



SIGNALS

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SAFETY CULTURE SPECIAL

Is it now time for Safety Management 2.0?

ROLLOVER RISK OF LNG

The phenomenon of rollover is a long-standing risk associated with liquid natural gas.

NORTH SPREADS CHRISTMAS CHEER TO SEAFARERS

A token of thanks at Christmas in appreciation of all of their hard work.

SCORA - SAFETY CULTURE ORGANISATIONAL ASSESSMENT

Building a tool to provide North's Members with an insight into their organisation's capacity for safety.

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NORTH

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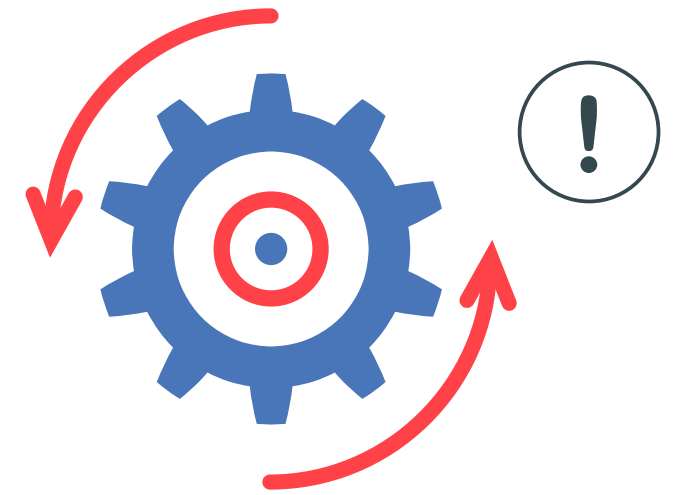
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SAFETY MANAGEMENT: TIME FOR AN UPGRADE?



Upgrade...



Since the introduction of the ISM Code, vessels' safety management systems (SMS) have evolved and they now vary significantly in size and complexity. However, incidents leading to deaths, injuries, damage and pollution still occur, regularly involving either a breach of a vessel's SMS or a flaw in the system.

Although invaluable when used correctly and sensibly, checklists and written procedures are not the sole solution to safe working and preventing incidents. It is a far more complex situation. In this issue we talk about the concept of Safety Management 2.0 where the seafarer is front and centre. Is it now time to upgrade your system so it works for the seafarer and not the other way round?

This is part of our special focus on safety culture. Tricky to define, tough to measure and immensely difficult to grow, safety culture is an area where potential great improvements in safety can be achieved. We look at some ideas that could improve the safety culture in your organisation. We are also very proud to introduce SCORA: a self-

assessment Safety Culture ORganisational Assessment tool being developed in conjunction with leading consultancy Green-Jakobsen and North's loss prevention working group. Scheduled for launch in March 2019, SCORA will be free for North Members and will provide a high level insight into your organisation's capacity for safety.

Elsewhere in this issue, LNG is tackled in two very different directions; one looking at the risks of rollover and the other at customs fines in India. We also have news on how recent court judgments could affect shipowners and charterers as well as an interesting interpretation by the German courts on what is 'en route' with regard to MARPOL.

Finally, we are launching a new series of training packs aimed at improving onboard training. The first pack is on the subject of can tests. Liquefaction of bulk cargoes remains a very real risk and it is vital that these simple can tests are understood.



By Alvin Forster
Deputy Director (Loss Prevention)



NORTH SPREADS CHRISTMAS CHEER TO SEAFARERS

Over the Christmas period many seafarers are unable to be at home with their loved ones whilst they play unofficial Santa delivering goods all around the world on their vessels.

As a 'thank you', North donated 67 shoeboxes full of gifts to the Apostleship of the Sea's Christmas Shoebox Appeal for distribution to vessels around the UK.

Seafarers work away throughout the year to deliver our everyday essentials - and over the festive season they also deliver

anticipation, smiles and joy with the Christmas presents they carry. The donated shoeboxes, containing small gifts such as toiletries and chocolates are a token of our thanks in appreciation of all of their hard work.

We were fortunate enough to deliver some of the shoeboxes to the crew of a vessel calling into the Port of Blyth which were very happily received by the seafarers on board.

By Holly Hughes
Claims Executive

NEW GUIDANCE ON CYBER SECURITY: ACT NOW!



The recent news that the Port of San Diego had been hit by a cyber extortion scheme is further proof that the maritime sector continues to be a target for cyber criminals. Vessel owners and operators must not only harden themselves against attack but also create contingency and recovery plans setting out what to do in the (inevitable?) event that an incident or attack occurs.

The recently updated BIMCO "Guidance on Cyber Security Onboard Ships" should be on everyone's reading list. This is the third edition of these guidelines in as many years, as good an illustration as could be given of the need to remain up to date and flexible in the face of our ever-increasing dependence on technology and the closer integration between shipboard operational technology (OT) and information technology (IT).

Whilst cyber risk management is not a formal requirement of the ISM Code until 2021, owners and operators should already be preparing now. Use tools such as the BIMCO guidelines to work towards its incorporation into vessels' safety management systems sooner rather than later. Not only will it take time to properly assess what needs to be done and how to do it, as the six anonymised examples given in the BIMCO guidelines show, cyber issues and attacks are already affecting vessels and operators.

Have you considered the issues raised in the six examples? Are your systems and procedures robust enough to deal with such incidents?

Now more than ever, the saying "hope for the best, plan for the worst, but prepare to be surprised" holds true.

By Adrian Durkin
Director (Claims)

FIND OUT MORE

The BIMCO guidance can be read here:
<http://bit.ly/CyberSecurityGuidelines2018>



BEWARE OF QUAY CONTACTS IN KINGSTON



Recent years have seen several incidents in the port of Kingston in Jamaica where vessels have made contact with a particular quay on the entrance to the port's basin.

These contact incidents have resulted in damage to the port, damage to the vessel and on occasion pollution. These in turn have led to high value claims.

COMMON FINDINGS

On each occasion, the appropriateness of the speed of approach of the vessel into the turning basin was questionable. Other repeated factors included:

- Δ Tugs made fast very late as they did not approach the vessel until it arrived at the turning basin. This forced the vessel to maintain its course towards the quayside ahead until the tug was made fast
- Δ Not enough tugs were available
- Δ Tugs made fast in inappropriate positions
- Δ Poor positioning in the approach channel
- Δ Vessel's arrival coincided with outbound vessels forcing it to miss the turning basin

MASTERS BEWARE!

Masters and bridge officers should ensure that these potential issues are noted in the vessel's passage plan and discussed before any arrival.

Crews are reminded of the importance of:

- Δ Effective passage planning: a well prepared and agreed 'berth to berth'

passage plan that includes emergency anchorages, no-go zones, a point of no return and expected vessel speeds

- Δ An effective Master-Pilot exchange (MPX): good communications between the bridge team and the pilot where the intended passage and berthing plan is discussed and agreed. This should include tug information, other vessel movements and vessel speed
- Δ Passage monitoring: the bridge team should monitor the agreed passage and report the vessel progress to the Master and pilot. Report any deviations from the agreed passage such as cross track error, and vessel speed
- Δ Monitor vessel movements in the port: these should be monitored by the bridge team, and reported to the Master and pilot
- Δ Record it: the bridge team should maintain accurate records of the berthing including fixing the vessel's position on the chart or ECDIS

IF IN DOUBT - SHOUT!

