

Global service
built around you

North

side

Celebrating 10 years of First Call and 20 years of PEME

Find out more about our
Crew Care programmes in
our anniversary special.

ALSO IN THIS ISSUE

Let it Flow! The limitations of the
flow table test

Blowing bubbles to lower emissions

Understanding SIF: Serious Injury
and Fatality

...plus much more

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WINTER 2022

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Signals

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We are North and this is our story

Our purpose today remains as it was on our inception in 1860; to enable our Members and Clients to trade with confidence

The North East of England has a rich maritime history, and we've been part of that history, right from the creation of the first indemnity association through to establishing a pioneering loss prevention department, providing specialist in-house legal services and completing several mergers and acquisitions.

The growth of North's business since it first opened its doors in 1860, insuring many of the 260 or so local shipowners who were based on the River Tyne, to today's global membership, is testament to the service excellence offered by North's committed team of professional people.

Today we are a diversified global marine insurer, employing over 400 people worldwide.

Our North Story Book

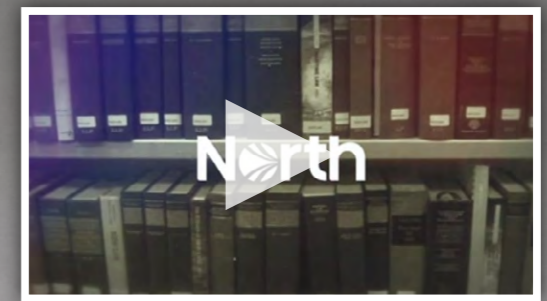
Since 1860, we have been enabling the shipowners and operators we insure to trade with confidence. Read more about our successful history and global maritime experience, and how we continue to deliver excellence to our members and clients in today's ever-evolving world. Click the image below to read more about our history.

Our North Story on Film

Come on a journey with us through film, as we bring our story to life. Over the years, North has diversified and innovated to become a maritime insurance world leader. We are North, and this is our story. Click the image below to watch our video.



Celebrating over 160 Years of North



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Photographs: Adobe Stock

How have we done? Let us know what you think of the latest edition.

Contact us at: signals@nepia.com

Insight articles and back issues: Current articles, further information and back issues of Signals are available online at: www.nepia.com/latest/articles

NorthStandard – the new name for North and Standard Club



Approvals from Competition and Regulatory Authorities are a major step in plan to merge North and Standard Club and establish NorthStandard.

What's changing

As part of creating this new entity, North will become the group's parent company and change its registered corporate name to NorthStandard Limited. There will be no change to the underlying insurance business.

Apart from North, all the other businesses within the NorthStandard group will continue to use their existing names and provide their current services.

Here are the full details of the insurance underwriting entities within the combined NorthStandard group from 20 February 2023:



Pictured: Paul Jennings, CEO at North and Jeremy Grose, CEO at Standard Club

Name prior to 20 February 2023	Name from 20 February 2023	Registered Number	Domicile & LEI Number
The North of England Protecting and Indemnity Association Limited (North)	NorthStandard Limited	505456	England XJCO61LLUWBTBNWIXO53
North of England P&I Designated Activity Company	North of England P&I Designated Activity Company	628183	Ireland 635400AADIICESCVBE87
The Standard Club Asia Ltd	The Standard Club Asia Ltd	199703224-R	Singapore 54930086ZEV1V0711X16
The Standard Club Ireland Designated Activity Company	The Standard Club Ireland Designated Activity Company	631911	Republic of Ireland 549300VGBC3B6V1QOU65
The Standard Club UK Ltd	The Standard Club UK Ltd	17864	England 549300F68LAQQLU3OH85

Uninterrupted cover

The merger of North and The Standard Club will have no impact on any cover already in place.

All existing insurances, certificates, blue cards, guarantees, undertakings, powers of attorney and other insurance or legal documentation bound or issued by insurance underwriting entities in either North or The Standard Club prior to 20 February 2023 will continue uninterrupted in accordance with their terms.

For the avoidance of doubt, the change of name of The North of England Protecting and Indemnity Association Limited will not

affect the validity or enforceability of documents issued under that name.

Continuity of contact

NorthStandard will continue to provide timely guidance, continuous support and efficient claims handling.

If your documentation includes contact information for North, The Standard Club, or correspondents or agents authorised by either organisation, you can continue to contact them in the usual ways. Any documentation issued after the merger date will include a relevant NorthStandard contact.

Next steps

Over the coming months we will keep you updated on the progress around the merger. If you have any questions about it or the planned changes to the wording in our certification, please email: namechange@nepia.com or get in touch with your usual contact.

FIND OUT MORE

To learn more about NorthStandard [click here](#).

Force Majeure: Issuing bills of lading for part-loaded cargo



If a port declares Force Majeure during loading of a bulk cargo, should the Master accept requests to issue a bill of lading for the cargo already loaded?

Consider the scenario where the shipper insists that in case of Force Majeure at the load port, interrupting cargo operations, the receiver pays for the cargo that has already been loaded on board. This would require the carrier to issue bills of lading for the cargo in the holds at the time operations were suspended.

This raises the question as to whether a shipper has the right to ask the owner or carrier to issue a clean 'shipped on board' bill of lading for the quantity already loaded, then issuing a second bill of lading upon completion of loading with the remaining quantity?

Initially, it might not seem unreasonable to conclude that if loading was interrupted for a considerable period due to circumstances beyond the control of either party, the Master should in the meantime be required to issue a bill of lading covering the cargo loaded to that point in time.

However, there are elements of uncertainty here and much will depend on the facts.

Caution advised

In the case of homogeneous bulk cargoes, a key factor is whether the cargo is being loaded in parcels or not.

The general rule is that the Master must sign a bill of lading in respect of each parcel shipped within a reasonable time of presentation. Where there is only one large parcel of cargo (i.e. undivided homogeneous bulk) then the Master should be entitled to delay signing the bill of lading until all the cargo for the vessel has been loaded or 'shipped'.

However, where the cargo is divided into parcels, the shipper is entitled to have a bill of lading issued once loading of the parcel in question has been completed.

Under the Hague and Hague-Visby Rules, a shipper will be entitled to demand a bill of lading after the cargo has been received into the carrier's custody. However, if such a bill is issued before the date of completion of loading of the parcel in question, it is arguable that this would be classified as a

'received for shipment' (RFS) bill of lading and not a 'shipped' bill of lading.

While an RFS bill of lading may be helpful in some cases for commercial purposes (e.g., recording the quantity loaded and its condition), they tend to be less common, especially in bulk cargo trades where consignees would expect completion of loading and commencement of the voyage to occur within a short space of time and where letters of credit are also likely to require a 'shipped' bill of lading.

