



# SIGNALS

EST. 1990 • SUMMER 2019 • ISSUE:116

## VESSEL ON MASTER'S ORDERS AND PILOT'S ADVICE

A common entry used in the bridge logbook when entering and leaving a port, but what does it mean?

### PILOT TRANSFERS BY HELICOPTER

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### UNSEAWORTHY JUDGMENT FOLLOWING ERRORS IN PASSAGE PLANNING

The UK Admiralty Court rejects a shipowner's claim for general average after concluding the vessel was unseaworthy due to an error in the passage plan.

### 2020: NEW FUELS ON THE HORIZON

Industry experts answer questions on 2020 new fuels: compatibility, stability, long term fuel storage, tank cleaning and dispersants.

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'Signals' is published by The North of England P&I Association Limited

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## HOW HAVE WE DONE?

Let us know what you think of the latest edition. Contact us at: [signals@nepia.com](mailto:signals@nepia.com)

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Photographs: Shutterstock

Thanks to: Chris Dyson of Exponent and Michael Banning of Innospec, MRL Assist and GSR Services GmbH

## INSIGHT ARTICLES AND BACK ISSUES

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# KEEPING UP WITH THE CHANGES

Changes in environmental legislation are keeping us all on our toes.



The beginning of 2020 will see the introduction of the reduced fuel sulphur cap and a ban on even carrying high sulphur fuel unless the vessel is fitted with a scrubber. We have been busy supporting our Members over the last year providing guidance and information on this subject and this edition of Signals tackles fuel tank and system cleaning.

This might at first sound like a rather mundane subject. But it is an important, challenging and potential high-risk task. For many, this will involve multiple tank entries and we are all too aware how many seafarers lose their lives in enclosed spaces.

Also, if the standard of cleaning isn't good enough, you run the risk of contaminating expensive compliant fuel subsequently bunkered, rendering it non-compliant and significantly de-valued. Do it right and do it safe.

At the end of 2020, a perhaps lesser-known requirement will hit vessels calling at EU ports. It requires them to have an Inventory of Hazardous Materials (IHM) by 31 December 2020. Our article warns that demand for services to assist in this process is expected to be high, so early planning is essential.

Moving up a few decks, we look at a recent court decision on the effectiveness of exclusion clauses for cargoes carried on deck as well as guidance on mitigating cargo damage claims, stressing the importance of early notification and seeking help.

Onto the wheelhouse and we have two articles that fall under the broad scope of bridge resource management. We look at the recent unseaworthy judgment following errors in passage planning which is essential reading for all deck officers. Incidents whilst the vessel is under pilotage are all-too-common and we consider the problem of relinquishing control to the pilot or failing to challenge an unsafe instruction.

Preventing crew illness continues to be a priority. In this edition, our Personal Injury team guide us on the unappealing subjects of flesh-eating diseases and poisonous fish – neither of which you would want to catch.

Finally, we make no apologies for repeating the importance of combatting fatigue. This edition comes with a poster which we hope will raise awareness on your vessel.



By Alvin Forster  
Deputy Director (Loss Prevention)



## SUPPORTING YOU AT SEA

For mental health and emotional wellbeing at sea call our confidential helpline: +44 191 235 3917 or visit: [www.mindcall.org](http://www.mindcall.org)



For more information and resources, please visit: [www.mymindmatters.club](http://www.mymindmatters.club)



## PRE-EMPLOYMENT MEDICALS

For further details regarding our PEME programmes please contact Lucy Dixon or Abbie Rudd. Email: [PEME@nepia.com](mailto:PEME@nepia.com)



## EAST / WEST US COAST PORTS

If you are disembarking crew for medical treatment, please contact First Call – Hudson Tactix on +1 856 342 7500 or email: [firstcall@hudsonstactix.com](mailto:firstcall@hudsonstactix.com)

## SOUTH COAST US PORTS

If you are disembarking crew for medical treatment, please contact First Call – Shuman Consulting Services on +1 281 486 5511 or email: [firstcall@scslp.com](mailto:firstcall@scslp.com)



## POST REPATRIATION MEDICAL SCHEME FOR FILIPINO SEAFARERS

For further details regarding our PRM programmes please contact Lucy Dixon or Abbie Rudd. Email: [PRM@nepia.com](mailto:PRM@nepia.com)



# BASKET CASE



Transferring people between vessels is a high risk operation. Despite being well regulated in the offshore industry, similar controls have not been commonplace in shipping.

To address this, new guidance has been issued by Oil Companies International Marine Forum (OCIMF) on transferring personnel by crane between vessels.

The guide outlines the risks involved in the transfer of personnel by crane and provides best practice on how to do it safely and using the right equipment.

## BRIDGING THE GAP

In the offshore industry, cranes used for personnel transfer are certified for “man riding”. However, a similar safety focus has not been evident in the shipping world, despite the risks and dangers being very similar. There has previously been no restriction preventing the transfer of several persons at a time on any available ship’s crane regardless of its design. There has also been a notable complacency with regard to the dangers involved in such operation by ships’ crews.

The new OCIMF guidelines are designed to bridge this safety gap.

## ALL THE GEAR IS THE RIGHT IDEA!

OCIMF provides several recommendations on crane requirements, some of which are:

- ⚠ The crane should be located on the parallel mid-body
- ⚠ The safe working load (SWL) should be reduced by 50% when carrying people
- ⚠ A wire safety factor of 10:1
- ⚠ The crane’s brakes should automatically activate when in neutral, or the emergency stop is activated or in the event of power failure
- ⚠ Brakes should have a manual override
- ⚠ The hook should be fitted with a positive locking safety latch
- ⚠ Cranes should have emergency means of recovery from any position

The guide lays out a series of important recommendations surrounding the design of the Personnel Transfer Baskets (PTB). These include:

- ⚠ The PTB should be fully certified and meet Flag State and classification society requirements
- ⚠ The SWL (or capacity) and empty weight are clearly marked
- ⚠ The PTB should be rigid, able to float and be self-righting

## CHECK, CHECK AND DOUBLE-CHECK!

OCIMF stresses the importance of a well-planned inspection programme that is incorporated into planned maintenance and safety management systems.

