

Signals

NEWSLETTER

NORTH 
SERVICE, STRENGTH, QUALITY

Welcome...

to the July 2013 edition of *Signals*, which provides information relating to loss prevention and other topics of interest to ship operators and seafarers and examines their implications and consequences.

IN THIS ISSUE

This edition of *Signals* addresses a wide variety of topics including crew welfare, carriage of reefer containers, collision avoidance and charterparty contracts.

The Maritime Labour Convention (MLC) enters into force in August 2013 and North examines some of the key provisions relating to evidence of insurance cover for financial liabilities, repatriation and Port State Control inspections. Another crew-related article in this issue looks at the hazards and personal safety precautions to be taken when disposing of cargo residues and garbage.

North's aim of ensuring seafarers receive high quality medical treatment that is managed in a cost-effective manner is highlighted in an article that looks at the importance of pre-employment medical examinations to detect health problems, but also stresses the importance of seafarers being proactive in looking after their own health.

Problems associated with refrigerated containers are a regular cause of P&I claims and this topic is examined further in an article that looks at causes of damage to refrigerated cargo and in particular measures that can be taken throughout the transportation 'cold chain' to prevent such damage. Other cargo-related articles discuss the stowage of jumbo bags containing bulk cargo and the legal and commercial risks associated with delivering cargo without production of bills of lading.

North continues its campaign on collision avoidance and this issue of *Signals* includes a new case study. These case studies are intended to promote wide-ranging discussions about collision avoidance as the best means of raising professional awareness. Two aspects of berthing ships are also considered; mooring safely and manoeuvring so as to avoid damaging structures or equipment on the quayside. The introduction of a new Port State inspection regime by Tokyo MOU is also discussed.

Legal topics include a comprehensive look at disputes involving repudiation of charterparty contracts when time charters end prematurely. The new German maritime trade law and latest sanctions information are also examined.



Finally, *Signals* includes its regular update on new regulations with a look at forthcoming International Maritime Organization regulations, US environmental regulations and non-tank vessel pollution response plans.

We hope you find these topics and the others covered in this edition of *Signals* interesting and useful. Up-to-date information about these and many other topics can be found on the loss prevention pages of the Club's website: www.nepia.com/loss-prevention

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MARITIME LABOUR CONVENTION: THE FINAL COUNTDOWN

The Maritime Labour Convention (MLC) 2006 enters into force on 20 August 2013, after which ships will require a Maritime Labour Certificate issued by their Flag State. Ships will also need to carry and maintain a Declaration of Maritime Labour Compliance (DMLC). The declaration comprises two parts. Part I is prepared by the Flag State and identifies the national requirements for implementing MLC provisions and matters which are to be inspected. Part II needs to be drawn up and maintained by the shipowner for each ship and sets out the measures adopted to ensure compliance. *A shipowner is defined in MLC as an organisation or person assuming responsibility for the operation of a ship.*

Obtaining Certificates

To obtain a Maritime Labour Certificate, the shipowner should contact its Flag State, which will then provide Part I of the DMLC. Based on the Part I requirements, the shipowner can then complete and submit Part II of the declaration to the Flag State. Following a review of Part II, the Flag State or a recognised organisation acting on its behalf will inspect the ship. If satisfactory, the declaration will be approved and a certificate issued.

Between two to three years following the date of issue of the certificate the ship will be subject to an intermediate inspection to ensure continued compliance. There will then be a certificate renewal inspection five years after issue.

Although there is some overlap between MLC and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM), many requirements of MLC are not covered by ISM. They are therefore the subject of a separate on board inspection. However, it may be that some Flag States will conduct ISM inspections in parallel with MLC inspections. The International Labour Organization has produced guidelines to encourage global consistency in the approach to Flag State inspections.

Port State Control

Any ship irrespective of flag that calls at a port in a country that has ratified MLC may be subject to a Port State Control inspection for MLC compliance. The Port State inspection should usually involve a check of the Maritime Labour Certificate and DMLC, which are to be taken as *prima facie* evidence of compliance. However, shipowners should bear in mind that Port State inspectors may observe potential MLC deficiencies that may lead to a more detailed inspection.

The grounds for carrying out a more detailed inspection may include:

- Documents not produced or incorrectly maintained.
- A belief that the working and living conditions on board do not conform to MLC requirements.
- A complaint alleging a breach of MLC requirements.

Where a ship is found not to comply with MLC requirements, and if the non-compliance affects health and safety on board or is a serious or repetitive breach, the Port State Control inspector has the power to detain the ship.

Complaints Procedure

MLC requires shipowners to have procedures on board for the fair, effective and expeditious handling of complaints by seafarers alleging breaches of MLC requirements. All seafarers are to be provided with a copy of this complaints procedure.

The complaints procedure must state the name of the person or persons on board who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaints procedure. The complaints procedure must also include contact information for the competent authority in the Flag State and, where different, in the seafarer's country of residence.

It is therefore important that Members have robust internal systems in place to ensure that complaints can be dealt with either on the ship or, if this is not possible due to the nature of the complaint, by a dedicated person ashore in the operator's organisation. A dedicated e-mail or phone number to a suitable person in the shipowner's organisation ashore, such as the ISM designated person ashore, should be provided in the complaints procedure.

Shipowner's Liability for Sickness, Injury or Death

Regulation 4.2 of the MLC provides that Flag States shall ensure that seafarers on vessels flying their flag are entitled to compensation in the event of death or long-term disability due to an occupational illness, injury or hazard as set out in national law, the seafarer's employment agreement or collective agreement. MLC states that financial security must be in place in respect of these liabilities.

Generally speaking the liabilities are already covered by Members' P&I cover subject to Club rules and terms of entry.

