

## Loss prevention – the team effort that benefits us all

This is the 50th edition of *Signals*, the Association's pioneering loss-prevention newsletter. Its continued publication since 1990 reflects the importance the North of England places on loss prevention – so it is perhaps timely to restate why.

The principal reason is mutuality. Within a P&I club there exists a very special relationship between the insurance provider – the club – and the insured parties – the Members. Unlike most other insurance arrangements, the insureds own the provider and cover each others' liabilities on a not-for-profit basis. Though premiums are based on individual claims records, all Members are affected by general claims trends and have a direct interest in driving down club accidents and claims.

### ADDRESSING HARDWARE AND SOFTWARE ISSUES

The primary cause of almost all accidents and claims can be traced back to either mechanical /

maintenance factors (the 'hardware') or human factors (the 'software'). More often than not, it is

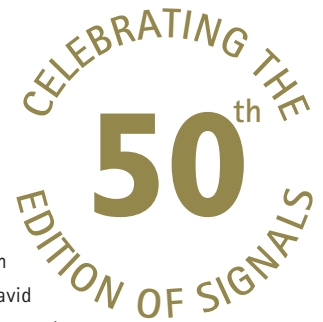


*The Survey Team: David, Mari and Paul.*

a combination of both. Managing risk and reducing exposure to accidents and claims thus requires a concerted effort to address both sets of factors.

Hardware factors are addressed at the North of England by David Hastings and his team who administer ship inspection and condition survey programmes in consultation with the underwriting department. New Members entering ships in the Association are likely to have their ships surveyed to ensure they meet the club's strict membership requirements and existing Members may also become subject to surveys to ensure that high standards are being maintained. In any one year approximately 10% of entered vessels are inspected.

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## Signals Special on ship security

A diplomatic conference at the International Maritime Organization (IMO) in London in December 2002 approved significant changes to the Safety of Life at Sea (SOLAS) Convention 1974 and the introduction of a completely new International Ship and Port Facility (ISPS) Code. The changes are designed to reduce the vulnerability of ships to terrorists.

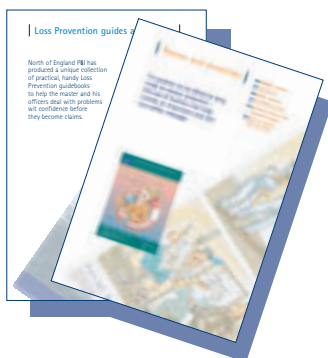
Ship operators now have only until July 2004 to install new security equipment, introduce new operational and management systems and obtain

the required certification if they wish to continue trading internationally after that date.

To bring Members up to date on the main provisions of the new regulations and to provide some practical guidance on how to develop practical ship security plans, this issue of *Signals* is accompanied by a *Signals Special* on ship security. The special issue also looks at some of the unilateral measures being introduced by the US as well as addressing some of the commercial implications of the new rules.



• For further copies please contact the loss prevention department.



## Ordering loss-prevention products

Accompanying this issue of *Signals* are revised and updated catalogues of the wide range of North of England loss-prevention books, posters, videos and other products.

Copies of all relevant publications and products are sent to all Members and entered ships automatically at the time of production. Full sets of relevant material is made available to all new ships or new Members when they enter the Association.

Additional copies of all items can be obtained from the loss prevention department in Newcastle for a nominal price. Copies of all material are also available to non-members at reasonable cost. An order form, which includes the prices, also accompanies this issue of *Signals*.

The Association welcomes suggestions from Members and their staff on ideas for future Loss-Prevention products.

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Software factors tend to be addressed by the loss-prevention department, headed up by Phil Anderson. A wide range of pioneering loss-prevention tools - in the form of guides, posters, videos and other training aids - has been developed by the department along with a variety of unique training courses, seminars and workshops for Members and their staff, both shore-based and seagoing. Full details can be obtained from the loss-prevention section of the club's website at [www.nepia.com](http://www.nepia.com)

#### A VAST TEAM EFFORT

It would be a mistake, however, to think that implementation of the Association's loss-prevention ethos was restricted to just two departments. In reality almost everyone associated with the club participates in the loss-prevention programme - the departments simply provide focus.

Club staff are frequently involved in writing books and articles or contributing towards poster design ideas, while others have appeared in training videos. When training courses, workshops and seminars are run it is quite normal for individuals from the claims, underwriting, FD&D and accounts departments to give presentations. Indeed these same individuals are frequently involved in providing loss-prevention advice to members on a wide range of issues - from bill-of-lading clauses, pre-employment medical advice and cargo commodity queries to interpretation of ISM-related issues.

An even wider pool of knowledge exists within the club's network of correspondents and representatives around the world. In addition there

are many lawyers, surveyors and consultants with a wide range of expertise who regularly make contributions to the club's loss-prevention activities.

North of England Members are of course also directly involved in the programme and frequently suggest the topics for loss-prevention initiatives. Many of the club's training courses, workshops and seminars are incorporated into Members' own training programmes or company conferences.

#### A COMMON GOAL

At the North of England there is effectively just one team working to drive down accidents and claims. That team comprises many thousands of individuals around the world, both ashore and on board. They all have the same goal - to make ships safer, seas cleaner and, as a natural consequence, to make shipping a more profitable venture.



*The Loss Prevention Team: Adele, Phil, Denise and Tony.*

## New hook for safer lifeboat drills?

A new on-load release hook for lifeboats has been developed which should help to reduce the risk of personal injuries occurring during lifeboat drills.

A report in 2001 by the UK Marine Accident Investigation Branch found that many drill accidents were due to the fact that on-load release mechanisms had become over-complicated and crews generally didn't understand how they worked. The Association has recently received details of a new design of on-load release hook for conventional davit-launched lifeboats that appears to overcome many of these difficulties.

The Safelaunch design from Survival Craft makes use of a new mechanism that locks the hook positively and is not reliant on small tolerances to operate safely. The mechanism is readily accessible and correct operation can easily be verified visually. Use of stainless steel should also help to ensure consistent operation and reduce maintenance costs.