This includes the crew’s pre-use checks which should be conducted before every transfer operation. Contingency plans should be in place for personnel transfer; subject to the appropriate risk assessment, this includes the provision of any safety equipment that may be required in the event of an incident.

## KNOWLEDGE IS POWER

Guidance on crew training highlights the need for crewmembers with key roles and those being transferred to be sufficiently knowledgeable. A toolbox talk carried out prior to any transfer is extremely important so everyone understands the operation and knows their role.

## WE CAN ALL LEARN

The OCIMF guide is aimed at tanker operators, but this best practice advice can apply to any type of vessel that carries out transfers of personnel. All operators can learn to conduct such transfers in a safer and more efficient manner.

## FIND OUT MORE

The OCIMF guide ‘Transfer of Personnel by Crane between Vessels’ can be downloaded at: [bit.ly/2SWno5e](http://bit.ly/2SWno5e)

By John Southam  
Loss Prevention Executive



# UNSEAWORTHY JUDGMENT FOLLOWING ERRORS IN PASSAGE PLANNING



The UK Admiralty Court has recently rejected a shipowner’s claim for general average after concluding the vessel was unseaworthy due to an error in the passage plan.



Whilst departing from the Chinese port of Xiamen, the container vessel *CMA CGM Libra* grounded on rocks after departing from the marked fairway. General average (GA) was declared, but some of the cargo interests refused to contribute voluntarily.

They argued that errors within the ship’s passage plan had rendered the ship unseaworthy (i.e. there had been actionable fault for the purposes of Rule D of the York-Antwerp Rules which govern general average).

Cargo interests criticised the passage plans in a number of respects, but the critical error was a failure to record “all areas of danger” as per IMO Guidelines for Passage Planning. In particular, the passage plan did not reflect a recent Notice to Mariners advising of depths on the approaches to Xiamen which were less than charted.

## THE DECISION

The judge decided that a prudent owner, knowing of the defective passage plan, would have not allowed the vessel to depart Xiamen. The judge also decided that, since the unseaworthiness constituted crew negligence prior to the commencement of the voyage, this meant due diligence was not exercised by agents of the carrier. The judge rejected legal arguments that passage planning was not an aspect of seaworthiness.

Unseaworthiness has traditionally been understood as arising from a physical or systemic defect with the ship, its equipment or systems. Put another way, there must be an attribute of the ship itself which threatens damage to cargo rather than an error in how the ship is operated.

A ship might be unseaworthy if it is proved that damage resulted from the incompetence of its crew, but a one-off error in a navigational aspect of a voyage does not usually render a ship mean that a ship will be found to have been unseaworthy. The decision clearly sets out, however, that for a vessel to be seaworthy, a properly prepared passage plan is required at the commencement of the voyage.

## PRACTICAL PASSAGE PLANNING

The case has highlighted the importance of proper berth-to-berth passage planning. Remember that passage planning is much more than just putting courses on a chart or ECDIS.

Crews should always remember **A.P.E.M.** from the IMO guidance on voyage planning:

### Appraisal

Gather all relevant information for the intended passage.

Check that charts are up to date and all temporary and preliminary notices are read and noted as appropriate on the chart and in the passage plan. Navigation warnings are vital and important ones should also be noted in the plan, and removed when no longer applicable.

Items that are often forgotten in this section include stability considerations and ensuring the crew are well-rested and competent for the passage to be undertaken.

### Planning

Once armed with all the relevant information from the appraisal, a full and comprehensive plan must be made.

The plan must be clear and understood by all using it. Therefore mark on the charts all the vital information considered in the appraisal. Such items must include all no-go zones, emergency anchorages, points of no-return and safe speeds. For a vessel operating with ECDIS only, safety limits must be set up correctly.

### Execution

Once the entire bridge team have read and agreed the plan and the Master has endorsed it, it’s time to execute the plan.

Remember the plan isn’t set in stone – weather, unexpected traffic and new navigational hazards can raise the need for changes. Alterations to the plan should be made following a risk assessment and the changes agreed and logged. Record any additional mitigation measures needed, such as extra lookouts or lower than planned speed for restricted visibility.

### Monitoring

The vessel’s passage must be closely monitored throughout the voyage. This is even more critical when under pilotage as the risks are often greater due to the proximity of navigational hazards. Close monitoring of the course using a variety of methods will show when the vessel is approaching alterations, no-go zones or other navigational hazards.

## IN SUMMARY

The *CMA CGM Libra* judgment emphasises the importance of proper passage planning. Get it right by following the IMO guidelines and the A.P.E.M. method.

## FIND OUT MORE

For more information on the issues raised in this article, please get in touch with your usual contacts at North.

By David Richards  
Deputy Director (Cargo)

John Southam  
Loss Prevention Executive



# 2020: NEW FUELS ON THE HORIZON

The reduction of the global fuel sulphur cap to 0.50% on 1 January 2020 is fast approaching.

Many uncertainties remain despite being so close to the deadline. Some of the more pressing concerns are on the characteristics of the new compliant fuels and how vessels can prepare for its storage and use. To help bring clarity to some of these uncertainties, we spoke with two industry experts: Chris Dyson of Exponent and Michael Banning of Innospec.

**Q** What challenges do you see ahead with the new very low sulphur fuel oil (VLSFO) products?

**MB (Michael Banning)** Stability and compatibility are the chief concerns.

The stability of a fuel is its resistance to breakdown and precipitate asphaltenic sludge under normal storage and handling conditions. If fuel is comingled on board, then we need to consider compatibility which is the ability of two or more fuels to be comingled at a defined ratio without separation or precipitation of asphaltenic sludge.

VLSFO products are likely to be produced from different lower sulphur streams from the refinery process. Distillate products are often used to further reduce the sulphur content and they may originate from different regions which creates further problems. Therefore, characteristics may differ from bunker parcel to bunker parcel which may lead to incompatibility.

Long term use of certain distillates can lead to filter blockages, injector fouling and corrosion within the fuel system.

Given the fact that 2020 fuel supply is largely anticipated to be a mixture of both VLSFO products and MGO, it may become common place that both instability of asphaltenes and gum formation will be an issue.