The Master and the bridge team must challenge the pilot if they are in any doubt.

Reduce the risk of any contact issues by following best practice, being alert and establishing good communications between the pilot and bridge team.



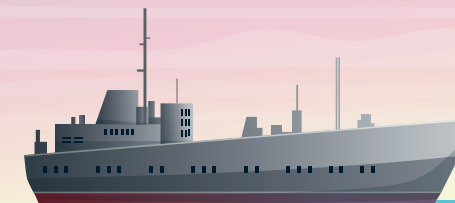
Example of track of vessel contacting berth
Source: www.madesmart.nl

FIND OUT MORE

For further information on please see our Hot-Spots on MPX
www.nepia.com/media/289177/LP-Briefing-Master-Pilot-Information-Exchange-September-2015.pdf

By John Southam
Loss Prevention Executive

INCREASED POWERS TO PENALISE POLLUTION IN EUROPE



If a vessel pollutes the waters within the Exclusive Economic Zone (EEZ) of a country but does not call at any of that nation's ports, it has not always been clear who has the right to impose penalties.

A recent European Court of Justice (ECJ) decision provides some clarity on this matter. The judgment permits European coastal states to detain and penalise ships for breaches of MARPOL that occur in their EEZ even if the ship did not otherwise call at any of its ports.

The case involved a bulk carrier that spilled oil when passing about 30 km off the coast of Finland. Therefore the ship was within the Finnish EEZ but not its territorial waters. No counter-pollution measures were undertaken by the Finnish authorities and the slick was not observed to reach the coastline or to have caused any specific damage to the environment or Finnish property.

Several days later, the vessel returned through Finland's EEZ and was detained by the Finnish Coast Guard for two days until the shipowner provided security in the relatively small amount of €17,112. A fine was later imposed by the Finnish courts for that same amount.

This penalty was challenged by the shipowner and brought to a Finnish maritime court. This first instance court dismissed the action and the subsequent Court of Appeal dismissed the appeal, but the Finnish referring courts sought clarification from the ECJ on a number of questions.

Of most interest to shipowners, it was questioned whether Finnish courts had jurisdiction over pollution incidents occurring in Finland's EEZ and whether Finland had the right to interfere with the ship's passage through the EEZ in such circumstances.

The ECJ ruled that a coastal state can interfere with the ship's right of free passage where:

- i. the coastal state has clear objective evidence that a foreign vessel is the source of a discharge that breached MARPOL pollution regulations; and
- ii. the breach caused or threatened to cause major damage to the coastline or related interests of the coastal state or to the resources of the coastal state.

Furthermore, the ECJ ruled that "resources" can be very widely defined so that, effectively, damage or a threat of damage to anything at all within the EEZ is enough to trigger the coastal state's jurisdiction.

It is likely that other EU nations will now start to use this ECJ judgment to assert rights of enforcement over incidents occurring within their EEZ.

FIND OUT MORE

If Members wish to discuss any of the issues raised in this article, then they should get in touch with their usual contacts at North.

By Peter Scott
Senior Executive (Claims)



A SEA CHANGE IN APPROACH TO SAFETY MANAGEMENT?

Safety suffers through complex safety management systems and difficulties in building safety culture. Is it now time for Safety Management 2.0?



SAFETY CULTURE: EASY IN THEORY...

1. A CEO makes a statement that safety is the way we do business going forward
2. A mission statement around “safety vision” is written
3. Stretch KPIs - very low numbers LTIFs or zero incidents - are created
4. The vision is communicated to all employees, extolling the safety vision
5. A comprehensive safety management system exists or is produced

6. Staff are trained in systems and procedures important to safety

7. Safety culture flourishes in the company

But the reality is much different. Safety culture can be likened to a rare orchid – delicate, hard to grow and in need of constant tending and nurturing in the face of a harsh environment.

Let's look at some of the elements that contribute to difficulties implementing safety culture.

CHALLENGES IN NURTURING A SAFETY CULTURE

Safety and commerce do not tend to coexist easily. It's a big step for a company to fully commit to safety as their way of business. Commercial pressures around costs and vessel schedules will inevitably put pressure on the commitment to safety. Individuals or departments within a company may occasionally respond to these pressures by making exceptions and prioritise commerce over safety. This can be corrosive to a safety culture as employees may perceive that the company is not really committed to safety as its way of business. This can be particularly destructive if a safety culture programme has recently started.

The societal expectations of shipping allow continued safety failings. Society has zero tolerance for airline accidents but shipping accidents are routinely accepted. This undoubtedly has a negative impact on the shipping industry's approach to safety culture. The

nearest equivalent in shipping to a 'zero tolerance' attitude is the tanker sector. Tanker operators are required to operate safely by their commercial partners. This zero tolerance attitude from the customer means that safety and commerce go hand in hand and it's no coincidence that the tanker sector operates more safely than other sectors.

Human nature does not necessarily lend itself to safe behaviour. Enclosed space accidents are a good example of this. Those involved are often experienced seafarers, usually conscious of the potential risks and aware of the entry procedures. But still they enter. What motivates this clearly unsafe behaviour? Are they thinking "I've done it before and it was OK"? Or "I've got to get the job done now so we can start loading"? Surely they are not thinking "I will put my life in danger today"?

Training can help this situation but it needs unsafe behaviours to be challenged at all times and become unacceptable at all levels within companies. This requires a *culture of*

open communication – again difficult to achieve in a hierarchical company structure and can often be complicated by cultural preferences.

Safety management systems (SMS) can be overly long and complex in their use of language, making them difficult to use. To some extent these systems are a victim of their own success. They have been an extremely effective tool for companies and seafarers to manage their vessels. But documentation can often run to hundreds of pages and tens of thousands of words – too much for anyone to easily digest. If a system is difficult to use this leads to workarounds or procedures being ignored. Recently a number of companies have taken steps to re-write and re-structure their SMS with a focus on making them accessible to the end user i.e. the seafarer. This is something we at North refer to as *sensible systems*.

The custodians of safety, the DPA and others in the HSQE department tend to be highly capable and competent on the technical aspects of running a ship, and

the associated SMS. But usually they will lack any formal training in human behaviours. Naturally this means that most will favour a technical approach to safety and see safety as part of system that can be fixed. If something goes wrong, the incident is analysed and very often procedural changes will be made to put more barriers in place to prevent recurrence. But very often the analysis of the human side of things amounts to “failure to follow procedures” or the even less helpful “human error”. It is rare that questions are asked of the individuals involved as to why they behaved as they did. Such questioning can be invaluable in supporting a safety culture.

There are many other brakes on safety culture including the highly fragmented nature of the industry and the nature of and pressures on seafarer employment.