#### LOCKING PIN FOR DRILLS

A significant improvement is the ability to fit a locking pin. This would obviously not be used during normal operations but can be fitted - following the procedures of the ship's permit-to-work system - to ensure safety during drills and maintenance operations.

According to the manufacturer, the hooks can be specified with new lifeboats or retrofitted to most existing lifeboats using universal fittings. The photographs show the hook and locking pin in use on a lifeboat at South Tyneside College in the UK.

*For further details contact Survival Craft Inspectorate, telephone +44 (0)1224 210171, fax +44 (0)1224 210432, email [info@survivalcraft.com](mailto:info@survivalcraft.com)*



*The new on-load release hook with locking pin.*

# The dangers of hepatitis

Recent analysis of crew-illness claims handled by the North of England reveals that hepatitis is a growing and serious problem. It is also apparent that many crewmembers are already suffering from hepatitis before they join their ships and that their condition is not identified by pre-employment medicals.

Hepatitis means inflammation of the liver. There are several viruses which cause hepatitis, the most common ones being hepatitis A, B and C. The main differences between the viruses are how they are transmitted and the effect they have on health.

Most people recover from hepatitis A with no lasting liver damage, but hepatitis B and C can cause long term liver disease and even liver cancer. Unfortunately in many cases there are no early warning symptoms and it might not be diagnosed until liver damage is advanced.

## HEPATITIS A

Crewmembers can catch hepatitis A where hygiene and sewage treatment standards are poor, by eating

raw and inadequately cooked food prepared by an infected person with poor personal hygiene, by eating salads and fruit washed in contaminated water, and from sexual activities which involve oral / faecal contact.

Crewmembers can protect themselves against hepatitis A by vaccination and this is advisable before visiting all countries where sanitation may be poor and by avoiding inadequately cooked shellfish, raw salads, fruit, tap water, ice cubes and un-pasteurised milk in high-risk countries.

## HEPATITIS B

Hepatitis B can be caught by having sexual intercourse without a condom, by sharing any injecting equipment (including syringes, needles, filters, cups, spoons and water), from infected blood, for example through an open cut or sore, or by sharing such items as razors, toothbrushes or scissors. Infection is also possible through other infected secretions such as semen, vaginal fluid and saliva, but particularly if contaminated with blood.

Vaccination against hepatitis B is also available if at risk of infection. However protection will be gained by having safer sex - use a condom, by not sharing any injecting equipment and by preventing someone else's blood or other body fluids from entering your body.

## HEPATITIS C

Like hepatitis B, hepatitis C can also cause infection by having sexual intercourse without a condom, although the risk is lower. Sharing any injecting equipment, including syringes and needles and the sharing of personal items such as a razor or toothbrush where dried blood may be present, are also the possible causes of infection.

The recommended way to protect against hepatitis C is by not sharing any injecting equipment and by ensuring that only sterile needles are used for any form of injecting. Crew should also avoid sharing personal items where dried blood may be present.

- For further information visit the British Liver Trust website at [www.britishlivertrust.org.uk](http://www.britishlivertrust.org.uk)

## Major changes introduced with new Athens Convention

Amendments to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 have finally been adopted at a diplomatic conference held from 21 October to 1 November 2002 at the International Maritime Organisation headquarters in London. The amendments to the 1974 Convention are contained in a protocol to the Athens Convention.

The IMO intends that the new instrument will provide for adequate compensation for death and personal injury claims and claims for loss of or damage to luggage and vehicles. More than 70 States attended the Conference, and had varied views on what actually constitutes adequate compensation. It has previously been argued that the 1974 Convention was only ratified by as few as 28 States because of the low level of the limits of liability set therein, the alternative view is of course that for many states the limit was considered too high. The protocol sets a maximum limit empowering national courts to compensate for death, injury or damage up to that amount. Also included is an 'opt-out' clause, enabling Parties to the Convention to retain or introduce higher limits of liability still, or even unlimited liability.

The final wording has now been finalised by the Legal Department at the IMO and will be available

for ratification. The 2002 Protocol will enter into force 12 months after being accepted by 10 States and will be entitled *The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002*. It may then take a few years before each State incorporates the Convention into domestic law.

### LIMITS OF LIABILITY

Not only have the limits of liability been significantly raised, the mechanism for raising limits still further in the future have been made easier, but is presently set at a minimum of 250,000 Special Drawing Rights (SDR) (Approximately US\$ 325,000) per passenger, per incident. The carrier will be considered automatically liable unless they can prove that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, unless wholly caused by an act or omission done with intent to cause the incident, by a third party. The liability of the carrier however only includes loss arising from incidents that occurred in the course of the carriage. The burden of proving this, and the extent of the loss, remains with the claimant. Where the death of, or personal injury to, a passenger is not caused by a shipping

incident, the carrier is still liable if the incident which caused the loss was due to the fault or neglect of the carrier, the burden of proving fault or neglect in this case also lies with the claimant.

If the loss exceeds the minimum limit, the carrier is further liable, up to a limit of 400,000 SDR, (approximately US\$524,000) per passenger per incident, unless the carrier is able to prove that the incident causing the loss occurred without the fault or neglect of the carrier. Therefore this top-up layer of compensation is not subject to the same strict liability that governs the initial 250,000 SDR.

### OPT-OUT CLAUSE

A party to the protocol is able to introduce higher limits of liability for personal injury and death but are obliged to inform the IMO accordingly.

### LOSS OF OR DAMAGE TO LUGGAGE AND VEHICLES

The liability of the carrier for the loss of or damage to cabin luggage is limited to 2,250 SDR (approximately US\$2,925) per passenger, per carriage.

Liability of the carrier for the loss of or damage to vehicles, including all luggage carried in or on the vehicle is limited to 12,700 SDR (approximately US\$16,250) per vehicle, per carriage.