**CD (Chris Dyson)** New VLSFO products are expected to present new challenges because distillates tend to destabilise residual fuels. It may be prudent to avoid mixing fuels whenever possible. If mixing is required then the degree of instability should be evaluated for different mixing ratios. However, it may not be possible to detect compatibility problems until significant deposits have formed.

It is possible that the low temperature performance of VLSFO products may change significantly with increase in paraffinic content. Standardised testing for low temperature performance is currently limited and it may take time to refine this process.

VLSFO products containing a higher proportion of distillates may tend towards wax deposition instead of asphaltene deposition. Wax deposition is controlled by different physical and chemical processes, so deposits may be seen in different areas of the fuel system and cause different problems.

**Q** Will long term storage of fuel be affected?

**CD** The storage of incompatible fuels in the long term can lead to deposit formation in the bottom of the storage tank.

**MB** The marine market may need to consider the shelf life of VLSFO products. The majority of components ending up in VLSFO will be highly reactive short chained cracked residuals. For example ethylene cracker residue has a shelf life of days so the components should be considered.

**Q** What are your thoughts on the use of stabilisers and treatment chemicals?

**MB** Dispersants and stabilisers are the most commonly used tank cleaning chemicals. Dispersants break up sludge clusters into a more manageable size.

Stabilisers work to keep asphaltenes in suspension and stable within the fuel. If a neat dispersant is used, it will break up sludge but used without a stabiliser it will shift sludge from one area in the system to another.

**CD** Stabilisers and chemical treatments may be useful to remedy instability or incompatibility in fuels if used before deposits have progressed to a problematic level.

However, it is critical that the additive is chemically matched with a suitable dosage or more problems may be created. This is of even greater importance because of the expected diversity of new VLSFO blends. Lab testing may be required before adding treatment chemicals to the fuel.

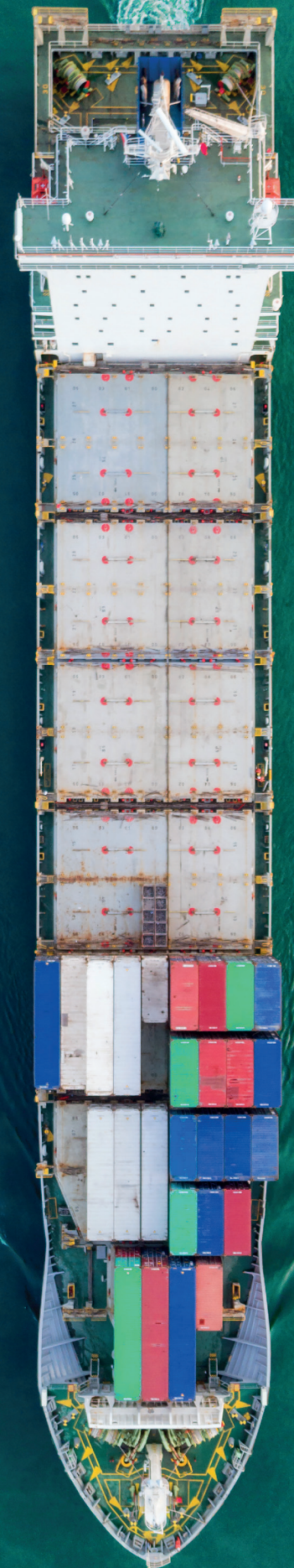
There are many additive suppliers in the industry. Each uses their own chemistry so it's important to understand the chemistry on offer and how it may affect your fuel system. It's important to speak to the additive provider to ensure the product is best suited to your fuel system.

**Q** What challenges do you see with tank cleaning?

**CD** Ships' tanks and fuel systems should be cleaned to a satisfactory standard prior to the loading and use of compliant fuel. This should prevent any rapid removal of pre-existing deposits, residues and sediments which might cause operational issues and avoid rendering the new fuel non-compliant.

Checking the cleanliness of a ship's fuel tank may require tank entry and inspection which brings its own risks.

To ensure compliance, analysis of samples at agreed points towards the engine inlet may be required.



**Q** How can we reliably test for stability and compatibility?

**CD** Current industry tests may not be suitable or sufficient for evaluating the stability and compatibility of new VLSFO products. The deposition of sludge is a very slow process and not easily replicated in the lab. Over the years, ISO 8217 limits have been developed to understand how the fuel test results may or may not reflect fuel performance in service.

With the new VLSFO products and different chemical composition it is unclear whether the tests will provide a useful indication of fuel performance. Will the existing specification limits be appropriate?

**MB** ISO 8217 recommends the hot filtration method which indicates stability of the fuel. But this doesn't provide the dispersion of the asphaltenes and is only really an indicator of the total sediment content.

Optical scanning (Turbiscan ASTM D7061-12) provides a reserve stability number which defines the ability of a fuel oil to maintain asphaltenes in suspension during prolonged storage time and fluctuations in temperature. This is not in the ISO specifications, but is useful to predict compatibility and stability problems.

Thank you to Chris Dyson and Michael Banning for sharing their views.

## FIND OUT MORE

For more information, visit the 2020 Vision Insights area on our website: [www.nepia.com/insights/2020-vision](http://www.nepia.com/insights/2020-vision) where you can also download our Preparing for the Big Switch guides.

By Mark Smith  
Loss Prevention Executive



# VESSEL ON MASTER'S ORDERS AND PILOT'S ADVICE



**“Vessel on Master's orders and Pilot's advice” – a common entry used in the bridge logbook when entering and leaving a port, but what does it mean?**



It's well known that in the vast majority of places around the world the presence of a pilot on the bridge does not relieve the Master or officer in charge of the watch from their duties or obligations for the safety of the ship. Yet there are still many cases where the Master appears to relinquish control to the pilot or fails to challenge a potentially unsafe instruction, sometimes resulting in an incident.

## FOLLOW OR NOT?

If the pilot informs the Master to conduct a manoeuvre that results in an incident, will that prevent the Master being responsible? Almost certainly not, because ship management and navigation in most cases remain the responsibility of the Master.