However, if an RFS bill of lading is issued where loading is interrupted, it may be possible to replace this with a final 'shipped' bill of lading showing the date loading was finally completed, provided of course that the shipper has not put the RFS bill of lading into circulation and the full RFS set can be returned and efforts should be made so that the 'shipped' bill reflects the period over which the full cargo was loaded.

It is important that any bill of lading shows the date on which completion of loading occurred in respect of the parcel of cargo as identified in the bill of lading.

If an RFS bill of lading is issued and there is a prolonged delay, but there is nothing physically preventing the vessel from sailing, Members should take advice on the question of whether, having issued a bill, they are under an obligation to proceed with the voyage anyway.

The correct position in any given case (including where there is a lengthy interruption to loading) will of course depend on the particular facts

and circumstances and Members are encouraged to discuss things with the Club.

Seeking advice

Where loading is interrupted for a prolonged period, or where a Member is being asked to issue a bill of lading before the full intended cargo has been loaded, Members should contact the club. North's **Loss Prevention team** can assist with assessing the risks associated with a particular cargo when left for an extended period of time and will consider steps such as the periodic appointment of surveyors to record the condition of bulk cargoes. If this is not possible, then it is important for crew to monitor the cargo and keep accurate records on its condition. Such actions allow the carrier to be in the best position possible to argue inherent vice/ Force Majeure, etc, defences to any cargo claims at the discharge port.

By Nicola Nel
Senior Executive (Claims)



Let it flow! The limitations of the flow table test



When carrying cargoes that may liquefy, the vessel's owner and crew rely on accurate testing for the cargo's flow characteristics. This raises the question: are all tests equal?

The problems associated with the liquefaction and dynamic separation of cargoes such as nickel ore, iron ore fines and bauxite are well documented. Too many vessels have been lost and the lives of seafarers taken away when these cargoes achieve a flow state and stability is lost.

These dangers are recognised by the IMSBC Code, which places an obligation on the shippers of Group A cargoes (those cargoes liable to liquefy) to provide the carrier with details of the laboratory analysis of the cargo – namely the transportable moisture limit (TML) and the moisture content (MC).

The TML can either be measured directly (using one of the four Proctor Fagerberg methods), or by first testing for the flow moisture point (FMP) using the flow table or penetration test methods, then calculating 90% of this value. These methods are detailed in Appendix 2 of the IMSBC Code 2020 Edition.

The flow table method is widely used around the world. Its popularity is primarily because of its perceived simplicity and its ability to be used anywhere at any time, particularly in less-developed regions where there are limited laboratory resources.

Understanding the flow table test

The equipment required to determine the FMP is basic, comprising a standard flow table, frame and the flow table mounting, a mould, a tamper, scales and weights, a glass measuring cylinder, a mixing bowl and a drying oven.

The procedure is laid out clearly in Appendix 2 of the IMSBC Code, but in very basic terms the test is carried out by filling the mould with a cargo sample and tamping this into the mould (the tamping is alleged to simulate cargo compaction that may occur at the bottom of a ship's hold). The mould is then removed carefully leaving the sample in the mould shape on the flow table. The flow table is then operated (turning the handle) which raises and lowers the table at a set rate and height.

If the sample is below its FMP, it will crumble on the table. Once this crumbling occurs, the sample is returned to the bowl and water added from the measuring cylinder. The process is repeated until a 'flow state' is reached and observed.

What is a flow state?

When the flow table operator notes the sides of the sample deforming (either convex or concave) by approximately 3mm without crumbling, this is considered to have deformed. The moisture content of the sample at this point is considered to be the FMP.

However, plastic flow state cannot be indicated by a generic measurement (3mm increase in base diameter for example). The IMSBC Code defines plastic flow state very precisely, referencing saturation, density and plastic deformation instead. The IMSBC Code also suggests that a template to gauge deformation or size increase in any part of the sample is a useful aid and gives 3mm only as an example not an absolute measurement.

Important limitations of the flow table test

The flow table test may not be appropriate for all cargoes. The IMSBC Code clearly outlines test parameters, in Appendix 2 subsection 1.1.1:

- The flow table is generally suitable for mineral concentrates or other fine material with a **maximum grain size** of 1 mm.
- It may also be applicable to materials with a **maximum grain size** up to 7 mm.
- It will not be suitable for materials coarser than this and may also not give satisfactory results for some materials with **high clay content**. It should be noted that only cargoes with mineralogical (silica) clay will impact the results.

Another key issue is that the test can be subjective. It relies on the personal interpretation of when a state of deformation has been reached. Relying on the tester's naked eye, two independent persons testing the same

cargo could reach different opinions. This is the reason why testing houses write 3mm into their procedures to remove the requirement for interpretation and recognition of flow state. However, this is an incorrect approach as the IMSBC Code defines deformation very precisely, referencing saturation, density and plastic deformation.

Problems in practice

Due to the aforementioned limitations, experts say that use of the flow table test can be prone to over-inflating the FMP, which in turn overstates the TML value.

Inaccurate TML tests can have adverse effects on the carriage of the cargo. In regions where the flow table test is regularly used, the moisture content can be as little as 0.5% to 1% below the declared TML, which presents little margin for error.

Equally, FMP can also be understated (typically in mineral concentrates) because the tester applies the absolute measure of 3mm before flow state has occurred, which is an incorrect approach.

We have observed that some shippers and mines often declare a relatively course cargo with a large percentage (50% or more) of the cargo being well over the limiting particle size of 7mm. However, the flow table has still been used despite the limitations outlined above, meaning the tested sample is either outside the boundaries for accuracy or not representative of the entire cargo to be loaded.

Some regions that use the flow table test to determine TML are exporting cargoes with very high clay content. A typical example is nickel ore from the Philippines. The IMSBC Code clearly states that clay content may affect the accuracy of the results.

Additionally, the misuse or erroneous application of the IMSBC Code subsection 1.1.4.4 (rapid plotting method) to determine the approximate FMP can lead to the overstating of the TML result, thus allowing the Shipper to potentially present

cargo with a moisture content that is close to or in excess of the actual TML, again an issue that is more critical with cargoes such as nickel ore from the Philippines.

In Summary

The flow table test is a legitimate test method. However, due to its limitations, the owners and crews of carrying vessels should remain cautious when agreeing to load a cargo that has been tested using this method.

Always check the cargo declaration in detail, and if concerned about the accuracy of the test used for the specific cargo being delivered to the vessel, carry out a check test in accordance with Appendix 2 subsection 8.4 for approximately determining the possibility of flow and then, if this shows a potential issue, insist on additional laboratory testing before the cargo consignment is accepted for loading.

Acknowledgment

With thanks to Roxburgh for their assistance with this article.

Roxburgh – About us

By **John Southam**
Loss Prevention Executive

FIND OUT MORE

[Click here](#) to learn more about cargo liquefaction in our article.

