



Signals

NEWSLETTER



Welcome...

to the July 2014 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

We will consider a number of different topics including the best sources for information on sanctions and a recent report that highlights the increasing importance of access to internet and email for seafarers and prospective seafarers.

Accompanying this issue is the third edition of our bills of lading guide which has been fully reviewed and updated to include electronic bills of lading and the latest in our Hot-Spots series entitled 'Mooring Operations'.

Poor mooring practices can give rise to very serious consequences, including death and personal injury, vessel damage and even pollution.

The latest Hot-Spot 'Mooring Operations' focuses on good practice during mooring operations with the intention of reducing the number of incidents involving poor mooring practices.

The problems relating to piracy in West Africa continue and the areas where pirates are operating appear to be expanding. In this article we provide a brief update on the piracy situation in West Africa including the latest news on armed guards in Nigeria.

Access to internet and emails for seafarers is increasingly important. A recent study has highlighted the importance of such access for the modern seafarer and the role it may play in the retention of seafarers. This research highlights the importance of access to modern communications at sea, which vessel operators may find useful when considering the cost/benefit of providing such access.

Operational topics that are covered include the recovery of people from the sea, which can be an issue in areas with high numbers of migrants moving by sea, the problems of misdescribed cargo in the container trade and recent cases involving poorly secured cargo hold ladders on new bulk carriers.

Legal issues include a recent ruling involving responsibility for damage to perishable cargoes shipped on board a liner service which is subject to delay and a new BIMCO voyage charterparty clause dealing with the disposal of cargo residues and wash water from cargoes that are hazardous to the marine environment.

Proliferation of sanctions over the past few years has been referred to as "Sanctions Surge" and in this issue, we highlight some of the more useful websites that may assist owners and charterers in avoiding sanctions breaches.

As usual we include an IMO update, a note on recent loss prevention activities and on the back page a collision case study.

The primary purpose of *Signals* is to inform and be of use to Members and we therefore welcome feedback and suggestions for future articles.



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FOR NORTH'S MEMBERS

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POLLUTION IN THE BLACK SEA

North has recently been dealing with an incident where a chemical carrier called at a terminal in Yuzhny, Ukraine to discharge various parcels of Refined Palm Olein (RPO). During discharge, a small spill of RPO occurred on deck and into the waters surrounding the vessel at the berth. The Master initially estimated the total quantity of RPO spilled was only approximately 100kg.

Clean up and containment measures, involving the deployment of oil booms and a specialist skimmer vessel, were immediately mobilised by the State Ecological Inspectorate and Yuzhny Port Authorities.

The clean up works were completed that evening with the Ecological Authorities issuing an official measurement of the oil collected in the drums and tanks of the skimmer vessel which stated 14 cubic metres of oil, seaweed and water had been collected. Authorities calculated, by visual assessment, a total oil content of 85% of the total mixture equivalent to 11.9 cubic metres (10,829kg) – significantly different to the quantity estimated initially by the Master.

Local correspondents, surveyors and lawyers were subsequently instructed to assist, with an expert marine surveying company tasked with quantifying the amount of RPO contained within the oil/water mixture. The analysis revealed that the total mixture was just short of 13 metric tons with an estimated RPO content of just over 3,000kg.

However, based on the authorities initial calculations of the total quantity collected, and a tariff of \$286 per kg (which is imposed under Ukrainian law for the discharge of palm oil products/derivatives, which are considered as Category “Y” substances under MARPOL Annex V), the Ecological Authorities issued a claim for over US\$3 million for environmental damage and a fine of US\$145 on the Master for the spill. Additionally, the port authorities also issued a claim for over US\$9,000 to cover their investigative and clean up expenses. Lawyers have advised that whilst limitation under Ukraine law is available, the limits of liability applying to the vessel mean it would not be relevant. The lawyers have also advised that the Tariff of US\$286 per kg is legally enshrined under Ukrainian law.

Members’ best defence lay in challenging the assessed quantity of RPO in the oil/water mixture collected. Unfortunately the local authorities have refused to accept the quantity proposed by the expert surveyors or negotiate on their position.

As can be seen in this case, there is the potential for a very large claim to be levied against a vessel in Yuzhny for a relatively minor spill, which may be very difficult to defend.

Members should exercise extra care during cargo operations in Yuzhny and surrounding areas and exercise extreme caution to ensure that even the most minor incidents are avoided.

HOLDING ON IN THE HOLD



Most seafarers and superintendents who have either stood by a vessel being built, or taken delivery of a new vessel, can testify that new vessels are not always defect free. The first few months that a vessel enters service are amongst some of the busiest, as hidden or unnoticed build defects become apparent.

North has been made aware of instances recently where newly constructed bulk carriers and general cargo ships have been delivered from the shipbuilder, with partly completed or poorly constructed ladders in the cargo holds.

More specifically, there are cases where the cargo hold access ladders, platforms and their cages have been constructed and secured to the bulkheads only by tack welds, rather than being fully welded. When subject to a load or any other applied stress, such as vessel movement, these tack welds have failed and resulted in an unsafe access to and from the cargo hold. This introduces a very high risk of injury to crew members, stevedores and any third parties entering or leaving the cargo hold. It can also result in costly delays and port State control problems.

The cost of repairs for defects that fall within a newbuilding’s warranty period will often be recoverable from the shipbuilder. However, any costs incurred through consequential losses as a result of such a defect may not be recoverable from the shipbuilder.

