners sought to argue that the continuing performance warranty did not apply where the vessel's performance fell-off because of fair wear and tear in the course of contractual trading. This argument was rejected. In his judgment, Mr Justice Phillips concluded that the proposition stated in paragraph 3.75 of *Time Charters* (the go-to text book for time charter disputes) is too widely stated. He held that where there has been underperformance, it is not a defence (on a continuing performance warranty) for owners to prove that the underperformance was caused by following charterers' orders UNLESS the underperformance resulted from a risk that owners had not legally assumed responsibility for under the charterparty.



In light of this decision, Owners should be careful to limit the application of speed and performance warranties – for example, by limiting such warranties to passages under fair weather conditions and excluding a performance warranty in respect of voyages taken after a vessel has been waiting in warm water ports. The BIMCO Hull Fouling Clause for Time Charter Parties was produced to try and address issues of hull fouling following a prolonged stay in port (either within or outside a tropical zone).

The BIMCO clause provides that any warranties concerning speed and consumption shall be suspended pending inspection of the vessel's underwater parts following a stay in port exceeding 15 days (or such other period as the parties may agree). Should Members require further assistance, then please do not hesitate to contact your usual FD&D claims handler.



Marine growth on hull

CONTROL OF SEARCH AND RESCUE OPERATIONS

A recent Search and Rescue (“SAR”) mission involving a North-entered ship has highlighted the role of the Coastal State in such operations.

The ship had left the load-port, passed through the 12nm Territorial Seas and was in the 200nm Exclusive Economic Zone (“EEZ”) before identifying that a crew member was missing. The Master informed the Coastal State, which was also the Maritime Rescue Coordination Centre (“MRCC”) for the sea area. Acting as MRCC, the Coastal State tasked the ship, together with others in the area, to perform a SAR operation under the command and control of their navy. After a proper but unsuccessful search the SAR operation was terminated and the naval commander permitted all ships that had been involved to continue their voyages.

During the SAR operation the owners were concerned that the Coastal State might order the ship to return to the nearest convenient port in order to conduct an investigation into the incident. The correspondent recommended that any such order should be complied with but the Master and owners understood that once the ship had left the Territorial Seas, the Flag State had responsibility for any on board investigation of the incident. In the event, no order was made by the Coastal State and the ship continued the cargo voyage.

The framework for control of maritime search and rescue is:

All mariners have an obligation to help those in danger at sea. This ‘immemorial custom of the sea’ is also enshrined in the United Nations Convention on the Law of the Sea (“UNCLOS”), the Safety of Life at Sea Convention (“SOLAS”), the Load Line Convention and The International Convention on Maritime Search and Rescue (“MSRC”).

The duty to render assistance is covered by Article 98 of UNCLOS:

Every State shall require the Master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

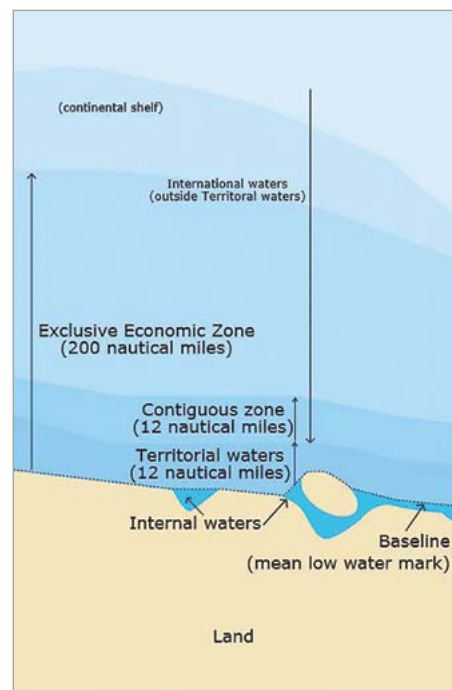
- *To render assistance to any person found at sea in danger of being lost;*
- *To proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him; and*
- *After a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.*

Under MSRC, the MRCC has authority to co-ordinate SAR operations and can require ships to take part in SAR operations. A ship must not be subject to undue delay, financial burden or other difficulties after assisting persons at sea and the MRCC must relieve them as soon as practicable. Certain expenses incurred in assisting persons in distress are indemnified under North’s Rule 19(8).

The framework set out above only applies to SAR operations. Responsibility for the investigation of accidents is primarily with the Flag State under Article 94 of UNCLOS which provides:

Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The Flag State and the other State shall co-operate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

Coastal States have full sovereignty over their Territorial Seas, which includes the right to regulate shipping (always subject to any rights granted by UNCLOS, such as the right of ‘innocent passage’) and to investigate any accidents which might occur. However, the extent of a Coastal State’s jurisdiction over the EEZ is not straightforward; they do not have ‘sovereignty’ but they exercise ‘sovereign rights’ over the marine resources of the seabed and the water column. The EEZ remains ‘international waters’ and ships retain freedom of navigation. When in international waters, the authority to investigate marine accidents lies with the Flag State.