Crew Care Programmes - Anniversary Special

North's Personal Injury claims team have always endeavoured to not only handle claims effectively for our Members, but also to provide further support by introducing initiatives that will genuinely save Members time and money whilst properly considering the health of their crew.

In 2022 we have been celebrating the 20th and 10th year anniversaries of PEME and First Call respectively and have marked these important milestones with commemorative gifts for those partners which help make it happen.

PRE EMPLOYMENT MEDICALS - CELEBRATING 20 YEARS



Many crew illness claims might have been avoided if the seafarer had undergone a comprehensive pre-employment medical examination (PEME) by a reliable specialist clinic. In order to reduce incidents and ensure the good health of crew, North manages very successful enhanced PEMEs in the Philippines and the Ukraine which have collectively **resulted in estimated savings to our Members of over US\$25m**. For further details please contact **Lucy Dixon, Abbie Rudd or Alex Farrier** at PEME@nepia.com



FIRST CALL - CELEBRATING 10 YEARS



First Call is a service supported by North in collaboration with two US correspondents; Hudson Tactix and Shuman Consulting, to help Members reduce the risk of incurring excessive medical bills in the USA.

First Call ensures crew members obtain excellent, appropriate and prompt medical attention, and that it is managed in a cost-effective manner.

First Call has, on average, enabled a saving in medical expenses of almost 50% per claim with a total estimated saving, since its launch, of US\$7m+.

For further details please contact **Rob Robinson or Ross Waddell** at FirstCall@nepia.com



MIND MATTERS AT SEA & MIND CALL AT SEA



Working at sea can be stressful, demanding and sometimes isolating for crew, and Mind Matters offers both Members and their crew access to various resources for information, support, and assistance.

- My Mind Matters is a dedicated website which can be accessed directly by crew at their convenience and provides a range of resources to assist with mental health related issues: www.mymindmatters.club.

- Mind Call is a confidential helpline supported by North in partnership with ISWAN which can be contacted by telephone, email or Live Chat. Collectively the team speak 7 languages as well as English. The helpline is confidential and available 24/7 every day of the year.

For further details please contact **Holly Hughes or Peter Telford** at mindmatters@nepia.com



20TH ANNIVERSARY OF OUR PEME PROGRAMME



10TH ANNIVERSARY OF OUR FIRST CALL SERVICE

POST REPATRIATION MEDICALS



Our Post Repatriation Medical programme (PRM) is aimed at Filipino crew who require ongoing medical treatment once home. As well as providing efficient, high quality treatment for seafarers it helps manage the length of treatment so that Members are protected as much as possible from claims for full disability.

North has two recommended PRM facilities in Manila and Members are encouraged to notify the Club as soon as possible of any Filipino seafarer requiring repatriation so that we can ensure full arrangements are in place from the moment they land.

For further details please contact **Lucy Dixon, Abbie Rudd or Alex Farrier** at prm@nepia.com



EUROPEAN HEALTH COVER GUIDE



Members can reduce their costs for European crew illness and injury claims in 32 countries (all EU States plus Iceland, Liechtenstein, Norway, Switzerland, and the United Kingdom), just by ensuring eligible crew carry their free European Health Insurance Card (EHIC).

North has put together a handy guide to European healthcare and the EHIC as there is often confusion as whom, where and what it covers. There are differences between each participating country so, should a crewmember from one EU State be taken ill in another, it is always worthwhile checking the specific arrangements in the relevant place.

For further details please contact **Paul Delve** at paul.delve@nepia.com

By **Belinda Ward**
Director (Claims)



FIND OUT MORE

To view our range of crew care publications [click here](#).

Blowing bubbles to lower emissions



The shipping industry is on its voyage to reduce greenhouse gas emissions. A popular approach is to reduce the vessel's fuel consumption by improving the operational efficiency. But there are many ways to achieve this, one of which is to reduce the hull's frictional resistance through air lubrication.



Air lubrication systems work by coating the flat bottom of the vessel with a layer of micro-bubbles. The improved frictional resistance reduces the fuel consumed and, in turn, emissions produced.

We spoke to Noah Silberschmidt from Silverstream Technologies to gain a better understanding of how their air lubrication system works.

Q How does your air lubrication system work?

A The Silverstream® System operates by deploying a uniform carpet of air to lower the frictional resistance between the hull of a vessel and the water. A natural phenomenon called 'shearing', where the interaction of water and air in the air release units (ARUs) generates a carpet of microbubbles that covers the full length of the flat bottom of a vessel. These microbubbles are uniform in size and do not merge or collect.

Q How much can CO2 emissions be reduced?

A Fuel consumption and associated CO2 emissions can be reduced by 5-10% net, depending on vessel type.

Q Do the air bubbles have an influence of noise or vibration at the propeller?

A The bubbles are small in diameter (1-3mm) and emerge at hydrostatic pressure, eliminating the tendency to escape up the vertical sides of the hull. This means we can coat the entire flat bottom of the vessel and maximise savings.

Research is ongoing into the positive consequential outcomes our systems on the operation of the vessel. This includes a reduction in hull fouling, dampening of noise and vibrations as well as the suppression of a vessel's underwater radiated noise (URN) signature. Anecdotal reports have suggested that there is a decrease in vibrations on passenger ships when the Silverstream® System is in operation, but this needs further scientific study to verify

Q Tell us more about the air release units (ARUs)?

A The Silverstream® System works by installing 10-12 ARUs in an arrowhead formation along the flat bottom of a vessel, inside the double hull. The system is designed for a small footprint. The oil free compressors are energy efficient and compact enough to fit in bespoke engineering spaces. The system is flexible and modular to work for newbuilds and retrofits alike.

Q How long does it take to retrofit your system?

A Retrofits of the Silverstream® System are usually carried out within a two week dry-docking. In some cases, it can be achieved within one week. Riding squads are often used during commissioning to prevent any commercial issues arising, such as off hire and time out of service. Co-operation with owners, operators and relevant experts is important whether a retrofit or installing on a new build vessel.

Q What are the maintenance requirements?

A Compressors can be maintained in service and ARUs can be inspected at routine dry-docking intervals. Note that if the system is out of service, there are no adverse effects of drag as the ARU plates are flat and are set flush with the hull. Maintenance requirements have been reduced thanks to relatively few moving parts. Training is provided to operators so that maintenance frequency is prolonged.

Q What is the power demand of this system?

A Power demand varies between each installation, but it is kept low because the natural energy of the vessel moving through the water is used to shear air onto the flat bottom as opposed to expelling at pressure. This is the same phenomenon that causes white caps on waves. To accurately assess savings in operation it's always calculated as net of energy used.

By Mark Smith
Loss Prevention Executive

FIND OUT MORE

[Click here](#) to learn more about reducing shipping's greenhouse gas emissions at our 'Navigating Decarbonisation' website area.

[Click here for](#) more details about Silverstream Technologies.