BALANCING SYSTEMS AND PEOPLE

All of these factors combined mean that for an individual company to be successful in nurturing a safety culture through to maturity they must be highly committed to developing the safety culture across the whole organisation and very mindful of the difficulties that can hamper their efforts.

For safety culture to flourish, companies must balance a systems approach to safety management with a person-centric approach to safety management. Over time, with care and hard work this can develop into a safety culture which allows safer, incident free (or at least incident light) and more efficient operations.

So perhaps safety and commerce can coexist easily after all?

The time for Safety Management 2.0 is now.



By Colin Gillespie
Director (Loss Prevention)

FIND OUT MORE

For further information contact our Loss Prevention Team at loss.prevention@nepia.com or visit www.nepia.com/loss-prevention

UNDERSTANDING HUMANS: LESSONS FROM THE FINANCIAL CRASH

Focus in recent years has been on the human element and safety culture. We often take inspiration from other industries, such as aviation and offshore oil and gas but can we learn lessons from industries where a transferrable link is less obvious?

The global economic crash at the end of the last decade prompted much analysis in the financial sector. Great efforts were made to try and understand why bankers acted in the way that they did and why their behaviour wasn't challenged sooner. This research has raised some very interesting points; particularly the study of why well-intentioned rules and regulations are violated and how this allows a better understanding of human behaviour.

Perhaps too much effort has been made in the past within the maritime sector in identifying how people violated the rules, and reacting by adapting the rules to prevent future violation, rather than understanding why people contravened the rules and therefore tackling the root of the problem.

STUDYING HUMAN BEHAVIOUR

A paper by Dr Roger Miles titled *Tracing the True Origins of Bad Behaviour: New Ways to Predict Conduct Risk Exposure* looked at the aftermath of the credit crunch. An immediate thought might be "what has bankers behaving badly got to do with maritime safety?" But the paper contains many observations that are easily recognisable to the mariner's eye.

It tells us that to really understand why a person or a group of people acted in the way they did, we need to look deeper into their biases and behaviours.

"Unsafe" behaviour arises when certain conditions are in place. If these can be identified then efforts can be made to stop the problem before it takes root. The conditions as described in Dr Miles' research are of course largely unique to the financial industry but it does not require too much imagination to see how it could apply to the maritime sector and safety. They can be paraphrased as follows to relate to shipping:

- ▲ 'Longevity': A high turnover of staff within the shore management can lead to ships' crews thinking they will outlast whoever is driving any changes
- ▲ 'Balance of Power': The crews hold more power and influence in the operation and management of the vessels than the senior management

- ▲ 'Abstraction': Crews' perceptions of risk and their abilities to identify hazards and assess risks
- ▲ 'Unchallenged': A lack of oversight or distant relationship by senior shore management
- ▲ 'Incentive to Move': If the crew know they can leave the company and be employed elsewhere on equal or more generous terms with little consequence then this can stifle loyalty to the company
- ▲ 'Granular Regulation': Negative effect of over-regulation and micromanagement on the crew

WAH! KNOWING WHAT ACTUALLY HAPPENS

The finding that relates most strikingly to the maritime sector is the 'disconnect' that can exist between the different parties and introduces the concept of the 'formal structure' and the 'informal structure'.

The formal structure comprises of what has been written down by the organisation's management and includes charts, mission statements, job descriptions and manuals. The informal structure is "What Actually Happens" (WAH) and this is the reality on board the ship. Safety violations and incidents occur as a direct result of what actually happens in reality.

This supports earlier work by academics on safety such as that by Hollnagel where the concepts of "work as imagined" and "work as done" are discussed. It is the 'disconnect' between those who decide on the policies and procedures and those who actually carry them out.

So what influences people and why does this disconnect exist between the different parties?

WE'RE ONLY HUMAN

Human Reaction to Rules: On their own, written rules and codes are not effective ways to control people and influence behaviour. It is wrong to assume that a person's default position on rules and regulations is that of honest and simple compliance.

By Alvin Forster
Deputy Director
(Loss Prevention)



KEY FINDING IS
THE 'DISCONNECT' BETWEEN
THOSE WHO DECIDE ON THE
POLICIES AND PROCEDURES
AND THOSE WHO ACTUALLY
CARRY THEM OUT

Also, people modify their behaviour in an adverse way if the rules are too strict or restrictive. Their behaviour can adapt quite creatively and can ultimately lead to pushback against the system. If people are treated like idiots they will act like idiots.

Measuring Performance: Performance cannot always be effectively monitored and assessed by reviewing systems and carrying out planned audits. Performance is best assessed by the direct observation of people's behaviour by independent and random audits.

Communication: Upwards reporting of non-compliances is often filtered. This prevents the full WAH picture from being known by senior management, who then have a more optimistic view on the safety culture than the actual reality.

The most powerful forecaster of unsafe behaviour is when people won't talk about unsafe behaviour – consider the reporting of incidents, near misses and ISM non-conformities. The absence of these reports certainly does not mean that incidents are not happening.

Tribal Loyalties: Where do people's loyalties lie? Possibly the strongest influence on a person's behaviour is the behaviour of their work group and peers. This determines what is "normal". It is human nature to adapt behaviour in order to fit in with the work group even if it is known what goes on is fundamentally wrong. This influencing work group consists of people who are generally the same status, includes their immediate managers, but, very importantly, excludes senior management.

The work groups have loyalties primarily to their own "tribe" and resist any intervention from senior management. They state "this how we do things around here", but in the negative sense of the term. It is easy to see how this could apply to a shipping company – senior management versus crew with superintendents somewhere between the two.

The Tone at the Middle: People don't just make up their own sense of a rule, they watch for signals from those around them to see if it really does apply to them. So, if the formal

rule or written procedure says one thing, but their colleagues or line manager say another, then the local version will win more often than not.

The top-down efforts on creating and maintaining an effective safety culture remain vitally important, where senior management must be unequivocal and unambiguous in the message. But there must also now be a realisation that the "tone in the middle" is a significant influence in people's behaviour.

WHERE NOW?

- ▲ Strong leadership is essential with an unequivocal and unambiguous position on safety
- ▲ There needs to be the right share of accountability at each level within the company, ashore and on board, with the appropriate amount of oversight
- ▲ Strong relationships and trust amongst ship, shore and senior management personnel
- ▲ Safety management systems must be sensible and workable. The crew must have input into the process
- ▲ A stable and secure workforce could help promote belonging and loyalty
- ▲ Crews need to have the ability to identify hazards and assess risks – ensure training provisions recognise this
- ▲ The decision makers ashore and senior management must know what actually happens on board the vessels – tackle the 'disconnect' between "work as imagined" and "what actually happens"
- ▲ Rethink the auditing and performance measurement systems to better assess the reality of "what actually happens"

FIND OUT MORE

For further information contact our Loss Prevention Team at loss.prevention@nepia.com or visit www.nepia.com/loss-prevention

SCORA

SAFETY CULTURE ORGANISATIONAL ASSESSMENT

A tool to provide Members with an insight into their organisation's capacity for safety.

Organisational safety capacity is the ability of the company, both ashore and at sea, to employ, evaluate and enhance safe work processes, good safety practices and to develop safe behaviours.