P&I Cover for Repatriation

MLC Standard A2.5 provides that seafarers are to be repatriated at no cost to themselves in the following circumstances:

- their employment agreements expire while abroad;
- their employment agreements are terminated by the shipowner;
- their employment agreements are terminated by themselves for justified reasons; and/or
- they are no longer able to carry out their duties under their employment agreements or cannot be expected to carry them out in specific circumstances.

Shipowners are required to have financial security in place to cover the liabilities established by A2.5 and its accompanying guidelines. North, along with other members of the International Group of P&I Clubs, has thus agreed to extend the scope of P&I cover from 20 August 2013 to include repatriation in cases of insolvency and in the other circumstances listed in MLC where seafarers are entitled to repatriation. It should be noted that unpaid wages are not covered by the MLC and there is no requirement to provide financial security for such wages.

Although the International Group clubs have agreed to provide cover for the liabilities in the first instance, it is not intended that such liabilities will ultimately rest with the P&I clubs. Members will therefore be required to indemnify the Club for liabilities in respect of repatriation in the following circumstances:

- Insolvency or sale of the ship, change of ship's registration or other similar reason.
- The request of a crew member to be repatriated as a result of the vessel entering a war zone.
- Termination or interruption of the employment contract.

Crew Managers' Exposure

If a crew manager is entered as a joint Member (as opposed to co-assured), and in the event that the principal shipowner becomes insolvent, the crew manager may be required to indemnify the Club for repatriation costs incurred by the Club on behalf of the ship owner as a result of insolvency (or other reason listed by MLC and covered by the Club under the amendment to the rules).

Evidence of Insurance

At the time of writing, 18 Flag States have confirmed that they will accept an International Group club certificate of entry as evidence of shipowners' financial security required under MLC. Other states are still considering the issue as they are currently in the process of developing their national MLC implementing legislation.



CARGO RESIDUE DISPOSAL: THE PHYSICAL RISKS



Recent accidents have highlighted the potentially fatal consequences of disposing cargo residues at sea, notwithstanding the new stricter garbage disposal rules in Annex V of the International Convention for the Prevention of Pollution from Ships.

Hold cleaning operations typically involve crew members hauling heavy steel drums of cargo residues and sweepings from tank tops up onto deck for disposal. Such tasks are inherently physically dangerous and need careful planning.

Recent Incidents

In one reported accident, a seaman lost his hand while tipping a drum at the fish plate and pouring residues over the ship's side. He was using a heaving line wrapped around his wrist and the ship's rail but was not able to control the weight of the drum, which fell over the side. His wrist was severed by the slipping heaving line.

In a similar but more tragic incident, a seafarer controlling the heaving line was pulled completely overboard by the falling

drum before he could release his hold and was lost at sea.

Another seaman lost his life while hauling a drum of cargo residues from the tank top onto the deck using a block and tackle. The shackle holding the block failed and the loose block hit the seaman on his head, causing fatal injuries.

Risk Assessment

When disposing of cargo residues or garbage over board, crew members should pay very careful attention to the risk assessment for the job.

All the hazards, especially those relating to the safety of crew engaged in the operation, should be fully assessed. The three incidents described above show how even routine operations can lead to serious injury or death.

MEDICALS: TIME FOR CREW MEMBERS TO BE PROACTIVE

Over recent years North has witnessed many cases where seafarers have sadly died through illness on board vessels. Although the seafarer's family may receive compensation, this can never adequately compensate for the loss of a loved one. However, in many cases these tragic deaths could probably have been prevented by simple measures taken by the seafarer – including being more proactive during their medical examinations.

Pre-employment medical examinations are a vital step in determining whether or not a seafarer is fit enough to go on board a vessel. All seafarers should undergo a thorough pre-employment medical examination before each term of engagement to ensure that their health does not deteriorate. North has enhanced pre-employment medical examination schemes in the Philippines and Ukraine and also provides guidelines for their worldwide application. Both of the Club's schemes are fully audited on an annual basis to ensure that the recommended clinics are operating to set guidelines.

Encouraging a More Proactive Approach

It is also important to encourage seafarers to take greater ownership of their own health. In particular, the pre-employment medical examination should be seen as an opportunity to be proactive in doing this.

Seafarers should be encouraged not only to disclose any significant health problems such as illness, operations and treatment to assist with a correct medical determination, but also to try to obtain any relevant information from the doctor as to what they can do to keep any health problems under control or improve their health situation.

In one preventable case, a crew member's blood pressure was at the higher end of normal limits and he did not advise the doctor about his hypertension during his pre-employment medical examination. The seafarer was also a smoker and obese which, combined with the hypertension, caused hardening of the arteries leading to a fatal heart attack at sea. Had he disclosed his hypertension, he may have been properly diagnosed by the doctor as at risk. He could then have sought advice from the doctor as to how he could reduce his risk of the high blood pressure and hypertension which he ultimately died from.

Controlling and Combating Health Conditions

Any clarification that seafarers can obtain from doctors at the pre-employment medical stage to target what they can do to help control or combat a condition can only help.

A combination of a sufficiently comprehensive pre-employment medical examination and action taken by the seafarer at both the examination stage and on board will help to prevent some of these tragic cases arising.

Crew members should never ignore their symptoms or the advice received from their doctor in treating their conditions, especially those which are potentially life threatening.

In conjunction with taking the advice of their doctor, healthy eating and keeping fit, it is possible to control many potentially life threatening illnesses.

Further Information

Detailed information about North's enhanced pre-employment medical examination schemes can be found on its website: www.nepia.com/loss-prevention-briefings

UKRAINE STAMPS DOWN ON DAMAGED DOCUMENTS

North has been alerted to instances of fines being imposed on crew members in the Ukrainian port of Nakhodka for having damaged or torn passports.

