THE AMERICAN CLUB

CURRENTS

ISSUE NUMBER 21 NOVEMBER 2005

Winds Of Change

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AMERICAN CLUB NEWS

Diary

December 19, 2005	Reception	Trinity House London
March 16, 2006	Board Meeting	Office of the Managers New York
June 1, 2006	Posidonia Reception	Athens
June 22, 2006	Annual Meeting	New York
September 14, 2006	Board Meeting	Office of the Managers New York

Board Changes

At the Annual Meeting in New York on June 16, 2005, the following Directors were elected to the Board:

Calvin W.S. Cheng	Eastmark Associates, Inc.
Samuel A. Giberga	HornbeckOffshore Services, Inc.
George D. Gourdomichalis	Free Bulkers S.A.
George Vakirtzis	Polembros Shipping Ltd
J. Arnold Witte	Donjon Marine Co., Inc.

Robert A. Agresti of P&O Nedlloyd resigned in February, 2005.
David L. Gare of PSL Marine Ltd retired at the last Meeting.

Management Changes

The following appointments have been made to the staff of Shipowners Claims Bureau Inc., the Managers:

New York

Jacqueline L. Alvarez	Accounting
Sakis Grammenos	Accounting
Sajive Nanda	Claims
John S. Poulson	Technical Services

London

Gustavo Gomez-Acevado	Claims
Ian Sandy	Claims

Piraeus

Marivi Banou	Claims
Annie Papadimitriou	Administration

American Steamship Owners Mutual
Protection & Indemnity Association, Inc.,
Shipowners Claims Bureau Inc., Manager
60 Broad Street, 37th Floor
New York, NY 10004, USA

Confident Progress in Uncertain Times

As the end of the calendar year approaches, it is gratifying to note that the encouraging gains made by the Club at the February 2005 renewal have been sustained over the intervening months. Entered tonnage currently stands at approximately 22.5 million gross tons, while annualized premium income is projected to be in the order of US$150 million.

Of course, this growth could not have been managed without an equivalent development in the Club's 'on the ground' resources. With the opening of our new management office in Piraeus, in April 2005, the Club has been able to provide an enhanced level of service to our important Greek membership and to the wider Eastern Mediterranean region. Looking further East, the Club has recently established a claims-handling facility in China to cater for our expanding Far Eastern membership. The event was marked by a well-attended Club Reception in Shanghai, in October 2005.

While a significant proportion of the Club's future growth may be expected to be derived from Asia, it is important not to neglect other markets. A Board Meeting and Reception held in Paris, in November 2005, gave us the opportunity to renew our acquaintance with key members of the French shipping community. In addition, our feature 'The View From Marseille' highlights the important work performed by our Correspondents on behalf of Members who trade with this leading maritime nation.

The accolade 'P&I Club of the Year 2005', bestowed on the American Club earlier this year by Lloyd's List, has brought recognition of the Club's recent achievements. However, we can be under no illusions that our continued progress will need to be consolidated in the face of increasingly difficult market conditions. The impact of Hurricane Katrina, the upward pressure of retained claims – these and other adverse factors are all touched upon in our main feature 'Winds of Change', indicating that uncertain times lie ahead for the P&I industry, as a whole.

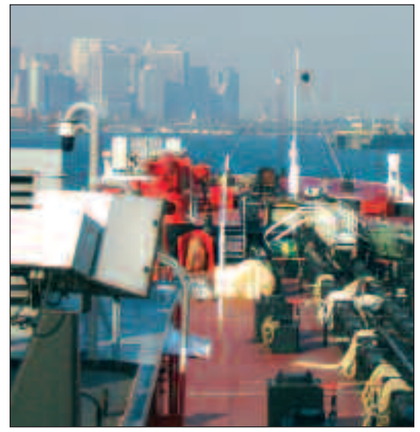
Nevertheless, 'It's an ill wind…' as the old saying has it – and the American Club's appetite for challenge, concomitant with its proven dedication to service and loss prevention, allows our Members to look forward with confidence to the opportunities that lie ahead in the months and years to come, while enjoying a more secure operational environment for their vessels.

Winds Of Change

Joseph E.M. Hughes, Chairman & CEO, Shipowners Claims Bureau, Inc., charts the latest developments in the marine insurance markets.

Introduction

In discussing the latest developments in marine insurance I have made the assumption that the majority of readers will be chiefly interested in the Hull, War and P&I markets. I have also assumed that most people will be reasonably familiar with the basic structure of these markets and the manner in which the cover they supply is distributed internationally. This cover is provided overwhelming by commercial underwriters in London, Scandinavia, continental Europe, the United States and Japan and – so far as P&I is concerned – by the thirteen mutuals which comprise the International Group of P&I Clubs. Accordingly, my overview will address these three areas in turn. Clutching, then, this basic chart, in the aftermath of Hurricane Katrina, where can it be said that the markets are leading us?



The Hull Market

Despite the occasional gloomy prognostication to the contrary over the past decade, there has been no significant decline in the availability of capital to underwrite bluewater hull risks. However, the manner in which that capital has come to the market, and the way in which it has been deployed, have clearly undergone great change since the early 1990s. But, by and large, the global appetite to accept bluewater hull business appears relatively constant, even if there has been a greater concentration of power in certain places, notably in London and Norway, by contrast with other, erstwhile traditional markets, for example, the United States.

Some of the new risks being presented – both in individual cases and in the aggregate – are very large indeed and demand institutional funding. The US$1 billion cruise ship is certainly not far away, to say nothing of next-generation LNG carriers, and so on. Incidentally, some believe that the anticipation of top values of this order stretches capacity and has the effect of softening lower-level pricing further down the rating scale.

Notwithstanding this trend, the international market can be said to have now enjoyed four years of increasing rates and improving conditions. Accordingly, hull insurers have been gaining profitability after some six years of consecutive losses. More recently, however, there would appear to have been at least a leveling-off of rates and, even in the case of fleets with bad records, a more modest uplift in premium demands than might have been expected two or three years ago.

As appears perennially to be the case, general bluewater hull results still tend to underperform other classes of business. This has the effect of placing pressure on class underwriters from their peers in multi-line operations. And at Lloyd's the Franchise Board continues to monitor all syndicate hull figures since the market's marine hull results remain in the bottom quartile of the totality of classes written.

While Lloyd's recently announced a healthy US$2.45 billion interim profit for the six months to June 2005, compared with a full-year profit of £2.42 billion for 2004, this promising trend will have inevitably suffered a significant reverse in the wake of Hurricane Katrina. Lloyd's has provisionally estimated a US$2.55 billion net loss, as a result of the hurricane's devastation. However, based on current information, it believes that any impact on the Lloyd's

(continued on next page)

Central Fund will be immaterial and that there is nothing to suggest that any syndicate will not be able to continue trading. Naturally, circumstances will vary from underwriter to underwriter and from fleet to fleet and any attempt at a quantative assessment, at this stage, would be rash. Nevertheless, an inevitable increase in the cost of reinsurance *post* Katrina should in due course create an upward movement in premium on the direct side, although new capacity attracted by rising rates might constrain such a logical direction for the market.

War Risks

The significance of war risks cover has, of course, grown exponentially since the events of September 11, 2001 and the beginning of the global war on terror. This applies not only to cover for hull-related losses but also to that for liability arising from acts of war or terrorism. The most recent development of note in the war risks sphere occurred in June 2005 when the London market's Joint War Committee withdrew the old list of excluded areas and substituted a much revised catalog of places and regions. The new list was drawn up following advice from an independent security advisor – Aegis Defense Services Ltd. – to the Joint War Committee to reflect, it was thought, a better, and less subjective, assessment of relative risk.