VOYAGE DATA RECORDERS



Cases continue to be reported where Voyage Data Recorder (VDR) data is lost, corrupted or has not been saved following an incident. This can make it very difficult to verify the circumstances leading up to an incident and to provide a robust defence to any allegations arising out of an incident or alleged incident.

Common causes for a lack of usable VDR data include:

- Incorrect set up of the VDR equipment and the navigational equipment inputs
- Faults in the connection with navigational equipment
- Forgetting to save the data
- Unfamiliarity with operation of VDR equipment
- Unfamiliarity with method of recovering data.

In order to ensure that the system is functioning correctly and that all required navigational information is fed into the system properly, we recommend that procedures are developed to ensure that vessel crews are familiar with the process of saving and recovering data. The recovered data may be used as an additional training tool for the bridge team where appropriate.

Data recovered during these routine procedures should be checked to ensure that it is both complete and correct. This should identify any potential problems with the system and suitable maintenance can take place to ensure that the VDR is functioning correctly. Hopefully, the data will never be needed but it can be invaluable should an incident occur.



WEST AFRICAN PIRACY UPDATE

Maritime crime has been present in West Africa for many years and vessel operators familiar with the region will be well aware of crimes such as robbery from vessels at anchorages and pilferage of cargo. A number of recent high profile cases involving vessels being hijacked and crew members kidnapped have brought maritime crime in the waters off West Africa into greater focus.

In the past, the main high risk area encompassed the Gulf of Guinea, the Bight of Benin and the Bight of Bonny. This includes the territorial waters of Togo, Benin, and Nigeria. Although the number of attacks have dropped significantly in the territorial waters of the Ivory Coast, Togo and Benin, the general area remains extremely hazardous and vigilance is recommended when operating within the region.

The hijacking of a Liberian flagged product tanker in January, sparked industry wide concern that Nigerian pirates are not only expanding their field of operation, but also at the levels of violence being used against crew members. In this incident, the vessel was boarded by pirates off the coast of Angola and the cargo stolen during a ship-to-ship transfer operation that took place in the waters along the West African coast.

In another more recent incident in June and at a location 45nm south of Accra, Ghana, pirates hijacked a drifting product tanker and stole cargo and the crew's personal effects. The vessel and crew were then released after a week in captivity, but thankfully all crew were unharmed.

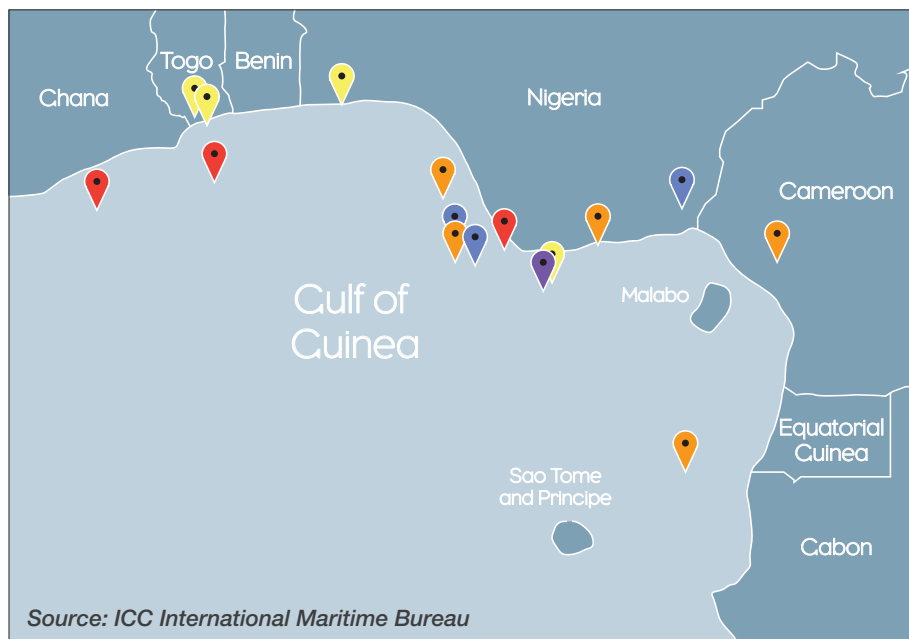
The International Chamber of Commerce's International Maritime Bureau's (IMB) first quarterly report indicates that, so far in 2014, there have been twelve individual incidents and the hijacking of two vessels in West African waters. However, Nigeria accounts for six of these incidents, including the hijacking of a supply vessel that was used as a mother ship.

The IMB's live piracy map providing the most up-to-date information on incidents in the region can be found at: www.icc-ccs.org/piracy-reporting-centre

Industry Guidelines for Gulf of Guinea Region

Industry guidelines have been produced to assist Members in making their threat assessment and general understanding of the situation in the Gulf of Guinea. The industry guidelines rely heavily on best management practices (BMP4) which are specific to the Somali piracy problem and which may not prove wholly suitable for use in West African situations.

= Attempted Attack = Boarded = Fired upon = Hijacked = Suspicious vessel



Industry guidelines for Gulf of Guinea region can be viewed or downloaded from North's website at: www.nepia.com/publications/industrynews/ships/africa/1315

The Use of Armed Security Guards in Nigeria

The Baltic and International Maritime Council (BIMCO) has issued a security advisory alert reporting that Members operating vessels within the Nigerian Exclusive Economic Zone (EEZ) and territorial waters should be aware that they may be at risk of potentially significant liabilities and delays if they employ armed guards on board their vessels. This appears to apply regardless of whether armed guards are from the Nigerian Marine Police, the Nigerian Police or the "Joint Task Force" and sourced by an agent or a private maritime security company (PMSC).