This is illustrated by lines 170 and 171 of the NYPE 46 Charterparty which reads:

*“...The owners to remain responsible for the navigation of the vessel...same as when trading for their own account...”*

In the un-safe berth case *The Stork*, one of the issues was whether the Master acted reasonably when following pilot's advice on anchoring despite the Master having issues with the instruction. The court noted that pilots possess intimate local knowledge and concluded, *“Of course, the Master cannot transfer his responsibility to the pilot, but a Master would be very imprudent if in a place of this sort he disregarded the advice of those with local knowledge unless he had very good reason for doing so.”*

This means that the Master – in consultation with the bridge team – should assess any instruction given by the pilot to make sure that if the pilot's instruction is carried out, the vessel will be safe.

In another case, *The Vine*, it was considered whether a terminal had a system to ensure the Master was informed of important features of the berth. The court decided that: *“The fact that the pilot may have such knowledge does not detract from the importance of the Master having such knowledge. For the Master is responsible for the safe berthing of his vessel even though he may be advised by the pilot...Of course, orders will be “advised” by the pilot who in reality will determine the appropriate orders but the master must be in a position to reject the pilot's advice if he considers it to be unsafe.”*

Another common misconception is that the pilot's suggestion constitutes an employment order which enables an owner to hold the charterer responsible or be indemnified. Mr Justice Staughton was clear in *The Erechthion* that whilst the orders of a harbour master to proceed to an anchorage were employment orders, the pilot's suggestion as to where the vessel should anchor was a matter of navigation so the ultimate responsibility lies with the Master. Although the charterer may pay for the pilot, this does not make the pilot the charterer's servant. Accordingly, this does not mean that the charterer will be responsible to the owner for the pilot's negligence (see *Fraser v Bee [1900] 17 T.L.R. 101*).

## THE CERTAINTY OF DISAGREEMENT

Disagreeing with a pilot is easier said than done. Commercial pressure often makes ignoring the pilot's instructions very difficult. Masters are only too aware of the commercial consequences of missing a schedule or creating delays. However, it is very important that this is not an overriding factor in the Master's decision.

Should the Master choose not to follow a pilot's instruction, and this results in a delay or extra expenditure, a dispute will most likely follow. But if the Master chooses to follow the instruction and it results in an incident, again a dispute will follow.

Inevitably, there is a high risk of a dispute regardless of what choice the Master makes. So how can a Master best equip themselves?

## SOLAS ON YOUR SIDE

SOLAS Chapter V regulation 34-1 states:

*“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.”*

Considering SOLAS chapter V is one of the best tools at a Master's disposal, they should ensure they remain in command and make a reasonable choice based on safety alone.

It is also imperative that the Master gathers relevant contemporaneous evidence to prove that the choice not to follow the pilot's instructions was reasonable. For example, this can include:

- ▲ Risk assessments
- ▲ Tidal data
- ▲ Charts
- ▲ Passage plans
- ▲ Navigation warnings
- ▲ Echo sounder records
- ▲ VDR data
- ▲ Statements
- ▲ Photographs
- ▲ Checklists
- ▲ Master pilot exchanges
- ▲ The bridge logbook entries

Courts in the most part will sympathise with a Master who has considered the safety of their crew and the vessel and acted reasonably, even when there is a delay or additional expenditure as a result.

Should the Master follow the pilot's instruction without thinking fully of the safety factors, and an incident occurs, then SOLAS Chapter V will work against the Master.

## FIND OUT MORE

Our loss prevention guide “the Mariner's role in Collecting Evidence” is available to download in the Members' Area of [www.nepia.com](http://www.nepia.com)

By John Southam, Loss Prevention Executive  
Dimitra Capas, Solicitor

# PILOT TRANSFERS BY HELICOPTER



An increasing number of ports around the world are now using helicopters to transfer the pilot to and from the vessel instead of the more traditional use of a pilot boat.



Whilst this means that pilots can now transfer in increasingly challenging weather conditions, it does introduce new risks and ships' crews should be aware of these.

## ASSESSING THE RISK

The ship's master should read and understand the latest copy of the *ICS Guide to Helicopter / Ship Operations*. Additionally, the port's guidelines and requirements should be sought and adhered to.

After consulting the above, the ship's crew should draw up a bespoke risk assessment to be used in conjunction with any existing SMS procedures for this type of operation. Generic “one size fits all” risk assessments should not be used, as each port and operation will have different and changeable risks.

Consider the below when carrying out your risk assessment:

### Weather

- ▲ Wind direction and speed: Helicopters will usually fly into the wind as this enables them to hover more effectively and maintain their stability. Therefore the Master might need to steer a steady speed and straight course into the wind. Monitor the wind direction before and during the operation and identify potential obstructions that may require the vessel to change course during this period

- ▲ Visibility: should be good and adhere to set limits

- ▲ Sea State: Rough seas obviously form an unfavourable motion for helicopter operations. Assess the maximum viable conditions and adhere to them

### Communications

The ship's master and helicopter pilot should agree on the most efficient form of communications and ensure there is no cross-talk on the channel. Where safe to do so, follow the commands of the helicopter pilot. Remember, when operating close to a vessel, helicopter noise can make communications difficult.

### Prepare the area on deck

All loose items should be lashed or removed from the area so as not to be affected by the helicopter's down draft. Any antenna in the vicinity that could cause issues should be lowered.

### Crew

Crew should be equipped with the appropriate PPE and be fully briefed in a toolbox talk. They must be fully aware of their responsibilities and the agreed communication methods during the operation. Again, be mindful that helicopter noise could affect radio communications between the crew.

### Emergency equipment

Charged hoses with a foam eductor should be rigged to surround the winch site. Fully dressed fire crews should be ready and in a safe position. Additional portable fire extinguishers should be readily available.

Rescue equipment, such as a crowbar, axe and wire cutters should be readily available to the deck crew. It is recommended that the rescue boat is readied for immediate use and the first aid team is on standby.

### Signals

Consider displaying lights indicating that the vessel is restricted in its ability to manoeuvre.

## GROUNDING THE WINCH WIRE

When the winch wire has been lowered to the deck, it is extremely important that the winch wire has been properly grounded to prevent discharge of static electricity. This is usually achieved by allowing the earthing strap to make contact with the vessel's deck. The crew must not touch the winch wire before it is grounded as it can cause serious injury.

## IMPACT ON P&I COVER

Helicopter operations, such as pilot transfers, are not excluded from P&I cover. It is very important, however, that the Master or agent does not sign or agree to any additional terms and conditions related to the helicopter operations.