Overall, the changes are said by market underwriters to be revenue-neutral i.e. it is not expected that the total war premium earned by the market will either increase or decrease by reason of the changes. Nevertheless, it is clear that some operations may be faced with higher premiums while others will probably attract savings.

The inclusion of the Malacca Straits as an excluded area has, however, generated controversy, both locally (as might be expected) and within the industry at large. Independently of the cost of the cover – a price of 0.01% per transit has been widely trailed – the practicality of catering for some 60,000 vessel transits a year has been brought into question.

The impact of these changes will, in the final result, be determined by the market itself. It should be noted, of course, that, following London's lead, the Hellenic, Japanese, Norwegian and UK Mutual War Schemes have also implemented the new list. In particular, as regards the inclusion of the Malacca Straits, it is likely that underwriters will eventually either bow to pressure to have the area taken off the list or that, over time, the current consensus as to its appropriateness will fragment. However, at present, there are no signs that this is likely to occur in the short-term.

On the P&I front, International Group clubs continue to provide a special war risks cover of US$500 million in excess of an entered ship's proper value or US$100 million, whichever is the less. The terms of this cover contain an exclusion in respect of "bio-chem" exposures. Although an additional word "biological" has been added to the market "bio-chem" clause, its effect so far as members of P&I clubs are concerned is unchanged, reinsurers having already clarified in 2002 that biological risks were within the scope of the exclusions.

However, in order to respond to this, International Group clubs decided to cover the "bio-chem" claims which were excluded from the special war risks P&I cover through the above-mentioned clause, by way of establishing an unreinsured pooling facility in respect, chiefly, of personal injury to, or illness or death of, seamen. For 2005 the limited cover available under this pooling facility is US$30 million; each club within the Group retaining US$6 million of any claim as might arise under the cover, any one vessel.

At present, the United States Terrorism Risks Insurance Act 2002 (TRIA) continues in force until the end of the year. Broadly speaking, the effect of TRIA is that in the event of claims arising in the United States through an act of terrorism as defined in the legislation, 90% of the losses resulting therefrom may be recovered from the US government.

The US Treasury released a report on the effects of TRIA during its lifetime – Assessment: Terrorism Risk Insurance Act 2002 – to Congress on June 30, 2005. Even if TRIA is to be extended, its form remains a matter of debate, for it is clear that the US administration is opposed to expanding the scope of the program.

The P&I Market

While the significant premium increases of the last three renewals have done much to strengthen the underlying revenue base of most clubs, the relentless increase in claims volumes – stimulated by high ship utilization and steep commodity prices – have done relatively little to abate a general trend of widespread underwriting losses.

Collectively, the International Group of P&I clubs ran successive operating deficits for the financial years 2000 through 2003 inclusive, with the aggregate free reserves of the Group over that period declining by some 26% – or by comparison with the highest year in recent memory – 1999 – by nearly 30%. Last year, by contrast, a robust collective operating surplus of over US$500 million enabled the total free reserves of Group clubs to increase by nearly 40% over the twelve-month period to February 20, 2004.

However, it should be cautioned that most of this substantial gain was attributable to investment income. And some of this was itself created by persistent dollar weakening throughout 2003 which resulted in substantial exchange gains for some clubs at the relevant reporting date in 2004, most of which were unrealized.

In underlying terms, however, underwriting performance did not improve. This was noted in A.M. Best's Special Report on P&I Clubs, August 15, 2005, as follows:

"In fact, only five clubs within the International Group made a technical profit for the year ending February 2004: The American Club (US$24.5 million), Britannia (US$26.8 million), Japan Club (US$14.6 million), Shipowners Club (US$25.6 million) and SKULD (US$3.0 million)."

The collective results for the International Group for the most recent financial year are mixed. While, overall, the clubs have been able to report a surplus – albeit down to just over US$140 million in aggregate – and an increase in free reserves to a little over US$2 billion in all, this may largely be due to the fact that claims emergence for the 2003 and earlier policy years is developing more favorably than predicted twelve months ago.

As to the claims climate generally, the 2004 policy year is shaping up to be among the worst years for the International Group Pool in recent memory. At the same time, the cost of retained claims for 2004 – which appears to be continuing into 2005 – is in many cases treading somewhat over budget. This, as noted earlier, is probably due to the overall increase in global trade and the rise in ship utilization thus generated. The impact of Hurricane Katrina has, at this point in time, yet to be calculated. However, no one expects it to do anything other than exacerbate this trend.

As to investment performance, most clubs saw earnings in the region of 5% to 6% during the last fiscal period – somewhat better, in the result, than was forecast at the half-way point i.e. about a year ago. But current geopolitical uncertainties are likely to create a continuingly fragile investment climate which, although showing some bright spots in certain capital markets, is unlikely to provide the boost to International Group funding it did two years ago. In short, upward pressure on rating and deductible levels is likely to continue over the short term as clubs must, perforce, continue to move away from reliance upon investment earnings to a sharper focus on underwriting surplus.

How this will, in fact, reveal itself in the next round of general increases to be applied as of February 2006 remains, of course, to be seen. But it is likely that clubs will be looking to take account of their growing exposures at the level of retained claims, as well as the expected rise in reinsurance costs as a result of Hurricane Katrina.

Within the Group itself, it is worth noting that the Hydra scheme has been in effect since February 2005. Hydra Insurance Company Ltd. is a Bermuda-based protected cell captive providing reinsurance protection for the Group by way of segregated accounts attributable to each club's liability to the Pool. The reinsurance provides cover for US$20 million excess of US$30 million in the Pool's retention of US$50 million below the threshold of the Group's collective scheme, and, beyond this, in the Group's 25% co-insurance of the first layer of the general excess of loss contract of US$500 million excess of US$50 million. Hydra has, in turn, protected its exposure with a policy on the same terms as that taken out by the Group in 2004 i.e. a stop-loss cover for US$500 million in the aggregate, excess of US$50 million on a 25% basis. The existence of Hydra brings a number of advantages, including the clear commitment of the International Group to retain more risk and the enhancement of financial security as between individual clubs.