It is understood that the operations of the Nigerian Marine Police, the Nigerian Police and the "Joint Task Force" are restricted to the Nigerian Delta and the countries ports and harbours. Their jurisdiction reportedly does not extend to the high seas beyond the fairway buoy.

The Nigerian Navy does not provide or permit armed guards on merchant vessels and the only authorised method of employing security protection within Nigeria's territorial waters and the EEZ is by utilising the services of the Nigerian Navy.

The employment of unauthorised armed security guards on board merchant vessels has so far resulted in three arrests this year.

The security guards were provided by the Nigerian Police and detentions lasted up to six weeks. Members considering employing armed guards in Nigerian waters should proceed with extreme caution and ensure that the guards are authorised for the intended areas of operation.

Members should continue to use GUARDCON suitably amended for its use in West Africa. For guidance on this please see the Club's Circular Reference 2014/015 dated 11 April 2014. This Circular confirms that the BIMCO GUARDCON contract for the employment of PMSCs on vessels conforms to Club cover and IG pooling arrangements. <http://www.nepia.com/publications/clubcirculargeneral/1444>

Further Information

North has published a comprehensive Loss Prevention Briefing entitled West African Piracy which can be downloaded from the Club's website at: www.nepia.com/lp-briefings

Members considering the employment of armed guards in West Africa, or submitting a draft contract for review before it is signed, should contact the piracy team at North: piracycontractreviewteam@nepia.com

CREW COMMUNICATION

The modern world is becoming smaller – not in a physical sense, the great circle distance between two points hasn't changed, but the ability to communicate instantly in a huge array of formats has effectively bridged the physical gap of distance and brought the world closer together.

In today's multimedia society it is considered normal to be able to log on to a multitude of apps or software systems and to immediately see or talk to someone on the other side of the world.

Many of you when sitting at home, or even whilst working in your office, will have access to many different forms of technologies that are specifically designed to instantly communicate with the outside world – it is this technology that is making the world a smaller place and is what people are becoming reliant on when working away from families and friends.

But what happens when a vessel is in the middle of the ocean and the technology isn't available or is too expensive? What affect on morale or psychological wellbeing does the inability of a seafarer to communicate with family have? People have an inherent need to communicate and socialise with colleagues, family and friends, removing that facility can have a detrimental effect on morale, decrease performance and efficiency and lead to an increased rate of accidents.

A recent study produced by researchers taking part in the *KnowMe* project (an EU funded initiative instigated to examine ways of improving the image of shipping and enhance the attractiveness of maritime careers) showed that over 97% of seafarers questioned thought that communication facilities on board played a crucial role in promoting the wellbeing of seafarers, with the majority of seafarers questioned rating the ability to communicate with family as being extremely important.

The format and availability of communications technology at sea varies greatly, 68% of seafarers who responded to the survey stated they had access to satellite phone whilst at sea but only 36% stated they had access to the internet. One third of the seafarers who have access to the internet only have access for a predetermined amount of time and one quarter are only allowed a predetermined amount of data.

Is access to the internet really that important? Three quarters of respondents said they accessed the internet on a daily basis whilst at home but this fell to one quarter when on board a ship. 84% of respondents advised that access to the internet would be a critical factor in deciding to prolong a contract on board and 65% stated that access to the internet was a critical factor when deciding which shipping company to work with.

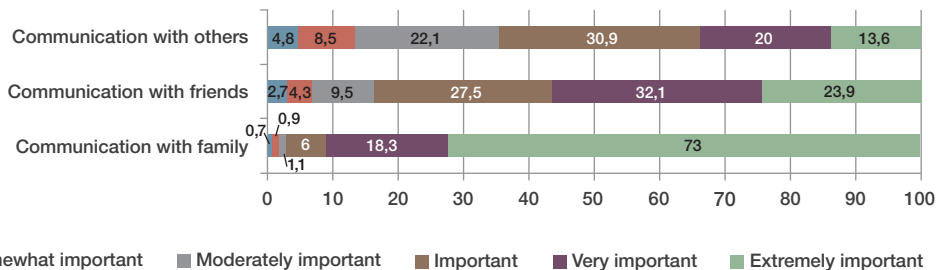
When asked about the reasons that seafarers consider important when deciding to leave the maritime industry, improper communication with family and friends coupled with social isolation was considered to be either paramount or very significant by nearly 65% of respondents when driven to make a decision.

Recruitment and retention of high calibre individuals is an industry wide problem and this research indicates that the inability to communicate with your family, and the perceived isolation that may arise from limited access to emails and internet, is very likely to have a detrimental effect on both recruitment and retention of seafarers.