Regulations are governed by the Russian Federation Code of Administration Offences, Article 18.2 in particular, and have been implemented since 2012. Fines increase for a repeat offender and, if the crew member is found guilty of the offence on more than two occasions, there is a risk they could be deported.

Crew members embarking on voyages to ports in Ukraine are advised to check that their passports and other personal documents are in good condition.



HOT ISSUES IN THE COLD CHAIN



However, it was apparent that a significant proportion of the damage claims related to temperature deviation and two common issues were identified:

1. Prolonged periods of time off-power. These occurred at terminals, shipper and consignee's premises, during on-land haulage and on board the carrying vessel.
2. Technical malfunction of the refrigeration unit and its control system and sensors, including the controlled atmosphere unit.

There are of course other events that could lead to temperature deviation within the container, such as improper stowage affecting the air flow, warm stuffing, heat generation by premature ripening of cargo and incorrectly set parameters.

New Publications to Assist Members

North has published a new Hot-Spots sheet, entitled *The Cold Chain*, to provide an easy reference to the common issues and problems at each link of the cold chain, and to suggest loss prevention measures. The Club has also published a complementary loss prevention briefing about the carriage of reefer containers.

The two publications include loss prevention advice to help ensure the cargo is properly cared for at all stages of the cold chain, in particular to prevent damage to reefer cargo caused by prolonged periods of time off-power or by a breakdown or malfunction of the container and its machinery. They aim to raise awareness of the need to understand the cargoes being transported and ensure that carriage instructions are suitable, as well as assist in defending a claim resulting from reported damage to cargo.

Cold Chain Loss Prevention

A brief summary of loss prevention measures relating to the most common issues are listed below, but more comprehensive advice is included in the publications.

- Cargo characteristics should be known. Carriage instructions should be accurate and unambiguous.
- The temperature and controlled atmosphere set points and the ventilation setting should be set correctly at time of empty release, unless otherwise agreed.
- Ventilation settings should be stated in flow rates and not percentages.
- Pre-trip inspections should check for container condition, cleanliness and free-from-taint.



- The shipper should be aware of the importance of correct stowage of the cargo when stuffing and avoid short-circuiting and appreciate that the cargo must be pre-cooled to the required carriage temperature at point of stuffing.
- A power supply should be provided in a timely manner at each stage of the cold chain.
- Terminals should regularly monitor and record the temperatures and status of the reefers under their care.
- Reliability of ship's power supply is essential. Generators should be capable of operating to full design capacity and standby generators available in case of unplanned maintenance during passage.
- Regular monitoring and recording should be carried out of the temperatures and status of the reefers whilst onboard and prompt notification given of reefer problems or malfunctions that cannot be repaired on board.
- Ships should have adequate spares on board and relevant expertise to carry out emergency repairs to reefer containers on board.

Further Information

A copy of The Cold Chain Hot-Spots is enclosed with this issue of Signals for all appropriate entered vessels. An electronic copy of this and other Hot-Spots is also available from the Club's website: www.nepia.com/hot-spots

The new loss prevention briefing, Carriage of Reefer Containers, can be viewed or downloaded from the Club's website: www.nepia.com/loss-prevention-briefings

The Transport Information Service from the German Insurance Association provides users with free specialist information on various aspects of the transport sector on its website: www.tis-gdv.de

BMT Surveys has developed a large free database on transportation of cargoes in the marine industry known as 'Cargohandbook' which can be viewed on its website: www.cargohandbook.com

The carriage of cargo in refrigerated containers, also known as 'reefer' containers, presents a variety of challenges to ship operators.

Each cargo, and in particular living organic cargo, has specific carriage requirements. To ensure the cargo reaches its final destination in perfect order, the correct conditions must be maintained throughout the 'cold chain', from harvest to sea transit to point of sale.

However, increasing use of combined and multimodal bills of lading are extending shipowners' responsibility for the sea part of the cold chain to include the time when the reefer container leaves the shipper, up to when it is delivered to the consignee. This could include road haulage and periods of time being stored at container terminals, all of which are critical links in the cold chain.

Causes of Reefer Cargo Damage

A recent review of P&I claims involving reefer containers has shown that the majority were related to cargo damage. Such cargo damage can take a number of forms, such as temperature abuse and physical damage, but the sensitivity and inherent characteristics of the cargo also have to be considered.

Many reefer cargoes are of a particularly sensitive nature. In addition to a requirement to maintain the correct temperature of the cargo, there is often a need to provide the correct atmosphere within the container by means of a controlled atmosphere, which presents further challenges.



ACCEPTING LETTERS OF INDEMNITY: IS IT WORTH THE RISK?

The provision of letters of indemnity (LOI) by charterers and receivers to carriers is a long-established practice in the shipping industry. It is, in effect, a promise to make good any loss suffered by carriers when following instructions which might breach their contracts of carriage, but it also risks undermining carriers' P&I cover.

In particular, North's Members are increasingly being asked to accept LOIs for non-production of bills of lading at discharge ports. This is perhaps due to greater efficiency in the shipping industry, with vessels frequently arriving before the cargo's paperwork, particularly if the cargo is traded during the voyage.

Risks of Accepting LOIs

However, while the request to deliver a cargo against an LOI instead of a bill of lading is both legitimate and commonplace, it also attracts a number of risks. Ship operators should be aware of these risks and, if planning to make the commercial decision to accept an LOI to satisfy the charterer or receiver, take suitable precautions.

The main risk is that the cargo may not be delivered to the correct bill of lading holder, exposing carriers to a claim for breach of contract of carriage. Furthermore, ship operators' P&I cover will be prejudiced – any loss suffered would only be covered at the discretion of North's Directors. This means the real protection for Ship operators is the LOI itself.