If the Master or agent is requested to sign or agree to such a document, then the owner should send the document to North for review before signing to ensure it does not impact on P&I cover.

## FIND OUT MORE

If you have any questions on the issues raised in this article, please get in touch with your usual contacts at North.

By John Southam  
Loss Prevention Executive

Adrian Durkin  
Director (Claims)



# SHIP SCRAPPING: MATERIAL MATTERS



Regulations concerning the scrapping of vessels have taken effect in a number of countries.

In Signals 113, our article “Scrapheap Challenge” outlined the new European Union (EU) regulations that require vessels flying the flag of an EU state can only be scrapped in approved ship-recycling facilities.

Outside the EU, some countries have already ratified the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships, which will come into force 24 months after it is fully ratified.

## WHAT'S REQUIRED?

Both regulations require ships to be in possession of an Inventory of Hazardous Material (IHM) which is approved by their Flag State.

The inventory is a list of hazardous materials that form part of the ship's structure and equipment, operationally generated hazardous wastes and stores on board.

The below table, provided by **GSR Services GmbH**, outlines the requirements for new and existing vessels:

INVENTORY OF HAZARDOUS MATERIALS	SHIPBUILDING & OPERATION		PRIOR TO RECYCLING	
	Part 1: Structure & Equipment	Part 2: Hazardous Wastes	Part 3: Stores	
<b>IMO Table A (and EU Annex I):</b> Mandatory for all ships and installation	✓			
<b>IMO Table B (and EU Annex II):</b> Mandatory for new ships and installations, voluntary for existing ships	✓			
<b>Table C:</b> Potentially hazardous Items		✓	✓	
<b>Table D:</b> Regular consumer products			✓	

## WHAT'S THE ISSUE?

This sounds simple, but there are concerns within the shipping industry that this may be difficult to achieve.

Earlier this year at the Tradewinds Ship Recycling Forum, experts representing different sectors of the shipping industry, including class societies, revealed that there is no mandatory instruction on how to draft IHM and what should be in it.

The impact of this could be felt most strongly during future port state control (PSC) inspections. As Tradewinds later reported: “With little consistency on how IHMs should be drafted, it is more than likely that the same will apply on the enforcement side”.

There are some differences between the IMO and regional regulations. For example, the EU regulations have two additional substances compared to the IMO tables (Perfluorooctane sulfonic acid (PFOS) and Brominated Flame Retardant (HBCDD)).

The compilation of the IHM for new build vessels may be simpler for the shipowner as it is the responsibility of the shipyard to provide the necessary approved documentation. But for existing vessels, compiling the IHM will be more difficult and time-consuming based on a scheme of inspections and sampling.

Given that all vessels calling at an EU port must have an IHM by 31 December 2020, demand for services to assist in this process will be high. IHM consultants are advising shipowners not to leave this process to the last minute.

With thanks to **GSR Services GmbH** – [www.gsr-services.com](http://www.gsr-services.com) for their assistance in writing this article.

## FIND OUT MORE

For further reading, refer to our article “Scrapheap Challenge” in issue 113 of Signals.

By **John Southam**  
Loss Prevention Executive

# MASTER'S ROLE IN MITIGATING CARGO CLAIMS



**When informed that wet or damaged cargo has been found in a hold, the Master's early actions can do a lot to help their position and can even help in defending or reducing liabilities.**

North's book “The Mariners' Role in Collecting Evidence” is an excellent reference guide which should be on all crew's reading list.

There are always certain actions that need to be taken, including:

- ▲ Investigate what caused the damage
- ▲ Notify others who may be interested in the cargo
- ▲ Minimise the amount of damage as best as possible
- ▲ Get the damaged cargo off the ship so it can continue to the next port as soon as possible

But these objectives can sometimes conflict with each other.

A careful discharge can minimise further damage and better segregate good cargo from spoiled, but this can delay the ship. Similarly, notifying other parties can result in them delaying the continuation of discharge.

## SEEK HELP

The Master and crew cannot expect to do everything themselves. Unless the wetting or damage is obviously very minor, one of the Master's first actions should be to call the Club's local correspondent for assistance.

Our correspondents are very experienced in all aspects of local cargo and cargo handling and will often have good contacts with the receivers. Sometimes, the correspondent will be able to resolve a possible problem with a few phone calls.

If the damage is more significant, the correspondent will appoint an experienced local surveyor to attend on board to assist the Master. Together they can help deal with the stevedores and cargo interests to try to ensure that the cargo is discharged quickly with minimum further damage and to investigate the cause of the damage. The crew should cooperate fully with the correspondent and surveyor and provide whatever information and documentation may be requested by them.

## CAPTURE THE EVIDENCE

In any event, the Master should take photos of the damage and area surrounding the damage. The quality of images from some smartphone cameras can be poor, so where possible use a digital camera on the highest resolution setting. However, in the absence of any other camera, a smartphone camera is better than no photos at all. Don't forget to take photos of the general area of any damage as well as close-ups. If possible, the Master should ensure that the crew do not separately take their own videos or photographs to avoid the un-necessary release of potentially damaging information.

Another thing the Master can do before the surveyor arrives is take samples of both damaged and undamaged cargo. Collect samples in individual plastic bags and, if the cargo is degradable, store them in a fridge until the surveyor can take custody.

## CONTROL OF INFORMATION AND EVIDENCE

If the damage is severe, the Master may find they have less control over the situation. The cargo interests will have their own surveyors who will liaise with the ship's surveyor. The ship may be arrested so will be delayed in any event.

It is likely that cargo interests' surveyors, court surveyors, experts or lawyers will start making all sorts of demands on the Master for statements or ship's documents. The Master should take guidance from the correspondent and surveyor on this. Possibly the best solution is for all the requested documentation and statements to be released to the correspondent who can hold it until the owner, the P&I Club and the cargo interests can reach agreement on what should be released and when.

Consider whether the charterer of the vessel, if any, should be notified. The Master should check with the owner whether to put the charterer on notice of the matter and reserve the owner's rights under the charterparty.

This can be a worrying time for a Master. A Master cannot be expected to be a legal expert or cargo expert as well as a ship handling expert. In the event of cargo damage, take samples, take photos, call for assistance and let others take some of the pressure!