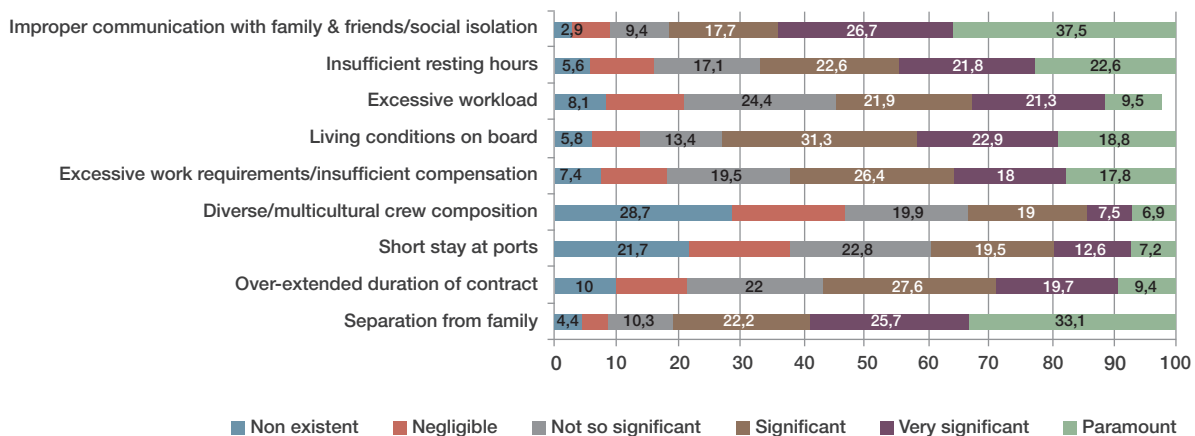
The costs associated with emails and internet access at sea are still considerable but cannot be considered in isolation. If viewed in context against the cost of recruiting, training, and retaining seafarers, the costs become much more reasonable. Careful consideration of an appropriate communications policy is needed to balance the cost/benefit. Is your pool of available crew reduced due to your communications policy? Can your company afford not to have generous email and internet access allowance? Would you or your son or daughter be prepared to put up with the reduced access to technology that is still the norm for seafarers? All difficult questions with no easy answers.

Source: *KnowMe*

How important is communicating with people whilst on board?



What would drive you to abandon the maritime profession?





CREW MEDICAL EXPENSES IN SPAIN



Club correspondents have recently provided us with an update in relation to medical expenses for seafarers disembarked in Spain for medical treatment.

They recommend that all EU seafarers carry an EHIC card in line with the advice provided to Members in *Signals* Issue 94 (January 2014).

Most major ports in Spain have good quality public hospitals nearby and there should be no need for a crew member to be taken to a private hospital. For routine matters or consultations, a seafarer is unlikely to obtain better quality treatment at a private hospital.

In a number of ports, for non urgent cases, a doctor will attend on board to assess a crew member. The doctor will request details of the person responsible for this crew member. The responsible person is usually the ship's agent however, correspondents can also be appointed in this role. If the doctor assesses that the symptoms are non urgent, it is unlikely that the crew member will receive free medical treatment at a public hospital. In these cases, the correct procedure, even for Spanish nationals, is to visit their local public health doctor. Although the service is in theory free and a crew member could use his EHIC card to obtain treatment, it is necessary to register first at the public medical centre as a temporary patient.

This may take some time and may cause delays to the vessel. In view of the potential minimal charge for the private consultation, registering as a temporary patient may not be feasible.

For those matters which require urgent admission to hospital, a seafarer should be in possession of an EHIC card in order to receive free treatment. Hospitals will not usually demand sight of the card at the time an urgent admission is required. Nor does the possession of an EHIC card guarantee free treatment. The position of the Spanish Social Security is that, where a seafarer requires hospital treatment as a result of a workplace accident, the employer should pay for the treatment. This applies even to Spanish nationals admitted to state hospitals as a result of a workplace accident.

Illnesses are treated differently, but again, there are some areas of Spain (Barcelona for example) whose hospitals receive high numbers of ill or injured tourists. They employ a member of staff specifically to capture insurance details of all foreign nationals in order to recover their charges despite the fact that the tourist (or seafarer) carries an EHIC card.

The state hospital tariffs are set by the government of each of the autonomous regions of Spain. Private hospitals are also required to publish standard set tariffs. Usually, there is little chance to negotiate a discount unless there is scope for volume business, i.e. a cruise ship sending a large number of patients from a vessel.

It is always advisable for crew members to carry an EHIC card should they be eligible for one as the starting point for all negotiations will be the existence of the card.

Members should also be aware that medical agencies operate in many ports. In some cases they provide a useful service but according to our correspondents the cost of treatment via some medical agencies can be considerably higher than expected. Also, the fees and commissions charged by these companies have, in some instances, been excessive.

In order to ensure that costs can be controlled as much as possible, and that crew members are directed to the most appropriate medical facility, we would recommend that Members contact the Club immediately where a crew member requires medical treatment in Spain. Our local correspondents can be appointed to ensure that the seafarer is admitted to the most appropriate medical centre and that as far as possible, medical costs are minimised or avoided altogether where possible.

We would like to thank James McKinnell from Hispania P&I Correspondents for his contribution to this article.

PLANS AND PROCEDURES FOR RECOVERY OF PEOPLE FROM THE WATER



The recovery of people from the water has been an age old concern for the maritime industry and seafarers may be faced with the task of recovering distressed people on an urgent basis without notice. Rescues may include crew members or passengers from the seafarer's vessel, abandoned vessels or ditched aircraft.

The recent surge in numbers of migrants at sea means that vessels are more likely to be faced with recovering numerous people from the water or from small craft. The migrants may be in need of water, food or medical treatment.

The safe transfer of migrants from the water or small craft can pose many risks because of the number of people involved and because they may be weak. Language can be a problem and they will certainly lack training or practice in using traditional boarding methods. Should you be called upon to assist in rescuing migrants, the following factors need to be taken into account.

Once the people to be rescued have been located, which may be difficult in itself, there are numerous factors to overcome when conducting rescue operations including:

- Differing sizes between ships, survival crafts and the people in distress.