However, an LOI is only as good as the party issuing it. A ship operator must be satisfied as to the credibility and solvency of the issuer. This is particularly important as the courts in England have little sympathy for ship operators accepting such LOIs. The courts view the delivery of cargo without a bill of lading as a well-known hazard and have issued advice over the years concerning the precautions to be taken before doing so.

Alternatives to LOIs

Ship operators may also wish to consider the options available to them if they do not accept an LOI.

For example, they could discharge the cargo but retain possession by storing it in a warehouse until the bill of lading is presented. This could be difficult logistically and also expensive, depending on how long the cargo requires storage.

Alternatively, ship operators could refuse to discharge the cargo from the ship until the bill of lading is eventually presented. This option may also be far from ideal as it could result in hire and demurrage consequences and port costs.

Terms to Include and Avoid

If a Member does decide to accept an LOI then it is imperative the LOI offers adequate protection. This is where the Club can assist and would recommend the LOI is provided on the standard form provided by the International Group of P&I Clubs.

The Club can also review the terms of any proposed LOI and advise Members on whether it will cover all potential risk. The LOI should be drafted widely enough to cover any liability, not just the potential cargo loss but any other costs or claims which could arise by reason of delivering the cargo in accordance with the request.

The LOI should not contain any limitations as, depending on the jurisdiction in which it is being relied upon, liability may well be over a stated limitation figure and Members would be prevented from seeking recourse in respect of such liabilities. It should also not include a time bar. Depending on the jurisdiction again and especially if the cargo has not been loaded in a convention state, a claim may be brought against the carrier after the time bar and the Member would not be able to seek recourse under the LOI.

Another option worth considering is for the carrier to request the bank involved in the sale transaction to countersign the LOI to gain added security. However, in practice it is not always easy to convince a bank to do this.

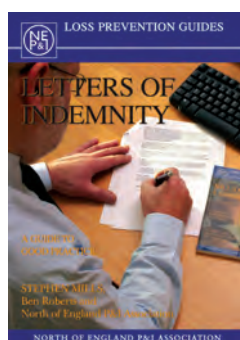
Conclusion

In conclusion, despite the fact that the acceptance of an LOI is common practice, ship operators should continue to be aware that whether to accept one or not is a commercial decision. If they decide to do so, an LOI in effect replaces P&I Club cover. The Club can nevertheless offer assistance to Members to ensure the LOI offers the best possible protection.

Further Information

North's Loss Prevention Guide entitled Letters of Indemnity: A Guide to Good Practice can be viewed on its website:

www.nepia.com/lpguides



JUMBO BAG RISKS

North has recently seen instances where jumbo bags containing bulk cargo have been stowed up to six-high despite manufacturers generally recommending no more than three-high. This significantly increases the risk of the bottom bags bursting, potentially leading to cargo and vessel instability.

The correct technical term for jumbo bags is 'Flexible Intermediate Bulk Containers' (FIBC) and there are International Organization for Standardization (ISO) standards for their manufacture for stacking. These only require FIBCs to resist loads of 1.8 times their own maximum gross weight, hence the usual three-high stacking limit, particularly with dense cargoes.

Stacking jumbo bags of cement, for example, six-high on the tank top and then loading additional cargo on top will put the bottom bags under a load for which they are almost certainly not designed. This could lead to bursting of bags at the base of the stow and a resulting instability of the cargo stowed above.

Avoiding Static Electricity

Furthermore, jumbo bags transported in contact with each other (so they rub together) can generate considerable static electricity. Manufacturers thus only recommend a 'Type-D Anti-static FIBC' for sea transport. These are made of a material which resists the build up of static.

A stow using jumbo bags that are not Type-D may increase the potential for static discharges and, under the right circumstances, could lead to explosions or ignition of combustible material. A recent investigation into a fire in a hold of a general cargo concluded that the likely cause was friction in the stow igniting shredded packing paper and chipboard.



LITHIUM-ION BATTERIES: INSERT WITH CARE

Lithium-ion batteries (the cause of several recent aircraft fires) are frequently carried on ships in containers so it is vital ship operators and seafarers are aware of the nature of this cargo and its risks.

Recent high profile incidents in the aviation industry include an aircraft fire at Dubai airport in 2010, where lithium-ion batteries were carried as cargo, and more recently the overheating and resulting fires from in-service lithium-ion batteries on new Boeing 787 aircraft.

Overcharging and Short-Circuiting

The batteries are mostly designed to be rechargeable (as opposed to the non-rechargeable lithium metal type of battery)

and have a high 'energy density', meaning they have a high level of energy output in relation to their weight when compared to other types of batteries.

Failures of in-service batteries are often attributed to overcharging, overheating and internal short-circuiting. These may result in the rapid release of heat (exothermic reaction) and can escalate into what is known as 'thermal runaway' and lead to fires and explosions.

Manufacturing and Packaging Faults

Internal short-circuits may also be caused or contributed to by manufacturing faults, which may be more prevalent in counterfeit or refurbished items.