Coming soon... North's latest app: The MRCE Handbook



Our industry-renowned loss prevention guide Mariner's Role in Collecting Evidence Handbook will be available to Members as an interactive evidence checklist generator app.

The 'evidence checklists' contained in the handbook have long proven useful to ship operators, seafarers and surveyors when collecting evidence following an incident. To improve this data-gathering process, we have created an interactive evidence checklist app.

In addition to having access to the content contained in the new edition of the handbook, users will be able to generate a checklist relevant to the incident in hand. The checklist will be interactive, allowing

the checklist to be populated, such as entry of free text and uploading of documents and images to the user's device. Once the checklist is populated, the user can send the information to their selected recipient, whether it is the shipowner, operator or technical manager.

The app is free for North Members and is available for iOS and Android devices.

Our loss prevention guides continue to be available for sale (in both hard copy and

e-book) from **Witherbys Seamanship**.

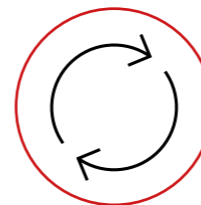
North Members can download their free pdf version copy of the new edition of the Mariner's Role in Collecting Evidence Handbook below and by logging on to their MyNorth account at:

www.nepia.com/login

By Alvin Forster
Loss Prevention Executive

Key features & benefits:

Our simple and easy-to-use app, enables users to efficiently and effectively collect evidence for incidents:



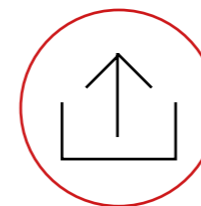
Easily create, save and send checklists



Online and offline 24/7/365 access



Access to North's Mariner's Role in Collecting Evidence Handbook and guidance



Upload supporting imagery and video footage



Available only for North Members and Correspondents

Exclusive for North Members and Correspondents -

Free to download



Training and onboarding support

Once the app is launched, see our website for instructions and training videos on how to access and use the app.

Hold on! Common cargo hold issues and how to avoid them



When holds are not ready for their intended cargo, a number of different issues may arise.

The preparation and maintenance of cargo holds is a crucial aspect of the bulk cargo trade. When holds are not ready for their intended cargo, a number of different types of claim may arise, such as cargo contamination and shortage, as well as charterparty disputes.

We look at some of the topics we frequently see, which should assist our Members in avoiding and dealing with these types of dispute.

First things first: the cargo and destination

Before we can start to consider the actual condition and suitability of the cargo holds, think about:

- What is the cargo?
- What is its intended use?
- Where is the cargo coming from and going to?
- What standard of hold cleanliness is required?
- What was the previous cargo transported in the holds?
- Have you been advised of any particular requirements at the load or discharge port?

The required standard of cargo hold condition can vary from port to port. It is sensible to consider not only whether the cleanliness requirements for a particular port may be more stringent than another, but also whether the level of cleaning required between cargoes may lead to issues regarding the disposal of cargo residue and/or wash water or may limit the use of certain cleaning materials.

“Who is responsible for ensuring the holds are in a suitable condition for loading the next cargo?”

Standards of Hold Cleanliness

Although not standardised across jurisdictions, the standards are broadly as follows:

Hospital Clean	<ul style="list-style-type: none"> • This is the most stringent. This requires all hold surfaces to have 100% intact coatings.
Grain Clean	<ul style="list-style-type: none"> • The holds must be clean from previous cargo residue, odours, insects, loose rust scale and paint flakes • Atmospheric rusting of exposed steel is generally accepted • Prior to loading, holds must be clean-swept, washed down with fresh water, dried and well-ventilated
Normal Clean	<ul style="list-style-type: none"> • The holds must be swept to remove residues of the previous cargo, washed down and ready to receive a similar cargo.
Shovel Clean	<ul style="list-style-type: none"> • The holds do not require washing but should be swept down

Charterparty considerations

A commonly asked question is “who is responsible for ensuring the holds are in a suitable condition for loading the next cargo?”.

The answer depends on the charterparty terms.

As a starting point, absent a charterparty clause to the contrary, it is likely the responsibility for both cleanliness and

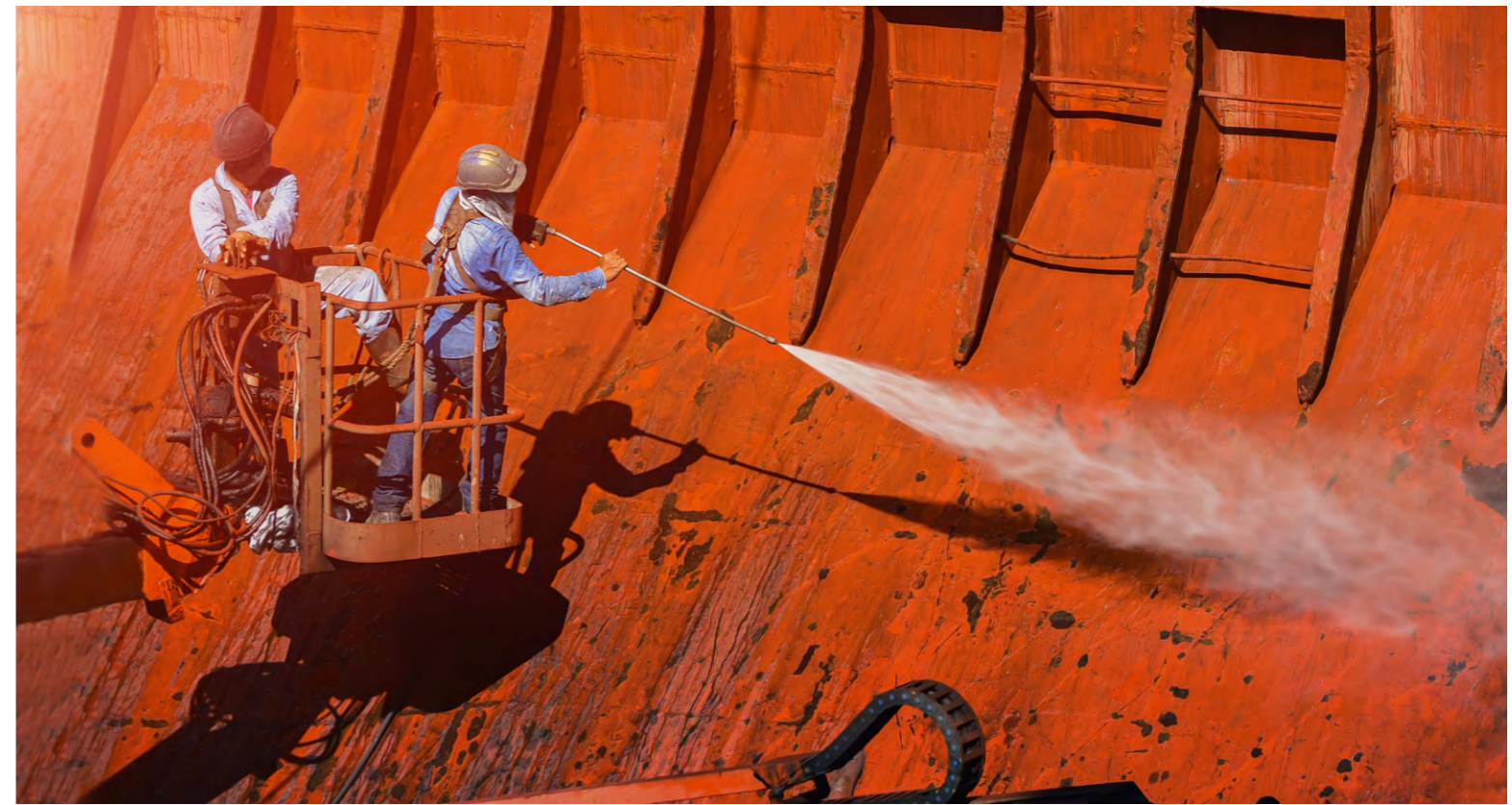
maintenance would fall to Owners. Under an unamended standard form NYPE charter, Owners are likely to be responsible (i) under the maintenance clause, (ii) their obligation to ensure the vessel is fit for her charter service, and (iii) their obligation to prosecute the voyage with the utmost despatch.