- Differences in relative movement between the rescuing vessel and survival craft or people.
- Water temperatures or conditions surrounding the rescue vessel.
- Physical capability of those being recovered.
- Quantity of people being rescued and possibility of fatigued migrants.
- Sea state and weather conditions.
- It will be more difficult at night.

A new SOLAS Regulation, III/17-1 will progress the need for greater planning in this regard and any vessel with a keel laid, or carrying out a renewal safety equipment survey (after 1 July 2014) will be required to comply with this Regulation. Ro-Ro passenger vessels should already comply with SOLAS Regulation III/26.4, and so are deemed to have complied with Regulation III/17-1 requirements.

The new Regulation requires ship specific plans and procedures for the recovery of people from the water whilst reducing the risk of injury by impact with the vessel structure, or injury caused by life saving apparatus. Risk assessments are used to account for anticipated weather and sea conditions and should be tailored to suit the rescuing vessel.

Cold water survival may be of great importance if the conditions dictate and understanding how the body reacts to cold water exposure will assist in knowing the steps which can be taken to help delay the damaging effects of cold stress, which will increase the chances of survival.

Useful guidance for developing your plans may be found in the following IMO documents:

- MSC.1/ Circ. 1182 – Guide to Recovery Techniques.
- MSC.1/ Circ. 1447 – Guidelines for the Development of Plans and Procedures for Recovery of People from the Water.
- MSC.1/ Circ. 1185 – Guide for Cold Water Survival.

It is important that crew are familiar with the plans, procedures and equipment used to rescue people from the water. As such, there is a need to rehearse this on a regular basis. You may wish to develop and include a drill focussed on recovery of people from the water in your routine on board drills.

Information sourced from IMO website and pictures from UNHCR/North.



REEFER DELAY CLAIMS

A recent judgment in the English High Court highlights the difficulties faced by cargo vessel interests when claiming damages for loss or damage to perishable cargoes shipped on board a liner service which is subject to delay.

The judgement, *Univeg Direct Fruit Marketing & Others -v- Mediterranean Shipping Company SA* (“MSC STELLA”) 2013 EWHC2962 (Comm), dispels the claim often advanced by cargo interests who ship perishable fruits that a clean on board bill of lading evidences cargo shipped in good order and condition. The judgment also highlights the obligation of cargo interests to provide evidence showing the pre-shipment condition of the cargo and evidence of the pre-shipment handling. The case also found that unless the carrier has undertaken unequivocally to carry cargo on a specific vessel within a specific timeframe then it is the cargo interests and not the carrier who bear the risk of delay unless the delay is due to clear fault on board part of the carrier.

The facts of this case took place against the background of industrial action in South Africa in May 2010 which resulted in a backlog of waiting ships at ports including Cape Town.

The defendant carrier had issued booking confirmations in respect of containers of clementines to be shipped from Cape town to Rotterdam and referring to the “MSC LESOTHO”. However, the strike caused the carrier to advise the customer that it had been unable to accommodate all of the cargo onto the “MSC LESOTHO” and that the balance would be shipped on the “MSC STELLA” “where it will obtain priority for loading”.

The “MSC LESOTHO” was the first to leave Cape Town and arrived in Rotterdam on 26 June. The “MSC STELLA” arrived 5 days later. The claimant consignees and shippers argued that the arrival of the “MSC STELLA” was delayed, that the carrier was responsible for the delay and that the delay caused the deterioration of the cargo and therefore its value.

However, the Commercial Court found:

- Although the initial booking envisaged shipment on board the “MSC LESOTHO”, the booking was subject to the carrier’s bill of lading terms which stated that the carrier could use any vessel. Cargo interests had not contracted for any specific ship or loading time.
- The court rejected that the carrier had failed to use reasonable despatch.

- Cargo interests had failed to discharge the initial burden of proof that the cargo was shipped in good order and condition and without inherent vice and that the cargo was able to withstand the ordinary incidents of the carriage concerned. The court found that cargo interests had failed to provide sufficient evidence of the condition of the cargo upon shipment, in particular in respect of pre-shipment treatment and handling. It was found that export certificates alone were insufficient. Furthermore, the court found that the condition of the cargo on outturn suggested that the cargo was not free from deterioration at the time of shipment.
- The court accepted expert evidence that the cargo would have been close to the end of its commercial life even if it had been shipped on board the “MSC LESOTHO” and did not suffer material additional deterioration during the additional 5 days the cargo was on board the “MSC STELLA”.

It is worth remembering that the additional evidence which this judgment shows cargo interests must obtain in order to be able to succeed against the carrier, in particular evidence of pre-shipment handling and condition, may present as a costly, time consuming hurdle for cargo interests (particularly receivers) to overcome.

THE DANGERS OF MISDESCRIBED CARGOES

The description and weight of all cargoes loaded on board a ship are supposed to be properly declared by the shipper. Failure to do so can be dangerous to the ship and crew in more ways than one.

The dangers of containers declared with the incorrect weights, which are then put in the wrong place in the stow are well known. The dangers of misdeclared contents of containers are even greater. North is aware of several cases recently in which it is strongly believed that misdeclared cargoes are the primary cause of fires on board.

The Club has numerous examples of dangerous misdescription of cargoes. For example, containers from China described as containing toys when the contents were in fact fireworks. Fortunately in this case, the containers had already been discharged once the misdescription was discovered.

Not all misdescriptions can result in physical damage to the ship or danger to the crew. Misdescription can result in customs penalties being levied against the carrier or criminal proceedings being instituted. Whilst attempts to smuggle cigarettes and tobacco products, for example, in containers is relatively minor, the attempt to smuggle a container of firearms described as “kitchen and toilet equipment” is taken much more seriously by the local authorities.