## FIND OUT MORE

If you have any questions about the issues in this article, get in touch with any of your usual contacts in P&I.

By **Peter Scott**  
Senior Executive (Claims)





# DECK CARGO EXCLUSION CLAUSES: THE ELIN



A recent decision in the English Courts concerns the effectiveness of a clause in a bill of lading that excludes a carrier's liability for loss or damage to cargo carried on deck.

In this case, *The Elin* loaded 201 packages of project cargo for carriage from Thailand to Algeria. The front of the bill of lading stated: "70 pckgs... loaded on deck at shipper's and/or consignee's and/or receiver's risk; the carrier and/or Owners and/or Vessel being not responsible for loss or damage howsoever arising".

There was a similar term on the back of the bill of lading.

During the voyage the vessel encountered heavy weather and some of the deck cargo was lost or damaged. Cargo interests claimed the shipowner had failed to care for the deck cargo or, alternatively, had failed to exercise due diligence to make the ship seaworthy at the commencement of the voyage due to inadequate lashings and stowage.

THE PHRASE  
**"HOWSOEVER ARISING"**  
IS, THE JUDGE SAID, THE "CLASSIC PHRASE" USED TO EXCLUDE LIABILITY FOR NEGLIGENCE AND UNSEAWORTHINESS.

## EXCEPTION CLAUSES

The Court was asked to consider, as a preliminary issue, whether the exceptions clauses in the bill of lading were sufficient to exclude liability for loss or damage caused by negligence or unseaworthiness.

The owner raised previous legal cases (including *The Imvros*) to the effect that, where exclusionary words in a bill of lading are clear, then they mean what they say. They argued that the Court should not re-write the contract to give a different meaning to an exclusion clause.

Cargo interests argued that for it to operate in this case, exceptions clauses must specifically refer to liability for unseaworthiness or negligence. Cargo interests suggested *The Imvros* should not be applied because that decision had been forcefully criticised by academics and because the Singapore courts had decided it was wrong.

The Judge in *The Elin* rejected the criticisms of the decision in *The Imvros*. The phrase "howsoever arising" is, the Judge said, the "classic phrase" used to exclude liability for negligence and unseaworthiness.

The shipowner was therefore not liable for any loss or damage to any cargo carried on deck, including loss or damage caused by negligence and unseaworthiness.

## NORTH VIEW

This is a very useful decision for shipowners who routinely carry cargoes on deck. It confirms that parties to a contract of carriage are free to agree a carrier has no liability for loss or damage to deck cargo.

Carriers are reminded of North's recommended General Deck Cargo Clause:

**"Carried on deck at shipper's risk without responsibility for loss or damage howsoever caused."**

The Judge's rejection of criticisms of the decision in *The Imvros* is also helpful to shipowners. In addition to dealing with exceptions clauses, *The Imvros* also stated that, where a charterer is responsible for stowage, liability for damage caused by inadequate stowage is not transferred back to the owner where the stowage is performed so badly it renders the vessel unseaworthy.

## FIND OUT MORE

Download the judgment: *Aprile SPA v Elin Maritime Ltd ("The Elin")* from our website: <http://bit.ly/2LxCv0N>

By David Richards  
Deputy Director (Cargo)

# NEW ARBITRATION NOTICE CLAUSE RELEASED



Could this clause help avoid your claim being time barred?

The London Maritime Arbitrators Association (LMAA) has released the Arbitration Notice Clause, which should ensure that notices of arbitration are validly served if the procedure in the clause is followed.

## IDENTIFYING THE NEED

In Signals 113, an article "Don't be Time Barred – a Trio of Decisions" highlighted the importance of being aware of, and complying with, contractual time bars. One of the cases (London Arbitration 19/18) involved the charterer having a complete defence to the owner's demurrage claim because the owner had not served the demurrage claim on the charterer. Instead, owners had served the claim on a broker, who the Tribunal held was an intermediary broker and not acting for the charterer. It was then too late for the owner to serve the claim on the correct party because the claim, by that point, was time barred.

There were also cases in 2017<sup>1</sup> where arguments were raised that notices of arbitration had not been served on the correct party. Indeed, we understand it was as a result of these cases that the LMAA considered the need for, and drafted, this Arbitration Notice Clause.

In the *Sino Channel v Dana Shipping* case, the Court of Appeal held that the person on whom the notice of arbitration had been served (who was not employed by the charterer/respondent) had authority to accept service. However, the owner had to spend considerable time and resources to get this decision (which had been decided differently by the first instance court). In the *Glencore v Conqueror* case it was held that the service of the arbitration notice on the particular employee on whom it had been served was not effective service.

Had there been a clause in the charterparties in *Glencore v Conqueror* and the 19/18 arbitration that set out exactly who should be sent notices and claims, then the claim or arbitration respectively may have been protected. Indeed, in the *Sino Channel v Dana Shipping* case such a clause could have saved the parties considerable time and money fighting the point to the Court of Appeal.

## ABOUT THE CLAUSE

The Arbitration Notice Clause provides for the parties to designate e-mail addresses for the service of notices and communications in relation to arbitration and should be completed by the parties when concluding a contract.

While this clause is specific to notices and communications in relation to any arbitration proceedings, there would be no harm extending this clause so it applies to notices and communications in relation to all claims under the charterparty. This would include communications, for example, relating to presentation of demurrage claims and supporting documents.

<sup>1</sup>Sino Channel Asia Ltd v Dana Shipping & Trading PTE Singapore & Another [2017] EWCA Civ 1703 and Glencore Agriculture B.V. v Conqueror Holdings Limited [2017] EWHC 2893 (Comm).

## FIND OUT MORE

For further reading, refer to our article "Don't be Time Barred – a Trio of Decisions" in issue 113 of Signals. The LMAA Arbitration Notice Clause is available at: [bit.ly/LMAAanc](http://bit.ly/LMAAanc) Have any queries, or want to know more? Then please get in touch with your usual contacts in the FD&D team.

By Helen Barden, Professional Support Lawyer (FD&D)

# NECROTISING FASCIITIS - RARE BUT BE AWARE



The 'flesh eating' disease necrotising fasciitis is thankfully rare, but two recent cases show it can happen to seafarers.