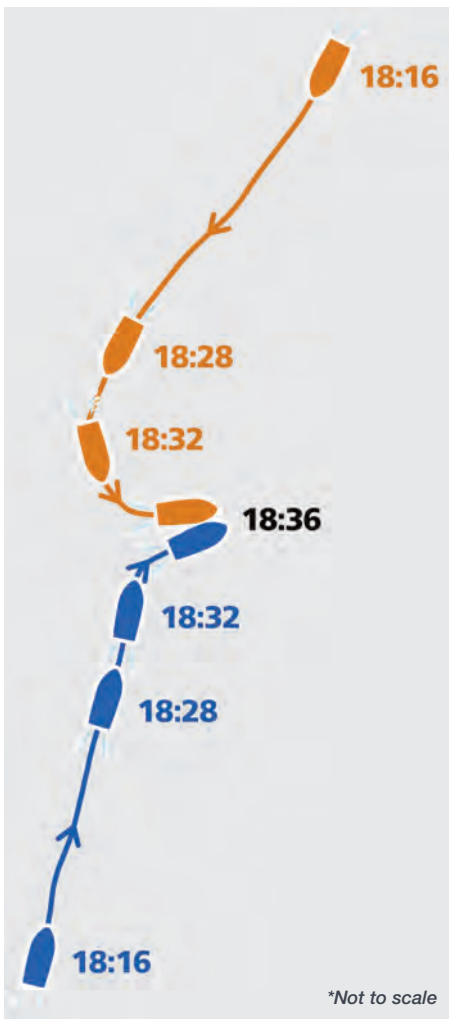
Poor standards of packaging and exposure to external heat sources are also reported causes of overheating and fire incidents when carried as a cargo. Tests carried out by the US Federal Aviation Administration demonstrated that lithium-ion batteries are flammable and capable of self-ignition.

Carry as IMDG Code Class 9 Cargo

Lithium-ion batteries as cargo should therefore be carried in strict accordance with the *International Maritime Dangerous Goods* (IMDG) Code and are listed as a Class 9 cargo (miscellaneous dangerous substances and articles).



COLLISION CASE STUDY



North's loss prevention guide entitled *Collisions: How to avoid them* includes a series of collision case studies intended to generate discussions about the International Regulations for Preventing Collisions at Sea (COLREGs). Additional case studies are published in *Signals* from time to time, the next of which is provided here.

Each case study is set out as simply as possible, with the minimum information necessary to describe a developing situation. It also asks a number of questions but the answers are not provided. The case studies are intended to promote wide-ranging discussions about collision avoidance.

Scenario

Two ships are approaching each other soon after nightfall. Each ship is making about 12 knots and is showing the correct lights.

At 1816, when the ships are 7.5 nautical miles apart, the blue ship makes a 5° alteration to starboard. For the next 15 minutes its steering is erratic, with its head moving 3° to 4° on either side of its course.

At 1828 the orange ship makes a bold alteration to port. The blue ship does not see this immediately but at 1832 it starts a turn to starboard.

Neither ship reduces its speed and they collide at 1836.



Questions

1. Did the blue ship do anything wrong at 1816?
2. Did the orange ship do anything wrong at 1816?
3. Why did the orange ship alter course to port at 1828?
4. What should each ship have done at 1832?

Further Information

North's Loss Prevention Guide entitled *Collisions: How to avoid them* can be viewed on its website: www.nepia.com/lpguides



SAFE MOORING: THE NEED FOR A LINE-BY-LINE APPROACH



Ineffective or poorly planned moorings have been attributed to a number of incidents where damage to vessels, berths or port equipment has occurred. These incidents range from damaged gangways to the vessel breaking free in poor weather and colliding with other vessels or shore equipment.

To ensure berthing operations are completed safely and without incident it is critical that the intended pattern of mooring lines is properly planned. This planning should take into account the layout of the berth and bollards, the weather and environmental conditions expected during the port stay, the layout and available equipment on board the vessel, the type of mooring line to be used and the required line tension.

Consideration must also be given to the length, lead and positioning of the head lines,

breast lines and springs so as to ensure the vessel is prevented from moving off or ranging along the quay. Head lines and springs are most effective when they are as close as possible to the fore and aft line of the hull. Breast lines are most effective when they are as close as possible to perpendicular to the fore and aft line of the hull.

Keep Lead Angles Low

All lines should be kept at as shallow an angle to the jetty as possible. An increase in the lead angle of the line greatly reduces the efficiency of the lead in terms of the ratio between the horizontal pull on a line to the tension in the line.

Should the vessel be moved along the quay using the mooring ropes then it may be necessary for the lines to be repositioned on the bollards to maintain the efficiency of the lead necessary for an effective mooring pattern.

There are a variety of sizes and types of mooring rope and wire available, all of which will have differing strengths and elasticity. It is essential for ensuring effective mooring that only one type of mooring is used for each group of lines and that wires and synthetic ropes are not mixed. This ensures that the properties of each line are matched and that each line will behave in the same way.

Consider Crew Safety

In order to ensure the safety of the crew engaged in mooring operations, due consideration must also be given to the leads the mooring lines take in relation to the mooring winches and their control stations, dollies, fairleads and bits. This will ensure that the crew can operate the mooring winches and tend to the lines whilst being kept clear of potential snap-back zones. Unfortunately incidents where crew members have been seriously injured whilst standing within snap-back zones continue to occur.



OBSTRUCTIONS ON BERTH



Before berthing or sailing remember to check the position of loaders, conveyors, cranes and other equipment or obstacles on the quay – they should all be well clear of the berthing area so that the chances of contact are minimised.

Recent Incident

A recent case in which a ship under pilotage collided with a shore loader highlights the risks of not doing so, as well as the importance of monitoring and questioning pilots and collecting evidence.

In the incident a master queried the position of a shore loader with the pilot just before sailing. The loader was positioned right opposite the bridge wing at a distance of less than one metre so its presence could not be ignored.

The pilot dismissed the master's concerns with a comment that he had, 'sailed hundreds of ships from these berths captain and never touched a loader', adding that there was only one tug available of the two that were ordered.

The ship cast off the moorings and started to move off the berth. Within minutes the stern started to swing towards the loader. The sole tug was made fast forward and was unable to control the swing and the stern hit the shore loader. Luckily there was no contact with the berth.