Whilst in most cases the shipowner has a right of reimbursement of any losses from the shipper or charterer, in some cases the shipper or charterer does not have the financial resources or is not located in a jurisdiction in which the shipowner’s right can be reliably exercised. Sometimes, losses are not always financial – how does one reimburse the loss of life or loss of reputation or indirect losses or expenses to the shipowner?

The Club strongly recommends that shipowners ensure that they have robust systems in place at local booking offices that will assist staff in identifying misdeclared cargoes and those shippers who may routinely misdescribe cargo. The systems should take into account common trade names that may be associated with dangerous goods, the UN Numbers of dangerous cargoes and the unique Chemical Abstract Number (CAS) assigned to every chemical compound. Knowing the shippers and their business is also important in ensuring misdeclared cargoes are picked up. Training of booking staff in the systems and in the potential hazards of dangerous cargoes is also recommended.

There will always be shippers who misdeclare cargo and, as such, the more robust the systems are that you have in place the less likely you are to have a serious incident on board.

MEDIATION – IT’S GOOD TO TALK

Are you persuaded to consider mediation as a means of resolving a dispute?

If you are not, perhaps you should be. Recent statistics show that across UK commerce as a whole, some £65 billion worth of cases have been mediated since 1990, with a calculated saving of around £17.5 billion in legal fees, wasted management time, damaged relationships and lost productivity (Source: The 6th Biennial Mediation Audit by CEDR and the Civil Mediation Council).

Our own, albeit less scientific, analysis of shipping and mediation suggests similar figures, with mediation easily saving 70% of the fees that would have been incurred had a matter fought – as well as avoiding all that “invisible” loss to the commercial parties concerned.

Any businessman offered a 70% reduction in his overheads together with a tangible reduction in management disruption, and more harmonious relationships with his customers, would surely leap at the chance. It is always better if disputes never arise; but when they do, the advantages of mediation – if it can be used – are obvious.

What is mediation and how and why does it work?

Mediation is not a mini trial or mini arbitration. There is no judge or arbitrator and no decision is “imposed” on the parties. Instead, it is a series of facilitated settlement meetings, usually – though not necessarily – in one place on one day. The process uses the skill and neutrality of the mediator to overcome the issues of mistrust and “positional bargaining” and lost faith which are often present when disputes occur. He adds his knowledge and expertise to that of the parties and their advisors, to give some real perspective to the arguments on both sides. The decision whether or not to settle is with the parties. They decide if they prefer the deal on the table to the alternative of fighting and perhaps losing, with all that entails. This control over the outcome allows experienced commercial people, the shipowners and charterers etc, to play as important and decisive a role as the lawyers and their experts to determine an outcome which suits them most, or harms them least. They do this after a careful assessment, assisted by the mediator, of all of the options.



How do I make it happen?

Most lawyers will find the opportunity to discuss mediation with their opponents whenever they think the process may be appropriate. Sometimes the courts will order mediation. Sometimes the contracts require mediation as a first step in any dispute resolution process – and if they don’t, then it is certainly useful to include a dispute resolution clause such as that contained in the BIMCO Recommended Clauses www.bimco.org/Chartering/Clauses/Dispute_Resolution_Clauses.aspx or the shorter MSMS Mediation Clause www.msmsg.com/clause.htm (which may be easier to insert in a hurriedly negotiated charterparty) or the following very short but effective CEDR clause:

‘If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.’

Sometimes in deeply intractable disputes, mediation may recommend itself to one party but not to others. In that situation a mediator can get involved at the request of one party to discuss with each of the other parties, without any commitment, their options for preparing a “road map” – a sensible route by which to take the dispute forward to resolution by the most expeditious means. This may include mediation, or may simply include a degree of co-operation in agreeing the timetable for and scope of litigation. That in itself is a form of mediation at work and it all saves time, trouble and costs. All of these are matters that can be discussed with the experienced claims staff at the Club, who in turn will know suitable mediation contacts.

Is there a downside?

It may not settle, there is no judgment, and it does not resolve points of law. It is also a long day and takes some stamina. But as 80% of cases settle, and given the statistics above, it will usually be worth thinking about very carefully... and it is always good to talk.



NEW EDITION OF BILLS OF LADING – A GUIDE TO GOOD PRACTICE

North's unique guide on bills of lading, which explains how to avoid disputes and problems arising from their improper use, has been updated.

It is 16 years since the first edition of the guide was published, but many of the issues concerning bills of lading remain unchanged, including disputes between shipowners and shippers over condition or quantity of cargo, delivery without production of the bill of lading, incorporation of terms from often unidentified charterparties and splitting, backdating and amending bills of lading. The latest (third) edition has been extended to cover electronic bills of lading and the legal section has been fully reviewed and updated.

Masters who are diligent or cautious in their handling of that document may often be seen by others as obstructive or awkward. If Masters are to stand their ground and justify their stance, then they should know not only what they have to do, but also why they are doing it.

The guide's principal aim is to assist Masters, as well as ship's officers, operators and managers, understand the legal implications of bills of lading and the problems and practical issues surrounding their everyday use. It is not a legal text book, it is a practical guide offering practical assistance to those in the front line, but hopefully with a sound legal foundation which is explained in legal notes.