However, the charterparty terms are usually amended and the following types of provision are common:

- A clause providing at the first load port only, owners are responsible for ensuring the holds are in the required condition for the first cargo to be loaded. If the holds are not ready, the potential consequences may be charterers having the option to (a) place the vessel off-hire (or pro-rata off-hire proportionate to the number of holds not ready for loading) until the vessel passes inspection; and/or (b) cancel the charterparty in the event the vessel is not in the required state by the cancelling date.
- Owners remain responsible for the maintenance of the vessel. However, there is often a bespoke clause providing charterers are responsible for the cleanliness of the holds for subsequent cargoes whilst the vessel remains on charter.
- A clause setting out the condition the holds should be in on redelivery. Parties may opt to allow charterers to make a payment in lieu of cleaning the holds (commonly referred to as an “in lieu of hold cleaning” or ILOHC clause).

Common disputes

Below we set out two examples of disputes: (1) the distinction between “cleanliness” and “maintenance” when determining liability for an unready hold and (2) whether on delivery, any cargo remaining in the hold is a residue or whether it amounts to excess cargo under an ILOHC.



(1) Cleanliness vs maintenance

Absent any charterparty clause to the contrary, issues of maintenance generally fall to Owners’ account. However, it is common for charterparties to contain additional clauses which expressly provide any cleaning between cargoes is charterers’ responsibility.

As such, we regularly see disputes on whether the cause of the hold condition failure relates to “cleanliness” or “maintenance”. If it is a question of insufficient maintenance, then it is arguably a matter for Owners’ account. Where there is an express cleaning term, issues of cleanliness are for charterers’ account.

There is surprisingly little authority on the distinction between the two. But consider the following points from the *Bela Krajina* [1975] 1 Lloyd’s Rep 139:

- Each case should be considered on its own merits.
- Guidance included: “cleaning of holds does not include chipping steel. It does include removal of large rust patches in accessible locations. Customary assistance does not extend to scaling operations requiring the use of sophisticated tools like pneumatic chipping hammers, high pressure water jets or sandblasting equipment.”
- Can the crew achieve the required standard unaided? For example, is there soft non-adhering rust that can be removed (albeit with some difficulty)? If the crew cannot achieve the cleaning without assistance, this is indicative that it may go beyond cleaning.

Another consideration is whether the amount of work to rectify the holds is due to the charterers’ choice of cargo? If there is an extraordinary cleaning operation required because of the cargo, there is a possibility additional costs may be recoverable from charterers under the implied indemnity.

(2) Hold Condition on redelivery (ILOHC clauses)

We also see disputes about the condition of the cargo holds on redelivery. These often involve cargoes that are difficult to fully discharge using grabs, such as cement.

The charterparty may contain provisions setting out the expected condition of the vessel on redelivery. If charterers breach these provisions, they may be liable to Owners in damages (usually the cost and time of rectifying the holds).

As an alternative, we may see an ILOHC provision which provides charterers may pay a lump sum on redelivery in lieu of cleaning the holds. Some ILOHC clauses expressly refer to dunnage and the extent of cargo residues that fall within the permissible limits of the ILOHC provision.

One of the more common disputes is whether the cargo remaining in the hold(s) amounts to “cargo residue” (i.e. likely within the limits of the agreed ILOHC) or “excess cargo” (i.e. outside the ILOHC with charterers being liable in damages in addition to any ILOHC lumpsum).

Again, this is a matter to be assessed on a case-by-case basis, with reference to the particular contractual clause(s). However, factors we take into account include:

- Does the clause indicate what quantities may be acceptable as residues?
- What percentage of the cargo remained on board compared to the quantity loaded?
- Was there a shortage claim?
- How was the quantity of cargo remaining on board estimated? (i.e. how accurate is the estimate?)
- How long did it take to remove the cargo?
- Are there any photographs of the holds and/or remaining cargoes?

Particularly with cargoes such as cement, it is difficult to remove all residues as the cargo at the bottom of the hold needs to be shovelled out manually.

At the outset, where possible, it is helpful for parties to be realistic about the likely cost and time of cleaning the holds and the level of work involved and to try to reflect this in any lump sum sought under an ILOHC clause.

READ MORE...
This article continues on the next page.

Hold On! Common cargo hold issues and how to avoid them (cont.)



Surveyor's evidence

In practice, we see disputes focussing on the level of rusting in the holds, the extent to which it is flaking and the extent to which this can be tackled/rectified by the crew. In this regard, the evidence of the attending surveyor can be crucial to establishing the case.

The charterparty will often set out the requirements for whom can be considered a competent surveyor. It is not uncommon to see a requirement for an "independent surveyor". In broad terms, this is generally accepted to mean a surveyor jointly appointed by the parties (The Protank Orinoco [1997] 2 Lloyd's Rep 42).

Practically speaking it is helpful when the hold condition report covers the following:

- What condition the holds should be in.
- If the holds are not in the required condition, the reasons why not. A brief explanation can be very helpful, as can accompanying photographs of the hold and any issues.
- What steps are needed to bring the holds to the required standard.
- Whether the steps needed are, in the surveyor's view, cleaning or maintenance. Although this is not definitive, it may be a helpful indication.

Even with the best-laid plans, some disputes are unavoidable. In the event a dispute arises - or is contemplated - contemporaneous evidence is usually key.