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Liability of the carrier for the loss of or damage to other luggage is limited to 3,375 SDR (approximately US\$4,390) per passenger per carriage.

The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 SDR (approximately US\$430) in the case of damage to a vehicle and not exceeding 149 SDR (approximately US\$194) per passenger, in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

#### COMPULSORY INSURANCE

The new convention requires carriers to maintain

insurance or financial security, such as the guarantee of a bank of similar financial institution, to cover the limits of such liability under the convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance shall not be less than 250,000 SDR (approximately US\$325,000) per passenger per incident. Ships are to be issued with a certificate attesting that such insurance, or alternative financial security, is in force and the protocol provides a draft certificate for this purpose in an Annex.

#### DIRECT ACTION AGAINST INSURERS

Claims for compensation which are covered by insurance may be brought directly against the

insurer. The insurer's liability will be limited to the first layer of SDR 250,000 even where the carrier is not entitled to limitation of liability.

#### TIME BAR FOR ACTIONS

The basic time bar period of two years remains in the new Convention. However the law of the court seized of the case shall govern the grounds for suspension and interruption of time. In no case however may this be increased beyond three years from when the claimant knew, or ought reasonably to have known, of the injury, loss or damage, and it cannot be extended beyond five years in total, other than by private agreement between the carrier and the passenger.

# Nigerian bagged cargoes

The Association has recently been provided with some very useful advice from local surveyors we know in Nigeria. The advice is specific to Nigeria but the main points are applicable to many West African ports.

As those Members carrying bagged cargoes will know, the majority of the problems arise due to alleged shortage and damage. Shortages are almost invariably the result of either pilferage by



*Pilfering of the cargo takes place ashore...*

stevedores or deliberate under-counting by receivers. For instance, it seems that each truck taking bagged cargoes from alongside a ship is assumed to contain 600 bags but trucks are often deliberately overloaded.

However, if the owner's agent or the protecting agent arranges with the receiver for a joint inspection of hatch seals and a joint draught survey on arrival, followed by a joint empty hold survey after discharge, the scope for any shortage claims should be significantly reduced. The use of official port surveyors, such as those now assigned in Nigeria, will add even greater evidential value.

Masters should of course also have carried out a draught survey at the load port.

#### JOINT SURVEY OF STOWAGE CONDITION

As regards to cargo damage, the causes usually arise from the stevedores' practices of

- discharging from the hatch square and allowing the stow in the wings to collapse inwards
- using net slings which are in poor condition
- overloading the slings (50 bags instead of the allowable 40)
- forceful landing of the slings onto the trucks.

The trucks themselves are often in poor condition, with sharp projections from the truck bed and so on, and the stevedores also often tear bags to steal the contents.

A joint survey between the owner and receiver of the stowage condition at the same time as the hatch seal inspection should also help to avoid damage claims. Further, joint daily tallying should be carried out at the ship's side specifying the number of bags discharged and the number torn with the torn bags being weighed before being loaded onto trucks. In any case, the owner's tally sheets should be passed to the receiver every day. Protest notes should also be issued by the master regarding any pilferage or negligent cargo handling by the stevedores and some of these should be notarised to give them greater evidential value.

#### NEW REGULATORY BODY FORMED

Fortunately the general incompetence and corruption of local stevedores has started to be

officially recognised. The Nigerian port authority has recently set up the Joint Dock Industrial Labour Council (JODLIC) to regulate stevedoring practice, administer and control dock labour and improve the welfare of dock labourers.

If any stevedores are found to be pilfering or to be acting negligently, masters should get their details from their identity cards and report them via the agent or protecting agent to JODLIC together with short details of the incident.

- *For more information please contact Peter Scott at the Association.*



*...as well as on board ship.*

## West African correspondents recommend discharge surveys

West African P&I club correspondents have recommended discharge surveys as the most effective method of avoiding inflated claims from local receivers. Their recommendations were given to North of England services manager Nick Tonge and Gunnar Topland from Gard, who recently visited the country on behalf of the International Group.

The fact-finding trip was undertaken in October to review the status and abilities of the various companies listed as correspondents to International Group clubs. Though intended primarily to review the infrastructure, abilities and facilities of the various correspondents, questions of claims prevention and claims handling were also on the agenda.

### DISCHARGE SURVEYS DETER INFLATED CLAIMS

In terms of claims prevention, the predominant message was that owners should, in every case, arrange for a discharge survey. Whereas such surveys may not prevent claims being presented, they certainly help to deter cargo receivers making the sort of inflated claims that are too often a feature of West African trade.

The Association's position on discharge surveys is that they are, in effect, anticipatory surveys and are not covered by the club. However, if a claim subsequently arises and the club uses the survey in the owner's defence, the club may reimburse the cost of the survey.

The second suggestion made by most correspondents was that owners should consider

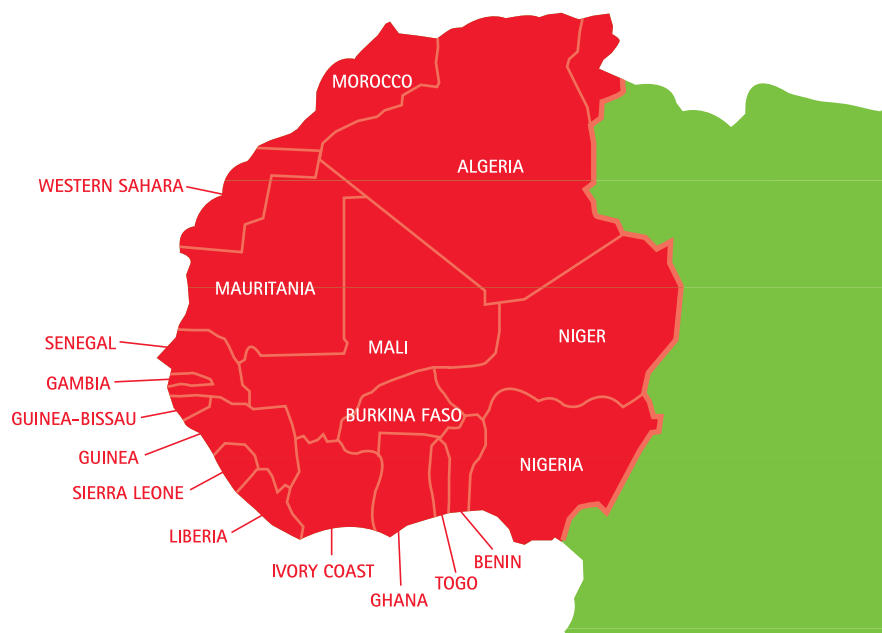
appointing a protecting agent in most ports. If, however, the purpose of having a protecting agent is to organise cargo surveys, many Members may find it easier and cheaper to ask the Association to arrange surveys through the local correspondent, in which case a separate protecting agent may not be necessary.