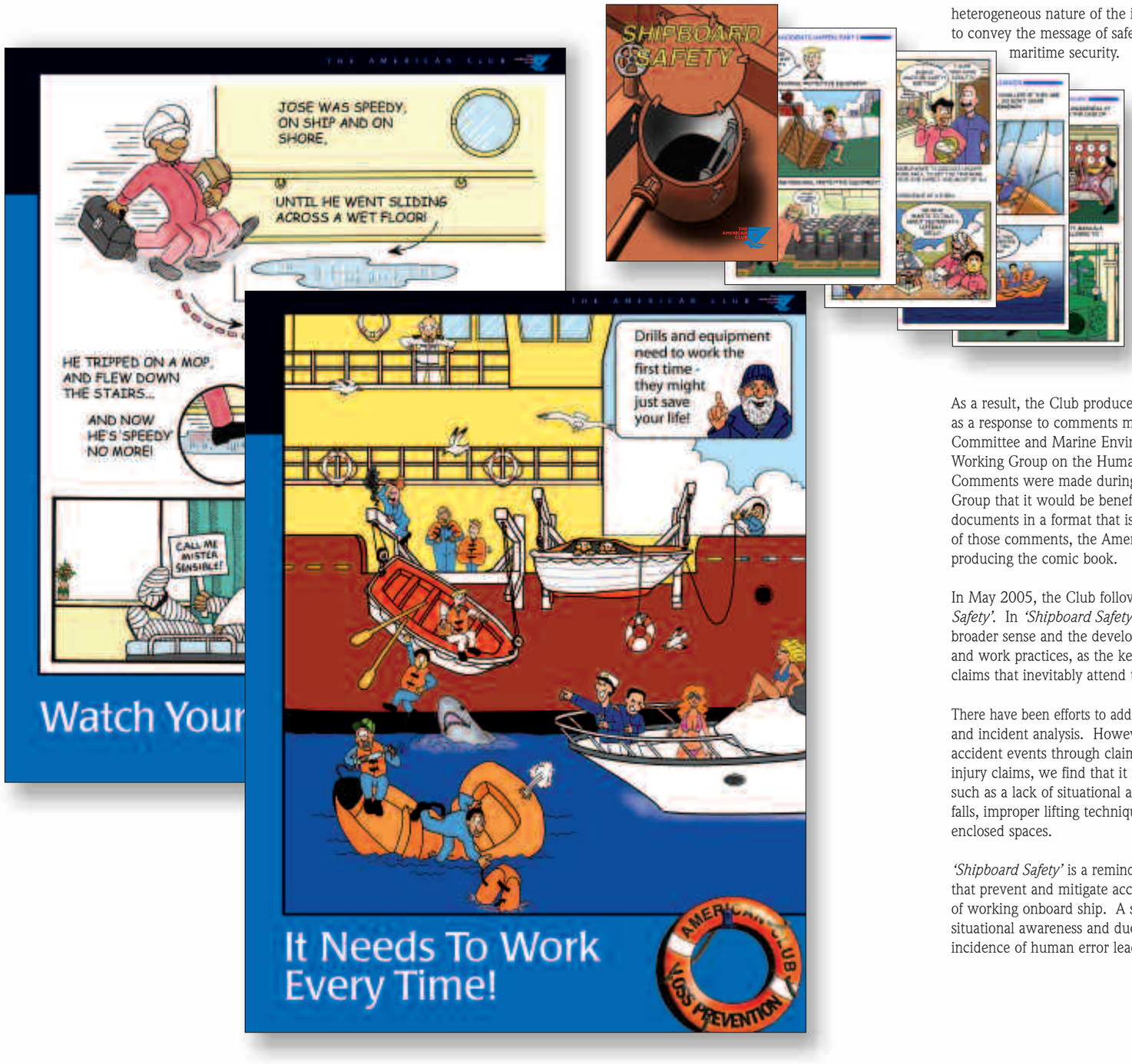
Summary

Although, to a large degree, the Hull, War and P&I markets are driven by varying dynamics – including, it is to be regretted, hurricanes – decent levels of solvency are their common aim. The market vectors which energize this commonality of aim are different but, in the final analysis, the interest of the shipping community in seeing a financially strong and flourishing marine insurance industry is, it is submitted, self-evident.

A marine insurance sector which is well funded and confident of its future is demonstrably a good thing for the shipowners and operators who rely upon its services. In the absence of a buoyant insurance industry, predicated upon fair rating and a decent return for the assumption of risk, shipowners themselves will face difficulty in obtaining the limits and breath of cover which are increasingly expected of them in an ever more demanding economic and regulatory climate.

This article is an abridged version of the paper presented by Joseph E.M. Hughes at Maritime Cyprus 2005, in September 2005.

LOSS PREVENTION– THROUGH HUMOR



Dr. William H. Moore, Vice President of Loss Prevention, Risk Control and Technical Services, Shipowners Claims Bureau, Inc., explains the American Club's current shipboard safety and poster initiative.

Addressing the human element and human error for the maritime industry has never been an easy task. As commonly noted, human error accounts for 80% of maritime accidents. In particular, the heterogeneous nature of the industry makes this task more difficult to convey the message of safety, environmental protection and maritime security.

One of the American Club's important contributions in addressing shipboard safety has been its comic book and poster initiative. The Club had been looking for more effective means of communicating safety and environmental protection to seafarers whose native language is not English. It is a widely held misconception today that complexity equals sophistication and effectiveness. Consequently, it was important to develop material that seafarers want to read and not just another required written regulation or manual.

As a result, the Club produced the comic book *'Preventing Fatigue'* as a response to comments made at a session of the Maritime Safety Committee and Marine Environmental Protection Committee Joint Working Group on the Human Element that met in May 2004. Comments were made during the meeting of the Joint Working Group that it would be beneficial to communicate important IMO documents in a format that is user-friendly for seafarers. As a result of those comments, the American Club responded positively by producing the comic book.

In May 2005, the Club followed it with the publication *'Shipboard Safety'*. In *'Shipboard Safety'*, the focus is on loss prevention in a broader sense and the development of a culture of safety awareness and work practices, as the key to avoiding accidents at sea and the claims that inevitably attend them.

There have been efforts to address the human element through accident and incident analysis. However, the Clubs see the consequences of accident events through claims analysis. When looking at personal injury claims, we find that it is the small things that lead to injuries, such as a lack of situational awareness onboard ship, slips, trips, falls, improper lifting techniques, lifeboat drills and entry into enclosed spaces.

'Shipboard Safety' is a reminder to seafarers about safe work practices that prevent and mitigate accidents associated with the daily hazards of working onboard ship. A strong safety culture, safety awareness, situational awareness and due diligence are key to reducing the incidence of human error leading to accidents.

The next initiative was directed at providing safety posters for Members. We have seen other Clubs such as the North of England P&I Club develop safety and environmental protection posters with a high degree of success and a positive response from the industry. It is important that the American Club moves in a similar direction.

The first four posters, in a series of 15, have been produced and distributed to members for each ship entered with the Club. The first posters are on lifeboat safety, fatigue control, safe lifting practices, and prevention of slips, trips, and falls.

The industry is growing increasingly concerned about lifeboat safety and the number of seafarers injured and killed during drills. We felt that a poster focused on ensuring that lifeboats and lifesaving appliances work when they are needed during drills or an actual emergency is particularly appropriate, given the consequences of these events.

The second poster is a follow-up to the publication *'Preventing Fatigue'* and focuses on taking the seafarer's responsibility to take control of fatigue. The third poster is directed at ensuring that seafarers do not injure their backs through improper lifting of heavy items. The poster provides guidance on common safe lifting practices.

Slips, trips and falls continue to be a common cause of injury both aboard ship and in shore-side industries. The fourth poster focuses not only on ensuring that seafarers are diligent in preventing slips, trips and falls but reaffirms the adage, *"Keep one hand for yourself and one for the ship!"*

There is a wide range of important maritime related risks we wish to highlight in the Club's poster series such as oily water separation violations, garbage management, maritime security and Port State inspections, to name a few. Issuing posters on these subjects allows us to direct our attention to specific risk-related problems that will be regularly visible onboard ship in common work areas.

John Steventon, a free-lance artist from Parsippany, New Jersey, did the artwork for *'Preventing Fatigue'*, *'Shipboard Safety'* and the poster series. Joseph E.M. Hughes, Chief Executive Officer, Shipowners Claims Bureau, Inc., commented, "The Club has been very impressed with Mr. Steventon's extraordinary ability to make points in pictures which would be rendered so much weaker in words. This is of particular importance in the maritime sector with so many nationalities onboard ship where those images need to be effective."

The American Club has come a long way since 2003, when we reaffirmed our commitment to claims prevention and loss prevention. The Club will continuously monitor risks to Members and their seafarers and adapt our loss prevention and risk control activities to meet the needs of our increasingly diverse fleet.

For more information about American Club publications, please contact Dr. William Moore, Vice President, Loss Prevention, Risk Control and Technical Services, at: Shipowners Claims Bureau, Inc. Tel: +1 212 847 4542 or wmoore@american-club.net.

LEAVE IT TO THE EXPERTS

Frank Boyfield, National Sales Manager of Anderson-Kelly Associates, Inc., outlines the advantages of utilizing a maritime medical program administrator.