NORTH BENEFITS FROM EARLY INTERVENTION

James Wilson, former Senior Partner of Ince & Co LLP, now a full time mediator with SeaMediation Chambers, discusses the benefits of Early Intervention as a useful addition to the dispute resolution toolbox.

What is Early Intervention?

Early Intervention is a highly flexible process developed by SeaMediation Chambers that seeks to take the key ingredients that make mediation so effective, but to introduce them earlier and in a more dynamic and fluid way to help the parties achieve an informed solution much sooner. Despite its name, however, it is a process that can be used at any time in the course of a dispute, sometimes as late as the final stages of preparation for a hearing.

Like mediation, Early Intervention introduces the neutral mediator to provide a trusted and independent third party with whom each party can discuss the case on a 'without prejudice' and confidential basis. However, unlike mediation, those discussions tend, certainly initially, to take place over the telephone which may avoid the costs involved in gathering all the parties in one location for a formal mediation day.

Flexibility of Process

The initial goal of the Early Intervention process is to identify the blockages to a possible settlement. Often one or more of the parties require more information before they feel sufficiently informed to take a view on whether to settle a dispute. The mediator can work with each party to agree a road map which takes them most efficiently to the point where they can discuss an informed solution. That road map can be flexible and creative. It might for example include an exchange of specific documentation or evidence; it might involve a meeting between experts (with or without legal or commercial representatives present) or a referral of an expert or legal issue to a neutral expert for a binding or non-binding independent opinion. The mediator can also offer constructive challenge as to whether the benefits that might be derived from advancing aspects of the evidence are really sufficient to justify the related costs.



On occasions, the mediator finds that the parties are in reality already sufficiently informed to take a view on settlement without incurring further time and costs of exchanging documents and evidence and the Early Intervention process simply opens up the negotiation – either through a series of individual phone calls with the mediator (or a conference call involving all parties) or through a settlement meeting.

Another unique feature of the flexible Early Intervention process is that one party to a dispute may approach a mediator and ask them to initiate contact with another party to the dispute to explore whether they are willing to engage in Early Intervention. This can be particularly useful when relations between the parties have reached an impasse and the involvement of the mediator offers an opportunity for each side to explain the impasse to a neutral third party.

How it is Working in Practice

A common theme in the feedback from parties using Early Intervention is that they like the flexibility of the process. That flexibility has seen it used in a very broad range of disputes: complex, high value cases where a road map has substantially reduced the costs; lower value claims where the amounts involved might not have justified a formal arbitration hearing or even a formal mediation meeting; multi-party cases where parties in different parts of a charterparty chain have no other 'forum' to talk to each other; multi-jurisdictional cases where, again, the parties might have no common 'forum' to explore a global settlement.

One case involving one of North's members offers a useful illustration of the process in action. It involved a four party charterparty chain with the parties located in different parts of the world: head owners in the US (represented in London); head charterers based in Norway (represented in Norway); sub-charterers based in Germany (represented by the Club) and shippers based in Canada (represented in Singapore).

Three separate arbitrations were under way in relation to disputes arising as to the fitness of a cargo of nickel ore for loading. The arbitrations were progressing in the usual manner with the issues being played out in written submissions being mirrored up and down the chain of arbitrations but without any forum for direct dialogue between the head owners at the top of the chain and the shippers at the bottom, notwithstanding that the real issues were between those two parties.

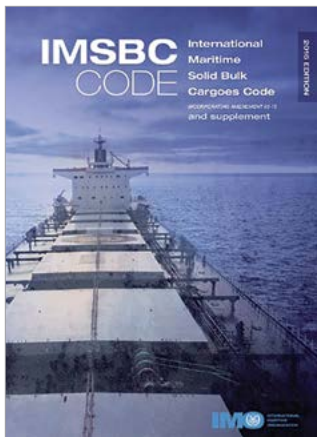
The mediator's initial conversations with each of the parties identified some key differences between the various experts. Subsequent rounds of conversations were directed at finding a shortcut to resolving those differences or at least facilitating a discussion of them direct between head owners and shippers. At the same time, the mediator was able to explore privately what each party might be willing to concede to see an end to the entire dispute. As the mediator continued those discussions with each party he was able to construct a notional 'pot' into which various parties would contribute sufficiently to satisfy those parties who would be net recipients in an overall settlement. Having then obtained all parties agreement to a formal settlement structure, the mediator was able to finalise the matter without the parties ever having to gather from around the globe for a formal mediation meeting. The cost of the Early Intervention process represented a saving of about 95% of the future costs that would have been incurred in concluding the three arbitrations.

Want to Find Out More?

You can find out more about Early Intervention at SeaMediation's website (www.seamediation.com) or by speaking to any of the experienced claims staff at the Club.



IMSBC CODE – 2015 AMENDMENTS MANDATORY FROM 1 JANUARY 2017



During the ninety-fifth session of the International Maritime Organization's (IMO) Maritime Safety Committee, amendments 03-15 to the *International Maritime Solid Bulk Cargoes (IMSBC) Code* under Resolution MSC.393(95) were adopted.