The guide works on various levels, with a practical guidance section supplemented by a theory section and footnotes to show the legal foundation of the advice given. Copies of the various international conventions are included together with an annotated and fully explained copy of the BIMCO Congenbill and the latest set of recommended standard letters.

Members can obtain electronic versions of the guide by emailing loss.prevention@nepia.com

Additional hard copies can also be obtained. Please complete the order form which can be found on our website at:

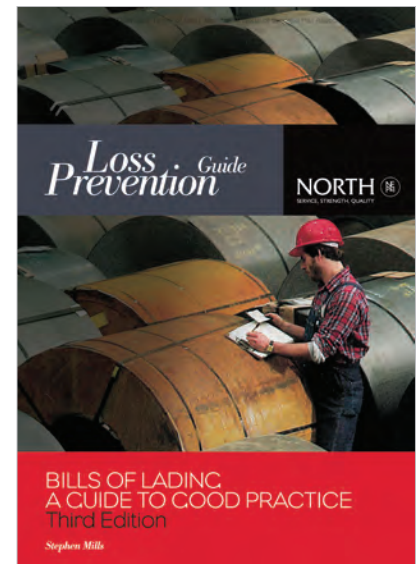
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NEW VOYAGE CP CLAUSE

Disposal of cargo residues and wash water from cargoes that are hazardous to the marine environment (HME)

BIMCO has published a new clause for voyage charterparties dealing with the disposal of cargo residues and wash water from cargoes that are hazardous to the marine environment (HME). It has been developed in response to amendments to MARPOL Annex V that came into effect in 2013.

A copy of the BIMCO's Special Circular which provides the full text of the new clause along with an explanatory note is available to download by following the link below:
www.bimco.org/~ /media/Chartering/Special_Circulars/SC2014_02.ashx

Members are reminded that BIMCO has already published a revised Hold Cleaning/Residue Disposal Clause for Time Charter Parties during 2013.



DEALING WITH THE SANCTIONS SURGE

Adam Szubin, the Director of the US Department of the Treasury's Office of Foreign Assets Control (OFAC), has called the recent proliferation of sanctions over the last couple of years a "sanctions surge". This sanctions surge has resulted in a huge amount of information and guidance being produced, which can potentially overwhelm individuals and companies. In this article, we suggest some of the more useful resources that may assist Members to safely navigate through this sanctions surge.

North

www.nepia.com

Latest updates can be found in the Industry News section of the website:

www.nepia.com/publications/industrynews/listing

More detailed articles on the Iranian and Syrian sanctions are available as Loss Prevention briefings:

www.nepia.com/loss-prevention/publications-and-guides/loss-prevention-briefings



Members should contact the Club directly for guidance and advice on any particular sanctions questions they may have.



US Department of the Treasury

www.treasury.gov

The Treasury website is the starting point when considering US sanctions issues.

The OFAC launch page will highlight (under the resources tab) links to details of individual sanctions programs, news, general information and the Specially Designated National (SDN) List:

www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx

There is a very useful SDN search tool which can be accessed directly here:

<http://sdnsearch.ofac.treas.gov>

This tool is simply searching against US targets and a negative result does not, for example, mean that party is not targeted by EU sanctions.

The website also includes a very long list of FAQ's on sanctions generally and in respect of individual sanctions regimes.

European Union (External Action Service)

www.eeas.europa.eu/cfsp/sanctions/index_en.htm

Perhaps not as user friendly as the US Treasury website, this site hosts a great deal of background and information on the various types of sanctions, the rationale behind the imposing of sanctions and the key EU documents. The consolidated list of persons, groups and entities subject to EU financial sanctions can be accessed here:

www.eeas.europa.eu/cfsp/sanctions/consol-list_en.htm

UK Government

www.gov.uk

The UK Government site includes summaries of the measures taken by the United Nations, European Union and UK Government against particular countries. The Iran section can be accessed here:

www.gov.uk/sanctions-on-iran

Other Resources

Many of the major UK and US law firms issue regular bulletins and updates on sanctions.

Reed Smith has also produced a useful table summarising all the various countries targeted by EU, UN and US sanctions, with hyperlinks through to the lists of sanctions targets:

www.reedsmith.com/Sanctions

The Future

There is no immediate sign of the sanctions surge abating, with many international crises resulting in sanctions against individuals and entities and in different business sectors. Having knowledge of, and utilising, key resources such as those described above is set to be a routine aspect of international trade for years to come.



WRECK REMOVAL CONVENTION TO ENTER INTO FORCE

Following ratification by Denmark on 14 April of this year, The Nairobi International Convention on the Removal of Wrecks will enter into force on 14 April 2015.

The Convention provides a legal basis for States to remove shipwrecks that have the potential to adversely affect the safety of lives, goods and property at sea, as well as the marine and coastal environment. It makes shipowners financially liable and requires them to take out insurance or provide other financial security to cover the costs of wreck removal. It also provides States with a right of direct action against insurers.

The Convention covers:

- The reporting of ships and wrecks to the nearest coastal State, warnings to mariners and action by the coastal state to locate the ship or wreck;
- Criteria for assessing the hazard posed by wrecks, including to safety of navigation and protection of the environment;
- The rights and obligations to remove hazardous ships and wrecks, including when a State may intervene;
- The liability of the owner for the costs of locating, marking and removing ships and wrecks; and

- Settlement of disputes.

The number of abandoned wrecks is believed to have increased in the last decade and the problems they cause to coastal States and to shipping in general have become more acute.

The Convention will make it more difficult for shipowners to 'walk away' from dangerous wrecks. It should also allow shipowners and insurers to challenge unreasonable wreck removal orders.