Introduction

Maritime employers both in the United States and abroad face the challenges of finding medically fit mariners to work on board their vessels. The Club's recent statistical analysis of claims[1] revealed that as many as 24% of reported claims and 22% of illness/injury claims (USD 5.2 million) resulted from possible pre-existing conditions. To reduce the high cost of claims, injury management, repatriation and lost time, many maritime employers are realizing the benefits of implementing a pre-placement medical examination program. Such programs help to reduce costs and increase productivity by medically pre-screening seafarers prior to employment onboard ship.

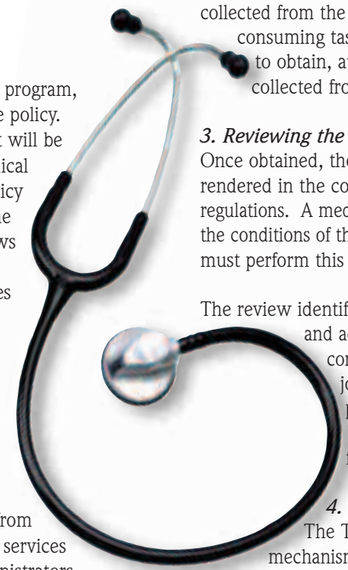
Administration of pre-placement medical programs is complex and time-consuming. To assist in the process, the maritime employer can utilize the services of a third party maritime medical program administrator (TPA), which include:

Establishing Corporate Policy

In order to implement a pre-placement medical program, the employer must establish a written corporate policy. The TPA can assist in developing standards that will be used to determine fitness, the scope of the medical evaluations, the employees impacted by the policy and how the program will be administered. The policy must be designed to comply with any laws and regulations that may affect the maritime employer (ADA, USCG, in certain circumstances OSHA), and require seafarers to meet industry-accepted fitness standards. These standards must then be applied to the workforce without discrimination.

Appointment Coordination

Many maritime employers hire employees in a decentralized fashion. They may source crew from many areas, making it impractical to utilize the services of one clinic. Effective maritime program administrators have developed relationships with a large network of qualified physicians who are available to see employees on short notice and can respond to the needs of the employer, reducing travel costs and time.



Physical Examinations

The process of examining and determining if a mariner is fit-for-duty requires four separate procedures:

1. Clinical Evaluation
The clinical evaluation includes:

- a review of the medical history of the seafarer, paying particular attention to pre-existing conditions that would be exacerbated by the arduous work at sea.
- a physical examination, where an clinician experienced in maritime medicine examines the seafarer, performs laboratory studies and drug and alcohol testing.

2. Collecting the Results
Upon completion of the physical examination, the reports must be collected from the clinic in a timely fashion. To accomplish this time-consuming task, TPA's typically staff large records departments to obtain, audit and process the volumes of paperwork collected from medical clinics.

3. Reviewing the Results
Once obtained, the findings are reviewed and a fitness decision rendered in the context of the corporate standards, policies and regulations. A medical professional experienced in maritime medicine, the conditions of the maritime workplace and the company's standards, must perform this review.

The review identifies mariners who are fit-for-duty or not fit-for-duty, and accommodates seafarers with well-controlled medical conditions which are manageable in the context of the job. For example, certain medical conditions may preclude seafarers from trans-oceanic employment but not coastwise employment, where medical facilities are locally available.

4. Reporting the Results
The TPA's offers clients a wide variety of reporting mechanisms. These include individual status reports for each mariner, and overall program status reports available electronically, via secure email or web-based applications.

This entire process must be performed expeditiously, as maritime employers often crew vessels on short notice and therefore must obtain the immediate medical status of new hires.

[1]*Currents May 2004*

Privacy Concerns

The results from medical evaluations are confidential medical information and cannot be stored in the main personnel file; rather, they must be stored in separate, locked medical files. TPA's can assist employers by providing off-site records storage and 24-hour emergency record retrieval.

Customized and Consolidated Billing Solutions

The TPA offers convenient billing for all related services that it renders as part of the program. This includes collecting and paying all of the bills from clinics and laboratories. The TPA will audit bills for accuracy and appropriateness, and submit one monthly invoice to the employer. This invoice can be organized by vessel, department, rating or cost center, making the tasks of assigning costs to various accounts easy for the employer's accounting department.

Selecting a Maritime Medical Program Administrator

Once the decision is reached to outsource the medical program, it is important to select a TPA with maritime industry experience, for the needs of the maritime employers vary distinctly from those of traditional, land-based operations. This experience should represent a cross-section of maritime employers.

The TPA must have a full understanding of industry regulations i.e. IMO/STCW, USCG, MSC, ADA, OSHA, etc. and be able to customize medical examinations based on the job descriptions of the employees to assure accuracy, fairness and regulatory compliance.

In short, TPA's can assist employers by offering "one-stop shopping". They can effectively and efficiently:

- assist with developing corporate policy.
- provide the employer with a large network of clinics.
- recruit and certify clinics to accommodate a client's geographic needs.
- schedule appointments on behalf of employers, on short notice and at convenient locations.
- ensure all provider clinics use the correct paperwork and follow regulations and corporate policy.
- collect results and audit findings, benchmarking each evaluation against standards assuring completeness and accuracy.
- resolve all discrepancies on behalf of the company.
- pay all invoices and submit a standardized invoice to the customer for ease of accounting and budgeting; integrate value-added services, such as drug testing, background checks, ship-to-shore medical advisory services, medical supply services, etc.
- provide on-line, up-to-the-minute web access regarding new hire and program status.
- provide medical records management, compliant with federal or state regulations.
- provide twenty-four hour records retrieval in the event of an emergency.
- provide program oversight and quality control.

Conclusion

TPA's bring together all aspects of the maritime physical examination process—providing a complete and consistent package of services delivered with efficiency and accountability. They offer depth of knowledge, understanding of industry regulations and years of practical application to the maritime employer.

Outsourcing to a qualified maritime medical program administrator may not be a solution for everyone, but for those whose time is better served in managing their business, outsourcing is a value-added service. The maritime medical program administrator will reduce risk in the hiring process which, in turn, will decrease expenses and employee replacement costs.

DEFENDING THE OWNER'S RIGHTS

Nick Parton and Nils Dahl-Nielsen, founding partners of UK lawyers Jackson Parton, detail the significance of the 'Laemthong Glory' case, in relation to the Contracts (Rights of Third Parties) Act 1999.

The case of the *'Laemthong Glory'* represented an attempt by cargo receivers in Yemen – no doubt emboldened by such major incidents as the "USS COLE" in 2000 and the "LIMBURG" in 2002 – to indulge in some serious commercial blackmail. It involved the American Club in litigation in the English courts throughout much of 2004 and was finally resolved in the early part of 2005 – very successfully, from both the Club and the Member's point of view.

The case is significant from a legal standpoint, since the Court of Appeal in London has now made it clear that a shipowner who is not a party to a contract (in this case, a letter of indemnity between a charterer and the receiver) can enforce a term of that contract to benefit him. The shipowner relied on the Contracts (Rights of Third Parties) Act 1999 ("the 1999 Act") to obtain the benefit of the terms of the letter of indemnity issued by the receivers to the charterers. The Court of Appeal upheld the decision in the owner's favor made by Mr. Justice Cooke in the London High Court five months previously. Both decisions are reported; the Court of Appeal's at *2005 1 Ll 688 and the High Court's at 2005 1 Ll 632.*

In order to explain the commercial importance of this case, it is necessary to give some background facts. The Member was the registered owner of the *MV 'Laemthong Glory'*. The owner chartered the vessel on an amended Sugar Charter Party 1999 form, in December 2003, to French charterers for a voyage from Santos to Aden, with a cargo of 14,000 metric tons of bagged sugar. The cargo was loaded in Santos and bills of lading were issued in late January 2004. They were signed by the Master, for and on behalf of the shipowner as carrier, and consigned *"to order"*. The cargo was shipped pursuant to a sale contract concluded between the charterers as sellers and the Yemeni receivers as buyers, at the end of January 2004.