Necrotising Fasciitis is a serious bacterial infection that affects the tissue under the skin surrounding muscles, nerves, fat and blood vessels. The bacteria cause necrosis, which means the death of the tissues.

The US health agency, the *Centers for Disease Control and Prevention* (CDC) estimate that one in every three cases is fatal – even with treatment.

The offending bacteria live in the gut, throat or skin of some people. However, it does not cause any problems unless it gets into the deep body tissues.

This can be through a relatively minor injury such as:

- ▲ Cuts and scrapes
- ▲ Burns
- ▲ Insect bites
- ▲ Puncture or surgical wounds

While necrotising fasciitis is rare, anyone can be affected. But people with other health problems that lower the body's ability to fight infections such as diabetes, kidney disease or poor general health are more vulnerable. Living in close quarters, such as on a vessel, may also put you at a higher risk.

Although symptoms of necrotising fasciitis are similar to other infections, they appear more rapidly and are more intense.

Early symptoms can include:

- ▲ a small but painful cut or scratch on the skin
- ▲ intense pain that's out of proportion to any damage to the skin
- ▲ a high temperature (fever) and other flu like symptoms

After a few hours to days, you may develop:

- ▲ swelling and redness in the painful area – the swelling will usually feel firm to the touch
- ▲ diarrhoea and vomiting
- ▲ dark blotches on the skin that turn into fluid-filled blisters

If left untreated, the infection can spread through the body quickly and cause symptoms such as dizziness, weakness and confusion.

Necrotising fasciitis is a very serious illness which requires immediate hospital treatment. It can progress very quickly leading to serious problems such as sepsis and organ failure.

There is no vaccine for necrotising fasciitis. But the following steps may help prevent it:

- ▲ Avoid sharing personal items such as towels, razors etc.
- ▲ Report any deep or serious wounds so that medical advice can be sought as soon as possible if at sea
- ▲ Treat any wounds or breaks to the skin quickly and ensure they remain clean and dry
- ▲ Wash your hands regularly with soap and water
- ▲ Report any symptoms of infection immediately

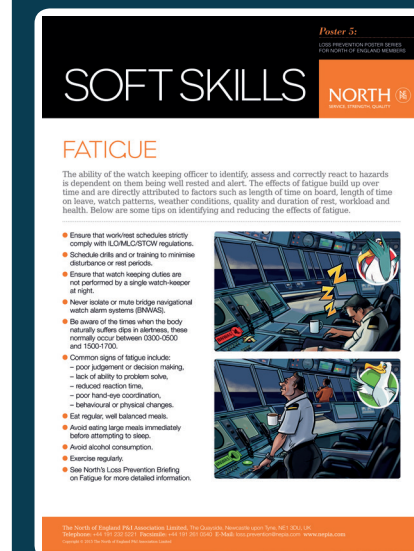
With thanks to MRL Assist: [www.mrl-assist.com](http://www.mrl-assist.com) for providing content for this article.

## FIND OUT MORE

For more information about Necrotising Fasciitis please visit the following websites: [www.cdc.gov/groupastrep/diseases-public/necrotizing-fasciitis.html](http://www.cdc.gov/groupastrep/diseases-public/necrotizing-fasciitis.html) [www.nhs.uk/conditions/necrotising-fasciitis](http://www.nhs.uk/conditions/necrotising-fasciitis) [www.sepsis.org/sepsis-and-necrotizing-fasciitis](http://www.sepsis.org/sepsis-and-necrotizing-fasciitis)

By John Webb  
Senior Executive (Claims)

# FATIGUE POSTER LAUNCHED



The ability of watchkeepers to identify, assess and correctly react to hazards is dependent on them being well rested and alert. The effects of fatigue build up over time and are directly attributed to factors such as length of time on board, amount of leave, watch patterns, weather conditions, quality and duration of rest, workload and health. Below are some tips on identifying and reducing the effects of fatigue.

The effects of fatigue build up over time and are directly attributed to factors such as length of time on board, amount of leave, watch patterns, weather conditions, quality and duration of rest, workload and health.

Accompanying this issue of Signals, North's latest 'Soft Skills' poster provides some tips on identifying and reducing the effects of fatigue.

## FIND OUT MORE

For more information, our Loss Prevention Briefing on Fatigue can be found on our website: [www.nepia.com/media/869003/Fatigue-People-Feb-2017-LP-Briefing.PDF](http://www.nepia.com/media/869003/Fatigue-People-Feb-2017-LP-Briefing.PDF)

By Alvin Forster  
Deputy Director (Loss Prevention)



# GETTING THE BENEFIT



The death of a family member is a very distressing time for anyone and most would like to know that the handling of one's affairs after their death is as stress-free as possible for their grieving family.

Unfortunately, in some jurisdictions nominating a next of kin is not sufficient to ensure that the party which you intend to receive compensation, in the event that it is due, is the ultimate recipient of the money. We have experienced situations where numerous family members claim that they are the rightful beneficiary, but they refuse to reach an amicable agreement between them on the division of the compensation.

It is therefore advisable that, in addition to the nomination of a next of kin, an individual ensures that they also identify their intended beneficiary of compensation, in the event of their death during their employment. This will help avoid any undue stress upon family members following the death of their loved one.

We suggest that a nominated beneficiary form be completed and appended to the contract of employment. The wording can be as simple as the following: *"In the event of my death any compensation due in accordance with the contract of employment or statute shall be paid in full to (name and relationship to seafarer)."*

If the intention is to have the compensation split between family members, this should be clearly stated within the nomination form with clear instructions on the nominated percentage to each beneficiary.

The inclusion of the above clause appended to the contract will ensure that your wish is fulfilled to the extent possible.

## FIND OUT MORE

For more information on this topic, get in touch with your usual Personal Injury team contacts at North.

By Lucy Dixon  
Senior Executive (Claims)

# FISHY BUSINESS LEAVES A BAD TASTE



Fishing has long been a popular pastime for crew on board a vessel. But enjoying your catch could leave you feeling green around the gills for several reasons.



When deciding whether to fish for your supper, first check for any legal restrictions on fishing within that area. Many jurisdictions have fishing regulations and if crew are found to be in breach of these then they could be subject to criminal prosecution.