North, in conjunction with Green-Jakobsen and North's Loss Prevention Working Group, is developing the **Safety Culture ORganisational Assessment** tool. This consists of a survey aimed at senior officers on board, shore based managers who have a direct input into vessel safety and the departments directly supporting the vessel operations such as technical, marine and HSEQ, operations, crewing and commercial.

A report is then produced that provides an overview of the organisational safety capacity in a number of key areas, namely:

- ▲ Safety leadership
- ▲ Health and well-being
- ▲ Risk management

By Simon MacLeod
Deputy Director
(Loss Prevention)



- ▲ Learning and development
- ▲ Reporting culture

A score is awarded for each key area, along with a recommendation on how to maintain or improve performance.

The report can then promote discussions and stimulate ideas for safety improvements. By identifying and prioritising improvements, companies can focus their efforts effectively. Completing the survey periodically provides an indicator of progress and the effectiveness of implemented improvements over time.

FIND OUT MORE

SCORA is due to be launched in **March 2019** and will be free for Members.

Members wishing to register interest in using SCORA should contact Simon.MacLeod@nepia.com

SPREADING CULTURE

Enclosed spaces continue to kill.

By David Patterson
Loss Prevention Executive

It is concerning that despite the high-profile campaigns to tackle enclosed spaces and dangerous atmospheres, fatal incidents keep happening.

The circumstances surrounding these incidents vary and the reasons behind them are undoubtedly complex. It may be because the space was not considered to be dangerous or that the dangers were known but entry still went ahead.

Such incidents can be prevented by a competent and motivated crew supported by sensible safety management systems existing in a mature safety culture. But what about those who visit the vessel and do not share the same values?

Shore-based workers can fall victim to the dangers of enclosed spaces on board a vessel. It is therefore vital that the crew lead by example and not relax their standards to those of visiting third parties.

SPREADING SAFETY CULTURE

Visitors to the vessel should be supervised at all times and be prevented from accessing areas where a dangerous atmosphere might have developed. Stevedores and any other shore workers should not be permitted to enter cargo



Stevedore inspecting containers

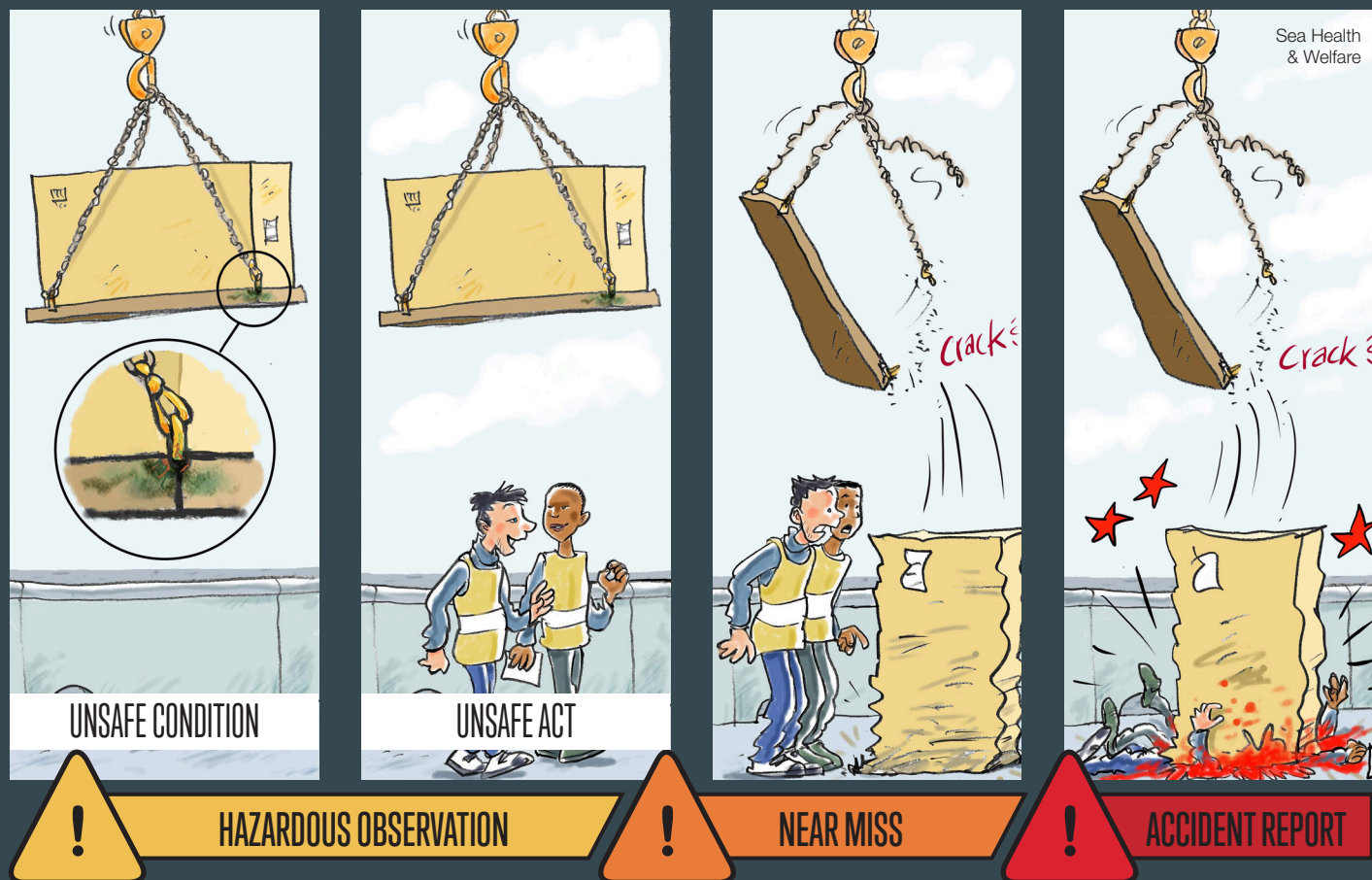
holds without express permission from the officer in charge. Observant and vigilant deck rounds by crew will help identify any unsafe practices and prevent persons accessing unauthorised areas.

Visitors to the vessel should be in no doubt that unsafe working will not be tolerated. Providing safety instruction to visitors upon boarding sets the tone and shows them the expectations of the ship towards operational safety.

When working with surveyors or other contractors who require entry into a space with a potentially dangerous atmosphere, make sure all parties are involved and engaged in the toolbox talk.

GET THE MOST OUT OF A CLOSE SHAVE

By John Southam
Loss Prevention Executive



There are a number of different systems that allow crew to report safety incidents and issues. Different terms are used and the lack of clear definitions can confuse. But whichever system is used, it is important that it is used to its full effect.

Two of the more common terms are 'near miss' and 'hazardous observation'. Let us look at what these actually mean.

NEAR MISS

The UK Health and Safety Executive (HSE) defines a near miss as "an event not causing harm, but has the potential to cause injury or ill health". In other words an unsafe or dangerous event that actually happened, that could have caused damage or harm to the crew but on this occasion did not.