Right to Refuse

In hindsight it appears that the master would have been perfectly within his rights under the International Convention for the Safety of Life at Sea (SOLAS), Chapter V, Regulation 34, to refuse to sail until the loader was moved or another tug was available.

According to SOLAS, 'the owner, the charterer, the company operating the ship, or any other person SHALL not prevent or restrict the master of the ship from taking or executing any decision which, in the master's professional judgement, is necessary for the safety of life at sea and protection of the marine environment'.

Collecting Evidence

In the case described above, the port authorities made a substantial claim against the ship and much of the discussion was about which part of the damage was caused by the ship and which had existed previously.

To counteract such claims, a ship's crew can help by gathering evidence on a routine basis. For example, taking photographs during routine operations including the condition of the quay, the condition of the fenders, the moorings and the position of shore cranes, gantries and loaders. Particular attention should be paid to any pre-existing damage to the quay area, the fenders and any metal ladders or pipes.

If a pilot dismisses the master's concerns about the position of shore equipment on the quay then use photographs to record the situation. Audio data from the voyage data recorder should be used to record protests and the pilot's response.

NEW INSPECTION REGIME IN ASIA PACIFIC

The Memorandum of Understanding on Port State Control in the Asia Pacific Region, otherwise known as the Tokyo MOU, will be introducing a new inspection regime from 1 January 2014.

Under the new regime ships will be identified into three categories based on ship risk profile, which will be calculated automatically in the region's Port State Control database system APCIS. Under the system each ship will be categorised as high risk, standard risk or low risk.

Inspection Priority

Different inspection intervals will apply to each category of ship, with the time window running from the date of the previous inspection. For low risk ships it is nine to 18 months, for standard risk ships the interval is five to eight months and for high risk ships the window is two to four months.

In addition, vessels will be given a priority categorisation. Priority I means the ship should be inspected because its time window has closed, while Priority II means the ship could be inspected because it is within its time window.

Should any overriding factors be identified, a ship will be prioritised for inspection above its category.

Ship Risk Profile

The existing Tokyo MOU ship-targeting factors will be replaced by a ship risk profile. This will be based on the following elements using historical data from inspections in the region during a three year period:

- Performance of the Flag State of the ship.
- Type of ship.
- Age of ship.

- Performance of the recognised organisations of the ship.
- Performance of the company responsible for International Management Code for the Safe Operation of Ship and Pollution Prevention.
- Number of deficiencies.
- Number of detentions.

Further Information

Details of the Tokyo MOU new inspection regime are available from its website: www.tokyo-mou.org/inspections_detentions/NIR.php



UNPAID HIRE JUDGED TO BE BREACH OF CHARTERPARTY CONDITIONS



The English High Court decision in April 2013 regarding *Kuwait Rocks Co v. AMN Bulkcarriers Inc* (The 'Astra') is the latest judgment developing the current trend towards strengthening shipowners' rights when charterers do not pay hire properly and when time charters end prematurely.

Mr Justice Flaux expressed the view that a charterer's failure to pay hire on time is a breach of charterparty conditions, thereby entitling an owner to withdraw the vessel and claim damages for loss of profit for the unexpired charter period.

The judge's remarks on this point were not necessary for the decision in the case (and so might not be followed in subsequent cases) but nonetheless the judgement represents a significant change when compared to the previous perception that breach of the obligation to pay hire only entitled an owner to exercise a contractual right to withdraw a vessel and claim any unpaid hire up to the date of withdrawal.

Background to the Case

Astra's charterer Kuwait Rocks failed to pay hire many times and also threatened several times to seek insolvency if owner AMN Bulkcarriers did not agree to reduce the hire rate. Following expiry of one such agreement the charterer continued to pay hire at the reduced rate instead of at the full rate. The owner therefore served an anti-technicality notice and, when the charterer still did not pay, withdrew the ship.

Arbitration was commenced by the owner to claim damages for loss of profit from the time of withdrawal of *Astra* for the remaining minimum unexpired period of the charter.

The tribunal did not accept that Clause 5 of the NYPE 1946 charterparty was a condition. The tribunal did however find that the charterer's conduct amounted to a repudiation of the charter. That entitled the owner to damages for loss of profit.

The judgment was an appeal against the arbitration award. The judge concluded that the charterer had repudiated the charter. Although unnecessary for the decision, at the request of both parties he also undertook a comprehensive and detailed consideration of the leading cases and concluded that Clause 5 of the NYPE 1946 charterparty is a condition of the charter.

Far-Reaching Implications

This judgment will be relevant to present and future performance and disputes under all time charters concerning owners' rights to terminate the charterparty and charterers' obligations to pay hire. While the decision that the charterer was in repudiatory breach is uncontroversial, the conclusion that Clause 5 is a condition is open to question.

As such, the present position is not clear enough to justify firmly recommending reliance on the judgment and it should be accepted that there is a risk that the judgment will not be followed or confirmed later. Assuming the judgment is followed in future, the impact could be far reaching, depending on market conditions and other relevant factors.

The judgment will have no impact on the obligation to comply promptly with formalities for giving anti-technicality and withdrawal notices, and withdrawing the vessel promptly, following a charterer's breach to avoid the risk of committing an anticipatory breach or

waiving a breach by a charterer. However, owners now hold a stronger position in relation to deductions from hire if Clause 5 is a condition.

Charterers Position

Other than where the charter provides an express right to deduct from hire or where a right of equitable set-off can be firmly established, charterers could be playing a dangerous game of brinkmanship by making hire deductions. This is dependent on the state of the market, the contractual hire rate agreed, the strength of charterers' financial standing, charterers' vulnerability to owners obtaining security, and the attitude and risk appetite of owners.