### CLUB LETTERS STILL NOT POPULAR IN NIGERIA

It would appear that most claimants in West Africa will accept club letters of undertaking with only the

most aggressive demanding bank guarantees. However, many local claimants in Nigeria insist on bank guarantees as they can use them as collateral against further loans - indeed, certain receivers seem to make a point of collecting guarantees to finance their activities!

There is an ongoing process by which the International Group is trying to educate receivers, agents and judges that club letters are sufficient and can be accepted and ordered by the courts.



## Paranagua shippers shape up

The Brazilian courts are at last beginning to show a more balanced approach to dealing with shortloading incidents at the Brazilian port of Paranagua. The port had developed a reputation in shipping circles for serious shortloading and neither shippers nor the courts seemed inclined to improve the situation.

The usual pattern of events was that a master discovered a shortloading by draught survey and inserted remarks on the mate's receipts. The Brazilian shipper then got a court order forcing the agent to issue a clean bill of lading, which the agent duly did. On arrival at the discharge port, the shortage was found and the shipowner held liable. Any attempt to recover from the shipper was generally abandoned as being too expensive and time consuming due to inefficiencies in the Brazilian court system.

### COURTS NO LONGER SUPPORTING SHIPPERS

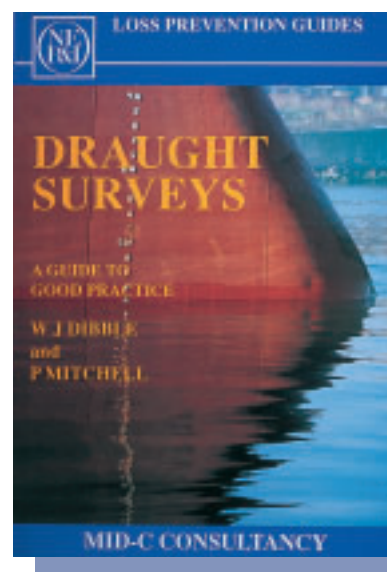
However, the Association's correspondent in

Paranagua has advised that local courts may no longer always act in the shipper's interests. On three recent occasions the courts have refused to order the agent to issue clean bills of lading. Shippers have apparently taken note of this and are, when pressed by masters, taking steps to load extra cargo.

Masters are nevertheless advised to carry out interim draught surveys and compare their figures with those supplied by the shipper. Where a shortage is found, masters should protest and threaten to clause mate's receipts.

Indeed, masters should carry out regular interim draught surveys as a matter of practice. If a master or member wants local assistance in dealing with a shipper they can always contact the Association, which will in turn ask its correspondent to assist.

*Practical guidance on conducting draught surveys can be found in the Association's loss-prevention guide on the subject.*



# Saving life – a duty on us all

In previous editions of *Signals* and *Signal Specials* we have dealt with the issue of saving persons in distress. But what are the legal implications of delaying a ship's voyage or deviating from its course?

The precise answer will depend in each case upon the particular terms of the contract under which the ship is employed, whether it is a charterparty or a bill of lading. Nevertheless there are some general principles that apply.



*Ships have a legal obligation to assist persons in distress.*

The terms of the Safety of Life at Sea (SOLAS) Convention 1974 and Search and Rescue (SAR) Convention 1979 impose legal obligations on ships to assist any person in danger of being lost at sea. It is also a matter of public policy that seafarers should be encouraged to save persons in distress at sea and, what is more, not be penalised or disadvantaged by doing so.

## STANDARD FORMS GIVE LIBERTY TO DEVIATE

Therefore, under a time charterparty such as the New York Produce Exchange form, in the absence of any special provisions, the ship will not go off hire and nor will charterers have any claim against owners for any delay or expenses or losses that they may suffer as a result of the voyage having to be interrupted, delayed or prolonged as a result of the rescue. Indeed, the standard NYPE form expressly states that there is a liberty to deviate for the purpose of saving life.

As for voyage charterparties, the GENCON, for example, contains a similar liberty clause.

The same may also be said of many bills of lading, which either already include an applicable liberty clause or which otherwise incorporate the terms of a charterparty which itself includes a liberty. Furthermore, the Hague and Hague Visby Rules expressly state that the carrier and ship shall not be responsible for any loss or damage arising or resulting from saving or attempting to save life at sea. Any deviation or delay to save life will simply not amount to a breach of the contract of carriage.

Insofar as any clause or provision which would put the ship off hire or make owners liable for delay or deviation would be contrary to public policy, not to mention conventions such as the above international Conventions, Members should resist the agreement of such clauses so far as they may. It is of course understandable that there will be commercial pressures that dictate that the ship should not be diverted in any way from the contractual venture. However, purely commercial considerations cannot and must not be allowed to take precedence over the saving of life!