The vessel arrived at Aden in late February 2004 and the parties agreed that she would discharge the cargo not against production of the bills of lading but against two letters of indemnity dated 25 February 2004, one addressed by the receivers to the charterers, the other addressed by the charterers to the shipowner. The cargo was subsequently delivered to the receivers and discharge was completed in early March 2004. Following discharge, the vessel was arrested by a Yemeni bank which alleged that it held all the bills of lading, asserting a claim for the value of the cargo – at well over US$ 3,000,000 – together with interest and costs.

The vessel was not released from arrest until November 2004, shortly after the High Court trial before Mr. Justice Cooke (referred to above). The arrest had occurred apparently because – the reasons were never entirely clear – the receivers decided not to pay their own bank. This was particularly ironic as the individual behind the receivers was also the largest shareholder in the arresting bank, holding nearly one-fifth of the shares. It became clear in the build-up to the trial that the reason given for the receivers' non-payment was patent nonsense. This was simply an attempt by the bank/receivers to 'exert commercial pressure' on the shipowner, in order to obtain some form of payment (no doubt, a very large one, the vessel having been arrested for an alleged claim of over US$ 3,000,000), to ensure the vessel's release from arrest.

Under the terms of the letter of indemnity given by the charterers to the shipowner, it was clear that the former would have to indemnify the latter in full for all the losses caused by the arrest. However, the French charterers had gone into administration/liquidation and so the letter of indemnity given to shipowner was worthless. The shipowner therefore wanted to enforce the letter of indemnity, which the receivers had given the charterers, directly against the receivers themselves. It was here that the provisions of the 1999 Act proved vital to the shipowner's cause. The receivers' letter of indemnity, which Mr. Justice Cooke, at first instance, held the shipowner was entitled to enforce directly against them, provided that *"In consideration of your complying with our above request* (i.e. to deliver the cargo), *we hereby agree as follows: 1) To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss damage or expense of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request".*

After the Court of Appeal hearing which upheld Mr. Justice Cooke's decision, there was a further hearing before Mr. Justice Aikens where the shipowner claimed an indemnity/damages from the receivers for the *"liability, loss, damage or expense"* they had suffered by reason of the bank's arrest (about which, more below).

It is clear therefore that the Court of Appeal's decision was vital to the shipowner's cause. In order to determine the parties' rights under the 1999 Act, a two-stage approach is required. The first question is whether the contract or contract term in question purports to confer a benefit on the third party seeking to enforce it. Secondly, if it does, the third party is entitled to enforce that contract or term, unless it appears that the parties did not intend the term to be enforceable by him. The third party does not need to be named in the contract. It is simply sufficient for him to be a member of a class or to answer a particular description identified in the contract.

In this case, it was not in dispute that the receiver's letter of indemnity was valid and effective as between the charterers and the receivers, nor that it purported to confer a benefit on the charterers' *"servants or agents"*. The two questions the Court of Appeal had to decide therefore were: 1) Were the ship owners identified in the receivers' letters of indemnity as *"servants or agents"* of the charterers? 2) If so, did it appear, on the true construction of the receivers' letter of indemnity, that the charterers and the receivers did not intend the term to be enforceable by the shipowner?

The Court of Appeal, in dismissing the receivers' appeal, said that Mr. Justice Cooke was correct in finding that the terms of receivers' letter of indemnity relied upon by the shipowner purported to confer a benefit on the shipowner within the meaning of the 1999 Act. As Lord Justice Clarke said (page 697 of the report): *"The parties undoubtedly envisaged it would be the owners, and not the charterers, who effected the delivery. In those circumstances, the fact that the charterers* "request you to deliver the said cargo" *must be a request which extends to physical delivery by the owners."* Earlier, (page 694 of the report) the same judge had said: *"If the very act for which the indemnity was being given was described in the receivers' LOI as one to be carried out by the charterers, in circumstances where it was known to all the parties that it was physically to be carried out by the owners, it seems to us that the only way in which it could be sensibly said that the charterers "deliver[ed]" the cargo was on the basis that the owners were the agents."*

On the second issue, the court held that there was nothing in the receivers' letter of indemnity which led to the conclusion that the parties did not intend the terms to be enforceable by the shipowner. As Lord Justice Clarke said (page 698 of the judgment): *"The whole purpose of the receivers' LOI was on the one hand to ensure that the receivers received the cargo from the ship without production of the original bills of lading and on the other hand to ensure that the owners were fully protected from the consequences of arrest or other action which might be taken by the holders of the original bills of lading. In short, in our judgment the Judge was correct on this second issue as well as the first."*

As the Court of Appeal had dismissed the receivers' appeal, the shipowner's action against the receivers to recover their losses could proceed. The hearing which, as stated above, took place in the High Court before Mr. Justice Aikens determined the amount of the losses suffered by the shipowner and whether or not, as a matter of Yemeni law, the individual behind the receivers (a partnership/company) was personally liable. In the event, in a judgment yet to be reported, the Judge awarded the shipowner nearly US$ 3.5 million, plus costs, and declared that both the receivers and the individual behind them were both jointly and severally liable. The shipowner subsequently made a full recovery of all his losses, including all the legal costs and expenses incurred.

In exercising its discretion to appoint well-placed local correspondents and experts and by instructing lawyers to pursue litigation through the English Courts, the American Club took a tough, principled line, with the result that a cargo receiver and his bank were taught a very expensive lesson. It is believed that the Club's firm stance in this and other similar cases will pay dividends in the future for the Membership, as word spreads in Yemeni shipping circles that enough is enough.

THE EXPORT OF VIETNAMESE RICE

Richard Skene, Manager, Spica Services-Vietnam offers a valuable insight into this important seaborne trade

The rice trade

Recent statistics show the total amount of rice traded globally to be 23 million tonnes. The ratio of trade volume against total production, based upon 340 million tonnes of milled rice, is approximately 6.75%, which is significantly less than other grains.

Rice production in Vietnam is about 34 million tonnes of paddy (harvested) base, where the main production areas are the Mekong Delta in the South and the Red River Delta in the North. The Mekong Delta produces more than half of the country's total production and provides suitable climate conditions so that, in most cases, farmers can harvest rice more than three times a year.

Rice harvests are generally between February and March, July and August, November and December, for short season rice; and January and February, for long season rice.

Rice moisture

At harvest, paddy rice generally has a moisture content of 20-28 percent. The moisture content varies with maturity and atmospheric humidity. It is understandably higher in the wet season than the dry season.

Paddy rice should be dried to a moisture content of less than 20 percent within 48 hours of harvest to reduce the risk of damage. To facilitate good storage, it is best to dry the paddy rice – either in the sun or with modern drying techniques and/or machinery – to a moisture content of 14 percent or less.

Rice kernels should have a moisture content of 13-14 percent to ensure good storage. When the moisture level exceeds 14 percent, the rice takes on a yellowish hue that can lead to mould, lumping and decay, resulting in damage that effects both the quality and quantity of the rice.

Damaged rice can affect undamaged rice lying in close proximity but not necessarily in direct contact. This can occur particularly when it is bagged and awaiting shipment. Therefore, it is prudent to check for this type of damage prior to the cargo leaving the warehouse storage facility. The carrier and his appointed surveyors therefore require the full cooperation of the shippers, to identify where the rice is being stored prior to shipment. However, Spica's experience has shown that the shippers may not be eager to cooperate.

Milling and processing

The most essential stage of the *post*-harvest process is milling, when the husks and bran particles are removed from the paddy grain. Milled rice maintains a higher temperature than pre-processed rice, when the moisture content is higher than 14 percent and particles of bran adhere to the surface of the kernel. Since the rice has generally been whitened, it soon takes on an ivory or yellow coloration.