An example:

During loading stores using the stores crane, a damaged sling is used and it parts under load. The load drops from height onto the main deck but fortunately no one was standing under it. The stores palette was light so there was no damage to the ship's structure.

HAZARDOUS OBSERVATION

Sometimes also known as 'hazard identification', this is where an unsafe act or an unsafe condition is observed that may have the potential to cause harm.

Using the same situation as above:

The crew are preparing to load stores and one of the AB's checks the lifting sling prior to use. He notices it was not put away properly after its last use and has subsequently been damaged. He notes that if used, there is the potential it may break.

Danish organisation Sea Health & Welfare has produced a series of illustrations that can be found at <http://uk.nearmiss.dk/knowledge/what-is-what/>. The above is a great example of what is a hazardous observation (unsafe condition or unsafe act), a near miss and an actual accident.

SIMPLE AND EFFECTIVE REPORTING

Using a simple format, all crew can easily report a hazard and also give suggestions for improvement. For example:

CREW HAZARDOUS OBSERVATION REPORT	
HAZARD:	Stores sling found on the deck instead of in the rigging loft, it was damaged
ACTION TAKEN:	Removed the sling from the rigging loft and told chief mate so the certificate could be removed from the register
SUGGESTION FOR IMPROVEMENT:	Raise the importance of returning rigging to the rigging loft after use at next safety meeting

QUALITY OVER QUANTITY

It is important that safety management systems clearly state what is required by the crew when it comes to reporting hazards or incidents.

Some companies require their vessels' crews to submit a minimum number of near misses per month. This could promote the wrong behaviour and it has been reported that crews are actually submitting simple hazard observations or trivial matters to meet an arbitrary quota.

It is better to concern ourselves with the quality of submissions of both near-misses and hazardous observations. Instead of a KPI for quantity, set a KPI on a quality based metric, such as the closure of reported hazards.

A strong safety culture requires all levels in the organisation – both ship and ashore - to be actively involved in safety. Therefore a system that requires input from all levels, such as that outlined above, will assist in building a stronger culture.

FIND OUT MORE

For further information contact our Loss Prevention Team at loss.prevention@nepia.com or visit www.nepia.com/loss-prevention

SAFETY CULTURE SPECIAL MEASURING REAL SAFETY PERFORMANCE

Can a vessel's safety culture be assessed by LTIF and whether or not crew wear PPE?

When we ask shipowners and operators the question: "How is your safety culture?" a large majority responded along the lines of "Our safety culture is above average – crew use PPE and our LTIF is OK!"

Can an assessment of 'above average' be justified from only these two parameters? Probably not, as they don't adequately explain the truth about what is actually happening on board the vessels.

Safety performance is often evaluated from the outside, usually in the form of audits and inspections. And of course we should always also learn from incidents. These are OK, but cannot stand alone. Real safety performance measurement has to be done by those doing the job – potentially supported by observers. In other words, we have to look at the safety 'lifestyle' on board if we are to measure how safe we are.

TALKING WITH SEAFARERS PROVIDES VALUABLE KNOWLEDGE

Over the years Green-Jakobsen has carried out a number of 'safety maturity assessments', in the course of which over 1,800 seafarers were interviewed as well as a large number of office staff.

Asking the right questions allows an insight into how safe people feel at work and how they perceive safety performance. Do they have a proper and useful dialogue about what and how they operate – before, during and after? Is the atmosphere on board beneficial for the well-being and job satisfaction for the crew? Do the leaders give clear direction and instruction? Is the work environment taken into consideration when tasks are planned and executed?

The answers to all these questions - and more - give a more precise indication of the safety on board. Giving the seafarers a chance to discuss, collaborate and reflect to a much higher degree allows for them to be supported in addressing the factors that are important for the safety lifestyle on board.

After all, wouldn't it be much better if we learn before an incident happens?

FIND OUT MORE

Read more about Green Jakobsen's work on measuring real safety performance at www.safety-delta.com

By Erik Green
Managing Director of Green-Jakobsen

WHO HAS TO PRODUCE THE EVIDENCE IN A CARGO CLAIM?



In December 2018, the Supreme Court issued a judgment concerning the burden of proof in cargo claims.

This case was about the carriage of bagged coffee in unventilated containers from South America to Northern Europe. During transit the cargo suffered condensation damage resulting from cargo sweat. The containers were prepared and stuffed by stevedores contracted by the carrier.

The Supreme Court dealt with a narrow point arising under the Hague Rules: who bears the burden of proof in the context of a cargo claim not arising from unseaworthiness? The Supreme Court has clarified that, for all practical purposes, the common law liability of a carrier, unless modified by contract or subject to a cargo convention like the Hague Rules, is to take reasonable care of the goods.

The position under the Hague Rules was dealt with in two stages by the Supreme Court.

- Article III, rule 2 of the Hague Rules deals with the obligations to "properly and carefully" transport goods. The Supreme Court decided that where cargo is shipped in apparent good order and condition, but is discharged damaged, the carrier must show that the damage occurred without its fault in the various respects covered by Article III, rule 2.
- Article IV, rule 2 of the Hague Rules sets out a list of defences to a claim for breach of Article III, rule 2. When invoking most of those defences, the carrier has the legal burden of disproving any negligence on its part. In relation to the "inherent vice" defence at Article IV, rule 2(m) in particular, the carrier must show either it took reasonable care of the cargo but the damage occurred anyway, or that whatever reasonable steps might have been taken to protect the cargo from damage would have failed in the face of its inherent propensities.

Since the trial judge had not made findings on some key issues relating to how the containers were prepared, the carrier had failed to discharge its burden of proof and the cargo claims succeeded.

It is welcome to have clarity on this important issue. The full extent of any impact from the judgment will only be known after a period of time has passed and no doubt the decision will be subject to detailed analysis in subsequent cases.

A few points can be made about the limits of this decision.

- Nature of carrier's obligation under Article III, rule 2:** the Court of Appeal's judgment in this case reviewed the authorities on the nature of the carrier's obligation under Article III, rule 2. The Court of Appeal stated it is well-established that the obligation to care for and carry the goods "properly" under Article III, rule 2 means "in accordance with a sound system". The law does not require the carrier to employ a system which is guaranteed to avoid damage nor is there an obligation to ensure goods arrive in an undamaged condition at their destination. The carrier is

to adopt a system which is sound in light of all the knowledge which a carrier has or ought to have about the nature of the goods. It does not mean a system which is suitable for all the weaknesses of a particular cargo. One indicator of a sound system is that it is in accordance with general industry practice. Nothing in the Supreme Court's judgment changes that summary of the law.