## The exercise of due diligence in employing crew

Members will be well aware of their obligation to ensure that the crew that they employ are properly qualified and certificated and that they are competent. Indeed the requirement is set out, for example, in section 6 of the ISM Code. It is of course common for the task of employing suitable crew to be delegated to manning agents. Members should however be aware that entrusting this task to manning agents may not itself be enough to discharge their own obligations and that they will still need to take steps to ensure that their crews are indeed competent. It also remains a continuing obligation to ensure that crew members remain competent and efficient after recruitment. The danger that an owner faces if his crew is not in fact competent is that the ship will be regarded as unseaworthy at the commencement of the voyage so that it may not be possible to escape liability for any cargo loss or damage that may occur on the voyage.

This has been the position under English law for some time but the point has recently been highlighted by a case in the High Court in Singapore. This case involved a ship, the 'Patraikos II', which ran aground causing substantial damage to both ship and cargo. The owners of the ship failed in their defence of the resulting cargo claims because they could not demonstrate that they had

exercised due diligence so far as competence of the crew was concerned.

The importance of this point is also emphasised by two recent English cases that have received a lot of attention insofar as they have implications for Members' ISM systems, the 'Eurasian Dream' and the 'Torepo'.

The 'Eurasian Dream' involved a fire in a car carrier. Although owners had in place an extensive ISM system and although properly certificated and qualified officers and crew had been appointed to her, the ship was nevertheless not seaworthy. Although experienced, the Master did not have any experience of car carriers. The crew themselves were unfamiliar with the hazards of car carriers and were not familiar with the characteristics of this particular ship. Crew had not been adequately trained in fire fighting. They simply did not know how to deal with a fire on a car carrier. As a result cargo interests' claim for cargo damage succeeded.

On the other hand, the 'Torepo' involved a ship grounding, which then led to a salvage. Cargo interests sought to recover from the ship the amount that they were obliged to pay to salvors on the basis that she was unseaworthy. That claim failed. There was nothing to suggest that the relevant ships' officers were not competent,

familiar with their tasks and capable of carrying them out – they simply made a mistake. The ship was therefore seaworthy.

The lesson for Members is clear. It is not enough to employ officers and crew who have all of the necessary certificates. Members must also ensure that they are properly competent, that they have the necessary experience to enable them to carry out the particular tasks required of them on the particular ship on which they are employed, and that they are properly familiarised with the ship and trained to carry out their tasks. It is not sufficient simply to rely upon manning agents. Recruitment, familiarisation, training and supervision all need to be dealt with in a proper ISM system that is appropriate to the Members' particular ships and operations and not, as was the case in the 'Eurasian Dream', a generic system.



# International Hull Clauses

Over the last hundred years, the Institute Time Clauses have become an international standard for period insurances on vessels and this is reflected in the new title of "International Hull Clauses". The basis of their success has been providing the cover required by commercial interests, together with the greatest possible degree of certainty in the approach to claims.

The latest clauses have had a relatively short gestation period, but it has involved a wide consultation exercise. The Joint Hull Committee of Lloyds, as authors of the new clauses, have stated that further reviews will happen after they are brought into use, the first likely to be in about six months. They have also emphasised that Institute Time Clauses 1.10.83 and 1.11.95 will continue to be available for use if required.

The Clauses are now divided into three parts:-

Part 1 - Principal Insuring Conditions

Part 2 - Additional Clauses

Part 3 - Claims provisions

The new Clauses are considerably longer than their predecessors for two reasons:

- The new clauses have incorporated a number of wordings normally found in Cover Notes, to produce a more self-contained document. These additions are highlighted in the full commentary but have little or no effect on the overall cover that would be provided to most Assureds.
- Institute Time Clauses 1/10/83 incorporated a number of provisions that repeated important sections of the Marine Insurance Act 1906, so that the Assured could see in a single document both the positive cover and major exclusions. This approach has been continued in International Hull Clauses 1/11/02 with regard to procedural matters. Part 3 therefore contains Clauses that largely reflect existing law and market practices, again on the basis that having such matters clearly set out is of benefit to all parties.

The most significant changes in cover are:

## Part 1

Clause 2.2 - Latent defect cover subject to the deduction of the cost that would have been incurred to correct the defect itself.

Clause 6.3 - Cover for legal costs in collision cases limited to 25% of Insured Value.

Clauses 10 & 11 - Provisions regarding navigation and use of vessel are no longer time warranties; no cover for

losses during period of breach unless Underwriters advised immediately and terms agreed.

Clause 13 - Automatic termination following failure to comply with Class / ISM requirements, absent Underwriters' agreement.

Clause 14.2 - Absent Underwriters' agreement, automatic termination of cover on vessel sailing to be scrapped.

Clause 14.4 - Underwriters not liable for losses attributable to breach of Statutory / Class requirements.

Clause 21 - Constructive Total Loss payable based on 80% of Insured Value.

## Part 2

Clause 43 - General Average Absorption Clause available as an option.

Clause 44 - Optional Additional Perils Clause, including cover for latent defect cost excluded in Clause 2.2.

## Part 3

Clause 46 - Notice of claim required within 180 days.

Clause 48 - New provisions concerning investigation of claims.

Clause 52 - Recoveries to be apportioned "ground up" including proportion in respect of deductible.

From a P&I Club's perspective, the most significant change is to Clause 8 - General Average and Salvage (which was Clause 11 in the Institute Time Clauses Hulls, 1.10.83)

Clauses 8.1, 8.2, 8.3 and 8.4 are as per Institute Time Clauses Hulls 1/10/83 with an alteration in 8.3 from the 1974 to the 1994 York-Antwerp Rules. Clauses 8.5 and 8.6 are new and require some explanation. These clauses state:

8.5 The Underwriters shall not be liable under this Clause 8 for or in respect of

8.5.1 *special compensation payable to a salvor under Article 14 of the International Convention on Salvage, 1989 or under any other provision in any statute, rule, law or contract which is similar in substance*

8.5.2 *expenses or liabilities incurred in respect of damage to the environment, or the threat of such damage, or as a consequence of the escape or release of pollutant*

*substances from the vessel, or the heat of such escape or release.*

8.6 Clause 8.5 shall not however exclude any sum, which the Assured shall pay

8.6.1 *to salvors for or in respect of salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account*

8.6.2 *as general average expenditure allowable under Rule XI(d) of the York-Antwerp Rules 1994, but only where the contract of affreightment provides for adjustment according to the York-Antwerp Rules 1994.*

Clause 8.5.1 refers to special compensation payable to Salvors under Article 14 of the International Convention on Salvage 1989. Article 14 provides for special compensation to be paid by the Shipowner to the Salvor for preventing or minimising damage to the environment by the ship and / or her cargo in circumstances where the Salvor has failed to earn a sufficient customary salvage reward under Article 13 (which deals with the criteria for fixing the reward and includes efforts by the Salvor to prevent or minimise damage to the environment).