Preparing rice for export

Prior to the 1990s, exported Vietnamese rice was considered to be low-grade, when approximately 35 percent of the rice had broken ends. Following significant improvements in production and processing technology, Vietnam now produces rice with only 5-10 percent broken ends.

Following the establishment of the Vietnamese Rice Standard for Export by the Standardization Meteorology and Quality Control (SMQC) Centre, foreign buyers can choose between the Vietnamese standard specification or their own export specification.

The following steps indicate how local exporters prepare rice for export:

- Milled rice is purchased from local mill or merchant.
- The rice is processed and/or classified, according to export grades and standards. Cargo is separated into different categories, according to grade and quality.
- The quality of the rice is adjusted, if necessary, to meet the specifications of the shipments by reprocessing (via whitening, sieving, polishing, drying, etc) or simply by mixing rice from different categories in ratios determined during packing at the warehouse.
- Bagged rice is transported from warehouses and remote locations in and around Ho Chi Minh City and throughout the Mekong Delta area. This stage is difficult to monitor accurately unless the surveyor is given several days' notice of the shipment.

Notable problems

Most rice exporters, sellers and shippers allocate quantities of cargo for single-day shipment to several supplier warehouses in Ho Chi Minh City and/or Mekong Delta provinces. Since these suppliers do not necessarily export directly, they are all solely responsible for their cargo until it is loaded on to the ship. It is not uncommon for them to try to profit by supplying cargo just meeting the lower margin of the required specification or occasionally, slightly below specification.

In addition, many suppliers buy rice from local farms, mills or merchants upon demand, due to the lack of adequate finance to buy and process the rice in advance of export. When cargoes are needed urgently for export, the rice cannot always be processed in time, with the result that cargo quality may be compromised, particularly in respect of excess moisture content.

The problem of exceeding the moisture content is compounded during the country's monsoon season, between May and November. To meet the Vietnamese government standard average moisture content of 14 percent, rice kernels of a higher moisture content (e.g. 14.5 percent) may be mixed with rice of lower moisture content (e.g. 13 percent) and many small suppliers and warehouses simply adjust the quality of rice by mixing it with rice of different quality, grade and moisture content during the packing operation. This method may be acceptable for meeting contractual quality as regards the percentage of broken kernels, red kernels, yellow kernels, paddy, etc. but is problematic when it neglects the moisture content of the rice. Damp rice kernels can not only spoil undamaged rice lying in the immediate vicinity but also other rice within the vessel's hold, due to moisture migration, contamination and over-heating. It is therefore important that, weather permitting, both cargo and holds are adequately ventilated.

While techniques in drying and processing rice have improved significantly over recent years, there are many loopholes in the system which allow inferior grades of rice to be shipped with rice that meets quality standards.

Loading rice

Vessels customarily load rice cargoes at mooring buoys or anchorages in and around the port of Ho Chi Minh City. Bagged rice can be transported by truck from inland points or directly into wooden or steel barges that deliver the rice alongside the vessel. With older

(continued on next page)

wooden barges, cargo can be exposed to wet damage from water ingress via the hull planking, while both wooden and steel barges can suffer water ingress via the deck and hatch covers. This is a particular problem during inclement weather.

Cargo is loaded aboard using port stevedores who are not usually contracted by the owner but by the shipper and/or charterers. Although the use of steel hooks to load bagged rice is generally prohibited, this practice can still be found. Unless challenged, it can result in damage and loss of cargo, through spillage, which may not become evident until the cargo is discharged.

Experience has shown that little or no attention to detail or care is shown in loading the cargo since the stevedores are poorly paid for their work. It is not uncommon to see stevedores urinating on cargo in underwings and secluded corners of the vessel. Moreover, they are careless in providing safe stowage and dunnage and in allowing adequate ventilation channels for the cargo.

Consequently, shipowners, charterers or receivers will arrange for separate stevedores to arrange and lay appropriate dunnage.

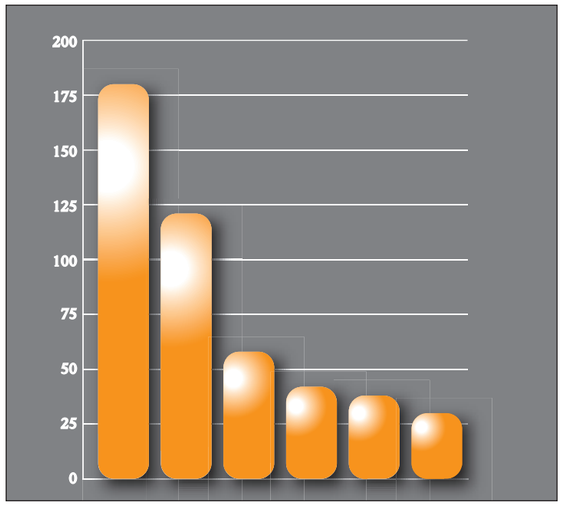
It is recommended that shipowners appoint independent surveyors to ensure proper stowage and care of the cargo during loading and to ensure a proper tally of the cargo is conducted. Furthermore, it is recommended that the ship's crew conduct initial, intermediate and final draft surveys to reduce the risk of cargo shortage claims.

Dunnaging

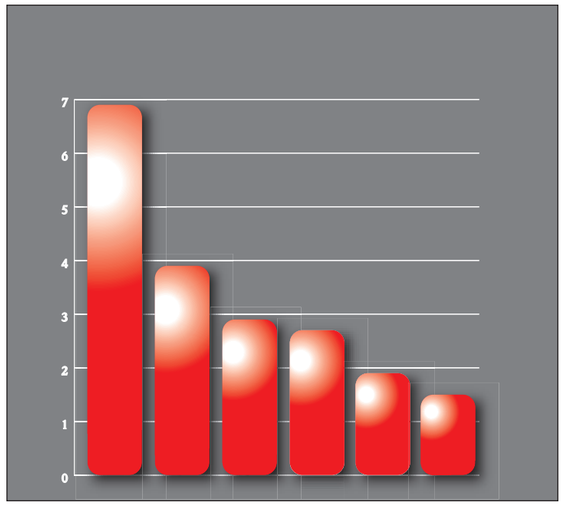
Dunnage usually consists of bamboo sticks laid in a criss-cross fashion on the steel tank tops. These are overlaid with craft paper sheets and/or bamboo mats along the sides of the vessel's bulkheads and side shell. The problem with bamboo sticks is that they are not moisture-free. They may appear dry on the outside but can have a pulpy interior which bleeds moisture into the cargo holds while the ship is in transit.

It is prudent to appoint surveyors to randomly sample bagged cargo and have the samples sent ashore for analysis. While hand-held moisture readings are taken as part of any survey, the readings are only accurate to within 0.5 percent. Thus, if a hand-held reading indicates a sample to be 14 percent, it may actually be 14.5 percent – exceeding local government standards and likely contractual requirements.

2004 Global Rice Production (millions of tons)



2004 Global Rice Exports (millions of tons)



LOSS PREVENTION REVIEW

Loss Prevention, Risk Control and Technical Services Department

Since 2003, the American Club's survey and loss control activities have increased dramatically to adapt to the growing needs of the Club's Members. The Club's loss prevention, risk control and technical services (i.e. surveys) are all coordinated within a single department that provides service to Members and to the Underwriting and Claims departments.

Meet the Managers…

William Moore, Dr. Eng.
Bill is Vice President of Loss Prevention, Risk Control & Technical Services. In addition, Bill is an advisor to Liberia at the International Maritime Organization on both maritime safety and environmental protection-related matters.

Prior to joining the American Club, he spent 4-1/2 years as the Vice President of Loss Prevention & Risk Assessment in Bergen, Norway for Gard Services AS.