Shipowners' legal liabilities under the Convention are included in North's P&I cover, subject to North's Rules.

IMO UPDATE MAY 2014

Adoption of Amendments to the ISM Code

The IMO Maritime Safety Committee (MSC), during its 92nd session, approved amendments to the International Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code). MSC.353(92) specifies the amendments to the Code, these include changes to Part A paragraph 6 – Resources and Personnel and paragraph 12 – Company Verification, Review and Evaluation.

Paragraph 6.2 of the Code has been amended as follows:

The Company should ensure that each ship is:

1. manned with qualified, certificated and medically fit seafarers in accordance with national and international requirements; and
2. appropriately manned in order to encompass all aspects of maintaining safe operations on board.

Paragraph 12 now includes a new Paragraph 12.2:

The Company should periodically verify whether all those undertaking delegated ISM-related tasks are acting in conformity with the Company's responsibilities under the Code.

The above amendments are due to enter into force on 1 January 2015.

Adoption of Amendments to SOLAS

The IMO Maritime Safety Committee (MSC), during its 92nd session, approved amendments to the International Convention for the Safety of Life at Sea (SOLAS). MSC.350(92) specifies the amendments to the Convention, these include amendments to Chapter III, Part B, Regulation 19 – Emergency Training and Drills.

The amendments require crew members with enclosed space entry or rescue responsibilities to participate in an enclosed space entry and rescue drill on board the ship at least once every two months. The following must be included in training and drills:

1. checking and use of personal protective equipment required for entry;
2. checking and use of communication equipment and procedures;
3. checking and use of instruments for measuring the atmosphere in enclosed spaces;
4. checking and use of rescue equipment and procedures; and
5. instructions in first aid and resuscitation techniques.

Reduction in Fuel Oil Sulphur Limits When Operating in ECAs

The IMO Marine Environment Protection Committee, during its 60th session, adopted amendments to the International Convention for the Prevention of Pollution from Ships (MARPOL). MEPC.190(60) specifies the amendments to Annex VI of the MARPOL Convention relating to the allowable fuel oil sulphur limits for vessels operating in the Baltic Sea, North Sea and North American emission control areas (ECAs).

The amendments reduce the limits for sulphur content of fuel oil used on board ships operating within an ECA to 0.10% m/m. These reduced limits enter into force on 1 January 2015.





UK RESIDENTIAL TRAINING COURSE 2014

North's 22nd UK Residential Training Course in P&I Insurance and Loss Prevention held during June 2014 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, an emergency life raft in an 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 2015 will be available from early next year.



COLLISION CASE STUDY

Scenario

Two ships are full away in open waters. Visibility is good and there is no other shipping in the vicinity.

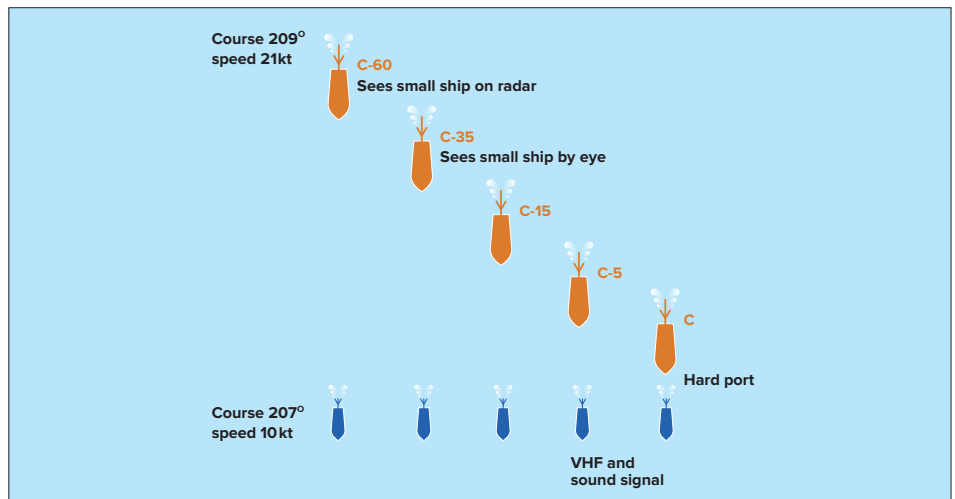
The small ship is on a steady course, speed 10 knots.

The larger ship is approaching from astern at a speed of 21 knots. She sees the smaller ship by eye 35 minutes before the collision.

Neither ship alters course or speed until the moment of collision.

Questions

1. What action (and when) should the larger ship have taken?
2. What action (and when) should the smaller ship have taken?
3. Would your answers be different if the smaller ship was under sail?



Further Information

North's loss prevention guide entitled *Collisions: How to avoid them* can be viewed on its website: www.nepia.com/lpguides

Your Copy of *Signals*

Copies of this issue of *Signals* should contain the following enclosures:

- LP Guide – Bills of Lading (third edition) (Members and appropriate entered ships)
- Hot-Spots – Mooring Operations



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.

The purpose of this publication is to provide 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 the information contained herein are expected to satisfy themselves that it is relevant and suitable for the purposes to which it is applied or intended to be applied. No responsibility is accepted by North or by any person, firm, corporation or organisation who or which has been in any way concerned with the furnishing of data, the development, compilation or publication thereof, for the accuracy of any information or advice given herein or for any omission herefrom, or for any consequences whatsoever resulting directly or indirectly from, reliance upon or adoption of guidance contained herein.

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