It was agreed (the so-called Montreal compromise) that Article 13 awards would be payable by property Underwriters but that Article 14 "special compensation" would be paid by the vessel's P&I Club. Clauses 8.5.1 and 8.6.1 therefore make explicit the terms of the Montreal compromise and represent no change in the cover provided by Institute Time Clauses 1/10/83.

Clause 8.5.2 is new and has a potential influence on coverage.

Any General Average Adjustment involving cargo is drawn up in accordance with the provisions contained in the contract of affreightment. Should the Bill of Lading or Charter Party provide for any General Average to be adjusted according to York-Antwerp Rules 1974, then there may be some General Average expenditure which would be allowed in the General Average but would not be recoverable from Hull Underwriters as Ship's proportion of General Average by virtue of Clause 8.6.2.

Two areas of expenditure that would be allowable in General Average (according to York-Antwerp Rules 1974) but not recoverable from Hull Underwriters would be:

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- liabilities which may flow from the voluntary jettison of pollutant substances
- any enhancement in any inward port charges at a port of refuge or port of repair by virtue of extra tugs or booms being deployed as a precaution against potential release of pollutant substances.

A recent informal survey conducted around RHL Group offices indicated that at least 50% of General Average cases currently in hand still involve contracts of affreightment providing for York-Antwerp Rules 1974.

Owners who retain York-Antwerp Rules 1974 in their Contracts of Affreightment should therefore discuss this with their Insurers at renewal, or consider changing to York-Antwerp Rules 1994. Difficulties may sometimes occur since Owners are not always aware of the detailed contents of Charterers' Bills of Lading, which are most often the ones likely to include the older Rules.

Three other significant changes are:

- **Clause 21 - Constructive Total Loss.**

It is now necessary to show costs only up to 80% rather than 100% of the Insured Value, in order to establish a Constructive Total Loss. This change puts the new clauses on a par with the Norwegian Plan and many countries, which are subject to Civil Codes that make a similar provision.

- **Clause 52 - Recoveries.**

Under the Institute Time Clauses 1/10/83, recoveries were dealt with on a "top down" basis, with the Underwriters having the first call on recovery funds until he had recovered everything he had paid. Under the International Hull Clauses 1/11/02, the recovery is apportioned over insured and uninsured losses (including the deductible).

- **Clause 49 - Duties of Underwriters in relation to claims.**

Included within this clause are procedural statements relating to the appointment of Average Adjusters and Surveyors. Whilst much of this new clause reflects existing practice it is both welcome and important that such claims procedures have been set out explicitly for the first time.

A full commentary on the new International Hull Clauses can be obtained from [richard.corhah@rhl-ctc.com](mailto:richard.corhah@rhl-ctc.com) or [gordon.whyte@rhl-ctc.com](mailto:gordon.whyte@rhl-ctc.com)

*This article was contributed by Gordon Whyte of Richards Hogg Lindley - Average Adjusters Marine Claims Consultants.*

## Mandatory signs poster

The third poster in the Association's series on safety signs accompanies this issue of *Signals*. It illustrates the use of mandatory signs, which prescribe a specific action to be taken and generally feature a white symbol on a blue disc background.

The poster is part of the series to accompany the club's recently launched audio-visual training module on signs and signals, the computer CD version for which has already been distributed to all ships and members entered with the Association. The module is designed to help them meet their obligations under the STCW and ISM codes to provide onboard familiarisation training.

Regulations issued by the United Kingdom government (Statutory Instrument 2001 No 3444) also draw shipowners' attention to their obligations, under UK and European law, to provide and maintain safety signs. This should form part of a risk

assessment and include the provision of instruction and training to seafarers.



- A copy of (Statutory Instrument 2001 No 3444) can be downloaded from the UK government publications website at [www.hms.gov.uk/stat.htm](http://www.hms.gov.uk/stat.htm)

## Giving way with confidence

The latest Collision Regulations poster released by the club - a copy of which is enclosed with this issue of *Signals* - relates to rule 16, the action to be taken by a give-way vessel in a close-quarters situation.

When approaching another vessel so as to involve a risk of collision, many Masters and navigating officers would prefer to be on board the give way vessel. Having established themselves to be on the give way vessel they became empowered to take the appropriate action to keep well clear, in good time, thereby avoiding the anxiety of the close quarters situation. For some, however, it has become commonplace for their ships to stand on even when the rules and circumstances of the case make it clear they are on the give-way vessel.

### CONFIDENCE COMES FROM UNDERSTANDING

Collision avoidance is about confidence, which comes from a thorough understanding of the rules of the road and an ability to use them in any situation. This applies equally well to the give-way vessel as it does to the stand-on vessel, as the actions of both will ultimately determine the outcome.

The latest ColRegs poster is designed to assist watch-keeping officers develop a better understanding of the rules of the road and thereby

develop the confidence to take positive and correct action. Confident watch keepers will positively identify what role their vessel plays in any given collision situation and, having established their vessel to be the give-way vessel, will take early and substantial action to keep well clear.

### DOING THE RIGHT THING

As the give-way vessel you have the ability to take the stress out of any and all close-quarters situations. In time you will grow to like this role, saving the stand-on manoeuvre for the stand-on vessel - which has every right to expect the give-way vessel to do the right thing.