- Standard of proof:** Where the carrier bears the burden of proof, it will be required to demonstrate those facts required to discharge its burden on the balance of probabilities (i.e. whether something was more likely than not to have occurred). *Volcafe v. CSAV* is not a case about the weight a judge or arbitrator might attach to the available evidence.
- Evidential Burden:** Cargo interests remain under an evidential burden to show that (a) cargo was loaded in apparent good order and condition and (b) that it was discharged damaged.
- Seaworthiness:** Nothing in the *Volcafe v. CSAV* judgment impacts on cases involving an allegation that there was a failure to exercise due diligence to make the ship seaworthy at the commencement of a voyage in breach of Article III, rule 1. Cargo interests retain the burden of proving causative unseaworthiness.
- Loading, handling, stowage and discharge:** This decision does not cast doubt on the analysis in *The Jordan II* that The Hague and Hague-Visby Rules do not require the carrier to perform loading, handling, stowage or discharge operations. It is only insofar as the carrier agrees to carry out any of the functions mentioned in Article III, rule 2, that he agrees to perform them "properly and carefully" / with "reasonable care".
- Article IV defences:** *The Volcafe v. CSAV* judgment requires the carrier to disprove negligence in order to rely on many of the Article IV defences. However evidence of negligence on the part of the carrier will not defeat the nautical fault exception (Article IV, rule 2(a)) or, as per the decision of the High Court in *The Lady M*, the fire defence (Article IV, rule 2(b)).

The case serves to highlight the importance of creating accurate records throughout the period cargo is in the custody of carriers and of preserving evidence in relation to any potential cargo claim.

FIND OUT MORE

Practical guidance can be found in the Club's publication on the collection of evidence and in guides on particular types of cargo claims, which are available on the Members' Area of the website: www.nepia.com

By David Richards
Deputy Director (Cargo)

LIGHTING FIRES



Forgetting to switch off the lights in cargo holds can damage cargo but in more extreme cases, it can lead to fire.

The New Zealand Transport Accident Investigation Commission (NZ TAIC) has recently published the report of its investigation into a cargo hold fire.

The geared multi-purpose container vessel KOKOPO CHIEF loaded packaged timber under deck before closing the hatch covers and loading containers on top. Hours later, the fire detection system alerted the crew of a fire in No.4 hold. The vessel's fixed carbon dioxide (CO2) fire-extinguishing system was activated and the local fire service responded and worked with the crew to monitor the situation.

The investigators found that the fire was caused by heat radiating from a cargo hold light that set fire to packs of timber stowed close to the lamp. The cargo hold lights had not been switched off upon completion of loading.

The report concludes that the response to the fire was well co-ordinated, but identified the following safety issues:

- A The operator's safety management system had not fully mitigated the risk of fire caused by cargo hold lighting, in spite of an earlier incident involving similar circumstances
- A NZ Fire and Emergency training standards did not fully cover the special considerations for responding to shipboard fires. Therefore ships' crews must never assume that shore emergency response teams know everything - they need the crew's vessel-specific knowledge.



Credit NZ TAIC

FIND OUT MORE

The NZ TAIC report can be read here: <https://taic.org.nz/inquiry/mo-2017-205>



By Alvin Forster
Deputy Director (Loss Prevention)

CUSTOMS TARGETING LNG SHORTAGES IN INDIA



By Michelle Foster
Senior Executive (Claims)

Customs fines imposed on LNG carriers for cargo shortages upon discharge in Gujarat.

These fines take the form of a summons issued by Indian customs authorities. They allege a cargo shortage when a vessel does not discharge the entire quantity of LNG cargo detailed on the bill of lading. The authorities view this "shortage" as a means to reduce the amount in customs duty that would otherwise have been applicable for the full bill of lading quantity.

Furthermore, allegations are being made by the same authorities that LNG vessels calling at ports in Gujarat are forcing cargo for propulsion in order to avoid the expense of burning bunkers during the sea passage.

Responding to and defending these allegations requires considerable time and effort by all parties involved.

In accordance with Section 115 of the Indian Customs Act 1962, local agents must explain why the full bill of lading quantity has not been discharged. This includes providing documentation in support of the natural boil-off of the cargo validly used for propulsion during the voyage. These notifications date back to inbound LNG voyages from 2012, therefore potentially several hundred summonses could be issued.

The basis of these summonses is questionable. It is an established fact that the LNG quantity discharged is almost always less than that at completion of loading due to boil-off and heel requirements. North, through agents, local correspondents and lawyers have provided the Indian customs authorities with explanations on how LNG Carriers operate. We continue to wait to hear whether this explanation has been accepted.

For LNG carriers equipped with re-liquefaction plants there may still be an issue regarding the retention of heel should charterers require the tanks to be cool for the arrival at the next load port.

There have been suggestions made by the Indian authorities that, regardless of the outcome of these hearings, a system could be introduced similar to current practices in Argentina and Turkey. This system provides that a separate set of bill of lading will be produced for the agreed heel, boil-off gas used during the voyage and the quantity discharged ashore; effectively splitting the original bill of lading quantity into three sets.

Whilst North has not been made aware of any problems with this system so far, there are obviously concerns about the mechanisms of its operation. For example, the cargo quantity discharged ashore has to be carefully determined so that the set of bills of lading incorporating the discharged quantity is correctly issued. Similarly, there may be difficulties when determining the quantity of boil-off during the loaded voyage. Finally, there are the usual difficulties associated with collecting all copies of the originally issued bills of lading for cancellation in exchange for issuing three split sets as described above. Care must be taken when using the three bill of lading system.

Given the number of LNG carriers across all International Group P&I Clubs affected by this issue, we are working together to ensure a consistent approach.

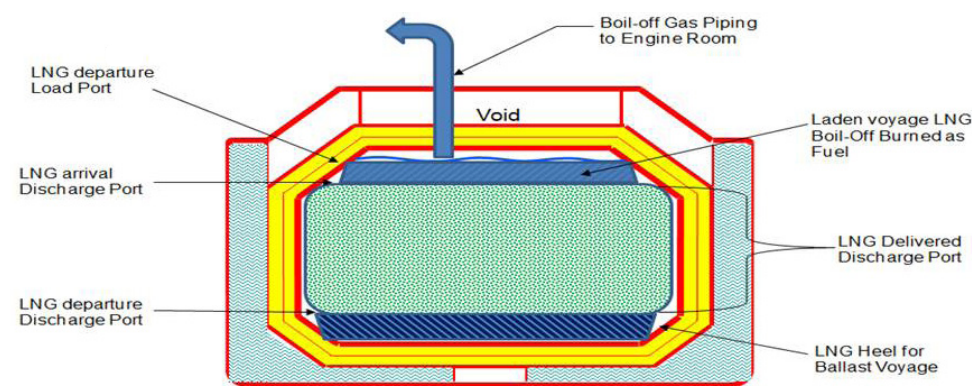
FIND OUT MORE

North has a designated LNG team that includes mariners and maritime lawyers experienced in LNG. We are here to help our Members on all LNG related matters.