These amendments, which have been in place on a voluntary basis since 1 January 2016, will become mandatory on 1 January 2017.

Amendment 03-15 includes updates to existing individual schedules for solid bulk cargoes, 19 new cargo schedules and references to recent SOLAS amendments, along with updated information from the IMDG Code.

Details of the 19 new cargo schedules including the group along with details of those designated as Material Hazardous in Bulk (MHB) are included in the table below.

The latest version of the code is now available from your usual supplier.

New Cargo Schedules	IMO Class	Group
Aluminium Fluoride		A
Amorphous Sodium Silicate Lumps	MHB (CR)	B
Boric Acid	MHB (TX)	B
Chemical Gypsum		A
Clinker Ash	MHB	A and B
Copper Slag		A
Glass Cullet		C
Iron and Steel Slag and its Mixture		A
Iron Ore Fines		A
Iron Oxide Technical		A
Iron Sinter		C
Manganese Component Ferroalloy Slag		C
Manganese Ore Fines		A
Scale Generated from the Iron and Steel Making Process		A
Spodumene (Upgraded)		A
Wood Pellets Containing Additives and/or Binders	MHB (WF)	B
Wood Pellets not Containing Additives and/or Binders	MHB (OH)	B
Zinc Slag		C
Zircon Kyanite Concentrate		A

In order to ensure that the chemical hazards of individual cargoes designated as MHB can be identified, an updated definition of MHB is included in the amendments. In addition to the amended MHB definition, notational references which clearly specify the chemical hazards of the cargo are included. A table showing these notational references is included opposite.

Chemical Hazard	Notational Reference
Combustible solids	CB
Self-heating solids	SH
Solids that evolve flammable gas when wet	WF
Solids that evolve toxic gas when wet	WT
Toxic solids	TX
Corrosive solids	CR
Other hazards	OH



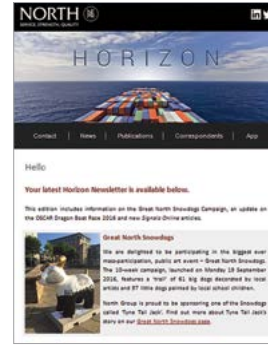
HORIZON NEWSLETTER – NEW EMAIL SUBSCRIPTION SERVICE

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- News (Industry News, Signals Online, Press Releases and CSR News).

- Sanctions.
- Maritime Threats and Incidents.

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COLLISION CASE STUDY – FISHING IN A TRAFFIC SEPARATION SCHEME?

Introduction

North's loss prevention guide *Collisions: How to Avoid Them* includes a series of collision case studies intended to generate discussion about the International Regulations for preventing Collisions at Sea (COLREGs). Further case studies are published in *Signals* from time to time and here is the latest of them. Each case study is set out as simply as possible, with the minimum information necessary to describe a developing situation. The case studies ask a number of questions but answers are not provided. The case studies are intended to promote wide-ranging discussions about collision avoidance.

Scenario

You are the Master of the 'blue ship' heading south west down a busy Traffic Separation Scheme. On your port bow a 'red fishing vessel' is steering north west to cross the Traffic Separation Scheme. It is proceeding very slowly and is showing the shapes and lights of a trawler.

Questions

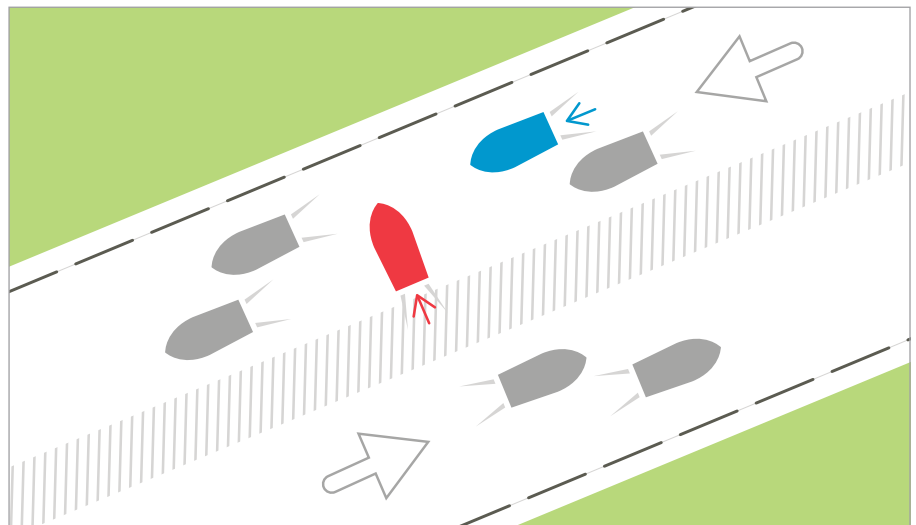
You are the Master of the 'blue ship':

1. Is the fishing vessel complying with COLREGs?
2. Who has right of way?
3. What should you do?
4. What should the fishing vessel do?

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 North's guides, please download the loss prevention order form from our website: 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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