## Signs and signals training packs

Members can order complete training packs on signs and signals at £15 each (non-members £25) from the Association's loss prevention department. Each pack contains a set of four safety-signs posters and an audio-visual training module. The module is available on computer CD, VHS video or video CD (VCD) - please specify when ordering.





# Greek workshops focus on ISM Code

Club staff undertook a major programme of workshops and lectures in Greece at the end of November 2002, including a series of in-house loss-



*North of England staff presenting workshops to new members, Minerva Shipping.*

prevention workshops at Members' individual offices. The events were run by Mike Salthouse and Tony Allen of the club's Greek office supported by loss-prevention manager Phil Anderson and Hellenic

team member John Owen - who had recently moved back to the Newcastle office.

The workshops involved a comparative study of some recent London High Court judgments, which provide useful guidance on the legal significance of the ISM Code. In particular the relevance of the concept of 'seaworthiness' was explored, both within the context of the Hague-Visby Rules and the ISM Code. Each workshop was well attended, including managers and superintendents from different departments as well as a good number of masters and officers on leave.

## LECTURING TO PACKED HOUSES

A lecture on a similar theme was held that week for other Greek members at the Marine Club of Piraeus, which was filled to capacity.

Phil Anderson, in his capacity as senior vice president of the Nautical Institute, was also invited to lecture to the newly formed Hellenic branch of the Institute at the Centre for Further Education (KESEN) in Piraeus. The auditorium was packed with nearly 400 masters, mates and engineers attending the academy as well as local members of the Institute.



*Hellenic branch of the Nautical Institute lecture.*

## Norwegian training link continues

The Association continues to provide the P&I insurance course for the Norwegian Insurance Academy in Oslo, now using the new computer-based training format.

Over 30 students from various sectors of the Norwegian marine insurance and shipping industries took part in the course last year. Most of the studying was done by distance learning, with the students corresponding with North of England tutor Phil Anderson by email. However, a full-day tutorial session was also held in Bergen by Phil and Rune Dybedal - the club's in-house Norwegian Advocate.

The club has provided the Academy's P&I module for more than a decade now and many former students have now reached senior positions in the Norwegian marine insurance and shipping industries.



## Loss-prevention seminar in Istanbul

The Association continued its policy of keeping members directly informed of the latest club and industry developments during a recent visit to Turkey when it held a well-attended loss-prevention and company seminar in Istanbul.

Tony Baker and Graham Pilkington, from the loss prevention and FD&D departments, updated the audience on the latest issues arising from the ISM Code and the incoming proposals on ships' security.

Directors Alan Wilson and Savraj Mehta then described recent developments at the Association, highlighting its continued growth and strong financial performance. They were particularly pleased to report that Association membership in Turkey now exceeds 1 million GT.

The visit also enabled the team to visit many of the Association's members in and around Istanbul.



*Finance Director Alan Wilson explains the strong financial performance of the Club.*



*Loss Prevention executive Tony Baker provided an ISM update.*

# Residential course 2003

"The content of the lectures and the way information was presented has already proved to be of great help to the development of my knowledge"



"The presentations were first class and it was clear that North of England are genuinely interested in enhancing delegates' understanding of the subject matter"

The club will again run its highly popular residential training course in P&I insurance and loss prevention this year. Full details of the course and a registration form are included with this issue of Signals or can be downloaded from the club's website at [www.nepia.com](http://www.nepia.com)

The course will have three separate parts, as follows.

- Part 1 - an introduction to ships and shipping, held at the maritime safety training centre at

South Tyneside College, South Shields and on site, visiting ships and around the port of Middlesbrough (2 days - Saturday 14 and Sunday 15 June, arriving evening Friday 13 June)

- Part 2 - an introduction to P&I insurance and loss prevention, held at Lumley Castle (1 day - Monday 16 June)
- Part 3 - applied P&I claims and loss prevention, held at Lumley Castle (4 days - Tuesday 17 June to Friday 20 June).

Delegates can attend all three parts or select a shorter programme to reflect their own experience and requirements.

The course continues to be extremely popular and already half the available spaces are booked - almost all based on personal recommendations from previous delegates. Anyone wishing to secure one of the remaining places should thus submit a completed registration form as soon as possible.

"I want to send you my great thanks for your extraordinary hospitality I received in Geordieland. I have to reiterate that the seminar was really brilliantly organised and very instructive"



# All at sea!

The 2002 Nautical Institute 'Mariner and Maritime Law' seminar was held afloat on board the DFDS ship - m.s. Queen of Scandinavia on voyage from Newcastle to Amsterdam.



The event was one of the most successful in the 13 year history of this seminar series - which has received sponsorship and support from the Association throughout that period. Focussing upon the very topical issue of Salvage the event attracted a first class panel of speakers as well as 160 delegates from across the shipping industry.

The North Sea in mid October can prove to be a little 'choppy' when the wind blows up from the South East and so the delegates were provided with a bonus by being allowed to sample just a little of the weather conditions many seafarers have to spend much of their working lives enduring! It was all part of the education!

In 2003 the seminar will be hosted by the London and South Coast branches of the Nautical Institute and will be held in Southampton - it will return to Newcastle in 2004.



*M.S. Queen of Scandinavia in calmer seas.*



*Delegates were provided with an added bonus on the voyage...an opportunity to find their 'sea legs'!*

## Rewarding tomorrow's innovators

The Marine Technology faculty of the University of Newcastle (\*) is famous around the world and many former students will be found working in the industry in countries as far apart as Greece and Singapore as well as the UK and many places in between. These individuals are often responsible for major breakthroughs in maritime safety and technology innovations. The students passing through the University today will be the innovators of tomorrow.