Disposal of cargo residues and excess cargo

Any excess cargo, cargo residues, washwater and cleaning products must be disposed of in accordance with MARPOL and local regulations. A practical consideration is how these are disposed. Although the technical considerations are outside the scope of this article, factors to consider are:

- Is there a cargo residue clause in the charterparty?
- Who is responsible for disposal.
- Is there any indication on the cargo declaration that the cargo is harmful?
- Are any of the cleaning agents used in the hold harmful?
- Are there any disposal restrictions in port (such as whether the vessel is in a MARPOL Special Area)?
- Does any wash water need to be disposed of in a reception facility?
- Does the vessel require a garbage/residue management plan?

Top tips on avoiding disputes

We have had a "whistle-stop tour" of some of the key areas where disputes may arise. But how can disputes be avoided?

It is impossible to foresee and account for every eventuality but, broadly, factors to consider at the outset of a charter include:

- Is the vessel suitable for the cargo(es) in question? (has it previously carried similar cargoes or will significant cleaning be needed?)
- If cleaning is needed, is it clear in the charterparty who will be responsible?
- Are the expected standards clear to all parties and set out in correspondence and/or the charterparty?
- Is there a provision as to whom will be considered an appropriate surveyor?
- Are the consequences of hold failure (e.g. off-hire) clearly set out in the charterparty?
- If cleaning will be required, does the vessel have the equipment and cleaning supplies it requires for the task? Who is to provide and pay for these?

By considering some of these factors in advance, it may be the parties have a clear framework in which to determine responsibility in the event the holds do not pass inspection, as well as the means to address any issues promptly, to avoid further delays.

If a dispute arises...

Even with the best-laid plans, some disputes are unavoidable. In the event a dispute arises - or is contemplated - contemporaneous evidence is usually key. This is likely to include:

- Attendance of a local correspondent/surveyor and their photographic and written reports.
- Exchanges between parties: pre, during and post fixture.
- Notes of any telephone calls/records of exchanges.
- Recap and charterparty terms.
- Any instructions given to the crew and/or contractor.
- Notices or protests given.
- Cleaning logs or cleaning records.
- Photographs.

By Kate Richards
Senior Solicitor (FD&D)

FIND OUT MORE

If you have any further questions or issues to discuss arising from this article, please approach your usual contact at North

London Arbitration 28/22: (Maritime) Lien on Me?



An interesting London arbitration final award highlights the risks of foregoing legal advice at an early stage of a dispute.

The facts of the case are straightforward, and a common scenario seen every day when vessels stem bunkers.

The vessel was on time charter and the time charterers arranged a stem of bunkers on their own account with bunker suppliers. The time charter included a no-lien clause, as did the demise (bareboat) charter. However, as is quite typical, the bunker sale contract purported to be made with not only the time charterers but also the owners and the vessel, amongst other supposed counterparties. Furthermore, it was subject to English law but applied United States federal maritime law for the purpose of purportedly creating a US statutory maritime lien against the vessel for the bunkers supplied.

The time charterers failed to pay the invoice, and the bunker suppliers purported to commence arbitration not only against the time charterers but also the demise owners. With both parties having failed to respond to the arbitration notice, the bunker suppliers' arbitrator became sole arbitrator by default.

Only later did the demise owners become involved and then only alleged that the bunker suppliers had admitted in correspondence that the time charterers were the ones liable to pay.

The sole arbitrator held that the correspondence in question was fraudulent - created by a hacker thought to be acting on behalf of the time charterers - and went on to determine there was a US maritime lien on the vessel and the demise owners were liable to pay.

However, as a matter of English law, the time charterers could not agree to the bunker sale contract on behalf of the demise owners (or the vessel) without their express authority (and such authority had been expressly excluded by the no-lien clause in the time charter).

Further, the bunker suppliers and the time charterers alone could not contract on a basis that artificially created a US maritime lien (which arises by US statute) on the vessel, which was a third party to the contract. This follows from the English Admiralty Court judgment in *The "Yuta Bondarovskaya"* [1988] 1 Lloyd's Rep. 357. This keeps in mind that English law alone would determine if a contract was formed and who the parties to that contract were, because US federal maritime law only applied for another purpose.

As a result, the demise owners made two key mistakes. First, they could have remained silent, which would have preserved their right to challenge the final award on enforcement on the basis that the sole arbitrator lacked substantive jurisdiction to have made the final award. Second, and with pro-activity in mind, they should have challenged the sole arbitrator as to his or her substantive jurisdiction to resolve the supposed claim against them, because they (and the vessel) were not counterparties to the bunker sale contract or any London arbitration agreement found therein.