Bill spent 5 years with the American Bureau of Shipping (ABS) in New York City as the Manager of Human Factors and Risk Assessment. He was the ABS representative to IACS on the Human Element and Formal Safety Assessment.

He acquired his Doctorate of Engineering in Naval Architecture & Offshore Engineering from the University of California at Berkeley in 1993 and a Master of Engineering in Ocean Systems Management degree from the Massachusetts Institute of Technology in 1990. He received his Bachelor of Science degree in Statistics from the University of California at Berkeley in 1985.

John Poulson
John was born in Durham, England and spent the majority of his sea-going career with Andrew Weir & Co., 'The Bank Line' of Glasgow and London, joining them from school as an Engineer Cadet in 1975. His studies and career at sea took him from Junior Engineer through the ranks to become Chief Engineer at the age of 28.

He joined the Salvage Association in 1989 serving first in the Antwerp Office where he carried out salvage, casualty, warranty and condition survey duties throughout Europe, Scandinavia, West Africa and Turkey. He transferred from Antwerp to the New York Office in 1992, since when he has carried out surveys on behalf of Underwriters and other instructing Principals in virtually every country in the hemisphere. John became Regional Manager of BMT Salvage Ltd. (the SA) for the Americas in April 2001, responsible for all operations throughout North, South & Central America, and Canada.

In September 2005, John joined the American P&I Club as Vice President of Technical Services and Principal Surveyor.

He is a member of the Institute of Marine Engineering, Science and Technology, a member of The American Institute of Marine Underwriters and a member of the Society of Naval Architects and Marine Engineers. He also has a place on the ABS special committee on Ship Operations and was elected Chairman of the Association of Average Adjusters of the United States for 2006.

Carl Croce
Carl Croce is the Vice President of Technical Services and is a marine engineer and marine surveyor with 22 years' experience as a Marine Port Engineer, managing the daily operation of ocean-going containerships, tankers and dry bulk carriers, of international and U.S. registry, and U.S. Naval combat and support vessels, with expertise in all facets of ship repair from large-scale reconstruction and conversion to voyage repairs of steam and diesel ships of many engine types of domestic and foreign manufacture.

Carl is a graduate of the United States Merchant Marine Academy at Kings Point. He is a Certified ISO-ISM Internal Auditor by ABS Marine Services. Prior to joining the American P&I Club, Carl was most recently the principal of a marine survey and engineering consulting company where he carried out and reviewed marine surveys and managed ship repair availabilities, including MARAD RRF activities.

Sonia Santos
Sonia is a professional administrator with many years in the marine industry, having worked for more than 20 years with OSG Ship Management in New York City. Sonia also has a Masters degree in Human Resource Management. She works in all facets of administrative functions to the department. In particular, Sonia interfaces regularly with brokers, Members, correspondents and surveyors in arranging entry condition surveys.

Left to right: Carl Croce, Maria Maldonado, John Poulson and William Moore

Maria Maldonado
Maria is the Administrative Assistant assisting with survey requirements, data updating and general assistance to the Loss Prevention, Risk Control and Technical Services Department. Maria has an Associates Degree from Bronx College in New York in Computer Information Systems.

REGULATORY REVIEW

Two notable decisions concerning Personal Injury have been handed down recently by the Federal Courts of the United States:

(1) In *Stewart v. Dutra Constr. Co., __ U.S. __, 125 S.Ct. 1118 (2005)*, the Supreme Court addressed the issue of whether a dredge is a "vessel" within the scope of that term in the Longshore and Harbor Workers' Compensation Act ("LHWCA"). There, a marine engineer employed aboard a dredge sued the dredge owner for personal injuries allegedly sustained during the course of his employment. The dredge was a floating platform from which a clamshell bucket was used to remove silt from the harbor bottom and deposit it upon scows positioned alongside. The dredge could navigate short distances of approximately 30 to 50 feet by manipulating its anchors and cables. For longer distances, a tugboat would be utilized.

The plaintiff alleged that, while the dredge was lying idle, he was on one of the scows attending to a wiring malfunction as the dredge's clam bucket was moving the scow. The scow struck the dredge and plaintiff was thrown down a hatch, sustaining serious injuries.

Plaintiff sued the dredge owner under LHWCA (among other causes of action), which offers workers' compensation remedies to land based maritime employees as well as tort remedies against third-party owners of "vessels." After failing to prevail on his claims in the United States District Court for the District of Massachusetts and again on appeal in the United States Court of Appeals for the First Circuit, the Supreme Court granted *certiorari* and accepted the case for the sole purpose of resolving confusion among the lower courts as to what constitutes a "vessel" within the scope of LHWCA.

Noting that LHWCA does not define "vessel" within that statute, the Court began its discussion with §3 of the Revised Statutes of 1873, which states that the term "includes every description of water-craft or other artificial contrivance used, or capable of being used, as a means of transportation on water." The Court then went on to state that certain lower courts had narrowed that definition in the years following the Revised Statutes' passage, requiring that a watercraft have navigation as its primary function and that, in certain circumstances, it be in motion at the time of the incident in order to qualify as a "vessel". The Court rejected this interpretation as contrary to the plain language of the statute.

In so doing, the Court set down a blackletter rule that, although explicitly limited to the definition of "vessel" under LHWCA, should for all practical purposes govern the interpretation of the term for other statutes (such as the Jones Act) that do not contain a conflicting definition:
The question remains in all cases whether the watercraft's use "as a means of transportation on water" is a practical possibility or merely a theoretical one… Simply put, a watercraft is not "capable of being used" for maritime transport in any meaningful sense if it has been permanently moored or otherwise rendered practically incapable of transportation or movement… [Otherwise, a] "vessel" is any watercraft practically capable of maritime transportation, regardless of its primary purpose or state of transit at a particular moment. Thus, the Court found that, because the dredge was capable of moving over the water (albeit slowly and for only short distances), it was a "vessel" within the meaning of §3 and, by extension, LHWCA.

(2) In *Bautista v. Star Cruises, 396 F.3d 1289, 2005 AMC 372 (11th Cir. 2005),* the central issue addressed by the United States Court of Appeals for the Eleventh Circuit was whether Norwegian Cruise Lines ("NCL") could compel arbitration of its crewmembers' Jones Act, 46 U.S.C. § 688, and unseaworthiness claims pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, opened for signature June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3 (the "Convention").

In *Bautista*, six Filipino crewmembers were killed and four Filipino crewmembers were injured when the S/S NORWAY's steam boiler exploded while the vessel was in the port of Miami. The crewmembers' employment aboard the vessel was governed by an employment contract executed in the Philippines by the crewmembers and representatives of NCL. The Philippine government regulated the form and content of the employment contract through a program administered by the Philippine Overseas Employment Administration ("POEA"). Each crewmember signed a one-page contract created by the POEA setting forth the basic terms and conditions of employment. Additional terms and conditions, including an arbitration clause, were incorporated by reference to a document entitled "The Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels" ("Standard Terms"). Section 29 of the Standard Terms required arbitration "in cases of claims and disputes arising from [the seaman's] employment." Standard Terms, sec. 29; R.3.60, p. 1.

Following the explosion aboard the S/S NORWAY, the crewmembers/representatives (hereafter "crewmembers") filed separate suits in the Florida circuit court against NCL and Star Cruises. NCL removed the cases to the United States District Court for the Southern District of Florida pursuant to 9 U.S.C. § 205, which permits removal before the start of trial when the dispute relates to an agreement to arbitrate covered by the Convention. Thereafter, the district court consolidated the cases and granted NCL's motion to compel arbitration in the Philippines.