It is therefore with much pleasure that the Association continues its annual presentation of prizes and awards to the highest achievers amongst the Marine Technology Students at the University. This year's 'NEPIA Prize Winners' were:

- **OUTSTANDING POST-GRADUATE STUDENT:**  
Ali M Aldossary
- **MOST SUCCESSFUL MSC STUDENT PROGRAM:**  
Joanne Chambers, Erik Christenson and Solomon Chysanthou
- **MOST PROMISING UNDERGRADUATE STUDENTS:**  
K Gutteridge and P Tsonakis.

The Association extends its heartiest congratulations to all the prize winners and its best wishes for a successful career ahead.

(\* This year Marine Technology merged with Marine Biology to form a new faculty / school of Marine Science.)



*The Association's head of Loss Prevention - Phil Anderson joined Newcastle University Professor Ian Buxton presenting the NEPIA prizes to Joanne Chambers, Erik Christenson and Solomon Chysanthou.*

## Sweet Justice

The following incident has been reported to the Editor of Signals and he has been assured that it is a true story.

A lawyer purchased a box of very rare and expensive cigars and then insured them against fire, among other things. Within a month he had smoked the entire box and, even before making his first premium payment, filed a claim against the insurance company. The lawyer stated the cigars were lost 'in a series of small fires'. Not surprisingly, the insurance company refused to pay, citing that the man had consumed the cigars in the normal fashion. The lawyer sued...and won!

### PUTTING THE HEAT ON

In delivering the ruling, the judge agreed with the insurance company that the claim was frivolous. The judge nevertheless stated that the company had warranted that the cigars were insurable and also guaranteed it would insure them against fire. It had not defined what was

considered to be unacceptable fire so was obliged to pay the claim. Rather than endure a lengthy and costly appeal process, the insurance company accepted the ruling and paid \$15,000 to the lawyer for his loss of the rare cigars.

And now for the best part...after the lawyer cashed the cheque, the insurance company had him arrested on 24 counts of arson! With the lawyer's own insurance claim and testimony being used against him, he was convicted of intentionally burning his insured property and was sentenced to 24 months in jail and a \$24,000 fine. No prizes for guessing the jurisdiction in which this incident occurred...



## Signals swot 14

### Quiz Winner

**Maria Skoufalou**

Ness Marine Brokers, Greece

### Runners-up

Colin Ruxton - MV "Striling Juro", Seacor Marine, Aberdeen

KR Vallance - MV "Sand Heron", RMC Marine, Southampton

Robert A Young - Unicorn Shipping, Durban

Christian Preda - Ermis Maritime, Greece

Nick Chekan - Indochina Shipping, Middlesex

*well done!!!!!!*

## Signals Swot Quiz

Welcome to Signals Swot number 15. We invite you to pit your wits against "Bosun Bo" and become a *Signals Swotter!*

This is not a general knowledge quiz but rather the answers to all the questions are to be found within this particular issue of Signals.

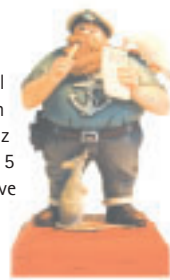
- The quiz is open to all readers of Signals.
- The quiz comprises 10 multiple choice questions - simply tick the correct answer ✓

- Send a photocopy of your answers, along with your name and, if appropriate, name of ship, position on board, company and address to the Editor of Signals at the Association.
- All correct entries received by the closing date will be entered in a prize draw.
- Closing date 14 March 2003.

### PRIZES!

The first correct entry drawn will receive a 'Winners Plate' along with a limited edition statuette of our quiz master "Bosun Bo". The next 5 correct entries drawn will each receive a statuette.

Details of the winner and runners-up will appear in the following edition of Signals.



# signalswot

Good luck to all you Signals Swotters!!

**1** Which member of the Club management recently visited a number of West African countries on behalf of the International Group?

- Nick Tonge.....
- Dr. Livingston.....
- The African Queen.....

**2** What is the new limit of liability under the Athens Convention for loss of or damage to cabin luggage?

- 2,250 SDR.....
- 3,375 SDR.....
- 12,700 SDR.....

**3** Which of the Collision Regulations deals with the action to be taken by a 'give-way' vessel?

- Rule 15.....
- Rule 16.....
- Rule 17.....

**4** What are the dominant colours on Mandatory Signs?

- Blue and white.....
- Red and white.....
- Yellow and black.....

**5** Where did one of last years Residential Course delegates enjoy 'extraordinary hospitality'?

- Newcastle.....
- The 'Toon'.....
- Geordieland.....

**6** What is the main organ affected by hepatitis?

- Heart.....
- Liver.....
- Brain.....

**7** What precaution has been recommended as the most effective method of avoiding inflated claims from local receivers in West African ports?

- CCTV Monitoring.....
- Writing Letters of Protest.....
- Discharge surveys.....

**8** Who heads up the ship inspection team at the Club?

- Phil Anderson.....
- David Hastings.....
- Tony Baker.....

**9** Which section of the ISM Code obliges Companies to ensure that their ships are manned with qualified and certificated seafarers?

- Section 3.....
- Section 6.....
- Section 7.....

**10** What was introduced at the diplomatic conference of the IMO in December 2002?

- ISPS Code.....
- ISM Code.....
- STCW Code.....

• In this publication all references to the masculine gender are for convenience only and are also intended as a reference to the female gender. Unless the contrary is indicated, all articles are written with reference to English Law. However it should be noted that the content of this publication does not constitute legal advice and should not be construed as such. Members with appropriate cover should contact the Association's FD&D dept. for legal advice on particular matters.

• The purpose of the Association's loss prevention facility is to provide a source of information which is additional to that available to the maritime industry from regulatory, advisory, and consultative organisations. Whilst care is taken to ensure the accuracy of any information made available (whether orally or in writing and whether in the nature of guidance, advice, or direction) no warranty of accuracy is given and users of that information are expected to satisfy themselves that the information is relevant and suitable for the purposes to which it is applied. In no circumstances whatsoever shall the Association be liable to any person whatsoever for any loss or damage whensoever or howsoever arising out of or in connection with the supply (including negligent supply) or use of information (as described above).

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