On the other hand, few owners are likely to be eager to take the risk of withdrawal or otherwise terminating the charterparty on a simple late payment or deduction given that the judgment may not be followed or, even if followed, charterers may later establish a right to equitable set-off, thereby making owners' termination wrongful.

Tolerating late payment may also often be seen as better in weak markets rather than terminating certain employment for the risk of limited alternative employment opportunities, lack of available security for the claim, and lack of willingness or ability of charterers to satisfy a successful award or judgment later on.

While charterers often seek to make deductions from hire towards the end of charters, terminating a charterparty at a later stage may be difficult or impractical. This is particularly so given the normal obligation to complete a cargo-carrying voyage and the considerable limitations in seeking to exercise a lien over cargo for unpaid hire. At that time any right to intercept freight and hire is probably also difficult or no longer available. Exercise of a lien on cargo might also prejudice owners' insurance cover, which is highly undesirable.

Given the uncertainty and the risks involved owners considering withdrawal of their vessels or terminating their charterparty due to non-payment of or deductions from hire, and charterers considering withholding or deducting from hire, should seek prompt assistance from the Club.

NEW GERMAN MARITIME TRADE LAW

On 25 April 2013 Germany introduced new legislation under the Act on the Reform of Maritime Trade Law implementing a number of changes to its Maritime Trade Law. The changes update the previous 150 year old German Maritime Law Code and, it is hoped, will create greater contractual freedom under German law between shipowners, carriers and shippers.

However, some of the changes may have an adverse effect on Members, with potentially increased liabilities and a greater chance of arrest.

Increased Liabilities

Steps have been taken to reduce the circumstances in which a carrier can rely on the 'fire' and 'error of navigation' defences under the Hague Rules. It seems these defences will still be applicable where a bill of lading has been issued in a Hague Rules signatory state. However, if this is not the case, the best way to ensure the defences are available would be for the parties to agree to them in their contractual terms prior to the voyage.

In addition a new legal concept has been introduced whereby liability can be imposed on a 'performing carrier'. This expands the scope of statutory liability beyond the contractual carrier to any party with even a partial role in the carriage.

Increased Risk of Arrest

It will also now be easier to arrest a vessel in Germany as the new legislation has reduced liability for wrongful arrest and so there is no incentive for a party not to arrest a vessel even in non-urgent circumstances.

The new legislation has significantly reformed the law in Germany and the above is only a brief summary of some of the changes. The Club recommends that Members which conclude business subject to German law check and, if necessary, revise their standard terms and conditions to ensure these are compatible with the new law.

It is also recommended that appropriate legal advice is taken from a suitable German lawyer on any relevant issues.

EXPANSION OF US SANCTIONS AGAINST IRAN FOR NON-US ENTITIES

The US sanctions regime against Iran is being expanded as of 1 July 2013. This latest expansion of the regime has potentially serious consequences for US and non-US entities involved with marine transportation and marine insurance.

The additional sanctions form part of the National Defense Authorization Act for Fiscal Year 2013 ("NDAA 2013") which contains a section entitled "Iran Freedom and Counter-Proliferation Act of 2012" ("IFCA"). It is IFCA that includes the additional sanctions against non-US persons engaged in trade with Iran.

With effect from 1 July 2013, the following sectors are targeted and/or subjected to additional measures by the US:

- Transactions with Iran's energy, shipping and shipbuilding sectors and its ports.
- Iran's automotive industry.

- Transactions with those on the Specially Designated Nationals ("SDN") list.
- Transactions involving precious metals and raw materials.
- Insurance, reinsurance and underwriting activities.

Of particular significance is Regulation 1246 of IFCA which specifically imposes sanctions on insurers who insure any Iran-related activity for which sanctions have been imposed under any US law. There is a statutory exception for insurers who have exercised due diligence in an effort to avoid providing insurance for prohibited activities. However, given the broad scope of the new provision it is expected that the authorities will expect insurers to be proactive in exercising due diligence.

Clarification on certain aspects has been sought from the Office of Foreign Assets Control (OFAC) and the US State Department and will be made available in due course. The International Group of P&I Clubs has published a briefing note on these new measures, which is available to view or download from North's website: www.nepia.com



CANADA ENFORCES NORTH AMERICAN ECA

New regulations have just been published which enforce the new North American Emission Control Area (NA-ECA) in Canada.

The NA-ECA, which was adopted under Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL), entered into force on 1 August 2012. It sets a 1% limit on the sulphur content of marine fuel and is expected to be followed by a further reduction to 0.1% in 2015.

At the time of NA-ECA's introduction, the Canadian authorities announced there would be no means to enforce the regulations in Canada and Canadian waters. However, Transport Canada subsequently announced implementation of the Regulations Amending

the Vessel Pollution and Dangerous Chemicals Regulations, which came into effect from 18 April 2013. NA-ECA sulphur limits are thus now enforceable in designated Canadian waters.

The new Canadian regulations include advice for foreign vessels that cannot obtain fuel oil that meets the requirements. In such cases notification must include:

- Vessel's name and IMO number.
- Vessel's port of origin and port of destination.
- Details of the attempts made to obtain fuel oil that meets the requirements, including the names and addresses of the fuel oil suppliers contacted, and the dates on which contact was made.

- Sulphur content of the fuel oil that was obtained.
- Measures that will be taken to obtain, as soon as feasible, fuel oil that meets the requirements.

Further information

The Regulations Amending the Vessel Pollution and Dangerous Chemicals Regulations (SOR/2013-68) can be found in the Canada Gazette available from its website: <http://canadagazette.gc.ca/rp-pr/p2/2013/2013-05-08/pdf/g2-14710.pdf>

NEW US RULE ON NON-TANK POLLUTION RESPONSE PLANS

A new regulation is soon to be published in the USA which clarifies the fuel oil discharge response plans required on all ships over 400 GT other than tankers.