Once you have ascertained that it is legal to fish, consider the catch itself. Food poisoning from fish can be deadly if not recognised and treated quickly.

Poisoning from spoiled fish includes scombroid and ciguatera.

## SCOMBROID

Scombroid poisoning is caused by fish which have not been properly refrigerated or preserved. This allows bacteria to act on compounds in the fish which then release histamine. This accounts for the allergic-type symptoms and explains why antihistamines help control symptoms.

Heat does not destroy the histamine so even well-cooked fish presents a risk.

The on-set of symptoms is fast, starting from 15 minutes to two hours following eating. Symptoms include flushing, rashes, sweating, diarrhoea and cramps. Most people recover, but additional reactions of swelling of the tongue and mouth as well as blurred vision can occur which can be fatal if proper care is not immediately provided.

When catching your own fish, refrigerate or freeze as soon as possible. If the fish tastes peppery, sharp, metallic or burns, do not eat it.

## CIGUATERA

Ciguatera presents similar symptoms as scombroid but with added muscle pain, "hot-cold reversal" (hot items feel cold and vice versa), low blood pressure, blurred vision, hair loss and loss of nails. This may be followed by muscle paralysis, coma and eventual death through respiratory paralysis. If you survive, recovery can take months and symptoms may linger for years.

Ciguatera is produced by a type of algae associated with coral reefs. Small plant-eating fish eat the algae, then are in turn eaten by larger, predatory fish and the ciguatera from the algae accumulates up the food chain.

The highest concentrations of ciguatera are found in older, larger fish who are predatory in nature and have consumed many smaller fish throughout their lifetime (tuna, grouper, barracuda, snapper, jack, mackerel, triggerfish, marlin etc). The symptoms of poisoning can last for months or even years.

Appearance, taste and smell of the fish are not affected by ciguatera. Without these outward warning signs of contamination, the best prevention is not to eat fish caught on coral reefs and to avoid the larger predator fish. You can also minimise the chances of getting a dose of poisoning by not eating any of the guts, liver or gills of any fish.

If you do become symptomatic of fish poisoning, drink plenty of water and seek medical advice.

Source: South Australia Health.

## FIND OUT MORE

More information on fish poisoning, including symptoms, treatment and prevention, can be found on the South Australia Health website: <http://bit.ly/SAFishPoisoning>

By Abbie Rudd  
Senior Executive (Claims)

# NORTH IN THE NEWS

You may have missed...

## DIVERSIFICATION AND SERVICE EXCELLENCE PAYS OFF FOR NORTH P&I CLUB IN 2018-19 ANNUAL RESULTS, MAY 2019

North releases its financial results, including an increase in free reserves to US\$463 million.

<http://bit.ly/North463m>

## SENIOR LEADERSHIP APPOINTMENTS FURTHER STRENGTHEN NORTH P&I CLUB, JUNE 2019

North announced a number of changes to the Senior Leadership Team as part of ongoing succession planning and strategic development.

<http://bit.ly/NorthAppointmentsJune>



## NORTH P&I CLUB HOSTS INAUGURAL AMERICAS RECEPTION IN NEW YORK, JUNE 2019

North staff, board members and guests celebrated the official opening of the Club's New York office in June.

<http://bit.ly/NYopening>

## NORTH P&I CLUB COMES ABOARD AS GLOBAL MARITIME FORUM PARTNER, JUNE 2019

Paul Jennings, Chief Executive, comments on North's recent partnership with the Global Maritime Forum.

<http://bit.ly/NorthGMF>



## NORTH P&I CLUB NAMED 'LEGAL DEPARTMENT OF THE YEAR' AT NORTHERN LAW AWARDS, JUNE 2019

North P&I Club's in-house Corporate & Legal Team has been named 'Legal Department of the Year' at the recent Northern Law Awards.

<http://bit.ly/LegalDeptOfYear>

## SEASENSE - EXPERT THINKING ON SAFETY MANAGEMENT

In this experts' column, Colin Gillespie, Director (Loss Prevention), shares his views on whether the approach to safety management is changing in the industry.

<http://bit.ly/SafetyManagementColumn>



## NORTH P&I CLUB - IT'S TIME TO PREPARE FOR THE BIG SWITCH

Tiejha Smyth, Deputy Director (FD&D) and Mark Smith, Loss Prevention Executive, highlight the importance of getting ready for the 2020 sulphur cap compliance deadline. This follows on from the publication of three new guides for Members on the topic.

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

# WORKSHOPS IN GREECE



North has launched a series of *Safety Management 2.0* workshops with the first sessions held in our Piraeus office. Those attending benefitted from expert insights from leading safety consultancies Lovoy AS and Green Jakobsen.

Day one of the workshop focused on simplifying safety management systems. Delegates learnt how to simplify safety systems to improve safety, training efficiency, compliance and seafarer satisfaction.

On the second day, delegates explored several issues around measuring and assessing safety performance from both an organisational perspective and a crew perspective. The workshop also included an introduction to North's new SCORA self-assessment tool that provides an insight into a company's organisational safety capacity.

North's Members will be kept informed of other opportunities to register for a *Safety Management 2.0* workshop.

## FIND OUT MORE

Safety Management 2.0: [www.nepia.com/insights/safety-management-20](http://www.nepia.com/insights/safety-management-20)  
SCORA: [www.nepia.com/insights/safety-management-20/scora](http://www.nepia.com/insights/safety-management-20/scora)

By John Southam, Loss Prevention Executive

# 27 YEARS OF SUCCESS



North's 27th UK Residential Training Course in P&I Insurance and Loss Prevention took place at the stunning and historic venue of Lumley Castle in the North East of England from 10-15 June 2019.

Once again it has been heralded as a great success by the 50 plus delegates attending from many sectors of the maritime industry. Throughout the event the delegates enjoyed a valuable mix of traditional and interactive training and networking experiences.

Details of the 2020 course will be released shortly. Places tend to sell out very quickly so book soon to avoid disappointment.

## FIND OUT MORE

For more information visit: [www.nepia.com/RTC](http://www.nepia.com/RTC)

Rod MacLennan, Loss Prevention Executive