On appeal to the United States Court of Appeals for the Eleventh Circuit, the crewmembers argued that their claims were not covered by the Convention. In review of this contention, the Court began by noting that the Convention requires that a contracting State "shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen … between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration." Convention, art. II (1). However, when the United States acceded to the Convention in 1970, it exercised its right to limit the Convention's application to "commercial" legal relationships as defined by the law of the United States. Convention, art. I (3). The crewmembers, therefore, argued that the applicable definition of the term commercial is found in section 1 of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, which defines "commerce" and provides that "nothing herein contained shall apply to contracts of employment of seaman." 9 U.S.C. § 1.

The Court rejected this argument noting that the Convention's implementing legislation is found at 9 U.S.C. §§ 202-208. Section 202 of the implementing legislation sets forth the intended scope of the Convention and provides that an agreement falls under the Convention if it "arises out of a legal relation, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of [the FAA]." 9 U.S.C. § 202 (emphasis added). Section 2 of the FAA, in turn, makes valid and enforceable "[a] written provision in any maritime transaction … to settle by arbitration." 9 U.S.C. § 2. Unlike section 2 of the FAA, the Court found that section 1 of the FAA is not incorporated into the implementing legislation of the Convention and, therefore, "contracts of employment of seaman" are not specifically excluded.

The Court then turned to the "residual" provision of the Convention's implementing legislation that provides that non-conflicting provisions of the FAA will apply. 9 U.S.C. § 208. The Court summarily rejected the crewmembers' argument that section 1 of the FAA must apply because section 202 of the implementing legislation is silent as to seamen's employment contracts. The Court found that because section 202 covers commercial legal relationships without exception, it most certainly conflicts with the language of section 1 of the FAA.

Held: the language of the Convention, the ratifying language, and the Convention Act implementing the Convention do not recognize an exception for seaman employment contracts. The district court's order to arbitrate in the Philippines was affirmed.

Marseille

From the marinas of the French Riviera to the hot-spots of equatorial Africa, ETIC, the American Club's correspondents in Marseille, know that there is no substitute for local knowledge and expertise.

Founded some 2,600 years ago by the Greeks, Marseille and its port reflect the history of a multi-cultural society with strong ties across the Mediterranean – a stepping-stone to the Middle East and the African continent beyond. High above the city, from her hilltop perch, Notre Dame de la Garde watches carefully over mariners – right across the bay to the fishing port of Saumaty, in the famous Estaque district of Marseille. It is here, from their picturesque quayside offices, that European Transport & Insurance Consultants Sas (ETIC) conducts their daily business.

Created in 2001 by its three partners – Graham Ashley, Frank Benham and Alain Dalmas – ETIC and its African arm, AFRICA P&I Services, aim to provide the shipping community with a consultancy and support service whose emphasis is as much on commercial realism as legal competence. All three partners have over 20 years' experience in P&I work, with particular expertise in handling cargo fraud and personal injury claims in North and West Africa, not to mention luxury yacht-related claims on the French Riviera.

ETIC's typical daily activity of handling cargo, personal injury and other third party liability claims centers on Marseille and its deepwater berths at the container port at Fos-sur-Mer, which as well as handling the bulk of France's round-the-world container traffic, also functions as the main arrival-point for oil and oil products destined for the South European pipeline.

Stowaways are a perennial problem for ETIC and are to be found mainly aboard general liner cargo vessels bound from Morocco and, to a lesser extent, liner ro-ro vessels from Tunisia and Algeria. Relatively few are to be found onboard cross-Mediterranean passenger ships or vessels from West Africa and the Red Sea.

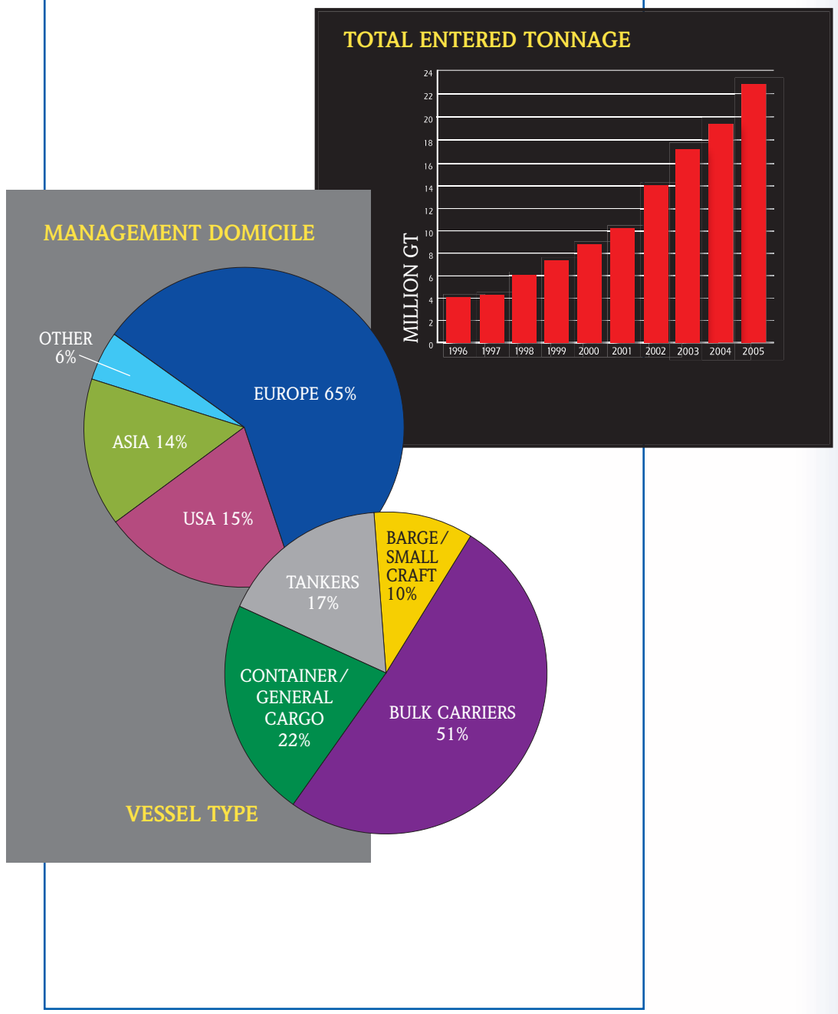
It is the current policy of the French authorities, after a compulsory transit ashore to a detention center in the Port area, to return stow-aways to their vessels for repatriation. According to French law, if the stowaway is a minor then he must remain ashore for a minimum of 24 hours – one complete day from 00h00 to 24h00 – which means that the vessel may be delayed while the under-age stowaway has his 24 hours' rest. However, providing that the necessary groundwork has been done and timely advice given to the authorities, the presence of a stowaway onboard a vessel calling at Marseille will not necessarily incur a fine, unless the authorities can prove complicity on the part of the crew.

Marseille has been named as one of the Courts competent to try cases under the recently introduced Loi Perben, which imposes severe penalties on shipowners and masters convicted of causing oil pollution in French territorial waters. Thankfully, ETIC's experience of such cases has so far been limited – but they have no doubt that this will change, given the enthusiasm of the French maritime authorities for pursuing alleged offenders under this Law.

As far as AFRICA P&I Services is concerned, ETIC believes that, having established branch companies and offices in major locations along the West African and East African coasts during the past four years and by maintaining strong links with the best local agents, surveyors and lawyers, it can provide Club Members with professional yet cost-conscious assistance throughout this vast region.

Alain Dalmas and Frank Benham have recently been joined by Florence Raymond-Gourlet, an experienced maritime lawyer, in providing legal support for their African network, while Graham Ashley makes regular visits throughout the region, trouble-shooting in places as far apart as Nouakchott and Dar-es-Salaam. Whether in France or Africa, ETIC knows that there is no substitute for a solid reputation in areas where expertise and experience count, where an understanding of local risks is paramount and where an immediate response to a problem is the key to successful loss prevention and risk management.

American Club Fleet 2005



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