For more information contact
Allistair Ridgley - Senior Executive (Claims)
allistair.ridgley@nepia.com



LNG LOAD/BOIL-OFF/ DISCHARGE



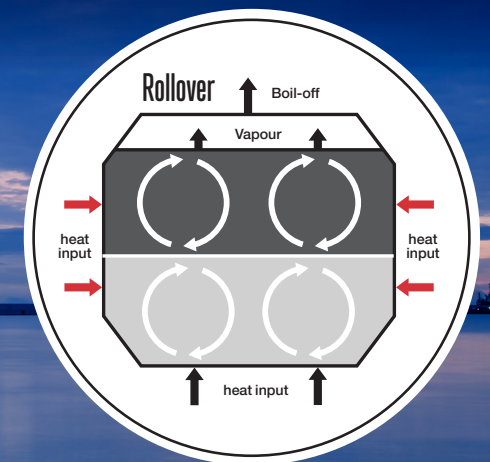
Source: Marangas

ROLLOVER RISKS OF LNG



By Rod MacLennan
Loss Prevention Executive

The phenomenon of rollover is a long-standing risk associated with liquid natural gas (LNG). The consequences can be severe.



Although more associated with shore-based storage, LNG rollover is a potentially dangerous issue for sea-based storage units, both as a cargo or as a marine fuel.

To date, rollover on LNG vessels is rare. But the risk may change as trading and chartering patterns shift. It is important we understand not only what rollover is, but also how to detect it and what can be done to mitigate the risks.

WHAT IS ROLLOVER?

Fundamentally, a rollover can only take place if there are two separate layers – this is known as stratification. For stratification to occur, two elements must be in place:

1. There must be a retained volume of LNG (or heel) within the tank; and
2. There must be a difference in the densities of the LNG being loaded and the retained LNG in the tank.

Stratification is more likely to occur if the density of the loaded LNG is greater than the density of the retained heel. The filling line on an LNG vessel is usually designed with the outflow at the bottom of the tank. Therefore, heavier LNG will remain at the bottom and the lighter heel will sit on top.

This has the effect of creating two separate and distinct layers within the tank space.

Over time heat will be absorbed into the both layers. The upper layer will evaporate (or "boil off") as expected at a normal rate. As the surface evaporates there will be an increase in the surface density due to cooling. The surface liquid will then sink and a convection cell will be created within this layer. Subsequently, the rate of boil-off will reduce noticeably – as much as 10%.

The lower layer will also gain heat and therefore become warmer. But as it is subject to a static pressure exerted by the upper layer, it can't physically evaporate. It essentially becomes superheated, existing in a liquid state when at a temperature above its natural boiling point. Losing the cooling effect usually provided by boil-off at the surface, the lower layer will continue to warm up. As a result its density decreases.

As the densities of the two layers equalise, the static pressure exerted by the top layer is overcome. The lower layer rises through the top layer towards the surface. The LNG loses its superheat and boils rapidly, producing a large volume of vapour.

PREVENTING ROLLOVER

So what can a vessel do to prevent this from happening?

Primarily, prevent loading heavier LNG under a lighter heel. Society of International Gas Tanker and Terminal Operators (SIGTTO) has produced guidance for the prevention of rollovers in LNG ships. When loading higher density LNG cargoes with a large volume of lower density heel whilst alongside a terminal, they suggest adopting the following procedure:

1. Consolidate heel into one tank
2. Partially load a second tank to a level such that there is room to transfer into the tank the entire heel
3. Close manifold liquid valves but keep vapour manifold open
4. Transfer heel into partially filled tank as quickly as vapour pressure allows
5. Do not load any further LNG into the tank containing mix
6. Complete loading other tanks in normal way

It is important to note that this operation should only be carried out in close cooperation with shore facility. Large volumes of vapour could be generated and it must be carefully managed.

There are occasions where either the density of the LNG being delivered is not known or has changed from the original analysis (e.g. weathering/aging or transhipped). So what can be done if it is found that heavier LNG has been loaded under a large volume of retained heel and the risk of a rollover is assessed to be high?

SIGTTO advises that the safest and surest method to prevent a rollover in this situation is to discharge all LNG as soon as possible into a shore receiving tank with appropriate mixing arrangements. This might be an

effective solution but it can have huge commercial and operational implications.

SPOTTING THE SIGNS

The ability to detect stratification allows better management of a developing situation. Two very simple signs that may indicate that stratification has occurred are:

1. A reduction in the normal boil-off from a tank
2. Increased temperature readings in the lower levels of a tank while the upper readings are largely constant

HIGH ROLLOVER RISK?

If the risk of rollover is high, then it is important to act.

Steps to mitigate the risk may include:

- A Increasing gas flow to the engine from the affected tank - the increased consumption should result in reduced tank pressure and create a buffer in case of rapid boil-off
- A Using a spray pump in an attempt to "mix" the layers internally within the tank

CHANGING TIMES

Historically, rollovers on seagoing vessels have been very rare events. But as the nature of the LNG market changes, we may see vessels being asked to retain larger volumes of heel or load multiple grades from multiple ports or load "weathered" LNG.

All these scenarios could result in heavier LNG being loaded under a lighter heel which ultimately could lead to a rollover.

FIND OUT MORE

Further details can be sought from North's dedicated LNG team, whose experience includes Master Mariners, commercial operators, LNG project management, technical superintendency and technical operations.

DOUBLE TROUBLE FOR OWNERS

Failing to commence the approach voyage even without an ETA can allow for damages and the ability to cancel the charter.

A recent Court of Appeal decision has confirmed that an owner has an absolute obligation to commence the approach voyage by the required time even where there is no expected time of arrival or readiness to load in the charterparty. A failure to do so will ordinarily be a breach of the voyage charterparty allowing for damages and the ability to cancel the charter.

“PACIFIC VOYAGER”: THE FACTS

The voyage charterparty required the vessel to perform the charter service with utmost despatch and to proceed to the load port. Whilst the charterparty did not contain an Expected Ready to Load (ERL) date or Estimated Time of Arrival (ETA), it did contain details of the anticipated timetable for completion of the voyage under the previous charter. This timetable included the expected date of discharge of the cargo under the previous charter at Antifer on the basis “IAGW / WP” (interpreted by the court as ‘on the basis if all goes well/weather permitting’).

On her way to the discharge port under the previous charter, the vessel came into contact with a submerged object in the Suez Canal causing significant damage requiring lengthy repairs. The charterers cancelled in accordance with the cancelling clause, but also claimed damages due to owners failing to commence the approach voyage to the load port.

THE DECISION

Under English law, where there is an ERL and/or ETA date in the voyage charterparty and it contains a clause requiring that the vessel proceeds with utmost despatch/all convenient speed, there is an absolute obligation on the owner to start the approach voyage by a date so as to reasonably ensure the vessel arrives by the ERL/ETA date.

This case does not change that. However, it is now apparent that even where there is no ERL/ETA date, there remains an absolute obligation on the owner to commence the approach voyage. A failure to do so will be a breach allowing for damages. Where there is no express date given in the charterparty then this obligation will either start, depending on the facts, forthwith, or within a reasonable period of the date of the charter.

WHO WILL BEAR THE RISK OF DELAYS

This decision allocates the risks of delay prior to the approached voyage to the owner and will be welcomed by charterers. But given that the decision may be appealed, it is still in charterers’ interests to include ERL/ETA dates in the charterparty.