Since 2008, operators of all 'non-tank' vessels operating in the USA have been required to prepare and submit a Non-tank Vessel Response Plan (NTRVP) no less than 30 days prior to entering or operating in US waters.

In 2009 the US Coast Guard announced the publication of a notice of proposed rulemaking designed to increase pollution response preparedness for non-tank vessels carrying oil as fuel within US waters. The proposed rule, entitled Non-tank Vessel Response Plans and Other Vessel Response Plan Requirements, is aimed at establishing the content of response plans for oil discharges and assisting non-tank vessel owners and operators to comply with preparation and submission requirements for vessel response plans to the US Coast Guard.

The final rule is expected to be published in the US Federal Register imminently and to be implemented shortly after.

It will mark an important milestone in formalising the response plan regime for the large number of non-tank vessels operating in US waters.

IMO UPDATE

MARPOL Annex III

The 61st session of the International Maritime Organization (IMO) Marine Environment Protection Committee adopted amendments to Annex III of the International Convention for the Prevention of Pollution From Ships (MARPOL), which revises text to the regulations for the prevention of pollution by harmful substances carried by sea in packaged form under Resolution MEPC.193(61).

The amendments relate to the documents required for the carriage of harmful substances and to the criteria used for identifying harmful substances. The amendments will enter into force on 1 January 2014.

MARPOL Annex VI

The 63rd session of the IMO Marine Environment Protection Committee adopted amendments to Annex VI of MARPOL and the NO_x Technical Code 2008 under Resolution MEPC.217(63).

The amendments to MARPOL Annex VI include the addition of a new paragraph to Regulation 17 dealing with arrangements for regional port reception facilities. The amendments to the NO_x Technical Code 2008 relate to the certification of engines which have not been pre-certified on a

test-bed and engines fitted with selective catalytic reduction systems. The amendments will enter into force on 1 August 2013.

SOLAS

The 89th session of the IMO Maritime Safety Committee adopted amendments to the International Convention for the Safety of Life at Sea Convention (SOLAS) under Resolution MSC.317(89). These amendments will enter into force on 1 January 2014.

IMDG Code

The 90th session of the IMO Maritime Safety Committee adopted revisions to the International Maritime Dangerous Goods (IMDG) Code under Resolution MSC.328(90). The amendments to the Code, which had been adopted on a voluntary basis on 1 January 2013, will become mandatory on 1 January 2014.



2013 SINGAPORE RESIDENTIAL TRAINING COURSE

North would like to remind Members that the Singapore Residential Training Course will take place from 18-22 November 2013. This course will offer a unique blend of expert-led seminars and workshops, including a simulated collision workshop, and a chance to network with marine professionals from a wide variety of industry sectors.

Delegates will benefit from the knowledge, experience and expertise of P&I professionals who deliver the course. Topics to be covered include P&I underwriting, FD&D insurance and crew, pollution, collision, damage to property and cargo claims.

The course will again be held at the Shangri La's Rasa Sentosa Resort. Singapore Maritime Cluster Fund Training grants of 70% are available for eligible participants.

Further Information

Information and a course brochure are available from North's website: www.nepia.com/residential-training-course

Details can also be obtained from Elizabeth Er in North's Singapore office. E-mail: elizabeth.er@nepia.com





UK RESIDENTIAL TRAINING COURSE COMES OF AGE

North's 21st UK Residential Training Course in P&I Insurance and Loss Prevention held during June 2013 was a great success, with over 45 delegates from many sectors of the maritime industry enjoying a valuable training and networking experience. Highlights included ship visits, a simulated collision exercise, a rescue in the deep environmental pool complete with wind, waves and rain, and most importantly the valuable learning experience provided by the guided workshops.

The course runs every June at Lumley Castle and South Shields Marine School in north east England. Delegate and course information for 2014 will be available from early next year.



Signals Search 36 ?

Questions

- 1 Which MOU is introducing a new inspection regime?
- 2 What type of bags can carry larger amounts of bulk cargo?
- 3 In which Asia Pacific country does North operate a PEME scheme?
- 4 What is the acronym for the document accompanying an MLC certificate?
- 5 What chain does refrigerated cargo use to reach its final destination?
- 6 What should be kept well clear of the berthing area?
- 7 Where is the next North residential training course?
- 8 Which country has introduced a new maritime law?
- 9 What is the acronym for a plan required by ships other than tankers entering US waters?
- 10 Which type of batteries have a high energy density?

Your Copy of Signals

Copies of this issue of *Signals* should contain the following enclosures:
● Hot-Spots – The Cold Chain (appropriate entered ships only).



Signals Search is open to all readers of *Signals*.

- Send a photocopy of your completed search, along with your name and, if appropriate, name of ship, position on board, company and address to Denise Huddleston at the Club. E-mail: denise.huddleston@nepia.com

● All correct entries received by the closing date will be entered in a prize draw.

● Closing date Friday 6 September 2013.

Prizes will be awarded to the first correct entry and two runners-up drawn.

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

Answers to Signals Search 35

- | | | |
|---------------|----------------|-------------|
| 1 Alternative | 5 Guardcon | 8 ISO |
| 2 Arbitration | 6 OLRRS | 9 Boxing |
| 3 Talking | 7 Repatriation | 10 Residues |
| 4 Supercargo | | |

Signals Search 35 Winners

Winner: Captain Desmond Desouza, MV Vinni – Bergshav Management AS
Runners-up: Richard Peter de Winter, Vos Prelude – Vroon Offshore Services
Captain Maung Maung Sein, MT Cavally – Raffles Ship Management



Disclaimer

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

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