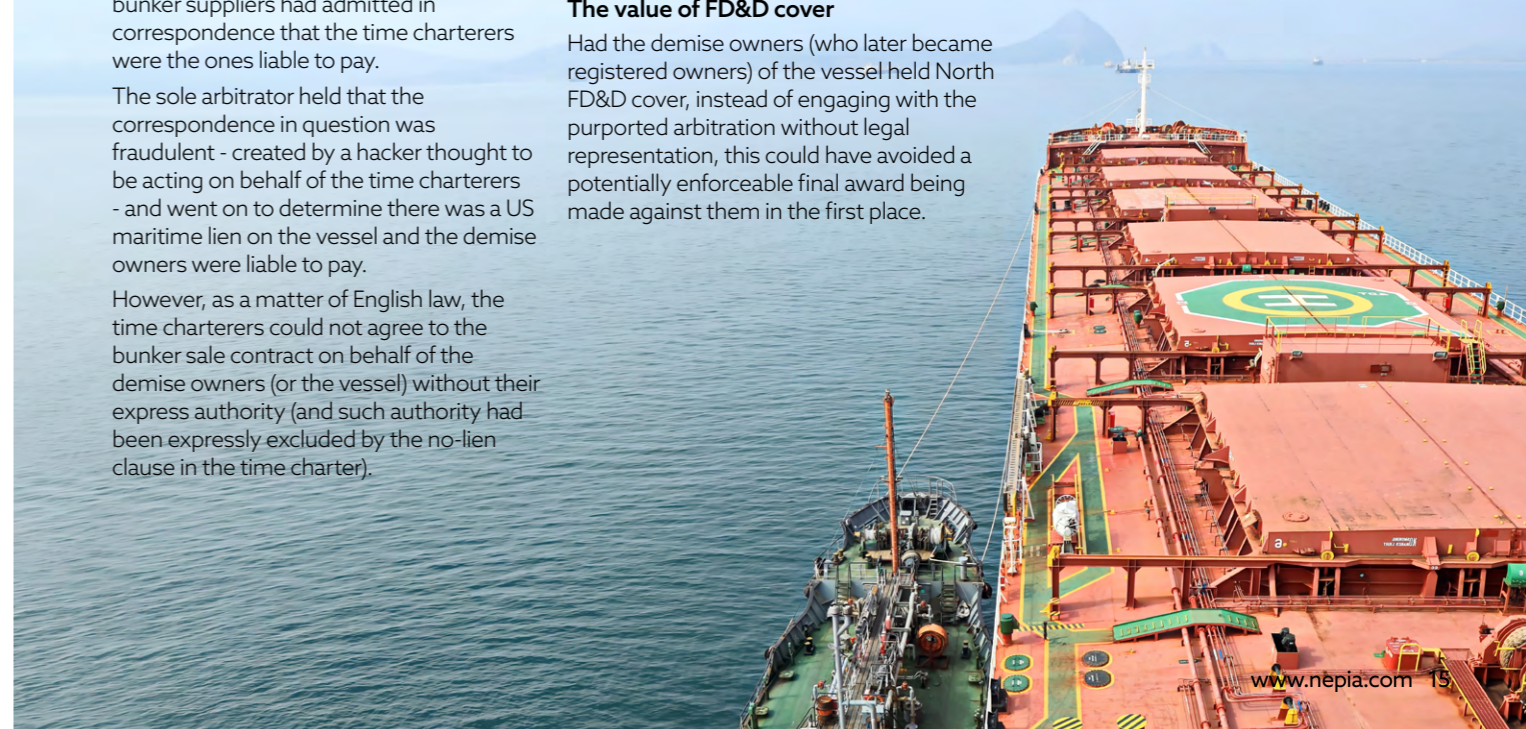
The value of FD&D cover

Had the demise owners (who later became registered owners) of the vessel held North FD&D cover, instead of engaging with the purported arbitration without legal representation, this could have avoided a potentially enforceable final award being made against them in the first place.

Further, this would have spared them the substantial costs now being incurred in seeking to obtain leave to appeal against the final award from the English High Court or (if this cannot be corrected because the application is out of time and time is not extended or the appeal itself is not granted or if heard is dismissed) having to contest enforcement proceedings, if there are any good grounds to do so.

By Jim Leighton
Consultant (FD&D)

The demise owners could have avoided a potentially enforceable final award being made against them in the first place



Understanding SIF: Serious Injury and Fatality



Investigating incidents, near-misses and hazardous conditions take considerable time and effort. Does everyone have the time and resources to investigate every incident in depth? And is it worth it?

We learn from our mistakes, and when things go wrong it is important that we study the reasons behind the event, and from that we look to improve.

But investigating incidents, near-misses and hazardous conditions take considerable time and effort. Does everyone have the time and resources to investigate every incident in depth? And is it worth it?

Historically, many have followed Heinrich's triangle. Although the numbers used in Heinrich's triangle are contested, the concept remains valued by many safety experts. The rationale is if we tackle all the many near-misses and minor accidents, then this will avoid that major injury or fatality that sits at the top of the triangle.



However, it is now considered that to prevent that big incident from occurring, your efforts should be focused only on those incidents with a high potential of harmful outcome.

Introducing the SIF

According to human factors consultancy Dekra, serious injuries and fatalities – or SIFs - have plateaued or increased while the more minor injuries have continuously declined.

Their studies identified that one of the main reasons for this is that the causal factors behind SIFs are often different from those for less serious injuries. They also found that the potential for serious injury is low for the majority (around 80%) of non-SIF injuries. As such, not all minor incidents can result in major incidents.

In Dekra's white paper, they consider the activity of manual lifting. The most common injury resulting from this activity is soft tissue injury, and this exposure is unlikely to cause a fatality.

Compare this to falling from a height of, say, 10 feet. This clearly has the potential to cause a fatality or life-altering injury, even though that is not always the outcome of such a fall.

Therefore, serious injuries and fatalities occur because of events that have SIF potential. And whether these potential SIF exposures result in an actual SIF is - in Dekra's words - a matter of luck.

Defining SIFs

Defining a fatality is of course straightforward, but what constitutes a "serious injury"? According to Dekra, this is for the individual organisation to define, but in general terms it can be considered to be a life-threatening or life-altering work-related injury or illness.

It gets trickier when trying to determine whether an event has "SIF Potential". This is when the incident could have reasonably resulted in a fatality or serious injury had any of the circumstances or protective measures changed, or if luck hadn't played its part in reducing the severity of the actual outcome. In other words, could a fatality or life-altering or life-threatening injury/illness reasonably have resulted?

There are two recognised methods to help determine whether an incident has SIF Potential:

"Judgment-Based Narrative Review" – this subjective approach relies on the professional judgement of safety managers and investigators to assess whether the event could have resulted in a SIF.

"Event-based Decision Tree Classification" – this uses the characteristics of the incident or near-miss to classify a situation as having SIF potential. Examples of these activities involving lifting, moving or working under heavy loads, entering and working in enclosed (confined) spaces, performing jobs that require LOTO (lock-out tag-out) and working aloft.

Focusing efforts

Identifying which incidents have SIF potential could allow us to better focus our limited resources and achieve maximum results from our efforts.

Knowing when to investigate

HSEQ superintendents and safety managers can receive a lot of reports on incidents, near-misses, and hazardous observations, which they must manage with finite resources.

Identify the incidents with SIF potential can help them prioritise which reports require more in-depth analysis.

Measuring

Safety reporting and measuring 'safety' can be a contentious issue. Some in the "you can't manage what you don't measure" camp argue that recording injury rates is important management information and allows identification of problem areas. Others may argue that metrics such as loss time incident (LTIs) are not indicative of performance and can create a culture where people are discouraged from reporting. Who wants to be the person who resets the 'XX days injury free' banner that is proudly displayed in the workplace?

Recording actual SIF events may not in itself be a useful indicator of safety performance as incidents are, thankfully, infrequent. What may be more useful is to also include those events with SIF potential – in other words, the exposures that resulted in an actual fatality or serious injury plus those that could have but did not.

Safety initiatives

Knowing which types of incidents have SIF potential can help you identify and formulate safety initiatives that target both these types of events and the underlying issues behind them.

Dekra say that when companies rely solely on recordable injury rates as the primary measure of safety performance (a common practice) they lose sight of crucial data underlying SIFs. This ends up with safety initiatives that are put in to place to help reduce low SIF potential incidents for no other reason than because they occur more frequently. Leaders then mistakenly believe that their actions are addressing the likelihood of all injury types.

By Alvin Forster

Loss Prevention Executive

FIND OUT MORE

[Click here](#) to read the Dekra white paper on reducing SIFs.

Heinrich's triangle with serious injuries and fatalities (SIF)

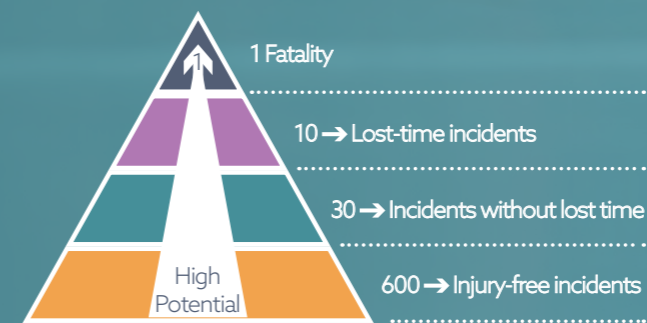


Image credit: EHS Today

FIND OUT MORE

[Click here](#) to visit our 'Safety Management 2.0' initiative.