An owner will want to resist the inclusion of an ERL/ETA or any other dates that could be deemed equivalent. However, even in the absence of such information there will still be an obligation to commence the approach voyage ‘forthwith’ or ‘within a reasonable period’ of the

By Helen Barden
Professional Support Lawyer (FD&D)



date of the charter, assuming this decision is not successfully appealed.

While an owner may wish to weaken any despatch obligation to proceed to the load port, the incident which caused the delay to the vessel in the Pacific Voyager occurred before the approach voyage. Therefore, the owner was not protected by an excepted perils clause, which would have required an amendment to cover delays occurring prior to the approach voyage.

Finally, it was made clear that if an owner wants to make the beginning of the chartered service contingent on the conclusion of the previous voyage then clear words will be required. “IAGW” and “WP” will not be sufficient. The latest Gencon revision uses the following wording in clause 1:

The vessel shall, as soon as her prior commitments have been completed, proceed to the loading port(s)...and there load a full and complete cargo....

However, this wording may only protect owners in relation to prior commitments existing at the time the charter is made and is yet to be tested in the courts.

FIND OUT MORE

If you wish to discuss any of the issues arising out of this case then please get in touch with your usual FD&D contact.

INTERPRETING ‘EN ROUTE’

Differences in interpreting ‘en route’ in MARPOL Annex II can cause confusion on operational discharges as seen recently in the Netherlands and Germany.

Under MARPOL Annex II, noxious liquid substances may be discharged if, amongst other things and subject to the approved categorisation of the liquid in question, the vessel is proceeding en route at a speed of at least 7 knots in the case of self-propelled vessels (at least 4 knots in the case of ships which are not self-propelled).

En route is defined in the current form of Annex II, Reg 1.6 as:

“the ship is under way at sea and on course or courses, including deviation from the shortest direct route, which as far as practicable for navigational purposes, will cause any discharge to be spread over as great an area of the sea as is reasonable and practicable.”

So, how is this viewed in different jurisdictions?

THE DUTCH VIEW

In the Netherlands, a case concerned vessels that had either deviated in their course of direct sailing or sailed directly to and from the same port for the purposes of discharging tank washings in perceived compliance

with MARPOL Annex II. These operational discharges took place in the North Sea but as the vessels were Dutch flagged, matters were addressed within that jurisdiction.

The Dutch Public Prosecutor took the view that the shipowners were criminally liable as they were not “en route” when discharging noxious substances. The case went to the Dutch Supreme Court who found that “en route” means that the ship shall be underway and sailing at or above the speed mentioned in the regulations. Therefore a ship may sail from a port, or deviate, for the sole purpose discharging noxious substances, provided the other requirements of MARPOL have been met.

The court further reinforced the point by concluding that the intention of the definition of “en route” in MARPOL is to “spread the discharge over as large an area of the sea as practicable” which would not necessarily be met should the ship be denied the option to deviate, nor would it allow for compliance with the 12 mile off and deep sea route requirements.

THE GERMAN INTERPRETATION

There remains ambiguity in Germany. Recent advice given to North by German lawyers was that the local courts are led by the general principle that the goal of MARPOL is to protect the marine environment so far as possible. Although MARPOL Annex II is implemented into German law, their domestic laws tend to take precedence where they differ from the convention. For example, the German *See-Umweltverhaltensverordnung* regulation provides that a vessel is not en route if it undertakes a voyage for the sole purpose of discharging noxious substances. As a result, a vessel sailing to or from a German port or deviating on passage to a German port for the sole purpose of discharging washings is not en route and the vessel’s Master and Chief Engineer will be liable to prosecution.

FIND OUT MORE

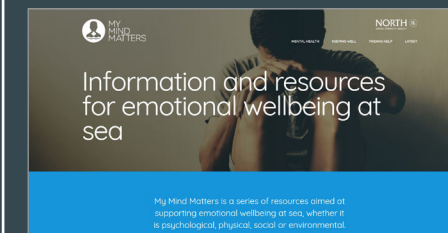
Should you find yourself unsure how to proceed in similar circumstances, speak to your usual contacts at North.

By Garath Archer
Claims Executive (P&I)



NORTH IN THE NEWS

You may have missed...



NORTH P&I CLUB PARTNERS WITH ISWAN TO LAUNCH NEW CONFIDENTIAL HELPLINE FOR CREW, NOVEMBER 2018

North launches Mind Matters – a campaign to raise awareness of mental health and wellbeing among seafarers – and confidential helpline for crew, Mind Call.

<http://bit.ly/MindCall>

PREPARING FOR 2020: Q&A WITH SHIPPING INDUSTRY EXPERTS, NOVEMBER 2018

Alvin Forster, Deputy Director (Loss Prevention), discusses the uncertainty surrounding 2020 compliance and urges careful and early planning.

<http://bit.ly/PreparingFor2020>



NORTH P&I CLUB’S ALAN LO RETIRES AFTER 23 YEARS WITH THE CLUB, DECEMBER 2018

Hong Kong Director, Alan Lo, retired from North at the end of November.

<http://bit.ly/AlanLo>

NORTH P&I WARNS OWNERS OF CONTAMINATED BUNKER RISKS, DECEMBER 2018

Mark Church, Director (FD&D), offers advice on the risks posed by contaminated bunkers.

<http://bit.ly/BunkerRisks>



READYING CHARTER PARTIES FOR 2020 COMPLIANCE, DECEMBER 2018

Tiejha Smyth, Deputy Director (FD&D), discusses how IMO’s sulphur cap is affecting charterparties.

<http://bit.ly/2020Charterparties>

SANCTIONS TRAPPING FIRMS ‘BETWEEN A ROCK AND A HARD PLACE’, DECEMBER 2018

Mark Church, Director (FD&D), explains the difficulties arising for shipping firms due to frequent changes and US and EU divergence in the sanctions landscape.

<http://bit.ly/SanctionsDifficulties>



RESIDENTIAL TRAINING COURSE 2019

Registration for North’s industry-renowned annual residential training course in P&I insurance is now open.

Running for over 25 years, this unique course offers specialist training in all aspects of P&I insurance and this year the course will run in the UK from 7-14 June 2019.

More information on course topics and to download a brochure, visit www.nepia.com/RTC or contact rod.maclennan@nepia.com



By Simon MacLeod
Deputy Director (Loss Prevention)

NORTH LAUNCHES A NEW SERIES OF TRAINING PACKS

North has launched a new series of training packs aimed at improving the delivery of onboard training. Each training session will focus on a single topic which has been recognised as a contributing factor in incidents, accidents or near misses.

The new training packs include guides for those delivering the onboard training and resources (including videos and practical exercises) for the participants. Each structured training session should take 20 to 30 minutes to complete, ensuring that key points are covered and learned.

The first in the series focuses on the International Maritime Solid Bulk Cargo Code (IMSBC Code) supplementary test for bulk cargoes, otherwise known as the ‘can test’. The can test is a simple means of providing the crew with a first alert that a bulk cargo that is being loaded might be unsafe and liquefy.

FIND OUT MORE

The Can Test training pack will be available to download from www.nepia.com/insights/cantest



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