RightShip Safety Score: What you need to know



RightShip's Safety Score is a performance benchmark that provides shipowners and managers, charterers, and ports and terminals with an indication of a vessel's safety performance.

The Safety Score replaced RightShip's Star Rating in February 2021, which was widely used by chartering interests to provide a top-level assessment of the performance of a vessel.

The score provides an indication of a vessel's likely performance based on past data, allowing users to compare against similar vessels in the same peer group.

What is the Safety Score?

Ranging from 'N/A', '0' or '1' to '5', the Safety Score is designed to allow benchmarking against the historical operational performance of the world's fleet.

This helps shipowners and operators identify areas where safety performance can be improved through better processes and technologies.

It also provides charterers with an initial view on a potential vessel's operational performance during the pre-fixing due diligence process and helps them decide whether they would like to conduct a full vet on a vessel.

How is the score assigned?

A Safety Score is calculated using a two-stage process.

First, the vessel is assessed against a series of industry standard safety performance rules. If a safety performance rule is triggered, the vessel will be assigned a Safety Score of 'N/A', '0', '1' or '2':

N/A – applies to vessels that are not covered by RightShip's Platform, such as tugs, RoRos, or vessels over a particular age (e.g. bulk carriers over 35 years).

0 – vessels which have been sanctioned or are connected to a sanctioned entity.

1 – includes vessels that:

- have been reported for abandoning seafarers,
- are listed on the Paris Memorandum of Understanding (MOU), Australian Maritime Safety Authority (AMSA) or United States Coast Guard (USCG) banned list,
- have been detained three times in the last 24 months or rated unacceptable during last RightShip inspection,

- have, in the previous 12 months, had a 'Category A' incident, which is RightShip's most severe category and covers pollution, loss of life, missing persons, fire/explosion or a total loss.

2 – includes vessels that:

- have two Port State Control (PSC) detentions in the last 24 months,
- have received an excessively high number (50+) of PSC deficiencies over the previous 24 months,
- are non – IACS classed vessels,
- have had a 'Category A' incident in last 12 months and, post-incident, and the incident was closed during a RightShip inspection.

If none of the above safety performance rules are triggered, then the second step is an evaluation by the Safety Score tool.

The model calculates a score between '3' and '5', measuring performance on six sub-score categories:

Sub-Score Category	Impact on Safety Score
Incidents DoC (ISM Manager) performance	Highest
Vessel PSC Deficiencies Vessel PSC Detentions	Medium
Vessel's Flag State Vessel's Classification Society	Medium

Vessels scoring '1' or '2' are identified as requiring improvement to achieve the industry standards of 'good' operations. Owners and operators of these vessels can request a Safety Score review which will be carried out by RightShip, after which, specific guidance will be provided on how the vessel's score can be improved.

Vessels that score between '3' and '5' are considered by RightShip to be working towards industry best practice in safe operations.

Interpreting PSC data

To ensure that PSC data is interpreted with consistency and to allow for differences in inspection regimes around the world, the Safety Score considers all inspection data for

the port in question. If the inspection port is not known or there has limited historical data, this is also taken into account.

Transparency

The Safety Score is designed to be transparent and provides a clear and concise explanation of the elements that factor into a vessel's score. Anytime a Safety Score rule is triggered, it is highlighted on the platform so the shipowner can see why a particular score has been allocated.

Safety Score and Charterparties

In the absence of a specific charterparty term, documents proving a vessel needs RightShip approval (or similar) are not indicative of seaworthiness. There is a distinction between legally required documents (such as Class approval) and commercial requirements of private organisations (such as RightShip).

RightShip has never supported the use of either its previous Star Rating or the new Safety Score as a charterparty requirement. However, some parties agree to insert clauses into charterparties requiring the vessel to achieve or maintain a minimum RightShip 'rating'.

Where there is such a charterparty term and the vessel fails to meet a contractually agreed rating, charterers may have a claim for damages for breach of charterparty against owners. However, charterers would likely be obliged to try to mitigate their loss. For example, charterers could continue to trade the vessel with the lower rating (if possible) and claim losses from owners (for instance, the difference in hire rates between a three-star rating and any lower rating). In practical terms, charterers would need to evidence the loss and/or show a causal connection between the RightShip rating and the loss of a fixture or a lower hire or freight rate.

By David Patterson
Consultant (Loss Prevention)

By Kate Richards
Senior Solicitor (FD&D)

FIND OUT MORE

Click here to learn more about RightShip's Safety Score.

Explore the globe with our award-winning suite of digital tools

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- ✓ World Sanctions

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Supporting Members Navigate Decarbonisation

The IMO has set targets for shipping to reduce greenhouse gases between now and 2050 in a phased approach. The 'Navigating Decarbonisation' area on our website looks at the goals in more detail and how the industry can accomplish them.

Learn more about decarbonising shipping at www.nepia.com/topics/navigating-decarbonisation

Where we tackle subjects such as:

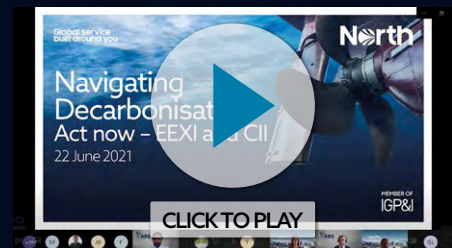
- IMO greenhouse gas emissions strategy
- Meeting the 2030 targets
- Meeting the 2050 targets
- Emerging technologies and alternative fuels
- Sea Cargo Charter and Poseidon Principles
- Details on national decarbonisation schemes
- Contractual and charterparty issues, including:
 - CO₂ reduction measures
 - CO₂ data collection clauses
 - Carbon trading

2023: Act Now for EEXI and CII

The Energy Efficiency Existing Ship Index (EEXI) and the Carbon Intensity Indicator (CII) requirements will enter into force from 2023. EEXI benchmarking of shipowner's fleets of vessels is required soon to allow technical improvements can be considered and the contractual aspects planned.

DISCUSSIONS BETWEEN CHARTERERS AND SHIPOWNERS NEED TO START NOW!

We recently combined forces with ABS to provide our Members with a webinar on the EEXI and CII. See the webinar [here](#).



WANT TO KNOW MORE?

Contact us at decarbonisation@nepia.com to see how we can support Members in making informed decisions in their decarbonisation strategies.

Contact our Loss Prevention team on: loss.prevention@nepia.com

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